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# Federal Register

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# Federal Register

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# Presidential Documents

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## The President

**Proclamation 7302 of May 2, 2000**

## Jewish Heritage Week, 2000

**By the President of the United States of America**

**A Proclamation**

For centuries, Jews from every corner of the globe have come to America seeking the right to worship in freedom and to pursue their individual hopes and dreams in peace. For many, the journey was a desperate flight from oppression and persecution to a new life in a new country. Bolstered by powerful family and community ties and drawing strength and hope from their ancient religious traditions, Jews in America not only survived the difficult transition, but also thrived.

From science and the arts to business and the law; as teachers, physicians, journalists, judges, musicians, and policymakers; from neighborhood stores to the corridors of Congress; from the Armed Forces to the Supreme Court, generations of American Jews have succeeded in every sector of our society. And the rewards of that success are shared by us all. Our Nation has benefited immeasurably from the character, values, and achievements of our Jewish citizens.

Building on the Jewish tradition of hospitality toward strangers and acutely aware of the long and tragic history of prejudice and persecution against their people, Jews in America have committed themselves to tolerance, justice, human rights, and the rule of law. American Jews have shared their resources generously with health and human services programs, civil rights groups, educational institutions, arts organizations, and so many more. In communities across our Nation, in small towns and big cities, synagogues and yeshivas have become centers of community service and civic responsibility.

During Jewish Heritage Week, let us acknowledge and give thanks for the many contributions that Jews have brought to our national life and character, and let us celebrate the rich religious and ethnic threads that Jewish men and women have woven into the tapestry that is America.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 7 through May 14, 2000, as Jewish Heritage Week. I urge all Americans to observe this week with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this second day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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# Rules and Regulations

Federal Register
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Friday, May 5, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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## OFFICE OF PERSONNEL MANAGEMENT

**5 CFR Part 532**

**RIN 3206–AI95**

## Prevailing Rate Systems; Redefinition of the Southern and Western Colorado Appropriated Fund Wage Area

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing a final rule to remove Eagle, Garfield, Lake, Pitkin, Rio Blanco, and Routt Counties, Colorado, from the Southern and Western Colorado appropriated fund Federal Wage System (FWS) wage area. These counties will now be in the Denver wage area. We are also removing Mesa County, CO, from the Southern and Western Colorado FWS wage area and adding it to the Utah FWS wage area. These changes more accurately reflect the regulatory criteria we use to define FWS wage areas. Finally, we are changing the name of the Southern and Western Colorado FWS wage area to the Southern Colorado FWS wage area to more accurately describe the geographic coverage of the redefined wage area.

**DATES:** *Effective Date:* This regulation is effective on June 5, 2000. *Applicability Date:* This regulation applies on the first day of the first applicable pay period beginning on or after June 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hopkins by phone at (202) 606–2848, by FAX at (202) 606–0824, or by email at jdhopkin@opm.gov.

**SUPPLEMENTARY INFORMATION:** On December 27, 1999, the Office of Personnel Management (OPM) published a proposed rule (64 FR 72292) to remove Eagle, Garfield, Lake, Pitkin, Rio Blanco, and Routt Counties, Colorado, from the Southern and Western Colorado appropriated fund FWS wage area and add them to the Denver FWS wage area as areas of application. We do not conduct wage surveys in areas of application. Instead, we apply the results that we obtain from surveys in the other counties in the applicable wage area. We also proposed to remove Mesa County, CO, from the Southern and Western Colorado FWS wage area and add it to the Utah FWS wage area as an area of application. Finally, we proposed to change the name of the Southern and Western Colorado FWS wage area to Southern Colorado.

Under section 5343 of title 5, United States Code, OPM is responsible for defining FWS wage areas. For this purpose, we follow the regulatory criteria in section 532.211 of title 5, Code of Federal Regulations. The Southern and Western Colorado wage area meets all of the regulatory requirements to remain a separate wage area. About 1,800 FWS employees currently work in this wage area. The wage area's host activity, the United States Air Force Academy, has the capability to host annual local wage surveys. In addition, we find more than sufficient local private industry wage data in local wage surveys of the Southern and Western Colorado wage area to satisfy our regulatory requirements.

We are moving Eagle, Garfield, Lake, Pitkin, Rio Blanco, and Routt Counties to the Denver wage area based on our analysis of the regulatory criteria. The distance criterion for these counties favors the Denver wage area more than the Southern and Western Colorado wage area. The transportation facilities and geographic features criteria for these counties strongly favor the Denver wage area because the most favorable route by road from these counties goes through the present Denver wage area before reaching the Southern and Western Colorado survey area. All the other criteria we studied did not favor one wage area more than another.

For Mesa County, CO, the distance to the closest city criterion favors the Utah wage area, while the distance to the closest host installation criterion favors the Denver wage area. The transportation facilities and geographic features criteria favor the Utah wage area. The kinds and sizes of industry and population criteria also favor the Utah wage area. All of the other criteria we studied had indeterminate findings. Colorado National Monument, located in Mesa County, is administratively in the same National Park Service region as most of the National Parks in Utah. Arches National Park is in the Utah wage area and is just across the State line from Colorado National Monument. We are placing Colorado National Monument in the same wage area as Arches National Park because of the organizational relationships and geographic proximity of National Park Service facilities in this region.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and recommended these changes by consensus. The proposed rule had a 30-day public comment period, during which OPM did not receive any comments.

### Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

### List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

Accordingly, the Office of Personnel Management amends 5 CFR part 532 as follows:

## PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

**Authority:** 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix A to subpart B of part 532 is amended for the State of Colorado by revising the wage area "Southern & Western Colorado" to read "Southern Colorado".

3. Appendix C to subpart B is amended by revising the wage area listings for the States of Colorado and Utah, to read as follows:

**Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas**

* * * * *

**Colorado**

**Denver**

*Survey Area*

Colorado:
- Adams
- Arapahoe
- Boulder
- Denver
- Douglas
- Gilpin
- Jefferson

Area of Application. Survey area plus:

Colorado:
- Clear Creek
- Eagle
- Elbert
- Garfield
- Grand
- Jackson
- Lake
- Larimer
- Logan
- Morgan
- Park
- Phillips
- Pitkin
- Rio Blanco
- Routt
- Sedgwick
- Summit
- Washington
- Weld
- Yuma

**Southern Colorado**

*Survey Area*

Colorado:
- El Paso
- Pueblo
- Teller

Area of Application. Survey area plus:

Colorado:
- Alamosa
- Archuleta
- Baca
- Bent
- Chaffee
- Cheyenne
- Conejos
- Costilla
- Crowley
- Custer
- Delta
- Dolores
- Fremont
- Gunnison
- Hinsdale
- Huerfano
- Kiowa
- Kit Carson
- Las Animas
- Lincoln
- Mineral
- Montrose
- Otero
- Ouray
- Pitkin
- Prowers
- Rio Grande
- Saguache
- San Juan
- San Miguel

* * * * *

**Utah**

*Survey Area*

Utah:
- Box Elder
- Davis
- Salt Lake
- Tooele
- Utah
- Weber

Area of Application. Survey area plus:

Utah:
- Beaver
- Cache
- Carbon
- Daggett
- Duchesne
- Emery
- Garfield
- Grand
- Iron
- Juab
- Millard
- Morgan
- Piute
- Rich
- San Juan (Only includes the Canyonlands National Park portion.)
- Sanpete
- Sevier
- Summit
- Uintah
- Wasatch
- Washington
- Wayne

Colorado:
- Mesa
- Moffat

* * * * *

[FR Doc. 00–11199 Filed 5–4–00; 8:45 am]

BILLING CODE 6325–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AI86**

### Prevailing Rate Systems; Definition of Napa County, CA, to a Nonappropriated Fund Wage Area

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing a final rule to add Napa County, California, as an area of application to the Solano, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. This change is necessary because NAF FWS employees will have work stations in Napa County, and Napa County was not previously an NAF wage area.

**DATES:** *Effective Date:* This regulation is effective on June 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hopkins, (202) 606–2848, FAX: (202) 606–0824, or email *jdhopkin@opm.gov*.

**SUPPLEMENTARY INFORMATION:** On November 15, 1999, the Office of Personnel Management (OPM) published an interim rule (64 FR 61769) to redefine the Solano, California, nonappropriated fund (NAF) Federal Wage System (FWS) wage area by adding Napa County, CA, as an area of application. Under section 5343 of title 5, United States Code, OPM is responsible for defining FWS wage areas. For this purpose, we follow the regulatory criteria in section 532.219(b) of title 5, Code of Federal Regulations.

The Solano wage area presently has one survey county, Solano County, and two area of application counties, Marin and Sonoma Counties, CA. The Army and Air Force Exchange Service acquired the Yountville Retail Facility located in Napa County and staffed the new activity with approximately eight employees, two of whom are FWS employees. Under 5 CFR 532.219, each NAF wage area "shall consist of one or more survey areas, along with nonsurvey areas, having nonappropriated fund employees."

Napa County does not meet the regulatory criteria under 5 CFR 532.219 to be a separate NAF wage area; however, OPM may combine nonsurvey counties with a survey area to form a wage area. Therefore, OPM defined Napa County as an area of application to an existing NAF wage area. The Solano wage survey consists of one survey county, Solano County, and three area of application counties, Marin, Napa, and Sonoma Counties, CA.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed and concurred by consensus with this change. The interim rule had a 30-day public comment period, during which OPM did not receive any comments.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (64 FR 61769) amending 5 CFR part 532 published on November 15, 1999, is adopted as final with no changes.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00–11198 Filed 5–4–00; 8:45 am]

BILLING CODE 6325–01–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–NE–46–AD; Amendment 39–11714; AD 2000–09–05]**

**RIN 2120–AA64**

## Airworthiness Directives; Allison Engine Company AE 3007 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Allison Engine Company AE 3007 series turbofan engines. This AD would require removal of certain cone shafts from service before exceeding new cyclic life limits and replacement with serviceable parts. This amendment is prompted by additional testing and low cycle fatigue (LCF) life analysis that substantiate lower cyclic lives than originally determined. The actions specified by this AD are intended to prevent LCF failure of cone shafts, which could result in an uncontained engine failure and damage to the aircraft.

**DATES:** Effective date July 5, 2000.

**ADDRESSES:** This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** John Tallarovic, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Avenue, Des Plaines, IL 60018; telephone (847) 294–8180, fax (847) 294–7834.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Allison Engine Company AE 3007A, AE 3007A1, AE 3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1P, and AE 3007C turbofan engines was published in the **Federal Register** on October 12, 1999 (64 FR 55196). That action proposed to require the removal of certain cone shafts, P/Ns 23050728 and 23070729, from service prior to the accumulation of new cyclic life limits, depending on engine model.

### Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Increase Cone Shaft Life Limits for AE 3007A and AE 3007C Engines

The manufacturer requests that the FAA increase the cone shaft life limits for the AE 3007A and AE 3007C engines from 7,500 cycles each to 9,500 cycles and 14,500 cycles respectively. At the time the NPRM was issued, the cone shaft low cycle fatigue analysis for these engines was not available, and the FAA proposed lower, more conservative shaft life limits. The analysis has since been completed and the manufacturer requests that the life limits be increased.

The FAA agrees. The methodology used to determine the lives for these engine models has been approved by the FAA and is consistent with that used to determine critical part lives for other engines already in service (AE 3007A1, AE 3007A1/1, and AE 3007A1/2). Therefore, the cone shaft life limits for the AE 3007A and AE3007C engines should be increased to 9,500 cycles for the AE 3007A engine and to 14,500 cycles for the AE 3007C engine. Accordingly, new paragraphs (a), (b), and (c) in the final rule are substituted for proposed paragraph (a), and the proposed paragraphs (b) through (g) become paragraphs (d) through (i) in the final rule.

### Increase Cone Shaft Life Limits for AE 3007A1/3 and AE 3007A1P Engines

One commenter requests that the FAA increase the cone shaft life limits for the AE 3007A1/3 and AE 3007A1P engines from 3,500 cycles and 2,400 cycles, respectively, to 7,500 cycles each. The commenter suggests that the cone shaft life of the AE 3007A1/3 and AE 3007A1P engines should be increased to match those of the AE 3007A1, AE 3007A1/1, and AE 3007A1/2 engines for two reasons:

- The turbomachinery hardware is the same for all the engine models referenced above. The primary difference between the models is the engine control software.
- A significant operational aspect of this group of engines is the ability to easily maintain fleet readiness by changing the engine model with an engine control software change.

The FAA does not agree. When new data from tests or analysis suggests that component low cycle fatigue lives need to be reduced, different approaches may be taken, depending on the circumstances. If there are significant numbers of affected engines in the field (*e.g.* AE 3007A, AE 3007A1, AE 3007A1/1, AE 3007A1/2, and AE 3007C models), a life management program is developed that allows the users some operational flexibility while maintaining an acceptable level of risk for the fleet. If there is a very small number of affected engines in the field, the FAA prefers a life management program structured on the lifing methodology intended for original certification of the engine design. For the AE 3007A1/3 and AE 3007A1P engines, therefore, the FAA has determined to use the original FAA approved lifing methodology.

### Increase Cone Shaft Life Limits for AE 3007A3 Engines

One commenter requests that the FAA increase the cone shaft life limits for the AE 3007A3 engines.

The FAA does not agree. This engine model was not included in the NPRM and is beyond the scope of this AD.

### Incorrect Model Designation

The NPRM incorrectly specifies the AE 3007A1/P engine. This designation should read "AE 3007A1P." This has been corrected in the final rule.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

### Economic Analysis

There are approximately 598 engines of the affected design in the worldwide fleet. The FAA estimates that 364 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 150 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $3,921 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,703,244.

**Regulatory Impact**

This rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–09–05 Allison Engine Company:** Amendment 39–11714; Docket 99–NE–46–AD.

*Applicability:* Allison Engine Company Models AE 3007A, AE 3007A1, AE 3007A1/1, AE 3007A1/2, AE 3007A1/3, AE 3007A1P, and AE 3007C turbofan engines, with cone shafts, part numbers (P/Ns) 23050728 and 23070729, installed. These engines are installed on but not limited to EMBRAER EMB–135 and EMB–145 series and Cessna 750 (Citation X) series airplanes.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent low cycle fatigue failure of cone shafts, which could result in an uncontained engine failure and damage to the aircraft, accomplish the following:

**Removal From Service**

(a) For Allison Engine Company model AE 3007A engines, remove cone shafts from service prior to accumulating 9,500 cycles-since-new (CSN) and replace with serviceable parts.

(b) For Allison Engine Company model AE 3007C engines, remove cone shafts from service prior to accumulating 14,500 CSN and replace with serviceable parts.

(c) For Allison Engine Company models AE 3007A1, AE 3007A1/1, and AE 3007A1/2 engines, remove cone shafts from service prior to accumulating 7,500 CSN and replace with serviceable parts.

(d) For Allison Engine Company model AE 3007A1/3 engines, remove cone shafts from service prior to accumulating 3,500 CSN and replace with serviceable parts.

(e) For Allison Engine Company model AE 3007A1P engines, remove cone shafts from service prior to accumulating 2,400 CSN and replace with serviceable parts.

**New Life Limits**

(f) Paragraphs (a), (b), (c), (d) and (e) of this AD establish new, lower life limits for cone shafts, P/Ns 23050728 and 23070729.

(g) Except for the provisions of paragraph (h) of this AD, no cone shafts, P/Ns 23050728 and 23070729, may remain in service exceeding the life limits established in paragraphs (a), (b), (c), (d) and (e) of this AD.

**Alternative Method of Compliance**

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago ACO.

**Ferry Flights**

(i) No special flight permits will be issued.

**Effective Date**

(j) This amendment becomes effective on July 5, 2000.

Issued in Burlington, Massachusetts, on April 27, 2000.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–11177 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–13–U

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–SW–02–AD; Amendment 39–11708; AD 2000–08–22]**

**RIN 2120–AA64**

## Airworthiness Directives; MD Helicopters Inc. Model 369D, 369E, 500N, and 600N Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) applicable to MD Helicopters Inc. (MDHI) Model 369D, 369E, 500N, and 600N helicopters with certain analog/digital turbine outlet temperature (TOT) indicators installed. This action requires repetitive calibration testing of the TOT indicating system and corrective actions if necessary. This amendment is prompted by seven reports of erroneous TOT readings and two reports of incorrect wiring harness terminal lugs on the thermocouple wiring. The actions specified in this AD are intended to prevent an erroneous TOT indication, damage to critical engine components, loss of engine power, and a subsequent forced landing.

**DATES:** Effective May 22, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 22, 2000.

Comments for inclusion in the Rules Docket must be received on or before July 5, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000-SW–02, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–346–6387, datafax 480–346–6813. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Bumann, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5265; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** This amendment adopts a new airworthiness directive (AD) applicable to MDHI Model 369D, 369E, 500N, and 600N helicopters with certain analog/digital TOT indicators installed. This action requires repetitive testing of the TOT indicating system to verify correct calibration and to take corrective actions if necessary. This amendment is prompted by seven reports of erroneous TOT readings, up to 100 degrees Celsius low. This amendment is also prompted by two reports of incorrect wiring harness terminal lugs on the thermocouple wiring. Reports indicated that some of the TOT readings did not agree with the engine Electronic Control Unit (ECU) and some readings were found to be 4 degrees Celsius to 17 degrees Celsius low. The actions specified in this AD are intended to prevent erroneous TOT indications, which could prevent the flight crew from detecting that an engine temperature limitation has been exceeded. This condition, if not corrected, could result in damage to critical engine components, loss of engine power, and a subsequent forced landing.

The FAA has reviewed MDHI Service Bulletins SB369D–199, SB369E–093, SB500N–019 (for Model 369D, 369E, and 500N helicopters) and SB600N–026 (for Model 600N helicopters), both dated January 11, 2000. These service bulletins describe procedures for calibration testing of the TOT indicating system and corrective actions if necessary. The corrective actions include inspecting TOT wire harness terminal lugs, connector pins, and sockets to verify correct material and installation; retesting the TOT indicating system; and replacing any unairworthy part with an airworthy part. For Model 600N helicopters, Part III of the service bulletin also describes procedures for verifying the electronic control unit (ECU) TOT calibration.

Since an unsafe condition has been identified that is likely to exist or develop on other MDHI model helicopters of these same type designs, this AD is being issued to prevent an erroneous TOT indication, damage to critical engine components, loss of engine power, and a subsequent forced landing. The actions are required to be accomplished in accordance with the service bulletins described previously, except as discussed in the following paragraphs. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the engine, causing a loss of engine power and a subsequent forced landing of the helicopter. Therefore, initial testing of the TOT indicating system to verify correct calibration is required within the next 50 hours time-in-service (TIS) or on or before June 15, 2000, whichever occurs earlier, and this AD must be issued immediately.

This AD is an interim action. The manufacturer has advised that it currently is developing a modification that will permanently address the unsafe condition.

The service bulletins specify certain serial numbered helicopters with the affected analog/digital TOT indicator installed. The FAA has determined that any Model 369D, 369E, 500N, and 600N helicopter may have the analog/digital TOT indicator, part number (P/N) 369D24513–1 or P/N 9A3420, installed, since the helicopter manufacturer has not developed a modification to correct the unsafe condition. Even subsequently manufactured Model 369D, 369E, 500N, and 600N helicopters may have these analog/digital TOT indicators installed.

The service bulletins recommend accomplishing the TOT system calibration test within 100 hours TIS. The FAA has determined that a 100-hour TIS compliance time would not address the unsafe condition in a timely manner. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the test. In light of all these factors, the FAA finds a compliance time within the next 50 hours TIS or on or before June 15, 2000, whichever occurs first, for initiating the required test is an appropriate interval of time that affected helicopters can operate without compromising safety.

Additionally, the FAA has determined that long-term continued operational safety will be better assured by repetitive testing of the TOT indicating system at intervals not to exceed 300 hours TIS, rather than a one-time test, because of reports that the system calibration may shift with service time. A one-time test may not provide the degree of safety assurance necessary to ensure that the TOT indicator is properly calibrated over time.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 566 helicopters will be affected by this proposed AD, that it will take approximately 0.5 work hour to accomplish the test, and that the average labor rate is $60 per work hour. The manufacturer has represented in the service bulletins that parts will be provided at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,980, per test cycle for the entire fleet.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact

concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–02–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**AD 2000–08–22 MD Helicopters Inc.:** Amendment 39–11708, Docket No. 2000–SW–02–AD.

*Applicability:* Model 369D, 369E, and 500N helicopters, with analog/digital turbine outlet temperature (TOT) indicator, part number (P/N) 369D24513–1, installed; and Model 600N helicopters, with analog/digital TOT indicator, P/N 9A3420, installed; certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent an erroneous TOT indication, damage to critical engine components, loss of engine power, and a subsequent forced landing, accomplish the following:

(a) For Model 369E, 369D, and 500N helicopters: Within the next 50 hours time-in-service (TIS) or on or before June 15, 2000, whichever occurs first; test the TOT indicating system to verify correct calibration in accordance with the Accomplishment Instructions, Part I, of MD Helicopters, Inc. (MDHI) Service Bulletin SB369D–199, SB369E–093, SB500N–019, dated January 11, 2000 (SB). Thereafter, repeat the test at intervals not to exceed 300 hours TIS.

(b) If during any test required by paragraph (a) of this AD the TOT indicator readings for the tester setting temperatures in Table 1, Part I, of the SB are not within the indicator reading range, before further flight, perform the actions in the Accomplishment Instructions, Part I, paragraph (6)(b) of the SB.

(c) For Model 600N helicopters: Within the next 50 hours TIS or on or before June 15, 2000, whichever occurs first; test the TOT indicating system, including the electronic control unit (ECU) TOT sensing system, to verify correct calibration in accordance with the Accomplishment Instructions, Part I, of MDHI SB600N–026, dated January 11, 2000 (SB 600N). Thereafter, repeat the test at intervals not to exceed 300 hours TIS.

(d) If during any calibration test required by paragraph (c) of this AD the TOT indicator readings for the tester setting temperatures in Table 1, Part I, of SB 600N, are not within the indicator reading range, before further flight, perform the actions in the Accomplishment Instructions, Part I, paragraph (7)(b) of SB 600N.

(e) If during any test required by paragraph (c) of this AD the Full Authority Digital Electronic Control (FADEC) maintenance laptop terminal does not indicate ECU TOT within (5 degrees Celsius of the tester setting in Table 1, Part I, of SB 600N, before further flight, perform the actions in the Accomplishment Instructions, Part III, of the SB 600N.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(h) The tests shall be done in accordance with MD Helicopters Inc. Service Bulletin SB369D–199, SB369E–093, SB500N–019 for Model 369D, 369E, and 500N helicopters and Service Bulletin SB600N–026 for Model 600N helicopters, both dated January 11, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9797, telephone 1–800–388–3378 or 480–346–6387; datafax 480–346–6813. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 22, 2000.

Issued in Fort Worth, Texas, on April 18, 2000.

**Mark R. Schilling,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–11058 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–99–AD; Amendment 39–11713; AD 2000–07–51]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model 717–200 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This document publishes in the **Federal Register** an amendment adopting airworthiness directive (AD) 2000–07–51 that was sent previously to all known U.S. owners and operators of McDonnell Douglas Model 717–200 series airplanes by individual notices. This AD requires coiling and stowing of electrical wires between the glareshield control panel and the Integrated Standby Instrument System; and revising the abnormal procedures of the Procedures section of the Airplane Flight Manual to include procedures for identifying and pulling certain circuit breakers if the altimeter Captain's Primary Flight Display (PFD) data become unreliable. This action is prompted by a report of two incidents in which an intermittent loss of altitude data occurred simultaneously on the Captain's PFD, First Officer's PFD, and the Integrated Standby Instrument System (ISIS) altitude display due to a voltage drop in the power distribution control unit. The actions specified by this AD are intended to prevent loss of all altitude information and subsequent essential navigation data for continued safe flight and landing.

**DATES:** Effective May 10, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–07–51, issued April 1, 2000, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 10, 2000.

Comments for inclusion in the Rules Docket must be received on or before July 5, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Thomas Phan, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5342; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** On April 1, 2000, the FAA issued emergency AD 2000–07–51, which is applicable to all McDonnell Douglas Model 717–200 series airplanes.

The FAA has received a report of two incidents in which an intermittent loss of altitude data occurred simultaneously on the Captain's Primary Flight Display (PFD), First Officer's PFD, and the Integrated Standby Instrument System (ISIS) altitude display due to a voltage drop in the power distribution control unit. Additional intermittent loss of cockpit indications included the glareshield control panel data, navigation data, flight management computer mismatch annunciation, autopilot disconnect, and autothrottle disconnect. In both cases, the airspeed and attitude indication remained operational. The flights continued on to their destination without further incident. This condition, if not corrected, could result in loss of all altitude information and subsequent essential navigation data for continued safe flight and landing.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletin 717–34A0002, dated March 30, 2000, which describes procedures for coiling and stowing of electrical wires between the glareshield control panel and the ISIS.

The FAA also has reviewed and approved Boeing Interim Operating Procedure (IOP) 2–17, dated March 31, 2000, which describes procedures for identifying and pulling certain circuit breakers if the altimeter primary flight display data (PFD) become unreliable.

### Explanation of Requirements of the Rule

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design, the FAA issued emergency AD 2000–07–51 to prevent loss of all altitude information and subsequent essential navigation data for continued safe flight and landing. The AD requires coiling and stowing of electrical wires between the glareshield control panel and the Integrated Standby Instrument System; and revising the abnormal procedures of the Procedures section of the Airplane Flight Manual to include procedures for identifying and pulling certain circuit breakers if the altimeter PFD data become unreliable. The actions are required to be accomplished in accordance with the alert service bulletin and IOP previously described.

### Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider additional rulemaking.

### Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this AD effective in less than 30 days.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual notices issued on April 1, 2000, to all known U.S. owners and operators of McDonnell Douglas Model 717–200 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective to all persons.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–99–AD." The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–07–51 McDonnell Douglas:** Amendment 39–11713. Docket 2000-NM–99-AD.

*Applicability:* All Model 717–200 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of all altitude information and subsequent essential navigation data for continued safe flight and landing, accomplish the following:

(a) Prior to further flight, coil and stow the electrical wires between the glareshield control panel and the Integrated Standby Instrument System in accordance with Boeing Alert Service Bulletin 717–34A0002, dated March 30, 2000.

(b) Prior to further flight, revise the abnormal procedures of the Procedures section of the FAA-approved Airplane Flight Manual (AFM) to include procedures for identifying and pulling certain circuit breakers. This must be accomplished by inserting Boeing Interim Operating Procedure 2–17, dated March 31, 2000, into the AFM.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 717–34A0002, dated March 30, 2000; and Boeing Interim Operating Procedure 2–17, dated March 31, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on May 10, 2000, to all persons except those persons to whom it was made immediately effective by emergency AD 2000–07–51, issued on April 1, 2000, which contained the requirements of this amendment.

Issued in Renton, Washington, on April 27, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11059 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 99–ACE–30]**

## Amendment to Class E Airspace; Albion, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends the Class E airspace area at Albion Municipal Airport, Albion, NE. The FAA has developed Global Positioning System (GPS) Runway (RWY) 15 and GPS RWY 33 Standard Instrument Approach Procedures (SIAPs) to serve Albion Municipal Airport, NE. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the GPS RWY

15 and GPS RWY 33 SIAPs in controlled airspace.

In addition, a minor revision to the Airport Reference Point (ARP) and Alaby NDB coordinates is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 15, GPS RWY 33, revise the ARP and NDB coordinates and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

**DATES:** This direct final rule is effective on 0901 UTC, August 10, 2000.

Comments for inclusion in the Rules Docket must be received on or before June 15, 2000.

**ADDRESSES:** Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 99–ACE–30, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:** The FAA has developed GPS RWY 15 and GPS RWY 33 SIAPs to serve the Albion Municipal Airport, NE. The amendment to Class E airspace at Albion, NE, will provide additional controlled airspace at and above 700 feet AGL in order to contain the SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Albion Municipal Airport, NE, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Direct Final Rule Procedure**

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received with the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

**Comments Invited**

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–30." The postcard will be date stamped and returned to the commenter.

**Agency Findings**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subject in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation

Administration Order 7400.9G Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ACE NE E5 Albion, NE [Revised]**

Albion Municipal Airport, NE
(Lat. 41°43′43″N., long. 98°03′21″W.
Alaby NDB
(Lat. 41°43′47″N., long. 98°03′10″W.

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Albion Municipal Airport and within 2.6 miles each side of the 159° bearing from the Alaby NDB extending from the 6.5-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on April 21, 2000.

**Richard L. Day,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 00–11317 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–ACE–6]**

### Establishment of Class E Airspace; Salem, MO

**AGENCY:** Federal Aviation Administration [FAA], DOT.

**ACTION:** Final rule.

**SUMMARY:** This action establishes Class E airspace area at Salem, MO. Area Navigation (RNAV) Runway (RWY) 17, RNAV RWY 35 and Omnidirectional Range (VOR)–A Standard Instrument Approach Procedures (SIAPs) have been developed to serve Salem Memorial Airport, Salem, MO. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate aircraft executing these SIAPs. This action establishes controlled airspace at Salem, MO for aircraft executing the SIAPs at the Salem Memorial Airport.

**EFFECTIVE DATE:** 0901 UTC August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:**

**History**

On March 10, 2000, the FAA proposed to amend part 71 of Title 14 of the Federal Regulations (14 CFR part 71) by establishing Class E airspace area at Salem, MO (65 FR 12957). The proposed action will provide controlled airspace to accommodate aircraft executing the RNAV RWY 17, RNAV RWY 35 and VOR–A SIAPs.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Rule**

This amendment to part 71 of Title 14 of the Federal Regulations (14 CFR part 71) establishes Class E airspace area at Salem, MO, by providing controlled airspace for aircraft executing the RNAV RWY 17, RNAV RWY 35 and VOR–A SIAPs. The area will be depicted on appropriated aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routing matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

### PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 2000, and effective September 16, 2000, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ACE MO E5 Salem, MO [New]**

Salem Memorial Airport, MO
(Lat. 37°36′55″N., long. 91°36′16″W.)
Maples VORTAC
(Lat. 37°35′27″N., long. 91°47′19″W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Salem Memorial Airport, and within 1.1 miles each side of the Maples VORTAC 080° radial extending from the 6.3-mile radius of the Salem Memorial Airport to .2 miles east of the Maples VORTAC.

* * * * *

Issued in Kansas City, MO on April 25, 2000.

**Richard L. Day,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 00–11318 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 121

**[Docket Nos. 27065, 25148 and 26620; Amdt. No. 121–276]**

**RIN 2120–AG74**

### Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule, technical amendment; correction.

**SUMMARY:** This document contains a correction to the final rule, published in

the **Federal Register** on April 10, 2000 (65 FR 18886). That final rule corrects FAA office addresses listed in the Code of Federal Regulations regarding Drug Testing Programs and Alcohol Misuse Prevention Programs. The intended effect of this action is to ensure that the regulated public has correct information regarding FAA office addresses.

**DATES:** This correction is effective April 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ralph Timmons, (202) 267–8442.

**Correction of Publication**

In final rule FR Doc. 00–8362, beginning on page 18886 in the **Federal Register** issue of April 10, 2000, make the following corrections:

1. On page 18886, in column 3, in the heading section, beginning on line 5, correct the amendment number to read, "Amendment No. 121–276".

Issued in Washington, DC, on April 28, 2000.

**Donald P. Byrne,**

*Assistant Chief Counsel, Regulations Division.*

[FR Doc. 00–11164 Filed 5–4–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

**Food and Drug Administration**

**21 CFR Part 178**

**[Docket No. 99F–5111]**

**Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acid-catalyzed condensation reaction products of branched 4-nonylphenol, formaldehyde, and 1-dodecanethiol for use as an antioxidant in adhesives, pressure-sensitive adhesives, and repeated-use rubber articles intended for use in contact with food. This action is in response to a petition filed by Goodyear Tire & Rubber Co.

**DATES:** This rule is effective May 5, 2000. Submit written objections and requests for a hearing by June 5, 2000.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of December 2, 1999 (64 FR 67575), FDA announced that a food additive petition (FAP 0B4703) had been filed by Goodyear Tire & Rubber Co., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of acid-catalyzed condensation reaction products of branched 4-nonylphenol, formaldehyde, and 1-dodecanethiol for use as an antioxidant in adhesives, pressure-sensitive adhesives, and repeated-use rubber articles intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) that the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 0B4703 (64 FR 67575). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before June 5, 2000, file with the Dockets Management Branch (address above) written objection thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

**List of Subjects in 21 CFR Part 178**

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by revising the entry for "Alkylthiophenolics" to read as follows:

**§ 178.2010 Antioxidants and/or stabilizers for polymers.**

* * * * *

(b) * * *

| Substances | Limitations |
|---|---|
| * * * * * * * | |
| Alkylthiophenolics:<br>1. Acid-catalyzed condensation reaction products of 4-nonylphenol, formaldehyde, and 1-dodecanethiol (CAS Reg. No. 164907–73–7). | For use only:<br>1. At levels not to exceed 2 percent by weight of adhesives complying with § 175.105 of this chapter, of pressure-sensitive adhesives complying with § 175.125 of this chapter, and of rubber articles complying with § 177.2600 of this chapter. |
| 2. Acid-catalyzed condensation reaction products of branched 4-nonylphenol, formaldehyde, and 1-dodecanethiol (CAS Reg. No. 203742–97–6). | 2. Do. |
| * * * * * * * | |

Dated: April 25, 2000.

**L. Robert Lake,**

*Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–11201 Filed 5–4–00; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 948

**[WV–080–FOR]**

## West Virginia Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule.

**SUMMARY:** OSM is approving, with certain exceptions, amendments to the West Virginia permanent regulatory program (hereinafter referred to as the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of the revisions to the West Virginia Surface Mining Reclamation Regulations. The amendments are intended to improve the operational efficiency of the West Virginia program.

**EFFECTIVE DATE:** May 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger W. Calhoun, Director, Charleston Field Office, 1027 Virginia Street East, Charleston, West Virginia 25301. Telephone: (304) 347–7158.

**SUPPLEMENTARY INFORMATION:**

I. Background on the West Virginia Program
II. Submission of the Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

### I. Background on the West Virginia Program

The Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of the approval in the January 21, 1981, **Federal Register** at 46 FR 5915–5956. Subsequent actions concerning the West Virginia program and previous amendments are codified at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

### II. Submission of the Amendment

By letter dated May 11, 1998 (Administrative Record Number WV 1086), the West Virginia Division of Environmental Protection (WVDEP) submitted an amendment to its approved regulatory program pursuant to the Federal regulations at 30 CFR 732.17(b). The amendment consists of revisions to CSR 38–2, the State's Surface Mining Reclamation Regulations, which the Governor signed on April 12, 1998.

We published the proposed rulemaking in the **Federal Register** on June 15, 1998 (63 FR 32632). The public comment period closed on July 15, 1998. Since no one requested an opportunity to speak at a public hearing, we did not hold a hearing.

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the amendments to the West Virginia regulatory program.

*1. CSR 38–2–2 Definitions*

West Virginia is amending the definition of "Coal Remining Operation" in CSR 38–2–2.25 to mean a coal mining operation on lands which would be eligible for expenditures under section 22–2–4 of the West Virginia Surface Coal Mining and Reclamation Act (WVSCMRA). Section 22–2–4(c) provides that lands and water eligible for reclamation are those which were mined for coal or which were affected by the mining, waste banks, coal processing or other coal mining processes, and abandoned or left in an inadequate status prior to August 3, 1977, and for which there is no continuing reclamation responsibility. This language is substantively identical to the corresponding Federal provision in section 404 of SMCRA. Section 22–2–4(c) also includes certain lands for which bond forfeiture proceeds are inadequate to completely reclaim the site, as authorized by section 402(g)(4) of SMCRA. Hence, the State definition is substantively identical to the Federal definition of "lands eligible for remining" at 30 CFR 701.5, which provides that the term "means those lands that would otherwise be eligible for expenditures under section 404 or under section 402(g)(4) of the Act."

The State also is amending the definition of "Remined Area" in CSR 38–2–2.102 to mean the area of any coal remining operation. This definition has no precise Federal counterpart, but we find that it is not inconsistent with the Federal definition of "lands eligible for remining" at 30 CFR 701.5 or any other SMCRA-related provision. Hence, it can be approved.

*2. CSR 38–2–3.14 Removal of Abandoned Coal Refuse Disposal Piles*

West Virginia has revised paragraphs a. and b. of subsection 3.14 by replacing the term "special permit" with the term "reclamation contract" and by replacing "permit application" and "application" with "request." The State also made numerous other revisions to this subsection. For the reasons set forth below, these revisions need not be discussed here.

Subsection 3.14 authorizes the State to issue reclamation contracts "solely for the removal of existing abandoned

coal processing waste piles." It further provides that, "if the average quality of the refuse material meets the minimum BTU value standards to be classified as coal, as set forth in ASTM Standard D 388–88, a request which meets all applicable requirements of this section shall be required." In addition, subsection 3.14.c. implies that the State may issue a reclamation contract for operations that involve on-site reprocessing of abandoned coal refuse piles.

While we approved previous versions of subsection 3.14, our approval was limited to the removal of abandoned refuse piles that do *not* meet the definition of coal in 30 CFR 700.5. For example, in 1990, at 30 CFR 948.12(k)(4), we disapproved the initial version of subsection 3.14 "to the extent that it applies to the removal of abandoned coal mine refuse piles where the material being removed meets the definition of coal (ASTM Standard D 388 77)." 55 FR 21304, 21313–14, May 23, 1990. We based that decision on the definition of "surface coal mining operations" in 30 CFR 700.5, which specifically includes "the extraction of coal from coal refuse piles." The term "extraction" includes both the removal of coal refuse material that already meets the definition of coal and the on-site reprocessing of coal refuse to separate coal from waste rock and other materials. SMCRA and the Federal regulations do not establish lesser permitting requirements for the extraction of coal from coal refuse piles than they do for other types of remining operations.

Subsection 3.14 is less stringent than SMCRA and less effective than the Federal regulations because it would allow the issuance of a reclamation contract for the removal of coal refuse piles that meet the definition of coal rather than requiring that such operations obtain a standard regulatory program permit for surface coal mining operations as do the Federal regulations. In addition, subsection 3.14.c. is less stringent than SMCRA and less effective than the Federal regulations to the extent that it may be interpreted as authorizing the State to issue a reclamation contract rather than a surface coal mining operations permit for on-site reprocessing operations. As discussed above, under the Federal definition of surface coal mining operations in 30 CFR 700.5, all on-site reprocessing operations that separate coal from other materials in the pile must be regulated as surface coal mining operations.

Therefore, we are not approving subsection 3.14 to the extent that it would apply to the removal of abandoned coal mine refuse piles where, on average, the material to be removed meets the definition of coal in 30 CFR 700.5. In addition, we are not approving subsection 3.14 to the extent that it could be interpreted as applying to the on-site reprocessing of abandoned coal refuse piles.

Otherwise, we take no position on the revisions that West Virginia has made to subsection 3.14. As we stated in 1990, "the removal, transport and use (without onsite reprocessing) of coal mine refuse which does not meet the definition of 'coal' set forth in 30 CFR 700.5; i.e., ASTM Standard D 388–77, is not subject to regulation [under SMCRA]." 55 FR 21314, May 23, 1990.

Consistent with this decision, we are requiring that West Virginia amend its program to either: (1) Delete subsection 3.14; or (2) revise subsection 3.14 to clearly specify that its provisions apply only to activities that do not qualify as surface coal mining operations as that term is defined in 30 CFR 700.5; i.e., that subsection 3.14 does not apply to either the removal of abandoned coal mine waste piles that, on average, meet the definition of coal or to the on-site reprocessing of coal mine waste piles. If the State chooses the second option, it should also submit the sampling protocol that will be used to determine whether the refuse piles meet the definition of coal. The sampling protocol must be designed to ensure that no activities meeting the definition of surface coal mining operations escape regulation under the State counterpart to SMCRA and the Federal regulations.

The previous discussion notwithstanding, the removal or reprocessing of any coal refuse pile may qualify for the government-financed construction exemption under section 528(2) of SMCRA. Section 528(2) of SMCRA states that SMCRA shall not apply to the extraction of coal as an incidental part of Federal, State, or local government-financed highway or other construction under regulations established by the regulatory authority. Section 22–3–26(b) of the WVSCMRA contains a similar provision.

The Federal regulations at 30 CFR part 707 provide the standards for implementing SMCRA section 528(2). Essentially, part 707 provides that, to be exempt from regulation as a surface coal mining operation under SMCRA, coal extraction must be a component of a government-financed construction project, and the extraction of coal must be incidental to the construction. CSR 38–2–3.31 is the approved West Virginia program regulation governing government-financed highway or other construction exemptions that are exempt from the provisions of WVSCMRA.

On February 12, 1999 (64 FR 7469–83), we amended the definition of "government-financed construction" at 30 CFR 707.5 to provide that government funding of less than 50 percent of a project's costs may qualify if the construction is undertaken as an approved abandoned mine reclamation project under Title IV of SMCRA. We also added 30 CFR 874.17, which establishes requirements and procedures for reclamation projects receiving less than 50 percent government funding. The West Virginia program lacks counterparts to the revised Federal definition of "government-financed construction" at 30 CFR 707.5 and the Federal regulations at 30 CFR 874.17. Therefore, at present, the government-financed construction exemption is not available to West Virginia projects with less than 50 percent government financing.

*3. CSR 38–2–3.32 Findings—Permit Issuance*

Subsection 3.32.d.12 is amended by replacing the reference to former subsection 14.16 with a reference to new section 24, where the performance standards applicable only to remining operations have been relocated. We find this change to be a non-substantive organizational revision that does not render the State program less stringent than SMCRA or less effective than the Federal regulations.

In addition, West Virginia is replacing the phrase "and prior to August 3, 1977" with "would be eligible for expenditures under Section 4, Article 2 of Chapter 22." We find that this revision is approvable because it is consistent with the Federal definition of "lands eligible for remining" at 30 CFR 701.5, a term that appears in 30 CFR 773.15(c)(13), the Federal counterpart to the West Virginia provision.

West Virginia also proposes to add subsection 3.32.g to read as follows: "The prohibition of subsection c. shall not apply to a permit application due to any violation resulting from an unanticipated event or condition at a surface mine eligible for remining held by the applicant." The Federal counterpart to this new provision is 30 CFR 773.15(b)(4). However, the State rule lacks a counterpart to the restrictions that 30 CFR 773.15(b)(4) places on the exception. Therefore, the proposed amendment is less effective than 30 CFR 773.15(b)(4) and it cannot be approved. In addition, the State provision is less effective than its Federal counterpart because it does not

define the meaning and limits of the term "unanticipated event or condition" as does 30 CFR 773.15(b)(4)(ii).

*4. CSR 38–2–14.14.a.1. Disposal of Excess Spoil*

This subdivision is amended by adding language to allow excess spoil to be deposited on abandoned mine lands and/or bond forfeiture sites under a reclamation contract pursuant to Section 28 of WVSCMRA. The new language requires that the permittee obtain right of entry and any necessary approvals from the appropriate environmental agencies or other agencies. The WVDEP stated that these changes will allow the director to issue no-cost reclamation contracts to a permittee to reclaim abandoned and forfeited sites.

We recently approved an amendment to the Pennsylvania program that authorizes the placement of excess spoil on AML reclamation project sites (64 FR 14610, March 26, 1999). The Pennsylvania amendment authorizes the use of excess spoil from a valid, permitted coal mining operation for the reclamation of an abandoned, unreclaimed area outside the permit area. As a prerequisite for approval, we informed Pennsylvania that the Commonwealth must either handle these projects as traditional Federally funded AML reclamation projects or identify the administrative, financial, contractual and environmental safeguards that will be applied to these "no-cost" government-financed construction contracts. In addition, Pennsylvania also needed to show how the safeguards would ensure the same level of environmental protection as that provided by traditional Federally funded AML reclamation projects.

The same standard applies to West Virginia. That is, West Virginia must either limit excess spoil disposal to traditional Federally funded AML reclamation projects or identify alternative procedures that will afford the same level of protection.

The proposed amendment at CSR 38–2–14.14.a.1. provides that the disposal of excess spoil on abandoned mine lands must be conducted under a reclamation contract pursuant to section 22–3–28 of WVSCMRA and "this rule." The meaning of the phrase "this rule" is unclear. While it could mean all of subsection 14.14, this is unlikely, because 14.14.c. limits placement of excess spoil to permitted areas and approved AML reclamation projects. If these restrictions are meant to apply to projects authorized under 14.14.a.1., then the new provision is superfluous, since it would not expand the universe of sites eligible for excess spoil disposal. In particular, the authorization to place excess spoil on bond forfeiture sites would be meaningless, since it would be limited to bond forfeiture sites that are also eligible for and approved for AML reclamation funding—and such sites are already candidates for excess spoil placement pursuant to subsection 14.14.c. Therefore, we believe the phrase "this rule" means subsection 14.14.a. Consequently, our analysis must focus on the issue of whether section 22–3–28 of WVSCMRA and subsection 14.14.a. of the regulations provide safeguards that will ensure the same level of environmental protection as that provided by Federally funded AML reclamation projects.

In authorizing the issuance of "no cost" contracts for reclamation projects, section 22–3–28(e) of WVSCMRA provides no specific safeguards for the disposal of excess spoil on abandoned mine lands. CSR 38–2–14.14.a. contains some safeguards, such as the requirement that acid and toxic-forming materials be covered with nonacid, nontoxic and noncombustible materials (14.14.a.5.) and the requirements for slope protection (14.14.a.6.) and postmining land use suitability (14.14.a.7.). However, there is no meaningful performance incentive, such as the requirement to file a bond, to ensure completion of reclamation in accordance with the contract. And neither the statute nor the regulations provide an alternate guarantee that the necessary reclamation will be completed, such as commitment of AML moneys or other sources of funding. Because section 22–3–28 of WVSCMRA and CSR 38–2–14.14.a. do not contain safeguards that will ensure the same level of environmental protection as that provided by a permit and bond or by Federally funded AML reclamation projects, we are not approving CSR 38–2–14.14.a.1. at this time.

We recommend that the WVDEP identify the specific provisions of section 22–3–28 of the WVSCMRA and CSR 38–2–14.14 that apply to the placement of excess spoil on abandoned mine lands. The WVDEP should also clarify that spoil may only be placed on sites eligible for reclamation under the abandoned mine land reclamation program and listed on the abandoned mine land inventory. The program also must require that excess spoil placed on bond forfeiture sites be placed in accordance with the reclamation plan of the forfeited permit.

In short, the WVDEP must provide safeguards that will ensure the same level of environmental protection as that provided by a permit and bond issued under the State's approved regulatory program, or as provided by a Federally funded AML reclamation project. When these safeguards are developed, we encourage the WVDEP to resubmit its amendment concerning the disposal of excess spoil on abandoned mine lands and bond forfeiture sites for our review. At that time, we will also reconsider the proposed amendments to sections 22–3–3(u)(2)(3) and 22–3–28(e) of WVSCMRA to the extent that they authorize reclamation of abandoned mine lands and bond forfeiture sites under no-cost reclamation contracts.

*5. Redesignation of CSR 38–2–14.16 Through 38–2–14.19*

As discussed in Finding 9, West Virginia is incorporating CSR 38–2–14.16 into new section CSR 38–2–24. As a consequence of this action, CSR 38–2–14.17 is redesignated as CSR 38–2–14.16; CSR 38–2–14.18 is redesignated as CSR 38–2–14.17; and CSR 38–2–14.19 is redesignated as CSR 38–2–14.18. These are non-substantive organizational changes that do not render the West Virginia program less effective than the Federal regulations.

*6. CSR 38–2–14.18 Disposal of Noncoal Mine Wastes*

West Virginia is deleting subsection 14.18.d. (formerly codified as subsection 14.19.d.) because it conflicts with CSR 38–2–8.2.e., which was added during the last legislative session. In our approval of CSR 38–2–8.2.e., we noted that 30 CFR 948.16(ttt) continued to require that the State regulations at CSR 38–2–14.19.d. (now 14.18.d.) concerning the windrowing of timber be amended. We also noted that West Virginia indicated that 38–2–14.19.d. (now 14.18.d.) would be deleted in a future rulemaking session, which would satisfy this requirement. *See* 64 FR 6201, 6209 (February 9, 1999).

For this reason, we find that the State's deletion of CSR 38–2–14.18.d. does not render the West Virginia program less effective than the Federal regulations. In addition, we are removing 30 CFR 948.16(ttt) for the same reason.

*7. CSR 38–2–22.5.l Removal of Abandoned Coal Refuse Piles*

Subsection 22.5.l applies to the removal or reprocessing of abandoned coal refuse piles under CSR 38–2–3.14 and subsection 22–3–28(d) of WVSCMRA. West Virginia is revising this subsection by deleting the term "special permit" and replacing it with "reclamation contract" to more accurately reflect actual practice. Therefore, we find that this change is

non-substantive. However, as discussed in Finding 2, we are not approving CSR 38–2–3.14 to the extent that it applies to the on-site reprocessing of any abandoned coal mine waste piles or to the complete or partial removal of abandoned refuse piles that meet the definition of coal in 30 CFR 700.5.

*8. CSR 38–2–23 Special Authorization for Coal Extraction as an Incidental Part of Development of Land for Commercial, Residential, or Civic Use*

This new section would allow special authorization for coal extraction as an incidental part of development of land for commercial, residential, industrial, or civic use. The section contains provisions for applicant information, site development and sampling information; provisions for approval of a notice of intent for coal extraction as an incidental part of development of land for commercial, residential, or civic use; performance standards; expiration of a notice of intent coal extraction as an incidental part of development; escrow release; notice on site; and public records. The WVDEP explained that the new language is intended to implement new statutory provisions. The new provisions (subsections 22–3–28 (a) through (c) of WVSCMRA) allow the director to apply lesser standards to coal extraction conducted as an incidental part of development of land for commercial, residential, industrial, or civic use.

On February 9, 1999 (64 FR 6204, Finding 12), we found subsections 22–3–28 (a) through (c) of WVSCMRA to be less stringent than sections 528 and 701(28) of SMCRA and therefore unapprovable. As noted in that finding, the Interior Board of Surface Mining Appeals (IBSMA), which was subsequently incorporated into the Interior Board of Land Appeals (IBLA), twice ruled that "the extraction of coal as an incidental part of privately financed construction is not an activity excluded as such from the coverage of the * * * regulatory program." *See James Moore,* 1 IBSMA 216 (1979) and *Gobel Bartley,* 4 IBSMA 219 (1992). In addition, we have previously determined that subsections 22–3–28 (a) through (c) of WVSCMRA are inconsistent with SMCRA. *See* Finding 14.4 at 46 FR 5915, 5924 (January 21, 1981). Therefore, we are not approving CSR 38–2–23. Furthermore, we are requiring that West Virginia revise its regulations to remove CSR 38–2–23.

*9. CSR 38–2–24 Performance Standards Applicable Only to Remining Operations*

This section is largely new. However, subsections 24.1.a. through 24.1.l. were formerly codified as subsections 14.16.a. through 14.16.l, subsection 24.2.a. was previously codified as subsection 14.16.m, and subsection 24.3 was previously codified as subsection 14.16.n. Because the redesignated subsections are otherwise unchanged, we find that the redesignation does not render the State program less effective than SMCRA and the Federal regulations.

We also note that redesignated subsection 24.3 concerns only the standards for issuance of National Pollutant Discharge Elimination System (NPDES) permits for remining operations. We have no jurisdiction over the NPDES program. Therefore, subsection 24.3 is not subject to review and approval under SMCRA and we do not consider it to be part of the State's approved SMCRA regulatory program.

New subsection 24.2.b. provides that the revegetation responsibility period for remining operations must be not less than two growing seasons after the last year of augmented seeding, fertilizing, irrigation or other work. The counterpart Federal regulations at 30 CFR 816.116(c)(2)(ii) provide that the period of responsibility must be two full years for lands eligible for remining. Since the State's rules at CSR 38–2–2.57 define growing season to mean one year, the proposed responsibility period of two growing seasons is equivalent to, and therefore no less effective than, the Federal regulations at 30 CFR 816.116(c)(2)(ii).

New subsection CSR 38–2–24.4 provides that bond release for remining operations must comply with CSR 38–2–12.2, with the exception of subdivision 12.2.e. for Phase I, II, or III release. If all other requirements of subsection 12.2 are satisfied, then the Director may approve a request for Phase I, II, or III release if the quality of untreated water discharging from the site is equal to or better than the pre-remining water quality discharged from the site. In its submittal of this amendment, the WVDEP stated that this change will allow for the release of the land reclamation bond if the post-remining water quality discharging from the site is equal to or better than pre-remining water quality.

Under section 301(p) of the Clean Water Act, the State may issue an NPDES permit which modifies the pH, iron, and manganese standards for pre-existing discharges from the remined area or affected by a qualifying remining operation. However, the permit may not allow the pH, iron, or manganese levels of any discharge to exceed the levels being discharged from the remined area before the advent of the coal remining operation.

But section 301(p) does not apply to all remining operations. Instead, it defines "coal remining operation" to mean a coal mining operation which begins after February 4, 1987 (the date of enactment of section 301(p)), at a site on which coal mining was conducted before August 3, 1977 (the effective date of SMCRA). The U.S. Environmental Protection Agency (EPA) declined to concur with the approval of subsection CSR 38–2–24.4 because that subsection would allow use of the section 301(p) standards for remining operations that began prior to February 4, 1987, and for sites on which coal mining was originally conducted on or after August 3, 1977.

The Federal regulations at 30 CFR 816/817.42 provide that discharges of water from areas disturbed by surface mining activities must be made in compliance with all applicable State and Federal water quality laws and regulations. Because CSR 38–2–24.4 does not comply with this requirement, it is less effective than the Federal rules. Accordingly, we are not approving this provision. We also are requiring that West Virginia further amend its regulations to remove CSR 38–2–24.4.

## IV. Summary and Disposition of Comments

*Federal Agency Comments*

On June 12, 1998, we asked for comments from various Federal agencies who may have an interest in the West Virginia amendment (Administrative Record Number WV–1088). We solicited comments in accordance with section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i) of the Federal regulations. The Department of the Army, U.S. Army Corps of Engineers responded and stated that the changes are satisfactory to the Corps.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) provided the following comments. MSHA expressed concern with section 38–2–24.1.g. which allows coal processing and underground development waste embankments in mined-out areas to have a long-term slope stability safety factor of 1.3. MSHA stated that a safety factor of 1.5 is required by 30 CFR 77.215(h).

The Federal regulations at 30 CFR 77.215(h), to which MSHA referred in its comment, requires a static safety

factor of 1.5 for refuse piles. Refuse piles are structures that are built above the ground level where no material previously existed, or are built upon previously existing built-up structures. The Federal regulations for impoundments (30 CFR 816.49), excess spoil disposal (30 CFR 816.71), durable rock fills (30 CFR 816.73), and coal mine waste disposal areas (30 CFR 816.81) all provide for static safety factor of 1.5. These are all structures that are constructed above the ground level, where no material previously existed. However, the stability of materials that will be returned to or be used to backfill the mined out area as provided by 30 CFR 816.102 can achieve a lesser static safety factor of 1.3. 30 CFR 816.102(e) provides that the disposal of coal processing waste and underground development waste in the mined-out area shall be in accordance with sections 816.81 and 816.83, except that a long-term static safety factor of 1.3 shall be achieved. The higher 1.5 static safety factor standard is only required where refuse or waste will be piled into above-ground structures. The lesser 1.3 static safety factor standard is required where refuse or waste will be used to backfill mined out areas, or to bring the land back to its approximate original contour. The West Virginia standard at section 38–2–24.1.g. applies only to the disposal of waste in previously mined out areas. Therefore, the static safety standard of 1.3 is appropriate, and no less effective than the Federal regulations at 30 CFR 816.102(e) which provide the same standard for waste disposal in a mined-out area.

The National Park Service requested that we review the proposed changes carefully to examine the full implication of the revisions on the overall effectiveness of the West Virginia program. The National Park Service also stated that, while the proposed revisions do not alter provisions pertinent to section 522(e)(3) of SMCRA, they nonetheless may affect the level of protection afforded various areas under this section of SMCRA. Section 522(e)(3) provides that, subject to valid existing rights, no surface coal mining operations except those which exist on August 3, 1977, may be permitted if the operations would adversely affect any publicly owned park or place included in the National Register of Historic Places, unless the regulatory authority and the Federal, State, or local agency with jurisdiction over the park or the historic site jointly approve these operations. In response to the Park Service's concerns, we note that the amendment does not in any way compromise the protections afforded under section 522(e)(3) of SMCRA.

*Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(i) and (ii), OSM is required to solicit comments and obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). By letter dated June 12, 1998, we requested comments and concurrence from EPA on the State's proposed amendment of May 14, 1998 (Administrative Record Number WV–1089).

By letter dated November 29, 1999 (Administrative Record Number WV–1141), the EPA provided comments on the proposed amendment. In addition, the EPA stated that it could not concur with the approval of CSR 38–2–24.4 because that subsection appears to allow bond release for sites on which remining began before February 4, 1987, and/or for sites mined after August 3, 1977, even if the discharges from those sites do not meet applicable effluent limitations and water quality standards. The EPA noted that such a provision would not comply with section 301(p) of the Clean Water Act, 33 U.S.C. 1311(p).

As discussed in Finding 9, we are not approving CSR 38–2–24.4 because it would allow issuance of modified NPDES permits for operations that do not meet the criteria established in section 301(p). To be eligible under section 301(p), a remining operation must be a site on which coal mining was conducted before the effective date of SMCRA (August 3, 1977), and the remining operation must begin after the date of the enactment of section 301(p) of the Clean Water Act (February 4, 1987). Therefore, as submitted, CSR 38–2–24.4 is less effective than 30 CFR 816/817.42 and we are not approving it.

The EPA supported CSR 38–2–3.14, which concerns no-cost contracts for the removal of abandoned coal refuse piles. However, the EPA noted that CSR 38–2–3.14.b.4.E., which requires that all necessary permits be obtained from environmental agencies, must be interpreted as including NPDES permits for stormwater discharges from the refuse removal operation sites, where applicable.

As discussed in Finding 2, we are not approving subsection 3.14 to the extent that it would apply to the removal of abandoned coal mine refuse piles where, on average, the material to be removed meets the definition of coal in 30 CFR 700.5. In addition, we are not approving subsection 3.14 to the extent that it could be interpreted as applying to the on-site reprocessing of abandoned coal refuse piles.

We determined that subsection 3.14 is less stringent than SMCRA and less effective than the Federal regulations because it would allow the issuance of a reclamation contract for the removal of coal refuse piles that meet the definition of coal rather than requiring that such operations obtain a standard regulatory program permit for surface coal mining operations as do the Federal regulations. We also determined that subsection 3.14.c. is less stringent than SMCRA and less effective than the Federal regulations to the extent that it may be interpreted as authorizing the State to issue a reclamation contract rather than a surface coal mining operations permit for on-site reprocessing operations. Under the Federal definition of surface coal mining operations in 30 CFR 700.5, all on-site reprocessing operations that separate coal from other materials in the pile must be regulated as surface coal mining operations.

We took no position on the other revisions that West Virginia has made to subsection 3.14. As we stated in 1990, "the removal, transport and use (without onsite reprocessing) of coal mine refuse which does not meet the definition of 'coal' set forth in 30 CFR 700.5; i.e., ASTM Standard D 388–77, is not subject to regulation [under SMCRA]." 55 FR 21314, May 23, 1990.

The EPA also stated that CSR 38–2–24.3 correctly provides that remining operations that begin after February 4, 1987, on a site that was mined prior to August 3, 1977, may qualify for less stringent effluent limits under section 301(p) of the Clean Water Act. The EPA explained that, subject to certain conditions, section 301(p) allows replacement of most effluent limits in 40 CFR 434 with less stringent, best professional judgement (BPJ) effluent limits if the applicant can demonstrate that the post-remining discharge quality will be better than, or at least equal to, the pre-remining discharge quality. As noted in Finding 9, subsection 24.3 concerns only the issuance of NPDES permits. Therefore, it is not subject to review and approval under SMCRA and we do not consider it to be part of the State's approved SMCRA regulatory program.

*Public Comments*

We received no comments from the public.

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## V. Director's Decision

Based on the findings in Part III of this preamble, we are approving the proposed amendments to the West Virginia program, except as noted below.

We are not approving CSR 38–2–3.14 to the extent that it would apply to the removal of abandoned coal mine refuse piles where, on average, the material to be removed meets the definition of coal in 30 CFR 700.5. In addition, we are not approving this subsection to the extent that it could be interpreted as applying to the on-site reprocessing of abandoned coal refuse piles. We take no position on subsection 3.14 to the extent that it may concern the removal, transport and use (without onsite reprocessing) of coal mine refuse which does not meet the definition of "coal" in 30 CFR 700.5; such activities are not subject to regulation under SMCRA.

In addition, we are requiring that West Virginia amend its program to either: (1) delete subsection 3.14; or (2) revise subsection 3.14 to clearly specify that its provisions apply only to activities that do not qualify as surface coal mining operations as that term is defined in 30 CFR 700.5; i.e., that subsection 3.14 does not apply to either the removal of abandoned coal mine waste piles that, on average, meet the definition of coal or to the on-site reprocessing of coal mine waste piles. If the State chooses the second option, it should also submit the sampling protocol that will be used to determine whether the refuse piles meet the definition of coal. The sampling protocol must be designed to ensure that no activities meeting the definition of surface coal mining operations escape regulation under the State's SMCRA regulatory program.

We are not approving CSR 38–2–3.32.g., 38–2–14.14.a.1., 38–2–23, and 38–2–24.4. In addition, we are requiring that West Virginia remove CSR 38–2–23 and 38–2–24.4.

We are removing 30 CFR 948.16(ttt).

The Federal regulations at 30 CFR part 948 codifying decisions concerning the West Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

## VI. Procedural Determinations

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

*Unfunded Mandates*

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

**List of Subjects in 30 CFR Part 948**

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 23, 2000.

**Michael K. Robinson,**

*Acting Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

## PART 948—WEST VIRGINIA

1. The authority citation for part 948 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 948.12 is amended by revising the section heading and adding a new paragraph (a) to read as follows:

**§ 948.12 State statutory, regulatory, and proposed program amendment provisions not approved.**

(a) We are not approving the following provisions of the proposed program amendment that West Virginia submitted on May 11, 1998:

(1) CSR 38–2–3.14, to the extent that it could be interpreted as applying to the on-site reprocessing of abandoned coal mine waste piles or to the extent that it would apply to the removal of abandoned coal refuse piles where, on average, the material to be removed meets the definition of coal in 30 CFR 700.5.

(2) CSR 38–2–3.32.g., which concerns unanticipated events or conditions.

(3) CSR 38–2–14.14.a.1., which concerns placement of excess spoil outside the permit area.

(4) CSR 38–2–23, which concerns coal extraction as part of land development activities.

(5) CSR 38–2–24.4, which concerns water quality standards for bond release.

* * * * *

3. Section 948.15 is amended by revising the introductory text, the table headings, and by adding a new entry to the table in chronological order by date

of final rule publication to read as follows:

**§ 948.15 Approval of West Virginia regulatory program amendments.**

The following table lists the dates that West Virginia submitted proposed amendments to OSM, the dates when OSM published final rules approving all or portions of those amendments in the **Federal Register**, and the State statutory or regulatory citations for those amendments (or a brief description of the amendment). The amendments appear in order of the date of publication of the final rules announcing OSM's decisions on the amendments. The preambles to those final rules identify and discuss any assumptions underlying approval, any conditions placed on the approval, and any exceptions to the approval.

| Original amendment submission date | Date of publication of final rule | Citation/description of approved provisions |
|---|---|---|
| * | * | * * * * * * * |
| May 11, 1998 | May 5, 2000 | West Virginia regulations at CSR 38–2–2.25; 2.102; 3.32.d.12; 14.16 through 14.19; 22.5.1; 24 (except 24.4). |

4. Section 948.16 is amended by removing and reserving paragraph (ttt) and by adding paragraphs (nnnn), (oooo), and (pppp) to read as follows:

**§ 948.16 Required regulatory program amendments.**

* * * * *

(nnnn) By July 5, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to either delete CSR 38–2–3.14 or revise CSR 38–2–3.14 to clearly specify that its provisions apply only to activities that do not qualify as surface coal mining operations as that term is defined in 30 CFR 700.5; i.e., that subsection 3.14 does not apply to either the removal of abandoned coal mine waste piles that, on average, meet the definition of coal or to the on-site reprocessing of coal mine waste piles. If the State chooses the second option, it should also submit the sampling protocol that will be used to determine whether the refuse piles meet the definition of coal. The sampling protocol must be designed to ensure that no activities meeting the definition of surface coal mining operations escape regulation under the State's SMCRA regulatory program.

(oooo) By July 5, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove CSR 38–2–23.

(pppp) By July 5, 2000, West Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to remove CSR 38–2–24.4.

[FR Doc. 00–10972 Filed 5–4–00; 8:45 am]

BILLING CODE 4310–05–P

## DEPARTMENT OF EDUCATION

**34 CFR Part 674**

### Federal Perkins Loan Program; Correction of Effective Date

**AGENCY:** Department of Education.

**ACTION:** Final regulations; correction of effective date.

**SUMMARY:** On April 6, 2000 technical amendments to regulations governing the Federal Perkins Loan Program were published in the **Federal Register** (65 FR 18001). This document corrects the effective date of May 8, 2000 announced. The correct effective date for the technical amendments is July 1, 2000. These technical amendments are to take effect immediately following the incorporation of previous amendments to 34 CFR part 674 published on October 28, 1999 (64 FR 58298–58315) with an effective date of July 1, 2000.

**DATES:** The regulations amending 34 CFR part 674 published on April 6, 2000 (65 FR 18001–18003) are effective July 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Vanessa Freeman, Program Specialist, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3045, Regional Office Building 3, Washington, DC 20202–5449. Telephone: (202) 708–8242. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

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**SUPPLEMENTARY INFORMATION:**

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**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number: 84.037 Federal Perkins Loan Program)

**List of Subjects in 34 CFR Part 674**

Loan programs—education, Reporting and recordkeeping requirements, Student aid.

Dated: May 1, 2000.

**Maureen McLaughlin,**

*Acting Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 00–11230 Filed 5–4–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF DEFENSE

**Department of the Army, Corps of Engineers**

**36 CFR Part 327**

**RIN 0710–AA45**

### Public Use of Water Resources Development Projects Administered by the Chief of Engineers

**AGENCY:** U.S. Army Corps of Engineers, DOD.

**ACTION:** Correcting amendments.

**SUMMARY:** This document contains corrections to the final regulations (RIN #0710–AA45), which were published in

the **Federal Register** on Friday, February 11, 2000 (65 FR 6896). The regulations relate to the public use of Water Resources Development Projects administered by the Chief of Engineers.

**DATES:** Effective on May 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Stephen Austin, Outdoor Recreation Planner, 202–761–1796 (not a toll free call).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of these corrections superseded § 327.17 on the effective date and affect advertising at Water Resources Development Projects administered by the Chief of Engineers.

**Need for Correction**

As originally published on February 11, 2000 (effective date of April 1, 2000), the final regulation prohibits the advertising at Water Resources Development Projects without the written permission by the District Commander. Revised language will allow for greater freedom of speech with reasonable restrictions on time and space. This correction is effective on the date of publication in the **Federal Register**.

**List of Subjects in 36 CFR Part 327**

Advertising.

## PART 327—RULES AND REGULATIONS GOVERNING PUBLIC USE OF WATER RESOURCES DEVELOPMENT PROJECTS ADMINISTERED BY THE CHIEF OF ENGINEERS

Accordingly, 36 CFR part 327 is amended by making the following correcting amendments:

1. The authority citation for Part 327 continues to read as follows:

**Authority:** 16 U.S.C. 460d; 16 U.S.C. 460l-6a; Sec. 210, Pub L. 90–483, 82 Stat. 746.; 33 U.S.C. 1, 28 Stat. 362.

2. Revise § 327.17 to read as follows:

**§ 327.17 Advertisment.**

(a) Advertising and the distribution of printed matter is allowed within project land and waters provided that a permit to do so has been issued by the District Commander and provided that this activity is not solely commercial advertising.

(b) An application for such a permit shall set forth the name of the applicant, the name of the organization (if any), the date, time, duration, and location of the proposed advertising or the distribution of printed matter, the number of participants, and any other information required by the permit application form. Permit conditions and procedures are available from the District Commander.

(c) Vessels and vehicles with semipermanent or permanent painted or installed signs are exempt as long as they are used for authorized recreational activities and comply with all other rules and regulations pertaining to vessels and vehicles.

(d) The District Commander shall, without unreasonable delay, issue a permit on proper application unless:

(1) A prior application for a permit for the same time and location has been made that has been or will be granted and the activities authorized by that permit do not reasonably allow multiple occupancy of the particular area; or

(2) It reasonably appears that the advertising or the distribution of printed matter will present a clear and present danger to the public health and safety; or

(3) The number of persons engaged in the advertising or the distribution of printed matter exceeds the number that can reasonably be accommodated in the particular location applied for, considering such things as damage to project resources or facilities, impairment of a protected area's atmosphere of peace and tranquility, interference with program activities, or impairment of public use facilities; or

(4) The location applied for has not been designated as available for the advertising or the distribution of printed matter; or

(5) The activity would constitute a violation of an applicable law or regulation.

(e) If a permit is denied, the applicant shall be so informed in writing, with the reason(s) for the denial set forth.

(f) The District Commander shall designate on a map, which shall be available for inspection in the applicable project office, the locations within the project that are available for the advertising or the distribution of printed matter. Locations may be designated as not available only if the advertising or the distribution of printed matter would:

(1) Cause injury or damage to project resources; or

(2) Unreasonably impair the atmosphere of the peace and tranquility maintained in natural, historic, or commemorative zones; or

(3) Unreasonably interfere with interpretive, visitor service, or other program activities, or with the administrative activities of the Corps of Engineers; or

(4) Substantially impair the operation of public use facilities or services of Corps of Engineers concessioners or contractors.

(5) Present a clear and present danger to the public health and safety.

(g) The permit may contain such conditions as are reasonably consistent with protection and use of the project area for the purposes for which it is established.

(h) No permit shall be issued for a period in excess of 14 consecutive days, provided that permits may be extended for like periods, upon a new application, unless another applicant has requested use of the same location and multiple occupancy of that location is not reasonably possible.

(i) It is prohibited for persons engaged in the activity under this section to obstruct or impede pedestrians or vehicles, harass project visitors with physical contact or persistent demands, misrepresent the purposes or affiliations of those engaged in the advertising or the distribution of printed matter, or misrepresent whether the printed matter is available without cost or donation.

(j) A permit may be revoked under any of those conditions, as listed in paragraph (d) of this section, that constitute grounds for denial of a permit, or for violation of the terms and conditions of the permit. Such a revocation shall be made in writing, with the reason(s) for revocation clearly set forth, except under emergency circumstances, when an immediate verbal revocation or suspension may be made, to be followed by written confirmation within 72 hours.

(k) Violation of the terms and conditions of a permit issued in accordance with this section may result in the suspension or revocation of the permit.

Dated: May 1, 2000.

**Charles M. Hess,**

*Chief, Operations Division, Office of Deputy Commanding General for Civil Works.*

[FR Doc. 00–11307 Filed 5–4–00; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

**50 CFR Part 660**

**[Docket No. 000501119–0119–01; I.D. 042400J]**

**RIN 0648–AN81**

## Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 2000 Management Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Annual management measures for the ocean salmon fishery; request for comments.

**SUMMARY:** NMFS establishes fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for the 2000 and 2001 salmon seasons opening earlier than May 1, 2001. Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic zone (EEZ) (3–200 nm) off Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian and non-treaty commercial and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and for inside fisheries.

**DATES:** Effective from 0001 hours Pacific Daylight Time, May 2, 2000, until the effective date of the 2001 management measures, as published in the **Federal Register**. Comments must be received by May 22, 2000.

**ADDRESSES:** Comments on the management measures and the related environmental assessment (EA) may be sent to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070, fax: 206–526–6376; or to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, fax: 562–980–4018.

Copies of the EA and other documents cited in this document are available from Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 2130 S.W. Fifth Ave., Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** William L. Robinson at 206–526–6140, or Svein Fougner at 562–980–4040.

**SUPPLEMENTARY INFORMATION:**

### Background

The ocean salmon fisheries in the EEZ off Washington, Oregon, and California are managed under a "framework" fishery management plan entitled the Pacific Coast Salmon Plan (FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notification in the **Federal Register**.

These management measures for the 2000 and pre-May 2001 ocean salmon fisheries were recommended by the Pacific Fishery Management Council (Council) at its April 3 to 7, 2000, meeting. Schedule Used to Establish 2000 Management Measures

In accordance with the FMP, the Council's Salmon Technical Team (STT) and staff economist prepared several reports for the Council, its advisors, and the public. The first report, "Review of 1999 Ocean Salmon Fisheries," (REVIEW) summarizes biological and socio-economic data for the 1999 ocean salmon fisheries and assesses how well the Council's 1999 management objectives were met. The second report, "Preseason Report I Stock Abundance Analysis for 2000 Ocean Salmon Fisheries" (PRE I), provides the 2000 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 1999 regulations and regulatory procedures were applied to the 2000 stock abundances.

The Council met from March 6 to 10, 2000, in Sacramento, CA, to develop proposed management options for 2000. Three commercial and three recreational fishery management options were proposed for analysis and public comment. These options consisted of various combinations of management measures designed to protect numerous weak stocks of coho and chinook salmon and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the Council's STT and staff economist prepared a third report, "Preseason Report II Analysis of Proposed Regulatory Options for 2000 Ocean Salmon Fisheries," which analyzes the effects of the proposed 2000 management options. This report also was made available to the Council, its advisors, and the public.

Public hearings to receive public testimony on the proposed options were held on March 27, 2000, in Westport, WA; North Bend, OR; and Santa Rosa, CA; and, on March 28, 2000, in Tillamook, OR; Moss Landing, CA; and Eureka, CA. The Council also received public testimony at both the March and April meetings, and received written comments at the Council office.

The Council met on April 3 to 7, 2000, in Portland, Oregon, to adopt its final 2000 recommendations. Following the April Council meeting, the Council's STT and staff economist prepared a fourth report, "Preseason Report III Analysis of Council-Adopted Management Measures for 2000 Ocean Salmon Fisheries," which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report also was made available to the Council, its advisors, and the public. After the Council took final action on the annual ocean salmon specifications in April, it published the recommended management measures in its newsletter.

### Resource Status

Since 1989, NMFS has listed under the Endangered Species Act (ESA) 16 evolutionarily significant units (ESU) of salmon on the west coast. As the listings have occurred, NMFS has initiated formal ESA section 7 consultations and issued biological opinions (BOs) that consider the impacts to listed salmonid species, resulting from proposed implementation of the FMP, or in some cases, from proposed implementation of the annual management measures. Some of the BOs have concluded that implementation of the FMP is not likely to jeopardize the continued existence of certain listed ESUs. Other BOs have found the FMP is likely to jeopardize certain listed ESUs and have identified reasonable and prudent alternatives (ESA consultation standards) that would avoid the likelihood of jeopardizing the continued existence of the ESU under consideration. Since completion of the April 30, 1999, supplement to the March 8, 1996, BO on the effect of ocean fisheries on endangered and threatened salmon, NMFS has listed California Central Valley spring chinook and California coastal chinook as threatened under the ESA (64 FR 50394, September 16, 1999). In a March 7, 2000, letter to the Council, NMFS provided the Council with ESA standards and guidance for the management of stocks listed under the ESA in anticipation of the BOs in preparation for the 2000 management season.

Estimates of the 1999 spawning escapements for key stocks managed under the FMP and preseason estimates of 2000 ocean abundance are provided in the Council's REVIEW and PRE I documents. The primary resource and management concerns are for salmon stocks listed under the ESA, Queets River coho, and Klamath River fall chinook.

Oregon coastal natural (OCN) coho are the largest naturally produced component of the natural and hatchery coho stocks originating from rivers south of Leadbetter Point, WA. OCN coho are managed as a stock aggregate with four identified sub-stocks that include coho produced from Oregon river and lake systems south of the Columbia River. NMFS has listed three ESUs of coho under the ESA: central California coastal, southern Oregon/northern California coastal, and Oregon coastal. The three northern sub-stocks of OCN coho comprise the Oregon coastal coho ESU. NMFS' ESA consultation standards require that the three OCN northern sub-stocks be managed in accordance with Amendment 13 to the FMP, which permits an exploitation rate of up to 15-percent under the current level of ocean survival. The southern sub-stock is part of the southern Oregon/northern California coastal ESU and must be managed in accordance with the requirements for that ESU. The 2000 ocean abundance estimate for OCN is 55,900 coho, which is 8-percent above the 1999 post-season estimate of 51,900 coho and twice the post-season estimate of the 1997 parent brood (PRE I).

Central California coast coho and southern Oregon/northern California coast coho are listed as threatened species under the ESA (61 FR 56138, October 31, 1996, and 62 FR 24588, May 6, 1997). Coho populations in California have not been monitored closely in the past, and no forecasts of the ocean abundance of listed coho originating from California are available; these runs have been generally at low abundance levels for many years. NMFS' ESA consultation standards for the southern Oregon/northern California coastal coho and Central California coastal coho ESUs require that the ocean exploitation rate on Rogue/Klamath hatchery coho be constrained to 13-percent or less, and that the retention of coho in recreational and commercial fisheries off California be prohibited.

Sacramento River winter chinook is listed as an endangered species under the ESA (59 FR 440, January 4, 1994). NMFS' ESA consultation standards require that all harvest-related impacts to the Sacramento River winter chinook salmon population be reduced by a level that would achieve at least a 31-percent increase in the age-3 spawner-to-spawner replacement rate over a base period of 1989 through 1993. The 1999 spawning run size was estimated to be 885 adults, a 45-percent increase over the estimated 1996 adult escapement, but short of the goal of 1,083 adults. Neither preseason nor postseason estimates of ocean abundance are available for winter chinook; however, the run is expected to remain depressed in 2000.

Columbia River fall chinook abundance estimates are made for distinct fall chinook stock units. Lewis River wild chinook ocean escapement is forecast at 3,500 adults, 106-percent of the 1999 run size of 3,300 adults (PRE I). The forecast is 61-percent of the 5,700 spawning escapement goal. This decline and the expectation that Lewis River will not meet the spawning escapement goal for wild chinook are due to short term impacts from previous flooding events; therefore, this decline should not be a long-term trend. Lower river hatchery (Tules) fall chinook ocean escapement is forecast at 23,700 adults, a record low return, 37-percent below the 1999 observed return of 37,400 adults (PRE I). This stock has declined sharply since the record high return in 1987. Lower Columbia River fall chinook stocks normally account for more than half the total catch in Council area fisheries north of Cape Falcon, with lower river hatchery fall chinook being the single largest contributing stock. The forecast return is 26-percent below the current estimated ocean escapement of 32,000 adults needed to meet brood stock requirements.

Snake River wild fall chinook are listed under the ESA as a threatened species (57 FR 14653, April 22, 1992). Information on the stock's ocean distribution and on fishery impacts is not available. Fishery impacts on Snake River fall chinook are evaluated using the Lyons Ferry Hatchery stock. The Lyons Ferry stock is widely distributed and harvested by ocean fisheries from southern California to Alaska. NMFS' ESA consultation standard requires that Council fisheries must be managed to ensure that the exploitation rate of age-3 and age-4 adults for the combined Southeast Alaska, Canadian, and Council fisheries is 30-percent less than that observed during the 1988–1993 base period under the terms of the 1999 Pacific Salmon Treaty.

Klamath River fall chinook ocean abundance is projected to be 205,900 age-3 and age-4 fish at the beginning of the fishing season. The abundance forecast is 95-percent above the 1999 preseason abundance estimate and 25-percent above the average of postseason estimates for 1990–1999 (PRE I). The 1999 natural spawning escapement of 18,600 adults did not achieve the minimum escapement goal of 35,000 natural spawners (fish that spawn outside hatcheries).

The Queets River coho has a conservation objective, or maximum sustainable yield (MSY) goal, of 5,800 to 14,500 adult spawners. However, under the *Hoh* v. *Baldrige* court decisions and under the FMP, the State of Washington and the Coastal Indian treaty tribes may in any year agree on a spawning escapement objective less than the MSY goal. The State of Washington and the Quinault Nation have agreed to manage the 2000 fisheries for an overall escapement of 3,200 and a wild escapement of 2,500 coho. From 1997–99 the postseason estimates of spawners have been 2,100, 5,500, and 5,300 respectively, all well under the MSY goal. However, the wild component of the spawning escapement has only missed the annual management goal agreed to by the State and Tribes in one year, 1997.

The Council has adopted Amendment 14 to the FMP which revises the overfishing provisions of the FMP to be consistent with the 1996 Sustainable Fisheries Act amendments to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). However, the Council has not yet submitted Amendment 14 to NMFS to begin Secretarial review. Therefore, the overfishing provisions of the current FMP are still in force. Under the current FMP, a stock is considered overfished if it misses its annual management targets for 3 consecutive years. In such case, the Council is required to prepare a detailed report determining the causes for the failure to meet the annual goals and take whatever actions are reasonable to rebuild the stock if harvest controls can have a significant positive impact. Since the wild Queets River coho escapement has fallen short of the annually agreed to goals in only 1 of the last 3 years, Queets coho are not considered overfished.

However, Amendment 14, if approved, would change the criteria for determining when a Washington coastal stock is defined as overfished from missing the annual agreed goal for 3 consecutive years to missing the MSY escapement goal for 3 consecutive years. Under the new definition, Queets River coho will be defined as overfished, and the Council will have to prepare a rebuilding plan.

The potential designation of Queets coho as overfished under Amendment

14 is controversial because the co-managers, WDFW and the Quinault Indian Nation, have had yearly agreements to manage the yearly escapement targets at less than 5,800 fish. They have indicated that the use of these preseason agreed escapement goals is more reflective of the current habitat conditions in the Queets River basin and that the MSY range of 5,800–14,500 fish was derived when habitat conditions supported a higher stock size, and may no longer be a true MSY goal.

**Management Measures for 2000**

The Council recommended allowable ocean harvest levels and management measures for 2000 are designed to apportion the burden of protecting the weak stocks identified and discussed in PRE I equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations responsive to the goals of the FMP, the requirements of the resource, and the socio-economic factors affecting resource users. The recommendations are consistent with the requirements of the Magnuson-Stevens Act and other applicable law, including the ESA and U.S. obligations to Indian tribes with Federally recognized fishing rights. Accordingly, NMFS has adopted them.

The dominant issues before the Council in developing final management recommendations were achieving an acceptable ocean exploitation rate on OCN and southern Oregon/northern California coho; meeting NMFS' ESA consultation standard for Sacramento River winter chinook; protection of depressed Puget Sound and Washington coastal coho salmon; and the allocation of Klamath River fall chinook between California and Oregon commercial fisheries.

Amendment 13 to the FMP, which was approved by NMFS in April 1999, provides separate exploitation rate targets for four OCN sub-stocks that depend on measures of prior escapement and ocean survival. NMFS' ESA consultation standard requires that the three northern sub-stocks be managed in accordance with Amendment 13, which permits an exploitation rate of up to 15-percent under the currently estimated level of ocean survival. However, NMFS provided guidance that the Council should target a precautionary exploitation rate not higher than 8.73-percent, which was the 1999 preseason exploitation rate projection. The guidance was based on concerns that: (1) The aggregate OCN coho broods had not replaced themselves in the past 3 years; (2) the actual OCN ocean abundance may fall short of the preseason forecast if the current trend of the previous 3 years in overestimated forecasts continues; and (3) the 1997 parent brood of OCN coho subject to harvest in 2000 was the lowest recorded for the last 10 years at 27,800. The Council's recommendations resulted in an 8.2-percent exploitation rate for OCN coho (freshwater and marine) and a 6.0-percent marine exploitation rate impact for Rogue/Klamath coho, which are the index stocks for the southern Oregon/northern California coho stocks. Retention of coho off California continues to be prohibited for the sixth consecutive year.

The Council's recommended measures, which are expected to produce an 8.2-percent OCN coho exploitation rate, are based on a revised hooking mortality rate estimate of 14-percent in recreational fisheries, including selective fisheries. The Council increased the hooking mortality from 8 percent to 14 percent at its March 2000 meeting based on recommendations by the STT and Scientific and Statistical Committee.

In 1999 the Council recommended and NMFS approved a selective fishery for 15,000 coho off the Oregon coast, in which hatchery marked coho with a healed adipose fin clip could be retained. The selective fishery is controversial because of potential impacts on OCN coho. This year the Council adopted a final recommendation for a 20,000 coho selective fishery following consideration of an initial proposal for a 25,000 fish selective fishery, and later a proposal from Oregon for a 15,000 fish selective fishery. Oregon will again intensively monitor this selective fishery to gain more information regarding impacts of the selective fishery and to help in the shaping of future selective fisheries. NMFS believes the modest selective fishery and planned monitoring program are sufficiently precautionary.

This year, the Council's Salmon Advisory Subpanel was unable to reach agreement on a recommendation to the Council regarding the sharing of the Klamath River fall chinook harvest between the commercial fisheries off Oregon and California. The Council voted on the allocation, adopting a recommendation for a 57/43 allocation between California and Oregon, respectively.

From the U.S.-Canada border to Cape Falcon, ocean fisheries are managed to protect depressed lower Columbia River fall chinook salmon and Washington coastal and Puget Sound natural coho salmon stocks and to meet ESA requirements for Snake River fall chinook salmon. Ocean treaty and non-treaty harvests and management measures were based in part on negotiations between Washington State fishery managers, commercial and recreational fishing groups, and the Washington coastal, Puget Sound, and Columbia River treaty Indian tribes as authorized by the U.S. District Court in *U.S.* v. *Washington, U.S.* v. *Oregon,* and *Hoh Indian Tribe* v. *Baldrige.*

North of Cape Falcon, Oregon, the 2000 management measures are more restrictive than in 1999. The total allowable catch for 2000 is 25,000 chinook and 100,000 coho; these fisheries are restricted to protect depressed Washington coastal, Puget Sound, and OCN coho. Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly by ocean harvests from Cape Falcon to the U.S.-Canada border.

The new Columbia River Control Zone adopted in 1999 for the recreational fisheries was extended to the commercial fisheries in 2000. The boundaries are defined in sections 1.C.4.a. and 2.C.3.a. of the 2000 management measures. The Council adopted this change to avoid the confusion of having two different boundaries for the these user groups in this area. South of Cape Falcon, OR, the retention of coho is prohibited for the sixth consecutive year, except for a recreational selective fishery off Oregon in July with a 20,000 fish quota of marked hatchery coho. Chinook fisheries are constrained primarily to meet the Klamath River fall chinook natural spawner escapement floor and ESA standards for Sacramento River winter chinook. These constraints also limit impacts on threatened Snake River fall chinook, Central Valley spring chinook, and California coastal chinook and reduce release mortality on Oregon coastal coho, southern Oregon/northern California coast coho, and central California coho. Size limit, gear, and seasonal restrictions are intended to reduce harvest impacts on endangered Sacramento River winter chinook.

The Council recommended a minimum size limit in the recreational fishery of 24 in (61.0 cm) south of Horse Mountain through May 31, and 20 in (50.8 cm) thereafter, in conjunction with a 2 week delay in the opening of the recreational seasons south of Point Arena to reduce incidental ocean harvest of Sacramento River winter chinook and Central Valley spring chinook. In order to minimize hooking

mortality, the Council recommended the continuation of gear restrictions (circle hooks while mooching) for recreational fisheries off California, and extension of the gear restrictions for mooching to commercial fisheries.

The Council recommended for the third year a commercial troll test fishery operating inside 6 nautical miles (nm) (11.1 km) from July 1 through July 15 between Fort Ross and Point Reyes under a 4,500-fish quota. The test fishery is designed to assess the relative contribution of Klamath River fall chinook to the catch of a near-shore commercial fishery in the test area.

NMFS concluded that incidental fishery impacts that occur in the ocean salmon fishery proposed for the period from May 1, 2000, through April 30, 2001 (or until the effective date of the 2001 management measures), will not jeopardize the continued existence of ESA listed salmon.

**Treaty Indian Fisheries**

The treaty-Indian commercial troll fishery is expected to land its quota of 25,500 chinook in ocean management areas and Area 4B combined. The landings result from a chinook-directed fishery in May and June (under a quota of 20,000 chinook) and the all-salmon season beginning in August with a 5,500 chinook quota. The expected 2000 harvest would be a reduction from the observed harvest in 1999. The coho quota and projected catch for the treaty-Indian troll fishery in ocean management areas, including Washington State Statistical Area 4B for the May–September period is 20,000 coho, a significant decrease from 1999.

**2001 Fisheries**

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May 1 of the same year. Therefore, the 2001 fishing seasons opening earlier than May 1 are also established in this action. The Council recommended and NMFS concurs that the recreational seasons from Horse Mountain to the U.S. Mexico Border will open off California in 2001 as indicated in the season description section. In addition, at the March 2000 meeting, the Council will consider inseason recommendations to (1) Establish management measures for an all-salmon-except-coho recreational and commercial fishery prior to May 1, in areas off Oregon, and (2) recommend the areas, season, quota, and special regulations for experimental fisheries in April (proposals must meet Council protocol and be received in November 2000).

**Inseason Actions**

The following sections set out the management regime for the salmon fishery. Open seasons and days are described in Sections 1, 2, and 3 of the 2000 management measures. Inseason closures in the commercial and recreational fisheries are announced on the NMFS hotline and through the Coast Guard Notice to Mariners as described In Section 7. Other inseason adjustments to management measures are also announced on the hotline and through Notice to Mariners.

The following are the management measures recommended by the Council and approved and implemented by NMFS for 2000 and, as specified, for 2001.

**Section 1. Commercial Management Measures for 2000 Ocean Salmon Fisheries**

**Note:** This section contains important restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.

*A. Season Description—North of Cape Falcon*

U.S.-Canada Border to Cape Falcon

May 1 through earlier of June 15 or 11,000 chinook guideline (see C.7.a.). All salmon except coho. See gear restrictions in C.2. Columbia Control Zone is closed (see C.4.a. for description of newly defined area for 2000 which is identical to the recreational control zone). [Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (C.7.)]

Queets River to Cape Falcon

Aug. 4 through earliest of Sept. 30 or the overall chinook quota (preseason 1,500 chinook guideline; see C.7.a.) or a quota of 25,000 coho with healed adipose fin clips. All salmon. Cycle of 4 days open/3 days closed. See gear restrictions in C.2. Each vessel may possess, land, and deliver no more than 50 chinook per open period. However, no possession or landing restrictions will initially apply if the chinook harvest guideline is at least 2,500 chinook as a result of the transfer of uncaught harvest from the May/June fishery. Trip limits, gear restrictions, and harvest guidelines may be instituted and adjusted inseason. Vessels must land and deliver their fish within 24 hours of any closure of this fishery within the area or in adjacent areas that are closed to all commercial non-Indian salmon fishing. Columbia Control Zone is closed (see C.4.a. for description of newly defined area for 2000, which is identical to the recreational control zone).

*South of Cape Falcon*

Cape Falcon to Humbug Mt.

Apr. 1 through July 22; Aug. 1 through Aug. 29; and Sept. 1 through Oct. 31. All salmon except coho. See gear restrictions in C.2. See Oregon State regulations for a description of the closed area at the mouth of Tillamook Bay.

Humbug Mt. to OR–CA Border

May 1 through May 31. All salmon except coho. See gear restrictions in C.2.

Sisters Rocks to Oregon-California Border

Aug. 1 through earlier of Aug. 31 or 1,300 chinook quota. All salmon except coho. Possession and landing limit of 30 fish per day. See gear restrictions in C.2. All salmon must be landed and delivered to Gold Beach, Port Orford or Brookings within 24 hours of closure.

House Rock, Oregon to Humboldt South Jetty

Sept. 1 through earlier of Sept. 30 or 7,000 chinook quota. All salmon except coho. Possession and landing limit of 30 fish per day. All fish caught in this area must be landed within the area. See gear restrictions in C.2. Klamath Control Zone closed (C.4.). The 7,000 chinook quota includes a harvest guideline limiting landings at the port of Brookings to no more than 1,000 chinook. If this guideline is reached prior to the overall quota, the fishery will close north of the Oregon-California border. When the fishery is closed north of the Oregon-California border and open to the south, Oregon State regulations provide for the following Vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, Oregon prior to landing in California only if such vessels first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the vessel name, number of fish on board, and estimated time of arrival.

Horse Mt. to Pt. Arena (Fort Bragg)

Sept. 1 through Sept. 30. All salmon except coho. Minimum size 26 in (66.0 cm). See gear restrictions in C.2.

Pt. Arena to Pt. Reyes (Bodega Bay)

July 18 through Sept. 30. All salmon except coho. Minimum size 27 in (68.6 cm). See gear restrictions in C.2.

Fort Ross to Pt. Reyes (test fishery inside 6 nm (11.1 km))

July 1 through earlier of July 15 or 4,500 chinook quota. All salmon except coho. Fishery closed July 4. Minimum size 26 in (66.0 cm) (to be consistent with 1998 and 1999 test fisheries). Open only inside 6 nm (11.1 km). Possession and landing limit of 30 fish per day. See gear restrictions in C.2. All fish caught in this area must be landed in Bodega Bay. Fish taken outside this area may not be landed at Bodega Bay while this fishery is open.

Pt. Reyes to Pt. San Pedro

May 29 through Sept. 30. All-salmon-except-coho. Minimum size 26 in (66.0 cm) through June 30 and 27 in (68.6 cm) thereafter. See gear restrictions in C.2.

Pt. San Pedro to U.S.-Mexico Border

May 1 through Aug. 27. All salmon except coho. Minimum size 26 in (66.0 cm) through June 30 and 27 in (68.6 cm) thereafter. See gear restrictions in C.2.

B. MINIMUM SIZE

[Inches]

| Area (when open) | Chinook | | Coho | | Pink |
|---|---|---|---|---|---|
| | Total length | Head-off | Total length | Head-off | |
| North of Cape Falcon | 28.0 | 21.5 | 16.0 | 12.0 | None. |
| Cape Falcon to Pt. Arena | [a]26.0 | [a]19.5 | | | None. |
| South of Pt. Arena prior to July 1 | [a]26.0 | [a]19.5 | | | None. |
| South of Pt. Arena after June 30 | [a b]27.0 | [a b]20.25 | | | None. |

[a] Chinook not less than 26 in (19.5 in head-off) taken in open seasons south of Cape Falcon may be landed north of Cape Falcon only when the season is closed north of Cape Falcon.

[b] Except minimum size limit of 26 in total length in the Bodega Bay test fishery.

Metric equivalents: 28.0 in=71.1 cm, 27.0 in=68.6 cm, 26.0 in=66.0 cm, 21.5 in=54.6 cm, 20.25 in=51.4 cm, 19.5 in=49.5 cm, 16.0 in=40.6 cm, 12.0 in=30.5 cm

*C. Special Requirements, Definitions, Restrictions, or Exceptions*

C.1. *Compliance with Minimum Size or Other Special Restrictions:* All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.2. *Gear Restrictions:*

a. Single point, single shank barbless hooks are required in all fisheries.

b. Off Oregon South of Cape Falcon: No more than 4 spreads are allowed per line.

*Spread defined:* A single leader connected to an individual lure or bait.

c. Off California: No more than 6 lines are allowed per vessel and barbless circle hooks are required when fishing with bait by any means other than trolling.

*Circle hook defined:* A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

*Trolling defined:* Fishing from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions, except when landing fish.

C.3. *Transit Through Closed Areas with Salmon on Board:* It is unlawful for a vessel to have troll gear in the water while transiting any area closed to salmon fishing while possessing salmon.

C.4. *Control Zone Definitions (note modified description of Columbia Control Zone for 2000):*

a. *Columbia Control Zone*—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between red lighted Buoy #4 (46°13′35″ N. lat., 124°06′50″ W. long.) and green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357 true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north, by a line running northeast/northeast/southwest between green lighted Buoy #7 to the tip of the north jetty (46°14′48″ N. lat., 124°05′20″ W. long.), and then along north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between red lighted Buoy #4 and the tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

b. *Klamath Control Zone*—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nm (11.1 km) north of the Klamath River mouth); on the west, by 124°23′00″ W. long. (approximately 12 nm (22.2 km) off shore); and, on the south, by 41°26′48″ N. lat. (approximately 6 nm (11.1 km) south of the Klamath River mouth).

C.5. *Notification When Unsafe Conditions Prevent Compliance with Regulations:* If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the U.S. Coast Guard and receive acknowledgment of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board and the estimated time of arrival. This stipulation will be implemented by state regulations for California, Oregon and Washington.

C.6. *Incidental Halibut Harvest:* During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (phone 206–634–1838). Applicants must apply prior to April 1 of each year. Incidental harvest is authorized only during May and June troll seasons and after July 31 if quota remains and if announced on the NMFS hotline (phone 800–662–9825). ODFW and WDFW will monitor landings. If the landings are projected to exceed the 23,490-lb (10.7-mt) preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to close the incidental halibut fishery. License holders may land no more than 1 halibut per each 3 chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip. Halibut retained must be no less than 32

in (81.3 cm) in total length (with head on).

C.7. *Inseason Management:* In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance is provided to NMFS:

a. In the overall non-Indian commercial chinook quota north of Cape Falcon, 1,000 chinook in the May/June harvest guideline are the result of impacts assessed at the July/August harvest impact rate. Inseason, these 1,000 chinook (or remaining portion thereof) may be transferred to the July/August harvest guideline at a one-to-one rate if not caught in the May/June fishery. Any chinook remaining in the May/June harvest guideline in excess of 1,000 may be transferred to the July/August harvest guideline on a fishery impact equivalent basis.

b. At the March 2001 meeting, the Council will consider inseason recommendations to: (1) Open commercial seasons for all salmon except coho prior to May 1 in areas off Oregon, and (2) identify the areas, season, quota, and special regulations for any experimental April fisheries (proposals must meet Council protocol and be received in November 2000).

C.8. Consistent with Council management objectives, the State of Oregon may establish additional late-season, chinook-only fisheries in state waters. Check state regulations for details.

C.9. For the purposes of CDFG Code, Section 8232.5, the definition of the KMZ for the ocean salmon season shall be that area from Humbug Mt., Oregon to Horse Mt., California.

**Section 2. Recreational Management Measures for 2000 Ocean Salmon Fisheries**

**Note:** This section contains important restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.

*A. Season Description—North of Cape Falcon*

U.S.-Canada Border to Cape Alava (Neah Bay Area)

July 3 through earlier of Sept. 30 (7 days per week) or subarea quota of 6,900 marked coho. All salmon, see following note concerning Area 4B. 2 fish per day, but only 1 chinook. All retained coho must have a healed adipose fin clip. See gear restrictions in C.2. Inseason management may be used to maintain season length and keep harvest within a guideline of 500 chinook.

**Note:** While ocean fishery is open in Area 4, no retention of chinook is allowed in Area 4B.

Cape Alava to Queets River (La Push Area)

July 3 through earlier of Sept. 30 (7 days per week) or subarea quota of 1,700 marked coho. All salmon. 2 fish per day, but only 1 chinook. All retained coho must have a healed adipose fin clip. See gear restrictions in C.2. Inseason management may be used to maintain season length and keep harvest within a guideline of 300 chinook.

Queets River to Leadbetter Pt. (Westport Area)

Sun. through Thurs. July 3 through earlier of Sept. 30 or subarea quota of 28,900 marked coho. All salmon. 2 fish per day, but only 1 chinook. All retained coho must have a healed adipose fin clip. See gear restrictions in C.2. Closed through Aug. 10 inside the area defined by a line drawn from the Westport lighthouse (46°53.3′ N. lat., 124°07.01′ W. long.) to Buoy #2 (46°52.7′ N. lat., 124°12.7′ W. long.) to Buoy #3 (46°55.0′ N. lat., 124°14.8′ W. long.) to the Grays Harbor north jetty (46°55.6′ N. lat., 124°10.85′ W. long.). Inseason management may be used to maintain season length and limit harvest within a guideline of 7,400 chinook.

Leadbetter Pt. to Cape Falcon (Columbia River Area)

Sun. through Thurs. July 10 through earlier of Sept. 30 or subarea quota of 37,500 marked coho. All salmon. 2 fish per day, but only 1 chinook. All retained coho must have a healed adipose fin clip. See gear restrictions in C.2. Coho retention is prohibited between Tillamook Head and Cape Falcon beginning Aug. 1 (*i.e.*, all salmon except coho and a daily bag limit of 1 chinook). Closed in Columbia Control Zone (C.3.). Inseason management may be used to maintain season length and limit harvest within a guideline of 4,300 chinook.

*South of Cape Falcon*

Cape Falcon to Humbug Mt.

Except as provided below during the selective fishery, the season will be Apr. 1 through Oct. 31. All salmon except coho, 2 fish per day. No more than 6 fish in 7 consecutive days. See gear restrictions in C.2. See Oregon State regulations for a description of a closure at the mouth of Tillamook Bay.

Selective fishery for marked hatchery coho (healed adipose fin clip)

Sun., Tue., Wed., Thur., and Sat. of each week, July 1 through earlier of July 31 or a landed catch of 20,000 marked coho. All salmon. 2 fish per day. All retained coho must have a healed adipose fin clip. No more than 6 fish in 7 consecutive days. See gear restrictions C.2. Open days may be adjusted to utilize the available quota.

**Note:** On closed days during the selective fishery, no angling for any species of salmon is allowed. The all-salmon-except-coho season reopens the earlier of Aug. 1 or attainment of the coho quota.

Humbug Mt. to Horse Mt. (Klamath Management Zone)

May 27 through July 6, one fish per day; and July 29 through Sept. 10, two fish per day. All salmon except coho, no more than 4 fish in 7 consecutive days. See gear restrictions in C.2. Klamath Control Zone (C.3.) closed during Aug.

Horse Mt. to Pt. Arena (Fort Bragg)

Feb. 12 through July 6 and July 22 through Nov. 12. All salmon except coho, 2 fish per day. Minimum size 24 in (61.0 cm) through May 31 and 20 inc (50.8 cm) thereafter. See gear restrictions in C.2.

In 2001, season opens Feb. 17 (nearest Sat. to Feb. 15) for all salmon except coho, 2 fish per day. Minimum size 24 in (61.0 cm) and gear restrictions in C.2.

Pt. Arena to Pigeon Pt.

Apr. 15 through Nov. 5. All salmon except coho, 2 fish per day. Minimum size 24 in (61.0 cm) through May 31 and 20 in (50.8 cm) thereafter. See gear restrictions in C.2.

In 2001, the season will open Apr. 14 for all salmon except coho, 2 fish per day. Minimum size 24 in (61.0 cm) and gear restrictions in C.2.

Pigeon Pt. to U.S.-Mexico Border

Apr. 1 through Oct. 1. All salmon except coho, 2 fish per day. Minimum size 24 in (61.0 cm) through May 31 and 20 in (50.8 cm) thereafter. North of Pt. Conception, see gear restrictions in C.2.

In 2001, the season will open March 31 for all salmon except coho, 2 fish per day. Minimum size 24 in (61.0 cm) and gear restrictions in C.2.

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B. MINIMUM SIZE

[Total Length in Inches]

| Area (when open) | Chinook | Coho | Pink |
|---|---|---|---|
| North of Cape Falcon | 24.0 | 16.0 | None. |
| Cape Falcon to Horse Mt | 20.0 | 16.0 | None, except 20.0 off. |
| South of Horse Mt* | 20.0* | - - | 20.0. |

* Except 24.0 inches prior to June 1.
Metric equivalents: 24.0 in=61.0 cm, 20.0 in=50.8 cm, 16.0 in=40.6 cm.

*C. Special Requirements, Definitions, Restrictions, or Exceptions*

C.1. *Compliance with Minimum Size and Other Special Restrictions:* All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.2. *Gear Restrictions:* All persons fishing for salmon, and all persons fishing from a boat with salmon on board must meet the gear restrictions listed below for specific areas or seasons.

a. *U.S.-Canada Border to Pt. Conception, California:* No more than one rod may be used per angler and single point, single shank barbless hooks are required for all fishing gear. (Note: ODFW regulations in the state-water fishery off Tillamook Bay may allow the use of barbed hooks to be consistent with inside regulations.)

b. *Off Oregon between Cape Falcon and Humbug Mt.:* During the all-salmon-except coho season, legal gear is limited to artificial lures and plugs of any size, or bait no less than 6 in (15.2 cm) long (excluding hooks and swivels). All gear must have no more than 2 single point, single shank barbless hooks. Divers are prohibited and flashers may be used only with downriggers. During the all-salmon, mark-selective fishery, the legal gear limitations for this area are waived, except anglers must use no more than 2 single point, single shank barbless hooks.

c. *Off California North of Pt. Conception:* Anglers must use no more than 2 single point, single shank barbless hooks.

d. *Off California between Horse Mt. and Pt. Conception:* Single point, single shank, barbless circle hooks must be used if angling with bait by any means other than trolling and no more than 2 such hooks shall be used. When angling with 2 hooks, the distance between the hooks must not exceed 5 in (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). Circle hooks are not required when artificial lures are used without bait.

*Circle hook defined:* A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

*Trolling defined:* Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions, except when landing a fish.

C.3. *Control Zone Definitions:*

a. Columbia Control Zone—An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between red lighted Buoy #4 (46°13′35″ N. Lat., 124°06′50″ W. long.) and green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357 true from the south jetty at 46°14′00″ N. lat.,124°03′07″ West. long. to its intersection with the north jetty; on the north, by a line running northeast /southwest between green lighted Buoy #7 to the tip of the north jetty (46°14′48″ N. lat., 124°05′20″ W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between red lighted Buoy #4 and tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

b. *Klamath Control Zone*—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nm (11.1 km) north of the Klamath River mouth); on the west, by 124°23′00″ W. long. (approximately 12 nm (22.2 km) off shore); and, on the south, by 41°26′48″ N. lat. (approximately 6 nautical miles (11.1 km) south of the Klamath River mouth).

C.4. *Inseason Management:* Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines and season duration. Actions could include modifications to bag limits or days open to fishing, and extensions or reductions in areas open to fishing. NMFS may transfer coho inseason among recreational subareas North of Cape Falcon to help meet the recreational season duration objectives (for each subarea) after conferring with representatives of the affected ports and the Salmon Advisory Subpanel recreational representatives north of Cape Falcon. At the March 2001 meeting, the Council will consider an inseason recommendation to open seasons for all salmon except coho prior to May 1 in areas off Oregon.

C.5. *Additional Seasons in State Territorial Waters:* Consistent with Council management objectives, the states of Washington and Oregon may establish limited seasons in state waters. Oregon state-water fisheries are limited to chinook salmon. Check state regulations for details.

**Section 3. Treaty Indian Management Measures for 2000 Ocean Salmon Fisheries**

**Note:** This section contains important restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.

*A. Season Descriptions*

| Tribe and area boundaries | Open seasons | Salmon species | Minimum size (inches) | | Special restrictions by area |
|---|---|---|---|---|---|
| | | | Chinook | Coho | |
| *Makah*—That portion of the Fishery Management Area (FMA) north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long. | May 1 through earlier of June 30 or chinook quota.<br>August 1 through earliest of September 15 or chinook or coho quota. | All except coho<br>All | 24<br>24 | .....<br>16 | Barbless hooks. No more than 8 fixed lines per boat or no more than 4 hand-held lines per person. |
| *Quileute*—That portion of the FMA between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Queets River) and east of 125°44′00″ W. long. | May 1 through earlier of June 30 or chinook quota.<br>August 1 through earliest of September 15 or chinook or coho quota. | All except coho<br>All | 24<br>24 | .....<br>16 | Barbless hooks. No more than 8 fixed lines per boat. |
| *Hoh*—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) and east of 125°44′00″ W. long. | May 1 through earlier of June 30 or chinook quota.<br>August 1 through earliest of September 15 or chinook or coho quota. | All except coho<br>All | 24<br>24 | .....<br>16 | Barbless hooks. No more than ■ fixed lines per boat. |
| *Quinault*—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) and east of 125°44′00″ W. long. | May 1 through earlier of June 30 or chinook quota.<br>August 1 through earliest of September 15 or chinook or coho quota. | All except coho<br>All | 24<br>24 | .....<br>16 | Barbless hooks. No more than 8 fixed lines per boat. |

* Metric equivalents: 24 in=61.0 cm, 16 in=40.6 cm.

*B. Special Requirements, Restrictions, and Exceptions*

B.1. All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

B.2. Applicable lengths, in inches, for dressed, head-off salmon, are 18 in (45.7 cm) for chinook and 12 in (30.5 cm) for coho. Minimum size and retention limits for ceremonial and subsistence harvest are as follows:

*Makah Tribe*—None.

*Quileute, Hoh and Quinault tribes*—Not more than 2 chinook longer than 24 in (61.0 cm) in total length may be retained per day. Chinook less than 24 in (61.0 cm) total length may be retained.

B.3. The area within a 6-mile (9.7 km) radius of the mouths of the Queets River (47°31′42″ N. lat.) and the Hoh River (47°45′12″ N. lat.) will be closed to commercial fishing. A closure within 2 miles (3.2 km) of the mouth of the Quinault River (47°21′00″ N. lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

*C. Quotas*

C.1. The overall treaty troll ocean quotas are 25,500 chinook and 20,000 coho. The overall chinook quota is divided into 20,000 chinook for the May-June chinook-directed fishery and 5,500 chinook for the August-September all-salmon season. If the chinook quota for the May-June fishery is not fully utilized, the excess fish may not be transferred into the later all-salmon season. The quotas include troll catches by the S'Klallam and Makah tribes in Washington State Statistical Area 4B from May 1 through September 30.

**Section 4. Halibut Retention**

Under the authority of the Northern Pacific Halibut Act, NMFS promulgated regulations governing the Pacific halibut fishery which appear at 50 CFR part 300, subpart E. In addition, the 2000 Pacific halibut management measures were published in the **Federal Register** on March 20, 2000 (65 FR 14909). The regulations and management measures provide that vessels participating in the salmon troll fishery in Area 2A (all waters off the States of Washington, Oregon, and California), which have obtained the appropriate International Pacific Halibut Commission (IPHC) license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved. The operator of a vessel who has been issued an incidental halibut harvest license by the IPHC may retain Pacific halibut caught incidentally in Area 2A, during authorized periods, while trolling for salmon. Incidental harvest is authorized only during the May and June troll seasons. It is also authorized after July 31 if halibut quota remains and if halibut retention is announced on the NMFS hotline (phone 800–622–9825). License holders may land no more than 1 halibut per each 3 chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip. Halibut retained must meet the minimum size limit of 32 in (81.3 cm). The Oregon Department of Fish and Wildlife and Washington Department of Fish and Wildlife will monitor landings and, if they are projected to exceed the 23,490-lb (10.7-mt) preseason allocation or the Area 2A non-Indian commercial total allowable catch of halibut, NMFS will take inseason action to close the incidental halibut fishery. License applications for incidental harvest must be obtained from the IPHC. Applicants must apply prior to April 1 of each year.

**Section 5. Gear Definitions and Restrictions**

In addition to the gear restrictions shown in Section 1, 2, and 3, the following gear definitions and restrictions will apply.

*Commercial Troll Fishing Gear:* Troll fishing gear for the ocean salmon fisheries in the EEZ off Washington,

Oregon, and California is defined as one or more lines that drag hooks behind a moving fishing vessel. In that portion of the fishery management area (FMA) off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

*Recreational Fishing Gear:* Recreational fishing gear for the FMA is defined as angling tackle consisting of a line with no more than one artificial lure or natural bait attached. In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed 4 lb (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon and no person fishing from a boat with salmon on board, may use more than one rod and line. Fishing includes any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

**Section 6. Geographical Landmarks**

Wherever the words "nautical miles off shore" are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

| | |
|---|---|
| Cape Flattery | 48°23′00″ N. lat. |
| Cape Alava | 48°10′00″ N. lat. |
| Queets River | 47°31′42″ N. lat. |
| Leadbetter Point | 46°38′10″ N. lat. |
| Cape Falcon | 45°46′00″ N. lat. |
| Humbug Mountain | 42°40′30″ N. lat. |
| Sisters Rocks | 42°35′45″ N. lat. |
| Mack Arch | 42°13′40″ N. lat. |
| House Rock | 42°06′32″ N. lat. |
| Oregon-California Border | 42°00′00″ N. lat. |
| Humboldt South Jetty | 40°45′53″ N. lat. |
| Horse Mountain | 40°05′00″ N. lat. |
| Point Arena | 38°57′30″ N. lat. |
| Fort Ross | 38°31′00″ N. lat. |
| Point Reyes | 37°59′44″ N. lat. |
| Point San Pedro | 37°35′40″ N. lat. |
| Pigeon Point | 37°11′00″ N. lat. |
| Point Conception | 34°27′00″ N. lat. |

**Section 7. Inseason Notice Procedures**

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206–526–6667 or 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

**Classification**

This notification of annual management measures is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment. As described earlier (Schedule Used to Establish 2000 Management Measures), the Council solicited public comment on these measures and has notified the public of the measures it recommended for implementation. Providing for additional prior notice and opportunity for public comments on these measures through a rulemaking process would be impracticable and contrary to the public interest. Given the extremely low returns of many ocean salmon stocks listed under the ESA, the need to prevent overfishing, and the need to facilitate a level of escapement to meet the requirements of the resource and inside fisheries, it is essential to have these measures effective at the beginning of the fishing year. Failure to implement these measures immediately could compromise the status of certain stocks and negatively impact international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action.

For the reasons discussed earlier, NMFS has determined that good cause exists to waive the requirements of 50 CFR 660.411 for prior notice and opportunity for public comments. Section 660.411 of title 50, Code of Federal Regulations, requires NMFS to publish an action implementing management measures for ocean salmon fisheries each year and, if time allows, invite public comment prior to the effective date. Section 660.411 further states that if, for good cause, an action must be filed without affording a prior opportunity for public comment, the measures will become effective; however, public comments on the action will be received for a period of 15 days after filing of the action with the Office of the Federal Register. NMFS will receive public comments on this action for 15 days from the date of filing this action for public inspection with the Office of the Federal Register.

The AA also finds good cause under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this rule. The finding of good cause is based upon the public's interest in having these provisions in place by the start of the ocean salmon fishing year (May 1, 2000). As previously discussed, these measures are essential to conserve threatened and endangered ocean salmon stocks, and to provide for harvest of more abundant stocks. The finding of good cause to waive the 30-day delay in effectiveness is also based on the limited time available to implement these new measures after the final Council meeting in April and before the commencement of the ocean salmon fishing year on May 1.

To enhance notification of the fishing industry of these new measures, NMFS is announcing the new measures over the telephone hotline used for inseason management actions and by U.S. Coast Guard Notice to Mariners Broadcast. NMFS also has advised the States of Washington, Oregon, and California,

which announce the seasons for applicable state and Federal fisheries through their own public notification systems.

Since 1989, NMFS has listed 16 ESUs of salmon on the west coast. As the listings have occurred, NMFS has initiated formal ESA section 7 consultations and issued BOs which consider the impacts to listed salmonid species, resulting from proposed implementation of the FMP, or in some cases, from proposed implementation of the annual management measures. Some opinions have concluded that implementation of the FMP is not likely to jeopardize the continued existence of certain listed ESUs. Other opinions have found the FMP is likely to jeopardize certain listed ESUs, and have identified reasonable and prudent alternatives (ESA consultation standards) that would avoid the likelihood of jeopardizing the continued existence of the ESU under consideration. Since completion of the April 30, 1999, supplement to the March 8, 1996, BO on the effect of ocean fisheries on endangered and threatened salmon, NMFS has listed Central Valley spring chinook and California coastal chinook as threatened under the ESA (64 FR 50394, September 16, 1999).

NMFS reinitiated consultation and issued two BOs which address the potential effects of ocean salmon fisheries to newly listed species under the ESA; those opinions were signed on April 28, 2000, covering the two listed chinook ESUs in the ocean salmon fisheries, and on April 28, 2000, covering the ocean salmon fisheries for this season through April 30, 2001.

Based on these BOs, NMFS concludes that these management measures are not likely to jeopardize the continued existence of any ESU of salmon that is listed under the ESA. The Council's recommended management measures comply with the terms and conditions of the incidental take statements in all of the outstanding applicable BOs related to listed salmon species that may be affected by Council fisheries.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 1, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–11231 Filed 5–2–00; 11:28 am]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register
Vol. 65, No. 88
Friday, May 5, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

### 9 CFR Part 590

**[Docket No. 99–012E]**

**RIN 0583–AC71**

### Fee Increase for Egg Products Inspection—Year 2000; Extension of comment period.

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Proposed rule; reopening of comment period.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is extending the comment period for the proposed rule, "Fee Increase for Egg Products Inspection—Year 2000" for an additional 30 days. This action is in response to a request to allow additional time for comment in order to compile more complete data regarding the impact of the proposed fee.

**DATES:** Comments must be received by June 1, 2000.

**ADDRESSES:** Submit one original and two copies of written comments to FSIS Docket Clerk, Docket No. 99–012P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments submitted in response to the proposal will be available for public inspection in the Docket Clerk's Office between 8:30 and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** For information concerning policy issues, contact Daniel Engeljohn, Ph.D., Director, Regulations Development and Analysis Division, Office of Policy, Program Development, and Evaluation, FSIS, U.S. Department of Agriculture, Room 112, Cotton Annex, 300 12th Street, SW., Washington, DC 20250, (202) 720–5627, fax number (202) 690–0486.

For information concerning fee development, contact Michael B. Zimmerer, Director, Financial Management Division, Office of Management, FSIS, U.S. Department of Agriculture, Room 2130-S, 1400 Independence Avenue, SW., Washington, DC 20250, (202) 720–3552, fax number (202) 720–3552.

**SUPPLEMENTARY INFORMATION:**

#### Background

FSIS is responsible for the inspection of egg products to protect the health and welfare of consumers by assuring that egg products are wholesome, not adulterated, and properly labeled and packaged.

While the cost of mandatory inspection is borne by FSIS, plants pay for inspection services performed on holidays or on an overtime basis. There has not been a change in overtime and holiday fees for egg products inspection services since the transfer of program functions from AMS to FSIS in May 1995. AMS established and implemented the current fees in November 1994. These fees reflect only the costs of inspection at that time and are insufficient to recover FSIS's current costs for the delivery of overtime and holiday inspection service.

On March 3, 2000, FSIS published a proposed rule (65 FR 11486) to increase the fees it charges egg products plants for providing overtime and holiday inspection services. FSIS is also proposing to amend 9 CFR 590.130 by deleting the reference to regulations governing the collection of fees associated with the voluntary grading of eggs. Interested parties were given 60 days to submit comments on the proposal.

Now in response to a request to extend the comment period for the proposed rule, FSIS has decided to extend the comment period an additional 30 days. The request included preliminary impact data to support the statement that additional time was needed to complete the data collection effort.

#### Additional Public Notification

Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce and provide copies of this **Federal Register** publication in its constituent update.

The Agency provides a weekly *FSIS Constituent Update* via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience than would be otherwise possible.

For more information or to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done in Washington, DC on: May 2, 2000.

**Thomas J. Billy,**

*Administrator.*

[FR Doc. 00–11298 Filed 5–4–00; 8:45 am]

**BILLING CODE 3410–DM–P**

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 32

**[Docket No. PRM–32–05]**

### Metabolic Solutions: Denial of Petition for Rulemaking; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Denial of petition for rulemaking; correction.

**SUMMARY:** This document corrects the denial of a petition for rulemaking filed by Metabolic Solutions published in the **Federal Register** on April 24, 2000 (65 FR 21673). The **ADDRESSES** section of the notice contains language that requests public comment that was inadvertently included in the notice. This action is necessary to indicate that the NRC is not soliciting public comments because the denial is the final NRC action on the petition for rulemaking.

**FOR FURTHER INFORMATION CONTACT:** David L. Meyer, Chief, Rules and

Directives Branch, Division of Administrative Services, Office of Administration, telephone (301) 415–7162.

**SUPPLEMENTARY INFORMATION:** On page 21673, in the first column, the **ADDRESSES** section is removed because the NRC is not soliciting public comments and the denial is the final NRC action on this petition for rulemaking.

Dated at Rockville, Maryland, this 1st day of May 2000.

For the Nuclear Regulatory Commission.

**David L. Meyer,**

*Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.*

[FR Doc. 00–11244 Filed 5–4–00; 8:45 am]

BILLING CODE 7590–01–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–CE–09–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) Airplanes

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes to supersede Airworthiness Directive (AD) 99–12–02, which currently requires flight and operating limitations on Raytheon Aircraft Corporation (Raytheon) Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes. AD 99–12–02 resulted from a report of an in-flight separation of the right wing on a Raytheon Beech Model A45 (T–34A) airplane. The AD was issued as an interim action until the development of FAA-approved inspection procedures. Raytheon has developed such procedures. The proposed AD would: Require repetitive inspections of the wing spar assembly for cracks, with replacement of any wing spar assembly found cracked (unless the spar assembly has a crack indication in the filler strip where the direction of the crack is toward the outside of the filler strip); require reporting the results of the initial inspection; and change the flight and operating limitations that AD 99–12–02 currently requires.

The actions specified by the proposed AD are intended to detect and correct cracks in the wing spar assemblies and assure the operational safety of the above-referenced airplanes.

**DATES:** The Federal Aviation Adminstration (FAA) must receive any comments on the proposed rule on or before July 7, 2000.

**ADDRESSES:** Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–09–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in the proposed AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may examine this information at the Rules Docket at the address above.

**FOR FURTHER INFORMATION CONTACT:** Paul Nguyen, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

We believe that the proposed regulation may have a significant economic impact on a substantial number of small entities. Due to the urgent nature of the safety issues addressed, FAA has been unable to complete a preliminary regulatory flexibility analysis prior to issuance of the NPRM. We anticipate including the final regulatory flexibility analysis and determination with the final rule, if adopted. To assist in this analysis, we are particularly interested in receiving information on the impact of the proposed rule on small businesses and suggested alternative methods of compliance that will reduce or eliminate such impacts. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov.*

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–09-AD." We will date stamp and mail the postcard back to you.

### Discussion

*Has FAA taken any action to this point?* In-flight separation of the right wing on a Raytheon Beech Model A45 (T34A) airplane caused us to issue AD 99–12–02, Amendment 39–11193 (64 FR 31689, June 14, 1999). This AD requires:

—Incorporating flight and operating limitations that restrict the airplanes to normal category operation and prohibit them from acrobatic and utility category operations;

—Limiting the flight load factor to 0 to 2.5 G; and

—Limiting the maximum airspeed to 175 miles per hour (mph) (152 knots).

AD 99–12–02 was issued as an interim action until the development of FAA-approved inspection procedures.

*What has happened since AD 99–12–02 to initiate this action?* Raytheon has developed procedures to inspect the wing spar assemblies on Raytheon Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes. We have reviewed and approved the technical aspects of these procedures.

*Is there service information that applies to this subject?* Raytheon has issued Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000.

*What are the provisions of this service bulletin?* The service bulletin:

—Includes procedures for inspecting the forward (main) and aft (rear) wing spar assemblies of the above-referenced airplanes; and

—Specifies provisions for when to replace a cracked wing spar assembly.

The service bulletin specifies that a crack indication in the filler strip is allowed if the direction of the crack is toward the outside edge of the filler strip. If the direction of the crack is toward the inside of the filler strip or any crack is found in any other area, the service bulletin specifies replacing the spar assembly prior to further flight.

**The FAA's Determination and Explanation of the Provisions of the Proposed AD**

*What has FAA determined?* After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, FAA has determined that:

—An unsafe condition is likely to exist or develop in other Raytheon Beech Models 45 (YT–34), A45 (T–34A, B–45), and D45 (T–34B) airplanes of the same type design;

—The actions of the above-referenced service bulletin should be accomplished on the affected airplanes;

—When these actions are accomplished, the flight and operating restrictions that AD 99–12–02 requires may be changed as specified in this proposed AD; and

—AD action should be taken to detect and correct cracks in the wing spar assemblies and assure the operational safety of the above-referenced airplanes.

*What would the proposed AD require?* The proposed AD would supersede AD 99–12–02 and would:

—Require you to repetitively inspect the wing spar assemblies for cracks and replace any cracked wing spar assembly. A crack indication in the filler strip is allowed if the direction of the crack is toward the outside edge of the filler strip;

—Require you to report the results of the initial inspection;

—Require you to maintain the flight and operating restrictions that AD 99–12–02 currently requires until you accomplish the initial inspection and possible replacement proposed in this AD; and

—Allow you to change the flight and operating restrictions that AD 99–12–02 currently requires after the wing spar assemblies are inspected and the wing spar assembly either is replaced, is crack free, or only has a crack indication in the filler strip where the direction of the crack is toward the outside of the filler strip.

*Are there differences between the proposed AD and the service information?* Raytheon Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000, specifies that you accomplish the initial inspection prior to further flight after receipt. We do not have justification for requiring the initial inspection prior to further flight. Instead, we have determined that 80 hours time-in-service (TIS) or 12 months (whichever occurs first) is a reasonable time period for accomplishing the initial inspection in this AD. We will retain the flight and operating restrictions that AD 99–12–02 currently requires until this inspection is accomplished.

*Why is the compliance of the initial inspection in hours time-in-service (TIS) and calendar time?* We have established the compliance time of the initial inspection at the next 80 hours TIS or 12 months time with the prevalent one being that which occurs first. This would assure that cracks are detected on high usage airplanes while the owners/operators of the lower usage airplanes would have additional time to accomplish the action (up to 12 months). Having the inspection accomplshed on all airplanes within 12 months would assure that all wing spar cracks on the affected airplanes are detected in a reasonable time period, while not inadvertently grounding the affected airplanes. The FAA has determined that the dual compliance time will assure that the safety issue is addressed in a timely manner without inadvertently grounding any of the affected airplanes.

**Cost Impact**

*How many airplanes does the proposed AD impact?* The FAA estimates that 476 airplanes in the U.S. registry would be affected by the proposed AD.

*What is the cost impact of the initial inspection on owners/operators of the affected airplanes?* We estimate that it would take approximately 241 workhours per airplane to accomplish the proposed initial inspection, at an average labor rate of $60 an hour. Based on these figures, FAA estimates the cost impact of the proposed initial inspection on U.S. operators at $6,882,960, or $14,460 per airplane.

*What about the cost of repetitive inspections and replacements?* The figures above only take into account the cost of the proposed initial inspection and do not take into account the cost of repetitive inspections or the cost to replace a cracked wing spar assembly. The FAA has no way of determining the number of repetitive inspections each owner/operator would incur over the life of an affected airplane or the number of airplanes that would have a cracked wing spar(s) and need replacement.

The cost of each repetitive inspection would be $1,860 per airplane (31 workhours × $60 per hour).

Raytheon no longer produces wings spars for the affected airplanes. If a wing spar was found cracked, you would have to install an FAA-approved wing spar configuration in order to continue to operate the airplane. For cost estimate purposes, we are using information on installing a Raytheon Beech 55 or 58 series airplane wing spar on a Raytheon Beech Model A45 airplane in accordance with Supplemental Type Certificate (STC) No. SA5521NM. Nogle and Black Aviation, Inc., owns this STC. The cost to replace a cracked wing spar through this STC would be $14,100 (160 workhours × $60 per hour plus $4,500 for parts). The airplane would still be subject to the inspection requirements proposed in this NPRM.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed action (1) is not a "significant regulatory action" under Executive Order 12866; and (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). This proposed rule, if adopted, may have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We are currently conducting a Regulatory Flexibility Determination and Analysis. We are considering alternative methods of compliance to the proposed AD that could minimize the impact on small entities. We specifically invite comments in this area.

At this point, we have determined that AD action is the best course to

address the unsafe condition specified in this document. We have also determined that the situation does not warrant waiting for the completion of the Regulatory Flexibility Determination and Analysis before we issue the NPRM. We will place a copy of the completed Regulatory Flexibility Determination and Analysis in the Docket file. You may obtain this information at the address specified in the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. FAA amends Section 39.13 by removing Airworthiness Directive (AD) 99–12–02, Amendment 39–11193 (64 FR 31689, June 14, 1999), and by adding a new AD to read as follows:

**Raytheon Aircraft Company:** Docket No. 2000–CE–09–AD; Supersedes AD 99–12–02, Amendment 39–11193.

(a) *What airplanes are affected by this AD?* This AD applies to Beech Models 45 (YT–34), A45 (T–34A, B-45), and D45 (T–34B) airplanes, all serial numbers, certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct cracks in the wing spar assemblies and assure the operational safety of the above-referenced airplanes.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

(1) Actions retained from AD 99–12–02:

| Action | When | In accordance with |
|---|---|---|
| I. Placard requirements:<br>Fabricate two placards using letters of at least 1/10-inch in height with each consisting of the following words: "Never exceed speed, Vne–175 MPH (152 knots) IAS; Normal Acceleration (G) 1999 Limits −0, and +2.5; ACROBATIC MANEUVERS PROHIBITED."<br>Install these placards on the airplane instrument panels (one on the front panel and one on the rear panel) next to the airspeed indicators within the pilot's clear view.<br>Insert a copy of this AD into the Limitations Section of the Airplane Flight Manual (AFM). | I. All actions prior to further flight with after July 9, 1999 (the effective date of AD 99–12–02). | I. Not Applicable. |
| II. Modification requirements:<br>Modify the airspeed indicator glass by accomplishing the following:<br>1. Place a red radial line on the indicator glass at 175 miles per hour (mph) (152 knots).<br>2. Place a white slippage index mark between the airspeed indicator glass and the case to visually verify that the glass has not rotated.<br>Mark the outside surface of the "g" of meters with lines of approximately 1/16-inch by 3/16-inch, as follows:<br>1. A red line at 0 and 2.5; and<br>2. A white slippage mark between each "g" meter glass and case to visually verify that the glass has not rotated. | II. All actions required within 10 hours time-in-service (TIS) after July 9, 1999 (the effective date of AD 99–12–02). | II. Not Applicable. |

(2) Actions New to this AD:

| Action | When | In accordance with |
|---|---|---|
| I. Inspect the wing spar assemblies for cracks. | I. Initially at whichever occurs first: .....<br>—Within 80 hours time-in-service (TIS) after the effective date of this AD; or.<br>—Within 12 months after the effective date of this AD.<br>Repetitively inspect thereafter at intervals not to exceed 80 hours TIS. | I. Raytheon Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000. |
| II. Replace any cracked wing spar assembly. A crack indication in the filler strip is allowed if the direction of the crack is toward the outside edge of the filler strip. If the direction of the crack is toward the inside of the filler strip or any crack is found in any other area, you must replace the cracked wing spar assembly prior to further flight. | II. Prior to further flight after the required inspection where the cracked wing spar assembly is found. | II. The applicable maintenance manual. |

| Action | When | In accordance with |
|---|---|---|
| III. Submit a report to the FAA that describes the damage found on the wing spar. Use the chart on pages 58 through 60 of Raytheon Mandatory Service Bulletin No. SB 57–3329, Issued: February, Submit this report even if no cracks are found. | III. Within 10 days after the initial inspection or within 10 days after the effective date of the AD, whichever occurs later. | III. Pages 58 through 60 of Raytheon Mandatory Service Bulletin No. SB 57–3329, Issued: February, 2000. |
| IV. The flight and operating restrictions that were required by paragraph (d)(1) of this AD, as retained from AD 99–12–02, may be changed by accomplishing the following:<br>Remove the placards, modifications, etc. required by paragraph (d)(1) of this AD, as retained from AD 99–12–02. | IV. All actions required prior to further flight after the initial inspection provided the wing spar assembly is either replaced, is crack free, or only has a crack indication in the filler strip where the direction of the crack is toward the outside of the filler strip. | IV. Not applicable. |
| Fabricate two placards using letters of at least 1/10-inch in height with each consisting of the following words: "Never exceed speed, Vne-225 MPH (219 knots) IAS; Normal Acceleration (G) Limits −0, +5."<br>Install these placards on the airplane instrument panels (one on the front panel and one on the rear panel) next to the airspeed indicators within the pilot's clear view.<br>Modify the airspeed indicator glass by accomplishing the following:<br>1. Place a red radial line on the indicator glass at 225 miles per hour (mph) (219 knots).<br>2. Place a white slippage index mark between the airspeed indicator glass and the case to visually verify that the glass has not rotated.<br>Mark the outside surface of the "g" meters with lines of approximately 1/16-inch by 3/16-inch, as follows:<br>1. A red line at 0 and +5; and<br>2. A white slippage mark between each "g" meter glass and case to visually verify that the glass has not rotated.<br>Insert a copy of this AD into the Limitations Section of the AFM. | | |

(e) *Can I comply with this AD in any other way?* (1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) This AD applies to each aircraft identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(3) Alternative methods of compliance approved in accordance with AD 99–12–02, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Paul Nguyen, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4125; facsimile: (316) 946–4407.

(g) *What if I need to fly the aircraft to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your aircraft to a location where you can accomplish the requirements of this AD.

(h) *How do I get copies of the documents referenced in this AD?* You may obtain copies of the documents referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. You may examine these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 99–12–02, Amendment 39–11193.

Issued in Kansas City, Missouri, on April 27, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11179 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NE–29–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney JT8D Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Pratt

& Whitney JT8D series turbofan engines. This proposal would require inspections of main fuel pump control shafts for excessive spline wear. Additionally, as terminating action to the inspections, this proposal would require the replacement of the main fuel pump control shaft with parts of improved design, and reworking the main fuel pump impeller, impeller gear train plate assembly, and impeller cover assembly. This proposal is prompted by reports of failed main fuel pump control shafts caused by excessive spline wear. The actions specified by the proposed AD are intended to prevent loss of engine throttle control, uncommanded acceleration, uncommanded deceleration or inflight shutdown, which could result in reduced airplane control during a critical phase of flight.

**DATES:** Comments must be received by July 5, 2000.

**ADDRESSES:** Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–29–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone 860–565–8770, fax 860–565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

**FOR FURTHER INFORMATION CONTACT:** Christopher Spinney, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7175, fax 781-238–7199.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–29–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–29–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

### Discussion

The Federal Aviation Administration (FAA) has received 51 reports of failed main fuel pump control shafts, which resulted in the loss of engine throttle control, uncommanded acceleration, uncommanded deceleration or inflight shutdown, on Pratt & Whitney (PW) Models JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, and –15A turbofan engines. In one incident, a Boeing 737–200 powered by two PW Model JT8D–15 engines experienced an uncommanded acceleration of the No. 2 engine during takeoff roll. The exhaust gas temperature (EGT) overtemperature indication light illuminated in the cockpit at approximately 110 knots. A takeoff abort was attempted but the No. 2 engine did not respond to the throttle movement. The airplane went off the side of the runway, sustained landing gear damage, and was destroyed by fire after all passengers and crew escaped. Four passengers were injured during the evacuation. The investigation revealed a failed main fuel pump control shaft. The main fuel pump control shaft failure was attributed to wear of the main fuel pump control shaft spline. This condition, if not corrected, could result in the loss of engine throttle control, uncommanded acceleration, uncommanded deceleration or inflight shutdown, which could result in reduced aircraft control during a critical phase of flight.

### Service Information

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) A6381 dated March 15, 2000, that describes procedures for inspecting the main fuel pump control shaft for excessive spline wear. As terminating action, PW ASB A6381 describes procedures for replacement of the main fuel pump control shaft with an improved wear resistant material shaft and reworking the main fuel pump impeller, impeller gear train plate assembly, and impeller cover assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspecting main fuel pump control shafts for excessive wear, replacing the main fuel pump control shaft with parts of improved design, and reworking the main fuel pump impeller, impeller gear train plate assembly, and impeller cover assembly. The replacement and rework must be accomplished prior to accumulating 12,000 hours time-in-service (TIS) since last overhaul, or within 2,000 hours after the effective date of this AD, whichever occurs later. The actions would be required to be accomplished in accordance with the ASB described previously.

There are approximately 5,800 engines of the affected design in the worldwide fleet. The FAA estimates that 2962 engines installed on aircraft of US registry would be affected by this proposed AD, that it would take approximately 0.3 work hours to perform the required inspections and 0.5 hours per engine to accomplish the replacements proposed at overhaul, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,996 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $11,978,328.

### Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Pratt & Whitney:** Docket No. 99–NE–29–AD.

*Applicability:* Pratt & Whitney (PW) Models JT8D–1, –1A, –1B, –7, –7A, –7B, –9, –9A, –11, –15, –15A turbofan engines, installed on but not limited to Boeing 727 and 737 series, and McDonnell Douglas DC–9 series airplanes.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of engine throttle control, uncommanded acceleration, uncommanded deceleration or inflight shutdown, which could result in reduced airplane control during a critical phase of flight, accomplish the following:

**Initial Inspection**

(a) At the next accessibility of the main fuel pump after accumulating 1,000 hours time in service (TIS) since last fuel pump overhaul, inspect, and replace, if necessary, the main fuel pump control shaft in accordance with procedures described in the Accomplishment Instructions of PW Alert Service Bulletin (ASB) A6381, dated March 15, 2000.

**Repetitive Inspections**

(b) Thereafter, reinspect the main fuel pump control shaft and remove and replace, if necessary, in accordance with intervals and procedures described in the Accomplishment Instructions of PW ASB A6381, dated March 15, 2000.

**Installation and Terminating Action**

(c) At the next main fuel pump overhaul, but prior to accumulating either 12,000 hours TIS since last fuel pump overhaul or 2,000 hours TIS after the effective date of this AD, whichever occurs later, install a reworked impeller, impeller gear train plate assembly and impeller cover assembly and a new main fuel pump control shaft in accordance with paragraph 2.A and 2.B. of PW ASB A6381, dated March 15, 2000. Installation of a reworked impeller, impeller gear train plate assembly and impeller cover assembly and a new main fuel pump control shaft in accordance with this paragraph constitute terminating action to the inspections required by paragraphs (a) and (b) of this AD.

**Definitions**

(d) For the purpose of this AD:

(1) Accessibility of the main fuel pump is defined as removal of the fuel control from the fuel pump or removal of the fuel pump from the engine.

(2) Main fuel pump overhaul is defined as compliance with the manufacturer's recommended overhaul procedures described in Argo-Tech Overhaul Manual 73–11–1.

**Alternative Methods of Compliance**

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the ECO.

**Ferry Flights**

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on May 1, 2000.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–11303 Filed 5–4–00; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 00–ASO–12]**

## Proposed Establishment of Class D Airspace; Stuart, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to establish Class D airspace at Stuart, FL. Air traffic controllers at Witham Field in Stuart, FL, are being certificated as weather observers. Therefore, the airport will meet criteria for Class D airspace. Class D surface area airspace is required when the control tower is open to accommodate current Standard Instrument Approach Procedures (SIAP) and for Instrument flight Rules (IFR) operations at the airport. This action would establish Class D airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of the Witham Field Airport.

**DATES:** Comments must be received on or before June 5, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–12, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions

presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Stuart, FL. Air traffic controllers at Witham field in Stuart, FL, are being certificated as weather observors. Therefore, the airport will meet criteria for Class D airspace. Class D surface area airspace is required when the control tower is open to accommodate current SIAP and for IFR operations at the airport. Class D airspace designations for airspace areas extending upward from the surface are published in Paragraph 5000 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, as amended as follows:

*Paragraph 5000 Class D Airspace*

* * * * *

**ASO MS D Stuart, FL [New]**

Witham Field Airport, FL
(Lat. 27°10'54" N, long. 80°13'16" W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4-mile radius of Witham Field Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice of Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on April 24, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–11321 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–ASO–14]**

## Proposed Establishment of Class E Airspace; Dunlap, TN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to establish Class E airspace at Dunlap, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for North Valley medical Center. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

**DATES:** Comments must be received on or before June 5, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–14, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in

developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Dunlap, TN. A GPS SIAP, helicopter point in space approach, has been developed for North Valley Medical Center. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by Reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

* * * * *

**ASO TN E5 Dunlap, TN [New]**

North Valley Medical Center, Point in Space Coordinates.
(Lat. 35°23'50"N, long. 85°22'01"W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 35°23'50"N, long. 85°22'01"W) serving North Valley Medical Center.

* * * * *

Issued in College Park, Georgia, on April 24, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–11323 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–ASO–10]**

### Proposed Amendment of Class E Airspace; Savannah, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend Class E surface area airspace at Savannah, GA. Hunter Army Air Field (AAF) is included in the Savannah Class D surface airspace area. However, when Hunter AAF control tower closes that segment of the Class D airspace area reverts to Class G airspace, as there is no remote communications to either Savannah Approach Control or Jacksonville Air Route Traffic Control Center (ARTCC) to control aircraft at Hunter AAF. Remote communications equipment is being installed and is expected to be operational on or about June 1, 2000. As a result, additional controlled airspace extending upward from the surface is needed to accommodate instrument flight rules (IFR) operations at Hunter AAF when Hunter AAF control tower is closed. This proposal will also make a technical amendment to the name of the location, changing it from Savannah International Airport, GA, to Savannah, GA.

**DATES:** Comments must be received on or before June 5, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–10, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch Air Traffic Division, Federal Aviation Administration, P.O. Box

20636, Atlanta, Georgia 30320; telephone (404) 305–5586.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Comments wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–10." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarize each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E surface area airspace at Savannah, GA. Additional controlled airspace extending upward from the surface is needed to accommodate IFR operations at Hunter AAF when Hunter AAF control tower is closed. This proposal will also make a technical amendment to the name of the location, changing it from Savannah International Airport, GA, to Savannah, GA. Class E airspace designated as surface are published in Paragraph 6002 of FAA order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedure (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by Reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6002 Class E Airspace Designated as Surface Areas.*

* * * * *

**ASO GA E2 Savannah, GA [Revised]**

Hunter AAF
(Lat. 32°00′35″N, long. 81°08′44″W)
Savannah International Airport
(Lat. 32°07′39″N, long. 81°12′08″W)

Within a 5-mile radius of Savannah International Airport and within a 4.5-mile radius of Hunter AAF. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

Issued in College Park, Georgia, on April 24, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–11319 Filed 5–4–00; 8:45 am]

**BILLING CODE 4910–13–M**

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–ASO–11]**

**Proposed Amendment of Class E Airspace; Livingston, TN.**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend Class E airspace at Livingston, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Livingston Community Hospital, Livingston, TN. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action proposes to amend the Class E airspace for Livingston, TN, to the southeast, in order to include the point in space approach serving Livingston Community Hospital.

**DATES:** Comments must be received on or before June 5, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–11, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental,and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to airspace Docket No. 00–ASO–11." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Livingston, TN.A GPS SIAP, helicopter point in space approach, has been developed for Livingston Community Hospital, Livingston, TN. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by Reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

*ASO TN E5 Livingston, TN [Revised]*

Livingston Municipal Airport, TN
Lat. 36°24′44″N, long. 85°18′42″W
Livingston VORTAC
Lat. 36°35′04″N, long. 85°10′00″W
Livingston Community Hospital, Livingston, TN, Point In Space Coordinates.
Lat. 36°22′43″N, long. 85°20′23″W

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Livingston Municipal Airport and within 2 miles each side of the Livingston VORTAC 214° radial extending from the 7-mile radius to the VORTAC and that airspace within a 6-mile radius of the point in space (lat. 36°22′43″N, long. 85°20′23″W) serving Livingston Community Hospital, Livingston, TN.

* * * * *

Issued in College Park, Georgia, on April 24, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–11320 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–AGL–02]**

**Proposed modification of Class E Airspace; Marquette, MI**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to modify Class E airspace at Marquette, MI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 19 has been developed for Sawyer International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action would increase that portion of the existing Class E airspace which extends upward from 1,200 feet above the

surface of the earth for Sawyer International Airport.

**DATES:** Comments must be received on or before June 22, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Regional Counsel, AGL–7, Rules Docket No. 00–AGL–02, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Regional Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AGL–02." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Regional Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRM's**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Marquette, MI, by increasing that portion of the existing Class E airspace which extends upward from 1,200 feet above the surface of the earth for Sawyer International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain airspace executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this, is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFr 71.1 of the Federal Aviation Administration Order 7400.9g, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MI E5 Marquette, MI [Revised]**

Marquette, Sawyer International Airport, MI
(Lat. 46°21′13″ N., long. 87°23′45″ W.)

That airspace extending upward from 700 feet above the surface within an 7.1-mile radius of the Sawyer International Airport, and that airspace extending upward from 1,200 feet above the surface within an area bounded on the north by latitude 47°05′ 00″ N., on the east by longitude 86°23′ 30″ W., on the south by latitude 45°45′00″ N., and on the east by V9; excluding all Federal Airways, Hancock, MI, Escanaba, MI, and Iron Mountain, MI, Class E airspace areas.

* * * * *

Dated: Issued in Des Plaines, Illinois on April 24, 2000.

**Christopher R. Blum,**

*Manager, Air Traffic Division.*

[FR Doc. 00–11324 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–ASO–13]**

## Proposed Establishment of Class E Airspace; Copperhill, TN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to establish Class E airspace at Copperhill, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Copperbasin Medical Center. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

**DATES:** Comments must be received on or before June 5, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–13, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Copperhill, TN. A GPS SIAP, helicopter point in space approach, has been developed for Copperbasin Medical Center. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR part 71

Airspace, Incorporation by Reference, Navigation (Air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS, ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E Airspace Extending Upward from 700 feet or More Aboce the Surface of the Earth.*

* * * * *

**ASO TN E5 Copperhill, TN [New]**

Copperbasin Medical Center, Point in Space Coordinates
(Lat. 35°00′48″N, long. 84°22′25″W)
That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat. 35°00′48″N, long. 84°22′25″W) serving Copperbasin Medical Center.

* * * * *

Issued in College Park, Georgia, on April 24, 2000.

**Nancy B. Shelton,**

*Acting Manager Air Traffic Division, Southern Region.*

[FR Doc. 00–11322 Filed 5–4–00; 8:45 am]

**BILLING CODE 4910–13–M**

## FEDERAL TRADE COMMISSION

### 16 CFR Part 310

### Notice of 30-Day Extension in Comment Period in the Review of the Telemarketing Sales Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Rule review, notice of extension of comment period.

**SUMMARY:** The Federal Trade Commission ("the Commission" or "FTC") has extended the comment period by which comments must be submitted concerning the review of its Telemarketing Sales Rule ("the Rule" or "TSR"). This document informs prospective commenters of the change and sets a new date of May 30, 2000, for the end of the comment period.

**DATES:** Written comments will be received until the close of business on May 30, 2000.

**ADDRESSES:** Six paper copies of each paper and/or written comment should be submitted to the Office of the Secretary, Federal Trade Commission, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If possible, comments should also be submitted in electronic form. To encourage prompt and efficient review and dissemination of the comments to the public, all comments should also be submitted, if possible, in electronic form, on either a 5¼ or a 3½ inch computer disk, with a label on the disk stating the name of the commenter and the name and version of the word processing program used to create the document. (Programs based on DOS are preferred. Files from other operating systems should be submitted in ASCII text format to be accepted.) Individual members of the public filing comments need not submit multiple copies or comments in electronic form. Alternatively, the Commission will accept papers and comments submitted to the following email address: tsr@ftc.gov, provided the content of any papers or comments submitted by email is organized in sequentially numbered paragraphs. All submissions should be identified as "Telemarketing Review—Comment. FTC File No. P994414."

Papers and written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, 16 CFR 4.9, on normal business days between the hours of 8:30 a.m. and 5:00 p.m. in Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission will make this notice and, to the extent possible, all papers or comments received in response to this notice available to the public through the Internet at the following address: *www.ftc.gov*.

**FOR FURTHER INFORMATION CONTACT:** Catherine Harrington-McBride (202) 326–2452, email cmcbride@ftc.gov; Karen Leonard (202) 326–3597, email kleonard@ftc.gov; or Carole Danielson (202) 326–3115, email cdanielson@ftc.gov, Division of Marketing Practices, Bureau of Consumer Products, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** On February 28, 2000, the Commission published a request for comment on its Telemarketing Sales Rule.[1] The Telemarketing and Consumer Fraud and Abuse Prevention Act ("the Telemarketing Act" or "the Act") directed the Commission to promulgate rules to protect consumers from deceptive telemarketing practices and other abusive telemarketing activities. In response to this directive, the Commission adopted the TSR, which requires telemarketers to make specific disclosures of material information; prohibits misrepresentations; sets limits on the times telemarketers may call consumers; prohibits calls to a consumer who has asked not be called again; and sets payment restrictions for the sale of certain goods and services. The comment period is currently scheduled to close on April 27, 2000.

Several stakeholders that participated in the original rulemaking proceeding and in the recent public forum focusing on the Rule's do-not-call provision have expressed concern that there will not be sufficient time before April 27 to complete their responses to the Commission's Request for Comment. They have asked that the comment period be extended to complete their data collection. The Commission is mindful of the need to deal with this matter expeditiously. However, the Commission also is aware that the issues raised are complex and believes that the enhancement of the record that will be achieved by extending the comment period far outweighs any harm that might be caused by the delay.

Accordingly, the Commission has decided to extend the comment period to May 30, 2000. This extension will provide sufficient time for commenters to prepare useful comments. This extension will not affect the date of the public forum to discuss the TSR's provisions nor the date by which applications to participate in the forum must be received. The public forum will continue to be held on July 27–28, 2000, and notification of interest in participating in the forum must be submitted in writing on or before June 16, 2000, to Carole I. Danielson, Division of Marketing Practices, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

[1] 65 FR 10428 (February 28, 2000).

**List of Subjects in 16 CFR 310**

Telemarketing, Trade practices.

**Authority:** 15 U.S.C. 1601–1608.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–11314 Filed 5–4–00; 8:45 am]

BILLING CODE 6750–01–M

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 335

**RIN 3220–AB44**

### Sickness Benefits

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board (Board) hereby proposes to amend its regulations under the Railroad Unemployment Insurance Act (RUIA) to permit a "nurse practitioner" to execute a statement of sickness in support of payments of sickness benefits under the RUIA. The Board does not currently accept statements executed by a nurse practitioner, which in some cases may delay payment of benefits.

**DATES:** Comments must be received on or before July 5, 2000.

**ADDRESSES:** Comments should be addressed to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Litt, General Attorney, (312) 751–4929, TDD (312) 751–4701.

**SUPPLEMENTARY INFORMATION:** Section 335.2(a)(2) of the Board's regulations provides that in order to be entitled to sickness benefits under the RUIA, a claimant must provide a "statement of sickness". Section 335.3(a) of this part lists the individuals from whom the Board will accept a statement of sickness. That list does not currently include nurse practitioners. Nurse practitioners offer health care to people throughout the United States. Their practice emphasizes health promotion and maintenance, disease prevention, and the diagnosis and management of acute and chronic diseases. Nurse

practitioners are registered nurses with advanced education and clinical expertise that qualifies them to diagnose and treat illnesses and injuries. Under current regulations, the Board does not accept a statement of sickness or supplemental statement of sickness from a nurse practitioner. A claimant who submits a statement of sickness signed by a nurse practitioner is informed that the statement may not be accepted and is required to get a new one signed by an individual listed in § 335.3(a). This is administratively costly and delays the payment of sickness benefits. Thus, the Board proposes to add "nurse practitioner" to the list of individuals from whom it will accept a statement of sickness.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action for purposes of Executive Order 12866. Therefore, no regulatory analysis is required. The information collections contemplated by this part have been approved by the Office of Management and Budget under control number 3220–0039.

**List of Subjects in 20 CFR Part 335**

Railroad employees, Railroad unemployment insurance, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend title 20, chapter II of the Code of Federal Regulations as follows:

## PART 335—SICKNESS BENEFITS

1. The authority citation for part 335 continues to read as follows:

**Authority:** 45 U.S.C. 362(i) and 362(l).

2. Section 335.3 is amended as follows: remove "or" at the end of paragraph (a)(9), remove the period and add "; or" at the end of paragraph (a)(10), and add a new paragraph (a)(11) to read as follows:

**§ 335.3 Execution of statement of sickness and supplemental doctor's statement.**

(a) * * *

(11) A nurse practitioner.

* * * * *

Dated: April 28, 2000.

By Authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 00–11220 Filed 5–4–00; 8:45 am]

BILLING CODE 7905–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Parts 16 and 900

**[Docket No. 99N–4578]**

**RIN 0910–AB98**

## State Certification of Mammography Facilities; Correction

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule; correction.

**SUMMARY:** The Food and Drug Administration (FDA) is correcting a proposed rule that appeared in the **Federal Register** of March 30, 2000 (65 FR 16847). The document proposes to implement the "States as certifiers provisions" of the Mammography Quality Standards Act of 1992 (the MQSA). In the March 30, 2000, proposed rule, there were two incorrect references to the provisions of the MQSA being implemented. This document corrects those errors.

**FOR FURTHER INFORMATION CONTACT:** Ruth A. Fischer, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, FAX 301–594–3306.

**SUPPLEMENTARY INFORMATION:** In FR Doc. 00–7653, appearing on page 16847 in the **Federal Register** of March 30, 2000, the following corrections are made:

1. On page 16847, in the first column, under the **SUMMARY**, in line 3, "patient notification" is corrected to read "States as certifiers".

2. On page 16848, in the first column, the heading in section D, "*The Patient Notification Provisions*" is corrected to read "*The States as Certifiers Provisions*".

Dated: April 15, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

[FR Doc. 00–11330 Filed 5–4–00; 8:45 am]

BILLING CODE 4160–01–F

## LIBRARY OF CONGRESS

### Copyright Office

### 37 CFR Part 202

**[Docket No. RM 95–7B]**

## Registration of Claims to Copyright, Group Registration of Photographs

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Proposed regulations with request for comments.

**SUMMARY:** The Copyright Office of the Library of Congress is proposing regulations to facilitate group registration of published photographs. These proposed regulations differ significantly from regulations proposed earlier in this rulemaking proceeding, as they require the deposit of the actual photographic images, rather than merely written identifying descriptions, for registration purposes and as they pertain only to published photographs. This option for group registration of photographs is available only for registration of works by an individual photographer which are published within one calendar year. In addition, the Office also proposes to liberalize the deposit requirements for groups of unpublished photographs registered as unpublished collections. The Office is seeking comments only on these proposals.

**DATES:** Written comments on the proposed regulations should be received on or before June 19, 2000.

**ADDRESSES:** If sent BY MAIL, an original and 15 copies of written comments should be addressed to David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. If delivered by hand, an original and 15 copies should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, 101 Independence Avenue, SE., Washington, DC 20559.

**FOR FURTHER INFORMATION CONTACT:** David Carson, General Counsel, or Patricia L. Sinn, Senior Attorney Advisor, Telephone: (202) 707–8380. Fax: (202) 707–8366.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Registration of a copyright can be made at any time during the term of statutory protection; however, with the exception of a three-month grace period dating from first publication, the law prohibits the award of statutory damages or attorney's fees where a work has not been registered before infringement occurs. 17 U.S.C. 412.

Under the 1976 Copyright Act, as amended, an applicant may register a claim in an original work of authorship with the Copyright Office by submitting a completed application, a fee, and a deposit of copies of the work to be registered. The nature of the copy to be deposited is set out in the statute in general terms, *e.g.*, one complete copy or phonorecord of an unpublished work,

and two complete copies or phonorecords of the best edition of a published work if first published in the United States. 17 U.S.C. 408(b). The Register of Copyrights may require or permit the deposit of identifying material instead of copies or phonorecords; and the Register may allow a single registration for a group of related works. 17 U.S.C. 408(c).

*A. Legislative Intent*

In explaining section 408(c), the House Judiciary Committee noted that it was intended to give the Register of Copyrights "latitude in adjusting the type of material deposited to the needs of the registration system." H. R. Rep. No. 94–1476, at 153 (1976). It stated that "Where the copies or phonorecords are bulky, unwieldy, easily broken, or otherwise impractical to file and retain as records identifying the work registered, the Register would be able to require or permit the substitute deposit of material that would better serve the purpose of identification. Cases of this sort might include, for example, billboard posters, toys and dolls, ceramics and glassware, costume jewelry, and a wide range of three-dimensional objects embodying copyrighted material. The Register's authority would also extend to rare or extremely valuable copies which would be burdensome or impossible to deposit." *Id.* at 154 (emphasis added).

Finally, Congress noted that the provision empowering the Register to allow a number of related works to be registered together as a group "represents a needed and important liberalization of the law now in effect. At present the requirement for separate registrations where related works or parts of a work are published separately has created administrative problems and has resulted in unnecessary burdens and expense on authors and other copyright owners." *Id.* A group of photographs by one photographer was cited as one example where these results could be avoided by allowing a group registration.

*B. Registration Concerns Expressed by Photographers*

For some time the Copyright Office has been working with photographers to devise a registration system that works more effectively for photographers who have said that they find it difficult to register the many images they create due to concerns of time, effort and expense. At the same time, the procedure adopted must meet the requirement that the deposit adequately identify the work registered. Photographers have urged that the nature of much photography, where thousands of images may be created, particularly by free-lance photographers, with only a few images, if any, being published, makes registration difficult. They assert that at the time registration may be sought, the photographer may not know which photographs, if any, will be or have been published. Often a photographer's film is turned over to another party which processes and uses the images, leaving the photographer with nothing to deposit with the Copyright Office for registration purposes.

In an attempt to make registration easier for such photographers, the Office expanded its procedures regarding deposit materials for two and three dimensional works of the visual arts. For example, the Office accepts the deposit of a videotape or filmstrip as identifying material for collections of unpublished photographs. Despite the liberalization of deposit procedures, many photographers continued to urge that the requirement that they deposit a visual image of each photograph covered in the registration precludes them from registering. They claim that while they have been given a legal right by the copyright law, they have no effective remedy, thus leading to continued infringement of their works.

During congressional hearings on the proposed Copyright Reform Act of.1993, photographers stated that they could not take advantage of the benefits of copyright registration because the Office's practices were too burdensome in terms of the time and cost required to submit a copy of each image included in a collection of photographs.[1]

In June, 1993, the Librarian of Congress appointed an Advisory Committee on Copyright Registration and Deposit (ACCORD) to advise him "concerning the impact and implications of the [proposed] Copyright Reform Act of 1993. . ." Library of Congress, Advisory Committee on Copyright Registration and Deposit, *Report of the Co-Chairs*, vii (1993). The Committee recommended that the Office expand "the use of group registration and optional deposit to reduce the present burdens" and "consult more actively and frequently with present and potential registrants to hear their problems and to respond to them whenever possible." *Id.* at 20.

*C. Office's Further Attempts to Address Photographer's Concerns.*

After the ACCORD report was issued, the Copyright Office met with photographers and their representatives and sought a workable solution for photographers which would not cause unforeseen problems for publishers, photofinishers, and other users of photographs. On December 4, 1995, the Office initiated a rulemaking proceeding by publishing proposed regulations with a request for comments. 60 FR 61657 (Dec. 4, 1995). The proposed regulations would have permitted individual photographers and photography businesses to make group registrations of mixed unpublished and published photographs with the deposit of identifying material consisting of written descriptions of the photos in a particular grouping rather than copies of individual photo images. The notice of proposed rulemaking also framed questions regarding possible consequences of adopting the proposed regulations which were much more liberal than anything the Office had previously proposed.

The proposed regulations elicited a great deal of controversy. In an effort to reach consensus, the Office held a public hearing and provided for an additional comment period. See 61 FR 28829 (June 6, 1996).[2] Some respondents approved the proposed regulations, in whole or in part, as aiding photographers in their desire for access to legal remedies. Others raised a number of concerns, the most serious of which is the value of the copyright deposit as an identification of the work registered and the question of whether descriptive identifying material serves as well as the deposit of the complete image of a photograph for a court's purposes. Some respondents claimed that based on past experience, it was likely that the proposed regulations would promote frivolous litigation targeting parties who unknowingly reproduced copies of copyrighted photographs without the copyright owner's permission. In response to this concern, industry representatives presented a set of proposed guidelines that not only would be followed by industry members who had previously agreed to them, but also were proposed to be included in, or referenced by, the Office's final regulations.

Another controversial issue highlighted by commenters was whether registration claimants who decided to use proposed group registration

[1] *See Copyright Reform Act of 1993: Hearings on H.R. 897 Before the Subcomm. on Intellectual Property and Judicial Administration of the House Comm. on the Judiciary*, 103d Cong., 1st Sess. 370–72 (1993). *See also, Copyright Reform Act of 1993: Hearing on S. 373 Before the Subcomm. on Patents, Copyrights and Trademarks of the Senate Comm. on the Judiciary*, 103d Cong., 1st Sess. 169 (1993).

[2] All comments and the transcript of the June 26, 1996, public meeting are available for inspection in the Copyright Office Public Information Office.

procedures would (or could), by making that choice, be forced by provisions of the industry agreement to waive rights to statutory damages and attorney's fees in innocent infringement determinations. Further comments concerned other registration requirements, identifying deposit information, effective date of registration, and consumer education about copyright law.

Professor Peter Jaszi, a member of the ACCORD advisory committee, asserted that although some specific and limited suggestions about how to address photographers' concerns were incorporated in recommendations made by the Librarian of Congress' advisory group ACCORD in response to the proposed 1993 Copyright Reform Act, "there is little if anything in the ACCORD record which lends support to such a far-reaching revision of registration and deposit practice" as was contained in the Office's proposed group registration regulations. Jaszi reply comments in RM 95–7 at 1.

*D. Further Reflection on the 1995 Proposal*

When the Office opened this rulemaking proceeding in 1995, its goals were to determine how to modify registration and deposit procedures to ensure deposit of works for the record, to register works to protect claimants, and ultimately to benefit the public by providing access to information on copyright status and ownership of photographic works. Its efforts to further liberalize deposit provisions for photographers led to what seemed insurmountable differences about the purpose of the copyright deposit which could not be resolved to the satisfaction of all interested parties. Although the rulemaking proceeding has remained open for a considerable period of time, the Office has continued to consider the issues raised in the proceeding and in other contexts (*e.g.*, the adjustment of registration fees and other statutory fees). It has also determined that it should reexamine the purpose of the section 408 copyright deposit for all classes of works and expects to publish a Notice of Inquiry to begin the study this year. Meanwhile, the Office is reluctant to implement a procedure that would permit the acceptance of deposits that do not meaningfully reveal the work for which copyright protection is claimed.

The Office has decided that it should move forward with a more modest proposal which would permit group registration of related published photographs. Since this rulemaking proceeding commenced in 1995, there have been advances in the technology that permits the taking and/or preservation of photographs in digital form, and in the commercial availability of such technology. The Office expects that such advances over the next several years will make identification and imaging of photographs for registration purposes even easier so that registration will become more readily available for photographers.

**II. Group Registration of Photographs Published in the Same Calendar Year**

Continued reflection on the issue suggested a possible alternative that would give many photographers a more flexible group registration procedure by permitting registration of multiple photographs created by one photographer which are published on different dates but in the same calendar year. The Office is now proposing regulations that would permit such an alternative. A.

*A. Works Covered and Required Identification.*

Each submission for group registration must contain photographs by an individual photographer that were all published [3] within the same calendar year. The claimant(s) for all photographs in the group must be the same. The date of publication for each photograph must be indicated either on the individual image or on the registration application or application continuation sheet in such a manner that for each photograph in the group, it is possible to ascertain the date of its publication. However, the Office will not catalog individual dates of publication; the Copyright Office catalog will include the single publication date or range of publication dates indicated on the Form VA. If the claimant uses a continuation sheet to provide details such as date of publication for each photograph, the certificate of registration will incorporate the continuation sheet, and copies of the certificate may be obtained from the Copyright Office and reviewed in the Office's Card Catalog room.

The Office notes that although it will accept group registration claims for all photographs published within a calendar year, an applicant who wishes to ensure that he is eligible for statutory damages and attorney's fees must register within three months of publication. 17 U.S.C. 412. Applicants would be well-advised to submit a group registration claim within each three-month period in which any photographs in the group were published.

The Office recognizes that some commenters have previously expressed the view that photographers sometimes have difficulty knowing exactly when—or even whether [4]—a particular photograph has been published. With respect to date of publication, it should be noted that the Office's longstanding practices permit the claimant some flexibility in determining the appropriate date. See, *e.g.*, Compendium of Copyright Office Practices, Compendium II, § 910.02 (1984) (Choice of a date of first publication).[5]

Notwithstanding such concerns, the Office has concluded that it cannot establish a group registration procedure that permits claimants to include both published and unpublished photographs within a single group registration due to their inability to determine whether a particular photograph has been published. A procedure permitting inclusion of both published and unpublished works in a single registration would be unprecedented and would ignore critical distinctions between the copyright law's treatment of published works and its treatment of unpublished works. See, *e.g.*, 1 Melville B. Nimmer and David Nimmer, Nimmer on Copyright § 4.01[A] (1999). Moreover, an application for copyright registration must identify the date and nation of first publication for each published work. 17 U.S.C. 409(8). That statutory requirement would be inconsistent with a procedure that permitted claimants to refrain from identifying whether a particular photograph has been published.

The Office also requests comments on whether applications for group registration of photographs should be permitted to state a range of dates of up to three months (*e.g.*, January 1–March

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[3] The definition of "publication" in the 1976 Copyright Act, as amended, is as follows: "Publication" is the distribution of copies or phonorecords of a work to the public by sale or other transfer of ownership, or by rental, lease, or lending. The offering to distribute copies or phonorecords to a group of persons for purposes of further distribution, public performance, or public display, constitutes publication. A public performance or display of a work does not of itself constitute publication. 17 U.S.C. 101.

[4] The Compendium of Copyright Office Practices, Compendium II, § 904 states the Office's general practice with respect to publication, including that "The Office will ordinarily not attempt to decide whether or not publication has occurred but will generally leave this decision to the applicant."

[5] "1) Where the applicant is uncertain as to which of several possible dates to choose, it is generally advisable to choose the earliest date, to avoid implication of an attempt to lengthen the copyright term, or any other period prescribed by the statute. "2) When the exact date is not known, the best approximate date may be chosen. In such cases, qualifying language such as 'approximately,' 'on or about,' 'circa,' 'no later than,' and 'no earlier than,' will generally not be questioned."

31, 2001) in which all the photographs in the group were published, rather than stating specific dates of publication for each photograph. The Office would consider such an alternative only if it were persuaded that requiring specific dates of publication for each photograph would impose an unjustifiable and burdensome hardship on photographers, and that the advantages (to claimants and to the public record) of such an alternative would outweigh its disadvantages.

The Office believes that it would be beneficial and would create a clearer public record if claimants are required to number the photographs in a group consecutively (*e.g.*, from 1 to 500), and to indicate the number of each photograph on or affixed to the individual image of the photograph that is deposited. The Office requests comments on whether such a requirement would be desirable.

*B. Use of the Appropriate Form, Deposit, and Fee*

To register qualified works as a group, an applicant should submit an application Form VA, with the appropriate fee and a deposit consisting of an image of each photograph included in the group. The statutory requirement of a deposit of two complete copies of the best edition of each published photograph is waived, and a claimant may submit a single copy of each image in any of the following formats: limages in digital form on CD–ROM or DVD–ROM; single images (prints, at least 3 inches by 3 inches and preferably archivally-processed on fiber-based paper); contact sheets (preferably archivally-processed on fiber-based paper); slides with single images; slides each containing up to 36 images; or multiple images on video tape. In addition, any or all of the photographs may be deposited in the format in which they were originally published, such as clippings from a newspaper or magazine. The Office seeks comment on whether there are other formats for deposit of full images of photographs that will minimize the burden on photographers while providing the Office and the public record with accessible and usable images. The Office also seeks comment on what file formats should be acceptable for photographs submitted on CD–ROM.

The Office also seeks comments on whether it should provide an optional specialized continuation sheet, similar to Form GR/CP (the adjunct application form for group registration of contributions to periodicals), which could provide specific information (*e.g.*, title or other description, date of publication) about each photograph included in the group.

*C. How Many Photographs May Be Included in One Registration?*

Due to administrative and workload considerations, a maximum of 500 photographs may be included in a single group registration. The approximate number of photographs in the group submitted must be indicated on the application.

*D. Relationship of This New Procedure to Other Types of Registration of Photographs*

Registration and deposit requirements for unpublished photographs remain unchanged, and may be found in 17 U.S.C. 408(b)(1) and 37 CFR 202.20(b)(1)(i), and (c)(4)(xix). Registration for individual photographs may still be made using a Form VA, submitted with a registration fee of $30.00 and a copy of the photograph which complies with the existing deposit requirements found at 37 CFR 202.20.

Unpublished collections of photographs may be registered pursuant to the requirements set forth in 37 CFR 202.3(b)(3). The new liberalized deposit requirements of 37 CFR 202.20(c)(2)(xx), discussed above in section C for group registration of published photographs, shall also apply to deposit of unpublished collections of photographs. Thus, photographers will be able to register groups of unpublished photographs in much the same manner as that in which they can register groups of published photographs.

## III. Public Comment

The Copyright Office is seeking comment only on the rules proposed in this notice. Reargument of issues raised earlier in this rulemaking that have, at this point, been rejected by the Office (*e.g.*, acceptance of descriptive identifying material as deposits in lieu of actual images) will not be productive. Following review of comments, the Office will adopt final regulations. Interested parties are invited to submit comments on the following points:

1. Under the proposed regulations, a claimant must identify the date of publication of each image published within the same calendar year and submitted for registration. As deposit copies, the Office will accept images in digital form on CD–ROM or DVD–ROM; single images; contact sheets; slides with single images; slides each containing up to 36 images; or multiple images on video tape. The Office will also accept copies of the photographs in the formats in which they were originally published (*e.g.*, clippings from newspapers or magazines). The final regulation will specify how dates must be provided for each photograph in the group in such a way that for each photograph, one can ascertain its date of publication. Recommendations about the best methods for providing this information are invited now. In the proposed regulations, applicants will have the option of identifying each photograph and its date of publication separately on a continuation sheet or of indicating the date of publication on each photograph itself. For example, if separate photographic prints were deposited, the date of publication of each photograph could be written on the back of the print. However, for other formats (*e.g.*, CD–ROM, slides containing up to 36 images, videotapes, contact sheets), other ways of indicating the date of publication for each image will be necessary.

A. Comments are invited on how the date of publication of each photograph can be indicated on the deposit itself for deposits made in such formats, and how each date can be connected to the pertinent photograph.

B. Comments are also invited on how the date of publication of each photograph can be indicated on a continuation sheet, and how each date of publication entry on the continuation sheet can be related to a particular photograph or photographs. For example, if the continuation sheet is used, should each photograph be numbered consecutively; and for each photograph, should that number be written or otherwise indicated on the corresponding copy of the photograph that is deposited?

C. Comments are also invited on whether the Office's general continuation sheet, Form CON, should be used for this purpose or whether the Office should provide an optional specialized continuation sheet, similar to Form GR/CP (the adjunct application form for group registration of contributions to periodicals), which could provide specific information (*e.g.*, title or other description, date of publication) about each photograph included in the group.

2. Comments are invited on whether claimants should be required to number the photographs in a group consecutively (*e.g.*, from 1 to 500), and to indicate the number of each photograph on or affixed to the individual image of the photograph that is deposited. Would such a numbering requirement assist in identifying dates of publication of each photograph when a continuation sheet is used, as

suggested in question 1.B. above? Would such a requirement assist in creating a clearer public record? How burdensome would such a requirement be?

3. Should the Office accept deposits in formats other than those mentioned in item 1? If so, what other formats should be accepted? Each format must be capable of providing a complete image of each photograph in the group.

4. For photographs submitted on CD–ROMs or in other electronic formats, what file formats (*e.g.*, JPEG, GIF, etc.) should be accepted, and why?

5. As an alternative to requiring a claimant to provide the date of publication of each photograph in the group, should the Office consider offering the alternative of providing a range of dates over a three-month period (*e.g.*, January 1–March 31, 2001)? What would be the advantages and disadvantages—to claimants and to the public record -of such an approach?

**List of Subjects in 37 CFR Part 202**

Claims, Copyright.

**Proposed Rule**

In consideration of the foregoing, the Copyright Office proposes to amend 37 CFR part 202 in the manner set forth below:

**PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT**

1. The authority citation for part 202 is revised to read as follows:

**Authority:** 17 U.S.C. 408, 702.

2. In section 202.3, paragraph (b)(9) is redesignated as paragraph (b)(10), and a new paragraph (b)(9) is added to read as follows:

**§ 202.3 Registration of copyright.**

* * * ** *

(b) * * *

(9) Group registration of published photographs. Pursuant to the authority granted by 17 U.S.C. 408(c)(1), the Register of Copyrights will accept a single application (on Form VA), deposit and filing fee for registration of a group of at least two and no more than 500 photographic works if the following conditions are met:

(i) The author of all the photographic works submitted for registration as part of the group must be the same person.

(ii) The copyright claimant in all of the photographic works must be the same.

(iii) The photographs in the group must have been published within the same calendar year.

(iv) The date of publication of each work within the group must be identified either on the deposited image, on the application form, or on a continuation sheet, in such a manner that one may specifically identify the date of publication of any photograph in the group. If the photographs in a group were not all published on the same date, the range of dates of publication (*e.g.*, January 1–March 31, 2001) should be provided in space 3b of the application.

(v) The deposit(s) and application must be accompanied by the fee set forth in § 201.3(c) of this chapter for a basic registration using Form VA.

(vi) The applicant must note on the application Form VA the approximate number of photographs included in the group.

(vii) As an alternative to the best edition of the work, one copy of each photographic work shall be submitted in one of the formats set forth in § 202.20(c)(2)(xx).

* * * * *

3. Section 202.20 is amended by adding a new paragraph (c)(2)(xx) to read as follows:

**§ 202.20 Deposit of copies and phonorecords for copyright registration.**

* * * * *

(c) * * *

(2) * * *

(xx) Photographs: group registration. For groups of photographs registered with one application under § 202.3(b)(3) or § 202.3(b)(9), photographs must be deposited in one of the following formats (listed in the Library's order of preference):

(A) Digital form on one or more CD–ROMs (including C–RW's) or DVD–ROMs;

(B) Unmounted prints measuring at least 3 inches by 3 inches (not to exceed 20 inches by 24 inches) submitted on fiber-based paper;

(B) Contact sheets on fiber-based paper;

(C) Slides, each with a single image;

(E) The form in which each photograph was originally published (*e.g.*, clippings from newspapers or magazines);

(F) Slides, each containing up to 36 images; or

(G) A videotape clearly depicting each photograph.

* * * * *

Dated: April 25, 2000.

**Marybeth Peters,**

*Register of Copyrights*

Approved By:

**James H. Billington,**

*The Librarian of Congress.*

[FR Doc. 00–10986 Filed 5–4–00; 8:45 am]

BILLING CODE 1410–30–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 350, 390, 394, 395, and 398**

**[Docket No. FMCSA–97–2350]**

**RIN 2126–AA23**

## Public Hearing on Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of hearings.

**SUMMARY:** The FMCSA is announcing the first of seven public hearings for interested persons to present comments and views on the FMCSA's proposed revisions to its hours-of-service regulations (65 FR 25540, May 2, 2000). This action is necessary to inform the public about the date, time, and structure of the first hearing. The FMCSA hopes to hear from the public about how the proposed hours-of-service regulations would improve highway safety, affect the personal, professional, and family life of commercial vehicle drivers, and the impact on the various segments of the motor carrier industry. All oral comments will be transcribed and placed in the rulemaking docket for the FMCSA's consideration.

**DATES:** The first of seven sessions will be held on Wednesday May 31 and Thursday June 1, 2000, beginning at 8:30 a.m. and ending at 5 p.m. The dates and times for sessions 2 through 7 will be announced in the near future.

**ADDRESSES:** The first session will be held at the DOT Headquarters building, Room 2230, 400 Seventh Street, SW., Washington, DC 20590–0001. The locations for sessions 2 through 7 will be held at sites convenient for truck and motor coach parking in Atlanta, GA; Denver, CO; Los Angeles, CA; Indianapolis, IN; Kansas City, MO; and the Springfield, MA/Hartford, CT area.

**FOR FURTHER INFORMATION CONTACT:** *General Information.* To request time to be heard at the Washington, D.C. hearing and for other general information about all the sessions contact Mr. Stanley Hamilton, Office of Regulatory Development, (202) 366–0665. *Specific Information.* For information concerning the rulemaking contact Mr. David Miller, Office of Driver and Carrier Operations, (202) 366–1790, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's web page at *http://www.access.gpo.gov/nara*. Internet users may also find this document at the FMCSA's Motor Carrier Regulatory Information Service (MCREGIS) web site for notices at *http://www.fmcsa.dot.gov/rulesregs/fmcsr/rulemakings.htm*.

**Background**

*Structure of Washington Hearing*

Speakers must limit their oral presentations to no more than 10 minutes duration. Presenters may submit additional written documentation to be placed in the public docket.

The public hearing will be subdivided and the FMCSA will seek comments on specific topics during the prescribed time period, as follows:

*Day One*

1. Opening remarks—8:30 a.m.
2. Supportive science—8:45 a.m. to 3 p.m., with general comments about any subject from 3:15 to 4:30 p.m.

*Day Two*

3. Daily cycle (18, 24, other) and weekly cycle (7-day, 168-hour, other)—8:30 a.m. to 10:30 a.m.
4. Minimum rest period to recover from cumulative multi-day fatigue—10:45 a.m. to noon.
5. Work-rest requirements for various types of operations—1 to 2 p.m.
6. Information collection methods and requirements, including electronic on-board recorders and Department of Labor time records—2 to 3 p.m.
7. General comments—3:15 to 4:30 p.m.

**Washington Participants**

All persons who would like to present comments must notify Mr. Stan Hamilton by telephone at (202) 366–0665 by 4 p.m. e.t., no later than May 26, 2000. All persons attending will be subject to Federal and DOT workplace security measures. All persons will need photo identification and must display the identification to DOT security officers. All visitors will be required to sign in at the guard's desk, walk through metal detectors, and be subject to random search. All visitors will be required to wear a "Visitor" tag at all times while in the building. Persons failing to satisfy security requirements will be denied entry and forfeit their opportunity to participate in the hearing. Such persons may, however, submit their written comments by the close of business on July 31, 2000, to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20950–0001.

**Authority:** 49 U.S.C. 322, 31502, and 31136; and 49 CFR 1.73.

Issued on: May 2, 2000.

**Brian M. McLaughlin,**

*Director, Office of Policy Plans and Regulations.*

[FR Doc. 00–11334 Filed 5–4–00; 8:45 am]

**BILLING CODE 4910–22–P**

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 224**

**[Docket No 990910253–0118–02; ID No. 041300C]**

**RIN 0648–AM90**

## Endangered and Threatened Species; Proposed Endangered Status for White Abalone

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS has completed a comprehensive status review of the white abalone (*Haliotis sorenseni*) under the Endangered Species Act (ESA). Based on the findings from the status review and a review of the factors affecting the species, NMFS has concluded that white abalone is in danger of extinction throughout a significant portion of its range. Accordingly, NMFS is now issuing a proposed rule to list white abalone as an endangered species. NMFS is not proposing to designate critical habitat for white abalone at this time, but is requesting public comments on the issues pertaining to this proposed rule.

**DATES:** Comments must be received no later than 5 p.m., Pacific daylight time, on July 5, 2000.

Requests for public hearings must be received by June 19, 2000. If NMFS receives a request for public hearings, it will announce the dates and locations of the public hearings in a later **Federal Register** notice.

**ADDRESSES:** Comments on this proposed rule and requests for public hearings or reference materials should be sent to the Assistant Regional Administrator, Protected Resources Division, NMFS, Southwest Region, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Comments may also be sent via facsimile (fax) to 562–980–4027, but they will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Irma Lagomarsino, 562–980–4020; or Marta Nammack/Terri Jordan, 301–713–1401, or send a request via electronic mail to whiteab.info@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

Based on information indicating a major decline in abundance, NMFS designated the white abalone, a marine invertebrate, as a candidate species under the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), on July 14, 1997 (62 FR 37560). In August 1998, NMFS contracted with Scripps Institution of Oceanography (SIO) to conduct a review of the biological status of white abalone, including the current and historical impacts to the species. NMFS received the draft status review on April 21, 1999, from SIO. In order to obtain an independent peer-review, NMFS requested that three non-federal scientists review and report on the scientific merits of the status review. By August 1999, NMFS received these anonymous reviews; NMFS scientists also reviewed the document. Subsequently, SIO incorporated all of these comments into the status review, and submitted the revised final status review document to NMFS on March 20, 2000.

NMFS received a petition on April 29, 1999, from the Center for Biological Diversity and the Southwest Center for Biological Diversity to list white abalone as an endangered species on an emergency basis and designate critical habitat under the ESA. On May 17, 1999, NMFS received a second petition to list white abalone as an endangered species throughout its range and designate critical habitat under the ESA from the following organizations: the Marine Conservation Biology Institute, Abalone and Marine Resources Council, Sonoma County Abalone Network, Asociacion Interamericana para la Defensa del Ambiente, Channnel Islands

Marine Resource Institute, Proteus SeaFarms International, and the Environmental Defense Fund and Natural Resources Defense Council. NMFS considers this second request as supplemental information to the first petition.

On September 24, 1999, NMFS published its 90-day finding regarding the April 29, 1999, petition to list white abalone as an endangered species (64 FR 51725). It concluded that the April 29, 1999, petition presented substantial scientific and commercial information indicating that a listing may be warranted, based on criteria specified in 50 CFR 424.14(b)(2). However, NMFS did not find that the petition presented substantial evidence to warrant listing of white abalone on an emergency basis. To ensure that the ongoing white abalone status review was complete and based on the best available scientific and commercial data, NMFS's 90-day finding also solicited information and comments on (1) whether white abalone is endangered or threatened; (2) factors that have contributed to the decline of white abalone; and (3) any efforts being made to protect the species throughout its range. The comment period ended on November 23, 1999.

On November 23, 1999, NMFS received a letter from the Center for Marine Conservation (CMC) strongly recommending that NMFS list white abalone as an endangered species on an emergency basis under section 4(b) of the ESA and immediately implement recovery measures. Based on conclusions reported in Davis *et al.* (1996 and 1998), CMC stated that white abalone has not been able to recover from overharvesting and faces inevitable extinction in the near future unless measures are taken to recover the species. CMC believes that an emergency listing will benefit white abalone because NMFS could then initiate the recovery planning process. Similar to the conclusion in the 90-day finding notice (64 FR 51725, September 24, 1999), NMFS believes that there is insufficient information to warrant listing white abalone on an emergency basis under the ESA at this time and that the normal rulemaking procedures are sufficient and appropriate for the protection of white abalone. Based on its review of the petition and on other available information, NMFS believes the decline of white abalone in California is primarily the result of overharvesting in the early 1970s. By March 1996, the State of California closed commercial and recreational fishing for white abalone. Also, the best available information indicates that white abalone habitat is not currently at risk from destruction or modification. Thus, NMFS concludes that no emergency exists to pose a significant risk to the well-being of the species and that an emergency listing is not warranted at this time.

### Abalone Life History and Ecology

Abalone are marine gastropods belonging to the family Haliotidae and genus *Haliotis* and are characterized by a flattened spiral shell (Haaker, 1986; Hobday and Tegner, 2000a). Abalone have separate sexes and are broadcast spawners, releasing millions of eggs or sperm during a spawning event. Fertilized eggs hatch and develop into free-swimming larvae, spending from 5 to 14 days as non-feeding zooplankton before development (i.e., metamorphosis) into the adult form. After metamorphosis, they settle onto hard substrates in intertidal and subtidal areas. Abalone grow slowly and have relatively long lifespans of 30 years or more. Young abalone (referred to as "cryptic abalone") seek cover in rocky crevices, under rocks, and deep crevices, feeding on benthic diatoms, bacterial films, and single-celled algae found on coralline algal substrate (Cox, 1962). As abalone grow and become less vulnerable to predation at about 75–100 mm (2.9–3.9 inches) in length, they emerge from secluded habitat to more open, visible locations where their principal food source, attached or drifting algae, is more available (Cox 1962). In dive surveys, these animals are classified as "emergent" abalone. Abalone lead a relatively sedentary lifestyle. Although juveniles may move tens of meters per day, adult abalone have extremely limited movements as they increase in size (Cox, 1962; Tutschulte, 1976; Shephard, 1973).

Successful abalone recruitment has been related to the interaction between spawning density, spawning period and length, and fecundity (Hobday and Tegner, 2000a). At low adult densities, fertilization success is much reduced. When males and females are greatly separated, fertilization success may be negligible and recruitment failure will likely occur (Hobday and Tegner, 2000a).

### White Abalone

Eight species of *Haliotis* occur along the west coast of North America. Historically, white abalone ranged from Point Conception, California, U.S.A., to Punta Abreojos, Baja California, Mexico. Although studies have recognized possible population structure in other *Haliotis* species, no studies have identified distinct populations of white abalone (Hobday and Tegner, 2000a). As its name suggests, the shell of *Haliotis sorenseni* is white—the adult body is characterized by a mottled orange tan epipodium. Tutschulte (1976) reported that white abalone are not as cryptic as other California abalone species.

White abalone is the deepest-living of the west coast *Haliotis* species (Hobday and Tegner, 2000), usually reported at subtidal depths of between 20–60 m (66–197 ft) and historically most "abundant" between 25–30 m (80–100 ft) (Cox, 1960; Tutschulte, 1976). At these depths, white abalone are found in open low relief rock or boulder habitat surrounded by sand (Tutschulte, 1976; Davis *et al.*, 1996).

White abalone may be limited to depths where algae grow, a function of light levels and substrate availability, because they are reported to feed less on drift algae and more on attached brown algae (Tutschulte, 1976; Hobday and Tegner, 2000a). The upper and lower limits of white abalone depth distribution could also be influenced by temperature effects on larvae and juvenile survival. Leighton (1972) found that white abalone larval survival is reduced at lower temperatures. Tutschulte (1976) speculated that white abalone may have been restricted to depths below 25 m (82 ft) by predation from sea otters when sea otter and white abalone latitudinal ranges overlapped or from competition with pink abalone and predation by octopuses.

Maximum shell length recorded for white abalone in California and Mexico is 20–25 cm (7.8–9.8 inches) and 17 cm (6.6 inches), respectively. However, "average" observed size is about 13–20 cm (5–8 inches), and animals that are less than 10 cm (4 inches) are rare (Cox, 1960). White abalone reach sexual maturity at a size of between 88 and 134 mm (3.4–5.2 inches) in approximately 4 to 6 years and spawn in the winter, between February and April (Tutschutle, 1976; Tutschutle and Connell, 1981). Compared to two other California species, white abalone have a high degree of spawning synchronicity wherein most males and females spawn in a relatively short time period. Based on a peak in 5-year old animals prior to the peak of the white abalone fishery, Tutschulte (1976) suggested that white abalone have irregular recruitment. Tutschulte (1976) estimated that maximum lifespan of white abalone is 35 to 40 years.

In the laboratory, settlement of white abalone larvae occurred after 9 to 10 days at 15 °C (59°F) (Leighton, 1972). This larval period is longer than periods reported for other California abalone species (Hobday and Tegner, 2000a). Drift tube studies have found that larval

periods of most abalone species would not usually be long enough for regular dispersal of abalone between islands and mainland areas (Tegner and Butler, 1985b). Since they have a relatively long larval period, potential dispersal distances may be greater for white abalone than those other of abalone species (Hobday and Tegner, 2000a).

**Status of White Abalone**

Section 3 of the ESA defines the term "endangered species" as any species that is in danger of extinction throughout all or a significant portion of its range. The term "threatened species" is defined as "any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range." NMFS identified a number of factors that should be considered in evaluating the level of risk faced by a species, including (1) current abundance in relation to historical abundance; (2) trends in abundance; (3) spatial and temporal distribution and effective population size, and (4) natural and human influences. NMFS has evaluated these factors to aid in determining the status of white abalone.

*1. Current Abundance in Relation to Historical Abundance*

a. *Historical Abundance.* Estimates of pre-exploitation abundance of white abalone may be made from both fishery-independent and fishery-dependent data and by using an estimate of the total area of white abalone habitat within the species range. Based on a historical range between Point Conception and Punta Eugenia and on the assumption that 3 percent of the area within depth contours of 25 to 65 m (82–213 ft) is rocky reef habitat, Davis *et al.* (1998) estimate total area of white abalone habitat throughout the species' range to be 966 hectares (ha). Using Tutschulte's (1976) density estimate of 0.23 white abalone/$m^2$, Hobday and Tegner (2000a) estimated a pre-exploitation abundance of 2,221,800 animals. Alternatively, Hobday and Tegner (2000a) calculated another pre-exploitation population abundance estimate for white abalone using data from Mexico. Using fishery-independent data from abalone surveys conducted by Guzman and Proo *et al.* (1976) between 1968 and 1970 along the west coast of Baja California, Mexico, within the depth contours between 0 to 27 m (0–89 ft), Hobday and Tegner (2000a) estimated that the pre-exploitation population size in Mexico was 2.12 million individuals. Hobday and Tegner (2000a) then doubled this estimate to account for white abalone in California and calculated a pre-exploitation estimate of white abalone abundance of 4.24 million animals throughout the range of the species. This estimate incorrectly assumes that white abalone were found throughout the area surveyed (i.e., in southern Baja, California) and, thus, this calculation may overestimate white abalone abundance.

Hobday and Tegner (2000a) also calculated a pre-exploitation abundance of white abalone using fishery-dependent data. Between the peak years of white abalone exploitation in California, approximately 605,807 lb (274,792 kg) of white abalone were landed. (Assuming 1.67 lbs (.76 kg)/animal, 362,759 animals were harvested). Since it would have taken 10 years for white abalone to reach California's legal size limit, and the fishery collapsed after only 10 years of exploitation, Hobday and Tegner (2000a) assume that all legal-sized adults were harvested every year. If total catch in the 10-year period represents the total accumulated virgin stock and there was no recruitment, Hobday and Tegner (2000a) estimate the former California population size equals the total catch between 1969 and 1978, namely 362,759 animals. If this figure is doubled to include Mexico, the historical abundance estimate is 725,518 white abalone throughout its historical range. However, the actual pre-exploitation abundance must have been greater because some white abalone were harvested in subsequent years, some animals were lost to natural mortality, and white abalone from the recreational catch were not included in the estimate. Not all of the pre-exploitation estimates account for cryptic white abalone.

b. *Current Abundance.* Using a research submersible vessel, the first deep-reef surveys for white abalone were conducted near Santa Barbara, Anacapa, and Santa Cruz Islands, and on Osborn Bank in 1996 and 1997 (Davis *et al.*, 1998). After searching 77,070 $m^2$ (829,601 $ft^2$) of rocky reef between 27 and 67 m (89 and 220 ft) depth, only nine live white abalone were found. Assuming that population densities of white abalone estimated from these surveys (i.e., 0.000167 white abalone/$m^2$, plus or minus 0.0001) were representative of white abalone densities throughout their entire range and that the total available habitat within the species range is 966 ha (2,386 acres), Hobday and Tegner (2000a) estimate that the 1996/1997 population size throughout the entire range of the species was 1,613 white abalone. They conclude from these results that white abalone are absent or at extremely low densities at all depths and areas surveyed. Using these same data, Davis *et al.* (1998) estimated that fewer than 1,000 white abalone existed in 1996/1997 throughout the species range and concluded that these submersible surveys both confirmed the "critically low" population density and demonstrated the lack of a *de facto* refugia beyond normal scuba depths.

In October 1999, scientists conducted another deep-reef survey for white abalone near Santa Cruz, Anacapa, Santa Barbara, San Clemente and Santa Catalina Islands and on Osborn, Farnsworth, Tanner and Cortez Banks using a submersible vessel (Haaker *et al.*, 2000; Hobday and Tegner, 2000b). In contrast to the 1996/1997 submersible surveys, the areas selected for the October 1999 study were the areas where the greatest amount of white abalone had been removed by the commercial and recreational fisheries in the 1970s (Hobday and Tegner, 2000a). This survey covered approximately 57.5 ha (142 acres) (Haaker *et al.*, 2000) of suitable white abalone habitat, at a depth between 19 and 65 m (62 and 213 ft), and found 157 live white abalone (average density = 0.00027 white abalone/$m^2$ or 2.7 white abalone per ha).

The 1996/1997 and 1999 submarine surveys for white abalone in California covered approximately 6 percent of the estimated 966 ha (2,386 acres) of suitable habitat throughout the species' range (Hobday and Tegner, 2000b). Hobday and Tegner (2000b) combined data from these surveys and calculated another estimate of current population abundance. This estimate should be more representative of the population because they used spatially-distinct white abalone densities from the different areas surveyed. Based on the estimated potential habitat (966 ha or 2,386 acres) and the area-specific white abalone densities, Hobday and Tegner (2000b) calculated a revised current population abundance of 2,540 individuals throughout the range of the species.

All of these historical and current white abalone abundance estimates are likely to be biased for several reasons. First, the total amount of white abalone habitat may be more or less than the 3-percent assumed area within the depth contours between 25 and 65 m (82–213 ft), and the amount may vary among areas (Hobday and Tegner, 2000b). Second, since the exact width of the submarine transect widths are not known, the area actually surveyed may be larger or smaller. In addition, since white abalone prefer low relief rocks covered with folise algae near sand at depths between 40–60 m, observers

collecting data during surveys may preferentially search these areas. Finally, in 1996 alone, 12,307 kg (27,132 lb) of white abalone were reported in Mexican commercial abalone landings. Because the average weight of white abalone is 1.67 lb (0.75 kg), represents approximately

32,000 white abalone (Hobday and Tegner, 2000a). If the Mexican landings data are correct, the current white abalone density estimates based on fishery-independent data may be too low.

*2. Trends in Abundance*

a. *Commercial Fishery Data - California.* In 1967, at a time when the total abalone landings in California began to decline, commercial white abalone harvest began (Hobday and Tegner, 2000a). Within a 9-year period between 1969 and 1977, over 95 percent of the commercial white abalone landings took place. White abalone landings peaked at 144,000 lb (86,000 individuals) in 1972, only 3 years after intense harvest began. The decline in white abalone landings was so dramatic by 1978 (less than 5,000 lb (2270 kg) landed), that the CDFG no longer required white abalone to be reported separately on commercial landings receipts. Between 1987 and 1992, only 11 white abalone were voluntarily reported in commercial landings, and, since 1992, none have been reported.

b. *Recreational Fishery Data—California.* Data on the recreational catch of abalone in California comes from commercial passenger dive boats (Hobday and Tegner, 2000a). Between 1971 and 1993, white abalone comprised 1.29 percent of the total, and 2.89 percent of the "identified," recreational abalone catch in California. Most of the catch was harvested from Santa Catalina and San Clemente Islands. Recreational harvest of white abalone peaked at about 35,000 animals in 1975, then declined sharply. By 1986, white abalone were rarely reported as landed by divers using commercial dive boats. Abalone catch from recreational divers not using commercial dive boats has not been quantified.

*c. Commercial Fishery Data - Mexico.* Data on abalone landings in Mexico are limited because species-specific catch data are sparse. Before 1984, Mexico did not require commercial abalone fishermen to land abalone in the shell, the only identifying characteristic. Prior to about 1990, Hobday and Tegner (2000a) found no data on the number or weight of white abalone landed in Mexico. Often, available data were temporally and spatially inconsistent and contradictory.

Although white abalone are deep-living and most likely hard to find, they were harvested in Mexico prior to 1931 because the tender meat attracted a high price (Croker, 1931, p. 69). Historically, white abalone comprised only a few percent of the total Baja, California, abalone catch. However, in certain cooperatives, white abalone was sometimes a significant portion of the abalone catch—in some months representing over 50 percent of the total abalone catch (Hobday and Tegner, 2000a). For instance, between 1992 and 1994, white abalone represented about 65 percent of the catch of one Mexican fishing cooperative. Since the total abalone catch for that cooperative was 57,983 lb (26,301 kg) of meat, that represents a large amount of white abalone meat (i.e., 37,689 lb or 17,096 kg). Hobday and Tegner (2000a) suggest that this harvest may represent overharvesting of newly located reefs, because that harvest rate was not sustained in subsequent years.

Data from Zone 1 (the northernmost portion of species range in Mexico) from 1990 to 1997 indicate that white abalone represented only 0.73 percent of the total abalone catch (Hobday and Tegner, 2000a). In this same zone, no catch trends are evident for any abalone species. White abalone were not harvested south of Zone I in Baja, California, from 1993 to 1998. Although the data are limited, it appears that in those areas, catch-per-unit-effort of abalone declined from 205 to 18 kg/boat/day (452 to 40 lb) between 1958 and 1984, respectively (Guzman del Proo, 1992, as cited in Hobday and Tegner, 2000a). Since 1981, total abalone catch has remained near 800–1000 tons, with most abalone harvested from Cedros Island. From 1993 to 1998, the price of abalone in Mexico has remained constant and is an important source of income for the region (Ponce-Diaz *et al.*, 1998, cited in Hobday and Tegner, 2000a). Based on trends in landings, Mexico's white abalone populations may be depleted (Guzman del Proo, 1992), though perhaps not as severely as in the United States (Hobday and Tegner, 2000a).

*d. Recreational Fishery-Dependent Data—Mexico.* Although there is no recreational abalone fishery in Mexico, the gathering of intertidal abalone occurs at some level (Hobday and Tegner, 2000a).

*e. Summary of Trends.* Survey assessments for white abalone have been limited in number and spatially separate (Hobday and Tegner, 2000a). Because of this and because relatively few white abalone were observed, estimates of white abalone density, using fishery-independent data collected during the surveys in the 1980's and 1990's are imprecise. The current white abalone abundance calculations based on these survey data may also be biased due to assumptions about the total amount of white abalone habitat currently available (e.g., 3 percent) and the amount of area actually surveyed. Nevertheless, data collected from the white abalone surveys represent the best available scientific information on the species.

Review of the results from the series of fishery-independent abalone surveys in the early 1980s and 1990s indicates that white abalone density may have declined by several orders of magnitude in California since 1970 (Hobday and Tegner, 2000a). Over the last 30 years, white abalone abundance has declined from approximately 2.22 to 4.24 million animals (pre-exploitation) to approximately 1,613 to 2,540 animals throughout the species range. This decline represents a decrease in white abalone abundance of over 99 percent since exploitation began in the late 1960s. Review of the commercial landings data also indicates a significant decline in white abalone abundance, from a peak of 144,000 lbs (65,318 kg) in 1972 to less than 1,000 lbs (454 kg) in 1979, after only a decade of commercial exploitation.

*3. Spatial and Temporal Distribution and Effective Population size*

In addition to the absolute number of individuals in a population or species, their spatial and temporal distribution is critical for successful fertilization, recruitment, and survival of local populations. Reproductive failure will occur below a threshold population density because surviving individuals are so few and so scattered that they cannot find mates. This is commonly referred to as the "Allee Effect" (Primack, 1993). Individuals that are close enough to find mates may still not produce offspring due to other factors such as age, poor health, sterility, malnutrition, and small body size (Primack, 1993). As a result of these factors, the "effective population size" of breeding individuals will be substantially smaller than the actual population size.

Even with high adult densities, abalone recruitment is highly variable and unpredictable (Davis *et al.*, 1996). Based on results from modeling and experiments with sea urchins, Pennington (1985) demonstrated that successful fertilization for broadcast spawners requires that males and females be close enough for free-swimming sperm to contact eggs in sufficient densities. Juvenile abalone

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recruitment severely declines, or ceases in abalone populations that are depleted below approximately 50 percent of virgin stock levels (Shepherd and Brown, 1993; Richards and Davis, 1993). Price *et al.* (1988) found that, for the Australian abalone species, *Haliotis rubra*, abundance of breeding animals determined recruitment. Thus, despite the broadcasting of millions of sperm and eggs and a planktonic larval phase, locally reduced adult abalone densities can result in lower local recruitment. More recently, Babcock and Keesing (1999) found that, for the Australian abalone species, *Haliotis laevigata*, recruitment failure occurred when the mean nearest neighbor distances were over 1–2 m (3.3–6.6 ft) or when densities fell below 0.3 animals/$m^2$. They also speculate that reductions in abalone densities may further reduce reproductive success by limiting the ability to synchronize reproductive behavior.

Because abalone are slow-moving bottom dwellers, their ability to aggregate during spawning to overcome even relatively small separations is extremely limited. If the current estimate of mean white abalone density (e.g., 0.00027 white abalone/$m^2$) is representative throughout most of the range of the species, it is far below that necessary to produce gamete concentrations high enough for effective fertilization. Based on the current estimated average distance of approximately 50 m (164 ft) between white abalone adults, the chance of successful fertilization and regular production of viable cohorts of juvenile white abalone is extremely low (Davis, 1998).

The density of white abalone observed during the 1999 submersible survey varied from 0 to 9.76 abalone per ha (Hobday and Tegner, 2000b). The highest densities were found at Tanner Bank, an offshore area where distance, average sea conditions, and navigational challenges may have reduced white abalone fishing effort. Of the 157 white abalone found in the October 1999 submersible survey, nearly 80 percent were individuals (i.e., the nearest neighbor was more than 2 m (6.6 ft) away (Hobday and Tegner, 2000b). Twenty percent of the white abalone observed were found in "groups" of two, and one group of four was found. Although these groups have the potential to produce offspring if at least one male and one female occurs in each group, it is still likely that the effective population size of the species is currently very small (Hobday and Tegner, 2000b).

The size and frequency of empty abalone shells observed during surveys can also indicate local population structure and whether habitat is suitable for survival. For example, about 20 percent of the empty shells near stable red abalone populations, with regular juvenile recruitment are juvenile-sized shells (Hines and Pearse, 1982, reported in Davis *et al.*, 1996). In contrast, the percentage of juvenile-sized empty shells found near a red abalone population on the verge of collapse at Santa Rosa Island dropped from 22 percent to 6 percent as recruitment and adult densities declined (Tegner *et al.*, 1989; Davis *et al.*, 1992, reported in Davis *et al.*, 1996).

Davis *et al.* (1996) found that during the 1992–1993 scuba surveys for white abalone, most of the empty shells and live individuals were probably more than 25 years old (>140 mm or 5.5 inches). All of these shells, except one, were adult size (>50 mm or 2 inches) and most were between 131 and 180 mm (5 and 7 inches). During the 1996–1997 submersible white abalone surveys, over 300 empty shells were observed. All of these shells appeared to be over 25 years old (Davis, G., pers. comm., February 2000). These results indicate that the survey sites were previously inhabited by white abalone. Davis *et* al. (1998) concludes that these older abalone represent the last major cohort recruited to the population. This cohort would have been spawned in the late 1960s or early 1970s and survived because they would have been too small to be legally harvested during the peak of the fishery in the 1970s.

Although the influence of age on white abalone fertility is unknown, if individual age is a factor for reproductive success, the effective population size of white abalone may be significantly lower than the current estimate of white abalone abundance throughout its range. Analysis of the 1999 survey video footage and photographs to determine size frequencies of the white abalone observed (live individuals and empty shells) has not yet been conducted (Hobday and Tegner, 2000b).

*4. Other Natural and Human Influences.* See (A), (C), and (E) in Summary of Factors Affecting White Abalone.

**Summary of Factors Affecting White Abalone**

Section 4(a)(1) of the ESA and the listing regulations (50 CFR part 424) set forth procedures for listing species. NMFS must determine, through the regulatory process, if a species is endangered or threatened based upon any one or a combination of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or human-made factors affecting its continued existence. NMFS' contract with SIO included a review of current and historical factors affecting white abalone. This review identifies overutilization for commercial purposes as the primary reason for the decline of white abalone (Hobday and Tegner, 2000a). The following is a discussion of the factors used to determine whether white abalone should be listed as a threatened or endangered species under the ESA.

*A. Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

Loss or modification of habitat is not likely to have been a factor in the decline of white abalone. Hobday and Tegner (2000a) conclude that natural or anthropogenic white abalone habitat losses are unknown. Due to the isolation of the offshore islands off southern California and northern Baja, California, Mexico, and the depth range of the species, anthropogenic impacts to white abalone habitat should be limited near the islands. The California Department of Fish and Game (CDFG) believe, that direct threats to white abalone are limited, especially on the islands offshore of southern California, but mainland habitat may have been affected to an "unknown extent" for a variety of unspecified land-based human activities. On the other hand, pollution affected shallow water abalone habitat (i.e., *Macrocystis* kelp forests) along the Palos Verdes Peninsula in the 1950s, resulting in a decline in certain shallow water abalone populations (Tegner, 1989; 1993). However, the source of the pollution has been controlled and is no longer affecting habitat in that area.

Long-term or short-term changes in ocean conditions could affect both larval and adult abalone (Hobday and Tegner, 2000a). For example, periodic El Nino conditions increase surface water temperatures above optimum larval survival levels. In addition, due to the periodicity of these events, Hobday and Tegner (2000a) suggest the warming events would lead to recruitment failure. The influence of some diseases may increase during periods of warm water conditions. Warm water has also been associated with depleted nutrients in the ocean, declines in *Macrocystis*,

and the availability of drifting algae material. The direct or indirect impacts of increasing water temperatures within the depth range on white abalone are unknown. Harvesting of *Macrocystis pyrifera* has been shown to have little effect on shallow-living abalone species (Tegner, 1989) and could even benefit abalone by providing greater amounts of drift algae (Hobday and Tegner, 2000a). For these reasons, habitat loss or modification are not likely to have been factors of decline of white abalone.

*B. Overutilization for Commercial, Recreational, Scientific or Educational Purposes*

White abalone throughout its range have experienced declines in abundance as a result of overutilization for commercial and recreational purposes. Hobday and Tegner (2000a) suggest that white abalone in California were subject to "serial depletion" by the commercial fishery during the early 1970s. Due to their life history characteristics as slow-moving bottom dwellers with external fertilization, abalone are particularly susceptible to local and subsequent serial depletion. If female abalone are not within a few meters of males when they both spawn, the sperm will be too diluted by diffusion to fertilize the eggs (Davis *et al.*, 1996). As local abalone density declines, the probability of successful fertilization and subsequent recruitment, correspondingly decreases. Serial depletion occurs as fishermen shift from exploited to unexploited fishing areas due to local depletion. Total landings may remain constant in the short term. Eventually, however, if all areas are harvested at unsustainable levels, recruitment failure occurs on a regionwide basis. The CDFG believe that the most significant threat to white abalone is related to the effects of low population abundance on continued white abalone reproduction, survival and recovery.

Because white abalone catch data from California were recorded by blocks that can be aggregated into regions, data indicate that over 80 percent of the white abalone landings were taken from San Clemente Island. The offshore Tanner Bank and Cortez Bank-Bishop Rock region provided 13 percent of the total catch. Notably, between 1965 and 1975, over 25 percent (average 43 percent) of the white abalone catch at each location came from a single year (Hobday and Tegner, 2000a). If harvest was sustainable, the portion of catch harvested each year at each location should have been more equitable over many years. In contrast, at each location (e.g., island), large harvest was sustained for only a few years after previously unexploited white abalone stocks were depleted (see Table 8 in Hobday and Tegner, 2000a). After only 3 years of commercial exploitation, regionwide landings of white abalone peaked at 144,000 lb (65,318 kg) in 1972, declining to less than 10,000 lb (4,535 kg) in 1977. White abalone landings were so negligible by 1978 (<1,000 lb or 454 kg), that CDFG no longer collected landings data for the species.

Hobday and Tegner (2000a) suggest that the increasing value of abalone may have contributed to increased fishing pressure. For example, the price of white abalone increased from about $2.50 per pound in 1981 to about $7 per pound in 1993. As the catch of all abalone declined, the total and per-unit value of the harvest continued to increase. White abalone was usually the most valuable species and by 1988, white abalone was worth twice the value of other abalone species (Davis *et al.*, 1996).

*C. Disease or Predation*

First detected in 1985, withering syndrome disease has significantly affected west coast abalone species, especially the black abalone. Withering syndrome also occurs in pink, red, and green abalone (Alstatt *et al.*, 1996, cited in Hobday and Tegner, 2000a). Withering syndrome has recently been identified as a ricksettia bacterium that affects the digestive glands of abalone. Surveys of black abalone suffering from withering syndrome found large numbers of empty black abalone shells. Hobday and Tegner (2000a) suggest, that if white abalone were significantly affected by withering syndrome, large numbers of empty white abalone shells should have been detected during the abalone surveys of the 1980s.

In 1990, 20 freshly dead white abalone, which could have been killed by withering syndrome, with undamaged shells were collected from Santa Catalina (Tegner *et al.*, 1996). In 1993, two live white abalone were collected from Santa Catalina Island and diagnosed with withering syndrome. A white abalone in captivity recently died and showed symptoms of withering syndrome. Although white abalone appear to be susceptible to withering syndrome, it is not likely to have been a major factor in the decline of white abalone.

Several abalone predators have been documented, including sea stars, fish, crabs, octopuses, and sea otters (Hobday and Tegner, 2000a). Although increases in abundance of these predators could be related to declines in white abalone abundance, no information is available on the density of the invertebrate predators in white abalone habitat. Due to the depth range and latitudinal distribution of white abalone, predation by sea otters is not likely to have been a factor in the decline of white abalone abundance. The CDFG believes that factors such as disease or predation may have contributed to the decline of white abalone but are not currently a major factor affecting the species' continued existence.

*D. The Inadequacy of Existing Regulatory Mechanisms*

Because white abalone throughout their range have experienced declines in abundance as a result of overutilization for commercial purposes, fishing regulations for white abalone during the major period of its decline in the 1970s were inadequate to regulate harvest of white abalone at sustainable levels.

The establishment of minimum size limits has been a strategy used worldwide to manage the harvest of abalone on a sustainable basis (Hobday and Tegner, 2000a). Managers expected this restriction would allow individual abalone a chance to reproduce and contribute to the population before possible removal from the population by harvest. In California, minimum size limits for abalone were greater than the size of sexual maturity and could have allowed for several years of reproduction before the animals reached legal harvest size. However, successful reproduction does not necessarily occur each year. If reproductive failure occurs for several years, abalone could reach legal size and be removed by the fishery before they have successfully reproduced and contributed offspring to the population. California also prohibited abalone fishing during the spawning season. Other regulations, such as bag limits for recreational fishermen, and limited entry, were also instituted by California as abalone management measures.

In 1970, California established a permit fee of $100 for both divers and crew members (Burge *et al.*, 1975; cited in Hobday and Tegner, 2000a). The diver fee increased to $200 in 1975 and finally reached $330 in 1991. Relative to permit fees charged by other countries to harvest abalone which approach $1 million per permit (e.g., Tasmania, South Australia), these relatively low fees did not promote sustainable abalone fishing in California.

California's abalone management did not prevent serial depletion of white abalone or promote sustainable harvest practices in the 1970s. In 1996, the California Fish and Game Commission closed the California white abalone fishery to protect the surviving adults (Davis *et al.*, 1998). At this time, NMFS does not have documentation that

Mexico has closed its commercial white abalone fishery or limited white abalone fishing.

Intentional capture of sub-legal abalone before they contributed substantially to the population could have reduced the reproductive potential of white abalone (Hobday and Tegner, 2000a). However, since the State of California has required all commercially caught abalone to be landed in the shell, poaching is not likely to have been a major factor for the decline of white abalone. In Mexico, during a survey in 1973, a substantial portion of the commercial white abalone catch was found to be undersized. The impact of illegal white abalone harvesting as a factor of the species' decline is difficult to evaluate in Mexico, but was probably not a major factor in California. Because abalone has no blood-clotting ability, cut animals bleed to death (Cox, 1962, cited in Hobday and Tegner, 2000a). Burge *et al.* (1975) found that accidental cutting of sub-legal sized abalone is a significant cause of mortality and could have further reduced white abalone abundance (Hobday and Tegner, 2000a). For example, mortality due to cutting during collection of sub-legal red abalone was estimated at 60 percent from small cuts in the lab, and almost 100 percent in the field. Even undersized abalone that are handled and replaced without being cut suffer a 2 to 10–percent mortality in the field. Under-sized abalone may also be subject to predation before they have a chance to reattach to the substrate.

*E. Other Natural or Manmade Factors Affecting Their Continued Existence*

Competition from sea urchins and other abalone species for food and space could have been a factor in the decline of white abalone. For instance, increasing trends in abundance of sea urchins (*Strongylocentrotus purpuratus* and *S. franciscanus*) could have limited the amount of algae available for juvenile or adult white abalone consumption (Hobday and Tegner, 2000a). Although these potential ecological interactions have not been studied in the field, the densities of these potential competitors are also currently low and are no longer likely to limit white abalone abundance (Hobday and Tegner, 2000a).

Hybridization of white abalone with other more abundant California abalone species could potentially lower white abalone population size (Hobday and Tegner, 2000a). Natural hybridization between other California abalone species and white abalone has been observed. Owen *et al.* (1971) found that disturbance, high sea urchin frequency, and low abundance of one parent species increased the frequency of abalone hybrids. However, because large numbers of white abalone hybrids have not been found in the field, Hobday and Tegner (2000a) conclude that hybridization of white abalone with other abalone species is unlikely to have led to a decline of the species.

**Efforts Being Made to Protect White Abalone**

Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to make listing determinations solely on the basis of the best scientific and commercial data available and after taking into account efforts being made by any state or foreign nation to protect a species, by predator control, protection of habitat and food supply, or by other conservation practices. In making this listing determination, therefore, NMFS must consider white abalone status and the factors that have lead to its decline, as well as state or foreign conservation efforts that may ameliorate the risks faced by the white abalone.

In judging the efficacy of state or foreign conservation efforts, NMFS considers the following: (1) The substantive, protective, and conservation elements of such efforts; (2) the degree of certainty that such efforts will be reliably implemented; and (3) the presence of monitoring provisions that determine effectiveness and that permit adaptive management (NMFS, 1996b). In some cases, conservation efforts may be relatively new and may not have had time to demonstrate their biological benefit. In such cases, provisions for adequate monitoring and funding of conservation efforts are essential to ensure intended conservation benefits are realized.

*State of California Conservation Measures for White Abalone*

The CDFG has collected fishery-independent data on white abalone for many years and has conducted and participated in the scuba and submersible surveys conducted in 1980/1981, 1992/1993, 1996/1997, and 1999. The data and information gathered during these studies have contributed to a better understanding of the decline of white abalone. Because the State required that abalone fishermen submit landings data, the precipitous decline of white abalone in the 1970s has been documented. As mentioned previously, the State closed white abalone fishing in 1996, thereby removing a significant factor for decline. The closure of all abalone fisheries in southern California in 1997 has also reduced the likelihood of accidental harvest or poaching of white abalone in California. Despite these State conservation measures, however, the species may not survive without human intervention because most of the remaining individuals are too far apart to successfully reproduce. To date, the State of California has not listed white abalone under the State's Endangered Species Act.

*Mexican Conservation Measures for White Abalone*

At this time, NMFS does not know whether Mexico has closed its white abalone fishery or instituted other conservation measures to protect the species. NMFS contracted out the status review to SIO to gather data on white abalone landings and status of white abalone in Mexico, but conservation measures were not part of this contract. The U.S. Government has not contacted Mexico yet with regard to conservation measures. Under 50 CFR 424.16, insofar as practical and in cooperation with the Secretary of State, NMFS must give notice of any proposed regulation to list a species to each foreign nation in which the species is believed to occur and invite the comment of such nation. After NMFS solicits and receives comments from Mexico, it should have a better understanding of the conservation measures Mexico has implemented to protect white abalone.

*Private-Public Partnerships*

Due to concern over the depleted status of white abalone, a consortium of scientists, fishermen, conservation organizations, universities, Federal and state agencies, and mariculturists in private enterprise have joined together to develop and execute a plan to restore white abalone populations (Davis *et al.*, 1998). The White Abalone Restoration Consortium (Consortium) has developed the following four-step restoration plan: (1) Locate surviving white abalone by surveying historical habitat; (2) collect brood stock; (3) breed and rear a new generation of brood stock; and (4) re-establish refugia of self-sustaining brood stocks in the wild. The Consortium has also initiated an outreach program to raise public awareness of the status of white abalone and restoration efforts. Particularly challenging is the ability to increase public awareness of a relatively small and unknown marine invertebrate. Because nearly 25 years of artificially producing and outplanting juvenile and younger red abalone in California have failed to demonstrate effective population restoration, the Consortium is advocating that captive-born white abalone be reared until 4 years of age (>100 mm or 4 inches). Federal, state, and private grants and

funds have recently supported white abalone submersible surveys and the establishment of an aquaculture facility specifically designed to breed white abalone in captivity and rear offspring to adulthood for outplanting to the wild.

While NMFS recognizes that many of the existing conservation measures are likely to protect the remaining white abalone survivors, in the aggregate, they do not yet provide for white abalone conservation at a scale that is adequate to protect and recover the species. Due to the extremely low population abundance of white abalone throughout its range, NMFS believes that the existing protective measures alone will not be sufficient to reduce the risk of white abalone extinction in the near future.

**Proposed Determination**

The ESA defines an endangered species as any species in danger of extinction throughout all or a significant portion of its range, and a threatened species as any species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range (16 U.S.C. 1532(6) and (20)). Section 4(b)(1) of the ESA requires that the listing determination be based solely on the best scientific and commercial data available, after conducting a review of the status of the species and after taking into account those efforts, if any, being made by any state or foreign nation to protect and conserve the species.

Review of white abalone landings data and analysis of fishery-independent data indicate that over the last 30 years, white abalone abundance has declined by over 99 percent and several orders of magnitude. Most of the remaining survivors are old and so scattered that they will not be able to find mates to spawn successfully and regularly produce viable cohorts of juveniles. While NMFS recognizes that many of the existing conservation measures are likely to protect the remaining white abalone, in the aggregate, they do not yet provide for white abalone conservation at a scale that is adequate to protect and recover the species.

Based on results from the white abalone status review, information received in the petition to list white abalone as an endangered species, and other published and unpublished information, NMFS has determined that white abalone are in danger of extinction throughout all or a significant portion of their range. Therefore, NMFS proposes to list white abalone as an endangered species.

During the period between publication of this proposed rule and publication of a final rule, NMFS will continue to solicit information regarding existing protective efforts including those by Mexico (see Public Comments Solicited). NMFS will also work with Federal and state fisheries managers to evaluate and enhance the efficacy of the various white abalone conservation efforts.

**Conservation Measures**

Conservation measures that may apply to listed species include conservation measures implemented by tribes, states, foreign nations, local governments, and private organizations. Also, Federal, tribal, state, and foreign nations' recovery actions, Federal consultation requirements, and prohibitions on taking constitute conservation measures. In addition, recognition through Federal government or state listing promotes public awareness and conservation actions by Federal, state, tribal governments, foreign nations, private organizations, and individuals.

Based on information presented in the proposed rule, general protective and conservation measures that could be implemented to help conserve white abalone are listed as follows. This list does not constitute NMFS' interpretation of a recovery plan under section 4(f) of the ESA:

1. Continue the State prohibition on commercial and recreational white abalone fishing in California.
2. Locate white abalone in California and Mexico by surveying historic habitat.
3. Collect white abalone brood stock, spawn the brood stock, rear the offspring to early adulthood, and outplant the next generation in the wild.
4. Collect and aggregate adult white abalone in the wild to facilitate successful reproduction in the field.
5. Establish protected zones to serve as refugia for captive-bred offspring and aggregated adult white abalone.
6. Promote protection and conservation of white abalone in Mexico.

**Prohibitions and Protective Measures**

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all individuals, organizations and agencies subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species.

Sections 7(a)(2) and (4) of the ESA require Federal agencies to consult with NMFS to ensure that activities they authorize, fund, or conduct are not likely to jeopardize the continued existence of a listed species or a species proposed for listing, or to adversely modify critical habitat or proposed critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with NMFS.

Examples of Federal actions that may affect white abalone include coastal development, oil and gas development, outfall construction and operation, and power plant permitting.

Sections 10(a)(1)(A) and (B) of the ESA provide NMFS with authority to grant exceptions to the ESA's Section 9 "take" prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of a listed species. The type of activities potentially requiring a section 10(a)(1)(A) research/enhancement permit include scientific research that targets white abalone; collection of adult white abalone for artificial propagation purposes and aggregation or relocation of white abalone to enhance the potential of natural propagation in the wild.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species, as long as the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. The types of activities potentially requiring a section 10(a)(1)(B) incidental take permit include scientific research, not targeting white abalone, that incidentally takes white abalone, and the operation of power plants in a manner that incidentally takes white abalone.

**NMFS Policies on Endangered and Threatened Wildlife**

On July 1, 1994, NMFS, jointly with the U.S. Fish and Wildlife Service (FWS), published a series of policies regarding listings under the ESA, including a policy for peer review of scientific data (59 FR 34270) and a policy to identify, to the maximum extent possible, those activities that would or would not constitute a violation of section 9 of the ESA.

*Role of Peer Review*

Before adopting the status review prepared under contract by SIO, NMFS submitted the review for peer review. NMFS shares a joint policy with FWS regarding the role of peer review of proposed listing determinations. The intent of the peer review policy is to

ensure that listings are based on the best scientific and commercial data available. Prior to a final listing, NMFS will solicit the expert opinions of at least three qualified specialists, concurrent with the public comment period. Independent peer reviewers will be selected from the academic and scientific community, Federal and state agencies, and the private sector.

*Identification of Those Activities That Would Constitute a Violation of Section 9 of the ESA*

NMFS and the FWS published in the **Federal Register** on July 1, 1994, (59 FR 34272), a policy that NMFS shall identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. If this rule is finalized, at that time NMFS will identify to the extent known, specific activities that will not be considered likely to result in violations of section 9, and activities that will be considered likely to result in violations. NMFS believes, based on the best available information, the following actions will not result in a violation of section 9:

1. Possession of white abalone which are acquired lawfully by permit issued by NMFS, pursuant to section 10 of the ESA, or by the terms of an incidental take statement, pursuant to section 7 of the ESA.

2. Federally funded or approved projects for which section 7 consultation has been completed, and when activities are conducted in accordance with any terms and conditions provided by NMFS in an incidental take statement accompanying a biological opinion.

Activities that NMFS believes could potentially harm white abalone, and result in a violation of section 9 take prohibition include, but are not limited to:

1. Coastal development that adversely affects white abalone (e.g., dredging, oil and gas development).

2. Destruction/alteration of white abalone habitat, such as the harvesting of algae.

3. Discharges or dumping of toxic chemicals or other pollutants (e.g., sewage, oil, gasoline) into areas supporting white abalone.

4. Interstate and foreign commerce of white abalone and import/export of white abalone without a permit.

5. Collecting or handling of white abalone in the United States. Permits to conduct these activities are available for purposes of scientific research or to enhance the propagation or survival of the species.

These lists are not exhaustive. They are intended to provide some examples of the types of activities that might or might not be considered by NMFS as constituting a take of white abalone under the ESA and its regulations. Questions regarding whether specific activities will constitute a violation of the ESA section 9 take prohibitions and general inquiries regarding prohibitions and permits should be directed to NMFS (see **ADDRESSES**).

## Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. While NMFS has completed its initial analysis of the biological status of white abalone, it has not performed the full analysis necessary for proposing a designation of critical habitat at this time. NMFS intends to develop a critical habitat proposal for white abalone within the next year, as soon as the analysis can be completed.

## Public Comments Solicited

NMFS exercised its best professional judgement in developing this proposal to list white abalone. To ensure that the final action resulting from this proposal will be as accurate and effective as possible, NMFS is soliciting comments and suggestions from the public, other governmental agencies, the Government of Mexico, the scientific community, industry, and any other interested parties. NMFS is interested in any additional information concerning (1) biological or other relevant data concerning any threats to white abalone; (2) the range, distribution, and abundance of white abalone; (3) current or planned activities within the range of white abalone and their possible impact on white abalone; and (4) efforts being made to protect white abalone.

NMFS will review all public comments and any additional information regarding the status of white abalone and will complete a final determination within one year of publication of this proposed rule, as required under the ESA. The availability of new information may cause NMFS to reassess the status of white abalone.

Joint Commerce-Interior ESA implementing regulations state that the Secretary "shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list ...or to designate or revise critical habitat." (see 50 CFR 424.16(c)(3)). If a public hearing is requested, it would provide an opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS encourages the public's involvement in such ESA matters. Written comments on the proposed rule should be submitted to NMFS (see **ADDRESSES**).

## References

A complete list of all cited references is available upon request (see **ADDRESSES**).

## Classification

*National Environmental Policy Act*

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation v. Andrus*, 675 F. 2d825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the National Environmental Policy Act (NEPA). (See NOAA Administrative Order 216–6.)

*Executive Order 12866, Regulatory Flexibility Act and Paperwork Reduction Act*

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act (RFA) are not applicable to the listing process. In addition, this rule is exempt from review under Executive Order 12866. This rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

*Executive Order 13132—Federalism*

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual State and Federal interest, NMFS has conferred with the State of California in the course of assessing the status of white abalone, and considered, among other things, state and local conservation measures. California has expressed support for the conservation of white abalone. The content of this dialogue with the State of California as well as the basis for this proposed action, is described in the **SUPPLEMENTARY INFORMATION** section of this document. As the process continues, NMFS intends to continue

engaging in informal and formal contacts with California, and other affected local or regional entities, giving careful consideration to all written and oral comments received. NMFS also intends to consult with appropriate elected officials in the establishment of a final rule.

*Critical Habitat*

At this time, NMFS is not proposing to designate critical habitat for white abalone pursuant to ESA section 4(b)(2). Prior to proposing to designate critical habitat for white abalone, NMFS will comply with all relevant RFA requirements.

**List of Subjects in 50 CFR Part 224**

Endangered and threatened wildlife, Exports, Imports, Marine Mammals, Transportation.

Dated: May 1, 2000.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 224 is proposed to be amended as follows:

## PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

1. The authority citation of part 224 continues to read as follows:

**Authority:** 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

2. In § 224.101, paragraph (d) is added to read as follows:

**§ 224.101 Enumeration of endangered marine and anadromous species.**

* * * * *

(d) *Marine invertebrates.* White abalone (*Haliotis sorenseni*).

[FR Doc. 00–11285 Filed 5–4–00; 8:45 am]

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VOL 65 ISS 88 MY 5 2000 UMI

# Notices

Federal Register
Vol. 65, No. 88
Friday, May 5, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Economic Research Service

### Intent To Seek Approval to Collect Information

**AGENCY:** Economic Research Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) implementing regulations, this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection on the declining participation in the Food Stamp Program (FSP) and the role of policies and local administrative practices in the FSP or in related programs, such as Temporary Assistance to Needy Families (TANF), in affecting participation. This information will contribute to a better understanding of the reasons behind the large declines in food stamp participation since passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

**DATES:** Comments on this notice must be received by July 10, 2000 to be assured of consideration.

**ADDRESSES:** Address all comments concerning this notice to Peggy J. Cook, Food Assistance and Rural Economy Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M. Street, NW, Room S–2078, Washington, DC 20036–5831. For further information contact: Peggy J. Cook, 202–694–5419.

**SUPPLEMENTARY INFORMATION:**

*Title:* Paperwork Reduction Act Submission (OMB–83–I).

*OMB Number:* Not yet assigned.

*Expiration Date:* N/A.

*Type of Request:* New collection of information.

*Abstract:* ERS has the responsibility to provide social and economic intelligence on consumer, food marketing, and rural issues, including: domestic food assistance programs; low-income assistance programs; food security status of the poor; food consumption determinants and trends; consumer demand for food quality, safety, and nutrition; food market competition and coordination; and food safety regulations.

The Food and Nutrition Service (FNS) administers the nutrition assistance programs of the U.S. Department of Agriculture (USDA). The Food Stamp Program (FSP) is the cornerstone of the Nation's nutrition safety net for low-income Americans. The program's intent is to eliminate hunger and enable eligible low-income persons to obtain a more nutritionally adequate diet by providing food stamp coupons (or other forms of payment) redeemable at many retail food stores. Benefits provided under the FSP come solely from Federal dollars, but the program is administered jointly by Federal, State, and local governments who also share the costs of program administration. The program is in operation in the 50 States, the District of Columbia, Guam and the U.S. Virgin Islands. In 1998, the program distributed more than $16.6 billion to 19.8 million people living in 7.8 million households.

USDA is concerned about the declines in FSP participation that have occurred since 1994 and whether or not the FSP is reaching all those in need. National food stamp rolls declined by one-third between 1994, when 28.8 million persons received food stamps in an average month, and 1999, when an average of 18.8 persons received benefits each month. According to some analysts, factors like the strong economy, changes in the size and composition of the potential eligibility pool, and Federal changes in the food stamp eligibility rules legislated under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) do not fully explain the decline. Little is known about the possible influences of other program factors on FSP participation, in particular, the effects of post-PRWORA changes on how States and local offices administer and operate the FSP in respect to other programs, especially the TANF program. Information also is lacking about the extent to which the levels of awareness and motivations of potentially eligible households affect their decisions to seek and to continue food stamp participation. The data collected in this study are designed to provide information about the role of policies and local administrative practices in the FSP and in related programs in affecting participation.

A sample of FSP caseworker supervisors and caseworkers will be asked questions to identify specific policies and practices in local FSP administration that may affect eligible households' access to and participation in the FSP. Questions will concern policies and practices affecting: contacting the FSP office; filing the FSP application and completing the process; ongoing requirements for FSP recipients; and FSP/TANF benefit reductions or TANF termination. Respondents also will be asked questions concerning their perspectives on post-PRWORA changes in policies and practices. A sample of FSP applicants will be asked questions concerning: trigger events that led to their food stamp application; their understanding of the application process and requirements; expected benefits and costs; and household characteristics and circumstances. A sample of presumptively FSP-eligible households who are not participating in the Program will be asked questions concerning: reasons for not applying to the FSP, perceived eligibility; previous experience with FSP, TANF, and Medicaid programs; perceived costs of participation; and household characteristics and circumstances.

The sampling design for the study is a two-stage national probability sample of new and recertifying food stamps applicants. The first stage of the sampling is the selection of local sites. The study will be conducted in a nationally representative sample of 120 local food stamp offices. The sample will include at least one office in nearly all of the forty-eight contiguous states and the District of Columbia, yet still use a probabilistic sampling approach that yields good statistical precision in overall estimates. The second stage of the sampling involves selecting, within each of the 120 sampled local offices, a representative sample of new and recertifying food stamp applicants. Within each of the sampled local

offices, food stamp caseworker supervisors and food stamp caseworkers will be sampled. In addition, a random-digit-dial telephone survey also will be conducted with a sample of presumptively FSP-eligible households, living in the areas served by the 120 sampled local food stamp offices, who are not participating in the FSP.

ERS, working with Abt Associates and Health Systems Research, will conduct the telephone surveys of FSP supervisors and caseworkers, FSP applicant households, and FSP-eligible nonparticipating households. FSP applicant households without telephones will be interviewed in-person. The household telephone interviews will be conducted using Computer-Assisted-Telephone Interviewing (CATI). Responses are voluntary and confidential. To minimize the burden on applicant households, a substantial portion of needed data will be collected by abstraction from local offices' case file records. Survey data will be used with other data for statistical purposes and reported only in aggregate or statistical form.

No existing data sources, including FNS administrative data, can provide all the information needed to complete the Study of Program Access and Declining Food Stamp Participation. These data and the research they will support are vital to the USDA's ability to understand reasons for recent declines in FSP participation.

*Estimate of Burden:* Public burden for this data collection is estimated, on average, as 60 minutes for caseworker supervisors and caseworkers; 30 minutes for food stamp applicants; 5 minutes for screening households to determine presumptive FSP eligibility; and 30 minutes for FSP-eligible nonparticipants. The estimates include time for listening to instructions, gathering data needed, and responding to questionnaire items.

*Respondents:* FSP caseworker supervisors, FSP caseworkers, FSP applicants, households with residential telephone numbers, and presumptively FSP-eligible households.

*Estimated Number of Respondents:* 240 FSP caseworker supervisors, 480 FSP caseworkers, 1,425 FSP applicants, 33,333 households with residential telephone numbers, and 1800 presumptively FSP-eligible households.

*Estimated Total Annual Burden on Respondents:* 5111 hours.

Copies of the information to be collected can be obtained from Peggy J. Cook, Food Assistance and Rural Economy Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M. Street, NW, Room S–2078, Washington, DC 20036–5831, 202–694–5419.

**Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques. Comments should be sent to the address stated in the preamble. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Signed at Washington, D.C., this 28th day of April, 2000.

**James Blaylock,**

*Associate Director, Food and Rural Economics Division.*

[FR Doc. 00–11203 Filed 5–4–00; 8:45 am]

BILLING CODE 3410–18–M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to procurement list.

**SUMMARY:** The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** June 5, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Dispatcher Services, Federal Building, 222 West 7th Avenue, Anchorage, Alaska
NPA: Portland Habilitation Center, Inc., Portland, Oregon
Grounds Maintenance, DC Air National Guard, 201st Mission Support Squadron, Andrews Air Force Base, Maryland
NPA: Melwood Horticultural Training Center, Upper Marlboro, Maryland
Janitorial/Custodial, Butler U.S. Army Reserve Center/OMS, 360 Evan City Road, Butler, Pennsylvania
NPA: The Easter Seal Society of Western Pennsylvania, Pittsburgh, Pennsylvania
Operation of the Alternate Format Center, Department of Education, Mary Switzer Building, 330 C Street, SW, Washington, DC
NPA: Columbia Lighthouse for the Blind, Washington, DC
Recycling Service, Scott Air Force Base, Illinois
NPA: Challenge Unlimited, Inc., Alton, Illinois

**Rita L. Wells,**

*Deputy Director (Policy and Program Coordination).*

[FR Doc. 00–11287 Filed 5–4–00; 8:45 am]

BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List Addition

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Addition to the Procurement List.

**SUMMARY:** This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** June 5, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On November 29, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 66611) of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action will not have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the service proposed for addition to the Procurement List.

Accordingly, the following service is hereby added to the Procurement List:

Base Supply Center, Operation of Individual Equipment Element Store and HAZMART, Charleston Air Force Base, South Carolina

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Rita L. Wells,**

*Deputy Director (Policy and Program Coordination).*

[FR Doc. 00–11288 Filed 5–4–00; 8:45 am]

BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

### Bureau of Export Administration

### Materials Technical Advisory Committee; Notice of Partially Closed Meeting

The Materials Technical Advisory Committee will meet on June 1, 2000, 10:30 a.m., Herbert C. Hoover Building, Room 3884, 14th Street between Constitution & Pennsylvania Avenues, NW, Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that affect the level of export controls applicable to materials and related technology.

**Agenda**

*Open Session*

1. Opening remarks and introductions.
2. Presentation of papers and comments by the public.
3. Update on Chemical Weapons Convention declarations and inspections.

*Closed Session*

4. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available during the open session of the meeting. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the materials should be forwarded prior to the meeting to the address below:

Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce, 14 St. & Pennsylvania Ave., NW, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on March 7, 2000, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For more information or copies of the minutes call Ms. Lee Ann Carpenter at (202) 482–2583.

Dated: May 1, 2000.

**Lee Ann Carpenter,**

*Committee Liaison Officer.*

[FR Doc. 00–11302 Filed 5–4–00; 8:45 am]

BILLING CODE 3510–JT–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–818, C–475–819]**

### Certain Pasta From Italy: Notice of Initiation of Anti-Circumvention Inquiry on the Antidumping and Countervailing Duty Orders

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (the Department) is self-initiating an anti-circumvention inquiry to determine whether an Italian producer of pasta is circumventing the antidumping and countervailing duty orders on certain pasta from Italy, issued July 24, 1996.

**EFFECTIVE DATE:** May 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann or Jarrod Goldfeder, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4126 or (202) 482–2305, respectively.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments

made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR part 351 (April 1999).

**Scope of Antidumping and Countervailing Duty Orders**

Imports covered by these orders are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione (IMC), by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia or by Consorzio per il Controllo dei Prodotti Biologici.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS)*. Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to these orders is dispositive.

**Scope Rulings**

The Department has issued the following scope rulings to date:

(1) On August 25, 1997, the Department issued a scope ruling that multicolored pasta, imported in kitchen display bottles of decorative glass that are sealed with cork or paraffin and bound with raffia, is excluded from the scope of the antidumping and countervailing duty orders. *See* Memorandum from Edward Easton to Richard Moreland, dated August 25, 1997, on file in the Central Records Unit (CRU) of the main Commerce Building, Room B–099.

(2) On July 30, 1998, the Department issued a scope ruling, finding that multipacks consisting of six one-pound packages of pasta that are shrink-wrapped into a single package are within the scope of the antidumping and countervailing duty orders. *See* letter from Susan H. Kuhbach, Acting Deputy Assistant Secretary for Import Administration, to Barbara P. Sidari, Vice President, Joseph A. Sidari Company, Inc., dated July 30, 1998, on file in the CRU.

(3) On October 23, 1997, the petitioners filed a request that the Department initiate an anti-circumvention investigation against Barilla, an Italian producer and exporter of pasta. On October 5, 1998, the Department issued a final determination that, pursuant to section 781(a) of the Act. Barilla was circumventing the antidumping duty order by exporting bulk pasta from Italy which it subsequently repackaged in the United States into packages of five pounds or less for sale in the United States. *See Anti-circumvention Inquiry of the Antidumping Duty Order on Certain Pasta from Italy: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 63 FR 54672 (October 13, 1998) (*Barilla Circumvention Inquiry*).

(4) On October 26, 1998, the Department self-initiated a scope inquiry to determine whether a package weighing over five pounds as a result of allowable industry tolerances may be within the scope of the antidumping and countervailing duty orders. On May 24, 1999 we issued a final scope ruling finding that, effective October 26, 1998, pasta in packages weighing up to (and including) five pounds four ounces, and so labeled, is within the scope of the antidumping and countervailing duty orders. *See* Memorandum from John Brinkmann to Richard Moreland, dated May 24, 1999, on file in the CRU.

**Background**

On August 30, 1999, we issued an antidumping questionnaire to Pastificio Fratelli Pagani S.p.A. (Pagani) for the third administrative review of the antidumping duty order, covering the period July 1, 1998, through June 30, 1999. In its October 1, 1999 questionnaire response, Pagani stated that it "exported sacks of nonsubject bulk pasta for repackaging after importation." Based on a supplemental questionnaire issued to Pagani on January 24, 2090, Pagani provided more detail regarding its repackaging operation.

**Scope of the Anti-Circumvention Inquiry**

The product subject to this anti-circumvention inquiry is certain pasta produced in Italy, by Pagani, and exported to the United States in packages of greater than five pounds (2.27 kilograms) that meets all the requirements for the merchandise subject to the antidumping and countervailing duty orders, with the exception of packaging size, and which is repackaged into packages of five pounds (2.27 kilograms) or less after entry into the United States.

**Initiation of Anti-Circumvention Proceeding**

In accordance with section 781(a) of the Act, the Department may include merchandise completed or assembled in the United States within the scope of an existing order when the following four conditions are met: (A) The merchandise sold in the United States is of the same class or kind as any other merchandise that is the subject of an antidumping or countervailing duty order; (B) such merchandise sold in the United States is completed or assembled in the United States from parts or components produced in the foreign country with respect to which such order applies; (C) the process of assembly or completion in the United States is minor or insignificant; and (D) the value of the parts or components produced in the foreign country to which the antidumping and countervailing duty order apply is a significant portion of the total value of the merchandise sold in the United States.

In determining whether to include parts or components in an order, the Act states at section 781(a)(3) that the Department must take into account: (1) The pattern of trade, including sourcing patterns; (2) whether the manufacturer or exporter of the parts or components is affiliated with the person who assembles or completes the merchandise sold in the United States; and (3) whether imports into the United States of the parts or components produced in such foreign country have increased after the initiation of the investigation which resulted in the issuance of such order or finding.

Based upon our review of the information submitted in the context of the third administrative review with respect to the preceding criteria, we find that the all of the elements that warrant an anti-circumvention inquiry are present (*see* Memorandum from Holly A. Kuga to Troy H. Cribb, "Initiation of Anti-circumvention Inquiry of the Antidumping and Countervailing Duty Orders on Certain Pasta from Italy," dated April 21, 2000, on file in the CRU. This information indicates that there is reason to believe that Pagani's repackaging operation in the United States has allowed it to evade

antidumping and countervailing duties on its sales of subject pasta in the United States. Therefore, we are self-initiating an anti-circumvention inquiry to determine whether Pagani's importation of pasta in bulk and subsequent repackaging in the United States constitutes circumvention, with respect to the antidumping and countervailing duty orders on pasta from Italy pursuant to section 781(a) of the Act and 19 CFR 351.225(b).

We intend to notify the International Trade Commission in the event of an affirmative preliminary determination of circumvention, in accordance with 19 CFR 351.225(f)(7).

The Department will not order the suspension of liquidation at this time. However, in accordance with 19 CFR 351.225(l)(2), the Department will instruct the U.S. Customs Service to suspend liquidation in the event of an affirmative preliminary determination of circumvention. Although interested parties may comment prior to the preliminary determination, the Department will establish a formal schedule for submission of final comments after the preliminary determination.

This notice is issued and published pursuant to section 781 of the Act (19 U.S.C. 1677j) and 19 CFR 351.225.

Dated: April 27, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–11306 Filed 5–4–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[Docket No.000411102–0102–01; I.D. 030800B]**

**RIN 0648–ZA85**

### Financial Assistance for Community-Based Habitat Restoration Projects

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability of funds.

**SUMMARY:** NMFS announces that funding will be available to implement grass-roots restoration projects to restore fish habitats under the NOAA Community-Based Restoration Program (CRP or Program). NMFS issues this document describing the conditions under which applications (project proposals) will be accepted under the CRP and the manner in which applications will be selected for funding.

The CRP is a national effort to encourage partnerships with Federal agencies, states, local governments, non-governmental and non-profit organizations, businesses, industry, schools, colleges and universities to carry out locally important habitat restorations to benefit living marine resources. The CRP assists eligible applicants in carrying out on-the-ground habitat restoration projects that address important fishery habitat issues within communities and involve local citizens in marine, estuarine, and anadromous fish habitat restoration activities.

**DATES:** Applications for funding under the CRP will be accepted upon publication of this notice in the **Federal Register** and must be received by 5 p.m. (eastern daylight savings time) on June 9, 2000. Applications received after that time will not be considered for funding. No facsimile applications will be accepted.

**ADDRESSES:** Send applications to Director, NOAA Restoration Center, National Marine Fisheries Service, 1315 East West Highway (F/HC3), Silver Spring, MD 20910–3282; ATTN: CRP Applications.

See **SUPPLEMENTARY INFORMATION** section under Electronic Access for additional information on the Program and for application form information.

**FOR FURTHER INFORMATION CONTACT:** Christopher D. Doley, (301) 713–0174, or by e-mail at Chris.Doley@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. Authority

The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act of 1956, 16 U.S.C. 661–666, to provide grants or cooperative agreements for fisheries habitat restoration.

#### II. Catalogue of Federal Domestic Assistance

This Program is described in the "Catalogue of Federal Domestic Assistance," under program number 11.463, Habitat Conservation.

#### III. Program Description

The CRP, a competitive Federal assistance program, promotes strong partnerships to fund grass-roots, community-based activities that restore habitat and develop stewardship and a conservation ethic for NOAA's trust resources. NOAA's trust resources are living marine resources that include: commercial and recreational fishery resources; anadromous species (fish, such as salmon and striped bass, that spawn in freshwater and then migrate to the sea); endangered and threatened marine species and their habitats; marine mammals; marshes, mangroves, sea grass beds, coral reefs, and other coastal habitats; and all resources associated with National Marine Sanctuaries and National Estuarine Research Reserves.

The Program's objective is to bring together citizen groups, public and nonprofit organizations, industry, corporations and businesses, youth conservation corps, students, landowners, and local government, state, and Federal agencies to implement habitat restoration projects to benefit NOAA trust resources. Partnerships are developed at the national and local level to contribute funding, land, technical assistance, workforce support or other in-kind services to promote citizen participation in the improvement of locally important living marine resources.

The Program recognizes the significant role that communities play in habitat restoration and protection and acknowledges that habitat restoration is often best supported and implemented at a community level. Projects are successful because they have significant community support and depend upon citizens' hands-on involvement. The role of NOAA in the Program is to strengthen the development and implementation of sound restoration projects.

For more information on the Program, see Electronic Access.

#### IV. Funding Availability

This solicitation announces that funding of approximately $500,000 will be available in FY 2000. There is no guarantee that sufficient funds will be available to make awards for all approved projects. Publication of this notice does not obligate NOAA to award any specific project or obligate all or any parts of the available funds.

#### V. Matching Requirements

The focus of the Program is to provide seed money to leverage funds and other contributions from a broad public and private sector to implement locally important habitat restoration to benefit living marine resources. To this end, applicants are expected to demonstrate a minimum 1:1 non-Federal match for CRP funds requested to complete the proposed project. In unusual circumstances, the NOAA Restoration Center may waive the expectation of 1:1 matching funds before funding decisions are made if the project meets the following three requirements: (1)

The project is judged to be an outstanding match with NOAA and NMFS Restoration Center objectives (see **SUPPLEMENTARY INFORMATION** section under Eligible Restoration Activities); (2) the need to carry out the project in a timely fashion to benefit NOAA trust resources is critical; and (3) the project sponsor has attempted to obtain matching funds but was unable to come up with the full 1:1 minimum match expected, and can provide satisfactory supporting documentation. NOAA strongly encourages applicants to leverage as much investment as possible. The degree to which cost-sharing exceeds the minimum level may be taken into account in the final selection of projects to be funded (see Evaluation Criteria section).

The match can come from a variety of public and private sources and can include in-kind goods and services. Federal funds may not be considered matching funds. Applicants are permitted to combine contributions from additional project partners in order to meet the 1:1 expected match for the project. Applicants whose proposals are selected for funding will be bound by the percentage of cost sharing reflected in the award document signed by the Grants Officer.

### VI. Type of Funding Instrument

The Restoration Center envisions funding projects in this solicitation through cooperative agreements and grants. In most cases, the cooperative agreement is likely to be the preferred and most appropriate funding instrument. A cooperative agreement is a legal instrument reflecting a relationship between NOAA and a recipient whenever (1) the principal purpose of the relationship is to provide financial assistance to the recipient and (2) substantial involvement in the project by NOAA is anticipated during performance of the contemplated activity. NOAA is substantially involved in developing locally driven habitat restoration projects, conducting cooperative activities with recipients, and evaluating the performance of projects for their effectiveness in meeting stated restoration goals for improving fisheries habitat. A grant is similar to a cooperative agreement, except that, in the case of grants, substantial involvement by NOAA is not anticipated during the performance of the contemplated activity.

### VII. Eligible Applicants

Any state, local or tribal government, regional governmental body, public or private agency or organization may sponsor a project for funding consideration. Federal agencies are not eligible to apply for funding; however, they are encouraged to work in partnership with state agencies, municipalities, and community groups. Successful applicants will be those whose projects demonstrate that significant, direct benefits are expected to living marine resources as a result of activities by supportive, involved communities. The Program operates under statutory authority that precludes individuals from applying.

Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

### VIII. Award Period

Generally, the Program will make awards only to those projects where requested funding will be used to complete proposed restoration activities, with the exception of post-construction monitoring, within a period of 18 months from the time awards are distributed. If an application is selected for funding, NMFS has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Any subsequent proposal to continue work on an existing project must be submitted to the competitive process for consideration and will not receive preferential treatment. Renewal of an award to increase funding or to extend the period of performance is at the total discretion of the Restoration Center Director.

### IX. Electronic Access

Information on the Program, including partnerships and projects that have been funded to date, can be found on the world wide web at http://www.nmfs.gov/habitat/restoration. Application forms are available over the world wide web at http://www.rdc.noaa.gov/grants/index.html. Application forms can also be obtained from the NOAA Restoration Center (see **ADDRESSES**).

### X. Application Process

Applications for project funding under this program must be complete and in accordance with instructions in the standard NOAA Grants Application Package. Each application must include all specified sections as listed in the Application Package, including, but not limited to, the following: cover sheet (an applicant must use OMB Standard Form 424 and 424B as the cover sheet for each project); budget (SF 424A and budget justification), and narrative project description (statement of work). Budgets must include a detailed breakdown by category of cost estimates as they relate to specific aspects of the project, with appropriate justification for both the Federal and non-Federal shares.

The narrative project description should be limited to five pages in length and should give a clear presentation of the proposed work. It should identify the problems the project will address and describe short-term and long-term objectives and goals, the methods for carrying out and monitoring the project, and its relevance to enhancing habitat to benefit living marine resources. The need for assistance should be demonstrated, and participants (project partners) other than the applicant should be identified. The project narrative should also provide an overview of the organization to establish the qualifications of the applicant seeking funds and identify proposed project staff, and identify the geographic location where the project will occur. Applicants should not assume prior knowledge on the part of NOAA as to the relative merits of the project described in the application.

Applications should not be bound in any manner and should be printed on one side only. All incomplete applications will be returned to the applicant. Three copies (one signed original and two signed copies) of each application are required and must be submitted to the NOAA Restoration Center (see **ADDRESSES**). Applicants may opt to submit additional copies (seven are needed for reviewing purposes) if it doesn't cause a financial hardship.

### XI. Indirect Costs

The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. The total dollar amount of indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal

agency prior to the proposed effective date of the award. However, the Federal share of the indirect costs may not exceed 25 percent of the proposed request for Federal support. Applicants with indirect cost rates above 25 percent may use the amount above the 25–percent level as part of the non-Federal share. A copy of the approved, currently negotiated Indirect Cost Agreement with the Federal Government must be included in the application. If the applicant does not have a current negotiated rate, and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of the award.

**XII. Eligible Restoration Activities**

NOAA is interested in funding projects that will result in on-the-ground restoration of habitat to benefit living marine resources, including anadromous fish species. Habitat restoration is defined here as activities that directly result in the reestablishment of formerly existing or re-creation of functional and productive, marine, estuarine, or coastal river biological systems. Restoration may include, but is not limited to, the improvement of coastal wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; improvement or reestablishment of fish passageway; natural or artificial reef/substrate/habitat creation; the establishment of riparian buffer zones and improvement of freshwater habitat features that support anadromous fishes; the planting of native coastal wetland and submerged aquatic vegetation; and the improvement of feeding, spawning and growth areas essential to marine or anadromous fish.

In general, proposed projects should clearly demonstrate anticipated benefits to habitats, such as salt marshes, seagrass beds, coral reefs, mangrove forests and riparian habitat near rivers, streams and creeks used or formerly used by anadromous fish. To protect the Federal investment, projects on private lands need to provide assurance that the project will be maintained for its intended purpose for the life of the project. Projects on permanently protected lands may be given priority consideration.

Projects must involve significant community support through an educational and/or volunteer component tied to the restoration activities. Implementation of on-the-ground habitat restoration projects must involve community outreach and monitoring to assess project success, and may involve limited pre-implementation activities, such as engineering and design and short-term baseline studies. Proposals emphasizing a singular component, such as only outreach, monitoring, or program coordination are discouraged, as are requests primarily for administration, salaries, overhead and travel.

Although NOAA recognizes that water quality issues may impact habitat restoration efforts, this initiative is intended to fund physical habitat restoration projects rather than direct water quality improvement measures, such as wastewater treatment plant upgrades or combined sewer outfall corrections. Similarly, the following restoration projects will not be eligible for funding: (1) Activities that constitute legally required mitigation for the adverse effects of an activity regulated or otherwise governed by state or Federal law; (2) activities that constitute restoration for natural resource damages under Federal or state law, and (3) activities that are required by a separate consent decree, court order, statute or regulation. Funds from this program may be sought to enhance restoration activities beyond the scope legally required by these activities.

**XIII. Examples of Previously Funded Projects**

The following examples are community-based restoration projects that have been funded with assistance from the Restoration Center. These examples are only illustrative and are not intended to limit the scope of future proposals in any way.

*Submerged Aquatic Vegetation Restoration*

Funding was provided to evaluate the feasibility of using volunteer divers to restore seagrass. A protocol was developed to train volunteers in water quality monitoring and seagrass transplantation techniques.

*Fish Ladder Construction*

An impediment to fish passage was corrected through the design and construction of a step-pool fish ladder, which now allows native steelhead trout to reach their historical spawning grounds.

*Invasive Plant Removal*

Funding was provided to a coalition of volunteer groups called "Pepperbusters" who worked to remove exotic Brazilian pepper plants and replant native shoreline vegetation.

*Salt Marsh Restoration*

Tidal flushing was restored to 20 acres of salt marsh by replacing an undersized culvert to increase the mean high water level in the restricted portion of the marsh.

*Oyster Reef Restoration*

Funding was provided to increase oyster reef habitat by reconstructing historical reefs and seeding them with hatchery-produced seed oysters grown in floating cages by students.

*Kelp Forest Restoration*

Funding was provided to train community dive groups in kelp reforestation activities, including the preparation, planting and maintenance of kelp sites, documentation of growth patterns and changes in marine life attracted to the newly planted kelp areas.

*Wetland Plant Nursery*

Funding was provided to start an innovative wetland nursery program in local high schools, where science and ecology classes build wetland nurseries on-campus to grow salt marsh grasses for local restoration efforts.

*Riparian Habitat Restoration*

Funding was provided to train youth corps in the use of biorestoration and stabilization techniques to restore eroding riverbanks and improve habitat for salmon smolt and other fish species.

*Anadromous Fish Habitat Restoration*

Highly functional salmonid and wildlife habitat was restored with the cooperation of private landowners by opening silted enclosures along a slough to provide refuge for juvenile salmonids during the winter flood flows.

**XIV. Project Selection Process**

Applications will be screened to determine if applicants meet the minimum Program requirements as described in this notice. Eligible restoration projects will undergo a technical review, ranking, and selection process. As appropriate during this process, the NOAA Restoration Center will solicit individual technical evaluations of each project and may consult with other NOAA offices, the NOAA Grants Management Division, the U.S. Department of Commerce, the Regional Fishery Management Councils, other Federal and state agencies, such as state coastal management agencies and state fish and wildlife agencies, and private and public sector subject experts or such other interested parties as potential partners who have knowledge of a specific project or its subject matter.

Projects will be ranked by individual reviewers according to the criteria and weights described in this solicitation.

The individual evaluation comments, and composite project ranks of reviewers will be presented to the Director of the NOAA Restoration Center. The Director, in consultation with Program staff, may take into account the following program priorities: (a) geographic location and habitat type to be restored, (b) diversity of applicants, (c) degree of duplication of proposed activities with other projects that are currently funded or approved for funding by NOAA and other Federal agencies; and (d) availability of remaining funds. As a result, awards may not necessarily be made to the highest scored proposals. In addition, the Director, in consultation with Program staff, will select the proposals to be funded, determine which components of the selected projects will be funded, and determine the amount of funds available for each proposal.

Applicants may be asked to modify objectives, work plans, or budgets prior to final approval of an award. The exact amount of funds awarded, the final scope of activities, the project duration, and specific NOAA cooperative involvement with the activities of each project will be determined in pre-award negotiations among the applicant, the NOAA Grants Office, and the NOAA Program staff. Projects should not be initiated in expectation of Federal funding until a notice of award document is received from the NOAA Grants Office.

Successful applicants generally will be selected approximately 90 days after the date of publication in the **Federal Register** of this notice. The earliest date for awards will be approximately 150 days after the date of publication in the **Federal Register** of this notice, when all NOAA/applicant negotiations of cooperative activities have been completed. Applicants should consider this selection and processing time in developing requested start dates for their applications.

## XV. Evaluation Criteria

Reviewers will assign scores to proposals ranging from 0 (unacceptable) to 100 (excellent) points based on the following four evaluation criteria and respective weights:

(1) *Benefit to living marine resources* (25 percent)

NOAA is interested in funding projects where benefits to living marine resources can be realized. Therefore, NOAA will evaluate proposals based on the potential of the restoration project to restore, protect, conserve, and create habitats and ecosystems vital to self-sustaining populations of living marine resources under NOAA Fisheries stewardship. Locations where restoration projects may have high potential to benefit NOAA trust resources include areas identified as essential fish habitat (EFH) and areas within EFH identified as Habitat Areas of Particular Concern; areas identified as critical habitat for listed marine and anadromous species; areas identified as important habitat for marine mammals; areas located within National Marine Sanctuaries or National Estuarine Research Reserves; watersheds or such other areas under conservation management as special management areas under state coastal management programs; and other important commercial or recreational marine fish habitat, including degraded areas that formerly were important habitat for living marine resources.

(2) *Technical Merit and Adequacy of Implementation Plan* (25 percent)

Proposals will be evaluated on the technical feasibility of the project from both biological and engineering perspectives, and on the qualifications and past experience of the project leaders and/or partners in designing, implementing and effectively managing and overseeing projects. Communities and/or organizations developing their first locally driven restoration project may not be able to document past experience and, therefore, will be evaluated on the basis of their potential to effectively manage and oversee all project phases and on the availability of NOAA or other technical expertise to guide the project to a successful completion. Proposals will also be evaluated on their ability to (a) deliver the restoration objective stated in the proposal; (b) provide educational benefits; (c) demonstrate that the restoration activity will be sustainable and long-lasting; and (d) provide assurance that implementation of the project will meet all Federal and state environmental laws by obtaining or proceeding to obtain applicable permits and consultations.

(3) *Community Commitment and Partnership Development* (25 percent)

Proposals will be evaluated on the depth and breadth of the community's support. Projects must incorporate significant community involvement, which may include: (a) hands-on training and restoration activities undertaken by volunteer students, qualified youth conservation or service corps, or other citizens; (b) input from local entities, such as businesses, conservation organizations, Minority Serving Institutions, and others, either through in-kind goods and services (earth moving, technical expertise, easements) or cash contributions; (c) visibility within the community and demonstrated potential for public outreach; (d) cooperation with private landowners who set an example within the community for natural resource conservation; (e) support by state and local governments; (f) representation of those within the community who have an interest in or are affected by the project and seek the benefits of the restoration; (g) ability to achieve long-term stewardship for restored resources and to generate a community conservation ethic; and/or (h) demonstration by the applicant that the project is incorporated into a regional or community planning process or otherwise assure that all residents or citizens affected by the project are provided an opportunity to participate.

(4) *Cost-effectiveness and Budget Justification* (25 percent)

Projects will be evaluated on (a) their ability to demonstrate that a significant benefit will be generated for reasonable cost; (b) the extent of habitat and degree to which it will be restored; (c) NOAA's ability to act as a catalyst to implement the project, i.e. whether the proposed activity is more likely to occur or will occur more quickly or efficiently with NOAA involvement; (d) the percentage of funds that will be used for physical, on-the-ground restoration versus salaries, administration and overhead; and (e) the demonstration of partnership and collaboration as reflected in the budget detail. NOAA will expect cost-sharing to leverage funding and to encourage partnerships among government, industry, and academia, to address the needs of communities and to restore important fisheries habitat.

## XVI. Funding Ranges

The NOAA Restoration Center anticipates that typical project awards will range from $25,000 to $75,000; NOAA will not accept proposals under $10,000 or proposals over $120,000 in this solicitation. The number of awards to be made in FY 2000 will depend on the number of eligible applications received, the amount of funds requested by applicants, and the rating and ranking of the proposals. The exact amount of funds awarded to a project will be determined in pre-award negotiations between the applicant and NOAA representatives. Funds awarded cannot necessarily pay for all the costs that the recipient might incur in the course of carrying out the project. Allowable costs are determined by reference to the Office of Management and Budget Circulars A–122, "Cost Principles for Non-profit Organizations"; A–21, "Cost Principles

for Education Institutions"; and A–87, "Cost Principles for State, Local and Indian Tribal Governments." Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are "necessary and reasonable." However, in order to encourage on-the-ground restoration, if funding for salaries is requested, at least 75 percent of the total salary request must be used to support staff accomplishing the restoration work.

**XVII. Other Requirements**

*Federal Policies and Procedures*

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures application to Federal financial assistance awards.

*Past Performance*

Any first-time applicant for Federal grant funds under this announcement is subject to a pre-award accounting survey prior to execution of the award. Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

*Pre-award Activities*

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of NOAA to cover pre-award costs.

*No Obligation of Future Funding*

If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Restoration Center Director.

*Delinquent Federal Debts*

No award of Federal funds shall be made to an applicant or to its subrecipients who have any outstanding delinquent Federal debt or fine until–

1. The delinquent account is paid in full;
2. A negotiated repayment schedule is established, and, at least, one payment is received; or
3. Other arrangements satisfactory to Commerce are made.

*Name Check Review*

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal whether key individuals associated with the applicant have been convicted of, or are presently facing, such criminal charges as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management, honesty, or financial integrity. Potential non-profit and for-profit recipients may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

*Primary Applicant Certifications*

All primary applicants must submit a completed Form CD 511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. *Nonprocurement debarment and suspension.* Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed earlier applies;
2. *Drug-free workplace.* Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR 26, subpart F, "Government-side Requirements for Drug-Free Workplace (Grants)," and the related section of the certification form prescribed earlier applies; also please enter the Principal Place of Performance, that is, where the work will be done.
3. *Anti-Lobbying.* Persons (as defined at 15 CFR 28.105) are subject to the lobbying provision of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, contracts for more than $100,000, and loans and loan guarantees for more than $150,000.
4. *Anti-Lobbying Disclosures.* Any applicant who has paid or will pay for lobbying using any funds must submit a Form SF-LLL, "Disclosure Form to Report Lobbying," as required under 15 CFR part 28, appendix B.

*Lower Tier Certifications*

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD 512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure Form SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

*False Statements*

A false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

*Intergovernmental Review*

Applications under this program are subject to the provisions of E.O. 12372, "Intergovernmental Review of Federal Programs."

*American-made Equipment and Products*

Applicants are hereby notified that they are encouraged, to the extent feasible, to purchase American-made equipment and products with funding provided under this program.

**Classification**

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or by any other law for this notice concerning grants, benefits, and contracts. Furthermore, a regulatory flexibility analysis is not required for the purposes of the Regulatory Flexibility Act.

This action has been determined to be "not significant" for purposes of E.O. 12866.

This notice contains collections of information subject to the Paperwork Reduction Act, which have been approved by OMB under OMB control numbers 0348–0040, 0348–0043, 0348–0044, and 0348–0046.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Dated: May 1, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–11284 Filed 5–4–00; 8:45 am]

BILLING CODE 3510–22–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

May 1, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** May 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryover, carryforward, swing, special shift and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 62659, published on November 17, 1999.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

May 1, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 9, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Republic of Turkey and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 8, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted limit [1] |
|---|---|
| Fabric Group 219, 313–O [2], 314–O [3], 315–O [4], 317–O [5], 326–O [6], 617, 625/626/627/628/629, as a group. | 181,635,090 square meters of which not more than 47,480,835 square meters shall be in Category 219; not more than 56,280,079 square meters shall be in Category 313–O; not more than 33,764,149 square meters shall be in Category 314–O; not more than 45,370,578 square meters shall be in Category 315–O; not more than 47,480,835 square meters shall be in Category 317–O; not more than 5,275,647 square meters shall be in Category 326–O, and not more than 31,653,892 square meters shall be in Category 617. |
| Sublevel in Fabric Group 625/626/627/628/629 | 21,374,292 square meters of which not more than 10,088,665 square meters shall be in Category 625; not more than 8,549,716 square meters shall be in Category 626; not more than 8,549,716 square meters shall be in Category 627; not more than 8,549,716 square meters shall be in Category 628; and not more than 8,549,716 square meters shall be in Category 629. |
| Limits not in a group | |
| 300/301 | 11,022,486 kilograms. |
| 338/339/638/639 | 7,032,913 dozen of which not more than 5,975,240 dozen shall be in Categories 338–S/339–S/638–S/639–S [7]. |
| 340/640 | 1,570,897 dozen of which not more than 499,226 dozen shall be in Categories 340–Y/640–Y [8]. |
| 347/348 | 7,090,182 dozen of which not more than 2,339,172 dozen shall be in Categories 347–T/348–T [9]. |
| 350 | 707,784 dozen. |
| 351/651 | 1,260,126 dozen. |
| 352/652 | 3,460,161 dozen. |
| 361 | 2,716,520 numbers. |
| 369–S [10] | 2,408,734 kilograms. |
| 410/624 | 1,135,918 square meters of which not more than 888,390 square meters shall be in Category 410. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[3] Category 314–O: all HTS numbers except 5209.51.6015.

[4] Category 315–O: all HTS numbers except 5208.52.4055.

[5] Category 317–O: all HTS numbers except 5208.59.2085.

[6] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[7] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

[8] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[9] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010. 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[10] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs

exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–11240 Filed 5–4–00; 8:45 am]

BILLING CODE 3510–DR–F

## COMMODITY FUTURES TRADING COMMISSION

### New York Cotton Exchange: Proposed Amendments To Convert the U.S. Dollar Index Futures Contract to Physical Delivery From Cash Settlement.

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice of availability of proposed amendments to the terms and conditions of commodity futures contract.

**SUMMARY:** The FINEX Division of the New York Cotton Exchange (NYCE or Exchange) has submitted proposed amendments to convert its U.S. Dollar Index (USDX or Index) futures contract to physical delivery from its existing cash settlement provisions. Under the proposal, the NYCE would no longer cash settle the USDX futures contract based on a survey of banks conducted by Reuters. Rather, the contract would provide for physical delivery of U.S. dollars in exchange for a basket of foreign currencies based on the fixed percentage weights of the Index.

The Acting Director of the Division of Economic Analysis (Division), acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

**DATES:** Comments must be received on or before May 22, 2000.

**ADDRESSES:** Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendments to the NYCE U.S. Dollar Index futures contract.

**FOR FURTHER INFORMATION CONTACT:** Please contact Michael Penick of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5279. Facsimile number: (202) 418–5527. Electronic mail: mpenick@cftc.gov.

**SUPPLEMENTARY INFORMATION:** The USDX is a geometric index of six foreign currencies with fixed percentage weights. The six currencies and their percentage weights are as follows: euro (57.6%); Japanese yen (13.6%); British pound (11.9%); Canadian dollar (9.1%); Swedish krona (4.2%); and Swiss franc (3.6%). The index formula is:

$$USDX = 50.14348112 * \prod_{i=1}^{6} = \left(\text{Spot Rate}_{it}\right)^{\text{currency weight i}}$$

Where Spot Rate$_i$ = exchange rate of currency i at time t with all exchange rates expressed in European terms, *i.e.*, units of foreign currency per U.S. dollar, and Π is the mathematical symbol for the product of a multiplication.

Under current rules, the USDX futures contract is cash settled at expiration based on a survey of banks for indicative bids and offers. The survey is conducted by Reuters USA during the last half hour of trading on the last trading day. The Exchange stated that "over time, there has been a deterioration of the quality of the indications and a decline in the number of bank contributors."

The Exchange proposes replacing the cash settlement procedure with a physical delivery procedure. Under this procedure, a long position holder in the subject contract would receive delivery of U.S. dollars and make payment in a basket of the six foreign currencies that are components of the USDX. Under the proposal, the contract size would remain $1,000 times the Index. Thus, at an Index level at delivery time of 100, the long would receive U.S. $100,000 and pay an amount of foreign currency valued at $100,000. Similarly, the short position holder would deliver U.S. $100,000 and receive payment in the basket of foreign currencies.

As part of the delivery procedure, the Exchange would determine a final settlement price. The final settlement price would be based, to the extent possible, on futures prices of NYCE currency futures contracts that expire at the same time as the subject USDX futures contract. If necessary, the rate for any currency that does not have an NYCE futures contract expiring at the same time as the USDX contract would be "determined by the [NYCE's] Settlement Committee taking into account cash and futures prices of the underlying currency component and any other information that the Committee may deem appropriate."

The final settlement price would be used to determine both the amount of U.S. dollars that the short delivers and the long receives and the amount of foreign currency that the long pays and the short receives. For example, suppose the final USDX settlement price is 100.00 and one euro is worth exactly $1.00. As noted, the weighting of the euro is 57.6%. In this instance, the short would deliver $100,000 ($1,000 times 100.00). The long would pay a basket of foreign currency worth $100,000. That basket would contain $57,600 (57.6% of $100,000) worth of euros and $42.400 worth of the other five currencies distributed according to their respective weights. Since the euro in this example is worth exactly $1.00, the long would pay 57,600 euros. The amount that the long would pay of each in the other five foreign currencies would be calculated similarly, based on their percentage weights and currency exchange rates.

Now, suppose the final settlement price is $110.00 and the euro is valued at 90.00 cents. In this instance, the short would deliver and the long would receive $110,000 ($1,000 times 110.00). The long would pay and the short would receive a basket of foreign currency worth $110,000. That basket would contain $63,360 (57.6% of $110.000) worth of the euros and $46,640 worth of the other five currencies distributed according to their respective weights. Since the euro in this example is worth $0.90, the long would pay 70,400 euros ($63,360 divided by 0.90), compared to the 57,600 euros that the long would pay if the USDX were 100.00 and the euro were valued at $1.00 under the preceding example.

As shown in these examples, under the proposed physical delivery procedure, neither the number of U.S.

dollars delivered nor the size of the basket of currencies is fixed.[1] Rather, both amounts vary in the same direction as the futures price (or index level) changes. Specifically, if the Index rises, the long receives more dollars, but is also obligated to pay more foreign currency units. Conversely, if the Index declines, the long receives fewer dollars, but is obligated to pay fewer foreign currency units.

The Division requests comment on the above-noted delivery provision. How does this novel delivery provision affect the hedging or price discovery functions of the futures contract? Also, under this delivery procedure, can market participant who make or take delivery realize profits or losses in the contract?

For most physical delivery futures contracts, it is not possible to benefit from manipulating the daily settlement price used in delivery invoices, since any benefit to a futures margin account would be offset by losses associated with that invoice price at delivery. In the revised USDX contract, the final settlement price would be used to determine both the invoice price and the amount of currency delivered. The Division requests comment regarding whether, given the unusual terms of the revised USDX futures contract, it is possible to benefit from manipulating the proposed final settlement price and, if so, whether the final settlement price is readily susceptible to manipulation.

The proposal was submitted to the Commission under the Commission's 45-day Fast Track procedures of Commission Regulation 1.41(b)(2). Under these procedures, absent Commission action to the contrary, the proposal would be deemed approved at the close of business on May 30, 2000. In view of the limited review period under the Fast Track procedures, the Division has determined to publish for public comment notice of the proposal for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the proposed amendments will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, D.C. 20581. Copies of the proposed amendments can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 418–5100.

Other materials submitted by the NYCE may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendments, or with respect to other materials submitted by the NYCE, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st St., NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on May 1, 2000.

**Richard A. Shilts,**

*Acting Director.*

[FR Doc. 00–11241 Filed 5–4–00; 8:45 am]

BILLING CODE 6351–01–M

[1] For most futures contracts, the amount of the commodity delivered is fixed (*e.g.* 5,000 bushels of corn), while only the number of dollars paid for the commodity varies as the futures price varies.

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**AGENCY:** U.S. Consumer Product Safety Commission Washington, DC 20207.

**TIME AND DATE:** Friday, May 12, 2000, 10 a.m.

**LOCATION:** Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

**STATUS:** Open to the Public.

**MATTER TO BE CONSIDERED:**

**Mid-Year Review**

The staff will brief the Commission on issues related to fiscal year 2000 mid-year review.

For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: May 3, 2000.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 00–11425 Filed 5–3–00; 2:46 pm]

BILLING CODE 6355–01–M

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Proposed New Information Collection; Comment Request

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice.

**SUMMARY:** The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed application entitled: Application for Outreach to Individuals with a Disability. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section by July 5, 2000.

**ADDRESSES:** Send comments to the Corporation for National and Community Service, Attn: Ms. Nancy Talbot, Director, Planning and Program Development, 1201 New York Avenue, NW., Washington, DC 20525.

**FOR FURTHER INFORMATION CONTACT:** Nancy Talbot (202) 606–5000, ext. 470.

**SUPPLEMENTARY INFORMATION:** The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

**Background**

The Application for Outreach to Individuals with a Disability provides the background, requirements, and instructions that potential applicants need to complete an application to the Corporation for funds to provide outreach and help increase the participation of individuals with a disability in national service.

**Current Action**

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these application guidelines. This is a new application form.

*Type of Review:* New Collection.
*Agency:* Corporation for National and Community Service.

*Title:* Application for Outreach to Individuals with a Disability.

*OMB Number:* None.

*Agency Number:* None.

*Affected Public:* Corporation-approved state commissions on national and community service, state education agencies, national nonprofit organizations with expertise in disability issues, tribal or territorial governments, and public or private nonprofit organizations.

*Total Respondents:* 25.

*Frequency:* Once.

*Average Time Per Response:* Ten (10) hours.

*Estimated Total Burden Hours:* 250 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintenance):* None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 2, 2000.

**Gary Kowalczyk,**

*Coordinator, National Service Programs, Corporation for National and Community Service.*

[FR Doc. 00–11236 Filed 5–4–00; 8:45 am]

BILLING CODE 6050–28–U

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Notice of Pre-Application Conference Calls for Potential Applicants for Learn and Serve America and AmeriCorps Grants To Overcome the Digital Divide

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of pre-application technical assistance conference calls.

**SUMMARY:** We have scheduled three conference calls to provide technical assistance to organizations interested in applying for grants to support efforts to overcome the digital divide through the Learn and Serve America School-based and AmeriCorps State competitive and National Direct programs.

**FOR FURTHER INFORMATION CONTACT:** To register for one of the conference calls contact Rosa Harrison, (202) 606–5000, ext. 433, TDD (202) 565–2799. For individuals with disabilities, we will make information available in alternative formats upon request.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** on April 28, 2000 (65 FR 24920) we announced the availability of approximately $12,500,000 to award grants under the Learn and Serve America K–12 School-based and AmeriCorps State Competitive and National Direct funding streams to support efforts to help overcome the digital divide. For a copy of this notice and related materials and to access additional information about Learn and Serve America and AmeriCorps, visit our web site: http://www.nationalservice.org.

We have scheduled three conference calls regarding the application processes for these grants. The conference calls will assist participants in understanding the application processes and the requirements for grants made under the notice of funding availability.

**Conference Calls**

Tuesday, May 9, 4 p.m.–5 p.m. Eastern Time
Wednesday, May 10, 1 p.m.–2 p.m. Eastern Time
Thursday, May 11, 12 p.m.–1 p.m. Eastern Time

To register for one of the conference calls contact Rosa Harrison, (202) 606–5000, ext. 433, TDD (202) 565–2799.

Dated: May 2, 2000.

**Gary Kowalczyk,**

*Coordinator, National Service Programs, Corporation for National and Community Service.*

[FR Doc. 00–11286 Filed 5–4–00; 8:45 am]

BILLING CODE 6050–28–U

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed Collection; Comment Request

**AGENCY:** Office of the Under Secretary of Defense (Policy).

**ACTION:** Notice.

In compliance with Section 35006(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Policy) announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or forms of information technology.

**DATES:** Consideration will be given to all comments received by July 5, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to Gladys Crews, ODUSD(PS), Room BE865, 2000 Defense Pentagon, Washington, DC 20301–2000.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call (703) 697–5495.

*Title and OMB Number:* Foreign Visitor System; 0704–0221.

*Needs and Uses:* The information collection requirement is necessary to record the reporting of authorized foreign visits that have occurred at Department of Defense (DoD) Sites and associated locations, which is designed to meet the requirements set forth in DoD Directive 5230.20, "Visits, Assignments, and Exchanges of Foreign Nationals."

*Affected Public:* Individuals (Representing Foreign Governments and Businesses or other For-Profits).

*Annual Burden Hours:* 3250.

*Number of Respondents:* 13,000.

*Responses per Respondent:* 1.

*Average Burden per Response:* 15 minutes.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Respondents are individuals representing foreign governments or foreign businesses visiting Department of Defense facilities. DoD personnel process the information into an automated system. The information collected is used to positively identify the individual. This centralized information system is necessary to confirm that approved visits have occurred.

Dated: May 1, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

[FR Doc. 00–11195 Filed 5–4–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Defense Partnership Council Meeting

**AGENCY:** Department of Defense.

**ACTION:** Notice of meeting.

**SUMMARY:** The Department of Defense (DoD) announces a meeting of the Defense Partnership Council. Notice of this meeting is required under the Federal Advisory Committee Act. This meeting is open to the public. The agenda will include a partnership presentation by the U.S. Army Operations Support Command (Provisional), NAGE Local R7–68 and AFGE Local 15, and other related Partnership topics.

**DATES:** The meeting is to be held May 23, 2000, in room 1E801, Conference Room 7, the Pentagon, from 1 p.m. until 3 p.m. Comments should be received by May 16, 2000, in order to be considered at the May 23 meeting.

**ADDRESSES:** We invite interested persons and organizations to submit written comments or recommendations. Mail or deliver your comments or recommendations to Mr. Ben James at the address shown below. Seating is limited and available on a first-come, first-serve basis. Individuals wishing to attend who do not possess an appropriate Pentagon building pass should call the below listed telephone number to obtain instructions for entry into the Pentagon. Handicapped individuals wishing to attend should also call the below listed telephone number to obtain appropriate accommodations.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben James, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Blvd, Suite B–200, Arlington, VA 22209–5144, (703) 696–6301, ext. 730.

Dated: April 25, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–11194 Filed 5–4–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Notice of Meeting

**AGENCY:** Department of Defense Education Benefits Board of Actuaries.

**ACTION:** Notice of meeting.

**SUMMARY:** A meeting of the board has been schedule to execute the provisions of Chapter 101, Title 10, United States Code (10 U.S.C. 2006 *et. seq.*). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the G.I. Bill. Persons desiring to: (1) Attend the DoD Education Benefits Board of Actuaries meeting or, (2) make an oral presentation or submit a written statement for consideration at the meeting must notify Wendie Powell at (703) 696–7400 by July 24, 2000.

Notice of this meeting is required under the Federal Advisory Committee Act.

**DATES:** August 4, 2000, 10 a.m. to 1 p.m.

**ADDRESSES:** The Pentagon, Room 1E801—Room 5.

**FOR FURTHER INFORMATION CONTACT:** Christopher Doyle, Chief Actuary, DoD Office of the Actuary, 1555 Wilson Boulevard, Suite 701, Arlington, VA 22209–2405, (703) 696–7407.

Dated: April 25, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–11191 Filed 5–4–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the President's Information Technology Advisory Committee (Formerly the Presidential Advisory Committee on High Performance Computing and Communications, Information Technology, and the Next Generation Internet)

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and summary agenda for the next meeting of the President's Information Technology Advisory Committee. The meeting will be open to the public. Notice of this meeting is required under the Federal Advisory Committee Act, (Pub. L. 92–463).

**DATES:** May 18, 2000.

**ADDRESSES:** NSF Board Room (Room 1235), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**Proposed Schedule and Agenda**

The President's Information Technology Advisory Committee (PITAC) will meet in open session from approximately 8:30 a.m. to 12 p.m. and 1:30 p.m. to 4:30 p.m. on May 18, 2000. This meeting will include:

(1) Updates on PITAC's panels on: learning, digital libraries; open source software; government; healthcare; the digital divide; and international issues.

(2) The issues of the digital divide.

(3) Information technology strategies in Federal agencies.

This notice is being published less than 15 days prior to meeting because of administrative oversight.

**FOR FURTHER INFORMATION CONTACT:** The National Coordination Office for Computing, Information, and Communications provides information about this Committee on its web site at: http://www.ccic.gov; it can also be reached at (703) 306–4722. Public seating for this meeting is limited, and is available on a first-come, first served basis.

Dated: May 1, 2000.

**L. N. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–11196 Filed 5–4–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Notice of meeting

**AGENCY:** Department of Defense Retirement Board of Actuaries.

**ACTION:** Notice of meeting.

**SUMMARY:** A meeting of the board has been scheduled to execute the provisions of Chapter 74, Title 10, United States Code (10 U.S.C. 1464 et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the Military Retirement System. Persons desiring to: (1) Attend the DoD Retirement Board of Actuaries meeting or, (2) make an oral presentation or submit a written statement for consideration at the

meeting, must notify Wendie Powell at (703) 696–7400 by July 24, 2000. Notice of this meeting is required under the Federal Advisory Committee Act.

**DATES:** August 3, 2000, 1:00 pm to 5:00 pm

**ADDRESSES:** The Pentagon, Room 1E801–Room 5.

**FOR FURTHER INFORMATION CONTACT:** Christopher Doyle, Chief Actuary, DoD Office of the Actuary, 1555 Wilson Boulevard, Suite 701, Arlington, VA 22209–2405, (703) 696–7407.

Dated: April 25, 2000.

**Patricia L. Topping,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–11192 Filed 5–4–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Threat Reduction Advisory Committee

**AGENCY:** Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics).

**ACTION:** Notice of Advisory Committee Meeting.

**SUMMARY:** The Threat Reduction Advisory Committee will meet in closed session on Wednesday, July 12, 2000 at the Pentagon.

The mission of the Committee is to advise the Under Secretary of Defense (Acquisition, Technology, and Logistics) on technology security, counterproliferation, chemical and biological defense, sustainment of the nuclear weapons stockpile, and other matters related to the Defense Threat Reduction Agency's mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix II, (1994)), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly the meeting will be closed to the public.

**DATES:** Wednesday, July 12, 2000, (8:00 a.m. to 5:30 p.m.)

**ADDRESSES:** Room 3E869, The Pentagon, Washington, DC 20301.

**FOR FURTHER INFORMATION CONTACT:** Contact Ms. Eileen Giglio, Defense Threat Reduction Agency/AS, 45045 Aviation Drive, Dulles, Va 20166–7517. Phone: (703) 326–8789.

Dated: April 25, 2000.

**Patricia L. Toppings**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–11193 Filed 5–4–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Office of Secretary of Defense

### Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on May 2, 2000, May 9, 2000, May 16, 2000, May 23, 2000 and May 30, 2000, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: April 25, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–11190 Filed 5–4–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### ARMS Initiative Implementation

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of the next meeting of the Armament Retooling and Manufacturing Support (ARMS) Executive Advisory Committee (EAC). The EAC encourages the development of new and innovative methods to optimize the asset value of the Government-Owned, Contractor-Operated ammunition industrial base for peacetime and national emergency requirements, while promoting economical and efficient processes at minimal operating costs, retention of critical skills, community economic benefits, and a potential model for defense conversion. This meeting will be hosted by Alliant Ammunition and Powder Company, the Facility Use Contractor at Radford AAP, along with the Business Assistance Center-Defense Conversion at Radford University. The purpose of the meeting is to update the EAC and public on the status of ongoing actions, new items of interest, and suggested future direction/actions. Topics for this meeting will include—Strategic Planning for the ARMS Program; the ARMS/USDA Loan Guarantee Program; Facility Contracting and Leasing; ARMS Database and Metrics; a FAR 45 Update; the swearing in of new EAC Members; and a tour of the Radford Facility. This meeting is open to the public.

*Date of Meeting:* June 14–15, 2000.

*Place of Meeting:* Radford University International Center (RUIC), Radford, Virginia.

*Time of Meeting:* 8 am–5 pm on June 14 and 8 am–2 pm on June 15.

**FOR FURTHER INFORMATION CONTACT:** Mr. Elwood H. Weber, ARMS Task Force, HQ Army Materiel Command, 5001 Eisenhower Avenue, Alexandria Virginia 22333; Phone (703) 617–9788

**SUPPLEMENTARY INFORMATION:** A block of rooms has been reserved at the Best Western Radford Inn for the nights of 13–14 June 2000. The Radford Inn is located at 1501 Tyler Avenue, Radford, Virginia 24141, Local Phone (540) 639–3000. Please make your reservations by calling 800–628–1955. Be sure to mention that you are attending the ARMS PPTF. Reserve your room prior to May 30th to get the Government Rate of $53.25 a night. Also notify this office of your attendance by notifying either Susan Alten, susan.alten@hqda.army.mil 703–617–4246 (DSN 767–4246) or Elwood Weber, eweber@hqamc.army.mil, 703–617–9788 (DSN 767–9788). To insure adequate arrangements (transportation, conference facilities, *etc.*) for all attendees, we request your attendance notification with this office by May 30, 2000. Corporate casual is meeting attire.

**John A. Hall,**

*Alternate Army Federal Register Liaison Officer.*

[FR Doc. 00–11297 Filed 5–4–00; 8:45 am]

**BILLING CODE 3710–08–P**

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## DEPARTMENT OF DEFENSE

### Department of Army; Corps of Engineers

### Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Wetland Restoration and/or Creation in the Barataria Basin, Louisiana, a Component of the Louisiana Coastal Area, Louisiana—Ecosystem Restoration, Barrier Island Restoration, Marsh Creation, and River Diversion, Barataria Basin Feasibility Study

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the U.S. Army Corps of Engineers (USACE), New Orleans District (NOD) will prepare a Draft Environmental Impact Statement (DEIS) to determine the feasibility of implementing wetland restoration/creation in the Barataria Basin, located in Lafourche Parish, Louisiana. The proposed action is strategically planned as an initial effort for coastal restoration under the existing authority for the Louisiana Coastal Area (LCA), Louisiana—Ecosystem Restoration Louisiana—Ecosystem Restoration, Barrier Island Restoration, Marsh Creation, and River Diversion, Barataria Basin Feasibility Study.

The LCA Feasibility Study will evaluate the coastal restoration strategies described in the December 1998 document entitled "Coast 2050: Toward a Sustainable Coastal Louisiana". The LCA Feasibility Study will evaluate the Coast 2050 Plan as a whole and select strategies, such as the proposed action, to be analyzed in feasibility-level detail. The Coast 2050 Plan has been developed under legislative mandate and is a result of recognition by Federal, State, and local agencies that a single plan is needed that incorporates a clear vision for the coast, builds on previous work, integrates coastal management and coastal restoration approaches, and adopts a multiple-use approach to restoration planning.

In general, the overall purpose of the Coast 2050 Plan is to sustain a coastal ecosystem that supports and protects the environment, economy, and culture of southern Louisiana, and contributes greatly to the economy and well-being of the nation. The purpose of the Coast 2050 strategies for the Barataria Basin is to restore and/or protect the natural and human environment to create a sustainable ecosystem in the Barataria Basin within the context of the Gulf of Mexico ecosystem, including coastal Louisiana. The purpose of the proposed action, wetland restoration/creation strategy R2–16 and R2–17 of the Coast 2050 Plan for the Barataria Basin, is to restore and create wetlands in the western Barataria Basin so as to protect and sustain the ecological functions, the natural distributary ridges, and the local human infrastructure of the area.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the DEIS may be directed to Dr. William P. Klein, Jr., CEMVN–PM–RS, P.O. Box 60267, New Orleans, Louisiana 70160–0267; telephone (504) 862–2540 or fax (504) 862–2572. Questions regarding the proposed action should be directed to the study manager, Mr. Edmond J. Russo, Jr., CEMVN–PM–CWPPRA, P.O. Box 60267, New Orleans, Louisiana 70160–0267, telephone (504) 862–1496 or fax: (504) 862–2572.

**SUPPLEMENTARY INFORMATION:**

**1. Authority.**

This study is authorized through Resolutions of the U.S. House of Representatives and Senate Committees on Public Works, 19 October 1967 and 19 April 1967. Representatives and Senate Committees on Public Works, 19 October 1967 and 19 April 1967.

**2. Proposed Action**

a. The proposed action is one of three separate actions to be initially considered under the LCA, Louisiana—Ecosystem Restoration Louisiana—Ecosystem Restoration, Barrier Island Restoration, Marsh Creation, and River Diversion, Barataria Basin Feasibility Study. The USACE, NOD proposes to investigate the feasibility of restoring and/or creating wetlands in the southwestern portion of the Barataria Basin, Louisiana.

The purpose of the proposed action, wetland restoration/creation strategies R2–16 and R2–17 of the Coast 2050 Plan for the Barataria Basin, is to restore and create wetlands in the southwestern portions of the Barataria Basin so as to protect and sustain the ecological functions, the natural distributary ridges, and the local human infrastructure of the area.

b. The study area is located within the Barataria Basin of southeastern Louisiana in Lafourche Parish. The study area is bounded on the north by the West Fork Bayou L'Ours, on the west by Bayou Lafourche, on the south by Louisiana State Highway 1, and on the east by the Lafourche Parish and Jefferson Parish boundary. The study area is experiencing wetland loss at the rate of approximately 11 square miles per year.

Wetland loss within the Barataria Basin is attributed to the combination of natural erosional processes of sea-level rise, subsidence, herbivory, and the human activities of levee construction, channelization, and development. Freshwater and sediment input into the Barataria Basin was virtually eliminated by the flood protection levees constructed along the Mississippi River and the closure of Bayou Lafourche at Donaldsonville. The only significant source of fresh water in the basin is rainfall. There is some freshwater input into the basin by the siphons located at Naomi and at West Pointe a la Hache (each siphon has a maximum output of about 2,000 cubic feet per second).

When Davis Pond becomes operational in April 2001, it could potentially divert up to 10,650 cubic feet per second dependent upon the salinity conditions in the basin. However, it is predicted that the sediment-laden waters will collect in the ponding area about two miles from the Davis Pond structure located at U.S. Highway 90 and Lake Catouatche. Little, if any, of this would likely directly impact the proposed action area.

c. The Coast 2050 Plan serves as the joint coastal restoration plan of the Breaux Act Task Force and the State Wetlands Authority. The Coast 2050 Plan was completed in December 1998 through a joint effort of the Louisiana Coastal Wetlands Conservation and Restoration Task Force and the Louisiana Wetlands Conservation and Restoration Authority. Coast 2050 is a planning effort inspired by the severity of the problems facing south Louisiana, as well as an increased level of confidence in our ability to understand the ecosystem and to implement effective restoration projects.

The Coast 2050 Plan combines elements of all previous efforts, along with new initiatives from private citizens, local governments, State and Federal agency personnel, and the scientific community. For the first time, as explicitly called for by the Coalition to Restore Coastal Louisiana in 1997, diverse groups have come together to develop one shared vision for the coast expressed in this overarching goal: To sustain a coastal ecosystem that supports and protects the environment, economy and culture of southern Louisiana, and that contributes greatly to the economy and well-being of the nation.

d. *Need for the Study.*—The Coast 2050 Reconnaissance Report recommended that the study proceed to

the feasibility phase, contingent upon the execution of a Feasibility Cost Sharing Agreement (FCSA) with a non-Federal Sponsor. An FCSA was executed with the Louisiana Department of Natural Resources (LADNR) on February 18, 2000. The proposed action focuses on wetland restoration/creation in the Barataria Basin ecosystem due to the very high rate of wetland loss, estimated at about 11 square miles per year, throughout the basin.

The proposed action also provides additional advantages: (1) This proposed action potentially provides a low risk and quickly implementable plan to address wetland loss in the Barataria Basin; (2) the proposed action study area is strategically placed and could potentially yield benefits to other coastal resources within the unique Barataria Basin ecosystem, geologic framework, and the human environment infrastructure associated with transportation, oil and gas extraction, utilities, etc.; (3) the proposed action could also provide additional benefits in terms of protection of important landscape structural features that function as important hydrological features within the Barataria Basin; and (4) the proposed action could be implemented independently of the remaining Coast 2050 Plan strategies for the Barataria Basin.

**3. Study Alternatives**

a. During the Coast 2050 public meetings conducted in 1998, two marsh creation strategies, Strategy R2–17—Dedicated Dredging near Caminada Bay and Strategy R2–16—Dedicated Dredging Along Louisiana Highway 1, were considered as viable ecosystem restoration strategies. Hence, these strategies will be developed into alternatives for the proposed action. Other alternatives that will be considered include: The No Action Alternative, filling, marsh replenishing, terracing, and the beneficial use of dredged material from maintenance dredging of navigation channels. In addition, alternatives developed during the scoping process will also be developed and considered.

b. Wetland restoration/creation design features will be evaluated to ensure compliance with current Federal and State laws and regulations. Any adverse effects of the alternative plans will be identified and appropriate mitigation measures will be included in the plans. However, because the proposed action is ecosystem restoration, it is not the intent to generate alternative plans that would require mitigation. An Environmental Impact Statement (EIS) will be prepared during the feasibility phase because of the potential for significant direct and indirect, secondary, and cumulative impacts on the human and natural environment.

**4. Scoping Process**

An intensive public involvement program will be initiated and maintained throughout the study to solicit input from affected Federal, State, and local agencies, Indian tribes, and interested private organizations and individuals. Scoping is a critical component of the overall public involvement program. The scoping process is designed to provide an early and open means of determining the scope of issues (problems, needs, and opportunities) to be identified and addressed in the DEIS.

**5. Public Scoping Meeting**

The Corps of Engineers and the LADNR invite NEPA input in writing or in person concerning the scope of the EIS, resources to be evaluated, and alternatives to be considered. Individuals, groups, agencies and other interested parties can write comments to the Corps of Engineers using Dr. Klein's mailing address shown above. In the early summer of 2000, the Corps of Engineers will hold at least one public meeting in the study area to receive oral and written comments on the proposed action. Notices will be mailed to the affected and interested public once the date of the public scoping meeting has been established. Comments received as a result of the scoping meeting will be compiled and analyzed; and a Scoping Document, summarizing the results, will be made available to all participants.

**6. Interagency Coordination**

The Department of Interior, U.S. Fish and Wildlife Service, will provide a Fish and Wildlife Coordination Act Report. Coordination will be maintained with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding threatened and endangered species under their respective jurisdictional responsibilities. Coordination will be maintained with the Natural Resources Conservation Service regarding prime and unique farmlands. The U.S. Department of Agriculture will be consulted regarding the "Swampbuster" provisions of the Food Security Act. We will prepare a section 404(b)(1) evaluation. Coordination will be maintained with the Advisory Counsel on Historic Preservation and the State Historic Preservation Officer. The Louisiana Department of Natural Resources will be consulted regarding consistency with the Coastal Zone Management Act. The Louisiana Department of Wildlife and Fisheries will be contacted concerning potential impacts to Natural and Scenic Streams. Application will be made to the Louisiana Department of Environmental Quality for a Water Quality Certificate.

**7. Availability of DEIS**

It is anticipated that the Draft EIS will be available for public review during the spring of 2001. A 45-day review period will be allowed so that all interested agencies, groups, and individuals will have an opportunity to comment on the draft report and EIS. In addition, a public meeting will be held during the review period to receive comments and address questions concerning the draft EIS.

Dated: April 26, 2000.

**Thomas F. Julich,**

*Colonel, U.S. Army District Engineer.*

[FR Doc. 00–11296 Filed 5–4–00; 8:45 am]

BILLING CODE 3710–84–P

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Intent To Prepare a Supplement (SEIS) to the 1992 Final Environmental Impact Statement on Modified Water Deliveries to Everglades National Park (Mod Waters Project) to Address a Change in Design of U.S. Highway 41 (Tamiami Trail) Originally Proposed Modifications

**AGENCY:** U.S. Army Corps of Engineers, Department of Defense.

**ACTION:** Notice of intent.

**SUMMARY:** The congressionally authorized Mod Waters project consists of structural modifications and additions to the existing C&SF Project required for improvement of water deliveries for ecosystem restoration in Everglades National Park. The authorized plan calls for only minor modification of Tamiami Trail by increasing the elevation of about 3,000 linear feet of the roadbed. The existing culvert system was thought adequate to pass the maximum desired volume of water. Additional analysis indicates that the existing culverts are not adequate to do so. Therefore additional water conveyance methods will be analyzed.

**FOR FURTHER INFORMATION CONTACT:** U.S. Army Corps of Engineers, P.O. Box 4970, Jacksonville, FL 32232; Attn: Mr. Elmar Kurzbach, 904–232–2325.

**SUPPLEMENTARY INFORMATION:**

1. Alternatives that will be evaluated include: addition of 4 new bridges, relocating the road (either to the north or south) with sufficient culverts and bridges, installation of an underground piping system, and installation of a new pump and "getaway" channel. The bridge and underground piping system alternatives would include alternative upgrades of the existing roadbed ranging from no upgrades, to raising approximately 10 miles of roadbed up to about 2 feet in elevation, or to an elevation of 12 feet NGVD.

2. A scoping letter and public Scoping Meeting will be used to invite comments on alternatives and issues from Federal, State, and local agencies, affected Indian tribes, and other interested private organizations and individuals.

3. The Draft EIS will analyze potential impacts to local businesses and residents, Everglades National Park, endangered species, wetlands, biological resources, water quality, and recreational fishing. Impact analysis will be limited to issues associated with the construction of the improvements, only. All general Mod Waters issues were addressed in the original Environmental Impact Statement.

4. The alternative plans will be reviewed under provisions of appropriate laws and regulations, including the Endangered Species Act, Fish and Wildlife Coordination Act, and Clean Water Act.

5. The Draft SEIS is expected to be available for public review during the 4th quarter of calendar year 2000.

**John A. Hall,**

*Alternate Army Federal Register Liaison Officer.*

[FR Doc. 00–11293 Filed 5–4–00; 8:45 am]

BILLING CODE 3710–AJ–M

## DEPARTMENT OF DEFENSE

### Intent To Prepare a Draft Environmental Impact Statement (DEIS) in Conjunction With Proposed Flood Control and Ecosystem Restoration Measures in the Kankakee River Basin in Northeast Illinois and Northwest Indiana

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The project involves proposed construction of flood control measures and ecosystem restoration measures along the Kankakee River, Yellow River, Iroquois River, and major tributaries. Alternatives under consideration include setback levees, sediment traps, wetland restoration, bank stabilization, vegetation buffers, and selective dredging at locations in several counties in northeast Illinois and northwest Indiana.

**FOR FURTHER INFORMATION CONTACT:** Mr. Keith Ryder, 312/353–6400 ext. 2020; U.S. Army Corps of Engineers, Suite 600, 111 North Canal Street; Chicago, Illinois 60606–7206.

Dated: April 21, 2000.

**Peter J. Rowan,**

*Lieutenant Colonel, U.S. Army, District Engineer.*

[FR Doc. 00–11295 Filed 5–4–00; 8:45 am]

BILLING CODE 3710–HN–M

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

### Notice of Intent and Notice of Preparation for a Draft Environmental Impact Report and Environmental Impact Statement (EIR/EIS) for a Proposed Flood Reduction Investigation in Yolo County, California

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The action being taken is the development of a joint draft EIS/EIR to identify and assess the significance of potential measures that would reduce flood damages to the city of Woodland, adjacent unincorporated areas, and agricultural lands of Yolo County, and improve the conveyance of the hydraulic system for the Lower Cache Creek area. The intent of the draft EIS/EIR is to describe and evaluate the potential effects of the proposed alternatives on environmental resources in the study area.

**FOR FURTHER INFORMATION CONTACT:** Questions about the proposed action and draft EIS/EIR can be answered by Patti Johnson at (916) 557–6611 or by mail at U.S. Army Corps of Engineers, Planning Division, ATTN: CESPK–PD–R, 1325 J Street, Sacramento, CA 95814–2922.

**SUPPLEMENTARY INFORMATION:** 1. *Proposed Action.*—The Corps in cooperation with the non-Federal sponsors (The Reclamation Board of the State of California and the City of Woodland) is conducting a cost-shared feasibility study on alternative flood damage reduction measures to the city of Woodland, Yolo County, California, adjacent unincorporated areas, and agricultural lands. The study is authorized by section 209 of the Flood Control Act of 1962 (Public Law 87–874). A reconnaissance study of flooding problems in the westside tributaries, including Putah and Cache Creeks, and the Yolo Bypass was conducted in 1993–1994 under the authorization of the Energy and Water Development Appropriations Act of 1993. Information resulting from this reconnaissance report is providing some data for the present feasibility study.

2. *Alternatives.*—The feasibility study's draft EIS/EIR will address a combination of one or more flood control measures including setback levees along Cache Creek, stream channel improvements, a north Woodland floodway, and a no-action alternative. Mitigation measures for any significant adverse effects on environmental resources will be identified and incorporated into the alternatives in compliance with various Federal and State statutes.

3. *Scoping Process.*—a. The study plan provides for public scoping, meetings, and comment. The Corps has initiated a process of involving concerned Federal, State, and local agencies and individuals. The City of Woodland Task Force has held periodic public meetings to discuss issues and solicit public comment.

b. Public involvement during the reconnissance phase of the study included the "Notice of Initiation of a Reconnaissance Study, Westside Tributaries to Yolo Bypass, Flood Control Investigation, California," that was sent to Federal, State, county, and city agencies and other interested groups and individuals in May 1993. The Corps participated in a number of meetings with the Yolo County Board of Supervisors and the Yolo-Solano Flood Control Task Force to brief participants including other public agencies, organizations, and interested individuals on the proposed alternatives. Comments received focused on flooding along Cache Creek, land subsidence, gravel mining, and effects of the alternatives on the Cache Creek Settling Basin. On April 15 and May 6, 1996, the Corps held public workshops in Woodland to present the study result and discuss the procedures to complete the reconnaissance phase and initiate the feasibility phase of the study.

c. Issues that will be analyzed in depth in the draft EIS/EIR include effects on vegetation and wildlife, special-status species, water quality, air quality, socio-economic conditions, and cultural resources. Other issues may include geology, soils, topography, noise, esthetics, climate and recreation.

d. The U.S. Fish and Wildlife Service will provide the Fish and Wildlife Coordination Act Report.

e. A 45-day review period will be allowed for all interested agencies and individuals to review and comment on the draft EIS/EIR. All interested persons are encouraged to respond to this notice and provide a current address if they wish to be contacted about the draft EIS/EIR.

4. A public scoping meeting will be held on May 30, 2000, from 7 p.m. to 9 p.m. at the Heidrick Ag History Center at 1962 Hays Lane in Woodland, Yolo County, California.

5. *Availability.* The draft EIS/EIR is scheduled to be available for public review in August 2001.

Dated: April 17, 2000.

**Robert A. O'Brien III,**

*LTC, EN, Acting Commander.*

[FR Doc. 00–11294 Filed 5–4–00; 8:45 am]

BILLING CODE 3710–EZ–M

## DEPARTMENT OF ENERGY

**[Docket Nos. FE C&E 00–06, C&E 00–07, C&E 00–08, C&E 00–09 and C&E 00–10; Certification Notice—186]**

## Office of Fossil Energy; Notice of Filings of Coal Capability of Gateway Power Project, L.P., Rio Nogales Power Project, L.P., Conectiv Energy, Inc., AES Londonderry, LLC and Calpine Construction Finance Co., L.P. Powerplant and Industrial Fuel Use Act

**AGENCY:** Office of Fossil Energy, Department of Energy.

**ACTION:** Notice of filing.

**SUMMARY:** Gateway Power Project, L.P., Rio Nogales Power Project, L.P., Conectiv Energy, Inc., AES Londonderry, LLC and Calpine Construction Finance Company, L.P. submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

**ADDRESSES:** Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell at (202) 586–9624.

**SUPPLEMENTARY INFORMATION:** Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed a self-certification in acccordance with section 201(d).

*Owner:* Gateway Power Project, L.P. (C&E 00–06).
*Operator:* Gateway Power Project, L.P.
*Location:* Gilmer, TX.
*Plant Configuration:* Combined-cycle.
*Capacity:* 800 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Utilities and power marketers in Texas and surrounding states.
*In-Service Date:* September 1, 2002

*Owner:* Rio Nogales Power Project, L.P. (C&E 00–07).
*Operator:* Rio Nogales Power Project, L.P.
*Location:* Seguin, TX.
*Plant Configuration:* Combined-cycle.
*Capacity:* 800 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Utilities and power marketers in Texas.
*In-Service Date:* June 1, 2002.

*Owner:* Conectiv Energy, Inc. (C&E 00–08).
*Operator:* Conectiv Energy, Inc.
*Location:* Wilmington, DE.
*Plant Configuration:* Combined-cycle.
*Capacity:* 550 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Various entities interconnected in the PJM Power Pool, including Conectiv Power Delivery.
*In-Service Date:* May 2001.

*Owner:* AES Londonderry, L.L.C. (C&E 00–09).
*Operator:* AES Londonderry, L.L.C.
*Location:* Town of Londonderry, County of Rockingham, NH.
*Plant Configuration:* Combined-cycle.
*Capacity:* 724 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Wholesale power purchasers and into the spot markets administered by ISO New England.
*In-Service Date:* June 2002.

*Owner:* Calpine Construction Finance Company, L.P. (C&E 00–10).
*Operator:* Calpine/GenTex Lost Pines Operations, L.P.
*Location:* Bastrop County, Texas.
*Plant Configuration:* Combined-cycle.
*Capacity:* 500 MW.
*Fuel:* Natural gas.
*Purchasing Entities:* Electric output sold on a "merchant" basis under power purchase agreements to be negotiated.
*In-Service Date:* June 1, 2001.

Issued in Washington, DC, April 26, 2000.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 00–11248 Filed 5–4–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Agency Information Collection Under Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, Department of Energy.

**ACTION:** Submission for OMB review; comment request.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for review under sections 3507 (h)(1) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

Each entry contains the following information: (1) The collection number and title; (2) a summary of the collection of information (includes the sponsor which is the Department of Energy component), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement), response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

**DATES:** Comments must be filed on or before June 5, 2000. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise the OMB DOE Desk Officer listed below of your intention to do so as soon as possible. The OMB DOE Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

**ADDRESSES:** Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW, Washington, DC 20503. (Comments should also be addressed to the Statistics and Methods Group at the address below.)

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Miller may be contacted by telephone at (202) 426–1103, FAX at (202) 426–1081, or e-mail at Herbert.Miller@eia.doe.gov.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review was:

1. EIA–902, "Annual Geothermal Heat Pump Manufacturers Survey."

2. Energy Efficiency and Renewable Energy; OMB Number 1901–0303; Three-Year Extension; Mandatory.

3. EIA–902 is designed to collect information on the emerging domestic geothermal heat pump industry. The economics of geothermal heat pumps have improved in recent years and the pumps are more competitive with conventional heating, cooling, and water heating systems. Data collected will be from U.S. geothermal heat pump manufacturers. The data will be used by DOE, the heat pump industry, and the public. The data will also be published.

4. Business or other for-profit.

5. 160 hours (4 hours × 1 response per year × 40 respondents).

*Statutory Authority:* Sections 3507(h)(1) and 3506(c) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC, May 1, 2000.

**Stanley R. Freedman,**

*Acting Director, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 00–11249 Filed 5–4–00; 8:45 am]

BILLING CODE 6450–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6600–1]**

### Agency Information Collection Activities: Continuing Collection; Comment Request; Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types, EPA ICR Number 1572.04, OMB Control Number 2050–0050, expires June 30, 2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before July 5, 2000.

**ADDRESSES:** Commenters must send an original and two copies of their comments referencing docket number F–2000–SUIP–FFFFF to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format should also be identified by the docket number F–2000–SUIP–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the "Supplementary Information" section for information on accessing them.

The ICR is available on the Internet at <http://www.epa.gov/epaoswer/hazwaste/tsds/specific/index.htm>.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register**. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323. For more detailed information on specific aspects of this rulemaking, contact David Eberly, Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, by phone at 703–308–8645, or by e-mail at *eberly.david@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

*Affected entities*: Entities potentially affected by this action are owners and operators of hazardous waste treatment, storage, and disposal facilities.

*Title*: Hazardous Waste Specific Unit Requirements, and Special Waste Processes and Types, EPA ICR Number 1572.04, OMB Control Number 2050–0050, expiration date June 30, 2000.

*Abstract*: Section 3004 of the Resource Conservation and Recovery Act (RCRA) of 1976, as amended, requires that the U.S. Environmental Protection Agency develop standards for hazardous waste treatment, storage, and disposal facilities (TSDFs), as may be necessary, to protect human health and the environment. Section 3004, Subsections (1), (3), (4), (5), and (6) specify that these standards include, but not be limited to, the following requirements:

(1) Maintaining records of all hazardous wastes identified or listed under this title which are treated, stored, or disposed of, *** and the manner in which such wastes were treated, stored, or disposed of;

(3) Treatment, storage, or disposal of all such waste received by the unit pursuant to such operating methods, techniques, and practices as may be satisfactory to the Administrator;

(4) The location, design, and construction of such hazardous waste treatment, disposal, or storage facilities;

(5) Contingency plans for effective action to minimize unanticipated damage from any treatment, storage, or disposal of any such hazardous waste; and

(6) The maintenance or operation of such facilities and requiring such additional qualifications as to ownership, continuity of operation, training for personnel, and financial responsibility as may be necessary or desirable.

All of the collection requirements covered in this ICR have been published in 40 CFR parts 261, 264 and 265, subparts J through DD, and 40 CFR part 266, subpart F. With each collection covered in this ICR, EPA is aiding the goal of complying with its statutory mandate under RCRA to develop standards for hazardous waste TSDFs, as may be necessary, to protect human health and the environment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Burden Statement*: EPA estimates that the total annual respondent cost for all activities covered in this ICR is $11,934,785. This cost includes annual labor, capital, and operation and maintenance (O&M) costs to be incurred by respondents affected by the information collection requirements covered in this ICR. EPA estimates an average hourly respondent labor cost (including overhead) of $90.00 for legal staff, $69.30 for managerial staff, $54.33 for technical staff, and $24.29 for clerical staff. As shown in the table, EPA estimates that, each year, a total of 3,187 units will be subject to the information collection requirements covered in this ICR. Of these 3,187 units, 375 units are existing interim status units that will remain in the interim status universe, 100 units are interim status units that will enter the permitted universe, 2,688 units are existing permitted units, and 24 units are new permitted units. The number of respondents varies depending upon the category of each unit and the required activity.

This ICR is an exhaustive description of the total respondent burden for all activities related to specific unit requirements and special waste processes and types. From 1996 to 2000, total respondent hourly burden decreased by 42 percent and total respondent financial burden decreased by 37 percent. The burden decreased for a number of reasons. First, in revising this ICR, EPA significantly improved its estimated number of specific units in the interim status and permitted universes. In addition, labor rates were adjusted in this ICR. In the 1996 ICR, EPA had overestimated the overhead factor and thus, the labor rates of the respondents conducting the activities covered in this ICR. In addition, EPA removed all federally owned or operated units from the respondent universe. Thus, EPA's estimates of the overall total respondent burden and cost has decreased. EPA believes that the burden and cost reflects a more comprehensive and, therefore, a more accurate portrait of the existing hourly and financial burden on the regulated community.

For tank systems, the public reporting burden is estimated to average six hours per respondent per year. The record keeping burden is estimated to average 155 hours per respondent per year.

For surface impoundments, the public reporting burden is estimated to average two hours per respondent per year. The record keeping burden is estimated to average 152 hours per respondent per year.

For waste piles, there is no public reporting burden associated with the requirements covered in this ICR. The record keeping burden is estimated to average 20 hours per respondent per year.

For land treatment units, the public reporting burden is estimated to average one hour per respondent per year. The record keeping burden is estimated to average one hour per respondent per year.

For landfills, the public reporting burden is estimated to average seven hours per respondent per year. The record keeping burden is estimated to average 80 hours per respondent per year.

For incinerators, the public reporting burden is estimated to average two hours per respondent per year. The record keeping burden is estimated to average three hours per respondent per year.

For thermal treatment units, there is no public reporting or record keeping burden associated with the requirements covered in this ICR.

For chemical, physical, and biological treatment units, there is no public reporting or record keeping burden associated with the requirements covered in this ICR.

For drip pads, there is no public reporting or record keeping burden associated with the requirements covered in this ICR.

For miscellaneous units, there is no public reporting or record keeping burden associated with the requirements covered in this ICR.

For process vents, the public reporting burden is estimated to average ten hours per respondent per year. The record keeping burden is estimated to average 1,072 hours per respondent per year.

For equipment leaks, the public reporting burden is estimated to average seven hours per respondent per year. The record keeping burden is estimated to average 83 hours per respondent per year.

For containment buildings, the public reporting burden is estimated to average six hours per respondent per year. The record keeping burden is estimated to average 56 hours per respondent per year.

For specific hazardous waste recovery and recycling units, there is no public reporting burden associated with these requirements. The record keeping burden is estimated to average four hours per respondent per year.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 21, 2000.

**Matthew Hale,**

*Acting Director, Office of Solid Waste.*

[FR Doc. 00–11283 Filed 5–4–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6588–3]**

### Acid Rain Program; Notice of the Filing of Petition for Administrative Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of the filing of petition for administrative review.

**SUMMARY:** The purpose of this notice is to announce the filing, with EPA's Environmental Appeals Board (EAB), of a petition for review by UtiliCorp United, Inc. (UCU) of a decision issued by EPA's Office of Air and Radiation, Clean Air Markets Division. This decision and petition for review concern a request submitted by UCU for approval of methods for apportionment of the nitrogen oxide ($NO_X$) emissions from a common stack at UCU's Sibley, Missouri facility.

**FOR FURTHER INFORMATION CONTACT:** Dwight C. Alpern, Attorney-Advisor, Clean Air Markets Division (6204J), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460 at (202) 564–9151.

**SUPPLEMENTARY INFORMATION:** On April 5, 2000, UCU filed, with the EAB. a petition for review (Appeal No. CAA–004) of a decision by EPA's Office of Air and Radiation, Clean Air Markets Division, dated March 6, 2000, disapproving UCU's petition for approval of methods for apportionment of the $NO_X$ emissions from a common stack at UCU's facility located at Sibley, Missouri. The appeal raises issues regarding the requirements of 40 CFR 75.17(a)(2)(iii). The appeals was filed under 40 CFR part 78 of the Acid Rain regulations and requested an evidentiary hearing. Motions for leave to intervene in Appeal No. CAA–004 under 40 CFR 78.11 must be filed by May 22, 2000 with the EAB.

Dated: May 1, 2000.

**Brian J. McLean,**

*Director, Clean Air Markets Division.*

[FR Doc. 00–11281 Filed 5–4–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6353–9]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 17, 2000 through April 21, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (63 FR 17856).

**Draft EISs**

ERP No. D–DOE–E09806–TN Rating EC2, Treating Transuranic (TRU)/Alpha Low-Level Waste at the Oak Ridge National Laboratory, Construct, Operate, and Decontaminate/Decommission of Waste Treatment Facility, Oak Ridge, TN.

*Summary:* EPA expressed environmental concerns regarding the issue of process releases and the resulting risk to humans. EPA requested that additional information be provide on the risk issue and the preferred alternative.

ERP No. D–TVA–E65054–TN Rating EC2, Tellico Reservoir Land Management Plan, Implementation of Seven Mainstream and Two Tributary Reservoirs, Blount, Loudon and Monroe, TN.

*Summary:* EPA expressed concerns with aspects of some of the proposed zones, such as planned timber harvesting and certain commercial/industrial development. EPA suggested that the Plan be revised to eliminate or minimize timber harvesting of circumferential reservoir lands and islands and eliminate incompatible forms of commercial and industrial development.

**Final EISs**

ERP No. F–BIA–A65165–00 Programmatic EIS—Navajo Ten Year Forest Management Plan Alternatives, Implementation and Funding, AZ and NM.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: May 2, 2000

**Joseph C. Montgomery,**

*Director, NEPA Compliance Director, Office of Federal Activities.*

[FR Doc. 00–11308 Filed 5–4–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6353–8]**

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements filed April 24, 2000 through April 28, 2000 pursuant to 40 CFR 1506.9.

EIS No. 000129, Final EIS, AFS, CO, Uncompahgre National Forest Travel Plans Revision, Implementation, Grand Mesa, Uncompahgre and Gunnison National Forests, Garrison, Hinsdale Mesa, Montrose, Ouray and San Juan Counties, CO, Due: June 5, 2000, Contact: Jeff Burch (970) 874–6600.

EIS No. 000130, Draft EIS, FHW, MO, New Mississippi River Crossing, Relocated I–70 and I–64 Connector, Funding, COE Section 404 and 10 Permits and NPDES Permit, St. Louis County, MO, Due: June 20, 2000, Contact: Ronald C. Marshall (217) 492–4600.

EIS No. 000131, Draft EIS, AFS, ID, Box Canyon Timber Sale, Vegetative Management, Implementation, Palisades Ranger District, Caribou-Targhee National Forest, Bonneville County, ID, Due: June 19, 2000, Contact: Jerry B. Reese (208) 624–3151.

EIS No. 000132, Draft EIS, AFS, CA, NV, Sierra Nevada Forest Plan Amendment Project, Implementation, several counties, CA and NV, Due: August 11, 2000, Contact: John Bradford (916) 498–5075.

EIS No. 000133, Draft Supplement, FTA, NY, Buffalo Inner Harbor Development Project, Waterfront Redevelopment, Funding and COE Section 10 and 404 Permit Issuance, New Information in Response to a Court Order concerning Historic Preservation, Erie County, NY, Due: May 31, 2000, Contact: Anthony G. Carr (212) 668–2170. Under Federal Court Decision and Order No. 99–CV–745S a SDEIS was to be prepared to consider archaeological investigations conducted after the FEIS. The Federal court order establishes a public

review period for the DSEIS beginning May 10, 2000 and ending May 31, 2000. Written comments must be received by 5:00 P.M. on May 31, 2000 to be considered in the FSEIS. Comments are to be sent to Ruta Dzenis AICP, Project Director, Empire State Development Corporation, 420 Main Street, Suite 717, Buffalo, NY 14202. A public hearing will be held on May 24, 2000 from 7:00–9:00 P.M. at the Erie Community College, City Campus Auditorium, 121 Ellicott Street, Buffalo, NY 14203.

Dated: May 2, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–11309 Filed 5–4–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–00439B; FRL–6558–8]**

### Pesticide Program Dialogue Committee (PPDC): Inert Disclosure Stakeholder Workgroup; Open Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a conference call meeting of the Inert Disclosure Stakeholder Workgroup. The workgroup was established to advise the Pesticide Program Dialogue Committee (PPDC) on ways of making information on inert ingredients more available to the public while working within the mandates of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and related Confidential Business Information (CBI) concerns.

**DATES:** The meeting will be held by conference call on Tuesday, May 9, 2000 from 12:00 p.m. to 3:00 p.m. EST.

**ADDRESSES:** Members of the public may listen to the meeting discussions on site at: Crystal Mall #2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA 22202; Conference Room 1123. Seating is limited and will be available on a first come first serve basis.

**FOR FURTHER INFORMATION CONTACT:** By mail: Cameo Smoot, Office of Pesticide Programs (7506C), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, telephone: (703) 305–5454. Office locations: 11th floor, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. E-mail: smoot.cameo@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*A. Background*

The Inert Disclosure Stakeholder Workgroup is composed of a participants from the following sectors: environmental/public interest and consumer groups; industry and pesticide users; Federal, State and local governments; the general public; academia and public health organizations.

The Inert Disclosure Stakeholder Workgroup, will advise the United States Environmental Protection Agency, through the Pesticide Program Dialogue Committee (PPDC), on potential measures to increase the availability to the public of information about inert ingredients (also called "other ingredients") under FIFRA. Among the factors the workgroup has been asked to consider in preparing its recommendations are: existing law regarding inert ingredients and CBI; current Agency processes and policies for disseminating inert ingredient information to the public, including procedures for the protection of CBI; informational needs for a variety of stakeholders; and business reasons for limiting the disclosure of inert ingredient information.

The Inert Disclosure Stakeholder Workgroup meeting is open to the public. Written public statements are welcome and should be submitted to the OPP administrative docket OPP–00439B. Any person who wishes to file a written statement can do so before or after the conference call. These statements will become part of the permanent file and will be provided to the Workgroup members for their information.

*B. How and to Whom Do I Submit the Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00439B in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments and/or data electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in Units B.1. and 2. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00439B. Electronic comments may also be filed online at many Federal Depository Libraries.

**List of Subjects**

Environmental protection, Pesticides, Inerts, PPDC.

Dated: May 2, 2000.

**Joseph J. Merenda,**

*Acting Director, Office of Pesticide Programs.*

[FR Doc. 00–11409 Filed 5–3–00; 1:58 pm]

BILLING CODE 6561–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30494; FRL–6555–7]**

### Pesticide Product; Registration Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments, identified by the docket control number OPP–30494, must be received on or before June 5, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30494 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Mike Mendelsohn, Biopesticides

and Pollution Prevention Division (7511C), Office of Pesticides Programs, Environmental Protection Agency, Ariel Rios Bldg., Washington, DC 20460. Office location, telephone number, and e-mail address: 9th Floor, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA 22202; (703) 308–8715; mendelsohn.mike@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production.<br>Animal production.<br>Food manufacturing.<br>Pesticide manufacturing. |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30494. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30494 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e- mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30494. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. These applications had previously been reported as seed increase registration applications on

November 26, 1999 (64 FR 66474) (FRL–6390–3). The applicants have subsequently modified their application to request full commercial use. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

*Products Containing Active Ingredients Not Included in Any Previously Registered Products*

1. File Symbol: 68467–E. Applicant: Mycogen Seeds, c/o Dow Agrosciences LLC, 9330 Zionsville Road, Indianapolis, IN 46268. Product name: Mycogen Brand Bt Cry1F Corn. Active ingredient: *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn plants. Proposed classification/Use: None. For full commercial use.

2. File Symbol: 29964–G. Applicant: Pioneer Hi-Bred International, Inc., 7250 NW 62nd Avenue, P.O. Box 552, Johnston, Iowa 50131–0552. Product name: Pioneer Brand Bt Cry1F Corn. Active ingredient: *Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn plants. Proposed classification/Use: None. For full commercial use.

**Authority:** 7 U.S.C. 136.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: April 27, 2000.

**Kathleen D. Knox,**

*Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 00–11150 Filed 5–4–00; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 28, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before June 5, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0307.

*Title:* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of FMR Systems in the 800 MHz Frequency Band.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit, individuals or households, not-for-profit institutions, and state, local or tribal government.

*Number of Respondents:* 12,195.

*Estimated Time Per Response:* .5 hours to 5 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 23,073 hours.

*Total Annual Cost:* $7,591,000.

*Needs and Uses:* This collection will promote Congress' goal of regulatory parity for all commercial mobile radio services, and encourage the participation of a wide variety of applicants, including small businesses, in the SMR industry. In addition, this collection will establish rules for the SMR services in order to streamline the licensing process and provide a flexible operating environment for licensees, foster competition, and promote the delivery of service to all areas of the country, including rural areas.

The Commission submitted this information collection to OMB under the emergency processing provisions on 4/10/00. We received OMB approval on 4/21/00 for approximately six months. This submission is being made to extend the current OMB approval for the full three-year cycle.

*OMB Control No.:* 3060–0370.

*Title:* Part 32—Uniform System of Accounts for Telecommunications Companies.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 239.

*Estimated Time Per Response:* 105 hours to 44,511 hours.

*Frequency of Response:* Recordkeeping requirement, on occasion reporting requirements.

*Total Annual Burden:* 2,280,080 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* The Uniform System of Accounts is a historical financial accounting system which reports the results of operational and financial events in a manner which enables both management and regulators to assess these results with a specified accounting period. Subject respondents are telecommunications companies. Entities having annual revenues from regulatory telecommunications operations of less than $100 million are designated as Class B and are subject to a less detailed accounting system than those designated as Class A companies. Part 32 imposes essentially recordkeeping requirements. The reporting requirements contained in the rulepart are sporadic or initiated by the carriers. The information contained in the various reports submitted to the Commission by the carriers provides necessary detail to enable the Commission to fulfill its regulatory responsibilities.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–11239 Filed 5–4–00; 8:45 am]

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**FEDERAL COMMUNICATIONS COMMISSION**

**[DA 00–912]**

## Year 2000 Deadline for Compliance With Commission's Regulations Regarding Human Exposure to Radiofrequency Emissions

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission released a document on April 27, 2000, that reminds all of the Commission's licensees and grantees of the impending deadline for ensuring compliance with provisions of the Commission's rules. It is the responsibility of the licensee or grantee to either take action to bring the facility, operation or device into compliance or file an Environmental Assessment (EA) with the Commission no later than September 1, 2000. After September 1, 2000, if any facility, operation or device is found not to be in compliance with the Commission's RF exposure guidelines, and if the required EA has not been filed, the Commission will consider this to be a violation of its rules resulting in possible fines, forfeiture or other actions deemed appropriate by the Commission.

**FOR FURTHER INFORMATION CONTACT:** Robert Cleveland, Office of Engineering and Technology, (202) 418–2422.

**SUPPLEMENTARY INFORMATION:** This is a summary of the text of the Public Notice, DA 00–912, released April 27, 2000. The document is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, NW Washington, DC 20036.

### Summary of Public Notice

1. On August 25, 1997, the Commission adopted the second of two Orders finalizing its rules regarding compliance with safety limits for human exposure to radiofrequency (RF) emissions, 62 FR 47960, September 12, 1997. The effective dates for implementation of the revised rules were August 1, 1996, for devices subject to equipment authorization, such as cellular and PCS telephones, and October 15, 1997, for other transmitting facilities and operations (except the Amateur Radio Service for which the effective date was January 1, 1998). For devices, facilities and operations authorized or licensed by the Commission prior to the appropriate effective date, the following provision was adopted in reference to 47 CFR 1.1307(b)(1) through 1.1307(b)(3): "All existing transmitting facilities, operations and devices regulated by the Commission must be in compliance with the requirements of paragraphs (b)(1) through (b)(3) of this section by September 1, 2000, or, if not in compliance, file an Environmental Assessment as specified in §§ 1.1307(b)(5) and 1.1311." If such an Environmental Assessment ("EA") is required, the obligation to file it would fall upon the licensee presently holding the permit or license to transmit, or the party presently holding the grant of equipment authorization.

2. An EA is a formal document required by the National Environmental Policy Act whenever an action may have a significant environmental impact. Section 1.1311 of the Commission's rules, 47 CFR 1.1311, explains what information must be included in an EA. The Commission's rules require that EAs accompany applications for licenses, renewals or other Commission actions when there is evidence of environmental impact for a variety of categories. An EA would be considered by the Commission to determine whether the environmental impact described is significant and whether further action is needed to minimize or eliminate the environmental effect. Filing procedures for EAs may vary depending on the specific authorizing bureau or office. Information on specific filing procedures can be obtained at the appropriate Web site address or phone number found at the end of this notice. With respect to antennas located on fixed structures, filers of EAs should be aware that non-RF environmental issues must be addressed in any EA filed with the Commission in accordance with the requirements of § 1.1311 and the Commission's environmental rules in §§ 1.1301 thorugh 1.1319.

3. The purpose of this Public Notice is to remind all of the Commission's licensees and grantees of the impending September 1 deadline for ensuring compliance with these provisions of its rules. Therefore, if an existing facility, operation or device of a licensee or grantee is not in compliance with the provisions of 47 CFR 1.1307(b)(1) through (b)(3), it is the responsibility of the licensee or grantee to either take action to bring the facility, operation or device into compliance or file an EA with the Commission no later than September 1, 2000. After September 1, 2000, if any facility, operation or device is found not to be in compliance with the Commission's RF exposure guidelines, and if the required EA has not been filed, the Commission will consider this to be a violation of its rules resulting in possible fines, forfeiture or other actions deemed appropriate by the Commission. With respect to antennas located on fixed structures, it is the responsibility of the respective licensees, not tower owners, to undertake an environmental evaluation and file EAs, if required, due to non-compliance with our RF rules.

4. It is important to note that the Commission's RF exposure rules apply to all facilities, operations and devices regulated by the Commission. While a given facility, operation or device might be categorically excluded from routine evaluation for RF exposure by § 1.1307(b)(1) of our rules, it must still comply with the FCC's exposure guidelines.

5. Consumers should be aware that hand-held cellular and PCS telephones that were authorized by the FCC after the August 1, 1996, effective date have been evaluated for compliance with FCC guidelines for safe exposure. Furthermore, PCS devices subject to equipment authorization have been required to comply with our RF guidelines since 1994. This means that a large number, if not the majority, of cellular and PCS telephones now in use in the United States have already been evaluated for compliance with the FCC's RF exposure limits. To the extent that a wireless handset received an FCC authorization prior to the August 1, 1996, effective date, and is still being produced and marketed, manufacturers of such handsets will be required to file EAs if the handset in question is not in compliance with the FCC's RF guidelines.

6. Further information on the Commission's RF exposure rules and on evaluating compliance with FCC RF guidelines may be found at the Commission's RF Safety Web page: www.fcc.gov/oet/rfsafety. In particular, the Office of Engineering and Technology's OET Bulletin 65 and supplements to this bulletin (all available at the Web Site for viewing and downloading) offer detailed guidance on evaluating compliance. Requests for information or copies of these documents can also be directed to the FCC's RF Safety Program in the Office of Engineering and Technology, (202) 418–2464 or by e-mail to: rfsafety@fcc.gov.

7. For information on specific filing procedures for EAs, licensees and grantees should consult the following

Web Sites or contact the appropriate FCC office or bureau:

- Wireless Telecommunications Bureau: www.fcc.gov/wtb; Irene Griffith: (202) 418–1315.
- Mass Media Bureau: www.fcc.gov/mmb; FM (Brian Butler): (202) 418–2700;
- AM (Joseph Szczesny): (202) 418–2700; TV (John Morgan): (202) 418–1600.
- International Bureau: www.fcc.gov/ib; (202) 418–2222.
- Office of Engineering and Technology: www.fcc.gov/oet; (202) 418–2464.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–11237 Filed 5–4–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 96–237; FCC 00–140]**

### Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Federal Communications Commission affirms in part and modifies in part its original Report and Order implementing section 259 of the Telecommunications Act of 1996 ("1996 Act"). This action is taken to respond to Petitions for Reconsideration that were received by the Commission following release of its original Report and Order. By affirming and clarifying its original Report and Order, the Commission provides parties negotiating section 259 arrangements with a better understanding of their responsibilities.

**FOR FURTHER INFORMATION CONTACT:** Gregory Guice, Industry Analysis Division, Common Carrier Bureau, at (202) 418–0095.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Order on Reconsideration released April 27, 2000 (FCC 00–140). The full text of the Order on Reconsideration is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW, Washington, DC 20554. The complete text also may be purchased from the Commission's copy contractor, International Transcription Service, Inc. (202) 857–3800, 1231 20th Street, NW, Washington, DC 20037. Additionally, the complete item is available on the Commission's website at <http://www.fcc.gov/Bureaus/Common_Carrier/Orders/2000>.

**Synopsis of the Inquiry**

1. In the document summarized here, the Federal Communications Commission affirms in part and clarifies in part its original Report and Order implementing section 259 of the Telecommunications Act of 1996 ("1996 Act"). In the 1996 Act, Congress moved to restructure the local telecommunications market by removing legal, regulatory, and economic impediments to competition that sustain a monopoly environment. As part of this restructuring, Congress adopted section 259, which requires incumbent LECs to make available, under certain conditions, public switched network infrastructure and other capabilities to a carrier requesting access, or a "qualifying carrier," that is providing telephone exchange service outside the incumbent LEC's area. On February 7, 1997, the Commission promulgated general rules and guidelines to define the obligations imposed by section 259. *Implementation of Infrastructure Sharing Provisions in the Telecommunications Act of 1996*, 62 FR 9704 (Mar. 4, 1997) ("Infrastructure Sharing Order"). Recognizing that a qualifying carrier may not use the facilities or functions of the incumbent LEC to compete in the incumbent's telephone exchange area, as is the case in other market opening provisions of the 1996 Act such as sections 251 and 252, the *Infrastructure Sharing Order* adopted an approach that depends in large part on negotiations among the interested parties.

2. Specifically in this Order on Reconsideration, the Commission affirms its decision to implement section 259 through a negotiation-driven approach that relies on parties to reach mutually-satisfactory terms for infrastructure sharing. It further affirms its decision to not rely on definitions that are restrictively based on perceptions of present network requirements, and therefore, affirms that things which might be characterized as "services" by the incumbent LEC are not *per se* excluded from section 259 arrangements.

3. The Commission modifies, however, the *Infrastructure Sharing Order* in the following manner. First, the Commission clarifies that because 259(b)(6) prevents qualifying carriers from using section 259-requested infrastructure to compete with the providing incumbent LEC in its telephone exchange area, "resale," as that term is used in conjunction with section 251 of the 1996 Act, is not permitted under section 259 arrangements. Second, the Commission clarifies that nothing in its rules would require an incumbent LEC to make available the intellectual property of third parties without necessary licensing or in violation of existing licensing agreements. Third, the Commission modifies the *Infrastructure Sharing Order* by placing the primary burden to obtain third-party intellectual property and licensing rights on the carrier requesting access to the incumbent LECs infrastructure. However, the Commission requires that incumbent LECs engage in good faith efforts, whenever requested, to help resolve intellectual property and licensing disputes between qualifying carriers and third-party vendors.

4. Finally, the Commission rejects a petition by MCI requesting the Commission exercise pricing authority and mandate particular prices for shared infrastructure obtained by qualifying carriers pursuant to section 259.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–11238 Filed 5–4–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

*Title:* Make Your Mark on the Floodplain—High Water Mark Form.

*Type of Information Collection:* Extension of a currently approved collection.

*OMB Number:* 3067–0268.

*Abstract:* The Federal Emergency Management Agency (FEMA) has entered into a partnership with the U.S. Army Corps of Engineers (COE) in the Portland District to assist the Agency in providing floodplain management assistance at the most basic and needed level, that of local floodplain managers

and the local communities. The joint efforts of FEMA and the COE continue to assure safe and sound developments near floodplains. The Make Your Mark on the Floodplain handout and accompanying High Water Mark Form is used to establish uniform and consistent methodologies for setting and recovering high water marks following a significant flood event. After a major flood, anyone who has high water marks on their property or who has observed flood marks on public property can use the form to record high water mark information, including location, measurements, and description of the marks read. The data will be used by FEMA in post-flood damage assessments. The data will define a frequency/damage relationship for the flooding event and provide calibration information for future analysis. The U.S. Army Corps of Engineers will assist FEMA in collecting and compiling high water mark data.

*Affected Public:* State, Local or Tribal Government, Individual or Households, Business or Other For-Profit, Not-For-Profit Institutions, Farms.

*Number of Respondents:* 7,500.

*Estimated Time per Respondent:* 20 minutes.

*Estimated Total Annual Burden Hours:* 2,500.

*Frequency of Response:* On Occasion (after each significant flood event).

**COMMENTS:** Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

**Virginia Akers,**

*Acting Director, Program Services Division, Operations Support Directorate.*

[FR Doc. 00–11261 Filed 5–4–00; 8:45 am]

BILLING CODE 6718–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

*Title:* The Federal Emergency Management Agency/Federal Insurance Administration's Cover America II Project.

*Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*OMB Number:* 3067–0267.

*Abstract:* FEMA/Federal Insurance Administration will conduct research with consumers, business-owners and insurance agents to (1) establish flood insurance in the minds of consumers as the best method for recovering from flood damage, (2) promote flood insurance as must-have protection that is easily available and relatively inexpensive; and (3) stimulate demand for flood insurance by linking it to strong positive motivators, such as peace of mind and financial security.

*Affected Public:* Individuals or households, Business or Other For-Profit, Not For-Profit Institutions and State, Local or Tribal Government.

*Estimated Total Annual Burden Hours:* 3,082.

| FY 2000 | Number of respondents | Response frequency | Burden per respondent | Total burden hours |
|---|---|---|---|---|
| Quantitative Tracking—Time I | 1,200 Consumers<br>300 Agents | 1 | 25 | 500 Consumers.<br>250 Agents. |
| Quantitative Tracking—Time II | 1,200 Consumers<br>300 Agents | 1 | 25 | 500 Consumers.<br>250 Agents. |
| Satisfaction with Flood Insurance Program Study (once a year) | 900 Consumers<br>300 Agents<br>10 WYOs | 1 | 20 | 300 Consumers.<br>100 Agents.<br>3 WYOs. |
| Stage I—Preliminary Advertising Development among Consumers. | 80 | 1 | 120 | 160. |
| Stage II—Evaluation of Agent Advertising | 200 | 1 | 120 | 400. |
| Lender Survey—Time I | 300 | 2 | 20 | 100. |
| Lender Survey—Time II | 300 | 2 | 20 | 100. |
| Radio Test (Pre Ad Implementation | 200 | 4 | 10 | 133. |
| Radio Test (Post Ad Implementation | 200 | 4 | 10 | 133. |
| Insurance Agents' Satisfaction with NFIP Co-op Advertising Program. | 700 | 1 | 10 | 117. |
| After the Flood Contest—Agents | 250 | 1 | 60 | 250. |
| After the Flood Contest—Consumers | 250 | 1 | 5 | 21. |
| National Flood Insurance Leads Application Form | 448 | 1 | 2 | 15. |
| Total | 5,138 | | 387 | 3,082. |

*Cost to Respondents:* $10,026,000.

*Cost to Federal Government:* $1,153,187,000.

**Comments**

Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW., Room 316,

Washington, DC 20472. Telephone number (202) 646–2625. FAX (202) 646–3524 or email muriel.anderson@fema.gov.

**Virginia Akers,**

*Acting Director, Program Services Division, Operations Support Directorate.*

[FR Doc. 00–11262 Filed 5–4–00; 8:45 am]

BILLING CODE 6718–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Federal Emergency Management Agency has submitted the following proposed information collection to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

*Title:* General Admissions Application and General Admissions Application Short Form.

*Type of Information Collection:* Revision of a currently approved collection.

*OMB Number:* 3067–0024.

*Abstract:* NFA and EMI (located at the National Emergency Training Center (NETC) in Emmitsburg, Maryland) use FEMA Forms 75, General Admissions Application, and 75–5a, General Admissions Application Short Form, to admit applicants to resident courses and programs offered at NETC, Mount Weather Emergency Assistance Center (MWEAC) and various locations throughout the United States. Information from the application forms is maintained in the Admissions System. The system (1) provides a consolidated record of all FEMA training taken by a student; (2) identifies or verifies participation in any prerequisite courses; (3) produces a transcript which can be used by the student in requesting college credit or continuing education units for courses completed; (4) provides statistical information to members of Congress, members of the respective Boards of Visitors, sponsoring states or local officials; and (5) determines which students receive stipends for attending NFA or EMI courses.

*Affected Public:* Individuals or households, Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal government.

*Number of Respondents:* 65,000.

*Estimated Time per Respondent:* 9 minutes for FEMA Form 75–5 and 6 minutes for FEMA Form 75–5a.

*Estimated Total Annual Burden Hours:* 8,500.

*Frequency of Response:* As requested.

**COMMENTS:** Interested persons are invited to submit written comments on the proposed information collection to the Desk Officer for the Federal Emergency Management Agency, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 within 30 days of the date of this notice.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be made to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email muriel.anderson@fema.gov.

**Virginia Akers,**

*Acting Director, Program Services Division, Operations Support Directorate.*

[FR Doc. 00–11263 Filed 5–4–00; 8:45 am]

BILLING CODE 6718–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1324–DR]**

### Maryland; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA–1324–DR), dated April 10, 2000, and related determinations.

**EFFECTIVE DATE:** April 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Maryland is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 10, 2000: Emergency protective measures (Category B) under Public Assistance for Dorchester County.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Patricia K. Stahlschmidt,**

*Division Director, Infrastructure Division, Response and Recovery Directorate.*

[FR Doc. 00–11264 Filed 5–4–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 19, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Milford Norman Osborne & Edith Osborne, both of Texarkana, Arkansas, and Richard Wagnon & Sheila Osborne Wagnon, both of Batesville, Arkansas; to acquire additional voting shares of First Community Bancshares, Inc., Batesville, Arkansas, and thereby indirectly acquire additional voting shares of First Community Bank of Batesville, Batesville, Arkansas.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group), 101 Market Street, San Francisco, California 94105–1579:

1. George Gund III, as trustee for the Gund Trust, San Francisco, California; to retain voting shares of Great Basin Financial Corporation, Elko, Nevada, and thereby retain voting shares of Great Basin Bank of Nevada, Elko, Nevada.

Board of Governors of the Federal Reserve System, May 1, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11188 Filed 5–4–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 22, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Robert and Michelle Sullivan, and Michael and Nancy Van Cleef, all of Carleton, Nebraska; to acquire voting shares of Carleton Agency, Inc., Carleton, Nebraska, and thereby indirectly acquire voting shares of Citizens State Bank, Carleton, Nebraska.

Board of Governors of the Federal Reserve System, May 2, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11292 Filed 5–4–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Banks, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Bank of Ventura, Ventura, California.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Citizens Financial Corporation, Cortez, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens State Bank of Cortez, Cortez, Colorado.

2. Cortez Investment Co., Cortez, Colorado; to acquire 50 percent of the voting shares of Citizens Financial Corporation, Cortez, Colorado, which will acquire The Citizens State Bank of Cortez, Cortez, Colorado.

3. Vail Banks, Inc., Vail, Colorado; to merge with Estes Bank Corporation, Estes Park, Colorado; and thereby acquire United Valley Bank, Estes Park, Colorado.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group), 101 Market Street, San Francisco, California 94105–1579:

1. Amplicon, Inc., Santa Ana, California; to acquire 100 percent of the voting shares of Hutton National Bank, Santa Ana, California (in organization).

In connection with this application, Applicant also has applied to continue to engage directly in the activities of personal property leasing or acting as agent, broker or advisor in leasing personal property, pursuant to § 225.28(b)(3)of Regulation Y.

Board of Governors of the Federal Reserve System, May 1, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11187 Filed 5–4–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 2000.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Sterling Financial Corporation, Lancaster, Pennsylvania; to acquire 100 percent of the voting shares of and thereby merge with Hanover Bancorp, Inc., Hanover, Pennsylvania, and

thereby indirectly acquire Bank of Hanover Trust Company, Hanover, Pennsylvania.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Ledyard Bancorporation, Inc., Ledyard, Iowa; to become a bank holding company by acquiring 97.45 percent of the voting shares of State Bank of Ledyard, Ledyard, Iowa.

C. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. NASB Shares, Inc., Belgrade, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of North American State Bank, Belgrade, Minnesota.

In connection with this application, Applicant also has applied to acquire Borgerding Insurance Agency, Inc., Belgrade, Minnesota, and thereby engage in general insurance agency activities in a place with a population not exceeding 5,000 and where the bank holding company organization has a lending office, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

D. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. The State Bank of Hoxie ESOP, Hoxie, Kansas; to acquire up to 50 percent of the voting shares of Prairie State Bancshares, Inc., Hoxie, Kansas, and thereby indirectly acquire The State Bank, Hoxie, Kansas.

Board of Governors of the Federal Reserve System, May 2, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11291 Filed 5–4–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 22, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Ellingson Corporation, Kenyon, Minnesota; has applied to engage in selling general insurance, in a town of less than 5,000, pursuant to § 225.28(b)(11) of Regulation Y.

Board of Governors of the Federal Reserve System, May 2, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11290 Filed 5–4–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Federal Open Market Committee; Domestic Policy Directive of February 1–2, 2000

In accordance with § 71.5 of its rules regarding availability of information (12 CFR part 271), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on February 1–2, 2000.[1]

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability and promote sustainable growth in output. In furtherance of these objectives, the Committee at this meeting established ranges for growth of M2 and M3 of 1 to 5 percent and 2 to 6 percent respectively, measured from the fourth quarter of 1999 to the fourth quarter of 2000. The range for growth of total domestic nonfinancial debt was set at 3 to 7 percent for the year. The behavior of the monetary aggregates will continue to be evaluated in the light of movements in their velocities and developments in prices, the economy, and financial markets.

To further the Committee's long-run objectives of price stability and sustainable economic growth, the Committee in the immediate future seeks conditions in reserve markets consistent with increasing the federal funds rate to an average of around 5¾ percent.

By order of the Federal Open Market Committee, May 1, 2000.

**Normand Bernard,**

*Deputy Secretary, Federal Open Market Committee.*

[FR Doc. 00–11260 Filed 5–4–00; 8:45 am]

BILLING CODE 6210–01–P

[1] Copies of the Minutes of the Federal Open Market Committee meeting of February 1–2, 2000, which include the domestic policy directive issued at that meeting, are available upon request to the Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The minutes are published in the Federal Reserve Bulletin and in the Board's annual report.

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10:00 a.m., Wednesday, May 10, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:**

**Discussion Agenda**

1. Publication for comment of proposed new Regulation G (Disclosure and Reporting of CRA Related Agreements) to implement the Community Reinvestment Act sunshine requirements of the Gramm-Leach-Bliley Act.

2. Proposed new Regulation P (Privacy of Consumer Financial Information) to implement the provisions of the Gramm-Leach-Bliley Act that govern the protection and disclosure by financial institutions of nonpublic personal information about consumers (proposed earlier for public comment; Docket No. R–1058).

3. Any items carried forward from a previously announced meeting.

**Note:** This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling 202–452–3684 or by writing to: Freedom of

Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 for a recorded announcement of this meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement. (The Web site also includes procedural and other information about the open meeting.)

Dated: May 3, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11406 Filed 5–3–00; 12:38 pm]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** Approximately 11:00 a.m., Wednesday, May 10, 2000, following a recess at the conclusion of the open meeting.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 3, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11407 Filed 5–3–00; 12:38 pm]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

**[File No. 992 3022]**

### Alternative Cigarettes, Inc., et al.; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before May 30, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Matthew Gold, Federal Trade Commission, Western Region, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 356–5276.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 27, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Alternative Cigarettes, Inc., and its President, Joseph Pandolfino (hereinafter "Alternative Cigarettes"). The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged misleading representations for Alternative Cigarettes' Pure and Glory tobacco cigarettes, and the company's Herbal Gold and Magic herbal cigarettes. Alternative Cigarettes advertised that Pure and Glory cigarettes contains no additives. According to the FTC complaint, through these advertisements respondents represented that because Pure and Glory cigarettes contain no additives, smoking them is less hazardous to a smoker's health than smoking otherwise comparable cigarettes that contain additives. The complaint alleges that respondent did not have a reasonable basis for the representation at the time it was made. Among other reasons, according to the complaint, the smoke from Pure and Glory cigarettes, like the smoke from all cigarettes, contains numerous carcinogens and toxins, including tar and carbon monoxide.

The FTC complaint further alleges that Alternative Cigarettes represented that smoking Herbal Gold and Magic herbal cigarettes does not pose the health risks associated with smoking tobacco cigarettes. According to the complaint, this claim is false, as Herbal Gold and Magic cigarette smoke, like the smoke from tobacco cigarettes, contains numerous carcinogens and toxins, including tar and carbon monoxide.

The proposed consent order contains provisions designed to prevent Alternative Cigarettes from engaging in similar acts and practices in the future. Part I of the order requires Alternative Cigarettes to include the following disclosure, clearly and prominently, in certain advertising for its tobacco cigarettes: "No additives in our tobacco

does NOT mean a safer cigarette." (The order requires a similar disclosure in advertising for other tobacco products Alternative Cigarettes advertises as having no additives.) The disclosure must be included in all tobacco advertising that represents (through such phrases as "no additives" or "100% tobacco") that the product has no additives. Part I exempts Alternative Cigarettes from the disclosure requirement: (1) For cigarette advertisements not required to bear the Surgeon General's health warning; and (2) if Alternative Cigarettes possesses scientific evidence demonstrating that its "no additives" cigarette poses materially lower health risks than other cigarettes of the same type. In general, the disclosure required by Part I must be in the same type size and style as the Surgeon General's warning and must appear within a rectangular box that is no less than 40% of the size of the box containing the Surgeon General's warning.

Part II of the order requires Alternative Cigarettes to include the following disclosure, clearly and prominently, in advertising and on packaging for herbal cigarettes: "Herbal cigarettes are dangerous to your health. They produce tar and carbon monoxide." (The order requires a similar disclosure for other herbal smoking products.) The disclosure must be included in all advertising and on packaging for herbal smoking products that represent (through such phrases as "no tobacco," "tobacco-free," or "herbal") that the product has no tobacco. Part II also contains an exemption from the disclosure requirement if Alternative Cigarettes possesses scientific evidence demonstrating that such herbal smoking products do not pose any material health risks. In general, the disclosure required by Part II must be in the same type size and style as the Surgeon General's warning and for advertisements must appear within a rectangular box that is the same size as the box containing the Surgeon General's warning.

Part III of the order requires Alternative Cigarettes to possess competent and reliable scientific evidence prior to: (1) Claiming that any herbal smoking product does not present the health risks associated with smoking tobacco cigarettes; of (2) making any claim about the health risks associated with the use of any herbal smoking product.

Part IV requires Alternative Cigarettes to send a letter to its purchasers for resale notifying them that they should discontinue the use of certain existing Alternative Cigarettes advertisements and promotional materials and that Alternative Cigarettes is required to stop doing business with purchasers for resale that do not comply with this request.

Parts V–VIII of the order contain requirements that Alternative Cigarettes keep copies of relevant advertisements and materials substantiating claims made in the advertisements; provide copies of the order to certain of its current and future personnel; notify the Commission of changes in the composition or formula of its tobacco products or herbal smoking products that may affect compliance with the order; and notify the Commission of any changes in the corporate structure that might affect compliance with the order. Part IX requires that the individual respondent notify the Commission of changes in his employment status for a period of ten years. Part X requires Alternative Cigarettes to file one or more reports detailing compliance with the order. Part XI provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–11312 Filed 5–4–00; 8:45 am]

BILLING CODE 6750–01–M

## FEDERAL TRADE COMMISSION

**[File Nos. 992 3246 and 992 3247]**

### R.N. Motors, Inc., et al. and Simmons Rockwell Ford Mercury, Inc., et al.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreements.

**SUMMARY:** The consent agreements in these two matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

**DATES:** Comments must be received on or before May 30, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Carole Reynolds or Michelle Chua, FTC/S–4429, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3230 or 326–3248.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaints. An electronic copy of the full text of the consent agreements package can be obtained from the FTC Home Page (for April 27, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Orders To Aid Public Comment

*Summary*

The Federal Trade Commission has accepted separate agreements, subject to final approval, to proposed consent orders from respondents: (1) R.N. Motors, Inc., Red Noland Cadillac, Inc., and Nelson B. Noland ("Red Noland"); and (2) Simmons Rockwell Ford Mercury, Inc., Simmons Rockwell Autoplaza, Inc., Don Simmons, Inc., and Donald M. Simmons, II and Richard L. Rockwell ("Simmons Rockwell"). The persons named in these actions are named individually and as officers of their respective corporations.

The proposed consent orders have been placed on the public record for

thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The Red Noland and Simmons Rockwell complaints allege that these respondents disseminated automobile lease advertisements that violate the Federal Trade Commission Act ("FTC Act"), the Consumer Leasing Act ("CLA"), and Regulation M. The Simmons Rockwell complaint also alleges that it disseminated automobile credit advertisements that violate the Truth in Lending Act ("TILA") and Regulation Z.

Section 5 of the FTC Act prohibits false, misleading, or deceptive representations or omissions of material information in advertisements. In addition, Congress established statutory disclosure requirements for lease and credit advertisements under the CLA and the TILA, respectively, and directed the Federal Reserve Board to promulgate regulations implementing such statutes—Regulations M and Z respectively. See 15 U.S.C. 1667 *et seq;* 15 U.S.C. 1601 *et seq;* 12 CFR 213; 12 CFR 226.

*I. The Complaints*

A. FTC Act Violations

The Red Noland complaint alleges that, based on the terms prominently stated in their lease advertisements, including but not necessarily limited to the monthly payment amount, the downpayment, and the security deposit, respondent failed to disclose, and failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception, including but not limited to whether third-party fees such as taxes, licenses, and registration fees are required as part of the total amount due at lease inception. The Simmons Rockwell complaint alleges that, based on the terms prominently stated in their lease advertisements, including but not necessarily limited to the monthly payment amount, respondent failed to disclose, and/or failed to disclose adequately, additional terms pertaining to the lease offer, such as the total amount due at lease inception, including but not limited to whether third-party fees, such as taxes, licenses, and registration fees, are required as part of the total amount due at lease inception. The Red Noland and Simmons Rockwell complaints allege that the required information does not appear at all or appears in fine print and/or is illegible in the advertisements and that this information would be material to consumers in deciding whether to visit respondents' dealerships and/or whether to lease an automobile from respondents. These practices, according to both complaints, constitute deceptive acts or practices in violation of section 5(a) of the FTC Act.

B. CLA and Regulation M Violations

The Red Noland and Simmons Rockwell complaints also allege that respondents' lease advertisements have violated the CLA and Regulation M. The Red Noland complaint alleges that respondent's ads state the monthly payment amount, the downpayment, and the security deposit; the Simmons Rockwell complaint alleges that respondent's ads state the monthly payment amount—all "triggering" terms under these laws. The Red Noland and Simmons Rockwell complaints allege that respondents failed to disclose, and/or fail to disclose clearly and conspicuously, certain additional "triggered" terms, as applicable and as follows: The total amount due prior to or at consummation, or by delivery, if delivery occurs after consummation, and that such amount: (1) Excludes third-party fees, such as taxes, licenses and registration fees; and discloses that fact; or (2) includes third-party fees based on a particular state or locality and discloses that fact and the fact that such fees may vary by state or locality; whether or not a security deposit is required; and the number, amounts, and timing of scheduled payments.

According to the complaints, Red Noland's lease disclosures are omitted altogether and are not clear and conspicuous. Simmons Rockwell's lease disclosures, if provided, are not clear and conspicuous because they appear in fine print and/or are illegible.

The Red Noland and Simmons Rockwell complaints, therefore, allege that these practices violate section 184 of the CLA, 15 U.S.C. 1667c, as amended, and section 213.7 of Regulation M, 12 CFR 213.7, as amended.

In addition, the Red Noland complaint alleges that respondent's lease advertisements state specific lease rates for each of certain advertised vehicles, but fail to disclose, and fail to disclose clearly and conspicuously, the following notice concerning lease rates required by Regulation M: "This percentage may not measure the overall cost of financing this lease."

The Red Noland complaint, therefore, alleges that this practice violates section 213.4(s) of Regulation M, 12 CFR 213.4(s).

C. TILA and Regulation Z Violations

The Simmons Rockwell complaint alleges that respondent's credit advertisements have violated the TILA and Regulation Z. It alleges that respondent's credit ads state the number of payments required to finance the transaction and an annual percentage rate (expressed as an "APR"), but failed to disclose, and/or failed to disclose clearly and conspicuously, certain additional terms required by Regulation Z, including the amount of the downpayment and the full terms of repayment, such as the amount of the monthly payment.

According to the complaint, Simmons Rockwell's credit disclosures, if provided, are not clear and conspicuous because they appear in blurred print.

The Simmons Rockwell complaint, therefore, alleges that these practices violate section 144 of the TILA, 15 U.S.C. 1664, as amended, and section 226.24(c) of Regulation Z, 12 CFR 226.24(c), as amended.

*II. Proposed Consent Orders*

The Red Noland and Simmons Rockwell proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future. Specifically, Paragraph I.A. of the Red Noland and Simmons Rockwell proposed orders prohibit respondents, in any lease advertisement, from misrepresenting, in any manner, directly or by implication, the costs or terms of leasing a vehicle, including but not limited to the total amount due at lease signing or delivery.

Paragraph I.B. of the Red Noland and Simmons Rockwell proposed orders prohibit respondents, in any lease advertisement, from making any reference to any charge that is part of the total amount due at lease signing or delivery or that no such charge is required, not including a statement of the periodic payment, unless the advertisement also states with "equal prominence" the total amount due at lease signing or delivery. The "prominence" requirement prohibits respondents from running deceptive advertisements that highlight low amounts due at lease inception with inadequate disclosure of the actual total lease inception fees. This "prominence" requirement for lease inception fees is also found in Regulation M.

Paragraph I.C. of the Red Noland and Simmons Rockwell proposed orders prohibit respondents, in any lease, from stating the amount of any payment or that any or no initial payment is required at lease signing or delivery, unless the advertisement also states, clearly and conspicuously, all of the terms required by Regulation M, as amended and as follows: (1) That the transaction advertised is a lease; (2) the total amount due at lease signing or delivery; (3) whether or not a security deposit is required; (4) the number, amounts, and timing of scheduled payments; and (5) that an extra charge may be imposed at the end of the lease term in a lease in which the liability of the consumer at the end of the lease term is based on the anticipated residual value of the vehicle.

Furthermore, Paragraph I.D. of the Red Noland proposed order prohibits this respondent from stating a percentage rate in an advertisement or in documents evidencing the lease transaction, unless respondent also states the notice required by Regulation M that "this percentage may not measure the overall cost of financing this lease."

Paragraph I.D. of the Simmons Rockwell proposed order, and paragraph I.E. of the Red Noland proposed order, prohibit respondents from engaging in any other violation of Regulation M, as amended.

In addition, Paragraph II. A. of the Simmons Rockwell proposed order enjoins respondent, in any credit advertisement, from stating the amount or percentage of any downpayment, the number of payments or period of repayment, the amount of any payment, or the amount of any finance charge, without disclosing, clearly and conspicuously, all of the terms required by Regulation Z, as follows: (1) The amount or percentage of the downpayment; (2) the terms of repayment; and (3) annual percentage rate, using that term or the abbreviation "APR." If the annual percentage rate may be increased after consummation of the credit transaction, that fact must also be disclosed. Paragraph II.B. of this proposed order also prohibits Simmons Rockwell from stating a rate of finance charge unless respondents state the rate as an "annual percentage rate" or the abbreviation "APR," using that term. Paragraph III.C. of this proposed order also enjoins Simmons Rockwell from engaging in any other violation of Regulation Z, as amended.

The information required by Paragraph I of the Red Noland proposed order (lease advertisements), and Paragraphs I and II of the Simmons Rockwell proposed order (lease and credit advertisements), must be disclosed "clearly and conspicuously." Both proposed orders define the term "clearly and conspicuously" for Red Noland's and Simmons Rockwell's advertisements in all media. In a television, video, radio or Internet or other electronic advertisement, the required disclosures made in the audio portion of the advertisement must be delivered in a volume, cadence, and location sufficient for an ordinary consumer to hear and comprehend. The required disclosures in the video portion of the advertisement must be of a size and shade, and must appear on the screen for a duration and in a location, sufficient for an ordinary consumer to read and comprehend. In a print advertisement, the required disclosures must be in a type size and location sufficient for an ordinary consumer to read and comprehend, in print that contrasts with the background against which it appears. Additionally, the required disclosures must be in understandable language and syntax. Further, nothing contrary to, inconsistent with, or in mitigation of the required disclosures shall be used in any advertisement.

The purpose of this analysis is a facilitate public comment on the proposed orders. It is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–11311 Filed 5–4–00; 8:45 am]

BILLING CODE 6750–01–M

## FEDERAL TRADE COMMISSION

**[File No. 992 3026]**

### Santa Fe Natural Tobacco Company, Inc.; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before May 30, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Michael Ostheimer, FTC/S–4002, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2699.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 27, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rule of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Santa Fe Natural Tobacco Company, Inc. ("Santa Fe").

The proposed consent order has been placed on the public record for thirty (30) days for receipt for comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves an alleged misleading representation for Natural American Spirit cigarettes, which Santa Fe has advertised as containing no additives. According to the FTC complaint, through these advertisements, Santa Fe represented that because Natural American Spirit cigarettes contain no additives, smoking them is less hazardous to a smoker's health than smoking otherwise comparable cigarettes that contain additives. The complaint alleges that Santa Fe did not have a reasonable basis for the representation at the time it was made. Among other reasons, according to the complaint, the smoke from Natural American Spirit cigarettes, like the smoke from all cigarettes, contains numerous carcinogens and toxins, including tar and carbon monoxide.[1]

The proposed consent order contains provisions designed to prevent Santa Fe engaging in similar acts and practices in the future.

Part I of the order requires Santa Fe to include the following disclosure, clearly and prominently, in certain advertising for its tobacco cigarettes: "No additives in our tobacco does NOT mean a safer cigarette." (The order requires a similar disclosure in advertising for other tobacco products Santa Fe advertises as having no additives.) The disclosure must be included in all tobacco advertising that represents (through such phrases as "no additives" or "100% tobacco") that the product has no additives. This Part exempts Santa Fe from the disclosure requirement: (1) For cigarette advertisements not required to bear the Surgeon General's health warning; and (2) if Santa Fe possesses scientific evidence demonstrating that its "no additives" cigarette poses materially lower health risks than other cigarettes of the same type. In general, the disclosure required by Part I must be in the same type size and style as the Surgeon General's warning and must appear within a rectangular box that is no less than 40% of the size of the box containing the Surgeon General's warning.

Part II of the order requires Santa Fe to include the following disclosure, clearly and prominently, in advertising and on packaging for herbal cigarettes: "Herbal cigarettes are dangerous to your health. They produce tar and carbon monoxide." (The order requires a similar disclosure for other herbal smoking products.) The disclosure must be included in all advertising and on packaging for herbal smoking products that represent (through such phrases as "no tobacco," "tobacco-free," or "herbal") that the product has no tobacco. This Part also contains an exemption from the disclosure requirement if Santa Fe possesses scientific evidence demonstrating that such herbal smoking products do not pose any material health risks. In general, the disclosure required by Part II must be in the same type size and style as the Surgeon General's warning and for advertisements must appear within a rectangular box that is the same size as the box containing the Surgeon General's warning.

Part III requires Santa Fe to send a letter to its purchasers for resale notifying them that they should discontinue the use of certain existing Natural American Spirit cigarette advertisements and promotional materials and that Santa Fe is required to stop doing business with purchasers for resale that do not comply with this request.

Parts IV–VIII of the order require Santa Fe to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain of its personnel; to notify the Commission of changes in the composition or formula of Natural American Spirit cigarettes that may affect the order; to notify the Commission of changes in corporate structure; and to file compliance reports with the Commission. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–11313 Filed 5–4–00; 8:45 am]

BILLING CODE 6750–01–M

[1] In late 1997, Santa Fe voluntarily did begin placing the statement, "To our knowledge there is no research indicating cigarettes containing additive-free tobacco are safer than cigarettes with tobacco containing additives" in certain ads for Natural American Spirit tobacco cigarettes. Since early 1998, Santa Fe has also included the statement "We make no representation expressed or implied that these cigarettes are any less hazardous than any other cigarettes" on the packaging of Natural American Spirit cigarettes.

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–29–00]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

**Proposed Project**

1. Public Health Prevention Service Program—New—Epidemiology Program Office (EPO). In 1995, senior CDC leadership asked for a review of CDC's role in developing public health workers. As a result of the review, the Public Health Prevention Service (PHPS) program was established in 1997, to be carried out by the Epidemiology Program Office (EPO). The purpose of the PHPS program is to improve the nation's public health practice by preparing entry-level public health professionals to conduct prevention programs that improve health and prevent injury and to manage emerging public health problems.

Implicit in the creation of the program is the expectation that the PHPS participants would be a new breed of public health professional who would owe primary allegiance to prevention and public health as disciplines rather than to specific programs, be comfortable working across a variety of programs and in multiple levels of jurisdictions, and be knowledgeable about and prepared to meet future challenges in public health in planning, implementing, managing, and evaluating scientifically sound prevention programs and interventions.

PHPS participants (Prevention Specialists) are selected annually in a national competition. Each year, approximately 25 PHPS participants are chosen from a pool of about 100 applicants. During their 3-year participation they undertake formal training, engage in a series of rotations throughout CDC and, finally, are posted to 2-year assignments with health

departments at the state, county, or local level. Throughout the off-site portion of the program, they are intended to participate in scheduled training through periodic on-site sessions at CDC as well as through distance learning. At the conclusion of the three years, they are available for employment in any setting.

Data are needed to determine if the PHPS program is meeting its goals, including: (1) Broad exposure to multiple disciplines and levels of government, (2) exposure to important management and leadership skills, and (3) contribution to the creation of a pool of qualified leaders who will remain in and rise rapidly to leadership in public health at Federal, state, and local levels. In addition, data are needed to monitor the implementation of the program and allow for continuous improvement of processes.

While surveys and focus groups are being conducted with the PHPS participants and their CDC supervisors throughout the course of their 3-year participation, these data need to be supplemented with information from others including: (1) Graduates of the PHPS program: to determine if they are assuming leadership roles in public health and the aspects of the PHPS program that proved most helpful, (2) local health department staff who supervise PHPS participants during their field assignments: to determine if the PHPS participants are exhibiting the level of skills imparted during their training period and are adding value to state and local public health efforts, and (3) those who are offered PHPS positions but choose not to participate: to determine how to make the program more attractive and to enable the program to improve marketing, application, and selection processes.

Results from this research will be used to help CDC identify ways in which the PHPS program can be enhanced and its processes improved. More importantly, it will allow CDC to assess whether the PHPS program is an effective mechanism for creating a pool of broadly-trained public health leaders.

The PHPS program will track participants, graduates, and their supervisors and employers for a period of 10 years. This request covers the first three years only. The total burden hours averages approximately 55 hours per year.

| Respondents | No. of respondents | Responses/ respondent | Avg. burden/ response (in hrs.) |
|---|---|---|---|
| **Year 1** | | | |
| Candidates: | | | |
| Inquiring but not applying | 60 | 1 | .25 |
| Offered, but declining interviews | 10 | 1 | .25 |
| Interviewed but not offered PHPS slots | 30 | 1 | .25 |
| Offered PHPS slots but not accepting | 10 | 1 | .25 |
| Supervisors: | | | |
| Of agencies requesting but not receiving a PHPS assignee | 30 | 1 | .1667 |
| Of field assignments | 50 | 1 | .25 |
| Of post-PHPS permanent employment [1] | 0 | 1 | .1667 |
| PHPS participants: | | | |
| Graduating from the program [1] | 0 | 1. | .25 |
| **Year 2** | | | |
| Candidates: | | | |
| Inquiring but not applying | 60 | 1 | .25 |
| Offered, but declining interviews | 10 | 1 | .25 |
| Interviewed but not offered PHPS slots | 30 | 1 | .25 |
| Offered but declining PHPS participation | 10 | 1 | .25 |
| Supervisors: | | | |
| Of agencies requesting but not receiving a PHPS assignee | 30 | 1 | .1667 |
| Of field assignments | 50 | 1 | .25 |
| For post PHPS permanent employment [1] | 25 | 1 | .1667 |
| PHPS participants: | | | |
| Graduating from the program [1] | 25 | 1 | .25 |
| **Year 3** | | | |
| Candidates: | | | |
| Inquiring but not applying | 60 | 1 | .25 |
| Offered, but declined interviews | 10 | 1 | .25 |
| Interviewed but not offered PHPS | | | |
| Slots | 30 | 1 | .25 |
| Offered PHPS slots but not accepting | 10 | 1 | .25 |
| Supervisors: | | | |
| Of agencies requesting but not receiving a PHPS assignee | 30 | 1 | .1667 |
| Of field assignments | 50 | 1 | .25 |
| Of post-PHPS permanent employment [1] | 50 | 1 | .1667 |
| PHPS participants: | | | |
| Graduating from the program [1] | 50 | 1 | .25 |

[1] PHPS is a three year program enrolling 25 new participants each year. First class will graduate in Year 2 of this data collection; 25 new graduates will be added to the pool of graduates each year thereafter.

Dated: May 1, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–11232 Filed 5–4–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–26–00]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

**Proposed Projects**

1. PHS Supplements to the Application for Federal Assistance—SF 424 (0920–0428)—Extension—The Centers for Disease Control and Prevention (CDC) is requesting a three-year extension for continued use of the Supplements to the Request for Federal Assistance Application (SF–424). The Checklist, Program Narrative, and the Public Health System Impact Statement (third party notification) (PHSIS) are a part of the standard application for State and local governments and for private non-profit and for-profit organizations when applying for financial assistance from PHS grant programs. The Checklist assists applicants to ensure that they have included all required information necessary to process the application. The Checklist data helps to reduce the time required to process and review grant applications, expediting the issuance of grant awards. The PHSIS Third Party Notification Form is used to inform State and local health agencies of community-based proposals submitted by non-governmental applicants for Federal funding. We also requesting the use of a new CDC form (CDC 0.1113) to be used once an award is granted. This form will provide CDC specific assurances after an award is granted. Total annual hours burden are 31,204.

| Respondents | Number of respondents | Number of responses/respondent | Average burden/response (in hrs.) |
|---|---|---|---|
| Program Narrative & Checklist | 6,343 | 1 | 4 |
| CDC Form 0.0126 (E) | 990 | 1 | 4 |
| CDC Form 0.1113 | 1,000 | 1 | 30/60 |
| Public Health Impact Statement (PHSIS) | 2,845 | 2.5 | 10/60 |
| SSA (SAMHSA) | 1,125 | 1 | 10/60 |

Dated: May 1, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–11233 Filed 5–4–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICE

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request

**Proposed Projects**

*Title:* Annual Survey of Refugees.

*OMB No.:* 0970–0033.

*Description:* The Annual Survey of Refugees is conducted each Fall by a contractor. Approximately 2,000 refugee families are interviewed via telephone with questions relating to employment, English language skills and training, occupational training, education, and welfare utilization.

*Respondents:* Individuals or Households.

*Annual Burden Estimates:*

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response (minutes) | Total burden hours |
|---|---|---|---|---|
| Annual Survey of Refugees | 2,000 | 1 | 40 | 1,350 |

*Estimated Total Annual Burden Hours:* 1,350.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 1, 2000.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 00–11250 Filed 5–4–00; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Low Income Home Energy Assistance Program (LIHEAP) Leveraging Report.

*OMB No.:* 0970–0121.

*Description:* The LIHEAP leveraging incentive program rewards LIHEAP grantees that have leveraged nonfederal home energy resources for low income households. The LIHEAP leveraging report is the application for leveraging incentive funds that these LIHEAP grantees submit to HHS for each fiscal year in which they leverage countable resources. Participation in the leveraging incentive program is voluntary. The Leveraging report obtains information on the resources leveraged by LIHEAP grantees each fiscal year (as cash, discounts, waivers, and in-kind); the benefits provided to low income households by these resources (for example, as fuel and payments for fuel, as home heating and cooling equipment, and is weatherization materials and installation); and the fair market value of these resource/benefits. HHS needs this information in order to carry out statutory requirements for administering the LIHEAP leveraging incentive program, to determine countability and valuation of grantees' leveraged nonfederal home energy resources, and to determine grantees' shares of leveraging incentive funds. HHS proposes to request a 3-year extension of OMB approval for the currently approved LIHEAP leveraging report information collection.

*Respondents:* State and Tribal Governments.

*Annual Burden Estimates:*

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| LIHEAP leveraging Report | 70 | 1 | 38 | 2,660 |
| Estimated total annual burden hours | | | | 2,660 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer.

**OMB Comment**

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: May 1, 2000

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 00–11189 Filed 5–4–00; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Office of Family Assistance; Statement of Organization, Functions and Delegation of Authority; Correction

**AGENCY:** Office of Family Assistance (OFA)/ACF/DHHS.

**ACTION:** Notice; correction.

**SUMMARY:** This notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration of Children and Families (ACF) as follows: Chapter KH, The Office of Family Assistance (OFA) (65 FR 8980), as last amended in the **Federal Register** on February 23, 2000. This notice reflects the correction of an administrative code given in OFA's new structure for the Division of TANF Information Network listed on page 8981, the first column, in the notice issued February 23, 2000.

Delete KH.10 Organization in its entirety and replace with the following:

KH.10 Organization. The Office of Family Assistance is headed by a Director, who reports to the Assistant Secretary for Children and Families. The office is organized as follows:

Office of the Director (KHA)
Division of Policy and Program Development (KHB)
Division of Technical Assistance and Training (KHC)
Division of TANF Information Network (KHG)

**FOR FURTHER INFORMATION CONTACT:** Contact Glenda D. Harden at 202–401–5623.

Dated: May 1, 2000.

**Alvin C. Collins,**

*Director, Office of Family Assistance.*

[FR Doc. 00–11257 Filed 5–4–00; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1262]**

### Improving Premarket Review and Approval of Food and Color Additives in the Center for Food Safety and Applied Nutrition; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting public comment on ways to improve the process of premarket review and approval of food and color additive petitions by FDA's Center for Food Safety and Applied Nutrition (CFSAN). CFSAN received substantial new resources for fiscal year 2000 targeted to the premarket review of petitions for approval of new uses of food and color additives. This document is being

published to give all interested parties an opportunity to comment on how these new resources may best be applied to address public health issues related to the timely approval and safe use of food and color additives. CFSAN will consider administrative and procedural enhancements to ensure that program goals are met while maintaining high standards of safety and scientific credibility.

**DATES:** Submit written comments by July 19, 2000.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Alan M. Rulis, Center for Food Safety and Applied Nutrition (HFS–200), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3100, e-mail: arulis@cfsan.fda.gov.

**SUPPLEMENTARY INFORMATION:** The Office of Premarket Approval (OPA) in CFSAN manages the following programs: Petitions for new uses of food and color additives, consultations on foods developed using new methods of biotechnology, generally recognized as safe (GRAS) notices, threshold of regulation (TOR) exemption requests, and premarket notifications for food contact substances (PMN). In addition to these programs, OPA is the lead technical authority for food additives for the U.S. Government. OPA provides expertise and leadership in the international forums of the Joint Food Agricultural Organization (FAO)/World Health Organization (WHO) Expert Committee on Food Additives, the North American Free Trade Agreement, and the Codex Alimentarius Commission to define international standards, promote harmonization, and evaluate equivalency agreements for food additives and other food ingredients. OPA also has laboratory research and sample analysis components that provide technical support for the enforcement of the food additive regulations.

The current process of reviewing food and color additive petitions has evolved over 40 years since the passage of the 1958 Food Additives Amendment to the Federal Food, Drug, and Cosmetic Act (the act). Approvals of food and color additives have been based on a critical scientific evaluation of safety information submitted by petitioners. The primary components of this evaluation are the review of chemical, toxicological, and environmental scientific data and information and an estimation of the probable human dietary exposure to additives. During its review of safety of new food additive uses, OPA develops an administrative record that relies on scientific data and information to support the agency's safety conclusions. Although this framework has a high level of scientific credibility, CFSAN recognizes that improvements could be made to ensure that the process is more efficient while maintaining the current high scientific standards. With this notice, CFSAN is soliciting comments on ways to improve the timeliness, transparency, and predictability of its review of food and color additive petitions, and its monitoring of the safety of food and color additives over time.

To help focus comments, FDA requests that comments regarding food and color additive review address the following:

1. The act requires that the agency base its safety decisions for the premarket review of additives on "a fair evaluation of the data" and requires that new uses of food additives be consistent with the agency safety standard of "reasonable certainty of no harm." What specific changes can be made to the current review process to make that process more efficient, i.e., transparent, timely, responsive, and predictable, while preserving these high standards of data review and of safety?

2. On January 5, 1999 (64 FR 517), CFSAN made available a guidance describing a policy to expedite the review of petitions for food additives that are intended to significantly decrease human pathogens or their toxins in/on food. Should the Center consider broadening the criteria for eligibility for such expedited petition review? If so, petitions for what types of uses should be added?

3. How should the increased appropriation to CFSAN that is targeted for the safety review of food and color additives be allocated? For example, to what extent should new resources be allocated to: (1) Performing prefiling consultations with prospective applicants for new uses of food ingredients, (2) adding personnel resources to the review process, (3) enhancing electronic data management systems such as automated workflow management or data warehousing, and (4) acquiring or monitoring new safety information on already approved additives?

4. What specific program enhancements should be given the highest priority?

Interested persons may, on or before July 19, 2000, submit to the Dockets Management Branch (address above) written comments regarding this document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 28, 2000.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 00–11331 Filed 5–4–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Oxytetracycline in Shrimp; Availability of Data

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of human food safety data that may be used in support of a new animal drug application (NADA) or supplemental NADA for the treatment of shrimp with oxytetracycline via medicated feed for bacterial infections. The data, contained in Public Master File (PMF) 5662, were compiled by FDA, Center for Veterinary Medicine (CVM), Office of Research (OR).

**ADDRESSES:** Submit NADA's or supplemental NADA's to the Document Control Unit (HFV–199), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Copies of the analytical methods used to analyze the feed and tissue samples used in this study are available from the Center for Veterinary Medicine, Office of Research, 8401 Muirkirk Rd., Laurel, MD 20708.

**FOR FURTHER INFORMATION CONTACT:** Julia A. Oriani, Center for Veterinary Medicine (HFV–151), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6976.

**SUPPLEMENTARY INFORMATION:** Oxytetracycline used for the treatment of bacterial infections in shrimp is a new animal drug under section 201(v) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(v)). As a new animal drug, oxytetracycline is subject to section 512 of the act (21 U.S.C. 360b), requiring that its use in shrimp be the subject of an approved NADA or supplemental NADA. Shrimp are a minor species under 21 CFR 514.1(d)(1)(ii).

The OR and a researcher from the University of Arizona have provided human food safety data for the use of oxytetracycline in shrimp. The OR provided analytical support to complete a tissue residue depletion study conducted by the researcher from the University of Arizona for oxytetracycline in shrimp. The University of Arizona researcher directed the in-life portion of the study. Juvenile Pacific shrimp, *Penaeus vannamei*, were fed 3.4 grams oxytetracycline/kilogram feed for 14 days and then sampled at 0, 12, 24, 36, 48, 72, and 96 hours after treatment.

Feed and tissue samples were sent to the OR laboratory for analysis. The OR analyzed the feed samples by the regulatory high performance liquid chromatography (HPLC) method entitled "Determination of Oxytetracycline in Milk Replacer (FDA/CVM, Revision 1.2, April 1, 1998)." The tissue samples were analyzed by a 1997 version of the regulatory HPLC method for determining oxytetracycline residues in shrimp. While validating the method prior to analyzing the test samples, the OR found that the 1997 method should be revised to emphasize complete collection of the aqueous phase during extraction. The revised regulatory method for analysis of oxytetracycline in shrimp is entitled "Method for the Determination of Oxytetracycline Residues in Uncooked Shrimp Using High Performance Liquid Chromatography," by Steven W. Hadley, Susan K. Braun, and Marleen M. Wekell, FDA, Office of Regulatory Affairs, Division of Field Science, Seafood Products Research Center, December 23, 1999.

At 0 hours withdrawal, oxytetracycline tissue levels ranged from 3.2 to 5.6 parts per million (ppm); at 12 hours, 1.5 to 4.1 ppm; at 24 hours, 1.5 to 2.1 ppm; at 36 hours, 1.2 to 2.0 ppm; at 48 hours, 0.31 to 0.64 ppm; and at 72 hours, <0.25 ppm. The 96-hour samples were not analyzed because residues were below the lowest point on the standard curve by 72 hours withdrawal.

Data and information on human food safety are contained in PMF 5662. Sponsors of NADA's or supplemental NADA's may, without further authorization, reference the PMF to support approval of an application filed under 21 CFR 514.1(d). An NADA or supplemental NADA must include, in addition to reference to the PMF: Effectiveness data, target animal safety data, animal drug labeling, and other information needed for approval. Other information needed for approval may include data supporting extrapolation from a major species in which the drug is currently approved or authorized reference to such data; data concerning manufacturing methods, facilities, and control; and information addressing potential environmental impacts of the manufacturing process. Persons desiring more information concerning the PMF or requirements for approval of an NADA or supplement may contact Julia A. Oriani (address above).

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information provided in this PMF to support approval of an application may, upon approval of such application, be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 28, 2000.

**Stephen F. Sundlof,**

*Director, Center for Veterinary Medicine.*

[FR Doc. 00–11329 Filed 5–4–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Transmissible Spongiform Encephalopathies (TSE) Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee:* Transmissible Spongiform Encephalopathies (TSE) Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on June 1, 2000, 8:30 a.m. to 5:30 p.m. and on June 2, 2000, 8:30 a.m. to 3:30 p.m.

*Location:* Holiday Inn, Ballroom II, Montgomery Village Ave., Gaithersburg, MD.

*Contact Person:* William Freas, or Sheila D. Langford, Center for Biologics Evaluation and Research (HFM–71), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448; 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12392. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On June 1, 2000, the committee will discuss policies for deferral of blood and plasma donors because of their possible exposure to the agent of bovine spongiform encephalopathy (BSE). On June 2, 2000, the committee will discuss the scientific merit of leukoreduction as a method to reduce the theoretical risk of Creutzfeldt-Jakob Disease (CJD) and/or new variant CJD (nvCJD) in blood and blood components for transfusions as well as plasma for manufacture into derivatives. In the afternoon, the committee will receive an update on the regulatory status of human dura mater.

*Procedure:* On June 1, 2000, from 8:30 a.m. to 5 p.m. and June 2, 2000, from 8:30 a.m. to 3:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 15, 2000. Oral presentations from the public will be scheduled between approximately 8:30 a.m. to 9 a.m., and 1 p.m. to 1:30 p.m. on June 1, 2000, and between 8:30 a.m. to 9 a.m. and 1 p.m. to 1:30 p.m. on June 2, 2000. Time allotted for each presentation may be limited. These desiring to make formal oral presentations should notify the contact person before May 22, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations:* On June 1, 2000, from 5 p.m. to 5:30 p.m., the meeting will be closed to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)). This portion of the meeting will be closed to permit discussion of this material.

Notice of this is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 21, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–11200 Filed 5–4–00; 8:45 am]

BILLING CODE 4160–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1266]**

### Report to Congress on Pediatric Exclusivity; Request for Comments

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Food and Drug Administration (FDA) is requesting comments on the pediatric exclusivity program established by the Food and Drug Administration Modernization Act of 1997 (the Modernization Act). This action is being taken to assist the agency in preparing a report to Congress on

pediatric exclusivity as required by the Federal Food, Drug, and Cosmetic Act (the act). FDA is seeking public input on the pediatric exclusivity program.

**DATES:** Submit written comments on the pediatric exclusivity program by June 5, 2000.

**ADDRESSES:** Submit written comments on the pediatric exclusivity program to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Copies of this notice are available on the Internet at http://www.fda.gov/cder/pediatrics.

**FOR FURTHER INFORMATION CONTACT:**

Terrie L. Crescenzi, Center for Drug Evaluation and Research (HFD–104), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–7337, FAX 301–827–2520, e-mail: crescenzit@cder.fda.gov, or

Elaine C. Esber, Center for Biologics Evaluation and Research (HFM–30), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0641, FAX 301–827–0644, e-mail: esber@cber.fda.gov.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

FDA is seeking public comment on the pediatric exclusivity program. Section 111 of the Modernization Act (Public Law 105–115), signed into law by President Clinton on November 21, 1997, created section 505A of the act (21 U.S.C. 355a). Section 505A of the act permits certain new drug applications to obtain an additional 6 months of marketing exclusivity if, in accordance with the requirements of the statute, the sponsor submits information relating to the use of the drug in the pediatric population.

Under section 505A(k) of the act, FDA must submit a report to Congress on the pediatric exclusivity program.

**II. Description of the Report**

Under section 505A(k) of the act, FDA must conduct a study and report to Congress not later than January 1, 2001, on the experience under the pediatric exclusivity provisions of the act. The study and report must examine all relevant issues, including:

1. The effectiveness of the program in improving information about important pediatric uses for approved drugs;
2. The adequacy of the pediatric exclusivity incentive;
3. The economic impact of the pediatric exclusivity program on taxpayers and consumers and the impact of the lack of lower cost generic drugs on patients, including on lower income patients; and
4. Any suggestions for modification.

**III. Request for Comments**

FDA invites all interested parties to address the specific topics that will be included in the report or any other general issue appropriate for this report relevant to the pediatric exclusivity provision of the act. Interested persons may submit to the Dockets Management Branch (address above) written comments on the pediatric exclusivity program by June 5, 2000. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 28, 2000.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 00–11328 Filed 5–4–00; 8:45 am]

**BILLING CODE 4160–01–F**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–462A/B]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendments (CLIA) Adverse Action Extract and Supporting Regulations at 42 CFR 483.1840; *Form No.:* HCFA–462A/B (OMB 0938–0655; *Use:* The CLIA Adverse Action Extract will be used by HCFA surveyors (State health department, and other HCFA agents) to report to regional staff and record the adverse actions imposed against a laboratory. The form will also serve to track dates of the imposition of adverse actions, date on which a laboratory corrects deficiencies, and all appeals activity; *Frequency:* On occasion, Biennially; *Affected Public:* State, local, or tribal government; *Number of Respondents:* 52; *Total Annual Responses:* 1573; *Total Annual Hours:* 786.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 26, 2000.

**John P. Burke III,**

*Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–11215 Filed 5–4–00; 8:45 am]

**BILLING CODE 4120–03–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–1957]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and

Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection;

*Title of Information Collection:* SSO Report of State Buy In Problems and Supporting Regulations in 42 CFR 407.40;

*Form No.:* HCFA–1957 (0938–0035);

*Use:* The HCFA–1957 is issued to assist with communications between the Social Security District Offices, Medicaid State Agencies and HCFA Central Offices in the resolution of beneficiary complaints, regarding entitlement under state buy-ins. It is used when a problem arises which cannot be resolved thru normal data exchange.

*Frequency:* On occasion;

*Affected Public:* State, Local or Tribal Government, and Individuals or Households;

*Number of Respondents:* 2,000;

*Total Annual Responses:* 2,000;

*Total Annual Hours:* 716.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 10, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–11216 Filed 5–4–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### White House Initiative on Asian Americans and Pacific Islanders President's Advisory Commission; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 2000.

*Name:* President's Advisory Commission on Asian Americans and Pacific Islanders.

*Date and Time:* May 17, 2000; 9:00 a.m.–5:00 p.m. and May 19, 2000; 9:00 a.m.–5:00 p.m.

*Place:* Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, D.C. 20201.

The meetings are open to the public.

The President's Advisory Commission will have its inaugural meeting on May 17, from 9:00 a.m.–5:00 p.m. and subsequent meeting on May 19, from 9:00 a.m.–5:00 p.m. The purpose of the Commission is to advise the President on the issues facing Asian Americans and Pacific Islanders (AAPIs). The President's Advisory Commission on AAPIs will be seated through June 7, 2001. Agenda items will include, but will not be limited to: orientation; rolls and responsibilities of Commissioners; updates on the activities of the White House Initiative on AAPIs; and discussion of future Commission activities. Agenda items are subject to change as priorities dictate.

Requests to address the Commission should be made in writing and should include the name, address, telephone number and business or professional affiliation of the interested party. Individuals or groups addressing similar issues are encouraged to combine comments and present through a single representative. The allocation of time for remarks may be adjusted to accommodate the level of expressed interest. Written requests should be faxed to (301) 443–0259. Anyone who has interest in attending any portion of the meeting or who requires additional information about the Commission should contact: Mr. Tyson Nakashima, Office of the White House Initiative on AAPIs, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–2492. Anyone who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Nakashima no later than May 10, 2000.

Dated: May 3, 2000.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00–11449 Filed 5–4–00; 8:45 am]

BILLING CODE 4160–15–p

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 2000.

*Name:* Advisory Commission on Childhood Vaccines (ACCV).

*Date and Time:* June 7, 2000; 9 a.m.–5 p.m.

*Place:* Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.

The full Commission will meet on Wednesday, June 7, from 9 a.m. to 5 p.m. Agenda items will include, but not be limited to: a presentation on Aluminum in Vaccines, a presentation on recent General Accounting Office Reports on the Vaccine Injury Compensation Program, a report on Vaccination and Autism, updates from the Department of Justice and the National Vaccine Program Office, and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on June 7, 2000. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Shelia Tibbs, Principal Staff Liaison, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–1896. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest.

The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Rooms G and H on June 7, 2000. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Tibbs, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–1896.

Agenda items are subject to change as priorities dictate.

Dated: May 1, 2000.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00–11251 Filed 5–4–00; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request: Enhancing Access and Measuring the Effectiveness of HIV/AIDS Information Methods

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Library of Medicine (NLM), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**Proposed Collection**

*Title:* Enhancing Access and Measuring the Effectiveness of HIV/AIDS Information Methods. *Type of Information Collection Request:* New, *Need and Use of Information Collection:* This study will assess the effectiveness of three information sources within the African American Community in disseminating HIV prevention information. HIV infection and the dissemination of prevention information is a major public health task in North Florida. Three types of African American communities from Gadsden, Leon, and Duval counties have been selected as the sites of this study. This includes communities with rural, mixed rural/urban, and urban areas represented for assessing possible differences in health information channel preferences. This study will add to the body of knowledge concerning HIV information dissemination to African American communities in two ways: first, by assessing whether there are differences in the preferred health information channels of those living in rural, mixed, and urban areas, and secondly, by assessing three information dissemination channels for communicating HIV issues to African American communities. The three information channels of concern in this study are community newsletters, entertainment education, and church ministries. In the first year of the project, a brief survey will be conducted before and after distribution of the community newsletter to assess how the community obtains information about the prevention of HIV infection and transmission, their preferred sources of health information, and the effectiveness of the newsletter. The initial data collected will be used to establish a baseline for the project against which the subsequent project data can be evaluated

*Frequency of Response:* On occasion. *Affected Public:* Individuals or households. *Type of Respondents:* Residents living in Duval, Gadsden and Leon counties, Florida. The annual reporting burden is as follows: *Estimated Number of Respondents:* 450; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours Per Response:* .167; and *Estimated Total Annual Burden Hours Requested:* 75. The annualized cost to respondents is estimated at: $1,082. There are no Capital Costs to report. there are no Operating or Maintenance Costs to report.

**Request for Comments**

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, include the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Gale Dutcher, Special Assistant to the Associate Director, Division of Specialized Information Services, National Library of Medicine, Building 38A, Room 3S317, 8600 Rockville Pike, Bethesda, MD 20894, or call non-toll-free number (301) 496–3147 or E-mail your request, including your address to: *gd21d@nih.gov.*

**Comments Due Date**

Comments regarding this information collection are best assured of having their full effect if received on or before July 5, 2000.

Dated: April 24, 2000.

**Donald C. Poppke,**

*Associate Director for Administrative Management, National Library of Medicine.*

[FR Doc. 00–11214 Filed 5–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center For Research Resources; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open the public as indicate below, with attendance limited to space available. Individual who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclose of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.

*Date:* May 22-24, 2000.

*Open:* May 22, 2000, 8 a.m. to 9 a.m.

*Agenda:* To discuss program planning and other issues.

*Place:* Gaithersburg Hilton Hotel, 620 Perry Parkway, Gaithersburg, MD 20877.

*Closed:* May 22, 2000, 9 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD 20877.

*Contact Person:* D.G. Patel, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0824.

*Name of Committee:* National Center for Research Resource Special Emphasis Panel Science Education Partnership Award.

*Date:* June 7–8, 2000.

*Closed:* June 7, 2000 8 a.m. to Adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Sybil A. Wellstood, PhD, Scientific Review Administrator, Office of Review, National Center for Research Rources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0814.

*Name of Committee:* National Center for Research Resource Initial Review Group Comparative Medicine Review Committee.

*Date:* June 13–14, 2000.

*Open:* June 13, 2000, 8 a.m. to 9 a.m.

*Agenda:* To discuss program planning and program accomplishments.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Closed:* June 13, 2000, 9:00 a.m. to Adjourmnemt.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* John D. Harding, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0810.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research; 93.333, 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: April 27, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11210 Filed 5–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Sickle Cell Disease Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* Sickle Cell Disease Advisory Committee.

*Date:* June 5, 2000.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* Discussion of program policies and issues.

*Place:* National Institutes of Health, Two Rockledge Center, Suite 9104, 6701 Rockledge Drive, Bethesda, MD 20892.

*Contact Person:* Charles M. Peterson, MD, Director, Blood Diseases Program, Division of Blood Diseases and Resources, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 10158, MSC 7950, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0050.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Disease and Resources Research, National Institutes of Health, HHS)

Dated: April 26, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11204 Filed 5–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute of clearly unwarranted invasion of personal privacy.

*Name of Committee:* Heart, Lung, and Blood Program Project Review Committee.

*Date:* June 15, 2000.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

*Contact Person:* Jeffrey H. Hurst, PhD, Scientific Review Administrator, Review Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301/435–0303.

*Name of Committee:* Clinical Trials Review Committee.

*Date:* June 25–27, 2000.

*Time:* 7 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

*Contact Person:* Joyce A. Hunter, PhD, NHLBI/DEA/Review Branch, Rockledge Building II, Room 7192, MSC 7924, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 26, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11205 Filed 5–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute of clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

*Date:* May 3, 2000.

*Time:* 3:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 45 Natcher Bldg, Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Tommy L. Broadwater, Phd, Chief, Grants Review Branch, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25U, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 26, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11206 Filed 5–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel Malaria Vaccine Production and Support Services.

*Date:* May 26, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Holiday Inn Georgetown, Fortune Room, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

*Contact Person:* Anna Ramsey-Ewing, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700-B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301 496–2550, ar15o@nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 26, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11207 Filed 5–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute of clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

*Date:* May 24, 2000.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Residence Inn, 7335 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* AFTAB A. ANSARI, Phd, National Institutes of Health, NIAMS, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 27, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11208 Filed 5–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute of clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* May 23, 2000.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Fred Altman, Phd, Scientific Review Administrator, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Boulevard, Room 6220, MSC 9621, Bethesda, MD 20892–9621, 301–443–8962.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* June 27–29, 2000.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037

*Contact Person:* Lawrence E. Chaitkin, Phd, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd Room 6138, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 27, 2000.

**Anna P. Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11209 Filed 5–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–7 (M5) M.

*Date:* May 4, 2000.

*Time:* 3 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, NIDDK/DEA/Review Branch, 2 Democracy Boulevard, 6707 Democracy Boulevard, MSC 5452, Room# 659, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Lakshmanan Sankaran, PhD., Scientific Review Administration, Review Branch, DEA, NIDDK, Room 659, 6707, Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600 (301) 594–7799.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–1 (M5).

*Date:* May 10, 2000.

*Time:* 10:30 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 6707 Democracy Blv, Two Democracy Plaza, 6th Floor, Room 641, MSC 5452, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Carolyn Miles, PhD., Scientific Review Administration, Review Branch, DEA, NIDDK, Room 641, 6707, Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 28, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11211 Filed 5–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given to meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of person privacy.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council.

*Date:* May 31–June 1, 2000.

*Open:* May 31, 2000, 8:30 a.m. to 12 p.m.

*Agenda:* Present the Director's Report and other scientific presentations.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Closed:* May 31, 2000, 2:30 p.m. to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Closed:* June 1, 2000, 9:45 a.m. to 10:15 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Open:* June 1, 2000, 10:15 a.m. to 12 p.m.

*Agenda:* To present the Director's Report and other scientific presentations.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.

*Contact Person:* Walter S. Stolz, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

*Date:* May 31–June 1, 2000.

*Open:* May 31, 2000, 1:30 p.m. to 2:30 p.m.

*Agenda:* Review of the Division's scientific and planning activities.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

*Closed:* May 31, 2000, 2:30 p.m. to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

*Closed:* June 1, 2000, 8 a.m. to 9:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

*Contact Person:* Walter S. Stolz, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic and Hematologic Diseases Subcommittee.

*Date:* May 31–June 1, 2000.

*Open:* May 31, 2000 1:30 p.m. to 2:30 p.m.

*Agenda:* Review of the Division's scientific and planning activities.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 7.

*Closed:* May 31, 2000, 2:30 p.m. to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 7.

*Closed:* June 1, 2000, 8 a.m. to 9:30 a.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference Room 7.

*Contact Person:* Walter S. Stolz, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

*Name of Committee:* National Diabetes and Digestive and Kidney Diseases Advisory Council, Diabetes, Endocrine and Metabolic Diseases Subcommittee.

*Date:* May 31–June 1, 2000.
*Open:* May 31, 2000, 1:30 p.m. to 2:30 p.m.
*Agenda:* Review of the Division's scientific and planning activities.
*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.
*Closed:* May 31, 2000, 2:30 PM to adjournment.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.
*Closed:* June 1, 2000, 8 a.m. to 9:30 a.m.
*Agenda:* To review and evaluate grant applications.
*Place:* National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 10, Bethesda, MD 20892.
*Contact Person:* Walter S. Stolz, PhD, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases,Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 28, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11212 Filed 5–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasions of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Initial Review Group Neurological Sciences and Disorders C.

*Date:* June 12–13, 2000.

*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Madison Hotel, Fifteenth & M Streets NW, Washington, DC 20005.
*Contact Person:* Alan L Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, SUITE 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 28, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11213 Filed 5–4–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcement No. CFDA 93.576]**

### Notice of Availability of FY 2000 Discretionary Funds for Refugee Community and Family Strengthening and Integration—Program Name: Community and Family Strengthening and Integration

**AGENCY:** Office of Refugee Resettlement (ORR), ACF, DHHS.

**ACTION:** Notice of availability of FY 2000 discretionary funds for refugee Community and Family Strengthening and Integration.

**SUMMARY:** ORR invites eligible entities to submit competitive grant applications for Priority Area One: Community and Family Strengthening and Integration for Refugees, and Priority Area Two: Technical Assistance for the Integration of Refugees and Refugee Families into American Communities.

Applications will be accepted pursuant to the Director's discretionary authority under section 412(c) of the Immigration and Nationality Act (INA)(8 U.S.C. 1522), as amended.

Applications will be screened and evaluated as indicated in this program announcement. Awards will be contingent on the outcome of the competition and the availability of funds.

**DATES:** The closing date for submission of applications is July 5, 2000. See Part III of this announcement for more information on submitting applications.

**FOR FURTHER INFORMATION CONTACT:** Anna Mary Portz at (202) 401-1196, *APortz@ACF.DHHS.GOV*. Application materials are also available at the Office of Refugee Resettlement, 370 L'Enfant Promenade SW, Washington DC 20447 and on the ORR website at *www.acf.dhhs.gov/program/orr*.

**SUPPLEMENTARY INFORMATION:** This program announcement consists of four parts:

*Part I:* Background, legislative authority, funding availability, CFDA Number, applicant eligibility, project and budget periods, and for each of the two priority areas—program purpose and scope, allowable activities, and review criteria.

*Part II:* The Review Process—Intergovernmental review, initial ACF screening, and competitive review.

*Part III:* The Application—application forms, application submission and deadlines, certifications, general instructions for preparing a full project description, and length of application.

*Part IV:* Post-award—regulations, treatment of program income, and reporting.

*Paperwork Reduction Act of 1995 (Pub. L. 104–13):* Public reporting burden for this collection of information is estimated to average 16 hours, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collections are included in the program announcement: OMB Approval No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD) which expires 10/31/2000 and OMB Approval No. 0970–0036, ORR Quarterly Performance Report (QPR). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

### Part I

### Background

This announcement is the fifth iteration of the Community and Family Strengthening and Integration (CFSI) program. In FY 1994, ORR first announced the Refugee Community and Family Strengthening (CFS) Program as Program Area One of the Omnibus Discretionary Social Services Announcement (59 FR 26070 (05/18/94).

The announcement distinguished program areas by activities directed at strengthening refugee communities and those directed at refugee families, and further between large urban areas and smaller urban or rural areas. "Many

American communities with high concentrations of refugees have increased need for better communication and cooperation among agencies in order to increase program effectiveness, to provide services that are in touch with the needs of the refugee population, and to avoid duplication or fragmentation of services. Some of these communities have experienced a range of social and economic problems among refugee populations, particularly with regard to refugee women, youth, elderly, and in those sectors characterized by a high incidence of crime, violence, and neighborhood deterioration."

This announcement continues to encourage service planners and providers to consider the unmet needs of refugee families and communities in the context of existing services. Through the CFSI program ORR intends to promote a local planning process where service providers and community members come together to assess how the existing services are serving refugees and what additional activities might be funded with cost-sharing support. By placing importance on communities reaching consensus with regard to projects, ORR seeks to strengthen cooperation among local service providers, community leaders, Mutual Assistance Associations, voluntary agencies, churches, and other public and private organizations involved in refugee resettlement, family, youth, and child welfare, and community mental health services. ORR intends that this process will build strategic partnerships among these groups to expand their capacity to serve the social and economic needs of refugees and to give support and direction to ethnic community participation.

The trauma refugee families may experience as a result of persecution or flight may be destabilizing to family life. Single-parent refugee families are likely to face the same stresses as U.S. single-parent families. Finally, they may live in low-income neighborhoods with higher crime rates than expected and without the benefit of an ethnic community to provide information, guidance, protection and support.

Through the CFSI program and other experience, ORR has come to recognize that refugee families residing in U.S. communities encounter significant differences in child rearing practices compared to the ethnic or national customs of their country of origin. Traditional cultures with a strong authoritarian parental role may frequently be at odds with American child rearing practices. These basic differences frequently create conflict within refugee families on how best to raise children. Further, as a result of these factors, a small number of refugee families encounter and may require the assistance of child protective services and other services of the judicial system. These experiences may not be easily understood by the refugee family and the larger refugee community leading to confusion and fear of U.S. child welfare and child protective systems. Children may also confront conflicts in fitting in with their peers or finding a sense of belonging in the schools and social groups, at the same time meeting the expectations of their parents.

Many U.S. community public services do not have the cultural expertise or language capability to work effectively with refugee families. While the Civil Rights Act of 1964 mandates equal access to public services, frequently public resources are limited, and cultural and linguistic capacity is seldom available for refugee families.

In recent years, ORR has funded initiatives for recreation for refugee youth, crime prevention among refugee youth, parenting classes, and intergenerational activities. It has become clear over time that a productive relationship with child welfare services, child protective services, childcare services, youth shelters and other youth programs such as Boys and Girls Clubs, YMCA, YWCA, after school programs, is also needed to promote the refugee families' capacity to care for their children and youth safely in their new communities.

The goal in all CFSI projects should be to build and strengthen the community's capacity to serve its members regardless of language, cultural, or ethnic differences, and to improve the quality of life and standard of living for refugee families.

**Legislative Authority**

This program is authorized by Section 412(c)(1)(A) of the Immigration and Nationality Act (INA)(8 U.S.C. 1522(a)(1)(A), as amended, which authorizes the Director "to make grants to, and enter into contracts with, public or private nonprofit agencies for projects (such as) (i) * * * professional refresher training, and other recertification services; (ii) to provide training in English where necessary (regardless of whether the refugees are employed or receiving cash or other assistance); and (iii) to provide where specific needs have been shown and recognized by the Director, health (including mental health) services, social services, educational and other services." The FY 2000 Appropriation Act for the Department of Health and Human Services (Pub. L. 106–113) appropriates funds for refugee and entrant assistance activities authorized by these provisions of the INA.

As with all programs funded by appropriations pursuant to the Refugee Act, eligibility for these services is limited to persons who meet all requirements of 45 CFR 400.43 (as amended by 65 FR 15409 (03/22/00)) and 45 CFR 401.2 (Cuban and Haitian entrants), referred to collectively as "refugees". Further, the intent of this announcement is to target primarily refugees who have arrived within the last five years and to give special consideration to the needs of refugee children and youth within those families.

**Funding Availability**

ORR expects to award $5.8 million in FY 2000 discretionary social service funds through this announcement. Approximately 18 projects will be awarded under Priority Area One: Community and Family Strengthening and Integration in amounts ranging from $150,000–$400,000, in three program areas—(1) Integration into U.S. Communities, (2) Family Strengthening, (3) Community Strengthening. ORR will award one cooperative agreement of approximately $800,000 under Priority Area Two: Integration Technical Assistance.

The Director reserves the right to award less, or more, than the funds described, in the absence of worthy applications, or under such other circumstances as may be deemed to be in the best interest of the government.

**CFDA Number–93.576**

**Applicant Eligibility**

Public and private nonprofit organizations, including current CFS grantees whose projects end on September 30, 2000, are eligible to apply for ORR grants. An applicant may submit only one application per priority area, under this announcement. However, they may be involved in providing services under this announcement as a member of a coalition in which another agency is the applicant.

Any private nonprofit organization submitting an application must submit proof of its nonprofit status at the time of submission. A nonprofit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate.

**Project and Budget Periods**

This announcement invites applications for project periods up to three years. Awards, on a competitive basis, will be for a one-year budget period although project periods may be for three years. Applications for continuation grants funded under these awards, beyond the one-year budget period but within the three-year project period, will be entertained in subsequent years on a noncompetitive basis, subject to availability of funds, satisfactory progress of the grantee and a determination that continued funding would be in the best interest of the Government.

**Priority Area One: CFSI**

*Purpose and Scope*—This program announcement governs the availability of, and award procedures, for the FY 2000 Community and Family Strengthening and Integration Program and provides an opportunity for States and nonprofit organizations to request funding for activities which supplement and complement employment-related services by strengthening refugee families and communities and by enhancing their integration into mainstream society. ORR is interested in funding Priority Area One, CFSI projects, in three program areas:

(1) Integration into U.S. Communities
(2) Family Strengthening
(3) Community Strengthening

Applications may include activities in more than one program area. Applicants will designate the area under which they wish to be considered. ORR is particularly interested in projects which are planned and implemented through coalitions, address refugee needs for cultural and linguistic access to services, and provide cost-sharing support.

*Coalitions*

Refugee programs and local organizations, which have not already done so, are encouraged to build coalitions for the purpose of providing services funded under this Program Area. ORR strongly encourages single applications from partnerships or consortia of three or more eligible organizations. Partners may be in the refugee services provider community of organizations and institutions, or in mainstream services organizations, *e.g.*, public or private child welfare and child protective services, child care coalitions, community mental health services, women's shelters, or adult basic and continuing education providers. Collaboration may also include the Mayor's office, school parent-teacher groups, school counselors, local police departments, and other mainstream community service organizations.

All applicants should demonstrate existing refugee community support for their agency and their proposed project. If the applicant is located in an area where no other organizations work with refugees, and a coalition with other organizations is not possible, the applicant should demonstrate how the proposed services will be effectively provided by a single agency.

In this context, ORR is defining partnership as a negotiated arrangement among organizations that provides for a substantive, collaborative role for each of the partners in the planning and conduct of the project. Applications which represent a coalition of providers should include a signed partnership agreement stating a commitment or an intent to commit or receive resources from the prospective partner(s) contingent upon receipt of ORR funds, and for the lead agency, which is to be the fiscal agent, a copy of the most recent audit report. The agreement should state how the partnership arrangement relates to the objectives of the project. The applicant should also include: supporting documentation identifying the resources, experience, and expertise of the partner(s); evidence that the partner(s) has been involved in the planning of the project; and a discussion of the role of the partner(s) in the implementation and conduct of the project.

*Cultural and Linguistic Compatibility*

In all cases, regardless of the nature of the organization proposed to provide services or conduct activities funded under this announcement, the services/activities should be conducted in a manner linguistically and culturally compatible with the refugee families or communities to be served. In addition, the applicant must describe how proposed providers will have access to the families and to the community to be served.

In planning the project, applicants must include representatives of the target population and relevant public and private agencies active in service delivery in the proposed activity areas. As examples, a project being designed for refugee youth must include both refugee youth and public and private youth service providers among the planners; an applicant proposing English language and literacy for homebound refugee women must involve them along with ELT and literacy practitioners in the planning.

Furthermore, if interpreters are proposed in the first budget period, applicant must demonstrate how these staff will be used in subsequent years of the project, and whether they will be trained to assume an integral role in the project, such as to become service providers.

Applicants and any proposed partners should provide evidence that their governing bodies, boards of directors, or advisory bodies are representative of the refugee communities being served and have both male and female representation.

*Cost-Sharing*

Long-range viability for CFSI services may depend on: linkages to activities funded by other sources, the availability of expertise in the community, the likelihood of tangible results, the willingness of the community to participate actively including volunteer commitment in assuring the success of the project, and ultimately the community's capacity to continue the activity without additional ORR resources beyond the three-year project period.

Cost-sharing" is used here to refer to any situation in which the grantee shares in the costs of a project. The term "recipient contributions" refers to costs borne by the grantee, either through cash outlay or the provision of services. "In-kind contributions" means the value of goods and/or services donated by third parties. Grantees are not considered as providing "in-kind contributions." The cost-sharing or in-kind contribution costs are subject to the rules governing allowability in 45 CFR 74.23 or 92.24, including allowability under the applicable cost principles and conformance with other terms and conditions of the award that govern the expenditure of Federal funds.

Grantees must provide at least ten percent of the total approved cost of the project for the first year, 25% for the second year, and 40 percent for the third year. The total approved cost of the project is the sum of the ACF share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a project requesting $675,000 in Federal funds (based on an award of $225,000 per budget period) must provide cost-sharing of at least $22,500, ten percent in the first 12-month budget period. In subsequent continuation applications, the grantee will be asked to document receipt of non-ORR funds from other

sources. If the second year request is for a Federal share of $225,000, the grantee would be required to provide, at a minimum, cost-sharing of $75,000, or 25 percent of the full budget. In the third year, the grantee might propose to cost-share 50% of the project (must be at least 40%), and the Federal share would be an equal amount.

Grantees will be held accountable for commitments of non-Federal resources even if over the amount of the required cost-sharing. Failure to provide the amount will result in disallowance of Federal share.

Income generated from activities funded under this program shall be "used to finance the nonfederal share of" (ref.: 45 CFR 74.24 and 92.25) the project.

Applicants are urged to plan for the use of these funds in a manner that complements other Federal, State, and private funds available to assist the target populations and to carry out similar programs and activities.

**Allowable Activities**

ORR will consider applications for services which an applicant justifies, based on an analysis of service needs and available resources to address the social and economic problems and integration needs of refugee families and of the refugee community. It should be clear what is the goal or expected outcome of the activity, how it responds to the particular needs of families in that community or to a broader need of the community of families, who is committed to do wha. in order to accomplish this goal, and how the proposed activity fits into the existing network of services. An application may include activities in more than one program area. In selecting the program area against which the application will compete, applicants should consider the nature of outcomes for which they will be accountable. In instances where an applicant proposes activities which cut across program areas, the choice of program area should correspond to the proposed results or outcomes.

The specific services proposed may be as diverse as the refugee populations and the resettlement communities themselves. Proposed activities and services should be planned in conjunction with existing service providers and should supplement and complement these services.

Refugee families face many challenges when resettling in U.S. communities: family relationships may undergo stress and change; strong authoritarian and sometimes patriarchal family structures may provoke conflicts; schools and parents have different relationships; the range of freedom American youths are afforded may concern refugee parents; and discipline practices and spousal relations may differ from what is preferred or legal in the U.S. Typically income levels of refugee households dictate that they are often located in neighborhoods with high crime rates. Special attention should be placed on enhancing refugee access to services available to all citizens, including those community institutions which serve youth, women, or special needs populations.

Listed below are some examples of allowable activities organized by program area:

**Program Area One: Integration Into U.S. Communities**

Activities designed to inform and orient the refugee community regarding issues essential to effective participation in the new society.

Assistance to parents in connecting with the school system and other local community organizations.

Training and assistance for refugee women to enhance their integration and afford them full opportunities to participate in community development.

Continuing education programs for U.S.-recognized re-certification or skill-building.

Specialized English Training for groups outside the regular classes, *e.g.*, mothers of small children, homebound refugees with particular attention to accessibility of site and time.

Activities designed to facilitate adjustment of status, family reunification, and naturalization.

Activities designed to improve relations among refugees and the law enforcement communities such as drop-in centers or neighborhood storefronts.

Neighborhood watch programs.

Cross cultural training for the law enforcement community *i.e.*, police departments, court system, mediation or dispute management centers. (Please note: Law enforcement activities such as hiring sworn police officers (except those who are public service officers or community liaison officers whose job it is to work with the refugee community), fingerprinting, incarceration, *etc.*, are outside the scope of allowable services under the Refugee Act and will not be considered for funding. (Activities principally focused on parole counseling or court advocacy will not be funded.)

**Program Area Two: Family Strengthening**

Promotion of access to family service agencies that support families.

Classes and activities to support parenting skills, including information about U.S. cultural and legal issues, (*e.g.*), parental interaction with schools, family recreation, discipline practices, practices of corporal punishment, intergenerational conflict, child abuse, child protective services.

Development of refugee families as foster parents for refugee children.

Cross-cultural training for child protective service agencies, courts, county agencies, private businesses, and other organizations that work in this area.

Orientation and information regarding U.S. family structure, roles of men and women, divorce practices, intra-family violence intervention, sexual harassment and coercion, techniques for protection and agencies for refuge and support.

Training for staff and/or bi-lingual staff development for domestic violence or runaway youth shelters, etc.

**Program Area Three: Community Strengthening**

Operating community centers for the delivery of services to refugee individuals and families. Centers may also be used for information and referral services, childcare, and community gatherings. (Costs related to construction or renovation will not be considered, and costs for food or beverages are not allowable).

Communities might be organized for housing cooperatives, for youth activities, for violence intervention, for volunteer ELT and literacy services, or for crime prevention.

Development of staff in community based organizations working directly with refugees. Such activities may include training and professional consultation to increase knowledge and understanding of refugee flight and distress, and how to work with people under stress, and to increase information and understanding of how refugees are referred to or use mental health services.

Development of training curriculum and materials for relevant staff development.

Orientation and information for refugees to normalize the experience of refugee flight trauma and their reactions to the trauma, and to seek appropriate social adjustment or mental health services.

Orientation and information on refugees and resettlement for mainstream mental health providers and professionals who may have refugees in their care.

The above are only examples of services. They are not intended to limit

potential applicants in community planning. They are listed and generically described without regard to the population to be served. It will be necessary in the application to describe more specifically the target population. For example, one activity might be appropriately designed to serve only homebound women. Another might be designed for teenagers and their parents. Another might be for English language training and naturalization classes. Some might be targeted for all members of the family. Applications should correlate a planned activity with specific target audiences and discuss the relationship between the proposed activities and the target population.

Funds will not be awarded to applicants who propose to engage in activities which are designed primarily to promote the preservation of cultural heritage or which have a political objective. ORR encourages refugee community efforts to preserve cultural heritage, but believes communities should support these activities with alternative funding.

**Review Criteria**

All priority area one applications regardless of program area designation will be evaluated according to the following criteria:

Results or Benefits Expected—The applicant clearly described the results and benefits to be achieved. The applicant identifies how improvement will be measured on key indicators for refugee family well-being or community strengthening and integration, and provides milestones indicating progress. Proposed outcomes are tangible and achievable within the grant project period, and the proposed monitoring and information collection is adequately planned. (30 points)

Approach—The strategy and plan is likely to achieve the proposed results; the proposed activities and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished as well as the potential for the project to have a positive impact on the quality of life for refugee families and communities (1) by improving refugees' abilities to access services, to provide mutual assistance, and to demand or create services where they are not available; and (2) by instituting changes among service providers to make them more accessible. (25 points)

Organization Profiles—Where coalition partners are proposed, the applicant has described the rationale for the collaboration, each partner agency's respective role, and how the coalition will enhance the accomplishment of the project goals. In all cases, the applicant describes planning consultation efforts undertaken, including consultation with the refugee community. The proposed coalition is appropriate with respective roles and financial responsibilities delineated. Evidence of commitment of coalition partners in implementing the activities is demonstrated, *i.e.*, by letters or the terms of the signed agreement among participants.

The applicant or coalition partners provide documented experience in performing the proposed services as well as adequate gender balance and constituent representation on the proposed project's advisory board.

Assurance is provided that proposed services will be delivered in a manner that is linguistically and culturally appropriate to the target population.

Individual organization staff including volunteers are well-qualified. The administrative and management features of the project, including a plan for fiscal and programmatic management of each activity, is described in detail with proposed start-up times, ongoing timelines, major milestones or benchmarks, a component/project organization chart, and a staffing chart. The applicant has provided a copy of its most recent audit report. (25 points)

Budget and Budget Justification—The budget and narrative justification are reasonable in relation to the proposed activities and anticipated results; the applicant makes provision for cost-sharing (*i.e.* leveraging ORR funds with non-Federal funds or in-kind support) to maintain the full budget during the overall project; the plan for the continuation of services with phase-out of ORR grant funding over the multi-year project period is realistic; and the applicant describes the extent to which the award is projected to be augmented or supplemented by other funding during and beyond the grant period (*i.e.* in the second and any subsequent year), or can be integrated into other existing service systems. (20 points)

**Priority Area Two: Technical Assistance for the Integration of Refugees and Refugee Families Into American Communities**

*Purpose and Scope*

ORR proposes to award one cooperative agreement to provide technical assistance and training to refugees, refugee service agencies, and other community organizations to assist in the integration of refugees into the mainstream of American community life. Through this project, communities and other organizations will be assisted in helping refugees gain access to, participate in, and contribute to, the economic, educational, social and civic life of the community in which they live.

The objectives of this grant are:

1. To analyze the status of refugee integration in six communities and produce a blueprint describing those factors which contribute to refugees being accepted—or not accepted—into the community;
2. To assist selected communities in organizing to develop an action plan for improved community integration;
3. To provide some financial assistance to enable one or more community agencies to carry out the plan; and,
4. To analyze the results of that effort.

As a result of this project, communities and resettlement community organizations will be better able to assist refugees in gaining access, in measurable ways, to local economic opportunities, community health and mental health resources, safe and affordable housing, participation in local school systems, and continuing education and vocational training. The technical assistance project should be designed to promote refugees' contributions to their communities through activities such as neighborhood revitalization and crime watch, small business development, bilingual staffing of local community services, naturalization rates, and participation in the community civic activities.

Under this cooperative agreement, ORR intends to: (1) Assist in developing key indicators of integration; (2) participate in the selection and field reviews of the six selected community sites; (3) review all written materials prior to their release; and (4) review and approve proposed workshops, meetings, and agenda.

The grantee will be required to: (1) Identify community agencies and institutions with the capacity and commitment to engage constructively with refugee communities and to provide them services; (2) analyze refugee community's access to services through field interviews and other assessment strategies, and prepare a blueprint of findings; (3) prepare, in collaboration with the community, an action plan for mobilizing public and private community agencies, businesses, and institutions to increase opportunities for refugees to become self-sufficient and more fully integrated into the mainstream life of the community; (4) provide, through a competitive process, sub-grant funds for implementation of the action plan; and (5) prepare and disseminate reports on

refugee community characteristics, achievements, and best practices.

Approximately $800,000 has been allocated for this project. Of this amount, $350,000 has been allocated for the purposes of the technical assistance grant. An additional $450,000 is available to the technical assistance grantee to provide funding for a local agency or consortium of agencies to implement the community action plan in up to three sites at up to $150,000 per site.

*Allowable Activities*

Applicants may propose all or a combination of the activities suggested below as well as other activities which support the purposes of this priority area:

Assess the local economic and social conditions, including poverty and isolation, transportation, health and mental health services, local coordination of, or linkage to, resources and services, existing housing stock, labor market opportunities, and the interaction among refugees, immigrant communities, and other local residents.

Assess local organizational strengths and weaknesses, refugee community needs, and the impact of refugees on the local community.

Analyze access to culturally and linguistically appropriate services by generation cohort (elderly, youth, *etc.*) and gender.

Facilitate the flow and exchange of community information on resources, services, and opportunities, developing a blueprint for refugee integration.

Engage State and county agencies and community advocates in program planning and community development.

Assist local organizations in developing partnerships and an action plan for local refugee integration.

*Review Criteria*

Priority Area Two applications will be evaluated according to the following criteria:

*Results or Benefits Expected*—The applicant clearly described the results and benefits to be achieved, such as improvement along key indicators for refugee integration, and the production of best practices manuals or training materials. (25 points)

*Approach*—The technical assistance plan is clearly described and appropriate; the proposed activities and timeframes are reasonable and feasible. The plan describes in detail how the proposed activities will be accomplished. (25 points)

*Organization Profiles*—The applicant demonstrates the capacity of the organization to achieve the project's objectives. Organizational expertise and experience in community development and in the provision of technical assistance activities are described and are appropriate for this project. (25 points)

*Budget and Budget Justification*—The budget is accurate, reasonable, clearly presented, and cost-effective. (25 points)

**Part II: The Review Process**

*Intergovernmental Review*

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the Order known as Single Point of Contact or SPOC, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

As of November 20, 1998, the following jurisdictions have elected not to participate in the Executive Order process: Alabama; Alaska; American Samoa; Colorado; Connecticut; Kansas; Hawaii; Idaho; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; and Washington. Applicants from these jurisdictions or for projects administered by federally recognized Indian Tribes need take no action in regard to E.O. 12372.

Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit any required materials to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW, 6th Floor, Washington DC, 20447 ATTN: Ms. Daphne Weeden.

A list of the Single Points of Contact for each participating State and Territory can be found on the web at: http://www.dhhs.gov/progorg/grantsnet/laws-reg/spoq0695.htm.

*Initial ACF Screening*

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

*Competitive Review and Evaluation Criteria*

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of evaluation criteria specified in Part I. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement.

Priority Area One applications will be scored and ranked in three groups corresponding to the three program areas.

**Part III: The Application**

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Selected elements of the ACF Uniform Project Description (UPD) relevant to this program announcement are attached as an appendix.

*Application Forms*

Applicants for financial assistance under this announcement must file the Standard Form (SF) 424, Application for Federal Assistance; SF 424A, Budget Information—Non-construction Programs; SF 424B, Assurances—Non-Construction Programs. The forms may be reproduced for use in submitting applications. Application materials including forms and instructions are also available from the Contact named in the preamble of this announcement.

*Application Submission And Deadlines*

An application with an original signature and two clearly identified copies is required. Applicants must clearly indicate on the SF424 the Priority Area under which the application is submitted, and if Priority Area One, then also the Program Area under which the project is to be considered.

The closing date for submission of applications is July 5, 2000. Mailed applications postmarked after the closing date will be classified as late.

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Attention: Ms. Daphne Weeden.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, the Office of Refugee Resettlement, 6th Floor, Aerospace Building, 901 D Street, SW, Washington, DC 20447 between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: Ms. Daphne Weeden." (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

*Late applications*

Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

*Extension of deadlines*

ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, *etc.*) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

For Further Information on Application Deadlines Contact: Ms. Daphne Weeden, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade, SW, 6th Floor, Washington, DC 20447, Telephone: (202) 401–4577.

**Certifications, Assurances, and Disclosure Required for Non-Construction Programs**

Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications.

Applicants must provide a signed certification regarding lobbying with their applications, when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

**General Instructions for Preparing a Full Project Description**

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested. Please refer to the UPD sections in the appendix.

*Length of Applications*

Each application narrative should not exceed 25 double-spaced pages in a 12-pitch font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as administration charts, position descriptions, resumes, and letters of intent or partnership agreements. Each page should be numbered sequentially, including the attachments or appendices. This limitation of 25 pages per program area should be considered as a maximum, and not necessarily a goal.

Please do not include books or videotapes as they are not easily reproduced and are, therefore, inaccessible to the reviewers.

**Part IV: Post-Award**

Applicable Regulations—Applicable DHHS grant administration regulations can be found in 45 CFR part 74 or 92.

*Treatment of Program Income*

Program income from activities funded under this program may be retained by the recipient and added to the funds committed to the project through cost-sharing, and used to further program objectives.

*Reporting Requirements*

Grantees are required to file the Financial status Report (SF–269) and Program Performance Reports on a semi-annual basis. Funds issued under these awards must be accounted for and reported upon separately from all other grant activities. Although ORR does not expect the proposed projects to include evaluation activities, it does expect

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grantees to maintain adequate records to track and report on project outcomes and expenditures. The official receipt point for all reports and correspondence is the ORR Grants Officer, Ms. Daphne Weeden, Administration for Children and Families/Office of Refugee Resettlement, 370 L'Enfant Promenade SW, 6th Floor, Washington, DC 20447, Telephone: (202) 401–4577. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Grants Officer.

A Final Financial and Program Report shall be due 90 days after the project expiration date or termination of Federal budget support.

Dated: May 1, 2000.

**Lavinia Limón,**

*Director, Office of Refugee Resettlement.*

## Appendix I—Uniform Project Description—Overview OMB No. 0970–0139

Expires 10/31/00

*Purpose*

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

*General Instructions*

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

*Introduction*

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions.

*Project Summary/Abstract*

Provide a summary of the project description (a page or less) with reference to the funding request.

**Objectives and Need for Assistance**

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

*Results or Benefits Expected*

Identify the results and benefits to be derived. For example, when applying for a grant to establish a neighborhood child care center, describe who will occupy the facility, who will use the facility, how the facility will be used, and how the facility will benefit the community which it will serve.

*Approach*

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

**Geographic Location**

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

**Staff and Position Data**

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

**Organization Profiles**

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

**Dissemination Plan**

Provide a plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

**Third-Party Agreements**

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

**Letters of Support**

Provide statements from community, public and commercial leaders that support the project proposed for funding.

*Budget and Budget Justification*

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

**General**

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

**Personnel**

*Description:* Costs of employee salaries and wages.

*Justification:* Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

**Fringe Benefits**

*Description:* Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

*Justification:* Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

**Travel**

*Description:* Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

*Justification:* For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

**Equipment**

*Description:* Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, an applicant may use its own definition of equipment provided that such equipment would at least include all equipment defined above.

*Justification:* For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

**Supplies**

*Description:* Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

**Contractual**

*Description:* Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

*Justification:* All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. If procurement competitions were held or if procurement without competition is being proposed, attach a list of proposed contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and the award selection process. Justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 USC 403(11) (currently set at Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

**Note:** Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

**Other**

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

*Justification:* Provide computations, a narrative description and a justification for each cost under this category.

**Indirect Charges**

*Description:* Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

*Justification:* An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

**Program Income**

*Description:* The estimated amount of income, if any, expected to be generated from this project.

*Justification:* Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

**Non-Federal Resources**

*Description:* Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

*Justification:* The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

*Total Direct Charges, Total Indirect Charges, Total Project Costs*

Self explanatory.

[FR Doc. 00–11258 Filed 5–4–00; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4557–N–18]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of the publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Energy:* Mr. Tom Knox, Department of Energy, Office of Contract and Resource Management, MA–53, Washington, DC 20585; (202) 586–8715; *GSA*: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0052; *Navy:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: April 27, 2000.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Special Needs Assistance Programs.*

**Title V, Federal Surplus Property Program Federal Register Report for 5/5/00**

**Suitable/Available Properties**

*Building (by State)*

California

Bldg. 301
Naval Support Activity
Monterey Co: CA 93943–
Landholding Agency: Navy
Property Number: 77200020041
Status: Excess
Comment: 18,608 sq. ft., presence of asbestos/lead paint, needs major rehab

Idaho

Bldg. CF603
Idaho Natl Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200020004
Status: Excess
Comment: 15,005 sq. ft. cinder block, presence of asbestos/lead paint, major rehab, off-site use only

Maryland

De LaSalle Bldg.
4900 LaSalle Road
Avondale Co: Prince George MD 20782–
Landholding Agency: GSA
Property Number: 54200020007
Status: Excess
Comment: 130,000 sq. ft., multi-story on 17.79 acres, extensive rehab required, presence of asbestos/lead paint/pigeon infestation, subj. to easements, eligible for Natl Register
GSA Number: 4–G–MD–565A

Missouri

Natl Weather Svc Ofc
4100 Mexico Road
St. Peters Co: St. Charles MO 00000–
Landholding Agency: GSA
Property Number: 54200020015
Status: Excess
Comment: 4774 sq. ft., presence of asbestos, good condition, most recent use—office
GSA Number: 7–C–MO–641

*Land (by State)*

North Carolina

6.45 acres
Portion of McKinney Lake
Fish Hatchery
Millstone Church Road
Hoffman Co: Richmond NC 28347–
Landholding Agency: GSA
Property Number: 54200020011
Status: Excess
Comment: 6.45 acres, most recent use—outdoor horticulture classes
GSA Number: 4–GR–NC–570

North Dakota

Grand Forks Waterline
Formerly S. Mickelson Water Complex
Grand Forks Co: ND 00000–
Landholding Agency: GSA
Property Number: 54200020014
Status: Excess
Comment: 10.84 acres of improved fee land w/bldg., 527.22 acres of easement for waterline, 1.70 acres of licenses
GSA Number: 7–D–ND–499

**Suitable/Unavailable Properties**

*Buildings (by State)*

North Carolina

Vehicle Maint. Facility

310 New Bern Ave.
Raleigh Co: Wake NC 27601–
Landholding Agency: GSA
Property Number: 54200020012
Status: Excess
Comment: 10,455 sq. ft., most recent use—maintenance garage
GSA Number: NC076AB

*Land (by State)*

Virginia

25 acres
Wildlife Refuge
Fishermans Island Co: Northhampton VA 00000–
Landholding Agency: GSA
Property Number: 54200020010
Status: Excess
Comment: unimproved land
GSA Number: 4–N–VA–720A

New Jersey

Parcel A–1, Bldg. 228
Raritan Center
2890 Woodbridge Avenue
Edison Co: NJ 08837–
Landholding Agency: GSA
Property Number: 54200020009
Status: Excess
Reasons: Landlocked; extensive deterioration
GSA Number: 1–Z–NJ–440–O

New Mexico

Bldg. 3, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Property Number: 41200020001
Status: Unutilized
Reasons: Secured area; extensive deterioration

Bldg. 51, TA–9
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landolding Agency: Energy
Property Number 41200020002
Status: Unutilized
Reason: Secured area

Bldg. 30, TA–14
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landolding Agency: Energy
Property Number: 41200020003
Status: Unutilized
Reason: Secured area

North Carolina

Bldg. 2067
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200020036
Status: Excess
Reasons: Secured area; extensive deterioration

Bldg. 3146
Marine Corps Air Station
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77200020037
Status: Excess
Reason: Secured area; extensive deterioration

Virginia

CEP–12
Naval Station Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number 77200020042
Status: Excess
Reason: Extensive deterioration

CEP–62
Naval Station Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200020043
Status: Excess
Reason: Extensive deterioration

CEP–206
Naval Station Norfolk
Norfolk Co: VA 23511
Landholding Agency: Navy
Property Number: 77200020044
Status: Excess
Reason: Extensive deterioration

Washington

Bldg. 398
Naval Station
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77200020038
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; secured area

Bldg. 976
Naval Station
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200020039
Reasons: Within 2000 ft. of flammable or explosive material; secured area; extensive deterioration

8 Bldgs.
Naval Station
902, 903, 905, 907, 909–911, 915
Bremerton Co: WA 98314–5020
Landholding Agency: Navy
Property Number: 77200020040
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; secured area

*Land (by State)*

Missouri

Borrow Pit Area
North of Smart Field
St. Charles Co: MO 00000–
Landholding Agency: GSA
Property Number: 54200020008
Status: Excess
Reason: Floodway
GSA Number: 7–GR–MO–0423

[FR Doc. 00–10963 Filed 5–4–00; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Invasive Species Advisory Committee

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Notice of public meetings of the Invasive Species Advisory Committee and Invasive Species Council.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of meetings of the Invasive Species Advisory Committee and the Invasive Species Council. The purpose of the Advisory Committee is to provide advice to the Council, as authorized by Executive Order 13112, on a broad array of issues related to preventing the introduction of invasive species and providing for their control and minimizing the economic, ecological, and human health impacts that invasive species cause. The Council is Co-chaired by the Secretary of the Interior, the Secretary of Agriculture, and the Secretary of Commerce. The duty of the Council is to provide national leadership regarding invasive species issues. The purpose of a meeting on May 17 is to convene the full Advisory Committee and receive reports from the six working groups established to provide input for the National Invasive Species Management Plan. A second meeting on May 18 is the first joint meeting of the Advisory Committee and the Council. The meetings will be open to the public. Attendance will be limited to space available.

**DATES:** Meeting of Invasive Species Advisory Committee: 9 a.m., Wednesday, May 17, 2000; Meeting of Invasive Species Advisory Committee and Council: 1 p.m., Thursday, May 18, 2000.

**ADDRESSES:** Doubletree Hotel National Airport, 300 Army Navy Drive, Arlington, VA 22202. Committee Meeting will be held in the Commonwealth Room, Joint Committee/ Council Meeting will be held in the Washington Room.

**FOR FURTHER INFORMATION CONTACT:** Kelsey Passé, National Invasive Species Council Program Analyst; E-mail: kelsey_passe@ios.doi.gov; Phone: (202) 208–6336; Fax: (202) 208–1526.

Dated: May 1, 2000.

**A. Gordon Brown,**

*Co-Executive Director, National Invasive Species Council.*

[FR Doc. 00–11197 Filed 5–4–00; 8:45 am]

BILLING CODE 4310–RK–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–942–5420 J951; UTU–78738]**

### Proposed Disclaimer of Interest; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management has received an application for a Disclaimer of Interest for accreted lands along the Virgin River in Washington, County, Utah. This notice provides a public comment period for the Disclaimer of Interest.

**DATES:** Comments should be received by August 3, 2000.

**ADDRESSES:** Comments should be sent to the State Director, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

**FOR FURTHER INFORMATION CONTACT:** Angela D. Williams, Bureau of Land Management, Utah State Office, 801–539–4107.

**SUPPLEMENTARY INFORMATION:** The United States of America, through the Bureau of Land Management, of the Department of the Interior, hereby disclaims any interest in the following tracts of land situated in Washington County, State of Utah:

**Parcel #1**

Beginning at a point North 01°05′07″ West 957.00 feet along the Section Line from the Southeast Corner of Section 32, Township 42 South, Range 15 West, Salt Lake Base and Meridian; said point also being on the South Meander Line of the Virgin River as shown on the Surveyor's General Official Plat dated September 3, 1870; thence along said Meander Line the following two (2) courses: South 89°40′55″ West 1325.10 feet to the East Sixteenth (1/16) Line of said Section 32; thence South 59°40′55″ West 255.22 feet to a point on the arc of a 1477.89–foot radius curve concave to the Northeast, from which the radius point bears North 66°08′45″ East; said point also being on the Easterly Right-of-Way Line of River Road, a 100-foot wide public street; thence along said Right-of-Way Line the following two (2) courses: Northwesterly 138.84 feet along the arc of said curve through a central angle of 5°22′58″; thence North 18°28′17″ West 750.70 feet; thence leaving said Right-of-Way Line South 68°50′50″ East 786.00 feet; thence South 82°54′39″ East 135.38 feet; thence North 77°14′39″ East 87.66 feet; thence North 44°54′44″ East 663.44 feet; thence North 85°30′46″ East 176.24 feet; thence South 63°28′36″ East 491.12 feet; thence South 61°39′26″ East 1268.77 feet to the West Sixteenth (1/16) Line of said Section 33; thence along said Sixteenth Line South 00°53′19″ East 140.28 feet to the said Meander Line; thence along said Meander Line the following two (2) courses: South 85°40′55″ West 985.11 feet; thence North 69°19′05″ West 363.00 feet to the point of beginning.

Continuing 41.49 acres, lying Southerly of the Virgin River and Northerly of original riparian lots 5 and 6, Section 32, Township 42 South, Range 15 West, Salt Lake Base and Meridian.

**Parcel #2**

Beginning at a point South 89°40′55″ West 1876.79 feet along the Section Line and North 00°00′00″ East 647.88 feet from the Southeast Corner of Section 32, Township 42 South, Range 15 West, Salt Lake Base and Meridian; said point also being on the South Meander Line of the Virgin River as shown on the Surveyor's General Official Plat dated September 3, 1870; said point also being on the arc of an 822.85-foot radius curve concave to the Northeast from which point the radius point bears North 76°35′00″ East; thence Northwesterly 75.61 feet along the arc of said curve through a central angle of 5°15′54″; thence North 08°09′06″ West 866.84 feet; thence North 14°58′06″ West 193.60 feet; thence North 79°21′04″ East 9.32 feet; thence North 58°29′09″ East 14.74 feet; thence North 34°47′30″ East 17.78 feet; thence South 52°04′08″ East 24.12 feet; thence South 25°00′10″ East 31.06 feet; thence South 60°04′38″ East 19.83 feet; thence South 75°46′19″ East 4.15 feet to a point on the Westerly Right-of-Way Line of River Road, a 100.00-foot wide public street; thence along said Right-of-Way line the following two (2) courses: South 18°28′17 East 852.50 feet to the point of curvature of a 1577.89-foot radius curve concave to the Northeast; thence Southeasterly 159.57 feet long the arc of said curve through a central angle of 5°47′39″ to a point from which the radius point bears North 65°44′04″ East; thence leaving said Right-of-Way Line South 59°40′55″ West 2662.26 feet to the point of beginning.

Containing 3.76 acres, lying Southerly of the Virgin River and Northerly of original riparian lot 5, Section 32, Township 42 South, Range 15 West, Salt Lake Base and Meridian.

By this action, the United States of America hereby releases and relinquishes any claim of interest to the above described land.

Further, the United States of America hereby releases and relinquishes any claim of interest to the surface lands, for lands patented out, from their original surveyed and plated location to the center line of the Virgin River. This statement does not address any subsurface interest that may still vested with the United States of America.

The public is hereby notified that comments may be submitted to the State Director at the address shown above withing the comment period identified above. Any adverse comments will be evaluated by the State Director who may modify or vacate this action and issue a final determination. In absence of any action by the State Director, this notice will become the final determination of the Department of the Interior and a disclaimer of interest maybe issued 90 day from the publication of this notice.

**Joseph Incardine,**

*Chief, Branch of Lands and Realty.*

[FR Doc. 00–11234 Filed 5–4–00; 8:45 am]

BILLING CODE 4310–DQ–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[MT–059–00–1020–AC]**

### Resource Advisory Council Meeting, Dillon, MT

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Western Montana Resource Advisory Council will convene at 10 a.m., Wednesday, May 31, 2000, and 9:00 a.m., Thursday, June 1, 2000, at the Dillon Field Office, 1005 Selway Drive, Dillon, Montana. On Wednesday, there will be a field trip to Dyce Creek to discuss issues associated with the Dyce Creek Forest Health Project, the field trip will end at 5:00 p.m. At the Thursday meeting, issues will include the Whitetail-Pipestone Environmental Impact Statement and BLM's budget, Thursday's meeting will end at 12:00 p.m.

The meeting is open to the public and written comments can be given to the Council. Oral comments may be presented to the Council at 11:30 a.m. on Thursday. The time allotted for oral comment may be limited, depending on the number of persons wishing to be heard. Individuals who plan to attend and need further information about the meeting, or who need special assistance, such as sign language or other reasonable accommodations, should contact Jean Nelson-Dean, Resource Advisory Coordinator, at the Butte Field Office, 106 North Parkmont, P.O. Box 3388, Butte, Montana 59702–3388, telephone 406–533–7617.

**FOR FURTHER INFORMATION CONTACT:** Scott Powers, Dillon Field Manager, 406–683–2337, or Jean Nelson-Dean at the above address and telephone number.

Dated: April 28, 2000.

**Dave Williams,**

*Acting Field Manager.*

[FR Doc. 00–11217 Filed 5–4–00; 8:45 am]

**BILLING CODE 4310–DN–P**

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**DEPARTMENT OF INTERIOR**

**Bureau of Land Management**

**Notice of Pryor Mountain Area Off-Highway Vehicle (OHV) Designation**

**ACTION:** Notice; correction.

**SUMMARY:** The Bureau of Land Management published a document in the **Federal Register** of April 20, 2000, concerning designations for Off Highway Vehicle use on public lands. The document contained an incorrect road name and number.

**FOR FURTHER INFORMATION CONTACT:** David Jaynes, 406–896–5013.

**Correction**

In the **Federal Register** of April 20, 2000 (Volume 65, Number 77) on page 21209, correct the sentence in "Summary" from "Bear Canyon Ridge Road [1031] from East Horsehaven [1030] T.9S., R.26E., Section 2, meandering north to the Custer National Forest in Section 2" to read "Bear Canyon Ridge Road [1031] from West Horsehaven [1021] T.9S., R.26E., meandering north to the Custer National Forest in Section 2".

Dated: May 1, 2000.

**Sandra S. Brooks,**

*Field Manager.*

[FR Doc. 00–11235 Filed 5–4–00; 8:45 am]

**BILLING CODE 4310–$$–P**

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**[CO–170–00N1220–DA]**

**Notice of Intent To Amend the San Juan/San Miguel Resource Management Plan**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent to Amend the San Juan/San Miguel Resource Management Plan, and prepare an Environmental Assessment (EA).

**SUMMARY:** The Bureau of Land Management (BLM) announces the initiation of a Resource Management Plan (RMP) Amendment for the Grandview Ridge Coordinated Resource Management Plan, affecting approximately 1,600 acres of BLM administered public land. The proposed action has been reviewed for conformance with the San Juan Field Office Resource Management Plan (43 CFR 1610.5, BLM 1617.3). The proposed action would amend certain portions of the plan as follows: (1) Motorized use would be limited to access for oil/gas development and maintenance, use and maintenance of existing ROWs, wildlife habitat improvement projects, and administrative use, (2) Recreation emphasis would be added to the existing Wildlife and Mineral emphasis, and (3) the Mineral emphasis for sand and gravel development would be reduced from 400 to 160 acres.

**ADDRESSES:** To obtain copies of the Proposed Plan Amendment/EA and Finding of No Significant Impact and for further information, contact Calvin N. Joyner, Bureau of Land Management (BLM) San Juan Public Lands Center, Durango, Colorado 81301; Telephone (970) 247–4874.

**DATES:** This notice initiates a 30 day public comment period on the proposed plan amendment and finding of no significant impact.

**SUPPLEMENTARY INFORMATION:** The BLM conducted an open house on November 5, 1998, and written comments were received until January 30, 1999, to identify issues to be evaluated and to determine if new issues and circumstances warranted amending the RMP. The Grandview Ridge Coordinated Resource Management Area includes the following public lands totaling approximately 1,600 acres: In New Mexico Principal Meridian: T.34N., R.9W., Section 3 SE¼ NW¼: Lots 5, 6, 7, 8, 9, 10, 11, 12 & 13.; Section 4: Lots 5, 6, 7, 8, 9, 10, 11 & 12; Section 9: 1, 2 4 & 5; Section 10: NW¼ NW¼. T.34N., R.9W., Section 34. T.35N., R.9w., Section 26: SE¼ NE¼, SE¼ SW¼, W¼ SE¼; Section 34: Lots 6, 9, 13, 14 & 15; Section 35: W½ NW¼.

In accordance with Section 202 of FLPMA, the San Juan RMP will be reviewed and potentially amended. The first step in this process involved soliciting public input to identify issues to be evaluated in the process. Issue identification is integral to the EA and amendment process, and was utilized to focus on relevant environmental concerns, identify controversy over resource management activities and identify alternative management for the area. The issues addressed by this Plan Amendment/EA include safety, resource protection, cultural resources, wildlife habitat, mineral development, and recreational opportunities. Following completion of issue identification, the BLM identified alternatives to be analyzed and planning criteria to guide the plan amendment process. Additional public input was solicited at a later date to complete these steps in the process. Planning criteria are the standards, rules, and other factors used in formulating judgements about data collection, analysis, and decision making. These criteria establish parameters and help focus the amendment process. The proposed planning criteria include:

1. All proposed actions and alternatives considered must comply with current laws and Federal Regulations.

2. The resource allocations of proposed actions will be made in accordance with the principles of "multiple use" as defined in the Federal Land Policy and Management Act of 1976 (FLPMA), Sec. 103(c).

3. The Proposed Plan Amendment will consider the relatively scarcity of the values involved and the availability of alternative means and sites for realization of those values.

4. This planning process provided for public involvement including early notice and frequent opportunity for citizens and interested groups and others to participate in and comment on the preparation of plans and related guidance.

5. To the extent possible under Federal law, and within the framework of proper long-term management of the public lands, BLM will strive to ensure that its management prescriptions and planning actions take into consideration related programs, plans, or policies of other resource agencies. This will include the formal consistency review by the Governor of Colorado.

6. BLM provided local, State and Federal agencies a copy of the Draft EA with a written request to comment. Agencies may identify in writing any inconsistencies with formally approved land use plans or related jurisdictions.

7. Planning decisions will apply only to BLM administered public lands.

8. All valid existing rights will continue to be recognized.

Dated: April 24, 2000.

**Calvin N. Joyner,**

*Field Manager, San Juan Field Office.*

[FR Doc. 00–11265 Filed 5–4–00; 8:45 am]

**BILLING CODE 4310–JB–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Environmental Statements; Availability etc; Gettysburg National Military Park

**AGENCY:** National Park Service (NPS), Department of Interior (DOI).

**ACTION:** Notice of availability of an environmental assessment on the proposed demolition and removal of the National Tower at Gettysburg National Military Park, Gettysburg, PA.

**SUMMARY:** Pursuant to the Council on Environmental Quality regulations and National Park Service policy, the NPS announces the availability of a draft environmental assessment on the proposed demolition and removal of the National Tower at Gettysburg National Military Park, Gettysburg, PA. The purpose of this environmental assessment is to present the alternatives for removal of the tower and related impacts. Specific actions required for future site restoration are not described or analyzed within this document. The NPS is soliciting comments on this environmental assessment. NPS will consider these comments in making a decision pursuant to the National Environmental Policy Act (NEPA) and the National Historic Preservation Act of 1966 (NHPA).

**DATES:** The environmental assessment will remain available for public comment through May 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Katie Lawhon, (717) 334–1124 extension 452 or write to Superintendent, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, PA 17325.

**SUPPLEMENTARY INFORMATION:** On December 9, 1999, the Department of Justice filed a complaint in condemnation at the U.S. District Court in Harrisburg, Pennsylvania. This action was the first formal legal step in the federal government's acquisition of the privately owned 307-foot observation tower, the land upon which it sits and its appurtenant rights-of-way. The action to acquire the National Tower, which overlooks the Gettysburg Battlefield, implements the decision made by the National Park Service as part of its 1990 Boundary Study and its 1993 Land Protection Plan to add the site to the park, acquire the land and the tower, and remove the tower.

Removal of non-historic structures in order to restore natural conditions is listed by the NPS as a categorical exclusion under the National Park Service procedures for implementing the provisions of the National Environmental Policy Act (NEPA). However, in the interests of disclosing the limited impacts associated with the demolition of the non-historic tower structure, this environmental assessment ahs been prepared for public and agency review. Alternatives analyzed in the draft Environmental Assessment include Alternative 1, (the Proposal), Tower Removal and Alternative 2, No Action. Under Alternative 1, the tower structure and its surrounding buildings would be demolished and removed. Demolition itself could be accomplished through a variety of methods. One alternative method would be to dismantle the structure in a piece-by-piece method through use of cranes and other mechanical methods. Another demolition method would be to use an implosion method to reduce the tower and associated structures into on-site debris and then remove the debris. Under all methods, the resulting debris would be removed by truck to approved scrap yards/resale facilities and landfills. Under Alternative 2, No Action, the tower property would be acquired as stated in previous planning documents. The NPS would close the National Tower to public access and use, but the tower would not be removed. This alternative is presented for baseline purposes of comparison. All interested agencies, organizations, and individuals are urged to provide comments on the draft Environmental Assessment. All comments received by the closing date will be considered by NPS as it completes its NEPA and NHPA compliance.

Dated: April 28, 2000.

**John A. Latschar,**

*Superintendent, Gettysburg National Military Park.*

[FR Doc. 00–11202 Filed 5–4–00; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant tc the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

**Withdrawn General Wage Determination Decisions**

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

IA000015—See IA000020
IA000046—See IA000020
IA000053—See IA000020
IA000055—See IA000020
ND000008—See ND000006
ND000010—See ND000006 and ND000007
ND000011—See ND000007 and ND000009
ND000012—See ND000009
ND000013—See ND000007
ND000014—See ND000009
ND000015—See ND000007
ND000016—See ND000007
ND000018—See ND000007
ND000019—See ND000006
ND000020—See ND000009
ND000021—See ND000006
ND000022—See ND000006
ND000023—See ND000009
ND000024—See ND000006
ND000025—See ND000006
ND000030—See ND000007
SD000003—See SD000006
SD000008—See SD000011
SD000009—See SD000007
SD000010—See SD000007
SD000012—See SD000006 and SD000007
SD000013—See SD000006
SD000014—See SD000006 and SD000011
SD000015—See SD000007
SD000016—See SD000007
SD000018—See SD000011
SD000019—See SD000007
SD000020—See SD000006
SD000021—See SD000007
SD000022—See SD000007
SD000023—See SD000006
SD000024—See SD000002
SD000025—See SD000011
SD000026—See SD000007

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

**Modifications to General Wage Determination Decisions**

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Massachusetts
MA000001 (Feb. 11, 2000)
MA000005 (Feb. 11, 2000)
MA000007 (Feb. 11, 2000)
MA000008 (Feb. 11, 2000)
MA000010 (Feb. 11, 2000)
MA000019 (Feb. 11, 2000)
New Jersey
NJ000001 (Feb. 11, 2000)
NJ000002 (Feb. 11, 2000)
NJ000003 (Feb. 11, 2000)
NJ000007 (Feb. 11, 2000)
NJ000009 (Apr. 24, 2000)
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NY000002 (Feb. 11, 2000)
NY000003 (Feb. 11, 2000)
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NY000078 (Feb. 11, 2000)
NY000079 (Feb. 11, 2000)

*Volume II*

None

*Volume III*

Alabama
AL000007 (Feb. 11, 2000)
AL000008 (Feb. 11, 2000)
AL000034 (Feb. 11, 2000)
AL000052 (Feb. 11, 2000)
Florida
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Kentucky
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KY000028 (Feb. 11, 2000)
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KY000044 (Feb. 11, 2000)

*Volume IV*

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IL000003 (Feb. 11, 2000)
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OH000034 (Feb. 11, 2000)
OH000035 (Feb. 11, 2000)

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IA000073 (Feb. 11, 2000)
Kansas
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LA000014 (Feb. 11, 2000)
LA000015 (Feb. 11, 2000)
LA000017 (Feb. 11, 2000)
LA000018 (Feb. 11, 2000)
New Mexico
NM000001 (Feb. 11, 2000)
Texas
TX000007 (Feb. 11, 2000)
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*Volume VI*

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WA000008 (Feb. 11, 2000)
Wyoming
WY000023 (Feb. 11, 2000)
Volume VII
California
CA000028 (Feb. 11, 2000)

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 27th day of April 2000.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 00–10902 Filed 5–4–00; 8:45 am]

BILLING CODE 4510–27–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Advanced Computational Infrastructure & Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Advanced Computational Infrastructure & Research (#1185).

*Date and Time:* May 26, 2000, 8:30am–5:00pm.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Suite 320, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Charles H. Koelbel, Program Director, Advanced Computational Research Program, Suite 1122, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1962.

*Purpose of Meeting:* To provide recommendations and advice concerning Visualization & Data Management Proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Proposals in the Advanced Computational Research Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–11267 Filed 5–04–00; 8:45 am]

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

*Date and Time:* June 4–5, 2000; 8 a.m.–5 p.m.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Room 370, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Sohi Rastegar, Program Director, Biomedical Engineering and Research to Aid Persons with Disabilities, Division of Bioengineering and Environmental Systems, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1318.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate regular research proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and person information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–11271 Filed 5–4–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Biological Sciences (1754).

*Date & Time:* May 18, 19, 2000, 9 a.m.–6 p.m. daily.

*Place:* Room 380, NSF, 4201 Wilson Boulevard, Arlington, Virginia.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Gerald Selzer, Program Director, Field Stations Marine Laboratory, Division of Biological Infrastructure, Room 615, NSF, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 306–1470.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to the NSF for financial support.

*Agenda:* To review and evaluate Field Stations Marine Laboratories proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–11272 Filed 5–4–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Biological Sciences: Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Advisory Committee for Biological Sciences (1110).

*Date and Time:* July 19–21, 2000.

*Place:* Room 630, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Part-open.

*Contact Person:* Dr. Samuel Scheiner, Division of Environmental Biology, Room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1480.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support

*Agenda:* Closed Session: July 19, 2000, 8:30 a.m. to 5 p.m.; July 20, 2000, 8:30 a.m.–1 p.m. and 3–5 p.m.; July 21 9:30 a.m.–5 p.m.; review and evaluate proposals as part of the selection process for awards.

*Open Session:* July 20, 2000, 2–3 p.m. discussion on research trends, opportunities and assessment procedures in the Systematic and Population Biology Cluster.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personnel information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–11276 Filed 5–4–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Civil and Mechanical Systems (1205).

*Date and Time:* 18 and 19, May, 2000, 8 a.m. to 5 p.m.

*Place:* NSF, 4201 Wilson Boulevard, Rooms 365 and 310, Arlington, Virginia 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Jorn Larsen-Basse, Program Director Surface Engineering and Material Design, Division of Civil and Mechanical Systems, Room 545, (703) 306–1361.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate nominations for the FY'00 Mechanics and Structures of Materials and Surface Engineering and Material Design Review Panel proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–11273 Filed 5–4–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Educational Systemic Reform; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Educational Systemic Reform (1765).

*Date and Time:* May 11–12, 2000; 8 a.m.–5:30 p.m.

*Place:* Room 370, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Kathleen Bergin or Celeste Pea, Program Directors, Division of Educational Systemic Reform, National Science Foundation, 4201 Wilson Boulevard, Room 875 Arlington, VA 22230. Telephone: (703) 306–1682.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals for the Urban Systemic Program as part of the selection process for awards.

*Reason for closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–11268 Filed 5–4–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Educational Systemic Reform; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Educational Systemic Reform (1765).

*Date and Time:* June 1–2, 2000; 8 a.m.–5:30 p.m.

*Place:* Room 370, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Celeste Pea, Program Director, Division of Educational Systemic Reform, National Science Foundation, 4201 Wilson Boulevard, Room 875, Arlington, VA 22230. Telephone: (703) 306–1682.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals for the Supplement: Urban Systemic Program, K–12 Higher Education Partnerships as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–11269 Filed 5–04–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Electrical and Communications Systems (1196).

*Date and Time:* May 15–16, 2000, 8:30 am to 5 pm.

*Place:* Room 680, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Gernot Pomrenke, Program Director, Room 675, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1339.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate unsolicited proposals submitted in response to the program announcement (NSF 99–2).

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–11275 Filed 5–4–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Engineering Education and Centers; Revised Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Engineering Education and Centers (#173).

*Date and Time:* June 1–2, 2000, 8:30 a.m.–5:30p.m. (Originally was announced for May 31–June 2).

*Place:* National Science Foundation, Rooms 360, 380, and 680. 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Persons:* Dr. Cheryl Cathey, Program Director; Engineering Education and Centers Division; National Science Foundation, Room 585; 4201 Wilson Blvd., Arlington, VA 22230.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the Nanoscale Modeling and Simulation Program (Small Group Initiative) as part of the selection process for awards.

*Reasons for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information: financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–11274 Filed 5–4–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Experimental Program To Stimulate Competitive Research, Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Experimental Program to Stimulate Competitive Research (1198)

*Date and Time:* May 24–25, 2000; 8 a.m.–5:00 p.m.

*Place:* National Science Foundation, Room 830, 4201 Wilson Boulevard, Arlington, VA

*Type of Meeting:* Part-Open.

*Contact Person:* Dr. Richard J. Anderson, Senior Science Advisor, Office of Experimental Program to Stimulate Competitive Research, Room 875, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1683.

*Purpose of Meeting:* To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials

*Public Sessions:* May 24; 8 am–10 am; May 25; 3:00 pm–4:00 pm—Presentation of Committee of Visitors findings including outcomes under the Government Performance and Results Act (GPRA).

*Agenda:* To review and evaluate the Experimental Program to Stimulate Competitive Research Program and provide assessment of program level technical and managerial matters pertaining to proposal decisions and program operations.

*Reason for Closing:* Proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–11270 Filed 5–4–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Geosciences (1756).

*Date & Time:* May 22, 2000; 2 p.m.–6:00 p.m.; May 23, 2000; 9 a.m.–6:00 p.m.; May 24, 2000; 9 a.m.–4:00 p.m.

*Place:* Room 350, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Anne-Marie Schmoltner, Program Director, Atmospheric Chemistry Program, Room 775, Division of Atmospheric Sciences, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1522

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Aerosol Characterization Experiments (ACE)-Asia proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 2, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–11278 Filed 5–04–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Polar Program; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Office of Polar Programs' Advisory Committee Meeting (1130).

*Date and Time:* May 22, 2000 8:30 a.m. to 5 p.m. May 23, 2000 8:30 a.m. to 5 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230.

*Type of Meeting:* Open.

*Contact Person:* Brenda Williams, Office of Polar Programs (OPP), National Science Foundation, 4201 Wilson Blvd., Suite 755, Arlington, VA 22230. Telephone: (703) 306–1030.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To advise NSF on the impact of its policies, programs, and activities on the polar research community; to provide advice to the Director of OPP on issues related to long range planning, and to form *ad hoc* subcommittees to carry out needed studies and tasks.

*Agenda:* Discussion of NSF-wide initiatives, long-range planning, and GPRA.

Dated: May 2, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–11277 Filed 5–4–00; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–8681]**

### International Uranium (USA) Corporation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of receipt of request from International Uranium Corporation to amend Source Material License SUA–1358 to receive and process alternate feed materials; Notice of opportunity for hearing

**SUMMARY:** Notice is herby given that the U.S. Nuclear Regulatory Commission has received, by letter dated March 16, 2000, a request from International Uranium (USA) Corporation (IUC) to amend its NRC Source Material License SUA–1358, to allow their White Mesa Uranium Mill near Blanding, Utah, to receive and process up to 100,000 cubic yards of alternate feed material from the Linde Formerly Utililized Sites Remedial Action Program (FUSRAP) site in Tonawanda, New York.

**FOR FURTHER INFORMATION CONTACT:** Mr. William von Till, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J8, Washington, DC 20555. Telephone (301) 415–6251.

**SUPPLEMENTARY INFORMATION:** By its submittal dated March 16, 2000, IUC requested that the NRC amend Materials License SUA–1358 to allow the receipt and processing of material other than natural uranium ore (i.e., alternate feed material) at its White Mesa uranium mill located near Blanding, Utah. These materials would be used as an "alternate feed material" (i.e., matter that is processed in the mill to remove the uranium but which is different from natural uranium ores, the normal feed material). These sites currently are being remediated by the U.S. Army Corps of Engineers (USACE) under FUSRAP. (See the USACE web site at http://www.lrb.usace.army.mil/fusrap/linde/index.htm for locations, documents, and photographs of the sites).

IUC proposes to receive contaminated materials from the Linde site for processing at its uranium mill. The material consists primarily of moist soils containing byproducts from uranium processing operations (i.e., "tailings"), mixed with other site soils. Uranium, thorium, and radium are its primary radiological constituents. Based on USACE documents, IUC estimates the amount of material for this amendment request to be 70,000 to 100,000 yd $^3$. Actual amounts removed would be determined based on sampling at the time of excavation. The total amount could also be less than this range because the USACE has selected other contractors to dispose of this material. This application will be reviewed using our formal guidance, "Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores' and the Nuclear Regulatory Commission's Memorandum and Order, *International Uranium (USA) Corp.*, CLI–00–01, (February 10, 2000). The NRC has approved similar amendment requests in the past for separate alternate feed material.

The Linde property is one of four properties that comprise the Tonawanda site. The NRC has already granted license amendments to IUC to process material from two of the other properties within the Tonawanda site, Ashland 1 and Ashland 2, which contained uranium byproduct material originally generated at the Linde property. The primary radioactive contaminants in the soils are Uranium-238 (U-238), Radium-226 (Ra–226), Thorium-230 (Th-230), and their respective decay products. IUC, based on a review of material, states that the weighted average grade of uranium for the Linde site is estimated to be 0.07 percent, with hot spots up to 0.3 percent.

The amendment application is available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street NW, Washington DC 20555.

**Notice of Opportunity for Hearing**

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, International Uranium (USA) Corporation, Independence Plaza, Suite 950, 1050 Seventeenth Street, Denver, Colorado 80265; Attention: Michelle Rehmann; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 28th day of April 2000.

For the Nuclear Regulatory Commission.

**Thomas H. Essig,**

*Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–11242 Filed 5–4–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 40–8681]**

## International Uranium (USA) Corporation; Notice of Opportunity for Hearing

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Receipt of Request from International Uranium Corporation to Amend Source Material License SUA–1358 to Receive and Process Alternate Feed Materials, Notice of Opportunity for Hearing.

**SUMMARY:** Notice is herby given that the U.S. Nuclear Regulatory Commission has received, by letter dated April 12, 2000, a request from International Uranium (USA) Corporation (IUC) to amend its NRC Source Material License SUA–1358, to allow their White Mesa Uranium Mill near Blanding, Utah, to receive and process up to 140,000 cubic yards of alternate feed material from the W.R. Grace Site located in Chattanooga, Tennessee. The W.R. Grace material is being remediated under the authority of the State of Tennessee and is licensed by the Division of Radiological Health under Source Material License S–3306–E9.

**FOR FURTHER INFORMATION CONTACT:** Mr. William von Till, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Mail Stop T7–J8, Washington, DC 20555. Telephone (301) 415–6251.

**SUPPLEMENTARY INFORMATION:** By its submittal dated April 12, 2000, IUC requested that the NRC amend Materials License SUA–1358 to allow the receipt and processing of material other than natural uranium ore (*i.e.*, alternate feed material) at its White Mesa uranium mill located near Blanding, Utah. These materials would be used as an "alternate feed material" (*i.e.*, matter that is processed in the mill to remove the uranium but which is different from natural uranium ores, the normal feed material).

IUC proposes to receive contaminated materials from the W.R. Grace Site for processing at its uranium mill. This material consists primarily of moist soils containing byproducts (*i.e.* "tailings") as a result of thorium and rare earth mineral extraction. The W.R. Grace Site is being remediated under the regulatory authority of the State of Tennessee and the material is licensed by Tennessee as source material under Source Material License S–3306–E9. IUC estimates the amount of material for this amendment request to be up to 140,000 yd.$^3$ The primary radioactive contaminants in the soils are Uranium-238 (U-238), Radium-226 (Ra-226), Radium-228 (Ra-228), Thorium-230 (Th-230), Thorium 232 (Th-232), Potassium-40 (K-40) and their respective decay products. IUC, based on a review of material, states that the weighted average grade of uranium for the W.R. Grace Site is estimated to range from 0.5 to approximately 1.1 weight percent, or greater, with an overall average grade of 0.74 percent uranium (0.87 percent $U_3O_8$). IUC estimates the amount of material for this amendment request to be 93,000 to 140,000 yds.$^3$ Actual amounts removed would be determined based on sampling at the time of excavation. W.R. Grace and IUC have determined that no listed hazardous wastes numerated in the U.S. Code of Federal Regulations, Title 40 part 261, Subpart D, as amended by the U.S. **Federal Register** August 6, 1998, are contained within this material.

The material will be shipped by rail in intermodal containers and then transferred to truck for the part of the trip to the mill. Material would be loaded onto railcars and transported cross-country to the final rail destination, where they will be transferred to truck for the final leg of the trip to the mill (expected to be either near Grand Junction, Colorado; Cisco, Utah; Green River, Utah; or East Carbon, Utah). The material will be shipped as radioactive low specific activity (LSA) Hazard Class 7 Hazardous Material as defined by Department of Transportation regulations.

This application will be reviewed using NRC formal guidance, "Final Position and Guidance on the Use of Uranium Mill Feed Material Other Than Natural Ores" and the guidance

contained in the Nuclear Regulatory Commission's Memorandum and Order, *International Uranium (USA) Corp.*, CLI–00–01, (February 10, 2000). The NRC has approved similar amendment requests in the past for separate alternate feed material under this and other licenses.

The amendment application is available for public inspection and copying at the NRC Public Document Room, in the Gelman Building, 2120 L Street N.W., Washington D.C. 20555.

**Notice of Opportunity for Hearing**

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, International Uranium (USA) Corporation, Independence Plaza, Suite 950, 1050 Seventeenth Street, Denver, Colorado 80265; Attention: Michelle Rehmann; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 20th day of April 2000.

For the U.S. Nuclear Regulatory Commission.

**Thomas H. Essig,**

*Chief, Uranium Recovery and Low Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–11243 Filed 5–4–00; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF THE TREASURY

### Office of Management and Budget

### Submission for OMB Review; Comment Request

April 27, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before June 5, 2000 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0108.
*Form Number:* IRS Form 1096.
*Type of Review:* Extension.
*Title:* Annual Summary and Transmittal of U.S. Information Returns.

*Description:* Federal 1096 is used to transmit information returns (Forms 1099, 1098, 5498, and W–2G) to the IRS Service Centers. Under Internal Revenue Code (IRC) section 6041 and related sections, a separate Form 1096 is U.S.C. for each type of return sent to the service centers by the taxpayer. It is used by IRS to summarize and categorize the transmitted forms.

*Respondents:* Individuals or households, Business or other for-profit, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 4,023,036.

*Estimated Burden Hours Per Respondent:* 10 minutes.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 751,556 hours.

*OMB Number:* 1545–1241.

*Regulation Project Number:* PS–92–90 Final.

*Type of Review:* Extension.

*Title:* Special Valuation Rules.

*Description:* Section 2701 of the Internal Revenue Code allows various elections by family members who make gifts of common stock or partnership interests and retain senior interests. The elections affect the value of the gifted interests and the retained interests.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 1,200.

*Estimated Burden Hours Per Respondent:* 25 minutes.

*Frequency of Response:* Other (one-time election).

*Estimated Total Reporting Burden:* 496 hours.

*OMB Number:* 1545–1254.

*Regulation Project Number:* FI–34–91 Final.

*Type of Review:* Extension.

*Title:* Conclusive Presumption of Worthlessness of Debts held by Banks.

*Description:* Paragraph (d)(3) of section 1.166–2 of the regulations allows banks and thrifts to elect to conform their tax accounting for bad debts with their regulatory accounting. An election, or revocation thereof, is a change in method of accounting. The collection of information required in section 1.166–2(d)(3) is necessary to monitor the elections.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 200.

*Estimated Burden Hours Per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting Burden:* 50 hours.

*OMB Number:* 1545–1260.
*Regulation Project Number:* CO–62–89 Final.
*Type of Review:* Extension.
*Title:* Final Regulations Under Section 382 of the Internal Revenue Code of 1986; Limitation on Corporate Net Operating Loss Carryforwards.
*Description:* The reporting requirements concerns the election a taxpayer may make to treat as the change date the effective date of a plan of reorganization in a title II or similar case rather than the confirmation date of a plan.
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents:* 10.
*Estimated Burden Hours Per Respondent:* 1 hour.
*Frequency of Response:* Other (once).
*Estimated Total Reporting Burden:* 1 hour.
*OMB Number:* 1545–1344.
*Regulation Project Number:* CO–30–92 Final.
*Type of Review:* Extension.
*Title:* Consolidated Returns—Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss, Non-applicability of Section 357(c).
*Description:* The reporting requirements affect consolidated taxpayers who will be making elections (if made) to treat certain loss carryovers as expiring and an election (if made) allocating items between returns. The information will facilitate enforcement of consolidated return regulations.
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents:* 52,049.
*Estimated Burden Hours Per Respondent:* 45 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 18,600 hours.
*OMB Number:* 1545–1364.
*Regulation Project Number:* INTL–372–88 Final and INTL–401–88 Final.
*Type of Review:* Extension.
*Title:* Section 482 Cost Sharing Regulations (INTL–372–88); and Intercompany Transfer Pricing Regulations Under Section 482 (INTL–401–88).
*Description:* INTL–372–88: The information will be used to determine whether an entity is an eligible participant of a qualified cost sharing arrangement and whether each eligible participant is sharing the costs and benefits of intangible development on an arm's length basis.

INTL–401–888: This document contains regulations relating to the pricing of transfers of tangible property, intangible property, or services between related parties.
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents/Recordkeepers:* 1,000.
*Estimated Burden Hours Per Respondent/Recordkeeper:* 7 hours, 51 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting/Recordkeeping Burden:* 7,850 hours.
*OMB Number:* 1545–1403.
*Regulation Project Number:* FI–46–93 Final.
*Type of Review:* Extension.
*Title:* Hedging Transactions.
*Description:* The information is required by the IRS to aid in administering the law and to prevent manipulation. The information will be used to verify that a taxpayer is properly reporting its business hedging transactions.
*Respondents:* Business or other for-profit.
*Estimated Number of Recordkeepers:* 110,000.
*Estimated Burden Hours Per Recordkeeper:* 52 minutes.
*Estimated Total Recordkeeping Burden:* 95,000 hours.
*OMB Number:* 1545–1535.
*Revenue Procedure Number:* Revenue Procedure 97–19.
*Type of Review:* Extension.
*Title:* Timely Mailing Treated as Timely Filing.
*Description:* Revenue Procedure 97–19 provides the criteria that will be used by the IRS to determine whether a private delivery service qualifies as a designated Private Delivery Service under section 7502 of the Internal Revenue Code.
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents:* 5.
*Estimated Burden Hours Per Respondent:* 613 hours, 48 minutes.
*Frequency of Response: On occasion.*
*Estimated Total Reporting Burden:* 3,069 hours.
*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 00–11301 Filed 5–4–00; 8:45 am]
BILLING CODE 4830–01–P

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s)**

(1) *Collection title:* Application for Spouse Annuity Under the Railroad Retirement Act.
(2) *Form(s) submitted:* AA–3.
(3) *OMB Number:* 3220–0042.
(4) *Expiration date of current OMB clearance:* 6/30/2000.
(5) *Type of request:* Revision of a currently approved collection.
(6) *Respondents:* Individuals or households.
(7) *Estimated annual number of respondents:* 8,500.
(8) *Total annual response:* 8,500.
(9) *Total annual reporting hours:* 4,717.
(10) *Collection description:* The Railroad Retirement Act provides for the payment of annuities to spouses of railroad retirement annuitants who meet the requirements under the Act. The application obtains information supporting the claim for benefits based on being a spouse of an annuitant. The information is used for determining entitlement to and amount of the annuity applied for.

**Additional Information or Comments**

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Joe Lackey (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Chuck Mierzwa,**
*Clearance Officer.*
[FR Doc. 00–11218 Filed 5–4–00; 8:45 am]
BILLING CODE 7905–01–M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44

U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s)**

(1) *Collection title:* Repayment of Debt.

(2) *Form(s) submitted:* G–421f.

(3) *OMB Number:* 3220–0169.

(4) *Expiration date of current OMB clearance:* 6/30/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Individuals or households.

(7) *Estimated annual number of respondents:* 300.

(8) *Total annual responses:* 300.

(9) *Total annual reporting hours:* 25.

(10) *Collection description:* Section 2 of the Railroad Retirement Act provides for payment of annuities to retired or disabled railroad employees, their spouses, and eligible survivors. When the RRB determines that an overpayment of RRA benefits has occurred, it initiates prompt action to notify the claimant of the overpayment and to recover the amount owed. The collection obtains information needed to allow for repayment by the claimant by credit card, in addition to the customary form of payment by check or money order.

**Additional Information or Comments**

Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Joe Lackey (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 00–11219 Filed 5–4–00; 8:45 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

**Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (InterDigital Communications Corporation, Common Stock, $.01 Par Value, and Series B Junior Participating Preferred Stock Rights) File No. 1–11152**

April 28, 2000.

InterDigital Communications Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw the securities described above ("Securities")[3] from listing registration on the American Stock Exchange LLC ("Amex") and under Section 12(b) of the Act.[4]

The Company, whose business relates to wireless communications technology, has determined to transfer trading in its Securities from the Amex to the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq"), which the Company believes offers the most trading activity and best liquidity and exposure for the securities of technology companies. The Company has registered its Securities pursuant to Section 12(g) of the Act[5] by filing a Registration Statement on Form 8–A with the Commission on April 25, 2000. The Securities subsequently became designated for quotation and began trading on the Nasdaq National Market, and were simultaneously suspended from trading on the Amex, on April 26, 2000.

The Company has stated that it has complied with the Rules of the Amex governing the withdrawal of its Securities from listing and registration on the Exchange and that the Amex, in turn, has indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Securities from listing and registration on the Amex and shall have no effect upon the Securities' designation for quotation and trading on the Nasdaq National Market and registration under Section 12(g) of the Act.[6]

Any interested person may, on or before May 19, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11333 Filed 5–4–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] The Series B Junior Participating Preferred Stock Rights are currently attached to, and trade together with, shares of the Common Stock.

[4] 15 U.S.C. 78*l*(b).

[5] 15 U.S.C. 78*l*(g).

[6] *Id.*

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 24430; 812–11194]**

**SEI Investments Management Corporation, et al.; Notice of Application**

April 28, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application under: (a) Section 6(c) of the Investment Company Act of 1940 (the "Act") requesting an exemption from sections 12(d)(3) and 17(e) of the Act and rule 17e–1 under the Act; (b) sections 6(c) and 17(b) of the Act requesting an exemption from section 17(a) of the Act; and (c) section 10(f) of the Act requesting an exemption from section 10(f) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered open-end management investment companies advised by several investment advisers to engage in principal and brokerage transactions with a broker-dealer affiliated with one of the investment advisers and to purchase securities in certain underwritings. The transactions would be between the broker-dealer and a portion of the investment company's portfolio not advised by the adviser affiliated with that broker-dealer. The order also would permit these investment companies not to aggregate certain purchases from an underwriting syndicate in which an affiliated person of one of the investment advisers is a

[7] 17 CFR 200.30–3(a)(1).

principal underwriter. Further, applicants request relief to permit a portion of an investment company's portfolio to purchase securities issued by a broker-dealer, which is an affiliated person of an investment adviser to another portion, subject to the limits in rule 12d3–1 under the Act.

**APPLICANTS:** SEI Institutional Investments Trust, SEI Institutional Managed Trust, SEI Institutional International Trust, and SEI Insurance Products Trust (collectively, the "Trusts"), and SEI Investments Management Corporation ("SIMC").

**FILING DATES:** The application was filed on June 24, 1998. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 22, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, in c/o Todd B. Cipperman, Esq., SEI Investments, One Freedom Valley Drive, Oaks, PA 19456.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

**Applicants' Representations**

1. Each Trust is an open-end management investment company registered under the Act and consists of several portfolios ("Portfolios"). SIMC is an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act") and is a wholly-owned subsidiary of SEI Investments Company. SIMC serves as investment adviser to the Portfolios. The assets of certain Portfolios ("Multi-Managed Portfolios") are allocated by SIMC among two or more subadvisers ("Subadvisers"). Each Subadviser had discretion to purchase and sell securities for a discrete portion of a Portfolio's assets in accordance with the Portfolio's objectives, policies, and restrictions. Each Subadviser is registered under the Advisers Act or is exempt from registration under the Advisers Act. Each Subadviser is compensated based on a percentage of the value of assets allocated to that Subadviser. SIMC may directly advise a discrete portion of a Portfolio.

2. Applicants request relief to permit: (a) A portion of a Multi-Managed Portfolio ("Unaffiliated Portion") to engage in principal transactions with a broker-dealer that is, or is an affiliated person of, a Subadviser to another portion of the Multi-Managed Portfolio ("Affiliated Broker-Dealer") and to purchase securities in an underwriting in which an Affiliated Broker-Dealer acts as principal underwriter; (b) an Affiliated Broker-Dealer to provide brokerage services to an Unaffiliated Portion without complying with the requirements of subsections (b) and (c) of rule 17e–1 under the Act; (c) a portion of a Multi-Managed Portfolio advised by a Subadviser affiliated with the Affiliated Broker-Dealer ("Affiliated Subadviser") to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Subadviser or an affiliated person of an Affiliated Subadviser, in accordance with the conditions of rule 10f–3 under the Act, except that paragraph (b)(7) of the rule would not require the aggregation of purchases of the portion of the Portfolio affiliated with the Affiliated Subadviser ("Affiliated Portion") with purchases by an Unaffiliated Portion; and (d) an Unaffiliated Portion to purchase securities issued by an Affiliated Subadviser, or an affiliated person of an Affiliated Subadviser, that is involved in securities-related activities, subject to the limits in rule 12d3–1 under the Act. The requested relief would apply only if the Affiliated Broker-Dealer is not an affiliated person or an affiliated person of an affiliated person of SIMC, the Subadviser making the investment decision with respect to the Unaffiliated Portion ("Unaffiliated Subadviser"),[1] or an officer, trustee, or employee of the Multi-Managed Portfolio engaging in the transaction.

3. Applicants request that the relief apply to any registered open-end management investment company or portfolio thereof for which SIMC, or any entity controlling, controlled by, or under common control with SIMC, currently or in the future acts as investment adviser. Applicants state that SIMC will take steps designed to ensure that any other existing or future entity that relies on the order will comply with the terms and conditions of the application.

*Applicants' Legal Analysis*

*A. Principal Transactions Between an Unaffiliated Portion and an Affiliated Broker-Dealer*

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company or an affiliated person of such affiliated person ("second-tier affiliate"). Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled by, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company. Applicants assert that an Affiliated Subadviser would be an affiliated person of a Multi-Managed Portfolio, and an Affiliated Broker-Dealer would be either an Affiliated Subadviser or an affiliated person of the Affiliated Subadviser, and, thus, a second-tier affiliate of a Multi-Managed Portfolio, including the Unaffiliated Portion. Accordingly, applicants state that any transactions to be effected by an Unaffiliated Subadviser on behalf of an Unaffiliated Portion of a Multi-Managed Portfolio with an Affiliated Broker-Dealer would be subject to the prohibitions of section 17(a).

2. Applicants seek relief under sections 6(c) and 17(b) to exempt

[1] The terms "Unaffiliated Subadviser," "Subadviser," and "Unaffiliated Portion" include SIMC and the discrete portion of a Multi-Managed Portfolio directly advised by SIMC, respectively, provided that SIMC manages its portion of the Multi-Managed Portfolio independently of the portions managed by the other Subadvisers to the Multi-Managed Portfolio, and SIMC does not control or influence any other Subadviser's investment decisions for its portion of the Multi-Managed Portfolio. SIMC does not currently manage any Multi-Managed Portfolio.

principal transactions prohibited by section 17(a) because an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Multi-Managed Portfolio. The requested relief would not be available if the Affiliated Broker-Dealer (except by virtue of serving as a Subadviser) is an affiliated person or a second-tier affiliate of SIMC, the Unaffiliated Subadviser making the investment decision, or any officer, trustee, or employee of the Multi-Managed Portfolio.

3. Section 17(b) of the Act authorizes the SEC to grant an order permitting a transaction other wise prohibited by section 17(a) if it finds that the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the SEC to exempt any person or transaction from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. For the reasons stated below, applicants submit that the terms of the proposed transactions meet the standards of sections 6(c) and 17(b).

4. Applicant contend that section 17(a) is intended to prevent persons who have the power to influence an investment company from using that influence to their own pecuniary advantage. Applicants assert that when a person acting on behalf of an investment company has no direct or indirect pecuniary interest in a party to a principal transaction, the abuses that section 17(a) is designed to prevent are not present. Applicants state that if an Unaffiliated Subadviser purchases securities on behalf of an Unaffiliated Portion in a principal transaction with an Affiliated Broker-Dealer, any benefit that might inure to the Affiliated Broker-Dealer would not be shared by the Unaffiliated Subadviser. In addition, applicants state that Subadvisers are paid on the basis of a percentage of the value of the assets allocated to their management. The execution of a transaction to the disadvantage of the Unaffiliated Portion would disadvantage the Unaffiliated Subadviser to the extent that it diminishes the value of the Unaffiliated Portion. Applicants further submit that SIMC's power to dismiss Subadvisers or to change the portion of a Portfolio allocated to each Subadviser reinforces a Subadviser's incentive to maximize the investment performance of its own portion of the Multi-Managed Portfolio.

5. Applicants state that each Subadviser's contract assigns it responsibility to manage a discrete portion of the Multi-Managed Portfolio. The contracts neither require nor authorize collaboration between or among Subadvisers. Each Subadviser is responsible for making independent investment and brokerage allocation decisions based on its own research and credit evaluations. Applicants state that SIMC does not dictate or influence brokerage allocation decisions for the Multi-Managed Portfolios, except where SIMC actually advises an Unaffiliated Portion of a Multi-Managed Portfolio. Applicants submit that, in managing a discrete portion of a Portfolio, each Subadviser acts for all practical purposes as though it is managing a separate investment company.

6. Applicants state that the proposed transactions will be consistent with the policies of each Multi-Managed Portfolio, since each Unaffiliated Subadviser is required to manage the Unaffiliated Portion of the Multi-Managed Portfolio in accordance with the investment objectives and related investment policies of the Multi-Managed Portfolio as described in its registration statement. Applicants also assert that permitting the transactions will be consistent with the general purposes of the Act and in the public interest because the ability to engage in the transactions will increase the likelihood of a Multi-Managed Portfolio achieving best price and execution on its principal transactions, while giving rise to none of the abuses that section 17(a) was designed to prevent.

*B. Payment of Brokerage Compensation by an Unaffiliated Portion to an Affiliated Broker-Dealer*

1. Section 17(e)(2) of the Act prohibits an affiliated person or a second-tier affiliate of a registered investment company from receiving compensation for acting as broker in connection with the sale of securities to or by the investment company if the compensation exceeds the limits prescribed by the section, unless otherwise permitted by rule 17e–1 under the Act. Rule 17e–1 sets forth the conditions under which an affiliated person or a second-tier affiliate of an investment company may receive a commission which would not exceed the "usual and customary broker's commission" for purposes of section 17(e)(2). Rule 17e–1(b) requires the investment company's board of directors, including a majority of the directors who are not "interested persons," as defined in section 2(a)(19) of the Act, to adopt procedures regarding brokerage compensation paid pursuant to the rule and to determine at least quarterly that all transactions effected in reliance on the rule complied with the procedures. Rule 17e–1(c) specifies the records that must be maintained by each investment company with respect to any transaction effected pursuant to rule 17e–1.

2. Applicants state that, for the reasons discussed above, Affiliated Broker-Dealers are second-tier affiliates of the Unaffiliated Portions. Applicants request relief under section 6(c) of the Act from section 17(e) of the Act and rule 17e–1 under the Act to the extent necessary to permit the Unaffiliated Portions of each Multi-Managed Portfolio to pay brokerage compensation to an Affiliated Broker-Dealer, when the Affiliated Broker-Dealer acts as broker in the ordinary course of business, without complying with the requirements of rule 17e–1(b) and (c) under the Act. The requested exemption would apply only where an Affiliated Broker-Dealer is deemed to be an affiliated person or a second-tier affiliate of an Unaffiliated Portion solely because an Affiliated Subadviser is the Subadviser to another portion of the same Multi-Managed Portfolio. The relief would not apply if the Affiliated Broker-Dealer is an affiliated person or a second-tier affiliate of SIMC, the Unaffiliated Subadviser to the Unaffiliated Portion of the Multi-Managed Portfolio, or any officer, trustee, or employee of the Multi-Managed Portfolio.

3. Applicants state the proposed brokerage transactions involve no conflicts of interest or possibility of self-dealing and will meet the standards of section 6(c). Applicants assert that the interests of an Unaffiliated Subadviser are directly aligned with the interests of the Unaffiliated Portion it advises, and an Unaffiliated Subadviser will enter into brokerage transactions with Affiliated Broker-Dealers only if the fees charged are reasonable and fair. Applicants also note that the Unaffiliated Subadvisers have a fiduciary duty to obtain best price and execution for the Unaffiliated Portion.

*C. Purchases of Certain Securities by an Unaffiliated Portion*

1. Section 10(f) of the Act, in relevant part, prohibits a registered investment company from knowingly purchasing or otherwise acquiring, during the existence of any underwriting or selling

syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or an affiliated person of any of the foregoing. Section 10(f) also provides that the SEC may exempt by order any transaction or classes of transactions from any of the provisions of section 10(f), if and to the extent that such exemption is consistent with the protection of investors. Rule 10f–3 under the Act exempts certain transactions from the prohibitions of section 10(f) if specified conditions are met. Paragraph (b)(7) of rule 10f–3 limits the amount of securities of any class of an issue to be purchased by the investment company, or by two or more investment companies having the same investment adviser, to 25% of the principal amount of the offering of the class of securities.

2. Applicants state that each Subadviser to a Multi-Managed Portfolio is considered to be an investment adviser to the entire Multi-Managed Portfolio. Therefore, all purchases of securities by an Unaffiliated Portion from an underwriting syndicate a principal underwriter of which is an Affiliated Broker-Dealer would be subject to section 10(f).

3. Applicants request relief under section 10(f) from that section to permit an Unaffiliated Portion to purchase securities during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Broker-Dealer. Applicants request relief from section 10(f) only to the extent those provisions apply solely because an Affiliated Subadviser is an investment adviser to the Multi-Managed Portfolio. The requested relief would not be available if the Affiliated Broker-Dealer is an affiliated person or a second-tier affiliate of SIMC, the Unaffiliated Subadviser making the investment decision with respect to the Unaffiliated Portion, or any officer, trustee, or employee of the Multi-Managed Portfolio. Applicants also seek relief from section 10(f) to permit an Affiliated Portion to purchase securities during the existence of an underwriting syndicate, a principal underwriter of which is an Affiliated Broker-Dealer, provided that the purchase will be in accordance with the conditions of rule 10f–3, except that paragraph (b)(7) of the rule will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

4. Applicants state that section 10(f) was adopted in response to concerns about the "dumping" of otherwise unmarketable securities on investment companies, either by forcing the investment company to purchase unmarketable securities from its underwriting affiliate, or by forcing or encouraging the investment company to purchase the securities from another member of the syndicate. Applicants submit that these abuses are not present in the context of the Multi-Managed Portfolios because an Unaffiliated Subadviser's decision to purchase securities from an underwriting syndicate, a principal underwriter of which is an Affiliated Broker-Dealer, involves no potential for "dumping." In addition, applicants assert that aggregating purchases would serve no purpose because there is no collaboration among the Subadvisers and any common purchases by an Affiliated Subadviser and an Unaffiliated Subadviser would be coincidence.

*D. Purchases by Unaffiliated Subadvisers of Securities Issued by Securities Affiliates*

1. Section 12(d)(3) of the Act generally prohibits a registered investment company from acquiring any security issued by any person who is a broker, dealer, investment adviser, or engaged in the business of underwriting (collectively, "securities-related activities"). Applicants state that, because certain of the Affiliated Subadvisers or their affiliated persons may be issuers that are engaged in securities-related activities ("Securities Affiliates"), an Unaffiliated Portion would be prohibited by section 12(d)(3) from purchasing securities issued by Securities Affiliates of another Subadviser to the same Multi-Managed Portfolio.

2. Rule 12d3–1 under the Act exempts from the prohibition of section 12(d)(3) purchases of securities of an issuer engaged in securities-related activities if certain conditions are met. One of these conditions, set forth in rule 12d3–1(c), prohibits the acquisition of a security issued by the investment company's investment adviser, promoter, or principal underwriter, or any affiliated person of the investment adviser, promoter, or principal underwriter.

3. Applicants state that each Subadviser to a Multi-Managed Portfolio is considered to be an investment adviser to the entire Multi-Managed Portfolio. Thus, applicants state that a purchase by an Unaffiliated Portion of securities issued by Securities Affiliates of another Subadviser to the same Multi-Managed Portfolio would not meet rule 12d3–1(c) and that applicants are therefore unable to rely on the rule.

4. Applicants request an exemption under section 6(c) from section 12(d)(3) to permit an Unaffiliated Subadviers to acquire for an Unaffiliated Portion, securities issued by a Securities Affiliate subject to the limits in rule 12d3–1. The requested relief would apply only to securities issued by a Securities Affiliate that is an Affiliated Subadviser to another portion of the Multi-Managed Portfolio, or an affiliated person of an Affiliated Subadviser to another portion. The requested relief would not extend to securities issued by the Subadviser making the purchase, SIMC, or an affiliated person of any of these entities.

5. Applicants state that their proposal does not raise the conflicts of interest that rule 12d3–1(c) was designed to address because of the nature of the affiliation between an Affiliated Subadviser and the Unaffiliated Portion. Applicants submit that each Subadviser acts independently of the other Subadvisers in making investment and brokerage allocation decisions for the assets allocated to its portion of the Multi-Managed Portfolio. Applicants assert that prohibiting the Unaffiliated Portions from purchasing securities issued by a Securities Affiliate may cause Unaffiliated Subadvisers to forego investment opportunities that would be in the best interests of the Multi-Managed Portfolios.

**Applicants' Conditions**

Applicants agree that the requested order will be subject to the following conditions:

1. Each Multi-Managed Portfolio will be advised by an Affiliated Sub-Adviser and at least one Unaffiliated Subadviser and will be operated consistent with the manner described in the application.

2. No Affiliated Subadviser (except by virtue of serving as Subadviser to a discrete portion of a Multi-Managed Portfolio) or Affiliated Broker-Dealer will be an affiliated person or a second-tier affiliate of SIMC, any Unaffiliated Subadviser. or any officer, trustee, or employee of the Multi-Managed Portfolio engaging in the transaction.

3. No Affiliated Subadviser will directly or indirectly consult with any Unaffiliated Subadviser concerning allocation of principal or brokerage transactions or concerning the purchase of the securities issued by its Securities Affiliates. Subadvisers may consult with SIMC in order to monitor compliance with the limits in rule 12d3–1.

4. No Affiliated Subadviser will participate in any arrangement under which the amount of its subadvisory fees will be affected by the investment performance of any other Subadviser.

5. With respect to purchases of securities by an Affiliated Portion during the existence of an underwriting or selling syndicate, a principal underwriter of which is an Affiliated Broker-Dealer, the conditions of rule 10f–3 will be satisfied except that paragraph (b)(7) will not require the aggregation of purchases by the Affiliated Portion with purchases by an Unaffiliated Portion.

6. Each Multi-Managed Portfolio will comply with rule 12d3–1, except paragraph (c) of that rule solely with respect to purchases by an Unaffiliated Portion of securities issued by a Securities Affiliate that would be prohibited by rule 12d3–1(c) solely because the Securities Affiliate is an Affiliated Subadviser, or an affiliated person of an Affiliated Subadviser, to an Affiliated Portion of the Multi-Managed Portfolio.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11226 Filed 5–4–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–24429]**

### Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 28, 2000.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April 2000. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to a SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 23, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, 450 Fifth Street, N.W., Washington, DC 20549–0506.

**Select Advisors Trust C [File No. 811–8404]**

*Summary:* Applicant seeks an order declaring that is has ceased to be an investment company. On December 31, 1998, each series of applicant transferred its assets to Touchstone Series Trust (formerly known as Select Advisors Trust A) based on net asset value. Expenses of approximately $218,560 incurred in connection with the reorganization were paid by Touchstone Advisors, Inc., applicant's investment adviser.

*Filing Date:* The application was filed on February 7, 2000.

*Applicant's Address:* 311 Pike Street, Cincinnati, Ohio 45202.

**Heritage U.S. Government Income Fund [File No. 811–7980]**

*Summary:* Applicant seeks an order declaring that is has ceased to be an investment company. On October 15, 1999, applicant transferred its assets to Intermediate Government Fund, a series of Heritage Income Trust, based on net asset value. Expenses of $61,500 incurred in connection with the reorganization were paid by applicant's investment adviser, Heritage Asset Management, Inc.

*Filing Date:* The application was filed on April 7, 2000.

*Applicant's Address:* 800 Carillon Parkway, St. Petersburg, Florida 33716.

**The Planters Funds—Tennessee Tax-Free Bond Fund [File No. 811–7065]**

*Summary:* Applicant seeks an order declaring that is has ceased to be an investment company. By December 28, 1999, all shareholders of applicant had redeemed their shares at net asset value. No expenses were incurred in connection with applicant's liquidation.

*Filing Dates:* The application was filed on February 17, 2000, and amended on April 13, 2000.

*Applicant's Address:* 5800 Corporate Drive, Pittsburgh, Pennsylvania 15237–7010.

**The Rodney Square Tax-Exempt Fund [File No. 811–4372]**

**The Rodney Square Fund [File No. 811–3406]**

**The Rodney Square Strategic Equity Fund [File No. 811–4808]**

**The Rodney Square Strategic Fixed-Income Fund [File No. 811–4663]**

**The CRM Funds [File No. 811–9034]**

*Summary:* Each applicant seeks an order declaring that it has ceased to be an investment company. On October 31, 1999, each applicant transferred its assets to WT Mutual Fund, based on net asset value. Approximate expenses of $12,400; $73,540; $13,418; $7,565; and $5,587, respectively, incurred in connection with the reorganizations were paid by each applicant. Wilmington Trust Company, applicants' investment adviser, has agreed to reimburse The Rodney Square Strategic Equity Fund and The Rodney Square Strategic Fixed-Income Fund for expenses in excess of their expense caps.

*Filing Date:* Each application was filed on April 7, 2000.

*Applicants' Address:* Each of The Rodney Square Funds: 1100 N. Market Street, Wilmington, Delaware 19890. The CRM Funds: 400 Bellevue Parkway, Wilmington, Delaware 19809.

**Harris & Harris Group, Inc. [File No. 811–7074]**

*Summary:* Applicant requests an order declaring that it ceased to be an investment company as of July 27, 1995, the date applicant elected to be regulated as a business development company.

*Filing Date:* The application was filed on March 29, 2000.

*Applicant's Address:* One Rockefeller Plaza, 14 West 49th Street, New York, New York 10020.

**Life & Annuity Trust [File No. 811–8118]**

*Summary:* Applicant seeks an order declaring that it has ceased to be an investment company. On August 5, 1999, the shareholders of applicant voted to approve the merger of applicant with another investment company. The name of the fund surviving the merger is Wells Fargo Variable Trust, and its Investment Company Act file number is 811–9255. Expenses of $144,638 were incurred in connection with the merger and were paid by Wells Fargo Bank, N.A., which has been the investment adviser to the fund for the past five years and is the investment adviser to the successor fund.

*Filing Date:* The application was filed on March 2, 2000.

*Applicant's Address:* 111 Center Street, Little Rock, Arkansas 72201.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11225 Filed 5–4–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Security Benefit Life Insurance Company, et al.

April 28, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for an order under section 6(c) of the Investment Company Act of 1940 ("1940 Act"), as amended granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credit enhancements applied to the contract value of certain flexible premium deferred variable annuity contracts.

*Summary of Application:* Applicants seek an order under Section 6(c) of the 1940 Act, to permit, under specified circumstances, the recapture of certain credit enhancements ("Credit Enhancements") applied to: (i) The Variflex Extra Credit contract ("Variflex Credit" or "Contract"), a flexible premium deferred variable annuity contract that Security Benefit issues through the Variflex Account: and (ii) other variable contracts and future variable contracts offered by the SBL Insurers and funded by the Separate Accounts or a Future Account ("Future Variable Contracts"), provided that the Future Variable Contract is substantially similar in all material respects to the Contract.

*Applicants:* Security Benefit Life Insurance Company ("Security Benefit"); First Security Benefit Life Insurance and Annuity Company of New York ("First Security Benefit"); SBL Variable Annuity Account VIII (Variflex Extra Credit) ("Variflex Account," and, together with any other separate account of Security Benefit or First Security Benefit supporting variable annuity contracts, collectively referred to as the "Separate Accounts"); any other separate account that will be established in the future by Security Benefit or First Security Benefit to support variable annuity contracts ("Future Accounts") issued by Security Benefit or First Security Benefit (collectively, the "SBL Insurers"); and Security Distributors, Inc. ("SDI"), (collectively referred to herein as "Applicants").

*Filing Dates:* The Application was filed with the Commission on January 27, 2000, and amended and restated on March 22, 2000 and April 27, 2000.

*Hearing or Notification of Hearing:* An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request personally or by mail. hearing requests should be received by the Commission by 5:30 p.m., on May 23, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Applicants, c/o Amy J. Lee, Esq., Associate General Counsel, Security Benefit Life Insurance Company, 700 Harrison Street, Topeka, KS 66636–0001.

**FOR FURTHER INFORMATION CONTACT:** Ronald A. Holinsky, Attorney, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC, 450 Fifth Street NW Washington, DC 20549–0102 (tel. (202) 942–8090).

### Applicant's Representations

1. Security Benefit is a stock life insurance company organized under the laws of the state of Kansas. Security Benefit offers life insurance policies and annuity contracts, as well as financial and retirement services. It is authorized to conduct life insurance and annuity business in the District of Columbia and all states except New York. Together with its subsidiaries, Security Benefit has total funds under management of approximately $8 billion.

2. First Security Benefit is a stock life insurance company organized under the laws of the State of New York. First Security Benefit offers variable annuity contracts in New York and is admitted to do business in that state. First Benefit is a wholly-owned subsidiary of Security Benefit Group, Inc. ("Security Benefit Group"), a financial services holding company which is wholly-owned by Security Benefit.

3. Variflex Account was established on September 12, 1994 as a segregated asset account of Security Benefit and is registered with the Commission as a unit investment trust (File No. 811–8836). Security Benefit is the legal owner of the assets in Variflex Account. Variflex Account currently has 17 subaccounts. Each subaccount invests exclusively in shares of a specific series of the SBL Fund, an open-end management investment company for which Security Management Company, LLC, a wholly-owned subsidiary of Security Benefit, serves as investment adviser. Variflex Account funds the variable benefits available under Variflex Credit. Security Benefit has filed a registration statement on Form N–4 under the 1940 Act and the Securities Act of 1933, as amended (the "1993 Act") to register interests in the Variflex Account under Variflex Credit (File No. 333–93947).

4. SDI, an affiliate of Security Benefit, serves as the principal underwriter for the Variable Contracts issued by Security Benefit, including Variflex Credit. SDI is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the NASD. SDI is a wholly-owned subsidiary of Security Benefit Group.

5. Variflex Credit is a flexible premium deferred variable annuity contract. Variflex Credit may be purchased as a non-tax qualified retirement plan for an individual, or on an individual basis, in connection with a retirement plan qualified under sections 403(b), 408, or 408A, of the Internal Revenue Code of 1986, as amended.

6. Variflex Credit offers a "Credit Enhancement" feature under which Security Benefit may add an amount to each contractholder's "Contract Value" [1] at the time of any purchase payment. Credit Enhancements are allocated among the subaccounts in the same proportion that the applicable purchase payment is allocated. The amount of any Credit Enhancement is based on the total purchase payments made into

[1] The term "Contract Value" refers to the total value of the Contract which includes amounts allocated to the Subaccounts and the Fixed Account as well as any amount set aside in the loan account to secure loans.

Variflex Credit less total withdrawals, including any withdrawal changes, from the Contract as of the date the purchase payment is applied. The percentage amounts are set forth in the table below:

| Total purchase payments, less withdrawals and withdrawal charges | Credit enhancement (in percent) |
|---|---|
| Less than $10,000 | 0 |
| At least $10,000 but no more than $1,000,000 | 4 |
| $1,000,000 or more | 5 |

7. The Variflex Credit provides for various withdrawal options, annuity benefits and payout annuity options, as well as transfer privileges among investment options.

8. The Variable Contracts issued by the SBL Insurers permit contractholders to cancel their Variable Contracts and to receive a refund during the Free-Look Period.

9. In most instances, a contractholder who returns the Variable Contract during the Free-Look Period will receive a refund of Contract Value plus any charges deducted from such Contract Value, minus the value of any Credit Enhancement.[2] Contractholders also receive a refund of any amounts that may have been deducted for state premium taxes and/or other taxes. The value of the Credit Enhancement, not the amount originally credited, id deducted if the Variable Contract is canceled using the Free-Look Period.

10. Variflex Credit provides for a death benefit upon the death of the contractholder prior to the annuity start date. The death benefit proceeds will be the death benefit reduced by any unpaid loan balance including loan interest ("Contract Debt"), any pro rata account charge and any uncollected premium tax. If a contractholder dies before the annuity start date, the amount of the death benefit generally will be the greater of: (i) The sum of all purchase payments (not including Credit Enhancements), less any reductions caused by previous withdrawals; or (ii) the Contract Value on the date due proof of death and instructions regarding payment are received by Security Benefit less any Credit Enhancements applied during the 12 months prior to the date of the contractholder's death.

11. Variflex Credit provides for withdrawal charge waivers upon a full or partial withdrawal in the event of confinement to a hospital or nursing facility or diagnosis of a terminal illness ("Eligible Withdrawal"). In the event of an Eligible Withdrawal, the contractholder would forfeit all or part of any Credit Enhancement applied during the 12 months preceding the withdrawal. The amount of Credit Enhancements to be forfeited is a percentage determined by dividing the amount of the Eligible Withdrawal by the total purchase payments made in the 12 months preceding that Eligible Withdrawal. For example, a withdrawal of $50,000 relative to $100,000 in purchase payments in the 12 months preceding the withdrawal would result in forfeiture of 50% of the Credit Enhancements applied during that 12 month period.

12. Applicants seek relief to: (1) Deduct from the death benefit the amount of any Credit Enhancement applied 12 months prior to the date of the contractholder's death; and (ii) deduct from an Eligible Withdrawal the amount of any Credit Enhancement applied 12 months before an Eligible Withdrawal. The requested relief would also apply to Future Variable Contracts that are substantially similar in all material respects to the Contracts.

*Applicant's Legal Analysis*

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the provisions of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants seek exemptive relief pursuant to section 6(c) from sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder, to the extent necessary to permit the SBL Insurers to recapture: (1) The amount of any Credit Enhancement applied 12 months prior to the date of the contractholder's death from the amount of any death benefit; and (ii) the amount of any Credit Enhancement applied 12 months before an Eligible Withdrawal from the amount of that Eligible Withdrawal.

3. Subsection (i) of Section 27 of the 1940 Act provides that section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such separate account, except as provided in paragraph (2) of that subsection. Paragraph (2) provides that it shall be unlawful for such separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless such contract is redeemable security.

4. Section 2(a)(32) of the 1940 Act defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate shares of the issuer's current net assets, or the cash equivalent thereof.

5. Applicants state that a beneficiary's or contractholder's interest in the amount of a Credit Enhancement allocated to Contract Value is not vested until 12 months after the Credit Enhancement has been applied to the Variable Contract. Unless and until the beneficiary's and contractholder's interests in the amount of the Credit Enhancement have vested (*i.e.*, 12 months after it has been applied to the Variable Contract), Security Benefit retains a right and interest in the Credit Enhancement. Thus, when Security Benefit recaptures any Credit Enhancement, it is simply retrieving its own assets, and because a contractholder's interest in the Credit Enhancement is not vested, the contractholder is not deprived of a proportionate share of the net assets of the Separate Account.

6. Applicants state that because the amount paid as a death benefit does not include the amount of any Credit Enhancement applied to the Variable Contract 12 months prior to the date of death, the beneficiary arguably is not receiving the contractholder's proportionate share of the Separate Account's current net assets. Similarly, because the full or partial withdrawal amount of an Eligible Withdrawal results in the forfeiture of all or a portion of any Credit Enhancements applied during the 12 months preceding the Eligible Withdrawal, the contractholder arguably is not receiving his or her proportionate share of the Separate Account's current net assets. Applicants submit, however, that the recapture of the amount of any Credit Enhancement applied to the Variable Contract in the 12 months prior to the date of the contractholder's death or prior to an Eligible Withdrawal, as described herein, would not deprive a contractholder of his or her proportionate share of the issuer's current net assets. The prospectus clearly discloses that, for purposes of the death benefit, the beneficiary's interest in a Credit Enhancement will vest only if it has been added to Contract Value more than 12 months

[2] Under the laws of a number of states, if Free-Look rights are exercised, the sponsoring insurance company is required to refund purchase payments.

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prior to the date of the contractholder's death.

As described above, the Contract provides that if a contractholder dies before the annuity start date, the amount of the death benefit generally will be the greater of: (i) The sum of all purchase payments (not including Credit Enhancements), less any reductions caused by previous withdrawals; or (ii) the Contract Value on the date due proof of death and instructions regarding payment are received by Security Benefit less any Credit Enhancements applied during the 12 months prior to the date of death.

Similarly, the Contract provides in relevant part that in the event of an Eligible Withdrawal, a contractholder would forfeit all or part of any Credit Enhancement applied 12 months before the Eligible Withdrawal, depending upon the amount of the Eligible Withdrawal relative to the total purchase payments made in the 12 months preceding that Eligible Withdrawal. Furthermore, since a contractholder's interest in the Credit Enhancement allocated to Contract Value is only vested 12 months after the Credit Enhancement has been applied to the Variable Contract, Security Benefit asserts that it is simply retrieving its own assets when recapturing any Credit Enhancement when it pays a death benefit or in connection with an Eligible Withdrawal.

7. Applicants content that annuity contracts, unlike life insurance contracts, are not intended to insure against the risk of premature death. Instead, annuity contracts are intended to provide an income stream to the contractholder or a named beneficiary, for the life of the annuitant or for a period of years. The risk to an insurer under an annuity contract typically is that the annuitant lives longer than the insurer's prediction.

8. Applicants assert that if Credit Enhancements are applied to the death benefit under an annuity contract before a minimum period of time has elapsed from the time that a Credit Enhancement has been credited, the insurer runs the risk of adverse selection. Similarly, the insurer runs the risk of adverse selection if Credit Enhancements are applied to withdrawals not subject to a withdrawal charge due to the confinement of the insured to a hospital or nursing facility or diagnosis of a terminal illness, unless a minimum period of time has elapsed from the time that a Credit Enhancement has been credited. With respect to the death benefit, the insurer runs the risk that, for example, a terminally ill contractholder will make a large purchase payment in order to leverage the amount of money he or she is able to transfer to the beneficiary. With respect to the withdrawal charge waiver due to the confinement of the contractholder to a hospital or nursing facility or diagnosis of a terminal illness, the insurer runs the risk that, for example, a contractholder will make a large purchase payment in order to leverage the amount of money he or she is able to apply to medical care payments. SBL believes that requiring a year to elapse before a Credit Enhancement may be included in a death benefit or in an Eligible Withdrawal is an appropriate means to ensure that the Variable Contracts are not used as a risk-free vehicle to leverage the amount of money someone may wish to transfer to a beneficiary or to a medical care facility.

9. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company to accomplish the same purposes as contemplated by section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing a redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except as a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. Applicants state that Security Benefit's recapture of the Credit Enhancement in instances in which: (i) Fewer than 12 months have elapsed between the time that the Credit Enhancement has been applied to the Contract, and the death of the Contractholder; or (ii) fewer than 12 months have elapsed between the time that the Credit Enhancement ;has been applied to the Contract, and an Eligible Withdrawal, might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the applicable subaccount of a Separate Account. In other words, because any such Credit Enhancement paid by Security Benefit is immediately added, on a conditional basis, to the Contract Value of certain contractholders, and further because these amounts are allocated to certain subaccounts for the benefit of the contractholder, the net asset value of each subaccount arguably is affected by these credits.

11. Applicants contend, however, that the recapture of the Credit Enhancement under the circumstances summarized herein should not be deemed to be a violation of section 22(c) and Rule 22c–1. To the extent that the recapture practices summarized herein are considered to be technical violations of these provisions. Applicants respectfully request relief from section 22(c) and Rule 22c–1 in order to recapture Credit Enhancements as discussed above for Contracts and Future Variable Contracts provided within 12 months of: (i) The contractholder's death before the annuity start date; or (ii) an Eligible Withdrawal.

12. Applicants content that the recapture of the Credit Enhancement does not involve either of the practices that Rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it; and (ii) other unfair results, including speculative trading practices.

13. Applicants argue that the proposed recapture of the Credit Enhancement poses no threat of dilution. To effect a recapture of a Credit Enhancement, Security Benefit redeems (and other SBL Insurers will redeem) interests in a contractholder's subaccounts at a price determined on the basis of the current accumulation unit value of each of the subaccounts of the Separate Account in which the contractholder's Contract Value is allocated. The amount recaptured in the event of a death benefit, or an Eligible Withdrawal, will be equal to the amount of the Credit Enhancement paid out of the assets of Security Benefit. That amount will be redeemed at the current accumulation unit value of the applicable subaccount(s) as of the date of receipt of the death claim, or withdrawal request, in proper order. Thus, Applicants assert that no dilution will occur upon the recapture of a Credit Enhancement. Applicants further submit that the second practice that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit Enhancement. However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an

exemption from the provisions of section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit Enhancement that is or will be made available under the Variable Contracts and Future Variable Contracts.

**Conclusion**

Applicants submit that their request for an order for the exemptive relief described above is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11224 Filed 5–5–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42732; File No. SR–Amex–00–24]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Rule 2(a) of the Rules of Procedure Applicable to Exchange Disciplinary Proceedings

April 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 27, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] The Exchange provided written notice to the Commission on April 20, 2000, that it intended to file this proposal. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Rule 2(a) of the Rules of Procedure Applicable to Exchange Disciplinary Proceedings for purposes of authorizing the Chief Hearing Officer (or the Deputy Chief Hearing Officer) at the National Association of Securities Dealers Regulation, Inc. ("NASDR") Office of Hearing Officers to appoint NASDR hearing officers to act as Chairmen of Amex disciplinary panels. The text of the proposed rule change is below. New language is italics.

*K. Exchange Disciplinary Proceedings*

*Rule*

*Rule 02(a). Selection of Hearing Officers*

Whenever the Chairman of the Exchange shall be advised that a charge or charges have been served upon a member, member organization, approved person, or a registered or non-registered employee or prospective employee of a member or member organization, or that a written stipulation of facts and consent to a specified penalty has been entered into between any such person or persons and an officer of the Exchange, or that a member or member organization has been suspended or expelled from any other securities exchange or any national securities association, or has been suspended or barred from being associated with any member of such exchange or association, or has been suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities and such member or member organization has not consented in writing to similar action by the Exchange, or that an employee or prospective employee of a member or member organization has been suspended or expelled from any other securities exchange or any national securities association, or has been suspended or barred from being associated with any member of such exchange or association, or has been suspended or barred by any governmental securities agency from dealing in securities or being associated with any broker or dealer in securities and such employee or prospective employee has not consented in writing to similar action by the Exchange, the Chairman, *(or such person(s) as the Chairman may designate with Board approval),* shall select, from among hearing officers appointed to serve on Exchange Disciplinary Panels, one such hearing officer to act as a chairman of a Disciplinary Panel which shall conduct a hearing with respect to such matter and take such action as may be authorized pursuant to the Constitution and rules of the Exchange.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis, for, the Proposed Rule Change*

1. Purpose

Under Article V, Section 1(b)(2) of the Amex Constitution, the Chairman of the Board, subject to the approval of the Board, designates Exchange Officials and other persons to serve on the Hearing Board. Those who are designated to serve on the Hearing Board make up a pool of persons who can be asked to serve as members of disciplinary panels in Exchange disciplinary proceedings. Under Article V, Section 1(b)(3), the Chairman, again subject to Board approval, designates one or more hearing officers, who have no Exchange duties or functions relating to the investigation or preparation of disciplinary matters, to act as Chairmen of Amex disciplinary panels.

These two pools of people (*i.e.*, the people who serve as members of disciplinary panels, and the people who act as Chairmen of the disciplinary panels) are approved on an annual basis at the Board's organization meeting each January. Rule 2(a) of the Rules of Procedure Applicable to Exchange Disciplinary Proceedings then requires the Amex Chairman, each time an Amex disciplinary proceeding is initiated, to select the specific hearing officer that will chair that particular Amex disciplinary panel.

Last year, the Amex entered into a formal agreement with the National Association of Securities Dealers ("NASD") under which the NASDR's Office of Hearing Officers provides hearing officers to chair all Amex disciplinary panels. The hearing officers are responsible for fulfilling the panel chair's duties as set forth in the Amex Constitution and Rules. The NASD has followed the above described procedure under Rule 2(a) with respect to the selection of a hearing officer to chair each Amex disciplinary panel, obtaining the approval of the Amex Chairman in each instance.

Amex proposes to amend Rule 2(a) to expedite the selection process by authorizing the Amex Chairman, or such person(s) as the Chairman may designate with Board approval, to

appoint in each instance the specific hearing officer that will chair each Amex disciplinary panel. The Amex Board has approved this amendment and specifically authorized the Chief Hearing Officer (or the Deputy Hearing Officer) at the NASDR's Office of Hearing Officers, as the Amex Chairman's designee, to appoint NASDR hearing officers to chair Amex disciplinary panels. The Exchange is amending Rule 2(a) for the sole purpose of streamlining the process for selecting hearing officers. The Exchange believes the amendment will provide for more efficient administration of Amex disciplinary proceedings.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act[6] in general and furthers the objectives of Section 6(b)(6)[7] in particular in that it is intended to assure that Exchange members and member firms are appropriately disciplined for rule violations.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Amex believes the proposed rule change will impose no burden on competiton.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to section 19(b)(3)(A) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–00–24 and should be submitted by May 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11227 Filed 5–4–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42729; File No. SR–GSCC–99–05]**

## Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Granting Approval of a Proposed Rule Change Relating to the Formation of the European Securities Clearing Corporation

April 28, 2000.

On November 16, 1999, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–99–05) pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on January 5, 2000.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

**I. Description**

Under the rule change, GSCC seeks Commission approval to become an initial shareholder and to serve on the board of directors of the European Securities Clearing Corporation ("ESCC"). ESCC will be a new entity formed under the laws of the United Kingdom by GSCC, the Euroclear Clearance System Societe Cooperative ("Euroclear"), and the London Clearing House ("LCH"). ESCC will be owned equally by GSCC, Euroclear, and LCH.[3]

ESCC's main role will be to oversee the scope and nature of the netting services being offered through LCH's RepoClear.[4] It is intended that ESCC will be governed by its market participant users, which are expected to be major participants in the European fixed-income marketplace. GSCC's involvement in ESCC will be a governance role that should help ensure, among other things, that RepoClear will draw upon GSCC's experience and knowledge and will have United States-style features such as single-ticket data input, settlement of contracts at current market value, the facilitation of substitutions, and the admission of inter-dealer brokers.

GSCC's role in ESCC will further help to ensure that the RepoClear service will use, to the extent appropriate, GSCC's mark-to-market and margining methodologies to provide comprehensive, uniform risk

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(6).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 42279, (December 28, 1999), 65 FR 541.

[3] In 1998, GSCC's board of directors requested that GSCC explore the possibility of providing in Europe the types of comparison, netting, and risk management services that GSCC provides in the United States. GSCC originally planned to provide these services through a joint venture with Euroclear and its operator Morgan Guaranty Trust Company of New York, Brussels Branch. Specifically, GSCC and Euroclear had planned to use J.P. Morgan Benelux, S.A., an existing Morgan subsidiary, as the netting vehicle that would have been renamed the European Securities Clearing Corporation. In a separate development, LCH was also asked by its members to provide these same services in Europe. In response, in April 1999 LCH began offering its RepoClear service through which LCH provides netting services for European sovereign debt repo transactions. To achieve greater efficiency, GSCC, Euroclear, and LCH have agreed that it would be more efficient to provide the services for European sovereign debt purchases and repo transactions through a single netting vehicle, RepoClear.

[4] In accordance with the agreement between GSCC, Euroclear, and LCH, LCH will transfer control of RepoClear to ESCC. For a description of LCH's RepoClear, see note 3.

management processes. GSCC intends to help ensure that: (i) Processing efficiencies will be attained through the utilization of standardized SWIFT message formats for input and output; (ii) participants' margin requirements will be reduced through cross-margining both their European Government securities activity and their combined United States and European activity; [5] (iii) participants' balance sheets will be reduced and they will experience increased capital utilization through a maximization of the offsets available from repo and reverse repo activity; (iv) the RepoClear service will support global electronic trading systems which will allow for more efficient settlement of side-by-side cash and futures activities through coordinated mark-to-market and margining processes, standardized clearance and settlement practices, and optimized cross-margining of correlated positions.

### II. Discussion

Section 17A(b)(3)(F) [6] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions. For the reasons set forth below, the Commission believes that GSCC's proposed rule change is consistent with GSCC's obligations under the Act.

GSCC's participation in ESCC as a shareholder and a member of the board of directors should help to ensure that ESCC is able to provide both to United States organizations operating abroad, either directly or through their European affiliates, and to non-United States organizations a clearance and settlement system that provides for the prompt and accurate clearance and settlement of buys and sells and repo transactions involving European sovereign debt instruments. GSCC's participation in ESCC should also foster cooperation and coordination between itself, Euroclear, and LCH, all of which are major providers of clearance and settlement services.

### III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It Is Therefore Ordered,* pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–GSCC–99–05) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11254 Filed 5–4–00; 8:45 am]

BILLING CODE 8010–01–M

[5] The proposed cross-margining arrangement will be the subject of a separate rule filing by GSCC in the future. GSCC, Euroclear, and LCH intend to work toward implementing the cross-margining arrangement by early 2001.

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42370; File No. SR–ISE–00–02]**

## Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the International Securities Exchange LLC Relating to Its Fee Schedule

April 28, 2000.

### I. Introduction

On February 25, 2000, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt a fee schedule.

The proposed rule change was published for comment in the **Federal Register** on March 6, 2000.[3] No comments were received on the proposal. This order approves the proposal.

### II. Description of the Proposal

ISE's proposed fee schedule itemizes fees for the services it will offer to its members and others. This schedule includes membership fees, trading fees, and fees for a variety of other services, including the installation and maintenance of certain equipment. ISE stated in its proposal that it intends to use revenues from these fees to recover its costs of operating a trading market and to build a reserve for future needs. ISE further stated that it does not intend to use these fees to generate an operating profit to distribute to its members, and will adjust its fees to maintain the appropriate balance between costs and expenses, as ISE gains experience in the operation of its market.

### III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange,[4] and in particular, with the requirements of section 6 of the Act.[5] Specifically, the Commission finds that the proposal is consistent with section 6(b)(4) of the Act.[6]

Under section 6(b)(4),[7] a registered national securities exchange must promulgate rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities. The Commission finds that ISE's fee schedule is not unreasonable and should not discriminate unfairly among market participants.

### IV. Conclusion

*It Is Therefore Ordered,* pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (SR–ISE–00–02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11229 Filed 5–4–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42473 (February 29, 2000), 65 FR 11818.

[4] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42734; File No. SR–NASD–00–25]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Extension of Time To Pass the Series 55 Examination, Equity Trader

April 28, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 27, 2000, the National Association of

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. NASD Regulation has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under section 19(b)(3)(A)(i) of the Act and Rule 19b–4(f)(1) thereunder, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of The Terms of Substance of the Proposed Rule Change**

NASD Regulation is proposing to amend NASD Rule 1032(f) to change the date by which certain registered representatives who trade equity securities in the Nasdaq Stock Market ("Nasdaq") and/or over-the-counter must pass the Series 55 Examination. The text of the proposed rule change is available at the offices of the NASD and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, And Statutory Basis for the Proposed Rule Change**

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On January 2, 1998, the SEC approved File No. SR–NASD–97–221, which proposed amending NASD Rule 1032 to add an additional category of representative registration.[3] Specifically, Rule 1032(f) requires each registered representative who engages in proprietary or agency trades of equities, preferred securities, or convertible debt securities otherwise than on a securities exchange, or who directly supervises such activities (*i.e.*, functioning as an "Equity Trader"), to register as a Limited Representative-Equity Trader. In order to register as a Limited Representative-Equity Trader, the representative must be registered as a General Securities Representative (Series 7) or as a Limited Representative-Corporate Securities (Series 62), and must pass the Series 55 Examination.[4] The rule contains an exemption for representatives whose principal trading activities involve executing orders on behalf of an affiliated investment company that is registered with the SEC under the Investment Company Act of 1940.

Rule 1032 affords certain registered representatives a two-year grace period, ending on May 1, 2000, to pass the Series 55 Examination. NASD Regulation believed this would provide such representatives sufficient time to pass the examination. Unfortunately, this has not been the case. It has come to NASD Regulation's attention that many registered representatives who are eligible for the two-year grace period will not pass the Series 55 Examination by May 1, 2000. If the deadline is not extended, these registered persons will be forced to cease certain trading activities, which could cause disruptions at NASD member firms and could cause harm to customers. NASD Regulation does not believe the markets or customers will be served by a strict application of this deadline. Consequently, NASD Regulation is proposing to extend the grace period for passing the examination. NASD Regulation is proposing that registered representatives who were eligible for the two-year grace period, but who failed to pass the Series 55 Examination, be given until October 1, 2000 to pass the examination. However, such representatives will not be permitted to function as Equity Traders after October 1, 2000 unless they receive passing scores on the Series 55 Examination.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act,[5] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the failure to extend the deadline to pass the Series 55 Examination will cause disruptions at some NASD member firms and could cause harm to customers. NASD Regulation does not believe the markets or customers will be served by a strict application of this deadline.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD Regulation represents that it does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

NASD Regulation has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of The Proposed Rule Change And Timing for Commission Action**

The proposed rule change is effective upon filing pursuant to section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(1)[7] thereunder, in that the proposed rule change is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[3] Securities Exchange Act Release No. 39516, 63 FR 1520 (January 9, 1998).

[4] Representatives who have been "grandfathered" from taking the Series 7 or the Series 62 Examinations will not be required to take either examination in order to take the Series 55.

[5] 17 CFR 240.15Aj–1.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(1).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–25 and should be submitted by May 26, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11255 Filed 5–04–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42727; File No. SR–NYSE–00–09]**

## Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc. Amending Exchange Rule 123B

April 27, 2000.

### I. Introduction

On February 28, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission", pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 123B. The proposed rule change was published for comment in the **Federal Register** on March 31, 2000. The Commission has received no comments on the proposal. This order grants accelerated approval to the proposed rule change.

### II. Description of the Proposal

The Exchange seeks permanent approval of a pilot program that two amendments to Exchange Rule 123B. The first amendment to Rule 123B provides for the commission-free execution of all orders received by Exchange specialists through the SuperDOT system if such orders are executed within five minutes. The Exchange instituted the pricing initiative of commission-free executions beginning with trades executed on December 29, 1999.

A second amendment added language to Rule 123B to clarify that if an order that had been placed with the specialist is canceled and replaced, the replacement order is considered a new order for purposes of the Rule. Since the implementation of the pilot program, the Exchange is not aware of any problems associated with the program.

The Exchange is now proposing to make the pilot program with respect to commission-free executions and cancelled/replaced orders permanent.[3] The Exchange believes that the pilot program is operating successfully and requests permanent approval of the proposed rule change.[4]

### III. Discussion

The Commission finds that the proposed rule change relating to commission-free executions and cancelled/replaced orders is consistent with the requirements of the Act. In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[5] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change is also consistent with Section 11A(a)(1)(C)[6] of the Act which states that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure, among other things, economically efficient execution of securities transactions, and fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchanges.

The proposed rule change eliminating commissions on orders received through the SuperDOT system that are executed within a timely fashion furthers the Exchange's ability to compete effectively for order flow from other marketplaces. Competition between and among markets drives market intermediaries to provide more efficient services which, in turn, promotes a free and open market and benefits investors and the public interest. Investors and the public interest may also benefit from the accompanying reduction in transaction costs.[7]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. In addition to the reasons noted above, the Exchange has stated that the program is operating without problems. Because the pilot approval expires on April 26, 2000, accelerated approval of this filing will permit the Exchange to continue its program for commission-free execution of orders received through SuperDOT permanently and without interruption, and will resolve the treatment of cancelled and replaced orders.

### IV. Conclusion

*It Is Therefore Ordered,* pursuant to 19(b)(2) of the Act,[8] that the proposed rule change (SR–NYSE–00–09) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11228 Filed 5–04–00; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF STATE

**[Public Notice Number 3280]**

## International Telecommunication Advisory Committee Radiocommunications (ITAC–R); Notice of Meeting

The International Telecommunications Advisory Committee—Radiocommunications provides policy and technical advice to the department on matters concerning radiocommnuication in preparation for United States participation in international meetings and conferences.

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that it approved these two amendments to Exchange Rule 123B on a pilot basis on November 30, 1999. *See* Exchange Act Release No. 42184 (November 30, 1999), 64 FR 68710 (December 8, 1999), File No. SR–NYSE–99–40. A third amendment to Exchange Rule 123B relating to execution reports of stopped orders was also proposed and approved by the Commission. However, the Exchange decided not to implement this third amendment due to capacity and resource limitations. *See* letter from James E. Buck, Senior Vice President and Secretary. Exchange, to Richard Stasser, Assistant Director, Division of Market Regulation, Commission, dated February 25, 2000. In this proposed rule change, the Commission provided notice of the modified pilot program instituting only two out of the three amendments originally proposed in SR–NYSE–99–40.

[4] On March 22, 2000, the Commission also approved on an accelerated basis the Exchange's request to extend the pilot program relating to commission-free executions and cancelled/replaced orders until April 26, 2000. *See* Exchange Act Release No. 42694 (April 17, 2000), 65 FR 24245 (April 25, 2000), File No. SR–NYSE–00–13.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78k–1(a)(1)(C).

[7] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

A meeting of the ITAC–R will be held Thursday, May 11, 2000, in room 1912, at the Department of State. The purpose of the meeting is to provide information and obtain advice, as appropriate, concerning the World Radiocommunication Conference underway May 8–June 2, 2000, in Istanbul, Turkey. The department apologizes for such short notice necessitated by changes in the chairman's schedule.

Members of the general public may attend these meetings. Entrance to the Department of State is controlled; people intending to attend any of the ITAC. Meetings should send a fax to (202) 647–7407 not later than 24 hours before the meeting. This fax should display the name of the meeting and date of meeting, your name, social security number, date of birth, and organizational affiliation. One of the following valid photo identifications will be required for admission: U.S. driver's license, passport, U.S. Government identification card. Enter from the C street lobby; in view of escorting requirements, non-government attendees should plan to arrive not less than 15 minutes before the meeting begins.

Dated: May 2, 2000.

**Brian K. Ramsay,**

*Telecommunications Officer, Office of Multilateral Affairs, U.S. Department of State.*

[FR Doc. 00–11408 Filed 5–3–00; 2:45 pm]

**BILLING CODE 4710–45–P**

## TENNESSEE VALLEY AUTHORITY

### Production of Tritium for the United States Department of Energy, Rhea and Hamilton Counties, TN

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Issuance of Record of Decision and Adoption of Final Environmental Impact Statement for the Production of Tritium in a Commercial Light Water Reactor (CLWR) prepared by the U.S. Department of Energy (DOE).

**SUMMARY:** This Record of Decision (ROD) is provided in accordance with the Council on Environmental Quality (CEQ) regulations found at 40 CFR parts 1500 to 1508 and TVA procedures implementing the National Environmental Policy Act.

TVA has decided to enter into an interagency agreement with DOE under The Economy Act (31 U.S.C. 1535) to provide irradiation services for producing tritium in TVA light water reactors. These reactors are Watts Bar Nuclear Plant Unit 1, Rhea County, Tennessee and Sequoyah Nuclear Plant Units 1 and 2, Hamilton County, Tennessee. The TVA Board of Directors passed a resolution approving the interagency agreement on December 15, 1999.

The environmental impacts of producing tritium in these reactors as well as in TVA's Bellefonte Nuclear Plant Units 1 and 2, Jackson County, Alabama were assessed in a 1999 Final Environmental Impact Statement (EIS) for the Production of Tritium in a Commercial Light Water Reactor (DOE/EIS–0288) prepared by DOE. TVA was a cooperating agency in the preparation of this EIS. Under 40 CFR 1506.3(c) of the CEQ regulations, TVA has independently reviewed the EIS prepared by DOE and found it to be adequate and with this notice is adopting the EIS, including the preferred alternative.

**FOR FURTHER INFORMATION CONTACT:** Greg Askew, P.E., Senior NEPA Specialist, Tennessee Valley Authority, 400 West Summit Hill Drive, mail stop WT 8C, Knoxville, Tennessee, 37902; telephone 865–632–6418; or e-mail gaskew@tva.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

*DOE's Mission and the Nation's Tritium Need*

The U.S. Department of Energy (DOE) is responsible for supplying nuclear materials for national security needs and ensuring that the nuclear weapons stockpile remains safe and reliable. Tritium, a radioactive isotope of hydrogen, is an essential component of every weapon in the current and projected U.S. nuclear weapons stockpile. Unlike other nuclear materials used in nuclear weapons, tritium decays at a rate of 5.5 percent per year. Accordingly, as long as the Nation relies on a nuclear deterrent, the tritium in each nuclear weapon must be replenished periodically. At present, the U.S. nuclear weapons complex does not have the capability to produce the amounts of tritium that will be required to support the Nation's current and future nuclear weapons stockpile.

In recent years, international arms control agreements have caused the U.S. nuclear weapons stockpile to be reduced in size. Reducing the stockpile has allowed DOE to recycle the tritium removed from dismantled weapons for use in supporting the remaining stockpile. However, due to the decay of tritium, the current inventory of tritium will not meet national security requirements past approximately 2005. Therefore, the most recent Presidential direction, contained in the 1996 Nuclear Weapons Stockpile Plan and an accompanying Presidential Decision Directive, mandates that new tritium be available by approximately 2005.

In December 1995, DOE issued a Record of Decision (ROD) (60 FR 63878) for the Final Programmatic Environmental Impact Statement for Tritium Supply and Recycling (DOE/EIS–0161). In this ROD, DOE decided to pursue a dual-track approach on the most promising tritium-supply alternatives: (1) to initiate purchase of an existing commercial reactor (operating or partially complete) or irradiation services with an option to purchase the reactor for conversion to a defense facility; and (2) to design, build, and test critical components of an accelerator system for tritium production. Under the dual-track approach described in the December 1995 ROD issued by DOE, the agency was to select within 3 years one of these two technologies as the primary source of tritium.

*Production of Tritium in a Commercial Light Water Reactor*

The production of tritium in a CLWR is technically straightforward and requires no elaborate, complex engineering development and testing program. All the Nation's supply of tritium has been produced in reactors. Most existing commercial pressurized water reactors utilize 12-foot-long rods containing an isotope of boron (boron-10) in ceramic form. These rods are sometimes called burnable absorber rods. The rods are inserted in the reactor fuel assemblies to absorb excess neutrons produced by the uranium fuel in the fission process for the purpose of controlling power in the core at the beginning of an operating cycle.

DOE's tritium program has developed another type of burnable absorber rod in which neutrons are absorbed by a lithium aluminate ceramic rather than boron ceramic. While the two types of rods function in a very similar manner to absorb excess neutrons in the reactor core, there is one notable difference: When neutrons strike the lithium aluminate ceramic material in a tritium producing burnable absorber rod (TPBAR), tritium is produced. This tritium is captured almost instantaneously in a solid zirconium material in the rod, called a "getter." The solid material that captures the tritium as it is produced in the rod is so effective that the rod will have to be heated in a vacuum at much higher temperatures than normally occur in the operation of a light water reactor to

extract the tritium for eventual use in the nuclear weapons stockpile.

These TPBARs would be placed in the same locations in the reactor core as the standard burnable absorber rods. There is no fissile material (uranium or plutonium) in the TPBARs. Depending upon tritium needs, up to as many as 2,400 TPBARs could be placed in a CLWR for irradiation.

*TVA's National Defense Role*

TVA has a history of supporting national defense programs. The preamble to the TVA Act of 1933 identifies national defense as one of the purposes for its enactment. Further, the TVA Act in Sections 15(h) and 31 declares that the Act should be liberally construed to aid TVA in discharging its responsibilities for the advancement of national defense and other statutory purposes. In compliance with that Congressional mandate, TVA has supported the Nation's defense efforts on numerous occasions.

TVA constructed hydroelectric plants in record time to supply electric power to key defense industries during World War II including aluminum production and Manhattan Project activities at Oak Ridge, Tennessee. TVA produced phosphorus and ammonium nitrate for explosives and munitions during World War II and the Korean conflict. From 1952 to 1957, TVA, under an agreement with the Department of the Army, operated and maintained the Phosphate Development Works (PDW) complex at which various phosphorus based chemical agents were produced. From 1985 to 1988, under a contract with the Department of Defense, the PDW was refurbished to process and purify the Department of Defense's remaining stock of methyl phosphonic dichloride, a chemical agent component. TVA continues to support defense missions today with the cleanup of chemical and munitions production and storage sites as well as stabilization or disposal of surplus chemical weapons stockpiles.

*The Procurement Process*

The DOE issued a request for proposal RFP DE-RP02–97DP00414 on June 3, 1997 to all nuclear utilities to obtain a fixed price bid for irradiation services with an option to lease or purchase a facility, if necessary, in one or more commercial light water reactors. TVA responded to the RFP on September 15, 1997 with 2 offers:

(1) An Economy Act Proposal [1] for completion of one unit at the Bellefonte Nuclear Plant with Watts Bar Nuclear Plant Unit 1 as a backup facility. This proposal is referred to as the Bellefonte Revenue Sharing Offer.

(2) A commercial proposal responsive to the RFP to provide irradiation services using Watts Bar Unit 1. This proposal is referred to as the Watts Bar Irradiation Services Offer.

On November 16, 1998, DOE requested TVA to revise and resubmit a stand alone proposal for the purchase of irradiation services from TVA's operating plants at Watts Bar and Sequoyah. On December 8, 1998, TVA submitted a revised Watts Bar Nuclear Plant/Sequoyah Nuclear Plant Services Offer as a commercial proposal for irradiation services using Watts Bar Unit 1 and one unit at Sequoyah for backup and surge production capacity.

On December 22, 1998, Energy Secretary Bill Richardson announced that tritium production in one or more CLWRs would be the primary tritium supply technology and that the accelerator would be developed, but not constructed, as a backup to CLWR tritium production. Secretary Richardson further stated that the Watts Bar and Sequoyah reactors had been designated as the preferred alternative for CLWR tritium production. At the same time, Secretary Richardson also requested that TVA negotiate an interagency agreement under the Economy Act for irradiation services using Watts Bar Unit 1 and one unit at Sequoyah.

**Alternatives Considered**

TVA submitted the only responsive proposal to DOE's RFP as part of the procurement process described above. As a result, the following five TVA reactors were the only reactors considered in developing alternatives.

- Watts Bar Nuclear Plant Unit 1, Rhea County, Tennessee
- Sequoyah Nuclear Plant Units 1 and 2, Hamilton County, Tennessee, and
- Bellefonte Nuclear Plant Units 1 and 2, Jackson County, Alabama.

One or more of these reactors could be used to produce the tritium necessary to meet national security requirements. Therefore, scenarios comprising various combinations of the five TVA reactors were considered reasonable alternatives the impacts of which were addressed in the EIS. The transportation of irradiated TPBARs from the reactor to the DOE Savannah River Site for processing is also a part of each alternative.

TVA's No Action alternative to the use of CLWRs for tritium production is the continued operation of Watts Bar Unit 1 and Sequoyah Units 1 and 2 and the deferral of construction activities necessary for completion of Bellefonte units 1 and 2 as nuclear units.

*Preferences Among Alternatives*

DOE's considerations included a desire for low capital cost (low first cost). Also, there is uncertainty in DOE's long-term tritium production requirement with pending ratification of the Strategic Arms Reduction Treaty (START II) by Russia and potential future treaty negotiations. These factors favored selection of a flexible approach not requiring an immediate major commitment of resources by DOE such as would be required for completion of Bellefonte Nuclear Plant Unit 1. Therefore, DOE's preferred alternative was the combination of existing reactors at Watts Bar and Sequoyah Nuclear Plants.

**Environmental and Other Considerations of the Decision**

*Environmental Considerations*

The EIS considered two environmentally-distinct sets of alternatives: (1) Alternatives involving the use of only existing operating reactors at Watts Bar and Sequoyah Nuclear Plants, and (2) alternatives that included the completion and startup of the unfinished Bellefonte Nuclear Plant Unit 1 or Units 1 and 2.

Described below are the relative differences in environmental impacts between tritium production in operating CLWRs (Watts Bar Unit 1 and Sequoyah Units 1 and 2 are used in the analysis) and an incomplete CLWR (Bellefonte Unit 1). For an incomplete CLWR, the environmental analysis attributes all of the impacts from completing construction and operating the plant to the tritium production mission.

Construction Impacts

For tritium production in a CLWR, construction impacts would range from none (for operating CLWRs) to minor (for a CLWR which is currently approximately 90 percent complete, and would only require internal modifications). The predominant construction impact associated with an incomplete CLWR would be on socioeconomics, as approximately 4,500 direct jobs and 4,500 indirect jobs could be created during the peak year of construction. The creation of

[1] Because both TVA and DOE are Federal agencies, an interagency agreement may be reached via the Economy Act (31 U.S.C. 1535). The Economy Act is a Federal law that allows two government agencies to enter into an interagency agreement similar to the contractual agreement that a Federal agency would enter with a non-Federal party through the competitive procurement process. The Federal procurement process for the CLWR program explicitly allows for an interagency agreement via the Economy Act.

approximately 9,000 total jobs would have a significant positive impact on the economic area surrounding the incomplete reactor. By contrast, use of an existing CLWR would have no socioeconomic impacts. For all alternatives, the environmental impacts associated with construction are considered small.

Operating Impacts

For an operating CLWR, there would either be no impacts, or negligible impacts, to resources such as: land, infrastructure, noise, visual, air quality, water resources (use and quality), geology and soils, archeological and historic, and socioeconomics. Tritium production could cause additional impacts in the following resources: spent fuel generation; human health (normal operations and accidents); low-level radioactive waste (LLW) generation; and transportation.

For the alternative that would complete, start up, and operate an incomplete reactor, the operating impacts include those impacts associated with a new commercial nuclear power plant. The following resources would be affected: infrastructure (including visual resources); water resources; spent fuel generation; human health (normal operations and accidents); LLW generation; transportation; and socioeconomics.

Infrastructure

The production of tritium in an operating CLWR would have no impact on the local infrastructure. The impacts of operating a newly completed reactor would produce more than 1,200 megawatts of usable electric power. In an area such as the Tennessee Valley, this beneficial impact would tend to reduce the need for operation of coal-fired or gas-fired power plants, or could offset the need for additional power plants in the future, potentially reducing future air emissions. Although visual resources surrounding the incomplete reactor site would be negatively impacted by a cooling tower plume, this is not significant enough to change the plant's existing visual resource classification.

Spent Fuel

The operating reactors considered here each contain 193 fuel assemblies. At each refueling a percentage of these assemblies are removed from the reactor and placed in the reactor's spent fuel storage pool. The number of assemblies of spent fuel generated by an existing reactor could increase as a result of tritium production. Increases could range from approximately zero (0) to 60 spent fuel assemblies per cycle depending on the number of TPBARs loaded. The environmental impacts associated with long-term, on-site, dry-cask storage of spent fuel are not significant. For an incomplete CLWR, approximately 72 spent fuel assemblies would be generated during reactor operations without tritium production. Increases in spent fuel could range from zero (0) to approximately 69 additional spent fuel assemblies depending on the number of TPBARs loaded. In this regard, it is DOE's intention to minimize the generation of additional spent fuel by limiting the number of TPBARs inserted in a single reactor. Thus, operation of a newly completed reactor would generate the most spent fuel; by contrast, use of currently operating reactors could lead to a limited incremental increase in spent fuel.

Human Health (Normal Operations)

By adding tritium production to the currently operating reactors, there would be additional radiation doses to workers and the public from tritium production. The incremental increase in annual average worker dose is estimated at approximately 1.1 millirem, while the total population dose within 50 miles is estimated to increase by approximately 2.0 person-rem per year during normal operations. In terms of potential impacts, these values are not significant. For example, a 2.0 person-rem dose translates into a latent cancer fatality risk of 1 in 1,000 years. For the average worker, a 1.1 millirem annual dose translates to a risk to that worker of a latent cancer fatality every 2.3 million years.

By finishing the incomplete reactor and operating it to produce electricity and tritium, there would be radiation doses to workers and the public that do not currently occur. The average annual worker dose is estimated at a maximum of approximately 105 millirem, of which 104 millirem would result from operation of the reactor to produce electricity, and 1.1 millirem would be from tritium operations. The annual total population dose within 50 miles is estimated to be a maximum of approximately 2.3 person-rem. In terms of potential impacts, these values are not significant. For example, a 2.3 person-rem dose translates into a latent cancer fatality risk of 1 in 870 years. A 105 millirem annual dose translates to a risk to an average worker of a latent cancer fatality every 23,000 years. Radiological impacts for normal operations are considered small for all alternatives. Use of an operating CLWR would have the smallest impact to workers.

Human Health (Accidents)

The CLWR EIS provides a detailed evaluation of impacts from accidents on a site-specific basis for the CLWR reactor alternatives. The CLWR EIS documents that the potential impacts from tritium production on accident impacts is small. For design-basis accidents at operating reactors, the risk of a latent cancer fatality to an average individual from tritium production in the 50-mile population surrounding a CLWR would be approximately 1 in 480 million years. At the incomplete reactor site, this risk would be approximately 1 in 1.3 billion years. For beyond design-basis accidents, tritium production would result in very small changes in the consequences of an accident. This is due to the fact that the potential consequences of such an accident would be dominated by radionuclides other than tritium. At the operating reactors, the additional risks to the 50-mile population from adding tritium production would be less than one additional cancer per every 7,100 years from a beyond design-basis accident. At the incomplete reactor site, the total risk of the new reactor and the added tritium mission to the 50-mile population would be approximately 1 latent cancer fatalities per 5,500 years from a beyond design-basis accident. The risks associated with accidents are small for all the CLWR tritium production alternatives.

Low-Level Radioactive Wastes

Low level waste (LLW) generation at the operating reactors could increase by 0.43 cubic meters annually as a result of tritium production. TVA may store this LLW onsite for the life of the plant. The newly completed reactor would generate approximately 40 cubic meters of LLW annually which may also be stored onsite for the life of the plant. Although all of the waste generation impacts are acceptable, the use of currently operating reactors would generate the smallest amount of low-level wastes from tritium production. For all alternatives, the environmental impacts of all waste types, including low-level waste would be small and manageable with existing facilities.

Socioeconomics

Little or no socioeconomic impact is expected by adding the tritium production mission at an operating CLWR. Operation of a newly completed CLWR would add approximately 800 direct and 800 indirect jobs. The socioeconomic impacts of the 1,600

total jobs would have a positive impact on the economic area surrounding the reactor site. Operation of a newly completed reactor would have the greatest positive socioeconomic impacts, while use of currently operating CLWRs to produce tritium would involve insignificant socioeconomic impacts.

Transportation

There will be impacts associated with transporting irradiated TPBARs from the reactor sites to the Tritium Extraction Facility (TEF) at the Savannah River Site (SRS). There would be up to approximately 13 shipments of TPBARs annually to SRS which would result in an annual human health risk, over the entire route of the shipments, of less than 1 latent cancer fatality every 100,000 years. The impact on any one individual would be less than that. All the transportation impacts are negligible.

No environmental commitments or mitigation were identified for the preferred alternative. A substantial radiological monitoring program for public exposure and all environmental media (air, water and land) is an established component of existing operations at the Watts Bar and Sequoyah Nuclear Plants. This existing program will identify any increases in radiological releases and impacts that may result from tritium production.

*Other Considerations*

TVA's Support of National Defense

TVA's decision to produce the Nation's tritium on an "at cost" basis under an Economy Act agreement reflects TVA's continuing willingness to support the national defense. TVA's historic and contemporary defense roles are described above under TVA's National Defense Role. Both alternatives would further TVA's commitment to national defense by producing the requisite quantities of tritium.

Regulatory and Licensing Issues

The Bellefonte alternatives would have to be licensed as a new nuclear power plant. The plant's initial NRC operating license would also permit tritium production. Since the process is likely to take 5 years, the Bellefonte alternative has the potential to impact the project schedule but would not affect the national security because initial tritium production could begin with the Watts Bar reactor.

For the alternatives using existing CLWRs, NRC would have to amend the operating licenses of the Watts Bar and Sequoyah reactors to permit tritium production. TVA expects that NRC would be in a position to act upon the amendment requests well in advance of the planned October 2003 start of irradiation.

*Environmentally Preferable Alternative*

The alternatives involving the completion and operation of one or both of the Bellefonte units would cause greater environmental impacts than the alternatives using existing operating reactors at Watts Bar and Sequoyah. This greater impact of alternatives using the Bellefonte reactors would result from their construction and operation as nuclear units which would be made possible by their concurrent use for tritium production. Based on these additional impacts that would be caused by completing and operating the Bellefonte units, TVA considers the use of the Watts Bar and Sequoyah reactors for tritium production as the environmentally preferable alternative.

Dated: April 24, 2000.

**John A. Scalice,**

*Chief Nuclear Officer and Executive Vice President.*

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## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Report on Trade Expansion Priorities Pursuant to Executive Order 13116 ("SUPER 301")

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** The United States Trade Representative (USTR) is providing notice that it submitted the report on U.S. trade expansion priorities published herein to the Committee on Finance of the United States Senate and Committee on Ways and Means of the United States House of Representatives pursuant to the provisions (commonly referred to as "Super 301") set forth in Executive Order No. 13116 of March 31, 1999.

**DATES:** The report was submitted on May 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Demetrios Marantis, Associate General Counsel, Office of the U.S. Trade Representative, 600 17th Street, NW, Washington, DC 20508, 202–395–9626.

**SUPPLEMENTARY INFORMATION:** The text of the USTR report is as follows.

### Identification of Trade Expansion Priorities Pursuant to Executive Order 13116 April 30, 2000

The United States Trade Representative (USTR) submits to Congress this year's "Super 301" report pursuant to Executive Order 13116 of March 31, 1999. The Executive Order directs the USTR to review U.S. trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. This report builds on the 2000 National Trade Estimate (NTE) Report on Foreign Trade Barriers (released on March 31, 2000) and complements the "Special 301" (intellectual property rights) and "Title VII" (government procurement) reports.

The USTR prepared this report in close consultation with other U.S. Government agencies. After reviewing the 2000 Trade Policy Agenda, the 2000 NTE Report, public comments submitted to USTR, and information received from U.S. Embassies abroad, these agencies have identified the Administration's top U.S. trade expansion priorities for 2000. USTR has also determined that a number of countries have failed to fully implement certain multilateral commitments and, accordingly, has decided to pursue enforcement action in the World Trade Organization (WTO). Finally, although USTR is not identifying any "priority foreign country practice" in this Report, the Administration has focused on a number of practices which may warrant future enforcement action.

#### I. Trade Expansion Priorities for 2000

Over the past eight years, this Administration has promoted a strong trade policy premised on open markets and the rule of law. The Administration's trade policy achievements have contributed to strong economic growth, rising living standards, increased investment, and industrial growth. Looking forward, further expansion of trade will remain crucial to continued growth and technological progress. In this regard, USTR identifies below its top trade expansion priorities for 2000.

*A. Complete China's Accession to the WTO*

This year's top trade expansion priority is to complete China's accession to the WTO and secure approval of permanent Normal Trade Relations (NTR) status for China. The economic liberalization and opening to the world

China will make as part of its WTO accession will support reform in China, create opportunities for China's trading partners, and ultimately help to stabilize peace in the Pacific. From the perspective of the trading system, a status quo in which the world's third-largest economy does not need to follow WTO rules is an enormous source of distortion and uncertainty.

This Administration made a monumental step in the direction of China's accession last November by reaching a bilateral agreement with China on WTO accession. This Agreement secures broad-ranging, comprehensive concessions on China's part, granting the United States substantially greater market access across the spectrum of industrial goods, services, and farm products. The Agreement covers tariff and non-tariff barriers to U.S. exports of industrial goods, agricultural products and services. Specific rules address import surges, anti-dumping and subsidies practices and requirements for export performance, local content, offsets, and technology transfer. These commitments are specific and enforceable through WTO dispute settlement, U.S. trade laws, and other special mechanisms, including periodic multilateral review of China's compliance with its commitments.

Beyond our bilateral agreement, securing China's accession this year will require action, first by those WTO members which have yet to complete their own negotiations with China, and second by the entirety of the WTO's membership on WTO rules issues. As part of this process, the United States must grant China unconditional (*e.g.*, permanent) NTR or risk losing the full benefits of the agreement that was negotiated, including special import protections, and the right to enforce China's commitments through WTO dispute settlement. All WTO members, including the United States, pledge to give one another unconditional NTR so that we may enjoy the WTO benefits available in one another's markets.

Permanent NTR, in terms of our policy toward China, is no real change. NTR is simply the tariff status we have given China since the Carter Administration; and which every Administration and every Congress over the intervening 20 years has reviewed and found, even at the periods of greatest strain in our relationship, to be in our fundamental national interest. If Congress were to refuse to grant permanent NTR, our Asian and European competitors will reap the benefits of the agreement we negotiated with China, but American farmers and businesses may well be left behind.

*B. Secure Enactment of Legislation Promoting Trade in Certain Regions*

Greater market access for the poorest countries remains essential to integrating less developed regions into the world economy on an equitable basis. As the President stressed in his State of the Union Address, the United States is prepared to do this unilaterally by securing passage this year of legislation further opening U.S. markets to goods from Africa and the Caribbean. This is of fundamental importance to growth and sustainable development for the people of these regions, and will also help these regions become better markets for U.S. products.

In this regard, one of our principal policy goals for the year 2000 is passage of the African Growth and Opportunity Act and Caribbean Trade Enhancement. This legislation has received bi-partisan Congressional support, and should see final action soon. Enactment of these measures would provide increased market access for products from reforming sub-Saharan African countries. This legislation would also institutionalize an annual U.S.-sub-Saharan Africa Trade and Economic Cooperation Forum and encourage the establishment of funds and guarantees to support private sector and infrastructure development in Africa.

In the Caribbean and Central America, this legislation would strengthen the partnerships that exist between the U.S. and Caribbean Basin firms in the textile and apparel sector. It would also improve the competitiveness of apparel assemblers from the Caribbean and Central America vis-a-vis assembly operations in other parts of the world that do not use U.S. fabric and other inputs to the same extent.

Offering additional trade benefits to Southeast Europe is also an important component of the Administration's efforts, in conjunction with the European Union (EU) and other multilateral institutions, to bring stability and economic development to Southeast Europe. The Administration has transmitted to Congress legislation that would provide the authority to establish duty-free treatment of certain imports from the countries and territories of Southeast Europe on the basis of specific criteria for a period of five years. Full utilization of the additional duty-free treatment would provide several of the countries of Southeast Europe with duty-free entry to the U.S. market for over 80 percent of their products. Serbia would be eligible for this treatment only if the President determined significant progress had been made in meeting several reform criteria and international obligations. This legislation has been introduced in the Senate, and the Administration supports its enactment this year.

*C. Advance Negotiations for the Free Trade Area of the Americas*

The 34 democracies in the Western Hemisphere are currently engaged in the historic mission to create the Free Trade Area of the Americas (FTAA). This process will eliminate tariffs and non-tariff barriers to trade in goods and services throughout the Hemisphere and establish a single set of rules for liberalized trade in the region, and fulfill a two-century old dream of a hemisphere united by a shared commitment to democracy, prosperity and mutual benefit. This commitment has already led to agreement on the adoption of specific business facilitation measures in the area of customs procedures, with implementation beginning this year. In addition, in November 1999, the 34 trade ministers agreed in Toronto to an ambitious negotiating agenda for the following 15 months, namely for each of the nine negotiating groups to prepare draft texts.

With the Third Summit of the Americas scheduled for April 2001 in Quebec, Canada, this year will be an intense year of negotiations. The agenda concentrates in four areas: Negotiating draft texts of the chapters of the Agreement by April 2001; carrying out a continuing program of business facilitation; addressing the views and concerns of civil society; and deepening the region's understanding of the implications and benefits of electronic commerce for our societies.

Ensuring that trade liberalization and environmental protection policies are mutually supportive is a key priority of the Administration. One important means of ensuring this is through environmental reviews of trade agreements, as reflected in the Executive Order on Environmental Review of Trade Agreements. Thus, the Administration has initiated its environmental review of the FTAA. This will help inform both the public and negotiators of the environmental considerations that must be taken into account as the United States formulates its negotiating positions. As we implement the principles of the White House Declaration of Environmental Trade Policy, the United States will also work with other stakeholders to address concerns including issues of worker rights, transparency, and consumer protection.

*D. Pursue Multilateral Negotiations To Open World Markets to U.S. Exports*

Over the past eight years, the Administration has made great progress toward open and fair world markets. However, this work is not yet done, and WTO members must focus on the negotiating agenda of the next decade. Under existing commitments made in the Uruguay Round, WTO members have opened formal negotiations to undertake further reforms and liberalization in agriculture and services—sectors in which the most distortions and barriers remain. The Administration intends to pursue progress in these areas in close consultation with Members of Congress, the private sector and other interested Americans. In this regard, on March 28, USTR published in the **Federal Register** a notice seeking comments from all interested parties as the United States begins the process of developing proposals for these negotiations.

The Administration has ambitious goals in these areas. In agriculture, the WTO Agreement on Agriculture provides the basis on which to pursue further meaningful reform. The United States is now working with other countries to ensure that negotiations focus on substantive reform proposals such as eliminating export subsidies; reducing tariffs; expanding market access opportunities for products subject to tariff rate quotas (TRQs), including better disciplines on the administration of those TRQs; reducing trade-distorting domestic support levels; and ensuring that the operation of agricultural state trading entities is more market-oriented.

In services, the United States is developing negotiating proposals for a wide range of sectors, including energy services, environmental services, audiovisual services, express delivery, financial services, telecommunications, professional services, private education and training, private healthcare, travel and tourism, and other sectors of great importance to the U.S. economy in particular, its high-tech sectors. Broadly speaking, U.S. objectives include further removing restrictions on services trade and ensuring non-discriminatory treatment.

Beyond these mandated negotiations, there is a host of other issues on the WTO's agenda which warrant attention. As examples, we must address market access concerns in non-agricultural products, electronic commerce, issues related to trade and the environment, trade and labor, trade facilitation, transparency in government procurement, and other topics as well. Thus, while there are a number of different options for proceeding with trade liberalization beyond agriculture and services, the United States is working to build consensus for a new Round. Building such a consensus is not a simple task. However, the goal can be achieved if WTO members prove willing to focus more fully on the shared benefits of success, and find the balance that allows us to move ahead.

*E. Enhance Monitoring and Enforcement Efforts*

Ensuring full implementation of our trade agreements remains one of this Administration's strategic priorities. Vigorous enforcement enhances our ability to get the maximum benefit from our trade agreements, ensures that we can continue to open markets, and builds confidence in the trading system. The United States has respected its own commitments in this regard and expects the same of its trading partners. Consequently, this Administration has devoted more attention and resources than ever before to ensuring that these agreements yield the maximum advantage in terms of ensuring market access for Americans, advancing the rule of law internationally, and creating a fair, open and predictable trading environment.

To carry out this work as effectively as possible, in particular with the prospect of enforcing our bilateral agreement with China on WTO accession, the Administration has added new personnel to carry out a larger enforcement workload, without compromising our efforts to negotiate further market access in key markets. The President has also announced a Trade Compliance Initiative, which would further strengthen the monitoring and enforcement capabilities of the Executive Branch and would add additional resources for those efforts.

**II. Enforcing Trade Commitments and Resolving Disputes**

Since 1993, the Administration has vigorously enforced U.S. rights by deploying all available trade enforcement tools. Through application of U.S. trade laws, and active use of WTO dispute settlement procedures, the Administration has effectively opened foreign markets to U.S. goods and services. The President has also used the incentive of preferential access to the U.S. market to encourage improvements in workers' rights and reform of intellectual property laws and practices in other countries. These enforcement efforts have resulted in major benefits to U.S. firms, farmers and workers.

In parallel with enforcement of U.S. trade laws, U.S. participation in the WTO has been instrumental to the progress made in enforcing the international commitments of our trading partners. By ratifying the Uruguay Round Agreements, which created the WTO on January 1, 1995, Congress took a step of immense significance: helping to expand the rule of law and strengthening our ability to enforce the commitments of U.S. trading partners. Since that time, the United States has been the world's most frequent user of WTO dispute settlement procedures, winning favorable settlements and panel victories in virtually all sectors, including manufacturing, intellectual property, agriculture, and services. Continued participation in the WTO by the United States therefore remains central to the efforts of this and future Administrations to ensure that Americans enjoy the full promise and benefit of international trade agreements.

With the WTO now five years old, the obligations contained in most of the Uruguay Round agreements have already entered into force. In particular, January 1, 2000, marked the expiration of the five-year transition periods granted to certain WTO members (particularly in less-developed countries) to phase-in key rules agreed in the Uruguay Round, such as those in the area of intellectual property, trade-related investment measures, customs valuation and industrial subsidies. There has been good progress in the implementation of and compliance with WTO commitments, particularly as a result of enforcement of U.S. trade law, activity in the various WTO oversight bodies, and successful dispute settlement activity. However, the United States remains concerned that certain trading partners are not yet fulfilling all of their WTO obligations.

*A. Enforcement Successes*

Securing compliance with WTO and other trade obligations has been a major success of this Administration. Efforts to promote compliance with the WTO agreements have taken place using three tools: (1) Enforcement of U.S. trade law; (2) the various WTO oversight bodies and (3) the WTO dispute settlement mechanism.

First, the panoply of U.S. trade tools (*e.g.*, Section 301, Section 1377, Special 301, Super 301, and Title VII) works in conjunction with bilateral and WTO mechanisms to promote compliance and to address problems that are outside the scope of the WTO and NAFTA. These tools have led to some important

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implementation successes in the past year:

- Pursuant to *Section 301*, USTR successfully investigated and resolved a petition filed by the Border Waters Coalition Against Discrimination in Service Trade of certain Canadian practices affecting tourism and sport fishing. This investigation was announced as part of last year's *Super 301* report.
- *Section 1377* has produced enhanced implementation of WTO basic and value-added telecommunications commitments. For instance, as part of this year's Section 1377 process, Israel announced that it would terminate its discriminatory access charge on traffic between Israel and North America (see USTR News Release 00–25, April 4, 2000).
- *Special 301* has been used successfully by USTR to encourage many developing countries to make substantial progress toward full implementation of their TRIPS obligations. For details, see this year's Special 301 report on intellectual property rights.
- The 1999 *Super 301* Report provided the basis for WTO enforcement action against India (regarding automotive trade and investment measures) and for stepped-up enforcement activity in the area of customs valuation. The United States will pursue WTO consultations regarding the customs valuations practices of Brazil and Romania, consult bilaterally with Mexico, and closely monitor India's customs valuation practices.
- *Title VII* has enabled USTR to challenge the discriminatory procurement barriers of foreign governments. For instance, after being identified under Title VII in 1996 for failing to provide an adequate remedies system to challenge procurement decisions in the heavy electrical sector, Germany has since passed and implemented new legislation to reform its bid challenge system.

Second, WTO oversight bodies offer another important means of securing implementation of WTO commitments. WTO members have worked collectively in the array of WTO oversight bodies charged with monitoring implementation and surveillance of agreements and disciplines to monitor the commitments our trading partners have made, identify potential problems, and offer technical assistance or other expertise when necessary to help ensure compliance and implementation of commitments. The United States actively asserts its rights and pursues its interests through these mechanisms. For example:

- The *Committee on Agriculture* has remained an effective forum for raising agricultural trade issues of concern. The United States played a leading role in the Committee's activities, working with other countries to ensure broad-based compliance with WTO commitments on agriculture.
- The *Committee on Customs Valuation*, where more than 50 developing country members face individual deadlines for implementation of the Agreement on Customs Valuation. Some members have requested additional time to assume the Agreement's obligations in full. The United States and others, working through the Committee, have consulted with these members to craft individualized extension decisions which provide for benchmarked work programs toward full implementation, along with reporting requirements and specific commitments on other implementation issues important to U.S. export interests.
- In the *Committee on Technical Barriers to Trade*, the United States has expressed concerns about a range of foreign measures which could adversely affect trade or pose unnecessary trade barriers, *e.g.*, EU restrictions on the use of hushkitted and certain re-engined aircraft.
- In the *Committee on Balance of Payments (BOP) Restrictions*, the effective use of consultation procedures resulted in Nigeria's elimination of all BOP-justified restrictions such that, now, only four members continue to retain such measures.
- Finally, the *Trade Policy Review* process has been instrumental in the identification of potentially WTO-inconsistent practices in members' regimes, and provides a forum in which pressure can be brought to urge reform or elimination of such practices.

Third, the United States has used the WTO dispute settlement mechanism to ensure implementation of WTO commitments. U.S. dispute settlement activity has aimed not only at challenging existing barriers but also at preventing the future adoption of similar barriers around the world. In this regard, the United States continues to be the most active user of the WTO dispute settlement process and, in 1999, filed eight new complaints. These cases involve a variety of WTO-inconsistent trade barriers maintained by several different governments.

U.S. experience thus far indicates that the WTO dispute settlement process has been an effective tool in combating barriers to U.S. exports. Some key dispute settlement successes in the past year include:

- Agreement on expeditious elimination of India's import bans and other quantitative restrictions on 2,700 tariff lines of goods. This ruling will open new markets for U.S. producers of consumer goods, textiles, agricultural products, petrochemicals, high technology products, and other industrial products;
- Reduction of Canada's subsidized exports of dairy products. The WTO panel and Appellate Body rulings in this case prevent Canada from applying illegal export subsidies on dairy products, including butter and skimmed milk powder; stop Canada's evasion of its Uruguay Round agricultural trade obligations; and deter copycat subsidies in other countries;
- WTO ruling requiring withdrawal of Australia's subsidies on exports of automotive leather. If the United States cannot satisfactorily resolve this matter with Australia, the WTO Dispute Settlement Body will authorize the United States to suspend concessions with respect to products of Australia;
- Affirmation of the WTO right to suspend concessions with respect to certain products from the EU as a result of the EU's failure to lift its ban on imports of U.S. meat, as well as its adoption of a WTO-inconsistent banana-import policy;
- Elimination of Japanese restrictions on the imports of certain varieties of fruit, including apples and cherries; and
- Affirmation that Mexico's imposition of anti-dumping duties on the import of high fructose corn syrup from the United States was inconsistent with the requirements of the WTO Antidumping Agreement.

As important as favorable WTO rulings are early settlements, achieved without having to pursue litigation to completion. Some notable settlements include full enforcement of intellectual property rights in Sweden, elimination of tax discrimination against imported movies in Turkey, and market access for U.S. agricultural products in the Philippines and the EU.

*B. Resolving Disputes*

Despite these many successes, certain WTO members are not implementing their WTO obligations, including those that came due on January 1, 2000. The United States remains committed to engaging in discussions with its trading partners in a constructive spirit to find solutions to implementation problems, including in the respective WTO bodies charged with overseeing the rigorous technical aspects of implementation, and will use all multilateral tools

available to resolve such problems. In this connection, initiating WTO dispute settlement procedures may be the most effective means of achieving a resolution on a multilateral basis of some of these difficult issues. Accordingly, USTR has decided to resort to these procedures in the following cases:

• Brazil-Customs Valuation: The United States will request WTO consultations with Brazil regarding its system for verification of the declared values of imported goods, such as textile products. Brazil uses minimum reference prices both as a requirement to obtain import licenses and/or as a base requirement for import. In practice, this system works to prohibit the import of products with declared values below established minimum prices, and, as such, appears to violate provisions of the WTO Agreement on Customs Valuation, GATT 1994, and the WTO Agreement on Import Licensing Procedures. The United States has also actively participated as an interested third party in consultations requested by the EU on this issue.

• India-Measures Affecting Trade and Investment in the Motor Vehicle Sector: The United States will take the next step in its dispute with India and will request the establishment of a WTO dispute settlement panel to challenge the WTO consistency of Indian measures that apply to investment in the automotive industry. In order to obtain import licenses for certain motor vehicle parts and components, India requires manufacturing firms in the motor vehicle sector to achieve specified levels of local content, neutralize foreign exchange by balancing the value of certain imports with the value of exports of cars and components over a stated period, and limit imports to a value based on the previous year's imports. Considering these requirements inconsistent with India's obligations under the GATT 1994 and the TRIMS Agreement, the United States requested WTO consultations on June 2, 1999. These consultations—held on July 20, 1999—failed to resolve the dispute, and accordingly the United States intends to take the next step and litigate this issue before a WTO panel.

• Philippines-Measures Affecting Trade and Investment in the Motor Vehicles Sector: The United States will request WTO consultations with the Philippines on its motor vehicle policies. The Philippines imposes local content requirements on producers of motorcycles, automobiles and commercial vehicles which range from 13 to 45 percent (certain automobiles face a 40 percent requirement). There are also foreign exchange balancing requirements which range from 5 to 75 percent. The Philippines was required to remove these measures by January 1, 2000, unless additional time was granted by the WTO. On October 4, 1999, the Philippines made a formal request for an additional five years to bring these measures into compliance with its obligations under the Agreement. For these reasons, the Philippines appears to be in violation of the TRIMs Agreement. Additionally, other facets of the Philippines' motor vehicle policy will be reviewed to ensure their consistency with other WTO standards. The approximate size of the vehicle market in the Philippines in 1998 was 80,000 units (250,000 units including motorcycles). A large portion of the vehicles sold in the Philippines are produced locally. Motor vehicle parts sales into the Philippines are also reduced by these measures. The United States has actively pursued a resolution of this request through bilateral and multilateral meetings, and will continue to do so through the use of dispute settlement procedures.

• Romania-Customs Valuation: The United States will request WTO consultations with Romania regarding measures which establish minimum and maximum prices for certain imported products (such as poultry, eggs, fruits and vegetables, clothing, footwear, and certain distilled spirits) and procedures for investigating import prices when the declared value falls below the minimum import price. In such situations, the importer is required to pay, in addition to the duty based on the declared value, a "guarantee" deposit that is the difference between the duties of the maximum established price and that of the declared value. These practices appear to violate Romania's obligations under the WTO Customs Valuation Agreement, GATT 1994, as well as the WTO Agreement on Agriculture.

• Intellectual Property Rights: In addition, in the "Special 301" report on intellectual property rights, the USTR announces that the United States will pursue WTO dispute settlement in three intellectual property rights cases. The United States will request WTO consultations with Argentina regarding significant deficiencies in its patent regime. The United States will also consult with Brazil in the WTO regarding a longstanding narrow difference of views on interpretation of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) that can only be resolved through WTO dispute settlement. The United States will also proceed to a WTO panel in an existing dispute with Denmark regarding enforcement of its intellectual property laws unless imminent progress is made.

### III. Continued Monitoring of Certain Trade Practices

This report also identifies several trade practices of significant concern. While these practices do not yet warrant enforcement action, USTR will monitor closely developments with respect to these practices and could initiate bilateral or multilateral trade enforcement action as necessary.

*EU-Airbus*

The United States is extremely concerned about the ongoing subsidization of the Airbus consortium by EU Member State governments. Since the inception of Airbus in 1967, the Airbus member governments have provided massive subsidies to their respective member companies to aid in the development, production and marketing of the Airbus family of large civil aircraft, enabling Airbus to garner, according to the Airbus Chief Executive Officer, "a 55 percent market share in 1999, after almost 50 percent in 1998." The Airbus partner governments have borne 75 to 100 percent of the development costs for all major lines of Airbus aircraft and provided other forms of support, including equity infusions, debt forgiveness, debt rollovers and marketing assistance. They have also provided funds to support the development of derivative versions of earlier Airbus aircraft models, such as the A330–200 and the A340–500/600. Some loans for Airbus programs, repayable from royalties on aircraft sold, have been effectively forgiven because projected sales did not materialize.

The Airbus governments continue to subsidize their member companies. The British government recently announced a commitment of $830 million to underwrite BAe System's participation in the development of a new Airbus project, the A3XX "superjumbo" aircraft. The French, German and Spanish governments are considering whether to extend A3XX funding to their producers as well. The recent announcement that the Italian company Finmeccanica may join both Airbus and the A3XX program raises new subsidy issues with regard to Italy, and the pending creation of a unified Airbus company creates serious concerns about possible debt forgiveness in all of the Airbus countries.

The United States believes that government support of Airbus raises serious concerns about Member State compliance with their bilateral and

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multilateral obligations in this sector. The United States will closely monitor developments and will consider all options to ensure that these obligations are fully met.

*India-Textiles*

Under the December 31, 1994 U.S.-India Memorandum of Understanding (MOU) on Market Access for textile products, India committed to undertaking tariff bindings on a broad spectrum of such products. The United States also committed to provide India with "relevant price information" on products subject to the MOU. The United States has lived up to its commitments under the MOU. India, after a lengthy delay, has made some effort to bind textile tariffs. However, the items proposed to be bound generally are not items covered by the U.S.—India agreement, and the binding proposal is deficient in many respects. In addition, India has begun to apply alternative specific duties in the textile sector, which will have a significantly negative impact on potential U.S. exports. In so doing, India has apparently failed to take into account relevant data supplied by the United States. India's actions conflict with the objectives of the 1994 agreement, which called on both the United States and India to improve conditions for access into their markets for textile and apparel products. The United States will continue to work to ensure that India completes an acceptable, comprehensive tariff binding, in compliance with bilateral and WTO commitments, as soon as possible, and will take appropriate action as necessary.

*Japan-Automotive Sector*

The U.S.-Japan Automotive Agreement achieved initial progress in opening Japan's auto and auto parts market to U.S. and other foreign suppliers, but results over the last few years have been disappointing. Japan introduced new categories of service garages, removed shock absorbers, struts, trailer hitches, and power steering from the critical parts list, deregulated 23 standards and certification requirements and streamlined the type designation system, improved access to vehicle registration data, and took steps to ensure auto dealers that they are free to carry the products of competing manufacturers. Since 1997, however, the Japanese Government has remained reluctant to take additional meaningful steps to actively deregulate and fully open its automotive sector, or to create an environment that would help promote a more competitive market in this sector. The United States has called upon Japan to take additional, concrete market-opening and deregulatory actions to achieve the Automotive Agreement's objectives of ensuring continuing improvements in market access and sales opportunities in the Japanese automotive market. The United States is also consulting with U.S. industry, labor, Congress, NGOs, and other interested parties to develop a position on what type of follow-on agreement it should seek in light of the December 2000 expiration date of the current Automotive Agreement. The Administration hopes to work closely and cooperatively with Japan on this issue in the coming months.

*Japan-Flat Glass*

The U.S.-Japan Flat Glass Agreement, which expired on December 31, 1999, achieved some progress in opening Japan's flat glass market. For example, it resulted in Japan's adoption of energy conservation standards in the housing sector, boosting demand for high-value-added insulating glass produced by both Japanese and U.S. manufacturers. However, the Agreement's principal objective, opening Japan's flat glass distribution to non-Japanese manufacturers, remains unfulfilled. The Japanese Government's own data show that most Japanese distributors believe that foreign flat glass manufacturers offer equal or better prices, quality and service than Japanese manufacturers. Yet the world's four leading non-Japanese flat glass manufacturers, including two U.S. firms, still sell an insignificant amount of glass to Japan, with market share stuck at about five percent. The highly oligopolistic market structure and the tight control exerted by three Japanese manufacturers over the domestic glass distribution system though majority ownership, equity and financing ties, employee exchanges, and purchasing quotas remain the key barriers to market access in this sector. Japan's Fair Trade Commission has recently taken action to curb some of these practices in niche glass markets, but has not taken action in the broader glass market.

The United States continues to urge Japan to take concrete steps to open this market. Later this Spring, the United States and Japan are planning to hold a government/industry forum involving Japanese and U.S. industry representatives to share perspectives on the state of competition in Japan's flat glass market. Following this forum, the two governments will meet to discuss ways in which the two governments can work together to achieve an open and competitive flat glass market in Japan.

*Korea-Motor Vehicle Policies*

In October 1998, the U.S. and Korean Governments concluded a Memorandum of Understanding (MOU) and exchange of letters to settle a section 301 investigation initiated after USTR named Korea's motor vehicle policies as a "priority foreign country practice" in the 1997 Super 301 report. Under the 1998 MOU, Korea agreed to (1) bind in the WTO its 80 percent applied tariff rate at 8 percent; (2) lower some of its motor-vehicle-related taxes and eliminate others; (3) adopt a self-certification system by 2002; (4) streamline its standards and certification procedures; (5) establish a new financing mechanism to make it easier to purchase motor vehicles in Korea; and (6) actively and expeditiously address instances of anti-import activity and actively promote a better understanding of free trade and open competition.

While Korea has taken steps to implement provisions in the MOU, after two sets of detailed consultations and numerous other government-to-government exchanges, the U.S. Government and industry continue to have serious concerns about the lack of access to the Korean motor vehicle market, as demonstrated by unacceptably low foreign market share. The MOU provides for a significant increase in market access for foreign motor vehicles. In addition, there has not been meaningful restructuring of the Korean motor vehicle sector, *i.e.*, changes have yet to yield efficient, market-driven firms. Also, anti-import activity continues, and negative perception of foreign motor vehicles persists, including, for example, the perception that buying a foreign car is an unpatriotic act that could lead to tax audits. While the Korean Government has taken some steps to address these problems, some Korean Government officials, as well as Korean individuals outside of the government, have demonstrated a return to the past practice of discouraging the purchase and consumption of imported goods, including foreign motor vehicles. Finally, the U.S. Government has put the Korean Government on notice that some of its plans or policies on standards and taxes do not conform with the provisions in the MOU. The U.S. Government will continue to aggressively push for full and faithful implementation of the 1998 MOU and side letter.

*Korea-Treatment of Foreign, Research-Based Pharmaceuticals*

U.S. concerns about Korea's treatment of foreign, research-based pharmaceuticals have centered around (1) discrimination in the reimbursement pricing system; (2) lack of protection of intellectual property rights (IPR), particularly with respect to clinical data and patents; and (3) burdensome and non-science-based Korean regulatory requirements, particularly on the acceptance of foreign clinical test data, testing, and approval of new drugs. In response to multiple government-to-government exchanges, including at high levels, the Korean Government has made some changes to address U.S. concerns. Specifically, imported pharmaceuticals are now listed, as are domestic drugs, on Korea's national health insurance reimbursement schedule. Also, the Korean Government has introduced a new system to reimburse hospitals for drugs at actual transaction prices to eliminate the illegal hospital margins that were available only for domestic drugs. Finally, Korea has taken some minor steps to address U.S. concerns on data protection and regulatory issues.

However, serious questions remain regarding how the new reimbursement pricing system in Korea will treat foreign innovative drugs, and regarding whether Korea provides TRIPS-consistent data protection. Korean authorities have resisted committing to a system of "linkage" between health and IPR authorities that would prevent the launch into the Korean market of drugs that would infringe valid patents. Finally, new Korean regulations finalized in December 1999 do not conform to international guidelines on the acceptance of foreign clinical test data. Prior to December of last year, in communications with the U.S. Government, the Korean Government indicated that it would implement these guidelines. In fact, the final Korean regulations appear to perpetuate requirements for redundant clinical testing and fail to shorten and streamline Korea's drug approval process. The U.S. Government will continue discussions with the Korean Government until U.S. concerns are addressed.

*Malaysia-Trade and Investment in Motor Vehicles*

The United States will continue to monitor Malaysia's compliance with its WTO obligations in the motor vehicle sector. Malaysia imposes local content requirements on producers of motorcycles, automobiles and commercial vehicles (45 to 60 percent for passenger and commercial vehicles and 60 percent for motorcycles). Under the TRIMs Agreement, Malaysia was required to remove these measures by January 1, 2000 unless additional time was granted by the WTO. On December 29, 1999, Malaysia made a formal request for an additional two years to bring these measures into compliance with its obligations under the Agreement, but approval of this request has not been forthcoming. For these reasons, Malaysia appears to be in violation of the TRIMs Agreement. The approximate size of the automobile and commercial vehicle market in Malaysia in 1998 was 164,000 units. A large portion of the vehicles sold in Malaysia are produced locally. Motor vehicle parts sales into Malaysia are also reduced by these measures.

The United States hopes to receive increased interest from Malaysia in resolving this issue in a timely fashion. It will be important to increase the dialogue regarding the extension request made by the Malaysians. A meaningful first step will be for Malaysia to provide answers to a series of questions posed by several WTO members. The United States provided its questions on February 8, 2000 and on several occasions encouraged Malaysia to respond. Absent progress toward resolving Malaysia's request, we will need to consider alternate action to resolve this apparent violation. Additionally, other facets of Malaysia's motor vehicle policies will be reviewed to ensure their consistency with WTO obligations.

*Mexico-Customs Valuation*

The United States has requested bilateral consultations with the Government of Mexico regarding its use of reference prices for a wide range of imported products, including foods, distilled spirits, chemicals, paper, textiles, apparel, footwear, steel, hand tools, and appliances. Based on currently available information, effective May 1, 2000, companies importing affected products below the Government's minimum reference price must deposit cash in a designated Mexican financial institution (or arrange one of two alternative guarantees) to cover the difference in duties and taxes. This cash deposit requirement is to replace a bond requirement that has been in place for several years. These practices appear to violate a number of WTO agreements, including the WTO Agreement on Customs Valuation, GATT 1994, the WTO Agreement on Import Licensing Procedures, the Agreement on Preshipment Inspection, and the Agreement on Textiles and Clothing. If consultations underway do not result, in a timely manner, in Mexican policies which are in compliance with its international agreements, the United States will initiate WTO consultations.

*Mexico-Nutritional Products*

Mexican Health Ministry regulations require the inspection and approval of manufacturing facilities in order to sell nutritional products, such as low-dosage vitamins, in Mexico. However, Mexican authorities refuse to inspect U.S.-based manufacturing facilities. Denying U.S. exporters the ability to have their facilities inspected and approved on the same basis as their Mexican counterparts raises serious concerns about Mexico's adherence to its trade obligations under the NAFTA and the WTO. The United States has raised these concerns with Mexico and has requested further consultations with Mexico. If this problem is not resolved in a timely manner that will allow U.S. companies without Mexican-based production facilities to resume exporting nutritional products to Mexico, the United States will consider proceeding to dispute settlement.

**A. Jane Bradley,**

*Assistant U.S. Trade Representative for Monitoring and Enforcement.*

[FR Doc. 00–11289 Filed 5–4–00; 8:45 am]

BILLING CODE 3190–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Noise Certification Issues

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss noise certification issues.

**DATES:** The meeting will be held on May 18, 2000, at 10 a.m.

**ADDRESSES:** The meeting will be held at the General Aviation Manufacturers Association, 1400 K Street NW, Washington, DC

**FOR FURTHER INFORMATION CONTACT:** Ms. Angela. O. Anderson, (202) 267–9681, Office of Rulemaking (ARM–204), 800 Independence Avenue, SW, Washington, DC 20591.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to discuss noise certification issues. This meeting will be held May 18, 2000, at 10 a.m., at the General Aviation Manufacturers Association. The agenda for this meeting will include the presentation and vote on the NPRM from FAR/JAR Harmonization Working Group for Subsonic Transport Airplanes. Members of the public may obtain copies of this NPRM by contacting the person listed above under **FOR FURTHER INFORMATION CONTACT**

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present statements to the committee at any time. Written statements may be presented to the committee at any time by providing 16 copies to the Assistant Chair or by providing the copies at the meeting. If you are in need of assistance or require a reasonable accommodation for the meeting, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT**. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, is requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on April 27, 2000.

**Paul Dykeman,**

*Assistant Executive Director for Noise Certification Issues, Aviation Rulemaking Advisory Committee.*

[FR Doc. 00–11326 Filed 5–4–00; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 196 Night Vision Goggle (NVG) Appliances and Equipment

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–196 meeting to be held March 28–29, 2000, starting at 9:00 a.m. each day. The meeting will be held at RTCA Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will include: May 31: (1) Welcome and Introductory Remarks; (2) Agenda Overview; (3) Review/Approval of Previous Minutes; (4) Action Item Status Review; (5) Overview SC–196 Working Group (WG) Activities: (a) WG–1, Operational Concept/Requirements; (b) WG–2, Night Vision Goggles Minimum Operational Performance Standards; (c) WG–3, Night Vision Imaging System Lighting; (d) WG–4, Maintenance/Serviceability; (e) WG–5, Training Guidelines/Considerations; (6) WG Breakout Sessions. June 1: (7) Night vision Imaging Systems Terminology Review; (8) Technical Standard Order Process; (9) RTCA Ballot Process; (10) Risk and System Safety Assessment Discussion; (11) Working Group Breakout Sessions. June 2: (12) Status of SC–196 WG Activities; (a) WG–1, Operational Concept/Requirements; (b) WG–2, Night Vision Goggles Minimum Operational Performance Standards; (c) WG–3, Night Vision Imaging System Lighting; (d) WG–4, Maintenance/Serviceability; (e) WG–5, Training Guidelines/Considerations; (13) Other Business; (14) Establish Agenda for Next Meeting; (15) Date and Location of Next Meeting; (16) Workgroup Breakout Sessions; (17) Working Group Chairpersons Meeting; (18) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 1, 2000.

**Jane P. Caldwell,**

*Designated Official.*

[FR Doc. 00–11327 Filed 5–4–00; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[Docket No. FHWA–2000–7315]**

### Notice of Request for Renewal of Five Currently Approved Information Collections

**AGENCY:** Department of Transportation, Federal Highway Administration (FHWA).

**ACTION:** Notice and request for public comments.

**SUMMARY:** In accordance with the requirements in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to renew its clearances for the five currently approved FHWA collections of information identified below under Supplementary Information.

**DATES:** Comments must be submitted on or before July 5, 2000.

**ADDRESSES:** All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington DC 20590–0001. Commenters should refer to the OMB control number to specify the information collection they are commenting on. All comments received will be available for examination at the above address between 10 a.m. to 5 p.m., et., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**Public Comments Invited**

Interested parties are invited to send comments regarding any aspect of these five information collections, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burdens; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the requests for OMB's clearance of the following five collections of information.

**SUPPLEMENTARY INFORMATION:** (1) *Title:* Federal-aid Highway Construction Equal Employment Opportunity.

*OMB Control Number:* 2125–0019 (Expiration Date: December 31, 2000).

*Affected Public:* State highway agencies.

*Abstract:* Title 23, part 140(a), requires the FHWA to ensure equal opportunity regarding contractors' employment practices on Federal-aid highway projects. To carry out this requirement the contractors must submit to the State highway agencies an annual report providing employment

work force data, which includes the number of minorities, women, and non-minorities in each construction craft. This information is reported on Form PR–1391, Federal-aid Highway Construction Contractors Summary of Employment Data. The statute also requires the State highway agencies to submit a report to the FHWA summarizing the data entered on the PR–1391 forms. This summary data is provided on Form PR–1392, Federal-aid Highway Construction Contractors Summary of Employment Data. The FHWA uses this data to identify patterns and trends of employment in the highway construction industry, and to determine the adequacy and impacts of the FHWA's contract compliance and on-the-job training programs.

*Estimated Annual Burden:* The FHWA estimates the total annual burden hours imposed on the public by this collection is 6,580 hours; *i.e.*, 2,080 hours is required by the 52 State highway agencies to complete and submit the Form PR–1392, and an additional 4,500 hours is required for 4,500 Federal-Aid contractors to complete and submit the Form PR–1391.

*Number of Respondents:* 52.

*For Further Information Contact:* Ms. Carmen Sevier, (202) 366–1595, Department of Transportation, Federal Highway Administration, Civil Rights Service Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

(2) *Title:* Statement of Materials and Labor Used by Contractor on Highway Construction Involving Federal Funds.

*OMB Control Number:* 2125–0033 (Expiration Date: November 30, 2000).

*Affected Public:* State highway agencies and Federal-aid highway contractors.

*Abstract:* The State highway agencies and contractors who work on highway projects are required to submit data regarding the usage of materials and labor in highway construction (23 CFR 635.126). This data is submitted to the FHWA on Form FHWA–47, Statement of Materials and Labor Used by Contractors on Highway Construction Involving Federal Funds. Title 29 U.S.C. 2 authorizes the Department of Labor (DOL) to collect the labor-related information using its own forces or by getting the information from other Federal agencies. An informal agreement has been reached for the FHWA to collect the desired data for DOL. The data is used by the FHWA for estimating current material usage and cost distribution on Federal-aid highway construction contracts to aid in planning for future requirements based on anticipated program levels. The information is also used by the Department of Labor in its studies on the highway construction industry's labor and materials requirements, and by the industry, including the materials suppliers. This information is made available to other Federal, State and local agencies, universities, businesses, and industry for their own uses.

*Estimated Annual Burden:* The FHWA estimates that the total annual burden imposed on the public by this collection is 7,475 hours; *i.e.*, approximately 650 State highway agencies and Federal-Aid highway contractors complete and submit an average of 2.3 reports on Form FHWA–47 yearly; and the estimated time to complete each report is 5 hours.

*Number of Respondents:* 650.

**FOR FURTHER INFORMATION CONTACT:** Ms. Claretta Duren, (202) 366–4636, Department of Transportation, Federal Highway Administration, Infrastructure Core Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

(3) *Title:* Developing and Recording Costs for Utility Adjustments.

*OMB Control Number:* 2125–0519 (Expiration Date: November 30, 2000).

*Affected Public:* State highway agencies and public utilities.

*Abstract:* Under 23 U.S.C. 123, the FHWA reimburses the State highway agencies when they have paid the costs of utility facilities' relocations that are required by the construction of Federal-aid highway projects. The FHWA requires the utilities to document the costs for adjusting their facilities. The utilities must have a system for recording labor, materials, supplies and equipment costs incurred when undertaking adjustments to accommodate the highway projects. This record of costs forms the basis for payment by the State highway agency to the utility and in turn the FHWA reimburses the State for its payment to the utility. The utilities are required to maintain these records of costs for three years after final payment is received.

*Estimated Annual Burden:* The FHWA estimates that this collection imposes a total annual burden on the public of 180,000 hours; *i.e.*, approximately 9,000 reimbursable utility adjustments are made yearly by approximately 3,000 utility firms. The average amount of time required by these firms to calculate the adjustment costs and maintain the required records is 20 hours.

*Number of Respondents:* 3,000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Scott, (202) 366–4104, Department of Transportation, Federal Highway Administration, Infrastructure Core Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

(4) *Title:* Utility Use and Occupancy Agreements.

*OMB Control Number:* 2125–0522 (Expiration Date: October 31, 2000).

*Affected Public:* State/local highway authorities and public utilities.

*Abstract:* Under 23 U.S.C. 116, the FHWA requires the State and/or local highway authorities to maintain the highway rights-of-way including the control of its use by the utilities. In controlling the utilities' use of the highway rights-of-way the State/local highway authorities are required to document the terms under which the utility is to cross or otherwise occupy the highway rights-of-way. This documentation, consisting of a use and occupancy agreement (permit), must be in writing and must be maintained in the State/local highway authority's files for a three-year retention period.

*Estimated Annual Burden:* The FHWA estimates that the total annual burden imposed on the public by this collection is 552,000 hours; *i.e.*, nearly 4,600 State/local highway authorities are each involved in an average of 15 use and occupancy agreements per year, and the estimated amount of time required by these entities to process the permits is 8 hours.

*Number of Respondents:* 4,600.

**FOR FURTHER INFORMATION CONTACT:** Mr. Paul Scott, (202) 366–4104, Department of Transportation, Federal Highway Administration, Infrastructure Core Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

(5) *Title:* Developing and Recording Costs for Railroad Adjustments.

*OMB Control Number:* 2125–0521 (Expiration Date: October 31, 2000).

*Affected Public:* State highway agencies and railroad companies.

*Abstract:* Under 23 U.S.C. 130, the FHWA reimburses the State highway agencies when they have paid for the cost of projects that (1) eliminate hazards at railroad/highway crossings, or (2) adjust railroad facilities to accommodate the construction of highway projects. The FHWA requires the railroad companies to document their costs incurred for adjusting their

facilities. The railroad companies must have a system for recording labor, materials, supplies, and equipment costs incurred when undertaking the necessary railroad work. This record of costs forms the basis for payment by the State highway agency to the railroad company, and in turn FHWA reimburses the State for its payment to the railroad company.

*Estimated Annual Burden:* The FHWA estimates that the total annual burden imposed on the public by this collection is 18,400 hours; *i.e.*, nearly 115 railroad companies are involved in an average of 10 railroad/highway projects per year, and the average number of hours required to calculate the railroad adjustment costs and maintain the required records is 16 hours.

*Number of Respondents:* 115.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Winans, (202) 366–4656, Department of Transportation, Federal Highway Administration, Safety Core Business Unit, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**Authority:** 23 U.S.C. 140(a); 23 CFR 635.126; 29 U.S.C. 2; 23 U.S.C. 123; 23 U.S.C. 116; 23 U.S C. 130; 49 CFR 1.48.

Issued on: May 2, 2000.

**James R. Kabel,**

*Chief, Management Programs and Analysis Division.*

[FR Doc. 00–11310 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Valencia County, NM

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed new east-west highway and Rio Grande river crossing in Valencia County, New Mexico.

**FOR FURTHER INFORMATION CONTACT:** Gregory D. Rawlings, Environmental Specialist, Federal Highway Administration, 604 W. San Mateo Road, Santa Fe, New Mexico 87505, telephone: (505) 820–2027; or F. Craig Conley, Environmental Program Manager, New Mexico State Highway and Transportation Department, P.O. Box 1149, Santa Fe, New Mexico 87504, telephone: (505) 827–5233.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the New Mexico State Highway and Transportation Department, will prepare an EIS for a proposed new highway that would link Interstate 25 (I–25) and New Mexico Highway 47 (NM 47) in Valencia County, NM. The study area encompasses a corridor approximately 4 miles wide and between I–25 and NM 47. The southern boundary of the corridor lies approximately 5 miles north of Reinken Road (NM Highway 309) through the City of Belen. The northern boundary of the corridor lies approximately 1.5 miles south of Main Street (NM Highway 6) through the Village of Los Lunas.

The need for a new east-west highway and river crossing that would connect I–25 and NM 47 is founded in several factors including rapid population growth, employment growth and congested roadways. Continuing population and employment growth is projected to occur on both sides of the Rio Grande in the project corridor, necessitating additional east to west travel. The current highway system to serve this growth is limited to two 4-lane highways spaced over 10 miles apart, and is projected to become severely congested. Alternatives to be considered by the EIS will include the No Action alternative and various route alternative(s) developed during the initial corridor study phase and scoping process. Alternatives are being developed with input from stakeholder jurisdictions, agencies, landowners, and the general public. The alternatives will also consider different lane configurations, access management concepts, roadway profiles, and system and demand management measures. Preliminary scoping for the project has included: (1) Introductory information sent to federal, state, tribal, and local agencies, public and private organizations, and individuals identified as potentially-interested or affected parties; (2) public information meetings conducted in the study area to solicit preliminary issues and concerns regarding the proposed action; (3) briefings to local jurisdictions; and, (4) meetings with various neighborhood groups, Native American groups and other stakeholder groups. A scoping letter describing the proposed action will be sent to interested agencies followed by a formal agency scoping meeting planned for Summer 2000. Additional public meetings will be held to discuss FHWA's intention to prepare an EIS. These meetings will provide an opportunity for additional public and agency input.

A public hearing will be held to present the findings of the Draft EIS (DEIS) during the public review period. The DEIS will be available for public and agency review and comment prior to the hearing.

To ensure that the full range of issues related to this proposed action are addressed all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and EIS should be directed to the FHWA or NMSHTD at the addresses provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities and 23 U.S.C. 315; 49 CFR 1.48 apply to this program.)

Issued on April 26, 2000.

**Gregory D. Rawlings,**

*Environmental Specialist, Santa Fe, New Mexico.*

[FR Doc. 00–11221 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number: MARAD–2000–7329]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TROPICAL ATTITUDES.

**SUMMARY:** As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before June 5, 2000.

**ADDRESSES:** Comments should refer to docket number MARAD–2000–7329. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

**Vessel Proposed for Waiver of the U.S.-build Requirement**

(1) Name of vessel and owner for which waiver is requested: Name of vessel: TROPICAL ATTITUDES, Owner: Winkin, Inc. of Dover, DE.

(2) Size, capacity and tonnage of vessel: According to the Applicant "TROPICAL ATTITUDES is 39′ in length, with a beam of 20′7″ and a gross tonnage of 8 tons (7 net tons) measured pursuant to 46 U.S. C. 14502."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The intended use of the vessel, after the granting of a waiver, is to conduct live-aboard sailing catamaran charters in the Florida Keys. The maximum number of passengers on any such charter will be six, enabling the vessel to operate as an uninspected vessel with a coastwise endorsement. These charters will be conducted by CCJ Inc, a Florida Corporation, and citizen of the United States."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1989, place of construction: Les Sables D'Olonnes, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "Since there are presently no other such operators offering live-aboard Catamaran sailing charters in the Florida Keys, we feel that we would not in any way be adversely affecting any other commercial vessel operators in the area. In fact, though there are many charter vessels for hire operating in the Florida Keys, there are few that offer any type of live-aboard arrangements and no other sailing catamaran based in the Florida Keys offers charters of this kind."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "Since there are very few U.S. shipbuilders manufacturing vessels comparable to the Privilege 39, we do not feel that our small operation will in any way adversely affect U.S. shipbuilders. We do feel, however, that the impact the operation will have on U.S. shipyards will be a positive one, as haul-outs and refits will be performed in U.S. shipyards. In addition, though we wish to start this operation on a small scale, we hope for future plans to include expansion into a larger vessel which will be U.S. built and certified as an Inspected Vessel as the business grows."

By Order of the Maritime Administrator.

Dated: May 2, 2000.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00–11315 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–81–P

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## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

**[Docket Number: MARAD–2000–7328]**

### Requested Administrative Waiver of the Coastwise Trade Laws

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel TA MANA.

**SUMMARY:** As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

**DATES:** Submit comments on or before June 5, 2000.

**ADDRESSES:** Comments should refer to docket number MARAD–2000–7328. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201. 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

**SUPPLEMENTARY INFORMATION:** Title V of Public Law 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been

received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

**Vessel Proposed for Waiver of the U.S.-build Requirement**

(1) Name of vessel and owner for which waiver is requested: Name of vessel: TA MANA Owner: Helmut "Bernard" Quante.

(2) Size, capacity and tonnage of vessel: According to the Applicant "The vessel measures 36′ (LOA) and weighs 8.25 tons (weight according to ship builder's plaque inside of vessel—7,340 Kg)."

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The intended use for the vessel would be carrying up to six passengers for touring the San Francisco Bay and the Gulf of the Farrallones. The boat is of a very seakindly design, some sister ships sailed around Cape Horn."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1981, place of construction: Fecamp, Normandy, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "The home port and intended area of operation is San Francisco, the most visited city in the whole United States, perhaps the world. There are a number of large operators that tour the Bay with ferry-size vessels and some larger sailing vessels that can take up to 49 passengers. They all seem to do brisk business. I am planning to target French and German speaking tourist, offering a hands-on sailing experience where the guests participate in handling the boat. I believe that the presence of my operation will have a minute impact on the overall picture."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "My boat is constructed of aluminum. Very few shipyards do build equivalent boats, if any. However I have been given local shipyards a fair amount of business from regular haul outs for maintenance and bottom painting to welding and paint jobs, installation of a new engine, etc. Ship chandlers and sail makers profited from outfitting my boat with brand new electronics, a galley and new sails. The interior became a near rebuilt. I sailed the vessel to the Hawaiian Islands four times under the Ocean Racers Rules. Consequently, the safety equipment on board exceeds U.S. Coast Guard requirement."

Dated: May 2, 2000.

By Order of the Maritime Administrator.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00–11316 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[U.S. DOT Docket Number NHTSA–2000–7266]**

### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for public comment on proposed collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

**DATES:** Comments must be received on or before July 5, 2000.

**ADDRESSES:** Comments must refer to the docket notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance Number. It is requested, but not required, that 2 copies of the comment be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m.

**FOR FURTHER INFORMATION CONTACT:** Complete copies of each request for collection of information may be obtained at no charge from Ms. Kim Jackson, NHTSA 400 Seventh Street, SW, Room 5238, NSC–01,Washington, DC 20590. Ms. Jackson's telephone number is (202) 366–2588. Her fax number is (202) 493–2833 Please identify the relevant collection of information by referring to its OMB Control Number.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected;

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following proposed collections of information:

(1) *Title:* Air Bag Deactivation.

*OMB Control Number:* 2127–0588.

*Affected Public:* Private individuals, fleet owners and lessees, motor vehicle dealers, repair business.

*Abstract:* If a private individual or lessee wants to install an air bag on-off switch to turn-off either or both frontal air bags, they must complete Form OMB 2127–0588 to certify certain statements regarding use of the switch. The dealer or business must, in turn, submit the completed forms to NHTSA within seven days. The submission of the completed forms by the dealers and repair business to NHTSA, as required, will serve the agency several purposes. They will aid the agency in monitoring the number of authorization requests submitted and the pattern in claims of risk groups membership. The completed forms will enable the agency to determine whether the dealers and

repair business are complying with the terms of the exemption, which include a requirement that the dealers and repair businesses accept only fully completed forms. Finally, submission of the completed forms to the agency will promote honesty and accuracy in the filling out of the forms by vehicle owners. The air bag on-off switches are installed only in vehicles in which the risk of harm needs to be minimized on a case-by-case basis.

*Estimated Annual Burden:* 7,500 hours.

*Estimated Number of Respondents:* 15,000.

Issued on: May 1, 2000.

**Herman L. Simms,**

*Associate Administrator for Administration.*

[FR Doc. 00–11253 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. MC–F–20967]**

### Laidlaw Inc., et al.—Control and Merger—Penetang-Midland Coach Lines Limited, J. I. DeNure (Chatham) Limited, d/b/a Chatham Coach Lines, and Chatham Coach Lines, Inc.

**AGENCY:** Surface Transportation Board.

**ACTION:** Notice tentatively approving finance application.

**SUMMARY:** In an application filed under 49 U.S.C. 14303, Laidlaw Inc. (Laidlaw), a noncarrier, seeks to acquire indirect control, through its subsidiary, Laidlaw Transit Ltd. (Transit Ltd.), of Penetang-Midland Coach Lines Limited (PMCL) and J. I. DeNure (Chatham) Limited, d/b/a Chatham Coach Lines (JID), motor passenger carriers, and subsequently to merge PMCL and JID into Transit Ltd. Laidlaw also seeks to acquire indirect control, through its subsidiary, Laidlaw Transit, Inc. (Transit, Inc.), of Chatham Coach Lines, Inc. (CCL), a motor passenger carrier, and subsequently to merge CCL into Transit, Inc. Persons wishing to oppose the application must follow the rules under 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

**DATES:** Comments must be filed by June 19, 2000. Applicants may file a reply by July 5, 2000. If no comments are filed by June 19, 2000, this notice is effective on that date.

**ADDRESSES:** Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20967 to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Fritz R. Kahn, 1920 N Street (8th Floor), NW., Washington, DC 20036–1601.

**FOR FURTHER INFORMATION CONTACT:** Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired:1–800–877–8339.]

**SUPPLEMENTARY INFORMATION:** Applicants submit that, pursuant to an agreement, dated June 4, 1998, Transit Ltd. acquired a minority shareholder's interest in PMCL on June 23, 1998, and, upon approval by the Board of the proposed transaction, Transit Ltd. proposes to acquire the remainder of PMCL's issued and outstanding stock as of June 23, 2000. Applicants also submit that, by agreements dated February 3, 2000, Transit Ltd. and Transit, Inc. agreed to acquire all of the issued and outstanding shares of JID and CCL, respectively, and the shares simultaneously were placed in voting trusts by their former owners.[1]

Laidlaw currently controls motor passenger carriers, which include Transit Ltd. (MC–102189) and Transit, Inc. (MC–161299). These carriers' operations in the United States, with the exception of Greyhound Lines, Inc. (Greyhound), are largely limited to charter and special operations. Greyhound holds federally issued operating authority in Docket No. MC–1515 and provides mainly nationwide, scheduled regular-route operations. Although Greyhound performs some special and charter operations, according to applicants, Greyhound does not have the same contacts as those established by PMCL, JID, and CCL.[2] Applicants assert that the addition of PMCL, JID, and CCL will contribute significantly to the breadth of services that Greyhound and the other Laidlaw affiliates are able to provide to the traveling public within the United States.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicants have shown that the proposed transaction will have a positive effect on the adequacy of transportation to the public and will result in no increase in fixed charges and no changes in employment. *See* 49 CFR 1182.2(a)(7). Additional information may be obtained from applicants' representative.

On the basis of the application, we find that the proposed transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at: "WWW.STB.DOT.GOV."

This decision will not significantly affect the quality of the human environment or the conservation of energy resources.

*It is Ordered:*

1. The proposed control and merger is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on June 19, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration—HMCE–20, 400 Virginia Avenue, SW., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: April 27, 2000.

[1] PMCL, JID, and CCL operate primarily in Canada, but hold federally issued authority in Docket Nos. MC–139953, MC–11143, and MC–172751, respectively, authorizing them to provide special and charter operations in the United States.

[2] Laidlaw states that PMCL's contacts are with community organizations, schools, and other institutions in central Ontario, Canada, and JID's and CCL's contacts are in southwestern Ontario.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–11181 Filed 5–4–00; 8:45 am]

BILLING CODE 4915–00–U

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33835]**

### Penn-Jersey Rail Lines, Inc.—Acquisition and Operation Exemption—Lines in Penn Warner Industrial Park, Falls Township, Bucks County, PA

Penn Jersey Rail Lines, Inc. (PJRL), a Class III rail carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire, by assignment from Consolidated Rail Corporation, and operate, as a common carrier railroad, line easements in Penn Warner Industrial Park, Falls Township, Bucks County, PA.[1] The line easements are described as approximately a mile in length and beginning at a point located 250 feet +/− in a westerly direction along the centerline of the track from the Point of Switch at Railroad Station 0+00.

The transaction is scheduled to be consummated on or after May 1, 2000.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33835, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Fritz R. Kahn, Esq., 1920 N Street, NW., Washington, DC 20036–1601.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 27, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–11182 Filed 5–4–00; 8:45 am]

BILLING CODE 4915–00–P

[1] In the verified notice of exemption, PJRL states that the line easements are identified as Easements A and B in a deed of easement from the Warner Realty Investment Company to Penn Central Transportation Company, dated December 13, 1973.

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

### Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** Bureau of Transportation Statistics, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request abstracted below has been forwarded to the Office of Management and Budget for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 5, 2000 (65 FR pages 552–553).

**DATES:** Comments must be submitted on or before June 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bernie Stankus, (202) 366–4387, DOT, Office of Airline Information, Room 4125, K–25, 400 Seventh Street, NW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

**Bureau of Transportation Statistics**

*Title:* Part 249 Preservation of Records.

*Type of Request:* Extension of a currently approved Collection.

*OMB Control Number:* 2138–0006.

*Form(s):* None.

*Affected Public:* Certificated air carriers, public charter operators and overseas military personnel charter operators.

*Abstract:* Part 249 applies to all carriers holding certificates of public convenience and necessity, public charter operators, and overseas military personnel charter operators. This part requires the retention of such records as general and subsidiary ledgers, journals and journal vouchers, voucher distribution registers, accounts receivable and payable journals and ledgers, subsidy records documenting underlying financial and statistical reports to the Department, funds reports, consumer records, sales reports, auditors' and flight coupons, air waybills, etc. Depending on the nature of the document, it may be retained for a period of 30 days to 3 years. Public charter operators and overseas military personnel charter operators must retain documents which evidence or reflect deposits made by each charter participant and commissions received by, paid to, or deducted by travel agents, and all statements, invoices, bills and receipts from suppliers or furnishers of goods and services in connection with the tour or charter. These records are retained for 6 months after completion of the charter program.

*Estimated Annual Burden Hours:* 710.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are Invited on: whether the proposed record retention requirements are necessary for the proper performance of the functions of the Department, including whether the record retention requirements practical utility; the accuracy of the Department's estimate of the burden of the proposed record retention; ways to enhance the quality, utility and clarity of the requirements; and ways to minimize the burden of the requirements on respondents, including the use other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued in Washington, DC, on May 1, 2000.

**Donald W. Bright,**

*Acting Director, Office of Airline Information, Bureau of Transportation Statistics.*

[FR Doc. 00–11252 Filed 5–4–00; 8:45 am]

BILLING CODE 4910–FE–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 1, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before June 5, 2000 to be assured of consideration.

**U.S. Customs Service (CUS)**

*OMB Number:* 1515–0157.

*Form Number:* None.

*Type of Review:* Extension.
*Title:* Exportation of Self-Propelled Vehicles.
*Description:* The Exportation of Self-Propelled Vehicles requires the submission of documents verifying vehicle ownership of exporters for exportation of vehicles in the United States.
*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions.
*Estimated Number of Respondents:* 600,000.
*Estimated Burden Hours Per Respondent:* 10 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 100,000 hours.
*OMB Number:* 1515–0189.
*Form Number:* None.
*Type of Review:* Extension.
*Title:* Petroleum Refineries in Foreign Trade Subzones.
*Description:* This recordkeeping requirement provides special procedures for Petroleum Refineries in foreign Trade Subzones and requirements governing the operations of crude petroleum and refineries approved as foreign trade zones.
*Respondents:* Business or other for-profit, Not-for-profit institutions.
*Estimated Number of Recordkeepers:* 18.
*Estimated Burden Hours Per Recordkeeper:* 732 hours.
*Estimated Total Recordkeeping Burden:* 13,176 hours.
*Clearance Officer:* J. Edgar Nichols (202) 927–1426, U.S. Customs Service, Printing and Records Management Branch, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Room 3.2.C, Washington, DC 20229.
OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 00–11299 Filed 5–4–00; 8:45 am]
BILLING CODE 4820–02–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

April 21, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before June 5, 2000 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0238.
*Form Number:* IRS Form W–2G.
*Type of Review:* Extension.
*Title:* Certain Gambling Winnings.
*Description:* Internal Revenue Code (IRC) section 6041 requires payers of certain gambling winnings to report them to IRS. If applicable, section 3402(g) and section 3406, require tax withholding on these winnings. We use the information to ensure taxpayer income reporting compliance.
*Respondents:* Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.
*Estimated Number of Respondents:* 6,400.
*Estimated Burden Hours Per Respondent:* 19 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting Burden:* 1,272,479 hours.
*OMB Number:* 1545–0274.
*Form Number:* IRS Form 2163(c).
*Type of Review:* Extension.
*Title:* Employment—Reference Inquiry.
*Description:* Form 2163(c) is used by IRS to verify past employment and to question listed and developed references as to the character and integrity of current and potential IRS employees. The information received is incorporated into a report on which a security determination is based.
*Respondents:* Business or other for-profit, Individuals or households, Not-for-profit institutions, Farms, Federal Government, State, Local or Tribal Government.
*Estimated Number of Respondents:* 20,000.
*Estimated Burden Hours Per Respondent:* 12 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 4,000 hours.
*OMB Number:* 1545–0967.
*Form Number:* IRS Form 83–F.
*Type of Review:* Extension.
*Title:* U.S. Estate or Trust Income Tax Declaration and Signature for Electronic and Magnetic Media Filing.
*Description:* This form is used to secure taxpayer signatures and declaration in conjunction with electronic and magnetic media filing of trust and fiduciary income tax returns. This form, together with the electronic and magnetic media transmission, will comprise the taxpayer's income tax return (Form 1041).
*Respondents:* Individuals or households, Business or other for-profit.
*Estimated Number of Respondents/Recordkeepers:* 1,000.
*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | Minutes |
|---|---|
| Recordkeeping | 7 |
| Learning about the law or the form | 5 |
| Preparing the form | 18 |
| Copying, assembling, and sending the form to the IRS | 20 |

*Frequency of Response:* Annually.
*Estimated Total Reporting/Recordkeeping Burden:* 830 hours.
*OMB Number:* 1545–0970.
*Form Number:* IRS Form 8453–P.
*Type of Review:* Extension.
*Title:* U.S. Partnership Declaration and Signature for Electronic Filing.
*Description:* This form is used to secure the general partner's signature and declaration in conjunction with the electronic filing of a partnership return (Form 1065). Form 8453–P, together with the electronic transmission, will comprise the partnership's return.
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents/Recordkeepers:* 500.
*Estimated Burden Hours Per Respondent/Recordkeeper:*

| | Minutes |
|---|---|
| Recordkeeping | 7 |
| Learning about the law or the form | 5 |
| Preparing the form | 20 |
| Copying, assembling, and sending the form to the IRS | 17 |

*Frequency of Response:* Annually.
*Estimated Total Reporting/Recordkeeping Burden:* 410 hours.
*OMB Number:* 1545–1227.
*Regulation Project Number:* FI–104–90 Final.
*Type of Review:* Extension.
*Title:* Tax Treatment of Salvage and Reinsurance.
*Description:* The regulation provides a disclosure requirement for an insurance company that increases losses shown on its annual statement by the amount of estimated salvage recoverable taken into account.
*Respondents:* Business or other for-profit.

*Estimated Number of Respondents:* 2,500.

*Estimated Burden Hours Per Respondent:* 2 hours.

*Frequency of Response:* Annually.

*Estimated Total Reporting Burden:* 5,000 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports, Management Officer.*

[FR Doc. 00–11300 Filed 5–4–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### United States Secret Service

### Proposed Collection; Comment Request

April 19, 2000.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(C)(2)(A)). Currently, the United States Secret Service, within the Department of the Treasury is soliciting comments concerning the SSF 3237, Contractor Personnel Access Application.

**DATES:** Written comments should be received on or before June 30, 2000.

**ADDRESSES:** Direct all written comments to United States Secret Service, Special Investigations and Security Division, Attn: Special Agent Richard Harrington, Special Investigations and Security Programs Branch, 950 H St., NW, Washington, DC 20373–5824, Suite 3800, 202/406–5830.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to: United States Secret Service, Special Investigations and Security Division, Attn: Special Agent Richard Harrington, Security Programs Branch, 950 H Street, NW, Washington, DC 20373–5824. Telephone number: (202) 406–5830.

**SUPPLEMENTARY INFORMATION:**

*Title:* Contractor Personnel Access Application.

*OMB Number:*

*Form Number:* SSF 3237.

*Abstract:* Respondents are all Secret Service contractor personnel requiring access to Secret Service facilities performance of their contractual duties. These contractors, if approved for access, will require escorted, unescorted, and staff-like access to Secret Service facilities. Response to questions on the SSF 3237 yields information necessary for the adjudication of eligibility for facility access.

*Type of Review:* New.

*Affected Public:* Individuals or Households/Business.

*Estimated Number of Respondents:* 5000.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 1250 hours.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) The annual cost burden to respondents or record keepers from the collection of information (a total capital and start-up cost and a total operation and maintenance cost).

Dated: April 19, 2000.

**John Machado,**

*Branch Chief, Policy Analysis and Records Systems Branch.*

[FR Doc. 00–11266 Filed 5–4–00; 8:45 am]

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# Corrections

Federal Register
Vol. 65, No. 88
Friday, May 5, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

*Correction*

In notice document 00–10872 appearing on page 25468 in the issue of Tuesday, May 2, 2000, make the following correction:

On page 25468, in the first column, in the **DATES** section, in the second and third lines, "July 3, 2000" should read "June 1, 2000.".

[FR Doc. C0–10872 Filed 5–4–00; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

*Correction*

In notice document 00–9107 appearing on page 19736 in the issue of Wednesday, April 12, 2000, the table is corrected to read as follows:

| | Period |
|---|---|
| **Antidumping Duty Proceedings** | |
| Canada: Sugar and Syrups,* A–122–085 | 4/1/99–12/31/99 |
| France: Sorbitol, A–427–001 | 4/1/99–3/31/00 |
| Greece: Electrolytic Manganese Dioxide, A–484–801 | 4/1/99–3/31/00 |
| Japan: Calcium Hypochlorite*, A–588–401 | 4/1/99–12/31/99 |
| Japan: Electrolytic Manganese Dioxide*, A–588–806 | 4/1/99–3/31/00 |
| Japan: 3.5″ Microdisks and Media Thereof*, A–588–802 | 4/1/99–12/31/99 |
| Kenya: Standard Carnations*, A–779–602 | 4/1/99–12/31/99 |
| Mexico: Fresh Cut Flowers*, A–201–601 | 4/1/99–12/31/99 |
| Norway: Fresh and Chilled Atlantic Salmon, A–403–801 | 4/1/99–3/31/00 |
| Republic of Korea: Color Television Receivers*, A–580–008 | 4/1/99–12/31/99 |
| Taiwan: Color Television Receivers*, A–583–009 | 4/1/99–12/31/99 |
| The People's Republic of China: Brake Rotors, A–570–846 | 4/1/99–3/31/00 |
| Turkey: Certain Steel Concrete Reinforcing Bars, A–489–807 | 4/1/99–3/31/00 |
| **Countervailing Duty Proceedings** | |
| Norway: Fresh and Chilled Atlantic Salmon, C–403–802 | 4/1/99–12/31/99 |
| Peru: Pompon Chrysanthemums, C–333–601 | 4/1/99–12/31/99 |
| **Suspension Agreements** | |
| None. | |

*Order revoked effective 01/01/2000.

[FR Doc. C0–9107 Filed 5–4–00; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF ENERGY

### 10 CFR Part 810

**RIN 1992-AA24**

### Assistance to Foreign Atomic Energy Activities

*Correction*

In rule document 00–7181 beginning on page 16124 in the issue of Monday, March 27, 2000, make the following correction:

**§810.8 [Corrected]**

On page 16127, in §810.8(a), in the second column:

1. In the third line, after "the" add "following" and in the fourth line, remove "following".

2. In the list of countries, the 20th entry "China, People's Republic of Comoros*" should read "China, People's Republic of*" and "Comoros*" should become the 21st entry.

[FR Doc. C0–7181 Filed 5–4–00; 8:45 am]

BILLING CODE 1505–01–D

## FARM CREDIT ADMINISTRATION

### 12 CFR Part 614

**RIN 3052-AB67**

### Loan Policies and Operations; Participations

*Correction*

In rule document 00–9955 beginning on page 24101, in the issue of Tuesday, April 25, 2000, make the following corrections:

1. On page 24102, in the first column, in the 10th line, "participation" should read "participations".

**§ 614.4000 [Corrected]**

2. On page 24102, in the second column, in amendatory instruction 2. "§ 614.000" should read "§ 614.4000".

[FR Doc. C0–9955 Filed 5–4–00; 8:45 am]

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Federal Register

Friday,
May 5, 2000

Part II

# Department of Health and Human Services

Health Care Financing Administration
42 CFR Parts 412, 413, and 485
Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2001 Rates; Proposed Rule

VOL 65 ISS 88 MY 5 2000 UMI

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Parts 412, 413, and 485**

**[HCFA–1118–P]**

**RIN 0938–AK09**

# Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2001 Rates

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to revise the Medicare hospital inpatient prospective payment system for operating costs to: implement applicable statutory requirements, including a number of provisions of the Medicare, Medicaid, and State Children's Health Insurance Program Balanced Budget Refinement Act of 1999 (Public Law 106–113); and implement changes arising from our continuing experience with the system. In addition, in the Addendum to this proposed rule, we are describing proposed changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes would be applicable to discharges occurring on or after October 1, 2000. We also are setting forth proposed rate-of-increase limits as well as proposed policy changes for hospitals and hospital units excluded from the prospective payment systems.

We are proposing changes to the policies governing payments to hospitals for the direct costs of graduate medical education and payments to disproportionate share hospitals, sole community hospitals, and critical access hospitals to implement changes made by Public Law 106–113.

Finally, we are proposing a new condition of participation on organ, tissue, and eye procurement for critical access hospitals that parallels the condition of participation that we previously published for all other Medicare-participating hospitals.

**DATES:** Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on July 5, 2000.

**ADDRESSES:** Mail written comments (an original and three copies) to the following address only: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1118–P, P.O. Box 8010, Baltimore, MD 21244–1850.

If you prefer, you may deliver by courier your written comments (an original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to those addresses may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1118–P.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to the following addresses:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attn: John Burke HCFA–1118–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer.

**FOR FURTHER INFORMATION CONTACT:**

Steve Phillips, (410) 786–4531, Operating Prospective Payment, DRG, Wage Index, Reclassifications, and Sole Community Hospital Issues.

Tzvi Hefter, (410) 786–4487, Capital Prospective Payment, Excluded Hospitals, Graduate Medical Education and Critical Access Hospital Issues.

**SUPPLEMENTARY INFORMATION:**

## Availability of Copies and Electronic Access

*Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/nara_docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

## I. Background

### *A. Summary*

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system. Under these prospective payment systems, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs).

Certain specialty hospitals are excluded from the prospective payment systems. Under section 1886(d)(1)(B) of the Act, the following hospitals and hospital units are excluded from the prospective payment systems: psychiatric hospitals and units, rehabilitation hospitals and units, children's hospitals, long-term care hospitals, and cancer hospitals. For these hospitals and units, Medicare payment for operating costs is based on reasonable costs subject to a hospital-specific annual limit.

Under sections 1820 and 1834(g) of the Act, payments are made to critical

access hospitals (CAHs) (that is, rural nonprofit hospitals or facilities that meet certain statutory requirements) for outpatient services on a reasonable cost basis. Reasonable cost is determined under the provisions of section 1861(v)(1)(A) of the Act and existing regulations under parts 413 and 415.

Under section 1886(a)(4) of the Act, costs of approved educational activities are excluded from the operating costs of inpatient hospital services. Hospitals with approved graduate medical education (GME) programs are paid for the direct costs of GME in accordance with section 1886(h) of the Act; the amount of payment for direct GME costs for a cost reporting period is based on the hospital's number of residents in that period and the hospital's costs per resident in a base year.

The regulations governing the hospital inpatient prospective payment system are located in 42 CFR part 412. The regulations governing excluded hospitals and hospital units are located in parts 412 and 413, and the GME regulations are located in part 413.

On July 30, 1999, we published a final rule in the **Federal Register** (64 FR 41490) that implemented both statutory requirements and other changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs, as well as changes addressing payment for excluded hospitals and payments for GME costs. Generally, these changes were effective for discharges occurring on or after October 1, 1999. Correction notices for the July 30, 1999 final rule relating to the wage index and geographic adjustment factor were issued in the **Federal Register** on January 12, 2000 (65 FR 1817) and February 7, 2000 (65 FR 5933).

On November 29, 1999, the Medicare, Medicaid, and State Children's Health Insurance Program (SCHIP) Balanced Budget Refinement Act of 1999, Public Law 106–113, was enacted. Public Law 106–113 made a number of changes to the Act relating to prospective payments to hospitals for inpatient services and payments to excluded hospitals. This proposed rule would implement amendments enacted by Public Law 106–113 relating to FY 2001 payments for GME costs and FY 2001 payments to disproportionate share hospitals (DSHs), sole community hospitals (SCHs), and CAHs. These changes are addressed in sections IV. and VI. of this preamble.

Other provisions of Public Law 106–113 that relate to Medicare payments to hospitals effective prior to October 1, 2000, will be addressed in a separate interim final rule with comment period. The provisions that will be included in the interim final rule are summarized in section I.C. of this preamble.

Public Law 106–113 also amended section 1886(j) of the Act, which was added by section 4421 of the Balanced Budget Act of 1997 (Public Law 105–33). Section 1886(j) of the Act provides for a fully implemented prospective payment system for inpatient rehabilitation hospitals and rehabilitation units, effective for cost reporting periods beginning on or after October 1, 2002, with provisions for payments during a transitional period of October 1, 2000 to October 1, 2002, based on target amounts specified in section 1886(b) of the Act. In section VI of this preamble, we describe the impact of this provision on the proposed changes applicable to excluded hospitals and units in this proposed rule. We are issuing a separate notice of proposed rulemaking to implement the prospective payment system for inpatient rehabilitation hospitals and units.

### *B. Major Contents of This Proposed Rule*

In this proposed rule, we are setting forth proposed changes to the Medicare hospital inpatient prospective payment system for operating costs. We are not proposing any policy changes relating to payments for capital-related costs under the hospital inpatient prospective payment system in FY 2001. Our proposed changes relating to capital-related costs include only changes to the amounts and factors for determining the rates for capital-related costs for FY 2001. We also are proposing changes relating to payments for GME costs and payments to excluded hospitals and units, DSHs, SCHs, and CAHs. This proposed rule would be effective for discharges occurring on or after October 1, 2000.

The following is a summary of the major changes that we are proposing to make:

1. Proposed Changes to the DRG Reclassifications and Recalibrations of Relative Weights

As required by section 1886(d)(4)(C) of the Act, we adjust the DRG classifications and relative weights annually. Our proposed changes for FY 2001 are set forth in section II. of this preamble.

2. Proposed Changes to the Hospital Wage Index

In section III. of this preamble, we discuss proposed revisions to the wage index and the annual update of the wage data. Specific issues addressed in this section include the following:

- The FY 2001 wage index update, using FY 1997 wage data.
- The transition to excluding from the wage index Part A physician wage costs that are teaching-related, as well as resident and Part A certified registered nurse anesthetist (CRNA) costs.
- Revisions to the wage index based on hospital redesignations and reclassifications.

3. Other Decisions and Proposed Changes to the Prospective Payment System for Inpatient Operating and Graduate Medical Education Costs

In section IV. of this preamble, we discuss several provisions of the regulations in 42 CFR Parts 412 and 413 and set forth certain proposed changes concerning the following:

- Postacute care transfers.
- Sole community hospitals.
- Rural referral centers.
- Changes relating to the indirect medical education adjustment.
- Changes relating to the DSH adjustment and collection of data on uncompensated costs for services furnished in hospitals under the prospective payment system.
- Medicare Geographic Classification Review Board (MGCRB) classifications.
- Payment for the direct costs of GME.

4. Last Year of Transition Period for the Prospective Payment System for Capital-Related Costs

In section V. of this preamble, we discuss FY 2001 as the last year of a 10-year transition period established to phase-in the prospective payment system for capital-related costs for inpatient hospital services.

5. Proposed Changes for Hospitals and Hospital Units Excluded from the Prospective Payment Systems

In section VI. of this preamble, we discuss the following proposals concerning excluded hospital and hospital units and CAHs:

- Limits on and adjustments to the proposed target amounts for FY 2001.
- Development of prospective payment system for inpatient rehabilitation hospitals and units.
- Continuous improvement bonus payments.
- Clarification that the 5-percent threshold used in calculating an excluded hospital's cost per discharge is based only on Medicare inpatients discharged from the hospital-within-a-hospital.
- All-inclusive payment rate option for CAHs.
- Condition of participation for CAHs relating to organ, tissue, and eye procurement.

6. Determining Prospective Payment Operating and Capital Rates and Rate-of-Increase Limits

In the Addendum to this proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 2001 prospective payment rates for operating costs and capital-related costs. We also address update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 2001 for hospitals and hospital units excluded from the prospective payment system.

7. Impact Analysis

In Appendix A, we set forth an analysis of the impact that the proposed changes described in this proposed rule would have on affected entities.

8. Capital Acquisition Model

Appendix B contains the technical appendix on the proposed FY 2001 capital cost model.

9. Report to Congress on the Update Factor for Hospitals under the Prospective Payment System and Hospitals and Units Excluded from the Prospective Payment System

Section 1886(e)(3) of the Act requires the Secretary to report to Congress on our initial estimate of a recommended update factor for FY 2001 for payments to hospitals included in the prospective payment systems, and hospitals excluded from the prospective payment systems. This report is included as Appendix C to this proposed rule.

10. Proposed Recommendation of Update Factor for Hospital Inpatient Operating Costs

As required by sections 1886(e)(4) and (e)(5) of the Act, Appendix D provides our recommendation of the appropriate percentage change for FY 2001 for the following:

- Large urban area and other area average standardized amounts (and hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs.
- Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.

11. Discussion of Medicare Payment Advisory Commission Recommendations

Under section 1805(b) of the Act, the Medicare Payment Advisory Commission (MedPAC) is required to submit a report to Congress, not later than March 1 of each year, that reviews and makes recommendations on Medicare payment policies. This annual report makes recommendations concerning hospital inpatient payment policies. In section VII. of this preamble, we discuss the MedPAC recommendations and any actions we are proposing to take with regard to them (when an action is recommended). For further information relating specifically to the MedPAC March 1 report or to obtain a copy of the report, contact MedPAC at (202) 653–7220.

*C. Provisions of Public Law 106–113 To Be Included in Interim Final Rule With Comment Period*

As we have indicated under section I.A. of this preamble, we are planning to publish an interim final rule with comment period to address provisions of Public Law 106–113 that are effective prior to October 1, 2000. This interim final rule with comment period will be issued prior to the publication of the hospital inpatient prospective payment system final rule by August 1. A summary of the provisions of Public Law 106–113 that will be addressed in the interim final rule with comment period follows:

- Section 111(b), which provides for an additional payment to teaching hospitals equal to the additional amount the hospital would have been paid for FY 2000 if the IME adjustment formula under section 1886(d)(5)(B) of the Act (which reflects the higher indirect operating costs associated with GME) for FY 2000 had remained the same as for FY 1999. (Section 111(a) also changed the IME adjustment formula for discharges occurring during FY 2001 and for discharges occurring on or after October 1, 2001, which is addressed in section IV.D. of this preamble.)
- Section 121, which amended section 1886(b)(3)(H) of the Act to provide for an appropriate wage adjustment to the cap on the target amounts for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals, effective for cost reporting periods beginning on or after October 1, 1999, through September 30, 2002. We will address the wage adjustment to the FY 2000 caps in the interim final rule. (The wage adjustment to the FY 2001 caps is discussed in section VI. of this preamble.)
- Section 312, which amended section 1886(h)(5) of the Act to provide that, effective July 1, 2000, in determining the cap on the number of residents for GME and IME costs, the period of board eligibility and the initial residency period for child neurology is the period of board eligibility for pediatrics plus 2 years. This provision applies on and after July 1, 2000, to residency programs that began before, on, or after November 29, 1999.
- Section 401(a), which amended section 1886(d)(8) of the Act to direct the Secretary to treat certain hospitals located in urban areas as being located in rural areas of their State if the hospital meets statutory criteria and files an application with HCFA. This provision is effective on January 1, 2000.
- Section 401(b), which contains conforming changes to incorporate the reclassifications under the amendments made by section 401(a) of Public Law 106–113 to outpatient hospital services (section 1833(t) of the Act) and the CAH statute (section 1820(c)(2)(B)(i) of the Act). This provision is effective on January 1, 2000.
- Section 403(a), which amended section 1820(c)(2)(B)(iii) of the Act to delete the 96-hour length of stay restriction on inpatient care in a CAH and to authorize a period of stay that does not exceed, on an annual basis, 96 hours per patient. This provision is effective on November 29, 1999.
- Section 403(b), which amended section 1820(c)(2)(B)(i) of the Act to allow for-profit hospitals to qualify for CAH status. This provision is effective on November 29, 1999.
- Section 403(c), which amended section 1820(c) of the Act to allow hospitals that have closed within 10 years prior to November 29, 1999, or hospitals that downsized to a health clinic or health center, to be designated as CAHs if they meet the established criteria for designation.
- Section 403(e), which amended sections 1833(a)(1)(D)(i) and 1833(a)(2)(D)(i) the Act to eliminate the Medicare Part B deductible and coinsurance for clinical diagnostic laboratory tests furnished by a CAH on an outpatient basis. This provision is effective with respect to services furnished on or after November 29, 1999.
- Section 403(f), which amended section 1883 of the Act to reinstate the right of CAHs that meet applicable requirements to enter into "swing-bed" agreements.
- Section 404, which amended section 1886(d)(5)(G) of the Act to extend the Medicare-dependent, small rural hospital program for 5 years, from FY 2001 through FY 2005. Section 404 also amended section 1886(b)(3)(D) of the Act as a conforming change to make the 5-year extension applicable to the

target amounts for Medicare-dependent, small rural hospitals.

• Section 407(a)(1), which amended section 1886(h)(4)(F) of the Act to direct the Secretary, for purposes of determining a hospital's FTE cap for direct GME payments, to count an individual to the extent that the individual would have been counted as a primary care resident for purposes of the FTE cap but for the fact that the individual was on maternity or disability leave or a similar approved leave of absence. Section 407(a)(2) made a corresponding amendment to section 1886(d)(5)(B)(v) of the Act relating to the IME adjustment. The provision relating to direct GME is effective with cost reporting periods beginning on or after November 29, 1999. The provision relating to the IME adjustment applies to discharges occurring in cost reporting periods beginning on or after November 29, 1999.

• Section 407(b)(1), which amended section 1886(h)(4)(F)(i) of the Act to provide that a rural hospital's direct FTE count for direct GME may not exceed 130 percent of the number of unweighted residents that the rural hospital counted in its most recent cost reporting period ending on or before December 31, 1996. Section 407(b)(2) made a similar change to section 1886(d)(5)(B)(v) of the Act relating to the IME adjustment. The provision relating to direct GME applies to cost reporting periods beginning on or after April 1, 2000. The provision relating to the IME adjustment applies to discharges occurring on or after April 1, 2000.

• Section 407(c), which amended sections 1886(h)(4)(H) and 1886(d)(5)(B)(v) of the Act to allow a non-rural hospital that establishes separately accredited approved medical residency training programs (or rural training tracks) in a rural area or has an accredited training program with an integrated rural track, to receive an FTE cap adjustment for purposes of direct GME and IME. The provision is effective with cost reporting periods beginning on or after April 1, 2000 for direct GME, and with discharges occurring on or after April 1, 2000 for IME.

• Section 407(d) addresses the situation where residents were training in a residency training program at a Veterans Affairs hospital and then were transferred on or after January 1, 1997 and on or before July 30, 1998, to a non-Veterans Affairs hospital because the program in which the residents were training would lose its accreditation by the Accreditation Council on Graduate Medical Education (ACGME) if the residents continued to train at the facility. In this scenario, the non-Veterans Affairs hospital may receive a temporary adjustment to its 1996 FTE cap to include in its FTE count those residents who were transferred from the Veterans Affairs hospital. This provision applies as if it was included in the enactment of Public Law 105–33, that is, for GME with cost reporting periods beginning on or after October 1, 1997, and for IME, discharges occurring on or after October 1, 1997. If a hospital is owed payments as a result of this provision, payments must be made immediately.

• Section 541, which amended section 1886 of the Act to provide an additional payment to hospitals that receive payments under section 1861(v) of the Act for approved nursing and allied health education programs to reflect utilization of Medicare+Choice enrollees. This provision is effective for portions of cost reporting periods in a year beginning with calendar year 2000.

## II. Proposed Changes to DRG Classifications and Relative Weights

### *A. Background*

Under the prospective payment system, we pay for inpatient hospital services on a rate per discharge basis that varies according to the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights at least annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The proposed changes to the DRG classification system, and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 2000, are discussed below.

### *B. DRG Reclassification*

#### 1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM). Medicare fiscal intermediaries enter the information into their claims processing systems and subject it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG.

After screening through the MCE and any further development of the claims, cases are classified into the appropriate DRG by the Medicare GROUPER software program. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights.

In the July 30, 1999 final rule (64 FR 41500), we discussed a process for considering non-MedPAR data in the recalibration process. In order for the use of particular data to be feasible, we must have sufficient time to evaluate and test the data. The time necessary to do so depends upon the nature and quality of the data submitted. Generally, however, a significant sample of the data should be submitted by August 1, approximately 8 months prior to the publication of the proposed rule, so that we can test the data and make a preliminary assessment as to the feasibility of using the data. Subsequently, a complete database should be submitted no later than December 1 for consideration in conjunction with the next year's proposed rule.

Currently, cases are assigned to one of 501 DRGs (including one DRG for a diagnosis that is invalid as a discharge diagnosis and one DRG for ungroupable diagnoses) in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6 (Diseases and Disorders of the Digestive System)); however, some MDCs are not constructed on this basis since they

involve multiple organ systems (for example, MDC 22 (Burns)).

In general, cases are assigned to an MDC based on the principal diagnosis, before assignment to a DRG. However, there are five DRGs to which cases are directly assigned on the basis of procedure codes. These are the DRGs for liver, bone marrow, and lung transplants (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (CC).

Generally, the GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

The changes we are proposing to make to the DRG classification system for FY 2001 and other issues concerning DRGs are set forth below. Unless otherwise noted, our DRG analysis is based on the full (100 percent) FY 1999 MedPAR file (bills received through December 31, 1999 for discharges in FY 1999).

*2. MDC 5 (Diseases and Disorders of the Circulatory System)*

In the August 29, 1997 final rule with comment period (62 FR 45974), we noted that, because of the many recent changes in heart surgery, we were considering conducting a comprehensive review of the MDC 5 surgical DRGs. In the July 31, 1998 final rule with comment period (63 FR 40956), we did adopt some changes to the MDC 5 surgical DRGs. Since that time, we have received inquiries on a continuing basis regarding these DRGs. We have continued to review Medicare claims data and, based on our analysis, we are proposing the following DRG changes in MDC 5:

a. Heart Transplant (DRG 103)

As previously stated, cases are generally assigned to an MDC based on principal diagnosis and subsequently assigned to surgical or medical DRGs included in that MDC. However, cases involving liver, bone marrow, and lung transplants (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483) are directly assigned on the basis of procedure codes. Cases assigned to these DRGs before classification to an MDC are referred to as pre-MDC. However, cases involving heart transplants are currently assigned first to MDC 5 and then to DRG 103.

Currently, when a bone marrow transplant and a heart transplant are performed during the same admission, the case is assigned to DRG 481 (Bone Marrow Transplant). Because bone marrow transplant cases are first classified to pre-MDC, while heart transplants are first assigned to MDC 5, the bone marrow transplant assumes precedence in the assignment of the case to a DRG. However, payment for DRG 481 is substantially less than DRG 103. For FY 2000, the relative weight for DRG 103 is 19.5100, while the relative weight for DRG 481 is 8.7285.

We reviewed the FY 1999 MedPAR file containing bills through December 31, 1999 and found no cases in which a bone marrow transplant and a heart transplant were performed in the same admission. However, to ensure appropriate DRG assignment of these cases, we are proposing that the heart transplant DRG, which encompasses combined heart-lung transplantation (ICD–9–CM procedure code 33.6) and heart transplantation (ICD–9–CM procedure code 37.5) be assigned to pre-MDC. In this way, cases involving a bone marrow transplant and a heart transplant would be assigned to DRG 103 (DRG 103 would be reordered higher in the pre-MDC surgical hierarchy, as discussed in section II.B.5. of this preamble).

b. Heart Assist Devices

We continue to review data in MDC 5 (Diseases and Disorders of the Circulatory System) to determine if cases are being assigned to the most appropriate DRG based on clinical coherence and similar resource consumption. At the December 1, 1994 ICD–9–CM Coordination and Maintenance Committee meeting, we recommended creation of new codes to capture single and bi-ventricular heart assist systems. These codes, 37.65 (Implant of an external, pulsatile heart assist system) and 37.66 (Implant of an implantable, pulsatile heart assist system), were adopted for use for discharges occurring on or after October 1, 1995. However, code 37.66 was deemed investigational and was not considered a covered procedure. Effective May 5, 1997, we revised Medicare coverage of heart assist devices to allow coverage of a ventricular assist device (code 37.66) used for support of blood circulation postcardiotomy if certain conditions were met.

Due to some residual misunderstanding regarding this coverage policy, we would like to emphasize that this device was and will continue to be listed as a noncovered procedure in the Medicare Code Editor (MCE), the front-end software product in the GROUPER program that detects and reports errors in the coding of claims data. The reason that this device is listed in the MCE, in spite of the fact that its implantation is covered, is because of the stringent conditions that must be met by hospitals in order to receive payment.

In the August 29, 1997 final rule (62 FR 45973), we moved procedure code 37.66 from DRGs 110 and 111 [1] (Major Cardiovascular Procedures with and without CCs, respectively) to DRG 108 (Other Cardiothoracic Procedures). As stated in the July 31, 1998 final rule (63 FR 40956), we moved procedure code 37.66 to DRGs 104 and 105 (Cardiac Valve and Other Major Cardiothoracic Procedures with and without CCs, respectively) for FY 1999.

In the July 30, 1999 final rule (64 FR 41498), we responded to a comment suggesting that heart assist devices be assigned to DRG 103. In further consideration of this issue, we have reviewed the 100 percent FY 1999 MedPAR file containing bills through December 31, 1999, and found that there were a total of 47 implantable heart assist system procedures performed on Medicare beneficiaries. Of these cases, 13 (approximately 28 percent) were assigned to DRG 103 (Heart Transplant) and four (approximately 9 percent) were assigned to DRG 483 (Tracheostomy Except for Face, Mouth and Neck Diagnoses), and, therefore, were paid at significantly higher rates than the remaining 30 cases. All of the procedure code 37.66 cases have extremely high charges, which is consistent with past

[1] A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is for cases with CC and the second DRG is for cases without CC. If a third number is included, it represents cases with patients who are age 0–17. Occasionally, a pair of DRGs is split between age ≥17 and age 0–17.

analysis, and all of these cases are subject to payment as cost outliers.

Our data analysis indicates that the most cases in any one hospital is 5, while 17 hospitals performed only one heart assist system implant each. We reiterate that only heart transplant cases can be properly assigned to the transplant DRG (August 29, 1997 final rule (62 FR 45974)). Since heart assist devices are used across DRGs, many not involving a transplant, we are not proposing to assign procedure code 37.66 to DRG 103.

In addition to the review of 37.66, we also looked at procedure codes 37.62 (Implant of other heart assist system), 37.63 (Replacement and repair of heart assist system), and 37.65 (Implant of an external, pulsatile heart assist system). These cases are currently assigned to DRGs 110 and 111 (Major Cardiovascular Procedures). We believe that these procedures are similar both clinically and in terms of resource utilization to procedure code 37.66, which is already assigned to DRGs 104 and 105. Therefore, we propose to move codes 37.62, 37.63, and 37.65 from DRGs 110 and 111 to DRGs 104 and 105.

c. Platelet Inhibitors

Effective October 1, 1998, procedure code 99.20 (Injection or infusion of platelet inhibitor) was created. The use of platelet inhibitors have been shown to significantly decrease the rate of acute vessel closure, as well as the rate of cardiac complications and death. Platelet inhibitors are frequently administered to patients undergoing percutaneous transluminal coronary angioplasty (PTCA). In addition, patients admitted with unstable angina may also benefit from platelet inhibitors. This procedure code is designated as a non-OR procedure that does not affect DRG assignment (platelet inhibitors are administered either through intravenous injection or infusion).

For the past 2 years, a manufacturer of platelet inhibitors has submitted data to support its position that cases involving platelet inhibitor therapy receiving angioplasty should be reclassified from DRG 112 (Percutaneous Cardiovascular Procedures) to DRG 116 (Other Permanent Cardiac Pacemaker Implant or PTCA with Coronary Artery Stent Implant). In the July 30, 1999 final rule (64 FR 41503), we noted that we had received a new set of data from the platelet inhibitor manufacturer containing 27,673 cases from 164 hospitals in which Medicare patients underwent an angioplasty.

Included with the data were tables summarizing the results of the commenter's analysis of the data, showing that angioplasty cases receiving platelet inhibitor therapy are more expensive than those not receiving platelet inhibitors. According to the commenter, the approximate average standardized charges for the different classes of patients are as follows:

- No drug, no stent: $19,877.
- No drug, with stent: $22,968.
- Drug, no stent: $26,389.
- Drug, stent: $30,139.

Using the 100 percent FY 1999 MedPAR file that contains discharges through September 30, 1999, we performed analysis of the cases for which procedure code 99.20 was reported. There were a total of 37,222 cases spread across 123 DRGs.

The majority of the platelet inhibitor cases, 28,022 (75 percent of all platelet inhibitor cases), are *already* assigned to DRG 116. The average standardized charges for these cases are approximately $26,683, compared to approximately $25,251 for DRG 116 overall. In DRG 112, there were 4,310 platelet inhibitor cases (12 percent of all platelet inhibitor cases) assigned. The average standardized charge for these cases is approximately $22,786, compared to approximately $20,224 for DRG 112 overall. Although the platelet inhibitor therapy cases that are classified to DRG 112 do have somewhat higher charges than the average case assigned to this DRG (11 percent, or $2,563), we found several procedures in DRG 112 with average standardized charges higher than the platelet inhibitor cases. For example, there were 1,560 cases in which a single vessel PTCA or coronary atherectomy with thrombolytic agent (procedure code 36.02) was performed with an average standardized charge of approximately $25,181, and there were 4,951 cases in which a multiple vessel PTCA or coronary atherectomy was performed, with or without a thrombolytic agent (procedure code 36.05) with an average standardized charge of approximately $23,608.

We also noted that there are several procedures assigned to DRG 112 that have average standardized charges lower than the average charges for all cases in the DRG. For example, average charges for cases with procedure code 37.34 (Catheter ablation of lesion or tissues of heart) were $18,429. The following chart illustrates the variation among the average charges for DRG 112. This chart shows that the average charges for cases with procedure code 99.20 are well within the normal variation of other procedures.

| DRG 112 | Cases | Average standardized charges |
|---|---|---|
| Catheter ablation of lesion or tissues of heart (code 37.34) | 6,972 | $18,429 |
| All cases within DRG 112 | 60,842 | 20,224 |
| Injection or infusion of platelet inhibitor (code 99.20) | 4,310 | 22,786 |
| Multiple vessel PTCA or coronary atherectomy with or without mention of thrombolytic agent (code 36.05) | 4,951 | 23,608 |
| Single vessel PTCA or coronary atherectomy with mention of thrombolytic agent (code 36.02) | 1,560 | 25,181 |

These examples indicate that there is always some variation in charges within a DRG. This difference in variations of charges is within the normal range of charge variations.

Clinical homogeneity within DRGs has always been a fundamental principle considered when assigning codes to appropriate DRGs. Currently, DRG 116 includes cases involving the insertion of a pacemaker as well as the insertion of coronary artery stents with PTCA. On the other hand, cases assigned to DRG 112 involve less invasive operating room and, in some cases, nonoperating room procedures.

The basis for DRG assignment has generally been the diagnosis of the patient or the procedures performed. To the extent the use of a particular technology becomes prevalent in the treatment of a particular type of case, the DRG system is designed to account for any increases or decreases in costs through recalibration. Hospitals frequently benefit from this process while efficiency-enhancing technology is being introduced. We believe that the update factors established in section 1886(b)(3)(B)(i) of the Act, combined with the potential for continuing improvements in hospital productivity, and annual recalibration of the DRG

weights, are adequate to finance appropriate care of Medicare patients.

We also received a comment from another manufacturer of platelet inhibitors whose therapy is targeted on acute coronary syndrome patients without coronary intervention. These cases are assigned to DRG 124 (Circulatory Disorders Except Acute Myocardial Infarction with Cardiac Catheterization and Complex Diagnosis) or DRG 140 (Angina Pectoris). The manufacturer's concern is that both types of cases, those performed in conjunction with coronary intervention and those without, be given an equal focus in this evaluation.

Based on our analysis, we found 410 platelet inhibitor cases (1 percent) assigned to DRG 124. This is a small percentage of cases in comparison to the overall total of 134,759 cases assigned to this DRG. The platelet inhibitor cases had an average standardized charge of approximately $17,378 compared to approximately $14,730 for DRG 124 overall. As we have illustrated above, there is always some variation in charges within a DRG and this difference is within normal variation.

There were 66 platelet inhibitor cases (0.2 percent) assigned to DRG 140. The average standardized charge for these cases is higher than the overall DRG charge, approximately $8,992 and $5,657, respectively. However, it represents a small percentage of the total (76,913) cases assigned to DRG 140.

In summary, currently 75 percent of cases where code 99.20 is present are assigned to DRG 116. The next most common DRG where these cases are assigned is DRG 112 (12 percent). Cases assigned to DRG 116 generally involve implantation of a pacemaker or artery stent, while cases assigned to DRG 112 involve percutaneous cardiovascular procedures. Our analysis found a $3,897 difference between cases involving platelet inhibitor therapy that were assigned to DRG 116 and cases assigned to DRG 112, indicating a clinical distinction between the cases grouping to the two DRGs. Finally, among platelet inhibitor therapy cases that are assigned to DRG 112, our analysis found that the average charges are well within the normal variation around the overall average charges within the DRG. Based on these findings, we do not believe it would be appropriate to assign all cases where procedure code 99.20 is present to DRG 116. Therefore, we are not proposing to change to our current policy which specifies that assignment of cases to this code does not affect the DRG assignment.

d. Extracorporeal Membrane Oxygenation

Extracorporeal Membrane Oxygenation (ECMO) is a cardiopulmonary bypass technique that provides long-term cardiopulmonary support to patients who have reversible cardiopulmonary insufficiency that has not responded to conventional management. It involves passing a patient's blood through an extracorporeal membrane oxygenator which adds oxygen and removes carbon dioxide. The oxygenated blood then is passed through a heat exchanger to warm it to body temperature prior to returning it to the patient. The process and equipment are similar to those used in open heart surgery, but are continued over prolonged periods of time. ECMO attempts to provide the patient with artificial cardiopulmonary function while his or her own cardiopulmonary functions are incapable of sustaining life.

Since ECMO involves the use of a device that sustains cardiopulmonary function while the underlying condition is being treated, it is important to identify and treat underlying conditions leading to cardiopulmonary failure if the patient is to return to normal cardiopulmonary function.

ECMO is assigned to procedure code 39.65 (Extracorporeal membrane oxygenation (ECMO)). This code is not recognized as an OR procedure within the DRG system and, therefore, does not affect payment. To evaluate the appropriateness of payment under the current DRG assignment, we have reviewed a 10-percent sample of Medicare claims in the FY 1999 MedPAR file and found only 4 cases in which ECMO was used. The charges for these cases ranged from $16,006 to $198,014. Since medical literature indicates that ECMO is predominately used on newborns and pediatric cases, this low number of claims is not surprising. Only in recent years have some hospitals started to use ECMO on adults. It is reserved for cases facing almost certain mortality.

Because ECMO is a procedure clinically similar to a heart assist device, we are proposing that procedure code 39.65 be classified as an OR procedure and be classified in DRGs 104 and 105 along with the heart assist system procedures (as discussed in section II.B.2.b. of this preamble). Those cases in which ECMO was provided, but for which the principal diagnosis is not classified to MDC 5, would then be assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis). This would be appropriate since it is possible that secondary conditions or complications may arise during hospitalization that would require the use of ECMO. The relatively high weight of DRG 468 would be appropriate for these cases.

3. MDC 15 (Newborns and Other Neonates With Conditions Originating in the Perinatal Period)

a. V05.8 (Vaccination for Disease, NEC)

DRG 390 (Neonate with Other Significant Problems) contains newborn or neonate cases with other significant problems, not assigned to DRGs 385 through 389, DRG 391, or DRG 469. In order to be classified into DRG 391 (Normal Newborn), the neonate must have a principal diagnosis as listed under DRG 391 and either no secondary diagnosis or a secondary diagnosis as listed under DRG 391. Neonates with a secondary diagnosis of V05.8 (Vaccination for disease, NEC) are currently classified to DRG 390. Although it would seem that healthy newborns who receive vaccinations and have no other problems should be classified to DRG 391, code V05.8 was not included as one of the secondary diagnoses under DRG 391, and therefore the case would not be classified as a normal newborn (DRG 391). Code V05.8 is assigned to DRG 390 as a default, since it is not included under another complicated neonate DRG or the normal newborn DRG.

Based on inquiries we have received, we reviewed the appropriateness of including diagnosis code V05.8 on the list of acceptable secondary diagnoses under DRG 390. It was pointed out that by including V05.8 on the acceptable secondary diagnosis list for DRG 390, newborns who receive vaccinations are classified as having significant health problems. The inquirers believed this incorrectly labels an otherwise healthy newborn as having a significant medical condition. Providing a vaccination to a newborn is performed to prevent the infant from contracting a disease.

We agree with the inquirers that, absent any evidence of disease, a newborn should not be considered as having a significant problem simply because a preventative vaccination was provided. Therefore, we are proposing that V05.8 be removed from the list of acceptable secondary diagnoses under DRG 390 and assigned as a secondary diagnosis under DRG 39l. In doing so, these cases would no longer be classified to DRG 390.

b. Diagnosis Code 666.02 (Third-stage Postpartum Hemorrhage, Delivered With Postpartum Complication)

Diagnosis code 666.02 is assigned to DRG 373 (Vaginal Delivery without Complicating Diagnosis). This DRG was created for uncomplicated vaginal deliveries. However, code 666.22 (Delayed and secondary postpartum hemorrhage, delivered with postpartum complication) is assigned to DRG 372 (Vaginal Delivery with Complicating Diagnoses). This means that mothers who had a delayed and secondary postpartum hemorrhage would be assigned to DRG 372, while mothers who had a third-stage postpartum hemorrhage would not be considered as a complicated delivery.

We believe a third-stage postpartum hemorrhage should be considered a complicating diagnosis and, in order to more appropriately categorize these cases, we are proposing that diagnosis code 666.02 be removed from DRG 373 and assigned as a complicating diagnosis under DRG 372.

c. Diagnosis Code 759.89 (Specified Congenital Anomalies, NEC) (Alport's Syndrome)

Alport's Syndrome (also referred to as hereditary nephritis) is an inherited disorder involving damage to the kidney, blood in the urine, and, in some cases, loss of hearing. It may also include loss of vision. Patients who are not treated early enough or who do not respond to treatment may progress to renal failure. A kidney transplant is one treatment option for these cases. As with many of the congenital anomalies, there is no unique ICD–9–CM code for this condition. Alport's Syndrome, along with many other rare and diverse congenital anomalies, is assigned to the rather nonspecific diagnosis code 759.89 (Specific congenital anomalies, NEC). Examples include William Syndrome, Brachio-Oto-Renal Syndrome, and Costello's Syndrome. Each of these is a unique hereditary disorder affecting a variety of body systems.

Patients can be diagnosed and treated for congenital anomalies throughout their lives; treatment is not restricted to the neonatal period. In our GROUPER, however, each diagnosis code is assigned to just one MDC. In this case, diagnosis code 759.89 is assigned to MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period) even though the patient may be an adult.

We have received a request from a physician concerning renal transplants for patients with Alport's Syndrome. The physician pointed out that when a patient with Alport's Syndrome is admitted for a kidney transplant, the case is assigned to DRG 390 (Neonate with Other Significant Problems). In these instances, when the principal diagnosis is code 759.89, the case is classified to MDC 15 even though the patient may no longer be a newborn. The physician believed that these cases should be assigned to DRG 302 (Kidney Transplant).

The inquirer suggested moving diagnosis code 759.89 to MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract) so that when a kidney transplant is performed, it will be assigned to DRG 302. Although this seems quite appropriate for patients with Alport's Syndrome found in diagnosis code 759.89, it does not work well for the wide variety of patients also described by this code. Many others would be inappropriately classified to MDC 11.

Alport's Syndrome cases with code 759.89 as a principal diagnosis who receive a kidney transplant are assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis). This DRG has a FY 2000 relative weight of 3.6400. Also for FY 2000, DRG 302 (Kidney Transplant) has a relative weight of 3.5669. Therefore, the payment amounts are in fact comparable.

There are several options for resolving this issue:

(1) If the case is assigned a principal diagnosis code of renal failure with Alport's Syndrome as a secondary diagnosis, the case could be assigned to DRG 302. As this option would represent a change in the sequencing of congenital anomaly codes and related complications, it would have to be evaluated and subsequently approved by the Editorial Advisory Board for *Coding Clinic for ICD–9–CM*. This Editorial Advisory Board contains representatives from the physician, coding, and hospital industry. Final decisions on coding policy issues are made by the representatives from the American Hospital Association, the American Health Information Management Association, the National Center for Health Statistics, and HCFA.

Since a change in sequencing of congenital anomaly codes and their manifestations and complications would require a change of coding policy, this issue was brought to the Editorial Advisory Board, which is currently evaluating it. A final decision on any proposed policy change would not be finalized and published in time for either this proposed rule or the final rule. Therefore, this option would not assist in immediately addressing the issue at hand.

(2) A unique ICD–9–CM diagnosis code could be created for Alport's Syndrome that could then be evaluated for possible assignment within MDC 11. This issue has been referred to the National Center for Health Statistics for consideration as a future coding modification.

One difficulty with this option is the large number of congenital anomalies and the limited number of unused codes in this section of ICD–9–CM. Each new code must be carefully evaluated for appropriateness.

(3) A third option, which was already addressed, involves moving diagnosis code 759.89 to MDC 11. The problem with this approach is that many cases would then be misassigned to MDC 11 because the congenital anomaly would not involve diseases of the kidney and urinary tract.

(4) A fourth option would be to leave the coding and DRG assignment as they currently exist. Since few cases exist, the overall impact may be minimal.

To evaluate the impact of leaving the DRG assignment as it currently exists, we examined data from a 10-percent sample of Medicare cases in the FY 1999 MedPAR file. There were 95 cases assigned to a wide range of DRGs with code 759.89 as a secondary diagnosis. There was only one case assigned to MDC 15 with a principal diagnosis of code 759.89.

We are recommending that diagnosis code 759.89 remain in MDC 15, since it encompasses such a wide variety of conditions. In addition, we are not proposing a change in the DRG assignment because the payment impact would be minimal and the cases few. We will continue to pursue the possibility of modifying the ICD–9–CM code as well as evaluating the coding rules.

4. MDC 17 (Myeloproliferative Diseases and Disorders and Poorly Differentiated Neoplasm)

Diagnosis code 273.8 (Disorders of plasma protein metabolism, NEC) is assigned to DRG 403 (Lymphoma and Nonacute Leukemia with CC) and DRG 404 (Lymphoma and Nonacute Leukemia without CC). A disorder of plasma protein metabolism does not mean one has a lymphoma with nonacute leukemia. An individual can have a disorder of plasma protein metabolism without having a lymphoma or leukemia.

We have received an inquiry on the appropriateness of including diagnosis code 273.8 in DRGs 403 and 404. The inquirer pointed out that disorders of

plasma protein metabolism are not lymphomas or leukemia. We agree that diagnosis code 273.8 is not a lymphoma or leukemia and is more closely related to DRG 413 (Other Myeloproliferative Disorders or Poorly Differentiated Neoplasm Diagnoses with CC) and DRG 414 (Other Myeloproliferative Disorders or Poorly Differentiated Neoplasm Diagnoses without CC).

We examined charge data drawn from cases assigned to diagnosis code 273.8 in a 10-percent sample of Medicare cases in the FY 1999 MedPAR file and found that the average charges for these cases were also more closely related to DRGs 413 and 414 than to DRGs 403 and 404, as demonstrated in the following chart.

| DRGs 403/404 all cases in 10-percent sample | | |
|---|---|---|
| DRG | Count | Average charge |
| 403 | 2,107 | $17,617 |
| 404 | 296 | 8,063 |

| DRGs 413/414 all cases in 10-percent sample | | |
|---|---|---|
| DRG | Count | Average charge |
| 413 | 387 | $12,278 |
| 414 | 47 | 5,906 |

| Code | DRG | Count | Average charge |
|---|---|---|---|
| 273.8 | 403 | 17 | $8,573 |

| Code | DRG | Count | Average charge |
|---|---|---|---|
| 273.8 | 404 | 3 | $6,644 |

Therefore, we are proposing to move diagnosis code 273.8 from DRGs 403 and 404 to DRGs 413 and 414.

Diagnosis code 273.8 is also included in the following surgical DRGs that are performed on patients with lymphoma or leukemia:

- DRG 400 (Lymphoma and Leukemia with Major OR Procedure).
- DRG 401 (Lymphoma and Nonacute Leukemia with Other OR Procedure with CC).
- DRG 402 (Lymphoma and Nonacute Leukemia with Other OR Procedure without CC).

The same clinical issue would apply to these surgical DRGS performed on patients with lymphoma and leukemia. Code 273.8 should be assigned to the surgical DRGs for myeloproliferative disorders since the cases are clinically similar and, as stated before, code 273.8 is not clinically similar to lymphomas and leukemias. Therefore, we are also proposing that code 273.8 be removed from the surgical DRGs related to lymphoma and leukemia (DRGS 400, 401, and 402) and assigned to the following myeloproliferative surgical DRGS, based on the procedure performed:

- DRG 406 (Myeloproliferative Disorders or Poorly Differentiated Neoplasms with Major OR Procedures with CC).
- DRG 407 (Myeloproliferative Disorders Or Poorly Differentiated Neoplasms with Major OR Procedures without CC).
- DRG 408 (Myeloproliferative Disorders or Poorly Differentiated Neoplasms with Other OR Procedures).

5. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. Therefore, it is necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of one or more DRGs. For example, in MDC 11, the surgical class "kidney transplant" consists of a single DRG (DRG 302) and the class "kidney, ureter and major bladder procedures" consists of three DRGs (DRGs 303, 304, and 305). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class involves weighting each DRG for frequency to determine the average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5. Assume also that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the "other OR procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weight for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small.

We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the relative weights are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing to modify the surgical hierarchy as set forth below. As we stated in the September 1, 1989 final rule (54 FR 36457), we are unable to test the effects of proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights due to the unavailability of the revised GROUPER software at the time the proposed rule is prepared. Rather, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification and then determine the average charge for each DRG. These average charges then serve as our best estimate of relative resource use for each surgical class. We test the proposed surgical hierarchy changes after the revised GROUPER is received and reflect the final changes in the DRG relative weights in the final rule. Further, as discussed in section II.C of this preamble, we anticipate that the final recalibrated weights will be somewhat different from those proposed, since they will be based on more complete data. Consequently, further revision of the hierarchy, using the above principles, may be necessary in the final rule.

At this time, we are proposing to revise the surgical hierarchy for the pre-MDC DRGs, MDC 8 (Diseases and Disorders of the Musculoskeletal System and Connective Tissue), and MDC 10 (Endocrine, Nutritional, and Metabolic Diseases and Disorders) as follows:

- In the pre-MDC DRGs, as we stated previously, we are proposing to move DRG 103 (Heart Transplant) from MDC 5 to pre-MDC. We are proposing to reorder DRG 103 (Heart Transplant) above DRG 483 (Tracheostomy Except for Face, Mouth, and Neck Diagnoses).
- In the pre-MDC DRGs, we are proposing to reorder DRG 481 (Bone Marrow Transplant) above DRG 495 (Lung Transplant).
- In MDC 8, we are proposing to reorder DRG 230 (Local Excision and Removal of Internal Fixation Devices of Hip and Femur) above DRG 226 (Soft Tissue Procedures with CC) and DRG 227 (Soft Tissue Procedures without CC).
- In MDC 10, we are proposing to reorder DRG 288 (OR Procedures for Obesity) above DRG 285 (Amputation of Lower Limb for Endocrine, Nutritional, and Metabolic Disorders).

6. Refinement of Complications and Comorbidities (CC) List

In the September 1, 1987 final notice (52 FR 33143) concerning changes to the DRG classification system, we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes for the following reasons: (1) To preclude coding of CCs for closely related conditions; (2) to preclude duplicative coding or inconsistent coding from being treated as CCs; and (3) to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair. We developed this standard list of diagnoses using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting CCs already on the list. At this time, we do not propose to delete any of the diagnosis codes on the CC list.

In the May 19, 1987 proposed notice (52 FR 18877) concerning changes to the DRG classification system, we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not coexist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended only as a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications or comorbidities of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC. (See the September 30, 1988 final rule (53 FR 38485) for the revision made for the discharges occurring in FY 1989; the September 1, 1989 final rule (54 FR 36552) for the FY 1990 revision; the September 4, 1990 final rule (55 FR 36126) for the FY 1991 revision; the August 30, 1991 final rule (56 FR 43209) for the FY 1992 revision; the September 1, 1992 final rule (57 FR 39753) for the FY 1993 revision; the September 1, 1993 final rule (58 FR 46278) for the FY 1994 revisions; the September 1, 1994 final rule (59 FR 45334) for the FY 1995 revisions; the September 1, 1995 final rule (60 FR 45782) for the FY 1996 revisions; the August 30, 1996 final rule (61 FR 46171) for the FY 1997 revisions; the August 29, 1997 final rule (62 FR 45966) for the FY 1998 revisions; and the July 31, 1998 final rule (63 FR 40954) for the FY 1999 revisions. In the July 30, 1999 final rule (64 FR 41490) we did not modify the CC Exclusions List for FY 2000 because we did not make any changes to the ICD–9–CM codes for FY 2000.

We are proposing a limited revision of the CC Exclusions List to take into account the changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 2000. (See section II.B.8. below, for a discussion of ICD–9–CM changes.) These proposed changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6F and 6G in section V. of the Addendum to this proposed rule contain the proposed revisions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 2000. Each table shows the principal diagnoses with proposed changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6F—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 2000, the indented diagnoses will not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6G—Deletions from the CC

Exclusions List. Beginning with discharges on or after October 1, 2000, the indented diagnoses will be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $92.00 plus $6.00 shipping and handling and on microfiche for $20.50, plus $4.00 for shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number (PB) 88–133970) should be made to the following address: National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161; or by calling (703) 487–4650.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, and 1999) and those in Tables 6F and 6G of this document must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 2000. (Note: There was no CC Exclusions List in FY 2000 because we did not make changes to the ICD–9–CM codes for FY 2000.)

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with HCFA, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 17.0, is available for $225.00, which includes $15.00 for shipping and handling. Version 18.0 of this manual, which includes the final FY 2001 DRG changes, will be available in October 2000 for $225.00. These manuals may be obtained by writing 3M/HIS at the following address: 100 Barnes Road, Wallingford, Connecticut 06492; or by calling (203) 949–0303. Please specify the revision or revisions requested.

7. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the OR procedures performed is related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue
60.18 Other diagnostic procedures on prostate and periprostatic tissue
60.21 Transurethral prostatectomy
60.29 Other transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.95 Transurethral balloon dilation of the prostatic urethra
60.99 Other operations on prostate

All remaining OR procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures, if performed with an unrelated principal diagnosis, was published in Table 6C in section IV. of the Addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990 (55 FR 36135), August 30, 1991 (56 FR 43212), September 1, 1992 (57 FR 23625), September 1, 1993 (58 FR 46279), September 1, 1994 (59 FR 45336), September 1, 1995 (60 FR 45783), August 30, 1996 (61 FR 46173), and August 29, 1997 (62 FR 45981), we moved several other procedures from DRG 468 to 477, and some procedures from DRG 477 to 468. No procedures were moved in FY 1999, as noted in the July 31, 1998 final rule (63 FR 40962), or in FY 2000, as noted in the July 30, 1999 final rule (64 FR 41496).

a. Moving Procedure Codes From DRGs 468 or 477 to MDCs

We annually conduct a review of procedures producing assignment to DRG 468 or DRG 477 on the basis of volume, by procedure, to see if it would be appropriate to move procedure codes out of these DRGs into one of the surgical DRGs for the MDC into which the principal diagnosis falls. The data are arrayed two ways for comparison purposes. We look at a frequency count of each major operative procedure code. We also compare procedures across MDCs by volume of procedure codes within each MDC. That is, using procedure code 57.49 (Other transurethral excision or destruction of lesion or tissue of bladder) as an example, we determined that this particular code accounted for the highest number of major operative procedures (162 cases, or 9.8 percent of all cases) reported in the sample of DRG 477. In addition, we determined that procedure code 57.49 appeared in MDC 4 (Diseases and Disorders of the Respiratory System) 28 times as well as in 9 other MDCs.

Using a 10-percent sample of the FY 1999 MedPAR file, we determined that the quantity of cases in DRG 477 totaled 1,650. There were 106 instances where the major operative procedure appeared only once (6.4 percent of the time), resulting in assignment to DRG 477.

Using the same 10-percent sample of the FY 1999 MedPAR file, we reviewed DRG 468. There were a total of 3,858 cases, with one major operative code causing the DRG assignment 311 times (or 8 percent) and 230 instances where the major operative procedure appeared only once (or 6 percent of the time).

Our medical consultants then identified those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. Based on this year's review, we did not identify any necessary changes in procedures under either DRG 468 or 477 and, therefore, are not proposing to move any procedures from either DRG 468 or DRG 477 to one of the surgical DRGs.

b. Reassignment of Procedures Among DRGs 468, 476, and 477

We also annually review the list of ICD–9–CM procedures that, when in combination with their principal diagnosis code, result in assignment to DRGs 468, 476, and 477, to ascertain if any of those procedures should be moved from one of these DRGs to another of these DRGs based on average charges and length of stay. We look at the data for trends such as shifts in treatment practice or reporting practice that would make the resulting DRG assignment illogical. If our medical consultants were to find these shifts, we

would propose moving cases to keep the DRGs clinically similar or to provide payment for the cases in a similar manner. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we are not proposing to move any procedures from DRG 468 to DRGs 476 or 477, from DRG 476 to DRGs 468 or 477, or from DRG 477 to DRGs 468 or 476.

c. Adding Diagnosis Codes to MDCs

It has been brought to our attention that an ICD–9–CM diagnosis code should be added to DRG 482 (Tracheostomy for Face, Mouth and Neck Diagnoses) to preserve clinical coherence and homogeneity of the system. In the case of a patient who has a facial infection (diagnosis code 682.0 (Other cellulitis and abscess, Face)), the face may become extremely swollen and the patient's ability to breathe might be impaired. It might be deemed medically necessary to perform a temporary tracheostomy (procedure code 31.1) on the patient until the swelling subsides enough for the patient to once again breathe on his or her own.

The combination of diagnosis code 682.0 and procedure code 31.1 results in assignment to DRG 483 (Tracheostomy Except for Face, Mouth and Neck Diagnoses). The absence of diagnosis code 682.0 in DRG 483 forces the GROUPER algorithm to assign the case based solely on the procedure code, without taking this diagnosis into account. Clearly this was not the intent, as diagnosis code 682.0 should be included with other face, mouth and neck diagnosis. We believe that cases such as these would appropriately be assigned to DRG 482. Therefore, we are proposing to add diagnosis code 682.0 to the list of other face, mouth and neck diagnoses already in the principal diagnosis list in DRG 482.

8. Changes to the ICD–9–CM Coding System

As described in section II.B.1 of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and HCFA, charged with maintaining and updating the ICD–9–CM system. The Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the *Tabular List* and *Alphabetic Index for Diseases*, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in the *Tabular List* and *Alphabetic Index for Procedures*.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes for FY 2000 at public meetings held on June 4, 1998 and November 2, 1998. Even though the Committee conducted public meetings and considered approval of coding changes for FY 2000 implementation, we did not implement any changes to ICD–9–CM codes for FY 2000 because of our major efforts to ensure that all of the Medicare computer systems were compliant with the year 2000. Therefore, the code proposals presented at the public meetings held on June 4, 1998 and November 2, 1998, that (if approved) ordinarily would have been included as new codes for October 1, 1999, were held for consideration for inclusion in this proposed annual update for FY 2001.

The Committee also presented proposals for coding changes for implementation in FY 2001 at public meetings held on May 13, 1999 and November 12, 1999, and finalized the coding changes after consideration of comments received at the meetings and in writing by January 7, 2000.

Copies of the Coordination and Maintenance Committee minutes of the 1999 meetings can be obtained from the HCFA Home Page by typing http://www.hcfa.gov/medicare/icd9cm.htm. Paper copies of these minutes are no longer available and the mailing list has been discontinued. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Room 1100; 6525 Belcrest Road; Hyattsville, Maryland 20782. Comments may be sent by E-mail to: dfp4@cdc.gov.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; HCFA, Center for Health Plans and Providers, Purchasing Policy Group, Division of Acute Care; C4–07–07; 7500 Security Boulevard; Baltimore, Maryland 21244–1850. Comments may be sent by E-mail to: pbrooks@hcfa.gov.

The ICD–9–CM code changes that have been approved will become effective October 1, 2000. The new ICD–9–CM codes are listed, along with their proposed DRG classifications, in Tables 6A and 6B (New Diagnosis Codes and New Procedure Codes, respectively) in section VI. of the Addendum to this proposed rule. As we stated above, the code numbers and their titles were presented for public comment at the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. Therefore, we are soliciting comments only on the proposed DRG classification of these new codes.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes or other codes, or have been deleted are in Table 6C (Invalid Diagnosis Codes). These invalid diagnosis codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 2000. For codes that have been replaced by new or expanded codes, the corresponding new or expanded diagnosis codes are included in Table 6A (New Diagnosis Codes). There were no procedure codes that were replaced by expanded codes or other codes, or were deleted. Revisions to diagnosis code titles are in Table 6D (Revised Diagnosis Code Titles), which also include the proposed DRG assignments

for these revised codes. Revisions to procedure code titles are in Table 6E (Revised Procedure Codes Titles).

9. Other Issues

a. Immunotherapy

Effective October 1, 1994, procedure code 99.28 (Injection or infusion of biologic response modifier (BRM) as an antineoplastic agent) was created and designated as a non-OR procedure that does not affect DRG assignment. This cancer treatment involving biological response modifiers is also known as BRM therapy or immunotherapy.

In response to a comment on the May 7, 1999 proposed rule, for the FY 2000 final rule we performed analysis of cases for which procedure code 99.28 was reported using the 100 percent FY 1998 MedPAR file. The commenter requested that we create a new DRG for BRM therapy or assign cases in which BRM therapy is performed to an existing DRG with a high relative weight. The commenter suggested that DRG 403 (Lymphoma and Nonacute Leukemia with CC) would be an appropriate DRG.

Based on the commenter's request, we examined cases only for hospitals that use the particular drug manufactured by the commenter. We concluded that due to the variation of charges across the cases and the limited number of cases distributed across 19 different DRGs, it would be inappropriate to classify these cases to a single DRG. For example, it would be inappropriate to classify these cases into DRG 403 because only a few cases were coded with a principal diagnosis assigned to MDC 17 (Myeloproliferative Diseases and Disorders, and Poorly Differentiated Neoplasm), the MDC that includes DRG 403. We stated in the July 30, 1999 final rule (64 FR 41497) that we would perform a full analysis of immunotherapy cases using the FY 1999 MedPAR data to determine if changes are needed.

Using 100 percent of the data in the FY 1999 MedPAR file, we performed an analysis of all cases for which procedure code 99.28 was reported. We identified 1,179 cases in 136 DRGs in 22 MDCs. No more than 141 cases were assigned to any one particular DRG.

Of the 1,179 cases, 141 cases (approximately 12 percent) were assigned to DRG 403 in MDC 17. We found approximately one-half of these cases had other procedures performed in addition to receiving immunotherapy, such as chemotherapy, bone marrow biopsy, insertion of totally implantable vascular access device, thoracentesis, or percutaneous abdominal drainage, which may account for the increased charges. There were 123 immunotherapy cases assigned to DRG 82 (Respiratory Neoplasms) in MDC 4 (Diseases and Disorders of the Respiratory System). We noted that, in some cases, in addition to immunotherapy, other procedures were performed, such as insertion of an intercostal catheter for drainage, thoracentesis, or chemotherapy.

There were 84 cases assigned to DRG 416 (Septicemia, Age >17) in MDC 18 (Infectious and Parasitic Diseases (Systemic or Unspecified Sites)). The principal diagnosis for this DRG is septicemia and, in addition to receiving treatment for septicemia, immunotherapy was also given. There were 79 cases assigned to DRG 410 (Chemotherapy without Acute Leukemia as Secondary Diagnosis) in MDC 17.

The cost of immunotherapy is averaged into the weight for these DRGS and, based on our analysis, we do not believe a reclassification of these cases is warranted. Due to the limited number of cases that were distributed throughout 136 DRGs in 22 MDCs and the variation of charges, we concluded that it would be inappropriate to classify these cases into a single DRG.

Although there were 141 cases assigned to DRG 403, it would be inappropriate to place all immunotherapy cases, regardless of diagnosis, into a DRG that is designated for lymphoma and nonacute leukemia. We establish DRGs based on clinical coherence and resource utilization. Each DRG encompasses a variety of cases, reflecting a range of services and a range of resources. Generally, then, each DRG reflects some higher cost cases and some lower cost cases. To the extent a new technology is extremely costly relative to the cases reflected in the DRG relative weight, the hospital might qualify for outlier payments, that is, additional payments over and above the standard prospective payment rate. We have not received any comments from hospitals regarding payment for immunotherapy cases.

b. Pancreas Transplant

Effective July 1, 1999, Medicare covers whole organ pancreas transplantation if the transplantation is performed simultaneously with or after a kidney transplant (procedure codes 55.69, Other kidney transplantation, and V42.0, Organ or tissue replaced by transplant, Kidney) (Transmittal No. 115, April 1999). We note that when we published the notification of this coverage in the July 30, 1999 final rule (64 FR 41497), we inadvertently made an error in announcing the covered codes. We cited the incorrect codes for pancreas transplantation as procedure code 52.80 (Pancreatic transplant, not otherwise specified) and 52.83 (Heterotransplant of pancreas). The correct procedure codes for pancreas transplantation are 52.80 (Pancreatic transplant, not otherwise specified) and 52.82 (Homotransplant of pancreas). We will revise the Coverage Issues Manual to reflect this correction.

Pancreas transplantation is generally limited to those patients with severe secondary complications of diabetes, including kidney failure. However, pancreas transplantation is sometimes performed on patients with labile diabetes and hypoglycemic unawareness. Pancreas transplantation for diabetic patients who have not experienced end-stage renal failure secondary to diabetes is excluded from coverage. Medicare also excludes coverage of transplantation of partial pancreatic tissue or islet cells.

In the July 30, 1999 final rule (64 FR 41497), we indicated that we planned to review discharge data to determine whether a new DRG should be created, or existing DRGs modified, to further classify pancreas transplantation in combination with kidney transplantation.

Under the current DRG classification, if a kidney transplant and a pancreas transplant are performed simultaneously on a patient with chronic renal failure secondary to diabetes with renal manifestations (diagnosis codes 250.40 through 250.43), the case is assigned to DRG 302 (Kidney Transplant) in MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract). If a pancreas transplant is performed following a kidney transplant (that is, during a different hospital admission) on a patient with chronic renal failure secondary to diabetes with renal manifestations, the case is assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis). This is because pancreas transplant is not assigned to MDC 11, the MDC to which a principal diagnosis of chronic renal failure secondary to diabetes is assigned.

Using 100 percent of the data in the FY 1999 MedPAR file (which contains hospital bills through December 31, 1999), we performed an analysis of the cases for which procedure codes 52.80 and 52.83 were reported. We identified a total of 79 cases in 8 DRGs, in 3 MDCs, and in 1 pre-MDC. Of the 79 cases identified, 49 cases were assigned to DRG 302, 14 cases were assigned to DRG 468, and 8 cases were assigned to DRG 191 (Pancreas, Liver and Shunt

Procedures with CC). The additional 8 cases were distributed over 5 other assorted DRGs, and due to their disparity, were not considered in our evaluation.

We examined our data to determine whether we should propose a new kidney and pancreas transplant DRG at this time. We identified 49 such dual transplant cases in the FY 1999 MedPAR file. We do not believe this is a sufficient sample size to warrant the creation of a new DRG. Furthermore, we would note that nearly half of these cases occurred at a hospital in Maryland, which is not paid under the prospective payment system. The rest of the cases are spread across multiple hospitals, with no single hospital having more than 5 cases in the FY 1999 MedPAR.

*C. Recalibration of DRG Weights.*

We are proposing to use the same basic methodology for the FY 2001 recalibration as we did for FY 2000 (July 30, 1999 final rule (64 FR 41498)). That is, we would recalibrate the weights based on charge data for Medicare discharges. However, we propose to use the most current charge information available, the FY 1999 MedPAR file. (For the FY 2000 recalibration, we used the FY 1998 MedPAR file.) The MedPAR file is based on fully coded diagnostic and procedure data for all Medicare inpatient hospital bills.

The proposed recalibrated DRG relative weights are constructed from FY 1999 MedPAR data (discharges occurring between October 1, 1998 and September 30, 1999), based on bills received by HCFA through December 31, 1999, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1999 MedPAR file includes data for approximately 11,059,625 Medicare discharges.

The methodology used to calculate the proposed DRG relative weights from the FY 1999 MedPAR file is as follows:

- To the extent possible, all the claims were regrouped using the proposed DRG classification revisions discussed in section II.B of this preamble. As noted in section II.B.5, due to the unavailability of the revised GROUPER software, we simulated most major classification changes to approximate the placement of cases under the proposed reclassification. However, there are some changes that cannot be modeled.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education and disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers, using the same criteria used in computing the current weights. That is, all cases that are outside of 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG are eliminated.
- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight. A transfer case is counted as a fraction of a case based on the ratio of its transfer payment under the per diem payment methodology to the full DRG payment for nontransfer cases. That is, transfer cases paid under the transfer methodology equal to half of what the case would receive as a nontransfer would be counted as 0.5 of a total case.
- We established the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart, heart-lung, liver, and lung transplant centers that have cases in the FY 1999 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from HCFA as transplant centers.)
- Acquisition costs for kidney, heart, heart-lung, liver, and lung transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant); DRG 480 (Liver Transplant); and DRG 495 (Lung Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We propose to use that same case threshold in recalibrating the DRG weights for FY 2001. Using the FY 1999 MedPAR data set, there are 40 DRGs that contain fewer than 10 cases. We computed the weights for these 40 low-volume DRGs by adjusting the FY 2000 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs.

The weights developed according to the methodology described above, using the proposed DRG classification changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor (1.45431) so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that, beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payment to hospitals is affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.b. of the Addendum to this proposed rule, we are proposing to make a budget neutrality adjustment to assure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

## III. Proposed Changes to the Hospital Wage Index

*A. Background*

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred under the Act, we currently define hospital labor market areas based on the definitions of Metropolitan

Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by the Office of Management and Budget (OMB). The OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprising two or more PMSAs (identified by their separate economic and social character). For purposes of the hospital wage index, we use the PMSAs rather than CMSAs since they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA. Rural areas are areas outside a designated MSA, PMSA, or NECMA. For purposes of the wage index, we combine all of the rural counties in a State to calculate a rural wage index for that State.

We note that effective April 1, 1990, the term Metropolitan Area (MA) replaced the term MSA (which had been used since June 30, 1983) to describe the set of metropolitan areas consisting of MSAs, PMSAs, and CMSAs. The terminology was changed by OMB in the March 30, 1990 **Federal Register** to distinguish between the individual metropolitan areas known as MSAs and the set of all metropolitan areas (MSAs, PMSAs, and CMSAs) (55 FR 12154). For purposes of the prospective payment system, we will continue to refer to these areas as MSAs.

Beginning October 1, 1993, section 1886(d)(3)(E) of the Act requires that we update the wage index annually. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services. As discussed below in section III.F of this preamble, we also take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act when calculating the wage index.

*B. FY 2001 Wage Index Update*

The proposed FY 2001 wage index values in section VI of the Addendum to this proposed rule (effective for hospital discharges occurring on or after October 1, 2000 and before October 1, 2001) are based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1997 (the FY 2000 wage index was based on FY 1996 wage data).

The proposed FY 2001 wage index includes the following categories of data associated with costs paid under the hospital inpatient prospective payment system (as well as outpatient costs), which were also included in the FY 2000 wage index:

- Salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Certain contract labor costs and hours.
- Wage-related costs.

Consistent with the wage index methodology for FY 2000, the proposed wage index for FY 2001 also continues to exclude the direct and overhead salaries and hours for services not paid through the inpatient prospective payment system such as skilled nursing facility services, home health services, or other subprovider components that are not subject to the prospective payment system.

We calculate a separate Puerto Rico-specific wage index and apply it to the Puerto Rico standardized amount. (See 62 FR 45984 and 46041.) This wage index is based solely on Puerto Rico's data. Finally, section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State.

*C. FY 2001 Wage Index Proposal*

Because it is used to adjust payments to hospitals under the prospective payment system, the hospital wage index should, to the extent possible, reflect the wage costs associated with the areas of the hospital included under the hospital inpatient prospective payment system. In response to concerns within the hospital community related to the removal from the wage index calculation costs related to graduate medical education (GME) (teaching physicians and residents), and certified registered nurse anesthetists (CRNAs), which are paid by Medicare separately from the prospective payment system, the American Hospital Association (AHA) convened a workgroup to develop a consensus recommendation on this issue. The workgroup recommended that costs related to GME and CRNAs be phased out of the wage index calculation over a 5-year period. Based upon our analysis of hospitals' FY 1996 wage data, and consistent with the AHA workgroup's recommendation, we specified in the July 30, 1999 final rule (64 FR 41505) that we would phase-out these costs from the calculation of the wage index over a 5-year period, beginning in FY 2000. In keeping with the decision to phase-out costs related to GME and CRNAs, the proposed FY 2001 wage index is based on a blend of 60 percent of an average hourly wage including these costs, and 40 percent of an average hourly wage excluding these costs.

1. Teaching Physician Costs and Hours Survey

As discussed in the July 30, 1999 final rule, because the FY 1996 cost reporting data did not separate teaching physician costs from other physician Part A costs, we instructed our fiscal intermediaries to survey teaching hospitals to collect data on teaching physician costs and hours payable under the per resident amounts (§ 413.86) and reported on Worksheet A, Line 23 of the hospitals' cost report.

The FY 1997 cost reports also do not separately report teaching physician costs. Therefore, we once again conducted a special survey to collect data on these costs. (For the FY 1998 cost reports, we have revised the Worksheet S–3, Part II so that hospitals can separately report teaching physician Part A costs. Therefore, after this year, it will no longer be necessary for us to conduct this special survey.)

The survey data collected as of mid-January 2000 were included in the preliminary public use data file made available on the Internet in February 2000 at HCFA's home page (http://www.hcfa.gov). At that time, we had received teaching physician data for 459 out of 770 teaching hospitals reporting physician Part A costs on their Worksheet S–3, Part II. Also, in some cases, intermediaries reported that teaching hospitals did not incur teaching physician costs. In early January 2000, we instructed intermediaries to review the survey data for consistency with the Supplemental Worksheet A–8–2 of the hospitals' cost reports. Supplemental Worksheet A–8–2 is used to apply the reasonable compensation equivalency limits to the costs of provider-based physicians, itemizing these costs by the corresponding line number on Worksheet A.

When we notified the hospitals, through our fiscal intermediaries, that they could review the survey data on the Internet, we also notified hospitals that requests for changes to the teaching survey data must be submitted by March 6, 2000. We instructed fiscal intermediaries to review the requests for changes received from hospitals and submit necessary data revisions to HCFA by April 3, 2000.

We removed from the wage data the physician Part A teaching costs and hours reported on the survey form for every hospital that completed the survey. These data had been verified by the fiscal intermediary before submission to HCFA. We have identified 42 teaching hospitals in our database that reported physician Part A costs on Line 4 of their Worksheet S–3 and teaching-related costs on Line 23 of Worksheet A, Column 1, but for which we do not have teaching physician costs from the survey because the hospitals failed to complete the survey. As we did in the case of such hospitals in calculating the FY 2000 wage index, for purposes of calculating the FY 2001 wage index, we propose to subtract the costs reported on Line 23 of the Worksheet A, Column 1 (GME Other Program Costs) from Line 1 of the Worksheet S–3. These costs (from Line 23, Column 1 of Worksheet A) are included in Line 1 of the Worksheet S–3, which is the sum of Column 1, Worksheet A. They also represent costs for which the hospital is paid through the per resident amount under the direct GME payment. To determine the hours to be removed, the costs reported on Line 23 of the Worksheet A, Column 1 would be divided by the national average hourly wage for teaching physicians based upon the survey of $65.62.

For the FY 2000 wage index, the AHA workgroup recommended that, if reliable teaching physician data were not available for removing teaching costs from hospitals' total physician Part A costs, HCFA should remove 80 percent of the costs and hours reported by hospitals attributable to physicians' Part A services. In calculating the FY 2000 wage index, if we did not receive survey data for a teaching hospital, we removed 80 percent of the hospital's reported total physician Part A costs and hours from the calculation. For the FY 2001 wage index, we are proposing a different approach. In some instances, fiscal intermediaries have verified that teaching hospitals do not have teaching physician costs; for these hospitals, it is not necessary to adjust the hospitals' physician Part A costs. We are actively conferring with the fiscal intermediaries to distinguish teaching hospitals that do not have teaching physician costs from teaching hospitals that have not identified the portion of their physician Part A costs associated with teaching physicians (that is, hospitals that did not complete the teaching survey and did not report teaching-related costs on Worksheet A, Line 23). We propose to remove 100 percent of the physician Part A costs and hours (reported on Worksheet S–3, Lines 4, 10, 12, and 18) in the FY 2001 wage index calculation for those hospitals where the fiscal intermediary verifies that the hospital has otherwise unidentified teaching physician costs included in physician Part A costs and hours.

It should be noted that Line 23 of Worksheet A, Column 1, flows directly into hospitals' total salaries on Worksheet S–3, Part II. Line 23 contains GME costs not directly attributable to residents' salaries or fringe benefits. Therefore, these costs tend to be costs associated with teaching physicians. To the extent a hospital fails to separately identify the proportion of its Line 23 Worksheet A costs associated with teaching physicians, we believe it is reasonable to remove all of these costs under the presumption that they are all associated with teaching physicians.

Thus, for the proposed wage index, we are either using the data submitted on the teaching physician survey or, in the absence of such data, removing the amount reported on Line 23 of Worksheet A, Column 1 or removing 100 percent of physician Part A costs reported on Worksheet S–3.

2. Nurse Practitioner and Clinical Nurse Specialist Costs

The current wage index includes salaries and wage-related costs for nurse practitioners (NPs) and clinical nurse specialists (CNSs) who, similar to physician assistants and CRNAs (unless at hospitals under the rural pass-through exception for CRNAs), are paid under the physician fee schedule. Over the past year, we have received several inquiries from hospitals and fiscal intermediaries regarding NP costs and how they should be handled for purposes of the hospital wage index. Because Medicare generally pays for NP and CNS costs under Part B outside the hospital prospective payment system, removing NP and CNS Part B costs from the wage index calculation would be consistent with our general policy to exclude, to the extent possible, costs that are not paid through the hospital prospective payment system. Because NP and CNS costs are not separately reported on the Worksheet S–3 for FYs 1997, 1998, and 1999, the FY 2000 Worksheet S–3 and cost reporting instructions will be revised to allow for separate reporting of NP and CNS Part A and Part B costs. We will exclude the Part B costs beginning with the FY 2004 wage index. These services are pervasive in both rural and urban settings. As such, we believe there will be no significant overall impact resulting from the removal of Part B costs for NPs and CNSs.

3. Severance and Bonus Pay Costs

On October 6, 1999, we issued a memorandum to hospitals and intermediaries regarding our policy on treatment of severance and bonus pay costs in developing the wage index, effective beginning with the FY 2001 wage index. (The hospital cost report instructions also will be amended to reflect our policy on these costs.) We stated that severance pay costs may be included on Worksheet S–3 as salaries on Part II, Line 1, only if the associated hours are included. If the hospital has no accounting of the hours, or if the costs are not based on hours, the severance pay costs may not be included in the wage index. On the other hand, bonus pay costs may be included in the cost report on Line 1 of Worksheet S–3 with no corresponding hours. Due to the inquiries we continue to receive from hospitals regarding the inclusion of severance pay costs on cost reports, we are clarifying our policy in this proposed rule.

Hospitals vary in their accounting of severance pay costs. Some hospitals base the amounts to be paid on hours, for example, 80 hours worth of pay. Others do not; for example, a 15-year employee may be offered a $25,000 buyout package. Some hospitals record associated hours; others do not. The Wage Index Workgroup has suggested that we not include any severance pay costs in the wage index calculation, that these costs are for terminated employees, and, therefore, they should be considered an administrative rather than a salary expense.

Severance pay costs can be substantial amounts, particularly in periods of downsizing. We believe that, if severance pay costs are included with no associated hours, the wage index, which is a relative measure of wage costs across labor market areas, would be distorted.

Severance pay costs are included in the proposed FY 2001 wage index as a salary cost to the extent that associated hours are also reported. However, we are soliciting public comments on this issue.

4. Health Insurance and Health-Related Costs

In the September 1, 1994 final rule (59 FR 45356), we stated that health insurance, purchased or self-insurance, is a core wage-related cost. Over the past year, we have received several inquiries from hospitals and hospital associations requesting that we define "purchased health insurance costs." In response, in

this proposed rule, we are clarifying that, for wage index purposes, we define "purchased health insurance costs" as the premiums and administrative costs a hospital pays on behalf of its employees for health insurance coverage. "Self-insurance" includes the hospital's costs (not charges) for covered services delivered to its employees, less any amounts paid by the employees, and less the personnel costs for hospital staff who delivered the services (these costs are already included in the wage index). For purchased health insurance and self-health insurance, the included costs must be for services covered in a health insurance plan.

Also, in the September 1, 1994 final rule (59 FR 45357), we addressed a comment about the inclusion of health-related costs in the calculation of the wage index. Such health-related costs include employee physical examinations, flu shots, and clinic visits, and other services that are not covered by employees' health insurance plans but are provided at no cost or at discounted rates to employees of the hospital. We are clarifying that the costs for these services may be included as an "other" wage-related cost if (among other criteria), when all such health-related costs are combined, the total of such costs is greater than 1 percent of the hospital's total salaries (less excluded area salaries). As discussed in the September 1, 1994 final rule (59 FR 45357), a cost may be allowable as an "other wage-related cost" if it meets certain criteria. Under one criterion, the wage-related cost must be greater than 1 percent of total salaries (less excluded area salaries). For purposes of applying this 1-percent test with respect to the health-related costs at issue here, we look at the combined total of the health-related costs (not charges) for services delivered to its employees, less any amounts employees paid, and less the personnel costs for hospital staff who delivered the services (as these costs are already included in the wage index).

5. Elimination of Wage Costs Associated With Rural Health Clinics and Federally Qualified Health Centers

The current hospital wage index includes the salaries and wage-related costs of hospital-based rural health clinics (RHCs) and federally qualified health centers (FQHCs). However, Medicare pays for these costs outside the hospital inpatient prospective payment system. Effective January 1, 1998, under section 1833(f) of the Act, as amended by section 4205 of Public Law 105–33, Medicare pays both hospital-based and freestanding RHCs and FQHCs on a cost-per-visit basis. Medicare cost reporting forms for RHCs and FQHCs were revised to reflect this legislative change, beginning with cost reporting periods ending on or after September 30, 1998 (the FY 1998 cost report). Other cost-reimbursed outpatient departments, such as ambulatory surgical centers, community mental health centers, and comprehensive outpatient rehabilitation facilities, are presently excluded from the wage index. Therefore, consistent with our wage index refinements that exclude, to the extent possible, costs associated with services not paid under the hospital inpatient prospective payment system, we believe it would be appropriate to exclude all salary costs associated with RHCs and FQHCs from the wage index calculation if we had feasible, reliable data for such exclusion.

Because RHC and FQHC costs are not separately reported on the Worksheet S–3 for FYs 1997, 1998, and 1999, we cannot exclude these costs from the FY 2001, FY 2002, or FY 2003 wage indexes. Therefore, we will revise the FY 2000 Worksheet S–3 to begin providing for the separate reporting of RHC and FQHC salaries, wage-related costs, and hours. We will evaluate the wage data for RHCs and FQHCs in developing the FY 2004 wage index.

*D. Verification of Wage Data From the Medicare Cost Report*

The data for the proposed FY 2001 wage index were obtained from Worksheet S–3, Parts II and III of the FY 1997 Medicare cost reports. The data file used to construct the proposed wage index includes FY 1997 data submitted to HCFA as of mid-February 2000. As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

We asked our fiscal intermediaries to revise or verify data elements that resulted in specific edit failures. Some unresolved data elements are included in the calculation of the proposed FY 2001 wage index pending their resolution before calculation of the final FY 2001 wage index. We have instructed the intermediaries to complete their verification of questionable data elements and to transmit any changes to the wage data (through HCRIS) no later than April 3, 2000. We expect that all unresolved data elements will be resolved by that date. The revised data will be reflected in the final rule.

Also, as part of our editing process, we removed data for 19 hospitals that failed edits. For two of these hospitals, we were unable to obtain sufficient documentation to verify or revise the data because the hospitals are no longer participating in the Medicare program or are in bankruptcy status. Four hospitals had negative average hourly wages after allocating overhead to their excluded areas and, therefore, were removed from the calculation. The data from the remaining 13 hospitals also failed the edits and were removed. The data for these hospitals will be included in the final wage index if we receive corrected data that pass our edits. As a result, the proposed FY 2001 wage index is calculated based on FY 1997 wage data for 4,926 hospitals.

*E. Computation of the Proposed FY 2001 Wage Index*

The method used to compute the proposed FY 2001 wage index is as follows:

Step 1—As noted above, we are proposing to base the FY 2001 wage index on wage data reported on the FY 1997 Medicare cost reports. We gathered data from each of the non-Federal, short-term, acute care hospitals for which data were reported on the Worksheet S–3, Parts II and III of the Medicare cost report for the hospital's cost reporting period beginning on or after October 1, 1996 and before October 1, 1997. In addition, we included data from a few hospitals that had cost reporting periods beginning in September 1996 and reported a cost reporting period exceeding 52 weeks. These data were included because no other data from these hospitals would be available for the cost reporting period described above, and because particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1997 data. We note that, if a hospital had more than one cost reporting period beginning during FY 1997 (for example, a hospital had two short cost reporting periods beginning on or after October 1, 1996 and before October 1, 1997), we included wage data from only one of the cost reporting periods, the longest, in the wage index calculation. If there was more than one cost reporting period and the periods were equal in length, we included the wage data from the latest period in the wage index calculation.

Step 2—Salaries—The method used to compute a hospital's average hourly wage is a blend of 60 percent of the hospital's average hourly wage including all GME and CRNA costs, and 40 percent of the hospital's average hourly wage after eliminating all GME and CRNA costs.

In calculating a hospital's average salaries plus wage-related costs,

including all GME and CRNA costs, we subtracted from Line 1 (total salaries) the Part B salaries reported on Lines 3 and 5, home office salaries reported on Line 7, and excluded salaries reported on Lines 8 and 8.01 (that is, direct salaries attributable to skilled nursing facility services, home health services, and other subprovider components not subject to the prospective payment system). We also subtracted from Line 1 the salaries for which no hours were reported on Lines 2, 4, and 6. To determine total salaries plus wage-related costs, we added to the net hospital salaries the costs of contract labor for direct patient care, certain top management, and physician Part A services (Lines 9 and 10), home office salaries and wage-related costs reported by the hospital on Lines 11 and 12, and nonexcluded area wage-related costs (Lines 13, 14, 16, 18, and 20).

We note that contract labor and home office salaries for which no corresponding hours are reported were not included. In addition, wage-related costs for specific categories of employees (Lines 16, 18, and 20) are excluded if no corresponding salaries are reported for those employees (Lines 2, 4, and 6, respectively).

We then calculated a hospital's salaries plus wage-related costs by subtracting from total salaries the salaries plus wage-related costs for teaching physicians, Part A CRNAs (Lines 2 and 16), and residents (Lines 6 and 20).

Step 3—Hours—With the exception of wage-related costs, for which there are no associated hours, we computed total hours using the same methods as described for salaries in Step 2.

Step 4—For each hospital reporting both total overhead salaries and total overhead hours greater than zero, we then allocated overhead costs. First, we determined the ratio of excluded area hours (sum of Lines 8 and 8.01 of Worksheet S–3, Part II) to revised total hours (Line 1 minus the sum of Part II, Lines 3, 5, and 7 and Part III, Line 13 of Worksheet S–3). We then computed the amounts of overhead salaries and hours to be allocated to excluded areas by multiplying the above ratio by the total overhead salaries and hours reported on Line 13 of Worksheet S–3, Part III. Finally, we subtracted the computed overhead salaries and hours associated with excluded areas from the total salaries and hours derived in Steps 2 and 3.

Step 5—For each hospital, we adjusted the total salaries plus wage-related costs to a common period to determine total adjusted salaries plus wage-related costs. To make the wage adjustment, we estimated the percentage change in the employment cost index (ECI) for compensation for each 30-day increment from October 14, 1996 through April 15, 1998 for private industry hospital workers from the Bureau of Labor Statistics' *Compensation and Working Conditions*. We use the ECI because it reflects the price increase associated with total compensation (salaries plus fringes) rather than just the increase in salaries. In addition, the ECI includes managers as well as other hospital workers. This methodology to compute the monthly update factors uses actual quarterly ECI data and assures that the update factors match the actual quarterly and annual percent changes. The factors used to adjust the hospital's data were based on the midpoint of the cost reporting period, as indicated below.

MIDPOINT OF COST REPORTING PERIOD

| After | Before | Adjustment factor |
|---|---|---|
| 10/14/96 | 11/15/96 | 1.02848 |
| 11/14/96 | 12/15/96 | 1.02748 |
| 12/14/96 | 01/15/97 | 1.02641 |
| 01/14/97 | 02/15/97 | 1.02521 |
| 02/14/97 | 03/15/97 | 1.02387 |
| 03/14/97 | 04/15/97 | 1.02236 |
| 04/14/97 | 05/15/97 | 1.02068 |
| 05/14/97 | 06/15/97 | 1.01883 |
| 06/14/97 | 07/15/97 | 1.01695 |
| 07/14/97 | 08/15/97 | 1.01520 |
| 08/14/97 | 09/15/97 | 1.01357 |
| 09/14/97 | 10/15/97 | 1.01182 |
| 10/14/97 | 11/15/97 | 1.00966 |
| 11/14/97 | 12/15/97 | 1.00712 |
| 12/14/97 | 01/15/98 | 1.00451 |
| 01/14/98 | 02/15/98 | 1.00213 |
| 02/14/98 | 03/15/98 | 1.00000 |
| 03/14/98 | 04/15/98 | 0.99798 |

For example, the midpoint of a cost reporting period beginning January 1, 1997 and ending December 31, 1997 is June 30, 1997. An adjustment factor of 1.01695 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1997 and covers a period of less than 360 days or more than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area before any reclassifications under section 1886(d)(8)(B) or section 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted salaries plus wage-related costs obtained in Step 5 (with and without GME and CRNA costs) for all hospitals in that area to determine the total adjusted salaries plus wage-related costs for the labor market area.

Step 7—We divided the total adjusted salaries plus wage-related costs obtained under both methods in Step 6 by the sum of the corresponding total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Because the proposed FY 2001 wage index is based on a blend of average hourly wages, we then added 60 percent of the average hourly wage calculated without removing GME and CRNA costs, and 40 percent of the average hourly wage calculated with these costs excluded.

Step 8—We added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage (using the same blending methodology described in Step 7). Using the data as described above, the national average hourly wage is $21.6988.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

Step 10—Following the process set forth above, we developed a separate Puerto Rico-specific wage index for purposes of adjusting the Puerto Rico standardized amounts. (The national Puerto Rico standardized amount is adjusted by a wage index calculated for all Puerto Rico labor market areas based on the national average hourly wage as described above.) We added the total adjusted salaries plus wage-related costs (as calculated in Step 5) for all hospitals in Puerto Rico and divided the sum by the total hours for Puerto Rico (as calculated in Step 4) to arrive at an overall average hourly wage of $9.9667 for Puerto Rico. For each labor market area in Puerto Rico, we calculated the Puerto Rico-specific wage index value by dividing the area average hourly wage (as calculated in Step 7) by the overall Puerto Rico average hourly wage.

Step 11—Section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is located in an urban area may not be less than the area wage index applicable to hospitals located in rural areas in that State. Furthermore, this wage index floor is to be implemented in such a manner as to assure that aggregate

prospective payment system payments are not greater or less than those that would have been made in the year if this section did not apply. For FY 2001, this change affects 241 hospitals in 41 MSAs. The MSAs affected by this provision are identified in Table 4A by a footnote.

*F. Revisions to the Wage Index Based on Hospital Redesignation*

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system.

Under section 152 of Public Law 106–113, hospitals in certain counties are deemed to be located in specified areas for purposes of payment under the hospital inpatient prospective payment system, for discharges occurring on or after October 1, 2000. For payment purposes, these hospitals are to be treated as though they were reclassified for purposes of both the standardized amount and the wage index. We are proposing to calculate FY 2001 wage indexes for hospitals in the affected counties as if they were reclassified to the specified area.

For purposes of making payments under section 1886(d) of the Act for FY 2001, section 152 provides the following:

- Iredell County, North Carolina is deemed to be located in the Charlotte-Gastonia-Rock Hill, North Carolina-South Carolina MSA;
- Orange County, New York is deemed to be located in the New York, New York MSA;
- Lake County, Indiana and Lee County, Illinois are deemed to be located in the Chicago, Illinois MSA;
- Hamilton-Middletown, Ohio is deemed to be located in the Cincinnati, Ohio-Kentucky-Indiana MSA;
- Brazoria County, Texas is deemed to be located in the Houston, Texas MSA;
- Chittenden County, Vermont is deemed to be located in the Boston-Worcester-Lawrence-Lowell-Brockton, Massachusetts-New Hampshire MSA.

Section 152 also requires that these reclassifications be treated for FY 2001 as though they are reclassification decisions by the MGCRB. Therefore, the proposed wage indexes for the areas to which these hospitals are reclassifying, as well as the wage indexes for the areas in which they are located, are subject to all of the normal rules for calculating wage indexes for hospitals affected by reclassification decisions by the MGCRB, as described below.

In addition, we would note that the reclassifications enacted by section 152 pertain only to the hospitals located in the specified counties, not to hospitals in other counties within the MSA or hospitals reclassified into the MSA by the MGCRB.

Under section 154 of Public Law 106–113, the Allentown-Bethlehem-Easton, Pennsylvania MSA wage index will be calculated including the wage data for Lehigh Valley Hospital. Section 154 states that, for FY 2001, "[n]otwithstanding any other provision of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)), in calculating and applying the wage indices under that section for discharges occurring during fiscal year 2001, Lehigh Valley Hospital shall be treated as being classified in the Allentown-Bethlehem-Easton Metropolitan Statistical Area." This statutory language directs us to include Lehigh Valley Hospital's wage data in the wage index calculation for the Allentown-Bethlehem-Easton MSA for FY 2000 and FY 2001, and to apply the Allentown-Bethlehem-Easton MSA wage index to Lehigh Valley Hospital for discharges occurring during FY 2001.

Section 1886(d)(8)(B) of the Act established that a hospital located in a rural county adjacent to one or more urban areas is treated as being located in the MSA to which the greatest number of workers in the county commute, if the rural county would otherwise be considered part of an MSA (or NECMAs), if the commuting rates used in determining outlying counties were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous MSAs. Through FY 2000, hospitals are required to use standards published in the **Federal Register** on January 3, 1980, by the Office of Management and Budget. For FY 2000, there were 26 hospitals affected by this provision.

Section 402 of Public Law 106–113 amended section 1886(d)(8)(B) of the Act to allow hospitals to elect to use the standards published in the **Federal Register** on January 3, 1980 (1980 decennial census data) or March 30, 1990 (1990 decennial census data) during FY 2001 and FY 2002. As of FY 2003, hospitals will be required to use the standards published in the **Federal Register** by the Director of the Office of Management and Budget based on the most recent available decennial population data.

We are in the process of working with the Office of Management and Budget to identify the hospitals that would be affected by this amendment. We refer the reader to the September 30, 1988 final rule (53 FR 38499) for a complete discussion of our approach to identify the outlying counties using the standards published in the January 3, 1980 **Federal Register**.

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals would reduce the wage index value for the area to which the hospitals are redesignated by 1 percentage point or less, the area wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the redesignated hospitals are subject to that combined wage index value.
- If including the wage data for the redesignated hospitals increases the wage index value for the area to which the hospitals are redesignated, both the area and the redesignated hospitals receive the combined wage index value.
- The wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.
- Rural areas whose wage index values would be reduced by excluding the wage data for hospitals that have been redesignated to another area continue to have their wage index values calculated as if no redesignation had occurred.
- Rural areas whose wage index values increase as a result of excluding the wage data for the hospitals that have been redesignated to another area have

their wage index values calculated exclusive of the wage data of the redesignated hospitals.

• The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, geographic reclassification may not reduce the wage index value for an urban area below the statewide rural wage index value.

We note that, except for those rural areas in which redesignation would reduce the rural wage index value, the wage index value for each area is computed exclusive of the wage data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, several urban areas listed in Table 4A have no hospitals remaining in the area. This is because all the hospitals originally in these urban areas have been reclassified to another area by the MGCRB. These areas with no remaining hospitals receive the prereclassified wage index value. The prereclassified wage index value will apply as long as the area remains empty.

The proposed wage index values for FY 2001 are shown in Tables 4A, 4B, 4C, and 4F in the Addendum to this proposed rule. Hospitals that are redesignated should use the wage index values shown in Table 4C. Areas in Table 4C may have more than one wage index value because the wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located. When the wage index value of the area to which a hospital is redesignated is lower than the wage index value for the rural areas of the State in which the hospital is located, the redesignated hospital receives the higher wage index value; that is, the wage index value for the rural areas of the State in which it is located, rather than the wage index value otherwise applicable to the redesignated hospitals.

Tables 4D and 4E list the average hourly wage for each labor market area, before the redesignation of hospitals, based on the FY 1997 wage data. In addition, Table 3C in the Addendum to this proposed rule includes the adjusted average hourly wage for each hospital based on the preliminary FY 1997 data as of February 25, 2000 (reflecting the phase-out of GME and CRNA wages as described at section III.C of this preamble). The MGCRB will use the average hourly wage published in the final rule to evaluate a hospital's application for reclassification for FY 2002 (unless that average hourly wage is later revised in accordance with the wage data correction policy described in § 412.63(w)(2)). We note that in adjudicating these wage index reclassifications the MGCRB will use the average hourly wages for each hospital and labor market area that are reflected in the final FY 2001 wage index.

At the time this proposed wage index was constructed, the MGCRB had completed its review of FY 2001 reclassification requests. The proposed FY 2001 wage index values incorporate all 586 hospitals redesignated for purposes of the wage index (hospitals redesignated under section 1886(d)(8)(B) or 1886(d)(10) of the Act, and section 152 Public Law 106–113) for FY 2001. The final number of reclassifications may vary because some MGCRB decisions are still under review by the Administrator and because some hospitals may withdraw their requests for reclassification.

Any changes to the wage index that result from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process will be incorporated into the wage index values published in the final rule following this proposed rule. The changes may affect not only the wage index value for specific geographic areas, but also the wage index value redesignated hospitals receive; that is, whether they receive the wage index value for the area to which they are redesignated, or a wage index value that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index value for the area from which the hospitals are redesignated may be affected.

Under § 412.273, hospitals that have been reclassified by the MGCRB are permitted to withdraw their applications within 45 days of the publication of this proposed rule in the **Federal Register**. The request for withdrawal of an application for reclassification that would be effective in FY 2001 must be received by the MGCRB by June 19, 2000. A hospital that requests to withdraw its application may not later request that the MGCRB decision be reinstated.

*G. Requests for Wage Data Corrections*

To allow hospitals time to evaluate the wage data used to construct the proposed FY 2001 hospital wage index, we made available to the public a data file containing the FY 1997 hospital wage data. As stated in section II.D of this preamble, the data file used to construct the proposed wage index includes FY 1997 data submitted to HCFA as of mid-February 2000. In a memorandum dated January 28, 2000, we instructed all Medicare intermediaries to inform the prospective payment hospitals that they service of the availability of the wage data file and the process and timeframe for requesting revisions. The wage data file was made available on February 7, 2000 through the Internet at HCFA's home page (http://www.hcfa.gov). We also instructed the intermediaries to advise hospitals of the availability of these data either through their representative hospital organizations or directly from HCFA. Additional details on ordering this data file are discussed in section IX.A of this preamble, "Requests for Data from the Public."

In addition, Table 3C in the Addendum to this proposed rule contains each hospital's adjusted average hourly wage used to construct the proposed wage index values. It should be noted that the hospital average hourly wages shown in Table 3C may not reflect any changes made to a hospital's data after February 7, 2000. Changes approved by a hospital's fiscal intermediary and forwarded to HCFA by April 3, 2000 will be reflected on the final public use wage data file scheduled to be made available on May 5, 2000.

We believe hospitals have sufficient time to ensure the accuracy of their FY 1997 wage data. Moreover, the ultimate responsibility for accurately completing the cost report rests with the hospital, which must attest to the accuracy of the data at the time the cost report is filed. However, if, after review of the wage data file released February 4, 2000, a hospital believed that its FY 1997 wage data were incorrectly reported, the hospital was to submit corrections along with complete, detailed supporting documentation to its intermediary by March 6, 2000. Hospitals were notified of this deadline, and of all other possible deadlines and requirements, through written communications from their fiscal intermediaries in late January 2000.

After reviewing requested changes submitted by hospitals, intermediaries transmitted any revised cost reports to HCFA and forwarded a copy of the revised Worksheet S–3, Parts II and III to the hospitals. In addition, fiscal intermediaries were to notify hospitals of the changes or the reasons that changes were not accepted. This procedure ensures that hospitals have every opportunity to verify the data that will be used to construct their wage index values. We believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of a particular cost and whether it should be included in the wage index data. However, if a

hospital disagrees with the intermediary's resolution of a requested change, the hospital may contact HCFA in an effort to resolve policy disputes. We note that the April 3, 2000 deadline also applies to these requested changes. We will not consider factual determinations at this time, as these should have been resolved earlier in the process.

Any wage data corrections to be reflected in the final wage index must have been reviewed and verified by the intermediary and transmitted to HCFA on or before April 3, 2000. (The deadline for hospitals to request changes from their fiscal intermediaries was March 6, 2000.) These deadlines are necessary to allow sufficient time to review and process the data so that the final wage index calculation can be completed for development of the final prospective payment rates to be published by August 1, 2000.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the wage data for the FY 2001 payment rates. Accordingly, hospitals that do not meet the procedural deadlines set forth above will not be afforded a later opportunity to submit wage data corrections or to dispute the intermediary's decision with respect to requested changes.

The final wage data public use file will be released by May 5, 2000. Hospitals should examine both Table 3C of this proposed rule and the May 5 final public use wage data file (which reflects revisions to the data used to calculate the values in Table 3C) to verify the data HCFA is using to calculate the wage index. Hospitals will have until June 5, 2000, to submit requests to correct errors in the final wage data due to data entry or tabulation errors by the intermediary or HCFA. The correction requests that will be considered at that time will be limited to errors in the entry or tabulation of the final wage data that the hospital could not have known about before the release of the final wage data public use file.

As noted above in section III.C of this preamble, the final wage data file released on May 5, 2000 will include hospitals' teaching survey data as well as cost report data. As with the file made available in February 2000, HCFA will make the final wage data file released in May 2000 available to hospital associations and the public on the Internet. However, this file is being made available solely for the limited purpose of identifying any potential errors made by HCFA or the intermediary in the entry of the final wage data that result from the correction process described above (with the March 6 deadline). Hospitals are encouraged to review their hospital wage data promptly after the release of the final file because data presented at this time cannot be used by hospitals to initiate new wage data correction requests.

If, after reviewing the final file, a hospital believes that its wage data are incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and HCFA. The letters should outline why the hospital believes an error exists and provide all supporting information, including dates. These requests must be *received* by HCFA and the intermediaries no later than June 5, 2000. Requests mailed to HCFA should be sent to: Health Care Financing Administration; Center for Health Plans and Providers; Attention: Wage Index Team, Division of Acute Care; C4–07–07; 7500 Security Boulevard; Baltimore, MD 21244–1850. Each request must also be sent to the hospital's fiscal intermediary. The intermediary will review requests upon receipt and contact HCFA immediately to discuss its findings.

At this point in the process, changes to the hospital wage data will only be made in those very limited situations involving an error by the intermediary or HCFA that the hospital could not have known about before its review of the final wage data file. Specifically, neither the intermediary nor HCFA will accept the following types of requests at this stage of the process:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to HCFA on or before April 3, 2000.
- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the February 2000 wage data file.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or HCFA during the wage data correction process.

Verified corrections to the wage index received timely (that is, by June 5, 2000) will be incorporated into the final wage index to be published by August 1, 2000 and effective October 1, 2000.

Again, we believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors in their wage data to the intermediary's attention. Moreover, because hospitals will have access to the final wage data by early May 2000, they will have the opportunity to detect any data entry or tabulation errors made by the intermediary or HCFA before the development and publication of the FY 2001 wage index by August 1, 2000 and the implementation of the FY 2001 wage index on October 1, 2000. If hospitals avail themselves of this opportunity, the wage index implemented on October 1, should be virtually error free. Nevertheless, in the unlikely event that errors should occur after that date, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(w)(2), we may make midyear corrections to the wage index only in those limited circumstances in which a hospital can show (1) that the intermediary or HCFA made an error in tabulating its data; and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 2001 (that is, by the June 5, 2000 deadline). As indicated earlier, since a hospital will have the opportunity to verify its data, and the intermediary will notify the hospital of any changes, we do not foresee any specific circumstances under which midyear corrections would be necessary. However, should a midyear correction be necessary, the wage index change for the affected area will be effective prospectively from the date the correction is made.

## IV. Other Decisions and Proposed Changes to the Prospective Payment System for Inpatient Operating Costs and Graduate Medical Education Costs

### *A. Expanding the Transfer Definition to Include Postacute Care Discharges (§ 412.4)*

In accordance with section 1886(d)(5)(I) of the Act, the prospective payment system distinguishes between "discharges," situations in which a patient leaves an acute care (prospective payment) hospital after receiving complete acute care treatment, and "transfers," situations in which the patient is transferred to another acute care hospital for related care. Our policy, as set forth in the regulations at § 412.4, provides that, in a transfer situation, full payment is made to the final discharging hospital and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

Effective with discharges on or after October 1, 1998, section 1886(d)(5)(J) of the Act required the Secretary to define

and pay as transfers all cases assigned to one of 10 DRGs (identified below) selected by the Secretary if the individuals are discharged to one of the following settings:

- A hospital or hospital unit that is not a subsection 1886(d) hospital. (Section 1886(d)(1)(B) of the Act identifies the hospitals and hospital units that are excluded from the term "subsection(d) hospital" as psychiatric hospitals and units, rehabilitation hospitals and units, children's hospitals, long-term care hospitals, and cancer hospitals.)
- A skilled nursing facility (as defined at section 1819(a) of the Act).
- Home health services provided by a home health agency, if the services relate to the condition or diagnosis for which the individual received inpatient hospital services, and if the home health services are provided within an appropriate period (as determined by the Secretary).

Therefore, any discharge from a prospective payment hospital from one of the selected 10 DRGs that is admitted to a hospital excluded from the prospective payment system on the date of discharge from the acute care hospital, on or after October 1, 1998, would be considered a transfer and paid accordingly under the prospective payment systems (operating and capital) for inpatient hospital services. Similarly, a discharge from an acute care inpatient hospital paid under the prospective payment system to a skilled nursing facility on the same date would be defined as a transfer and paid as such. This would include cases discharged from one of the 10 selected DRGs to a designated swing bed for skilled nursing care. We consider situations in which home health services related to the condition or diagnosis of the inpatient admission are received within 3 days after the discharge as a transfer.

The statute specifies that the Secretary select 10 DRGs based upon a high volume of discharges to postacute care and a disproportionate use of postacute care services. We identified the following DRGs with the highest percentage of postacute care:

- DRG 14 (Specific Cerebrovascular Disorders Except Transient Ischemic Attack (Medical)).
- DRG 113 (Amputation for Circulatory System Disorders Except Upper Limb and Toe (Surgical)).
- DRG 209 (Major Joint Limb Reattachment Procedures of Lower Extremity (Surgical)).
- DRG 210 (Hip and Femur Procedures Except Major Joint Procedures Age >17 with CC (Surgical)).
- DRG 211 (Hip and Femur Procedures Except Major Joint Procedures Age >17 without CC (Surgical)).
- DRG 236 (Fractures of Hip and Pelvis (Medical)).
- DRG 263 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis with CC (Surgical))
- DRG 264 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis without CC (Surgical))
- DRG 429 (Organic Disturbances and Mental Retardation (Medical))
- DRG 483 (Tracheostomy Except for Face, Mouth and Neck Diagnoses (Surgical)).

Generally, we pay for transfers based on a per diem payment, determined by dividing the DRG payment by the average length of stay for that DRG. The transferring hospital receives twice the per diem rate the first day and the per diem rate for each following day, up to the full DRG payment. Of the 10 selected DRGs, 7 are paid under this method. However, three DRGs exhibit a disproportionate share of costs very early in the hospital stay. For these three DRGs, hospitals receive one-half of the DRG payment for the first day of the stay and one-half of the payment they would receive under the current transfer payment method, up to the full DRG payment.

Section 1886(d)(5)(J)(iv) of the Act requires the Secretary to include in the FY 2001 proposed rule a description of the effect of the provision to treat as transfers cases that are assigned to one of the 10 selected DRGs and receive postacute care upon their discharge from the hospital. Under contract with HCFA (Contract No. 500–95–0006), Health Economics Research, Inc. (HER) conducted an analysis of the impact on hospitals and hospital payments of the postacute transfer provision. The analysis sought to obtain information on four primary areas: how hospitals responded in terms of their transfer practices; a comparison of payments and costs for these cases; whether hospitals are attempting to circumvent the policy by delaying postacute care or coding the patient's discharge status as something other than a transfer; and what the next possible step is for expanding the transfer payment policy beyond the current 10 selected DRGs or the current postacute destinations.

Section 1886(d)(5)(J)(iv)(I) authorizes the Secretary to include in the proposed rule for FY 2001 a description of other post-discharge services that should be added to this postacute care transfer provision. Since FY 1999 was the first year this policy was effective and because of pending changes to payment policies for other postacute care settings such as hospital outpatient departments, we have limited data to assess whether additional postacute care settings should be included. We will continue to closely monitor this issue as more data become available.

In its analysis, HER relied on HCFA's Standard Analytic Files containing claims submission data through September 1999. However, the second and third quarter submissions for calendar year 1999 were not complete. It was decided that transfer cases would be identified by linking acute hospital discharges with postacute records based on Medicare beneficiary numbers and dates of discharge from the acute hospital with dates of admission or provision of service by the postacute provider. This method was used rather than selecting cases based on the discharge status code on the claim even though this code is being used for payment to these cases because we wanted to also assess how accurately hospitals are coding this status. However, the need to link acute and postacute episodes further limited the analytic data, due to the greater time lag for collecting postacute records. Therefore, much of HER's analysis focused on only the first two quarters of FY 1998. The two preceding fiscal years served as a baseline for purposes of comparison.

HER looked at the 10 DRGs included under the transfer payment policy and identified a slight decrease in the percentage of short-stay postacute transfers. Short-stay transfers were defined as those with a length of stay at least one day below the geometric mean length of stay for the DRG. Comparing the share of short-stay postacute transfers to total discharges shows that during the first two quarters of FY 1998, the resulting percentage was 34 percent. The same comparison during the first two quarters of FY 1999 yielded 33 percent. When HER examined the share of short-stay postacute transfers relative to all short-stay cases, it found that the percentage fell from 59 percent in FY 1998 to 58 percent in FY 1999. According to HER, "[t]hese figures suggest that the policy change resulted in a moderate decline in the number of postacute care transfers paid for under the lower per diem methodology."

Evidence also suggests that hospitals are keeping patients in these 10 DRGs longer prior to transfer. The mean length of stay of short-stay postacute transfers remained fairly constant prior to the change and after the change, declining less than one-half percent. On the other hand, the mean length of stay of nontransfer short-stay patients fell by

1.8 percent. By comparison, the mean length of stay of long-stay postacute transfers fell by 3.4 percent, while it fell only 2.1 percent for long-stay nontransfers. The report suggests "[t]he relative decline in the length of stay of transfers among all long-stay cases suggests that (prospective payment system) hospitals may have responded to the policy change by holding such patients until they exceeded the geometric mean minus one day threshold prior to post-discharge referral."

We believe these marginal reactions by hospitals to the postacute transfer policy suggest that the increase in the rate of postacute transfers over the past several years has been due to a number of factors, of which Medicare payment policy has been only one. As indicated in the Conference report accompanying Public Law 105–33 (H.R. Conf. Rept. No. 105–217, 105th Cong., 1st Sess., at 740 (1997)), Congress' intent was to "continue to provide hospitals with strong incentives to treat patients in the most effective and efficient manner, while at the same time, adjust PPS payments in a manner that accounts for reduced hospital lengths of stay because of a discharge to another setting." The preliminary results of HER's report suggest that the policy resulting from Public Law 105–33 has not had a disruptive impact on existing clinical practices.

To assess the adequacy of payments under the new policy, HER examined average profits per case prior to and after the policy change. Prior to the policy change, HER found average profits for short-stay transfers in the 10 DRGs to be $2,454 per case. Across the 10 DRGs the average profits ranged from $32,007 per case for DRG 483 to minus $26 per case for DRG 211 (the only one of the 10 DRGs with a negative profit margin prior to implementing the policy). After the policy change, the average profit per case was $1,180 per case. However, 3 of the 10 DRGs had negative average profits after implementation of the policy. The average margin for DRG 483 declined to $16,672 per case.

The study also attempted to ascertain whether there was any concerted effort to circumvent the policy by delaying transfers to avoid having a case defined as a transfer, or by not coding the case correctly on the discharge status indicator on the bill. To assess whether postacute care was being delayed, HER considered, for the periods preceding and subsequent to the policy change, the number and percent of cases admitted to either a hospital or distinct-part unit of a hospital excluded from the prospective payment system or to a skilled nursing facility 2 or 3 days following the discharge, and the number and percent of patients who received services from a home health agency 4 or 5 days after discharge from an acute care hospital. The percentages are based on the share of transferred patients falling into the time windows described above relative to all such transfers.

The analysis identified 699 patients transferred to an excluded hospital or unit 2 or 3 days following discharge from an acute care hospital during the first two quarters of FY 1998, and 660 such cases during the first two quarters of FY 1999. Similarly, there were 2,219 transfers to skilled nursing facilities 2 or 3 days after discharge during the first two quarters of FY 1998, and 1,759 during the first two quarters of FY 1999. The percentage of such transfers was constant for both excluded hospitals and units and for skilled nursing facilities. The analysis found that home health referral on the 4th or 5th day following discharge fell from 17.5 percent to 16.5 percent between the two study periods, from 12,667 cases to 9,745 cases. On the basis of these findings, HER believes "[t]hese results do not support the contention that (prospective payment system) hospitals (would) circumvent the lower per diem payments by delaying the date of postacute care admission or visit."

The study also examined the discharge destination codes as reported on the acute care hospital claims against postacute care transfers identified on the basis of a postacute care claim indicating the patient qualifies as a transfer. This analysis found that in 1998, only 74 percent of transfer cases had discharge destination codes on the acute care hospital claim that were consistent with whether there was a postacute care claim for the case matching the date of discharge. In FY 1999, the year the postacute care transfer policy went into effect, this rate rose to 79 percent. This indicates that hospitals are improving the accuracy of coding transfer cases.

Transfers to hospitals or units excluded from the prospective payment system must have a discharge destination code (Patient Status) of 05. Transfers to a skilled nursing facility must have a discharge destination code of 03. Transfers to a home health agency must have a discharge destination code of 06. If the hospital's continuing care plan for the patient is not related to the purpose of the inpatient hospital admission, a condition code 42 must be entered on the claim. If the continuing care plan is related to the purpose of the inpatient hospital admission, but care did not start within 3 days after the date of discharge, a condition code 43 must be entered on the claim. The presence of either of these condition codes in conjunction with discharge destination code 06 will result in full payment rather than the transfer payment amount. We intend to closely monitor the accuracy of hospitals' discharge destination coding in this regard and take whatever steps are necessary to ensure that accurate payment is made under this policy.

Section 1886(d)(5)(J)(iv)(II) of the Act authorized but did not require the Secretary to include as part of this proposed rule additional DRGs to include under the postacute care transfer provision. As part of "The President's Plan to Modernize and Strengthen Medicare for the 21st Century" (July 2, 1999), the Administration committed to not expanding the number of DRGs included in the policy until FY 2003. Therefore, we are not proposing any change to the postacute care settings or the 10 DRGs.

HER did undertake an analysis of how additional DRGs might be considered for inclusion under the policy. The analysis supports the initial 10 DRGs selected as being consistent with the nature of the Congressional mandate. According to HER, "[t]he top 10 DRGs chosen initially by HCFA exhibit very large PAC [postacute care] levels and PAC discharge rates (except for DRG 264, Skin Graft and/or Debridement for Skin Ulcer or Cellulitis without CC, which was paired with DRG 263). All 10 appear to be excellent choices based on the other criteria as well. Most have fairly high short-stay PAC rates (except possibly for Strokes, DRG 14, and Mental Retardation, DRG 429)."

Extending the policy beyond these initial DRGs, however, may well require more extensive analysis and grouping of like-DRGs. One concern raised in the analysis relates to single DRGs including multiple procedures with varying lengths of stay. Because the transfer payment methodology only considers the DRG overall geometric mean length of stay for a DRG, certain procedures with short lengths of stay relative to other procedures in the same DRG may be more likely to be treated as transfers. The analysis also considers pairs of DRGs, such as DRGs 263 and 264, as well as larger bundles of DRGs (grouped by common elements such as trauma, infections, and major organ procedures). According to HER, "[i]n extending the PAC transfer policy, it is necessary to go beyond the flawed concept of a single DRG to discover multiple DRGs with a common link that

exhibit similar PAC statistics. Aggregation of this sort provides a logical bridge in expanding the PAC transfer policy that is easily justified to Congress and that avoids unintended inequities in the way DRGs—and potentially hospitals—are treated under this policy. Hospitals can be inadvertently penalized or not under the current implementation criteria due to systematic differences in the DRG mix."

Finally, the HER report concludes with a discussion of the issues related to potentially expanding the postacute care transfer policy to all DRGs. On the positive side, HER points to the benefits of expanding the policy to include all DRGs:

- A simple, uniform formula-driven policy;
- Same policy rationale exists for all DRGs—the statutory provision requiring the Secretary to select only 10 DRGs was a political compromise;
- DRGs with little utilization of short-stay postacute care would not be harmed by the policy;
- Less confusion in discharge destination coding; and
- Hospitals that happen to be disproportionately treating the current 10 DRGs may be harmed more than hospitals with an aggressive short-stay postacute care transfer policy for other DRGs.

According to HER, the negative implications of expanding the policy to all DRGs include:

- The postacute care transfer policy is irrelevant for many DRGs;
- Added burden for the fiscal intermediaries to verify discharge destination codes;
- Diluted program savings beyond the initial 10 DRGs;
- Difficult to identify ongoing postacute care that resumes after discharge; and
- Heterogeneous procedures within single DRGs having varying lengths of stay.

At the time we developed this proposed rule, HER's report was not yet in final format. We anticipate that, by the time the final FY 2001 rule is published, this report will be available in final format. We will announce in that rule how to attain copies of the complete report.

**B. Sole Community Hospitals (SCHs) (412.63, 412.73, and 413.75, Proposed New § 412.77, and § 412.92)**

Under the hospital inpatient prospective payment system, special payment protections are provided to sole community hospitals (SCHs). Section 1886(d)(5)(D)(iii) of the Act defines an SCH as, among other things, a hospital that, by reason of factors such as isolated location, weather conditions, travel conditions, or absence of other hospitals (as determined by the Secretary), is the sole source of inpatient hospital services reasonably available to Medicare beneficiaries. The regulations that set forth the criteria a hospital must meet to be classified as an SCH are located at § 412.92(a).

Currently SCHs are paid based on whichever of the following rates yields the greatest aggregate payment to the hospital for the cost reporting period: the Federal national rafe applicable to the hospital; or the hospital's "target amount";—that is, either the updated hospital-specific rate based on FY 1982 costs per discharge, or the updated hospital-specific rate based on FY 1987 costs per discharge.

Section 405 of Public Law 106–113, which amended section 1886(b)(3) of the Act, provides that an SCH that was paid for its cost reporting period beginning during 1999 on the basis of either its FY 1982 or FY 1987 target amount (the hospital-specific rate as opposed to the Federal rate) may elect to receive payment under a methodology using a third hospital-specific rate based on the hospital's FY 1996 costs per discharge. This amendment to the statute means that, for discharges occurring in FY 2001, eligible SCHs can elect to use the allowable FY 1996 operating costs for inpatient hospital services as the basis for their target amount, rather than either their FY 1982 or FY 1987 costs.

We are aware that language in the Conference Report accompanying Public Law 106–113 indicates that the House bill (H.R. 3075) would have permitted SCHs that were being paid the Federal rate to rebase, not SCHs that were paid on the basis of either their FY 1982 or FY 1987 target amount (H.R. Conf. Rep. No. 106–479, 106th Cong., 1st Sess. at 890 (1999)). The language of the section 405 amendment to section 1886(b)(3) (which added new subparagraph (I)(ii)) clearly limits the option to substitute the FY 1996 base year to SCHs that were paid for their cost reporting periods beginning during 1999 on the basis of the target amount applicable to the hospital under section 1886(b)(3)(C).

When calculating an eligible SCH's FY 1996 hospital-specific rate, we propose to utilize the same basic methodology used to calculate FY 1982 and FY 1987 bases. That methodology is set forth in §§ 412.71 through 412.75 of the regulations and discussed in detail in several prospective payment system documents published in the **Federal Register** on September 1, 1983 (48 FR 3977); January 3, 1984 (49 FR 256); June 1, 1984 (49 FR 23010); and April 20, 1990 (55 FR 15150).

Since we anticipate that eligible hospitals will elect the option to rebase using their FY 1996 cost reporting periods, we are instructing our fiscal intermediaries to identify those SCHs that were paid for their cost reporting periods beginning during 1999 on the basis of their target amounts. For these hospitals, fiscal intermediaries will calculate the FY 1996 hospital-specific rate as described below in this section IV.B. If this rate exceeds a hospital's current target amount based on the greater of the FY 1982 or FY 1987 hospital-specific rate, the hospital will receive payment based on the FY 1996 hospital-specific rate (based on the blended amounts described at section 1886(b)(3)(I)(i) of the Act) unless the hospital notifies its fiscal intermediary in writing prior to the end of the cost reporting period that it does not wish to be paid on the basis of the FY 1996 hospital-specific rate. Thus, if a hospital does not notify its fiscal intermediary before the end of the cost reporting period that it declines the rebasing option, we will deem the lack of such notification as an election to have section 1886(b)(3)(I) of the Act apply to the hospital.

An SCH's decision to decline this option for a cost reporting period will remain in effect for subsequent periods until such time as the hospital notifies its fiscal intermediary otherwise.

The FY 1996 hospital-specific rate will be based on FY 1996 cost reporting periods beginning on or after October 1, 1995 and before October 1, 1996, that are 12 months or longer. If the hospital's last cost reporting period ending on or before September 30, 1996 is less than 12 months, the hospital's most recent 12-month or longer cost reporting period ending before the short period report would be utilized in the computations. If a hospital has no cost reporting period beginning in FY 1996, it would not have a hospital-specific rate based on FY 1996.

For each hospital eligible for FY 1996 rebasing, the fiscal intermediary would calculate a hospital-specific rate based on the hospital's FY 1996 cost report as follows:

- Determine the hospital's total allowable Medicare inpatient operating cost, as stated on the FY 1996 cost report.
- Divide the total Medicare operating cost by the number of Medicare discharges in the cost reporting period to determine the FY 1996 base period cost per case. For this purpose, transfers are considered to be discharges.

• In order to take into consideration the hospital's individual case-mix, divide the base year cost per case by the hospital's case-mix index applicable to the FY 1996 cost reporting period. This step is necessary to standardize the hospital's base period cost for case-mix and is consistent with our treatment of both FY 1982 and FY 1987 base-period costs per case. A hospital's case-mix is computed based on its Medicare patient discharges subject to DRG-based payment.

The fiscal intermediary will notify eligible hospitals of their FY 1996 hospital-specific rate prior to October 1, 2000. Consistent with our policies relating to FY 1982 and FY 1987 hospital-specific rates, we propose to permit hospitals to appeal a fiscal intermediary's determination of the FY 1996 hospital-specific rate under the procedures set forth in 42 CFR part 405, subpart R, which concern provider payment determinations and appeals. In the event of a modification of base period costs for FY 1996 rebasing due to a final nonappealable court judgment or certain administrative actions (as defined in § 412.72(a)(3)(i)), the adjustment would be retroactive to the time of the intermediary's initial calculation of the base period costs, consistent with the policy for rates based on FY 1982 and FY 1987 costs.

Section 405 prescribes the following formula to determine the payment for SCHs that elect rebasing:

For discharges during FY 2001:

• 75 percent of the updated FY 1982 or FY 1987 former target (identified in the statute as the "subparagraph (C) target amount"), plus

• 25 percent of the updated FY 1996 amount (identified in the statute as the ""rebased target amount").

For discharges during FY 2002:

• 50 percent of the updated FY 1982 or FY 1987 former target, plus

• 50 percent of the updated FY 1996 amount.

For discharges during FY 2003:

• 25 percent of the updated FY 1982 or FY 1987 former target, plus

• 75 percent of the updated FY 1996 amount.

For discharges during FY 2004 or any subsequent fiscal year, the hospital-specific rate would be determined based on 100 percent of the updated FY 1996 amount.

We are proposing to add a new § 412.77 and amend § 412.92(d) to incorporate the provisions of section 1886(b)(3)(I) of the Act, as added by section 405 of Public Law 106–113.

Section 406 of Public Law 106–113 amended section 1886(b)(3)(B)(i)(XVI) of the Act to provide, for fiscal year 2001, for full market basket updates to both the Federal and hospital-specific payment rates applicable to sole community hospitals. We are proposing to amend § § 412.63, 412.73, and 412.75 to incorporate the amendment made by section 406 of Public Law 106–113.

*C. Rural Referral Centers (§ 412.96)*

Under the authority of section 1886(d)(5)(C)(i) of the Act, the regulations at § 412.96 set forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban amount rather than the rural standardized amount. Although the other urban and rural standardized amounts were the same for discharges beginning with that date, rural referral centers would continue to receive special treatment under both the disproportionate share hospital (DSH) payment adjustment and the criteria for geographic reclassification.

As discussed in 62 FR 45999 and 63 FR 26317, under section 4202 of Public Law 105–33, a hospital that was classified as a rural referral center for FY 1991 is to be classified as a rural referral center for FY 1998 and later years so long as that hospital continued to be located in a rural area and did not voluntarily terminate its rural referral center status. Otherwise, a hospital seeking rural referral center status must satisfy applicable criteria. One of the criteria under which a hospital may qualify as a rural referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size requirement can qualify as a rural referral center if the hospital meets two mandatory prerequisites (specifying a minimum case-mix index and a minimum number of discharges) and at least one of three optional criteria (relating to specialty composition of medical staff, source of inpatients, or referral volume). With respect to the two mandatory prerequisites, a hospital may be classified as a rural referral center if its—

• Case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and

• Number of discharges is at least 5,000 per year, or if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. The methodology we use to determine the proposed national and regional case-mix index values is set forth in regulations at § 412.96(c)(1)(ii). The proposed national case-mix index value includes all urban hospitals nationwide, and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105). These values are based on discharges occurring during FY 1999 (October 1, 1998 through September 30, 1999) and include bills posted to HCFA's records through December 1999.

We are proposing that, in addition to meeting other criteria, hospitals with fewer than 275 beds, if they are to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2000, must have a case-mix index value for FY 1999 that is at least—

• 1.3401; or

• The median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located.

The median case-mix values by region are set forth in the following table:

| Region | Case-mix index value |
|---|---|
| 1. New England (CT, ME, MA, NH, RI, VT) | 1.2291 |
| 2. Middle Atlantic (PA, NJ, NY) | 1.2387 |
| 3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) | 1.3116 |
| 4. East North Central (IL, IN, MI, OH, WI) | 1.2602 |
| 5. East South Central (AL, KY, MS, TN) | 1.2692 |
| 6. West North Central (IA, KS, MN, MO, NE, ND, SD) | 1.1881 |
| 7. West South Central (AR, LA, OK, TX) | 1.2800 |
| 8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) | 1.3302 |
| 9. Pacific (AK, CA, HI, OR, WA) | 1.3076 |

The preceding numbers will be revised in the final rule to the extent required to reflect the updated FY 1999 MedPAR file, which will contain data

from additional bills received through March 31, 2000.

For the benefit of hospitals seeking to qualify as rural referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1999 case-mix index value in Table 3C in section VI. of the Addendum to this proposed rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. We are proposing to update the regional standards based on discharges for urban hospitals' cost reporting periods that began during FY 1998 (that is, October 1, 1997 through September 30, 1998). That is the latest year for which we have complete discharge data available.

Therefore, we are proposing that, in addition to meeting other criteria, a hospital, if it is to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2000, must have as the number of discharges for its cost reporting period that began during FY 1999 a figure that is at least—

- 5,000; or
- The median number of discharges for urban hospitals in the census region in which the hospital is located, as indicated in the following table:

| Region | Number of discharges |
|---|---|
| 1. New England (CT, ME, MA, NH, RI, VT) | 6,733 |
| 2. Middle Atlantic (PA, NJ, NY) | 8,681 |
| 3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV) | 7,845 |
| 4. East North Central (IL, IN, MI, OH, WI) | 7,526 |
| 5. East South Central (AL, KY, MS, TN) | 6,852 |
| 6. West North Central (IA, KS, MN, MO, NE, ND, SD) | 5,346 |
| 7. West South Central (AR, LA, OK, TX) | 5,380 |
| 8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY) | 8,026 |
| 9. Pacific (AK, CA, HI, OR, WA) | 6,160 |

We note that the number of discharges for hospitals in each census region is greater than the national standard of 5,000 discharges. Therefore, 5,000 discharges is the minimum criterion for all hospitals. These numbers will be revised in the final rule based on the latest FY 1998 cost report data.

We reiterate that an osteopathic hospital, if it is to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 2000, must have at least 3,000 discharges for its cost reporting period that began during FY 1999.

*D. Indirect Medical Education (IME) Adjustment (§ 412.105)*

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved graduate medical education (GME) program receive an additional payment to reflect the higher indirect operating costs associated with GME. The regulations regarding the calculation of this additional payment, known as the indirect medical education (IME) adjustment, are located at § 412.105.

Section 111 of Public Law 106–113 modified the transition for the IME adjustment that was established by Public Law 105–33. We will publish these changes in a separate interim final rule with comment period. However, for discharges occurring during FY 2001, the adjustment formula equation used to calculate the IME adjustment factor is $1.54 \times [(1 + r)^{.405} - 1]$. (The variable r represents the hospital's resident-to-bed ratio.)

In the July 30, 1999 final rule (64 FR 41517), we set forth certain policies that affected payment for both direct and indirect GME. These policies related to adjustments to full-time equivalent (FTE) resident caps for new medical residency programs affecting both direct and indirect GME programs; the adjustment to GME caps for certain hospitals under construction prior to August 5, 1997 (the enactment date of Public Law 105–33) to account for residents in new medical residency training programs; and the temporary adjustment to FTE caps to reflect residents affected by hospital closures. When we amended the regulations under § 413.86 for direct GME, we inadvertently did not make the corresponding changes in § 412.105 for IME. We are proposing to make the following conforming changes:

- To amend § 412.105(f)(1)(vii) to provide for an adjustment to the FTE caps for new medical residency programs as specified under § 413.86(g)(6).
- To add a new § 412.105(f)(1)(viii) related to the adjustment to the FTE caps for newly constructed hospitals that sponsor new residency programs in effect on or after January 1, 1995, and on or before August 5, 1997, that either received initial accreditation by the appropriate accrediting body or temporarily trained residents at another hospital(s) until the facility was completed, to conform to the provisions of § 413.86(g)(7).
- To add a new § 412.105(f)(1)(ix) to specify that a hospital may receive a temporary adjustment to its FTE cap to take into account residents added because of another hospital's closure if the hospital meets the criteria listed under § 413.86(g)(8).

In addition, we are proposing to add a cross-reference to "§ 413.86(d)(3)(i) through (v)" in § 412.105(g), and to correct the applicable period in both §§ 412.105(g) and 413.86(d)(3) by revising the phrase "For portions of cost reporting periods beginning on or after January 1, 1998" to read "For portions of cost reporting periods occurring on or after January 1, 1998".

*E. Payments to Disproportionate Share Hospitals (§ 412.106)*

Effective for discharges beginning on or after May 1, 1986, hospitals that treat a disproportionately large number of low-income patients (as defined in section 1886(d)(5)(F) of the Act) receive additional payments through the DSH adjustment. Section 4403(a) of Public Law 105–33 amended section 1886(d)(5)(F) of the Act to reduce the payment a hospital would otherwise receive under the current disproportionate share formula by 1 percent for FY 1998, 2 percent for FY 1999, 3 percent for FY 2000, 4 percent for FY 2001, 5 percent for 2002, and 0 percent for FY 2003 and each subsequent fiscal year. Subsequently, section 112 of Public Law 106–113 modified the amount of the reductions under Public Law 105–33 by changing the reduction to 3 percent for FY 2001 and 4 percent for FY 2002. The reduction continues to be 0 percent for FY 2003 and each subsequent fiscal year. We are proposing to revise § 412.106(e) to reflect the changes in the statute made by Public Law 106–113.

Section 112 of Public Law 106–113 also directs the Secretary to require prospective payment system hospitals to submit data on the costs incurred by the hospitals for providing inpatient and outpatient hospital services for which the hospitals are not compensated, including non-Medicare bad debt, charity care, and charges for medical and indigent care to the Secretary as part of hospitals' cost reports. These data are required for cost reporting periods beginning on or after October 1,

2001. We will be revising our instructions to hospitals for cost reports for FY 2002 to capture these data.

*F. Medicare Geographic Classification Review Board (§§ 412.256 and 412.276)*

With the creation of the Medicare Geographic Classification Review Board (MGCRB), beginning in FY 1991, under section 1886(d)(10) of the Act, hospitals could request reclassification from one geographic location to another for the purpose of using the other area's standardized amount for inpatient operating costs or the wage index value, or both (September 6, 1990 interim final rule with comment period (55 FR 36754), June 4, 1991 final rule with comment period (56 FR 25458), and June 4, 1992 proposed rule (57 FR 23631)). Implementing regulations in Subpart L of Part 412 (412.230 *et seq.*) set forth criteria and conditions for redesignations from rural to urban, rural to rural, or from an urban area to another urban area with special rules for SCHs and rural referral centers.

1. Provisions of Public Law 106–113

Section 401 of Public Law 106–113 amended section 1886(d)(8) of the Act by adding subparagraph (E), which creates a mechanism, separate and apart from the MGCRB, permitting an urban hospital to apply to the Secretary to be treated as being located in the rural area of the State in which the hospital is located. The statute directs the Secretary to treat a qualifying hospital as being located in a rural area for purposes of provisions under section 1886(d) of the Act. In addition, section 401 of Public Law 106–113 went on to incorporate the effects of such reclassifications from urban to rural for purposes of Medicare payments to outpatient departments and to hospitals that would qualify to become critical access hospitals.

Regulations implementing section 1886(d)(8)(E) of the Act are currently under development and will be published in a separate document. However, we note that the statutory language of section 1886(d)(8)(E) of the Act does not address the issue of interactions between changes in classification under section 1886(d)(8)(E) of the Act and the MGCRB reclassification process under section 1886(d)(10) of the Act. The Secretary has extremely broad authority under section 1886(d)(10) of the Act to establish criteria for reclassification under the MGCRB process. Section 401 of Public Law 106–113 does not amend section 1886(d)(10) of the Act to limit the agency's discretion under the provision in any way, nor does section 1886(d)(8)(E) of the Act (as added by section 401) refer to section 1886(d)(10) of the Act. However, we note that in the Conference Report accompanying Public Law 106–113, the language discussing the House bill (H.R. 3075, as passed) indicated that: "[H]ospitals qualifying under this section shall be eligible to qualify for all categories and designations available to rural hospitals, including sole community, Medicare dependent, critical access, and referral centers. Additionally, qualifying hospitals shall be eligible to apply to the Medicare Geographic Reclassification Review Board for geographic reclassification to another area".

We are concerned that section 1886(d)(8)(E) might create an opportunity for some urban hospitals to take advantage of the MGCRB process by first seeking to be reclassified as rural under section 1886(d)(8)(E) (and receiving the benefits afforded to rural hospitals) and in turn seek reclassification through the MGCRB back to the urban area for purposes of their standardized amount and wage index (and thus also receive the higher payments that might result from being treated as being located in an urban area). That is, we are concerned that some hospitals might inappropriately seek to be treated as being located in a rural area for some purposes and as being located in an urban area for other purposes. In light of the Conference Report language noted above discussing the House bill on the one hand, and the potential for inappropriately inconsistent treatment of the same hospital on the other hand, we are seeking public comment on this issue, and indicating our position that we may impose a limitation on such MGCRB reclassifications in the final rule for FY 2001, if such action appears warranted. We also are seeking specific comments on how such a limitation, if any, should be imposed.

For example, it could be argued that if a hospital has applied to be treated as being located in a rural area under section 1886(d)(8)(E) of the Act, then the hospital should be treated as rural for all purposes under section 1886(d), and it would be inappropriate to permit the hospital to be reclassified back to an urban area for any purpose. Under this approach, hospitals seeking reclassification under section 1886(d)(8)(E) of the Act would be treated as rural for all purposes under section 1886(d) and would be able to benefit from special provisions that apply to rural hospitals. They would not, however, be eligible for reclassification back to an urban area for either the wage index or the standardized amount. This would apply to hospitals seeking to reclassify either to their original MSA or to another MSA.

Under an alternative approach, hospitals reclassifying from urban to rural under section 1886(d)(8)(E) of the Act would be eligible to apply and be reclassified by the MGCRB like any other rural hospital (as long as applicable regulations governing MGCRB are met). This might allow hospitals to effectively pick from an array of urban and rural payment policies to maximize their Medicare payments. It could be argued that this would be the policy most consistent with the Conference Report language but we believe that it might lead to inappropriate, inconsistent classifications.

We are very concerned that the effect of unlimited MGCRB reclassifications back to the area from which a hospital was reclassified under section 1886(d)(8)(E) of the Act could have implications beyond those envisioned by Congress when it passed Public Law 106–113. However, in light of the Conference Report language, we are seeking comments on this issue. In the final rule, we might adopt one of the approaches discussed above or some other approach for addressing this issue.

Under section 152 of Public Law 106–113, certain counties are deemed to be located in specified areas for purposes of payment under the hospital inpatient prospective payment system, effective for discharges occurring on or after October 1, 2000. For payment purposes, these hospitals are to be treated as though they were reclassified for purposes of both the standardized amount and the wage index. These provisions are addressed in section III.B. of this preamble, as they relate to calculation of the FY 2001 wage indexes for hospitals in the affected counties as if they were reclassified to the specified area; and in the Addendum to this preamble as they relate to the standardized amounts.

2. Revised Thresholds Applicable to Rural Hospitals for Wage Index Reclassifications

Existing §§ 412.230(e)(1)(iii) and (e)(1)(iv) provide that hospitals may obtain reclassification to another area for purposes of calculating and applying the wage index if the hospital's average hourly wages are at least 108 percent of the average hourly wages in the area where it is physically located, and at least 84 percent of the average hourly wages in a proximate area to which the hospital seeks reclassification. These thresholds apply equally to urban and rural hospitals seeking reclassification.

Historically, the financial performance of rural hospitals under the prospective payment system has lagged behind that of urban hospitals. Despite an overall increase in recent years of Medicare inpatient operating profit margins, some rural hospitals continue to struggle financially (as measured by Medicare inpatient operating prospective payment system payments minus costs, divided by payments). For example, during FY 1997, while the national average hospital margin was 15.1 percent, it was 8.9 percent for rural hospitals. In addition, approximately one-third of rural hospitals continue to experience negative Medicare inpatient margins despite this relatively high average margin.

In response to the lower margins of rural hospitals and the potential for a negative impact on beneficiaries' access to care if these hospitals were to close, we considered potential administrative changes that could help improve payments for rural hospitals. One approach in that regard would be to make it easier for rural hospitals to reclassify for purposes of receiving a higher wage index. The current thresholds for applying for wage index reclassification are based on our previous analysis showing the average hospital wage as a percentage of its area wage was 96 percent, and one standard deviation from that average was equal to 12 percentage points (see the June 4, 1992 proposed rule (57 FR 23635) and the September 1, 1992 final rule (57 FR 39770)). Because rural hospitals' financial performance has consistently remained below that of urban hospitals, we now believe that rural hospitals merit special dispensation with respect to qualifying for reclassification for purposes of the wage index. Therefore, we are proposing to change those average wage threshold percentages so more rural hospitals can be reclassified. Specifically, we are proposing to lower the upper threshold for rural hospitals to 106 percent and the lower threshold to 82 percent. The thresholds for urban hospitals seeking reclassification for purposes of the wage index would be unchanged. We would note that rural hospitals comprised nearly 90 percent of FY 2000 wage index reclassifications. Under this proposal, beginning October 1, 2000, rural hospitals would be able to reclassify for the wage index if, among other things, their average hourly wages are at least 106 percent of the area in which they are physically located, and at least 82 percent of the average hourly wages in the proximate area to which it seeks reclassification.

Although it is difficult to estimate precisely how many additional hospitals might qualify by lowering the thresholds because we do not have data indicating which hospitals meet all of the other reclassification criteria (*e.g.*, proximity), our analysis indicates that, if we were to raise the 108 percent threshold to 109 percent, approximately 20 rural hospitals would no longer qualify. If the upper threshold were to be raised to 110 percent, another 16 hospitals would not qualify. On the other hand, increasing the lower threshold from 84 percent to 85 percent would result in only 2 rural hospitals becoming ineligible to reclassify. Only 1 additional hospital would be affected by raising the threshold to 86 percent. Based on this analysis, we anticipate approximately 50 rural hospitals are likely to benefit from this proposed change.

We believe this proposal achieves an appropriate balance between allowing certain hospitals that are currently just below the thresholds to become eligible for reclassification, while not liberalizing the criteria so much that an excessive number of hospitals begin to reclassify. Because these reclassifications are budget neutral, nonreclassified hospitals' payments are negatively impacted by reclassification.

We believe there are many factors associated with lower margins among rural hospitals. We would note that section 410 of Public Law 106–113 requires the Comptroller General of the United States to "conduct a study of the current laws and regulations for geographic reclassification of hospitals to determine whether such reclassification is appropriate for purposes of applying wage indices." In addition, section 411 of Public Law 106–113 requires MedPAC to conduct a study on the adequacy and appropriateness of the special payment categories and methodologies established for rural hospitals. We anticipate that the results of these studies will help identify other areas to help improve payments for rural hospitals, either through reclassifications or other means.

*G. Payment for Direct Costs of Graduate Medical Education (§ 413.86)*

1. Background

Under section 1886(h) of the Act, Medicare pays hospitals for the direct costs of graduate medical education (GME). The payments are based on the number of residents trained by the hospital. Section 1886(h) of the Act, as amended by section 4623 of Public Law 105–33, caps the number of residents that hospitals may count for direct GME.

Section 9202 of the Consolidated Omnibus Reconciliation Act (COBRA) of 1985 (Public Law 99–272) established a methodology for determining payments to hospitals for the costs of approved GME programs at section 1886(h)(2) of the Act. Section 1886(h)(2) of the Act, as implemented in regulations at § 413.86(e), sets forth a payment methodology for the determination of a hospital-specific, base-period per resident amount (PRA) that is calculated by dividing a hospital's allowable costs of GME for a base period by its number of residents in the base period. The base period is, for most hospitals, the hospital's cost reporting period beginning in FY 1984 (that is, the period of October 1, 1983 through September 30, 1984). The PRA is multiplied by the number of full-time equivalent (FTE) residents working in all areas of the hospital complex (or non-hospital sites, when applicable), and the hospital's Medicare share of total inpatient days to determine Medicare's direct GME payments. In addition, as specified in section 1886(h)(2)(D)(ii) of the Act, for cost reporting periods beginning on or after October 1, 1993, through September 30, 1995, each hospital's PRA for the previous cost reporting period is not adjusted for any FTE residents who are not either a primary care or an obstetrics and gynecology resident. As a result, hospitals with both primary care/obstetrics and gynecology residents and non-primary care residents have two separate PRAs for FY 1994 and, thereafter, one for primary care and one for non-primary care. (Thus, for purposes of this proposed rule, when we refer to a hospital's PRA, this amount is inclusive of any CPI–U adjustments the hospital may have received since the hospital's base-year, including any CPI-U adjustments the hospital may have received because the hospital trains primary care/non-primary care residents, as specified under existing § 413.86(e)(3)(ii)).

2. Use of National Average Per Resident Amount Methodology in Computing Direct GME Payments

Section 311 of Public Law 106–113 amended section 1886(h)(2) of the Act to establish a methodology for the use of a national average PRA in computing direct GME payments for cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2005. Generally, section 311 establishes a "floor" and a "ceiling" based on a locality-adjusted, updated, weighted average PRA. Each hospital's PRA is compared to the floor and ceiling to determine whether its PRA should be

revised. Accordingly, we are proposing to implement section 311 by setting forth the prescribed methodology for calculation of the weighted average PRA. We then discuss the proposed steps for determining whether a hospital's PRA will be adjusted based upon the proposed calculated weighted average PRA, in accordance with the methodology specified under section 311 of Public Law 106–113.

We propose to calculate the weighted average PRA based upon data from hospitals' cost reporting periods ending during FY 1997 (October 1, 1996 through September 30, 1997), as directed by section 311 of Public Law 106–113. We accessed these FY 1997 cost reporting data from the Hospital Cost Report Information System (HCRIS) and also obtained the necessary data for those hospitals that are not included in HCRIS (because they file manual cost reports), from those hospitals' fiscal intermediaries. If a hospital had more than one cost reporting period ending in FY 1997, we propose to include all of its cost reports ending in FY 1997 in our calculations. However, if a hospital did not have a cost reporting period ending in FY 1997, such as a hospital with a long cost reporting period beginning in FY 1996 and ending in FY 1998, the hospital is excluded from our calculations. One hospital is excluded from our calculation even though it did have a cost reporting period ending during FY 1997 because, at that time, it was a new teaching hospital with no established PRA (the first year of training for a new teaching hospital is paid for by Medicare on a cost basis; a PRA is applied in calculating a hospital's payment beginning with the hospital's second year of residency training). The total number of hospitals that we include in our calculation is 1,235. Thirty-five of these hospitals are hospitals with more than one cost report.

In accordance with section 311 of Public Law 106–113, we propose to calculate the weighted average PRA in the following manner:

*Step 1:* We determine each hospital's single PRA by adding each hospital's primary care and non-primary care PRAs, weighted by its respective FTEs, and dividing by the sum of the FTEs for primary care and non-primary care residents.

*Step 2:* We standardize each hospital's single PRA by dividing it by the 1999 geographic adjustment factor (GAF) (which is an average of the three geographic index values (weighted by the national average weight for the work component, practice expense component, and malpractice component)) in accordance with section 1848(e) of the Act and 42 CFR 414.26 (which is used to adjust physician payments for the different wage areas), for the physician fee schedule area in which the hospital is located.

*Step 3:* We add all the standardized hospital PRAs (as calculated in Step 2), each weighted by hospitals' respective FTEs, and then divide by the total number of FTEs.

Based upon this three-step calculation, we have determined the proposed weighted average PRA (for cost reporting periods ending during FY 1997) to be $68,487.

For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2005 (FY 2001 through FY 2005), the national average PRA is applied using the following three steps:

*Step 1: Update the weighted average PRA for inflation.* Under section 1886(h)(2) of the Act, as amended by section 311 of Public Law 106–113, the weighted average PRA is updated by the estimated percentage increase in the consumer price index for all urban consumers (CPI–U) during the period beginning with the month that represents the midpoint of the cost reporting *periods* ending during FY 1997 and ending with the midpoint of the hospital's cost reporting *period* that begins in FY 2001. Therefore, the weighted average standardized PRA ($68,487) would be updated by the increase in CPI–U for the period beginning with the midpoint of *all cost* reporting periods for hospitals with cost reporting periods ending during FY 1997 (October 1, 1996), and ending with the midpoint of the *individual* hospital's cost reporting period that begins during FY 2001.

For example, Hospital A has a calendar year cost reporting period. Thus, for Hospital A, the weighted average PRA is updated from October 1, 1996 to July 1, 2001, because July 1 is the midpoint of its cost reporting period beginning on or after October 1, 2000. Or, for example, if Hospital B has a cost reporting period starting October 1, the weighted average PRA is updated from October 1, 1996 to April 1, 2001, the midpoint of the cost reporting period for Hospital B. Therefore, the starting point for updating the weighted average PRA is the same date for all hospitals (October 1, 1996), but the ending date is different because it is dependent upon the cost reporting period for each hospital.

*Step 2: Adjust for locality.* In accordance with section 1886(h)(2) of the Act, as amended by section 311 of Public Law 106–113, once the weighted average PRA is updated according to each hospital's cost reporting period, the updated weighted average PRA (the national average PRA) would be further adjusted to calculate a locality-adjusted national average PRA for each hospital. This is done by multiplying the updated national average PRA by the 1999 GAF (as specified in the October 31, 1997 **Federal Register** (62 FR 59257)) for the fee schedule area in which the hospital is located.

*Step 3: Determine possible revisions to the PRA.* For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2005, the locality-adjusted national average PRA, as calculated in Step 2, is then compared to the hospital's individual PRA. Based upon the provisions of section 1886(h)(2) of the Act, as amended by section 311 of Public Law 106–113, a hospital's PRA would be revised, if appropriate, according to the following:

- Floor—For cost reporting periods beginning in FY 2001, to determine which PRAs (primary care and non-primary care separately) are below the 70 percent floor, a hospital's locality-adjusted national average PRA is multiplied by 70 percent. This resulting number is then compared to the hospital's PRA that is updated for inflation to the current cost reporting period. If the hospital's PRA would be less than 70 percent of the locality-adjusted national average PRA, the individual PRA is replaced by 70 percent of the locality-adjusted national average PRA for that cost reporting period and would be updated for inflation in future years by the CPI–U.

We note that there may be some hospitals with primary care and non-primary care PRAs where both PRAs are replaced by 70 percent of the locality-adjusted national average PRA. In these situations, the hospital would receive identical PRAs; no distinction in PRAs would be made for differences in inflation (because a hospital has both primary care and non-primary care PRAs, each of which is updated as described in § 413.86(e)(3)(ii)) as of cost reporting periods beginning on or after October 1, 2000.

For example, if the FY 2001 locality-adjusted national average PRA for Area X is $100,000, then 70 percent of that amount is $70,000. If, in Area X, Hospital A has a primary care FY 2001 PRA of $69,000 and a non-primary care FY 2001 PRA of $67,000, both of Hospital A's FY 2001 PRAs are replaced by the $70,000 floor. Thus, $70,000 is the amount that would be used to determine Hospital A's direct GME payments for both primary care and

non-primary care FTEs in its cost reporting period beginning in FY 2001, and the $70,000 PRA would be updated for inflation by the CPI–U in subsequent years.

• *Ceiling*—For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2005 (FY 2001 through FY 2005), a ceiling that is equal to 140 percent of each locality-adjusted national average PRA would be calculated and compared to each individual hospital's PRA. If the hospital's PRA is greater than 140 percent of the locality-adjusted national average PRA, the PRA would be adjusted depending on the fiscal year as follows:

a. FY 2001

For cost reporting periods beginning in FY 2001, each hospital's PRA from the preceding cost reporting period (that is, FY 2000) is compared to the FY 2001 locality-adjusted national average PRA. If the individual hospital's FY 2000 PRA exceeds 140 percent of the FY 2001 locality-adjusted national average PRA, the PRA is frozen at the FY 2000 PRA, and is not updated in FY 2001 by the CPI–U factor, subject to the limitation in section IV.G.2.d. of this preamble.

For example, if the FY 2001 locality-adjusted national average PRA "ceiling" for Area Y is $140,000 (that is, 140 percent of $100,000, the hypothetical locality-adjusted national average PRA), and if, in this area, Hospital B has a FY 2000 PRA of $140,001, then for FY 2001, Hospital B's PRA is frozen at $140,001 and is not updated by the CPI–U for FY 2001.

b. FY 2002

For cost reporting periods beginning in FY 2002, the methodology used to calculate each hospital's individual PRA would be the same as described in section IV.G.2.a. above for FY 2001. Each hospital's PRA from the preceding cost reporting period (that is, FY 2001) is compared to the FY 2002 locality-adjusted national average PRA. If the individual hospital's FY 2001 PRA exceeds 140 percent of the FY 2002 locality-adjusted national average PRA, the PRA is frozen at the FY 2001 PRA, and is not updated in FY 2002 by the CPI–U factor, subject to the limitation in section IV.G.2.d. of this preamble.

c. FY 2003, FY 2004, and FY 2005

For cost reporting periods beginning in FY 2003, FY 2004, and FY 2005, if the hospital's PRA for the previous cost reporting period is greater than 140 percent of the locality-adjusted national average PRA for that same previous cost reporting period (for example, for the cost reporting period beginning in FY 2003, compare the hospital's PRA from the FY 2002 cost reporting period to the locality-adjusted national average PRA from FY 2002), then, subject to the limitation in section IV.G.2.d. of this preamble, the hospital's PRA is updated in accordance with section 1886(h)(2)(D)(i) of the Act, except that the CPI–U applied is reduced (but not below zero) by 2 percentage points.

For example, for purposes of Hospital A's FY 2003 cost report, Hospital A's PRA for FY 2002 is compared to Hospital A's locality-adjusted national average PRA ceiling for FY 2002. If, in FY 2002, Hospital A's PRA is $100,001 and the FY 2002 locality-adjusted national average PRA ceiling is $100,000, then for FY 2003, Hospital A's PRA is updated with the FY 2003 CPI–U minus 2 percent. If, in this scenario, the CPI–U for FY 2003 is 1.024, Hospital A would update its PRA in FY 2003 by 1.004 (the CPI–U minus 2 percentage points). However, if the CPI–U factor for FY 2003 is 1.01 and subtracting 2 percentage points of 1.01 yields 0.99, the PRA for FY 2003 would not be updated, and would remain $100,001.

We note that, while the language in section 1886(h)(2)(D)(iv)(I) and in section 1886(h)(2)(D)(iv)(II) of the Act (the sections that describe the adjustments to PRAs for hospitals that exceed 140 percent of the locality-adjusted national average PRA) is very similar, the language does differ. Section 1886(h)(2)(D)(iv)(I) of the Act states that for a cost reporting period beginning during FY 2000 or FY 2001, "if the approved FTE resident amount for a hospital for the preceding cost reporting period exceeds 140 percent of the locality-adjusted national average per resident amount * * * *for that hospital and period* * * *", the approved FTE resident amount for the period involved shall be the same as the approved FTE resident amount for such preceding cost reporting period." (Emphasis added.) Section 1886(h)(2)(D)(iv)(II) of the Act states that for a cost reporting period beginning during FY 2003, FY 2004, or FY 2005, "if the approved FTE resident amount for a hospital for the preceding cost reporting period exceeds 140 percent of the locality-adjusted national average per resident amount * * * *for that hospital and preceding period*, the approved FTE resident amount for the period involved shall be updated * * . *." (Emphasis added.) Accordingly, for FYs 2001 and 2002, a hospital's PRA from the previous cost reporting period is compared to the locality-adjusted national average PRA of the current cost reporting period. For FY 2003, FY 2004, or FY 2005, a hospital's PRA from the previous cost reporting period is compared to the locality-adjusted national average PRA from the previous cost reporting period.

d. General Rule for Hospitals That Exceed the Ceiling

For cost reporting periods beginning in FY 2001 through FY 2005, if a hospital's PRA exceeds 140 percent of the locality-adjusted national average PRA and it is adjusted under any of the above criteria, the current year PRA cannot be reduced below 140 percent of the locality-adjusted national average PRA.

For example, to determine the PRA of Hospital A, in FY 2003, Hospital A had a FY 2002 PRA of $100,001 and the FY 2002 locality-adjusted national average PRA ceiling is $100,000. For FY 2003, applying an update of the CPI–U factor minus 2 percentage points (for example, 1.024 − .02 = 1.004 would yield an updated PRA of $100,401) while the locality-adjusted national average PRA (before calculation of the ceiling) is updated for FY 2003 with the full CPI–U factor (1.024) so that the ceiling of $100,000 is now increased to $102,400 (that is, $100,000 × 1.024 = $102,400). Therefore, applying the adjustment would result in a PRA of $100,401, which is under the ceiling of $102,400 for FY 2003. In this situation, for purposes of the FY 2003 cost report, Hospital A's PRA equals $102,400.

We note that if the hospital's PRA *does not* exceed 140 percent of the locality-adjusted national average PRA, the PRA is updated by the CPI–U for the respective fiscal year. If a hospital's PRA is updated by the CPI–U because it is less than 140 percent of the locality-adjusted national average PRA for a respective fiscal year, and once updated, the PRA exceeds the 140 percent ceiling for the respective fiscal year, the updated PRA would still be used to calculate the hospital's direct GME payments. Whether a hospital's PRA exceeds the ceiling is determined *before* the application of the update factors; if a hospital's PRA exceeds the ceiling only because of the application of the update factors, the hospital's PRA would retain the CPI–U factors.

For example, if, in FY 2001, the locality-adjusted national average PRA ceiling for Area Y is $140,000, and if, in this area, Hospital B has a FY 2000 PRA of $139,000, then for FY 2001, Hospital B's PRA is updated for inflation for FY 2001 because the PRA is below the ceiling. However, once the update factors are applied, Hospital B's PRA is now $142,000 (that is, above the $140,000 ceiling). In this scenario,

Hospital B's inflated PRA would be used to calculate its direct GME payments because Hospital B has only exceeded the ceiling *after* the application of the inflation factors.

• *PRAs greater than or equal to the floor and less than or equal to the ceiling.* For cost reporting periods beginning in FY 2001 through FY 2005, if a hospital's PRA is greater than or equal to 70 percent and less than or equal to 140 percent of the locality-adjusted national average PRA, the hospital's PRA is updated using the existing methodology specified in § 413.86(e)(3)(i).

For cost reporting periods beginning in FY 2006 and thereafter, a hospital's PRA for its preceding cost reporting period would be updated using the existing methodology specified in § 413.86(e)(3)(i).

We are proposing to redesignate the existing § 413.86(e)(4) as § 413.86(e)(5) and add the rules implementing section 1886(h)(2) of the Act, as amended by section 311 of Public Law 106–113, in the vacated § 413.86(e)(4). Because we are proposing to apply the methodology for updating the PRA for inflation that is described in existing § 413.86(e)(3), we also are proposing to amend § 413.86(e)(3) to make those rules applicable to the cost reporting periods (FY 2001 through FY 2005) specified in the proposed § 413.86(e)(4), and in subsequent cost reporting periods.

In addition, we are proposing to make a conforming change by amending proposed redesignated § 413.86(e)(5) to account for situations in which hospitals do not have a 1984 base period and establish a PRA in a cost reporting period beginning on or after October 1, 2000. We believe there are two factors to consider when a new teaching hospital establishes its PRA under proposed redesignated § 413.86(e)(5). First, for example, when calculating the weighted mean value of PRAs of hospitals located in the same geographic area or the weighted mean of the PRAs in the hospital's census region (as specified in § 412.62(f)(1)(i)), the hospitals' PRAs used to calculate the weighted mean values are subject to the provisions of proposed § 413.86(e)(4), the national average PRA methodology. Second, the resulting PRA established under proposed redesignated § 413.86(e)(5) also would be subject to the national average PRA methodology specified in proposed § 413.86(e)(4).

We also are making a clarifying amendment to the proposed redesignated § 413.86(e)(5)(i)(B) to account for an oversight in the regulations text when we amended our regulations on August 29, 1997 (62 FR 46004). In the preamble of the August 29, 1997 final rule, in setting forth our policy on the determination of per resident amounts for hospitals that did not have residents in the 1984 GME base period, we stated that we would use a "weighted" average of the per resident amounts for hospitals located in the same geographic area. However, we inadvertently did not include a specific reference to "weighted" in the language of the regulation text. Therefore, we are proposing to specify that the "weighted mean value" of per resident amounts of hospitals located in the same geographic wage area is used for determining the base period for certain hospitals for cost reporting periods beginning in the same fiscal years.

*H. Outliers: Miscellaneous Change*

Under the provisions of section 1886(d)(5)(A)(i) of the Act, the Secretary does not pay for day outliers for discharges from hospitals paid under the prospective payment systems that occur after September 30, 1997. We are proposing to make a conforming change to § 412.2(a) by deleting the reference to an additional payment for both inpatient operating and inpatient capital-related costs for cases that have an atypically long length of stay.

## V. The Prospective Payment System for Capital-Related Costs: The Last Year of the Transition Period

Since FY 2001 is the last year of the 10-year transition period established to phase in the prospective payment system for hospital capital-related costs, for the readers' benefit, we are providing a summary of the statutory basis for the system, the development and evolution of the system, the methodology used to determine capital-related payments to hospitals, and the policy for providing exceptions payments during the transition period.

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services "in accordance with a prospective payment system established by the Secretary." Under the statute, the Secretary has broad authority in establishing and implementing the capital prospective payment system. We initially implemented the capital prospective payment system in the August 30, 1991 final rule (56 FR 43409), in which we established a 10-year transition period to change the payment methodology for Medicare inpatient capital-related costs from a reasonable cost-based methodology to a prospective methodology (based fully on the Federal rate).

The 10-year transition period established to phase in the prospective payment system for capital-related costs is effective for discharges occurring on or after October 1, 1991 (FY 1992) through discharges occurring on or before September 30, 2001. For FY 2001, hospitals paid under the fully prospective transition period methodology will be paid 100 percent of the Federal rate and zero percent of their hospital-specific rate, while hospitals paid under the hold-harmless transition period methodology will be paid 85 percent of their allowable old capital costs (100 percent for sole community hospitals) plus a payment for new capital costs based on the Federal rate. Fiscal year 2001 is the final year of the capital transition period and, therefore, the last fiscal year for which a portion of a hold-harmless hospital's capital costs per discharge will be paid on a cost basis (except for new hospitals). Also, since fully prospective hospitals will be paid based on 100 percent of the Federal rate and zero percent of their hospital-specific rate, we will not determine a hospital-specific rate update for FY 2001 in section IV of the Addendum of this proposed rule. Beginning with discharges occurring on or after October 1, 2001 (FY 2002), payment for capital-related costs will be determined based solely on the capital standard Federal rate. Hospitals that were defined as "Anew" for the purposes of capital payments during the transition period (§ 412.30(b)) will continue to be paid according to the applicable payment methodology outlined in § 412.324.

Generally, during the transition period, inpatient capital-related costs are paid on a per discharge basis, and the amount of payment depends on the relationship between the hospital-specific rate and the Federal rate during the hospital's base year. A hospital with a base year hospital-specific rate lower than the Federal rate is paid under the fully prospective payment methodology during the transition period. This method is based on a dynamic blend percentage of the hospital's hospital-specific rate and the applicable Federal rate for each year during the transition period. A hospital with a base period hospital-specific rate greater than the Federal rate is paid under the hold-harmless payment methodology during the transition period. A hospital paid under the hold-harmless payment methodology receives the higher of (1) a blended payment of 85 percent of reasonable cost for old capital plus an amount for new capital based on a portion of the Federal rate or (2) a

payment based on 100 percent of the adjusted Federal rate. The amount recognized as old capital is generally limited to the allowable Medicare capital-related costs that were in use for patient care as of December 31, 1990. Under limited circumstances, capital-related costs for assets obligated as of December 31, 1990, but put in use for patient care after December 31, 1990, also may be recognized as old capital if certain conditions are met. These costs are known as obligated capital costs. New capital costs are generally defined as allowable Medicare capital-related costs for assets put in use for patient care after December 31, 1990. Beginning in FY 2001, at the conclusion of the transition period for the capital prospective payment system, capital payments will be based solely on the Federal rate for the vast majority of hospitals.

During the transition period, new hospitals are exempt from the prospective payment system for capital-related costs for their first 2 years of operation and are paid 85 percent of their reasonable cost during that period. The hospital's first 12-month cost reporting period (or combination of cost reporting periods covering at least 12 months) beginning at least 1 year after the hospital accepts its first patient serves as the hospital's base period. Those base year costs qualify as old capital and are used to establish its hospital-specific rate used to determine its payment methodology under the capital prospective payment system. Effective with the third year of operation, the hospital is paid under either the fully prospective methodology or the hold-harmless methodology. If the fully prospective methodology is applicable, the hospital is paid using the appropriate transition blend of its hospital-specific rate and the Federal rate for that fiscal year until the conclusion of the transition period, at which time the hospital will be paid based on 100 percent of the Federal rate. If the hold-harmless methodology is applicable, the hospital will receive hold-harmless payment for assets in use during the base period for 8 years, which may extend beyond the transition period.

The basic methodology for determining capital prospective payments based on the Federal rate is set forth in § 412.312. For the purpose of calculating payments for each discharge, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) × (DRG Weight) × (GAF) × (Large Urban Add-on, if applicable) x (COLA Adjustment for Hospitals Located in Alaska and Hawaii) × (1 + DSH Adjustment Factor + IME Adjustment Factor).

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments.

During the capital prospective payment system transition period, a hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs for qualifying classes of hospitals. For up to 10 years after the conclusion of the transition period, a hospital may also receive an additional payment under a special exceptions process if certain qualifying criteria are met and its total inpatient capital-related payments are less than the 70 percent minimum percentage of its allowable Medicare inpatient capital-related costs.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1997, under amendments to the Act enacted by section 4406 of Public Law 105–33, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs, we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital-related costs.

In the August 30, 1991 final rule, we established a capital exceptions policy, which provides for exceptions payments during the transition period (§ 412.348). Section 412.348 provides that, during the transition period, a hospital may receive additional payment under an exceptions process when its regular payments are less than a minimum percentage, established by class of hospital, of the hospital's reasonable capital-related costs. The amount of the exceptions payment is the difference between the hospital's minimum payment level and the payments the hospital would receive under the capital prospective payment system in the absence of an exceptions payment. The comparison is made on a cumulative basis for all cost reporting periods during which the hospital is subject to the capital prospective payment transition rules. The minimum payment percentages for regular capital exceptions payments by class of hospitals for FY 2001 are:

- For sole community hospitals, 90 percent;
- For urban hospitals with at least 100 beds that have a disproportionate share patient percentage of at least 20.2 percent or that received more than 30 percent of their net inpatient care revenues from State or local governments for indigent care, 80 percent;
- For all other hospitals, 70 percent of the hospital's reasonable inpatient capital-related costs.

The provision for regular exceptions payments will expire at the end of the transition period. Payments will no longer be adjusted to reflect regular exceptions payments at § 412.348. Accordingly, for cost reporting periods beginning on or after October 1, 2001, hospitals will receive only the per discharge payment based on the Federal rate for capital costs (plus any applicable DSH or IME and outlier adjustments) unless a hospital qualifies for a special exceptions payment under § 412.348(g).

Under the special exceptions provision at § 412.348(g), an additional payment may be made for up to 10 years beyond the end of the capital prospective payment system transition period for eligible hospitals. The capital special exceptions process is budget neutral; that is, even after the end of the capital prospective payment system transition, we will continue to make an adjustment to the capital Federal rate in a budget neutral manner to pay for exceptions, as long as an exceptions policy is in force. Currently, the limited

special exceptions policy will allow for exceptions payments for 10 years beyond the conclusion of the 10-year capital transition period or through September 30, 2011.

## VI. Proposed Changes for Hospitals and Hospital Units Excluded From the Prospective Payment System

### *A. Limits on and Adjustments to the Target Amounts for Excluded Hospitals and Units (§ 413.40(b)(4) and (g))*

1. Updated Caps

Section 1886(b)(3) of the Act (as amended by section 4414 of Public Law 105–33) establishes caps on the target amounts for certain existing excluded hospitals and units for cost reporting periods beginning on or after October 1, 1997 through September 30, 2002. The caps on the target amounts apply to the following three classes of excluded hospitals: Psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

A discussion of how the caps on the target amounts were calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46018); the May 12, 1998 final rule (63 FR 26344); the July 31, 1998 final rule (63 FR 41000), and the July 30, 1999 final rule (64 FR 41529). For purposes of calculating the caps on existing facilities, the statute required us to calculate the national 75th percentile of the target amounts for each class of hospital (psychiatric, rehabilitation, or long-term care) for cost reporting periods ending during FY 1996. Under section 1886(b)(3)(H)(iii) of the Act, the resulting amounts are updated by the market basket percentage to the applicable fiscal year. However, section 121 of Public Law 106–113 amended section 1886(b)(3)(H) of the Act to provide for an appropriate wage adjustment to the caps on the target amounts for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals, effective for cost reporting periods beginning on or after October 1, 1999, through September 30, 2002. We intend to publish an interim final rule with comment period implementing this provision for cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000. This proposed rule addresses the wage adjustment to the caps for cost reporting periods beginning on or after October 1, 2000.

For purposes of calculating the caps, section 1886(b)(3)(H)(ii) of the Act requires the Secretary to first "estimate the 75th percentile of the target amounts for such hospitals within such class for cost reporting periods ending during fiscal year 1996." Furthermore, section 1886(b)(3)(H)(iii), as added by Public Law 106–113, requires the Secretary to provide for "an appropriate adjustment to the labor-related portion of the amount determined under such subparagraph to take into account the differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital."

Consistent with the broad authority conferred on the Secretary by section 1886(b)(3)(H)(iii) of the Act to determine the appropriate wage adjustment, we propose to account for differences in wage-related costs by adjusting the caps to account for the following:

First, we would adjust each hospital's target amount to account for area differences in wage-related costs. For each class of hospitals (psychiatric, rehabilitation, and long-term care), we would determine the labor-related portion of each hospital's FY 1996 target amount by multiplying its target amount by the actuarial estimate of the labor-related portion of costs (or 0.71553). Similarly, we would determine the nonlabor-related portion of each hospital's FY 1996 target amount by multiplying its target amount by the actuarial estimate of the nonlabor-related portion of costs (or 0.28447).

Next, we would account for wage differences among hospitals within each class by dividing the labor-related portion of each hospital's target amount by the hospital's FY 1998 hospital wage index under the hospital inpatient prospective payment system (see § 412.63), as shown in Tables 4A and 4B of the August 29, 1997 final rule (62 FR 46070). Within each class, each hospital's wage-adjusted target amount would be calculated by adding the wage-adjusted labor-related portion of its target amount and the nonlabor-related portion of its target amount. Then, the wage-adjusted target amounts for hospitals within each class would be arrayed in order to determine the national 75th percentile caps on the target amounts for each class.

This adjustment methodology for the national 75th percentile of the target amounts is identical to the methodology we utilized for the wage index adjustment described in the August 29, 1997 final rule (62 FR 46020) to calculate the wage-adjusted 110 percent of the national median target amounts for new excluded hospitals and units. Again, we recognize that wages may differ for prospective payment hospitals and excluded hospitals, but we believe that the wage data reflect area differences in wage-related costs. Moreover, in light of the short timeframe for implementing this provision, we would use the wage data for acute hospitals since they are the most feasible data source.

In the July 30, 1999 final rule (64 FR 41529), we established the FY 2000 caps on the target amounts as follows:

- Psychiatric hospitals and units: $11,110.
- Rehabilitation hospitals and units: $20,129.
- Long-term care hospitals: $39,712.

Therefore, based on these previously calculated caps on the target amounts and consistent with the broad authority conferred on the Secretary by section 1886(b)(3)(H)(iii) of the Act to determine the appropriate wage adjustment to the caps, we have determined the labor-related and nonlabor-related portions of the proposed caps on the target amounts for FY 2001 using the methodology outlined above.

| Class of excluded hospital or unit | Labor-related share | Nonlabor-related share |
|---|---|---|
| Psychiatric ..... | $8,106 | $3,223 |
| Rehabilitation .... | 15,108 | 6,007 |
| Long-Term Care | 29,312 | 11,654 |

These labor-related and nonlabor-related portions of the proposed caps on the target amounts for FY 2001 are based on the current estimate of the market basket increase for excluded hospitals and units for FY 2001 of 3.1 percent.

In the interim final rule with comment period that we plan to publish, we will revise §§ 413.40(c)(4)(i) and (c)(4)(ii) to incorporate the changes in the formula used to determine the limitation on the target amounts for excluded hospitals and units, as provided for by section 121 of Public Law 106–113.

Finally, to determine payments described in § 413.40(c), the cap on the hospital's target amount per discharge is determined by adding the hospital's nonlabor-related portion of the national 75th percentile cap to its wage-adjusted, labor-related portion of the national 75th percentile cap. A hospital's wage-adjusted, labor-related portion of the target amount is calculated by multiplying the labor-related portion of the national 75th percentile cap for the hospital's class by the hospital's applicable wage index. For FY 2001, a hospital's applicable wage index is the wage index under the hospital inpatient prospective payment system (see § 412.63), for cost reporting periods beginning on or after October 1, 2000 and ending on or before September 30,

2001 as shown in Tables 4A and 4B of this proposed rule. A hospital's applicable wage index corresponds to the area in which the hospital or unit is physically located (MSA or rural area) and is not subject to prospective payment system hospital reclassification under section 1886(d)(10) of the Act.

2. Updated Caps for New Excluded Hospitals and Units (§ 413.40(f))

Section 1886(b)(7) of the Act establishes a payment methodology for new psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals. Under the statutory methodology, for a hospital that is within a class of hospitals specified in the statute and that first receives payments as a hospital or unit excluded from the prospective payment system on or after October 1, 1997, the amount of payment will be determined as follows: For the first two 12-month cost reporting periods, the amount of payment is the lesser of (1) the operating costs per case; or (2) 110 percent of the national median of target amounts for the same class of hospitals for cost reporting periods ending during FY 1996, updated to the first cost reporting period in which the hospital receives payments and adjusted for differences in area wage levels.

The proposed amounts included in the following table reflect the updated 110 percent of the wage neutral national median target amounts for each class of excluded hospitals and units for cost reporting periods beginning during FY 2001. These figures are updated to reflect the projected market basket increase of 3.1 percent. For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

| Class of excluded hospital or unit | Labor-related share | Nonlabor-related share |
|---|---|---|
| Psychiatric ..... | $6,592 | $2,623 |
| Rehabilitation .... | 12,964 | 5,154 |
| Long-Term Care | 16,708 | 6,643 |

3. Development of Prospective Payment System for Inpatient Rehabilitation Hospitals and Units

Section 4421 of Public Law 105–33 added section 1886(j) to the Act. Section 1886(j) of the Act mandates the phase-in of a case-mix adjusted prospective payment system for inpatient rehabilitation services (freestanding hospitals and units) for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2002. The prospective payment system will be fully implemented for cost reporting periods beginning on or after October 1, 2002. Section 1886(j) was amended by section 125 of Public Law 106–113 to require the Secretary to use the discharge as the payment unit under the prospective payment system for inpatient rehabilitation services and to establish classes of patient discharges by functional-related groups.

We will issue a separate notice of proposed rulemaking in the **Federal Register** on the prospective payment system for inpatient rehabilitation facilities. That document will discuss the requirements in section 1886(j)(1)(A)(i) of the Act for a transition phase covering the first two cost reporting periods under the prospective payment system. During this transition phase, inpatient rehabilitation facilities will receive a payment rate comprised of a blend of the facility specific rate (the TEFRA percentage) based on the amount that would have been paid under Part A with respect to these costs if the prospective payment system would not be implemented and the inpatient rehabilitation facility prospective payment rate (prospective payment percentage). As set forth in sections 1886(j)(1)(C)(i) and (ii) of the Act, the TEFRA percentage for a cost reporting period beginning on or after October 1, 2000, and before October 1, 2001, is 66⅔ percent; the prospective payment percentage is 33⅓ percent. For cost reporting periods beginning on or after October 1, 2001 and before October 1, 2002, the TEFRA percentage is 33⅓ percent and the prospective payment percentage is 66⅔ percent.

As provided in section 1886(j)(3)(A) of the Act, the prospective payment rates will be based on the average inpatient operating and capital costs of rehabilitation facilities and units. Payments will be adjusted for case-mix using patient classification groups, area wages, inflation, outlier status and any other factors the Secretary determines necessary. We will propose to set prospective payment amounts in effect during FY 2001 so that total payments under the system are projected to equal 98 percent of the amount of payments that would have been made under the current payment system. Outlier payments in a fiscal year may not be projected or estimated to exceed 5 percent of the total payments based on the rates for that fiscal year.

4. Continuous Improvement Bonus Payment

Under § 413.40(d)(4), for cost reporting periods beginning on or after October 1, 1997, an "eligible" hospital may receive continuous improvement bonus payments in addition to its payment for inpatient operating costs plus a percentage of the hospital's rate-of-increase ceiling (as specified in § 413.40(d)(2)). An eligible hospital is a hospital that has been a provider excluded from the prospective payment system for at least three full cost reporting periods prior to the applicable period and the hospital's operating costs per discharge for the applicable period are below the lowest of its target amount, trended costs, or expected costs for the applicable period. Prior to enactment of Public Law 106–113, the amount of the continuous improvement bonus payment was equal to the lesser of—

(a) 50 percent of the amount by which operating costs were less than the expected costs for the period; or

(b) 1 percent of the ceiling.

Section 122 of Public Law 106–113 amended section 1886(b)(2) of the Act to provide, for cost reporting periods beginning on or after October 1, 2000, and before September 30, 2001, for an increase in the continuous improvement bonus payment for long-term care and psychiatric hospitals and units. Under section 1886(b)(2) of the Act, as amended, a hospital that is within one of these two classes of hospitals (psychiatric hospitals or units and long-term-care hospitals) will receive the lesser of 50 percent of the amount by which the operating costs are less than the expected costs for the period, or the increased percentages mandated by statute as follows:

(a) For a cost reporting period beginning on or after October 1, 2000 and before September 30, 2001, 1.5 percent of the ceiling; and

(b) For a cost reporting period beginning on or after October 1, 2001, and before September 30, 2002, 2 percent of the ceiling.

We are proposing to revise § 413.40(d)(4) to incorporate this provision of the statute.

*B. Responsibility for Care of Patients in Hospitals-Within-Hospitals (§ 413.40(a)(3))*

Effective October 1, 1999, for hospitals-within-hospitals, we implemented a policy that allows for a 5-percent threshold for cases in which a patient discharged from an excluded hospital-within-a-hospital and admitted to the host hospital was subsequently

readmitted to the excluded hospital-within-a-hospital. With respect to these cases, if the excluded hospital exceeds the 5-percent threshold, we do not include any previous discharges to the prospective payment hospital in calculating the excluded hospital's cost per discharge. That is, the entire stay is considered one Medicare "discharge" for purposes of payments to the excluded hospital. The effect of this rule, as explained more fully in the May 7, 1999 proposed rule (64 FR 24716) and in the July 30, 1999 final rule (64 FR 41490), is to prevent inappropriate Medicare payment to hospitals having a large number of such stays.

In the existing regulations at § 413.40(a)(3), we state that the 5-percent threshold is determined based on the total number of discharges from the hospital-within-a-hospital. We have received questions as to whether, in determining whether the threshold is met, we consider Medicare patients only or all patients (Medicare and non-Medicare). To avoid any further misunderstanding, we are clarifying the definition of "ceiling" in § 413.40(a)(3) by specifying that the 5-percent threshold is based on the *Medicare* inpatients discharged from the hospital-within-a-hospital in a particular cost reporting period, not on total Medicare and non-Medicare inpatient discharges.

*C. Critical Access Hospitals (CAHs)*

1. Election of Payment Method (§ 413.70)

Section 1834(g) of the Act, as in effect before enactment of Public Law 106–113, provided that the amount of payment for outpatient CAH services is the reasonable costs of the CAH in providing such services. However, the reasonable costs of the CAH's services to outpatients included only the CAH's costs of providing facility services, and did not include any payment for professional services. Physicians and other practitioners who furnished professional services to CAH outpatients billed the Part B carrier for these services and were paid under the physician fee schedule in accordance with the provisions of section 1848 of the Act.

Section 403(d) of Public Law 106–113 amended section 1834(g) of the Act to permit the CAH to elect to be paid for its outpatient services under another option. CAHs making this election would be paid amounts equal to the sum of the following, less the amount that the hospital may charge as described in section 1866(a)(2)(A) of the Act (that is, Part A and Part B deductibles and coinsurance):

(1) For facility services, not including any services for which payment may be made as outpatient professional services, the reasonable costs of the CAH in providing the services; and

(2) For professional services otherwise included within outpatient CAH services, the amounts that would otherwise be paid under Medicare if the services were not included in outpatient CAH services.

Section 403(d) of Public Law 106–113 added section 1834(g)(3) to the Act to further specify that payment amounts under this election are be determined without regard to the amount of the customary or other charge.

The amendment made by section 403(d) is effective for cost reporting periods beginning on or after October 1, 2000.

We are proposing to revise § 413.70 to incorporate the provisions of section 403(d) of Public Law 106–113. The existing § 413.70 specifies a single set of reasonable cost basis payment rules applicable to both inpatient and outpatient services furnished by CAHs. As section 403(d) of Public Law 106–113 provides that CAHs may elect to be paid on a reasonable cost basis for facility services and on a fee schedule basis for professional services, we are proposing to revise the section to allow for separate payment rules for CAH inpatient and outpatient services.

We are proposing to place the provisions of existing § 413.70(a) and (b) that relate to payment on a reasonable cost basis for inpatient services furnished by a CAH under proposed § 413.70(a). Proposed § 413.70(a)(2) would also state that payment to a CAH for inpatient services does not include professional services to CAH inpatients and is subject to the Part A hospital deductible and coinsurance determined under 42 CFR part 409, Subpart G.

We are proposing to include under § 413.70(b) the payment rules for outpatient services furnished by CAHs, including the option for CAHs to elect to be paid on the basis of reasonable costs for facility services and on the basis of the physician fee schedule for professional services. Under proposed § 413.70(b)(2), we would retain the existing provision that unless the CAH elects the option provided for under section 403 of Public Law 106–113, payment for outpatient CAH services is on a reasonable cost basis, as determined in accordance with section 1861(v)(1)(A) of the Act and the applicable principles of cost reimbursement in Parts 413 and 415 (except for certain payment principles that do not apply; that is, the lesser of costs or charges, RCE limits, any type of reduction to operating or capital costs under § 413.124 or § 413.130(j)(7), and blended payment amounts for ambulatory surgical center services, radiology services, and other diagnostic services.

Under proposed § 413.70(b)(3), we would specify that any CAH that elects to be paid under the optional method must make an annual request in writing, and deliver the request for the election to the fiscal intermediary at least 60 days before the start of the affected cost reporting period. In addition, proposed § 413.70(b)(3) states that if a CAH elects payment under this method, payment to the CAH for each outpatient visit will be the sum of the following two amounts:

- For facility services, not including any outpatient professional services for which payment may be made on a fee schedule basis, the amount would be the reasonable costs of the services as determined in accordance with applicable principles of cost reimbursement in 42 CFR Parts 413 and 415, except for certain payment principles that would not apply as specified above; and
- For professional services, otherwise payable to the physician or other practitioner on a fee schedule basis, the amounts would be those amounts that would otherwise be paid for the services if the CAH had not elected payment under this method.

We would also specify that payment to a CAH for outpatient services would be subject to the Part B deductible and coinsurance amounts, as determined under §§ 410.152, 410.160, and 410.161. Final payment to the CAH for its facility services to inpatients and outpatients furnished during a cost reporting would be based on a cost report for that period, as required under § 413.20(b).

2. Condition of Participation: Organ, Tissue, and Eye Procurement (§ 485.643)

Sections 1820(c)(2)(B) and 1861(mm) of the Act set forth the criteria for designating a CAH. Under this authority, the Secretary has established in regulations the minimum requirements a CAH must meet to participate in Medicare (42 CFR part 485, Subpart F).

Section 1905(a) of the Act provides that Medicaid payments may be made for any other medical care, and any other type of remedial care recognized under State law, specified by the Secretary. The Secretary has specified CAH services as Medicaid services in regulations, specifically, the regulations at 42 CFR 440.170(g)(1)(i), and defined CAH services under Medicaid as those services furnished by a provider

meeting the Medicare conditions of participation (CoP).

Section 1138 of the Act provides that a CAH participating in Medicare must establish written protocols to identify potential organ donors that: (1) Assures that potential donors and their families are made aware of the full range of options for organ or tissue donation as well as their rights to decline donation; (2) encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of those families; and (3) require that an organ procurement agency designated by the Secretary be notified of potential organ donors.

On June 22, 1998, as part of the Medicare hospital conditions of participation under Part 482, subpart C, we added to the regulations at § 482.45, a condition that specifically addressed organ, tissue, and eye procurement. However, Part 482 does not apply to CAHs, as CAHs are a distinct type of provider with separate CoP under Part 485. Therefore, we are proposing to add a CoP for organ, tissue, and eye procurement for CAHs at a new § 485.643 that generally parallels the CoP at § 482.45 for all Medicare hospitals with respect to the statutory requirement in section 1138 of the Act concerning organ donation. CAHs are not full service hospitals and therefore are not equipped to perform organ transplantations. Therefore, we are not including the standard applicable to Medicare hospitals that CAHs must be a member of the Organ Procurement and Transplantation Network (OPTN), abide by its rules and provide organ transplant-related data to the OPTN, the Scientific Registry, organ procurement agencies, or directly to the Department on request of the Secretary.

The proposed CoP for CAHs includes several requirements designed to increase organ donation. One of these requirements is that a CAH must have an agreement with the Organ Procurement Organization (OPO) designated by the Secretary, under which the CAH will contact the OPO in a timely manner about individuals who die or whose death is imminent. The OPO will then determine the individual's medical suitability for donation. In addition, the CAH must have an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage, and distribution of tissues and eyes, as long as the agreement does not interfere with organ donation. The proposed CoP would require a CAH to ensure, in collaboration with the OPO with which it has an agreement, that the family of every potential donor is informed of its option to either donate or not donate organs, tissues, or eyes. The CAH may choose to have OPO staff perform this function, have CAH and OPO staff jointly perform this function, or rely exclusively on CAH staff. Research indicates that consent to organ donation is highest when the formal request is made by OPO staff or by OPO staff and hospital staff together. While we require collaboration, we also recognize that CAH staff may wish to perform this function and may do so when properly trained. Moreover, the CoP would require the CAH to ensure that CAH employees who initiate a request for donation to the family of a potential donor have been trained as designated requestors.

Finally, the CoP would require the CAH to work with the OPO and at least one tissue bank and one eye bank in educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors while necessary testing and placement of organs and tissues is underway.

We are sensitive to the possible burden this proposed CoP may place on CAHs. Therefore, we are particularly interested in comments and information concerning the following requirements: (1) Developing written protocols for donations; (2) developing agreements with OPOs, tissue banks, and eye banks; (3) referring all deaths to the OPO; (4) working cooperatively with the designated OPO, tissue bank, and eye bank in educating staff on donation issues, reviewing death records, and maintaining potential donors. We note that the proposed requirement allow some degree of flexibility for the CAH. For example, the CAH would have the option of using an OPO-approved education program to train its own employees as routine requestors or deferring requesting services to the OPO, the tissue bank, or the eye bank to provide requestors.

## VII. MedPAC Recommendations

We have reviewed the March 1, 2000 report submitted by MedPAC to Congress and have given it careful consideration in conjunction with the proposals set forth in this document. MedPAC's recommendations and our responses are set forth below.

We note that MedPAC's March 1, 2000 report did not contain a recommendation concerning the update factors for inpatient hospital operating costs under the prospective payment system or for hospitals and hospital units excluded from the prospective payment system. However, at its April 13, 2000 public meeting, MedPAC announced that it was recommending a combined update of between 3.5 percent and 4.0 percent for operating and capital-related payments for FY 2001. This recommendation is higher than the current law amount as prescribed by Public Law 105–33 and proposed in this rule. Because of the timing of MedPAC's announcement in relation to the publication of this proposed rule, we intend to respond to MedPAC's recommendation in the FY 2001 final rule to be issued in August 2000 when we will have had the opportunity to review the data analyses that substantiate MedPAC's recommendation.

### *A. Combined Operating and Capital Prospective Payment Systems (Recommendation 3J)*

*Recommendation:* The Congress should combine prospective payment system operating and capital payment rates to create a single prospective rate for hospital inpatient care. This change would require a single set of payment adjustments—in particular, for indirect medical education and disproportionate share hospital payments—and a single payment update.

*Response:* We responded to a similar comment in the July 30, 1999 final rule (64 FR 41552), the July 31, 1998 final rule (63 FR 41013), and the September 1, 1995 final rule (60 FR 45816). In those rules, we stated that our long-term goal was to develop a single update framework for operating and capital prospective payments and that we would begin development of a unified framework. However, we have not yet developed such a single framework as the actual operating system update has been determined by Congress through FY 2002. In the meantime, we intend to maintain as much consistency as possible with the current operating framework in order to facilitate the eventual development of a unified framework. We maintain our goal of combining the update frameworks at the end of the 10-year capital transition period (the end of FY 2001) and may examine combining the payment systems post-transition. Because of the similarity of the update frameworks, we believe that they could be combined with little difficulty.

In the discussion of its recommendation, MedPAC notes that it "is examining broad reforms to the prospective payment system, including DRG refinement and modifications of the graduate medical education payment and the IME and DSH adjustments. The Commission believes that a combined hospital prospective payment rate should be established

whether or not broader reforms are undertaken. However, if the Congress acts on any or all of the Commission's recommendations, it should consider combining operating and capital payments as part of a larger package."

We agree that ultimately the operating and capital prospective payment systems should be combined into a single system. However, we believe that, because of MedPAC's ongoing analysis and the Administration's pending DSH report to Congress, any such unification should occur within the context of other system refinements.

*B. Continuing Postacute Transfer Payment Policy (Recommendation 3K)*

*Recommendation:* The Commission recommends continuing the existing policy of adjusting per case payments through an expanded transfer policy when a short length of stay results from a portion of the patient's care being provided in another setting.

*Response:* As noted in section IV.A. of this preamble, we have undertaken (through a contract with HER) an analysis of the impact on hospitals and hospital payments of the postacute transfer provision. That analysis (based on preliminary data covering only approximately 6 months of discharge data) showed a minimal impact on the rate of short-stay postacute transfers after implementation of the policy. However, average profit margins as measured by HER declined from $2,454 prior to implementation of the policy to $1,180 after implementation. We believe these preliminary findings demonstrate that the postacute transfer provision has had only marginal impact on existing practice patterns while more closely aligning the payments to hospitals for these cases with the costs incurred. Therefore, we agree with MedPAC's recommendation that the policy should be continued.

*C. Disproportionate Share Hospitals (DSH) (Recommendations 3L and 3M)*

*Recommendation:* To address longstanding problems and current legal and regulatory developments, Congress should reform the disproportionate share adjustment to: include the costs of all poor patients in calculating low-income shares used to distribute disproportionate share payments, and use the same formula to distribute payments to all hospitals covered by prospective payment.

*Response:* As we noted in section IV.E. of this preamble, Public Law 106–113 directed the Secretary to require subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Act) to submit data on costs incurred for providing inpatient and outpatient hospital services for which the hospital is not compensated, including non-Medicare bad debt, charity care, and charges for Medicaid and indigent care. These data must be reported on the hospital's cost reports for cost reporting periods beginning on or after October 1, 2001, and will provide information that will enable MedPAC and us to evaluate potential refinements to the DSH formula to address issues referred to by MedPAC.

Medicare fiscal intermediaries will audit these data to ensure their accuracy and consistency. Our experience with administering the current DSH formula leads us to believe that this auditing function would necessarily be extensive, because the non-Medicare data that would be collected have never before been collected and reviewed by Medicare's fiscal intermediaries. The data would have to be determined to be accurate and usable, and corrected if necessary.

We agree that the current statutory payment formula could be improved, largely because of different threshold levels and different formula parameters applicable to different groups of hospitals. We are in the process of preparing a report to Congress on the Medicare DSH adjustment that includes several options for amending the statutory formula.

*Recommendation:* To provide further protection for the primarily voluntary hospitals with mid-level low-income shares, the minimum value, or threshold, for the low-income share that a hospital must have before payment is made should be set to make 60 percent of hospitals eligible to receive disproportionate share payments.

*Response:* Currently, approximately less than 40 percent of all prospective payment system hospitals receive DSH payments. Therefore, this recommendation would entail significant redistributions of existing DSH payments if implemented in a budget neutral manner. We are particularly concerned about the effect of this recommendation on hospitals receiving substantial DSH payments currently, including major teaching hospitals and public hospitals. The analysis by MedPAC demonstrates that these hospitals would be negatively impacted if more hospitals were made eligible for DSH payments.

## VIII. Other Required Information

*A. Requests for Data From the Public*

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape or cartridge format; however, some files are available on diskette as well as on the Internet at http://www.hcfa.gov/stats/pubfiles.html. Data files are listed below with the cost of each. Anyone wishing to purchase data tapes, cartridges, or diskettes should submit a written request along with a company check or money order (payable to HCFA–PUF) to cover the cost to the following address: Health Care Financing Administration, Public Use Files, Accounting Division, P.O. Box 7520, Baltimore, Maryland 21207–0520, (410) 786–3691. Files on the Internet may be downloaded without charge.

1. Expanded Modified MedPAR-Hospital (National)

The Medicare Provider Analysis and Review (MedPAR) file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in the United States. (The file is a Federal fiscal year file, that is, discharges occurring October 1 through September 30 of the requested year.) The records are stripped of most data elements that would permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the **Federal Register** on December 24, 1984 (49 FR 49941), and amended by the July 2, 1985 notice (50 FR 27361). The national file consists of approximately 11 million records. Under the requirements of these notices, an agreement for use of HCFA Beneficiary Encrypted Files must be signed by the purchaser before release of these data. For all files requiring a signed agreement, please write or call to obtain a blank agreement form before placing an order. Two versions of this file are created each year. They support the following:

- Notice of Proposed Rulemaking (NPRM) published in the **Federal Register**. This file, scheduled to be available by the end of April, is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**. The FY 1999 MedPAR file used for the FY 2001 final rule will be cut off 6 months after the end of the fiscal year (March file) and is scheduled to be available by the end of April.

Media: Tape/Cartridge
File Cost: $3,655.00 per fiscal year

Periods Available: FY 1988 through FY 1999

2. Expanded Modified MedPAR-Hospital (State)

The State MedPAR file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in a particular State. The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the December 24, 1984 **Federal Register** notice, and amended by the July 2, 1985 notice. This file is a subset of the Expanded Modified MedPAR-Hospital (National) as described above. Under the requirements of these notices, an agreement for use of HCFA Beneficiary Encrypted Files must be signed by the purchaser before release of these data. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**. This file, scheduled to be available by the end of April, is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**. The FY 1999 MedPAR file used for the FY 2001 final rule will be cut off 6 months after the end of the fiscal year (March file) and is scheduled to be available by the end of April.

Media: Tape/Cartridge
File Cost: $1,130.00 per State per year
Periods Available: FY 1988 through FY 1999

3. HCFA Wage Data

This file contains the hospital hours and salaries for FY 1997 used to create the proposed FY 2001 prospective payment system wage index. The file will be available by the beginning of February for the NPRM and the beginning of May for the final rule.

| Processing year | Wage data year | PPS fiscal year |
|---|---|---|
| 2000 | 1997 | 2001 |
| 1999 | 1996 | 2000 |
| 1998 | 1995 | 1999 |
| 1997 | 1994 | 1998 |
| 1996 | 1993 | 1997 |
| 1995 | 1992 | 1996 |
| 1994 | 1991 | 1995 |
| 1993 | 1990 | 1994 |
| 1992 | 1989 | 1993 |
| 1991 | 1988 | 1992 |

These files support the following:

- NPRM published in the **Federal Register**.
- Final Rule published in the **Federal Register**.

Media: Diskette/most recent year on the Internet
File Cost: $165.00 per year
Periods Available: FY 2001 PPS Update

4. HCFA Hospital Wages Indices (Formerly: Urban and Rural Wage Index Values Only)

This file contains a history of all wage indices since October 1, 1983.

Media: Diskette/most recent year on the Internet
File Cost: $165.00 per year
Periods Available: FY 2001 PPS Update

5. PPS SSA/FIPS MSA State and County Crosswalk

This file contains a crosswalk of State and county codes used by the Social Security Administration (SSA) and the Federal Information Processing Standards (FIPS), county name, and a historical list of Metropolitan Statistical Area (MSA).

Media: Diskette/Internet
File Cost: $165.00 per year
Periods Available: FY 2001 PPS Update

6. Reclassified Hospitals New Wage Index (Formerly: Reclassified Hospitals by Provider Only)

This file contains a list of hospitals that were reclassified for the purpose of assigning a new wage index. Two versions of these files are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final Rule published in the **Federal Register**.

Media: Diskette/Internet
File Cost: $165.00 per year
Periods Available: FY 2001 PPS Update

7. PPS–IV to PPS–XII Minimum Data Set

The Minimum Data Set contains cost, statistical, financial, and other information from Medicare hospital cost reports. The data set includes only the most current cost report (as submitted, final settled, or reopened) submitted for a Medicare participating hospital by the Medicare fiscal intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

MEDIA: TAPE/CARTRIDGE

| | Periods beginning on or after | and before |
|---|---|---|
| PPS–IV | 10/01/86 | 10/01/87 |
| PPS–V | 10/01/87 | 10/01/88 |
| PPS–VI | 10/01/88 | 10/01/89 |
| PPS–VII | 10/01/89 | 10/01/90 |
| PPS–VIII | 10/01/90 | 10/01/91 |
| PPS–IX | 10/01/91 | 10/01/92 |
| PPS–X | 10/01/92 | 10/01/93 |
| PPS–XI | 10/01/93 | 10/01/94 |
| PPS–XIII | 10/01/94 | 10/01/95 |

(**Note:** The PPS–XIII, PPS–XIV, and PPS–XV Minimum Data Sets are part of the PPS–XIII, PPS–XIV, and PPS–XV Hospital Date Set Files).

File Cost: $770.00 per year

8. PPS–IX to PPS–XII Capital Data Set

The Capital Data Set contains selected data for capital-related costs, interest expense and related information and complete balance sheet data from the Medicare hospital cost report. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare certified hospital by the Medicare fiscal intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

MEDIA: TAPE/CARTRIDGE

| | Periods beginning on or after | and before |
|---|---|---|
| PPS–IX | 10/01/91 | 10/01/92 |
| PPS–X | 10/01/92 | 10/01/93 |
| PPS–XI | 10/01/93 | 10/01/94 |
| PPS–XII | 10/01/94 | 10/01/95 |

(**Note:** The PPS–XIII, PPS–XIV, and PPS–XV Capital Data Sets are part of the PPS–XIII, PPS–XIV, PPS–XV Hospital Data Set files.)

File Cost: $770.00 per year

9. PPS–XIII to PPS–XV Hospital Data Set

The file contains cost, statistical, financial, and other data from the Medicare Hospital Cost Report. The data set includes only the most current cost report (as submitted, final settled, or reopened) submitted for a Medicare-certified hospital by the Medicare fiscal intermediary to HCFA. The data set are updated at the end of each calendar quarter and is available on the last day of the following month.

Media: Diskette/Internet
File Cost: $2,500.00

| | Periods beginning on or after | and before |
|---|---|---|
| PPS–XIII | 10/01/95 | 10/01/96 |
| PPS–XIV | 10/01/96 | 10/01/97 |
| PPS–XV | 10/01/97 | 10/01/98 |

10. Provider-Specific File

This file is a component of the PRICER program used in the fiscal intermediary's system to compute DRG payments for individual bills. The file contains records for all prospective payment system eligible hospitals, including hospitals in waiver States, and data elements used in the prospective payment system recalibration processes and related activities. Beginning with December 1988, the individual records were enlarged to include pass-through per diems and other elements.

Media: Diskette/Internet
File Cost: $265.00
Periods Available: FY 2001 PPS Update

11. HCFA Medicare Case-Mix Index File

This file contains the Medicare case-mix index by provider number as published in each year's update of the Medicare hospital inpatient prospective payment system. The case-mix index is a measure of the costliness of cases treated by a hospital relative to the cost of the national average of all Medicare hospital cases, using DRG weights as a measure of relative costliness of cases. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Diskette/most recent year on Internet
Price: $165.00 per year/per file
Periods Available: FY 1985 through FY 1999

12. DRG Relative Weights (Formerly Table 5 DRG)

This file contains a listing of DRGs, DRG narrative description, relative weights, and geometric and arithmetic mean lengths of stay as published in the **Federal Register**. The hard copy image has been copied to diskette. There are two versions of this file as published in the **Federal Register:**

- NPRM.
- Final rule.

Media: Diskette/Internet
File Cost: $165.00
Periods Available: FY 2001 PPS Update

13. PPS Payment Impact File

This file contains data used to estimate payments under Medicare's hospital inpatient prospective payment systems for operating and capital-related costs. The data are taken from various sources, including the Provider-Specific File, Minimum Data Sets, and prior impact files. The data set is abstracted from an internal file used for the impact analysis of the changes to the prospective payment systems published in the **Federal Register**. This file is available for release 1 month after the proposed and final rules are published in the **Federal Register**.

Media: Diskette/Internet
File Cost: $165.00
Periods Available: FY 2001 PPS Update

14. AOR/BOR Tables

This file contains data used to develop the DRG relative weights. It contains mean, maximum, minimum, standard deviation, and coefficient of variation statistics by DRG for length of stay and standardized charges. The BOR tables are "Before Outliers Removed" and the AOR is "After Outliers Removed." (Outliers refers to statistical outliers, not payment outliers.) Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Diskette/Internet
File Cost: $165.00
Periods Available: FY 2001 PPS Update

For further information concerning these data tapes, contact The HCFA Public Use Files Hotline at (410) 786–3691.

Commenters interested in obtaining or discussing any other data used in constructing this rule should contact Stephen Phillips at (410) 786–4531.

*B. Information Collection Requirements*

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.
- We are soliciting public comment on each of these issues for the sections that contain information collection requirements.

*Section 412.77, Determination of the Hospital-Specific Rate for Inpatient Operating Costs for Certain Sole Community Hospitals Based on a Federal Fiscal Year 1996 Base Period, and 412.92, Special Treatment: Sole Community Hospitals*

Sections 412.77(a)(2) and 412.92(d)(1)(ii) state that an otherwise eligible hospital that elects not to receive payment based on its hospital-specific rate as determined under § 412.77 must notify its fiscal intermediary of its decision prior to the beginning of its cost reporting period beginning on or after October 1, 2000.

We estimate that it will take each hospital that notifies its intermediary of its election not to receive payments based on its hospital-specific rate as determined under § 412.77 an hour to draft and send its notice. However, we are unable at this time to determine how many hospitals will make this election and, therefore, will need to notify their intermediaries of their decision.

*Section 485.643, Condition of Participation: Organ, Tissue, and Eye Procurement*

It is important to note that because of the inherent flexibility of this proposed regulation, the extent of the information collection requirements is dependent upon decisions that will be made either by the CAH or by the CAH in conjunction with the OPO or the tissue and eye banks, or both. Thus, the paperwork burden on individual CAHs will vary and is subject, in large part, to their decisionmaking.

The burden associated with the requirements of this section include: (1) The requirement to maintain protocol documentation demonstrating that the five requirements of this section have been met; (2) the requirement for a CAH to notify an OPO, a tissue bank, or an eye bank of any imminent or actual death; and (3) the time required for a hospital to document and maintain OPO referral information.

We estimate that, on average, the requirement to maintain protocol documentation demonstrating that the requirements of this section have been met will impose one hour of burden on each CAH (on 161 CAHs) on an annual basis (a total of 161 annual burden hours).

The CoP in this section would require CAHs to notify the OPO about every

death that occurs in the CAH. The average Medicare hospital has approximately 165 beds and 200 deaths per year. However, by statute and regulation, CAHs may use no more than 15 beds for acute care services. Assuming that the number of deaths in a hospital is related to the number of acute care beds, there should be approximately 18 deaths per year in the average CAH. We estimated that the average notification telephone call to the OPO takes 5 minutes. Based on this estimate, a CAH would need approximately 90 minutes per year to notify the OPO about all deaths and imminent deaths.

Under the proposed CoP, a CAH may agree to have the OPO determine medical suitability for tissue and eye donation or may have alternative arrangements with a tissue bank and an eye bank. These alternative arrangements could include the CAH's direct notification of the tissue and eye bank of potential tissue and eye donors or direct notification of all deaths. If a CAH chose to contact both a tissue bank and an eye bank directly on all deaths, it would need an additional 6 hours per year (that is, 5 minutes per call) in order to call both the tissue and eye bank directly. Again, the impact is small, and the proposed regulation permits the CAH to decide how this process will take place. Note that many communities already have a one-phone call system in place. In addition, some OPOs are also tissue banks or eye banks, or both. A CAH that chose to use the OPO's tissue and eye bank services in these localities would need to make only one telephone call on every death.

We estimate that additional time would be needed by the CAH to annotate the patient record or fill out a form regarding the disposition of a call to the OPO or the tissue bank or the eye bank, or both. This recordkeeping should take no more than 5 minutes per call. Therefore, the paperwork burden associated with the call(s) would add up to an additional 270 minutes per year per CAH.

In summary, the information collection requirements of this section would be a range of from 3 to 9 hours per CAH, or 483 to 1,449 hours annually nationally.

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following addresses:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attn: John Burke HCFA–1118-P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503. Attn: Allison Herron Eydt, HCFA Desk Officer.

These new information collection and recordkeeping requirements have been submitted to the Office of Management and Budget (OMB) for review under the authority of PRA. We have submitted a copy of the proposed rule to OMB for its review of the information collection requirements. These requirements will not be effective until they have been approved by OMB.

The requirements associated with a hospital's application for a geographic redesignation, codified in Part 412, are currently approved by OMB under OMB approval number 0938–0573, with an expiration date of September 30, 2002.

*C. Public Comments*

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the **DATES** section of this preamble and respond to those comments in the preamble to that rule. We emphasize that section 1886(e)(5) of the Act requires the final rule for FY 2001 to be published by August 1, 2000, and we will consider only those comments that deal specifically with the matters discussed in this proposed rule.

**List of Subjects**

*42 CFR Part 412*

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

*42 CFR Part 413*

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

*42 CFR Part 485*

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is proposed to be amended as set forth below:

## PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

A. Part 412 is amended as follows:

1. The authority citation for Part 412 continues to read as follows:

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 412.2 is amended by revising the last sentence of paragraph (a) to read as follows:

**§ 412.2 Basis of payment.**

(a) *Payment on a per discharge basis.* * * * An additional payment is made for both inpatient operating and inpatient capital-related costs, in accordance with subpart F of this part, for cases that are extraordinarily costly to treat.

* * * * *

**§ 412.4 [Amended]**

3. In § 412.4(f)(3), the reference to "§ 412.2(e)" is removed and "412.2(b)" is added in its place.

4. Section 412.63 is amended by:

a. Revising paragraph (s);

b. Redesignating paragraphs (t), (u), (v), and (w) as paragraphs (u), (v), (w), and (x) respectively; and

c. Adding a new paragraph (t), to read as follows:

**§ 412.63 Federal rates for inpatient operating costs for fiscal years after Federal fiscal year 1984.**

* * * * *

(s) *Applicable percentage change for fiscal year 2001.* The applicable percentage change for fiscal year 2001 is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this subchapter) for sole community hospitals and the increase in the market basket index minus 1.1 percentage points for other hospitals in all areas.

(t) *Applicable percentage change for fiscal year 2002.* The applicable percentage change for fiscal year 2002 is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this subchapter) minus 1.1 percentage points for hospitals in all areas.

* * * * *

5. Section 412.73 is amended by revising paragraph (c)(12) and adding paragraphs (c)(13), (c)(14), and (c)(15), to read as follows:

**§ 412.73 Determination of the hospital-specific rate based on a Federal fiscal year 1982 base period.**

* * * * *

(c) *Updating base-year costs* * * *

(12) *For Federal fiscal years 1996 through 2000.* For Federal fiscal years

1996 through 2000, the update factor is the applicable percentage change for other prospective payment hospitals in each respective year as set forth in §§ 412.63(n) through (r).

(13) *For Federal fiscal year 2001.* For Federal fiscal year 2001, the update factor is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter).

(14) *For Federal fiscal year 2002.* For Federal fiscal year 2002, the update factor is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter) minus 1.1 percentage points.

(15) *For Federal fiscal year 2003 and for subsequent years.* For Federal fiscal year 2003 and subsequent years, the update factor is the percentage increase in the market basket index for prospective payment hospitals (as defined in § 413.40(a) of this chapter).

* * * * *

**§ 412.75 [Amended]**

6. In § 412.75(d), the cross reference "§ 412.73 (c)(5) through (c)(12)" is removed and "§ 412.75(c)(15)" is added in its place.

**§ 412.76 [Redesignated]**

7. Section 412.76 is redesignated as a new § 412.78.

8. A new § 412.77 is added to read as follows:

**§ 412.77 Determination of the hospital-specific rate for inpatient operating costs for certain sole community hospitals based on a Federal fiscal year 1996 base period.**

(a) *Applicability.* (1) This section applies to a hospital that has been designated as a sole community hospital, as described in § 412.72, that received payment for its cost reporting period beginning during 1999 based on its hospital-specific rate for either fiscal year 1982 under § 412.73 or fiscal year 1987 under § 412.75, and that elects under paragraph (a)(2) of this section to be paid based on a fiscal year 1996 base period.

(2) Hospitals that are otherwise eligible for but elect not to receive payment on the basis of their Federal fiscal year 1996 updated costs per case must notify their fiscal intermediary of this decision prior to the beginning of their cost reporting period beginning on or after October 1, 2000, for which such payments would otherwise be made. If a hospital does not make the notification to its fiscal intermediary before the end of the cost reporting period, the hospital is deemed to have elected to have section 1886(b)(3)(I) of the Act apply to the hospital.

(3) This section applies only to cost reporting periods beginning on or after October 1, 2000.

(4) The formula for determining the hospital-specific costs for hospitals described under paragraph (a)(1) of this section is set forth in paragraph (f) of this section.

(b) *Base-period costs for hospitals subject to fiscal year 1996 rebasing.* (1) *General rule.* Except as provided in paragraph (b)(2) of this section, for each hospital eligible under paragraph (a) of this section, the intermediary determines the hospital's Medicare Part A allowable inpatient operating costs, as described in § 412.2(c), for the 12-month or longer cost reporting period ending on or after September 30, 1996 and before September 30, 1997, and computes the hospital-specific rate for purposes of determining prospective payment rates for inpatient operating costs as determined under § 412.92(d).

(2) *Exceptions.* (i) If the hospital's last cost reporting period ending before September 30, 1997 is for less than 12 months, the base period is the hospital's most recent 12-month or longer cost reporting period ending before the short period report.

(ii) If the hospital does not have a cost reporting period ending on or after September 30, 1996 and before September 30, 1997, and does have a cost reporting period beginning on or after October 1, 1995 and before October 1, 1996, that cost reporting period is the base period unless the cost reporting period is for less than 12 months. If that cost reporting period is for less than 12 months, the base period is the hospital's most recent 12-month or longer cost reporting period ending before the short cost reporting period. If a hospital has no cost reporting period beginning in fiscal year 1996, the hospital will not have a hospital-specific rate based on fiscal year 1996.

(c) *Costs on a per discharge basis.* The intermediary determines the hospital's average base-period operating cost per discharge by dividing the total operating costs by the number of discharges in the base period. For purposes of this section, a transfer as defined in § 412.4(b) is considered to be a discharge.

(d) *Case-mix adjustment.* The intermediary divides the average base-period cost per discharge by the hospital's case-mix index for the base period.

(e) *Updating base-period costs.* For purposes of determining the updated base-period costs for cost reporting periods beginning in Federal fiscal year 1996, the update factor is determined using the methodology set forth in § 412.73(c)(12) through (c)(15).

(f) *DRG adjustment.* The applicable hospital-specific cost per discharge is multiplied by the appropriate DRG weighting factor to determine the hospital-specific base payment amount (target amount) for a particular covered discharge.

(g) *Phase-in of fiscal year 1996 base-period rate.* The intermediary calculates the hospital-specific rates determined on the basis of the fiscal year 1996 base period rate as follows:

(1) For Federal fiscal year 2001, the hospital-specific rate is the sum of 75 percent of the hospital-specific rate for fiscal year 1982 or fiscal year 1987 (the § 412.73 or § 412.75 target amount), plus 25 percent of the hospital-specific rate for fiscal year 1996 (the § 412.77 target amount).

(2) For Federal fiscal year 2002, the hospital-specific rate is the sum of 50 percent of the § 412.73 or § 412.75 target amount and 50 percent of the § 412.77 target amount.

(3) For Federal fiscal year 2003, the hospital-specific rate is the sum of 25 percent of the § 412.73 or § 412.75 target amount and 75 percent of the § 412.77 target amount.

(4) For Federal fiscal year 2004 and any subsequent fiscal years, the hospital-specific rate is 100 percent of the § 412.77 target amount.

(h) *Notice of hospital-specific rates.* The intermediary furnishes a hospital eligible for rebasing a notice of the hospital-specific rate as computed in accordance with this section. The notice will contain a statement of the hospital's Medicare Part A allowable inpatient operating costs, the number of Medicare discharges, and the case-mix index adjustment factor used to determine the hospital's cost per discharge for the Federal fiscal year 1996 base period.

(i) *Right to administrative and judicial review.* An intermediary's determination of the hospital-specific rate for a hospital is subject to administrative and judicial review. Review is available to a hospital upon receipt of the notice of the hospital-specific rate. This notice is treated as a final intermediary determination of the amount of program reimbursement for purposes of subpart R of part 405 of this chapter.

(j) *Modification of hospital-specific rate.* (1) The intermediary recalculates the hospital-specific rate to reflect the following:

(i) Any modifications that are determined as a result of administrative or judicial review of the hospital-specific rate determinations; or

(ii) Any additional costs that are recognized as allowable costs for the

hospital's base period as a result of administrative or judicial review of the base-period notice of amount of program reimbursement.

(2) With respect to either the hospital-specific rate determination or the amount of program reimbursement determination, the actions taken on administrative or judicial review that provide a basis for the recalculations of the hospital-specific rate include the following:

(i) A reopening and revision of the hospital's base-period notice of amount of program reimbursement under §§ 405.1885 through 405.1889 of this chapter.

(ii) A prehearing order or finding issued during the provider payment appeals process by the appropriate reviewing authority under § 405.1821 or § 405.1853 of this chapter that resolved a matter at issue in the hospital's base-period notice of amount of program reimbursement.

(iii) An affirmation, modification, or reversal of a Provider Reimbursement Review Board decision by the Administrator of HCFA under§ 405.1875 of this chapter that resolved a matter at issue in the hospital's base-period notice of amount of program reimbursement.

(iv) An administrative or judicial review decision under § 405.1831, § 405.1871, or § 405.1877 of this chapter that is final and no longer subject to review under applicable law or regulations by a higher reviewing authority, and that resolved a matter at issue in the hospital's base-period notice of amount of program reimbursement.

(v) A final, nonappealable court judgment relating to the base-period costs.

(3) The adjustments to the hospital-specific rate made under paragraphs (i)(1) and (i)(2) of this section are effective retroactively to the time of the intermediary's initial determination of the rate.

9. Section 412.92 is amended by revising paragraph (d)(1) to read as follows:

**§ 412.92 Special treatment: sole community hospitals.**

* * * * *

(d) *Determining prospective payment rates for inpatient operating costs for sole community hospitals.* (1) *General rules.* (i) Except as provided in paragraph (d)(1)(ii) of this section, for cost reporting periods beginning on or after April 1, 1990, a sole community hospital is paid based on whichever of the following amounts yields the greatest aggregate payment for the cost reporting period:

(A) The Federal payment rate applicable to the hospitals as determined under § 412.63.

(B) The hospital-specific rate as determined under § 412.73.

(C) The hospital-specific rate as determined under § 412.75.

(ii) For cost reporting periods beginning on or after October 1, 2000, a sole community hospital that was paid for its cost reporting period beginning during 1999 on the basis of the hospital-specific rate specified in paragraph (d)(1)(i)(B) or (d)(1)(i)(C) of this section, may elect to use the hospital-specific rate as determined under § 412.77.

* * * * *

10. Section 412.105 is amended by:

a. Revising paragraph (d)(3)(v);

b. Republishing paragraph (f)(1) introductory text and revising paragraph (f)(1)(vii);

c. Adding new paragraphs (f)(1)(viii) and (f)(1)(ix); and

d. Revising paragraph (g), to read as follows:

**§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.**

* * * * *

(d) *Determination of education adjustment factor* * * *

(3) * * *

(v) For discharges occurring during fiscal year 2001, 1.54.

* * * * *

(f) *Determining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991.* (1) For cost reporting periods beginning on or after July 1, 1991, the count of full-time equivalent residents for the purpose of determining the indirect medical education adjustment is determined as follows:

* * * * *

(vii) If a hospital establishes a new medical residency training program, as defined in § 413.86(g)(9) of this subchapter, the hospital's full-time equivalent cap may be adjusted in accordance with the provisions of §§ 413.86(g)(6) (i) through (iv) of this subchapter.

(viii) A hospital that began construction of its facility prior to August 5, 1997, and sponsored new medical residency training programs on or after January 1, 1995 and on or before August 5, 1997, that either received initial accreditation by the appropriate accrediting body or temporarily trained residents at another hospital(s) until the facility was completed, may receive an adjustment to its full-time equivalent cap in accordance with the provisions of § 413.86(g)(7) of this subchapter.

(ix) A hospital may receive a temporary adjustment to its full-time equivalent cap to reflect residents added because of another hospital's closure if the hospital meets the criteria specified in § 413.86(g)(8) of this subchapter.

* * * * *

(g) *Indirect medical education payment for managed care enrollees.* For portions of cost reporting periods occurring on or after January 1, 1998, a payment is made to a hospital for indirect medical education costs, as determined under paragraph (e) of this section, for discharges associated with individuals who are enrolled under a risk-sharing contract with an eligible organization under section 1876 of the Act or with a Medicare+Choice organization under title XVIII, Part C of the Act during the period, according to the applicable payment percentages described in §§ 413.86(d)(3)(i) through (d)(3)(v) of this subchapter.

11. In § 412.106, the introductory text of paragraph (e) is republished and paragraphs (e)(4) and (e)(5) are revised to read as follows:

**§ 412.106 Special treatment: Hospitals that serve a disproportionate share of low-income patients.**

* * * * *

(e) *Reduction in payment for FYs 1998 through 2002.* The amounts otherwise payable to a hospital under paragraph (d) of this section are reduced by the following:

* * * * *

(4) For FY 2001, 3 percent.

(5) For FY 2002, 4 percent.

* * * * *

12. Section 412.230 is amended by:

a. Republishing the introductory text of paragraph (e)(1); and

b. Revising paragraph (e)(1)(iii) and (e)(1)(iv)(A), to read as follows:

**§ 412.230 Criteria for an individual hospital seeking redesignation to another rural area or an urban area.**

* * * * *

(e) *Use of urban or other rural area's wage index—(1) Criteria for use of area's wage index.* Except as provided in paragraphs (e)(3) and (e)(4) of this section, to use an area's wage index, a hospital must demonstrate the following:

* * * * *

(iii) The hospital's average hourly wage is, in the case of a hospital located in a rural area, at least 106 percent, and, in the case of a hospital located in an urban area, at least 108 percent of the average hourly wage of hospitals in the

area in which the hospital is located; and

(iv) * * *

(A) The hospital's average hourly wage is equal to, in the case of a hospital located in a rural area, at least 82 percent, and in the case of a hospital located in an urban area, at least 84 percent of the average hourly wage of hospitals in the area to which it seeks redesignation.

* * * * *

## PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

B. Part 413 is amended as follows:

1. The authority citation for Part 413 is revised to read as follows:

**Authority:** Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. In § 413.40, paragraph (a)(3) is amended by revising paragraph (B) in the definition of "ceiling" and paragraph (d)(4) is revised, to read as follows:

### § 413.40 Ceiling on the rate of increase in hospital inpatient costs.

(a) *Introduction.* * * *

(3) *Definitions.* * * *

*Ceiling.* * * *

(B) The hospital-within-a-hospital has discharged to the other hospital and subsequently readmitted more than 5 percent (that is, in excess of 5.0 percent) of the total number of Medicare inpatients discharged from the hospital-within-a-hospital in that cost reporting period.

* * * * *

(d) *Application of the target amount in determining the amount of payment.* * * *

(4) *Continuous improvement bonus payments.* (i) For cost reporting periods beginning on or after October 1, 1997 and ending before October 1, 2000, eligible hospitals (as defined in paragraph (d)(5) of this section) receive payments in addition to those in paragraph (d)(2) of this section, as applicable. These payments are equal to the lesser of—

(A) 50 percent of the amount by which the operating costs are less than the expected costs for the period; or

(B) 1 percent of the ceiling.

(ii) For cost reporting periods beginning on or after October 1, 2000, and ending before October 1, 2001, eligible psychiatric hospitals and units and long-term care hospitals (as defined in paragraph (d)(5) of this section) receive payments in addition to those in paragraph (d)(2) of this section, as applicable. These payments are equal to the lesser of—

(A) 50 percent of the amount by which the operating costs are less than the expected costs for the period; or

(B) 1.5 percent of the ceiling.

(iii) For cost reporting periods beginning on or after October 1, 2001, and ending before October 1, 2002, eligible psychiatric hospitals and units and long-term care hospitals receive payments in addition to those in paragraph (d)(5) of this section, as applicable. These payments are equal to the lesser of—

(A) 50 percent of the amount by which the operating costs are less than the expected costs for the periods; or

(B) 2 percent of the ceiling.

* * * * *

3. Section 413.70 is revised to read as follows:

### § 413.70 Payment for services of a CAH.

(a) *Payment for inpatient services furnished by a CAH.* (1) Payment for inpatient services of a CAH is the reasonable costs of the CAH in providing CAH services to its inpatients, as determined in accordance with section 1861(v)(1)(A) of the Act and the applicable principles of cost reimbursement in this part and in Part 415 of this chapter, except that the following payment principles are excluded when determining payment for CAH inpatient services:

(i) Lesser of cost or charges;

(ii) Ceilings on hospital operating costs; and

(iii) Reasonable compensation equivalent (RCE) limits for physician services to providers.

(2) Payment to a CAH for inpatient services does not include any costs of physician services or other professional services to CAH inpatients, and is subject to the Part A hospital deductible and coinsurance, as determined under subpart G of part 409 of this chapter.

(b) *Payment for outpatient services furnished by a CAH.* (1) *General.* Unless the CAH elects to be paid for services to its outpatients under the method specified in paragraph (b)(3) of this section, the amount of payment for outpatient services of a CAH is the amount determined under paragraph (b)(2) of this section.

(2) *Reasonable costs for facility services.* (i) Payment for outpatient services of a CAH is the reasonable costs of the CAH in providing CAH services to its outpatients, as determined in accordance with section 1861(v)(1)(A) of the Act and the applicable principles of cost reimbursement in this part and in Part 415 of this chapter, except that the following payment principles are excluded when determining payment for CAH outpatient services:

(A) Lesser of costs or charges;

(B) RCE limits;

(C) Any type of reduction to operating or capital costs under § 413.124 or § 413.130(j)(7); and

(D) Blended payment amounts for ambulatory surgical services, radiology services, and other diagnostic services;

(ii) Payment to a CAH under paragraph (b)(2) of this section does not include any costs of physician services or other professional services to CAH outpatients, and is subject to the Part B deductible and coinsurance amounts, as determined under §§ 410.152(k), 410.160, and 410.161 of this chapter.

(3) *Election to be paid reasonable costs for facility services plus fee schedule for professional services.* (i) A CAH may elect to be paid for outpatient services in any cost reporting period under the method described in paragraphs (b)(3)(ii) and (b)(3)(iii) of this section. This election must be made in writing, made on an annual basis, and delivered to the intermediary at least 60 days before the start of each affected cost reporting period. An election of this payment method, once made for a cost reporting period, remains in effect for all of that period and applies to all services furnished to outpatients during that period.

(ii) If the CAH elects payment under this method, payment to the CAH for each outpatient visit will be the sum of the following amounts:

(A) For facility services, not including any services for which payment may be made under paragraph (b)(3)(ii)(B) of this section, the reasonable costs of the services as determined under paragraph (b)(2)(i) of this section; and

(B) For professional services otherwise payable to the physician or other practitioner on a fee schedule basis, the amounts that otherwise would be paid for the services if the CAH had not elected payment under this method.

(iii) Payment to a CAH is subject to the Part B deductible and coinsurance amounts, as determined under §§ 410.152, 410.160, and 410.161 of this chapter.

(c) *Final payment based on cost report.* Final payment to the CAH for CAH facility services to inpatients and outpatients furnished during a cost reporting is based on a cost report for that period, as required under § 413.20(b).

4. Section 413.86 is amended by:
a. Revising the first sentence of paragraph (d)(3);
b. Revising the introductory text of paragraph (e)(3);
c. Redesignating paragraph (e)(4) as paragraph (e)(5);
d. Adding a new paragraph (e)(4);
e. Revising newly designated paragraph (e)(5)(i)(B); and
f. Adding a new paragraph (e)(5)(iv), to read as follows:

**§ 413.86 Direct graduate medical education payments.**

* * * * *

(d) *Calculating payment for graduate medical education costs.* * * *

(3) *Step Three.* For portions of cost reporting periods occurring on or after January 1, 1998, the product derived in step one is multiplied by the proportion of the hospital's inpatient days attributable to individuals who are enrolled under a risk-sharing contract with an eligible organization under section 1876 of the Act and who are entitled to Medicare Part A or with a Medicare+Choice organization under Title XVIII, Part C of the Act. * * *

* * * * *

(e) *Determining per resident amounts for the base period.* * * *

(3) *For cost reporting periods beginning on or after July 1, 1986.* Subject to the provisions of paragraph (e)(4) of this section, for cost reporting periods beginning on or after July 1, 1986, a hospital's base-period per resident amount is adjusted as follows:

* * * * *

(4) *For cost reporting periods beginning on or after October 1, 2000 and ending on or before September 30, 2005.* For cost reporting periods beginning on or after October 1, 2000 and ending on or before September 30, 2005, a hospital's per resident amount for each fiscal year is adjusted in accordance with the following provisions:

(i) *General provisions.* For purposes of § 413.86(e)(4)—

(A) *Weighted average per resident amount.* The weighted average per resident amount is established as follows:

(*1*) Using data from hospitals' cost reporting periods ending during FY 1997, HCFA calculates each hospital's single per resident amount by adding each hospital's primary care and non-primary care per resident amounts, weighted by its respective FTEs, and dividing by the sum of the FTEs for primary care and non-primary care residents.

(*2*) Each hospital's single per resident amount calculated under paragraph (e)(4)(i)(A)(*1*) of this section is standardized by the 1999 geographic adjustment factor for the physician fee schedule area (as determined under § 414.26 of this chapter) in which the hospital is located.

(*3*) HCFA calculates an average of all hospitals' standardized per resident amounts that are determined under paragraph (e)(4)(i)(A)(*2*) of this section. The resulting amount is the weighted average per resident amount.

(B) *Primary care/obstetrics and gynecology and non-primary care per resident amounts.* A hospital's per resident amount is an amount inclusive of any CPI–U adjustments that the hospital may have received since the hospital's base year, including any CPI–U adjustments the hospital may have received because the hospital trains primary care/obstetrics and gynecology residents and non-primary care residents as specified under paragraph (e)(3)(ii) of this section.

(ii) *Adjustment beginning in FY 2001 and ending in FY 2005.* For cost reporting periods beginning on or after October 1, 2000 and ending on or before September 30, 2005, a hospital's per resident amount is adjusted in accordance with paragraphs (e)(4)(ii)(A) through (e)(4)(ii)(C) of this section, in that order:

(A) *Updating the weighted average per resident amount for inflation.* The weighted average per resident amount (as determined under paragraph (e)(4)(i)(A) of this section) is updated by the estimated percentage increase in the CPI–U during the period beginning with the month that represents the midpoint of the cost reporting periods ending during FY 1997 (that is, October 1, 1996) and ending with the midpoint of the hospital's cost reporting period that begins in FY 2001.

(B) *Adjusting for locality.* The updated weighted average per resident amount determined under paragraph (e)(4)(ii)(A) of this section (the national average per resident amount) is adjusted for the locality of each hospital by multiplying the national average per resident amount by the 1999 geographic adjustment factor for the physician fee schedule area in which each hospital is located, established in accordance with § 414.26 of this subchapter.

(C) *Determining necessary revisions to the per resident amount.* The locality-adjusted national average per resident amount, as calculated in accordance with paragraph (e)(4)(ii)(B) of this section, is compared to the hospital's per resident amount. Each hospital's per resident amount is revised, if appropriate, according to the following three categories:

(*1*) *Floor.* For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2001, if the hospital's per resident amount would otherwise be less than 70 percent of the locality-adjusted national average per resident amount for FY 2001 (as determined under paragraph (e)(4)(ii)(B) of this section), the per resident amount is equal to 70 percent of the locality-adjusted national average per resident amount for FY 2001. For subsequent cost reporting periods, the hospital's per resident amount is updated using the methodology specified under paragraph (e)(3)(i) of this section.

(*2*) *Ceiling.* If the hospital's per resident amount is greater than 140 percent of the locality-adjusted national average per resident amount, the per resident amount is adjusted as follows for FY 2001 through FY 2005:

(*i*) *FY 2001.* For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2001, if the hospital's FY 2000 per resident amount exceeds 140 percent of the FY 2001 locality-adjusted national average per resident amount (as calculated under paragraph (e)(4)(ii)(B) of this section), then, subject to the provision stated in paragraph (e)(4)(ii)(C)(*2*)(*iv*) of this section, the hospital's per resident amount is frozen at the FY 2000 per resident amount and is not updated for FY 2001 by the CPI–U factor.

(*ii*) *FY 2002.* For cost reporting periods beginning on or after October 1, 2001 and on or before September 30, 2002, if the hospital's FY 2001 per resident amount exceeds 140 percent of the FY 2002 locality-adjusted national average per resident amount, then, subject to the provision stated in paragraph (e)(4)(ii)(C)(*2*)(*iv*) of this section, the hospital's per resident amount is frozen at the FY 2001 per resident amount and is not updated for FY 2002 by the CPI–U factor.

(*iii*) *FY 2003 through FY 2005.* For cost reporting periods beginning on or after October 1, 2002 and on or before September 30, 2005, if the hospital's per resident amount for the previous cost reporting period is greater than 140 percent of the locality-adjusted national average per resident amount for that same previous cost reporting period (for example, for cost reporting periods beginning in FY 2003, compare the hospital's per resident amount from the FY 2002 cost report to the hospital's locality-adjusted national average per resident amount from FY 2002), then, subject to the provision stated in paragraph (e)(4)(ii)(C)(*2*)(*iv*) of this section, the hospital's per resident amount is adjusted using the methodology specified in paragraph

(e)(3)(i) of this section, except that the CPI–U applied for a 12-month period is reduced (but not below zero) by 2 percentage points.

(*iv*) *General rule for hospitals that exceed the ceiling.* For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2005, if a hospital's per resident amount exceeds 140 percent of the hospital's locality-adjusted national average per resident amount and it is adjusted under any of the criteria under paragraphs (e)(4)(ii)(C)(*2*)(*i*) through (*iii*) of this section, the current year per resident amount resident amount cannot be reduced below 140 percent of the locality-adjusted national average per resident amount.

(*3*) *Per resident amounts greater than or equal to the floor and less than or equal to the ceiling.* For cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2005, if a hospital's per resident amount is greater than or equal to 70 percent and less than or equal to 140 percent of the hospital's locality-adjusted national average per resident amount for each respective fiscal year, the hospital's per resident amount is updated using the methodology specified in paragraph (e)(3)(i) of this section.

(5) *Exceptions*—(i) *Base period for certain hospitals.* * * *

(B) The weighted mean value of per resident amounts of hospitals located in the same geographic wage area, as that term is used in the prospective payment system under part 412 of this chapter, for cost reporting periods beginning in the same fiscal years. If there are fewer than three amounts that can be used to calculate the weighted mean value, the calculation of the per resident amounts includes all hospitals in the hospital's region as that term is used in § 412.62(f)(1)(i) of this chapter.

* * * * *

(iv) Effective October 1, 2000, the per resident amounts established under paragraphs (e)(5)(i) through (iii) of this section are subject to the provisions of paragraph (e)(4) of this section.

* * * * *

## PART 485B—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

C. Part 485 is amended as follows:

1. The authority citation for part 485 continues to read as follows:

**Authority:** Sec. 1820 of the Act (42 U.S.C. 1395i–4), unless otherwise noted.

2. A new § 485.643 is added to subpart F to read as follows:

**§ 485.643 Condition of participation: Organ, tissue, and eye procurement.**

The CAH must have and implement written protocols that:

(a) Incorporate an agreement with an OPO designated under part 486 of this chapter, under which it must notify, in a timely manner, the OPO or a third party designated by the OPO of individuals whose death is imminent or who have died in the CAH. The OPO determines medical suitability for organ donation and, in the absence of alternative arrangements by the CAH, the OPO determines medical suitability for tissue and eye donation, using the definition of potential tissue and eye donor and the notification protocol developed in consultation with the tissue and eye banks identified by the CAH for this purpose;

(b) Incorporate an agreement with at least one tissue bank and at least one eye bank to cooperate in the retrieval, processing, preservation, storage and distribution of tissues and eyes, as may be appropriate to assure that all usable tissues and eyes are obtained from potential donors, insofar as such an agreement does not interfere with organ procurement;

(c) Ensure, in collaboration with the designated OPO, that the family of each potential donor is informed of its option to either donate or not donate organs, tissues, or eyes. The individual designated by the CAH to initiate the request to the family must be a designated requestor. A designated requestor is an individual who has completed a course offered or approved by the OPO and designed in conjunction with the tissue and eye bank community in the methodology for approaching potential donor families and requesting organ or tissue donation;

(d) Encourage discretion and sensitivity with respect to the circumstances, views, and beliefs of the families of potential donors;

(e) Ensure that the CAH works cooperatively with the designated OPO, tissue bank and eye bank in educating staff on donation issues, reviewing death records to improve identification of potential donors, and maintaining potential donors while necessary testing and placement of potential donated organs, tissues, and eyes take place.

(f) For purposes of these standards, the term "Organ" means a human kidney, liver, heart, lung, or pancreas.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: April 14, 2000.

**Nancy Ann Min DeParle,**

*Administrator, Health Care Financing Administration*

Dated: April 28, 2000.

**Donna E. Shalala,**

*Secretary.*

**[Editorial Note:** The following Addendum and appendixes will not appear in the Code of Federal Regulations.]

## Addendum—Proposed Schedule of Standardized Amounts Effective With Discharges Occurring On or After October 1, 2000 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 2000

### I. Summary and Background

In this Addendum, we are setting forth the proposed amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth proposed rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 2000, except for sole community hospitals, Medicare-dependent, small rural hospitals, and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be based on 100 percent of the Federal national rate.

Sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, the updated hospital-specific rate based on FY 1987 cost per discharge, or, if qualified, 25 percent of the updated hospital-specific rate based on FY 1996 cost per discharge, plus 75 percent of the updated FY 1982 or FY 1987 hospital-specific rate. Section 405 of Public Law 106–113 amended section 1886(b)(3) of the Act to allow a sole community hospital that was paid for its cost reporting period beginning during FY 1999 on the basis of either its FY 1982 or FY 1987 hospital-specific rate to elect to rebase its hospital-specific rate based on its FY 1996 cost per discharge.

Section 404 of Public Law 106–113 amended section 1886(d)(5)(G) of the Act to extend the special treatment for Medicare-dependent, small rural hospitals. Therefore, Medicare-dependent, small rural hospitals are paid based on the Federal national rate or, if higher, the Federal national rate plus 50 percent of the difference

between the Federal national rate and the updated hospital-specific rate based on FY 1982 or FY 1987 cost per discharge, whichever is higher.

For hospitals in Puerto Rico, the payment per discharge is based on the sum of 50 percent of a Puerto Rico rate and 50 percent of a Federal national rate.

As discussed below in section II of this Addendum, we are proposing to make changes in the determination of the prospective payment rates for Medicare inpatient operating costs for FY 2001. The changes, to be applied prospectively, would affect the calculation of the Federal rates. In section III of this Addendum, we discuss updates to the payments per unit for blood clotting factor provided to hospital inpatients who have hemophilia. In section IV of this Addendum, we discuss our proposed changes for determining the prospective payment rates for Medicare inpatient capital-related costs for FY 2001. Section V of this Addendum sets forth our proposed changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system for FY 2001. The tables to which we refer in the preamble to this proposed rule are presented at the end of this Addendum in section VI.

## II. Proposed Changes to Prospective Payment Rates for Inpatient Operating Costs for FY 2001

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the proposed factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, will be effective with discharges occurring on or after October 1, 2000. As required by section 1886(d)(4)(C) of the Act, we must also adjust the DRG classifications and weighting factors for discharges in FY 2001.

In summary, the proposed standardized amounts set forth in Tables 1A and 1C of section VI of this Addendum reflect—

- Updates of 2.0 percent for all areas (that is, the market basket percentage increase of 3.1 percent minus 1.1 percentage points);
- An adjustment to ensure budget neutrality as provided for in sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 2000 budget neutrality factor and applying a revised factor;
- An adjustment to apply the revised outlier offset by removing the FY 2000 outlier offsets and applying a new offset; and
- An adjustment in the Puerto Rico standardized amounts to reflect the application of a Puerto Rico-specific wage index.

The standardized amounts set forth in table 1E of section VI of this Addendum, which apply to sole community hospitals, reflect updates of 3.1 percent (that is, the full market basket percentage increase) as provided for in section 406 of Public Law 106–113, but otherwise reflect the same adjustments as the national standardized amounts.

### *A. Calculation of Adjusted Standardized Amounts*

#### 1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required us to determine the Medicare target amounts for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule (52 FR 33043, 33066) contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates.

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(B) and (d)(2)(C) of the Act required us to update base-year per discharge costs for FY 1984 and then standardize the cost data in order to remove the effects of certain sources of cost variations among hospitals. These effects include case-mix, differences in area wage levels, cost-of-living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Under sections 1886(d)(2)(H) and (d)(3)(E) of the Act, in making payments under the prospective payment system, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Since October 1, 1997, when the market basket was last revised, we have considered 71.1 percent of costs to be labor-related for purposes of the prospective payment system. The average labor share in Puerto Rico is 71.3 percent. We are proposing to revise the discharge-weighted national standardized amount for Puerto Rico to reflect the proportion of discharges in large urban and other areas from the FY 1999 MedPAR file.

#### 2. Computing Large Urban and Other Area Averages

Sections 1886(d)(2)(D) and (d)(3) of the Act require the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (d)(9)(C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 50 percent of the applicable Puerto Rico standardized amount and 50 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines "urban area" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1 million. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D) of the Act. Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be

based on the other standardized amount.

Based on 1997 population estimates published by the Bureau of the Census, 61 areas meet the criteria to be defined as large urban areas for FY 2001. These areas are identified by a footnote in Table 4A.

3. Updating the Average Standardized Amounts

Under section 1886(d)(3)(A) of the Act, we update the area average standardized amounts each year. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban areas' and the other areas' average standardized amounts for FY 2001 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XVI) of the Act specifies that the update factor for the standardized amounts for FY 2001 is equal to the market basket percentage increase minus 1.1 percentage points for hospitals, except sole community hospitals, in all areas. The Act, as amended by section 406 of Public Law 106–113, specifies an update factor equal to the market basket percentage increase for sole community hospitals.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the hospital market basket increase for FY 2001 is 3.1 percent. Thus, for FY 2001, the proposed update to the average standardized amounts equals 3.1 percent for sole community hospitals and 2.0 percent for other hospitals.

As in the past, we are adjusting the FY 2000 standardized amounts to remove the effects of the FY 2000 geographic reclassifications and outlier payments before applying the FY 2001 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. We then apply the new offsets to the standardized amounts for outliers and geographic reclassifications for FY 2001.

Although the update factors for FY 2001 are set by law, we are required by section 1886(e)(3) of the Act to report to the Congress our initial recommendation of update factors for FY 2001 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we have included the report to Congress as Appendix C to this proposed rule. Our proposed recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act) is set forth as Appendix D to this proposed rule.

4. Other Adjustments to the Average Standardized Amounts

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment

Section 1886(d)(4)(C)(iii) of the Act specifies that, beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration.

Section 1886(d)(3)(E) of the Act requires us to update the hospital wage index on an annual basis beginning October 1, 1993. This provision also requires us to make any updates or adjustments to the wage index in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we used historical discharge data to simulate payments and compared aggregate payments using the FY 2000 relative weights and wage index to aggregate payments using the proposed FY 2001 relative weights and wage index. The same methodology was used for the FY 2000 budget neutrality adjustment. (See the discussion in the September 1, 1992 final rule (57 FR 39832).) Based on this comparison, we computed a budget neutrality adjustment factor equal to 0.996506. We also adjust the Puerto Rico-specific standardized amounts for the effect of DRG reclassification and recalibration. We computed a budget neutrality adjustment factor for Puerto Rico-specific standardized amounts equal to 0.999753. These budget neutrality adjustment factors are applied to the standardized amounts without removing the effects of the FY 2000 budget neutrality adjustments. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we are proposing to apply these same adjustment factors to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 2000. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. Reclassified Hospitals—Budget Neutrality Adjustment

Section 1886(d)(8)(B) of the Act provides that, effective with discharges occurring on or after October 1, 1988, certain rural hospitals are deemed urban. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. Section 152(b) of Public Law 106–113 requires reclassifications under that subsection to be treated as reclassifications under section 1886(d)(10) of the Act. To calculate this budget neutrality factor, we used historical discharge data to simulate payments, and compared total prospective payments (including IME and DSH payments) prior to any reclassifications to total prospective payments after reclassifications. Based on these simulations, we are applying an adjustment factor of 0.994270 to ensure that the effects of reclassification are budget neutral.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 2000 budget neutrality adjustment factor. We note that the proposed FY 2001 adjustment reflects wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of February 29, 2000. The effects of any additional reclassification changes resulting from appeals and reviews of the MGCRB decisions for FY 2001 or from a hospital's request for the withdrawal of a reclassification request will be reflected in the final budget neutrality adjustment published in the final rule for FY 2001.

c. Outliers

Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for "outlier" cases, cases involving extraordinarily high costs (cost outliers). Section 1886(d)(3)(B) of the Act requires the Secretary to adjust both the large urban and other area national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to adjust the large urban and other standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases. Furthermore, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total payments based on DRG prospective payment rates.

i. FY 2001 outlier thresholds. For FY 2000, the fixed loss cost outlier threshold was equal to the prospective payment for the DRG plus $14,050 ($12,827 for hospitals that have not yet entered the prospective payment system for capital-related costs). The marginal cost factor for cost outliers (the percent of costs paid after costs for the case exceed the threshold) was 80 percent. We applied an outlier adjustment to the FY 2000 standardized amounts of 0.948859 for the large urban and other areas rates and 0.9402 for the capital Federal rate.

For FY 2001, we propose to establish a fixed loss cost outlier threshold equal to the prospective payment rate for the DRG plus the IME and DSH payments plus $17,250 ($15,763 for hospitals that have not yet entered the prospective payment system for capital-related costs). In addition, we propose to maintain the marginal cost factor for cost outliers at 80 percent.

To calculate FY 2001 outlier thresholds, we simulated payments by applying FY 2001 rates and policies to the December 1999 update of the FY 1999 MedPAR file and the December 1999 update of the provider-specific file. As we have explained in the past, to calculate outlier thresholds, we apply a cost inflation factor to update costs for the cases used to simulate payments. For FY 1999, we used a cost inflation factor of minus 1.724 percent. For FY 2000, we used a cost inflation factor (or cost adjustment factor) of zero percent. To set the proposed FY 2001 outlier thresholds, we are using a cost inflation factor of 1.0 percent. This factor reflects our analysis of the best available cost report data as well as calculations (using the best available data) indicating that the percentage of actual outlier payments for FY 1999 is higher than we projected before the beginning of FY 1999, and that the percentage of actual outlier payments for FY 2000 will likely be higher than we projected before the beginning of FY 2000. The calculations of "actual" outlier payments are discussed further below.

ii. Other changes concerning outliers. In accordance with section 1886(d)(5)(A)(iv) of the Act, we calculated proposed outlier thresholds so that outlier payments are projected to equal 5.1 percent of total payments based on DRG prospective payment rates. In accordance with section 1886(d)(3)(E), we reduced the proposed FY 2001 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers.

As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both inpatient operating costs and inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the proposed thresholds for FY 2001 will result in outlier payments equal to 5.1 percent of operating DRG payments and 5.8 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors to be applied to the standardized amounts for FY 2001 are as follows:

| | Operating standardized amounts | Capital federal rate |
|---|---|---|
| National ..... | 0.948865 | 0.9416 |
| Puerto Rico ... | 0.975408 | 0.9709 |

We apply the proposed outlier adjustment factors after removing the effects of the FY 2000 outlier adjustment factors on the standardized amounts.

Table 8A in section VI of this Addendum contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the fiscal intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. These Statewide average ratios would replace the ratios published in the July 30, 1999 final rule (64 FR 41620). Table 8B contains comparable Statewide average capital cost-to-charge ratios. These average ratios would be used to calculate cost outlier payments for those hospitals for which the fiscal intermediary computes operating cost-to-charge ratios lower than 0.201132 or greater than 1.308495 and capital cost-to-charge ratios lower than 0.01266 or greater than 0.16901. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. We note that the cost-to-charge ratios in Tables 8A and 8B would be used during FY 2001 when hospital-specific cost-to-charge ratios based on the latest settled cost report are either not available or outside the three standard deviations range.

iii. FY 1999 and FY 2000 outlier payments. In the July 30, 1999 final rule (64 FR 41547), we stated that, based on available data, we estimated that actual FY 1999 outlier payments would be approximately 6.3 percent of actual total DRG payments. This was computed by simulating payments using the March 1998 bill data available at the time. That is, the estimate of actual outlier payments did not reflect actual FY 1999 bills but instead reflected the application of FY 1999 rates and policies to available FY 1998 bills. Our current estimate, using available FY 1999 bills, is that actual outlier payments for FY 1999 were approximately 7.5 percent of actual total DRG payments. We note that the MedPAR file for FY 1999 discharges continues to be updated. Thus, the data indicate that, for FY 1999, the percentage of actual outlier payments relative to actual total payments is higher than we projected before FY 1999 (and thus exceeds the percentage by which we reduced the standardized amounts for FY 1999). In fact, the data indicate that the proportion of actual outlier payments for FY 1999 exceeds 6 percent. Nevertheless, consistent with the policy and statutory interpretation we have maintained since the inception of the prospective payment system, we do not plan to recoup money and make retroactive adjustments to outlier payments for FY 1999.

We currently estimate that actual outlier payments for FY 2000 will be approximately 6.1 percent of actual total DRG payments, higher than the 5.1 percent we projected in setting outlier policies for FY 2000. This estimate is based on simulations using the December 1999 update of the provider-specific file and the December 1999 update of the FY 1999 MedPAR file (discharge data for FY 1999 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 2000 by applying FY 2000 rates and policies to available FY 1999 bills.

5. FY 2001 Standardized Amounts

The adjusted standardized amounts are divided into labor and nonlabor portions. Table 1A (Table 1E for sole community hospitals) contains the two national standardized amounts that we are proposing to be applicable to all hospitals, except hospitals in Puerto Rico. Under section 1886(d)(9)(A)(ii) of the Act, the Federal portion of the Puerto Rico payment rate is based on the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1A). The labor and nonlabor portions of the national average standardized amounts for Puerto Rico hospitals are set forth in Table 1C. This table also includes the Puerto Rico standardized amounts.

*B. Adjustments for Area Wage Levels and Cost of Living*

Tables 1A, 1C and 1E, as set forth in this Addendum, contain the proposed labor-related and nonlabor-related shares that would be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this Addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that we make an adjustment to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of this preamble, we discuss the data and methodology for the proposed FY 2001 wage index. The proposed wage index is set forth in Tables 4A through 4F of this Addendum.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 2001, we propose to adjust the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below. If the Office of Personnel Management releases revised cost-of-living adjustment factors before July 1, 2000, we will publish them in the final rule and use them in determining FY 2001 payments.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

| | |
|---|---|
| Alaska—All areas | 1.25 |
| Hawaii: | |
| County of Honolulu | 1.25 |
| County of Hawaii | 1.15 |
| County of Kauai | 1.225 |
| County of Maui | 1.225 |
| County of Kalawao | 1.225 |

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

*C. DRG Relative Weights*

As discussed in section II of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section VI of this Addendum contains the relative weights that we are proposing to use for discharges occurring in FY 2001. These factors have been recalibrated as explained in section II of the preamble.

*D. Calculation of Prospective Payment Rates for FY 2001*

**General Formula for Calculation of Prospective Payment Rates for FY 2001**

Prospective payment rate for all hospitals located outside of Puerto Rico except sole community hospitals and Medicare-dependent, small rural hospitals = Federal rate.

Prospective payment rate for sole community hospitals = Whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, the updated hospital-specific rate based on FY 1987 cost per discharge, or, if the sole community hospital was paid for its cost reporting period beginning during FY 1999 on the basis of either its FY 1982 or FY 1987 hospital-specific rate and elects rebasing, 25 percent of its updated hospital-specific rate based on FY 1996 cost per discharge plus 75 percent of its updated FY 1982 or FY 1987 hospital-specific rate.

Prospective payment rate for Medicare-dependent, small rural hospitals = 100 percent of the Federal rate, or, if the greater of the updated FY 1982 hospital-specific rate or the updated FY 1987 hospital-specific rate is higher than the Federal rate, 100 percent of the Federal rate plus 50 percent of the difference between the applicable hospital-specific rate and the Federal rate.

Prospective payment rate for Puerto Rico = 50 percent of the Puerto Rico rate + 50 percent of a discharge-weighted average of the national large urban standardized amount and the Federal national other standardized amount.

1. Federal Rate

For discharges occurring on or after October 1, 2000 and before October 1, 2001, except for sole community hospitals, Medicare-dependent, small rural hospitals and hospitals in Puerto Rico, the hospital's payment is based exclusively on the Federal national rate.

The payment amount is determined as follows:

Step 1—Select the appropriate national standardized amount considering the type of hospital and designation of the hospital as large urban or other (see Table 1A or 1E in section VI of this Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4A, 4B, and 4C of section VI of this Addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted, if appropriate, under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5 of section VI of this Addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals and Medicare-Dependent, Small Rural Hospitals)

Section 1886(b)(3)(C) of the Act, as amended by section 405 of Public Law 106–113, provides that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, the updated hospital-specific rate based on FY 1987 cost per discharge, or, if the sole community hospital was paid for its cost reporting period beginning during FY 1999 on the basis of either its FY 1982 or FY 1987 hospital-specific

rate and elects rebasing, 25 percent of its updated hospital-specific rate based on FY 1996 cost per discharge plus 75 percent of the updated FY 1982 or FY 1987 hospital-specific rate.

Section 1886(d)(5)(G) of the Act, as amended by section 404 of Public Law 106–113, provides that Medicare-dependent, small rural hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate or the Federal rate plus 50 percent of the difference between the Federal rate and the greater of the updated hospital-specific rate based on FY 1982 and FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on either the FY 1982 cost per discharge, the FY 1987 cost per discharge or, for qualifying sole community hospitals, the FY 1996 cost per discharge. For a more detailed discussion of the calculation of the hospital-specific rates, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 2001

We are proposing to increase the hospital-specific rates by 3.1 percent (the hospital market basket rate of increase) for sole community hospitals and by 2.0 percent (the hospital market basket percentage increase minus 1.1 percentage points) for Medicare-dependent, small rural hospitals for FY 2001. Section 1886(b)(3)(C)(iv) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals equal the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for sole community hospitals in FY 2001, is the market basket rate of increase. Section 1886(b)(3)(D) of the Act provides that the update factor applicable to the hospital-specific rates for Medicare-dependent, small rural hospitals equal the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 2001, is the market basket rate of increase minus 1.1 percentage points.

b. Calculation of Hospital-Specific Rate

For sole community hospitals, the applicable FY 2001 hospital-specific rate would be the greater of the following: the hospital-specific rate for the preceding fiscal year, increased by the applicable update factor (3.1 percent); or, if the hospital qualifies to rebase its hospital-specific rate based on cost per case in FY 1996 and elects rebasing, 75 percent of the hospital-specific rate for the preceding fiscal year, increased by the applicable update factor, plus 25 percent of its rebased FY 1996 hospital-specific rate updated through FY 2001. For Medicare-dependent, small rural hospitals, the applicable FY 2001 hospital-specific rate would be calculated by increasing the hospital's hospital-specific rate for the preceding fiscal year by the applicable update factor (2.0 percent), which is the same as the update for all prospective payment hospitals, except sole community hospitals. In addition, the hospital-specific rate would be adjusted by the budget neutrality adjustment factor (that is, 0.996506) as discussed in section II.A.4.a. of this Addendum. The resulting rate is used in determining under which rate a sole community hospital or Medicare-dependent, small rural hospital is paid for its discharges beginning on or after October 1, 2000, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 2000 and Before October 1, 2001

a. Puerto Rico Rate

The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1C of section VI of the Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate Puerto Rico-specific wage index (see Table 4F of section VI of the Addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 50 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5 of section VI of the Addendum).

b. National Rate

The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1C of section VI of the Addendum) by the appropriate national wage index (see Tables 4A and 4B of section VI of the Addendum).

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 50 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5 of section VI of the Addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

**III. Changes to the Payment Rates for Blood Clotting Factor for Hemophilia Inpatients**

For the past 2 years in the **Federal Register** (63 FR 41010 and 64 FR 41549), we have discussed section 4452 of Public Law 105–33, which amended section 6011(d) of Public Law 101–239 to reinstate the add-on payment for the costs of administering blood clotting factor to Medicare beneficiaries who have hemophilia and who are hospital inpatients for discharges occurring on or after October 1, 1997. In these prior rules, we have described the payment policy and specifically listed the updated add-on payment amounts for each clotting factor, as described by HCFA's Common Procedure Coding System (HCPCS). Because we are not changing the policy established 2 years ago, we are proposing to discontinue listing these amounts in the annual proposed and final rules. Instead, the program manuals will instruct fiscal intermediaries to follow this policy and obtain the average wholesale price (AWP) for each relevant HCPCS from either their corresponding local carrier or the Medicare durable medical equipment regional carrier (DMERC) that has jurisdiction in their area. Carriers already calculate the AWP based on the median AWP of the several products available in each category of factor. The payment amount for clotting factors covered by this inpatient benefit is equal to 85 percent of the AWP, subject to the Part A deductible and coinsurance requirements.

The payment amounts will be determined using the most recent AWP data available to the carrier at the time the intermediary performs these annual update calculations. These amounts are updated annually and are effective for discharges beginning on or after October 1 of the current year through September 30 of the following year. Payment will be made for blood clotting factor only if there is an ICD–9–CM diagnosis code for hemophilia included on the bill.

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## IV. Proposed Changes to Payment Rates for Inpatient Capital-Related Costs for FY 2001

The prospective payment system for hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, hospital inpatient capital-related costs are paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of a hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the proposed Federal rate and the hospital-specific rates for FY 2001. The rates will be effective for discharges occurring on or after October 1, 2000.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992, we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated proportion of outlier payments under the Federal rate to total capital payments under the Federal rate. In addition, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for exceptions under § 412.348. Furthermore, § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FYs 1992 through 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996. Section 412.308(b)(2) describes the 7.4 percent reduction to the rate that was made in FY 1994, and § 412.308(b)(3) describes the 0.28 percent reduction to the rate made in FY 1996 as a result of the revised policy of paying for transfers. In the FY 1998 final rule with comment period (62 FR 45966), we implemented section 4402 of Public Law 105–33, which requires that for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted standard Federal rate is reduced by 17.78 percent. A small part of that reduction will be restored effective October 1, 2002.

For each hospital, the hospital-specific rate was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment adjustment factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. Since FY 1992, the hospital-specific rate has been updated annually for inflation and for changes in the exceptions payment adjustment factor. For FYs 1992 through 1995, the hospital-specific rate was also adjusted by a budget neutrality adjustment factor. For discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted hospital-specific rate is reduced by 17.78 percent. A small part of this reduction will be restored effective October 1, 2002.

To determine the appropriate budget neutrality adjustment factor and the exceptions payment adjustment factor, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the model is still used to estimate the exceptions payment adjustment and other factors. The model and its application are described in greater detail in Appendix B of this proposed rule.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1997, as a result of section 4406 of Public Law 105–33, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate.

Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs, we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital.

### *A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update*

In the July 30, 1999 final rule (64 FR 41551), we established a Federal rate of $377.03 for FY 2000. As a result of the changes we are proposing to the factors used to establish the Federal rate in this addendum, the proposed FY 2001 Federal rate is $383.06.

In the discussion that follows, we explain the factors that were used to determine the proposed FY 2001 Federal rate. In particular, we explain why the proposed FY 2001 Federal rate has increased 1.60 percent compared to the FY 2000 Federal rate. We also estimate aggregate capital payments will increase by 5.89 percent during this same period. This increase is primarily due to the increase in the number of hospital admissions, the increase in case-mix, and the increase in the Federal blend percentage from 90 to 100 percent for fully prospective payment hospitals.

Total payments to hospitals under the prospective payment system are relatively unaffected by changes in the capital prospective payments. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital prospective payment transition system are estimated to increase in FY 2001 compared to FY 2000.

1. Standard Federal Rate Update

a. Description of the Update Framework

Under § 412.308(c)(1), the standard Federal rate is updated on the basis of

an analytical framework that takes into account changes in a capital input price index and other factors. The update framework consists of a capital input price index (CIPI) and several policy adjustment factors. Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for case-mix index-related changes, for intensity, and for errors in previous CIPI forecasts. The proposed update factor for FY 2001 under that framework is 0.9 percent. This proposal is based on a projected 0.9 percent increase in the CIPI, a 0.0 percent adjustment for intensity, a 0.0 percent adjustment for case-mix, a 0.0 percent adjustment for the FY 1999 DRG reclassification and recalibration, and a forecast error correction of 0.0 percent. We explain the basis for the FY 2001 CIPI projection in section II.D of this Addendum. In this section IV of the Addendum, we describe the policy adjustments that have been applied.

The case-mix index is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the case-mix index corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons:

- The average resource use of Medicare patients changes ("real" case-mix change);
- Changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and
- The annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect").

We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case-mix index. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all case-mix index-related changes other than patient severity. (For example, we adjusted for the effects of the FY 1999 DRG reclassification and recalibration as part of our FY 2001 update recommendation.) We have adopted this case-mix index adjustment in the capital update framework as well.

For FY 2001, we are projecting a 0.5 percent increase in the case-mix index. We estimate that real case-mix increase will equal 0.5 percent in FY 2001. Therefore, the proposed net adjustment for case-mix change in FY 2001 is 0.0 percentage points.

We estimate that FY 1999 DRG reclassification and recalibration will result in a 0.0 percent change in the case-mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs. Therefore, we are making a 0.0 percent adjustment for DRG reclassification and recalibration in the update recommendation for FY 2001.

The capital update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year there may be unanticipated price fluctuations that may result in differences between the actual increase in prices and the forecast used in calculating the update factors. In setting a prospective payment rate under the framework, we make an adjustment for forecast error only if our estimate of the change in the capital input price index for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. A forecast error of 0.0 percentage points was calculated for the FY 1999 update. That is, current historical data indicate that the FY 1999 CIPI used in calculating the forecasted FY 1999 update factor did not overstate or understate realized price increases. Therefore, we are making a 0.0 percent adjustment for forecast error in the update for FY 2001.

Under the capital prospective payment system framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data as in the framework for the operating prospective payment system. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. Therefore, we have incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 2001, we have developed a Medicare-specific intensity measure based on a 5-year average using FY 1995 through 1999 data. In determining case-mix constant intensity, we found that observed case-mix increase was 1.7 percent in FY 1995, 1.6 percent in FY 1996, 0.3 percent in FY 1997, −0.4 percent in FY 1998, and −0.3 in FY 1999. For FY 1995 and FY 1996, we estimate that real case-mix increase was 1.0 to 1.4 percent each year. The estimate for those years is supported by past studies of case-mix change by the RAND Corporation. The most recent study was "Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G.M. Carter, J.P. Newhouse, and D.A. Relles, R–4098–HCFA/ProPAC (1991). The study suggested that real case-mix change was not dependent on total change, but was usually a fairly steady 1.0 to 1.5 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1995 through FY 1999. Based on this analysis, we believe that all of the observed case-mix increase for FY 1997, FY 1998, and FY 1999 is real. The increases for FY 1995 and FY 1996 were in excess of our estimate of real case-mix increase.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level

changes (the CPI for hospital and related services), and changes in real case-mix. Given estimates of real case-mix of 1.0 percent for FY 1995, 1.0 percent for FY 1996, 0.3 percent for FY 1997, −0.4 for FY 1998, and −0.3 for FY 1999, we estimate that case-mix constant intensity declined by an average 0.7 percent during FYs 1995 through 1999, for a cumulative decrease of 3.6 percent. If we assume that real case-mix increase was 1.4 percent for FY 1995, 1.4 percent for FY 1996, 0.3 percent for FY 1997, −0.4 for FY 1998, and −0.3 for FY 1999, we estimate that case-mix constant intensity declined by an average 0.9 percent during FYs 1995 through 1999, for a cumulative decrease of 4.5 percent. Since we estimate that intensity has declined during that period, we are recommending a 0.0 percent intensity adjustment for FY 2001. We note that the operating recommendation addressed in Appendix D of this proposed rule reflects the possible range that a negative adjustment could span (−0.6 percent to 0.0 percent adjustment) based on our analyses that intensity has declined during that 5-year period. While the calculation of the adjustment for intensity is identical in both the capital and the operating update frameworks, consistent with past capital update recommendations and the FY 2001 proposed operating recommendation, we are not making a negative adjustment for intensity in the FY 2001 proposed capital update.

b. Comparison of HCFA and MedPAC Update Recommendations

MedPAC's FY 2001 update recommendation for capital prospective payments was not included in its March 2000 Report to Congress. However, MedPAC did announce at its April 13, 2000 public meeting that it was recommending a combined update of between 3.5 percent and 4.0 percent for operating and capital-related payments for FY 2001. This recommendation is higher than the current law amount as prescribed by Public Law 105–33. Because of the timing of the announcement and our need for ample time to perform a proper analysis of the recommendation, we will address the comparison of HCFA's update recommendation and MedPAC's update recommendation in the FY 2001 final rule in August 2000 when we will have had the opportunity to review the data analyses that substantiate MedPAC's recommendation.

In section IV.A.1.a. of this Addendum, we describe the basis of the components used to develop our proposed 0.9 percent FY 2001 capital update factor as shown in Table 1 below.

TABLE 1.—HCFA'S PROPOSED FY 2001 CAPITAL UPDATE FACTOR

| | |
|---|---|
| Capital Input Price Index | 0.9 |
| Intensity | 0.0 |
| Case-Mix Adjustment Factors: | |
| Projected Case-Mix Change | −0.5 |
| Real Across DRG Change | 0.5 |
| Subtotal | 0.0 |
| Effect of FY 1999 Reclassification and Recalibration | 0.0 |
| Forecast Error Correction | 0.0 |
| Total Update | 0.9 |

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments (for example, 100 percent for cost reporting periods beginning in FY 2001 for hospitals paid under the fully prospective payment methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of outlier payments under the Federal rate to total inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments. The inpatient capital-related outlier reduction factor reflects the inpatient capital-related outlier payments that would be made if all hospitals were paid 100 percent of the Federal rate. For purposes of calculating the outlier thresholds and the outlier reduction factor, we model payments as if all hospitals were paid 100 percent of the Federal rate because, as explained above, outlier payments are made only on the portion of the Federal rate that is included in the hospital's inpatient capital-related payments.

In the July 30, 1999 final rule, we estimated that outlier payments for capital in FY 2000 would equal 5.98 percent of inpatient capital-related payments based on the Federal rate (64 FR 41553). Accordingly, we applied an outlier adjustment factor of 0.9402 to the Federal rate. Based on the thresholds as set forth in section II.A.4.d. of this Addendum, we estimate that outlier payments for capital will equal 5.84 percent of inpatient capital-related payments based on the Federal rate in FY 2001. Therefore, we are proposing an outlier adjustment factor of 0.9416 to the Federal rate. Thus, the projected percentage of capital outlier payments to total capital standard payments for FY 2001 is lower than the percentage for FY 2000.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the proposed net change in the outlier adjustment to the Federal rate for FY 2001 is 1.0015 (0.9416/0.9402). The outlier adjustment increases the FY 2001 Federal rate by 0.15 percent compared with the FY 2000 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the GAF are projected to equal aggregate payments that would have been made on the basis of the Federal rate without such changes. We use the actuarial model, described in Appendix B of this proposed rule, to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the GAF. We also use the model to estimate aggregate payments that would be made on the basis of the Federal rate as a result of those changes. We then use these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the GAF.

For FY 2000, we calculated a GAF/DRG budget neutrality factor of 0.9985. For FY 2001, we are proposing a GAF/DRG budget neutrality factor of 0.9986. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAF. The proposed incremental change in the adjustment from FY 2000 to FY 2001 is 0.9986. The proposed cumulative change in the rate due to this adjustment is 1.0060 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996,

FY 1997, FY 1998, FY 1999, FY 2000, and the proposed incremental factor for FY 2001:
0.9980 × 1.0053 × 0.9998
× 0.9994 × 0.9987 × 0.9989
× 1.0028 × 0.9985 × 0.9986 = 1.0000).

This proposed factor accounts for DRG reclassifications and recalibration and for changes in the GAF. It also incorporates the effects on the GAF of FY 2001 geographic reclassification decisions made by the MGCRB compared to FY 2000 decisions. However, it does not account for changes in payments due to changes in the DSH and IME adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of additional payments for exceptions under § 412.348 relative to total payments under the hospital-specific rate and Federal rate. We use the model originally developed for determining the budget neutrality adjustment factor to determine the exceptions payment adjustment factor. We describe that model in Appendix B to this proposed rule.

For FY 2000, we estimated that exceptions payments would equal 2.70 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9730 (1 − 0.0270) in determining the Federal rate. For this proposed rule, we estimate that exceptions payments for FY 2001 will equal 2.04 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we are proposing an exceptions payment reduction factor of 0.9796 to the Federal rate for FY 2001. The proposed exceptions reduction factor for FY 2001 is 0.68 percent higher than the factor for FY 2000.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the proposed net adjustment to the FY 2001 Federal rate is 0.9796/0.9730, or 1.0068.

5. Standard Capital Federal Rate for FY 2001

For FY 2000, the capital Federal rate was $377.03. As a result of changes we are proposing to the factors used to establish the Federal rate, the proposed FY 2001 Federal rate is $383.06. The proposed Federal rate for FY 2001 was calculated as follows:

- The proposed FY 2001 update factor is 1.0090; that is, the proposed update is 0.90 percent.
- The proposed FY 2001 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the GAF is 0.9986.
- The proposed FY 2001 outlier adjustment factor is 0.9416.
- The proposed FY 2001 exceptions payments adjustment factor is 0.9796.

Since the Federal rate has already been adjusted for differences in case-mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we propose to make no additional adjustments in the standard Federal rate for these factors other than the budget neutrality factor for changes in the DRG relative weights and the GAF.

We are providing a chart that shows how each of the factors and adjustments for FY 2001 affected the computation of the proposed FY 2001 Federal rate in comparison to the FY 2000 Federal rate. The proposed FY 2001 update factor has the effect of increasing the Federal rate by 0.90 percent compared to the rate in FY 2000, while the proposed geographic and DRG budget neutrality factor has the effect of decreasing the Federal rate by 0.14 percent. The proposed FY 2001 outlier adjustment factor has the effect of increasing the Federal rate by 0.15 percent compared to FY 2000. The proposed FY 2001 exceptions reduction factor has the effect of increasing the Federal rate by 0.68 percent compared to the exceptions reduction for FY 2000. The combined effect of all the proposed changes is to increase the proposed Federal rate by 1.60 percent compared to the Federal rate for FY 2000.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2000 FEDERAL RATE AND PROPOSED FY 2001 FEDERAL RATE

| | FY 2000 | Proposed FY 2001 | Change | Percent change |
|---|---|---|---|---|
| Update factor[1] | 1.0030 | 1.0090 | 1.0090 | 0.90 |
| GAF/DRG Adjustment Factor[1] | 0.9985 | 0.9986 | 0.9986 | −0.14 |
| Outlier Adjustment Factor[2] | 0.9402 | 0.9416 | 1.0015 | 0.15 |
| Exceptions Adjustment Factor[2] | 0.9730 | 0.9796 | 1.0068 | 0.68 |
| Federal Rate | $377.03 | $383.06 | 1.0160 | 1.60 |

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 2000 to FY 2001 resulting from the application of the 0.9986 GAF/DRG budget neutrality factor for FY 2001 is 0.9986.
[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 2001 outlier reduction factor is 0.9416/0.9402, or 1.0015.

6. Special Rate for Puerto Rico Hospitals

As explained at the beginning of section IV of this Addendum, hospitals in Puerto Rico are paid based on 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. The Puerto Rico rate is derived from the costs of Puerto Rico hospitals only, while the Federal rate is derived from the costs of all acute care hospitals participating in the prospective payment system (including Puerto Rico). To adjust hospitals' capital payments for geographic variations in capital costs, we apply a geographic adjustment factor (GAF) to both portions of the blended rate. The GAF is calculated using the operating prospective payment system wage index and varies depending on the MSA or rural area in which the hospital is located. We use the Puerto Rico wage index to determine the GAF for the Puerto Rico part of the capital-blended rate and the national wage index to determine the GAF for the national part of the blended rate.

Since we implemented a separate GAF for Puerto Rico in FY 1998, we also apply separate budget neutrality adjustments for the national GAF and for the Puerto Rico GAF. However, we apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. The Puerto Rico GAF budget

neutrality factor is 1.0031, while the DRG adjustment is 1.0002, for a combined cumulative adjustment of 1.0033.

In computing the payment for a particular Puerto Rico hospital, the Puerto Rico portion of the rate (50 percent) is multiplied by the Puerto Rico-specific GAF for the MSA in which the hospital is located, and the national portion of the rate (50 percent) is multiplied by the national GAF for the MSA in which the hospital is located (which is computed from national data for all hospitals in the United States and Puerto Rico). In FY 1998, we implemented a 17.78 percent reduction to the Puerto Rico rate as a result of Public Law 105–33.

For FY 2000, before application of the GAF, the special rate for Puerto Rico hospitals was $174.81. With the changes we are proposing to the factors used to determine the rate, the proposed FY 2001 special rate for Puerto Rico is $185.38.

*B. Calculation of Inpatient Capital-Related Prospective Payments for FY 2001*

During the capital prospective payment system transition period, a hospital is paid for the inpatient capital-related costs under one of two payment methodologies—the fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the Federal rate applicable to the hospital's first cost reporting period under the prospective payment system. The applicable Federal rate was determined by making adjustments as follows:

- For outliers, by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and
- For the payment adjustments applicable to the hospital, by multiplying the hospital's GAF, disproportionate share adjustment factor, and IME adjustment factor, when appropriate.

If the hospital-specific rate is above the applicable Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is below the applicable Federal rate, the hospital is paid under the fully prospective methodology.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology, the standard Federal rate is adjusted as follows: (Standard Federal Rate) × (DRG weight) × (GAF) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + IME Adjustment Factor, if applicable).

The result is the adjusted Federal rate.

Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of the following:

- 100 percent of the adjusted Federal rate for each discharge; or
- An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted Federal rate for each discharge. The percentage of the adjusted Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted Federal rate in a cost reporting period beginning on or after October 1, 1994 (or the first cost reporting period after obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis for the remainder of the transition period.

Payment for each discharge under the fully prospective methodology is based on the applicable transition blend percentage of the hospital-specific rate and the adjusted Federal rate.

Thus, for FY 2001 payments under the fully prospective methodology will be based on 100 percent of the adjusted Federal rate and zero percent of the hospital-specific rate.

Hospitals also may receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments. For fully prospective hospitals, that portion is 100 percent of the Federal rate for discharges occurring in cost reporting periods beginning during FY 2001. Thus, a fully prospective hospital will receive 100 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 2001. For hold-harmless hospitals that are paid 85 percent of their reasonable costs for old inpatient capital, the portion of the Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid 100 percent of the Federal rate, 100 percent of the Federal rate is included in the hospital's outlier payments.

The proposed outlier thresholds for FY 2001 are in section II.A.4.c. of this Addendum. For FY 2001, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the prospective payment rate for the DRG plus $17,250.

During the capital prospective payment system transition period, a hospital also may receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The proposed minimum payment levels for portions of cost reporting periods occurring in FY 2001 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent or that receive more than 30 percent of their net inpatient care revenues from State or local governments for indigent care, 80 percent; and
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period. New hospitals are exempted from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. A new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December

31, 1990, or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period.

*C. Capital Input Price Index*

1. Background

Like the operating input price index, the capital input price index (CIPI) is a fixed-weight price index that measures the price changes associated with costs during a given year. The CIPI differs from the operating input price index in one important aspect—the CIPI reflects the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions). An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year.

Using Medicare cost reports, American Hospital Association (AHA) data, and Securities Data Company data, a vintage-weighted price index was developed to measure price increases associated with capital expenses. We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. Currently, the CIPI is based to FY 1992 and was last rebased in 1997. The most recent explanation of the CIPI was discussed in the final rule with comment period for FY 1998 published on August 29, 1997 (62 FR 46050).

2. Forecast of the CIPI for Federal Fiscal Year 2001

We are forecasting the CIPI to increase 0.9 percent for FY 2001. This reflects a projected 1.5 percent increase in vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 3.5 percent increase in other capital expense prices in FY 2001, partially offset by a 1.3 percent decline in vintage-weighted interest rates in FY 2001. The weighted average of these three factors produces the 0.9 percent increase for the CIPI as a whole.

**V. Proposed Changes to Payment Rates for Excluded Hospitals and Hospital Units: Rate-of-Increase Percentages**

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in regulations at § 413.40. Under these limits, a hospital-specific target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors). In the case of a psychiatric hospital or hospital unit, a rehabilitation hospital or hospital unit, or a long-term care hospital, the target amount may not exceed the updated figure for the 75th percentile of target amounts adjusted to take into account differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospital for hospitals and units in the same class (psychiatric, rehabilitation, and long-term care) for cost reporting periods ending during FY 1996. The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Each hospital-specific target amount is adjusted annually, at the beginning of each hospital's cost reporting period, by an applicable update factor.

Section 1886(b)(3)(B) of the Act, which is implemented in regulations at § 413.40(c)(3)(vii), provides that for cost reporting periods beginning on or after October 1, 1998 and before October 1, 2002, the update factor for a hospital or unit depends on the hospital's or hospital unit's costs in relation to the ceiling for the most recent cost reporting period for which information is available. For hospitals with costs exceeding the ceiling by 10 percent or more, the update factor is the market basket increase. For hospitals with costs exceeding the ceiling by less than 10 percent, the update factor is the market basket minus .25 percent for each percentage point by which costs are less than 10 percent over the ceiling. For hospitals with costs equal to or less than the ceiling but greater than 66.7 percent of the ceiling, the update factor is the greater of 0 percent or the market basket minus 2.5 percent. For hospitals with costs that do not exceed 66.7 percent of the ceiling, the update factor is 0.

The most recent forecast of the market basket increase for FY 2001 for hospitals and hospital units excluded from the prospective payment system is 3.1 percent. Therefore, the update to a hospital's target amount for its cost reporting period beginning in FY 2001 would be between 0.6 and 3.1 percent, or 0 percent, depending on the hospital's or unit's costs in relation to its rate-of-increase limit.

In addition, § 413.40(c)(4)(iii) requires that for cost reporting periods beginning on or after October 1, 1998 and before October 1, 2002, the target amount for each psychiatric hospital or hospital unit, rehabilitation hospital or hospital unit, and long-term care hospital cannot exceed a cap on the target amounts for hospitals in the same class.

Section 121 of Public Law 106–113 amended section 1886(b)(3)(H) of the Act to provide for an appropriate wage adjustment to the caps on the target amounts for psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals, effective for cost reporting periods beginning on or after October 1, 1999, through September 30, 2002. We intend to publish an interim final rule with comment period implementing this provision for cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000. This proposed rule addresses the wage adjustment to the caps for cost reporting periods beginning on or after October 1, 2000.

As discussed in section VI. of the preamble of this proposed rule, under section 121 of Public Law 106–113, the cap on the target amount per discharge is determined by adding the hospital's nonlabor-related portion of the national 75th percentile cap to its wage-adjusted, labor-related portion of the national 75th percentile cap (the labor-related portion of costs equals 0.71553 and the nonlabor-related portion of costs equals 0.28447). A hospital's wage-adjusted, labor-related portion of the target amount is calculated by multiplying the labor-related portion of the national 75th percentile cap for the hospital's class by the wage index under the hospital inpatient prospective payment system (see § 412.63), without taking into account reclassifications under sections 1886(a)(10) and (d)(8)(B) of the Act.

For cost reporting periods beginning in FY 2001, the proposed caps are as follows:

| Class of excluded hospital or unit | Labor-related share | Nonlabor-related share |
|---|---|---|
| Psychiatric ..... | $8,106 | $3,223 |
| Rehabilitation .... | 15,108 | 6,007 |
| Long-Term Care | 29,312 | 11,654 |

Regulations at § 413.40(d) specify the formulas for determining bonus and relief payments for excluded hospitals and specify established criteria for an additional bonus payment for continuous improvement. Regulations at §413.40(f)(2)(ii) specify the payment methodology for new hospitals and hospital units (psychiatric, rehabilitation, and long-term care) effective October 1, 1997.

**VI. Tables**

This section contains the tables referred to throughout the preamble to this proposed rule and in this Addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 1E (a new table, as described in section II of this Addendum), 3C, 4A, 4B, 4C, 4D, 4E, 4F, 5, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 7A, 7B, 8A, and 8B are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor
Table 1D—Capital Standard Federal Payment Rate
Table 1E—National Adjusted Operating Standardized Amounts for Sole Community Hospitals, Labor/Nonlabor
Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1999 and Hospital Average Hourly Wage for Federal Fiscal Year 2001 Wage Index
Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4D—Average Hourly Wage for Urban Areas
Table 4E—Average Hourly Wage for Rural Areas
Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF)
Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Arithmetic Mean Length of Stay Points Used in the Prospective Payment System
Table 6A—New Diagnosis Codes
Table 6B—New Procedure Codes
Table 6C—Invalid Diagnosis Codes
Table 6D—Revised Diagnosis Code Titles
Table 6E—Revised Procedure Codes
Table 6F—Additions to the CC Exclusions List
Table 6G—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 99 MEDPAR Update 12/99 GROUPER V17.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 99 MEDPAR Update 12/99 GROUPER V18.0
Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) March 2000
Table 8B—Statewide Average Capital Cost-to-Charge Ratios (Case Weighted) March 2000

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

| Large urban areas | | Other areas | |
|---|---|---|---|
| Labor-related | Nonlabor-related | Labor-related | Nonlabor related |
| $2,856.71 | $1,161.17 | $2,811.49 | $1,142.79 |

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

| | Large urban areas | | Other areas | |
|---|---|---|---|---|
| | Labor | Nonlabor | Labor | Nonlabor |
| National ..... | $2,832.11 | $1,151.16 | $2,832.11 | $1,151.16 |
| Puerto Rico ..... | 1,373.19 | 552.74 | 1,351.45 | 543.99 |

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

| | Rate |
|---|---|
| National ..... | $383.06 |
| Puerto Rico ..... | 185.38 |

TABLE 1E.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR SOLE COMMUNITY HOSPITALS, LABOR/NONLABOR

| Large urban areas | | Other areas | |
|---|---|---|---|
| Labor-related | Nonlabor-related | Labor-related | Nonlabor-related |
| $2,887.52 | $1,173.69 | $2,841.81 | $1,155.11 |

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TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 010001 | 1.4278 | 16.48 | 010052 | 1.0036 | 16.97 | 010109 | 1.0212 | 15.33 | 020005 | 0.8798 | 34.13 | 030025 | 0.9391 | 13.27 | 030085 | 1.4869 | 19.44 |
| 010004 | 1.0044 | 18.05 | 010053 | 1.0194 | 14.68 | 010110 | 0.8850 | | 020006 | 1.1483 | 31.85 | 030027 | 0.9273 | 16.22 | 030086 | 3.7429 | 19.83 |
| 010005 | 1.2480 | 17.66 | 010054 | 1.1445 | 18.51 | 010112 | 1.0528 | 15.23 | 020007 | 0.9380 | 29.28 | 030030 | 1.6808 | 21.20 | 030087 | 1.5545 | 21.43 |
| 010006 | 1.4005 | 16.52 | 010055 | 1.4568 | 19.26 | 010113 | 1.6470 | 17.01 | 020008 | 1.0787 | 29.56 | 030033 | 1.2105 | 19.76 | 030088 | 1.3535 | 19.87 |
| 010007 | 1.1113 | 15.58 | 010056 | 1.3395 | 19.25 | 010114 | 1.3085 | 15.26 | 020009 | 0.8178 | 20.45 | 030034 | 0.9505 | 17.14 | 030089 | 1.5928 | 20.40 |
| 010008 | 1.0850 | 15.00 | 010058 | 0.9947 | 16.92 | 010115 | 0.8637 | 14.81 | 020010 | 0.9175 | 26.72 | 030035 | 1.2644 | 19.50 | 030092 | 1.5998 | 16.26 |
| 010009 | 1.0667 | 19.19 | 010059 | 1.0876 | 19.35 | 010118 | 1.2302 | | 020011 | 0.9195 | 30.48 | 030036 | 1.2424 | 20.76 | 030093 | 1.3244 | 19.87 |
| 010010 | 1.0880 | 16.53 | 010061 | 0.9942 | 15.11 | 010119 | 0.7846 | 18.81 | 020012 | 1.2732 | 25.24 | 030037 | 2.0155 | 23.11 | 030094 | 1.2428 | 21.62 |
| 010011 | 1.6150 | 20.81 | 010062 | 1.1101 | 15.10 | 010120 | 0.9620 | 17.34 | 020013 | 1.0626 | 24.47 | 030038 | 1.5713 | 22.80 | 030095 | 0.9887 | 13.73 |
| 010012 | 1.3045 | 17.81 | 010064 | 1.8161 | 20.51 | 010121 | 1.2250 | 14.74 | 020014 | 1.1975 | 29.43 | 030040 | 1.0698 | 18.96 | 030099 | 0.9042 | 16.18 |
| 010015 | 0.9885 | 15.53 | 010065 | 1.2896 | 16.52 | 010123 | 1.2688 | 16.64 | 020017 | 1.6744 | 26.77 | 030041 | 0.8919 | 16.42 | 030100 | 1.9339 | |
| 010016 | 1.2621 | 17.28 | 010066 | 0.8539 | 15.77 | 010124 | | 16.19 | 020018 | 0.9153 | | 030043 | 1.2572 | 21.06 | 030101 | 1.5440 | |
| 010018 | 1.0469 | 18.08 | 010068 | 1.2576 | 15.31 | 010125 | 1.0259 | 15.71 | 020019 | 0.8528 | | 030044 | 0.9287 | 16.86 | 030102 | 2.5438 | |
| 010019 | 1.1669 | 16.39 | 010069 | 1.1548 | 13.99 | 010126 | 1.0986 | 19.69 | 020021 | 0.8346 | | 030047 | 0.8511 | 22.78 | 030103 | 1.6998 | |
| 010021 | 1.1984 | 16.38 | 010072 | 1.1114 | 15.08 | 010127 | | 19.53 | 020024 | 1.0545 | 24.09 | 030049 | 0.8952 | 19.63 | 040001 | 1.1033 | 15.30 |
| 010022 | 1.0132 | 18.93 | 010073 | 0.8978 | 14.15 | 010128 | 0.9027 | 14.62 | 020025 | 0.8695 | 21.78 | 030054 | 0.8303 | 15.37 | 040002 | 1.0913 | 13.15 |
| 010023 | 1.7280 | 16.19 | 010078 | 1.2693 | 17.97 | 010129 | 1.0588 | 14.86 | 020026 | 1.4409 | | 030055 | 1.2365 | 16.43 | 040003 | 1.0704 | 14.57 |
| 010024 | 1.3789 | 16.31 | 010079 | 1.2290 | 16.63 | 010130 | 0.9895 | 16.85 | 020027 | 0.9912 | | 030059 | 1.3346 | 24.08 | 040004 | 1.6137 | 18.04 |
| 010025 | 1.2878 | 15.24 | 010081 | 1.3804 | | 010131 | 1.2724 | | 030001 | 1.3884 | 20.41 | 030060 | 1.1248 | 19.25 | 040005 | 0.9870 | 13.31 |
| 010027 | 0.8252 | 13.87 | 010083 | 1.1286 | 16.91 | 010134 | 0.8020 | 20.58 | 030002 | 1.8195 | 21.78 | 030061 | 1.6762 | 18.94 | 040007 | 1.6837 | 22.13 |
| 010029 | 1.5749 | 17.73 | 010084 | 1.4695 | 18.53 | 010137 | 1.3159 | 12.12 | 030003 | 2.2304 | 23.99 | 030062 | 1.1606 | 17.72 | 040008 | 1.0106 | 16.25 |
| 010031 | 1.3683 | 18.78 | 010085 | 1.3068 | 18.60 | 010138 | 0.9615 | 13.19 | 030004 | 0.8905 | 14.17 | 030064 | 1.7355 | 19.64 | 040010 | 1.2831 | 18.75 |
| 010032 | 0.8616 | 12.84 | 010086 | 1.0467 | 16.69 | 010139 | 1.5811 | 18.47 | 030006 | 1.5664 | 18.32 | 030065 | 1.7670 | 20.60 | 040011 | 0.9495 | 14.97 |
| 010033 | 2.0389 | 20.47 | 010087 | 1.7488 | 19.03 | 010143 | 1.1549 | 21.75 | 030007 | 1.2621 | 19.72 | 030067 | 1.1041 | 14.49 | 040014 | 1.4163 | 17.92 |
| 010034 | 1.0754 | 15.23 | 010089 | 1.2804 | 16.84 | 010144 | 1.4251 | 17.17 | 030008 | 2.0733 | 22.37 | 030068 | 1.0055 | 17.59 | 040015 | 1.1470 | 17.02 |
| 010035 | 1.2529 | 20.25 | 010090 | 1.6551 | 18.39 | 010145 | 1.2446 | 20.42 | 030009 | 1.1418 | 18.28 | 030069 | 1.3547 | 19.19 | 040016 | 1.6706 | 19.04 |
| 010036 | 1.0593 | | 010091 | 0.9348 | 14.08 | 010146 | 1.2935 | 18.56 | 030010 | 1.3827 | 19.15 | 030071 | 0.8901 | | 040017 | 1.1720 | 13.03 |
| 010038 | 1.2051 | 18.27 | 010092 | 1.3926 | 17.05 | 010148 | 0.9818 | 12.34 | 030011 | 1.3897 | 19.33 | 030072 | 0.9288 | | 040018 | 1.1338 | 17.75 |
| 010039 | 1.6101 | 20.18 | 010095 | 0.9413 | 12.70 | 010149 | 1.2070 | 18.56 | 030012 | 1.2263 | 19.09 | 030073 | 1.0146 | | 040019 | 1.0841 | 24.51 |
| 010040 | 1.4448 | 19.06 | 010097 | 0.8645 | 13.21 | 010150 | 1.0460 | 18.15 | 030013 | 1.2632 | 20.84 | 030074 | 0.9404 | | 040020 | 1.5875 | 18.36 |
| 010043 | 1.0006 | 38.25 | 010098 | 0.9268 | 16.03 | 010152 | 1.3025 | 17.83 | 030014 | 1.5248 | 20.05 | 030075 | 0.8153 | | 040021 | 1.2297 | 17.91 |
| 010044 | 0.9812 | 22.99 | 010099 | 1.1312 | 16.03 | 010155 | 1.0695 | 9.36 | 030016 | 1.3278 | 19.70 | 030076 | 0.8824 | | 040022 | 1.4451 | 17.16 |
| 010045 | 1.1916 | 15.62 | 010100 | 1.2961 | 17.27 | 010157 | 1.1997 | | 030017 | 1.4749 | 23.11 | 030077 | 0.8316 | | 040024 | 1.0611 | 14.61 |
| 010046 | 1.5065 | 17.44 | 010101 | 1.1235 | 15.45 | 010158 | 1.0853 | 17.24 | 030018 | 1.8380 | 20.52 | 030078 | 1.1559 | | 040025 | 0.8692 | 11.59 |
| 010047 | 0.9422 | 13.41 | 010102 | 0.9079 | 14.02 | 010159 | 1.1094 | | 030019 | 1.2068 | 21.76 | 030079 | 0.8532 | | 040026 | 1.6035 | 19.88 |
| 010049 | 1.1846 | 14.77 | 010103 | 1.8380 | 18.01 | 020001 | 1.4984 | 28.36 | 030022 | 1.4836 | 15.20 | 030080 | 1.3803 | 20.60 | 040027 | 1.3965 | 16.30 |
| 010050 | 1.0824 | 18.66 | 010104 | 1.7096 | 17.80 | 020002 | 1.0103 | 24.89 | 030023 | 1.4898 | 23.86 | 030083 | 1.2592 | 21.08 | 040028 | 0.9947 | 14.91 |
| 010051 | 0.8974 | 12.19 | 010108 | 1.1564 | 18.37 | 020004 | 1.0683 | 30.98 | 030024 | 1.7420 | 22.82 | 030084 | 1.1379 | | 040029 | 1.2723 | 18.03 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 040030 | 0.9396 | 13.93 | 040090 | 0.8630 | 18.35 | 050033 | 1.4729 | 25.01 | 050090 | 1.2709 | 23.64 | 050138 | 2.1622 | 37.84 | 050207 | 1.2349 | 21.65 |
| 040032 | 0.9438 | 14.03 | 040091 | 1.2296 | 17.53 | 050036 | 1.7390 | 21.36 | 050091 | 1.1410 | 25.29 | 050139 | 1.1982 | 33.13 | 050211 | 1.2346 | 31.95 |
| 040035 | 0.9216 | 13.01 | 040093 | 0.9349 | 12.78 | 050038 | 1.3755 | 28.81 | 050092 | 0.8504 | 16.86 | 050140 | 1.3758 | 34.43 | 050213 | 1.5148 | 21.50 |
| 040036 | 1.3589 | 18.98 | 040100 | 1.1438 | 14.87 | 050039 | 1.5488 | 22.70 | 050093 | 1.5478 | 25.37 | 050144 | 1.4526 | 28.29 | 050214 | 1.5278 | 21.84 |
| 040037 | 1.0868 | 15.10 | 040105 | 0.9922 | 15.78 | 050040 | 1.2641 | 33.40 | 050095 | | 35.99 | 050145 | 1.3372 | 32.41 | 050215 | 1.5854 | 30.03 |
| 040039 | 1.2271 | 14.46 | 040106 | 1.0883 | 15.86 | 050042 | 1.2409 | 24.99 | 050096 | 1.0790 | 20.54 | 050146 | 1.6424 | | 050217 | 1.2598 | 19.60 |
| 040040 | 0.9470 | 18.23 | 040107 | 1.0434 | 19.01 | 050043 | 1.5334 | 33.33 | 050097 | 1.4223 | 16.40 | 050148 | 1.0688 | 22.00 | 050219 | 1.0474 | 21.83 |
| 040041 | 1.2165 | 16.08 | 040109 | 1.1328 | 14.77 | 050045 | 1.2221 | 19.88 | 050099 | 1.4583 | 24.98 | 050149 | 1.3785 | 24.71 | 050222 | 1.6060 | 27.54 |
| 040042 | 1.2980 | 15.35 | 040114 | 1.8654 | 18.87 | 050046 | 1.1393 | 26.07 | 050100 | 1.7205 | 30.18 | 050150 | 1.2152 | 25.13 | 050224 | 1.6205 | 23.61 |
| 040044 | 1.0474 | 12.80 | 040116 | | 20.35 | 050047 | 1.6262 | 30.13 | 050101 | 1.4103 | 31.14 | 050152 | 1.3259 | 34.39 | 050225 | 1.5004 | 31.58 |
| 040045 | 0.9487 | 15.24 | 040118 | 1.4710 | 19.61 | 050051 | 0.9881 | 18.18 | 050102 | 1.2911 | 22.30 | 050153 | 1.6067 | 30.64 | 050226 | 1.4298 | 27.83 |
| 040047 | 1.0359 | 17.09 | 040119 | 1.1794 | 15.59 | 050054 | 1.1959 | 20.75 | 050103 | 1.5882 | 25.01 | 050155 | 1.0591 | 24.84 | 050228 | 1.3532 | 34.31 |
| 040050 | 1.1708 | 13.80 | 040124 | 0.9563 | 19.26 | 050055 | 1.1956 | 29.72 | 050104 | 1.4022 | 25.67 | 050158 | 1.2985 | 27.84 | 050230 | 1.5494 | 27.88 |
| 040051 | 1.0438 | 15.99 | 040126 | 0.9145 | 12.72 | 050056 | 1.3751 | 27.51 | 050107 | 1.4130 | 21.70 | 050159 | 1.3185 | 23.54 | 050231 | 1.5745 | 26.19 |
| 040053 | 1.0545 | 16.66 | 040132 | | 22.62 | 050057 | 1.6438 | 21.42 | 050108 | 1.8758 | 23.62 | 050167 | 1.4456 | 21.96 | 050232 | 1.7691 | 24.56 |
| 040054 | 1.0183 | 15.43 | 040134 | 2.6352 | 18.08 | 050058 | 1.4738 | 23.34 | 050110 | 1.1566 | 20.62 | 050168 | 1.5914 | 23.46 | 050234 | 1.1381 | 26.03 |
| 040055 | 1.4727 | 17.25 | 040135 | 1.4738 | 22.68 | 050060 | 1.5538 | 20.87 | 050111 | 1.2612 | 21.19 | 050169 | 1.4356 | 22.55 | 050235 | 1.5844 | 25.46 |
| 040058 | 1.0376 | 17.82 | 040136 | 2.2661 | | 050061 | 1.3808 | 23.74 | 050112 | 1.4206 | 25.37 | 050170 | 1.4332 | 24.06 | 050236 | 1.3946 | 27.29 |
| 040060 | 0.9530 | 13.75 | 050002 | 1.5128 | 39.36 | 050063 | 1.3292 | 25.16 | 050113 | 1.2119 | 29.30 | 050172 | 1.2213 | 20.18 | 050238 | 1.5409 | 24.47 |
| 040062 | 1.5948 | 23.18 | 050006 | 1.4846 | 19.18 | 050065 | 1.7146 | 24.28 | 050114 | 1.3399 | 24.85 | 050173 | 1.1939 | 25.08 | 050239 | 1.6537 | 22.66 |
| 040064 | 1.0306 | 11.06 | 050007 | 1.4729 | 30.71 | 050066 | 1.3859 | 16.69 | 050115 | 1.5070 | 21.41 | 050174 | 1.7347 | 31.50 | 050240 | 1.5264 | 26.54 |
| 040066 | 1.0685 | 18.42 | 050008 | 1.4666 | 26.73 | 050067 | 1.2756 | 23.15 | 050116 | 1.5553 | 25.24 | 050175 | 1.3795 | 27.96 | 050241 | | 26.37 |
| 040067 | 1.0625 | 14.70 | 050009 | 1.6262 | 27.06 | 050068 | 1.0637 | 21.52 | 050117 | 1.3992 | 23.39 | 050177 | 1.2057 | 21.80 | 050242 | 1.3988 | 31.31 |
| 040069 | 1.0577 | 17.80 | 050013 | 1.9833 | 22.96 | 050069 | 1.5647 | 25.94 | 050118 | 1.1741 | 23.77 | 050179 | 1.2162 | 22.06 | 050243 | 1.5571 | 29.12 |
| 040070 | 0.9170 | 17.07 | 050014 | 1.1307 | 22.98 | 050070 | 1.3225 | 32.87 | 050121 | 1.3144 | 19.60 | 050180 | 1.5819 | 31.96 | 050245 | 1.5661 | 23.85 |
| 040071 | 1.5990 | 17.07 | 050015 | 1.4834 | 26.26 | 050071 | 1.2657 | 33.34 | 050122 | 1.6021 | 26.34 | 050183 | | 20.36 | 050248 | 1.2079 | 26.33 |
| 040072 | 1.0365 | 16.30 | 050016 | 1.2089 | 20.67 | 050072 | 1.2791 | 33.53 | 050124 | 1.2563 | 22.88 | 050186 | 1.3599 | 22.79 | 050251 | 1.0433 | 22.39 |
| 040074 | 1.2996 | 18.48 | 050017 | 2.1001 | 23.22 | 050073 | 1.2635 | 33.65 | 050125 | 1.3273 | 29.60 | 050188 | 1.4760 | 28.30 | 050253 | 1.4115 | 16.07 |
| 040075 | 0.9771 | 13.40 | 050018 | 1.2245 | 15.49 | 050075 | 1.2788 | 34.10 | 050126 | 1.4554 | 24.03 | 050189 | 0.9957 | 23.30 | 050254 | 1.1387 | 19.40 |
| 040076 | 1.1181 | 19.37 | 050021 | | 26.03 | 050076 | 2.3071 | 27.82 | 050127 | 1.2415 | 22.19 | 050191 | 1.3715 | 20.91 | 050256 | 1.7386 | 23.81 |
| 040077 | 1.0444 | 13.09 | 050022 | 1.6509 | 24.12 | 050077 | 1.5543 | 24.15 | 050128 | 1.5294 | 25.89 | 050192 | 1.0556 | 18.68 | 050257 | 1.0952 | 15.32 |
| 040078 | 1.5847 | 19.15 | 050024 | 1.3078 | 21.57 | 050078 | 1.3423 | 23.35 | 050129 | 1.6749 | 26.64 | 050193 | 1.1442 | 22.86 | 050260 | 0.9729 | 23.62 |
| 040080 | 1.0164 | 19.53 | 050025 | 1.7364 | 23.45 | 050079 | 1.5386 | 33.54 | 050131 | 1.2584 | 31.24 | 050194 | 1.2706 | 35.58 | 050261 | 1.2542 | 20.10 |
| 040081 | 0.8832 | 11.39 | 050026 | 1.5282 | 27.92 | 050080 | | 9.75 | 050132 | 1.3424 | 24.18 | 050195 | 1.5371 | 31.73 | 050262 | 1.8299 | 28.95 |
| 040082 | 1.0656 | 16.71 | 050028 | 1.3459 | 16.61 | 050082 | 1.6267 | 22.15 | 050133 | 1.2297 | 25.34 | 050196 | 1.3094 | 18.52 | 050264 | 1.3077 | 32.34 |
| 040084 | 1.1044 | 17.31 | 050029 | 1.2962 | 24.97 | 050084 | 1.5992 | 23.67 | 050135 | 1.3515 | 23.28 | 050197 | 2.0328 | 35.59 | 050267 | 1.7131 | 26.61 |
| 040085 | 1.1034 | 17.17 | 050030 | 1.2994 | 21.25 | 050088 | 0.9057 | 20.84 | 050136 | 1.2602 | 25.49 | 050204 | 1.4464 | 23.69 | 050270 | 1.3463 | 24.10 |
| 040088 | 1.3771 | 17.56 | 050032 | 1.2823 | 25.20 | 050089 | 1.2844 | 20.42 | 050137 | 1.3354 | 33.15 | 050205 | 1.2961 | 23.79 | 050272 | 1.3864 | 22.55 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 050274 | | 21.90 | 050336 | 1.3148 | 21.11 | 050411 | 1.3325 | 35.12 | 050482 | 0.9444 | 18.33 | 050557 | 1.4917 | 21.19 | 050616 | 1.3945 | 23.24 |
| 050276 | 1.2294 | 30.14 | 050337 | 1.3409 | | 050414 | 1.2163 | 24.21 | 050483 | | 22.72 | 050559 | 1.3253 | 23.97 | 050618 | 0.9941 | 23.36 |
| 050277 | 1.3544 | 20.11 | 050342 | 1.2318 | 20.36 | 050417 | 1.2669 | 21.72 | 050485 | 1.5748 | 23.02 | 050561 | 1.1922 | 34.74 | 050623 | 1.3428 | 31.48 |
| 050278 | 1.5520 | 25.08 | 050343 | | 17.21 | 050419 | 1.4211 | 24.35 | 050488 | 1.3457 | 34.75 | 050564 | 1.5745 | 23.81 | 050624 | 1.3036 | 22.73 |
| 050279 | 1.2438 | 21.49 | 050348 | 1.7938 | 24.04 | 050420 | 1.2836 | 22.37 | 050491 | 1.1162 | 26.54 | 050565 | | 23.80 | 050625 | 1.6119 | 24.49 |
| 050280 | 1.6911 | 25.35 | 050349 | 0.8931 | 14.98 | 050423 | 1.1073 | 17.37 | 050492 | 1.4207 | 19.55 | 050566 | 0.9362 | 17.63 | 050630 | 1.1955 | 23.92 |
| 050281 | 1.4283 | 19.89 | 050350 | 1.4083 | 24.94 | 050424 | 1.8977 | 22.86 | 050494 | 1.2611 | 29.94 | 050567 | 1.5233 | 24.77 | 050633 | 1.3384 | 23.19 |
| 050282 | 1.3177 | 28.95 | 050351 | 1.4618 | 25.59 | 050425 | 1.2423 | 33.01 | 050496 | 1.6631 | 32.63 | 050568 | 1.2199 | 19.62 | 050636 | 1.3775 | 21.49 |
| 050283 | 1.5413 | 29.91 | 050352 | 1.3581 | 26.44 | 050426 | 1.4516 | 25.41 | 050497 | 0.8187 | 14.88 | 050569 | 1.2256 | 26.84 | 050638 | 1.2242 | 18.30 |
| 050286 | | 17.82 | 050353 | 1.5558 | 23.07 | 050427 | 0.9257 | 21.09 | 050498 | 1.2010 | 25.23 | 050570 | 1.5758 | 25.35 | 050641 | 1.1934 | 22.08 |
| 050289 | 1.7695 | 34.63 | 050355 | 0.8485 | 23.11 | 050430 | 0.9850 | 27.11 | 050502 | 1.7562 | 22.26 | 050571 | 1.4012 | 26.67 | 050643 | 0.8109 | |
| 050290 | 1.6650 | 28.62 | 050357 | 1.3840 | 22.77 | 050432 | 1.5787 | 24.47 | 050503 | 1.3611 | 24.50 | 050573 | 1.5665 | 25.04 | 050644 | 1.0478 | 22.61 |
| 050291 | 1.2493 | 30.37 | 050359 | 1.2337 | 17.86 | 050433 | 0.9702 | 18.78 | 050506 | 1.3777 | 25.26 | 050575 | 1.0859 | 19.56 | 050660 | 1.3988 | |
| 050292 | 1.0279 | 21.61 | 050360 | 1.3884 | 31.55 | 050434 | 1.0486 | 20.11 | 050510 | 1.1881 | 33.68 | 050577 | 1.3890 | 25.18 | 050661 | | 19.69 |
| 050293 | 1.3962 | 22.40 | 050366 | 1.2354 | 23.85 | 050435 | 1.2440 | 26.85 | 050512 | 1.3509 | 35.79 | 050578 | 1.3082 | 29.18 | 050662 | 0.7821 | 33.69 |
| 050295 | 1.4548 | 21.44 | 050367 | 1.2265 | 28.47 | 050436 | | 14.82 | 050515 | 1.3677 | 35.59 | 050579 | 1.3288 | 30.66 | 050663 | 1.0923 | 31.69 |
| 050296 | 1.1963 | 27.85 | 050369 | 1.3186 | 27.11 | 050438 | 1.7067 | 25.19 | 050516 | 1.4960 | 24.85 | 050580 | 1.2433 | 26.07 | 050667 | 0.9630 | 31.43 |
| 050298 | 1.2708 | 24.45 | 050373 | 1.3850 | 25.58 | 050440 | 1.2249 | 24.04 | 050517 | 1.1888 | 20.96 | 050581 | 1.4087 | 23.94 | 050668 | 1.0342 | 90.35 |
| 050299 | 1.4014 | 26.61 | 050376 | 1.5450 | 25.95 | 050441 | 1.9566 | 33.91 | 050522 | 1.1530 | 35.75 | 050583 | 1.5685 | 24.46 | 050670 | 0.7818 | 20.09 |
| 050300 | 1.5156 | 23.47 | 050377 | 0.9251 | 17.68 | 050443 | 0.7635 | 20.72 | 050523 | 1.2555 | 27.10 | 050584 | 1.1277 | 21.24 | 050674 | 1.2419 | 35.29 |
| 050301 | 1.2115 | 21.96 | 050378 | 1.1115 | 26.25 | 050444 | 1.3293 | 21.66 | 050526 | 1.2341 | 24.10 | 050585 | 1.2603 | 26.14 | 050675 | | 15.68 |
| 050305 | 1.5654 | 34.96 | 050379 | 0.9780 | 17.02 | 050446 | 0.8819 | 20.67 | 050528 | 1.1751 | 19.06 | 050586 | 1.2224 | 23.57 | 050676 | 0.9591 | 21.14 |
| 050307 | | 23.86 | 050380 | 1.6373 | 31.53 | 050447 | 1.0026 | 17.98 | 050531 | 1.1211 | 22.73 | 050588 | 1.3006 | 25.56 | 050677 | 1.3600 | 35.65 |
| 050308 | 1.4622 | 29.42 | 050382 | 1.3438 | 25.57 | 050448 | 1.0667 | 18.32 | 050534 | 1.2604 | 24.07 | 050589 | 1.1422 | 24.87 | 050678 | 1.3388 | 26.89 |
| 050309 | 1.2943 | 23.86 | 050385 | 1.4093 | 24.94 | 050449 | 1.4294 | 23.88 | 050535 | 1.2211 | 26.03 | 050590 | 1.3372 | 22.89 | 050680 | 1.2248 | 28.06 |
| 050312 | 1.9924 | 27.26 | 050388 | 0.8404 | 22.89 | 050454 | 1.7486 | 28.83 | 050537 | 1.2836 | 22.42 | 050591 | 1.2395 | 24.04 | 050682 | 0.8984 | 37.06 |
| 050313 | 1.2089 | 22.01 | 050390 | 1.1935 | 25.41 | 050455 | 1.9528 | 20.23 | 050539 | 1.2990 | 20.92 | 050592 | 1.2596 | 21.85 | 050684 | 1.2854 | 22.35 |
| 050315 | 1.2679 | 24.87 | 050391 | 1.2246 | 19.09 | 050456 | 1.1464 | 20.62 | 050541 | 1.5705 | 34.58 | 050594 | 1.7218 | 30.50 | 050685 | 1.2160 | 32.57 |
| 050317 | | 21.69 | 050392 | 0.9510 | 23.02 | 050457 | 1.6199 | 38.30 | 050542 | 1.0198 | 16.49 | 050597 | 1.2903 | 22.90 | 050686 | 1.2508 | 35.54 |
| 050320 | 1.2272 | 31.15 | 050393 | 1.4703 | 25.91 | 050464 | 1.7424 | 25.38 | 050543 | 0.8629 | 22.41 | 050598 | 1.2550 | 25.68 | 050688 | 1.1258 | 31.29 |
| 050324 | 2.0207 | 26.99 | 050394 | 1.5619 | 23.14 | 050468 | 1.5316 | 23.79 | 050545 | 0.7727 | 31.73 | 050599 | 1.5637 | 29.33 | 050689 | 1.4986 | 30.73 |
| 050325 | 1.2393 | 25.57 | 050396 | 1.6585 | 24.14 | 050469 | 1.0325 | 23.93 | 050546 | 0.6865 | 32.09 | 050601 | 1.4770 | 31.42 | 050690 | 1.3144 | 33.15 |
| 050327 | 1.6181 | 24.06 | 050397 | 0.8335 | 20.97 | 050470 | 1.0961 | 16.17 | 050547 | 0.8104 | 33.16 | 050603 | 1.3658 | 23.36 | 050693 | 1.2162 | 26.96 |
| 050329 | 1.2744 | 17.46 | 050401 | 0.9837 | 21.00 | 050471 | 1.6658 | 25.72 | 050548 | | 35.76 | 050604 | 1.4187 | 34.21 | 050694 | 1.3336 | 23.23 |
| 050331 | 1.4044 | 22.28 | 050404 | 1.0558 | 17.60 | 050476 | 1.3077 | 22.66 | 050549 | 1.6508 | 27.33 | 050608 | 1.2767 | 18.25 | 050695 | 1.1842 | 21.16 |
| 050333 | 1.0599 | 19.76 | 050406 | 1.0536 | 18.88 | 050477 | 1.4892 | 28.58 | 050550 | 1.3328 | 24.79 | 050609 | 1.5732 | 35.23 | 050696 | 2.0674 | 27.90 |
| 050334 | 1.7234 | 34.42 | 050407 | 1.2790 | 29.97 | 050478 | 0.9611 | 24.58 | 050551 | 1.3155 | 25.61 | 050613 | 1.0324 | 26.17 | 050697 | 1.1678 | 21.16 |
| 050335 | 1.3895 | 23.50 | 050410 | 0.9752 | 17.68 | 050481 | 1.4495 | 28.11 | 050552 | 1.1761 | 22.65 | 050615 | 1.4612 | 23.96 | 050699 | 0.5929 | 20.44 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

UMI 2000 5 MY 88 ISS 65 VOL



TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 050701 | 1.3041 | 19.00 | 060031 | 1.4940 | 21.26 | 060107 | 1.2629 | 12.04 | 080004 | 1.2728 | 23.94 | 100034 | 1.7330 | 18.15* | 100081 | 1.0733 | 14.84 |
| 050704 | 1.0440 | 22.90 | 060032 | 1.4783 | 22.71 | 060109 | 1.2053 | | 080006 | 1.3233 | 19.72 | 100035 | 1.6432 | 20.24 | 100082 | | 18.78 |
| 050707 | 1.0969 | 26.27 | 060033 | 1.0888 | 15.91 | 070001 | 1.8220 | 26.01 | 080007 | 1.3638 | 21.08 | 100038 | 1.8869 | 23.47 | 100084 | 1.5856 | 22.70 |
| 050708 | 1.4624 | 22.78 | 060034 | 1.5456 | 21.79 | 070002 | 1.8248 | 26.29 | 090001 | 1.5805 | 21.77 | 100039 | 1.5107 | 21.54 | 100085 | | 22.12 |
| 050709 | 1.2384 | 21.96 | 060036 | 1.1020 | 15.38 | 070003 | 1.1624 | 25.82 | 090002 | 1.2115 | 19.71 | 100040 | 1.7877 | 19.17 | 100086 | 1.2173 | 21.79 |
| 050710 | 1.3005 | 26.91 | 060037 | 0.9888 | 15.75 | 070004 | 1.2746 | 22.49 | 090003 | 1.3600 | 22.13 | 100043 | 1.2939 | 18.91 | 100087 | 1.8911 | 23.35 |
| 050713 | 0.8043 | 17.73 | 060038 | 0.8834 | 14.22 | 070005 | 1.4166 | 26.70 | 090004 | 1.8650 | 24.36 | 100044 | 1.3454 | 21.53 | 100088 | 1.6760 | 20.02 |
| 050714 | 1.2788 | 24.94 | 060041 | 0.8407 | 17.78 | 070006 | 1.3491 | 27.66 | 090005 | 1.3332 | 23.91 | 100045 | 1.3468 | 21.01 | 100090 | 1.3664 | 21.70 |
| 050717 | 1.3784 | 26.85 | 060042 | 0.9951 | 19.65 | 070007 | 1.3027 | 26.48 | 090006 | 1.3410 | 21.08 | 100046 | 1.3502 | 20.05 | 100092 | 1.5614 | 20.17 |
| 050718 | 0.8088 | 17.61 | 060043 | 0.8853 | 13.86 | 070008 | 1.2561 | 23.42 | 090007 | 1.5039 | 22.20 | 100047 | 1.8051 | 20.12 | 100093 | 1.6726 | 16.66 |
| 050719 | 2.5595 | 25.55 | 060044 | 1.3091 | 19.90 | 070009 | 1.1586 | 23.71 | 090008 | 1.4737 | 20.23 | 100048 | 0.9430 | 15.25 | 100098 | 1.0452 | 19.30 |
| 050720 | 0.8806 | | 060046 | 1.0232 | 19.44 | 070010 | 1.6689 | 25.99 | 090010 | 1.1445 | 24.13 | 100049 | 1.1975 | 18.85 | 100099 | 1.1700 | 15.88 |
| 050721 | 1.3599 | | 060047 | 1.0139 | 17.57 | 070011 | 1.3718 | 23.44 | 090011 | 2.1410 | 27.40 | 100050 | 1.2993 | 17.25 | 100102 | 1.0391 | 19.10 |
| 050722 | 1.1328 | | 060049 | 1.3706 | 32.06 | 070012 | 1.2279 | 23.31 | 100001 | 1.5535 | 19.03 | 100051 | 1.3413 | 22.98 | 100103 | 0.9650 | 17.24 |
| 050723 | 1.1372 | | 060050 | 1.2370 | 18.38 | 070015 | 1.4039 | 23.83 | 100002 | 1.3985 | 20.80 | 100052 | 1.3219 | 19.36 | 100105 | 1.4124 | 21.81 |
| 060001 | 1.6607 | 21.50 | 060052 | 1.0063 | 13.86 | 070016 | 1.4794 | 24.96 | 100004 | 0.9642 | 14.85 | 100053 | 1.1962 | 20.24 | 100106 | 1.0387 | 17.39 |
| 060003 | 1.2464 | 19.91 | 060053 | 0.9789 | 16.01 | 070017 | 1.4040 | 26.43 | 100006 | 1.6035 | 21.02* | 100054 | 1.2561 | 22.69 | 100107 | 1.2762 | 20.19 |
| 060004 | 1.2407 | 23.03 | 060054 | 1.3802 | 22.95 | 070018 | 1.3593 | 28.13 | 100007 | 1.8823 | 22.81 | 100055 | 1.3620 | 18.09 | 100108 | 0.9784 | 20.56 |
| 060006 | 1.1971 | 19.51 | 060056 | 0.9290 | 18.32 | 070019 | 1.2555 | 25.73 | 100008 | 1.6963 | 20.53 | 100056 | 1.5305 | 25.90 | 100109 | 1.3755 | 17.03 |
| 060007 | 1.1130 | 17.69 | 060057 | 1.0415 | 26.56 | 070020 | 1.3599 | 24.18 | 100009 | 1.5188 | 21.35 | 100057 | 1.3391 | 20.24 | 100110 | 1.3848 | 21.16 |
| 060008 | 1.0591 | 18.10 | 060058 | 0.9435 | 16.62 | 070021 | 1.1984 | 25.36 | 100010 | 1.4760 | 21.92 | 100059 | 1.9893 | | 100112 | 1.0418 | |
| 060009 | 1.5798 | 21.75 | 060060 | 0.8847 | 16.03 | 070022 | 1.8512 | 26.79 | 100012 | 1.6474 | 19.61 | 100060 | 1.7354 | 23.44 | 100113 | 1.7293 | 24.16 |
| 060010 | 1.6149 | 24.21 | 060062 | 0.8820 | 18.70 | 070024 | 1.3331 | 25.36 | 100014 | 1.4035 | 19.16 | 100061 | 1.4170 | 21.70 | 100114 | 1.3604 | 21.76 |
| 060011 | 1.3116 | 23.61 | 060064 | 1.4307 | 21.41 | 070025 | 1.8542 | 25.32 | 100015 | 1.4231 | 18.61 | 100062 | 1.7076 | 19.09 | 100117 | 1.2254 | 20.74 |
| 060012 | 1.4015 | | 060065 | 1.3054 | 21.74 | 070027 | 1.3019 | 23.74 | 100017 | 1.6819 | 19.19 | 100063 | 1.2343 | 19.01 | 100118 | 1.1397 | 26.62 |
| 060013 | 1.3105 | 23.47 | 060066 | 0.9651 | 18.00 | 070028 | 1.5485 | 24.77 | 100018 | 1.5502 | 20.39 | 100067 | 1.3635 | 18.15 | 100121 | 1.1637 | |
| 060014 | 1.8362 | 22.91 | 060070 | 1.1094 | 17.42 | 070029 | 1.3317 | 22.18 | 100019 | 1.6468 | 20.97 | 100068 | 1.3245 | 20.28 | 100122 | 1.1574 | 19.42 |
| 060015 | 1.5978 | 21.07 | 060071 | 1.2312 | 17.84 | 070030 | 1.0954 | 29.05 | 100020 | 1.2541 | 21.53 | 100069 | 1.3151 | 16.83 | 100124 | 1.2712 | 17.13 |
| 060016 | 1.1378 | 16.78 | 060073 | 0.8801 | 16.02 | 070031 | 1.2789 | 23.88 | 100022 | 1.7844 | 26.79 | 100070 | 1.4642 | 16.75 | 100125 | 1.2053 | 18.95 |
| 060018 | 1.2592 | 20.41 | 060075 | 1.2325 | 24.22 | 070033 | 1.3762 | 30.60 | 100023 | 1.3041 | 20.33 | 100071 | 1.2406 | 17.56 | 100126 | 1.4299 | 19.79 |
| 060020 | 1.6920 | 18.53 | 060076 | 1.4509 | 20.14 | 070034 | 1.4300 | 29.61 | 100024 | 1.2288 | 22.07 | 100072 | 1.2476 | 20.90 | 100127 | 1.5688 | 20.16 |
| 060022 | 1.5334 | 21.14 | 060085 | 0.9227 | 14.79 | 070035 | 1.4153 | 23.19 | 100025 | 1.7128 | 18.78* | 100073 | 1.7104 | 21.24 | 100128 | 2.2110 | 20.44 |
| 060023 | 1.6360 | 19.53 | 060088 | 1.0675 | 27.99 | 070036 | 1.7766 | 28.86 | 100026 | 1.6560 | 20.81* | 100075 | 1.5161 | 18.41 | 100129 | 1.2952 | 19.16 |
| 060024 | 1.6914 | 22.04 | 060090 | 0.8350 | 22.36 | 070038 | 0.9784 | | 100027 | 0.9696 | 19.29 | 100076 | 1.3282 | 17.98 | 100130 | 1.2695 | 18.67 |
| 060027 | 1.6360 | 21.04 | 060096 | 1.2942 | 22.28 | 070039 | 0.9154 | 30.12 | 100028 | 1.2189 | 19.36 | 100077 | 1.3677 | 22.00 | 100131 | 1.3142 | 23.33 |
| 060028 | 1.5280 | 23.25 | 060100 | 1.5432 | 21.42 | 080001 | 1.6499 | 25.62 | 100029 | 1.2934 | 20.95 | 100078 | 1.0126 | 18.65 | 100132 | 1.2678 | 18.18 |
| 060029 | 0.8602 | 21.44 | 060103 | 1.3721 | 24.82 | 080002 | | 19.77 | 100030 | 1.2240 | 21.95 | 100079 | 1.4734 | | 100134 | 1.0026 | 15.71 |
| 060030 | 1.3103 | 20.76 | 060104 | 1.2589 | 22.24 | 080003 | 1.3355 | 22.29 | 100032 | 1.8440 | 19.74 | 100080 | 1.6017 | 22.16 | 100135 | 1.5395 | 18.96* |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 100137 | 1.2039 | 18.79 | 100204 | 1.5506 | 20.14 | 100256 | 2.0964 | 20.81 | 110018 | 1.1364 | 19.74 | 110069 | 1.2541 | 19.38 | 110120 | 1.0471 | 15.26 |
| 100138 | 0.9867 | 17.91 | 100206 | 1.3714 | 19.65 | 100258 | 1.6079 | 21.42 | 110020 | 1.2453 | 18.29 | 110070 | 1.1370 | 22.19 | 110121 | 1.1598 | 16.30 |
| 100139 | 1.0410 | 15.96 | 100208 | 1.3622 | 20.77 | 100259 | 1.3122 | 20.52 | 110023 | 1.3537 | 23.93 | 110071 | 1.0981 | 15.22 | 110122 | 1.3667 | 21.23 |
| 100140 | 1.1463 | 17.12 | 100209 | 1.4895 | 22.11 | 100260 | 1.4172 | 20.37 | 110024 | 1.3610 | 20.77 | 110072 | 0.9629 | 12.83 | 110124 | 1.1254 | |
| 100142 | 1.2539 | 19.68 | 100210 | 1.5739 | 21.65 | 100262 | 1.3754 | 20.04 | 110025 | 1.3340 | 19.95 | 110073 | 1.1550 | 15.45 | 110125 | 1.2699 | 20.18 |
| 100144 | | 12.29 | 100211 | 1.3116 | 20.90 | 100264 | 1.3555 | 18.90 | 110026 | 1.1413 | 17.00 | 110074 | 1.5135 | 21.44 | 110127 | 0.9462 | 17.30 |
| 100146 | 0.9755 | 18.16 | 100212 | 1.6038 | 19.42 | 100265 | 1.3060 | 18.92 | 110027 | 1.1318 | 16.86 | 110075 | 1.3350 | 18.65 | 110128 | 1.2154 | 18.46 |
| 100147 | 1.0461 | 14.97 | 100213 | 1.5127 | 20.55 | 100266 | 1.3878 | 18.30 | 110028 | 1.7739 | 19.90 | 110076 | 1.4376 | 21.43 | 110129 | 1.6410 | 19.27 |
| 100150 | 1.3626 | 21.46 | 100217 | 1.2329 | 21.02 | 100267 | 1.3403 | 20.45 | 110029 | 1.3622 | 20.68 | 110078 | 1.7632 | 22.39 | 110130 | 0.9648 | 16.57 |
| 100151 | 1.7573 | 21.22* | 100220 | 1.6372 | 20.56 | 100268 | 1.2059 | 23.94 | 110030 | 1.3111 | 18.77 | 110079 | 1.3823 | 21.18 | 110132 | 1.1773 | 16.45 |
| 100154 | 1.5564 | 20.23 | 100221 | 1.9727 | 17.44 | 100269 | 1.4284 | 21.71 | 110031 | 1.2248 | 19.24 | 110080 | 1.2814 | 18.48 | 110134 | 0.9264 | 12.58 |
| 100156 | 1.1115 | 19.26 | 100223 | 1.4609 | 20.02 | 100270 | 1.0078 | 13.04 | 110032 | 1.2322 | 15.77 | 110082 | 2.0916 | 23.91 | 110135 | 1.3458 | 17.75 |
| 100157 | 1.5744 | 22.68 | 100224 | 1.3095 | 20.28 | 100271 | 1.8579 | 20.42 | 110033 | 1.4387 | 22.45 | 110083 | 1.7825 | 23.23 | 110136 | 1.1662 | 21.44 |
| 100159 | 0.8689 | 10.28 | 100225 | 1.2952 | 20.71 | 100275 | 1.3926 | 21.00 | 110034 | 1.6681 | 19.65 | 110086 | 1.3511 | 18.60 | 110140 | 0.9171 | 18.29 |
| 100160 | 1.1972 | 20.56 | 100226 | 1.3762 | 19.94 | 100276 | 1.2174 | 22.64 | 110035 | 1.3958 | 19.44 | 110087 | 1.3976 | 21.91 | 110141 | 1.0114 | 13.25 |
| 100161 | 1.6930 | 22.48 | 100228 | 1.2631 | 21.29 | 100277 | 0.9851 | 22.71 | 110036 | 1.8407 | 17.51 | 110089 | 1.2177 | 18.67 | 110142 | 0.9250 | 14.88 |
| 100162 | 1.4197 | 19.80 | 100229 | 1.3076 | 19.76 | 100279 | 1.2484 | 20.03 | 110038 | 1.5125 | 17.87 | 110091 | 1.2450 | 19.53 | 110143 | 1.3856 | 20.20 |
| 100165 | | 19.15 | 100230 | 1.3689 | 20.52 | 100280 | 1.3265 | 17.37 | 110039 | 1.3617 | 20.96 | 110092 | 1.0867 | 17.52 | 110144 | 1.0713 | 16.87 |
| 100166 | 1.4570 | 20.09 | 100231 | 1.6423 | 18.00 | 100281 | 1.2848 | 22.48 | 110040 | 1.0234 | 17.64 | 110093 | 0.9417 | | 110146 | 1.1440 | 16.13 |
| 100167 | 1.4347 | 23.39 | 100232 | 1.2503 | 19.51 | 100282 | 1.0730 | 21.01 | 110041 | 1.1572 | 19.24 | 110094 | 0.9977 | 14.71 | 110149 | 1.1393 | 18.13 |
| 100168 | 1.3326 | 20.22 | 100234 | 1.3547 | 20.48 | 100284 | 1.1182 | | 110042 | 1.1760 | 24.39 | 110095 | 1.3290 | 16.50 | 110150 | 1.3930 | 20.36 |
| 100169 | 1.8050 | 20.41 | 100235 | | 17.41 | 100366 | 0.5957 | | 110043 | 1.8283 | 20.17 | 110096 | 1.1208 | 16.85 | 110152 | 1.0312 | 15.40 |
| 100170 | 1.3538 | 18.70 | 100236 | 1.3938 | 20.17 | 110001 | 1.2994 | 19.34 | 110044 | 1.1327 | 16.51 | 110097 | 1.0167 | 16.21 | 110153 | 1.1318 | 19.28 |
| 100172 | 1.4356 | 14.62 | 100237 | 2.1470 | 22.13 | 110002 | 1.2790 | 17.23 | 110045 | 1.1495 | 20.33 | 110098 | 0.9545 | 17.24 | 110154 | 1.0059 | 15.15 |
| 100173 | 1.6941 | 18.70 | 100238 | 1.6304 | 19.77 | 110003 | 1.3398 | 18.41 | 110046 | 1.3087 | 20.23 | 110100 | 0.9897 | 18.72 | 110155 | 1.0125 | 15.66 |
| 100174 | 1.3537 | 26.64 | 100239 | 1.4050 | 21.58 | 110004 | 1.3361 | 19.98 | 110048 | 1.1241 | 16.43 | 110101 | 1.0025 | 11.06 | 110156 | 1.0322 | 15.18 |
| 100175 | 1.1222 | 17.45 | 100240 | 0.8726 | 20.71 | 110005 | 1.1325 | 18.20 | 110049 | 1.1587 | 16.18 | 110103 | 0.9633 | 15.15 | 110161 | 1.2930 | 21.74 |
| 100176 | 2.1358 | 23.33 | 100241 | 0.8330 | 15.16 | 110006 | 1.4064 | 21.07 | 110050 | 1.1060 | 21.16 | 110104 | 1.1311 | 16.19 | 110162 | 0.7571 | |
| 100177 | 1.3008 | 26.39 | 100242 | 1.4081 | 18.04 | 110007 | 1.6005 | 27.56 | 110051 | 1.0215 | 17.48 | 110105 | 1.3065 | 17.21 | 110163 | 1.5140 | 20.50 |
| 100179 | 1.7907 | 17.85 | 100243 | 1.3648 | 21.43 | 110008 | 1.1634 | 22.14 | 110054 | 1.4006 | | 110107 | 1.9709 | 19.44 | 110164 | 1.4087 | 20.50 |
| 100180 | 1.4286 | 20.26 | 100244 | 1.3264 | 18.65 | 110009 | 1.1607 | 16.31 | 110056 | 1.0315 | 15.65 | 110108 | 0.9625 | 23.29 | 110165 | 1.5036 | 21.40 |
| 100181 | 1.2051 | 23.32 | 100246 | 1.4822 | 19.79 | 110010 | 2.1808 | 23.39 | 110059 | 1.1805 | 16.67 | 110109 | 1.1051 | 16.54 | 110166 | 1.4852 | 20.68 |
| 100183 | 1.2036 | 24.61 | 100248 | 1.5204 | 20.79 | 110011 | 1.1584 | 18.78 | 110061 | 1.0899 | 15.04 | 110111 | 1.2216 | 15.10 | 110168 | 1.7175 | 20.95 |
| 100187 | 1.4004 | 20.36 | 100249 | 1.2561 | 19.33 | 110013 | 1.0518 | 16.30 | 110062 | 0.9080 | 19.28 | 110112 | 1.0140 | 20.90 | 110169 | 1.2966 | 20.64 |
| 100189 | 1.3222 | 21.37 | 100252 | 1.2092 | 17.85 | 110014 | 0.9597 | 16.32 | 110063 | 1.0042 | 17.16 | 110113 | 1.0481 | 16.82 | 110171 | 1.6355 | 24.38 |
| 100191 | 1.3015 | 17.64 | 100253 | 1.3553 | 21.17 | 110015 | 1.1568 | 21.21 | 110064 | 1.4462 | 18.96 | 110114 | 1.1384 | 14.75 | 110172 | 1.4379 | 23.79 |
| 100199 | | 21.79 | 100254 | 1.5509 | 19.15 | 110016 | 1.1898 | 23.96 | 110065 | 1.0364 | 15.25 | 110115 | 1.7009 | | 110174 | 0.8945 | 14.10 |
| 100200 | 1.3088 | 22.58 | 100255 | 1.2584 | 23.81 | 110017 | 0.9476 | 13.78 | 110066 | 1.4927 | 21.10 | 110118 | 1.0955 | 23.51 | 110177 | 1.6242 | 20.68 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 110178 | | 18.90 | 120009 | 1.0057 | 17.84 | 130026 | 1.1734 | 21.84 | 140025 | 1.0508 | 17.02 | 140070 | 1.1887 | 24.38 | 140121 | 1.3419 | 17.71 |
| 110179 | 1.1374 | 23.09 | 120010 | 1.7786 | 24.28 | 130027 | 0.9291 | 23.44 | 140026 | 1.1498 | 16.93 | 140074 | 0.9349 | 20.16 | 140122 | 1.5459 | 24.29 |
| 110181 | 0.9751 | 14.16 | 120011 | 1.4448 | 35.67 | 130028 | 1.2811 | 26.07 | 140027 | 1.2125 | 18.90 | 140075 | 1.2772 | 21.57 | 140124 | 1.1060 | 27.21* |
| 110183 | 1.3534 | 23.55 | 120012 | 0.8988 | 23.92 | 130029 | 1.0949 | 18.84 | 140029 | 1.3319 | 22.54 | 140077 | 1.0509 | 17.54 | 140125 | 1.3141 | 18.28 |
| 110184 | 1.3226 | 22.20 | 120014 | 1.2487 | 23.30 | 130030 | 0.9563 | 19.23 | 140030 | 1.8578 | 21.75 | 140079 | 1.1963 | 23.68 | 140127 | 1.4113 | 20.21 |
| 110185 | 1.2365 | 16.97 | 120015 | 0.8200 | 48.18 | 130031 | 0.9559 | 18.68 | 140031 | 1.1664 | 19.90 | 140080 | 1.4883 | 21.22 | 140128 | 1.0088 | 19.99 |
| 110186 | 1.3170 | 17.36 | 120016 | 1.0310 | 52.50 | 130034 | 1.0449 | 17.70 | 140032 | 1.2580 | 18.16 | 140081 | 1.0321 | 16.97 | 140129 | 1.1860 | 18.45 |
| 110187 | 1.2613 | 20.12 | 120018 | 0.9098 | 32.43 | 130035 | 0.9055 | 19.68 | 140033 | 1.2931 | 24.30 | 140082 | 1.3063 | 22.30 | 140130 | 1.1985 | 18.29 |
| 110188 | 1.3286 | 25.40 | 120019 | 1.2769 | 23.15 | 130036 | 1.3872 | 14.05 | 140034 | 1.2076 | 19.47 | 140083 | 1.3317 | 19.64 | 140132 | 1.4693 | 23.48 |
| 110189 | 1.1100 | 22.08 | 120021 | 0.9952 | 26.79 | 130037 | 1.4342 | 18.96 | 140035 | 1.0669 | 16.10 | 140084 | 1.2544 | 20.98 | 140133 | 1.3805 | 21.21 |
| 110190 | 1.0680 | 18.87 | 120022 | 1.6672 | 21.83 | 130043 | 0.9501 | 16.51 | 140036 | 1.2546 | 18.82 | 140086 | 1.0728 | 18.71 | 140135 | 1.2660 | 17.24 |
| 110191 | 1.3128 | 20.20 | 120024 | 0.6619 | 51.59 | 130044 | 0.9331 | 18.32 | 140037 | 1.0534 | 13.12 | 140087 | 1.3629 | 16.12 | 140137 | 1.0603 | 17.26 |
| 110192 | 1.3985 | 21.64 | 120025 | | 85.75 | 130045 | 0.9546 | 16.80 | 140038 | 1.0615 | 18.35 | 140088 | 1.7642 | 25.38 | 140138 | 0.9863 | 17.19 |
| 110193 | 1.2433 | 21.07 | 120026 | 1.2790 | 25.17 | 130048 | 1.0584 | 17.07 | 140040 | 1.1954 | 20.35 | 140089 | 1.2799 | 17.85 | 140139 | 1.0648 | |
| 110194 | 0.9213 | 15.45 | 120027 | 1.4784 | 24.56 | 130049 | 1.2594 | 20.47 | 140041 | 1.1947 | 18.85 | 140090 | 1.4459 | 23.88 | 140140 | 1.1302 | 17.82 |
| 110195 | 1.0290 | 14.03 | 120028 | 1.3724 | 27.53 | 130054 | 1.0083 | 17.36 | 140042 | 0.9820 | 15.62 | 140091 | 1.8712 | 21.06 | 140141 | 1.2260 | 17.74 |
| 110198 | 1.3135 | 23.96 | 130001 | 1.0337 | 19.01 | 130056 | 0.8268 | 18.65 | 140043 | 1.1608 | 19.67 | 140093 | 1.1358 | 19.69 | 140143 | 1.0788 | 19.39 |
| 110200 | 1.8356 | 17.49 | 130002 | 1.3192 | 16.76 | 130060 | 1.3135 | 22.21 | 140045 | 1.0035 | 16.35 | 140094 | 1.2582 | 21.72 | 140144 | 0.9808 | 21.98 |
| 110201 | 1.4260 | 20.49 | 130003 | 1.3082 | 21.63 | 130061 | | 15.77 | 140046 | 1.3002 | 19.39 | 140095 | 1.3695 | 27.29 | 140145 | 1.1325 | 17.89 |
| 110203 | 0.9334 | 31.72 | 130005 | 1.3949 | 20.90 | 130062 | 0.7754 | 16.57 | 140047 | 1.1762 | 17.91 | 140097 | 0.9335 | 18.77 | 140146 | 1.0380 | 22.49 |
| 110204 | 0.7991 | 33.44 | 130006 | 1.8249 | 19.40 | 130063 | 1.6847 | 15.94 | 140048 | 1.3599 | 22.34 | 140100 | 1.3423 | 21.45 | 140147 | 1.2077 | 16.68 |
| 110205 | 1.0120 | 17.27 | 130007 | 1.6719 | 21.03 | 140001 | 1.2145 | 16.68 | 140049 | 1.6853 | 30.36 | 140101 | 1.1731 | 21.87 | 140148 | 1.8759 | 18.71 |
| 110207 | 0.9441 | 12.97 | 130008 | 0.9489 | 13.37 | 140002 | 1.2420 | 19.14 | 140051 | 1.4534 | 24.10 | 140102 | 1.0750 | 17.59 | 140150 | 1.5435 | 21.47 |
| 110208 | 0.9274 | 15.37 | 130009 | 0.9555 | 19.66 | 140003 | 1.0111 | 22.02 | 140052 | 1.2817 | 19.80 | 140103 | 1.3599 | 19.39 | 140151 | 0.9278 | 21.39 |
| 110209 | 0.6581 | 17.92 | 130010 | 0.9805 | 17.90 | 140004 | 1.1019 | 15.92 | 140053 | 2.0552 | 19.26 | 140105 | 1.2652 | 21.74 | 140152 | 1.1974 | 23.72 |
| 110211 | 0.9720 | 21.04 | 130011 | 1.2328 | 20.62 | 140005 | 0.9948 | 11.61 | 140054 | 1.3702 | 22.39 | 140107 | 0.9540 | 11.22 | 140155 | 1.3274 | 18.75 |
| 110212 | 1.0169 | 11.87 | 130012 | 0.9391 | 22.98 | 140007 | 1.4604 | 24.10 | 140055 | 0.9840 | 16.79 | 140108 | 1.3349 | 26.02 | 140158 | 1.3318 | 22.72* |
| 110213 | | 14.37 | 130013 | 1.3159 | 17.58 | 140008 | 1.4757 | 21.50 | 140058 | 1.3095 | 17.58 | 140109 | 1.1401 | 15.93 | 140160 | 1.1495 | 17.94 |
| 110215 | 1.1707 | 20.19 | 130014 | 1.2634 | 19.17 | 140010 | 1.3745 | 27.94 | 140059 | 1.1043 | 15.07 | 140110 | 1.1861 | 19.48 | 140161 | 1.1361 | 20.32 |
| 110216 | 1.6858 | | 130015 | 0.8869 | 16.81 | 140011 | 1.1662 | 18.03 | 140061 | 1.1028 | 17.99 | 140112 | 1.0909 | 18.09 | 140162 | 1.8114 | 19.74 |
| 110217 | 1.0577 | | 130016 | 0.9572 | 17.58 | 140012 | 1.2799 | 22.82 | 140062 | 1.2480 | 28.22 | 140113 | 1.5020 | 19.16 | 140164 | 1.4382 | 18.85 |
| 120001 | 1.7540 | 28.06 | 130017 | 1.0086 | 18.90 | 140013 | 1.5939 | 18.39 | 140063 | 1.4962 | 25.63 | 140114 | 1.3189 | 21.42 | 140165 | 1.1144 | 15.02 |
| 120002 | 1.2815 | 25.07 | 130018 | 1.4858 | 19.74 | 140014 | 1.1517 | 22.85 | 140064 | 1.2611 | 19.27 | 140115 | 1.2987 | 21.28 | 140166 | 1.1636 | 20.53 |
| 120003 | 1.0698 | 26.46 | 130019 | 1.1067 | 19.58 | 140015 | 1.2389 | 16.84 | 140065 | 1.4178 | 22.38 | 140116 | 1.2351 | 22.94 | 140167 | 1.1025 | 17.45 |
| 120004 | 1.2052 | 24.81 | 130021 | 1.1733 | 13.27 | 140016 | 1.0256 | 13.17 | 140066 | 1.1876 | 17.46 | 140117 | 1.5533 | 20.80 | 140168 | 1.2011 | 16.97 |
| 120005 | 1.2648 | 23.77 | 130022 | 1.2526 | 16.85 | 140018 | 1.3475 | 23.18 | 140067 | 1.7548 | 19.38 | 140118 | 1.7417 | 18.56 | 140170 | 1.1423 | 16.57 |
| 120006 | 1.2589 | 25.24 | 130024 | 1.1081 | 19.54 | 140019 | 1.0146 | 16.92 | 140068 | 1.4635 | 19.42 | 140119 | 1.7596 | 36.39 | 140171 | 0.9868 | 14.23 |
| 120007 | 1.7566 | 22.93 | 130025 | 1.1204 | 17.58 | 140024 | 0.9850 | 17.45 | 140069 | 0.9770 | 17.23 | 140120 | 1.3480 | 15.52 | 140172 | 1.7242 | 21.67 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 140173 | 0.9322 | 16.95 | 140231 | 1.5294 | 23.98 | 150011 | 1.1585 | 18.69 | 150054 | 1.2297 | 17.50 | 150101 | 1.0464 | 16.85 | 160018 | 0.9389 | 14.62 |
| 140174 | 1.5623 | 20.68 | 140233 | 1.7468 | 19.66 | 150012 | 1.5923 | 23.09 | 150056 | 1.8571 | 21.52 | 150102 | 1.0818 | 19.75 | 160020 | 1.1361 | 15.87 |
| 140176 | 1.2127 | 23.41 | 140234 | 1.2132 | 19.46 | 150013 | 1.0472 | 17.15 | 150057 | 2.1553 | 16.83 | 150103 | 1.0077 | 16.26 | 160021 | 1.0003 | 16.88 |
| 140177 | 1.3061 | 18.76 | 140236 | | 7.62 | 150014 | 1.5418 | 23.54 | 150058 | 1.7023 | 20.85 | 150104 | 1.0517 | 17.66 | 160023 | 1.0324 | 15.34 |
| 140179 | 1.3324 | 21.32 | 140239 | 1.6466 | 18.88 | 150015 | 1.2954 | 23.63 | 150059 | 1.4207 | 21.78 | 150105 | 1.2897 | 21.89 | 160024 | 1.5676 | 19.78 |
| 140180 | 1.4295 | 23.76 | 140240 | 1.3571 | 23.79 | 150017 | 1.8547 | 18.80 | 150060 | 1.1522 | 13.12 | 150106 | 0.9748 | 13.64 | 160026 | 0.9777 | 19.11 |
| 140181 | 1.4247 | 20.78 | 140242 | 1.6250 | 24.18 | 150018 | 1.4847 | 20.43 | 150061 | 1.2127 | 17.74 | 150109 | 1.4461 | 18.76 | 160027 | 1.0597 | 16.98 |
| 140182 | 1.3455 | 22.20 | 140245 | 1.1866 | 13.48 | 150019 | 1.1071 | 10.53 | 150062 | 1.0030 | 20.80 | 150110 | 0.9738 | 17.33 | 160028 | 1.2297 | 20.24 |
| 140184 | 1.1885 | 17.82 | 140246 | 1.0445 | 13.54 | 150020 | 1.0754 | 15.40 | 150063 | 1.0279 | 34.54 | 150111 | 1.1107 | 21.80 | 160029 | 1.5420 | 20.79* |
| 140185 | 1.4702 | 17.74 | 140250 | 1.2949 | 25.23 | 150021 | 1.6487 | 19.56 | 150064 | 1.1317 | 18.38 | 150112 | 1.2495 | 21.03 | 160030 | 1.3379 | 20.14 |
| 140186 | 1.3253 | 19.98 | 140251 | 1.3477 | 21.20 | 150022 | 1.1219 | 34.07 | 150065 | 1.1822 | 20.08 | 150113 | 1.2253 | 15.27 | 160031 | 1.0457 | 15.38 |
| 140187 | 1.6341 | 18.01 | 140252 | 1.4860 | 25.28 | 150023 | 1.5935 | 14.73 | 150066 | 0.9689 | 15.49 | 150114 | 0.9413 | 19.85 | 160032 | 1.1105 | 17.44 |
| 140188 | 0.9867 | 15.60 | 140253 | 1.1846 | 18.00 | 150024 | 1.3963 | 19.62 | 150067 | 1.1267 | 18.48 | 150115 | 1.2701 | 17.41 | 160033 | 1.8669 | 19.07 |
| 140189 | 1.2402 | 21.34 | 140258 | 1.5226 | 23.47 | 150025 | 1.4278 | 18.79 | 150069 | 1.1725 | 23.17 | 150122 | 1.1113 | 21.26 | 160034 | 1.1044 | 15.12 |
| 140190 | 1.0811 | 16.91 | 140271 | 0.9409 | 12.64 | 150026 | 1.2243 | 21.26 | 150070 | 0.9413 | 18.31 | 150123 | 1.0230 | 15.87 | 160035 | 0.8424 | 16.37 |
| 140191 | 1.3919 | 26.13 | 140275 | 1.2797 | 20.61 | 150027 | 1.0116 | 17.42 | 150071 | 1.1045 | 16.98 | 150124 | 1.1597 | 14.74 | 160036 | 0.9862 | 18.39 |
| 140193 | 0.9706 | 16.16 | 140276 | 2.0040 | 27.10 | 150029 | 1.3671 | 24.65 | 150072 | 1.1972 | 16.34 | 150125 | 1.4701 | 20.71 | 160037 | 1.0340 | 19.31 |
| 140197 | 1.2487 | 18.82 | 140280 | 1.4493 | 20.25 | 150030 | 1.2747 | 18.15 | 150073 | 1.0451 | 23.02 | 150126 | 1.4199 | 21.52 | 160039 | 1.0222 | 17.85 |
| 140199 | 1.0745 | 18.76 | 140281 | 1.6266 | 24.08* | 150031 | 1.0534 | 17.46 | 150074 | 1.6460 | 16.94 | 150127 | 1.0387 | 19.74 | 160040 | 1.3519 | 18.37 |
| 140200 | 1.5277 | 21.88 | 140285 | 1.2589 | 18.35 | 150033 | 1.5650 | 22.26 | 150075 | 1.1630 | 15.84 | 150128 | 1.2584 | 18.51 | 160041 | 1.0093 | 16.98 |
| 140202 | 1.3151 | 22.27 | 140286 | 1.1210 | 20.51 | 150034 | 1.4363 | 22.15 | 150076 | 1.1131 | 23.62 | 150129 | 1.1500 | 24.16 | 160043 | 1.0518 | 15.92 |
| 140203 | 1.1800 | 20.13 | 140288 | 1.6143 | 25.24 | 150035 | 1.4780 | 20.51 | 150078 | 1.0215 | 19.68 | 150130 | 1.3292 | 18.47 | 160044 | 1.2213 | 16.95 |
| 140205 | 1.3543 | 18.68 | 140289 | 1.3225 | 17.22 | 150036 | 1.0024 | 20.93 | 150079 | 1.2053 | 19.15 | 150132 | 1.4176 | 16.04 | 160045 | 1.7235 | 18.57 |
| 140206 | 1.2300 | 21.33 | 140290 | 1.3084 | 21.01 | 150037 | 1.2352 | 22.08 | 150082 | 1.5235 | 17.66 | 150133 | 1.2309 | 16.95 | 160046 | 0.9295 | 14.58 |
| 140207 | 1.2556 | 22.46 | 140291 | 1.3210 | 25.18 | 150038 | 1.1475 | 21.39 | 150084 | 1.9332 | 19.57 | 150134 | 1.0730 | 19.85 | 160047 | 1.4782 | 18.51 |
| 140208 | 1.6993 | 26.05 | 140292 | 1.2043 | 21.65 | 150039 | 0.9631 | 18.85 | 150086 | 1.2064 | 19.17 | 150136 | 0.8719 | 19.83 | 160048 | 1.1574 | 14.86 |
| 140209 | 1.5937 | 18.32 | 140294 | 1.1361 | 17.83 | 150042 | 1.2981 | 18.47 | 150088 | 1.3253 | 17.15 | 150145 | | 16.69 | 160049 | 0.9884 | 14.60 |
| 140210 | 1.1269 | 15.96 | 140300 | 1.5103 | 13.58 | 150043 | 1.1319 | 18.81 | 150089 | 1.5044 | 23.29 | 160001 | 1.2877 | 18.73 | 160050 | 1.0153 | 17.86 |
| 140211 | 1.2322 | 21.91 | 150001 | 1.0957 | 26.36 | 150044 | 1.2398 | 18.73 | 150090 | 1.4092 | 21.17 | 160002 | 1.0992 | 16.23 | 160051 | 1.0519 | 14.90 |
| 140213 | 1.2808 | 20.79 | 150002 | 1.4832 | 20.21 | 150045 | 1.1096 | 16.91 | 150091 | 1.0178 | 21.59 | 160003 | 1.0319 | 16.26 | 160052 | 0.9904 | 18.25 |
| 140215 | 0.9836 | 16.20 | 150003 | 1.7985 | 21.07 | 150046 | 1.4223 | 17.74 | 150092 | 1.0648 | 16.93 | 160005 | 1.1415 | 18.05 | 160054 | 1.0986 | 16.35 |
| 140217 | 1.3134 | 22.58 | 150004 | 1.5367 | 20.93 | 150047 | 1.5506 | 19.33 | 150094 | 1.0057 | 15.52 | 160007 | 1.0002 | 13.21 | 160055 | 0.9200 | 14.85 |
| 140218 | 0.9792 | 15.25 | 150005 | 1.1291 | 21.53 | 150048 | 1.1828 | 19.44 | 150095 | 1.0586 | 17.44 | 160008 | 1.1113 | 16.23 | 160056 | 1.1024 | 16.69 |
| 140220 | 1.1316 | 18.06 | 150006 | 1.2658 | 20.90 | 150049 | 1.1880 | 17.20 | 150096 | 0.9845 | 23.66 | 160009 | 1.1937 | 17.28 | 160057 | 1.2729 | 18.52 |
| 140223 | 1.5140 | 25.05 | 150007 | 1.1809 | 16.89 | 150050 | 1.0893 | 16.66 | 150097 | 1.0621 | 19.57 | 160012 | 0.9913 | 17.01 | 160058 | 1.8122 | 21.21 |
| 140224 | 1.3999 | 25.54 | 150008 | 1.3775 | 22.28 | 150051 | 1.4773 | 19.21 | 150098 | 1.1272 | 15.25 | 160013 | 1.2073 | 18.47 | 160060 | 1.0746 | 16.83 |
| 140228 | 1.6649 | 19.74 | 150009 | 1.3774 | 19.30 | 150052 | 1.0272 | 15.52 | 150099 | | 22.57 | 160014 | 1.0396 | 16.11 | 160061 | 1.0826 | 18.11 |
| 140230 | 0.9221 | 18.09 | 150010 | 1.3388 | 22.49 | 150053 | 0.9660 | 19.45 | 150100 | 1.5702 | 16.30 | 160016 | 1.1903 | 19.84 | 160062 | 0.9842 | 19.19 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

UMI 2000 5 MY 88 ISS 65 VOL



TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 160063 | 1.0211 | 17.04 | 160108 | 1.0646 | 16.13 | 170014 | 1.0176 | 18.04 | 170067 | 0.9801 | 14.98 | 170117 | 0.8927 | 17.16 | 180006 | 0.9735 | 11.69 |
| 160064 | 1.5659 | 20.89 | 160109 | 1.2001 | 17.69 | 170015 | 0.9416 | 16.75 | 170068 | 1.3082 | 15.29 | 170119 | 0.9504 | 16.19 | 180007 | 1.4008 | 17.39 |
| 160065 | 1.0393 | 17.21 | 160110 | 1.5342 | 19.35 | 170016 | 1.6722 | 19.13 | 170070 | 0.9589 | 14.39 | 170120 | 1.2807 | 17.79 | 180009 | 1.3429 | 21.59 |
| 160066 | 1.0697 | 17.30 | 160111 | 1.0094 | 15.13 | 170017 | 1.1999 | 18.00 | 170072 | 0.8337 | 12.80 | 170122 | 1.7035 | 20.23 | 180010 | 1.9313 | 19.24 |
| 160067 | 1.4185 | 17.99 | 160112 | 1.3703 | 17.16 | 170018 | 1.0352 | 15.54 | 170073 | 1.0589 | 18.34 | 170123 | 1.7174 | 22.72 | 180011 | 1.3328 | 17.34 |
| 160068 | 1.0723 | 18.58 | 160113 | 1.0596 | 14.91 | 170019 | 1.2559 | 15.27 | 170074 | 1.1480 | 17.64 | 170124 | 1.0059 | 11.13 | 180012 | 1.3887 | 18.78 |
| 160069 | 1.5079 | 20.15 | 160114 | 0.9688 | 16.14 | 170020 | 1.4610 | 17.54 | 170075 | 0.9131 | 12.46 | 170126 | 0.9279 | 12.96 | 180013 | 1.4581 | 18.45 |
| 160070 | 0.9292 | 17.26 | 160115 | 0.9783 | 16.20 | 170022 | 1.1251 | 18.92 | 170076 | 0.9228 | 14.59 | 170128 | 0.9649 | 15.17 | 180014 | 1.6406 | 21.36 |
| 160072 | 1.0487 | 15.01 | 160116 | 1.0496 | 17.15 | 170023 | 1.4054 | 19.39 | 170077 | 0.9011 | 14.33 | 170131 | | 10.36 | 180016 | 1.2475 | 19.90 |
| 160073 | 0.9884 | 11.92 | 160117 | 1.3358 | 18.15 | 170024 | 1.0585 | 14.05 | 170079 | 1.0030 | 14.33 | 170133 | 1.0859 | 18.35 | 180017 | 1.2688 | 15.47 |
| 160074 | 0.9931 | 20.17 | 160118 | 1.0374 | 17.86 | 170025 | 1.1883 | 18.89 | 170080 | 1.0169 | 13.01 | 170134 | 0.8900 | 14.23 | 180018 | 1.2839 | 17.48 |
| 160075 | 1.1054 | 19.72 | 160120 | 0.9606 | 10.74 | 170026 | 1.0303 | 16.85 | 170081 | 0.9175 | 13.81 | 170137 | 1.1928 | 17.95 | 180019 | 1.1622 | 17.03 |
| 160076 | 1.0718 | 18.00 | 160122 | 1.0901 | 19.12 | 170027 | 1.2437 | 17.56 | 170082 | 0.9560 | 14.08 | 170139 | 0.9665 | 15.26 | 180020 | 1.0889 | 17.87 |
| 160077 | 1.1129 | 13.07 | 160124 | 1.2761 | 18.32 | 170030 | 0.9983 | 15.07 | 170084 | 0.8997 | 12.77 | 170142 | 1.3127 | | 180021 | 1.0609 | 15.54 |
| 160079 | 1.4266 | 17.73 | 160126 | 1.0585 | 19.21 | 170031 | 0.8973 | 13.96 | 170085 | 0.8802 | 15.48 | 170143 | 1.0799 | 15.75 | 180023 | 0.8665 | 15.88 |
| 160080 | 1.1622 | 19.15 | 160129 | 0.9327 | 17.12 | 170032 | 1.0182 | 15.85 | 170086 | 1.6293 | 20.46 | 170144 | 1.4694 | 19.40 | 180024 | 1.2659 | 16.10 |
| 160081 | 1.1172 | 17.06 | 160130 | 1.0192 | 16.57 | 170033 | 1.3730 | 16.99 | 170088 | 0.9382 | 13.46 | 170145 | 1.0640 | 17.51 | 180025 | 1.1444 | 14.25 |
| 160082 | 1.8726 | 19.70 | 160131 | 1.0662 | 15.62 | 170034 | 1.0450 | 15.85 | 170089 | 0.8582 | 19.30 | 170146 | 1.4356 | 20.84 | 180026 | 1.1076 | 14.95 |
| 160083 | 1.6807 | 20.78 | 160134 | 0.9873 | 13.56 | 170035 | 0.9164 | 27.81 | 170090 | 1.0301 | 12.36 | 170147 | 1.1943 | 22.36 | 180027 | 1.2091 | 16.98 |
| 160085 | 1.0382 | 18.04 | 160135 | 0.9326 | 18.66 | 170038 | 0.8638 | 14.73 | 170093 | 0.9153 | 14.13 | 170148 | 1.2950 | 16.92 | 180028 | 1.0858 | 20.41 |
| 160086 | 0.9072 | 18.60 | 160138 | 1.0465 | 16.87 | 170039 | 1.0413 | 16.15 | 170094 | 0.9426 | 20.53 | 170150 | 1.1364 | 15.72 | 180029 | 1.2276 | 17.97 |
| 160088 | 1.0949 | 22.04 | 160140 | 1.1065 | 18.54 | 170040 | 1.6272 | 22.55 | 170095 | 1.0077 | 15.66 | 170151 | 1.0244 | 13.99 | 180030 | 1.1120 | 17.69 |
| 160089 | 1.2305 | 17.23 | 160142 | 0.9674 | 16.43 | 170041 | 1.0890 | 11.80 | 170097 | 0.9080 | 16.49 | 170152 | 0.9660 | 15.00 | 180031 | 1.0033 | 15.16 |
| 160090 | 1.0153 | 17.25 | 160143 | 1.1451 | 16.83 | 170044 | 0.9420 | 15.36 | 170098 | 1.1150 | 15.66 | 170160 | 0.9345 | 13.83 | 180032 | 1.0535 | 17.17 |
| 160091 | 0.9832 | 13.17 | 160145 | 1.0588 | 14.65 | 170045 | 1.0835 | 15.93 | 170099 | 1.2266 | 14.22 | 170164 | 0.9491 | 16.94 | 180033 | 1.0826 | 18.01 |
| 160092 | 1.0496 | 16.11 | 160146 | 1.4375 | 16.74 | 170049 | 1.4427 | 20.04 | 170101 | 0.8928 | 14.65 | 170166 | 1.0387 | 29.44 | 180034 | 1.0203 | 15.58 |
| 160093 | 1.0734 | 18.39 | 160147 | 1.2878 | 17.60 | 170051 | 0.9580 | 15.15 | 170102 | 1.0037 | 13.78 | 170171 | 1.0039 | 13.58 | 180035 | 1.5441 | 20.13 |
| 160094 | 1.1678 | 19.06 | 160151 | 0.9959 | 17.16 | 170052 | 1.0777 | 15.08 | 170103 | 1.2993 | 17.38 | 170175 | 1.3130 | 17.36 | 180036 | 1.1678 | 19.90 |
| 160095 | 1.0552 | 15.59 | 160152 | 1.0254 | 15.81 | 170053 | 0.9645 | 7.58 | 170104 | 1.4782 | 20.84 | 170176 | 1.5640 | 18.28 | 180037 | 1.2569 | 20.09 |
| 160097 | 1.1329 | 16.32 | 160153 | 1.7606 | 20.38 | 170054 | 1.0498 | 14.50 | 170105 | 1.1438 | 16.79 | 170180 | | 16.66 | 180038 | 1.4853 | 16.72 |
| 160098 | 0.9348 | 16.38 | 170001 | 1.1892 | 18.19 | 170055 | 0.9154 | 17.21 | 170106 | 0.9683 | 19.62 | 170182 | 1.4966 | 22.23 | 180040 | 1.9519 | 19.66 |
| 160099 | 0.9635 | 13.95 | 170004 | 1.0619 | 15.12 | 170056 | 0.9143 | 17.81 | 170109 | 1.0107 | 17.48 | 170183 | 1.9776 | 20.35 | 180041 | 1.1638 | 15.15 |
| 160101 | 1.1114 | 18.80* | 170006 | 1.2255 | 17.42 | 170057 | | 13.18 | 170110 | 0.9667 | 17.19 | 170185 | 1.0648 | | 180042 | 1.1410 | 17.00 |
| 160102 | 1.3545 | 19.03 | 170008 | 0.9966 | 15.02 | 170058 | 1.1530 | 19.53 | 170112 | 1.1397 | 14.39 | 170186 | 2.9004 | | 180043 | 1.1423 | 16.20 |
| 160103 | 0.9429 | 17.82 | 170009 | 1.1527 | 21.21 | 170060 | 0.9519 | 18.32 | 170113 | 1.1136 | 14.08 | 180001 | 1.3209 | 18.11 | 180044 | 1.1999 | 18.56 |
| 160104 | 1.1628 | 18.93 | 170010 | 1.2814 | 19.07 | 170061 | 1.1127 | 16.08 | 170114 | 0.9557 | 14.68 | 180002 | 1.0407 | 18.14 | 180045 | 1.2684 | 18.05 |
| 160106 | 1.1341 | 17.49 | 170012 | 1.4501 | 17.92 | 170063 | 0.8893 | 14.04 | 170115 | 0.9614 | 12.92 | 180004 | 1.0444 | 17.73 | 180046 | 1.0406 | 18.99 |
| 160107 | 1.1097 | 18.29 | 170013 | 1.4698 | 18.88 | 170066 | 0.9044 | 16.60 | 170116 | 1.0952 | 17.14 | 180005 | 1.2267 | 21.28 | 180047 | 1.0352 | 16.86 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 180048 | 1.2342 | 18.46 | 180118 | 0.9295 | 15.86 | 190019 | 1.7402 | 18.62 | 190102 | 1.6401 | 20.15 | 190164 | 1.1634 | 15.23 | 200006 | 1.0504 | 18.34 |
| 180049 | 1.3081 | 16.49 | 180120 | 0.9692 | 16.34 | 190020 | 1.1626 | 17.72 | 190103 | 0.9168 | 13.07 | 190167 | 1.0900 | 16.76 | 200007 | 1.0330 | 18.66 |
| 180050 | 1.2654 | 18.12 | 180121 | 1.1361 | 15.43 | 190025 | 1.2831 | 19.10 | 190106 | 1.1527 | 18.83 | 190170 | 0.9043 | 14.70 | 200008 | 1.2740 | 21.38 |
| 180051 | 1.4125 | 16.45 | 180122 | 1.1059 | 18.99 | 190026 | 1.5272 | 18.44 | 190109 | 1.1514 | 16.53 | 190173 | 1.3080 | 24.21 | 200009 | 1.8712 | 22.24 |
| 180053 | 1.0502 | 15.97 | 180123 | 1.3658 | 20.19 | 190027 | 1.4898 | 17.13 | 190110 | 0.9774 | 16.24 | 190175 | 1.4262 | 19.62 | 200012 | 1.1265 | 18.52 |
| 180054 | 1.1186 | 19.95 | 180124 | 1.2790 | 17.32 | 190029 | 1.1610 | 16.93 | 190111 | 1.5886 | 19.89 | 190176 | 1.5572 | 17.58 | 200013 | 1.1611 | 18.17 |
| 180055 | 1.2850 | 15.59 | 180125 | 1.0624 | 20.54 | 190034 | 1.1761 | 17.00 | 190112 | 1.5532 | 21.17 | 190177 | 1.6845 | 18.82 | 200016 | 1.0177 | 17.92 |
| 180056 | 1.1852 | 17.20 | 180126 | 1.0687 | 12.92 | 190036 | 1.6914 | 21.71 | 190113 | 1.3710 | 12.58 | 190178 | 0.9686 | 11.07 | 200017 | | 17.32 |
| 180058 | 0.9988 | 16.24 | 180127 | 1.2661 | 18.96 | 190037 | 0.9934 | 13.43 | 190114 | 1.0211 | 12.84 | 190182 | 1.1484 | 20.04 | 200018 | 1.1142 | 19.07 |
| 180059 | 0.8724 | 13.79 | 180128 | 1.0360 | 17.74 | 190039 | 1.4035 | 19.89 | 190115 | 1.2492 | 20.74 | 190183 | 1.1608 | 16.88 | 200019 | 1.2344 | 19.28 |
| 180063 | 1.1129 | 13.18 | 180129 | 0.9539 | 18.74 | 190040 | 1.3555 | 21.73 | 190116 | 1.2103 | 15.75 | 190184 | 0.9908 | 17.20 | 200020 | 1.1903 | 22.43 |
| 180064 | 1.2176 | 15.42 | 180130 | 1.4281 | 19.63 | 190041 | 1.5882 | 17.75 | 190118 | 0.9775 | 15.03 | 190185 | 1.3260 | 20.14 | 200021 | 1.1099 | 19.99 |
| 180065 | 1.0270 | 12.16 | 180132 | 1.2196 | 17.43 | 190043 | 1.0172 | 15.92 | 190120 | 1.0735 | 13.96 | 190186 | 0.9141 | 19.92 | 200023 | 0.8538 | 17.27 |
| 180066 | 1.0038 | 18.24 | 180133 | 1.3312 | 21.82 | 190044 | 1.1783 | 17.39 | 190122 | 1.2423 | 15.50 | 190190 | 0.9308 | 17.46 | 200024 | 1.4168 | 19.21 |
| 180067 | 1.9385 | 20.68 | 180134 | 1.0873 | 13.22 | 190045 | 1.5202 | 21.88 | 190124 | 1.6154 | 20.98 | 190191 | 1.1531 | 20.11 | 200025 | 1.1537 | 20.25 |
| 180069 | 1.1014 | 18.10 | 180136 | | 17.39 | 190046 | 1.4126 | 20.14 | 190125 | 1.4919 | 20.70 | 190196 | 0.8609 | | 200026 | 1.0690 | 18.52 |
| 180070 | 1.1376 | 13.21 | 180138 | 1.1657 | 19.49 | 190048 | 1.1250 | 16.99 | 190128 | 1.1739 | 20.51 | 190197 | 1.2088 | 19.68 | 200027 | 1.2369 | 19.36 |
| 180072 | 1.0863 | 17.77 | 180139 | 1.0346 | 18.72 | 190049 | 0.9687 | 17.37 | 190130 | 0.9784 | 15.30 | 190199 | 1.2281 | 18.40 | 200028 | 0.9575 | 19.74 |
| 180078 | 1.1264 | 21.12 | 180140 | 0.9789 | 16.82 | 190050 | 1.0589 | 16.49 | 190131 | 1.2667 | 20.98 | 190200 | 1.5588 | 22.26 | 200031 | 1.2493 | 16.02 |
| 180079 | 1.1866 | 15.56 | 180141 | 1.7255 | 20.90 | 190053 | 1.1156 | 13.27 | 190133 | 0.9987 | 14.11 | 190201 | 1.2230 | 18.72 | 200032 | 1.2939 | 19.16 |
| 180080 | 1.0600 | 16.51 | 180142 | 1.7748 | | 190054 | 1.3643 | 19.36 | 190134 | | 12.17 | 190202 | 1.2092 | | 200033 | 1.8152 | 21.90 |
| 180087 | 1.2453 | 14.93 | 180143 | 1.6713 | | 190059 | 0.9281 | 16.09 | 190135 | 1.4479 | 21.91 | 190203 | 1.4662 | 21.83 | 200034 | 1.2558 | 20.58 |
| 180088 | 1.6592 | 22.07* | 190001 | 0.8917 | 17.68 | 190060 | 1.4169 | 14.80 | 190136 | 0.9830 | 12.44 | 190204 | 1.4704 | 21.56 | 200037 | 1.2094 | 18.89 |
| 180092 | 1.2198 | 18.36 | 190002 | 1.7001 | 19.30 | 190064 | 1.5448 | 20.60 | 190140 | 0.9599 | 14.39 | 190205 | 1.8433 | 21.67 | 200038 | 1.1364 | 23.44 |
| 180093 | 1.5278 | 17.11 | 190003 | 1.4207 | 23.28 | 190065 | 1.4650 | 21.78 | 190142 | 0.9520 | 16.28 | 190206 | 1.6335 | 21.98 | 200039 | 1.2510 | 19.45 |
| 180094 | 0.9855 | 13.76 | 190004 | 1.4551 | 17.90 | 190071 | 0.9282 | 14.64 | 190144 | 1.1809 | 16.17 | 190207 | 1.1343 | 20.80 | 200040 | 1.1934 | 20.04 |
| 180095 | 1.0831 | 14.12 | 190005 | 1.4422 | 17.32 | 190077 | 0.9399 | 15.78 | 190145 | 0.9721 | 15.63 | 190208 | 0.8369 | 20.10 | 200041 | 1.1042 | 18.91 |
| 180099 | 1.0837 | 13.64 | 190006 | 1.2264 | 19.86 | 190078 | 1.1615 | 15.05 | 190146 | 1.5435 | 21.42 | 190218 | 0.9927 | 20.20 | 200043 | 0.8145 | 16.72 |
| 180101 | 1.0972 | 18.29 | 190007 | 1.0824 | 14.29 | 190079 | 1.2231 | 18.24 | 190147 | 0.9621 | 14.58 | 190227 | 0.9050 | | 200050 | 1.2217 | 20.64 |
| 180102 | 1.5083 | 18.20 | 190008 | 1.5961 | 18.88 | 190081 | 0.8914 | 15.42 | 190148 | 0.8903 | 16.95 | 190231 | 1.4047 | 15.84 | 200051 | 0.9584 | 22.34 |
| 180103 | 2.2793 | 19.89 | 190009 | 1.2260 | 15.36 | 190083 | 0.9797 | 20.21 | 190149 | 0.9671 | 18.01 | 190236 | 1.5081 | 19.42 | 200052 | 0.9893 | 17.42 |
| 180104 | 1.5805 | 18.96 | 190010 | 1.0669 | 20.37 | 190086 | 1.3593 | 15.90 | 190151 | 0.9894 | 14.98 | 190237 | 2.1390 | | 200055 | 1.0118 | 19.20 |
| 180105 | 0.8843 | 15.54 | 190011 | 1.1347 | 15.95 | 190088 | 1.1898 | 21.26 | 190152 | 1.4623 | 22.25 | 190238 | 2.2526 | | 200062 | 0.9345 | 17.38 |
| 180106 | 0.8753 | 14.35 | 190013 | 1.2718 | 17.15 | 190089 | 1.1204 | 13.22 | 190156 | 0.9339 | 15.85 | 190239 | 1.2930 | | 200063 | 1.1802 | 20.06 |
| 180108 | 0.8405 | 15.06 | 190014 | 1.1193 | 17.29 | 190090 | 1.1154 | 16.92 | 190158 | 1.2518 | 20.67 | 190240 | 0.9632 | | 200066 | 1.1361 | 17.50 |
| 180115 | 1.0497 | 16.94 | 190015 | 1.2874 | 18.63 | 190095 | 1.0285 | 16.45 | 190160 | 1.2121 | 17.17 | 200001 | 1.2976 | 18.08 | 210001 | 1.3753 | 20.93 |
| 180116 | 1.2350 | 18.02 | 190017 | 1.3229 | 16.35 | 190098 | 1.7160 | 20.77 | 190161 | 0.9821 | 15.57 | 200002 | 1.1110 | 19.55 | 210002 | 1.9621 | 20.25 |
| 180117 | 1.0918 | 17.92 | 190018 | 1.1762 | 15.87 | 190099 | 1.2031 | 20.10 | 190162 | 1.1565 | 20.73 | 200003 | 1.1109 | 16.91 | 210003 | 1.5525 | 20.33 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 210004 | 1.3195 | 24.36 | 210051 | 1.3690 | 22.45 | 220051 | 1.1868 | 21.31 | 220106 | 1.1892 | 26.07 | 230036 | 1.2472 | 24.18 | 230097 | 1.6653 | 20.93 |
| 210005 | 1.2864 | 21.67 | 210054 | 1.3457 | 22.34 | 220052 | 1.2382 | 23.63 | 220108 | 1.1615 | 22.00 | 230037 | 1.2306 | 20.59 | 230099 | 1.1348 | 21.28 |
| 210006 | 1.0880 | 18.94 | 210055 | 1.2832 | 29.26 | 220053 | 1.1723 | 19.51 | 220110 | 2.0549 | 29.09 | 230038 | 1.7327 | 23.44 | 230100 | 1.1966 | 16.01 |
| 210007 | 1.8468 | 23.14 | 210056 | 1.3525 | 19.36 | 220055 | | 21.43 | 220111 | 1.2402 | 23.82 | 230040 | 1.1241 | 21.57 | 230101 | 1.0863 | 20.23 |
| 210008 | 1.2729 | 21.22 | 210057 | 1.3546 | 23.99 | 220057 | 1.2992 | 22.75 | 220116 | 1.8631 | 25.84 | 230041 | 1.3354 | 20.40 | 230103 | 0.9822 | 23.27 |
| 210009 | 1.9467 | 20.56 | 210058 | 1.4744 | 22.14 | 220058 | 1.0710 | 20.24 | 220119 | 1.2669 | 23.39 | 230042 | 1.1918 | 22.20 | 230104 | 1.6221 | 23.05 |
| 210010 | 1.0715 | 18.75 | 210059 | 1.2079 | 23.18 | 220060 | 1.1968 | 28.28 | 220123 | 1.0807 | 25.91 | 230046 | 1.9200 | 25.53 | 230105 | 1.7571 | 21.33 |
| 210011 | 1.3803 | 21.47 | 210060 | 1.2209 | | 220062 | 0.5885 | 20.47 | 220126 | 1.1977 | 22.65 | 230047 | 1.3071 | 21.70 | 230106 | 1.1915 | 21.17 |
| 210012 | 1.7055 | 20.87 | 210061 | 1.1161 | 17.69 | 220063 | 1.2558 | 20.56 | 220133 | 0.6689 | 25.67 | 230053 | 1.5884 | 25.64 | 230107 | 0.9343 | 19.02 |
| 210013 | 1.3654 | 19.85 | 220001 | 1.3269 | 22.08 | 220064 | 1.2030 | 22.53 | 220135 | 1.2664 | 25.65 | 230054 | 1.8717 | 19.51* | 230108 | 1.2425 | 19.20 |
| 210015 | 1.3139 | 16.61 | 220002 | 1.4321 | 24.08 | 220065 | 1.2552 | 20.32 | 220153 | 0.9380 | | 230055 | 1.1122 | 20.94 | 230110 | 1.3541 | 18.68 |
| 210016 | 1.7837 | 23.94 | 220003 | 1.0434 | 17.22 | 220066 | 1.3453 | 20.85 | 220154 | 0.9464 | 28.01 | 230056 | 0.9356 | 16.37 | 230113 | | 14.94 |
| 210017 | 1.2279 | 19.03 | 220006 | 1.3490 | 22.46 | 220067 | 1.2798 | 26.69 | 220162 | 1.5785 | | 230058 | 1.0859 | 20.74 | 230115 | 0.9648 | |
| 210018 | 1.2197 | 22.29 | 220008 | 1.3304 | 24.54 | 220070 | 1.1694 | 20.22 | 220163 | 1.9703 | 29.66 | 230059 | 1.4308 | 20.01 | 230116 | 0.9124 | 16.62 |
| 210019 | 1.6598 | 19.32 | 220010 | 1.3469 | 21.75 | 220071 | 1.9010 | 25.57 | 220171 | 1.7354 | 24.62 | 230060 | 1.4109 | 19.95 | 230117 | 1.8491 | 25.05 |
| 210022 | 1.4512 | 22.69 | 220011 | 1.1263 | 26.26 | 220073 | 1.3545 | 25.63 | 230001 | 1.1432 | 19.90 | 230062 | 0.9267 | 17.80 | 230118 | 1.0884 | 21.44 |
| 210023 | 1.3946 | 23.38 | 220012 | 1.3271 | 32.27 | 220074 | 1.3030 | 25.89 | 230002 | 1.2587 | 22.56 | 230063 | | 20.44 | 230119 | 1.3257 | 21.19 |
| 210024 | 1.7214 | 20.57 | 220015 | 1.1649 | 22.66 | 220075 | 1.8206 | 23.05 | 230003 | 1.1858 | 19.98 | 230065 | 1.3511 | 22.61 | 230120 | 1.1253 | 19.01 |
| 210025 | 1.2928 | 19.65 | 220016 | 1.3228 | 23.63 | 220076 | 1.1840 | 23.08 | 230004 | 1.6726 | 23.36 | 230066 | 1.3369 | 22.06 | 230121 | 1.1805 | 27.13 |
| 210026 | 1.3244 | 12.12 | 220017 | 1.3167 | 22.70 | 220077 | 1.8427 | 25.61* | 230005 | 1.2682 | 18.73 | 230069 | 1.2097 | 22.94 | 230122 | | 19.49 |
| 210027 | 1.2599 | 17.79 | 220019 | 1.1179 | 19.79 | 220079 | 0.7692 | 22.84 | 230006 | 1.0054 | 19.33 | 230070 | 1.5124 | 20.13 | 230124 | 1.1531 | 20.03 |
| 210028 | 1.1842 | 19.64 | 220020 | 1.1917 | 21.46 | 220080 | 1.3225 | 21.62 | 230007 | | 15.55 | 230071 | 1.1479 | 22.91 | 230128 | 1.3896 | 23.94 |
| 210029 | 1.2433 | 21.54 | 220023 | | 16.53 | 220081 | 0.9782 | 29.81 | 230012 | 0.7495 | 15.15 | 230072 | 1.2377 | 20.83 | 230130 | 1.6936 | 23.55 |
| 210030 | 1.2541 | 21.75 | 220024 | 1.1828 | 21.66 | 220082 | 1.3036 | 21.71 | 230013 | 1.3276 | 20.86 | 230075 | 1.4576 | 20.14 | 230132 | 1.3969 | 26.37 |
| 210031 | 1.1427 | 16.30 | 220025 | 1.1444 | 20.83 | 220083 | 1.1983 | 24.00 | 230015 | 1.0852 | 20.27 | 230076 | 1.4467 | 11.61 | 230133 | 1.2282 | 17.90 |
| 210032 | 1.1942 | 17.73 | 220028 | 1.4819 | | 220084 | 1.3035 | 23.82 | 230017 | 1.6066 | 21.31 | 230077 | 1.9906 | 21.08 | 230135 | 1.1630 | 22.88 |
| 210033 | 1.2612 | 20.87 | 220029 | 1.1950 | 23.49 | 220086 | 1.7729 | 25.66 | 230019 | 1.5438 | 19.33 | 230078 | 1.1603 | 17.78 | 230137 | | 19.23 |
| 210034 | 1.2813 | 15.89 | 220030 | 1.1353 | 18.82 | 220088 | 1.6330 | 23.64 | 230020 | 1.7453 | 20.09 | 230080 | 1.2280 | 19.98 | 230141 | 1.6463 | 22.21 |
| 210035 | 1.2819 | 20.33 | 220031 | 1.6735 | 30.43 | 220089 | 1.2429 | 23.45 | 230021 | 1.5029 | 19.19 | 230081 | 1.2131 | 19.14 | 230142 | 1.2627 | 22.09 |
| 210037 | 1.2115 | 18.47 | 220033 | 1.2509 | 20.39 | 220090 | 1.2954 | 22.01 | 230022 | 1.1988 | 18.83 | 230082 | 1.0447 | 18.75 | 230143 | 1.2367 | 16.42 |
| 210038 | 1.4383 | 23.59 | 220035 | 1.2874 | 21.73 | 220092 | 1.1430 | 18.41 | 230024 | 1.3911 | 23.77 | 230085 | 1.2776 | 20.32 | 230144 | 1.0633 | 25.13 |
| 210039 | 1.1984 | 20.05 | 220036 | 1.6121 | 24.49 | 220094 | | 24.31* | 230027 | 1.0489 | 14.78 | 230086 | 1.0381 | 19.66 | 230145 | 1.1070 | 20.26 |
| 210040 | 1.2826 | 21.53 | 220038 | 1.3121 | 22.89 | 220095 | 1.2192 | 21.76 | 230029 | 1.6419 | 19.40 | 230087 | 1.0390 | 19.12 | 230146 | 1.3342 | 20.23 |
| 210043 | 1.2928 | 19.68 | 220041 | 1.2370 | 23.80 | 220098 | 1.2597 | 21.61 | 230030 | 1.3297 | 17.62 | 230089 | 1.3188 | 22.15 | 230147 | 1.3684 | 22.01 |
| 210044 | 1.3691 | 22.62 | 220042 | 1.2292 | 25.51 | 220100 | 1.3682 | 26.04 | 230031 | 1.4203 | 19.50 | 230092 | 1.3544 | 19.48 | 230149 | 1.1978 | 21.83 |
| 210045 | 1.1048 | 11.63 | 220046 | 1.3433 | 22.93 | 220101 | 1.4111 | 25.92* | 230032 | 1.7072 | 21.90 | 230093 | 1.1861 | 20.16 | 230151 | 1.4626 | 20.69 |
| 210048 | 1.3354 | 23.11 | 220049 | 1.2918 | 25.83 | 220104 | | 24.12 | 230034 | 1.2389 | 19.05 | 230095 | 1.1826 | 17.38 | 230153 | 0.9925 | 19.39 |
| 210049 | 1.1471 | 19.08 | 220050 | 1.1650 | 22.48 | 220105 | 1.2463 | 21.49 | 230035 | 1.1329 | 17.78 | 230096 | 1.0658 | 23.34 | 230154 | 0.8789 | 15.63 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 230155 | 0.9751 | 18.09 | 230227 | 1.4814 | 23.71 | 240017 | 1.1398 | 18.89 | 240073 | 0.8879 | 16.11 | 240117 | 1.1109 | 18.24 | 240172 | 0.9255 | 20.08 |
| 230156 | 1.6603 | 24.37 | 230230 | 1.5512 | 22.26 | 240018 | 1.2441 | 21.24 | 240075 | 1.1861 | 21.28 | 240119 | 0.8309 | 22.23 | 240173 | 0.9557 | 17.49 |
| 230157 | 0.9068 | 20.49 | 230235 | 1.0232 | 17.08 | 240019 | 1.3349 | 22.33 | 240076 | 1.0872 | 21.88 | 240121 | 0.9259 | 24.40 | 240179 | 0.9770 | 17.50 |
| 230159 | | 20.18 | 230236 | 1.3535 | 22.67 | 240020 | 1.1768 | 21.61 | 240077 | 0.9462 | 16.24 | 240122 | 0.9925 | 20.01 | 240184 | 0.9886 | 16.99 |
| 230162 | 0.9995 | 23.34 | 230239 | 1.1417 | 18.25 | 240021 | 0.9236 | 23.29 | 240078 | 1.5281 | 23.92 | 240123 | 1.0359 | 17.51 | 240187 | 1.2632 | 20.43 |
| 230165 | 1.8185 | 23.02 | 230241 | 1.1341 | 19.33 | 240022 | 1.1192 | 22.02 | 240079 | 0.9403 | 18.84 | 240124 | 0.9314 | 19.85 | 240193 | 0.9640 | 17.95 |
| 230167 | 1.7841 | 20.72 | 230244 | 1.3672 | 21.78 | 240023 | 0.9420 | 22.89 | 240080 | 1.6105 | 24.42 | 240125 | 0.9009 | 12.41 | 240196 | 0.7812 | 24.35 |
| 230169 | 1.3469 | 26.34 | 230253 | 0.9338 | 20.89 | 240025 | 1.1749 | 18.61 | 240082 | 1.0530 | 18.42 | 240127 | 1.0022 | 17.83 | 240200 | 0.9238 | 14.74 |
| 230171 | 0.9835 | 13.39 | 230254 | 1.2766 | 22.00 | 240027 | 1.0210 | 20.01 | 240083 | 1.2035 | 20.32 | 240128 | 1.0644 | 17.41 | 240205 | 0.9292 | |
| 230172 | 1.2283 | 20.86 | 230257 | 0.9939 | 15.84 | 240028 | | 20.83 | 240084 | 1.3005 | 19.85 | 240129 | 0.9580 | 14.52 | 240206 | 0.8149 | |
| 230174 | 1.3677 | 22.99 | 230259 | 1.1232 | 22.49 | 240029 | 1.1435 | 21.22 | 240085 | 1.0275 | 23.20 | 240130 | 0.9422 | 14.96 | 240207 | 1.1578 | 24.11 |
| 230175 | 2.7123 | 16.89 | 230264 | 1.4272 | 17.17 | 240030 | 1.2664 | 18.86 | 240086 | 1.0112 | 17.33 | 240132 | 1.2570 | 23.11 | 240210 | 1.2505 | 24.22 |
| 230176 | 1.2163 | 21.80 | 230269 | 1.3192 | 23.46 | 240031 | 0.9686 | 19.92 | 240087 | 1.1033 | 19.19 | 240133 | 1.1703 | 19.21 | 240211 | 0.9918 | 32.21 |
| 230178 | 1.0059 | 17.57 | 230270 | 1.2256 | 20.47 | 240036 | 1.5890 | 22.35 | 240088 | 1.3578 | 21.94 | 240135 | 0.8382 | 17.41 | 250001 | 1.6021 | 18.45 |
| 230180 | 1.1010 | 15.89 | 230273 | 1.5809 | 22.95 | 240037 | 1.0055 | 19.46 | 240089 | 0.9769 | 21.38 | 240137 | 1.1273 | 21.80 | 250002 | 0.8541 | 17.34 |
| 230184 | 1.2708 | 19.06 | 230275 | 0.5165 | 50.25 | 240038 | 1.4979 | 25.33 | 240090 | 1.0655 | 22.31 | 240138 | 0.9458 | 14.38 | 250003 | 1.0110 | 18.09 |
| 230186 | 1.1092 | 20.02 | 230276 | 0.5142 | 26.55 | 240040 | 1.3172 | 20.64 | 240093 | 1.2556 | 18.80 | 240139 | 1.0006 | 18.72 | 250004 | 1.5571 | 18.12 |
| 230188 | 1.0835 | 15.77 | 230277 | 1.3004 | 23.05 | 240041 | 1.1233 | 20.33 | 240094 | 0.9185 | 21.77 | 240141 | 1.1332 | 23.81 | 250005 | 0.9376 | 13.03 |
| 230189 | 0.9337 | 16.70 | 230278 | | 18.21 | 240043 | 1.2402 | 17.97 | 240096 | 1.0307 | 20.97 | 240142 | 1.0390 | 32.04 | 250006 | 0.9859 | 17.04 |
| 230190 | 0.9231 | 26.82 | 230279 | 0.6318 | 17.70 | 240044 | 1.1420 | 19.26 | 240097 | 1.0219 | 25.42 | 240143 | 0.8917 | 19.43 | 250007 | 1.2463 | 19.29 |
| 230191 | 0.9599 | 19.50 | 230280 | 1.6338 | 15.94 | 240045 | 1.1356 | 22.12 | 240098 | 0.9495 | 21.82 | 240144 | 1.0412 | 20.03 | 250008 | 1.0057 | 15.19 |
| 230193 | 1.2745 | 19.78 | 230283 | 1.6032 | 27.96 | 240047 | 1.5606 | 22.83 | 240099 | 1.0577 | 15.27 | 240145 | 0.9259 | 19.10 | 250009 | 1.3310 | 18.84 |
| 230195 | 1.3298 | 21.93 | 230284 | 1.5037 | | 240050 | 1.2115 | 25.30 | 240100 | 1.2690 | 21.07 | 240146 | 0.9265 | 16.22 | 250010 | 0.9978 | 13.79 |
| 230197 | 1.3911 | 23.51 | 230285 | 1.0969 | | 240051 | 0.9195 | 20.76 | 240101 | 1.1731 | 19.65 | 240148 | 0.9095 | 17.03 | 250012 | 0.9798 | 14.35 |
| 230199 | 1.0859 | 23.70 | 230286 | 1.0244 | | 240052 | 1.2790 | 21.11 | 240102 | 0.8423 | 15.00 | 240150 | 0.7099 | 13.99 | 250015 | 0.9903 | 13.61 |
| 230201 | 1.2386 | 17.40 | 240001 | 1.5053 | 24.98 | 240053 | 1.4428 | 23.03 | 240103 | 1.2331 | 20.79 | 240152 | 1.0040 | 21.19 | 250017 | 1.0363 | 18.42 |
| 230204 | 1.4472 | 25.44 | 240002 | 1.7887 | 22.90 | 240056 | 1.2526 | 23.85 | 240104 | 1.1455 | 23.24 | 240153 | 1.0139 | 17.10 | 250018 | 0.8886 | 13.49 |
| 230205 | 0.9745 | 14.76 | 240004 | 1.5988 | 25.70 | 240057 | 1.8032 | 24.31 | 240105 | | 16.38 | 240154 | 0.9857 | 18.22 | 250019 | 1.5534 | 16.82 |
| 230207 | 1.2289 | 20.64 | 240005 | 0.8805 | 20.16 | 240058 | 0.9257 | 16.89 | 240106 | 1.3842 | 23.53 | 240155 | 0.9366 | 20.91 | 250020 | 0.9611 | 13.59 |
| 230208 | 1.2219 | 16.10 | 240006 | 1.1279 | 25.67 | 240059 | 1.0530 | 24.81 | 240107 | 0.9555 | 21.20 | 240157 | 0.9767 | 14.25 | 250021 | 1.0083 | 9.63 |
| 230211 | 0.9313 | 19.89 | 240007 | 1.0807 | 18.68 | 240061 | 1.7533 | 27.26 | 240108 | 0.9445 | 17.03 | 240160 | 0.9988 | 15.79 | 250023 | 0.9090 | 15.05 |
| 230212 | 0.9634 | 23.33 | 240008 | 1.1244 | 23.87 | 240063 | 1.4523 | 23.85 | 240109 | 0.9456 | 13.75 | 240161 | 0.9772 | 15.88 | 250024 | 0.9307 | 13.65 |
| 230213 | 0.9759 | 16.03 | 240009 | 0.9532 | 17.06 | 240064 | 1.3396 | 23.87 | 240110 | 0.9132 | 21.28 | 240162 | 1.0664 | 16.85 | 250025 | 1.0566 | 19.09 |
| 230216 | 1.6156 | 20.38 | 240010 | 1.9585 | 23.66 | 240065 | 1.0358 | 13.49 | 240111 | 1.0063 | 18.14 | 240163 | 0.9663 | 20.49 | 250027 | 0.9856 | 16.49 |
| 230217 | 1.2423 | 21.45 | 240011 | 1.1592 | 21.67 | 240066 | 1.2749 | 23.44 | 240112 | 1.0169 | 15.88 | 240166 | 1.0852 | 17.28 | 250029 | 0.8437 | 16.90 |
| 230219 | 0.8448 | 19.63 | 240013 | 1.2614 | 21.05 | 240069 | 1.1553 | 20.04 | 240114 | 0.9025 | 17.42 | 240169 | | 16.67 | 250030 | 0.9016 | 17.99 |
| 230222 | 1.3656 | 21.05 | 240014 | 1.0934 | 23.47 | 240071 | 1.1332 | 20.27 | 240115 | 1.5957 | 23.78 | 240170 | 1.0869 | 20.29 | 250031 | 1.1990 | 18.02 |
| 230223 | 1.2716 | 21.25 | 240016 | 1.3575 | 20.69 | 240072 | 0.9545 | 21.26 | 240116 | 0.8640 | 18.17 | 240171 | 0.9467 | 17.29 | 250032 | 1.2695 | 17.45 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 250033 | 0.9665 | 18.38 | 250085 | 0.9453 | 14.51 | 260001 | 1.7328 | 18.23 | 260053 | 1.1626 | 13.61 | 260113 | 1.2685 | 14.70 | 260191 | 1.3272 | 18.03 |
| 250034 | 1.5072 | 16.83 | 250088 | 0.9697 | 17.88 | 260002 | 1.3530 | 23.17 | 260054 | 1.3058 | 20.90 | 260115 | 1.1534 | 19.35 | 260193 | 1.2299 | 21.50 |
| 250035 | 0.8325 | 15.34 | 250089 | 1.0860 | 13.55 | 260003 | 1.1100 | 14.71 | 260055 | 0.9775 | 12.12 | 260116 | 1.0757 | 16.40 | 260195 | 1.1984 | 18.38 |
| 250036 | 0.9375 | 15.89 | 250093 | 1.1745 | 15.42 | 260004 | 0.9089 | 13.51 | 260057 | 1.0397 | 17.59 | 260119 | 1.1362 | 17.50 | 260197 | 1.2424 | 19.74 |
| 250037 | 0.9007 | 17.94 | 250094 | 1.3039 | 18.26 | 260005 | 1.5338 | 19.74 | 260059 | 1.2133 | 16.74 | 260120 | 1.1550 | | 260198 | 1.2942 | 11.98 |
| 250038 | 0.9443 | 16.97 | 250095 | 0.9883 | 17.11 | 260006 | 1.5282 | 20.06 | 260061 | 1.0891 | 14.87 | 260122 | 1.0929 | 15.30 | 260200 | 1.1751 | 20.63 |
| 250039 | 1.0136 | 14.34 | 250096 | 1.2290 | 19.36 | 260008 | 0.9499 | 13.92 | 260062 | 1.1846 | 20.31 | 260123 | 0.9861 | 14.88 | 260205 | 1.5117 | 17.63 |
| 250040 | 1.3211 | 17.38 | 250097 | 1.2230 | 17.23 | 260009 | 1.2927 | 18.59 | 260063 | 1.0362 | 18.43 | 260127 | 1.1114 | 18.60 | 260206 | 3.5316 | |
| 250042 | 1.2334 | 16.05 | 250098 | 0.8744 | 13.40 | 260011 | 1.5623 | 19.26 | 260064 | 1.3131 | 16.78 | 260128 | 1.0236 | 13.32 | 270002 | 1.3162 | 44.27 |
| 250043 | 0.8710 | 17.08 | 250099 | 1.2374 | 14.87 | 260012 | 1.0117 | 14.51 | 260065 | 1.7689 | 18.52 | 260131 | 1.1656 | 17.87 | 270003 | 1.1746 | 22.07 |
| 250044 | 0.9690 | 16.33 | 250100 | 1.3062 | 17.43 | 260013 | 1.1288 | 16.32 | 260066 | 1.0195 | 15.27 | 260134 | 1.1677 | 16.46 | 270004 | 1.7430 | 19.01 |
| 250045 | 1.2069 | 22.09 | 250101 | 0.9519 | 18.64 | 260014 | 0.7243 | | 260067 | 0.8996 | 14.47 | 260137 | 1.7546 | 16.17 | 270006 | 0.8758 | 19.99 |
| 250047 | 0.9759 | 14.07 | 250102 | 1.5081 | 24.36 | 260015 | 1.1812 | 12.16 | 260068 | 1.6771 | 20.30 | 260138 | 1.8734 | 22.92 | 270007 | 1.0195 | 11.79 |
| 250048 | 1.5789 | 16.97 | 250104 | 1.4611 | 18.26 | 260017 | 1.2006 | 17.07 | 260070 | 0.9995 | | 260141 | 1.9634 | 17.74 | 270009 | 1.0859 | 16.59 |
| 250049 | 0.8831 | 11.67 | 250105 | 0.9051 | 14.69 | 260018 | 0.8929 | 12.20 | 260073 | 1.0504 | 14.43 | 260142 | 1.1199 | 17.59 | 270011 | 1.0198 | 21.09 |
| 250050 | 1.2031 | 14.43 | 250107 | 0.9189 | 15.46 | 260019 | 1.1495 | 18.99 | 260074 | 1.2867 | 19.19 | 260143 | 1.0676 | 13.23 | 270012 | 1.5757 | 19.99 |
| 250051 | 0.8618 | 9.35 | 250109 | 0.8763 | 25.32 | 260020 | 1.7727 | 20.61 | 260077 | 1.7892 | 18.78 | 260147 | 0.9506 | 14.13 | 270014 | 1.9162 | 19.21 |
| 250057 | 1.1763 | 16.08 | 250112 | 0.9711 | 15.56 | 260021 | 1.3792 | 22.26 | 260078 | 1.1333 | 15.76 | 260148 | 0.8693 | 11.90 | 270016 | 0.8704 | 22.89 |
| 250058 | 1.1829 | 15.74 | 250117 | 1.0317 | 16.23 | 260022 | 1.1787 | 17.37 | 260079 | 1.0014 | 14.70 | 260158 | 1.0756 | 12.38 | 270017 | 1.2561 | 21.18 |
| 250059 | 1.0700 | 16.32 | 250119 | 1.0871 | 15.37 | 260023 | 1.3615 | 16.77 | 260080 | 0.9746 | 13.71 | 260159 | 0.9760 | 20.66 | 270019 | 1.1190 | 13.59 |
| 250060 | 0.7470 | 12.98 | 250120 | 1.1576 | 15.36 | 260024 | 0.9362 | 15.50 | 260081 | 1.5753 | 21.21 | 260160 | 1.1133 | 16.07 | 270021 | 1.0770 | 17.94 |
| 250061 | 0.8374 | 11.63 | 250122 | 1.1737 | 18.95 | 260025 | 1.3046 | 15.65 | 260082 | 1.1317 | 16.12 | 260162 | 1.6557 | 19.57 | 270023 | 1.2707 | 22.76 |
| 250063 | 0.8479 | 13.48 | 250123 | 1.1742 | 19.05 | 260027 | 1.6840 | 21.42 | 260085 | 1.5453 | 20.70 | 260163 | 1.3105 | 16.49 | 270026 | 0.9368 | 18.46 |
| 250065 | 0.8667 | 12.92 | 250124 | 0.9029 | 13.18 | 260029 | 1.1627 | 21.05 | 260086 | 0.9260 | 14.49 | 260164 | 0.8816 | 15.12 | 270027 | 1.0309 | 14.19 |
| 250066 | 0.8903 | 15.84 | 250125 | 1.3322 | 20.86 | 260030 | 1.0962 | 13.80 | 260091 | 1.6732 | 20.15 | 260166 | 1.2190 | 20.18 | 270028 | 1.1098 | 21.40 |
| 250067 | 1.1545 | 16.43 | 250126 | 0.9695 | 18.54 | 260031 | 1.5501 | 19.66 | 260094 | 1.2045 | 18.25 | 260172 | 0.9495 | 15.87 | 270029 | 0.9229 | 18.11 |
| 250068 | 0.8249 | 13.84 | 250127 | 0.8232 | | 260032 | 1.7853 | 20.29 | 260095 | 1.3972 | 20.06 | 260173 | 1.0138 | 12.92 | 270032 | 1.1140 | 18.64 |
| 250069 | 1.2727 | 18.15 | 250128 | 1.0249 | 14.06 | 260034 | 0.9597 | 17.87 | 260096 | 1.5336 | 23.21 | 260175 | 1.1555 | 17.11 | 270033 | 0.8100 | 19.19 |
| 250071 | 0.8816 | 14.92 | 250131 | 1.0314 | 13.07 | 260035 | 0.9708 | 13.18 | 260097 | 1.1343 | 16.62 | 260176 | 1.5702 | 27.03 | 270035 | 0.9569 | 17.35 |
| 250072 | 1.4249 | 18.33 | 250134 | 0.9404 | 17.05 | 260036 | 0.9895 | 16.89 | 260100 | 0.9519 | 15.98 | 260177 | 1.2853 | 21.37 | 270036 | 0.9056 | 17.61 |
| 250076 | | 18.49 | 250136 | 0.9008 | 19.06 | 260039 | 1.0792 | 14.39 | 260102 | 0.9961 | 21.22 | 260178 | 1.5350 | 19.82 | 270039 | 1.0428 | 16.98 |
| 250077 | 0.9821 | 12.29 | 250138 | 1.2425 | 18.41 | 260040 | 1.6302 | 17.44 | 260103 | 1.3583 | 18.81 | 260179 | 1.6145 | 20.04 | 270040 | 1.1295 | 19.22 |
| 250078 | 1.5178 | 15.76 | 250141 | 1.2485 | 19.21 | 260042 | 1.0374 | 20.25 | 260104 | 1.6018 | 21.27 | 260180 | 1.6060 | 19.67 | 270041 | 1.1196 | 20.55 |
| 250079 | 0.8699 | 16.67 | 250145 | 0.8593 | 10.25 | 260044 | 0.9647 | 16.31 | 260105 | 1.8164 | 24.78 | 260183 | 1.6356 | 20.12 | 270044 | 1.0627 | 16.90 |
| 250081 | 1.2872 | 17.69 | 250146 | 0.9420 | 14.67 | 260047 | 1.5659 | 19.25* | 260107 | 1.4601 | 19.97 | 260186 | 1.6413 | 19.40 | 270048 | 0.9841 | 18.45 |
| 250082 | 1.5718 | 16.26 | 250148 | 1.0949 | 18.17 | 260048 | 1.3267 | 20.28 | 260108 | 1.8703 | 19.52 | 260188 | 1.2121 | 21.03 | 270049 | 1.7313 | 22.63 |
| 250083 | 0.9060 | 14.31 | 250149 | 0.9679 | 13.29 | 260050 | 1.0056 | 16.12 | 260109 | 1.0531 | 13.99 | 260189 | 0.8331 | 11.39 | 270050 | 1.0847 | 20.97 |
| 250084 | 1.1566 | 17.10 | 250150 | 2.0233 | | 260052 | 1.3582 | 18.14 | 260110 | 1.6714 | 17.91 | 260190 | 1.1997 | 18.53 | 270051 | 1.3361 | 20.49 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 270052 | 0.9741 | 12.27 | 280032 | 1.3356 | 19.31 | 280081 | 1.6620 | 20.30 | 290010 | 1.1158 | 15.80 | 300023 | 1.4296 | 22.11 | 310039 | 1.2730 | 22.22 |
| 270057 | 1.2837 | 21.25 | 280033 | 0.9923 | 15.85 | 280082 | 0.9945 | 14.40 | 290011 | 0.9723 | 21.94 | 300024 | 1.2962 | 20.30 | 310040 | 1.2258 | 23.99 |
| 270058 | 0.9710 | 15.73 | 280035 | 1.0577 | 16.59 | 280083 | 1.0399 | 12.40 | 290012 | 1.3585 | 21.97 | 300028 | 1.2814 | 17.48 | 310041 | 1.3094 | 25.01 |
| 270059 | 0.7762 | 14.76 | 280037 | 1.0080 | 18.19 | 280084 | 0.9594 | 12.68 | 290013 | 1.0146 | 18.41 | 300029 | 1.5954 | 24.05 | 310042 | 1.2556 | 23.41 |
| 270060 | 0.9641 | 15.55 | 280038 | 1.0720 | 17.42 | 280085 | | 28.26 | 290014 | 1.0354 | 18.95 | 300033 | 1.0719 | 17.44 | 310043 | 1.1489 | 21.97 |
| 270063 | 1.0414 | 12.75 | 280039 | 1.0243 | 16.14 | 280088 | | 20.40 | 290015 | 0.9487 | 20.30 | 300034 | 2.1195 | 23.66 | 310044 | 1.3189 | 21.75 |
| 270073 | 1.1955 | 15.45 | 280040 | 1.7205 | 19.77 | 280089 | 0.9483 | 18.66 | 290016 | 1.0947 | 14.65 | 310001 | 1.7546 | 26.77 | 310045 | 1.4622 | 28.58 |
| 270074 | 0.8908 | | 280041 | 0.9366 | 16.53 | 280090 | | 14.19 | 290019 | 1.3058 | 21.42 | 310002 | 1.8249 | 28.36 | 310047 | 1.3288 | 25.35 |
| 270075 | 0.9693 | | 280042 | 1.0236 | 16.77 | 280091 | 1.0630 | 16.05 | 290020 | 0.9203 | 21.61 | 310003 | 1.3210 | 29.23 | 310048 | 1.2889 | 23.67 |
| 270076 | 0.8683 | | 280043 | 1.0166 | 16.66 | 280092 | 1.0073 | 14.24 | 290021 | 1.6576 | 21.63 | 310005 | 1.3371 | 21.85 | 310049 | 1.2090 | 22.72 |
| 270079 | 0.9317 | 17.21 | 280045 | 1.0114 | 17.02 | 280094 | 0.9541 | 17.76 | 290022 | 1.6306 | 24.64 | 310006 | 1.2934 | 21.66 | 310050 | 1.3129 | 26.34 |
| 270080 | 1.0699 | 16.58 | 280046 | 1.0450 | 18.52 | 280097 | 1.0200 | 15.48 | 290027 | 0.9135 | 17.74 | 310008 | 1.3619 | 23.79 | 310051 | 1.4157 | 26.08* |
| 270081 | 0.9728 | 16.39 | 280047 | 1.0745 | 18.27 | 280098 | 0.9297 | 13.55 | 290029 | 0.9152 | | 310009 | 1.3152 | 23.74 | 310052 | 1.2478 | 22.98 |
| 270082 | 1.0783 | 18.16 | 280048 | 1.0610 | 16.33 | 280101 | 1.0304 | 14.87 | 290032 | 1.4454 | 23.48 | 310010 | 1.2651 | 20.32 | 310054 | 1.3220 | 26.30 |
| 270083 | 1.0150 | 19.07 | 280049 | 1.1349 | 19.24 | 280102 | | 14.18 | 290038 | 0.8689 | 20.67 | 310011 | 1.2148 | 23.21 | 310057 | 1.2602 | 21.33 |
| 270084 | 0.9263 | 16.51 | 280050 | 0.9046 | 16.90 | 280104 | 0.9158 | 13.98 | 290039 | 1.3644 | 25.41 | 310012 | 1.6363 | 26.56 | 310058 | 1.2197 | 30.35 |
| 280001 | 1.0557 | 18.71 | 280051 | 0.9767 | 15.89 | 280105 | 1.3290 | 18.84 | 290041 | 1.2948 | | 310013 | 1.3263 | 21.23 | 310060 | 1.2779 | 19.20 |
| 280003 | 2.1228 | 22.58* | 280052 | 1.0544 | 14.16 | 280106 | 0.9666 | 16.56 | 290043 | 1.4491 | | 310014 | 1.6471 | 28.00 | 310061 | 1.2311 | 23.49 |
| 280005 | 1.3911 | 19.32 | 280054 | 1.2274 | 20.85 | 280107 | 1.0640 | 13.33 | 300001 | 1.5554 | 22.14 | 310015 | 2.0193 | 27.30 | 310062 | | 20.64 |
| 280009 | 1.7901 | 20.04* | 280055 | 0.9476 | 13.58 | 280108 | 1.1057 | 17.60 | 300003 | 1.8803 | 23.06 | 310016 | 1.2898 | 24.39* | 310063 | 1.3686 | 22.08 |
| 280010 | 0.8079 | 18.95 | 280056 | 0.8587 | 12.70 | 280109 | 0.9708 | 12.90 | 300005 | 1.2655 | 20.98 | 310017 | 1.3429 | 25.87 | 310064 | 1.3430 | 24.70 |
| 280011 | 0.8768 | 15.91 | 280057 | 0.9219 | 19.92 | 280110 | 0.9881 | 12.83 | 300006 | 1.1961 | 24.52 | 310018 | 1.1257 | 22.84 | 310067 | 1.3385 | 25.06 |
| 280013 | 1.7382 | 22.81 | 280058 | 1.1285 | 20.17 | 280111 | 1.3028 | 21.90 | 300007 | 1.1446 | 20.40 | 310019 | 1.6473 | 24.25* | 310069 | 1.2386 | 23.76 |
| 280014 | 0.9200 | 15.96 | 280060 | 1.5681 | 19.50 | 280114 | 0.9367 | 15.72 | 300008 | 1.1612 | 20.93 | 310020 | 1.4225 | 24.31 | 310070 | 1.3761 | 27.69 |
| 280015 | 1.0018 | 17.64 | 280061 | 1.3988 | 17.70 | 280115 | 0.9545 | 16.88 | 300009 | 1.0464 | 18.19 | 310021 | 1.6597 | 23.61 | 310072 | 1.3532 | 21.85 |
| 280017 | 1.0449 | 14.21 | 280062 | 1.1403 | 14.59 | 280117 | 1.0304 | 17.87 | 300010 | 1.3190 | 19.46 | 310022 | 1.3046 | 21.41 | 310073 | 1.6573 | 28.85 |
| 280018 | 0.9921 | 15.13 | 280064 | 0.9605 | 16.39 | 280118 | 0.9357 | 16.92 | 300011 | 1.3302 | 22.50 | 310024 | 1.3477 | 24.32 | 310074 | 1.4056 | 23.87 |
| 280020 | 1.7888 | 20.08 | 280065 | 1.2545 | 19.22 | 280119 | 0.8719 | | 300012 | 1.3253 | 24.79 | 310025 | 1.2381 | 18.76 | 310075 | 1.3357 | 23.38 |
| 280021 | 1.1400 | 17.24 | 280066 | 1.0204 | 11.70 | 280123 | 0.8405 | 13.83 | 300013 | 1.1165 | 19.29 | 310026 | 1.3365 | 23.63 | 310076 | 1.4753 | 30.10 |
| 280022 | 0.9370 | 18.44 | 280068 | 0.8544 | 9.49 | 280125 | 1.2273 | 16.22 | 300014 | 1.2247 | 20.55 | 310027 | 1.3219 | 22.09 | 310077 | 1.6035 | 25.23 |
| 280023 | 1.3771 | 26.74 | 280070 | 0.9519 | 18.80 | 290001 | 1.7178 | 22.90 | 300015 | 1.1975 | 20.88 | 310028 | 1.2719 | 23.49 | 310078 | 1.3589 | 23.89 |
| 280024 | 0.9485 | 15.18 | 280073 | 0.9819 | 17.42 | 290002 | 0.9215 | 17.84 | 300016 | 1.1982 | 23.78 | 310029 | 1.8571 | 23.94 | 310081 | 1.3168 | 22.21 |
| 280025 | 0.9383 | 15.67 | 280074 | 1.0434 | 18.35 | 290003 | 1.6796 | 22.95 | 300017 | 1.4335 | 21.87 | 310031 | 2.8403 | 26.51 | 310083 | 1.2103 | 23.94 |
| 280026 | 1.0401 | 16.77 | 280075 | 1.1198 | 15.92 | 290005 | 1.3125 | 19.51 | 300018 | 1.3143 | 21.69 | 310032 | 1.2791 | 24.12 | 310084 | 1.2859 | 27.04 |
| 280028 | 1.0585 | 17.37 | 280076 | 1.1016 | 15.21 | 290006 | 1.2307 | 22.32 | 300019 | 1.2071 | 21.29 | 310034 | 1.2926 | 23.36 | 310086 | 1.2463 | 24.33 |
| 280029 | 1.0970 | 25.16 | 280077 | 1.2267 | 19.63 | 290007 | 1.6281 | 29.82 | 300020 | 1.3598 | 22.23 | 310036 | 1.1781 | 20.26 | 310087 | 1.3346 | 20.70 |
| 280030 | 1.7561 | 26.00 | 280079 | 0.9470 | 11.35 | 290008 | 1.2008 | 20.66 | 300021 | 1.1372 | 18.76 | 310037 | 1.3747 | 27.75 | 310088 | 1.2268 | 22.45 |
| 280031 | 1.0339 | 13.87 | 280080 | 1.0743 | 15.90 | 290009 | 1.6408 | 22.71 | 300022 | 1.1054 | 18.51 | 310038 | 1.9781 | 28.46 | 310090 | 1.3844 | 23.91 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 310091 | 1.2517 | 23.00 | 320033 | 1.0638 | 26.26 | 330023 | 1.3016 | 24.27 | 330080 | 1.2842 | 25.95 | 330144 | 0.9522 | 14.39 | 330203 | 1.4111 | 20.78 |
| 310092 | 1.3584 | 20.63 | 320035 | 0.9774 | 24.63 | 330024 | 1.7844 | 34.32 | 330084 | 1.0907 | 18.01 | 330148 | 1.0299 | 16.94 | 330204 | 1.4201 | 23.30 |
| 310093 | 1.2391 | 22.44 | 320037 | 1.2031 | 17.03 | 330025 | 1.1211 | 16.21 | 330085 | 1.2368 | 20.69 | 330151 | 1.1139 | 16.23 | 330205 | 1.2435 | 20.58 |
| 310096 | 2.0482 | 25.16 | 320038 | 1.1836 | 16.87 | 330027 | 1.3863 | 35.44 | 330086 | 1.3292 | 31.59 | 330152 | 1.4515 | 30.60 | 330208 | 1.2195 | 26.21 |
| 310105 | 1.2274 | 25.59 | 320046 | 1.4747 | 18.46 | 330028 | 1.4173 | 28.26 | 330088 | 1.0439 | 25.99 | 330153 | 1.6740 | 18.33 | 330209 | 1.1902 | 24.06 |
| 310108 | 1.4130 | 22.68 | 320048 | 1.3028 | 20.04 | 330029 | 1.0092 | 18.84 | 330090 | 1.5195 | 19.51 | 330154 | 1.7674 | | 330211 | 1.1966 | 19.69 |
| 310110 | 1.2397 | 21.84 | 320056 | 0.9389 | | 330030 | 1.5314 | 18.37 | 330091 | 1.4009 | 19.10 | 330157 | 1.3658 | 22.45 | 330212 | 1.0327 | 21.77 |
| 310111 | 1.2775 | 21.11 | 320057 | 0.9771 | | 330033 | 1.2412 | 18.75 | 330092 | 1.0031 | 12.95 | 330158 | 1.4573 | 25.94 | 330213 | 1.0949 | 20.71 |
| 310112 | 1.3142 | 23.67 | 320058 | 1.0242 | | 330034 | | 31.32 | 330094 | 1.2733 | 17.62 | 330159 | 1.2556 | 19.13 | 330214 | 1.8038 | 38.15 |
| 310113 | 1.2434 | 23.71 | 320059 | 1.0795 | | 330036 | 1.2531 | 23.99 | 330095 | 1.2590 | 20.19 | 330160 | 1.4834 | 30.46 | 330215 | 1.1639 | 17.90 |
| 310115 | 1.2742 | 21.74 | 320060 | 0.9723 | | 330037 | 1.1401 | 16.14 | 330096 | 1.1059 | 17.96 | 330162 | 1.3003 | 27.18 | 330218 | 1.1083 | 21.67 |
| 310116 | 1.3470 | 22.77 | 320061 | 1.2614 | | 330038 | 1.0982 | 16.37 | 330097 | 1.1947 | 16.65 | 330163 | 1.2817 | 18.74 | 330219 | 1.5273 | 22.18 |
| 310118 | 1.3408 | 26.59 | 320062 | 0.8457 | | 330041 | 1.2956 | 24.52 | 330100 | 1.0557 | 27.12 | 330164 | 1.3889 | 19.69 | 330221 | 1.4092 | 27.88 |
| 310119 | 1.7957 | 33.68 | 320063 | 1.2638 | 18.31 | 330043 | 1.2931 | 29.24 | 330101 | 1.7620 | 32.51 | 330166 | 1.0967 | 15.10 | 330222 | 1.2936 | 18.48 |
| 310120 | 1.1628 | 23.88 | 320065 | 1.1440 | 13.19 | 330044 | 1.2707 | 19.84 | 330102 | 1.3625 | 17.70 | 330167 | 1.7283 | 29.87 | 330223 | 1.0697 | 17.62 |
| 310528 | 1.4071 | | 320067 | 0.9611 | 36.85 | 330045 | 1.3708 | 28.12 | 330103 | 1.2143 | 15.80 | 330169 | 1.4043 | 37.34 | 330224 | 1.2874 | 19.76 |
| 310529 | 1.4071 | | 320068 | 0.8767 | 17.70 | 330046 | 1.4439 | 32.58 | 330104 | 1.3469 | 31.73 | 330171 | 1.2608 | 25.80 | 330225 | 1.1882 | 25.83 |
| 320001 | 1.5189 | 19.17 | 320069 | 0.9678 | 13.01 | 330047 | 1.2340 | 18.25 | 330106 | 1.6787 | 39.91 | 330175 | 1.1745 | 17.47 | 330226 | 1.3157 | 16.72 |
| 320002 | 1.3291 | 19.54 | 320070 | 0.9979 | | 330048 | 1.2609 | 17.79 | 330107 | 1.2278 | 28.72 | 330177 | 0.9549 | 17.74 | 330229 | 1.2693 | 16.80 |
| 320003 | 1.1451 | 16.11 | 320074 | 1.1329 | 19.51 | 330049 | 1.1964 | 19.68 | 330108 | 1.2560 | 17.55 | 330179 | 0.8664 | 13.50 | 330230 | 1.2683 | 29.85 |
| 320004 | 1.2309 | 18.58 | 320079 | 1.2044 | 18.40 | 330053 | 1.2468 | 17.66 | 330111 | 1.0726 | 20.53 | 330180 | 1.2294 | 17.00 | 330231 | 1.0234 | 28.36 |
| 320005 | 1.3686 | 20.81 | 330001 | 1.1787 | 26.61 | 330055 | 1.6289 | 28.38 | 330114 | 0.9090 | 17.56 | 330181 | 1.3093 | 32.37 | 330232 | 1.2271 | 17.98 |
| 320006 | 1.4054 | 19.04 | 330002 | 1.3665 | 26.28 | 330056 | 1.3713 | 30.48 | 330115 | 1.1386 | 16.72 | 330182 | 2.5729 | 32.78* | 330233 | 1.4766 | 32.79 |
| 320009 | 1.6991 | 18.32 | 330003 | 1.3553 | 17.37 | 330057 | 1.7160 | 18.70 | 330116 | 0.8466 | 16.53 | 330183 | 1.4643 | 20.09 | 330234 | 2.3667 | 35.75 |
| 320011 | 1.1645 | 20.22 | 330004 | 1.2760 | 21.83 | 330058 | 1.2882 | 17.41 | 330118 | | 20.72 | 330184 | 1.3691 | 30.31 | 330235 | 1.1563 | 21.28 |
| 320012 | 1.0162 | 16.63 | 330005 | 1.6334 | 24.90 | 330059 | 1.5435 | 32.46 | 330119 | 1.6596 | 34.92 | 330185 | 1.2869 | 26.21 | 330236 | 1.4013 | 29.71 |
| 320013 | 1.2025 | 22.96 | 330006 | 1.3555 | 25.42 | 330061 | 1.2626 | 25.74 | 330121 | 1.0191 | 16.10 | 330188 | 1.2406 | 20.96 | 330238 | 1.2154 | 15.64 |
| 320014 | 1.0711 | 16.84 | 330007 | | 19.07 | 330062 | 1.0915 | 19.99 | 330122 | 1.0256 | 20.86 | 330189 | 0.9157 | 15.13 | 330239 | 1.2083 | 17.52 |
| 320016 | 1.1680 | 21.02 | 330008 | 1.1472 | 19.45 | 330064 | 1.3542 | 33.20 | 330125 | 1.8707 | 16.09 | 330191 | 1.2920 | 18.50 | 330240 | 1.3457 | 23.38 |
| 320017 | 1.0879 | 18.64 | 330009 | 1.2474 | 30.66 | 330065 | 1.2488 | 20.01* | 330126 | 1.2034 | 24.01 | 330193 | 1.4131 | 36.55 | 330241 | 2.0281 | 24.79 |
| 320018 | 1.4850 | 18.97 | 330010 | 1.3041 | 17.87 | 330066 | 1.3213 | 18.72 | 330127 | 1.3907 | 30.54 | 330194 | 1.8591 | 35.00 | 330242 | 1.3725 | 28.58 |
| 320019 | 1.4291 | 24.58 | 330011 | 1.2558 | 18.29 | 330067 | 1.3559 | 21.10 | 330128 | 1.2984 | 28.17 | 330195 | 1.6368 | 33.44 | 330245 | 1.6772 | 17.51 |
| 320021 | 1.7113 | 19.05 | 330012 | 1.2482 | 32.69 | 330072 | 1.3910 | 31.00 | 330132 | 1.1954 | 15.77 | 330196 | 1.3036 | 23.39 | 330246 | 1.3474 | 28.23 |
| 320022 | 1.1714 | 16.27 | 330013 | 2.0835 | 19.81 | 330073 | 1.1988 | 16.33 | 330133 | 1.4009 | 38.06 | 330197 | 1.0867 | 17.67 | 330247 | 0.9413 | 28.43 |
| 320023 | 0.9239 | 18.63 | 330014 | 1.3568 | 32.74 | 330074 | 1.2899 | 18.46 | 330135 | 1.1927 | 18.83 | 330198 | 1.4002 | 24.64 | 330249 | 1.1691 | 16.36 |
| 320030 | 1.1665 | 16.78 | 330016 | 1.0288 | 16.92 | 330075 | 1.0735 | 17.23 | 330136 | 1.3316 | 18.01 | 330199 | 1.3195 | 22.94 | 330250 | 1.3149 | 19.69 |
| 320031 | 0.9716 | 19.85 | 330019 | 1.3296 | 35.98 | 330078 | 1.4101 | 16.84 | 330140 | 1.7797 | 19.07 | 330201 | 1.6150 | 33.45* | 330254 | 1.3228 | 16.35 |
| 320032 | 0.9893 | 19.25 | 330020 | 1.0404 | 16.37 | 330079 | 1.1665 | 16.96 | 330141 | 1.3350 | 26.72 | 330202 | 1.2994 | 43.79 | 330258 | 1.2266 | 29.74 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 330259 | 1.4440 | 25.68 | 330387 | 0.9061 | | 340030 | 2.0506 | 21.18 | 340087 | 1.1029 | 17.47 | 340141 | 1.6896 | 21.50 | 350018 | 1.0477 | 15.87 |
| 330261 | 1.2036 | 25.82 | 330389 | 1.8456 | 30.47 | 340031 | 0.9217 | 14.73 | 340088 | 1.3517 | 21.53 | 340142 | 1.1644 | 17.19 | 350019 | 1.6646 | 22.51 |
| 330263 | 0.9771 | 20.75 | 330390 | 1.3632 | 31.08 | 340032 | 1.4561 | 19.60 | 340089 | 0.9792 | 13.86 | 340143 | 1.4585 | 21.46 | 350021 | 1.0506 | 13.29 |
| 330264 | 1.1710 | 23.22 | 330393 | 1.8344 | 26.59 | 340034 | 1.2442 | | 340090 | 1.1480 | 17.21 | 340144 | 1.2422 | 21.13 | 350023 | 0.9937 | 16.37 |
| 330265 | 1.3028 | 18.55 | 330394 | 1.5311 | 19.26 | 340035 | 1.0676 | 20.68 | 340091 | 1.6245 | 20.66 | 340145 | 1.3102 | 20.25 | 350024 | 0.9655 | 15.51 |
| 330267 | 1.4366 | 24.52 | 330395 | 1.3433 | 32.84 | 340036 | 1.0915 | 18.26 | 340093 | 1.0273 | 16.72 | 340146 | 1.1826 | 16.64 | 350025 | 0.9338 | 17.21 |
| 330268 | 0.9345 | 13.14 | 330396 | 1.2143 | 26.26 | 340037 | 1.1047 | 16.93 | 340094 | 1.3767 | 19.07 | 340147 | 1.2064 | 19.64 | 350027 | 0.9560 | 16.01 |
| 330270 | 1.9596 | 34.74 | 330397 | 1.3009 | 32.83 | 340038 | 1.0927 | 17.57 | 340096 | 1.1847 | 17.83 | 340148 | 1.2816 | 18.61 | 350029 | 0.8521 | 12.00 |
| 330273 | 1.3019 | 23.20 | 330398 | | 28.92 | 340039 | 1.2681 | 20.71 | 340097 | 1.1371 | 19.16 | 340151 | 1.1870 | 16.79 | 350030 | 1.0714 | 17.73 |
| 330275 | 1.9172 | 18.10 | 330399 | 1.2710 | 32.22 | 340040 | 1.7843 | 20.51 | 340098 | 1.5932 | 21.67 | 340153 | 1.8584 | 20.83 | 350033 | 0.9207 | 14.94 |
| 330276 | 1.2311 | 18.49 | 330400 | 0.8821 | | 340041 | 1.2060 | 15.24 | 340099 | 1.0861 | 16.99 | 340155 | 1.4055 | 20.67* | 350034 | 0.9218 | 18.84 |
| 330277 | 1.1123 | 18.34 | 340001 | 1.4099 | 15.48* | 340042 | 1.2316 | 17.03 | 340101 | 1.0110 | 14.00 | 340156 | 0.8347 | | 350035 | 0.9248 | 10.65 |
| 330279 | 1.3744 | 19.99 | 340002 | 1.6734 | 20.68 | 340044 | 1.0595 | 19.39 | 340104 | 0.8826 | 13.05 | 340158 | 1.0371 | 18.08 | 350038 | 1.0716 | 17.98 |
| 330285 | 1.8516 | 23.30 | 340003 | 1.0955 | 20.60 | 340045 | 0.9604 | 13.85 | 340105 | 1.4831 | 20.64 | 340159 | 1.1728 | 17.62 | 350039 | 0.9588 | 17.10 |
| 330286 | 1.2784 | 26.86 | 340004 | 1.4532 | 18.52 | 340047 | 1.8711 | 20.38 | 340106 | 1.1165 | 17.72 | 340160 | 1.0910 | 16.55 | 350041 | 1.1001 | 14.82 |
| 330290 | 1.7526 | 33.26 | 340005 | 1.0277 | 16.15 | 340049 | 0.7283 | 20.73 | 340107 | 1.2067 | 18.11 | 340162 | | 14.35 | 350042 | 1.0451 | 19.25 |
| 330293 | 1.1727 | 16.87 | 340006 | 0.9684 | 16.67 | 340050 | 1.1208 | 20.25 | 340109 | 1.3127 | 18.78 | 340164 | 1.3481 | 21.39 | 350043 | 1.5489 | 17.03 |
| 330304 | 1.2306 | 26.84 | 340007 | 1.1562 | 17.36 | 340051 | 1.2485 | 16.57 | 340111 | 1.0645 | 16.35 | 340166 | 1.3030 | 20.05 | 350044 | 0.8822 | 10.34 |
| 330306 | 1.3142 | 27.41 | 340008 | 1.1447 | 20.88 | 340052 | 1.0014 | 23.31 | 340112 | 0.9920 | 14.32 | 340168 | 0.5101 | 15.34 | 350047 | 0.9607 | 13.91 |
| 330307 | 1.2306 | 21.19 | 340009 | | 20.60 | 340053 | 1.5873 | 21.07 | 340113 | 1.8651 | 21.36 | 340171 | 1.1455 | 21.61 | 350049 | 1.1631 | 15.75 |
| 330314 | 1.3597 | 25.25 | 340010 | 1.3362 | 18.41 | 340054 | 1.1409 | 15.70 | 340114 | 1.5493 | 21.34 | 340173 | 1.2098 | 19.35 | 350050 | 0.8466 | 11.60 |
| 330316 | 1.3133 | 27.61 | 340011 | 1.1290 | 13.66 | 340055 | 1.2627 | 19.89 | 340115 | 1.5715 | 19.90 | 350001 | 0.9882 | 13.34 | 350051 | 0.9311 | 17.61 |
| 330327 | 0.8648 | 16.46 | 340012 | 1.2311 | 19.16 | 340060 | 1.0869 | 19.05 | 340116 | 1.8253 | 20.06 | 350002 | 1.8110 | 17.82 | 350053 | 1.0154 | 17.09 |
| 330331 | 1.3086 | 31.62 | 340013 | 1.2510 | 21.14 | 340061 | 1.7329 | 21.74 | 340119 | 1.2141 | 18.16 | 350003 | 1.2256 | 18.56 | 350055 | 1.0230 | 14.75 |
| 330332 | 1.2568 | 27.69 | 340014 | 1.5229 | 20.55 | 340063 | 1.0093 | 17.48 | 340120 | 1.0408 | 15.33 | 350004 | 1.9049 | 20.76 | 350056 | 0.9278 | 15.07 |
| 330333 | 1.2909 | | 340015 | 1.2754 | 19.82 | 340064 | 1.1300 | 21.16 | 340121 | 1.0749 | 16.38 | 350005 | 1.0401 | 15.81 | 350058 | 0.9833 | 15.65 |
| 330336 | 1.2324 | 29.77 | 340016 | 1.1207 | 17.78 | 340065 | 1.2243 | 18.04 | 340123 | 1.1175 | 16.97 | 350006 | 1.5547 | 18.59 | 350060 | 0.8490 | 10.37 |
| 330338 | 1.1705 | 23.14 | 340017 | 1.2071 | 20.35 | 340067 | 0.9991 | 19.38 | 340124 | 1.0808 | 15.63 | 350007 | 0.8587 | 13.77 | 350061 | 1.0027 | 15.49 |
| 330339 | 0.8910 | 20.01 | 340018 | 1.0804 | 14.12 | 340068 | 1.1715 | 16.63 | 340125 | 1.4253 | 19.73 | 350008 | 1.1613 | 17.76 | 350063 | 0.9667 | |
| 330340 | 1.1929 | 28.86 | 340019 | 0.9785 | 15.15 | 340069 | 1.7761 | 21.12 | 340126 | 1.3013 | 18.83 | 350009 | 1.1136 | 19.53 | 350064 | 0.7555 | |
| 330350 | 1.6581 | 31.05 | 340020 | 1.1779 | 18.67 | 340070 | 1.2898 | 19.94 | 340127 | 1.1956 | 20.54 | 350010 | 1.0118 | 18.31 | 350069 | 1.2802 | |
| 330353 | 1.3482 | 32.30 | 340021 | 1.2520 | 19.99 | 340071 | 1.0832 | 17.14 | 340129 | 1.2476 | 20.48 | 350011 | 1.8866 | 18.31 | 360001 | 1.2935 | 16.77 |
| 330354 | 1.6409 | | 340022 | 1.0739 | 17.90 | 340072 | 1.2082 | 17.04 | 340130 | 1.2840 | 19.91 | 350012 | 1.1412 | 11.47 | 360002 | 1.1402 | 18.13 |
| 330357 | 1.3536 | 38.13 | 340023 | 1.3875 | 18.19 | 340073 | 1.2988 | 22.21 | 340131 | 1.4394 | 19.86 | 350013 | 1.0380 | 16.64 | 360003 | 1.6873 | |
| 330372 | 1.2414 | 29.34 | 340024 | 1.1973 | 17.69 | 340075 | 1.1577 | 19.47 | 340132 | 1.3414 | 17.41 | 350014 | 0.9712 | 15.08 | 360006 | 1.9146 | 21.90 |
| 330381 | 1.2242 | 31.05 | 340025 | 1.1953 | 17.54 | 340080 | | 23.28 | 340133 | 1.0261 | 16.60 | 350015 | 1.7387 | 16.88 | 360007 | 1.0265 | 18.39 |
| 330385 | 1.2649 | | 340027 | 1.1839 | 18.21 | 340084 | 1.0709 | 17.68 | 340137 | 1.0783 | 34.86 | 350016 | | 10.78 | 360008 | 1.3490 | 18.86 |
| 330386 | 1.1312 | 17.72 | 340028 | 1.5757 | 18.35 | 340085 | 1.1718 | 17.38 | 340138 | 1.1288 | 24.83 | 350017 | 1.2958 | 17.88 | 360009 | 1.5361 | 18.98 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

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TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 360010 | 1.2334 | 15.17 | 360055 | 1.3525 | 21.56 | 360098 | 1.5062 | 19.91 | 360150 | 1.3685 | 21.12 | 360213 | 1.2083 | 19.69 | 370032 | 1.5629 | 18.35 |
| 360011 | 1.3423 | 19.52 | 360056 | 1.4041 | 16.61 | 360099 | 1.0245 | 18.71 | 360151 | 1.4074 | 16.67 | 360218 | 1.2975 | 19.08 | 370033 | 1.0525 | 13.98 |
| 360012 | 1.3342 | 20.51 | 360057 | 1.0483 | 15.11 | 360100 | 1.2130 | 18.29 | 360152 | 1.5163 | 20.85 | 360230 | 1.4929 | 21.98 | 370034 | 1.2289 | 15.81 |
| 360013 | 1.1575 | 20.87 | 360058 | 1.1193 | 18.82 | 360101 | 1.3243 | 21.48 | 360153 | 1.1651 | 15.68 | 360231 | 1.1033 | 13.04 | 370035 | | 25.56 |
| 360014 | 1.1008 | 21.00 | 360059 | 1.5947 | 19.06 | 360102 | 1.2553 | 19.46 | 360154 | 1.0086 | 14.51 | 360234 | 1.3213 | 36.08 | 370036 | 0.9960 | 12.53 |
| 360016 | 1.5836 | 16.64 | 360062 | 1.4230 | 20.87 | 360106 | 1.1940 | 19.11 | 360155 | 1.4647 | 22.60 | 360236 | 1.2715 | 17.61 | 370037 | 1.7645 | 16.78 |
| 360017 | 1.9251 | 21.81 | 360063 | 1.1702 | 18.75 | 360107 | 1.1811 | 19.80 | 360156 | 1.2202 | 16.78 | 360239 | 1.3395 | 20.28 | 370038 | 0.9615 | 13.46 |
| 360018 | 1.6721 | 22.56 | 360064 | 1.6012 | 20.51 | 360108 | 1.0338 | 18.15 | 360159 | 1.1602 | 20.40 | 360241 | 0.4317 | 24.60 | 370039 | 1.1425 | 15.52 |
| 360019 | 1.2060 | 18.79 | 360065 | 1.2487 | 20.23 | 360109 | 1.1111 | 20.44 | 360161 | 1.3892 | 19.23 | 360242 | 1.8217 | | 370040 | 1.0073 | 15.19 |
| 360020 | 1.5186 | 25.81 | 360066 | 1.6090 | 22.67 | 360112 | 1.8536 | 22.69 | 360162 | 0.7891 | | 360243 | | 14.87 | 370041 | 0.9018 | 17.04 |
| 360024 | 1.2682 | 20.07 | 360067 | 1.0787 | 15.64 | 360113 | 1.2901 | 24.24 | 360163 | 1.8340 | 20.69 | 360245 | 0.6949 | 16.46 | 370042 | 0.8507 | 15.10 |
| 360025 | 1.3835 | 20.15 | 360068 | 1.8270 | 21.31 | 360114 | 1.0970 | 17.88 | 360165 | 1.1673 | 18.36 | 360247 | 0.4151 | | 370043 | 0.9540 | 16.24 |
| 360026 | 1.3585 | 18.36 | 360069 | 1.1756 | 16.83 | 360115 | 1.3870 | 18.68 | 360166 | | 18.73 | 360252 | 1.1998 | | 370045 | 0.9814 | 10.36 |
| 360027 | 1.4749 | 21.12 | 360070 | 1.7350 | 17.47 | 360116 | 1.2625 | 19.25 | 360170 | 1.3600 | 24.15 | 370001 | 1.7264 | 19.57 | 370046 | 0.9928 | 20.54 |
| 360028 | 1.4691 | 17.36 | 360071 | 1.3047 | 17.52 | 360118 | 1.4264 | 19.53 | 360172 | 1.3346 | 18.64 | 370002 | 1.3068 | 14.87 | 370047 | 1.3957 | 16.87 |
| 360029 | 1.1472 | 18.76 | 360072 | 1.2218 | 18.01 | 360121 | 1.1630 | 30.53 | 360174 | 1.2905 | 20.06 | 370004 | 1.2174 | 19.80 | 370048 | 1.2000 | 18.48 |
| 360030 | 1.2350 | 17.59 | 360074 | 1.2811 | 21.16* | 360123 | 1.3141 | 20.40 | 360175 | 1.2197 | 21.34 | 370005 | 0.8524 | 15.29 | 370049 | 1.2853 | 21.09 |
| 360031 | 1.2603 | 19.79 | 360075 | 1.3381 | 22.47 | 360125 | 1.2270 | 19.16 | 360176 | 1.1301 | 16.04 | 370006 | 1.1483 | 16.78 | 370051 | 0.9589 | 12.40 |
| 360032 | 1.1946 | 18.86 | 360076 | 1.3683 | 20.86 | 360126 | 1.2293 | 19.00 | 360177 | 1.1801 | 19.08 | 370007 | 1.0950 | 15.72 | 370054 | 1.2822 | 17.01 |
| 360034 | 1.2043 | 14.98 | 360077 | 1.5732 | 21.19 | 360127 | 1.1664 | 17.47 | 360178 | 1.2352 | 18.97 | 370008 | 1.4079 | 16.80 | 370056 | 1.6437 | 18.66 |
| 360035 | 1.6355 | 20.58 | 360078 | 1.2570 | 21.56 | 360128 | 1.2319 | 16.16 | 360179 | 1.4850 | 21.22 | 370011 | 1.0145 | 15.43 | 370057 | 1.0945 | 17.13 |
| 360036 | 1.2488 | 20.30 | 360079 | 1.9036 | 22.23 | 360129 | 0.9283 | 15.88 | 360180 | 2.1826 | 22.23* | 370012 | 0.9599 | 11.91 | 370059 | 1.0654 | 18.46 |
| 360037 | 1.7944 | 23.08 | 360080 | 1.1484 | 17.61 | 360130 | 1.0412 | 16.93 | 360184 | | 21.79 | 370013 | 1.8371 | 19.53 | 370060 | 1.0384 | 16.80 |
| 360038 | 1.6196 | 21.78 | 360081 | 1.3684 | 21.28 | 360131 | 1.2850 | 19.50 | 360185 | 1.2317 | 18.85 | 370014 | 1.1749 | 20.77 | 370063 | 1.2088 | 15.05 |
| 360039 | 1.3097 | 18.83 | 360082 | 1.2761 | 23.10 | 360132 | 1.3760 | 20.03 | 360186 | 1.0135 | 18.61 | 370015 | 1.0935 | 17.22 | 370064 | 0.8983 | 11.00 |
| 360040 | 1.2276 | 17.89 | 360084 | 1.5193 | 20.69 | 360133 | 1.5665 | 20.10* | 360187 | 1.4773 | 18.71 | 370016 | 1.3381 | 19.61 | 370065 | 0.9824 | 17.06 |
| 360041 | 1.3560 | 19.78 | 360085 | 1.9661 | 22.00 | 360134 | 1.6855 | 20.68 | 360188 | 0.9369 | 17.38 | 370017 | | 12.76 | 370071 | 1.0039 | 16.32 |
| 360042 | 1.1141 | 17.27 | 360086 | 1.5020 | 19.57 | 360136 | 1.0046 | 17.87 | 360189 | 1.0455 | 18.17 | 370018 | 1.3295 | 18.76 | 370072 | 0.8630 | 14.74 |
| 360044 | 1.2324 | 17.06 | 360087 | 1.5437 | 20.60 | 360137 | 1.7667 | 20.11 | 360192 | 1.3219 | 21.58 | 370019 | 1.3153 | 14.28 | 370076 | 1.2066 | 13.63 |
| 360045 | 1.4084 | 22.54 | 360088 | 1.3352 | 24.84 | 360140 | 0.9480 | 20.62 | 360194 | 1.1997 | 17.35 | 370020 | 1.2263 | 14.57 | 370078 | 1.5996 | 20.02 |
| 360046 | 1.1656 | 20.48 | 360089 | 1.2093 | 18.39 | 360141 | 1.6729 | 23.15 | 360195 | 1.1098 | 20.08 | 370021 | 0.8554 | 12.05 | 370079 | 0.9794 | 16.90 |
| 360047 | 1.1027 | 17.19 | 360090 | 1.2546 | 21.08 | 360142 | 1.0190 | 17.06 | 360197 | 1.1044 | 20.17 | 370022 | 1.2696 | 17.46 | 370080 | 0.9639 | 14.51 |
| 360048 | 1.8242 | 22.62 | 360091 | 1.2937 | 21.57 | 360143 | 1.3588 | 20.31 | 360200 | 0.9555 | 17.15 | 370023 | 1.2643 | 17.94 | 370082 | 0.8241 | 14.03 |
| 360049 | 1.2121 | 20.56 | 360092 | 1.1341 | 20.86 | 360144 | 1.3417 | 23.25 | 360203 | 1.0978 | 16.41 | 370025 | 1.3035 | 17.61 | 370083 | 0.9353 | 13.39 |
| 360050 | 1.1495 | 13.14 | 360093 | 1.0964 | 19.33 | 360145 | 1.7463 | 19.55 | 360204 | 1.0462 | 22.32 | 370026 | 1.5025 | 18.47 | 370084 | 1.0542 | 24.69 |
| 360051 | 1.6201 | 20.97 | 360094 | 1.3416 | 19.07 | 360147 | 1.2667 | 16.80 | 360210 | 1.1429 | 21.12 | 370028 | 1.9017 | 18.46 | 370085 | 0.9464 | 11.80 |
| 360052 | 1.6225 | 19.69* | 360095 | 1.3125 | 20.55 | 360148 | 1.1127 | 19.79 | 360211 | 1.2930 | 20.20 | 370029 | 1.1722 | 16.56 | 370086 | 1.1221 | 15.67 |
| 360054 | 1.2007 | | 360096 | 1.0795 | 18.38 | 360149 | | 20.10 | 360212 | 1.3331 | 21.22 | 370030 | 1.1316 | 16.72 | 370089 | 1.2271 | 16.25 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 370091 | 1.6044 | 21.70 | 370170 | 1.0541 | | 380021 | 1.2503 | 21.19 | 380083 | 1.1471 | 22.40 | 390037 | 1.4185 | 21.15 | 390080 | 1.3019 | 19.11 |
| 370092 | 1.0139 | 14.98 | 370171 | 0.9971 | | 380022 | 1.1688 | 22.92 | 380084 | 1.2453 | 24.42 | 390039 | 1.1907 | 17.26 | 390081 | 1.2462 | 25.01 |
| 370093 | 1.8117 | 18.49 | 370172 | 0.8396 | | 380023 | 1.1761 | 20.72 | 380087 | 1.2474 | 16.58 | 390040 | 1.0209 | 16.06 | 390083 | 1.1651 | |
| 370094 | 1.4127 | 18.10 | 370173 | 1.1247 | | 380025 | 1.3346 | 26.40 | 380088 | 0.9247 | 24.74 | 390041 | 1.2732 | 20.03 | 390084 | 1.1987 | 16.59 |
| 370095 | 0.9763 | 12.64 | 370174 | 0.9543 | | 380026 | 1.0945 | 20.70 | 380089 | 1.2394 | 19.53 | 390042 | 1.5063 | 22.88 | 390086 | 1.1480 | 18.59 |
| 370097 | 1.2818 | 23.54 | 370176 | 1.2074 | 16.06 | 380027 | 1.2669 | 20.98 | 380090 | 1.3238 | 29.26 | 390043 | 1.1749 | 17.33 | 390088 | 1.3842 | 23.80 |
| 370099 | 1.0947 | 15.47 | 370177 | 0.9524 | 11.37 | 380029 | 1.1922 | 19.64 | 380091 | 1.2535 | 27.86 | 390044 | 1.6322 | 20.34 | 390090 | 1.8116 | 21.65 |
| 370100 | 0.9115 | 14.22 | 370178 | 1.0189 | 10.66 | 380031 | 0.9315 | 24.67 | 390001 | 1.5417 | 19.33 | 390045 | 1.6031 | 18.66 | 390091 | 1.1333 | 18.17 |
| 370103 | 0.9543 | 19.40 | 370179 | 0.8885 | 18.46 | 380033 | 1.7553 | 25.24 | 390002 | 1.3557 | 20.92 | 390046 | 1.5702 | 20.80 | 390093 | 1.1630 | 17.97 |
| 370105 | 1.9099 | 21.76 | 370180 | 0.9075 | | 380035 | 1.2499 | 23.10 | 390003 | 1.2310 | 16.88 | 390047 | 1.5521 | 19.19 | 390095 | 1.2468 | 16.33 |
| 370106 | 1.5203 | 18.67 | 370183 | 1.0814 | 10.31 | 380036 | | 28.46 | 390004 | 1.3896 | 19.29* | 390048 | 1.1545 | 19.22 | 390096 | 1.4929 | 19.13 |
| 370108 | 0.9726 | 12.38 | 370186 | 0.9477 | 13.67 | 380037 | 1.2582 | 22.27 | 390005 | 1.1046 | 17.71 | 390049 | 1.5575 | 20.92 | 390097 | 1.2575 | 24.17 |
| 370112 | 1.0891 | 15.36 | 370190 | 1.5098 | 14.13 | 380038 | 1.3126 | 26.31 | 390006 | 1.8361 | 20.28 | 390050 | 2.1143 | 22.95 | 390100 | 1.6304 | 20.62* |
| 370113 | 1.1543 | 16.46 | 370192 | 1.3555 | 18.46 | 380039 | 1.2777 | 23.40 | 390007 | 1.1621 | 17.36 | 390051 | 2.1193 | 20.70 | 390101 | 1.2165 | 18.08 |
| 370114 | 1.5781 | 16.55 | 370196 | 0.8606 | | 380040 | 1.2192 | 27.41 | 390008 | 1.1623 | 18.07 | 390052 | 1.1748 | 21.01 | 390102 | 1.3785 | 16.42 |
| 370121 | 1.0688 | 23.09 | 370198 | | 21.31 | 380042 | 0.9475 | 21.58 | 390009 | 1.7844 | 20.50 | 390054 | 1.2301 | 17.82 | 390103 | 1.1339 | 18.55 |
| 370122 | 0.9493 | 15.36 | 370199 | 0.8639 | | 380047 | 1.6760 | 23.15 | 390010 | 1.2242 | 17.59 | 390055 | 1.8787 | 23.77 | 390104 | 1.0108 | 16.05 |
| 370123 | 1.3885 | 19.46 | 370200 | 1.1197 | | 380048 | 0.9881 | 17.75 | 390011 | 1.3623 | 18.24 | 390056 | 1.1528 | 17.84 | 390106 | 1.0782 | 16.67 |
| 370125 | 0.9138 | 15.90 | 370201 | 1.5239 | | 380050 | 1.4244 | 20.47 | 390012 | 1.1580 | 20.78 | 390057 | 1.2898 | 20.18 | 390107 | 1.4339 | 19.48 |
| 370126 | 1.0242 | 25.10 | 370202 | 1.6312 | | 380051 | 1.6019 | 22.51 | 390013 | 1.2035 | 19.41 | 390058 | 1.3431 | 19.88 | 390108 | 1.3803 | 20.88 |
| 370131 | 0.8213 | 17.84 | 370203 | 0.9571 | | 380052 | 1.2343 | 19.44 | 390015 | 1.1147 | 13.13 | 390060 | | 20.71 | 390109 | 1.1779 | 16.54 |
| 370133 | 1.0895 | 11.12 | 380001 | 1.2454 | 20.48 | 380056 | 1.1446 | 19.64 | 390016 | 1.2102 | 17.11 | 390061 | 1.4576 | 21.41 | 390110 | 1.6090 | 24.45 |
| 370138 | 0.9855 | 16.51 | 380002 | 1.2140 | 24.49 | 380060 | 1.4009 | 23.54 | 390017 | 1.1623 | | 390062 | 1.1875 | 16.79 | 390111 | 1.9566 | 28.83 |
| 370139 | 0.9845 | 14.92 | 380003 | 1.1372 | 22.04 | 380061 | 1.5403 | 22.40 | 390018 | 1.2433 | 21.49 | 390063 | 1.8778 | 20.12 | 390112 | 1.2223 | 15.02 |
| 370140 | 1.0484 | 16.50 | 380004 | 1.7746 | 23.06 | 380062 | 1.0568 | 22.42 | 390019 | 1.0956 | 16.74 | 390065 | 1.2180 | 20.06 | 390113 | 1.2382 | 19.41 |
| 370141 | 1.2715 | 18.56 | 380005 | 1.1564 | 24.14 | 380063 | | 20.41 | 390022 | 1.2626 | 21.66 | 390066 | 1.2689 | 20.00 | 390114 | 1.1908 | 19.68 |
| 370146 | 1.0376 | 13.04 | 380006 | 1.2218 | 21.43 | 380064 | 1.2399 | 20.40 | 390023 | 1.2740 | 22.66 | 390067 | 1.7230 | 21.06 | 390115 | 1.3884 | 23.13 |
| 370148 | 1.4798 | 21.23 | 380007 | 1.8133 | 24.88 | 380065 | 1.3760 | 29.90 | 390024 | 1.1950 | 25.28 | 390068 | 1.3359 | 18.38 | 390116 | 1.3141 | 22.01 |
| 370149 | 1.3531 | 16.29 | 380008 | 1.1193 | 20.81 | 380066 | 1.2342 | 22.84 | 390025 | 0.4914 | 15.62 | 390069 | 1.2272 | 19.76 | 390117 | 1.1927 | 17.96 |
| 370153 | 1.1109 | 18.06 | 380009 | 1.9155 | 23.82 | 380068 | | 22.78 | 390026 | 1.2536 | 22.40 | 390070 | 1.3908 | 21.09 | 390118 | 1.2266 | 18.64 |
| 370154 | 0.9997 | 15.74 | 380010 | 1.0883 | 24.16 | 380069 | 0.9663 | 19.83 | 390027 | 1.6725 | 26.80 | 390071 | 1.0710 | 16.06 | 390119 | 1.3509 | 18.60 |
| 370156 | 1.0546 | 14.03 | 380011 | 1.1283 | 21.90 | 380070 | 1.2440 | 27.97 | 390028 | 1.8243 | 22.89 | 390072 | 1.0686 | 15.67 | 390121 | 1.3954 | 19.72 |
| 370158 | 0.9813 | 15.80 | 380013 | 1.1981 | 18.76 | 380071 | 1.2939 | 22.86 | 390029 | 2.0480 | 21.66 | 390073 | 1.6453 | 20.59 | 390122 | 1.0559 | 17.34 |
| 370159 | 1.2126 | 35.75 | 380014 | 1.6849 | 24.82 | 380072 | 0.9643 | 19.16 | 390030 | 1.3037 | 18.20 | 390074 | 1.2044 | 18.56 | 390123 | 1.2538 | 20.93 |
| 370163 | 0.9443 | 17.72 | 380017 | 1.8298 | 26.13 | 380075 | 1.3986 | 22.53 | 390031 | 1.1843 | 19.32 | 390075 | 0.8141 | 17.64 | 390125 | 1.2810 | 16.97 |
| 370165 | 1.1288 | 13.20 | 380018 | 1.8417 | 22.48 | 380078 | 0.9868 | 20.43 | 390032 | 1.2292 | 17.67 | 390076 | 1.2336 | 20.37 | 390126 | | 20.74 |
| 370166 | 1.0969 | 17.29 | 380019 | 1.2490 | 22.52 | 380081 | 0.9945 | 21.77 | 390035 | 1.2915 | 19.92 | 390078 | 1.1636 | 19.40 | 390127 | 1.2380 | 21.81 |
| 370169 | 1.0537 | 12.64 | 380020 | 1.4433 | 20.31 | 380082 | 1.2817 | 22.26 | 390036 | 1.4804 | 20.06* | 390079 | 1.7957 | 18.35 | 390128 | 1.2390 | 21.27 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

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TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 390130 | 1.1414 | 17.70 | 390184 | 1.1496 | 20.78 | 390246 | 1.1346 | 20.47 | 400013 | 1.2447 | 8.46 | 400122 | 1.0349 | 8.19 | 420039 | 1.1396 | 15.91 |
| 390131 | 1.3543 | 16.23 | 390185 | 1.1762 | 18.74 | 390247 | 1.0155 | 24.31 | 400014 | 1.3938 | 9.55 | 400123 | 1.2661 | 7.81 | 420043 | 1.1828 | 19.55 |
| 390132 | 1.3454 | 21.19 | 390189 | 1.1613 | 19.37 | 390249 | 0.9448 | 12.79 | 400015 | 1.5592 | 8.89 | 400124 | 2.9225 | 12.10 | 420048 | 1.2223 | 18.68 |
| 390133 | 1.7892 | 23.17* | 390191 | 1.1886 | 16.46 | 390256 | 1.8684 | 21.09 | 400016 | 1.3398 | 13.29 | 400125 | 1.0767 | | 420049 | 1.2086 | 17.82 |
| 390135 | 1.2544 | 21.45 | 390192 | 1.1512 | 16.71 | 390258 | 1.4919 | 21.98 | 400017 | 1.2238 | | 410001 | 1.3880 | 23.40 | 420051 | 1.5733 | 19.54 |
| 390136 | 1.1034 | 17.01 | 390193 | 1.2810 | 17.13 | 390260 | 1.1989 | 18.22 | 400018 | 1.2832 | 10.51 | 410004 | 1.2965 | 22.64 | 420053 | 1.1080 | 17.15 |
| 390137 | 1.4923 | 17.09 | 390194 | 1.2385 | 21.28 | 390262 | 1.9292 | 18.30 | 400019 | 1.5231 | 10.43 | 410005 | 1.2923 | 23.48 | 420054 | 1.2667 | 18.36 |
| 390138 | 1.3158 | 19.45 | 390195 | 1.8209 | 23.96 | 390263 | 1.3520 | 18.74 | 400021 | 1.4409 | 10.72 | 410006 | 1.2576 | 23.65 | 420055 | 1.0334 | 21.55 |
| 390139 | 1.4902 | 24.10 | 390196 | 1.5086 | | 390265 | 1.2960 | 20.69 | 400022 | 1.3550 | 9.99 | 410007 | 1.6077 | 22.27 | 420056 | 1.2203 | 15.10 |
| 390142 | 1.5730 | 26.57 | 390197 | 1.4697 | 19.26 | 390266 | 1.1655 | 17.21 | 400024 | 0.9633 | 8.09 | 410008 | 1.2095 | 23.12 | 420057 | 1.1423 | 15.98 |
| 390145 | 1.4010 | 20.49 | 390198 | 1.2564 | 15.98 | 390267 | 1.2438 | 21.59 | 400026 | 1.0177 | 5.64 | 410009 | 1.3252 | 24.66 | 420059 | 0.9951 | 15.89 |
| 390146 | 1.2706 | 19.06 | 390199 | 1.1973 | 17.17 | 390268 | 1.3339 | 21.44 | 400027 | | 9.59 | 410010 | 1.1320 | 27.07 | 420061 | 1.1300 | 19.02 |
| 390147 | 1.2032 | 21.09 | 390200 | 0.9409 | 15.15 | 390270 | 1.3984 | 18.72 | 400028 | 1.1174 | 8.91 | 410011 | 1.2441 | 24.99 | 420062 | 1.1754 | 17.74 |
| 390150 | 1.1443 | 21.25 | 390201 | 1.2378 | 20.71 | 390272 | 0.5183 | | 400031 | | 8.27 | 410012 | 1.8150 | 24.68 | 420064 | 1.1821 | |
| 390151 | 1.2241 | 21.70 | 390203 | 1.3451 | 21.11 | 390277 | | 17.82 | 400032 | 1.2050 | 10.59 | 410013 | 1.2765 | 24.46 | 420065 | 1.3485 | 19.91 |
| 390152 | 1.0777 | 20.34 | 390204 | 1.2783 | 20.27 | 390278 | 0.6647 | 18.63 | 400044 | 1.4631 | 11.97 | 420002 | 1.4889 | 19.58 | 420066 | 1.0367 | 15.19 |
| 390153 | 1.2252 | 23.34 | 390206 | | 18.44 | 390279 | 1.0636 | 14.41 | 400048 | 1.1615 | 9.19 | 420004 | 1.8906 | 19.80 | 420067 | 1.2058 | 19.02 |
| 390154 | 1.2076 | 17.72 | 390209 | 1.0417 | 17.83 | 390281 | 1.3650 | | 400061 | 1.7940 | 12.91 | 420005 | 1.0771 | 17.49 | 420068 | 1.3360 | 18.58 |
| 390156 | 1.4359 | 20.56* | 390211 | 1.2277 | 18.01 | 390284 | 1.4412 | | 400079 | 1.1999 | | 420006 | 1.0719 | 18.62 | 420069 | 1.0419 | 17.14 |
| 390157 | 1.3608 | 19.74 | 390213 | 1.1661 | 19.22 | 390285 | 1.6668 | | 400087 | 1.5057 | 9.51 | 420007 | 1.5943 | 18.44 | 420070 | 1.2721 | 15.43 |
| 390160 | 1.2339 | 21.43 | 390215 | 1.1889 | 20.77 | 390286 | 1.1152 | | 400094 | 1.0905 | 8.92 | 420009 | 1.1750 | 18.80 | 420071 | 1.3375 | 19.49 |
| 390161 | 1.0720 | 16.69 | 390217 | 1.2195 | 19.27 | 390287 | 1.5408 | | 400098 | 1.3009 | 9.34 | 420010 | 1.1495 | 17.12 | 420072 | 0.9270 | 13.86 |
| 390162 | 1.4942 | 21.42 | 390219 | 1.2829 | 18.96* | 390288 | 1.3205 | | 400102 | 1.1160 | 9.86 | 420011 | 1.1579 | 16.64 | 420073 | 1.2998 | 19.24 |
| 390163 | 1.2985 | 16.92 | 390220 | 1.1356 | 18.87 | 390289 | 1.2735 | | 400103 | 1.4139 | 11.23 | 420014 | 1.0098 | 17.03 | 420074 | 0.9703 | 17.01 |
| 390164 | 2.1661 | 25.91 | 390222 | 1.2848 | 21.70 | 390290 | 1.9083 | | 400104 | 1.2735 | 11.12 | 420015 | 1.3587 | 18.88 | 420075 | 0.9049 | 14.48 |
| 390166 | 1.1228 | 19.37 | 390223 | 1.7590 | 22.21* | 390291 | 1.0064 | | 400105 | 1.1909 | 9.32 | 420016 | 0.9117 | 15.62 | 420078 | 1.8707 | 20.57 |
| 390167 | | 20.11 | 390224 | 0.8462 | 16.06 | 390292 | 1.7398 | | 400106 | 1.2229 | 9.31 | 420018 | 1.6937 | 19.79 | 420079 | 1.4542 | 21.00 |
| 390168 | 1.4324 | 18.85 | 390225 | 1.2356 | 18.83 | 400001 | 1.2713 | 9.95 | 400109 | 1.4645 | 10.99 | 420019 | 1.1298 | 17.40 | 420080 | 1.4090 | 22.51 |
| 390169 | 1.4254 | 19.91 | 390226 | 1.7162 | 23.01 | 400002 | 1.6814 | 10.14 | 400110 | 1.2210 | 10.36 | 420020 | 1.1853 | 18.90 | 420082 | 1.5064 | 20.51 |
| 390170 | 1.6553 | 18.33 | 390228 | 1.3772 | 19.49 | 400003 | 1.3343 | 6.87 | 400111 | 1.1955 | 10.47 | 420023 | 1.4599 | 22.35 | 420083 | 1.3483 | 20.31 |
| 390173 | 1.1611 | 18.59 | 390231 | 1.5411 | 20.49 | 400004 | 1.2034 | 8.99 | 400112 | 1.0783 | 10.18 | 420026 | 1.8483 | 20.30 | 420085 | 1.4415 | 19.59 |
| 390174 | 1.6425 | 25.07* | 390233 | 1.3671 | 20.75 | 400005 | 1.1684 | 9.56 | 400113 | 1.2079 | 8.52 | 420027 | 1.3037 | 18.92 | 420086 | 1.4438 | 26.48 |
| 390176 | 1.2014 | 17.84 | 390235 | 1.4513 | 21.34* | 400006 | 1.1960 | 10.33 | 400114 | 1.0938 | 9.05 | 420030 | 1.2526 | 19.07 | 420087 | 1.7286 | 19.21 |
| 390178 | 1.3200 | 16.78 | 390236 | 1.1984 | 16.40 | 400007 | 1.1674 | 6.45 | 400115 | 1.0873 | 9.98 | 420031 | 0.8958 | 14.45 | 420088 | 1.0686 | 17.06 |
| 390179 | 1.2709 | 21.74 | 390237 | 1.5383 | 19.90 | 400009 | 1.0022 | 8.42 | 400117 | 1.1340 | 10.23 | 420033 | 1.1243 | 21.74 | 420089 | 1.1770 | 20.33 |
| 390180 | 1.4422 | 25.65 | 390238 | 1.3058 | 17.82 | 400010 | 0.8818 | 8.49 | 400118 | 1.2341 | 9.44 | 420036 | 1.2338 | 17.72 | 420091 | 1.2947 | 19.00 |
| 390181 | 1.0954 | 19.73 | 390244 | 0.9301 | 16.67 | 400011 | 1.0851 | 7.50 | 400120 | 1.3236 | 9.55 | 420037 | 1.2657 | 21.79 | 420093 | 0.9796 | 17.49 |
| 390183 | 1.1932 | 18.03 | 390245 | 1.3389 | 21.30 | 400012 | 1.2487 | 8.24 | 400121 | 0.9217 | 8.09 | 420038 | 1.2484 | 17.68 | 420095 | 2.5155 | |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 420096 | 1.7514 | | 430066 | 0.9008 | 14.40 | 440030 | 1.1751 | 16.49 | 440091 | 1.6362 | 19.71 | 440173 | 1.6396 | 18.69 | 450021 | 1.8814 | 21.55 |
| 430004 | 0.9609 | 18.79 | 430073 | 1.0143 | 16.39 | 440031 | 1.0663 | 15.53 | 440100 | 0.9807 | 14.04 | 440174 | 0.9259 | 17.33 | 450023 | 1.4841 | 16.17 |
| 430005 | 1.2812 | 16.48 | 430076 | 0.9123 | 13.65 | 440032 | 0.9951 | 13.99 | 440102 | 1.1416 | 14.54 | 440175 | 1.1195 | 19.26 | 450024 | 1.3907 | 17.45 |
| 430007 | 1.0407 | 14.22 | 430077 | 1.6719 | 18.33 | 440033 | 1.1005 | 14.70 | 440103 | | 20.55 | 440176 | 1.3127 | 18.23 | 450025 | | 16.85 |
| 430008 | 1.1208 | 18.12 | 430079 | 0.9190 | 14.41 | 440034 | 1.5809 | 19.55 | 440104 | 1.7547 | 23.12 | 440180 | 1.1305 | 22.35 | 450028 | 1.4881 | 18.94 |
| 430010 | 1.0575 | 19.27 | 430081 | 0.9496 | | 440035 | 1.2507 | 19.06 | 440105 | 0.9667 | 16.78 | 440181 | 0.9166 | 16.80 | 450029 | 1.6984 | 17.00 |
| 430011 | 1.2700 | 17.11 | 430082 | 0.8197 | | 440039 | 1.8372 | 18.57 | 440109 | 1.1160 | 16.70 | 440182 | 0.9912 | 17.90 | 450031 | 1.3727 | 22.47 |
| 430012 | 1.2865 | 17.39 | 430083 | 0.8671 | | 440040 | 1.0520 | 16.48 | 440110 | 1.1731 | 12.62 | 440183 | 1.6053 | 22.77 | 450032 | 1.2407 | 17.39 |
| 430013 | 1.2140 | 18.41 | 430084 | 0.8903 | | 440041 | 1.0032 | 14.79 | 440111 | 1.3903 | 23.33 | 440184 | 1.1685 | 17.22 | 450033 | 1.6070 | 19.88 |
| 430014 | 1.2991 | 16.94 | 430085 | 0.8145 | | 440046 | 1.1755 | 18.34 | 440114 | 1.0945 | 14.67 | 440185 | 1.1912 | 17.98 | 450034 | 1.5605 | 18.27 |
| 430015 | 1.1562 | 21.74 | 430089 | 0.8934 | 17.90 | 440047 | 0.9188 | 16.66 | 440115 | 1.0341 | 17.45 | 440186 | 0.9946 | 19.57 | 450035 | 1.4463 | 19.66 |
| 430016 | 1.8956 | 19.70 | 430090 | 1.5851 | 21.52 | 440048 | 1.8112 | 19.46* | 440120 | 1.6727 | 17.23 | 440187 | 1.1545 | 18.44 | 450037 | 1.5430 | 18.95 |
| 430018 | 0.9377 | 14.89 | 430091 | 1.8060 | 19.21 | 440049 | 1.6778 | 12.12 | 440125 | 1.5439 | 15.73 | 440189 | 1.5100 | | 450039 | 1.5413 | 20.21* |
| 430022 | 0.8661 | 13.77 | 430092 | 2.0606 | | 440050 | 1.2316 | 20.50 | 440130 | 1.1552 | 18.18 | 440192 | 1.0452 | 19.28 | 450040 | 1.7134 | 16.94 |
| 430023 | 0.9045 | 12.32 | 430093 | 0.9802 | | 440051 | 0.9195 | 13.21 | 440131 | 1.1323 | 15.71 | 440193 | 1.2660 | 19.37 | 450042 | 1.6929 | 20.49 |
| 430024 | 0.9625 | 15.49 | 440001 | 1.1930 | 15.17 | 440052 | 0.9792 | 16.76 | 440132 | 1.1083 | 16.89 | 440194 | 1.3426 | 20.08 | 450044 | 1.4881 | 23.89 |
| 430027 | 1.7844 | 19.26 | 440002 | 1.6591 | 19.40 | 440053 | 1.3276 | 18.58 | 440133 | 1.5549 | 21.57 | 440197 | 1.2797 | 22.18 | 450046 | 1.4707 | 16.73 |
| 430028 | 1.1337 | 19.48 | 440003 | 1.2569 | 18.50 | 440054 | 1.2203 | 13.99 | 440135 | 1.1874 | 19.78 | 440200 | 1.1776 | 18.30 | 450047 | 1.1163 | 13.46 |
| 430029 | 0.9468 | 17.07 | 440006 | 1.3368 | 19.65 | 440056 | 1.0523 | 15.98 | 440137 | 1.1338 | 14.97 | 440203 | 0.9624 | 18.47 | 450050 | 0.9150 | 14.98 |
| 430031 | 0.8712 | 13.33 | 440007 | 1.0197 | 12.62 | 440057 | 1.0726 | 13.06 | 440141 | 0.9927 | 13.80 | 440206 | | 16.47 | 450051 | 1.6138 | 20.36 |
| 430033 | 0.9751 | 16.11 | 440008 | 1.0196 | 17.54 | 440058 | 1.1480 | 16.50 | 440142 | 1.0087 | 15.99 | 440210 | 1.0561 | 11.02 | 450052 | 1.0261 | 13.94 |
| 430034 | 0.9654 | 15.66 | 440009 | 1.1329 | 17.89 | 440059 | 1.4748 | 18.61 | 440143 | 1.0185 | 17.78 | 440211 | | 15.03 | 450053 | 1.0551 | 17.05 |
| 430036 | 0.9604 | 14.40 | 440010 | 0.9371 | 20.90 | 440060 | 1.1176 | 18.63 | 440144 | 1.2759 | 17.78 | 440212 | | 17.07 | 450054 | 1.6178 | 23.39 |
| 430037 | 0.9250 | 17.25 | 440011 | 1.3658 | 17.90 | 440061 | 1.1173 | 14.98 | 440145 | 0.9782 | 16.97 | 440213 | | 19.58 | 450055 | 1.1126 | 15.13 |
| 430038 | 1.0131 | 13.72 | 440012 | 1.6411 | 16.03 | 440063 | 1.6311 | 19.36 | 440147 | 1.7122 | 21.59 | 440214 | 1.6187 | | 450056 | 1.6203 | 21.00 |
| 430040 | 1.0512 | 13.88 | 440014 | 0.9859 | 16.12 | 440064 | 1.1067 | 17.77 | 440148 | 1.0657 | 19.26 | 440217 | 1.2148 | | 450058 | 1.6096 | 17.60 |
| 430041 | 0.8894 | 13.32 | 440015 | 1.8127 | 18.60 | 440065 | 1.3182 | 18.72 | 440149 | 1.0301 | 17.02 | 450002 | 1.4960 | 21.57 | 450059 | 1.2338 | 15.23 |
| 430043 | 1.1877 | 14.02 | 440016 | 1.0277 | 15.74 | 440067 | 1.1752 | 14.74 | 440150 | 1.3189 | 20.23 | 450004 | 1.0878 | 16.85 | 450063 | 0.8737 | 14.83 |
| 430044 | 0.7894 | 19.42 | 440017 | 1.8014 | 19.67 | 440068 | 1.2451 | 19.48 | 440151 | 1.1401 | 17.45 | 450005 | 1.2002 | 13.48 | 450064 | 1.4426 | 17.41 |
| 430047 | 1.0491 | 18.79 | 440018 | 1.2742 | 17.14 | 440070 | 1.0142 | 13.79 | 440152 | 2.0595 | 20.49 | 450007 | 1.2265 | 17.07 | 450065 | 0.9949 | 22.60 |
| 430048 | 1.1085 | 18.62 | 440019 | 1.7608 | 20.22 | 440071 | 1.1950 | 17.20 | 440153 | 1.1112 | 16.93 | 450008 | 1.2228 | 17.16 | 450068 | 1.8929 | 23.02 |
| 430049 | 0.8842 | 15.59 | 440020 | 1.1148 | 19.75 | 440072 | 1.2842 | 17.75 | 440156 | 1.4817 | 31.20 | 450010 | 1.4716 | 16.53 | 450072 | 1.2215 | 19.15 |
| 430051 | 0.9210 | 17.29 | 440022 | | 15.85 | 440073 | 1.2464 | 19.22 | 440157 | 1.0596 | 17.13 | 450011 | 1.5042 | 17.22 | 450073 | 1.1334 | 17.58 |
| 430054 | 0.9508 | 14.74 | 440023 | 1.0919 | 15.73 | 440078 | 1.0057 | 15.09 | 440159 | 1.2264 | 18.11 | 450014 | 1.1292 | 18.23 | 450076 | 1.7681 | |
| 430056 | 0.8955 | 12.20 | 440024 | 1.3011 | 18.57 | 440081 | 1.0953 | 18.89 | 440161 | 1.8362 | 21.95 | 450015 | 1.5990 | 17.54 | 450078 | 0.9236 | 11.83 |
| 430057 | 0.9851 | 16.85 | 440025 | 1.1421 | 16.14 | 440082 | 2.0079 | 19.62 | 440162 | 0.7243 | 14.97 | 450016 | 1.5700 | 18.13 | 450079 | 1.4697 | 17.69 |
| 430060 | 0.8973 | 9.05 | 440026 | | 26.56 | 440083 | 1.0269 | 42.77 | 440166 | 1.6689 | 19.67 | 450018 | 1.4567 | 21.77 | 450080 | 1.1648 | 14.53 |
| 430064 | 1.0133 | 14.49 | 440029 | 1.2736 | 19.57 | 440084 | 1.1552 | 13.61 | 440168 | 1.0086 | 18.99 | 450020 | 0.9528 | 18.04 | 450081 | 0.9876 | 16.52 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 450082 | 0.9960 | 16.16 | 450146 | 0.8943 | 20.90 | 450213 | 1.7687 | 14.84 | 450307 | 0.6961 | 16.62 | 450411 | 0.9183 | 14.59 | 450545 | 1.1744 | 19.67 |
| 450083 | 1.7958 | 21.68 | 450147 | 1.3482 | 18.27 | 450214 | 1.3120 | 19.28 | 450309 | 1.0330 | 13.18 | 450417 | 0.9553 | 13.50 | 450547 | 1.0057 | 14.82 |
| 450085 | 1.1423 | 18.49 | 450148 | 1.1863 | 18.49 | 450217 | 0.9378 | 13.02 | 450315 | 0.9183 | 23.14 | 450418 | 1.4654 | 22.10 | 450551 | 1.0662 | 17.05 |
| 450087 | 1.4100 | 22.09 | 450149 | 1.5830 | 18.81 | 450219 | 0.9736 | 15.49 | 450320 | 1.2139 | 19.16 | 450419 | 1.1985 | 20.66 | 450558 | 1.8453 | 22.35 |
| 450090 | 1.1643 | 15.21 | 450150 | 0.9361 | 16.47 | 450221 | 1.0745 | 16.67 | 450321 | 0.8878 | 13.02 | 450422 | 1.0383 | 26.48 | 450563 | 1.2800 | 18.57 |
| 450092 | 1.1843 | 16.23 | 450151 | 1.1655 | 15.41 | 450222 | 1.5295 | 20.35 | 450322 | 0.6218 | 23.32 | 450423 | | 22.83 | 450565 | 1.2368 | 16.38 |
| 450094 | 1.3057 | 22.14 | 450152 | 1.1794 | 18.29 | 450224 | 1.3260 | 26.64 | 450324 | 1.4635 | 18.06 | 450424 | 1.2331 | 18.88 | 450570 | 1.1060 | 19.17 |
| 450096 | 1.4316 | 17.97 | 450153 | 1.5855 | 19.54 | 450229 | 1.6656 | 16.55 | 450327 | 0.9713 | 11.85 | 450429 | 1.0777 | 14.19 | 450571 | 1.5416 | 16.83 |
| 450097 | 1.3604 | 19.38 | 450154 | 1.2060 | 13.92 | 450231 | 1.5949 | 19.10 | 450330 | 1.1591 | 19.03 | 450431 | 1.5180 | 19.91 | 450573 | 1.0078 | 15.78 |
| 450098 | 1.0430 | 20.60 | 450155 | 1.0641 | 11.69 | 450234 | 1.0237 | 16.45 | 450334 | 0.9096 | 12.85 | 450438 | 1.1740 | 19.73 | 450574 | 0.9157 | 14.86 |
| 450099 | 1.1801 | 19.44 | 450157 | 1.0359 | 15.83 | 450235 | 1.0433 | 15.36 | 450337 | 1.0009 | 17.46 | 450446 | 0.7064 | 13.10 | 450575 | 1.0415 | 19.41 |
| 450101 | 1.5377 | 17.19 | 450160 | 0.9635 | 17.74 | 450236 | 1.2054 | 16.52 | 450340 | 1.4004 | 16.76 | 450447 | 1.3487 | 18.15 | 450578 | 0.9355 | 15.74 |
| 450102 | 1.6869 | 17.86 | 450162 | 1.2420 | 21.17 | 450237 | 1.5863 | 20.88 | 450341 | 1.0090 | 19.30 | 450451 | 1.1711 | 18.91 | 450580 | 1.1929 | 15.90 |
| 450104 | 1.1446 | 16.72 | 450163 | 1.0163 | 17.58 | 450239 | 1.0093 | 17.54 | 450346 | 1.3165 | 16.62 | 450457 | 1.8455 | 26.17 | 450583 | 1.0284 | 15.85 |
| 450107 | 1.5559 | 23.53 | 450164 | 1.1251 | 17.02 | 450241 | 1.0053 | 12.68 | 450347 | 1.2273 | 17.22 | 450460 | 1.0059 | 15.43 | 450584 | 1.0554 | 14.26 |
| 450108 | 1.0361 | 15.79 | 450165 | 0.9970 | 13.79 | 450243 | 0.9962 | 11.96 | 450348 | 1.0832 | 13.95 | 450462 | 1.7608 | 19.31 | 450586 | 1.0130 | 14.45 |
| 450109 | 0.9101 | 13.84 | 450166 | 0.9848 | 11.48 | 450246 | 1.1557 | 16.55 | 450351 | 1.1985 | 17.56 | 450464 | 0.8967 | 13.29 | 450587 | 1.1749 | 17.14 |
| 450110 | | 19.63 | 450169 | | 13.24 | 450249 | 1.0124 | 12.20 | 450352 | 1.1554 | 15.59 | 450465 | 1.2051 | 15.65 | 450591 | 1.1231 | 17.90 |
| 450111 | 1.2657 | 19.41 | 450170 | 0.9179 | 14.47 | 450250 | 0.9090 | 10.29 | 450353 | 1.1249 | 16.90 | 450467 | 1.0074 | 10.62 | 450596 | 1.2398 | 21.99 |
| 450112 | 1.2205 | 16.16 | 450176 | 1.3096 | 16.21 | 450253 | 1.1342 | 12.27 | 450355 | 0.9593 | 12.92 | 450469 | 1.4645 | 19.80 | 450597 | 0.9200 | 17.32 |
| 450113 | 1.3520 | 17.49 | 450177 | 1.1283 | 14.79 | 450258 | 0.9538 | 16.34 | 450358 | 2.0646 | 21.38 | 450473 | 1.0003 | 20.34 | 450603 | 0.6767 | 11.65 |
| 450118 | | 17.72 | 450178 | 0.9711 | 17.95 | 450264 | 0.9521 | 14.25 | 450362 | 1.0631 | 15.41 | 450475 | 1.1255 | 16.23 | 450604 | 1.3064 | 16.56 |
| 450119 | 1.2895 | 20.34 | 450181 | 1.0189 | 15.56 | 450269 | 1.0285 | 12.42 | 450369 | 1.0425 | 15.65 | 450484 | 1.5193 | 16.83 | 450605 | 1.1726 | 20.44 |
| 450121 | 1.4558 | 19.67 | 450184 | 1.4254 | 21.30 | 450270 | 1.1022 | 12.91 | 450370 | 1.1686 | 12.62 | 450488 | 1.3170 | 19.47 | 450609 | 0.8760 | 16.08 |
| 450123 | 1.1661 | 15.86 | 450185 | 0.9994 | 14.47 | 450271 | 1.2754 | 16.78 | 450371 | 1.1421 | 24.63 | 450489 | 0.9231 | 10.02 | 450610 | 1.5045 | 17.27 |
| 450124 | 1.7120 | 21.87 | 450187 | 1.2363 | 16.76 | 450272 | 1.2605 | 19.40 | 450372 | 1.2134 | 15.79 | 450497 | 1.0741 | 15.17 | 450614 | 0.9387 | 14.17 |
| 450126 | 1.3319 | 32.99 | 450188 | 0.9614 | 14.34 | 450276 | 1.0243 | 13.26 | 450373 | 1.0187 | 17.31 | 450498 | 0.9672 | 13.92 | 450615 | 1.1101 | 15.31 |
| 450128 | 1.2133 | 18.22 | 450191 | 1.0720 | 20.24 | 450278 | 0.9120 | 14.95 | 450374 | 0.9227 | 13.81 | 450508 | 1.4167 | 19.04 | 450617 | 1.3670 | 21.80 |
| 450130 | 1.3544 | 20.83 | 450192 | 1.1841 | 20.52 | 450280 | 1.5969 | 21.73 | 450378 | 1.3774 | 23.87 | 450514 | 1.0524 | 21.68 | 450620 | 1.0735 | 16.01 |
| 450131 | 1.2707 | 18.14 | 450193 | 1.9907 | 23.11 | 450283 | 1.0658 | 14.69 | 450379 | 1.4183 | 22.81 | 450517 | 0.9600 | 28.24 | 450623 | 1.1402 | 22.58 |
| 450132 | 1.5767 | 17.71 | 450194 | 1.3360 | 20.58 | 450288 | 1.1124 | 16.32 | 450381 | 0.9911 | 16.60 | 450518 | 1.4288 | 19.94 | 450626 | 1.0285 | 18.50 |
| 450133 | 1.5579 | 24.02 | 450196 | 1.4149 | 17.34 | 450289 | 1.4136 | 19.42 | 450388 | 1.7790 | 17.97 | 450523 | 1.4373 | 20.28 | 450628 | 0.9792 | 21.08 |
| 450135 | 1.6715 | 20.96 | 450200 | 1.4510 | 17.36 | 450292 | 1.2175 | 5.36 | 450389 | 1.3010 | 17.90 | 450530 | 1.2461 | 28.30 | 450630 | 1.4789 | 21.73 |
| 450137 | 1.5680 | 22.50 | 450201 | 1.0866 | 16.99 | 450293 | 0.9113 | 16.31 | 450393 | 1.1967 | 14.68 | 450534 | 0.9218 | 20.41 | 450631 | 1.7081 | 19.96 |
| 450140 | 0.9325 | 20.23 | 450203 | 1.0964 | 20.89 | 450296 | 1.1790 | 21.73 | 450395 | 0.9819 | 17.25 | 450535 | 1.2963 | 19.82 | 450632 | 0.9815 | 11.89 |
| 450143 | 1.0309 | 14.55 | 450209 | 1.7119 | 18.74 | 450299 | 1.4784 | 21.64 | 450399 | 0.8681 | 16.13 | 450537 | 1.2836 | 20.82 | 450633 | 1.5955 | 18.54 |
| 450144 | 1.0765 | 18.27 | 450210 | 1.0429 | 14.09 | 450303 | 0.8535 | 12.55 | 450400 | 1.3197 | 17.64 | 450539 | 1.1845 | 16.57 | 450634 | 1.7054 | 18.10 |
| 450145 | 0.8587 | 16.21 | 450211 | 1.3947 | 18.08 | 450306 | 1.0552 | 11.97 | 450403 | 1.2160 | 21.31 | 450544 | 1.1001 | 25.46 | 450638 | 1.5434 | 23.22 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 450639 | 1.4535 | 22.74 | 450702 | 1.3929 | 20.94 | 450775 | 1.2827 | 19.31 | 460007 | 1.3623 | 21.02 | 470004 | 1.0901 | 16.98 | 490033 | 1.1611 | 21.44 |
| 450641 | 0.9823 | 16.85 | 450704 | 1.1144 | 17.67 | 450776 | 0.9621 | 21.13 | 460008 | 1.3326 | 19.03 | 470005 | 1.2236 | 22.03 | 490037 | 1.2493 | 16.50 |
| 450643 | 1.2484 | 15.28 | 450705 | 0.8976 | 10.47 | 450777 | 0.9171 | 19.76 | 460009 | 1.8531 | 21.78 | 470006 | 1.2142 | 18.14 | 490038 | 1.1750 | 22.06 |
| 450644 | 1.5278 | 23.46 | 450706 | 1.2002 | 21.21 | 450779 | 1.3162 | 16.26 | 460010 | 2.0267 | 22.10 | 470008 | 1.2047 | 19.70 | 490040 | 1.4176 | 22.73 |
| 450646 | 1.4067 | 18.49 | 450709 | 1.2351 | 20.53 | 450780 | 1.6540 | 19.26 | 460011 | 1.4199 | 19.08 | 470010 | 1.1119 | 20.35 | 490041 | 1.3269 | 18.24 |
| 450647 | 1.8230 | 24.99 | 450711 | 1.6715 | 18.65 | 450785 | 0.8497 | 18.50 | 460013 | 1.3875 | 19.59 | 470011 | 1.1746 | 21.78 | 490042 | 1.2583 | 16.67 |
| 450648 | 1.0109 | 15.19 | 450712 | 0.5321 | 13.62 | 450788 | 1.5915 | 19.06 | 460014 | 1.1796 | | 470012 | 1.2287 | 18.60 | 490043 | 1.3021 | 22.60 |
| 450649 | 0.9519 | 16.64 | 450713 | 1.4817 | 21.06 | 450794 | | 18.22 | 460015 | 1.2695 | 20.84 | 470015 | 1.2640 | 20.58 | 490044 | 1.3680 | 18.39 |
| 450651 | 1.6788 | 22.80 | 450715 | 1.3773 | 22.21 | 450795 | 0.9434 | 16.65 | 460016 | 1.0803 | 18.66 | 470018 | 1.2088 | 21.70 | 490045 | 1.2492 | 20.74 |
| 450652 | | 13.56 | 450716 | 1.2405 | 20.64 | 450796 | | 16.54 | 460017 | 1.3617 | 17.95 | 470020 | 0.9267 | 21.33 | 490046 | 1.5443 | 18.48 |
| 450653 | 1.1007 | 18.42 | 450717 | 1.2506 | 20.77 | 450797 | | 15.92 | 460018 | 0.9149 | 18.92 | 470023 | 1.3133 | 20.58 | 490047 | 1.0575 | 25.88 |
| 450654 | 0.9517 | 14.69 | 450718 | 1.1948 | 19.74 | 450798 | | 9.66 | 460019 | 1.0442 | 16.62 | 470024 | 1.1433 | 20.88 | 490048 | 1.4965 | 18.83 |
| 450656 | 1.3437 | 17.42 | 450723 | 1.3958 | 19.76 | 450801 | 1.4413 | 16.61 | 460020 | 0.9010 | 17.38 | 490001 | 1.1856 | 22.06 | 490050 | 1.4056 | 23.10 |
| 450658 | 1.0274 | 16.26 | 450724 | 1.2345 | 20.38 | 450802 | 1.3907 | 19.92 | 460021 | 1.4514 | 21.12 | 490002 | 1.0447 | 16.63 | 490052 | 1.6530 | 16.89 |
| 450659 | 1.5156 | 21.64 | 450727 | 1.0718 | 13.65 | 450803 | 1.1881 | 17.10 | 460022 | 0.9548 | 20.59 | 490003 | 0.6857 | 19.17 | 490053 | 1.2444 | 15.72 |
| 450661 | 1.1545 | 19.78 | 450728 | 0.8812 | 17.83 | 450804 | 1.6092 | 18.91 | 460023 | 1.2893 | 22.42 | 490004 | 1.2554 | 19.25 | 490054 | 1.0026 | 15.75 |
| 450662 | 1.4591 | 18.33 | 450730 | 1.2159 | 22.12 | 450806 | 1.0901 | | 460025 | 0.7321 | 21.01 | 490005 | 1.6128 | 20.67 | 490057 | 1.6660 | 19.96 |
| 450665 | 0.8576 | 15.36 | 450733 | 1.4100 | 17.35 | 450807 | 0.7885 | 11.72 | 460026 | 1.1345 | 20.17 | 490006 | 1.1819 | 16.17 | 490059 | 1.5972 | 21.25 |
| 450666 | 1.2980 | 20.59 | 450735 | | 14.20 | 450808 | 1.9776 | 16.99 | 460027 | 0.9048 | 22.38 | 490007 | 2.1445 | 18.69 | 490060 | 1.0610 | 17.82 |
| 450668 | 1.6447 | 20.78 | 450742 | 1.2950 | 23.00 | 450809 | 1.5576 | 20.06 | 460029 | 1.0288 | 20.83 | 490009 | 1.8346 | 23.70 | 490063 | 1.7473 | 28.99 |
| 450669 | 1.2883 | 21.84 | 450743 | 1.5082 | 18.89 | 450810 | 0.8196 | | 460030 | 1.1907 | 17.72 | 490010 | | 22.96 | 490066 | 1.2752 | 19.28 |
| 450670 | 1.3667 | 16.94 | 450746 | 0.9165 | | 450811 | 2.3313 | 19.11 | 460032 | 0.9642 | | 490011 | 1.4315 | 17.97 | 490067 | 1.2439 | 17.42 |
| 450672 | 1.6502 | 21.68 | 450747 | 1.2546 | 19.20 | 450813 | 0.9759 | 15.92 | 460033 | 1.0248 | 19.62 | 490012 | 1.2096 | 16.29 | 490069 | 1.4470 | 14.45 |
| 450673 | 0.9922 | 14.16 | 450749 | 0.9838 | 16.34 | 450817 | 0.7497 | | 460035 | 0.9162 | 16.27 | 490013 | 1.2819 | 17.34 | 490071 | 1.4402 | 21.90 |
| 450674 | 1.0414 | 22.39 | 450750 | 1.0004 | 14.75 | 450818 | 1.1935 | | 460036 | 0.9335 | 24.10 | 490014 | 1.7745 | 25.89 | 490073 | 1.4367 | 20.91 |
| 450675 | 1.5238 | 22.56 | 450751 | 1.2101 | 22.05 | 450819 | 1.5223 | | 460037 | 0.9614 | 19.16 | 490015 | 1.4511 | 19.68 | 490075 | 1.4050 | 18.50 |
| 450677 | 1.3365 | 22.99 | 450754 | 0.9924 | 16.19 | 450820 | 1.0098 | | 460039 | 1.0265 | 25.10 | 490017 | 1.3972 | 18.65 | 490077 | 1.2582 | 21.44 |
| 450678 | 1.4631 | 23.40 | 450755 | 1.0440 | 17.99 | 450822 | 1.3206 | | 460041 | 1.2947 | 21.11 | 490018 | 1.2388 | 19.02 | 490079 | 1.3006 | 17.72 |
| 450683 | 1.2553 | 20.55 | 450757 | 0.8813 | 13.87 | 450823 | 0.8929 | | 460042 | 1.4016 | 18.27 | 490019 | 1.1702 | 19.76 | 490084 | 1.1482 | 16.95 |
| 450684 | 1.2358 | 19.75 | 450758 | 1.5865 | 22.64 | 450824 | 2.1452 | | 460043 | 1.0320 | 24.56 | 490020 | 1.2444 | 18.77 | 490085 | 1.1526 | 17.78 |
| 450686 | 1.6694 | 15.61 | 450760 | 1.1227 | 17.76 | 450825 | 1.7366 | | 460044 | 1.1802 | 21.55 | 490021 | 1.4211 | 19.70 | 490088 | 1.1466 | 17.26 |
| 450688 | 1.2922 | 19.80 | 450761 | 0.9095 | 13.77 | 450827 | 1.3679 | | 460046 | | 19.25 | 490022 | 1.5400 | 21.28 | 490089 | 1.0672 | 18.12 |
| 450690 | 1.3030 | 22.30 | 450763 | 1.0772 | 18.33 | 450828 | 1.1400 | | 460047 | 1.6289 | 22.83 | 490023 | 1.1961 | 20.80 | 490090 | 1.1171 | 17.19 |
| 450694 | 1.1766 | 17.53 | 450766 | 2.0511 | 22.66 | 460001 | 1.7776 | 21.65 | 460049 | 2.0509 | 19.65 | 490024 | 1.6655 | 20.28 | 490091 | 1.2414 | 20.92 |
| 450696 | | 25.05 | 450769 | 0.9131 | 14.64 | 460003 | 1.5139 | 20.12 | 460051 | 1.1512 | 19.49 | 490027 | 1.1283 | 16.56 | 490092 | 1.1993 | 17.41 |
| 450697 | 1.3828 | 19.22 | 450770 | 1.0388 | 16.59 | 460004 | 1.7379 | 18.65 | 460052 | 1.2179 | | 490030 | | 8.27 | 490093 | 1.4168 | 17.27 |
| 450698 | 0.9236 | 14.73 | 450771 | 1.8332 | 22.08 | 460005 | 1.5708 | 19.25 | 470001 | 1.3211 | 20.36 | 490031 | 1.0743 | 15.19 | 490094 | 1.0401 | 18.92 |
| 450700 | 0.9571 | 15.09 | 450774 | 1.4994 | 15.85 | 460006 | 1.2717 | 20.70 | 470003 | 1.8784 | 23.98 | 490032 | 1.7032 | 22.53 | 490097 | 1.2107 | 15.80 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

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TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 490098 | 1.1619 | 15.52 | 500015 | 1.3388 | 24.01 | 500068 | 1.0026 | 21.92 | 500139 | 1.4984 | 22.36 | 510060 | | 17.83 | 520028 | 1.2946 | 22.03 |
| 490099 | 0.9143 | 18.11 | 500016 | 1.5172 | 24.52 | 500069 | 1.0966 | 21.36 | 500141 | 1.3708 | 23.88 | 510061 | 1.0311 | 13.89 | 520029 | 0.9182 | 19.61 |
| 490100 | | 23.92 | 500019 | 1.4072 | 22.75 | 500071 | 1.2764 | 19.19 | 500143 | 0.5330 | 18.03 | 510062 | 1.1717 | 19.64 | 520030 | 1.6835 | 20.58 |
| 490101 | 1.2104 | 24.89 | 500021 | 1.4662 | 26.00 | 500072 | 1.1977 | 25.59 | 500146 | | 21.60 | 510066 | | 12.35 | 520031 | 1.0527 | 21.71 |
| 490104 | 0.7590 | 39.77 | 500023 | 1.1539 | 26.81 | 500073 | 0.9698 | 22.96 | 510001 | 1.8670 | 19.01 | 510067 | 1.1081 | 16.74 | 520032 | 1.2271 | 20.20 |
| 490105 | 0.6195 | 19.48 | 500024 | 1.7123 | 23.93 | 500074 | 1.0798 | 19.12 | 510002 | 1.2875 | 20.15 | 510068 | 1.2068 | 18.87 | 520033 | 1.1938 | 19.73 |
| 490106 | 0.8205 | 20.69 | 500025 | 1.8551 | 26.39 | 500077 | 1.2916 | 22.86 | 510005 | 1.0548 | 14.39 | 510070 | 1.3020 | 19.05 | 520034 | 1.1877 | 17.42 |
| 490107 | 1.3749 | 23.53 | 500026 | 1.4243 | 23.81 | 500079 | 1.2831 | 24.60 | 510006 | 1.2275 | 18.76 | 510071 | 1.3229 | 17.27 | 520035 | 1.2917 | 19.01 |
| 490108 | 0.9179 | 24.55 | 500027 | 1.6187 | 22.39 | 500080 | 0.8127 | 17.24 | 510007 | 1.5830 | 21.35 | 510072 | 1.0316 | 16.14 | 520037 | 1.6595 | 20.79 |
| 490109 | 0.8814 | 43.52 | 500028 | 1.0333 | 20.32 | 500084 | 1.1782 | 23.53 | 510008 | 1.2326 | 18.44 | 510077 | 1.1082 | 18.10 | 520038 | 1.2811 | 19.64 |
| 490110 | 1.3378 | 16.92 | 500029 | 0.9293 | 18.10 | 500085 | 0.9750 | 22.00 | 510012 | 0.9916 | 16.06 | 510080 | 1.0892 | 17.72 | 520039 | 0.9853 | 22.76 |
| 490111 | 1.1772 | 17.36 | 500030 | 1.4356 | 24.93 | 500086 | 1.2499 | 23.33 | 510013 | 1.0617 | 18.03 | 510081 | 1.1326 | 13.84 | 520040 | 1.5734 | 20.51 |
| 490112 | 1.6380 | 21.48 | 500031 | 1.2626 | 30.43 | 500088 | 1.3490 | 23.31 | 510015 | 0.9331 | 15.00 | 510082 | 1.1539 | 18.01 | 520041 | 1.1875 | 17.71 |
| 490113 | 1.2798 | 23.28 | 500033 | 1.3611 | 22.66 | 500089 | 1.0651 | 19.75 | 510018 | 1.0911 | 18.53 | 510084 | 0.9761 | | 520042 | 1.0978 | 18.72 |
| 490114 | 1.0713 | 17.41 | 500036 | 1.3684 | 22.32 | 500090 | 0.9553 | 18.09 | 510020 | 1.0381 | 13.49 | 510085 | 1.2868 | 17.40 | 520044 | 1.4432 | 18.66 |
| 490115 | 1.1835 | 16.85 | 500037 | 1.1283 | 20.73 | 500092 | 1.0483 | 17.17 | 510022 | 1.8940 | 20.21 | 510086 | 1.0538 | | 520045 | 1.6686 | 20.60 |
| 490116 | 1.1827 | 17.07 | 500039 | 1.4018 | 24.02 | 500094 | 0.8629 | 19.67 | 510023 | 1.2009 | 16.14 | 510088 | 1.0585 | | 520047 | 0.9641 | 19.77 |
| 490117 | 1.1675 | 14.14 | 500041 | 1.2903 | 24.27 | 500096 | 1.0371 | 20.98 | 510024 | 1.5609 | 19.15 | 520002 | 1.2446 | 19.80 | 520048 | 1.4699 | 20.73 |
| 490118 | 1.7174 | 21.79 | 500042 | | 22.91 | 500097 | 1.1124 | 20.30 | 510026 | 1.0625 | 13.89 | 520003 | 1.1470 | 17.12 | 520049 | 2.1110 | 20.42 |
| 490119 | 1.4774 | 17.91 | 500043 | 0.9855 | 22.03 | 500098 | 0.9611 | 16.56 | 510027 | 0.9781 | 17.55 | 520004 | 1.2166 | 20.57 | 520051 | 1.7733 | 21.74 |
| 490120 | 1.3380 | 19.31 | 500044 | 1.9958 | 23.47 | 500101 | 0.9913 | 19.75 | 510028 | 1.0360 | 20.50 | 520006 | 1.0031 | 22.32 | 520053 | 1.1632 | 17.45 |
| 490122 | 1.3994 | 24.00 | 500045 | 1.0519 | 21.03 | 500102 | 0.9753 | 20.99 | 510029 | 1.2643 | 17.79 | 520007 | 1.0609 | 16.45 | 520054 | 1.0276 | 16.04 |
| 490123 | 1.1397 | 17.96 | 500048 | 0.9209 | 23.64 | 500104 | 1.2042 | 22.82 | 510030 | 1.0272 | 17.58 | 520008 | 1.6068 | 22.82 | 520057 | 1.1291 | 19.21 |
| 490124 | 1.0762 | 21.36 | 500049 | 1.4087 | 24.86 | 500106 | 0.9099 | 19.03 | 510031 | 1.4214 | 31.62 | 520009 | 1.6634 | 18.66 | 520058 | 1.1246 | 19.73 |
| 490126 | 1.3068 | 19.13 | 500050 | 1.3901 | 22.09 | 500107 | 1.1275 | 18.12 | 510033 | 1.2891 | 16.44 | 520010 | 1.0997 | 22.77 | 520059 | 1.3217 | 21.20 |
| 490127 | 1.0278 | 16.17 | 500051 | 1.7224 | 24.92 | 500108 | 1.7558 | 26.43 | 510035 | 1.1875 | 16.75 | 520011 | 1.1660 | 20.84 | 520060 | 1.4629 | 18.35 |
| 490129 | 1.0921 | 70.69 | 500052 | 1.3449 | | 500110 | 1.1461 | 21.63 | 510036 | 0.9419 | 14.42 | 520013 | 1.3438 | 15.83 | 520062 | 1.2311 | 19.42 |
| 490130 | 1.2502 | 16.53 | 500053 | 1.3078 | 24.04 | 500118 | 1.1260 | 23.84 | 510038 | 1.0712 | 15.92 | 520014 | 1.1234 | 17.23 | 520063 | 1.1835 | 19.72 |
| 490132 | 1.1041 | 19.11 | 500054 | 1.9647 | 28.67 | 500119 | 1.2955 | 22.48 | 510039 | 1.4126 | 17.00 | 520015 | 1.1646 | 18.71 | 520064 | 1.5643 | 22.81 |
| 500001 | 1.5630 | 22.39 | 500055 | 1.0899 | 23.94 | 500122 | 1.2366 | 22.87 | 510043 | 0.8981 | 14.27 | 520016 | 1.1835 | 18.32 | 520066 | 1.4377 | 23.81 |
| 500002 | 1.4632 | 21.89 | 500057 | 1.2634 | 18.32 | 500123 | 1.0661 | 20.51 | 510046 | 1.2032 | 17.49 | 520017 | 1.1188 | 20.03 | 520068 | 0.9323 | 19.48 |
| 500003 | 1.4120 | 28.85 | 500058 | 1.4557 | 24.82 | 500124 | 1.3291 | 23.38 | 510047 | 1.1603 | | 520018 | 1.0709 | 20.18 | 520069 | 1.1929 | 20.55 |
| 500005 | 1.8140 | 22.48 | 500059 | 1.0927 | 23.65 | 500125 | 1.0770 | 15.91 | 510048 | 1.1370 | 21.04 | 520019 | 1.1935 | 20.02 | 520070 | 1.5322 | 18.68 |
| 500007 | 1.3788 | 26.17 | 500060 | 1.4548 | 25.20 | 500127 | 1.0838 | | 510050 | 1.7222 | 17.01 | 520021 | 1.4890 | 21.38 | 520071 | 1.2015 | 19.17 |
| 500008 | 1.8285 | 25.37 | 500061 | 0.9435 | 21.72 | 500129 | 1.5989 | 26.11 | 510053 | 1.0166 | 16.53 | 520024 | 1.0043 | 14.08 | 520074 | 1.0144 | 21.03 |
| 500011 | 1.3586 | 23.89 | 500062 | 1.0828 | 18.84 | 500132 | 1.0101 | 15.67 | 510055 | 1.2904 | 23.80 | 520025 | 1.0627 | 18.43 | 520075 | 1.4649 | 20.29 |
| 500012 | 1.5651 | 21.02 | 500064 | 1.5966 | 25.70 | 500134 | 0.6380 | 17.75 | 510058 | 1.2883 | 18.58 | 520026 | 1.1073 | 21.63 | 520076 | 1.1466 | 18.01 |
| 500014 | 1.5484 | 24.43 | 500065 | 1.2588 | 21.94 | 500138 | 4.4489 | | 510059 | 2.2171 | 16.77 | 520027 | 1.2727 | 19.95 | 520077 | 0.9197 | 17.92 |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 3C: HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1999
HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2001 WAGE INDEX

| PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE | PROV. | CASE MIX INDEX | AVG. HOUR. WAGE |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 520078 | 1.5782 | 21.35 | 520134 | 1.1381 | 18.36 | 530012 | 1.6523 | 19.07 | | | | | | | | | |
| 520082 | | 17.76 | 520135 | 0.8966 | 15.92 | 530014 | 1.4436 | 18.33 | | | | | | | | | |
| 520083 | 1.6498 | 23.92 | 520136 | 1.4618 | 19.95 | 530015 | 1.2294 | 22.89 | | | | | | | | | |
| 520084 | 1.1004 | 20.86 | 520138 | 1.8041 | 21.26 | 530016 | 1.2655 | 18.77 | | | | | | | | | |
| 520087 | 1.6939 | 20.48 | 520139 | 1.2597 | 21.06 | 530017 | 0.9021 | 16.52 | | | | | | | | | |
| 520088 | 1.2653 | 21.10 | 520140 | 1.6432 | 21.66 | 530018 | 1.2153 | 18.90 | | | | | | | | | |
| 520089 | 1.4636 | 21.62 | 520142 | 0.8531 | 22.95 | 530019 | 0.9189 | 19.65 | | | | | | | | | |
| 520090 | 1.3780 | 18.96 | 520144 | 1.0474 | 18.75 | 530022 | 1.1474 | 18.75 | | | | | | | | | |
| 520091 | 1.3127 | 21.61 | 520145 | 0.9007 | 18.40 | 530023 | 0.8667 | 20.69 | | | | | | | | | |
| 520092 | 1.1118 | 17.82 | 520146 | 1.0503 | 18.01 | 530025 | 1.4917 | 21.46 | | | | | | | | | |
| 520094 | 0.7713 | 20.53 | 520148 | 1.1135 | 17.41 | 530026 | 0.9944 | 18.10 | | | | | | | | | |
| 520095 | 1.2760 | 20.54 | 520149 | 0.9075 | 14.45 | 530027 | 0.8937 | 18.04 | | | | | | | | | |
| 520096 | 1.4155 | 19.73 | 520151 | 1.0428 | 17.38 | 530029 | 0.9222 | 20.22 | | | | | | | | | |
| 520097 | 1.2960 | 20.12 | 520152 | 1.1007 | 20.40 | 530031 | 0.7912 | 19.18 | | | | | | | | | |
| 520098 | 1.8137 | 22.48 | 520153 | 0.9397 | 16.73 | 530032 | 1.0391 | 21.19 | | | | | | | | | |
| 520100 | 1.2287 | 18.54 | 520154 | 1.1326 | 18.60 | | | | | | | | | | | | |
| 520101 | 1.1324 | 19.65 | 520156 | 1.1396 | 21.58 | | | | | | | | | | | | |
| 520102 | 1.1668 | 20.30 | 520157 | 1.0554 | 18.12 | | | | | | | | | | | | |
| 520103 | 1.3028 | 19.56 | 520159 | 0.9117 | 18.98 | | | | | | | | | | | | |
| 520107 | 1.2267 | 20.82 | 520160 | 1.7786 | 19.42 | | | | | | | | | | | | |
| 520109 | 1.0392 | 19.42 | 520161 | 0.9866 | 20.37 | | | | | | | | | | | | |
| 520110 | 1.2277 | 20.50 | 520170 | 1.2569 | 21.62 | | | | | | | | | | | | |
| 520111 | 0.9743 | 17.85 | 520171 | 0.9402 | 18.19 | | | | | | | | | | | | |
| 520112 | 1.1347 | 19.21 | 520173 | 1.1319 | 21.37 | | | | | | | | | | | | |
| 520113 | 1.3008 | 21.31 | 520177 | 1.6377 | 22.29 | | | | | | | | | | | | |
| 520114 | 1.0857 | 17.84 | 520178 | 1.0532 | 19.94 | | | | | | | | | | | | |
| 520115 | 1.1995 | 18.55 | 520188 | 2.3936 | 13.91 | | | | | | | | | | | | |
| 520116 | 1.1297 | 20.34 | 520189 | 1.0866 | | | | | | | | | | | | | |
| 520117 | 1.0176 | 18.85 | 530002 | 1.1379 | 19.42 | | | | | | | | | | | | |
| 520118 | 0.8951 | 15.80 | 530003 | 0.8570 | 18.11 | | | | | | | | | | | | |
| 520120 | | 25.88 | 530004 | 0.9967 | 15.19 | | | | | | | | | | | | |
| 520121 | 0.9684 | 20.63 | 530005 | 1.2070 | 13.46 | | | | | | | | | | | | |
| 520122 | 0.9672 | 16.97 | 530006 | 1.1178 | 18.73 | | | | | | | | | | | | |
| 520123 | 1.0245 | 17.40 | 530007 | 0.9956 | 20.19 | | | | | | | | | | | | |
| 520124 | 1.0387 | 17.77 | 530008 | 1.1846 | 19.18 | | | | | | | | | | | | |
| 520130 | 1.0843 | 16.31 | 530009 | 0.9534 | 22.99 | | | | | | | | | | | | |
| 520131 | 0.9925 | 19.00 | 530010 | 1.2257 | 22.07 | | | | | | | | | | | | |
| 520132 | 1.1750 | 15.68 | 530011 | 1.1642 | 18.74 | | | | | | | | | | | | |

Average Hourly Wage based on data on file as of February 15, 2000. It does not reflect changes processed after that date.
ASTERISK DENOTES TEACHING PHYSICIAN COSTS REMOVED BASED ON COSTS REPORTED ON WORKSHEET A, COL. 1, LINE 23 OF FY 1997 COST REPORT.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| 0040 Abilene, TX | 0.8318 | 0.8815 |
| Taylor, TX | | |
| 0060 Aguadilla, PR | 0.4826 | 0.6072 |
| Aguada, PR | | |
| Aguadilla, PR | | |
| Moca, PR | | |
| 0080 Akron, OH | 1.0557 | 1.0378 |
| Portage, OH | | |
| Summit, OH | | |
| 0120 Albany, GA | 1.1854 | 1.1235 |
| Dougherty, GA | | |
| Lee, GA | | |
| 0160 Albany-Schenectady-Troy, NY | 0.8563 | 0.8992 |
| Albany, NY | | |
| Montgomery, NY | | |
| Rensselaer, NY | | |
| Saratoga, NY | | |
| Schenectady, NY | | |
| Schoharie, NY | | |
| 0200 Albuquerque, NM | 0.9365 | 0.9561 |
| Bernalillo, NM | | |
| Sandoval, NM | | |
| Valencia, NM | | |
| 0220 Alexandria, LA | 0.8262 | 0.8774 |
| Rapides, LA | | |
| 0240 Allentown-Bethlehem-Easton, PA | 0.9849 | 0.9896 |
| Carbon, PA | | |
| Lehigh, PA | | |
| Northampton, PA | | |
| 0280 Altoona, PA | 0.9262 | 0.9489 |
| Blair, PA | | |
| 0320 Amarillo, TX | 0.8663 | 0.9064 |
| Potter, TX | | |
| Randall, TX | | |
| 0380 Anchorage, AK | 1.2967 | 1.1947 |
| Anchorage, AK | | |
| 0440 Ann Arbor, MI | 1.1283 | 1.0862 |
| Lenawee, MI | | |
| Livingston, MI | | |
| Washtenaw, MI | | |
| 0450 Anniston, AL | 0.8331 | 0.8825 |
| Calhoun, AL | | |
| 0460 Appleton-Oshkosh-Neenah, WI | 0.9101 | 0.9375 |
| Calumet, WI | | |
| Outagamie, WI | | |
| Winnebago, WI | | |
| 0470 Arecibo, PR | 0.4540 | 0.5823 |
| Arecibo, PR | | |
| Camuy, PR | | |
| Hatillo, PR | | |
| 0480 Asheville, NC | 0.9527 | 0.9674 |
| Buncombe, NC | | |
| Madison, NC | | |
| 0500 Athens, GA | 0.9829 | 0.9883 |
| Clarke, GA | | |
| Madison, GA | | |
| Oconee, GA | | |
| 0520 [1] Atlanta, GA | 0.9945 | 0.9962 |
| Barrow, GA | | |
| Bartow, GA | | |
| Carroll, GA | | |
| Cherokee, GA | | |
| Clayton, GA | | |
| Cobb, GA | | |
| Coweta, GA | | |
| DeKalb, GA | | |
| Douglas, GA | | |
| Fayette, GA | | |
| Forsyth, GA | | |
| Fulton, GA | | |
| Gwinnett, GA | | |
| Henry, GA | | |
| Newton, GA | | |
| Paulding, GA | | |
| Pickens, GA | | |
| Rockdale, GA | | |
| Spalding, GA | | |
| Walton, GA | | |
| 0560 Atlantic-Cape May, NJ | 1.1220 | 1.0820 |
| Atlantic, NJ | | |
| Cape May, NJ | | |
| 0580 Auburn-Opelika, AL | 0.8170 | 0.8707 |
| Lee, AL | | |
| 0600 Augusta-Aiken, GA–SC | 0.9226 | 0.9463 |
| Columbia, GA | | |
| McDuffie, GA | | |
| Richmond, GA | | |
| Aiken, SC | | |
| Edgefield, SC | | |
| 0640 [1] Austin-San Marcos, TX | 0.9436 | 0.9610 |
| Bastrop, TX | | |
| Caldwell, TX | | |
| Hays, TX | | |
| Travis, TX | | |
| Williamson, TX | | |
| 0680 [2] Bakersfield, CA | 0.9966 | 0.9977 |
| Kern, CA | | |
| 0720 [1] Baltimore, MD | 0.9485 | 0.9644 |
| Anne Arundel, MD | | |
| Baltimore, MD | | |
| Baltimore City, MD | | |
| Carroll, MD | | |
| Harford, MD | | |
| Howard, MD | | |
| Queen Anne's, MD | | |
| 0733 Bangor, ME | 0.9613 | 0.9733 |
| Penobscot, ME | | |
| 0743 Barnstable-Yarmouth, MA | 1.3938 | 1.2553 |
| Barnstable, MA | | |
| 0760 Baton Rouge, LA | 0.8964 | 0.9278 |
| Ascension, LA | | |
| East Baton Rouge, LA | | |
| Livingston, LA | | |
| West Baton Rouge, LA | | |
| 0840 Beaumont-Port Arthur, TX | 0.8361 | 0.8846 |
| Hardin, TX | | |
| Jefferson, TX | | |
| Orange, TX | | |
| 0860 Bellingham, WA | 1.1491 | 1.0998 |
| Whatcom, WA | | |
| 0870 [2] Benton Harbor, MI | 0.9133 | 0.9398 |
| Berrien, MI | | |
| 0875 [1] Bergen-Passaic, NJ | 1.1727 | 1.1153 |
| Bergen, NJ | | |
| Passaic, NJ | | |
| 0880 Billings, MT | 0.9577 | 0.9708 |
| Yellowstone, MT | | |
| 0920 Biloxi-Gulfport-Pascagoula, MS | 0.8282 | 0.8789 |
| Hancock, MS | | |
| Harrison, MS | | |
| Jackson, MS | | |
| 0960 Binghamton, NY | 0.8723 | 0.9107 |
| Broome, NY | | |
| Tioga, NY | | |
| 1000 Birmingham, AL | 0.8574 | 0.9000 |
| Blount, AL | | |
| Jefferson, AL | | |
| St. Clair, AL | | |
| Shelby, AL | | |
| 1010 Bismarck, ND | 0.8016 | 0.8595 |
| Burleigh, ND | | |
| Morton, ND | | |
| 1020 Bloomington-Normal, IL | 0.8854 | 0.9200 |
| Monroe, IN | | |
| 1040 Bloomington-Normal, IL | 0.9294 | 0.9511 |
| McLean, IL | | |
| 1080 Boise City, ID | 0.9133 | 0.9398 |
| Ada, ID | | |
| Canyon, ID | | |
| 1123 [1 2] Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (MA Hospitals) | 1.1348 | 1.0905 |
| Bristol, MA | | |
| Essex, MA | | |
| Middlesex, MA | | |
| Norfolk, MA | | |
| Plymouth, MA | | |
| Suffolk, MA | | |
| Worcester, MA | | |
| Hillsborough, NH | | |
| Merrimack, NH | | |
| Rockingham, NH | | |
| Strafford, NH | | |
| 1123 [1] Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (NH Hospitals) | 1.1239 | 1.0833 |
| Bristol, MA | | |
| Essex, MA | | |
| Middlesex, MA | | |
| Norfolk, MA | | |
| Plymouth, MA | | |
| Suffolk, MA | | |
| Worcester, MA | | |
| Hillsborough, NH | | |
| Merrimack, NH | | |
| Rockingham, NH | | |
| Strafford, NH | | |
| 1125 Boulder-Longmont, CO | 0.9798 | 0.9861 |
| Boulder, CO | | |
| 1145 Brazoria, TX | 0.8751 | 0.9127 |
| Brazoria, TX | | |
| 1150 Bremerton, WA | 1.1069 | 1.0720 |
| Kitsap, WA | | |
| 1240 Brownsville-Harlingen-San Benito, TX | 0.8794 | 0.9158 |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| Cameron, TX | | |
| 1260 Bryan-College Station, TX | 0.8306 | 0.8806 |
| Brazos, TX | | |
| 1280 [1] Buffalo-Niagara Falls, NY | 0.9566 | 0.9701 |
| Erie, NY | | |
| Niagara, NY | | |
| 1303 Burlington, VT | 0.9624 | 0.9741 |
| Chittenden, VT | | |
| Franklin, VT | | |
| Grand Isle, VT | | |
| 1310 Caguas, PR | 0.4591 | 0.5868 |
| Caguas, PR | | |
| Cayey, PR | | |
| Cidra, PR | | |
| Gurabo, PR | | |
| San Lorenzo, PR | | |
| 1320 [2] Canton-Massillon, OH | 0.8778 | 0.9146 |
| Carroll, OH | | |
| Stark, OH | | |
| 1350 [2] Casper, WY | 0.9046 | 0.9336 |
| Natrona, WY | | |
| 1360 Cedar Rapids, IA | 0.8396 | 0.8872 |
| Linn, IA | | |
| 1400 Champaign-Urbana, IL | 0.9353 | 0.9552 |
| Champaign, IL | | |
| 1440 Charleston-North Charleston, SC | 0.9094 | 0.9370 |
| Berkeley, SC | | |
| Charleston, SC | | |
| Dorchester, SC | | |
| 1480 Charleston, WV | 0.9324 | 0.9532 |
| Kanawha, WV | | |
| Putnam, WV | | |
| 1520 [1] Charlotte-Gastonia-Rock Hill, NC–SC | 0.9307 | 0.9520 |
| Cabarrus, NC | | |
| Gaston, NC | | |
| Lincoln, NC | | |
| Mecklenburg, NC | | |
| Rowan, NC | | |
| Stanly, NC | | |
| Union, NC | | |
| York, SC | | |
| 1540 Charlottesville, VA | 1.0744 | 1.0504 |
| Albemarle, VA | | |
| Charlottesville City, VA | | |
| Fluvanna, VA | | |
| Greene, VA | | |
| 1560 Chattanooga, TN–GA | 1.0083 | 1.0057 |
| Catoosa, GA | | |
| Dade, GA | | |
| Walker, GA | | |
| Hamilton, TN | | |
| Marion, TN | | |
| 1580 [2] Cheyenne, WY | 0.9046 | 0.9336 |
| Laramie, WY | | |
| 1600 [1] Chicago, IL | 1.1027 | 1.0692 |
| Cook, IL | | |
| DeKalb, IL | | |
| DuPage, IL | | |
| Grundy, IL | | |
| Kane, IL | | |
| Kendall, IL | | |
| Lake, IL | | |
| McHenry, IL | | |
| Will, IL | | |
| 1620 Chico-Paradise, CA | 1.0684 | 1.0464 |
| Butte, CA | | |
| 1640 [1] Cincinnati, OH–KY–IN | 0.9330 | 0.9536 |
| Dearborn, IN | | |
| Ohio, IN | | |
| Boone, KY | | |
| Campbell, KY | | |
| Gallatin, KY | | |
| Grant, KY | | |
| Kenton, KY | | |
| Pendleton, KY | | |
| Brown, OH | | |
| Clermont, OH | | |
| Hamilton, OH | | |
| Warren, OH | | |
| 1660 Clarksville-Hopkinsville, TN–KY | 0.8393 | 0.8869 |
| Christian, KY | | |
| Montgomery, TN | | |
| 1680 [1] Cleveland-Lorain-Elyria, OH | 0.9649 | 0.9758 |
| Ashtabula, OH | | |
| Cuyahoga, OH | | |
| Geauga, OH | | |
| Lake, OH | | |
| Lorain, OH | | |
| Medina, OH | | |
| 1720 Colorado Springs, CO | 0.9770 | 0.9842 |
| El Paso, CO | | |
| 1740 Columbia, MO | 0.8600 | 0.9019 |
| Boone, MO | | |
| 1760 Columbia, SC | 0.9641 | 0.9753 |
| Lexington, SC | | |
| Richland, SC | | |
| 1800 Columbus, GA–AL | 0.8607 | 0.9024 |
| Russell, AL | | |
| Chattahoochee, GA | | |
| Harris, GA | | |
| Muscogee, GA | | |
| 1840 [1] Columbus, OH | 0.9741 | 0.9822 |
| Delaware, OH | | |
| Fairfield, OH | | |
| Franklin, OH | | |
| Licking, OH | | |
| Madison, OH | | |
| Pickaway, OH | | |
| 1880 Corpus Christi, TX | 0.8496 | 0.8944 |
| Nueces, TX | | |
| San Patricio, TX | | |
| 1890 Corvallis, OR | 1.1439 | 1.0964 |
| Benton, OR | | |
| 1900 [2] Cumberland, MD–WV (MD Hospitals) | 0.8717 | 0.9103 |
| Allegany, MD | | |
| Mineral, WV | | |
| 1900 Cumberland, MD–WV (WV Hospital) | 0.8437 | 0.8901 |
| Allegany, MD | | |
| Mineral, WV | | |
| 1920 [1] Dallas, TX | 0.9220 | 0.9459 |
| Collin, TX | | |
| Dallas, TX | | |
| Denton, TX | | |
| Ellis, TX | | |
| Henderson, TX | | |
| Hunt, TX | | |
| Kaufman, TX | | |
| Rockwall, TX | | |
| 1950 Danville, VA | 0.8527 | 0.8966 |
| Danville City, VA | | |
| Pittsylvania, VA | | |
| 1960 Davenport-Moline-Rock Island, IA–IL | 0.9021 | 0.9319 |
| Scott, IA | | |
| Henry, IL | | |
| Rock Island, IL | | |
| 2000 Dayton-Springfield, OH | 0.9519 | 0.9668 |
| Clark, OH | | |
| Greene, OH | | |
| Miami, OH | | |
| Montgomery, OH | | |
| 2020 Daytona Beach, FL | 0.9179 | 0.9430 |
| Flagler, FL | | |
| Volusia, FL | | |
| 2030 Decatur, AL | 0.8627 | 0.9038 |
| Lawrence, AL | | |
| Morgan, AL | | |
| 2040 Decatur, IL | 0.8601 | 0.9019 |
| Macon, IL | | |
| 2080 [1] Denver, CO | 1.0032 | 1.0022 |
| Adams, CO | | |
| Arapahoe, CO | | |
| Denver, CO | | |
| Douglas, CO | | |
| Jefferson, CO | | |
| 2120 Des Moines, IA | 0.9211 | 0.9453 |
| Dallas, IA | | |
| Polk, IA | | |
| Warren, IA | | |
| 2160 [1] Detroit, MI | 1.0057 | 1.0039 |
| Lapeer, MI | | |
| Macomb, MI | | |
| Monroe, MI | | |
| Oakland, MI | | |
| St. Clair, MI | | |
| Wayne, MI | | |
| 2180 Dothan, AL | 0.8105 | 0.8660 |
| Dale, AL | | |
| Houston, AL | | |
| 2190 Dover, DE | 1.1032 | 1.0696 |
| Kent, DE | | |
| 2200 Dubuque, IA | 0.8928 | 0.9253 |
| Dubuque, IA | | |
| 2240 Duluth-Superior, MN–WI | 1.0201 | 1.0137 |
| St. Louis, MN | | |
| Douglas, WI | | |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| 2281 Dutchess County, NY<br>Dutchess, NY | 0.9599 | 0.9724 |
| 2290 [2] Eau Claire, WI<br>Chippewa, WI<br>Eau Claire, WI | 0.9073 | 0.9356 |
| 2320 El Paso, TX<br>El Paso, TX | 0.9215 | 0.9456 |
| 2330 Elkhart-Goshen, IN<br>Elkhart, IN | 0.9549 | 0.9689 |
| 2335 Elmira, NY<br>Chemung, NY | 0.8645 | 0.9051 |
| 2340 Enid, OK<br>Garfield, OK | 0.8781 | 0.9148 |
| 2360 Erie, PA<br>Erie, PA | 0.9021 | 0.9319 |
| 2400 Eugene-Springfield, OR<br>Lane, OR | 1.1026 | 1.0692 |
| 2440 [2] Evansville-Henderson, IN–KY (IN Hospitals)<br>Posey, IN<br>Vanderburgh, IN<br>Warrick, IN<br>Henderson, KY | 0.8807 | 0.9167 |
| 2440 Evansville-Henderson, IN–KY (KY Hospitals)<br>Posey, IN<br>Vanderburgh, IN<br>Warrick, IN<br>Henderson, KY | 0.8018 | 0.8596 |
| 2520 Fargo-Moorhead, ND–MN<br>Clay, MN<br>Cass, ND | 0.8830 | 0.9183 |
| 2560 Fayetteville, NC<br>Cumberland, NC | 0.8638 | 0.9046 |
| 2580 Fayetteville-Springdale-Rogers, AR<br>Benton, AR<br>Washington, AR | 0.7999 | 0.8582 |
| 2620 Flagstaff, AZ–UT<br>Coconino, AZ<br>Kane, UT | 1.0844 | 1.0571 |
| 2640 Flint, MI<br>Genesee, MI | 1.1189 | 1.0800 |
| 2650 Florence, AL<br>Colbert, AL<br>Lauderdale, AL | 0.7621 | 0.8302 |
| 2655 Florence, SC<br>Florence, SC | 0.8838 | 0.9189 |
| 2670 Fort Collins-Loveland, CO<br>Larimer, CO | 1.1005 | 1.0678 |
| 2680 [1] Ft. Lauderdale, FL<br>Broward, FL | 1.0228 | 1.0156 |
| 2700 Fort Myers-Cape Coral, FL<br>Lee, FL | 0.9112 | 0.9383 |
| 2710 Fort Pierce-Port St. Lucie, FL<br>Martin, FL<br>St. Lucie, FL | 0.9672 | 0.9774 |
| 2720 Fort Smith, AR–OK<br>Crawford, AR<br>Sebastian, AR<br>Sequoyah, OK | 0.8858 | 0.9203 |
| 2750 Fort Walton Beach, FL<br>Okaloosa, FL | 0.9351 | 0.9551 |
| 2760 [2] Fort Wayne, IN<br>Adams, IN<br>Allen, IN<br>De Kalb, IN<br>Huntington, IN<br>Wells, IN<br>Whitley, IN | 0.8807 | 0.9167 |
| 2800 [1] Forth Worth-Arlington, TX<br>Hood, TX<br>Johnson, TX<br>Parker, TX<br>Tarrant, TX | 0.9442 | 0.9614 |
| 2840 Fresno, CA<br>Fresno, CA<br>Madera, CA | 1.0184 | 1.0126 |
| 2880 Gadsden, AL<br>Etowah, AL | 0.8491 | 0.8940 |
| 2900 Gainesville, FL<br>Alachua, FL | 1.0286 | 1.0195 |
| 2920 Galveston-Texas City, TX<br>Galveston, TX | 1.0284 | 1.0194 |
| 2960 Gary, IN<br>Lake, IN<br>Porter, IN | 0.9454 | 0.9623 |
| 2975 [2] Glens Falls, NY<br>Warren, NY<br>Washington, NY | 0.8558 | 0.8989 |
| 2980 [2] Goldsboro, NC<br>Wayne, NC | 0.8553 | 0.8985 |
| 2985 Grand Forks, ND–MN<br>Polk, MN *<br>Grand Forks, ND | 1.0207 | 1.0141 |
| 2995 Grand Junction, CO<br>Mesa, CO | 0.9601 | 0.9725 |
| 3000 [1] Grand Rapids-Muskegon-Holland, MI<br>Allegan, MI<br>Kent, MI<br>Muskegon, MI<br>Ottawa, MI | 1.0256 | 1.0175 |
| 3040 Great Falls, MT<br>Cascade, MT | 0.9447 | 0.9618 |
| 3060 Greeley, CO<br>Weld, CO | 0.9908 | 0.9937 |
| 3080 Green Bay, WI<br>Brown, WI | 0.9359 | 0.9556 |
| 3120 [1] Greensboro-Winston-Salem-High Point, NC<br>Alamance, NC<br>Davidson, NC<br>Davie, NC<br>Forsyth, NC<br>Guilford, NC<br>Randolph, NC<br>Stokes, NC<br>Yadkin, NC | 0.9187 | 0.9436 |
| 3150 Greenville, NC<br>Pitt, NC | 0.9454 | 0.9623 |
| 3160 Greenville-Spartanburg-Anderson, SC<br>Anderson, SC<br>Cherokee, SC<br>Greenville, SC<br>Pickens, SC<br>Spartanburg, SC | 0.9160 | 0.9417 |
| 3180 Hagerstown, MD<br>Washington, MD | 0.9647 | 0.9757 |
| 3200 Hamilton-Middletown, OH<br>Butler, OH | 0.8892 | 0.9227 |
| 3240 Harrisburg-Lebanon-Carlisle, PA<br>Cumberland, PA<br>Dauphin, PA<br>Lebanon, PA<br>Perry, PA | 0.9467 | 0.9632 |
| 3283 [1 2] Hartford, CT<br>Hartford, CT<br>Litchfield, CT<br>Middlesex, CT<br>Tolland, CT | 1.1798 | 1.1199 |
| 3285 [2] Hattiesburg, MS<br>Forrest, MS<br>Lamar, MS | 0.7608 | 0.8293 |
| 3290 Hickory-Morganton-Lenoir, NC<br>Alexander, NC<br>Burke, NC<br>Caldwell, NC<br>Catawba, NC | 0.8989 | 0.9296 |
| 3320 Honolulu, HI<br>Honolulu, HI | 1.1905 | 1.1268 |
| 3350 Houma, LA<br>Lafourche, LA<br>Terrebonne, LA | 0.8218 | 0.8742 |
| 3360 [1] Houston, TX<br>Chambers, TX<br>Fort Bend, TX<br>Harris, TX<br>Liberty, TX<br>Montgomery, TX<br>Waller, TX | 0.9661 | 0.9767 |
| 3400 Huntington-Ashland, WV–KY–OH<br>Boyd, KY<br>Carter, KY<br>Greenup, KY<br>Lawrence, OH<br>Cabell, WV<br>Wayne, WV | 0.9961 | 0.9973 |
| 3440 Huntsville, AL<br>Limestone, AL<br>Madison, AL | 0.9089 | 0.9367 |
| 3480 [1] Indianapolis, IN<br>Boone, IN<br>Hamilton, IN<br>Hancock, IN | 0.9314 | 0.9525 |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| Hendricks, IN | | |
| Johnson, IN | | |
| Madison, IN | | |
| Marion, IN | | |
| Morgan, IN | | |
| Shelby, IN | | |
| 3500 Iowa City, IA | 0.9749 | 0.9827 |
| Johnson, IA | | |
| 3520 [2] Jackson, MI | 0.9133 | 0.9398 |
| Jackson, MI | | |
| 3560 Jackson, MS | 0.8890 | 0.9226 |
| Hinds, MS | | |
| Madison, MS | | |
| Rankin, MS | | |
| 3580 Jackson, TN | 0.8939 | 0.9261 |
| Madison, TN | | |
| Chester, TN | | |
| 3600 [1] Jacksonville, FL | 0.8995 | 0.9300 |
| Clay, FL | | |
| Duval, FL | | |
| Nassau, FL | | |
| St. Johns, FL | | |
| 3605 [2] Jacksonville, NC | 0.8553 | 0.8985 |
| Onslow, NC | | |
| 3610 [2] Jamestown, NY | 0.8558 | 0.8989 |
| Chautauqua, NY | | |
| 3620 Janesville-Beloit, WI | 0.9856 | 0.9901 |
| Rock, WI | | |
| 3640 Jersey City, NJ | 1.0985 | 1.0664 |
| Hudson, NJ | | |
| 3660 Johnson City-Kingsport-Bristol, TN–VA | 0.8412 | 0.8883 |
| Carter, TN | | |
| Hawkins, TN | | |
| Sullivan, TN | | |
| Unicoi, TN | | |
| Washington, TN | | |
| Bristol City, VA | | |
| Scott, VA | | |
| Washington, VA | | |
| 3680 Johnstown, PA | 0.8686 | 0.9080 |
| Cambria, PA | | |
| Somerset, PA | | |
| 3700 Jonesboro, AR | 0.8587 | 0.9009 |
| Craighead, AR | | |
| 3710 Joplin, MO | 0.7924 | 0.8527 |
| Jasper, MO | | |
| Newton, MO | | |
| 3720 Kalamazoo-Battlecreek, MI | 1.0247 | 1.0168 |
| Calhoun, MI | | |
| Kalamazoo, MI | | |
| Van Buren, MI | | |
| 3740 Kankakee, IL | 0.8954 | 0.9271 |
| Kankakee, IL | | |
| 3760 [1] Kansas City, KS–MO | 0.9629 | 0.9744 |
| Johnson, KS | | |
| Leavenworth, KS | | |
| Miami, KS | | |
| Wyandotte, KS | | |
| Cass, MO | | |
| Clay, MO | | |
| Clinton, MO | | |
| Jackson, MO | | |
| Lafayette, MO | | |
| Platte, MO | | |
| Ray, MO | | |
| 3800 Kenosha, WI | 0.9703 | 0.9796 |
| Kenosha, WI | | |
| 3810 Killeen-Temple, TX | 1.0321 | 1.0219 |
| Bell, TX | | |
| Coryell, TX | | |
| 3840 Knoxville, TN | 0.8422 | 0.8890 |
| Anderson, TN | | |
| Blount, TN | | |
| Knox, TN | | |
| Loudon, TN | | |
| Sevier, TN | | |
| Union, TN | | |
| 3850 Kokomo, IN | 0.9190 | 0.9438 |
| Howard, IN | | |
| Tipton, IN | | |
| 3870 La Crosse, WI–MN | 0.9442 | 0.9614 |
| Houston, MN | | |
| La Crosse, WI | | |
| 3880 Lafayette, LA | 0.8852 | 0.9199 |
| Acadia, LA | | |
| Lafayette, LA | | |
| St. Landry, LA | | |
| St. Martin, LA | | |
| 3920 Lafayette, IN | 0.9091 | 0.9368 |
| Clinton, IN | | |
| Tippecanoe, IN | | |
| 3960 [2] Lake Charles, LA | 0.7921 | 0.8525 |
| Calcasieu, LA | | |
| 3980 Lakeland-Winter Haven, FL | 0.8904 | 0.9236 |
| Polk, FL | | |
| 4000 Lancaster, PA | 0.9274 | 0.9497 |
| Lancaster, PA | | |
| 4040 Lansing-East Lansing, MI | 0.9873 | 0.9913 |
| Clinton, MI | | |
| Eaton, MI | | |
| Ingham, MI | | |
| 4080 Laredo, TX | 0.7637 | 0.8314 |
| Webb, TX | | |
| 4100 Las Cruces, NM | 0.8744 | 0.9122 |
| Dona Ana, NM | | |
| 4120 [1] Las Vegas, NV–AZ | 1.0876 | 1.0592 |
| Mohave, AZ | | |
| Clark, NV | | |
| Nye, NV | | |
| 4150 Lawrence, KS | 0.8272 | 0.8782 |
| Douglas, KS | | |
| 4200 Lawton, OK | 0.9156 | 0.9414 |
| Comanche, OK | | |
| 4243 Lewiston-Auburn, ME | 0.9064 | 0.9349 |
| Androscoggin, ME | | |
| 4280 Lexington, KY | 0.8921 | 0.9248 |
| Bourbon, KY | | |
| Clark, KY | | |
| Fayette, KY | | |
| Jessamine, KY | | |
| Madison, KY | | |
| Scott, KY | | |
| Woodford, KY | | |
| 4320 Lima, OH | 0.9634 | 0.9748 |
| Allen, OH | | |
| Auglaize, OH | | |
| 4360 Lincoln, NE | 0.9808 | 0.9868 |
| Lancaster, NE | | |
| 4400 Little Rock-North Little Rock, AR | 0.8959 | 0.9275 |
| Faulkner, AR | | |
| Lonoke, AR | | |
| Pulaski, AR | | |
| Saline, AR | | |
| 4420 Longview-Marshall, TX | 0.8816 | 0.9173 |
| Gregg, TX | | |
| Harrison, TX | | |
| Upshur, TX | | |
| 4480 [1] Los Angeles-Long Beach, CA | 1.1955 | 1.1301 |
| Los Angeles, CA | | |
| 4520 Louisville, KY–IN | 0.9395 | 0.9582 |
| Clark, IN | | |
| Floyd, IN | | |
| Harrison, IN | | |
| Scott, IN | | |
| Bullitt, KY | | |
| Jefferson, KY | | |
| Oldham, KY | | |
| 4600 Lubbock, TX | 0.8828 | 0.9182 |
| Lubbock, TX | | |
| 4640 Lynchburg, VA | 0.9218 | 0.9458 |
| Amherst, VA | | |
| Bedford, VA | | |
| Bedford City, VA | | |
| Campbell, VA | | |
| Lynchburg City, VA | | |
| 4680 Macon, GA | 0.9046 | 0.9336 |
| Bibb, GA | | |
| Houston, GA | | |
| Jones, GA | | |
| Peach, GA | | |
| Twiggs, GA | | |
| 4720 Madison, WI | 1.0354 | 1.0241 |
| Dane, WI | | |
| 4800 [2] Mansfield, OH | 0.8778 | 0.9146 |
| Crawford, OH | | |
| Richland, OH | | |
| 4840 Mayaguez, PR | 0.4617 | 0.5891 |
| Anasco, PR | | |
| Cabo Rojo, PR | | |
| Hormigueros, PR | | |
| Mayaguez, PR | | |
| Sabana Grande, PR | | |
| San German, PR | | |
| 4880 McAllen-Edinburg-Mission, TX | 0.8403 | 0.8877 |
| Hidalgo, TX | | |
| 4890 Medford-Ashland, OR | 1.0438 | 1.0298 |
| Jackson, OR | | |
| 4900 Melbourne-Titusville-Palm Bay, FL | 0.9713 | 0.9803 |
| Brevard, Fl | | |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| 4920 [1 2] Memphis, TN–AR–MS (TN Hospitals) | 0.7980 | 0.8568 |
| Crittenden, AR | | |
| DeSoto, MS | | |
| Fayette, TN | | |
| Shelby, TN | | |
| Tipton, TN | | |
| 4920 [1 2] Memphis, TN–AR–MS (AR Hospitals) | 0.7538 | 0.8240 |
| Crittenden, AR | | |
| DeSoto, MS | | |
| Fayette, TN | | |
| Shelby, TN | | |
| Tipton, TN | | |
| 4920 [1 2] Memphis, TN–AR–MS (MS Hospitals) | 0.7608 | 0.8293 |
| Crittenden, AR | | |
| DeSoto, MS | | |
| Fayette, TN | | |
| Shelby, TN | | |
| Tipton, TN | | |
| 4940 [2] Merced, CA | 0.9966 | 0.9977 |
| Merced, CA | | |
| 5000 [1] Miami, FL | 1.0148 | 1.0101 |
| Dade, FL | | |
| 5015 [1] Middlesex-Somerset-Hunterdon, NJ | 1.0342 | 1.0233 |
| Hunterdon, NJ | | |
| Middlesex, NJ | | |
| Somerset, NJ | | |
| 5080 [1] Milwaukee-Waukesha, WI | 0.9803 | 0.9865 |
| Milwaukee, WI | | |
| Ozaukee, WI | | |
| Washington, WI | | |
| Waukesha, WI | | |
| 5120 [1] Minneapolis-St. Paul, MN–WI | 1.1118 | 1.0753 |
| Anoka, MN | | |
| Carver, MN | | |
| Chisago, MN | | |
| Dakota, MN | | |
| Hennepin, MN | | |
| Isanti, MN | | |
| Ramsey, MN | | |
| Scott, MN | | |
| Sherburne, MN | | |
| Washington, MN | | |
| Wright, MN | | |
| Pierce, WI | | |
| St. Croix, WI | | |
| 5140 Missoula, MT | 0.9462 | 0.9628 |
| Missoula, MT | | |
| 5160 Mobile, AL | 0.8205 | 0.8733 |
| Baldwin, AL | | |
| Mobile, AL | | |
| 5170 Modesto, CA | 1.0481 | 1.0327 |
| Stanislaus, CA | | |
| 5190 [1] Monmouth-Ocean, NJ | 1.1552 | 1.1038 |
| Monmouth, NJ | | |
| Ocean, NJ | | |
| 5200 Monroe, LA | 0.8467 | 0.8923 |
| Ouachita, LA | | |
| 5240 [2] Montgomery, AL | 0.7610 | 0.8294 |
| Autauga, AL | | |
| Elmore, AL | | |
| Montgomery, AL | | |
| 5280 Muncie, IN | 1.0734 | 1.0497 |
| Delaware, IN | | |
| 5330 Myrtle Beach, SC | 0.8658 | 0.9060 |
| Horry, SC | | |
| 5345 Naples, FL | 0.9396 | 0.9582 |
| Collier, FL | | |
| 5360 [1] Nashville, TN | 0.9201 | 0.9446 |
| Cheatham, TN | | |
| Davidson, TN | | |
| Dickson, TN | | |
| Robertson, TN | | |
| Rutherford TN | | |
| Sumner, TN | | |
| Williamson, TN | | |
| Wilson, TN | | |
| 5380 [1] Nassau-Suffolk, NY | 1.3089 | 1.2024 |
| Nassau, NY | | |
| Suffolk, NY | | |
| 5483 [1] New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT | 1.2135 | 1.1417 |
| Fairfield, CT | | |
| New Haven, CT | | |
| 5523 New London-Norwich, CT | 1.1984 | 1.1319 |
| New London, CT | | |
| 5560 [1] New Orleans, LA | 0.9283 | 0.9503 |
| Jefferson, LA | | |
| Orleans, LA | | |
| Plaquemines, LA | | |
| St. Bernard, LA | | |
| St. Charles, LA | | |
| St. James, LA | | |
| St. John The Baptist, LA | | |
| St. Tammany, LA | | |
| 5600 [1] New York, NY | 1.4445 | 1.2864 |
| Bronx, NY | | |
| Kings, NY | | |
| New York, NY | | |
| Putnam, NY | | |
| Queens, NY | | |
| Richmond, NY | | |
| Rockland, NY | | |
| Westchester, NY | | |
| 5640 [1] Newark, NJ | 1.0717 | 1.0486 |
| Essex, NJ | | |
| Morris, NJ | | |
| Sussex, NJ | | |
| Union, NJ | | |
| Warren, NJ | | |
| 5660 Newburgh, NY–PA | 1.0946 | 1.0639 |
| Orange, NY | | |
| Pike, PA | | |
| 5720 [1] Norfolk-Virginia Beach-Newport News, VA–NC | 0.8429 | 0.8896 |
| Currituck, NC | | |
| Chesapeake City, VA | | |
| Gloucester, VA | | |
| Hampton City, VA | | |
| Isle of Wight, VA | | |
| James City, VA | | |
| Mathews, VA | | |
| Newport News City, VA | | |
| Norfolk City, VA | | |
| Poquoson City, VA | | |
| Portsmouth City, VA | | |
| Suffolk City, VA | | |
| Virginia Beach City, VA | | |
| Williamsburg City, VA | | |
| York, VA | | |
| 5775 [1] Oakland, CA | 1.5051 | 1.3231 |
| Alameda, CA | | |
| Contra Costa, CA | | |
| 5790 Ocala, FL | 0.8904 | 0.9236 |
| Marion, FL | | |
| 5800 Odessa-Midland, TX | 0.9168 | 0.9422 |
| Ector, TX | | |
| Midland, TX | | |
| 5880 [1] Oklahoma City, OK | 0.8910 | 0.9240 |
| Canadian, OK | | |
| Cleveland, OK | | |
| Logan, OK | | |
| McClain, OK | | |
| Oklahoma, OK | | |
| Pottawatomie, OK | | |
| 5910 Olympia, WA | 1.0787 | 1.0532 |
| Thurston, WA | | |
| 5920 Omaha, NE–IA | 0.9707 | 0.9798 |
| Pottawattamie, IA | | |
| Cass, NE | | |
| Douglas, NE | | |
| Sarpy, NE | | |
| Washington, NE | | |
| 5945 [1] Orange County, CA | 1.1560 | 1.1044 |
| Orange, CA | | |
| 5960 [1] Orlando, FL | 0.9959 | 0.9972 |
| Lake, FL | | |
| Orange, FL | | |
| Osceola, FL | | |
| Seminole, FL | | |
| 5990 [2] Owensboro, KY | 0.8017 | 0.8595 |
| Daviess, KY | | |
| 6015 Panama City, FL | 0.9129 | 0.9395 |
| Bay, FL | | |
| 6020 [2] Parkersburg-Marietta, WV–OH (WV Hospitals) | 0.8321 | 0.8817 |
| Washington, OH | | |
| Wood, WV | | |
| 6020 [2] Parkersburg-Marietta, WV–OH (OH Hospitals) | 0.8778 | 0.9146 |
| Washington, OH | | |
| Wood, WV | | |
| 6080 [2] Pensacola, FL | 0.8904 | 0.9236 |
| Escambia, FL | | |
| Santa Rosa, FL | | |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| 6120 Peoria-Pekin, IL | 0.8687 | 0.9081 |
| Peoria, IL | | |
| Tazewell, IL | | |
| Woodford, IL | | |
| 6160 [1] Philadelphia, PA–NJ | 1.0660 | 1.0447 |
| Burlington, NJ | | |
| Camden, NJ | | |
| Gloucester, NJ | | |
| Salem, NJ | | |
| Bucks, PA | | |
| Chester, PA | | |
| Delaware, PA | | |
| Montgomery, PA | | |
| Philadelphia, PA | | |
| 6200 [1] Phoenix-Mesa, AZ | 0.9532 | 0.9677 |
| Maricopa, AZ | | |
| Pinal, AZ | | |
| 6240 Pine Bluff, AR | 0.7866 | 0.8484 |
| Jefferson, AR | | |
| 6280 [1] Pittsburgh, PA | 0.9818 | 0.9875 |
| Allegheny, PA | | |
| Beaver, PA | | |
| Butler, PA | | |
| Fayette, PA | | |
| Washington, PA | | |
| Westmoreland, PA | | |
| 6323 [2] Pittsfield, MA | 1.1348 | 1.0905 |
| Berkshire, MA | | |
| 6340 Pocatello, ID | 1.0819 | 1.0554 |
| Bannock, ID | | |
| 6360 Ponce, PR | 0.4347 | 0.5652 |
| Guayanilla, PR | | |
| Juana Diaz, PR | | |
| Penuelas, PR | | |
| Ponce, PR | | |
| Villalba, PR | | |
| Yauco, PR | | |
| 6403 Portland, ME | 0.9779 | 0.9848 |
| Cumberland, ME | | |
| Sagadahoc, ME | | |
| York, ME | | |
| 6440 [1] Portland-Vancouver, OR–WA | 1.0928 | 1.0627 |
| Clackamas, OR | | |
| Columbia, OR | | |
| Multnomah, OR | | |
| Washington, OR | | |
| Yamhill, OR | | |
| Clark, WA | | |
| 6483 [1] Providence-Warwick-Pawtucket, RI | 1.0955 | 1.0645 |
| Bristol, RI | | |
| Kent, RI | | |
| Newport, RI | | |
| Providence, RI | | |
| Washington, RI | | |
| 6520 Provo-Orem, UT | 0.9972 | 0.9981 |
| Utah, UT | | |
| 6560 [2] Pueblo, CO | 0.9179 | 0.9430 |
| Pueblo, CO | | |
| 6580 Punta Gorda, FL | 0.9565 | 0.9700 |
| Charlotte, FL | | |
| 6600 Racine, WI | 0.9298 | 0.9514 |
| Racine, WI | | |
| 6640 [1] Raleigh-Durham-Chapel Hill, NC | 0.9749 | 0.9827 |
| Chatham, NC | | |
| Durham, NC | | |
| Franklin, NC | | |
| Johnston, NC | | |
| Orange, NC | | |
| Wake, NC | | |
| 6660 Rapid City, SD | 0.8463 | 0.8920 |
| Pennington, SD | | |
| 6680 Reading, PA | 0.9203 | 0.9447 |
| Berks, PA | | |
| 6690 Redding, CA | 1.1795 | 1.1197 |
| Shasta, CA | | |
| 6720 Reno, NV | 1.0508 | 1.0345 |
| Washoe, NV | | |
| 6740 Richland-Kennewick-Pasco, WA | 1.1564 | 1.1046 |
| Benton, WA | | |
| Franklin, WA | | |
| 6760 Richmond-Petersburg, VA | 0.9679 | 0.9779 |
| Charles City County, VA | | |
| Chesterfield, VA | | |
| Colonial Heights City, VA | | |
| Dinwiddie, VA | | |
| Goochland, VA | | |
| Hanover, VA | | |
| Henrico, VA | | |
| Hopewell City, VA | | |
| New Kent, VA | | |
| Petersburg City, VA | | |
| Powhatan, VA | | |
| Prince George, VA | | |
| Richmond City, VA | | |
| 6780 [1] Riverside-San Bernardino, CA | 1.1159 | 1.0780 |
| Riverside, CA | | |
| San Bernardino, CA | | |
| 6800 Roanoke, VA | 0.9543 | 0.9685 |
| Botetourt, VA | | |
| Roanoke, VA | | |
| Roanoke City, VA | | |
| Salem City, VA | | |
| 6820 Rochester, MN | 1.1361 | 1.0913 |
| Olmsted, MN | | |
| 6840 [1] Rochester, NY | 0.8846 | 0.9195 |
| Genesee, NY | | |
| Livingston, NY | | |
| Monroe, NY | | |
| Ontario, NY | | |
| Orleans, NY | | |
| Wayne, NY | | |
| 6880 Rockford, IL | 0.8904 | 0.9236 |
| Boone, IL | | |
| Ogle, IL | | |
| Winnebago, IL | | |
| 6895 Rocky Mount, NC | 0.8875 | 0.9215 |
| Edgecombe, NC | | |
| Nash, NC | | |
| 6920 [1] Sacramento, CA | 1.2003 | 1.1332 |
| El Dorado, CA | | |
| Placer, CA | | |
| Sacramento, CA | | |
| 6960 Saginaw-Bay City-Midland, MI | 0.9475 | 0.9637 |
| Bay, MI | | |
| Midland, MI | | |
| Saginaw, MI | | |
| 6980 St. Cloud, MN | 1.0164 | 1.0112 |
| Benton, MN | | |
| Stearns, MN | | |
| 7000 St. Joseph, MO | 0.9245 | 0.9477 |
| Andrew, MO | | |
| Buchanan, MO | | |
| 7040 [1] St. Louis, MO–IL | 0.9114 | 0.9384 |
| Clinton, IL | | |
| Jersey, IL | | |
| Madison, IL | | |
| Monroe, IL | | |
| St. Clair, IL | | |
| Franklin, MO | | |
| Jefferson, MO | | |
| Lincoln, MO | | |
| St. Charles, MO | | |
| St. Louis, MO | | |
| St. Louis City, MO | | |
| Warren, MO | | |
| 7080 [2] Salem, OR | 1.0300 | 1.0204 |
| Marion, OR | | |
| Polk, OR | | |
| 7120 Salinas, CA | 1.4649 | 1.2988 |
| Monterey, CA | | |
| 7160 [1] Salt Lake City-Ogden, UT | 0.9661 | 0.9767 |
| Davis, UT | | |
| Salt Lake, UT | | |
| Weber, UT | | |
| 7200 San Angelo, TX | 0.7747 | 0.8396 |
| Tom Green, TX | | |
| 7240 [1] San Antonio, TX | 0.8087 | 0.8647 |
| Bexar, TX | | |
| Comal, TX | | |
| Guadalupe, TX | | |
| Wilson, TX | | |
| 7320 [1] San Diego, CA | 1.1901 | 1.1266 |
| San Diego, CA | | |
| 7360 [1] San Francisco, CA | 1.4433 | 1.2857 |
| Marin, CA | | |
| San Francisco, CA | | |
| San Mateo, CA | | |
| 7400 [1] San Jose, CA | 1.4376 | 1.2822 |
| Santa Clara, CA | | |
| 7440 [1] San Juan-Bayamon, PR | 0.4691 | 0.5955 |
| Aguas Buenas, PR | | |
| Barceloneta, PR | | |
| Bayamon, PR | | |
| Canovanas, PR | | |
| Carolina, PR | | |
| Catano, PR | | |
| Ceiba, PR | | |
| Comerio, PR | | |
| Corozal, PR | | |
| Dorado, PR | | |
| Fajardo, PR | | |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| Florida, PR<br>Guaynabo, PR<br>Humacao, PR<br>Juncos, PR<br>Los Piedras, PR<br>Loiza, PR<br>Luguillo, PR<br>Manati, PR<br>Morovis, PR<br>Naguabo, PR<br>Naranjito, PR<br>Rio Grande, PR<br>San Juan, PR<br>Toa Alta, PR<br>Toa Baja, PR<br>Trujillo Alto, PR<br>Vega Alta, PR<br>Vega Baja, PR<br>Yabucoa, PR | | |
| 7460 San Luis Obispo-Atascadero-Paso Robles, CA<br>San Luis Obispo, CA | 1.0755 | 1.0511 |
| 7480 Santa Barbara-Santa Maria-Lompoc, CA<br>Santa Barbara, CA | 1.0728 | 1.0493 |
| 7485 Santa Cruz-Watsonville, CA<br>Santa Cruz, CA | 1.4736 | 1.3041 |
| 7490 Santa Fe, NM<br>Los Alamos, NM<br>Santa Fe, NM | 0.9383 | 0.9573 |
| 7500 Santa Rosa, CA<br>Sonoma, CA | 1.3182 | 1.2083 |
| 7510 Sarasota-Bradenton, FL<br>Manatee, FL<br>Sarasota, FL | 0.9670 | 0.9773 |
| 7520 Savannah, GA<br>Bryan, GA<br>Chatham, GA<br>Effingham, GA | 0.8689 | 0.9083 |
| 7560 [2] Scranton-Wilkes-Barre-Hazleton, PA<br>Columbia, PA<br>Lackawanna, PA<br>Luzerne, PA<br>Wyoming, PA | 0.8686 | 0.9080 |
| 7600 [1] Seattle-Bellevue-Everett, WA<br>Island, WA<br>King, WA<br>Snohomish, WA | 1.1134 | 1.0763 |
| 7610 [2] Sharon, PA<br>Mercer, PA | 0.8686 | 0.9080 |
| 7620 [2] Sheboygan, WI<br>Sheboygan, WI | 0.9073 | 0.9356 |
| 7640 Sherman-Denison, TX<br>Grayson, TX | 0.8619 | 0.9032 |
| 7680 Shreveport-Bossier City, LA<br>Bossier, LA<br>Caddo, LA<br>Webster, LA | 0.8853 | 0.9200 |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| 7720 Sioux City, IA–NE<br>Woodbury, IA<br>Dakota, NE | 0.8571 | 0.8998 |
| 7760 Sioux Falls, SD<br>Lincoln, SD<br>Minnehaha, SD | 0.8890 | 0.9226 |
| 7800 South Bend, IN<br>St. Joseph, IN | 1.0233 | 1.0159 |
| 7840 Spokane, WA<br>Spokane, WA | 1.1979 | 1.1316 |
| 7880 Springfield, IL<br>Menard, IL<br>Sangamon, IL | 0.8744 | 0.9122 |
| 7920 Springfield, MO<br>Christian, MO<br>Greene, MO<br>Webster, MO | 0.8357 | 0.8843 |
| 8003 [2] Springfield, MA<br>Hampden, MA<br>Hampshire, MA | 1.1348 | 1.0905 |
| 8050 State College, PA<br>Centre, PA | 0.9114 | 0.9384 |
| 8080 [2] Steubenville-Weirton, OH–WV (OH Hospitals)<br>Jefferson, OH<br>Brooke, WV<br>Hancock, WV | 0.8778 | 0.9146 |
| 8080 Steubenville-Weirton, OH–WV (WV Hospitals)<br>Jefferson, OH<br>Brooke, WV<br>Hancock, WV | 0.8658 | 0.9060 |
| 8120 Stockton-Lodi, CA<br>San Joaquin, CA | 1.0711 | 1.0482 |
| 8140 [2] Sumter, SC<br>Sumter, SC | 0.8445 | 0.8907 |
| 8160 Syracuse, NY<br>Cayuga, NY<br>Madison, NY<br>Onondaga, NY<br>Oswego, NY | 0.9662 | 0.9767 |
| 8200 Tacoma, WA<br>Pierce, WA | 1.1658 | 1.1108 |
| 8240 [2] Tallahassee, FL<br>Gadsden, FL<br>Leon, FL | 0.8904 | 0.9236 |
| 8280 [1] Tampa-St. Petersburg-Clearwater, FL<br>Hernando, FL<br>Hillsborough, FL<br>Pasco, FL<br>Pinellas, FL | 0.9111 | 0.9382 |
| 8320 [2] Terre Haute, IN<br>Clay, IN<br>Vermillion, IN<br>Vigo, IN | 0.8807 | 0.9167 |
| 8360 Texarkana, AR-Texarkana, TX<br>Miller, AR<br>Bowie, TX | 0.7962 | 0.8555 |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| 8400 Toledo, OH<br>Fulton, OH<br>Lucas, OH<br>Wood, OH | 0.9705 | 0.9797 |
| 8440 Topeka, KS<br>Shawnee, KS | 0.9134 | 0.9399 |
| 8480 Trenton, NJ<br>Mercer, NJ | 0.9919 | 0.9944 |
| 8520 Tucson, AZ<br>Pima, AZ | 0.8826 | 0.9180 |
| 8560 Tulsa, OK<br>Creek, OK<br>Osage, OK<br>Rogers, OK<br>Tulsa, OK<br>Wagoner, OK | 0.8698 | 0.9089 |
| 8600 Tuscaloosa, AL<br>Tuscaloosa, AL | 0.8081 | 0.8642 |
| 8640 Tyler, TX<br>Smith, TX | 0.9270 | 0.9494 |
| 8680 [2] Utica-Rome, NY<br>Herkimer, NY<br>Oneida, NY | 0.8558 | 0.8989 |
| 8720 Vallejo-Fairfield-Napa, CA<br>Napa, CA<br>Solano, CA | 1.2672 | 1.1761 |
| 8735 Ventura, CA<br>Ventura, CA | 1.0586 | 1.0398 |
| 8750 Victoria, TX<br>Victoria, TX | 0.8133 | 0.8680 |
| 8760 Vineland-Millville-Bridgeton, NJ<br>Cumberland, NJ | 1.0462 | 1.0314 |
| 8780 [2] Visalia-Tulare-Porterville, CA<br>Tulare, CA | 0.9966 | 0.9977 |
| 8800 Waco, TX<br>McLennan, TX | 0.8402 | 0.8876 |
| 8840 [1] Washington, DC–MD–VA–WV<br>District of Columbia, DC<br>Calvert, MD<br>Charles, MD<br>Frederick, MD<br>Montgomery, MD<br>Prince Georges, MD<br>Alexandria City, VA<br>Arlington, VA<br>Clarke, VA<br>Culpeper, VA<br>Fairfax, VA<br>Fairfax City, VA<br>Falls Church City, VA<br>Fauquier, VA<br>Fredericksburg City, VA<br>King George, VA<br>Loudoun, VA<br>Manassas City, VA<br>Manassas Park City, VA<br>Prince William, VA<br>Spotsylvania, VA<br>Stafford, VA | 1.0832 | 1.0563 |

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

| Urban area (constituent counties) | Wage index | GAF |
|---|---|---|
| Warren, VA<br>Berkeley, WV<br>Jefferson, WV | | |
| 8920 Waterloo-Cedar Falls, IA<br>Black Hawk, IA | 0.8932 | 0.9256 |
| 8940 Wausau, WI<br>Marathon, WI | 0.9511 | 0.9663 |
| 8960 [1] West Palm Beach-Boca Raton, FL<br>Palm Beach, FL | 0.9658 | 0.9765 |
| 9000 [2] Wheeling, WV–OH (WV Hospitals)<br>Belmont, OH<br>Marshall, WV<br>Ohio, WV | 0.8321 | 0.8817 |
| 9000 [2] Wheeling, WV–OH (OH Hospitals)<br>Belmont, OH<br>Marshall, WV<br>Ohio, WV | 0.8778 | 0.9146 |
| 9040 Wichita, KS<br>Butler, KS<br>Harvey, KS<br>Sedgwick, KS | 0.9574 | 0.9706 |
| 9080 Wichita Falls, TX<br>Archer, TX<br>Wichita, TX | 0.7668 | 0.8337 |
| 9140 [2] Williamsport, PA<br>Lycoming, PA | 0.8686 | 0.9080 |
| 9160 Wilmington-Newark, DE–MD<br>New Castle, DE<br>Cecil, MD | 1.1281 | 1.0860 |
| 9200 Wilmington, NC<br>New Hanover, NC<br>Brunswick, NC | 0.9474 | 0.9637 |
| 9260 [2] Yakima, WA<br>Yakima, WA | 1.0763 | 1.0516 |
| 9270 Yolo, CA<br>Yolo, CA | 1.0261 | 1.0178 |
| 9280 York, PA<br>York, PA | 0.9427 | 0.9604 |
| 9320 Youngstown-Warren, OH<br>Columbiana, OH<br>Mahoning, OH<br>Trumbull, OH | 0.9604 | 0.9727 |
| 9340 Yuba City, CA<br>Sutter, CA<br>Yuba, CA | 1.0820 | 1.0555 |
| 9360 Yuma, AZ<br>Yuma, AZ | 0.9605 | 0.9728 |

[1] Large Urban Area

[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2000.

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

| Nonurban Area | Wage Index | GAF |
|---|---|---|
| Alabama | 0.7610 | 0.8294 |
| Alaska | 1.2681 | 1.1766 |
| Arizona | 0.8400 | 0.8875 |
| Arkansas | 0.7538 | 0.8240 |
| California | 0.9966 | 0.9977 |
| Colorado | 0.9179 | 0.9430 |
| Connecticut | 1.1798 | 1.1199 |
| Delaware | 0.9349 | 0.9549 |
| Florida | 0.8904 | 0.9236 |
| Georgia | 0.8510 | 0.8954 |
| Hawaii | 1.1438 | 1.0964 |
| Idaho | 0.8831 | 0.9184 |
| Illinois | 0.8320 | 0.8817 |
| Indiana | 0.8807 | 0.9167 |
| Iowa | 0.8196 | 0.8726 |
| Kansas | 0.7710 | 0.8369 |
| Kentucky | 0.8017 | 0.8595 |
| Louisiana | 0.7921 | 0.8525 |
| Maine | 0.8813 | 0.9171 |
| Maryland | 0.8717 | 0.9103 |
| Massachusetts | 1.1348 | 1.0905 |
| Michigan | 0.9133 | 0.9398 |
| Minnesota | 0.9116 | 0.9386 |
| Mississippi | 0.7608 | 0.8293 |
| Missouri | 0.7766 | 0.8410 |
| Montana | 0.9017 | 0.9316 |
| Nebraska | 0.8265 | 0.8777 |
| Nevada | 0.9354 | 0.9553 |
| New Hampshire | 0.9995 | 0.9997 |
| New Jersey [1] | 0.0000 | ..... |
| New Mexico | 0.8425 | 0.8893 |
| New York | 0.8558 | 0.8989 |
| North Carolina | 0.8553 | 0.8985 |
| North Dakota | 0.7698 | 0.8360 |
| Ohio | 0.8778 | 0.9146 |
| Oklahoma | 0.7622 | 0.8303 |
| Oregon | 1.0300 | 1.0204 |
| Pennsylvania | 0.8686 | 0.9080 |
| Puerto Rico | 0.4232 | 0.5550 |
| Rhode Island [1] | 0.0000 | ..... |
| South Carolina | 0.8445 | 0.8907 |
| South Dakota | 0.7786 | 0.8425 |
| Tennessee | 0.7980 | 0.8568 |
| Texas | 0.7523 | 0.8229 |
| Utah | 0.9182 | 0.9432 |
| Vermont | 0.9538 | 0.9681 |
| Virginia | 0.8361 | 0.8846 |
| Washington | 1.0763 | 1.0516 |
| West Virginia | 0.8321 | 0.8817 |
| Wisconsin | 0.9073 | 0.9356 |
| Wyoming | 0.9046 | 0.9336 |

[1] All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

| Area | Wage index | GAF |
|---|---|---|
| Abilene, TX | 0.8318 | 0.8815 |
| Akron, OH | 1.0181 | 1.0124 |
| Albany, GA | 1.0783 | 1.0530 |
| Alexandria, LA | 0.8262 | 0.8774 |
| Amarillo, TX | 0.8663 | 0.9064 |

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

| Area | Wage index | GAF |
|---|---|---|
| Anchorage, AK | 1.2967 | 1.1947 |
| Ann Arbor, MI | 1.1177 | 1.0792 |
| Atlanta, GA | 0.9945 | 0.9962 |
| Atlantic-Cape May, NJ | 1.0998 | 1.0673 |
| Augusta-Aiken, GA–SC | 0.9226 | 0.9463 |
| Baltimore, MD | 0.9485 | 0.9644 |
| Barnstable-Yarmouth, MA | 1.3694 | 1.2402 |
| Baton Rouge, LA | 0.8856 | 0.9202 |
| Benton Harbor, MI | 0.9133 | 0.9398 |
| Bergen-Passaic, NJ | 1.1727 | 1.1153 |
| Billings, MT | 0.9577 | 0.9708 |
| Binghamton, NY | 0.8723 | 0.9107 |
| Birmingham, AL | 0.8574 | 0.9000 |
| Bismarck, ND | 0.8016 | 0.8595 |
| Bloomington, IN | 0.9294 | 0.9511 |
| Boise City, ID | 0.9133 | 0.9398 |
| Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH (NH, RI, and VT Hospitals) | 1.1239 | 1.0833 |
| Bryan-College Station, TX | 0.8306 | 0.8806 |
| Burlington, VT (VT Hospitals) | 0.9538 | 0.9681 |
| Burlington, VT (NY Hospital) | 0.9238 | 0.9472 |
| Casper, WY | 0.9046 | 0.9336 |
| Champaign-Urbana, IL | 0.9353 | 0.9552 |
| Charleston-North Charleston, SC | 0.9094 | 0.9370 |
| Charleston, WV | 0.9003 | 0.9306 |
| Charlotte-Gastonia-Rock Hill, NC–SC | 0.9307 | 0.9520 |
| Chattanooga, TN–GA | 0.9795 | 0.9859 |
| Chicago, IL | 1.0902 | 1.0609 |
| Cincinnati, OH–KY–IN | 0.9330 | 0.9536 |
| Clarksville-Hopkinsville, TN–KY | 0.8393 | 0.8869 |
| Cleveland-Lorain-Elyria, OH | 0.9649 | 0.9758 |
| Columbia, MO | 0.8600 | 0.9019 |
| Columbia, SC | 0.9517 | 0.9667 |
| Columbus, OH | 0.9741 | 0.9822 |
| Dallas, TX | 0.9220 | 0.9459 |
| Danville, VA | 0.8361 | 0.8846 |
| Davenport-Moline—Rock Island, IA–IL | 0.9021 | 0.9319 |
| Dayton-Springfield, OH | 0.9519 | 0.9668 |
| Denver, CO | 1.0032 | 1.0022 |
| Des Moines, IA | 0.9087 | 0.9365 |
| Dothan, AL | 0.8105 | 0.8660 |
| Dover, DE | 0.9349 | 0.9549 |
| Duluth-Superior, MN–WI | 1.0201 | 1.0137 |
| Eau Claire, WI | 0.9073 | 0.9356 |
| Erie, PA | 0.9021 | 0.9319 |
| Eugene-Springfield, OR | 1.1026 | 1.0692 |
| Fargo-Moorhead, ND–MN (ND and SD Hospitals) | 0.8597 | 0.9017 |
| Fayetteville, NC | 0.8553 | 0.8985 |
| Flagstaff, AZ–UT | 1.0678 | 1.0459 |
| Flint, MI | 1.1189 | 1.0800 |
| Florence, AL | 0.7621 | 0.8302 |
| Florence, SC | 0.8838 | 0.9189 |

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

| Area | Wage index | GAF |
|---|---|---|
| Fort Collins-Loveland, CO | 1.1005 | 1.0678 |
| Ft. Lauderdale, FL | 1.0228 | 1.0156 |
| Fort Pierce-Port St. Lucie, FL | 0.9672 | 0.9774 |
| Fort Smith, AR–OK | 0.8634 | 0.9043 |
| Fort Wayne, IN | 0.8807 | 0.9167 |
| Forth Worth-Arlington, TX | 0.9442 | 0.9614 |
| Gadsden, AL | 0.8491 | 0.8940 |
| Grand Forks, ND–MN | 1.0042 | 1.0029 |
| Grand Junction, CO | 0.9601 | 0.9725 |
| Grand Rapids-Muskegon-Holland, MI | 1.0150 | 1.0102 |
| Great Falls, MT | 0.9447 | 0.9618 |
| Greeley, CO | 0.9642 | 0.9753 |
| Green Bay, WI | 0.9359 | 0.9556 |
| Greensboro-Winston-Salem-High Point, NC | 0.9187 | 0.9436 |
| Greenville, NC | 0.9244 | 0.9476 |
| Greenville-Spartanburg-Anderson, SC | 0.9160 | 0.9417 |
| Harrisburg-Lebanon-Carlisle, PA | 0.9360 | 0.9557 |
| Hartford, CT (MA Hospital) | 1.1530 | 1.1024 |
| Hattiesburg, MS | 0.7608 | 0.8293 |
| Hickory-Morganton-Lenoir, NC | 0.8766 | 0.9138 |
| Honolulu, HI | 1.1905 | 1.1268 |
| Houston, TX | 0.9661 | 0.9767 |
| Huntington-Ashland, WV–KY–OH | 0.9721 | 0.9808 |
| Huntsville, AL | 0.8882 | 0.9220 |
| Indianapolis, IN | 0.9314 | 0.9525 |
| Jackson, MS | 0.8776 | 0.9145 |
| Jackson, TN | 0.8939 | 0.9261 |
| Jacksonville, FL | 0.8995 | 0.9300 |
| Jersey City, NJ | 1.0985 | 1.0664 |
| Johnson City-Kingsport-Bristol, TN–VA | 0.8412 | 0.8883 |
| Joplin, MO | 0.7924 | 0.8527 |
| Kalamazoo-Battlecreek, MI | 1.0144 | 1.0098 |
| Kansas City, KS–MO | 0.9629 | 0.9744 |
| Knoxville, TN | 0.8422 | 0.8890 |
| Kokomo, IN | 0.9190 | 0.9438 |
| Lafayette, LA | 0.8852 | 0.9199 |
| Lansing-East Lansing, MI | 0.9873 | 0.9913 |
| Las Cruces, NM | 0.8623 | 0.9035 |
| Las Vegas, NV–AZ | 1.0876 | 1.0592 |
| Lexington, KY | 0.8769 | 0.9140 |
| Lima, OH | 0.9497 | 0.9653 |
| Lincoln, NE | 0.9808 | 0.9868 |
| Little Rock-North Little Rock, AR | 0.8841 | 0.9191 |
| Longview-Marshall, TX | 0.8403 | 0.8877 |
| Los Angeles-Long Beach, CA | 1.1955 | 1.1301 |
| Louisville, KY–IN | 0.9395 | 0.9582 |
| Lynchburg, VA | 0.9090 | 0.9368 |
| Macon, GA | 0.9046 | 0.9336 |
| Madison, WI | 1.0354 | 1.0241 |
| Mansfield, OH | 0.8778 | 0.9146 |

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

| Area | Wage index | GAF |
|---|---|---|
| Memphis, TN–AR–MS (AR Hospital) | 0.7538 | 0.8240 |
| Memphis, TN–AR–MS (MS Hospital) | 0.7608 | 0.8293 |
| Milwaukee-Waukesha, WI | 0.9803 | 0.9865 |
| Minneapolis-St. Paul, MN–WI | 1.1118 | 1.0753 |
| Missoula, MT | 0.9462 | 0.9628 |
| Mobile, AL | 0.8205 | 0.8733 |
| Monmouth-Ocean, NJ | 1.1552 | 1.1038 |
| Montgomery, AL | 0.7610 | 0.8294 |
| Myrtle Beach, SC (NC Hospital) | 0.8553 | 0.8985 |
| Nashville, TN | 0.9078 | 0.9359 |
| New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT | 1.2135 | 1.1417 |
| New London-Norwich, CT | 1.1861 | 1.1240 |
| New Orleans, LA | 0.9283 | 0.9503 |
| New York, NY | 1.4445 | 1.2864 |
| Newburgh, NY–PA | 0.9919 | 0.9944 |
| Norfolk-Virginia Beach-Newport News, VA–NC (NC Hospital) | 0.8553 | 0.8985 |
| Oakland, CA | 1.5051 | 1.3231 |
| Ocala, FL | 0.8904 | 0.9236 |
| Odessa-Midland, TX | 0.9058 | 0.9345 |
| Oklahoma City, OK | 0.8910 | 0.9240 |
| Omaha, NE–IA | 0.9707 | 0.9798 |
| Orange County, CA | 1.1560 | 1.1044 |
| Orlando, FL | 0.9856 | 0.9901 |
| Peoria-Pekin, IL | 0.8687 | 0.9081 |
| Pine Bluff, AR | 0.7762 | 0.8407 |
| Pittsburgh, PA | 0.9713 | 0.9803 |
| Pittsfield, MA (VT Hospital) | 1.0032 | 1.0022 |
| Pocatello, ID | 0.9265 | 0.9491 |
| Portland, ME | 0.9622 | 0.9740 |
| Portland-Vancouver, ORWA | 1.0928 | 1.0627 |
| Provo-Orem, UT | 0.9972 | 0.9981 |
| Raleigh-Durham-Chapel Hill, NC | 0.9749 | 0.9827 |
| Rapid City, SD | 0.8463 | 0.8920 |
| Redding, CA | 1.1795 | 1.1197 |
| Reno, NV | 1.0508 | 1.0345 |
| Richland-Kennewick-Pasco, WA | 1.1267 | 1.0851 |
| Roanoke, VA | 0.9543 | 0.9685 |
| Rochester, MN | 1.1361 | 1.0913 |
| Rockford, IL | 0.8904 | 0.9236 |
| Sacramento, CA | 1.2003 | 1.1332 |
| Saginaw-Bay City-Midland, MI | 0.9475 | 0.9637 |
| St. Cloud, MN | 1.0164 | 1.0112 |
| St. Joseph, MO | 0.9036 | 0.9329 |
| St. Louis, MO–IL | 0.9114 | 0.9384 |
| Salinas, CA | 1.4649 | 1.2988 |
| Salt Lake City-Ogden, UT | 0.9661 | 0.9767 |
| San Diego, CA | 1.1901 | 1.1266 |
| Santa Cruz-Watsonville, CA | 1.2834 | 1.1863 |
| Santa Fe, NM | 0.9383 | 0.9573 |

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

| Area | Wage index | GAF |
|---|---|---|
| Santa Rosa, CA | 1.2832 | 1.1862 |
| Seattle-Bellevue-Everett, WA | 1.1134 | 1.0763 |
| Sherman-Denison, TX | 0.8619 | 0.9032 |
| Sioux City, IA–NE | 0.8571 | 0.8998 |
| South Bend, IN | 1.0233 | 1.0159 |
| Spokane, WA | 1.1608 | 1.1075 |
| Springfield, IL | 0.8744 | 0.9122 |
| Springfield, MO | 0.8089 | 0.8648 |
| Syracuse, NY | 0.9662 | 0.9767 |
| Tampa-St. Petersburg-Clearwater, FL | 0.9111 | 0.9382 |
| Texarkana, AR-Texarkana, TX | 0.7962 | 0.8555 |
| Toledo, OH | 0.9705 | 0.9797 |
| Topeka, KS | 0.9134 | 0.9399 |
| Tucson, AZ | 0.8826 | 0.9180 |
| Tulsa, OK | 0.8698 | 0.9089 |
| Tuscaloosa, AL | 0.8081 | 0.8642 |
| Tyler, TX | 0.9077 | 0.9358 |
| Victoria, TX | 0.8133 | 0.8680 |
| Washington, DC–MD–VA–WV | 1.0832 | 1.0563 |
| Waterloo-Cedar Falls, IA | 0.8932 | 0.9256 |
| Wausau, WI | 0.9511 | 0.9663 |
| Wichita, KS | 0.9290 | 0.9508 |
| Rural Alabama | 0.7610 | 0.8294 |
| Rural Florida | 0.8904 | 0.9236 |
| Rural Illinois | 0.8320 | 0.8817 |
| Rural Louisiana | 0.7921 | 0.8525 |
| Rural Michigan | 0.9133 | 0.9398 |
| Rural Minnesota | 0.9116 | 0.9386 |
| Rural Missouri | 0.7766 | 0.8410 |
| Rural Montana | 0.9017 | 0.9316 |
| Rural Oregon | 1.0300 | 1.0204 |
| Rural Texas (OK Hospital) | 0.7622 | 0.8303 |
| Rural Washington | 1.0763 | 1.0516 |
| Rural West Virginia | 0.8321 | 0.8817 |
| Rural Wisconsin | 0.9073 | 0.9356 |
| Rural Wyoming | 0.8905 | 0.9237 |

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS

| Urban area | Average hourly wage |
|---|---|
| Abilene, TX | 18.0486 |
| Aguadilla, PR | 10.4725 |
| Akron, OH | 22.9067 |
| Albany, GA | 25.7222 |
| Albany-Schenectady-Troy, NY | 18.5809 |
| Albuquerque, NM | 20.3203 |
| Alexandria, LA | 17.8813 |
| Allentown-Bethlehem-Easton, PA | 21.3707 |
| Altoona, PA | 20.0974 |
| Amarillo, TX | 18.7968 |
| Anchorage, AK | 27.9780 |
| Ann Arbor, MI | 24.4830 |
| Anniston, AL | 18.0781 |
| Appleton-Oshkosh-Neenah, WI | 19.7485 |
| Arecibo, PR | 9.8505 |

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

| Urban area | Average hourly wage |
|---|---|
| Asheville, NC | 20.6721 |
| Athens, GA | 21.3273 |
| Atlanta, GA | 21.5792 |
| Atlantic-Cape May, NJ | 24.3464 |
| Auburn-Opelika, AL | 17.7284 |
| Augusta-Aiken, GA–SC | 20.0184 |
| Austin-San Marcos, TX | 20.4753 |
| Bakersfield, CA | 21.1738 |
| Baltimore, MD | 20.4985 |
| Bangor, ME | 20.8595 |
| Barnstable-Yarmouth, MA | 30.2448 |
| Baton Rouge, LA | 19.4498 |
| Beaumont-Port Arthur, TX | 18.1415 |
| Bellingham, WA | 24.9338 |
| Benton Harbor, MI | 19.0728 |
| Bergen-Passaic, NJ | 25.6998 |
| Billings, MT | 20.6821 |
| Biloxi-Gulfport-Pascagoula, MS | 17.9703 |
| Binghamton, NY | 18.9273 |
| Birmingham, AL | 18.5525 |
| Bismarck, ND | 17.1607 |
| Bloomington,IN | 19.2118 |
| Bloomington-Normal, IL | 20.0254 |
| Boise City, ID | 19.7312 |
| Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH | 24.3877 |
| Boulder-Longmont, CO | 21.2598 |
| Brazoria, TX | 18.9889 |
| Bremerton, WA | 24.0180 |
| Brownsville-Harlingen-San Benito, TX | 19.0812 |
| Bryan-College Station, TX | 17.9622 |
| Buffalo-Niagara Falls, NY | 20.7580 |
| Burlington, VT | 23.6135 |
| Caguas, PR | 9.9614 |
| Canton-Massillon, OH | 18.8702 |
| Casper, WY | 19.0746 |
| Cedar Rapids, IA | 18.2191 |
| Champaign-Urbana, IL | 20.1555 |
| Charleston-North Charleston, SC | 19.7335 |
| Charleston, WV | 20.2316 |
| Charlotte-Gastonia-Rock Hill, NC–SC | 20.1566 |
| Charlottesville, VA | 23.3140 |
| Chattanooga, TN–GA | 21.8793 |
| Cheyenne, WY | 18.3270 |
| Chicago, IL | 23.9273 |
| Chico-Paradise, CA | 23.1834 |
| Cincinnati, OH–KY–IN | 20.2453 |
| Clarksville-Hopkinsville, TN–KY | 17.9692 |
| Cleveland-Lorain-Elyria, OH | 20.9457 |
| Colorado Springs, CO | 21.1998 |
| Columbia, MO | 18.6606 |
| Columbia, SC | 20.9200 |
| Columbus, GA-AL | 18.6769 |
| Columbus, OH | 21.1363 |
| Corpus Christi, TX | 18.4356 |
| Corvallis, OR | 24.8210 |
| Cumberland, MD-WV | 18.3080 |
| Dallas, TX | 20.0063 |
| Danville, VA | 18.5023 |
| Davenport-Moline-Rock Island, IA–IL | 19.5749 |
| Dayton-Springfield, OH | 20.6558 |
| Daytona Beach, FL | 20.0411 |
| Decatur, AL | 18.7206 |
| Decatur, IL | 18.6640 |
| Denver, CO | 21.7676 |
| Des Moines, IA | 19.9873 |

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

| Urban area | Average hourly wage |
|---|---|
| Detroit, MI | 21.8228 |
| Dothan, AL | 17.4329 |
| Dover, DE | 23.9388 |
| Dubuque, IA | 19.3729 |
| Duluth-Superior, MN–WI | 22.0638 |
| Dutchess County, NY | 22.3565 |
| Eau Claire, WI | 17.5107 |
| El Paso, TX | 19.9962 |
| Elkhart-Goshen, IN | 20.7202 |
| Elmira, NY | 18.7582 |
| Enid, OK | 19.0534 |
| Erie, PA | 19.5749 |
| Eugene-Springfield, OR | 23.9117 |
| Evansville, Henderson, IN–KY | 17.3973 |
| Fargo-Moorhead, ND-MN | 19.1596 |
| Fayetteville, NC | 18.7438 |
| Fayetteville-Springdale-Rogers, AR | 17.3575 |
| Flagstaff, AZ–UT | 23.5301 |
| Flint, MI | 24.1126 |
| Florence, AL | 16.4548 |
| Florence, SC | 19.1780 |
| Fort Collins-Loveland, CO | 23.3920 |
| Fort Lauderdale, FL | 22.1262 |
| Fort Myers-Cape Coral, FL | 19.7718 |
| Fort Pierce-Port St. Lucie, FL | 20.7352 |
| Fort Smith, AR-OK | 19.2209 |
| Fort Walton Beach, FL | 20.2902 |
| Fort Wayne, IN | 18.9774 |
| Fort Worth-Arlington, TX | 20.4871 |
| Fresno, CA | 22.0987 |
| Gadsden, AL | 18.4245 |
| Gainesville, FL | 22.3195 |
| Galveston-Texas City, TX | 22.3151 |
| Gary, IN | 20.4033 |
| Glens Falls, NY | 18.2226 |
| Goldsboro, NC | 18.4077 |
| Grand Forks, ND–MN | 22.1477 |
| Grand Junction, CO | 20.0924 |
| Grand Rapids-Muskegon-Holland, MI | 22.2552 |
| Great Falls, MT | 19.9908 |
| Greeley, CO | 21.4997 |
| Green Bay, WI | 20.3069 |
| Greensboro-Winston-Salem-High Point, NC | 19.9482 |
| Greenville, NC | 20.5145 |
| Greenville-Spartanburg-Anderson, SC | 19.8759 |
| Hagerstown, MD | 20.9333 |
| Hamilton-Middletown, OH | 19.2938 |
| Harrisburg-Lebanon-Carlisle, PA | 20.5425 |
| Hartford, CT | 24.8641 |
| Hattiesburg, MS | 16.4489 |
| Hickory-Morganton-Lenoir, NC | 19.9965 |
| Honolulu, HI | 25.7981 |
| Houma, LA | 17.8310 |
| Houston, TX | 20.9625 |
| Huntington-Ashland, WV–KY–OH | 21.6140 |
| Huntsville, AL | 19.7211 |
| Indianapolis, IN | 20.2095 |
| Iowa City, IA | 21.1537 |
| Jackson, MI | 19.4234 |
| Jackson, MS | 19.2901 |
| Jackson, TN | 19.3964 |
| Jacksonville, FL | 19.5189 |
| Jacksonville, NC | 17.0264 |
| Jamestown, NY | 17.1320 |
| Janesville-Beloit, WI | 21.3868 |

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

| Urban area | Average hourly wage |
|---|---|
| Jersey City, NJ | 23.7469 |
| Johnson City-Kingsport-Bristol, TN–VA | 18.0944 |
| Johnstown, PA | 20.7614 |
| Jonesboro, AR | 18.6323 |
| Joplin, MO | 17.0944 |
| Kalamazoo-Battlecreek, MI | 22.2348 |
| Kankakee, IL | 19.4290 |
| Kansas City, KS–MO | 20.8941 |
| Kenosha, WI | 21.0547 |
| Killeen-Temple, TX | 22.3946 |
| Knoxville, TN | 18.1724 |
| Kokomo, IN | 19.8136 |
| La Crosse, WI–MN | 20.4875 |
| Lafayette, LA | 19.1482 |
| Lafayette, IN | 19.7271 |
| Lake Charles, LA | 16.2042 |
| Lakeland-Winter Haven, FL | 20.7380 |
| Lancaster, PA | 20.1227 |
| Lansing-East Lansing, MI | 21.4235 |
| Laredo, TX | 16.5720 |
| Las Cruces, NM | 18.9734 |
| Las Vegas, NV-AZ | 23.6000 |
| Lawrence, KS | 17.9498 |
| Lawton, OK | 19.8665 |
| Lewiston-Auburn, ME | 19.6684 |
| Lexington, KY | 19.3574 |
| Lima, OH | 20.9055 |
| Lincoln, NE | 21.1236 |
| Little Rock-North Little Rock, AR | 19.4396 |
| Longview-Marshall, TX | 19.1300 |
| Los Angeles-Long Beach, CA | 25.8459 |
| Louisville, KY–IN | 20.3861 |
| Lubbock, TX | 19.1566 |
| Lynchburg, VA | 20.0013 |
| Macon, GA | 19.6297 |
| Madison, WI | 22.4673 |
| Mansfield, OH | 19.0435 |
| Mayaguez, PR | 10.0185 |
| McAllen-Edinburg-Mission, TX | 18.2331 |
| Medford-Ashland, OR | 22.6499 |
| Melbourne-Titusville-Palm Bay, FL | 21.0752 |
| Memphis, TN–AR–MS | 15.8781 |
| Merced, CA | 21.1426 |
| Miami, FL | 22.0202 |
| Middlesex-Somerset-Hunterdon, NJ | 24.8629 |
| Milwaukee-Waukesha, WI | 21.2711 |
| Minneapolis-St. Paul, MN–WI | 24.1246 |
| Missoula, MT | 20.4135 |
| Mobile, AL | 17.8029 |
| Modesto, CA | 22.7416 |
| Monmouth-Ocean, NJ | 24.6814 |
| Monroe, LA | 18.3733 |
| Montgomery, AL | 16.4427 |
| Muncie, IN | 23.2904 |
| Myrtle Beach, SC | 18.7864 |
| Naples, FL | 20.3889 |
| Nashville, TN | 19.9647 |
| Nassau-Suffolk, NY | 30.5221 |
| New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT | 26.9488 |
| New London-Norwich, CT | 26.0037 |
| New Orleans, LA | 20.1432 |
| New York, NY | 31.3439 |
| Newark, NJ | 25.6220 |
| Newburgh, NY-PA | 23.7525 |
| Norfolk-Virginia Beach-Newport News, VA–NC | 18.2637 |

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

| Urban area | Average hourly wage |
|---|---|
| Oakland, CA | 32.6592 |
| Ocala, FL | 19.2230 |
| Odessa-Midland, TX | 19.8941 |
| Oklahoma City, OK | 19.3346 |
| Olympia, WA | 23.4064 |
| Omaha, NE-IA | 21.0639 |
| Orange County, CA | 25.1808 |
| Orlando, FL | 21.6103 |
| Owensboro, KY | 16.7178 |
| Panama City, FL | 19.8085 |
| Parkersburg-Marietta, WV–OH | 17.5453 |
| Pensacola, FL | 17.8738 |
| Peoria-Pekin, IL | 18.7922 |
| Philadelphia, PA–NJ | 23.1316 |
| Phoenix-Mesa, AZ | 20.6836 |
| Pine Bluff, AR | 17.0672 |
| Pittsburgh, PA | 21.3039 |
| Pittsfield, MA | 22.6239 |
| Pocatello, ID | 23.4749 |
| Ponce, PR | 9.4317 |
| Portland, ME | 21.2189 |
| Portland-Vancouver, OR–WA | 23.7092 |
| Providence-Warwick, RI | 23.7714 |
| Provo-Orem, UT | 21.5911 |
| Pueblo, CO | 18.5332 |
| Punta Gorda, FL | 20.7540 |
| Racine, WI | 20.1753 |
| Raleigh-Durham-Chapel Hill, NC | 21.1552 |
| Rapid City, SD | 18.3452 |
| Reading, PA | 19.9691 |
| Redding, CA | 25.5947 |
| Reno, NV | 22.8021 |
| Richland-Kennewick-Pasco, WA | 25.0933 |
| Richmond-Petersburg, VA | 21.0026 |
| Riverside-San Bernardino, CA | 24.4131 |
| Roanoke, VA | 20.7061 |
| Rochester, MN | 24.6529 |
| Rochester, NY | 19.1942 |
| Rockford, IL | 19.3204 |
| Rocky Mount, NC | 19.2567 |
| Sacramento, CA | 26.0102 |
| Saginaw-Bay City-Midland, MI | 20.5596 |
| St. Cloud, MN | 22.0551 |
| St. Joseph, MO | 20.0604 |
| St. Louis, MO–IL | 19.7758 |
| Salem, OR | 22.3396 |
| Salinas, CA | 31.7057 |
| Salt Lake City-Ogden, UT | 20.9541 |
| San Angelo, TX | 16.8092 |
| San Antonio, TX | 17.5486 |
| San Diego, CA | 25.8245 |
| San Francisco, CA | 31.2006 |
| San Jose, CA | 31.3127 |
| San Juan-Bayamon, PR | 10.1790 |
| San Luis Obispo-Atascadero-Paso Robles, CA | 23.3363 |
| Santa Barbara-Santa Maria-Lompoc, CA | 23.2791 |
| Santa Cruz-Watsonville, CA | 31.9763 |
| Santa Fe, NM | 20.3593 |
| Santa Rosa, CA | 28.6042 |

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

| Urban area | Average hourly wage |
|---|---|
| Sarasota-Bradenton, FL | 20.9819 |
| Savannah, GA | 18.8537 |
| Scranton-Wilkes Barre-Hazleton, PA | 18.1723 |
| Seattle-Bellevue-Everett, WA | 24.0236 |
| Sharon, PA | 17.3633 |
| Sheboygan, WI | 18.3680 |
| Sherman-Denison, TX | 18.3921 |
| Shreveport-Bossier City, LA | 19.2092 |
| Sioux City, IA-NE | 18.5977 |
| Sioux Falls, SD | 19.2902 |
| South Bend, IN | 22.2041 |
| Spokane, WA | 25.9937 |
| Springfield, IL | 18.9742 |
| Springfield, MO | 18.1326 |
| Springfield, MA | 23.4382 |
| State College, PA | 19.7770 |
| Steubenville-Weirton, OH–WV | 18.7875 |
| Stockton-Lodi, CA | 23.2417 |
| Sumter, SC | 15.4277 |
| Syracuse, NY | 20.8181 |
| Tacoma, WA | 25.2962 |
| Tallahassee, FL | 18.6152 |
| Tampa-St. Petersburg-Clearwater, FL | 19.5050 |
| Terre Haute, IN | 15.3117 |
| Texarkana, AR-Texarkana, TX | 17.0551 |
| Toledo, OH | 21.4500 |
| Topeka, KS | 19.8204 |
| Trenton, NJ | 21.5233 |
| Tucson, AZ | 19.0859 |
| Tulsa, OK | 18.8729 |
| Tuscaloosa, AL | 17.5354 |
| Tyler, TX | 20.1140 |
| Utica-Rome, NY | 18.2490 |
| Vallejo-Fairfield-Napa, CA | 28.7082 |
| Ventura, CA | 24.1637 |
| Victoria, TX | 17.6229 |
| Vineland-Millville-Bridgeton, NJ | 22.7012 |
| Visalia-Tulare-Porterville, CA | 21.2165 |
| Waco, TX | 18.2321 |
| Washington, DC–MD–VA–WV | 23.5031 |
| Waterloo-Cedar Falls, IA | 18.4528 |
| Wausau, WI | 20.5783 |
| West Palm Beach-Boca Raton, FL | 21.1018 |
| Wheeling, OH-WV | 16.9649 |
| Wichita, KS | 20.7737 |
| Wichita Falls, TX | 16.6396 |
| Williamsport, PA | 18.2295 |
| Wilmington-Newark, DE–MD | 24.4776 |
| Wilmington, NC | 20.5573 |
| Yakima, WA | 21.7819 |
| Yolo, CA | 22.2646 |
| York, PA | 20.4558 |
| Youngstown-Warren, OH | 20.8393 |
| Yuba City, CA | 23.4776 |
| Yuma, AZ | 20.8420 |

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS

| Nonurban area | Average hourly wage |
|---|---|
| Alabama | 16.4226 |
| Alaska | 27.5158 |
| Arizona | 18.2279 |
| Arkansas | 16.3570 |
| California | 21.6246 |
| Colorado | 19.9177 |
| Connecticut | 25.5994 |
| Delaware | 20.2855 |
| Florida | 19.2234 |
| Georgia | 18.4650 |
| Hawaii | 24.8190 |
| Idaho | 19.1619 |
| Illinois | 18.0540 |
| Indiana | 19.1101 |
| Iowa | 17.7834 |
| Kansas | 16.7288 |
| Kentucky | 17.3951 |
| Louisiana | 17.1441 |
| Maine | 19.1234 |
| Maryland | 18.9146 |
| Massachusetts | 24.6234 |
| Michigan | 19.7353 |
| Minnesota | 19.7808 |
| Mississippi | 16.5082 |
| Missouri | 16.8219 |
| Montana | 19.5658 |
| Nebraska | 17.9331 |
| Nevada | 20.2962 |
| New Hampshire | 21.6890 |
| New Jersey [1] | |
| New Mexico | 18.2818 |
| New York | 18.5706 |
| North Carolina | 18.5592 |
| North Dakota | 16.7027 |
| Ohio | 19.0464 |
| Oklahoma | 16.5386 |
| Oregon | 22.3491 |
| Pennsylvania | 18.8470 |
| Puerto Rico | 9.1823 |
| Rhode Island [1] | |
| South Carolina | 18.3244 |
| South Dakota | 16.8938 |
| Tennessee | 17.3149 |
| Texas | 16.3108 |
| Utah | 19.9234 |
| Vermont | 20.3374 |
| Virginia | 18.1413 |
| Washington | 23.3538 |
| West Virginia | 18.0536 |
| Wisconsin | 19.6848 |
| Wyoming | 19.6292 |

[1] All counties within the State are classified as urban.

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

| Area | Wage index | GAF | Wage index—reclass. hospitals | GAF—reclass. hospitals |
|---|---|---|---|---|
| Aguadilla, PR | 1.0507 | 1.0344 | | |
| Arecibo, PR | 0.9883 | 0.9920 | | |
| Caguas, PR | 0.9995 | 0.9997 | | |
| Mayaguez, PR | 1.0052 | 1.0036 | | |
| Ponce, PR | 0.9463 | 0.9629 | | |
| San Juan-Bayamon, PR | 1.0213 | 1.0145 | | |
| Rural Puerto Rico | 0.9213 | 0.9454 | | |

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY

| DRG | MDC | Type | DRG title | Relative weights | Geometric mean LOS | Arithmetic mean LOS |
|---|---|---|---|---|---|---|
| 1 | 01 | SURG | CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA | 3.1023 | 6.3 | 9.1 |
| 2 | 01 | SURG | CRANIOTOMY FOR TRAUMA AGE >17 | 3.1157 | 7.3 | 9.7 |
| 3 | 01 | SURG | *CRANIOTOMY AGE 0–17 | 1.9575 | 12.7 | 12.7 |
| 4 | 01 | SURG | SPINAL PROCEDURES | 2.2879 | 4.8 | 7.3 |
| 5 | 01 | SURG | EXTRACRANIAL VASCULAR PROCEDURES | 1.4334 | 2.3 | 3.3 |
| 6 | 01 | SURG | CARPAL TUNNEL RELEASE | .8265 | 2.2 | 3.2 |
| 7 | 01 | SURG | PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC | 2.5918 | 6.9 | 10.3 |
| 8 | 01 | SURG | PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC. | 1.3987 | 2.1 | 3.0 |
| 9 | 01 | MED | SPINAL DISORDERS & INJURIES | 1.3176 | 4.8 | 6.7 |
| 10 | 01 | MED | NERVOUS SYSTEM NEOPLASMS W CC | 1.2276 | 4.9 | 6.7 |
| 11 | 01 | MED | NERVOUS SYSTEM NEOPLASMS W/O CC | .8343 | 3.1 | 4.2 |
| 12 | 01 | MED | DEGENERATIVE NERVOUS SYSTEM DISORDERS | .8916 | 4.5 | 6.1 |
| 13 | 01 | MED | MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA | .7675 | 4.1 | 5.1 |
| 14 | 01 | MED | SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA | 1.2205 | 4.8 | 6.2 |
| 15 | 01 | MED | TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS | .7486 | 2.9 | 3.6 |
| 16 | 01 | MED | NONSPECIFIC CEREBROVASCULAR DISORDERS W CC | 1.1670 | 4.6 | 6.1 |
| 17 | 01 | MED | NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC | .6563 | 2.7 | 3.4 |
| 18 | 01 | MED | CRANIAL & PERIPHERAL NERVE DISORDERS W CC | .9616 | 4.3 | 5.6 |
| 19 | 01 | MED | CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC | .6975 | 2.9 | 3.7 |
| 20 | 01 | MED | NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS | 2.7645 | 7.9 | 10.5 |
| 21 | 01 | MED | VIRAL MENINGITIS | 1.5003 | 5.2 | 6.9 |
| 22 | 01 | MED | HYPERTENSIVE ENCEPHALOPATHY | 1.0084 | 3.8 | 5.0 |
| 23 | 01 | MED | NONTRAUMATIC STUPOR & COMA | .8021 | 3.2 | 4.2 |
| 24 | 01 | MED | SEIZURE & HEADACHE AGE >17 W CC | .9925 | 3.7 | 5.0 |
| 25 | 01 | MED | SEIZURE & HEADACHE AGE >17 W/O CC | .6045 | 2.6 | 3.3 |
| 26 | 01 | MED | SEIZURE & HEADACHE AGE 0–17 | .6453 | 2.4 | 3.2 |
| 27 | 01 | MED | TRAUMATIC STUPOR & COMA, COMA >1 HR | 1.2871 | 3.2 | 5.1 |
| 28 | 01 | MED | TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 17 ≥ W CC | 1.3124 | 4.5 | 6.3 |
| 29 | 01 | MED | TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 17 ≥ W/O CC | .7037 | 2.8 | 3.7 |
| 30 | 01 | MED | *TRAUMATIC STUPOR & COMA, COMA < 1 HR AGE 0–17 | .3311 | 2.0 | 2.0 |
| 31 | 01 | MED | CONCUSSION AGE >17 W CC | .8655 | 3.1 | 4.2 |
| 32 | 01 | MED | CONCUSSION AGE >17 W/O CC | .5374 | 2.1 | 2.7 |
| 33 | 01 | MED | *CONCUSSION AGE 0–17 | .2080 | 1.6 | 1.6 |
| 34 | 01 | MED | OTHER DISORDERS OF NERVOUS SYSTEM W CC | 1.0108 | 3.8 | 5.2 |
| 35 | 01 | MED | OTHER DISORDERS OF NERVOUS SYSTEM W/O CC | .6051 | 2.7 | 3.4 |
| 36 | 02 | SURG | RETINAL PROCEDURES | .6636 | 1.2 | 1.4 |
| 37 | 02 | SURG | ORBITAL PROCEDURES | 1.0020 | 2.6 | 3.7 |
| 38 | 02 | SURG | PRIMARY IRIS PROCEDURES | .4832 | 1.8 | 2.5 |
| 39 | 02 | SURG | LENS PROCEDURES WITH OR WITHOUT VITRECTOMY | .5803 | 1.5 | 1.9 |
| 40 | 02 | SURG | EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17 | .8625 | 2.3 | 3.6 |
| 41 | 02 | SURG | *EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17 | .3370 | 1.6 | 1.6 |
| 42 | 02 | SURG | INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS | .6472 | 1.6 | 2.2 |
| 43 | 02 | MED | HYPHEMA | .5008 | 2.6 | 3.3 |
| 44 | 02 | MED | ACUTE MAJOR EYE INFECTIONS | .6293 | 4.0 | 5.0 |
| 45 | 02 | MED | NEUROLOGICAL EYE DISORDERS | .7031 | 2.7 | 3.3 |
| 46 | 02 | MED | OTHER DISORDERS OF THE EYE AGE >17 W CC | .7767 | 3.5 | 4.6 |
| 47 | 02 | MED | OTHER DISORDERS OF THE EYE AGE >17 W/O CC | .4921 | 2.5 | 3.3 |
| 48 | 02 | MED | *OTHER DISORDERS OF THE EYE AGE 0–17 | .2968 | 2.9 | 2.9 |
| 49 | 03 | SURG | MAJOR HEAD & NECK PROCEDURES | 1.8368 | 3.5 | 5.0 |
| 50 | 03 | SURG | SIALOADENECTOMY | .8531 | 1.6 | 2.0 |
| 51 | 03 | SURG | SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY | .7986 | 1.8 | 2.6 |
| 52 | 03 | SURG | CLEFT LIP & PALATE REPAIR | .8428 | 1.6 | 2.1 |
| 53 | 03 | SURG | SINUS & MASTOID PROCEDURES AGE >17 | 1.2137 | 2.3 | 3.7 |

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

| DRG | MDC | Type | DRG title | Relative weights | Geometric mean LOS | Arithmetic mean LOS |
|---|---|---|---|---|---|---|
| 54 | 03 | SURG | *SINUS & MASTOID PROCEDURES AGE 0–17 | .4812 | 3.2 | 3.2 |
| 55 | 03 | SURG | MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES. | .9049 | 1.9 | 2.9 |
| 56 | 03 | SURG | RHINOPLASTY | .9487 | 2.1 | 3.1 |
| 57 | 03 | SURG | T & A PROC, EXCEPT TONSILLECTOMY & /OR ADENOIDECTOMY ONLY, AGE >17. | 1.0775 | 2.6 | 4.0 |
| 58 | 03 | SURG | *T & A PROC, EXCEPT TONSILLECTOMY & /OR ADENOIDECTOMY ONLY, AGE 0–17. | .2733 | 1.5 | 1.5 |
| 59 | 03 | SURG | TONSILLECTOMY & /OR ADENOIDECTOMY ONLY, AGE >17 | .6824 | 1.8 | 2.4 |
| 60 | 03 | SURG | *TONSILLECTOMY & /OR ADENOIDECTOMY ONLY, AGE 0–17 | .2081 | 1.5 | 1.5 |
| 61 | 03 | SURG | MYRINGOTOMY W TUBE INSERTION AGE >17 | 1.2708 | 2.8 | 4.9 |
| 62 | 03 | SURG | *MYRINGOTOMY W TUBE INSERTION AGE 0–17 | .2946 | 1.3 | 1.3 |
| 63 | 03 | SURG | OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES | 1.3393 | 3.0 | 4.3 |
| 64 | 03 | MED | EAR, NOSE, MOUTH & THROAT MALIGNANCY | 1.2285 | 4.2 | 6.5 |
| 65 | 03 | MED | DYSEQUILIBRIUM | .5383 | 2.3 | 2.9 |
| 66 | 03 | MED | EPISTAXIS | .5580 | 2.5 | 3.2 |
| 67 | 03 | MED | EPIGLOTTITIS | .8088 | 2.8 | 3.5 |
| 68 | 03 | MED | OTITIS MEDIA & URI AGE >17 W CC | .6744 | 3.4 | 4.2 |
| 69 | 03 | MED | OTITIS MEDIA & URI AGE >17 W/O CC | .5114 | 2.7 | 3.3 |
| 70 | 03 | MED | OTITIS MEDIA & URI AGE 0–17 | .4666 | 2.4 | 2.9 |
| 71 | 03 | MED | LARYNGOTRACHEITIS | .7730 | 3.0 | 3.9 |
| 72 | 03 | MED | NASAL TRAUMA & DEFORMITY | .6409 | 2.6 | 3.3 |
| 73 | 03 | MED | OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17 | .7763 | 3.3 | 4.3 |
| 74 | 03 | MED | *OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17 | .3348 | 2.1 | 2.1 |
| 75 | 04 | SURG | MAJOR CHEST PROCEDURES | 3.1338 | 7.8 | 10.0 |
| 76 | 04 | SURG | OTHER RESP SYSTEM O.R. PROCEDURES W CC | 2.7905 | 8.4 | 11.3 |
| 77 | 04 | SURG | OTHER RESP SYSTEM O.R. PROCEDURES W/O CC | 1.1793 | 3.4 | 4.9 |
| 78 | 04 | MED | PULMONARY EMBOLISM | 1.3703 | 6.0 | 7.0 |
| 79 | 04 | MED | RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC | 1.6471 | 6.6 | 8.5 |
| 80 | 04 | MED | RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC. | .9168 | 4.6 | 5.7 |
| 81 | 04 | MED | *RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17 | 1.5162 | 6.1 | 6.1 |
| 82 | 04 | MED | RESPIRATORY NEOPLASMS | 1.3810 | 5.2 | 7.0 |
| 83 | 04 | MED | MAJOR CHEST TRAUMA W CC | .9752 | 4.4 | 5.6 |
| 84 | 04 | MED | MAJOR CHEST TRAUMA W/O CC | .5492 | 2.8 | 3.4 |
| 85 | 04 | MED | PLEURAL EFFUSION W CC | 1.2201 | 4.9 | 6.4 |
| 86 | 04 | MED | PLEURAL EFFUSION W/O CC | .6990 | 2.9 | 3.8 |
| 87 | 04 | MED | PULMONARY EDEMA & RESPIRATORY FAILURE | 1.3746 | 4.8 | 6.3 |
| 88 | 04 | MED | CHRONIC OBSTRUCTIVE PULMONARY DISEASE | .9314 | 4.2 | 5.2 |
| 89 | 04 | MED | SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC | 1.0638 | 5.0 | 6.0 |
| 90 | 04 | MED | SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC | .6540 | 3.6 | 4.2 |
| 91 | 04 | MED | SIMPLE PNEUMONIA & PLEURISY AGE 0–17 | .6702 | 2.8 | 3.3 |
| 92 | 04 | MED | INTERSTITIAL LUNG DISEASE W CC | 1.1852 | 5.0 | 6.3 |
| 93 | 04 | MED | INTERSTITIAL LUNG DISEASE W/O CC | .7211 | 3.3 | 4.0 |
| 94 | 04 | MED | PNEUMOTHORAX W CC | 1.1694 | 4.8 | 6.3 |
| 95 | 04 | MED | PNEUMOTHORAX W/O CC | .6072 | 3.0 | 3.7 |
| 96 | 04 | MED | BRONCHITIS & ASTHMA AGE >17 W CC | .7873 | 3.9 | 4.7 |
| 97 | 04 | MED | BRONCHITIS & ASTHMA AGE >17 W/O CC | .5871 | 3.1 | 3.7 |
| 98 | 04 | MED | BRONCHITIS & ASTHMA AGE 0–17 | .9098 | 3.0 | 4.7 |
| 99 | 04 | MED | RESPIRATORY SIGNS & SYMPTOMS W CC | .7104 | 2.5 | 3.2 |
| 100 | 04 | MED | RESPIRATORY SIGNS & SYMPTOMS W/O CC | .5415 | 1.8 | 2.2 |
| 101 | 04 | MED | OTHER RESPIRATORY SYSTEM DIAGNOSES W CC | .8535 | 3.3 | 4.4 |
| 102 | 04 | MED | OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC | .5522 | 2.1 | 2.7 |
| 103 | PRE | SURG | HEART TRANSPLANT | 17.3527 | 28.8 | 48.6 |
| 104 | 05 | SURG | CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH. | 7.2014 | 8.9 | 11.7 |
| 105 | 05 | SURG | CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH. | 5.6515 | 7.4 | 9.3 |
| 106 | 05 | SURG | CORONARY BYPASS W PTCA | 7.5379 | 9.4 | 11.2 |
| 107 | 05 | SURG | CORONARY BYPASS W CARDIAC CATH | 5.3870 | 9.2 | 10.4 |
| 108 | 05 | SURG | OTHER CARDIOTHORACIC PROCEDURES | 5.6650 | 8.0 | 10.6 |
| 109 | 05 | SURG | CORONARY BYPASS W/O PTCA OR CARDIAC CATH | 4.0244 | 6.8 | 7.7 |
| 110 | 05 | SURG | MAJOR CARDIOVASCULAR PROCEDURES W CC | 4.1440 | 7.1 | 9.5 |
| 111 | 05 | SURG | MAJOR CARDIOVASCULAR PROCEDURES W/O CC | 2.2427 | 4.7 | 5.5 |
| 112 | 05 | SURG | PERCUTANEOUS CARDIOVASCULAR PROCEDURES | 1.8729 | 2.6 | 3.8 |
| 113 | 05 | SURG | AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE. | 2.7595 | 9.7 | 12.7 |
| 114 | 05 | SURG | UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS. | 1.5650 | 6.0 | 8.3 |

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TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

| DRG | MDC | Type | DRG title | Relative weights | Geometric mean LOS | Arithmetic mean LOS |
|---|---|---|---|---|---|---|
| 115 | 05 | SURG | PRM CARD PACEM IMPL W AMI,HRT FAIL OR SHK,OR AICD LEAD OR GNRTR PR. | 3.4763 | 6.0 | 8.4 |
| 116 | 05 | SURG | OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT. | 2.4225 | 2.6 | 3.7 |
| 117 | 05 | SURG | CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT. | 1.2983 | 2.6 | 4.1 |
| 118 | 05 | SURG | CARDIAC PACEMAKER DEVICE REPLACEMENT | 1.4952 | 1.9 | 2.8 |
| 119 | 05 | SURG | VEIN LIGATION & STRIPPING | 1.2627 | 2.9 | 4.8 |
| 120 | 05 | SURG | OTHER CIRCULATORY SYSTEM O.R. PROCEDURES | 2.0394 | 4.9 | 8.1 |
| 121 | 05 | MED | CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE. | 1.6191 | 5.5 | 6.7 |
| 122 | 05 | MED | CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE. | 1.0872 | 3.3 | 4.0 |
| 123 | 05 | MED | CIRCULATORY DISORDERS W AMI, EXPIRED | 1.5531 | 2.8 | 4.6 |
| 124 | 05 | MED | CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG. | 1.4152 | 3.3 | 4.4 |
| 125 | 05 | MED | CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG. | 1.0624 | 2.2 | 2.8 |
| 126 | 05 | MED | ACUTE & SUBACUTE ENDOCARDITIS | 2.5352 | 9.2 | 12.0 |
| 127 | 05 | MED | HEART FAILURE & SHOCK | 1.0135 | 4.2 | 5.4 |
| 128 | 05 | MED | DEEP VEIN THROMBOPHLEBITIS | .7644 | 5.0 | 5.8 |
| 129 | 05 | MED | CARDIAC ARREST, UNEXPLAINED | 1.0936 | 1.8 | 2.8 |
| 130 | 05 | MED | PERIPHERAL VASCULAR DISORDERS W CC | .9474 | 4.7 | 5.9 |
| 131 | 05 | MED | PERIPHERAL VASCULAR DISORDERS W/O CC | .5891 | 3.6 | 4.4 |
| 132 | 05 | MED | ATHEROSCLEROSIS W CC | .6703 | 2.4 | 3.1 |
| 133 | 05 | MED | ATHEROSCLEROSIS W/O CC | .5656 | 1.9 | 2.4 |
| 134 | 05 | MED | HYPERTENSION | .5921 | 2.6 | 3.3 |
| 135 | 05 | MED | CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC. | .9085 | 3.3 | 4.5 |
| 136 | 05 | MED | CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC. | .6074 | 2.3 | 2.9 |
| 137 | 05 | MED | *CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17 | .8170 | 3.3 | 3.3 |
| 138 | 05 | MED | CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC | .8288 | 3.1 | 4.0 |
| 139 | 05 | MED | CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC | .5139 | 2.0 | 2.5 |
| 140 | 05 | MED | ANGINA PECTORIS | .5737 | 2.2 | 2.7 |
| 141 | 05 | MED | SYNCOPE & COLLAPSE W CC | .7225 | 2.9 | 3.7 |
| 142 | 05 | MED | SYNCOPE & COLLAPSE W/O CC | .5556 | 2.2 | 2.7 |
| 143 | 05 | MED | CHEST PAIN | .5403 | 1.8 | 2.2 |
| 144 | 05 | MED | OTHER CIRCULATORY SYSTEM DIAGNOSES W CC | 1.1676 | 3.8 | 5.4 |
| 145 | 05 | MED | OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC | .6308 | 2.2 | 2.8 |
| 146 | 06 | SURG | RECTAL RESECTION W CC | 2.7439 | 8.9 | 10.2 |
| 147 | 06 | SURG | RECTAL RESECTION W/O CC | 1.6272 | 6.0 | 6.6 |
| 148 | 06 | SURG | MAJOR SMALL & LARGE BOWEL PROCEDURES W CC | 3.4317 | 10.1 | 12.1 |
| 149 | 06 | SURG | MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC | 1.5645 | 6.1 | 6.6 |
| 150 | 06 | SURG | PERITONEAL ADHESIOLYSIS W CC | 2.8508 | 9.1 | 11.2 |
| 151 | 06 | SURG | PERITONEAL ADHESIOLYSIS W/O CC | 1.3404 | 4.8 | 5.9 |
| 152 | 06 | SURG | MINOR SMALL & LARGE BOWEL PROCEDURES W CC | 1.9422 | 6.8 | 8.2 |
| 153 | 06 | SURG | MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC | 1.2045 | 4.9 | 5.5 |
| 154 | 06 | SURG | STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC. | 4.1504 | 10.1 | 13.3 |
| 155 | 06 | SURG | STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC. | 1.3691 | 3.3 | 4.3 |
| 156 | 06 | SURG | *STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17. | .8413 | 6.0 | 6.0 |
| 157 | 06 | SURG | ANAL & STOMAL PROCEDURES W CC | 1.2381 | 3.9 | 5.5 |
| 158 | 06 | SURG | ANAL & STOMAL PROCEDURES W/O CC | .6630 | 2.1 | 2.6 |
| 159 | 06 | SURG | HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC. | 1.3341 | 3.8 | 5.0 |
| 160 | 06 | SURG | HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC. | .7828 | 2.2 | 2.7 |
| 161 | 06 | SURG | INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC | 1.1022 | 2.9 | 4.2 |
| 162 | 06 | SURG | INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC | .6236 | 1.6 | 2.0 |
| 163 | 06 | SURG | *HERNIA PROCEDURES AGE 0–17 | .8701 | 2.1 | 2.1 |
| 164 | 06 | SURG | APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC | 2.3776 | 7.1 | 8.4 |
| 165 | 06 | SURG | APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC | 1.2823 | 4.3 | 4.9 |
| 166 | 06 | SURG | APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC | 1.4813 | 4.0 | 5.1 |
| 167 | 06 | SURG | APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC | .8936 | 2.3 | 2.7 |
| 168 | 03 | SURG | MOUTH PROCEDURES W CC | 1.2069 | 3.2 | 4.6 |
| 169 | 03 | SURG | MOUTH PROCEDURES W/O CC | .7475 | 1.9 | 2.4 |
| 170 | 06 | SURG | OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC | 2.8739 | 7.7 | 11.2 |

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

| DRG | MDC | Type | DRG title | Relative weights | Geometric mean LOS | Arithmetic mean LOS |
|---|---|---|---|---|---|---|
| 171 | 06 | SURG | OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC | 1.1951 | 3.6 | 4.8 |
| 172 | 06 | MED | DIGESTIVE MALIGNANCY W CC | 1.3502 | 5.1 | 7.0 |
| 173 | 06 | MED | DIGESTIVE MALIGNANCY W/O CC | .7641 | 2.8 | 3.9 |
| 174 | 06 | MED | G.I. HEMORRHAGE W CC | .9981 | 3.9 | 4.8 |
| 175 | 06 | MED | G.I. HEMORRHAGE W/O CC | .5495 | 2.5 | 2.9 |
| 176 | 06 | MED | COMPLICATED PEPTIC ULCER | 1.1057 | 4.1 | 5.3 |
| 177 | 06 | MED | UNCOMPLICATED PEPTIC ULCER W CC | .8997 | 3.7 | 4.6 |
| 178 | 06 | MED | UNCOMPLICATED PEPTIC ULCER W/O CC | .6593 | 2.6 | 3.1 |
| 179 | 06 | MED | INFLAMMATORY BOWEL DISEASE | 1.0583 | 4.7 | 6.0 |
| 180 | 06 | MED | G.I. OBSTRUCTION W CC | .9426 | 4.2 | 5.4 |
| 181 | 06 | MED | G.I. OBSTRUCTION W/O CC | .5309 | 2.8 | 3.4 |
| 182 | 06 | MED | ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC. | .7922 | 3.4 | 4.4 |
| 183 | 06 | MED | ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC. | .5713 | 2.4 | 3.0 |
| 184 | 06 | MED | ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17. | .5137 | 2.5 | 3.3 |
| 185 | 03 | MED | DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17. | .8624 | 3.3 | 4.5 |
| 186 | 03 | MED | *DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17. | .3207 | 2.9 | 2.9 |
| 187 | 03 | MED | DENTAL EXTRACTIONS & RESTORATIONS | .7687 | 2.9 | 3.8 |
| 188 | 06 | MED | OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC | 1.1005 | 4.1 | 5.6 |
| 189 | 06 | MED | OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC | .5799 | 2.4 | 3.1 |
| 190 | 06 | MED | OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17 | .9912 | 4.1 | 6.0 |
| 191 | 07 | SURG | PANCREAS, LIVER & SHUNT PROCEDURES W CC | 4.3818 | 10.5 | 14.1 |
| 192 | 07 | SURG | PANCREAS, LIVER & SHUNT PROCEDURES W/O CC | 1.7866 | 5.3 | 6.6 |
| 193 | 07 | SURG | BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC. | 3.3954 | 10.3 | 12.6 |
| 194 | 07 | SURG | BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC. | 1.6141 | 5.6 | 6.8 |
| 195 | 07 | SURG | CHOLECYSTECTOMY W C.D.E. W CC | 2.9025 | 8.3 | 9.9 |
| 196 | 07 | SURG | CHOLECYSTECTOMY W C.D.E. W/O CC | 1.6543 | 4.9 | 5.7 |
| 197 | 07 | SURG | CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC. | 2.4551 | 7.2 | 8.7 |
| 198 | 07 | SURG | CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC. | 1.2323 | 3.9 | 4.5 |
| 199 | 07 | SURG | HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY | 2.3610 | 7.2 | 9.7 |
| 200 | 07 | SURG | HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY. | 3.1765 | 7.0 | 10.8 |
| 201 | 07 | SURG | OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES | 3.4002 | 10.2 | 13.9 |
| 202 | 07 | MED | CIRRHOSIS & ALCOHOLIC HEPATITIS | 1.3035 | 4.9 | 6.5 |
| 203 | 07 | MED | MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS | 1.3284 | 5.0 | 6.7 |
| 204 | 07 | MED | DISORDERS OF PANCREAS EXCEPT MALIGNANCY | 1.2030 | 4.5 | 5.9 |
| 205 | 07 | MED | DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC | 1.2072 | 4.7 | 6.3 |
| 206 | 07 | MED | DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC | .6759 | 3.0 | 3.9 |
| 207 | 07 | MED | DISORDERS OF THE BILIARY TRACT W CC | 1.1037 | 4.0 | 5.2 |
| 208 | 07 | MED | DISORDERS OF THE BILIARY TRACT W/O CC | .6532 | 2.3 | 2.9 |
| 209 | 08 | SURG | MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY. | 2.0902 | 4.6 | 5.2 |
| 210 | 08 | SURG | HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC. | 1.8074 | 6.0 | 6.9 |
| 211 | 08 | SURG | HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC. | 1.2663 | 4.6 | 5.0 |
| 212 | 08 | SURG | *HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17 | .8449 | 11.1 | 11.1 |
| 213 | 08 | SURG | AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS. | 1.7751 | 6.4 | 8.7 |
| 214 | 08 | SURG | NO LONGER VALID | .0000 | .0 | .0 |
| 215 | 08 | SURG | NO LONGER VALID | .0000 | .0 | .0 |
| 216 | 08 | SURG | BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE. | 2.1983 | 7.1 | 9.8 |
| 217 | 08 | SURG | WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS. | 2.9142 | 8.9 | 13.1 |
| 218 | 08 | SURG | LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC. | 1.5309 | 4.2 | 5.4 |
| 219 | 08 | SURG | LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC. | 1.0219 | 2.7 | 3.2 |
| 220 | 08 | SURG | *LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17. | .5828 | 5.3 | 5.3 |
| 221 | 08 | SURG | NO LONGER VALID | .0000 | .0 | .0 |

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

| DRG | MDC | Type | DRG title | Relative weights | Geometric mean LOS | Arithmetic mean LOS |
|---|---|---|---|---|---|---|
| 222 | 08 | SURG | NO LONGER VALID | .0000 | .0 | .0 |
| 223 | 08 | SURG | MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC. | .9560 | 2.0 | 2.6 |
| 224 | 08 | SURG | SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC. | .7986 | 1.7 | 2.0 |
| 225 | 08 | SURG | FOOT PROCEDURES | 1.0864 | 3.3 | 4.7 |
| 226 | 08 | SURG | SOFT TISSUE PROCEDURES W CC | 1.4749 | 4.3 | 6.3 |
| 227 | 08 | SURG | SOFT TISSUE PROCEDURES W/O CC | .8025 | 2.1 | 2.7 |
| 228 | 08 | SURG | MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC. | 1.0648 | 2.4 | 3.6 |
| 229 | 08 | SURG | HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC | .7157 | 1.8 | 2.4 |
| 230 | 08 | SURG | LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR. | 1.2592 | 3.4 | 5.1 |
| 231 | 08 | SURG | LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR. | 1.3813 | 3.2 | 4.8 |
| 232 | 08 | SURG | ARTHROSCOPY | 1.0833 | 2.3 | 3.6 |
| 233 | 08 | SURG | OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC | 2.0825 | 5.3 | 7.7 |
| 234 | 08 | SURG | OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC. | 1.2661 | 2.7 | 3.6 |
| 235 | 08 | MED | FRACTURES OF FEMUR | .7584 | 3.8 | 5.2 |
| 236 | 08 | MED | FRACTURES OF HIP & PELVIS | .7218 | 4.0 | 5.0 |
| 237 | 08 | MED | SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH | .5668 | 3.0 | 3.7 |
| 238 | 08 | MED | OSTEOMYELITIS | 1.3520 | 6.4 | 8.6 |
| 239 | 08 | MED | PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY. | .9749 | 4.9 | 6.2 |
| 240 | 08 | MED | CONNECTIVE TISSUE DISORDERS W CC | 1.2671 | 4.9 | 6.6 |
| 241 | 08 | MED | CONNECTIVE TISSUE DISORDERS W/O CC | .6166 | 3.1 | 3.9 |
| 242 | 08 | MED | SEPTIC ARTHRITIS | 1.0690 | 5.1 | 6.6 |
| 243 | 08 | MED | MEDICAL BACK PROBLEMS | .7261 | 3.7 | 4.7 |
| 244 | 08 | MED | BONE DISEASES & SPECIFIC ARTHROPATHIES W CC | .7170 | 3.7 | 4.8 |
| 245 | 08 | MED | BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC | .4842 | 2.8 | 3.6 |
| 246 | 08 | MED | NON-SPECIFIC ARTHROPATHIES | .5572 | 3.0 | 3.6 |
| 247 | 08 | MED | SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE. | .5698 | 2.6 | 3.4 |
| 248 | 08 | MED | TENDONITIS, MYOSITIS & BURSITIS | .7854 | 3.7 | 4.7 |
| 249 | 08 | MED | AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE. | .6919 | 2.6 | 3.8 |
| 250 | 08 | MED | FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC. | .6912 | 3.3 | 4.3 |
| 251 | 08 | MED | FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC. | .4993 | 2.4 | 3.0 |
| 252 | 08 | MED | *FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17 | .2531 | 1.8 | 1.8 |
| 253 | 08 | MED | FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC. | .7239 | 3.7 | 4.7 |
| 254 | 08 | MED | FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC. | .4403 | 2.6 | 3.2 |
| 255 | 08 | MED | *FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17. | .2947 | 2.9 | 2.9 |
| 256 | 08 | MED | OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES. | .7950 | 3.8 | 5.1 |
| 257 | 09 | SURG | TOTAL MASTECTOMY FOR MALIGNANCY W CC | .9100 | 2.3 | 2.8 |
| 258 | 09 | SURG | TOTAL MASTECTOMY FOR MALIGNANCY W/O CC | .7223 | 1.8 | 2.0 |
| 259 | 09 | SURG | SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC | .9083 | 1.8 | 2.8 |
| 260 | 09 | SURG | SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC | .6521 | 1.3 | 1.4 |
| 261 | 09 | SURG | BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION. | .9307 | 1.7 | 2.2 |
| 262 | 09 | SURG | BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY | .8768 | 2.7 | 3.8 |
| 263 | 09 | SURG | SKIN GRAFT & /OR DEBRID FOR SKN ULCER OR CELLULITIS W CC. | 2.1112 | 8.9 | 12.1 |
| 264 | 09 | SURG | SKIN GRAFT & /OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC. | 1.1515 | 5.4 | 7.2 |
| 265 | 09 | SURG | SKIN GRAFT & /OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC. | 1.5284 | 4.2 | 6.6 |
| 266 | 09 | SURG | SKIN GRAFT & /OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC. | .8726 | 2.4 | 3.3 |
| 267 | 09 | SURG | PERIANAL & PILONIDAL PROCEDURES | 1.0827 | 3.1 | 5.2 |
| 268 | 09 | SURG | SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES. | 1.1382 | 2.4 | 3.7 |
| 269 | 09 | SURG | OTHER SKIN, SUBCUT TISS & BREAST PROC W CC | 1.7023 | 5.8 | 8.3 |
| 270 | 09 | SURG | OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC | .7657 | 2.3 | 3.3 |

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

| DRG | MDC | Type | DRG title | Relative weights | Geometric mean LOS | Arithmetic mean LOS |
|---|---|---|---|---|---|---|
| 271 | 09 | MED | SKIN ULCERS | 1.0093 | 5.5 | 7.1 |
| 272 | 09 | MED | MAJOR SKIN DISORDERS W CC | 1.0005 | 4.8 | 6.4 |
| 273 | 09 | MED | MAJOR SKIN DISORDERS W/O CC | .6162 | 3.2 | 4.2 |
| 274 | 09 | MED | MALIGNANT BREAST DISORDERS W CC | 1.2100 | 4.9 | 7.0 |
| 275 | 09 | MED | MALIGNANT BREAST DISORDERS W/O CC | .5316 | 2.4 | 3.3 |
| 276 | 09 | MED | NON-MALIGANT BREAST DISORDERS | .6919 | 3.6 | 4.7 |
| 277 | 09 | MED | CELLULITIS AGE >17 W CC | .8398 | 4.7 | 5.7 |
| 278 | 09 | MED | CELLULITIS AGE >17 W/O CC | .5526 | 3.6 | 4.3 |
| 279 | 09 | MED | *CELLULITIS AGE 0–17 | .6626 | 4.2 | 4.2 |
| 280 | 09 | MED | TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC | .6769 | 3.2 | 4.2 |
| 281 | 09 | MED | TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC. | .4720 | 2.4 | 3.1 |
| 282 | 09 | MED | *TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17 | .2563 | 2.2 | 2.2 |
| 283 | 09 | MED | MINOR SKIN DISORDERS W CC | .6924 | 3.5 | 4.6 |
| 284 | 09 | MED | MINOR SKIN DISORDERS W/O CC | .4348 | 2.5 | 3.2 |
| 285 | 10 | SURG | AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS. | 1.9923 | 7.7 | 10.4 |
| 286 | 10 | SURG | ADRENAL & PITUITARY PROCEDURES | 2.1300 | 4.9 | 6.2 |
| 287 | 10 | SURG | SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS. | 1.8336 | 7.8 | 10.5 |
| 288 | 10 | SURG | O.R. PROCEDURES FOR OBESITY | 2.1764 | 4.6 | 5.7 |
| 289 | 10 | SURG | PARATHYROID PROCEDURES | .9892 | 2.0 | 3.1 |
| 290 | 10 | SURG | THYROID PROCEDURES | .9207 | 1.8 | 2.4 |
| 291 | 10 | SURG | THYROGLOSSAL PROCEDURES | .5503 | 1.4 | 1.6 |
| 292 | 10 | SURG | OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC | 2.4548 | 6.9 | 10.0 |
| 293 | 10 | SURG | OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC | 1.2190 | 3.5 | 4.9 |
| 294 | 10 | MED | DIABETES AGE >35 | .7596 | 3.6 | 4.7 |
| 295 | 10 | MED | DIABETES AGE 0–35 | .7555 | 2.9 | 3.9 |
| 296 | 10 | MED | NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC | .8594 | 4.0 | 5.2 |
| 297 | 10 | MED | NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC. | .5170 | 2.8 | 3.5 |
| 298 | 10 | MED | NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17 | .5309 | 2.5 | 3.2 |
| 299 | 10 | MED | INBORN ERRORS OF METABOLISM | .9442 | 4.0 | 5.6 |
| 300 | 10 | MED | ENDOCRINE DISORDERS W CC | 1.0836 | 4.7 | 6.1 |
| 301 | 10 | MED | ENDOCRINE DISORDERS W/O CC | .6108 | 2.9 | 3.7 |
| 302 | 11 | SURG | KIDNEY TRANSPLANT | 3.4495 | 7.9 | 9.4 |
| 303 | 11 | SURG | KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM. | 2.4639 | 7.0 | 8.5 |
| 304 | 11 | SURG | KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC. | 2.3371 | 6.4 | 8.9 |
| 305 | 11 | SURG | KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC. | 1.1844 | 3.1 | 3.8 |
| 306 | 11 | SURG | PROSTATECTOMY W CC | 1.2483 | 3.7 | 5.5 |
| 307 | 11 | SURG | PROSTATECTOMY W/O CC | .6424 | 1.9 | 2.3 |
| 308 | 11 | SURG | MINOR BLADDER PROCEDURES W CC | 1.6345 | 4.2 | 6.4 |
| 309 | 11 | SURG | MINOR BLADDER PROCEDURES W/O CC | .9332 | 2.0 | 2.5 |
| 310 | 11 | SURG | TRANSURETHRAL PROCEDURES W CC | 1.1174 | 3.0 | 4.4 |
| 311 | 11 | SURG | TRANSURETHRAL PROCEDURES W/O CC | .6165 | 1.6 | 1.9 |
| 312 | 11 | SURG | URETHRAL PROCEDURES, AGE >17 W CC | 1.0197 | 3.0 | 4.5 |
| 313 | 11 | SURG | URETHRAL PROCEDURES, AGE >17 W/O CC | .6464 | 1.7 | 2.1 |
| 314 | 11 | SURG | *URETHRAL PROCEDURES, AGE 0–17 | .4939 | 2.3 | 2.3 |
| 315 | 11 | SURG | OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES | 2.0511 | 4.2 | 7.5 |
| 316 | 11 | MED | RENAL FAILURE | 1.3444 | 4.9 | 6.7 |
| 317 | 11 | MED | ADMIT FOR RENAL DIALYSIS | .7439 | 2.1 | 3.2 |
| 318 | 11 | MED | KIDNEY & URINARY TRACT NEOPLASMS W CC | 1.1316 | 4.3 | 6.0 |
| 319 | 11 | MED | KIDNEY & URINARY TRACT NEOPLASMS W/O CC | .6045 | 2.1 | 2.9 |
| 320 | 11 | MED | KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC | .8625 | 4.3 | 5.4 |
| 321 | 11 | MED | KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC | .5686 | 3.2 | 3.8 |
| 322 | 11 | MED | KIDNEY & URINARY TRACT INFECTIONS AGE 0–17 | .4946 | 3.3 | 4.1 |
| 323 | 11 | MED | URINARY STONES W CC, & /OR ESW LITHOTRIPSY | .7992 | 2.4 | 3.2 |
| 324 | 11 | MED | URINARY STONES W/O CC | .4502 | 1.6 | 1.9 |
| 325 | 11 | MED | KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC. | .6468 | 3.0 | 3.9 |
| 326 | 11 | MED | KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC. | .4302 | 2.1 | 2.7 |
| 327 | 11 | MED | *KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17 | .3533 | 3.1 | 3.1 |
| 328 | 11 | MED | URETHRAL STRICTURE AGE >17 W CC | .7487 | 2.8 | 3.9 |
| 329 | 11 | MED | URETHRAL STRICTURE AGE >17 W/O CC | .5283 | 1.7 | 2.0 |
| 330 | 11 | MED | *URETHRAL STRICTURE AGE 0–17 | .3182 | 1.6 | 1.6 |
| 331 | 11 | MED | OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC | 1.0226 | 4.1 | 5.6 |

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TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

| DRG | MDC | Type | DRG title | Relative weights | Geometric mean LOS | Arithmetic mean LOS |
|---|---|---|---|---|---|---|
| 332 | 11 | MED | OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC. | .5994 | 2.5 | 3.3 |
| 333 | 11 | MED | OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17 | .8248 | 3.5 | 5.1 |
| 334 | 12 | SURG | MAJOR MALE PELVIC PROCEDURES W CC | 1.5582 | 4.2 | 4.9 |
| 335 | 12 | SURG | MAJOR MALE PELVIC PROCEDURES W/O CC | 1.1706 | 3.2 | 3.4 |
| 336 | 12 | SURG | TRANSURETHRAL PROSTATECTOMY W CC | .8873 | 2.7 | 3.5 |
| 337 | 12 | SURG | TRANSURETHRAL PROSTATECTOMY W/O CC | .6147 | 1.9 | 2.2 |
| 338 | 12 | SURG | TESTES PROCEDURES, FOR MALIGNANCY | 1.1903 | 3.5 | 5.3 |
| 339 | 12 | SURG | TESTES PROCEDURES, NON-MALIGNANCY AGE >17 | 1.0710 | 3.0 | 4.5 |
| 340 | 12 | SURG | *TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17 | .2828 | 2.4 | 2.4 |
| 341 | 12 | SURG | PENIS PROCEDURES | 1.1668 | 2.1 | 3.2 |
| 342 | 12 | SURG | CIRCUMCISION AGE >17 | .8214 | 2.5 | 3.1 |
| 343 | 12 | SURG | *CIRCUMCISION AGE 0–17 | .1537 | 1.7 | 1.7 |
| 344 | 12 | SURG | OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY. | 1.1489 | 1.6 | 2.3 |
| 345 | 12 | SURG | OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY. | .8813 | 2.6 | 3.8 |
| 346 | 12 | MED | MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC | .9783 | 4.3 | 5.8 |
| 347 | 12 | MED | MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC | .5905 | 2.4 | 3.4 |
| 348 | 12 | MED | BENIGN PROSTATIC HYPERTROPHY W CC | .7170 | 3.2 | 4.2 |
| 349 | 12 | MED | BENIGN PROSTATIC HYPERTROPHY W/O CC | .4420 | 2.0 | 2.6 |
| 350 | 12 | MED | INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM | .6987 | 3.6 | 4.4 |
| 351 | 12 | MED | *STERILIZATION, MALE | .2358 | 1.3 | 1.3 |
| 352 | 12 | MED | OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES | .6875 | 2.8 | 3.9 |
| 353 | 13 | SURG | PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY. | 1.9232 | 5.3 | 6.7 |
| 354 | 13 | SURG | UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC. | 1.5267 | 4.9 | 5.9 |
| 355 | 13 | SURG | UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC. | .9265 | 3.1 | 3.3 |
| 356 | 13 | SURG | FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES. | .7838 | 2.1 | 2.4 |
| 357 | 13 | SURG | UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY. | 2.3601 | 6.9 | 8.5 |
| 358 | 13 | SURG | UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC | 1.2247 | 3.7 | 4.4 |
| 359 | 13 | SURG | UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC | .8582 | 2.6 | 2.8 |
| 360 | 13 | SURG | VAGINA, CERVIX & VULVA PROCEDURES | .8859 | 2.4 | 3.0 |
| 361 | 13 | SURG | LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION | 1.2248 | 2.2 | 3.5 |
| 362 | 13 | SURG | *ENDOSCOPIC TUBAL INTERRUPTION | .3013 | 1.4 | 1.4 |
| 363 | 13 | SURG | D & C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY | .8178 | 2.6 | 3.5 |
| 364 | 13 | SURG | D & C, CONIZATION EXCEPT FOR MALIGNANCY | .7559 | 2.6 | 3.6 |
| 365 | 13 | SURG | OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES | 1.8502 | 5.0 | 7.3 |
| 366 | 13 | MED | MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC | 1.2498 | 4.8 | 6.8 |
| 367 | 13 | MED | MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC | .5675 | 2.4 | 3.2 |
| 368 | 13 | MED | INFECTIONS, FEMALE REPRODUCTIVE SYSTEM | 1.1249 | 5.0 | 6.7 |
| 369 | 13 | MED | MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS. | .5721 | 2.4 | 3.2 |
| 370 | 14 | SURG | CESAREAN SECTION W CC | 1.0631 | 4.4 | 5.7 |
| 371 | 14 | SURG | CESAREAN SECTION W/O CC | .7157 | 3.3 | 3.7 |
| 372 | 14 | MED | VAGINAL DELIVERY W COMPLICATING DIAGNOSES | .6069 | 2.7 | 3.5 |
| 373 | 14 | MED | VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES | .4172 | 2.0 | 2.3 |
| 374 | 14 | SURG | VAGINAL DELIVERY W STERILIZATION & /OR D & C | .7698 | 2.7 | 3.5 |
| 375 | 14 | SURG | *VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL & /OR D & C. | .6841 | 4.4 | 4.4 |
| 376 | 14 | MED | POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE. | .5314 | 2.6 | 3.5 |
| 377 | 14 | SURG | POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE. | .8870 | 2.6 | 3.9 |
| 378 | 14 | MED | ECTOPIC PREGNANCY | .7543 | 2.1 | 2.3 |
| 379 | 14 | MED | THREATENED ABORTION | .3981 | 2.0 | 3.1 |
| 380 | 14 | MED | ABORTION W/O D & C | .4867 | 1.8 | 2.2 |
| 381 | 14 | SURG | ABORTION W D & C,. ASPIRATION CURETTAGE OR HYSTEROTOMY. | .5323 | 1.5 | 2.0 |
| 382 | 14 | MED | FALSE LABOR | .1845 | 1.2 | 1.3 |
| 383 | 14 | MED | OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS. | .5082 | 2.7 | 3.9 |
| 384 | 14 | MED | OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS. | .3232 | 1.7 | 2.3 |
| 385 | 15 | MED | *NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY. | 1.3729 | 1.8 | 1.8 |

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

| DRG | MDC | Type | DRG title | Relative weights | Geometric mean LOS | Arithmetic mean LOS |
|---|---|---|---|---|---|---|
| 386 | 15 | MED | *EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE. | 4.5275 | 17.9 | 17.9 |
| 387 | 15 | MED | *PREMATURITY W MAJOR PROBLEMS | 3.0922 | 13.3 | 13.3 |
| 388 | 15 | MED | *PREMATURITY W/O MAJOR PROBLEMS | 1.8657 | 8.6 | 8.6 |
| 389 | 15 | MED | *FULL TERM NEONATE W MAJOR PROBLEMS | 1.8357 | 4.7 | 4.7 |
| 390 | 15 | MED | NEONATE W OTHER SIGNIFICANT PROBLEMS | .8865 | 2.9 | 3.7 |
| 391 | 15 | MED | *NORMAL NEWBORN | .1523 | 3.1 | 3.1 |
| 392 | 16 | SURG | SPLENECTOMY AGE >17 | 3.1818 | 7.1 | 9.5 |
| 393 | 16 | SURG | *SPLENECTOMY AGE 0–17 | 1.3449 | 9.1 | 9.1 |
| 394 | 16 | SURG | OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS. | 1.5946 | 4.1 | 6.7 |
| 395 | 16 | MED | RED BLOOD CELL DISORDERS AGE >17 | .8262 | 3.3 | 4.5 |
| 396 | 16 | MED | RED BLOOD CELL DISORDERS AGE 0–17 | 1.2128 | 2.4 | 3.7 |
| 397 | 16 | MED | COAGULATION DISORDERS | 1.2290 | 3.8 | 5.2 |
| 398 | 16 | MED | RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC | 1.2765 | 4.7 | 6.0 |
| 399 | 16 | MED | RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC | .6899 | 2.8 | 3.6 |
| 400 | 17 | SURG | LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE | 2.6272 | 5.8 | 9.1 |
| 401 | 17 | SURG | LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC. | 2.7311 | 7.8 | 11.2 |
| 402 | 17 | SURG | LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC. | 1.1002 | 2.8 | 3.9 |
| 403 | 17 | MED | LYMPHOMA & NON-ACUTE LEUKEMIA W CC | 1.7607 | 5.7 | 8.1 |
| 404 | 17 | MED | LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC | .8495 | 3.1 | 4.2 |
| 405 | 17 | MED | *ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17 | 1.9067 | 4.9 | 4.9 |
| 406 | 17 | SURG | MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC. | 2.8109 | 7.5 | 10.3 |
| 407 | 17 | SURG | MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC. | 1.3138 | 3.6 | 4.4 |
| 408 | 17 | SURG | MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC. | 1.9991 | 4.7 | 7.7 |
| 409 | 17 | MED | RADIOTHERAPY | 1.1226 | 4.4 | 5.9 |
| 410 | 17 | MED | CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS. | .9493 | 2.9 | 3.7 |
| 411 | 17 | MED | HISTORY OF MALIGNANCY W/O ENDOSCOPY | .3288 | 2.0 | 2.3 |
| 412 | 17 | MED | HISTORY OF MALIGNANCY W ENDOSCOPY | .4877 | 2.0 | 2.7 |
| 413 | 17 | MED | OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC. | 1.3665 | 5.3 | 7.3 |
| 414 | 17 | MED | OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC. | .7522 | 3.0 | 4.1 |
| 415 | 18 | SURG | O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES | 3.5919 | 10.3 | 14.2 |
| 416 | 18 | MED | SEPTICEMIA AGE >17 | 1.5287 | 5.5 | 7.4 |
| 417 | 18 | MED | SEPTICEMIA AGE 0–17 | 1.2437 | 3.9 | 6.3 |
| 418 | 18 | MED | POSTOPERATIVE & POST-TRAUMATIC INFECTIONS | 1.0076 | 4.8 | 6.2 |
| 419 | 18 | MED | FEVER OF UNKNOWN ORIGIN AGE >17 W CC | .8724 | 3.7 | 4.8 |
| 420 | 18 | MED | FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC | .6053 | 2.9 | 3.6 |
| 421 | 18 | MED | VIRAL ILLNESS AGE >17 | .6760 | 3.1 | 3.9 |
| 422 | 18 | MED | VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17 | .7893 | 2.8 | 5.1 |
| 423 | 18 | MED | OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES | 1.7317 | 5.9 | 8.2 |
| 424 | 19 | SURG | O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS. | 2.2742 | 8.7 | 13.5 |
| 425 | 19 | MED | ACUTE ADJUSTMENT REACTION & PSYCHOLOGICAL DYSFUNCTION. | .7022 | 3.0 | 4.1 |
| 426 | 19 | MED | DEPRESSIVE NEUROSES | .5303 | 3.3 | 4.6 |
| 427 | 19 | MED | NEUROSES EXCEPT DEPRESSIVE | .5673 | 3.3 | 5.0 |
| 428 | 19 | MED | DISORDERS OF PERSONALITY & IMPULSE CONTROL | .7360 | 4.4 | 7.1 |
| 429 | 19 | MED | ORGANIC DISTURBANCES & MENTAL RETARDATION | .8567 | 4.9 | 6.6 |
| 430 | 19 | MED | PSYCHOSES | .7659 | 5.9 | 8.3 |
| 431 | 19 | MED | CHILDHOOD MENTAL DISORDERS | .6434 | 4.7 | 6.6 |
| 432 | 19 | MED | OTHER MENTAL DISORDER DIAGNOSES | .6488 | 3.2 | 4.8 |
| 433 | 20 | MED | ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA | .2829 | 2.2 | 3.0 |
| 434 | 20 | MED | ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC. | .7239 | 3.9 | 5.1 |
| 435 | 20 | MED | ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC. | .4167 | 3.5 | 4.3 |
| 436 | 20 | MED | ALC/DRUG DEPENDENCE W REHABILITATION THERAPY | .7433 | 10.3 | 12.9 |
| 437 | 20 | MED | ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY. | .6576 | 7.6 | 9.0 |
| 438 | | | NO LONGER VALID | .0000 | .0 | .0 |
| 439 | 21 | SURG | SKIN GRAFTS FOR INJURIES | 1.7255 | 5.3 | 8.2 |
| 440 | 21 | SURG | WOUND DEBRIDEMENTS FOR INJURIES | 1.9063 | 5.8 | 8.9 |

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TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

| DRG | MDC | Type | DRG title | Relative weights | Geometric mean LOS | Arithmetic mean LOS |
|---|---|---|---|---|---|---|
| 441 | 21 | SURG | HAND PROCEDURES FOR INJURIES | .9443 | 2.2 | 3.2 |
| 442 | 21 | SURG | OTHER O.R. PROCEDURES FOR INJURIES W CC | 2.3391 | 5.4 | 8.2 |
| 443 | 21 | SURG | OTHER O.R. PROCEDURES FOR INJURIES W/O CC | .9979 | 2.5 | 3.4 |
| 444 | 21 | MED | TRAUMATIC INJURY AGE >17 W CC | .7225 | 3.2 | 4.2 |
| 445 | 21 | MED | TRAUMATIC INJURY AGE >17 W/O CC | .5054 | 2.4 | 3.0 |
| 446 | 21 | MED | *TRAUMATIC INJURY AGE 0–17 | .2955 | 2.4 | 2.4 |
| 447 | 21 | MED | ALLERGIC REACTIONS AGE >17 | .5160 | 1.9 | 2.5 |
| 448 | 21 | MED | *ALLERGIC REACTIONS AGE 0–17 | .0972 | 2.9 | 2.9 |
| 449 | 21 | MED | POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC | .8073 | 2.6 | 3.7 |
| 450 | 21 | MED | POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC | .4409 | 1.6 | 2.1 |
| 451 | 21 | MED | *POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17 | .2625 | 2.1 | 2.1 |
| 452 | 21 | MED | COMPLICATIONS OF TREATMENT W CC | 1.0135 | 3.5 | 5.0 |
| 453 | 21 | MED | COMPLICATIONS OF TREATMENT W/O CC | .4998 | 2.2 | 2.8 |
| 454 | 21 | MED | OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC | .8586 | 3.2 | 4.6 |
| 455 | 21 | MED | OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC | .4661 | 2.0 | 2.6 |
| 456 | | | NO LONGER VALID | .0000 | .0 | .0 |
| 457 | | | NO LONGER VALID | .0000 | .0 | .0 |
| 458 | | | NO LONGER VALID | .0000 | .0 | .0 |
| 459 | | | NO LONGER VALID | .0000 | .0 | .0 |
| 460 | | | NO LONGER VALID | .0000 | .0 | .0 |
| 461 | 23 | SURG | O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES. | 1.2045 | 2.4 | 4.6 |
| 462 | 23 | MED | REHABILITATION | 1.2426 | 9.3 | 11.7 |
| 463 | 23 | MED | SIGNS & SYMPTOMS W CC | .6922 | 3.3 | 4.3 |
| 464 | 23 | MED | SIGNS & SYMPTOMS W/O CC | .4771 | 2.4 | 3.1 |
| 465 | 23 | MED | AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS. | .5777 | 2.1 | 3.4 |
| 466 | 23 | MED | AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS. | .6777 | 2.2 | 3.9 |
| 467 | 23 | MED | OTHER FACTORS INFLUENCING HEALTH STATUS | .5112 | 2.3 | 4.1 |
| 468 | | | EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS. | 3.6423 | 9.2 | 13.0 |
| 469 | | | **PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS | .0000 | .0 | .0 |
| 470 | | | **UNGROUPABLE | .0000 | .0 | .0 |
| 471 | 08 | SURG | BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY. | 3.1978 | 5.0 | 5.7 |
| 472 | | | NO LONGER VALID | .0000 | .0 | .0 |
| 473 | 17 | SURG | ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17 | 3.5861 | 7.6 | 13.1 |
| 474 | | | NO LONGER VALID | .0000 | .0 | .0 |
| 475 | 04 | MED | RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT. | 3.6949 | 8.1 | 11.3 |
| 476 | | SURG | PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS. | 2.2633 | 8.4 | 11.6 |
| 477 | | SURG | NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS. | 1.8270 | 5.4 | 8.2 |
| 478 | 05 | SURG | OTHER VASCULAR PROCEDURES W CC | 2.3372 | 5.0 | 7.3 |
| 479 | 05 | SURG | OTHER VASCULAR PROCEDURES W/O CC | 1.4333 | 2.8 | 3.6 |
| 480 | PRE | SURG | LIVER TRANSPLANT | 9.5064 | 14.6 | 19.2 |
| 481 | PRE | SURG | BONE MARROW TRANSPLANT | 8.7719 | 24.1 | 27.1 |
| 482 | PRE | SURG | TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES | 3.5738 | 9.9 | 12.8 |
| 483 | PRE | SURG | TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES. | 15.8415 | 33.4 | 40.7 |
| 484 | 24 | SURG | CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA | 5.6100 | 9.0 | 13.3 |
| 485 | 24 | SURG | LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TRA. | 3.0519 | 7.6 | 9.4 |
| 486 | 24 | SURG | OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA. | 4.9156 | 8.1 | 12.2 |
| 487 | 24 | MED | OTHER MULTIPLE SIGNIFICANT TRAUMA | 2.0199 | 5.5 | 7.7 |
| 488 | 25 | SURG | HIV W EXTENSIVE O.R. PROCEDURE | 4.5503 | 11.6 | 17.0 |
| 489 | 25 | MED | HIV W MAJOR RELATED CONDITION | 1.7496 | 6.0 | 8.6 |
| 490 | 25 | MED | HIV W OR W/O OTHER RELATED CONDITION | .9715 | 3.7 | 5.1 |
| 491 | 08 | SURG | MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY. | 1.6661 | 2.9 | 3.5 |
| 492 | 17 | MED | CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS. | 4.2524 | 10.9 | 16.1 |
| 493 | 07 | SURG | LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC | 1.8180 | 4.3 | 5.7 |
| 494 | 07 | SURG | LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC | 1.0374 | 2.0 | 2.5 |
| 495 | PRE | SURG | LUNG TRANSPLANT | 8.5947 | 13.1 | 20.3 |
| 496 | 08 | SURG | COMBINED ANTERIOR/POSTERIOR SPINAL FUSION | 5.5796 | 7.8 | 10.0 |
| 497 | 08 | SURG | SPINAL FUSION W CC | 2.9469 | 4.9 | 6.2 |

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

| DRG | MDC | Type | DRG title | Relative weights | Geometric mean LOS | Arithmetic mean LOS |
|---|---|---|---|---|---|---|
| 498 ... | 08 | SURG | SPINAL FUSION W/O CC | 1.9077 | 2.8 | 3.4 |
| 499 ... | 08 | SURG | BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC | 1.4590 | 3.6 | 4.8 |
| 500 ... | 08 | SURG | BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC | .9811 | 2.2 | 2.7 |
| 501 ... | 08 | SURG | KNEE PROCEDURES W PDX OF INFECTION W CC | 2.6350 | 8.4 | 10.6 |
| 502 ... | 08 | SURG | KNEE PROCEDURES W PDX OF INFECTION W/O CC | 1.4327 | 4.9 | 6.0 |
| 503 ... | 08 | SURG | KNEE PROCEDURES W/O PDX OF INFECTION | 1.2151 | 3.1 | 4.0 |
| 504 ... | 22 | SURG | EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT | 12.4664 | 23.9 | 30.1 |
| 505 ... | 22 | MED | EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT | 2.0389 | 2.5 | 4.7 |
| 506 ... | 22 | SURG | FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA. | 4.4971 | 13.0 | 17.6 |
| 507 ... | 22 | SURG | FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA. | 1.8438 | 6.6 | 9.2 |
| 508 ... | 22 | MED | FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA. | 1.3119 | 5.1 | 7.2 |
| 509 ... | 22 | MED | FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA. | .8154 | 4.1 | 6.2 |
| 510 ... | 22 | MED | NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA | 1.4130 | 5.2 | 7.9 |
| 511 ... | 22 | MED | NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA | .6568 | 3.1 | 4.5 |

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
**DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
NOTE: GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
NOTE: ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 6A.—NEW DIAGNOSIS CODES

| Diagnosis code | Description | CC | MDC | DRG |
|---|---|---|---|---|
| 007.5 | Cyclosporiasis | N | 6 | 182, 183, 184 |
| 082.40 | Unspecified ehrlichiosis | N | 18 | 423 |
| 082.41 | Ehrlichiosis Chafiensis (E. Chafiensis) | N | 18 | 423 |
| 082.49 | Other ehrlichiosis | N | 18 | 423 |
| 285.21 | Anemia in end-stage renal disease | N | 16 | 395, 396 |
| 285.22 | Anemia in neoplastic disease | N | 16 | 395, 396 |
| 285.29 | Anemia of other chronic illness | N | 16 | 395, 396 |
| 294.10 | Dementia in conditions classified elsewhere without behavioral disturbance | N | 19 | 429 |
| 294.11 | Dementia in conditions classified elsewhere with behavioral disturbance | N | 19 | 429 |
| 372.81 | Conjunctivochalasis | N | 2 | 46, 47, 48 |
| 372.89 | Other disorders of conjunctiva | N | 2 | 46, 47, 48 |
| 477.1 | Allergic rhinitis, due to food | N | 3 | 68, 69, 70 |
| 493.02 | Extrinsic asthma, with acute exacerbation | Y | 4 | 96, 97, 98 |
| 493.12 | Intrinsic asthma, with acute exacerbation | Y | 4 | 96, 97, 98 |
| 493.22 | Chronic obstructive asthma, with acute exacerbation | Y | 4 | 88 |
| 493.92 | Unspecified asthma, with acute exacerbation | Y | 4 | 96, 97, 98 |
| 494.0 | Bronchiectasis without acute exacerbation | N | 4 | 88 |
| 494.1 | Bronchiectasis with acute exacerbation | Y | 4 | 88 |
| 558.3 | Allergic gastroenteritis and colitis | N | 6 | 182, 183, 184 |
| 600.0 | Hypertrophy (benign) of prostate | N | 12 | 348, 349 |
| 600.1 | Nodular prostate | N | 12 | 348, 349 |
| 600.2 | Benign localized hyperplasia of prostate | N | 12 | 348, 349 |
| 600.3 | Cyst of prostate | N | 12 | 348, 349 |
| 600.9 | Unspecified hyperplasia of prostate | N | 12 | 348, 349 |
| 645.10 | Post term pregnancy, unspecified as to episode of care or not applicable | N | 14 | 469 |
| 645.11 | Post term pregnancy, delivered, with or without mention of antepartum condition. | N | 14 | 370, 371, 372, 373, 374, 375 |
| 645.13 | Post term pregnancy, antepartum condition or complication | N | 14 | 383, 384 |
| 645.20 | Prolonged pregnancy, unspecified as to episode of care or not applicable | N | 14 | 469 |
| 645.21 | Prolonged pregnancy, delivered, with or without mention of antepartum condition. | N | 14 | 370, 371, 372, 373, 374, 375 |
| 645.23 | Prolonged pregnancy, antepartum condition or complication | N | 14 | 383, 384 |
| 692.75 | Disseminated superficial actinic porokeratosis (DSAP) | N | 9 | 283, 284 |
| 707.10 | Unspecified ulcer of lower limb | Y | 9 | 263, 264, 271 |
| 707.11 | Ulcer of thigh | Y | 9 | 263, 264, 271 |
| 707.12 | Ulcer of calf | Y | 9 | 263, 264, 271 |
| 707.13 | Ulcer of ankle | Y | 9 | 263, 264, 271 |
| 707.14 | Ulcer of heel and midfoot | Y | 9 | 263, 264, 271 |
| 707.15 | Ulcer of other part of foot | Y | 9 | 263, 264, 271 |
| 707.19 | Ulcer of other part of lower limb | Y | 9 | 263, 264, 271 |

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TABLE 6A.—NEW DIAGNOSIS CODES—Continued

| Diagnosis code | Description | CC | MDC | DRG |
|---|---|---|---|---|
| 727.83 | Plica syndrome | N | 8 | 248 |
| 781.91 | Loss of height | N | 1 | 34, 35 |
| 781.92 | Abnormal posture | N | 1 | 34, 35 |
| 781.99 | Other symptoms involving nervous and musculoskeletal systems | N | 1 | 34, 35 |
| 783.21 | Loss of weight | N | 10 | 296, 297, 298 |
| 783.22 | Underweight | N | 10 | 296, 297, 298 |
| 783.40 | Unspecified lack of normal physiological development | N | 10 | 296, 297, 298 |
| 783.41 | Failure to thrive | N | 10 | 296, 297, 298 |
| 783.42 | Delayed milestones | N | 10 | 296, 297, 298 |
| 783.43 | Short stature | N | 10 | 296, 297, 298 |
| 783.7 | Adult failure to thrive | N | 10 | 296, 297, 298 |
| 790.01 | Precipitous drop in hematocrit | N | 16 | 395, 396 |
| 790.09 | Other abnormality of red blood cells | N | 16 | 395, 396 |
| 792.5 | Cloudy (hemodialysis) (peritoneal) dialysis effluent | N | 23 | 463, 464 |
| 995.7 | Other adverse food reactions, not elsewhere classified | N | 21 | 454, 455 |
| 996.87 | Complications of transplanted organ, intestine | Y | 21 | 452, 453 |
| V15.01 | Allergy to peanuts | N | 23 | 467 |
| V15.02 | Allergy to milk products | N | 23 | 467 |
| V15.03 | Allergy to eggs | N | 23 | 467 |
| V15.04 | Allergy to seafood | N | 23 | 467 |
| V15.05 | Allergy to other foods | N | 23 | 467 |
| V15.06 | Allergy to insects | N | 23 | 467 |
| V15.07 | Allergy to latex | N | 23 | 467 |
| V15.08 | Allergy to radiographic dye | N | 23 | 467 |
| V15.09 | Other allergy, other than to medicinal agents | N | 23 | 467 |
| V21.30 | Unspecified low birth weight status | N | 23 | 467 |
| V21.31 | Low birth weight status, less than 500 grams | N | 23 | 467 |
| V21.32 | Low birth weight status, 500–999 grams | N | 23 | 467 |
| V21.33 | Low birth weight status, 1000–1499 grams | N | 23 | 467 |
| V21.34 | Low birth weight status, 1500–1999 grams | N | 23 | 467 |
| V21.35 | Low birth weight status, 2000–2500 grams | N | 23 | 467 |
| V26.21 | Fertility testing | N | 23 | 467 |
| V26.22 | Aftercare following sterilization reversal | N | 23 | 467 |
| V26.29 | Other investigation and testing | N | 23 | 467 |
| V42.84 | Organ or tissue replaced by transplant, intestines | Y | 23 | 467 |
| V45.74 | Acquired absence of organ, other parts of urinary tract | N | 23 | 467 |
| V45.75 | Acquired absence of organ, stomach | N | 23 | 467 |
| V45.76 | Acquired absence of organ, lung | N | 23 | 467 |
| V45.77 | Acquired absence of organ, genital organs | N | 23 | 467 |
| V45.78 | Acquired absence of organ, eye | N | 23 | 467 |
| V45.79 | Other acquired absence of organ | N | 23 | 467 |
| V49.81 | Postmenopausal status (age-related) (natural) | N | 23 | 467 |
| V49.89 | Other specified conditions influencing health status | N | 23 | 467 |
| V56.31 | Encounter for adequacy testing for hemodialysis | N | 11 | 317 |
| V56.32 | Encounter for adequacy testing for peritoneal dialysis | N | 11 | 317 |
| V58.83 | Encounter for therapeutic drug monitoring | N | 23 | 465, 466 |
| V67.00 | Follow-up examination, following unspecified surgery | N | 23 | 465, 466 |
| V67.01 | Following surgery, follow-up vaginal pap smear | N | 23 | 465, 466 |
| V67.09 | Follow-up examination, following other surgery | N | 23 | 465, 466 |
| V71.81 | Observation for suspected abuse and neglect | N | 23 | 467 |
| V71.89 | Observation for other specified suspected conditions | N | 23 | 467 |
| V76.46 | Special screening for malignant neoplasms, ovary | N | 23 | 467 |
| V76.47 | Special screening for malignant neoplasms, Vagina | N | 23 | 467 |
| V76.50 | Special screening for malignant neoplasms, unspecified intestine | N | 23 | 467 |
| V76.51 | Special screening for malignant neoplasms, colon | N | 23 | 467 |
| V76.52 | Special screening for malignant neoplasms, small intestine | N | 23 | 467 |
| V76.81 | Special screening for malignant neoplasms, nervous system | N | 23 | 467 |
| V76.89 | Special screening for other malignant neoplasm | N | 23 | 467 |
| V77.91 | Screening for lipoid disorders | N | 23 | 467 |
| V77.99 | Other and unspecified endocrine, nutritional, metabolic, and immunity disorders. | N | 23 | 467 |
| V82.81 | Special screening for osteoporosis | N | 23 | 467 |
| V82.89 | Special screening for other specified conditions | N | 23 | 467 |

TABLE 6B.—NEW PROCEDURE CODES

| Procedure code | Description | OR | MDC | DRG |
|---|---|---|---|---|
| 39.71 | Endovascular implantation of graph in abdominal aorta | Y | 5 | 110, 111 |
| | | | 11 | 315 |
| | | | 21 | 442, 443 |
| | | | 24 | 486 |
| 39.79 | Other endovascular graft repair of aneurysm | Y | 1 | 1, 2, 3 |
| | | | 5 | 110, 111 |
| | | | 11 | 315 |
| | | | 21 | 442, 443 |
| | | | 24 | 486 |
| 41.07 | Autologous hematopoietic stem cell transplant with purging | Y | PRE | 481 |
| 41.08 | Allogeneic hematopoietic stem cell transplant with purging | Y | PRE | 481 |
| 41.09 | Autologous bone marrow transplant with purging | Y | PRE | 481 |
| 46.97 | Transplant of intestine | Y | 6 | 148, 149 |
| | | | 7 | 201 |
| | | | 17 | 400, 406, 407 |
| | | | 21 | 442, 443 |
| | | | 24 | 486 |
| 60.96 | Transurethral destruction of prostate tissue by microwave thermotherapy | Y | 11 | 306, 307 |
| | | | 12 | 336, 337 |
| | | | UNR | 476 |
| 60.97 | Other transurethral destruction of prostate tissue by other thermotherapy | Y | 11 | 306, 307 |
| | | | 12 | 336, 337 |
| | | | UNR | 476 |
| 99.75 | Administration of neuroprotective agent | N | | |

TABLE 6C.—INVALID DIAGNOSIS CODES

| Diagnosis code | Description | CC | MDC | DRG |
|---|---|---|---|---|
| 294.1 | Dementia in conditions classified elsewhere | N | 19 | 429 |
| 372.8 | Other disorders of conjunctiva | N | 2 | 46, 47, 48 |
| 494 | Bronchiectasis | Y | 4 | 88 |
| 600 | Hyperplasia of prostate | N | 12 | 348, 349 |
| 645.00 | Prolonged pregnancy, unspecified as to episode of care or not applicable | N | 14 | 469 |
| 645.01 | Prolonged pregnancy, delivered, with or without mention of antepartum condition. | N | 14 | 370, 371, 372, 373, 374, 375 |
| 645.03 | Prolonged pregnancy, antepartum condition or complication | N | 14 | 383, 384 |
| 707.1 | Ulcer of lower limb, except decubitus | Y | 9 | 263, 264, 271 |
| 781.9 | Other symptoms involving nervous and musculoskeletal systems | N | 1 | 34, 35 |
| 783.2 | Abnormal loss of weight | N | 10 | 296, 297, 298 |
| 783.4 | Lack of expected normal physiological development | N | 10 | 296, 297, 298 |
| 790.0 | Abnormality of red blood cells | N | 16 | 395, 396 |
| V15.0 | Allergy, other than to medicinal agents | N | 23 | 467 |
| V26.2 | Investigation and testing | N | 23 | 467 |
| V49.8 | Other specified problems influencing health status | N | 23 | 467 |
| V67.0 | Follow-up examination following surgery | N | 23 | 465, 466 |
| V71.8 | Observation for other specified suspected conditions | N | 23 | 467 |
| V76.8 | Special screening for malignant neoplasms, other neoplasm | N | 23 | 467 |
| V77.9 | Other and unspecified endocrine, nutritional, metabolic, and immunity disorders. | N | 23 | 467 |
| V82.8 | Special screening for other specified conditions | N | 23 | 467 |

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TABLE 6D.—REVISED DIAGNOSIS CODE TITLES

| Diagnosis code | Description | CC | MDC | DRG |
|---|---|---|---|---|
| 564.1 | Irritable bowel syndrome | N | 6 | 182, 183, 184 |
| V26.3 | Genetic counseling and testing | N | 23 | 467 |
| V76.49 | Special screening for malignant, other sites | N | 23 | 467 |

TABLE 6E.—REVISED PROCEDURE CODES

| Procedure code | Description | OR | MDC | DRG |
|---|---|---|---|---|
| 41.01 | Autologous bone marrow transplant without purging | Y | PRE | 481 |
| 41.04 | Autologous hematopoietic stem cell transplant without purging | Y | PRE | 481 |
| 41.05 | Allogeneic hematopoietic stem cell transplant without purging | Y | PRE | 481 |
| 86.59 | Closure of skin and subcutaneous tissue other sites | N | | |

## TABLE 6F.—ADDITIONS TO THE CC EXCLUSIONS LIST

CCs that are added to the list are in Table 6F—Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| *0075 | 2818 | 70713 | 49312 | 01170 | 4870 | 01152 | 4829 |
| 00841 | 2824 | 70714 | 49322 | 01171 | 4950 | 01153 | 4830 |
| 00842 | 28260 | 70715 | 49392 | 01172 | 4951 | 01154 | 4831 |
| 00843 | 28261 | 70719 | *49391 | 01173 | 4952 | 01155 | 4838 |
| 00844 | 28262 | *4871 | 49302 | 01174 | 4953 | 01156 | 4841 |
| 00845 | 28263 | 4941 | 49312 | 01175 | 4954 | 01160 | 4843 |
| 00846 | 28269 | *49300 | 49322 | 01176 | 4955 | 01161 | 4845 |
| 00847 | 2830 | 49302 | 49392 | 01180 | 4956 | 01162 | 4846 |
| 00849 | 28310 | 49312 | *49392 | 01181 | 4957 | 01163 | 4847 |
| *01790 | 28311 | 49322 | 49301 | 01182 | 4958 | 01164 | 4848 |
| 4941 | 28319 | 49392 | 49302 | 01183 | 4959 | 01165 | 485 |
| *01791 | 2832 | *49301 | 49311 | 01184 | 496 | 01166 | 486 |
| 4941 | 2839 | 49302 | 49312 | 01185 | 5060 | 01170 | 4870 |
| *01792 | 2840 | 49312 | 49320 | 01186 | 5061 | 01171 | 4941 |
| 4941 | 2848 | 49322 | 49321 | 01190 | 5070 | 01172 | 4950 |
| *01793 | 2849 | 49392 | 49322 | 01191 | 5071 | 01173 | 4951 |
| 4941 | 2850 | *49302 | 49391 | 01192 | 5078 | 01174 | 4952 |
| *01794 | 2851 | 49301 | 49392 | 01193 | 5080 | 01175 | 4953 |
| 4941 | *29410 | 49302 | *4940 | 01194 | 5081 | 01176 | 4954 |
| *01795 | 2910 | 49311 | 01100 | 01195 | 515 | 01180 | 4955 |
| 4941 | 2911 | 49312 | 01101 | 01196 | 5160 | 01181 | 4956 |
| *01796 | 2912 | 49320 | 01102 | 01200 | 5161 | 01182 | 4957 |
| 4941 | 2913 | 49321 | 01103 | 01201 | 5162 | 01183 | 4958 |
| *28521 | 2914 | 49322 | 01104 | 01202 | 5163 | 01184 | 4959 |
| 2800 | 29181 | 49391 | 01105 | 01203 | 5168 | 01185 | 496 |
| 2814 | 29189 | 49392 | 01106 | 01204 | 5169 | 01186 | 5060 |
| 2818 | 2919 | *49310 | 01110 | 01205 | 5171 | 01190 | 5061 |
| 2824 | 2920 | 49302 | 01111 | 01206 | 5172 | 01191 | 5070 |
| 28260 | 29211 | 49312 | 01112 | 01210 | 5178 | 01192 | 5071 |
| 28261 | 29212 | 49322 | 01113 | 01211 | 74861 | 01193 | 5078 |
| 28262 | 2922 | 49392 | 01114 | 01212 | *4941 | 01194 | 5080 |
| 28263 | 29281 | *49311 | 01115 | 01213 | 01100 | 01195 | 5081 |
| 28269 | 29282 | 49302 | 01116 | 01214 | 01101 | 01196 | 515 |
| 2830 | 29283 | 49312 | 01120 | 01215 | 01102 | 01200 | 5160 |
| 28310 | 29284 | 49322 | 01121 | 01216 | 01103 | 01201 | 5161 |
| 28311 | 29289 | 49392 | 01122 | 0310 | 01104 | 01202 | 5162 |
| 28319 | 2929 | *49312 | 01123 | 11505 | 01105 | 01203 | 5163 |
| 2832 | 29381 | 49301 | 01124 | 11515 | 01106 | 01204 | 5168 |
| 2839 | 29382 | 49302 | 01125 | 1304 | 01110 | 01205 | 5169 |
| 2840 | 29383 | 49311 | 01126 | 1363 | 01111 | 01206 | 5171 |
| 2848 | 29384 | 49312 | 01130 | 481 | 01112 | 01210 | 5172 |
| 2849 | *29411 | 49320 | 01131 | 4820 | 01113 | 01211 | 5178 |
| 2850 | 2910 | 49321 | 01132 | 4821 | 01114 | 01212 | 74861 |
| 2851 | 2911 | 49322 | 01133 | 4822 | 01115 | 01213 | *496 |
| *28522 | 2912 | 49391 | 01134 | 48230 | 01116 | 01214 | 4941 |
| 2800 | 2913 | 49392 | 01135 | 48231 | 01120 | 01215 | *5061 |
| 2814 | 2914 | *49320 | 01136 | 48232 | 01121 | 01216 | 4941 |
| 2818 | 29181 | 49302 | 01140 | 48239 | 01122 | 0310 | *5064 |
| 2824 | 29189 | 49312 | 01141 | 48240 | 01123 | 11505 | 4941 |
| 28260 | 2919 | 49322 | 01142 | 48241 | 01124 | 11515 | *5069 |
| 28261 | 2920 | 49392 | 01143 | 48249 | 01125 | 1304 | 4941 |
| 28262 | 29211 | *49321 | 01144 | 48281 | 01126 | 1363 | *5178 |
| 28263 | 29212 | 49302 | 01145 | 48282 | 01130 | 481 | 49302 |
| 28269 | 2922 | 49312 | 01146 | 48283 | 01131 | 4820 | 49312 |
| 2830 | 29281 | 49322 | 01150 | 48284 | 01132 | 4821 | 49322 |
| 28310 | 29282 | 49392 | 01151 | 48289 | 01133 | 4822 | 49392 |
| 28311 | 29283 | *49322 | 01152 | 4829 | 01134 | 48230 | *51889 |
| 28319 | 29284 | 49301 | 01153 | 4830 | 01135 | 48231 | 49302 |
| 2832 | 29289 | 49302 | 01154 | 4831 | 01136 | 48232 | 49312 |
| 2839 | 2929 | 49311 | 01155 | 4838 | 01140 | 48239 | 49322 |
| 2840 | 29381 | 49312 | 01156 | 4841 | 01141 | 48240 | 49392 |
| 2848 | 29382 | 49320 | 01160 | 4843 | 01142 | 48241 | *5198 |
| 2849 | 29383 | 49321 | 01161 | 4845 | 01143 | 48249 | 49302 |
| 2850 | 29384 | 49322 | 01162 | 4846 | 01144 | 48281 | 49312 |
| 2851 | *44023 | 49391 | 01163 | 4847 | 01145 | 48282 | 49322 |
| *28529 | 70710 | 49392 | 01164 | 4848 | 01146 | 48283 | 49392 |
| 2800 | 70711 | *49390 | 01165 | 485 | 01150 | 48284 | *5199 |
| 2814 | 70712 | 49302 | 01166 | 486 | 01151 | 48289 | 49302 |

## TABLE 6F.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

CCs that are added to the list are in Table 6F—Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

| | | |
|---|---|---|
| 49312 | *70712 | V421 |
| 49322 | 70710 | V426 |
| 49392 | 70711 | V427 |
| *5583 | 70712 | V4281 |
| 00841 | 70713 | V4282 |
| 00842 | 70714 | V4283 |
| 00843 | 70715 | V4289 |
| 00844 | 70719 | V432 |
| 00845 | *70713 | *99689 |
| 00846 | 70710 | V4284 |
| 00847 | 70711 | *99791 |
| 00849 | 70712 | 99687 |
| *6000 | 70713 | *99799 |
| 5960 | 70714 | 99687 |
| 5996 | 70715 | *V4284 |
| 6010 | 70719 | V4284 |
| 6012 | *70714 | *V4289 |
| 6013 | 70710 | V4284 |
| 6021 | 70711 | *V429 |
| 78820 | 70712 | V4284 |
| 78829 | 70713 | |
| *6001 | 70714 | |
| 5960 | 70715 | |
| 5996 | 70719 | |
| 6010 | *70715 | |
| 6012 | 70710 | |
| 6013 | 70711 | |
| 6021 | 70712 | |
| 78820 | 70713 | |
| 78829 | 70714 | |
| *6002 | 70715 | |
| 5960 | 70719 | |
| 5996 | *70719 | |
| 6010 | 70710 | |
| 6012 | 70711 | |
| 6013 | 70712 | |
| 6021 | 70713 | |
| 78820 | 70714 | |
| 78829 | 70715 | |
| *6003 | 70719 | |
| 5960 | *7078 | |
| 5996 | 70710 | |
| 6010 | 70711 | |
| 6012 | 70712 | |
| 6013 | 70713 | |
| 6021 | 70714 | |
| 78820 | 70715 | |
| 78829 | 70719 | |
| *6009 | *7079 | |
| 5960 | 70710 | |
| 5996 | 70711 | |
| 6010 | 70712 | |
| 6012 | 70713 | |
| 6013 | 70714 | |
| 6021 | 70715 | |
| 78820 | 70719 | |
| 78829 | *7098 | |
| *70710 | 70710 | |
| 70710 | 70711 | |
| 70711 | 70712 | |
| 70712 | 70713 | |
| 70713 | 70714 | |
| 70714 | 70715 | |
| 70715 | 70719 | |
| 70719 | *74861 | |
| *70711 | 4941 | |
| 70710 | *99680 | |
| 70711 | 99687 | |
| 70712 | V4284 | |
| 70713 | *99687 | |
| 70714 | 99680 | |
| 70715 | 99687 | |
| 70719 | V420 | |

## TABLE 6G.—DELECTIONS TO THE CC EXCLUSIONS LIST

CCs that are deleted from the list are in Table 6G—Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

| | | | |
|---|---|---|---|
| *01790 | 01135 | 48231 | 6021 |
| 494 | 01136 | 48232 | 78820 |
| *01791 | 01140 | 48239 | 78829 |
| 494 | 01141 | 48240 | *7071 |
| *01792 | 01142 | 48241 | 7071 |
| 494 | 01143 | 48249 | *7078 |
| *01793 | 01144 | 48281 | 7071 |
| 494 | 01145 | 48282 | *7079 |
| *01794 | 01146 | 48283 | 7071 |
| 494 | 01150 | 48284 | *7098 |
| 01795 | 01151 | 48289 | 7071 |
| 494 | 01152 | 4829 | *74861 |
| *01796 | 01153 | 4830 | 494 |
| 494 | 01154 | 4831 | |
| *2941 | 01155 | 4838 | |
| 2910 | 01156 | 4841 | |
| 2911 | 01160 | 4843 | |
| 2912 | 01161 | 4845 | |
| 2913 | 01162 | 4846 | |
| 2914 | 01163 | 4847 | |
| 29181 | 01164 | 4848 | |
| 29189 | 01165 | 485 | |
| 2919 | 01166 | 486 | |
| 2920 | 01170 | 4870 | |
| 29211 | 01171 | 494 | |
| 29212 | 01172 | 4950 | |
| 2922 | 01173 | 4951 | |
| 29281 | 01174 | 4952 | |
| 29282 | 01175 | 4953 | |
| 29283 | 01176 | 4954 | |
| 29284 | 01180 | 4955 | |
| 29289 | 01181 | 4956 | |
| 2929 | 01182 | 4957 | |
| 29381 | 01183 | 4958 | |
| 29382 | 01184 | 4959 | |
| 29383 | 01185 | 496 | |
| 29384 | 01186 | 5060 | |
| *44023 | 01190 | 5061 | |
| 7071 | 01191 | 5070 | |
| *4871 | 01192 | 5071 | |
| 494 | 01193 | 5078 | |
| *494 | 01194 | 5080 | |
| 01100 | 01195 | 5081 | |
| 01101 | 01196 | 515 | |
| 01102 | 01200 | 5160 | |
| 01103 | 01201 | 5161 | |
| 01104 | 01202 | 5162 | |
| 01105 | 01203 | 5163 | |
| 01106 | 01204 | 5168 | |
| 01110 | 01205 | 5169 | |
| 01111 | 01206 | 5171 | |
| 01112 | 01210 | 5172 | |
| 01113 | 01211 | 5178 | |
| 01114 | 01212 | 74861 | |
| 01115 | 01213 | *496 | |
| 01116 | 01214 | 494 | |
| 01120 | 01215 | *5061 | |
| 01121 | 01216 | 494 | |
| 01122 | 0310 | *5064 | |
| 01123 | 11505 | 494 | |
| 01124 | 11515 | *5069 | |
| 01125 | 1304 | 494 | |
| 01126 | 1363 | *600 | |
| 01130 | 481 | 5960 | |
| 01131 | 4820 | 5996 | |
| 01132 | 4821 | 6010 | |
| 01133 | 4822 | 6012 | |
| 01134 | 48230 | 6013 | |

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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY

[FY99 MEDPAR Update 12/99 Grouper V17.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 1 | 35069 | 9.0962 | 2 | 4 | 6 | 12 | 19 |
| 2 | 7064 | 9.6692 | 3 | 5 | 7 | 12 | 19 |
| 4 | 6022 | 7.3316 | 1 | 2 | 5 | 9 | 16 |
| 5 | 95151 | 3.2852 | 1 | 1 | 2 | 3 | 7 |
| 6 | 340 | 3.2412 | 1 | 1 | 2 | 4 | 7 |
| 7 | 12054 | 10.2745 | 2 | 4 | 7 | 13 | 21 |
| 8 | 3662 | 3.0145 | 1 | 1 | 2 | 4 | 7 |
| 9 | 1623 | 6.4898 | 1 | 3 | 5 | 8 | 12 |
| 10 | 18297 | 6.5874 | 2 | 3 | 5 | 8 | 13 |
| 11 | 3300 | 4.1488 | 1 | 2 | 3 | 5 | 8 |
| 12 | 44849 | 6.0417 | 2 | 3 | 4 | 7 | 11 |
| 13 | 6185 | 5.0928 | 2 | 3 | 4 | 6 | 9 |
| 14 | 330036 | 5.9583 | 2 | 3 | 5 | 7 | 11 |
| 15 | 139608 | 3.6293 | 1 | 2 | 3 | 5 | 7 |
| 16 | 11101 | 6.1222 | 2 | 3 | 5 | 7 | 12 |
| 17 | 3437 | 3.3750 | 1 | 2 | 3 | 4 | 6 |
| 18 | 25899 | 5.5415 | 2 | 3 | 4 | 7 | 10 |
| 19 | 7951 | 3.7393 | 1 | 2 | 3 | 5 | 7 |
| 20 | 5735 | 10.2382 | 3 | 5 | 8 | 13 | 20 |
| 21 | 1356 | 6.8754 | 2 | 3 | 5 | 9 | 13 |
| 22 | 2501 | 4.9384 | 2 | 2 | 4 | 6 | 9 |
| 23 | 8311 | 4.2224 | 1 | 2 | 3 | 5 | 8 |
| 24 | 52472 | 5.0144 | 1 | 2 | 4 | 6 | 10 |
| 25 | 24380 | 3.3056 | 1 | 2 | 3 | 4 | 6 |
| 26 | 20 | 3.2000 | 1 | 1 | 2 | 3 | 7 |
| 27 | 3567 | 5.0962 | 1 | 1 | 3 | 6 | 11 |
| 28 | 10686 | 6.2281 | 1 | 3 | 5 | 8 | 13 |
| 29 | 3910 | 3.7133 | 1 | 2 | 3 | 5 | 7 |
| 31 | 3209 | 4.2312 | 1 | 2 | 3 | 5 | 8 |
| 32 | 1545 | 2.7398 | 1 | 1 | 2 | 3 | 5 |
| 34 | 19531 | 5.1937 | 1 | 2 | 4 | 6 | 10 |
| 35 | 5177 | 3.4199 | 1 | 2 | 3 | 4 | 6 |
| 36 | 4223 | 1.3640 | 1 | 1 | 1 | 1 | 2 |
| 37 | 1476 | 3.6917 | 1 | 1 | 3 | 5 | 8 |
| 38 | 115 | 2.5304 | 1 | 1 | 1 | 3 | 5 |
| 39 | 1152 | 1.9106 | 1 | 1 | 1 | 2 | 4 |
| 40 | 1755 | 3.5801 | 1 | 1 | 2 | 4 | 8 |
| 41 | 1 | 4.0000 | 4 | 4 | 4 | 4 | 4 |
| 42 | 2698 | 2.2279 | 1 | 1 | 1 | 3 | 5 |
| 43 | 83 | 3.3012 | 1 | 2 | 3 | 4 | 7 |
| 44 | 1226 | 4.9625 | 2 | 3 | 4 | 6 | 9 |
| 45 | 2490 | 3.2743 | 1 | 2 | 3 | 4 | 6 |
| 46 | 2940 | 4.5871 | 1 | 2 | 4 | 6 | 9 |
| 47 | 1183 | 3.2975 | 1 | 1 | 3 | 4 | 6 |
| 49 | 2228 | 4.9677 | 1 | 2 | 4 | 6 | 9 |
| 50 | 2569 | 1.9844 | 1 | 1 | 1 | 2 | 3 |
| 51 | 264 | 2.5606 | 1 | 1 | 1 | 3 | 6 |
| 52 | 196 | 2.1276 | 1 | 1 | 1 | 2 | 5 |
| 53 | 2569 | 3.6734 | 1 | 1 | 2 | 4 | 8 |
| 54 | 4 | 1.5000 | 1 | 1 | 1 | 1 | 3 |
| 55 | 1560 | 2.8865 | 1 | 1 | 1 | 3 | 6 |
| 56 | 526 | 3.0646 | 1 | 1 | 2 | 4 | 6 |
| 57 | 579 | 3.9862 | 1 | 1 | 2 | 4 | 8 |
| 59 | 111 | 2.4414 | 1 | 1 | 2 | 2 | 5 |
| 60 | 2 | 1.0000 | 1 | 1 | 1 | 1 | 1 |
| 61 | 208 | 4.8894 | 1 | 1 | 2 | 6 | 13 |
| 62 | 2 | 3.5000 | 2 | 2 | 5 | 5 | 5 |
| 63 | 3168 | 4.2601 | 1 | 2 | 3 | 5 | 9 |
| 64 | 3162 | 6.4756 | 1 | 2 | 4 | 8 | 14 |
| 65 | 31728 | 2.8963 | 1 | 1 | 2 | 4 | 5 |
| 66 | 6938 | 3.1721 | 1 | 1 | 3 | 4 | 6 |
| 67 | 477 | 3.5241 | 1 | 2 | 3 | 4 | 7 |
| 68 | 13401 | 4.1595 | 1 | 2 | 3 | 5 | 8 |
| 69 | 4228 | 3.2774 | 1 | 2 | 3 | 4 | 6 |
| 70 | 33 | 2.9091 | 1 | 2 | 3 | 4 | 5 |
| 71 | 105 | 3.8667 | 1 | 2 | 3 | 6 | 7 |
| 72 | 812 | 3.3017 | 1 | 2 | 3 | 4 | 6 |
| 73 | 6402 | 4.3380 | 1 | 2 | 3 | 5 | 8 |
| 75 | 39147 | 9.9967 | 3 | 5 | 8 | 12 | 20 |
| 76 | 39851 | 11.2556 | 3 | 5 | 9 | 14 | 21 |

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR Update 12/99 Grouper V17.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 77 | 2375 | 4.8880 | 1 | 2 | 4 | 7 | 10 |
| 78 | 30492 | 6.9444 | 3 | 5 | 6 | 8 | 11 |
| 79 | 183121 | 8.4551 | 3 | 4 | 7 | 11 | 16 |
| 80 | 8291 | 5.6652 | 2 | 3 | 5 | 7 | 10 |
| 81 | 5 | 9.2000 | 2 | 2 | 10 | 10 | 19 |
| 82 | 63683 | 6.9428 | 2 | 3 | 5 | 9 | 14 |
| 83 | 6462 | 5.5305 | 2 | 3 | 4 | 7 | 10 |
| 84 | 1494 | 3.3681 | 1 | 2 | 3 | 4 | 6 |
| 85 | 20066 | 6.3638 | 2 | 3 | 5 | 8 | 12 |
| 86 | 1923 | 3.7889 | 1 | 2 | 3 | 5 | 7 |
| 87 | 62959 | 6.2450 | 1 | 3 | 5 | 8 | 12 |
| 88 | 403808 | 5.2212 | 2 | 3 | 4 | 7 | 9 |
| 89 | 524107 | 6.0245 | 2 | 3 | 5 | 7 | 11 |
| 90 | 51271 | 4.2271 | 2 | 3 | 4 | 5 | 7 |
| 91 | 49 | 3.3061 | 1 | 2 | 3 | 4 | 5 |
| 92 | 13763 | 6.2465 | 2 | 3 | 5 | 8 | 12 |
| 93 | 1543 | 3.9942 | 1 | 2 | 3 | 5 | 7 |
| 94 | 12332 | 6.3027 | 2 | 3 | 5 | 8 | 12 |
| 95 | 1561 | 3.6887 | 1 | 2 | 3 | 5 | 7 |
| 96 | 64893 | 4.7277 | 2 | 3 | 4 | 6 | 8 |
| 97 | 31521 | 3.6879 | 1 | 2 | 3 | 5 | 7 |
| 98 | 18 | 4.6667 | 1 | 1 | 3 | 6 | 7 |
| 99 | 18166 | 3.2204 | 1 | 1 | 2 | 4 | 6 |
| 100 | 7230 | 2.2047 | 1 | 1 | 2 | 3 | 4 |
| 101 | 19700 | 4.4248 | 1 | 2 | 3 | 5 | 8 |
| 102 | 4970 | 2.7360 | 1 | 1 | 2 | 3 | 5 |
| 103 | 442 | 48.6041 | 9 | 12 | 29 | 64 | 112 |
| 104 | 33069 | 11.6306 | 3 | 6 | 10 | 15 | 22 |
| 105 | 29348 | 9.2675 | 4 | 5 | 7 | 11 | 17 |
| 106 | 3800 | 11.2111 | 5 | 7 | 9 | 13 | 20 |
| 107 | 90499 | 10.3531 | 5 | 7 | 9 | 12 | 17 |
| 108 | 5234 | 10.5728 | 3 | 5 | 8 | 13 | 20 |
| 109 | 61584 | 7.7338 | 4 | 5 | 6 | 9 | 13 |
| 110 | 54902 | 9.4567 | 2 | 5 | 8 | 11 | 18 |
| 111 | 7109 | 5.4788 | 2 | 4 | 5 | 7 | 8 |
| 112 | 60796 | 3.7594 | 1 | 1 | 3 | 5 | 8 |
| 113 | 44201 | 12.0562 | 3 | 6 | 9 | 15 | 24 |
| 114 | 8478 | 8.2536 | 2 | 4 | 7 | 10 | 16 |
| 115 | 14032 | 8.4152 | 1 | 4 | 7 | 11 | 16 |
| 116 | 308071 | 3.7287 | 1 | 1 | 3 | 5 | 8 |
| 117 | 3404 | 4.0523 | 1 | 1 | 2 | 5 | 9 |
| 118 | 6649 | 2.8117 | 1 | 1 | 1 | 3 | 6 |
| 119 | 1445 | 4.8374 | 1 | 1 | 3 | 6 | 12 |
| 120 | 36651 | 8.1192 | 1 | 2 | 5 | 10 | 18 |
| 121 | 163449 | 6.4387 | 2 | 3 | 5 | 8 | 12 |
| 122 | 80682 | 3.8317 | 1 | 2 | 3 | 5 | 7 |
| 123 | 40870 | 4.5742 | 1 | 1 | 3 | 6 | 11 |
| 124 | 134743 | 4.3708 | 1 | 2 | 3 | 6 | 8 |
| 125 | 74923 | 2.7862 | 1 | 1 | 2 | 4 | 5 |
| 126 | 5131 | 11.6936 | 3 | 6 | 9 | 14 | 22 |
| 127 | 680654 | 5.3354 | 2 | 3 | 4 | 7 | 10 |
| 128 | 11526 | 5.8044 | 3 | 4 | 5 | 7 | 9 |
| 129 | 4173 | 2.8447 | 1 | 1 | 1 | 3 | 7 |
| 130 | 89048 | 5.8037 | 2 | 3 | 5 | 7 | 10 |
| 131 | 26830 | 4.3785 | 1 | 3 | 4 | 6 | 7 |
| 132 | 152932 | 3.0474 | 1 | 1 | 2 | 4 | 6 |
| 133 | 7573 | 2.3956 | 1 | 1 | 2 | 3 | 4 |
| 134 | 32813 | 3.2987 | 1 | 2 | 3 | 4 | 6 |
| 135 | 7100 | 4.4668 | 1 | 2 | 3 | 5 | 9 |
| 136 | 1170 | 2.9120 | 1 | 1 | 2 | 4 | 6 |
| 138 | 191436 | 4.0071 | 1 | 2 | 3 | 5 | 8 |
| 139 | 77194 | 2.5069 | 1 | 1 | 2 | 3 | 5 |
| 140 | 76478 | 2.7136 | 1 | 1 | 2 | 3 | 5 |
| 141 | 85791 | 3.7068 | 1 | 2 | 3 | 5 | 7 |
| 142 | 42652 | 2.6766 | 1 | 1 | 2 | 3 | 5 |
| 143 | 185700 | 2.1667 | 1 | 1 | 2 | 3 | 4 |
| 144 | 78800 | 5.3171 | 1 | 2 | 4 | 7 | 11 |
| 145 | 6884 | 2.8117 | 1 | 1 | 2 | 4 | 6 |
| 146 | 11215 | 10.1815 | 5 | 7 | 9 | 12 | 17 |
| 147 | 2418 | 6.6208 | 3 | 5 | 6 | 8 | 10 |

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR Update 12/99 Grouper V17.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 148 | 134272 | 12.1101 | 5 | 7 | 10 | 14 | 22 |
| 149 | 17551 | 6.6488 | 4 | 5 | 6 | 8 | 10 |
| 150 | 20300 | 11.1450 | 4 | 7 | 9 | 14 | 20 |
| 151 | 4479 | 5.9272 | 2 | 3 | 5 | 8 | 10 |
| 152 | 4441 | 8.1743 | 3 | 5 | 7 | 10 | 14 |
| 153 | 1914 | 5.4713 | 3 | 4 | 5 | 7 | 8 |
| 154 | 29346 | 13.2615 | 4 | 7 | 10 | 16 | 25 |
| 155 | 6052 | 4.3354 | 1 | 2 | 3 | 6 | 8 |
| 156 | 2 | 28.0000 | 28 | 28 | 28 | 28 | 28 |
| 157 | 8196 | 5.4926 | 1 | 2 | 4 | 7 | 11 |
| 158 | 4393 | 2.6271 | 1 | 1 | 2 | 3 | 5 |
| 159 | 16421 | 5.0258 | 1 | 2 | 4 | 6 | 10 |
| 160 | 10974 | 2.7204 | 1 | 1 | 2 | 4 | 5 |
| 161 | 11483 | 4.1695 | 1 | 2 | 3 | 5 | 9 |
| 162 | 7018 | 1.9577 | 1 | 1 | 1 | 2 | 4 |
| 163 | 8 | 2.7500 | 1 | 1 | 3 | 3 | 3 |
| 164 | 4720 | 8.4019 | 4 | 5 | 7 | 10 | 15 |
| 165 | 1942 | 4.8553 | 2 | 3 | 5 | 6 | 8 |
| 166 | 3307 | 5.0889 | 2 | 3 | 4 | 6 | 9 |
| 167 | 2896 | 2.7099 | 1 | 2 | 2 | 3 | 5 |
| 168 | 1511 | 4.5963 | 1 | 2 | 3 | 6 | 9 |
| 169 | 802 | 2.4214 | 1 | 1 | 2 | 3 | 5 |
| 170 | 11287 | 11.1669 | 2 | 5 | 8 | 14 | 23 |
| 171 | 1125 | 4.7911 | 1 | 2 | 4 | 6 | 9 |
| 172 | 30485 | 6.9710 | 2 | 3 | 5 | 9 | 14 |
| 173 | 2492 | 3.8435 | 1 | 1 | 3 | 5 | 8 |
| 174 | 236408 | 4.8222 | 2 | 3 | 4 | 6 | 9 |
| 175 | 28026 | 2.9414 | 1 | 2 | 3 | 4 | 5 |
| 176 | 15607 | 5.2668 | 2 | 3 | 4 | 6 | 10 |
| 177 | 9489 | 4.5521 | 2 | 2 | 4 | 6 | 8 |
| 178 | 3568 | 3.1373 | 1 | 2 | 3 | 4 | 6 |
| 179 | 12177 | 6.0139 | 2 | 3 | 5 | 7 | 11 |
| 180 | 85083 | 5.3978 | 2 | 3 | 4 | 7 | 10 |
| 181 | 24320 | 3.4134 | 1 | 2 | 3 | 4 | 6 |
| 182 | 232501 | 4.3626 | 1 | 2 | 3 | 5 | 8 |
| 183 | 78432 | 2.9618 | 1 | 1 | 2 | 4 | 6 |
| 184 | 98 | 3.2449 | 1 | 2 | 2 | 4 | 5 |
| 185 | 4300 | 4.4963 | 1 | 2 | 3 | 6 | 9 |
| 186 | 2 | 4.5000 | 2 | 2 | 7 | 7 | 7 |
| 187 | 722 | 3.8130 | 1 | 2 | 3 | 5 | 8 |
| 188 | 74594 | 5.5723 | 1 | 2 | 4 | 7 | 11 |
| 189 | 11097 | 3.1388 | 1 | 1 | 2 | 4 | 6 |
| 190 | 69 | 6.0290 | 2 | 3 | 4 | 6 | 11 |
| 191 | 9367 | 14.0878 | 4 | 7 | 10 | 18 | 28 |
| 192 | 974 | 6.5842 | 2 | 4 | 6 | 8 | 11 |
| 193 | 5669 | 12.5490 | 5 | 7 | 10 | 15 | 23 |
| 194 | 755 | 6.7497 | 2 | 4 | 6 | 8 | 12 |
| 195 | 4869 | 9.9029 | 4 | 6 | 8 | 12 | 17 |
| 196 | 1190 | 5.6832 | 2 | 4 | 5 | 7 | 9 |
| 197 | 20225 | 8.7363 | 3 | 5 | 7 | 11 | 16 |
| 198 | 6079 | 4.4996 | 2 | 3 | 4 | 6 | 8 |
| 199 | 1724 | 9.6456 | 3 | 4 | 8 | 12 | 19 |
| 200 | 1071 | 10.7404 | 2 | 4 | 8 | 14 | 22 |
| 201 | 1465 | 13.8314 | 3 | 6 | 11 | 18 | 27 |
| 202 | 25595 | 6.5031 | 2 | 3 | 5 | 8 | 13 |
| 203 | 28958 | 6.6940 | 2 | 3 | 5 | 9 | 13 |
| 204 | 54818 | 5.8581 | 2 | 3 | 4 | 7 | 11 |
| 205 | 22519 | 6.2964 | 2 | 3 | 5 | 8 | 12 |
| 206 | 1778 | 3.8335 | 1 | 2 | 3 | 5 | 7 |
| 207 | 30768 | 5.1176 | 1 | 2 | 4 | 6 | 10 |
| 208 | 9616 | 2.8974 | 1 | 1 | 2 | 4 | 6 |
| 209 | 342301 | 5.1232 | 3 | 3 | 4 | 6 | 8 |
| 210 | 126555 | 6.8082 | 3 | 4 | 6 | 8 | 11 |
| 211 | 31227 | 4.9152 | 3 | 4 | 4 | 6 | 7 |
| 212 | 7 | 3.0000 | 2 | 2 | 2 | 3 | 4 |
| 213 | 8882 | 8.7299 | 2 | 4 | 7 | 11 | 17 |
| 216 | 5822 | 9.7583 | 2 | 4 | 7 | 12 | 19 |
| 217 | 17573 | 13.0833 | 3 | 5 | 9 | 16 | 28 |
| 218 | 21344 | 5.3594 | 2 | 3 | 4 | 6 | 10 |
| 219 | 19125 | 3.2444 | 1 | 2 | 3 | 4 | 5 |

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR Update 12/99 Grouper V17.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 220 | 2 | 2.5000 | 1 | 1 | 4 | 4 | 4 |
| 223 | 17434 | 2.5812 | 1 | 1 | 2 | 3 | 5 |
| 224 | 7953 | 2.0448 | 1 | 1 | 2 | 3 | 4 |
| 225 | 5575 | 4.7146 | 1 | 2 | 3 | 6 | 10 |
| 226 | 4985 | 6.2828 | 1 | 2 | 4 | 8 | 13 |
| 227 | 4416 | 2.6594 | 1 | 1 | 2 | 3 | 5 |
| 228 | 2437 | 3.5568 | 1 | 1 | 2 | 4 | 8 |
| 229 | 1080 | 2.3944 | 1 | 1 | 2 | 3 | 5 |
| 230 | 2102 | 5.1237 | 1 | 2 | 3 | 6 | 10 |
| 231 | 10618 | 4.8282 | 1 | 2 | 3 | 6 | 10 |
| 232 | 565 | 3.5894 | 1 | 1 | 2 | 4 | 9 |
| 233 | 4542 | 7.6797 | 2 | 3 | 5 | 9 | 16 |
| 234 | 2666 | 3.5709 | 1 | 2 | 3 | 4 | 7 |
| 235 | 5334 | 5.1245 | 1 | 2 | 4 | 6 | 10 |
| 236 | 38564 | 4.8516 | 1 | 3 | 4 | 6 | 9 |
| 237 | 1576 | 3.7386 | 1 | 2 | 3 | 5 | 7 |
| 238 | 7594 | 8.4664 | 3 | 4 | 6 | 10 | 16 |
| 239 | 51719 | 6.2172 | 2 | 3 | 5 | 8 | 12 |
| 240 | 11850 | 6.5754 | 2 | 3 | 5 | 8 | 13 |
| 241 | 2953 | 3.9401 | 1 | 2 | 3 | 5 | 7 |
| 242 | 2477 | 6.5268 | 2 | 3 | 5 | 8 | 12 |
| 243 | 84831 | 4.7022 | 1 | 3 | 4 | 6 | 9 |
| 244 | 11891 | 4.7802 | 1 | 2 | 4 | 6 | 9 |
| 245 | 4929 | 3.7206 | 1 | 2 | 3 | 4 | 7 |
| 246 | 1342 | 3.6461 | 1 | 2 | 3 | 4 | 7 |
| 247 | 15047 | 3.4443 | 1 | 1 | 3 | 4 | 7 |
| 248 | 9336 | 4.7321 | 1 | 2 | 4 | 6 | 9 |
| 249 | 10719 | 3.7768 | 1 | 1 | 3 | 5 | 8 |
| 250 | 3509 | 4.2485 | 1 | 2 | 3 | 5 | 8 |
| 251 | 2351 | 2.9872 | 1 | 1 | 3 | 4 | 5 |
| 252 | 1 | 2.0000 | 2 | 2 | 2 | 2 | 2 |
| 253 | 18878 | 4.6841 | 1 | 3 | 4 | 6 | 9 |
| 254 | 10341 | 3.2080 | 1 | 2 | 3 | 4 | 6 |
| 255 | 1 | 1.0000 | 1 | 1 | 1 | 1 | 1 |
| 256 | 5803 | 5.1260 | 1 | 2 | 4 | 6 | 10 |
| 257 | 16795 | 2.8263 | 1 | 2 | 2 | 3 | 5 |
| 258 | 15710 | 2.0006 | 1 | 1 | 2 | 2 | 3 |
| 259 | 3717 | 2.7896 | 1 | 1 | 1 | 3 | 6 |
| 260 | 4780 | 1.4749 | 1 | 1 | 1 | 2 | 2 |
| 261 | 1730 | 2.1624 | 1 | 1 | 1 | 2 | 4 |
| 262 | 673 | 3.8098 | 1 | 1 | 3 | 5 | 7 |
| 263 | 24527 | 11.5534 | 3 | 5 | 8 | 14 | 23 |
| 264 | 3877 | 6.9010 | 2 | 3 | 5 | 8 | 14 |
| 265 | 3868 | 6.6099 | 1 | 2 | 4 | 8 | 14 |
| 266 | 2527 | 3.3174 | 1 | 1 | 2 | 4 | 7 |
| 267 | 255 | 5.2353 | 1 | 1 | 3 | 6 | 12 |
| 268 | 896 | 3.6953 | 1 | 1 | 2 | 4 | 8 |
| 269 | 8856 | 8.2516 | 2 | 3 | 6 | 10 | 16 |
| 270 | 2734 | 3.2579 | 1 | 1 | 2 | 4 | 7 |
| 271 | 21090 | 7.1019 | 2 | 4 | 6 | 8 | 13 |
| 272 | 5465 | 6.3420 | 2 | 3 | 5 | 8 | 12 |
| 273 | 1341 | 4.2118 | 1 | 2 | 3 | 5 | 8 |
| 274 | 2368 | 6.9548 | 2 | 3 | 5 | 9 | 14 |
| 275 | 224 | 3.3125 | 1 | 1 | 2 | 4 | 7 |
| 276 | 1076 | 4.6515 | 1 | 2 | 4 | 6 | 9 |
| 277 | 83707 | 5.7178 | 2 | 3 | 5 | 7 | 10 |
| 278 | 28524 | 4.3359 | 2 | 3 | 4 | 5 | 7 |
| 279 | 4 | 4.0000 | 2 | 2 | 4 | 5 | 5 |
| 280 | 15047 | 4.1980 | 1 | 2 | 3 | 5 | 8 |
| 281 | 6682 | 3.0805 | 1 | 1 | 3 | 4 | 6 |
| 283 | 5322 | 4.5569 | 1 | 2 | 3 | 6 | 9 |
| 284 | 1852 | 3.1960 | 1 | 1 | 2 | 4 | 6 |
| 285 | 6125 | 10.4263 | 3 | 5 | 8 | 13 | 20 |
| 286 | 1995 | 6.2000 | 2 | 3 | 5 | 7 | 11 |
| 287 | 5974 | 10.5387 | 3 | 5 | 8 | 13 | 20 |
| 288 | 2252 | 5.7234 | 2 | 3 | 4 | 6 | 9 |
| 289 | 4326 | 3.1248 | 1 | 1 | 2 | 3 | 7 |
| 290 | 8214 | 2.4329 | 1 | 1 | 2 | 2 | 4 |
| 291 | 57 | 1.6316 | 1 | 1 | 1 | 2 | 2 |
| 292 | 4945 | 9.9610 | 2 | 4 | 7 | 13 | 21 |
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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR Update 12/99 Grouper V17.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 293 | 321 | 4.9346 | 1 | 2 | 4 | 7 | 10 |
| 294 | 83924 | 4.7128 | 1 | 2 | 4 | 6 | 9 |
| 295 | 3464 | 3.8467 | 1 | 2 | 3 | 5 | 7 |
| 296 | 232274 | 5.2398 | 2 | 3 | 4 | 6 | 10 |
| 297 | 40842 | 3.4744 | 1 | 2 | 3 | 4 | 6 |
| 298 | 106 | 3.1887 | 1 | 2 | 2 | 4 | 6 |
| 299 | 1052 | 5.5542 | 1 | 2 | 4 | 6 | 11 |
| 300 | 15582 | 6.1317 | 2 | 3 | 5 | 8 | 12 |
| 301 | 3101 | 3.7004 | 1 | 2 | 3 | 5 | 7 |
| 302 | 7525 | 9.4141 | 4 | 5 | 7 | 11 | 16 |
| 303 | 19405 | 8.4850 | 4 | 5 | 7 | 10 | 15 |
| 304 | 11967 | 8.8979 | 2 | 4 | 7 | 11 | 18 |
| 305 | 2852 | 3.8443 | 1 | 2 | 3 | 5 | 7 |
| 306 | 7925 | 5.4829 | 1 | 2 | 3 | 7 | 12 |
| 307 | 2226 | 2.2668 | 1 | 1 | 2 | 3 | 4 |
| 308 | 7673 | 6.3836 | 1 | 2 | 4 | 8 | 14 |
| 309 | 3947 | 2.4880 | 1 | 1 | 2 | 3 | 5 |
| 310 | 23701 | 4.3591 | 1 | 2 | 3 | 5 | 9 |
| 311 | 8200 | 1.8902 | 1 | 1 | 1 | 2 | 3 |
| 312 | 1570 | 4.5166 | 1 | 1 | 3 | 6 | 10 |
| 313 | 633 | 2.1153 | 1 | 1 | 1 | 3 | 4 |
| 314 | 2 | 1.0000 | 1 | 1 | 1 | 1 | 1 |
| 315 | 28524 | 7.4721 | 1 | 1 | 5 | 10 | 17 |
| 316 | 96406 | 6.6791 | 2 | 3 | 5 | 8 | 13 |
| 317 | 1230 | 3.2114 | 1 | 1 | 2 | 3 | 6 |
| 318 | 5544 | 5.9975 | 1 | 3 | 4 | 7 | 12 |
| 319 | 460 | 2.8630 | 1 | 1 | 2 | 4 | 6 |
| 320 | 181708 | 5.3834 | 2 | 3 | 4 | 7 | 10 |
| 321 | 28174 | 3.8452 | 1 | 2 | 3 | 5 | 7 |
| 322 | 69 | 4.0580 | 1 | 2 | 3 | 5 | 7 |
| 323 | 16353 | 3.2183 | 1 | 1 | 2 | 4 | 7 |
| 324 | 7365 | 1.8789 | 1 | 1 | 1 | 2 | 3 |
| 325 | 7788 | 3.8947 | 1 | 2 | 3 | 5 | 7 |
| 326 | 2414 | 2.6582 | 1 | 1 | 2 | 3 | 5 |
| 327 | 7 | 9.2857 | 1 | 1 | 2 | 4 | 13 |
| 328 | 718 | 3.9053 | 1 | 1 | 3 | 5 | 8 |
| 329 | 104 | 2.0481 | 1 | 1 | 1 | 3 | 4 |
| 331 | 43233 | 5.5300 | 1 | 2 | 4 | 7 | 11 |
| 332 | 4795 | 3.2715 | 1 | 1 | 2 | 4 | 7 |
| 333 | 296 | 5.0507 | 1 | 2 | 3 | 6 | 10 |
| 334 | 12132 | 4.8938 | 2 | 3 | 4 | 6 | 8 |
| 335 | 11393 | 3.4104 | 2 | 3 | 3 | 4 | 5 |
| 336 | 40525 | 3.5229 | 1 | 2 | 3 | 4 | 7 |
| 337 | 30540 | 2.1759 | 1 | 1 | 2 | 3 | 3 |
| 338 | 1641 | 5.2956 | 1 | 2 | 3 | 7 | 12 |
| 339 | 1503 | 4.5269 | 1 | 1 | 3 | 6 | 10 |
| 340 | 1 | 1.0000 | 1 | 1 | 1 | 1 | 1 |
| 341 | 3836 | 3.2018 | 1 | 1 | 2 | 3 | 7 |
| 342 | 775 | 3.1174 | 1 | 2 | 2 | 4 | 6 |
| 344 | 3934 | 2.2567 | 1 | 1 | 1 | 2 | 4 |
| 345 | 1272 | 3.7673 | 1 | 1 | 2 | 5 | 8 |
| 346 | 4622 | 5.8090 | 1 | 3 | 4 | 7 | 11 |
| 347 | 396 | 3.3712 | 1 | 1 | 2 | 4 | 7 |
| 348 | 3105 | 4.2029 | 1 | 2 | 3 | 5 | 8 |
| 349 | 589 | 2.6027 | 1 | 1 | 2 | 3 | 5 |
| 350 | 6157 | 4.3937 | 2 | 2 | 4 | 5 | 8 |
| 352 | 646 | 3.8498 | 1 | 2 | 3 | 5 | 8 |
| 353 | 2631 | 6.7081 | 3 | 3 | 5 | 8 | 13 |
| 354 | 8209 | 5.8725 | 3 | 3 | 4 | 7 | 10 |
| 355 | 5698 | 3.3243 | 2 | 3 | 3 | 4 | 5 |
| 356 | 25961 | 2.4179 | 1 | 1 | 2 | 3 | 4 |
| 357 | 5767 | 8.4947 | 3 | 4 | 7 | 10 | 16 |
| 358 | 21628 | 4.3926 | 2 | 3 | 3 | 5 | 7 |
| 359 | 29103 | 2.8141 | 2 | 2 | 3 | 3 | 4 |
| 360 | 16133 | 2.9634 | 1 | 2 | 2 | 3 | 5 |
| 361 | 420 | 3.4524 | 1 | 1 | 2 | 4 | 7 |
| 362 | 1 | 1.0000 | 1 | 1 | 1 | 1 | 1 |
| 363 | 3079 | 3.4784 | 1 | 2 | 2 | 3 | 7 |
| 364 | 1611 | 3.5847 | 1 | 1 | 2 | 5 | 7 |
| 365 | 1917 | 7.3005 | 2 | 3 | 5 | 9 | 16 |

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR Update 12/99 Grouper V17.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 366 | 4226 | 6.7283 | 1 | 3 | 5 | 8 | 14 |
| 367 | 472 | 3.1462 | 1 | 1 | 2 | 4 | 7 |
| 368 | 2861 | 6.7113 | 2 | 3 | 5 | 8 | 13 |
| 369 | 2832 | 3.1963 | 1 | 1 | 2 | 4 | 6 |
| 370 | 1141 | 5.7160 | 3 | 3 | 4 | 5 | 9 |
| 371 | 1174 | 3.6567 | 2 | 3 | 3 | 4 | 5 |
| 372 | 916 | 3.4509 | 2 | 2 | 2 | 3 | 5 |
| 373 | 3916 | 2.2829 | 1 | 2 | 2 | 2 | 3 |
| 374 | 125 | 3.4880 | 2 | 2 | 2 | 3 | 5 |
| 375 | 6 | 2.6667 | 2 | 2 | 2 | 3 | 3 |
| 376 | 254 | 3.4803 | 1 | 2 | 2 | 4 | 7 |
| 377 | 53 | 3.8679 | 1 | 1 | 2 | 5 | 8 |
| 378 | 151 | 2.3444 | 1 | 1 | 2 | 3 | 4 |
| 379 | 355 | 3.1127 | 1 | 1 | 2 | 3 | 7 |
| 380 | 74 | 2.1622 | 1 | 1 | 2 | 2 | 4 |
| 381 | 176 | 1.9545 | 1 | 1 | 1 | 2 | 3 |
| 382 | 39 | 1.3077 | 1 | 1 | 1 | 1 | 2 |
| 383 | 1545 | 3.8913 | 1 | 1 | 3 | 5 | 8 |
| 384 | 123 | 2.3415 | 1 | 1 | 1 | 2 | 4 |
| 389 | 8 | 5.8750 | 3 | 3 | 4 | 8 | 10 |
| 390 | 19 | 3.7368 | 1 | 1 | 3 | 5 | 7 |
| 392 | 2508 | 9.4769 | 3 | 4 | 7 | 12 | 19 |
| 393 | 1 | 8.0000 | 8 | 8 | 8 | 8 | 8 |
| 394 | 1724 | 6.6810 | 1 | 2 | 4 | 8 | 15 |
| 395 | 80464 | 4.5303 | 1 | 2 | 3 | 6 | 9 |
| 396 | 17 | 3.7059 | 1 | 1 | 2 | 5 | 6 |
| 397 | 18071 | 5.2277 | 1 | 2 | 4 | 7 | 10 |
| 398 | 18051 | 5.9638 | 2 | 3 | 5 | 7 | 11 |
| 399 | 1614 | 3.5520 | 1 | 2 | 3 | 4 | 7 |
| 400 | 6845 | 9.0488 | 1 | 3 | 6 | 12 | 20 |
| 401 | 5827 | 11.1903 | 2 | 5 | 8 | 14 | 23 |
| 402 | 1483 | 3.9400 | 1 | 1 | 3 | 5 | 8 |
| 403 | 33277 | 8.0524 | 2 | 3 | 6 | 10 | 17 |
| 404 | 4491 | 4.2224 | 1 | 2 | 3 | 6 | 9 |
| 406 | 2546 | 10.2859 | 3 | 4 | 7 | 13 | 21 |
| 407 | 695 | 4.4086 | 1 | 2 | 4 | 6 | 8 |
| 408 | 2246 | 7.7061 | 1 | 2 | 5 | 10 | 18 |
| 409 | 3281 | 5.9113 | 2 | 3 | 4 | 6 | 11 |
| 410 | 40863 | 3.7201 | 1 | 2 | 3 | 5 | 6 |
| 411 | 13 | 2.3077 | 1 | 1 | 2 | 4 | 4 |
| 412 | 29 | 2.7241 | 1 | 1 | 2 | 3 | 6 |
| 413 | 6149 | 7.2477 | 2 | 3 | 6 | 9 | 14 |
| 414 | 712 | 4.0941 | 1 | 2 | 3 | 5 | 9 |
| 415 | 39856 | 14.1713 | 4 | 6 | 11 | 18 | 28 |
| 416 | 195783 | 7.3483 | 2 | 4 | 6 | 9 | 14 |
| 417 | 32 | 6.1875 | 1 | 2 | 4 | 7 | 13 |
| 418 | 22097 | 6.1239 | 2 | 3 | 5 | 7 | 11 |
| 419 | 15859 | 4.8212 | 2 | 2 | 4 | 6 | 9 |
| 420 | 3091 | 3.5642 | 1 | 2 | 3 | 4 | 6 |
| 421 | 12242 | 3.8638 | 1 | 2 | 3 | 5 | 7 |
| 422 | 96 | 5.2708 | 1 | 2 | 2 | 5 | 7 |
| 423 | 8073 | 8.1416 | 2 | 3 | 6 | 10 | 17 |
| 424 | 1354 | 13.3936 | 2 | 5 | 9 | 16 | 28 |
| 425 | 15006 | 4.0716 | 1 | 2 | 3 | 5 | 8 |
| 426 | 4313 | 4.5613 | 1 | 2 | 3 | 6 | 9 |
| 427 | 1660 | 5.0283 | 1 | 2 | 3 | 6 | 10 |
| 428 | 839 | 7.1025 | 1 | 2 | 4 | 8 | 15 |
| 429 | 27480 | 6.4737 | 2 | 3 | 5 | 8 | 12 |
| 430 | 58011 | 8.2066 | 2 | 3 | 6 | 10 | 16 |
| 431 | 295 | 6.5864 | 2 | 3 | 5 | 8 | 13 |
| 432 | 389 | 4.7506 | 1 | 2 | 3 | 5 | 9 |
| 433 | 5781 | 3.0073 | 1 | 1 | 2 | 4 | 6 |
| 434 | 21835 | 5.0844 | 1 | 2 | 4 | 6 | 9 |
| 435 | 14486 | 4.2925 | 1 | 2 | 4 | 5 | 8 |
| 436 | 3499 | 12.8337 | 4 | 7 | 11 | 17 | 25 |
| 437 | 9750 | 8.9544 | 3 | 5 | 8 | 11 | 15 |
| 439 | 1287 | 8.1756 | 1 | 3 | 5 | 10 | 17 |
| 440 | 5017 | 8.8433 | 2 | 3 | 6 | 10 | 19 |
| 441 | 579 | 3.2383 | 1 | 1 | 2 | 4 | 7 |
| 442 | 15896 | 8.2292 | 1 | 3 | 6 | 10 | 17 |

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR Update 12/99 Grouper V17.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 443 | 3547 | 3.3941 | 1 | 1 | 2 | 4 | 7 |
| 444 | 5150 | 4.2252 | 1 | 2 | 3 | 5 | 8 |
| 445 | 2223 | 3.0031 | 1 | 1 | 2 | 4 | 5 |
| 447 | 4854 | 2.5117 | 1 | 1 | 2 | 3 | 5 |
| 448 | 1 | 4.0000 | 4 | 4 | 4 | 4 | 4 |
| 449 | 26543 | 3.6722 | 1 | 1 | 3 | 4 | 7 |
| 450 | 6363 | 2.0525 | 1 | 1 | 1 | 2 | 4 |
| 451 | 1 | 1.0000 | 1 | 1 | 1 | 1 | 1 |
| 452 | 21656 | 4.9536 | 1 | 2 | 3 | 6 | 10 |
| 453 | 4464 | 2.8156 | 1 | 1 | 2 | 3 | 5 |
| 454 | 4930 | 4.5554 | 1 | 2 | 3 | 6 | 9 |
| 455 | 1070 | 2.6262 | 1 | 1 | 2 | 3 | 5 |
| 461 | 3356 | 4.5584 | 1 | 1 | 2 | 5 | 11 |
| 462 | 12630 | 11.5264 | 4 | 6 | 9 | 15 | 21 |
| 463 | 18895 | 4.2653 | 1 | 2 | 3 | 5 | 8 |
| 464 | 5456 | 3.0770 | 1 | 1 | 2 | 4 | 6 |
| 465 | 227 | 3.3612 | 1 | 1 | 2 | 3 | 7 |
| 466 | 1719 | 3.8674 | 1 | 1 | 2 | 4 | 8 |
| 467 | 1301 | 4.0638 | 1 | 1 | 2 | 4 | 7 |
| 468 | 58386 | 12.9325 | 3 | 6 | 10 | 17 | 26 |
| 471 | 11423 | 5.7339 | 3 | 4 | 5 | 6 | 9 |
| 473 | 7615 | 12.8411 | 2 | 3 | 7 | 19 | 32 |
| 475 | 109114 | 11.1765 | 2 | 5 | 9 | 15 | 22 |
| 476 | 4448 | 11.6369 | 2 | 5 | 10 | 15 | 21 |
| 477 | 25690 | 8.1425 | 1 | 3 | 6 | 10 | 17 |
| 478 | 111192 | 7.3159 | 1 | 3 | 5 | 9 | 15 |
| 479 | 22375 | 3.6220 | 1 | 2 | 3 | 5 | 7 |
| 480 | 460 | 19.1848 | 7 | 9 | 14 | 23 | 38 |
| 481 | 229 | 27.1485 | 16 | 19 | 23 | 32 | 43 |
| 482 | 6119 | 12.7756 | 4 | 7 | 10 | 15 | 24 |
| 483 | 43070 | 38.8321 | 14 | 21 | 32 | 49 | 70 |
| 484 | 323 | 13.3065 | 2 | 5 | 10 | 18 | 28 |
| 485 | 2932 | 9.3905 | 4 | 5 | 7 | 11 | 17 |
| 486 | 2012 | 12.1511 | 1 | 5 | 9 | 16 | 24 |
| 487 | 3491 | 7.5408 | 1 | 3 | 6 | 10 | 15 |
| 488 | 767 | 16.9465 | 4 | 7 | 12 | 21 | 34 |
| 489 | 14253 | 8.5597 | 2 | 3 | 6 | 10 | 18 |
| 490 | 5283 | 5.1333 | 1 | 2 | 4 | 6 | 10 |
| 491 | 11332 | 3.4896 | 2 | 2 | 3 | 4 | 6 |
| 492 | 2667 | 16.1234 | 4 | 5 | 9 | 26 | 34 |
| 493 | 54030 | 5.7170 | 1 | 3 | 5 | 7 | 11 |
| 494 | 27254 | 2.4838 | 1 | 1 | 2 | 3 | 5 |
| 495 | 145 | 20.2552 | 6 | 8 | 12 | 18 | 33 |
| 496 | 1270 | 9.9843 | 4 | 5 | 7 | 12 | 18 |
| 497 | 22593 | 6.2173 | 2 | 3 | 5 | 7 | 11 |
| 498 | 19133 | 3.4179 | 1 | 2 | 3 | 4 | 6 |
| 499 | 30738 | 4.7687 | 1 | 2 | 4 | 6 | 9 |
| 500 | 42090 | 2.6897 | 1 | 1 | 2 | 3 | 5 |
| 501 | 1943 | 10.5713 | 4 | 5 | 8 | 13 | 20 |
| 502 | 612 | 5.9379 | 2 | 3 | 5 | 7 | 10 |
| 503 | 5563 | 3.9730 | 1 | 2 | 3 | 5 | 7 |
| 504 | 122 | 30.0984 | 10 | 15 | 25 | 40 | 60 |
| 505 | 153 | 4.7190 | 1 | 1 | 2 | 6 | 12 |
| 506 | 962 | 17.6258 | 4 | 8 | 14 | 24 | 37 |
| 507 | 280 | 9.1857 | 2 | 4 | 7 | 13 | 18 |
| 508 | 637 | 7.1350 | 2 | 3 | 5 | 9 | 15 |
| 509 | 165 | 6.1333 | 1 | 2 | 4 | 8 | 12 |
| 510 | 1653 | 7.8506 | 2 | 3 | 5 | 9 | 17 |
| 511 | 594 | 4.4646 | 1 | 1 | 3 | 6 | 10 |
| | 10930692 | | | | | | |

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY

[FY99 MEDPAR Update 12/99 Grouper V18.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 1 | 35069 | 9.0962 | 2 | 4 | 6 | 12 | 19 |

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR Update 12/99 Grouper V18.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 2 | 7064 | 9.6692 | 3 | 5 | 7 | 12 | 19 |
| 4 | 6022 | 7.3316 | 1 | 2 | 5 | 9 | 16 |
| 5 | 95151 | 3.2852 | 1 | 1 | 2 | 3 | 7 |
| 6 | 340 | 3.2412 | 1 | 1 | 2 | 4 | 7 |
| 7 | 12054 | 10.2745 | 2 | 4 | 7 | 13 | 21 |
| 8 | 3662 | 3.0145 | 1 | 1 | 2 | 4 | 7 |
| 9 | 1623 | 6.4898 | 1 | 3 | 5 | 8 | 12 |
| 10 | 18297 | 6.5874 | 2 | 3 | 5 | 8 | 13 |
| 11 | 3300 | 4.1488 | 1 | 2 | 3 | 5 | 8 |
| 12 | 44849 | 6.0417 | 2 | 3 | 4 | 7 | 11 |
| 13 | 6185 | 5.0928 | 2 | 3 | 4 | 6 | 9 |
| 14 | 362463 | 6.0528 | 2 | 3 | 5 | 7 | 11 |
| 15 | 139608 | 3.6293 | 1 | 2 | 3 | 5 | 7 |
| 16 | 11101 | 6.1222 | 2 | 3 | 5 | 7 | 12 |
| 17 | 3437 | 3.3750 | 1 | 2 | 3 | 4 | 6 |
| 18 | 25899 | 5.5415 | 2 | 3 | 4 | 7 | 10 |
| 19 | 7951 | 3.7393 | 1 | 2 | 3 | 5 | 7 |
| 20 | 5735 | 10.2382 | 3 | 5 | 8 | 13 | 20 |
| 21 | 1356 | 6.8754 | 2 | 3 | 5 | 9 | 13 |
| 22 | 2501 | 4.9384 | 2 | 2 | 4 | 6 | 9 |
| 23 | 8311 | 4.2224 | 1 | 2 | 3 | 5 | 8 |
| 24 | 52472 | 5.0144 | 1 | 2 | 4 | 6 | 10 |
| 25 | 24380 | 3.3056 | 1 | 2 | 3 | 4 | 6 |
| 26 | 20 | 3.2000 | 1 | 1 | 2 | 3 | 7 |
| 27 | 3567 | 5.0962 | 1 | 1 | 3 | 6 | 11 |
| 28 | 10685 | 6.2270 | 1 | 3 | 5 | 8 | 13 |
| 29 | 3910 | 3.7133 | 1 | 2 | 3 | 5 | 7 |
| 31 | 3209 | 4.2312 | 1 | 2 | 3 | 5 | 8 |
| 32 | 1545 | 2.7398 | 1 | 1 | 2 | 3 | 5 |
| 34 | 19531 | 5.1937 | 1 | 2 | 4 | 6 | 10 |
| 35 | 5177 | 3.4199 | 1 | 2 | 3 | 4 | 6 |
| 36 | 4223 | 1.3640 | 1 | 1 | 1 | 1 | 2 |
| 37 | 1476 | 3.6917 | 1 | 1 | 3 | 5 | 8 |
| 38 | 115 | 2.5304 | 1 | 1 | 1 | 3 | 5 |
| 39 | 1152 | 1.9106 | 1 | 1 | 1 | 2 | 4 |
| 40 | 1755 | 3.5801 | 1 | 1 | 2 | 4 | 8 |
| 41 | 1 | 4.0000 | 4 | 4 | 4 | 4 | 4 |
| 42 | 2698 | 2.2279 | 1 | 1 | 1 | 3 | 5 |
| 43 | 83 | 3.3012 | 1 | 2 | 3 | 4 | 7 |
| 44 | 1226 | 4.9625 | 2 | 3 | 4 | 6 | 9 |
| 45 | 2490 | 3.2743 | 1 | 2 | 3 | 4 | 6 |
| 46 | 2940 | 4.5871 | 1 | 2 | 4 | 6 | 9 |
| 47 | 1183 | 3.2975 | 1 | 1 | 3 | 4 | 6 |
| 49 | 2228 | 4.9677 | 1 | 2 | 4 | 6 | 9 |
| 50 | 2569 | 1.9844 | 1 | 1 | 1 | 2 | 3 |
| 51 | 264 | 2.5606 | 1 | 1 | 1 | 3 | 6 |
| 52 | 196 | 2.1276 | 1 | 1 | 1 | 2 | 5 |
| 53 | 2569 | 3.6734 | 1 | 1 | 2 | 4 | 8 |
| 54 | 4 | 1.5000 | 1 | 1 | 1 | 1 | 3 |
| 55 | 1560 | 2.8865 | 1 | 1 | 1 | 3 | 6 |
| 56 | 526 | 3.0646 | 1 | 1 | 2 | 4 | 6 |
| 57 | 579 | 3.9862 | 1 | 1 | 2 | 4 | 8 |
| 59 | 111 | 2.4414 | 1 | 1 | 2 | 2 | 5 |
| 60 | 2 | 1.0000 | 1 | 1 | 1 | 1 | 1 |
| 61 | 208 | 4.8894 | 1 | 1 | 2 | 6 | 13 |
| 62 | 2 | 3.5000 | 2 | 2 | 5 | 5 | 5 |
| 63 | 3168 | 4.2601 | 1 | 2 | 3 | 5 | 9 |
| 64 | 3162 | 6.4756 | 1 | 2 | 4 | 8 | 14 |
| 65 | 31728 | 2.8963 | 1 | 1 | 2 | 4 | 5 |
| 66 | 6938 | 3.1721 | 1 | 1 | 3 | 4 | 6 |
| 67 | 477 | 3.5241 | 1 | 2 | 3 | 4 | 7 |
| 68 | 13401 | 4.1595 | 1 | 2 | 3 | 5 | 8 |
| 69 | 4228 | 3.2774 | 1 | 2 | 3 | 4 | 6 |
| 70 | 33 | 2.9091 | 1 | 2 | 3 | 4 | 5 |
| 71 | 105 | 3.8667 | 1 | 2 | 3 | 6 | 7 |
| 72 | 812 | 3.3017 | 1 | 2 | 3 | 4 | 6 |
| 73 | 6402 | 4.3380 | 1 | 2 | 3 | 5 | 8 |
| 75 | 39147 | 9.9967 | 3 | 5 | 8 | 12 | 20 |
| 76 | 39851 | 11.2556 | 3 | 5 | 9 | 14 | 21 |
| 77 | 2375 | 4.8880 | 1 | 2 | 4 | 7 | 10 |
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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR Update 12/99 Grouper V18.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 78 | 30492 | 6.9444 | 3 | 5 | 6 | 8 | 11 |
| 79 | 183121 | 8.4551 | 3 | 4 | 7 | 11 | 16 |
| 80 | 8291 | 5.6652 | 2 | 3 | 5 | 7 | 10 |
| 81 | 5 | 9.2000 | 2 | 2 | 10 | 10 | 19 |
| 82 | 63683 | 6.9428 | 2 | 3 | 5 | 9 | 14 |
| 83 | 6462 | 5.5305 | 2 | 3 | 4 | 7 | 10 |
| 84 | 1494 | 3.3681 | 1 | 2 | 3 | 4 | 6 |
| 85 | 20066 | 6.3638 | 2 | 3 | 5 | 8 | 12 |
| 86 | 1923 | 3.7889 | 1 | 2 | 3 | 5 | 7 |
| 87 | 62959 | 6.2450 | 1 | 3 | 5 | 8 | 12 |
| 88 | 403808 | 5.2212 | 2 | 3 | 4 | 7 | 9 |
| 89 | 524106 | 6.0245 | 2 | 3 | 5 | 7 | 11 |
| 90 | 51271 | 4.2271 | 2 | 3 | 4 | 5 | 7 |
| 91 | 49 | 3.3061 | 1 | 2 | 3 | 4 | 5 |
| 92 | 13763 | 6.2465 | 2 | 3 | 5 | 8 | 12 |
| 93 | 1543 | 3.9942 | 1 | 2 | 3 | 5 | 7 |
| 94 | 12332 | 6.3027 | 2 | 3 | 5 | 8 | 12 |
| 95 | 1561 | 3.6887 | 1 | 2 | 3 | 5 | 7 |
| 96 | 64893 | 4.7277 | 2 | 3 | 4 | 6 | 8 |
| 97 | 31521 | 3.6879 | 1 | 2 | 3 | 5 | 7 |
| 98 | 18 | 4.6667 | 1 | 1 | 3 | 6 | 7 |
| 99 | 18166 | 3.2204 | 1 | 1 | 2 | 4 | 6 |
| 100 | 7230 | 2.2047 | 1 | 1 | 2 | 3 | 4 |
| 101 | 19700 | 4.4248 | 1 | 2 | 3 | 5 | 8 |
| 102 | 4970 | 2.7360 | 1 | 1 | 2 | 3 | 5 |
| 103 | 442 | 48.6041 | 9 | 12 | 29 | 64 | 112 |
| 104 | 33352 | 11.6423 | 3 | 6 | 10 | 15 | 22 |
| 105 | 29488 | 9.2812 | 4 | 5 | 7 | 11 | 17 |
| 106 | 3785 | 11.2201 | 5 | 7 | 9 | 13 | 20 |
| 107 | 90361 | 10.3492 | 5 | 7 | 9 | 12 | 17 |
| 108 | 5213 | 10.5580 | 3 | 5 | 8 | 13 | 20 |
| 109 | 61526 | 7.7320 | 4 | 5 | 6 | 9 | 13 |
| 110 | 54724 | 9.4413 | 2 | 5 | 8 | 11 | 18 |
| 111 | 7102 | 5.4816 | 2 | 4 | 5 | 7 | 8 |
| 112 | 60794 | 3.7592 | 1 | 1 | 3 | 5 | 8 |
| 113 | 49775 | 12.1191 | 4 | 6 | 9 | 15 | 24 |
| 114 | 8478 | 8.2536 | 2 | 4 | 7 | 10 | 16 |
| 115 | 14032 | 8.4152 | 1 | 4 | 7 | 11 | 16 |
| 116 | 308070 | 3.7287 | 1 | 1 | 3 | 5 | 8 |
| 117 | 3404 | 4.0523 | 1 | 1 | 2 | 5 | 9 |
| 118 | 6649 | 2.8117 | 1 | 1 | 1 | 3 | 6 |
| 119 | 1445 | 4.8374 | 1 | 1 | 3 | 6 | 12 |
| 120 | 36650 | 8.1194 | 1 | 2 | 5 | 10 | 18 |
| 121 | 163449 | 6.4387 | 2 | 3 | 5 | 8 | 12 |
| 122 | 80682 | 3.8317 | 1 | 2 | 3 | 5 | 7 |
| 123 | 40869 | 4.5742 | 1 | 1 | 3 | 6 | 11 |
| 124 | 134743 | 4.3708 | 1 | 2 | 3 | 6 | 8 |
| 125 | 74923 | 2.7862 | 1 | 1 | 2 | 4 | 5 |
| 126 | 5131 | 11.6936 | 3 | 6 | 9 | 14 | 22 |
| 127 | 680654 | 5.3354 | 2 | 3 | 4 | 7 | 10 |
| 128 | 11526 | 5.8044 | 3 | 4 | 5 | 7 | 9 |
| 129 | 4173 | 2.8447 | 1 | 1 | 1 | 3 | 7 |
| 130 | 89048 | 5.8037 | 2 | 3 | 5 | 7 | 10 |
| 131 | 26830 | 4.3785 | 1 | 3 | 4 | 6 | 7 |
| 132 | 152932 | 3.0474 | 1 | 1 | 2 | 4 | 6 |
| 133 | 7573 | 2.3956 | 1 | 1 | 2 | 3 | 4 |
| 134 | 32813 | 3.2987 | 1 | 2 | 3 | 4 | 6 |
| 135 | 7100 | 4.4668 | 1 | 2 | 3 | 5 | 9 |
| 136 | 1170 | 2.9120 | 1 | 1 | 2 | 4 | 6 |
| 138 | 191436 | 4.0071 | 1 | 2 | 3 | 5 | 8 |
| 139 | 77194 | 2.5069 | 1 | 1 | 2 | 3 | 5 |
| 140 | 76478 | 2.7136 | 1 | 1 | 2 | 3 | 5 |
| 141 | 85791 | 3.7068 | 1 | 2 | 3 | 5 | 7 |
| 142 | 42652 | 2.6766 | 1 | 1 | 2 | 3 | 5 |
| 143 | 185700 | 2.1667 | 1 | 1 | 2 | 3 | 4 |
| 144 | 78800 | 5.3171 | 1 | 2 | 4 | 7 | 11 |
| 145 | 6884 | 2.8117 | 1 | 1 | 2 | 4 | 6 |
| 146 | 11215 | 10.1815 | 5 | 7 | 9 | 12 | 17 |
| 147 | 2418 | 6.6208 | 3 | 5 | 6 | 8 | 10 |
| 148 | 134272 | 12.1101 | 5 | 7 | 10 | 14 | 22 |

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR Update 12/99 Grouper V18.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 149 | 17551 | 6.6488 | 4 | 5 | 6 | 8 | 10 |
| 150 | 20300 | 11.1450 | 4 | 7 | 9 | 14 | 20 |
| 151 | 4479 | 5.9272 | 2 | 3 | 5 | 8 | 10 |
| 152 | 4441 | 8.1743 | 3 | 5 | 7 | 10 | 14 |
| 153 | 1914 | 5.4713 | 3 | 4 | 5 | 7 | 8 |
| 154 | 29346 | 13.2615 | 4 | 7 | 10 | 16 | 25 |
| 155 | 6052 | 4.3354 | 1 | 2 | 3 | 6 | 8 |
| 156 | 2 | 28.0000 | 28 | 28 | 28 | 28 | 28 |
| 157 | 8196 | 5.4926 | 1 | 2 | 4 | 7 | 11 |
| 158 | 4393 | 2.6271 | 1 | 1 | 2 | 3 | 5 |
| 159 | 16421 | 5.0258 | 1 | 2 | 4 | 6 | 10 |
| 160 | 10974 | 2.7204 | 1 | 1 | 2 | 4 | 5 |
| 161 | 11483 | 4.1695 | 1 | 2 | 3 | 5 | 9 |
| 162 | 7018 | 1.9577 | 1 | 1 | 1 | 2 | 4 |
| 163 | 8 | 2.7500 | 1 | 1 | 3 | 3 | 3 |
| 164 | 4720 | 8.4019 | 4 | 5 | 7 | 10 | 15 |
| 165 | 1942 | 4.8553 | 2 | 3 | 5 | 6 | 8 |
| 166 | 3307 | 5.0889 | 2 | 3 | 4 | 6 | 9 |
| 167 | 2896 | 2.7099 | 1 | 2 | 2 | 3 | 5 |
| 168 | 1511 | 4.5963 | 1 | 2 | 3 | 6 | 9 |
| 169 | 802 | 2.4214 | 1 | 1 | 2 | 3 | 5 |
| 170 | 11287 | 11.1669 | 2 | 5 | 8 | 14 | 23 |
| 171 | 1125 | 4.7911 | 1 | 2 | 4 | 6 | 9 |
| 172 | 30485 | 6.9710 | 2 | 3 | 5 | 9 | 14 |
| 173 | 2492 | 3.8435 | 1 | 1 | 3 | 5 | 8 |
| 174 | 236408 | 4.8222 | 2 | 3 | 4 | 6 | 9 |
| 175 | 28026 | 2.9414 | 1 | 2 | 3 | 4 | 5 |
| 176 | 15607 | 5.2668 | 2 | 3 | 4 | 6 | 10 |
| 177 | 9489 | 4.5521 | 2 | 2 | 4 | 6 | 8 |
| 178 | 3568 | 3.1373 | 1 | 2 | 3 | 4 | 6 |
| 179 | 12177 | 6.0139 | 2 | 3 | 5 | 7 | 11 |
| 180 | 85083 | 5.3978 | 2 | 3 | 4 | 7 | 10 |
| 181 | 24320 | 3.4134 | 1 | 2 | 3 | 4 | 6 |
| 182 | 232501 | 4.3626 | 1 | 2 | 3 | 5 | 8 |
| 183 | 78432 | 2.9618 | 1 | 1 | 2 | 4 | 6 |
| 184 | 98 | 3.2449 | 1 | 2 | 2 | 4 | 5 |
| 185 | 4300 | 4.4963 | 1 | 2 | 3 | 6 | 9 |
| 186 | 2 | 4.5000 | 2 | 2 | 7 | 7 | 7 |
| 187 | 722 | 3.8130 | 1 | 2 | 3 | 5 | 8 |
| 188 | 74594 | 5.5723 | 1 | 2 | 4 | 7 | 11 |
| 189 | 11097 | 3.1388 | 1 | 1 | 2 | 4 | 6 |
| 190 | 69 | 6.0290 | 2 | 3 | 4 | 6 | 11 |
| 191 | 9367 | 14.0878 | 4 | 7 | 10 | 18 | 28 |
| 192 | 974 | 6.5842 | 2 | 4 | 6 | 8 | 11 |
| 193 | 5669 | 12.5490 | 5 | 7 | 10 | 15 | 23 |
| 194 | 755 | 6.7497 | 2 | 4 | 6 | 8 | 12 |
| 195 | 4869 | 9.9029 | 4 | 6 | 8 | 12 | 17 |
| 196 | 1190 | 5.6832 | 2 | 4 | 5 | 7 | 9 |
| 197 | 20225 | 8.7363 | 3 | 5 | 7 | 11 | 16 |
| 198 | 6079 | 4.4996 | 2 | 3 | 4 | 6 | 8 |
| 199 | 1724 | 9.6456 | 3 | 4 | 8 | 12 | 19 |
| 200 | 1071 | 10.7404 | 2 | 4 | 8 | 14 | 22 |
| 201 | 1465 | 13.8314 | 3 | 6 | 11 | 18 | 27 |
| 202 | 25595 | 6.5031 | 2 | 3 | 5 | 8 | 13 |
| 203 | 28958 | 6.6940 | 2 | 3 | 5 | 9 | 13 |
| 204 | 54818 | 5.8581 | 2 | 3 | 4 | 7 | 11 |
| 205 | 22519 | 6.2964 | 2 | 3 | 5 | 8 | 12 |
| 206 | 1778 | 3.8335 | 1 | 2 | 3 | 5 | 7 |
| 207 | 30768 | 5.1176 | 1 | 2 | 4 | 6 | 10 |
| 208 | 9616 | 2.8974 | 1 | 1 | 2 | 4 | 6 |
| 209 | 394168 | 5.1231 | 3 | 3 | 4 | 6 | 8 |
| 210 | 146423 | 6.8039 | 3 | 4 | 6 | 8 | 11 |
| 211 | 35938 | 4.9292 | 3 | 4 | 4 | 6 | 7 |
| 212 | 7 | 3.0000 | 2 | 2 | 2 | 3 | 4 |
| 213 | 8882 | 8.7299 | 2 | 4 | 7 | 11 | 17 |
| 216 | 5822 | 9.7583 | 2 | 4 | 7 | 12 | 19 |
| 217 | 17573 | 13.0833 | 3 | 5 | 9 | 16 | 28 |
| 218 | 21344 | 5.3594 | 2 | 3 | 4 | 6 | 10 |
| 219 | 19125 | 3.2444 | 1 | 2 | 3 | 4 | 5 |
| 220 | 2 | 2.5000 | 1 | 1 | 4 | 4 | 4 |

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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR Update 12/99 Grouper V18.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 223 | 17434 | 2.5812 | 1 | 1 | 2 | 3 | 5 |
| 224 | 7953 | 2.0448 | 1 | 1 | 2 | 3 | 4 |
| 225 | 5575 | 4.7146 | 1 | 2 | 3 | 6 | 10 |
| 226 | 4985 | 6.2828 | 1 | 2 | 4 | 8 | 13 |
| 227 | 4416 | 2.6594 | 1 | 1 | 2 | 3 | 5 |
| 228 | 2437 | 3.5568 | 1 | 1 | 2 | 4 | 8 |
| 229 | 1080 | 2.3944 | 1 | 1 | 2 | 3 | 5 |
| 230 | 2102 | 5.1237 | 1 | 2 | 3 | 6 | 10 |
| 231 | 10618 | 4.8282 | 1 | 2 | 3 | 6 | 10 |
| 232 | 565 | 3.5894 | 1 | 1 | 2 | 4 | 9 |
| 233 | 4542 | 7.6797 | 2 | 3 | 5 | 9 | 16 |
| 234 | 2666 | 3.5709 | 1 | 2 | 3 | 4 | 7 |
| 235 | 5334 | 5.1245 | 1 | 2 | 4 | 6 | 10 |
| 236 | 43318 | 4.8912 | 2 | 3 | 4 | 6 | 9 |
| 237 | 1576 | 3.7386 | 1 | 2 | 3 | 5 | 7 |
| 238 | 7594 | 8.4664 | 3 | 4 | 6 | 10 | 16 |
| 239 | 51719 | 6.2172 | 2 | 3 | 5 | 8 | 12 |
| 240 | 11850 | 6.5754 | 2 | 3 | 5 | 8 | 13 |
| 241 | 2953 | 3.9401 | 1 | 2 | 3 | 5 | 7 |
| 242 | 2477 | 6.5268 | 2 | 3 | 5 | 8 | 12 |
| 243 | 84831 | 4.7022 | 1 | 3 | 4 | 6 | 9 |
| 244 | 11891 | 4.7802 | 1 | 2 | 4 | 6 | 9 |
| 245 | 4929 | 3.7206 | 1 | 2 | 3 | 4 | 7 |
| 246 | 1342 | 3.6461 | 1 | 2 | 3 | 4 | 7 |
| 247 | 15047 | 3.4443 | 1 | 1 | 3 | 4 | 7 |
| 248 | 9336 | 4.7321 | 1 | 2 | 4 | 6 | 9 |
| 249 | 10719 | 3.7768 | 1 | 1 | 3 | 5 | 8 |
| 250 | 3509 | 4.2485 | 1 | 2 | 3 | 5 | 8 |
| 251 | 2351 | 2.9872 | 1 | 1 | 3 | 4 | 5 |
| 252 | 1 | 2.0000 | 2 | 2 | 2 | 2 | 2 |
| 253 | 18878 | 4.6841 | 1 | 3 | 4 | 6 | 9 |
| 254 | 10341 | 3.2080 | 1 | 2 | 3 | 4 | 6 |
| 255 | 1 | 1.0000 | 1 | 1 | 1 | 1 | 1 |
| 256 | 5803 | 5.1260 | 1 | 2 | 4 | 6 | 10 |
| 257 | 16795 | 2.8263 | 1 | 2 | 2 | 3 | 5 |
| 258 | 15710 | 2.0006 | 1 | 1 | 2 | 2 | 3 |
| 259 | 3717 | 2.7896 | 1 | 1 | 1 | 3 | 6 |
| 260 | 4780 | 1.4749 | 1 | 1 | 1 | 2 | 2 |
| 261 | 1730 | 2.1624 | 1 | 1 | 1 | 2 | 4 |
| 262 | 673 | 3.8098 | 1 | 1 | 3 | 5 | 7 |
| 263 | 27219 | 11.5858 | 3 | 5 | 8 | 14 | 23 |
| 264 | 4261 | 6.9681 | 2 | 3 | 5 | 8 | 14 |
| 265 | 3868 | 6.6099 | 1 | 2 | 4 | 8 | 14 |
| 266 | 2527 | 3.3174 | 1 | 1 | 2 | 4 | 7 |
| 267 | 255 | 5.2353 | 1 | 1 | 3 | 6 | 12 |
| 268 | 896 | 3.6953 | 1 | 1 | 2 | 4 | 8 |
| 269 | 8856 | 8.2516 | 2 | 3 | 6 | 10 | 16 |
| 270 | 2734 | 3.2579 | 1 | 1 | 2 | 4 | 7 |
| 271 | 21090 | 7.1019 | 2 | 4 | 6 | 8 | 13 |
| 272 | 5465 | 6.3420 | 2 | 3 | 5 | 8 | 12 |
| 273 | 1341 | 4.2118 | 1 | 2 | 3 | 5 | 8 |
| 274 | 2368 | 6.9548 | 2 | 3 | 5 | 9 | 14 |
| 275 | 224 | 3.3125 | 1 | 1 | 2 | 4 | 7 |
| 276 | 1076 | 4.6515 | 1 | 2 | 4 | 6 | 9 |
| 277 | 83707 | 5.7178 | 2 | 3 | 5 | 7 | 10 |
| 278 | 28524 | 4.3359 | 2 | 3 | 4 | 5 | 7 |
| 279 | 4 | 4.0000 | 2 | 2 | 4 | 5 | 5 |
| 280 | 15047 | 4.1980 | 1 | 2 | 3 | 5 | 8 |
| 281 | 6682 | 3.0805 | 1 | 1 | 3 | 4 | 6 |
| 283 | 5322 | 4.5569 | 1 | 2 | 3 | 6 | 9 |
| 284 | 1852 | 3.1960 | 1 | 1 | 2 | 4 | 6 |
| 285 | 6125 | 10.4263 | 3 | 5 | 8 | 13 | 20 |
| 286 | 1995 | 6.2000 | 2 | 3 | 5 | 7 | 11 |
| 287 | 5974 | 10.5387 | 3 | 5 | 8 | 13 | 20 |
| 288 | 2252 | 5.7234 | 2 | 3 | 4 | 6 | 9 |
| 289 | 4326 | 3.1248 | 1 | 1 | 2 | 3 | 7 |
| 290 | 8214 | 2.4329 | 1 | 1 | 2 | 2 | 4 |
| 291 | 57 | 1.6316 | 1 | 1 | 1 | 2 | 2 |
| 292 | 4945 | 9.9610 | 2 | 4 | 7 | 13 | 21 |
| 293 | 321 | 4.9346 | 1 | 2 | 4 | 7 | 10 |

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR Update 12/99 Grouper V18.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 294 | 83924 | 4.7128 | 1 | 2 | 4 | 6 | 9 |
| 295 | 3464 | 3.8467 | 1 | 2 | 3 | 5 | 7 |
| 296 | 232274 | 5.2398 | 2 | 3 | 4 | 6 | 10 |
| 297 | 40842 | 3.4744 | 1 | 2 | 3 | 4 | 6 |
| 298 | 106 | 3.1887 | 1 | 2 | 2 | 4 | 6 |
| 299 | 1052 | 5.5542 | 1 | 2 | 4 | 6 | 11 |
| 300 | 15582 | 6.1317 | 2 | 3 | 5 | 8 | 12 |
| 301 | 3101 | 3.7004 | 1 | 2 | 3 | 5 | 7 |
| 302 | 7525 | 9.4141 | 4 | 5 | 7 | 11 | 16 |
| 303 | 19405 | 8.4850 | 4 | 5 | 7 | 10 | 15 |
| 304 | 11967 | 8.8979 | 2 | 4 | 7 | 11 | 18 |
| 305 | 2852 | 3.8443 | 1 | 2 | 3 | 5 | 7 |
| 306 | 7925 | 5.4829 | 1 | 2 | 3 | 7 | 12 |
| 307 | 2226 | 2.2668 | 1 | 1 | 2 | 3 | 4 |
| 308 | 7673 | 6.3836 | 1 | 2 | 4 | 8 | 14 |
| 309 | 3947 | 2.4880 | 1 | 1 | 2 | 3 | 5 |
| 310 | 23701 | 4.3591 | 1 | 2 | 3 | 5 | 9 |
| 311 | 8200 | 1.8902 | 1 | 1 | 1 | 2 | 3 |
| 312 | 1570 | 4.5166 | 1 | 1 | 3 | 6 | 10 |
| 313 | 633 | 2.1153 | 1 | 1 | 1 | 3 | 4 |
| 314 | 2 | 1.0000 | 1 | 1 | 1 | 1 | 1 |
| 315 | 28524 | 7.4721 | 1 | 1 | 5 | 10 | 17 |
| 316 | 96405 | 6.6791 | 2 | 3 | 5 | 8 | 13 |
| 317 | 1230 | 3.2114 | 1 | 1 | 2 | 3 | 6 |
| 318 | 5544 | 5.9975 | 1 | 3 | 4 | 7 | 12 |
| 319 | 460 | 2.8630 | 1 | 1 | 2 | 4 | 6 |
| 320 | 181708 | 5.3834 | 2 | 3 | 4 | 7 | 10 |
| 321 | 28174 | 3.8452 | 1 | 2 | 3 | 5 | 7 |
| 322 | 69 | 4.0580 | 1 | 2 | 3 | 5 | 7 |
| 323 | 16353 | 3.2183 | 1 | 1 | 2 | 4 | 7 |
| 324 | 7365 | 1.8789 | 1 | 1 | 1 | 2 | 3 |
| 325 | 7788 | 3.8947 | 1 | 2 | 3 | 5 | 7 |
| 326 | 2414 | 2.6582 | 1 | 1 | 2 | 3 | 5 |
| 327 | 7 | 9.2857 | 1 | 1 | 2 | 4 | 13 |
| 328 | 718 | 3.9053 | 1 | 1 | 3 | 5 | 8 |
| 329 | 104 | 2.0481 | 1 | 1 | 1 | 3 | 4 |
| 331 | 43233 | 5.5300 | 1 | 2 | 4 | 7 | 11 |
| 332 | 4795 | 3.2715 | 1 | 1 | 2 | 4 | 7 |
| 333 | 296 | 5.0507 | 1 | 2 | 3 | 6 | 10 |
| 334 | 12132 | 4.8938 | 2 | 3 | 4 | 6 | 8 |
| 335 | 11393 | 3.4104 | 2 | 3 | 3 | 4 | 5 |
| 336 | 40525 | 3.5229 | 1 | 2 | 3 | 4 | 7 |
| 337 | 30540 | 2.1759 | 1 | 1 | 2 | 3 | 3 |
| 338 | 1641 | 5.2956 | 1 | 2 | 3 | 7 | 12 |
| 339 | 1503 | 4.5269 | 1 | 1 | 3 | 6 | 10 |
| 340 | 1 | 1.0000 | 1 | 1 | 1 | 1 | 1 |
| 341 | 3836 | 3.2018 | 1 | 1 | 2 | 3 | 7 |
| 342 | 775 | 3.1174 | 1 | 2 | 2 | 4 | 6 |
| 344 | 3934 | 2.2567 | 1 | 1 | 1 | 2 | 4 |
| 345 | 1272 | 3.7673 | 1 | 1 | 2 | 5 | 8 |
| 346 | 4622 | 5.8090 | 1 | 3 | 4 | 7 | 11 |
| 347 | 396 | 3.3712 | 1 | 1 | 2 | 4 | 7 |
| 348 | 3105 | 4.2029 | 1 | 2 | 3 | 5 | 8 |
| 349 | 589 | 2.6027 | 1 | 1 | 2 | 3 | 5 |
| 350 | 6157 | 4.3937 | 2 | 2 | 4 | 5 | 8 |
| 352 | 646 | 3.8498 | 1 | 2 | 3 | 5 | 8 |
| 353 | 2631 | 6.7081 | 3 | 3 | 5 | 8 | 13 |
| 354 | 8209 | 5.8725 | 3 | 3 | 4 | 7 | 10 |
| 355 | 5698 | 3.3243 | 2 | 3 | 3 | 4 | 5 |
| 356 | 25961 | 2.4179 | 1 | 1 | 2 | 3 | 4 |
| 357 | 5767 | 8.4947 | 3 | 4 | 7 | 10 | 16 |
| 358 | 21628 | 4.3926 | 2 | 3 | 3 | 5 | 7 |
| 359 | 29103 | 2.8141 | 2 | 2 | 3 | 3 | 4 |
| 360 | 16133 | 2.9634 | 1 | 2 | 2 | 3 | 5 |
| 361 | 420 | 3.4524 | 1 | 1 | 2 | 4 | 7 |
| 362 | 1 | 1.0000 | 1 | 1 | 1 | 1 | 1 |
| 363 | 3079 | 3.4784 | 1 | 2 | 2 | 3 | 7 |
| 364 | 1611 | 3.5847 | 1 | 1 | 2 | 5 | 7 |
| 365 | 1917 | 7.3005 | 2 | 3 | 5 | 9 | 16 |
| 366 | 4226 | 6.7283 | 1 | 3 | 5 | 8 | 14 |
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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR Update 12/99 Grouper V18.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 367 | 472 | 3.1462 | 1 | 1 | 2 | 4 | 7 |
| 368 | 2861 | 6.7113 | 2 | 3 | 5 | 8 | 13 |
| 369 | 2832 | 3.1963 | 1 | 1 | 2 | 4 | 6 |
| 370 | 1141 | 5.7160 | 3 | 3 | 4 | 5 | 9 |
| 371 | 1174 | 3.6567 | 2 | 3 | 3 | 4 | 5 |
| 372 | 916 | 3.4509 | 2 | 2 | 2 | 3 | 5 |
| 373 | 3916 | 2.2829 | 1 | 2 | 2 | 2 | 3 |
| 374 | 125 | 3.4880 | 2 | 2 | 2 | 3 | 5 |
| 375 | 6 | 2.6667 | 2 | 2 | 2 | 3 | 3 |
| 376 | 254 | 3.4803 | 1 | 2 | 2 | 4 | 7 |
| 377 | 53 | 3.8679 | 1 | 1 | 2 | 5 | 8 |
| 378 | 151 | 2.3444 | 1 | 1 | 2 | 3 | 4 |
| 379 | 355 | 3.1127 | 1 | 1 | 2 | 3 | 7 |
| 380 | 74 | 2.1622 | 1 | 1 | 2 | 2 | 4 |
| 381 | 176 | 1.9545 | 1 | 1 | 1 | 2 | 3 |
| 382 | 39 | 1.3077 | 1 | 1 | 1 | 1 | 2 |
| 383 | 1545 | 3.8913 | 1 | 1 | 3 | 5 | 8 |
| 384 | 123 | 2.3415 | 1 | 1 | 1 | 2 | 4 |
| 389 | 8 | 5.8750 | 3 | 3 | 4 | 8 | 10 |
| 390 | 19 | 3.7368 | 1 | 1 | 3 | 5 | 7 |
| 392 | 2508 | 9.4769 | 3 | 4 | 7 | 12 | 19 |
| 393 | 1 | 8.0000 | 8 | 8 | 8 | 8 | 8 |
| 394 | 1724 | 6.6810 | 1 | 2 | 4 | 8 | 15 |
| 395 | 80464 | 4.5303 | 1 | 2 | 3 | 6 | 9 |
| 396 | 17 | 3.7059 | 1 | 1 | 2 | 5 | 6 |
| 397 | 18071 | 5.2277 | 1 | 2 | 4 | 7 | 10 |
| 398 | 18051 | 5.9638 | 2 | 3 | 5 | 7 | 11 |
| 399 | 1614 | 3.5520 | 1 | 2 | 3 | 4 | 7 |
| 400 | 6845 | 9.0488 | 1 | 3 | 6 | 12 | 20 |
| 401 | 5827 | 11.1903 | 2 | 5 | 8 | 14 | 23 |
| 402 | 1483 | 3.9400 | 1 | 1 | 3 | 5 | 8 |
| 403 | 32911 | 8.0630 | 2 | 3 | 6 | 10 | 17 |
| 404 | 4457 | 4.2257 | 1 | 2 | 3 | 6 | 9 |
| 406 | 2546 | 10.2859 | 3 | 4 | 7 | 13 | 21 |
| 407 | 695 | 4.4086 | 1 | 2 | 4 | 6 | 8 |
| 408 | 2247 | 7.7036 | 1 | 2 | 5 | 10 | 18 |
| 409 | 3281 | 5.9113 | 2 | 3 | 4 | 6 | 11 |
| 410 | 40862 | 3.7202 | 1 | 2 | 3 | 5 | 6 |
| 411 | 13 | 2.3077 | 1 | 1 | 2 | 4 | 4 |
| 412 | 29 | 2.7241 | 1 | 1 | 2 | 3 | 6 |
| 413 | 6515 | 7.2391 | 2 | 3 | 6 | 9 | 14 |
| 414 | 746 | 4.0804 | 1 | 2 | 3 | 5 | 8 |
| 415 | 39856 | 14.1713 | 4 | 6 | 11 | 18 | 28 |
| 416 | 195783 | 7.3483 | 2 | 4 | 6 | 9 | 14 |
| 417 | 32 | 6.1875 | 1 | 2 | 4 | 7 | 13 |
| 418 | 22097 | 6.1239 | 2 | 3 | 5 | 7 | 11 |
| 419 | 15859 | 4.8212 | 2 | 2 | 4 | 6 | 9 |
| 420 | 3091 | 3.5642 | 1 | 2 | 3 | 4 | 6 |
| 421 | 12242 | 3.8638 | 1 | 2 | 3 | 5 | 7 |
| 422 | 96 | 5.2708 | 1 | 2 | 2 | 5 | 7 |
| 423 | 8073 | 8.1416 | 2 | 3 | 6 | 10 | 17 |
| 424 | 1354 | 13.3936 | 2 | 5 | 9 | 16 | 28 |
| 425 | 15006 | 4.0716 | 1 | 2 | 3 | 5 | 8 |
| 426 | 4313 | 4.5613 | 1 | 2 | 3 | 6 | 9 |
| 427 | 1660 | 5.0283 | 1 | 2 | 3 | 6 | 10 |
| 428 | 839 | 7.1025 | 1 | 2 | 4 | 8 | 15 |
| 429 | 30016 | 6.4824 | 2 | 3 | 5 | 8 | 12 |
| 430 | 58011 | 8.2066 | 2 | 3 | 6 | 10 | 16 |
| 431 | 295 | 6.5864 | 2 | 3 | 5 | 8 | 13 |
| 432 | 389 | 4.7506 | 1 | 2 | 3 | 5 | 9 |
| 433 | 5781 | 3.0073 | 1 | 1 | 2 | 4 | 6 |
| 434 | 21835 | 5.0844 | 1 | 2 | 4 | 6 | 9 |
| 435 | 14486 | 4.2925 | 1 | 2 | 4 | 5 | 8 |
| 436 | 3499 | 12.8337 | 4 | 7 | 11 | 17 | 25 |
| 437 | 9750 | 8.9544 | 3 | 5 | 8 | 11 | 15 |
| 439 | 1287 | 8.1756 | 1 | 3 | 5 | 10 | 17 |
| 440 | 5017 | 8.8433 | 2 | 3 | 6 | 10 | 19 |
| 441 | 579 | 3.2383 | 1 | 1 | 2 | 4 | 7 |
| 442 | 15896 | 8.2292 | 1 | 3 | 6 | 10 | 17 |
| 443 | 3547 | 3.3941 | 1 | 1 | 2 | 4 | 7 |

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY99 MEDPAR Update 12/99 Grouper V18.0]

| DRG | Number discharges | Arithmetic mean LOS | 10th percentile | 25th percentile | 50th percentile | 75th percentile | 90th percentile |
|---|---|---|---|---|---|---|---|
| 444 | 5150 | 4.2252 | 1 | 2 | 3 | 5 | 8 |
| 445 | 2223 | 3.0031 | 1 | 1 | 2 | 4 | 5 |
| 447 | 4854 | 2.5117 | 1 | 1 | 2 | 3 | 5 |
| 448 | 1 | 4.0000 | 4 | 4 | 4 | 4 | 4 |
| 449 | 26543 | 3.6722 | 1 | 1 | 3 | 4 | 7 |
| 450 | 6363 | 2.0525 | 1 | 1 | 1 | 2 | 4 |
| 451 | 1 | 1.0000 | 1 | 1 | 1 | 1 | 1 |
| 452 | 21656 | 4.9536 | 1 | 2 | 3 | 6 | 10 |
| 453 | 4464 | 2.8156 | 1 | 1 | 2 | 3 | 5 |
| 454 | 4930 | 4.5554 | 1 | 2 | 3 | 6 | 9 |
| 455 | 1070 | 2.6262 | 1 | 1 | 2 | 3 | 5 |
| 461 | 3357 | 4.5594 | 1 | 1 | 2 | 5 | 11 |
| 462 | 12630 | 11.5264 | 4 | 6 | 9 | 15 | 21 |
| 463 | 18895 | 4.2653 | 1 | 2 | 3 | 5 | 8 |
| 464 | 5455 | 3.0761 | 1 | 1 | 2 | 4 | 6 |
| 465 | 227 | 3.3612 | 1 | 1 | 2 | 3 | 7 |
| 466 | 1719 | 3.8674 | 1 | 1 | 2 | 4 | 8 |
| 467 | 1301 | 4.0638 | 1 | 1 | 2 | 4 | 7 |
| 468 | 58391 | 12.9318 | 3 | 6 | 10 | 17 | 26 |
| 471 | 11423 | 5.7339 | 3 | 4 | 5 | 6 | 9 |
| 473 | 7615 | 12.8411 | 2 | 3 | 7 | 19 | 32 |
| 475 | 109112 | 11.1767 | 2 | 5 | 9 | 15 | 22 |
| 476 | 4448 | 11.6369 | 2 | 5 | 10 | 15 | 21 |
| 477 | 25690 | 8.1425 | 1 | 3 | 6 | 10 | 17 |
| 478 | 111191 | 7.3157 | 1 | 3 | 5 | 9 | 15 |
| 479 | 22375 | 3.6220 | 1 | 2 | 3 | 5 | 7 |
| 480 | 460 | 19.1848 | 7 | 9 | 14 | 23 | 38 |
| 481 | 229 | 27.1485 | 16 | 19 | 23 | 32 | 43 |
| 482 | 6119 | 12.7756 | 4 | 7 | 10 | 15 | 24 |
| 483 | 47190 | 38.8624 | 14 | 21 | 32 | 49 | 70 |
| 484 | 323 | 13.3065 | 2 | 5 | 10 | 18 | 28 |
| 485 | 2932 | 9.3905 | 4 | 5 | 7 | 11 | 17 |
| 486 | 2012 | 12.1511 | 1 | 5 | 9 | 16 | 24 |
| 487 | 3491 | 7.5408 | 1 | 3 | 6 | 10 | 15 |
| 488 | 767 | 16.9465 | 4 | 7 | 12 | 21 | 34 |
| 489 | 14253 | 8.5597 | 2 | 3 | 6 | 10 | 18 |
| 490 | 5283 | 5.1333 | 1 | 2 | 4 | 6 | 10 |
| 491 | 11332 | 3.4896 | 2 | 2 | 3 | 4 | 6 |
| 492 | 2667 | 16.1234 | 4 | 5 | 9 | 26 | 34 |
| 493 | 54030 | 5.7170 | 1 | 3 | 5 | 7 | 11 |
| 494 | 27254 | 2.4838 | 1 | 1 | 2 | 3 | 5 |
| 495 | 145 | 20.2552 | 6 | 8 | 12 | 18 | 33 |
| 496 | 1270 | 9.9843 | 4 | 5 | 7 | 12 | 18 |
| 497 | 22593 | 6.2173 | 2 | 3 | 5 | 7 | 11 |
| 498 | 19133 | 3.4179 | 1 | 2 | 3 | 4 | 6 |
| 499 | 30738 | 4.7687 | 1 | 2 | 4 | 6 | 9 |
| 500 | 42090 | 2.6897 | 1 | 1 | 2 | 3 | 5 |
| 501 | 1943 | 10.5713 | 4 | 5 | 8 | 13 | 20 |
| 502 | 612 | 5.9379 | 2 | 3 | 5 | 7 | 10 |
| 503 | 5563 | 3.9730 | 1 | 2 | 3 | 5 | 7 |
| 504 | 122 | 30.0984 | 10 | 15 | 25 | 40 | 60 |
| 505 | 153 | 4.7190 | 1 | 1 | 2 | 6 | 12 |
| 506 | 962 | 17.6258 | 4 | 8 | 14 | 24 | 37 |
| 507 | 280 | 9.1857 | 2 | 4 | 7 | 13 | 18 |
| 508 | 637 | 7.1350 | 2 | 3 | 5 | 9 | 15 |
| 509 | 165 | 6.1333 | 1 | 2 | 4 | 8 | 12 |
| 510 | 1653 | 7.8506 | 2 | 3 | 5 | 9 | 17 |
| 511 | 594 | 4.4646 | 1 | 1 | 3 | 6 | 10 |
| | 11059625 | | | | | | |

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) MARCH 2000

| State | Urban | Rural |
|---|---|---|
| ALABAMA | 0.401 | 0.355 |
| ALASKA | 0.469 | 0.722 |
| ARIZONA | 0.373 | 0.516 |
| ARKANSAS | 0.478 | 0.454 |
| CALIFORNIA | 0.344 | 0.443 |
| COLORADO | 0.427 | 0.560 |
| CONNECTICUT | 0.495 | 0.503 |
| DELAWARE | 0.507 | 0.449 |
| DISTRICT OF COLUMBIA | 0.521 | ..... |
| FLORIDA | 0.363 | 0.380 |
| GEORGIA | 0.474 | 0.486 |
| HAWAII | 0.409 | 0.554 |
| IDAHO | 0.549 | 0.570 |
| ILLINOIS | 0.427 | 0.515 |
| INDIANA | 0.532 | 0.543 |
| IOWA | 0.493 | 0.623 |
| KANSAS | 0.443 | 0.656 |
| KENTUCKY | 0.477 | 0.493 |
| LOUISIANA | 0.406 | 0.495 |
| MAINE | 0.597 | 0.554 |
| MARYLAND | 0.759 | 0.821 |
| MASSACHUSETTS | 0.525 | 0.537 |
| MICHIGAN | 0.558 | 0.597 |
| MINNESOTA | 0.510 | 0.590 |
| MISSISSIPPI | 0.455 | 0.455 |
| MISSOURI | 0.413 | 0.506 |
| MONTANA | 0.525 | 0.570 |
| NEBRASKA | 0.468 | 0.623 |
| NEVADA | 0.293 | 0.483 |
| NEW HAMPSHIRE | 0.543 | 0.583 |
| NEW JERSEY | 0.411 | ..... |
| NEW MEXICO | 0.477 | 0.498 |
| NEW YORK | 0.529 | 0.610 |
| NORTH CAROLINA | 0.539 | 0.489 |
| NORTH DAKOTA | 0.622 | 0.660 |
| OHIO | 0.513 | 0.578 |
| OKLAHOMA | 0.422 | 0.509 |
| OREGON | 0.560 | 0.581 |
| PENNSYLVANIA | 0.396 | 0.517 |
| PUERTO RICO | 0.479 | 0.578 |
| RHODE ISLAND | 0.523 | ..... |
| SOUTH CAROLINA | 0.456 | 0.452 |
| SOUTH DAKOTA | 0.537 | 0.600 |
| TENNESSEE | 0.441 | 0.482 |
| TEXAS | 0.406 | 0.511 |
| UTAH | 0.505 | 0.627 |
| VERMONT | 0.623 | 0.590 |
| VIRGINA | 0.467 | 0.500 |
| WASHINGTON | 0.577 | 0.652 |
| WEST VIRGINIA | 0.577 | 0.530 |
| WISCONSIN | 0.559 | 0.622 |
| WYOMING | 0.475 | 0.681 |

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 2000

| State | Ratio |
|---|---|
| ALABAMA | 0.040 |
| ALASKA | 0.070 |
| ARIZONA | 0.041 |
| ARKANSAS | 0.050 |
| CALIFORNIA | 0.037 |
| COLORADO | 0.046 |
| CONNECTICUT | 0.036 |
| DELAWARE | 0.051 |
| DISTRICT OF COLUMBIA | 0.039 |
| FLORIDA | 0.045 |
| GEORGIA | 0.056 |
| HAWAII | 0.042 |
| IDAHO | 0.049 |
| ILLINOIS | 0.042 |
| INDIANA | 0.057 |
| IOWA | 0.056 |
| KANSAS | 0.054 |
| KENTUCKY | 0.046 |
| LOUISIANA | 0.050 |
| MAINE | 0.039 |
| MARYLAND | 0.013 |
| MASSACHUSETTS | 0.054 |
| MICHIGAN | 0.053 |
| MINNESOTA | 0.049 |
| MISSISSIPPI | 0.045 |
| MISSOURI | 0.046 |
| MONTANA | 0.050 |
| NEBRASKA | 0.054 |
| NEVADA | 0.030 |
| NEW HAMPSHIRE | 0.063 |
| NEW JERSEY | 0.037 |
| NEW MEXICO | 0.044 |
| NEW YORK | 0.051 |
| NORTH CAROLINA | 0.050 |
| NORTH DAKOTA | 0.074 |
| OHIO | 0.050 |
| OKLAHOMA | 0.048 |
| OREGON | 0.048 |
| PENNSYLVANIA | 0.040 |
| PUERTO RICO | 0.043 |
| RHODE ISLAND | 0.030 |
| SOUTH CAROLINA | 0.047 |
| SOUTH DAKOTA | 0.066 |
| TENNESSEE | 0.051 |
| TEXAS | 0.048 |
| UTAH | 0.049 |
| VERMONT | 0.051 |
| VIRGINIA | 0.058 |
| WASHINGTON | 0.064 |
| WEST VIRGINIA | 0.047 |
| WISCONSIN | 0.054 |
| WYOMING | 0.057 |

## Appendix A—Regulatory Impact Analysis

### I. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless we certify that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the hospital inpatient prospective payment system, we classify these hospitals as urban hospitals.

It is clear that the changes being proposed in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

We have reviewed this proposed rule under the threshold criteria of Executive Order 13132, Federalism, and have determined that the proposed rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. This proposed rule does not mandate any requirements for State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

### II. Objectives

The primary objective of the hospital inpatient prospective payment system is to create incentives for hospitals to operate efficiently and minimize unnecessary costs while at the same time ensuring that payments are sufficient to adequately compensate hospitals for their legitimate costs. In addition, we share national goals of preserving the Medicare Trust Fund.

We believe the proposed changes would further each of these goals while maintaining the financial viability of the hospital industry and ensuring access to high quality health care for Medicare beneficiaries. We expect that these proposed changes would ensure that the outcomes of this payment system are reasonable and equitable while avoiding or minimizing unintended adverse consequences.

### III. Limitations of Our Analysis

As has been the case in our previously published regulatory impact analyses, the following quantitative analysis presents the projected effects of our proposed policy changes, as well as statutory changes effective for FY 2001, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do

not make adjustments for future changes in such variables as admissions, lengths of stay, or case-mix. As we have done in previous proposed rules, we are soliciting comments and information about the anticipated effects of these changes on hospitals and our methodology for estimating them.

**IV. Hospitals Included In and Excluded From the Prospective Payment System**

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 44 Indian Health Service hospitals in our database, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 50 such hospitals in Maryland remain excluded from the prospective payment system under the waiver at section 1814(b)(3) of the Act. Thus, as of February 2000, we have included 4,836 hospitals in our analysis. This represents about 80 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

The remaining 20 percent are specialty hospitals that are excluded from the prospective payment system and continue to be paid on the basis of their reasonable costs (subject to a rate-of-increase ceiling on their inpatient operating costs per discharge). These hospitals include psychiatric, rehabilitation, long-term care, children's, and cancer hospitals. The impacts of our final policy changes on these hospitals are discussed below.

**V. Impact on Excluded Hospitals and Units**

As of February 2000, there were 1,081 specialty hospitals excluded from the prospective payment system and instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. Broken down by specialty, there were 549 psychiatric, 194 rehabilitation, 238 long-term care, 73 childrens', 17 Christian Science Sanatoria, and 10 cancer hospitals. In addition, there were 1,470 psychiatric units and 910 rehabilitation units in hospitals otherwise subject to the prospective payment system. These excluded units are also paid in accordance with § 413.40. Under § 413.40(a)(2)(i)(A), the rate-of-increase ceiling is not applicable to the 36 specialty hospitals and units in Maryland that are paid in accordance with the waiver at section 1814(b)(3) of the Act.

As required by section 1886(b)(3)(B) of the Act, the update factor applicable to the rate-of-increase limit for excluded hospitals and units for FY 2001 would be between 0 and 3.1 percent, depending on the hospital's or unit's costs in relation to its limit for the most recent cost reporting period for which information is available.

The impact on excluded hospitals and units of the update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital or unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the percentage increases in the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per-case cost increases above the cumulative update in their rate-of-increase limits, the major effect will be the amount of excess costs that would not be reimbursed.

We note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed 110 percent of its rate-of-increase limit receives its rate-of-increase limit plus 50 percent of the difference between its reasonable costs and 110 percent of the limit, not to exceed 110 percent of its limit. In addition, under the various provisions set forth in § 413.40, certain excluded hospitals and units can obtain payment adjustments for justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

**VI. Graduate Medical Education Impact of National Average Per Resident Amount (PRA)**

As discussed in section IV.G. of the preamble, this proposed rule would implement statutory provisions enacted by section 311 of Public Law 106–113 that establish a methodology for the use of a national average PRA in computing direct graduate medical education (GME) payments for cost reporting periods beginning on or after October 1, 2000 and on or before September 30, 2005. The methodology would establish a "floor" and "ceiling" based on a locality-adjusted, updated national average PRA. Under section 1886(h)(2)(D)(iii) of the Act, as added by section 311(a) of Public Law 106–113, the PRA for a hospital for the cost reporting period beginning during FY 2001 cannot be below 70 percent of the locality-adjusted, updated national average PRA. Thus, if a hospital's PRA for the cost reporting period beginning during FY 2001 would otherwise be below the floor, the hospital's PRA for that cost reporting period would be equal to 70 percent of the locality-adjusted, national average PRA. Under section 1886(h)(2)(D)(iv) of the Act, as added by section 311(a) of Public Law 106–113, if a hospital's PRA exceeds 140 percent of the locality-adjusted, updated national average PRA, the hospital's PRA would be frozen (for FYs 2001-and 2002) or subject to a 2-percent reduction to the otherwise applicable update (for FYs 2003 through 2005). See section IV.G. of the preamble for a fuller explanation of this policy.

For purposes of the proposed rule, we have calculated an estimated impact of this proposed policy on teaching hospitals' PRAs for FY 2001 making assumptions about update factors and geographic adjustment factors (GAF) for each hospital. Generally, utilizing FY 1997 data, we calculated a floor and a ceiling and estimated the impact on hospitals. This impact was then inflated to FY 2001 to estimate the total impact on the Medicare program for FY 2001. The estimated numbers for this impact should not be used by hospitals in calculating their own individual PRAs; hospitals must use the methodology stated in section IV.G. of this proposed rule to revise (if appropriate) their individual PRAs.

In calculating this impact, we utilized Medicare cost report data for all cost reports ending in FY 1997. We excluded hospitals that file manual cost reports because we did not have access to their Medicare utilization data. We also excluded all teaching hospitals in Maryland because these hospitals are paid under a Medicare waiver. For those hospitals that had two cost reporting periods ending in FY 1997, we used the later of the two periods. A total of 1,231 teaching hospitals were included in this analysis.

Utilizing the proposed FY 1997 weighted average PRA of $68,487, we calculated a FY 1997 70-percent floor of $47,941 and a FY 1997 140-percent ceiling of $95,882. We then estimated that, for cost reporting periods ending in FY 1997, 339 hospitals had PRAs that were below $47,941 (27.5 percent of 1,231 hospitals), and 180 hospitals had PRAs above $95,882 (14.6 percent of 1,231 hospitals). Thus, for example, to illustrate the extremes in impact for a hospital with PRAs below the floor, Hospital A had a FY 1997 primary care PRA of $22,000 and a non-primary care PRA of $20,000. When these PRAs are replaced by a single PRA of $47,941, the hospital gains over 110 percent in payments per resident. For a hospital with PRAs above the ceiling, Hospital B had a FY 1997 primary care PRA of $150,000 and a non-primary care PRA of $148,000. When these PRAs are frozen and not updated for inflation in FY 2001, the percentage loss in payments per resident that year would be equal to the CPI–U percentage that would otherwise have been used to update the PRA.

For the 339 hospitals that had PRAs below the FY 1997 $47,941 floor, we estimated that the total cost to the Medicare program for FY 2001 of applying the floor would be $33.3 million. For the 180 hospitals that had PRAs above the FY 1997 $95,882 ceiling, we estimated that the total savings to the Medicare program for FY 2001 would be $18.7 million. Subtracting the estimated savings of $18.7 million from the estimated costs of $33.3 million yields an estimated total net cost to the Medicare program for FY 2001 of $14.6 million.

**VII. Quantitative Impact Analysis of the Proposed Policy Changes Under the Prospective Payment System for Operating Costs**

*A. Basis and Methodology of Estimates*

In this proposed rule, we are announcing policy changes and payment rate updates for the prospective payment systems for operating and capital-related costs. We estimate the total impact of these changes for FY 2001 payments compared to FY 2000 payments to be approximately a $1.3 billion increase. We have prepared separate impact analyses of the proposed changes to each system. This section deals with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are

taken from the FY 1999 MedPAR file and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate cost data, the most recently available hospital cost report data were used to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these proposed policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each proposed change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 1999 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the general prospective payment systems (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations. Payments under the capital prospective payment system, or payments for costs other than inpatient operating costs, are not analyzed here. Estimated payment impacts of proposed FY 2001 changes to the capital prospective payment system are discussed in section IX of this Appendix.

The proposed changes discussed separately below are the following:

- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the diagnosis-related group (DRG) relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of changes in hospitals' wage index values reflecting the wage index update (FY 1997 data).
- The effects of our proposal to remove from the wage index the costs and hours associated with teaching physicians paid under Medicare Part A, residents, and certified registered nurse anesthetists (CRNAs) during the second year of a 5-year phase-out, by calculating a wage index based on 40 percent of hospitals' average hourly wages after removing these costs and hours, and 60 percent of hospitals' average hourly wages with these costs included.
- The effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB) that will be effective in FY 2001.
- The total change in payments based on FY 2001 policies relative to payments based on FY 2000 policies.

To illustrate the impacts of the FY 2001 proposed changes, our analysis begins with a FY 2000 baseline simulation model using: The FY 2000 DRG GROUPER (version 17.0); the FY 2000 wage index; and no MGCRB reclassifications. Outlier payments are set a 5.1 percent of total DRG plus outlier payments.

Each proposed and statutory policy change is then added incrementally to this baseline model, finally arriving at an FY 2001 model incorporating all of the changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 2000 to FY 2001. Five factors have significant impacts here. The first is the update to the standardized amounts. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban and the other areas average standardized amounts for FY 2001 using the most recently forecasted hospital market basket increase for FY 2001 of 3.1 percent minus 1.1 percentage points (for an update of 2.0 percent).

Under section 1886(b)(3) of the Act, as amended by section 406 of Public Law 106–113, the updates to the average standardized amounts and the hospital-specific amounts for sole community hospitals (SCHs) will be equal to the full market basket increase for FY 2001. Consequently, the update factor used for SCHs in this impact analysis is 3.1 percent. Under section 1886(b)(3)(D) of the Act, the update factor for the hospital-specific amounts for MDHs is equal to the market basket increase of 3.1 percent minus 1.1 percentage points (for an update of 2.0 percent).

A second significant factor that impacts changes in hospitals' payments per case from FY 2000 to FY 2001 is a change in MGCRB reclassification status from one year to the next. That is, hospitals reclassified in FY 2000 that are no longer reclassified in FY 2001 may have a negative payment impact going from FY 2000 to FY 2001; conversely, hospitals not reclassified in FY 2000 that are reclassified in FY 2001 may have a positive impact. In some cases, these impacts can be quite substantial, so if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage change in payments for the category may be below the national mean.

A third significant factor is that we currently estimate that actual outlier payments during FY 2000 will be 6.1 percent of actual total DRG payments. When the FY 2000 final rule was published, we projected FY 2000 outlier payments would be 5.1 percent of total DRG plus outlier payments; the standardized amounts were offset correspondingly. The effects of the higher than expected outlier payments during FY 2000 (as discussed in the Addendum to this proposed rule) are reflected in the analyses below comparing our current estimates of FY 2000 payments per case to estimated FY 2001 payments per case.

Fourth, section 111 of Public Law 106–113 revised section 1886(d)(5)(B)(ii) of the Act so that the IME adjustment changes from FY 2000 to FY 2001 from approximately a 6.25-percent increase for every 100-percent increase in a hospital's resident-to-bed ratio during FY 2000 to approximately a 6.2-percent increase in FY 2001. Similarly, section 112 of Public Law 106–113 revised section 1886(d)(5)(F)(ix) of the Act so that the DSH adjustment for FY 2001 is reduced by 3-percent from what would otherwise have been paid (this is the same percentage reduction that was applied in FY 2000).

Finally, section 405 of Public Law 106–113 provided that certain SCHs may elect to receive payment on the basis of their costs per case during their cost reporting period that began during 1996. To be eligible, a SCH must have received for its cost reporting period beginning during 1999, payment on the basis of its hospital-specific rate. For FY 2001, eligible SCHs that elect rebasing receive a hospital-specific rate comprised of 75-percent of the higher of their FY 1982 or FY 1987 hospital-specific rate, and 25-percent of their FY 1996 hospital-specific rate.

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 4,836 hospitals included in the analysis. This number is 86 fewer hospitals than were included in the impact analysis in the FY 2000 final rule (64 FR 41624).

The next four rows of Table I contain hospitals categorized according to their geographic location (all urban, which is further divided into large urban and other urban, or rural). There are 2,710 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,545 hospitals located in large urban areas (populations over 1 million), and 1,165 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 2,126 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 2001 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show that the number of hospitals paid based on these categorizations (after consideration of geographic reclassifications) are 2,786, 1,617, 1,169, and 2,050, respectively.

The next three groupings examine the impacts of the proposed changes on hospitals grouped by whether or not they have residency programs (teaching hospitals that receive an IME adjustment) or receive DSH payments, or some combination of these two adjustments. There are 3,730 nonteaching hospitals in our analysis, 870 teaching hospitals with fewer than 100 residents, and 236 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Hospitals in the rural DSH categories, therefore, represent hospitals that were not reclassified for purposes of the standardized amount or for purposes of the DSH adjustment. (They may, however, have been reclassified for purposes of the wage index.) The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next five rows examine the impacts of the proposed changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), and MDHs), as well as rural hospitals not receiving a special payment designation. The RRCs (150), SCHs (660), MDHs (352), and SCH and RRCs (58) shown here were not reclassified for purposes of the standardized amount. There are 20 RRCs, 1 MDH, 5 SCHs and 2 SCH and RRCs that will be reclassified as urban for the standardized amount in FY 2001 and, therefore, are not included in these rows.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 1998 Medicare cost report files, if available (otherwise FY 1997 data are used). Data needed to determine ownership status or Medicare utilization percentages were unavailable for 34 and 35 hospitals, respectively. For the most part, these are new hospitals.

The next series of groupings concern the geographic reclassification status of hospitals. The first three groupings display hospitals that were reclassified by the MGCRB for both FY 2000 and FY 2001, or for only one of those 2 years, by urban and rural status. The next rows illustrate the overall number of FY 2001 reclassifications, as well as the numbers of reclassified hospitals grouped by urban and rural location. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

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TABLE I - IMPACT ANALYSIS OF CHANGES FOR FY 2001
OPERATING PROSPECTIVE PAYMENT SYSTEM
(PERCENT CHANGES IN PAYMENTS PER CASE)

| | NUM. OF HOSPS.[1] (0) | DRG RE-CALIB.[2] (1) | NEW WAGE DATA[3] (2) | PHASE-OUT OF GME AND CRNA COSTS[4] (3) | DRG & WI CHANGES[5] (4) | MGCRB RECLASSI-FICATION[6] (5) | ALL FY 2001 CHANGES[7] (6) |
|---|---|---|---|---|---|---|---|
| (BY GEOGRAPHIC LOCATION) | | | | | | | |
| ALL HOSPITALS | 4,836 | 0.0 | 0.3 | 0.0 | 0.0 | 0.0 | 1.2 |
| URBAN HOSPITALS | 2,710 | 0.0 | 0.1 | 0.0 | -0.1 | -0.4 | 0.9 |
| LARGE URBAN | 1,545 | 0.0 | -0.3 | 0.1 | -0.5 | -0.5 | 0.6 |
| OTHER URBAN | 1,165 | 0.0 | 0.6 | 0.0 | 0.4 | -0.3 | 1.4 |
| RURAL HOSPITALS | 2,126 | 0.1 | 1.4 | 0.1 | 1.3 | 2.4 | 2.8 |
| BED SIZE (URBAN) | | | | | | | |
| 0- 99 BEDS | 687 | 0.1 | 0.2 | 0.1 | 0.3 | -0.4 | 1.4 |
| 100-199 BEDS | 928 | 0.1 | 0.1 | 0.1 | 0.0 | -0.5 | 1.0 |
| 200-299 BEDS | 543 | 0.0 | 0.0 | 0.1 | -0.2 | -0.4 | 0.8 |
| 300-499 BEDS | 410 | -0.1 | 0.1 | 0.1 | -0.2 | -0.4 | 0.8 |
| 500 OR MORE BEDS | 142 | -0.1 | 0.1 | 0.0 | -0.3 | -0.4 | 1.0 |
| BED SIZE (RURAL) | | | | | | | |
| 0- 49 BEDS | 1,208 | 0.2 | 1.4 | 0.1 | 1.3 | 0.3 | 3.6 |
| 50- 99 BEDS | 549 | 0.2 | 1.4 | 0.1 | 1.2 | 0.8 | 3.0 |
| 100-149 BEDS | 217 | 0.2 | 1.4 | 0.1 | 1.2 | 3.4 | 2.5 |

| | NUM. OF HOSPS.[1] (0) | DRG RE-CALIB.[2] (1) | NEW WAGE DATA[3] (2) | PHASE-OUT OF GME AND CRNA COSTS[4] (3) | DRG & WI CHANGES[5] (4) | MGCRB RECLASSI-FICATION[6] (5) | ALL FY 2001 CHANGES[7] (6) |
|---|---|---|---|---|---|---|---|
| 150-199 BEDS | 85 | 0.1 | 1.5 | 0.1 | 1.3 | 4.9 | 2.7 |
| 200 OR MORE BEDS | 67 | 0.1 | 1.4 | 0.1 | 1.2 | 4.1 | 2.2 |
| URBAN BY CENSUS DIVISION | | | | | | | |
| NEW ENGLAND | 146 | 0.0 | -0.2 | 0.1 | 0.3 | -0.2 | 1.2 |
| MIDDLE ATLANTIC | 412 | 0.0 | -0.3 | -0.1 | -0.7 | -0.5 | 0.0 |
| SOUTH ATLANTIC | 400 | 0.0 | 0.2 | 0.1 | 0.1 | -0.5 | 1.1 |
| EAST NORTH CENTRAL | 457 | 0.0 | 0.1 | 0.0 | -0.2 | -0.2 | 1.0 |
| EAST SOUTH CENTRAL | 156 | 0.0 | -0.6 | 0.0 | -0.9 | -0.4 | 0.2 |
| WEST NORTH CENTRAL | 185 | -0.1 | 0.6 | 0.0 | 0.2 | -0.4 | 1.5 |
| WEST SOUTH CENTRAL | 343 | 0.0 | 0.8 | 0.1 | 0.5 | -0.5 | 1.6 |
| MOUNTAIN | 132 | -0.1 | 0.2 | 0.1 | -0.2 | -0.4 | 1.3 |
| PACIFIC | 434 | 0.0 | 0.2 | 0.1 | 0.0 | -0.4 | 1.0 |
| PUERTO RICO | 45 | 0.1 | -0.7 | 0.0 | -0.8 | -0.5 | 0.9 |
| RURAL BY CENSUS DIVISION | | | | | | | |
| NEW ENGLAND | 52 | 0.1 | 0.4 | 0.0 | 0.1 | 2.6 | 2.6 |
| MIDDLE ATLANTIC | 79 | 0.1 | 0.4 | 0.0 | 0.2 | 2.8 | 2.6 |
| SOUTH ATLANTIC | 276 | 0.2 | 1.9 | 0.1 | 1.8 | 2.8 | 3.0 |
| EAST NORTH CENTRAL | 280 | 0.1 | 1.5 | 0.1 | 1.3 | 2.0 | 3.0 |

| | NUM. OF HOSPS.[1] (0) | DRG RE-CALIB.[2] (1) | NEW WAGE DATA[3] (2) | PHASE-OUT OF GME AND CRNA COSTS[4] (3) | DRG & WI CHANGES[5] (4) | MGCRB RECLASSI-FICATION[6] (5) | ALL FY 2001 CHANGES[7] (6) |
|---|---|---|---|---|---|---|---|
| EAST SOUTH CENTRAL | 265 | 0.2 | 1.4 | 0.1 | 1.3 | 2.2 | 2.4 |
| WEST NORTH CENTRAL | 491 | 0.1 | 1.3 | 0.0 | 1.0 | 2.5 | 3.1 |
| WEST SOUTH CENTRAL | 337 | 0.2 | 1.7 | 0.1 | 1.6 | 2.8 | 2.7 |
| MOUNTAIN | 201 | 0.1 | 1.0 | 0.0 | 0.8 | 1.7 | 3.1 |
| PACIFIC | 140 | 0.2 | 1.4 | 0.1 | 1.3 | 1.7 | 2.8 |
| PUERTO RICO | 5 | 0.2 | 0.1 | 0.1 | 0.2 | -0.6 | 0.1 |
| (BY PAYMENT CATEGORIES) | | | | | | | |
| URBAN HOSPITALS | 2,786 | 0.0 | 0.1 | 0.0 | -0.1 | -0.3 | 0.9 |
| LARGE URBAN | 1,617 | 0.0 | -0.3 | 0.1 | -0.5 | -0.4 | 0.6 |
| OTHER URBAN | 1,169 | 0.0 | 0.6 | 0.0 | 0.5 | -0.3 | 1.4 |
| RURAL HOSPITALS | 2,050 | 0.2 | 1.4 | 0.1 | 1.3 | 2.1 | 2.8 |
| TEACHING STATUS | | | | | | | |
| NON-TEACHING | 3,730 | 0.1 | 0.5 | 0.1 | 0.4 | 0.3 | 1.4 |
| LESS THAN 100 RESIDENTS | 870 | 0.0 | 0.2 | 0.0 | 0.0 | -0.2 | 1.1 |
| 100+ RESIDENTS | 236 | -0.1 | -0.2 | 0.0 | -0.5 | -0.4 | 0.8 |
| DISPROPORTIONATE SHARE HOSPITALS (DSH) | | | | | | | |
| NON-DSH | 3,025 | 0.0 | 0.2 | 0.0 | 0.1 | 0.3 | 1.1 |

| | NUM. OF HOSPS.[1] (0) | DRG RE-CALIB.[2] (1) | NEW WAGE DATA[3] (2) | PHASE-OUT OF GME AND CRNA COSTS[4] (3) | DRG & WI CHANGES[5] (4) | MGCRB RECLASSI-FICATION[6] (5) | ALL FY 2001 CHANGES[7] (6) |
|---|---|---|---|---|---|---|---|
| URBAN DSH | | | | | | | |
| 100 BEDS OR MORE | 1,377 | 0.0 | 0.2 | 0.0 | -0.1 | -0.4 | 1.1 |
| FEWER THAN 100 BEDS | 76 | 0.1 | 0.5 | 0.1 | 0.4 | -0.5 | 1.6 |
| RURAL DSH | | | | | | | |
| SOLE COMMUNITY (SCH) | 153 | 0.2 | 1.6 | 0.1 | 1.5 | 0.6 | 4.7 |
| REFERRAL CENTERS (RRC) | 54 | 0.2 | 1.8 | 0.1 | 1.7 | 3.9 | 1.5 |
| OTHER RURAL DSH HOSPITALS | | | | | | | |
| 100 BEDS OR MORE | 48 | 0.2 | 2.0 | 0.1 | 1.9 | 1.8 | 2.6 |
| FEWER THAN 100 BEDS | 103 | 0.2 | 2.0 | 0.1 | 2.0 | 0.4 | 3.7 |
| URBAN TEACHING AND DSH | | | | | | | |
| BOTH TEACHING AND DSH | 716 | -0.1 | 0.1 | 0.0 | -0.2 | -0.4 | 1.1 |
| TEACHING AND NO DSH | 325 | -0.1 | -0.1 | 0.0 | -0.4 | -0.3 | 0.6 |
| NO TEACHING AND DSH | 737 | 0.1 | 0.3 | 0.1 | 0.2 | -0.2 | 1.1 |
| NO TEACHING AND NO DSH | 1,008 | 0.1 | -0.1 | 0.1 | -0.1 | -0.3 | 0.6 |
| RURAL HOSPITAL TYPES | | | | | | | |
| NONSPECIAL STATUS HOSPITALS | 830 | 0.2 | 1.9 | 0.1 | 1.8 | 1.2 | 3.1 |
| RRC | 150 | 0.1 | 1.7 | 0.1 | 1.6 | 5.3 | 2.1 |
| SCH | 660 | 0.2 | 0.8 | 0.0 | 0.7 | 0.4 | 3.5 |
| MDH | 352 | 0.2 | 1.4 | 0.1 | 1.3 | 0.3 | 3.1 |

| | NUM. OF HOSPS.[1] (0) | DRG RE-CALIB.[2] (1) | NEW WAGE DATA[3] (2) | PHASE-OUT OF GME AND CRNA COSTS[4] (3) | DRG & WI CHANGES[5] (4) | MGCRB RECLASSI-FICATION[6] (5) | ALL FY 2001 CHANGES[7] (6) |
|---|---|---|---|---|---|---|---|
| SCH AND RRC | 58 | 0.1 | 0.6 | 0.0 | 0.4 | 1.8 | 2.1 |
| TYPE OF OWNERSHIP | | | | | | | |
| VOLUNTARY | 2,820 | 0.0 | 0.2 | 0.0 | 0.0 | -0.1 | 1.1 |
| PROPRIETARY | 768 | 0.1 | 0.2 | 0.1 | 0.0 | 0.0 | 0.9 |
| GOVERNMENT | 1,214 | 0.0 | 0.7 | 0.1 | 0.4 | 0.3 | 1.9 |
| UNKNOWN | 34 | -0.2 | -0.2 | 0.0 | -0.7 | -0.5 | 0.5 |
| MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS | | | | | | | |
| 0 - 25 | 379 | 0.0 | 0.2 | 0.1 | -0.1 | -0.1 | 1.4 |
| 25 - 50 | 1,830 | 0.0 | 0.1 | 0.1 | -0.2 | -0.3 | 1.0 |
| 50 - 65 | 1,893 | 0.0 | 0.5 | 0.0 | 0.3 | 0.2 | 1.3 |
| OVER 65 | 699 | 0.1 | 0.3 | 0.0 | 0.3 | 0.3 | 1.2 |
| UNKNOWN | 35 | -0.2 | -0.2 | 0.0 | -0.7 | -0.5 | 0.5 |
| HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD | | | | | | | |
| RECLASSIFICATION STATUS DURING FY 2000 AND FY 2001 | | | | | | | |
| RECLASSIFIED DURING BOTH FY 2000 AND FY 2001 | 381 | 0.1 | 1.2 | 0.1 | 1.1 | 5.4 | 1.2 |
| URBAN | 52 | 0.0 | 0.8 | 0.1 | 1.0 | 4.8 | -0.2 |

| | NUM. OF HOSPS.[1] (0) | DRG RE-CALIB.[2] (1) | NEW WAGE DATA[3] (2) | PHASE-OUT OF GME AND CRNA COSTS[4] (3) | DRG & WI CHANGES[5] (4) | MGCRB RECLASSI-FICATION[6] (5) | ALL FY 2001 CHANGES[7] (6) |
|---|---|---|---|---|---|---|---|
| RURAL | 329 | 0.1 | 1.4 | 0.1 | 1.2 | 5.7 | 1.8 |
| RECLASSIFIED DURING FY 2001 ONLY | 160 | 0.1 | 1.1 | 0.1 | 0.9 | 3.9 | 6.1 |
| URBAN | 41 | 0.0 | 0.6 | 0.0 | 0.3 | 3.3 | 4.2 |
| RURAL | 119 | 0.2 | 1.7 | 0.1 | 1.5 | 4.6 | 8.5 |
| RECLASSIFIED DURING FY 2000 ONLY | 118 | 0.0 | 0.5 | 0.1 | 0.2 | -0.8 | -2.8 |
| URBAN | 31 | 0.0 | -0.2 | 0.1 | -0.5 | -1.1 | -2.7 |
| RURAL | 87 | 0.2 | 1.5 | 0.1 | 1.4 | -0.4 | -2.9 |
| FY 2001 RECLASSIFICATIONS | | | | | | | |
| ALL RECLASSIFIED HOSPITALS | 541 | 0.1 | 1.2 | 0.1 | 1.0 | 5.0 | 2.4 |
| STANDARDIZED AMOUNT ONLY | 66 | 0.1 | 0.8 | 0.1 | 0.7 | 3.7 | 0.6 |
| WAGE INDEX ONLY | 386 | 0.1 | 1.2 | 0.1 | 1.1 | 4.3 | 0.7 |
| BOTH | 46 | 0.1 | 0.0 | 0.1 | -0.2 | 4.4 | -1.1 |
| NONRECLASSIFIED | 4,312 | 0.0 | 0.2 | 0.0 | -0.1 | -0.5 | 1.2 |
| ALL URBAN RECLASSIFIED | 93 | 0.0 | 0.7 | 0.1 | 0.7 | 4.2 | 1.5 |
| STANDARDIZED AMOUNT ONLY | 16 | 0.2 | -0.6 | 0.0 | -0.7 | 0.7 | 0.3 |
| WAGE INDEX ONLY | 59 | 0.0 | 0.7 | 0.1 | 0.8 | 4.8 | 2.2 |
| BOTH | 18 | 0.0 | 1.4 | 0.1 | 1.1 | 3.2 | -0.9 |

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| | NUM. OF HOSPS.[1] (0) | DRG RE-CALIB.[2] (1) | NEW WAGE DATA[3] (2) | PHASE-OUT OF GME AND CRNA COSTS[4] (3) | DRG & WI CHANGES[5] (4) | MGCRB RECLASSI-FICATION[6] (5) | ALL FY 2001 CHANGES[7] (6) |
|---|---|---|---|---|---|---|---|
| NONRECLASSIFIED | 2,592 | 0.0 | 0.0 | 0.0 | -0.2 | -0.6 | 0.9 |
| ALL RURAL RECLASSIFIED | 448 | 0.1 | 1.4 | 0.1 | 1.2 | 5.5 | 2.9 |
| STANDARDIZED AMOUNT ONLY | 53 | 0.1 | 1.5 | 0.1 | 1.3 | 4.3 | 2.7 |
| WAGE INDEX ONLY | 372 | 0.1 | 1.4 | 0.1 | 1.3 | 5.4 | 2.9 |
| BOTH | 23 | 0.0 | 0.9 | 0.1 | 0.6 | 8.4 | 3.7 |
| NONRECLASSIFIED | 1,677 | 0.2 | 1.4 | 0.1 | 1.3 | -0.4 | 2.7 |
| OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B)) | 26 | 0.2 | -0.2 | 0.0 | -0.3 | 1.4 | 0.9 |

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 1999, and hospital cost report data are from reporting periods beginning in FY 1997 and FY 1998.

[2] This column displays the payment impact of the recalibration of the DRG weights based on FY 1999 MedPAR data and the DRG reclassification changes, in accordance with section 1886(d)(4)(C) of the Act.

[3] This column shows the payment effects of updating the data used to calculate the wage index with data from the FY 1997 cost reports.

[4] This column displays the impact of removing 60 percent of the costs and hours associated with teaching physicians Part A, residents, and CRNAs from the wage index calculation.

[5] This column displays the combined impact of the reclassification and recalibration of the DRGs, the updated and revised wage data used to calculate the wage index, and the budget neutrality adjustment factor for these two changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 1, 2 and 3, and the FY 2001 budget neutrality factor of .996506.

[6] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2001 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2001. Reclassification for prior years has no bearing on the payment impacts shown here.

[7] This column shows changes in payments from FY 2000 to FY 2001. It incorporates all of the changes displayed in columns 4 and 5 (the changes displayed in columns 1, 2, and 3 are included in column 4). It also displays the impact of the FY 2001 update (including the higher update for SCHs), changes in hospitals' reclassification status in FY 2001 compared to FY 2000, the difference in outlier payments from FY 2000 to FY 2001, and the reductions to payments through the IME adjustment taking effect during FY 2001. It also reflects section 405 of Public law 106-113, which permitted certain SCHs to rebase for a 1996 hospital-specific rate. The sum of these columns may be different from the percentage changes shown here due to rounding and interactive effects.

*B. Impact of the Proposed Changes to the DRG Reclassifications and Recalibration of Relative Weights (Column 1)*

In column 1 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II of the preamble to this proposed rule. Section 1886(d)(4)(C)(i) of the Act requires us to annually make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

We compared aggregate payments using the FY 2000 DRG relative weights (GROUPER version 17) to aggregate payments using the proposed FY 2001 DRG relative weights (GROUPER version 18). Overall payments are unaffected by the DRG reclassification and recalibration. Consistent with the minor changes we are proposing for the FY 2001 GROUPER, the redistributional impacts of DRG reclassifications and recalibration across hospital groups are very small (a 0.0 percent impact for large and other urban hospitals; a 0.1 percent increase for rural hospitals). Within hospital categories, the net effects for urban hospitals are small positive changes for small hospitals (a 0.1 percent increase for hospitals with fewer than 200 beds), and small decreases for larger hospitals (a 0.1 percent decrease for hospitals with more than 300 beds). Among rural hospitals, small hospital categories experience the largest increases, a 0.2 percent increase for hospitals with fewer than 50 beds.

The breakdown by urban census division shows that the small decrease among urban hospitals is confined to the West North Central and Mountain regions. Payments to urban hospitals in most other regions are unchanged, while payments to urban hospitals in Puerto Rico rise by 0.1 percent. All rural hospital census divisions experience payment increases ranging from 0.1 percent for hospitals in New England, Middle Atlantic, East North Central, West North Central, and Mountain regions to 0.2 percent for hospitals in the South Atlantic, East South Central, West South Central, Pacific, and Puerto Rico census divisions.

*C. Impact of Updating the Wage Data (Column 2)*

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the proposed wage index for FY 2001 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1996 and before October 1, 1997. As with the previous column, the impact of the new data on hospital payments is isolated by holding the other payment parameters constant in the two simulations. That is, column 2 shows the percentage changes in payments when going from a model using the FY 2000 wage index (based on FY 1996 wage data before geographic reclassifications to a model using the FY 2001 prereclassification wage index based on FY 1997 wage data). Sections 152 and 154 of Public Law 106–113 reclassified certain hospitals for purposes of the wage index standardized amounts. For purposes of this column, these hospitals are located in their prereclassification geographic location. The impacts of these statutory reclassifications are shown in column 5, when examining the impacts of geographic reclassification.

The wage data collected on the FY 1997 cost reports are similar to the data used in the calculation of the FY 2000 wage index. For a thorough discussion of the data used to calculate the wage index, see section III.B. of this proposed rule.

The results indicate that the new wage data have an overall impact of a 0.3 percent increase in hospital payments (prior to applying the budget neutrality factor, see column 5). Rural hospitals especially appear to benefit from the update. Their payments increase by 1.4 percent. These increases are attributable to relatively large increases in the wage index values for the rural areas of particular States; Hawaii, Louisiana, and Montana all had increases greater than 6 percent in their prereclassification wage index values.

Urban hospitals as a group are not significantly affected by the updated wage data. The gains of hospitals in other urban areas (0.6 percent increase) are offset by decreases among hospitals in large urban areas (0.3 percent decrease). Urban hospitals in Puerto Rico experience a 7.0 percent decrease, largely due to declines of 6 percent or more in the prereclassified FY 2001 wage indexes of 2 MSAs. Urban hospitals in the East South Central census region experience a 6 percent decline due to several MSAs in Tennessee with prereclassified FY 2001 wage indexes that fall by 6 percent or more. We note that the wage data used for the proposed wage index are based upon the data available as of February 22, 2000 and, therefore, do not reflect revision requests received and processed by the fiscal intermediaries after that date. To the extent these requests are granted by hospitals' fiscal intermediaries, these revisions will be reflected in the final rule. In addition, we continue to verify the accuracy of the data for hospitals with extraordinary changes in their data from the prior year.

The largest increases are seen in the rural census divisions. Rural South Atlantic experiences the greatest positive impact, 1.9 percent. Hospitals in five other census divisions receive positive impacts over 1.0 percent: West South Central at 1.7, East North Central at 1.5, East South Central at 1.4, Pacific at 1.4, and West North Central at 1.3. The following chart compares the shifts in wage index values for labor market areas for FY 2000 relative to FY 2001. This chart demonstrates the impact of the proposed changes for the FY 2001 wage index relative to the FY 2000 wage index. The majority of labor market areas (322) experience less than a 5-percent change. A total of 39 labor market areas experience an increase of more than 5 percent with 12 having an increase greater than 10 percent. A total of 15 areas experience decreases of more than 5-percent. Of those, 10 decline by 10 percent or more.

| Percentage change in area wage index values | Number of labor market areas | |
|---|---|---|
| | FY 2000 | FY 2001 |
| Increase more than 10 percent | 8 | 12 |
| Increase more than 5 percent and less than 10 percent | 22 | 27 |
| Increase or decrease less than 5 percent | 318 | 322 |
| Decrease more than 5 percent and less than 10 percent | 17 | 5 |
| Decrease more than 10 percent | 5 | 10 |

Among urban hospitals, 125 would experience an increase of between 5 and 10 percent and 19 more than 10 percent. A total of 401 rural hospitals have increases greater than 5 percent, but none greater than 10 percent. On the negative side, 55 urban hospitals have decreases in their wage index values of at least 5 percent but less than 10 percent. Twelve urban hospitals have decreases in their wage index values greater than 10 percent. There are no rural hospitals with decreases in their wage index values greater than 5 percent or with increases of more than 10 percent. The following chart shows the projected impact for urban and rural hospitals.

| Percentage change in area wage index values | Number of hospitals | |
|---|---|---|
| | Urban | Rural |
| Increase more than 10 percent | 19 | 0 |
| Increase more than 5 percent and less than 10 percent | 125 | 401 |
| Increase or decrease less than 5 percent | 2,499 | 1,725 |

| Percentage change in area wage index values | Number of hospitals | |
|---|---|---|
| | Urban | Rural |
| Decrease more than 5 percent and less than 10 percent | 55 | 0 |
| Decrease more than 10 percent | 12 | 0 |

*D. Impact of 5-Year Phase-Out of Teaching Physicians', Residents', and CRNAs' Costs (Column 3)*

As described in section III.C. of this preamble, the proposed FY 2001 wage index is calculated by blending 60 percent of hospitals' average hourly wages calculated without removing teaching physician (paid under Medicare Part A), residents, or CRNA costs (and hours); and 40 percent of average hourly wages calculated after removing these costs (and hours). This constitutes the second year of a 5-year phase-out of these costs and hours, where the proportion of the calculation based upon average hourly wages after removing these costs increases by 20 percentage points per year.

In order to determine the impact of moving from the 80/20 blend percentage to the 60/40 blend percentage, we first estimated the payments for FY 2001 using the FY 2001 prereclassified wage index calculated using the 80/20 blend percentage (Column 2). We then estimated what the payments for FY 2001 would have been if the 60/40 blend percentage was applied to the FY 2001 prereclassified wage index. Column 3 compares the differences in these payment estimates and shows that the 60/40 blend percentage does not significantly impact overall payments (0.0 percent change). Only 53 labor market areas experience a decrease in their wage index and none decreases by more than −0.1 percent.

*E. Combined Impact of DRG and Wage Index Changes—Including Budget Neutrality Adjustment (Column 4)*

The impact of DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are to be budget neutral. As noted in the Addendum to this proposed rule, we compared simulated aggregate payments using the FY 2000 DRG relative weights and wage index to simulated aggregate payments using the proposed FY 2001 DRG relative weights and blended wage index. Based on this comparison, we computed a wage and recalibration budget neutrality factor of 0.996506. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index are shown in column 4. The 0.0 percent impact for all hospitals demonstrates that these changes, in combination with the budget neutrality factor, are budget neutral.

For the most part, the changes in this column are the sum of the changes in columns 1, 2, and 3, minus approximately 0.3 percent attributable to the budget neutrality factor. There may be some variation of plus or minus 0.1 percent due to rounding.

*F. Impact of MGCRB Reclassifications (Column 5)*

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 5 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 2001. As noted below, these decisions affect hospitals' standardized amount and wage index area assignments. In addition, until FY 2002, rural hospitals reclassified for purposes of the standardized amount qualify to be treated as urban for purposes of the DSH adjustment.

Beginning in 1998, by February 28 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. (In previous years, these determinations were made by March 30.) The MGCRB may approve a hospital's reclassification request for the purpose of using the other area's standardized amount, wage index value, or both, or for FYs 1999 through 2001, for purposes of qualifying for a DSH adjustment or to receive a higher DSH payment.

The proposed FY 2001 wage index values incorporate all of the MGCRB's reclassification decisions for FY 2001. The wage index values also reflect any decisions made by the HCFA Administrator through the appeals and review process for MGCRB decisions as of February 29, 2000. Additional changes that result from the Administrator's review of MGCRB decisions or a request by a hospital to withdraw its application will be reflected in the final rule for FY 2001.

Section 152 of Public Law 106–113 reclassified certain hospitals for purposes of the wage index and the standardized amounts. The impacts of these statutory reclassifications are included in this column.

The overall effect of geographic reclassification is required by section 1886(d)(8)(D) of the Act to be budget neutral. Therefore, we applied an adjustment of 0.994270 to ensure that the effects of reclassification are budget neutral. (See section II.A.4.b. of the Addendum to this proposed rule.)

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.4 percent, while payments to urban hospitals decline 0.4 percent. Hospitals in other urban areas see a decrease in payments of 0.3 percent, while large urban hospitals lose 0.5 percent. Among urban hospital groups (that is, bed size, census division, and special payment status), payments generally decline.

A positive impact is evident among most of the rural hospital groups. The largest decrease among the rural census divisions is 0.6 percent for Puerto Rico. The largest increases are in rural Middle Atlantic and West South Central. These regions all receive an increase of 2.8 percent.

Among rural hospitals designated as RRCs, 127 hospitals are reclassified for purposes of the wage index only, leading to the 5.3 percent increase in payments among RRCs overall. This positive impact on RRCs is also reflected in the category of rural hospitals with 150–199 beds, which has a 4.9 percent increase in payments.

Rural hospitals reclassified for FY 2000 and FY 2001 experience a 5.7 percent increase in payments. This may be due to the fact that these hospitals have the most to gain from reclassification and have been reclassified for a period of years. Rural hospitals reclassified for FY 2001 only experience a 4.6 percent increase in payments, while rural hospitals reclassified for FY 2000 only experience a 0.4 percent decrease in payments. Urban hospitals reclassified for FY 2001 but not FY 2000 experience a 3.3 percent increase in payments overall. Urban hospitals reclassified for FY 2000 but not for FY 2001 experience a 1.1 percent decline in payments.

The FY 2001 Reclassification rows of Table I show the changes in payments per case for all FY 2001 reclassified and nonreclassified hospitals in urban and rural locations for each of the three reclassification categories (standardized amount only, wage index only, or both). The table illustrates that the largest impact for reclassified rural hospitals is for those hospitals reclassified for both the standardized amount and the wage index. These hospitals receive an 8.4 percent increase in payments. In addition, rural hospitals reclassified just for the wage index receive a 5.4 percent payment increase. The overall impact on reclassified hospitals is to increase their payments per case by an average of 5 percent for FY 2001.

The reclassification of hospitals primarily affects payment to nonreclassified hospitals through changes in the wage index and the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Among hospitals that are not reclassified, the overall impact of hospital reclassifications is an average decrease in payments per case of about 0.4 percent. Rural nonreclassified hospitals decrease by 0.4 percent, and urban nonreclassified hospitals lose 0.6 percent (the amount of the budget neutrality offset).

The foregoing analysis was based on MGCRB and HCFA Administrator decisions made by February 29, 2000. As previously noted, there may be changes to some MGCRB decisions through the appeals, review, and applicant withdrawal process. The outcome

of these cases will be reflected in the analysis presented in the final rule.

*G. All Changes (Column 6)*

Column 6 compares our estimate of payments per case, incorporating all changes reflected in this proposed rule for FY 2001 (including statutory changes), to our estimate of payments per case in FY 2000. It includes the effects of the 2.0 percent update to the standardized amounts and the hospital-specific rates for MDHs and the 3.1 percent update for SCHs. It also reflects the 1.0 percentage point difference between the projected outlier payments in FY 2000 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 2000 (6.1 percent), as described in the introduction to this Appendix and the Addendum to this proposed rule.

Another change affecting the difference between FY 2000 and FY 2001 payments arises from section 1886(d)(5)(8) of the Act, as amended by Public Law 106–113. As noted in the introduction to this impact analysis, for FY 2001, the IME adjustment is decreased from last year (6.5 percent in FY 2000 and 6.25 percent in FY 2001).

We also note that column 6 includes the impacts of FY 2001 MGCRB reclassifications compared to the payment impacts of FY 2000 reclassifications. Therefore, when comparing FY 2001 payments to FY 2000, the percent changes due to FY 2001 reclassifications shown in column 5 need to be offset by the effects of reclassification on hospitals' FY 2000 payments (column 7 of Table 1, July 30, 1999 final rule (64 FR 41625)). For example, the impact of MGCRB reclassifications on rural hospitals' FY 2001 payments was approximately a 2.4 percent increase, offsetting most of the 2.6 percent increase in column 7 for FY 2000. Therefore, the net change in FY 2001 payments due to reclassification for rural hospitals is actually a decrease of 0.2 percent relative to FY 2000. However, last year's analysis contained a somewhat different set of hospitals, so this might affect the numbers slightly.

Finally, section 405 of Public Law 106–113 provided that certain SCHs may elect to receive payment on the basis of their costs per case during their cost reporting period that began during 1996. To be eligible, a SCH must have received payment for cost reporting periods beginning during 1999 on the basis of its hospital-specific rate. For FY 2001, eligible SCHs that elect rebasing receive a hospital-specific rate comprised of 75 percent of the higher of their FY 1982 or FY 1987 hospital-specific rate, and 25 percent of their 1996 hospital-specific rate. The impact of this provision is modeled in column 6 as well.

There might also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 6 may not equal the sum of the changes in columns 4 and 5, plus the other impacts that we are able to identify.

The overall payment change from FY 2000 to FY 2001 for all hospitals is a 1.2 percent increase. This reflects the 2.0 percent update for FY 2001 (3.1 percent for SCHs), the 1.0 percent lower outlier payments in FY 2001 compared to FY 2000 (5.1 percent compared to 6.1 percent); the change in the IME adjustment (6.5 in FY 2000 to 6.2 in FY 2001); and the rebasing of certain SCHs to their 1996 hospital-specific rate.

Hospitals in urban areas experience a 0.9 percent increase in payments per case compared to FY 2000. The 0.4 percent negative impact due to reclassification is offset by an identical negative impact for FY 2000. Hospitals in rural areas, meanwhile, experience a 2.8 percent payment increase. As discussed previously, this is primarily due to the positive effect of the wage index and DRG changes (1.2 percent increase).

Among urban census divisions, other than the Middle Atlantic and East South Central regions (which experience no change and a 0.2 percent increase in payments, respectively), payments increased between 0.9 and 1.6 percent between FY 2000 and FY 2001. The rural census division experiencing the smallest increase in payments was Puerto Rico (0.1 percent). The largest increases by rural hospitals are in the Mountain and West North Central regions, both with 3.1 percent. Among other rural census divisions, the largest increases are in the South Atlantic and the East North Central, both with 3.0.

Among special categories of rural hospitals, those hospitals receiving payment under the hospital-specific methodology (SCHs, MDHs, and SCH/RRCs) experience payment increases of 3.5 percent, 3.1 percent, and 2.1 percent, respectively. This outcome is primarily related to the fact that, for hospitals receiving payments under the hospital-specific methodology, there are no outlier payments. Therefore, these hospitals do not experience negative payment impacts from the decline in outlier payments from FY 2000 to FY 2001 (from 6.1 of total DRG plus outlier payments to 5.1 percent) as do hospitals paid based on the national standardized amounts.

The largest negative payment impacts from FY 2000 to FY 2001 are among hospitals that were reclassified for FY 2000 and are not reclassified for FY 2001. Overall, these hospitals lose 2.8 percent. The urban hospitals in this category lose 2.7 percent, while the rural hospitals lose 2.9 percent. On the other hand, hospitals reclassified for FY 2001 that were not reclassified for FY 2000 would experience the greatest payment increases: 6.1 percent overall; 8.5 percent for 119 rural hospitals in this category and 4.2 percent for 41 urban hospitals.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2000 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per case]

| (BY GEOGRAPHIC LOCATION) | Number of hospitals (1) | Average FY 2000 payment per case (2)[1] | Average FY 2001 payment per case (3)[1] | All changes (4) |
|---|---|---|---|---|
| ALL HOSPITALS | 4,836 | $6,816 | $6,895 | 1.2 |
| URBAN HOSPITALS | 2,710 | 7,391 | 7,457 | 0.9 |
| LARGE URBAN AREAS | 1,545 | 7,927 | 7,973 | 0.6 |
| OTHER URBAN AREAS | 1,165 | 6,694 | 6,786 | 1.4 |
| RURAL HOSPITALS | 2,126 | 4,565 | 4,695 | 2.8 |
| BED SIZE (URBAN): | | | | |
| 0–99 BEDS | 687 | 4,970 | 5,041 | 1.4 |
| 100–199 BEDS | 928 | 6,235 | 6,300 | 1.0 |
| 200–299 BEDS | 543 | 7,022 | 7,076 | 0.8 |
| 300–499 BEDS | 410 | 7,884 | 7,943 | 0.8 |
| 500 OR MORE BEDS | 142 | 9,762 | 9,859 | 1.0 |
| BED SIZE (RURAL): | | | | |
| 0–49 BEDS | 1,208 | 3,787 | 3,925 | 3.6 |
| 50–99 BEDS | 549 | 4,273 | 4,402 | 3.0 |
| 100–149 BEDS | 217 | 4,671 | 4,789 | 2.5 |
| 150–199 BEDS | 85 | 5,112 | 5,251 | 2.7 |
| 200 OR MORE BEDS | 67 | 5,719 | 5,847 | 2.2 |
| URBAN BY CENSUS DIVISION: | | | | |
| NEW ENGLAND | 146 | 7,843 | 7,939 | 1.2 |
| MIDDLE ATLANTIC | 412 | 8,311 | 8,314 | 0.0 |

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2000 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per case]

| (BY GEOGRAPHIC LOCATION) | Number of hospitals (1) | Average FY 2000 payment per case (2) [1] | Average FY 2001 payment per case (3) [1] | All changes (4) |
|---|---|---|---|---|
| SOUTH ATLANTIC | 400 | 7,045 | 7,120 | 1.1 |
| EAST NORTH CENTRAL | 457 | 7,113 | 7,187 | 1.0 |
| EAST SOUTH CENTRAL | 156 | 6,648 | 6,660 | 0.2 |
| WEST NORTH CENTRAL | 185 | 7,128 | 7,235 | 1.5 |
| WEST SOUTH CENTRAL | 343 | 6,788 | 6,898 | 1.6 |
| MOUNTAIN | 132 | 7,047 | 7,138 | 1.3 |
| PACIFIC | 434 | 8,591 | 8,678 | 1.0 |
| PUERTO RICO | 45 | 3,169 | 3,198 | 0.9 |
| RURAL BY CENSUS DIVISION: | | | | |
| NEW ENGLAND | 52 | 5,462 | 5,604 | 2.6 |
| MIDDLE ATLANTIC | 79 | 4,927 | 5,056 | 2.6 |
| SOUTH ATLANTIC | 276 | 4,698 | 4,840 | 3.0 |
| EAST NORTH CENTRAL | 280 | 4,615 | 4,751 | 3.0 |
| EAST SOUTH CENTRAL | 265 | 4,231 | 4,331 | 2.4 |
| WEST NORTH CENTRAL | 491 | 4,380 | 4,517 | 3.1 |
| WEST SOUTH CENTRAL | 337 | 4,062 | 4,170 | 2.7 |
| MOUNTAIN | 201 | 4,895 | 5,046 | 3.1 |
| PACIFIC | 140 | 5,612 | 5,769 | 2.8 |
| PUERTO RICO | 5 | 2,455 | 2,457 | 0.1 |
| **(BY PAYMENT CATEGORIES)** | | | | |
| URBAN HOSPITALS: | 2,786 | 7,352 | 7,419 | 0.9 |
| LARGE URBAN | 1,617 | 7,852 | 7,898 | 0.6 |
| OTHER URBAN | 1,169 | 6,681 | 6,776 | 1.4 |
| RURAL HOSPITALS | 2,050 | 4,538 | 4,665 | 2.8 |
| TEACHING STATUS: | | | | |
| NON-TEACHING | 3,730 | 5,502 | 5,578 | 1.4 |
| FEWER THAN 100 RESIDENTS | 870 | 7,175 | 7,256 | 1.1 |
| 100 OR MORE RESIDENTS | 236 | 10,914 | 11,001 | 0.8 |
| DISPROPORTIONATE SHARE HOSPITALS (DSH): | | | | |
| NON-DSH | 3,025 | 5,850 | 5,915 | 1.1 |
| URBAN DSH: | | | | |
| 100 BEDS OR MORE | 1,377 | 7,959 | 8,047 | 1.1 |
| FEWER THAN 100 BEDS | 76 | 4,966 | 5,045 | 1.6 |
| RURAL DSH: | | | | |
| SOLE COMMUNITY (SCH) | 153 | 4,198 | 4,397 | 4.7 |
| REFERRAL CENTERS (RRC) | 54 | 5,384 | 5,465 | 1.5 |
| OTHER RURAL DSH HOSPITALS: | | | | |
| 100 BEDS OR MORE | 48 | 4,141 | 4,249 | 2.6 |
| FEWER THAN 100 BEDS | 103 | 3,706 | 3,844 | 3.7 |
| URBAN TEACHING AND DSH: | | | | |
| BOTH TEACHING AND DSH | 716 | 8,864 | 8,962 | 1.1 |
| TEACHING AND NO DSH | 325 | 7,372 | 7,413 | 0.6 |
| NO TEACHING AND DSH | 737 | 6,362 | 6,432 | 1.1 |
| NO TEACHING AND NO DSH | 1,008 | 5,711 | 5,744 | 0.6 |
| RURAL HOSPITAL TYPES: | | | | |
| NONSPECIAL STATUS HOSPITALS | 830 | 3,968 | 4,092 | 3.1 |
| RRC | 150 | 5,269 | 5,380 | 2.1 |
| SCH | 660 | 4,534 | 4,692 | 3.5 |
| MDH | 352 | 3,786 | 3,903 | 3.1 |
| SCH AND RRC | 58 | 5,533 | 5,651 | 2.1 |
| TYPE OF OWNERSHIP: | | | | |
| VOLUNTARY | 2,820 | 6,987 | 7,062 | 1.1 |
| PROPRIETARY | 768 | 6,276 | 6,335 | 0.9 |
| GOVERNMENT | 1,214 | 6,307 | 6,427 | 1.9 |
| UNKNOWN | 34 | 11,179 | 11,236 | 0.5 |
| MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS: | | | | |
| 0–25 | 379 | 9,010 | 9,136 | 1.4 |
| 25–50 | 1,830 | 7,891 | 7,972 | 1.0 |
| 50–65 | 1,893 | 5,958 | 6,036 | 1.3 |
| OVER 65 | 699 | 5,297 | 5,358 | 1.2 |
| UNKNOWN | 35 | 11,178 | 11,236 | 0.5 |
| HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD: | | | | |
| RECLASSIFICATION STATUS DURING FY 2000 AND FY 2001: | | | | |
| RECLASSIFIED DURING BOTH FY 2000 AND FY 2001 | 381 | 5,848 | 5,921 | 1.2 |
| URBAN | 52 | 8,046 | 8,033 | −0.2 |
| RURAL | 329 | 5,272 | 5,367 | 1.8 |

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2000 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per case]

| | Number of hospitals | Average FY 2000 payment per case | Average FY 2001 payment per case | All changes |
|---|---|---|---|---|
| | (1) | (2) [1] | (3) [1] | (4) |
| RECLASSIFIED DURING FY 2001 ONLY | 160 | 5,900 | 6,259 | 6.1 |
| URBAN | 41 | 7,600 | 7,917 | 4.2 |
| RURAL | 119 | 4,604 | 4,994 | 8.5 |
| RECLASSIFIED DURING FY 2000 ONLY | 118 | 5,940 | 5,774 | −2.8 |
| URBAN | 31 | 7,428 | 7,226 | −2.7 |
| RURAL | 87 | 4,584 | 4,449 | −2.9 |
| FY 2000 RECLASSIFICATIONS: | | | | |
| ALL RECLASSIFIED HOSPITALS | 541 | 5,861 | 6,005 | 2.4 |
| STANDARDIZED AMOUNT ONLY | 66 | 4,864 | 4,892 | 0.6 |
| WAGE INDEX ONLY | 386 | 5,889 | 5,930 | 0.7 |
| BOTH | 46 | 6,494 | 6,424 | −1.1 |
| NONRECLASSIFIED | 4,312 | 6,944 | 7,030 | 1.2 |
| ALL URBAN RECLASSIFIED | 93 | 7,865 | 7,986 | 1.5 |
| STANDARDIZED AMOUNT ONLY | 16 | 5,230 | 5,246 | 0.3 |
| WAGE INDEX ONLY | 59 | 8,321 | 8,508 | 2.2 |
| BOTH | 18 | 8,036 | 7,962 | −0.9 |
| NONRECLASSIFIED | 2,592 | 7,384 | 7,447 | 0.9 |
| ALL RURAL RECLASSIFIED | 448 | 5,145 | 5,296 | 2.9 |
| STANDARDIZED AMOUNT ONLY | 53 | 4,728 | 4,856 | 2.7 |
| WAGE INDEX ONLY | 372 | 5,177 | 5,327 | 2.9 |
| BOTH | 23 | 5,267 | 5,460 | 3.7 |
| NONRECLASSIFIED | 1,677 | 4,121 | 4,234 | 2.7 |
| OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B)) | 26 | 4,765 | 4,808 | 0.9 |

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the proposed changes for FY 2001 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the estimated payments per case for FY 2000 with the average estimated per case payments for FY 2001, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from column 6 of Table I.

**VIII. Impact of Organ, Tissue and Eye Procurement Condition of Participation on CAHs**

In this proposed rule, we propose to add a CoP for organ, tissue and eye procurement for CAHs. We do not anticipate that this condition would have a substantial economic impact on CAHs. However, we believe it is desirable to inform the public of our projections of its likely effects. There are several provisions in this proposed condition that would impact CAHs to a greater or lesser degree. Specifically, CAHs would be required to have written protocols; have agreements with an OPO, a tissue bank, and an eye bank; refer all deaths that occur in the CAH to the OPO or a third party designated by the OPO; ensure that CAH employees who initiate a request for donation to the family of a potential donor have been trained as a designated requestor; and work cooperatively with the OPO, tissue bank, and eye bank in educating CAH staff, reviewing death records, and maintaining potential donors. It is important to note that because of the inherent flexibility of this condition, the extent of its economic impact is dependent upon decisions that will be made either by the CAH or by the CAH in conjunction with the OPO or the tissue and eye banks. Thus, the impact on individual CAHs will vary and is subject in large part to their decision making. The impact will also vary based on whether a CAH currently has an organ donation protocol and its level of compliance with existing law and regulations. For example, if a CAH was a Medicare hospital in compliance with the hospital CoP for organ, tissue, and eye procurement prior to converting to a CAH, there will be no additional impact.

The first requirement in the proposed CoP is that CAHs have and implement written protocols that reflect the various other requirements of the proposed CoP. Currently, under section 1138 of the Act, CAHs must have written protocols for organ donation. Most CAHs will need to rewrite their existing protocols to conform with this regulation; however, this is clearly not a requirement that imposes a significant economic burden.

In addition, a CAH must have an agreement with its designated OPO and with at least one tissue bank and at least one eye bank. CAHs are required under section 1138 of the Act to refer all potential donors to an OPO. Also, the OPO regulation at 42 CFR 486.306 requires, as a qualification for designation as an OPO, that the OPO have a working relationship with at least 75 percent of the hospitals in its service area that participate in the Medicare and Medicaid programs and that have an operating room and the equipment and personnel for retrieving organs. Therefore, some CAHs may already have an agreement with their designated OPO. Although CAHs may need to modify those existing agreements, the need to make modifications would not impose a significant economic burden. Although there is no statutory or regulatory requirement for a CAH to have agreements with tissue and eye banks, we must assume some CAHs have agreements with tissue and eye banks, since hospitals are the source for virtually all tissues and eyes.

The CoP would require CAHs to notify the OPO about every death that occurs in the CAH. The average Medicare hospital has approximately 165 beds and 200 deaths per year. However, by statute and regulation, CAHs may use no more than 15 beds for acute care services. Assuming that the number of deaths in a hospital is related to the number of acute care beds, there should be approximately 18 deaths per year in the average CAH. Thus, the economic impact for a CAH of referring all deaths would be small.

Under the proposed CoP, a CAH may agree to have the OPO determine medical suitability for tissue and eye donation or may have alternative arrangements with a tissue bank and an eye bank. These alternative arrangements could include the CAH's direct notification of the tissue and eye bank of potential tissue and eye donors or direct notification of all deaths. Again, the impact is small, and the regulation permits the CAH to decide how this process will take place. We recognize that many communities already have a one-phone-call system in place. In addition, some OPOs are also tissue banks or eye banks or both. A CAH that chose to use the OPO's tissue and eye bank services in these localities would need to make only one telephone call on every death.

This proposed CoP requires that the individual who initiates a request for

donation to the family of a potential donor must be an OPO representative or a designated requestor. A designated requestor is an individual who has taken a course offered or approved by the OPO in the methodology for approaching families of potential donors and requesting donation. The CAH would need to arrange for designated requestor training. Most OPOs have trained designated requestors as part of the hospital CoP for organ, tissue, and eye procurement. Even if the CAH wants to have a sufficient number of designated requestors to ensure that all shifts are covered, this provision of the regulation would not have a significant economic impact on CAHs. In addition, the CAH may be able to choose to have donation requests initiated by the OPO, the tissue bank, or the eye bank staff rather than CAH staff, in which case there is no economic impact.

The regulation requires a CAH to work cooperatively with the OPO, a tissue bank, and an eye bank in educating CAH staff. We do not believe education of CAH staff will demand a significant amount of staff time. In addition, most OPOs already give educational presentations for the staff in their hospitals.

The regulation requires a CAH to work cooperatively with the OPO, a tissue bank, and an eye bank in reviewing death records. Most OPOs currently conduct extensive CAH death record reviews. The CAH's assistance is required only to provide lists of CAH deaths and facilitate access to records.

Finally, the regulation requires a CAH to work cooperatively with the OPO, a tissue bank, and an eye bank in maintaining potential donors while necessary testing and placement of potential donated organs and tissues take place. It is possible that because of the proposed CoP, some CAHs may have their first organ donors. Therefore, we considered the impact on a CAH of maintaining a brain dead potential donor on a ventilator until the organs can be placed. CAHs with full ventilator capability should have no trouble maintaining a potential donor until the organs are placed. However, some CAHs have ventilator capability only so that a patient can be maintained until he or she is transferred to a larger facility for treatment. These CAHs would have the equipment and staffing to maintain a potential donor until transfer to another facility occurs. Some CAHs do not have ventilator capability and would be unable to maintain a potential donor. However, CAHs without ventilator capability would still be obligated to notify the OPO, or a third party designated by the OPO, of all individuals whose death is imminent or who have died in the CAH because there is a potential to obtain a tissue or an eye donation. We do not believe there will be a significant impact on CAHs no matter what their situation—full ventilator capability, ventilator capability only for patients who are to be transferred to a larger facility, or no ventilator capability.

We are sensitive to the possible burden this proposed CoP may place on CAHs. Therefore, we are particularly interested in comments and information concerning the previously mentioned requirements.

## IX. Impact of Proposed Changes in the Capital Prospective Payment System

### *A. General Considerations*

We now have cost report data for the 7th year of the capital prospective payment system (cost reports beginning in FY 1998) available through the December 1999 update of the HCRIS. We also have updated information on the projected aggregate amount of obligated capital approved by the fiscal intermediaries. However, our impact analysis of payment changes for capital-related costs is still limited by the lack of hospital-specific data on several items. These are the hospital's projected new capital costs for each year, its projected old capital costs for each year, and the actual amounts of obligated capital that will be put in use for patient care and recognized as Medicare old capital costs in each year. The lack of this information affects our impact analysis in the following ways:

- Major investment in hospital capital assets (for example, in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the hospital capital growth rate for individual hospitals.
- Our policy of recognizing certain obligated capital as old capital makes it difficult to project future capital-related costs for individual hospitals. Under § 412.302(c), a hospital is required to notify its intermediary that it has obligated capital by the later of October 1, 1992, or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system. The intermediary must then notify the hospital of its determination whether the criteria for recognition of obligated capital have been met by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification. The amount that is recognized as old capital is limited to the lesser of the actual allowable costs when the asset is put in use for patient care or the estimated costs of the capital expenditure at the time it was obligated. We have substantial information regarding fiscal intermediary determinations of projected aggregate obligated capital amounts. However, we still do not know when these projects will actually be put into use for patient care, the actual amount that will be recognized as obligated capital when the project is put into use, or the Medicare share of the recognized costs. Therefore, we do not know actual obligated capital commitments for purposes of the FY 2001 capital cost projections. In Appendix B of this proposed rule, we discuss the assumptions and computations that we employ to generate the amount of obligated capital commitments for use in the FY 2001 capital cost projections.

In Table III of this section, we present the redistributive effects that are expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals in FY 2001. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of the proposed FY 2001 capital payment policies by the standard prospective payment system hospital groupings. While we now have actual information on the effects of the transition payment methodology and interim payments under the capital prospective payment system and cost report data for most hospitals, we still need to randomly generate numbers for the change in old capital costs, new capital costs for each year, and obligated amounts that will be put in use for patient care services and recognized as old capital each year. We continue to be unable to predict accurately FY 2001 capital costs for individual hospitals, but with the most recent data on hospitals' experience under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings.

### *B. Projected Impact Based on the Proposed FY 2001 Actuarial Model*

#### 1. Assumptions

In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 2000 to FY 2001 using a capital cost model. The FY 2001 model, as described in Appendix B of this proposed rule, integrates actual data from individual hospitals with randomly generated capital cost amounts. We have capital cost data from cost reports beginning in FY 1989 through FY 1998 as reported on the December 1999 update of HCRIS, interim payment data for hospitals already receiving capital prospective payments through PRICER, and data reported by the intermediaries that include the hospital-specific rate determinations that have been made through January 1, 2000 in the provider-specific file. We used these data to determine the proposed FY 2001 capital rates. However, we do not have individual hospital data on old capital changes, new capital formation, and actual obligated capital costs. We have data on costs for capital in use in FY 1998, and we age that capital by a formula described in Appendix B. Therefore, we need to randomly generate only new capital acquisitions for any year after FY 1998. All Federal rate payment parameters are assigned to the applicable hospital.

For purposes of this impact analysis, the proposed FY 2001 actuarial model includes the following assumptions:

- Medicare inpatient capital costs per discharge will change at the following rates during these periods:

AVERAGE PERCENTAGE CHANGE IN CAPITAL COSTS PER DISCHARGE

| Fiscal year | Percentage change |
|---|---|
| 1999 | 3.16 |
| 2000 | 2.34 |
| 2001 | 1.99 |

- We estimate that the Medicare case-mix index will increase by 0.5 percent in FY 2000 and in FY 2001.

• The Federal capital rate and the hospital-specific rate were updated in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The proposed FY 2001 update is 0.9 percent (see section IV. of the Addendum to this proposed rule).

2. Results

We have used the actuarial model to estimate the change in payment for capital-related costs from FY 2000 to FY 2001. Table III shows the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high capital cost hospital is a hospital that, based on its initial hospital-specific rate and the applicable Federal rate, will be paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY FOR FY 2001

| Type of hospital | Percent of hospitals | Percent of discharges | Percent of capital costs | Percent of capital payments |
|---|---|---|---|---|
| Low Cost Hospital | 67 | 62 | 56 | 61 |
| High Cost Hospital | 33 | 38 | 44 | 39 |

A low capital cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year, through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use (within the limits established in § 412.302(e) for putting obligated capital into use for patient care). If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital became a hold-harmless payment hospital as a result of a redetermination, we continue to show these hospitals as low capital cost hospitals in Table III.

Assuming no behavioral changes in capital expenditures, Table III displays the percentage change in payments from FY 2000 to FY 2001 using the above described actuarial model. With the proposed Federal rate, we estimate aggregate Medicare capital payments will increase by 5.89 percent in FY 2001. This increase is noticeably higher than last year's (3.34 percent) due to the combination of the increase in the number of hospital admissions, the increase in case-mix, and the increase in the Federal blend percentage from 90 percent to 100 percent and a decrease in the hospital-specific rate percentage from 10 percent to 0 percent for fully prospective payment hospitals.

TABLE III.—IMPACT OF PROPOSED CHANGES FOR FY 2001 ON PAYMENTS PER DISCHARGE

| | Number of Hospitals | Discharges | Adjusted Federal payment | Average Federal percent | Hospital specific payment | Hold harmless payment | Exceptions payment | Total payment | Percent Change over FY 2000 |
|---|---|---|---|---|---|---|---|---|---|
| FY 2000 Payments per Discharge | | | | | | | | | |
| Low Cost Hospitals | 3,187 | 6,757,956 | $581.11 | 90.42 | $30.20 | $2.40 | $8.90 | $622.61 | |
| Fully Prospective | 3,015 | 6,289,996 | 577.57 | 90.00 | 32.44 | | 8.52 | 618.53 | |
| 100% Federal Rate | 155 | 430,322 | 638.22 | 100.00 | | | 3.76 | 641.98 | |
| Hold Harmless | 17 | 37,639 | 520.20 | 60.95 | | 431.53 | 130.53 | 1,082.26 | |
| High Cost Hospitals | 1,588 | 4,091,922 | 658.45 | 97.93 | | 19.44 | 13.10 | 690.98 | |
| 100% Federal Rate | 1,394 | 3,742,341 | 676.37 | 100.00 | | | 9.01 | 685.38 | |
| Hold Harmless | 194 | 349,581 | 466.63 | 74.15 | | 227.51 | 56.83 | 750.97 | |
| Total Hospitals | 4,775 | 10,849,879 | 610.28 | 93.33 | 18.81 | 8.83 | 10.48 | 648.40 | |
| FY 2001 Payments per Discharge | | | | | | | | | |
| Low Cost Hospitals | 3,187 | 6,869,437 | $649.67 | 99.81 | | $1.74 | $10.12 | $661.54 | 6.25 |
| Fully Prospective | 3,015 | 6,393,759 | 650.22 | 100.00 | | | 9.55 | 659.77 | 6.67 |
| 100% Federal Rate | 157 | 442,002 | 648.25 | 100.00 | | | 4.59 | 652.84 | 1.69 |
| Hold Harmless | 15 | 33,676 | 564.26 | 68.97 | | 355.91 | 191.29 | 1,111.46 | 2.70 |
| High Cost Hospitals | 1,588 | 4,159,343 | 666.60 | 98.79 | | 12.23 | 19.53 | 698.36 | 1.07 |
| 100% Federal Rate | 1,412 | 3,853,508 | 680.13 | 100.00 | | | 13.37 | 693.50 | 1.19 |
| Hold Harmless | 176 | 305,834 | 496.05 | 81.77 | | 166.38 | 97.07 | 759.50 | 1.14 |
| Total Hospitals | 4,775 | 11,028,780 | 656.05 | 99.42 | | 5.70 | 13.67 | 675.42 | 4.17 |

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average increase in payments per case of 6.67 percent, and high capital cost hospitals will experience an average increase of 1.07 percent. These results are due to the change in the blended percentages to the payment system to 100 percent adjusted Federal rate and 0 percent hospital-specific rate.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 90 percent to 100 percent and the hospital-specific rate payment percentage will decrease from 10 to 0 percent in FY 2001. The Federal rate payment percentage for hospitals paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for high cost hospitals receiving a hold-harmless payment for old capital will increase from 74.15 percent to 81.77 percent. We estimate the percentage of hold-harmless hospitals paid based on 100

percent of the Federal rate will increase from 87.78 percent to 88.92 percent. We estimate that the few remaining high cost hold-harmless hospitals (176) will experience an increase in payments of 1.14 percent from FY 2000 to FY 2001. This increase reflects our estimate that exception payments per discharge will increase 70.81 percent from FY 2000 to FY 2001 for high cost hold-harmless hospitals. While we estimate that this group's regular hold-harmless payments for old capital will decline by 26.87 percent due to the retirement of old capital, we estimate that its high overall capital costs will cause an increase in these hospitals' exceptions payments from $56.83 per discharge in FY 2000 to $97.07 per discharge in FY 2001. This is primarily due to the estimated decrease in outlier payments, which will cause an estimated increase in exceptions payments to cover unmet capital costs.

We expect that the average hospital-specific rate payment per discharge will decrease from $32.44 in FY 2000 to $0.00 in FY 2001. This decrease is due to the decrease in the hospital-specific rate payment percentage from 10 percent in FY 2000 to 0 percent in FY 2001 for fully prospective payment hospitals.

We are proposing no changes in our exceptions policies for FY 2001. As a result, the minimum payment levels would be—

- 90 percent for sole community hospitals;
- 80 percent for urban hospitals with 100 or more beds and a disproportionate share patient percentage of 20.2 percent or more; or
- 70 percent for all other hospitals.

We estimate that exceptions payments will increase from 1.62 percent of total capital payments in FY 2000 to 2.02 percent of payments in FY 2001. The projected distribution of the exception payments is shown in the chart below:

ESTIMATED FY 2001 EXCEPTIONS PAYMENTS

| Type of hospital | Number of hospitals | Percent of exceptions payments |
|---|---|---|
| Low Capital Cost | 186 | 46 |
| High Capital Cost | 191 | 54 |
| Total | 377 | 100 |

*C. Cross-Sectional Comparison of Capital Prospective Payment Methodologies*

Table IV presents a cross-sectional summary of hospital groupings by capital prospective payment methodology. This distribution is generated by our actuarial model.

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TABLE IV.— DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS-ESTIMATE FOR FY 2001 PAYMENTS

| | (1) Total No. of Hospitals | (2) Hold-harmless | | (3) Percentage paid fully prospective rate |
|---|---|---|---|---|
| | | Percentage paid hold-harmless (A) | Percentage paid fully federal (B) | |
| By Geographic Location: | | | | |
| All hospitals | 4,775 | 4.0 | 32.9 | 63.1 |
| Large urban areas (populations over 1 million) | 1,514 | 4.0 | 41.1 | 55.0 |
| Other urban areas (populations of 1 million of fewer) | 1,144 | 4.8 | 40.6 | 54.5 |
| Rural areas | 2,117 | 3.6 | 22.8 | 73.6 |
| Urban hospitals | 2,658 | 4.3 | 40.9 | 54.8 |
| 0-99 beds | 646 | 5.9 | 33.7 | 60.4 |
| 100-199 beds | 918 | 5.7 | 47.2 | 47.2 |
| 200-299 beds | 542 | 3.7 | 41.9 | 54.4 |
| 300-499 beds | 410 | 0.5 | 37.3 | 62.2 |
| 500 or more beds | 142 | 2.1 | 39.4 | 58.5 |
| Rural hospitals | 2,117 | 3.6 | 22.8 | 73.6 |
| 0-49 beds | 1,201 | 3.0 | 16.4 | 80.6 |
| 50-99 beds | 547 | 4.8 | 28.2 | 67.1 |
| 100-149 beds | 217 | 5.1 | 35.0 | 59.9 |
| 150-199 beds | 85 | 2.4 | 28.2 | 69.4 |
| 200 or more beds | 67 | 1.5 | 46.3 | 52.2 |
| By Region: | | | | |
| Urban by Region | 2,658 | 4.3 | 40.9 | 54.8 |
| New England | 145 | 0.7 | 25.5 | 73.8 |
| Middle Atlantic | 407 | 2.7 | 34.6 | 62.7 |
| South Atlantic | 395 | 5.1 | 52.2 | 42.8 |
| East North Central | 453 | 3.8 | 30.2 | 66.0 |
| East South Central | 153 | 7.2 | 47.7 | 45.1 |
| West North Central | 180 | 5.6 | 37.2 | 57.2 |
| West South Central | 326 | 9.5 | 57.4 | 33.1 |
| Mountain | 123 | 2.4 | 52.0 | 45.5 |
| Pacific | 431 | 2.6 | 37.6 | 59.9 |
| Puerto Rico | 45 | 0.0 | 28.9 | 71.1 |
| Rural by Region | 2,117 | 3.6 | 22.8 | 73.6 |
| New England | 52 | 0.0 | 21.2 | 78.8 |
| Middle Atlantic | 78 | 3.8 | 20.5 | 75.6 |
| South Atlantic | 276 | 1.4 | 34.1 | 64.5 |
| East North Central | 280 | 2.5 | 17.9 | 79.6 |
| East South Central | 265 | 3.0 | 33.2 | 63.8 |
| West North Central | 489 | 3.1 | 14.5 | 82.4 |
| West South Central | 333 | 4.5 | 26.1 | 69.4 |
| Mountain | 200 | 8.5 | 16.0 | 75.5 |
| Pacific | 139 | 5.0 | 23.7 | 71.2 |
| By Payment Classification: | | | | |
| Large urban areas (populations over 1 million) | 1,586 | 3.8 | 41.1 | 55.0 |
| Other urban areas (populations of 1 million of fewer) | 1,148 | 4.9 | 40.2 | 55.0 |
| Rural areas | 2,041 | 3.6 | 22.3 | 74.0 |
| Teaching Status: | | | | |
| Non-teaching | 3,670 | 4.4 | 32.2 | 63.3 |
| Fewer than 100 Residents | 869 | 2.9 | 35.6 | 61.6 |
| 100 or more Residents | 236 | 1.3 | 32.6 | 66.1 |
| Disproportionate share hospitals (DSH): | | | | |
| Non-DSH | 2,974 | 4.1 | 28.6 | 67.2 |
| Urban DSH: | | | | |
| 100 or more beds | 1,371 | 3.8 | 43.3 | 53.0 |
| Less than 100 beds | 74 | 5.4 | 25.7 | 68.9 |
| Rural DSH: | | | | |
| Sole Community (SCH/EACH) | 153 | 5.2 | 22.2 | 72.5 |
| Referral Center (RRC/EACH) | 54 | 1.9 | 53.7 | 44.4 |

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TABLE IV.— DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS-ESTIMATE FOR FY 2001 PAYMENTS

| | (1) Total No. of Hospitals | (2) Hold-harmless | | (3) Percentage paid fully prospective rate |
|---|---|---|---|---|
| | | Percentage paid hold-harmless (A) | Percentage paid fully federal (B) | |
| Other Rural: | | | | |
| 100 or more beds | 48 | 2.1 | 41.7 | 56.3 |
| Less than 100 beds | 101 | 2.0 | 21.8 | 76.2 |
| Urban teaching and DSH: | | | | |
| Both teaching and DSH | 715 | 2.0 | 36.8 | 61.3 |
| Teaching and no DSH | 325 | 3.7 | 32.9 | 63.4 |
| No teaching and DSH | 730 | 5.8 | 47.8 | 46.4 |
| No teaching and no DSH | 964 | 5.1 | 40.9 | 54.0 |
| Rural Hospital Types: | | | | |
| Non special status hospitals | 822 | 1.3 | 24.3 | 74.3 |
| RRC/EACH | 150 | 1.3 | 38.0 | 60.7 |
| SCH/EACH | 660 | 7.7 | 19.4 | 72.9 |
| Medicare-dependent hospitals (MDH) | 351 | 1.4 | 16.0 | 82.6 |
| SCH, RRC and EACH | 58 | 8.6 | 25.9 | 65.5 |
| Type of Ownership: | | | | |
| Voluntary | 2,804 | 3.6 | 32.1 | 64.3 |
| Proprietary | 736 | 6.8 | 57.9 | 35.3 |
| Government | 1,211 | 3.4 | 19.9 | 76.7 |
| Medicare Utilization as a Percent of Inpatient Days: | | | | |
| 0-25 | 366 | 4.4 | 28.1 | 67.5 |
| 25-50 | 1,818 | 3.9 | 35.3 | 60.8 |
| 50-65 | 1,882 | 4.1 | 31.8 | 64.1 |
| Over 65 | 685 | 3.9 | 32.7 | 63.4 |

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As we explain in Appendix B of this proposed rule, we were not able to use 61 of the 4,836 hospitals in our database due to insufficient (missing or unusable) data. Consequently, the payment methodology distribution is based on 4,775 hospitals. These data should be fully representative of the payment methodologies that will be applicable to hospitals.

The cross-sectional distribution of hospital by payment methodology is presented by: (1) Geographic location; (2) region; and (3) payment classification. This provides an indication of the percentage of hospitals within a particular hospital grouping that will be paid under the fully prospective payment methodology and the hold-harmless payment methodology.

The percentage of hospitals paid fully Federal (100 percent of the Federal rate) as hold-harmless hospitals is expected to increase to 32.9 percent in FY 2001.

Table IV indicates that 63.1 percent of hospitals will be paid under the fully prospective payment methodology. (This figure, unlike the figure of 67 percent for low cost capital hospitals in the chart on "Capital Transition Payment Methodology for FY 2001," in section VII.B.2. of this impact analysis takes into account the effects of redeterminations. In other words, this figure does not include low cost hospitals that, following a hospital-specific rate redetermination, are now paid under the hold-harmless methodology.) As expected, a relatively higher percentage of rural and governmental hospitals (74.0 percent and 76.7 percent, respectively by payment classification) are being paid under the fully prospective payment methodology. This is a reflection of their lower than average capital costs per case. In contrast, only 35.3 percent of proprietary hospitals are being paid under the fully prospective methodology. This is a reflection of their higher than average capital costs per case. (We found at the time of the August 30, 1991 final rule (56 FR 43430) that 62.7 percent of proprietary hospitals had a capital cost per case above the national average cost per case.)

*D. Cross-Sectional Analysis of Changes in Aggregate Payments*

We used our FY 2001 actuarial model to estimate the potential impact of our proposed changes for FY 2001 on total capital payments per case, using a universe of 4,775 hospitals. The individual hospital payment parameters are taken from the best available data, including: the January 1, 2000 update to the provider-specific file, cost report data, and audit information supplied by intermediaries. In Table V we present the results of the cross-sectional analysis using the results of our actuarial model and the aggregate impact of the proposed FY 2001 payment policies. Columns 3 and 4 show estimates of payments per case under our model for FY 2000 and FY 2001. Column 5 shows the total percentage change in payments from FY 2000 to FY 2001. Column 6 presents the percentage change in payments that can be attributed to Federal rate changes alone.

Federal rate changes represented in Column 6 include the 1.60 percent increase in the Federal rate, a 0.5 percent increase in case mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the MGCRB. Column 5 includes the effects of the Federal rate changes represented in Column 6. Column 5 also reflects the effects of all other changes, including the change from 90 percent to 100 percent in the portion of the Federal rate for fully prospective hospitals, the hospital-specific rate update, changes in the proportion of new to total capital for hold-harmless hospitals, changes in old capital (for example, obligated capital put in use), hospital-specific rate redeterminations, and exceptions. The comparisons are provided by: (1) Geographic location, (2) region, and (3) payment classification.

The simulation results show that, on average, capital payments per case can be expected to increase 4.2 percent in FY 2001. The results show that the effect of the Federal rate change alone is to increase payments by 0.9 percent. In addition to the increase attributable to the Federal rate change, a 3.3 percent increase is attributable to the effects of all other changes.

Our comparison by geographic location shows an overall increase in payments to hospitals in all areas. This comparison also shows that urban and rural hospitals will experience slightly different rates of increase in capital payments per case (3.9 percent and 5.9 percent, respectively). This difference is due to the lower rate of increase for urban hospitals relative to rural hospitals (0.6 percent and 2.7 percent, respectively) from the Federal rate changes alone. Urban hospitals will gain approximately the same as rural hospitals (3.3 percent versus 3.2 percent, respectively) from the effects of all other changes.

All regions are estimated to receive increases in total capital payments per case, partly due to the increased share of payments that are based on the Federal rate (from 90 to 100 percent). Changes by region vary from a minimum of 2.6 percent increase (Middle Atlantic urban region) to a maximum of 7.5 percent increase (East North Central rural region).

By type of ownership, government hospitals are projected to have the largest rate of increase of total payment changes (5.6 percent, a 1.4 percent increase due to the Federal rate changes, and a 4.2 percent increase from the effects of all other changes). Payments to voluntary hospitals will increase 4.0 percent (a 0.9 percent increase due to Federal rate changes, and a 3.1 percent increase from the effects of all other changes) and payments to proprietary hospitals will increase 3.6 percent (a 0.4 percent increase due to Federal rate changes, and a 3.2 percent increase from the effects of all other changes).

Section 1886(d)(10) of the Act established the MGCRB. Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both and for purposes of DSH for FYs 1999 through 2001. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes affects the geographic adjustment factor, since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 2001 compared to the effects of reclassification for FY 2000, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 2001 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 2001 as a whole are projected to experience a 5.9 percent increase in payments (a 2.4 percent increase attributable to Federal rate changes and a 3.5 percent increase attributable to the effects of all other changes). Payments to nonreclassified hospitals will increase slightly less (4.2 percent) than reclassified hospitals (5.9 percent) overall. Payments to nonreclassified hospitals will increase less than reclassified hospitals from the Federal rate changes (0.9 percent compared to 2.4 percent), but they will gain about the same from the effects of all other changes (3.3 percent compared to 3.5 percent).

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## TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE (FY 2000 PAYMENTS COMPARED TO FY 2001 PAYMENTS)

| | Number of Hospitals | Average FY 2000 payments/case | Average FY 2001 payments/case | All Changes | Portion Attributable to Federal Rate Change |
|---|---|---|---|---|---|
| By Geographic Location: | | | | | |
| All hospitals | 4,775 | 648 | 675 | 4.2 | 0.9 |
| Large urban areas (populations over 1 million) | 1,514 | 752 | 779 | 3.5 | 0.2 |
| Other urban areas (populations of 1 million of fewer) | 1,144 | 639 | 667 | 4.4 | 1.1 |
| Rural areas | 2,117 | 434 | 460 | 5.9 | 2.7 |
| Urban hospitals | 2,658 | 703 | 730 | 3.9 | 0.6 |
| 0-99 beds | 646 | 503 | 525 | 4.3 | 1.3 |
| 100-199 beds | 918 | 613 | 635 | 3.7 | 0.9 |
| 200-299 beds | 542 | 671 | 697 | 4.0 | 0.7 |
| 300-499 beds | 410 | 731 | 761 | 4.1 | 0.4 |
| 500 or more beds | 142 | 912 | 944 | 3.6 | 0.2 |
| Rural hospitals | 2,117 | 434 | 460 | 5.9 | 2.7 |
| 0-49 beds | 1,201 | 380 | 386 | 7.4 | 3.6 |
| 50-99 beds | 547 | 408 | 432 | 5.9 | 2.8 |
| 100-149 beds | 217 | 453 | 476 | 5.2 | 2.4 |
| 150-199 beds | 85 | 473 | 501 | 6.0 | 2.7 |
| 200 or more beds | 67 | 535 | 564 | 5.4 | 2.2 |
| By Region: | | | | | |
| Urban by Region | 2,658 | 703 | 730 | 3.9 | 0.6 |
| New England | 145 | 727 | 764 | 5.0 | 1.0 |
| Middle Atlantic | 407 | 772 | 793 | 2.6 | -0.2 |
| South Atlantic | 395 | 682 | 705 | 3.4 | 0.7 |
| East North Central | 453 | 678 | 710 | 4.7 | 0.9 |
| East South Central | 153 | 645 | 664 | 2.9 | -0.6 |
| West North Central | 180 | 694 | 727 | 4.7 | 1.2 |
| West South Central | 326 | 668 | 695 | 4.2 | 1.1 |
| Mountain | 123 | 672 | 703 | 4.6 | 1.0 |
| Pacific | 431 | 794 | 830 | 4.6 | 0.6 |
| Puerto Rico | 45 | 290 | 304 | 4.7 | 2.1 |
| Rural by Region | 2,117 | 434 | 460 | 5.9 | 2.7 |
| New England | 52 | 516 | 539 | 4.5 | 1.5 |
| Middle Atlantic | 78 | 460 | 487 | 6.1 | 2.5 |
| South Atlantic | 276 | 447 | 473 | 5.8 | 2.9 |
| East North Central | 280 | 444 | 478 | 7.5 | 3.0 |
| East South Central | 265 | 398 | 422 | 5.9 | 2.4 |
| West North Central | 489 | 425 | 448 | 5.5 | 3.0 |
| West South Central | 333 | 392 | 410 | 4.7 | 2.4 |
| Mountain | 200 | 458 | 482 | 5.3 | 3.0 |
| Pacific | 139 | 508 | 543 | 7.0 | 3.1 |
| By Payment Classification: | | | | | |
| All hospitals | 4,775 | 648 | 675 | 4.2 | 0.9 |
| Large urban areas (populations over 1 million) | 1,586 | 745 | 772 | 3.5 | 0.3 |
| Other urban areas (populations of 1 million of fewer) | 1,148 | 638 | 666 | 4.5 | 1.1 |
| Rural areas | 2,041 | 430 | 456 | 5.9 | 2.7 |
| Teaching Status: | | | | | |
| Non-teaching | 3,670 | 537 | 558 | 4.0 | 1.3 |
| Fewer than 100 Residents | 869 | 678 | 710 | 4.7 | 0.9 |
| 100 or more Residents | 236 | 993 | 1,029 | 3.6 | -0.1 |
| Urban DSH: | | | | | |
| 100 or more beds | 1,371 | 743 | 773 | 4.0 | 0.6 |
| Less than 100 beds | 74 | 519 | 520 | 0.0 | 1.2 |
| Rural DSH: | | | | | |
| Sole Community (SCH/EACH) | 153 | 376 | 411 | 9.2 | 3.9 |
| Referral Center (RRC/EACH) | 54 | 494 | 512 | 3.5 | 1.3 |
| Other Rural: | | | | | |
| 100 or more beds | 48 | 390 | 410 | 5.0 | 3.2 |
| Less than 100 beds | 101 | 346 | 372 | 7.5 | 3.9 |

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE
(FY 2000 PAYMENTS COMPARED TO FY 2001 PAYMENTS)

| | Number of Hospitals | Average FY 2000 pay-ments/case | Average FY 2001 pay-ments/case | All Changes | Portion Attributable to Federal Rate Change |
|---|---|---|---|---|---|
| Urban teaching and DSH: | | | | | |
| Both teaching and DSH | 715 | 816 | 849 | 4.1 | 0.5 |
| Teaching and no DSH | 325 | 708 | 740 | 4.5 | 0.5 |
| No teaching and DSH | 730 | 615 | 637 | 3.7 | 0.9 |
| No teaching and no DSH | 964 | 573 | 591 | 3.1 | 0.7 |
| Rural Hospital Types: | | | | | |
| Non special status hospitals | 822 | 382 | 406 | 6.3 | 3.3 |
| RRC/EACH | 150 | 499 | 525 | 5.3 | 2.1 |
| SCH/EACH | 660 | 421 | 451 | 7.0 | 2.8 |
| Medicare-dependent hospitals (MDH) | 351 | 358 | 387 | 8.0 | 3.5 |
| SCH, RRC and EACH | 58 | 523 | 539 | 3.1 | 1.8 |
| Hospitals Reclassified by the Medicare Geographic Classification Review Board: | | | | | |
| Reclassification Status During FY00 and FY01: | | | | | |
| Reclassified During Both FY00 and FY01 | 381 | 550 | 575 | 4.6 | 1.3 |
| Reclassified During FY01 Only | 160 | 555 | 610 | 9.9 | 5.8 |
| Reclassified During FY00 Only | 144 | 568 | 567 | -0.1 | -2.8 |
| FY01 Reclassifications: | | | | | |
| All Reclassified Hospitals | 541 | 552 | 584 | 5.9 | 2.4 |
| All Nonreclassified Hospitals | 4,251 | 661 | 689 | 4.2 | 0.9 |
| All Urban Reclassified Hospitals | 93 | 719 | 760 | 5.7 | 1.4 |
| Urban Nonreclassified Hospitals | 2,540 | 703 | 730 | 3.8 | 0.5 |
| All Reclassified Rural Hospitals | 448 | 491 | 521 | 6.0 | 2.9 |
| Rural Nonreclassified Hospitals | 1,668 | 389 | 412 | 5.9 | 2.6 |
| Other Reclassified Hospitals (Section 1886(D)(8)(B)) | 26 | 478 | 492 | 2.9 | 0.8 |

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE
(FY 2000 PAYMENTS COMPARED TO FY 2001 PAYMENTS)

| | Number of Hospitals | Average FY 2000 pay-ments/case | Average FY 2001 pay-ments/case | All Changes | Portion Attributable to Federal Rate Change |
|---|---|---|---|---|---|
| Type of Ownership: | | | | | |
| Voluntary | 2,804 | 663 | 690 | 4.0 | 0.9 |
| Proprietary | 736 | 631 | 654 | 3.6 | 0.4 |
| Government | 1,211 | 580 | 612 | 5.6 | 1.4 |
| Medicare Utilization as a Percent of Inpatient Days: | | | | | |
| 0-25 | 366 | 805 | 853 | 6.0 | 0.6 |
| 25-50 | 1,818 | 743 | 771 | 3.8 | 0.5 |
| 50-65 | 1,882 | 578 | 603 | 4.4 | 1.2 |

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### Appendix B: Technical Appendix on the Capital Cost Model and Required Adjustments

Under section 1886(g)(1)(A) of the Act, we set capital prospective payment rates for FY 1992 through FY 1995 so that aggregate prospective payments for capital costs were projected to be 10 percent lower than the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. To implement this requirement, we developed the capital acquisition model to determine the budget neutrality adjustment factor. Even though the budget neutrality requirement expired effective with FY 1996, we must continue to determine the recalibration and geographic reclassification budget neutrality adjustment factor and the reduction in the Federal and hospital-specific rates for exceptions payments. To determine these factors, we must continue to project capital costs and payments.

We used the capital acquisition model from the start of prospective payments for capital costs through FY 1997. We now have 7 years of cost reports under the capital prospective payment system. For FY 1998, we developed a new capital cost model to replace the capital acquisition model. This revised model makes use of the data from these cost reports.

The following cost reports are used in the capital cost model for this proposed rule: The December 31, 1999 update of the cost reports for PPS–IX (cost reporting periods beginning in FY 1992), PPS–X (cost reporting periods beginning in FY 1993), PPS–XI (cost reporting periods beginning in FY 1994), PPS–XII (cost reporting periods beginning in FY 1995), PPS–XIII (cost reporting periods beginning in FY 1996), PPS–XIV (cost reporting periods beginning in FY 1997), and PPS–XV (cost reporting periods beginning in FY 1998). In addition, to model payments, we use the January 1, 2000 update of the provider-specific file, and the March 1994 update of the intermediary audit file.

Since hospitals under alternative payment system waivers (that is, hospitals in Maryland) are currently excluded from the capital prospective payment system, we excluded these hospitals from our model.

We developed FY 1992 through FY 2000 hospital-specific rates using the provider-specific file and the intermediary audit file.

(We used the cumulative provider-specific file, which includes all updates to each hospital's records, and chose the latest record for each fiscal year.) We checked the consistency between the provider-specific file and the intermediary audit file. We ensured that increases in the hospital-specific rates were at least as large as the published updates (increases) for the hospital-specific rates each year. We were able to match hospitals to the files as shown in the following table:

| Source | Number of hospitals |
|---|---|
| Provider-Specific File Only | 129 |
| Provider-Specific and Audit File | 4,707 |
| Total | 4,836 |

Eighty-two of the 4,836 hospitals had unusable or missing data, or had no cost reports available. For 20 of the 82 hospitals, we were unable to determine a hospital-specific rate from the available cost reports. However, there was adequate cost information to determine that these hospitals were paid under the hold-harmless methodology. Since the hospital-specific rate is not used to determine payments for hospitals paid under the hold-harmless methodology, there was sufficient cost report information available to include these 20 hospitals in the analysis. We were able to estimate hospital-specific amounts for one additional hospital from the PPS–IX cost reports. Hence we were able to use 21 of the 82 hospitals. We used 4,775 hospitals for the analysis. Sixty-one hospitals could not be used in the analysis because of insufficient information. These hospitals account for less than 0.7 percent of admissions. Therefore, any effects from the elimination of their cost report data should be minimal.

We analyzed changes in capital-related costs (depreciation, interest, rent, leases, insurance, and taxes) reported in the cost reports. We found a wide variance among hospitals in the growth of these costs. For hospitals with more than 100 beds, the distribution and mean of these cost increases were different for large changes in bed-size (greater than ±20 percent). We also analyzed changes in the growth in old capital and new capital for cost reports that provided this information. For old capital, we limited the analysis to decreases in old capital. We did this since the opportunity for most hospitals to treat "obligated" capital put into service as old capital has expired. Old capital costs should decrease as assets become fully depreciated and as interest costs decrease as the loan is amortized.

The new capital cost model separates the hospitals into three mutually exclusive groups. Hold-harmless hospitals with data on old capital were placed in the first group. Of the remaining hospitals, those hospitals with fewer than 100 beds comprise the second group. The third group consists of all hospitals that did not fit into either of the first two groups. Each of these groups displayed unique patterns of growth in capital costs. We found that the gamma distribution is useful in explaining and describing the patterns of increase in capital costs. A gamma distribution is a statistical distribution that can be used to describe patterns of growth rates, with the greatest proportion of rates being at the low end. We use the gamma distribution to estimate individual hospital rates of increase as follows:

(1) For hold-harmless hospitals, old capital cost changes were fitted to a truncated gamma distribution, that is, a gamma distribution covering only the distribution of cost decreases. New capital costs changes were fitted to the entire gamma distribution, allowing for both decreases and increases.

(2) For hospitals with fewer than 100 beds (small), total capital cost changes were fitted to the gamma distribution, allowing for both decreases and increases.

(3) Other (large) hospitals were further separated into three groups:

- Bed-size decreases over 20 percent (decrease).
- Bed-size increases over 20 percent (increase).
- Other (no change).

Capital cost changes for large hospitals were fitted to gamma distributions for each bed-size change group, allowing for both decreases and increases in capital costs. We analyzed the probability distribution of increases and decreases in bed size for large hospitals. We found the probability somewhat dependent on the prior year change in bed size and factored this dependence into the analysis. Probabilities of bed-size change were determined. Separate sets of probability factors were calculated to reflect the dependence on prior year change in bed size (increase, decrease, and no change).

The gamma distributions were fitted to changes in aggregate capital costs for the entire hospital. We checked the relationship between aggregate costs and Medicare per discharge costs. For large hospitals, there was a small variance, but the variance was larger for small hospitals. Since costs are used only for the hold-harmless methodology and to determine exceptions, we decided to use the gamma distributions fitted to aggregate cost increases for estimating distributions of cost per discharge increases.

Capital costs per discharge calculated from the cost reports were increased by random numbers drawn from the gamma distribution to project costs in future years. Old and new capital were projected separately for hold-harmless hospitals. Aggregate capital per discharge costs were projected for all other hospitals. Because the distribution of increases in capital costs varies with changes in bed size for large hospitals, we first projected changes in bed size for large hospitals before drawing random numbers from the gamma distribution. Bed-size changes were drawn from the uniform distribution with the probabilities dependent on the previous year bed-size change. The gamma distribution has a shape parameter and a scaling parameter. (We used different parameters for each hospital group, and for old and new capital.)

We used discharge counts from the cost reports to calculate capital cost per discharge. To estimate total capital costs for FY 1999 (the MedPAR data year) and later, we use the number of discharges from the MedPAR data. Some hospitals had considerably more discharges in FY 1999 than in the years for which we calculated cost per discharge from the cost report data. Consequently, a hospital with few cost report discharges would have a high capital cost per discharge, since fixed costs would be allocated over only a few discharges. If discharges increase substantially, the cost per discharge would decrease because fixed costs would be allocated over more discharges. If the projection of capital cost per discharge is not adjusted for increases in discharges, the projection of exceptions would be overstated. We address this situation by recalculating the cost per discharge with the MedPAR discharges if the MedPAR discharges exceed the cost report discharges by more than 20 percent. We do not adjust for increases of less than 20 percent because we have not received all of the FY 1999 discharges, and we have removed some discharges from the analysis because they are statistical outliers. This adjustment reduces our estimate of exceptions payments, and consequently, the reduction to the Federal rate for exceptions is smaller. We will continue to monitor our modeling of exceptions payments and make adjustments as needed.

The average national capital cost per discharge generated by this model is the combined average of many randomly generated increases. This average must equal the projected average national capital cost per discharge, which we projected separately (outside this model). We adjusted the shape parameter of the gamma distributions so that the modeled average capital cost per discharge matches our projected capital cost per discharge. The shape parameter for old capital was not adjusted since we are modeling the aging of "existing" assets. This model provides a distribution of capital costs among hospitals that is consistent with our aggregate capital projections.

Once each hospital's capital-related costs are generated, the model projects capital payments. We use the actual payment parameters (for example, the case-mix index and the geographic adjustment factor) that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital as determined from the provider-specific file and the cost reports. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the FY 1999 MedPAR file using the FY 2001 DRG relative weights included in section VI. of the Addendum to this proposed rule. The case-mix index is increased each year after FY 1999 based on analysis of past experiences in case-mix increases. Based on analysis of recent case-mix increases, we estimate that case-mix will increase 0.5 percent in FY 2000. We project that case-mix will increase 0.5 percent in FY 2001. (Since we are using FY 1999 cases for our analysis, the FY 1999 increase in case-mix has no effect on projected capital payments.)

Changes in geographic classification and revisions to the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year, based on the Federal rate after any changes resulting from DRG reclassifications and recalibration and the geographic adjustment factor, equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. For FY 2000, the budget neutrality adjustment factors were 1.00142 for the national rate and 1.00134 for the Puerto Rico rate.

Since we implemented a separate geographic adjustment factor for Puerto Rico, we applied separate budget neutrality adjustments for the national geographic adjustment factor and the Puerto Rico geographic adjustment factor. We applied the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 and earlier since the geographic adjustment factor for Puerto Rico was implemented in FY 1998.

To determine the factors for FY 2001, we first determined the portions of the Federal national and Puerto Rico rates that would be paid for each hospital in FY 2001 based on its applicable payment methodology. Using our model, we then compared, separately for the national rate and the Puerto Rico rate, estimated aggregate Federal rate payments based on the FY 2000 DRG relative weights and the FY 2000 geographic adjustment factor to estimated aggregate Federal rate payments based on the FY 2000 relative weights and the FY 2001 geographic adjustment factor. In making the comparison, we held the FY 2001 Federal rate portion constant and set the other budget neutrality adjustment factor and the exceptions reduction factor to 1.00. To achieve budget neutrality for the changes in the national geographic adjustment factor, we applied an incremental budget neutrality adjustment of 0.99846 for FY 2001 to the previous cumulative FY 2000 adjustment of 1.00142, yielding a cumulative adjustment of 0.99988 through FY 2001. For the Puerto Rico geographic adjustment factor, we applied an incremental budget neutrality adjustment of 1.00312 for FY 2001 to the previous cumulative FY 2000 adjustment of 1.00134, yielding a cumulative adjustment of 1.00446 through FY 2001. We then compared estimated aggregate Federal rate payments based on the FY 2000 DRG relative weights and the FY 2001 geographic adjustment factors to estimated aggregate Federal rate payments based on the FY 2001 DRG relative weights and the FY 2001 geographic adjustment factors. The incremental adjustment for DRG classifications and changes in relative weights would be 1.00019 nationally and for Puerto Rico. The cumulative adjustments for DRG classifications and changes in relative weights and for changes in the geographic adjustment factors through FY 2001 would be 1.00007 nationally and 1.00465 for Puerto Rico. The following table summarizes the adjustment factors for each fiscal year:

BUDGET NEUTRALITY ADJUSTMENT FOR DRG RECLASSIFICATIONS AND RECALIBRATION AND THE GEOGRAPHIC ADJUSTMENT FACTORS

| Fiscal year | National | | | | Puerto Rico | | | |
|---|---|---|---|---|---|---|---|---|
| | Incremental adjustment | | | Cumulative | Incremental adjustment | | | Cumulative |
| | Geographic adjustment factor | DRG reclassifications and recalibration | Combined | | Geographic adjustment factor | DRG reclassifications and recalibration | Combined | |
| 1992 | | | | 1.00000 | | | | |
| 1993 | | | 0.99800 | 0.99800 | | | | |
| 1994 | | | 1.00531 | 1.00330 | | | | |
| 1995 | | | 0.99980 | 1.00310 | | | | |
| 1996 | | | 0.99940 | 1.00250 | | | | |
| 1997 | | | 0.99873 | 1.00123 | | | | |
| 1998 | | | 0.99892 | 1.00015 | | | | 1.00000 |
| 1999 | 0.99944 | 1.00335 | 1.00279 | 1.00294 | 0.99898 | 1.00335 | 1.00233 | 1.00233 |
| 2000 | 0.99857 | 0.99991 | 0.99848 | 1.00142 | 0.99910 | 0.99991 | 0.99901 | 1.00134 |
| 2001 | 0.99846 | 1.00019 | 0.99865 | 1.00007 | 1.00312 | 1.00019 | 1.00331 | 1.00465 |

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that, under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor (the national rate and the Puerto Rico rate are determined separately) for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low-income patients or the large urban add-on payments.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to simulate total payments under the prospective payment system.

Additional payments under the exceptions process are accounted for through a reduction in the Federal and hospital-specific rates. Therefore, we used the model to calculate the exceptions reduction factor. This exceptions reduction factor ensures that aggregate payments under the capital prospective payment system, including exceptions payments, are projected to equal the aggregate payments that would have been made under the capital prospective payment system without an exceptions process. Since changes in the level of the payment rates change the level of payments under the exceptions process, the exceptions reduction factor must be determined through iteration.

In the August 30, 1991 final rule (56 FR 43517), we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next 5 years. The table below provides the actual factors for FYs 1992 through 2000, the proposed factors for FY 2001, and the estimated factors that would be applicable through FY 2005. We caution that these are estimates for FYs 2001 and later, and are subject to revisions resulting from continued methodological refinements, receipt of additional data, and changes in payment policy. We note that in making these projections, we have assumed that the cumulative national DRG/GAF budget neutrality adjustment factor will remain at 1.00007 (1.00465 for Puerto Rico) for FY 2001 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 2001.

The projections are as follows:

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| Fiscal Year | Update Factor | Exceptions Reduction Factor | Budget Neutrality Factor | DRG/GAF Adjustment Factor[1] | Outlier Adjustment Factor | Federal Rate Adjustment | Federal Rate (after outlier) reduction) |
|---|---|---|---|---|---|---|---|
| 1992 . | N/A | 0.9813 | 0.9602 | | .9497 | | 415.59 |
| 1993 . | 6.07 | .9756 | .9162 | .9980 | .9496 | | 417.29 |
| 1994 . | 3.04 | .9485 | .8947 | 1.0053 | .9454 | .9260[2] | 378.34 |
| 1995 . | 3.44 | .9734 | .8432 | .9998 | .9414 | | 376.83 |
| 1996 . | 1.20 | .9849 | N/A | .9994 | .9536 | .9972[3] | 461.96 |
| 1997 . | 0.70 | .9358 | N/A | .9987 | .9481 | | 438.92 |
| 1998 . | 0.90 | .9659 | N/A | .9989 | .9382 | .8222[4] | 371.51 |
| 1999 . | 0.10 | .9783 | N/A | 1.0028 | .9392 | | 378.10 |
| 2000 . | 0.30 | .9730 | N/A | .9985 | .9402 | | 377.03 |
| 2001 . | 0.90 | .9796 | N/A | .9987 | .9416 | | 383.06 |
| 2002 . | 0.80 | 1.0000[6] | N/A | 1.0000[5] | .9416[5] | | 394.17 |
| 2003 . | 0.70 | 1.0000[6] | N/A | 1.0000 | .9416 | 1.0255[4] | 407.07 |
| 2004 . | 0.70 | 1.0000[6] | N/A | 1.0000 | .9416 | | 409.92 |
| 2005 . | 0.80 | 1.0000[6] | N/A | 1.0000 | .9416 | | 413.19 |

[1]Note: The incremental change over the previous year.

[2]Note: OBRA 1993 adjustment.

[3]Note: Adjustment for change in the transfer policy.

[4]Note: Balanced Budget Act of 1997 adjustment.

[5]Note: Future adjustments are, for purposes of this projection, assumed to remain at the same level.

[6]Note: We are unable to estimate exceptions payments for the year under the special exceptions provision (§ 412.348(g) of the regulations) because the regular exceptions provision (§ 412.348(e)) expires.

APPENDIX C—REPORT TO CONGRESS

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THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

APR 17 2000

The Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

Section 1886(e)(3) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in hospital inpatient payment rates for fiscal year (FY) 2001 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and units excluded from PPS. This submission constitutes the required report.

Current law mandates, and the President's FY 2001 budget includes, an update for PPS hospitals, except sole community hospitals (SCHs), equal to the market basket minus 1.1 percentage points. The update for SCHs in current law and the President's 2001 budget is equal to the market basket rate of increase. The President's FY 2001 budget estimated the PPS market basket rate of increase for FY 2001 to be 3.2 percent. Based on this estimate, we recommend an update for SCHs of 3.2 percent and for other hospitals in both large urban and other areas of 2.1 percent.

SCHs are the sole source of care in their area and are afforded special payment protection in order to maintain access to services for Medicare beneficiaries. Medicare-dependent, small rural hospitals (MDHs) are a major source of care for Medicare beneficiaries in their area and are afforded special payment protection in order to maintain access to services for beneficiaries. SCHs and MDHs are PPS hospitals. However, SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate, and MDHs are paid the Federal PPS rate, or, if their hospital-specific rate exceeds the Federal PPS rate, the Federal rate plus 50 percent of the difference between the hospital-specific rate and the Federal rate. We recommend an update of 3.2 percent to the SCH hospital-specific rate and 2.1 percent to the MDH hospital-specific rate.

Hospitals and distinct part hospital units excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Current law mandates that the update for all hospitals and distinct part units excluded from PPS equals the rate of increase in the excluded hospital market basket less a percentage between 0 and 2.5 percentage points, depending on the hospital's costs in relation to its limit, or 0 if costs do not exceed two-thirds of the limit. The President's FY 2001 budget incorporates an increase to the TEFRA limit using

Page 2 - The Honorable Albert Gore, Jr.

3.2 percent for the excluded hospital market basket increase. Therefore, depending on the hospital's costs in relation to its limit, the update would be the market basket increase minus a percentage between 0 and 2.5 percentage points, or 0, resulting in an increase in the TEFRA limits of between .7 and 3.2 percent, or 0.

My recommendation for the updates is based on cost projections used in the President's FY 2001 budget. A final recommendation on the appropriate percentage increases for FY 2001 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest of all relevant factors, including recommendations by the Medicare Payment Advisory Commission.

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time, I do not anticipate recommending any adjustment to the DRG weighting factors for FY 2001.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the Speaker of the House of Representatives.

Sincerely,

Donna E. Shalala

VOL 65 ISS 88 MY 5 2000 UMI

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

APR 17 2000

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Section 1886(e)(3) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in hospital inpatient payment rates for fiscal year (FY) 2001 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and units excluded from PPS. This submission constitutes the required report.

Current law mandates, and the President's FY 2001 budget includes, an update for PPS hospitals, except sole community hospitals (SCHs), equal to the market basket minus 1.1 percentage points. The update for SCHs in current law and the President's 2001 budget is equal to the market basket rate of increase. The President's FY 2001 budget estimated the PPS market basket rate of increase for FY 2001 to be 3.2 percent. Based on this estimate, we recommend an update for SCHs of 3.2 percent and for other hospitals in both large urban and other areas of 2.1 percent.

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Page 2 - The Honorable J. Dennis Hastert

President's FY 2001 budget incorporates an increase to the TEFRA limit using 3.2 percent for the excluded hospital market basket increase. Therefore, depending on the hospital's costs in relation to its limit, the update would be the market basket increase minus a percentage between 0 and 2.5 percentage points, or 0, resulting in an increase in the TEFRA limits of between .7 and 3.2 percent, or 0.

My recommendation for the updates is based on cost projections used in the President's FY 2001 budget. A final recommendation on the appropriate percentage increases for FY 2001 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest of all relevant factors, including recommendations by the Medicare Payment Advisory Commission.

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I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the President of the Senate.

Sincerely,

Donna E. Shalala

BILLING CODE 4120-01-C

## Appendix D: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

### I. Background

Several provisions of the Act address the setting of update factors for inpatient services furnished in FY 2001 by hospitals subject to the prospective payment system and by hospitals or units excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(XVI) of the Act sets the FY 2001 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 1.1 percent for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 2001 percentage increase in the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act. For Medicare-dependent, small rural hospitals, the percentage increase is the same update factor as all other hospitals subject to the prospective payment system, or the rate of increase in the market basket minus 1.1 percentage points. Section 406 of Public Law 106–113 amended section 1886(b)(3)(B)(i) of the Act to provide that, for sole community hospitals, the rate of increase in the hospital-specific rates for FY 2001 only is equal to the market basket percentage increase. Prior to FY 2001, sole community hospitals were subject to the same percentage increase to their hospital-specific rates as all other hospitals subject to the prospective payment system set forth in section 1886(b)(3)(B)(i) of the Act.

Under section 1886(b)(3)(B)(ii) of the Act, the FY 2001 percentage increase in the rate-of-increase limits for hospitals and units excluded from the prospective payment system ranges from the percentage increase in the excluded hospital market basket less a percentage between 0 and 2.5 percentage points, depending on the hospital's or unit's costs in relation to its limit for the most recent cost reporting period for which information is available, or 0 percentage point if costs do not exceed two-thirds of the limit.

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals and units excluded from the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the first quarter 2000 forecast of the FY 2001 market basket increase of 3.1 percent for hospitals and units subject to the prospective payment system, the proposed update to the standardized amounts is 2.0 percent (that is, the market basket rate of increase minus 1.1 percent percentage points) for hospitals in both large urban and other areas. The proposed update to the hospital-specific rate applicable to Medicare-dependent, small rural hospitals is also 2.0 percent. The proposed update to the hospital-specific rate applicable to sole community hospitals is 3.1 percent. The proposed update for hospitals and units excluded from the prospective payment system would range from the percentage increase in the excluded hospital market basket (currently estimated at 3.1 percent) minus a percentage between 0 and 2.5 percentage points, or 0 percentage point, resulting in an increase in the rate-of-increase limit between 0.6 and 3.1 percent, or 0 percent.

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of the Medicare Payment Advisory Commission (MedPAC), recommend update factors for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the update factors recommended under section 1886(e)(4) of the Act. Accordingly, this appendix provides the recommendations of appropriate update factors and the analysis underlying our recommendations.

In its March 1, 2000 report, MedPAC did not make a specific update recommendation for FY 2001 payments for Medicare acute inpatient hospitals. However, at its April 13, 2000 public meeting, MedPAC announced that it was recommending a combined update between 3.5 percent and 4.0 percent for operating and capital-related payments for FY 2001. This recommendation is higher than the current law amount as prescribed by Public Law 105–33 and proposed in this rule. Because of the timing of the announcement and our need for ample time to perform a proper analysis of the recommendation, we will address the comparison of HCFA's update recommendation and MedPAC's update recommendation in the FY 2001 final rule in August 2000 when we will have had the opportunity to review the data analyses that substantiate MedPAC's recommendation.

We describe the basis for our FY 2001 update recommendation (Table 1) in section II. of this Appendix.

### II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending that an appropriate update factor for the standardized amounts is 2.0 percentage points for hospitals located in large urban and other areas. We are also recommending an update of 2.0 percentage points to the hospital-specific rate for Medicare-dependent, small rural hospitals. In addition, we are recommending an update of 3.1 percentage points to the hospital-specific rate for sole community hospitals. We believe these recommended update factors would ensure that Medicare acts as a prudent purchaser and provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund.

We recommend that hospitals excluded from the prospective payment system receive an update of between 0.6 and 3.1 percentage points, or 0 percentage points. The update for excluded hospitals and units is equal to the increase in the excluded hospital operating market basket less a percentage between 0 and 2.5 percentage points, or 0 percentage points, depending on the hospital's or unit's costs in relation to its rate-of-increase limit for the most recent cost reporting period for which information is available. The market basket rate of increase for excluded hospitals and units is currently forecast at 3.1 percent.

Our update recommendation of 2.0 percent (market basket increase minus 1.1 percent) for prospective payment system operating costs standardized amounts is supported by the following analyses that measure changes in hospital productivity, scientific and technological advances, practice pattern changes, and changes in case-mix:

#### *A. Productivity*

Service level productivity is defined as the ratio of total service output to full-time equivalent employees (FTEs). While we recognize that productivity is a function of many variables (for example, labor, nonlabor material, and capital inputs), we use a labor productivity measure since this update framework applies to operating payment. To recognize that we are apportioning the short-run output changes to the labor input and not considering the nonlabor inputs, we weight our productivity measure for operating costs by the share of direct labor services in the market basket to determine the expected effect on cost per case.

Our recommendation for the service productivity component is based on historical trends in productivity and total output for both the hospital industry and the general economy, and projected levels of future hospital service output. MedPAC's predecessor, the Prospective Payment Assessment Commission (ProPAC), estimated cumulative service productivity growth to be 4.9 percent from 1985 through 1989, or 1.2 percent annually. At the same time, ProPAC estimated total output growth at 3.4 percent annually, implying a ratio of service productivity growth to output growth of 0.35.

Since it is not possible at this time to develop a productivity measure specific to Medicare patients, we examined productivity (output per hour) and output (gross domestic product) for the economy. Depending on the exact time period, annual changes in productivity range from 0.3 to 0.35 percent of the change in output (that is, a 1.0 percent increase in output would be correlated with a 0.3 to 0.35 percent change in output per hour).

Under our framework, the recommended update is based in part on expected productivity—that is, projected service output during the year, multiplied by the historical ratio of service productivity to total service output, multiplied by the share of labor in total operating inputs, as calculated in the hospital market basket. This method estimates an expected labor productivity improvement in the same proportion to expected total service growth that has occurred in the past and assumes that, at a minimum, growth in FTEs changes proportionally to the growth in total service output. Thus, the recommendation allows for unit productivity to be smaller than the historical averages in years that output growth is relatively low and larger in years that output growth is higher than the historical averages. Based on the above estimates from both the hospital industry and the economy, we have chosen to employ the

range of ratios of productivity change to output change of 0.30 to 0.35.

The expected change in total hospital service output is the product of projected growth in total admissions (adjusted for outpatient usage), projected real case-mix growth, expected quality-enhancing intensity growth, and net of expected decline in intensity due to reduction of cost-ineffective practice. Case-mix growth and intensity numbers for Medicare are used as proxies for those of the total hospital, since case-mix increases (used in the intensity measure as well) are unavailable for non-Medicare patients. Thus, expected output growth is simply the sum of the expected change in intensity (0.0 percent), projected admissions change (1.6 percent for FY 2001), and projected real case-mix growth (0.5 percent), or 2.1 percent. The share of direct labor services in the market basket (consisting of wages, salaries, and employee benefits) is 61.4 percent.

Multiplying the expected change in total hospital service output (2.1 percent) by the ratio of historical service productivity change to total service growth of 0.30 to 0.35 and by the direct labor share percentage 61.4, provides our productivity standard of −0.5 to −0.4 percent.

*B. Intensity*

We base our intensity standard on the combined effect of three separate factors: changes in the use of quality enhancing services, changes in the use of services due to shifts in within-DRG severity, and changes in the use of services due to reductions of cost-ineffective practices. For FY 2001, we recommend an adjustment of 0.0 percent. The basis of this recommendation is discussed below.

We have no empirical evidence that accurately gauges the level of quality-enhancing technology changes. A study published in the Winter 1992 issue of the *Health Care Financing Review*, "Contributions of case mix and intensity change to hospital cost increases" (pp. 151–163), suggests that one-third of the intensity change is attributable to high-cost technology. The balance was unexplained but the authors speculated that it is attributable to fixed costs in service delivery.

Typically, a specific new technology increases cost in some uses and decreases cost in other uses. Concurrently, health status is improved in some situations while in other situations it may be unaffected or even worsened using the same technology. It is difficult to separate out the relative significance of each of the cost-increasing effects for individual technologies and new technologies.

Other things being equal, per-discharge fixed costs tend to fluctuate in inverse proportion to changes in volume. Fixed costs exist whether patients are treated or not. If volume is declining, per-discharge fixed costs will rise, but the reverse is true if volume is increasing.

Following methods developed by HCFA's Office of the Actuary for deriving hospital output estimates from total hospital charges, we have developed Medicare-specific intensity measures based on a 5-year average using FYs 1995 through 1999 MedPAR billing data. Case-mix constant intensity is calculated as the change in total Medicare charges per discharge adjusted for changes in the average charge per unit of service as measured by the CPI for hospital and related services and changes in real case-mix. Thus, in order to measure changes in intensity, one must measure changes in real case-mix.

For FYs 1995 through 1999, observed case-mix index change ranged from a low of −0.3 percent to a high of 1.7 percent, with a 5-year average change of 0.6 percent. Based on evidence from past studies of case-mix change, we estimate that real case-mix change fluctuates between 1.0 and 1.4 percent and the observed values generally fall in this range, although some years the figures fall outside this range. The average percentage change in charge per discharge was 3.6 percent and the average annual change in the CPI for hospital and related services was 4.1 percent. Dividing the change in charge per discharge by the quantity of the real case-mix index change and the CPI for hospital and related services yields an average annual change in intensity of −1.9 percent. Assuming the technology/fixed cost ratio still holds (.33), technology would account for a −0.6 percent annual decline while fixed costs would account for a −1.3 percent annual decline. The decline in fixed costs per discharge makes intuitive sense as volume, measured by total discharges, has increased during the period. In the past, we have not recommended a negative intensity adjustment. Although we are not recommending a negative adjustment for FY 2001, we are reflecting the possible range that such a negative adjustment could span, based on our analysis. Accordingly, for FY 2001, we are recommending an intensity adjustment between 0 percent and −0.6 percent.

*C. Change in Case-Mix*

Our analysis takes into account projected changes in case-mix, adjusted for changes attributable to improved coding practices. For our FY 2001 update recommendation, we are projecting a 0.5 percent increase in the case-mix index. We define real case-mix as actual changes in the mix (and resources requirements) of Medicare patients as opposed to changes in coding behavior that results in assignment of cases to higher weighted DRGS, but do not reflect greater resource requirements. Unlike in past years, where we differentiated between "real" case-mix increase and increases attributable to changes in coding behavior, we do not feel changes in coding behavior will impact the overall case-mix in FY 2001. As such for FY 2001, we estimate that real case-mix is equal to projected change in case-mix. Thus, we are recommending a 0.0 adjustment for case-mix.

*D. Effect of FY 1999 DRG Reclassification and Recalibration*

We estimate that DRG reclassification and recalibration for FY 1999 resulted in a 0.0 percent change in the case-mix index when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the GROUPER.

*E. Forecast Error Correction*

We make a forecast error correction if the actual market basket changes differ from the forecasted market basket by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of forecast error. Our update framework for FY 2001 does not reflect a forecast error correction because, for FY 1999, there was less than a 0.25 percentage point difference between the actual market basket and the forecasted market basket.

As we explained in section I. of this Appendix, a comparison of our update recommendation to MedPAC's recommendation is unavailable for this proposed rule. MedPAC did not announce its recommendation for a combined update of between 3.5 percent and 4.0 percent for operating and capital-related payments for FY 2001 until its April 13, 2000 public meeting. This recommendation is higher than the current law amount as prescribed by Public Law 105–33 and proposed in this rule. Because of the timing of the announcement and our need for ample time to perform a proper analysis of the recommendation, we will address the comparison of HCFA's update recommendation and MedPAC's update recommendation in the FY 2001 final rule in August 2000 when we will have had the opportunity to review the data analyses that substantiate MedPAC's recommendation. The following is a summary of the update range supported by our analyses:

TABLE 1.—HHS' FY 2001 UPDATE RECOMMENDATION

| Market basket | MB |
|---|---|
| Policy Adjustments Factors: | |
| Productivity | −0.5 to −0.4 |
| Intensity | 0.0 to −0.6 |
| Subtotal | −0.5 to −1.0 |
| Case-Mix Adjustment Factors: | |
| Projected Case-Mix Change | −0.5 |
| Real Across DRG Change | 0.5 |
| Subtotal | 0.0 |
| Effect of 1999 Reclassification and Recalibration | 0.0 |
| Forecast Error Correction | 0.0 |
| Total Recommended Update | MB −0.5 to MB −1.0 |

Consistent with current law, we are recommending an update of market basket increase minus 1.1 percentage points (or 2.0 percent). We note that this approximates the lower bound of the range suggested by our framework when accounting for a negative intensity change.

For FY 2001, we believe that a 2.0 update factor appropriately reflects current trends in health care delivery, including the recent decreases in the use of hospital inpatient services and the corresponding increase in the use of hospital outpatient and postacute care services. We also recommend that the hospital-specific rates applicable to Medicare-dependent, small rural hospitals be increased by the same update, 2.0 percentage points. Furthermore, we recommend that the hospital-specific rates applicable to sole community hospitals be increased by an update of 3.1 percentage points.

[FR Doc. 00–10874 Filed 5–4–00; 8:45 am]

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VOL 65 ISS 88 MY 5 2000 UMI

Federal Register

Friday,
May 5, 2000

Part III

# Department of the Interior

Fish and Wildlife Service
50 CFR Part 17
Endangered and Threatened Wildlife and Plants; Final Rule To List the Alabama Sturgeon as Endangered; Final Rule

VOL 65 ISS 88 MY 5 2000 UMI

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AF56**

## Endangered and Threatened Wildlife and Plants; Final Rule To List the Alabama Sturgeon as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Fish and Wildlife Service (Service), determine the Alabama sturgeon (*Scaphirhynchus suttkusi*) to be endangered under the authority of the Endangered Species Act of 1973, as amended (Act). The Alabama sturgeon's historic range once included about 1,600 kilometers (km) (1,000 miles (mi)) of the Mobile River system in Alabama (Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensaw, and Cahaba Rivers) and Mississippi (Tombigbee River). Since 1985, all confirmed captures have been from a short, free-flowing reach of the Alabama River below Millers Ferry and Claiborne Locks and Dams in Clarke, Monroe, and Wilcox Counties, Alabama. The decline of the Alabama sturgeon is attributed to over-fishing, loss and fragmentation of habitat as a result of historical navigation-related development, and water quality degradation. Current threats primarily result from its reduced range and its small population numbers. These threats are compounded by a lack of information on Alabama sturgeon habitat and life history requirements. This action extends the Act's protection to the Alabama sturgeon.

**EFFECTIVE DATE:** June 5, 2000.

**ADDRESSES:** The complete file for this rule is available for inspection, by appointment, during normal business hours at the Mississippi Field Office, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Jackson, Mississippi 39213.

**FOR FURTHER INFORMATION CONTACT:** Paul Hartfield at the above address (telephone 601/321–1125; facsimile 601/965–4340).

**SUPPLEMENTARY INFORMATION:**

### Background

The Alabama sturgeon (*Scaphirhynchus suttkusi*) is a small, freshwater sturgeon that was historically found only in the Mobile River Basin of Alabama and Mississippi. This sturgeon is an elongate, slender fish growing to about 80 centimeters (cm) (31 inches (in)) in length. A mature fish weighs 1 to 2 kilograms (kg) (2 to 4 pounds (lb)). The head is broad and flattened shovel-like at the snout. The mouth is tubular and protrusive. There are four barbels (whisker-like appendages used to find prey) on the bottom of the snout, in front of the mouth. Bony plates cover the head, back, and sides. The body narrows abruptly to the rear, forming a narrow stalk between the body and tail. The upper lobe of the tail fin is elongated and ends in a long filament. Characters used to distinguish the Alabama sturgeon from the closely related shovelnose sturgeon (*Scaphirhynchus platorynchus*) include larger eyes, orange color, number of dorsal plates, dorsal fin ray numbers, and the absence of spines on the tip of its snout and in front of its eyes.

The earliest specimens of Alabama sturgeon in museum collections date from about 1880. The first mention of the fish in the scientific literature, however, was not until 1955, when a report of the collection of a single specimen from the Tombigbee River was published by Chermock. In 1976, Ramsey referred to the Alabama sturgeon as the Alabama shovelnose sturgeon, noting that it probably was distinct from the shovelnose sturgeon, which is found in the Mississippi River Basin and was also historically known from the Rio Grande. In 1991, Williams and Clemmer formally described the species based on a statistical comparison of relative sizes and numbers of morphological structures of Alabama and shovelnose sturgeons.

The methods used by Williams and Clemmer (1991) to justify species designation for the Alabama sturgeon have been criticized in unpublished manuscripts (*e.g.*, Blanchard and Bartolucci 1994, Howell *et al.* 1995) and in one published paper (Mayden and Kuhajda 1996). The criticisms included identification of a variety of statistical and methodological errors and limitations (*e.g.*, small sample size, clinal variation (characteristics of a species correlated with changing ecological variables), allometric growth (growth of parts of an organism at different rates and at different times), inappropriate statistical tests, and others). Bartolucci *et al.* (1998), using Bayesian Analysis statistical methodology, found no significant differences in multivariate means of measurement data, taken from Williams and Clemmer (1991).

Mayden and Kuhajda (1996) reevaluated the morphological distinctiveness of the Alabama sturgeon using improved statistical tests and new data derived from examination of additional shovelnose sturgeon specimens from a larger geographic area. Mayden and Kuhajda (1996) identified eight new diagnostic characters, found little evidence of geographic clinal variation in these diagnostic features, and concluded that the Alabama sturgeon was a distinct and valid species.

Attempts to clarify taxonomic relationships of the Alabama sturgeon to other species of *Scaphirhynchus* using DNA sequencing have met with limited success. In an unpublished report, Schill and Walker (1994) used tissue samples from an Alabama sturgeon collected in 1993 to compare the three nominal *Scaphirhynchus* species. Based on estimates of sequence divergence at the mitochondrial cytochrome *b* locus, Alabama, shovelnose, and pallid sturgeons (*S. albus*) were indistinguishable. However, other studies have also found that the cytochrome *b* locus was not useful for discriminating among some congeneric fish species that were otherwise distinguished by accepted morphological, behavioral, and other characteristics (Campton *et al.* 1995).

In two unpublished reports for the U.S. Army Corps of Engineers (Corps) and us by Genetic Analyses, Inc. (1994, 1995), nuclear DNA fragments were compared among the three *Scaphirhynchus* species. The three Alabama sturgeon specimens examined were genetically divergent from pallid and shovelnose sturgeons, while there were no observed differences of DNA fragments between the pallid and shovelnose sturgeons. However, the 1995 study also found that two of the Alabama sturgeon differed substantially from the third, noted the small number of samples of Alabama sturgeon, and recommended additional studies to examine genetic diversity within the Alabama sturgeon population.

A comparative study of the mitochondrial DNA (mtDNA) d-loop of *Scaphirhynchus* species by Campton *et al.* (1995) provided genetic data consistent with the taxonomic distinction of the Alabama sturgeon from the shovelnose sturgeon. The d-loop is considered to be a rapidly evolving part of the genome. Campton *et al.* (1995) found that haplotype (genetic markers) frequencies of the d-loop from the three *Scaphirhynchus* species were significantly different, with the Alabama sturgeon having a unique haplotype. However, the relative genetic differences among the three species were small, suggesting that the rate of genetic change in the genus is relatively slow and/or they have only recently diverged. The genetic similarity

between the pallid and shovelnose sturgeon has been suggested to be due to interbreeding that has recently occurred as a result of niche overlap resulting from widespread habitat losses (Carlson *et al.* 1985, Keenlyne *et al.* 1994).

During open comment periods for the proposed rule, we received several reports and letters containing new data from mtDNA analysis of *Scaphirhynchus*. Both Campton *et al.* (1999) and Mayden *et al.* (1999) identified a haplotype common to the three Alabama sturgeon sampled that was not observed in a much larger sample (>70) of pallid and shovelnose sturgeons. Wells (*in litt.* 1999) also conducted mtDNA analysis on eight shovelnose sturgeon and identified several new haplotypes not found in previous studies. He did not find the haplotype unique to Alabama sturgeon in these shovelnose sturgeon. Fain *et al.* (2000) found that the mitochondrial cytochrome *b* gene was not useful to distinguish species within *Scaphirhynchus* or two other species groups within the sturgeon genus *Acipenser*. Campton *et al.* (in press) submitted a peer-reviewed report supporting species recognition of all three species within *Scaphirhynchus*, based on current morphological, biogeographic, and molecular genetic evidence.

We acknowledge that there is some disagreement concerning the Alabama sturgeon's taxonomic status. However, the description of the Alabama sturgeon (*Scaphirhynchus suttkusi*) complies with the rules of the *International Code of Zoological Nomenclature* (§ 17.11(b)). Recognition of Alabama sturgeon as a species (Williams and Clemmer 1991) is supported by Mayden and Kuhajda (1996), as well as by several recent unpublished genetic studies (Campton *et al.* 1995, 1999, in press; Genetic Analyses, Inc. 1994, 1995; Mayden *et al.* 1999). Furthermore, the Alabama sturgeon is nationally and internationally recognized as a valid species (see response to Issue 2"), and will continue to be so recognized unless overturned at some future date by the scientific community through the formal peer review and publication process.

Very little is known of the life history, habitat, or other ecological requirements of the Alabama sturgeon. Observations by Burke and Ramsey (1985) indicate the species prefers relatively stable gravel and sand substrates in flowing river channels. Verified captures of Alabama sturgeon have primarily occurred in large channels of big rivers; however, at least two historic records were from oxbow lakes (Williams and Clemmer 1991). Examination of stomach contents of museum and captured specimens show that these sturgeon are opportunistic bottom feeders, preying primarily on aquatic insect larvae (Mayden and Kuhajda 1996). Mayden and Kuhajda (1996) deduced other aspects of Alabama sturgeon life history by a review of spawning habits of its better known congener (a species that is a member of the same genus), the shovelnose sturgeon. Life history of the shovelnose sturgeon has also been recently summarized by Keenlyne (1997). These data indicate that Alabama sturgeon are likely to migrate upstream during late winter and spring to spawn. Downstream migrations may occur to search for feeding areas and/or deeper, cooler waters during the summer. Eggs are probably deposited on hard bottom substrates such as bedrock, armored gravel, or channel training works in deep water habitats, and possibly in tributaries to major rivers. The eggs are adhesive and require current for proper development. Sturgeon larvae are planktonic, drifting with river currents, with postlarval stages eventually settling out to the river bottom. Sexual maturity is believed to occur at 5 to 7 years of age. Spawning frequency of both sexes is influenced by food supply and fish condition, and may occur every 1 to 3 years. Alabama sturgeon may live up to 15 or more years of age.

The Alabama sturgeon's historic range consisted of about 1,600 km (1,000 mi) of river habitat in the Mobile River Basin in Alabama and Mississippi. There are records of sturgeon captures from the Black Warrior, Tombigbee, Alabama, Coosa, Tallapoosa, Mobile, Tensaw, and Cahaba Rivers (Burke and Ramsey 1985, 1995). The Alabama sturgeon was once common in Alabama, and perhaps also in Mississippi. The total 1898 commercial catch of shovelnose sturgeons (i.e., Alabama sturgeon) from Alabama was reported as 19,000 kg (42,000 lb) in a statistical report to Congress (U.S. Commission of Fish and Fisheries 1898). Of this total, 18,000 kg (39,800 lb) came from the Alabama River and 1,000 kg (2,200 lb) from the Black Warrior River. Given that an average Alabama sturgeon weighs about 1 kg (2 lb), the 1898 commercial catch consisted of approximately 20,000 fish. These records indicate a substantial historic population of Alabama sturgeon.

Between the 1898 report and 1970, little information was published regarding the Alabama sturgeon. An anonymous article published in the Alabama Game and Fish News in 1930 stated that the sturgeon was not uncommon; however, by the 1970s, it had become rare. In 1976, Ramsey considered the sturgeon as endangered and documented only six specimens from museums. Clemmer (1983) was able to locate 23 Alabama sturgeon specimens in museum collections, with the most recent collection dated 1977. Clemmer also found that commercial fishermen in the Alabama and Tombigbee Rivers were familiar with the sturgeon, calling it hackleback, buglemouth trout, or devilfish.

During the mid-1980s, Burke and Ramsey (1985, 1995) conducted a status survey to determine the distribution and abundance of the Alabama sturgeon. Interviews were conducted with commercial fishermen on the Alabama and Cahaba Rivers, some of whom reported catch of Alabama sturgeon as an annual event. However, with the assistance of commercial fishermen, Burke and Ramsey were able to collect only five Alabama sturgeons, including two males, two gravid females, and one juvenile about 2 years old. Burke and Ramsey (1985) concluded that the Alabama sturgeon had been extirpated from 57 percent (950 km or 589 mi) of its range and that only 15 percent (250 km or 155 mi) of its former habitat had the potential to support a good population. An additional sturgeon was taken in 1985 in the Tensaw River and photographed, but the specimen was lost (Mettee, Geologic Survey of Alabama, pers. comm. 1997).

In 1990 and 1992, biologists from the Alabama Department of Conservation and Natural Resources (ADCNR), with the assistance of the Corps, conducted searches for Alabama sturgeon using a variety of sampling techniques, without success (Tucker and Johnson 1991, 1992). However, some commercial and sports fishermen continued to report recent catches of small sturgeon in Millers Ferry and Claiborne Reservoirs and in the lower Alabama River (Tucker and Johnson 1991, 1992).

In 1993, our biologists and the ADCNR conducted another extensive survey for Alabama sturgeon in the lower Alabama River. On December 2, 1993, a mature male was captured alive in a gill net downstream of Claiborne Lock and Dam, at river mile 58.8 in Monroe County, Alabama (Parauka, U.S. Fish and Wildlife Service, pers. comm. 1995). This specimen represented the first confirmed record of Alabama sturgeon in about 9 years. This fish was moved to a hatchery where it later died.

On April 18, 1995, an Alabama sturgeon captured by fishermen below Claiborne Lock and Dam was turned over to ADCNR and Service biologists. This fish was carefully examined, radio-

tagged, and returned to the river where it was tracked for 4 days before the transmitter switched off (Parauka, pers. comm. 1995). In June 1995, it was determined that the tag had dislodged. On May 19, 1995, our biologists took another Alabama sturgeon in Monroe County, Alabama, near the 1993 collection site. Unfortunately, shortly after the fish was tagged and released, it was found entangled and dead in a vandalized gill net lying on the river bottom (Parauka, pers. comm. 1995). On April 26, 1996, a commercial fisherman caught, photographed, and released an Alabama sturgeon (estimated at about 51 to 58 cm (20 to 23 in) total length and 1 kg (2 lb) weight) in the Alabama River, 5 km (3 mi) downstream of Millers Ferry Lock and Dam (Reeves, ADCNR, pers. comm. 1996).

Due to the historic decline, lack of collection success, and the apparent rarity of the sturgeon, members of the Mobile River Basin Recovery Coalition began discussions in the spring of 1996 to develop and implement a conservation plan for the Alabama sturgeon that could receive wide support. A draft plan was subsequently endorsed in 1997 by the ADCNR, Mobile District Corps, representatives of the Alabama-Tombigbee Rivers Coalition, and us (1997 Conservation Plan). This Plan identified the need to develop life history information through capture, tagging, and telemetry; capture of broodstock for breeding and potential population augmentation; construction of hatchery facilities for sturgeon propagation; and habitat identification and quantification in the lower Alabama River (see discussion of 1997 Conservation Plan under State Conservation Efforts section).

In March 1997, the ADCNR implemented the collection component of the 1997 Conservation Plan. The Geological Survey of Alabama, Corps, Waterways Experiment Station, Alabama Power Company, and the Service also participated in the effort. Up to four crews were on the river at any one time using gill nets and trot lines. Most of the effort focused on the lower Alabama River where recent previous captures had been made. Personnel from the ADCNR caught one small sturgeon (1 kg (2 lb) weight) on April 9, 1997, immediately below Claiborne Lock and Dam.

The ADCNR continued fishing for sturgeon through the fall and winter and collected another sturgeon downstream of Millers Ferry Lock and Dam on December 10, 1997. This fish was also transported to the Marion Fish Hatchery, where both fish were held for potential use as broodstock. In January 1998, the two fish were biopsied to determine their sex. The April specimen was found to be a mature female with immature eggs, whereas the December fish was a mature male

Alabama broodstock collection efforts in 1998 resulted in the capture of a single fish on November 12, 1998. A biopsy performed in December found the specimen to be a reproductively inactive male. The two 1997 fish were also biopsied at this time, and were determined to be candidates for propagation in the spring of 1999.

On March 27, 1999, the mature male and female sturgeon captured during 1997 were induced to spawn. The female produced about 4,000 mature eggs; however, the male failed to produce sperm, and the fertilization attempt was unsuccessful. On April 4, 1999, the captive female died from a bacterial infection that was apparently aggravated by spawning stress. Another sturgeon was captured on April 14, 1999, by commercial fishermen downstream of Claiborne Lock and Dam, delivered to ADCNR fisheries biologists, and transported to the Marion State Hatchery. This sturgeon died at the hatchery in February 2000, following a biopsy that identified it as a female. Another Alabama sturgeon captured on August 18, 1999, in the Claiborne Pool also died at the hatchery shortly after transport. To date, more than 4,000 man-hours of fishing effort by professional fisheries biologists over the past 3 years has resulted in the capture of five fish, three of which have died in captivity.

The chronology of commercial harvest, scientific collections, and incidental catches by commercial and sport fishermen demonstrate a significant decline in both the population size and range of the Alabama sturgeon in the past 100 years. Historically, the fish occurred in commercial abundance and was found in all major coastal plain tributaries of the Mobile River system. The Alabama sturgeon has apparently disappeared from the upper Tombigbee, lower Black Warrior, lower Tallapoosa, and upper Cahaba, where it was last reported in the 1960s; the lower Coosa, last reported around 1970; the lower Tombigbee, last reported around 1975; and lower Cahaba, last reported in 1985 (Clemmer 1983; Burke and Ramsey 1985, 1995; Williams and Clemmer 1991; Mayden and Kuhajda 1996). The fish is known from a single 1985 record in the Mobile-Tensaw Delta; however, no incidental catches by commercial or recreational fishermen have been reported since that time. Recent collection efforts indicate that very low numbers of Alabama sturgeon continue to survive in portions of the 216-km (134-mi) length of the Alabama River channel below Millers Ferry Lock and Dam, downstream to the mouth of the Tombigbee River.

The historic population decline of the Alabama sturgeon was probably initiated by unrestricted harvesting near the turn of the century. Although there are no reports of commercial harvests of Alabama sturgeon after the 1898 report, it is likely that sturgeon continued to be affected by the commercial fishery. Keenlyne (1997) noted that in the early years of the 20th century, shovelnose sturgeon were considered a nuisance to commercial fishermen and were destroyed when caught. Interviews with commercial and recreational fishermen along the Alabama River indicate that Alabama sturgeon continued to be taken into the 1980s (Burke and Ramsey 1985). Studies of other sturgeon species suggest that newly exploited sturgeon fisheries typically show an initial high yield, followed by rapid declines. With continued exploitation and habitat loss little or no subsequent recovery may occur, even after nearly a century (National Paddlefish and Sturgeon Steering Committee 1993, Birstein 1993).

Although unrestricted commercial harvesting of the Alabama sturgeon may have significantly reduced its numbers and initiated a population decline, the present curtailment of the Alabama sturgeon's range is the result of 100 years of cumulative impacts to the rivers of the Mobile River Basin (Basin) as they were developed for navigation, especially during the last 50 years. Navigation development of the Basin affected the sturgeon in major ways. This development significantly changed and modified extensive portions of river channel habitats, blocked long-distant movements, including migrations, and fragmented and isolated sturgeon populations.

The Basin's major rivers are now controlled by more than 30 locks and/or dams, forming a series of lakes that are interspersed with short, free-flowing reaches. Within the sturgeon's historic range, there are three dams on the Alabama River (built between 1968 and 1971); the Black Warrior has two (completed by 1959); and the Tombigbee has six (built between 1954 and 1979). These 11 dams affect and fragment 970 km (583 mi) of river channel habitat. Riverine (flowing water) habitats are required by the Alabama sturgeon to successfully complete its life cycle. Alabama sturgeon habitat requirements are not met in impoundments, where weak flows result in accumulations of silt

making bottom habitats unsuitable for spawning, larval and postlarval development, and, perhaps, for the bottom-dwelling invertebrates on which the sturgeon feed.

Prior to widespread construction of locks and dams throughout the Basin, Alabama sturgeon could move freely between feeding areas, and from feeding areas to sites that favored spawning and development of eggs and larvae. Additionally, the sturgeon may have sought thermal refuges during summer months, when high water temperatures became stressful. Such movements might have been extensive, since other *Scaphirhynchus* species of sturgeons are known to make long-distance movements exceeding 250 km (155 mi) (Moos 1978, Bramblett 1996). Locks and dams, however, fragmented the sturgeons' range, forming isolated subpopulations between the dams where all the species' habitat needs were not necessarily met. With avenues of movement and migration restricted, these subpopulations also became more vulnerable to local declines in water and habitat quality caused by riverine and land management practices and/or polluting discharges. With access restricted by dams, habitat fragmentation also precluded recolonization of areas when subpopulations became extirpated.

Most of the major rivers within the historic range of the Alabama sturgeon have also been dredged and/or channelized to make them navigable. For example, the 740-km (459-mi) long Warrior-Tombigbee Waterway channel was originally dredged to 45 meters (m) by 2 m (148 feet (ft) by 7 ft) and later to 61 m by 3 m (200 ft by 10 ft). The lower Alabama and Tombigbee Rivers are routinely dredged in areas of natural deposition to maintain navigation depths. Dredged and channelized river reaches, in comparison to natural river reaches, have reduced habitat diversity (*e.g.*, loss of shoals, removal of snags, removal of bendways, reduction in flow heterogeneity, etc.), which results in decreased aquatic diversity and productivity (Hubbard *et al.* 1988 and references therein). The deepening and destruction of shoals and shallow runs or other historic feeding and spawning sites as a result of navigation development likely contributed to local and overall historic declines in range and abundance of the Alabama sturgeon.

Dams constructed for navigation and power production also affected the quantity and timing of water moving through the Basin. Water depths for navigation are controlled through discharges from upstream dams, and flows have also been changed as a result of hydroelectric production by upstream dams (Buckley 1995; Freeman and Irwin, U.S. Geological Survey, pers. comm. 1997).

The construction and operation of dams and development of navigation channels were significant factors in curtailment of the historic range of the Alabama sturgeon and in defining its current distribution. While these structures and activities are likely to continue to influence the environment (habitat) and its use by this species and others, the present effects of the operation of existing structures, flow regulation, and navigation maintenance activities on the sturgeon are poorly understood, in large part due to lack of specific information on the behavior and ecology of the Alabama sturgeon.

In 1994, we conducted an impact analysis with the Corps on potential effects of channel maintenance and other Federal actions in the Alabama River on the Alabama sturgeon. The analysis was summarized in a White Paper by Biggins (1994) (see text of the White Paper below). Based on limited information on the Alabama sturgeon and studies of the shovelnose sturgeon in the Mississippi River system, the White Paper noted that Alabama sturgeon appear to require strong currents in deep waters over relatively stable substrates for feeding and spawning, and they are not generally associated with the unconsolidated substrates that settle in slower current areas. Channel maintenance is primarily associated with specific shallow areas with unconsolidated substrates and produces small, localized, and temporary elevations of turbidity. Based on 1994 information, the White Paper concluded that the annual maintenance dredging program in the Alabama and lower Tombigbee Rivers does not adversely affect the Alabama sturgeon. Recent studies have also supported the conclusions of the White Paper (see discussion of maintenance dredging under Factor A). The White Paper in its entirety is at the end of this final rule.

In summary, the Alabama sturgeon has undergone marked declines in population size and range during the past century. Over-fishing and historical navigation development were significant factors in the sturgeon's decline. The Alabama sturgeon currently inhabits only about 15 percent of its historic range, and the species is known to survive only in the Alabama River channel below Millers Ferry Lock and Dam, downstream to the mouth of the Tombigbee River.

**Previous Federal Actions**

We included the Alabama sturgeon in **Federal Register** Notices of Review for candidate animals in 1982, 1985, 1989, and 1991. In the 1982 and 1985 notices (47 FR 58454 and 50 FR 37958), this fish was included as a category 2 species (a species for which we had data indicating that listing was possibly appropriate, but for which we lacked substantial data on biological vulnerability and threats to support a proposed rule; we discontinued designation of category 2 species in the February 28, 1996, Notice of Review (61 FR 7956)). In the 1989 and 1991 notices (54 FR 554 and 56 FR 58816), the Alabama sturgeon was listed as a category 1 candidate species (a species for which we have on file sufficient information on biological vulnerability and threats to support issuance of a proposed rule).

On June 15, 1993, we published a proposed rule to list the Alabama sturgeon as endangered with critical habitat (58 FR 33148). On July 27, 1993, we published a notice scheduling a public hearing on the proposed rule (58 FR 40109). We published a notice on August 24, 1993 (58 FR 44643), canceling and rescheduling the hearing. On September 13, 1993 (58 FR 47851), we published a notice rescheduling the public hearing for October 4, 1993, and extending the comment period to October 13, 1993. We held the October 4 public hearing on the campus of Mobile College, Mobile, Alabama. On October 25, 1993 (58 FR 55036), we published a notice announcing a second public hearing date, reopening the comment period, and stating the availability of a panel report. This second public hearing was canceled in response to a preliminary injunction issued on November 9, 1993.

On January 4, 1994 (59 FR 288), we published a notice rescheduling the second public hearing and extending the comment period. However, this hearing was subsequently rescheduled in a January 7, 1994, notice (59 FR 997). We held the second public hearing on January 31, 1994, at the Montgomery Civic Center, Montgomery, Alabama.

We published a 6-month extension of the deadline and reopening of the comment period for the proposed rule to list the Alabama sturgeon with critical habitat on June 21, 1994 (59 FR 31970). On September 15, 1994 (59 FR 47294), we published another notice that further extended the comment period and sought additional comments on only the scientific point of whether the Alabama sturgeon still existed. We withdrew the proposed rule on December 15, 1994 (59

FR 64794), on the basis of insufficient information that the Alabama sturgeon continued to exist.

On September 19, 1997, after capture of several individuals confirming that the species was extant, we included the Alabama sturgeon in the candidate species Notice of Review (62 FR 49403).

On March 26, 1999, we published a proposed rule to list the Alabama sturgeon as endangered, without critical habitat (64 FR 14676). We invited the public and State and Federal agencies to comment on the proposed listing; the comment period was open through May 26, 1999. On May 25, 1999, we published a notice announcing a June 24 public hearing on the proposal at the Montgomery Civic Center and an extension of the comment period through July 5, 1999 (64 FR 28142). To allow time for additional public comments, we reopened the comment period on July 12, 1999, through September 10, 1999 (64 FR 37492).

On January 11, 2000, we reopened the comment period (65 FR 1583), to make available for comment a 1999 study "The Development of a DNA Procedure for the Forensic Identification of Caviar" (Fain *et al.* 1999). On February 7, 2000 (65 FR 5848), we withdrew consideration of this study from the decision making process. For clarity and ease of understanding, we replaced it with a report containing information relevant to the Alabama sturgeon listing process (Fain *et al.* 2000). We accepted comments on this report through March 8, 2000.

We reopened the comment period again on February 16, 2000 (65 FR 7817), to announce the availability of and obtain comments on a Conservation Agreement and Strategy (Conservation Agreement Strategy) for the Alabama Sturgeon signed by the ADCNR, the Corps, the Alabama-Tombigbee Rivers Coalition, and us on February 9, 2000. We accepted comments on the Conservation Agreement Strategy and its relevance and significance to the listing decision until March 17, 2000.

We published Listing Priority Guidance for Fiscal Year 2000 in the **Federal Register** on October 22, 1999 (64 FR 57114). That guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance.

**Summary of Comments and Recommendations**

We have reviewed all written and oral comments received during the comment periods and have incorporated information updating the available data into the appropriate sections of this rule. We have organized substantive comments concerning the proposed rule, Fain *et al.* 2000, and the Conservation Agreement Strategy into specific issues, which may be paraphrased. We grouped comments of a similar nature or subject matter into a number of broader issues. These issues and our response to each are summarized in the three subsections below.

*Proposed Rule*

In the March 26, 1999, proposed rule (64 FR 14676), we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule. We sent direct notification of the proposal to 192 institutions and individuals, including Federal and State agencies, county governments, scientific organizations, and interested parties. We published legal notices announcing the proposal and inviting public comment on April 18, 1999, in the Montgomery Advertiser, Montgomery, Alabama; and the Mobile Press-Register, Mobile, Alabama. The comment period closed on May 26, 1999. On May 6, 1999, we received a request for a public hearing from the Alabama-Tombigbee Rivers Coalition. We published a notice on May 25, 1999 (64 FR 28142), scheduling the public hearing and extending the comment period through July 5, 1999. We sent direct notification of the hearing and comment period extension to Federal and State agencies, county governments, scientific organizations, and other interested parties. Legal notices announcing the public hearing and comment period extension were published on June 20, 1999, in the Montgomery Advertiser, Montgomery, Alabama; and the Mobile Press-Register, Mobile, Alabama. We held the public hearing at the Montgomery Civic Center, Montgomery, Alabama, on June 24, 1999, with approximately 1,000 people in attendance. We received oral comments from 78 individuals; of these, 66 expressed opposition to the listing, 3 supported the action, and 10 did not specifically state their position on the listing. Because of widespread concern over the proposed action, we reopened the comment period on July 12, 1999 (64 FR 37492), through September 10, 1999.

During the comment periods, we received approximately 4,000 cards, letters, and reports concerning the proposal. Most expressed opposition to, or concern about the proposed listing; however, a number of individuals supported the action. Opposition to the proposed listing primarily centered on perceived economic effects of the action, questions about taxonomy and science, and the adequacy of current State conservation actions to protect the sturgeon. We received comments from four Federal agencies and seven State agencies. The remaining comments were from individuals or representatives of organizations or groups. The Governor of Alabama and the ADCNR stated that existing State protection and recovery efforts are adequate, and opposed the listing. We convened a team of Service experts to review the issues raised, including issues of taxonomy and genetics, during the comment period for the Alabama sturgeon proposed rule and to ensure they were fully and correctly addressed prior to preparation of our final decision document on this species. Below are issues raised in these comments relating to this action and our responses to each.

*Issue 1:* The proposed listing was not based on the best scientific and commercial data available, as required by section 4(b)(1) of the Act. The literature cited to support the proposed rule was either not applicable, erroneous, incomplete, misinterpreted, or simply wrong.

*Response:* We thoroughly reviewed all scientific and commercial data in our possession in preparing the proposed rule. We sought and reviewed historic and recent publications and unpublished reports concerning the Alabama sturgeon, closely related species, and sturgeon literature in general, as well as literature and reports on human impacts to river systems and resulting responses in faunal composition and channel habitat integrity. Not all literature or reports reviewed were cited; however, the appropriate literature was cited to document the text in the proposal. We used our best professional judgment and, while we considered all of the information, we relied upon data and documents which in our professional opinion are the best scientific and commercial data and the most reliable.

*Issue 2:* The Service does not have sufficient scientific information to

conclude that the Alabama sturgeon is a distinct species from the common shovelnose sturgeon.

*Response:* The Alabama sturgeon is nationally and internationally considered a valid species. The Alabama sturgeon was initially described as a distinct species in a peer-reviewed, widely distributed museum periodical (Williams and Clemmer 1991). The species was considered valid in a catalog of fishes of Alabama (Boschung 1992) and in a catalog of fishes of North America (Mayden *et al.* 1992). Species status was reassessed, reaffirmed, and published in the ichthyological journal *Copeia* (Mayden and Kuhajda 1996). The Alabama sturgeon is listed as a separate species in State fish books for Alabama (Mettee *et al.* 1996) and Mississippi (Ross and Brenneman in press). The Alabama sturgeon is listed as a valid species in a catalog of fishes of the world (Eshmeyer 1998). Birstein *et al.* (1997) included the Alabama sturgeon in a list of all sturgeon species of the world. The Alabama sturgeon is considered a distinct and valid species by the American Society of Ichthyologists and Herpetologists (1995, 1999 *in litt.*), and by the Southern Fishes Council Technical Advisory Committee (Warren *et al.* in prep.). Thus, the Alabama sturgeon is currently recognized as a valid taxonomic species and will continue to be so recognized unless overturned at some future date by the scientific community through the formal publication and peer review process.

*Issue 3:* The Service should conduct comprehensive taxonomic and life history studies of the genus *Scaphirhynchus* on a river system by river system basis prior to listing.

*Response:* While having comprehensive knowledge of a species and its near relatives throughout their geographic ranges prior to listing would be ideal, it is seldom, if ever, possible. Resolution of all aspects of taxonomy and life history for this genus could take years, perhaps decades. The Act requires us to use the best available information to determine the status of a species, subspecies, or vertebrate population. The available information clearly indicates that the Alabama sturgeon is in danger of extinction. Resolving unpublished taxonomic dissent prior to a proposal or final decision is not required. The threat assessment that currently applies to the Alabama sturgeon as a taxonomic species would apply equally to a subspecies or distinct population segment.

*Issue 4:* The Service has failed to clearly indicate which reports or studies they consider to be the best available scientific and commercial data.

*Response:* The list of literature cited in the proposal indicates which reports and studies we consider to be the best available scientific and commercial data. We have reviewed all information currently available to us in assessing the status of the Alabama sturgeon. A list of the literature cited in the proposal is available upon request, as noted in the proposed and final rules, and was provided to interested parties during the open comment period. We also allowed interested parties access to review our files and administrative record on two occasions. In conducting our analysis, we noted opposing views available to us on taxonomy; genetics; distribution and abundance; life history; historic, present, and future threats; and vulnerability to extinction. We evaluated all information with regard to its applicability to the determination of species status under the Act and acceptance by the scientific community.

*Issue 5:* The Service was provided, and has ignored, information discrediting species status for the Alabama sturgeon. Only 4 of 17 scientific reports, documents, and statements provided to the Service in 1993 and 1994 that opposed listing the Alabama sturgeon as a distinct species at that time, were cited in the 1999 proposed rule. The Service has ignored all opposing scientific documents, except a few.

*Response:* We reviewed the information received in 1993 and 1994 that criticized the taxonomy of the Alabama sturgeon prior to preparing the March 26, 1999, proposed rule. The views expressed in the documents were generally summarized in the proposed rule, and several were cited as examples. In proposed and final rules, as well as in most scientific documents, only references used to document or clarify statements are explicitly cited.

The reports referenced by commenters that were not cited in the proposal criticized the original description of the Alabama sturgeon (Williams and Clemmer 1991) and expressed alternative views of its taxonomic status. We reviewed these documents and have not ignored their views; however, only one taxonomic treatment of the species (Mayden and Kuhajda 1996) has been published in the 9 years since the fish was first described. It supersedes the original description and postdates the unpublished accounts referenced that disputed taxonomic validity. Mayden and Kuhajda (1996) scientifically documented species recognition of the Alabama sturgeon. Several national and internationally available articles have also been published since 1994 that recognize the taxonomic validity of the species (see response to Issue 2). Absent publication of alternative or differing taxonomic data and conclusions through the peer review scientific process, the species will continue to be recognized as *Scaphirhynchus suttkusi* by the taxonomic community at large.

*Issue 6:* No scientists have directly challenged any of the scientific data or conclusions of the dozen scientists who question the taxonomy of the Alabama sturgeon.

*Response:* With the one, limited exception discussed below, none of the data and conclusions of the scientists who question the taxonomy of the Alabama sturgeon have been made available for review by the scientific ichthyological community through the accepted process of peer review and publication. Only a single peer-reviewed paper has been published that questions the taxonomy of the Alabama sturgeon (Bartolucci *et al.* 1998). However, that publication was a methods paper concerning a statistical approach to compare the significance of morphological characters. It was published in a statistically oriented journal and not in a zoological, ichthyological, or systematics journal, and it made no attempt to formally revise the taxonomy of the Alabama sturgeon. We received letters from ichthyologists during the comment period pointing out shortcomings of Bartolucci *et. al* (1998) for taxonomic purposes. In a review of the systematics and taxonomy of the Alabama sturgeon, Mayden and Kuhajda (1996) presented new data, addressed many of the criticisms of the original description, and substantiated species status for the Alabama sturgeon.

*Issue 7:* The Service did not list the references that were cited in the proposed rule.

*Response:* In order to save publication space and expense, it is common practice not to include the references cited in the published proposal. The proposed rule clearly noted that a complete list of references was available upon request. We have provided copies of references to all who have requested them.

*Issue 8:* Some of the literature cited for scientific background was criticized as outdated and superseded by later reports. Other studies were said to be irrelevant to the status of the sturgeon because they did not directly address the Alabama sturgeon.

*Response:* We disagree with the assessment that the literature cited in the proposed rule is outdated and

superseded by later reports. Historic status reviews and surveys were cited, along with more recent studies (see Background section), to document efforts to determine the status of the species over a period of two decades. Review of studies on closely related and better known sturgeons provides virtually the only insight to the life history, ecology, and vulnerability of the Alabama sturgeon. It is common and accepted practice in science to deduce the needs and vulnerability of poorly known, rare species, or those that are difficult to study, by using information from more common and better known, related species. It is also common in science to use surrogate species to deduce effects of environmental changes on another species with appropriate caveats that recognize known similarities and differences. For example, it is a common practice in the biomedical sciences to use experimental studies of laboratory mice to infer the potential carcinogenic effects of environmental contaminants and to evaluate the physiological effects of new drug treatments before they are ever tested on humans.

*Issue 9:* The Service still claims that the 1991 description of the Alabama sturgeon, discredited by several scientists, is the best available information on the fish.

*Response:* We recognize errors in the original description (Williams and Clemmer 1991) that have been brought to our attention since 1993. Furthermore, we explicitly reference a rigorous taxonomic and systematic evaluation published in the journal *Copeia* (Mayden and Kuhajda 1996) that firmly establishes the species name, and the species name is widely used in peer-reviewed publications. In keeping with accepted practices in scientific nomenclature and regardless of errors in the original description, the Williams and Clemmer (1991) article will continue to be recognized by the ichthyological professional community as the source of the name *Scaphirhynchus suttkusi* as long as the taxonomy is considered valid (see also response to Issue 16''). As noted in our response to Issue 2,'' the Alabama sturgeon is currently and widely recognized in published literature as a valid taxonomic species.

*Issue 10:* Certain information presented in the proposal regarding the sturgeon's habitat needs, reproductive cycles, and life history requirements is without basis in fact or science.

*Response:* We have used the best available information for assessing the sturgeon's biological needs. This information has been in the form of peer-reviewed literature and professional scientific reports. The Alabama sturgeon's habitat needs, reproductive cycles and life history requirements are not completely known. For those areas where there is insufficient or no information we have utilized information garnered from peer-reviewed scientific studies of the closely related pallid sturgeon and shovelnose sturgeon (see response to Issue 8'').

*Issue 11:* Scientific disagreement with the 1991 Williams and Clemmer description constitutes substantial disagreement among recognized experts.

*Response:* Taxonomic disagreements are not uncommon in any field of systematic biology. While there may be individuals that disagree with the sturgeon's species status, we do not think that this disagreement is substantial. Taxonomic disagreements are resolved through the peer-review publication process, where evidence and interpretation are laid out to the rigorous scrutiny of the scientific community. None of the biologists who disagree with the validity of the specific status of the Alabama sturgeon has presented his or her views through the formal process of submitting papers to appropriate zoological journals. We will give consideration only to those disagreements which are found in the appropriate zoological journals. Regardless of the taxonomic status recognized in the proposal and final rule, the scientific process remains available to dissenting opinions through formal peer-review publication in appropriate journals.

*Issue 12:* Mayden and Kuhajda (1996) failed to do a thorough river system by river system analysis of shovelnose sturgeon.

*Response:* The Mayden and Kuhajda (1996) paper is the most thorough and comprehensive analysis of Alabama sturgeon systematics and taxonomy published to date. We are required to use the best scientific and commercial information that is available. The information and conclusions presented in this account were peer-reviewed and accepted for publication by *Copeia*, a highly respected scientific journal, and one recognized as appropriate for describing new species of fish.

*Issue 13:* The Mayden and Kuhajda (1996) paper is not the most recent science regarding the taxonomy of the Alabama sturgeon. Bartolucci *et al.* (1998) reviewed, criticized, and trumped the Mayden and Kuhajda (1996) paper.

*Response:* Bartolucci *et al.* (1998) was published in a journal oriented to statistical methodology, not an ichthyological or systematics journal. This paper used Bayesian Analysis statistical methodology to compare the principal components of measurement data from samples of Alabama and shovelnose sturgeon. Their results supported previous unpublished conclusions (Howell *et al.* 1994) that the Alabama and shovelnose sturgeon were indistinguishable by principal component analyses of measurement data. The publication did not identify the measurement data that were analyzed, nor was the source of their data cited. Dr. Bartolucci later clarified in submissions at the June 1999 public hearing on the proposed rule that data provided by Williams and Clemmer (1991) were used. In addition, Bartolucci *et al.* (1998) did not review, criticize, or even reference the Mayden and Kuhajda (1996) evaluation of the taxonomy and systematics of the Alabama sturgeon, and additional mensural (based on measurements) and meristic (based on counts) data, as well as new diagnostic characters presented by Mayden and Kuhajda (1996) were not addressed.

*Issue 14:* The Service financially underwrote the 1996 Mayden and Kuhajda paper through a Service contract.

*Response:* We did not provide funds or any other type of support for the 1996 Mayden and Kuhajda paper.

*Issue 15:* The Service failed to evaluate Bartolucci *et al.* (1998) in its 1998 Status Review Report for the Alabama sturgeon and failed to analyze or consider the publication in the proposed rule, as evidenced by an erroneous reference to the paper in the proposal.

*Response:* We received comments on our 1998 Status Report from Dr. Howell referred to the publication of a recent and relevant paper (Bartolucci *et. al* 1998) and, at our request, provided us with a copy. We reviewed, analyzed, and considered the information published in Bartolucci *et al.* (1998) and cited the paper in the proposed rule as part of a brief review of the taxonomy of the Alabama sturgeon (refer to Issue 13 for a more detailed discussion of our analysis of this paper). We acknowledge that the text in the proposed rule is misleading as to the statistical methodology employed by Bartolucci *et al.* (1998). Therefore, we have modified the language to clarify that Bartolucci *et al.* (1998) used Bayesian Analysis statistical methodology to compare the multivariate means of measurements taken from samples of Alabama and shovelnose sturgeon (see Background section).

*Issue 16:* The Service has incorrectly cited the rules set forth by the

International Code of Zoological Nomenclature (ICZN). Complying with the rules does not validate a species. ICZN is heavily based on the law of priority. Based on priority, *Scaphirhynchus suttkusi* is a synonym of *S. platorynchus*.

*Response:* The ICZN deals with the criteria for publication of new scientific names. Chapter 3, Article 7, of the ICZN recommends publication in an appropriate scientific journal or monographic series. As stated in the proposed rule, the description of the Alabama sturgeon (Williams and Clemmer 1991) complies with ICZN rules and recommendations. Chapter 6, Article 23, of the ICZN sets forth the Principle of Priority. This principle states that The valid name of a taxon is the oldest available name applied to it * * * The oldest name applied to a distinct species of *Scaphirhynchus* endemic to the Mobile River Basin is *Scaphirhynchus suttkusi* Williams and Clemmer 1991.

*Issue 17:* The Service should request the ICZN to render an opinion on the question of the taxonomic validity of the Alabama sturgeon.

*Response:* The purpose of the ICZN's Principle of Priority is to promote stability of names. In rare cases, the ICZN may rule on nomenclature priority if requested. Regarding disagreements over newly described species, the accepted procedure is to present data, conclusions, and nomenclature changes in appropriate peer-reviewed journals.

*Issue 18:* Various genetic tests have been conducted on Alabama sturgeon, shovelnose, and pallid sturgeon. The results of these tests have been inconclusive and do not support the listing of the Alabama sturgeon as an endangered species.

*Response:* The proposed rule recognizes the limited results of genetic evaluations for distinguishing species of *Scaphirhynchus*. However, genetic studies cited in the proposed rule, and several received during the comment periods have been consistent with biogeographic arguments for recognizing Alabama sturgeon as an isolated phylogenetic (classification of organisms based on their deduced evolutionary relationships) lineage (Campton *et al.* 1995, 1999, in press; Genetic Analyses, Inc. 1994, 1995; Mayden *et al.* 1999). Mayden and Kuhajda (1996) further demonstrated that the degree of morphological divergence between Alabama and shovelnose sturgeon warranted taxonomic species status for the former. In preparing the proposed rule, we relied primarily upon the taxonomic and systematic evaluation of Mayden and Kuhajda (1996). The genetic studies noted above are consistent with that distinction. The absence of detectable differences by other investigators (*e.g.*, Schill and Walker 1994, Fain *et al.* 2000) only attests to the very close evolutionary relationship between Alabama and shovelnose sturgeon. The Alabama sturgeon meets the definition of an endangered species.

*Issue 19:* The Service has completely ignored the Schill and Walker report (1994), which demonstrated that the shovelnose sturgeon and the Alabama sturgeon are the same species.

*Response:* The proposed rule cited Schill and Walker (1994) who noted that shovelnose, pallid, and Alabama sturgeon were indistinguishable at the mitochondrial cytochrome b locus. The proposed rule also noted similar findings for other currently recognized species. Dr. Jeffrey Wells (*in litt.* 1999), a geneticist hired by the Alabama-Tombigbee Rivers Coalition to review sturgeon genetic studies, also concluded that the Schill and Walker study, among others, does not disprove that the Alabama sturgeon is a separate species.

*Issue 20:* The Service hired Genetic Analyses, Inc., to conduct additional genetic studies. The 1999 proposal did not address their 1994 recommendation for more studies.

*Response:* In 1994, we were made aware of an imminent nuclear DNA genetic study of pallid and shovelnose sturgeon to be jointly funded by the U.S. Army Corps of Engineers, Omaha District, and the Service's Region 6. At our request, tissues from a single Alabama sturgeon available at that time were included in this previously arranged study. The 1994 Genetic Analyses, Inc., data indicated some genetic divergence of Alabama sturgeon from both pallid and shovelnose sturgeon. The report noted, however, that their results were based upon DNA samples from a single Alabama sturgeon and encouraged expanding the investigation should additional specimens become available. In 1995, Genetics Analyses, Inc., reported similar genetic results on two additional, recently collected Alabama sturgeon. They also noted differences between individual Alabama sturgeon, and again recommended additional studies. We provided these conclusions and recommendations in the proposal.

*Issue 21:* The U.S. Army Corps of Engineers, Mobile District, requested clarification of a number of issues raised in the Genetic Analyses, Inc., 1994 draft report. These issues were not addressed in the 1994 Genetic Analyses, Inc., final report.

*Response:* According to information available to us, the request for clarification by the Mobile District was made to the Omaha District, U.S. Army Corps of Engineers. The lack of response to requests for clarification from one Corps District to another has no bearing on us or the final report.

*Issue 22:* The Service claims that the three Alabama sturgeon samples tested by Genetic Analyses, Inc., (1995) are the same species even though one specimen was found to be genetically different from the other two, and genetically the same as the shovelnose.

*Response:* The 1995 study found that all three Alabama sturgeon genetic samples were substantially divergent from shovelnose and pallid sturgeon. However, two new Alabama sturgeon samples were equally divergent from a previously tested Alabama sturgeon sample. For this reason, Genetic Analyses, Inc., recommended examining nuclear DNA genetic diversity within the Alabama sturgeon population as additional samples become available. We made these findings clear in the proposed rule.

*Issue 23:* The Campton *et al.* (1995) report found a difference in only 1 base pair out of 435 between the Alabama sturgeon and the shovelnose sturgeon. The report concluded that the Alabama sturgeon is either a separate subspecies or a distinct population segment. The Service failed to explain the conclusion of the Campton *et al.* (1995) report and inappropriately interpreted the report to mean only that the Alabama sturgeon is a separate species.

*Response:* Campton *et al.* (1995) noted that the level of genetic similarity that they observed between Alabama sturgeon and pallid and shovelnose sturgeon was more typical of isolated populations or subspecies than congeneric species. However, they also referred the reader to similar levels of genetic similarity between species and even genera of cichlid fishes in Africa. The report concluded that the genetic data were consistent with biogeographic and morphological arguments for recognizing *S. suttkusi* (Alabama sturgeon) as an endangered species or distinct population segment * * *. In our summary of their results, we noted that the relative genetic differences among the three species was small. However, Campton *et al.* (1995) clearly demonstrated that pallid and shovelnose sturgeon are genetically distinct in areas where they naturally co-occur, and they also provided genetic (mtDNA) data consistent with the taxonomic distinction of Alabama sturgeon from shovelnose sturgeon. A follow-up study (Campton *et al.* 1999)

reaffirmed their earlier results regarding the genetic distinctiveness of Alabama sturgeon with additional samples of pallid and shovelnose sturgeon from the Atchafalaya River. To date, those investigators (Campton *et al.* 1995, 1999) have examined 75 specimens of *Scaphirhynchus* from the Missouri and Atchafalaya Rivers, and none of the specimens possessed the mtDNA haplotype that characterized the three Alabama sturgeon they examined. One nucleotide substitution out of 435 base pairs demonstrates only the relatively slow rate (*i.e.*, over geological time scales) at which genetic changes in DNA molecules occur over time. The genetic data are, thus, consistent with biogeographic arguments that Alabama sturgeon have been isolated in the Mobile River Basin for at least 10,000 years.

*Issue 24:* Dr. Jeffery Wells reviewed Campton *et al.* (1995), and Mayden *et al.* (1999) (received during the open comment period), and conducted mtDNA analysis on an additional eight shovelnose sturgeon using techniques described by Campton *et al.* (1995). Dr. Wells criticized the conclusions reached in both previous studies and stated that these studies, as well as his own, were inconclusive in determining the potential status of the Alabama sturgeon as a separate species using mtDNA.

*Response:* Genetic data are not commonly used to prove that allopatric (do not occur in the same place) populations are different species. However, Campton *et al.* (1995, 1999) and Mayden *et al.* (1999) identified a unique mtDNA haplotype for Alabama sturgeon that has not been observed among over 40 shovelnose and 30 pallid sturgeon examined to date from the Mississippi and Missouri River Basins. While this genetic data alone does not prove that they are distinct species, it is consistent with Mayden and Kuhajda's (1996) taxonomic description.

*Issue 25:* Reviews of Campton *et al.* (1999) by Drs. Mike Howell and Jeffrey Wells clearly indicate that more genetic testing is required to determine the true genetic status of the three species of *Scaphirhynchus.*

*Response:* We received Campton *et al.* (1999) during the open comment period and, therefore, did not consider it in preparing the proposal. However, as mentioned previously, the report of Campton *et al.* (1999) is consistent with the results of their previous study (Campton *et al.* 1995) and reaffirms their conclusions regarding the genetic distinctness of the three *Scaphirhynchus* species. Genetics of *Scaphirhynchus* is poorly known and we acknowledge that more work is needed. However, as discussed in the previous issue and Issue 60, genetic data alone is not conclusive in distinguishing species, particularly for those species which do not occur together. However, the genetic studies conducted to date by Campton *et al.* (1995, 1999) are consistent with the results of Mayden and Kuhajda (1996) and the taxonomic distinction of Alabama sturgeon.

*Issue 26:* Dr. Stephen Fain was inappropriately influenced by a Service listing biologist to withdraw from cooperative genetic studies of the Alabama sturgeon.

*Response:* Dr. Fain is the DNA Research Team Leader at the National Fish and Wildlife Service Forensics Laboratory in Ashland, Oregon. We were notified by ADCNR fisheries biologists that they had provided Dr. Fain with samples for genetic studies on the genus Scaphyrhinchus. We subsequently contacted Dr. Fain to ensure that he was aware of several previous genetic and morphological studies on the genus. We did not ask Dr. Fain to withdraw from cooperative genetic studies. We also informed Dr. Fain that we would welcome additional information on genetics of the Alabama sturgeon. Dr. Fain's research was completed in late 1999, and summarized in Fain *et al.* (1999, 2000). These reports were made available for public review and comment by reopening the comment period between January 11 and March 5, 2000. Comments pertaining to this work are summarized below in Issues 59 through 61.

*Issue 27:* The Service failed to explain which, if any, of the five factors they are relying upon to justify the proposed listing.

*Response:* Factor A clearly establishes the present curtailment of range and the apparent causes of curtailment. Factor E states that the primary threat to the immediate survival of Alabama sturgeon is its small population size and its apparent inability to offset mortality rates with reproduction and recruitment, as evidenced by declining rates of capture over the past two decades. At the conclusion of the summary of factors, the proposal stated: Endangered status is appropriate for the Alabama sturgeon due to extensive curtailment of its range and extremely low population numbers.

*Issue 28:* The Service's conclusion that current habitat conditions imperil the Alabama sturgeon is unsupported by the available scientific information.

*Response:* Factor A notes the disappearance of the Alabama sturgeon from about 85 percent of its historic range, and that human activities are associated with its decline in range. This finding is supported by historic trends and recent collection efforts (see Background section). Our primary concern under Factor A is whether the quantity of habitat currently occupied by the sturgeon is adequate to support a self-sustaining, viable population. The Background section of the proposal and this final rule also cite studies reporting long-distance movements of the other species of *Scaphirhynchus,* possibly between feeding and spawning sites. While most of the impacts to the sturgeon's habitat were historic, gradual, and cumulative, they still may affect the sturgeon's ability to move within the system between areas for feeding and reproduction. A reduction in natural range from about 1,600 km (1,000 mi) to 216 km (134 mi) of river channel is certainly cause for concern in a wide-ranging fish species with possible migratory needs. This concern is supported by other examples in the fisheries literature (e.g., salmon, striped bass, and robust redhorse, as well as other sturgeon species). Occupied habitat quality was not directly identified as a known threat. We have some concern that the timing of water releases below Millers Ferry Lock and Dam may have negative effects on sturgeon reproduction. Other sturgeon species' reproductive success has been affected by changes in water quantity and timing (see studies cited in the discussion under Factor A). We acknowledge, however, that the lack of specific information on Alabama sturgeon reproductive habitat requirements or the use of this area by the sturgeon for reproduction limits our ability to draw definite conclusions as to current impacts on the Alabama sturgeon.

*Issue 29:* The Service has failed to consider the myriad of existing Federal, State, and local laws that provide additional protection for the Alabama sturgeon and its habitat. Factor D fails to justify listing the Alabama sturgeon as an endangered species.

*Response:* We agree that a number of existing laws and regulations benefit the sturgeon and its habitat. Factor D, however, addresses the inadequacy of protective regulatory mechanisms. In the proposed rule and in this final rule, we note that, within the scope of other environmental laws or Alabama State law, there is currently no requirement to specifically consider the effects of actions on the Alabama sturgeon or ensure that a project will not jeopardize its continued existence. We concur that this issue alone does not present a significant threat to the Alabama sturgeon at this time. The Act requires

that a determination of endangered or threatened status be made on any one of the five factors under section 4(a)(1). See the discussion under the Summary of Factors Affecting the Species section for a complete description of the threats.

*Issue 30:* Minimum Viable Population (MVP) is a theoretical hypothesis and not an established quantifiable technique. The Service has no data (population size, mortality and reproduction rates, etc.) to determine an MVP.

*Response:* Over the past few decades, biologists have been studying the processes of extinction for small populations (see Soule 1987). The likelihood of species extinction and/or extirpation (loss) of isolated populations increases dramatically as population size diminishes (Shaffer 1987). The Alabama sturgeon has been reduced to about 15 percent of its historic range. Collection history and anecdotal accounts from commercial fishermen demonstrate a continued decline in catches over the past few decades or, at a minimum, an increased effort required to collect the fish.

A number of techniques have been developed to estimate the probability of extinction for populations of animals over time, or to predict the minimum population size (MVP) necessary for a population to persist for a given time period (see Soule 1987). In the proposed rule, we did not attempt to determine a hypothetical numerical population size necessary to sustain the Alabama sturgeon, and we concur that the information does not currently exist to define a numerical MVP. We used the MVP terminology to depict that the Alabama sturgeon's increasing restriction in range, its rarity, and its life history render the species highly vulnerable to chance extinction. However, for purposes of clarity, we have removed discussion of MVP from this final rule and instead refer to the threat presented to the Alabama sturgeon by its small population size.

*Issue 31:* The Service has offered no proof or evidence of a current or continuing decline in the Alabama sturgeon's population numbers in the Alabama River. Alabama sturgeon have been rare for decades and are as plentiful in the Alabama River today as they were 25 years ago.

*Response:* We concur that Alabama sturgeon have probably been uncommon in the Mobile River Basin for the past few decades. However, collection data over this time period demonstrate a decline in distribution, as well as a reduction in population size. For example, collection data indicate that the species has disappeared from the Coosa, Tallapoosa, Black Warrior, upper Tombigbee, and upper Alabama Rivers since the 1960s (see Background section). Interviews with commercial fishermen and fisheries biologists also indicate that the Alabama sturgeon has disappeared from the Millers Ferry reach of the Alabama River, and the Cahaba, lower Tombigbee, and Mobile/Tensaw Rivers during the past 25 years. Recent collection efforts suggest a decrease in abundance of the species in the lower Alabama River and the Claiborne Dam reach during the past 15 years.

The first attempt to determine the status of the Alabama sturgeon in the Mobile River Basin was by Clemmer (1983). Although an ADCNR fisheries biologist reported regular catches of shovelnose (=Alabama) sturgeon in the Cahaba River during the early 1980s, Clemmer documented recent trends in lower numbers of sturgeon through interviews with commercial fishermen and professional fisheries biologists. Burke and Ramsey (1985) reached the same conclusion of declining Alabama sturgeon from interviews with veteran fisheries biologists, conservation officers, and full-time commercial fishermen. They conducted random stratified interviews with full-time commercial fishermen and reported 18 pre-1975 captures and 7 post-1975 captures. Commercial fishermen reported recent declines in captures of Alabama sturgeon in the Millers Ferry reach of the Alabama River and the Cahaba River. Burke and Ramsey (1995) described their ability in 1985 to capture Alabama sturgeon with relative ease in the Alabama River below Millers Ferry Lock and Dam. ADCNR biologists Tucker and Johnson (1991, 1992) reported on sturgeon collection efforts and interviews with conservation officers, fisheries professionals, and commercial and sports fishermen. They employed a variety of collection methods in the lower Alabama River, Claiborne Reservoir, Millers Ferry Reservoir, Tombigbee River, and Cahaba River without capturing any sturgeon. However, interviews yielded reports of several recent captures of small sturgeon in the lower Alabama and Cahaba Rivers during 1991 and 1992. As noted in the proposed rule, the most intensive fishing effort to date was initiated in early 1997. At the time of publication of the proposal, more than 3,000 man-hours of fishing effort directed toward sturgeon were expended over an 18-month period by professional fisheries biologists. In addition, commercial and recreational fishermen were asked to report any captures. As a result of this intensive effort, only three sturgeon were captured in 1997 and 1998. Two additional fish have been collected during intensive fishing efforts since publication of the proposal in 1999. While it is unfortunate that directly comparable data do not exist through all decades, the disappearance of the species from much of its range, the anecdotal accounts by knowledgeable fisheries biologists and commercial fishermen of a decline in captures, and the documented intensive efforts required to capture the species during the last four years clearly indicate a reduction in the range and numbers of Alabama sturgeon in the Mobile River Basin over the past two decades.

*Issue 32:* There is no evidence that the 1898 reported catch of shovelnose sturgeon were not immature Gulf sturgeon.

*Response:* The U.S. Commission of Fish and Fisheries (1898) represents the best available commercial information on sturgeon fisheries at the turn of the century in the Mobile River Basin. The shovelnose sturgeon was described in 1820, and the Atlantic sturgeon (as the Gulf sturgeon was known at that time) was described in 1814. There is no evidence to suggest that the fisheries biologists compiling the 1898 statistics were not able to distinguish the two species. The lake sturgeon, another sturgeon species more similar in appearance to the Gulf sturgeon than the shovelnose, was also reported in the statistics.

*Issue 33:* The Service should address the State's efforts to conserve the Alabama sturgeon under Factor E.

*Response:* The ADCNR fishing and hatchery efforts are addressed in the Background section. The State's 1997 Conservation Plan was addressed in detail in the proposed rule under Available Conservation Measures. We have moved this discussion under Factor E in this final rule, as recommended.

*Issue 34:* The Service has consistently opposed suggestions to use shovelnose sturgeon from the Mississippi River drainage to augment Alabama sturgeon populations in the Mobile River drainage.

*Response:* Introducing shovelnose sturgeon from the Mississippi River drainage into the Mobile River drainage is ill-advised at the present time because doing so could lead to, or accelerate, the extinction of Alabama sturgeon through hybridization, genetic swamping, or competition.

*Issue 35:* The Service requires continued cooperation from commercial and recreational fishermen and the ADCNR to successfully recover the

Alabama sturgeon. Listing the Alabama sturgeon under the Act will impede that cooperation by enacting Federal take prohibitions and penalties, and funds available for candidate conservation cannot be used for recovery efforts.

*Response:* We agree that cooperation from ADCNR and commercial and recreational fishermen, as well as others, is essential to the recovery of the Alabama sturgeon. Section 6 of the Act allows us to enter into cooperative agreements with States to assist them in conserving endangered or threatened wildlife. A section 6 cooperative agreement between the State of Alabama and us recognizes the State's authority to establish and implement programs for the conservation of federally listed species and provides funding assistance towards their conservation. Under the cooperative agreement, the ADCNR may continue to implement the 1997 Conservation Plan for the Alabama sturgeon, or any future approved recovery plan. ADCNR is also eligible for funds for conservation of the sturgeon under our recovery and section 6 programs. Implementing regulations (50 CFR 17.21(c)(5)) also provide States under cooperative agreements certain authorities for conducting actions for the conservation (*i.e.*, recovery) of endangered species.

Listing the Alabama sturgeon under the Act increases penalties for already prohibited acts. Unauthorized removal of sturgeon from the waters of Alabama is already prohibited by State law. Cooperation and assistance from private individuals, such as recreational and commercial fishermen, can continue under both Federal and State permitting authority.

Listing of the Alabama sturgeon under the Act does not effect use of the fiscal year 2000 candidate conservation funds already given to the State. We have obligated this money to the State of Alabama; they may use it for the purpose of candidate conservation and it will not be rescinded.

*Issue 36:* The Service failed to consider the 1997 Conservation Plan and its favorable effect on the Alabama sturgeon in its proposal.

*Response:* We outlined the 1997 Conservation Plan in the proposed rule under Available Conservation Measures. Implementation efforts under the plan were also discussed under the Background section of the proposal. Implementation of the plan tasks, such as construction of hatchery facilities and collection efforts, is positive and provides opportunities for future population augmentation. However, the plan has not yet been successful in decreasing the threat of extinction to where protection under the Act is no longer warranted.

*Issue 37:* The proposed listing of the Alabama sturgeon has made it more difficult for ADCNR to implement the 1997 Conservation Plan because of permitting requirements, conferencing limitations, and Service propagation policies.

*Response:* Proposed endangered status has not affected implementation of the 1997 Conservation Plan. We have no permitting requirements for proposed species; we will expedite permitting procedures once this final rule is published. The section 7 conferencing requirements were met with the White Paper (Biggins 1994) and subsequent correspondence between the Corps and us. We published a Draft Policy Regarding Controlled Propagation of Species Listed Under the Endangered Species Act on February 7, 1996 (61 FR 4716). We will work with the State to ensure that the Alabama sturgeon propagation program is in compliance with the policy, once we publish the policy in final form. Collection efforts have continued, and two fish have been caught since the listing proposal was published. The State conducted an unsuccessful attempt to propagate the sturgeon following publication of the proposal.

*Issue 38:* Candidate conservation funds appropriated for the FY 2000 budget cannot be used for sturgeon conservation, should the Alabama sturgeon be listed.

*Response:* Funds appropriated for Alabama sturgeon conservation in the FY 2000 budget were committed to Alabama sturgeon conservation efforts while the sturgeon was a proposed species. (Refer to Issue 35 for further information.)

*Issue 39:* Listing will transfer responsibility for managing the Alabama sturgeon from the State to the Service, and work on the 1997 Conservation Plan will stop for at least a year until a recovery plan is developed and approved.

*Response:* Our policy is to develop recovery plans for listed species within two and a half years of their designation as endangered or threatened species. Approved recovery plans, however, are not necessary to conduct recovery actions for listed species. Under the section 6 agreement between the State and us, the ADCNR may continue conservation efforts without delay.

*Issue 40:* The U.S. Coast Guard has stated that listing the Alabama sturgeon would seriously limit, if not hamper, the dredging of all navigable waterways in the historic Mobile River Basin.

*Response:* The U.S. Coast Guard comments were based on a premise that listing the sturgeon would stop navigation maintenance. They were unaware of an impact assessment on navigation maintenance conducted and agreed to by both us and the Mobile District Corps of Engineers that concluded that navigation dredging would not need to be eliminated, modified, or altered should the Alabama sturgeon be listed. They have since been provided with this information.

*Issue 41:* The White Paper is an informal agreement that must be endorsed at the national level to be believable. The Service should include the White Paper in its entirety in the final rule to list the Alabama sturgeon.

*Response:* The White Paper (Biggins 1994) is not an agreement, but a 1994 assessment of impact of a Federal agency's activities on a proposed species. This assessment found no adverse effect to the Alabama sturgeon from current Corps activities and permitting activities in the lower Alabama River. The no-adverse-effect determination was formalized by an exchange of letters between the two agencies that same year. In 1998 and 1999, both agencies reaffirmed this conclusion following studies that supported the determination. Federal agency activity impact assessments on listed species, required by the Act, are conducted at the field level. Should disagreements occur, they may be elevated to the Regional and District level. Although there was no disagreement between agencies concerning the no-adverse-effect determination on the Alabama sturgeon, letters reaffirming the determination were exchanged between the Service's Regional Director and the Corp's Division Commander because of continued public concern. There is no disagreement between the agencies at the field, Regional, or District levels; therefore, there is no need to elevate this assessment to the national level.

Much of the assessment and conclusions of the White Paper, as well as of the more recent correspondence, was incorporated into the proposed rule under Factor A, and the White Paper (Biggins 1994) was cited for reference. The White Paper and all subsequent correspondence relating to the White Paper and Federal activities within Alabama sturgeon habitat are currently a part of the administrative record to list the sturgeon under the Act. Publishing the White Paper and pertinent correspondence would not add to, or detract from, the protection of the Alabama sturgeon under the Act, or affect or change any Federal agency's

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responsibility under the Act. We have, however, included the White Paper at the end of this rule and expanded and clarified the discussion of it and its findings in this final rule.

*Issue 42:* In the 1994 White Paper, the Service and the Corps concluded that listing the sturgeon would have no impact on State water quality standards. However, EPA has agreed in a Memorandum of Agreement Regarding Enhanced Coordination under the Clean Water Act and Endangered Species Act (MOA) between EPA and us to consider the effects of their programs and activities on listed species. Under the Agreement, EPA agreed that modified regulations will prohibit mixing zones likely to cause jeopardy to listed species. Therefore, listing the Alabama sturgeon may require changes in State water quality standards throughout its historic range.

*Response:* Under Factor A, we note that pollution may have contributed to the decline of the Alabama sturgeon in the past. However, at this time, we have no information that current water quality regulations are not protective of the Alabama sturgeon.

The MOA between the Service and EPA is to ensure appropriate implementation of both the Clean Water Act and the Endangered Species Act. The MOA does not change, or add to, the legal responsibilities of either agency under either Act. Currently, there are 62 listed species in Alabama that are subject to consultation on water quality standards under the MOA.

Under the Endangered Species Act, Federal agencies, including EPA, are obligated to consider the effects of their actions, including permitting actions, on endangered and threatened species, and to avoid jeopardizing the continued existence of the species. Only actions impacting the species need to be considered. The Alabama sturgeon is believed to be extirpated from approximately 85 percent of its historic range in the Mobile River Basin. Based on current knowledge of the species, only Federal actions affecting the lower 216 km (134 mi) of the Alabama River need to be assessed for impacts on the Alabama sturgeon. We are unaware of any permitted discharge within this river reach, or anywhere else, that is likely to jeopardize the continued existence of the Alabama sturgeon.

*Issue 43:* EPA recently proposed additions to Alabama's 303(d) list, based in part, on the presence of federally listed species in streams. A substantial portion of the Mobile River Basin could become subject to 303(d) designation based solely on the habitat/historic range of the Alabama sturgeon.

*Response:* Streams proposed by EPA for addition to Alabama's 303(d) list, due to listed aquatic species, have to meet certain criteria. These include a documented decline or extirpation of the listed species since 1975, and an identified pollutant that contributes to that decline (such as sediment or nutrients). These criteria limit the 303(d) proposals to a few stream segments with demonstrated problems, affecting only a small number of the streams that support listed species in Alabama. Currently, no pollutants have been implicated in the decline or extirpation of the Alabama sturgeon from any stream segment since 1975. The listing proposal pointed out that two localized river segments above Claiborne Lock and Dam have been reported as occasionally impaired due to nutrients and organic enrichment; however, this is not considered a significant impact on the Alabama sturgeon. We do not anticipate requesting EPA to consider adding streams or stream segments to the State 303(d) list based on the past or present occurrence of the Alabama sturgeon.

*Issue 44:* Any violation of a discharge permit into waters supporting Alabama sturgeon could potentially result in take of the species under the Act. Since critical habitat was not proposed for the sturgeon, any violation of a National Pollutant Discharge Elimination System (NPDES) discharge permit within the sturgeon's historic habitat in the Mobile River Basin would be subject to civil and criminal penalties under the Act.

*Response:* Since 1994, it has been our policy to notify the public of activities that could potentially result in a violation of the Act in proposed regulations to list species. In the proposed rule, we identified discharge permit and water withdrawal permit violations as having the potential to result in a take of Alabama sturgeon. We have received many comments expressing concern that common, minor violations of NPDES discharge permits throughout the historic range of the sturgeon will be prosecuted as take of Alabama sturgeon. This is not our intent. Only violations that result in injury or death to the listed species would be prosecutable under the Act. However, since illegal discharge of pollutants is also identified as a potential take, we have removed the section on permit violations from the referenced discussion in this final rule. Permit violations that result in death or injury to Alabama sturgeon or any other federally listed species, however, could be considered take.

*Issue 45:* Listing the Alabama sturgeon would have an adverse impact on hydropower operations below Robert F. Henry and Millers Ferry Hydroelectric Projects, and may potentially impact operation of the Allatoona and Carters Hydroelectric Projects. There is also concern that the Service could make unsubstantiated claims of harm as a result of future changes in flow regimes in the lower Alabama River.

*Response:* The proposed rule noted that flow regimes below Millers Ferry Lock and Dam may have a negative effect on Alabama sturgeon reproduction and recruitment, based on studied responses of other sturgeon species to flow modifications within their habitats. However, we also noted that it is not currently known if this area is important to, or even used for, Alabama sturgeon reproduction. Therefore, we see no reason for recommending any modification of flow regime below Millers Ferry Lock and Dam at this time. Should future research determine that this area is important for sturgeon reproduction, and/or flow regimes were having a negative effect on sturgeon, we and the Corps would examine options available under section 7 consultation. Options might include working with the Corps and hydroelectric operator to provide more favorable flows for the sturgeon, and/or providing for any incidental take of sturgeon resulting from activities of the Corps and hydroelectric operator via an incidental take statement as part of a biological opinion.

Future proposed changes in flow regimes in the lower Alabama River should thoroughly consider potential impacts to the Alabama sturgeon, as well as other species. Continued research into the life history and habitat of Alabama sturgeon can provide a sound basis for future decisions regarding potential changes in flow regimes in the lower Alabama River.

The Alabama sturgeon is no longer believed to occur in the Millers Ferry Pool below Robert F. Henry Lock and Dam. The Allatoona and Carters hydroelectric projects in Georgia occur outside of, and are remote from, Alabama sturgeon's historic and currently occupied habitat. These projects are unlikely to affect the Alabama sturgeon, or be affected by its protection under the Act.

*Issue 46:* A recent economic impact analysis of the proposed listing, developed by economists at Troy State University, determined that a more than $15 billion adverse economic impact will result from listing the Alabama sturgeon as endangered. There should be a cost/benefit analysis conducted

prior to listing the Alabama sturgeon under the Act.

*Response:* Section 4(b)(1)(A) of the Act requires us to base our decision on whether to list a species solely on the best scientific and commercial data available on the species' status and precludes us from considering economic or other impacts that might result from the listing. Public comments directed to economic or other potential impacts of listing are outside the scope of this rulemaking.

Section 4(b)(2) of the Act does require us to consider economic or other impacts associated with the designation of critical habitat. However, we believe that the referenced economic impact analysis cited above was based upon a set of incorrect assumptions about how the proposed listing would affect economic activity throughout the Mobile River Basin. The referenced analysis made no attempt to identify or quantify any past or present economic impact associated with 38 aquatic species currently listed throughout the Basin. For example, there are listed species associated with all of the navigation channels of the Mobile River Basin, yet no negative economic impact on navigation, ports, or marinas due to the presence of these species was documented in the economic analysis. The analysis assumes, however, without justification or examples, that all waterways within the Mobile River Basin will be closed to navigation by the designation of endangered status to the Alabama sturgeon, and estimates economic consequences that might result from a halt in all navigation in the Tennessee-Tombigbee, Tombigbee, Black Warrior, Mobile, and Alabama River channels, and the closing of ports and marinas. The Alabama sturgeon currently inhabits only the lower Alabama River. The Corps and the Service have determined that navigation maintenance has no adverse effect on the Alabama sturgeon. The proposed rule specifically stated that maintenance dredging is unlikely to result in a take of Alabama sturgeon. Therefore, navigation, ports, and marinas will be economically unaffected by this listing.

The economic analysis also assumed that water withdrawals and discharges within the Alabama, Coosa, Tallapoosa, Cahaba, Tombigbee, Black Warrior, and Mobile Rivers and their tributaries would be capped at present levels should the sturgeon be listed. As noted above, the Alabama sturgeon currently inhabits only the lower Alabama River. Water withdrawal has not been identified as a threat to the Alabama sturgeon. In addition, all of the rivers assumed to be impacted by the analysis, and many of their tributaries, currently support populations of endangered and threatened species that have been listed for many years, and yet the analysis documented no negative economic impact from water withdrawal and discharge capping due to the presence of these listed species.

*Issue 47:* Listing the Alabama sturgeon may restrict the repair and/or construction of new and existing roads and bridges on the lower Alabama River.

*Response:* Section 7 of the Act requires Federal agencies, in consultation with us, to determine if their actions are likely to jeopardize the continued existence of listed species or adversely modify or destroy their critical habitat, and to conduct their activities in ways that are protective of listed species. This includes activities conducted or permitted by Federal agencies, such as road and bridge repair and construction. There are currently 38 listed aquatic species in the Mobile River Basin, including four currently inhabiting the Alabama River. As a result, consultations are a common occurrence in the Mobile River Basin, normally proceeding without attention of or impact to the general public. Based on our knowledge of conditions in the lower Alabama River, the life history and habitat of the Alabama sturgeon, and the localized and temporary nature of impacts associated with road and bridge construction, we do not foresee any restrictions necessary on bridge and road construction or repair resulting from addition of the Alabama sturgeon to the list of species protected under the Act.

*Issue 48:* Listing the Alabama sturgeon under the Act will result in third party lawsuits to stop Federal projects (such as maintenance dredging) or stop the issuance of discharge permits.

*Response:* Citizen suits are allowed under the Act. However, it has been our experience that fully complying with the requirements of the Act, as well as other Federal laws, is the best way to avoid citizen suits.

*Issue 49:* The Act clearly states that to the maximum extent prudent and determinable, critical habitat shall be designated concurrently with listing a species. By not proposing critical habitat concurrent with the listing, the proposal is in violation of the Act.

*Response:* Implementing regulations allow us to determine that critical habitat designation is not prudent if such designation would result in an increase in threat to the species, or if designation does not benefit the species. In the proposal, we determined that because of the limited range of the species, critical habitat would provide no additional benefit for the species beyond that which it would receive from listing. In addition, we were concerned that an adverse public reaction to critical habitat designation would result in loss of cooperation by fishermen and other partners in current conservation efforts. Therefore, in the proposed rule we concluded that designation of critical habitat for the Alabama sturgeon was not prudent.

During the public comment period, we received numerous comments from both proponents and opponents of the species listing that favored designation of critical habitat. Due to this public response, we now believe that it is unlikely than any adverse effect on the sturgeon would occur as a result of critical habitat designation, and that such designation is indeed prudent, but not determinable at this time. Section 4(b)(6)(C) of the Act provides that a concurrent critical habitat determination is not required with a final regulation implementing endangered status and that the final designation may be postponed for one additional year beyond the period specified in section 4(b)(6)(A), if (I) a prompt determination of endangered or threatened status is essential to the conservation of the species, or (ii) critical habitat is not then determinable (see Critical Habitat section).

*Issue 50:* The Service did not provide actual notice of the proposed regulation to list the Alabama sturgeon to ADCNR, or to each of the three Alabama counties in which the sturgeon currently exists, as the Act requires.

*Response:* We provided advance notification, by facsimile, to the Governor of Alabama, the ADCNR, and the County Commissions of Wilcox, Clarke, Monroe, and Baldwin Counties, as well as other parties, of the proposal the day before its publication in the **Federal Register**. Upon publication of the proposal, we mailed them copies of the complete text as published in the **Federal Register** and solicited their comments. We have fully complied with the notification requirements of the Act.

*Issue 51:* The Service's proposed listing is based on the historic range of the Alabama sturgeon; therefore, the Service may be required to give actual notice to almost every county in Alabama and several counties in Mississippi.

*Response:* We are required to give notice and invite the comments of each county in which the species proposed for listing is believed to occur (see 50 CFR 424.16(c)(1)(ii) and 16 U.S.C. 1533(b)(5)(A)(ii)). The sturgeon is

extirpated from about 85 percent of its historic range in Alabama and Mississippi. It is currently believed to inhabit the Alabama River in Clarke, Monroe, and Wilcox Counties. We gave these counties notice of the proposed regulation and solicited their comments.

*Issue 52:* The Service must comply with the National Environmental Policy Act (NEPA) when designating critical habitat.

*Response:* Environmental assessments and environmental impact statements, as defined under NEPA, are not required for regulations enacted under section 4(a) of the Act (see 48 FR 49244). Please refer to the NEPA section of this final rule.

*Issue 53:* In submitting the proposed rule to scientific specialists for review, the Service must comply with the Federal Advisory Committee Act (FACA).

*Response:* FACA applies to committees established by Federal agencies to provide recommendations and advice to an agency. We provided copies of the proposed rule to five scientific specialists for independent review during the open comment period. We received individual comments from four of these reviewers during the open comment period. The fifth scientist provided comments through the Alabama-Tombigbee Rivers Coalition during the open comment period. Our request and receipt of comments from individual peer reviewers during the open comment period is fully consistent with FACA requirements.

*Issue 54:* The Service must comply with Executive Order 12866 and prepare a Regulatory Plan.

*Response:* Because section 4(b)(1)(A) of the Act specifically prohibits consideration of information other than scientific and commercial information, we are prohibited from applying the procedures of Executive Order 12866 to proposed and final listings.

*Issue 55:* The Service must prepare a regulatory flexibility analysis.

*Response:* In accordance with the requirements of section 4(b)(1)(A) of the Act mentioned under Issue 54 above, the Regulatory Flexibility Act does not apply to listing actions.

*Issue 56:* The Alabama strugeon is protected by the State and there is a State-managed 1997 Conservation Plan in place. Listing the Alabama sturgeon will provide no added benefits to the current conservation efforts. There is no need for Federal protection of this species.

*Response:* We acknowledge that the State of Alabama protects the Alabama sturgeon from scientific and recreational take, and has implemented conservation efforts for the species. To date, the 1997 Conservation Plan has not been successful at improving the status of the species such that it no longer requires protection under the Act. Section 4(a)(1) of the Act requires us to determine whether any species is an endangered species or a threatened species because of any of five factors. Listing the Alabama sturgeon will not detract from the efforts of the 1997 Conservation Plan. The Act requires us to cooperate with State agencies in conserving endangered species, and we will continue to cooperate with the ADCNR in conserving the Alabama sturgeon. Listing will also augment protection and conservation of the Alabama sturgeon. The Act requires Federal agencies to use their authorities to conserve listed species. Without protection under the Act, there is no legal requirement to specifically consider the effects of new Federal projects funded, carried out, or permitted within the Alabama sturgeon's habitat. Since many of the activities associated with the Alabama River channel habitat used by the sturgeon are funded, carried out, or permitted by Federal agencies, the Federal agency conservation responsibilities invoked by the Act will benefit the species. This does not mean that activities of Federal agencies or permittees will be impeded, rather that projects will be planned and implemented in ways that reduce harm or injury to the species, and avoid jeopardizing its continued existence.

*Issue 57:* It is not clear that listing the Alabama sturgeon will result in its recovery.

*Response:* The Act allows us to only consider information related to a species' status when determining as to whether protection is warranted under the Act. Therefore, we may not consider the feasibility of recovery in determining whether to list a species.

*Issue 58:* Listing the Alabama sturgeon under the Act may create restrictions on numerous permit actions.

*Response:* Federal agencies are required under the Act to consider the effects of their actions, including issuing permits, on endangered and threatened species. In cases where the action affects the species, the agency is required to consult with us. If during consultation, the action is determined to likely jeopardize the species' continued existence, it may be significantly modified, or even prohibited. However, this is rarely the case. In over 1,000 consultations in Alabama over the past decade, only two consultations resulted in a jeopardy determination, and in both of these cases, the programs were modified and went forward. In most cases, projects that may affect listed species have been slightly modified to reduce or eliminate the effect, and/or the resulting biological opinion anticipates some level of take of the species, which is exempted from section 9 prohibitions. In addition, we and the Corps have already determined that most Corps permitting activities in the lower Alabama River currently are not known to adversely affect the Alabama sturgeon. Therefore, it is unlikely that listing the sturgeon under the Act will create restrictions on numerous permit actions.

*Fain et al. (2000) Report*

During the open comment period for the Fain *et al.* (2000) report on river sturgeon genetics, we received six comments and one peer-reviewed manuscript. One commenter felt that the use of mtDNA for forensics purposes should be thoroughly peer-reviewed for all sturgeon species. Two commenters believed that the report established that the Alabama sturgeon should not be considered a distinct species. Three commenters noted that the report establishes only that the cytochrome-*b* gene is not useful for examining genetic variation within the genus *Scaphirhynchus* and two other sturgeon species groups. The peer-reviewed manuscript we received during the comment period concluded that current mtDNA data provide a potentially diagnostic genetic character supporting taxonomic recognition of the Alabama sturgeon as a distinct species. Below are issues raised in these comments relating to this action and our responses to each.

*Issue 59:* Alabama and shovelnose sturgeons are genetically identical.

*Response:* A study by Schill and Walker (1994), discussed in the background section of the proposed rule, found no sequence divergence in a cytochrome *b* mtDNA sequence between a single specimen of the Alabama sturgeon and shovelnose sturgeon. All subsequent genetic studies with larger samples of Alabama and shovelnose sturgeons have revealed genetic differences between samples of the two species. Cytochrome *b* mtDNA sequences reported by Fain *et al.* (2000) indicate that the Alabama sturgeon sample had only one sequence type, A, whereas the shovelnose sturgeon sample included two sequence types, B and C, that were not found in the Alabama sturgeon sample. Although sequence A was found in both, it differed in frequency in Alabama (frequency = 1.0) and shovelnose (frequency = 0.86) sturgeons. Fain *et al.* (2000) concluded that these differences were not

diagnostic for forensic purposes. Campton *et al.* (in press) report a unique mtDNA sequence at the mtDNA control region found in all three Alabama sturgeons sampled, but was not found in any of a sample of 37 shovelnose sturgeon and putative shovelnose/pallid sturgeon hybrids. This potentially diagnostic genetic marker differed from the most similar shovelnose and pallid sturgeon sequences by a unique base-pair substitution. These results were confirmed by those of Mayden *et al.* (1999), which are discussed in our response to Issue 24. Nuclear DNA divergence detected between Alabama sturgeons and other *Scaphirhynchus* reported by Genetic Analyses, Inc., (1994, 1995) is discussed in our responses to Issues 20 and 22 and in the Background section of this rule.

*Issue 60:* Genetics is the best science for making taxonomic determinations and trumps morphological analyses.

*Response:* The most scientifically credible approach to making taxonomic determinations is to consider all available data involving as many different classes of characters as possible. Classes of characters that can be considered include morphological, karyological (chromosomal), biochemical (including DNA analysis and other molecular genetic techniques), physiological, behavioral, ecological, and biogeographic characters (Wiley 1981). The consideration given to any given class of characters in making a taxonomic decision depends on several factors. These include the availability and quality of the data, the appropriateness of the method and design of the study to the taxonomic issue in question, and the demonstrated utility of the method to similar issues or taxonomic groups. Genetic data have their greatest utility in making species-level taxonomic determinations when the putative species are sympatric (occur together) and the degree of natural genetic interaction can be evaluated. When the putative species are allopatric, as with Alabama and shovelnose sturgeons, genetic data provide a measure of divergence that must be evaluated along with all other available measures of divergence in making a determination whether species-level differences exist. When sample sizes are small, either in terms of number of individuals or number of genetic regions or loci tested, the taxonomic value of genetic data is diminished.

*Issue 61:* Based on the study by Fain *et al.* (2000), Alabama and shovelnose sturgeons are the same species (conspecific).

*Response:* The study of Fain *et al.* (2000) was designed to develop a procedure for the forensic identification of caviar; it was not designed to critically examine the taxonomy of sturgeons of the genus *Scaphirhynchus*. Their choice of a portion of the cytochrome *b* sequence is reasonable for their purpose of evaluating a number of different genera distributed over a wide geographic range across different continents. Failure to find a diagnostic marker for Alabama sturgeon in a gene region chosen to have a somewhat conservative rate of divergence does not mean that it is not a species or that genetic differences were not found; genetic differences are discussed in our response to Issue 59. Fain *et al.* (2000) observe that when minimal genetic variation is found with such a technique, it can mean that the species have recently diverged and there has not been time for fixation of genetic differences. That species formation can take place more rapidly than differentiation of genetic markers can become established has long been appreciated by systematists and taxonomists applying genetic data (Avise 1994). Cytochrome b is not the best choice of a genetic region for resolving the closely related species in the genus *Scaphirhynchus*. In such cases it is appropriate to examine a gene region known to have a faster rate of evolution that might be reflected in a difference between species. The study of Campton *et al.* (in press) employed the more rapidly evolving control region of mtDNA with the results described under Issue 59. Campton *et al.* (in press) also discuss other cases where speciation has occurred in fishes with very little genetic divergence in cytochrome *b*, and Fain *et al.* (2000) identifies lack of divergence between pairs of other sturgeon species. Interpreted in light of the minimal gene regions studied, the small sample sizes of Alabama sturgeon, and evidence from other species that species formation can occur with minimal detectable genetic differentiation in DNA regions commonly studied, the genetic data are consistent with and do not demand the rejection of taxonomic conclusions based on morphological and biogeographical data that the Alabama sturgeon qualifies for recognition as a valid species.

*Conservation Agreement Strategy*

During the open comment period for the Conservation Agreement Strategy, we received 259 letters recommending implementation of the Strategy and withdrawal of the listing action. We also received five letters opposing the use of the Strategy to preclude listing. Below are issues raised in these comments relating to this action and our responses to each.

*Issue 62:* The Conservation Agreement Strategy fully addresses the threats identified in the proposed listing rule. Therefore, it provides the basis for either withdrawing the listing action for the Alabama sturgeon, or listing as threatened instead of endangered.

*Response:* Conservation actions for the Alabama sturgeon have been conducted over the past years by the State of Alabama, other concerned parties and us under a Conservation Plan. These actions have been successful to the extent of increasing our knowledge of methods to capture the fish and maintain it in captivity. However, the species remains vulnerable to extinction because of its small population size and restricted range. Early this year we were requested by the State of Alabama to develop and enter into a formal Conservation Agreement and Strategy with the State and others to continue and to increase conservation efforts for the Alabama sturgeon. We collectively developed a conservation strategy that is technologically and economically feasible and that has a good chance of addressing the threats to the continued existence of the Alabama sturgeon. We also released the Conservation Agreement Strategy for public review and comment. We then reviewed the comments received, and considered the certainty and effectiveness of the Conservation Agreement Strategy as it relates to the current and future status of the sturgeon.

We concluded that the Conservation Agreement Strategy is the best approach for conservation of the Alabama sturgeon; however, the certainty and effectiveness of these efforts in removing existing threats remain unproven and dependent upon many factors beyond human control. For example, the Strategy can only be effective if sufficient mature fish of both sexes can be captured. In the past 4 years we have only captured five fish, of which only one was in reproductive condition. While the Strategy calls for a dramatic increase in capture efforts over the next decade, the capture of sufficient fish in appropriate condition cannot be assured.

Collection history and anecdotal accounts from commercial fishermen indicate that the numbers of Alabama sturgeon have been declining since the construction of dams in the Alabama River during the 1960's and early 1970's. It is currently unknown if this decline is an effect of low population

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numbers and the subsequent inability of the fish to reproduce successfully, or a result of inadequate habitat quantity, or a combination of factors.

Although the successful implementation of the Conservation Agreement Strategy will maintain current habitat quantity and quality and provide information on the habitat needs of the Alabama sturgeon, we cannot currently predict what effect that information may have on the future status of the species. Therefore, based on our analysis, the Conservation Agreement Strategy does not remove existing threats to the Alabama sturgeon to a degree to where it no longer warrants listing under the Act. The Conservation Agreement Strategy, however, does provide the best available actions for the conservation of the Alabama sturgeon, and may lead to its eventual recovery. The Strategy has outlined what the species needs for recovery, and it will make an excellent recovery plan.

*Issue 63:* The Conservation Agreement Strategy fails to address the factors sufficiently to have an effect on the listing determination of the Alabama sturgeon.

*Response:* We concur that the Strategy does not remove threats to the Alabama sturgeon to a degree that precludes its need for protection under the Act. However, the Conservation Agreement Strategy can influence many future actions covered under sections 4, 6, and 7 of the Act. For example, the Strategy provides the basis for an Alabama sturgeon recovery plan, identifying current and future recovery actions essential to the species' conservation. The Conservation Agreement Strategy could become the State's program to conserve the sturgeon under section 6 of the Act. In addition, the Corps' involvement, commitments, and actions under the Conservation Agreement Strategy would, in large part, fulfill their conservation obligations under section 7(a)(1) of the Act. Positive results of the Conservation Agreement Strategy could facilitate future section 7(a)(2) consultations.

*Issue 64:* The Department of the Interior had already made a decision regarding the listing of the Alabama sturgeon when the comment period opened in February.

*Response:* As stated in the February 16, 2000, **Federal Register** notice (65 FR 7817), we reopened the comment period to obtain public comment on the Conservation Agreement Strategy's relevance and significance to the upcoming listing decision. We reviewed all comments received prior to making a determination to list the Alabama sturgeon as an endangered species.

*Issue 65:* The Conservation Agreement Strategy failed to allow public involvement in the development of the conservation goals and strategies, and did not appear to include consultation with scientific authorities with expertise in population ecology or dynamics. The result is an agreement that fails to consider the geographic scale needed for long term survival of the species.

*Response:* Much of the Conservation Agreement Strategy is based upon the 1997 Conservation Plan. This Plan had wide distribution and input, including that of private and public professional fisheries biologists and ecologists. Little had changed since development of the 1997 Conservation Plan. The parties used that Plan as a starting point and developed the Conservation Agreement Strategy. The Conservation Agreement Strategy was executed by the parties prior to public comment because the signatories were concerned, in part, about losing prime spawning time for the Alabama sturgeon if execution was delayed until after public comment. The parties to the Conservation Agreement Strategy agreed that an open comment period after execution was appropriate to provide the public and scientific community the opportunity for input in the Conservation Agreement Strategy, its objectives and its associated tasks, and that Strategy 2000 would be modified as deemed appropriate by the signatories.

*Issue 66:* The Service did not follow the rules of FACA when developing the Conservation Agreement Strategy.

*Response:* The Conservation Agreement Strategy is a joint effort by the parties to eliminate or significantly reduce current threats to the Alabama sturgeon. Entering into such agreements with states, other federal government entities and other interested private parties to accomplish mutual goals is a routine practice of the Service and other federal agencies. These are not the type of activities that are subject to FACA.

**Peer Review**

In accordance with our July 1, 1994 (59 FR 34270), Interagency Cooperative Policy on Peer Review, we requested the expert opinions of independent specialists regarding pertinent scientific or commercial data and assumptions relating to the supportive biological and ecological information in the proposed rule. The purpose of such review is to ensure that the listing decision is based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists.

We requested five academicians who possess expertise on Alabama and shovelnose sturgeon taxonomy and systematics to review the proposed rule by the close of the comment period. Four of these individuals responded directly to our request. All expressed their belief that the data support protection of the Alabama sturgeon under the Act. Three peer reviewers strongly supported the taxonomic status of the Alabama sturgeon, and two of these provided supporting information. One reviewer expressed some personal doubt regarding taxonomic status of the Alabama sturgeon, but felt the fish represented a subspecies, or at a minimum, a unique population that needed protection under the Act. This individual also noted that Mayden and Kuhajda (1996) convincingly argued for species status.

The fifth reviewer did not directly respond to our request for peer review; however, he provided comments opposing the proposal at the public hearing and through an organization opposed to the listing. We have addressed these comments in the Summary of Comments and Recommendations section, above.

**Summary of Factors Affecting the Species**

After a thorough review and consideration of all information available, we determine that the Alabama sturgeon should be classified as an endangered species. We followed the procedures found at section 4(a)(1) of the Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) issued to implement the listing provisions of the Act. We may determine a species to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Alabama sturgeon (*Scaphirhynchus suttkusi* Williams and Clemmer 1991) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The best available data indicate that the Alabama sturgeon has disappeared from 85 percent of its historic range. Its decline has been associated with construction of dams, flow regulation, navigation channel development, other forms of channel modification, and pollution. Dams in the Alabama River have reduced the amount of riverine habitat, impeded migration of Alabama sturgeon for feeding and spawning needs, and changed the river's flow patterns. The species is now restricted to a 216-km (134-mi) reach of the Alabama River below Millers Ferry Lock and Dam, downstream to the mouth of

the Tombigbee River. Whether the quantity of fluvial (stream) habitat currently available to the species in this river reach is adequate to meet all of the ecological needs of a self-sustaining population is unknown.

Changes in natural river flow regimes by operation of hydroelectric dams are known to be detrimental to other sturgeon species (*e.g.*, Khoroshko 1972, Zakharyan 1972, Veshchev 1982, Veshchev and Novikova 1983, Auer 1996). Flow quantity is believed to be adequate to maintain sturgeon in the lower Alabama River below Claiborne Lock and Dam (Biggins 1994). The Alabama Power Company currently releases 57 cubic meters per second (cms) (2,000 cubic feet per second (cfs)) seasonal minimum flow from Jordan Dam into the lower Coosa River, and 34 cms (1,200 cfs) minimum flow from Thurlow Dam into the lower Tallapoosa River. These two releases provide a combined 91 cms (3,200 cfs) minimum flow to the upper Alabama River for passage through the three Alabama River locks and dams. Alabama River flows are further augmented by generating flows from Jordan, Thurlow, and Bouldin dams, as well as other Alabama River tributary flows. The average daily flows measured over the last decade downstream of Claiborne Lock and Dam have ranged from over 100 cms to nearly 7,000 cms (3,500 to 247,000 cfs). While no evidence suggests that the Alabama sturgeon is limited by water quantity below Robert F. Henry and Millers Ferry Locks and Dams, these dams house hydropower facilities and neither is required to maintain a minimum flow. Current low flow releases from these two facilities can be as little as 3 hours of generation timed according to peaking needs, plus lockage releases. The effect of such daily flow fluctuations below Millers Ferry Lock and Dam on Alabama sturgeon reproductive, larval, or juvenile habitat requirements may be negative; however, the importance of the area between Robert F. Henry and Claiborne lock and dams for sturgeon reproduction is currently unknown.

The most visible continuing navigation impact within presently occupied Alabama sturgeon habitat is maintenance dredging of navigation channels. We have no evidence that such dredging currently constitutes a limiting factor to the sturgeon (Biggins 1994). The Corps has constructed 67 channel training works (jetties) at 16 locations in the lower Alabama River, eliminating about 60 percent of dredging requirements at those locations. In the Mississippi River drainage, such channel training works are believed to be used as spawning areas by other sturgeon species (Mayden and Kuhajda 1996).

Maintenance dredging continues to be necessary in the Alabama River to remove seasonally accumulated material from deposition areas within the navigation channel. Dredged materials are usually placed on natural deposition features adjacent to the navigation channel, such as point bars or lateral bars. Due to the natural dynamics of river channels and annual sediment movement, maintenance areas have remained fairly constant over time, with the same areas repeatedly dredged or used for disposal. Recent investigations by the Corps, ADCNR, and us indicate that the distribution of stable benthic (bottom) habitats in the riverine portions of the Alabama River has been, and continues to be, strongly influenced by historical dredge and disposal practices. Changes in disposal practices could disrupt the existing equilibrium. For example, river channels are strongly influenced by the amount of sediment moving through them. Increases in sediment budget can cause aggradation (filling) of the channel, while decreases in sediment can cause degradation (erosion). With the upstream dams forming barriers to the movement of sediment through the Alabama River, additional reduction of sediment availability (*e.g.*, through upland disposal) could increase river bed and bank erosion, including areas that are now important, stable habitats. In consideration of this situation, significant changes in current disposal methods in the Alabama River could adversely affect the Alabama sturgeon.

Recent investigations by ADCNR biologists and us have documented the presence of high-quality, stable river bottom habitats interspersed within and between dredge and disposal sites in the lower Alabama River (Hartfield and Garner 1998). These habitats included stable sand and gravel river bottom supporting freshwater mussel beds, and bedrock walls and bottom. Mussel beds are excellent indicators of riverine habitat stability because freshwater mussels may live in excess of 30 years, and mussel beds require many decades to develop (Neves 1993). Clean bedrock has been identified as potential Alabama sturgeon spawning habitat (Mayden and Kuhajda 1996). The significance of such areas of stability are suggested by the location of recent and historic Alabama sturgeon capture sites below Millers Ferry and Claiborne locks and dams. Dive surveys at 19 capture sites dating back to 1950 found 17 in the vicinity of dense mussel beds (15 sites) and/or clean bedrock riverine habitat (11 sites) (Hartfield and Garner 1998). Depths at these areas (5 to 15 m (16 to 49 ft)) are well below the minimum navigation maintenance depth of 3 m (9 ft).

Sand and gravel mining has had historic impacts on riverine habitats in the lower Tombigbee and Alabama river channels. Instream dredging for sand and gravel can result in localized biological and geomorphic changes similar to those caused by channelization and navigation channel development. For example, mining of rivers has been shown to reduce fish and invertebrate biomass and diversity and can induce geomorphic changes in the river channel both above and below mined areas (Simons *et al.* 1982, Brown and Lyttle 1992, Kanehl and Lyons 1992, Hartfield 1993, Patrick and Dueitt 1996). Sand and gravel dredging of the Tombigbee and Alabama river channels within the historic and current range of the Alabama sturgeon has occurred periodically since the 1930s (Simons *et al.* 1982). We are not aware of any currently active sand and gravel dredging operations in the Alabama River. However, mining of gravel from stable river reaches used by the Alabama sturgeon would be detrimental to the species.

Water pollution may adversely impact sturgeon (Ruelle and Keenlyne 1993) and was likely a factor in the decline of the Alabama sturgeon, especially prior to implementation of State and Federal water quality regulations. Currently, the major sources of water pollution in Alabama are agriculture, municipal point sources, resource extraction, and contaminated sediments, in order of decreasing importance based on numbers of miles impaired (Alabama Department of Environmental Management 1994). Water quality in the lower Alabama River is generally good; however, two localized river segments above Claiborne Lock and Dam have been reported in the past as occasionally impaired due to excess nutrients and organic enrichment (Alabama Department of Environmental Management 1994). Sources of impairment were broadly identified as the combined effects of industrial and municipal discharges, and runoff from agriculture and silviculture. These river segments are also affected by hydropower discharges from Millers Ferry Lock and Dam. In 1994, an impact analysis on Federal activities in the Alabama River (Biggins 1994) concluded that no information suggests that current fish and wildlife standards for water quality are not protective of the Alabama sturgeon and that State water quality standards would not need

to be increased should the sturgeon be protected under the Act. No information developed since 1994 suggests otherwise.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* As discussed in the "Background" section of this final rule, the Alabama sturgeon was commercially harvested around the turn of the century. Alabama State law (sect. 220–2–.26–4) now protects the Alabama sturgeon and other sturgeons requiring that * * * any person who shall catch a sturgeon shall immediately return it to the waters from whence it came with the least possible harm. As a result, sturgeon are not currently pursued by commercial or recreational fishermen. Nonetheless, Alabama sturgeon are occasionally caught by fishermen in nets or trot lines set for other species. For example, one of the Alabama sturgeons caught in 1995 was hooked by a fisherman on a trot line, and the Alabama sturgeon caught in 1996 was trapped in a hoop net; both of these fish were released. Doubtless, there have been additional, undocumented incidental captures by commercial and sport fishermen. However, the surveys and collection efforts of the past decade have shown such captures to be rare.

C. *Disease or predation.* The Alabama sturgeon has no known threats from disease or natural predators. To the extent that disease or predation occurs, such threats become a more important consideration as the total population decreases in number.

D. *The inadequacy of existing regulatory mechanisms.* As we discussed under factor B, Alabama State law (sect. 220–2–.26–4) protects the Alabama sturgeon and other sturgeons requiring that * * * any person who shall catch a sturgeon shall immediately return it to the waters from whence it came with the least possible harm. As a result, sturgeon are not currently pursued by commercial or recreational fishermen. State regulations, however, do not generally protect the Alabama sturgeon from other threats. Several regulatory mechanisms currently benefit the Alabama sturgeon and its habitat (*e.g.*, Clean Water Act and associated State laws, Fish and Wildlife Coordination Act, Federal Power Act, National Environmental Policy Act, Rivers and Harbors Act). However, within the scope of other environmental laws or Alabama State law, there is currently no requirement to specifically consider the effects of actions on the Alabama sturgeon and ensure that a project is not likely to jeopardize its continued existence.

E. *Other natural or manmade factors affecting its continued existence.* The primary threat to the immediate survival of the Alabama sturgeon is its small population size and its apparent inability to offset mortality rates with current reproduction and/or recruitment rates. As noted in the Background section, incidents of capture of Alabama sturgeon have been steadily diminishing for the past two decades, indicating declining population numbers over this time. Studies also demonstrate that small populations are inherently highly vulnerable to extinction (Soule 1987). In such cases, the species becomes very vulnerable to natural or human-induced events (*e.g.*, droughts, floods, competition, variations in prey abundance, toxic spills), which may further depress recruitment or increase mortality (Belovsky 1987, Shaffer 1987).

Sturgeon species may be especially vulnerable to small population size for several reasons. Age at first spawning (ranging from 5 to 7 years for shovelnose sturgeon) is much delayed in comparison to many other fishes, and female sturgeons may not spawn for intervals of several years (Wallus *et al.* 1990). A recent attempt to propagate Alabama sturgeon at the Marion State Fish Hatchery indicates that males may not spawn annually as well. Thus, the number of adult males and females capable of reproducing in a given year is much smaller than the actual numbers of adult sturgeon present. Also, recruitment success in fish is subject to considerable natural variability owing to fluctuations of environmental conditions, and several years can pass between periods of good recruitment. Sturgeon may compensate for some of these aspects of their natural history by producing large quantities of eggs per female. However, successful spawning and production of large numbers of offspring by a single or a few fish may result in reduced genetic diversity for the overall population.

Currently, no population estimates exist for the Alabama sturgeon. Recent collection efforts demonstrate its increasing rarity. For example, beginning in the spring of 1997 through 1999, up to four crews of professional fisheries biologists have expended approximately 4,000 man-hours of fishing effort in the lower Alabama River to capture Alabama sturgeon for use as broodstock. This effort resulted in the capture of only five Alabama sturgeon, three of which have died in captivity. An additional incidental catch and release was reported by a commercial fisherman. Thus, approximately 18 months of fishing by professional, commercial, and recreational fishermen resulted in the capture of only six Alabama sturgeon. Compared to the estimated 20,000 Alabama sturgeon reported in the 1898 harvest, the amount of effort currently required to capture Alabama sturgeon indicates that the species' population numbers are extremely low. This determination strongly indicates that the Alabama sturgeon is highly susceptible to the negative effects of a small population size and this factor, coupled with the reproduction characteristics of its natural history, renders the species very vulnerable to extinction.

**State Conservation Efforts**

Section 4(b)(1)(A) requires us, in making a listing determination, to take into account efforts being made by the State to protect the Alabama sturgeon. In 1996, the ADCNR developed a conservation plan for the Alabama sturgeon that attempted to address the most immediate threat to the species, its small population size. A variety of public and private groups, including the Service, Army Corps of Engineers, Geological Survey of Alabama, Auburn University, the Alabama-Tombigbee Rivers Coalition, and the Mobile River Basin Coalition have participated in, and/or endorsed, this plan. The immediate focus of the plan is to prevent extinction through a captive breeding program and release of propagated fish. Other objectives of the plan include genetic conservation, habitat restoration, and determining life history information essential to effective management of the species. A freshwater sturgeon conservation plan working group composed of scientists and resource managers from a variety of Federal and State agencies, industry, and local universities was formed in September 1996 to establish collection and handling protocols, and to recommend and participate in research efforts. Implementation of the conservation plan began in March 1997, with broodstock collection efforts. To date, five fish have been captured; however, three of these have died. Two male sturgeon are currently held at the Marion State Fish Hatchery. The hatchery has been upgraded to accommodate sturgeon propagation. An unsuccessful attempt to spawn the captive sturgeon was conducted during March 1999 (see Background section). Coordinated studies are currently in progress by the ADCNR, Corps, and us to identify and quantify stable riverine habitat in the Alabama River, and to develop strategies for its management. Life history and habitat studies in progress include habitat

characterization at historic sturgeon collection sites, prey density studies, and larval sturgeon surveys. To date, the 1997 Conservation Plan has not been successful in decreasing the threat of extinction to where protection under the Act is no longer warranted.

On February 9, 2000, the ADCNR, the Corps, the Alabama-Tombigbee Rivers Coalition, and the Service signed a formal 10-year Conservation Agreement and Strategy for the Alabama Sturgeon. The goal of the 10-year Conservation Agreement Strategy is to eliminate or significantly reduce current threats to the Alabama sturgeon and its habitat. Attaining the goal of the Conservation Agreement Strategy will require accomplishment of the following objectives: (1) Restore and maintain sufficient numbers of Alabama sturgeon in the lower Alabama River to ensure its long-term survival by increasing the numbers of sturgeon through hatchery propagation and augmentation; and (2) identify and protect existing occupied Alabama sturgeon habitat quantity and quality, develop information on the sturgeon's life history and habitat needs, and use this information to implement appropriate conservation measures and adaptive management strategies for the Alabama sturgeon and its habitat. The objectives will be accomplished through implementation of the Conservation Agreement Strategy for the Alabama Sturgeon.

The Conservation Agreement Strategy for the Alabama Sturgeon describes specific actions and strategies required to expedite implementation of conservation measures for the Alabama sturgeon to ensure the long-term viability of the species, and to establish benchmarks to measure the success of the program. The general conservation goals are to increase sturgeon numbers to a viable, self-sustaining level; maintain habitat currently occupied by the sturgeon; conduct research necessary to understand sturgeon life history and ecology and use this information to manage the species; identify occupied habitat within the lower Alabama River that might support sturgeon with appropriate management; and insure sturgeon accessibility to essential habitat that is identified through research.

The success of implementation during the life of the Agreement and Strategy will be measured by annual reviews to address the following: (1) Successful collection of broodstock; (2) successful hatchery propagation; (3) initial augmentation of the remaining wild stock of the species with hatchery-spawned Alabama sturgeon; (4) protection of existing occupied habitat; (5) extending knowledge of the species' natural history, life cycle, and ecological needs; and (6) development and implementation of appropriate adaptive management strategies to conserve the species.

Implementation of the Conservation Agreement Strategy is the most viable approach to conservation of the Alabama sturgeon, based on current technology and information. However, the certainty on the effectiveness of these efforts in removing existing threats remain unproven and dependent upon many factors beyond human control. Therefore, the Alabama sturgeon still warrants protection under the Act (see responses to Issues 62 to 66).

The Mobile River Basin Aquatic Ecosystem Recovery Coalition, a partnership comprising diverse business, environmental, private landowner, and agency interests, has been meeting regularly to participate in recovery planning for 15 listed aquatic species in the Basin (U.S. Fish and Wildlife Service 1998). The Coalition promotes increased stewardship awareness by private landowners throughout the Basin, and encourages the control of non-point source pollution through the implementation of Best Management Practices. All aquatic habitats, including Alabama sturgeon habitat, will benefit from such efforts.

In determining to make this rule final, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Alabama sturgeon, while taking into account ongoing conservation efforts and commitments by the State and others. Based on our evaluation, the most appropriate action is to list the Alabama sturgeon as endangered. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. The species is currently limited in distribution to a small portion of its historic range and is blocked by dams from recolonizing other portions of that range. Whether the quantity of habitat currently available to the Alabama sturgeon is adequate to meet the needs of a self-sustaining population is unknown. In addition, the Alabama sturgeon is vulnerable to extinction due to its small population size, aggravated by certain characteristics of its reproduction. Ongoing conservation efforts to increase sturgeon numbers have to date met with limited success.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as: (I) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management consideration or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. Conservation means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of its inclusion, unless to do so would result in the extinction of the species. Our regulations (50 CFR 424.12(a)(2)) state that critical habitat is not determinable if information sufficient to perform the required analysis of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat.

In the proposed rule, we found that critical habitat designation for the Alabama sturgeon was not prudent because we believed it would provide no additional benefit beyond that of the listing. We also indicated that the designation of critical habitat was not prudent because of our concern that such designation could harm the species as a result of adverse public reaction and loss of cooperation by fishermen and other partners in ongoing conservation efforts. However, during the open comment period, we received numerous comments favoring critical habitat designation for the Alabama sturgeon. Commercial fishermen also continued to cooperate in conservation actions during the open comment period. Due to this response, we no longer believe that any significant adverse public reaction will result from the designation of critical habitat for the Alabama sturgeon.

In the absence of a finding that critical habitat would increase threats to a species, if any benefits would result

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from critical habitat designation, then a prudent finding is warranted. In the case of the Alabama sturgeon, designation of critical habitat may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in some instances, section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or presently occupied habitat that may become unoccupied in the future. In addition, some educational or informational benefits may result from designating critical habitat. Therefore, we now find that critical habitat designation is prudent, but not determinable, for the Alabama sturgeon.

Section 4(b)(6)(C) of the Act provides that a concurrent critical habitat determination is not required with a final regulation implementing endangered status and that the final designation may be postponed for one additional year beyond the period specified in section 4(b)(6)(A), if (I) a prompt determination of endangered or threatened status is essential to the conservation of the species, or (ii) critical habitat is not then determinable. We believe that a prompt determination of endangered status for the Alabama sturgeon is essential to its conservation. Listing the sturgeon will augment protection for the species, require consideration by Federal agencies of the effects of their actions on its survival, and allow recovery planning to proceed, while allowing us additional time to evaluate critical habitat needs. While we received a number of comments advocating critical habitat designation, none of these comments provided information that added to our ability to determine critical habitat. Additionally, we did not obtain any new information regarding specific physical and biological features essential for the Alabama sturgeon during the open comment period or the public hearing. The biological needs of the Alabama sturgeon are not sufficiently well known to permit identification of areas as critical habitat. Insufficient information is available on spawning and juvenile habitat, instream flow needs, water quality, and other essential habitat features. Through ongoing studies we are attempting to better ascertain the biological needs of the Alabama sturgeon and the habitat essential to those needs. This information is considered essential for determining critical habitat. Prior to a final designation, maps of proposed critical habitat, identification of essential features, and an economic analysis of any incremental regulatory effects (additive to the species listing) will be released for public review and comment. Protection of Alabama sturgeon habitat will be provided during the interim through the recovery process, the section 7 consultation process, and section 9 prohibitions on take.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Federal activities that could occur and impact the Alabama sturgeon include, but are not limited to, the carrying out or the issuance of permits for reservoir construction, stream alterations, discharges, wastewater facility development, water withdrawal projects, pesticide registration, mining, and road and bridge construction. In our experience, nearly all section 7 consultations have been resolved so that the species have been protected and the project objectives have been met.

In addition, section 7(a)(1) of the Act requires all Federal agencies to review the programs they administer and use these programs in furtherance of the purposes of the Act. All Federal agencies, in consultation with us, are to carry out programs for the conservation of endangered and threatened species listed pursuant to section 4 of the Act.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife. To possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally is also is illegal. Certain exceptions apply to our agents and agents of State conservation agencies.

Our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify, to the maximum extent practicable, those activities that would or would not constitute a violation of section 9 of the Act for this species. The intent of this policy is to increase public awareness as to the effects of this final listing on future and ongoing activities within this species' range.

We believe, based on the best available information, that the following activities are unlikely to result in a violation of section 9:

(1) Discharges into waters supporting the Alabama sturgeon, provided these activities are carried out in accordance with existing regulations and permit requirements (e.g., activities subject to section 404 of the Clean Water Act and discharges regulated under the NPDES);

(2) Continuation of ongoing maintenance dredging of unconsolidated sediments undertaken or approved by the Corps of Engineers;

(3) Development and construction activities designed and implemented in accordance with State and local water quality regulations and implemented using approved Best Management Practices;

(4) Lawful commercial and sport fishing for species other than Alabama sturgeon, provided any Alabama sturgeon caught are immediately released unharmed; and

(5) Actions that may affect the Alabama sturgeon and are authorized,

funded, or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by us pursuant to section 7 of the Act.

Activities that we believe could potentially result in take of the Alabama sturgeon include:

(1) Illegal collection of the Alabama sturgeon;

(2) Unlawful destruction or alteration of the Alabama sturgeon's habitat (e.g., un-permitted instream dredging, channelization, discharge of fill material); and

(3) Illegal discharge or dumping of toxic chemicals or other pollutants into waters supporting the Alabama sturgeon.

Other activities not identified above will be reviewed on a case-by-case basis to determine if a violation of section 9 of the Act may be likely to result from such activity. We do not consider these lists to be exhaustive and provide them as information to the public.

You should direct questions regarding whether specific activities will constitute a violation of section 9 to the Field Supervisor, U.S. Fish and Wildlife Service, P.O. Box 1190, Daphne, AL 36526 (telephone 334/441–5181), or to the Field Supervisor of the Service's Mississippi Field Office (see **ADDRESSES** section).

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. You may obtain permits for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. Send requests for copies of regulations regarding listed species and inquiries about prohibitions and permits to the U.S. Fish and Wildlife Service, Ecological Services Division, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (telephone 404/679–7358; facsimile 404/679–7081).

**National Environmental Policy Act**

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**Paperwork Reduction Act**

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

**References Cited**

You may request a complete list of all references cited in this document, as well as others, from the Mississippi Field Office (see **ADDRESSES** section).

Author: The primary author of this document is Paul Hartfield (see **ADDRESSES** section) (601/321–1125).

**Introduction to the White Paper (Biggins 1994)**

Below is a document entitled Federal Activities That May Affect the Alabama Sturgeon and Anticipated Section 7 Consultations on These Activities. This document was developed jointly by representatives from the Corps and the Service in 1994 in response to concerns raised during public comment periods on the 1993 proposed rule to list the Alabama sturgeon as an endangered species. The document finalized on November 18, 1994, was referred to in the 1999 proposed rule to list the Alabama sturgeon as an endangered species and in this final rule as "Biggins 1994," and has become widely known as the White Paper.

The White Paper carefully reviews the anticipated impacts of a variety of activities in the lower Alabama River to the Alabama sturgeon. To summarize, the 1994 White Paper found the following: (1) Based on the information available at the time, the Corps' annual maintenance dredging program was not likely to adversely affect the Alabama sturgeon. However, the Corps, in conjunction with the Service, agreed to pursue research to more fully evaluate impacts of maintenance dredging activities, particularly with regard to turbidity issues. (2) While removal of rock shelves may adversely affect the Alabama sturgeon, concerns can be adequately addressed through routine consultation between the Corps and the Service, and this consultation is not likely to result in a jeopardy situation or delays in activities. (3) While channel training devices could reduce impacts to the Alabama sturgeon, additional training devices are not required to avoid jeopardy to the species. (4) The removal of unconsolidated materials from the river bottom through non-Federal maintenance dredging activities is not considered a direct threat to the Alabama sturgeon. (5) Current flow patterns are likely adequate to sustain the Alabama sturgeon where it is currently known to occur. (6) There is no need to modify the State's water quality standards to protect the Alabama sturgeon. (7) Direct or indirect impacts to the Alabama sturgeon from coalbed methane extraction are not anticipated. (8) In-stream gravel mining may adversely affect the Alabama sturgeon and would need to be addressed through consultation. (9) The Alabama sturgeon would need to be considered under other non-Federal activities permitted by the Corps; however, delays in activities are not anticipated.

The findings of the White Paper have been affirmed, reviewed, and reaffirmed through a variety of correspondence between the Corps and us over the last 5 years. Immediately following the finalization of the White Paper, in a letter dated November 23, 1994, the Corps determined that maintenance dredging and disposal activities had no effect on the Alabama sturgeon. We supported that determination in a letter dated November 28, 1994. Between October 1998 and April 1999, we and the Corps again carefully reviewed the details and findings of the White Paper (four letters—Service, October 21, 1998; Corps, December 21, 1998; Corps, February 2, 1999; and Service, April 7, 1999). These letters are all part of the administrative record for this final rule, and summarily clarify and reaffirm the findings of the White Paper.

The findings of the White Paper relative to the annual maintenance of the existing navigation channel of the Alabama River were further supported through an exchange of letters from the Service's Southeast Regional Director, Sam D. Hamilton (June 24, 1999 and February 1, 2000) and the Corps' Division Engineer, Brigadier General J. Richard Capka (November 15, 1999). In these exchanges, Regional Director Hamilton affirmed that the annual navigation channel maintenance dredging programs would have no effect on the Alabama sturgeon and would not need to be eliminated, modified, or altered should the Alabama sturgeon be listed. Brigadier General Capka concurred with this finding and requested that the White Paper be published in its entirety with the final rule. In response to this request, the White Paper follows in its entirety.

Finally, this latest exchange of letters between Regional Director Hamilton and Brigadier General Capka identified the need for a Memorandum of Agreement between the two agencies to ensure open communication and formalize a cooperative process for dealing with new information that may alter the earlier no effect finding. The Service and Corps are currently drafting this agreement.

**The White Paper (Biggins 1994)**

*Federal Activities That May Affect The Alabama Sturgeon and Anticipated Section 7 Consultations on These Activities*

*Annual maintenance dredging by the Corps:* Maintenance dredging by the U.S. Army Corps of Engineers (Corps) to maintain the navigation channel on the Alabama and lower Tombigbee Rivers annually removes 1.5 to 3.8 million cubic meters (2 to 5 million cubic yards) of unconsolidated aggregate (e.g., sand, mud, and silt). Dredge material from the Tombigbee River downstream of Coffeeville, Alabama, is disposed of at upland sites and within the banks of the river. On the Alabama River, fewer upland disposal areas have been established, and the majority of the dredge materials is placed within the shallow reaches of the river.

Based on limited information on the Alabama sturgeon and studies of the shovelnose sturgeon, it appears that these fish require currents over relatively stable substrates for feeding and spawning. They are generally not associated with those unconsolidated substrates that settle in slower current areas and must be removed annually to maintain navigation. Therefore, removal and disposal of unconsolidated materials is not perceived as a threat to the sturgeon or to its feeding or spawning habitat.

In the proposed rule, the U.S. Fish and Wildlife Service (Service) expressed concern that turbidity increases associated with the Corps' annual maintenance dredging could affect the sturgeon, and the Service still has some concern regarding this issue. However, based on the fact that (1) The Alabama and Tombigbee Rivers are currently characterized as turbid rivers; (2) channel maintenance activities produce only localized and temporary elevation of turbidity; (3) the extent to which turbidity impacts the Alabama sturgeon is unknown; and (4) the Corps in cooperation with the Service has agreed to pursue research (within three years and based on the availability of funds) regarding the potential impacts of maintenance dredging activities, including turbidity, on the shovelnose sturgeon, the Service has concurred with the Corps' determination that based on current information their annual maintenance dredging program does not adversely affect the Alabama sturgeon.

Thus, as it is currently believed that the Corps' annual maintenance dredging program on the Alabama and lower Tombigbee Rivers is not likely to affect the Alabama sturgeon, these channel maintenance activities will not need to be eliminated, modified in timing or duration, or altered to protect the Alabama sturgeon. Therefore, no loss of revenue from diminished annual channel maintenance activities will be associated with the listing of the Alabama sturgeon.

*Maintenance dredging by the Corps to remove rock shelves:* The Alabama and Tombigbee Rivers naturally move laterally, and to some extent, vertically. This natural river channel movement exposes rock shelves at the outer bends of the river. In order to provide for a reliable and safe navigation channel, these rock shelves must sometimes be removed, and similar channel alignment improvements of covered consolidated material are sometimes necessary on the inside bends. Although the removal of these obstructions to navigation are usually infrequent and restricted to isolated areas, this activity may adversely affect the Alabama sturgeon.

The Corps and the Service have discussed the potential impacts to the Alabama sturgeon of removing these rock shelves, and both agencies agree that section 7 consultation will be required prior to the commencement of any rock shelf removal project within or adjacent to potential Alabama sturgeon habitat. However, since both agencies agree that rock shelf removal projects are generally not emergency projects, there will be a sufficient period of time prior to the next dredging season for both agencies to consider the timing and habitat improvements which may be possible by the design and construction of the remaining shelf after excavation and by selective placement of the excavated material. Thus, the Service does not anticipate that these consultations will result in a jeopardy situation or result in delays in these maintenance dredging activities.

*Use of training devices by the Corps:* In the proposed rule, the Service cited studies by the Corps and others that the use of channel-training devices (e.g., training dikes, jetties, sills, and revetments) in several rivers in the eastern half of the United states reduced dredging requirements by over 50 percent. The Corps' own data stated that structures in the Alabama River were assumed to eliminate about 60 percent of dredging requirements at the specific location where such structures were designed and constructed in the last phase of training works on the Alabama River. The present system on the Alabama River consists of 67 channel training works at 16 locations. The Corps has subsequently stated that based on the Mobile District's criteria for the use of training works, these structures are already used to the maximum extent practicable. However, the Service understands that the Corps will continue to evaluate their use, will modify existing structures as necessary, and may construct additional training devices when justified.

Although the Service believes that training devices could reduce impacts to the Alabama sturgeon and encourages the Corps to consider their use in future planning, the Service does not believe that more training devices are required to avoid jeopardy to the Alabama sturgeon.

*Maintenance dredging for non-Federal activities:* The Corps authorizes maintenance dredging for non-Federal navigation projects. Although these projects are usually on a much smaller scale that the Corps' annual maintenance dredging activities, they involve the removal of unconsolidated aggregate from navigable waters of the United States and include the discharge of some material back into the waterways. Thus, maintenance dredging by non-Federal entities comes under the Corps' authority pursuant to section 10 of the RHA (33 U.S.C. 403) and section 404 of the CWA (33 U.S.C. 1344).

Maintenance dredging by non-Federal entities for navigation removes unconsolidated aggregate (*e.g.*, sand, mud, and silt) that washes down from upstream portions of the river and from tributaries. Based on limited information on the Alabama sturgeon and studies of the shovelnose sturgeon, it appears that these fish require currents over relatively stable substrates for feeding and spawning. They are generally not associated with the unconsolidated substrates that settle in slower current areas. Therefore, removal of unconsolidated materials is not considered as a direct threat to the sturgeon or to its feeding or spawning habitat.

Prior to the Corps' issuance of a section 404 permit for non-Federal maintenance dredging, the applicant must receive State water quality certification from the State of Alabama pursuant to section 401 of the CWA. As the Service does not believe that more restrictive water quality standards will

be needed to protect the Alabama sturgeon from this activity, the likelihood of an applicant receiving a State water quality certification will not be affected by the listing of the Alabama sturgeon. Additionally, as addressed above under Annual maintenance dredging by the Corps, temporary increases in turbidity associated with maintenance dredging activities are nor currently believed to adversely affect the Alabama sturgeon; and as dredge material from non-Federal maintenance dredging projects is traditionally disposed of at upland sites, potential impacts to the sturgeon are further reduced.

*Changes in river flow patterns:* A series of dams now control water flows in much of the Mobile River system. Changes in the natural flow patterns have probably had both direct and indirect effects on the Alabama sturgeon and its habitat. In the proposed rule, it was stated that The Service expects that continuous minimum flows of approximately 3,000 [cfs] will be required [to sustain the Alabama sturgeon] below both Robert F. Henry and Millers Ferry Locks and Dams on the lower Alabama River and that

* * *minimum flows below Claiborne Lock and Dam are already maintained at approximately 5,000 cfs to provide for cooling water intake of downstream industry. Although the Service concedes that little information on the flow needs of the sturgeon is available, a minimum figures of 90 cms (3,000 cfs) was arrived at by Service and other biologists familiar with the Alabama River and its fish populations.

The Service now has evidence of the continued existence of the Alabama sturgeon in the free-flowing portion of the Alabama River downstream of Claiborne Lock and Dam and that the Alabama Power Company (APC), through an agreement with the Corps, attempts to maintain (for the purposes of navigation) a minimum average daily flow of approximately 149 cms (4,640 cfs) over any seven consecutive day period and a minimum average daily flow of approximately 81 cms (2,667 cfs) over any three consecutive day period downstream of Claiborne Lock and Dam. Further, the average daily flows over the last decade downstream of Claiborne Lock and Dam have ranged from 114 to 6,912 cms (3,800 to 244,000 cfs). Therefore, the Service believes that the minimum average daily flows, as agreed to by the Corps and the APC, coupled with historic and Federal Energy Regulatory Commission ordered flow patterns, are likely adequate to sustain the Alabama sturgeon in this river reach.

The Service's opinion on flow requirements for river segments upstream of Claiborne Lock and Dam, as stated in the proposed rule, has changed somewhat. The Service's position remains that the best biological judgement at this time is that a minimum average daily flow of approximately 90 cms (3,000 cfs) from the Robert F. Henry and Millers Ferry Locks and Dams would be required to maintain a population of the Alabama sturgeon upstream of Claiborne Lock and Dam. However, the continued existence of the sturgeon upstream of Claiborne Lock and Dam has not been substantiated in nearly a decade, although anecdotal evidence exists.

Therefore, based on our current knowledge of the Alabama sturgeon and its distribution, no changes in water releases from these structures or from structures located in the headwaters of the Alabama River system (*e.g.*, Coosa and Tallapoosa Rivers) are being suggested for the benefit of the sturgeon nor are they anticipated by the Service as a result of this listing. Thus, without changes in flow releases from power-generating dams, there should be no loss of electrical power revenue resulting from listing the Alabama sturgeon.

*State water quality standards:* Although it is possible that some point-source discharges negatively impact the Alabama sturgeon, there is no evidence to support the conclusion that the State's water quality standards must be changed if the fish is listed. As discussed in the proposed rule, the potential exists for point discharges to impact the Alabama sturgeon, and it is noted that there is an increasing demand for discharge permits in the Mobile River system. However, there are two factors that work to minimize any impacts to this fish from point-source discharges: (1) As the Alabama sturgeon inhabits larger channel areas, the effects of any point discharge into its habitat would likely be minimized by dilution and (2) the State of Alabama, with assistance from and oversight by the EPA, sets water quality standards that are presumably protective of aquatic life.

It is the Service's position, as stated in the proposed rule, that as long as current fish and wildlife standards under the CWA are used to issue discharge permits and the conditions of the permits are enforced, there is no need to modify the State's water quality standards to protect the Alabama sturgeon. A violation of State water quality standards would be a violation of the CWA, and listing the Alabama sturgeon could potentially increase noncompliance penalties. However, the listing, based on current information, would not increase the need for changes in State water quality standards.

*Coalbed methane:* The extraction of coalbed methane can necessitate the release of produced water into the environment, and this discharge was mentioned as a potential threat to the Alabama sturgeon in the proposed rule. The Corps authorizes produced-water discharge structures pursuant to section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) if the outfall structure is placed into navigable waters of the United States. The Corps typically authorizes these structures with a Letter of Permission. Letters of Permission are a type of permit issued through an abbreviated processing procedure that includes coordination with Federal (including the Service) and State fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without publishing an individual public notice. Letters of Permission may be used in those cases subject to section 10 when, in the opinion of the District Engineer, the proposed work would be minor, would not have significant individual or cumulative impacts on environmental values, and should encounter no appreciable opposition. Additionally, prior to discharge, the applicant must receive a permit from the State of Alabama under NPDES guidelines. As the Alabama sturgeon exists far downstream of these permit activities, the Service does not believe that any modification to existing discharge structure authorization procedures is needed to protect the Alabama sturgeon.

The potential coalbed methane wells are far upstream of known Alabama sturgeon habitat and any discharge must meet State water quality standards (the Service has stated that the water quality standards will not have to be modified in order to protect the Alabama sturgeon). Therefore, the Service does not anticipate any direct or indirect impacts to the Alabama sturgeon from properly permitted produced-water discharges.

*Gravel mining:* In-stream gravel mining involves work in navigable waters of the United States and includes the discharge of the noncommercial dredge material back into the waterway. Thus, in-stream gravel mining comes under the Corps' authority, pursuant to section 10 of the RHA (33 U.S.C. 403) and section 404 of the CWA (33 U.S.C. 1344). The Service believes that the Alabama sturgeon likely uses relatively stable substrate for breeding and feeding habitat. Thus, mining of this stable substrate could threaten the species. However, the Service believes the

mining of unconsolidated material or relatively stable material that is covered by several inches of fine sediment would not be likely to jeopardize the species' continued existence.

Prior to the issuance of a permit by the Corps for in-stream gravel mining, the applicant must receive State water quality certification from the State of Alabama pursuant to section 401 of the CWA. As the Service does not believe that more restrictive water quality standards will be needed to protect the Alabama sturgeon from this activity, the likelihood of an applicant's receiving State water quality certification will not be affected by the listing of the Alabama sturgeon. However, as in-stream gravel mining generally produces higher turbidity levels than are produced by maintenance dredging, the Service believes that increases in turbidity within Alabama sturgeon habitat from in-stream gravel mining activities could be considered a "may adversely affect situation that the Corps would need to address through section 7 consultation with the Service. However, the Service does not anticipate that turbidity produced from gravel-mining of unconsolidated substrates would likely jeopardize the continued existence of the Alabama sturgeon.

*Other regulatory activities of the Corps:* The Corps authorizes other non-Federal activities (*e.g.*, pipelines, piers, wharfs, and small boat channels) within waters of the United States within the historic range of the Alabama sturgeon. These non-Federal activities are regulated through the Corps' regulatory program and evaluated on a case by case basis. Although these activities are on a much smaller scale than most other activities authorized by the Corps, these actions are more numerous and therefore could present a greater number of opportunities for the Service to consider impacts to the sturgeon. Thus, concern has been expressed that if the Alabama sturgeon is listed permit applicants will be burdened by time delays and by requirements to conduct sturgeon surveys. The Service recognizes that some of the non-Federal activities authorized by the Corps (*e.g.*, bridge pier placement and pipeline crossings) in the Alabama River system could be delayed by a requirement to conduct endangered species surveys (Alabama sturgeon plus other listed species). However, it has been the experience of the Service that most of these non-Federal activities do not require a survey and further are not delayed because of endangered species issues.

Prepared: November 18, 1994.

This document [White Paper] was prepared jointly by the Fish and Wildlife Service and the U.S. Army Corps of Engineers in accordance with the September 1994 Memorandum of Understanding on Implementation of the Endangered Species Act.

By: Richard Biggins, U.S. Fish and Wildlife Service, Asheville Field Office, 330 Ridgefield Court, Asheville, North Carolina 28806 (telephone: 704/665–1195 ext. 228, facsimile: 704/665–2782)

**Note:** Material contained in this document will be included in any final Alabama sturgeon rule that might be produced by the Service.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows.

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by adding the following to the List of Endangered and Threatened Wildlife, in alphabetical order under FISHES:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| Fishes: | | | | | | | |
| * | * | * | * | * | * | * | |
| Sturgeon, Alabama. | *Scaphirhynchus suttkusi.* | U.S.A. (AL, MS) ..... | Entire ..... | E | 697 | NA | NA |
| * | * | * | * | * | * | * | |

Dated: April 30, 2000.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 00–11131 Filed 5–2–00; 8:45 am]

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Part IV

# Department of Education

34 CFR Parts 100, 104, 106, and 110
Conforming Amendments to the Regulations Governing Nondiscrimination on the Basis of Race, Color, National Origin, Disability, Sex, and Age Under the Civil Rights Restoration Act of 1987; Proposed Rule

VOL 65 ISS 88 MY 5 2000 UMI

**DEPARTMENT OF EDUCATION**

**34 CFR Parts 100, 104, 106, and 110**

**RIN 1870–AA10**

## Conforming Amendments to the Regulations Governing Nondiscrimination on the Basis of Race, Color, National Origin, Disability, Sex, and Age Under the Civil Rights Restoration Act of 1987

**AGENCY:** Office for Civil Rights, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing nondiscrimination on the basis of race, color, national origin, sex, handicap, and age to conform with statutory amendments made by the Civil Rights Restoration Act of 1987 (CRRA). These amendments would add a definition of "program or activity" or "program" that adopts the statutory definition of "program or activity" or "program" enacted as part of the CRRA.

**DATES:** We must receive your comments on or before July 5, 2000.

**ADDRESSES:** Address all comments about these proposed regulations to Jeanette J. Lim, U.S. Department of Education, 400 Maryland Avenue, SW., room 5036 MES, Washington, DC 20202–1100. If you prefer to send your comments through the Internet, use the following address: comments@ed.gov

You must include the term "CRRA" in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Jeanette J. Lim. Telephone: (202) 205–5557. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 260–0471 or the Federal Information Relay Service at 1–800–877–8339.

For additional copies of this NPRM, individuals may call OCR's Customer Service Team at 202–205–5557 or toll-free at 1–800–421–3481.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to OCR's Customer Service Team listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:**

### Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 5036, 330 C Street, SW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

### Overview

The Department of Education (Department or ED) proposes to amend these civil rights regulations to conform to provisions of the Civil Rights Restoration Act (CRRA), regarding the scope of coverage under civil rights statutes administered by the Department. These statutes include Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d, *et seq.* (Title VI), Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*, (Title IX), Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794 (Section 504), and the Age Discrimination Act of 1975, 42 U.S.C. 6101, *et seq.* (Age Discrimination Act). Title VI prohibits discrimination on the basis of race, color, and national origin in all programs or activities that receive Federal financial assistance; Title IX prohibits discrimination on the basis of sex in education programs or activities that receive Federal financial assistance; Section 504 prohibits discrimination on the basis of disability in all programs or activities that receive Federal financial assistance; and the Age Discrimination Act prohibits discrimination on the basis of age in all programs or activities that receive Federal financial assistance.

The proposed conforming change is to amend each of these regulations to add a definition of "program or activity" or "program" that adopts the statutory definition of "program or activity" or "program" enacted as part of the CRRA. We believe that adding this statutory definition to the regulatory language is the best way to avoid confusion on the part of recipients, students, parents, and other interested parties about the scope of civil rights coverage. This proposal also conforms to a notice of proposed rulemaking (NPRM) to establish Title IX common regulations for 24 Federal agencies published on October 29, 1999. (64 FR 58568) That proposed common rule incorporated the statutory definitions of "program or activity" or "program" enacted as part of the CRRA.

The Department's civil rights regulations, when originally issued and implemented, were interpreted by the Department to mean that acceptance of Federal assistance by a school resulted in broad institutional coverage. In *Grove City College* v. *Bell*, 465 U.S. 555, 571–72 (1984) (*Grove City College*), the Supreme Court held, in a Title IX case, that if the Department provides student financial assistance to a college, the Department has jurisdiction to ensure Title IX compliance in the specific program receiving the assistance, in this case, the student financial aid office, but that the Federal student financial assistance would not provide jurisdiction over the entire institution. Following the Supreme Court's decision in *Grove City College*, the Department did change its interpretation, but not the language, of these regulations to be consistent with the Court's restrictive, "program specific" definition of "program or activity" or "program." Since Title IX was patterned after Title VI, *Grove City College* significantly narrowed the scope of jurisdiction of Title VI and two other statutes based on it: The Age Discrimination Act and Section 504. See S. Rep. No. 100–64, 100th Cong., 1st Sess. 2–3, 11–16 (1987).

Then, in 1988, the CRRA was enacted to "restore the prior consistent and long-standing executive branch interpretation and broad, institution-wide application of those laws as previously administered." 20 U.S.C. 1687 note 1. Congress enacted the CRRA in order to remedy what it perceived to be a serious narrowing by the Supreme Court of a longstanding administrative interpretation of the coverage of the regulations. At that time, the Department reinstated its broad interpretation to be consistent with the

CRRA, again without changing the language of the regulations. It was and remains the Department's consistent interpretation that—with regard to the differences between the interpretation of the regulations given by the Supreme Court in *Grove City College* and the language of the CRRA—the CRRA, which took effect upon enactment, superseded the *Grove City College* decision and, therefore, the regulations must be read in conformity with the CRRA.

This interpretation reflects the understanding of Congress, as expressed in the legislative history of the CRRA, that the statutory definition of "program or activity" or "program" would take effect immediately, by its own force, without the need for Federal agencies to amend their existing regulations. S. Rep. No. 100–64 at 32. The legislative history also evidences congressional concern about the Department's immediate need to address complaints and findings of discrimination in federally assisted schools under the CRRA definition of "program or activity," citing examples to demonstrate why the CRRA was "urgently" needed. S. Rep. No. 100–64 at 11–16.

The proposed regulatory change discussed previously would eliminate an issue recently raised by the Third Circuit Court of Appeals in *Cureton* v. *NCAA*, 198 F. 3d 107 (1999) (*Cureton*). That court determined that, because the Department did not amend its Title VI regulations after the CRRA amended Title VI, application of the Department's Title VI regulations to disparate impact discrimination claims is "program specific" (*i.e.*, limited to specific programs in an institution affected by the Federal funds), rather than institution-wide (*i.e.*, applicable to all of the operations of the institution regardless of the use of the Federal funds). The Department disagrees with the *Cureton* decision for the reasons described in this preamble. That decision would thwart clearly expressed congressional intent. In any event, the proposed regulatory changes would address the concerns raised by the Third Circuit in that the regulations would track the statutory language and apply to both disparate impact discrimination and different treatment discrimination. ("Different treatment," *i.e.*, intentional discrimination, refers to policies or practices that treat individuals differently based on their race, color, national origin, sex, disability, or age, as applicable. That different treatment is generally barred by the civil rights statutes and regulations. "Disparate impact" refers to criteria or methods of administration that have a significant disparate effect on individuals based on race, color, national origin, sex, disability, or age, as applicable. Those criteria or practices may constitute impermissible discrimination based on legal standards that include consideration of their educational necessity.)

The statutory definition, which is being incorporated into the regulations, addresses four broad categories of recipients: (1) State or local governmental entities. (2) Colleges, universities, other postsecondary educational institutions, public systems of higher education, local educational agencies (LEAs), systems of vocational education, and other school systems. (3) Private entities, such as corporations, partnerships, and sole proprietorships, including those whose principal business is providing education. (4) Entities that are established by a combination of two or more of the first three types of entities.

Under the first part of the definition, if State and local governmental entities receive financial assistance from the Department, the "program or activity" or "program" in which discrimination is prohibited includes all of the operations of any State or local department or agency to which the Federal assistance is extended. For example, if the Department provides financial assistance to a State educational agency, all of the agency's operations are subject to the nondiscrimination requirements of the regulations. In addition, "program or activity" or "program" also includes all of the operations of the entity of a State or local government that distributes the Federal assistance to another State or local governmental agency or department and all of the operations of the State or local governmental entity to which the financial assistance is extended. For example, if the Department provides financial assistance under Title I of the Elementary and Secondary Education Act to a State educational agency and the State educational agency distributes the financial assistance to a local educational agency, then all of the operations of the State educational agency are subject to the nondiscrimination requirements of the regulations, and all of the operations of the local educational agency are covered.

Under the second part of the definition of "program or activity" or "program," if colleges, universities, other postsecondary institutions, public systems of higher education, local educational agencies, systems of vocational education, or other public or private schools or school systems receive financial assistance from the Department, all of their operations are subject to the nondiscrimination requirements of the regulations. For example, if a public school district receives funds from the Department under the Safe and Drug Free Schools and Communities Act, the entire school district is covered, not just the district's Safe and Drug Free Schools and Communities component. Additionally, for example, if a college or university receives student financial assistance from the Department, all of the operations of the college or university are covered, not solely the operations of the student financial assistance office. In addition, the legislative history of the CRRA made it clear that "all of the operations" was not limited to traditional educational operations, but was intended to include other benefits and services of the educational institution, such as faculty and student housing, campus shuttle bus services, and commercial activities, such as cafeterias and bookstores.

Under the third part of the definition, in the case of private entities not already listed under the second part of the definition, if the federally assisted entity or organization is principally engaged in the business of education (or health care, housing, social services, or parks and recreation), then the entire corporation, partnership, or other private organization or sole proprietorship is the covered "program or activity" or "program." For example, if an individual elementary or secondary school that is neither part of an LEA nor part of an assisted private "school system" receives financial assistance from the Department, the school will be covered on an institution-wide basis under this portion of the definition of "program or activity" or "program" because it is an entity principally engaged in the business of providing education. For example, if a proprietary trade school receives student financial assistance from the Department, all of its operations are covered by the nondiscrimination requirements of the regulations.

Also under the third part of the definition, if a private entity is not principally engaged in the business of education or health care, housing, social services, or parks and recreation and the Department extends financial assistance to the private entity "as a whole," all of the private entity's operations at all of its locations would be covered. If the Department were to extend general assistance, that is, assistance that is not designated for a particular purpose, to this type of corporation or other private entity, that would be considered financial assistance to the private entity

"as a whole." In other instances in which a geographically separate facility receives assistance under the third part of this definition, the coverage would be limited to the geographically separate facility that receives the assistance.

Under the fourth part of the definition, if an entity of a type not already covered by one of the first three parts of the definition is established by two or more of the entities listed under the first three parts of the definition, then all of the operations of that new entity are covered. Under the illustrative example in the legislative history, a public school district (an entity listed under the second part of the definition) and a private corporation (an entity listed under the third part of the definition) may establish a new company, which is a public-private partnership designed to provide remediation, training, and employment to high school students who are at risk of dropping out of school. If the new company applied for and received financial assistance from the Department, then, as an entity listed under the fourth part of the definition, all of its operations would be covered, even if the assistance from the Department went only to one division or component of the new company.

The proposed regulations also would modify or delete some existing sections of the Department regulations that have become superfluous following the CRRA enactment, to conform with the CRRA definitions of "program or activity" or "program." These proposed regulations would not change the requirements of the existing regulations. This is consistent with the approach in the Title IX common rule NPRM in which it was noted that regulatory language in ED's Title IX regulations made superfluous by the enactment of the CRRA was omitted in that proposed rule (64 FR 58571).

The Department's Title IX regulations, promulgated in 1975, defined "recipient" as an entity "to whom Federal financial assistance is extended directly or through another recipient and that operates an education program or activity that receives or benefits from such assistance." At that time, the words "or benefits from" were necessary to clarify that *all* of the operations of a university or other educational institution that receives Federal funds— not just the particular programs receiving financial assistance—are covered by Title IX's nondiscrimination requirements. As previously discussed, this interpretation was rejected by the Supreme Court in 1984 in *Grove City College*, which held that Federal student financial aid established Title IX jurisdiction only over the financial aid program, not the entire institution. However, Congress' 1988 enactment of the CRRA counteracted this decision by defining "program or activity" and "program" to provide expressly that Title IX covers all educational programs of a recipient institution. Because of this statutory change, the words "or benefits from" are no longer necessary as a regulatory matter. For the same reason, we propose to delete the words "or benefits from" from the Section 504 regulations. These deletions do not affect the reach of Title IX or Section 504.

The Department of Education's existing Title VI regulations, promulgated in 1964 by the Department of Health, Education, and Welfare in 29 FR 16298 and 29 FR 16988 and in 1965 in 30 FR 16988, include an assurance requirement for institutions in § 100.4(d)(2) that has created confusion with regard to the scope of "program or activity" and "program" under Title VI. One example is the previously referenced decision in *Cureton*. The current provision states, in part, "The assurance * * * shall be applicable to the entire institution unless the applicant establishes, to the satisfaction of the responsible Department official, that the institution's practices in designated parts or programs of the institution will in no way affect its practices in the program of the institution for which Federal financial assistance is sought * * *." (34 CFR 100.4(d)(2)) This NPRM proposes to delete that portion of the assurance to avoid any further confusion. As previously stated, it was appropriate to apply the CRRA statutory definition of "program or activity" to the regulations. For the same reasons, portions of the illustrations in § 100.5 (b) and (d) would be deleted, since they could create similar confusion. Specifically, current § 100.5(b) states that, with regard to university graduate research, training, demonstration, or other grants, "the prohibition extends to the entire university unless it satisfies the responsible Department official that practices with respect to other parts or programs of the university will not interfere, directly or indirectly, with fulfillment of the assurance required with respect to the graduate school." Similarly, current § 100.5(d) states that "In construction grants the assurances required will be adapted to the nature of the activities to be conducted in the facilities for construction of which the grants have been authorized by Congress." These proposed deletions would not affect the reach of Title VI.

In addition, we are proposing conforming changes that delete references to "program" or "program or activity" in the existing regulations that do not refer to the CRRA broad definition of that phrase and to continue the longstanding Department interpretation of the statutes and regulations. For example, in some instances, we have proposed to delete "program" or "program or activity" and substitute "Federal financial assistance" or "aids, benefits, or services." In others, we have proposed to change "programs *and* activities" to "programs or activities" to conform the regulations to the phrase used in the CRRA—when it is used in the broad manner defined in the CRRA. We have not proposed to modify the term "activity" when it appears separately from the phrase "program or activity" and is used in a manner unrelated to the CRRA phrase "program or activity."

It is important to note that the proposed changes would not in any way alter the requirement of the CRRA that a proposed or effectuated fund termination be limited to the particular program or programs "or part thereof" that discriminates or, as appropriate, to all of the programs that are infected by the discriminatory practices. *See* S. Rep. No. 100–64, at 20 ("The [CRRA] defines 'program' in the same manner as 'program or activity,' and leaves intact the 'or part thereof' pinpointing language.").

We propose to replace the current definition of "program" in 34 CFR 100.13 with the proposed definition of "program or activity" and "program." We propose to add the definition of "program or activity" and "program" to 34 CFR 106.2. We propose to add the definition of "program or activity" to 34 CFR 104.3 and to 34 CFR 110.3. Because, as previously explained, the proposed changes merely incorporate statutory language and do not alter the Department's consistent position that the regulations must be read in conformity with the CRRA, the Department views these changes as technical in nature. However, the Department is inviting public comment on the proposed changes, consistent with its policy of involving interested members of the public in its rulemaking process. Conforming changes to the nonregulatory guidance in Appendix B of Part 100, Appendix A of Part 104, and Appendix A of Part 106 will be published in the **Federal Register** in a separate notice. Nothing in these proposed changes affects coverage under the Federal employment nondiscrimination statutes, including Title VII of the Civil Rights Act of 1964,

Title I of the Americans with Disabilities Act, and the Age Discrimination in Employment Act.

**Executive Order 12866**

*1. Potential Costs and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering these programs effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that there probably will be no cost impacts because this regulatory action merely clarifies longstanding Department policy and does not change the Department's practices in addressing issues of discrimination.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

Recently, the Third Circuit Court of Appeals interpreted existing regulations inconsistently with the language of the CRRA and our existing practices. The Department disagrees with that decision. However, these proposed regulations would clarify the Department's policy and practice in light of that decision—and would do that only a short time after the court decision, thereby ensuring continuity in that policy and practice and avoiding changes in the behavior of recipients within the Third Circuit that could occur if Federal civil rights jurisdiction were changed. Therefore, it is possible that there will be no costs associated with the proposed regulations.

*2. Clarity of the Regulations*

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 100.2 *Application of this regulation.*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These regulations implement statutory amendments and longstanding Department policy.

**Paperwork Reduction Act of 1995**

These proposed regulations do not contain any information collection requirements.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

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**List of Subjects**

*34 CFR Part 100*

Administrative practice and procedure, Civil rights.

*34 CFR Part 104*

Civil Rights, Equal educational opportunity, Equal employment opportunity, Individuals with disabilities.

*34 CFR Part 106*

Education, Sex discrimination.

*34 CFR Part 110*

Administrative practice and procedure, Aged, Civil rights, Grant programs—education, Loan programs—education.

Dated: March 29, 2000.

**Richard W. Riley,**

*Secretary of Education.*

For the reasons discussed in the preamble, the Secretary proposes to amend parts 100, 104, 106, and 110 of title 34 of the Code of Federal Regulations as follows:

## PART 100—NONDISCRIMINATION UNDER PROGRAMS RECEIVING FEDERAL ASSISTANCE THROUGH THE DEPARTMENT OF EDUCATION EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

1. The authority citation for part 100 continues to read as follows:

**Authority:** Sec. 602, 78 Stat. 252; 42 U.S.C. 2000d–1, unless otherwise noted.

**§ 100.2 [Amended]**

2. Section 100.2 is amended by removing the words "program for which" and adding, in their place, "program to which" and removing the words "assisted programs and activities" and adding, in their place, "financial assistance".

**§ 100.3 [Amended]**

3. Section 100.3(d) is amended by removing the words "the benefits of a program", and adding, in their place, the word "benefits".

**§ 100.4 [Amended]**

4. Section 100.4 is amended as follows—

A. Removing the words "to carry out a program" in the first sentence of paragraph (a)(1);

B. Removing the words "except a program" and adding, in their place, the words "except an application" in the first sentence of paragraph (a)(1);

C. Removing the words "for each program" and the words "in the program" in the fifth sentence of paragraph (a)(1);

D. Removing the words "*State programs*" and adding, in their place, the words "*Federal financial assistance*" in the heading of paragraph (b);

E. Removing the words "to carry out a program involving" and adding, in their place, the word "for" in paragraph (b); and

F. Revising paragraph (d)(2).

The revision reads as follows:

**§ 100.4 Assurances required.**

* * * * *

(d) * * *

(2) The assurance required with respect to an institution of higher education, hospital, or any other institution, insofar as the assurance relates to the institution's practices with respect to admission or other treatment of individuals as students, patients, or clients of the institution or to the opportunity to participate in the provision of services or other benefits to such individuals, shall be applicable to the entire institution.

* * * * *

5. Section 100.5 is amended as follows—

A. Revising paragraph (b); and

B. Removing the last sentence of paragraph (d).

The revision reads as follows:

**§ 100.5 Illustrative application.**

* * * * *

(b) In a research, training, demonstration, or other grant to a university for activities to be conducted in a graduate school, discrimination in the admission and treatment of students in the graduate school is prohibited, and the prohibition extends to the entire university.

* * * * *

**§ 100.6 [Amended]**

6. Section 100.6(b) is amended by removing the words "of any program under" in the last sentence and adding, in their place, the word "in".

**§ 100.9 [Amended]**

7. Section 100.9(e) is amended by removing the word "programs" in the first sentence and adding, in its place, the words "Federal assistance statutes".

8. Section 100.13 is amended by removing "for any program," and "under any such program" in paragraph (i); removing "for the purpose of carrying out a program" in paragraph (j); and revising paragraph (g) and adding an authority citation following paragraph (g) to read as follows:

**§ 100.13 Definitions.**

* * * * *

(g) The term *program or activity* and the term *program* mean all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (g)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 42 U.S.C. 2000d–4)

* * * * *

9. Appendix A to part 100 is amended by revising the heading of part 1 and the heading of part 2 to read as follows:

**Appendix A to Part 100—Federal Financial Assistance to Which These Regulations Apply**

*Part 1—Assistance Other Than Continuing Assistance to States*

* * * * *

*Part 2—Continuing Assistance to States*

* * * * *

## PART 104—NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

10. The heading for part 104 is revised to read as set forth above.

11. The authority citation for part 104 continues to read as follows:

**Authority:** 20 U.S.C. 1405; 29 U.S.C. 794.

**§ 104.2 [Amended]**

12. Section 104.2 is amended by removing the word "each" wherever it appears and adding, in its place, the word "the"; and by removing the words "or benefits from".

13. Section 104.3 is amended by redesignating paragraphs (k) and (l) as paragraphs (l) and (m), respectively; adding a new paragraph (k); and adding an authority citation following paragraph (k) to read as follows:

**§ 104.3 Definitions.**

* * * * *

(k) *Program or activity* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or of a local government; or

(ii) The entity of such State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, or other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity which is established by two or more of the entities described in paragraph (k)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 29 U.S.C. 794(b))

* * * * *

14. Section 104.4 is amended by—

A. Removing the words "or benefits from" in paragraphs (a) and (b)(5);

B. Removing the words "programs or activities" wherever they appear in paragraph (b)(3), and adding, in their place, "aids, benefits, or services";

C. Removing the words "or benefiting from" in paragraph (b)(6); and

D. In paragraph (c), removing the word "*Programs*" in the heading and adding, in its place, the words "*Aids, benefits, or services*"; removing the words "from the benefits of a program" and adding, in their place, the words "from aids, benefits, or services", and removing the words "from a program" and adding, in their place, the words "from aids, benefits, or services".

**§§ 104.4, 104.6, 104.12, 104.33 [Amended]**

15. Remove the word "program" and add, in its place, the words "program or activity" in the following sections:

A. Section 104.4(b)(4);

B. Section 104.6(a)(3), wherever it appears;

C. Section 104.12(a), (c) introductory text, and (c)(1); and

D. Section 104.33(a).

**§ 104.5 [Amended]**

16. Section 104.5(a) is amended in the first sentence by removing the words "for a program or activity" and by removing the words "the program" and adding, in their place, the words "the program or activity".

**§ 104.8 [Amended]**

17. Section 104.8(a) is amended by removing the words "programs and activities" in the second sentence and adding, in their place, the words "programs or activities".

**§ 104.11 [Amended]**

18. Section 104.11 is amended by—

A. Removing the words "programs assisted" and adding, in their place, the words "programs or activities assisted" in paragraph (a)(2);

B. Removing the word "programs" and revising "apprenticeship" to read "apprenticeships" in the last sentence of paragraph (a)(4).

C. Removing the word "programs" and adding the words "those that are" before "social or recreational" in paragraph (b)(8).

**Subpart C to Part 104—[Amended]**

19. The heading of Subpart C is amended by removing the word "Program".

**§ 104.22 [Amended]**

20. Section 104.22 is amended in paragraph (a) by removing the words "*Program accessibility*" in the heading and adding, in their place, the word "*Accessibility*" and by removing the words "each program or activity to which this part applies so that the program or activity, when viewed in its entirety," in the first sentence and adding, in their place, the words "its program or activity so that when each part is viewed in its entirety, it"; by removing the words "offer programs and activities to" in the last sentence and adding, in their place, the word "serve" in paragraph (b); and by removing the word "program" in paragraph (e)(3).

**§ 104.31 [Amended]**

21. Section 104.31 is amended by removing the words "or benefit from" wherever they appear; and by removing the words "programs and activities" and adding, in their place, the words "programs or activities".

**§ 104.33 [Amended]**

22. Section 104.33 is amended by—

A. Removing the words "individualized education program" and adding, in their place, the words "Individualized Education Program" in paragraph (b)(2);

B. Removing the words "in or refer such person to a program other than the one that it operates" and adding, in their place, the words "or refer such a person for aids, benefits, or services other than those that it operates or provides" in the first sentence in paragraph (b)(3);

C. Removing the words "in or refers such person to a program not operated" in the second sentence of paragraph (c)(1), and adding, in their place, the words "or refers such person for aids, benefits, or services not operated or provided";

D. Removing the words "of the program" in the second sentence of paragraph (c)(1) and adding, in their place, the words "of the aids, benefits, or services";

E. Removing the words "in or refers such person to a program not operated" in paragraph (c)(2), and adding, in their place, the words "or refers such person for aids, benefits, or services not operated or provided";

F. Removing the words "from the program" in paragraph (c)(2), and adding, in their place, the words "from the aids, benefits, or services";

G. Removing the words "in the program" in paragraph (c)(2), and adding, in their place, the words "in the aids, benefits, or services";

H. Removing the words "If placement in a public or private residential program" and adding, in their place, the words "If a public or private residential placement" in paragraph (c)(3); and removing the words "the program", and adding, in their place, the words "the placement"; and

I. Removing the words "such a program" in the last sentence of paragraph (c)(4), and adding, in their place, the words "a free appropriate public education".

**§ 104.35 [Amended]**

23. Section 104.35(a) is amended by removing the words "program shall" and adding, in their place, the words "program or activity shall" and by removing the word "a" before the word "regular" and by removing the word "program" before the word "and".

**§ 104.37 [Amended]**

24. Section 104.37(c)(1) is amended by removing the words "programs and activities" in the first sentence and adding, in their place, the words "aids, benefits, or services"; and by removing the words "in these activities" in the last sentence.

**§ 104.38 [Amended]**

25. Section 104.38 is amended by—

A. Removing the word "programs" in the section heading;

B. Removing the words "operates a" and adding, in their place, the word "provides";

C. Removing the words "program or activity or an" after the word "care" and adding, in their place, the word "or";

D. Removing the words "program or activity" after the word "education";

E. Removing the words "from the program or activity";

F. Revising the word "aid" to read "aids"; and

G. Removing the words "under the program or activity".

**§ 104.39 [Amended]**

26. Section 104.39 is amended by—

A. Removing the word "programs" in the section heading;

B. Removing the words "operates a" and adding, in their place, the word "provides" in paragraph (a);

C. Removing the word "program" after the word "education" in paragraph (a);

D. Removing the words "from such program" in paragraph (a);

E. Removing the words "the recipient's program" in paragraph (a), and adding, in their place, the words "that recipient's program or activity"; and

F. Removing the words "operates special education programs shall operate such programs" in paragraph (c), and adding, in their place, the words "provides special education shall do so".

**§ 104.41 [Amended]**

27. Section 104.41 is amended by removing the words "programs and activities" wherever they appear in the section and adding, in their place, the words "programs or activities"; and by removing the words "or benefit from" wherever they appear in the section.

**§ 104.43 [Amended]**

28. Sections 104.43 is amended by—

A. Removing the words "program or activity" in paragraph (a) and adding, in their place, the words "aids, benefits, or services"; and

B. Removing the words "programs and activities" in paragraph (d), and adding, in their place, the words "program or activity".

**§ 104.44 [Amended]**

29. Section 104.44 is amended by—

A. Removing the words "program of" in the second sentence of paragraph (a);

B. Removing the words "in its program" in paragraph (c); and

C. Removing the words "under the education program or activity operated by the recipient" in paragraph (d)(1).

**§ 104.47 [Amended]**

30. Section 104.47 is amended by removing the words "programs and activities" in paragraph (a)(1), and adding, in their place, the words "aids, benefits, or services".

**§ 104.51 [Amended]**

31. Section 104.51 is amended by removing the words "or benefit from" wherever they appear in the section; and by removing the word "and" before the word "activities" and adding, in its place, the word "or".

## PART 106—NONDISCRIMINATION ON THE BASIS OF SEX IN EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

32. The heading for part 106 is revised to read as set forth above.

33. Section 106.2 is amended by—

A. Redesignating paragraphs (h) through (r) as paragraphs (i) through (s), respectively;

B. Adding a new paragraph (h) and adding an authority citation following paragraph (h); and

C. Amending redesignated paragraph (i) to remove the words "or benefits from".

The addition reads as follows:

**§ 106.2 Definitions.**

* * * * *

(h) *Program or activity* and *program* means all of the operations of—

(1)(i) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(ii) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(2)(i) A college, university, or other postsecondary institution, or a public system of higher education; or

(ii) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(3)(i) An entire corporation, partnership, other private organization, or an entire sole proprietorship—

(A) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(B) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(ii) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(4) Any other entity that is established by two or more of the entities described in paragraph (h)(1), (2), or (3) of this section; any part of which is extended Federal financial assistance.

(Authority: 20 U.S.C. 1687)

* * * * *

**§ 106.4 [Amended]**

34. Section 106.4 is amended by removing the word "each" and adding, in its place, the word "the" in the first sentence of paragraph (a).

**§ 106.6 [Amended]**

35. Section 106.6 is amended by removing the words "or benefits from" in paragraph (c).

**§ 106.11 [Amended]**

36. Section 106.11 is amended by removing the word "each" and adding, in its place, the word "the"; and by removing the words "or benefits from".

**Subparts D and E of Part 106—[Amended]**

37. The headings of Subparts D and E are amended by removing the word "and" and adding, in its place, the word "or".

**§ 106.31 [Amended]**

38. Section 106.31 is amended by—

A. Removing the word "and" in the section heading and adding, in its place, the word "or";

B. Removing the words "or benefits from" in the first sentence of paragraph (a); and

C. Removing the words "*Programs not operated*" in the heading of paragraph (d), and adding, in their place, the words "*Aid, benefits or services not provided*".

**§ 106.40 [Amended]**

39. Section 106.40 is amended by removing the words "in the normal education program or activity" in paragraph (b)(2); and by removing the words "instructional program in the separate program" in paragraph (b)(3) and adding, in their place, the words "separate portion".

**§ 106.51 [Amended]**

40. Section 106.51 is amended by removing the words "or benefits from" in paragraph (a)(1).

## PART 110—NONDISCRIMINATION ON THE BASIS OF AGE IN DEPARTMENT OF EDUCATION PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

41. The authority citation for part 110 continues to read as follows:

**Authority:** 42 U.S.C. 6101 *et seq.*, unless otherwise noted.

**§§ 110.1, 110.20 [Amended]**

42. Remove the words "programs and activities" in the last sentence of § 110.1 and the first sentence of § 110.20 and add, in their place, the words "programs or activities".

43. Section 110.3 is amended by adding in alphabetical order a new definition of "Program or activity" and adding an authority citation following the definition to read as follows:

**§ 110.3 What definitions apply?**

* * * * *

*Program or activity* means all of the operations of—

(a)(1) A department, agency, special purpose district, or other instrumentality of a State or local government; or

(2) The entity of a State or local government that distributes such assistance and each such department or agency (and each other State or local government entity) to which the assistance is extended, in the case of assistance to a State or local government;

(b)(1) A college, university, or other postsecondary institution, or a public system of higher education; or

(2) A local educational agency (as defined in 20 U.S.C. 8801), system of vocational education, or other school system;

(c)(1) An entire corporation, partnership, other private organization, or an entire sole proprietorship—

(i) If assistance is extended to such corporation, partnership, private organization, or sole proprietorship as a whole; or

(ii) Which is principally engaged in the business of providing education, health care, housing, social services, or parks and recreation; or

(2) The entire plant or other comparable, geographically separate facility to which Federal financial assistance is extended, in the case of any other corporation, partnership, private organization, or sole proprietorship; or

(d) Any other entity that is established by two or more of the entities described in paragraph (a), (b), or (c) of this section; any part of which is extended Federal financial assistance.

(Authority: 42 U.S.C. 6107)

* * * * *

**§§ 110.16, 110.17 [Amended]**

44. Remove the word "program" wherever it appears in § 110.16 and in § 110.17, and add, in its place, the words "program or activity".

**§ 110.35 [Amended]**

45. Section 110.35(c)(2) is amended by removing the word "Federal" in the first sentence.

**§ 110.37 [Amended]**

46. Section 110.37(b)(2) is amended by removing the words "program or activity" and adding, in their place, "Federal financial assistance".

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Federal Register

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Part V

# The President

Executive Order 13153—Actions To Improve Low-Performing Schools

Executive Order 13154—Establishing the Kosovo Campaign Medal

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# Presidential Documents

Title 3—

## The President

**Executive Order 13153 of May 3, 2000**

## Actions To Improve Low-Performing Schools

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Elementary and Secondary Education Act of 1965 (ESEA), the Department of Education Appropriations Act, 2000 (as contained in Public Law 106–113), and in order to take actions to improve low-performing schools, it is hereby ordered as follows:

**Section 1.** *Policy.* Since 1993, this Administration has sought to raise standards for students and to increase accountability in public education while investing more resources in elementary and secondary schools. While much has been accomplished—there has been progress in math and reading achievement, particularly for low-achieving students and students in our highest poverty schools—much more can be done, especially for low-performing schools.

**Sec. 2.** *Technical Assistance and Capacity Building.* (a) The Secretary of Education ("Secretary") shall work with State and local educational agencies ("LEAs") to develop and implement a comprehensive strategy for providing technical assistance and other assistance to States and LEAs to strengthen their capacity to improve the performance of schools identified as low performing. This comprehensive strategy shall include a number of steps, such as:

(1) providing States, school districts, and schools receiving funds from the school improvement fund established by Public Law 106–113, as well as other districts and schools identified for school improvement or corrective action under Title I of the ESEA, with access to the latest research and information on best practices, including research on instruction and educator professional development, and with the opportunity to learn from exemplary schools and exemplary State and local intervention strategies and from each other, in order to improve achievement for all students in the low-performing schools;

(2) determining effective ways of providing low-performing schools with access to resources from other Department of Education programs, such as funds from the Comprehensive School Reform Demonstration Program, the Reading Excellence Act, the Eisenhower Professional Development Program, the Class Size Reduction Program, and the 21st Century Community Learning Centers Program, and to make effective use of these funds and Title I funds;

(3) providing States and LEAs with information on effective strategies to improve the quality of the teaching force, including strategies for recruiting and retaining highly qualified teachers in high-poverty schools, and implementing research-based professional development programs aligned with challenging standards;

(4) helping States and school districts build partnerships with technical assistance providers, including, but not limited to, federally funded laboratories and centers, foundations, businesses, community-based organizations, institutions of higher education, reform model providers, and other organizations that can help local schools improve;

(5) identifying previously low-performing schools that have made significant achievement gains, and States and school districts that have been effective in improving the achievement of all students in low-performing schools, which can serve as models and resources;

(6) providing assistance and information on how to effectively involve parents in the school-improvement process, including effectively involving and informing parents at the beginning of the school year about improvement goals for their school as well as the goals for their own children, and reporting on progress made in achieving these goals;

(7) providing States and LEAs with information on effective approaches to school accountability, including the effectiveness of such strategies as school reconstitution, peer review teams, and financial rewards and incentives;

(8) providing LEAs with information and assistance on the design and implementation of approaches to choice among public schools that create incentives for improvement throughout the local educational agency, especially in the lowest-performing schools, and that maximize the opportunity of students in low-performing schools to attend a higher-performing public school;

(9) exploring the use of well-trained tutors to raise student achievement through initiatives such as "America Reads," "America Counts," and other work-study opportunities to help low-performing schools;

(10) using a full range of strategies for disseminating information about effective practices, including interactive electronic communications;

(11) working with the Department of Interior, Bureau of Indian Affairs (BIA), to provide technical assistance to BIA-funded low-performing schools; and

(12) taking other steps that can help improve the quality of teaching and instruction in low-performing schools.

(b) The Secretary shall, to the extent permitted by law, take whatever steps the Secretary finds necessary and appropriate to redirect the resources and technical assistance capability of the Department of Education ("Department") to assist States and localities in improving low-performing schools, and to ensure that the dissemination of research to help turn around low-performing schools is a priority of the Department.

**Sec. 3.** *School Improvement Report.* To monitor the progress of LEAs and schools in turning around failing schools, including those receiving grants from the School Improvement Fund, the Secretary shall prepare an annual School Improvement Report, to be published in September of each year, beginning in 2000. The report shall:

(a) describe trends in the numbers of LEAs and schools identified as needing improvement and subsequent changes in the academic performance of their students;

(b) identify best practices and significant research findings that can be used to help turn around low-performing LEAs and schools; and

(c) document ongoing efforts as a result of this order and other Federal efforts to assist States and local school districts in intervening in low-performing schools, including improving teacher quality. This report shall be publicly accessible.

**Sec. 4.** *Compliance Monitoring System.* Consistent with the implementation of the School Improvement Fund, the Secretary shall strengthen the Department's monitoring of ESEA requirements for identifying and turning around low-performing schools, as well as any new requirements established for the School Improvement Fund by Public Law 106–113. The Secretary shall give priority to provisions that have the greatest bearing on identifying and turning around low-performing schools, including sections 1116 and 1117 of the ESEA, and to developing an ongoing, focused, and systematic

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process for monitoring these provisions. This improved compliance monitoring shall be designed to:

(a) ensure that States and LEAs comply with ESEA requirements;

(b) assist States and LEAs in implementing effective procedures and strategies that reflect the best research available, as well as the experience of successful schools, school districts, and States as they address similar objectives and challenges; and

(c) assist States, LEAs, and schools in making the most effective use of available Federal resources.

**Sec. 5.** *Consultation.* The Secretary shall, where appropriate, consult with executive agencies, State and local education officials, educators, community-based groups, and others in carrying out this Executive order.

**Sec. 6.** *Judicial Review.* This order is intended only to improve the internal management of the executive branch and is not intended to, and does not create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
*May 3, 2000.*

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# Presidential Documents

**Executive Order 13154 of May 3, 2000**

## Establishing the Kosovo Campaign Medal

By the authority vested in me as President by the Constitution and the laws of the United States of America, including my authority as Commander in Chief of the Armed Forces of the United States, it is hereby ordered as follows:

**Section 1.** *Kosovo Campaign Medal.* There is hereby established the Kosovo Campaign Medal with suitable appurtenances. Except as limited in section 2 of this order, and under uniform regulations to be prescribed by the Secretaries of the Military Departments and approved by the Secretary of Defense, or under regulations to be prescribed by the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, the Kosovo Campaign Medal shall be awarded to members of the Armed Forces of the United States who serve or have served in Kosovo or contiguous waters or airspace, as defined by such regulations, after March 24, 1999, and before a terminal date to be prescribed by the Secretary of Defense.

**Sec. 2.** *Relationship to Other Awards.* Notwithstanding section 3 of Executive Order 10977 of December 4, 1961, establishing the Armed Forces Expeditionary Medal and section 3 of Executive Order 12985 of January 11, 1996, establishing the Armed Forces Service Medal, any member who qualified for those medals by reasons of service in Kosovo between March 24, 1999, and May 1, 2000, shall remain qualified for those medals. Upon application, any such member may be awarded the Kosovo Campaign Medal in lieu of the Armed Forces Expeditionary Medal or the Armed Forces Service Medal, but no person may be awarded more than one of these three medals by reason of service in Kosovo, and no person shall be entitled to more than one award of the Kosovo Campaign Medal.

**Sec. 3.** *Posthumous Award.* The Kosovo Campaign Medal may be awarded posthumously to any person covered by and under regulations prescribed in accordance with the first section of this order.

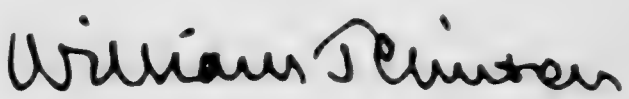

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*May 3, 2000.*

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**S. 1567/P.L. 106–196**

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# Presidential Documents

Title 3—

## The President

**Proclamation 7303 of May 4, 2000**

## National Day of Prayer, 2000

**By the President of the United States of America**

**A Proclamation**

Throughout our Nation's history, Americans have come before God with humble hearts to ask forgiveness, to seek wisdom, and to offer thanksgiving and praise. The framers of our democracy, on a quest for freedom and equality, were fueled by an abiding faith in a just and loving God, to whom they turned often for guidance and strength.

Succeeding generations of Americans, striving to preserve that freedom in the face of challenges posed by enemies abroad or conflict at home, also turned their hearts and minds to God in prayer. Today, whether celebrating the special moments in our lives, searching for strength and meaning in the face of problems or grief, or simply giving thanks for the blessing of a new day, Americans continue to use the powerful medium of prayer.

Now more than ever, Americans treasure our religious freedom, which embraces the many diverse communities of faith that have infused our society and our cultural heritage through more than two centuries. Millions of Americans gratefully sustain the tradition of prayer in churches, synagogues, temples, mosques, and other houses of worship across our country.

And we continue to rely on our faith as a pillar of strength, even in this era of unprecedented peace and prosperity. We pray for the spirit of reconciliation, so that we may overcome the divisions of race, religion, culture, and background that have scarred our society in recent years. We pray for the spirit of compassion so that we will reach out to others who have not shared equally in this world's bounteous blessings—those here at home who struggle for economic and educational opportunity and those around the globe whose lives have been darkened by the shadows of poverty, oppression, natural disaster, or disease. And we must always pray for wisdom—the wisdom to raise children with strong values and loving hearts; the wisdom to live in harmony with our environment and to preserve its health and beauty for the benefit of future generations; and the wisdom to keep America the world's greatest hope for freedom, peace, and human dignity in the 21st century.

The Congress, by Public Law 100–307, has called on our citizens to reaffirm the role of prayer in our society and to honor the religious diversity our freedom permits by recognizing annually a "National Day of Prayer."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 4, 2000, as a National Day of Prayer. I encourage the citizens of this great Nation to pray, each in his or her own manner, seeking strength from God to face today's challenges, seeking guidance for tomorrow's uncertainties, and giving thanks for the rich blessings that our country has enjoyed throughout its history.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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# Rules and Regulations

Federal Register
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Monday, May 8, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**OFFICE OF PERSONNEL MANAGEMENT**

**5 CFR Part 630**

**RIN 3206–AI35**

## Family and Medical Leave

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing final regulations on the Family and Medical Leave Act of 1993 to ensure that both employees' and agencies' rights are protected and their responsibilities fulfilled.

**EFFECTIVE DATE:** June 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jo Ann Perrini, (202) 606–2858, FAX (202) 606–0824, or email to payleave@opm.gov.

**SUPPLEMENTARY INFORMATION:** Title II of the Family and Medical Leave Act of 1993 (FMLA) (Public Law 103–3, February 5, 1993) provides an eligible Federal employee with a total of 12 administrative workweeks of unpaid leave during any 12-month period for: (a) The birth of a son or daughter and care of the newborn; (b) the placement of a child with the employee for adoption or foster care; (c) the care of the employee's spouse, son or daughter, or parent with a serious health condition; or (d) a serious health condition of the employee that makes the employee unable to perform the essential functions of his or her position. The Office of Personnel Management (OPM) published final regulations (61 FR 64441) in subpart L of part 630 of title 5, Code of Federal Regulations, to implement Title II of the FMLA. The final regulations became effective on January 6, 1997. The Department of Labor (DOL) is responsible for implementing Title I of the FMLA for non-Federal employees, and its final regulations were published in 29 CFR part 825 (60 FR 2180, January 6, 1995).

On August 13, 1998, OPM published proposed regulations (63 FR 43325) to address the many questions and concerns that continue to be received by OPM on employees' and agencies' obligations under the FMLA. We received comments from five Federal agencies, one professional association, one labor organization, and one individual, for a total of eight comments. In addition, we met with the labor organization to discuss its concerns. A summary of the comments received and the changes made in the regulations are presented below.

### Invoking Entitlement to Family and Medical Leave

The proposed regulations stated that an employee may not retroactively invoke his or her entitlement to family and medical leave. Three agencies and the individual strongly supported this change. The labor organization and the professional association opposed the proposed regulations because they viewed them as inconsistent with OPM's regulation at 5 CFR 630.1206, which allows an employee to notify his or her agency as soon as is practicable if the need for FMLA leave is not foreseeable (*e.g.*, a medical emergency). The labor organization explained that in medical emergencies, it may be impracticable to provide notification until after the leave is taken.

As stated in OPM's proposed regulations, there is a major difference between Title I and Title II of the FMLA in terms of the responsibility of an employer versus an employee to invoke entitlement to FMLA leave. Under DOL's regulations implementing Title I of the FMLA for non-Federal employees, the employer is required to designate leave, paid or unpaid, as FMLA leave and to give notice of such designation to the employee. In contrast, under OPM's regulations implementing Title II of the FMLA for Federal employees, the employee is responsible for invoking his or her entitlement to FMLA leave, and the employee may choose whether to substitute paid leave, as appropriate, for leave without pay under the FMLA. Under 5 CFR 630.1203(h), an agency may not subtract leave from the 12-week FMLA leave entitlement unless the agency has obtained confirmation from the employee of his or her intent to invoke entitlement to FMLA leave.

The requirement that an employee must initiate action to take FMLA leave is consistent with all other Federal leave policies and programs in that the employee is responsible for requesting leave or other time off from work. We believe it is Congress' intent to provide Federal employees with an entitlement to FMLA leave in a fair and equitable manner while minimizing the impact of such leave on an employing agency. The legislative history establishes an intent to authorize the use of leave "to be taken" under the FMLA—*i.e.*, on a prospective basis. If necessary, an employee may invoke his or her entitlement to FMLA leave on the day of the emergency. In the final regulations, we have added a sentence to 5 CFR 630.1203(b) to state that an employee may not retroactively invoke his or her entitlement to family and medical leave.

We realize that unique situations may require some flexibility in meeting this requirement. Therefore, 5 CFR 630.1203(b) of the final regulations provides that if an employee or his or her personal representative is physically or mentally incapable of invoking the employee's entitlement to FMLA leave during the entire period in which the employee is absent from work for an FMLA-qualifying purpose, the employee may retroactively invoke his or her entitlement to FMLA leave within 2 workdays after returning to work. (This change is consistent with DOL's regulations at 29 CFR 825.208(e)(1).) In such cases, the incapacity of the employee must be documented by a written medical certification from a health care provider. In addition, the employee must provide documentation acceptable to the agency explaining the inability of the personal representative to contact the agency and invoke the employee's entitlement to FMLA leave during the entire period in which the employee was absent from work for an FMLA-qualifying purpose.

The professional association objected to the current practice of requiring employees to provide 30 calendar days' notice of their intent to take FMLA leave. The association further stated that by not allowing employees to seek entitlement to FMLA leave retroactively, OPM is barring employees from using

FMLA leave when they need it most, *e.g.*, in a family medical emergency.

Under 5 U.S.C. 6382(e), if the need for leave is foreseeable, employees are required to provide not less than 30 calendar days' notice of their intent to use leave under the FMLA. If leave needs to begin in less than 30 calendar days, the employee must give such notice as is practicable. OPM's regulations at 5 CFR 630.1206 require an employee to provide 30 calendar days' notice when the need for leave is foreseeable (*e.g.*, an expected birth or planned medical treatment). If the need for leave is not foreseeable (*e.g.*, a medical emergency or the unexpected availability of a child for adoption or foster care), and the employee cannot provide 30 calendar days' notice of his or her need for leave, the employee must provide notice within a reasonable period of time appropriate to the circumstances involved. Finally, if the need for leave is not foreseeable and the employee is unable, due to circumstances beyond his or her control, to provide notice of his or her need for leave, the FMLA leave cannot be denied or delayed. Since the law and current regulations require notification of the need for FMLA leave and allow flexibility for emergency situations, no substantive changes were made in the final regulations. However, we have modified 5 CFR 630.1206 (a), (c), and (d) to make clear that "days" refers to "calendar days."

**Additional Evidence**

The proposed regulations would have permitted an agency to require that a request for leave under the FMLA be supported by evidence that is administratively acceptable to the agency. This provision was proposed in response to agency requests to obtain additional evidence to support a claim that an employee cared for a spouse, son or daughter, or parent with a serious health condition during an absence coinciding with the period in which the employee requested FMLA leave. Existing OPM regulations permit an agency to require an employee to provide evidence that is administratively acceptable when requesting leave for (1) the birth of a son or daughter of the employee and the care of such son or daughter and (2) the placement of a son or daughter with the employee for adoption or foster care.

Two agencies fully supported this change. The individual recommended that all requests for FMLA leave be supported by medical evidence, if at all possible. In contrast, the professional association and the labor organization opposed our proposal because they believe the phrase "administratively acceptable to the agency" is too broad and leaves the door open for agency abuse. Both the professional association and the labor organization stated that this change would present an additional hardship for employees undergoing a major crisis. The labor organization believes OPM's regulations at 5 CFR 630.1207 already establish a medical certification process through which an agency may require an employee to submit evidence in support of requested leave for an employee's serious health condition or that of a family member. The labor organization further noted that under 5 U.S.C. 6307, a medical certification that meets the requirements of the statute "shall be deemed sufficient."

After careful consideration, we agree that the regulations should not permit an agency to require an employee to submit documentation that may be overly burdensome and beyond what is deemed sufficient by statute. When an agency suspects employee fraud, it may contact its Office of the Inspector General for further investigation. The changes proposed in 5 CFR 630.1206(f) were not adopted.

**Medical Certification**

The proposed regulations would have required an employee to provide written medical certification of a serious health condition no later than 15 workdays after the date the agency requests such medical certification. Section 630.1207(g) of the proposed regulations provided that if an employee was unable to provide the requested medical certification before FMLA leave must begin, the agency would be required to grant provisional leave pending final written medical certification that was to be received no later than 15 workdays after the date the FMLA leave began. OPM proposed these time limits to ensure that the entitlements provided under the FMLA are provided to all Federal employees in a fair and consistent manner.

Two agencies agreed with OPM's proposed change. The individual remarked that 10 workdays would be preferable to 15 because 10 days would coincide with a biweekly pay period and payroll start dates. In contrast, both the professional association and the labor organization stated that OPM's 15-workday time limit was too stringent. The labor organization also objected that the proposed regulation would not guarantee an employee at least 15 workdays to provide medical certification. The labor organization noted that in cases where the health care provider does not complete the medical certification even after repeated efforts, the employee would be penalized for circumstances that are beyond his or her control. The labor organization further suggested that OPM adopt DOL's regulation at 29 CFR 825.305(b), which states that an "employee must provide the requested certification to the employer (which must allow at least 15 calendar days after the employer's request) unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts." The professional association believes the agency should be prohibited from requesting medical certification until the "emergency" situation has ceased.

We believe it is Congress' intent that, in all circumstances, employees be required to provide complete medical certification, when requested by an agency, within a reasonable period in view of the circumstances involved. We recognize that the proposed regulation would not permit any flexibility for an employee who was unable to provide medical certification within 15 workdays due to circumstances beyond his or her control. Therefore, as suggested by the labor organization, we have revised our regulation to model DOL's regulation. We have revised 5 CFR 630.1207(g) to require employees to provide medical certification of a serious health condition no later than 15 calendar days after the date the agency requests the medical certification. However, to accommodate situations in which more flexibility may be needed, we have added a sentence to 5 CFR 630.1207(g) to provide that if it is not practicable under the particular circumstances to provide the requested medical certification within 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the medical certification was requested by the agency.

In most cases, we believe 15 calendar days constitutes an ample amount of time within which an employee can obtain written medical certification. Establishing a time limit of 30 calendar days in all cases for which an employee must provide medical certification provides a needed balance between guaranteeing employees ample time to provide required medical certification and affirming agencies' authority to determine whether FMLA leave is appropriate. If an employee does not provide the requested medical certification, the absence is not FMLA

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leave and the agency may charge the employee as absent without leave (AWOL) or allow the employee to request annual leave, sick leave, or leave without pay, as appropriate, for the period of absence.

The labor organization also suggested that OPM revise its regulations to require an agency to request medical certification at the time the employee gives notice of the need for leave or within 2 business days thereafter, or, in the case of unforeseen leave, within 2 business days after the leave commences. The labor organization believes this would put both the employer and the employee on notice of the time frame during which a request for medical certification would normally be appropriate. The labor organization believes this addition would strike an appropriate balance between the obligations and rights of the employer and the employee.

The requirement to provide medical certification for a serious health condition within 15 calendar days cannot begin until after the date the agency requests such medical certification. Employees will *not* receive any additional benefits from requiring agencies to request medical certification within 2 workdays after the employee's notice of FMLA leave. Therefore, we do not believe this additional requirement is necessary.

**Insufficient Notification and Medical Certification**

The proposed regulations stated that an employee who does not comply with the notification requirements in § 630.1206, and who does not provide medical certification signed by the health care provider that includes all the information required by law and OPM's regulations at § 630.1207(b), is not entitled to FMLA leave. Further, the employee would not receive any of the employment and benefit protections of the FMLA. Two agencies fully supported this proposal. The labor organization stated that it would support this section if employees' interests were adequately protected as reflected in the organization's other recommendations. The labor organization believes this provision will put employees on notice of the consequences of their failure to meet their responsibilities. We believe the changes we have discussed above will provide adequate protection to all employees. Therefore, we have revised 5 CFR 630.1208(l) to state that a employee who does not comply with the notification requirements in § 630.1206, and who does not provide medical certification signed by the health care provider that includes all the information required by law and OPM's regulations at § 630.1207(b), is not entitled to FMLA leave.

**Holidays**

The proposed regulations stated that any holiday that occurs during the period in which an employee is on family and medical leave will be counted toward the 12-week FMLA entitlement. One agency supported this proposal and recommended adding the phrase "and any periods of administrative dismissal" to include all periods of authorized absence. One agency and the labor organization objected to this proposal because no other employee is charged leave on a holiday. The labor organization remarked that a Federal employee has a separate entitlement to Federal holidays and that to count holidays toward the 12-week FMLA period would diminish the employee's entitlement to those holidays. The labor organization also expressed the view that counting holidays within an employee's FMLA leave period would have a disproportionate impact on those employees who need FMLA leave for a continuous period of weeks as compared to those who use FMLA leave intermittently.

DOL's regulations permit the counting of holidays against the 12-week entitlement to FMLA leave. In 29 CFR 825.200(f), DOL's regulations provide that for purposes of determining the amount of leave used by an employee, the fact that a holiday may occur within the week taken as FMLA leave has no effect; the week is counted as a week of FMLA leave. However, DOL's regulations further explain that if an employer's business activity has temporarily ceased and employees are not expected to report for work (e.g., a school closing 2 weeks for the Christmas/New Year's holiday or an employer closing a plant for retooling or repairs), the days the employer's activities have ceased do not count against an employee's 12-week entitlement to FMLA leave.

The law (5 U.S.C. 6302(a)) provides that days of leave are days on which an employee would otherwise work and receive pay and are exclusive of holidays and nonworkdays established by Federal statute, Executive order, or administrative order. Upon further consideration, we have determined that FMLA leave may be charged only on days on which an employee is scheduled to be in a duty status. Therefore, we have revised 5 CFR 630.1203(e) to state that any holidays authorized under 5 U.S.C. 6103 or by Executive order and nonworkdays established by Federal statute, Executive order, or administrative order that occur during the period in which the employee is on family and medical leave will *not* be counted toward the 12-week entitlement to family and medical leave. OPM's regulations are consistent with Congress' intent to better enable Federal employees to benefit from the leave provided by the FMLA.

**"Stacking" of Leave**

An agency requested guidance on an employee's entitlement to annual and sick leave in addition to leave under the FMLA—i.e., the "stacking" of leave. The 12 workweeks of unpaid leave under the FMLA are in addition to any annual leave, sick leave, or other paid leave or compensatory time off available to an employee, and an employee may choose to take FMLA leave in combination with any other available leave. We have advised agencies that the best way to manage the "stacking" of leave is to encourage communication between supervisors and employees. A supervisor must inform employees of their entitlements and responsibilities under the FMLA. When an employee requests leave for a personal or family medical situation, the supervisor may want to ask up front whether the employee is invoking his or her entitlement to FMLA leave.

Although a supervisor generally cannot deny sick leave if the employee provides medical certification, he or she can deny annual leave or leave without pay if there is a need for the employee to be at work. While the taking of annual leave is a right of an employee, it is subject to the right of the supervisor to schedule the time at which annual leave may be taken. If an employee requests leave for any of the four FMLA-qualifying purposes, the supervisor may ask whether the employee is invoking his or her entitlement to FMLA leave. If the employee invokes entitlement to FMLA leave, he or she may choose to substitute his or her annual leave, or sick leave as appropriate, for leave without pay under the FMLA. As a result, both the supervisor and the employee are successful in meeting their needs.

**SF–71, Request for Leave or Approved Absence**

One agency recommended that the SF–71, Request for Leave or Approved Absence, include a block for granting FMLA provisional leave pending receipt of final medical certification and that the block should also include a statement that the employee must provide the requested medical

certification not later than 15 workdays after the date the agency requests the certification. The agency believes this would further assist employees and supervisors in meeting their obligations under the FMLA.

In our continuing effort to improve the Federal leave system and in response to agencies' recommendations, OPM is considering further improvements in the SF–71. We will provide agencies with information on the availability of revised forms through OPM's web site at *http://www.opm.gov.*

**Miscellaneous Changes**

Sections 630.1201(b)(1)(ii)(B) and (b)(3)(i) of title 5, Code of Federal Regulations, are being revised as requested by the Department of Veterans Affairs to identify employees of the Veterans Health Administration who are covered by Title II of the FMLA.

An agency suggested that 5 CFR 630.1203(a) be revised to clarify that medical conditions associated with pregnancy or childbirth must meet the requirements for using FMLA leave for a serious health condition. Under 5 CFR 630.1203(a), an employee has an absolute entitlement to unpaid leave under the FMLA for the birth of a child and care of the newborn. In addition, paragraph (1)(ii)(B) of the definition of "serious health condition" in 5 CFR 630.1202 specifically includes pregnancy and prenatal care. Finally, if an employee elects to substitute sick leave for unpaid leave under the FMLA, OPM's regulation at 5 CFR 630.401 authorizes the use of sick leave for pregnancy and childbirth. For these reasons, we have not adopted the agency's suggestion in the final regulations.

An agency suggested that in order to avoid confusion, OPM should specify throughout 5 CFR part 630, subpart L, whether "days" means workdays or calendar days. We agree and have edited the regulations to state "calendar days," where appropriate.

An agency suggested that OPM require that the medical certification be signed personally by the health care provider. We believe this suggestion may place an unnecessary burden on the employee and the health care provider. Therefore, we have not adopted this suggestion.

Finally, we are taking this opportunity to correct an improper citation and to clarify § 630.1207(i).

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

**Family Assessment Certification**

I certify that these regulations would strengthen the stability of the family, help families meet their responsibilities, and increase the disposable income of families in accordance with section 654 of the Treasury and General Government Appropriations Act, 1999, as contained in section 101(h) of Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999.

**List of Subjects in 5 CFR Part 630**

Government employees.

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

Accordingly, OPM is amending part 630 of title 5 of the Code of Federal Regulations as follows:

## PART 630—ABSENCE AND LEAVE

1. The authority citation for part 630 continues to read as follows:

**Authority:** 5 U.S.C. 6311; § 630.301 also issued under Pub. L. 103–356, 108 Stat. 3410; § 630.303 also issued under 5 U.S.C. 6133(a); §§ 630.306 and 630.308 also issued under 5 U.S.C. 6304(d)(3), Pub. L. 102–484, 106 Stat. 2722, and Pub. L. 103–337, 108 Stat. 2663; subpart D also issued under Pub. L. 103–329, 108 Stat. 2423; § 630.501 and subpart F also issued under E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G also issued under 5 U.S.C. 6305; subpart H also issued under 5 U.S.C. 6326; subpart I also issued under 5 U.S.C. 6332, Pub. L. 100–566, 102 Stat. 2834, and Pub. L. 103–103, 107 Stat. 1022; subpart J also issued under 5 U.S.C. 6362, Pub. L 100–566, and Pub. L. 103–103; subpart K also issued under Pub. L. 105–18, 111 Stat. 158; subpart L also issued under 5 U.S.C. 6387 and Pub. L. 103–3, 107 Stat. 23; and subpart M also issued under 5 U.S.C. 6391 and Pub. L. 102–25, 105 Stat. 92.

## Subpart L—Family and Medical Leave

2. Sections 630.1201(b)(1)(ii)(B) and 630.1201(b)(3)(i) are revised to read as follows:

**§ 630.1201 Purpose, applicability, and administration.**

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(B) An employee of the Veterans Health Administration appointed under title 38, United States Code, in occupations listed in 38 U.S.C. 7401(1);

* * * * *

(3) * * *

(i) An employee of the Veterans Health Administration appointed under title 38, United States Code, in occupations listed in 38 U.S.C. 7401(1) is be governed by the terms and conditions of regulations prescribed by the Secretary of Veterans Affairs;

* * * * *

3. In § 630.1203, paragraph (b) is revised, a new sentence is added at the end of paragraph (e), and the first sentence in paragraph (h) is revised to read as follows:

**§ 630.1203 Leave entitlement.**

* * * * *

(b) An employee must invoke his or her entitlement to family and medical leave under paragraph (a) of this section, subject to the notification and medical certification requirements in §§ 630.1206 and 630.1207. An employee may not retroactively invoke his or her entitlement to family and medical leave. However, if an employee and his or her personal representative are physically or mentally incapable of invoking the employee's entitlement to FMLA leave *during the entire period* in which the employee is absent from work for an FMLA-qualifying purpose under paragraph (a) of this section, the employee may retroactively invoke his or her entitlement to FMLA leave within 2 workdays after returning to work. In such cases, the incapacity of the employee must be documented by a written medical certification from a health care provider. In addition, the employee must provide documentation acceptable to the agency explaining the inability of his or her personal representative to contact the agency and invoke the employee's entitlement to FMLA leave during the entire period in which the employee was absent from work for an FMLA-qualifying purpose. An employee may take only the amount of family and medical leave that is necessary to manage the circumstances that prompted the need for leave under paragraph (a) of this section.

* * * * *

(e) * * * Any holidays authorized under 5 U.S.C. 6103 or by Executive order and nonworkdays established by Federal statute, Executive order, or administrative order that occur during the period in which the employee is on family and medical leave may not be counted toward the 12-week entitlement to family and medical leave.

* * * * *

(h) An agency may not put an employee on family and medical leave and may not subtract leave from an employee's entitlement to leave under paragraph (a) of this section unless the agency has obtained confirmation from the employee of his or her intent to

invoke entitlement to leave under paragraph (b) of this section. * * *

**§ 630.1206 [Amended]**

4. In § 630.1206 , paragraphs (a), (c), and (d), the word "calendar" is added before the words "days" and "days'."

5. In § 630.1207, the second sentence in paragraph (a) is removed; paragraphs (h), (i) and (j) are redesignated as paragraphs (i), (j), and (k); a new paragraph (h) is added; and the newly redesignated paragraph (j) is revised to read as follows:

**§ 630.1207 Medical certification.**

* * * * *

(h) An employee must provide the written medical certification required by paragraphs (a), (d), (e), and (g) of this section, signed by the health care provider, no later than 15 calendar days after the date the agency requests such medical certification. If it is not practicable under the particular circumstances to provide the requested medical certification no later than 15 calendar days after the date requested by the agency despite the employee's diligent, good faith efforts, the employee must provide the medical certification within a reasonable period of time under the circumstances involved, but no later than 30 calendar days after the date the agency requests such medical certification.

* * * * *

(j) At its own expense, an agency may require subsequent medical recertification on a periodic basis, but not more than once every 30 calendar days, for leave taken for purposes relating to pregnancy, chronic conditions, or long-term conditions, as these terms are used in the definition of *serious health condition* in § 630.1202.

* * * * *

6. In § 630.1208, paragraph (l) is added to read as follows:

**§ 630.1208 Protection of employment and benefits.**

* * * * *

(l) An employee who does not comply with the notification requirements in § 630.1206 and does not provide medical certification signed by the health care provider that includes all of the information required in § 630.1207(b) is not entitled to family and medical leave.

[FR Doc. 00–11385 Filed 5–5–00; 8:45 am]

BILLING CODE 6325–01–P

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 99–076–2]**

## Oriental Fruit Fly; Removal of Quarantined Area

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the Oriental fruit fly regulations by removing the quarantine on a portion of Los Angeles County, CA, and by removing the restrictions on the interstate movement of regulated articles from that area. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from this portion of Los Angeles County, CA, and that the quarantine and restrictions are no longer necessary. This portion of Los Angeles County, CA, was the last remaining area in California quarantined for the Oriental fruit fly. Therefore, as a result of this action, there are no longer any areas in the continental United States quarantined for the Oriental fruit fly.

**DATES:** This interim rule was effective May 2, 2000. We invite you to comment on this docket. We will consider all comments that we receive by July 7, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 99–076–2, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 99–076–2.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wilmer E. Snell, Operations Officer, Invasive Species and Pest Management Staff, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–8747.

**SUPPLEMENTARY INFORMATION:**

### Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruits, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks that can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93–10 (referred to below as the regulations), restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective on September 22, 1999, and published in the **Federal Register** on September 28, 1999 (64 FR 52213–52214, Docket No. 99–076–1), we quarantined a portion of Los Angeles County, CA, and restricted the interstate movement of regulated articles from the quarantined area.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Oriental fruit fly has been eradicated from the quarantined portion of Los Angeles County, CA. The last finding of Oriental fruit fly in this area was Octobor 19, 1999.

Since then, no evidence of Oriental fruit fly infestation has been found in this area. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Oriental fruit fly no longer exists in Los Angeles County, CA. Therefore, we are removing Los Angeles County, CA, from the list of quarantined areas in § 301.93–3(c). Oriental fruit fly infestations are not known to exist anywhere else in the continental United States.

### Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for

publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove an unnecessary regulatory burden on the public. A portion of Los Angeles County, CA, was quarantined due to the possibility that the Oriental fruit fly could be spread from this area to noninfested areas of the United States. Since this situation no longer exists, immediate action is necessary to remove the quarantine on Los Angeles County, CA, and to relieve the restrictions on the interstate movement of regulated articles from that area.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This interim rule relieves restrictions on the interstate movement of regulated articles from a portion of Los Angeles County, CA.

Within the previously quarantined portion of Los Angeles County, CA, there are approximately 219 entities that will be affected by this rule. All would be considered small entities. These include 1 airport, 5 caterers, 2 certified farmer's markets, 2 community gardens, 154 fruit sellers. 1 grower, 1 landfill, 52 nurseries, and 1 swap meet. These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, these small entities sell regulated articles primarily for local intrastate, not interstate, movement so the effect, if any, of this regulation on these entities appears to be minimal.

The effect on those few entities that do move regulated articles interstate was minimized by the availability of various treatments that, in most cases, allowed these small entities to move regulated articles interstate with very little additional cost.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

## PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.93–3, paragraph (c) is revised to read as follows:

**§ 301.93–3 Quarantined areas.**

* * * * *

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United States quarantined for the Oriental fruit fly.

Done in Washington, DC, this 2nd day of April 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–11374 Filed 5–5–00; 8:45 am]

BILLING CODE 3410–34–P

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**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 48**

**[TD 8879]**

**RIN 1545–AV71; RIN 1545–AT18**

## Kerosene Tax; Aviation Fuel Tax; Taxable Fuel Measurement and Reporting; Tax on Heavy Trucks and Trailers; Highway Vehicle Use Tax; Correction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document contains corrections to Treasury Decision 8879, which was published in the **Federal Register** on Friday, March 31, 2000 (65 FR 17149). The corrections relate to the kerosene excise tax.

**DATES:** These corrections are effective March 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Frank Boland, (202) 622–3130 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Background**

The final regulations that are the subject of these corrections are under sections 4101 and 6427 of the Internal Revenue Code.

**Need for Correction**

As published, TD 8879 contains errors that may prove to be misleading and are in need of clarification.

**List of Subjects in 26 CFR Part 48**

Excise taxes, Reporting and recordkeeping requirements.

**Correction of Publication**

Accordingly, 26 CFR part 48 is corrected by making the following correcting amendments:

## PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

**Paragraph 1.** The authority citation for part 48 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 48.4101–1 is amended by:

1. Redesignating paragraphs (c)(1)(v) and (c)(1)(vi) as paragraphs (c)(1)(vi) and (c)(1)(vii), respectively;

2. Adding paragraph (c)(1)(v);

3. Removing the language "(c)(1)(vi)" from paragraph (l)(2) and adding the language "(c)(1)(vii)" in its place. The addition reads as follows:

**§ 48.4101–1 Taxable fuel; registration.**

* * * * *

(c) * * * (1) * * *

(v) A refiner;

* * * * *

**§ 48.4101–2T [Removed]**

**Par. 3.** Section 48.4101–2T is removed.

**Par. 4.** Section 48.6427–11(e)(2)(iii) is revised to read as follows:.

**§ 48.6427–11 Kerosene; claims by registered ultimate vendors (blending).**

* * * * *

(e) * * *

(2) * * *

(iii) *Model certificate.*

CERTIFICATE OF BUYER FOR PRODUCTION OF A COLD WEATHER BLEND (To support vendor's claim for a credit or payment under section 6427 of the Internal Revenue Code.)

_____(Buyer) certifies the following under penalties of perjury:

Name of buyer

The kerosene to which this certificate applies will be used by Buyer to produce a blend of kerosene and diesel fuel in an area described in a declaration of extreme cold and the blend will be sold for use or used for heating purposes.

This certificate applies to ____ percent of Buyer's purchase from _____ (name, address, and employer identification number of seller) on invoice or delivery ticket number ____.

If Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing.

_____

Title of person signing

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

* * * * *

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 00–11469 Filed 5–5–00; 8:45 am]

**BILLING CODE 4830–01–P**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[CGD07–00–080]**

**RIN 2115—AA97**

## Security Zone; Vicinity of Atlantic Fleet Weapons Training Facility, Vieques, PR and Adjacent Territorial Sea

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** At the request of the U.S. Navy, the Coast Guard is establishing a temporary security zone covering the area of territorial sea and land adjacent to the bombing and gunnery range (Impact Area) at the naval installation on the eastern end of Vieques Island, Puerto Rico. The security zone is needed to protect the bombing and gunnery range, and adjacent land and waters at the Navy's Atlantic Fleet Weapons Training Facility on Vieques Island, PR, to ensure against destruction, injury, or loss of uninterrupted use. Only authorized vessels are permitted to enter or remain within the security zone.

**DATES:** This rule is effective from 12:01 a.m. May 4, 2000 until 11:59 p.m. May 13, 2000.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket [CGD07–00–080] and are available for inspection or copying at the Seventh Coast Guard District office, 909 SE First Avenue, Room 918, Miami, FL 33131, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Steve Andersen at (305) 415–6950.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

In order to protect the interests of national security, and in accordance with the Presidential Directive of January 31, 2000, the President has directed the conduct of Navy Training at the Atlantic Fleet Weapons Training Facility on Vieques Island, PR. Immediate action is needed to ensure the uninterrupted use by the U.S. Navy of the Training Facility on Vieques, including the adjacent land and waters, and to protect that facility from destruction or injury. The Coast Guard is promulgating the security zone regulations to prevent interference with the conduct of the Navy's exercises for the duration of the security zone. As a result, the enforcement of the security zone is a function directly involved in, and necessary to, the Navy training exercise. Accordingly, based on the military function exception set forth in the Administrative Procedure Act, 5 U.S.C. 553(a)(1), notice and comment rule-making and advance publication, pursuant to 5 U.S.C. 553(b) and (d), are not required for this regulation.

Even if the requirements of 5 U.S.C. 553 would otherwise be applicable, the Coast Guard for good cause finds that, under 5 U.S.C. 553(b)(B) and (d)(3), notice and public comment on the rule before the effective date of the rule and advance publication are impracticable and contrary to the public interest. There is an imminent need to use the naval installation bombing and gunnery range and the adjacent waters for exercises scheduled to commence in the near term, and the exercises being conducted by the Navy further the national security interests of the United States. Moreover, the conduct of notice and comment rulemaking proceedings and compliance with advance notice requirements present significant public safety concerns that outweigh the public interest in compliance with these provisions. Public rulemaking proceedings and advance publication could provoke consequences that would pose a risk of harm to the public, military personnel, and law enforcement personnel charged with enforcement of the security zone and interfere with the commencement and completion of the training exercises. This regulation is geographically and temporally tailored to meet the needs of national security with a minimal burden on the public.

### Background and Purpose

The Atlantic Fleet Weapons Training Facility is located on the eastern end of Vieques Island, PR. Use of this naval installation is important to achieving acceptable levels of military readiness in accordance with established training standards and requires training exercises conducted with inert ordnance. Such training exercises cannot be safely or effectively conducted if there are unauthorized persons inside the training areas or if the installation is damaged or personnel are injured. The U.S. Army Corps of Engineers has established a danger zone in the vicinity of the bombing and gunnery target area, 33 CFR 334.1470, that is in effect during these training exercises. The Army Corps has also established a restricted area off the coast of the naval facility, 33 CFR 334.1480.

In order to further the interests of national security, and in accordance with the Presidential directive of

January 31, 2000, the President has directed the conduct of Navy Training at the Atlantic Fleet Weapons Training Facility on Vieques Island, Puerto Rico. The restricted area and danger zone do not provide the degree of security required for the naval facility before and during the next use of the facility, scheduled to commence in the near term. That use will entail training exercises, all conducted with inert ordnance. These operations cannot be conducted if unauthorized personnel or vessels are present inside the security zone. Therefore, to ensure against the destruction, injury or loss of uninterrupted use of the naval installation at Vieques, including the adjacent land and waters, the Coast Guard is establishing this security zone.

This security zone is established pursuant to the authority of subpart D of part 165 of Title 33 of the Code of Federal Regulations and the Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including subparts 6.01 and 6.04 of part 6 of Title 33 of the Code of Federal Regulations. See E.O. 10173, as amended. The security zone is needed to protect the bombing and gunnery range, and the adjacent facilities and water, at Vieques Island, PR against destruction, injury, or loss of uninterrupted use. Pursuant to this regulation, no vessel or person will be allowed to enter or remain in the security zone unless specifically authorized to do so by the District Commander or his designated representatives. The District Commander or his designated representatives may grant permission for a vessel to enter or remain within the security zone when operations permit and may condition that permission as appropriate.

Vessels or persons violating this section are subject to the penalties set forth in 50 U.S.C. 192 and 18 U.S.C. 3571: seizure and forfeiture of the vessel, a monetary penalty of not more than $250,000, and imprisonment for not more than 10 years.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Although the security zone covers an area out to three miles from shore, the zone will be in effect for a limited amount of time. The vessel traffic in the area normally consists of a small number of commercial fishing vessels and other vessels transiting the area. These vessels are not allowed to enter or transit the zone during these training exercises under existing Army Corps of Engineer regulations (33 CFR 334.1470 and 33 CFR 334.1480). These vessels can redirect their transit around the zone with only minor delays in time and distance.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in the vicinity of the Naval installation at Vieques, PR and fishing vessels which normally fish the area. These vessels are not allowed to enter or transit the zone during these training exercises under existing Army Corps of Engineer regulations (33 CFR 334.1470 and 334.1480). This security zone will not have a significant economic impact on a substantial number of these small entities. Although the security zone will cover an area out to three miles from shore, the zone will be in effect only for a limited amount of time.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we will assist small entities in understanding this rule and how it affects them. Small entities may call the person identified in **FOR FURTHER INFORMATION CONTACT**.

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

The Coast Guard anticipates this temporary rule will be categorically excluded from further environmental documentation under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C. The environmental analysis checklist and Categorical Exclusion Determination will be prepared and submitted after establishment of this temporary security zone, and will be available in the docket. This temporary rule only ensures the protection of Naval assets and the uninterrupted use of the area for scheduled Naval operations. Standard Coast Guard manatee and turtle watch measures will be in effect during Coast Guard patrols of the security zone. Deep-water routes will be used where practical. Lookouts will be posted to avoid collision with turtles and manatees. If a collision occurs, notification will be made to the U.S. Fish & Wildlife Service at Boqueron, Puerto Rico (787–851–7297). The

Categorical Exclusion Determination will be available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

**Temporary Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. A new temporary § 165.T–07–080 is added to read as follows:

**§ 165.T07–080 Security Zone; Vieques Island, PR.**

(a) *Location.* The following area is established as a security zone: An area of water and land measured from the mean high water line on the naval installation out to 3 nautical miles along the east end of Vieques Island extending from Santa Maria (18°09′29″ N, 065° 25′23″ W) due north 3 nautical miles to position 18°12′29″ N, 065°25′23″ W, then easterly around Vieques Island, remaining three nautical miles from the coast, to a point 3 nautical miles south of the eastern edge of Puerto Mosquito (18°02′34″ N, 065°26′26″ W) then due north to the eastern edge of Puerto Mosquito (18°05′34″ N, 065°26′26″ W), including the rocks, cays, and small islands within.

(b) *Regulations.*

(1) In accordance with the general regulations in § 165.33 of this part:

(i) No person or vessel may enter or remain in this zone without the permission of the District Commander or designated representatives,

(ii) All persons within this zone shall obey any direction or order of the District Commander or designated representatives,

(iii) The District Commander or designated representatives may take possession and control of any vessel in this zone,

(iv) The District Commander or designated representatives may remove any person, vessel, article or thing from this zone,

(v) No person may board, or take or place any article or thing on board, any vessel in this zone without the permission of the District Commander or designated representatives; and,

(vi) No person may take or place any article or thing upon any waterfront facility in this security zone without the permission of the District Commander or designated representatives.

(2) The District Commander or designated representatives may grant permission for individual vessels to enter or remain within this security zone when permitted by operational conditions and may place conditions upon that permission. Vessels permitted to enter or remain in this zone must radio the patrol commander upon entering and departing the zone.

(c) *Enforcement.* Vessels or persons violating this section are subject to the penalties set out in 50 U.S.C. 192 and 18 U.S.C. 3571:

(1) Seizure and forfeiture of the vessel;

(2) A monetary penalty of not more than $250,000; and

(3) Imprisonment for not more than 10 years.

(d) *Dates.* This section is effective from 12:01 a.m. May 4, 2000 until 11:59 p.m. May 13, 2000.

(e) *Authority.* In addition to the authority in part 165, this section is also authorized under authority of Executive Order 10173, as amended.

Dated: April 28, 2000.

**G.W. Sutton,**

*Captain U.S. Coast Guard, Acting Commander, Seventh Coast Guard District,*

[FR Doc. 00–11511 Filed 5–4–00; 11:18 am]

**BILLING CODE 4910–15–P**

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 9 and 63**

**[AD–FRL–6585–5]**

**RIN 2060–AE86**

**National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production; Synthetic Organic Chemical Manufacturing Industry; Epoxy Resins Production and Non-Nylon Polyamides Production; and Petroleum Refineries**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule and final rule.

**SUMMARY:** The EPA is taking direct final action to amend the national emission standards for hazardous air pollutants (NESHAP) for Polyether Polyols Production; Synthetic Organic Chemical Manufacturing Industry (also known as Hazardous Organic NESHAP, or HON); Epoxy Resins Production and Non-Nylon Polyamides Production; and Petroleum Refineries. For all four of these NESHAP, this direct final rule amends the definition of *equipment leaks* to add the term "connectors" to the list of equipment that is subject to the equipment leak provisions in those NESHAP.

The remainder of this direct final rule corrects referencing errors and several equations which contained printing errors in the final NESHAP for Polyether Polyols Production (hereafter referred to as "subpart PPP"). This direct final rule amends the description of a process change and the description of excess emissions; the requirements pertaining to submission of a request for extension of a compliance date; the storage vessel monitoring requirements; the definition of the terms *epoxide, polyether polyol,* and *Group 2 wastewater stream;* the conditions required during performance testing for batch process vents; which compounds are considered to be organic hazardous air pollutants (HAPs) for the purposes of both the maintenance wastewater and the process wastewater requirements; the information requirements for start-up, shutdown, and malfunction reports; the dates on which initial notifications are due; and the reporting requirements for other reports to clarify those requirements.

In addition to the direct final rule, in compliance with the Paperwork Reduction Act (PRA), EPA is amending as a final rule the Office of Management and Budget (OMB) approval table to list the OMB control number issued under the PRA for information collection requirements for subpart PPP.

**DATES:** The amendments to 40 CFR part 9 are effective on May 8, 2000. The direct final rule amendments to 40 CFR part 63 are effective on July 7, 2000 without further notice, unless the EPA receives adverse comments by June 7, 2000, or by June 22, 2000 if a public hearing is requested. See the proposed rule in this issue of the **Federal Register** for information on the hearing. If we receive such comments, and those comments apply to an amendment, paragraph, or section of this rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw only those provisions on which we received adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective on July 7, 2000 and which provisions are being withdrawn.

**ADDRESSES:** *Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information

Center (6102), Attention Docket numbers A–90–20, A–92–37, A–93–48, and/or A–96–38 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below. *Docket.* Docket numbers A–90–20 and (the HON); A–92–37 (Epoxy Resins Production and Non-Nylon Polyamides Production); A–93–48 (Petroleum Refineries); and A–96–38 (Polyether Polyols Production) contain supporting information used in developing the standards. The dockets are located at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert E. Rosensteel, Organic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5608, electronic mail address: rosensteel.bob@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) An index for each docket, as well as individual items contained within the dockets, may be obtained by calling (202) 260–7548 or (202) 260–7549. A reasonable fee may be charged for copying docket materials. Docket indexes are also available by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at http://www.epa.gov/airprogm/oar/docket/faxlist.html. *Comments.* Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket numbers A–90–20, A–92–37, A–93–48, and/or A–96–38. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Melva Toomer, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 944, Durham, NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter. *World Wide Web.* In addition to being available in the docket, an electronic copy of this action is also available through the World Wide Web (WWW). Following signature, a copy of this action will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

**Regulated Entities**

Categories and entities potentially affected by this action include:

| Category | Standard Industrial Classification (SIC) codes | North American Industrial Classification System (NAICS) codes | Examples of regulated entities |
|---|---|---|---|
| Industry | 2865 and 2869 | 325110, 325188, 325192, 325193, 325199, and 325120. | Synthetic organic chemical manufacturing industry (SOCMI) units (*e.g.*,producers of benzene, toluene, or any other chemical listed in table 1 of 40 CFR part 63, subpart F). |
| Industry | 2821 | 325211 | Epoxy resins and non-nylon polyamide resins. |
| Industry | 2911 | 324110 | Petroleum refineries. |
| Industry | 2843 and 2869 | 325199 and 325613 | Producers of polyether polyols and polyether monools. |

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulations affected by these rules. To determine whether your facility is regulated by these rules, you should carefully examine all of the applicability criteria in 40 CFR part 63, subparts F, W, CC, and PPP. If you have any questions regarding the applicability of these amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

*Judicial Review.* Under section 307(b)(1) of the CAA, judicial review of this direct final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by September 5, 2000. Under section 307(b)(2) of the CAA, the requirements that are the subject of this direct final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Also under section 307(b)(1) of the CAA, judicial review of the final rule amendment to part 9 in this action is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by July 7, 2000. Under section 307(b)(2) of the CAA, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

## I. Why Are We Publishing These Amendments as a Direct Final Rule?

In the direct final rule portion of this action, we are correcting printing and referencing errors. We are also revising and slightly reorganizing certain paragraphs, and we are making minor amendments to certain definitions. These changes provide clarification on a variety of provisions ranging from applicability to recordkeeping. In all instances, we believe that these changes have the potential to reduce the burden on both owners and operators of affected sources and on the State or local agency implementing the rule, although we are unable to quantify reductions in hours for these amendments. For these reasons, we view these amendments as noncontroversial and anticipate no adverse comments, and we are publishing these amendments in a direct final rule.

If an adverse comment applies to an amendment, paragraph, or section of this direct final rule, and that provision may be addressed separately from the remainder of the rule, we will withdraw only those provisions on which we received adverse comments. In the "Proposed Rules" section of this **Federal Register**, we are publishing a separate document that will serve as the proposal for any provisions in this direct final rule on which we receive adverse comments. The EPA will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of this direct final rule is withdrawn, all public comments received will be addressed in a subsequent final rule based on the proposal in the "Proposed Rules" section of this **Federal Register**. We will not institute a second comment period on the subsequent final rule. Any parties interested in commenting must do so at this time. The nature of the changes contained in this direct final rule are such that it will benefit both industry and the States for these changes to become effective sooner, rather than later, as will be described in more detail below.

## II. What Amendments Are We Making To Reflect OMB Approval of the Information Collection Request (ICR) for the NESHAP for Polyether Polyols Production?

This final rule amends the table of currently approved Information Collection Request (ICR) control numbers issued by OMB. This final rule updates the table to list those information requirements promulgated under the NESHAP for Polyether Polyols Production, which appeared in the **Federal Register** on June 1, 1999 (64 FR 29420). The affected regulations are codified at 40 CFR part 63, subpart PPP. We will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations and in each CFR volume containing EPA regulations. The table lists the section numbers with reporting and recordkeeping requirements and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfy the requirements of the Paperwork Reduction Act and OMB's implementing regulations at 5 CFR part 1320. The ICR itself was subject to public notice and comment prior to OMB's approval of the ICR. Further, because amendment of the table in part 9 is technical in nature, we believe that another notice and comment period for this amendment is unnecessary. For these reasons, we believe that there is good cause under the Administrative Procedure Act (5 U.S.C. § 553(b) to amend this table without prior notice and comment.

## III. What Amendments Are We Making to the Equipment Leak Definition That Affect Subparts F, W, CC, and PPP?

In these rules, we are amending the definition of *equipment leak* in subparts F, W, CC, and PPP of 40 CFR part 63. In each of these NESHAP, the definition of *equipment leak* listed several sources from which emissions of organic HAP constitute a leak. However, "connectors" are not included in the list of sources of emissions that are included in the definition of the term *equipment leak* in any of those NESHAP.

Affected sources subject to any of those four subparts are required to comply with the NESHAP for equipment leaks (40 CFR part 63, subpart H). In subpart H, § 63.169 contains standards for pumps, valves, connectors, and agitators in heavy liquid service; instrumentation systems; and pressure relief devices in liquid service. Section 63.174 (of 40 CFR part 63, subpart H) contains standards for connectors in gas/vapor service and in light liquid service. The fact that there are specific provisions in subpart H applicable to connectors clearly demonstrates that we always intended emissions from connectors to be considered equipment leaks. In addition, the definition of *equipment* in § 63.161 of subpart H includes connectors, providing further evidence that the definition of *equipment leak* should include connectors. Therefore, we are amending the definition of *equipment leak* in subparts F, W, CC, and PPP by adding the term "a connector" to the list of equipment in each of those definitions.

## IV. What Amendments Are We Making to Subpart PPP?

Although this action amends portions of four separate subparts of 40 CFR part 63 (*i.e.*, subparts F, W, CC, and PPP), the primary focus of the amendments in this action is subpart PPP, which was promulgated on June 1, 1999 (64 FR 29420). This direct final rule contains amendments and technical corrections to the requirements in subpart PPP.

Several equations in the promulgated version of subpart PPP were printed incorrectly. This direct final rule amends the erroneous symbols in equations numbered 1, 2, 4, 5, 7, 10, and 13, to produce the originally intended equations.

This direct final rule also corrects references in several sections of subpart PPP. References are being corrected in this direct final rule in the following paragraphs: § 63.1422(b); § 63.1426(d)(3)(ii); § 63.1428(g)(3)(i); § 63.1430(e)(1)(vi) and (vii); § 63.1432(h) and (l); § 63.1433(a)(5), (7), and (8); § 63.1435(c); § 63.1439(e)(5)(iv) and (e)(7)(ii), and in the definition of *Group 2 wastewater stream*.

Two terms which are used in subpart PPP but were not defined in the final rule were added to the list in § 63.1423(a) that incorporates the definitions from other subparts. Specifically, *oil-water separator or organic-water separator* and *responsible official* were added to the list and their definitions in subparts G and A, respectively, were referenced.

In addition, the June 1, 1999 final rule contained references to 40 CFR part 63, subpart I in both §§ 63.1422(h) and 63.1434(c). This was an error because subpart I does not apply to polyether polyols producers. Therefore, both §§ 63.1422(h) and 63.1434(c) are removed and reserved in this direct final rule.

The provisions in § 63.1420(g) specify how changes or additions to plant sites impact whether an affected source is a new affected source or an existing affected source. Paragraph (g)(2) in § 63.1420 addresses adding emission points or making process changes to an existing affected source. The provisions in § 63.1420(g)(2)(i) specify that a process change or addition to an existing affected source that meets the definition of reconstruction and that occurred after September 4, 1997 causes

the entire affected source to become a new affected source. After promulgation of subpart PPP, we realized that these provisions were not consistent with our reconstruction policy for 40 CFR part 63 standards, which is contained in the general provisions for part 63 (40 CFR part 63, subpart A). The general provisions clearly distinguish between "replacements" and "additions." The definition of *reconstruction* in the general provisions only addresses the "replacement" of equipment, while § 63.5(b)(6) of the general provisions addresses additions. At promulgation, these two concepts were combined in the language for § 63.1420(g)(2)(i), creating confusion and making the subpart PPP requirements inconsistent with the our general policy on "replacements" and "additions." Therefore, in this direct final rule we are revising the provisions in § 63.1420(g)(2) to clearly distinguish how the replacement of components should be handled by owners and operators, and how the addition of new components should be handled, with respect to applicability to the new or existing source requirements. In summary, if the replacement of components at an existing affected source meets the definition of reconstruction, then the affected source becomes a new affected source. If an addition is made to an existing affected source, then the addition becomes part of the existing affected source.

Paragraph (g)(3) in § 63.1420 describes how to distinguish a process change from a change that is not considered to be a "process change," according to the 40 CFR part 63, subpart PPP requirements. We are amending § 63.1420(g)(3) by removing the last phrase (which referred to the equipment configuration and operating conditions documented in the notification of compliance status report required by § 63.1439(e)(5)), because not all equipment configurations and operating conditions are required to be reported in the notification of compliance status report. The phrase that was removed implied that unless a configuration or condition was described in the notification of compliance status report, equipment in that configuration or condition would automatically be considered to be a "process change." It was not our intent that every possible equipment configuration or condition be described in the notification of compliance status report. In addition, the phrase "changes that are not within the equipment configuration" was replaced with the phrase "changes that do not alter the equipment configuration," for reasons similar to those described above.

Paragraph (h) in § 63.1420 addresses the applicability of subpart PPP during periods of start-up, shutdown, malfunction, or nonoperation. Paragraph (h)(1) in § 63.1420 specifies that the emission limitations in subpart PPP do not apply during these periods. However, paragraphs § 63.1420(h)(3) and (4) contain requirements specific to periods of start-up, shutdown, and malfunction. Therefore, paragraph § 63.1420(h)(1) in the direct final rule has been amended to indicate that the emission limitations in the subpart do not apply during periods of start-up, shutdown, or malfunction, except as provided in § 63.1420(h)(3) and (4).

Also, § 63.1420(h)(4) requires that you must prevent or minimize excess emissions during periods of start-up, shutdown, and malfunction, and provides a description of what constitutes "excess emissions." In these direct final amendments, we are changing this description from "emissions in excess of those that would have occurred if there were no start-up, shutdown, or malfunction," to "emissions greater than those allowed by the emission limitation which would apply during operational periods other than start-up, shutdown, and malfunction." We are making this change because we believe that the new wording is more consistent with our original intent, which was that owners or operators take steps to minimize emissions during start-up, shutdown, and malfunction. Further, we believe the revision in this direct final rule is clearer and more specific than the promulgated language.

Paragraph (e) of § 63.1422 includes the provisions for requesting a compliance extension. In the promulgated rule, this paragraph stated that a request for compliance must be submitted no later than 120 days prior to the compliance dates specified in paragraphs (b) through (d) of § 63.1422. However, there are compliance dates specified in other paragraphs of subpart PPP. For instance, § 63.1420(g)(2)(i) of this direct final requires that new emission points comply with the existing source requirements by 120 days after the day of initial start-up. We intended that the compliance extension provisions in § 63.1422(e) apply to these other compliance dates, as well as to the compliance dates in § 63.1420(b) through (d). Therefore, this direct final rule adds a phrase to make it clear that you can request a compliance extension for compliance dates that are specified in sections of subpart PPP other than § 63.1420(b) through (d).

The promulgated definition of *epoxide* in subpart PPP includes a description of what an epoxide is (i.e., a chemical compound consisting of a three-membered cyclic ether). The definition also states that only emissions of ethylene oxide and propylene oxide are regulated under subpart PPP. After promulgation of subpart PPP, we became aware of another *epoxide*, "epichlorohydrin," that is used to make polyether polyols. Under the promulgated definition of epoxide, emissions of epichlorohydrin would be exempt from control. This is inconsistent with section 112(b), (c), and (d) of the CAA. Therefore, we have added epichlorohydrin to Table 4 (Known Organic HAP from Polyether Polyols Products) and have amended the definition of *epoxide* to include epichlorohydrin in the list of epoxides that are subject to the provisions of subpart PPP.

In the promulgated NESHAP, the definition of *polyether polyol* excludes hydroxyethyl cellulose. At the time of promulgation of subpart PPP, we intended that this product, which meets the basic criteria of a polyether polyol, would be covered by the Miscellaneous Cellulose NESHAP, which we are currently developing. However, in the development of the Miscellaneous Cellulose NESHAP, we have become aware of other cellulose ether products that meet the definition of *polyether polyol*. Therefore, in this direct final rule we have revised the definition of *polyether polyol* to exclude the entire family of cellulose ethers, not just hydroxyethyl cellulose.

The promulgated version of subpart PPP requires compliance with the HON requirements for storage vessels, with the exceptions listed in § 63.1432. Section 63.1432 requires that records of all times when the storage tank is being filled be kept, in addition to the records required in § 63.123 of the HON. In this direct final rule, we are making clarifications to the rule at § 63.1432(q). Our intent was that the requirement to keep records of times when the storage vessel is being filled should only apply to storage vessels using a combustion, recovery, or recapture device, where the applicable monitoring plan does not specify continuous monitoring. The amended language in § 63.1432(q) should make this distinction clear.

For the purposes of both the maintenance wastewater and the process wastewater requirements in subpart PPP, we are amending § 63.1433(a)(1) and (2) and (b)(1), in order to clarify which compounds are considered "organic HAP." The language in § 63.1433(a)(1) is

inadequate, while the language in § 63.1433(a)(2) and § 63.1433(b)(1) is unnecessarily complicated and difficult to interpret. The amendments in this direct final rule should make those requirements much easier to follow.

This direct final rule also clarifies the conditions required during performance testing for process vents from batch unit operations. Section 63.1426, paragraph (c)(3)(i)(B), which contains requirements specific to process vents from batch unit operations, states that performance testing may be conducted during either absolute worst-case conditions or hypothetical worst-case conditions. However, § 63.1437(a)(1) which contains general performance testing requirements for all emission sources, lists only absolute worst-case conditions as an option for performance testing at process vents from batch unit operations. This direct final rule corrects § 63.1437(a)(1) by revising that paragraph to state that performance testing at both absolute and hypothetical worst-case conditions is acceptable for process vents from batch unit operations.

Additionally, this direct final rule amends the information requirements associated with start-up, shutdown, and malfunction reports in § 63.1439(b)(1)(ii). The promulgated NESHAP requires the start-up, shutdown, and malfunction report to include all of the information recorded under § 63.1439(b)(1)(i)(A) through (B), and to contain the name, title, and signature of the owner or operator, or other responsible official certifying the report's accuracy. However, this is a good deal more information than is required to be specified in the general provisions in § 63.10(d)(5)(i). We have decided that as long as the information recorded under § 63.1439(b)(1)(i)(A) through (B) is recorded, that information need not be submitted to the Administrator. Therefore, this direct final rule references the start-up, shutdown, and malfunction reporting requirements in § 63.10(d)(5)(i) and no longer includes such a long list of information to report under § 63.1439(b)(1)(ii).

This direct final rule also removes the requirement that existing sources submit an Initial Notification report. The promulgated rule lists two separate due dates in different sections of the rule for the Initial Notification report. Section 63.1439, paragraph (e)(3)(ii)(A), states that the due date for the Initial Notification report for existing sources is June 1, 2000, but Table 8 shows the date as 120 days after June 1, 1999. Neither of those two dates is appropriate, in that the first date is too soon after promulgation of subpart PPP, while the other date is too late, since it was after the due date of the Notification of Compliance Status report for equipment leaks (April 29, 2000, or 150 days after the December 1, 1999 compliance date). To be useful, the Administrator (or the delegated authorities) needs to receive the Initial Notification report with sufficient time to prepare for receipt of the Notification of Compliance Status reports. Since this direct final rule will not take effect until after the date that the Notification of Compliance Status report for equipment leaks is due for existing sources, we do not believe that the submittal of an Initial Notification report is beneficial. Therefore, we have removed all requirements related to the Initial Notification report for existing sources. The specific changes are to § 63.1439(e)(3) and Table 8 of subpart PPP.

This direct final rule also inserts some introductory language pertinent to the other reports that are due in § 63.1439(e)(7) and reorganizes and renumbers the subsections of that paragraph. We are amending Table 1 of subpart PPP to clarify that although § 63.10(d)(5)(i) from the general provisions applies to subpart PPP affected sources, § 63.10(d)(5)(ii) (which requires immediate start-up, shutdown, or malfunction reports) does not.

## V. What Are the Administrative Requirements for These Rules?

### *A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that these amendments are not a "significant regulatory action" because they do not meet any of the above criteria. Consequently, these rules were not submitted to OMB for review under Executive Order 12866.

### *B. Executive Order 13132*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the regulation.

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of Executive Order 13132 do not apply to this direct final rule.

### *C. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by

consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." These rules do not significantly or uniquely affect the communities of Indian tribal governments. No tribal governments own or operate an affected source. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to these rules.

*D. Executive Order 13045*

Executive Order 13045 (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. These rules fall into that category only in part: the minimum rule stringency for subpart PPP is set according to a congressionally-mandated, technology-based lower limit called the "floor," while a decision to increase the stringency beyond this floor can be based on risk considerations. Thus, Executive Order 13045 applies to these rules only to the extent that the Agency may consider the inherent toxicity of a regulated pollutant, and any differential impact such a pollutant may have on children's health, in deciding whether to adopt control requirements more stringent than the floor level in subpart PPP.

These rules are not subject to Executive Order 13045 because they are not economically significant as defined in Executive Order 12866. No children's risk analysis was performed for these rules because no alternative technologies exist that would provide greater stringency at a reasonable cost. Therefore, the results of any such analysis would have no impact on the stringency decision.

*E. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least-burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least-costly, most cost-effective, or least-burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that these rules do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or in the private sector in any 1 year. Thus, today's rules are not subject to the requirements of sections 202 and 205 of the UMRA. In addition, the EPA has determined that these rules contain no regulatory requirements that might significantly or uniquely affect small governments, because they contain no requirements that apply to such governments or impose obligations on them. Therefore, today's rules are not subject to the requirements of section 203 of the UMRA.

*F. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 USC 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this direct final on small entities, small entity is defined as : (1) A small business that has less than 750 employees and is unaffiliated with a larger domestic entity; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of these rules on small entities, we have concluded that these actions will not have a significant economic impact on a substantial number of small entities. Consistent with Small Business Administrative (SBA) size standards, a polyether polyols production facility is classified as a small entity if it has less than 750 employees and is unaffiliated with a larger domestic entity. On that basis, 7 of the 36 polyether polyol production facilities are classified as small entities (i.e., having fewer than 750 employees). The EPA determined that none of these seven small entities will experience an increase in costs that is greater than one percent of revenues, as a result of these rules. This does not qualify as a significant economic impact on a substantial number of small businesses.

*G. Paperwork Reduction Act*

The information collection requirements in the final rule were submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been

prepared by EPA (ICR No. 1811.01), but, at promulgation, that ICR had not yet been approved by OMB. However, since promulgation the OMB has approved the ICR, and this final rule amends the table of currently approved ICR control numbers issued by OMB and updates the table to accurately display those information requirements not previously approved. The information collection requirements that are made effective by this action under OMB control number 2060–0415 were contained in ICR number 1811.01.

Today's final rule will have no impact on the information collection burden estimates made previously. The direct final amendments clarify the intent of the subpart PPP and correct inadvertent omissions and minor drafting errors. Consequently, the ICR has not been revised.

*H. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, (15 U.S.C. 272 note), directs all Federal agencies to use voluntary consensus standards instead of government-unique standards in their regulatory activities unless to do so would be inconsistent with applicable law or would be otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, material specifications, test method, sampling and analytical procedures, business practices, etc.) that are developed or adopted by one or more voluntary consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the National Fire Protection Association (NFPA), and the Society of Automotive Engineers (SAE). The NTTAA requires Federal agencies like EPA to provide Congress, through OMB, with explanations when the Agency decides not to use available and applicable voluntary consensus standards.

During the rulemaking, the Agency searched for voluntary consensus standards that might be applicable. The search has identified no applicable voluntary standards. Accordingly, the NTTAA requirement to use applicable voluntary consensus standards does not apply to these rules.

*I. The Congressional Review Act*

The Congressional Review Act, 5 U.S.C. § 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. § 804(2). This rule will be effective July 7, 2000.

**List of Subjects**

*40 CFR Part 9*

Environmental protection, Reporting and recordkeeping requirements.

*40 CFR Part 63*

Environmental protection, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements, Administrative practice and procedure, Air pollution control.

Dated: April 20, 2000.

**Carol M. Browner,**

*Administrator,*

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

**PART 9—[AMENDED]**

1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table in numerical order to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

* * * * *

| 40 CFR citation | OMB control no. |
|---|---|
| * * * * * | |
| National Emission Standards for Hazardous Air Pollutants for Source Categories [3] | |
| * * * * * | |
| 63.1420–63.1439 | 2060–0415 |

[3] The ICRs referenced in this section of the table encompass the applicable general provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

* * * * *

**PART 63—[AMENDED]**

3. The authority citation for part 63 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

* * * * *

**Subpart F—[AMENDED]**

* * * * *

4. Section 63.101 is amended by revising the definition of *equipment leak*, to read as follows:

**§ 63.101 Definitions.**

* * * * *

*Equipment leak* means emissions of organic hazardous air pollutants from a connector, pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, surge control vessel, bottoms receiver, or instrumentation system in organic hazardous air pollutant service as defined in § 63.161.

* * * * *

**Subpart W—[AMENDED]**

5. Section 63.522 is amended by revising the definition of equipment leaks, to read as follows:

**§ 63.522 Definitions.**

* * * * *

*Equipment leaks* means emissions of hazardous air pollutants from a connector, pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, or instrumentation system in organic hazardous air pollutant service.

* * * * *

**Subpart CC—[AMENDED]**

6. Section 63.641 is amended by revising the definition of *equipment leak*, to read as follows:

**§ 63.641 Definitions.**

* * * * *

*Equipment leak* means emissions of organic hazardous air pollutants from a connector, pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, or instrumentation system *in organic hazardous air pollutant service* as defined in this section. Vents from wastewater collection and conveyance systems (including, but not limited to wastewater drains, sewer vents, and sump drains), tank mixers, and sample valves on storage tanks are not equipment leaks.

* * * * *

**Subpart PPP—[AMENDED]**

* * * * *

7. Section 63.1420 is amended by:

a. Revising paragraph (e)(3) introductory text;

b. Revising paragraph (e)(9);

c. Revising paragraph (g)(1)(i) introductory text;

d. Revising paragraph (g)(2) introductory text;

e. Revising paragraph (g)(2)(i) introductory text;

f. Revising paragraph (g)(2)(i)(A);

g. Revising paragraph (g)(2)(ii);

h. Adding paragraph (g)(2)(iii);

i. Revising paragraph (g)(3);

j. Revising paragraph (g)(4);

k. Revising paragraph (h)(1); and

l. Revising paragraph (h)(4).

The revisions and additions read as follows:

**§ 63.1420 Applicability and designation of affected sources.**

* * * * *

(e) * * *

(3) *Annual applicability determination for non-PMPUs that have produced a polyether polyol.* Once per year beginning June 1, 2004, the owner or operator of each flexible operation unit that is not designated as a PMPU, but that has produced a polyether polyol at any time in the preceding 5-year period or since the date that the unit began production of any product, whichever is shorter, shall perform the evaluation described in paragraphs (e)(3)(i) through (iii) of this section. However, an owner or operator that does not intend to produce any elastomer product in the future, in accordance with paragraph (e)(9) of this section, is not required to perform the evaluation described in paragraphs (e)(3)(i) through (iii) of this section.

* * * * *

(9) *PMPUs terminating production of all polyether polyols.* If a PMPU terminates the production of all polyether polyols, and the owner or operator does not anticipate the production of any polyether polyols in the future in that PMPU, the process unit is no longer a PMPU and is not subject to this subpart after notification is made to the Administrator. This notification shall be accompanied by a rationale for why it is anticipated that no polyether polyols will be produced in the process unit in the future.

* * * * *

(g) * * *

(1) * * *

(i) If a group of one or more PMPUs is added to a plant site, the added group of one or more PMPUs and their associated equipment, as listed in paragraph (a)(4) of this section, shall be a new affected source and shall comply with the requirements for a new affected source in this subpart upon initial start-up or by June 1, 1999, whichever is later, if the added group of one or more PMPUs meets the criteria specified in paragraph (g)(1)(i)(A) of this section and either meets the criteria in paragraph (g)(1)(i)(B) or (C) of this section.

* * * * *

(2) *Adding emission points or making process changes to existing affected sources.* The provisions of paragraphs (g)(2)(i), (ii), and (iii) of this section apply to the owner or operator that adds emission points or makes process changes to an existing affected source.

(i) If any components are replaced at an existing affected source such that the criteria specified in paragraphs (g)(2)(i)(A) and (B) of this section are met, the entire affected source shall be a new affected source and shall comply with the requirements for a new affected source upon initial start-up or by June 1, 1999, whichever is later.

(A) The replacement of components meets the definition of reconstruction in § 63.1423(b). For purposes of determining whether the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct an entire affected source, the equivalent capital cost shall be the entire potentially affected source; and

* * * * *

(ii) If any components are replaced at an existing affected source such that the criteria specified in paragraphs (g)(2)(i)(A) and (B) of this section are not met and that replacement of components creates one or more emission points (*i.e.*, either newly created Group 1 emission points or emission points that change from Group 2 to Group 1) or causes any other emission point to be added (*i.e.*, Group 2 emission points, heat exchange systems subject to § 63.1435, or equipment leak components subject to § 63.1434), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission point(s) shall be in compliance upon initial start-up or by the appropriate compliance date specified in § 63.1422 (*i.e.*, December 1, 1999 for most equipment leak components subject to § 63.1434, and June 1, 2002 for emission points other than equipment leaks), whichever is later.

(iii) If an addition or process change (not including a process change that solely replaces components) is made that creates one or more Group 1 emission points (*i.e.*, either newly created Group 1 emission points or emission points that change group status from Group 2 to Group 1) or causes any other emission point to be added (*i.e.*, Group 2 emission points, heat exchange systems subject to § 63.1435, or equipment leak components subject to § 63.1434), the resulting emission point(s) shall be subject to the applicable requirements for an existing affected source. The resulting emission point(s) shall be in compliance by initial start-up or by the appropriate compliance date specified in § 63.1422 (*i.e.*, December 1, 1999 for most equipment leak components subject to § 63.1434, and June 1, 2002 for emission points other than equipment leaks), whichever is later.

(3) *Determining what are and are not process changes.* For purposes of paragraph (g) of this section, examples of process changes include, but are not limited to, additions in process equipment resulting in changes in production capacity; production of a product outside the scope of the compliance demonstration; or whenever there is a replacement, removal, or addition of recovery equipment. For purposes of paragraph (g) of this section, process changes do not include: process upsets, unintentional temporary process changes, and changes that do not alter the equipment configuration and operating conditions.

(4) *Reporting requirements for owners or operators that change or add to their plant site or affected source.* An owner or operator that changes or adds to their plant site or affected source, as discussed in paragraphs (g)(1) and (g)(2) of this section, shall submit a report as specified in § 63.1439(e)(7)(iii).

(h) * * *

(1) The emission limitations set forth in this subpart and the emission limitations referred to in this subpart shall apply at all times except during periods of nonoperation of the affected source (or specific portion thereof) resulting in cessation of the emissions to

which this subpart applies. These emission limitations shall not apply during periods of start-up, shutdown, or malfunction, except as provided in paragraphs (h)(3) and (4) of this section. During periods of start-up, shutdown, or malfunction, the owner or operator shall follow the applicable provisions of the start-up, shutdown, and malfunction plan required by § 63.6(e)(3). However, if a start-up, shutdown, malfunction, or period of nonoperation of one portion of an affected source does not affect the ability of a particular emission point to comply with the emission limitations to which it is subject, then that emission point shall still be required to comply with the applicable emission limitations of this subpart during the start-up, shutdown, malfunction, or period of nonoperation. For example, if there is an overpressure in the reactor area, a storage vessel that is part of the affected source would still be required to be controlled in accordance with the storage tank provisions in § 63.1432. Similarly, the degassing of a storage vessel would not affect the ability of a process vent to meet the emission limitations for process vents in §§ 63.1425 through 63.1430.

* * * * *

(4) During start-ups, shutdowns, and malfunctions when the emission limitations of this subpart do not apply pursuant to paragraphs (h)(1) through (3) of this section, the owner or operator shall implement, to the extent reasonably available, measures to prevent or minimize excess emissions to the extent practical. For purposes of this paragraph, the term "excess emissions" means emissions greater than those allowed by the emissions limitation which would apply during operational periods other than start-up, shutdown, and malfunction. The measures to be taken shall be identified in the applicable start-up, shutdown, and malfunction plan, and may include, but are not limited to, air pollution control technologies, recovery technologies, work practices, pollution prevention, monitoring, and/or changes in the manner of operation of the affected source. Use of back-up control techniques is not required, but is allowed, if available.

* * * * *

8. Section 63.1422 is amended by revising paragraph (b), by revising paragraph (e) introductory text, and removing and reserving paragraph (h) as follows:

**§ 63.1422 Compliance dates and relationship of this rule to existing applicable rules.**

* * * * *

(b) New affected sources that commence construction or reconstruction after September 4, 1997 shall be in compliance with this subpart upon initial start-up or by June 1, 1999, whichever is later.

* * * * *

(e) Pursuant to section 112(i)(3)(B) of the Act, an owner or operator may request an extension allowing the existing affected source up to 1 additional year to comply with section 112(d) standards. For purposes of this subpart, a request for an extension shall be submitted to the permitting authority as part of the operating permit application, or to the Administrator as a separate submittal, or as part of the Precompliance Report. Requests for extensions shall be submitted no later than 120 days prior to the compliance dates specified in paragraphs (b) through (d) of this section, or as specified elsewhere in this subpart. The dates specified in § 63.6(i) for submittal of requests for extensions shall not apply to this subpart.

* * * * *

(h) [Reserved]

9. Section 63.1423 is amended by adding in alphabetical order the terms *oil-water separator or organic-water separator* and *responsible official in paragraph (a)* and by revising the definitions of *epoxide, equipment leak, Group 2 wastewater stream,* and *polyether polyol in paragraph (b)* as follows:

**§ 63.1423 Definitions.**

(a) * * *

Oil-water separator or organic-water separator (subpart G)

* * * * *

Responsible official (subpart A)

* * * * *

(b) * * *

*Epoxide* means a chemical compound consisting of a three-membered cyclic ether. Only emissions of epoxides listed in Table 4 of this subpart (*i.e.*, ethylene oxide, propylene oxide, and epichlorohydrin) are regulated by the provisions of this subpart.

*Equipment leak* means emissions of organic HAP from a connector, pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, surge control vessel, bottoms receiver, or instrumentation system in organic HAP service.

* * * * *

*Group 2 wastewater stream* means any process wastewater stream at an existing affected source or new affected source that does not meet the definition (in this section) of a Group 1 wastewater stream.

* * * * *

*Polyether polyol* means a compound formed through the polymerization of EO or PO or other cyclic ethers with compounds having one or more reactive hydrogens (*i.e.*, a hydrogen atom bonded to nitrogen, oxygen, phosphorus, sulfur, etc.) to form polyethers (i.e., compounds with two or more ether bonds). This definition of *polyether polyol* excludes cellulose ethers (such as methyl cellulose, carboxymethyl cellulose, hydroxyethyl cellulose, hydroxy ethyl cellulose, and hydroxypropyl methyl cellulose) and materials regulated under 40 CFR part 63, subparts F, G, and H (the HON), such as glycols and glycol ethers.

* * * * *

10. Section 63.1426 is amended by:

a. Revising Equation 1 (in paragraph (c)(3)(i)(B)(*3*)(*i*));

b. Revising Equation 2 (in paragraph (c)(3)(ii)(A));

c. Revising Equations 4 and 5 (in paragraph (c)(5)(ii)(A));

d. Revising paragraph (d)(3)(ii); and

e. Revising Equation 7 in paragraph (e)(1).

The revisions read as follows:

**§ 63.1426 Process vent requirements for determining organic HAP concentration, control efficiency, and HAP emission reduction for a PMPU.**

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) * * *

(*3*) * * *

(*i*) * * *

$$E = \sum_{i=1}^{n} P_i MW_i \times \frac{(V)(t)}{(R)(T)} \times \frac{P_T}{P_T - \sum_{j=1}^{m} (P_j)} \qquad \text{[Equation 1]}$$

* * * * *

(ii) * * *

(A) * * *

$$C_{TOC} = \sum_{i=1}^{x} \frac{\left(\sum_{j=1}^{n} C_{ji}\right)}{x} \qquad \text{[Equation 2]}$$

* * * * *

(5) * * *

(ii) * * *

(A) * * *

$$E_i = K_2 \left(\sum_{j=1}^{n} C_{ij} M_{ij}\right) Q_i \qquad \text{[Equation 4]}$$

* * * * *

(d) * * *

$$E_o = K_2 \left(\sum_{j=1}^{n} C_{oj} M_{oj}\right) Q_o$$

(2) * * *

$$RED_{PMPU} = \left(\frac{\sum_{i=1}^{n} \left(E_{unc,i}\right)\left(\frac{R_i}{100}\right)}{\sum_{i=1}^{n} \left(E_{unc,i}\right) + \sum_{j=1}^{m} \left(E_{unc,j}\right)}\right) * 100 \qquad \text{[Equation 7]}$$

(3) * * *

(ii) The owner or operator shall determine the hourly uncontrolled organic HAP emissions from each process vent from a continuous unit operation in accordance with paragraph (c)(5)(ii) of this section, except that the emission rate shall be determined at the location specified in paragraph (d)(3)(i) of this section.

* * * * *

11. Section 63.1427 is amended:

a. By revising paragraph (e)(1) and Equation 10;

b. By revising Equation 13 in paragraph (h);

c. By revising paragraph (j)(2)(iii); and

d. By removing and reserving paragraph (j)(2)(iv).

The revisions read as follows:

**§ 63.1427 Process vent requirements for processes using extended cookout as an epoxide emission reduction technique.**

* * * * *

(e) * * *

(1) The owner or operator shall determine the percent epoxide emission reduction for the batch cycle using Equation 10.

$$R_{batchcycle} = \left[\frac{E_{e,u} - \left(E_{e,E}\right)\left(1 - \frac{R_{addon,i}}{100}\right) - \left(E_{e,o}\right)\left(1 - \frac{R_{addon,j}}{100}\right)}{E_{e,u}}\right] * 100 \qquad \text{[Equation 10]}$$

Where:

$R_{batchcycle}$ = Epoxide emission reduction for the batch cycle, percent.

$E_{e,E}$ = Epoxide emissions at the end of the ECO determined in accordance with paragraph (d)(1) of this section, kilograms.

$R_{addon,i}$ = Control efficiency of combustion, recovery, or recapture device that is used to control epoxide emissions after the ECO, determined in accordance with the provisions of § 63.1426(c), percent.

$E_{e,o}$ = Epoxide emissions that occur before the end of the ECO, determined in accordance with the provisions of § 63.1426(d), kilograms.

$R_{addon,j}$ = Control efficiency of combustion, recovery, or recapture device that is used to control epoxide emissions that occur before the end of the ECO, determined in accordance with the provisions of § 63.1426(c), percent.

$E_{e,u}$ = Uncontrolled epoxide emissions determined in accordance with paragraph (c)(1) of this section, kilograms.

* * * * *

(h) * * *

$$\text{Time}\left(P_{half}1\right) - \text{Time}\left(P_{half}2\right) < 20\%\ T_{AVG} \qquad \text{[Equation 13]}$$

Where:

$P_{half}1$ = Half the total pressure of the epoxide for product 1.

Time ($P_{half}1$) = Time when the pressure has fallen to half its total pressure for product 1.

$P_{half}2$ = Half the total pressure of the epoxide for product 2.

Time ($P_{half}2$) = Time when the pressure has fallen to half its total pressure for product 2.

$T_{AVG}$ = The average time to cookout to the point where the epoxide pressure is 25 percent of the epoxide pressure at the end of the feed step for products 1 and 2.

* * * * *

(j) * * *

(2) * * *

(iii) If a combustion, recovery, or recapture device is used to reduce emission in conjunction with ECO, the owner or operator shall record the information specified in § 63.1430(d) and comply with the monitoring provisions in § 63.1429.

* * * * *

12. Section 63.1428 is amended by revising paragraph (g)(3)(i) as follows:

**§ 63.1428 Process vent requirements for group determination of PMPUs using a nonepoxide organic HAP to make or modify the product.**

* * * * *

(g) * * *

(3) * * *

(i) If the redetermination described in paragraph (g)(2) of this section indicates that the group status of the combination of process vents from batch unit operations in a PMPU that are associated with the use of nonepoxide organic HAP to make or modify the product changes from Group 2 to Group 1 as a result of the process change, the owner or operator shall submit a report as specified in § 63.1439(e)(6)(iii)(D)(*1*) and shall comply with Group 1 combination of batch process vents provisions in this subpart, as specified in § 63.1425(c)(1).

* * * * *

13. Section 63.1430 is amended by revising paragraphs (e)(1)(vi) and (vii) as follows:

**§ 63.1430 Process vent reporting and recordkeeping requirements.**

* * * * *

(e) * * *

(1) * * *

(vi) If the combination of all process vents from batch unit operations associated with the use of an organic HAP to make or modify the product is subject to the Group 1 batch process vent control requirements for nonepoxide HAP emissions from making or modifying the product in § 63.1425((c)(1), none of the records in paragraphs (e)(1)(i) through (v) of this section are required.

(vii) If the total annual emissions from the combination of process vents from batch unit operations associated with the use of an organic HAP to make or modify the product are less than 11,800 kg per year, only the records in paragraphs (e)(1)(i) and (ii) of this section are required.

* * * * *

14. Section 63.1432 is amended by revising paragraphs (h), (l), and (q) as follows:

**§ 63.1432 Storage vessel provisions.**

* * * * *

(h) When the HON storage vessel requirements in §§ 63.120(d)(3)(i), 63.120(d)(5), and 63.122(g)(2) use the term "range," the term "level" shall apply instead for the purposes of this subpart.

* * * * *

(l) When the HON Periodic Report requirements contained in § 63.152(c) are referred to in §§ 63.120 and 63.122, the Periodic Report requirements contained in § 63.1439(e)(6) shall apply for the purposes of this subpart.

* * * * *

(q) In addition to the records required by § 63.123, the owner or operator of each storage vessel that is complying with § 63.119(e) and that has an applicable monitoring plan in accordance with § 63.120(d)(2) that does not specify continuous monitoring, shall maintain records of all times when the storage tank is being filled (i.e., when the liquid level in the storage vessel is being raised). These records shall consist of documentation of the time when each filling period begins and ends.

15. Section 63.1433 is amended by:

a. Revising paragraph (a)(1);

b. Revising paragraph (a)(2);

c. Revising paragraph (a)(5);

d. Revising paragraph (a)(7);

e. Revising paragraph (a)(8); and

f. Revising paragraph (b)(1).

The revisions and additions read as follows:

**§ 63.1433 Wastewater provisions.**

(a) * * *

(1) Owners and operators of affected sources are not required to comply with the HON new source wastewater requirements in § 63.132(b)(1) and § 63.132(d) for the purposes of this subpart. Owners or operators of all new affected sources, as defined in this subpart, shall comply with the HON requirements for existing sources in §§ 63.132 through 63.149, with the exceptions noted in paragraphs (a)(2) through (20) of this section.

(2) The provisions of paragraphs (a)(2)(i), (ii), and (a)(10)(iii) of this section clarify the organic HAP that an owner or operator shall consider when complying with the requirements of §§ 63.132 through 63.149.

(i) Owners and operators are exempt from all requirements in §§ 63.132 through 63.149 that pertain solely and exclusively to organic HAP listed on Table 8 of 40 CFR part 63, subpart G.

(ii) When the HON requirements in §§ 63.132 through 63.149 refer to Table 9 compounds, the owner or operator is only required to consider compounds that meet the definition of organic HAP in § 63.1423 and that are listed in Table 9 of 40 CFR part 63, subpart G, for the purposes of this subpart.

(iii) When §§ 63.132 through 63.149 refer to compounds in Table 36 of 40 CFR part 63, subpart G, or compounds in List 1 or List 2 of Table 36 of 40 CFR part 63, subpart G, the owner or operator is only required to consider compounds that meet the definition of organic HAP in § 63.1423 and that are listed on Table 36 of 40 CFR part 63, subpart G, for the purposes of this subpart.

* * * * *

(5) When the HON process wastewater reporting requirements in § 63.146(a) require the submission of a request for approval to monitor alternative parameters according to the procedures specified in § 63.151(f) or (g), the owner or operator requesting to monitor alternative parameters shall follow the procedures specified in § 63.1439(f) for the purposes of this subpart.

* * * * *

(7) When §§ 63.132 through 63.149 refer to an "existing source," the term *existing affected source*, as defined in § 63.1420(a)(2), shall apply for the purposes of this subpart.

(8) When the HON requirements in §§ 63.132 through 63.149 refer to a "new source," the term *new affected source*, as defined in § 63.1420(a)(3), shall apply for the purposes of this subpart.

* * * * *

(b) * * *

(1) When the HON maintenance wastewater provisions in § 63.105(a) refer to "organic HAPs listed in Table 9 of subpart G of this part," the owner or operator is only required to consider compounds that meet the definition of *organic HAP* in § 63.1423 and that are listed in Table 9 of 40 CFR part 63, subpart G, for the purposes of this subpart.

* * * * *

16. Section 63.1434 is amended by removing and reserving paragraph (c).

17. Section 63.1435 is amended by revising paragraph (c) as follows:

**§ 63.1435 Heat exchanger provisions.**

* * * * *

(c) When the HON heat exchange system requirements in § 63.104(c)(3) specify the monitoring plan retention requirements, and when § 63.104(f)(1) refers to the record retention requirements in § 63.103(c)(1), the provisions of the general recordkeeping and reporting requirements in § 63.1439(a) and the applicable provisions of the General Provisions in 40 CFR part 63, subpart A, as specified in Table 1 of this subpart, shall apply for the purposes of this subpart.

* * * * *

18. Section 63.1437 is amended by revising paragraph (a)(1) introductory text as follows:

**§ 63.1437 Additional requirements for performance testing.**

(a) * * *

(1) Performance tests shall be conducted according to the general provisions' performance testing requirements in § 63.7(e)(1) and (2), except that for all emission sources except process vents from batch unit operations, performance tests shall be conducted during maximum representative operating conditions for the process achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) or (iii) of this section to occur. For process vents from batch unit operations, performance tests shall be conducted either at absolute worst-case conditions or hypothetical worst-case conditions, as defined in § 63.1426(c)(3)(i)(B), that are achievable during one of the time periods described in paragraph (a)(1)(i) of this section, without causing any of the situations described in paragraph (a)(1)(ii) or (iii) of this section to occur.

* * * * *

19. Section 63.1439 is amended by:

a. Revising paragraph (b)(1)(ii);

b. Revising paragraph (e)(3) introductory text;

c. Removing and reserving paragraph (e)(3)(ii)(A);

d. Revising paragraph (e)(5)(iv); and

e. Revising paragraph (e)(7).

The revisions read as follows:

**§ 63.1439 General recordkeeping and reporting provisions.**

* * * * *

(b) * * *

(1) * * *

(ii) *Reports of start-up, shutdown, and malfunction.* For the purposes of this subpart, the semiannual start-up, shutdown, and malfunction reports shall be submitted on the same schedule as the Periodic Reports required under paragraph (e)(6) of this section instead of according to the general provisions' Periodic Reporting schedule specified in § 63.10(d)(5)(i). The reports shall include the information specified in § 63.10(d)(5)(i).

* * * * *

(e) * * *

(3) *Initial Notification.* The owner or operator of a new affected source shall submit a written Initial Notification to the Administrator containing the information described in paragraph (e)(3)(i) of this section according to the schedule in paragraph (e)(3)(ii) of this section. The General Provisions' Initial Notification requirements in § 63.9(b)(2), (3), and (6) shall not apply for the purposes of this subpart.

* * * * *

(5) * * *

(iv) The parameter monitoring levels for flexible operation units, and the basis on which these levels were selected, or a demonstration that these levels are appropriate at all times, as specified in § 63.1420(e)(5)(ii)(A).

* * * * *

(7) *Other reports.* Other reports shall be submitted as specified in paragraphs (e)(7)(i) through (iii) of this section.

(i) For storage vessels, the notifications of inspections required by § 63.1432 shall be submitted, as specified in the HON storage vessel provisions in § 63.122(h)(1) and (2).

(ii) When the conditions at § 63.1420(e)(3)(iii), (e)(9), or (e)(10) are met, reports of changes to the primary product for a PMPU or process unit, as required by § 63.1420(e)(3)(iii), (e)(9), or (e)(10)(iii), respectively, shall be submitted.

(iii) Owners or operators of PMPU or emission points (other than equipment leak components subject to § 63.1434) that are subject to provisions for changes or additions to plant sites in § 63.1420(g)(1) or (2) shall submit a report as specified in paragraphs (e)(7)(iii)(A) and (B) of this section.

(A) Reports shall include:

(*1*) A description of the process change or addition, as appropriate;

(*2*) The planned start-up date and the appropriate compliance date, according to § 63.1420(g)(1) or (2); and

(*3*) Identification of the group status of emission points (except equipment leak components subject to the requirements in § 63.1434) specified in paragraphs (e)(7)(iii)(A)(*3*)(*i*) through (*iii*) of this section, as applicable.

(*i*) All the emission points in the added PMPU, as described in § 63.1420(g)(1).

(*ii*) All the emission points in an affected source designated as a new affected source under § 63.1420(g)(2)(i).

(*iii*) All the added or created emission points as described in § 63.1420(g)(2)(ii) or (iii).

(*4*) If the owner or operator wishes to request approval to use alternative monitoring parameters, alternative continuous monitoring or recordkeeping, alternative controls, or wishes to establish parameter monitoring levels according to the procedures contained in § 63.1438(c) or (d), a Precompliance Report shall be submitted in accordance with paragraph (e)(7)(iii)(B) of this section.

(B) Reports shall be submitted as specified in paragraphs (e)(7)(iii)(B)(*1*) through (*3*) of this section, as appropriate.

(*1*) Owners or operators of an added PMPU subject to § 63.1420(g)(1) shall submit a report no later than 180 days prior to the compliance date for the PMPU.

(*2*) Owners or operators of an affected source designated as a new affected source under § 63.1420(g)(2)(i) shall submit a report no later than 180 days prior to the compliance date for the affected source.

(*3*) Owners and operators of any emission point (other than equipment leak components subject to § 63.1434) subject to § 63.1420(g)(2)(ii) or (iii) shall submit a report no later than 180 days prior to the compliance date for those emission points.

* * * * *

20. Tables 1, 4, and 8 to subpart PPP of part 63 are revised as follows:

TABLE 1 OF SUBPART PPP.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES

| Reference | Applies to subpart PPP | Explanation |
|---|---|---|
| 63.1(a)(1) | Yes | § 63.1423 specifies definitions in addition to or that supersede definitions in § 63.2. |
| 63.1(a)(2) | Yes. | |
| 63.1(a)(3) | Yes | § 63.1422(f) through (k) of this subpart and § 63.160(b) identify those standards which overlap with the requirements of subparts PPP and H and specify how compliance shall be achieved. |
| 63.1(a)(4) | Yes | Subpart PPP (this table) specifies the applicability of each paragraph in subpart A to subpart PPP. |
| 63.1(a)(5) | No | Reserved. |
| 63.1(a)(6)–(8) | Yes. | |
| 63.1(a)(9) | No. | Reserved. |
| 63.1(a)(10) | Yes. | |

TABLE 1 OF SUBPART PPP.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

| Reference | Applies to subpart PPP | Explanation |
|---|---|---|
| 63.1(a)(11) | Yes. | |
| 63.1(a)(12)–(14) | Yes. | |
| 63.1(b)(1) | No | § 63.1420(a) contains specific applicability criteria. |
| 63.1(b)(2) | Yes. | |
| 63.1(b)(3) | Yes. | |
| 63.1(c)(1) | Yes | Subpart PPP (this table) specifies the applicability of each paragraph in subpart A to subpart PPP. |
| 63.1(c)(2) | No | Area sources are not subject to subpart PPP. |
| 63.1(c)(3) | No | Reserved. |
| 63.1(c)(4) | Yes. | |
| 63.1(c)(5) | Yes | Except that affected sources are not required to submit notifications overridden by this table. |
| 63.1(d) | No | Reserved. |
| 63.1(e) | Yes. | |
| 63.2 | Yes | § 63.1423 specifies those subpart A definitions that apply to subpart PPP. |
| 63.3 | Yes. | |
| 63.4(a)(1)–(3) | Yes. | |
| 63.4(a)(4) | No | Reserved. |
| 63.4(a)(5) | Yes. | |
| 63.4(b) | Yes. | |
| 63.4(c) | Yes. | |
| 63.5(a)(1) | Yes | Except the terms "source" and "stationary source" should be interpreted as having the same meaning as "affected source." |
| 63.5(a)(2) | Yes. | |
| 63.5(b)(1) | Yes | Except § 63.1420(g) defines when construction or reconstruction is subject to new source standards. |
| 63.5(b)(2) | No | Reserved. |
| 63.5(b)(3) | Yes. | |
| 63.5(b)(4) | Yes | Except that the initial notification requirements in § 63.1439(e)(3) shall apply instead of the requirements in § 63.9(b). |
| 63.5(b)(5) | Yes. | |
| 63.5(b)(6) | Yes | Except that § 63.1420(g) defines when construction or reconstruction is subject to the new source standards. |
| 63.5(c) | No | Reserved. |
| 63.5(d)(1)(i) | Yes. | |
| 63.5(d)(1)(ii) | Yes | Except that § 63.5(d)(1)(ii)(H) does not apply. |
| 63.5(d)(1)(iii) | No | § 63.1439(e)(5) and § 63.1434(e) specify notification of compliance status requirements. |
| 63.5(d)(2) | No. | |
| 63.5(d)(3) | Yes | Except § 63.5(d)(3)(ii) does not apply, and equipment leaks subject to § 63.1434 are exempt. |
| 63.5(d)(4) | Yes. | |
| 63.5(e) | Yes. | |
| 63.5(f)(1) | Yes. | |
| 63.5(f)(2) | Yes | Except that where § 63.9(b)(2) is referred to, the owner or operator need not comply. |
| 63.6(a) | Yes. | |
| 63.6(b)(1) | Yes. | |
| 63.6(b)(2) | Yes. | |
| 63.6(b)(3) | Yes. | |
| 63.6(b)(4) | Yes. | |
| 63.6(b)(5) | Yes. | |
| 63.6(b)(6) | No | Reserved. |
| 63.6(b)(7) | No. | |
| 63.6(c)(1) | Yes | § 63.1422 specifies the compliance date. |
| 63.6(c)(2) | No. | |
| 63.6(c)(3) | No | Reserved. |
| 63.6(c)(4) | No | Reserved. |
| 63.6(c)(5) | Yes. | |
| 63.6(d) | No | Reserved. |
| 63.6(e) | Yes | Except as otherwise specified for individual paragraphs (below), and § 63.6(e) does not apply to Group 2 emission points. |
| 63.6(e)(1)(i) | No | This is addressed by § 63.1420(h)(4). |
| 63.6(e)(1)(ii) | Yes. | |
| 63.6(e)(1)(iii) | Yes. | |
| 63.6(e)(2) | Yes. | |
| 63.6(e)(3)(i) | Yes | For equipment leaks (subject to § 63.1434), the start-up, shutdown, and malfunction plan requirement of § 63.6(e)(3)(i) is limited to combustion, recovery, or recapture devices and is optional for other equipment. The start-up, shutdown, and malfunction plan may include written procedures that identify conditions that justify a delay of repair.[a] |
| 63.6(e)(3)(i)(A) | Yes | This is also addressed by § 63.1420(h)(4). |
| 63.6(e)(3)(i)(B) | Yes. | |
| 63.6(e)(3)(i)(C) | Yes. | |
| 63.6(e)(3)(ii) | Yes. | |

TABLE 1 OF SUBPART PPP.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

| Reference | Applies to subpart PPP | Explanation |
|---|---|---|
| 63.6(e)(3)(iii) | No | Recordkeeping and reporting are specified in § 63.1439(b)(1). |
| 63.6(e)(3)(iv) | No | Recordkeeping and reporting are specified in § 63.1439(b)(1). |
| 63.6(e)(3)(v) | No | Requirement is specified in § 63.1439(b)(1). |
| 63.6(e)(3)(vi) | Yes. | |
| 63.6(e)(3)(vii) | Yes. | |
| 63.6(e)(3)(vii) (A) | Yes. | |
| 63.6(e)(3)(vii) (B) | Yes | Except the plan shall provide for operation in compliance with § 63.1420(i)(4). |
| 63.6(e)(3)(vii) (C) | Yes. | |
| 63.6(e)(3)(viii) | Yes. | |
| 63.6(f)(1) | Yes. | |
| 63.6(f)(2) | Yes | Except 63.7(c), as referred to in § 63.6(f)(2)(iii)(D) does not apply, and except that § 63.6(f)(2)(ii) does not apply to equipment leaks subject to § 63.1434. |
| 63.6(f)(3) | Yes. | |
| 63.6(g) | Yes. | |
| 63.6(h) | No | Subpart PPP does not require opacity and visible emission standards. |
| 63.6(i)(1) | Yes. | |
| 63.6(i)(2) | Yes. | |
| 63.6(i)(3) | Yes. | |
| 63.6(i)(4)(i)(A) | Yes. | |
| 63.6(i)(4)(i)(B) | No | Dates are specified in § 63.1422(e) and § 63.1439(e)(4)(i) for all emission points except equipment leaks, which are covered under § 63.182(a)(6)(i). |
| 63.6(i)(4)(ii) | No. | |
| 63.6(i)(5)–(14) | Yes. | |
| 63.6(i)(15) | No | Reserved. |
| 63.6(i)(16) | Yes. | |
| 63.6(j) | Yes. | |
| 63.7(a)(1) | Yes. | |
| 63.7(a)(2) | No | § 63.1439(e) (5) and (6) specify the submittal dates of performance test results for all emission points except equipment leaks; for equipment leaks, compliance demonstration results are reported in the Periodic Reports. |
| 63.7(a)(3) | Yes. | |
| 63.7(b) | No | § 63.1437(a)(4) specifies notification requirements. |
| 63.7(c) | No | Except if the owner or operator chooses to submit an alternative nonopacity emission standard for approval under § 63.6(g). |
| 63.7(d) | Yes. | |
| 63.7(e)(1) | Yes | Except that all performance tests shall be conducted during worst case operating conditions. |
| 63.7(e)(2) | Yes. | |
| 63.7(e)(3) | No | Subpart PPP specifies requirements. |
| 63.7(e)(4) | Yes. | |
| 63.7(f) | Yes | Since a site-specific test plan is not required, the notification deadline in § 63.7(f)(2)(i) shall be 60 days prior to the performance test, and in § 63.7(f)(3) approval or disapproval of the alternative test method shall not be tied to the site-specific test plan. |
| 63.7(g) | Yes | Except the notification of compliance status report requirements in § 63.1439(e)(5) shall apply instead of those in § 63.9(h). In addition, equipment leaks subject to § 63.1434 are not required to conduct performance tests. |
| 63.7(h) | Yes | Except § 63.7(h)(4)(ii) is not applicable, since the site-specific test plans in § 63.7(c)(2) are not required. |
| 63.8(a)(1) | Yes. | |
| 63.8(a)(2) | No. | |
| 63.8(a)(3) | No | Reserved. |
| 63.8(a)(4) | Yes. | |
| 63.8(b)(1) | Yes. | |
| 63.8(b)(2) | No | Subpart PPP specifies locations to conduct monitoring. |
| 63.8(b)(3) | Yes. | |
| 63.8(c)(1) | Yes. | |
| 63.8(c)(1)(i) | Yes. | |
| 63.8(c)(1)(ii) | No | For all emission points except equipment leaks, comply with § 63.1439(b)(1)(i)(B); for equipment leaks, comply with § 63.181(g)(2)(ii). |
| 63.8(c)(1)(iii) | Yes. | |
| 63.8(c)(2) | Yes. | |
| 63.8(c)(3) | Yes. | |
| 63.8(c)(4) | No | § 63.1438 specifies monitoring requirements; not applicable to equipment leaks, because § 63.1434 does not require continuous monitoring systems. |
| 63.8(c)(5)–(8) | No. | |
| 63.8(d) | No. | |
| 63.8(e) | No. | |
| 63.8(f)(1)–(3) | Yes. | |
| 63.8(f)(4)(i) | Yes | Except the timeframe for submitting request is specified in § 63.1439(f) or (g); not applicable to equipment leaks, because § 63.1434 (through subpart H of this part) specifies acceptable alternative methods. |

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TABLE 1 OF SUBPART PPP.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPP AFFECTED SOURCES—Continued

| Reference | Applies to subpart PPP | Explanation |
|---|---|---|
| 63.8(f)(4)(ii) | Yes. | |
| 63.8(f)(4)(iii) | Yes. | |
| 63.8(f)(5)(i) | Yes. | |
| 63.8(f)(5)(ii) | No. | |
| 63.8(f)(5)(iii) | Yes. | |
| 63.8(f)(6) | No | Subpart PPP does not require CEMs. |
| 63.8(g) | No | Data reduction procedures specified in § 63.1439(d) and (h); not applicable to equipment leaks. |
| 63.9(a) | Yes. | |
| 63.9(b) | No | The initial notification requirements are specified in § 63.1439(e)(3). |
| 63.9(c) | Yes. | |
| 63.9(d) | Yes. | |
| 63.9(e) | No | § 63.1437(a)(4) specifies notification deadline. |
| 63.9(f) | No | Subpart PPP does not require opacity and visible emission standards. |
| 63.9(g) | No. | |
| 63.9(h) | No | § 63.1439(e)(5) specifies notification of compliance status requirements. |
| 63.9(i) | Yes. | |
| 63.9(j) | No. | |
| 63.10(a) | Yes. | |
| 63.10(b)(1) | No | § 63.1439(a) specifies record retention requirements. |
| 63.10(b)(2) | No | Subpart PPP specifies recordkeeping requirements. |
| 63.10(b)(3) | Yes. | |
| 63.10(c) | No | § 63.1439 specifies recordkeeping requirements. |
| 63.10(d)(1) | Yes. | |
| 63.10(d)(2) | No | § 63.1439(e)(5) and (6) specify performance test reporting requirements; not applicable to equipment leaks. |
| 63.10(d)(3) | No | Subpart PPP does not require opacity and visible emission standards. |
| 63.10(d)(4) | Yes. | |
| 63.10(d)(5)(i) | Yes | Except that reports required by § 63.10(d)(5)(i) shall be submitted at the same time as Periodic Reports specified in § 63.1439(e)(6). The start-up, shutdown, and malfunction plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points. |
| 63.10(d)(5)(ii) | No. | |
| 63.10(e) | No | § 63.1439 specifies reporting requirements. |
| 63.10(f) | Yes. | |
| 63.11 | Yes. | |
| 63.12 | Yes | Except that the authority of § 63.177 (for equipment leaks) will not be delegated to States. |
| 63.13–63.15 | Yes. | |

[a] The plan, and any records or reports of start-up, shutdown, and malfunction do not apply to Group 2 emission points.

* * * * *

TABLE 4 OF SUBPART PPP.—KNOWN ORGANIC HAP FROM POLYETHER POLYOL PRODUCTS

| Organic HAP/chemical name [CAS No.] |
|---|
| 1,3 Butadiene (106990) |
| Epichlorohydrin (106898) |
| Ethylene Oxide (75218) |
| n-Hexane (110543) |
| Methanol (67561) |
| Propylene Oxide (75569) |
| Toluene (108883) |

CAS No. = Chemical Abstracts Service Registry Number.

* * * * *

TABLE 8 TO SUBPART PPP.—ROUTINE REPORTS REQUIRED BY THIS SUBPART

| Reference | Description of report | Due date |
|---|---|---|
| § 63.1439(b) and subpart A of this part | Refer to § 63.1439(b), Table 1 of this subpart, and to subpart A of this part. | Refer to subpart A of this part. |
| § 63.1439(e)(3) | Initial notification | New affected sources w/ initial start-up at least 90 days after June 1, 1999: submit the application for approval of construction or reconstruction in lieu of the initial notification report.<br>New affected sources w/ initial start-up prior to 90 days after June 1, 1999:by 90 days after June 1, 1999. |
| § 63.1439(e)(4) | Precompliance Report[a] | Existing affected sources: 12 months prior to compliance date.<br>New affected sources: with the application for approval of construction or reconstruction. |
| § 63.1439(e)(5) | Notification of Compliance Status[b] | Within 150 days after the compliance date. |
| § 63.1439(e)(6) | Periodic Reports | Semiannually, no later than 60 days after the end of each 6-month period. See § 63.1439(e)(6)(i) for the due date for this report. |
| § 63.1439(e)(6)(iii) | Quarterly reports for sources with excursions (upon request of the Administrator). | No later than 60 days after the end of each quarter. |
| § 63.506(e)(7)(i) | Storage Vessels Notification of Inspection | At least 30 days prior to the refilling of each storage vessel or the inspection of each storage vessel. |

[a] There may be two versions of this report due at different times; one for equipment subject to § 63.1434 and one for other emission points subject to this subpart.

[b] There will be two versions of this report due at different times; one for equipment subject to § 63.1434 and one for other emission points subject to this subpart.

* * * * *

[FR Doc. 00–10418 Filed 5–5–00; 8:45 am]
BILLING CODE 6560–50–P

## FEDERAL MARITIME COMMISSION

## 46 CFR Parts 515, 520, 530 and 535

**[Docket No. 99–10]**

## Ocean Common Carriers Subject to the Shipping Act of 1984

**AGENCY:** Federal Maritime Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Maritime Commission is amending its regulations implementing the Shipping Act of 1984 to clarify the definition of "ocean common carrier" to reflect the Commission's interpretation of the term. As a result, only common carriers that operate vessels in at least one United States trade will be subject to these rules.

**DATES:** This rule becomes effective August 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Room 1018, Washington, D.C. 20573, (202) 523–5740.

**SUPPLEMENTARY INFORMATION:**

### Background

The Federal Maritime Commission initiated this proceeding by Notice of Proposed Rule ("NPR") published in the **Federal Register** on June 25, 1999. 64 FR 34183. The NPR noted that the Commission was proposing to amend several of its regulations to clarify the definition of "ocean common carrier" contained in section 3(16) of the Shipping Act of 1984 ("Shipping Act"), 46 U.S.C. app. § 1702(16), as amended by the Ocean Shipping Reform Act of 1998 ("OSRA"), P.L. 105–258, 112 Stat. 1902, to reflect the Commission's then-interpretation of that term. In essence, the proposed rule defined "ocean common carrier" to include only common carriers that operate vessels serving ports in at least one United States trade.

The NPR solicited comment on the proposed rule from the public, and the Commission received comments from: (1) The Ocean Carrier Working Group ("OCWG"); (2) Maersk, Inc.; (3) Samskip Hf ("Samskip"); (4) the Council of European & Japanese National Shipowners' Associations ("CENSA"); (5) the Calcutta, East Coast of India and Bangladesh Conference and Waterman Steamship Corporation ("India Carriers");(6) the National Industrial Transportation League ("NITL"); (7) the American International Freight Association & Transportation Intermediaries Association ("AIFA/TIA"); and (8) Ocean World Lines, Inc. ("OWL").

*The NPR*

The NPR noted that the Commission had previously proposed a new definition for the term "ocean common carrier" in the context of the rulemaking governing agreements which was undertaken to implement OSRA. Docket No. 98–26, *Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984*, 64 FR 11236, March 8, 1999. However, the Commission received only two comments on that particular proposal and subsequently decided to provide the public an additional opportunity to comment through this proceeding. The NPR then stated that the heart of the matter was how to distinguish between ocean common carriers ("OCCs") and non-vessel-operating common carriers ("NVOCCs"). The distinction is significant under the Shipping Act because only OCCs can enter into and file agreements with the Commission and receive antitrust immunity therefor. In addition, only OCCs can offer service contracts to shippers, although NVOCCs can enter into service contracts as shippers.

The NPR conceded that at first glance the defining of an OCC as a "vessel operator" does not appear to be ambiguous. However, the Commission stated that its staff has encountered

several complex situations in attempting to apply the term, *e.g.*, where and when vessels operated and what type of vessels are employed. In this regard, the NPR noted that various bureaus have interpreted the Shipping Act to require that an OCC must operate a vessel calling at a U.S. port, and that if a carrier is an OCC in one trade, it should be considered an OCC for all U.S. trades. The proposed rule therefore codified this approach and stated:

> *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

The NPR noted that this multi-trade approach avoids making interpretations as to a carrier's status on a trade-by-trade basis, which would be administratively impractical and might prompt a less efficient redeployment of vessels. The proposal was also intended to clarify that companies that operate vessels solely outside the U.S. are not deemed to be OCCs. The NPR suggested that the proposal was consistent with legislative intent that a "vessel operator" be one whose vessels call at U.S. ports and all other common carriers should be classified as NVOCCs.

The NPR further stated that if the definition of OCC included carriers that operate vessels only in foreign-to-foreign trades, it could expand the scope of antitrust immunity and also remove certain carriers from NVOCC financial responsibility requirements in U.S. trades even though they have no vessels or assets in the U.S. Lastly, the NPR concluded, based on principles of statutory construction, that when Congress used the term "vessel" in the definition of OCC, it likely was referring to those vessels specified in the definition of "common carrier," *i.e.*, those that operate on the high seas between the U.S. and a foreign country.

**Comments on Proposed Rule**

*A. OCWG*

The OCWG agrees with the Commission that the distinction between OCCs and NVOCCs is significant. It also supports continuation of the Commission's past practice that a common carrier that operates a vessel in one U.S. trade is an OCC for all U.S. trades. It contends that this practice is consistent with the Shipping Act and, as a practical matter, has worked well in the past, presenting no problems.

The OCWG submits that the proposed rule would require members of vessel sharing agreements ("VSAs") to deploy vessels in the U.S. solely to meet regulatory requirements, something the Commission has indicated it wishes to avoid, citing the NPR at 5. The OCWG asserts that various types of VSAs have grown significantly, and offer more efficient and frequent service at lower cost. It contends that it is possible, for a variety of operational factors, that the parties may decide that all of the vessels of a member be deployed in non-U.S. trades and it will only serve the U.S. via the vessels of its fellow members. The OCWG concludes that such a carrier would not be considered an OCC and would have to withdraw from the U.S. portion of the agreement or restructure its service.

The OCWG therefore suggests a modified definition. It would allegedly preserve the ability of VSAs to function efficiently, while at the same time maintaining a distinction between carriers that commit assets to a service in U.S. trades and those that do not.

Next, the OCWG argues that the proposed definition should not change the applicable law regarding transshipment agreements. It contends that for over 50 years the Commission has held that a person may be an OCC, within the meaning of the Shipping Act and its predecessor legislation, without having a vessel call directly at a U.S. port, citing *Restrictions on Transshipment at Canal Zone*, 2 U.S.M.C. 675 (1943). It notes further that in adopting OSRA, Congress did not change the statutory definition of "common carrier" and contends, therefore, that there is no statutory basis for the change in law being proposed by the Commission.

In addition, the OCWG maintains that the proposed change would overturn longstanding Commission precedent that a carrier providing a portion of a through vessel service to or from the U.S. qualifies as an OCC even though its vessels do not call at a U.S. port, citing *Transshipment & Apportionment Agreements from Indonesian Ports to U.S. Atlantic & Gulf Ports*, 10 F.M.C. 183 (1964); and *Transshipment and Through Billing Arrangements Between East Coast Ports of South Thailand and U.S. Atlantic and Gulf Ports*, 10 F.M.C. 201 (1966). These carriers therefore urge the Commission to clarify in the supplemental information that a common carrier offering a through bill of lading to or from the U.S. that operates a vessel on which part of the service is provided meets the definition of OCC, even if its vessels do not call directly at a U.S. port. The OCWG further notes that these carriers would be subject to tariff publication and other regulatory requirements of the Shipping Act and would maintain the distinction between carriers that commit assets to a service to or from the U.S. and those that do not. Lastly, the OCWG argues that the proposed approach would have the effect of removing all transshipment agreements from the scope of the Commission's jurisdiction and require the Commission to repeal 46 C.F.R. § 535.306.

*B. Maersk*

Maersk observes that the Commission's proposed definition would exclude feeder operators providing foreign-to-foreign transportation from the definition of OCC. It suggests that the final rule should accommodate such activity. In addition, Maersk believes that a carrier signatory to a vessel sharing agreement ("VSA") should be considered an OCC when another carrier participating in the agreement contributes ships making U.S. port calls.

*C. Samskip*

Samskip, a self-defined vessel-operating common carrier, argues that the proposed rule overturns Commission precedent that carriers providing a portion of vessel service to or from the U.S. qualify as OCCs even though their vessels do not actually call at U.S. ports. It suggests, therefore, that the supplemental information to the final rule state that a common carrier which offers a through bill of lading and operates a vessel on which part of the service is provided is an OCC, even if the vessels it operates do not call directly at a U.S. port. Lastly, Samskip urges the Commission to adopt a definition of OCC that provides that a common carrier that becomes an OCC by virtue of carriage in a transshipment situation should be considered an OCC for purposes of entering into slot chartering and vessel space sharing agreements with other OCCs.

*D. CENSA*

CENSA supports that portion of the proposed rule that states that a carrier operating a vessel in one U.S. trade is an OCC for all U.S. trades. However, CENSA believes that the requirement that a carrier must have at least one vessel calling at a U.S. port may exclude two categories of carriers—those involved in VSAs and transshipment arrangements.

CENSA contends that most OCCs are parties to one or more forms of VSAs—space charters, slot charters, and alliances—many of which are global in

scope. CENSA submits that it is possible that a VOCC member of a VSA will deploy its vessels in non-U.S. trades, but will serve the U.S. via the vessels of the agreement members. CENSA believes that under the proposed definition such a carrier would not be an OCC and would consequently have to withdraw from the U.S. portion of the agreement or restructure its service to have a vessel call at a U.S. port. It suggests amending the definition to include a VOCC that contributes vessels to a VSA.

CENSA further asserts that longstanding Commission precedent holds that carriers that provide a portion of vessel service to or from the U.S. qualify as OCCs even though their vessels do not call at U.S. ports. CENSA suggests that there is no need to overrule this precedent and that Congress is presumed to have been aware of it when it adopted the definition of "common carrier" in OSRA.

*E. India Carriers*

The India Carriers contend that the proposed rule would classify a carrier which operates oceangoing vessels as an NVOCC, if the vessels did not call at U.S. ports. They believe that this contradicts the definition of NVOCC in the Shipping Act—*i.e.*, a common carrier that does not operate the vessels by which the ocean transportation is provided. They further submit that an OCC that serves the U.S. trades by slot-chartering space on another carrier's vessels, but issues its own bills of lading, would be held to be a "shipper" under the proposed definition. This, they argue, could confuse the traditional liability relationship between shipper and carrier under the Carriage of Goods by Sea Act ("COGSA"), 46 U.S.C. 1310–1315.

The India Carriers also argue that the proposed rule would exclude carriers that operate vessels as only part of their U.S. service, thereby overturning longstanding precedent. In addition, they contend that the rationalization of vessel space through various cooperative agreements allows carriers to provide service more efficiently and at a reduced cost. The proposed rule allegedly might prompt carriers to redeploy vessels solely to satisfy a regulatory requirement.

The India Carriers note that vessels operating under slot charters or other VSAs are presently subject to the Commission's regulatory requirements, including that they publish tariffs. They also contend that FMC or court judgments could be enforced by requiring carriers who offer through service but do not call at U.S. ports to maintain a bond or other guarantee similar to that required of NVOCCs.

*F. NITL*

NITL supports the interpretation that a carrier that operates a vessel in a single trade is an OCC in all trades. It maintains that the plain language of the statute does not require a trade-by-trade analysis and to do so would lead to inefficiencies. NITL is concerned, however, about the exclusion of carriers that do not offer direct port calls but instead offer indirect ocean transportation by way of VSAs or similar arrangements.

NITL asserts that the proposed definition is narrower than the statutory definition, which simply defines an OCC as a "vessel-operating common carrier" and does not restrict the trade lanes in which the vessel can operate. NITL contends that there is no support for the Commission's assertion that the "vessel" in the definition of OCC was likely the vessels specified in the definition of "common carrier." NITL further states that under that definition a common carrier does not need to operate a vessel; it must merely "utilize" a vessel in U.S. trades for part or all of the transportation. It concludes that the "other part" of the transportation can be wholly outside the U.S., *i.e.*, foreign-to-foreign. It further contends that the plain language of the statute, unchanged by the passage of OSRA, does not restrict the provision of OCC service to only those carriers that make direct calls at U.S. ports.

NITL also finds the proposed definition inconsistent with the policy objective of OSRA, particularly section 2(4), which requires the FMC to administer the law in a manner that promotes competitive and efficient ocean transportation services and relies to a greater extent on the marketplace. It notes that carriers may decide that the U.S. market is more efficiently and economically served through a VSA and claims that the Commission's narrow definition of OCC would prevent some VOCCs from offering such services to shippers through service contracts.

Ultimately, NITL believes the FMC should maintain the existing statutory definition of OCC in its regulations and should broadly construe it. It contends that there is nothing in the Shipping Act or OSRA that indicates that Congress intended a more narrow definition.

*G. AIFA/TIA*

AIFA/TIA supports the proposed definition as providing necessary, clear, and precise guidance to the ocean transportation industry. It notes that the definition of "common carrier" in section 3(6) of the Shipping Act refers to a person who provides transportation by water and utilizes a vessel for all or part of that transportation, and that an OCC is defined simply as "a vessel-operating common carrier." AIFA/TIA submits that the Commission should put these two definitions together and issue a statement that an entity that otherwise meets the definition of common carrier and operates a single vessel on a single route between a single U.S. port and a single foreign port, over either the high seas or the Great Lakes, must be treated as an OCC for all of its operations in U.S. trades. This interpretation would allegedly extend the status of OCC to the largest possible universe of operators.

AIFA/TIA also does not object to proposals that carriers involved in nonexclusive transportation agreements also should be accorded OCC status even if they have no operations directly between a U.S. and foreign port.

*H. OWL*

OWL, one of the largest NVOCCs in the world, proposes a significant change in the traditional carrier/shipper relationship between VOCC and NVOCC. Instead of obtaining space from a vessel owner by a service contract, OWL presents a scenario in which an NVOCC would obtain space via a slot charter with a VOCC. Under such circumstances, OWL argues that the NVOCC would no longer be a shipper, vis-a-vis the VOCC, and would instead be a co-venturer, who should likewise be permitted to hold itself out to the public as an OCC in the trade lanes. OWL thus suggests a bifurcated approach to the definition of OCC: (1) The Commission's multi-trade approach for vessel operators in one or more trade lanes; and (2) a trade-by-trade approach for NVOCCs slot chartering with VOCCs.

OWL's proposal is premised on the assumption that a slot charter between a VOCC and an NVOCC provides the NVOCC with sufficient operational interest or nexus in the voyages to warrant classification as an OCC in that trade. If the Commission decides otherwise, then OWL asserts that the Commission should not allow a VOCC in one trade to become a VOCC in another by virtue of a slot charter. At the very least, OWL submits that the FMC should set out guidelines similar to those recently adopted by the U.S. Customs Service ("Customs") which require a slot or time-chartering common carrier to have significant responsibility or involvement in the actual operation of the vessels before being considered a VOCC.

OWL concedes that slot charters would be inherently risky for NVOCCs, but it is willing to face those risks in order to be able to offer service guarantees (*i.e.*, service contracts) to its underlying shipper clients. It contends further that the enhanced competition of new entrants would outweigh any possible adverse impact of possibly broadening the scope of antitrust immunity. OWL also believes that the Commission's concerns about its and shippers' ability to arrest or attach a vessel are unfounded. It suggests that the best way to protect shippers is by requiring adequate insurance or a surety bond, such as it already possesses.

OWL contends that there is no statute, code or policy that would prohibit it from obtaining space on vessels by means of space charters, and the fact that such space charters are not within the scope of the Shipping Act does not mean they are prohibited. In this regard, OWL references a decision of the European Commission ("EC") relating to the Trans-Atlantic Conference Agreement ("TACA"). *Commission Decision of 16 September 1998 Relating to a Proceeding Pursuant to Articles 85 and 86 of the EC Treaty.* (Case No. I/35.134) ("EC Decision"). That decision discussed two types of NVOCCs—(1) those that operate vessels in another trade, and (2) those that do not operate vessels anywhere. The EC stated that neither type competes with VOCCs in terms of quality of service, but the first is able to compete on price. OWL further asserts that the EC Decision recognizes three types of common carriers: (1) A VOCC in the trade; (2) VOCCs in another trade; and (3) NVOCCs. It submits that the critical distinction is not that the second owns vessel in another trade, but that it has the ability to compete with VOCCs on price through its space charter arrangements. OWL seeks this ability to compete on price by means of space charters and be deemed an OCC.

OWL further contends that the term "vessel operator" is growing increasingly ambiguous in light of vessel sharing and consortia agreements. It submits that the Commission has not faced the difficult question of what degree of involvement is required to be considered a vessel operator and has instead taken a rudimentary approach of defining a VOCC as a common carrier that operates a vessel somewhere in the U.S.

OWL notes that Customs has struggled with the definition of VOCC for the past 25 years in the context of the Sixth Proviso to the Jones Act, 46 U.S.C. app. 883, that exempts coastwise movements of empty containers owned or leased by the "owner or operator" of a vessel transporting those containers for its own use in the foreign commerce of the U.S. In this regard, Customs has issued several rulings dealing with carriers involved in slot charter agreements. In 1977, Customs purportedly issued a ruling holding that a time charterer was not a vessel operator and, in 1983, expanded this position to slot charterers. In that case, Customs allegedly looked at one trade lane without reference to status in other lanes. In 1999, Customs reviewed a joint service agreement between Italian Line and d'Amico Line. It determined that both were VOCCs because they shared operational control under the agreement.

**The Final Rule**

*General Discussion*

For the reasons set forth below, and in full consideration of all of the comments, the Commission has decided to adopt the proposed rule as the final rule. As a result, the term "ocean common carrier" will include only those common carriers who actually operate a vessel in at least one United States trade. In addition, if a common carrier is an ocean common carrier in one U.S. trade, it can act as an ocean common carrier in all U.S. trades.

This decision is fully supported by a straightforward reading of the relevant definitions contained in the Shipping Act. Section 3(16) of the Shipping Act defines an "ocean common carrier" as "a vessel-operating common carrier." And, section 3(6) of the Shipping Act defines a "common carrier", in part, as:

> * * * a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that—
>
> (A) assumes responsibility for the transportation from the port or point of receipt to the port or point of destination, and
>
> (B) utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country.
> * * *

When these two definitions are read together, it is logical to conclude that the vessels operated by an ocean common carrier are those referenced in the common carrier definition, *i.e.*, those "operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country."

The Commission recognizes that the definition of common carrier refers to one who "utilizes, for all or part of that transportation" a vessel operating between the U.S. and a foreign country. Congress employed the word "utilize" so that the definition of common carrier could encompass both ocean common carriers and NVOCCs; the very definition of ocean common carrier as "vessel-operating common carrier" indicates that Congress intended ocean common carriers actually to operate, not merely utilize, vessels. The reference to "all or a part of the transportation" simply reflects the fact that a common carrier can offer port-to-port transportation or point-to-point through transportation, using inland carriers for the latter.

The final rule is also consistent with Congress' intent to delineate between ocean common carriers and NVOCCs. In adopting the Shipping Act, Congress clearly wanted to distinguish between those common carriers that operate vessels and those that do not. The former are ocean common carriers and the latter are NVOCCs. As the House Committee on Merchant Marine and Fisheries noted with respect to H.R. 1878:

> The Shipping Act does not contain a definition of "non-vessel-operating common carrier." One is added to this bill so that the distinction may be made between those carriers that operate vessels and those that do not. Both types are included in the term "common carrier."
>
> The term "ocean common carrier" is based on the definition of "common carrier by water in foreign commerce" in section 1 of the Shipping Act with the added provision that the carrier must operate the vessel providing the transportation by water.

H.R. Rep. No. 53, 98th Cong., 1st Sess. 29 (1983) ("House Report"). *See also*, S. Rep. No. 3, 98th Cong., 1st Sess. 20 (1983) ("Senate Report"). In addition, Congress wanted to ensure that carriers operating solely through ports of contiguous nations not be included in the definition of "common carrier." *See*, House Report at 29; Senate Report at 19. Congress' concern not to establish the Commission's jurisdiction over carriers operating through ports in countries contiguous to the United States reflects its overall determination not to expand the Commission's jurisdiction, and with it, the conferring of antitrust immunity, to carriers operating solely between foreign ports.

As noted in the preamble to the NPR, Congress viewed vessel operators as those whose vessels call at U.S. ports and classified all other common carriers in U.S. commerce as non-vessel-operating common carriers. For example, in its report on the Shipping Act, the Senate Commerce, Science, and Transportation Committee observed:

> The Committee strongly believes that it is in our national interest to permit cooperation among carriers serving our foreign trades to permit efficient and reliable service. * * * Our carriers need; a stable, predictable, and profitable trade with a rate of return that warrants reinvestment and a commitment to serve the trade; greater security in investment. * * *

Senate Report at 9. We continue to believe that Congress intended to provide antitrust immunity and other special privileges and protections only to those carriers that have made the financial commitment to provide vessel service in United States trades.

The importance of the distinction between OCC and NVOCC was noted in the preamble to the proposed rule: an OCC can be a party to agreements filed with the Commission and receive antitrust immunity therefor, and can enter into service contracts with shippers. An NVOCC can do neither. Moreover, NVOCCs are subject to a financial responsibility requirement, with foreign NVOCCs subject to higher amounts under the scale promulgated by Commission regulation. Thus, there is ample incentive for NVOCCs to characterize themselves as OCCs, and this could inure to the detriment of their shipper customers who would otherwise have been protected by an NVOCC's financial responsibility.

The Commission continues to be concerned about the effect of the definition of ocean common carrier on the scope of antitrust immunity envisioned by Congress under the Shipping Act. If the definition of OCC somehow included carriers that operated vessels only in foreign-to-foreign trades, this could substantially expand the scope of antitrust immunity beyond that contemplated by Congress. In this regard, we note the longstanding judicial policy of narrowly construing antitrust exemptions. See, *Federal Maritime Commission* v. *Seatrain Lines, Inc.*, 411 U.S. 726, 733 (1973).

**Vessel Sharing Arrangements**

Several of the commenters (Maersk, CENSA, OCWG, India Carriers and NITL) suggest that the definition of OCC should be extended to include shipping lines who are parties to VSAs serving U.S. ports but who themselves do not call at U.S. ports. While the term VSA is undefined by the commenters, they suggest it is virtually any cooperative arrangement among OCCs. These commenters note that VSAs have grown over the years and are likely to continue to grow. These arrangements often permit carriers to offer more efficient and frequent service to the shipping public and at a lower cost. The OCWG further contends that a variety of operational and other factors will dictate how a member of a VSA will deploy its vessels in non-U.S. trades and that such a carrier may choose to serve U.S. trades solely with vessel space obtained on its partners' ships.

Some commenters suggest that the proposed definition could discourage the formation of VSAs or prevent the parties from maximizing the benefits of such cooperation by redeploying vessels out of U.S. trades. Maersk, CENSA and the OCWG thus propose an exception to the proposed definition for a vessel operating common carrier that contributes vessels to a VSA that serves the U.S. NITL likewise believes that VSAs should be encouraged, but suggests that this could be accomplished simply by maintaining the existing statutory definition and by broadly construing it. Lastly, OWL argues that if the Commission does not adopt its proposal concerning NVOCC space chartering, then parties to VSAs should be considered OCCs only if they have significant responsibility or involvement in the actual day-to-day operations of the vessels.

While the intended benefit of the exception urged by some of the commenters is to facilitate formation and operation of efficient VSAs, there are several problems with this approach. First, it appears to address a mostly theoretical concern. Commenters do not identify, nor is the Commission aware of, any instances where entities are planning to operate major VSAs with parties who are not in the U.S. trades, or where current, vessel-operating members of VSAs are contemplating withdrawing vessel service from U.S. trades and proposing to serve the U.S. only through space-sharing arrangements with fellow VSA members. In addition, this type of arrangement would expand the reach of antitrust immunity well beyond that envisioned by Congress when it recently passed OSRA. Since 1984, the only carriers that could enter into agreements subject to the Act and receive antitrust immunity were "ocean common carriers." The inclusion of VSA participants in the OCC definition would effectively confer antitrust immunity to carriers who do not make a commitment to serve the U.S. trades by operating their own vessels.

In addition to these very serious policy-based concerns, the carriers' proposal raises other technical or legal problems, and may generate further confusion or ambiguity. Since the term VSA is undefined, but seems to include an almost unlimited range of carrier relationships, the proposed exemption would appear to encompass a broad and indefinite class of foreign companies. Also, it refers to a vessel sharing agreement that "operates" vessels. However, VSAs do not collectively operate vessels—their individual carrier members do so. Moreover, if the members are subject to an arrangement that covers more than the U.S. trades, those non-U.S. portions of the arrangement would not be in the VSA and filed with the Commission.[1] The Commission could be left unable to determine the full extent of any such arrangement or ascertain whether the carrier involved is a vessel operator in some non-U.S. trade, and not an NVOCC or some other entity unlawfully seeking VOCC status. Lastly, this proposal provides no protection to the shipping public who might use the services of such a carrier in its U.S. service. The carrier would have no attachable assets in the U.S. and might not have an agent for service of process in the U.S. to receive the claims of injured parties. This too would appear to contravene OSRA's general objective of providing more, not fewer, protections to U.S. interests utilizing foreign entities, as reflected in the strengthened ocean transportation intermediary ("OTI") and controlled carrier provisions, for example.

For the reasons stated above, the Commission is not adopting the carrier proposal concerning VSAs. This does not mean that a VSA member without ships calling at a U.S. port would be precluded from offering a common carriage service to the U.S. However, it would simply have to offer its service as an NVOCC. It could then enter into service contracts with OCCs, but could not offer its own service contracts or fix rates with other vessel operators in a trade.

The Commission is fully cognizant of the new policy objective added to the Shipping Act by OSRA—*i.e.*, promoting the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace. The Commission further believes that there may be arrangements between common carriers that offer more efficient and rationalized services, while at the same time providing shippers with more service options and lower costs for their ocean

[1] In *Transpacific Westbound Rate Agreement* v. *Federal Maritime Comm'n*, 951 F.2d 950 (9th Cir. 1991), the court upheld the Commission's decision that it did not have jurisdiction over foreign-to-foreign portions of agreements that also had U.S.-to-foreign portions. As a result, foreign-to-foreign portions of agreements are generally not filed with the Commission, even for informational purposes.

transportation, and that some of these arrangements may be precluded by the final rule as a result of specific statutory constraints limiting the Commission's flexibility in interpreting the Shipping Act. We appreciate commenters' arguments regarding efficient operations. We fully support and wish to encourage arrangements and operations that enhance efficiency and competition. However, we do not think it appropriate to adopt an overly broad exception to address what, to date, is only a hypothetical problem. We would remind the carriers that the Commission would, as always, give serious consideration to any petition for rulemaking, reconsideration of this rule, or an exemption.

*Transshipment Arrangements*

Transshipment agreements are arrangements between ocean common carriers by which one carrier serving a port of origin and the other carrier serving a port of destination provide transportation between such ports via an intermediate port at which the cargo is transferred from one carrier to the other. *See* 46 CFR 535.306(a). Nonexclusive transshipment agreements are exempt from the filing requirements of the Shipping Act, 46 CFR 535.306(b),[2] but exclusive transshipment agreements must still be filed with the Commission.

Several commenters have raised concerns about the effect of the proposed rule on the status of vessel operator parties to transshipment agreements who do not directly serve the United States. They contend that the rule would overturn longstanding Commission precedent that such carriers are considered to be OCCs. As a result, Maersk has proposed an additional exception to include feeder operators in the rule, while Samskip and the OCWG suggest that the Commission can address the issue in the supplemental information to the final rule without further amending the actual definition.

Beginning in 1943, in the *Canal Zone* case, the Commission's predecessor found that ocean carriers moving cargo from Colombia or Ecuador to the Canal Zone and then transferring that cargo to carriers moving it to the U.S., under through bills of lading, were "engaged in the transportation by water of property between the United States and a foreign country" and consequently were "common carriers by water" subject to the Shipping Act, 1916. This position was reaffirmed and further explicated by the Commission in 1966, in the two *Transshipment Cases*. In the first case, the Commission found carriers moving cargo from Indonesian outports to the U.S. under a through bill of lading who transshipped the cargo at a base port to be common carriers by water, and stated:

> Where there exists a unitary contract of affreightment such as a through bill of lading by which two or more carriers or conferences of carriers hold themselves out to transport cargo from a specified foreign port to a point in the United States with transshipment at one or more intermediate points from one carrier to another, each of the carriers so involved is "engaged in" transporting cargo by water from a foreign country to the United States.

10 F.M.C. at 191. The Commission reached a similar conclusion in the second *Transshipment* case, 10 F.M.C. 201 (1966), where carriers moving cargo from Thailand to Singapore were also held to be subject to the 1916 Act.

The Commission does not believe that these cases are controlling today. The *Transshipment* cases were decided under the 1916 Act, which defined "common carrier by water in foreign commerce" to mean "a common carrier engaged in the transportation by water of passengers or property between the United States * * * and a foreign country." When Congress enacted the Shipping Act it chose different language to define "common carrier" in section 3(6), 46 U.S.C. app. 1702(6), and separately defined "ocean common carrier" and "non-vessel-operating common carrier." In light of the fact that the Commission decided the *Transshipment* cases prior to the statutory distinction being drawn between NVOCCs and OCCs, the Commission finds that the *Transshipment* cases are non-controlling as to these issues and declines to adopt the commenters' recommendations with regard thereto. As noted in the House Report, the difference between a "common carrier by water" and an "ocean common carrier" is that the latter has "the added provision that the carrier must operate the vessel," a significant distinction. Thus, the *Transshipment* cases are probably controlling as to whether someone is a "common carrier," but irrelevant to "ocean common carrier" status.

*Avoidance of OTI Responsibilities*

The NPR raised concerns about permitting vessel operators in foreign-to-foreign trades to be considered OCCs in U.S. trades by virtue of VSA or transshipment arrangements. In particular, it noted that this could remove certain companies from the scope of the NVOCC bonding requirement even though they have no vessels or assets in the U.S. that can be attached to satisfy a Commission or U.S. court judgment. NPR at 6. As noted earlier, there is a very strong incentive under the Shipping Act, as modified by OSRA, for NVOCCs to want to be considered OCCs. They can then offer confidential service contracts to their shipper customers and avoid the costs of maintaining a bond as required by the Act and the Commission's regulations. Some NVOCCs are likely to engage in complex machinations to be considered OCCs under some of the proposals suggested by certain commenters. This is not some idle threat or hypothetical fear—even before passage of OSRA many NVOCCs were simply holding themselves out as OCCs.[3] Now, post-OSRA, a review of the carriers holding themselves out as VOCCs on the Commission's web page reveals that many of these carriers may well be NVOCCs, a matter for probable enforcement action. In addition, it appears that some carriers that may have at one time served U.S. ports with their own vessels are continuing to hold themselves out as OCCs even though they have withdrawn these vessels from service.

*Multi-trade Approach*

Almost all of the commenters support the Commission's multi-trade approach to determining OCC status—if a carrier is an OCC in one U.S. trade, it will be considered an OCC for all U.S. trades. NITL suggests that this approach is supported by the plain language of the statute. The OCWG notes that this is simply a continuation of past Commission practice and avoids having to make status determinations on a trade-by-trade basis. It further argues that making such determinations on a trade-by-trade basis would be impractical and inefficient. As reflected by the endorsement of the commenters, the Commission's position in this regard is a sound one, and the Commission will continue the multi-trade approach to determining OCC status in the final rule.

*OWL's Proposal*

OWL's proposal to consider NVOCCs who space charter from VOCCs to be considered OCCs on a trade-by-trade basis is most problematic. At the very

[2] Nonexclusive transshipment agreements do not prohibit either carrier from entering into similar agreements with other carriers.

[3] In Docket No. 98–31, *Publication of Inactive or Inaccurate Ocean Common Carrier Tariffs*, order served May 19, 1999, the Commission found that 13 NVOCCs operating in the Far East trades held themselves out to be VOCCs.

least, such a proposal is outside the scope of the proposed rule and would require additional notice and comment were the Commission inclined to pursue such an approach. But, more importantly, OWL's proposal does not appear to be a proper matter for a rulemaking proceeding. OWL is not asking that the Commission explicate some statutory or regulatory provision. Instead, it is asking the Commission to rewrite the Shipping Act to give certain NVOCCs the ability to offer service contracts to their shipper customers. Regardless of whether this is sound policy, Congress recently and very consciously chose not to permit such activity when it enacted OSRA. The Commission will not now do what Congress declined to do.

**Effective Date**

It appears that there may be some vessel operators currently holding themselves out as ocean common carriers even though they do not operate vessels that directly serve U.S. ports. The Commission understands that these carriers may have been confused about the legitimacy of such services, in light of the Commission's pre-1984 policies implementing the 1916 Shipping Act. Regardless of the validity of this position, the Commission appreciates the situation these carriers are in and desires to give them sufficient time to restructure their services in accordance with the final rule. As a result, the final rule will not become effective for 90 days. And, of course, the rule will not be enforced retroactively as to such carriers.

It is also possible that some of these carriers operating as OCCs may have entered into service contracts with shippers that may still be effective. At the very least, our decision here should operate as the type of *force majeure* situation that would warrant the termination of such contracts without any penalty to the shipper. If the parties to such contracts wish to continue operating under them, the Commission believes that this would not be possible since the carrier would no longer be considered an ocean common carrier, but rather would be an NVOCC. However, a similar arrangement might possibly be reflected in the common carrier's tariff rates or perhaps as a time/volume rate.

*Amendment to Part 515*

In the final rule of Docket No. 98–28, *Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries*, adding section 515 to part 46 CFR, the Commission stated in the supplementary information section that payment against financial responsibility should only be made on "final" judgments; however, it mistakenly failed to add the word "final" in the actual language of § 515.23(b)(2). In response to petitions for reconsideration of the final rule in 46 CFR 515, the Commission ordered the correction of this oversight to be made in the instant rulemaking proceeding in order to preserve resources. Therefore, in accordance with the Commission's decision in Docket No. 98–28, we are amending 46 CFR 515.23(b)(2) to add the word "final."

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chairman of the Federal Maritime Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the rule will not have a significant impact on a substantial number of small entities. In its Notice of Proposed Rulemaking, the Commission stated its intention to certify this rulemaking because the proposed changes affect only ocean common carriers and passenger vessel operators, entities the Commission has determined do not come under the programs and policies mandated by the Small Business Regulatory Enforcement Fairness Act. As no commenter refuted this determination, the certification remains unchanged.

**List of Subjects**

*46 CFR Part 515*

Exports; Freight forwarders; Non-vessel-operating common carriers; Ocean transportation intermediaries; Licensing requirements; Financial responsibility requirements; Reporting and recordkeeping requirements.

*46 CFR Part 520*

Common carrier; Freight; Intermodal transportation; Maritime carriers; Reporting and recordkeeping requirements.

*46 CFR Part 530*

Freight; Maritime carriers; Reporting and recordkeeping requirements.

*46 CFR Part 535*

Administrative practice and procedure; Maritime carriers; Reporting and recordkeeping requirements.

Therefore, for the reasons set forth above, Parts 515, 520, 530, and 535 of Subchapter C of Title 46 Code of Federal Regulations, are amended as follows:

## PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES FOR OCEAN TRANSPORTATION INTERMEDIARIES

1. The authority citation continues to read as follows:

**Authority:** 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

2. In § 515.2 revise paragraph (m) to read as follows:

**§ 515.2 Definitions**

* * * * *

(m) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

3. Revise § 515.23(b)(2) to read as follows:

**§ 515.23 Claims against an ocean transportation intermediary.**

* * * * *

(b) * * *

(2) If the parties fail to reach an agreement in accordance with paragraph (b)(1) of this section within ninety (90) days of the date of the initial notification of the claim, the bond, insurance, or other surety shall be available to pay any final judgment for damages obtained from an appropriate court. The financial responsibility provider shall pay such judgment for damages only to the extent they arise from the transportation-related activities of the ocean transportation intermediary ordinarily within 30 days, without requiring further evidence related to the validity of the claim; it may, however, inquire into the extent to which the judgment for damages arises from the ocean transportation intermediary's transportation-related activities.

* * * * *

## PART 520—CARRIER AUTOMATED TARIFF SYSTEMS

1. The authority citation for part 520 continues to read as follows:

**Authority:** 5 U.S.C. 553; 46 U.S.C. app. 1701–1702, 1707–1709, 1712, 1716; and sec. 424 of Pub. L. 105–383, 112 Stat. 3411.

2. In § 520.2 revise the definition of ocean common carrier to read as follows:

**§ 520.2 Definitions**

* * * * *

*Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

## PART 530—SERVICE CONTRACTS

1. The authority citation for part 530 continues to read as follows:

**Authority:** 5 U.S.C. 553; 46 U.S.C. app. 1704, 1705, 1707, 1716.

2. In § 530.3 revise paragraph (n) to read as follows:

**§ 530.3 Definitions.**

* * * * *

(n) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

## PART 535—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHERS SUBJECT TO THE SHIPPING ACT OF 1984

1. The authority citation for part 535 is amended to read as follows:

**Authority:** 5 U.S.C. 553; 46 U.S.C. app. 1701–1707; 1709–1710, 1712 and 1714–1718; Pub. L. 105–383, 112 Stat. 3411.

2. Revise § 535.101 to read as follows:

**§ 535.101 Authority.**

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act (5 U.S.C. 553), sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17 and 19 of the Shipping Act of 1984 ("the Act"), and the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902.

3. In § 535.104 revise paragraph (u) to read as follows:

**§ 535.104 Definitions.**

* * * * *

(u) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

By the Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–11338 Filed 5–5–00; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 54

**[CC Docket No. 96–45; FCC 00–126]**

### Federal-State Joint Board on Universal Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule; petition for reconsideration.

**SUMMARY:** This document concerning the Federal-State Joint Board on Universal Service clarifies the method by which quarterly line count data will be incorporated in the new high-cost mechanism for purposes of calculating and targeting support amounts. It also clarifies that, until the Commission adopts new line count input values, forward-looking costs for universal service support purposes shall be estimated using the line count input values adopted in the Tenth Report and Order. Finally, it clarifies that high-cost support shall be available on a regular quarterly basis for competitive eligible telecommunications carriers serving lines in areas served by non-rural incumbent local exchange carriers.

**DATES:** Effective May 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Katie King, Attorney, Common Carrier Bureau, Accounting Policy Division, (202) 418–7400.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Twentieth Order Reconsideration, CC Docket No. 96–45; FCC 00–126, released on April 7, 2000. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C., 20554.

### I. Introduction

1. In this Order, we clarify certain aspects of the new high-cost universal service support mechanism for non-rural carriers adopted in the *Ninth Report and Order*, 64 FR 67416 (December 1, 1999), on October 21, 1999. Specifically, we clarify the method by which quarterly line count data will be incorporated in the new high-cost mechanism for purposes of calculating and targeting support amounts.

We also clarify that, until the Commission adopts new line count input values, forward-looking costs for universal service support purposes shall be estimated using the line count input values adopted in the *Tenth Report and Order*, 64 FR 67372 (December 1, 1999). This clarification does not alter the methodology adopted in the *Ninth Report and Order* except to account for line growth when the wire center line count data reported quarterly by the carriers differs from the input values used to estimate forward-looking cost.

Finally, we clarify that high-cost support shall be available on a regular quarterly basis for competitive eligible telecommunications carriers serving lines in areas served by non-rural incumbent local exchange carriers.

### II. Discussion

2. In general, there are four stages in the forward-looking high-cost mechanism for non-rural carriers where line count information is required: (1) To estimate forward-looking costs of providing supported services; (2) to determine statewide support amounts; (3) to target those statewide support amounts to individual wire centers; and (4) to determine the per-line support amounts in individual wire centers.

In addition, the interim hold-harmless provision uses line counts to target carrier-by-carrier hold-harmless support amounts to individual wire centers. The interim hold-harmless provision also uses line counts to determine the per-line support amounts in individual wire centers. As discussed, we provide specific guidance on how these line counts are used in the four stages of the forward-looking mechanism and the interim hold-harmless provision.

3. *Estimating Forward-Looking Costs.* We clarify that the line counts used in the model to estimate forward-looking economic costs shall be used to calculate average forward-looking costs in all the cost calculations in the methodology adopted in the *Ninth Report and Order* for determining support. This approach is consistent with the Commission's and the Federal-State Joint Board's decision to use a cost model. The model estimates the forward-looking costs of providing the supported services in each wire center served by non-rural carriers. We clarify that model lines shall be used in

determining the wire center average cost per line, the statewide average cost per line, the nationwide average cost per line, and the national cost benchmark.

The statewide average cost per line is determined by adding the costs in the wire centers in the state and dividing by the number of non-rural model lines in the state. Similarly, the nationwide average cost per line is determined by adding the costs in all states and dividing by the total number of non-rural model lines. The national benchmark equals 135 percent of the nationwide average cost.

4. *Calculating Statewide Support Amounts.* We clarify that, to the extent that the reported line counts differ from the line counts used in the model to estimate forward-looking costs, statewide support amounts shall be adjusted to reflect any changes between the number of model lines and the number of reported lines. This ensures that the new mechanism provides sufficient support and that support is portable. We shall incorporate the number of lines reported by non-rural carriers on a quarterly basis in calculating statewide support amounts. Statewide support amounts shall be determined by calculating the average per-line support amount in the state and multiplying this support amount by the number of lines reported by non-rural carriers in the state.

5. This clarification of the methodology can be illustrated by using the example in the *Ninth Report and Order* illustrating the targeting of forward-looking support. We assume, in that example, that there are 30 lines in the state, the average cost per line is $30 and thus the total statewide cost as estimated by the model is $900. We assume further that the national benchmark equates to $25 per line. Using the statewide methodology adopted in the *Ninth Report and Order*, the total amount of support provided to carriers in the state would be ($30 − $25)×30 lines×76%=$114 or $3.80 per line of untargeted support. In order to adjust the total statewide support amount to reflect quarterly line counts, we clarify that the average per-line amount of untargeted support shall be multiplied by the number of lines reported by non-rural carriers in the state. For example, assume that non-rural carriers in the state report that they have 35 lines, rather than the 30 lines used in the model to estimate forward-looking costs. Basing support on reported lines, the statewide support amount would be $3.80×35=$133, rather than $3.80×30=$114.

6. *Targeting Forward-Looking Support.* After statewide forward-looking support is calculated as described, that statewide support amount must be targeted to individual wire centers. Under this targeting approach, we clarify that the line counts used in the model to estimate forward-looking economic costs shall be used to target support to high-cost wire centers. This approach is consistent with the Commission's and the Federal-State Joint Board's decision to use a cost model. The model estimates the forward-looking costs of providing the supported services in each wire center served by non-rural carriers. From this information, we identify the high-cost wire centers. Although we do not alter the targeting methodology adopted in the *Ninth Report and Order*, we now clarify that the model is used to estimate relative costs among wire centers, rather than relative support amounts. We also clarify how the per-line targeted support amount should be calculated.

7. As discussed, we have concluded that support amounts should be adjusted to reflect the number of lines reported by non-rural carriers, in those situations when the number of lines used in the model to estimate forward-looking costs differs from the number of reported lines. The example used to illustrate targeting in the *Ninth Report and Order* was based on the assumption that the number of model lines and the number of reported lines did not differ, so we clarify how the targeting calculations will be made, even if the line counts differ. In identifying high-cost wire centers for purposes of targeting support, instead of using pro rata factors based on wire center scale support, we will calculate ratios based on the wire center's cost above the national cost benchmark. As explained, this approach does not change support amounts.

8. This clarification of the methodology is best provided by using the example in the *Ninth Report and Order* to illustrate the targeting of forward-looking support and the example for determining statewide support discussed. Assume that the estimated total cost of $900 in the state is derived from the costs in three wire centers as follows:

Wire Center 1 has 10 lines, with an average cost of $20 per line, and a total cost in the wire center of $200;
Wire Center 2 has 10 lines, with an average cost of $30 per line, and a total cost of $300; and
Wire Center 3 has 10 lines, with an average cost of $40 per line, and a total cost of $400.

As in the example, the statewide average cost per line is $30, the national benchmark is $25, and the statewide support amount is based on an average untargeted support amount of $3.80 per line. Because the number of lines reported by non-rural carriers in the State is assumed to be 35, the statewide support amount is $133. The proportion of the statewide support amount targeted to each wire center is determined by first calculating the ratio of the wire center's estimated cost above the benchmark to the total cost above the benchmark in the State. Therefore, the estimated costs above the benchmark would be as follows:

Wire Center 1 has an average cost below the benchmark, so the cost above the benchmark is $0;
Wire Center 2 has an estimated cost above the benchmark of ($30 − $25)×10 model lines=$50;
Wire Center 3 has an estimated cost above the benchmark of ($40 − $25)×10 model lines=$150; and the total estimated cost above the benchmark in the State is $0+$50+$150=$200.

Then the ratios used to determine the percentage of statewide support each wire center will receive are calculated as follows:

Wire Center 1 receives $0/$200=0%; Wire Center 2 receives $50/$200=25%; and Wire Center 3 receives $150/$200=75%.

Thus, of the $133 of support the State receives, Wire Center 1 receives $0 support; Wire Center 2 receives 25%×$133=$33.25; and Wire Center 3 receives 75%×$133=$99.75.

9. We clarify that we shall use the number of reported lines, rather than model lines, to calculate the targeted per-line support amount available in the wire center. Otherwise, support amounts could differ depending upon whether the line is provided by an incumbent local exchange carrier or by a competitive eligible telecommunications carrier.

Using the example, we know that, of the $133 statewide support amount, $33.25 is targeted to Wire Center 2, and $99.75 targeted to Wire Center 3. Assume that the 35 reported lines are distributed as follows:

Wire Center 1 has 15 reported lines;
Wire Center 2 has 6 reported lines; and
Wire Center 3 has 14 reported lines.

Dividing the support amounts available in each wire center, by the number of reported lines results in the following per-line support amounts:

Wire Center 1 receives $0 per line;
Wire Center 2 receives $33.25/6=$5.54 per line; and
Wire Center 3 receives $99.75/14=$7.125 per line.

This methodology produces a competitively neutral result, whereas, using model lines to calculate the per-line support would not. This can be illustrated with one of the wire centers in the example. If model lines were used to calculate the per-line support amount in Wire Center 3, the per-line amount would be $99.75/10=$9.975. If the incumbent local exchange carrier were serving all lines, the incumbent, in effect, would be receiving $99.75/14=$7.125 per line. If a competitor were serving one line and receiving $9.975 in support, the incumbent local exchange carrier would receive $6.905 per line for serving the remaining 13 lines (($99.75 − $9.975=$89.775)/13). To ensure that all non-rural carriers in a wire center receive the same per-line support amount for the lines they serve, we clarify that the total wire center support amount shall be divided by the number of reported lines in that wire center.

10. *Targeting Hold-Harmless Support.* We similarly clarify how hold-harmless support is targeted to high-cost wire centers. Although hold-harmless support is not based upon costs estimated by the model, it is consistent with our decision to target hold-harmless support to high-cost wire centers to use model lines in identifying high-cost wire centers, as we do for targeting forward-looking support. In addition, we clarify that the portable per-line amount of targeted hold-harmless support shall be determined by dividing the total hold-harmless support amount targeted to the wire center by the number of lines reported in that wire center.

11. We use the example presented in the *Ninth Report and Order* to illustrate the targeting of hold-harmless support. We use model lines to determine relative costs among wire centers and reported lines to determine the per-line support amount available in each wire center. We assume that a State has a single carrier with three wire centers in the State. Assume that the model estimates the average forward-looking cost per line in each wire center as follows:

Wire Center 1—$15,
Wire Center 2—$20,
Wire Center 3—$25.

Assume that these cost estimates were based on input values of 10 lines in each wire center. Thus, the statewide average cost per line is ($150+$200+$250)/30 lines=$20. Assume further that the national benchmark equates to $22 per line, and therefore the carrier receives no support under the forward-looking methodology in part 54 of our rules, which averages costs at the statewide level. Also assume that the carrier receives a total of $90 of interim hold-harmless support as determined pursuant to part 36 of our rules.

Under the targeting approach, the hold-harmless support is distributed first to the wire center that the model estimates to have the highest costs in the State until that wire center's average costs, net of support, equal the average costs in the next most expensive wire center. This process continues in a cascading fashion until all support has been distributed. In this example, the first $50 of hold-harmless support would be distributed to Wire Center 3, so that the average forward-looking cost in Wire Center 3, net of hold-harmless support, is reduced to $250 − $50=$200, an average cost of $200/10 lines=$20 per line. This places Wire Center 3 on equal footing with Wire Center 2, which also has an average cost of $200/10 lines=$20 per line. The remaining hold-harmless support, $90—$50 = $40, would be divided between the wire centers, so that the average cost as estimated by the model, net of hold-harmless support, would be the same in Wire Center 2 and Wire Center 3, that is, $18 per line.

Thus, Wire Center 2 would receive a total of $20 in support and Wire Center 3 would receive a total of $50+$20=$70 in support. The average forward-looking cost in Wire Center 2, net of hold-harmless support, is reduced to $200 − $20=$180, an average cost of $180/10 lines=$18 per line. The average forward-looking cost in Wire Center 3, net of hold-harmless support, is reduced to $250 − $70=$180, an average cost of $180/10 lines=$18 per line.

Now assume that the carrier reports that Wire Center 2 has 6 lines and that Wire Center 3 has 14 lines. The portable per-line support amount in Wire Center 2 would be $20/6 lines=$3.33 per line. The portable per-line support amount in Wire Center 3 would be $70/14 lines=$5.00 per line.

12. *Reporting Quarterly Line Counts.* As discussed, the line counts used in the model to estimate forward-looking costs are trued-up to 1998 ARMIS line counts. As of December 30, 1999, non-rural incumbent local exchange carriers and competitive eligible telecommunications carriers seeking to receive support are now required to file updated line counts every quarter. USAC shall determine statewide support amounts by calculating the average per-line support amount in the state and multiplying the average support amount by the number of lines reported by non-rural carriers in the State. For the year 2000, forward-looking support will be distributed for the first and second quarters of the year 2000 based on the line counts non-rural carriers filed on December 30, 1999. Similarly, forward-looking support for the third and fourth quarters of the year 2000, will be based on the line counts non-rural carriers file on March 30, 2000, and July 31, 2000, respectively.

13. Although section 54.307(b) of the Commission's rules refers to an annual July 31st deadline for the submission of competitive eligible telecommunications carriers' line count data, we clarify that high-cost support shall be available on a regular quarterly basis for competitive eligible telecommunications carriers serving lines in areas served by non-rural incumbent local exchange carriers. In the *Ninth Report and Order*, the Commission adopted uniform, mandatory quarterly reporting requirements for all carriers seeking support for serving lines in non-rural areas. To ensure "equitable, non-discriminatory, and competitively neutral treatment[,]" support must be available to all eligible telecommunications carriers on a quarterly basis, rather than on an annual basis. Therefore, competitive eligible telecommunications carriers serving lines in non-rural areas may submit line count data under the filing schedule described in § 54.307(c) and receive support on a regular quarterly basis. This approach is consistent with our decision to require uniform quarterly reporting and is essential to ensure portability of support among carriers. We amend § 54.307 accordingly.

## III. Procedural Matters

### *A. Regulatory Flexibility Act Certification*

14. The Regulatory Flexibility Act (RFA) requires an Initial Regulatory Flexibility Analysis (IRFA) whenever an agency publishes a notice of proposed rulemaking, and a Final Regulatory Flexibility Analysis (FRFA) whenever an agency subsequently promulgates a final rule, unless the agency certifies that the proposed or final rule will not have "a significant economic impact on a substantial number of small entities," and includes the factual basis for such certification. The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction."

In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business

concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). The SBA defines a small telecommunications entity in SIC code 4813 (Telephone Communications, Except Radiotelephone) as an entity with 1,500 or fewer employees.

15. In the *Ninth Report and Order*, the Commission certified pursuant to the RFA that the final rules adopted in that order would not have a significant economic impact on a substantial number of small entities. We concluded that the *Ninth Report and Order* adopted a final rule affecting only the amount of high-cost support provided to non-rural LECs. Non-rural LECs generally do not fall within the SBA's definition of a small business concern because they are usually large corporations or affiliates of such corporations. In a companion Further Notice of Proposed Rulemaking adopted in this docket, the Commission prepared an IRFA seeking comment on the economic impacts on small entities. No comments were received in response to that IRFA.

16. The rule changes adopted by this order implement our clarifications to the *Ninth Report and Order*, as described in the text of this *Twentieth Order on Reconsideration*. The changes adopted in this order will affect only non-rural LECs. As mentioned, non-rural LECs generally do not fall within the definition of a small business concern. Therefore, we certify pursuant to Section 605(b) of the RFA, that the final rules adopted in this order will not have a significant economic impact on a substantial number of small entities. The Consumer Information Bureau, Reference Information Center, will send a copy of the *Twentieth Order on Reconsideration*, including a copy of this final certification, to the Chief Counsel for Advocacy of the SBA in accordance with the RFA. In addition, this certification and order will be published in the **Federal Register**. Finally, the Commission's Consumer Information Bureau, Reference Information Center, will send a copy of the *Twentieth Order on Reconsideration*, including a copy of this final certification, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.

*B. Effective Date of Final Rules*

17. We conclude that the amendments to our rules adopted herein shall be effective May 8, 2000. In this order, we make minor amendments to the rules adopted in the *Ninth Report and Order*, which implement a new forward-looking high-cost support mechanism, effective January 1, 2000. Making the amendments effective 30 days after publication in the **Federal Register** would jeopardize the implementation of the new mechanism. Accordingly, pursuant to the Administrative Procedure Act, we find good cause to depart from the general requirement that final rules take effect not less than 30 days after their publication in the **Federal Register**.

**IV. Ordering Clauses**

18. The authority contained in sections 1–4, 201–205, 214, 218–220, 254, 303(r), 403, and 410 of the Communications Act of 1934, as amended, and section 1.108 of the Commission's rules, the Twentieth Order on Reconsideration is adopted.

19. Part 54 of the Commission's rules, 47 CFR Part 54, is amended as set forth, effective May 8, 2000.

20. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Twentieth Order on Reconsideration, including the Final Regulatory Flexibility Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 54**

Universal service.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Final Rules**

Part 54 of Title 47 of the Code of Federal Regulations is amended as follows:

**PART 54—UNIVERSAL SERVICE**

1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otheriwse noted.

2. Amend § 54.307 by revising paragraphs (b) and (c) to read as follows:

**§ 54.307 Support to a competitive eligible telecommunications carrier.**

* * * * *

(b) In order to receive support pursuant to this subpart, a competitive eligible telecommunications carrier must report to the Administrator the number of working loops it serves in a service area pursuant to the schedule set forth in paragraph (c) of this section. For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, as that term is defined in § 51.5 of this chapter, the carrier must report the number of working loops it serves in the service area. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must report the number of working loops it serves in the service area and the number of working loops it serves in each wire center in the service area. For universal service support purposes, working loops are defined as the number of working Exchange Line C&WF loops used jointly for exchange and message telecommunications service, including C&WF subscriber lines associated with pay telephones in C&WF Category 1, but excluding WATS closed end access and TWX service.

(c) For a competitive eligible telecommunications carrier serving loops in the service area of a rural telephone company, as that term is defined in § 51.5 of this chapter, the carrier must submit no later than July 31st of each year the data required pursuant to paragraph (b) of this section as of December 30th of the previous calendar year, and the carrier may update on a quarterly basis the data required pursuant to paragraph (b) of this section according to the schedule. For a competitive eligible telecommunications carrier serving loops in the service area of a non-rural telephone company, the carrier must submit the data required pursuant to paragraph (b) of this section according to the schedule.

(1) No later than July 31 of each year, submit data as of December 30th of the previous calendar year;

(2) No later than September 30th of each year, submit data as of March 30th of the existing calendar year;

(3) No later than December 30th of each year, submit data as of July 31st of the existing calendar year;

(4) No later than March 30th of each year, submit data as of September 30th of the previous year.

3. Amend § 54.309 by revising paragraphs (a)(1), (a)(2), (a)(4), (b)(1), (b)(2), (b)(3) and (b)(4) to read as follows:

**§ 54.309 Calculation and distribution of forward-looking support for non-rural carriers.**

(a) * * *

(1) For each State, the Commission's cost model shall determine the statewide average forward-looking economic cost (FLEC) per line of providing the supported services. The statewide average FLEC per line shall equal the total FLEC for non-rural

carriers to provide the supported services in the State, divided by the number of switched lines used in the Commission's cost model. The total FLEC shall equal average FLEC multiplied by the number of switched lines used in the Commission's cost model.

(2) The Commission's cost model shall determine the national average FLEC per line of providing the supported services. The national average FLEC per line shall equal the total FLEC for non-rural carriers to provide the supported services in all States, divided by the total number of switched lines in all States used in the Commission's cost model.

* * * * *

(4) Support calculated pursuant to this section shall be provided to non-rural carriers in each State where the statewide average FLEC per line exceeds the national cost benchmark. The total amount of support provided to non-rural carriers in each State where the statewide average FLEC per line exceeds the national cost benchmark shall equal 76 percent of the amount of the statewide average FLEC per line that exceeds the national cost benchmark, multiplied by the number of lines reported pursuant to § 36.611, § 36.612, and § 54.307 of this chapter.

* * * * *

(b) * * *

(1) The Commission's cost model shall determine the percentage of the total amount of support available in the State for each wire center by calculating the ratio of the wire center's FLEC above the national cost benchmark to the total FLEC above the national cost benchmark of all wire centers within the State. A wire center's FLEC above the national cost benchmark shall be equal to the wire center's average FLEC per line above the national cost benchmark, multiplied by the number of switched lines in the wire center used in the Commission's cost model;

(2) The total amount of support distributed to each wire center shall be equal to the percentage calculated for the wire center pursuant to paragraph (b)(1) of this section multiplied by the total amount of support available in the state;

(3) The total amount of support for each wire center pursuant to paragraph (b)(2) of this section shall be divided by the number of lines in the wire center reported pursuant to § 36.611, § 36.612, and § 54.307 of this chapter to determine the per-line amount of forward-looking support for that wire center;

(4) The per-line amount of support for each wire center pursuant to paragraph (b)(3) of this section shall be multiplied by the number of lines served by a non-rural incumbent local exchange carrier in that wire center, or by an eligible telecommunications carrier in that wire center, as reported pursuant to § 36.611, § 36.612, and § 54.307 of this chapter, to determine the amount of forward-looking support to be provided to that carrier.

* * * * *

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# Proposed Rules

Federal Register
Vol. 65, No. 89
Monday, May 8, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL HOUSING FINANCE BOARD

**12 CFR Parts 900, 917, 926, 944, 950, 952, 961 and 980**

**[No. 2000–16]**

**RIN 3069–AA97**

## Federal Home Loan Bank Advances, Eligible Collateral, New Business Activities and Related Matters

**AGENCY:** Federal Housing Finance Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Housing Finance Board (Finance Board) is proposing to amend its Advances Regulation and other regulations to implement the requirements of the Federal Home Loan Bank System Modernization Act of 1999 by: allowing the Federal Home Loan Banks (Banks) to accept from community financial institution members (CFI members) new categories of collateral to secure advances; expanding the purposes for which the Banks may make long-term advances to CFI members; and removing the limit on the amount of a member's advances that may be secured by other real estate-related collateral. The Finance Board also is proposing related and other technical changes to its regulations on General Definitions, Powers and Responsibilities of Bank Boards of Directors and Senior Management, Federal Home Loan Bank Associates, Community Support Requirements, Community Investment Cash Advance Programs and Standby Letters of Credit, and a new regulation on New Business Activities.

**DATES:** The Finance Board will accept comments on the proposed rule in writing on or before June 7, 2000.

**ADDRESSES:** Send comments to Elaine L. Baker, Secretary to the Board, by electronic mail at *bakere@fhfb.gov*, or by regular mail at the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

**FOR FURTHER INFORMATION CONTACT:** James L. Bothwell, Director, (202) 408–2821, Scott L. Smith, Deputy Director, (202) 408–2991, or Julie Paller, Senior Financial Analyst, (202) 408–2842, Office of Policy, Research and Analysis; or Eric E. Berg, Senior Attorney-Advisor, (202) 408–2589, Eric M. Radenbush, Senior Attorney-Advisor, (202) 408–2932, or Sharon B. Like, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:**

### I. Background and Overview of Proposed Rule

*A. Historical Benefits of Federal Home Loan Bank System*

The Federal Home Loan Bank System (Bank System) comprises twelve regional Banks that are instrumentalities of the United States organized under the authority of the Federal Home Loan Bank Act (Bank Act). *See* 12 U.S.C. 1423, 1432(a). The Banks are cooperatives; only members of a Bank may own the capital stock of a Bank and only members and certain eligible nonmember borrowers (associates) (such as state housing finance agencies) may obtain access to the products provided by a Bank. *See* 12 U.S.C. 1426, 1430(a), 1430b. Each Bank is managed by its own board of directors and serves the public by enhancing the availability of residential housing finance and community lending credit through its members and associates. *See* 12 U.S.C. 1427. Any eligible institution (typically, an insured depository institution) may become a member of a Bank by satisfying certain criteria and by purchasing a specified amount of a Bank's capital stock. *See* 12 U.S.C. 1424, 1426; 12 CFR part 925.

As government sponsored enterprises (GSEs), the Banks are granted certain privileges that enable them to borrow funds in the capital markets on terms more favorable than could be obtained by private entities, so that the Bank System generally can borrow funds at a modest spread over the rates on U.S. Treasury securities of comparable maturity. The Banks pass along their GSE funding advantage to their members, and ultimately to consumers, by providing secured loans, called advances, and other financial products and services at rates and terms that would not otherwise be available to their members.

The Banks must fully secure advances with eligible collateral. *See* 12 U.S.C. 1430(a). At the time of origination or renewal of an advance, a Bank must obtain a security interest in collateral eligible under one or more of the collateral categories set forth in the Bank Act. *See* 12 U.S.C. 1430(a) (as amended).

Under section 10 of the Bank Act and part 950 of the Finance Board's regulations, the Banks have broad authority to make advances in support of residential housing finance, which includes community lending, defined, in the proposed rule, as providing financing for economic development projects for targeted beneficiaries and, for CFIs, purchasing or funding small business loans, small farm loans or small agri-business loans. *See* 12 U.S.C. 1430(a), (i), (j); 12 CFR parts 900, 950. The Banks also are required to offer two programs, the Affordable Housing Program (AHP) and the Community Investment Program (CIP), to provide subsidized or at-cost advances, respectively, in support of unmet housing finance or targeted economic development credit needs. *See* 12 U.S.C. 1430(i), (j); 12 CFR parts 951, 952. In addition, section 10(j)(10) of the Bank Act authorizes the Banks to establish additional Community Investment Cash Advance (CICA) Programs for targeted community lending, defined as providing financing for economic development projects for targeted beneficiaries. *See* 12 U.S.C. 1430(j)(10); 12 CFR part 952.

*B. Expanded Access to Bank System Benefits*

On November 12, 1999, the President signed into law the Federal Home Loan Bank System Modernization Act of 1999 (Modernization Act) [1] which, among other things, amended the Bank Act by providing smaller lenders with greater access to membership in the Bank System and greater access to Bank advances. The Modernization Act established a category of members consisting of FDIC-insured depository institutions with less than $500,000,000 in average total assets (based on an average of total assets over three years)

[1] The Modernization Act is Title VI of the Gramm-Leach-Bliley Act, Pub. L. No. 106–102, 113 Stat. 1338 (Nov. 12, 1999).

called community financial institutions, or CFIs,[2] and authorized the Banks to make long-term advances to CFI members for the purposes of providing funds for small businesses, small farms and small agri-businesses. *See* Modernization Act, sections 602, 604(a)(2), 605. The Modernization Act also authorized the Banks to accept from CFI members as security for advances secured loans for small business, agriculture, or securities representing a whole interest in such secured loans. *See id.*, section 604(a)(5)(C).

For all members, the Modernization Act removed the statutory limit on the amount of aggregate outstanding advances that could be secured by "other real estate-related collateral," which had been capped at 30 percent of a member's capital. *See id.*, section 604(a)(5)(B). Banks, therefore, are now authorized to accept other real estate-related collateral as security for advances to any member as long as the collateral has a readily ascertainable value and the Bank is able to perfect a security interest in that collateral. *See* 12 U.S.C. 1430(a)(3)(D) (as amended).

The Finance Board is proposing to amend its regulations to implement the new statutory authorities described above. Because the primary duty of the Finance Board is to ensure that the Banks operate in a safe and sound manner, the proposed rule includes certain safeguards. The Finance Board believes that, because the Banks have had no experience with the new types of nonmortgage-related collateral authorized in the Modernization Act and in this proposed rule, and have made only limited use of "other real estate-related" collateral, the Banks will need to build capacity to evaluate the new types of collateral and must exercise caution even in accepting higher volumes of "other real estate-related" collateral. Banks will need to learn how to value small business loans and agriculture loans before accepting such loans from CFI members as security for advances. For these reasons, the Finance Board is proposing to treat these activities as new lines of business. Thus, part 980 of the proposed rule would require a Bank, prior to accepting for the first time the new categories of collateral from CFI members, or significantly higher volumes of "other real estate-related" collateral, to file a notice with the Finance Board containing information that demonstrates that the Bank has the capacity, sufficiency of experience, and expertise to safely value, discount and manage the risks associated with the particular types of collateral to be accepted. In evaluating a Bank's notice of new collateral activities, the Finance Board intends to encourage conservative discounting of new collateral until the Bank gains experience in valuing such collateral.

Prior to the enactment of the Modernization Act, section 10(e) of the Bank Act restricted access to Bank advances to Bank members that did not meet the qualified thrift lender (QTL) test.[3] These restrictions limited the purposes for which non-QTL members could obtain advances, limited Bank System-wide advances to non-QTL members to 30 percent of total Bank System advances outstanding, and gave QTL members a priority over non-QTL members in obtaining advances. *See* 12 U.S.C. 1430(e)(1), (2) (1994). The Bank Act also established a statutory presumption, for the purpose of determining the minimum amount of Bank capital stock that a member must purchase pursuant to section 6(b) of the Bank Act, that each member has at least 30 percent of its assets in home mortgage loans. *See* 12 U.S.C. 1430(e)(3) (1994). Coupled with the section 6(b) requirement that all members must subscribe to Bank stock equaling at least one percent of the member's aggregate unpaid loan principal, this presumption effectively limited the dollar amount of advances that a non-QTL member could obtain in relation to the amount of Bank stock it had purchased. *See id.*

The Modernization Act repealed section 10(e) of the Bank Act in its entirety, thereby providing access to Bank advances without regard to the percentage of housing-related assets a member holds. *See* Modernization Act, section 604(c). In a recently adopted Interim Final Rule, the Finance Board removed the provisions in its Membership and Advances Regulations containing the additional capital stock purchase requirements and limitations on advances applicable to non-QTL members. *See* 65 FR 13866 (March 15, 2000). The Finance Board is proposing in this rule to remove all remaining references to non-QTL status from its Advances Regulation. *See* 12 CFR 950.1, 950.21 (1999).

*C. Related Amendments*

The Finance Board also is proposing to revise its regulations to: (1) Amend part 900 (General Definitions) to add a new, broader definition of "community lending" that would include, for CFI members, purchasing or funding small business loans, small farm loans and small agri-business loans; (2) add a new section in part 917 (Powers and Responsibilities of Bank Boards of Directors and Senior Management) to set forth the responsibilities of a Bank's board of directors regarding member products policies; (3) add a new part 926 (Federal Home Loan Bank Associates) to address separately the eligibility requirements for associates that currently are contained in part 950; (4) replace the term "community lending" with the term "targeted community lending" in part 944 (Community Support Requirements) and part 952 (Community Investment Cash Advance Programs) to differentiate "targeted community lending" referred to in those parts from the broader definition of "community lending" proposed in part 900; (5) make technical and conforming changes to the collateral provisions in part 961 (Standby Letters of Credit); and (6) add a new part 980 (New Business Activities) setting forth the standards and procedures under which a Bank may engage in new business activities, including the acceptance of new types of collateral.

## II. Analysis of Proposed Rule

*A. Modernization Act Amendments Establishing Newly Eligible Collateral*

1. New CFI-Eligible Collateral

*a. Collateral eligible as security for advances to CFI members or their affiliates.* The Modernization Act amended the Bank Act to allow CFI members to pledge new types of collateral as security for advances, specifically, secured loans for small business or agriculture, or securities representing a whole interest in such secured loans. *See* Modernization Act, section 604(a)(5)(C). Proposed § 950.7(b)(1) implements this amendment by authorizing the Banks to accept from CFI members or their affiliates as security for advances, small business loans, small farm loans or small agri-business loans fully secured by collateral other than real estate, or securities representing a whole interest in such loans, provided that (i) the loans

[2] The Finance Board recently adopted an Interim Final Rule that amended the Finance Board's Membership Regulation to implement the Modernization Act amendments regarding membership in the Bank System. *See* 65 FR 13866 (March 15, 2000).

[3] The "qualified thrift lender" test is set forth in section 10(m) of the Home Owners' Loan Act, 12 U.S.C. 1467a(m), and applies directly only to savings associations. Originally enacted in 1987, the QTL test was intended to ensure that savings associations remained committed to the business of providing housing-related loans. Failure to meet the test subjected both the savings association and its holding company to certain statutory penalties, including reduced access to Bank advances for the association. In 1989, Congress revised the QTL test and the penalties for failing to meet it, including more severe restrictions on access to Bank advances for savings associations, as well as for commercial banks, that did not meet the test.

have a readily ascertainable liquidation value and can be freely liquidated in due course; and (ii) the Bank can perfect a security interest in such collateral (CFI-eligible collateral). Proposed § 950.7(b)(1) also requires that, prior to accepting any such CFI-eligible collateral, a Bank shall meet the new business activity requirements of part 980 of the proposed rule, described below. This requirement is intended to ensure that a Bank has the capacity to value, discount and manage the newly eligible collateral prior to making advances secured by such collateral.

Proposed § 950.7(b)(1) does not explicitly refer to secured loans for agriculture, as does the Modernization Act. *See* Modernization Act, section 604(a)(5)(C). Instead, the Finance Board has interpreted "agriculture loans" to mean small farm loans and small agri-business loans, and substituted these terms, in the text of proposed § 950.7(b)(1). These terms also appear in proposed § 950.3, which sets forth the authorized purposes of long-term Bank advances, so their use in proposed § 950.7(b)(1) is consistent with the Finance Board's general policy of employing uniform terminology in its regulations whenever possible.

Although the Finance Board could authorize the Banks to accept all secured agriculture loans as collateral from CFI members, the Finance Board is proposing, by interpreting agriculture loans to mean small farm loans and small agri-business loans, to allow only secured "small" agriculture loans to be included as eligible collateral. The Finance Board believes that permitting the Banks to accept as collateral only "small" agriculture loans is consistent with both the Banks' mission of assisting members with community lending and with the Modernization Act's emphasis on small institutions' lending to small enterprises. *See* Modernization Act, sections 602, 604(a)(3), 604(a)(5)(C).

Proposed § 950.7(b)(1) excludes loans secured by real estate because these types of loans are included in proposed § 950.7(a)(4).

In view of the greater risks inherent in non-mortgage, CFI-eligible collateral, the Finance Board, for safety and soundness reasons, considered whether limits or restrictions should be established on the types of collateral that could secure such loans or securities pledged by a CFI member or affiliate to secure an advance. For example, small business loans secured by accounts receivable or inventory, or small farm loans secured by crops or livestock, which may present greater risks than other types of secured small business or small farm loans, could have been excluded from the forms of eligible collateral. However, the Finance Board has chosen not to impose limits or restrictions in the proposed rule, but instead to require the Banks to have policies and capacity to value the collateral, whatever it may be. The Finance Board believes that proposed § 950.10(a), which requires that each Bank determine the value of collateral in accordance with the Bank's member products policy (established pursuant to proposed § 917.4), should minimize the Banks' exposure to risk in accepting CFI-eligible collateral. The Finance Board expects such policies, if they are properly developed and implemented, to take the appropriate risk factors into account in their valuation and discounting procedures. Of course, the policies, and the Banks' activities in this regard, also would be subject to examination by the Finance Board and to the new activities requirements of proposed part 980, discussed below. Accordingly, the proposed rule does not establish limits on the types of collateral that may secure such loans or securities pledged by a CFI member or affiliate. The Finance Board specifically requests comment on whether certain types of CFI-eligible collateral should be prohibited as eligible collateral on the basis of risk.

*b. Types of collateral—Definitions of "small business loans," "small farm loans" and "small agri-business loans".* To facilitate the safe and sound implementation of the Banks' authority to accept new types of collateral to secure advances to CFI members, the Finance Board is proposing to amend § 950.1 by defining the terms "small business loans," "small farm loans" and "small agri-business loans." For loans below a prescribed aggregate amount, the proposed definitions use loan size as a proxy for business size. For loans above the ceiling amount, business data specific to the borrowing enterprise (such as annual gross receipts) would determine whether a loan fits within the definition.

The business size approach provides greater accuracy, but may result in costs that deter CFI members from fully employing Banks as a funding source for loans to the small businesses and small farms in their communities. The loan size approach is less precise, but has the advantage of lower implementation costs, since it involves information already available to Federally regulated financial institutions in the reports they are required to file with their primary federal regulator.

The Finance Board believes that the proposed definitions represent an appropriate compromise between these two approaches that will allow CFI members to use Bank System funding to finance the small businesses and small farms in their communities, as authorized by the Modernization Act. *See* Modernization Act, section 604(a)(5)(C).

(i) "Small business loans"

Proposed § 950.1 defines "small businesses loans" as either: (1) Loans (including the aggregate of all loans to a particular borrower) with an original amount of not more than $1 million that are reported on either Schedule SB of the Thrift Financial Report filed by savings associations as "permanent mortgage loans secured by nonfarm, nonresidential properties" or "nonmortgage, nonagricultural commercial loans," or Schedule RC–C, Part II of the Report of Condition and Income (Call Report) filed by insured commercial banks and FDIC-supervised savings banks as "loans secured by nonfarm nonresidential properties" or "commercial and industrial loans to U.S. addresses"; or (2) loans for which the CFI, on a case-by-case basis, documents that the borrower meets the eligibility standards for a small business concern under the Small Business Administration's (SBA) regulations at 13 CFR part 121, or any successor provisions.

The Finance Board considered several possible definitions of a small business loan. One possible definition is a loan to a business that meets the eligibility standards for a small business concern under the Small Business Act and SBA regulations.[4] The Small Business Act defines an eligible small business as one that is independently owned and operated and not dominant in its field of operation. *See* 15 U.S.C. 632. The Small Business Act also states that in determining what is a small business, the definition shall vary from industry to industry to adequately reflect industry differences. *See id.* § 632(a)(3). The SBA developed size standards that define the maximum size of an eligible small business, based either on "annual receipts" or number of employees. 13 CFR 121.201. SBA regulations define "annual receipts" as total income plus

[4] Under the Small Business Act, the size of a manufacturing concern is determined on the basis of average employment, the size of a business concern providing services is determined on the basis of annual gross receipts over a period of not less than 3 years, and the size of other business concerns is determined on the basis of business data over a period of not less than 3 years. See 15 U.S.C. 632(b)(2)(C)(1996). The Small Business Administration implements these statutory standards with industry specific size regulations under 13 CFR part 121.

the cost of goods sold. 13 CFR 121.104. The size standards are based on Standard Industrial Classification (SIC) code, and generally are as follows:

| Industry | Size |
|---|---|
| Retail and Service | $3.5 to $21.5 million |
| Construction | $7.0 to $17.0 million |
| Agriculture | $0.5 to $9.0 million |
| Wholesale | No more than 100 employees |
| Manufacturing | 500 to 1,500 employees |

When affiliations exist with other companies, the primary business activity must be determined both for the applicant business as well as for the entire affiliated group. 13 CFR 121.103.

The Finance Board recognizes that member institutions are not apt to compile the type of information necessary to determine whether a business borrower qualifies as a small business under the SBA definition, and that requiring that such information be collected would impose additional costs on CFI members. Thus, the Finance Board considered other alternatives, including a definition of a small business based on the reporting requirements for loans to small businesses and small farms promulgated by the Federal Financial Institutions Examination Council (FFIEC).[5]

Section 122 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) requires the Federal banking agencies to annually collect from insured depository institutions such information on small business and small farm lending as the agencies may need to assess the availability of credit to these sectors of the economy.[6] Section 122 of FDICIA does not specify the types of information that the agencies must collect on small business and small farm loans, but it does indicate that the reporting requirement may be implemented by collecting data on the total number and aggregate dollar amount of loans to small businesses and agricultural loans to small farms. Section 122 of FDICIA also suggests that information on charge-offs and loan income be collected, but FFIEC determined that such information would not add sufficient value to the assessment of credit availability to justify the cost to institutions of reporting the information. *See* 57 FR 21410 (May 20, 1992).

On May 20, 1992, FFIEC published proposed reporting requirements on small business and small farm lending. *See id.* Because the terms "small business" and "small farm" were not defined in FDICIA, FFIEC proposed to use annual sales as the basis upon which to identify small businesses and small farms. Businesses and farms with annual sales of less than $10 million and $500,000, respectively, were deemed to be "small." *See id.*

Many of the comment letters received from institutions indicated that the implementation costs of the proposed FFIEC data collection would be excessive. *See* 57 FR 54235, 54237. A comparison of the expected costs with the expected benefits of the information led FFIEC to consider whether other reporting alternatives might be available that would allow institutions to report information of comparable value at a lower cost to the industry. *See id.*

Based on these considerations, FFIEC decided to use loan size as a proxy for business and farm size. As a rationale for using this approach, FFIEC, in the Supplemental Information section of the adopting release, indicated that it had reviewed data reported in the 1989 National Survey of Small Business Finances, a survey of firms with fewer than 500 employees, and concluded that the data indicated a strong correlation between size of business and loan size. In addition, several of the commentators had recommended that loan size be used as a proxy for business size. *See id.*

FFIEC decided to use the original amount of the loan rather than the current balance because an institution's loans with balances below a certain amount would include loans of varying original amounts to all sizes of borrowers that have been partially repaid.

As a rationale for the upper limit of $1 million for small business loans, FFIEC stated that more loans above this loan size category would tend to be made to larger businesses than in the category of loans of $1 million or less. In addition, FFIEC indicated that the more than 9,500 institutions with less than $100 million in assets would generally be constrained by their lending limits from making loans to businesses that would be considered "large." *See id.* at 54238.

The final FFIEC rule also requires financial institutions to report business loans with original amounts of $100,000 or less, more than $100,000 through $250,000, and more than $250,000 through $1 million. *See id.*

The Finance Board is proposing to define a small business loan based on the loan size standards established by the FFIEC agencies. Because this information on loan size is readily available to financial institutions, this approach will avoid burdensome costs to CFI members that might deter such members from using Banks as a funding source for loans to small businesses. The Finance Board also recognizes that applying only the FFIEC standard would exclude loans that exceed $1 million to businesses that meet the eligibility standards for a small business concern under the SBA's regulations. 13 CFR 121.104. To allow such loans to be eligible to secure advances to CFI members, the proposed definition of "small business loans" includes a qualifying alternative that does not impose a loan size restriction if the CFI member can document on a case-by-case basis that the borrower meets the eligibility standards for a small business concern under the SBA's regulations.

The Finance Board expects that CFI members initially will rely on the part of the proposed definition of small business loans that emphasizes loan size. However, over time, CFI members would have the opportunity to implement procedures to establish a borrower's size based on the SBA's regulatory standards, and thereby be in a position to rely on that part of the definition that does not restrict loan size. The Finance Board requests comment on whether there may be any other appropriate methods of categorizing or defining small business loans.

(ii) "Small Farm Loans"

Proposed § 950.1 defines "small farm loans" as either: (1) Loans (including the aggregate of all loans to a particular borrower) with an original amount of not more than $500,000 that are reported on either Schedule SB of the Thrift Financial Report filed by savings associations as "loans secured primarily by farms," or Schedule RC–C, Part II of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks as "loans secured by farmland (including farm residential and other improvements)"; or (2) loans for which the CFI, on a case-by-case basis, documents that the borrowers meet the eligibility standards for a small business concern under the SBA's regulations at 13 CFR part 121, or any successor provisions.

As with the proposed definition of "small business loans," the proposed

[5] FFIEC is a formal interagency body empowered to prescribe uniform principals, standards, and report forms for the federal examination of financial institutions by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Coporation, the National Credit Union Adminstration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision and to make recommendations to promote uniformity in the supervision of financial institutions. *See* 12 U.S.C. 3301 *et. seq.*

[6] Section 122 of FDICIA (Pub. L. No. 102–242, 105 Stat. 2251 (12 U.S.C. 1817 note)).

definition of "small farm loans" represents a compromise between the precision of the SBA's regulations, which include size parameters for farm enterprises,[7] and the practicality of FFIEC's standards for small farm loans. Accordingly, the definition of "small farm loans" is identical to the definition of "small business loans," except for the items referred to on Schedule SB and Schedule RC–C, and the upper limit of $500,000, which corresponds to the upper limit FFIEC applies to small farm loans. The particular schedule items referenced in the definition of "small farm loans" are the items in the schedules that most closely correlate to small farm activity and lending.

As a rationale for the upper limit of $500,000 for small farm loans, the notice accompanying FFIEC's final rule stated that data from the Second Quarter 1992 Agricultural Finance Databook prepared by the Federal Reserve Board (Databook) indicates that less than five percent of all non-real estate loans to farmers in recent years are made in amounts of $100,000 or more. See 57 FR 54238. The Databook also estimated that, in 1991, the average size of non-real estate loans to farmers with original amounts of $100,000 or more was $540,000. *See id.* Thus, FFIEC determined that a $1 million loan size cutoff for small farm loans would likely capture an extremely high percentage of all farm loans. FFIEC concluded that a loan size cutoff of $500,000 would be appropriate in order to reduce the likelihood that loans that have been made to large farms are reported as part of an institution's loans to small farms. *See id.*

The FFIEC final rule also requires financial institutions to report farm loans with original amounts of $100,000 or less, more than $100,000 through $250,000, and more than $250,000 through $500,000. *See id.* The Finance Board requests comment on whether there may be any other appropriate methods of categorizing or defining small farm loans.

(iii) "Small agri-business loans"

Proposed § 950.1 defines "small agri-businesses loans" as either: (1) Loans (including the aggregate of all loans to a particular borrower) with an original amount of not more than $500,000 that are reported on either Schedule SB of the Thrift Financial Report filed by savings associations as "nonmortgage, commercial loans to finance agricultural production and other nonmortgage commercial loans to farmers," or Schedule RC–C, Part II of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks as "loans to finance agricultural production and other loans to farmers"; or (2) loans for which the CFI, on a case-by-case basis, documents that the borrowers meet the eligibility standards for a small business concern under the SBA's regulations at 13 CFR part 121, or any successor provisions.

The proposed definition of "small agri-business loans" is identical to the definition of "small farm loans" except for the items referred to on Schedule SB and Schedule RC–C, which more closely correlate to small agri-business activity and lending. As with the proposed definitions of "small business loans" and "small farm loans", the proposed definition of "small agri-business loans" represents a compromise between the SBA size standards for agricultural businesses,[8] and FFIEC's standards for small agri-business loans, as identified by the schedule items referenced in the definition. The Finance Board requests comment on whether there may be any other appropriate methods of categorizing or defining small agri-business loans.

c. *Change in CFI Status.* Proposed § 950.7(b)(2) addresses how a Bank should deal with a CFI member that has advances outstanding secured by CFI-eligible collateral that loses its CFI status. Proposed § 950.7(b)(2) prohibits a Bank from accepting as security for new advances CFI-eligible collateral from a member that no longer qualifies as a CFI member. However, in order to prevent a situation where a member must quickly obtain alternative funding, proposed § 950.7(b)(2) provides that a Bank shall not require a member that loses its CFI status and has outstanding advances secured by CFI-eligible collateral to repay such advances prior to the stated maturities, or to provide substitute collateral, eligible under paragraphs (a)(1) through (5), based solely on the member's change in CFI status.

Proposed § 950.7(b)(2) also authorizes a Bank to allow such member to renew maturing advances secured by CFI-eligible collateral for up to 6 months. This is intended to provide the member with sufficient time to wind down advances and replace them with other funding in an orderly fashion. It is not uncommon for members to obtain short-term advances that frequently renew for additional terms. In that case, the member could have difficulty securing alternative funding if all or most of its advances mature within a short period of time. The Finance Board specifically requests comment on whether allowing renewals of such advances is appropriate and, if so, whether allowing renewals for up to 6 months would provide sufficient time for members to obtain alternative funding.

2. Cash or Deposits in a Bank

Current § 950.9 of the Advances Regulation (redesignated as § 950.7 in the proposed rule) sets forth the types of eligible collateral that a Bank may accept to secure advances. The Modernization Act revised section 10(a)(3) of the Bank Act to add "cash" to the types of eligible collateral. *See* Modernization Act, section 604(a)(5)(A). Proposed § 950.7(a)(3) implements this change by adding cash as eligible collateral.

3. Other Real Estate-Related Collateral

The Modernization Act amended section 10(a)(4) of the Bank Act by removing the limit on the dollar amount of advances that may be secured other real estate-related collateral, which had been set at 30 percent of the member's capital. *See* Modernization Act, section 604(a)(5)(B). Section 950.7(a)(4) of the proposed rule implements this change by removing the 30 percent limitation. Proposed § 950.7(a)(4)(iii), however, provides that a Bank shall not make total advances to all members secured by other real estate-related collateral in an aggregate amount that would exceed 25% of the highest level of advances previously secured by such collateral, until the Bank has met the new business activity requirements of proposed part 980.

The Finance Board specifically requests comment on what the appropriate threshold should be for triggering the new business activity requirement with respect to the use of other real estate-related collateral, and whether there should be any other limits on the use of such collateral to ensure that the Banks' lending against this type of collateral is done in a safe and sound manner. The Finance Board also specifically requests comment on whether members should be required to pledge all available collateral under proposed §§ 950.7(a)(1) through (3) prior to pledging other real estate-related collateral under paragraph (4) in order to prevent members from using only their least liquid collateral to secure Bank advances. While each Bank has the discretion to include such a requirement in its member products policy, it may be appropriate for the Finance Board to require that such a provision be included in such policies, especially in light of the Modernization Act authorization for the Finance Board to review, and increase, the Banks'

[7] *See* 13 CFR 121.201.

[8] See 13 CFR 121.201.

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standards for other real estate-related collateral. *See* Modernization Act, section 604(a)(7).

Current § 950.9(a)(4)(i)(A) of the Advances Regulation requires other real estate-related collateral to have a readily ascertainable value. The Finance Board believes that the liquidation value of collateral, and the ability to liquidate the collateral quickly, is a more appropriate measure of the value of other real estate-related collateral securing an advance, particularly given the lifting of the 30 percent cap. Accordingly, proposed § 950.7(a)(4)(i)(A) provides that other real estate-related collateral have a readily ascertainable liquidation value and be able to be freely liquidated in due course. This change also is proposed in § 950.7(b)(1)(i).

4. Removal of Combination Business or Farm Property From Definition of "Residential Real Property"

Under current § 950.1, the term "residential real property" is defined to include combination business or farm property, where at least 50 percent of the total appraised value of the combined property is attributable to the residential portion of the property or, in the case of a CFI, combination business or farm property on which is located a permanent structure actually used as a residence (other than for temporary or seasonal housing), where the residence constitutes an integral part of the property. 12 CFR 950.1. This provision was intended to allow mortgage loans on such properties to qualify as eligible collateral and be included in a member's total residential housing assets for the purpose of qualifying for membership and obtaining long-term advances. The Modernization Act's removal of the statutory limit on the amount of advances that may be secured by other real estate-related collateral appears to have eliminated the necessity of allowing combination business or farm property to be counted under the mortgage loan category of eligible collateral. In addition, the Modernization Act's removal of the requirement that CFI members have 10 percent of their assets in residential mortgage loans to qualify for membership and the expansion of the purposes for which advances may be made to CFI members also reduce the significance of counting such combination properties as residential mortgage loans. Accordingly, the Finance Board has proposed removing combination business or farm property from the definition of "residential real property" in § 950.1. The Finance Board specifically requests comment on whether there are any reasons to retain combination business or farm property in the definition of "residential real property."

*B. New Business Activity Requirement*

As discussed above, the proposed changes in types and amounts of collateral that may be pledged to secure advances will present new management challenges for the Banks. In order to ensure that entering into these and other new types of business activities will not create safety and soundness concerns, the Finance Board is proposing to add a new part 980 to its regulations. Proposed § 980.3 requires a Bank to provide at least 60 days prior written notice to the Finance Board of any new business activity that the Bank wishes to undertake—including the acceptance of increased volumes of other real estate-related collateral and of new CFI-eligible collateral for the first time—so that the Finance Board may disapprove, examine or impose restrictions on such activities, as necessary, on a case-by-case basis. In addition to the acceptance of new or increased volumes of collateral, proposed § 980.1 defines a "new business activity" as any business activity undertaken, transacted, conducted or engaged in by a Bank that has not been previously approved by the Finance Board, including: (1) A business activity that has not been undertaken previously by that Bank, or was undertaken previously under materially different terms and conditions; (2) a business activity that entails risks not previously and regularly managed by that Bank, its members, or both, as appropriate; or (3) a business activity that involves operations not previously undertaken by that Bank. The test of what constitutes a new business activity for a particular Bank is intended to focus attention on worthy new activities. The prior notice requirement would apply to any Bank desiring to pursue a new activity, even if another Bank has already undertaken the same activity. With respect to accepting either newly eligible collateral or significantly higher volumes of other real estate-related collateral, the written notice required by proposed § 980.3(b) must include: a description of the classes or amounts of collateral proposed to be accepted by the Bank; a copy of the Bank's member products policy; a copy of the Bank's procedures for determining the value of the collateral in question; and a demonstration of the Bank's capacity, personnel, technology, experience and expertise to value, discount and manage the risks associated with the collateral in question. This requirement is intended to ensure that a Bank has the capacity to value, discount and manage the additional collateral prior to making advances secured by such collateral.

*C. Clarification of Other Collateral Provisions in Existing Regulation*

1. Securities Representing Equity Interests in Eligible Collateral

Current § 950.9(a)(5) of the Advances Regulation provides that a Bank may accept as collateral any security, such as mutual fund shares, the ownership of which represents an undivided equity interest in underlying assets, all of which qualify either as: (i) eligible collateral under paragraph (a)(1) (mortgage loans and privately issued mortgage-backed securities) or paragraph (a)(2) (agency securities); or (ii) cash or cash equivalents. As discussed above, cash is now included as eligible collateral under paragraph (a)(3). Accordingly, for greater clarity, a reference to paragraph (a)(3) is included in proposed § 950.7(a)(5)(i) and the reference to cash in paragraph (a)(5)(ii) is removed.

The current Advances Regulation does not include a definition of "cash equivalents." Proposed § 950.1 defines "cash equivalents" as investments that: (1) Are readily convertible into known amounts of cash; (2) have a remaining maturity of 90 days or less at the acquisition date; and (3) are held for liquidity purposes. This definition would codify a Finance Board regulatory interpretation (Regulatory Interpretation 2000–RI–1 (March 6, 2000)) that allowed a Bank to accept as collateral under § 950.7(a)(5), shares of mutual funds that enter into certain limited types of repurchase agreements. For cash management purposes, mutual funds typically hold securities, pursuant to repurchase agreements, that represent short-term investments as part of their daily cash management activities. A mutual fund's ability to enter into such repurchase agreements, typically with a maturity of less than 90 days, allows the excess cash in the fund to be invested without losing liquidity or incurring price risk. Even mutual funds with particularly restrictive investment limitations, such as those limited to mortgage loans, government securities, and agency securities, typically use repurchase agreements to maintain a liquidity position and manage the fund.

The Financial Accounting Standards Board (FASB) defines "cash equivalents" for financial reporting purposes as short-term, highly liquid investments that are both: (a) readily convertible into cash; and (b) so near their maturity that they present

insignificant risk of changes in value because of changes in interest rates. *See* FAS 95 Paragraphs 8–10. FASB also states that, generally, only investments with original maturities of three months or less qualify under that definition. *See id.*

The proposed definition of "cash equivalents" is derived from the FASB definition, but would adapt it by requiring that investments have a remaining maturity of 90 days or less at the acquisition date, because this standard is more practical to implement than a requirement that investments be so near their maturity that they present insignificant risk of changes in value because of changes in interest rates. In addition, a requirement that the investments be held for liquidity purposes is being included in the proposed definition. The Banks will be required to determine on a case-by-case basis whether this requirement has been met.

Other real estate-related collateral under current § 950.9(a)(4) was not originally included in current § 950.9(a)(5)(i) because the dollar amount of advances that could be secured by other real estate-related collateral was limited to 30 percent of the member's capital and the Finance Board believed this limitation would result in monitoring complexities that would make the inclusion of other real estate-related collateral in § 950.9(a)(5)(i) impractical. *See* 64 FR 16618 (April 6, 1999). As discussed above, the Modernization Act amended section 10(a)(4) of the Bank Act by removing the 30 percent cap on other real estate-related collateral. *See* Modernization Act, section 604(a)(5)(B). Since this impediment has been eliminated, proposed § 970.7(a)(5)(i) includes a reference to other real estate-related collateral under proposed § 950.7(a)(4).

2. Bank Restrictions on Eligible Collateral

Section 9 of the Bank Act provides that the Banks have discretion to deny, or to approve with conditions, a request for an advance, and section 10(a)(1) confers on the Banks the authority to determine whether collateral is sufficient to fully secure an advance. *See* 12 U.S.C. 1429, 1430(a)(1). Current § 950.9(b) of the Advances Regulation grants a Bank the discretion to further restrict the types of eligible collateral it will accept as security for advances based on the creditworthiness or operations of the borrower, the quality of the collateral, or other reasonable criteria. 12 CFR 950.9(b). The Finance Board believes that the discretionary authority conferred on the Banks by current § 950.9(b) is unnecessary in light of the Banks' statutory authority, and because the factors listed in current § 950.9(b) are ordinarily considered in valuing collateral. Accordingly, the Finance Board proposes to remove current § 950.9(b).

3. Pledge of Advances Collateral by Affiliates

The Bank Act does not directly address the acceptance of eligible collateral from an affiliate, apart from section 10(e) of the Bank Act, which gives a priority to any security interest granted by a member or its affiliates, subject to certain exceptions. *See* 12 U.S.C. 1430(e). Implicit in Congress' inclusion of collateral pledged by an affiliate in the so-called "superlien provision" is the authority for the Banks to accept collateral from members' affiliates. Accordingly, the Finance Board has determined that Congress has authorized the Banks to accept collateral not only from a wholly-owned subsidiary, but from any affiliate of a member, and is proposing to state that expressly in proposed § 950.7(f).

Proposed § 950.7(f)(1) requires that the pledge of collateral by an affiliate of a member used to secure advances to the member shall either directly secure the member's obligation to repay the advances, or secure a surety or other agreement under which the affiliate has assumed, along with the member, a primary co-obligation to repay the advances made to the member. Because the Bank Act requires that each advance be fully secured, *see* 12 U.S.C. 1430(a), a guaranty by an affiliate of a member's obligation, backed by the eligible assets held by the affiliate, would not meet the requirements of the Bank Act or the proposed rule, as the collateral would then be securing the affiliate's secondary obligation and not the advance itself. As provided by proposed § 950.7(f)(1), however, where the affiliate enters into a surety arrangement under which it assumes a primary joint and several co-obligation to repay the advance made to the member, and fully secures this primary surety obligation with eligible collateral, such collateral would be considered as securing the advance itself, as required by the statute.

Proposed § 950.7(f)(2) requires the Bank to obtain from an affiliate, and maintain, a legally enforceable security interest pursuant to which the Bank's legal rights and privileges with respect to the collateral are functionally equivalent in all material respects to those that the Bank would possess if the member were to pledge the same collateral directly. The Bank would be required to have on file adequate documentation demonstrating this functional equivalence. The Finance Board anticipates that Banks that decide to accept collateral from affiliates of members will need to make this determination on a case-by-case basis, after careful legal review and analysis, taking into consideration the structure of the transaction and the law of the state that governs the transaction.

These proposed regulatory additions represent a modification of an earlier proposal on third-party collateral that was published for comment by the Finance Board, but that was subsequently withdrawn. In December 1998, the Finance Board published a proposed rule to amend the Advances Regulation (at that time designated as 12 CFR part 935), that, among other things, would have permitted the Banks to accept pledges of eligible collateral from a member's "qualifying investment subsidiary" (QIS) if the Bank were able to obtain and maintain a security interest in the collateral pursuant to which its rights and privileges were functionally equivalent to those that the Bank would possess if the member were to pledge the collateral directly. Under the December 1998 proposed rule, the term "qualifying investment subsidiary" would have included business entities that: (1) Are wholly owned by a member; (2) are operated solely as passive investment vehicles on behalf of that member; and (3) hold only cash equivalents and assets that are eligible collateral under §§ 935.9(a)(1) and (2) of the Advances Regulation. *See* 63 FR 67625 (Dec. 8, 1998).

In proposing the December 1998 amendments, the Finance Board intended to codify into regulation a series of Finance Board regulatory interpretations regarding the acceptance of eligible collateral held by a real estate investment trust and state security corporation subsidiaries. However, in response to the proposed rule, a large number of commenters questioned the Finance Board's proposal to address only pledges of collateral from a narrow class of wholly-owned subsidiaries, while ignoring collateral arrangements with other types of affiliates that may be permissible under the Bank Act. In light of these comments, the Finance Board removed the QIS provisions from the text of the final rule pending further analysis of the issue. *See* 64 FR 16618 (April 6, 1999).

In conjunction with new § 950.7(f), the proposed rule would amend § 950.1 by defining an "affiliate" as any business entity that controls, is controlled by, or is under common

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control with, a member. The proposed definition of "affiliate" is intended to limit the scope of eligible third-party collateral to assets over which the member exercises control or shares control.

4. Bank Advances Policy

The proposed rule removes existing § 950.3 of the Finance Board's Advances Regulation. That section requires each Bank's board of directors to adopt and review a policy on advances and outlines some basic criteria for the content of the advances policy. The Finance Board is proposing to move the requirement for the Bank's board of directors to adopt and periodically re-adopt an advances or credit policy to new § 917.4, "Bank Member Products Policy." The Finance Board believes it would make for a more logical presentation in its regulations to have all of the requirements for Bank policies contained in one regulatory part (part 917), rather than to have such requirements scattered throughout its regulations. The proposed requirements for Bank member products policies are discussed in section F. 2., below.

5. Removal of Non-QTL Definitions

Proposed § 950.1 deletes the following qualified thrift lender (QTL)-related definitions from the Advances Regulation: definitions of the terms "Actual thrift investment percentage" or "ATIP"; "Non-Qualified Thrift Lender Member"; "Qualified Thrift Lender" or "QTL"; and "Qualified Thrift Lender test" or "QTL test." 12 CFR 950.1. These terms are being removed to conform the Advances Regulation to the Modernization Act, which repealed all non-QTL advances provisions in the Bank Act. *See* Modernization Act, section 604(c).

*D. Modernization Act Amendment to Long-term Advances Purpose Provision for CFI Members*

Section 10(a) of the Bank Act formerly provided that all long-term advances shall be made only for the purpose of providing funds for residential housing finance. *See* 12 U.S.C. 1430(a) (1994). This purpose is set forth in current § 950.14(a), and is implemented by use of a proxy test set forth in current § 950.14(b). 12 CFR 950.14(a), (b). Specifically, current § 950.14(b)(1) provides that, before funding a long-term advance (*i.e.*, an advance with a maturity greater than five years), a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of the member's "residential housing finance assets." 12 CFR 950.1, 950.14(b)(1). "Residential housing finance assets" are defined in current § 950.1 to mean any of the following: (1) Loans secured by residential real property; (2) mortgage-backed securities; (3) participations in loans secured by residential real property; (4) loans or investments financed by advances made pursuant to a CICA program; (5) loans secured by manufactured housing, regardless of whether such housing qualifies as residential real property; or (6) any loans or investments which the Finance Board, in its discretion, otherwise determines to be residential housing finance assets. 12 CFR 950.1. Current § 950.14(b)(1) requires a Bank to determine the total book value of the member's residential housing finance assets using the most recent Thrift Financial Report, Report of Condition and Income, or financial statement made available by the member. 12 CFR 950.14(b)(1). This proxy test was determined by the Finance Board to be an operationally feasible compliance monitoring mechanism for residential housing finance assets to implement the statutory requirement that long-term advances be only for residential housing finance purposes. *See* 57 FR 45338 (Oct. 1, 1992).

The Modernization Act amended section 10(a) of the Bank Act to provide that a Bank may make long-term advances not only for the purpose of providing funds for residential housing finance, but also for the purpose of providing funds to any CFI for small businesses, small farms and small agri-businesses. *See* Modernization Act, section 604(a)(3). Accordingly, the proposed rule amends current § 950.14 by adding this new purpose in redesignated § 950.3. Proposed § 950.3(a) provides that a Bank shall make long-term advances only for the purpose of enabling any member to purchase or fund new or existing residential housing finance assets, which include, for CFI members, small business loans, small farm loans and small agri-business loans.

Instead of the statutory terms "small businesses," "small farms" and "small agri-businesses," proposed § 950.3 utilizes the terms "small business loans," "small farm loans" and "small agri-business loans," which the Finance Board is proposing to define for purposes of identifying the new types of collateral that Banks are authorized to accept from CFI members. *See* Modernization Act, section 604(a)(5)(C). The Finance Board believes that a single set of terms that would apply to both CFI-eligible collateral and the new purposes for which Banks may make advances to CFI members will reduce confusion and otherwise provide an efficient means of implementing the new authorities conferred on the Banks in regard to their CFI members. Further, the Modernization Act provides that the terms "small business," "small farm" and "small agri-business" shall have the meanings given to those terms by regulation of the Finance Board. *See* Modernization Act, section 604(a)(7). Accordingly, the Finance Board is interpreting the statutory phrase "providing funds to any community financial institution for small businesses, small farms, and small agri-businesses" to mean making advances to CFI members for small business loans, small farm loans and small agri-business loans. Proposed § 950.3(b)(1) maintains the proxy test in its current form. However, proposed revisions to certain definitions will have the effect of including small business loans, small farm loans and small agri-business loans in the denominator of the proxy test for CFI members.

Specifically, the proposed rule would amend § 900.1 by adding a new definition of "community lending," which would apply, wherever it appears, in all of the Finance Board's regulations. The term "community lending" currently is defined in § 952.3 of the CICA Regulation as "providing financing for economic development projects for targeted beneficiaries." 12 CFR 952.3. The definition of "community lending" proposed for § 900.1 would add to that definition, "and, for community financial institutions, purchasing or funding small business loans, small farm loans or small agri-business loans, as defined in § 950.1 of this chapter." This addition to the definition implements changes made by the Modernization Act and supports the Finance Board's belief that CFI lending to small businesses, small farms and small agri-businesses is community lending. For purposes of the CICA and Community Support Regulations, the current definition of "community lending," redesignated in this proposed rule as "targeted community lending," would continue to apply.

Concurrently, the Finance Board is proposing to amend the definition of "residential housing finance assets" to change the element that currently reads "Loans or investments financed by advances made pursuant to a CICA program" to "Loans or investments qualifying under the definition of community lending in § 900.1 of this chapter."

Thus, by operation of the revised definitions of "residential housing

finance assets" and "community lending," the proxy test calculation of the total book value of residential housing assets will include, for CFI members, small business loans, small farm loans and small agri-business loans. This result implements section 604(a)(5)(C) of the Modernization Act, which authorizes a Bank to make long-term advances to CFIs for the purpose of providing financing for small businesses, small farms and small agri-businesses. *See* Modernization Act, section 604(a)(5)(C).

Current § 950.14(b)(1) allows a Bank to determine the total book value of residential housing financial assets using the most recent Thrift Financial Report, Report of Condition and Income, or financial statement made available by the member. 12 CFR 950.14(b)(1). Proposed § 950.3(b)(1) adds to this list "other reliable documentation" made available by the member. This revision is intended to give the Banks more flexibility in the form of documentation they use in administering the proxy test, as long as the data supplied by the member is reliable.

*E. Clarification of Other Advances Provisions in Current Regulation*

1. Pricing

The Finance Board is taking this opportunity to clarify a provision of the Advances Regulation dealing with the pricing of advances. Current § 950.6(b)(1) requires each Bank to price its advances to members taking into account two factors: (1) The marginal cost to the Bank of raising matching maturity funds in the marketplace; and (2) the administrative and operating costs associated with making such advances to members. 12 CFR 950.6(b)(1). A separate provision, current § 950.8(b)(1), provides that each Bank shall establish and charge a prepayment fee pursuant to a specified formula which sufficiently compensates the Bank for providing a prepayment option on an advance, and which acts to make the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date. 12 CFR 950.8(b)(1). These provisions do not clearly indicate whether Banks must consider the costs of associated options and the administrative costs of funding advances with such options in pricing an advance. Further, because current § 950.6(b)(1) merely requires the Bank "to take into account" the marginal cost to the Bank of raising matching maturity funds in the marketplace, and the administrative and operating costs associated with making such advances to members, the current rule allows a Bank to price an advance below its marginal cost of funds, a practice the Finance Board could find to be an unsafe and unsound practice in some circumstances and one the Finance Board wishes to discourage.

Therefore, redesignated § 950.5(b)(1) of the proposed rule prohibits a Bank from pricing an advance below the Bank's marginal cost of funds, which is to include the cost of any embedded options, plus the administrative and operating costs associated with making the advance when funding an advance with similar maturity and options characteristics.

Proposed § 950.5(b)(3)(i) provides that the aforementioned prohibition would not apply to a Bank's CICA programs. This is intended to provide the Banks with maximum flexibility in designing and offering AHP and other CICA programs. Proposed § 950.5(b)(3)(ii) provides that the proposed prohibition also would not apply to any other advances that are volume limited and specifically approved by a Bank's board of directors. This exception is intended to allow a Bank to price targeted advances at below the cost of funds for some special purpose that does not meet all of the criteria for CICA advances. It is intended that the special purpose involve some social benefit, such as providing relief from a natural disaster. The proposed exception would also allow a Bank to conduct market testing of alternative pricing strategies for advances.

2. Convertible Advances Disclosure

Current § 950.6(d)(1) of the Advances Regulation provides that a Bank that offers a putable advance to a member shall disclose in writing to such member the type and nature of the risks associated with putable advance funding, and that such disclosure should include detail sufficient to describe such risks. 12 CFR 950.6(d)(1). A convertible advance is similar to a putable advance in that it carries risks associated with a triggering event, usually a shift in a designated interest rate index. Accordingly, redesignated § 950.5(d)(1) of the proposed rule makes the current disclosure requirements for putable advances applicable to convertible advances as well. Current § 950.6(d)(2) is not proposed to be revised because replacement funding is not an issue for convertible advances, as convertible advances involve only a change in the stated interest rate, not the repayment of funds. The Finance Board requests comment on whether there are other appropriate requirements for putable or convertible advances.

*F. Other Technical Changes*

1. Federal Home Loan Bank Associates—Part 926

Eligibility requirements for associates (nonmember borrowers), including application procedures and requirements for advances to associates, currently are contained in the Advances Regulation. *See* 12 CFR 950.22, 950.23. For the sake of greater organizational clarity, the proposed rule sets forth the associate eligibility requirements and advances requirements in separate regulations, by moving the associate eligibility requirements to a new part 926 under subpart B. No substantive changes are being proposed for subpart B.

As part of a continuing effort to revise and achieve consistency in regulatory nomenclature regarding nonmember borrowers, the proposed rule would amend the text, where appropriate, to refer to nonmember borrowers who are eligible under 10b of the Bank Act, 12 U.S.C. 1430b, to obtain advances from the Banks, as associates. The definition of "associate" was recently added to 12 CFR 900.1, which contains definitions of terms that apply to all parts of the Finance Board's regulations. Accordingly, the proposed rule would change the title of subpart B to "Advances to Associates." Since the term "associates" is defined in § 900.1, the Finance Board is not proposing that it be defined in any of the individual parts addressed by this rulemaking.

2. Bank Member Products Policy—Section 917.4

In its recently adopted final rule, Powers and Responsibilities of Bank Boards of Directors and Senior Management, the Finance Board consolidated all of the requirements for the Bank's board of directors' operational policies into one regulatory part, part 917, rather than have such requirements scattered throughout its regulations.[9] Proposed § 917.4 would add to that part a new requirement for adoption by a Bank's board of directors of a member products policy that would combine the requirements for an advances policy from current § 950.3(a), with the requirements for a standby letter of credit policy from current § 961.5(a), into one policy. The proposed member products policy also would address other products that the Banks may offer, such as acquired member assets.

[9] The Finance Board adopted part 917, "Powers and Responsibilities of Bank Boards of Directors and Senior Management," as a final rule at its March 22, 2000 Board of Directors meeting.

Under proposed § 917.4(b), a Bank's member products policy would be required to address the following items: the credit underwriting criteria to be applied to advances (including renewals) and standby letters of credit; collateralization (including levels, valuation and discounts) for advances and standby letters of credit; advances-related fees (including any schedules or formulas pertaining to such fees); standards and criteria for pricing member products (including differential pricing of advances pursuant to § 950.4(b)(2)); criteria regarding the pricing of standby letters of credit (including any special pricing provisions for standby letters of credit that facilitate the financing of projects that are eligible for any CICA programs under part 952); the maintenance of appropriate systems, procedures and internal controls; and the maintenance of appropriate operational and personnel capacity.

A Bank's member products policy also must provide that, for any draw made by a beneficiary under a standby letter of credit, the member will be charged a processing fee calculated in accordance with § 975.6(b).

Under proposed § 917.4(a)(2), each Bank's board of directors would be required to review the Bank's member products policy annually, amend the policy as appropriate, and re-adopt the policy, including interim amendments, not less often than every three years.

References to the "advances policy" in other sections of the Finance Board's current regulations are proposed to be changed to references to the "member products policy."

3. Bank Credit Mission—Removal of Section 950.2

In the Finance Board's recently adopted final rule on parts 900, 917 and 940, the Finance Board revised part 940 to add a new definition of the mission of the Banks.[10] Accordingly, the proposed rule removes existing § 950.2 of the Finance Board's Advances Regulation, which states the primary credit mission of the Banks and how the Banks must fulfill such mission, as no longer necessary.

4. Community Support Requirements and Community Investments Cash Advance Programs—Parts 944 and 952

As discussed previously, the proposed rule would amend part 944 and § 952.3 by re-designating the term "community lending" as "targeted community lending," with no substantive change to the corresponding definition. This revision is intended to differentiate CICA community lending, which is targeted, from the broader term "community lending" that the Finance Board proposes to add to § 900.1. The broader definition of "community lending" in § 900.1 would include, for CFIs, purchasing or funding small business loans, small farm loans and small agri-business loans, as defined in § 950.1 of this chapter.

5. Standby Letters of Credit—Part 961

The proposed rule would amend part 961 to update cross-references to reflect the reorganization of Finance Board regulations, change references from nonmember mortgagees to associates and make other technical and conforming changes.

## III. Paperwork Reduction Act

This proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 33 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

## IV. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, *see id.* at 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 12 CFR Parts 900, 917, 926, 944, 950, 952, 961 and 980**

Community development, Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby proposes to amend title 12, chapter IX, parts 900, 917, 926, 944, 950, 952, 961 and 980, Code of Federal Regulations, as follows:

## PART 900—GENERAL DEFINITIONS

1. The authority citation for part 900 is revised to read as follows:

**Authority:** 12 U.S.C. 1422, 1422b(a)(1).

2. Amend § 900.1 by adding, in alphabetical order, definitions of "community financial institution", "community financial institution asset cap", and "community lending", to read as follows:

**§ 900.1 Definitions applying to all regulations.**

* * * * *

*Community financial institution or CFI* means an institution—

(1) The deposits of which are insured under the Federal Deposit Insurance Act; and

(2) That has, as of the date of the transaction at issue, less than the community financial institution asset cap in total assets, based on an average of total assets over the three years preceding that date.

*Community financial institution asset cap* means, for 2000, $500 million. Beginning in 2001 and for subsequent years, the cap shall be adjusted annually by the Finance Board to reflect any percentage increase in the preceding year's Consumer Price Index (CPI) for all urban consumers, as published by the U.S. Department of Labor. Each year, as soon as practicable after the publication of the previous year's CPI, the Finance Board shall publish notice by **Federal Register**, distribution of a memorandum, or otherwise, of the CPI-adjusted cap.

*Community lending* means providing financing for economic development projects for targeted beneficiaries, and, for community financial institutions, purchasing or funding small business loans, small farm loans or small agri-business loans, as defined in § 950.1 of this chapter.

* * * * *

## PART 917—POWERS AND RESPONSIBILITIES OF BANK BOARDS OF DIRECTORS AND SENIOR MANAGEMENT

3. The authority citation for part 917 continues to read as follows:

**Authority:** 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1427, 1432(a), 1436(a), 1440.

4. Add § 917.4 to read as follows:

**§ 917.4 Bank member products policy.**

(a) *Adoption and review of member products policy.* (1) *Adoption.* Beginning 90 days after the effective date of this section, each Bank's board of directors shall have in effect at all times a policy that addresses the Bank's management of products offered by the Bank to members and associates, including but not limited to advances, letters of credit and acquired member assets, consistent with the requirements of the Act, paragraph (b) of this section, and all applicable Finance Board regulations and policies.

[10] Section 940.2 was adopted as a final rule by the Finance Board at its March 22, 2000 Board of Directors meeting as part of the rulemaking for part 917, "Powers and Responsibilities of Federal Home Loan Bank Boards of Directors and Senior Management."

(2) *Review and compliance.* Each Bank's board of directors shall:

(i) Review the Bank's member products policy annually;

(ii) Amend the member products policy as appropriate; and

(iii) Re-adopt the member products policy, including interim amendments, not less often than every three years.

(b) *Member products policy requirements.* In addition to meeting any other requirements set forth in this chapter, each Bank's member products policy shall:

(1) Address credit underwriting criteria to be applied in evaluating applications for advances, standby letters of credit, and renewals;

(2) Address appropriate levels of collateralization, valuation of collateral and discounts applied to collateral values for advances and standby letters of credit;

(3) Address advances-related fees to be charged by each Bank, including any schedules or formulas pertaining to such fees;

(4) Address standards and criteria for pricing member products, including differential pricing of advances pursuant to § 950.4(b)(2) of this chapter, and criteria regarding the pricing of standby letters of credit, including any special pricing provisions for standby letters of credit that facilitate the financing of projects that are eligible for any of the Banks' CICA programs under part 952 of this chapter;

(5) Provide that, for any draw made by a beneficiary under a standby letter of credit, the member will be charged a processing fee calculated in accordance with the requirements of § 975.6(b) of this chapter;

(6) Address the maintenance of appropriate systems, procedures and internal controls; and

(7) Address the maintenance of appropriate operational and personnel capacity.

5. Revise the heading of subchapter D to read as follows:

**SUBCHAPTER D—FEDERAL HOME LOAN BANK MEMBERS AND ASSOCIATES**

6. In subchapter D, add a new part 926 to read as follows:

**PART 926—FEDERAL HOME LOAN BANK ASSOCIATES**

Sec.

926.1 Definitions.
926.2 Bank authority to make advances to associates.
926.3 Associate eligibility requirements.
926.4 Satisfaction of eligibility requirements.
926.5 Associate application process.
926.6 Appeals.

**Authority:** 12 U.S.C. 1422b(a), 1430b.

**§ 926.1 Definitions.**

As used in this part:

*Advance* has the meaning set forth in § 950.1 of this chapter.

*Governmental agency* means the governor, legislature, and any other component of a federal, state, local, tribal, or Alaskan native village government with authority to act for or on behalf of that government.

*HUD* means the Department of Housing and Urban Development.

*State housing finance agency* or *SHFA* means:

(1) A public agency, authority, or publicly sponsored corporation that serves as an instrumentality of any state or political subdivision of any state, and functions as a source of residential mortgage loan financing in that state; or

(2) A legally established agency, authority, corporation, or organization that serves as an instrumentality of any Indian tribe, band, group, nation, community, or Alaskan Native village recognized by the United States or any state, and functions as a source of residential mortgage loan financing for the Indian or Alaskan Native community.

**§ 926.2 Bank authority to make advances to associates.**

Subject to the provisions of the Act and part 950 of this chapter, a Bank may make advances to an entity that is not a member of the Bank if the Bank has certified the entity as an associate under the provisions of this part.

**§ 926.3 Associate eligibility requirements.**

(a) *General.* A Bank may certify as an associate any applicant that meets the following requirements, as determined using the criteria set forth in § 926.4:

(1) The applicant is approved under title II of the National Housing Act (12 U.S.C. 1707, *et seq.*);

(2) The applicant is a chartered institution having succession;

(3) The applicant is subject to the inspection and supervision of some governmental agency;

(4) The principal activity of the applicant in the mortgage field consists of lending its own funds; and

(5) The financial condition of the applicant is such that advances may be safely made to it.

(b) *State housing finance agencies.* In addition to meeting the requirements in paragraph (a) of this section, any applicant seeking access to advances as a SHFA pursuant to § 950.17(b)(2) of this chapter shall provide evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations describing the applicant's structure and responsibilities, that the applicant is a state housing finance agency as defined in § 926.1.

**§ 926.4 Satisfaction of eligibility requirements.**

(a) *HUD approval requirement.* An applicant shall be deemed to meet the requirement in section 10b(a) of the Act and § 926.3(a)(1) that it be approved under title II of the National Housing Act if it submits a current HUD Yearly Verification Report or other documentation issued by HUD stating that the Federal Housing Administration of HUD has approved the applicant as a mortgagee.

(b) *Charter requirement.* An applicant shall be deemed to meet the requirement in section 10b(a) of the Act and § 926.3(a)(2) that it be a chartered institution having succession if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, the statutes and/or regulations under which the applicant was created, that:

(1) The applicant is a government agency; or

(2) The applicant is chartered under state, federal, local, tribal, or Alaskan Native village law as a corporation or other entity that has rights, characteristics, and powers under applicable law similar to those granted a corporation.

(c) *Inspection and supervision requirement.* (1) An applicant shall be deemed to meet the inspection and supervision requirement in section 10b(a) of the Act and § 926.3(a)(3) if it provides evidence satisfactory to the Bank, such as a copy of, or a citation to, relevant statutes and/or regulations, that, pursuant to statute or regulation, the applicant is subject to the inspection and supervision of a federal, state, local, tribal, or Alaskan native village governmental agency.

(2) An applicant shall be deemed to meet the inspection requirement if there is a statutory or regulatory requirement that the applicant be audited or examined periodically by a governmental agency or by an external auditor.

(3) An applicant shall be deemed to meet the supervision requirement if the governmental agency has statutory or regulatory authority to remove an applicant's officers or directors for cause or otherwise exercise enforcement or administrative control over actions of the applicant.

(d) *Mortgage activity requirement.* An applicant shall be deemed to meet the mortgage activity requirement in section 10b(a) of the Act and § 926.3(a)(4) if it provides documentary evidence satisfactory to the Bank, such as a financial statement or other financial

documents that include the applicant's mortgage loan assets and their funding liabilities, that it lends its own funds as its principal activity in the mortgage field. For purposes of this paragraph, lending funds includes, but is not limited to, the purchase of whole mortgage loans. In the case of a federal, state, local, tribal, or Alaskan Native village government agency, appropriated funds shall be considered an applicant's own funds. An applicant shall be deemed to satisfy this requirement notwithstanding that the majority of its operations are unrelated to mortgage lending if its mortgage activity conforms to this requirement. An applicant that acts principally as a broker for others making mortgage loans, or whose principal activity is to make mortgage loans for the account of others, does not meet this requirement.

(e) *Financial condition requirement.* An applicant shall be deemed to meet the financial condition requirement in § 926.3(a)(5) if the Bank determines that advances may be safely made to the applicant. The applicant shall submit to the Bank copies of its most recent regulatory audit or examination report, or external audit report, and any other documentary evidence, such as financial or other information, that the Bank may require to make the determination.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002.)

**§ 926.5 Associate application process.**

(a) *Authority.* The Banks are authorized to approve or deny all applications for certification as an associate, subject to the requirements of the Act and this part. A Bank may delegate the authority to approve applications for certification as an associate only to a committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development.

(b) *Application requirements.* An applicant for certification as an associate shall submit an application that satisfies the requirements of the Act and this part to the Bank of the district in which the applicant's principal place of business, as determined in accordance with part 925 of this chapter, is located.

(c) *Bank decision process.* (1) *Action on applications.* A Bank shall approve or deny an application for certification as an associate within 60 calendar days of the date the Bank deems the application to be complete. A Bank shall deem an application complete, and so notify the applicant in writing, when it has obtained all of the information required by this part and any other information it deems necessary to process the application. If a Bank determines during the review process that additional information is necessary to process the application, the Bank may deem the application incomplete and stop the 60-day time period by providing written notice to the applicant. When the Bank receives the additional information, it shall again deem the application complete, so notify the applicant in writing, and resume the 60-day time period where it stopped.

(2) *Decision on applications.* The Bank or a duly delegated committee of the Bank's board of directors, the Bank president, or a senior officer who reports directly to the Bank president other than an officer with responsibility for business development shall approve, or the board of directors of a Bank shall deny, each application for certification as an associate by a written decision resolution stating the grounds for the decision. Within three business days of a Bank's decision on an application, the Bank shall provide the applicant and the Finance Board with a copy of the Bank's decision resolution.

(3) *File.* The Bank shall maintain a certification file for each applicant for at least three years after the date the Bank decides whether to approve or deny certification or the date the Finance Board resolves any appeal, whichever is later. At a minimum, the certification file shall include all documents submitted by the applicant or otherwise obtained or generated by the Bank concerning the applicant, all documents the Bank relied upon in making its determination regarding certification, including copies of statutes and regulations, and the decision resolution.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002.)

**§ 926.6 Appeals.**

(a) *General.* Within 90 calendar days of the date of a Bank's decision to deny an application for certification as an associate, the applicant may submit a written appeal to the Finance Board that includes the Bank's decision resolution and a statement of the basis for the appeal with sufficient facts, information, analysis, and explanation to support the applicant's position. Appeals shall be sent to the Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006, with a copy to the Bank.

(b) *Record for appeal.* Upon receiving a copy of an appeal, the Bank whose action has been appealed shall provide to the Finance Board a complete copy of the applicant's certification file maintained by the Bank under § 926.5(c)(3). Until the Finance Board resolves the appeal, the Bank shall promptly provide to the Finance Board any relevant new materials it receives. The Finance Board may request additional information or further supporting arguments from the applicant, the Bank, or any other party that the Finance Board deems appropriate.

(c) *Deciding appeals.* Within 90 calendar days of the date an applicant files an appeal with the Finance Board, the Finance Board shall consider the record for appeal described in paragraph (b) of this section and resolve the appeal based on the requirements of the Act and this part.

(The Office of Management and Budget has approved the information collection contained in this section and assigned control number 3069–0005 with an expiration date of November 30, 2002.)

## PART 944—COMMUNITY SUPPORT REQUIREMENTS

7. The authority citation for part 944 continues to read as follows:

**Authority:** 12 U.S.C. 1422a(a)(3)(B), 1422b(a)(1), 1429, and 1430.

8. Amend part 944 by removing the term "community lending" wherever it appears, and, in its place, adding the term "targeted community lending".

**§ 944.6 [Amended]**

9. Amend § 944.6(b)(2) by removing the term "nonmember borrowers" and, in its place, adding the term "associates".

## PART 950—ADVANCES

10. The authority citation for part 950 continues to read as follows:

**Authority:** 12 U.S.C. 1422a(a)(3), 1422b(a)(1), 1426, 1429, 1430, 1430b and 1431.

11. The table of contents for part 950 is revised to read as follows:

**Subpart A—Advances to Members**

Sec.
950.1 Definitions.
950.2 Authorization and application for advances; obligation to repay advances.
950.3 Purpose of long-term advances; proxy text.
950.4 Limitations on access to advances.
950.5 Terms and conditions for advances.
950.6 Fees.

950.7 Collateral.
950.8 Banks as secured creditors.
950.9 Pledged collateral; verification.
950.10 Collateral valuation; appraisals.
950.11 Capital stock requirements; unilateral redemption of excess stock.
950.12 Intradistrict transfer of advances.
950.13 Special advances to savings associations.
950.14 Advances to the Savings Association Insurance Fund.
950.15 Liquidation of advances upon termination of membership.

**Subpart B—Advances to Associates**

950.16 Scope.
950.17 Advances to associates.

12. Amend § 950.1 by:

a. Adding, in alphabetical order, a definition of "affiliate";

b. Adding, in alphabetical order, a definition of "cash equivalents";

c. Removing the definitions of "Actual thrift investment percentage" or "ATIP", "combination business or farm property", "Non-Qualified Thrift Lender member", "Qualified Thrift Lender" or "QTL", and "Qualified Thrift Lender test" or "QTL test";

d. Amending the definition of "Community Investment Cash Advance" or "CICA" by removing the term "community lending", and, in its place, adding the term "targeted community lending";

e. Revising paragraph (4) of the definition of "residential housing finance assets";

f. Amending the definition of "residential real property" by removing paragraph (1)(v); and

g. Adding, in alphabetical order, definitions of "small agri-business loans", "small business loans", and "small farm loans", to read as follows:

**§ 950.1 Definitions.**

* * * * *

*Affiliate* means any business entity that controls, is controlled by, or is under common control with, a member.

* * * * *

*Cash equivalents* means investments that—

(1) Are readily convertible into known amounts of cash;

(2) Have a remaining maturity of 90 days or less at the acquisition date; and

(3) Are held for liquidity purposes.

* * * * *

*Residential housing finance assets* means any of the following:

* * * * *

(4) Loans or investments qualifying under the definition of "community lending" in § 900.1 of this chapter;

* * * * *

*Small agri-business loans* means loans:

(1) With an original amount (including the aggregate of all loans to a particular borrower) of not more than $ 500,000 that are reported on either: Schedule SB of the Thrift Financial Report filed by savings associations as "nonmortgage, commercial loans to finance agricultural production and other nonmortgage commercial loans to farmers," or Schedule RC–C, Part II of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks as "loans to finance agricultural production and other loans to farmers;" or

(2) For which the CFI, on a case-by-case basis, documents that the borrower meets the eligibility standards for a small business concern under the Small Business Administration's regulations at 13 CFR part 121, or any successor provisions.

*Small business loans* means loans:

(1) With an original amount (including the aggregate of all loans to a particular borrower) of not more than $1,000,000 that are reported on either: Schedule SB of the Thrift Financial Report filed by savings associations as "permanent mortgage loans secured by nonfarm, nonresidential properties" or "nonmortgage, nonagricultural commercial loans," or Schedule RC–C, Part II of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks as "loans secured by nonfarm, nonresidential properties," or "Commercial and industrial loans to U.S. addresses;" or

(2) For which the CFI, on a case-by-case basis, documents that the borrower meets the eligibility standards for a small business concern under the Small Business Administration's regulations at 13 CFR part 121, or any successor provisions.

*Small farm loans* means loans:

(1) With an original amount (including the aggregate of all loans to a particular borrower) of not more than $500,000 that are reported on either: Schedule SB of the Thrift Financial Report filed by savings associations as "loans secured primarily by farms," or Schedule RC–C, Part II of the Report of Condition and Income filed by insured commercial banks and FDIC-supervised savings banks as "loans secured by farmland (including farm residential and other improvements);" or

(2) For which the CFI, on a case-by-case basis, documents that the borrower meets the eligibility standards for a small business concern under the Small Business Administration's regulations at 13 CFR part 121, or any successor provisions.

* * * * *

13. Remove § 950.2.

14. Remove § 950.3.

15. Section 950.4 is redesignated as § 950.2.

16. Section 950.14 is redesignated as § 950.3, and the heading and paragraphs (a) and (b)(1) are revised to read as follows:

**§ 950.3 Purpose of long-term advances; proxy test.**

(a) A Bank shall make long-term advances only for the purpose of enabling any member to purchase or fund new or existing residential housing finance assets, which include, for CFI members, small business loans, small farm loans and small agri-business loans.

(b)(1) Prior to approving an application for a long-term advance, a Bank shall determine that the principal amount of all long-term advances currently held by the member does not exceed the total book value of residential housing finance assets held by such member. The Bank shall determine the total book value of such residential housing finance assets, using the most recent Thrift Financial Report, Report of Condition and Income, financial statement or other reliable documentation made available by the member.

* * * * *

17. Section 950.5 is redesignated as § 950.4.

18. Section 950.6 is redesignated as § 950.5, and paragraphs (b)(1), (b)(2)(ii), (b)(3), (d)(1) and (d)(3) are revised to read as follows:

**§ 950.5 Terms and conditions for advances.**

* * * * *

(b) *Advance pricing.* (1) *General.* A Bank shall not price its advances to members below:

(i) The marginal cost to the Bank of raising matching term and maturity funds in the marketplace, including embedded options; and

(ii) The administrative and operating costs associated with making such advances to members.

(2) * * *

(ii) Each Bank shall include in its member products policy required by § 917.4 of this chapter, standards and criteria for such differential pricing and shall apply such standards and criteria consistently and without discrimination to all members applying for advances.

(3) *Exceptions.* The advance pricing policies contained in paragraph (b)(1) of this section shall not apply in the case of:

(i) A Bank's CICA programs; and
(ii) Any other advances that are volume limited and specifically approved by the Bank's board of directors.

* * * * *

(d) *Putable or convertible advances.* (1) *Disclosure.* A Bank that offers a putable or convertible advance to a member shall disclose in writing to such member the type and nature of the risks associated with putable or convertible advance funding. The disclosure should include detail sufficient to describe such risks.

(2) *Replacement funding for putable advances.* If a Bank terminates a putable advance prior to the stated maturity date of such advance, the Bank shall offer to provide replacement funding to the member.

* * * * *

19. Section 950.8 is resdesignated as § 950.6, and paragraphs (a) and (b)(1) are revised to read as follows:

**§ 950.6 Fees.**

(a) *Fees in member products policy.* All fees charged by each Bank and any schedules or formulas pertaining to such fees shall be included in the Bank's member products policy required by § 917.4 of this chapter. Any such fee schedules or formulas shall be applied consistently and without discrimination to all members.

(b) *Prepayment fees.* (1) Except where an advance product contains a prepayment option, each Bank shall establish and charge a prepayment fee pursuant to a specified formula which makes the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date.

* * * * *

20. Section 950.9 is redesignated as § 950.7, paragraphs (a) introductory text, (a)(3), (a)(4), (b) and (c) are revised, and paragraphs (a) (5) and (f) are added, to read as follows:

**§ 950.7 Collateral.**

(a) *Eligible security for advances to all members.* At the time of origination or renewal of an advance, each Bank shall obtain from the borrowing member or, in accordance with paragraph (f) of this section, an affiliate of the borrowing member, and thereafter maintain, a security interest in collateral that meets the requirements of one or more of the following categories:

* * * * *

(3) *Cash or deposits.* Cash or deposits in a Bank.

(4) *Other real estate-related collateral.* (i) Other real estate-related collateral provided that:

(A) Such collateral has a readily ascertainable liquidation value and can be freely liquidated in due course; and
(B) The Bank can perfect a security interest in such collateral.

(ii) Eligible other real estate-related collateral may include, but is not limited to:

(A) Privately issued mortgage-backed securities not otherwise eligible under paragraph (a)(1)(ii) of this section;
(B) Second mortgage loans, including home equity loans;
(C) Commercial real estate loans; and
(D) Mortgage loan participations.

(iii) A Bank shall not make total advances to all members secured by other real estate-related collateral in an aggregate amount that would exceed the highest level of total advances secured by such collateral that the Bank has previously made by more than 25 percent until it has met the new business activity requirements of part 980 of this chapter.

(5) *Securities representing equity interests in eligible advances collateral.* Any security the ownership of which represents an undivided equity interest in underlying assets, all of which qualify either as:

(i) Eligible collateral under paragraphs (a)(1), (2), (3) or (4) of this section; or
(ii) Cash equivalents.

(b) *Additional collateral eligible as security for advances to CFI members or their affiliates.* (1) *General.* Subject to the limitations set forth in part 980 of this chapter, a Bank is authorized to accept from CFI members or their affiliates as security for advances small business loans, small farm loans or small agri-business loans fully secured by collateral other than real estate, or securities representing a whole interest in such loans, provided that:

(i) Such collateral has a readily ascertainable liquidation value and can be freely liquidated in due course; and
(ii) The Bank can perfect a security interest in such collateral.

(2) *Change in CFI status.* A Bank may not accept as security for new advances collateral under this section from a member that loses its CFI status. A Bank shall not require a member that loses its CFI status and has outstanding advances secured by collateral under this section to repay such advances prior to the stated maturities or to provide substitute collateral eligible under paragraphs (a)(1) through (5) of this section, based solely on the member's change in status, and may allow such member to renew maturing advances secured by collateral under this section for up to 6 months.

(c) *Additional advances collateral.* The provisions of paragraph (a) of this section shall not affect the ability of any Bank to take such steps as it deems necessary to protect its secured position on outstanding advances, including requiring additional collateral, whether or not such additional collateral conforms to the requirements for eligible collateral in paragraphs (a) or (b) of this section or section 10 of the Act (12 U.S.C. 1430).

* * * * *

(f) *Pledge of advances collateral by affiliates.* Assets held by an affiliate of a member that are eligible as collateral under paragraphs (a) or (b) of this section may be used to secure advances to that member only if:

(1) The collateral is pledged to secure either:

(i) The member's obligation to repay advances; or

(ii) A surety or other agreement under which the affiliate has assumed, along with the member, a primary obligation to repay advances made to the member; and

(2) The Bank obtains and maintains a legally enforceable security interest pursuant to which the Bank's legal rights and privileges with respect to the collateral are functionally equivalent in all material respects to those that the Bank would possess if the member were to pledge the same collateral directly, and such functional equivalence is supported by adequate documentation.

21. Section 950.10 is redesignated as § 950.8.

22. Section 950.11 is redesignated as § 950.9.

23. Section 950.12 is redesignated as § 950.10, and is revised to read as follows:

**§ 950.10 Collateral valuation; appraisals.**

(a) *Collateral valuation.* Each Bank shall determine the value of collateral securing the Bank's advances in accordance with the collateral valuation procedures set forth in the Bank's member products policy established pursuant to § 917.4 of this chapter.

(b) *Fair application of procedures.* Each Bank shall apply the collateral valuation procedures consistently and fairly to all borrowing members, and the valuation ascribed to any item of collateral by the Bank shall be conclusive as between the Bank and the member.

(c) *Appraisals.* A Bank may require a member to obtain an appraisal of any item of collateral, and to perform such other investigations of collateral as the Bank deems necessary and proper.

24. Section 950.15 is redesignated as § 950.11.

25. Section 950.17 is redesignated as § 950.12.

26. Section 950.18 is redesignated as § 950.13.

27. Section 950.20 is redesignated as § 950.14 and transferred to subpart A.

28. Section 950.19 is redesignated as § 950.15.

29. The heading of Subpart B is revised to read as follows:

**Subpart B—Advances to Associates**

30. Section 950.21 is redesignated as § 950.16, and is revised to read as follows:

**§ 950.16 Scope.**

Except as otherwise provided in §§ 950.14 and 950.17, the requirements of subpart A apply to this subpart.

31. Sections 950.22 and 950.23 are removed.

32. Section 950.24 is redesignated as § 950.17, and is amended by:

a. Removing the words "nonmember mortgagee" and "nonmember mortgagees", wherever they appear, and, in their place, adding the words "associate" and "associates", respectively; and

b. In paragraph (b)(2)(i) introductory text, removing the term "§ 950.22(d)", and, in its place, adding the term "§ 926.3(b)";

c. In paragraph (b)(2)(i)(B), removing the terms "§ 950.9(a)(3)" and "§ 950.22(d)", and in their place, adding the terms "§ 950.7(a)(3)" and "§ 926.3(b)," respectively; and

d. Revising paragraph (b)(2)(i)(C), to read as follows:

**§ 950.17 Advances to associates.**

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) The real estate-related collateral described in § 950.7(a)(4), provided that such collateral is comprised of mortgage loans on one-to-four family or multifamily residential property.

* * * * *

**PART 952—COMMUNITY INVESTMENT CASH ADVANCE PROGRAMS**

33. The authority citation for part 952 continues to read as follows:

**Authority:** 12 U.S.C. 1422b(a)(1) and 1430.

34. Amend § 952.3 by removing the definition of "nonmember borrower".

35. Amend part 952 by:

a. Removing the term "community lending", wherever it appears, and, in its place, adding the term "targeted community lending"; and

b. Removing the terms "nonmember borrower" and "nonmember borrowers", wherever they appear, and, in their place, adding the terms "associate borrower" and "associate borrowers", respectively.

**PART 961—STANDBY LETTERS OF CREDIT**

36. The authority citation for part 961 continues to read as follows:

**Authority:** 12 U.S.C. 1422b, 1429, 1430, 1430b, 1431.

37. Amend § 961.1 by:

a. Removing the definition of "community lending";

b. Removing the definition of "nonmember mortgagee";

c. Removing the definition of "nonmember SHFA";

d. Adding the definition of "SHFA associate"; and

e. Removing the definition of "small business", to read as follows:

**§ 961.1 Definitions.**

* * * * *

*SHFA associate* means an associate that is a "state housing finance agency," as that term is defined in § 926.1 of this chapter, and that has met the requirements of § 926.3(b) of this chapter.

* * * * *

38. Amend part 961 by:

a. Removing the terms "nonmember mortgagee" and "nonmember mortgagees", wherever they appear, and, in their place, adding the terms "associate" and "associates", respectively; and

b. Removing the terms "nonmember SHFA" and "nonmember SHFAs", wherever they appear, and, in their place, adding the terms "SHFA associate" and "SHFA associates", respectively.

39. Amend § 961.2 by revising paragraphs (a)(2), (c)(1), and (c)(2)(i), to read as follows:

**§ 961.2 Standby letters of credit on behalf of members.**

(a) * * *

(2) To assist members in facilitating community lending;

* * * * *

(c) *Eligible collateral.* (1) Any standby letter of credit issued or confirmed on behalf of a member may be secured in accordance with the requirements for advances under § 950.7(a) of this chapter.

(2) * * *

(i) Collateral eligible to secure advances under § 950.7(b)(1) of this chapter, regardless of whether the applicant is a community financial institution;

* * * * *

40. Amend § 961.3 by:

a. In the introductory text of paragraph (a), removing the term "§§ 950.24(b)(1)(i) or (ii)" and, in its place, adding the term "§§ 950.17(b)(1)(i) or (ii)";

b. Revising paragraph (a)(2); and

c. In paragraph (b), removing the term "950.24(b)(2)(i)(A), (B) or (C)" and, in its place, adding the term "950.17(b)(2)(i)(A), (B) or (C)", to read as follows:

**§ 961.3 Standby letters of credit on behalf of associates.**

(a) * * *

(2) To assist associates in facilitating community lending;

* * * * *

41. Amend § 961.4 by removing the term "§§ 969.5. 950.24(b)(2)(i)(B) or 950.24(d)" in paragraph (a)(1) and, in its place, adding the term "§§ 950.17(b)(2)(i)(B), 950.17(d), or 969.2".

42. Amend § 961.5 by:

a. Revising paragraph (a); and

b. In paragraph (b)(2), removing the reference to "§§ 950.9(b), 950.9(d), 950.9(e), 950.10, 950.11 and 950.12", and, in its place, adding a reference to §§ 950.7(d), 950.7(e), 950.8, 950.9 and 950.10", to read as follows:

**§ 961.5 Additional provisions applying to all standby letters of credit.**

(a) *Requirements.* Each standby letter of credit issued or confirmed by a Bank shall:

(1) Contain a specific expiration date, or be for a specific term; and

(2) Require approval in advance by the Bank of any transfer of the standby letter of credit from the original beneficiary to another person or entity.

* * * * *

43. In subchapter J, add a new part 980 to read as follows:

**PART 980—NEW BUSINESS ACTIVITIES**

Sec.

980.1 Definitions.

980.2 Limitation on Bank authority to undertake new business activities.

980.3 New business activity notice requirement.

980.4 Commencement of new business activities.

980.5 Notice by the Finance Board.

980.6 Finance Board consent.

980.7 Examinations; requests for additional information.

**Authority:** 12 U.S.C. 1422a(a)(3), 1422b(a), 1431(a), 1432(a).

**§ 980.1 Definitions.**

As used in this part:

*New business activity* means any business activity undertaken, transacted, conducted, or engaged in by

a Bank that has not been previously undertaken, transacted, conducted, or engaged in by that Bank, or was previously undertaken, transacted, conducted, or engaged in under materially different terms and conditions, and that:

(1) Involves the acceptance of collateral enumerated under §§ 950.7(a)(4)(i) and (ii) of this chapter in an amount greater than that set forth in § 950.7(a)(4)(iii);

(2) Involves the acceptance of classes of collateral enumerated under § 950.7(b) of this chapter for the first time;

(3) Entails risks not previously and regularly managed by that Bank, its members, or both, as appropriate; or

(4) Involves operations not previously undertaken by that Bank.

**§ 980.2 Limitation on Bank authority to undertake new business activities.**

No Bank shall undertake any new business activity except in accordance with the procedures set forth in this part.

**§ 980.3 New business activity notice requirement.**

At least sixty days prior to undertaking a new business activity, a Bank shall submit to the Finance Board a written notice containing the following information:

(a) *General requirements.* Except as provided in paragraph (b) of this section, a Bank's notice of new business activity shall include:

(1) An opinion of counsel citing the statutory, regulatory, or other legal authority for the new business activity;

(2) A good faith estimate of the anticipated dollar volume of the activity over the short-and long-term;

(3) A full description of:

(i) The purpose and operation of the proposed activity;

(ii) The market targeted by the activity;

(iii) The delivery system for the activity;

(iv) The effect of the activity on the housing, or relevant community lending, market; and

(4) A demonstration of the Bank's capacity, through staff, or contractors employed by the Bank, sufficiency of experience and expertise, to safely administer and manage the risks associated with the new activity;

(5) An assessment of the risks associated with the activity, including the Bank's ability to manage these risks and the Bank's ability to manage the risks associated with increasing volumes of the new activity; and

(6) The criteria that the Bank will use to determine the eligibility of its members or associates to participate in the new activity.

(b) *New collateral activities.* If a proposed new business activity relates to the acceptance of collateral under § 950.7 of this chapter, a Bank's notice of new business activity shall include:

(1) A description of the classes or amounts of collateral proposed to be accepted by the Bank;

(2) A copy of the Bank's member products policy, adopted pursuant to § 917.4 of this chapter;

(3) A copy of the Bank's procedures for determining the value of the collateral in question, established pursuant to § 950.10 of this chapter; and

(4) A demonstration of the Bank's capacity, personnel, technology, experience and expertise to value, discount and manage the risks associated with the collateral in question.

**§ 980.4 Commencement of new business activities.**

A Bank may commence a new business activity:

(a) Sixty days after receipt by the Finance Board of the notice of new business activity under § 980.3, if the Finance Board has not issued to the Bank a notice of disapproval, a notice of intent to examine, or a request for additional information under § 980.5; or

(b) Immediately upon issuance by the Finance Board of a letter of approval under § 980.6.

**§ 980.5 Notice by the Finance Board.**

(a) *Issuance.* Within sixty days after receipt of a notice of new business activity under § 980.3, the Finance Board may issue to a Bank a notice that:

(1) Disapproves the new business activity;

(2) Instructs the Bank not to commence the new business pending further consideration by the Finance Board;

(3) Declares an intent to examine the Bank;

(4) Requests additional information including but not limited to the requests listed in § 980.7;

(5) Establishes conditions for the Finance Board's approval of the new business activity, including but not limited to the conditions listed in § 980.7; or

(6) Contains other instructions or information that the Finance Board deems appropriate under the circumstances.

(b) *Effect.* Following receipt of a notice issued pursuant to paragraph (a) of this section, a Bank may not undertake any new business activity that is the subject of the notice until the Bank has received the Finance Board's consent pursuant to § 980.6.

**§ 980.6 Finance Board consent.**

The Finance Board may at any time provide consent for a Bank to undertake a particular new business activity and setting forth the terms and conditions that apply to the activity, with which the Bank shall comply if the Bank undertakes the activity in question.

**§ 980.7 Examinations; requests for additional information.**

(a) *General.* Nothing in this part shall limit in any manner the right of the Finance Board to conduct any examination of any Bank.

(b) *Requests for additional information and conditions for approval.* With respect to a new business activity, nothing in this part shall limit the right of the Finance Board at any time to:

(1) Request further information from a Bank concerning a new business activity; and

(2) Require a Bank to comply with certain conditions in order to undertake, or continue to undertake, the new business activity in question, including but not limited to:

(i) Successful completion of pre-or post-implementation safety and soundness examinations;

(ii) Demonstration by the Bank of adequate operational capacity, including the existence of appropriate policies, procedures and controls;

(iii) Demonstration by the Bank of its ability to manage the risks associated with accepting increasing volumes of particular collateral, or holding increasing volumes of particular assets, including the Bank's capacity reliably to value, discount and market the collateral or assets for liquidation;

(iv) Demonstration by the Bank that the new business activity is consistent with the housing finance and community lending mission of the Banks and the cooperative nature of the Bank System; and

(v) Finance Board review of any contracts or agreements between the Bank and its members or associates.

Dated: March 22, 2000.

By the Board of Directors of the Federal Housing Finance Board.

**Bruce A. Morrison,**

*Chairman.*

[FR Doc. 00–11078 Filed 5–5–00; 8:45 am]

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## FEDERAL TRADE COMMISSION

**16 CFR Part 307**

### Extension of Time for Comments Concerning Regulations Implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice of reopening and extension of comment period.

**SUMMARY:** The Federal Trade Commission (the "Commission") has extended the date by which comments must be submitted concerning the review of its regulations ("smokeless tobacco regulations" or "the regulations") implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act"). This document informs prospective commenters of the change and sets a new date of July 21, 2000 for the end of the comment period.

**DATES:** Comments must be submitted on or before July 21, 2000.

**ADDRESSES:** Written comments should be identified as "16 CFR Part 307" and sent to the Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, N.W., Washington D.C. 20580. The Commission requests that the original comment be filed with five copies, if feasible. The Commission also requests, if possible, that the comments be submitted in electronic form on a computer disc. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.) The disc label should identify the commenter's name and the name and version of the word processing program used to create the document.

Alternatively, the Commission will accept comments submitted to the following E-Mail address: "SMOKELESS@ftc.gov".

All comments will be placed on the public record and will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, during normal business days from 8:30 a.m. to 5:00 p.m., at the Public Reference Room, Room H–130, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington D.C. 20580. In addition, comments will be placed on the Internet at the FTC web site: http://www.ftc.gov.

**FOR FURTHER INFORMATION CONTACT:** Rosemary Rosso (202) 326–3076, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, E-Mail (for questions or information only): rrosso@ftc.gov.

**SUPPLEMENTARY INFORMATION:** On March 7, 2000, the Commission published in the **Federal Register** a Request for Comment on its regulations ("smokeless tobacco regulations" or "the regulations") implementing the Comprehensive Smokeless Tobacco Health Education Act of 1986 ("Smokeless Tobacco Act"), 16 CFR part 307, as part of its regulatory review program. 65 FR 11944. The regulations set forth the manner in which smokeless tobacco manufacturers, importers, and packagers must display and rotate the three health warnings mandated by the Smokeless Tobacco Act. The Federal Register Notice ("notice") posed twelve questions in all; some were general regulatory review questions, while others asked about material issues that are specific to the smokeless tobacco regulations. The notice requested commenters to provide answers where possible, and specifically asked for consumer research, studies or other data to support comments submitted to the Commission. Pursuant to the Federal Register Notice, the comment period ended on April 24, 2000.

Staff has received a request for an extension of the comment period from the Massachusetts Department of Public Health. The Department indicates that it is currently investigating issues that relate to smokeless tobacco warnings and requests additional time to compile relevant information for the Commission's consideration.

The Commission is mindful of the need to deal with this matter as expeditiously as possible. However, the Commission is also aware that some of the issues raised by the Federal Register Notice may be complex and it welcomes as much substantive input as possible to facilitate its decisionmaking process. Accordingly, in order to provide sufficient time for these and other interested parties to prepare useful comments, the Commission has decided to extend the deadline for comments until July 21, 2000.

### List of Subjects in 16 CFR Part 307

Health warnings, Smokeless tobacco, Trade practices.

**Authority:** 15 U.S.C. 1401–1410.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–11455 Filed 5–5–00; 8:45 am]

BILLING CODE 6750–01–M

## SECURITIES AND EXCHANGE COMMISSION

**17 CFR Part 240**

**[Release No. 34–42741; File No. S7–12–00]**

**RIN 3235–AH69**

### Electronic Submission of Securities Trading Data by Exchange Members, Brokers and Dealers

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Securities and Exchange Commission is proposing for comment Rule 17a–25 under Section 17 of the Securities Exchange Act of 1934. Proposed Rule 17a–25 would require brokers and dealers to submit electronically to the Commission, upon request, information on customer and firm securities trading. The Commission designed the proposal to improve its capacity to analyze electronic submissions of trading data and thereby facilitate Commission enforcement investigations and other trading reconstructions.

**DATES:** Comments must be received on or before June 7, 2000.

**ADDRESSES:** Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–12–00; this file number should be included in the subject line if e-mail is used. All comment letters received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

**FOR FURTHER INFORMATION CONTACT:** Alton Harvey, Office Chief, at (202) 942–4167; or Anitra Cassas, Attorney, at (202) 942–0089, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction and Executive Summary

In the course of its enforcement and market regulatory activities, the Securities and Exchange Commission ("Commission") regularly requests securities trading records from broker-dealers. For many decades, the

Commission requested this data by mailing questionnaire forms (known as "blue sheets" because of the color on which the forms were printed) to broker-dealers to be manually completed and mailed back to the Commission. In the late 1980s, as the volume of trading and securities transactions dramatically increased, the Commission and the securities self-regulatory organization ("SROs") worked together to develop and implement a system with a universal electronic format to replace the less efficient manual process. This system is commonly known as the "electronic blue sheet" or "EBS" system.

In general, the Commission uses the EBS system to obtain securities transaction information for one of two purposes: (1) to assist in the investigation of possible federal securities law violations, primarily involving insider trading or market manipulation; and (2) to conduct market reconstructions, primarily following significant market volatility.[1]

Since its inception, the EBS system has been an effective tool for most investigations, which usually require analyses of trading in only one or two stocks over a limited time period. When used for large scale investigations or market reconstructions involving numerous stocks during peak trading volume periods, however, data provided by the EBS system has not met certain of the Commission's needs. Specifically, the current EBS system format does not provide information that is needed by the Commission to effectively aggregate trading by market participants who trade through multiple accounts with more than one broker-dealer.

To ensure the continued effectiveness of the Commission's enforcement and regulatory programs, the Commission is therefore proposing to enhance certain aspects of the EBS system to take into account evolving trading strategies used by institutional and professional traders. Proposed Rule 17a–25 [2] would codify the requirement that brokers and dealers electronically submit to the Commission, upon request by the Commission staff, information on customer and proprietary securities trading necessary for the Commission's enforcement or regulatory programs.[3] Specifically, proposed Rule 17a–25 would require firms to supply specific information already covered by the existing EBS system. For proprietary transactions, firms would be required upon request to report standard data elements such as security symbol, date executed, amount traded, type of transaction, transaction price, account number, location where the transaction was executed, and identification information for the parties on either side of the transaction. For customer transactions, standard data elements would also include the customer name, address, branch office number, registered representative number, type of order, date account opened, taxpayer identification number, employer name, and the role of the intermediary (agent or principal) if any.

Proposed Rule 17a–25 would also require firms, upon request, to supply three additional data elements that would assist the Commission in aggregating transactions by entities trading through multiple accounts.[4] In addition, the rule would require broker-dealers, upon request, to provide and keep current, information needed to process data requests in a timely manner (*e.g.*, name, address, telephone and fax number, and e-mail address for each designated contact person responsible for receiving and processing EBS requests from the Commission).

Proposed Rule 17a–25 is intended to accomplish three objectives. First, the proposed rule would codify the requirement for broker-dealers to electronically submit securities trading data when requested by the Commission staff. Second, the rule is designed to improve the effectiveness of the Commission's enforcement and regulatory programs by providing the additional information necessary to aggregate the securities transactions of institutional and professional traders who maintain multiple accounts at more than one broker-dealer. Finally, by requiring broker-dealers to provide current contact person information, the proposed rule would significantly improve the Commission's ability to process securities trading data requests in a timely manner.

## II. Discussion of Proposed Rule 17a–25

### *A. Background*

The securities industry has witnessed tremendous change in the past two decades, both in the types of market participants and in the variety of trading strategies and products. In particular, increasing numbers of institutional and professional traders now conduct their securities trading through multiple sub-accounts maintained at different broker-dealers. These market participants include institutional investors such as pension funds, insurance companies, foundations, endowments, mutual funds, and hedge funds.

For over a decade, the Commission's primary tool for identifying buyers and sellers of securities in enforcement or other regulatory inquiries has been the EBS system. When an inquiry is opened, the Commission staff sends requests for trading data to the most active clearing firms in the relevant security. Firms are requested to submit, within ten business days, information concerning transactions by all proprietary and customer accounts that bought or sold a security or securities during a specified review period. For each account, firms must identify, among other things: the name and address of the account; the account type (proprietary or customer); the date of the trades; the types of trades (buy, sell, or sell short); the amount traded; and the transaction price. Firms use software to scan their account records and download the appropriate information into the standard EBS format. Firms then transmit that electronic file to the Securities Industry Automation Corporation ("SIAC"), which in turn routes the file electronically to the Commission's mainframe computer.[5]

The EBS system has performed effectively as an enforcement tool for analyzing trading in one or two securities over a limited time period. Given the increasing complexity of trading strategies, however, the Commission believes that enhancements to the EBS system are necessary to improve the Commission's ability to analyze trading in more complex market-wide trading reconstructions, as well as in investigations involving activities in multiple securities during heavy trading periods. Specifically, new data elements would assist the Commission in aggregating transactions by entities trading through multiple accounts.

The Commission believes that an enhanced EBS system would also provide a more efficient and cost-effective way to conduct timely and accurate reviews of the activities of large traders for regulatory or enforcement purposes, than would further efforts to

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[1] The surveillance and enforcement staffs of othe SROs also routinely use the EBS system to obtain trading data from member firms for investigations into trading abuses such as insider trading or market manipulation.

[2] 17 CFR 240.17a–25.

[3] Section 17(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act") requires registered broker-dealers to make, keep, furnish, and disseminate records and reports prescribed by Commission rule "as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of" the Exchange Act. 15 U.S.C. 78q(a)(1).

[4] *See* Part II.B.2, *infra*.

[5] If an SRO's surveillance or enforcement staff issues the data request, SIAC routes the EBS data from the broker-dealer to the appropriate SRO.

design and implement the large trader reporting system authorized by the Market Reform Act of 1990, and incorporated into section 13(h) of the Exchange Act.[6] Although the Commission proposed Rule 13h–1 for comment in 1991[7] to implement the large trader reporting system, and re-proposed a revised version of the rule in 1994,[8] the Commission has not proceeded with further development of this system in light of commenters' concerns.[9]

One of the primary objectives of the Market Reform Act of 1990 and proposed Rule 13h–1 was the enhancement of the Commission's ability to perform accurate and timely reconstructions of trading by large traders. The Commission believes that proposed Rule 17a–25 would accomplish this objective without imposing significant new burdens on broker-dealers or institutional investors. Under the current proposal, no major changes would be necessary for broker-dealer systems. The Commission preliminarily believes that all of the broker-dealers that are likely to handle large trader accounts already have in place systems to collect and transmit electronic reports over the existing EBS system. In addition, the Commission believes that the additional data elements contemplated by proposed Rule 17a–25 are readily available in broker-dealer systems and can be captured and electronically reported with only minor modifications to the firms' existing EBS software.

*B. Description of Proposed Recordkeeping and Reporting Requirements*

Section 17(a)(1) of the Exchange Act requires broker-dealers to make, keep, furnish, and disseminate records and reports prescribed by the Commission "as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of" the Exchange Act.[10] Rules 17a–3 and 17a–4 under the Exchange Act specify minimum requirements with respect to the records that must be maintained by broker-dealers, as well as the periods during which such records and other documents relating to a broker-dealer's business must be preserved.[11]

Proposed Rule 17a–25 would apply to entities currently subject to Rules 17a–3 and 17a–4. This includes any member of a national securities exchange who directly deals in a securities business with non-members of a national securities exchange. Proposed Rule 17a–25 would also apply to any broker or dealer who conducts a securities business through any member of a national securities exchange, or is registered pursuant to Section 15 of the Exchange Act.[12]

The proposed rule is largely patterned after existing SRO rules that require member firms to use the EBS system to submit the customer and proprietary trading data that the SROs request in connection with their market surveillance or enforcement inquiries.[13] The SRO rules, which have been in place for ten years,[14] require the same standard transaction information to be submitted that would be required pursuant to proposed Rule 17a–25(a). The universal EBS format permits the SROs and the Commission to conduct timely and thorough surveillance and enforcement inquiries with minimal regulatory burdens on reporting broker-dealers.

1. Standard Transaction Information

Proposed Rule 17a–25 would not impose additional recordkeeping requirements for broker-dealers; broker-dealers already maintain all of the information required for the proposed electronic reports pursuant to Exchange Act Rules 17a–3 and 17a–4. These elements include: (1) clearing house number or alpha symbol used by the broker-dealer submitting the data; (2) clearing house number(s) or alpha symbol(s) of the broker-dealer(s) on the opposite side to the trade; (3) the security identifier; (4) execution date; (5) quantity executed; (6) transaction price; (7) account number; and (8) identity of the exchange or market where each transaction was executed.[15] If transactions are for customer accounts (as opposed to proprietary accounts), the following additional elements are included: (9) customer name, address, and related account information; and (10) if a transaction is effected for a customer of another member, broker or dealer, whether the other member, broker or dealer was acting as principal or agent on the transaction(s).[16]

2. Additional Transaction Information

Proposed Rule 17a–25 would also set forth requirements for broker-dealers to provide, upon request, additional data elements that are needed to aggregate trading by institutional and professional traders that often use multiple accounts maintained at different broker-dealers. In preliminary discussions with the securities industry, the Commission staff has identified several additional data elements, discussed below, which would be useful in analyzing this type of trading through multiple accounts. These data elements should be readily available in broker-dealer systems, and only minor modifications to the firms' existing EBS software should be necessary to capture and report these data elements. We also believe that, because only a limited number of broker-dealers are likely to handle transactions for the types of entities that use multiple accounts at different broker-dealers (we estimate that less than 100 firms are likely to fall into this category), the potential costs to the securities industry for necessary EBS software modifications should be limited.

(a) Prime Brokerage Identifiers

It is common for an institutional investor to route its buy or sell orders in securities through different broker-dealers, who will then forward the transactions to a single broker-dealer that is designated as the institution's "prime broker." The prime broker maintains a master account for the institution that simplifies recordkeeping and oversight of the institution's trading activity.

When an institution uses a prime brokerage arrangement, it is often

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[6] 15 U.S.C. 78m(h).

[7] *See* Securities Exchange Act Release No. 29593 (August 22, 1991), 56 FR 42550 (August 28, 1991).

[8] *See* Securities Exchange Act Release No. 33608 (February 9, 1994), 59 FR 7917 (February 17, 1994).

[9] When proposed Rule 13h–1 was published for comment in 1991 and re-published in 1994, the Commission received numerous comments from the securities industry, potential large traders, and market commentators that the large trader reporting system would be unduly burdensome and costly. Public comments also raised concerns that a large trader registration system might cause large international investors to conduct their U.S. equity trading activities through foreign brokers and markets. Commenters also believed that the comprehensive system envisioned by Section 13(h) could prove difficult to implement and maintain, and most likely would not expedite trading reconstructions to the extent contemplated in 1990.

[10] 15 U.S.C. 78q(a)(1).

[11] 17 CFR 240.17a–3 and 240.17a–4.

[12] 15 U.S.C. 78o.

[13] *See, e.g.*, Rule 410A of the New York Stock Exchange (NYSE); Rule 153A of the American Stock Exchange (Amex); Rule 15.7 of the Chicago Board Options Exchange (CBOE); Rule 8211 of the National Association of Securities Dealers, Inc. (NASD); and Rule 785 of the Philadelphia Stock Exchange (Phlx).

[14] *See* Securities Exchange Act Release Nos. 25859 (June 27, 1988), 53 FR 25029 (July 1, 1988) (approving both the NYSE and Amex's rules for the electronic submission of trading data); 26235 (November 1, 1988), 53 FR 44688 (November 4, 1988) (approving the CBOE's rule for the electronic submission of trading data); 26539 (February 13, 1989), 54 FR 7318 (February 17, 1989) (approving the NASD's rule for the electronic submission of trading data); and 27170 (August 23, 1989), 54 FR 37066 (approving the Phlx's rule for the electronic submission of trading data).

[15] 17 CFR 240.17a–3 and 240.17a–4.

[16] *Id.*

difficult for the Commission to identify instances when the same transaction may be reported twice in EBS submissions—once in the report by the executing broker-dealer and again in the report by the broker-dealer acting as prime broker. Broker-dealers employ different means to identify prime brokerage accounts in EBS submissions. For example, some broker-dealers identify the primer broker or an account executive at the prime broker in the account address field. Other broker-dealers do not indicate that an account's transactions involved a prime broker. As a result, some trades may be inadvertently double-counted when the Commission performs trading analyses.

Two new data elements in proposed Rule 17a–25 are designed to provide uniformity in identifying transactions involving a prime brokerage arrangement. First, if a broker-dealer effected trades for an institutional account but forwarded this account's transactions to a prime broker, this would have to be reflected in one of the new data fields in the enhanced EBS reports. This requirement is set forth in sub-paragraph (1)(i) under paragraph (b) of proposed Rule 17a–25. Second, if a broker-dealer acted as the prime broker for an institutional account, this also would have to be reflected in the new EBS data field. This requirement is set forth in sub-paragraph (1)(ii) under paragraph (b) of proposed Rule 17a–25.

These new data elements would permit the Commission staff to better analyze this type of increasingly frequent institutional activity and to avoid inadvertently double-counting such transactions.[17]

(b) Average Price Account Identifiers

Broker-dealers often use their "average price accounts" as a mechanism to buy or sell large amounts of a given security for their institutional customers. Under this arrangement, a broker-dealer's average price account may buy or sell a security in small increments throughout a trading session, and then transfer the accumulated long or short position to one or more institutional accounts for a volume-weighted average price after the market close.

As with transactions involving prime brokerage arrangements, there currently is no uniformity in how broker-dealers identify these transactions in EBS submissions. As a result, the Commission's trading analyses may inadvertently double-count such transactions—once in the EBS submission for the firm's average price account, and again in the EBS submission for the institutional account receiving positions from the average price account. Two additional data elements in proposed Rule 17a–25 are designed to provide uniformity in identifying transactions involving average price accounts.

First, if an institutional account's transactions involved transfers from the broker-dealer's average price accounts, this would have to be reflected in one of the new data fields in the enhanced EBS format. This requirement is set forth in sub-paragraph (2) (i) under paragraph (b) of proposed Rule 17a–25. Similarly, if the account covered by an EBS submission were itself an average price account, this also would have to be reflected in a new field in the enhanced EBS format. This requirement is set forth in sub-paragraph (2) (ii) under paragraph (b) of proposed Rule 17a–25.[18]

(c) Identifiers Used by Depository Institutions

Many of the largest institutional investors in U.S. equity securities process their transactions through the Depository Trust Company ("DTC") or similar organizations. Pursuant to paragraph (b)(3) of proposed Rule 17a–25, if a broker-dealer effected trades for an institutional account and processed these transactions through a depository institution, the account's depository identifier would have to be reflected in one of the new data fields in the enhanced EBS reports. The inclusion of a depository account identifier in EBS reports would greatly expedite efforts by the Commission staff to aggregate institutional trading when conducting a complex trading reconstruction involving multiple securities over an extended trading period.[19]

3. Information to Facilitate Data Requests

A recurring problem with the EBS system has been the time delay in ensuring that data requests from the Commission staff are directed to the appropriate personnel at broker-dealers. Currently, the Commission staff initiates a data request by mailing a standard letter to the compliance personnel at any firm that was active in the selected security during the designated review period. Due to frequent staff turnover and reorganizations at broker-dealers, however, the correct compliance official at the firm often does not receive the request. Under certain circumstances, such as when a compliance officer has recently left the firm or is out of the office, it may be several days before a request reaches the appropriate staff person, thereby unnecessarily delaying the Commission's inquiry.

The Commission believes that requiring broker-dealers to supply the Commission with up-to-date information about personnel responsible for processing EBS requests would expedite the process. The Commission currently stores EBS contact person information in an electronic database. This database, however, is often incorrect because firms fail to notify the Commission that contact persons have changed. Accordingly, paragraph (c) of the proposed rule would require broker-dealers to submit, upon request, certain information about their contact persons and to keep this information current with the Commission. The Commission contemplates initially making such requests only to broker-dealers that have recently received EBS requests from the Commission.[20]

4. Other Information

The Commission is specifically requesting comment on other types of information that may be useful in analyzing trading in more complex market-wide trading reconstructions, as well as in investigations involving trading in multiple securities during very active markets. For example, execution times would be useful in trading reconstructions, particularly those that focus on trading during critical time periods during sharp market swings. To date, however, execution times have not been included in EBS reports because this information generally has not been available through broker-dealer account records systems ("back office" records) that are used to prepare EBS reports (although execution time information may be available in other broker-dealer recordkeeping systems). Some representatives of the securities industry have indicated to the

[17] The Commission is specifically requesting comment on prime brokerage identifiers; *see* Section III, *infra*.

[18] The Commission is specifically requesting comment on average price account identifiers; *see* Section III, *infra*.

[19] The Commission is specifically requesting comment on depository account identifiers; *see* Section III, *infra*.

[20] The Commission has determined that the most efficient means of obtaining EBS contact information from the appropriate broker-dealers is by request rather than imposing a general reporting obligation on all broker-dealers. Thousands of broker-dealers who clear their trades through other firms never receive EBS data requests from the Commission. In addition, firms who do not trade with the public or are otherwise extremely inactive traders are rarely asked to supply trading data. Accordingly, the Commission believes it would be most cost-effective to build its database of EBS contacts based on the staff's experience with the types of broker-dealers that are likely to be recipients of future data requests.

Commission staff that, at least for transactions effected through automated order-routing systems, "order sequence" identifiers [21] could be used for EBS reports in lieu of actual execution times.

The inclusion of order sequence identifiers in EBS reports would enable the Commission staff to derive order entry times for particular trades. Once such trades are isolated, the transactions' order sequence numbers could be matched with timed order entry reports captured by either the broker-dealer's internal systems or with timed audit trails and related SRO reports. In view of the large number of institutional and professional trades that are routed and executed using automated systems, particularly program trading activity, the capture of the appropriate order sequence identifiers in EBS reports could greatly expedite trading reconstructions in which precise timing of particular trading activity is critical. The Commission is therefore soliciting comments concerning the feasibility of, and costs associated with, capturing order sequence identifiers in EBS reports.

In addition, information captured by the NASD's Order Audit Trail System ("OATS") and the NYSE's proposed order tracking system [22] could be useful to the Commission in its trading analyses. For example, these systems generally capture the date and time of origination or receipt of the order and information on when the order is transmitted to another department within the member firm, to another member firm, or to a non-member. The Commission is, therefore, soliciting comments concerning the feasibility of, and costs associated with, capturing this type of information for Commission enforcement and trading reconstruction efforts.

*C. Exemptions*

The Commission recognizes that, particularly for some small broker-dealers, it may sometimes be appropriate to exempt a firm from some of the reporting requirements of proposed Rule 17a–25. The Commission would rely on its general exemptive authority under Section 36 of the Exchange Act [23] to exempt particular broker-dealers when the application of the reporting requirements of proposed Rule 17a–25 would not be necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the rule.

**III. Request for Comments**

The Commission invites interested persons to submit written comments on all aspects of proposed Rule 17a–25. The Commission specifically requests comments from broker-dealers on the feasibility of capturing and reporting the new data elements discussed above for activity by entities that use multiple accounts at broker-dealers. In particular, the Commission requests comments on whether prime brokerage and average price account identifiers are likely to prevent double counting, and whether there are other methods to identify and address this problem. The Commission also is seeking comments on the proposal to have EBS reports include, upon request, an institutional account's depository identifier. Furthermore, the Commission is soliciting comments concerning the feasibility of, and costs associated with, proposing additional data elements in EBS reports that would assist the Commission in determining when particular orders to buy or sell stocks have been entered. Finally, the Commission is soliciting comments from broker-dealers on the costs associated with providing and updating EBS contact person information. Commenters should also discuss if there are ways that any of the costs associated with proposed Rule 17a–25 could be reduced. Comments should be submitted by June 7, 2000.

**IV. Paperwork Reduction Act**

Certain provisions of proposed Rule 17a–25 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995, [24] and the Commission has submitted them to the Office of Management and Budget for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is: Rule 17a–25, Electronic Submission of Securities Trading Data by Exchange Members, Brokers and Dealers. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

*A. Summary of Collection of Information under Proposed Rule 17a–25*

Proposed Rule 17a–25 would set forth the obligation of registered broker-dealers to electronically submit securities trading data in a standardized format when requested by the Commission staff for enforcement and other regulatory purposes. The proposed rule would also require the electronic submission of trading information to include, upon request, new data elements that will improve the Commission's ability to analyze securities transactions by entities that trade through multiple accounts maintained at different broker-dealers. The rule would also require broker-dealers to submit and, keep current, contact person information for EBS requests.

*B. Proposed Use of Information*

The Commission would use the information collected pursuant to proposed Rule 17a-25 for enforcement inquiries or investigations and trading reconstructions, as well as for inspections and examinations.

*C. Respondents*

While proposed Rule 17a-25 would apply to all of the approximately 7,700 broker-dealers that are currently registered with the Commission, most provisions would apply only to the 5,500 broker-dealers who do business with the general public. Based on its experience, the Commission believes that the requirement for submission of new data elements for trade data concerning entities that use multiple accounts at broker-dealers would affect a significantly smaller number of broker-dealers, estimated at less than 100 firms. [25]

*D. Total Annual Reporting and Recordkeeping Burden*

Proposed Rule 17a-25 should not impose additional burdens on the vast majority of the broker-dealers. Most of the requirements of the proposed rule involve collections of information that broker-dealers already maintain in compliance with existing regulations. In addition, virtually all of these firms already have systems in place that are routinely used to submit data to the Commission or SROs over the EBS system. The Commission staff will work with the few broker-dealers who might

[21] Firms use these identifiers to trace orders routed through automated systems. These identifiers are also routinely captured by some audit trail systems and other recordkeeping systems, such as the NYSE's daily program trading reports from member firms.

[22] *See* SR–NYSE–99–51.

[23] 15 U.S.C. 78mm. Procedures for Filing applications for orders for exemptive relief under Section 36 are found in the Commission's Rules of General Application, 17 CFR 240.0–12.

[24] 44 U.S.C. 3501 *et seq.*

[25] The estimate that less than 100 firms handle transactions from entities that use multiple accounts at broker-dealers is based on the Commission staff's use of the EBS system for several trading reconstructions in the 1990s.

not have EBS systems in place to develop cost-effective means of obtaining requested securities trading data, whether using the EBS system or other mechanisms. In addition, if electronic reporting of securities transaction data is not feasible or is unreasonably expensive for a particular small broker-dealer, the Commission staff will consider using its general exemptive authority under Section 36 of the Exchange Act to issue an exemptive order to the firm.

The Commission believes the proposed rule will present new burdens only to those broker-dealers who have customers trading through multiple accounts. These broker-dealers would need to perform a one-time modification of their EBS-related software to capture and report the new data elements. The cost to these firms is discussed below. In addition, because SIAC serves as an intermediary to route electronic files both to the Commission and the SROs, the analysis below discusses the costs SIAC and the SROs will incur to make their systems compatible with the broker-dealers' systems.

1. Burden-hours for broker-dealers

The annual hour burden of the proposed rule for individual broker-dealers would vary widely because of differences in the levels of activities of the respondents and because of differences in the current recordkeeping systems of the respondents. However, it is estimated that electronic response firms would spend approximately 8 minutes and manual response firms would spend 1½ hours responding to an average blue sheet request. Based on its experience with the EBS system, the Commission estimates that it sends approximately 14,000 electronic blue sheet requests per year, of which approximately 350 are sent to manual response firms. Accordingly, the annual aggregate hour burden for electronic response firms is estimated to be 1,820 hours (13,650 × 8 ÷ 60). The annual aggregate hour burden for manual response firms is estimated to be 525 hours (350 × 90 ÷ 60).

In addition, the Commission estimates that it will request 1,400 broker-dealers to supply the contact information identified in proposed Rule 17a–25(f), and the submission should take each broker-dealer approximately 5 minutes to prepare. To be conservative, the Commission estimates that each of these broker-dealers will revise the contact information twice a year, and each revision will also take approximately 5 minutes to prepare (10 minutes total). Accordingly, the annual aggregate burden for supplying the information requested in proposed Rule 17a–25(f) is 350 hours (1400 × 15 ( 60). The annual aggregate burden for all respondents to the collection of information requirements of proposed Rule 17a–25 is, therefore, estimated to be 2,695 hours (1,820 + 525 + 350).

2. Capital Cost to Broker-Dealers and SROs

As previously stated, the Commission estimates approximately 100 broker-dealers will have to make modifications to their existing EBS software to capture the additional data elements. On average, each of these broker-dealers will incur capital or start-up costs of $150,000. The Commission also preliminarily believes that there will be no additional costs associated with the operation and maintenance of the modified EBS systems. Accordingly, the total start-up, operating and maintenance cost burden for broker-dealers is estimated to be $15 million (100 × $150,000).

Based on its discussions with the SROs, the Commission estimates that three SROs will each incur approximately $29, 500 in capital costs to make their systems compatible with the broker-dealers. The Commission preliminary believes that the SROs will not incur additional costs in association with the operation and maintenance of the modified EBS systems.

*E. General Information about the Collection of Information*

Any collection of information pursuant to proposed Rule 17a–25 would be mandatory. The retention periods for the collection of information are already specified in Rule 17a–4 of the Exchange Act.[26] Any collection of information pursuant to proposed Rule 17a–25 would be kept confidential, subject to the provisions of the Freedom of Information Act, 5 U.S.C. 552.

*F. Request for Comment*

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(1) evaluate whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility;

(2) evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(3) enhance the quality, utility, and the clarity of the information to be collected; and

(4) minimize the burden of collection on those who are to respond, including through the use of electronic collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements should direct them to the following persons: (1) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503; and (2) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, with reference to File No. S7–12–00. The Commission has submitted the proposed collection of information to OMB for approval. Members of the public should direct any general comments to both the Commission and OMB within 30 days. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication in the **Federal Register**, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, refer to File No. S7–12–00, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

## V. Costs and Benefits of the Proposed Rule

The proposed rule will significantly assist the Commission staff's ability to conduct timely and accurate trading analyses for market reconstructions and complex enforcement inquiries or investigations, as well as inspections and examinations. The current system severely limits the Commission's ability to aggregate transactions effected by entities that use multiple accounts at broker-dealers and can produce trading compilations that double count some transactions effected through multiple accounts. Augmented trading analyses will improve the Commission's ability to monitor the securities markets and increase levels of investor confidence in the markets.

*A. Broker-dealers*[27]

For purposes of the PRA, the Commission has estimated that the annual aggregate hour burden for all respondents to the collection of information requirements of proposed

[26] 17 CFR 240.17a–4.

[27] Both the time burden and the costs were derived from information supplied by several broker-dealers.

Rule 17a–25 to be 2,695 hours. The total annualized cost burden for those broker-dealers that make modifications to their existing EBS software is estimated to be $15 million in capital or start-up costs. The Commission also anticipates that these broker-dealers will not incur additional costs for the operation and maintenance of the modified EBS systems. The Commission specifically requests comments on whether the annual hour burden, the initial capital or start-up costs, and the costs for the operation and maintenance of broker-dealer EBS systems are reasonable estimates based on reasonable assumptions.

*B. SROs*

The estimate of total annualized cost burden to the SROs is $88,500.[28] This cost burden is computed by estimating that approximately three SROs will need to modify their systems to receive the new data elements, at an approximate cost of $29,500 per SRO. The Commission specifically requests comments on whether the annualized cost burden is a reasonable estimate.

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed rule, commenters are requested to provide analyses and data relating to the costs and benefits associated with any of the proposals.

**VI. Consideration of Burden on Competition, and Promotion of Efficiency, Competition, and Capital Formation**

Section 23 of the Exchange Act requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effects of any rule that it adopts. The Commission does not believe the proposed rule would have any anti-competitive effects. We request comment on the anti-competitive effects, if any, of proposed Rule 17a–25. Furthermore, Section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. We request comment on these matters in conjunction with the proposed rule.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed amendment on the economy on an annual basis. If possible, commenters should provide empirical data to support their views.

**VII. Summary of Initial Regulatory Flexibility Act Analysis**

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 concerning proposed Rule 17a–25. The following summarizes the IRFA.

As discussed in the IRFA, the purpose of proposed Rule 17a–25 is to facilitate the collection, analysis and evaluation of relevant trading data for enforcement and other regulatory reviews. In particular, the proposed rule is intended to provide an effective system for reviewing securities transactions of entities that trade through multiple accounts at different broker-dealers. The Commission believes that the proposed rule will protect investors, as well as preserve the fair and orderly operation of the nation's securities markets.

The IRFA also discusses the effect of proposed rule 17a–25 on small broker-dealers.[29] The Commission estimates that approximately 12% of registered broker-dealers, or approximately 1,000 broker-dealers, qualify as small broker-dealers.

The Commission's experience with the EBS system over the last ten years indicates that entities that trade through multiple accounts at different firms generally do not effect their trades through "small" broker-dealers. Accordingly, the Commission does not believe that any small broker-dealer would be required to modify its EBS-related software to capture and report the new data elements that are needed to analyze transactions by entities using multiple accounts.

The IRFA further states that proposed Rule 17a–25 would not impose any additional recordkeeping requirements for small broker-dealers. The elements of trade information required for electronic reports to the Commission are already maintained by broker-dealers pursuant to Rules 17a–3 and 17a–4 and SRO rules. In addition, because EBS requests are sent to large clearing firms or those broker-dealers that self-clear, these firms would also generally fall outside the definition of a small broker-dealer.

Small broker-dealers would incur some costs when they report transaction data pursuant to requests by the Commission staff for enforcement purposes. The Commission believes, however, that any new costs associated with the current rule proposal would be minimal. As discussed above, small broker-dealers are already subject to SRO rules that mandate transaction data reports for surveillance or enforcement inquiries. Accordingly, even small broker-dealers are already required to have in place adequate systems and procedures to submit transaction reports to the appropriate SRO; no new systems would need to be developed pursuant to proposed Rule 17a–25. Moreover, the Commission staff has traditionally been flexible when working with small broker-dealers who need to supply transaction reports. In cases in which a small broker-dealer does not already have the capacity to submit data over the EBS system, the Commission staff has accepted manual transmissions. Proposed Rule 17a–25 is not intended to change this flexible approach in obtaining necessary transaction reports from small broker-dealers.

Small broker-dealers would also incur some costs when they are asked to supply information, pursuant to paragraph (c) of proposed Rule 17a–25, about contact persons who would handle transaction data requests from the Commission. The Commission believes, however, that any new costs associated with this requirement would be minimal. Small broker-dealers are already required to have personnel and procedures in place to respond to enforcement or regulatory inquiries from the Commission or the SROs. In addition, because relatively few data requests are submitted by the Commission to small broker-dealers, only a small number of firms in this category would be requested to supply contact person information. Moreover, the costs associated with supplying this type of information appear to be minimal. Firms would simply be required to submit a brief letter or e-mail providing information concerning the appropriate contact person or persons, such as their names, telephone numbers, fax numbers, and e-mail addresses (if any), and to send a follow-up letter or e-mail when this information is no longer accurate.

The IRFA also discusses the various alternatives considered by the Commission in connection with the proposed rule that might minimize the effect on small entities. These include, among others, creating differing compliance or reporting requirements or timetables that take into account the resources available to small entities, and whether such entities could be exempted from the proposed rule, or any part thereof. The Commission has drafted the proposal to be consistent

[28] The estimated cost is based upon discussions with the SROs.

[29] For purposes of the regulatory flexibility analysis, a broker-dealer is considered a small entity if its total capital is less than $500,000, and it is not affiliated with a broker-dealer that has $500,000 or more in total capital. 17 CFR 240.0–10.

with the concerns for small entities. For example, as discussed above, the Commission has often permitted small broker-dealers to submit the trading data in a manual, rather than an electronic, format. The Commission will continue to rely on its exemptive authority under Section 36 of the Exchange Act to grant relief, when necessary, to small broker-dealers from the requirements of the proposed rule. A wholesale exemption from the proposed rule for small broker-dealers, however, would prevent the Commission from fully protecting investors and maintaining the fair and orderly operation of the nation's securities markets.

The Commission encourages the submission of written comments regarding any aspect of the IRFA. In particular, the Commission requests comments on: (1) The number of small broker-dealers that would be affected by the proposed rule, especially the number of small broker-dealers which maintain institutional accounts, and (2) the nature and extent of new costs to small broker-dealers as a result of the proposed rule. Commentators are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. Written comments will be considered in preparation of the Final Regulatory Flexibility Analysis if the proposed rule is adopted. Such comments will be placed in the public file designated for the proposed rule. A copy of the IRFA may be obtained by contacting Anitra Cassas, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001, (202) 942–0089.

**VIII. Statutory Basis**

Proposed Rule 17a–25 under the Exchange Act is being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly Sections 17(a) and 23(a) of the Act, unless otherwise noted.

**List of Subjects in 17 CFR Part 240**

Broker-dealers, Reporting and record-keeping requirements, Securities.

**Text of the Proposed Rule**

In accordance with the foregoing, Title 17, Chapter II of the *Code of Federal Regulations* is proposed to be amended as follows:

## PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.17a–25 is added to read as follows:

**§ 240.17a–25 Electronic submission of securities trading data by exchange members, brokers and dealers.**

(a) Every member, broker or dealer subject to § 240.17a–3 shall electronically submit to the Commission the data elements specified in this section for transactions that are the subject of a particular request for information made by the Commission:

(1) If the transaction was a proprietary transaction effected or caused to be effected by the member, broker or dealer for any account in which such member, broker or dealer, or person associated with the member, broker or dealer, is directly or indirectly interested, such member, broker or dealer shall submit or cause to be submitted the following information:

(i) Clearing house number, or alpha symbol as used by the member, broker or dealer submitting the data;

(ii) Clearing house number(s), or alpha symbol(s) as may be used from time to time, of the member(s), broker(s) or dealer(s) on the opposite side of the transaction;

(iii) Identifying symbol assigned to the security;

(iv) Date transaction was executed;

(v) Number of shares, or quantity of bonds or options contracts, for each specific transaction; whether each transaction was a purchase, sale, or short sale; and, if an options contract, whether open long or short or close long or short;

(vi) Transaction price;

(vii) Account number; and

(viii) The identity of the exchange or other market where the transaction was executed.

(2) If the transaction was effected or caused to be effected by the member, broker or dealer for any customer account, such member, broker or dealer shall submit or cause to be submitted the following information:

(i) Data elements contained in paragraphs (a)(1)(i) through (a)(1)(viii) of this section;

(ii) Customer name, address(es), branch office number, identification number for the associated person handling the account, whether order was solicited or unsolicited, date account opened and employer name and the tax identification number(s); and

(iii) If the transaction was effected for a customer of another member, broker or dealer, whether the other member, broker or dealer was acting as principal or agent on the transaction or transactions that are the subject of the Commission's request.

(b) In addition to the trading data elements in paragraph (a) of this section, a member, broker or dealer shall, upon request, submit or cause to be electronically submitted to the Commission the following information for transactions involving entities that trade using multiple accounts:

(1)(i) If part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise forwarded to one or more accounts at another broker-dealer, the data submission to the Commission shall include the clearing house number, or alpha symbol used by the broker-dealer receiving the transaction;

(ii) If part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise received from one or more other broker-dealers, the data submission to the Commission shall include the clearing house number(s), or alpha symbol(s) used by the broker-dealer(s) transferring or otherwise forwarding the transactions.

(2)(i) If part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise received from another account at the reporting broker-dealer, the data submission to the Commission shall include the identifier for this other account;

(ii) If part or all of an account's transactions at the reporting broker-dealer have been transferred or otherwise forwarded to one or more other accounts at the reporting broker-dealer, the data submission to the Commission shall include the identifiers for these other accounts; and

(3) If an account's transaction was processed by a depository institution, the data submission to the Commission shall include the identifier assigned to the account by the depository institution.

(c) Every member, broker or dealer subject to § 240.17a–3 shall submit upon request to the Commission and keep current information containing the full name, title, address, telephone number(s), facsimile number(s), and electronic-mail address(es) for each person designated by the member, broker or dealer as responsible for processing securities transaction data requests from the Commission.

(d) Unless otherwise specified by Commission rule or order, the member, broker, or dealer should comply with the format for the electronic submission

of the trading data described in paragraphs (a) and (b) of this section as specified by the self-regulatory organization of which it is a member.

Dated: May 2, 2000.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11405 Filed 5–5–00; 8:45 am]

BILLING CODE 8010–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–116567–99]**

**RIN 1545–AX67**

### Definition of Hyperinflationary Currency for Purposes of Section 988; Hearing Cancellation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of cancellation of a public hearing on proposed regulations relating to hyperinflationary currency for purposes of section 988.

**DATES:** The public hearing originally scheduled for Wednesday, May 17, 2000, at 10 a.m., is canceled.

**FOR FURTHER INFORMATION CONTACT:** Guy Traynor of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on January 13, 2000, (65 FR 2084), announced that a public hearing was scheduled for May 17, 2000 at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 988, of the Internal Revenue Code. The deadline for requests to speak and outlines of oral comments expired on April 20, 2000.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of April 24, 2000, no one has requested to speak. Therefore, the public hearing scheduled for May 17, 2000, is canceled.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 00–11343 Filed 5–5–00; 8:45 am]

BILLING CODE 4830–01–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1253

**RIN 3095–AA98**

### Location of NARA Facilities and Hours of Use

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Proposed rule.

**SUMMARY:** The National Archives and Records Administration proposes to revise its regulation that lists NARA facilities and hours when the public and other Federal agency staff may use the records in those facilities. This proposal updates information on NARA facilities throughout the United States, including the addition of two new facilities and the deletion of a closed NARA facility. Additional revisions include corrections to addresses, providing e-mail addresses for the Presidential libraries, the addition and correction of phone and fax numbers, and, in some cases, modifications to the hours that these facilities are open for research. This proposed rule will affect members of the public who do research at NARA.

**DATES:** Comments must be received by June 7, 2000.

**ADDRESSES:** Comments must be sent to Regulation Comments Desk (NPLN), Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270.

**FOR FURTHER INFORMATION CONTACT:** Shawn Morton at telephone number 301–713–7360, ext. 253, or fax number 301–713–7270.

**SUPPLEMENTARY INFORMATION:** This proposed regulation includes information on several facility changes that have occurred since the last update to 36 CFR part 1253. In 1997, the George Bush Presidential Library was dedicated. The listing for the Bush Library is included in proposed § 1253.3, Presidential Libraries. In 1998, the Military Ocean Terminal, Bayonne, New Jersey, site of the New York Federal Records Center was closed and the NARA—Central Plains Region (Lee's Summit, MO) records center was opened. These changes are reflected in proposed § 1253.6, Records Centers.

Listings of Presidential libraries, records centers, and regional archives are revised to include uniform facility names, corrected addresses, telephone numbers, research hours, and, for Presidential libraries, e-mail addresses. The core hours of research for the libraries, records centers, and regional archives are minimally affected by the revisions found in this proposed rule.

This rule is being issued as a proposed rule with a 30-day comment period because we believe this rule will have no substantive impact on the public using records in NARA facilities.

This proposed rule is not a significant regulatory action for purposes of Executive Order 12866 of September 30, 1993, and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities. This proposed rule does not have federalism implications.

**List of Subjects in 36 CFR Part 1253**

Archives and records.

For the reasons set forth in the preamble, NARA proposes to revise part 1253 of title 36, Code of Federal Regulations, to read as follows:

## PART 1253—LOCATION OF RECORDS AND HOURS OF USE

Sec.

1253.1 National Archives Building.
1253.2 National Archives at College Park.
1253.3 Presidential libraries.
1253.4 Washington National Records Center.
1253.5 National Personnel Records Center.
1253.6 Records centers.
1253.7 Regional archives.

**Authority:** 44 U.S.C. 2104(a).

### § 1253.1 National Archives Building.

(a) The National Archives Building is located at 700 Pennsylvania Avenue, NW., Washington, DC 20408. Business hours are 8:45 a.m. to 5:15 p.m., Monday through Friday, except Federal holidays when the building is closed. Hours for the Central Research Room and Microfilm Research Room are as follows, except Federal holidays:

(1) Monday and Wednesday, 8:45 a.m. to 5 p.m.;

(2) Tuesday, Thursday, and Friday, 8:45 a.m. to 9 p.m.; and

(3) Saturday, 8:45 a.m. to 4:45 p.m.

(b) The phone number for the research rooms is 800–234–8861.

(c) The location and business hours of the Office of the Federal Register are located in 1 CFR 2.3.

**§ 1253.2 National Archives at College Park.**

(a) The National Archives at College Park is located at 8601 Adelphi Road, College Park, MD 20740–6001. Business hours are 8:45 a.m. to 5:15 p.m., Monday through Friday, except Federal holidays when the building is closed.

(b) Research complex hours are as follows, except Federal holidays:

(1) Monday and Wednesday, 8:45 a.m. to 5 p.m.;

(2) Tuesday, Thursday, and Friday, 8:45 a.m. to 9 p.m.; and

(3) Saturday, 8:45 a.m. to 4:45 p.m.

(c) The phone number for the research complex is 800–234–8861.

**§ 1253.3 Presidential libraries.**

The Presidential libraries are open for research from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays when they are closed. NARA recommends that researchers contact the library before visiting for research. The Presidential library museums are open every day except Thanksgiving, December 25, and January 1 (with the exception of the Lyndon Baines Johnson Library that is only closed December 25). For more specific information about museum hours, please contact the libraries directly or visit the NARA web site at http://www.nara.gov/nara/president/address.html. Information for each library is as follows:

(a) Herbert Hoover Library is located at 210 Parkside Dr., West Branch, IA (mailing address: PO Box 488, West Branch, IA 52358–0488). The phone number is 319–643–5301 and the fax number is 319–643–5825. The e-mail address is *library@hoover.nara.gov*.

(b) Franklin D. Roosevelt Library is located at 4079 Albany Post Rd., Hyde Park, NY 12538–1999. The phone number is 914–229–8114 and the fax number is 914–229–0872. The e-mail address is *library@roosevelt.nara.gov*.

(c) Harry S. Truman Library is located at 500 W. US Hwy 24, Independence, MO 64050–1798. The phone number is 816–833–1400 and the fax number is 816–833–4368. The e-mail address is *library@truman.nara.gov*.

(d) Dwight D. Eisenhower Library is located at 200 SE Fourth Street, Abilene, KS 67410–2900. The phone number is 785–263–4751 and the fax number is 785–263–4218. The e-mail address is *library@eisenhower.nara.gov*.

(e) John Fitzgerald Kennedy Library is located at Columbia Point, Boston, MA 02125–3398. The phone number is 617–929–4500 and the fax number is 617–929–4538. The e-mail address is *library@kennedy.nara.gov*.

(f) Lyndon Baines Johnson Library is located at 2313 Red River St., Austin, TX 78705–5702. The phone number is 512–916–5137 and the fax number is 512–916–5171. The e-mail address is *library@johnson.nara.gov*.

(g) Gerald R. Ford Museum is located at 303 Pearl St., Grand Rapids, MI 49504–5353. The phone number is 616–451–9263 and the fax number is 616–451–9570. The e-mail address is *information. museum@fordmus. nara.gov*. Gerald R. Ford Library is located at 1000 Beal Avenue, Ann Arbor, MI 48109–2114. The phone number is 734–741–2218 and the fax number is 734–741–2341. The e-mail address is *library@fordlib.nara.gov*.

(h) Jimmy Carter Library is located at 441 Freedom Parkway, Atlanta, GA 30307–1498. The phone number is 404–331–3942 and the fax number is 404–730–2215. The e-mail address is *library@carter.nara.gov*.

(i) Ronald Reagan Library is located at 40 Presidential Dr., Simi Valley, CA 93065–0699. The phone number is 800–410–8354 and the fax number is 805–522–9621. The e-mail address is *library@reagan.nara.gov*.

(j) George Bush Library is located at 1000 George Bush Drive West, College Station, TX 77845. The phone number is 979–260–9554 and the fax number is 979–260–9557. The e-mail address is *library@bush.nara.gov*.

**§ 1253.4 Washington National Records Center.**

Washington National Records Center is located at 4205 Suitland Road, Suitland, MD (mailing address: Washington National Records Center, 4205 Suitland Road, Suitland, MD, 20746–8001). The hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays. The phone number is 301–457–7000.

**§ 1253.5 National Personnel Records Center.**

(a) Military personnel records. NARA—National Personnel Records Center—Military Personnel Records is located at 9700 Page Ave., St. Louis, MO 63132–5100. The hours are 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

(b) Civilian personnel records. NARA—National Personnel Records Center—Civilian Personnel Records is located at 111 Winnebago St., St. Louis, MO 63118–4199. The hours are 7:30 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**§ 1253.6 Records Centers.**

All records centers are closed on Federal holidays. Information for each center is as follows:

(a) NARA—Northeast Region (Boston) is located at the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452–6399. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 781–647–8108.

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 01201–8230. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 413–445–6885.

(c) NARA—Mid Atlantic Region (Northeast Philadelphia) is located at 14700 Townsend Rd., Philadelphia, PA 19154–1096. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 215–671–1175.

(d) NARA—Southeast Region (Atlanta) is located at 1557 St. Joseph Ave., East Point, GA 30344–2593. The hours are 7 a.m. to 4 p.m., Monday through Friday. The telephone number is 404–763–7063.

(e) NARA—Great Lakes Region (Dayton) is located at 3150 Springboro Rd., Dayton, OH 45439–1883. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 937–225–2852.

(f) NARA—Great Lakes Region (Chicago) is located at 7358 S. Pulaski Rd., Chicago, IL 60629–5898. The hours are 8:30 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 773–581–7816.

(g) NARA—Central Plains Region (Kansas City) is located at 2312 E. Bannister Rd., Kansas City, MO 64131–3011. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 816–926–6920.

(h) NARA—Central Plains Region (Lee's Summit, MO) is located at 200 Space Center Drive, Lee's Summit, MO 64064–1182. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 816–478–7079.

(i) NARA—Southwest Region (Fort Worth) is located at 501 West Felix St., Bldg. 1, Fort Worth, TX (mailing address: P.O. Box 6216, Fort Worth, TX 76115–0216). The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 817–334–5515.

(j) NARA—Rocky Mountain Region (Denver) is located at Building 48, Denver Federal Center, West 6th Ave. and Kipling Street, Denver, CO (mailing address: PO Box 25307, Denver, CO 80225–0307). The hours are 7:30 a.m. to 3:45 p.m., Monday through Friday. The telephone number is 303–236–0827.

(k) NARA—Pacific Region (San Francisco) is located at 1000 Commodore Dr., San Bruno, CA 94066–2350. The hours are 7:30 a.m. to 4 p.m., Monday through Friday. The telephone number is 650–876–9077.

(l) NARA—Pacific Region (Laguna Niguel, CA) is located at 24000 Avila Rd., 1st Floor East Entrance, Laguna Niguel, CA (mailing address: PO Box 6719, Laguna Niguel, CA 92607–6719). The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 949–360–6334.

(m) NARA—Pacific Alaska Region (Seattle) is located at 6125 Sand Point Way NE, Seattle, WA 98115–7999. The hours are 7:45 a.m. to 4:15 p.m., Monday through Friday. The telephone number is 206–526–6501.

**§ 1253.7 Regional archives.**

Most regional archives offer extended research room hours for microfilm research only. Information on extended hours is available from individual facilities. Regional archives are closed on Federal holidays. Information on each regional archives facility is as follows:

(a) NARA—Northeast Region (Boston) is located in the Frederick C. Murphy Federal Center, 380 Trapelo Rd., Waltham, MA 02452–6399. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 781–647–8100.

(b) NARA—Northeast Region (Pittsfield, MA) is located at 10 Conte Drive, Pittsfield, MA 01201–8230. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 413–445–6885.

(c) NARA—Northeast Region (New York City) is located at 201 Varick St., New York, NY 10014–4811. The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 212–337–1300.

(d) NARA—Mid Atlantic Region (Center City Philadelphia) is located at 900 Market St. Room 1350, Philadelphia, PA 19107–4292. The hours are 8 a.m. to 5 p.m., Monday through Friday. The telephone number is 215–597–3000.

(e) NARA—Southeast Region (Atlanta) is located at 1557 St. Joseph Ave., East Point, GA 30344–2593. The hours are 7 a.m. to 4 p.m., Monday through Friday. The telephone number is 404–763–7474.

(f) NARA—Great Lakes Region (Chicago) is located at 7358 S. Pulaski Rd., Chicago, IL 60629–5898. The hours are 8 a.m. to 4:15 p.m., Monday through Friday. The telephone number is 773–581–7816.

(g) NARA—Central Plains Region (Kansas City) is located at 2312 E. Bannister Rd., Kansas City, MO 64131–3060. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 816–926–6982.

(h) NARA—Southwest Region (Fort Worth) is located at 501 West Felix St., Bldg. 1, Dock 1, Fort Worth, TX (mailing address: P.O. Box 6216, Fort Worth, TX, 76115–0216). The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 817–334–5525.

(i) NARA—Rocky Mountain Region (Denver) is located at Building 48, Denver Federal Center, West 6th Avenue and Kipling Street, Denver, CO (mailing address: PO Box 25307, Denver, CO 80225–0307). The hours are 7:30 a.m. to 3:45 p.m., Monday through Friday. The telephone number is 303–236–0804.

(j) NARA—Pacific Region (Laguna Niguel, CA) is located at 24000 Avila Rd., 1st Floor East Entrance, Laguna Niguel, CA (mailing address: PO Box 6719, Laguna Niguel, CA 92607–6719). The hours are 8 a.m. to 4:30 p.m., Monday through Friday. The telephone number is 949–360–2641.

(k) NARA—Pacific Region (San Francisco) is located at 1000 Commodore Dr., San Bruno, CA 94066–2350. The hours are 7:30 a.m. to 4:00 p.m., Monday through Friday. The telephone number is 650–876–9009.

(l) NARA—Pacific Alaska Region (Seattle) is located at 6125 Sand Point Way NE, Seattle, WA 98115–7999. The hours are 7:45 a.m. to 4:15 p.m., Monday through Friday. The telephone number is 206–526–6501.

(m) NARA—Pacific Alaska Region (Anchorage) is located at 654 West Third Avenue, Anchorage, AK 99501–2145. The hours are 8 a.m. to 4 p.m., Monday through Friday. The telephone number is 907–271–2443.

Dated: May 3, 2000.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 00–11530 Filed 5–5–00; 8:45 am]

BILLING CODE 7515–01–P

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 63**

**[AD–FRL–6585–6]**

**RIN 2060–AE86**

## National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production; Synthetic Organic Chemical Manufacturing Industry; Epoxy Resins Production and Non-Nylon Polyamides Production; and Petroleum Refineries

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to amend the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Polyether Polyols Production; the Synthetic Organic Chemical Manufacturing Industry (also known as the Hazardous Organics NESHAP, or HON); Epoxy Resins Production and Non-Nylon Polyamides Production; and Petroleum Refineries.

This action proposes to correct referencing errors and several equations which contained printing errors in the final NESHAP for Polyether Polyols Production. This action proposes to amend the description of a process change and the description of excess emissions; the requirements pertaining to submission of a request for extension of a compliance date; the storage vessel monitoring requirements; the definition of the terms *epoxide*, *Polyether polyol*, and *Group 2 wastewater stream*; the conditions required during performance testing for batch process vents; which compounds are considered to be organic HAP for the purposes of both the maintenance wastewater and the process wastewater requirements; the information requirements for start-up, shutdown, and malfunction reports; the dates on which initial notification reports are due; and the reporting requirements for other reports to clarify those requirements. For all four NESHAP, the EPA is proposing to amend the definition of *equipment leaks* to add the term "connectors" to the list of equipment that is subject to the equipment leak provisions in those NESHAP.

In the "Rules and Regulations" section of this **Federal Register**, we are making these corrections in a direct final rule, without prior proposal, because we view these revisions as noncontroversial, and we anticipate no adverse comments. We have explained our reasons for these corrections in the preamble to the direct final rule.

If we receive no adverse comments, we will take no further action on this proposed rule. If an adverse comment applies to an amendment, paragraph, or section of this proposed rule, and that provision may be addressed separately from the remainder of the proposed rule, we will withdraw only those provisions on which we received adverse comments. We will publish a timely withdrawal in the **Federal Register** indicating which provisions will become effective and which provisions are being withdrawn. If part or all of the direct final rule in the "Rules and Regulations" section of this **Federal Register** is withdrawn, all public comments pertaining to those provisions will be addressed in a

subsequent final rule based on this proposed rule. We will not institute a second comment period on that subsequent final rule. Any parties interested in commenting must do so at this time.

**DATES:** *Comments.* Written comments must be received by June 7, 2000, unless a hearing is requested by May 18, 2000. If a hearing is requested, written comments must be received by June 22, 2000.

*Public Hearing.* If anyone contacts the EPA requesting to speak at a public hearing by May 18, 2000, a public hearing will be held on May 22, 2000.

*Comments.* Written comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket numbers A–90–20, A–92–37, A–93–48, and/or A–96–38 (see docket section below), Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed below.

**ADDRESSES:** *Docket.* Docket numbers A–90–20, A–92–37 (Epoxy Resins Production and Non-Nylon Polyamides Production), A–93–48 (Petroleum Refineries), and A–96–38 (Polyether Polyols Production) contain supporting information used in developing the standards. The dockets are located at the U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460, in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

*Public Hearing.* If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina at 10:30 a.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert E. Rosensteel, Organic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, NC 27711, telephone number (919) 541–5608, electronic mail address: rosensteel.bob@epa.gov.

**SUPPLEMENTARY INFORMATION:** *Docket.* The docket is an organized and complete file of all the information considered by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A)) of the Clean Air Act.) An index for each docket, as well as individual items contained within the dockets, may be obtained by calling (202) 260-7548 or (202) 260–7549. A reasonable fee may be charged for copying docket materials. Docket indexes are also available by facsimile, as described on the Office of Air and Radiation, Docket and Information Center Website at http://www.epa.gov/airprogm/oar/docket/faxlist.html.

*Public Hearing.* Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Maria Noell, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, NC 27711, telephone (919) 541–5607, at least 2 days in advance of the public hearing. Persons interested in attending the public hearing must also call Ms. Maria Noell to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed amendments.

*Comments.* Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov*. Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® version 5.1, 6.1 or Corel 8 file format. All comments and data submitted in electronic form must note the docket numbers A–90–20, A–92-37, A–93–48, and/or A–96–38. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Ms. Melva Toomer, U.S. EPA, OAQPS Document Control Officer, 411 W. Chapel Hill Street, Room 944, Durham NC 27711. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

*World Wide Web.* In addition to being available in the docket, an electronic copy of this proposed rule is also available through the World Wide Web (WWW). Following signature, a copy of the rule will be posted on the EPA's Technology Transfer Network (TTN) policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg*. The TTN at EPA's web site provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

*Regulated Entities.* Categories and entities potentially affected by this proposed rule include:

| Category | Standard Industrial Classification (SIC) codes | North American Industrial Classification System (NAICS) codes | Examples of regulated entities |
|---|---|---|---|
| Industry | 2865 and 2869 | 325110, 325188, 325192, 325193, 325199, and 325120. | Synthetic organic chemical manufacturing industry (SOCMI) units (e.g., producers of benzene, toluene, or any other chemical listed in table 1 of 40 CFR part 63, subpart F). |
| Industry | 2821 | 325211 | Epoxy resins and non-nylon polyamide resins. |
| Industry | 2911 | 324110 | Petroleum refineries. |
| Industry | 2843 and 2869 | 325199 and 325613 | Producers of polyether polyols and polyether mono-ols. |

This table is not intended to be exhaustive, but rather provides a guide for readers likely to be interested in the revisions to the regulations proposed in this action. To determine whether your facility is regulated by this action, you should carefully examine all of the applicability criteria in 40 CFR part 63, subparts F, W, CC, and PPP. If you have any questions regarding the applicability of these proposed amendments to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**What Are the Administrative Requirements for This Action?**

*Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of this proposed rule on small entities, small entity is defined as: (1) A small business that has less than 750 employees and is unaffiliated with a larger domestic entity; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. We have determined that 7 of the 36 polyether polyol production facilities are classified as small entities (i.e., having fewer than 750 employees). The EPA determined that none of these seven small entities will experience an increase in costs that is greater than one percent of revenues as a result of this proposed rule. This does not qualify as a significant economic impact on a substantial number of small businesses.

For information regarding other administrative requirements for this action, please see the direct final/final rule action that is located in the "Rules and Regulations" section of this **Federal Register** publication.

**List of Subjects in 40 CFR Part 63**

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 20, 2000.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 00–10419 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 239

**[FRL–6586–8]**

### The Territory of the U.S. Virgin Islands; Tentative Determination of Inadequacy of the Virgin Islands Municipal Solid Waste Permit Program; Public Hearings and Public Comment Period

**AGENCY:** Environmental Protection Agency .

**ACTION:** Proposed rule.

**SUMMARY:** Section 4005(c)(1)(B) of the Resource Conservation Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, 42 U.S.C. 6945(c)(1)(B) requires States to develop and implement permit programs or other systems of prior approval to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR Part 258). RCRA Section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs. For RCRA purposes, pursuant to Section 6903(31), 42 U.S.C. 6903(31), the term "State" includes the territory of the Virgin Islands. To implement these statutory provisions, EPA promulgated a State Implementation Final Rule (SIR), 40 CFR Part 239, which provides criteria and procedures for making adequacy determinations of State municipal landfill permit programs.

On October 6, 1993, the U.S. Virgin Islands applied for a determination of program adequacy under section 4005(c)(1)(B) of RCRA. Upon review of the application and certain revisions thereto, EPA on June 16, 1995, published a notice of a tentative determination of adequacy of the Virgin Islands landfill permit program. The notice of tentative determination provided that the Virgin Islands government had committed to amending its existing solid waste regulations so as to conform to federal Part 258 criteria by May, 1996. Two public hearings were subsequently held on the MSWLF application at which EPA received negative comments concerning the Bovoni and Anguilla municipal landfills in the Virgin Islands, which are operated by the government of the Virgin Islands. After further review, EPA requested that the Virgin Islands document the commitment of sufficient resources and budget in order to carry out and sustain improved landfill operations. Thus, provision of an adequate program budget and staff resources, and the promulgation of revised solid waste regulations needed to be accomplished.

Since 1995, EPA has worked with Virgin Islands officials to assist the government in preparing revised solid waste regulations and repeatedly has advised the government of the need to increase the level of resources for its MSWLF permit program. However, the promulgation of revised solid waste regulations by the Virgin Islands government, and the provision of adequate budget and staff resources to carry out program requirements have not occurred to date. Accordingly, by this notice, EPA is now officially promulgating its tentative determination, pursuant to Section 4005(c)(1)(C) of RCRA, that the Virgin Islands municipal landfill permit program is inadequate to assure compliance with the federal landfill criteria.

EPA is providing the public an opportunity to comment on this action, and will also hold two public hearings as described below. If after receipt of public comments and after public hearings to be held in the Virgin Islands, EPA proceeds to a Final Determination of Inadequacy, EPA will then assume enforcement authority for the federal landfill criteria in accordance with RCRA Section 4005(c)(2). Moreover, the Virgin Islands will be denied operational flexibility that is granted approved states, such as utilizing alternate daily cover standards or reducing the frequency of ground water monitoring. In addition, while in unapproved status, since the Virgin Islands is located in a seismic zone, it will be prohibited from siting a new landfill or expanding an existing one.

**DATES:** Written comments on today's action must be submitted on or before July 24, 2000. Although RCRA does not require EPA to hold a public hearing on

any determination to approve or disapprove a State's MSWLF program, the Region has scheduled two public hearings on this tentative determination. The public hearings have been scheduled, as follows: One public hearing will be held on St. Thomas at 7 p.m. on June 27, 2000 and a second public hearing will be held on St. Croix at 7 p.m. on June 28, 2000. The dates and locations of the public hearings will also be published in the VI Daily News and the St. Croix Avis.

**ADDRESSES:** For written comments, commenters should send an original and two copies of their comments to: Carl-Axel P. Soderberg, Director, EPA Region 2, Caribbean Environmental Protection Division, Centro Europa Building, Suite 417, 1492 Ponce De Leon Avenue, San Juan, PR 00907–4127, telephone: (787) 729–6951 ext. 222. Comments may also be submitted electronically by sending electronic mail through the Internet to: soderberg.carl@epamail.epa.gov. Comments in electronic format should clearly identify the subject matter. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The St. Thomas public hearing will be held at the Curriculum Center Conference Room at the Department of Education Curriculum Center, 386 Anna's Retreat (located immediately above the Tutu Fire Station and across from the Seventh Day Adventist Church); the St. Croix public hearing will be held in the Curriculum Center Conference Room at the Department of Education Curriculum Center, 21–22 Hospital Street, Christiansted (located between the Central High School and the St. Croix Territorial Court House along Queens Mary Highway).

Information and background documents concerning the Virgin Islands MSWLF program are available for viewing at the EPA Region 2, Caribbean Environmental Protection Division office located at the Federal Building and U.S. Courthouse, 5500 Veterans Drive, Room 142, St. Thomas, U.S. Virgin Islands 00802, telephone number (340) 714–2333; the Enid M. Baa Library & Archives, 20 Dronningens Gade, St. Thomas, Virgin Islands 00802; the Elaine I. Sprauve Library & Museum, Enighed Estate, Cruz Bay, St. John, Virgin Islands 00801; and the Florence Williams Public Library, 49–50 King's Street, Christiansted, St. Croix, Virgin Islands 00820. The background documents include the Virgin Islands MSWLF permit program application; information on the 1995 public hearings concerning the Virgin Islands MSWLF permit program and EPA correspondence with the Virgin Islands Government. The Index to the Administrative Record concerning the Virgin Islands MSWLF program is also available at these locations. Persons who wish to obtain copies of documents from the Administrative Record or who seek additional information, should contact the EPA official listed below.

**FOR FURTHER INFORMATION CONTACT:** John Filippelli, RCRA Programs Branch, Division of Environmental Planning and Protection, U.S. EPA Region 2, 290 Broadway, New York, NY 10007–1866, telephone (212) 637–4125, facsimile (212) 637–4437, or via the internet: filippelli.john@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

## A. Background

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs or other systems of prior approval to ensure that MSWLFs comply with the Federal Criteria under Part 258. RCRA also requires in Section 4005(c)(1)(C) that EPA determine whether State MSWLF permit programs are adequate to comply with the revised Federal Criteria. To fulfill this requirement, the Agency has promulgated a State Implementation Rule (SIR), 40 CFR Part 239—Requirements for State Permit Program Determination of Adequacy (63 FR 57025, October 23, 1998). Part 239 specifies the minimum requirements which State landfill permit programs must satisfy to be determined to be adequate, including: the state must have legally adopted enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF landfill criteria; the state must have an adequate compliance monitoring program and the legal authority to issue permits or other forms of prior approval to all new and existing MSWLFs in its jurisdiction; the State must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA; the State must also demonstrate that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with applicable regulations or its landfill permit.

EPA Regions are authorized to determine whether a State has submitted an "adequate" program based on the statute and the regulations summarized above. EPA expects States to meet all of these requirements for its MSWLF program before it gives full approval to a MSWLF program.

As a general matter, the Agency believes that approvals of state programs have an important benefit. Approved State permit programs provide for interaction between State and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States with approved permit programs can use the site-specific flexibility provided by Part 258 to the extent that the State permit program allows such flexibility. EPA notes that regardless of the approval status of a State and the permit status of any facility, the federal landfill criteria apply to all permitted and unpermitted MSWLF facilities. EPA also notes that Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of Section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR Part 258 independent of any State enforcement program.

## B. Territory of the U.S. Virgin Islands

On October 6, 1993, the Territory of the U.S. Virgin Islands submitted a program application for adequacy determination. Subsequently, the Virgin Islands made several revised submissions. EPA has reviewed the application and the revised submissions, and on June 16, 1995 published a **Federal Register** notice of tentative determination that all portions of the U.S. Virgin Islands' Subtitle D program were adequate to provide compliance with the revised Federal Criteria. The June 16, 1995 notice provided that the Virgin Islands expected to revise its solid waste regulations so as to be technically comparable to federal criteria by May, 1996. However, the revised regulations have not as yet been officially promulgated, although substantial preparatory work has been done. In addition, substantial adverse comments on the Virgin Islands' MSWLF permit program were presented during the public comment period and at the public hearings in 1995. EPA subsequently advised the Virgin Islands that it must both demonstrate a commitment of budget and staff resources to enable it to sustain adequate landfill program operations and promulgate revised regulations as prerequisites for obtaining a final EPA determination of program adequacy.

Currently there are two municipal solid waste disposal facilities operating in the U.S. Virgin Islands. One facility is located on St. Thomas and the other on St. Croix. The island of St. John is

currently serviced by a transfer station from which the waste is transported to the St. Thomas landfill for disposal. The Virgin Islands Department of Planning and Natural Resources (DPNR) has responsibility for implementing and enforcing solid waste management regulations, including issuing permits, and undertaking inspections and other enforcement activities. The solid waste landfills presently located in the Territory are operated by the Virgin Islands Department of Public Works (DPW). The Anguilla landfill is owned by the Virgin Islands Port Authority while the Bovoni landfill is owned by the government of the Virgin Islands. The DPNR and DPW entered into a Memorandum of Agreement (MOA) dated January 11, 1995 which committed the two agencies to meeting the requirements of 40 CFR Part 258 at the Virgin Islands landfills. This MOA was submitted to the EPA in conjunction with the application for a program adequacy determination. The DPNR Commissioner also advised EPA that no permits would be issued for the establishment of any private solid waste disposal facility until revised regulations for solid waste landfill management were in place. In addition, DPNR committed to issuing a permit to DPW pursuant to the revised regulations once these revised regulations were adopted. EPA reviewed these items as well as the other contents of the Virgin Islands' application when it made its earlier, initial determination of program adequacy.

On August 1 and August 2, 1995, EPA held two public hearings in the Virgin Islands on its tentative approval decision. Public comments were submitted orally at the hearings and in writing to the EPA. Substantial negative comments were received concerning the Virgin Islands' MSWLF program. EPA accordingly delayed making a final determination of adequacy, and in a February 19, 1996 letter to the DPNR Commissioner, the EPA Regional Administrator recommended delaying the final determination of program adequacy until the revised solid waste regulations meeting 40 CFR part 258 were in place, and other issues were resolved. On February 5, 1997, the DPNR Commissioner agreed to the delay, thus giving the Virgin Islands a further opportunity to promulgate revised regulations and obtain adequate solid waste staff and program resources. On April 3, 1997, the EPA Regional Administrator advised the Governor of the need for the Virgin Islands to adopt revised regulations as well as to update the Virgin Islands Attorney General's certificate as to the adequacy and enforceability of such regulations, and to demonstrate sufficient staff and funding to carry out the permit program. In a February 9, 1998 letter, the EPA Deputy Regional Administrator requested that the DPNR Commissioner establish a schedule of activities needed to promulgate revised regulations, secure funding and hire staff to run the program. On April 23, 1999, the EPA Regional Administrator advised the Governor that adequate solid waste management was one of the highest priority environmental problems in the Virgin Islands. Finally, on August 30, 1999, the EPA Regional Administrator advised the Governor that EPA would begin the official process to make the determination that the Virgin Islands' solid waste permit program is not adequate to meet federal part 258 landfill criteria because the essential prerequisites for program approval had not been put in place.

The U.S. Virgin Islands has not met its commitment to promulgate revised regulations meeting the requirements of 40 CFR part 258. Continued delay in promulgating such solid waste regulations, and obtaining funding and hiring staff for the solid waste program have resulted in a continuation of program deficiencies. The two operating municipal solid waste landfills, Bovoni on St. Thomas and Anguilla on St. Croix are substantially out of compliance with federal criteria. Conditions at the Bovoni landfill on St. Thomas have been determined to pose a potential imminent and substantial endangerment to human health and the environment, and have caused EPA and the Virgin Islands government to negotiate an administrative consent order pursuant to RCRA Section 7003 so as to provide immediate remedial action. In addition, the former Susannaberg landfill was not closed in accordance with part 258 requirements.

EPA has provided substantial technical assistance to the Virgin Islands in the form of providing MSWLF operator training for DPNR and DPW staff; performing reviews of regulatory and design documents; awarding solid waste management assistance grants; conducting groundwater and air monitoring at the landfills; and providing numerous technical documents and publications. EPA has also assisted the Virgin Islands in identifying sources of funding potentially available for staff and program activities and for landfill rehabilitation. Despite these efforts, actions have not been taken by the Virgin Islands to resolve critical outstanding deficiencies in its landfill permit program since EPA's tentative approval on June 16, 1995.

EPA will consider all public comments on this tentative determination of inadequacy that are received during the public comment period and during each public hearing. EPA will review all comments, including any comments offered by the Virgin Islands government, and make a final determination on whether or not to approve the Virgin Islands' permit program and will give notice of its decision in the **Federal Register**. The notice will include a summary of the reasons for the final determination, and responses to all major comments received at the public hearings and during the public comment period.

**Administrative Requirements**

*A. Executive Order 12866: Assessment of Potential Costs and Benefits*

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*B. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any proposed rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule

will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small government jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities: (1) A small entity is as defined in Small Business Administration's (SBA) regulations at 13 CFR § 121.201; (2) a small government jurisdiction is a government of a city, town, school district or other special district with a population of less than 50,000; and (3) a small organization is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The proposed rule will not have a significant economic impact on a substantial number of small entities, since the rule only directly affects the government of the Virgin Islands. The proposed rule will not impose any requirements on small entities. Therefore, no regulatory flexibility analysis has been prepared. Based on the foregoing discussion, I hereby certify that this proposed rule will not have a significant adverse impact on a substantial number of small entities.

*C. The Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* as amended, 44 U.S.C. 3501 *et seq.* As described in the preamble, the proposed rule affects only the government of the Virgin Islands, and is an EPA determination based on information previously submitted by the government of the Virgin Islands in its application for approval of its municipal solid waste landfill permit program, pursuant to 40 CFR parts 239 and 258.

*D. The Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995, (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements.

EPA has determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector, in any one year. Today's proposed rule concerns an EPA determination with respect to the adequacy of the government of the Virgin Islands municipal solid waste landfill program, pursuant to 40 CFR part 239. Existing Federal and Virgin Islands municipal solid waste regulations remain in effect, and no new Federal mandate is imposed on the Virgin Islands or the private sector under this rule. Section 203 of the UMRA is also inapplicable to this proposed rule because the rule only affects the government of the Virgin Islands and does not contain any regulatory requirements that might significantly or uniquely affect small governments.

*E. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 *FR* 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it is an EPA determination concerning a program application from the government of the Virgin Islands Federal with respect to its municipal solid waste landfill permit program.

*F. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. No. 104–113, § (d) (15 USC 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*G. Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the

process of developing the proposed regulation.

The proposed rule does not have federalism implications. It will not have substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's proposed rule solely concerns the territory of the Virgin Island, and EPA has made the determination that E.O. 13132 is therefore inapplicable. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule. EPA notes, however, that the proposed rule does not preempt any law or regulation of the government of the Virgin Islands, nor does it impose any requirements that are inconsistent with the fundamental federalism principles contained in Executive Order 13132. Moreover, as the preamble, above, make clear, there has been extensive consultation by EPA with the government of the Virgin Islands concerning its municipal solid waste landfill permit program prior to today's action.

*H. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because there are no federally recognized Indian Tribal governments in the Virgin Islands, and the rule solely affects the government of the Virgin Islands. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this proposed rule.

*I. Executive Order 12898: Environmental Justice*

Under Executive Order 12898 EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for residents of all communities. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and that all people live in clean and sustainable communities.

The Agency believes that today's proposed rule will potentially advance environmental justice causes. The process set in motion by this proposed rule allows all potentially affected segments of the population of the Virgin Islands to participate in public hearings and/or to provide public comment on health and environmental concerns that they feel may arise pursuant to the Agency's proposed action. In addition, the purpose of today's proposed rule is to help achieve compliance with 40 CFR Part 258 municipal solid waste landfill criteria, which will provide direct benefit to residents living near the landfill.

**Authority:** This proposed rule is issued under the authority of Section 4005 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6945.

Dated: April 19, 2000.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 00–10770 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 403**

**[FRL –6602–5]**

## Community XL (XLC) Site-Specific Rulemaking for Steele County, Minnesota; Proposed Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to implement a project under the Project XLC program for certain facilities in Steele County, Minnesota. The terms of the project are defined in a draft Final Project Agreement (FPA) which was made available for public review and comment through a **Federal Register** notice on December 29, 1999 (64 FR 73047). In addition, EPA is proposing a site-specific rule, applicable only to the Steele County sponsors who are Participating Industrial Users, to facilitate implementation of the project. By this document, EPA solicits comment on the proposed rule. This proposed site-specific rule is intended to provide regulatory changes under the Clean Water Act (CWA or the Act) to implement the Community XL project, which will result in superior environmental performance.

The proposed site-specific rule would change some of the CWA requirements which apply to the sponsors who are Participating Industrial Users to promote a reduction in the discharge of four priority metals and certain conventional pollutants, a reduction in water usage, and the development of an environmental management system. An incentive-based monitoring approach would be implemented, such that as discharge reduction goals are met, monitoring frequency could be reduced, mass-based limits would replace certain concentration limits, and an alternative Significant Noncompliance (SNC) publication approach would be tested. Monitoring reductions for pollutants determined not to be present in an industry's wastestream would also be authorized.

**DATES:** *Public Comments:* All public comments on the proposed rule must be received on or before May 30, 2000.

**ADDRESSES:** *Comments:* Written comments on the proposed rule should be mailed to: Ms. Abeer Hashem, U.S. Environmental Protection Agency, Region V, WC–15J, 77 West Jackson Boulevard, Chicago, IL 60604–3507. Please send an original and two copies of all comments, and refer to Docket for the Steele County Site-Specific Rulemaking.

*Viewing Project Materials:* A docket containing the proposed rule, draft Final Project Agreement, supporting materials, and public comments is available for public inspection and copying at U.S. EPA, Region V, Water Division, Room Number 15046, 77 West Jackson Boulevard, Chicago, IL 60604–3507. The Office is open from 9 a.m. to 4 p.m. Monday through Friday, excluding federal holidays. The public

is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning Abeer Hashem at (312) 886–1331. Refer to the Docket for the Steele County Site-Specific Rulemaking. The public may copy a maximum of 100 pages at no charge. Additional copies cost 15 cents per page. Project materials are also available for review for today's action on the World Wide Web at: *http://www.epa.gov/projectxl/*.

Supporting materials are also available for inspection and copying at U.S. EPA, Headquarters, 401 M Street SW, Room 445 West Tower, Washington, DC 20460 during normal business hours. Persons wishing to view the materials at the Washington, DC location are encouraged to contact Ms. Kristina Heinemann in advance by telephoning (202) 260–5355. In addition supporting materials are available at the Owatonna, MN Public Library, 105 Elm Avenue North, Owatonna, MN 55060. The phone number for the library is 507–444–2460, TDD 507–444–2480.

**FOR FURTHER INFORMATION CONTACT:** Ms. Abeer Hashem or Mr. Matthew Gluckman, U.S. Environmental Protection Agency, Region V, Water Division, WC–15J or WN–16J, 77 West Jackson Boulevard, Chicago, IL 60604–3507. Ms. Hashem can be reached at (312) 886–1331 and Mr. Gluckman can be reached at (312) 886–6089. Further information on today's action may also be obtained on the world wide web at: http://www.epa.gov/projectxl/.

**SUPPLEMENTARY INFORMATION:** This proposed site-specific rule sets forth the mechanism through which the sponsors would attempt to reach discharge reduction goals for chromium, copper, nickel, zinc, reach water use reduction goals, and commit to arrange and participate in training for the development of an Environmental Management System (EMS), as outlined in the Steele County Project XLC draft FPA (the document that embodies the parties' intent to implement this project). Today's proposal would facilitate implementation of the draft FPA that has been developed by the Steele County Project Sponsors, EPA, the Steele County Community Advisory Committee ("ACAC"), the Minnesota Pollution Control Agency ("AMPCA"), the Owatonna Waste Water Treatment Facility (OWWTF), the Blooming Prairie Waste Water Treatment Facility (BPWWTF), and other stakeholders. The FPA is available for review in the docket for today's action and on the world wide web at http://www.epa.gov/projectxl/.

The draft FPA addresses the nine Project XLC criteria, and the expectation of EPA that this XLC project will meet those criteria. Those criteria are: (1) Environmental results superior to what would be achieved through compliance with current and reasonably anticipated future regulations; (2) economic opportunity; (3) stakeholder involvement, support and capacity for community participation; (4) test of innovative, multi-media, pollution prevention strategies for achieving environmental results; (5) approaches that could be evaluated for future broader application (transferability); (6) technical and administrative feasibility; (7) mechanisms for monitoring, reporting, and evaluation; (8) consistency with Executive Order 12898 on Environmental Justice (avoidance of shifting of risk burden); and (9) community planning. The draft FPA specifically addresses the manner in which the project is expected to produce superior environmental benefits.

EPA is proposing today's rule to implement the provisions of this Project XLC initiative that require regulatory changes. However, Minnesota has had an approved state National Pollutant Discharge Elimination System (NPDES) program since June 30, 1974, and an approved State pretreatment program since July 16, 1979. Therefore, the requirements outlined in today's proposed rule would not take effect until Minnesota revises the Owatonna pretreatment program as incorporated in its NPDES permit. EPA would not be the primary regulatory agency responsible for implementing the requirements of this rule. In addition, for the sake of simplicity, the remainder of this preamble refers to the effects of this rule, although it would be the corresponding State and local law and corresponding NPDES and Industrial User permits that would actually govern this XL project.

### Outline of Today's Document

The information presented in this preamble is organized as follows:

I. Authority
II. Background
  A. Overview of Project XL and XLC
  B. Overview of the Steele County XLC Project
  1. Description of the Steele County Community XL Project
  2. What Are the Environmental Benefits of the Project?
  3. What Are the Economic Benefits and Paperwork Reduction Deriving From the Project?
  4. Stakeholder Involvement
  5. What Is the Project Duration and Completion Date?
  6. How Will EPA Ensure That Only Appropriate Sponsors Continue To Receive Flexibility Under This Proposal?
  7. How May the Project Be Terminated?
III. Rule Description
  A. Clean Water Act Requirements, Pre-Treatment Streamlining Proposal and Summary of Regulatory Requirements for the Steele County XL Project
IV. Additional Information
  A. How Does This Rule Comply With Executive Order 12866?
  B. Is a Regulatory Flexibility Analysis Required?
  C. Is an Information Collection Request Required for This Rule Under the Paperwork Reduction Act?
  D. Does This Rule Trigger the Requirements of the Unfunded Mandates Reform Act?
  E. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?
  F. How Does This Rule Comply With Executive Order 13132 on Federalism?
  G. How Does This Rule Comply With Executive Order 13084: Consultation and Coordination With Indian Tribal Governments?
  H. Does This Rule Comply with National Technology Transfer and Advancement Act of 1995 ("ANTTAA")?

## I. Authority

This regulation is being proposed under the authority of sections 307, 308, and 501 of the CWA, 33 U.S.C. 1317, 1318, 1361.

## II. Background

### *A. Overview of Project XL and XLC*

Each Project XL pilot—"eXcellence and Leadership" is described in a Final Project Agreement (FPA). For this Project XL for Communities (XLC), the draft FPA sets forth the intentions of EPA, the Minnesota Pollution Control Agency (MPCA) and the Steele County Community with regard to a project developed under Project XLC, an EPA initiative to allow regulated entities to achieve better environmental results using common sense, cost effective strategies. This regulation will enable implementation of the project.

Project XL was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995) and 60 FR 55569 (November 1, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to that which would be achieved through compliance with current and future regulations. These efforts are crucial to EPA's ability to test new strategies that reduce the regulatory burden and promote economic growth

while achieving better environmental and public health protection. EPA intends to evaluate the results of this and other XL projects to determine which specific elements of the project(s), if any, should be more broadly applied to other regulated entities for the benefit of both the economy and the environment.

Under Project XL, participants in four categories—facilities, industry sectors, governmental agencies and communities—are offered the flexibility to develop common sense, cost-effective strategies that will replace or modify specific regulatory requirements on the condition that they produce and demonstrate superior environmental performance. Project XLC, excellence and leadership for communities, was developed to focus on communities and local governments or regional organizations that are interested in creating an XL project. Project XLC encourages potential sponsors to come forward with new approaches to demonstrate community-designed and directed strategies for achieving greater environmental quality consistent with community economic goals.

To participate in Project XLC, applicants must develop alternative pollution reduction strategies pursuant to nine criteria: superior environmental results; stakeholder involvement, support, and capacity for community participation; economic opportunity; test of an innovative multi-media strategy; transferability; feasibility; community planning; identification of monitoring, reporting and evaluation methods; and equitable distribution of environmental risks. Projects must have full support of affected federal, state and tribal agencies to be selected.

For more information about the XL and XLC criteria, readers should refer to the three descriptive documents published in the **Federal Register** (60 FR 27282, May 23, 1995; 60 FR 55569, November 1, 1995; and 62 FR 19872, April 23, 1997). For further discussion as to how the Steele County XL Communities project addresses the XLC criteria, readers should refer to the draft Final Project Agreement and fact sheet that are available from the docket for this action (see **ADDRESSES** section of today's preamble).

Project XL is intended to allow the EPA to experiment with untried, potentially promising regulatory approaches, both to assess whether they provide benefits at the specific facility affected, and whether they should be considered for wider application. Such pilot projects allow the EPA to proceed more quickly than would be possible when undertaking changes on a nationwide basis. EPA may modify rules, on a site- or state-specific basis, that represent one of several possible policy approaches within a more general statutory directive, so long as the alternative being used is permissible under the statute. Adoption of such alternative approaches or interpretations in the context of a given XL project does not, however, signal EPA's willingness to adopt that interpretation as a general matter, or even in the context of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful for the particular projects that embody them. Depending on the results in these projects, EPA may or may not be willing to consider adopting the alternative approach or interpretation again, either generally or for other specific facilities.

EPA believes that adopting alternative policy approaches and/or interpretations, on a limited, site- or state-specific basis and in connection with a carefully selected pilot project, is consistent with the expectations of Congress about EPA's role in implementing the environmental statutes (so long as EPA acts within the discretion allowed by the statute). Congress' recognition that there is a need for experimentation and research, as well as ongoing reevaluation of environmental programs, is reflected in a variety of statutory provisions, *e.g.*, section 104 of the CWA.

*B. Overview of the Steele County XLC Project*

1. Description of the Steele County Community XL Project

Community Based Environmental Regulation

The Steele County XLC pilot project would test the effectiveness of a community based approach to industrial regulated wastewater effluent reductions and water use reduction controls designed to: (1) Result in pollution prevention; (2) meet the objectives of the CWA regulatory program; and (3) be at least as protective of human health and the environment as the current system. This project would pilot a community-based approach to environmental regulation with the goal of achieving a reduction in the discharge of certain metals to the OWWTF, and Biological Oxygen Demand (BOD), Total Suspended Solids (TSS) and Total Kjeldahl Nitrogen (TKN) to the BPWWTF. Other aspects of the pilot program would include water usage reduction, the development and implementation of a storm water and sewer water separation and education plan, and the development of a training and assessment program of an Environmental Management System.

If this first phase of the project is considered by the parties to be successful, a Phase II—consisting in general outline of a multi-media approach to environmental permitting based on overall community performance in the areas of air emissions, solid waste, hazardous waste, chemical storage, and community sustainability—may be considered. Today's proposal does not cover or commit to a second phase of this project.

For the purposes of today's proposed rule, the group of Owatonna sponsors who are Participating Industrial Users includes the following Industrial Users (IUs) in the City of Owatonna: Crown Cork and Seal Company, Inc.; Cybex International Inc.; Gandy Company, Inc.; Josten's Inc.—Southtown Facility; Mustang Manufacturing Company; SPx Corporation, Power Team Division; SPx Corporation, Service Solutions Division; Truth Hardware Corporation; and Uber Tanning Company. The final rule may include all or only some of the Industrial Users listed above. Two facilities included in the Owatonna Sponsor group, Viracon-Marcon, Inc. and the Wenger Corporation and one sponsor located in Blooming Prairie, Minnesota, Elf Atochem, are not receiving regulatory flexibility under today's proposed rule and are therefore not included as Participating Industrial Users.

To achieve the objectives of Phase 1 of the Project, part of this project would pilot an incentive-based approach to reduced monitoring requirements. As the Owatonna sponsors who are Participating Industrial Users, as a group meet certain discharge reduction goals, the City could reduce the required frequency of monitoring for any of the Participating Industrial Users. Other aspects of this pilot program would include: (1) Pollutant monitoring could be eliminated where a pollutant is not discharged; (2) in order to encourage water use reduction compliance with a concentration-based standard could be demonstrated by compliance with a mass-based limit; (3) an alternative publication process for Significant Noncompliance (SNC) would be put in place, and (4) sponsors may seek "No Exposure Certification for Exclusion from NPDES Storm Water Permitting", which is available under existing regulations (40 CFR 122.26 (g) pursuant to a change in the regulations found at

64 FR 68722 (December 8, 1999)), and does not require flexibility under today's proposal. Each of these elements of the pilot program requiring regulatory flexibility is explained below.

To achieve the objectives of this project the Participating Industrial Users would commit to utilize their best efforts to reach certain discharge reduction goals. Only if these goals are met would regulatory flexibility regarding lesser monitoring requirements than currently required under 40 CFR 403.12(e)(1) be granted. Specifically, the Participating Industrial Users located in Owatonna (or "City") would commit to a 20% reduction goal in the amount of nickel, chromium, copper, and zinc (by mass) they discharge to the OWWTF. These reduction goals are for each individual pollutant.

If the first 20% reduction goal is met, a further 20% reduction goal could be set for the remaining project term. If the initial 20% reduction goal is met for all pollutants, the City would be authorized, at its discretion, to reduce the self-monitoring frequency of Owatonna sponsors who are Participating Industrial Users to once per year. After the second metal reduction goal is met, the minimum monitoring frequency could remain once per year. In exercising this discretion, the OWWTF would be required to consider the Participating Industrial User's previous three years of compliance data, and could not reduce monitoring for pollutants where there is a reasonable potential of violating Pretreatment Standards.

This project would focus on the four metals slated for 20% release reductions because they are the metals determined to be discharged at the highest levels to the Owatonna wastewater treatment system relative to applicable water quality and biosolids criteria. In addition, the participants are regulated for these pollutants under categorical pretreatment standards and influence the loading of these pollutants to the Owatonna wastewater treatment system. Specific reductions of other categorically regulated metals are not being pursued under this project because they are released in small quantities relative to applicable environmental criteria. Because certain of these other metals may be present at some of the participant facilities, these metals may not qualify for the elimination of monitoring due to no releases. In such cases, the POTW would need to require continued monitoring of these metals. Through this proposed rule the POTW would be given the discretion to reduce monitoring frequencies for the other categorically regulated metals to the same extent it is being authorized to consider reduced monitoring for the four metals subject to the 20% reduction goals.

This project would also authorize the City to allow a sponsor Participating Industrial User subject to categorical standards to not sample for a pollutant, if it is not expected to be present in its wastestream at levels greater than background levels in its water supply. For such pollutants, the OWWTF would only be required to conduct sampling and analysis once during the term of the Participating Industrial User's permit. The Participating Industrial User would still be subject to the categorical standards for pollutants determined not to be present, and would need to resume monitoring if sampling indicates that a pollutant is present at above-background levels, or at any time at the discretion of the OWWTF.

If the POTW determines that one or more pollutants are not expected to be present at a Participating Industrial User, it could modify the IU's permit to reduce or eliminate the monitoring requirements for the pollutant(s). The Participating Industrial User permit would also require the user to submit, as part of its regular semi-annual monitoring reports, certification that there has been no increase in the pollutant in its wastewater due to its activities. The POTW would sample the Participating Industrial User's effluent for all pollutants in the applicable categorical standard at least once during the term of the IU's permit.

One of the goals of this pilot project would be to facilitate water conservation measures at the sponsors' facilities. The total flow to the OWWTF from the nine Owatonna sponsors who are Participating Industrial Users is 477,000 gallons per day. The Owatonna sponsors commit to a goal in the draft FPA of reducing this flow by 10%. To facilitate meeting this goal this rule proposes that the OWWTF be allowed to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards. Under the proposed rule entitled "Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution" (Pretreatment Streamlining Proposal), which was published on July 22, 1999 (64 FR 39564), POTWs would be allowed to establish alternative mass limits if an Industrial User has installed Best Available Technology Economically Achievable (BAT), or equivalent to BAT treatment, and the Industrial User is employing water conservation methods and technologies that substantially reduce water use.

While all of the conditions for receiving mass limits laid out in EPA's Streamlining Proposal are not being required for this site-specific rule (see discussion regarding Today's Proposal in Equivalent Mass Limits for Concentration Limits section of III.A, below), EPA is interested in determining whether providing mass limits prior to full adoption of water conservation practices will encourage more widespread adoption of such practices. To ensure the continued appropriateness of the specific mass limits, sponsor industries who are Participating Industrial Users would also be required to notify the City in the event production rates are expected to vary by more than 20 percent from a baseline production rate determined by Owatonna when it establishes a Participating Industrial User's initial mass limits. The Participating Industrial Users would commit to continued operation of at least the same level of treatment as at the outset of the project. Upon notification of a revised production rate, the City would reassess the appropriateness of the mass limit. Sponsor Elf Atochem discharges 16,900 gallons per day to the BPWWTF and commits in the draft FPA to a reduction goal of 10% of this amount. Because Elf Atochem is currently required to comply with mass-based limits, no change to its limits are required to facilitate water conservation measures.

EPA is today proposing a site-specific alternative procedure for publishing Significant Noncompliance for Participating Industrial Users. SNC is defined in 40 CFR 403.8(f)(2)(vii) as including violations by an Industrial User which meet one or more of eight specific criteria. Currently, POTWs are required to publish in the largest daily newspaper in the municipality in which the POTW is located a list of Industrial Users who have been in SNC at any time during the previous twelve months. The SNC publication requirement serves at least two important functions: (1) A deterrent effect on industrial users to avoid noncompliance generally, and SNC specifically; and (2) notice to the public of Significant Noncompliance. One result of this approach is that if the POTW publishes the notice for a particular SNC violation after the end of the twelve month period, the publication may not occur close in time to the violation, resulting in a delay between the violation and the notice to the public.

The intent of the proposed alternative procedure is to require website notice of all SNC violations, and reserve

additional newspaper publication for cases where this format is needed for its potentially greater effect. The Sponsors also intended to promote prompt and appropriate assistance for identifying and correcting violations through a unique community-based approach. Pursuant to the Steele County FPA, an Owatonna Peer Review Committee would be established. This Committee would consist of at least two Owatonna Sponsors not connected to the noncompliance event being reviewed and any stakeholders that wish to participate. The Peer Review Committee would investigate all instances of noncompliance by an Owatonna sponsor who is a Participating Industrial User and provide recommendations and assistance to expedite a return to compliance. The Peer Review Committee would make recommendations to the City regarding whether or not publication in a newspaper should occur, in addition to the website publication described below.

All recommendations by the Peer Review Committee would be non-binding on the City, and the City would continue to implement its State-approved Enforcement Response Plan. Under the Steele County FPA, the Sponsors would take steps to conduct public outreach on the information available regarding Significant and other noncompliance by the Sponsors, including a description of the Peer Review Committee and its functions, a Committee contact person and telephone number, and notice of Peer Review Committee meetings. Such outreach would include, but not be limited to, periodic (at least annual) mailings to the identified Steele County XL community stakeholders, and notice in the public library.

Any violation which is not corrected within thirty (30) calendar days or which results in pass through or interference would continue to be published in a newspaper as currently required in Part 403. All SNC violations, whether published in a newspaper or not, would be published as soon as is practicable on the MPCA web site. The website would contain an explanation of how SNC is determined. A contact name and phone number for information regarding all other violations would also be listed on the MPCA website.

2. What Are the Environmental Benefits of the Project?

This XLC project is expected to achieve superior environmental performance beyond that which is achieved under the current CWA regulatory system by encouraging the sponsors to work together in a coordinated manner to efficiently reduce their discharges to the OWWTF. As has been described, the Owatonna sponsors who are Participating Industrial Users have committed to 20% discharge reduction goals for nickel, chromium, copper, and zinc. Although not receiving regulatory flexibility under today's proposal, Elf Atochem has committed to analogous discharge reduction goals for BOD, TSS, and TKN to the BPWWTF. The Participating Industrial Users have additionally committed to a goal of at least a 10% reduction in water usage.

Besides the direct environmental benefits of these reductions, the sponsors have agreed to conduct an Environmental Management System (EMS) assessment within eighteen months of the effective date of the project. In the first year of the project, the Sponsors commit to arrange and participate in training for the development of the EMS. The Sponsors will utilize the information from the EMS assessment to reach the discharge reduction goals as well as to examine their facilities for other possible environmental improvements. The sponsors have agreed to report to the EPA and the MPCA the results of the assessment, and the suggestions which have been adopted by each facility. Additionally, the City has identified storm water infiltration into the collection system during wet weather events as a major problem. The Owatonna sponsors have agreed to work with the City to help alleviate this problem through the development of educational materials which will be distributed to sponsor employees as well as to the community at large. The Owatonna Sponsors have also committed in the draft FPA to develop a plan to minimize storm water infiltration into the sewer system at each participating facility.

One unique aspect of this pilot project is the desire of the sponsor facilities to work together to reach common goals. It is hoped that this cooperation will go beyond the specific goals of this project and result in presently unforseen environmental benefits.

3. What Are the Economic Benefits and Paperwork Reduction Deriving From the Project?

This XLC Project will encourage the sponsors to reduce water consumption at their facilities. This may result in reduced water costs for the facilities, without diminishing the level of environmental protection. Assuming the sponsors discharge lower levels of pollutants to the OWWTF and the BPWWTF, these POTWs may benefit from lower treatment costs. To the extent monitoring and reporting frequencies are reduced under this project, reduced expenditures may result. The EMS assessments may identify further environmental and economic benefits.

4. Stakeholder Involvement

Stakeholder involvement and participation is vital to the success of the Steele County XLC project. The participants have worked through a Community Advisory Committee, established by the Steele County Project Sponsors, to ensure that the general public has had an opportunity to be involved throughout the development of this project. The participants will continue to work to foster full and open communication between the general public and the project sponsors.

In addition, the Peer Review Committee will continue to provide opportunities for input from the community on important compliance issues. For example, if a sponsor is in noncompliance, the Peer Review Committee would provide input to bring the sponsor back into compliance. Sponsors would continue outreach work with all stakeholders using the strategies and tactics contained in their Proposed Stakeholder Involvement Plan (June 1999). MPCA, the Steele County Sponsors, Owatonna, Blooming Prairie, and EPA have been involved in the development of this project, and support it. From the beginning of the Steele County XLC process, there has been a high priority on providing opportunity for diverse stakeholder input and review. Public meetings were held in the City of Owatonna on June 9, September 23, and October 7, 1999.

5. What Is the Project Duration and Completion Date?

As with all XL projects testing alternative environmental protection strategies, the term of the Steele County Community XL project is one of limited duration. The duration of the regulatory relief provided by this rule is anticipated to be five (5) years from [PUBLICATION DATE OF FINAL RULE] or until [DATE FIVE YEARS FROM THE PUBLICATION DATE OF FINAL RULE.] However, the project may be terminated or suspended at any time for failure to comply with any of the requirements of the rule. If the parties renew the Steele County Community XL Final Project Agreement beyond its initial five year period, then it may be necessary to extend this site-

specific rule for an additional period of time.

6. How Will EPA Ensure That Only Appropriate Sponsors Continue To Receive Flexibility Under This Proposal?

If EPA determines that it is appropriate to terminate one or more Sponsors, who are Participating Industrial Users, participation in this Project so that they will no longer be eligible to receive the regulatory flexibility provided in today's proposed rule, EPA will coordinate with the POTW and State to make the necessary changes to the Participating Industrial User's permit. EPA retains its enforcement authority under the CWA to enforce Pretreatment Standards whether or not the POTW or State make such changes to the Participating Industrial User's permit.

7. How May the Project Be Terminated?

When the State modifies Owatonna's NPDES permit to incorporate the flexibility in today's rule, it will include a reopener provision enabling the State to eliminate this flexibility. This reopener provision would be utilized if the Project is terminated. In the event of early project termination, EPA will eliminate the provisions of proposed section 403.19 in advance of its [DATE FIVE YEARS FROM PUBLICATION DATE OF FINAL RULE] expiration date.

## III. Rule Description

*A. Clean Water Act Requirements, Pretreatment Streamlining Proposal and Summary of Regulatory Requirements for the Steele County XL Project*

Equivalent Mass Limits for Concentration Limits (40 CFR 403.19(b))

1. *Existing Requirements* (40 CFR 403.6(c)). National categorical Pretreatment Standards establish limits on pollutants discharged to POTWs by facilities in specific industrial categories. The standards establish pollutant limitations in different ways for different categories. EPA has established categorical Pretreatment Standards that are: (1) Concentration-based standards that are implemented directly as concentration limits; (2) mass limits based on production rates; (3) both concentration-based and production-based limits; and (4) mass limits based on a concentration standard multiplied by a facility's process wastewater flow. The current regulations do not allow a mass limit to substitute for a concentration limit when the applicable standard is expressed in terms of concentration.

While 40 CFR 403.6(d) allows the Control Authority to develop equivalent mass limits for concentration-based standards in order to prevent dilution, the equivalent limit applies in addition to the concentration limit. Today's rule would allow a Participating Industrial User who qualifies for flexibility under the rule to demonstrate compliance with the categorical Pretreatment Standard by demonstrating compliance with an equivalent mass-based limit alone.

2. *The Pretreatment Streamlining Proposal.* In its proposed rule entitled Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution (64 FR 39564, July 22, 1999) (Pretreatment Streamlining Proposal), EPA proposed to allow Control Authorities to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards in cases where an industrial user has installed model treatment technology or a treatment technology that yields optimum removal efficiencies, and the Industrial User is employing water conservation methods and technologies that substantially reduce water use. The Agency, however, solicited comments on whether mass limits would be appropriate in other situations. EPA proposed that 40 CFR 403.6(c) be revised to clarify that equivalent mass limits may be authorized by the Control Authority in lieu of promulgated concentration-based limits for industrial users. The Control Authority would be required to document how the mass limits were derived and make this information publicly available.

The July 22, 1999, proposed rule also specifically referenced the Steele County XL Community Project and indicated that, if this project was ready to proceed before EPA finalized the complete Pretreatment Streamlining proposal, EPA may promulgate, based on that proposal and comments received, a separate site-specific rule to allow the industries involved in the Steele County XLC project to use, at the discretion of the Control Authority, the change proposed for 40 CFR 403.6(c).

3. *Today's Proposal.* To facilitate water use reduction by industries involved in the Steele County XLC Project, EPA is proposing to allow the City of Owatonna, which is the Control Authority for the Owatonna sponsor industries, the Participating Industrial Users, to set equivalent mass limits as an alternative to concentration limits to meet concentration-based categorical Pretreatment Standards. Mass limits would be established by multiplying the five year, long term average process flows of the sponsors (or a shorter period if production has significantly increased or decreased during the five year period) by the concentration-based categorical standards. In general, flows used to establish mass-based limits must be appropriate in relation to current production or known future production, and will be determined based on consultation between the industry and the City of Owatonna. EPA's Guidance Manual for the Use of Production-Based Standards and the Combined Wastestream Formula (September 1985) provides additional guidance on establishing appropriate long-term average flows. In return for this flexibility, the sponsor industries, the Participating Industrial Users, are committing as a group to reduce water usage by 10 percent over the initial five year project period. In this site-specific rule EPA is not conditioning the availability of mass-based limits on the use of water conservation methods and technologies as it would in the Pretreatment Streamlining Rule. EPA is interested in determining whether providing mass limits prior to full adoption of water conservation practices will encourage more widespread adoption of such practices pursuant to the commitment described above.

In addition, this rule would not require that Participating Industrial Users utilize model treatment technologies that serve as the basis for the applicable Pretreatment Standards. Instead, EPA is interested in determining whether or not it would be sufficient to prevent facilities from complying with the applicable Standards, in the event of production decreases, by requiring that the facility maintain at least the same level of treatment as at the time an equivalent mass limit is established. To ensure the continued appropriateness of the specific mass limits, the Participating Industrial Users would also be required to notify the City in the event production rates are expected to vary by more than 20 percent from the previous year's average. Upon notification, the City will reassess the appropriateness of the mass limit.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise IU permits issued to Participating Industrial Users to enable it to establish alternative mass limits. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes proposed today.

Sampling for Pollutants Not Present (40 CFR 403.19(c))

1. *Existing Requirements* (40 CFR 403.12(e), 403.8(f)(2)(v)). Currently, 40 CFR 403.12(e)(1) requires industrial users subject to categorical Pretreatment Standards to submit reports to the Control Authority at least twice a year, indicating the nature and concentration of all pollutants in their effluent that are limited by the standards. 40 CFR 403.8(f)(2)(v) requires Control Authorities to sample these industrial users at least annually. Sampling is currently required for all pollutants limited by a categorical Pretreatment Standard even if certain pollutants regulated by the standard are not reasonably expected to be present.

2. *The Pretreatment Streamlining Proposal.* The July 22, 1999 Pretreatment Streamlining proposal would authorize a Control Authority to allow an industrial user subject to categorical Pretreatment Standards to not sample for a pollutant if the pollutant is not expected to be present in its wastestream in a quantity greater than the background level present in its water supply, with no increase in the pollutant due to the regulated process. The Agency also proposed a reduced sampling requirement for the Control Authority, to once per permit term, once it had determined that a pollutant was not expected to be present.

The Pretreatment Streamlining proposal would require the Control Authority's decision to waive sampling to be based upon both sampling and other technical data, such as the raw materials, industrial processes, and potential by-products. EPA did not propose that a specific amount of sampling data be required but solicited comment on that issue.

3. *Today's Proposal.* For purposes of this project, and as specified in Attachment C of the FPA, the City would be authorized to allow a sponsor Participating Industrial User subject to categorical standards to reduce the required sampling to less than twice per year, or to not sample for a pollutant, if it is not expected to be present in its wastestream at levels greater than background levels in its water supply, with no increase in the pollutant due to the regulated process. For such pollutants, the POTW would only be required to conduct sampling and analysis once during the term of the Participating Industrial User's permit. The Participating Industrial User would still be subject to the categorical standards for pollutants determined not to be present, and would be in violation of the limit and would need to resume the required sampling if existing sampling indicates the user has violated the limit.

Consistent with the Streamlining Proposal, for purposes of this project, determinations by the City of Owatonna to either waive or reduce Participating Industrial User sampling to less than twice per year would be based on both sampling and other technical data, such as raw material usage, industrial processes, and potential by-products. Existing data on pollutant concentrations of the local public water supply will be used to characterize background concentrations; where a Participating Industrial User uses an alternative water supply, representative influent sampling would need to be provided. At least three years of Participating Industrial User effluent data would then be compared to the background data in making the determination that a given pollutant is not expected to be present. In addition, the city would need to make its determination based on its knowledge of the raw materials used and the facility's processes and potential by-products, but would not consider capability and efficiency of the user's pretreatment system. Where it believes it is necessary to make a determination, the City may require a Participating Industrial User to provide representative data on its untreated effluent.

Once the POTW determines that one or more pollutants are not expected to be present at a Participating Industrial User, it may modify the Participating Industrial User's permit to reduce or eliminate the monitoring requirements for the pollutant(s). The IU permit would also require the Participating Industrial User to submit, as part of its regular semi-annual monitoring reports, certification that there has been no increase in the pollutant in its wastewater due to its activities. The POTW would sample the Participating Industrial User for all pollutants in the applicable categorical standard at least once during the term of the Participating Industrial User's permit.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise Participating Industrial User permits issued to Sponsor facilities to enable it to eliminate monitoring for pollutants not present. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes proposed today.

Monitoring Frequency Reductions (40 CFR 403.19(e))

1. *Existing Requirements* (40 CFR 403.12(e)). As discussed above, 40 CFR 403.12(e)(1) currently requires industrial users subject to categorical Pretreatment Standards to submit reports to the Control Authority twice a year, or more frequently if required by the Pretreatment Standard or the Control Authority, indicating the nature and concentration of all pollutants in their effluent that are limited by the standards. The City of Owatonna generally requires its significant IUs to monitor and report on a quarterly basis.

2. *Today's Proposal.* Upon initiation of this project, the City would evaluate the recent performance of sponsor Participating Industrial Users, and could reduce monitoring requirements to twice per year for facilities with satisfactory compliance records. After the first metal reduction goal of 20% is met, the City would be authorized, at its discretion, to reduce the self-monitoring frequency of Participating Industrial Users for any regulated pollutant to once per year. EPA believes that this mechanism will provide an incentive for Participating Industrial Users to reduce their contribution of the specified metals. In exercising this discretion, the OWWTF would be required to consider the Participating Industrial User's previous three years of compliance data, and would not reduce monitoring for pollutants where there is a reasonable potential of violating Pretreatment Standards.

If one or more of the Industrial Users in the City of Owatonna, (Crown Cork and Seal Company, Inc.; Cybex International Inc.; Gandy Company, Inc.; Josten's Inc.—Southtown Facility; Mustang Manufacturing Company; SPx Corporation, Power Team Division; SPx Corporation, Service Solutions Division; Truth Hardware Corporation; and Uber Tanning Company), does not become a Participating Industrial User, the loading values specified in today's proposed rule would be adjusted in the final rule based on a 20 percent reduction from the baseline loadings from the final group of Owatonna Participating Industrial Users.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF, and the City will need to revise Participating Industrial User permits issued to Sponsor facilities to reduce monitoring frequencies for regulated pollutants. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes proposed today.

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Significant Noncompliance Criteria (40 CFR 403.19(f))

1. *Existing Requirements* (40 CFR 403.8(f)(2)(vii)). "Significant Noncompliance" (SNC) is defined in 40 CFR 403.8(f)(2)(vii) to include violations that meet one or more of eight criteria. The criteria are: (1) Chronic violations of discharge limits (where 66 percent of all measurements taken during a six-month period exceed the daily maximum limit or the average limit for the same pollutant parameter); (2) technical review criteria (TRC) violations (where 33 percent or more of all measurements for each pollutant parameter taken during a six-month period equal or exceed the product of the daily maximum limit or the average limit multiplied by the applicable TRC (TRC equals 1.4 for BOD, TSS, fats, oil and grease and 1.2 for all other pollutants except pH)); (3) any other violation of a pretreatment effluent limit that the Control Authority determines has caused, alone or in combination with other discharges, interference or pass through; (4) any discharge of a pollutant that has caused imminent endangerment to human health, welfare or to the environment or has resulted in the POTW's exercise of its emergency authority to halt or prevent such a discharge; (5) failure to meet, within 90 days after the schedule date, a compliance schedule milestone contained in a local control mechanism or enforcement order for certain activities; (6) failure to provide required reports within 30 days after the due date; (7) failure to accurately report Noncompliance; and (8) any other violation or group of violations which the Control Authority determines will adversely affect the operation or implementation of the local Pretreatment Program.

On July 24, 1990, EPA modified 40 CFR 403.8(f)(2)(vii) to include the existing definition of SNC (55 FR 30082). The purpose of this modification was to provide some certainty and consistency among POTWs for publishing their lists of industrial users in Noncompliance. Under this provision, POTWs are required to annually publish a list of industrial users in SNC at any time during the previous twelve months. The POTW must publish this list in the largest daily newspaper published in the municipality in which the POTW is located. Independent of this publication requirement, POTWs are required to develop and implement Enforcement Response Plans, which describe the range of enforcement responses they will use in addressing various types of IU Noncompliance. Where an IU is identified as being in SNC, EPA guidance recommends that the POTW respond with some type of formal enforcement action such as an enforceable order ("Guidance For Developing Control Authority Enforcement Response Plans," EPA 832–B–89–102, September 1989).

2. *The Streamlining Proposal.* EPA did not propose to amend the entire provision on SNC, or even seek comment on all of it. Instead, the Agency proposed limited changes and sought comment on a number of options for a few specific provisions. With respect to publication, the primary purposes of which are to notify the public of violations and provide a disincentive for violating, EPA proposed to amend 40 CFR 403.8(f)(2)(vii) to allow publication of the SNC list in any paper of general circulation within the jurisdiction served by the POTW that provides meaningful public notice. EPA also proposed to amend the SNC criteria so that they must only be applied to significant industrial users, and to address more than just daily maximum and monthly average limits. The Agency also sought comments on whether to revise the Technical Review Criteria, whether to revise the SNC criteria for late reports, and whether to codify the rolling quarters approach to determining SNC or adopt some other approach.

3. *Today's Proposal.* Under today's proposed site-specific rule, the City would have the discretion to not publish certain instances of SNC by sponsor Participating Industrial Users in a newspaper. EPA believes that this change would provide faster public notice of SNC and would reserve additional newspaper publication of SNC for cases where this format is needed for its potentially greater effect. The City would continue to be required to provide newspaper publication of any violation which is not corrected within thirty (30) calendar days, or which results in pass through or interference. All SNC violations, whether published in a newspaper or not would be published as soon as is practicable, on the MPCA web site. The web site would contain an explanation of how SNC is determined, as well as a contact name and phone number for information regarding all other violations. The Owatonna Peer Review Committee system contemplated in the Steele County FPA will not be specified expressly in the rule, but rather is a voluntary agreement on the part of the Sponsors.

In addition to EPA's rulemaking action, MPCA will need to issue a revised NPDES permit to the OWWTF. The City will also need to evaluate its sewer use ordinance to determine if revisions are necessary to implement the changes proposed today.

## IV. Additional Information

### *A. How Does This Rule Comply With Executive Order 12866?*

Under Executive Order 12866 (58 FR 51735, October 4, 1993) EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs of the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Because the annualized cost of this proposed rule would be significantly less than $100 million and would not meet any of the other criteria specified in the Executive Order and because this proposed rule affects only nine specific private sector facilities and a single Publically-Owned Treatment Works (POTW), it is not a rule of general applicability or a "significant regulatory action" and therefore not subject to OMB review and Executive Order 12866. Further today's proposed rule does not affect the POTW or the facilities unless they choose on a voluntary basis to participate in the XL project. Finally, OMB has agreed that review of site specific rules under Project XL is not necessary.

Executive Order 12866 also encourages agencies to provide a meaningful public comment period, and suggests that in most cases the comment period should be 60 days. However, for today's action, EPA has chosen a shorter comment period of 21 days. Today's proposed rule affects a total of nine Industrial Users and one publically-owned wastewater treatment facility. These entities were involved in the development of the draft Final Project Agreement which was made available for public comment on December 29,

1999 (64 FR 73047). Additional stakeholder involvement activities have been described in the Stakeholder Involvement discussion of this preamble. In conclusion, considering the very limited, site-specific scope of today's rulemaking and the considerable public involvement in the development of the draft FPA, the EPA considers 21 days to be sufficient in providing a meaningful public comment period for today's action.

*B. Is a Regulatory Flexibility Analysis Required?*

Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et. seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, the statute does not require the agency to prepare a regulatory flexibility analysis. Pursuant to section 605(b), the Administrator certifies that this proposal, if promulgated, will not have a significant economic impact on a substantial number of small entities for the reasons explained below. Consequently, EPA has not prepared a regulatory flexibility analysis.

Small entities include small businesses, small organizations and small governmental jurisdictions. For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small business (based on SBA size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Today's proposed rule amends EPA's General Pretreatment Regulations to modify on a site-specific basis the requirements for POTW pretreatment programs. The rule authorizes the Owatonna, Minnesota Waste Water Treatment Facility, in its discretion, to reduce the required frequency of monitoring for its industrial users. Only one POTW is subject to this rule and grant of the relief authorized by the rule would reduce costs to the Owatonna Wastewater Treatment Facility's industrial users, including any industrial user that is a small business. Under these circumstances, EPA has concluded that the rule will not have a significant economic impact on a substantial number of small entities.

*C. Is an Information Collection Request Required for This Rule Under the Paperwork Reduction Act?*

This action applies to nine companies and a single POTW and therefore requires no information collection activities subject to the Paperwork Reduction Act, and therefore no Information Collection Request (ICR) will be submitted to the Office of Management and Budget (OMB) for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

*D. Does This Rule Trigger the Requirements of the Unfunded Mandates Reform Act?*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this proposed rule is limited to the OWWTF and certain sponsoring industries. This proposed rule would create no federal mandate because EPA is imposing no new enforceable duties. EPA has also determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA. Nevertheless, in developing this proposed rule, EPA worked closely with MPCA and the OWWTF and received meaningful and timely input in the development of this proposed rule.

*E. How Does This Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866. The proposed rule does not impose any new or amended standards for discharged wastewater resulting from treatment by a POTW. With respect to the effects on children, the collection, treatment and disposal of wastewater occurs in a restricted system (e.g., buried sewer lines and fenced

wastewater treatment plants) that children are unlikely to come in contact with on a routine basis. The proposed rule has no identifiable direct impact upon the health and/or safety risks to children and adoption of the proposed regulatory changes would not disproportionately affect children. The proposed rulemaking is thus in compliance with the intent and requirements of the Executive Order.

*F. How Does This Rule Comply With Executive Order 13132 on Federalism?*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements outlined in today's proposed rule will not take effect unless Minnesota chooses to adopt equivalent requirements through revisions to Owatonna's NPDES permit and Owatonna chooses to take the steps to implement the proposed rule and make revisions to any local law and industrial user permits. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did fully coordinate and consult with State and local officials in developing this rule.

*G. How Does This Rule Comply with Executive Order 13084: Consultation and Coordination With Indian Tribal Governments?*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities". Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. There are no communities of Indian tribal governments located in the vicinity of Steele County. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*H. Does This Rule Comply With National Technology Transfer and Advancement Act of 1995 "NTTAA"?*

Section 12(d) of NTTAA, Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary standards. This proposed rulemaking sets equivalent means of expressing the same technical standards, and of determining compliance with those standards. It also uses voluntary goals to achieve pollutant reductions beyond those required by the technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 403**

Environmental protection, Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: May 3, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, part 403, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

1. The authority citation for part 403 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

2. Section 403.19 is added to read as follows:

**§ 403.19 Provisions of specific applicability to the Owatonna Waste Water Treatment Facility.**

(a) For the purposes of this section, the term "Participating Industrial Users" includes the following Industrial Users in the City of Owatonna, Minnesota: Crown Cork and Seal Company, Inc.; Cybex International Inc.; Gandy Company, Inc.; Josten's Inc.—Southtown Facility; Mustang Manufacturing Company; SPx Corporation, Power Team Division; SPx Corporation, Service Solutions Division; Truth Hardware Corporation; and Uber Tanning Company.

(b) For a Participating Industrial User discharging to the Owatonna Waste Water Treatment Facility in Owatonna, Minnesota, when a categorical Pretreatment Standard is expressed in terms of pollutant concentration the City of Owatonna may convert the limit to a mass limit by multiplying the five-year, long-term average process flows of the Participating Industrial User (or a shorter period if production has significantly increased or decreased during the five year period) by the concentration-based categorical standard. Participating Industrial Users must notify the City in the event production rates are expected to vary by

more than 20 percent from a baseline production rate determined by Owatonna when it establishes a Participating Industrial User's initial mass limit. To remain eligible to receive equivalent mass limits the Participating Industrial User must maintain at least the same level of treatment as at the time the equivalent mass limit is established. Upon notification of a revised production rate from a Participating Industrial User, the City will reassess the appropriateness of the mass limit. Owatonna shall reestablish the concentration-based limit if a Participating Industrial User does not maintain at least the same level of treatment as when the equivalent mass limit was established.

(c) If a categorical Participating Industrial User of the Owatonna Waste Water Treatment Facility has demonstrated through sampling and other technical factors, including a comparison of three years of effluent data with background data, that pollutants regulated through categorical Pretreatment Standards, other than 40 CFR part 414, are not expected to be present in quantities greater than the background influent concentration to the industrial process, the City of Owatonna may reduce the sampling frequency specified in § 403.8(f)(2)(v) to once during the term of the categorical Participating Industrial User's permit.

(d) If a Participating Industrial User is discharging to the Owatonna Waste Water Treatment Facility in Owatonna, Minnesota and is subject to a categorical Pretreatment Standard other than one codified at 40 CFR part 414, the City of Owatonna may authorize the Participating Industrial User to forego sampling of a pollutant if the Participating Industrial User has demonstrated through sampling and other technical factors, including a comparison of three years of effluent data with background data, that the pollutant is not expected to be present in quantities greater than the background influent concentration to the industrial process, and the Participating Industrial User certifies on each report, with the following statement, that there has been no increase in the pollutant in its wastestream due to activities of the Participating Industrial User. The following statement is to be included as a comment to the periodic reports required by § 403.12(e):

> Based on my inquiry of the person or persons directly responsible for managing compliance with the pretreatment standard for 40 CFR ____, I certify that, to the best of my knowledge and belief, the raw materials, industrial processes, and potential by-products have not contributed this pollutant to the wastewaters since filing of the last periodic report under 40 CFR 403.12(e).

(e) If the average daily loading from the Participating Industrial Users to the Owatonna Waste Water Treatment Facility is equal to or less than .69 pounds per day of chromium, .28 pounds per day of copper, 1.18 pounds per day of nickel, and 1.11 pounds per day of zinc, Owatonna may authorize a categorical Participating Industrial User to satisfy the reporting requirements of § 403.12(e) with an annual report provided on a date specified by Owatonna, provided that the Participating Industrial User has no reasonable potential to violate a Pretreatment Standard for any pollutant for which reduced monitoring is being allowed, and has not been in Significant Noncompliance within the previous three years.

(f) The Owatonna Waste Water Treatment Facility in Owatonna, Minnesota shall post public notice of all Significant Noncompliance subject to the publication requirement in § 403.8(f)(2)(vii) at the Minnesota Pollution Control Agency website for a period of one year, as soon as practicable upon identifying the violations. In addition, the Owatonna Waste Water Treatment Facility shall post an explanation of how Significant Noncompliance is determined, and a contact name and phone number for information regarding other, non-Significant Noncompliance violations. If a violation is not corrected within thirty (30) calendar days or results in pass through or interference at the Owatonna Waste Water Treatment Facility, publication must also be made in the format specified in § 403.8(f)(2)(vii).

(g) The provisions of this section shall expire on [DATE FIVE YEARS FROM PUBLICATION DATE OF FINAL RULE].

[FR Doc. 00–11433 Filed 5–5–00; 8:45 am]
BILLING CODE 6560–50–P

VOL 65 ISS 89 MY 8 2000 UMI

# Notices

Federal Register
Vol. 65, No. 89
Monday, May 8, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Advisory Committee on Actuarial Examinations; Invitation for Membership on Advisory Committee

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Notice.

**SUMMARY:** The Joint Board for the Enrollment of Actuaries (Joint Board) established under the Employment Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory Committee will expire on November 1, 2000. This notice describes the Advisory Committee and invites applications from those interested in service on it.

**1. General**

To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and must satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries and the American Society of Pension Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to those actuarial organizations as part of their respective examination programs.

**2. Programs**

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations which will enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of such examinations, will review topics appropriately covered in them, and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views on examination content are understood.

**3. Function**

The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly administered examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of the draft questions, the Advisory Committee selects appropriate questions, modifies them as it deems desirable, and then prepares one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions and include them in what is recommended.)

**4. Membership**

The Joint Board will take steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examination extant in the community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations comprise a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. All members of the Advisory Committee will be expected to act in the public interest, that is, to produce examinations which will help ensure a level of competence among those who will be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. The Advisory Committee will meet about four times a year. Advisory Committee members should be prepared to devote from 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for Advisory Committee travels meals and lodging expenses incurred in accordance with applicable government regulations.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director C:AP:DOP, 1111 Constitution Avenue, NW, Washington, DC 20224.

Any questions may be directed to the Joint Board's Executive Director at 202–694–1891.

The deadline for accepting applications is September 5, 2000.

Dated: May 1, 2000.

**Patrick W. McDonough,**

*Executive Director, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 00–11470 Filed 5–5–00; 8:45 am]
BILLING CODE 4830–01–P

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Meeting of the Advisory Committee on Actuarial Examinations

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Notice of Federal Advisory Committee meeting.

**SUMMARY:** The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a meeting of the Advisory Committee on Actuarial Examinations (portions of which will be open to the public) in Washington, DC at the Office of Director of Practice on June 26 and 27, 2000.

**DATES:** Monday, June 26, 2000, from 9 AM to 5 PM, and Tuesday, June 27, 2000, from 8:30 AM to 5 PM.

**ADDRESSES:** The meeting will be held in Suite 4200E, Conference Room, Fourth Floor, Franklin Court Building, 1099 14th Street, NW, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1805.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in Suite 4200E, Conference Room, Fourth Floor, Franklin Court Building, 1099 14th Street, NW, Washington, DC on Monday, June 26, 2000, from 9 AM to 5 PM, and Tuesday, June 27, 2000, from 8:30 AM to 5 PM.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in 29 U.S.C. 1242(a)(1)(B) and to review the May 2000 Joint Board examinations in order to make recommendations relative thereto, including the minimum acceptable pass score. Topics for inclusion on the syllabus for the Joint Board's examination program for the November 2000 pension actuarial examination and the May 2001 basic actuarial examinations will be discussed.

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., that the portions of the meeting dealing with the discussion of questions which may appear on the Joint Board's examinations and review of the May 2000 Joint Board examinations fall within the exceptions to the open meeting requirement set forth in 5 U.S.C. 552b(c)(9)(B), and that the public interest requires that such portions be closed to public participation.

The portion of the meeting dealing with the discussion of the other topics will commence at 1 PM on June 26 and will continue for as long as necessary to complete the discussion, but not beyond 3 PM. Time permitting, after the close of this discussion by Committee members, interested persons may make statements germane to this subject. Persons wishing to make oral statements should must notify the Executive Director in writing prior to the meeting in order to aid in scheduling the time available and must submit the written text, or at a minimum, an outline of comments they propose to make orally. Such comments will be limited to 10 minutes in length. All other persons planning to attend the public session must also notify the Executive Director in writing to obtain building entry. Notifications of intent to make an oral statement or to attend must be faxed, no later than June 19, 2000, to 202–694–1876, Attn: Executive Director. Any interested person also may file a written statement for consideration by the Joint Board and the Committee by sending it to the Executive Director: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director C:AP:DOP, 1111 Constitution Avenue, NW, Washington, DC 20224.

Dated: May 1, 2000.

**Patrick W. McDonough,**

*Executive Director, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 00–11471 Filed 5–5–00; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. FV–00–302]**

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension to a currently approved information collection for Regulations Governing Inspection, Certification and Standards For Fresh Fruits, Vegetables, and Other Products.

**DATES:** Comments on this notice must be received on or before July 7, 2000, to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Donald T. Paradis, Head, Field Operations Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2049-South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Phone: 202–720–2482, FAX: 202–720–0393.

**SUPPLEMENTARY INFORMATION:**

*Title:* Regulations Governing Inspection, Certification and Standards For Fresh Fruits, Vegetables, and Other Products—7 CFR part 51.

*OMB Number:* 0581–0125.

*Expiration Date of Approval:* November 30, 2000.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The Fresh Products Branch provides a nationwide inspection and grading service for fresh fruits, vegetables, and other products to shippers, importers, processors, sellers, buyers and other financially interested parties on a "user-fee" basis. The use of this service is voluntary and is made available only upon request or when specified by some special program or contract. Information is needed to carry out the inspection and grading services. Such information includes: the name and location of the person or company requesting the inspection, the type and location of the product to be inspected, the type of inspection being requested and any information that will identify the product.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .0302205 hours per response.

*Respondents:* Shippers, importers, processors, sellers, buyers and others with a financial interest in lots of fresh fruits, vegetables and other products.

*Estimated Number of Respondents:* 51,800.

*Estimated Number of Responses per Respondent:* 4.09857.

*Estimated Total Annual Burden on Respondents:* $218,144 (6,416 total burden hours × $34.00 per hour).

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Donald T. Paradis, Head, Field Operations Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2049-South Building, 1400 Independence Avenue, SW., Washington, DC 20250, Fax: 202–720–0393. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 1, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–11417 Filed 5–5–00; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—Food Stamp Program Identification Card Requirements

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. This notice announces the intent of the Food and Nutrition Service (FNS) to continue requiring State agencies to issue a Food Stamp Program (FSP) identification (ID) card to each certified household in the Food Stamp Program.

**DATES:** Written comments must be submitted on or before July 7, 2000, to be assured consideration.

**ADDRESSES:** Send comments to Barbara Hallman, Chief, State Administration Branch, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia, 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Daniel Wilusz, (703) 305–2391.

**SUPPLEMENTARY INFORMATION:**

*Title:* Food Stamp Program Identification Card Requirements.

*OMB Number:* 0584–0124.

*Form Number:* None.

*Expiration Date:* October 31, 2000.

*Type of Request:* Extension of a currently approved collection with a reduction in burden hours.

*Abstract:* FSP ID cards are used during recertification and for the issuance of benefits. Specifically, the ID cards will be used by:

- Issuance agents to identify households for monthly issuance;
- Retailers to identify household when benefits are used; and
- Households to provide as proof of eligibility and when being issued monthly allotments.

The issuance of FSP ID cards by State agencies is authorized by section 7 of the Food Stamp Act of 1977 (the Act) (7 U.S.C. 2016). Section 11 of the Act (7 U.S.C. 2020) further specifies that these are to be photographic (photo) ID cards in both large project areas and in those areas identified by the Department as needing photo ID cards to reduce the number of unauthorized issuances.

FSP regulations at 7 CFR 274. 10(a) require that State agencies issue a FSP ID card to each household certified to participate in the FSP. The household must present its ID card as proof of eligibility to receive and use benefits. In addition, 7 CFR 274.10(b) requires State agencies to issue photo ID cards in project areas or portions thereof with more than 100,000 participants, and in smaller areas that have been identified by the Department's Inspector General as needing photo IDs to decrease the number of unauthorized issuances. Project areas where all issuance of benefits are through either direct mail or an electronic benefit transfer system (EBT) are exempt from the photo ID requirement.

FSP regulations require that the photo ID card be a controlled document with a serial number protected by lamination. The fact that it is a controlled document with a serial number ensures integrity in the issuance of new cards. Because the issuance agent is required by 7 CFR 274.10(c)(2)(i) to annotate this serial number on the authorization or issuance document, the State agency can identify the household that received a particular issuance during the reconciliation process. In addition, the photograph is required because it clearly identifies the bearer of the card to the issuance agent or retailer. Lastly, the lamination of the photo ID makes it more difficult to forge or alter the card. The Department believes that all of these features are essential to ensure the integrity of the FSP ID process and the FSP in general.

**Estimated Burden**

We are reducing the estimated burden from 61,480 hours to 20,629 hours to reflect declining FSP participation as well as the growing number of States currently using EBT to issue benefits. Total issuance has decreased over 19 percent from fiscal year 1997 to fiscal year 1999. As a result, fewer ID cards (both regular and photo) need to be issued. In addition, the growth of EBT also lowers the burden by reducing the number of photo ID cards. Photo ID cards are not required in an EBT environment since there are no coupons for households to pick up from issuance agents. EBT has increased from 15 percent of total issuance in fiscal year 1996 to about 71 percent of total issuance in January 2000.

*Affected Public:* State and local government, and food stamp households.

*Estimated Number of Respondents:* 338,535.

*Number of Responses per Respondent:* 12.

*Total Number of Annual Responses:* 4,062,420.

*Estimated Time per Response:* 0.005 hours.

*Estimated Total Annual Burden:* 20,629 hours.

Dated: April 28, 2000.

**Samuel Chambers, Jr.,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 00–11416 Filed 5–5–00; 8:45 am]

BILLING CODE 3410–30–U

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

**[Docket No. 00–016N]**

### Notice of Public Meeting: Revised Action Plan for the Control of *Listeria monocytogenes* for the Prevention of the Foodborne Illness Listeriosis

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice of public meeting; request for comment.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) will hold a public meeting to discuss and receive public comment regarding *Listeria monocytogenes (Lm)*. The purpose of the meeting is to discuss the initiatives the Agency took after its February 1999

public meeting on *Lm* and the Agency's future plans to further protect the public from foodborne illnesses associated with *Lm*. The Agency also invites data and public comment on *Lm*.

**DATE:** The meeting will be held May 15, 2000, from 9 a.m. to 5 p.m. Written comments must be received by June 7, 2000.

**ADDRESSES:** The meeting will be held at the Holiday Inn—Washington, DC on the Hill, 415 New Jersey Avenue, NW., Washington, DC 20001, telephone number is 202–638–1616.

To register for the meeting and to schedule a presentation, contact Mary Harris, FSIS, by telephone (202) 501–7136 or FAX (202) 501–7642. If a sign language interpreter or other special accommodation is necessary, contact Ms. Harris at the above number.

Submit one original and two copies of written comments to: FSIS Docket Clerk, Docket #00–016N, Room 102 Cotton Annex, 300 12th Street, SW., Washington, DC 20250–3700. All comments received in response to this notice will be considered part of the public record and will be available for viewing in the FSIS Docket Room between 8:30 a.m. and 4:30 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Judith Riggins, Associate Deputy Administrator, Office of Policy, Program Development and Evaluation, by telephone (202) 720–2709 or Fax (202) 720–2025.

**SUPPLEMENTARY INFORMATION:** *Listeria monocytogenes (Lm)* is found in soil and water and can contaminate a variety of raw foods, such as uncooked meats and vegetables, as well as foods that become contaminated after processing, such as soft cheeses, and cold cuts. Consumption of food contaminated with *Lm* can cause listeriosis, an uncommon but potentially fatal disease, that can lead to serious and sometimes fatal infections in pregnant women, newborns, the elderly, and persons with weakened immune systems, such as those with a chronic disease, an HIV infection, or who are undergoing chemotherapy treatment.

FSIS considers *Lm* to be an adulterant in ready-to-eat (RTE) meat and poultry products. FSIS has established and enforces a zero tolerance (no detectable level permitted) for this pathogen in RTE products. Since 1989, FSIS has conducted a monitoring program within plants to test for *Lm* in certain ready-to-eat (RTE) products such as hot dogs and luncheon meats. FSIS analyzes approximately 3,500 samples for *Lm* each year. The following product categories are included in the monitoring program: (1) Beef jerkey, (2) roast beef, cooked beef, and cooked corned beef, (3) sliced ham and luncheon meat, (4) small-diameter sausage, (5) large-diameter sausage, (6) cooked, uncured poultry, (7) salads and spreads, and (8) dry and semi-dry fermented sausage.

Out of 3,547 samples of RTE meat and poultry products analyzed in calendar year 1998 through the monitoring program, 90 samples, or approximately 2.5 percent, tested positive for *Lm*. FSIS sampling of just hot dogs from 1993 to 1996 showed that approximately 4.4 percent of the samples were positive for *Lm*. FSIS' monitoring program, implemented before pathogen reduction and HACCP implementation, was intended to encourage industry process control and validation. However, this program was not statistically designed and thus information obtained from it cannot be used to make determinations about *Listeria* contamination on a nationwide basis.

To gather information on *Lm* and listeriosis associated with RTE meat and poultry products, FSIS held a public meeting on February 10, 1999 (64 FR 5629). The Agency held this meeting in response to a large outbreak of listeriosis that occurred in late 1998/early 1999 that was attributed to bacteria in a RTE meat or poultry product and several recalls of *Lm* adulterated meat and poultry products. At this meeting, experts from FSIS, Centers for Disease Control (CDC), and the Food and Drug Administration (FDA), as well as industry groups and consumer groups shared foodborne illness and product contamination statistics on *Lm*, as well as information about on-going research projects and future research needs for *Lm*, testing programs for *Lm*, and educational efforts about *Lm*. At the meeting, FSIS also discussed its zero tolerance policy regarding *Lm* in RTE meat and poultry products.

In May of 1999, FSIS Administrator Tom Billy announced an action plan comprised of a number of initiatives that FSIS was undertaking to reduce the risk of foodborne illness attributed to *Lm*. The action plan for the control of *Lm* was based on the information obtained at the February 1999 public meeting as well as other information obtained by FSIS. The initiatives set forth in the action plan included near-term and long-term activities that involved all programs of the Agency, as well as interagency activities. Some of these activities included issuing a **Federal Register** notice (64 FR 28351) advising manufacturers of RTE meat and poultry products of the need to reassess their HACCP plans to ensure that the plans were adequately addressing *Lm*, developing consumer education material targeted to reach individuals at an increased risk for developing listeriosis, developing guidance material for the regulated industry on practices that have been used successfully by meat and poultry establishments to prevent the occurrence of *Lm* in RTE products, conducting a study on the post production growth of *Lm*, and working with FDA to conduct a risk assessment for *Lm*.

FSIS has now revised its action plan for the control of *Lm* based on its analysis of the comments and data received in response to the February 1999 public meeting, recommendations of the National Advisory Committee on Meat and Poultry Inspection and the National Advisory Committee on Microbiological Criteria for Foods, a petition received in January 2000 from the Center for Science in the Public Interest (CSPI), and the work of an interdisciplinary Agency working group.

To update the public on the initiatives undertaken and to provide the public with FSIS' revised action plan for the control of Lm, FSIS will hold a public meeting on May 15, 2000. FSIS requests additional data on Lm and public comment on the revised action plan. Some of the topics to be discussed at the May 15 meeting are:

- The public health impact of foodborne Lm contamination;
- The results of FSIS's review of what establishments did in response to its May 1999 **Federal Register** notice on reassessment of HACCP plans to ensure that they adequately address *Lm*;
- The revised instructions to be issued to field employees regarding the testing and sampling of RTE products;
- The petition received by FSIS from CSPI, (copies are available in the FSIS Docket Clerk's office, See **ADDRESSES**);
- Consumer education about *Lm*; and
- Research on *Lm*.

The agenda for the public meeting will be available on the FSIS homepage, www.usda.fsis.gov and at the meeting.

Representatives from government, industry groups, consumer groups, and academia will lead the discussions. There will be time at the end of the meeting for general public comment. However, attendees must sign-up in advance to speak during the public comment session. The sign-up sheet will be at the meeting. Time allotted for comment will be approximately 5 minutes for each participant, but will depend on the number of people participating.

**Additional Public Notification**

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/ stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: May 3, 2000.

**Thomas J. Billy,**

*Administrator.*

[FR Doc. 00–11419 Filed 5–5–00; 8:45 am]

**BILLING CODE 3410–DM–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Revised Land and Resource Management Plan for the White Mountain National Forest; Carroll, Coos, and Grafton Counties, New Hampshire and Oxford County, Maine

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of extension of public comment period on notice of intent for fourteen days.

**SUMMARY:** The Forest Service published a White Mountain National Forest Land and Resource Management Plan in the **Federal Register** on March 9, 2000 (Vol. 65, No. 47, FR 12505, Mar. 9, 2000). The Forest Service is extending the public comment period on that notice of Intent. A 14 day extension of the public comment period was given in response to comments from the public requesting additional time to fully analyze the issues and prepare comprehensive comments. The fourteen (14) day extensions starts immediately after the initial public comment period that ends May 9, 2000. The fourteen (14) day extension of the public comment period starts May 10, 2000 and ends May 23, 2000.

Additional information on the Notice of Intent can be found in the notice published in the **Federal Register** referenced above.

**DATES:** Comments on the Notice of Intent should be received in writing by May 23, 2000.

**ADDRESSES:** Send written comments to: Forest Planning, White Mountain National Forest, 719 N. Main St., Laconia, NH 03246. Or direct electronic mail to: mwoodbury@fs.fed.us.

**FOR FURTHER INFORMATION CONTACT:** Bryan Armel, Forest Planner, at (603) 528–8788. TDD (603) 528–8722. E-mail address: barmel@fs.fed.us.

**SUPPLEMENTARY INFORMATION:** The responsible official is Robert T. Jacobs, Regional Forester, Eastern Region, 210 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.

Dated: May 2, 2000.

**Donna L. Hepp,**

*Forest Supervisor, White Mountain National Forest.*

[FR Doc. 00–11381 Filed 5–5–00; 8:45 am]

**BILLING CODE 3410–11–M**

## DEPARTMENT OF AGRICULTURE

### Rural Housing Service

### Housing Demonstration Program

**AGENCY:** Rural Housing Service, United States Department of Agriculture (USDA).

**ACTION:** Notice of Funding for the Rural Housing Demonstration Program.

**SUMMARY:** The Rural Housing Service (RHS) announces the availability of housing funds for Fiscal Year (FY) 2000 for the Rural Housing Demonstration Program. For FY 2000, RHS has set aside $3 million for the Innovative Demonstration Initiatives and is soliciting proposals for a Housing Demonstration program under section 506(b) of title V of the Housing Act of 1949. Under section 506(b), RHS may provide loans for innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies. The intended effect is to increase the availability of affordable Rural Housing (RH) for low-income families through innovative designs and systems.

**EFFECTIVE DATE:** May 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Gloria L. Denson, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, STOP 0783, 1400 Independence Ave. SW, Washington, DC 20250–0783, Telephone (202) 720–1474. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** Under current standards, regulations, and policies, some low-income rural families lack sufficient income to qualify for loans to obtain adequate housing. Section 506(b) of title V of the Housing Act of 1949, authorizes a housing demonstration program that could result in housing that these families can afford. The Congress of the United States made two conditions: (1) That the health and safety of the population of the areas in which the demonstrations are carried out will not be adversely affected, and (2) that the aggregate expenditures for the demonstration may not exceed $10 million in any Fiscal Year.

Rural Development State Directors are authorized in FY 2000 to accept proposed demonstration concept proposals from nonprofit and for profit organizations.

The objective of the demonstration programs is to test new approaches to offering housing under the statutory authority granted to the Secretary of Agriculture. Rural Development will be required to review each application for completeness and accuracy; however, some demonstration programs may or may not be consistent with some of the provisions of our 7 CFR part 3550-Direct Single Family Housing Loans and Grants regulation. Under section 506(b) of the Housing Act of 1949, the Agency may provide loans for innovative housing design units, and systems which do not meet existing published standards, rules, regulations, or policies.

An application will be considered on a first come, first served basis based on the date a completed application is submitted. An application is considered complete only if the "Application for Approval of Housing Innovation" is complete in content, contains information related to the evaluation criteria and all applicable additional information required by this form has been provided. All application packages must be in accordance with the technical management requirements and address the evaluation criteria in the Proposal Content and Evaluation Criteria. The application, Proposal Content and Evaluation Criteria, and further information may be obtained from the Rural Development State Office in your area. (See the State Office

address list at the end of this notice or access the website at http://www.rurdev.usda.gov/recd_map.html. Organizations that submit incomplete applications will be sent a letter within 15 working days after submission of the incomplete package, advising of additional information needed in the proposal for continued processing.

The following evaluation factors will not be weighted and are non-competitive. RHS, in its analysis of the proposals received, will give primary consideration to those proposals which demonstrate the greatest potential for carrying out the objectives of this demonstration effort in accordance with the following criteria:

**A. Housing Unit Concept**

1. A proposal must be well beyond the "idea" state. Sufficient testing must have been completed to demonstrate its feasibility. The proposal must be judged ready for full scale field testing in a rural setting.

2. Ability of the housing unit to provide for the protection of life, property, and for the safety and welfare of the consumer, general public and occupants through the design, construction, quality of materials, use, and maintenance of the housing unit.

3. Flexibility of the housing units in relation to varying types of housing and varying site considerations.

4. Flexibility of the housing unit concept, insofar as it provides the ability to adjust or modify unit size and arrangements, either during design or after construction.

5. Efficiency in the use of materials and labor, with respect to cost in place, the conservation of materials, and the effective use of labor skills. Potential for Self-Help Technical Assistance Grant applications.

6. Selection of materials for durability and ease of maintenance.

7. Concepts for the effective use of land and development.

**B. Organization Capabilities**

1. The experience and "know-how" of the proposed organization or individual to implement construction of the housing unit concept in relation to the requirements of RHS's housing programs.

2. The management structure and organization of the proposer.

3. The quality and diversity of management and professional talent proposed as "key individuals."

4. The management plan of how this effort will be conducted.

**C. Cost and Price Analysis**

1. The level of costs which are proposed, as they may compare with other proposals and be considered realistic for the efforts planned. Also, the quantity and level of detail in the information supplied.

2. Projected cost of "housing in place," with particular reference to housing for very low and low-income families.

An acceptable proposal will be sent by the State Director to the National Office for concurrence by the RHS Administrator before the State Director may approve it. If the proposal is not selected, the State Director will so notify the applicant in writing, giving specific reasons why the proposal was not selected. The funds for the RH Demonstration program are section 502 single family housing funds and are available to housing applicants who wish to purchase an approved demonstration dwelling. Funds cannot be reserved or guaranteed under the demonstration housing concept. There is no guarantee that a market exists for demonstration dwellings, and this does not ensure that an eligible loan applicant will be available for such a section 502 RH dwelling. If there is no available RHS eligible loan applicant, the RH demonstration program applicant will have to advance funds to complete the construction of the demonstration housing, with the risk that there may be no RHS applicant from which the builder will recover his or her development and construction costs.

This program or activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons contained in 7 CFR part 3015, subpart V and RD Instruction 1940–J, "Intergovernmental Review of Rural Development Programs and Activities," this program or activity is excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

All interested parties must make a written request for a proposal package. The request must be made to the State Director in the State in which the proposal will be submitted; RHS will not be liable for any expenses incurred by respondents in the development and submission of applications.

The reporting requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under Control Number 0575–0114.

Date: April 28, 2000.

**David J. Villano,**

*Acting Administrator, Rural Housing Service.*

The following is an address list of Rural Development State Offices across the nation:

**Alabama**

Sterling Centre, 4121 Carmichael Road, Suite 601, Montgomery, AL 36106–3683, (334) 279–3400

**Alaska**

Suite 201, 800 W. Evergreen, Palmer, AK 99645–6539, (907) 745–2176

**Arizona**

Phoenix Corporate Center, 3003 N. Central Avenue, Suite 900, Phoenix, AZ 85012–2906, (602) 280–8700

**Arkansas**

Room 3416, 700 W. Capitol, Little Rock, AR 72201–3225, (501) 301–3200

**California**

Agency 4169, 430 G Street, Davis, CA 95616–4169, (530) 792–5800

**Colorado**

Room E100, 655 Parfet Street, Lakewood, CO 80215, (303) 236–2801

**Delaware and Maryland**

PO Box 400, 4607 S. DuPont Highway, Camden, DE 19934–9998, (302) 697–4300

**Florida and Virgin Islands**

PO Box 147010, 4440 NW 25th Place, Gainesville, FL 32614–7010, (352) 338–3400

**Georgia**

Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA, 30601–2768, (706) 546–2162

**Hawaii**

Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–3000

**Idaho**

Suite A1, 9173 W. Barnes Drive, Boise, ID 83709, (208) 378–5600

**Illinois**

Illini Plaza, Suite 103, 1817 S. Neil Street, Champaign, IL 61820, (217) 398–5235, (217) 398–5412 for automated answer

**Indiana**

5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100

**Iowa**

873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663

**Kansas**

PO Box 4653, 1200 SW Executive Drive, Topeka, KS 66604, (785) 271–2700

**Kentucky**

Suite 200, 771 Corporate Drive, Lexington, KY 40503, (606) 224–7300

**Louisiana**

3727 Government Street, Alexandria, LA 71302, (318) 473–7920

**Maine**

PO Box 405, 444 Stillwater Avenue, Suite 2, Bangor, ME 04402–0405, (207) 990–9106

**Massachusetts, Connecticut, and Rhode Island**

451 West Street, Amherst, MA 01002, (413) 253–4300

**Michigan**

Suite 200, 3001 Coolidge Road, East Lansing, MI 48823, (517) 324–5100

**Minnesota**

410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800

**Mississippi**

Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 956–4316

**Missouri**

Parkade Center, Suite 235, 601 Business Loop 70 West, Columbia, MO 65203, (573) 876–0976

**Montana**

Unit 1, Suite B, 900 Technology Boulevard, Bozeman, MT 59715, (406) 585–2580

**Nebraska**

Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5551

**Nevada**

1390 S. Curry Street, Carson City, NV 89703–9910, (775) 887–1222

**New Jersey**

Tarnsfield Plaza, Suite 22, 790 Woodlane Road, Mt. Holly, NJ 08060, (609) 265–3600

**New Mexico**

Room 255, 6200 Jefferson Street, NE Albuquerque, NM 87109, (505) 761–4950

**New York**

The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400

**North Carolina**

Suite 260, 4405 Bland Road, Raleigh, NC 27609, (919) 873–2000

**North Dakota**

Federal Building, Room 208, 220 East Rooser, PO Box 1737, Bismarck, ND 58502–1737, (701) 250–4781

**Ohio**

Federal Building, Room 507, 200 N. High Street, Columbus, OH 43215–2477, (614) 255–2400

**Oklahoma**

Suite 108, 100 USDA, Stillwater, OK 74074–2654, (405) 742–1000

**Oregon**

Suite 1410, 101 SW Main, Portland, OR 97204–3222, (503) 414–3300

**Pennsylvania**

Suite 330, One Credit Union Place, Harrisburg, PA 17110–2996, (717) 237–2299

**Puerto Rico**

PO Box 366106, San Juan, PR 00936–6101, (787) 766–5095

**South Carolina**

Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163

**South Dakota**

Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57360, (605) 352–1100

**Tennessee**

Suite 300, 3322 W. End Avenue, Nashville, TN 37203–1084, (615) 783–1300

**Texas**

Federal Building, Suite 102, 101 S. Main, Temple, TX 76501, (254) 742–9700

**Utah**

Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147, (801) 524–4320

**Vermont and New Hampshire**

City Center, 3rd Floor 89 Main Street, Montpelier, VT 05602, (802) 828–6000

**Virginia**

Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229 (804) 287–1550

**Washington**

Suite B, 1835 Black Lake Blvd., SW, Olympia, WA 98512–5715, (360) 704–7740

**West Virginia**

Federal Building, Room 320, 75 High Street, Morgantown, WV 26505–7500, (304) 291–4791

**Wisconsin**

4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600

**Wyoming**

Federal Building, Room 1005, 100 East B, PO Box 820, Casper, WY 82602, (307) 261–6300

[FR Doc. 00–11373 Filed 5–5–00; 8:45 am]

BILLING CODE 3410–XV–U

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–484–801]**

### Electrolytic Manganese Dioxide From Greece: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** Based on a request by a Greek producer, Tosoh Hellas A.I.C., the Department of Commerce is conducting an administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece.

We have preliminarily determined that sales by Tosoh Hellas A.I.C. have not been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to liquidate without regard to antidumping duties all entries of EMD from Tosoh Hellas A.I.C. during the period of review.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** May 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Hermes Pinilla or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

**SUPPLEMENTARY INFORMATION:**

*The Applicable Statute and Regulations*

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

*Background*

On April 17, 1989, the Department published in the **Federal Register** (54 FR 15243) the antidumping duty order on electrolytic manganese dioxide (EMD) from Greece. Tosoh Hellas A.I.C. (Tosoh) requested a review on April 29, 1999. In response to this request, the Department published a notice of initiation of administrative review on May 20, 1999, in accordance with 19 CFR 351.213(b) (64 FR 28973). The Department is conducting this administrative review in accordance with section 751 of the Act.

*Scope of Review*

Imports covered by this review are shipments of EMD from Greece. EMD is

manganese dioxide ($MnO_2$) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip, or plate, and two grades, alkaline and zinc-chloride. EMD in all three forms and both grades is included in the scope of the order. This merchandise is currently classifiable under item number 2820.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS number is provided for convenience and customs purposes. It is not determinative of the products subject to the order. The written product description remains dispositive.

*Period of Review*

The period of review (POR) is April 1, 1998, through March 31, 1999.

*Product Comparability and Home Market Viability*

In a July 20, 1999, submission, and in several subsequent submissions from Kerr-McGee Chemical LLC and Chemetals Inc. (collectively "the petitioners"), the petitioners allege three points concerning the selection of comparable merchandise: (1) The zinc-chloride-grade EMD sold in the home market is not a foreign like product that can be compared to the alkaline-grade EMD sold to the United States under the definition set forth in section 771(16)(B) of the Act; (2) the current review presents an unusual situation in which the home market sales of EMD, though accounting for more than five percent of sales to the United States, should not be considered a viable comparison market; and (3) a particular market situation exists which warrants rejection of home market sales for comparison purposes.

We have preliminarily determined the following: (1) The subject merchandise sold in Greece is a foreign like product as defined under section 771(16)(B) of the Act; (2) the home market is viable within the meaning of section 773(a)(1)(C)(ii) of the Act; and (3) a particular market situation does not exist within the meaning of section 773(a)(1)(C)(iii) of the Act.

With respect to the first point, we examined whether the EMD grade sold in the home market met the standards of section 771(16)(B) of the Act. Specifically, pursuant to section 771(16)(B) of the Act, we evaluated the following criteria: (1) Whether the foreign like product was produced in the same country and by the same person as the subject merchandise; (2) whether the merchandise in question is like in component material or materials and in the purposes for which used; and (3) whether the two grades (*i.e.*, zinc-chloride and alkaline) of EMD are approximately equal in commercial value.

Based on the information provided on the record we found that the merchandise in question is produced in the same country and by the same person as the subject merchandise. In addition, we found that both the U.S.—and home market—sold grades of EMD are produced using the same component materials and both grades are used as cathode material in the production of dry-cell batteries.

With regard to the commercial-value criterion, we found that the products satisfy our twenty-percent difference-in-merchandise test which we generally apply to evaluate the commercial-value criterion of the statute. *See Import Administrative Policy Bulletin 92.2 "Difference in Merchandise, 20 percent rule"* (July 29, 1992); *Certain Forged Stainless Steel Flanges From India: Final Results of Antidumping Duties Administrative Review*, 61 FR 51263, 51265 (October 1, 1996); *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews*, 63 FR 63860, 63874 (November 17, 1998). In addition, information the respondent submitted on March 13, 2000, shows that the two products have less than a two-percent difference in price when sold to a particular third-country market, the respondent's only market in which both zinc-chloride-grade and alkaline-grade EMD are sold. This less than two-percent difference in price, when considered in conjunction with a difference-in-merchandise adjustment of less than 20 percent, provides an indication that the grades are approximately equal in commercial value. Therefore, we preliminarily determine that the two products are "approximately equal in commercial value" as set forth in section 771(16)(B)(iii) of the Act.

Based on the reasons stated above, we determined that zinc-chloride-grade EMD is a foreign like product as defined under section 771(16)(B) of the Act. For a detailed explanation of our analysis, see the Decision Memorandum from Office Director to Deputy Assistant Secretary dated May 1, 2000 ("Decision Memo").

With respect to the petitioners' second point, we analyzed whether the current review presents an unusual situation in which home market sales of EMD constituting more than five percent of sales to the United States should not be considered viable. Based on our interpretation of the statute, we have preliminarily found that in this case there is no unusual situation which makes our application of our normal statutory five-percent viability test inappropriate. Therefore, since the aggregate quantity of the respondent's home market sales is more than five-percent of the aggregate quantity of the respondent's U.S. sales, we find that it is viable in accordance with our statute and regulations. For a detailed explanation of our analysis, see the Decision Memo.

Finally, with respect to the petitioners' final point, that a particular market situation exists, the petitioners assert in their July 20, 1999, submission, that there are a number of elements which do not permit a proper price-to-price comparison in this review period. According to the petitioners, these elements are as follows: (1) The component materials used in the home market product are unlike the component materials in the U.S. product; (2) the two types of EMD differ substantially in the purposes for which they are used; (3) the two types of EMD differ substantially in commercial value; and (4) Tosoh's home market sales are incidental or insignificant to Tosoh. The petitioners argue that all of these factors create a particular market situation that prevents the Department from making an appropriate price-to-price comparison.

The Act states that there may be "particular market situations" in a foreign market that do not permit a proper comparison with EP or CEP sales. Although the Act does not identify these "particular market situations," several are identified in the Statement of Administrative Action (SAA), H. Doc.103–316, vol. 1, 103d Cong., 2d sess., 822 (1994). These include: (1) Where a single sale in a foreign market constitutes five percent of sales to the United States; (2) where there are such extensive government controls over pricing in a foreign market that prices in that market cannot be considered competitively set; and (3) where there are differing patterns of demand in the United States and a foreign market. Finally, 19 CFR 351.404(c)(2) permits the Department to decline to calculate normal value on the basis of prices in a viable home market if parties establish to the Department's satisfaction that certain situations in the viable market would not permit a proper comparison of like product prices in that market with EP or CEP sales. See SAA at 822.

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We have found no evidence of a particular market situation, within the meaning of section 773(a)(1)(C)(iii) of the Act, which would prevent a proper price comparison and which warrants a departure from the normal five-percent viability test. For example, there is no evidence to suggest that a single sale in the home market constitutes five percent of sales to the United States, that there are extensive government controls over pricing in the Greek home market, or that there are differing patterns of demand for EMD in the United States and in the home market. For a detailed explanation of our analysis, see our Decision Memo.

Because the criteria on which the petitioners rely in their particular market-situation argument reflect the definition of a foreign like product in sections 771(16)(B) (ii) and (iii) of the Act, we examined whether the SAA mentions any of the criteria as determinants of a particular market situation. Based on our analysis of the SAA, we found that the SAA does not mention any of the criteria on which the petitioners rely in their particular-market-situation argument as a measure for finding that a particular market situation exists. For a detailed explanation of our analysis, see the Decision Memo.

*Constructed Export Price*

For the price to the United States, we used constructed export price (CEP) as defined in section 772(b) of the Act. We calculated CEP based on the packed, delivered prices to unaffiliated purchasers in the United States. We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the SAA (at 823–824), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including direct selling expenses and indirect selling expenses.

With respect to CEP profit, section 772(d)(3) of the Act requires the Department, in determining CEP, to identify and deduct from the starting price in the U.S. market an amount for profit allocable to selling and further-manufacturing activities in the United States. Section 772(f) of the Act provides the rule for determining the amount of CEP profit to deduct from the CEP starting price. In this review, since we do not have any cost information to calculate CEP profit, we determined that the best available sources of profit information are the 1998 financial statements which the respondent and its U.S. affiliate submitted in response to section A of our questionnaire. See Analysis Memorandum dated April 28, 2000 ("Analysis Memo").

Finally, in accordance with section 772(d)(1)(B) of the Act, we adjusted CEP to reflect a rebate which Tosoh is contractually obligated to make to its customer based on the relationship of its price, after all previously described adjustments, and normal value. For further details see Analysis Memo.

*Normal Value*

In calculating normal value, as we stated above, we determined that the quantity of foreign like product sold by the respondent in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1) of the Act because the quantity of sales in the home market was greater than five percent of the sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the price at which the foreign like product was sold for consumption in the exporting country. See Analysis Memo.

We calculated monthly, weighted-average normal values. Because identical merchandise was not sold during the relevant contemporaneous period, we compared U.S. sales to sales of the most similar foreign like product in accordance with section 771(16)(B) of the Act.

Home market prices were based on packed, free-on-truck prices to the unaffiliated purchasers in the home market. Where applicable, we made adjustments for differences in packing in accordance with section 773(a)(6)(A) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, and for differences in circumstances of sale (COS) in accordance with section 773 (a)(6)(C)(iii) of the Act and 19 CFR 351.410. With respect to our comparisons to CEP, we made COS adjustments by deducting home-market direct selling expenses from normal value. We also made adjustments for home-market indirect selling expenses to offset U.S. indirect selling expenses.

*Level of Trade*

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales in accordance with section 773(a)(1)(B) of the Act. The normal value level of trade is that of the starting-price sales in the home market. See 19 CFR 351.412(c)(iii).

To determine whether home market sales were at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Tosoh reported that there was only one channel of distribution in the home market, and we conclude that there is only one level of trade. Because all of Tosoh's U.S. sales were CEP sales, we identified the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act, pursuant to 19 CFR 351.412(c)(ii). Based on our analysis, we considered CEP sales to constitute a single level of trade. Based on the record, we found that there were significant differences between the selling activities associated with the home market level of trade and those associated with the CEP level of trade. Therefore, we determined that CEP sales were at a different level of trade from the home market sales. Consequently, we could not match U.S. sales to sales at the same level of trade in the home market. Moreover, data necessary to determine a level-of-trade adjustment was not available. Therefore, because home market sales were made at a more advanced stage of distribution than that of the CEP level, we made a CEP-offset adjustment when comparing CEP and home market sales in accordance with section 773(a)(7)(B) of the Act. For a more detailed description of our analysis, see the Level-of-Trade section of our Analysis Memo.

*Preliminary Results of Review*

As a result of our review, we preliminarily determine the weighted-average dumping margin of 0.00 for Tosoh for the period April 1, 1998, through March 31, 1999.

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 40 days after the date of publication of this notice, or the first workday thereafter. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice.

Parties who submit arguments are requested to submit with the arguments: (1) A table of contents, (2) a statement of the issue, (3) a list of authorities used, and (4) an executive summary of issues. Executive summaries should be limited to five pages total, including footnotes.

Hearing requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–099 of the main Department of Commerce building.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results of this administrative review, if there is no change from our preliminary results, we will instruct the Customs Service to liquidate all appropriate entries without regard to antidumping duties.

On April 20, 2000, the International Trade Commission (ITC) determined that revoking the existing antidumping duty orders on electrolytic manganese dioxide from Greece and Japan would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Therefore, because the order will be revoked as a result of the ITC's determination with an effective date of January 1, 2000, no deposit requirements will be effective for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 1, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–11461 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–588–806]**

### Electrolytic Manganese Dioxide From Japan: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of Preliminary Results of Antidumping Duty Administrative Review.

**SUMMARY:** Based on a request by a Japanese producer, Tosoh Corporation, the Department of Commerce is conducting an administrative review of the antidumping duty order on electrolytic manganese dioxide from Japan.

We have preliminarily determined that sales by Tosoh Corporation have not been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct Customs to liquidate without regard to antidumping duties all entries of EMD from Tosoh Corporation during the period of review.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

**EFFECTIVE DATE:** May 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Larry Tabash or Richard Rimlinger, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–5047 or (202) 482–4477, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

#### Background

On April 17, 1989, the Department published in the **Federal Register** (54 FR 15243) the antidumping duty order on electrolytic manganese dioxide (EMD) from Japan. On June 30, 1999, the Department published a notice of initiation of administrative review in accordance with 19 CFR 351.213(b). The Department is conducting this administrative review in accordance with section 751 of the Act.

#### Scope of Review

Imports covered by this review are sales of EMD from Japan. EMD is manganese dioxide (MnO2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc-chloride. EMD in all three forms and both grades is included in the scope of the order. This merchandise is currently classifiable under item number 2820.10.0000 of the Harmonized Tariff Schedule (HTSUS) of the United States. The HTSUS number is provided for convenience and customs purposes. It is not determinative of the products subject to the order. The written product description remains dispositive.

#### Period of Review

The period of review (POR) is April 1, 1998, through March 31, 1999.

#### Product Comparisons

Two product-comparison issues arose prior to the completion of these preliminary results. First, the sub-types of alkaline-grade EMD Tosoh sold in the home market and a sub-type of alkaline-grade EMD Tosoh sold to the United States varied by physical characteristics such as moisture, mesh, and particle size.

Tosoh provided in its questionnaire response a product-matching table identifying the various sub-types of alkaline-grade EMD it sold in the home market and to the United States. In its July 21, 1999, submission, the respondent stated that the sub-type of alkaline-grade EMD it sold to the United States was not sold in the home market during the POR and that the Department should match the sub-type sold in the United States to the closest sub-type of alkaline-grade EMD sold in the home market. Kerr-McGee Chemical LLC and Chemetals Inc. (collectively "the petitioners") responded that the Department should disregard the respondent's proposed product-matching criteria and base normal value of EMD exported to the United States on all sales of alkaline-grade EMD in the home market because, they argue, it is the Department's practice to base model-matching schemes only on

physical differences that are shown to be "commercially meaningful."

In the original less-than-fair-value (LTFV) investigation and previous administrative reviews of this order, we grouped EMD into the following three categories for purposes of model-matching: (1) Alkaline-grade EMD in powdered form, (2) zinc-chloride-grade EMD in powdered form, and (3) EMD in chip or plate form. *See* Appendix V in the Department's questionnaire dated June 7, 1999, for a complete description of the product. Our decision to do this was based on our analysis of comments that we received from all interested parties at the beginning of this proceeding. The respondent has provided no information regarding the commercial significance of the different sub-types. We are not convinced by the respondent's assertion that a more refined product-matching methodology is appropriate because the record indicates that any differences in either price or cost attributable to physical differences among the sub-types of alkaline grade EMD are small. Therefore, for these preliminary results, we have continued to match EMD based on the criteria outlined in the LTFV investigation.

Second, in an August 27, 1999, and in subsequent submissions, the petitioners allege that the respondent should have reported and accounted for home-market sales during the POR of EMD containing both gamma crystalline structure and other crystalline structure. The petitioners state that the Department's regulations for reporting the subject merchandise do not make any distinction between the gamma crystalline and other gamma crystalline structure EMD. The respondent argues that the product covered by this administrative review is EMD with a gamma crystalline structure, and that there is no basis to require Tosoh to provide information relating to other crystalline structure manganese dioxide which, according to Tosoh, is non-subject merchandise.

Section 771(16) of the Act directs the Department to compare U.S. sales to sales in the home market of identical merchandise prior to making comparisons to non-identical merchandise sold in the home market. As discussed above, under the definition of comparable merchandise which has been in place since the beginning of this proceeding, we consider all alkaline-grade EMD to be identical for product-comparison purposes. Since we were able to compare U.S. sales to sales of identical merchandise in the home market, we have not required Tosoh to report its home-market sales of non-identical EMD.

**Affiliated Party**

On August 27, 1999, the petitioners alleged that Tosoh and the Japanese trading company that Tosoh used to make sales of EMD to the United States may be affiliated because the two companies own two other companies jointly. (The identity of the Japanese trading company and the two joint ventures is business proprietary information and can not be disclosed in this public notice.) One of these joint ventures is a producer of EMD in another country. On September 9, 1999, and in subsequent submissions, Tosoh stated that it does not consider itself to be affiliated with the trading company in question, and it reported its sale to the trading company as the U.S. transaction. Tosoh argues that the trading company is not legally or operationally able to exercise any control or direction over Tosoh, and the fact that the trading company and Tosoh participate in the ownership of two other companies is irrelevant to this review. Tosoh also argues, citing 19 CFR 351.102(b), that its mere participation in a joint venture does not support a finding of affiliation absent a showing pursuant to the Department's regulations that "the relationship has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product." Furthermore, Tosoh asserts that affiliation between joint-venture partners can not be found under section 771(33)(F) of the Act unless there is sufficient evidence of "control" over decisions concerning the production, pricing, or cost of the subject merchandise. Tosoh cites *Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products From Korea*, 63 FR 13170, 13185 (March 18, 1998), where the Department found that two joint-venture partners were not affiliated under section 771(33)(F) of the Act because of the absence of evidence of control.

On November 29, 1999, after reviewing the information Tosoh presented in response to our original and supplemental questionnaires, we requested that Tosoh report the "downstream" sale information between the trading company's U.S. affiliate and its unaffiliated U.S. customer. *See* November 29, 1999, memorandum from Richard Rimlinger to Laurie Parkhill. (All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–099 of the main Department of Commerce building.)

Pursuant to section 771(33)(F) of the Act, affiliation exists where there are "(t)wo or more persons directly or indirectly controlling, controlled by, or under common control with, any person." However, we recognize the regulatory guidance indicating that a control relationship will not establish affiliation unless the relationship "has *the potential* to impact decisions concerning the production, pricing, or cost of the subject merchandise or foreign like product," 19 CFR 351.102(b) (emphasis added). Regarding Tosoh's control of one of the joint ventures, we are persuaded that potential control exists due to the fact that this joint venture manufactures EMD for sale in a variety of markets, including the United States. Thus, Tosoh is in a position that requires it to coordinate production and sales activities for its EMD production facilities. With respect to the trading company's control of the same joint venture, the record indicates that its wholly owned U.S. subsidiary negotiates the prices and terms of the U.S. sales for both Tosoh and the third-country joint venture. Because the subsidiary negotiates the prices and terms of the sales for both Tosoh and the joint venture, we find that the trading company, through its U.S. subsidiary, is able or at least has the potential to impact decisions concerning the production, pricing, or cost of the subject merchandise. Accordingly, we have preliminarily determined that Tosoh and the trading company commonly control the joint venture within the meaning of section 771(33)(F) of the Act and the Department's regulations. *See* Affiliation Memorandum from Laurie Parkhill to Richard W. Moreland, dated May 1, 2000. Accordingly, we conclude that Tosoh and the trading company are affiliated and that the appropriate sale for use in our analysis is the sale by the U.S. affiliate of the Japanese trading company to the unaffiliated U.S. customer. That sale is a constructed export price (CEP) transaction because it was made in the United States.

**Constructed Export Price**

In calculating the price to the United States, we used CEP as defined in section 772(b) of the Act. We calculated CEP based on the delivered price to an unaffiliated purchaser in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the Statement of Administrative Action (SAA), H. Doc. 103–316, vol. 1, 822–824 (1994), we calculated the CEP by deducting selling

expenses associated with economic activities occurring in the United States, including direct selling expenses and indirect selling expenses incurred in the United States.

With respect to CEP profit, section 772(d)(3) of the Act requires the Department, in determining CEP, to identify and deduct from the starting price in the U.S. market an amount for profit allocable to selling and further-manufacturing activities in the United States. Section 772(f) of the Act provides the rule for determining the amount of CEP profit to deduct from the CEP starting price. Pursuant to subsection 772(f)(2)(C), we determined that the best available sources of profit information are the 1998 financial statements which the respondent and the Japanese trading company's U.S. affiliate submitted in their responses to our questionnaires. *See* Electrolytic Manganese Dioxide from Japan—Tosoh Corporation, Analysis Memo dated April 28, 2000. We made adjustments, where appropriate, for domestic inland freight, warehousing expenses, international freight, and brokerage and handling in accordance with section 772(c)(2)(A) of the Act. In accordance with 19 CFR 351.401(i), we used the invoice date as the date of sale for the U.S. market. We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

Finally, in accordance with section 772(d)(1)(B) of the Act, we made an additional adjustment to CEP. Because of the business-proprietary nature of the adjustment, please see our Analysis Memo.

**Normal Value**

In order to determine whether there is a sufficient volume of sales in the home market to serve as a basis for calculating normal value, we compare the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise in accordance with section 773(a) of the Act. Because the aggregate volume of home-market sales of the foreign like product was greater than five percent of the aggregate volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating normal value. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the price at which the foreign like product was first sold to unaffiliated customers for consumption in the exporting country in the usual commercial quantities and in the ordinary course of trade. We matched CEP to normal value at the same level of trade in the home market and made no level-of-trade adjustment (see discussion below).

We compared CEP to the monthly weighted-average price of sales of the identical foreign like product. We based normal value on delivered prices to unaffiliated purchasers in the home market. We made adjustments to home-market price for inland freight, warehousing expenses, discounts, and rebates. Home-market prices were based on packed, delivered prices to the unaffiliated purchasers in the home market. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in costs attributable to differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. With respect to our comparisons to CEP, we made COS adjustments by deducting home-market direct selling expenses from normal value.

**Level of Trade**

To the extent practicable, we determine normal value for sales at the same level of trade as that in the United States in accordance with section 773(a)(1)(B) of the Act. The normal value level of trade is that of the starting-price sales in the home market. *See* 19 CFR 351.412(c)(iii).

To determine whether home-market sales were at a different level of trade than that in the United States, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Tosoh reported two channels of distribution in the home market. We examined the differences in selling functions Tosoh reported in its responses to our requests for information. We found that the selling activities associated with sales to trading companies/distributors did not differ from activities associated with sales to end-users in terms of various selling activities. For example, there were no differences between the two channels in terms of strategic planning/marketing, production planning/order evaluation, technical service, and freight/delivery to customer. Based on these sales activities and our overall analysis, we found that the two home-market channels constitute one level of trade.

Because Tosoh made CEP sales in the United States, we identified the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act and pursuant to 19 CFR 351.412(c)(ii). Based on our analysis, we considered CEP to constitute a single level of trade.

As a result of our examination of the record, we found that the respondent did not provide us with sufficient information to determine whether there were significant differences or similarities between the selling activities associated with the home-market level of trade and those associated with the CEP level of trade. Moreover, the respondent indicated in its July 21, 1999, and December 17, 1999, submissions that it was not requesting a level-of-trade adjustment. Therefore, we have determined that the U.S. sale was made at the same level of trade as the home-market level of trade and, therefore, no level-of-trade adjustment was necessary.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine a weighted-average dumping margin of 0.00 percent for the period April 1, 1998, through March 31, 1999, for Tosoh.

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 40 days after the date of publication of this notice, or the first workday thereafter. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. Any hearing, if requested, will be held three days after the scheduled date for submission of rebuttal briefs. Issues raised in hearings will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice.

Parties who submit arguments are requested to submit with the arguments (1) a table of contents, (2) a statement of the issue, (3) a list of authorities used, and (4) an executive summary of issues. Executive summaries should be limited to five pages total, including footnotes.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results of this administrative review, if there is no change from our preliminary results, we will instruct the Customs Service to

liquidate all appropriate entries without regard to antidumping duties.

On April 20, 2000, the International Trade Commission (ITC) determined that revoking the existing antidumping duty orders on EMD from Greece and Japan would not be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. Therefore, because the order will be revoked as a result of the ITC's determination with an effective date of January 1, 2000, no deposit requirements will be effective for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 1, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–11462 Filed 5–5–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–803]**

### Heavy Forged Hand Tools from the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews in Accordance With Court Decision

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of Amended Final Results of Antidumping Duty Administrative Review in accordance with Court Decision.

**SUMMARY:** On February 8, 2000, the Court of International Trade (CIT) affirmed the remand determination of the Department of Commerce (the Department) arising from the administrative reviews of the antidumping duty orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). *See Fujian Machinery & Equipment Import & Export Corp., et. al* v. *United States*, __CIT__, Slip Op. 00–14, (February 8, 2000). No party appealed this decision. As there is now a final and conclusive court decision in this segment, we are amending the final results of reviews in this matter and will instruct the U.S. Customs Service to liquidate entries subject to these amended final results.

**EFFECTIVE DATE:** May 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael Strollo or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–5255 and (202) 482–3020, respectively.

**SUPPLEMENTARY INFORMATION:**

### Background

On February 1, 1991, the Department issued antidumping duty orders on HFHTs from the PRC. *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China*, 56 FR 6622 (February 19, 1991) (*Antidumping Duty Orders*). On April 4, 1996, the Department published its final results of the third administrative review of HFHTs for two PRC exporters, Fujian Machinery and Equipment Import and Export Corporation (FMEC) and Shandong Machinery Import and Export Corporation (SMC). *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, from the People's Republic of China; Final Results of Antidumping Administrative Review*, 61 FR 15028 (April 4, 1996). On May 14, 1996, the Department published its amended final results of the third administrative review of HFHTs. See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Amendment of Final Results of Antidumping Duty Administrative Review, 61 FR 24285 (May 14, 1996).

On September 7, 1999, the Department filed with the CIT a consent motion for voluntary remand so that the Department may exclude statistics used as surrogate values that were found to be aberrational by the Department in the Final Results of Redetermination Pursuant to Court Remand relating to the second administrative review. The CIT granted the motion and remanded to the Department on September 15, 1999.

On November 15, 1999, the Department filed its final results pursuant to remand. *See Final Results of Redetermination Pursuant to Court Remand, Fujian Machinery and Equipment Import & Export Corp., et. al* v. *United States* (November 15, 1999). On February 8, 2000, the CIT upheld the Department's redetermination on remand. *Fujian Machinery & Equipment Import & Export Corp., Shandong Machinery Import & Export Corp., et al.* v. *United States*, __CIT__, Slip. Op 00–14 (February 8, 2000). Neither party appealed the CIT's decision.

There is now a final and conclusive court decision in this action; therefore, we are amending our final results of review for the period February 1, 1993 through January 31, 1994. We recalculated margins on each product category for FMEC and SMC. The revised weighted average margins are as follows:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| Fujian Machinery & Equipment Import & Export Corp.: | |
| Axes/Adzes | 5.68 |
| Bars/Wedges | 16.14 |
| Hammers/Sledges | 8.90 |
| Shandong Machinery Import & Export Corp.: | |
| Bars/Wedges | 29.84 |
| Hammers/Sledges | 10.02 |
| Picks/Mattocks | 52.60 |

Accordingly, the Department will determine, and the Customs Service will assess, antidumping duties on all entries of subject merchandise from FMEC and SMC in accordance with these amended final results. For assessment purposes, we have calculated importer-specific duty assessment rates for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the period of review (POR) to the total quantity of sales examined during the POR. The Department will issue appraisement instructions directly to Customs. The above rates will not affect FMEC or SMC's cash deposit rates currently in effect, which continue to be based on the margins found to exist in the most recently completed review.

This notice is published in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: April 27, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–11463 Filed 5–5–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–803]**

### Heavy Forged Hand Tools From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews in Accordance With Court Decision

**AGENCY:** Import Administration, International Trade Administration, U.S. Department of Commerce.

**ACTION:** Notice of amended final results of antidumping duty administrative review in accordance with court decision.

**SUMMARY:** On February 8, 2000, the Court of International Trade (CIT) affirmed the remand determination of the Department of Commerce (the Department) arising from the administrative reviews of the antidumping duty orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). *See Fujian Machinery & Equipment Import & Export Corp., et. al.* v. *United States*,__CIT__, Slip Op. 00–15 (February 8, 2000). No party appealed this decision. As there is now a final and conclusive court decision in this segment, we are amending the final results of reviews in this matter and will instruct the U.S. Customs Service to liquidate entries subject to these amended final results.

**EFFECTIVE DATE:** May 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael Strollo or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–5255 and (202) 482–3020, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On February 1, 1991, the Department issued antidumping duty orders on HFHTs from the PRC. *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China*, 56 FR 6622 (February 19, 1991) *Antidumping Duty Orders)*. On October 1, 1996, the Department published its final results of the fourth administrative review of HFHTs for two PRC exporters, Fujian Machinery and Equipment Import and Export Corporation (FMEC) and Shandong Machinery Import and Export Corporation (SMC). *See Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China; Final Results of Antidumping Administrative Review*, 61 FR 51269 (October 1, 1996). On May 5, 1997, the Department published its amended final results of the fourth administrative review of HFHTs. *See Heavy Forged Hand Tools from the People's Republic of China; Amendment of Final Result of Antidumping Administrative Review*, 62 FR 24416 (May 5, 1997).

On September 7, 1999, the Department filed with the CIT a consent motion for voluntary remand so that the Department may exclude statistics used as surrogate values that were found to be aberrational by the Department in the Final Results of Redetermination Pursuant to Court Remand relating to the second administrative review. The CIT granted the motion and remanded to the Department on September 15, 1999.

On November 15, 1999, the Department filed its final results pursuant to remand. *See Final Results of Redetermination Pursuant to Court Remand, Fujian Machinery and Equipment Import & Export Corp., et. al.* v. *United States* (November 15, 1999). On February 8, 2000, the CIT upheld the Department's redetermination on remand. *Fujian Machinery & Equipment Import & Export Corp., Shandong Machinery Import & Export Corp., et al.* v. *United States*,__CIT__, Slip. Op 00–15 (February 8, 2000). Neither party appealed the CIT's decision.

There is now a final court decision in this action; therefore, we are amending our final results of review for the period February 1, 1994 through January 31, 1995. We recalculated margins on each product category for FMEC and SMC. The revised weighted average margins are as follows:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| Fujian Machinery & Equipment Import & Export Corp.: | |
| Axes/Adzes | 1.84 |
| Bars/Wedges | 1.05 |
| Hammers/Sledges | 1.23 |
| Picks/Mattocks | 65.11 |
| Shandong Machinery Import & Export Corp.: | |
| Bars/Wedges | 25.93 |
| Hammers/Sledges | 4.77 |
| Picks/Mattocks | 52.82 |

Accordingly, the Department will determine, and the Customs Service will assess, antidumping duties on all entries subject merchandise from FMEC and SMC in accordance with these amended final results. For assessment purposes, we have calculated exporter-specific duty assessment rates for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales during the period of review (POR) to the total quantity of sales examined during the POR. We calculated exporter-specific assessment rates because there was no information on the record which indicated importers of record. The Department will issue appraisement instructions directly to Customs. The above rates will not affect FMEC or SMC's cash deposit rates currently in effect, which continue to be based on the margins found to exist in the most recently completed review.

This notice is published in accordance with section 751(a)(1)) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 351.221.

Dated: April 27, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–11464 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–807]**

### Polyethylene Terephthalate Film From Korea: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to a request from two respondents and two U.S. producers, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea. The review covers three manufacturers/exporters of the subject merchandise to the United States and

the period June 1, 1998 through May 31, 1999.

We preliminarily determine that there is a dumping margin for SKC Limited (SKC), and no margin for H.S. Industries (HSI) and Hyosung Corporation (Hyosung) during the period June 1, 1998 through May 31, 1999.

If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the United States Price (USP) and normal value (NV).

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with the arguments: (1) A statement of the issues and (2) a brief summary of the arguments (no longer than five pages, including footnotes).

**EFFECTIVE DATE:** May 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Heaney or Robert James, AD/CVD Enforcement Group III , Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4475 and (202) 482–0649, respectively.

**Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1999).

**SUPPLEMENTARY INFORMATION:**

**Background**

The Department published an antidumping duty order on PET film from the Republic of Korea on June 5, 1991 (56 FR 25660). On June 16, 1999, two domestic producers, E.I. DuPont Nemours & Co., Inc. and Mitsubishi Polyester Film L.L.C. requested reviews of HSI, Hyosung, and SKC for the period June 1, 1998 through May 31, 1999. On June 28, and June 30, 1999, SKC and HSI, respectively, requested administrative reviews of their sales for the same time period. We published a notice of initiation of the review on July 29, 1999 (64 FR 41075).

On February 9, 2000, the Department published a notice extending the time limits for publication of its preliminary results by 62 days (65 FR 6360).

**Scope of the Review**

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage. The review covers the period June 1, 1998 through May 31, 1999. The Department is conducting this review in accordance with section 751 of the Act, as amended.

**Fair Value Comparisons**

To determine whether sales of PET film in the United States were made at less than fair value, we compared USP to the NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

**United States Price (USP)**

In calculating USP, the Department treated respondent's sales as export price (EP) sales, as defined in section 772(a) of the Act, when the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation, and use of the constructed export price (CEP) methodology was not otherwise indicated. The Department treated SKC's sales as CEP sales, as defined in section 772(b) of the Act, when the merchandise was sold to unaffiliated U.S. purchasers after importation.

CEP was based on the delivered or c.i.f. U.S. port, packed prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, Korean and U.S. inland freight, ocean freight, bank charges, U.S. duties, and discounts, in accordance with section 772(c) of the Act. We made additions to EP for duty drawback pursuant to section 772(c)(1)(B) of the Act.

CEP was based on the delivered, packed prices to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean and U.S. brokerage charges, Korean and U.S. inland freight, ocean freight, and U.S. duties, in accordance with section 772(c) of the Act. Pursuant to section 772(c)(1)(B) of the Act, we made an addition to CEP for duty drawback. We also made an addition to CEP for interest revenue. In accordance with section 772(d)(1) of the Act, we made deductions for selling expenses associated with economic activities in the United States, including warranties, credit expenses, bank charges, and indirect selling expenses.

With respect to subject merchandise to which value was added in the United States by SKC prior to sale to unaffiliated customers, we deducted the cost of further manufacturing in accordance with section 772(d)(2) of the Act.

Pursuant to section 772(d)(3) of the Act, the price was further reduced by an amount for profit to arrive at the CEP.

**Normal Value**

In order to determine whether there were sufficient sales of PET film in the home market (HM) to serve as a viable basis for calculating NV, for each respondent we compared the volume of HM sales of PET film to the volume of PET film sold in the United States, in accordance with section 773(a)(1)(C) of the Act. Each respondent's aggregate volume of HM sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on the price at which the foreign like product was sold for consumption in the home market in the usual commercial quantities, in the ordinary course of trade, and, to the extent practicable, at the same level of trade.

Because the Department had disregarded SKC's sales of the foreign like product in the June 1996–May 1997 administrative review because they failed the cost test (*see* Polyethylene Terephthalate Film, Sheet and Strip from the Republic of Korea; Final Results of Antidumping Duty Administrative Review (1996–1997 Administrative Review), 63 FR 37334, 37335 (July 10, 1998) in accordance with section 773(b)(2)(A)(ii) of the Act, the Department had reasonable grounds to believe or suspect that SKC made sales below cost of production (COP) during this POR. Accordingly, we initiated a sales-below-cost of production investigation for SKC in accordance with section 773(b) of the

Act. (The June 1996–May 1997 administrative review was the most recently completed review at the time that we issued our antidumping questionnaire.)

We performed a model-specific COP test in which we examined whether each HM sale was priced below the merchandise's COP. We calculated the COP of the merchandise using SKC's cost of materials and fabrication for the foreign like product, plus amounts for home market general and administrative (G&A) expenses and packing costs, in accordance with section 773(b)(3) of the Act. We allocated yield losses equally between A-grade and B-grade film because these grades have identical production costs. This is consistent with the methodology employed in past reviews of this case. (*See e.g.*, 1996–1997 Administrative Review, 37335).

In accordance with section 773(b)(1) of the Act, in determining whether to disregard home market sales made at prices below COP, we examined whether such sales were made within an extended period of time in substantial quantities, and whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of SKC's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because these below-cost sales were not made in substantial quantities. Where 20 percent or more of SKC's home market sales of a given model were at prices less than the COP, we disregarded the below-cost sales because such sales were found to be made: (1) in substantial quantities within the POR (*i.e.*, within an extended period of time) in accordance with section 773(b)(2)(B) of the Act, and (2) at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act (*i.e.*, the sales were made at prices below the weighted-average per-unit COP for the POR). We used the remaining sales as the basis for determining NV, if such sales existed, in accordance with section 773(b)(1) of the Act.

In determining NV, we considered comparison market sales of identical or similar merchandise, or constructed value (CV).

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of SKC's cost of materials, fabrication, G&A expenses, and profit. We allocated yield losses equally between A-grade and B-grade film. In accordance with section 773(e)(2)(A) of the Act, we based G&A expenses and profit on the amounts incurred and realized by SKC in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average HM selling expenses. Pursuant to section 773(e)(3) of the Act, we included U.S. packing expenses.

In accordance with section 773(a)(6) of the Act, we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also adjusted NV for credit expenses. When NV was based upon home market sales, we made an adjustment for inland freight. For SKC's local export sales, we also made an addition to home market price for duty drawback. For comparisons to EP, we made an addition to NV for U.S.credit expenses, and bank charges as circumstance-of-sale adjustments pursuant to section 773(a)(6)(C) of the Act.

**Level of Trade and CEP Offset**

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affect price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See, e.g.*, Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value, 62 FR 61731 (November 19, 1997).

In implementing these principles in this review, we asked each respondent to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States. SKC identified two channels of distribution in the home market: (1) wholesalers/distributors and (2) end-users. HSI also identified two channels of distribution: sales to end-users and sales to distributors. Hyosung identified one channel of distribution in the home market: sales to end-users. For both channels SKC and HSI perform similar selling functions such as order processing, market research and after-sales warranty services. Because channels of distribution do not qualify *per se* as separate LOTs, when the selling functions performed for each customer class are sufficiently similar, as in the instant review, we determined that there exists one LOT for SKC's and HSI's home market sales.

For the U.S. market SKC reported two LOTs: (1) EP sales made directly to its U.S. customers, and (2) CEP sales made through SKC America, Inc., SKC's wholly-owned U.S. subsidiary. HSI and Hyosung identified one LOT: EP sales made directly to U.S. customers. The Department examined the selling functions performed by SKC for both EP and CEP sales. These selling functions included customer sales contacts (*i.e.*, visiting current or potential customers, receiving orders, promotion of new products, collection of unpaid invoices), technical services, inventory maintenance, and/or business system development. We found that SKC provided a greater degree of these services on EP sales than it did on CEP sales, and that the selling functions were sufficiently different to warrant two separate LOTs in the United States.

When we compared EP sales to home market sales, we determined that for each respondent both sales were made at the same LOT. For both EP and home market transactions, each respondent sold directly to the customer and provided similar levels of customer sales contacts, technical services, inventory maintenance and business system development. Therefore, no LOT adjustment was warranted.

For CEP sales, SKC performed fewer customer sales contacts, technical services, inventory maintenance, and computer legal, audit and business system development. In addition, the differences in selling functions performed for home market and CEP transactions indicate that home market

sales involved a more advanced stage of distribution than CEP sales.

Because we compared these CEP sales to HM sales at a different LOT, we examined whether a LOT adjustment may be appropriate. In this case SKC sold at one LOT in the home market; therefore, there is no demonstrated pattern of consistent price differences between LOTs. Further, we do not have the information which would allow us to examine pricing patterns of SKC's sales of other similar products, and there is no other record evidence on which such an analysis could be based.

Because the data available do not provide an appropriate basis for making a LOT adjustment but the LOT in Korea for SKC is at a more advanced stage than the LOT of its CEP sales, a CEP offset is appropriate in accordance with section 773(a)(7)(B) of the Act, as claimed by SKC. We based the CEP offset amount on the amount of home market indirect selling expenses, and limited the deduction for home market indirect selling expenses to the amount of indirect selling expenses deducted from CEP in accordance with section 772(d)(1)(D) of the Act. We applied the CEP offset to NV, whether based on home market prices or CV.

**Preliminary Results of Review**

We preliminarily determine that the following margins exist for the period June 1, 1998 through May 31, 1999:

| Company | Margin (percent) |
|---|---|
| HSI | 0 |
| Hyosung | 0 |
| SKC | 1.35 |

We will disclose calculations performed in connection with these preliminary results of review within 5 days of the day of publication of this notice. Interested parties may request a hearing not later than 30 days after publication of this notice. Interested parties may also submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with each argument a statement of the issue and a brief summary of the argument. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–009 of the main Commerce building. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including a discussion of its analysis of issues raised in any case or rebuttal brief or at a hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Upon completion of the final results in this review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212 (b), we have calculated an importer/customer-specific assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the entered value of those same sales. This Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed firm will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21.5%, the "all others" rate established in the LTFV investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 1, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–11460 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–P

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–583–827]**

### Static Random Access Memory Semiconductors From Taiwan; Preliminary Results and Partial Recission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** In response to requests by various interested parties, the Department of Commerce is conducting an administrative review of the antidumping duty order on static random access memory semiconductors from Taiwan. This review covers the U.S. sales and/or entries of three manufacturers/exporters. In addition, we are rescinding this review with respect to two companies. The period of review is October 1, 1997, through March 31, 1999, for two of these companies and October 1, 1998, through March 31, 1999, for the remaining company.

We have preliminarily determined that sales have been made below the normal value by each of the companies subject to this review. If these preliminary results are adopted in the final results of this administrative review, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who wish to submit comments in this proceeding are requested to submit with each argument: (1) A statement of the issue; and (2) a brief summary of the argument.

**EFFECTIVE DATE:** May 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Shawn Thompson or Irina Itkin, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington,

DC 20230; telephone (202) 482–1776 or (202) 482–0656, respectively.

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (1999).

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 15, 1999, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on static random access memory semiconductors (SRAMs) from Taiwan (64 FR 18600).

In accordance with 19 CFR 351.213(b)(2), in April 1999, the following five producers/exporters of SRAMs requested an administrative review of the antidumping duty order on SRAMs from Taiwan: Alliance Semiconductor (Alliance), Galvantech, Inc. (Galvantech), G-Link Technology Inc. (G-Link), GSI Technology, Inc. (GSI Technology), and Winbond Electronics Corporation (Winbond). In addition, one company which purchased, exported, and re-imported subject merchandise, White Electronic Designs (White Electronics), also requested an administrative review with respect to merchandise produced by G-Link. Because we determined that the merchandise subject to the antidumping duty order was the merchandise originally imported by G-Link (rather than re-imported by White Electronics), we did not initiate an administrative review for G-Link based on White Electronics' request. In addition, based on the facts associated with White Electronics' purchase, exportation, and re-importation, we determined that, upon re-importation, the merchandise at issue is not subject to cash deposits of antidumping duties. For further discussion of our treatment of re-imported merchandise, see the memorandum entitled "Antidumping Duty Administrative Review on Static Random Access Memory Semiconductors (SRAMs) from Taiwan—Request by Electronic Designs, Inc. (EDI) for Clarification on Whether EDI is Liable for Antidumping Duties on the Second Importation of Certain SRAMs" from the Team to Louis Apple, Director, Office 5, Office of AD/CVD Enforcement, dated June 21, 1999.

On May 19, 1999, the Department issued questionnaires to Alliance, Galvantech, G-Link, GSI Technology, and Winbond. The Department initiated an administrative review for each of these companies on May 20, 1999 (64 FR 28973 (May 28, 1999)).

In June and July 1999, respectively, Alliance and Galvantech withdrew their requests for an administrative review. For further discussion, see the "Partial Rescission of Review" section of this notice, below.

Also in July 1999, we received a response to sections A through D of the questionnaire (*i.e.*, the sections relating to general information, foreign market sales, U.S. sales, and cost of production (COP)/constructed value (CV), respectively) from Winbond.

In August 1999, we received a response to sections A through C of the questionnaire from G-Link. On August 27, 1999, the petitioner alleged that G-Link was selling at prices below the COP in its home market. Based on an analysis of this allegation, the Department initiated an investigation to determine whether G-Link made home market sales during the period of review (POR) at prices below the COP within the meaning of section 773(b) of the Act. Consequently, we issued section D of the questionnaire to G-Link.

In October 1999, we received a response to sections A through D of the questionnaire from GSI Technology. In November 1999, the petitioner alleged that GSI Technology was selling at prices below the COP in its third-country market. Based on an analysis of this allegation, we initiated an investigation to determine whether GSI Technology made foreign market sales during the POR at prices below the COP within the meaning of section 773(b) of the Act. Because GSI Technology submitted a response to section D of the questionnaire in October, it was not necessary to request additional information from GSI Technology.

In November 1999, we received a Section D questionnaire response from G-Link. Also in November and December 1999, we issued supplemental questionnaires to each of the respondents. We received responses to these questionnaires in December 1999, January 2000, and February 2000.

In February, March, and April 2000, the Department conducted verification of the data submitted by the respondents, in accordance with section 782(i) of the Act and 19 CFR 351.307(b)(1)(iv).

**Scope of the Review**

The products covered by this review are synchronous, asynchronous, and specialty SRAMs from Taiwan, whether assembled or unassembled. Assembled SRAMs include all package types. Unassembled SRAMs include processed wafers or die, uncut die and cut die. Processed wafers produced in Taiwan, but packaged, or assembled into memory modules, in a third country, are included in the scope; processed wafers produced in a third country and assembled or packaged in Taiwan are not included in the scope. The scope of this review includes modules containing SRAMs. Such modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, memory cards, or other collections of SRAMs, whether unmounted or mounted on a circuit board. The scope of this review does not include SRAMs that are physically integrated with other components of a motherboard in such a manner as to constitute one inseparable amalgam (*i.e.*, SRAMs soldered onto motherboards). The SRAMs within the scope of this review are currently classifiable under subheadings 8542.13.8037 through 8542.13.8049, 8473.30.10 through 8473.30.90, 8542.13.8005, and 8542.14.8004 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

**Period of Review**

The POR is October 1, 1997, through March 31, 1999, for G-Link and Winbond. Because GSI Technology was a respondent in the 1997–1998 new shipper review on SRAMs, the POR for our administrative review of its U.S. sales is October 1, 1998, through March 31, 1999.

**Partial Rescission of Review**

As noted above, in June and July 1999 respectively, Alliance and Galvantech withdrew their requests for administrative review. No other interested party requested a review of sales of merchandise produced or exported by either Alliance or Galvantech during the POR. Therefore, in accordance with 19 CFR 351.213(d)(1) and consistent with our practice, we are rescinding our review with respect to Alliance and Galvantech.

**Normal Value Comparisons**

To determine whether sales of SRAMs from Taiwan to the United States were made at less than normal value (NV), we compared the constructed export price (CEP) to the NV for G-Link, GSI

Technology, and Winbond as specified in the "Constructed Export Price" and "Normal Value" sections of this notice, below.

When making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the foreign market as described in the "Scope of the Review" section of this notice, above, that were in the ordinary course of trade. Where there were no sales of identical merchandise in the foreign market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade or CV, as appropriate.

Regarding G-Link and GSI Technology, we were unable to make product comparisons for certain models because these respondents failed to report cost information for these models, including both difference-in-merchandise and CV data. Consequently, for purposes of the preliminary results, we based the margin for the sales of these products on facts available pursuant to section 776(a)(2)(B) of the Act. As facts available, we used the highest non-aberrant margin calculated for any U.S. transaction for each respondent, in accordance with our practice. *See, e.g., Static Random Access Memory Semiconductors From Taiwan; Notice of Final Results of Antidumping Duty New Shipper Review*, 65 FR 12214 (Mar. 8, 2000); *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors From Taiwan*, 63 FR 8909, 8912 (Feb. 23, 1998) (*SRAMs Final Determination*); and *Final Determination of Sales at Less Than Fair Value: Stainless Steel Sheet and Strip in Coils From Germany*, 64 FR 30710, 30732 (June 8, 1999). In selecting a facts-available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory proposes of the adverse facts-available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of the respondent's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected the highest margin on an individual sale which fell within the mainstream of G-Link's and GSI Technology's transactions (*i.e.*, transactions that reflect sales of products that are representative of the broader range of models used to determine NV).

**Level of Trade and CEP Offset**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For CEP, the U.S. level of trade is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (Nov. 19, 1997).

Both GSI Technology and Winbond claimed that they made foreign market sales at two levels of trade (*i.e.*, to original equipment manufacturers (OEMs) and distributors). G-Link claimed that it made home market sales at three levels of trade (*i.e.*, to OEMs, distributors, and trading companies). We examined the selling activities at each reported marketing stage for each respondent and found that there was no substantive difference in the selling functions performed at any of these stages. Consequently, we determine that only one level of trade exists with respect to sales made by these companies to all foreign market customers.

In order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP, we compared the selling functions performed for foreign market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States, pursuant to section 772(d) of the Act. We found that G-Link performed essentially the same selling functions in its sales offices in Taiwan for home market and U.S. sales. Therefore, G-Link's home market sales were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exits between markets, we have not granted a CEP offset to G-Link. For a detailed explanation of this analysis, see the memorandum entitled "Preliminary Results of Antidumping Duty Administrative Review on Static Random Access Memory Semiconductors from Taiwan," dated May 1, 2000 (the "concurrence memorandum").

In contrast, we found that GSI Technology and Winbond performed most of the selling functions and services related to U.S. sales at their sales offices in the United States. These selling functions are associated with those expenses which we deduct from the CEP starting price, as specified in section 772(d) of the Act. In addition, we found that GSI Technology generally performed the same selling functions for sales to its third-country customers at its office in the United States, while Winbond performed these functions for its home market sales in Taiwan. Therefore, we find that GSI Technology's and Winbond's sales in the foreign market were at a more advanced stage of marketing and distribution (*i.e.*, more remote from the factory) than the constructed U.S. level of trade. However, because GSI Technology and Winbond sell at only one level of trade in the foreign market, the difference in the levels of trade cannot be quantified. Because the difference in the levels of trade cannot be quantified, but the foreign market is at a more advanced level of trade, we have granted a CEP offset to GSI Technology and Winbond. For further discussion, see the concurrence memorandum referenced above.

**Constructed Export Price**

In accordance with section 772(b) of the Act, we used CEP methodology because all sales took place after importation into the United States. We revised the reported data based on our findings at verification.

*A. G-Link*

We calculated CEP based on the starting price to the first unaffiliated

purchaser in the United States. Where appropriate, we made deductions for foreign inland freight, foreign warehousing, foreign brokerage and handling expenses, international freight, marine insurance, U.S. warehousing, U.S. freight expenses (offset by freight revenue), U.S. merchandise processing fees, and U.S. brokerage and handling expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by G-Link and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

*B. GSI Technology*

We based CEP on the starting price to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price for discounts. We also made deductions for foreign inland freight, foreign warehousing, international freight, marine insurance, U.S. merchandise processing fees, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for credit expenses, commissions, and indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by GSI Technology on its sales of the subject merchandise in the United States and the foreign like product in the third country and the profit associated with those sales.

*C. Winbond*

We calculated CEP based on the starting price to the first unaffiliated purchaser in the United States. In accordance with section 772(c)(1)(B) of the Act, we added an amount for uncollected import duties in Taiwan. Where appropriate, we made deductions for foreign inland freight, foreign warehousing, foreign brokerage and handling expenses, foreign inland insurance, international freight, marine insurance, U.S. merchandise processing fees, U.S. inland freight, and U.S. warehousing expenses, in accordance with section 772(c)(2)(A) of the Act.

We made additional deductions from CEP, where appropriate, for commissions, credit expenses, repacking expenses, and U.S. indirect selling expenses, including U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Winbond and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

**Normal Value**

In order to determine whether there is a sufficient volume of sales in the foreign market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that G-Link and Winbond had viable home markets during the POR, while GSI Technology did not. Consequently, we based NV on home market sales for G-Link and Winbond and on sales to Japan (*i.e.*, the largest third-country market) for GSI Technology.

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Winbond had made home market sales at prices below their COPs in this review because in the less-than-fair-value (LTFV) investigation, the Department disregarded below-cost sales that Winbond made in the home market. *See SRAMs Final Determination*, 63 FR 8909, 8913 (Feb. 23, 1998). As a result, the Department initiated an investigation to determine whether Winbond made home market sales during the POR at prices below their COPs.

In addition, in August and November 1999, respectively, the petitioner alleged that G-Link and GSI Technology were selling at prices below the COP in their foreign markets. Based on information submitted by the petitioner, the Department found reasonable grounds to believe or suspect that G-Link and GSI Technology made sales in the foreign markets at prices below the cost of producing the merchandise, in accordance with section 773(b)(1) of the Act. As a result, the Department initiated investigations to determine whether these respondents made foreign market sales during the POR at prices below their respective COPs within the meaning of section 773(b) of the Act. For further discussion, see the decision memoranda on this topic, dated August 27, 1999, for G-Link and December 6, 1999, for GSI Technology.

We calculated the COP based on the sum of each respondent's cost of materials and fabrication for the foreign like product in each quarter of the POR, plus amounts for SG&A and financing costs, in accordance with section 773(b)(3) of the Act.

We compared the weighted-average quarterly COP figures to home market or third country prices of the foreign like product, as appropriate, less any applicable movement charges and discounts, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below their respective COPs. On a product-specific basis, we compared the COP to foreign market prices, less any applicable movement charges, discounts, rebates, and packing expenses.

In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* section 773(b)(1) of the Act.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities."

Where 20 percent or more of a respondent's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time, in accordance with section 773(b)(2)(B) and (C) of the Act. To determine whether prices provided for recovery of costs within a reasonable period of time, we tested whether the prices which were below the per-unit cost of production at the time of the sale were also below the

weighted-average per-unit cost of production for the POR, in accordance with section 773(b)(2)(D). If they were, we disregarded the below-cost sales in determining NV.

We found that, for certain models of SRAMs, more than 20 percent of each respondent's foreign market sales within an extended period of time were at prices below the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded the below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of SRAMs for which there were no comparable foreign market sales in the ordinary course of trade, we compared CEP to CV, in accordance with section 773(a)(4) of the Act.

In accordance with section 773(e) of the Act, we calculated CV based on the sum of each respondent's cost of materials, fabrication, SG&A, financing expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we based SG&A, financing expenses, and profit on the amounts incurred and realized by each respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

We revised the sales data for each of the respondents, as well as the cost data provided by GSI Technology, based on our findings at verification. Because verification of the cost data submitted by G-Link and Winbond was conducted in April 2000, we were unable to incorporate our verification findings with respect to this data in the calculations performed for purposes of these preliminary results. We will, however, consider any verification findings for purposes of the final results. Company-specific calculations are discussed below.

*A. G-Link*

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight, foreign warehousing, and foreign inland insurance, where appropriate, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses.

Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by home market indirect selling expenses, up to the amount of the U.S. commission.

For all price-to-price comparisons, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Where NV was based on CV, we deducted from CV the weighted-average foreign market direct selling expenses, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8). Where applicable, we offset any commission paid on a U.S. sale by reducing the NV by the amount of home market indirect selling expenses, up to the amount of the U.S. commission.

*B. GSI Technology*

Where NV was based on third-country sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for discounts. We also made deductions, where appropriate, for foreign inland freight, foreign warehousing, international freight, marine insurance, U.S. merchandise processing fees, U.S. inland freight to the warehouse, and U.S. warehousing expenses, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for third-country credit expenses and commissions.

We deducted third-country indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by any third-country indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Where NV was based on CV, we deducted from CV the weighted-average foreign market direct selling expenses and commissions, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8). In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment, calculated as noted above. Where applicable, we offset any commission paid on a U.S. sale by reducing the NV by any third-country selling expenses remaining after the deduction of the CEP offset, up to the amount of the U.S. commission.

**Winbond**

In its questionnaire response, Winbond stated that it made all sales in the home market to unaffiliated parties. However, one of Winbond's customers was classified as an affiliate for purposes of the company's audited financial statements, based on the fact that the President of Winbond was a managing director of the customer in question. Consequently, we have treated this customer as an affiliated party, as defined by section 771(33)(F) of the Act, for purposes of the preliminary results.

We tested the affiliated-party sales in question to ensure that they were made at "arm's-length" prices, in accordance with our practice. (*See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, 58 FR 37062, 37077 (Appendix II) (July 9, 1993).) To conduct this test, we compared the prices of sales to affiliated and unaffiliated customers net of all movement charges, discounts, rebates, direct selling expenses, and packing costs, where appropriate. Based on the results of that test, we disregarded sales by Winbond to its affiliated party because they were not made at "arm's-length" prices, in accordance with 19 CFR 351.403(c).

Where NV was based on home market sales, we based NV on the starting price to unaffiliated customers. We made deductions from the starting price for foreign inland freight and foreign inland insurance, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) of the Act, we also made deductions for home market credit expenses, trade development fees, and commissions.

We deducted home market indirect selling expenses, including inventory carrying costs and other indirect selling expenses, up to the amount of indirect selling expenses incurred on U.S. sales, in accordance with section 773(a)(7)(B) of the Act. Where applicable, in accordance with 19 CFR 351.410(e), we offset any commission paid on a U.S. sale by reducing the NV by any home market selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act. Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with

section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

Where NV was based on CV, we deducted from CV the weighted-average foreign market direct selling expenses and commissions, in accordance with sections 773(a)(6)(C)(iii) and 773(a)(8). In accordance with section 773(a)(7)(B) of the Act, we granted a CEP offset adjustment, calculated as explained above. Where applicable, we offset any commission paid on a U.S. sale by reducing the NV by any home market indirect selling expenses remaining after the deduction for the CEP offset, up to the amount of the U.S. commission.

*Currency Conversion*

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Section 773A of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by 2.25 percent. The benchmark is defined as the moving average of rates for the past 40 business days. When we determine a fluctuation to have existed, we substitute the benchmark for the daily rate, in accordance with established practice.

*Preliminary Results of Review*

As a result of our review, we preliminarily determine that the following margins exist for the period October 1, 1997, through March 31, 1999 (for G-Link and Winbond) and the period October 1, 1998, through March 31, 1999 (for GSI Technology):

| Manufacturer/exporter | Percent margin |
|---|---|
| G-Link Technology | 21.74 |
| GSI Technology, Inc. | 33.85 |
| Winbond Electronics Corp. | 0.60 |

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of the publication. Any hearing, if requested, will be held two days after the date rebuttal briefs are filed. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such case briefs, within 120 days of the publication of these preliminary results.

Upon completion of this administrative review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of each importer's sales during the POR. These rates will be assessed uniformly on all entries of particular importers made during the POR. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries for any importer for whom the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of SRAMs from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(1) of the Act: (1) The cash deposit rates for G-Link, GSI Technology, and Winbond will be the rates established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106, the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 41.75 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(i)(1) and 777(i)(1) of the Act.

Dated: May 1, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–11465 Filed 5–5–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–469–807]**

## Stainless Steel Wire Rod From Spain: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Howard Smith at (202) 482–5193 or Timothy Finn at (202) 482–0065, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

**Time Limits**

*Statutory Time Limits*

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended ("the Act"), requires the Department of Commerce ("the Department") to make a preliminary determination within 245 days after the last day of the anniversary month of an order or finding for which a review is requested. However, if it is not practicable to complete the preliminary results of review within this time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days.

*Background*

On November 4, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on stainless steel wire rod from Spain, covering the period March 5, 1998 through August 31, 1999 (64 FR 60161). The preliminary

results are currently due no later than June 1, 2000.

*Extension of Time Limit for Preliminary Results of Review*

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. *See* Decision Memorandum from Tom Futtner to Holly A. Kuga, dated April 28, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore the Department is extending the time limit for completion of the preliminary results until no later than September 29, 2000. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 28, 2000.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary, Import Administration, Group II.*

[FR Doc. 00–11459 Filed 5–5–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### University of Vermont Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This is a decision pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

*Decision*: Denied. Applicant has failed to establish that domestic instruments of equivalent scientific value to the foreign instrument for the intended purposes are not available.

*Reasons*: Section 301.5(e)(4) of the regulations requires the denial of applications that have been denied without prejudice to resubmission if they are not resubmitted within the specified time period. This is the case for the following docket.

Docket Number: 99–031. Applicant: University of Vermont, Burlington, VT 05405. Instrument: HVS Video Tracking System, Pool and Platform, Model 2020. Manufacturer: HVS Image Ltd., United Kingdom. Date of Denial Without Prejudice to Resubmission: February 14, 2000.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 00–11466 Filed 5–5–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### University of Delaware; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 00–008. Applicant: University of Delaware, Newark, DE 19716. Instrument: Electron Microscope, Model JEM-2010F. Manufacturer: JEOL Ltd., Japan. Intended Use: See notice at 65 FR 21397, April 21, 2000. Order Date: November 1, 1999.

*Comments:* None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. Reasons: The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 00–11467 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 00–011. Applicant: University of Michigan, 930 N. University Avenue, Ann Arbor, MI 48109–1055. Instrument: Electron Beam Evaporator, Model EGN4. Manufacturer: Oxford Applied Research, United Kingdom. Intended Use: The instrument is intended to be used for studies of how various materials interact with thin metal films. Application accepted by Commissioner of Customs: April 21, 2000.

Docket Number: 00–013. Applicant: Allegheny-Singer Research Institute, 320 East North Avenue, Pittsburgh, PA 15212–4772. Instrument: Robot and Microplate Manipulator, Model Q-Bot. Manufacturer: Genetix Limited, United Kingdom. Intended Use: The instrument is intended to be used to prepare addressable libraries of DNA clones (both genomic and cDNA) for comparative gene expression studies (the basis of the science of functional genomics) to understand the differences between normal physiologic processes. The instrument will also be used for educational objectives through teaching trainees in the most current means to comparatively evaluate differences in gene expression. Application accepted by Commissioner of Customs: April 21, 2000.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 00–11468 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves

**AGENCY:** Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

**ACTION:** Notice of intent to evaluate.

**SUMMARY:** The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Ohio Coastal

Zone Management Program and the North Carolina National Estuarine Research Reserve (NERR).

The Coastal Zone Management Program evaluation will be conducted pursuant to section 312 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 923.

The NERR evaluation will be conducted pursuant to section 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended and regulations at 15 CFR part 921, subpart E and part 923, subpart L.

The CZMA requires a continuing review of the performance of states with respect to coastal program and research reserve program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves require findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document or the Reserve's final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA.

The evaluations will include a site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Ohio Coastal Zone Management Program evaluation site visit will be from June 26–30, 2000. The public meeting will be held on Wednesday, June 28, 2000, at 7:30 P.M., in the Visitor's Center at the Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, Huron, Ohio.

The North Carolina National Estuarine Research site visit will be from May 22–26, 2000. Public meetings will be held on Tuesday, May 23, 2000, at 7:00 P.M., in the Currituck County Satellite Office, Corolla, North Carolina; Wednesday, May 24, 2000, at 7:00 P.M., in the Marine Laboratory Auditorium, Duke University, Beaufort, North Carolina; and Thursday, May 25, 2000, at 7:00 P.M., at the Bryan Auditorium in Morton Hall, University of North Carolina at Wilmington, Wilmington, North Carolina.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States, are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Margo E. Jackson, Deputy Director, Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland, 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

**FOR FURTHER INFORMATION CONTACT:** Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, (301) 713–3155, Extension 114.

(Federal Domestic Assistance Catalog 11.419, Coastal Zone Management Program Administration)

Dated: May 2, 2000.

**John Oliver,**

*Chief Financial Officer, Chief Administrative Officer, National Ocean Service.*

[FR Doc. 00–11346 Filed 5–05–00; 8:45 am]

**BILLING CODE 3510–08–M**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 041900C]**

### Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of letters of authorization.

**SUMMARY:** In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that letters of authorization (LOAs) to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on February 4, 2000, to Taylor Energy Company of New Orleans, LA, and to Unocal Corporation of Lafayette, LA, on February 13, 2000, to Chevron U.S.A. of New Orleans, LA, on March 6, 2000 to Energy Resource Technology, Inc, on March 22, 2000, to Torch Operating Company, on April 21, 2000 to PennzEnergy, Newfield Exploration Company, and The Houston Exploration Company, all from Houston, TX, and to CNG Producing Company from New Orleans, Louisiana.

**ADDRESSES:** The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, ext 128.

**SUPPLEMENTARY INFORMATION:** Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000. However, because these regulations will expire on November 13, 2000, that is the expiration date for all LOAs issued under these regulations.

Dated: May 2, 2000.

**Art Jeffers,**

*Deputy Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–11448 Filed 5–5–00; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 041400A]

### Taking and Importing of Marine Mammals

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of affirmative finding; removal of embargo.

**SUMMARY:** The Assistant Administrator for Fisheries, NMFS, issued an affirmative finding for the Government of Mexico under the Marine Mammal Protection Act (MMPA) on April 12, 2000. This affirmative finding allows importation into the United States of yellowfin tuna and yellowfin tuna products harvested in the eastern tropical Pacific Ocean (ETP) after March 3, 1999, by Mexican-flag purse seine vessels or vessels operating under Mexican jurisdiction greater than 400 short tons (362.8 mt) carrying capacity. The affirmative finding was based on documentary evidence submitted by the Government of Mexico and obtained from the Inter-American Tropical Tuna Commission (IATTC). This finding remains in effect through March 31, 2001.

**DATES:** Effective April 12, 2000, through March 31, 2001.

**FOR FURTHER INFORMATION CONTACT:** Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, California, 90802–4213; Phone 562–980–4000; Fax 562–980–4018.

**SUPPLEMENTARY INFORMATION:** The MMPA, 16 U.S.C. 1361 et seq, as amended by the International Dolphin Conservation Program Act (IDCPA) (P. L. 105–42), allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the eastern tropical Pacific Ocean (ETP) under certain conditions. If requested by the harvesting nation, the Assistant Administrator for Fisheries, NOAA, will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, by the International Dolphin Conservation Program (IDCP), the IATTC, or the Department of State. A finding will remain valid for 1 year (April 1 through March 31) or for such other period as the Assistant Administrator for Fisheries may determine. The harvesting nation must submit an application directly to the Assistant Administrator for Fisheries for the first affirmative finding. Every 5 years, the government of the harvesting nation, must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator for Fisheries. The Assistant Administrator may require the submission of additional supporting documentation or verification of statements made in connection with requests to allow importations. An affirmative finding applies to tuna and tuna products that were harvested in the ETP by purse seine vessels of the nation, and applies to any tuna harvested in the ETP purse seine fishery after March 3, 1999, the effective date of the IDCPA.

The affirmative finding process requires that the harvesting nation meet several conditions related to compliance with the IDCP. To issue an annual affirmative finding, NMFS must receive the following information:

1. A statement requesting an affirmative finding;
2. Evidence of membership in the IATTC;
3. Evidence that a nation is meeting its obligations to the IATTC, including financial obligations;
4. Evidence that a nation is complying with the IDCP. For example, national laws and regulations implementing the Agreement on the IDCP and information that the nation is enforcing those laws and regulations;
5. Evidence of a tuna tracking and verification program comparable to the U.S. tracking and verification regulations at 50 CFR 216.94;
6. Evidence that the national fleet dolphin mortality limits (DMLs) were not exceeded in the previous calendar;
7. Evidence that the national fleet per-stock per-year mortality limits, if they are allocated to countries, were not exceeded in the previous calendar year;
8. Authorization for the IATTC to release to the Assistant Administrator for Fisheries complete, accurate, and timely information necessary to verify and inspect Tuna Tracking Forms; and
9. Authorization for the IATTC to release to the Assistant Administrator for Fisheries information whether a nation is meeting its obligations of membership to the IATTC and whether a nation is meeting its obligations under the IDCP, including managing (not exceeding) its national fleet DMLs or its national fleet per-stock per-year mortality limits. A nation may opt to provide this information directly to NMFS on an annual basis or to authorize the IATTC to release the information to NMFS in years when NMFS will review and consider whether to issue an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator for Fisheries determines that the requirements of 50 CFR 216.24(f)(9) are no longer being met or that a nation is consistently failing to take enforcement actions on violations which diminish the effectiveness of the IDCP. Every 5 years, the government of the harvesting nation, must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator for Fisheries.

The Assistant Administrator for Fisheries reviewed the application and documentary evidence submitted by the Government of Mexico and determined that the requirements under the MMPA to receive an affirmative finding have been met for the purposes of issuing an affirmative finding for the period April 1—March 31, 2001. On April 12, 2000, after consultation with the Department of State, NMFS issued an affirmative finding that removed the embargo and allows yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Mexican-flag purse seine vessels or vessels under Mexican jurisdiction greater than 400 short tons (362.8 metric tons) carrying capacity after March 3, 1999, to be imported into the United States. In subsequent years 2001 through 2004, the Assistant Administrator will determine on an annual basis whether the Government of Mexico is meeting the requirements under section 101 (a)(2)(B) and (C) of the MMPA. NMFS will use documentary evidence provided by the IATTC and the Department of State or by the harvesting nation on an annual basis to determine whether the finding should be renewed. If necessary, documentary evidence may also be requested from the Government of Mexico to determine whether the affirmative finding criteria are being met. A new application is due by the Government of Mexico if the affirmative finding lapses or is revoked. If the affirmative finding for the Government of Mexico is renewed after NMFS's annual review in the years 2001 to 2004, the Government of Mexico must submit a new application in early 2005 for an affirmative finding to be effective for the period April 1, 2005, through March 31, 2006, and subsequent years.

Dated: April 19, 2000.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–11446 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 050100A]**

### New England Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee and Advisory Panel, Habitat Committee and Advisory Panel, Enforcement Committee, and Gear Conflict Committee and Advisory Panel in May and June, 2000 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** The meetings will held between Wednesday, May 24, 2000 and Friday, June 2, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** The meetings will be held in Peabody and Mansfield, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

*Council address*: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Paul J. Howard, Executive Director, New England Fishery Management Council (978) 465–0492.

**SUPPLEMENTARY INFORMATION:**

#### Meeting Dates and Agendas

*Wednesday, May 24, 2000, at 9:30 a.m. and Thursday, May 25, 2000, at 8:30 a.m.*—Scallop Committee and Scallop Advisory Panel Joint Meeting

Location: Kings Grant Inn, Trask Road, Route 128, Exit 21N, Danvers, MA 01923; telephone: (978) 774–6800; fax: (978) 774–6502.

The committee and advisors will review and finalize the draft management alternatives for Amendment 10 to the fishery management plan. Part of the meeting on May 24, 2000 will be a joint meeting with the Habitat Committee and its advisors.

Amendment 10 considers new area rotation systems to improve scallop yield, changes to the framework adjustment process and timing, modifications to the crew size limit, and possible trawl gear modifications to improve size selection. The purpose of this meeting will be to evaluate draft Amendment 10 alternatives, identify potential impacts, and recommend modifications to these conceptual alternatives so that the potential impacts are taken into account.

The committee will recommend these draft alternatives to the Council at its June 14–15, 2000 meeting for inclusion and analysis in the Draft Supplemental Environmental Impact Statement.

*Wednesday, May 24, 2000, at 9:30 a.m.*—Habitat Committee and Habitat Advisory Panel Joint Meeting

Location: Kings Grant Inn, Trask Road, Route 128, Exit 21N, Danvers, MA 01923; telephone: (978) 774–6800; fax: (978) 774–6502.

The committee and advisors will discuss and develop recommendations for Amendment 10 to the Sea Scallop Fishery Management Plan. The purpose of this joint meeting will be to evaluate draft Amendment 10 alternatives, identify potential impacts, and recommend modifications to these conceptual alternatives so that the potential impacts are taken into account. This meeting is being held jointly with the Scallop Oversight Committee meeting announced above.

*Thursday, June 1, 2000, at 9:30 a.m.*—Joint Scallop Oversight Committee and Enforcement Committee Meeting

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

The committee will discuss and develop recommendations for Amendment 10 to the Sea Scallop Fishery Management Plan. The purpose of this joint meeting will be to evaluate draft Amendment 10 alternatives, identify potential impacts, and recommend modifications to these conceptual alternatives so that the potential impacts are taken into account. Also, the committee will evaluate enforcement of general category permit gear restrictions and will hear a presentation by the NMFS Office of Law Enforcement on enforcement of day-at-sea and closed area regulations through the Vessel Monitoring System.

*Friday, June 2, 2000, at 9:30 a.m.*—Joint Scallop Oversight Committee and Gear Conflict Committee Meeting

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200; fax: (508) 339–1040.

The committee will discuss and develop recommendations for Amendment 10 to the Sea Scallop Fishery Management Plan. The purpose of this joint meeting will be to evaluate draft Amendment 10 alternatives, identify potential impacts, and recommend modifications to these conceptual alternatives so that the potential impacts are taken into account.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject for formal action during these meetings. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 2, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–11447 Filed 5–5–00; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title and OMB Number:* Defense Reutilization and Marketing Service Customer Comment Card; OMB Number 0704–0394.

*Type of Request:* Extension.

*Number of Respondents:* 800.

*Responses Per Respondent:* 1.

*Annual Responses:* 800.

*Average Burden Per Response:* 15 minutes.

*Annual Burden Hours:* 200.

*Needs and Uses:* The information collection requirement is necessary to obtain customer rating and comments on the service of a Defense Reutilization and Marketing store. Respondents are customers who obtain or visit a store to obtain surplus or excess property. The customer comment card is a means for customers to rate and comment on aspects of the store's appearance, as an agent for service improvement, and for determining whether there is a systemic problem.

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions; State, Local, or Tribal Governments.

*Frequency:* On Occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 2, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–11392 Filed 5–5–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Form Number, and OMB Number:* Request for Approval for Qualification Training and Approval of Contractor Flight Crewmember, DD Forms 2627 and 2628; OMB Number 0704–0347.

*Type of Request:* Reinstatement.

*Number of Respondents:* 42.

*Responses Per Respondent:* 1.9.

*Annual Responses:* 81.

*Average Burden Per Response:* 5 minutes.

*Annual Burden Hours:* 7.

*Needs and Uses:* The requirement to have government approval of contract flight crewmembers is in Defense Logistics Agency Manual (DLAM) 8210.1, Contractor's Ground and Flight Operations, Vol I, Chapter 6. The contractor provides a personal history and requests the government approve training in a particular type government aircraft (DD Form 2627). The contractor certifies the crewmember has passed a flight evaluation and, with the DD form 2628, requests approval of the personnel to operate and fly government aircraft. Without the approvals, the contractor cannot use their personal as requested.

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 2, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–11393 Filed 5–5–00; 8:45 am]

BILLING CODE 5001–10–U

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Form Number, and OMB Number:* Armed Forces Participation in Public Events; DD Forms 2535 and 2536; OMB Number 0704–0290.

*Type of Request:* Extension.

*Number of Respondents:* 43,000.

*Responses Per Respondent:* 1.

*Annual Responses:* 43,000.

*Average Burden Per Response:* 8 minutes (average).

*Annual Burden Hours:* 5,547.

*Needs and Uses:* The information collection requirement is necessary to evaluate the eligibility of events to receive Armed Forces community relations support and to determine whether requested military assets are available. Respondents are individuals or representatives of Federal and non-Federal government agencies, community groups, non-profit organizations, and civil organizations requesting Armed Forces support for patriotic events conducted in the civilian domain. DD Forms 2535 and 2536 record the type of military support requested, event data, and sponsoring organization information. The completed forms provide the Armed Forces the minimum information necessary to determine whether an event is eligible for military participation and whether the desired support is permissible and/or available. If the forms are not provided, the review process is greatly increased because the Armed Forces must make additional written and telephonic inquiries with the event sponsor. In addition, use of the forms reduces the event sponsor's preparation time because the forms provide a detailed outline of information required, eliminate the need for a detailed letter, and contain concise information necessary for determining appropriateness of military support. Use of the forms is essential to reduce preparation and processing time, increase productivity, and maximize responsiveness to the public.

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions; State, Local, or Tribal Government.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 3, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–11394 Filed 5–5–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**ACTION:** Notice of Proposed Information Collection Requests.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 4, 2000. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 7, 2000.

**ADDRESSES:** Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: May 2, 2000.

**William E. Burrow,**

*Leader, Information Management Group, Office of the Chief Information Officer.*

*Office of Special Education and Rehabilitative Services*

*Type of Review:* New.

*Title:* Alternative Financing Program and the Alternative Financing Technical Assistance Program.

*Abstract:* The purpose of this program is to increase the availability of and expand opportunities for the purchase of assistive technology by creating State loan programs and to establish one grantee to give technical assistance to the States.

*Additional Information:* This program is a high priority initiative and a key part of the Administration's overall strategy to increase access to Assistive Technology services and devices for individuals with disabilities.

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or households; Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:*

Responses: 57.

Burden Hours: 1,680.

Requests for copies of the proposed information collection request should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov, or should be faxed to 202–708–9346.

Comments regarding burden and/or the collection activity requirements, contact Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–11382 Filed 5–5–00; 8:4 5am]

BILLING CODE 4000–01–U

## DEPARTMENT OF EDUCATION

### National Institute on Disability and Rehabilitation Research

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of proposed funding priority for fiscal years 2000–2001 for one Disability and Rehabilitation Research Project (DRRP).

**SUMMARY:** The Assistant Secretary for the Office of Special Education and Rehabilitative Services proposes to establish a priority for one DRRP under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 2000–2001. The Assistant Secretary takes this action to focus research attention on an area of national need. We intend the priority to improve rehabilitation services and outcomes for individuals with disabilities. This notice contains a proposed priority under the Disability and Rehabilitation Research Projects and Centers Program for a DRRP on information technology technical assistance and training.

**DATES:** Comments must be received on or before June 7, 2000.

**ADDRESSES:** All comments concerning this proposed priority should be addressed to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW, room 3418, Switzer Building, Washington, DC 20202–2645. Comments may also be sent through the Internet: donna__nangle@ed.gov.

You must include the term "Disability and Rehabilitation Research Projects and Centers" in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: donna__nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audio tape, or computer diskette) on request to

the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:**

**Invitation to Comment**

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this priority in Room 3424, Switzer Building, 330 C Street SW., Washington, DC, between the hours of 9 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

**Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record**

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

This proposed priority supports the National Education Goal that calls for every American to possess the skills necessary to compete in a global economy.

The authority for the Assistant Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762 and 764). Regulations governing this program are found in 34 CFR Part 350.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

**Note:** This notice does not solicit applications. In any year in which the Assistant Secretary chooses to use one or more proposed priorities, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate each priority as absolute, competitive preference, or invitational.

**Disability and Rehabilitation Research Projects**

Authority for DRRPs is contained in section 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13–350.19: Research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

**Proposed Priority**

Under an 34 CFR 75.105(c)(3) the Assistant Secretary proposes to give an absolute preference to applications that meet the following priority. The Assistant Secretary proposes to fund under this competition only an application that meets this absolute priority.

**Proposed Priority: Information Technology Technical Assistance and Training Center**

*Background*

The emerging digital economy is fundamentally altering the way Americans work. The advent of powerful computers, high speed modems, sophisticated telecommunications networks, fiber optics, broadband network capacity, intranets, the Internet, the World Wide Web (WWW), and satellites has enabled computer and information experts to build a global information network that is unparalleled. These technologies, and how we use them, are undergoing rapid changes that result in a new wave of information flow that touches all facets of society, including education, employment and daily living. In this period of rapid technical, economic, and social change, access to electronic and information technologies is essential for everyone. Unfortunately, while the availability of information technology holds tremendous promise to level the playing field, the proliferation of electronic and information technologies does not guarantee accessibility and usability for individuals with disabilities.

The electronic and information technology industry has been growing at more than double the rate of the overall economy—a trend that is likely to continue (The Emerging Digital Economy II, a report by the U.S. Department of Commerce, June, 1999). Because of the increase in availability of the Internet, 20 million salaried workers telecommuted from their homes last year. That number is expected to reach 130 million by 2003 (InfoTech Trends, Fourth Quarter, 1998). Electronic mail, once considered an elite mode of communication for university-based researchers and scientists, is now routinely used by workers to instantly exchange visual and audible information in readable and reusable formats (*e.g.*, computer files, charts, figures, tables, images, databases, and software packages) using one of the estimated 14,000 Internet service providers worldwide (InfoTech Trends, Second Quarter, 1999).

In today's market, electronic and information technology product cycles are measured in months, not years. The same can be said for product lifetimes. This rapid proliferation of technologies has emphasized the need for universal design—a process whereby environments and products are designed with built-in flexibility so they are usable by as many people as possible, regardless of age and ability, at no additional cost to the user. Given the rapid evolution of each generation, new products often do not include universal design features, thus increasing the need for the expensive process of retrofitting.

Unfortunately, there is a shortage of individuals knowledgeable about the principles of universal design and the benefits of incorporating universal design features into electronic and information technologies. There is also a shortage of individuals trained to educate consumers, customer service professionals, technical writers, web developers, marketers, and other information technology related professionals about accessible and usable electronic and information technologies.

Congress has passed landmark legislation that increased access to electronic and information technology in a range of areas. These laws, and their provisions, include the Hearing Aid Compatibility Act of 1988, the Television Decoder Circuitry Act of 1990, the Americans with Disabilities Act (ADA) of 1990, the

Telecommunications Act of 1996, the Assistive Technology Act (AT Act) of 1998, and the Workforce Investment Act of 1998, which includes sections 504 and 508 of the Rehabilitation Act of 1973, as amended.

Section 255 of the Telecommunications Act of 1996 requires telecommunications service providers and equipment manufacturers to make their services and equipment accessible by persons with the full range of disabilities, if readily achievable. If a manufacturer or service provider claims this is not readily achievable, the manufacturer or service provider must still ensure that the equipment or service is compatible with existing peripheral devices or specialized customer premises equipment commonly used by individuals with disabilities to achieve access. On July 19, 1999, the Federal Communications Commission (FCC) adopted rules and guidelines to implement section 255 of the Telecommunications Act.

Section 508 of the Rehabilitation Act of 1973, as amended, requires access to the Federal government's electronic and information technology. Section 508 applies to all federal departments and agencies when they develop, procure, maintain or use electronic and information technology. Federal departments and agencies must ensure equal access to, and use of, electronic and information technology for Federal employees with disabilities and members of the public seeking information or services from their agency comparable to those who do not have disabilities, unless such a requirement would cause an undue burden. The Access Board published a notice of proposed rulemaking in the **Federal Register** (65 FR 17345) on section 508 standards on March 31, 2000 and will publish final standards after analysis of comments received. Federal agencies will be responsible for complaints related to the procurement of accessible electronic and information technologies as of August 7, 2000. The Assistive Technology Act, 29 USC 3001, also requires that States receiving assistance, including subrecipients, under the State Grants program comply with the requirements of section 508, including the standards developed by the Access Board.

The regulations and standards for section 255 of the Telecommunications Act and section 508 of the Rehabilitation Act will have a profound impact on dozens of stakeholders, including, but not limited to, information technology manufacturers, product designers and engineers, technical writers, marketers, distributors, purchasers of information technologies, web developers and others. Currently there is a dearth of information and technical assistance available for stakeholders and other constituencies on how to comply with these regulations and standards. There is also a limited supply of skilled professionals capable of providing training and support on how to implement the requisite guidelines and standards for electronic and information technology.

A number of Federal agencies are collaborating to promote awareness about accessible electronic and information technologies, the benefits of incorporating universal design into these products, and the need for expanding capacity for training and technical assistance in this field. NIDRR, the General Services Administration, the Federal Communications Commission, and the Access Board are jointly supporting a multifaceted initiative that includes a demonstration center, multiple web pages, and technical assistance and training efforts, in partnership with industrial consortia and professional and trade associations. This priority relates to the need for expanding capacity for technical assistance and training for a broad array of constituents.

**Priority: Information Technology Technical Assistance and Training Center**

The Assistant Secretary proposes to establish an Information Technology Technical Assistance and Training Center to promote the wide spread use of accessible and usable electronic and information technology and to promote the benefits of universal design. In carrying out these purposes, the Information Technology Technical Assistance and Training Center must:

1. Design and implement a needs assessment that will determine the technical assistance and training needs relative to: a) implementing the final standards under section 508 of the Rehabilitation Act; b) the guidelines for section 255 of the Telecommunications Act; and c) promoting the principles of universal design. The needs assessment should target audiences including, but not limited to, State procurement officers, product designers and engineers, marketers, technical writers, web developers, consumer and disability-related organizations, service providers, human resource professionals, and relevant industrial consortia and professional and trade associations;

2. Based upon the findings of the needs assessment, develop, implement and evaluate relevant training materials and instructional modules that meet the requirements of section 255 of the Telecommunications Act and section 508 of the Rehabilitation Act, and address the principles of universal design;

3. Develop and disseminate training materials and instructional modules to States receiving AT Act funds on implementing the requirements of section 508 and its standards;

4. Provide information, training and technical assistance about section 255 of the Telecommunications Act, section 508 of the Rehabilitation Act, and the principles of universal design to appropriate constituencies, including the information technology and telecommunications industry, relevant industrial consortia, professional and trade associations, and States receiving AT Act funds;

5. Collaborate with the General Services Administration, the Federal Communications Commission, and the Access Board by contributing information and materials for the Government wide web site on Section 508;

6. Design and implement, in collaboration with the Federal Communications Commission, the Access Board, the Rehabilitation Engineering Research Center on Telecommunications Access and the telecommunications industry, a web site that contains information and instructional materials, including those developed under Activity 2, that can be used by telecommunications designers of equipment and services to develop and fabricate solutions that are in accordance with the guidelines for section 255 of the Telecommunications Act; and

7. Identify, implement, and disseminate strategies, in collaboration with industrial consortia and professional and trade associations, that will expand training capacity of the field and increase the knowledge base about accessible and usable electronic and information technology.

In addition to the activities proposed by the applicant to carry out these purposes, the Information Technology Technical Assistance and Training Center must:

- Collaborate with industry, industrial consortia, professional and trade associations, and States receiving AT Act funds on all relevant activities;

Coordinate on activities of mutual interest with NIDRR-funded projects including the Rehabilitation Engineering Research Centers on

Information Technology Access and Telecommunications Access and the Disability and Business Technical Assistance Centers; and

• Collaborate with relevant Federal agencies responsible for the administration of public laws that address access to and usability of electronic and information technology for individuals with disabilities including, but not limited to, the General Services Administration, the Access Board, the Federal Communications Commission, the Rehabilitation Services Administration, and other relevant Federal agencies identified by NIDRR.

**Proposed Additional Selection Criterion**

The Assistant Secretary will use the selection criteria in 34 CFR 350.54 to evaluate applications under this program. The maximum score for all the criteria is 100 points; however, the Assistant Secretary also proposes to use the following criterion so that up to an additional ten points may be earned by an applicant for a total possible score of 110 points:

Within this absolute priority, we will give the following competitive preference to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the extent to which an application includes effective strategies for employing and advancing in employment qualified individuals with disabilities in projects awarded under this absolute priority. In determining the effectiveness of those strategies, we will consider the applicant's success, as described in the application, in employing and advancing in employment qualified individuals with disabilities in the project.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

*Applicable Program Regulations:* 34 CFR Parts 350 and 353.

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**Program Authority:** 29 U.S.C. 761a(g) and 762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects)

Dated: May 3, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–11529 Filed 5–5–00; 8:45 am]

BILLING CODE 4000–01–U

## DEPARTMENT OF EDUCATION

### Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of arbitration panel decision under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on November 16, 1998, an arbitration panel rendered a decision in the matter of *Alabama Department of Rehabilitation Services* v. *U.S. Department of Defense, Department of the Air Force (Docket No. R–S/97–4)*. This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(b) upon receipt of a complaint filed by petitioner, the Alabama Department of Rehabilitation Services.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

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To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)) (the Act), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

**Background**

This dispute concerns the alleged violation by the U.S. Department of Defense, Department of the Air Force (Air Force), of the priority provisions of the Act by the exclusion of the proposal submitted by the Alabama Department of Rehabilitation Services, the State licensing agency (SLA), from the competitive range for a full food service contract at Maxwell Air Force Base, Gunter Annex, Alabama. A summary of the facts is as follows: On July 2, 1996, the Air Force issued a request for proposal (RFP) for full food service at Maxwell Air Force Base, Gunter Annex, Alabama. The SLA responded to the RFP as the State licensing agency authorized to administer the Act in Alabama. In the SLA's proposal, a blind person was designated as the State's licensee, and Food Service, Inc. was identified as a subcontractor to the SLA.

The RFP specified that the technical criteria of management, production, quality control and safety would be used to evaluate the proposal. Following the technical evaluation of the proposal by the Air Force, the SLA was informed that its proposal was determined to be unacceptable under the management criteria. In excluding the SLA, the Air Force determined that the SLA's proposal had three primary deficiencies: (1) It failed to provide evidence of the

contractor's full understanding of the requirement for maintaining the SIMS computer system for the food service operation, in particular with regard to the contractor's role in providing contractor personnel identifications and passwords. (2) The proposed SIMS Administrator did not have the level of experience required by the solicitation. (3) The alternate SIMS Administrators did not have the experience required by the solicitation.

In October 1996, the Air Force issued four clarification/deficiency letters to the SLA requesting that the SLA respond to its concerns. In a letter dated November 20, 1996, the Air Force advised the SLA of its exclusion from the competitive range of the RFP. The letter referred to the three previously stated reasons as the basis for the Air Force's decision.

The SLA received the November 20th letter from the Air Force on November 22 and on November 27 filed a protest against the Air Force with the U.S. General Accounting Office (GAO). The SLA then learned that the Air Force had awarded a contract to a private concessionaire on November 22, 1996. On November 29, the SLA filed a supplemental protest with GAO alleging that the Air Force had violated the Federal Acquisition Regulation, which requires contracting officers to notify in writing an unsuccessful offeror at the earliest practicable time that its proposal is no longer in the competitive range.

On December 2, 1996, the Air Force filed a request for summary dismissal of the SLA's protest with GAO. On December 12, the SLA received notification that its protest had been dismissed. The SLA filed a request for arbitration with the Secretary of Education concerning this dispute. A Federal arbitration hearing on this matter was held on June 16, 1998.

**Arbitration Panel Decision**

The central issues before the arbitration panel were: (1) Did the Air Force reasonably and properly evaluate the proposal submitted by the SLA? (2) Did the Air Force comply with the legal requirements to conduct meaningful discussions with the SLA pursuant to the Act and implementing regulations? (3) Did the Air Force comply with the legal requirement to treat all offerors equally?

The majority of the panel ruled that the record demonstrated that the Air Force technical evaluation team evaluated the SLA's proposal reasonably and in accordance with the terms of the solicitation. The solicitation required that the proposed SIMS Administrator have 3 years experience performing complete system back-ups including daily back-ups, as well as 3 years experience in trouble-shooting the system. The offeror was required to provide resumes and other evidence that substantiated that its proposed SIMS Administrator satisfied this requirement. The record reflects that the SLA failed to do so.

The panel further found that, in order to show that it was improperly excluded from the competitive range, the burden of proof was on the SLA to show that the determinations concerning the unacceptability of its proposal were unreasonable. The majority of the panel concluded that the evidence failed to meet this burden. Further, the record showed that the Air Force evaluators reasonably reached each determination concerning the technical unacceptability of the SLA's proposal and the Air Force Contracting Officer reasonably excluded the SLA's proposal from the final competitive range. Accordingly, the panel found that the Air Force's evaluation of the SLA's proposal and decision to eliminate the SLA from the competitive range were reasonable, rational, proper, and in accordance with the requirements of the solicitation.

Concerning the second issue, regarding the alleged failure of the Air Force to conduct meaningful discussions with the SLA, the majority of the panel stated that, when conducting meaningful discussions, an agency merely must direct or lead offerors into areas of their proposals needing amplification. An agency is not obligated to give offerors all-encompassing negotiations, nor is the agency required to rewrite an offeror's proposal. The panel found that, in this procurement, the Air Force on several occasions informed the SLA representatives of the Air Force's concerns with regard to the SLA's SIMS experience and its role in maintaining the system.

Regarding the third issue, concerning the alleged failure of the Air Force to treat all offerors fairly, the majority of the panel found that the record fully supported the reasonableness of the Air Force's evaluation of the SLA's proposal. The panel further ruled that there was no evidence of unequal or unfair treatment. After fully considering the record, the majority of the panel ruled that the Air Force acted reasonably, properly, and in accordance with the solicitation in evaluating and excluding the proposal submitted by the SLA. Therefore, the complaint was denied.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U. S. Department of Education.

Dated: May 1, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–11345 Filed 5–5–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–221–002]**

### CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 27, 2000, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, Substitute Second Revised Sheet No. 14 with an effective date of April 1, 2000.

CNG states that the purpose of the filing is to comply with the Commission's April 18, 2000 letter order in this proceeding correcting the classification of Line H–156 to transmission as required by the Commission's order issued in Docket No. CP97–549–000.

CNG states that copies of this letter of transmittal and enclosures are being served upon parties listed on the official service list.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11359 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER000–1770–000]

### Conectiv Energy Supply, Inc.; Notice of Issuance of Order

May 2, 2000.

On March 1, 2000, Conectiv, on behalf of its affiliates, Conectiv Delmarva Generation, LLC (CDG) and Conective Atlantic Generation, LLC (CAG) filed under section 205 of the Federal Power Act proposed market-based rates tariffs. In its filing, Conectiv also requested certain waivers and authorizations for CDG and CAG. In particular, Conectiv requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by CDG and CAG. On April 25, 2000, the Commission issued an Order Accepting For Filing Proposed Service Agreements And Market-Based Rates (Order), in the above-docketed proceeding.

The Commission's April 25, 2000 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (F):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by CDG or CAG should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, CDG and CAG are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of CDG and CAG compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of CDG's and CAG's issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 25, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Borgers,**

*Secretary.*

[FR Doc. 00–11351 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. GT00–28–000]

### Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 28, 2000, Great Lake Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2000:

Fifth Revised Sheet No. 3
Fourth Revised Sheet No. 3A Fourth Revised Sheet No. 3B Fourth Revised Sheet No. 3C

Great Lakes states that the tariff sheets listed above are being filed to revise the system and zone maps included in Great Lakes' tariff pursuant to 154.106(c) of the Commission's regulations. The revisions to the maps reflect the addition of the China meter station to Great Lakes' system, horsepower changes for two compressor stations, and other minor corrections.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11353 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. EC00–78–000]

### Merchant Energy Group of the Americas, Inc.; Notice of Filing

May 2, 2000.

Take notice that on April 27, 2000, Merchant Energy Group of the Americas, Inc., Gener S.A., and TransAlta USA Inc. (Applicants) tendered for filing Exhibit H, the Stock Purchase Agreement (SPA), to accompany the joint application under Section 203 of the Federal Power Act filed by the Applicants on April 13, 2000. Pursuant to 18 CFR 388.112, Applicants request confidential treatment of the SPA.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 15, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11366 Filed 5–5–00; 8:45 am]

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DEPARTMENT OF ENERGY

**Federal Energy Regulatory Commission**

[Docket No. RP00–218–001]

**Natural Gas Pipeline Company of America; Notice of Compliance Filing**

May 2, 2000.

Take notice that on April 27, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective April 16, 2000.

Natural states that these tariff sheets were filed in compliance with the Commission's "Order Accepting and Suspending Tariff Sheets Subject to Refund and Other Conditions" issued April 12, 2000 in Docket No. RP00–218–000 related to Natural's implementation of new Rate Schedule IBS (interruptible imbalance management service).

Natural states that copies of the filing have been mailed to its customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP00–218.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11358 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

**Federal Energy Regulatory Commission**

[Docket No. RP00–256–000]

**Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff**

May 2, 2000.

Take notice that on April 28, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fourteenth Revised Sheet No. 22, to be effective June 1, 2000.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions (GT&C) of its Tariff as the fourteenth semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Commission promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines.

Natural requested waivers of Section 21 of the GT&C of its Tariff and the Commission's Regulations to the extent necessary to permit Fourteenth Revised Sheet No. 22 to become effective June 1, 2000.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11361 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

**Federal Energy Regulatory Commission**

[Docket No. RP00–257–000]

**Ozark Gas Transmission, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff**

May 2, 2000.

Take notice that on April 28, 2000, Ozark Gas Transmission, L.L.C. (OGT) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective June 1, 2000:

First Revised Sheet No. 13
First Revised Sheet No. 17
First Revised Sheet No. 46
First Revised Sheet No. 47
First Revised Sheet No. 80

OGT states that the proposed rate changes would increase OGT's revenues from jurisdictional transportation services by approximately $6.4 million, based on the twelve-month period ended December 31, 1999, as adjusted, compared with the underlying rates approved in the Commission's 1998 certificate order which approved the combination of two pipeline systems into what is now the OGT system. Ozark Gas Transmission Sys., et al., 84 FERC ¶ 61,002, reh'g granted in part, 85 FERC ¶ 61,329 (1998).

OGT states that the adjustments in rates are attributable to: (a) a change in the required rate of return and related taxes; (b) a reduction in the depreciation rate to be applied to transmission plant; (c) changes in operation and maintenance expenses and the inclusion of income taxes not reflected in the currently effective rates; (d) revised system rate design quantities; and (e) a reduction in the percentage governing fuel retention to reflect decreased fuel requirements.

OGT further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11362 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–59–001]**

### Petal Gas Storage, L.L.C.; Notice of Site Visit

May 2, 2000.

On May 11, 2000, the Office of Energy Projects staff will be conducting a precertificate inspection of the facilities proposed by Petal Gas Storage, L.L.C. (Petal) in the above-referenced docket. The inspection will begin at Petal's existing plant site near Hattiesburg, in Forrest County, Mississippi, at approximately 1:00 p.m., and proceed to examine the proposed new compressor station and pipeline route on the ground via automobile.

All parties may attend. Those planning to attend must provide their own transportation.

For further information, please contact Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11349 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–255–000]**

### Petal Gas Storage, L.L.C.; Notice of Request for Waiver

May 2, 2000.

Take notice that on April 27, 2000, Petal Gas Storage, L.L.C. (Petal), tendered for filing a Request for Waiver of the Internet/interactive web site requirements of the Commission's Order No. 587–I.

Petal states that it is a small company with only two active customers and relatively low volumes. Petal further states that it maintains an electronic bulletin board (EBB) for informational postings and that none of its customers have requested an interactive web site. Petal furthers states that it will agree to implement an interactive web site if its customers request it or its business changes significantly in the future.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 9, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11360 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–108–000]**

### Questar Pipeline Company; Notice of Postponement of Technical Conference

May 2, 2000.

Take notice that the technical conference scheduled for Wednesday, May 3, 2000, in the above-referenced proceeding has been rescheduled at the request of the parties.

The conference will be rescheduled for Thursday, May 18, 2000, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11357 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER00–1717–000, ER00–1742–000, ER00–1746–000, ER00–1792–000, ER00–1779–000, ER00–1804–000, ER00–1805–000, ER00–1803–000, ER00–1814–000, ER00–1844–000, ER00–1851–000, ER00–1858–000, ER00–1858–001 (Not consolidated)]**

### Reliant Energy Shelby County, LP, et al.; Notice of Issuance of Order

May 2, 2000.

Reliant Energy Shelby County, LP, Madison Windpower, LLC, DTE Georgetown, LLC, Liberty Generating Company, LLC, Union Power Partners, L.P., Panda Leesburg Power Partners, L.P., Panda Midway Power Partners, South Eastern Generating Corporation, Avista Turbine Power, Inc., Lamar Power Partners, LP, Pleasant Hill Marketing, LLC, and New Hampshire Electric Cooperative, Inc., (collectively, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On April 25, 2000, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's April 25, 2000 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants

have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 25, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. This issuance may also be viewed on the Internet at *http://www.ferc.fed.us/* online/rims.htm (call 202–208–2222 for asssitance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11350 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ES00–26–000]**

### Smarr EMC; Notice of Filing

May 2, 2000.

Take notice that on April 27, 2000, Smarr EMC (Smarr) submitted an application seeking authorization under Section 204 of the Federal Power Act. Smarr seeks authorization to borrow up to $195 million under a loan agreement, or replacements therefor or renewals thereof, with the National Rural Utilities Cooperative Finance Corporation (CFC) over a two-year period.

Smarr also requests a waiver of the Commission's competitive bidding and negotiated placement requirements in 18 CFR 34.2.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 22, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11348 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. GT00–26–000]**

### Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 21, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, with an effective date of April 1, 2000.

Transco states that the purpose of the filing is to update certain Delivery Point Entitlement (DPE) tariff sheets in accordance with the provisions of Section 19 of the General Terms and Conditions of Transco's Third Revised Volume No. 1. Transco states that the tariff sheets have been revised to include changes as a result of the termination of the Rate Schedule FT service agreement with Prior Energy Corporation and the associated open season. Transco states that also included in the filing are tariff sheets which update the Index of Daily Facility Group and Delivery Point Entitlements and Related Maps.

Transco states that copies of the filing are being mailed to each of its affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11352 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–258–000]**

### Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 28, 2000, Trunkline LNG Company (TLNG) tendered for filing the following revised tariff sheet as part of its FERC Gas Tariff, Original Volume No. 1, to be effective June 1, 2000:

Fourth Revised Sheet No. 1

TLNG states that the purpose of this filing, made in accordance with the provisions of Section 154.602 of the Commission's Regulations, is to cancel TLNG's FERC Gas Tariff, Original Volume No. 1 in its entirety. The last effective rate schedule, Rate Schedule PLNG–2, was abandoned and canceled effective April 1, 1999 by the Commission's Order Approving Abandonment issued July 9, 1999 in Docket No. CP99–525–000 and the Commission's Order Accepting Tariff Sheets and Refund Plan issued March 15, 2000 in Docket No. RP92–122–008 (lead docket Trunkline Gas Company Docket No. RP87–15–036). All of the rate schedules in TLNG's Original Volume No. 1 have been canceled and no customers are affected by this filing. Therefore, TLNG proposes to cancel its Original Volume No. 1 in its entirety. TLNG will continue to offer open access service under its FERC Gas Tariff, Original Volume No. 1–A.

TLNG states that copies of this filing are being served on applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11363 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–259–000]**

### Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 28, 2000, Trunkline LNG Company (TLNG) tendered for filing the following revised tariff sheets for inclusion in its FERC Gas Tariff, Original Volume No. 1–A, to be effective June 1, 2000:

Second Revised Sheet No. 21
Second Revised Sheet No. 25
First Revised Sheet No. 65
First Revised Sheet No. 66
First Revised Sheet No. 114
Fourth Revised Sheet No. 115

TLNG states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to remove references to TLNG's Rate Schedule PLNG–2 which was abandoned and canceled effective April 1, 1999 by the Commission's Order Approving Abandonment issued July 9, 1999 in Docket No. CP99–525–000 and the Commission's Order Accepting Tariff Sheets and Refund Plan issued March 15, 2000 in Docket No. RP92–122–008 (Lead Docket No. RP87–15–036).

TLNG states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11364 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. GT00–27–000]**

### Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2000.

Take notice that on April 28, 2000, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, the following revised tariff sheet to be effective June 1, 2000.

First Revised Sheet No. 4

TLNG states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the system map to shoe the interconnect with Trunkline Gas Company and to delete other images of facilities owned by Trunkline Gas Company.

TLNG states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11389 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. GT00–29–000]**

### Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

May 2, 2000.

Take notice that on April 28, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 28, 2000:

Seventh Revised Sheet No. 5
Fifth Revised Sheet No. 6A
Fifth Revised Sheet No. ■
Sixth Revised Sheet No. 9

Williston Basin states that the revised tariff sheets are being filed simply to update its System Maps with the most recent information available.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11354 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER97–2517–008, et al.]**

## XENERGY,Inc., et al.; Electric Rate and Corporate Regulation Filings

May 2, 2000.

Take notice that the following filings have been made with the Commission:

### 1. XENERGY, Inc.

[Docket No. ER97–2517–008]

Take notice that on April 26, 2000, XENERGY, Inc. (XENERGY), tendered for filing an amendment to its March 3, 2000 notice of status change in connection with the pending merger between Energy East Corporation and Central Maine Power Company (CMP). This amendment involves XENERGY's code of conduct to incorporate CMP as an affiliate.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. NYSEG Solutions, Inc.

[Docket No. ER99–220–006]

Take notice that on April 26, 2000, NYSEG Solutions, Inc., tendered for filing an amendment to its March 3, 2000 notice of status change in connection with the pending merger between Energy East Corporation and Central Maine Power Company (CMP). This amendment involves NYSEG Solutions, Inc.'s code of conduct to incorporate CMP as an affiliate.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. New York State Electric & Gas Corporation

[Docket No. ER99–221–003]

Take notice that on April 26, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing an amendment to its March 3, 2000 notice of status change in connection with the pending merger between Energy East Corporation and Central Maine Power Company (CMP). This amendment involves NYSEG's code of conduct to incorporate CMP as an affiliate.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. Mid-Continent Area Power Pool

[Docket No. ER99–2649–002]

Take notice that on April 26, 2000, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, tendered for filing amendments to MAPP's Line Loading Relief procedure incorporating the North American Electric Reliability Council's transmission loading relief procedures for initial curtailments of non-firm transmission service.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. Energy East South Glens Falls LLC

[Docket No. ER00–262–002]

Take notice that on April 26, 2000, Energy East South Glens Falls LLC (South Glens Falls), tendered for filing an amendment to its March 3, 2000 notice of status change in connection with the pending merger between Energy East Corporation and Central Maine Power Company (CMP). This amendment involves South Glens Falls' code of conduct to incorporate CMP as an affiliate.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. Wisconsin Energy Corporation Operating Companies

[Docket No. ER00–1319–001]

Take notice that on April 26, 2000, Wisconsin Energy Corporation Operating Companies tendered for filing its compliance filing in accordance with the Commission's March 28, 2000 order in this proceeding, Wisconsin Energy Corporation Operating Companies, 90 FERC ¶ 61,298 (2000).

Copies of the filing have been served on all transmission service customers, the Michigan Public Service Commission and the Public Service Commission of Wisconsin.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 7. San Joaquin Cogen Limited

[Docket No. ER00–1517–001]

Take notice that on April 26, 2000, San Joaquin Cogen Limited (San Joaquin), tendered for filing revisions to its market based rate tariff in compliance with the March 29, 2000 Order issued in this proceeding.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 8. Central Power and Light Company

[Docket No. ER00–2296–000]

Take notice that on April 25, 2000, Central Power and Light Company (CPL), West Texas Utilities Company (WTU), Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, the CSW Operating Companies) tendered for filing an Interconnection Agreement between CPL and Gregory Power Partners, L.P. (GPP) and a service agreement under which GPP will take ancillary services pursuant to Parts I and IV of the CSW Operating Companies' open access transmission service tariff.

The CSW Operating Companies request that the Interconnection Agreement and the service agreement be accepted to become effective as of April 26, 2000. Accordingly, the CSW Operating Companies request waiver of the Commission's notice requirements.

CPL states that a copy of the filing was served on GPP and the Public Utility Commission of Texas.

*Comment date:* May 16, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 9. New England Power Pool

[Docket No. ER00–2297–000]

Take notice that on April 26, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing changes to Market Rules 1, 4 and 5 and requested expedited consideration of these changes.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 10. Carolina Power & Light Company

[Docket No. ER00–2298–000]

Take notice that on April 26, 2000, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Conectiv Energy Supply, Inc., under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4.

This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission

and the South Carolina Public Service Commission.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Consumers Energy Company**

[Docket No. ER00–2299–000]

Take notice that on April 26, 2000, Consumers Energy Company (CECo), tendered for filing a Wholesale Market Based Rate Tariff and a pro forma Service Agreement.

CECo seeks an effective date of June 1, 2000 for all of the tariff sheets submitted with this filing.

CECo states that its Wholesale Market Based Rate Tariff, and pro forma Service Agreement, are being filed in order to implement a pro forma tariff prepared by a group of representatives from various segments of the electric industry and to facilitate a standardized master power purchase and sale agreement.

CECo states that it does not propose to eliminate either its currently effective market-based Power Sales Tariff accepted for filing effective October 28, 1998 in Docket No. ER98–4421–000, nor its cost-based power sales tariff accepted for filing effective January 1, 1997 in Docket No. ER97–696–000.

Copies of this filing have been sent to the Michigan Public Service Commission.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Wayne-White Counties Electric Cooperative**

[Docket No. ER00–2300–000]

Take notice that on April 26, 2000, Wayne-White Counties Electric Cooperative (WWCEC), tendered for filing an executed umbrella service agreement under which WWCEC will make market-based power sales under its Market-Based Rate tariff, Rate Schedule FERC No. 1, to Illinois Power.

WWCEC requests an effective date of April 1, 2000, for the umbrella service agreement.

WWCEC states that a copy of the filing has been served on Illinois Power.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Southwestern Public Service Company**

[Docket No. ER00–2301–000]

Take notice that on April 26, 2000, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with South Plains Electric Cooperative, Inc., (South Plains). This umbrella service agreement provides for Southwestern's sale and South Plain's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Southwestern Public Service Company**

[Docket No. ER00–2302–000]

Take notice that on April 26, 2000, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with West Texas Municipal Power Agency (WTMPA). This umbrella service agreement provides for Southwestern's sale and WTMPA's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. Central Illinois Light Company**

[Docket No. ER00–2303–000]

Take notice that on April 26, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement with one new customer, Statoil Energy Services, Inc.

CILCO requested an effective date of April 17, 2000.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. Central Illinois Light Company**

[Docket No. ER00–2304–000]

Take notice that on April 26, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and one service agreement with one new customer, Statoil Energy Services, Inc.

CILCO requested an effective date of April 17, 2000.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. Tampa Electric Company**

[Docket No. ER00–2305–000]

Take notice that on April 26, 2000, Tampa Electric Company (Tampa Electric) tendered for filing a service agreement with Seminole Electric Cooperative, Inc. (Seminole) under Tampa Electric's market-based sales tariff. Tampa Electric proposes that the service agreement be made effective on May 15, 2000.

Copies of the filing have been served on Seminole and the Florida Public Service Commission.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. It's Electric & Gas, L.L.C.**

[Docket No. ER00–2306–000]

Take notice that on April 26, 2000, It's Electric & Gas, L.L.C. (It's Electric), petitioned the Commission for acceptance of It's Electric's FERC Rate Schedule No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and waiver of certain Commission regulations.

It's Electric intends to engage in wholesale electric power and energy purchases and sales as a marketer or broker. It's Electric is not in the business of generating or transmitting electric power. It's Electric is a wholly-owned subsidiary of Strine Enterprises.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. Public Service Company of New Mexico**

[Docket No. ER00–2307–000]

Take notice that on April 26, 2000, Public Service Company of New Mexico (PNM), tendered for filing a unilaterally executed service agreement, for electric power and energy sales at negotiated rates under the terms of PNM's Power and Energy Sales Tariff, with the City of Banning (dated April 5, 2000). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Copies of the filing have been sent to the City of Banning and to the New Mexico Public Regulation Commission.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**20. Entergy Services, Inc.**

[Docket No. ER00–2308–000]

Take notice that on April 26, 2000, Entergy Services, Inc. (Entergy

Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing the Power Coordination and Interchange Agreement (Coordination Agreement) between Entergy Arkansas, Inc., and City Water and Light Plant of the City of Jonesboro, Arkansas.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**21. Allegheny Energy Supply Company, L.L.C.; The Potomac Edison Company; West Penn Power Company**

[Docket No. ER00–2309–000]

Take notice that on April 26, 2000 Allegheny Energy Supply Company, L.L.C. (AE Supply), The Potomac Edison Company ("Potomac"), and West Penn Power Company (West Penn) (together, Potomac and West Penn are referred to as Allegheny Power), tendered for filing their "First Amended Purchase and Sale Agreement for Ancillary Services between Allegheny Power and Allegheny Energy Supply Company, L.L.C." The amendment adds Potomac to the Agreement and establishes a default price cap for affiliated energy imbalance sales all as more fully explained in the Application.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**22. Metropolitan Edison Company**

[Docket No. ER00–2310–000]

Take notice that on April 26, 2000, Metropolitan Edison Company (doing business as GPU Energy), tendered for filing a letter amendment to the Generation Facility Transmission Interconnection Agreement between GPU Energy and AES Ironwood, L.L.C.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**23. PJM Interconnection, L.L.C.**

[Docket No. ER00–2311–000]

Take notice that on April 26, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing 7 executed service agreements for network integration transmission service and for point-to-point transmission service under the PJM Open Access Transmission Tariff. These agreements are with Conectiv Energy Supply, Inc., NUI Energy Brokers, Inc. and Southern Company Retail Energy Marketing, L.P.

Copies of this filing were served upon the parties to the service agreements and the state commissions within the PJM control area.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**24. Wisconsin Electric Power Company**

[Docket No. ER00–2312–000]

Take notice that on April 26, 2000, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a revision to its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2). The revision to Service Schedule A, B and C clarifies that the cost of Wisconsin Electric's retail interruptible service options to be recovered in the definition of Out of Pocket costs.

Wisconsin Electric respectfully requests an effective date May 1, 2000. Wisconsin Electric requests waiver of the Commission's advance notice requirements.

Copies of the filing have been served on all current customers under the Coordination Sales Tariff, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**25. NRG Energy Center Paxton, Inc.**

[Docket No. ER00–2313–000]

Take notice that on April 26, 2000, NRG Energy Center Paxton, Inc. (Seller), a corporation organized under the laws of the State of Delaware, petitioned the Commission for an order: (1) Accepting Seller's proposed FERC Electric Tariff (Market-Based Rate Tariff); (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations, and (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates. Seller is an indirect wholly-owned subsidiary of NRG Energy, Inc.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**26. NRG Power Marketing, Inc.**

[Docket No. ER00–2314–000]

Take notice that on April 26, 2000, NRG Power Marketing, Inc., tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP), indicating that NRG Power Marketing, Inc., had completed all the steps for pool membership. NRG Power Marketing, Inc., requests that the Commission amend the WSPP Agreement to include it as a member.

NRG Power Marketing, Inc., requests an effective date of April 25, 2000 for the proposed amendment. Accordingly, NRG Power Marketing, Inc., requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**27. Duquesne Light Company; Orion Power MidWest, L.P.**

[Docket No. ER00–2315–000]

Take notice that on April 26, 2000, Duquesne Light Company and Orion Power MidWest, L.P., tendered for filing under Section 205 of the Federal Power Act a reactive supply and voltage control service agreement. The agreement is a result of the purchase of Duquesne's generation facilities by Orion Power MidWest, previously approved by the Commission, and Orion Power MidWest's resulting ownership of baseload generating units within Duquesne's control area.

A copy of the filing was served upon the Pennsylvania Public Utility Commission.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**28. Entergy Services, Inc.**

[Docket Nos. ER99–3084–003; ER99–3093–003; ER99–3133–003; ER99–3175–003; ER99–3176–003; ER99–3188–003; ER99–3252–003; ER99–3315–003; ER99–3960–002]

Take notice that on April 26, 2000, Entergy Services, Inc. (Entergy), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a compliance filing in accordance with the Commission's March 17 order in Entergy Services, Inc., 90 FERC ¶ 61,272 (2000), directing that Entergy submit a compliance refund report.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11347 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Tendered for Filing With the Commission Soliciting Additional Study Requests and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

May 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* P–2312–014.

c. *Date Filed:* March 31, 2000.

d. *Applicant:* PP&L Great Works, L.L.C.

e. *Name of Project:* Great Works Hydro Project.

f. *Location:* On the Penobscot River in Penobscot County, near Old Town, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Robert Burke, Esq., Vice President, Chief Council and Secretary, PP&L Great Works, L.L.C., 11350 Random Hills Road, Suite 400, Fairfax, VA 22030, (703) 293–2600.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Comment Date:* 60 days from the filing date of license application.

All documents (original and eight copies) should be filed with: David P. Boegers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

k. *Description of Project:* The existing Great Works Project consists of: (1) The Great Works Dam; (2) a 160-acre reservoir; (3) a 182-foot-long non-overflow structure; (4) an uncontrolled 850-foot-long concrete and timber crib spillway; (5) a 230-foot-long Denil fishway at the powerhouse; (6) a 216-foot-long powerhouse integral with the dam housing 11 generating units for a total installed capacity of 7,655-kW; (7) a 250-foot-long Denil fishway at the spillway; and (8) appurtenant facilities. Penobscot Hydro estimates that the total average annual generation would be 23, 640 MWh. The applicant is not proposing any changes to its powerhouse, generating units and equipment. Modifications are proposed to both upstream fish passage facilities and the downstream bypass, and the project dam.

l. With this notice, we are initiating consultation with the *Maine State Historic Preservation Officer (SHPO),* as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Pursuant to § 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the filing date of this application and serve a copy of the request on the applicant.

n. Procedural schedule and final amendments: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing

Notice of NEPA Scoping (unless scoping has already occurred)

Notice of application is ready for environmental analysis

Final amendments to the application must be filed with the Commission*

Notice of the availability of the draft NEPA document

Notice of the availability of the final NEPA document

Order issuing the Commission's decision on the application

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11355 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

* Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Request To Transfer License and Soliciting Comments, Motions To Intervene, and Protests

May 2, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request for Approval to Transfer License.

b. *Project No.:* 7352–024.

c. *Date Filed:* April 14, 2000.

d. *Applicants:* Kings Falls Power Corporation and Tug Hill Energy, Inc.

e. *Name of Project:* Kings Falls Hydroelectric Project.

f. *Location:* On the Deep River, in Lewis County, New York near the towns of Copenhagen and West Carthage. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contacts:* Kings Falls, (a) F. Michael Tucker, Kings Falls Corporation c/o Mercer Companies, Inc., 3 E-Comm2, Albany, New York 12207, (518) 434–1311 (b) William J. Madden, Jr., John A. Whittaker IV, Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502, (202) 371–5700, Tug Hill, (a) John J. Furman, President, Tug Hill Energy, Inc., 200 High Street, Suite 3B, Windsor, Connecticut, 06095–1100, (860) 688–2977, (b) Addison F. Vars III, Mentor, Rudin & Trivelpiece, P.C., 120 Washington Street, Suite 500, Watertown, New York 13601–3300, (315) 786–7950.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: *lynn.miles@ferc.fed.us.*

j. *Deadline for filing comments and/or motions:* May 31, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (7352–024) on any comments or motions filed.

k. *Description of Request:* Kings Fall Power Corporation (transferor) and Tug Hill Energy, Inc. (transferee) jointly request to close all underlying transactions regarding the Kings Falls Hydroelectric Project. Both applicants further state that due to the financial commitments relating to the sale of the project they both desire to have the Commission to issue an Order

Approving Transfer of License no later than June 30, 2000.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http: www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriation actions to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11356 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Intent to Surrender Exemption

May 2, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Surrender of Conduit Exemption.

b. *Project No.:* P–6274–005.

c. *Date Filed:* March 22, 2000.

d. *Applicant:* Herbert H. Beckwith.

e. *Name of Project:* Paradise Irrigation District, Projects C and D.

f. *Location:* The project is located on an unnamed tributary to Concaw Reservoir in Butte County, California (Paradise Irrigation District).

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Herbert H. Beckwith, 1428 S. Marengo Ave., Alhambra, CA 91803–3001.

i. *FERC Contact:* James Martin at *james.martin@ferc.fed.us,* or telephone (202) 208–1046.

j. *Deadline for filing comments, motions, or protests:* June 26, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please include the project number (P–6274–005) on any comments or motions filed.

k. *Description of Project:* Herbert H. Beckwith requests to surrender the exemption for his Paradise Irrigation District, Projects C and D. Project C has two generating units with a combined rating of 45 kW. Project D has two generating units with a combined rating of 60 kW.

*l. Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by the agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of any agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11365 Filed 5–5–00; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

[FRL-6602-1]

### Agency Information Collection Activities: Submission for OMB Review; Comment Request, Mobile Air Conditioner Retrofitting Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval:

*Title:* Mobile Air Conditioner Retrofitting Program, OMB Control Number 2060–0350, expiration date 5/31/00. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before June 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://ww.epa.gov/icr* and refer to EPA ICR No. 1774.02. For Technical questions about the ICR contact Anhar Karimjee at (202) 564–2683.

**SUPPLEMENTARY INFORMATION:**

*Title:* Information Collection Activities Associated with EPA's Mobile Air Conditioner Retrofitting Program, OMB Control Number 2060–0350, EPA ICR Number 1774.02, expiration date 5/31/00. This is a request for extension of a currently approved collection.

*Abstract:* EPA is concerned that the existence of several substitutes in this end-use may increase the likelihood of significant refrigerant cross-contamination and potential failure of both air conditioning systems and recovery/recycling equipment. The purpose of this Information Collection Request (ICR) is to estimate the burden associated with the 40 Code of Federal Regulations part 82 requirement that service technicians label mobile air conditioners with information about new refrigerants when they retrofit a system. These labels acknowledge that the retrofitting has been completed, and that the mobile air conditioner cannot accept chloroflourocarbon (CFC) refrigerant. In addition, the labels provide essential information to technicians about the specific refrigerant used in the air conditioning system. This information assists the technician in avoiding service practices that might result in cross-contamination and system failure. Responses to the collection of information are mandatory (section 612 of the Clean Air Act and 40 Code of Federal Regulations part 82).

An agency may not conduct or sponsor, and a person is not required to respond to, collection of information unless it displays a currently valid OMB control number. The OMB control numbers of EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/10/99; No comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 5 minutes per response. Burden means that total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Service technicians at new and used car dealers, gas service stations, top and body repair shops, general automotive repair shops, automotive repair shops not elsewhere classified, including air conditioning and radiator specialty shops.

*Estimated Number of Respondents;* 140,000.

*Frequency of Response:* Once per retrofitted car.

*Estimated Total Annual Hour Burden:* 416,667 hours.

*Estimated Total Annualized Capital, O&M Cost Burden:* $500,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1774.02 and OMB Control No. 2060–0350 in any correspondence.

Ms. Sancy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Divison (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–11431 Field 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6601–8]

### Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of Two New Reference Methods for $PM_{2.5}$ and Four New Equivalent Methods for $O_3$, $SO_2$, $NO_2$, and Pb

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of designation.

**SUMMARY:** Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, two new reference methods for measuring concentrations of $PM_{2.5}$ and four new equivalent methods for measuring concentrations of $O_3$, $SO_2$, $NO_2$, and Pb (respectively) in ambient air.

**FOR FURTHER INFORMATION CONTACT:** Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, NC 27711. Phone: (919) 541–2622, email: mcelroy.frank@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:** In accordance with regulations at 40 CFR part 53, the EPA examines various methods for monitoring the concentrations of certain pollutants in the ambient air. Methods that are determined to meet specific requirements for adequacy are designated as either reference or equivalent methods, thereby permitting their use under 40 CFR part 58 by States and other agencies for determining attainment of the National Ambient Air Quality Standards. EPA hereby announces the designation of two new reference methods for measuring

concentrations of $PM_{2.5}$ in ambient air and four new equivalent methods for measuring $O_3$, $SO_2$, $NO_2$, and Pb (respectively) in ambient air. These designations are made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new reference methods for $PM_{2.5}$ are manual monitoring methods based on particular, commercially available $PM_{2.5}$ samplers. The newly designated methods are identified as follows:

RFPS–0400–135, "URG–MASS100 Single PM 2.5 FRM Sampler," operated with software (firmware) version 4B or 5.0.1, configured for "Single 2.5" operation, for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, and in accordance with the URG–MASS100 Operater's Manual and with the requirements and sample collection filters specified in 40 CFR part 50, Appendix L.

RFPS–0400–136, "URG–MASS300 Sequential PM 2.5 FRM Sampler," operated with software (firmware) version 4B or 5.0.1, configured for "Multi 2.5" operation, for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, and in accordance with the URG–MASS300 Operator's Manual and with the requirements and sample collection filters specified in 40 CFR part 50, Appendix L.

The application for reference method determinations for these methods was received by EPA on July 27, 1998, and a notice of the receipt of the application was published in the **Federal Register** on October 29, 1998. The methods are available commercially from the applicant, URG Corporation, 116 S. Merritt Mill Road, Chapel Hill, NC 27516.

The new equivalent methods for $O_3$, $SO_2$, and $NO_2$ are automated methods (analyzers) that utilize a measurement principle based on differential optical absorption spectroscopy (DOAS) and measure pollutant concentrations directly in the atmosphere over a long, open path up to 500 meters in length, using a particular commercially available monitoring system. These newly designated methods are identified as follows:

EQOA–0400–137, Environnement S.A. Model SANOA Multigas Longpath Air Quality Monitoring System, consisting of a receiver, one or more projectors, interface unit, a user-provided control unit computer running the SANOA VisionAIR software, and associated incidental equipment; configured for measuring $O_3$, with the temperature control and internal calibration cell options installed, operated with a measurement range of 0 to 0.5 ppm, over an installed monitoring path length of between 27 and 500 meters, within an ambient air temperature range of −30 to +45°C, with a measurement (integrating) time of 180 seconds, and with or without external temperature and barometric pressure sensors or any of the following options: external (meteo) input connection, series 1M bus connection, OGR type projector, analog outputs. A high-concentration ozone generator, part # 80–231–03, or the SONIMIX 7121B calibration system is recommended for calibration or accuracy auditing.

EQSA–0400–138, Environnement S.A. Model SANOA Multigas Longpath Air Quality Monitoring System, consisting of a receiver, one or more projectors, interface unit, a user-provided control unit computer running the SANOA VisionAIR software, and associated incidental equipment; configured for measuring $SO_2$, with the temperature control and internal calibration cell options installed, operated with a measurement range of 0 to 0.5 ppm, over an installed monitoring path length of between 27 and 500 meters, within an ambient air temperature range of −30 to +45°C, with a measurement (integrating) time of 180 seconds, and with or without external temperature and barometric pressure sensors or any of the following options: external (meteo) input connection, series 1M bus connection, OGR type projector, analog outputs.

EQNA–0400–139, Environnement S.A. Model SANOA Multigas Longpath Air Quality Monitoring System, consisting of a receiver, one or more projectors, interface unit, a user-provided control unit computer running the SANOA VisionAIR software, and associated incidental equipment; configured for measuring $NO_2$, with the temperature control and internal calibration cell options installed, operated with a measurement range of 0 to 0.5 ppm, over an installed monitoring path length of between 27 and 500 meters, within an ambient air temperature range of −30 to +45°C, with a measurement (integrating) time of 180 seconds, and with or without external temperature and barometric pressure sensors or any of the following options: external (meteo) input connection, series 1M bus connection, OGR type projector, analog outputs.

Applications for equivalent method determinations for these methods were received by EPA on February 17, 1999, June 28, 1999, and July 23, 1999, respectively. A notice of the receipt of these applications was published in the **Federal Register** on October 12, 1999. The methods are available commercially from the applicant, Environnement S.A., 111 Boulevard Robespierre, 78304 Poissy, France.

The new equivalent method for lead (Pb) is a manual method that uses the sampling procedure specified in the Reference Method for the Determination of Lead in Suspended Particulate Matter Collected from Ambient Air (40 CFR part 50, Appendix G), with an alternative analytical procedure. The method is identified as follows:

EQL–0400–140, "Determination of Lead Concentration in Ambient Particulate Matter by Inductively Coupled Plasma—Atomic Emission Spectrometry (TNRCC)."

The application for an equivalent method determination for this method was submitted by the Texas Natural Resource Conservation Commission Laboratory, 5144 E. Sam Houston Parkway N., Houston, TX 77030 and was received by the EPA on March 1, 2000.

Test samplers, test analyzers, or the analytical procedure representative of each of these methods have been tested by the respective applicants in accordance with the test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the respective applicants, EPA has determined, in accordance with part 53, that each of these methods should be designated as a reference or equivalent method, as appropriate. The information submitted by the applicants will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As designated reference and equivalent methods, these methods are acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, each method must be used in strict accordance with the operation or instruction manual associated with the method, any specifications and limitations (*e.g.*, sample period, flow rate, or path length) specified in the applicable method designation description (see identifications of the methods above), and the specifications and requirements set forth in Appendixes G, or L to 40 CFR part 50, as applicable. Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the "Quality Assurance Guidance Document 2.12" and the "Quality Assurance Handbook, Volume II" (both available at www.epa.gov/ttn/amtic). Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such

methods by users are specified under section 2.8 of Appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded (*e.g.*, by minor modification or by substitution of the approved operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable perfor-mance specifications given in parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the applicant has received notice under 40 CFR part 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

(h) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler is manufactured as an ISO 9001-certified facility.

(i) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of these new reference and equivalent methods is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of any of these methods should be directed to the appropriate applicant.

**Norine E. Noonan,**

*Assistant Administrator for Research and Development.*

[FR Doc. 00–11430 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–60–P

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6602–4]**

## Adequacy Status of the Submitted Revised Carbon Monoxide Attainment Demonstration for the New Jersey Portion of the New York-Northern New Jersey-Long Island Moderate Carbon Monoxide Nonattainment Area

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of adequacy.

**SUMMARY:** In this document, EPA is notifying the public that we have found that the motor vehicle emissions budget for carbon monoxide in the submitted revised attainment demonstration for the New Jersey portion of the New York-Northern New Jersey-Long Island nonattainment area is adequate for transportation conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the New Jersey portion of the New York-Northern New Jersey-Long Island nonattainment area must use the motor vehicle emission budget from this submitted revised carbon monoxide attainment demonstration for future conformity determinations.

**DATES:** This finding is effective May 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Matthew B. Cairns, Mobile Source Team, Air Programs Branch, Environmental Protection Agency—Region 2, 290 Broadway, 25th Floor, New York New York 10007–1866, (212) 637–3895, cairns.matthew@epa.gov.

The finding and the response to comments will be available at EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

**SUPPLEMENTARY INFORMATION:**

### Background

Today's document is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to the New Jersey Department of Environmental Protection on April 6, 2000, stating that the motor vehicle emissions budget for carbon monoxide in the submitted revised attainment demonstration (dated December 10, 1999) for the New Jersey portion of the New York-Northern New Jersey-Long Island nonattainment area is adequate for transportation conformity purposes. This finding will also be announced on EPA's conformity website: *http://www.epa.gov/oms/traq*, (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans (SIPs) and establishes the criteria and procedures

for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We've described out process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

**Authority:** 42 U.S.C. 7401–7671 q.

Dated: April 6, 2000.

**William J. Muszynski,**

*Acting Regional Administrator, Region 2.*

[FR Doc. 00–11432 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6602–6]**

### Office of Research and Development Board of Scientific Counselors Notice of Charter Renewal

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of charter renewal.

The Charter for the Environmental Protection Agency's Board of Scientific Counselors (BOSC) will be renewed for an additional two-year period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. section 9(c). The purpose of the BOSC is to provide advice and recommendations to the Assistant Administrator for the Office of Research and Development (ORD) on issues associated with ORD's research program. It is determined that the BOSC is in the public interest in connection with the performance of duties imposed on the Agency by law. Inquiries may be directed to Shirley Hamilton, Designated Federal Officer, U.S. EPA, Office of Research and Development (mail code 8701–R), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

Dated: May 3, 2000.

**Peter W. Preuss,**

*Director, National Center for Environmental Research.*

[FR Doc. 00–11434 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6600–7]**

### Notice of Sixth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; announcement meeting.

**SUMMARY:** This notice announces the Sixth Meeting of the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force. The purpose of this Task Force consisting of Federal, State, and Tribal members, is to lead efforts to coordinate and support nutrient management and hypoxia-related activities in the Mississippi River and Gulf of Mexico watersheds. The major matter to be discussed at the meeting is what should be included in a draft Action Plan which will be available for public comment. This plan of action is required by section 604(b) of the Harmful Algal Blooms and Hypoxia Research Control Act ( Public Law 105–383—Coast Guard Authorization Act of 1998). The public will be afforded an opportunity to provide input to the Task Force during open discussion periods. The room accommodates approximately 125 people. Those who plan to make a statement are asked to indicate their intention to Dr. Belefski (Contact Information below).

**DATES:** The meeting will be held at 1 p.m.–5 p.m., June 15, 2000, and 8 a.m.—12 p.m., June 16, 2000.

**ADDRESSES:** The meeting will be held at the St. Louis Marriott Pavilion Downtown Hotel, One Broadway, St. Louis, MO; (314) 421–1776 or 1(800) 228–9290.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), Mail Code 4503F, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460, telephone (202)-260–7061; Internet: belefski.mary@epa.gov. For additional information on hotel accommodations contact Marquietta Davis, Tetra Tech, Inc., 10306 Eaton Place, Suite 340, Fairfax, Virginia 22030, telephone: (703) 385–6000; Internet:davisma@tetratech-ffx.com.

Dated: May 2, 2000.

**Robert Wayland,**

*Director, Office of Wetlands, Oceans, and Watersheds.*

[FR Doc. 00–11429 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6600–6]**

### Project XL Proposed Final Project Agreement: Georgia-Pacific Corporation Big Island, Virginia XL Project

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** EPA is requesting comments on a proposed Project XL Final Project Agreement (FPA) for the Georgia-Pacific Corporation Big Island, Virginia XL Project (hereafter "Georgia-Pacific"). The FPA is a voluntary agreement developed collaboratively by Georgia-Pacific, the Virginia Department of Environmental Quality (VADEQ), the USDA Forest Service (FS) and the EPA. Project XL, announced in the **Federal Register** on May 23, 1995 (60 FR 27282), gives regulated entities the flexibility to develop alternative strategies that will replace or modify specific regulatory or procedural requirements on the condition that they produce greater environmental benefits. EPA has set a goal of implementing fifty XL projects undertaken in full partnership with the states.

Georgia-Pacific Corporation owns and operates a non-sulfur, non-bleaching, semi-chemical pulp and paper mill in Big Island, Virginia (Mill). The Mill produces corrugated medium and liner board (the inside and outside components of cardboard) from hardwood pulp and secondary recycled fiber. The Mill is subject to the Pulp and Paper Mill Cluster Rule (a hazardous air pollution standard promulgated under the federal Clean Air Act (CAA)), which is based on installation of Maximum Achievable Control Technology (MACT) on regulated emission sources. A second MACT standard applicable to pulp and paper mills (MACT II), was proposed on April 15, 1998 to specifically address emissions from combustion sources associated with the recovery of pulping chemicals. At the Mill pulping liquor is added to hardwood chips, and the mixture is passed through digesters to produce the pulp. Currently the Mill

takes the spent pulping or black liquor, reduces it through evaporation, and flame combusts the resultant concentrated liquor in two "smelters," also called "recovery furnaces." The smelters recover the sodium carbonate in a molten smelt that is then dissolved in water to produce new pulping liquor.

Due to the age and physical condition of the existing smelters at the Mill, to comply with MACT II Georgia-Pacific would have to substantially upgrade or rebuild these units and add additional emission control devices. Alternatively, they would need to replace the smelters with a new recovery boiler that uses conventional technology. Georgia-Pacific has investigated, and proposes to install, a third alternative for recovering pulping chemicals at its facility, using an innovative black liquor gasification system. Under this alternative, the concentrated black liquor would be pyrolyzed (thermal conversion of organic compounds) to liberate a combustible gas (primarily hydrogen), which in turn would be burned as an energy source to drive the pyrolysis and to produce steam to be used elsewhere in the Big Island facility. Sodium carbonate pellets would be recovered during this process for reuse in fresh pulping liquor.

Georgia-Pacific's proposed installation of a black liquor gasification system would be the first commercial application of this innovative gasification technology in the United States. Deployment of the proposed gasification technology promises reduced consumption of fossil fuel, increased efficiency in energy conversion and chemical recovery, elimination of the smelt-water explosion hazard (inherent to the operation of conventional recovery boilers), reduced maintenance costs, and significantly lower environmental emissions of criteria pollutants (particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds precursors to ozone), carbon monoxide), hazardous air pollutants, and greenhouse gases. If Georgia-Pacific experiences no problems or delays in construction and testing of the gasification technology, Georgia-Pacific expects that its gasifier could be operational in time to meet the MACT II standards when they become effective. However, Georgia-Pacific is pursuing an XL Project for its Mill for the following reasons:

(1) to be able to operate the existing smelters past the otherwise applicable MACT II compliance date, if necessary, while the gasification system is brought on line and during a limited trial of the gasification system using black liquor from Kraft pulp mills;

(2) to assure that if the gasification system fails, Georgia-Pacific would be allowed to operate its existing smelters, as necessary, past the otherwise applicable MACT II compliance date while it constructs a conventional recovery boiler; and

(3) to allow the steam generated by the new process to be utilized elsewhere at the Mill.

This project does not include modifications to production areas of the Mill. This project is not intended to increase pulp or paper production. The new gasification system will be similar in capacity to the existing smelters. Due to the extensive nature of the stateholder process conducted by Georgia-Pacific on this project, the comment period will be 14 days.

**DATES:** The period for submission of comments ends on May 22, 2000.

**ADDRESSEES:** All comments on the proposed Final Project Agreement should be sent to: Steven Donohue, EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, or David Beck, Mail Drop 10 EPA Research Triangle Park, NC 27711. Comments may also be faxed to Mr. Donohue at (215) 814–2783 or to Mr. Beck at (919) 541–2464. Comments may also be received via electronic mail sent to: donohue.steve@epa.gov or beck.david@epa.gov.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the proposed Final Project Agreement or a Fact Sheet, contact: Steven Donohue, EPA Region III 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, or David Beck, Mail Drop 10 EPA Research Triangle Park, NC 27711. The FPA and related documents are also available via the Internet at the following location: *http://www.epa.gov/ProjectXL*. In addition, public files on the project, including the FPA, are located in the Big Island Public Library, 1111 Schooldays Road, Big Island, VA 24526 (804) 299–5604 and in the Amherst County Public Library, P.O. Box 370, Amherst, Virginia 24521 (804) 946–9388. Questions to EPA regarding the documents can be directed to Steven Donohue at (215) 814–3215 or David Beck at (919) 541–5421. To be included on the Georgia-Pacific Project XL mailing list for information about future public meetings, XL progress reports and other mailings from Georgia-Pacific on the XL project, contact Pat Moore, Georgia-Pacific Corporation, P.O. Box 40 Highway 501 North, Big Island, Virginia 24526 (804) 299–5911 ext. 286. For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Policy, Economics and Innovation, United States Environmental Protection Agency, 401 M Street, SW Room M3802 (Mail Code 1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this notice, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at http://www.epa.gov/ProjectXL.

Dated: May 2, 2000.

**Elizabeth A. Shaw,**

*Deputy Associate Administrator for Reinvention Programs.*

[FR Doc. 00–11428 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6586–7]**

### Water Pollution Control; Program Modification Application by Wisconsin to Administer the Sludge Management (Biosolids) Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of application and public comment period.

**SUMMARY:** Pursuant to 40 CFR 123.62 and 40 CFR part 501, the State of Wisconsin has submitted to EPA an application to modify the existing Wisconsin Pollutant Discharge Elimination System (WPDES) program to include administration and enforcement of the sludge management (biosolids) program where it has jurisdiction. Specifically, the State is seeking approval of a sludge management program which addresses the land application of sludge, surface disposal of sludge, and the landfilling of sludge. Wisconsin is not seeking approval for the incineration of sludge or the land application of septage. The state's sludge management program will not extend to "Indian Country" as defined in 18 U.S.C. 1151, and will not include lands within the exterior boundaries of Indian reservations within or abutting the State of Wisconsin, as they are not seeking approval for these areas at this time. According to the state's proposal, this program would be administered by the Wisconsin Department of Natural Resources (WDNR).

The application from Wisconsin is complete and is available for inspection and copying. Public comments are requested and encouraged.

**DATES:** Public comments are to be received or postmarked on or before June 22, 2000.

**ADDRESSES:** Send written comments to: Rebecca Harvey, Chief, NPDES Support and Technical Assistance Branch (WN–16J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

You may inspect, and copy at a minimal charge, the documents relevant to Wisconsin's submittal at the following addresses from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays, at the: WDNR, Bureau of Watershed Management, 101 South Webster Street, Madison, Wisconsin 53707, contact: Greg Kester, (608) 267–7611; WDNR-Southeast Region, 2300 North Martin Luther King Jr. Dr., P.O. Box 12436, Milwaukee, WI 53212, contact: Jim Fratrick, (414) 263–8632; WDNR-Northeast Region, 1125 North Military, P.O. Box 10448, Green Bay, WI 54307, contact: Jeff Haack, (920) 492–5811; WDNR-Northern Region-Park Falls, 875 South 4th Ave., P.O. Box 220, Park Falls, WI 54552, contact: Jim Hansen, (715) 762–4684 ext. 120; WDNR-South Central Region, 3911 Fish Hatchery Rd., Fitchburg, WI 53711, contact: Roy Lembcke, (608) 275–3283; WDNR-West Central Region, 1300 W. Clairemont St., P.O. Box 4001,Eau Claire, WI 54702–4001, contact: Paul LaLiberte, (715) 839–3724; and at the EPA Regional Office in Chicago at the address appearing earlier in this notice, contact: David Soong, (312) 886–0136. Copies of the complete submittal can be obtained at a cost of 10 cents per page (roughly $280.00 for the complete submittal) from WDNR. Requests for copies should be addressed to Greg Kester, Wisconsin Department of Natural Resources at the address provided above or at telephone number (608) 267–7611.

**FOR FURTHER INFORMATION CONTACT:** David Soong, NPDES Support and Technical Assistance Branch, (WN–16J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590, phone number: (312) 886–0136.

**SUPPLEMENTARY INFORMATION:**

Throughout this document "we", "us", or "our" means EPA.

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## I. Introduction

Wisconsin has regulated sewage sludge quality and beneficial reuse under state authority since 1977. Section 405 of the Clean Water Act (CWA or Act), 33 U.S.C. 1345, created the federal sludge management program, allowing EPA to issue permits for the disposal of sewage sludge under conditions required by the CWA. Section 405(c) of the CWA provides that a state may submit an application to EPA for administering its own program for issuing sewage sludge permits within its jurisdiction. EPA is required to approve each such submitted state program unless EPA determines that the program does not meet the requirements of Sections 304(i) and/or 402(b) of the CWA or the EPA regulations implementing those sections. To obtain such approval, the state must show, among other things, that it has authority to issue permits which comply with the Act, authority to impose civil and criminal penalties for permit violations, and authority to ensure that the public is given notice and opportunity for a hearing on each proposed permit. The requirements for state sludge management program approval are listed in 40 CFR part 501.

## II. What Was Submitted in Wisconsin's Application for Sludge Management Program Approval?

Wisconsin's application for sludge management program approval contains a letter from the Secretary of WDNR requesting program approval, an Attorney General's Statement, copies of pertinent state statutes and regulations, amendments to the WPDES Program Description, and proposed amendments to the WDNR/EPA Memorandum of Agreement (MOA) to be executed by the Regional Administrator, Region 5, EPA, and the Secretary, Wisconsin Department of Natural Resources.

The Secretary's letter of May 26, 1998, requested that EPA approve the state's sludge management program as a modification to their WPDES program. On March 8, 1999, the Secretary limited the state's request to all sludge activities within the State except for those activities occurring within Indian Country.

The Attorney General's Statement includes citations to specific statutes, administrative regulations, and judicial decisions which demonstrate adequate authority to carry out the state's sludge management program. State statutes and regulations cited in the Attorney General's Statement are also included in the application.

The amendments to the WPDES Program Description include a description of the scope and organizational structure of the sludge management program, including a description of the general duties and the total number of state staff carrying out the program, a description of applicable state procedures, including permitting procedures, and administrative and judicial review procedures, and a description of the state's compliance tracking and enforcement program. It also includes an inventory of the facilities that are subject to regulations promulgated pursuant to 40 CFR part 503 and subject to the state's sludge management program.

The proposed amendments to the WDNR/EPA MOA include provisions for permit administration, enforcement and compliance monitoring, and annual reporting. The MOA has been signed by the Secretary of WDNR and will become effective upon the signature of the Regional Administrator of EPA, Region 5. The MOA does not limit the authority of EPA to take actions pursuant to its powers under the CWA, nor does it limit EPA's oversight responsibilities with respect to sludge management program administration.

## III. Are There Variations Between Wisconsin's Sludge Management Program Regulations and the Federal Sludge Regulations, 40 CFR Part 503?

Following is a brief summary of and rationale for the main points of variance between Wisconsin's sludge management program and the 40 CFR part 503 sludge rules.

1. Wisconsin restricts application of sludge on agricultural land when it is frozen or snow covered. 40 CFR part 503 restricts sludge application on frozen or snow covered ground if there is a likelihood of sludge entering any waters or wetlands. Wisconsin believes that the

likelihood of runoff exists on most sites in Wisconsin which are frozen or snow covered. Therefore, winter land application is restricted pursuant to Wisconsin regulations.

2. Wisconsin regulations require that sludge must be land applied at the agronomic rate for the crop grown taking all sources of nitrogen into account. This is required to preclude over application of nitrogen which could result in groundwater contamination through the leaching of nitrates. 40 CFR part 503 requires application at the agronomic rate but is silent about how to take other nitrogen sources into account. Wisconsin requires disclosure at the time of soil sampling of the anticipated rate and type of manure application, percent of legume forage left standing, and projected options of crops to be grown.

3. Wisconsin regulations establish more stringent site restrictions regarding the land application of sludge than federal requirements. Wisconsin regulations address additional environmental and public concerns such as setback distances from residences, public and private wells, property lines, waterways of various kinds, rural schools, and rural health care facilities. Separation distances to bedrock and groundwater, allowable slopes and soil permeability are also addressed.

4. Wisconsin regulates radium-226 in communities which have elevated concentrations of radium-226 in their water supply system, while 40 CFR part 503 does not specifically regulate radium-226. Wisconsin's concern with the land application of sludge with radium-226 is twofold. First, Wisconsin is concerned that the decay of radium-226 to radon gas could pose a problem if construction were to occur in the future on a site which had an unacceptably high soil concentration. Second, Wisconsin is concerned that radium may leach to groundwater if the soil concentration of radium-226 is elevated.

5. Sludge management plans, which are required by Wisconsin regulations, are intended to allow facilities some flexibility in how they comply with the administrative rules. WDNR encourages innovative alternate beneficial uses of sludge such as mine reclamation, silviculture, and other projects which are shown to be environmentally sound. Sludge management plans provide the forum for such proposals to be presented. 40 CFR part 503 does not specifically require the use of sludge management plans.

6. State regulations prohibit "Surface Disposal" as a sludge management option, even though 40 CFR part 503 allows surface disposal. The State believes that surface disposal is not an environmentally acceptable alternative because it may threaten groundwater quality and contradicts the beneficial reuse policy WDNR promotes.

7. Bulk exceptional quality sludge is exempt from most of the management requirements of Wisconsin's regulations. However, application on frozen or snow covered ground is restricted and the storage requirement, which is not federally required, applies to this material.

## IV. Can the Public Comment on Wisconsin's Program Submittal?

It is requested and encouraged that the public comment on the state's sludge management program submittal. Copies of all submitted statements and documents will become a part of the record submitted to EPA. All comments or objections presented in writing and postmarked within 45 days of this notice to EPA, Region 5, will be considered by EPA before it takes final action on Wisconsin's request for program modification approval. Written comments should be submitted to Rebecca Harvey at the address given above.

The public is also encouraged to bring the foregoing to the attention of anyone interested in this matter.

## V. Is a Public Hearing Scheduled?

At the time of this notice, a decision has not been made as to whether a public hearing will be held on Wisconsin's request for program modification. During the comment period, any interested person may request a public hearing by filing a written request which must state the issues to be raised to EPA, Region 5. The last day for filing a request for a public hearing is 45 days from the date of this notice and should be submitted to Rebecca Harvey at the above address. In appropriate cases, including those where there is significant public interest, EPA may hold a public hearing. Public notice of such a hearing will occur in the **Federal Register** and in enough of the largest newspapers in Wisconsin to provide statewide coverage and will be mailed to interested persons at least 30 days prior to the hearing.

## VI. Has a Decision Been Made Regarding Wisconsin's Program?

The only decision that has been made is that Wisconsin has submitted a complete application. EPA sent a letter to the Secretary of the WDNR on March 14, 2000, stating that the state's application to modify the WPDES program to include a state sludge management program was complete. EPA has 90 days from the date of that letter to approve or disapprove Wisconsin's Sludge management program. The decision will be based on the requirements of Sections 405, 402 and 304(i) of the CWA and EPA regulations promulgated thereunder. If the Wisconsin program modifications are approved, EPA will notify the State of the approval. Notice will be published in the **Federal Register** and, as of the date of program approval, EPA will suspend issuance of NPDES sludge management permits in Wisconsin (except, as discussed below, for those in "Indian Country"). The state's program will operate in lieu of the EPA-administered program where the State has authority. However, EPA will retain the right, among other things, to object to WPDES permits proposed to be issued by Wisconsin and to take enforcement actions for violations, as allowed under the CWA. If EPA disapproves Wisconsin's sludge management program, EPA will notify the State of the reasons for disapproval and of any revisions or modifications to the state program that are necessary to obtain approval.

## VII. If EPA Approves the Wisconsin's WPDES Program Modification, What Is the Effect of That Decision?

If the Wisconsin program modification is approved, as of the date of program approval, there will be virtually no change in the program since Wisconsin has been regulating sludge management under state authority through its WPDES program. EPA will suspend issuance of NPDES sludge management permits in Wisconsin (except, as discussed below, for those in "Indian Country"). The state's program will operate in lieu of the EPA-administered program where the State has authority. Wisconsin will issue and administer permits for all the provisions for which it is authorized. After approval, EPA will transfer any pending sludge permit applications, completed permits, or pertinent file information to Wisconsin upon request. However, EPA will retain the right, among other things, to object to WPDES permits proposed to be issued by Wisconsin and to take enforcement actions for violations, as allowed under the CWA.

Approval will not impose additional requirements on the regulated community because the regulations by which Wisconsin will be implementing the sludge management program are already effective and will not be changed by EPA's approval.

**VIII. Would EPA's Approval Affect Indian Country (18 U.S.C. 1151) in Wisconsin?**

Wisconsin is not authorized to carry out its WPDES program in Indian Country, as defined in 18 U.S.C. 1151. This includes:

1. Lands within the exterior boundaries of the following Indian Reservations within or abutting the State of Wisconsin:

a. Bad River Indian Reservation.
b. Forest County Indian Reservation.
c. Ho-Chunk Nation Indian Reservation.
d. Lac Courte Oreilles Indian Reservation.
e. Lac Du Flambeau Indian Reservation.
f. Menominee Indian Reservation.
g. Oneida Indian Reservation.
h. Red Cliff Indian Reservation.
i. Sokaogon (Mole Lake) Indian Reservation.
j. St. Croix Indian Reservation.
k. Stockbridge-Munsee Indian Reservation.

2. Any land held in trust by the U.S. for any Indian tribe, and

3. Any other land, whether on or off a reservation that qualifies as Indian Country.

Therefore, if EPA approves the state's sludge management program, it will have no effect in Indian Country where EPA will continue to implement and administer the NPDES program.

In excluding Indian Country from the approval, we would not be making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sources in Indian Country. The state's application does not include a request for approval within Indian Country at this time. Should the State of Wisconsin choose to seek program approval within Indian Country, it may do so without prejudice.

**IX. Administrative Requirements**

*A. Executive Order 12866: Regulatory Planning and Review*

The Office of Management and Budget (OMB) has exempted this regulatory action from the requirements of Executive Order 12866, entitled "Regulatory Planning and Review."

*B. Executive Order 13045: Children's Health Protection*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

If EPA approves the program modification, the action would not be subject to Executive Order 13045 because it does not involve decisions based on environmental health or safety risks.

*C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

If EPA approves the program modification, the action would not be subject to Executive Order 13084 because it would not significantly or uniquely affect the communities of Indian tribal governments. Wisconsin is not authorized to implement the NPDES program in Indian Country. Therefore, the action would have no effect on Indian Country within the State.

*D. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

If EPA approves the program modification, it will not have federalism implications. It will not have a substantial direct effect on states, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule only effects one State. The approval would simply modify Wisconsin's existing program that they have voluntarily chosen to operate. Further, as a result of the approval, provisions of Wisconsin's sludge management program would apply in lieu of the equivalent federal program provisions implemented by EPA under CWA. Affected parties will be subject only to those authorized state program provisions, as opposed to being subject to both federal and state regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

*E. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities

include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

If EPA approves the program modifications, the action will not have a significant impact on a substantial number of small entities because it does not impose any new requirements on small entities because small entities that generate or prepare sewage sludge for land application, landfilling, or surface disposal are already subject to the regulatory requirements under state and federal laws. With approval of the program modification, the state's program would apply in lieu of the equivalent federal program. Therefore, because the approval will not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

*F. Unfunded Mandates Reform Act*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to state, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this notice does not include a federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This federal action provides notice of availability of the state's submittal and requests comments on the state's desire to modify its WPDES program to include a state sludge management program. If EPA approves the program modification, the state's program would apply in lieu of the equivalent federal program, therefore, imposing no new requirements under state or local law. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

*G. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this action. Today's action does not involve technical standards.

*H. Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any informational request contained in a proposed rule or a final rule. Today's action will not impose any information requirements upon the regulated community.

**List of Subjects in 40 CFR Parts 123 and 501**

Environmental protection, Administrative practice and procedures, Indian lands, Intergovernmental relations, Waste treatment and disposal, Water pollution control.

**Authority for parts 123 and 501:** Clean Water Act 33, U.S.C. 1251 *et seq.*

Dated: April 14, 2000.

**Elissa Speizman,**

*Acting, Regional Administrator, Region 5.*

[FR Doc. 00–11280 Filed 5–5–00; 8:45 am]

BILLING CODE 6560–50–P

## EXECUTIVE OFFICE OF THE PRESIDENT

### Office of National Drug Control Policy

### Designation of Forty (40) Counties as Part of the High Intensity Drug Trafficking Area

**AGENCY:** Office of National Drug Control Policy, Executive Office of the President.

**ACTION:** Notice.

**SUMMARY:** This notice lists forty (40) counties as additions to various High Intensity Drug Trafficking Area (HIDTA) programs. These new counties are: Mohave in the Arizona HIDTA; the Colorado counties of Boulder, Larimer, Weld, Pueblo, Grand, Routt and Moffatt, the Utah county of Davis and the Wyoming counties of Campbell and Unita in the Rocky Mountain HIDTA; the Iowa counties of Appanoose, Black, Hawk, and Marshall, the Kansas counties of Barton, Finney, Franklin, Miami, Sedgewick and Shawnee, the Missouri counties of Benton, Buchanan, Greene, Jasper, Marion, Platte and Texas, the Nebraska counties of Dodge, Gage, Jefferson, Madison and Platte as well as the South Dakota counties of Beadle, Brookings and Brown in the Midwest HIDTA; the Texas counties of Smith in the North Texas HIDTA and the Texas counties of Hardin, Jefferson, Liberty and Orange in the Houston HIDTA. HIDTAs are domestic regions identified as having the most critical drug trafficking problems that adversely affect the United States. These new counties are designated in an effort to promote more effective coordination of drug control efforts. This action will support local, state and federal law enforcement officers in assessing regional drug threats, designing strategies to combat the threats, developing initiatives to implement the strategies, and evaluating the effectiveness of their coordinated efforts.

**FOR FURTHER INFORMATION CONTACT:** Comments and questions regarding this notice should be directed to Mr. Kurt Schmid, National HIDTA Director, Office of National Drug Control Policy (ONDCP), Executive Office of the President, Washington, DC 20503; 202–395–6692.

**SUPPLEMENTARY INFORMATION:** In 1990, the Director of ONDCP designated the first five HIDTAs. These original HIDTAs, areas through which most illegal drugs enter the United States, are the Southwest Border, Houston, Los Angeles, New York/New Jersey, and South Florida. In 1994, the Director designated the Washington/Baltimore HIDTA to address the extensive drug distribution networks serving hardcore drug users and the Puerto Rico/U.S. Virgin Islands HIDTA based upon the significant amount of drugs entering the United States through this region. In 1995, HIDTAs were designated in Atlanta, Chicago, and Philadelphia/Camden to target drug abuse and drug trafficking in those areas. In 1997, the Gulf Coast HIDTA (includes parts of Alabama, Louisiana, and Mississippi), the Lake County HIDTA, the Midwest HIDTA (includes parts of Iowa, Kansas, Missouri, Nebraska, and South Dakota, with the focus on methamphetamine), the Northwest HIDTA (includes seven counties of Washington State), the Rocky Mountain HIDTA (includes parts of Colorado, Utah, and Wyoming), and the San Francisco HIDTA were designated. In 1998, new HIDTAs were designated in Appalachia (includes parts of Kentucky, Tennessee, and West Virginia), Central Florida, Milwaukee, North Texas, and Southeast Michigan.

In 1999, new HIDTAs were designated in Central Valley California, Hawaii, New England, Ohio and Oregon.

The HIDTA Program supports over 462 collocated joint task forces in twenty-seven regions of the country, including the entire Southwest Border. The HIDTA Program strengthens local, state, and federal drug trafficking and money laundering task forces, bolsters drug enforcement information networks and, improves integration of law enforcement, drug treatment, and drug abuse prevention programs, where appropriate.

Signed at Washington, DC, this 13th day of April, 2000.

**Barry R. McCaffrey,**

*Director.*

[FR Doc. 00–11412 Filed 5–5–00; 8:45 am]

BILLING CODE 3180–02–P

## EXPORT-IMPORT BANK OF THE UNITED STATES

### Notice of Open Special Meeting of the Sub-Saharan African Advisory Committee of the Export-Import Bank of the United States (Export-Import Bank)

**SUMMARY:** The Sub-Saharan African Advisory Committee was established by Pub. L. 105–121, November 26, 1997, to advise the Board of Directors on the development and implementation of policies and programs designed to support the expansion of the Bank's financial commitments in Sub-Saharan Africa under the loan, guarantee and insurance programs of the Bank. Further, the committee shall make recommendations on how the Bank can facilitate greater support by U.S. commercial banks for trade with Sub-Sahara Africa.

*Time and Place:* Thursday, May 25, 2000, at 9 a.m. to 1 p.m. The meeting will be held at the Export-Import Bank in Room 1143, 811 Vermont Avenue, NW, Washington, DC 20571.

*Agenda:* This meeting will include a discussion on telecommunications and technology in Sub-Saharan Africa.

*Public Participation:* The meeting will be open to public participation, and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to May 19, 2000, Teri Stumpf, Room 1203, Vermont Avenue, NW Washington, DC 20571, Voice: (202) 565–3502 or TDD (202) 565–3377.

**FOR FURTHER INFORMATION CONTACT:** For further information, contact Teri Stumpf, Room 1203, 811 Vermont Ave., NW, Washington, DC 20571, (202) 565–3502.

**John M. Niehuss,**

*General Counsel.*

[FR Doc. 00–11414 Filed 5–5–00; 8:45 am]

BILLING CODE 6690–01–M

## FEDERAL COMMUNICATIONS COMMISSION

[DA 00–967]

### Public Safety National Coordination Committee

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the eighth meeting of the Public Safety National Coordination Committee.

**DATES:** June 2, 2000 at 11:30 p.m.–4 p.m.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail mwilhelm@fcc.gov. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail mmccarri@fcc.gov.

**SUPPLEMENTARY INFORMATION:** Following is the complete text of the Public Notice: This Public Notice advises interested persons of the eighth meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

*Date:* June 2, 2000.

*Meeting Time:* General Membership Meeting—11:30 p.m.–4 p.m.

*Address:* Federal Communications Commission, 445 12th Street, SW., Commission Meeting Room, Washington, DC 20554.

The NCC Subcommittees will meet from 8:30 a.m. to 11:30 p.m., continuing their meetings from the previous day. The NCC General Membership Meeting will commence at 11:30 p.m. and continue until 4:00 p.m. The lunch break will be announced during the meeting. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks.
2. Remarks of Ari Fitzgerald, Legal Advisor to FCC Chairman William Kennard.
3. Remarks of Charles L. Jackson, Ph.D., Communications Consultant.
4. Administrative Matters.
5. Report from the Interoperability Subcommittee.
6. Report from the Technology Subcommittee.
7. Report from the Implementation Subcommittee.
8. Public Discussion.
9. Other Business.
10. Upcoming Meeting Dates and Locations.
11. Closing Remarks.

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the eighth meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford or Bert Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC

by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at jalford@fcc.gov or bweintra@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this eighth meeting. The FCC will attempt to accommodate as many people as possible. However, admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at jalford@fcc.gov. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: http://www.fcc.gov/wtb/publicsafety/ncc.html.

Federal Communications Commission.

**Ramona E. Melson,**

*Deputy Division Chief for Legal, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.*

[FR Doc. 00–11386 Filed 5–5–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting; Sunshine Act

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 8:00 a.m. on Wednesday, May 10, 2000, to consider the following matters:

**SUMMARY AGENDA:** No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Summary reports, status reports, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Memorandum and resolution re: Final amendments to Part 361—Minority and Women Outreach Program—Contracting.

**DISCUSSION AGENDA:** Memorandum re: BIF Assessment Rates for the Second Semiannual Assessment Period of 2000.

Memorandum re: SAIF Assessment Rates for the Second Semiannual Assessment Period of 2000.

Memorandum and resolution re: Final Rule—Part 332—Privacy of Consumer Financial information.

Memorandum and resolution re: Proposed Rule—Part 346—Disclosure and Reporting of CRA Related Agreements.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2449 (Voice); (202) 416–2004 (TTY), to make necessary arrangements. Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: May 3, 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00–11509 Filed 5–3–00; 5:04 pm]

BILLING CODE 6714–01–M

## FEDERAL TRADE COMMISSION.

**[File No. 0023113]**

### Michael G. Chrisman, et al.; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before May 30, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Stephen Gurwitz or Michael Ostheimer, FTC/H–238, 600 Pennsylvania Ave., NW, Washington, D.C. 20580, (202) 326–3272 or 326–2699.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 1, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Ave., NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Michael G. Chrisman and Michelle R. Chrisman, individually and doing business as DayTrading International ("respondents").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents sell and distribute recommendations for trading stock. Their trading products or services include the "Live Interactive Trading Room," the "Daily Picks Newsletter," and the "Hot Small Caps Newsletter." The "Live Interactive Trading Room" is

an Internet chat room where respondents provide "live" day trading advice during the day on when to buy and sell stocks. The "Daily Picks Newsletter," and the "Hot Small Caps Newsletter" are in the form of e-mails delivered once per day which contain advice for stock trading. Respondents advertise on their Internet Web site, www.daytradingintl.com. This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent of risk involved in using respondents' stock trading program.

The Commission's proposed complaint alleges that respondents made unsubstantiated claims that users of respondents' "Live Interactive Trading Room" program can reasonably expect to achieve profits on their trades more than 85 percent of the time and achieve substantial profits on a consistent basis (e.g., $500 per trade, two or three times each day); and that users of respondents' "Daily Picks Newsletter" program can reasonably expect to make short term trades, held one to five days, that achieve a rate of return of between two percent and ten percent per trade.

In addition, the complaint alleges that respondents misrepresented that users of their trading programs can reasonably expect to trade stocks profitably with little or no risk. The complaint also alleges that respondents misrepresented that since January 1996, their "Daily Picks Newsletter" program has returned an average of 167 percent annually and that during 1996 and 1997, their "Hot Small Caps Newsletter" program returned an average annual return of 214 percent. The complaint explains that respondents did not begin to offer the "Daily Picks Newsletter" or "Hot Small Caps Newsletter" until 1998.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have a reasonable basis substantiating any representation about the percentage, ratio, or number of trades that a user of any trading program could reasonably expect to be profitable; the amount of earnings, income, or profit that a user of any trading program could reasonably expect to attain; the rate of return that a user of any trading program could reasonably expect to attain or the length of time over which such a rate of return could reasonably be expected; or the past performance of a trading program. Part I also requires respondents to possess a reasonable basis substantiating claims about any financial benefit or other benefit from any trading program.

Part II of the proposed order prohibits respondents from misrepresenting that since January 1996, respondents' "Daily Picks Newsletter" program has returned an average of 167 percent annually or that during 1996 and 1997, respondents' "Hot Small Caps Newsletter" program returned an average annual return of 214 percent. It also prohibits respondents from misrepresenting that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed.

Part III of the proposed order requires respondents to disclose, clearly and conspicuously, "DAY TRADING involves high risks and YOU can LOSE a lot of money," in close proximity to any representation they make about the financial benefits of any day trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondents may be required to make.

Parts IV–VII of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain personnel; to notify the Commission of changes in their employment status and any changes in the name of their business for a period of ten years; and to file compliance reports with the Commission. Part VIII provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–11458 Filed 5–5–00; 8:45 am]

BILLING CODE 6750–01–M

## FEDERAL TRADE COMMISSION

**[File No. 002–3053]**

### Ellery Coleman; Analysis to Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed Consent Agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before May 30, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Stephen Gurwitz or Michael Ostheimer, FTC/H–238, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326–3272 or 326–2699.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 1, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania, Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Ellery Coleman, individually and

doing business as Granite Investments ("respondent").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondent sells and distributes various computer software programs and training for buying and selling S&P futures contracts on a daily basis. Respondent advertises on his Internet Web site, *www.choicedaytrades.com*. This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent of risk involved in using respondent's trading methods.

The Commission's proposed complaint alleges that respondent made unsubstantiated claims that users of his S&P futures trading programs can reasonably expect to achieve substantial profits on a consistent basis (*e.g.*, $25,000 per futures contract); that specific trades or investments enumerated in respondent's advertisements were actually made and resulted in the substantial profits stated in the advertisements; and that testimonials appearing in the advertisements for respondent's S&P futures trading programs reflect the typical or ordinary experience of members of the public who use the programs.

In addition, the complaint alleges that respondent misrepresented that users of his S&P futures trading programs can reasonably expect to trade profitably with little financial risk; that testimonials appearing in the advertisements for his S&P futures trading programs reflect the actual experiences of consumers who have used the programs; that he personally uses his S&P futures trading programs to trade profitably on his own behalf; and that the trades recommended by his S&P futures trading programs, as enumerated in the advertisements, were actually made in many cases.

The proposed consent order contains provisions designed to prevent respondent from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondent to have a reasonable basis substantiating any representation that users of his S&P futures trading programs can reasonably expect to achieve substantial profits on a consistent basis; that specific trades or investments were actually made and resulted in substantial profits; about the amount of earnings, income, profit or the rate of return that a prospective user of any trading program could reasonably expect to attain; about the percentage, ratio, or number of trades that a prospective user of respondent's S&P futures trading programs could reasonably expect to be profitable; or about any financial benefit or other benefit from any trading programs offered by respondent.

Part II of the proposed order prohibits respondent from misrepresenting that users of any trading program can reasonably expect to trade profitably with little or no financial risk; that respondent personally uses his trading programs to trade on his own behalf; whether trades recommended by respondent's trading programs were actually made or were hypothetical; that any testimonial or endorsement of respondent's trading programs or training reflects the testimonialist's or endorser's actual experience and current opinions, findings, beliefs, or experiences; or from misrepresenting the extent of risk to which users of any trading program are exposed.

Part III of the proposed order requires respondent to disclose, clearly and conspicuously, "FUTURES TRADING [or STOCK, CURRENCY, OPTIONS, ETC., as applicable] TRADING involves high risks and YOU can LOSE a lot of money," in close proximity to any representation he makes about the financial benefits of any trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondent may be required to make.

Part IV of the proposed order prohibits respondent from representing without a reasonable basis that the experience represented by any user, testimonial or endorsement of any trading program represents the typical or ordinary experience of members of the public who use the program; or respondent must disclose either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

Parts V–XI of the proposed order require respondent to keep copies of relevant advertisements and materials substantiating claims made in the advertisements; to provide copies of the order to certain personnel; to notify the Commission of changes in Granite Investments that may affect the order; to notify the Commission of changes in respondent's employment status for a period of ten years; and to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–11457 Filed 5–5–00; 8:45 am]

BILLING CODE 6750–01–M

## FEDERAL TRADE COMMISSION

**[File No. 002 3085]**

## CompuTrade LLC, et al.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before May 30, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Stephen Gurwitz or Michael Ostheimer, FTC/H–238, 600 Pennsylvania Ave., NW, Washington, D.C. (202) 326–3272 or 326–2699.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the

full text of the consent agreement package can be obtained from the FTC Home Page (for May 1, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from CompuTrade LLC, a corporation, and Bernard Lewis, individually and as an officer of the corporation (together, "respondents").

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

Respondents sell and distribute computer software and training for buying and selling foreign currencies on a daily basis. They advertise on their Internet Web sites, *www.computrades.com* and *www.computrader.net*. This matter concerns allegedly deceptive representations of the earnings and profit potential, as well as the extent of risk involved in using respondent's trading methods.

The Commission's proposed complaint alleges that respondents made unsubstantiated claims that users of respondents' currency trading program could reasonably expect to earn large profits of $500 to $750 or more per day, and as much as six or seven figures annually (*i.e.*, more than $1,000,000); that users could reasonably expect to earn huge profits even if they had no previous experience in currency trading; and that testimonials appearing in the advertisements for respondents' currency trading program reflected the typical or ordinary experience of members of the public who use the program. In addition, the complaint alleges that respondents misrepresented that users of their currency trading program could reasonably expect to trade with little financial risk.

The proposed consent order contains provisions designed to prevent respondents from engaging in similar acts and practices in the future.

Part I of the proposed order requires respondents to have a reasonable basis substantiating any representation that users of respondents' currency trading program can reasonably expect to earn large profits: (1) of $500 to $750 or more per day; (2) of as much as six or even seven figures annually (*i.e.*, more than $1,000,000); or (3) even if they have no previous experience in currency trading. Part I also requires respondents to possess a reasonable basis substantiating claims about the amount of earnings, income, or profit that a prospective user of any trading program could reasonably expect to attain, or about any financial benefit or other benefit from any trading program offered by respondents.

Part II of the proposed order prohibits respondents from misrepresenting that users of any trading program can reasonably expect to trade with little or no financial risk and from misrepresenting the extent of risk to which users of any such program are exposed.

Part III of the proposed order requires respondents to disclose, clearly and conspicuously, "CURRENCY [or STOCK, COMMODITY FUTURES, OPTIONS, ETC., as applicable] TRADING involves high risks and YOU can LOSE a lot of money," in close proximity to any representation they make about the financial benefits of any trading program. This disclosure is in addition to, and not instead of, any other disclosure that respondents may be required to make.

Part IV of the proposed order prohibits respondents from representing without a reasonable basis that the experience represented by any user, testimonial or endorsement of any trading program represents the typical or ordinary experience of members of the public who use the program; or respondents must disclose either what the generally expected results would be for users of the trading program, or the limited applicability of the endorser's experience to what users may generally expect to achieve, that is, that users should not expect to experience similar results.

Parts V and VI of the proposed order require respondents to keep copies of relevant advertisements and materials substantiating claims made in the advertisements and to provide copies of the order to certain personnel. Part VII requires CompuTrade to notify the Commission of any changes in the corporate structure that might affect compliance with the order. Part VIII requires that the individual respondent notify the Commission of changes in his employment status for a period of ten years. Part IX requires CompuTrade to file compliance reports with the Commission. Part X provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–11456 Filed 5–5–00; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Council for the Elimination of Tuberculosis: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following council meeting.

*Name:* Advisory Council for the Elimination of Tuberculosis (ACET).

*Times and Dates:* 8:30 a.m.–5 p.m., June 7, 2000 and 8:30 a.m.–12 p.m., June 8, 2000.

*Place:* Marriott Atlanta Century Center, 2000 Century Boulevard NE, Atlanta, Georgia 30345.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Purpose:* This council advises and makes recommendations to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the elimination of tuberculosis. Specifically, the Council makes recommendations regarding policies, strategies, objectives, and priorities; addresses the development and application of new technologies; and

reviews the extent to which progress has been made toward eliminating tuberculosis.

*Matters To Be Discussed:* Agenda items include issues pertaining to the epidemiology and control of Tuberculosis in low incidences counties and TB research priorities.

**CONTACT PERSON FOR MORE INFORMATION:** Paulette Ford, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8008.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 1, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–11383 Filed 5–5–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Vaccine Advisory Committee, Subcommittee on Future Vaccines, Subcommittee on Immunization Coverage, and Subcommittee on Vaccine Safety and Communication Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

*Name:* National Vaccine Advisory Committee (NVAC).

*Times and Dates:* 9 a.m.–2:15 p.m., May 22, 2000; 8:30 a.m.–12:45 p.m., May 23, 2000.

*Place:* Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Notice:* In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card should plan to arrive at the building each day either between 8:00 a.m. and 8:30 a.m. or 12:30 p.m. and 1:00 p.m. Entrance to the meeting at other times during the day cannot be assured.

*Purpose:* This committee advises and makes recommendations to the Director of the National Vaccine Program on matters related to the Program responsibilities.

*Matters to be Discussed:* Agenda items will include: an update on the National Vaccine Program Office (NVPO) activities; an update on Unmet Needs Funding; Influenza Vaccine—New Technologies; Pandemic Planning and Adult Immunization; Bioterrorism—Advisory Committee on Immunization Practices (ACIP)/NVAC Activities; Large Population Immunization; Immunization Registries Funding Issues; Vaccine Safety and Communication Subcommittee Report; update from the Office of the Assistant Secretary for Health and Surgeon General; Immunization Coverage Subcommittee Report; Future Vaccines Subcommittee Report; ACIP Annual Report; a report on NVAC Poliovirus Containment Workgroup; Together for Tots/Preventive Services Collaborative.

*Name:* Subcommittee on Future Vaccines.

*Time and Date:* 2:15 p.m.–5 p.m., May 22, 2000.

*Place:* Hubert H. Humphrey Building, Room 305A, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This subcommittee develops policy options and guides national activities that lead to accelerated development, licensure, and the best use of new vaccines in the simplest possible immunization schedules.

*Matters to be Discussed:* Agenda items will include discussions on the Institute of Medicine Report "Vaccines for the 21st Century" Cytomegalovirus (CMV) Workshop planned meeting; Vaccines for Chronic diseases meeting.

*Name:* Subcommittee on Immunization Coverage.

*Time and Date:* 2:15 p.m.–5 p.m., May 22, 2000.

*Place:* Hubert H. Humphrey Building, Room 505A, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This subcommittee will identify and propose solutions that provide a multifaceted and holistic approach to reducing barriers that result in low immunization coverage for children.

*Matters to be Discussed:* Agenda items will include adolescent immunization coverage rates; review of the Adult Immunization Standards' document; immunization requirements for school entry and philosophical exemptions; update on unmet needs; the roll-out process for the "Strategies to Sustain Success" and the Adult Immunization Action Plan.

*Name:* Subcommittee on Vaccine Safety and Communication.

*Time and Date:* 2:15 p.m.–5 p.m., May 22, 2000.

*Place:* Hubert H. Humphrey Building, Room 325A, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available.

*Purpose:* This subcommittee reviews issues relevant to vaccine safety and adverse reactions to vaccines.

*Matters to be Discussed:* Communication Workshop; Vaccine Safety Surveillance; and Standards for Pediatric Immunization Practices.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Gloria Sagar, Committee Management Specialist, NVPO, CDC, 1600 Clifton Road, NE, M/S D–66, Atlanta, Georgia 30333, telephone 404/687–6672.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 3, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–11516 Filed 5–5–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### President's Committee on Mental Retardation; Notice of Meeting

**AGENCY:** President's Committee on Mental Retardation, HHS.

**ACTION:** Notice of meeting.

**DATES:** Friday, June 2, 2000 from 9 to 1.

Place: Hotel Washington, 515 15th Street, NW, Washington, DC. 20004–1099.

Full Committee Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All meeting sites are barrier free.

Agenda: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness, relating to individuals with mental retardation.

**SUPPLEMENTARY INFORMATION:** The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics related to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs and supports for

persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

**FOR FURTHER INFORMATION CONTACT:** Jane L. Browning, Room 701 Aerospace Building, 370 L'Enfant Promenade, SW., Washington, DC 20447, (202) 619–0634.

Dated: May 1, 2000.

**Jane Browning,**

*Executive Director, President's Committee on Mental Retardation.*

[FR Doc. 00–11256 Filed 5–5–00; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–10000]**

### Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

**AGENCY:** Health Care Financing Administration, DHHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. This is necessary to ensure compliance with the Balance Budget Act of 1997. We cannot reasonably comply with the normal clearance procedures because to do so would result in public harm. Public harm would result because there would be a delay in being able to furnish materials to Medicare beneficiaries that would assist them in making informed health care choices concerning fee-for-services benefits and managed care benefits. We need to have the results of a survey ready to be included in the Medicare and You Handbook by October 1, 2000 and therefore must be able to begin the survey in July.

HCFA is requesting OMB review and approval of this collection by June 30, 2000, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by June 23, 2000. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

*Type of Information Request:* New collection; *Title of Information Collection:* Medicare Consumer Assessment Survey of Health Plan Survey (CAHPS)—Fee for Service; *HCFA Form Number:* HCFA–10000 (OMB approval #: 0938–NEW); *Use:* Under the Balanced Budget Act of 1997, HCFA is required to provide general and plan comparative information to beneficiaries that will help them make more informed health plan choices. A CAHPS fee for service survey is needed to provide information comparable to those data collected from the CAHPS managed care survey; *Frequency:* Annually; *Affected Public:* Individuals or households; *Number of Respondents:* 168,000; *Total Annual Responses:* 134,400; *Total Annual Burden Hours:* 44,800.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by June 23, 2000:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–0262 Attn: Julie Brown HCFA–10000

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: April 25, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–11367 Filed 5–5–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Vaccine Injury Compensation Program; List of Petitions Received

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Health Resources and Services Administration (HRSA) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the Public Health Service (PHS) Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the Program in general, contact the Clerk, United States Court of Federal Claims, 717 Madison

Place, N.W., Washington, D.C. 20005, (202) 219–9657. For information on HRSA's role in the Program, contact the Director, National Vaccine Injury Compensation Program, 5600 Fishers Lane, Room 8A–46, Rockville, MD 20857; (301) 443–6593.

**SUPPLEMENTARY INFORMATION:** The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa–10 *et seq.*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated her responsibility under the Program to HRSA. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table (the Table) set forth at section 2114 of the PHS Act or as set forth at 42 CFR 100.3, as applicable. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa–12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by HRSA on October 1, 1999, through December 22, 1999.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Table but which was caused by" one of the vaccines referred to in the Table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading **FOR FURTHER INFORMATION CONTACT**), with a copy to HRSA addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8–05, Rockville, MD 20857. The Court's caption (*Petitioner's Name* v. *Secretary of Health and Human Services*) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

**List of Petitions**

1. Timothy P. Shelenberger, New Wilmington, Pennsylvania, Court of Federal Claims Number 99–0853V.

2. Andrea and Brian Franklin on behalf of Scott P. Franklin, Maitland, Florida, Court of Federal Claims Number 99–0855V.

3. Jennifer and Gene Young on behalf of Miranda Young, Deceased, McCook, Nebraska, Court of Federal Claims Number 99–0856V.

4. Melody Miller, Fort Myers, Florida, Court of Federal Claims Number 99–0859V.

5. Alisha and Tom L. Conrad on behalf of James-Kylie N. Conrad, Washington, Iowa, Court of Federal Claims Number 99–0861V.

6. Richard Gilbert and Doris McClinton on behalf of Jamal Gilbert, Alexandria, Louisiana, Court of Federal Claims Number 99–0866V.

7. Jimena Alvarado on behalf of Maria J. Alvarado, Belleville, New Jersey, Court of Federal Claims Number 99–0871V.

8. Mary Ann and Douglas Besser on behalf of Nicholas Besser, Madison, Wisconsin, Court of Federal Claims Number 99–0872V.

9. Vanessa Rowley, Sandy, Utah, Court of Federal Claims Number 99–0880V.

10. Cynthia and William Nyberg on behalf of Erik Anders Nyberg, Seattle, Washington, Court of Federal Claims Number 99–0887V.

11. Angela Vasquez on behalf of Stephanie Vasquez, Deceased, Burley, Idaho, Court of Federal Claims Number 99–0888V.

12. Melrose Heltsley, Elkton, Kentucky, Court of Federal Claims Number 99–0892V.

13. Marla and David Lefeve on behalf of Steven James Lefeve, Baton Rouge, Louisiana, Court of Federal Claims Number 99–0896V.

14. Lyne and Nelson Adams on behalf Thomas Adams, McHenry, Illinois, Court of Federal Claims Number 99–0901V.

15. Luther B. Yount, Jr., Charleston, Indiana, Court of Federal Claims Number 99–0906V.

16. Harris Sandler, Boca Raton, Florida, Court of Federal Claims Number 99–0907V.

17. David Jenkins, San Diego, California, Court of Federal Claims Number 99–0911V.

18. Regina Touchstone on behalf of Ashley Deaver, Fort Myers, Florida, Court of Federal Claims Number 99–0912V.

19. Josie V. Rivera, Sarasota, Florida, Court of Federal Claims Number 99–0939V.

20. Shon and Jonathan Burch on behalf of Sabian E. Burch, Vienna, Virginia, Court of Federal Claims Number 99–0946V.

21. Ann and Scott Raper on behalf of Rian Raper, Deceased, Fort Hood, Texas, Court of Federal Claims Number 99–0947V.

22. Maria Perez on behalf of Dimitri Flores, Bronx, New York, Court of Federal Claims Number 99–0949V.

23. Kelli Logan on behalf of Logan Doughty, Oklahoma City, Oklahoma, Court of Federal Claims Number 99–0959V.

24. Su (John) F. Goh on behalf of Chelsea Goh, Kansas City, Missouri, Court of Federal Claims Number 99–0962V.

25. Riley Beth Elton-Gatherum, Kearneysville, West Virginia, Court of Federal Claims Number 99–0963V.

26. Karen B. Locklear on behalf of Katlyn Lathan, Southern Pines, North Carolina, Court of Federal Claims Number 99–0966V.

27. Helen Johnson, Bossier Parish, Louisiana, Court of Federal Claims Number 99–0978.

28. Kristen and Patrick Strain on behalf of Zachary P. Strain, Vienna, Virginia, Court of Federal Claims Number 99–0985V.

29. Kim Schirmer-Guzman and Adolfo Guzman on behalf of Brianna Guzman, Old Bridge, New Jersey, Court of Federal Claims Number 99–0998V.

30. Janet Boeger on behalf of Preston Lucido-Boeger, Antioch, California, Court of Federal Claims Number 99–01008V.

31. Yulanda Hargrove Turner, Round Rock, Texas, Court of Federal Claims Number 99–01009V.

Dated: May 2, 2000.

**Claude Earl Fox,**

*Administrator.*

[FR Doc. 00–11390 Filed 5–5–00; 8:45 am]

BILLING CODE 4160–15–U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Submission for OMB Review; Comment Request; 2000 California Health Interview Survey Cancer Control Topical Module (CHIS CCTM)

**SUMMARY:** Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 4, 1999, pages 60215–6 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

*Proposed Collection: Title:* 2000 California Health Interview Survey Cancer Control Topical Module (CHIS CCTM). *Type of Information Request:* New. *Need and Use of Information Collection:* The CHIS CCTM will assist NCI in the measurement of the burden of cancer in the population of the United States. Due to the rich diversity of California's population, NCI will be able to obtain information on racial/ethnic populations that are insufficiently represented in current national surveys. In addition, CHIS CCTM will use small area data for tracking emerging trends in cancer prevention and control at a geographic level that will impact future national trends. They survey will provide county-specific estimates for small racial/ethnic groups concentrated there. Data will be collected from July–December 2000, from approximately 55,000 respondents. *Frequency of Response:* One-time study. *Affected Public:* Individuals or households. *Type of Respondents:* Persons 18 yrs of age or older. The annual reporting burden is as follows: *Estimated Number of Respondents:* 55,000; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* .2171; and *Estimated Total Annual Burden Hours Requested:* 11,962. There are no Capital Costs, Operating Costs, and/or Maintenance Costs to report.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*Direct Comments to OMB:* Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Nancy Breen, National Cancer Institute, Executive Plaza North, Room 4005, Bethesda, Maryland 20892–7344, or call non-toll free number (301) 496–4675, or FAX your request to (301) 435–3710, or E-mail your request, including your address, to nb19k@nih.gov.

*Comments Due Date:* Comments regarding this information collection are best assured of having their full effect if received on or before June 7, 2000.

Dated: April 18, 2000.

**Reesa L. Nichols,**

*NCI Project Clearance Liaison.*

[FR Doc. 00–11439 Filed 5–5–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–40, Review of R03s & F32.

*Date:* May 1, 2000.

*Time:* 2 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* William J. Gartland, PhD. Scientific Review Administrator, Scientific Review Section, National Institute of Dental Research, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitation imposed by the review and funding cycle.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–66, Review of R01.

*Date:* May 19–June 19, 2000.

*Time:* 11 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Yasaman Shirazi, PhD, Scientific Review Administrator, 4500 Center

Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Instiute of Dental and Craniofacial Research Special Emphasis Panel 00–65, Review of R01.

*Date:* June 12, 2000.

*Time:* 2 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm 4AN44F, Bethesda, MD 20892.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–55, Review of R01.

*Date:* June 13, 2000.

*Time:* 1:30 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–55, Review of R01.

*Date:* June 13, 2000.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–52, Applicant Interview, P01.

*Date:* June 18–19, 2000.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Yujing Liu, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–47, Applicant Interview, U01s.

*Date:* July 26–27, 2000.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 1, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11435 Filed 5–5–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Environmental Health Sciences Council, May 15, 2000, 8:30 AM to May 16, 2000, 2:00 PM, Building 31C, Conference Room 6, National Institutes of Health, 3100 Center Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on April 13, 2000, 65 FR 19916.

The NAEHSC meeting will be held for one day on May 15, 2000. The Open and Closed Sessions will be as follows: Open 8:30 a.m. to 1:15 p.m. and Closed 1:30 p.m. to 4:30 p.m. The meeting is partially Closed to the public.

Dated: May 1, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11436 Filed 5–5–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel Clinical Trials Network.

*Date:* May 18–19, 2000.

*Time:* 8:30 a.m. to 3:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Radisson Barcelo Hotel, 2121 P Street, NW, Washington, DC 20037.

*Contact Person:* Susan L. Coyle, PhD, Chief, Clinical, Epidemiological and Applied Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 1, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11437 Filed 5–5–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel "Screening Compounds for Utility as Cocaine Pharmacotherapies Using the Rat Self-Administration Test".

*Date:* May 17, 2000.

*Time:* 9 a.m. to 2 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel "Policy Training Support".

*Date:* June 1, 2000.

*Time:* 9:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel "Cardiovascular and Safety Evaluations of Potential Medications to Reduce Drug Use".

*Date:* June 6, 2000.

*Time:* 9:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel "Bridging the Disconnect".

*Date:* June 14, 2000.

*Time:* 9:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Lyle Furr, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1439.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: May 1, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11438 Filed 5–5–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Privacy Act of 1974: New System of Records

**AGENCY:** Substance Abuse and Mental Health Services Administration, DHHS.

**ACTION:** Notification of a new system of records subject to the Privacy Act of 1974.

**SUMMARY:** In accordance with the requirements of the Privacy Act, the Substance Abuse and Mental Health Services (SAMHSA) is publishing a notice of the establishment of a new system of records, Child Care Subsidy Program. The new system will collect family income data from SAMHSA employees for the purpose of determining their eligibility for child care subsidies, and the amounts of the subsidies. It also will collect information from the employees' child care provider(s) for verification purposes, e.g., that the provider is licensed. Collection of data will be by subsidy application forms submitted by employees.

**DATES:** SAMHSA invites interested persons to submit comments on the proposed new system on or before June 7, 2000.

SAMHSA will adopt this new system without further notice on June 7, 2000 unless comments are received which would result in a contrary determination.

**ADDRESSES:** Please address comments to the SAMHSA Privacy Act Officer, Office of Program Services, Room 13C–20, Parklawn Building, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857. We will make comments available for public inspection at the above address during normal business hours, 8:30 a.m.–5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Director, Division of Human Resources Management, OPS/SAMHSA, Room 14C–24, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857 (301) 443–3408.

Dated: May 2, 2000.

**Richard Kopanda,**

*Director, Office of Program Services, Substance Abuse and Mental Health Services Administration.*

**09–30–0050**

**SYSTEM NAME:**

Child Care Subsidy Program Records (HHS/SAMHSA/OPS).

**SYSTEM CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

This system of records is maintained by the Office of Program Services, 5600 Fishers Lane, Rockville, Maryland 20857. The system of records will also be maintained at various contractor sites. A current list of contractor sites is available by writing to the System Manager at the address below.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

The individuals in the system are employees of the Substance Abuse and Mental Health Services Administration who voluntarily apply for child care subsidies.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Application forms for a child care subsidy contain personal information, including employee's (parent) name, Social Security Number, grade, home phone number, home address, total income, number of dependent children, and number of children on whose behalf the parent is applying for a subsidy, information on any tuition assistance received from State/County/local child care subsidy, and information on child care providers used, including their name, address, provider license number, and State where license issued, tuition cost, provider tax identification number, and copies of Internal Revenue Form 1040 for verification purposes.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 106–58 and Executive Order 9397.

**PURPOSE(S):**

To establish and verify SAMHSA employees' eligibility for child care subsidies in order for SAMHSA to provide monetary assistance for its employees.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:**

1. Disclosure may be made to a Member of Congress or to a congressional staff member in response to a request for assistance from the Member by the individual of record.

2. The Department of Health and Human Services (HHS) may disclose information from this system of records to the Department of Justice, or to a court or other tribunal, when (a) HHS, or any component thereof; or (b) any HHS employee in his or her official capacity; or (c) any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components, is a party to litigation, and HHS determines that the use of such records by the Department of Justice, court or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case HHS determines that such disclosure is compatible with the purpose for which the records were collected.

3. SAMHSA intends to disclose information from this system to an expert, consultant, or contractor (including employees of the contractor) of SAMHSA if necessary to further the implementation and operation of this program.

4. Disclosure may be made to a Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the Substance Abuse and Mental Health Services Administration is made aware of a violation or potential violation of civil or criminal law or regulation.

5. Disclosure may be made to the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of the subsidy program.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

**RETRIEVABILITY:**

The records are retrieved by name and may also be cross-referenced to Social Security Number.

**SAFEGUARDS:**

—Authorized Users: Only SAMHSA personnel working on this project and personnel employed by SAMHSA contractors to work on this project are authorized users as designated by the system manager.

—Physical Safeguards: Records are stored in lockable metal file cabinets or security rooms.

—Procedural Safeguards: Contractors who maintain records in this system are instructed to make no further disclosure of the records, except as authorized by the system manager and permitted by the Privacy Act. Privacy Act requirements are specifically included in contracts.

—Technical Safeguards: Electronic records are protected by use of passwords.

—Implementation Guidelines: HHS Chapter 45–13 of the General Administration Manual, "Safeguard Records Contained in Systems of Records and the HHS Automated Information Systems Security Program Handbook, Information Resources Management Manual."

**RETENTION AND DISPOSAL:**

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the SAMHSA Records Control Schedule, Appendix B–311 (NCI–90–76–5) Item 45.

**SYSTEM MANAGER(S) AND ADDRESS(ES):**

Director, Division of Human Resources Management, Office of Program Services, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857.

**NOTIFICATION PROCEDURE:**

Individuals may submit a request with a notarized signature on whether the system contains records about them to the above system manager.

**RECORD ACCESS PROCEDURES:**

Requests from individuals for access to their records should be addressed to the system manager. Requesters should also reasonably specify the record contents being sought. Individuals may also request an accounting of disclosures of their records, if any.

**CONTESTING RECORD PROCEDURES:**

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought, with supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

**RECORD SOURCE CATEGORIES:**

Information is provided by SAMHSA employees who apply for child care subsidies. Furnishing of the information is voluntary.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 00–11391 Filed 5–5–00; 8:45 am]
BILLING CODE 4162–20–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4565–N–12]**

### Notice of Proposal Information Collection: Comment Request; Housing Owners Certification and Application for Housing Assistance Payments, Schedule of Tenant Assistant Payments Due, Special Claims, Unpaid Rent/Damages, Vacancies

**AGENCY:** Office of the Assistant Secretary for Housing, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* July 7, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, DC. 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

**FOR FURTHER INFORMATION CONTACT:** Willie Spearmon, Multifamily Housing, Office of Business Products, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone number (202) 708–3000 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate

whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Housing Owners Certification and Application for Housing Assistance Payments, Schedule of Tenant Assistant Payments Due, Special Claims, Unpaid Rent/Damages, Vacancies.

*OMB Control Number, if applicable:* 2502–0182.

*Description of the need for the information and proposed use:* The forms must be completed so HUD can pay owners the difference between the gross rent and the total tenant payment (housing assistance payments) according to regulation.

*Agency form numbers, if applicable:* HUD–52670, HUD–52670–A Part 1 and HUD–52670–A Part 2, 52671A–D.

*Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of respondents is 38,252, frequency of responses is 40, the average time to complete form 52670A (Part 1) is 30 minutes, form 52670A (Part 2) is 20 minutes, and 52671A–D is 20 minutes, and annual burden hours requested are 158,792.

*Status of the proposed information collection:* Reinstatement without change.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 30, 2000.

**William C. Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 00–11337 Filed 5–05–00; 8:45 am]

BILLING CODE 4210–27–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4563–N–02]**

## Notice of Proposed Information Collection: Brief Survey of HUD Lead Hazard Control Grantees

**AGENCY:** Office of Lead Hazard Control, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement concerning the Notice of Funding Availability (NOFA) for Research to Improve the Evaluation and Control of Residential Lead-Based Paint Hazards will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* July 7, 2000.

**ADDRESSES:** Integrated persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Gail Ward, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room P3206, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Peter J. Ashley, (202) 755–1785 ext. 115 (this is not a toll-free number), for copies of the proposed forms and other available documents.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Title of Proposal:* Brief Survey of HUD Lead Hazard Control Grantees

*OMB Control Number:* Not applicable.

*Need For the Information and Proposed Use:* This information collection is required to assist in the design of a study to evaluate the effectiveness of lead hazard control interventions performed on private housing by a sample of the recipients of HUD lead hazard control grants (grant recipients include state or local governments). A similar study has been completed for a sample of 12 recipients of LHC grants from Rounds 1 and 2 of the grant program (awards made in 1992 and 1993). A new evaluation study is needed to assess the effectiveness of LHC interventions performed by a sample of LHC grants from Rounds 3 through 7 of the program. The new evaluation is needed to asses factors or conditions that could not be assessed in the completed study (*e.g.*, novel intervention protocols, communities in different geographic areas).

A brief survey will be conducted of potential study participants to provide information to be used in selecting a sample of final study participants. This research should contribute to an eventual reduction in the national prevalence of childhood lead poisoning.

*Agency Form Numbers:* None.

*Members of Affected Public:* State or local government recipients of HUD lead hazard control grants during Rounds 3–7 of the grant program (1994–2000).

*Total Burden Estimate (first year):*

*Total Estimated Hours:* 375.

| Task | Number of respondents | Frequency of responses | Hours per response | Burden hours |
|---|---|---|---|---|
| Respond in writing to survey questions | 125 | 1 | 3 | 375 |

Number of copies to be submitted to the Office of Lead Hazard control for evaluation: One copy.

*Status of the Proposed Information Collection:* New request.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 1, 2000.

**David E. Jacobs,**

*Director, Office of Lead Hazard Control.*

[FR Doc. 00–11454 Filed 5–5–00; 8:45 am]

BILLING CODE 4210–01–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4410–FA–13]**

## Announcement of Funding Awards; Community Development Technical Assistance Programs; Fiscal Year 1999

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Announcement of funding awards.

**SUMMARY:** In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this notice announces the funding decisions made by the Department in a competition for funding under the Fiscal Year 1999 competition for Community Development Technical Assistance Programs. The notice contains the names of award winners and the amounts of the awards. Winners for Housing Opportunities for Persons with AIDS (HOPWA) technical assistance were announced on February 28, 2000 (65 FR 10531).

**FOR FURTHER INFORMATION CONTACT:** Penny McCormack, Department of Housing and Urban Development, Room 7216, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–3176, extension 4391. The TTY number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers).

**SUPPLEMENTARY INFORMATION.** The purpose of the Community Development Technical Assistance competition is to select providers who can provide assistance in four Community Planning and Development programs. The purposes of technical assistance under these four programs are as follows: Community Development Block Grant (CDBG) Technical Assistance—to increase the effectiveness with which States and units of general local government plan, develop and administer their CDBG plans, including assistance to aid non-profits and other recipients of CDBG Funds; Community Housing Development Organizations (CHDOs) Technical Assistance—to promote the ability of CHDOs to maintain, rehabilitate and construct housing for low-income and moderate-income families; to facilitate the education of low-income homeowners and tenants; and to help women who reside in low- and moderate-income neighborhoods to rehabilitate and construct housing in the neighborhoods; HOME Technical Assistance—to help HOME participating jurisdictions design and implement HOME programs including, improving their ability to design and implement housing strategies and incorporate energy efficiency into affordable housing, facilitating the establishment and efficient operation of employer-assisted housing programs and land bank programs, and encouraging private lenders and for-profit developers of low-income housing to participate in public-private partnerships; Supportive Housing Program (SHP) Technical Assistance—to provide HUD-funded Supportive Housing program projects with technical assistance to promote the development of supportive housing and supportive services as part of a Continuum of Care approach, including innovative approaches to assist homeless persons in the transition from homelessness, and promoting the provision of supportive housing to homeless persons to enable them to live as independently as possible.

The assistance made available in this announcement is authorized by the following: CDBG Technical Assistance—Title I of the Housing and Community Development Act of 1974 (42 U.S. C. 5301–5320), 24 CFR 570.402; CHDO Technical Assistance—HOME Investment Partnerships Act (42 U.S.C. 12773), 24 CFR part 92; HOME Technical Assistance—HOME Investment Partnerships Act (42 U.S.C. 12781–12783), 24 CFR part 92; SHP Technical Assistance—42 U.S.C. 11381 *et seq.*, 24 CFR 583.140. The competition was announced in a Notice of Funding Availability (NOFA) published in the **Federal Register** on February 26, 1999 (FR 14410–N–01). Applications were rated and selected for funding on the basis of selection criteria contained in that Notice.

A total of $21,681,998 was awarded to 80 providers nationwide. In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987. 42 U.S.C. 3545), the Department is publishing the awardees and amounts of the awards in Appendix A to this document.

Dated: May 1, 2000.

**Cardell Cooper,**

*Assistant Secretary for Community Planning and Development.*

**Appendix A.—FY 1999 Funding Awards for the Community Development Technical Assistance Programs**

| Technical assistance awardee | CDBG TA | CHDO TA | HOME TA | SHP TA | Total |
|---|---|---|---|---|---|
| Asian Americans for Equality 111 Division Street, New York, NY 10002 | $121,720 | $344,003 | $221,568 | | $687,291 |
| Association of Community Living Agencies in Mental Health, 315A Washington Avenue Albany, NY 12206 | 20,000 | | 60,000 | 60,020 | 140,020 |
| Center for Community Change 1000 Wisconsin Avenue, NW, Washington, DC 20007 | | 167,320 | | | 167,320 |
| Center for Poverty Solutions 2521 N. Charles St., Baltimore, MD 21218 | | | | 26,000 | 26,000 |
| Center for Technical Assistance and Training (CTAT), 7500 Germantown Avenue, Suite 100, Philadelphia, PA 19119 | | 71,526 | 51,800 | | 123,326 |
| Chicago Rehabilitation Network, 53 W. Jackson, Suite 742, Chicago, IL 60604 | | 168,202 | | | 168,202 |
| Coalition for Low Income Community Development (CLICD), 1118 Light Street, Suite B, Baltimore, MD 21229 | 43,750 | | | | 43,750 |
| Coalition on Homelessness and Housing in Ohio, 85 East Gay Street, Suite 603, Columbus, OH 43215 | | | 125,000 | 78,000 | 203,000 |
| Coastal Enterprises, Inc., 36 Water St. P.O. Box 268, Wiscasset, ME 04578 | | 88,344 | | | 88,344 |
| Colorado Coalition for the Homeless, 2100 Broadway, Denver, CO 80205 | | 90,200 | | | 90,200 |

| Technical assistance awardee | CDBG TA | CHDO TA | HOME TA | SHP TA | Total |
|---|---|---|---|---|---|
| Common Ground 110 Prefontaine Place South, Suite 504, Seattle, WA 98104 | 28,470 | ..... | 68,375 | 30,030 | 126,875 |
| Community Development Training Institute, 50 Washington Square, Newport, RI 02840 | 30,000 | ..... | ..... | ..... | 30,000 |
| Community Research and Development, 1300 Baxter St., Suite 269, Charlotte, NC 28204 | ..... | 76,260 | ..... | ..... | 76,260 |
| Congress of National Black Churches, Inc., 1225 Eye Street, N.W., Suite 750, Washington, DC 20005 | 131,820 | 362,610 | ..... | ..... | 494,430 |
| Connecticut Housing Coalition, 30 Jordan Lane, Wethersfield, CT 06109 | 40,000 | ..... | 102,900 | ..... | 142,900 |
| Corporation for Supportive Housing, 50 Broadway, 17th Floor, New York, NY 10004 | ..... | ..... | 99,400 | 263,570 | 362,970 |
| Creative Housing Solutions, Inc., P.O. Box 1022, Selah, WA 98942 | 18,980 | ..... | 15,570 | ..... | 34,550 |
| Dennison Associates, Inc., 910 17th St. NW, Suite 404, Washington, DC 20006 | 36,700 | ..... | ..... | ..... | 36,700 |
| Development Training Institute, Inc., 2510 St. Paul Street, Baltimore, MD 21218 | 106,588 | 2,183,486 | 1,091,570 | ..... | 3,381,644 |
| Douglass-Cherokee Economic Authority, Inc., 534 E. First North Street, P.O. Box 1218, Morristown, TN 37814 | 40,000 | 112,590 | 57,800 | 55,000 | 265,390 |
| Education Development Center, Inc., 55 Chapel Street, Newton, MA 02458 | ..... | ..... | ..... | 60,339 | 60,339 |
| Enterprise Foundation, 10227 Wincopin Circle, Suite 500, Columbia, MD 21044 | 10,000 | 18,258 | ..... | ..... | 28,258 |
| Florida Counties Foundation, 100 South Monroe Street, Tallahassee, FL 32301 | 17,500 | ..... | ..... | ..... | 17,500 |
| Florida Housing Coalition, Inc., 1367 East Lafayette St. Suite C, Tallahassee, FL 32301 | 16,000 | 59,040 | 54,802 | 21,120 | 150,962 |
| Florida Planning Group, Inc., 9471 Baymeadow Road, Suite 401, Jacksonville, FL 32256 | 26,250 | ..... | 54,880 | 40,000 | 121,130 |
| Fomento Inc., dba Mendez England & Associates, 5550 Friendship Blvd., Suite 230, Chevy Chase, MD 20815 | 40,000 | ..... | ..... | ..... | 40,000 |
| Grassroots Leadership Development Program, Inc., 1875 North Ridge Rd., East Suite A, Lorain, OH 44055 | 35,000 | 73,098 | ..... | ..... | 108,098 |
| HomeBase/The Center for Common Concerns, Inc., 870 Market Street, Suite 1228, San Francisco, CA 94102 | ..... | ..... | ..... | 181,600 | 181,600 |
| ICF Incorporated, 9300 Lee Highway, Fairfax, VA 22031 | 299,901 | ..... | 1,065,317 | ..... | 1,365,218 |
| Illinois Community Action Association, 101 North 16th Street, Springfield, IL 62703 | ..... | ..... | ..... | 109,300 | 109,300 |
| Indiana Association for Community Economic Development, 17 West Market Street, Suite 865, Indianapolis, IN 46204 | 26,250 | ..... | ..... | 19,000 | 45,250 |
| Iowa Housing Corporation, 100 Court Avenue, Suite 209, Des Moines, IA 50309 | ..... | 28,275 | 54,940 | ..... | 83,215 |
| Johnson, Bassin & Shaw, Inc., 8630 Fenton Street, Suite 1200, Silver Spring, MD 20910 | 112,040 | ..... | 233,780 | 156,220 | 502,040 |
| Lawton Community Development Corp., 6 SW D Avenue, Suite B, Lawton, OK 73501 | 16,000 | ..... | ..... | ..... | 16,000 |
| Local Initiatives Support Corporation, 733 Third Avenue, 8th Floor, New York, NY 10017 | ..... | 321,235 | ..... | ..... | 321,235 |
| Low Income Housing Development Corporation, d/b/a The Affordable Housing Group, 1300 Baxter St., Suite 269, Charlotte, NC 28204 | ..... | 42,336 | ..... | ..... | 42,336 |
| Maine State Housing Authority, 353 Water St., Augusta, ME 04330 | 17,800 | ..... | 66,575 | 16,404 | 100,779 |
| Maryland Center for Community Development, Inc., 1118 Light Street, Baltimore, MD 21230 | 16,000 | 45,280 | 17,480 | ..... | 78,760 |
| Massachusetts Housing & Shelter Alliance, Inc., 5 Park Street, Boston, MA 02018 | ..... | ..... | ..... | 16,404 | 16,404 |
| Massachusetts Nonprofit Housing Association, Inc., 18 Tremont Street, Suite 401, Boston, MA 02108 | ..... | ..... | ..... | 43,709 | 43,709 |
| McClure Group, 2960 Piney Wood Drive, East Point, GA 30344 | 43,750 | 70,560 | 137,200 | ..... | 251,510 |
| Metropolitan Boston Housing Partnership, 569 Columbus Ave., Boston, MA 02118 | ..... | 58,896 | ..... | ..... | 58,896 |
| Michigan Coalition Against Homeless, 1210 W. Saginaw, Lansing, MI 48915 | ..... | ..... | ..... | 51,750 | 51,750 |
| Michigan Housing Trust Fund, 5829 Executive Drive, Lansing, MI 48911 | ..... | 123,840 | ..... | ..... | 123,840 |
| Minnesota Housing Partnership, 122 W. Franklin Ave., Suite 230, Minneapolis, MN 55404 | 24,000 | 121,275 | 102,900 | 40,000 | 288,175 |
| Mississippi Home Corporation, P.O. Box 23369, Jackson, MS 39225 | ..... | 35,280 | ..... | ..... | 35,280 |
| National Affordable Housing Training Institute, 1200 19th Street, NW, Suite 300, Washington, DC 20036 | 24,000 | ..... | 894,176 | ..... | 918,176 |
| National Association for Equal Opportunity in Higher Education, 8701 Georgia Avenue, Suite 200, Silver Spring, MD 20910 | ..... | 625,378 | ..... | ..... | 625,378 |
| National Center for Appropriate Technology, 3040 Continental Dr., P.O. Box 3838, Butte, MT 59702 | ..... | ..... | 403,434 | ..... | 403,484 |
| National Congress for Community Economic Development, 1030 15th Street, NW, Suite 325, Washington, DC 20005 | 16,000 | 336,725 | 18,000 | ..... | 370,725 |
| National Puerto Rican Coalition, Inc., 1700 K Street, NW, Suite 500, Washington, DC 20006 | 84,778 | 206,548 | 461,658 | 174,934 | 927,918 |

| Technical assistance awardee | CDBG TA | CHDO TA | HOME TA | SHP TA | Total |
|---|---|---|---|---|---|
| North Carolina Rural Economic Development Center, Inc., 4021 Carya Drive, Raleigh, NC 27610 | 17,500 | 28,224 | ..... | ..... | 45,724 |
| Northern Ponca Housing Authority, 1405 Riverside Blvd., P.O. Box 2486, Norfolk, NE 68702 | 40,000 | ..... | ..... | ..... | 40,000 |
| Northwest Regional Facilitators, 525 E. Mission Avenue, Spokane, WA 99202 | ..... | 135,567 | 90,155 | 50,648 | 276,370 |
| NYS Rural Housing Coalition, Inc., 879 Madison Avenue 2nd Floor, Albany, NY 12208 | 70,182 | 108,036 | 53,702 | 12,930 | 244,850 |
| Ohio Capital Corporation for Housing, 88 East Broad St., Suite 1800, Columbus, OH 43215 | ..... | 141,480 | 150,000 | ..... | 291,480 |
| Ohio CDC Association, 85 East Gay Street, Suite 403, Columbus, OH 43215 | 52,650 | ..... | ..... | ..... | 52,650 |
| Pathways Community Network, Inc., 44 Broad Street, NW, Suite 702, Atlanta, GA 30303 | ..... | ..... | ..... | 40,000 | 40,000 |
| Rural Community Assistance Corporation, 3120 Freebroad Drive, Suite 201, West Sacramento, CA 95691 | 130,370 | 927,868 | 413,800 | 34,222 | 1,506,260 |
| Smart, Inc., 833 Howard, 3rd Floor, New Orleans, LA 70113 | ..... | ..... | 35,000 | 20,000 | 55,000 |
| Southeast Michigan Council of Governments, 660 Plaza Drive, Suite 1900, Detroit, MI 48226 | 40,000 | ..... | ..... | ..... | 40,000 |
| Southern California Association of Governments, 818 West Seventh Street, 12th Floor, Los Angeles, CA 90001 | ..... | ..... | 123,200 | ..... | 123,200 |
| Southern California Mutual Housing Association, 4229 South Central Avenue, Los Angeles, CA 90011 | ..... | 112,639 | ..... | ..... | 112,639 |
| State of Alaska, P.O. Box 101020, Anchorage, AK 99510 | 40,000 | 23,640 | 45,600 | 40,000 | 149,240 |
| State of Michigan Department of Consumer & Industry Services, 401 S. Washington Square, P.O. Box 30044, Lansing, MI 48909 | ..... | ..... | 96,320 | ..... | 96,320 |
| State of North Dakota, 600 East Boulevard Avenue, 14th Floor—State Capitol, Bismarck, ND 58505 | 33,580 | ..... | ..... | ..... | 33,580 |
| State of Utah, 324 South State Street, Suite 500, Salt Lake City, UT 84111 | ..... | 120,000 | 60,000 | 16,000 | 196,000 |
| Statewide Housing Action Coalition, 202 South State Street, Suite 1414, Chicago, IL 60604 | ..... | 55,112 | ..... | ..... | 55,112 |
| Structured Employment Economic Development, Corporation (Seedco), 915 Broadway, Suite 1703, New York, NY 10010 | 99,642 | 748,559 | ..... | ..... | 848,201 |
| Technical Assistance Collaborative, One Center Plaza, Suite 310, Boston, MA 02108 | ..... | ..... | ..... | 16,404 | 16,404 |
| Tonya, Inc., 1000 Vermont Avenue, NW Suite 500, Washington, DC 20005 | 368,779 | ..... | 792,698 | 317,163 | 1,478,640 |
| Training & Development Associates, Inc., 1680 South Main Street, Suite 201, Laurinburg, NC 28352 | 88,000 | 513,970 | 344,670 | 72,980 | 1,019,620 |
| UNITY for the Homeless, 2475 Canal Street, Suite 300, New Orleans, LA 70119 | ..... | ..... | ..... | 96,000 | 96,000 |
| University of Southern MS, P.O. Box 5157, Hattiesburg, MS 39406 | 16,000 | ..... | 27,480 | ..... | 43,480 |
| Upstate Homeless Coalition of South Carolina, 2 Bennett Street, 1st Floor, P.O. Box 17738, Greenville, SC 29606 | ..... | ..... | ..... | 16,000 | 16,000 |
| Virginia Poverty Law Center, 201 W. Broad St., Suite 302, Richmond, VA 23220 | ..... | 52,920 | ..... | ..... | 52,920 |
| Washington Community Development Loan Fund, 1305 Fourth Ave., Suite 906, Seattle, WA 98101 | ..... | 75,000 | 25,000 | ..... | 100,000 |
| West Virginia Housing Development Fund, 841 Virginia Street, East, Charleston, WV 25301 | ..... | 161,700 | 137,200 | ..... | 298,900 |
| Wisconsin Department of Administration, 101 E. Wilson St., 4th Floor P.O., Box 8944, Madison, WI 53708 | ..... | ..... | 126,000 | ..... | 126,000 |
| Woonsocket Neighborhood Development Corp., 141 Olo Street, Woonsocket, RI 02895 | 20,000 | ..... | 20,000 | 10,971 | 50,971 |

[FR Doc. 00–11453 Filed 5–5–00; 8:45 am]

BILLING CODE 4210–29–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–310–1830–XQ]**

### Notice of Extension of Application Deadline

**AGENCY:** Bureau of Land Management, Northeast California Resource Advisory Council, Susanville, California.

**ACTION:** Notice of extension of membership application deadline.

**SUMMARY:** Pursuant to authorities in the Federal Advisory Committees Act (Public Law 92–463) and the Federal Land Policy and Management Act (Pub. L. 94–579), the U.S. Bureau of Land Management's Northeast California Resource Advisory Council is seeking nominations for membership on the advisory council. The original application deadline of April 20, 2000 has been extended to Friday, May 26, 2000.

**SUPPLEMENTARY INFORMATION:** There are five open seats on the Advisory Council. Three openings are in Category One, which includes holders of federal grazing permits or leases, representatives of the timber or mineral industries, representatives of commercial recreation or off-highway vehicle interests, and interests associated with transportation and rights of way. There is one open seat in Category Two, which includes representatives from national or regional environmental groups, interests associated with dispersed recreation activities, archaeological and historic interests, and national or regionally recognized wild horse and burro interest groups. There is one open seat in

Category Three, which includes persons who hold state, county or local elected office, employees of state agencies responsible for natural resources, teachers involved in the natural sciences, members of Native American tribes, and the public at large. Members are appointed by the Secretary of the Interior to serve three-year terms. The person selected must have knowledge or experience in the interest area specified, and must have knowledge of the geographic area under the council's purview (the northeast portion of California and the northwest portion of Nevada). Qualified applicants must have demonstrated a commitment to collaborate to solve a broad spectrum of natural resource issues.

Nomination forms are available by contacting BLM Public Affairs Officer Joseph J. Fontana, 2950 Riverside Drive, Susanville, CA 96130; by telephone (530) 257–5381; or email, jfontana@ca.blm.gov. Completed nomination forms, and letters of support, must be returned to: Bureau of Land Management, 2950 Riverside Drive, Susanville, CA 96130, Attention Public Affairs Officer, no later than Friday, May 26, 2000.

**FOR ADDITIONAL INFORMATION:**

Contact BLM Alturas Field Manager Tim Burke, (530) 233–4666, or Public Affairs Officer Joseph J. Fontana at the above phone or email address.

**Joseph J. Fontana,**

*Public Affairs Officer.*

[FR Doc. 00–11452 Filed 5–5–00; 8:45 am]

**BILLING CODE 4310–40–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate Cultural Items in the Possession of the California State Office, Bureau of Land Management, Sacramento, CA

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the California State Office, Bureau of Land Management, Sacramento, CA which meet the definition of "unassociated funerary objects" under Section 2 of the Act.

The 90 cultural items consist of *olivella* shell beads and pottery sherds.

In 1989, these cultural items were removed from a cremation at site CA-IMP–6315, ancient Lake Cahuilla, western Imperial County, CA during legally authorized investigations conducted by the University of California, Riverside. The human remains interred with these cultural items were not collected.

The one cultural item is a projectile point.

In 1989, this cultural item was removed from a cremation at site CA-IMP–6315, ancient Lake Cahuilla, western Imperial County, CA during legally authorized investigations conducted by the University of California, Riverside. The human remains interred with these cultural items were not collected.

Based on the common occurrence of brown and buff ware pottery derived from the lower Colorado river area, small projectile points, and late period shell beads imported from the Southern California coastal area, all of these cultural items can be dated to the late precontact period in the Southern California, Colorado Desert sequence, c. 1500 A.D. to the 19th century. Based on archeological and material culture evidence, there is a clear continuum from the late period precontact archeological cultures to the native peoples present in the area at the time of European contact. Consultation evidence presented by the Kumeyaay Cultural Repatriation Committee (authorized representatives of the Campo Band of Diegueno Mission Indians of the Campo Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California) also supports the recognition of this area of Imperial County as Kumeyaay ancestral homeland.

Based on the above mentioned information, officials of the Bureau of Land Management have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Bureau of Land Management have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Campo Band of Diegueno Mission Indians of the Campo Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California.

This notice has been sent to officials of the Kumeyaay Cultural Repatriation Committee and the Campo Band of Diegueno Mission Indians of the Campo Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California. Representatives of any other

Indian tribe that believes itself to be culturally affiliated with these objects should contact Russell Kaldenberg, Archeologist, Division of Natural Resources, California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, CA 95825; telephone: (916) 978–4635 before June 7, 2000. Repatriation of these objects to the Campo Band of Diegueno Mission Indians of the Campo Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California may begin after that date if no additional claimants come forward.

Dated: April 26, 2000.

**Veletta Canouts,**

*Acting Departmental Consulting Archeologist,*

*Deputy Manager, Archeology and Ethnography Program.*

[FR Doc. 00–11379 Filed 5–5–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains in the Possession of the Dayton Museum of Natural History, Dayton, OH

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains in the possession of the Dayton Museum of Natural History (a division of the Dayton Society of Natural History), Dayton, OH.

A detailed assessment of the human remains was made by Dayton Museum of Natural History professional staff in consultation with representatives of the Tonto Apache Tribe of Arizona; the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; the Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; the Fort Sill Apache Tribe of Oklahoma; the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.

In 1943, human remains representing one individual were donated to the Dayton Museum of Natural History by Mrs. E.R. Skillman. No known individuals were identified. No associated funerary objects are present.

Based on the original accession form, these human remains have been determined to be Native American affiliated with the Apache. No other evidence exists to contradict this accession information. Based on dental wear, the professional staff of the Dayton Museum of Natural History are inclined to believe that this individual dates to the precontact period rather than the historic period.

Based on the above mentioned information, officials of the Dayton Museum of Natural History have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Dayton Museum of Natural History have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Tonto Apache Tribe of Arizona; the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; the Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; the Fort Sill Apache Tribe of Oklahoma; the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona.

This notice has been sent to officials of the Tonto Apache Tribe of Arizona; the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; the Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; the Fort Sill Apache Tribe of Oklahoma; the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Ms. Lynn Simonelli, Curator, Dayton Museum of Natural History, 2600 DeWeese Parkway, Dayton, OH 45414; telephone: (937) 275–7431, ext. 30 before June 7, 2000. Repatriation of the human remains to the Tonto Apache Tribe of Arizona; the White Mountain Apache Tribe of the Fort Apache Reservation, Arizona; the Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; the Fort McDowell Mohave-Apache Community of the Fort McDowell Indian Reservation, Arizona; the Fort Sill Apache Tribe of Oklahoma; the Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; the San Carlos Apache Tribe of the San Carlos Reservation, Arizona; and the Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: April 26, 2000.

**Veletta Canouts,**

*Acting Departmental Consulting Archeologist,*

*Deputy Manager, Archeology and Ethnography Program.*

[FR Doc. 00–11380 Filed 5–5–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent to Repatriate Cultural Items from the Nevada Test Site, NV in the Possession of the Nevada Operations Office, U.S. Department of Energy, Las Vegas, NV

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items

from the Nevada Test Site, NV in the possession of the Nevada Operations Office, U.S. Department of Energy, Las Vegas, NV which meet the definition of "sacred object" and "unassociated funerary object" under Section 2 of the Act.

The 46 cultural items consist of ceramics, groundstones, bone and glass beads, stone pendants, projectile points, white chert, abrader, pestle, chipped stone, and a bowl.

These 46 cultural items were recovered in the same vicinities where Native American burials had previously been recovered. Consultation evidence presented by representatives of Western Shoshone and Paiute tribes indicates these cultural items are consistent with funerary objects typically included in Western Shoshone and Paiute burials.

The 274 cultural items consist of bone and glass beads, groundstone, projectile points and fragments, pieces of pottery, ceramics, obsidian bifaces, white chert, abraders, basketry, a bowl, a stone knife, a stone drill, crystals, pipe fragments, cores, and stone pendants/ornaments.

Consultation evidence presented by representatives of Western Shoshone and Paiute tribes indicates these 250 cultural items are specific ceremonial objects needed by Native American traditional religious leaders for the practice of Native American religion by present-day adherents.

Between 1965-1969, these cultural items were recovered from several sites within the Nevada Test site during non-legally permitted collections by Frederick Worman, and anthropologist and biologist with the Los Alamos National Laboratory and William McKinnis, an engineer with the Lawrence Livermore National Laboratory. These collections also include cultural items from within the Nevada Test site given to McKinnis by other unknown collectors. After 1969, these collections were curated at the University of Nevada-Las Vegas until 1983, when they were transferred to the Desert Research Institute (DRI), a federal curation facility, in Reno, NV. When the collections containing these cultural items were inventoried in 1996, if was found that there was not any systematic referencing system, making it difficult to assign materials to their original locations within the Nevada Test site.

Based on the above-mentioned information, officials of the U.S. Department of Energy have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 46 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the U.S. Department of Energy have determined that, pursuant to 43 CFR 10.2 (d)(3), these 274 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the U.S. Department of Energy have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Paiute Indian Tribe of Utah, the Chemehuevi Indian Tribe of the Chemehuevi Reservation, the Colorado River Indian Tribes of the Colorado Indian Reservation, the Duckwater Shoshone Tribe of the Duckwater Reservation, the Ely Shoshone Tribe of Nevada, the Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, the Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, the Moapa Band of Paiute Indians of the Moapa River Indian Reservation, the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, and the Yomba Shoshone Tribe of the Yomba Reservation.

This notice has been sent to officials of the Paiute Indian Tribe of Utah, the Chemehuevi Indian Tribe of the Chemehuevi Reservation, the Colorado River Indian Tribes of the Colorado Indian Reservation, the Duckwater Shoshone Tribe of the Duckwater Reservation, the Ely Shoshone Tribe of Nevada, the Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, the Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, the Moapa Band of Paiute Indians of the Moapa River Indian Reservation, the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, the Yomba Shoshone Tribe of the Yomba Reservation and the following non-Federally recognized Indian groups: the Timbisha Shoshone Tribe, the Pahrump Paiute Tribe, the Las Vegas Indian Center, the Southern Paiute Tribal Chairman's Associated, and the Owens Valley Board of Trustees. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Robert C. Furlow, NAGPRA Program Manager, DOE Nevada Operations Office, PO Box 98518, Las Vegas, NV 89193–8518; telephone: (762) 295–0845, fax: (762) 295–1455 before June 7, 2000. Repatriation of these objects to the Paiute Indian Tribe of Utah, the Chemehuevi Indian Tribe of the Chemehuevi Reservation, the Colorado River Indian Tribes of the Colorado Indian Reservation, the Duckwater Shoshone Tribe of the Duckwater Reservation, the Ely Shoshone Tribe of Nevada, the Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, the Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, the Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, the Moapa Band of Paiute Indians of the Moapa River Indian Reservation, the Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, and the Yomba Shoshone Tribe of the Yomba Reservation may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: April 26, 2000.

**Veletta Canouts,**

*Acting Deparmental Consulting Archeologist, Deputy Manager, Archeology and Ethnography Program.*

[FR Doc. 00–11378 Filed 5–5–00; 8:45 am]

BILLING CODE 4310–70–F

## INTERNATIONAL TRADE COMMISSION

### Notice of Commission Decision Not to Review an Initial Determination Amending the Complaint and Notice of Investigation

[Inv. No. 337–TA–428]

In the Matter of Certain Integrated Circuit Chipsets, Components Thereof and Products Containing Same.

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ's") initial determination ("ID") granting a motion to amend the complaint and notice of investigation to withdraw claims 1–11, 32–36, and 39–48 of U.S. Letters Patent 5,581,782 from the investigation and to amend the notice of investigation by adding to the caption and the text the phrase "components thereof."

**FOR FURTHER INFORMATION CONTACT:** Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436, telephone (202) 205-3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission ordered the institution of this investigation on February 4, 2000, based on a complaint filed by Intel Corp., of Santa Clara, California ("Intel"). 65 FR 7059 (2000). The complaint named five respondents: VIA Technologies, Inc., of Taipei, Taiwan; VIA Technologies, Inc., of Fremont, California (collectively, "VIA"); First International Computer, Inc., of Taipei, Taiwan; First International Computer of America, Inc., of Fremont, California; and Everex Systems, Inc., of Fremont, California (collectively, "FIC"). Id. The complaint, as supplemented, alleges violations of section 337 of the Tariff Act of 1930 in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain integrated circuit chipsets and products containing same by reason of infringement of claims 1–3 and 15–16 of U.S. Letters Patent 5,333,276, claims 1–4, 10, 15, 22, 27–30, 36–37, 44–45, and 49 of U.S. Letters Patent 5,740,385, claims 1–12 and 28–48 of U.S. Letters Patent 5,581,782 ("the '782 patent"), and claims 1–31 of U.S. Letters Patent 5,548,733.

On March 29, 2000, complainant Intel filed a motion to amend the complaint and notice of investigation by deleting claims 1–11, 32–36, and 39–48 of the '782 patent and by adding the phrase "components thereof" to the text and caption of the notice of investigation. Respondents opposed the motion to the extent that it sought to add the phrase "components thereof" to the notice of investigation. The Commission investigative attorney supported the motion in its entirety.

On April 10, 2000, the presiding ALJ issued an ID (Order No. 6) granting Intel's motion, thereby amending the complaint to delete claims 1–11, 32–36, and 39–48 of the '782 patent, and amending the notice of investigation to delete claims 1–11, 32–36, and 39–48 of the '782 patent and add the phrase "components thereof" to the caption and the text. No party petitioned for review of the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR § 210.42). Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

By order of the Commission.
Issued: May 1, 2000.

**Donna R. Koehnke**
*Secretary*

[FR Doc. 00–11339 Filed 5–5–00; 8:45 am]
BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Bureau of Justice Assistance; Agency Information Collection Activities: Common Request

**ACTION:** Notice of information collection under review; survey of best practices for hiring and retention of female and minority law enforcement officers.

The Department of Justice, Office of Justice Programs, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 28, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until June 7, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**Overview of This Information**

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Survey of Best Practices for Hiring and Retention of Female and Minority Law Enforcement Officers.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Bureau of Justice Assistance, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Local Law Enforcement Agencies. 42 USC 3760 [Sec.510.] Purposes (a)(4) providing financial assistance to public agencies and private nonprofit organizations for demonstration programs, which, in view of previous research or experience, are likely to be a success in more than one jurisdiction.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 800 respondents will complete a 35 minute nomination form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nominations is 400 annual burden hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy

Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place, 1331 Pennsylvania Avenue NW, Washington, DC 20530.

Dated: April 28, 2000.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, United States Department of Justice.*

[FR Doc. 00–11342 Filed 5–5–00; 8:45 am]

BILLING CODE 4410–18–M

## DEPARTMENT OF JUSTICE

### Office of Community Oriented Policing Services; FY 2000 Community Policing Discretionary Grants

**AGENCY:** Office of Community Oriented Policing Services, Department of Justice.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of Justice, Office of Community Oriented Policing Services ("COPS") announces a new grant program, COPS in Schools, designed to combat school violence by helping local law enforcement agencies hire additional community policing officers to work in schools. This program provides an incentive for law enforcement agencies to build working relationships with schools and to use community policing efforts to combat school violence. The COPS in Schools program will help reduce the local match requirement for local law enforcement agencies seeking to hire additional new officers to be used in or around schools.

**DATES:** The application deadline for CIS is June 16, 2000. Applications must be postmarked by this date to be considered for funding. Due to limited funding, applications that are not funded this Fiscal Year will be carried over for consideration in Fiscal year 2001 (subject the availability of Fiscal Year 2001 funding). If your agency already was awarded a FAST, AHEAD or UHP grant, you may request additional officers at any time. Note on your application if you are requesting officers that will be assigned to primary or secondary schools.

**ADDRESSES:** To obtain a copy of an application or for more information, please call the U.S. Department of Justice Response Center at 1–800–421–6770 or (202) 307–1480, or visit the COPS web site at http://www.usdoj.gov/cops/.

Departments that have a pending application under the Universal Hiring Program that are interested in redirecting that request to the COPS in Schools initiative should contact their grant advisor at 1–800–421–6770.

**FOR FURTHER INFORMATION CONTACT:** The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770. The CIS application and information on the COPS Office are also available on the Internet via the COPS web site at: http://www.usdoj.gov/cops/.

**FOR FURTHER INFORMATION CONTACT:** The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770 or your grant advisor.

**SUPPLEMENTARY INFORMATION:**

#### Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. The COPS in Schools program is specifically designed to combat school violence.

Many communities are discovering that trained, sworn Law enforcement officers assigned to schools make a difference. The presence of these officers provides schools with on-site security and a direct link to local law enforcement agencies.

Community policing officers typically perform a variety of functions within the school including teaching crime prevention and substance-abuse classes, monitoring troubled students, and building respect for law enforcement among students. School Resource Officers combine the functions of law enforcement and education.

The COPS in Schools initiative provides an incentive for law enforcement agencies to build working relationships with schools to use community policing efforts to combat school violence.

The COPS in Schools initiative reduces the local match requirement for law enforcement agencies seeking to hire additional officers in and around schools.

Grants will be awarded to provide for a designated portion of the salary and benefits of each new officer over three years. The maximum grant amount is $125,000 per officer; any remainder is paid with state or local funds. To qualify for funding, officers must be hired on or after the grant award start date. Funding begins when new officers are hired or on the award date (whichever is later). Funds are distributed over the course of the grant.

COPS grants must not replace funds that eligible agencies otherwise would have devoted to hire officers in the absence of the COPS funding. In other words, any hiring under the COPS in Schools program must be in addition to, not in lieu of, officers that otherwise would have been hired or currently employed officers. Grant recipients must develop a written plan to retain their COPS-funded officer positions with State of local funding after Federal funding ends. This plan must be submitted with the application.

To be eligible to receive funding under this grant program, applicants must be eligible to receive funding under the current guidelines established for the Universal Hiring Program (UHP). UHP guidelines are available from the U.S. Department of Justice Response Center (1–800–421–6770). Applicants must also provide assurance that the officers employed under this program will be assigned to work in primary or secondary schools and must enter into a partnership agreement with either a specific school official or with an official with general educational oversight authority in that jurisdiction. All applicants must also submit a memorandum of understanding (MOU). The MOU, which must be signed by both the Law Enforcement Executive and the School Official with general educational oversight, is an agreement between the parties involved whose purpose is to define the roles and responsibilities of the individuals and partners involved.

In addition to these general program requirements, agencies seeking funding under this program will be asked to provide supporting documentation in the following areas: problem identification and justification, community policing strategies to be used by the officers, quality and level of commitment to the effort, and the link to community policing.

All COPS in Schools awards will contain an "Additional Grant Condition" that must be signed and returned to the COPS Office. This condition requires the funded officer(s) and a school administrator to attend a COPS in Schools Training. Costs for training, per diem, travel, and lodging for attendance of required participants will be reimbursed by the COPS Office up to a maximum of $1100.

An award under the COPS in Schools grant program will not affect the eligibility of an agency to receive awards under any other COPS program.

(The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.)

Dated: April 21, 2000.

**Thomas Frazier,**

*Director.*

[FR Doc. 00–11368 Filed 5–5–00; 8:45 am]

BILLING CODE 4410–AT–M

## DEPARTMENT OF JUSTICE

### Office of Community Oriented Policing Services; FY 2000 Community Policing Discretionary Grants

**AGENCY:** Office of Community Oriented Policy Services, Department of Justice.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of Justice, Office of Community Oriented Policing Services ("COPS") announces the availability of Universal Hiring Program (UHP) grants to pay up to 75 percent of the total salary and benefits for new officers over three years, and up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. To qualify for funding, officers must be hired on or after the grant award start date. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

**DATES:** Application deadline for UHP is May 31, 2000. Applications must be postmarked by the deadline date. Additional application deadline dates may be announced later and are subject to available funding. If additional funding is available, applications postmarked after the deadline date may be carried over to the next funding period. Unlike previous fiscal years, funding is limited under the Universal Hiring Program. Because funding is limited, we encourage you to apply early. If your agency previously was awarded funding under the Universal Hiring Program, you may request additional officers at any time.

**ADDRESSES:** To obtain a copy of an application or for more information, call the U.S. Department of Justice Response Center at (202) 307–1480 or 1–800–421–6770.

**FOR FURTHER INFORMATION CONTACT:** The U.S. Department of Justice Response Center, (202) 307–1480 or 1–800–421–6770. The UHP application and information on the COPS Office are also available on the Internet via the COPS web site at: http://www.usdoj.gov/cops.

**SUPPLEMENTARY INFORMATION:**

#### Overview

The Violent Crime Control and Law Enforcement Act of 1994 (Pub. L. 103–322) authorizes the Department of Justice to make grants to increase deployment of law enforcement officers devoted to community policing on the streets and rural routes in this nation. The Universal Hiring Program (UHP) enables interested agencies to supplement their current sworn forces, or interested jurisdictions to establish a new agency, through Federal grants for up to three years. All policing agencies, as well as jurisdictions seeking to establish new policing agencies, are eligible to apply for this program.

Grants will be made for up to 75 percent of the total salary and benefits for each new officer over three years, and up to a maximum of $75,000 per officer, with the remainder to be paid by state or local funds. Funding will begin once the new officers have been hired or on the date of the award, whichever is later, and will be paid over the course of the grant. Officers must be hired after the grant award start date to qualify for grant funding.

Waivers of the non-Federal matching requirement may be requested under UHP, but will be granted only upon a showing of extraordinary fiscal hardship.

COPS grant funds must not be used to replace funds that eligible agencies otherwise would have devoted to officer hiring in the absence of the grant. In other words, any hiring under UHP must be in addition to, and not in lieu of, officers that otherwise would have been hired. All grant recipients must develop a written plan to retain their COPS-funded officer positions after Federal funding has ended. This plan must be submitted to the COPS Office with your application.

In hiring additional officers under the UHP, agencies may not reduce the scope of their customary screening and training procedures, and must include community policing principles in their training curricula.

An award under the COPS Universal Hiring Program will not affect the consideration of an agency's eligibility for a grant under other COPS programs.

The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.

Dated: April 21, 2000.

**Thomas Frazier,**

*Director.*

[FR Doc. 00–11369 Filed 5–5–00; 8:45 am]

BILLING CODE 4410–AT–M

## DEPARTMENT OF JUSTICE

### Office of Community Oriented Policing Services FY 2000 Community Policing Discretionary Grants

**AGENCY:** Office of Community Oriented Policing Services, Department of Justice.

**ACTION:** Revised notice of availability: deadline extension.

**SUMMARY:** The Department of Justice, Office of Community Oriented Policing Services ("COPS") announces the Visiting Fellowship Program (VFP) designed to support training, technical assistance, research, program development and policy analysis to contribute to address crime and related problems in communities across the country.

The VFP is intended to offer researchers, policing professionals, community leaders, and policy analysts an opportunity to undertake independent research, problem development activities, and policy analysis designed to advance community policing in a variety of ways.

Two types of fellowships are available: Community Policing Training and Technical Assistance Fellowships, and Program/Policy Support and Evaluation (PPSE) Fellowships.

Community Policing Training and Technical Assistance Fellowships will offer police practitioners and community leaders the opportunity to participate in a community policing training program that is national in scope. PPSE Fellowships will offer police practitioners, researchers, and policy analysts the opportunity to support innovative community policing programs, to engage in activities to assess the effectiveness of community policing approaches, and to apply policy analysis skills to support the advancement of community policing nationwide.

Visiting fellows will study a topic of mutual interest to the Fellow and the COPS Office for up to 12 months. Residency in Washington, DC, is not required, but visits to the COPS Office are encouraged.

**DATES:** The application deadline has been extended to May 15, 2000. Applications must be post marked by May 15, 2000 to be eligible for consideration.

**ADDRESSES:** To obtain a copy of an application or for more information, call the U.S. Department of Justice Response Center at 1–800–421–6770. Application kits are also available on the COPS Office web site at http://www.usdoj.gov/cops.

**FOR FURTHER INFORMATION CONTACT:** The U.S. Department of Justice Response Center at 1–800–421–6770, or the COPS web site at: http://www.usdoj.gov/cops.

**SUPPLEMENTARY INFORMATION:**

**Overview**

The United States Department of Justice, Office of Community Oriented Policing Services (COPS) has been charged with the implementation of the Public Safety Partnerships and Community Policing Act of 1994 (42 U.S.C. 3976dd). Under this law, the COPS Office provides grants, cooperative agreements, and technical assistance to increase police presence, improve police and community partnerships designed to address crime and disorder, and enhance public safety. The VFP, which complements the COPS Office's efforts to add 100,000 officers to our nation's streets and support innovative community policing, is one of a wide variety of policing programs supported under this law.

The VFP is intended to offer researchers, policing professionals, community leaders, and policy analysts an opportunity to undertake independent research, problem development activities, and policy analysis designed to advance community policing in a variety of ways.

Two types of fellowships are available: Community Policing Training and Technical Assistance Fellowships and Program/Policy Support and Evaluation (PPSE) Fellowships.

Community Policing Training and Technical Assistance Fellowships will offer police practitioners and community leaders the opportunity to participate in a community policing training program that is national in scope. Fellows will work to broaden their knowledge of a training area that is directly related to community policing. The experience is intended to encourage the further development, enhancement, or renewed exploration of a particular training expertise that supports community policing. Fellows will deliver this expertise innovatively as well as provide technical assistance to others. Under Community Policing Training and Technical Assistance Fellowships, Fellows may pursue initiatives designed to: (1) Improve police-citizen cooperation and communication; (2) enhance police relationships within the criminal justice system, as well as at all levels of local governments; (3) increase police and citizens' ability to innovatively solve community problems; (4) facilitate the restructuring of agencies to allow the fullest use of departmental and community resources; (5) promote the effective flow and use of information both within and outside of an agency; and/or (6) improve law enforcement responsiveness to members of the community.

PPSE Fellowships will offer police practitioners, researchers, and policy analysts the opportunity to support innovative community policing programs, to engage in activities to assess the effectiveness of community policing approaches, and to apply policy analysis skills to support the advancement of community policing nationwide. The experience is intended to encourage the further development, enhancement, or renewed exploration of program, policy, and evaluation issues that support community policing. This work will be shared with policy makers and practitioners through a variety of forums. Under PPSE Fellowships, Fellows may pursue a wide variety of initiatives. Topic areas of particular interest to the PPSE Division include, but are not limited to, the following goals: (1) Improve the ability of policing agencies and community organizations to collect different types of information that will aid in collaborative problem solving efforts; (2) enhance current knowledge of how policing agencies evolve while implementing community policing; (3) enhance current knowledge about how various policing agencies utilize information technology to support crime reduction and community policing efforts; and/or (4) enhance current knowledge of or improve the ability of policing agencies to implement community policing and problem solving in other ways.

Visiting Fellows will study a topic of mutual interest to the Fellow and the COPS Office for up to 12 months. Residency in Washington, DC, is not required, but visits to the COPS Office are encouraged.

Grants or cooperative agreements under the VFP may support salary, fringe benefits, travel essential to the project, and miscellaneous supplies or equipment in support of the project. Reasonable costs for research assistants or support staff will also be considered. Reasonable relocation expenses and the cost of temporary housing also may be permitted in cases of relocation from a Fellow's permanent address.

Under the VFP, the COPS Office may award grants or enter into cooperative agreements with individuals, public agencies, colleges or universities, nonprofit organizations, and profit-making organizations willing to waive their fees.

Receiving a grant or cooperative agreement under the VFP will not affect the eligibility of an agency to receive awards under other COPS programs.

The selection process is expected to be highly competitive.

(The Catalog of Federal Domestic Assistance (CFDA) reference for this program is 16.710.)

Dated: April 21, 2000.

**Thomas Frazier,**

*Director.*

[FR Doc. 00–11370 Filed 5–5–00; 8:45 am]

**BILLING CODE 4410–AT–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 26, 2000, a proposed Consent Decree in *United States* v. *Harvey GRQ, Inc., et al.*, Civil Action No. 00 C 2505, was lodged with the United States District Court for the Northern District of Illinois.

The Consent Decree settles an action brought under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601, *et seq.*, ("CERCLA") for the recovery of past costs incurred by the United States in responding to releases or threatened releases of hazardous substances at the Harvey GRQ Site, located in the Villages of Harvey and Dixmoor, Illinois. The proposed settlement set forth in the Consent Decree addresses the liability of four defendants in this action, each of which has been named as an owner and/or operator of the Site. Under the terms of the proposed decree, the settling defendants will pay the United States a total of $700,000 in settlement of the United States' past costs claims against them.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Harvey GRQ Inc., et al.*, D.J. Ref. 90–11–3–06600.

The Consent Decree may be examined at the office of the United States Attorney, Northern District of Illinois, 219 S. Dearborn St., 5th Floor, Chicago, Illinois 60604, and at United States Environment Protection Agency Region V, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed consent decree may also be obtained by

mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC. 20044. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–11372 Filed 5–5–00: 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Clean Air Act, the Resource Conservation and Recovery Act, the Clean Water Act, and the Safe Drinking Water Act

Under 28 CFR 50.7, notice is hereby given that on April 21, 2000, a proposed Consent Decree in *United States* v. *TPI Petroleum, Inc., Diamond Shamrock Refining Co., Diamond Shamrock Refining and Marketing Co., Sigmor Pipeline Co., and TPI Pipeline Corp.* Civil Action No. 00–CV–10151–BC (E.D. Mich.), was lodged with the United States District Court for the Eastern District of Michigan, Northern Division.

In this action, the United States sought injunctive relief and penalties against Defendant TPI Petroleum, Inc. ("TPI") for claims arising in connection with TPI's refinery in Alma, Michigan, under the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.,;* the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.;* the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.;* and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.* The United States also sought injunctive relief and penalties from Diamond Shamrock Refining Co., Diamond Shamrock Refining and Marketing Co, Sigmor Pipeline Co., and TPI Pipeline Corp. ("Slotted Guidepole Defendants") under the New Source Performance Standards of the Clean Air Act for Ka and Kb tanks, 40 CFR 60.112a(a)(1)–(2), and 60.112b(a)(1)–(2), and, with respect to the Corpus Christi product terminal owned by Sigmor Pipeline Co., the corollary requirements under the Texas State Implementation Plan, Tex. Admin, Code title 30 § 115.112.

Under the Consent Decree, TPI will submit quarterly reports regarding the status of its shutdown and decommissioning of the Alma Refinery. TPI will also close certain hazardous waste management units pursuant to the requirements of the Resource Conservation and Recovery Act, and will work with the U.S. Environmental Protection Agency and the Michigan Department of Environmental Quality to negotiate a corrective action consent order. TPI will perform a $9 million sediment remediation Supplemental Environmental Project ("SEP") on the Horse Creek and Pine River in Gratiot County, Michigan, and a $900,000 Brownfield SEP in the downtown waterfront area of Alma, Michigan, TPI will pay a cash penalty of $4 million.

Under the Consent Decree, TPI and the Slotted Guidepole Defendants will install controls on tanks that are equipped with guidepoles that have slots in them.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *TPI Petroleum, Inc., et al.*, Civil Action No. 00–CV–10151–BC, D.J. No. 90–5–2–1–2199.

The Consent Decree may be examined at: (1) The Office of the United States Attorney, 101 First St., Suite 200, Bay City, Mich., 48706, (2) the Region 5 Office of the U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, IL 60604–3590. A copy of the Consent Decree may be obtained by mail from the Department of Justice consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please refer to the above-referenced case and DOJ Reference Number 90–5–2–1–2199, and enclose a check in the amount of $39.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Bruce S. Gelber,**

*Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–11371 Filed 5–5–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 28, 2000, and published in the **Federal Register** on February 9, 2000, (65 FR 27), Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of dihydromorphine (9145), a basic class of controlled substance listed Schedule I.

Mallinckrodt, Inc. plans to isolate dihydromorphine as a step in a multistep synthesis of hydromorphone.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Mallinckrodt, Inc. to manufacture dihydromorphine is consistent with the public interest at this time. DEA has investigated Mallinckrodt, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: April 25, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–11411 Filed 5–5–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF LABOR

### Office of the Secretary; Submission for OMB Emergency Review; Comment Request

May 3, 2000.

The Department of Labor (DOL) has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. chapter 35). OMB approval has been requested by June 23, 2000. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Ira L. Mills on (202) 219–5095 x 129.

Comments and questions about the ICR listed below should be forwarded to

the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Departmental Management, U.S. Department of Labor, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316.

The Office of Management and Budget is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarify of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

*Agency:* Office of the Secretary, DOL.

*Title:* 2000 Family Medical Leave Act (FMLA) Employer and

*Employee Surveys.*

*OMB Number:* 1225–0 New.

*Frequency:* One time for both surveys.

*Affected Public:* Individuals or households; business or other for-profit.

*Employee Survey*

| Sampled households | Total responses | Average time per response (minutes) | Estimated total burden (hours) |
|---|---|---|---|
| Screeners | 10,000 | 5 | 833 |
| Leave Takers | 1,400 | 15 | 350 |
| Leave Needer | 206 | 7 | 24 |
| Employed Respondent | 800 | 5 | 67 |
| Total | 12,406 | | 1,274 |

*Employee Survey:*

| Sampled establishments | Total responses | Average time per response (minutes) | Estimated total burden (hours) |
|---|---|---|---|
| Screeners | 2,400 | 5 | 200 |
| Data Gathering by Respondent | 1,500 | 45 | 1,125 |
| Extended Interview | 1,500 | 20 | 500 |
| Total | 5,400 | | 1,825 |

*Total Burden:* 3,099 hours.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $0.

*Description:* DOL will conduct two surveys as a follow-up to the 1995 surveys done by the Commission on Family and Medical Leave, a bipartisan body established by the Congress. Prior survey clearances were approved by OMB under 1225–0062 (survey of businesses) and 1225–0063 (survey of employees). The new surveys will determine the response by employees and employers to family and medical leave issues, in general, as well as to the Family and Medical Leave Act. The new surveys will be very similar to the previous surveys to permit an analysis of the changes (if any) since 1995. Comments submitted in response to this notice will become a matter of public record.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–11444 Filed 5–5–00; 8:45 am]

BILLING CODE 4510–23–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Office of Policy and Research; Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondents burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Office of Policy and Research is soliciting comments concerning the proposed extension of the collection of the Occupational Code Request (OCR) information.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee's section below on or before July 7, 2000.

**ADDRESS:** Jim Woods, Office of Policy and Research, Employment and Training Administration, Room N–5637, 200 Constitution Avenue, NW., Washington, DC, 20210, (202) 219–7161 (This is not a toll free number), FAX (202) 219–9186; E-Mail; o*net@doleta.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The *Dictionary of Occupational Titles* (DOT) classifies nearly all jobs in the United States economy. However, new

jobs are constantly evolving, and old ones are eliminated as technology and other facts change. As the O*NET (Occupational Information Network) system, the automated replacement of the DOT, is preparing for the implementation phase, the need for Occupational Code Requests (OCRs) remains.

The ETA 741 Form, the Occupational Code Request (OCR), was developed by the Occupational Analysis (OA) program, as a public service to the users of the revised DOT in an effort to help them in obtaining occupational codes, titles and definitions for jobs that they were unable to locate in the DOT. In addition, data provided on the OCR may also be useful indicators of potential occupations that should be studied as part of the new O*NET on-line system.

Use of the OCR is voluntary and is provided only (1) as a uniform guideline to the public and private sectors to submit information, and (2) to assist O*NET in identifying potential changes in occupations or emerging occupations.

**II. Review Focus**

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**III. Current Actions**

The Office of Policy and Research, while preparing for the implementation phase of O*NET, seeks to provide both the public and private sectors with needed occupational codes that cannot be located in the DOT. Therefore, the need for continuing an existing collection of this information is requested.

*Type of Review:* Extension (without change).

*Agency:* Employment and Training Administration.

*Title:* Occupational Code Request.

*OMB Number:* 1205–0137.

*Affected Public:* Federal Government, State or Local Government; Individuals; and Business or other for-profit/Not-for-profit institutions.

*Total Respondents:* 95.

*Frequency:* On occasion.

*Average Time per Response:* 30 minutes.

*Estimated Total Burden Hours:* 47 hours.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintaining):* $1119.10.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 2, 2000.

**Gerard F. Fiala,**

*Administrator, Office of Policy and Research.*

[FR Doc. 00–11443 Filed 5–5–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. NRTL–1–99]**

### Curtis-Straus LLC., Recognition as an NRTL

**AGENCY:** Occupational Safety and Health Administration (OSHA); Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's final decision on the application of Curtis-Straus LLC. for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

**EFFECTIVE DATE:** This recognition becomes effective on May 8, 2000, and will be valid until May 9, 2005, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

**FOR FURTHER INFORMATION CONTACT:** Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N3653, Washington, DC 20210, or phone (202) 693–2110.

**SUPPLEMENTARY INFORMATION:**

**Notice of Final Decision**

The Occupational Safety and Health Administration (OSHA) hereby gives notice of its recognition of Curtis-Straus LLC. (CSL) as a Nationally Recognized Testing Laboratory (NRTL). This recognition covers testing and certification of the equipment or materials, and covers the site, listed below. The recognition also includes CSL's use of the supplemental programs described below.

OSHA recognition of an NRTL. signifies that the organization has met the legal requirements in section 1910.7 of title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition, and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL. OSHA processes applications related to an NRTL's recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish this public notice of its final decision on an application.

CSL applied for recognition as an NRTL, pursuant to 29 CFR 1910.7, and OSHA published the required notice in the **Federal Register** (64 FR 69552, 12/13/99) to announce the application. The notice included a preliminary finding that CSL could meet the requirements for recognition detailed in 29 CFR 1910.7, and invited public comment on the application by February 11, 2000. OSHA received five comments in response to the notice, all of which expressed support for recognition of the applicant.

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL–1–99, the permanent record of public information on the CSL recognition.

The address of the testing facility (site) that OSHA recognizes for CSL is: Curtis-Straus LLC., 527 Great Road, Littleton, Massachusetts 01460.

**Background on the Applicant and the Application**

According to the application, Curtis-Straus LLC. (CSL) is a limited liability company chartered in the Commonwealth of Massachusetts and was established in 1996. CSL states that it offers testing services in electrical safety and in a number of other areas. The applicant also states that its founders and managers have, in the aggregate, over thirty years of technical

experience in these areas. The application indicates that CSL is privately owned.

CSL submitted an application for recognition on February 9, 1998 (see Exhibit 2A). In response to requests from OSHA for clarification and additional information, CSL amended its application in submissions dated June 24, 1998, and August 9, 1999 (see Exhibits 2B and 2C). Some documents in these submissions, and part of the original application, have been withheld from disclosure under Exemption 4 of the Freedom of Information Act (FOIA). Staff of the NRTL Program performed an on-site assessment (review) of the Littleton, Massachusetts, facility on October 26–29, 1998. In the on-site review report (see Exhibit 3), the program staff recommended a "positive finding."

The applicant has presented documentation that describes how it will operate as an NRTL. However, it is an organization that, to date, has not operated a product certification program, and CSL only recently developed the documents for the certification phase of its planned NRTL operations. The CSL Standard Operating Procedures Manual (SOPM), which is one of the documents withheld from disclosure under FOIA, contain most of the detailed procedures the applicant plans to follow.

The four recognition requirements of 29 CFR 1910.7 are presented below, along with examples that illustrate how CSL has met or plans to meet each of these requirements. We also presented this information in the notice of preliminary finding.

**Capability**

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or accepted, the laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review report indicates that CSL has adequate testing equipment and an adequate facility to perform the tests required under the test standards for which it is recognized. Security measures are in place to restrict or control access to their facility, and procedures exist on handling of test samples. The report also indicates that testing and processing procedures are in place, although some were in the process of review and updating, at the time of the on-site review. CSL only recently developed the testing procedures it will use for the test standards listed below.

The application indicates that CSL maintains records on testing equipment, which include information on repair, routine maintenance, and calibrations. It uses outside calibration sources and has developed procedures for internal calibrations of certain equipment. The application and on-site review report address personnel qualifications and training, and identify CSL staff involved with product testing, along with a summary of their education and experience. Also, the report indicates that CSL personnel have adequate technical knowledge for the work they perform. Moreover, the review report indicates that the Quality System Manual (QSM) and SOPM are the primary documents for the CSL quality assurance activities. The application contains the procedures CSL will utilize for conducting the internal audits of its operations.

The application indicates that CSL has not tested products to all requirements of a test standard and, as already mentioned, CSL has just developed many of the procedures it will utilize to do such testing. Therefore, OSHA has not yet evaluated the actual use of the testing and reporting procedures that CSL will utilize for purposes of certifying to a complete test standard, and OSHA needs to investigate this aspect of CSL's operations when these procedures are in use. Accordingly, OSHA includes a condition in this recognition notice to provide the Agency with the opportunity to make this evaluation.

**Control Procedures**

Section 1910.7(b)(2) requires that the NRTL provide certain controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. They include control procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and field inspections to monitor and assure the proper use of identifying marks or labels.

The applicant has developed procedures and related documentation for initially qualifying a manufacturer under the CSL certification program and for performing the required follow-up inspections at a manufacturer's facility. CSL has stated in its SOPM that it will perform follow-up "factory inspections at least four times per year." These inspections will be one part of the activities that the applicant will utilize in controlling its certification mark. In its application, CSL included evidence of its application for registration of its certification mark with the U.S. Trademark and Patent Office (USPTO). The USPTO has issued a notice of allowance for this mark.

According to the on-site review report, CSL has not had a product certification program prior to applying for recognition as an OSHA NRTL. Staff of the NRTL Program reviewed a number of documents during the on-site visit that described the approach CSL would take in operating its program. After the visit, CSL finalized more detailed procedures, previously mentioned, for qualification and follow-up inspection of the manufacturer. CSL also presented procedures to establish and modify a "listing" of products it has certified and to control its mark on these products. Since CSL has just developed its NRTL follow-up program, and has not listed or labeled any products under these procedures, OSHA has been unable to evaluate the actual use of CSL's product certification program. The condition, mentioned above, that OSHA includes below also will provide the Agency with the opportunity to make this evaluation. In addition, OSHA is concerned about the adequacy of CSL's proposed procedures to control its certification mark. As a result, OSHA imposes another condition to ensure that CSL will adequately control its mark.

**Independence**

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes.

In its original application, CSL has stated that there is "no ownership of Curtis-Straus by [organizations that are] manufacturers or suppliers of products or components to be tested or certified." The applicant also states that none of its owners "works for, or has ownership of, or significant interest in" any such organization. More recently, CSL provided a more comprehensive statement of its independence from "suppliers" (*i.e.*, a manufacturer or distributor) and "major users" (*i.e.*, employers that make major use) of any products that must be certified by an NRTL. The applicant also states that its "conflict of interest policies are in place and * * * conflict of interest statements are signed by all personnel."

**Creditable Reports/Complaint Handling**

Section 1910.7(b)(4) provides that an NRTL must maintain effective

procedures for producing credible findings and reports that are objective and without bias, as well as for handling complaints and disputes under a fair and reasonable system.

As previously stated, CSL has only recently developed the procedures it will utilize in testing and certifying products. This includes the procedures for evaluating and reporting the findings for its initial or follow-up testing of products to ensure they conform to all requirements of a test standard. The applicant did include examples of the kind of reports it will generate. However, as with the testing procedures, the evaluation and reporting procedures are new to CSL, and OSHA needs to evaluate them when the applicant uses them for its NRTL operations. Regarding the handling of complaints and disputes, the applicant's SOPM contains the details on how it will handle a complaint it receives from its clients or from the public.

**Programs and Procedures**

OSHA is granting the request by CSL to use the two (2) supplemental programs, listed below, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. The on-site review report indicates that CSL meets the criteria for use of the following supplemental programs:

*Program 8:* Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC–CB) Scheme.

*Program 9:* Acceptance of services other than testing or evaluation performed by subcontractors or agents. (Limitation—recognition covers equipment calibration and maintenance services only.)

CSL does not plan to use Program 9 for purposes of conducting its follow-up inspections, which is permitted under this program.

OSHA developed the program descriptions to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under the programs only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, OSHA does treat these programs as one of the three elements that defines an NRTL's scope of recognition.

**Additional Conditions**

As described above, OSHA has not had the opportunity to evaluate the actual testing, evaluation, and reporting procedures, and use of the follow-up program, since these have not yet been implemented. Many of these procedures and practices will be new to CSL. Unless CSL meets a condition imposed by OSHA, it could not be recognized as an NRTL under 29 CFR 1910.7. As a result, OSHA conditionally recognizes CSL subject to a later assessment of the detailed procedures and practices once they are in place.

This approach is consistent with OSHA's past recognition of other organizations as NRTLs which, like CSL, were mainly experienced in testing products to specific customer or partial test standard requirements. OSHA indicated in the **Federal Register** notice for those recognitions that the procedures to be used were new to the organization (for example, see 56 FR 28581, 6/21/91; and 58 FR 15511, 3/23/93). OSHA will require CSL to take steps to correct any deficiencies that OSHA may find during its initial follow-up review. If deficiencies are not corrected, then OSHA will commence its process to revoke the recognition of the NRTL.

In addition, CSL plans to monitor use of its mark during its follow-up inspections and plans to monitor media to check for misuse of its mark. However, its procedures on authorizing and issuing its labels appear to present the opportunity for a manufacturer to label, intentionally or not, products that are not covered under the listing agreement with CSL. Under its procedures, CSL gives a manufacturer general authorization to use the CSL mark or label on a product but does not appear to control the actual marking or labeling that the manufacturer would use on a lot or run of production, much less on a series of such runs of production.

CSL's authorization procedure and listing agreement contain provisions to prohibit a manufacturer's use of the mark on products that are not "identical to the sample" CSL has certified. However, such proscriptions do not ensure that CSL actually controls its mark on a given run of production. As mentioned, CSL does plan to perform after-the-fact monitoring of the manufacturer to check for misuse. Also, it will take appropriate action if it discovers misuse. However, its procedures may not initially prevent misuse of the mark, and its planned monitoring may not detect instances when misuse has occurred, especially considering that many thousands of products may be affected. Such misuse may have serious consequences for workers who use products that turn out to be unsafe, which CSL, although well intentioned in its procedures, did not effectively detect. As a result, OSHA has included a condition on CSL that it implement, as part of its system for authorization or issuance of the use of its mark on products, an effective method to ensure that only products that it has certified carry this mark. If CSL does not meet this condition, it would not meet the requirement in 29 CFR 1910.7(b)(3), under which an NRTL must maintain adequate control programs, and could not continue to be recognized as an NRTL.

Therefore, OSHA has included appropriate conditions below to address these matters. These conditions apply solely to the CSL operations as an NRTL and solely to those products that it certifies for purposes of enabling employers to meet OSHA product approval requirements. The conditions are in addition to the other conditions listed below, which OSHA normally imposes in its recognition of an organization as an NRTL. The NRTL Program staff includes these type of additional conditions on OSHA's informational web page for the NRTL. When the staff determine that a particular condition has been satisfied, not only for CSL but for any NRTL, they will remove the condition from the web page and notify the NRTL accordingly. OSHA has no requirement to publish a public notice to remove conditions it imposes as part of its NRTL recognition activities.

**Final Decision and Order**

The NRTL Program staff has examined the complete application, the amendments to the application, and other pertinent documents. Based upon this examination and the OSHA staff finding, including the on-site review report (see Exhibit 3), OSHA finds that Curtis-Straus LLC. has met the requirements of 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby recognizes Curtis-Straus LLC. as a Nationally

Recognized Testing Laboratory, subject to the limitations and conditions listed below.

*Limitations*

OSHA recognizes CSL for testing and certification of products to demonstrate conformance to the following five (5) test standards, one part of the NRTL's scope of recognition. OSHA's recognition also includes the site and the use of the two supplemental programs, listed above. The Agency's recognition of CSL, or any NRTL, is always limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. As a result, OSHA's recognition of an NRTL for a test standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements. OSHA has determined that the standards listed below are appropriate, within the meaning of 29 CFR 1910.7(c).

ANSI/UL 1459 Telephone Equipment
ANSI/UL 1950 Information Technology Equipment Including Electrical Business Equipment
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment, Part 1: General Requirements

The designations and titles of the above standards were current at the time of the preparation of the notice of the preliminary finding.

*Conditions*

Curtis-Straus LLC. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

Within 30 days of certifying its first products under the NRTL Program, CSL will notify the OSHA NRTL Program Director so that OSHA may review CSL's implementation of its procedures for testing and certification of products covered within the scope of the test standards listed above.

As part of its system for authorization or issuance of the use of its certification mark, CSL must establish, maintain, and utilize proper procedures that ensure its mark is applied only to the specific run(s) of production of the products that CSL has certified.

OSHA must be allowed access to CSL's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If CSL has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

CSL must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, CSL agrees that it will allow no representation of its recognition as a Nationally Recognized Testing Laboratory (NRTL) by OSHA without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain types of products;

CSL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as an NRTL, including details;

CSL will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

CSL will continue to meet the requirements for recognition in all areas where it has been recognized; and

CSL will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, D.C. this 21st day of April, 2000.

**Charles N. Jeffress,**

*Assistant Secretary.*

[FR Doc. 00–11442 Filed 5–5–00; 8:45 am]

BILLING CODE 4510–26–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### Federal Council on the Arts and the Humanities, Arts and Artifacts Indemnity Panel Advisory Committee; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in Room 714, from 9 a.m. to 5 p.m., on Tuesday, May 30, 2000.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1, 2000.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemption (4) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, Laura S. Nelson, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

**Laura S. Nelson,**

*Advisory Committee Management Officer.*

[FR Doc. 00–11441 Filed 5–5–00; 8:45 am]

BILLING CODE 703–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–443]**

### North Atlantic Energy Service Corporation et al.; Seabrook Station, Unit No. 1; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating License No. NPF–86 for the Seabrook Station, Unit 1 (Seabrook Station), to the extent held by United Illuminating Company (UI). The indirect transfer would be to UIL Holdings Corporation (Holdings), incorporated in Connecticut. Currently, Holdings is a wholly owned subsidiary of UI.

According to a February 17, 2000, application, as supplemented on March 1, 2000, by UI for approval of certain indirect license transfers, on January 24, 2000, UI entered into an "Agreement and Plan of Merger and Share Exchange" (Plan of Exchange) with Holdings. Under the plan of exchange, UI will become a wholly owned subsidiary of Holdings, while the unregulated businesses of UI will be

transferred to Holdings as subsidiaries thereof. The establishment of a new parent for UI will effect an indirect transfer of the Seabrook Station license to the extent held by UI to Holdings. UI holds a 17.5-percent ownership interest in Seabrook Station; however, North Atlantic Energy Services Corporation (NAESCO) is exclusively authorized to operate the unit. NAESCO would remain as the managing agent for the 11 joint owners of the facility, including UI, and would continue to have exclusive responsibility for the management, operation, and maintenance of the Seabrook Station. The application does not propose a change in the rights, obligations, or interests of the other 10 joint owners of the Seabrook Station. In addition, no physical changes to the Seabrook Station facility or operational changes are being proposed in the application. No direct transfer of the license will result from the proposed corporate restructuring of UI.

The application also seeks approval of a proposed indirect license transfer in connection with UI's partial ownership of the Millstone Nuclear Power Station, Unit 3, which will be the subject of a separate notice.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction that will effectuate the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments regarding the license transfer application, are discussed below.

By May 29, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Barton Z. Cowan, Esq., Eckert Seamans Cherin & Mellott, LLC, 600 Grant Street, 44th floor, Pittsburgh, PA 15219 (telephone number 412–566–6000 and e-mail address bzc@escm.com,) attorney for United Illuminating Company; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by June 07, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of the **Federal Register** notice.

For further details with respect to this action, see the application dated February 17, 2000, and supplement dated March 1, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.NRC.gov).

Dated at Rockville, Maryland this 1st day of May 2000.

For the Nuclear Regulatory Commission.

**Robert M. Pulsifer,**

*Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–11397 Filed 5–5–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–423]**

### Northeast Nuclear Energy Company, et al.; Millstone Nuclear Power Station, Unit No. 3; Notice of Consideration of Approval of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating License No. NPF–49 for the Millstone Nuclear Power Station, Unit No. 3 (Millstone, Unit 3), to the extent held by United Illuminating Company (UI). The indirect transfer would be to UIL Holdings Corporation (Holdings), incorporated in Connecticut. Currently, Holdings is a wholly owned subsidiary of UI.

According to a February 17, 2000, application, as supplemented on March 1, 2000, by UI, for approval of certain indirect license transfers, on January 24, 2000, UI entered into an "Agreement and Plan of Merger and Share Exchange" (Plan of Exchange) with Holdings. Under the Plan of Exchange, UI will become a wholly owned subsidiary of Holdings, while the unregulated businesses of UI will be transferred to Holdings as subsidiaries thereof. The establishment of a new parent for UI will effect an indirect transfer of the Millstone, Unit 3 license to the extent held by UI to Holdings. UI holds a 3.685-percent ownership interest in Millstone, Unit 3; however, Northeast Nuclear Energy Company (NNEC) is exclusively authorized to operate the unit. NNEC would remain as the managing agent for the 14 joint owners of the facility including UI and would continue to have exclusive responsibility for the management, operation, and maintenance of Millstone, Unit 3. The application does not propose a change in the rights, obligations, or interests of the other 13

joint owners of Millstone, Unit 3. In addition, no physical changes to the Millstone, Unit 3 facility or operational changes are being proposed in the application. No direct transfer of the license will result from the proposed corporate restructuring of UI.

The application also seeks approval of a proposed indirect license transfer in connection with UI's partial ownership of Seabrook Station, which will be the subject of a separate notice.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction that will effectuate the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments regarding the license transfer application, are discussed below.

By May 29, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Barton Z. Cowan, Esq., Eckert Seamans Cherin & Mellott, LLC, 600 Grant Street, 44th floor, Pittsburgh, PA 15219 (telephone number 412–566–6000 and e-mail address bzc@escm.com,) attorney for United Illuminating Company; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.gov); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by June 7, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of the **Federal Register** notice.

For further details with respect to this action, see the application dated February 17, 2000, and supplement dated March 1, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.NRC.gov).

Dated at Rockville, Maryland this 3rd day of May 2000.

**Victor Nerses,**

*Senior Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–11396 Filed 5–5–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–461]**

### Amergen Energy Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–62 issued to AmerGen Energy Company, LLC (the licensee) for operation of the Clinton Power Station (CPS) located in DeWitt County, Illinois.

The proposed amendment would allow a one-time extension of some CPS Technical Specification (TS) surveillance intervals related to logic system functional testing of the Primary Containment and Drywell Isolation Instrumentation, and the Suppression Pool Makeup System Instrumentation. The extension would be to November 30, 2000, which is the scheduled end date of the upcoming refueling outage. The extension is requested to support elimination of a planned mid-cycle outage. Previously, by license Amendment No. 125 dated March 17, 2000, the NRC staff approved surveillance interval extensions for various TS to support elimination of the mid-cycle outage.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. *The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.*

The proposed Technical Specification (TS) changes involve a one-time only change in

the surveillance test intervals of selected Surveillance Requirements (SRs). As such, the Operability requirements for systems, structures, and components required by the Technical Specifications remain unchanged. Further, the proposed TS changes do not impact the TS surveillance performance requirements themselves nor the way in which the surveillances are performed, since only the test intervals are affected for the identified SRs. The proposed TS changes do not physically involve any changes to the plant, nor do they impact any design or functional requirements of the associated systems. Thus, the proposed TS changes do not increase the challenges of any safety systems assumed to function in the accident analysis.

In addition, the proposed TS changes do not significantly affect the availability of equipment or systems required to mitigate the consequences of an accident because (1) extension of the test intervals to the extent requested is not expected to have a significant impact on availability (i.e., no extended test interval would exceed 30 months), and (2) other or more frequent testing performed for the affected systems or components, as well as for redundant systems or components, supports continued availability of the affected functions. The equipment subject to testing per the affected SRs is still required to be operable and capable of performing any accident mitigation functions assumed in the accident analysis. Furthermore, a historical review of surveillance test results identified no failures that would invalidate these conclusions.

Based on the above, the proposed TS changes do not significantly increase the probability or consequences of an accident previously evaluated.

2. *The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.*

The proposed TS changes involve a one-time only change in the surveillance testing intervals of selected SRs. Such changes do not introduce any failure mechanisms of a different type than those previously evaluated since there are no physical changes being made to the facility. In addition, the surveillance test requirements themselves, and the way surveillance tests are performed, will remain unchanged. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. *The proposed changes do not involve a significant reduction in a margin of safety.*

The one-time extended surveillance frequencies do not result in a significant reduction in the margin of safety. Although the proposed TS changes will result in an increase in the interval between surveillance tests, the impact, if any, on system availability is small. This is because, as noted previously, extension of the test intervals to the limited extent proposed would not be expected to have a significant impact on availability. Other or more frequent testing performed for the affected systems or components, as well as the testing performed for redundant systems or components, supports continued availability of the affected functions.

In addition, the proposed changes do not involve any physical changes to the affected systems or components, nor do they involve any changes to setpoints, operating limits, or safety limits.

Based on the above, the assumptions in the licensing basis are not impacted, and the proposed TS changes do not significantly reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 7, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention

must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Kevin P. Gallen, Morgan, Lewis & Bockius LLP, 1800 M Street, NW, Washington, DC 20036–5869, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 24, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 2nd day of May, 2000.

For the Nuclear Regulatory Commission.

**Jon B. Hopkins,**

*Senior Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–11395 Filed 5–5–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment will hold a meeting on May 19, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

*Friday, May 19, 2000—8:30 a.m. Until the Conclusion of Business*

The Subcommittee will discuss the status of risk-informed revisions to 10 CFR Part 50 (Option 3), including proposed revision to 10 CFR 50.44 concerning combustible gas control systems and issues in the Nuclear Energy Institute letter dated January 19, 2000. The Subcommittee will also discuss the public comments related to the Option 2 Advance Notice of Public Rulemaking. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 5, 2000.

**Howard J. Larson,**

*Acting Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 00–11387 Filed 5–5–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Severe Accident Management; Notice of Meeting

The ACRS Subcommittee on Severe Accident Management will hold a meeting on May 18, 2000, in Room T–

2B3, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

*Thursday, May 18, 2000—1 p.m. Until the Conclusion of Business*

The Subcommittee will: (1) Review the proposed final Regulatory Guide and Standard Review Plan Section supporting the revised Source Term Rule, and (2) discuss the status of the NRC and NEI program to address issues associated with control room habitability. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: May 2, 2000.

**Howard J. Larson,**

*Acting Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 00–11388 Filed 5–5–00; 8:45 am]

BILLING CODE 7590–01–P

## PRESIDIO TRUST

### Notice of Receipt of and Availability for Public Comment on an Application for Wireless Telecommunications Facilities Site; The Presidio of San Francisco, California

**AGENCY:** The Presidio Trust.

**ACTION:** Public notice.

**SUMMARY:** This notice announces the Presidio Trust's receipt of and availability for public comment on an application from Bay Area Cellular Telephone Company, dba Cellular One, for a wireless telecommunications facilities site in The Presidio of San Francisco (the "Project"). The proposed location of the Project is in the parking area located directly below the Doyle Drive overpass in the vicinity of the intersection of Halleck and Vallejo Streets, San Francisco, California (the "Project Site").

The Project involves (i) placing a single utility pole and a one-story equipment building at the Project Site (alternatively, the equipment may be housed in an existing building, obviating the need for an equipment building), and (ii) removing five existing utility poles and lines, burying the lines underground. The utility pole will be approximately 50 feet tall. The one-story equipment building will be 9 feet by 15 feet. Power for the Project will be provided through underground coaxial cables connected to existing power sources. Connection to telephone lines will be through existing telephone lines.

*Comments:* Comments on the proposed Project must be sent to Devon Danz, Presidio Trust, 34 Graham Street, PO Box 29052, San Francisco, CA 94129–0052, and be received by June 7, 2000. A copy of Cellular One's application is available upon request to the Presidio Trust.

**FOR FURTHER INFORMATION CONTACT:** Devon Danz, Presidio Trust, 34 Graham Street, PO Box 29052, San Francisco, CA 94129–0052. Telephone: 415–561–5300.

Dated: May 2, 2000.

**Karen A. Cook,**

*General Counsel.*

[FR Doc. 00–11384 Filed 5–5–00; 8:45 am]

BILLING CODE 4310–4R–P

## SECURITIES AND EXCHANGE COMMISSION

### Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

**Extension: Rule 30b2–1, SEC File No. 270–213, OMB Control No. 3235–0218.**

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 ("Act") [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

**Rule 30b2–1 Under the Investment Company Act of 1940, Filing of Copies of Reports to Stockholders**

Rule 30b2–1 under the Investment Company Act of 1940 [17 CFR 270.30b2–1] requires the filing of four copies of every periodic or interim report transmitted by or on behalf of any registered investment company to its stockholders.[1] This requirement ensures that the Commission has information in its files to perform its regulatory functions and to apprise investors of the operational and financial condition of registered investment companies.[2]

It is estimated that approximately 3,490 registered management investment companies are required to send reports to stockholders at least twice annually. The annual burden of filing the reports is estimated to be negligible.

The burden estimate for Rule 30b2–1 is made solely for the purposes of the Act and is not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

The collection of information under Rule 30b2–1 is mandatory. The information provided by Rule 30b2–1 is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

[1] Most filings are made via the Commission's electronic filing system; therefore, paper filings under Rule 30b2–1 occur only in exceptional circumstances. Electronic filing eliminates the need for multiple copies of filings.

[2] Annual and periodic reports to the Commission become part of its public files and, therefore, are available for use by prospective investors and stockholders.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: May 1, 2000.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11403 Filed 5–5–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Maxim Pharmaceuticals, Inc., Common Stock, $.001 Par Value, and Redeemable Common Stock Purchase Warrants Expiring July 10, 2001) File No. 1–14430**

May 2, 2000.

Maxim Pharmaceuticals, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw the securities described above ("Securities") from listing and registration on the American Stock Exchange LLC ("Amex") and under Section 12(b) of the Act.[3]

The Company, whose business is biotechnology, has undertaken to transfer trading in its Securities from the Amex to the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq"), which it considers to be the preeminent marketplace for the securities of biotechnology companies. The Company has registered its Securities pursuant to Section 12(g) of the Act[4] by filing a Registration Statement on Form 8–A with the Commission on April 26, 2000. The Securities subsequently became designated for quotation and began trading on the Nasdaq National Market, and were simultaneously suspended from trading on the Amex, on April 27, 2000. In making the determination to withdraw its Securities from listing and registration on the Amex in conjunction with the commencement of trading on the Nasdaq, the Company hopes to avoid both the costs of maintaining dual listings and potential fragmentation of the market for its Securities.

The Company has stated that it has complied with the Rules of the Amex governing the withdrawal of its Securities from listing and registration on the Exchange, and that the Amex in turn has indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Securities from listing and registration on the Amex and shall have no effect upon the Securities' designation for quotation and trading on the Nasdaq National Market and registration under Section 12(g) of the Act.[5]

Any interested person may, on or before May 23, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11401 Filed 5–5–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**Issuer Delisting; Notice of Application To Withdraw From Listing and Registrations; (Rogers Corporation, Capital Stock, $1 Par Value, and Rights to Purchase Capital Stock, $1 Par Value) File No. 1–04347**

May 2, 2000.

Rogers Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2-2(d) thereunder, [2] to withdraw the securities to described above ("Securities") from listing and registration on the American Stock Exchange LLC ("Amex").

The Company is seeking to withdraw its Securities from listing and registration on the Amex in conjunction with the commencement of their trading on the New York Stock Exchange, Inc. ("NYSE"). The Company hopes that, with a NYSE listing, it will be able to realize a broader market base for its Securities than it has had through the Amex.

Subsequent to the filing of the Company's Registration Statements on Form 8–A with the Commission, which became effective on April 6, 2000, trading in the Securities commenced on the NYSE, and was simultaneously suspended on the Amex, at the opening if business on April 18, 2000. In making the determination to withdraw its Securities from listing and registration on the Amex in conjunction with the new listing and registration on the NYSE, the Company hopes to avoid both the costs associated with maintaining dual listings and potential fragmentation of the market for its Securities.

The Company has stated that it has complied with the rules of Amex governing the withdrawal of its Securities, and the Amex in turn has indicated that it will not opposed such withdrawal.

The Company's application relates solely to the withdrawal of the Securities from listing and registration on the Amex and shall have no effect no effect upon the Securities' continued listing and registration on the NYSE. By reason of Section 12(b) of the Act[3] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission under Section 13 of the Act.[4]

Any interested person may, on or before May 23, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date

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[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] *Id.*
[6] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78l(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78l(b).
[4] 15 U.S.C. 78m.

mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11404 Filed 5–5–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**(Release No. 34–42733; File No. SR–CHX–00–10)**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Membership Dues and Fees

April 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on April 10, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule ("Schedule") to impose a charge for the replacement of new identification badges used on the trading floor. The text of the proposed rule change is available upon request from the CHX and the Commission.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The proposed rule change amends the Schedule to confirm that the Exchange will impose a $30 fee on members and Exchange employees for the replacement of photo identification badges that will soon be issued by the Exchange. These identification badges will be issued to each member, member firm employees, and other person who works on the trading floor.[3]

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act[4] in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members.

*B. Self-Regulatory Organization's Statement of Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others*

No written comments were either solicited or received.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(B)(3)(A)(ii) of the Act[5] and subparagraph (f)(2) of Rule 19b–4[6] thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.[7]

### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed wit the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–10 and should be submitted by May 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11399 Filed 5–5–00; 8:45am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42749; File No. SR–NASD–00–26]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Market-Wide Trading Halts

May 2, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly

[5] 17 CFR 200.30–3(a)(1).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] There will be no charge for the initial badge; only replacement badges will incur the $30 fee. Telephone conversation between Ellen J. Neely, Vice President and General Counsel, CHX, and Michael Gaw, Division of Market Regulation, Commission (April 26, 2000).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. On May 1, 2000, Nasdaq amended the filing.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposal**

Nasdaq's proposal is an interpretation to NASD Rule 4120 dealing with trading halts due to extraordinary market price movements, otherwise known as "circuit breakers." The text of the proposed rule change is below. Proposed new language is in italics. Proposed deletions are in brackets.

* * * * *

*IM–4120–3. Market Closing Policy*

Since 1988, the NASD has consistently asserted that circuit breakers should only be used in response to extraordinary price movement. The NASD's strong preference is that markets remain open wherever possible and, most importantly, remain open at the end of the day.

The NASD recognizes, however, the risks imposed on any single market that remains open while all other U.S. markets have halted trading in response to extraordinary price movements. Therefore, the NASD Board of Governors has determined to halt, upon SEC request, all domestic trading in both the securities listed on The Nasdaq Stock Market and all equity and equity-related securities trading in the over-the-counter market should other major securities markets initiate market-wide trading halts in response to extraordinary market conditions.

This determination reflects the NASD's long-time policy of cooperation with the Commission and other market participants on issues relating to trading halts and represents the Association's continued commitment to the establishment of circuit breaker standards that both keep markets open longer during periods of market stress and that are also more reflective of market activity as a whole.

Towards that end, the NASD believes that additional future changes to circuit breakers are warranted. In particular, the NASD is concerned that the Dow Jones Industrial Average, [which contains no Nasdaq stocks,] *despite recent improvements including the addition of a small number of Nasdaq stocks,* [is] *remains* an inappropriately narrow indicator of market price declines. *As an alternative, the NASD believes that the Commission should consider replacing the DJIA with the larger and more diverse Standard and Poor's 500 Index as the measure that best reflects overall market activity for circuit breaker purposes.* [Moreover, recent attempts to commercially leverage the DJIA may result in that average being less immediately available to the investing public during periods of market stress.] The NASD hopes to revisit [these] this issue[s] with the Commission in the future. [with a view towards the adoption of a more representative [, and more readily-available, market index for circuit breaker purposes.]

This Policy Statement on Market Closings shall remain in effect until April 30, [2000] *2002,* unless otherwise modified, or extended prior thereto, by the NASD Board of Governors.

* * * * *

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission , Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Nasdaq proposes to extend and modify, on a two-year pilot basis, NASD IM–4120–3, which expresses the Association's agreement to halt, upon SEC request, all domestic trading in both the securities listed on Nasdaq and all equity and equity-related securities trading in the over-the-counter market, should any of the other major United States securities markets initiate market-wide trading halts in response to extraordinary market conditions. As outlined in the Interpretive Material ("IM"), the NASD reiterates its commitment to halt trading on Nasdaq and the over-the-counter market when any other major securities market declares a market-wide trading halt in response to extraordinary market conditions. In addition, Nasdaq proposes to modify the current market closing policy statement to reflect the recent addition of two Nasdaq stocks to the Dow Jones Industrial Average ("DJIA"), while still expressing the Association's view that the DJIA is too small and narrow an index to serve as the circuit-breaker price-decline standard.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] in that the proposed IM is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. In addition, Nasdaq believes the IM removes impediments to, and perfects the mechanism of, a free and open market and a national market system as well as, in general, protecting investors.

*B. Self-Regulatory Organization's Statement of Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing proposal has become effective pursuant to Section 19(b)(3)(A)(i) of the Act,[7] and Rule 19b–4(f)(1)[8] thereunder, in that it constitutes

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* April 28, 2000 letter from Thomas P. Moran, Assistant General Counsel, Office of General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC ("Amendment No. 1"). Amendment No. 1 changed the file number from SR–NASD–00–25 to SR–NASD–00–26, and changed Section III of Exhibit 1 to properly reflect that the proposal was filed pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(1) thereunder. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(1).

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78s(b)(3)(A)(i).

[8] 17 CFR 240.19b–4(f)(1).

a stated policy and interpretation with respect to the meaning of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–00–26 and should be submitted by May 30, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11400 Filed 5–05–00; 8:45 am]

**BILLING CODE 8010–01–M**

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**(Release No. 34–42740; File No. SR–CHX–00–11)**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to the Trading of Nasdaq/NM Securities on the CHX

May 1, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] notice is hereby given that on April 25, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange has requested a six-month extension[3] of the pilot program relating to the trading of Nasdaq/NM securities on the Exchange. Specifically, the pilot program amended Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules. The pilot currently is due to expire on May 1, 2000. The Exchange proposes that the pilot remain in effect on a pilot basis through November 1, 2000. The text of the proposed rule is available at the Exchange and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On May 4, 1987, the Commission approved certain Exchange rules and procedures relating to the trading of Nasdaq/NM securities on the Exchange.[4] Among other things, these rules rendered the Exchange's BEST Rule guarantee (Article XX, Rule 37(a)) applicable to Nasdaq/NM securities and made Nasdaq/NM securities eligible for the automatic execution feature of the Exchange's Midwest Automated Execution System (the "MAX" system).[5]

On January 3, 1997, the Commission approved,[6] on a one year pilot basis, a program that eliminated the requirement that CHX specialists automatically execute orders for Nasdaq/NM securities when the specialist is not quoting at the national best bid or best offer disseminated pursuant to Commission Rule 11Ac1–1 (the "NBBO"). When the Commission approved the program on a pilot basis, it requested that the Exchange submit a report to the Commission describing the Exchange's experience with the pilot program. The Commission stated that the report should include at least six months of trading data. Due to programming issues, the pilot program was not implemented until April 1997. Six months of trading data did not become available until November 1997. As a result, the Exchange requested an additional three-month extension to collect the data and prepare the report for the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In the original filing, the Exchange requested a one-year extension of the pilot program. In a telephone call on May 1, 2000, between Paul O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, and Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, the Exchange agreed to a six month extension for the pilot.

[4] *See* Securities Exchange Act Release No. 24424 (May 4, 1987), 52 FR 17868 (May 12, 1987) (order approving File No. SR–MSE–87–2); *see also*, Securities Exchange Act Release Nos. 28146 (June 26, 1990), 55 FR 27917 (July 6, 1990) (order expanding the number of eligible securities to 100); 36102 (August 14, 1995), 60 FR 43626 (August 22, 1995) (order expanding the number of eligible securities to 500); 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999) (order expanding the number of eligible securities to 1000).

[5] The MAX system may be used to provide an automated delivery and execution facility for orders that are eligible for execution under the Exchange's BEST Rule and certain other orders. *See* CHX Rules, Art. XX, Rule 37(b). A MAX order that fits within the BEST parameters is executed pursuant to the BEST Rule via the MAX system. If an order is outside the BEST parameters, the BEST rule does not apply, but MAX system handling rules remain applicable.

[6] *See* Securities Exchange Act Release No. 38119 (January 3, 1997), 62 FR 1788 (January 13, 1997).

On December 31, 1997, the Commission extended the pilot program for an additional three months, until March 31, 1998, to give the Exchange additional time to prepare and submit the report and to give the Commission adequate time to review the report prior to approving the pilot on a permanent basis.[7] The Exchange submitted the report to the Commission on January 30, 1998, Subsequently, the Exchange requested another three-month extension, in order to give the Commission adequate time ot approve the pilot program on a permanent basis.

On March 31, 1998, the Commission approved the pilot for an additional three-month period, until June 30, 1998.[8] On July 1, 1998, the Commission approved the pilot for an additional six-month period, until December 31, 1998.[9] On December 31, 1998, the Commission approved the pilot for an additional six-month period, until June 30, 1999.[10] On June 30, 1999, the Commission approved the pilot for an additional seven-month period, until January 31, 2000.[11] On January 31, 2000, the Commission approved the pilot for an additional three-month period, until May 1, 2000.[12] The Exchange now requests another extension of the current pilot program, through November 1, 2000. The Exchange also submitted to the Commission a report relating to executions in accordance with the pilot program, to enable the Commission to continue its review of the pilot program on April 27, 2000.[13]

Under the pilot program, specialists must continue to accept agency [14] market orders or marketable limit orders, but only for orders of 100 to 1,000 shares in Nasdaq/NM securities rather than the 2,099 share limit previously in place. Specialists, however, must accept all agency limit orders in Nasdaq/NM securities from up to and including 10,000 shares for placement in the limit order book. As described below, however, specialists are required to automatically execute Nasdaq/NM orders only if they are quoting at the NBBO when the order was received.

The pilot program requires the specialists to set the MAX auto-execution threshold at 1,000 shares or greater for Nasdaq/NM securities. When a CHX specialists is quoting at the NBBO, orders for a number of shares less than or equal to the auto-execution threshold designated by the specialist are executed automatically (in an amount up to the size of the specialist's quote). Orders in securities quoted with a spread greater than the minimum variation are executed automatically after a fifteen second delay from the time the order is entered into MAX. The size of specialist's bid or offer is then automatically decremented by the size of the execution. When the specialist's quote is exhausted, the system will generate an autoquote at an increment away from the NBBO, as determined by the specialist from time to time, for either 100 or 1,000 shares, depending on the issue.[15]

When the specialist is not quoting a Nasdaq/NM security at the NBBO, it can elect, on an order-by-order basis, to manually execute orders in that security. If the specialists does not elect manual execution, MAX market and marketable limit orders in the security that are of a size equal to or less than the auto-execution threshold is less than or equal to the NBBO. If the specialists elects manual execution, the specialist must either manually execute the order at the NBBO or a better or act as agent for the order in seeking to obtain the best available price for the order on a marketplace other than the Exchange. If the specialist decides to act as agent for the order, the pilot program requires the specialist to use order-routing systems to obtain an execution where appropriate. Market and marketable limit orders that are for a number of shares greater than the auto-execution threshold are not subject to these requirements, and may be canceled within one minute of being entered into MAX to designated as an open order.

2. Statutory Basis

The CHX believes that the proposed rule is consistent with the requirements of the Act and rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[16] In particular, the proposed rule is consistent with Section 6(b)(5) [17] of the Act in that it designed to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

Th CHX's proposal is intended to conform CHX specialist obligations to those applicable to OTC market makers in Nasdaq/NM securities, while recognizing that the CHX provides a separate, competitive market for Nasdaq/NM securities. The rules establish execution procedures and guarantees that attempt to provide executions reflective of the best quotes among OTC market makers and specialists in Nasdaq/NM securities without subjecting CHX specialists to execution guarantees that are substantially greater than those imposed on their competitors.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

Written comments were neither solicited nor received.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposal is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

[7] *See* Securities Exchange Act Release No. 39512 (December 31, 1997), 62 FR 1517 (January 9, 1998).

[8] *See* Securities Exchange Act Release No. 39823 (March 31, 1998), 63 FR 17246 (April 8, 1998).

[9] *See* Securities Exchange Act Release No. 40150 (July 1, 1998), 63 FR 36983 (July 8, 1998).

[10] *See* Securities Exchange Act Release No. 40868 (December 31, 1998), 64 FR 1845 (January 12, 1999).

[11] *See* Securities Exchange Act Release No. 41586 (June 30, 1999), 64 FR 36938 (July 8, 1999).

[12] *See* Securities Exchange Act Release No. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000).

[13] *See* Letter to Katherine England, Assistant Director, Division, Commission, from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, dated April 27, 2000.

[14] The term "agency order" means an order for the account of a customer, but does not include professional orders, as defined in CHX Rule, Art. XXX, Rule 2, Interp. and Policy .04. The rule defines a "professional order" as any order for the account of a broker-dealer, the account of an associated person of a broker-dealer, or any account in which a broker-dealer or an associated person of a broker-dealer has any direct or indirect interest.

[15] Specifically, the autoquote is currently for one normal unit of trading (usually 100 shares) for issues that became subject to mandatory compliance with Commission Rule 11Ac1–4 on or prior to February 24, 1997 and 1000 shares for other issues.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–11 and should be submitted by May 30, 2000.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the Exchange's proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[18] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)[19] of the Act, which requires that an Exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission also believes that the proposal is consistent with Section 11A(a)(1)(C)[20] and 11A(a)(1)(D)[21] of the Act. The proposal is consistent with Section 11A(a)(1)(C) in that it seeks to ensure economically efficient execution of securities transactions. Moreover, the proposal is consistent with Section 11A(a)(1)(D) in that it attempts to foster the linking of markets for qualified securities through communication and data processing facilities.

The Commission notes, however, that while the Exchange has been working toward establishing a linkage, specialists and OTC market makers do not yet have an effective method of routing orders to each other. The Commission expects the Exchange to continue to work towards establishing a linkage with the Nasdaq systems as requested in the January 1997 Order.[22] In connection with this effort, the Commission has requested an update on the information provided in the December 21, 1999 and April 27, 2000 reports using the Exchange's surveillance system. The Commission requests that the Exchange supplement the available trading data so that it can consider issues concerning the pilot program, including the circumstances involving orders that are not automatically executed through MAX, whether orders are given the NBBO shown at the time the order is received or the NBBO posted at the time the order is executed, and what explanations are available for price disimprovment. The Commission's is extending the pilot program through November 1, 2000 so that the Exchange may compile this data for the Commission's review. The Commission requests that the Exchange provide a report addressing the above no later than August 15, 2000.

Upon approval of SR–CHX–99–27,[23] wherein the Exchange last sought an extension of this pilot, the Commission also requested that the Exchange rewrite Article XX, Rule 37 and Article XX, Rule 43 of the Exchange's rules so these rules clearly explain the difference between how listed (or dually traded) securities and over-the-counter (or Nasdaq/NM) securities are routed and executed by the Exchange, and submit the new proposed language to the Commission for review and approval. Further, the Commission requested that the Exchange include in its rules an explanation of how the provisions of the Exchange's Best Rule interact with the Exchange's Rules governing automatic execution of orders. The Exchange has been working with Commission staff in an effort to revise these rules, and the Commission expects that these efforts will continue until the Exchange has sufficiently clarified these rules for their members and the public.

Thus, the Commission's approval of the pilot extension has several ramifications. Approval will: (1) Allow the Exchange to operate the BEST pilot without interruption; (2) provide a period for compilation of additional data; and (3) allow the Exchange additional time to revise the language of the existing rules for clarity and ease of understanding in the public interest and for protection of investors.

The Commission does not want to interrupt the current operations of the Exchange's pilot while the above-described issues are being addressed. The Commission, therefore, finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**.

*It is therefore ordered,* pursuant to Section 19(b)(2)[24] of the Act that the proposed rule change (SR–CHX–00–11), be, and hereby is, approved through November 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11402 Filed 5–5–00; 8:45 am]

BILLING CODE 8010–01–M

[18] In reviewing this proposal, the Commission has considered its impact on efficiency, competition and capital formation. 15 USC 78c(f).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78k–1(a)(1)(C).

[21] 15 U.S.C. 78k–1(a)(1)(D).

[22] *See* January 1997 Order, *supra* note 7.

[23] *See* Securities Exchange Act Release No. 42372 (January 31, 2000), 65 FR 6425 (February 9, 2000).

[24] 15 U.S.C. 78sZ(b)(2).

[25] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Agency Meeting

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** [65 FR 25410, May 1, 2000]

**STATUS:** Closed meeting.

**PLACE:** 450 Fifth Street, NW, Washington, DC.

**DATE PREVIOUSLY ANNOUNCED:** April 28, 2000.

**CHANGE IN THE MEETING:** Cancellation of meeting.

The closed meeting scheduled for Wednesday, May 3, 2000, at 2 p.m. has been cancelled.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 3, 2000.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11473 Filed 5–3–00; 4:10 pm]

BILLING CODE 8010–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice With Respect to List of Countries Denying Fair Market Opportunities for Government-Funded Airport Construction Projects

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice with respect to a list of countries denying fair market opportunities for products and suppliers of the United States in airport construction procurements.

**SUMMARY:** Pursuant to section 533 of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. 50104), the United States Trade Representative ("USTR") has determined not to include

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any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

**DATES:** Effective May 1, 2000.

**ADDRESSES:** Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC, 20508.

**FOR FURTHER INFORMATION CONTACT:** John Ellis, Director of Government Procurement Issues, (202) 395–3063; or Stephen Kho, Assistant General Counsel, (202) 395–3581.

**SUPPLEMENTARY INFORMATION:** Section 533 of the Airport and Airway Improvement Act of 1982, as amended by section 115 of the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100–223 (codified at 49 U.S.C. 50104) ("the Act"), requires USTR to decide by May 1, 2000, whether any foreign countries have denied fair market opportunities to U.S. products, suppliers, or bidders in connection with airport construction projects of $500,000 or more that are funded in whole or in part by the governments of such countries. The list of such countries must be published in the **Federal Register**. For the purposes of the Act, USTR has decided not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

**Charlene Barshefsky,**

*United States Trade Representative.*

[FR Doc. 00–11340 Filed 5–5–00; 8:45 am]

BILLING CODE 3190–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Identification of Countries That Deny Adequate Protection, or Market Access, for Intellectual Property Rights Under Section 182 of the Trade Act of 1974

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the United States Trade Representative (USTR) has submitted its annual report on the identification of those foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection, and those foreign countries determined to be priority foreign countries, to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the United States House of Representatives, pursuant to section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242).

**DATES:** This report was submitted on April 28, 2000.

**ADDRESSES:** Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

**FOR FURTHER INFORMATION CONTACT:** Claude Burcky, Deputy Assistant U.S. Trade Representative for Intellectual Property, (202) 395–6864, Donna DiPaolo, Director for Intellectual Property, (202) 395–6864, or Stephen Kho, Assistant General Counsel, (202) 395–3581.

**SUPPLEMENTARY INFORMATION:** Section 182 of the Trade Act requires USTR to identify within 30 days of the publication of the National Trade Estimates Report all trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as "priority foreign countries," unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this manner, the USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country, and the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights. In making these determinations, the USTR must consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, and other appropriate officials of the Federal Government and take into account information from other sources, such as information submitted by interested persons.

On April 28, 2000, USTR identified 59 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon intellectual property protection. USTR identified Ukraine for potential Priority Foreign Country designation on August 1, 2000. USTR again designated Paraguay and China for "Section 306 monitoring" to ensure both countries comply with the commitments made to the United States under bilateral intellectual property agreements.

USTR announced placement of 16 trading partners on the "Priority Watch List": Argentina, the Dominican Republic, Egypt, the European Union, Greece, Guatemala, India, Israel, Italy, Korea, Malaysia, Peru, Poland, Russia, Turkey, and Ukraine. USTR placed 39 trading partners on the "Watch List." Countries that were not mentioned in the report last year but are on the Watch List this year include: Armenia, Azerbaijan, Kazakhstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan. In addition, out-of-cycle reviews will be conducted of Italy in September, and Korea and Macau in December 2000. While El Salvador and the West Bank and Gaza are not listed, USTR will also conduct out-of-cycle reviews of each in September and December 2000, respectively. Finally, the USTR announced the initiation of WTO dispute settlement cases against Argentina and Brazil, and that it will take the next step in our dispute with Denmark and request the establishment of a WTO panel unless imminent progress is made.

**P. Claude Burcky,**

*Director of Intellectual Property.*

[FR Doc. 00–11341 Filed 5–5–00; 8:45 am]

BILLING CODE 3190–01–M

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Annual Report on Discrimination in Foreign Government Procurement Pursuant to Executive Order 13116 ("Title VII")

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** Notice if hereby given that the United States Trade Representative ("USTR") has submitted the annual report on discrimination in foreign government procurement, published herein, to the Committees on Finance and on Governmental Affairs of the United States Senate and the Committees on Ways and Means and on Government Reform and Oversight of the United States House of Representatives, pursuant to the reinstituted procedures of Title VII of the Omnibus Trade and Competitiveness Act of 1988 ("Title

VII"), as amended, as set forth in Executive Order No. 13116 of March 31, 1999.

**DATES:** The report was submitted on May 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Ellis, Office of the US Trade Representative, 600 17th Street, NW, Washington, DC 20508, 202–395–3063.

**SUPPLEMENTARY INFORMATION:** The text of the USTR report is as follows:

**Office of the United States Trade Representative, Washington, DC, April 28, 2000**

**Annual Report on Discrimination in Foreign Government Procurement**

*I. Executive Summary*

Executive Order 13116, which the President signed on March 31, 1999, re-institutes the provisions of Title VII of the Omnibus Trade and Competitiveness Act of 1988 ("Title VII"), as amended. Title VII establishes procedures for identifying foreign countries engaging in discriminatory government procurement practices. The Executive Order mandates that the United States Trade Representative ("USTR") submit a report on the identified countries and practices to the Congressional committees of jurisdiction within 30 days of the submission of the National Trade Estimate Report (for the years 1999, 2000, and 2001), and publish these reports in the **Federal Register**. This is the second annual report required by the Executive Order.

In accordance with the provisions of the Executive Order and on the recommendation of the Trade Policy Staff Committee, USTR has decided to terminate the 1996 Title VII identification of Germany for discrimination in the heavy electrical sector. This decision is based on Germany's implementation of new legislation that appears to effectively address the concerns raised by the United States through the original Title VII identification.

USTR's 1992 identification of the European Union ("EU") for discriminatory procurement practices of government-owned telecommunications entities in certain member states, as well as the resulting U.S. sanctions, remains outstanding. There are no other outstanding Title VII identifications. However, the Administration continues to work in a range of bilateral and multilateral fora to resolve U.S. concerns with procurement practices described in this and previous Title VII reports. Those concerns, discussed in detail below, relate to foreign procurement practices in the following areas:

- Japan: Public works
- Taiwan: Various aspects of the procurement regime
- Canada: Provincial price preferences
- Mexico: Implementation of new procurement laws and NAFTA tendering periods
- Korea: Airport construction
- Germany: Sect filters

In addition, this report describes the Administration's efforts to eliminate discriminatory foreign procurement practices by building and strengthening the international rule of law in a wide range of multilateral, regional and bilateral fora:

- The FTAA Business Facilitation initiative and Negotiating Group on Government Procurement
- The WTO Working Group on Transparency in Government Procurement
- The WTO Committee on Government Procurement
- The NAFTA Working Group on Government Procurement
- The OECD and OAS Conventions on Combating Bribery and Corruption
- Consultations on the Use of Offsets in Defense Trade

*II. Provisions of the Executive Order*

Pursuant to Executive Order 13116, USTR is required to submit to the Congress each year a report identifying foreign countries:

(1) That have failed to comply with their obligations under the WTO Agreement on Government Procurement ("GPA"), Chapter 10 of the North American Free Trade Agreement, or other agreements relating to government procurement to which that country and the United States are parties; or

(2) That maintain, in government procurement, a significant pattern or practice of discrimination against U.S. products or services which results in identifiable harm to U.S. businesses, when those countries' products or services are acquired in significant amounts by the U.S. Government.

Within 90 days of the submission of the report, USTR must initiate under section 301 of the Trade Act of 1974, as amended, an investigation with respect to any country identified in the report, unless USTR determines that a satisfactory resolution of the matter has been achieved. If the matter is not resolved during that period and USTR determines that the rights of the United States under an international procurement agreement are being violated, or that any discriminatory procurement practices exist, the Executive Order permits USTR, inter alia, to initiate formal dispute settlement proceedings under the international agreement in question or revoke any waivers for purchasing requirements granted to the discriminating foreign country.

Title VII has been a useful and effective tool in challenging foreign governments' procurement barriers. From 1991 to 1996, USTR conducted six annual reviews under Title VII. During that time, six identifications were formally made, while numerous potentially discriminatory government procurement practices were noted. USTR achieved satisfactory resolution with respect to eight discriminatory or potentially discriminatory practices. The re-institution of Title VII procedures through Executive Order 13116 sends a strong signal that the President is committed to protecting U.S. interests in international procurement markets.

*III. Identification of Specific Discriminatory Foreign Procurement Practices*

A. Practices Identified in Previous Reports

*Germany—Power Generation:* In 1996, USTR identified Germany for its failure to comply with market access procurement requirements in the heavy electrical equipment sector. The identification was based on irregularities in the procurement process for two separate steam turbine generator projects in Germany. In particular, the 1996 Title VII Report noted a "pervasive institutional problem" with respect to Germany's implementation of a remedies system for challenging procurement decisions. The imposition of trade sanctions, however, was delayed until September 30, 1996, because consultations with Germany suggested a resolution might be possible given additional time.

On October 1, 1996, USTR announced that the German Government had agreed to take steps to ensure open competition in the German heavy electrical equipment market, including reform of the government procurement remedies system as well as outreach, monitoring, and consultation measures. The United States did not, however, terminate the Title VII action at that time because legislation implementing reform of the procurement remedies system needed to be enacted.

In May 1998, the German parliament passed legislation requiring significant reforms in the German procurement system, including with respect to bid challenge procedures. This legislation entered into effect on January 1, 1999. Although the law is still relatively new and not fully tested, a precedent-setting decision in an August 1999 case demonstrated that losing bidders can now challenge procurement decisions in a court of law and anticipate a fair ruling. The United States has not received further complaints from U.S. suppliers.

Accordingly, USTR has decided, on the recommendation of the TPSC, to terminate the outstanding Title VII determination against Germany for discrimination in the heavy electrical sector. The Administration will continue to monitor the implementation of Germany's procurement reform legislation.

*EU—Telecommunications:* In 1992, USTR identified the European Union (EU) as engaging in discriminatory procurement via the practices of telecommunications entities with "special and exclusive rights" in certain member states. As a result of this identification, the United States imposed sanctions in 1993, which remain in place today. In 1999, the European Commission (EC) informed the Administration that telecommunications operators in most EU member states were exempted from the procurement requirements in the Utilities Directive. Consequently, the EC requested that the United States remove the sanctions imposed in 1993. The Administration has asked the EC for clarification of the amendments to its regulations and how those amendments apply to individual EU Member States. When that information is received, the Administration will review the issue, including the overall market access conditions in the EU telecommunications market.

B. Practices Identified in This Report

In developing this report, USTR has given careful consideration to a wide range of views and information, including the recommendations of other executive agencies and U.S. embassies and consulates overseas, private sector responses to USTR's request

for comments on this year's Title VII report (published in the **Federal Register** on February 1, 2000), and information on foreign government procurement practices reported in the 2000 National Trade Estimates Report.

On the basis of this information, and after consultation with the TPSC, USTR has determined that no practices meet the criteria for Title VII identification this year. As in previous years, however, there remain a number of foreign government procurement practices of concern which the Administration is pursuing in bilateral and multilateral fora, including WTO dispute settlement when appropriate, or that require continued monitoring and study.

Japan—Public Works

American companies are world-renowned for their expertise and competitiveness in design/consulting and construction projects. However, in 1999, American design and construction firms won only $50 million (.02 percent) in contracts in Japan's $250 billion public works market. This is the same level of participation as 1998, only half of the $100 million in Japanese public works contracts awarded to U.S. firms in 1997, and well below U.S. participation in this market in the late 1980's. Proportionally, Japanese firms do 12 times as much public construction business in the United States as American firms do in Japan.

These disappointing results have occurred despite commitments made by Japan in our two U.S.-Japan public works agreements. In particular, the 1994 U.S.-Japan Public Works Agreement aims at "reforming bidding and contracting procedures for public works in Japan, to enhance transparency, objectivity and competition, as well as to strengthen the application of the principle of non-discrimination." In spite of this, Japan has engaged in a significant and persistent pattern of practices of discrimination that impedes American companies from participating in Japan's public works sector. These practices include rampant bid-rigging; unreasonable restrictions on the formation of joint ventures, including the three-company joint venture rule which limits to three the number of members in joint ventures for construction projects; the use of unreasonably vague and discriminatory qualification and evaluation criteria; and the structuring of procurements and calculation of procurement values so they fall below the agreements' thresholds.

The U.S. and Japanese Governments have met at least annually to discuss the U.S. Government's substantive concerns with these and other practices in this sector. These discussions have been helpful in making progress on some issues, but major impediments continue to deprive American firms from opportunities within Japan's vast public works sector. Although the 1994 Agreement has no expiration date, the consultation provision requiring annual meetings between the United States and Japan expired on March 31, 2000, and Japan rejected the U.S. Government's formal request to extend the consultation provision. The United States believes a continuation of the government-to-government discussions on the implementation of the 1994 Agreement is needed given the continuing problems in this sector.

The United States expects that Japan will take steps to resolve concerns regarding this persistent pattern of practices. If these concerns are not resolved in a timely manner, the U.S. Government will initiate the steps necessary to identify Japan under Title VII.

*Taiwan—General Procurement Procedures*: Taiwan, which is in the process of acceding to both the WTO and the GPA, recently enacted a law and promulgated regulations intended to bring its procurement practices into conformity with the requirements of the GPA. Although the new procurement law is an improvement over the former procurement regime, particularly in the area of transparency, it will not be fully applicable to foreign bidders until Taiwan's accession and does not cover the full range of procurement activities of interest to U.S. suppliers. Moreover, the new regulations do not appear to have effectively addressed problems that U.S. suppliers continue to experience in the Taiwan procurement market, particularly in the following areas:

- The lack of timely and effective arbitration procedures, which prevent satisfactory resolution of contract disputes;
- High bid bond requirements and unacceptably high potential contract liabilities;
- Frequent costly and unreasonable contract change orders;
- The use of tender specifications to exclude foreign bidders;
- Qualification requirements that require experience in similar projects in Taiwan, which do not take into account relevant experience in other markets;
- Qualification requirements that require foreign suppliers to establish local subsidiaries; and
- The use of offsets in certain key sectors.

The Administration continues to urge the Taiwan authorities to take concrete steps, in preparation for its WTO and GPA accession, to eliminate these and other procurement practices that appear inconsistent with WTO requirements or that constitute an unfair or unnecessary restriction on competition in Taiwan's government procurement market.

*Canada—Provincial Price Preferences*: Canada is the only Party to the GPA that has not assumed obligations to cover procurement by sub-central government entities. Some Canadian provinces maintain "Buy Canada" price preferences that favor Canadian suppliers over U.S. and other foreign competitors. The Administration is concerned that the application of those preferences may result in an imbalance of bilateral market access opportunities in government procurement, will continue to raise these concerns in bilateral discussions, with a view to bringing Canadian provincial governments and other government and government-owned entities within the scope of the GPA and NAFTA procurement rules.

*Mexico—Implementation of New Procurement Laws and NAFTA Tendering Periods*: On January 4, 2000, Mexico published new laws relating to the procurement of Public Works and Related Services. These laws require Mexican procurement agencies to implement a new system of "Buy Mexico" purchasing preferences. While the laws appear to include a general exception for treaty obligations, there remains a potential risk that Mexico could implement the laws in a way that would be inconsistent with Mexico's NAFTA commitments. The Administration is following the situation closely to ensure Mexico's conformity with its obligations under the NAFTA.

The United States also remains concerned about complaints that some Mexican agencies are not adhering to NAFTA requirements relating to the time periods to be provided for tendering. The United States has joined Canada is seeking clarification of this issue in the NAFTA Negotiating Group on Government Procurement (NGGP), and continues to urge Mexico to ensure that its procurement authorities comply with the relevant NAFTA commitments.

*Korea—Airport Construction*: Practices applied by Korea in procurements for construction of the new Inchon International Airport project favor Korean firms over foreign firms. These practices, such as the use of domestic partnering, short deadlines and certain licensing requirements, appear inconsistent with the GPA, and restrict the ability of U.S. and other foreign firms to participate meaningfully in bidding opportunities and to win contracts. U.S. officials raised these concerns with Korea repeatedly in the WTO Government Procurement Committee and in informal bilateral consultations.

Because Korea's GPA schedule does not explicitly list the names of the entities procuring for the Inchon International Airport project, the United States and Korea disagreed about whether such procurements were even covered by the Agreement. The United States maintained that these entities, which were specifically created for the purpose of procuring for this particular project, are covered because they are in fact subordinate to Korea's Ministry of Construction and Transportation, a "central government" entity explicitly listed in Korea's GPA schedule. Korea, on the other hand, denied coverage of these entities under its GPA obligations.

The two governments could not come to an agreement after two years of discussions. Therefore, the United States asked a WTO panel to examine this issue. Formal consultations between the governments were held on March 17, 1999, and meetings of the panel were held in October and November of last year. On April 7, 2000, the panel issued its final report to the two governments. In its report, the panel concluded that this particular airport construction project is not covered by the GPA. The panel made this determination based on its findings, *inter alia*, that the project is not explicitly written into Korea's GPA schedule and that the entities procuring for the project are not "legally unified" with Korea's listed entities.

*Germany—"Sect Filters"*: Policy guidance issued by the German Federal Government has raised concerns about a potential for discrimination against U.S. firms in procurement decisions by German entities. In September 1998, the Federal Economics Ministry issued procurement guidelines to be

put into effect by all Federal Government Ministries. These procurement guidelines warn that a firm should be deemed "unreliable" if it refuses to sign a so-called sect filter. The filter requires a firm's leadership to attest that Scientology principles will not be used or spread in fulfillment of any contract; that the leadership of a firm will not recommend or approve participation in courses or seminars relating to Scientology principles during the course of business; and that firms reject Scientology principles in conjunction with any subsidiary. Procurement entities are permitted to reject bids and immediately terminate contracts if a firm does not sign the sect filter.

Although issued at the Federal level and only for use on procurements related to consulting or training services, state-level entities and even private firms currently appear to be using sect filters beyond that narrow scope. While it still remains unclear how these measures will be implemented, at least one major U.S. supplier has had to undergo a qualification process that was significantly more extensive than that required by its competitors. Upon learning of the sect filter requirements, the Administration raised its concerns with the German Government and continues press the Germans to repeal this discriminatory policy.

*IV. Expanding and Strengthening the International Rule of Law With Respect to Government Procurement*

A. Free Trade Area of the Americas ("FTAA")

In the March 1998 San José Declaration, the Trade Ministers of the 34 countries of the Western Hemisphere agreed that the specific objectives of the FTAA negotiations in the area of government procurement were to ensure: "openness and transparency of government procurement processes"; "non-discrimination * * * within a scope to be negotiated"; and "impartial and fair review for the resolution of complaints and appeals by suppliers and the effective implementation of such resolutions." In the November 1999 Toronto Declaration, FTAA Ministers instructed their negotiators to submit draft negotiating texts for ministerial review by the end of 2000. The FTAA governments are committed to concluding the FTAA negotiations by 2005.

Currently, only 27 countries and territories are Parties to the WTO Government Procurement Agreement. The entry into force of the FTAA procurement chapter, therefore, is likely to more than double the number of countries that have agreed to open their government procurement markets and subject them to strong, binding, non-discriminatory international procurement rules. In order to achieve the Toronto mandate, the Administration has pressed for a focused and forward leaning work program in the Negotiating Group on Government Procurement ("NGGP"). During the first part of the year, the NGGP has agreed that delegations will submit drafting proposals on all the elements that have been identified for inclusion in the FTAA procurement chapter. The NGGP will consolidate those proposals and seek to narrow differences and, where possible, achieve consensus on specific provisions by the end of the year. The resulting negotiating text will provide the framework for subsequent negotiations on the coverage (*i.e.*, specific market access commitments) of the eventual procurement chapter.

B. WTO Working Group on Transparency in Government Procurement

Continued, active support for early conclusion of a WTO Agreement on Transparency in Government Procurement is a key element of the Administration's ongoing efforts to promote the rule of law in public sector economic management throughout the world. Conclusion of this Agreement will serve a wide range of important U.S. interests. It will help to establish a more stable and predictable business environment for U.S. exporters, even in markets where governments maintain "buy national" or other purchasing restrictions. It will also build on the "good governance" reforms that a growing number of countries have adopted in response to the international financial crisis and the deeper structural impediments to efficient long-term growth and development.

In 1999, the WTO Working Group on Transparency in Government Procurement moved forward rapidly with the development of concrete provisions for potential international commitments in this area. On this basis, WTO Members are in a good position to conclude a multilateral agreement on transparency in government procurement. This work provides a strong foundation for continuing to pursue U.S. procurement objectives in bilateral and regional negotiations, as well as in the WTO. The Administration will, in the context of WTO Members' decisions on the overall WTO agenda, continue to actively support the efforts to conclude a strong multilateral Agreement on Transparency in Government Procurement at the earliest date possible.

C. The WTO Agreement on Government Procurement ("GPA")

The GPA, which entered into force on January 1, 1996, is a "plurilateral" agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO's single undertaking, and its membership is limited to the 27 WTO members that signed the Agreement in Marrakesh or that subsequently acceded to it. In its report to the 1996 Singapore Ministerial Conference, the Committee on Government Procurement, which monitors the GPA, stated its intention to undertake an "early review" of the GPA starting in 1997. The Administration considers the review of the Agreement to be an important opportunity to streamline the GPA and make it more understandable to current and potential new GPA Parties, their suppliers, and their procuring entities.

The United States and the other GPA Parties believe that the completion of this process will make the Agreement more accessible to a much broader range of WTO Members. Currently, five WTO Members are in the process of negotiating accession to the GPA, or preparing for those negotiations. A number of other countries, particularly eastern European countries seeking to accede to the European Union, have committed to pursue GPA accession in the future. In order to facilitate and expedite this process, the WTO Government Procurement Committee is developing standard accession procedures and time-tables. The Administration believes that the development of systematic accession procedures will complement the review process in making the GPA more accessible to a broad range of WTO Members and significantly expanding international participation in the open, rules-based international trading system for government procurement.

The GPA provides a consultative procedure to assist the Parties in monitoring and enforcing their procurement commitments under the Agreement. The United States has used this procedure to comment on questionable procurement practices, such as the application of the EU "Utilities Directive," and to obtain detailed information relevant to potential dispute settlement cases.

D. Chapter 10 of the North American Free Trade Agreement ("NAFTA")

In NAFTA Chapter 10, the NAFTA signatories agreed to open the majority of non-defense related federal procurement opportunities to competition from all North American suppliers. Because Mexico is not a member of the GPA, its participation in the NAFTA marked the first time that Mexico had committed to eliminate discriminatory government procurement practices. While differences exist between NAFTA Chapter 10 and the GPA (*e.g.*, with respect to thresholds and sub-federal coverage), the principles of non-discrimination, fair and open competition, and transparency are established with equal force in both agreements.

As with the WTO Government Procurement Committee, the NAFTA Working Group on Government Procurement provides a useful forum for the Administration in monitoring and enforcing the NAFTA Parties' procurement commitments.

E. Combating International Bribery and Corruption

Among the most consistent complaints the Administration receives from U.S. industry and labor representatives is that bribery and corruption can seriously compromise commercial opportunities in many overseas government procurement markets. This is particularly true for big ticket infrastructure projects for which preparation of a bid package alone can cost millions of dollars. U.S. exporters often report that they bid on projects with little or no certainty as to whether the offered technology and price are going to be the primary criteria in the award of contracts. In many cases, they may be doubly disadvantaged if their international competitors are not subject to legal disciplines similar to the U.S. Foreign Corrupt Practices Act. Despite these concerns, U.S. firms are frequently hesitant about coming forward publicly with cases in which they have seen bribery and corruption influence contract awards, because of fears that they may experience a commercial backlash with respect to future contracts.

These circumstances call for government-to-government initiatives to root out bribery and corruption in international procurement markets. The Administration is aggressively pursuing this objective in a wide range of international fora. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, for example, represents a major breakthrough in this area. The Convention obligates the parties to criminalize bribery of foreign public officials in the conduct of international business, which can include government procurement. It is aimed at proscribing the activities of those who offer, promise, or pay a bribe. For this reason the Convention is often characterized as a "supply side" agreement, as it seeks to effect changes in the conduct of companies in exporting nations. The Convention entered into force in February 1999 for 12 of the 34 signatories. As of April 2000, 20 signatories, including the United States, had ratified it.

In March 1996, countries in the Western Hemisphere concluded negotiations on the Inter-American Convention Against Corruption. To date, 26 countries have signed it and 18 have ratified. This Convention, a direct result of the Summit of the Americas Plan of Action, requires that the signatories criminalize bribery, using language modeled in part on the U.S. Foreign Corrupt Practices Act, and adopt other various measures aimed at both national and international corruption. The Convention entered into force in March 1997 for those countries which have ratified it.

The Administration is pursuing a broad range of complementary initiatives in the WTO and other international and regional trade fora. For example, we continue to press WTO Members for early conclusion of a multilateral Agreement on Transparency in Government Procurement. We have also led initiatives to ensure full and timely implementation of the WTO Agreement on Customs Valuation and to strengthen the operation of the WTO Agreement on Pre-Shipment Inspection. As part of the Business Facilitation initiative for the Free Trade Agreement of the Americas, the Administration has already secured important commitments to ensure transparency and due process, particularly in relation to customs procedures, that will apply to all 34 countries of the Western Hemisphere. These initiatives strengthen the international rule of law and help to create a transparent, stable and predictable business environment that suppresses corrupt practices and allows U.S. firms and their workers to compete on a level playing field in overseas markets.

F. Offsets in Defense Trade

When purchasing defense systems from U.S. contractors, many foreign governments require compensation, in the form of offsets, as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services. Offsets include mandatory co-production, licensed production, subcontractor production, technology transfer, countertrade, and foreign investment. Offsets may be directly related to the weapon system being exported, or they may take the form of compensation unrelated to the exported item, such as foreign investment or countertrade.

Originally designed to enhance allied national security, some key U.S. trading partners now use offsets to pursue economic and commercial objectives. Department of Commerce data indicates that, while over 90 percent of recent offset agreements were associated with exports of U.S. aerospace weapons systems, almost half the resulting offset transactions were fulfilled with non-aerospace products. Such mandatory offset requirements may negatively affect U.S. firms and their workers by enhancing foreign suppliers' competitive capabilities or opportunities, reducing U.S. exports, and potentially limiting domestic job opportunities in these industries. They may also have a negative impact on the foreign buyer, since contract award decisions that are determined by the willingness or ability of a supplier to provide offsets may result in procurement that does not achieve the best possible value in terms of the price and quality of the equipment, installation, materials or services supplied.

An Interagency Offset Steering Committee, chaired by the Department of Defense and including representatives of the Departments of Commerce, State and Labor and the Office of the United States Trade Representative, was established in 1999. The Committee has been working to develop strategies that would reduce the adverse effects that defense related offsets may have on the industrial base and on U.S. trade interests. On this basis, the Committee has initiated bilateral discussions with U.S. allies in an effort to focus allied governments' attention on the adverse effects of offsets in defense trade and to explore ways for reducing or eliminating them.

**Carmen Suro-Bredie,**

*Chairman, Trade Policy Staff Committee.*

[FR Doc. 00–11415 Filed 5–5–00; 8:45 am]

BILLING CODE 3190–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Lehigh and Norththampton Counties, Pennsylvania

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Lehigh and Northampton Counties, Pennsylvania.

**FOR FURTHER INFORMATION CONTACT:** David W. Cough, P.E., Operations Group Leader, Federal Highway Administration, Pennsylvania Division Office, 228 Walnut Street, Room 536, Harrisburg, PA 17101–1720, Telephone: (717) 221–3411 OR Donald Lerch, Assistant District Engineer, Pennsylvania Department of Transportation, District 5–0, 1713 Lehigh Street, Allentown, Pennsylvania, 18103, Telephone (610) 798–4131.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Pennsylvania Department of Transportation (PennDOT), and the Lehigh Valley Planning Commission will prepare an Environmental Impact Statement (EIS) to identify and evaluate alternatives for improvements to the U.S. Route 22 corridor in Lehigh and Northampton Counties, Pennsylvania. The proposed action would consist of improvements along U.S. Route 22 between its interchanges with Interstate 78 to the west and S.R. 248 to the east, a distance of approximately 31 km (19 miles). Included in the overall project will be the identification of a range of alternatives that meet the identified project needs, and supporting environmental documentation and analysis to recommend a selected alternative for implementation. A complete public involvement program is included as part of the project.

Documentation of the need for the project is being prepared. This process will identify the need for roadway improvements through the study area based on local and regional transportation demand, system linkage and continuity, geometric criteria, safety and local and regional planning.

Alternatives that will be considered may include, but will not be limited to: No Build; transportation systems management (TSM) upgrade existing facility, construction on new alignment, upgrade of existing road network, mass transit, traffic control measures, (TCM), and travel demand management (TDM). These alternatives will be the basis for recommendation of alternatives to be carried forward for detailed environmental and engineering studies in the EIS.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state and local agencies and to private organizations and citizens who express interest in this proposal. Public meetings will be held in the area throughout the study process. Public involvement and agency coordination will be maintained throughout the development of the EIS.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this

proposed action and the EIS should be directed to FHWA or PennDOT at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: April 25, 2000.

**James A. Cheatham,**

*FHWA Division Administrator.*

[FR Doc. 00–11413 Filed 5–5–00; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[RSPA–00–7283, Notice No. 00–4]**

### Safety Advisory Notice; Use of Non-Complying Portable Tanks for Transportation of Propane

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Safety advisory notice.

**SUMMARY:** This safety advisory notice is to make persons aware of safety concerns related to the intermodal transportation of propane in portable tanks and of the proper packaging requirements for such transportation. RSPA has become aware of several instances where propane was improperly transported in portable tanks. This suggests that some persons who offer or transport propane in portable tanks may not be fully aware of the applicable requirements of the Hazardous Materials Regulations. This notice alerts offerors and transporters to potential safety problems and summarizes the proper packaging requirements for offering or accepting propane in portable tanks for transportation.

**FOR FURTHER INFORMATION CONTACT:** Diane LaValle, Office of Hazardous Materials Standards, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, Telephone (202) 366–8553.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The U.S. Coast Guard has identified problems with certain portable tanks used to transport propane in and between the states of Washington and Alaska. It appears that many of the portable tanks in this service may not conform to the requirements of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180) and to requirements for approval and inspection of cargo containers (49 CFR parts 450–453). Some of the deficiencies identified may pose a significant safety threat.

On March 17, 2000, a SeaLand/CSX cargo vessel transporting over 6,000 gallons of propane in a portable tank encountered rough seas. The portable tank broke loose from its frame, damaging its external piping and releasing over 100 gallons of propane. Although the release of propane in this incident was relatively small, the potential for a catastrophic incident involving the bulk transportation of propane on board vessels should not be minimized. A significant release of propane, coupled with a fire or explosion, would place the crew and the vessel at serious risk.

Subsequent inquiries and investigations by RSPA's Offices of Hazardous Materials Enforcement and Hazardous Materials Technology, the Federal Motor Carrier Safety Administration, and the U.S. Coast Guard identified several potential problems with portable tanks used for the intermodal transportation of propane. These problems involve improper mounting of portable tanks to container frames, substandard welds where portable tanks are attached to container frames, overfilling, improperly modified cargo tanks, and invalid specification packaging markings. Preliminary indications are that such deficiencies may affect a significant number of portable tanks in intermodal propane service. An initial industry estimate is that perhaps 60 percent of 500 portable tanks involved in this transportation may not conform to HMR requirements. Because these tanks are used in intermodal service, the potential safety problems could affect highway and rail transportation, in addition to transportation by vessel.

### II. Requirements for the Transportation of Propane in Portable Tanks

Section 173.315 of the HMR authorizes the transportation of propane in a number of bulk packagings, including DOT Specification 51 portable tanks. Specifications for the design and manufacture of DOT Specification 51 portable tanks are in Subpart H of Part 178 of the HMR.

*Design and construction.* Generally, DOT 51 portable tanks must be designed, constructed, certified, and stamped in accordance with the ASME Code in effect at the time the tank is constructed (see § 178.245–1). Welds used in tank construction, as well as welding procedures and weld performance tests, must conform to the ASME Code (see § 178.245–1(b)). The regulations also include specific requirements for tank openings and filling and discharge connections (see § 178.245–1(d)). Among other requirements, each filling and discharge connection below the normal liquid level of the tank must be equipped with an internal self-closing stop valve capable of closing within 30 seconds of actuation.

The regulations for DOT 51 portable tanks also include specific requirements applicable to materials of construction (§ 178.245–2), design pressure (§ 178.245–3), mountings (§ 178.245–4), and damage protection (§ 178.245–5).

A DOT 51 portable tank that meets the definition of a "container" in 49 CFR 450.3(a)(2) must also conform to the requirements of 49 CFR parts 450 through 453 for compliance with Annex II of the International Convention for Safe Containers, particularly with regard to attachment of the portable tank to its intermodal frame (see § 178.245–1(d)(4)(i) and 178.245–4(e)). Parts 450 through 453 establish requirements and procedures for safety approval and periodic examination of cargo containers. Portable tanks that meet the definition of "container" for purposes of Parts 450 through 453 must be inspected by an agency that has been approved by the US Coast Guard. As defined in 49 CFR 450.3(a)(2), a "container" is an article of transport equipment that: (1) Is suitable for repeated use: (2) is designed to facilitate the transport of goods by one or more modes of transport without intermediate reloading; (3) is designed to be secured and readily handled with corner fittings for these purposes; and (4) has an area enclosed by the bottom four corners that is at least 150 square feet or 75 square feet if it has top corner fittings.

*Periodic inspections and tests.* Portable tanks used for the transportation of hazardous materials must undergo periodic inspections and tests to assure the continued integrity of the tank and its appurtenances. The requirements for periodic inspection and testing of DOT 51 portable tanks are in § 173.32(e). Every five years, a DOT 51 portable tank must successfully pass a pressure test that conforms to the requirements in § 173.32(e)(2)(i) and a visual inspection that conforms to the requirements in § 173.32(e)(2)(ii). The date of the most recent periodic test and inspection must be marked on the tank on or near its certification plate. A portable tank for which the prescribed tests or inspections have become due may not be filled and offered for

inspection until the test or inspection has been successfully completed.

*Cargo tank conversions.* It is possible, though difficult, to modify a cargo tank, such as by using the tank from an MC 330 cargo tank motor vehicle, to meet the DOT 51 portable tank specification. The modification must be performed by an ASME Code facility. The manufacturer performing the modification must assure that the modified tank conforms to all the requirements of the DOT 51 specification in § 178.245 of the HMR. Such a tank no longer meets the cargo tank specification; thus, the manufacturer must remove or cover the cargo tank specification plate on the modified tank and affix a new certification plate in accordance with § 178.245–6. Other than through recertification as a portable tank, there is no provision for use of the tank from a cargo tank motor vehicle as a portable tank.

*Filling densities.* The HMR prescribe maximum permitted filling densities for portable tanks in propane service in § 173.315(b). Generally, maximum permitted filling densities depend on the specific gravity of the material to be transported, measured at 60°F, and the size of the tank. Propane in a portable tank may not exceed 60 percent of the water-weight capacity of the tank.

**III. Safety Implications**

The purpose of this safety advisory notice is to alert persons who offer or transport propane that transporting propane in portable tanks that do not conform to the HMR could have serious safety implications for persons who handle or transport such tanks and for the general public. When liquid propane is released into the atmosphere, it quickly vaporizes into the gaseous form that is its normal state at atmospheric pressure. Vaporization occurs very rapidly and, in the process, the propane combines readily with air to form fuel-air mixtures that are ignitable over a range of 2.2 to 9.5 percent by volume. If an ignition source is present in the vicinity of the highly flammable mixture, the vapor cloud ignites and burns explosively.

No person may offer for transportation or transport hazardous materials except in conformance with the HMR. Persons offering or transporting propane in portable tanks that do not conform to the HMR requirements may be subject to civil or criminal penalties.

Issued in Washington, DC, on May 2, 2000.

**Robert A. McGuire,**

*Acting Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 00–11375 Filed 5–5–00; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33868]**

### OmniTRAX, Inc., Central Kansas Railway, L.L.C., and Kansas Southwestern Railway, L.L.C.—Corporate Family Transaction Exemption

OmniTRAX, Inc. (OmniTRAX),[1] Central Kansas Railway L.L.C. (CKR), and Kansas Southwestern Railway, L.L.C. (KSW), have jointly filed a verified notice of exemption. CKR operates over approximately 900 miles of rail line in the States of Kansas and Colorado. KSW operates over approximately 106 miles of rail line in the State of Kansas and connects at several locations with CKR. KSW will be merged into CKR, with CKR as the surviving corporation. After the transaction is consummated, OmniTRAX will control 9 Class III railroads in the United States.

The transaction was scheduled to be consummated on or shortly after April 26, 2000.

The purpose of the transaction is to simplify OmniTRAX's corporate structure and eliminate costs associated with separate accounting, tax, bookkeeping and reporting functions. The proposed transaction will also enhance the operating economies of, and improve service on, the surviving corporation.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33868, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, P.C., Ball Janik LLP, Suite 225, 1455 F Street, NW, Washington, DC 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 28, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–11183 Filed 5–5–00; 8:45 am]

BILLING CODE 4915–00–P

[1] OmniTRAX is a noncarrier holding company, which at the time of filing, directly controlled 10 Class III railroads, including CKR and KSW, operating in 7 states. *See OmniTRAX, Inc.—Control Exemption—Northern Ohio & Western Railway, LLC*, STB Finance Docket No. 33598 (STB served June 5, 1998). OmniTRAX also states that it controls 3 rail carriers that operate in Canada.

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Office of Thrift Supervision

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities; Proposed Renewal of Information Collection; Comment Request

**AGENCIES:** Office of the Comptroller of the Currency (OCC) and Office of Thrift Supervision (OTS), Treasury, and Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Joint notice and request for comment.

**SUMMARY:** The OCC, OTS, and FDIC (collectively, the "agencies"), as part of their continuing efforts to reduce paperwork and respondent burden, invite financial institutions, the general public, and other Federal agencies to comment on a continuing information

collection. This notice is issued in accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the agencies are requesting comment on the extension, without change, of an information collection titled Interagency Guidance on Asset Securitization Activities.

**DATES:** Written comments should be received on or before July 7, 2000.

**ADDRESSES:** You are invited to submit a comment to any or all of the agencies. Please direct your comments as follows:

OCC: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Third Floor, Attention: 1557–0217, Washington, DC 20219. In addition, you may send a comment by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

OTS: Manager, Dissemination Branch, Information Management and Services, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: 1550–0104. You may hand deliver your comments to the Guard's desk at 1700 G Street, NW.; or you may send comments by facsimile transmission to (202) 906–7755; or they may be sent by e-mail: public.info@ots.treas.gov. If you comment by e-mail, you should include your name and telephone number. You should send any comments over 25 pages in length to FAX Number (202) 906–6956. You may inspect the comments at 1700 G Street, NW., from 10 a.m. until 4 p.m. on Tuesdays and Thursdays. Comments are also available at OTS.treas.gov.

FDIC: Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. You may hand-deliver comments to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838: Internet address: comments@fdic.gov]. You may inspect and photocopy comments in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m., on business days.

**FOR FURTHER INFORMATION CONTACT:** You may request additional information or a copy of the collection by contacting:

OCC: Jessie Dunaway or Camille Dixon, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington DC 20219, (202) 874–5090.

OTS: William Magrini, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–5744.

FDIC: Steven F. Hanft, Office of the Executive Secretary, FDIC, 550 17th Street, NW., Washington, DC 20429, (202) 898–7453.

**SUPPLEMENTARY INFORMATION:**

*Title:* Interagency Guidance on Asset Securitization Activities.

*OMB Numbers:*
OCC: 1557–0217.
OTS: 1550–0104.
FDIC: 3064–0137.
*Form Numbers:*
None.

*Abstract:* On December 13, 1999, the agencies issued the Interagency Guidance on Asset Securitization Activities. The information collections contained in the Interagency Guidance were approved by OMB. The agencies are now in the process of requesting that OMB renew its approval of those information collections. The agencies are not proposing any change to the underlying information collections.

The Board of Governors of the Federal Reserve System has participated in the development and review of this information collection and will process its extension under its Paperwork Reduction Act delegated authority.

*Type of Review:* Renewal, without change, of a currently approved collection.

*Affected Public:* Business, for-profit institutions, and non-profit institutions.

*Estimated Number of Respondents:*
OCC: 50.
OTS: 30.
FDIC: 70.
*Estimated Total Annual Responses:*
OCC: 1 per year.
OTS: 1 per year.
FDIC: 1 per year.
*Estimated Total Annual Burden:*
OCC: 2,115 hours.
OTS: 1,269 hours.
FDIC: 2,070 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

**Request for Comments**

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agencies, including whether the information shall have practical utility;

(b) The accuracy of the agencies' estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: May 2, 2000.

**Mark J. Tenhundfeld,**

*Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.*

Dated: April 24, 2000.

**John E. Werner,**

*Director, Information Management and Services, Office of Thrift Supervision.*

Dated at Washington, DC, this 26th day of April, 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00–11376 Filed 5–5–00; 8:45 am]

BILLING CODE 4810–33–P; 6720–01–P; 6714–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[EE–113–82]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, EE–113–82, Required Distributions From Qualified Plans and Individual Retirement Plans (§ 1.403(b)–2).

**DATES:** Written comments should be received on or before July 7, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:** *Title:* Required Distributions from Qualified Plans and Individual Retirement Plans.

*OMB Number:* 1545–0996.

*Notice Number:* EE–113–82.

*Abstract:* This regulation provides rules regarding the minimum distribution requirements applicable to any annuity contract, custodial account, or retirement income account described in Internal Revenue Code section 403(b). The minimum distribution rules do not apply to benefits accrued before January 1, 1987.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

Affected Public: Not-for-profit institutions, and state, local, or tribal governments.

*Estimated Number of Respondents:* 8,400.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 8,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 26, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11344 Filed 5–5–00; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 4972

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4972, Tax on Lump-Sum Distributions (From Qualified Retirement Plans of Plan Participants Born Before 1936).

**DATES:** Written comments should be received on or before July 7, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Tax on Lump-Sum Distributions (From Qualified Retirement Plans of Plan Participants Born Before 1936).

*OMB Number:* 1545–0193.

*Form Number:* 4972.

*Abstract:* Internal Revenue Code section 402(e) and regulation section 1.402(e) allow recipients of lump-sum distributions from a qualified retirement plan to figure the tax separately on the distributions. The tax can be computed on the 10 year averaging method and/or by a special capital gain method. Form 4972 is used to compute the separate tax and to make a special 20 percent capital gain election on lump-sum distributions attributable to pre-1974 participation.

*Current Actions:* The Small Business Job Protection Act of 1996 repealed the 5-year averaging method for lump-sum distributions from qualified plans, effective for taxable years beginning after December 31, 1999. Thus, the Act repeals the separate tax paid on a lump-sum distribution and also repeals the deduction from gross income for taxpayers who elect to pay the separate tax on a lump-sum distribution. Therefore, lines 23–29 and line 37 in Part III of Form 4972 were deleted.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Responses:* 35,000.

*Estimated Time Per Respondent:* 2 hours, 44 minutes.

*Estimated Total Annual Burden Hours:* 95,550.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital

or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 1, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11472 Filed 5–5–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0025]**

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Office of Information and Technology, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Office of Information and Technology (IT), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed for an individual to provide a written consent to release his/her records or information to a third party.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before July 7, 2000.

**ADDRESSES:** Submit written comments on the collection of information to Barbara Epps (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Please refer to "OMB Control No. 2900–0025" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Barbara Epps at (202) 273–8013 or FAX (202) 273–5981.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, IT invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of IT's functions, including whether the information will have practical utility; (2) the accuracy of IT's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* Request for and Consent to Release of Information From Claimant's Records, VA Form 3288.

*OMB Control Number:* 2900–0025.

*Type of Review:* Extension of a previously approved collection.

*Abstract:* The form is completed by veterans or beneficiaries to provide VA with a written consent to release records or information to third parties such as insurance companies, physicians and other individuals. Use of the form ensures an individual gives an informed written consent for the release of records or information about himself/herself that is consistent with the statutory requirements of the Privacy Act of 1974 and VA's confidentiality statute.

*Affected Public:* Individuals or households.

*Estimated Annual Burden:* 18,875 hours.

*Estimated Average Burden Per Respondent:* 7.5 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 151,000.

Dated: April 13, 2000.

By Direction of the Secretary.

**Donald L. Neilson,**

*Director, Information Management Service.*

[FR Doc. 00–11377 Filed 5–5–00; 8:45 am]

**BILLING CODE 8320–01–P**

# Corrections

Federal Register

Vol. 65, No. 89

Monday May 8, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request

*Correction*

In notice document 00–10711 beginning on page 25495 in the issue of Tuesday, May 2, 2000, make the following corrections:

1. On page 25495, in the second column, under "**DATE**", "July 3, 2000" should read "June 3, 2000".

2. On page 25496, in the second column, five lines from the bottom, "July 3, 2000" should read "June 3, 2000".

[FR Doc. C0–10711 Filed 5–5–00; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. ICR–99–28]**

### Agency Information Collection Activities; Announcement on OMB Approval

*Correction*

In notice document 00–10380 appearing on page 24512 in the issue of Wednesday, April 26, 2000, make the following corrections:

1. On page 24512, in the second column, the document heading is corrected to read as set forth above.

2. On the same page, in the thrid column, in the first line, " 20 CFR" should read, "29 CFR".

[FR Doc. C0–10380 Filed 5–5–00; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Monday,
May 8, 2000

Part II

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Parts 10, 13, 17, and 23**
**Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), Revision of Regulations; Proposed Rule**

VOL 65 ISS 89 MY 8 2000 UMI

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Parts 10, 13, 17, and 23**

**RIN 1018–AD87**

## Revision of Regulations for the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We propose to revise the regulations that implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a treaty that regulates international trade in certain protected species. CITES uses a system of international permits and certificates to help ensure that trade is legal and does not threaten the survival of wildlife or plant species in the wild. Since the existing regulations were finalized, the CITES Conference of the Parties (COP) has held nine meetings where resolutions have been adopted. We propose to incorporate certain applicable current resolutions into 50 CFR part 23. Revised regulations will help us more effectively promote species conservation, fulfill our responsibilities under the Treaty, and help those affected by CITES understand how to conduct international trade in CITES species.

**DATES:** In preparing the final decision on this proposed rule, we will consider all information and comments received by August 7, 2000.

**ADDRESSES:** Send comments to Ms. Teiko Saito, Chief, Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. To the extent possible, reference the section of the proposed regulations on which you are commenting. You may also send comments via e-mail to: r9oma—cites@fws.gov. Please reference "Part 23 Comments" and include your name and return address in your e-mail message. Materials received will be available for public inspection by appointment from 7:45 a.m. to 4:15 p.m., Monday through Friday, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Teiko Saito, at the above address, telephone (703) 358–2093, fax (703) 358–2280.

**SUPPLEMENTARY INFORMATION:**

### Acronyms Used in This Proposed Rule

APHIS U.S. Department of Agriculture, Animal and Plant Health Inspection Service
CITES Convention on International Trade in Endangered Species of Wild Fauna and Flora, also referred to as the Convention or Treaty
CFR Code of Federal Regulations
COP CITES Conference of the Parties or meeting of the Conference of the Parties
DNA Deoxyribonucleic acid
ESA Endangered Species Act

### Background

CITES was negotiated in 1973 in Washington, DC, at a conference attended by delegations from 80 countries. The United States ratified the Treaty on September 13, 1973, and it came into force on July 1, 1975, after the required 10 countries had ratified it. Section 8A of the Endangered Species Act (ESA), as amended in 1982, designates the Secretary of the Interior as the U.S. Management Authority and Scientific Authority for CITES. These authorities have been delegated to the Fish and Wildlife Service. The U.S. regulations implementing CITES took effect on May 23, 1977 (42 FR 10465, February 22, 1977), after the first COP was held. The COP meets every 2 to 3 years to vote on proposed resolutions that interpret and implement the text of the Treaty and on amendments to the listing of species in the CITES appendices. There are currently 151 Parties (countries that have ratified or acceded to CITES). As a Party to CITES, the United States is committed to fulfilling its obligations under the Treaty, including implementing species listings and appropriate resolutions of the COP.

*Resolution consolidation.* Between 1976 and 1994, at least 190 resolutions were adopted by the Parties. In 1994, the Parties began an effort to consolidate some of these resolutions. Some resolutions were no longer relevant, and others needed to be combined since there were several resolutions on the same or similar subjects adopted at different COP's. As a result of this process, there are currently 82 resolutions in effect. This proposed rule incorporates certain of these consolidated resolutions from COP 2 through COP 10, as appropriate and relevant to U.S. implementation of the Treaty.

*Previous proposed rules.* We published proposed rules on September 24, 1985 (50 FR 38683), to incorporate changes from COP 2 through COP 4, and on April 10, 1986 (51 FR 12350), to incorporate changes from COP 5. These proposed rules were never finalized, and we are withdrawing them here because of subsequent decisions of the COP.

*Current proposed rule.* We propose to replace the current regulations contained in 50 CFR part 23. In this proposed rule, we retained most of the general information from the current 50 CFR part 23, but we reorganized the sections, added provisions from certain resolutions, and revised text under the Government's plain language initiative to make the regulations clearer and easier to use.

*Stricter national legislation.* Article XIV of the Treaty explicitly recognizes the rights of Parties to adopt stricter national measures to restrict or prohibit trade, taking, possession, or transport of any wildlife or plant species. Resolution Conf. 2.6 (Rev.) recommends that Parties make use of stricter national measures if they have determined "that an Appendix-II or -III species is being traded in a manner detrimental to the survival of that species" or is being "traded in contravention of the laws of any country involved in the transaction." Resolution Conf. 2.10 (Rev.) recommends that Parties experiencing significant problems in administering or enforcing CITES take stricter national measures to eliminate those problems. We have not incorporated elements of a number of resolutions into this proposal because our stricter national legislation, such as the ESA, the Marine Mammal Protection Act, and the Lacey Act, takes precedence.

*Other resolutions.* Some resolutions deal specifically with other countries and do not impact these regulations, such as Resolutions Conf. 6.5 (Rev.) and 8.2 (Rev.), which deal solely with the European Economic Community. A number of resolutions deal with general topics, including species conservation issues related to Houbara bustards, trade in sharks, and swiftlets. Although these are important resolutions, they are not regulatory in nature and, therefore, have not been addressed in this proposed rule.

### Comments and Information Received

On August 5, 1997, the Fish and Wildlife Service published a notice of intent to propose rulemaking (62 FR 42093). The notice requested public input for the revision of these regulations. We received eight letters of comment: seven from organizations (Animal Welfare Institute, Busch Gardens Tampa, Defenders of Wildlife, Humane Society of the United States, Safari Club International, TRAFFIC USA, and Wildlife Management Institute) and one from an individual.

Suggested changes reflected diverse viewpoints that, at times, supported opposite courses of action or interpretation. The comments fit into the following general categories.

*Product contents.* Two commenters stated that language should be added to 50 CFR part 23 so that products listing CITES species as ingredients must meet all CITES requirements. We propose to define the term "readily recognizable" to include any specimen that has accompanying documents, packaging, marks, or a label that indicates it contains CITES species.

*Definitions.* Most of the commenters wanted terms in resolutions defined. These included primarily commercial purposes, accompanying personal baggage, hybrid, commercial, bred in captivity, and artificially propagated. We propose to expand the current definitions section (see proposed § 23.5) to include those definitions with unique meanings under CITES.

*Non-detriment.* One commenter suggested that we include criteria for making non-detriment findings in the regulations, and two felt that the public should have the opportunity to comment on non-detriment findings. One commenter wanted regulations to enable us to question scientific non-detriment findings made by other countries for Appendix-II shipments and reject shipments if we find that the finding was inadequate.

In making a non-detriment finding, we use the best information available. We consult with other Federal agencies, State agencies, and experts to ensure that the information we use is current. We agree that the factors considered when making non-detriment findings should be included in the regulations and propose to include a section outlining those factors. In addition, we encourage people with information on a species or trade to send it to us at any time. As recommended in Resolutions Conf. 2.6 (Rev.) and 10.3, we currently request information on scientific findings from another Party when it appears appropriate. We propose to include the recommendations of these resolutions in the proposed section that outlines when a CITES document is valid (see proposed § 23.23).

*Personal effects exemption.* We received several comments concerning the personal effects exemption. Several requested that live wildlife or plants be excluded from this exemption, and some requested that limits be put on the number of items that could be considered as personal effects. We propose to revise the requirements for this exemption to exclude any live specimen, to implement Resolution Conf. 10.6, to include conditions that qualify what we would consider personal effects, and to provide guidelines for quantities rather than provide specific numbers.

*Quotas for Appendix-I species.* One commenter suggested that we expand our use of quotas for Appendix-I species, and another that we abide by the "plain" language of the Treaty rather than the resolutions concerning Appendix-I hunting trophies. The second commenter considered trophy hunting a primarily commercial industry and argued that the import of Appendix-I hunting trophies should not be allowed. The revisions we are proposing follow the relevant resolutions as well as stricter measures under U.S. laws. In general, we do not consider the import of hunting trophies by the person who killed the wildlife to be primarily commercial, even though commercial activity occurs in the exporting country as part of the hunt.

*Registered operations.* Two commenters wanted us to provide an opportunity for the public to comment on proposed registrations of captive-breeding facilities. We propose to publish notices in the **Federal Register** and invite public comment when we receive requests that U.S. operations be registered.

*Resolutions.* Most of the commenters discussed the inclusion of resolutions into the regulations. We received a wide range of comments, including: (1) Resolutions are confusing and contradictory, and not all of them should be incorporated; (2) resolutions are recommendations and should not be put into regulations; (3) we should only adopt resolutions that the United States supported at the COP's; (4) we should explain which resolutions are being incorporated and why; and (5) we should give a history of any resolution incorporated, including who proposed it and whether or not the United States supported it. We also received a number of comments on specific resolutions that commenters felt should be incorporated into the regulations. We propose to incorporate the resolutions that are regulatory in nature and consistent with U.S. interpretation of its obligations under CITES and under U.S. law. It is the goal of the Parties to adopt resolutions by consensus. The United States works hard at COP's to ensure that it can support the text of any resolution that is adopted.

We have reviewed all of the comments and addressed them wherever appropriate. Since there were conflicting recommendations, not all comments were incorporated into this proposal. Some comments were not relevant to 50 CFR part 23, but belong in other regulations and will be considered when those regulations are revised.

**Analysis of Proposed Changes to 50 CFR Parts 10, 13, and 17**

*Definitions in 50 CFR 10.12:* We propose to revise two definitions in 50 CFR 10.12 because the definitions provided in 50 CFR part 10 apply to all regulations in subchapter B if not separately defined in a specific part. We propose to expand the term "country of origin" to apply to plants as well as wildlife and to update the definition of the "United States" to reflect changes in areas under U.S. jurisdiction.

*General permit procedures in 50 CFR part 13:* We propose to reorganize 50 CFR 13.1 and to revise it to reflect that, under very limited circumstances, permits for non-commercial CITES shipments may be issued after the activity has occurred (see proposed § 23.43 on retrospective documents).

We also propose to revise 50 CFR 13.12 to change the general information required on an application to include an address within the United States. There have been a number of situations where a business in a foreign country has requested a CITES document from us for a shipment it owned that is being shipped out of the United States. If we issue the CITES document showing the exporter's foreign address rather than a U.S. address, it appears that we issued a CITES document for goods that were never in this country. The document can be issued to the owner of the items, but it must include either a U.S. address or the name and address of a U.S. agent. For commercial activities, the name and address of the commercial entity's agent in the United States must be included.

We propose to revise 50 CFR 13.22 that allows continuation of permitted activity during permit renewal. This general provision in 50 CFR part 13 does not apply to CITES documents since they are not considered valid for use upon expiration.

Permittees are required to maintain records. However, our authority to inspect records is limited to areas within the United States. Therefore, to ensure that we are able to carry out our responsibility to inspect records when necessary, we propose to revise 50 CFR 13.46 to require foreign permittees conducting commercial activities within the United States to maintain records in this country.

*Import exemption for threatened, Appendix-II wildlife (50 CFR 17.8):* We propose to add this new section to 50 CFR part 17. Section 9(c)(2) of the ESA sets out an exemption to the import

prohibition for threatened, Appendix-II wildlife when the taking and export meets the provisions of CITES and the import is not made in the course of a commercial activity. The exemption includes sport-hunted trophies that were personally taken from the wild or on a ranch for personal use. We propose to define "sport-hunted trophy" the same as in proposed § 23.5. Handicraft items or items manufactured from the trophy for use as clothing, curios, ornamentation, jewelry, or other utilitarian items would not be allowed.

The purchase in foreign commerce of an item of an ESA species is prohibited under the ESA. Section 9(c)(2) only exempts import; it does not exempt foreign commerce. Thus, the exemption would not include trophy items or other items purchased in curio stores, even if the intended use was personal. It would not apply to species that have a special rule in 50 CFR part 17, such as the argali in 50 CFR 17.40(j). It also would not apply to Appendix-II specimens annotated for a specific use, such as export of hunting trophies for non-commercial purposes, where other specimens of that species are included in Appendix I. The annotation of African elephant populations in Zimbabwe, Namibia, and Botswana is an example of this type of annotation.

**Analysis of Proposed Subpart A—Introduction**

We propose to expand this subpart to give a clearer picture of our responsibilities under CITES. The following is a section-by-section description of proposed changes to the current regulations.

*Parties:* The existing regulations (§ 23.4) include a list of countries that are Parties. We propose to omit this list. CITES has grown to include 151 Party countries. To keep this list up to date, we would need to continually revise the list of Parties when more countries join and as contact information for Parties changes. The list of Parties (including addresses and phone/fax numbers) is available on our website, from our fax retrieval system, or by mail or e-mail (see proposed § 23.7). As changes occur, these sources can be more quickly and easily updated than issuing a revised rule.

*Purposes (§ 23.1):* This section provides background information on the Treaty and explains that CITES is implemented in the United States under the ESA. It outlines the aim of CITES as stated in the preamble to the Treaty. The Parties acknowledge that wildlife and plants have aesthetic, scientific, cultural, recreational, and other non-consumptive values as well as economic importance.

*Scope (§ 23.2):* We have used a table to help people determine if these regulations apply to their proposed activities. The first question to be answered is whether the specimen is regulated by CITES. The reader is referred to the CITES appendices for the list of species. The second and third questions list the few CITES exemptions and refer the reader to the specific sections in the regulations for these exemptions. The fourth question lists the types of international trade regulated by CITES. The fifth question raises the issue of specimens that were illegally acquired or traded in contravention of CITES. The possession and domestic trade of legal specimens is not regulated by CITES unless the specimens were in international trade under specific conditions of a CITES document that still apply. The possession and domestic or international trade of illegally imported specimens, however, is prohibited. Further, any offspring of illegal specimens are also considered illegal.

*Other applicable regulations (§ 23.3):* These regulations detail the requirements for CITES species. However, many CITES species are covered by one or more other laws that have regulations in other parts of subchapter B. This section tells you where to look for information on other requirements.

*Appendices I, II, and III (§ 23.4):* Species are listed at one of three levels of protection, which have different requirements for permits and certificates (CITES documents). This section briefly defines Appendices I, II, and III.

*Definitions (§ 23.5):* We have added a number of definitions that relate to these regulations. In some cases, we could not clearly define a term in one or two sentences. We have provided longer definitions where necessary and/or referenced a section that contains more detailed provisions. Whenever possible we have defined terms using the wording of the Treaty and the resolutions.

We use some basic terms throughout these regulations. We define "import," "export," "re-export," "international trade," and "introduction from the sea" to reflect the way they are used by the Parties. These definitions refer to international movement, whether the purpose is commercial or non-commercial. "Import" and "export" are further defined in 50 CFR part 14. We have also defined the term "shipment" to eliminate confusion.

The text of the Treaty uses the terms "permits" (for import and export) and "certificates" (for re-export, exemptions, certificates of origin, and introduction from the sea) in referring to documents issued by CITES Management Authorities (a governmental agency officially designated by a Party or non-Party to implement CITES). However, some Parties refer to all CITES documents as "permits." For this reason, we have defined and use the term "CITES documents" to refer to all permits and certificates that are issued by a Management Authority. The definition of "permit" in this section is expanded from the definition in 50 CFR § 10.12 to include documents issued by any Management Authority, not just documents "issued by the Service."

The current regulations (§ 23.3) define the Management Authority in terms of Parties only and do not define Scientific Authority. We propose to define both and to include non-Parties in the definitions. If non-Parties wish to trade with Parties, they need to have entities officially designated as Management and Scientific Authorities to implement CITES and make the findings needed to grant CITES documents.

We used the definition of "specimen" given in the Treaty to clarify that, under this part, the term refers only to species listed under any of the CITES appendices.

Although the term "readily recognizable" is used in the Treaty (Article I), it is not specifically defined in the Treaty. However, Resolution Conf. 9.6 defines the term, and we have based our proposed definition on the text of the resolution.

*Management and Scientific Authorities (§ 23.6):* Under Article IX, each Party must designate a Management Authority and Scientific Authority. In the United States, these authorities have been delegated by the Secretary of the Interior and the Director of the Service to two different offices. We propose to add a section that summarizes the major roles of these authorities in the United States. The roles include a wide range of activities such as the issuance and denial of permits; scientific and management findings; monitoring of trade and trade impacts; communication with the Secretariat and other countries on scientific, administrative, and enforcement issues; and evaluation of species' status and trade. Another of our roles is to provide training and technical assistance to countries when possible (Resolution Conf. 3.4 on Technical Co-operation).

*Contact information (§ 23.7):* The table in this section outlines the type of information available from the Office of Management Authority, Office of

Scientific Authority, Office of Law Enforcement, APHIS, and the Secretariat and the different ways you can contact each office. In an effort to serve the public more efficiently, we have developed a website and a fax retrieval system that provide information, such as application forms for CITES documents, the names and addresses of Management and Scientific Authority offices in Party and non-Party countries, and the list of CITES species.

*Information collection (§ 23.8):* Each permit application form that we use must be reviewed and approved by the Office of Management and Budget for information collection under the Paperwork Reduction Act. These forms undergo review every 3 years. This process provides an opportunity for the public to provide input concerning the amount of time that it takes to complete the forms and prepare the information requested on the forms.

**Analysis of Proposed Subpart B—Prohibitions, Exemptions, and Requirements**

In this proposed subpart, we detail the activities that are prohibited, circumstances when exemptions may apply, and requirements for international movement of specimens. CITES uses a system of documents to ensure that trade in protected species is legal and does not threaten the survival of wildlife or plant species in the wild. The Treaty outlines standardized information that needs to be on these documents and, based on experience in inspecting shipments and enforcing CITES, the Parties have adopted a number of resolutions to refine the types of information that need to be on documents for Parties and non-Parties.

*Prohibitions (§ 23.11):* We propose minor changes to the prohibitions section in the current regulations. We listed "introduction from the sea" separately from "import" to clarify that CITES treats the activities differently. We added the phrase "engage in international trade" to the list of prohibitions to clarify that international trade in specimens in violation of these regulations by any person under U.S. jurisdiction is prohibited even if specimens are not actually imported into or exported from the United States.

*Personal and household effects (§ 23.12):* Article VII(3) provides for the import, export, or re-export of specimens that are personal or household effects without CITES documents under certain circumstances. We propose to clarify the current regulations (§ 23.13(d)) based on our experience in administering the Convention. Since many Parties do not recognize this exemption and require CITES documents for personal and household effects, we added new paragraphs explaining when CITES documents for personal and household effects may be required.

We also propose to exclude live wildlife and plants (including eggs and non-exempt seeds) and Appendix-I specimens from the exemption. The drafting history of CITES, as well as significant debate that occurred at COP 4 (the resulting resolution was consolidated into Resolution Conf. 10.6), clearly supports the view that this exemption applies only to nonliving items, such as clothing, jewelry, or household effects, that are being used by an individual for personal needs and are not for resale. In addition, few countries allow the import or export of Appendix-I specimens, including personal pets, without CITES documents, even for personal or household effects. In the United States, many Appendix-I species are listed under the ESA, which does not have an exemption for personal or household effects. Therefore, to assist in the enforcement of the Convention and to reduce the risk to Appendix-I species in the wild, we propose to be more restrictive and require CITES documents for all Appendix-I specimens, except for certain worked items made from African elephant ivory (see proposed § 23.12(g)).

The proposed rule clarifies that personal effects must be personally owned by the traveler for exclusively non-commercial purposes, be reasonably appropriate for the purpose of the trip or stay, and either be worn as clothing or accessories or part of accompanying personal baggage. We have encountered a number of instances, both in the United States as well as abroad, where individuals have had souvenirs or other items seized when these items were mailed or shipped to them. Although these could be considered items for personal use, the CITES exemption does not apply in these cases.

The proposal also clarifies that household effects must be personally owned items that are part of a non-commercial household move. We understand that sometimes it is not possible to ship household goods all at one time. Thus, we propose to allow a person to make as many shipments as needed to accomplish the move as long as they occur within 1 year of the person's change in residence. A shipment may contain only items acquired before the individual moves. It may not include items purchased, inherited, or otherwise acquired after the person has moved, even though the household goods have not yet been shipped.

At COP 10, the Parties recommended in Resolution Conf. 10.12 that the personal effects exemption for sturgeon caviar be limited to no more than 250 grams for each person. We propose to allow this exemption for caviar from species of Appendix-II sturgeon not listed under the ESA. The caviar must be strictly for personal use, and all other requirements of the personal effects exemption would apply. If a person is bringing in more than 250 grams of caviar, a CITES document is required that covers the entire amount, not just the amount over 250 grams. For example, if a person arrives in a country with 265 grams of sturgeon caviar without a CITES document for 265 grams, he or she will not be allowed to keep 250 grams as personal effects and simply surrender the excess amount. Since he or she did not have the required CITES document, the whole amount would be subject to seizure. All other parts and products of Appendix-II sturgeon species that are not listed under the ESA, such as a mounted fishing trophy, can be traded internationally as personal or household effects if they meet the conditions of the exemption.

The African Elephant Conservation Act is stricter U.S. legislation concerning the import or re-export of African elephant ivory. We propose to allow U.S. residents to travel out of and return to the United States with worked African elephant ivory as personal or household effects under certain conditions. Upon import, travelers would need to show records that they owned the ivory before leaving the United States. The exemption does not include items that are purchased while abroad or intended as gifts. We propose to adopt a definition of "raw ivory" similar to the one in the special rule concerning African elephants in 50 CFR 17.40(e) and Resolution Conf. 10.10. Individuals should contact the Management Authority in the country of their destination to find out about its requirements.

*Urine, feces, and synthetically derived DNA (§ 23.13):* We propose that the international trade of these types of specimens be exempt from CITES requirements. We consider samples of urine and feces to be wildlife by-products, rather than parts and products.

We differentiate between DNA extracted directly from blood or tissue samples and synthetically derived DNA. DNA extracted directly from blood and tissue samples must comply with all CITES permitting requirements. At COP

8, the Parties rejected Denmark's draft resolution to exempt blood and tissue samples to be used for DNA studies. The Parties agreed that such tissues should not be exempt from CITES controls. In 1994, we developed a policy that clarified that we consider synthetically derived DNA as exempt from CITES requirements since it contains no part of the original template. We believe that trade in synthetically derived DNA samples will not adversely affect the conservation of, or effective regulation of trade in, CITES species and their parts and derivatives. We are considering, however, whether we should expand this policy to exempt from CITES requirements DNA that has been extracted directly from tissue. We believe there is little commercial trade in this type of DNA and that exempting it from CITES requirements is of low conservation risk. We will be discussing this issue with other Parties and invite comment to assist us in making a final decision.

Since the Parties have not discussed whether urine, feces, or synthetically derived DNA are regulated by CITES, some countries may require CITES documents for these types of samples. If a country requires CITES documents, we will honor that country's interpretation and process an application.

Although we propose not to regulate these types of specimens under CITES, we believe it is important that researchers collect samples in a manner that does not harm the wildlife and that complies with the laws of the country where the collection occurs. Before collecting samples, researchers should contact the foreign Management Authority or other relevant wildlife or plant authorities to obtain information on collecting and export requirements.

*Diplomats and other customs-exempt persons (§ 23.14):* CITES Decision 10.34 urges the Parties to remind their diplomatic missions, their delegates on mission in foreign countries, and their troops serving under the flag of the United Nations that they are not exempt from the provisions of the Convention. We propose to add this provision to the regulations to better inform persons who receive duty-free and inspection waiver privileges under customs laws that CITES applies to their activities.

*Required CITES documents (§ 23.15–23.17):* Articles III, IV, and V lay out the types of documents that must accompany Appendix-I, -II, or -III specimens in international trade. Article VII recognizes some exemptions (such as pre-Convention, bred in captivity, and artificially propagated) that usually require specimens to be accompanied by CITES documents.

We propose to organize the information on what types of CITES documents are required (§ 23.12 and part of § 23.13 in the current regulations) into two decision trees and three tables.

Although the tables include Appendix-I specimens, we developed separate decision trees specifically to address the confusion expressed by the public on the export requirements for Appendix-I wildlife and plants. The decision trees and tables should make it easier for importers and exporters to understand what type of document is needed for a shipment. They refer the user to the section in these regulations that explains the application procedures, provisions, issuance criteria, and conditions. The foreign Management Authority should be contacted for information on how to meet its requirements.

*Reservations (§ 23.18):* Articles XV, XVI, and XXIII allow a Party to take a reservation on a species' listing. Generally, a reserving Party is treated as a non-Party with respect to trade in the reserved species. Some countries take a reservation because they choose not to recognize a listing and wish to continue trading in the species with other reserving Parties or non-Parties. To date, the United States has not taken a reservation. We believe that commercial trade in Appendix-I species by reserving Parties undermines the effectiveness of the Convention. A current list of species' reservations taken by Parties is available from us (see proposed § 23.7).

To clarify the requirements of the Treaty and to promote conservation, we propose to add this new section to emphasize what types of documents are required from Parties that have taken a reservation on a species. We are incorporating Resolution Conf. 4.25, which recommends that Parties who take a reservation when a species is transferred from Appendix II to Appendix I continue to treat the species as if listed in Appendix II, rather than not listed, when trading with other reserving Parties or non-Parties. This provision should promote the conservation of species listed in Appendix I and continue the reserving Party's obligations for the species.

*In-transit (§ 23.19):* Due to limited transportation routes and schedules, exporters and re-exporters may not always be able to ship specimens from one country directly to another without transhipping them through intermediary countries. Shipments of marine specimens harvested from international waters may need to move through waters under the jurisdiction of intermediary countries before reaching their port of introduction. Article VII(1) provides an exemption for specimens that are in-transit through a country while the specimens remain under customs control. We propose to define "in-transit shipment" as the immediate transhipment of a wildlife or plant through an intermediary country when the specimen remains under customs control.

In 1983, the COP recognized the potential for abuse of this provision, such as when importers claimed the exemption and delayed shipment of the transiting specimen in order to find a buyer in a foreign country. In 1989, the COP noted that if a valid CITES export document was required to accompany shipments through intermediary countries, Parties could discover illegal trade. The inspection of in-transit shipments was recommended in 1992. Resolution Conf. 9.7 consolidates the earlier resolutions concerning in-transit shipments (Resolutions Conf. 4.10, 7.4, and 8.8).

To prevent misuse of the in-transit exemption, we propose to revise § 23.13(b) to reflect the recommendations of the COP. In-transit shipments must be accompanied by a valid original CITES document issued by the Management Authority of the exporting or re-exporting country that designates the name of the importer in the country of final destination, a copy of a valid import permit for Appendix-I specimens where required, and transportation routing documents that show that the shipment has been consigned to the importer listed on the CITES documents. In-transit shipments must only stay in an intermediary country for the time necessary to transfer the specimens to the mode of transport used to continue to the final destination; must remain under customs control; and may not be sold, manipulated, or split. In addition to these requirements, shipments of specimens from non-Parties or reserving Parties must be accompanied by CITES documents.

We also propose to add language on CITES species protected under other U.S. regulations, such as migratory birds, bald and golden eagles, injurious wildlife, endangered or threatened species, or marine mammals. A shipment that contains specimens of species protected under these regulations that arrives in the United States before continuing on to another country is considered an import and must meet all import requirements.

In a separate **Federal Register** rulemaking proposal, we plan to

propose a revision of 50 CFR part 14 to clarify that shipments to duty-free shops, free ports, or similar zones, or shipments traveling under a customs carnet are considered imports and are not in-transit shipments.

*Required information on CITES documents (§ 23.20):* Article VI provides basic requirements for CITES documents for import, introduction from the sea, export, and re-export. At the first COP, the Parties recognized the importance of having standardized documents. They also recognized that the process of developing the standards would be a continuous one. Resolutions Conf. 2.5, 3.6, and 7.3 on permits and certificates were consolidated at COP 9 (Resolution Conf. 9.3) and reorganized at COP 10 into Resolution Conf. 10.2. This comprehensive resolution provides guidance on all aspects of CITES documents.

The use of standardized documents assists Parties in implementing CITES. Such standardization allows countries to verify that the specimen being shipped is the one listed on the document and helps identify false and invalid CITES documents. It facilitates the collection of information on the volume of trade in wildlife and plants, providing standard information for annual reports and allowing better monitoring of the levels of commercial trade on a species-specific basis. It also facilitates the clearance of shipments at ports of exit and entry by making all necessary information available to the inspector in a familiar format.

We propose this new section to provide detailed information on what all CITES documents must contain. It applies not only to documents issued by the United States, but also to ones issued by Parties and non-Parties. Most of the information is presented in a series of tables, organized alphabetically by key phrase, code, or type of document. This section should help those shipping and receiving specimens to understand what information is needed on CITES documents.

Most of the requirements are taken directly from Resolution Conf. 10.2 and need no further explanation. However, we discuss some here to clarify issues raised in the past.

*Dates:* We have had many questions about the "valid until date." We propose to clarify that the validity of a document expires at midnight (local time at the place of presentation) on the date indicated on the document. All activities, including, but not limited to, transport and presentation for import must be completed before that time.

*Description of the specimen:* The use of standard descriptions for a specimen is needed to do accurate global trade analyses, particularly for purposes of evaluating the impact of trade on the conservation of the species in the wild. We propose to require that descriptions be in English, Spanish, or French (the three working languages of the Treaty) on documents from Parties to assist inspectors in determining if documents match the accompanying shipment. We have experienced difficulties in processing CITES documents written in languages other than English, Spanish, or French, and clearance of some shipments has been delayed. Limiting descriptions to the three languages of the Treaty should help prevent or reduce such delays, while assisting in enforcement efforts.

*Purpose of transaction:* Resolution Conf. 10.2 lists standard transaction codes to be used on documents. These are the same codes used by Parties in their CITES annual reports. Although in some cases more than one code may apply, Parties must assign one code that best describes the overall activity. For example, a specimen may be exported for breeding purposes, but the wildlife was sold and the ultimate use is commercial. In this case, the permit will be marked as "T" for commercial, rather than "B" for breeding in captivity. The Management Authority is responsible for reviewing all information provided in an application and then determining which category best describes the transaction or is most appropriate.

*Quantity:* Many shipments have been presented for clearance with quantities identified as "one box" or "one case." These quantities give little clear information about how much wildlife or plants are actually in the shipment. A box may contain one wildlife or plant specimen, or it may contain hundreds. The unit of measurement should be appropriate for the type of specimen and agree with the preferred or alternative unit to be used in the CITES annual report, if possible. The unit should be in metric measurement. If weight is given, it is important to provide the weight of the specimen, not the packing material. Some items are more accurately reported by volume, such as timber, which should be shown as cubic meters. To effectively monitor trade, we need records on quantities that actually reflect the volume of that trade.

*Scientific name:* We propose that the scientific name of the species on the CITES document must include the subspecies when that information is needed to determine the level of protection of the specimen under CITES and/or the ESA. For example, under CITES, three subspecies of cougar (*Puma* (=*Felis*) *concolor coryi, P. c. costaricensis*, and *P. c. cougar*) are included in Appendix I, while all other subspecies are included in Appendix II. Under the ESA, the Louisiana black bear (*Ursus americanus luteolus*) is listed as a threatened species; while under CITES, the entire species is included in Appendix II with no subspecies included in Appendix I.

The document must contain the scientific name of the species that is of the standard nomenclature as it appears in the CITES appendices or in the references adopted by the COP. CITES has adopted nomenclature references for most, but not all, species. Resolution Conf. 10.22 provides a list of these references for mammals, birds, reptiles, amphibians, and plants. Taxonomy evolves, and different references may use different scientific names for the same organism. Having one standard that we can follow is important to ensure that documents are issued for the correct species. Any changes of adopted nomenclature references would be by a resolution of the COP. The most current list of references is available from us or the Secretariat's website.

Resolution Conf. 10.2 recommends three situations when a higher taxon name (such as genus or family) could be used on a CITES document. We propose to incorporate the recommendations of the resolution as adopted. We would accept a CITES document that uses a higher taxon name only when the COP has agreed to its use, the issuing Party can show it is well justified and has communicated it to the Secretariat, or when the item is a pre-Convention manufactured product containing a specimen that cannot be identified to the species' level.

*Signature:* We propose to implement the CITES requirement that the signatures of individuals authorized to sign CITES documents for a Management Authority must be on file with the Secretariat. This proposed requirement should help us determine if a document is valid and avoid delays in the clearance of shipments.

The proposed table in paragraph (e) provides details on additional information that is required for specific types of documents, such as an annex or certificate of origin. Some documents require additional information because of the type of transaction, the specimen involved, or special provisions, such as quotas.

CITES allows phytosanitary certificates to be used in lieu of CITES certificates for Appendix-II and -III artificially propagated plants only and under specific circumstances. Proposed paragraph (f) lists information that is

required on these certificates. At this time, the United States does not use phytosanitary certificates in lieu of CITES certificates.

*Source of the specimen (§ 23.21):* The source of a specimen is needed by Management and Scientific Authorities to make the findings required to issue CITES documents and is an important component in analyzing data and monitoring trade. We are providing a list of standardized codes that Management Authorities use on documents. Each code is defined as to the source of the specimen under CITES. The Management Authority will determine the appropriate code based on information provided in an application.

We often receive questions about the difference between the source codes "C" and "F." Wildlife bred in captivity can be given the source code "C" only if the specimen meets the requirements adopted by the COP as "bred in captivity" (see proposed § 23.53). If it is an Appendix-I specimen, it also must have been bred for non-commercial purposes (see proposed § 23.55) to qualify for an exemption certificate (see proposed § 23.33). If a captive-born specimen does not meet these criteria, it is assigned the source code "F" and requires CITES documents under Article III, IV, or V. For an Appendix-I specimen, both import and export permits are required, and the import may not be for primarily commercial purposes.

*Additional information required on non-Party documents (§ 23.22):* Article X provides that a Party may accept documentation from a non-Party if it is issued by a competent authority and substantially conforms with the requirements of CITES. Because the Parties were concerned that the trade of CITES specimens through non-Parties might jeopardize the effectiveness of the Convention, Resolution Conf. 9.5 was adopted. This resolution recommends that Parties accept documents from non-Parties only if they contain certain basic information, including certifications that they have made the findings required under Articles III, IV, and V.

Because of the need for standardized information concerning CITES species from all sources, to ensure that appropriate protection is given to CITES species, and to reduce the risk of detrimental or illegal trade from non-Parties, we propose to be stricter and incorporate the requirements of not only this resolution, but also Resolution Conf. 10.2 on permits and certificates. This proposed policy means that for us to consider a non-Party CITES document valid, it would essentially need to contain the same information as a Party document. This proposed section would replace § 23.14 in the current regulations.

*Valid CITES documents (§ 23.23):* Article VIII outlines measures that Parties should take to enforce the provisions of the Convention. Resolutions Conf. 2.6 (Rev.), 3.9 (Rev.), 6.4 (Rev.), 7.5, 9.8 (Rev.), 9.9, and 10.2 further detail these measures. For CITES to be effective, shipments must be accompanied by valid CITES documents issued by the appropriate authority and must meet all conditions of those documents. Each Party must have border controls for the inspection and validation of CITES documents. To ensure that specimens traded in violation of CITES are not re-entered into illegal trade, Parties are to consider seizure of specimens, rather than refusal of entry of the shipment. Parties are encouraged to cooperate with other Parties, the Secretariat, and international enforcement organizations to further effective enforcement of the Treaty and provide protection to CITES species.

We propose to include this new section in the regulations to clarify what requirements must be met before CITES documents are considered valid. We present this information in a table arranged alphabetically by key phrase to assist importers and exporters. Most of the requirements are self-explanatory; however, we feel it would be helpful to discuss specific ones.

*Management Authority and Scientific Authority:* We propose to incorporate the recommendation of Resolutions Conf. 3.9 (Rev.), 9.5, and 10.3 that documents should be accepted only from Parties and non-Parties that have designated a Management Authority and Scientific Authority and have provided that information to the Secretariat. If countries have not designated Management and Scientific Authorities, we cannot be sure that the required findings have been made. Without these findings, CITES documents are not valid.

*Ranched:* A number of species have been transferred from Appendix I to Appendix II based on ranching of the species. Resolution Conf. 10.18 recommends that Parties not allow trade in such species from a non-Party or a Party that has taken a reservation on the species. We propose to incorporate this recommendation. Trade in this type of specimen cannot be properly monitored when specimens are traded through non-Parties and Parties that hold reservations and do not require CITES documents.

*Shipment contents:* The proposed language reflects current practice. CITES documents must be obtained before the shipment occurs. Documents are specific to the specimens identified on the document, and the shipper may not substitute a new specimen to replace the one approved. The inspecting official may inspect the shipment and verify that the contents match the specimens described on the document. The official will validate or certify on the CITES document the actual quantities that are being shipped. The quantity may be less than the quantity shown on the document at the time it was issued, but cannot be more than that quantity.

*Quotas:* The COP approves export quotas for some species. For other species, countries determine their own export quotas. The Secretariat notifies the Parties of these quotas each year. We propose to require that the quantity exported may not exceed the quota.

We outline in paragraph (d) of this section the situations when we may request verification of documents from the Secretariat or the Management Authority of any country involved in the shipment. It includes instances when we have reasonable grounds to believe a document is not valid or authentic.

In paragraph (e), we propose to issue an information bulletin if we determine that a country is not effectively implementing CITES. The bulletin would indicate how we will handle shipments involving that country or a species from that country. We may issue such a bulletin if we receive reliable information from the COP, Standing Committee, Secretariat, or other credible source that there are reasonable grounds to believe that documents from a country are not valid. We will consider all available information, including whether the trade is detrimental to the species, the trade is in violation of any foreign law, or if the applicable findings are not being made when CITES documents are issued by a country. We will no longer publish separate notices of information in the **Federal Register**, but will use a number of more timely ways to provide this information to the public. These could include posting the bulletin on our website, mailing it to all import/export license holders and recipients of our CITES updates, and providing it to the media through press releases.

*Presentation of CITES documents at the port (§ 23.24):* Inspecting officials at the ports of exit and entry must verify that shipments are accompanied by valid CITES documents and take enforcement action when shipments do not comply with CITES. To help

importers and exporters, we propose this new section, which provides a table that outlines the type of U.S. and foreign documents that they must present for validation or certification or surrender when importing, introducing from the sea, exporting, or re-exporting CITES species. The general requirements for import and export are given in 50 CFR part 14 for wildlife and 7 CFR part 355 for plants.

**Analysis of Proposed Subpart C—Application Procedures, Issuance Criteria, and Conditions**

This proposed subpart expands the current § 23.15(c) through (f) to provide more detailed information on application procedures, decisions on applications, and records needed to apply for U.S. documents. The general requirements of this proposed subpart apply to both U.S. and foreign CITES documents.

*Application procedures (§ 23.25):* This proposed section gives a general overview of the application process for U.S. CITES documents. A number of CITES species are protected under other laws or treaties that we implement. If appropriate, we will accept one application if the applicant provides the information needed under all relevant regulations. Applicants should review the issuance criteria for all relevant regulations when preparing an application to ensure they understand the kinds of information we need. This review should help the applicant submit a more complete application and prevent delays in processing.

When we review an application, we decide whether the requirements of an exemption document under Article VII can be met or whether we need to process the application under the standard CITES requirements of Articles III, IV, or V. For example, a person may apply to export a specimen that was born in captivity. We will first look to see if the specimen meets the bred-in-captivity exemption. If the specimen does not meet the issuance criteria for this exemption, we will consider the application under the standard CITES requirements for an export permit.

*Decisions on applications (§ 23.26):* This new proposed section explains the procedures we follow in making a decision on an application. When an application is complete, we review the information under all applicable issuance criteria, including 50 CFR part 13, regulations under other wildlife and plant laws, and the CITES regulations. We may consult with outside experts, scientists, and staff within the Federal Government, State and tribal agencies, the Secretariat, or foreign Management or Scientific Authorities before we make our findings. The burden of proof in establishing that the issuance criteria are met lies with the applicant. We can issue a CITES document only if we are satisfied that all criteria specific to the proposed activity are met.

*Records (§ 23.27):* When applying for a U.S. CITES document, an applicant must provide documents on the origin of the specimens and/or parental or founder stock. This information must be sufficient for us to make the required findings for the type of document requested. This proposed section summarizes the types of general records that potential applicants should consider keeping for specimens that have been in or may enter international trade. Documents should be maintained as long as a specimen is owned by a potential applicant and should be transferred to any subsequent owner.

*Requirements for standard CITES documents (§§ 23.28–23.31):* The basic requirements for U.S. and foreign CITES documents are the same as in the current regulations (§ 23.15). We have designed U.S. application forms for specific activities and protection levels to make applications easier to complete and to clarify what information is needed. The information provided in paragraph (b) of each of these proposed sections is designed to help an applicant determine which application form to request. The forms can be obtained from our website and fax retrieval system or requested by phone or e-mail. We propose to omit the application information from the regulations since we have made application forms for specific activities available to the public.

The information in paragraph (c) or (d) of each of these proposed sections lists the issuance criteria for each type of document and references the appropriate section for factors we consider in making a decision on certain criteria. The issuance criteria are based on the provisions of the Convention (Articles III, IV, V, and XIV) and resolutions, including Resolution Conf. 10.2 on permits and certificates.

Under Article III, before a Management Authority can issue an export permit for an Appendix-I specimen, it must be satisfied that an import permit has been granted for the specimen. However, some countries have stricter national legislation that requires the export permit be issued before they can issue an import permit. Resolutions Conf. 10.14 and 10.15 recommend that this requirement may be satisfied when the Management Authority of the importing country has provided written assurance that an import permit will be granted. Thus, we propose in § 23.29(d)(1) that the issuance criteria can be met either by showing that the import permit has been granted or by providing confirmation from the Management Authority of the importing country that the import permit will be granted. We propose the same issuance criteria for the re-export of live specimens as required by Article III(4)(b). For re-export of dead specimens, the Management Authority does not need to see the import permit before issuing a re-export certificate, but the shipment still must be accompanied by an import permit.

As discussed earlier, to comply with Resolution Conf. 10.2, CITES documents must show the scientific name of the species using the standard nomenclature in the CITES appendices or the references adopted by the COP. Although current regulations (§ 23.15(c)(1)) require that applications include scientific names, they do not mandate use of the nomenclature in the CITES appendices and references. We propose to add this requirement as an issuance criterion to conform with Resolution Conf. 10.2, expedite review of permit applications, and ensure that documents are issued for the correct species.

Because Appendix-I wildlife and plants can be imported only when the intended use is not for primarily commercial purposes, we propose to condition all import permits that the specimen can be imported and subsequently used only for the permitted purpose. If the importer wants to transfer the specimen where it would be used for a different purpose, he or she would need to obtain permission from us. The importer would not be allowed to use or transfer the specimen for commercial purposes once in the United States.

To comply with the intent of Resolution Conf. 9.10 (Rev.), we propose to add an issuance criterion for re-export of confiscated Appendix-II specimens in § 23.29(d)(2). It would require us, before issuing a re-export certificate, to find that the proposed re-export of confiscated specimens would not be detrimental to the survival of the species. Regulations in 50 CFR 12.37 allow for the sale of confiscated Appendix-II and -III wildlife and plants. When specimens have been confiscated and subsequently sold or transferred, we consider them legally acquired. However, because the specimens were imported without the proper CITES documents, we need to make the biological finding (that normally would have been made prior to export) before issuing a re-export certificate.

Current regulations (§ 23.12(b)(2)) provide only general information about certificates of origin. We are proposing a new section (§ 23.30) to provide specific information on the application form and issuance criteria for certificates of origin. These documents allow the export of specimens of species listed in Appendix III when the specimens originate in a non-listing country.

Article XIV(4) and (5) provides a limited exemption for introduction from the sea of Appendix-II species when a country is a party to another treaty, convention, or international agreement that protects the listed marine species and was in force on July 1, 1975 (the entry into force of CITES). Based on this article, we propose in § 23.31(d) to apply this exemption only to specimens that were harvested by a ship registered in the country of introduction.

*Certificates for artificially propagated plants (§ 23.32):* The Parties recognize that a different approach for plants is sometimes necessary because of the unique aspects of plant biology and trade. This proposed section implements Article VII(5) and expands on the current regulations in § 23.15(d)(8). It allows us to issue a certificate for artificially propagated plants for specimens of Appendix-I species and hybrids of annotated Appendix-I species propagated for non-commercial purposes and for hybrids of unannotated Appendix-I species and specimens of Appendix-II or -III species or hybrids propagated for any purpose. It is important to note that there are no annotated Appendix-I plant species at this time, so all hybrids of Appendix-I species that qualify as artificially propagated are eligible for this exemption certificate. (See proposed § 23.39 to export Appendix-I plants propagated for commercial purposes under Article VII(4).) We propose to adopt the conditions of Resolution Conf. 9.18 (Rev.) to decide whether plants qualify as artificially propagated (see proposed § 23.54). This resolution means that not all "cultivated" (see proposed § 23.5) plants grown under controlled conditions qualify as artificially propagated, and the shipper may need a CITES export permit rather than a certificate for artificially propagated plants (see proposed § 23.29). An Appendix-I plant that qualifies for this exemption does not need a CITES import permit.

*Bred-in-captivity certificates (§ 23.33):* Bred-in-captivity wildlife is also covered under Article VII(4) and (5). In adopting Resolutions Conf. 8.15 and 10.16, the Parties recognized the need for a standard interpretation of these two paragraphs. The Parties have expressed concern that trade in specimens falsely declared as bred in captivity is contrary to the Convention and may be detrimental to the survival of wild populations. (See proposed § 23.38 concerning the registration of operations that breed Appendix-I wildlife for commercial purposes to meet the provisions of Article VII(4).) This proposed section implements Article VII(5) and expands the current regulations in § 23.15(d)(8). It allows us to issue a bred-in-captivity certificate for specimens of Appendix-I species bred for non-commercial purposes and specimens of Appendix-II or -III species bred for any purpose. We propose to adopt the conditions of Resolution Conf. 10.16 for bred in captivity (see proposed § 23.53). Wildlife that is born in captivity, but does not qualify under this criterion, can be shipped only with a CITES export permit (see proposed § 23.29). Appendix-I wildlife that qualifies for a bred-in-captivity certificate does not need a CITES import permit.

*Hybrids.* At COP 2, the Parties recognized that it is difficult to distinguish between purebred and hybrid specimens for trade identification purposes. If hybrids were not subject to CITES controls, persons wishing to avoid the controls of CITES could falsely claim that the specimens in question were hybrids. Resolution Conf. 2.13 recommended that hybrids, even though not specifically listed in any of the appendices, are subject to CITES if one or both parents are listed. The Parties agreed at COP 10 to treat plant hybrids differently from wildlife hybrids. Resolution Conf. 2.13 was repealed, and provisions for hybrids were placed in other resolutions.

*Plant hybrids (§ 23.34):* Resolution Conf. 9.18 (Rev.) on trade in plants was revised to add a section on trade in plant hybrids. We are proposing a new section in the regulations to implement this resolution. Trade in plant hybrids must meet the requirements of CITES unless the Parties agree to exempt an Appendix-II and -III hybrid by a specific annotation to the appendices. At COP 10 a number of artificially propagated hybrids of some "supermarket" cacti were granted this general exemption. Plant hybrids are subject to CITES controls if one or both parents are in the appendices. If the hybrid includes two CITES species in its lineage, it is listed in the more restrictive appendix of either parent, with Appendix I being the most restrictive. Most plant hybrids are the product of artificial propagation using well-established nursery stocks that have been artificially propagated for many years. Thus, the Parties agreed to treat artificially propagated hybrids of one or more unannotated Appendix-I species as if listed in Appendix II and allow them to be traded with a certificate for artificially propagated plants.

*Wildlife hybrids (§ 23.35):* In Resolution Conf. 10.17, the Parties agreed that wildlife hybrids with one or more specimens of Appendix-I or -II species in their recent lineage are controlled under CITES as if they were "genetically pure" specimens of the listed species. The term "recent lineage" was discussed during the drafting of this resolution, but a definition was not included in the final version. The term was again discussed at the 14th meeting of the Animals Committee in May 1998. Following the Animals Committee meeting, CITES Notification to the Parties No. 1998/28 advised the Parties that the Animals Committee had agreed that the term "recent lineage" would refer to the previous four generations of a species' ancestry. Because of listing in the CITES appendices of higher taxa, such as falcons or parrots, few commonly hybridized species of wildlife would qualify for this exemption. However, specimens of the domesticated bengal cat could qualify for this exemption, depending on when a wild leopard cat (*Prionailurus* (=*Felis*) *bengalensis*) was in a specimen's ancestry.

To confirm that a hybrid is exempt from CITES controls, we propose to require that the specimen be accompanied by a letter issued by the Management Authority of the country of export, or a CITES document if required by the exporting or re-exporting country. The letter would need to certify that the wildlife hybrid contains no CITES specimens in its recent lineage. Since not all countries will be aware of this U.S. requirement, a person who plans to import an exempt wildlife hybrid needs to contact the Management Authority of the exporting or re-exporting country to get the appropriate letter or CITES document before making a shipment. For export or re-export from the United States, once a person provides information to verify the hybrid's lineage and scientific name, we could issue a letter.

*Personally owned live wildlife (§ 23.36):* Article VII(3) provides that, in some circumstances, the provisions of Articles III, IV, and V do not apply to specimens that are personal or household effects. As discussed previously, Parties have generally excluded live wildlife from this exception. However, in Resolution Conf. 10.20, the Parties recommend that the

term "personal and household effects" include personally owned, live wildlife that is registered by the Management Authority in the country where the owner usually resides. To monitor frequent international movement and reduce administrative and technical problems, the Parties agreed to use a certificate of ownership under specific conditions. We propose to implement this resolution, which will simplify the procedure for people who frequently travel internationally with companion animals or wildlife used in non-commercial competitions, such as falconry. The certificate of ownership would act like a passport, but could be issued only after agreement between the Management Authorities of the Parties concerned. The owner must accompany the specimen when crossing international borders, and the wildlife cannot be sold or otherwise transferred when traveling abroad.

*Pre-Convention specimen (§ 23.37):* Under Article VII(2), a specimen acquired before the provisions of CITES applied to the species involved is exempt from Articles III, IV, and V when the Management Authority issues a pre-Convention certificate. Resolution Conf. 5.11 provides guidance on determining pre-Convention dates. This proposed section expands the current regulations in § 23.15(d)(8) and clarifies when a pre-Convention certificate may be issued.

The pre-Convention date for a specimen may vary depending on when a Party joined CITES or on a country's stricter national legislation. Although Parties may differ on the date they consider as pre-Convention for a species, a pre-Convention certificate is valid only if both importing and exporting countries consider the specimen to be pre-Convention. The Parties agreed to put the date the species was acquired on the face of the certificate so the importing country could confirm that the specimen qualifies as pre-Convention for them. Since the United States became a Party to CITES when it first came into force, the pre-Convention date for the United States is always the date a species was first listed in any of the appendices. Thus, we do not consider pre-Convention certificates issued for a specimen acquired after that date as valid for entry into the United States.

We propose that the applicant provide information that the wildlife or plant (including parts or products) was removed from the wild or held in captivity or a controlled environment before the first date that CITES applied to the specimen before we can issue a pre-Convention certificate. A certificate is also needed to export items that are antiques (over 100 years old).

We are also proposing a voluntary registration of any inventory or stockpile of live specimens or parts and products when species are initially listed on the CITES appendices. We would especially encourage businesses that have an inventory or stockpile in their possession to register it with us before the effective date of a listing. Our experience with certain listings, such as sturgeon and Brazilian rosewood, has shown that it becomes difficult to assess the pre-Convention status of stock over time. It would be advantageous to the exporter to register inventory, since registration would allow us to process applications for pre-Convention certificates faster. Commercial export or re-export of pre-Convention stock that had not been registered would require other convincing evidence that the specimens are pre-Convention.

*Registration of Appendix-I commercial breeding operations (§ 23.38):* Article VII(4) provides that specimens of Appendix-I species bred in captivity for commercial purposes will be regarded as species included in Appendix II. The Parties recognize the potential abuse inherent in this exemption since it is difficult for inspectors to distinguish between specimens bred in captivity and those removed from the wild. They also recognize that captive breeding for commercial and conservation purposes is increasing. The registration of operations that breed Appendix-I species for commercial purposes has been the subject of a series of resolutions (Conf. 4.15, 5.21, and 7.10), which were repealed with the adoption of Resolution Conf. 8.15.

We propose to implement this resolution, which provides guidelines in registering and monitoring these operations. We are proposing application procedures to allow an operation to register each Appendix-I species at the operation. The issuance criteria would include whether the species qualifies as bred in captivity (see proposed § 23.53, which is based on Resolution Conf. 10.16) and whether the founder stock has been legally acquired.

Instead of publishing a detailed notice in the **Federal Register** describing each application received, we propose to publish a notice of receipt that identifies the registration request and invites public comment. This action would allow for a more streamlined process and still give the public an opportunity to comment.

Wildlife from a registered breeding operation can be exported with an Appendix-II export permit under Article IV. Since no import permit is required, specimens can be used for primarily commercial purposes. To date, only one U.S. operation has chosen to complete the process of registering. We encourage breeders to register their operations if they plan to trade in Appendix-I specimens internationally. Currently most commercial breeders in the United States are applying for permits under Article III, rather than registering and taking advantage of this exemption. Article III, however, allows trade only when the import is not for primarily commercial purposes. The use of Article III is becoming more limited since an increasing number of Parties allow import of Appendix-I wildlife that was bred for commercial purposes only if the specimen originated in an operation registered with the Secretariat.

Debate continues on the best way to implement this exemption. Resolution Conf. 8.15 was discussed at COP 10, where it was referred to the Animals Committee to examine the effectiveness of and need for the existing registration system. This issue will also be discussed at COP 11, and any changes to the registration system that result from that discussion will be considered for incorporation into the regulations.

*Exporting Appendix-I plants commercially (§ 23.39):* The Parties recognize that the artificial propagation of plants is essentially different from captive breeding of wildlife and requires a different approach. Artificial propagation of native plants can provide an economic alternative to traditional agriculture in countries of origin. By making specimens readily available, artificial propagation may have a positive effect on the conservation of wild populations by reducing pressure from collection. Article VII(4) provides that specimens of Appendix-I plants artificially propagated for commercial purposes will be regarded as species included in Appendix II.

At COP 9, the Parties adopted Resolution Conf. 9.19, which recommends guidelines on the registration of nurseries that export artificially propagated Appendix-I plants. At the same time, the Parties recognized that nurseries that are not registered could still export artificially propagated Appendix-I plants using the standard procedures.

To date we have not registered any nurseries. We continue to implement this provision of the Convention by reviewing a nursery's facilities during the application process for CITES documents and issuing export permits. We recognize that there may be some advantages to developing a registration process. However, due to the

complexity of this issue, we propose to not incorporate Resolution Conf. 9.19 into the regulations, but to reserve § 23.39(e) for nursery registration. We anticipate seeking public comment on this issue in a separate **Federal Register** notice at a later date.

*Registered scientific institutions (§ 23.40):* Article VII(6) provides an exemption from strict CITES controls for preserved, dried, or embedded museum specimens, herbarium specimens, and live plant material that carry an approved label. The exemption covers the non-commercial loan, donation, or exchange of these items between scientists or scientific institutions registered by each country's Management Authority. Resolution Conf. 1.4 recommends that Parties encourage their natural history museums and herbaria to inventory their holdings of rare and endangered species. This recommendation was to allow researchers to efficiently borrow specimens for study and reduce any potential adverse impacts that museum needs for research specimens can have on small populations of rare wildlife and plants. In Resolution Conf. 2.14, the Parties recommended guidelines for implementing this exemption.

This proposed section would combine §§ 23.13(g), 23.15(d)(8)(iii), and 23.15(e)(3) in the current regulations and adopt the guidelines of the resolutions. A scientist who wishes to use this exemption must be affiliated with a registered scientific institution. We would broaden the exemption to include frozen museum specimens. Specimens could be used for scientific research, but not for decoration, trophies, or commercial purposes. We are clarifying that preserved, frozen, dried, or embedded biological samples, including blood and tissue samples, that would be partially destroyed during analysis are eligible for this exemption. A portion of each sample would need to be maintained at the museum for future scientific reference. Samples that would be completely destroyed during analysis would not be eligible for this exemption and would require the applicable CITES documents. Since not all countries recognize these types of samples as being eligible to be traded under this exemption, registered scientific institutions should check with the foreign CITES Management Authority before shipping such specimens under a scientific exchange certificate.

We also propose that all specimens for which the exemption is being claimed must have been legally acquired and under the control of a registered scientific institution. The specimens must have been permanently recorded by the sending registered institution before being shipped for exchange, donation, or loan for scientific research purposes. The Parties were concerned about possible abuse of the exemption by scientists who might collect specimens and directly export them without the permission of a registered institution in the exporting country. Thus, the registration criteria require the orderly handling and permanent recording of specimens, including the maintenance of permanent records for loans and transfers of specimens to other institutions. In addition, scientists may still need permits under other parts of this subchapter.

*Traveling live-animal exhibitions (§ 23.41):* Article VII(7) allows for the international movement of pre-Convention or bred-in-captivity specimens that are part of a traveling zoo, circus, menagerie, or other traveling animal exhibition without CITES certificates. The exhibition must register the wildlife with its Management Authority, and the wildlife must be transported and cared for humanely. Parties have agreed, however, to require exhibitions to be accompanied by CITES certificates to verify such registration. To address technical problems and to prevent potential fraud, the Parties adopted Resolution Conf. 8.16. We propose to incorporate the provisions of this resolution into these regulations. The term "traveling live-animal exhibition" is proposed in § 23.4 to include live wildlife used for display or entertainment where the exhibition is temporarily moving internationally. Typically, exhibitions are circuses and performing acts, but trainers that travel across borders with wildlife that perform in movies or television programs could also apply for this exemption. An exhibition certificate would be treated like a passport. The exhibitor would retain the original certificate, which must be validated at each border crossing.

Exhibitors would need to obtain a pre-Convention or bred-in-captivity certificate for each specimen. This exemption does not apply to specimens that do not qualify for one of these exemptions. Since exhibitors currently may have a number of specimens on one document, we propose phasing in this requirement and allowing existing documents to be used until they expire. At that time, the exhibitor would need to obtain a separate certificate for each specimen. This provision facilitates the identification of each specimen in the exhibition and validation of documents by border officials.

We are also proposing a number of conditions to ensure these certificates are used only for temporary cross-border movement by the exhibitor who owns the specimen. For example, a document may not be transferred to another exhibitor, and specimens cannot be sold or otherwise transferred when traveling abroad. Specimens could only be transported internationally for display or entertainment purposes, not for breeding or other purposes.

Many specimens covered by this exemption are Appendix-I specimens. We propose under the general conditions (see proposed § 23.45(a)(7)) to require that all live Appendix-I specimens be uniquely marked. To ensure that each specimen exported or imported is the specimen indicated on the certificate, we recommend that Appendix-II and -III specimens also be clearly identified and, if appropriate, uniquely marked. Tattoos, microchips, tags, or other marks may be used.

*Replacement of documents (§ 23.42):* Resolution Conf. 10.2 provides guidelines for replacing documents that are lost, damaged, stolen, or accidentally destroyed. In this section, we propose to incorporate the provisions of this resolution and clarify when replacement documents may be available and how to obtain one. One of the proposed issuance criteria requires a full and reasonable explanation of the circumstances surrounding the lost, damaged, stolen, or accidentally destroyed CITES document. We will also check to see if the exporter has requested a replacement document before and review the circumstances surrounding any previous request.

When a replacement document is requested after a commercial shipment has left the United States, we will consult with the Management Authority of the importing country. When we issue a replacement document for a shipment that has already left the country, we will not validate it because we cannot compare the actual shipment contents to the document. It is important that we issue replacement documents only when the circumstances warrant doing so and that issuance of such documents prevents the use of the original CITES document for a different shipment.

*Retrospective documents (§ 23.43):* A retrospective document authorizes an export or re-export after that activity has occurred, but before the shipment is cleared for import.

Resolution Conf. 10.2 recommends that a Party neither issue nor accept retrospective documents, but recognizes limited exceptions. We propose to amend 50 CFR 13.1 to add this new

section to allow for the issuance of retrospective permits for specimens based on this resolution. Retrospective documents would be issued only after both the exporting (or re-exporting) and importing countries have thoroughly investigated the situation and agreed to the issuance of the document. The investigation would need to reveal that the exporter, re-exporter, or importer is not responsible for any irregularities and that the shipment is otherwise in compliance with CITES and the national laws of the involved countries.

This proposed section details the situations when we would consider issuing a retrospective document and gives the issuance criteria. Based on the intent of the original resolution (Resolution Conf. 6.6, which is now part of Resolution Conf. 10.2), we propose to generally limit issuance of retrospective documents for non-commercial items. Eligible individuals would include travelers hand-carrying Appendix-II or -III items with them as personal effects or persons who can demonstrate that they were misinformed by an employee of the Service, APHIS (for plants), or a Management Authority of the foreign country that should have known the CITES requirements. We also are proposing to include live Appendix-II or -III wildlife and plants that are outside the proposed CITES personal effects exemption. Such shipments would need to be limited to no more than two specimens, be for personal use, and accompany the person as personal baggage. Retrospective documents would be allowed for Appendix-I wildlife and plants, including live specimens, parts, and products, only when they are personal pre-Convention specimens. We would issue a retrospective document only if the Management Authority of the importing country agrees to accept it.

*Length of document validity (§ 23.44):* Article VI(2) states that an export permit can be valid only for a period of 6 months from the date of issue. The Convention does not specify validity time frames for other documents. Resolution Conf. 10.2 specifies validity time frames for re-export certificates (6 months), import permits (12 months), and certificates of origin (12 months). We are also proposing that an introduction-from-the-sea certificate be valid for a maximum of 12 months since the activity is similar to import. Resolutions Conf. 8.16 and 10.20 recommend that certificates for traveling live-animal exhibitions and certificates of ownership be valid for no more than 3 years.

We propose to expand the current regulations (§ 23.15(f)) to incorporate the recommended validity times endorsed in the resolutions. All CITES documents would specify the length of validity. All import and introduction-from-the-sea activities must be completed by midnight (local time at the point of import) of the expiration date indicated on the document. The only situation where an extension of the validity date is authorized is for certain timber species under limited circumstances (see proposed § 23.64).

*CITES document conditions (§ 23.45):* Section 23.15(e) would be replaced by this proposed section, which addresses the topic of CITES document conditions. General conditions apply to all CITES documents, standard conditions apply to specific types of documents, and special conditions may be placed on a CITES document when the activity with a species warrants it. All CITES document conditions must be met for a shipment to be lawful.

Resolution Conf. 8.13 recommends that Parties, where possible and appropriate, adopt the use of microchip transponders for the secure identification of live Appendix-I wildlife. The Parties, however, have identified a number of technical issues that need to be addressed and have asked the Animals Committee to monitor this issue. The Animals Committee has drafted a resolution to be considered at COP 11. Thus, we are not proposing that all Appendix-I wildlife be marked with microchips. We propose that all live Appendix-I wildlife be securely marked or uniquely identified to ensure that the wildlife presented with a document is actually the specimen for which the document was issued.

**Analysis of Proposed Subpart D—Factors We Consider in Making Certain Findings**

*Legal acquisition (§ 23.50):* One of the issuance criteria in the current regulations at § 23.15(d)(2) is whether the wildlife or plant was acquired lawfully. Under Articles III, IV, and V, we must make a legal acquisition finding before granting export permits and re-export certificates for Appendix-I, -II, and -III wildlife and plants. The Parties have also agreed through a number of resolutions to make this finding before granting certain exemption documents under Article VII. These include Resolutions Conf. 2.14 (scientific exchange), Conf. 10.16 and 8.15 (bred-in-captivity wildlife), Conf. 9.18 (Rev.) and 9.19 (artificially propagated plants), and Conf. 10.20 (personally owned live wildlife).

The determination of legal acquisition includes an assessment of whether the specimen and its founder stock were traded internationally in accordance with CITES and whether they were acquired consistent with national laws for the protection of wildlife and plants. In the United States, these laws include all applicable local, State, Federal, tribal, and foreign laws.

We make the legal acquisition finding on a case-by-case basis considering all available information. Since the applicant is responsible for providing sufficient information to show that the specimen was legally acquired, potential applicants need to keep good records (see proposed § 23.27). General statements that there is no available information or that there is no evidence that the specimen or its founder stock is illegal will not be sufficient for us to make the legal acquisition finding. In addition to the information provided by the applicant, we consider other relevant trade information, scientific literature, and advice of experts. We may consult with foreign Management Authorities, the CITES Secretariat, other U.S. governmental agencies, and non-governmental experts.

We propose to add this section to the regulations to clarify the factors we consider in making a legal acquisition finding. This section should help individuals provide complete information at the time they apply for a CITES document and better understand the kind of records they should be keeping.

Persons who conduct commercial activities involving protected wildlife and plants are held to a high standard in understanding and complying with the requirements of the laws that affect their activities. We expect these persons to provide clear records that each specimen was legally acquired, including a record of the history of ownership, copies of cleared CITES documents, and records of parental or founder stock for specimens bred or propagated in the United States. We apply a lower information requirement, in most instances, for persons who acquired a specimen in the United States and want to travel internationally with it for personal, non-commercial use. We believe this system is appropriate for the limited number of specimens that would be involved, for the low conservation risk posed, and because most specimens are purchased from retailers who, as businesses, are expected to be prepared to comply with the laws. We will, however, request additional information when non-commercial trade in a particular species raises greater conservation concern.

For the export of specimens that are bred or propagated in captivity in the

United States, we consider whether the parental or founder stock was legally acquired. Resolutions Conf. 9.18 (Rev.) and 10.16 require that a Management Authority find that the breeding or propagation stock was established in accordance with CITES and national laws. We propose to define founder stock to mean the original breeding or propagation stock that produced the subsequent generations of captive specimens. This stock includes specimens that are pre-Convention, were previously imported into the United States, or were removed from the wild if the species is native to the United States. Standardized records, such as the International Species Inventory System (ISIS), provide this kind of information. Founder stock may differ from the parental stock, which is the immediate parents of a specimen.

We propose that applicants provide information on parental stock for species of lower conservation risk and information on founder stock for species of higher risk. For some species, we will look at a number of factors to decide if we need founder stock information. These factors include whether the species is uncommon in captivity in the United States, the species has not been documented to breed or propagate readily in captivity, illegal trade in the species is significant, few specimens have been legally imported into the United States, and the range country does not allow commercial export of the species.

We also propose to allow the export or re-export of donated

CITES specimens of unknown origin by public institutions on a case-by-case basis under limited circumstances. In some instances, public institutions, primarily zoos, aquariums, and botanical gardens, receive unsolicited donations of wildlife and plants. These donations may be brought in by individuals or left anonymously on the doorstep and may include specimens found sick or injured by well-meaning citizens, pets or plants that are no longer wanted, or specimens that owners fear they may possess in violation of the law. When this occurs, the institution may not be able to obtain reliable information concerning the origin of the specimen. Justifying issuance of a permit under CITES is extremely difficult when there are no data on the origin of the specimen, especially when the donor remains anonymous. We do not wish to open a loophole for laundering specimens that were illegally obtained by the donor or by someone else in the chain of ownership. However, the underlying purpose of CITES is to protect, preserve, and benefit the listed species. We believe that the provisions proposed will assist in the suitable placement of specimens without leading to illegal or unjustified take of wildlife and plants from the wild.

*Non-detriment findings (§ 23.51):* Under Articles III and IV and Resolution Conf. 10.3, the Scientific Authority must find that a proposed export or introduction from the sea of Appendix-I or -II specimens is not detrimental to the survival of the species and that a proposed import of an Appendix-I species is not for purposes that would be detrimental to the survival of the species. Although many activities could be considered detrimental or potentially detrimental, we would consider the following, among other things, to be detrimental: non-sustainable use and proposed activities that would pose a net harm to the status of the species in the wild. For Appendix-I species, we would also consider, among other things, whether the proposed activity would stimulate further trade in the species. We are proposing to use the definition of "sustainable use" as provided in 50 CFR part 15 under the Wild Bird Conservation Act. The wording has been slightly edited to be consistent with language used in this part.

Since a permit grants permission to an institution or individual to engage in an otherwise prohibited activity, the applicant must provide sufficient information to satisfy us that the proposed activity is not detrimental to the species concerned. If we can make a finding of non-detriment, and if all other issuance criteria are met, we can issue the relevant CITES document. If, however, the requested activity does not meet the criteria, we will either make a finding of detriment or be unable to determine that the activity is non-detrimental. In either case, we will not issue a CITES document.

Although we are proposing no changes in this proposed rule in how we make a non-detriment finding, we are proposing to list the factors used to determine if the requested import or export of CITES specimens would be non-detrimental to the survival of the species. These factors would be used for all specimens in a single shipment or in multiple shipments if the anticipated international trade is over a given period. Approval on a shipment-by-shipment or multiple-shipment basis is at our discretion. We have the option under CITES to issue our required scientific findings on a shipment-by-shipment basis (a different finding for each individual shipment) or management or conservation program basis (one finding to cover all shipments from a particular program).

Some Appendix-II species in the United States are listed under Article II(2)(b) because they or their parts and products (such as furs) are similar in appearance to other Appendix-I or -II species. Examples of such species include the river otter (*Lontra canadensis*), bobcat (*Lynx rufus*), and white sturgeon (*Acipenser transmontanus*). These species are listed to ensure that trade in the species to which they are similar is brought under control. Our non-detriment finding for these species takes this issue into consideration. We are obligated, however, to ensure that a species does not decline to the point that it qualifies to be listed in Appendix II under Article II(2)(a). Many of these species are included in State or tribal programs that manage the species and control removal of specimens from the wild. We receive information from the States and Tribes every year that allows us to monitor exports and be assured that exports are not detrimental to the species.

The status of the species in the wild and the degree of risk to the species posed by the proposed activity determine the level of scrutiny we give an application in making a finding. We give greater scrutiny, require more detailed information, and make our decision in a more precautionary manner for proposed activities that pose a greater risk to a species in the wild. In addition, we consider whether a living specimen being imported or exported would have an adverse impact if it was intentionally or accidently released into the wild. With the adverse impacts that invasive species are having both in the United States and in other countries, it is important that activities conducted under CITES do not further complicate the situation. We consider the cumulative risk, recognizing each aspect of international trade has a continuum of risk associated with it. For example, the export of an Appendix-II, non-native specimen bred in captivity would be less of a conservation risk than the import of an Appendix-I, wild-caught specimen that is being heavily impacted by illegal trade. Likewise, the export of plants grown from exempt seed or flasked seedlings or tissue culture would present a lower conservation risk than plants grown from non-exempt seeds. In all cases, if the species is subject to pressure from high levels of commercial trade or subject to significant illegal trade, the degree of scrutiny increases.

The Parties have agreed that export quotas for the non-commercial use of Appendix-I species can be proposed by

a range country and agreed to by the COP. This situation often pertains to trophy hunting. When making a non-detriment finding for the import of a specimen of a species where a quota has been established, we consider the biological and management factors used as a basis of the export quota. If necessary, we will contact the Scientific and Management Authorities of the exporting country for additional information to complete our finding. We clarify in this proposed section that even when a quota has been established, we will review any application for the import of a specimen of that species and make the required non-detriment finding as required under Article III.

*Primarily commercial purposes (§ 23.52):* Under Article III, import permits or introduction-from-the-sea certificates for Appendix-I species can be issued only when a Management Authority is satisfied that the specimen is not to be used for primarily commercial purposes. Resolution Conf. 5.10 provides details on the interpretation of "primarily commercial purposes," including examples. We consider this resolution to be an accurate interpretation of the Treaty. The United States supports its provisions and has been using the principles and examples set out in the resolution in evaluating applications for import documents for Appendix-I species. We propose to incorporate the provisions of this resolution in these regulations.

For an import or introduction of an Appendix-I specimen to qualify, the non-commercial aspects of the import or introduction must clearly predominate. While the nature of the transaction between the owner and the proposed recipient may be commercial, it is the intended use of the specimen that must not be for primarily commercial purposes. When we determine whether or not an import or introduction is primarily commercial, we must take into consideration all factors involved. Each application is considered on a case-by-case basis. The applicant must provide sufficient information for us to make a finding.

We propose that all applicants provide basic information on intended use, planned public outreach that may increase revenues, planned disposition of offspring, and an assessment of the reasons the proposed activities are not primarily commercial. Under certain circumstances, the commercial nature of the organization or the public appeal of a species would make it more difficult for us to make this finding. Thus, we propose that for-profit applicants would need to provide more detailed information. We would also ask for more detailed information from any applicant when we find that the proposed activity is with a species that is uncommon in captivity in the United States, has high public appeal, or is capable of generating substantial revenues. The additional information would include a statement from a licensed, independent certified public accountant that the applicant's internal accounting system is sufficient to account for and track funds generated by the proposed activities. We are also proposing that all net profits generated in the United States must be used for the conservation of the Appendix-I species in a range country. It is possible that an import or introduction, although superficially commercial, may qualify based on the overwhelming conservation benefits that will be provided through assistance to range countries, research, or other considerations that result from the import or introduction.

*Bred in captivity (§ 23.53):* Article VII, paragraphs 4 and 5, provides exemptions for wildlife bred in captivity. To establish a standard interpretation of the term "bred in captivity," the Parties adopted Resolution Conf. 2.12, which was revised at COP 10. After much discussion among the Parties, Resolution Conf. 2.12 (Rev.) was repealed and Resolution Conf. 10.16 adopted. We propose to incorporate this resolution into this new section.

In making this finding, we consider the conditions under which an individual specimen is bred and whether the breeding stock was established legally and in a non-detrimental manner and whether it is maintained with limited introduction of wild specimens. We also consider whether the breeding stock has consistently produced offspring of at least second generation (F2) or whether the U.S. captive population is managed in a way that shows it is capable of reliably producing F2 offspring. If a facility has sufficient breeding stock to meet all of the criteria, including consistently producing F2 offspring, then the wildlife at that facility can be considered bred in captivity. Few facilities, however, have sufficient stock to meet the criteria. Alternatively, if the majority of captive specimens of a species within the United States meets the criteria, then specimens bred by any U.S. facility that uses standard management procedures could meet the criteria for bred in captivity. Thus, we have determined that a number of species commonly held in the United States (such as lions, tigers, brown eared pheasants, and Burmese pythons) qualify as bred in captivity.

*Artificially propagated (§ 23.54):* Article VII, paragraphs 4 and 5, provides exemptions for artificially propagated plants. The Parties recognize the unique aspects of plant biology and trade. Modern developments in plant propagation, such as the use of flasked orchid seedlings, have allowed large quantities of artificially propagated plants to be produced. Resolution Conf. 9.18 (Rev.) addresses ways to reduce the paperwork involved to move plants internationally while maintaining protection of wild plants.

This proposed section expands the current § 23.15(d)(8) and incorporates from that resolution the criteria for artificially propagated. In making this finding, we consider the controlled conditions under which a plant is propagated. We also consider whether the cultivated parental stock was established legally and in a non-detrimental manner and whether it is managed in a way to ensure its long-term maintenance. For example, we would not consider plants grown from seeds, cuttings, or other propagules collected from wild plants and grown out under controlled conditions as artificially propagated. Hybrid plants must meet the same criteria. Grafted plants can also be considered artificially propagated if both the rootstock and the graft have been artificially propagated according to criteria in this section.

Some plant materials of CITES species are exempt from CITES requirements (*see* proposed § 23.88(c)). However, plants grown from exempt plant materials are regulated under CITES and are not automatically considered artificially propagated. Since these plant materials can be imported into the United States without any CITES documents, we propose to usually require less information on the origin of the exempt plant material than we would require on the origin of non-exempt plant material. Importers of exempt plant material should keep records that document who sold them the material. In general, we will consider plants grown from flasked seedlings or tissue culture as artificially propagated unless we have reasonable grounds to believe the plants were grown from wild propagules. However, it is more difficult to know if plants grown from exempt seeds meet the criteria for artificially propagated plants. If importers want to ensure plants they have grown from exempt seeds will qualify for a CITES certificate for artificially propagated plants, rather than an export permit, they may want to keep records that document the

cultivated origin of imported exempt seeds. We understand that limited information may be available on the origin of exempt seeds. Therefore, we would typically require less information when determining whether plants grown from exempt seed would be considered artificially propagated. We would consider whether the species is commonly artificially propagated and whether substantial numbers of seeds are collected from the wild.

*Bred or propagated for commercial purposes (§ 23.55):* The Treaty provides in VII(4) that specimens of Appendix–I species bred in captivity or artificially propagated for commercial purposes would be deemed to be in Appendix II. It also provides in VII(5) that specimens that are bred in captivity or artificially propagated may be granted an exemption document. To decide whether to process an application under Article VII(4) or Article VII(5), we must decide whether an Appendix-I specimen was bred or propagated for commercial purposes. We propose this new section to clarify what we consider in making this finding. We would use the definition of "commercial" (*see* proposed § 23.5) provided in Resolution Conf. 5.10. We would assess the purpose of the breeding and propagation activities, considering a variety of information, including the reproductive biology of the species and all aspects of the breeding or propagation program. Although generally we have found non-profit institutions are breeding specimens for non-commercial purposes, there have been instances when we have found they were breeding for commercial purposes. This issue of what is considered "bred for commercial purposes" has been discussed at some length within the Animals Committee and will be discussed at COP 11 in April of 2000.

*Suitably equipped to house and care (§ 23.56):* Under Article III(3)(b) and (5)(b), the Scientific Authority must determine that an individual or institution has facilities that are suitably equipped to house and care for an Appendix-I specimen being imported or introduced from the sea. These requirements are to ensure that rare specimens will have a reasonable chance for survival.

We propose this section to clarify the factors we consider in making this finding. All individuals or institutions that will be receiving specimens must be identified in an application, and their facilities approved by us, including individuals or institutions that are likely to receive specimens within 1 year of the specimen's arrival in the country. We will consider all possible uses that could be reasonably expected to occur and the housing and care requirements for those uses. For example, if the applicant is importing specimens for display and there was the possibility of offspring being produced, we would consider whether the applicant could provide adequate housing and care for the offspring.

We will base our finding on the best available information on the requirements of the species and information provided by the applicant. We will give closer scrutiny to applications for species with more demanding biological and husbandry or horticultural needs. For a captive-born, commonly held species, like a scarlet macaw, we would be less critical due to the ease with which such a species can be held in captivity and the availability of veterinary care and commercially prepared diets. For a species, such as the Chinese giant salamander, that is not commonly held in captivity and has very restrictive husbandry and housing requirements, we would require a greater level of detail regarding the facilities where the specimen would be held.

We have provided in this proposed section the general and specific factors that we consider in making this finding. We consider whether a facility supplies adequate space, appropriate living conditions, adequate veterinarian or horticultural care, sufficient security, and properly trained staff to care for the specimen. In addition, we consider if appropriate housing and care are available for any potential offspring.

An applicant may apply for a CITES document to import or introduce from the sea a specimen before the facility is completed or the staff to maintain the specimen has been identified or properly trained. In such a case, we can review the information, including construction plans or intended staffing, and make the finding based on that information. We would, however, condition the finding that the import could not occur until the facility has been completed or the staff hired and/or trained and approved by us.

**Analysis of Proposed Subpart E—International Trade in Certain Specimens**

This proposed subpart deals with situations that are either covered by specific resolutions or by procedures we have developed to deal with certain heavily traded native CITES species. We need information that allows us to make the required findings before we can issue CITES documents for export or re-export. Where this information is available from a State or tribal management program and is sufficient to allow us to make our required scientific and management findings, we have made export findings on a State or tribal basis. These findings certify that the programs contain the elements needed to allow us to make the findings required for export under CITES. For Tribes, we can make findings only for Tribes that have full wildlife management authority over the resource. In the past, we have published findings in the **Federal Register** for export of American ginseng, bobcat, river otter, Alaska lynx, Alaska gray wolf, Alaska brown bear, and American alligator. States and Tribes for which findings have been made are requested to submit an annual report to us containing certain information on the previous year's harvest. In some cases, such as for many furbearer species, our findings have been made on a multi-year basis. Annual reports from States allow us to remain assured that our original findings remain valid. In these sections, we are proposing to include the information we request from the States and Tribes on an annual basis. The non-detriment findings we make are based on § 23.51.

Initially, making findings on a State or tribal basis was a new way to address large-scale export of certain native species. If the legal acquisition and non-detriment findings were made on a permit-by-permit basis, it would present a tremendous workload for exporters as well as for our offices. It is standard practice for many Parties to issue findings on an annual basis for species with biologically based management programs. Although the State-and Tribe-based findings are not a rulemaking, we published them in the **Federal Register** as a convenient way of notifying the public. Since there are now more timely ways to provide this information to the public, we propose to discontinue publication of the findings in the **Federal Register.** A list of States and Tribes that have findings made on a State or tribal basis and copies of the findings would either be posted on our website or be available on request. Any requests to make findings for new States or Tribes will continue to be evaluated on a case-by-case basis.

*American ginseng (§ 23.60):* This proposed section is a revision of § 23.51. Most American ginseng is collected or grown for export and is exported in a much larger volume than any other native CITES plant species. Ginseng that has been collected under State or tribal requirements is certified as legally harvested. The State or tribal certificates accompany the ginseng until the time of

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export to document the origin of the material.

Under CITES, ginseng is considered either artificially propagated or wild. However, the industry has a number of other designations. In order to obtain more accurate information from exporters, we propose to include a chart in the regulations that describes different types of ginseng, such as wild simulated and cultivated woodsgrown, within the broad categories of wild and artificially propagated.

*Native furbearers (§ 23.61):* This proposed section consolidates and revises §§ 23.52–23.56. The bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear are included in Appendix II under the provisions of Article II(2)(b) because their parts and products are difficult to distinguish from certain similar CITES Appendix–I and –II species. Approved States and Tribes have procedures for placement of CITES export tags on skins ( including furs and pelts) that were legally taken. The presence of a tag on a skin provides us with reasonable assurance that the skin was obtained legally and provides a basis for our legal acquisition finding. We review the information we receive annually from each State or Tribe to determine if there is a need to reevaluate our State-or Tribe-based finding or if the species needs closer monitoring.

*Crocodilians (including American alligator) (§ 23.62):* This proposed section revises § 23.57 and expands it to incorporate Resolution Conf. 9.22 concerning tagging of all crocodilians. The proposed revision extends the tagging requirements to all crocodilian skins that are being imported, exported, or re-exported. This action would ensure that our requirements for trade in all crocodilians are consistent with the resolution and the international practices of all countries exporting native crocodilians. This standardization of requirements will assist with inspection efforts, reduce risk to wild crocodilian populations, and standardize procedures for importers and exporters. The requirements of the special rules in 50 CFR part 17 concerning the American alligator and certain threatened crocodilians must be met in addition to the requirements of this section. The current requirements for export of American alligator skins remain the same.

*Sturgeon caviar (§ 23.63):* At COP 10, all sturgeon that were not already included in the CITES appendices were added to Appendix II. Resolution Conf. 10.12 provides recommendations to the Parties to assist in the conservation of these vulnerable species. One specific recommendation is that Parties "monitor the storage, processing and re-packaging of sturgeon specimens in Customs free zones and free ports, and for airline and cruise line catering." Under the ESA, a shipment is considered an import as soon as it is in an area under the jurisdiction of the United States, whether or not it is considered an import under Customs law.

Caviar is regularly served to passengers on airplanes and cruise ships. Although the caviar is exported from the United States, the intent is not to import it into another country, but to serve it for consumption during the trip. We propose to provide specific guidelines to the travel industry on what quantities can be loaded on board and when a CITES document is required. Industry officials will need to carefully determine the amount likely to be consumed on an airplane or cruise ship since any unconsumed caviar that is on board at the foreign destination may be considered an import, even if left on board, and would require CITES documents.

According to industry sources, caviar is perishable and has a normal shelf life of 1 year. Since all sturgeon have been included in the CITES appendices since 1997, we no longer accept pre-Convention certificates for caviar. This practice is consistent with the CITES Notification No. 1999/23, which recommended that no permits or certificates declaring caviar as pre-Convention should be accepted after April 1, 1999. In order to be imported legally into the United States, shipments of sturgeon caviar must be accompanied by the appropriate export or re-export document (see our policy in the December 6, 1999, **Federal Register** (64 FR 68113)) .

*Timber (§ 23.64):* The Parties recognize that trade in timber may require some variations on standard CITES procedures.

Resolution Conf. 10.13 discusses the implementation of the Convention for timber species. Resolution 10.2 incorporates specific recommendations for timber species listed in Appendix II or III that have an annotation regulating only the trade in logs, sawn wood, and veneer sheets. It allows that under specific circumstances the period of validity for CITES documents for timber may be extended for a maximum of 6 months. It also includes provisions for changing the ultimate consignee for a shipment after export or re-export. We propose to incorporate these recommendations into this section.

*Personal sport-hunted trophies (§ 23.65):* Some countries allow limited take of Appendix-I species as part of an overall management plan. The export of Appendix-I hunting trophies requires both export and import permits under Article III (see proposed § 23.28). This practice is reaffirmed in Resolution Conf. 2.11(Rev.). Because imports of Appendix-I species cannot be for primarily commercial purposes, Resolutions Conf. 10.14 and 10.15 recommend that trophies of Appendix-I species must be acquired by the owner in the country of export, are being imported as personal items, and will not be sold in the country of import.

We propose to incorporate these requirements into 50 CFR part 23 and clarify what is considered a trophy. In a number of instances, large numbers of fully manufactured products, such as briefcases, handbags, and golf bags, have been imported as part of a "hunting trophy." Manufactured items of Appendix-II and -III species may be imported with the appropriate CITES export or re-export documents, which specifically describe the individual items, rather than including them under a general description of "trophy." It is unlikely that the requirements for import of Appendix-I species could be met for such items. We also would require Appendix-I specimens not be used or transferred for a commercial purpose for those trophies imported for personal use. We would include the specific conditions for leopard hunting trophies as provided in Resolution Conf. 10.14. These requirements would be in addition to any requirements in 50 CFR part 17. A hunter would not be allowed to import more than two leopard trophies in one calendar year, and any skin would need to meet tagging requirements.

**Analysis of Proposed Subpart F—Disposal of Confiscated Live Wildlife and Plants**

*Confiscated live specimens (§ 23.70):* Article VIII(4) and (5) outlines the requirements for disposal of confiscated live specimens, and the Parties have adopted Resolution Conf. 10.7 which sets out detailed guidance. For the United States, the general procedures for disposal of forfeited or abandoned property are in 50 CFR part 12. These procedures apply to CITES as well as the other laws that we enforce. We are not proposing to revise 50 CFR part 12, but to add a section to these regulations on the process we use in making a decision to dispose of confiscated live CITES wildlife and plants that have been forfeited or abandoned to our Division of Law Enforcement or APHIS.

Sometimes the country of export would like to have a shipment of confiscated live specimens returned. Although under Article VIII this is one of the options a country should consider, we are not always able to select this option or return specimens quickly. For example, when criminal charges are brought in connection with confiscated specimens, litigation may require us to hold the specimens as evidence for an extended period of time and the court may decide how we are to dispose of them.

Many factors must be considered when live specimens are seized. The most important of these factors is the welfare of the wildlife or plants. Resolution Conf. 10.7 details a number of options for disposal as well as the difficulties associated with each option. We propose to consult this recommended guidance as necessary in making a decision. For wildlife, the options discussed include maintenance in captivity, return to the wild, and euthanasia. For plants, the resolution discusses maintenance in cultivation, return to the wild, and destruction.

In many countries, including the United States, some confiscated specimens have been donated to zoos, aquariums, or botanical gardens. However, this option is not always open when large numbers of common species are seized. The zoological community recognizes that placing animals of low conservation value in limited cage space may benefit those individuals, but may detract from conservation efforts as a whole. As a result, they are setting conservation priorities for cage space. Botanical gardens are in a similar situation.

It is rare that confiscated specimens can or should be returned to the wild. Before return to the wild should be considered, a country must decide if that action would make a significant contribution to the conservation of the species or might be harmful to the conservation of species in the wild. Specimens held in captivity and/or transported may be exposed to a variety of diseases and parasites. Reintroduction of these specimens to the wild could result in introduction of diseases with potentially catastrophic effects. It is also unlikely that the exact point of collection could be determined. Therefore, the specimens could not be returned to their home areas. Introduction into other areas may result in genetic pollution and adverse impacts on the species native to that area. Sometimes range countries request return of confiscated wildlife or plants for educational or related purposes. The least popular solution to disposal of confiscated wildlife, euthanasia, may often be the simplest and most humane option available.

*Participation in the Plant Rescue Center Program (§ 23.71):* We propose to add this section on how a public institution can participate in our Plant Rescue Center Program. Whenever a shipment of plants arrives in the United States in violation of CITES and the plants are confiscated or seized, the plants are transferred to a participating center. We have enlisted more than 60 public institutions, such as non-profit botanical gardens, arboretums, zoological parks, and research institutions in the United States, to cooperate with us in this program.

**Analysis of Proposed Subpart G—CITES Administration**

*Roles of the Secretariat and the committees (§ 23.75):* This proposed section adds to the information in subpart D of the current regulations. It outlines the responsibilities of the Secretariat, which is established under Article XII, and the committees, which were established under resolutions (Resolution Conf. 9.1 (Rev.), which repeals Resolutions Conf. 6.1 and 7.1). The committees provide administrative and technical support to both the Parties and the Secretariat. The resolution also outlines how regional representatives are selected to serve on the various committees and their responsibilities.

*Conference of the Parties (COP) (§ 23.76):* We propose to add basic information on what a COP entails, how COP locations and dates are determined, and who can attend the meetings.

*Notice of a COP (§ 23.77):* This proposed section revises §§ 23.31–23.39 to clarify how we provide information to the public concerning a COP and how the public may participate in preparations for it. We propose to continue publishing notices in the **Federal Register** as soon as information is available concerning the location, dates, agenda, proposed amendments to the appendices, proposed resolutions for a COP, and public meetings. Since each notice will provide current information on participation in the public meetings, including the correct address for submission of any written comments and a telephone number for further information, we propose not to include the address and telephone number in 50 CFR part 23.

*Development of U.S. negotiating positions (§ 23.78):* We propose to reorganize the information in §§ 23.33, 23.35, and 23.38 to show the process we follow in developing our negotiating positions, including how the public can participate in this process. We will continue to publish proposals that the United States is considering and our proposed negotiating positions on agenda items and proposals. We will also continue to hold public meetings to discuss these issues. We propose to no longer publish our final negotiating positions in the **Federal Register**, but rather to make them available in more timely ways, such as posting them on our website and mailing them to people upon request. Some issues are extremely complex and require extensive coordination, and our final negotiating positions may not be available prior to the COP. We also propose to delete § 23.39 of the current regulations and no longer publish an official report after each COP. Information on the results of a COP is available from a number of sources, such as our website or CITES Update, much sooner than an official report could be published and printed. We propose to delete § 23.36 as a separate section since this information is incorporated into other newly proposed sections.

**Analysis of Proposed Subpart H—List of Species**

*Listing criteria for Appendix I or II (§ 23.85):* CITES lists species in one of three levels of protection depending on the degree of threat to the survival of the species and the protection in international trade believed to be necessary by the Parties (see proposed § 23.4). In 1992 at COP 8, the Parties directed the Standing Committee to undertake, with the assistance of the Secretariat, a revision of the criteria for amending the appendices in Resolution Conf. 1.1 (referred to as the Berne criteria). This review, carried out in consultation with the Parties, was based on initial technical work done by IUCN in collaboration with species experts. A joint meeting of the Plants and Animals Committees addressed all aspects of this review, in association with the Standing Committee, held in Brussels in September 1993.

From this review, the Parties adopted Resolution Conf. 9.24, which establishes specific criteria for listing species. This proposed section basically adopts this resolution as it is written. When considering any proposal to amend Appendix I or II, the Parties should apply a precautionary approach so that scientific uncertainty should not be used as a reason for failing to act in the best interest of the conservation of the species. We propose to define the term "precautionary measures" in proposed § 23.5.

Under Article II, Appendix II should include species that could be threatened with extinction if trade is not monitored

(Article II(2)(a)) and species where trade should be monitored because the species resembles another listed species and could be misidentified while in trade (Article II(2)(b)). In both cases, we are concerned that international trade does not adversely affect the listed species and that it does not develop to a level that is detrimental to the species in the wild. We are concerned that trade does not get to a level where the species would meet the criteria for listing in Appendix I and that the species is maintained at a level consistent with its role in its ecosystem.

To monitor the effectiveness of protection offered by the Convention, range countries in cooperation with the Animals Committee or the Plants Committee are to regularly review the status of species included in Appendices I and II. The Parties will fully review the listing criteria in Resolution Conf. 9.24 before COP 12 (approximately 2002) with regard to the scientific validity of the criteria, definitions, notes, and guidelines and their applicability to different groups of organisms.

*Listing criteria for Appendix III (§ 23.86)*: Article II(3) sets out that Appendix III includes native species that a Party lists to obtain international cooperation in controlling trade. Under Article XVI, a party can include a species in Appendix III by submitting information to the Secretariat. No vote of the Parties is required. The criteria to list a species in Appendix III includes that the species must be native to the listing country, be protected under that country's regulations to prevent or restrict exploitation and control trade, and be in international trade, with an indication that cooperation of other Parties would help to control illegal trade. The listing Party can request the species be removed from Appendix III at any time. By listing a species in Appendix III, trade data and other relevant information can be gathered to assist policy makers in a country determine whether the species should be proposed for inclusion in Appendix II, removed from Appendix III, or retained in Appendix III.

This proposed section incorporates Resolution Conf. 9.25 by outlining the criteria that a country must address to list a species in Appendix III. In addition, it gives a general description of the process we will use to decide if a species native to the United States should be listed in Appendix III. At this time, we have not listed any species in Appendix III, but we proposed several species in the January 26, 2000, **Federal Register** (65 FR 4217).

*Organization of the list and exemptions (§§ 23.87–23.88)*: These proposed sections are a revision and reorganization of current § 23.23. In addition, we propose to discontinue publication of the unofficial list in the CFR, but continue to provide information concerning exempt wildlife or plants and their parts or products in proposed § 23.88. The official CITES list is the one maintained by the Secretariat. It is based on decisions by the Parties and is available from the Secretariat's website or from our office. Although the unofficial list would no longer be in the CFR, we would continue to maintain it because it is in a more detailed and easier to use format. This list would be available on our website and as a printed publication.

## Required Determinations

*Regulatory Planning and Review*

This proposed rule has been reviewed by OMB under Executive Order 12866.

a. This proposed rule will not have an annual economic effect of $100 million or negatively affect a part of the economy, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. The purpose of this proposed rule is to clarify and update the regulations that carry out CITES. It is designed to assist individuals and businesses who import and export specimens of CITES species by clearly outlining the requirements that the United States, as well as the other 145 Parties, must follow under the Treaty. As of October 15, 1999, our records showed 5,368 currently valid CITES documents that we have issued (the period of validity for a document ranges from 6 months to 4 years).

The majority of our trading partners for wildlife and plants are CITES Parties. Because most of these Parties are currently implementing the resolutions, the proposed rule should cause little or no change to the way importers are currently doing business. The foreign suppliers are already required by their own country's laws and international customary law to follow the consensus interpretations embodied in the resolutions. In addition, if an importer were to receive a shipment that did not comply with all of the requirements of the country of shipment, the import may violate the Lacey Act Amendments of 1981.

Exporters need to comply with the requirements of the receiving country in addition to U.S. requirements. As a result, many are already complying with the recommendations and interpretations in the CITES resolutions. If a shipment is not in compliance with all applicable resolutions, it may be seized or detained at the destination. The proposed revisions will assist exporters in determining what procedures they need to follow to trade internationally.

These proposed revisions incorporate existing trade requirements that have not previously been published, but are required internationally by a treaty. The publication of the proposed revisions will assist U.S. businesses in complying with the requirements under CITES and in engaging in international trade.

Therefore, we do not expect that this proposed rule would have a significant effect on the volume or dollar value of wildlife and plants imported, introduced from the sea, exported, or re-exported to and from the United States. There is no indication that this proposed rule will result in statistically significant higher or lower levels of trade, permit applications, or permit issuance or denial.

b. This proposed rule will not create inconsistencies with other agencies' actions. As the lead agency for carrying out CITES in the United States, we are responsible for monitoring imports and exports of CITES wildlife and plants, including their parts and products, and issuing import and export documents under CITES.

c. This proposed rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients.

d. This proposed rule will not raise novel legal or policy issues because it only updates and clarifies existing regulations that implement CITES. As a member of CITES, the United States is committed to implementing the consensus interpretations of the Treaty that are embodied in the resolutions collectively approved by the Parties. This proposed rule would clarify the requirements for the import, introduction from the sea, export, and re-export of shipments of CITES specimens and would provide individuals and businesses access to current, clearly written regulations.

*Regulatory Flexibility Act*

The proposed rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final Regulatory Flexibility Analysis is not required. Accordingly, a Small Entity Compliance Guide is not required.

The overwhelming majority of the entities that import, export, or re-export CITES specimens are considered small as defined under the Regulatory

Flexibility Act. This proposed rule provides these businesses with updated and more clearly written regulations for the import, export and re-export of shipments of CITES specimens. The authority to enforce CITES requirements already exists under the Endangered Species Act and is carried out by regulations contained in 50 CFR part 23.

a. Many rural communities rely on the added income produced by harvesting and selling certain CITES species that occur in the United States, such as the American alligator, American ginseng, bobcat, river otter, Alaska lynx, Alaska brown bear, and Alaska wolf. The majority of consumer products made from these species are processed overseas. In 1997, approximately $24 million in wildlife species and $79 million in ginseng were exported from the United States under CITES. We are not proposing any changes from the existing export regulations and, therefore, do not anticipate any economic effect to the current level of activity.

We recognize that the States have the right and responsibility to manage their wildlife. Many States have monitored the harvest of CITES species since before the Treaty came into effect. Because of this, we have worked with States and Indian Tribes to use the information they collect to make CITES findings on a State-by-State or Tribe-by-Tribe basis where export approval is requested. This system allows us to make findings for all specimens of a particular species from a State or Tribe rather than requiring each applicant to supply the information we need to make legal acquisition and non-detriment findings. When we are able to make State- or Tribe-based findings, at no charge we supply those States and Tribes with CITES export tags. These tags are placed on each skin under State- or Tribe-monitored conditions. The presence of a tag on a skin provides us with reasonable assurance that the skin was acquired legally. By making these administrative findings on a State-wide or reservation-wide basis, we considerably reduce the amount of paperwork required and allow exporters of these species to use streamlined procedures.

In the proposed revisions, we provide the criteria we use in making decisions concerning administrative findings. However, these criteria are the same as we have used since the beginning of such findings. The proposed revisions would provide the public details on how these findings are made.

The proposed changes to the CITES regulations will assist those that rely on income from the export of certain native CITES species to remain competitive when conducting business in international markets. This proposed rule provides the importing and exporting community a better opportunity for obtaining economic gain from international business in CITES specimens.

b. CITES Resolution Conf. 8.16 requires that each wildlife specimen in a traveling live-animal exhibition (often a circus) must be covered by a CITES document specific to that specimen. Currently, many circuses have one document that covers several specimens. Under the proposed revisions, when a document covering multiple specimens expires, the permittee would need to obtain one document for each specimen. As a result, this proposed rule may result in increased permit application processing fees ($25 per application) for a small number of importers and exporters who trade in CITES species. The requirement will be phased in as current documents expire. We estimate that approximately 70 circuses import and export CITES wildlife to and from the United States on a regular basis. If exhibitors do not obtain individual documents for each specimen, they may encounter difficulties at border crossings.

c. CITES Resolution Conf. 10.6 (which incorporates Resolution Conf. 4.12) specifically states that the personal effects exemption that covers tourist souvenirs does not apply to live specimens. In addition, most Parties require CITES documents for all live specimens, even if they are personal items. Resolution Conf. 10.20 provides for the issuance of certificates for personal live wildlife that would be valid for a period of 3 years and allow for multiple imports, exports, and re-exports of the specimens. Current U.S. regulations do not advise the reader of this. However, if an individual leaves the United States with their pet that is protected under CITES (such as a parrot), they risk having the pet seized upon import into another CITES Party. The proposed revisions would advise travelers that they must have a CITES document in order to travel with their CITES pet and provide for the issuance of a 3-year document. In addition, individuals importing live CITES wildlife as pets will be required under this proposed rule to obtain a CITES document prior to arriving in the United States. In most cases, this requirement would ensure that they are not inadvertently violating the Lacey Act by exporting their pet from a CITES Party without an export document since most Parties require CITES documents for all live specimens. On the average between 1996 and 1998, we issued 21 retrospective documents for personal shipments, including live wildlife, annually. Since recipient Parties required individuals to obtain retrospective documents before allowing import of the live wildlife, this requirement will not place an additional paperwork or financial burden, but may actually save time and money.

The proposed regulations will create no other substantial fee or paperwork changes in the permitting process. The changes discussed above are not major in scope and will create only a modest financial or paperwork burden on the affected members of the general public. Therefore, we do not believe that this proposed rule will have a significant economic effect on a substantial number of small entities.

*Small Business Regulatory Enforcement Fairness Act*

Similarly this proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more. This proposed rule provides the importing and exporting community within the United States updated and more clearly written regulations that implement CITES in the United States. This proposed rule will not have a negative effect on this part of the economy.

This proposed rule will affect all importers and exporters equally, and the benefits of having updated guidance on complying with CITES requirements will be evenly spread among all businesses, whether small or large. There is not a disproportionate share of benefits for small or large businesses.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This proposed rule will clarify and update the regulations to carry out CITES, and as such, will provide benefits to all permit applicants in terms of time savings. This proposed rule may result in a small increase in the number of permit applications and permit processing fees for some circuses and pet owners.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This proposed rule will enable U.S. importers and exporters of CITES species to better understand and comply with the regulations covering international trade in CITES wildlife

and plants. Without these proposed revisions to the regulations, the U.S. importing and exporting community may not be able to effectively compete with foreign-based companies in the international trade of CITES specimens. This proposed rule will assist U.S. businesses in ensuring that they are meeting all required CITES resolutions and decrease the possibility that shipments may be delayed or even seized in another country that has implemented applicable CITES resolutions.

*Unfunded Mandates Reform Act*

Under the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*):

a. This proposed rule will not significantly or uniquely affect small governments. A Small Government Agency Plan is not required. As the lead agency for carrying out CITES in the United States, we are responsible for monitoring imports and exports of CITES wildlife and plants, including their parts and products, and issuing import and export documents under CITES. This proposed rule affects States only as described in 2.a. above, concerning export of certain native CITES species. Therefore, this proposed rule has no effect on small government's responsibilities.

b. This proposed rule will not produce a Federal requirement of $100 million or greater in any year and is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

*Takings*

Under Executive Order 12630, this proposed rule does not have significant takings implications. A takings implication assessment is not required. This proposed rule is not considered to have takings implications because it does not further restrict the import, export, or re-export of specimens of CITES specimens. Rather, the proposed rule updates the regulations for the import, export, and re-export of CITES specimens, which will assist the importing and exporting community in carrying out international trade in CITES specimens.

*Federalism*

These proposed revisions to CFR part 23 do not contain provisions that have Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. These proposed regulations cover U.S. responsibilities under CITES which is an international agreement that focuses on international trade in protected species. The activities of import and export are national in scope and are not sovereign powers reserved to the States. The portions of the proposed regulations which have direct links to the States are basically unchanged and were initially developed after extensive consultation with the States and with the International Association for Fish and Wildlife Agencies.

*Civil Justice Reform*

Under Executive Order 12988, the Office of the Solicitor has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. Specifically, this proposed rule has been reviewed to eliminate errors and ensure clarity, has been written to minimize disagreements, provides a clear legal standard for affected actions, and specifies in clear language the effect on existing Federal law or regulation.

*Paperwork Reduction Act and Information Collection*

This proposed rule contains information collections for which approvals are required under the Paperwork Reduction Act. The majority of the information collection associated with this proposed rule is covered by OMB approval number 1018–0093 (Forms 3–200–19 through 3–200–49, 3–200–52, and 3–200–53). Any comments on this record collection should be directed to the Information Collection Clearance Officer, Mail Stop 222, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

We are proposing ten new forms (listed below). These proposed forms are based on forms that are already approved and would require only submission of information specific to the activity covered by the form. The collection of information described for those forms has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13). We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The proposed information collection will be used to evaluate applications for CITES documents. We will use the information to review applications and make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation, or denial of CITES documents. Your response is required to obtain a CITES document. We estimate the public reporting burden for these reporting requirements to vary from 30 minutes to 40 hours per response with an average of 1 hour per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms.

Comments on this proposed information collection should be directed to the attention of the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. A copy of the comments should also be sent to the Information Collection Clearance Officer, Mail Stop 222, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240. The Office of Management and Budget has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Public comments should be submitted to OMB within 30 days in order to assure their maximum consideration. The new forms and the estimated reporting burdens are as follows:

| Form No. | Activity | Total number of respondents | Estimated completion time (hours) | Total annual burden hours | Regulation |
|---|---|---|---|---|---|
| 3–200–54 | Certificate of Ownership for Personally Owned Wildlife | 1,000 | 0.5 | 500 | 50 CFR 23.11, 23.36, 23.50. |
| 3–200–55 | Registration of Appendix-I Commercial Breeding Operations. | | | | 50 CFR 23.11, 23.38, 23.50. |
| | a. Application & Report | 10 | 4.5 | 45 | |
| | b. Non-native species study | 5 | 40 | 200 | |
| 3–200–56 | Replacement Documents | 50 | 0.5 | 25 | 50 CFR 23.11, 23.42. |

| Form No. | Activity | Total number of respondents | Estimated completion time (hours) | Total annual burden hours | Regulation |
|---|---|---|---|---|---|
| 3–200–57 | Issuance of a Letter for an Exempt Hybrid | 10 | 0.5 | 5 | 50 CFR 23.11, 23.35. |
| 3–200–58 | Retrospective Documents | 30 | 0.5 | 15 | 50 CFR 23.11, 23.43. |
| 3–200–59 | Voluntary Registration of Pre-Convention Stocks | 15 | 1.0 | 15 | 50 CFR 23.11, 23.37. |
| 3–200–60 | Participation in the Plant Rescue Center Program | 5 | 1.0 | 5 | 50 CFR 12.30, 23.70, 23.71. |
| 3–200–61 | Reports for the American Ginseng CITES Export Programs. | 24 | 1.0 | 24 | 50 CFR 23.11, 23.60. |
| 3–200–62 | Reports for the Furbearer CITES Export Programs | 49 | 0.5 | 24.5 | 50 CFR 23.11, 50 CFR 23.61. |
| 3–200–63 | Reports for the American Alligator CITES Export Programs. | 9 | 0.5 | 4.5 | 50 CFR 23.11, 23.62. |
| Totals | | 1,202 | 863 | | |

| Form No. | Activity | Total number of respondents | Application processing/fee | Total annual costs |
|---|---|---|---|---|
| 3–200–54 | Certificate of Ownership for Personally Owned Wildlife | 1,000 | $25 | $25,000 |
| 3–200–55 | Registration of Appendix-I | 10 | 25 | 250 |
| | Commercial Breeding Operations—Annual Report | 10 | 1 | 10 |
| 3–200–56 | Replacement Documents | 50 | 25 | 1,250 |
| 3–200–57 | Issuance of a Letter for an Exempt Hybrid | 10 | 25 | 250 |
| 3–200–58 | Retrospective Documents | 30 | 25 | 750 |
| 3–200–59 | Voluntary Registration of Pre-Convention Stocks | 15 | 25 | 375 |
| 3–200–60 | Participation in the Plant Rescue Center Program | 5 | N/A | 5 |
| 3–200–61 | Reports for the American Ginseng CITES Export Programs | 24 | N/A | 24 |
| 3–200–62 | Reports for the Furbearer CITES Export Programs | 49 | N/A | 49 |
| 3–200–63 | Reports for the American Alligator CITES Export Programs | 9 | N/A | 9 |
| Totals | | 1,202 | | 27,972 |

We are specifically seeking public comments as to:

a. Whether the collection of information is necessary for the proper performance of the functions of the Service, including whether the information will have practical utility;

b. The accuracy of the Service's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

c. The quality, utility, and clarity of the information to be collected; and

d. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

*National Environmental Policy Act*

The Department of the Interior has determined that the issuance of this action is categorically excluded under the Department's NEPA procedures in 516 DM 2, Appendix 1.10.

*Government-to-Government Relationship With Tribes*

Under the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on federally recognized Indian Tribes and have determined that there are no effects. Individual tribal members must meet the same regulatory requirements as other individuals who participate in international trade of CITES species.

**Public Comments Solicited**

We invite interested organizations and the public to comment on this proposed rule. It generally reflects the way we currently implement CITES under the current resolutions. We have drafted the proposal as part of our ongoing permits reform effort to simplify procedures, use risk assessment to reduce paperwork while still ensuring effective species conservation, and help people understand how to conduct international trade in CITES species. We are seeking comments, in particular, on whether the provisions of the proposed rule allows the affected public to effectively comply with CITES and whether the proposed rule is written in a manner that the public can easily understand and use.

**List of Subjects**

*50 CFR Part 10*

Exports, Fish, Imports, Law enforcement, Plants, Transportation, Wildlife.

*50 CFR Part 13*

Administrative practice and procedure, Exports, Fish, Imports, Plants, Reporting and recordkeeping requirements, Transportation, Wildlife.

*50 CFR Part 17*

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

*50 CFR Part 23*

Animals, Endangered and threatened species, Exports, Fish, Foreign officials, Foreign trade, Forest and forest products, Imports, Marine mammals, Plants, Reporting and recordkeeping requirements, Transportation, Treaties, Wildlife.

**Proposed Regulations**

For the reasons given in the preamble, Title 50, Chapter I, Subchapter B of the CFR, is proposed to be amended to read as follows:

## PART 10—[AMENDED]

1. The authority citation for part 10 continues to read as follows:

**Authority:** 18 U.S.C. 42; 16 U.S.C. 703–712; 16 U.S.C. 668a–d; 19 U.S.C. 1202; 16 U.S.C. 1531–1544; 16 U.S.C. 1361–1407; 16 U.S.C. 742a–742j–l; 16 U.S.C. 3371–3378.

2. In § 10.12, the definitions of *Country of origin* and *United States* are revised to read as follows:

**§ 10.12 Definitions.**

* * * * *

*Country of origin* means the country where the wildlife or plant (including parts and products such as manufactured goods) was taken from the wild or was born or propagated in captivity.

* * * * *

*United States* means the several States of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the U.S. Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

* * * * *

## PART 13—[AMENDED]

3. The authority citation for part 13 continues to read as follows:

**Authority:** 16 U.S.C. 668a, 704, 712, 742j–l, 1382, 1538(d), 1539, 1540(f), 3374; 4901–4916; 18 U.S.C. 42; 19 U.S.C. 1202; E.O. 11911, 41 FR 14583; 31 U.S.C. 9701.

4. Section 13.1 is revised to read as follows:

**§ 13.1 General.**

(a) A person must obtain a valid permit before commencing an activity for which a permit is required by this subchapter, except as provided in 50 CFR 23.43 for certain non-commercial shipments under CITES.

(b) A person must apply for such a permit under the general permit procedures of this part and any other regulations in this subchapter that apply to the proposed activity.

(1) The requirements of all applicable parts must be met.

(2) A person may submit one application that includes the information required in each part, and a single permit will be issued if appropriate.

5. Section 13.12(a)(1) is revised to read as follows:

**§ 13.12 General information requirements on applications for permits.**

(a) * * *

(1) Applicant's full name, street address, county, home and work telephone numbers, fax number, and e:mail address, and—

(i) If the applicant resides or is located outside the United States, a street address in the United States and, if conducting commercial activities, the name and address of his or her agent that is located in the United States; and

(ii) If the applicant is an individual, the date of birth, social security number, occupation, and any business, agency, organizational, or institutional affiliation associated with the wildlife or plants to be covered by the license or permit; or

(iii) If the applicant is a business, corporation, public agency, or institution, the tax identification number, description of the type of business, corporation, agency, or institution, and the name and title of person responsible for the permit (such as president, principal officer, or director);

* * * * *

6. Section 13.22(c) is revised to read as follows:

**§ 13.22 Renewal of permits.**

* * * * *

(c) *Continuation of permitted activity.* Any person holding a valid, renewable permit may continue the activities authorized by the expired permit until the Service acts on the application for renewal if all of the following conditions are met:

(1) The permit is currently in force and not suspended or revoked;

(2) The person has complied with this section; and

(3) The permit is not a CITES document issued under 50 CFR part 23, which is void upon expiration.

* * * * *

7. Section 13.46 is amended by adding a sentence at the end of the section to read as follows:

**§ 13.46 Maintenance of records.**

* * * If the permittee is conducting commercial activities and resides or is located outside the United States, records shall be maintained at a location in the United States that is available for inspection.

## PART 17—[AMENDED]

8. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

**§ 17.8 [Redesignated as § 17.9]**

9. Part 17 is amended by redesignating § 17.8 as § 17.9.

10. New § 17.8 is added to read as follows:

**§ 17.8 Import exemption for threatened, CITES Appendix-II wildlife.**

Except as provided in paragraph (a) of this section, all prohibitions of § 17.31 and exemptions of § 17.32 shall apply to any specimen of a threatened species of wildlife:

(a) *Import.* Subject to the provision in paragraph (b) of this section, live specimens, or parts and products, of ■ species listed as threatened under this part may be imported without a threatened species permit under § 17.32 provided the following conditions are met:

(1) The species is listed in Appendix II of CITES (see 50 CFR part 23);

(2) The wildlife was taken from the wild or on a ranch by or for the importer for non-commercial use;

(3) If the specimen is a sport-hunted trophy (see paragraph (c) of this section), the CITES listing is not subject to an annotation for sport-hunted trophies where other specimens of the species are treated as included in Appendix I of CITES (see 50 CFR part 23);

(4) The number of specimens to be imported is reasonably appropriate for the nature of the import;

(5) The specimen is accompanied by a valid CITES document (see 50 CFR 23.23);

(b) *Special rules.* Stricter provisions of any special rule in this part apply in addition to this section; and

(c) *Sport-hunted trophy* means raw or tanned parts of a specimen that was taken by the hunter, who is also the importer, during a sport hunt for personal, non-commercial use. It may include the hide, head, skull, tusks, horns, hair, teeth, claws, meat, bones, or any taxidermied part, including, but not limited to, a taxidermied head, shoulder, or full mount. It does not include articles made from a trophy such as worked, manufactured, or handicraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items.

11. Part 23 is revised to read as follows:

## PART 23—CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA (CITES)

### Subpart A—Introduction

Sec.
23.1 What are the purposes of CITES and these regulations?
23.2 How do I decide if these regulations apply to my shipment or me?
23.3 What other wildlife and plant regulations may apply?
23.4 What are Appendices I, II, and III?
23.5 How are the terms used in these regulations defined?
23.6 What are the roles of the Management and Scientific Authorities?
23.7 What office do I contact for CITES information?
23.8 What are the information collection requirements?

### Subpart B—Prohibitions, Exemptions, and Requirements

23.11 What is prohibited?
23.12 How may I travel internationally with my personal and household effects?
23.13 What are the U.S. CITES requirements for urine, feces, and synthetically derived DNA?
23.14 What are the requirements for diplomatic, consular, military, and other persons eligible for waiver privileges under customs law?
23.15 What CITES documents are required to export Appendix-I wildlife?
23.16 What CITES documents are required to export Appendix-I plants?
23.17 What CITES documents are required for international trade?
23.18 What happens if a country enters a reservation for a species?
23.19 What are the requirements for in-transit shipments?
23.20 What information is required on U.S. and foreign CITES documents?
23.21 What code is used to show the source of the specimen?
23.22 What additional information is required on non-Party CITES documents?
23.23 When is a U.S. or foreign CITES document valid?
23.24 What CITES documents do I present at the port?

### Subpart C—Application Procedures, Issuance Criteria, and Conditions

23.25 How do I apply for a U.S. CITES document?
23.26 How do we decide to issue or deny a request for a U.S. CITES document?
23.27 What records do I need to apply for a U.S. CITES document?
23.28 What are the requirements for import permits?
23.29 What are the requirements for export permits and re-export certificates?
23.30 What are the requirements for certificates of origin?
23.31 What are the requirements for introduction-from-the-sea certificates?
23.32 What are the requirements for certificates for artificially propagated plants?
23.33 What are the requirements for bred-in-captivity certificates?
23.34 What are the requirements for plant hybrids?
23.35 What are the requirements for wildlife hybrids?
23.36 What are the requirements to travel internationally with my personally owned live wildlife?
23.37 What are the requirements for pre-Convention specimens?
23.38 What are the requirements for registering an Appendix-I commercial breeding operation?
23.39 What are the requirements for export of Appendix-I plants artificially propagated for commercial purposes?
23.40 What are the requirements for registered scientific institutions?
23.41 What are the requirements for traveling live-animal exhibitions?
23.42 What are the requirements to replace lost, damaged, stolen, or accidentally destroyed CITES documents?
23.43 What are the requirements for retrospective CITES documents?
23.44 How long is a CITES document valid?
23.45 What CITES document conditions do I need to follow?

### Subpart D—Factors We Consider in Making Certain Findings

23.50 What factors do we consider in making a legal acquisition finding?
23.51 What factors do we consider in making a non-detriment finding?
23.52 What factors do we consider in making a finding of primarily commercial purposes?
23.53 What factors do we consider in making a bred-in-captivity finding?
23.54 What factors do we consider in making an artificially propagated finding?
23.55 What factors do we consider in making a finding of bred or propagated for commercial purposes?
23.56 What factors do we consider in making a finding that an applicant is suitably equipped to house and care for a live specimen?

### Subpart E—International Trade in Certain Specimens

23.60 How can I trade internationally in American ginseng?
23.61 How can I trade internationally in furs of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear?
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**Authority:** 27 U.S.T. 1087; 16 U.S.C. 1531 *et seq.*

## Subpart A—Introduction

### § 23.1 What are the purposes of CITES and these regulations?

(a) *Treaty.* The regulations in this part implement the Convention on International Trade in Endangered Species of Wild Fauna and Flora, also known as CITES, the Convention, the Treaty, or the Washington Convention, TIAS (Treaties and Other International Acts Series) 8249.

(b) *Purpose.* The aim of CITES is to regulate international trade to ensure it is legal and does not threaten the survival of wildlife and plant species in the wild. Countries that have ratified or acceded to CITES (Parties) recognize that:

(1) Wildlife and plants are an irreplaceable part of the natural systems of the earth and must be protected for this and future generations.

(2) The value of wildlife and plants is ever-growing from the viewpoints of aesthetics, science, culture, recreation, and economics.

(3) Although countries should be the best protectors of their own wildlife and plants, international cooperation is essential to protect wildlife and plant species from over-exploitation through international trade.

(4) It is urgent that countries take appropriate measures to prevent illegal trade and ensure that any use of wildlife and plants is sustainable.

(c) *Domestic legislation.* We, the Service, implement CITES through the U.S. Endangered Species Act (ESA).

### § 23.2 How do I decide if these regulations apply to my shipment or me?

Answer the following questions to decide if the regulations in this part apply to your proposed activity:

| Question on proposed activity | Answer and action |
|---|---|
| (a) Is the wildlife or plant species (including parts, products, and hybrids, whether wild-collected or bred, born, grown, or propagated in captivity) listed in Appendices I, II, or III of CITES? | (1) YES. Continue to paragraph (b) of this section.<br>(2) NO. The regulations in this part do not apply. |
| (b) Is the part, product, or manufactured article a personal or household effect? | (1) YES. See § 23.12.<br>(2) NO. Continue to paragraph (c) of this section. |
| (c) Is the sample urine, feces, or synthetically derived DNA (deoxyribonucleic acid)? | (1) YES. See § 23.13.<br>(2) NO. Continue to paragraph (d) of this section. |
| (d) Do you want to import, export, re-export, engage in international trade, or introduce from the sea? | (1) YES. The regulations in this part apply.<br>(2) NO. Continue to paragraph (e) of this section. |
| (e) Was the specimen that you possess, or want to put in intrastate or interstate commerce, unlawfully acquired, illegally traded, or otherwise subject to conditions set out on the CITES document? | (1) YES. See § 23.11(c) and (d) and sections 9(c)(1) and 11(a) and (b) of the ESA (16 U.S.C. 1538(c)(1) and 1540(a) and (b)).<br>(2) NO. The regulations in this part do not apply. |

### § 23.3 What other wildlife and plant regulations may apply?

(a) You may need to comply with other regulations in this subchapter that require a permit or have additional restrictions.

(b) If you are applying for a permit, you must comply with the general permit procedures in 50 CFR part 13.

(c) If you are importing (including introduction from the sea), exporting, or re-exporting wildlife or plants, you must comply with the regulations in 50 CFR part 14 for wildlife or 50 CFR part 24 for plants. Activities with plants are also regulated by the U.S. Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), in 7 CFR parts 355 and 356.

(d) Many CITES species are also covered by one or more parts of this subchapter and have additional requirements:

(1) 50 CFR parts 10 and 21 (migratory bird list and permits).

(2) 50 CFR part 15 (Wild Bird Conservation Act).

(3) 50 CFR part 16 (injurious wildlife).

(4) 50 CFR part 17 (endangered and threatened species).

(5) 50 CFR part 18 (marine mammals).

(6) 50 CFR part 22 (eagle permits).

### § 23.4 What are Appendices I, II, and III?

Species are listed by the Parties at one of three levels of protection (referred to as appendices, see subpart H of this part), which have different requirements. Parties regulate trade in specimens (live and dead) of Appendix-I, -II, or -III species and their hybrids, parts, and products through a system of permits and certificates (CITES documents). Such documents enable Parties to monitor the effects of the volume and type of trade to ensure trade is legal and not detrimental to the survival of the species.

(a) *Appendix I* includes species threatened with extinction that are or may be affected by trade. Requirements to trade in specimens of Appendix-I species include:

(1) Trade must be subject to particularly strict regulation to avoid further endangering their survival and must be authorized only in exceptional circumstances.

(2) The import or introduction from the sea may not be for primarily commercial purposes.

(3) A shipment requires an import permit and an export permit or re-export certificate unless the specimen is accompanied by either a valid CITES exemption document issued by the exporting or re-exporting country or an introduction-from-the-sea certificate.

(b) *Appendix II* includes species that are not presently threatened with extinction but may become so if their trade is not regulated. It also includes species that need to be regulated so that trade in certain other Appendix-I or -II species may be effectively controlled; these species are most commonly listed due to their similarity of appearance to other related CITES species.

(1) CITES does not require import permits for Appendix-II species.

(2) For specimens of Appendix-II species to be traded, each shipment must be accompanied by a CITES document from the exporting or re-exporting country or an introduction-from-the-sea certificate.

(c) *Appendix III* includes species listed by a range country to obtain international cooperation in controlling trade. For specimens of Appendix-III species to be traded, each shipment must be accompanied by an export permit, certificate of origin, or a re-export certificate.

### § 23.5 How are the terms used in these regulations defined?

In addition to the definitions contained in Article I of the Treaty and 50 CFR part 10, and unless the context requires, in this part:

*Annotation* means an official footnote to the listing of a species in the CITES appendices. A reference annotation provides information that further explains the listing ("p.e." for possibly extinct). A substantive annotation is an integral part of a species' listing. It designates whether the listing includes or excludes a geographically separate population, subspecies, species, group of species, or higher taxa and the type of specimens, such as live wildlife or plants or certain parts or products that can be traded. It may include export quotas.

*Artificially propagated* means a plant (including parts and products) grown under controlled conditions from a legally obtained seed, cutting, division, callus tissue, other plant tissue, spore, or other propagule that meets the criteria in § 23.54.

*Bred in captivity* means wildlife (including parts and products) that meets the criteria in § 23.53 and is the offspring of legally obtained parents that either mated or otherwise transferred egg and sperm under controlled conditions if reproduction is sexual; or of parents that were maintained under controlled conditions when development of the offspring began if reproduction is asexual.

*Certificate* means a CITES document designated as a re-export or other certificate.

*CITES document or CITES exemption document* means any certificate, permit,

or other document issued by a Management Authority of a Party or a non-Party whose name and address is on file with the Secretariat to authorize the international movement of CITES specimens.

*Commercial* means an activity whose purpose is to obtain economic benefit, including profit (whether in cash or in kind) and is directed toward resale, exchange, provision of a service, or other form of economic use or benefit.

*Conference of the Parties (COP)* refers to the meetings of the Parties to consider amendments to the appendices and resolutions to improve the implementation of CITES

*Cultivar* means a horticulturally derived variety where humans select for specific morphological, physiological, or other characteristics, such as color, a large flower, or disease resistance.

*Cultivated* refers to a plant that is grown, tended, or fostered by humans for human use. A cultivated plant can be treated as artificially propagated under CITES only if it meets the criteria in § 23.54.

*Export* means to send or carry out of a country (for export from the United States, see 50 CFR part 14).

*Flasked* means plant material obtained *in vitro*, in solid or liquid media, transported in sterile containers.

*Founder stock* means the original breeding or propagating specimens that produced the subsequent generations of captive specimens and can be either pre-Convention, previously imported into the United States, or removed from the wild if the species is native to the United States.

*Hybrid* means any wildlife or plant that results from a cross of genetic material between two separate taxa, when one or both are listed in Appendix I, II, or III. See § 23.34 for plant hybrids and § 23.35 for wildlife hybrids.

*Import* means to bring or carry into a country (for import into the United States, see 50 CFR part 14).

*International trade* means the import, introduction from the sea, export, or re-export across jurisdictional or international boundaries for any purpose whether commercial or non-commercial.

*In-transit shipment* means the immediate transshipment of any wildlife or plant through an intermediary country when the specimen remains under customs control.

*Introduction from the sea* means to directly transport into a country any specimen that was taken in the marine environment not under the jurisdiction of any country, including the air above the sea, the sea-bed, and subsoil beneath the sea.

*Management Authority* means a governmental agency officially designated by, and under the supervision of, a Party or non-Party to implement CITES, including the granting of CITES documents on behalf of that country.

*Parental stock* mean the wildlife or plants that are the immediate parents of a specimen.

*Party* means a country that has ratified or acceded to CITES.

*Permit* means a CITES document designated as an export or import permit.

*Precautionary measures* mean that the actions we take will be in the best interest of the conservation of the species, when there is uncertainty about the status of a species or the impact of trade on the conservation of a species.

*Pre-Convention* means a specimen that was removed from the wild or held in captivity or a controlled environment before the date the species was first listed on any appendix of CITES.

*Primarily commercial purposes* means an activity whose non-commercial aspects do not clearly predominate (see § 23.52).

*Propagule* means a structure, such as a cutting, seed, or spore, that propagates a plant.

*Ranching* means the rearing in a controlled environment of eggs or juvenile wildlife specimens taken from the wild.

*Readily recognizable* means any specimen that appears from a visual, physical, scientific, or forensic examination or test; an accompanying document, packaging, mark, or label; or any other circumstances to be a part or product of any CITES wildlife or plant, unless such part or product is specifically exempt from the provisions of CITES or this part.

*Re-export* means to send or carry out of a country any wildlife or plant (including parts and products) previously imported or introduced from the sea into that country, whether or not the specimen was altered since import or introduction.

*Reservation* means the action taken by a Party to inform the Secretariat that it is not bound by the effect of a specific listing (see § 23.18).

*Scientific Authority* means a governmental or independent scientific institution or entity officially designated by a Party or non-Party to implement CITES, including making scientific findings.

*Secretariat* means the entity designated by the Treaty to perform certain administrative functions (see § 23.75).

*Shipment* means any CITES specimen in international trade whether for commercial or non-commercial use, including any personal item.

*Species* means any species, subspecies, variety, or geographically separate population of that species.

*Specimen* means any wildlife or plant, whether alive or dead. For Appendix-I and -II wildlife and Appendix-I plants, this term includes any readily recognizable part or product. For Appendix-III wildlife and Appendix-II and -III plants, all readily recognizable parts or products are included, except as annotated in the appendices.

*Sport-hunted trophy* means raw or tanned parts of a specimen that was taken by the hunter, who is also the importer, exporter, or re-exporter, during a sport hunt for personal, non-commercial use. It may include the hide, head, skull, tusks, horns, hair, teeth, claws, meat, bones, or any taxidermied part, including, but not limited to, a taxidermied head, shoulder, or full mount. It does not include articles made from a trophy, such as worked, manufactured, or handicraft items for use as clothing, curios, ornamentation, jewelry, or other utilitarian items.

*Sustainable use* means the use of a species in a manner and at a level that maintain wild populations at biologically viable levels for the long term. Such use involves a determination of the productive capacity of the species and its ecosystem, to ensure that utilization does not exceed those capacities or the ability of the population to reproduce, maintain itself, and perform its role or function in its ecosystem.

*Trade* means the same as international trade.

*Traveling live-animal exhibition* means an entity that uses live wildlife for display or entertainment, such as a circus or performing act, where the exhibition is temporarily moving internationally.

### § 23.6 What are the roles of the Management and Scientific Authorities?

Under Article IX of the Treaty each Party must designate a Management and Scientific Authority to implement CITES for that country. If a non-Party wants to trade with a Party, it must also designate such Authorities. The name and address of these offices must be sent to the Secretariat to be included in the Directory. In the United States, different offices within our agency have been designated the Management and

Scientific Authority and do the following:

| Roles | Scientific authority | Management authority |
|---|---|---|
| (a) Provide scientific advice and recommendations, including advice on biological findings for applications for certain CITES documents. Evaluate the conservation status of species to determine if a species listing or change in listing is warranted | X | |
| (b) Review applications for CITES documents and issue or deny them based on findings required by CITES | | X |
| (c) Communicate with the Secretariat and other countries on scientific, administrative, and enforcement issues | X | X |
| (d) Monitor trade | X | X |
| (e) Produce annual reports on CITES trade | | X |
| (f) Coordinate with State conservation and Federal agencies on CITES issues, such as the status of native species, development of policies, negotiating positions, and law enforcement activities | X | X |
| (g) Communicate with the scientific community, the public, and media about CITES issues. Conduct public meetings and publish notices to gather input from the public on the administration of CITES and the conservation and trade status of domestic and foreign species traded internationally | X | X |
| (h) Represent the United States at the meetings of the Conference of the Parties (COP), on committees (see subpart G of this part), and on CITES work groups. Consult with other countries on CITES issues and the conservation status of species. Prepare discussion papers and proposals for new or amended resolutions and species listings for consideration at the COP | X | X |
| (i) Provide assistance for the enforcement of CITES, including the inspection and clearance of shipments. Cooperate with enforcement officers at the Secretariat, International Criminal Policy Organization—Interpol, and World Customs Organization to facilitate the exchange of information between enforcement bodies and for training purposes | | X |
| (j) Provide financial and technical assistance to other governmental agencies and CITES officials of other countries | X | X |

**§ 23.7 What office do I contact for CITES information?**

Contact one of the following offices to receive information about CITES:

| Type of information | Office to contact |
|---|---|
| (a) *CITES administrative and management issues:*<br>CITES documents, including application forms<br>Information on the COP<br>List of CITES species<br>Names and addresses of other countries' Management and Scientific Authority offices<br>Notifications, resolutions, and decisions<br>Standing Committee documents and issues | Office of Management Authority<br>U.S. Fish and Wildlife Service<br>4401 North Fairfax Drive, Room 700<br>Arlington, Virginia 22203<br>Toll Free: (800) 358–2104/permit questions<br>Tel: (703) 358–2095/other questions<br>Fax: (703) 358–2281/permits<br>Fax: (703) 358–2298/other issues<br>E-mail: r9IA__OMA@fws.gov<br>Fax retrieval system: (800) 770–0150 or (703) 358–2348<br>Website: international.fws.gov |

| Type of information | Office to contact |
|---|---|
| (b) *Scientific issues:*<br>Animals Committee documents and issues<br>Findings regarding suitability of facilities<br>Listing of species in the appendices and relevant resolutions<br>Names and addresses of other countries' Scientific Authority offices and scientists involved with CITES-related issues<br>Non-detriment and other scientific findings<br>Plants Committee documents and issues | Office of Scientific Authority<br>U.S. Fish and Wildlife Service<br>4401 North Fairfax Drive, Room 700<br>Arlington, Virginia 22203<br>Tel: (703) 358–1708<br>Fax: (703) 358–2276<br>E-mail: r9osa@fws.gov<br>Website: international.fws.gov |
| (c) *Wildlife clearance procedures:*<br>Information about wildlife port office locations<br>Procedures for the import (including introduction from the sea), export, and re-export of wildlife, including the inspection and clearance of shipments, and filing a Declaration of Importation or Exportation of Fish or Wildlife (Form 3–177)<br>Validation of CITES wildlife documents | Office of Law Enforcement<br>U.S. Fish and Wildlife Service<br>P.O. Box 3247<br>Arlington, Virginia 22203<br>Tel: (703) 358–1949<br>Fax: (703) 358–2271<br>Website: www.le.fws.gov |
| (d) *Plant clearance procedures:*<br>Information about plant port office locations<br>Procedures for the import (including introduction from the sea), export, and re-export of plants, including the inspection and clearance of shipments<br>Validation of CITES plant documents | U.S. Department of Agriculture APHIS/PPQ<br>4700 River Road<br>Riverdale, Maryland 20737–1236<br>Toll Free: (877) 770–5990/permit questions<br>Tel: (301) 734–5371/other CITES issues<br>Fax: (301) 734–5786/permit questions<br>Fax: (301) 734–8693/other CITES issues<br>Fax retrieval system: (301) 734–4327<br>Website: www.aphis.usda.gov/ppq |
| (e) *Official list of CITES species:* | CITES Secretariat<br>Website: www.cites.org |

**§ 23.8 What are the information collection requirements?**

(a) The Office of Management and Budget approved the information collection requirements for application forms 3–200–19 through 3–200–53 contained in this part under 44 U.S.C. 3507 and assigned OMB Control Number 1018–0093. New application forms 3–200–54 through 3–200–63 have been submitted to OMB for assignment of an approval number.

(b) When using a form, we cannot collect or sponsor the collection of information, and you are not required to provide information, unless the form displays a currently valid OMB control number.

(c) We are collecting this information to evaluate applications and make decisions under this part on whether to issue, suspend, revoke, or deny a request for a CITES document.

(d) We are also collecting information to review State and tribal management programs for CITES species to streamline the permitting process for species taken under these programs.

(e) You must respond to our request for information in order to get or retain a CITES document.

(f) We estimate the public reporting burden for the collection of information under this part to vary from 20 minutes to 40 hours per response with an average of 1 hour. This estimate includes time for reviewing instructions, gathering and maintaining data, and completing and reviewing the forms.

(g) You may direct comments on this information collection to the attention of the Desk Officer for the Interior Department, Office of Management and Budget, 1849 C Street, NW, Washington, DC 20503, with a copy to the Information Collection Clearance Officer, Mail Stop 222, Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

## Subpart B—Prohibitions, Exemptions, and Requirements

**§ 23.11 What is prohibited?**

If you are subject to the jurisdiction of the United States, it is unlawful for you to conduct any of the following activities unless you meet the requirements of this part:

(a) Import, export, re-export, or engage in international trade with any specimen of a species listed in Appendix I, II, or III of CITES.

(b) Introduce from the sea any specimen of a species listed in Appendix I or II of CITES.

(c) Possess any specimen of a species listed in Appendix I, II, or III of CITES imported, exported, re-exported, introduced from the sea, or traded contrary to the provisions of CITES, the ESA, or this part.

(d) Attempt to commit, solicit another to commit, or cause to be committed any of the activities described in paragraphs (a) through (c) of this section.

**§ 23.12 How may I travel internationally with my personal or household effects?**

(a) *Purpose.* Article VII(3) of the Treaty recognizes a limited exemption for the international movement of personal and household effects.

(b) *Stricter national legislation.* The exemption for personal and household effects does not apply if a country prohibits or restricts the import, export, or re-export of the item.

(1) You or your shipment must be accompanied by any document required by a country under its stricter national legislation.

(2) In the United States, this exemption does not relieve you from obtaining permission needed under other regulations in this subchapter (see § 23.3).

(c) *Required CITES documents.* You must obtain a CITES document for personal or household effects if one of the following applies:

(1) The Management Authority of the importing, exporting, or re-exporting country requires a CITES document.

(2) You or your shipment does not meet all of the conditions for an exemption as provided in paragraphs (d) through (g) of this section.

(d) *Personal effects.* You do not need a CITES document to import, export, or re-export any part, product, or manufactured article of a legally acquired Appendix-II or -III wildlife or plant, including a tourist souvenir, to or from the United States if all of the following conditions are met:

(1) No live wildlife or plant (including eggs or non-exempt seeds) is included.

(2) No item from an Appendix-I species is included, except for certain worked African elephant ivory as provided in paragraph (g) of this section.

(3) No sturgeon caviar (Order *Acipenseriformes*) is included except as provided in paragraph (f) of this section.

(4) You personally own and possess the item for non-commercial purposes, including any item intended as a personal gift.

(5) The item and quantity of items is reasonably necessary or appropriate for the nature of your trip or stay.

(6) You are either wearing the item as clothing or an accessory or taking it as part of your personal baggage, which is being carried by you or checked as baggage on the same plane, boat, car, or train as you.

(7) The item was not mailed or shipped separately.

(e) *Household effects.* You do not need a CITES document to import, export, or re-export any part, product, or manufactured article of a legally acquired Appendix-II or -III wildlife or plant that is part of a shipment of your household effects when moving your residence to or from the United States, if all of the following conditions are met:

(1) No live wildlife or plant (including eggs or non-exempt seeds) is included.

(2) No item from an Appendix-I species is included, except for certain worked African elephant ivory as provided in paragraph (g) of this section.

(3) No sturgeon caviar (Order *Acipenseriformes*) is included.

(4) You personally own the item and are moving it for non-commercial purposes.

(5) The item and quantity of items is reasonably necessary or appropriate for household use.

(6) You import or export your household effects within 1 year of moving your residence.

(7) The shipment, or shipments if you cannot move all of your household effects at one time, contains only items purchased, inherited, or otherwise acquired before you moved.

(f) *Sturgeon caviar.* You may import, export, or re-export 250 grams or less of caviar of Appendix-II sturgeon (in the Order *Acipenseriformes* and not listed as endangered or threatened under the ESA) without a CITES document as a personal effect if it meets the requirements in paragraph (d) of this section. To import, export, or re-export more than 250 grams of caviar, you must have a valid CITES document for the entire quantity.

(g) *African elephant worked ivory.* You may export or re-export from the United States worked African elephant (*Loxodonta africana*) ivory and then re-import it without a CITES document if you meet all of the following:

(1) The worked ivory is a personal or household effect that meets the requirements of paragraph (d) or (e) of this section, except it is not a gift.

(2) You are a U.S. resident, owned the worked ivory before leaving the United States, and intend to bring the item back to the United States.

(3) The ivory is substantially worked and is not raw. Raw ivory means a tusk, or a piece of tusk, which is polished or unpolished, unaltered, or minimally carved, including ivory mounted on a stand or part of a trophy.

(4) When you return, you are able to provide records, receipts, or other documents to show that you possessed the ivory before you left the United States.

### § 23.13 What are the U.S. CITES requirements for urine, feces, and synthetically derived DNA?

(a) *CITES documents.* We do not regulate any sample of urine, feces, or synthetically derived DNA under CITES but some countries may.

(1) You must obtain any collection permit and/or CITES document required by the foreign country.

(2) If the foreign country requires you to have a U.S. CITES document for these kinds of samples, we will treat the sample as regulated and you must apply for a CITES document.

(b) *Urine and feces.* Except as provided in paragraph (a) of this section, we consider urine and feces to be wildlife by-products, rather than parts or products, and exempt them from the requirements of CITES and this part.

(c) *DNA.* We differentiate between DNA directly extracted from blood and tissue and DNA synthetically derived as follows:

(1) A DNA sample directly derived from wildlife or plant tissue is regulated by CITES and this part.

(2) A DNA sample synthetically derived that does not contain any part of the original template is exempt from the requirements of CITES and this part.

### § 23.14 What are the requirements for diplomatic, consular, military, and other persons eligible for waiver privileges under customs law?

A person receiving duty-free and inspection waiver privileges under customs laws is not exempt from the requirements of CITES or the regulations in this part.

### § 23.15 What CITES documents are required to export Appendix-I wildlife?

Answer the questions in the following decision tree to find out the section in the regulations in this part that applies to the type of CITES document you need to export Appendix-I wildlife:

BILLING CODE 4310-55-P

# Decision Tree for Export of Appendix-I Wildlife

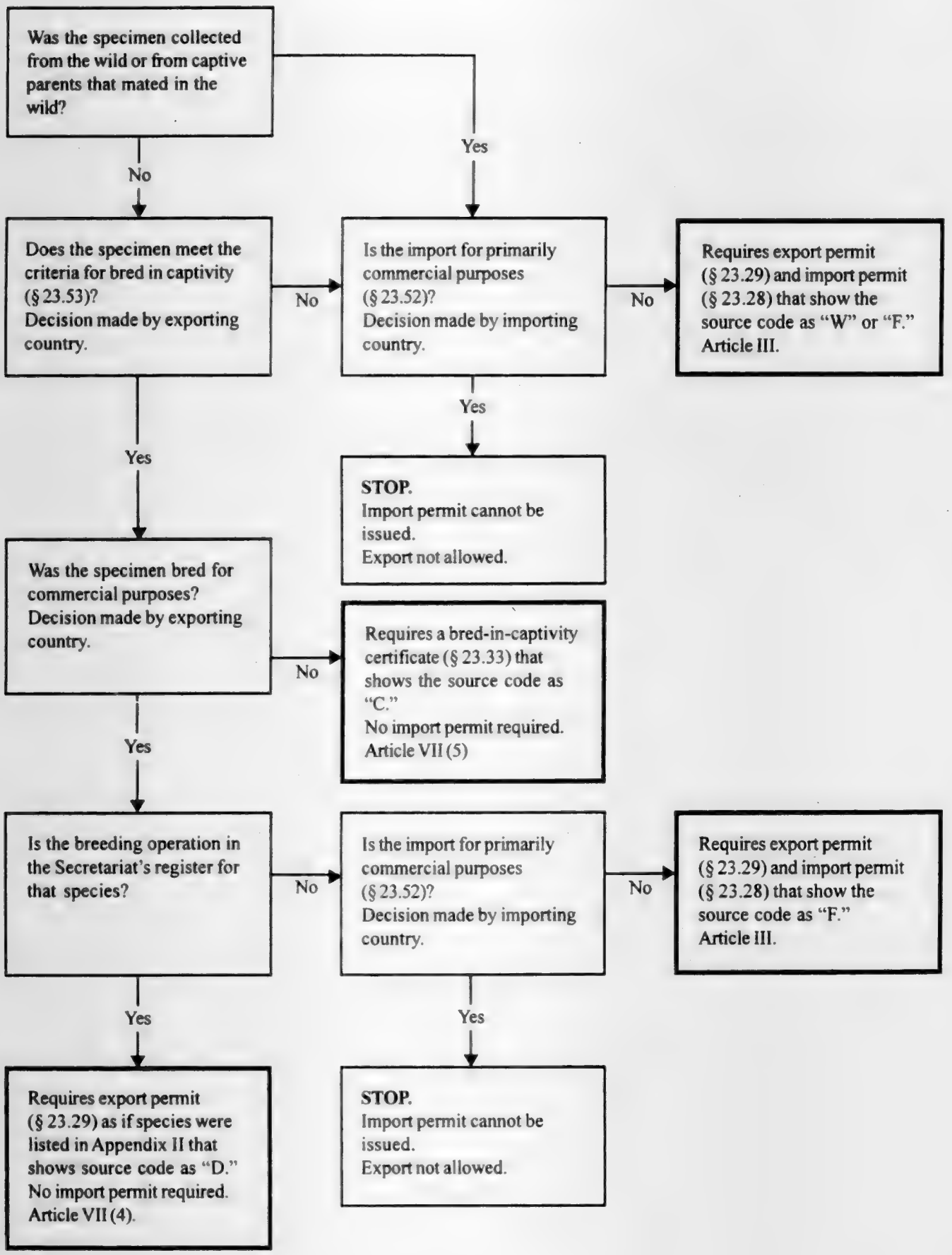

**§ 23.16 What CITES documents are required to export Appendix-I plants?**

Answer the questions in the following decision tree to find out the section in the regulations in this part that applies to the type of CITES document you need to export Appendix-I plants:

## Decision Tree for Export of Appendix-I Plants

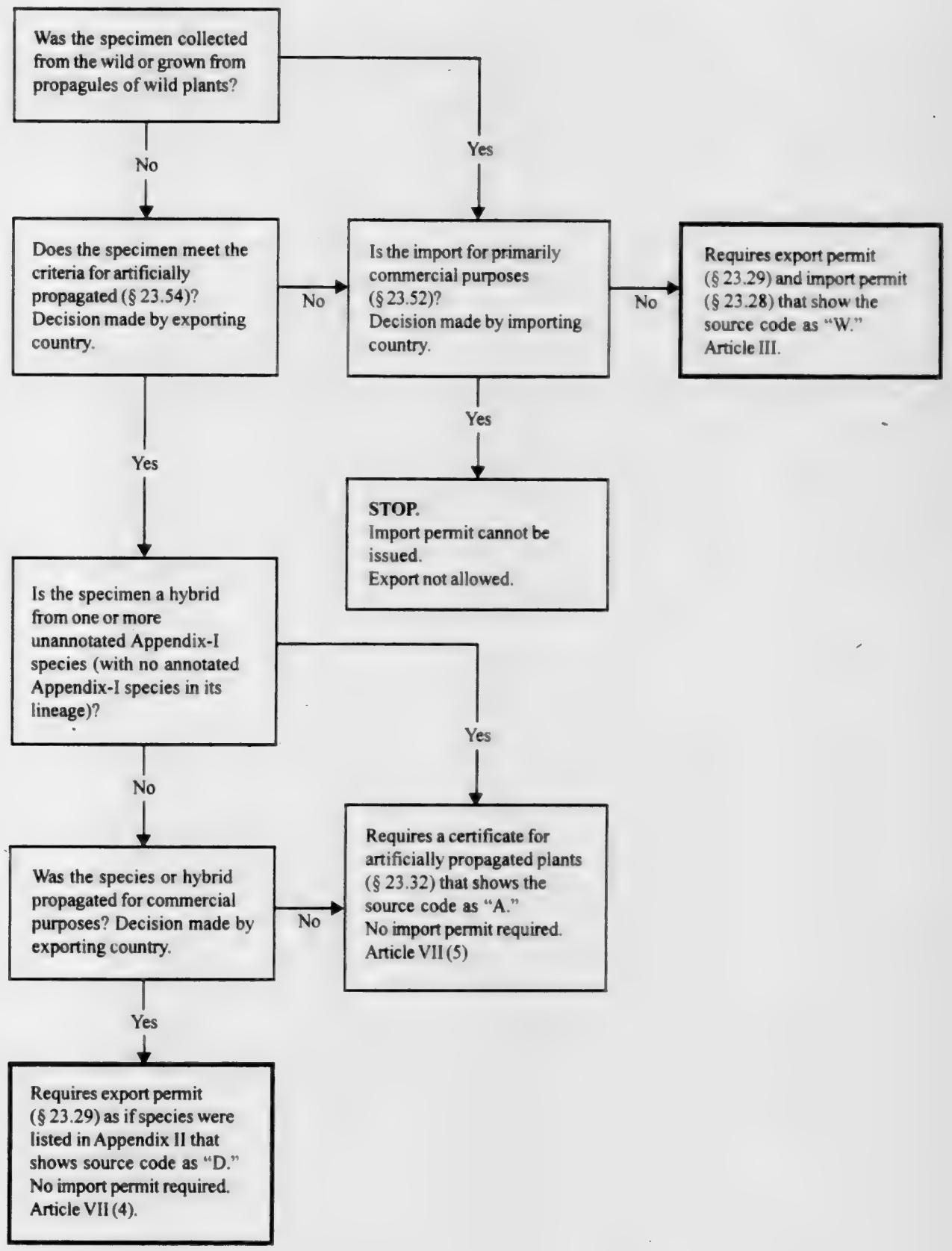


BILLING CODE 4310–55–C

**§ 23.17 What CITES documents are required for international trade?**

(a) *Purpose.* Articles III, IV, and V of the Treaty give the types of standard CITES documents that must accompany an Appendix-I, -II, or -III specimen in international trade. Article VII recognizes some exemptions and provides that a CITES document must accompany most exempt specimens.

(b) *Stricter national legislation.* Before importing, introducing from the sea, exporting, or re-exporting a specimen, check with the Management Authorities of all countries concerned to obtain any documentation required under stricter national legislation.

(c) *CITES documents.* Except as provided in the regulations in this part, you must have a valid CITES document to engage in international trade with any CITES specimen.

(d) *CITES exemption documents.* The following table lists the CITES exemption document that you must obtain before conducting a proposed activity with an exempt specimen. The first column alphabetically lists the type of specimen. The last column indicates the section of this part that contains information on the application procedures, provisions, issuance criteria, and conditions specific to each CITES exemption document, as follows:

| Type of specimen | Appendix | CITES exemption document | Section |
|---|---|---|---|
| (1) Artificially propagated plant (see paragraph (d)(4) of this section for an Appendix-I plant propagated for commercial purposes). | I,II, or III ..... | [1] CITES document with source code "A" ... | 23.32 |
| (2) Artificially propagated plant from a country that has provided copies of the certificates, stamps, and seals to the Secretariat. | II or III ..... | [1] Phytosanitary certificate with CITES statement. | 23.20(f) |
| (3) Bred-in-captivity wildlife (see paragraph (d)(5) of this section for Appendix-I wildlife bred for commercial purposes). | I,II, or III ..... | [1] CITES document with source code "C" ... | 23.33 |
| (4) Commercial propagation of an Appendix-I plant. | I ..... | [1] CITES document with source code "D" ... | 23.39 |
| (5) Commercial registered breeding operation for Appendix-I wildlife. | I ..... | [1] CITES document with source code "D" ... | 23.38 |
| (6) Hybrid ..... | I, II, or III ..... | [1] CITES document or certification letter from a Management Authority. | 23.34<br>23.35 |
| (7) In-transit shipment ..... | I, II, or III ..... | CITES document designating importer and country of final destination. | 23.19 |
| (8) Introduction from the sea under a pre-existing treaty, convention, or international agreement for that species. | I or II ..... | Document required by applicable treaty, convention, or international agreement. | 23.31(d) |
| (9) Personally owned live wildlife for multiple cross-border movement. | I, II, or III ..... | [2] CITES certificate of ownership ..... | 23.36 |
| (10) Pre-Convention speciment ..... | I, II, or III ..... | [1] CITES document indicating pre-Convention status. | 23.37 |
| (11) Registered scientific institution for non-commercial loan, donation, or exchange of specimens. | I, II, or III ..... | [3] A label indicating CITES and the registration codes of both institutions and, in the United States, a CITES certificate of scientific exchange that registers the institution. | 23.40 |
| (12) Traveling live-animal exhibition ..... | I, II, or III ..... | [2] CITES document indicating pre-Convention or bred-in-captivity status. | 23.41 |

[1] Issued by the Management Authority in exporting or re-exporting country.
[2] Issued by the Management Authority in the exporting country.
[3] Registration codes assigned by the Management Authorities in both exporting and importing countries.

(e) *Import permits, export permits, re-export certificates, and certificates of origin.* You must obtain the following valid CITES documents before conducting the proposed activity, unless one of the exemptions in paragraph (d) of this section or introduction from the sea in paragraph (f) of this section applies:

| Appendix | Import permit (§ 23.28) | Export permit, Re-export Certificate, (§ 23.29) or Certificate of Origin (§ 23.30) |
|---|---|---|
| I | [1] Required | Required. |
| II | Not Required | Required. |
| III | Not Required | Required:<br>• An export permit if coming from a country that listed the species.<br>• A re-export certificate if being re-exported from any country.<br>• A certificate of origin if originating in a country other than the listing country or as annotated in the listing. |

[1] The Management Authority of the importing country has granted the import permit or confirmed that it will be granted before an export permit for a live or dead specimen or a re-export certificate for a live specimen can be issued. A re-export certificate for a dead specimen can be issued without confirmation that the import permit has been issued, but the import permit is required before the import can be allowed.

(f) *Introduction-from-the-sea documents.* For introduction from the sea, you must obtain the following valid CITES documents before conducting the proposed activity, unless the exemption in paragraph (d)(8) of this section applies:

| Appendix | Either | Or | Import Permit (§ 23.28) |
|---|---|---|---|
| | Introduction-from-the-Sea Certificate (§ 23.31) | Re-export Certificate (§ 23.29) | |
| I | Required | [1] Required | Required |
| II | Required | [1] Required | Not required |
| III | Not required | [2] Required | Not required |

[1] The export of a specimen that was previously introduced from the sea will be treated as a re-export.
[2] Although an Appendix-III specimen taken from the marine environment beyond any country's jurisdiction does not require any CITES document to be introduced from the sea, the subsequent export of the specimen would require the issuance of a certificate of origin.

**§ 23.18 What happens if a country enters a reservation for a species?**

(a) *Purpose.* CITES is not subject to general reservations. Articles XV, XVI, and XXIII of the Treaty allow a specific reservation to be entered on a species included in Appendix I, II, or III, or on parts or products from a species included in Appendix III.

(b) *General provision.* A Party or a country in the process of acceding to CITES can enter a reservation as follows:

(1) A Party must provide written notification to the Depositary Government (Switzerland) on a specific new or amended listing in the appendices within 90 days after the COP that adopted the listing.

(2) A country must provide written notification on a specific species' listing when it ratifies or accedes to CITES.

(c) *Required CITES documents.* Except as provided in (c)(2) of this paragraph, Parties treat a reserving Party as if it were a non-Party for trade in the species concerned (including parts and products). A shipment must be accompanied by a valid CITES document, as follows:

| If: | Then the CITES document must indicate the specimen is listed in: |
|---|---|
| (1) The trade between a Party and a reserving Party | The appendix in which the species is listed in the CITES is appendices. |
| (2) A shipment is between a reserving Party and another reserving Party or non-Party and is transiting a Party. | (i) Appendix II if the species is listed in Appendix I.<br>(ii) Appendix II if the species is listed in Appendix II.<br>(iii) Appendix III if the species is listed in Appendix III. |

**§ 23.19 What are the requirements for in-transit shipments?**

(a) *Purpose.* Article VII(1) of the Treaty allows for in-transit shipments. To control any illegal trade Parties are to take measures to check for valid CITES documents when a shipment is moving through an intermediary country.

(b) *Document requirements.* An in-transit shipment does not require a CITES document from an intermediary country, but must be accompanied by all of the following documents:

(1) A valid original CITES document that designates the name of the importer in the country of final destination and is issued by the Management Authority of the exporting or re-exporting country, unless the item qualifies as a personal or household effect (see § 23.12).

(2) For shipment of an Appendix-I specimen, a copy of a valid import permit that designates the name of the importer in the country of final destination, unless the CITES document

in (b)(1) of this paragraph is an CITES exemption document (see § 23.17).

(3) Transportation and routing documents that show the shipment has been consigned to the same importer and country of final destination as designated on the CITES document.

(c) *Shipment requirements.* An in-transit shipment, including an on-board store of an airplane, must meet the following:

(1) When in an intermediary country, only stay for the time needed to transfer the specimen to the mode of transport used to continue to the final destination and remain under customs control. Other than during temporary transfer, the specimen may not be stored in a duty-free, bonded, or other kind of warehouse.

(2) At any time during transit, not be sold, manipulated, or split.

(d) *Reserving Party or non-Party.* All the requirements of this section apply to shipments to or from a reserving Party or non-Party that are being transhipped through a Party. The CITES document must treat the specimen as listed in the appendix as provided in § 23.18(c).

(e) *Specimen protected by other regulations.* Shipment of a specimen that is also listed as a migratory bird (50 CFR part 10), injurious wildlife (50 CFR part 16), endangered or threatened species (50 CFR parts 17 and 217–227), marine mammal (50 CFR parts 18 and 216), or bald or golden eagle (50 CFR part 22), and is moving through the United States is considered an import, and cannot be traded as an in-transit shipment.

### § 23.20 What information is required on U.S. and foreign CITES documents?

(a) *Purpose.* Article VI of the Treaty provides standard information that must be on a permit and certificate issued under Articles III, IV, and V. To identify any false or invalid document, a CITES document, including any CITES exemption document, must contain standardized information to allow a Party to verify that the specimen being shipped is the one listed on the document.

(b) *CITES form.* A CITES document issued by a Party must be on a form printed in one or more of the three working languages of CITES (English, Spanish, or French). A CITES document from a non-Party may be in the form of a permit or certificate, letter, or any other form that clearly indicates the nature of the document and includes the information in paragraphs (c) through (e) of this section and the additional information in § 23.22.

(c) *Required information.* Except for a phytosanitary certificate used as a CITES certificate for artificially propagated plants in paragraph (f) of this section, a CITES document issued by a Party or non-Party must contain the information set out in this paragraph (listed alphabetically). Specific types of CITES documents must also contain the additional information identified in paragraph (e) of this section. A CITES document is only valid with the following information:

| Key phrase | Required information |
|---|---|
| (1) Appendix | The appendix of CITES on which the species, subspecies, or population is listed. A certificate of origin is valid only for Appendix-III specimens and is not required to list the appendix. |
| (2) Applicant's signature | The applicant's signature, if the CITES document includes a place for it. |
| (3) Bill of lading or air waybill. | As applicable for export or re-export by ocean or air, the bill of lading or air waybill number as recorded on the CITES waybill document by the inspecting official at the port, if the document includes a place for it. |
| (4) Dates | Date of issue and date of expiration ("valid until date" on the standardized CITES form), which is midnight of the date on the CITES document. See § 23.44 for the length of validity for different types of CITES documents. |
| (5) Description of the specimen. | A complete description of the specimen, including whether live or the type of goods. The sex and age of a live specimen should be recorded, if possible. Such information must be in English, Spanish, or French on a CITES document from a Party. |
| (6) Document number | A unique control number. We use a unique 12-character number. The first two characters are the last two digits of the year of issuance, the next two are the two-letter ISO country code, followed by a six-digit serial number, and two digits or letters used for national informational purposes. |
| (7) Humane transport of live wildlife. | If the CITES document covers the export or re-export of live wildlife, a statement that the permit is only valid if the live wildlife transport conditions comply with the CITES Guidelines for Transport of Live Animals (available from the Office of Management Authority, see § 23.7) or, in the case of air transport, with the International Air Transport Association Live Animal Regulations. The shipment must comply with container requirements of the Live Animal Regulations (LAR), 26th edition, October 1, 1999, by the International Air Transport Association (IATA). The incorporation by reference of the LAR was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from IATA in Montreal, Canada, by calling 800–71–66–32–60 or ordering through the Internet at http://www.iataonline.com. Copies may be inspected at the Office of Management Authority (see § 23.7) or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. |
| (8) Indentification of the specimen. | Any unique identification number or mark (such as a tag, band, ring, microchip, and serial number), including any mark required under a CITES resolution. |

| Key phrase | Required information |
|---|---|
| (9) Management Authority | The complete name and address of the issuing Management Authority as included in the CITES Directory, which is available from the Office of Management Authority (see § 23.7). |
| (10) Name and address | The complete name and address, including country, of the exporter (consignor) and importer (consignee). |
| (11) Purpose of transaction | The purpose of the transaction, using one of the codes given in paragraph (d) of this section, if possible. The code is determined by the issuing Management Authority through information submitted with an application. This is not required for a certificate of origin. |
| (12) Quantity | The quantity of specimens authorized to be in the shipment and, if appropriate, the unit of measurement, which should be in metric:<br>(i) The unit of measurement should be appropriate to the type of specimen and, if possible, agree with the preferred or alternative unit that is to be used in the CITES annual report. General descriptions such as "one case" or "one batch" are not acceptable.<br>(ii) Weight should be in kilograms. If weight is used, net weight (weight of the specimen alone) must be stated, not gross weight that includes the weight of the container or packaging.<br>(iii) Volume, when used for timber, should be in cubic meters.<br>(iv) For re-export, if the type of good has not changed since being imported, the same unit of measurement as on the export permit must be used, except to change to units that are to be used in the CITES annual report. |
| (13) Scientific name | The scientific name of the species, including the subspecies when needed to determine the level of protection of the specimen under CITES or the ESA, using standard nomenclature as it appears in the CITES appendices or the references adopted by the COP. A list of current references is available from us or the Secretariat's website (see § 23.7). A CITES document may contain higher taxon names in lieu of the species name only under one of the following circumstances:<br>(i) When the COP has agreed that the use of a higher taxon name is acceptable for use on CITES documents.<br>(ii) When the issuing Party can show the use of a higher taxon name is well justified and has communicated the justification to the Secretariat.<br>(iii) The item is a pre-Convention manufactured product containing a specimen that cannot be identified to the species level. |
| (14) Seal or stamp | The embossed seal or ink stamp of the issuing Management Authority. |
| (15) Security stamp | If a Party uses a security stamp, the stamp is canceled by an authorized signature and a stamp or seal, preferably embossed. The number of the stamp must also be recorded on the CITES document. Each page of an attached annex must also contain a stamp that is canceled and recorded. |
| (16) Signature | An original signature of a person authorized to sign CITES documents for the issuing Management Authority. The signature must be on file with the Secretariat. |
| (17) Source | The source of the specimen, except for a certificate of origin which must certify that the specimen originated in the exporting country. See § 23.21 for a list of codes. |
| (18) Treaty name | Either the full name, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, or the CITES logo. |
| (19) Type of CITES document | The type of CITES document (import, export, re-export, or other). If marked "other," the CITES document must indicate the type of document, such as introduction-from-the-sea, pre-Convention, bred-in-captivity, scientific exchange, certificate of ownership, or artificially propagated. If multiple types are authorized on one CITES document, the type that applies to each specimen must be clearly indicated. |
| (20) Validation or certification | The actual quantity of specimens exported or re-exported:<br>(i) Using the same units of measurement as those on the CITES document.<br>(ii) Validated or certified by the stamp or seal and signature of the authority that carried out the inspection at the time of export or re-export. |

(d) *Purpose of transaction.* If possible, the CITES document should contain one of the following codes:

| Code | Purpose of transaction |
|---|---|
| B | Breeding in captivity or artificial propagation |
| E | Education |

| Code | Purpose of transaction |
|---|---|
| G | Botanical garden |
| H | Hunting trophy |
| L | Law enforcement |
| M | Biomedical research |
| N | Reintroduction or introduction into the wild |
| P | Personal |
| Q | Circus and traveling exhibition |
| S | Scientific purpose |
| T | Commercial |
| Z | Zoo |

(e) *Additional required information.* The following describes the additional information that is required for specific types of documents (listed alphabetically):

| Type of document | Additional required information |
|---|---|
| (1) Amended or renewed CITES document (see §§ 13.22 and 13.23). | The number and date of issue of the amended CITES document and reason for the change. |
| (2) Annex (such as an attached inventory conditions, or continuation pages of a CITES document). | The page number, document number, and date of issue on each page of an annex that is attached as an integral part of a CITES document. The signature and ink stamp or seal, preferably embossed, of the Management Authority issuing the CITES document must also be included on each page of the annex. The CITES document must indicate the total number of pages. |
| (3) Certificate of origin | A statement that the specimen originated in the country that issued the certificate. |
| (4) Copy | Where a copy of a CITES document is used in place of the original, a statement on the face of the document by the Management Authority authorizing the use of a copy. |
| (5) Export permit for a commercial registered breeding operation or nursery— Appendix-I specimens. | The registration number of the operation or nursery assigned by the Secretariat, and if the exporter is not the registered operation or nursery, the name of the registered operation or nursery. |
| (6) Export permit with species' quota | Numbers of specimens, such as 500/1000, that were:<br>(i) Exported thus far in the current calendar year, including those covered by the permit.<br>(ii) Included in the current annual quota. |
| (7) Import permit (Appendix-I specimen) | A certification that the specimen will not be used for primarily commercial purposes and, for a live specimen, that the recipient has suitable facilities and expertise to house and care for it. |
| (8) Lost, damaged, stolen, or accidentally destroyed CITES document. | When a CITES document is issued to replace an already issued CITES document, the number and date of issue of the CITES document that was replaced and reason for replacement. |
| (9) Pre-Convention certificate | (i) An indication that the specimen covered by the CITES document is pre-Convention.<br>(ii) A date that shows the specimen was acquired before the pre-Convention date (see § 23.5). |

| Type of document | Additional required information |
|---|---|
| (10) Re-export certificate | (i) The country of origin, the number of the export permit of that country, and the date of issue.<br>(ii) If previously re-exported, the country of last re-export, the number of the re-export certificate of that country, and the date of issue.<br>(iii) If all or part of this information is not known, a justification must be given. |
| (11) Retrospective CITES document | A clear statement that the CITES document is issued retrospectively and the reason for issuance. |

(f) *Phytosanitary certificate.* A Party that uses a phytosanitary certificate as a CITES document for the export of artificially propagated Appendix-II and -III plants and artificially propagated hybrids of unannotated Appendix-I plants must include all of the following information:

(1) The scientific name of the species, including the subspecies when needed to determine the level of protection of the specimen under CITES, using standard nomenclature as it appears in the CITES appendices or the references adopted by the COP.

(2) The type (such as live plant or bulb) and quantity of the specimen authorized to be in the shipment.

(3) A stamp, seal, or other specific indication stating that the specimen is artificially propagated as defined by CITES (see § 23.54).

**§ 23.21 What code is used to show the source of the specimen?**

The Management Authority must indicate on the CITES document the source of the specimen using one of the following codes:

| Source of specimen | Code |
|---|---|
| (a) Artificially propagated plants:<br>(1) An Appendix-II or -III artificially propagated plant (see § 23.54) or hybrid of unannotated Appendix-I species or other taxa whether artificially propagated for commercial or non-commercial purposes, as well as parts and products.<br>(2) An Appendix-I plant species or hybrid of annotated Appendix-I species artificially propagated for non-commercial purposes, as well as parts and products. | A |
| (b) Bred-in-captivity wildlife:<br>(1) Appendix-II or -III wildlife bred in captivity (see § 23.53) for commercial or non-commercial purposes, as well as parts and products.<br>(2) Appendix-I wildlife bred in captivity for non-commercial purposes, as well as parts and products. | C |
| (c) Propagated or bred for commercial purposes:<br>(1) An Appendix-I plant species or hybrid of annotated Appendix-I species artificially propagated for commercial purposes, as well as of parts and products.<br>(2) Appendix-I wildlife bred in captivity for commercial purposes, as well as parts and products, at an operation registered with the Secretariat. | D |
| (d) Wildlife born in captivity of parents that mated in captivity (first (F1) or subsequent generations) that do not qualify as bred in captivity (see § 23.53), as well as parts and products. | F |
| (e) Confiscated or seized specimens | I |
| (f) Ranched wildlife (wildlife that originated from a ranching operation) | R |
| (g) Source unknown (must be justified on the face of the CITES document) | U |
| (h) Specimens taken from the wild:<br>(1) For wildlife, this includes a specimen born in captivity from an egg collected from the wild or from wildlife that mated or exchanged genetic material in the wild.<br>(2) For plants, it includes a specimen grown in captivity from a propagule collected from a wild plant. | W |

**§ 23.22 What additional information is required on non-Party CITES documents?**

(a) *Purpose.* Under Article X of the Treaty, a Party may accept a CITES document issued by competent authorities in a non-Party only if the document substantially conforms to the requirements of the Treaty.

(b) *Additional certifications.* In addition to the information in § 23.20(c) through (e), CITES documents issued by non-Parties must contain the following certifications on the face of the document:

| Activity | Certification |
|---|---|
| (1) Export | (i) The Scientific Authority has advised that the export will Export not be detrimental to the survival of the species.<br>(ii) The Management Authority is satisfied that the specimen was legally acquired. |
| (2) Export or re-export of a live plant. | The live plant will be transported so as to minimize the risk of injury or damage to the health of the specimen. |
| (3) Import | The import will be for purposes that are not detrimental to the survival of the species. |

**§ 23.23 When is a U.S. or foreign CITES document valid?**

(a) *Purpose.* Article VIII of the Treaty provides that Parties take appropriate measures to enforce the Convention to prevent illegal trafficking in wildlife and plants.

(b) *Original CITES documents.* A separate original or a certified true copy of a CITES document must be issued before the import, introduction from the sea, export, or re-export and must accompany each shipment of specimens.

No copy may be used in place of an original except when endorsed on its face by the issuing Management Authority. Fax or electronic copies are not acceptable.

(c) *Acceptance of CITES documents.* We will accept a CITES document as valid for import, introduction from the sea, export, and re-export only if the document meets the requirements of §§ 23.20 and 23.22, subparts C and E of this part, and the following conditions:

| Key phrase | Conditions for an acceptable CITES document |
|---|---|
| (1) Altered or modified CITES document. | The CITES document has not been altered (by rubbing or scratching out), added to, or modified in any way unless the change is validated on the document by the stamp and signature of the issuing Management Authority. |
| (2) Commercial registered breeding operation for Appendix-I wildlife from a Party. | (i) The operation is in the Secretariat's register.<br>(ii) Each specimen is specifically marked and the mark is described on the CITES document. |
| (3) Commercial registered nursery for Appendix-I plants from Parties. | The operation is in the Secretariat's register. |
| (4) Conditions | All conditions on the CITES document are met. |
| (5) Extension of validity | The validity of a CITES document may not be extended except as provided in § 23.64 for certain timber species. |
| (6) Humane transport | (i) The live wildlife was transported in compliance with the CITES Guidelines for Transport of Live Animals or, in the case of air transport, the International Air Transport Association Live Animal Regulations.<br>(ii) The live plant was transported so as to minimize the risk of injury or damage to the health of the specimen. |
| (7) Management Authority and Scientific Authority. | The CITES document was issued by a Party or non-Party that has designated a Management Authority and Scientific Authority and has provided information on these authorities to the Secretariat. |
| (8) Name of importer and exporter. | A CITES document is specific to the name on the face of the document and may not be transferred or assigned to another person. |
| (9) Phytosanitary certificate | A phytosanitary certificate can be used as a certificate for artificially propagated plants only if the issuing Party has provided copies of the certificates, stamps, and seals to the Secretariat. |
| (10) Pre-Convention | For a CITES document designating the specimen as pre-Convention, the date of acquisition must be before the date the species was first listed in the CITES appendices, and the specimen must be considered pre-Convention by both the importing and exporting countries. |
| (11) Ranched | For any ranched specimen of a species transferred from Appendix I to Appendix II because of ranching, international trade cannot involve a non-Party or a Party that holds a reservation on the species. Check our website for a list of these species (see § 23.7). |

| Key phrase | Conditions for an acceptable CITES document |
|---|---|
| (12) Registered scientific institutions. | Both importing and exporting scientific institutions are in the Secretariat's register for scientific exchange. |
| (13) Shipment contents ..... | The contents of the shipment match the description of specimens provided on the CITES document, including the quantity, units, and species. A shipment cannot contain more specimens or different species than certified or validated on the CITES document at the time of export or re-export. The quantity of each specimen may be less than, but not more than, the quantity stated for that specimen on the CITES document at the time of issuance. |
| (14) Quotas ..... | For species with a quota on file with the Secretariat, the quantity exported from a country does not exceed the quota. |
| (15) Wild-collected wildlife specimens. | Wild-collected wildlife specimens (indicated on the CITES document with a source code of "W") are not coming from a country that is outside the range of the species, unless we have information that shows the species has been established in the wild in that country through accidental introduction or other means. |

(d) *Verification of CITES documents.* We may request verification of CITES documents from the Secretariat or a foreign Management Authority before deciding whether to accept a CITES document under some circumstances, including, but not limited to, the following:

(1) We receive reliable information from the COP, Standing Committee, Secretariat, or other credible source that indicates the improper implementation of CITES by the country concerned.

(2) We have reasonable grounds to believe that a CITES document is not valid or authentic because the species is being traded in a manner detrimental to the survival of the species or in violation of foreign wildlife or plant laws, or the applicable Scientific Authority finding has not been made.

(3) If the re-export certificate refers to an export permit that does not exist or is not valid.

(4) We have reasonable grounds to believe that the document is fraudulent or has unauthorized changes.

(5) We have reasonable grounds to believe that the specimens identified as bred in captivity or artificially propagated are wild specimens.

(6) The import of a specimen designated as bred in captivity or artificially propagated is from a non-Party. For an Appendix-I specimen, we must consult with the Secretariat.

(7) For a retrospectively issued CITES document, if both the importing and exporting or re-exporting countries' Management Authorities have not agreed to the issuance of the document.

(e) *Information bulletin.* If we determine, based on reliable information received from the Secretariat, Standing Committee, or other sources that a country is not effectively implementing or complying with CITES, we will issue an information bulletin indicating what action we will take on shipments involving that country. We may restrict the acceptance of CITES documents from that country, either for all CITES species or for only certain species.

**§ 23.24 What CITES documents do I present at the port?**

(a) *Purpose.* Article VIII of the Treaty provides that Parties establish an inspection process that takes place at a port of exit and entry. Inspecting officials must verify that valid CITES documents accompany shipments and take enforcement action when shipments do not comply with the Convention.

(b) *Process.* Officials in each country inspect the shipment and validate or certify the CITES document. In the United States, you must follow the clearance requirements for wildlife in 50 CFR part 14 or plants in 7 CFR 355.22. The table in this paragraph (b) provides information on:

(1) The types of original CITES documents you must present to be validated or certified by the inspecting official in order to export or re-export from a country.

(2) When you need to surrender a copy of the original CITES document to the inspecting official at the time of export or re-export.

(3) When you need to surrender the original CITES document to the inspecting official at the time of import or introduction from the sea.

| Type of CITES document | Present original for export or re-export validation or certification | Surrender copy upon export or re-export | Surrender original upon import or introduction from the sea |
|---|---|---|---|
| Artifically propagated plants ..... | Required ..... | Required ..... | Required. |
| Bred-in-captivity wildlife (for Appendix-I species, only includes wildlife bred for non-commercial purposes). | Required ..... | Required ..... | Required. |
| Certificate of origin ..... | Required ..... | Required ..... | Required. |
| Certificate of ownership ..... | Required ..... | Required ..... | Not required; submit copy. |
| Commercial registered breeding operation ..... | Required ..... | Required ..... | Required. |
| Commercial registered nursery ..... | Required ..... | Required ..... | Required. |
| Export permit ..... | Required ..... | Required ..... | Required. |
| Hybrid ..... | [1] Required ..... | Required ..... | Required. |
| Import permit ..... | Not required ..... | Required ..... | Required. |

| Type of CITES document | Present original for export or re-export validation or certification | Surrender copy upon export or re-export | Surrender original upon import or introduction from the sea |
|---|---|---|---|
| Introduction from the sea | Not applicable | Not applicable | Required. |
| Multiple-use permit | Required | Required | Not required; submit copy. |
| Pre-Convention document | Required | Required | Required. |
| Re-export certificate | Required | Required | Required. |
| Registered scientific institution CITES label | Not required | Not required | Not required. |
| Replacement document where a shipment has been made and is in a foreign country. | Not required | Not required | Required. |
| Replacement document where a shipment has not left the United States. | Required | Required | Required. |
| Retrospective document | Not required | Not required | Required. |
| Traveling live-animal exhibition | Required | Required | Not required; submit copy. |

[1] Certification letter may not require validation.

## Subpart C—Application Procedures, Issuance Criteria, and Conditions

### § 23.25 How do I apply for a U.S. CITES document?

(a) To apply for a U.S. CITES document, you must complete a standard application form and submit it with the processing fee, unless you are fee exempt (see 50 CFR 13.11(d)), to one of the following offices (see § 23.7):

| Type of CITES document | Contact office |
|---|---|
| (1) All types of CITES documents | Office of Management Authority. |
| (2) Export of furs or skins of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear, and American alligator (see § 23.61). | Division of Law Enforcement at certain designated ports or regional offices. |
| (3) Re-export of Appendix-II and -III wildlife (unless a permit is required under any other part in this subchapter). | Division of Law Enforcement at certain designated ports or regional offices. |
| (4) Export of a sport-hunted trophy, its parts or products, of the Alaskan population of black bear (*Ursus americanus*). | Division of Law Enforcement at certain ports in Alaska. |

(b) If you do not know the type of CITES document you need for your shipment, go to §§ 23.15–23.17.

(c) If a species is also listed under another part of this subchapter (such as endangered or threatened, see § 23.3), the requirements of all parts must be met. You may submit a single application that contains all the information needed to meet the requirements of CITES and other applicable parts.

(d) You must also follow the general permit procedures in 50 CFR part 13.

(e) You should review the issuance criteria of all applicable regulations in this subchapter that apply to the type of permit you are seeking before completing the application form.

(f) We will review your application to assess whether it contains the information needed to make the required findings.

(1) Based on available information, we will decide if any of the exemptions apply and what type of CITES document you need.

(2) If we need additional information, we will contact you. If you do not provide the information within 45 calendar days, we will place your application in our inactive files. When you provide the additional information, you may ask that we reactivate your application.

### § 23.26 How do we decide to issue or deny a request for a U.S. CITES document?

(a) Upon receiving a complete application, we will decide whether to issue a CITES document by considering:

(1) The general criteria in 50 CFR 13.21(b) and, if the species is protected under a separate law or treaty, criteria in any other applicable parts.

(2) The CITES issuance criteria provided in this subpart (see subpart D of this part for factors we consider in making certain of these findings).

(b) As needed, we will forward a copy of the application to the Office of Scientific Authority, State or other Federal government agencies, or other applicable experts. We may also query the Secretariat or foreign Management or Scientific Authorities for information to use in making the required findings.

(c) You must provide information to satisfy us that all criteria specific to the proposed activity are met before we can issue a CITES document.

(d) We will base our decision on whether to issue or deny the application on the best available information.

### § 23.27 What records do I need to apply for a U.S. CITES document?

(a) When you apply for a U.S. CITES document, you will be asked to provide information that shows the origin of the specimen.

(1) You need to provide sufficient information for us to determine if the issuance criteria in this part are met (see

the section in this subpart for each type of CITES document).

(2) Depending on the type of CITES document, you will need records to show that the specimen or founder stock was legally acquired (see § 23.50), that founder stock was acquired without detriment to the species, and that the proposed activity will not be detrimental to the survival of the species (see § 23.51).

(b) Documents to be provided in permit applications include, but are not limited to, the following:

| Source of specimen | Types of records to keep |
|---|---|
| (1) Born, bred, grown, or propagated in captivity (see wild-collected if the wildlife was born in captivity from an egg collected from the wild or from parents that mated or exchanged genetic material in the wild, or the plant was grown in captivity from a propagule collected from a wild plant). | (i) Records that identify the breeder or propagator:<br>(A) Signed and dated statement that the specimen was bred or propagated by the breeder or propagator.<br>(B) Name and address of the breeder or propagator.<br>(C) Identification of the specimen, including birth, hatch, or propagation date. For wildlife the identifying information could include sex, size, band number, or other markings.<br>(ii) Examples of documents that help identify a breeder or propagator:<br>(A) International Species Inventory System (ISIS) records.<br>(B) Veterinary certificates.<br>(C) Plant nursery licenses and USDA General Permit.<br>(iii)Records that document the breeding or propagating of specimens at the facility:<br>(A) Number of wildlife (by sex and age- or size-class) and plants at the facility.<br>(B) How long the facility has been breeding or propagating the specimens.<br>(C) Annual production and mortalities.<br>(D) Number sold or transferred annually.<br>(E) Number added from other sources annually.<br>(F) Transaction records with the date, quantity of specimens, and name and address of seller.<br>(G) Marking system, if applicable.<br>(H) Photographs or video of facility, including for wildlife any activities during nesting and production and rearing of young.<br>(iv) If a plant is propagated from exempt plant material (see § 23.88(c)), records that document the name and address of the person who sold you the plant material. If you will be seeking a certificate for artificially propagated plants for plants grown from exempt seeds, records that document the cultivated origin of the seed. |
| (2) Confiscated or seized | Copy of remission decision, legal settlement, or disposal action after forfeiture or abandonment that demonstrates the applicant's legal possession. |
| (3) Imported previously | (i) Copies of canceled CITES documents that accompanied shipments into the United States.<br>(ii) For wildlife, copies of a cleared Declaration for Importation or Exportation of Fish or Wildlife (Form 3–177) for each shipment. |
| (4) Multiple ownership/purchased | (i) Records that show the specimen's origin (pre-Convention, previously imported, wild-collected, or born, bred, grown, or propagated in captivity in the United States).<br>(ii) Records that document the history of all transfers in ownership.<br>(iii) Each record needs to specifically identify the specimen and give the name and address of the owner. |
| (5) Ranched or farmed | Records documenting that the specimens were taken under a State-approved program and that all State requirements were met. |
| (6) Wild-collected | Records, such as permits, licenses, and/or tags, that the specimen or the founder stock was legally removed from the wild under relevant foreign, Federal, tribal, State, or local wildlife or plant conservation laws or regulations: |

| Source of specimen | Types of records to keep |
|---|---|
| | (i) If taken on private or tribal land, permission of the landowner.<br>(ii) If taken in a national, State, or local park, refuge, or protected area, permission from the applicable agency.<br>(iii) If taken on public land and no permit is required, a statement from the appropriate State or other governmental agency. |

(c) You should keep records for as long as you possess the specimen, and, if you sell, donate, or transfer ownership of the specimen, you should provide records to the new owner on the origin of the specimen.

**§ 23.28 What are the requirements for import permits?**

(a) *Purpose.* Article III(3) of the Treaty sets out the conditions under which a Management Authority can grant an import permit.

(b) *U.S. application forms.* Complete and submit the appropriate form for the proposed activity to the Office of Management Authority (see § 23.7):

| Type of application for import permits for Appendix-I specimens | Form No. |
|---|---|
| CITES: | |
| African Elephant and Leopard Sport-hunted Trophies | 3–200–19 |
| Appendix-I Plants | 3–200–35 |
| Appendix-I Wildlife | 3–200–31 |
| Appendix-I Wildlife Biological Samples | 3–200–38 |
| Endangered Species Act and CITES: | |
| ESA Plants | 3–200–36 |
| ESA Wildlife | 3–200–37 |
| Marine Mammal Protection Act and CITES: | |
| Marine Mammals | 3–200–43 |
| Wild Bird Conservation Act and CITES: | |
| Personal Pet Bird | 3–200–46 |
| Scientific Research or Zoological Breeding/Display | 3–200–47 |
| Under an Approved Cooperative Breeding Program | 3–200–48 |

(c) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

| Issuance criteria for import permits for Appendix-I specimens | Section |
|---|---|
| (1) The proposed import would be for purposes which are not detrimental to the survival of the species | 23.51 |
| (2) The purpose of the import is not for primarily commercial purposes | 23.52 |
| (3) The recipient is suitably equipped to house and care for the live wildlife or plants to be imported. | 23.56 |
| (4) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP | 23.20 |
| (5) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen | 23.20 |

(d) *Standard conditions.* In addition to the conditions in § 23.45, you must meet all of the following:

(1) You may import and subsequently use the wildlife or plant only for the purposes stated in your application and specifically approved and conditioned in the permit. To ensure that the specimen will not be used for primarily commercial purposes after import, you must get a letter of approval from us to use the specimen for a different purpose or transfer the specimen where it will be used for a different purpose.

(2) You may not import, subsequently use, or transfer the specimen for any commercial purpose.

(3) The specimen may not be used by you or any other person to establish or participate in an operation or nursery that is breeding or propagating the species for commercial purposes.

**§ 23.29 What are the requirements for export permits and re-export certificates?**

(a) *Purposes.* Articles III, IV, and V of the Treaty set out the conditions under which a Management Authority may grant an export permit or re-export

certificate for Appendix-I, -II, and -III specimens.

(b) *U.S. application forms.* Complete and submit the appropriate form for the proposed activity to the Office of Management Authority or Form 3–200–26 to the Division of Law Enforcement at certain designated ports or regional offices (see § 23.7):

| Type of application for export permits and re-export certificates | Form No. |
|---|---|
| CITES: | |
| American Ginseng | 3–200–34 |
| Captive-born Raptors—Export only | 3–200–25 |
| Captive-born Wildlife (except raptors)—Export only | 3–200–24 |
| Furs or Skins of Bobcat, River Otter, Alaska lynx, Alaska Gray Wolf, Alaska Brown Bear, or American Alligator | 3–200–26 |
| Plants | 3–200–32 |
| Trophies of Alaska Black Bear | 3–200–26 |
| Trophies by Taxidermists | 3–200–28 |
| Wildlife | 3–200–27 |
| Wildlife—Re-export only of Appendix-II and -III specimens from some Law Enforcement offices | 3–200–26 |
| Wildlife Biological Specimens | 3–200–29 |
| Endangered Species Act and CITES: | |
| ESA Plants | 3–200–36 |
| ESA Wildlife | 3–200–37 |
| ESA Wildlife Biological Samples | 3–200–29 |
| Marine Mammal Protection Act and CITES: | |
| Marine Mammals | 3–200–53 |

(c) *A plant propagated from exempt plant material.* A plant grown from exempt plant material (see § 23.88(c)) is regulated by CITES.

(1) The proposed shipment of the specimen is treated as an export even if the exempt plant material from which it was derived was previously imported into the United States.

(2) When you apply for a CITES document, the plant may be eligible for an export permit under this section or a certificate for artificially propagated plants (§ 23.32) depending on the species and the records you have on the origin of the exempt plant material. See § 23.27 for the type of records you need.

(3) See § 23.54(f) on what we consider in deciding if a plant grown from exempt plant material qualifies as artificially propagated.

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) For an export permit:

| Issuance criteria for export permits | Appendix | | | Section |
|---|---|---|---|---|
| | I | II | III | |
| (i) The wildlife or plant was legally acquired | Yes | Yes | Yes | 23.50 |
| (ii) The proposed export would not be detrimental to the survival of the species. | Yes | Yes | N/A | 23.51 |
| (iii) An import permit has already been granted or the Management Authority of the importing country has confirmed that it will be granted. | Yes | N/A | N/A | 23.17 |
| (iv) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP. | Yes | Yes | YES | 23.20 |
| (v) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to health, or cruel treatment of the specimen. | Yes | Yes | Yes | 23.20 |
| (vi) For Appendix-III, the specimen originated in a country that listed the species. | N/A | N/A | Yes | 23.17 |

(2) For a re-export certificate:

| Issuance criteria for re-export certificates | Appendix | | | Section |
|---|---|---|---|---|
| | I | II | III | |
| (i) The wildlife or plant was legally acquired | Yes | Yes | Yes | 23.50 |
| (ii) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP. | Yes | Yes | Yes | 23.20 |
| (iii) For live specimens, an import permit has already been granted or the Management Authority of the importing country has confirmed that it will be granted. | Yes | N/A | N/A | 23.17 |
| (iv) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen. | Yes | Yes | Yes | 23.20 |
| (v) For re-export of specimens introduced from the sea under an international treaty, convention, or agreement that was in force for the species' protection on July 1, 1975, the specimens were taken in accordance with that treaty, convention, or agreement. | Yes | Yes | N/A | 23.31 |
| (vi) For re-export of confiscated Appendix-II specimens only, the proposed re-export would not be detrimental to the survival of the species. | N/A | Yes | N/A | 23.50 |

(e) *Confiscated specimen.* A Management Authority may issue a re-export certificate for a confiscated specimen when the certificate indicates the specimen was confiscated and when the re-export is for one of the following:

(1) For any CITES species, the return of a live specimen to the country of export (see subpart F), placement of a live specimen in a rescue center, or judicial use.

(2) For an Appendix-II or -III species, the disposal of the specimen in the best manner possible to benefit enforcement and administration of the Convention.

**§ 23.30 What are the requirements for certificates of origin?**

(a) *Purpose.* Article V(3) of the Treaty explains when a shipment of Appendix-III specimens must be accompanied by a certificate of origin.

(b) *U.S. application forms.* For a certificate of origin to export specimens that are listed in Appendix III by another country, but originated in the United States, complete and submit one of the following forms to the Office of Management Authority (see § 23.7):

(1) Application Form 3–200–27 for wildlife.

(2) Application Form 3–200–32 for plants.

(c) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The specimen originated in the United States.

(2) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.

(3) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen.

**§ 23.31 What are the requirements for introduction-from-the-sea certificates?**

(a) *Purpose.* Articles III(5), IV(6), and IV(7) of the Treaty set out the conditions under which a Management Authority may grant a certificate of introduction from the sea.

(b) *U.S. application form.* Complete and submit Form 3–200–31 to the Office of Management Authority (see § 23.7).

(c) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

| Issuance criteria for introduction-from-the-sea certificates | Appendix | | Section |
|---|---|---|---|
| | I | II | |
| (1) The proposed introduction from the sea would not be detrimental to the survival of the species. | Yes | Yes | 23.51 |
| (2) The purpose of the import is not for primarily commercial purposes | Yes | N/A | 23.52 |
| (3) The recipient is suitably equipped to house and care for live wildlife or plants | Yes | N/A | 23.56 |
| (4) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP. | Yes | Yes | 23.20 |
| (5) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen. | Yes | Yes | 23.20 |

(d) *Exemption.* As allowed under Article XIV(4) and (5) of the Treaty, you may directly transport into the United States any Appendix-II wildlife or plant taken in the marine environment that is not under the jurisdiction of any

country without a CITES document when all of the following conditions are met:

(1) The United States is a party to an international treaty, convention, or agreement that affords protection to the species and was in force on July 1, 1975.

(2) The ship that harvested the specimen is registered to the United States.

(3) The specimen was taken in accordance with the international treaty, convention, or agreement, including any quotas.

(4) The shipment is accompanied by any official document required under the international treaty, convention, or agreement or otherwise required by U.S. law.

(5) To re-export specimens, you must obtain a certificate from the Office of Management Authority (see § 23.7) that the specimens were taken in accordance with the provision of the pre-CITES international treaty, convention, or agreement.

(e) *Appendix III.* Introduction-from-the-sea certificate requirements do not apply to Appendix-III species.

**§ 23.32 What are the requirements for certificates for artificially propagated plants?**

(a) *Purpose.* Article VII(5) of the Treaty, grants an exemption to plants that are artificially propagated and a Management Authority grants a certificate.

(b) *General provisions.* We may grant a certificate for plants artificially propagated at your facility or acquired from another facility provided we find that the criteria in paragraph (d) of this section are met.

(1) For an Appendix-I plant species or a hybrid of an annotated Appendix-I species, only specimens that are artificially propagated for non-commercial purposes are eligible for this exemption. See § 23.39 for export of Appendix-I plants artificially propagated for commercial purposes.

(2) The certificate and any subsequent re-export certificate (§ 23.29) must show the source code as "A" for artificially propagated.

(3) For Appendix-I specimens that satisfy the requirements of this section, no CITES import permit is required.

(c) *U.S. application form.* Complete and submit Form 3–200–33 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

| Issuance criteria for certificates for artificially propagated plants | Appendix | | | Section |
|---|---|---|---|---|
| | I | II | III | |
| (1) The plant was legally acquired | Yes | Yes | Yes | 23.50 |
| (2) The plant was artificially propagated | Yes | Yes | Yes | 23.54 |
| (3) The Appendix-I species and hybrids of annotated Appendix-I species were propagated for non-commercial purposes. | Yes | N/A | N/A | 23.32 |
| (4) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP. | Yes | Yes | Yes | 23.20 |
| (5) The live plant will be prepared and shipped so as to minimize risk of injury or damage to the health of the specimen. | Yes | Yes | Yes | 23.20 |

(e) *Standard conditions.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) You may not export or re-export plants removed from the wild or grown directly from wild seed, and their parts and products under this certificate.

(2) You may not export specimens of Appendix-I species and hybrids of annotated Appendix-I species propagated for commercial purposes under this certificate.

(3) You may export native plants under this certificate only when specifically approved for export and listed on the certificate, inventory sheet, or an approved species list.

(4) You may export specimens under a higher taxon name only if you identified the taxon in your application and we approved it on this certificate.

**§ 23.33 What are the requirements for bred-in-captivity certificates?**

(a) *Purpose.* Article VII(5) of the Treaty grants an exemption to wildlife that is bred in captivity and a Management Authority grants a certificate.

(b) *General provisions.* We may grant a certificate for wildlife bred in captivity at your facility or acquired from another facility provided we find that criteria in paragraph (d) of this section are met.

(1) For Appendix-I wildlife, only specimens that are bred in captivity for non-commercial purposes are eligible for this exemption. *See* § 23.38 for registration of an Appendix-I commercial breeding operation.

(2) The certificate and any subsequent re-export certificate (§ 23.29) must show the source code as "C" for bred in captivity.

(3) For Appendix-I specimens that satisfy the requirements of this section, no CITES import permit is required.

(c) *U.S. application form.* Complete and submit Form 3–200–24 to the Office of Management Authority (*see* § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

| Issuance criteria for bred-in-captivity certificates | Appendix | | | Section |
|---|---|---|---|---|
| | I | II | III | |
| (1) The wildlife was legally acquired | Yes | Yes | Yes | 23.50 |

| Issuance criteria for bred-in-captivity certificates | Appendix | | | Section |
|---|---|---|---|---|
| | I | II | III | |
| (2) The wildlife was bred in captivity | Yes | Yes | Yes | 23.53 |
| (3) The Appendix-I species were bred for non-commercial purposes [1] | Yes | N/A | N/A | 23.33 |
| (4) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP. | Yes | Yes | Yes | 23.20 |
| (5) The live wildlife will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen. | Yes | Yes | Yes | 23.20 |

[1] This issuance criterion does not apply to live wildlife that is part of a traveling live-animal exhibition.

**§ 23.34 What are the requirements for plant hybrids?**

(a) *General provisions.* Except as provided in paragraph (b) of this section, the export, re-export, or import of a plant hybrid must be accompanied by a valid CITES document, as follows:

| If the plant is: | Then the specimen is: |
|---|---|
| (1) An artificially propagated hybrid of one or more unannotated Appendix-I species or other taxa. | Treated as if listed in Appendix II. |
| (2) A hybrid that includes two or more CITES species in its lineage and is not a specimen covered in paragraph (a)(1) of this section. | Considered to be listed in the more restrictive appendix, with Appendix I being the most restrictive and Appendix III the least. |
| (3) A hybrid that includes one CITES species in its lineage and is not a specimen covered in paragraph (a)(1) of this section. | Considered to be listed in the appendix in which the species is listed in the CITES appendices. |

(b) *Exception.* Plant hybrids may be excluded from CITES controls by an annotation in Appendix II or III (see § 23.88).

**§ 23.35 What are the requirements for wildlife hybrids?**

(a) *Definition of recent lineage.* Recent lineage for the purposes of this section means the last four generations of that specimen's ancestry (direct line of descent).

(b) *General provisions.* Except as provided in paragraph (c) of this section, the export, re-export, or import of a wildlife hybrid must be accompanied by a valid CITES document that shows the hybrid listed in the following appendix:

| If at least one specimen in the recent lineage is included in: | Then the specimen is included in: |
|---|---|
| (1) Appendix I | Appendix I. |
| (2) Appendix II, and an Appendix-I species is not included in the recent lineage | Appendix II. |
| (3) Appendix III, and an Appendix-I or -II species is not included in the recent lineage | Appendix III. |

(c) *Exempt wildlife hybrid.* Shipment of a wildlife hybrid that does not have CITES specimens in its recent lineage (exempt wildlife hybrid) must be accompanied by either a CITES document or a letter issued by us or a foreign Management Authority. The letter must describe the specimen, provide the scientific name, and certify that the wildlife contains no CITES specimens in the last four generations of its ancestry.

(d) *U.S. application for an exempt wildlife hybrid.* To apply for a hybrid exemption letter, provide the following to the Office of Management Authority (see § 23.7), or complete and submit application Form 3–200–57:

(1) A signed and dated request for a hybrid exemption letter.

(2) Your name and address.

(3) The name and address of the recipient in the foreign country.

(4) The scientific and common names of the species in the hybrid.

(5) Description of the wildlife, including sex and birth date, if known.

(6) Information that shows a CITES species does not occur in the last four generations of the specimen's ancestry. This includes, but is not limited to, a pedigree or official registration showing direct lineage.

(7) The U.S. port through which the export or re-export will occur.

(e) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The wildlife hybrid does not include any CITES specimen in its recent lineage.

(2) The scientific name of the CITES specimen that is in the lineage of the hybrid is standard nomenclature in the CITES appendices or references adopted by the COP.

**§ 23.36 What are the requirements to travel internationally with my personally owned live wildlife?**

(a) *Purpose.* A Management Authority may use the exemption in Article VII(3) of the Treaty to issue a certificate of ownership that approves cross-border movements of personally owned live wildlife.

(b) *General provisions.* You, the owner of live wildlife, may apply for a certificate of ownership if you frequently take the wildlife with you for companionship or a non-commercial competition to another country.

(1) You must obtain the certificate from the Management Authority in the country where you usually live.

(2) If offspring are born or you acquire specimens while you are traveling in another country, you must obtain the appropriate CITES document for the export or re-export of the wildlife, not a certificate of ownership, from the Management Authority of that country.

(3) Upon return home, you may apply for a certificate of ownership for wildlife born or acquired overseas.

(c) *U.S. application form.* Complete and submit Form 3–200–54 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) You own the live wildlife and the cross-border movement is for personal companionship or use in a non-commercial competition, such as falconry.

(2) You usually live in the United States.

(3) The wildlife was legally acquired (see § 23.50).

(4) You do not intend to sell or otherwise transfer the wildlife while traveling internationally.

(5) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.

(6) The Management Authority of the country of import has agreed to the cross-border movement.

(7) The wildlife is appropriately identified or securely marked.

(8) The wildlife is transported and cared for in a way that minimizes risk of injury, damage to the health, or cruel treatment of the specimen.

(e) *Standard conditions.* In addition to the conditions in § 23.45, all of the following conditions must be met:

(1) You may transport the wildlife for non-commercial purposes only.

(2) You must accompany the wildlife during any cross-border movement.

(3) You may not sell or otherwise transfer the specimen while traveling internationally.

(4) You must retain the original certificate and have it validated at each border crossing.

(5) If the certificate is lost, stolen, or accidentally destroyed, you must obtain a replacement certificate from the issuing Management Authority (see § 23.42).

(6) If you no longer own the live wildlife, the original certificate must be immediately returned to the issuing Management Authority.

**§ 23.37 What are the requirements for pre-Convention specimens?**

(a) *Purpose.* Article VII(2) of the Treaty allows international trade in pre-Convention specimens when the exporting or re-exporting country is satisfied that the specimen was acquired before the provisions of CITES applied to it and issues a CITES document to that effect.

(b) *General provisions.* The following general provisions apply:

(1) Trade in specimens under the pre-Convention exemption is only possible if the specimen is considered pre-Convention by both the importing and exporting countries.

(2) When a species is transferred from one appendix to another (such as Appendix II to Appendix I), the pre-Convention date is the date the species was first listed under CITES.

(3) For qualifying Appendix-I specimens, no CITES import permit is required.

(4) The pre-Convention exemption does not apply to offspring of any wildlife or plants born or propagated after the date the species was first listed under CITES.

(c) *U.S. application form.* Complete and submit Form 3–200–23 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The wildlife or plant (including parts and products) was removed from the wild or held in captivity or a controlled environment before the date CITES first applied to it.

(2) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP.

(3) The live wildlife or plant will be prepared and shipped so as to minimize risk of injury, damage to the health, or cruel treatment of the specimen.

(4) For the re-export of a pre-Convention specimen previously imported under a CITES document, the wildlife or plant was legally acquired (see § 23.50).

(e) *U.S. inventory.* If you possess an inventory or stockpile of specimens of species newly listed, the following applies:

(1) You may register with us the inventory or stockpile that you possessed before the effective date of the listing. Complete and submit application form 3–200–59 to the Office of Management Authority (see § 23.7). This registration will expedite the review of applications for pre-Convention certificates.

(2) If you wish to commercially export or re-export pre-Convention stock after the effective date of listing and have not registered your inventory, we will require convincing evidence that the specimens are pre-Convention. This evidence may include information from your recordkeeping system that shows an audit trail of initial stock and quantities exported, re-exported, sold or disposed of domestically, and new stock acquired since the listing.

**§ 23.38 What are the requirements for registering an Appendix-I commercial breeding operation?**

(a) *Purpose.* Article VII(4) of the Treaty provides that Appendix-I specimens that are bred in captivity for commercial purposes shall be treated as if they were listed in Appendix II.

(b) *General provisions.* If you are breeding Appendix-I wildlife for commercial purposes, you may apply to register your operation.

(1) If you are proposing to breed non-native species, you must conduct a study of ecological risks that the escape of specimens may pose to the ecosystem and native species and how to prevent any negative effects.

(2) In the United States, upon receipt of a complete registration request from a U.S. operation, we will publish a notice of receipt in the **Federal Register**. Each notice will invite interested entities to submit written data, views , or comment with respect to the registration request within 30 days after the date of the notice.

(3) If we are satisfied that the operation meets the conditions for registration, we will send the request from a U.S. operation to the Secretariat or provide comments to the Secretariat on requests by other Parties.

(4) If the request is the first registration for a species, the Secretariat will refer it to the appropriate experts for advice and notify the Parties of the registration request. If any Party objects to the registration within a 120-day comment period, approval of the registration will require a two-thirds majority vote by Parties at the next COP or by a postal vote.

(5) If other operations have already been registered for the species, the Secretariat may send the request to appropriate experts for advice if significant new information is available or if there are other reasons for concern.

(6) If the Secretariat is not satisfied that the operation meets the conditions for registration, it will provide the submitting Management Authority with an explanation of the reasons for rejection and indicate the specific conditions that must be met before the registration can be accepted.

(7) When the Secretariat is satisfied that the operation meets the registration requirements, it will include the operation in its register.

(8) Operations are assigned an identification number and listed in the official register. Registration is not final until the Secretariat notifies all Parties.

(9) A Management Authority may apply special criteria for the registration of operations intending to breed specimens of species that are known to be difficult to breed in captivity, species that have specific requirements for successful breeding in captivity, or specimens that are known to be difficult to distinguish from wild-taken specimens when in trade.

(10) If a Party believes that a registered operation does not meet the bred-in-captivity requirements, it may, after consultation with the Secretariat and the Party concerned, propose that the COP delete the operation from the register by a two-thirds vote of the Parties.

(11) The registering Management Authority must monitor registered operations to ensure that they continue to meet the registration requirements.

(12) A Party may unilaterally request the removal of a registered operation within its jurisdiction by notifying the Secretariat.

(c) *U.S. application to register.* Complete and submit Form 3–200–55 to the Office of Management Authority (see § 23.7).

(d) *Criteria.* For your breeding operation to be registered, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

| Criteria for registering an Appendix-I breeding operation | Section |
|---|---|
| (1) The specimen was bred for commercial purposes | 23.38 |
| (2) The founder stock was legally acquired | 23.50 |
| (3) The wildlife was bred in captivity | 23.53 |
| (4) Where the establishment of a breeding operation involves the removal of animals from the wild (allowable only under exceptional circumstances), the operation must demonstrate to the satisfaction of the Management Authority and the Secretariat that the removal is or was not detrimental to the conservation of the species | N/A |
| (5) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP | 23.20 |
| (6) The breeding operation will make a continuing, meaningful contribution to the conservation of the species, as warranted by the conservation needs of the species | N/A |

(e) *Standard conditions of the registration.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) You must uniquely mark, as proposed at the time of registration, all specimens from the breeding operation. Birds must have closed bands.

(2) You may not import Appendix-I specimens for primarily commercial purposes (such as to establish a commercial captive-breeding operation) except from breeding operations registered for that species.

(3) You must provide information each year on the year's production and your current breeding stock. You may provide the information by mail, fax, or e-mail.

(4)You must allow our agents to enter the premises at any reasonable hour to inspect wildlife held or to inspect, audit, or copy applicable records.

(f) *Export procedure for registered operations.* Appendix-I species bred at a registered operation are treated as if listed in Appendix II.

(1) The export permit (see § 23.29) may be granted to the registered operation or to persons who have purchased a specimen that originated at the registered operation if the specimen has the unique mark applied by the operation.

(2) The export permit must show the source code as "D" and give the identification number of the registered breeding operation where the specimens originated.

(3) Any subsequent re-export certificates (§ 23.29) for these specimens must also show the source code as "D" and give the number of the breeding operation.

(4) No CITES import permit is required for qualifying specimens.

**§ 23.39 What are the requirements for export of Appendix-I plants artificially propagated for commercial purposes?**

(a) *Purpose.* Article VII(4) of the Treaty provides that Appendix-I plants artificially propagated for commercial purposes shall be treated as if they were listed in Appendix II.

(b) *General provisions.* An export permit can be issued for specimens of Appendix-I species and hybrids of annotated Appendix-I species artificially propagated for commercial purposes at your facility or acquired from other facilities when the species meets the criteria in paragraph (d) of this section. These artificially propagated specimens are treated as if listed in Appendix II.

(1) The export permit is valid for only 6 months and must show the source code as "D" for plants artificially propagated for commercial purposes.

(2) Any subsequent re-export certificate (§ 23.29) for these specimens must also show the source code as "D."

(3) No CITES import permit is required for qualifying specimens.

(c) *U.S. application form.* Complete and submit Form 3–200–33 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

| Issuance criteria for export permits | Section |
|---|---|
| (1) The specimen was propagated for commercial purposes | 23.39 |
| (2) The founder stock was legally acquired | 23.50 |
| (3) The proposed export would not be detrimental to the survival of the species | 23.51 |
| (4) The plant was artificially propagated | 23.54 |
| (5) The scientific name of the species is the standard nomenclature in the CITES appendices or the references adopted by the COP | 23.20 |
| (6) The live plant will be prepared and shipped so as to minimize risk of injury or damage to the health of the specimen | N/A |

(e) *Nursery registration.* [Reserved]

**§ 23.40 What are the requirements for registered scientific institutions?**

(a) *Purpose.* Article VII(6) of the Treaty grants an exemption that allows international trade in certain specimens for non-commercial loan, donation, or exchange between scientific institutions.

(b) *General provisions.* Scientific institutions must register with the Management Authority in their country. Scientists who wish to use this exemption must be affiliated with a registered scientific institution.

(1) The Management Authority will assign the institution a five-character code, consisting of the ISO country code and a unique, three-digit number. In the case of a non-Party, the Secretariat will ensure that the institution meets the standards and assign it a unique code.

(2) The Management Authority communicates the name, address, and assigned code to the Secretariat, who maintains a list of registered scientific institutions and provides that information to all Parties.

(3) A registered scientific institution does not need separate CITES documents for the non-commercial loan, donation, or exchange of preserved, frozen, dried, or embedded museum specimens, herbaria specimens, or live plant material with another registered institution. The shipment must have an external label that contains specified information.

(c) *U.S. application to register.* To register, complete and submit application Form 3–200–39 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You, a registered scientific institution, must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) Collections of wildlife or plant specimens are permanently housed and professionally curated, and corresponding records are kept.

(2) Specimens are accessible to all qualified users, including those from other institutions.

(3) Records are properly accessioned in a permanent catalog.

(4) Records are permanently maintained for loans and transfers to other institutions.

(5) Specimens are acquired primarily for research that is to be reported in scientific publications.

(6) Collections are prepared and arranged in a way that ensures their utility.

(7) Specimen labels, permanent catalogs, and other records are accurate.

(8) Specimens are lawfully acquired and possessed under a country's national wildlife and plant laws.

(9) Appendix-I specimens are permanently and centrally housed under the direct control of the institution that manages them in a way that prevents their use for decoration, trophies, or commercial purposes.

(e) *Standard conditions.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) You are only authorized to send and receive preserved, frozen, dried, or embedded museum specimens, herbaria specimens, or live plant material as a non-commercial loan, donation, or exchange.

(2) You and the receiving or sending scientific institution must be registered by the applicable Management Authorities, and the registrations must be on file with the Secretariat.

(3) You must ship specimens only for scientific research and not for use as decoration, trophies, or commercial purposes.

(4) You must affix a customs declaration label to the outside of each shipping container or package that contains all of the following:

(i) The acronym "CITES."

(ii) A description of the contents (such as "herbarium specimens").

(iii) The names and addresses of the sending and receiving institutions.

(iv) The signature of a responsible officer of the sending registered scientific institution.

(v) The scientific institution codes of both registered scientific institutions involved in the loan, donation, or exchange.

(5) You must have information to show that specimens were legally acquired in the country of origin and/or legally imported.

(6) You are only authorized to receive specimens that are under the authority of a registered scientific institution and have been permanently and accurately recorded by the sending institution.

(7) You are authorized to import, export, or re-export preserved, frozen, dried, or embedded biological tissue samples, including blood and tissue samples, that will be partially destroyed during analysis provided a portion of the sample is maintained at the museum for future scientific reference. This does not include samples that will be completely destroyed during analysis.

**§ 23.41 What are the requirements for traveling live-animal exhibitions?**

(a) *Purpose.* Article VII(7) of the Treaty grants an exemption for specimens that qualify as bred in

captivity or pre-Convention and are part of a traveling live-animal exhibition.

(b) *General provisions.* You, as an exhibition wishing to travel internationally with live wildlife, must register with the Management Authority in the country where the exhibition is usually based.

(1) You must obtain an original pre-Convention or bred-in-captivity certificate for each specimen that indicates it is part of a traveling live-animal exhibition (see § 23.5).

(2) Parties should not collect the original certificate at their borders but should treat this CITES document like a passport for export and re-export from each country.

(3) Parties should check specimens closely to determine that the specimen matches the certificate and ensure that each specimen is being transported and cared for in a manner that minimizes the risk of injury, damage to the health, or cruel treatment of the specimen.

(4) If offspring are born or you acquire specimens while traveling in another country, you must obtain the appropriate CITES document for the export or re-export of the wildlife from the Management Authority of that country (for persons subject to the jurisdiction of the United States, the purchase in foreign commerce or import of any ESA species also requires a permit from the Office of Management Authority, see 50 CFR part 17).

(5) Upon return home, you may apply for a traveling live-animal exhibition certificate for wildlife born or acquired overseas.

(c) *U.S. application form.* Complete and submit Form 3–200–30 to the Office of Management Authority (see § 23.7).

(d) *Issuance criteria.* You must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) You own the live wildlife, and the cross-border movement is for display or entertainment purposes, and not for breeding or other purposes.

(2) You are based in the United States.

(3) The specimen meets the issuance criteria for a pre-Convention certificate in § 23.37(d) or a bred-in-captivity certificate in § 23.33(d).

(4) You do not intend to sell or otherwise transfer the wildlife while traveling internationally.

(5) The wildlife is securely marked or identified in such a way that border officials can verify that the certificate and specimen correspond.

(e) *Standard conditions.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) The certificate may be used by you, but must not be transferred or assigned to another person or traveling live-animal exhibition.

(2) You must transport internationally the specimen only for display or entertainment purposes, not for breeding or other purposes.

(3) You must retain the original certificate and have it validated at each border crossing.

(4) You must not sell or otherwise transfer the specimen while traveling internationally.

(5) If the certificate is lost, stolen, or accidentally destroyed, you must obtain a replacement certificate only from the issuing Management Authority (see § 23.42).

(6) If you no longer own the wildlife, the original certificate must be immediately returned to the issuing Management Authority.

### § 23.42 What are the requirements to replace lost, damaged, stolen, or accidentally destroyed CITES documents?

(a) *General provisions.* A Management Authority may issue duplicate CITES documents to replace lost, damaged, stolen, or accidentally destroyed CITES documents under the following general provisions:

(1) For commercial shipments, the issuing Management Authority should immediately inform the Management Authority in the country of destination and the Secretariat or send them a copy of the replacement CITES document.

(2) The replacement CITES document must indicate that it is a "true copy of the original" and include the number and expiration date of the document being replaced and the reason for replacement.

(b) *U.S. application procedures.* To amend or renew a CITES document, see 50 CFR part 13. To apply for a replacement CITES document, you must provide all of the following:

(1) Complete and submit application Form 3–200–56 to the Office of Management Authority (see § 23.7).

(2) Submit an application processing fee unless you are fee exempt (see 50 CFR 13.11(d)).

(3) Consult the list to find the types of information you need to provide (more than one circumstance may apply to you):

| If: | Then: |
|---|---|
| (i) The shipment has already occurred. | Provide copies of:<br>(A) For wildlife, the validated CITES document and cleared Declaration for Importation or Exportation of Fish or Wildlife (Form 3–177).<br>(B) For plants, the validated CITES document.<br>(C) Any correspondence you have had with the shipper or importing country's Management Authority concerning the shipment. |
| (ii) The original CITES document no longer exits. | Submit a signed, dated, and notarized statement that:<br>(A) Refers to the permit number and describes the circumstances that resulted in the loss or destruction of the original CITES document.<br>(B) States whether the shipment has already occurred.<br>(C) Requests a replacement U.S. CITES document. |
| (iii) An original CITES document exists but has been damaged. | Submit the original damaged CITES document and a signed, dated, and notarized statement that:<br>(A) Describes the circumstances that resulted in the CITES document being damaged.<br>(B) States whether the shipment has already occurred.<br>(C) Requests a replacement U.S. CITES document. |

(c) *Issuance criteria.* For us to issue or accept a replacement CITES document, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) You have fully explained the circumstances responsible for the lost, damaged, stolen, or accidentally destroyed CITES document and they are reasonable.

(2) If the shipment has already been made, the Management Authority of the importing country has indicated it will accept the replacement CITES document.

(d) *Standard conditions.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) If the original CITES document is found, you must return it to the issuing Management Authority.

(2) A CITES document issued for a shipment that has already occurred does not require validation.

(e) *Validation.* For an export or re-export that has not left the United States, follow the procedures in § 23.24. If the shipment has been made and is in a foreign country, submit the original un-validated replacement CITES document to the appropriate foreign authorities. We will not validate the replacement CITES document for a shipment that has already been shipped to a foreign country.

**§ 23.43 What are the requirements for retrospective CITES documents?**

(a) *General provisions.* Except as provided in paragraph (b) of this section, a Management Authority will not:

(1) Issue CITES documents retrospectively.

(2) Provide exporters, re-exporters, and/or consignees in importing countries with declarations about the legality of specimens exported or re-exported from their countries without the required CITES document.

(3) Provide exporters, re-exporters, and/or consignees in importing countries with declarations about the legality of CITES documents that at the time of export, re-export, or import did not meet the requirements of CITES.

(4) Accept CITES documents, including ones for in-transit shipments, that were issued retrospectively.

(b) *Special provisions.* A Management Authority can issue or accept a retrospective CITES document only if the Management Authorities of the importing and exporting countries, after a prompt and thorough investigation and in close consultation, are satisfied that all the following conditions are met:

(1) The request for a retrospective CITES document is being made at the time the shipment is being imported.

(2) The exporter, re-exporter, or importer is not responsible for the irregularities.

(3) The export, re-export, or import of the specimens are otherwise in compliance with CITES and the relevant national legislation of the countries involved.

(4) The Management Authority sends a copy of any retrospective CITES document to the Secretariat. It must contain a statement that it was issued retrospectively and give the reason for the issuance.

(c) *U.S. application.* You must provide the following information to the Office of Management Authority (§ 23.7):

(1) A completed application Form 3–200–58.

(2) A completed application form for the type of activity you conducted (see § 23.17).

(d) *Issuance criteria.* For us to issue or accept a retrospective CITES document, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria:

(1) The wildlife or plant has been exported, re-exported, or introduced from the sea without a valid CITES document and was presented to the appropriate official for inspection at the time of import.

(2) The wildlife or plants would have qualified for the applicable CITES document if you had applied for it before importing, introducing from the sea, exporting, or re-exporting the specimen.

(3) The import, introduction from the sea, export, or re-export did not require a U.S. permit under another part of this subchapter.

(4) As provided in paragraph (e) of this section, the irregularities are not attributable to you or an agent on your behalf.

(5) The importing Management Authority has agreed to accept the retrospectively issued CITES document.

(e) *Irregularities.* In the United States, irregularities include one of the following:

(1) You tried to find out the requirements and can show that you were misinformed about CITES requirements by an employee of the U.S. Fish and Wildlife Service, APHIS (for plants), or the Management Authority in the foreign country that should have informed you about CITES documents.

(2) The wildlife or plant item qualifies as a personal or household effect (see § 23.12).

(3) For live Appendix-II or -III wildlife or plants, the specimen is owned by you for your personal use, accompanied you as personal baggage, and number no more than two.

(4) For a pre-Convention Appendix-I wildlife or plant, you own the specimen for your personal use and it accompanied you as personal baggage.

(f) *Validation.* Submit the original un-validated retrospective CITES document to the appropriate foreign authorities. We will not validate the retrospective CITES document for a shipment that has already been shipped to a foreign country.

**§ 23.44 How long is a CITES document valid?**

(a) *Purpose.* Article VI(2) of the Treaty sets the time period within which an export permit is valid. Validity periods for other CITES documents are prescribed in this section.

(b) *Time of validity.* CITES documents are valid only if presented for import or introduction from the sea within the time of validity (before midnight of the expiration date) noted on the face of the document.

(1) An export permit and re-export certificate will be valid for no longer than 6 months from the issuance date.

(2) An import permit, introduction-from-the-sea certificate, and certificate of origin will be valid for no longer than 12 months from the issuance date.

(3) A certificate for traveling live-animal exhibitions and certificate of ownership will be valid for no longer than 3 years from the issuance date.

(4) Other CITES documents will state the length of their validity, but no U.S. CITES document will be valid for longer than 4 years from the issuance date.

(c) *Extension of validity.* The validity of a CITES document may not be extended beyond the expiration date on the face of the document, except under limited circumstances for certain timber species as outlined in § 23.64.

**§ 23.45 What CITES document conditions do I need to follow?**

(a) *General conditions.* You must comply with all of the following general conditions:

(1) For a U.S. CITES document, you must comply with the provisions of 50 CFR part 13 as conditions of the document. You must comply with all applicable foreign, local, State, tribal, or Federal wildlife or plant conservation laws, as well as the regulations in this subchapter, including, but not limited to, any that require permits.

(2) For export and re-export of live wildlife, the CITES document is only valid if the transport conditions comply with the CITES Guidelines for Transport of Live Animals or, in the case of air transport, with the International Air Transport Association Live Animal Regulations.

(3) For export and re-export of live plants, you must prepare and ship the

specimens so as to minimize the risk of injury or damage to health. You must ensure that living specimens to be shipped are healthy.

(4) You must return the original CITES document to the issuing office if you do not use it, it expires, or you request renewal or amendment.

(5) When appropriate, a Management Authority may require that you identify Appendix-II and -III wildlife or plants with a mark. All live Appendix-I wildlife must be securely marked or uniquely identified.

(b) *Standard conditions.* You must comply with the standard conditions provided in this part for specific types of CITES documents.

(c) *Special conditions.* We may condition a CITES document with special conditions based on the needs of the species or the proposed activity. You must comply with any special conditions contained in or attached to a CITES document.

## Subpart D—Factors We Consider in Making Certain Findings

### § 23.50 What factors do we consider in making a legal acquisition finding?

(a) *Purpose.* Articles III, IV, and V of the Treaty require a Management Authority to make a legal acquisition finding before granting export permits and re-export certificates.

(b) *Legal acquisition.* Legal acquisition refers to both:

(1) Whether the specimen and its founder stock were traded internationally in accordance with the provisions of CITES.

(2) Whether the specimen and its founder stock were obtained in accordance with the provisions of national laws for the protection of wildlife and plants. In the United States, these laws include all applicable local, State, Federal, tribal, and foreign laws.

(c) *General provisions.* We must make a finding that a specimen was legally acquired before we can issue certain kinds of CITES documents.

(1) We make this decision on a case-by-case basis considering all available information.

(2) As provided in paragraphs (d) through (j) of this section, you, the applicant, must provide sufficient information to establish the origin of the specimen and whether it was legally acquired (see § 23.27 for details on recordkeeping or the applicable application form referenced in subpart C of this part).

(3) For States and Tribes that have requested export approval on a State-wide or reservation-wide basis and that have management programs that provide us with the information necessary to make administrative findings, we make legal acquisition findings on a State or tribal basis. Permit applications for exports under these administrative findings must be accompanied by information showing that the specimens were legally acquired under State or tribal requirements.

(4) As necessary, we consult with foreign Management or Scientific Authorities, the CITES Secretariat, State conservation agencies, enforcement staff within our agency and APHIS, and other appropriate experts.

(d) *Personal use.* To establish legal acquisition of any specimen to be exported or re-exported for your personal use, you must provide sufficient information for us to find that your proposed activity meets all of the following criteria (If any of the following criteria do not apply, then you must comply with paragraphs (e) through (i) of this section.):

(1) You acquired the specimen in the United States and personally own and possess it for strictly non-commercial purposes.

(2) The number of specimens is reasonably appropriate for the nature of your export or re-export as personal use.

(3) There is no persuasive evidence of illegal transactions involving the specimen.

(4) You must provide information on the origin of parental or founder stock, if we request it as provided in paragraph (f)(2) of this section.

(5) You must provide information to show legal acquisition:

| If the specimen was: | Then you must provide: |
|---|---|
| (i) Born, bred, propagated, or grown in captivity in the United United States (see wild-collected if the wildlife was born in captivity from an egg collected from the wild or from parents that mated or exchanged genetic material in the wild, or the plant was grown in captivity from a propagule collected from a plant). | A signed breeder's or propagator's statement (see § 23.27) or a statement with the name and address of breeder or propagator, date of sale or transfer, species, and birth or hatch date for wildlife. |
| (ii) Imported previously by someone other than the applicant. | Copies of a canceled CITES or other import documents under which the specimen was exported or re-exported. |
| (iii) Of unknown origin | A complete description of the circumstances under which you acquired it (such as where, when, and from whom you acquired the specimen), including your efforts to obtain information on the origin of the specimen. |
| (iv) Taken from the wild in the United States | Information showing the specimen was legally removed from the wild under relevant wildlife or plant conservation laws or regulations. |

(e) *Multiple ownership.* In addition to meeting the requirements of paragraphs (f) through (i) of this section, if you were not the importer, collector from the wild, or breeder or propagator, you must show a clear record of the history of ownership that identifies the specimen and, if applicable under paragraph (f) of this section, its founder stock through each owner.

(f) *Born, bred, grown, or propagated in captivity.* For the export of specimens that are born, bred, grown, or propagated in captivity, we need reasonable proof that the founder stock or parental stock was legally acquired. For wildlife that was born in captivity from an egg collected from the wild from parents that mated or exchanged genetic material in the wild, or a plant that was grown in captivity from a propagule collected from a wild plant, go to paragraph (h) of this section.

(1) You must provide information as follows:

| If the species is listed in: | Then you must establish that: |
|---|---|
| (i) Appendix I | The founder stock was legally acquired. |
| (ii) Appendix II or III and the founder stock was collected from the wild in the United States. | The founder stock was legally acquired. |
| (iii) Appendix II or III and the founder stock was not collected from the wild in the United States, except for a plant grown from exempt plant material (see § 23.88(c)). | The parental stock was legally acquired and, if requested under paragraph (f)(2) of this section, founder stock was legally acquired. |

(2) You must also provide information to establish that the founder stock was legally acquired if we request it based on any of the following factors:

(i)The species is uncommon in captivity in the United States.

(ii) The species has not been documented to breed or propagate readily in captivity.

(iii) There is significant illegal trade in the species.

(iv) There is little or no record of legal import of the species into the United States.

(v) Range countries do not allow commercial export, or allow only limited, non-commercial export, of the species.

(g) *Imported previously.* For the re-export of specimens that were previously imported into the United States:

(1) You must provide information to satisfy us that the specimen was legally imported.

(2) We consider any reliable, relevant information we receive concerning the validity of a CITES document, regardless of whether the specimen has been imported and the shipment cleared by us or APHIS.

(h) *Wild-collected in the United States.* For specimens collected from the wild in the United States:

(1) You must provide information showing the legal collection of any specimen.

(2) We consider the site where the specimen was collected, whether the species is known to occur at that site, the abundance of the species at that site, and whether permission of the appropriate management agency or landowner was obtained to collect the specimen.

(i) *Confiscated specimens.* We may issue CITES documents to export or re-export confiscated Appendix-II and -III wildlife or plants under the following circumstances:

(1) You must provide a copy of the legal document that shows the transfer of the confiscated specimen to you and shows that any conditions on the document have been met.

(2) If the specimen is offspring of the confiscated wildlife or plant, you must provide information that it is the offspring of the documented confiscated specimen.

(3) All CITES findings must be made, including the finding by the Office of Scientific Authority that the export or re-export will not be detrimental to the survival of the species (see § 23.51).

(j) *Donated specimens of unknown origin.* We may issue CITES documents to export or re-export donated wildlife or plants of unknown origin under the following circumstances:

(1) You are a public institution (see 50 CFR 10.12) that did not solicit the donation.

(2) You follow standard recordkeeping practices and make reasonable efforts to obtain supporting information on the origin of the specimen.

(3) You provide information to show you made a reasonable effort to find a suitable recipient in the United States.

(4) The export or re-export will provide a conservation benefit to the species.

(5) There is no persuasive information of illegal transactions involving the specimen.

(6) The export or re-export is non-commercial, with no money or barter exchanged except for shipping costs.

(7) There is no history of institutions receiving a series of rare and valuable specimens or a large quantity of wildlife or plants of unknown origin.

(8) All other CITES findings must be made, including the finding by the Office of Scientific Authority that the export or re-export will not be detrimental to the survival of the species (see § 23.51).

**§ 23.51 What factors do we consider in making a non-detriment finding?**

(a) *Purpose.* Articles III and IV of the Treaty require that before we issue a CITES document we find that a proposed export or introduction from the sea of Appendix-I or -II specimens is not detrimental to the survival of the species and that a proposed import of an Appendix-I species is not for purposes that would be detrimental to the survival of the species.

(b) *Types of detriment.* Detrimental activities, depending on the species, could include, among other things, non-sustainable use (see § 23.5) and proposed activities that would pose a net harm to the status of the species in the wild. For Appendix-I species, it also includes use or removal from the wild that results in habitat loss or destruction, interference with recovery efforts for a species, or stimulation of further trade.

(c) *General factors.* The applicant must provide sufficient information for us to make a finding of non-detriment. In addition to factors in paragraphs (d) and (e) of this section, we will consider whether:

(1) There is scientific information that demonstrates the proposed activity represents sustainable use.

(2) The removal of the animals or plants from the wild is part of a scientifically based sustainable-use management plan, if established, that is designed to eliminate over-utilization of the species.

(3) If there is no sustainable-use management plan established, the removal of the plants or animals from the wild would not contribute to the over-utilization of the species, considering both domestic and international uses.

(4) The proposed activity, including the methods used to acquire the specimen, would pose no net harm to the status of the species in the wild.

(5) The proposed activity would not lead to long-term declines that would place the viability of the affected population in question.

(6) The proposed activity would not lead to significant habitat or range loss or restriction.

(d) *Additional factor for Appendix-II species.* In addition to the general factors in paragraph (c) of this section, we will consider whether the intended export of an Appendix-II species would be unsustainable or cause a significant risk that the species would qualify for inclusion in Appendix I.

(e) *Additional factors for Appendix-I species.* In addition to the general factors in paragraph (c) of this section,

we will consider whether the proposed activity:

(1) Would not cause an increased risk of extinction for either the species as a whole or the population from which the specimen was obtained.

(2) Would not interfere with the species' recovery.

(3) Would stimulate additional trade in the species. If the proposed activity does stimulate trade, we will consider whether the anticipated increase in trade would lead to the decline of the species.

(f) *How we make our findings.* We base the non-detriment finding on the best available biological information. We also consider trade information, including trade demand, or other scientific management information.

(1) We consult with the States, other Federal agencies, experts, and the range countries of the species.

(2) We consult with the Secretariat and other Parties to monitor the level of trade that is occurring in the species.

(3) Based on the factors in paragraphs (c) through (e) of this section, we evaluate the biological impact of the proposed activity.

(4) In cases where insufficient information is available or the factors above are not satisfactorily addressed, we act in a precautionary manner and would be unable to make the required finding of non-detriment.

(g) *Risk assessment.* We review the status of the species in the wild and the degree of risk the proposed activity poses to the species to determine the level of scrutiny needed to make a finding. We give greater scrutiny, require more detailed information, and make our decisions in a more precautionary manner for activities that pose a greater risk to a species in the wild. We consider the cumulative risks, recognizing that each aspect of international trade has a continuum of risk (from high to low) associated with it as follows:

(1) Status of the species: From Appendix I to Appendix II.

(2) Origin of the specimen: From wild-collected specimens to captive or cultivated specimens that cannot be considered artificially propagated or bred in captivity to specimens that are artificially propagated or bred in captivity.

(3) From plants grown from non-exempt seeds or seedlings to plants grown from exempt seeds or seedlings.

(4) From native species to non-native species.

(5) From high potential for invasive effects to limited potential for invasive effects.

(6) From high volume of commercial trade to low volume of trade.

(7) From commercial shipment to non-commercial shipment.

(8) From high occurrence of illegal trade to low occurrence of illegal trade.

(9) From high risk of disease transmission to limited risk of disease transmission.

(10) From listed under Article II(1) or II(2)(a) of the Treaty to listed under Article II(2)(b).

(h) *Quotas for Appendix-I species.* When an export quota has been set by the COP for an Appendix-I species, we will consider the scientific and management aspects used as the basis of the quota when we make our non-detriment finding. We will contact the Scientific and Management Authorities of the exporting country for further information if needed.

### § 23.52 What factors do we consider in making a finding of primarily commercial purposes?

(a) *Purpose.* Under Article III, paragraphs 3(c) and 5(c) of the Treaty, an import permit or an introduction-from-the-sea certificate for Appendix-I species can be issued only if the Management Authority is satisfied that the specimen is not to be used for primarily commercial purposes.

(b) *General principles.* We will follow these general principles in making a decision on whether a proposed activity is for primarily commercial purposes:

(1) Trade in Appendix-I species must be subject to particularly strict regulation and authorized only in exceptional circumstances.

(2) The definition of "commercial" in § 23.5 applies.

(3) We will look at all aspects of the intended use of the import or introduction from the sea. If the non-commercial aspects do not clearly predominate, we will consider the import or introduction to be primarily commercial.

(4) The burden of proof for showing that the intended use is clearly non-commercial is on you, the applicant.

(5) While the nature of the transaction between the owner in the country of export and the recipient in the country of import or introduction may be commercial, it is the intended use of the specimen that must not be for primarily commercial purposes.

(6) All net profits generated in the United States must be used for the conservation of the Appendix-I species in a range country.

(7) Net profit includes all funds or other valuable considerations (including enhanced value of common stock shares) received or attained by you or those affiliated with you as a result of the import or introduction, to the extent that such funds or other valuable considerations exceed the reasonable expenses that are properly attributable to the proposed activity.

(c) *Examples.* The following are examples of categories of transactions in which the non-commercial aspects may predominate depending on the facts of each situation. The discussions of each example provide further guidance in assessing the actual degree of commerciality on a case-by-case basis. These examples outline the circumstances commonly encountered. They do not cover all situations where import or introduction could be found not to be for primarily commercial purposes.

(1) *Purely private use.* A specimen that is imported or introduced purely for private use is not considered to be for primarily commercial purposes. An example is the import of a personal sport-hunted trophy by the person who hunted the wildlife for display in his or her own home.

(2) *Scientific purposes.* The import or introduction of an Appendix-I specimen may be permitted in situations where it is being imported or introduced by a scientist or scientific institution and the resale, commercial exchange, or exhibit for economic benefit of the specimen is not the primary intended use.

(3) *Conservation, education, or training.* Generally an Appendix-I specimen may be imported or introduced by government agencies or non-profit institutions for purposes of conservation, education, or training. For example, a specimen could be imported or introduced primarily to train customs staff in effective CITES control.

(4) *Biomedical industry.* Import or introduction of an Appendix-I specimen by an institution or company in the biomedical industry is initially presumed to be commercial since specimens are typically imported or introduced to develop and sell products that promote public health for profit. However, if the importer clearly shows that the sale of products is only incidental to public health research and not for the primary purpose of economic benefit or profit, then such an import or introduction could be considered as scientific research under paragraph (c)(2) of this section if the principles of paragraph (b) of this section are met.

(5) *Captive-breeding programs.* As a general rule, import or introduction of an Appendix-I specimen for a captive-breeding program must have as a priority, the long-term protection and recovery of the species in the wild. The

captive-breeding program must be part of a program aimed at the recovery of the species in the wild and be undertaken with the support of a country within the species' native range. Any profit gained must be used to support this recovery program. If a captive-breeding operation plans to sell surplus specimens to help offset the costs of its program, import or introduction would only be allowed if any profit would be used to support the captive-breeding program to the benefit of the Appendix-I species, not for the personal economic benefit of a private individual or share-holder.

(6) *Professional dealers.* Import or introduction by a professional dealer who states a general intention to eventually sell the specimen to an undetermined recipient would be considered to be for primarily commercial purposes. However, import or introduction through a professional dealer by a qualified applicant may be acceptable if the ultimate intended use would be for one of the purposes set out in paragraphs (c)(2), (3), and (5) of this section and where a binding contract, conditioned on the granting of permits, is in place.

(d) *For-profit entities.* Commercial organizations may be considered for an import permit or introduction-from-the-sea certificate, but the nature of these kinds of organizations to carry out activities in the pursuit of gain or profit, makes it more difficult for us to find that a proposed import or introduction is not to be used for primarily commercial purposes.

(e) *General information.* As provided in paragraphs (b) and (c) of this section, you must provide sufficient information to establish that the intended use of the specimen is not for primarily commercial purposes. This includes, but is not limited to:

(1) A description of your proposed activities, including any public outreach that may increase revenue and the disposition of any offspring.

(2) A statement of the reasons you believe your proposed activities are not primarily commercial.

(3) If there is any anticipated net profit, a description of any conservation project to be funded and, if the species was or is to be taken from the wild, how the project benefits the species in its native range (including agreements, time frames for accomplishing tasks, and anticipated benefits to the species).

(4) A plan to monitor any proposed conservation project, including expenditure of funds or completion of tasks.

(5) You must also provide the additional information in paragraph (f) of this section if you are a for-profit entity or if we request it based on any of the following factors:

(i) The species is uncommon in captivity in the United States.

(ii) The species has high public appeal.

(iii) The proposed use of the specimen could be capable of generating substantial revenues.

(f) *Additional information.* You must provide a statement from a licensed, independent certified public accountant that your internal accounting system is sufficient to account for and track funds generated by the proposed activities. You must also provide one of the following:

(1) A detailed analysis of expected revenue (both direct and indirect) and expenses to show any anticipated net profit and how you will track funds.

(2) A description of how your proposed activities will benefit the Appendix-I species in its native range and how the costs of providing that conservation benefit equal or exceed any net profit anticipated from the proposed activities.

**§ 23.53 What factors do we consider in making a bred-in-captivity finding?**

(a) *Purpose.* Article VII, paragraphs 4 and 5 of the Treaty, provides exemptions that allow for the special treatment of wildlife that was bred in captivity (see §§ 23.33 and 23.38).

(b) *Definitions.* The definition of "bred in captivity" relies on the following terms:

(1) A *controlled environment* means one that is actively manipulated for the purpose of producing specimens of a particular species, that has boundaries designed to prevent specimens, including eggs or gametes, from entering or leaving the controlled environment, and has general characteristics which may include artificial housing, waste removal, provision of veterinary care, protection from predators, and artificially supplied food.

(2) A *first-generation (F1) offspring* is a specimen produced in a controlled environment from parents at least one of which was conceived in or taken from the wild.

(3) An *offspring of second generation (F2) or subsequent generations* is a specimen produced in a controlled environment from parents that were also produced in a controlled environment.

(4) The *breeding stock* of an operation means the ensemble of all the wildlife in the operation used for reproduction.

(c) *Bred-in-captivity criteria.* For a specimen to qualify as bred in captivity, we must find all the following criteria are met:

(1) If reproduction is sexual, the specimen was born to parents that either mated or transferred gametes in a controlled environment.

(2) If reproduction is asexual, the parents were in a controlled environment when development of the offspring began.

(3) The breeding stock meets the criteria in paragraph (d) of this section.

(d) *Breeding stock.* The breeding stock must meet all of the following criteria:

(1) Was established according to the provisions of CITES and relevant national laws.

(2) Was established in a manner not detrimental to the survival of the species in the wild.

(3) Is maintained with only occasional introduction of wild specimens as provided in paragraph (e) of this section.

(4) Has consistently produced offspring of second generation or subsequent generations in a controlled environment or the captive population of the species in the United States is managed in a way demonstrated to be capable of reliably producing second-generation offspring.

(e) *Addition of wild specimens.* A breeder may introduce a very limited number of wild specimens (including eggs or gametes) into the breeding stock provided all of the following conditions are met:

(1) The specimen was acquired in accordance with the provisions of CITES and relevant national laws.

(2) The specimen was acquired in a manner not detrimental to the survival of the species in the wild.

(3) The specimen was added either to prevent or alleviate deleterious inbreeding, with the amount of such addition determined by the need for new genetic material, or to dispose of confiscated animals according to § 23.70.

**§ 23.54 What factors do we consider in making an artificially propagated finding?**

(a) *Purpose.* Article VII, paragraphs 4 and 5, of the Treaty provides exemptions for the special treatment of plants that were artificially propagated (see §§ 23.32 and 23.39).

(b) *Controlled conditions* means a non-natural environment that is intensively manipulated by human intervention for the purpose of producing selected species or hybrids. General characteristics of controlled conditions may include, but are not limited to, tillage, fertilization, weed control, irrigation, or nursery operations such as potting, bedding, or protection from weather.

(c) *Artificially propagated criteria.* For a plant specimen to qualify as

artificially propagated, we must find all the following criteria are met:

(1) A plant (including parts and products) must be grown from a seed, cutting, division, callus tissue, other plant tissue, spore, or other propagule under controlled conditions.

(2) The cultivated parental stock used for artificial propagation must have been established according to the provisions of CITES and relevant national laws;

(3) The cultivated parental stock must have been established in a manner not detrimental to the survival of the species in the wild; and

(4) The cultivated parental stock must be managed so that long-term maintenance of the cultivated stock is guaranteed.

(d) *Seeds.* A seed of a species listed in Appendix I or listed in Appendix II or III with an annotation to include seeds is artificially propagated only when the criteria in paragraph (c) of this section are met.

(e) *Grafted plant.* A grafted plant is artificially propagated only when both the rootstock and the graft have been artificially propagated according to paragraph (c) of this section.

(f) *Exempt plant material.* A plant grown from:

(1) A flasked seedling or tissue culture is considered artificially propagated, provided we have reasonable grounds to believe the specimen did not originate from wild propagules.

(2) A plant from an exempt seed will not be considered artificially propagated if the seed is of wild origin. If limited information is available on the origin of the seeds, we will consider whether the species is commonly artificially propagated and the expected level of seed collection from the wild, in making a finding of whether the plant qualifies as artificially propagated.

(g) *Timber.* Timber taken from trees grown in a monospecific plantation is considered artificially propagated.

**§ 23.55 What factors do we consider in making a finding of bred or propagated for commercial purposes?**

(a) *General provisions.* To decide whether to grant an exemption under Article VII(4) or Article VII(5) of the Treaty, we must make a finding on whether an Appendix-I specimen was bred or propagated for commercial purposes.

(1) We make this decision on a case-by-case basis considering all available information.

(2) The definition of "commercial" in § 23.4 applies.

(3) We assess the total circumstances surrounding the intention of the public, private, non-profit, or commercial (for-profit) entity in carrying out the captive breeding or propagation activity.

(4) We consider the reproductive biology of the species and all aspects of the breeding or propagation program at the facility.

(5) As necessary, we consult with experts.

(b) *Required information.* You, the applicant, must provide sufficient information to establish whether you have bred or propagated a specimen for commercial purposes. This includes, but is not limited to:

(1) A description of the overall goals and objectives of the breeding or propagation program.

(2) Information on the program, such as management of genetic stock, size of breeding or propagation stock, approximate number of specimens produced each year, maximum number of individuals that can be maintained at the facility, how you decide stock is surplus, and how you plan to dispose of any surplus stock.

(3) Information demonstrating the commercial or non-commercial nature of the proposed trade. This includes the number of specimens of the species you placed outside your facility in the last 5 years, purpose of each transaction, any net profit gained, and anticipated transactions in the next year.

**§ 23.56 What factors do we consider in making a finding that an applicant is suitably equipped to house and care for a live specimen?**

(a) *Purpose.* Under Article III(3)(b) and (5)(b) of the Treaty, an import permit or introduction-from-the-sea certificate for a live specimen of an Appendix-I species can be issued only if we are satisfied that the proposed recipient is suitably equipped to house and care for it.

(b) *General principles.* We will follow these general principles in making a decision on whether an individual or institution has facilities that would provide proper housing to maintain the specimens for the intended purpose, and whether persons caring for the specimen have the expertise to provide proper care and husbandry or horticultural practices.

(1) All individuals or institutions that would be receiving a specimen must be identified in an application and their facilities approved by us, including individuals or institutions that are likely to receive a specimen within 1 year of it arriving in the country.

(2) You, the applicant, must provide sufficient information for us to make a finding, including, but not limited to, a description of the facility, photographs, or construction plans, and resumes of the recipient or staff who will care for the specimen.

(3) We look at all possible uses of the specimen, including the possibility of offspring being produced even though breeding is not the main purpose of the import or introduction.

(4) We use the best available information on the requirements of the species in making a decision, and will consult with other Federal and State agencies and experts, as appropriate.

(5) The degree of scrutiny that we give an application is based on biological and husbandry or horticultural needs of the species.

(c) *Specific factors considered for wildlife.* In addition to the general provisions in paragraph (e) of this section, we consider the following factors in evaluating suitable housing and care for wildlife:

(1) Sufficient space, both indoors and outdoors if appropriate, to allow the wildlife to move, behave in a normal manner, and interact with other members of its species, as necessary.

(2) Appropriate forms of environmental enrichment, such as nesting material, perches, climbing apparatus, ground substrate, or other species-specific materials or objects.

(3) If the wildlife is on public display, an off-exhibit area, consisting of indoor and outdoor accommodations that can house the wildlife on a long-term basis.

(4) A plan to house and care for any offspring and disposition of any offspring that will not remain at the facility.

(5) Provision of water and nutritious food of a nature and in a way that are appropriate for the species.

(6) An individual or staff that is properly trained and experienced in providing daily care and maintenance for the species being imported or introduced, or closely related species.

(7) Readily available veterinarian care or veterinary staff experienced with the species or a closely related species, including emergency care.

(d) *Specific factors considered for plants.* (1) Sufficient space, appropriate lighting, and environmental conditions to ensure proper growth and reproduction.

(2) An individual or staff with experience with the imported species or related species with similar horticultural requirements.

(e) *General factors considered for wildlife and plants.* In addition to the specific provisions in paragraph (c) or (d) of this section, we will consider the following factors in evaluating suitable housing and care for wildlife and plants:

(1) Adequate enclosures or holding areas to prevent escape or unplanned

exchange of genetic material with specimens of the same or different species outside the facility.

(2) Appropriate security to prevent theft of specimens and measures taken to rectify any previous theft or security problem.

(3) A reasonable survival rate of specimens of the same species or closely related species at the facility, including number of births or plants propagated, mortalities for the previous 5 years, significant injuries to wildlife or damage to plants, and occurrence of significant disease outbreaks over the previous 5 years, and measures taken to prevent similar moralities, injuries, damage, or diseases. Significant injuries, damage, or disease outbreaks are those that are permanently debilitating or reoccurring (more than twice in the previous 5 years) or which affect behavior, breeding, educational use, or other conservation uses of the specimen.

(4) Sufficient funding on a long-term basis to cover the cost of maintaining the facility and the specimens imported.

(f) *Incomplete facilities or insufficient staff.* For applications submitted to us before the facilities to hold the specimens are completed or the staff is identified or properly trained:

(1) We will review all available information, including construction plans or intended staffing, and make a finding based on this information.

(2) We will place a condition in any positive finding that the import cannot occur until the facility has been completed or the staff hired and/or trained and approved by us.

## Subpart E—International Trade in Certain Specimens

### § 23.60 How can I trade internationally in American ginseng?

(a) *General provisions.* Whole plants and roots (whole, sliced, and parts, excluding manufactured parts or products, such as powders, pills, extracts, tonics, teas, and confectionery) of American ginseng (*Panax quinquefolius*), whether wild or artificially propagated, are included in Appendix II.

(1) Wild ginseng categories include:

| | Wild | Wild simulated | Wild cultivated |
|---|---|---|---|
| Cultivation | None | Planting of seeds or roots only. | Intensive. . |
| Fungicide use | None | None | Extensive. |
| Habitat | Within natural range, in suitable ginseng habitat. | Within natural range, in suitable ginseng habitat. | Grown in fields, whether within the natural range, or not. |
| Harvest Methods | Dug by hand | Dug by hand | Often dug by mechanical means. |
| Origin | Naturally occurring | Wild seeds or roots planted in natural habitat. | Wild seeds or roots. |

(2) Artificially propagated ginseng (also referred to as cultivated ginseng) categories include:

| | Cultivated | Cultivated Woodsgrown |
|---|---|---|
| Cultivation | Intensive | When planted, largest rocks removed and drainage ditches may be dug around beds. |
| Fungicide use | Extensive | Extensive. |
| Habitat | Grown in fields, whether within the natural range or not.. | Grown in woods similar to natural habitat, whether within the natural range or not. |
| Harvest Methods | Often dug by mechanical means | Dug by hand. |
| Origin | Cultivated seeds or roots | Cultivated seeds or roots. |

(b) *Approved export.* States and Tribes set up and maintain ginseng management and harvest programs designed to monitor and protect American ginseng from over-harvest. For States and Tribes with management programs that provide us with the necessary information, we make administrative findings on a State-wide or reservation-wide basis. States and Tribes for which these administrative findings have been made are requested to complete and submit form 3–200–61 as an annual report to provide information on the previous year's harvest to us by May 31 of each year. Annual reports should include at least the following:

(1) Pounds of wild ginseng and artificially propagated ginseng harvested.

(2) For wild ginseng, average number of roots per pound.

(3) Average age of wild-harvested plants estimated by counting bud scars or converting dry weight to age.

(4) Trends in abundance of wild ginseng populations, preferably as measured in field surveys.

(5) Information that the export of ginseng will not be detrimental to the survival of the species in the wild in that State or on tribal lands.

(6) Information on, and a copy of, any changes in ginseng laws or regulations.

(c) *New State-wide or reservation-wide export approval for wild ginseng.* States or Tribes that wish to set up a new management program for wild ginseng to obtain export approval on a

State or tribal basis must provide us with sufficient information to determine that the export of ginseng will not be detrimental to the survival of the species in the wild in that State or on tribal lands, and that the ginseng was legally obtained.

(d) *New State-wide or reservation-wide export approval for cultivated ginseng.* States or Tribes that wish to set up a new management program for cultivated ginseng to obtain export approval on a State or tribal basis must be able to document the source of the ginseng used. In addition, they should develop procedures to minimize the risk that wild-collected plants would be claimed as cultivated.

(e) *U.S. application forms.* A list of approved States and Tribes and application forms can be obtained from our website or by contacting us. Complete and submit the applicable form to the Office of Management Authority (see § 23.7):

| Type of application for export or re-export of Ginseng | Form No. |
|---|---|
| (1) Artificially Propagated Ginseng from an Approved State or Tribe (see § 23.29 for export requirements) ..... | 3–200–32 |
| (2) Wild Ginseng from an Approved State or Tribe ..... | 3–200–33 |
| (3) Wild or Artificially Propagated Ginseng NOT from an Approved State or Tribe ..... | 3–200–34 |

**§ 23.61 How can I trade internationally in furs of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear?**

(a) *Approved export.* States and Tribes set up and maintain management programs for certain native furbearers that are included in CITES based on Article II(2)(b) of the Treaty (see § 23.85). For States and Tribes whose programs provide us with sufficient information to determine that the export of the specimens from that State or Tribe will not be detrimental to the survival of the species in the wild that the species was listed to protect, that the species does not decline to a point that it might qualify for listing itself, and that the specimens were legally obtained, we make administrative findings on a State-wide or reservation-wide basis. States and Tribes for which these administrative findings have been made are requested to complete and submit to us by April 30 of each year form 3–200–62 as an annual report containing information on the previous harvest season. Annual reports can refer to information provided in previous years if there has been no change and should include at least the following:

(1) For each furbearer species, the number of specimens taken (by trapping as well as other methods) and the number of animals tagged (if different).

(2) A statement based on the State's or Tribes's professional assessment of the status of each species involved, including whether the population is stable, increasing, or decreasing, and at what rate; and whether the harvest will not be detrimental.

(3) A description of the types of information on which the assessment is based; for example, an analysis of carcass demographics; population models; analysis of past harvest levels as a function of fur prices or trapper effort; or indices of abundance independent of harvest information, such as scent station surveys, archer surveys, track or scat surveys, or road kill counts.

(4) Copies of any relevant reports for any furbearer species that the State or Tribe has prepared for the year in question as part of its existing management program for the species.

(5) Information on, and a copy of, any changes in furbearer laws or regulations.

(b) *CITES export tags.* We provide CITES export tags to States and Tribes for which administrative findings have been made. Each fur, including skins and pelts, to be exported must have a CITES export tag permanently attached.

(1) The tag must be inserted through the fur and permanently locked in place using the locking mechanism of the tag.

(2) The legend on CITES export tags include a CITES logo, an abbreviation for the State or Indian Tribe of harvest and the species (BCAT = bobcat, ROTR = river otter, LYNX = Alaska lynx, WOLF = Alaska gray wolf, and GBR = Alaska brown bear), the season of taking, and a unique serial number.

(c) *U.S. application forms.* A list of approved States and Tribes and application forms can be obtained from our website or by contacting us. Complete and submit the applicable form to the Office of Management Authority or to the appropriate Law Enforcement office (see § 23.7):

| Type of application for export or re-export of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear | Submit to | Form No. |
|---|---|---|
| (1) Export or re-export of furs from an approved State or Tribe (you must include a list of tag numbers with your application for export). | Law Enforcement or Office of Management Authority. | 3–200–26 or 3–200–27 |
| (2) Export of furs NOT from an approved State or Tribe (see § 23.29 for export requirements). | Office of Management Authority. | 3–200–27 |
| (3) Re-export of furs NOT from an approved State or Tribe (see § 23.29 for export requirements). | Law Enforcement or Office of Management Authority. | 3–200–26 or 3–200–27 |
| (4) Export of live specimens (see § 23.29 for export requirements). | Office of Management Authority. | 3–200–27 |
| (5) Re-export of live specimens ..... | Law Enforcement or Office of Management Authority. | 3–200–26 or 3–200–27 |

| Type of application for export or re-export of bobcat, river otter, Alaska lynx, Alaska gray wolf, and Alaska brown bear | Submit to | Form No. |
|---|---|---|
| (6) Export of manufactured products | Office of Management Authority. | 3–200–27 |
| (7) Re-export of manufactured products | Law Enforcement or Office of Management Authority. | 3–200–26 or 3–200–27 |

(d) *Broken CITES export tags.* Furs with broken tags may not be exported.

(1) When a tag breaks and the State of harvest cannot replace it, you may apply to us for a replacement tag before or when you apply for an export permit. You must provide information to show that the fur was legally acquired and give us the broken tag.

(2) If we are satisfied that the fur was legally acquired, we will replace the broken tag with a CITES replacement tag.

(e) *Finished furs and manufactured products.* A finished fur or manufactured fur product is not required to have a tag attached, but you must surrender the tag from the fur used to make the product when you apply for a CITES export permit.

**§ 23.62 How can I trade internationally in crocodilians skins and parts of skins, including American alligator skins?**

(a) *General.* For the purposes of this section, crocodilian refers to all species of alligator, caiman, crocodile, and gavial.

(b) *Crocodilian skins.* Skins includes whole or partial skins or flanks. You may import, export, or re-export crocodilian skins, including unmounted sport-hunted trophies, only if each skin is tagged prior to export. The tag must be non-reusable, inserted through the skin, and permanently locked in place using the locking mechanism of the tag. Unless a replacement tag under paragraph (d) of this section has been authorized, the tag must:

(1) Be self-locking, heat resistant, and inert to chemical and mechanical processes.

(2) Be permanently stamped with the two-letter code for the country of origin, a unique serial number, a standardized species code, and the year of production or harvest.

(c) *Parts of crocodilian skins.* You may import, export, or re-export crocodilian parts, including tails, throats, feet, backstrips, and other parts when the following conditions are met:

(1) Parts must be packed in transparent sealed containers.

(2) The containers must be clearly marked with a parts tag or label that includes a description of the contents, the total weight (contents and container), and the number of the CITES document.

(d) *Skins with broken, cut, or missing tags.* Skins with broken, cut, or missing tags may not be imported, exported, or re-exported.

(1) Replacement tags must meet all the requirements in paragraph (b) of this section except they do not require the country of origin code or the species code.

(2) In the United States, when a tag breaks and the State of harvest cannot replace it, you may apply to us for a replacement tag before or when you apply for an export permit. You must provide information to show that the skin was legally acquired and give us the broken tag. If we are satisfied that the skin was legally acquired, we will replace the broken tag with a CITES replacement tag.

(e) *Manufactured crocodilian products and meat.* A manufactured crocodilian product is not required to have a tag attached. When you apply for an export permit for an item manufactured in the United States, you must surrender the tags from the skins used to make the item. The export of meat does not require a tag.

(f) *Documentation requirements.* CITES documents for crocodilian skins must contain all information that is given on the tag. This information must be included on the CITES document itself or on an annex (see § 23.20(e)(2)).

(g) *Approved export for American alligator (Alligator mississippiensis).* States and Tribes set up and maintain alligator management programs. For States and Tribe with programs that provide us with sufficient information to determine that the export of the alligator skins, parts, or products will not be detrimental to the survival of the species in the wild in that State or on tribal lands, and that the alligators were legally obtained, we are able to make administrative findings on a State-wide or reservation-wide basis. States and Tribes for which administrative findings have been made are requested to complete and submit to us by May 31 of each year form 3–200–63 as an annual report containing information on the previous harvest season. Annual reports can refer to information provided in previous years if it has not changed. Annual reports should include at least the following:

(1) The number of skins from wild, ranched, and farmed alligators tagged in the State or Tribe.

(2) A statement, based on the State's or Tribe's professional assessment of the status of their alligator population, such as whether the population is stable, increasing, or decreasing, and at what rate; and whether the harvest will not be detrimental.

(3) For wild alligators, information on harvest of nuisance alligators, whether there is a wild alligator hunt, methods used to determine harvest levels, demographics of the harvest, and methods used to determine the total number and population trends of alligators in the wild.

(4) For ranched alligators, information on whether collecting and rearing of eggs or hatchlings is allowed, what factors are used to set the harvest level, and whether or not any alligators are returned to the wild.

(5) For captive-bred (see § 23.53) alligators, information on the sources of the breeding stock, numbers of alligators produced through captive breeding, and whether any captive-bred alligators are returned to the wild.

(6) Copies of any relevant reports that the State or Tribe has prepared for the year in question as part of its existing management program for the American alligator.

(7) Information on, and a copy of, any changes in American alligator laws or regulations.

(h) *American alligator export tags.* We provide CITES export tags to States and Tribes for which administrative findings have been made. The CITES export tags include a CITES logo, an abbreviation for the State or Indian Tribe of harvest and the species (MIS = *Alligator mississippiensis*), the season of taking, and a unique serial number.

(i) *U.S. application forms.* A list of approved States and Tribes and application forms can be obtained from our website or by contacting us. Complete and submit the applicable form to the Office of Management Authority or to the appropriate Law Enforcement office (see § 23.7):

| Type of application for export or re-export of crocodilians, including american alligator | Submit to: | Form no. |
|---|---|---|
| (1) Export or re-export of American alligator skins, parts, or products from an approved State or Tribe:.<br>(i) For export or re-export of skins, you must include all of the information on the CITES tags (species, year of take, and unique serial number)..<br>(ii) For export of parts or products, you must include Authority the information on the CITES tags that were on the skins from which the parts or products originated. | Law Enforcement or Office of Management Authority. | 3–200–26 or 3–200–27 |
| (2) Export of American alligator skins, parts, or products NOT from an approved State or Tribe (see § 23.29 for export requirements). | Office of Management Authority. | 3–200–27 |
| (3) Re-export of American alligator skins, parts, or products NOT from an approved State or Tribe. | Law Enforcement or Office of Management Authority. | 3–200–26 or 3–200–27 |
| (4) Export of live specimens of American alligator and other crocodilians (see § 23.29 for export requirements). | Office of Management Authority. | 3–200–27 |
| (5) Re-export of live specimens of American alligator and other crocodilians. | Law Enforcement or Office of Management Authority. | 3–200–27 |
| (6) Export of other crocodilian skins, parts, or products ..... | Office of Management Authority. | 3–200–27 |
| (7) Re-export of other crocodilian skins, parts, or products ..... | Law Enforcement or Office of Management Authority. | 3–200–26 or 3–200–27 |

**§ 23.63 How can I trade internationally in sturgeon caviar?**

(a) *Pre-Convention.* Sturgeon caviar may not be imported, exported, or re-exported under a pre-Convention certificate.

(b) *General provision.* Except as provided for personal effects in § 23.12(f) and for on-board passenger consumption in paragraph (c) of this section, the import, export, or re-export of Appendix-II sturgeon (Order Acipenseriformes and not listed under the ESA) caviar requires valid CITES documents (see § 23.29 for export permits and re-export certificates).

(c) *On-board passenger consumption.* An airplane or cruise ship may export or re-export sturgeon caviar from the United States without a CITES document if the following conditions are met:

(1) The caviar is legally acquired and only for passenger consumption during each specific flight or cruise.

(2) The quantity of caviar placed on board for each specific flight or cruise cannot exceed 250 grams per passenger intended to be served caviar (such as first class passengers), and must be consumed or disposed of before arrival in another country.

**§ 23.64 How can I trade internationally in timber?**

(a) *General provisions:* Trade in timber species listed in Appendix II or III and annotated to include only logs, sawn wood, and veneer sheets must follow the CITES requirements of this part, except as provided in paragraphs (b) and (c) of this section.

(b) *Change in destination.* A Management Authority may change the name and address of the importer (consignee) indicated on the CITES document after the shipment has left the exporting or re-exporting country under the following conditions:

(1) The quantity imported is the same as the quantity certified by a stamp or seal and signature of the Management Authority on the CITES document at the time of export or re-export.

(2) The number of the bill of lading of the shipment is on the CITES document, and the bill of lading is presented at the time of import.

(3) The import takes place before the CITES document expires, and the period of validity has not been extended.

(4) The Management Authority includes the following statement in block 5 of the CITES document: "Import into the [country] permitted in accordance with Resolution Conf. 10.2 (section VII.) on [date]." The modification is certified with an official stamp and signature.

(5) The Management Authority sends a copy of the amended CITES document to the country of export or re-export and the Secretariat.

(c) *Extension of CITES document validity.* A Management Authority may extend the validity of an export permit or re-export certificate beyond the normal maximum of 6 months after the date of issue under the following conditions:

(1) The shipment has arrived in the port of final destination before the CITES document expires, is being held in customs bond, and is not considered imported.

(2) The time extension does not exceed 6 months from the date of expiration of the CITES document and no previous extension has been granted.

(3) The Management Authority has included in block 5 of the CITES document the date of arrival and the new date of expiration on the document, certifying the modification with an official stamp and signature.

(4) The shipment is imported into the country from the port where the Management Authority granted the extension and before the amended CITES document expires.

(5) The Management Authority sends a copy of the amended CITES document to the country of export or re-export and to the Secretariat.

**§ 23.65 How can I trade internationally in personal sport-hunted trophies?**

(a) *General provisions.* Except as provided for personal and household effects in § 23.12, the import, export, or

re-export of personal sport-hunted trophies requires valid CITES documents.

(b) *Definition.* Your trophy must meet the definition of "sport-hunted trophy" in § 23.5.

(c) *Use after import.* You may use your sport-hunted trophy for the following purpose after import:

| If the species is listed in | Allowed use once imported is: |
|---|---|
| (1) Appendix I | Only personal; may not be used or transferred for a commercial purpose. |
| (2) Appendix II with a species' annotation for sport-hunted trophies where other specimens of that species are treated as included in Appendix I. | Only personal; may not be used or transferred for a commercial purpose. |
| (3) Appendix II (other than paragraph (c)(2) of this section) or Appendix III. | Any purpose. |

(d) *Leopard (Panthera pardus) conditions.* In addition to the conditions in § 23.45, you must meet all of the following conditions:

(1) You may import no more than two trophies in any calendar year.

(2) Each raw or tanned skin imported or re-exported must have a self-locking tag attached which indicates the county of export, the number of the specimen in relation to the annual quota, and the calendar year in which the specimen was taken in the wild.

(3) The export permit or re-export certificate must contain the information from the tag.

## Subpart F—Disposal of Confiscated Live Wildlife and Plants

### § 23.70 How do we dispose of confiscated live wildlife and plants?

(a) *Purpose.* Article VIII of the Treaty requires that Parties confiscate specimens that are traded in violation of CITES or return them to the country of export.

(b) *Consultation process.* Before making a decision on the disposal of confiscated specimens, the Management Authority may consult with the Scientific Authority, the Management Authority in the country of export, and other relevant governmental and non-governmental experts.

(c) Disposal options. 50 CFR part 12 provides the options on how we dispose of forfeited and abandoned wildlife and plants. These include maintenance in captivity either in the United States or in the country of export, return to the wild under limited circumstances, sale of certain Appendix-II or -III specimens, euthanasia, or destruction.

(d) *Action plans.* CITES Parties are urged to develop action plans for the disposal of confiscated specimens.

(1) We use a plant rescue center program for confiscated plants. Participants in this program may also assist APHIS in holding seized specimens as evidence pending any legal decisions.

(2) We dispose of confiscated live wildlife on a case-by-case basis at the time of seizure and consider the quantity, protection level, and husbandry needs of the wildlife.

### § 23.71 How may I participate in the Plant Rescue Center Program?

(a) *Purpose.* We have established the Plant Rescue Center Program to dispose of confiscated live plants as quickly as possible to prevent damage to or loss of the plants.

(b) *Criteria.* Institutions interested in participating in this program must:

(1) Be a public institution (see 50 CFR 10.12), such as a public, non-profit botanical garden, arboretum, zoological park, or research institution.

(2) Be willing to transfer confiscated plants from the port where they were confiscated to their facilities at their own expense.

(3) Accept and maintain a plant shipment as a unit for a minimum of 30 days in the event the country of export or re-export requests return of the shipment.

(c) *Application.* Institutions wishing to participate must complete and submit application Form 3–200–60 to the Office of Management Authority (see § 23.7).

## Subpart G—CITES Administration

### § 23.75 What are the roles of the Secretariat and the committees?

(a) *Secretariat.* The Secretariat is headed by the Secretary General and implements the policies of the COP and the Standing Committee. The functions of the Secretariat are listed in Article XII of the Treaty and include, in part:

(1) Providing Parties with trade information and technical support.

(2) Acting as a liaison among Parties.

(3) Contracting scientific and technical studies.

(4) Informing governments and the public about CITES wildlife and plant trade developments.

(5) Investigating possible CITES violations and threats to wildlife and plants due to trade.

(6) Organizing meetings of the COP.

(7) Providing coordination and consultation on proposed amendments to Appendix I or II, notifying the Parties of Appendix-III listings, and periodically publishing current lists of species included in the appendices.

(8) Preparing annual reports to the Parties.

(9) Carrying out tasks directed by the COP or technical committees.

(10) Making recommendations for effective implementation of CITES.

(b) *Committees.* The Parties have established five committees to provide administrative and technical support to the Parties and to the Secretariat. The COP may charge any of these committees with tasks.

(1) The Standing Committee steers the work and performance of the Convention between COP's. This Committee oversees development and execution of the Secretariat's budget, coordinates and advises other committees, appoints working groups, and carries out activities on behalf of the Parties between COP's. Regional representatives are elected by the COP as members of this Committee.

(2) The Animals Committee and the Plants Committee compile and evaluate data on Appendix-II species that are considered significantly affected by trade; periodically review the status of wildlife and plant species included in the appendices; advise range countries on management techniques when requested; draft resolutions on wildlife and plant matters for consideration by the Parties; assist the Nomenclature and Identification Manual Committees on issues concerning wildlife and plant species; and report to the COP and the Standing Committee. The Animals Committee also deals with the transport of live animals.

(3) The Identification Manual Committee provides guidance and

coordination in the preparation of identification manuals for wildlife and plant species to assist Parties in the accurate identification of specimens listed in the CITES appendices.

(4) The Nomenclature Committee is responsible for developing or identifying standard nomenclature references for wildlife and plants and making recommendations on nomenclature to the COP, other Committees, working groups, and the Secretariat.

**§ 23.76 What is a Conference of the Parties (COP)?**

(a) *Purpose.* Article XI of the Treaty provides general guidelines for meetings of the Parties. The Parties currently meet for 2 weeks every 2 to 3 years. At these meetings, the Parties consider amendments to the appendices and resolutions to improve implementation of CITES. The Parties adopt amendments to the lists of species in Appendix I and II and resolutions by a two-thirds majority of Parties present and voting. The Secretariat or any Party may also submit reports on wildlife and plant trade for consideration.

(b) *COP locations and dates.* At a COP, Parties interested in hosting the next meeting notify the Secretariat. The Parties vote to select the location of the next COP. Once a country has been chosen, that country works with the Secretariat to set the date. The Parties are then notified of the date for the next COP.

(c) *Attendance at a COP.* All Parties may participate and vote at a COP. Non-Party countries may participate, but may not vote. Organizations technically qualified in protection, conservation, or management of wildlife or plants may participate in a COP as observers if they are approved, but they are not eligible to vote.

(1) International organizations should apply to the CITES Secretariat for approval of observer status.

(2) National organizations must apply to the Management Authority of the country where they are located for approval of observer status.

**§ 23.77 How can I obtain information on a COP?**

(a) As we receive information on an upcoming COP from the CITES Secretariat, we will publish notices in the **Federal Register**. The notices will provide:

(1) A summary of the information we have received with an invitation for the public to comment and provide information on the agenda, proposed amendments to the appendices, and proposed resolutions.

(2) Information on times, dates, and locations of public meetings.

(b) We will post information concerning upcoming COP's on our website.

**§ 23.78 How does the United States develop negotiating positions for a COP?**

(a) In developing negotiating positions for a COP, we:

(1) Consult with appropriate Federal and State agencies, foreign governmental agencies, and others.

(2) Review the comments received in response to **Federal Register** notices concerning proposals related to an upcoming COP.

(3) Publish a notice that includes a summary of the information and comments that we received, a summary of our proposed negotiating positions, and the reasons for those proposed positions.

(4) Request public input and comments on the proposed positions.

(5) Schedule at least one public meeting.

(6) Submit all draft resolutions and other documents to the Secretariat at least 150 days before the COP.

(7) Submit proposals for amendment of the appendices, if all range countries have been consulted, 150 days before the meeting. If the range countries are not consulted, the proposal must be submitted 330 days before the COP.

(8) Provide the public with our final negotiating positions.

(b) The Director may publish a notice in the **Federal Register** that modifies or suspends any of these procedures if following the procedures would interfere with the timely or appropriate development of negotiating positions.

(c) We may receive additional information at a COP or circumstances may develop that have an impact on our published negotiating positions. As a result, the United States representatives to a COP may find it necessary to modify, reverse, or abandon any of those positions where to do so would be in the best interests of the United States.

## Subpart H—Lists of Species

**§ 23.85 What are the criteria for listing species in Appendix I or II?**

(a) *Purpose.* Article XV of the Treaty sets out the procedures for amending CITES Appendices I and II. A species must meet appropriate biological and trade criteria to be listed.

(b) *Listing a species in Appendix I.* Any species that meets at least one biological criterion specified in the CITES listing criteria resolution and is known to be in trade, is probably in trade, has a potential international demand, or might enter trade if not subject to strict controls should be included in Appendix I.

(1) When determining whether a species qualifies for inclusion in Appendix I, we will utilize the best available scientific and biological information, and evaluate that information against the criteria adopted by the Parties.

(2) Those criteria include factors pertaining to: the size of the wild population; ongoing, past, or potential population or distribution declines; population fragmentation; habitat availability or quality; area of distribution, range fragmentation; species-specific vulnerabilities due to biology, behavior, or other factors, including migration; patterns of exploitation; threats from factors such as the effects of pathogens, competitors, parasites, predators, hybridization, introduced species and the effects of toxins and pollutants; or decreases in reproductive potential.

(c) *Listing a species in Appendix II due to potential threats.* Any species that meets either of the criteria identified in the CITES listing criteria resolution for Appendix II qualifies for inclusion in Appendix II. Those criteria are:

(1) It is known or expected that unless trade in the species is subject to strict regulation, it will meet at least one of the criteria for inclusion in Appendix I in the near future.

(2) It is known or expected that the harvesting of specimens from the wild for international trade has or will have a detrimental impact on the species by either exceeding the level that can be sustainably harvested or reducing it to a population size where its survival would be threatened by other influences.

(d) *Listing a species in Appendix II due to similarity of appearance.* Any species that meets either of the criteria identified in the CITES listing criteria resolution for Appendix II due to similarity of appearance and related factors qualifies for inclusion in Appendix II. Those criteria are:

(1) The specimen resembles specimens of a species included in Appendix II due to criteria in paragraph (c) of this section or in Appendix I, such that a non-expert, with reasonable effort, is unlikely to be able to distinguish between them.

(2) The species is a member of a taxon of which most of the species are included in Appendix II due to criteria in paragraph (c) of this section or in Appendix I, and the unlisted species should be listed to bring trade in listed ones under effective control.

(e) *Other issues.* The Parties have addressed other issues pertaining to listing of species in the CITES appendices. We will evaluate any potential changes to the appendices taking those other issues (as specified in the CITES listing criteria resolution) into consideration, including but not limited to: split-listing, listing of higher taxa, specific plant-related listing issues, use of subspecies, and the listing of hybrids.

(f) *Precautionary measures.* When considering changes to the CITES appendices, in the case of uncertainty in regard to the status of a species or the impact of trade on the conservation of a species, we will act in the best interest of the conservation of the species. We will evaluate any potential transfers from Appendix I to II or removal of species from the appendices in the context of the precautionary measures in the CITES listing criteria resolution.

(g) *Proposal.* If it is felt that a species qualifies for inclusion or removal from the CITES appendices, a proposal must be submitted to the Secretariat for consideration by the COP. The proposal should indicate the intent of the specific action (such as inclusion in Appendix I or II, or transfer from Appendix I to II) and the criteria against which the proposal is to be judged. The proposal must be in a prescribed format with all of the components addressed in the CITES listing criteria resolution. Contact the Office of Scientific Authority (see § 23.7) for either a copy of the format or the resolution which includes the prescribed format. Any proposal submitted by the United States will conform with the proposal format in the CITES listing criteria resolution.

**§ 23.86 What are the criteria for listing species in Appendix III?**

(a) *Purpose.* Article XVI of the Treaty sets out the procedures for amending Appendix III.

(b) *General procedure.* A Party may unilaterally, at any time, submit a species to be included in Appendix III to the CITES Secretariat. The Secretariat will notify the Parties.

(c) *Criteria for listing.* For a Party to list a species in Appendix III, all of the following criteria must be met:

(1) The species must be native to the country listing the species.

(2) The species must be protected under that country's regulations to prevent or restrict exploitation and control trade, and the regulations are being implemented.

(3) The species is in international trade and there are indications that the cooperation of other Parties would help to control illegal trade.

(4) The listing Party must inform the Management Authorities of other range countries, the known major importing countries, the Secretariat and the Animals Committee or the Plants Committee that it is considering the listing and seek their opinion on the potential effects of the listing.

(d) *Annotation.* The listing Party may annotate the Appendix-III listing to include only specific parts, products, derivatives or life stages, as long as the Secretariat is notified of the annotation.

(e) *U.S. procedure.* The procedure to list a species native to the United States in Appendix III is as follows:

(1) We will consult with and solicit comments from all States where the species occurs and all other range countries.

(2) We will publish a proposed listing in the **Federal Register** to solicit comments from the public.

(3) If after evaluating the comments and available information we determine the species should be included in Appendix III, we will notify the Secretariat of the listing and publish a notice in the **Federal Register**.

(4) The listing will become effective 90 days after the Secretariat notifies the Parties of our request.

(f) *Removing a species from Appendix III.* We will monitor the international trade in Appendix-III species listed by us and periodically evaluate whether the species continues to meet the listing criteria in paragraph (b) of this section. We will remove a species from Appendix III provided all of the following criteria are met:

(1) International trade in the species is very limited (fewer than 5 shipments per year or fewer than 100 individual animals or plants).

(2) Legal and illegal trade in the species, including international trade or interstate commerce, is determined not to be a concern.

(g) *Transferring a species from Appendix III to Appendix I or II.* If, after monitoring the trade and evaluating the status of an Appendix III species we listed, we determine that the species meets the criteria in § 23.85(b), (c), or (d) for listing in Appendix I or II, we will consider whether to submit a proposal to amend the listing at the next COP.

**§ 23.87 How do I find out if a species is listed?**

(a) *CITES list.* The official CITES list includes species of wildlife and plants placed in Appendix-I, -II, and -III in accordance with the provisions of Articles XV and XVI of the Treaty. This list is maintained by the CITES Secretariat based on decisions of the Parties. You may access the official list from the CITES website (www.cites.org).

(b) *Unofficial list.* For your convenience, we maintain an unofficial list in an easy-to-use format that is available from our website or as a printed publication (see § 23.7).

**§ 23.88 Are any wildlife or plants, and their parts or products, exempt?**

All living or dead wildlife and plants in Appendix I, II, and III and all their readily recognizable parts and products must meet the requirements of CITES and this part, except:

(a) Parts and products of Appendix-III wildlife or Appendix-II or -III plants that are specifically included by annotation.

(b) An Appendix-II or -III plant hybrid may be excluded from CITES controls by an annotation in the CITES list.

(c) The following plant materials are exempt:

| Plant listing | Exempt parts or products |
|---|---|
| (1) Appendix-II and -III plants [1]. | (i) Flasked seedlings or tissue culture.<br>(ii) Spores and pollen (including pollinia).<br>(iii)Seeds (other than Mexican Cactaceae originating from Mexico).<br>(iv) Cut flowers of artificially propagated plants. |
| (2) In addition, for Appendix-II Cactaceae species [1]. | From artificially propagated or naturalized plants:<br>(i) Separate stem joints (pads) and their parts and products of the genus *Opuntia* subgenus *Opuntia*.<br>(ii) Fruits and their parts and products. |

| Plant listing | Exempt parts or products |
|---|---|
| (3) In addition, for Appendix-II Orchidaceae species [1]. | Fruits and their parts and products for artificially propagated plants of *Vanilla* species. |
| (4) For Appendix-I Orchidaceae species. | Flasked seedlings or tissue culture. |

[1] An artificially propagated hybrid of one or more unannotated Appendix-I species is treated as if listed in Appendix-II if no individual plant in its lineage is an annotated Appendix-I species.

Dated: November 30, 1999.

**Donald J. Barry,**

*Assistant Secretary, Fish and Wildlife and Parks, Department of the Interior.*

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Part III

# Department of the Interior

**Bureau of Indian Affairs**

**25 CFR Part 38**
**Southwestern Polytechnic Institute (SIPI) Personnel System; Proposed Rule**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Part 38**

**RIN 1076—AE02**

## Southwestern Polytechnic Institute (SIPI) Personnel System

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Indian Affairs is proposing to amend its regulations to allow the Southwestern Indian Polytechnic Institute to develop a new alternative personnel system.

**DATES:** Written comments on the proposed rule must be filed June 7, 2000. A public hearing will be held on June 8, 2000.

**ADDRESSES:** You may send written comments on the proposed rule and written comments to supplement oral testimony to: Dr. Carolyn Elgin, President, Southwestern Indian Polytechnic Institute, P. O. Box 10146, 9169 Coors Boulevard, NW, Albuquerque, New Mexico 87184.

**FOR FURTHER INFORMATION CONTACT:** David Parrish, Dean of Administration, at (505) 346–2340.

**SUPPLEMENTARY INFORMATION:**

*Review of Comments:* Comments will be available for inspection at SIPI, Room 107, 9169 Coors Boulevard, NW, Albuquerque, New Mexico, 87184. Written comments on the proposed rule should be specific, should be confined to issues pertinent to the proposed rule and should explain the reason for any change you recommend. Where possible, you should reference the specific section or paragraph of the proposal you are addressing. This 30 day time frame is necessary to ensure that statutory requirements for implementation no later than October 31, 2000 are met. A public hearing will be held on June 8, 2000.

Individual respondents may request confidentiality. If you wish to request that we consider withholding your name, street address and other contact information from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor request(s) for confidentiality on a case-by-case basis to the extent allowed by law. We will make available for public inspection in their entirety all submission from organizations and from individuals identifying themselves as representatives or officials of organizations.

*Public Hearing:* A public hearing will be held at SIPI, Library Building, Board of Regents Conference, 9169 Coors Boulevard, NW, Albuquerque, New Mexico, 87184. Any person who wants to participate in the public hearing should notify the person identified under **FOR FURTHER INFORMATION CONTACT** section.

(1) If no one expresses an interest in participating in a hearing at the given location on the given date, we will not hold the hearing. If only one person expresses an interest, we may hold a public meeting rather than a hearing, and we will include the results in the Administrative Record.

(2) If we hold a hearing, we will continue the hearing until everyone who wants to testify has done so. We will include the results in the Administrative Record.

At the time of the hearing, interested persons or institutions may present written or oral comments on the proposed rule. The hearing will be informal. However, anyone wishing to testify should contact the person listed under **FOR FURTHER INFORMATION CONTACT**. He will then plan the hearings and provide sufficient time for all interested persons and institutions to be heard. Priority will be given to those on the schedule. Other individuals may speak during any remaining available time. Each speaker's presentation will be limited to 10 minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

This demonstration project is initiated under the authority of Pub. L. 105–337. The congress believes that SIPI requires more flexibility and autonomy in their personnel activities than is currently allowed by the Office of Personnel Management regulations (Title 5, U.S.C.). The Congress further required that if a demonstration project is implemented, that it be implemented no later than October 31, 2000. This demonstration project allows SIPI to develop a completely new personnel system to meet the unique needs of the SIPI mission. This project is designed to increase the flexibility of training modules and services provided to the students attending SIPI. To accomplish these goals, a separation from Title 5 requirements was necessary.

### Background

Individuals employed at the Southwestern Indian Polytechnic Institute (SIPI) are currently covered under Title 5 of the CFR (Administrative Personnel). Under the demonstration project, SIPI employees will no longer be covered by Title 5 of the CFR, but will be covered by Part 38 of Title 25 (Indians), as established in this proposed rule. This action will allow SIPI greater autonomy in administration and improvement of the academic program while maintaining SIPI and its employees as an integral part of the Bureau of Indian Affairs. Under this demonstration project, employees at SIPI will be converted to the Excepted Service and all future appointments to positions at SIPI will be in the Excepted Service. SIPI Management will establish qualifications and classifications standards that will directly support the mission of SIPI in providing quality education programs for its students. The employee compensation and pay system will be converted to that of the current contract education pay system with no loss of pay or benefits. The current Title 5 benefits (*ie.* Retirement, Health, Life Insurance and Thrift Savings Plan) will be continued. The current annual and sick leave program will be continued. A new 5 step performance evaluation system will be utilized under the project. Any collective bargaining agreement in effect on the day before this demonstration project commences shall be recognized by SIPI until the earlier of:

(1) The date occurring 3 years after the commencement date of the project;

(2) The date as of which the agreement is scheduled to expire (disregarding any option to renew); or

(3) such date as may be determined by mutual agreement of the parties.

### Termination of the Demonstration Project

This demonstration project will terminate on October 31, 2005, or on such date beyond October 31, 2005, as deemed necessary to validate the results of the project, or as determined by Congress.

### Discussion

This proposed rule will expedite the employment and utilization of future employees with qualifications that more readily reflect the needs of the Institution than is currently allowed under Office of Personnel Management regulations. It will also provide the administration of SIPI with the flexibility to modify program requirements and more appropriately assign employees to reflect changing requirements.

### Regulatory Planning and Review (E.O. 12866)

These proposed regulations are not a significant regulatory action because they affect only a small number of employees (approximately 185) and

have no additional affect on SIPI employees beyond the current approved budget. Therefore, they are subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will have no effect beyond the current approved budget which is less than $6 million.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

**Regulatory Flexibility Act**

The Department certifies that these proposed regulations will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it only effects the 185 total positions located at SIPI and has no economic impact on the incumbents of those positions.

**Small Business Regulatory Enforcement Fairness Act (SBREFA)**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

(a) Does not have any annual effect on the economy beyond the current approved budget of less that $6 million.

(b) Will not cause any increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Does not have any adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

**Unfunded Mandates Reform Act**

This rule does not impose any unfunded mandate on State, local, or tribal governments or the private sector. The rule does not have any effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

**Takings (E.O. 12630)**

In accordance with Executive Order 12630, the rule does not have any takings implications. A takings implication assessment is not required.

**Federalism (E.O. 13132)**

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule does not propose any regulation that:

(1) Has any direct effect on the States, the relationship between national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Impose any compliance costs on State and local governments; or,

**Executive Order 13132**

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule does not propose any regulation that:

(1) Has any direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Impose any direct compliance costs on State and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084, " Consultation and Coordination with Indian Tribal Governments." Because the proposed rule does not affect the Indian tribal governments, the funding and consultation requirement of Executive Order 13084 does not apply.

**Civil Justice Reform (Executive Order 12988)**

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not impact the judicial system and does not meet the requirements of sections 3(a) and 3(b)(2) of the Order.

**Paperwork Reduction Act**

This regulation does not require information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB form 83–I is not required.

**National Environmental Policy Act**

This rule does not constitute a major Federal action affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

**Consultation and Coordination With Indian Tribal Governments (E.O. 13084)**

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084. Because the proposed rule would not affect the Indian tribal governments, the funding and consultation requirement of Executive Order 13084 does not apply.

**Clarity of This Regulation**

Executive Order 12866 requires each agency to write regulations that are easy to understand. President Clinton's Presidential memorandum of June 2, 1998 required us to write new regulations in plain language. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading, for example, § 38.15 Southwest Indian Polytechnic Institute. (5) Is the description of the proposed rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: *Execsec@ios.doi.gov* .

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the provisions of the Public Law. Persons making written submissions should file with the Southwestern Indian Polytechnic Institute. A copy of the submission, all subsequent amendments, all written statements with respect to the proposed rule that are filed with SIPI, and all written communications relating to the proposed rule between SIPI and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will

be available for inspection and copying at the address indicated in the **ADDRESSES** section.

**List of Subjects in 25 CFR Part 38**

Indians—education.

**Words of Issuance**

For the reasons stated in the summary, the Department of the Interior proposes to amend Title 25 CFR, as follows:

**PART 38—EDUCATION PERSONNEL.**

1. The authority for part 38 is revised to read as follows:

**Authority:** Secs. 1131 and 1135 of the Act of November 1, 1978 (92 Stat. 2322 and 2327; 25 U.S.C. 2011 and 2015); Secs. 511 and 512 of Pub. L. 98–511; and Secs. 8 and 9 of Pub. L. 99–89 (Indian Education Technical Amendments Act of 1985) and Title V of Pub. L. 100–297 (Indian Education Amendments of 1988) and Pub. L. 105–337.

2. A new § 38.15 is added to read as follows:

**§ 38.15 Southwestern Indian Polytechnic Institute.**

The Southwest Indian Polytechnic Institute has an independent personnel system established under Pub. L. 105–337, the Administrative Systems Act of 1998, 112 Stat. 3171. The details of this system are in the Bureau of Indian Affairs Manual at 62 BIAM, which may be found in Bureau of Indian Affairs Area and Agency offices, Education Line Offices and the Central office in Washington, DC.

Dated: April 25, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–11072 Filed 5–5–00; 8:45 am]

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## LIST OF PUBLIC LAWS

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**H.R. 1615/P.L. 106–192**
Lamprey Wild and Scenic River Extension Act (May 2, 2000; 114 Stat. 233)

**H.R. 1753/P.L. 106–193**
Methane Hydrate Research and Development Act of 2000 (May 2, 2000; 114 Stat. 234)

**H.R. 3090/P.L. 106–194**

To amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes. (May 2, 2000; 114 Stat. 239)

**H.J. Res. 86/P.L. 106–195**

Recognizing the 50th anniversary of the Korean War and the service by members of the Armed Forces during such war, and for other purposes. (May 2, 2000; 114 Stat. 244)

**S. 1567/P.L. 106–196**

To designate the United States courthouse located at 223 Broad Avenue in Albany, Georgia, as the "C.B. King United States Courthouse". (May 2, 2000; 114 Stat. 245)

**S. 1769/P.L. 106–197**

To exempt certain reports from automatic elimination and sunset pursuant to the Federal Reports Elimination and Sunset Act of 1995, and for other purposes. (May 2, 2000; 114 Stat. 246)

**Last List May 3, 2000**

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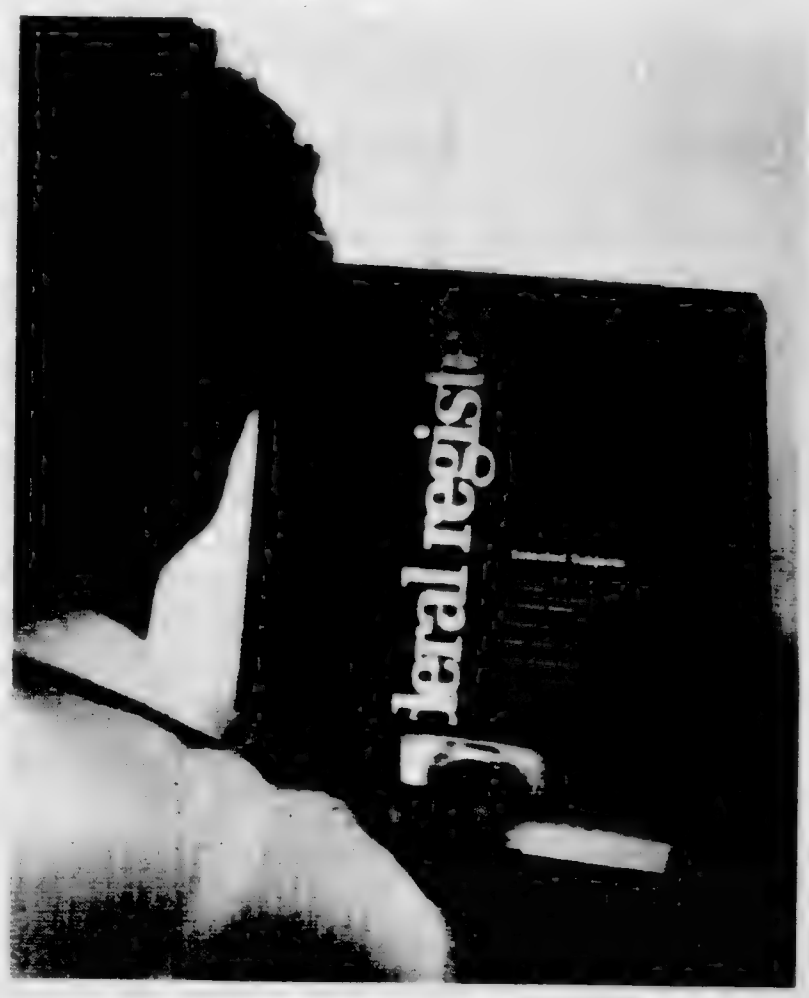


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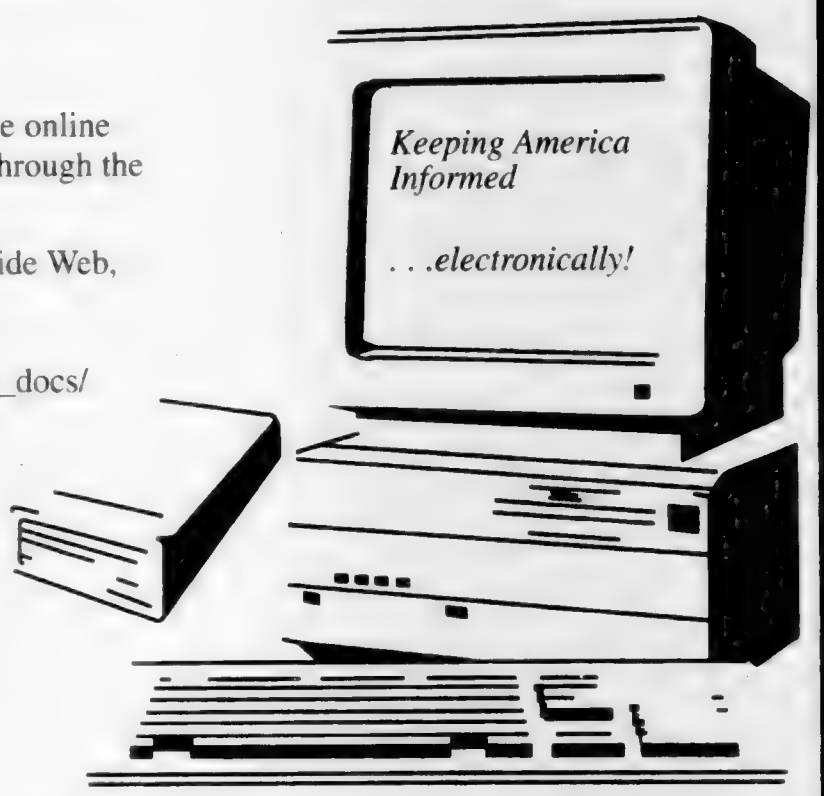


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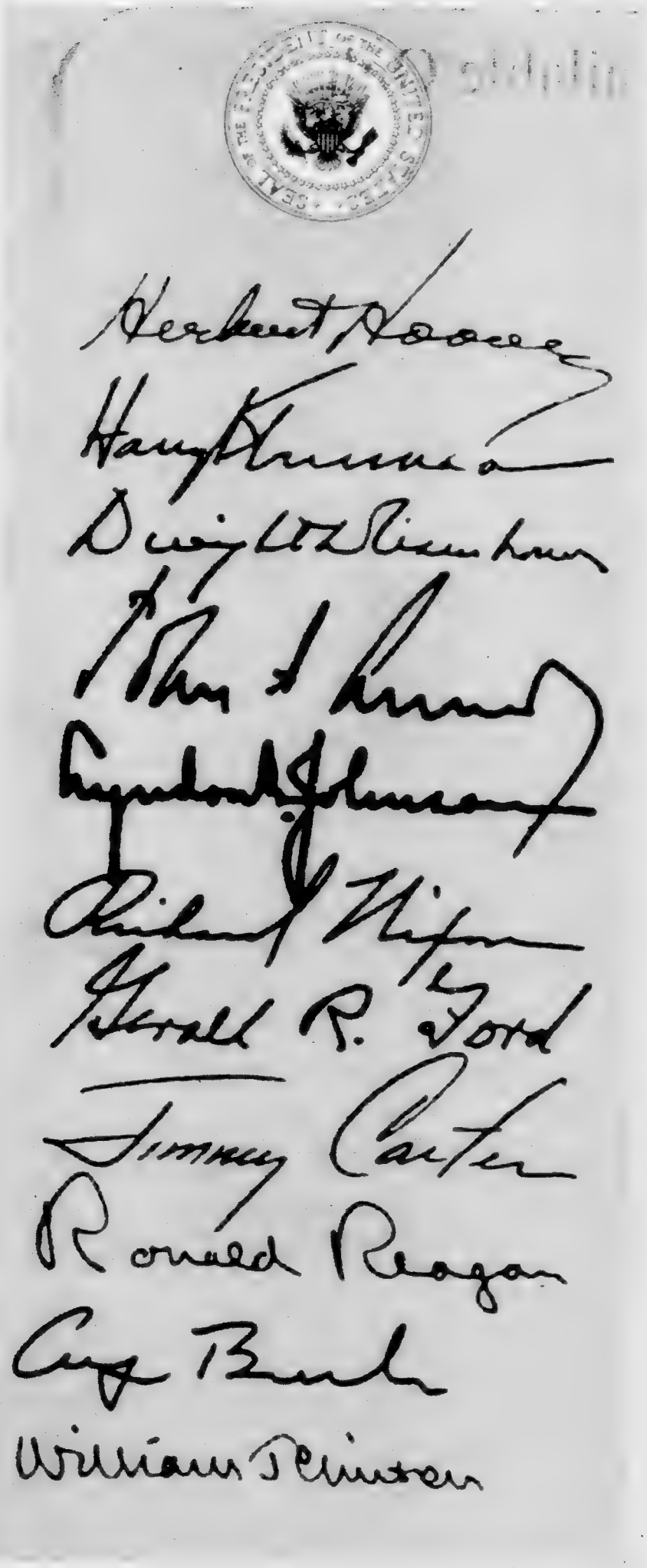

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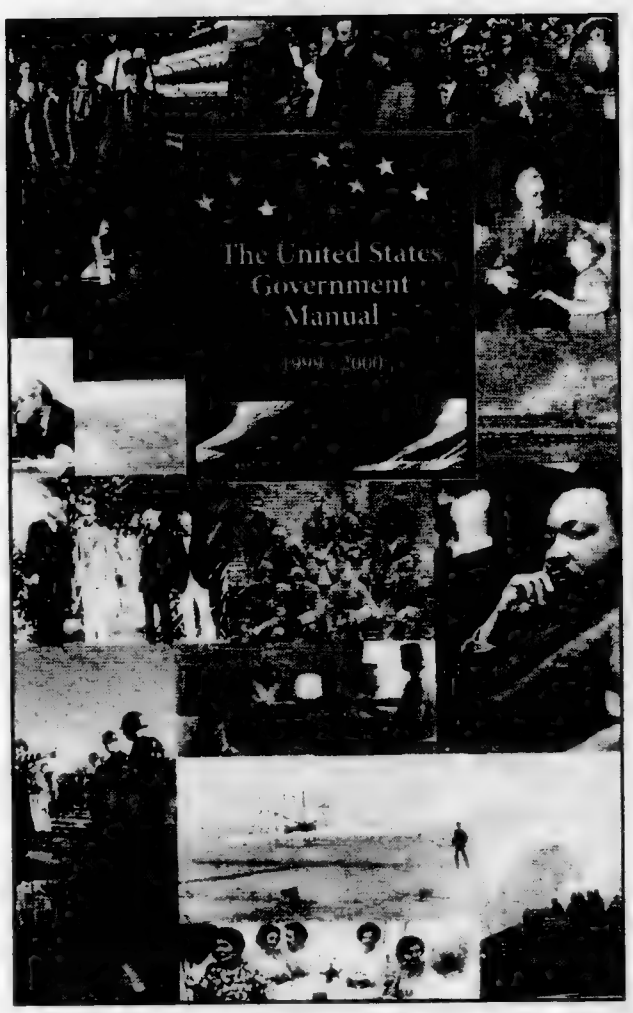


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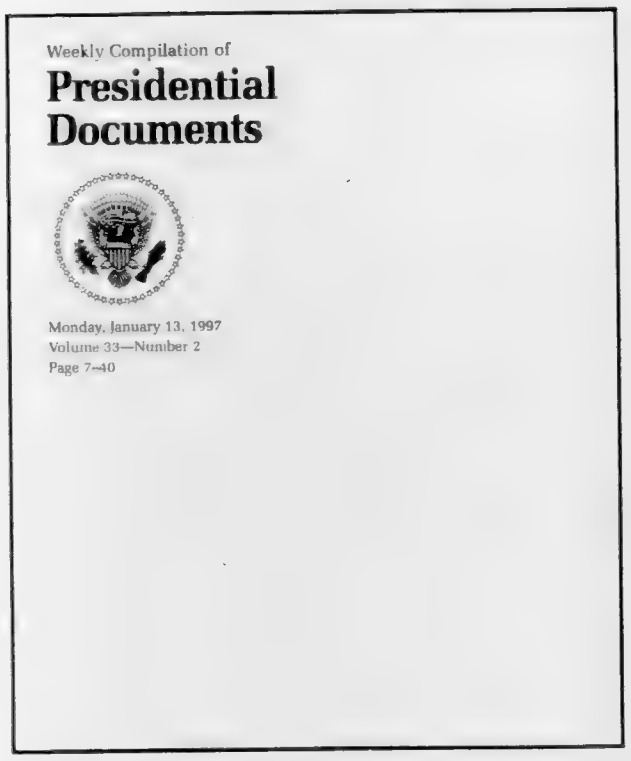


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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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# Rules and Regulations

Federal Register
Vol. 65, No. 90
Tuesday, May 9, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**Office of Federal Housing Enterprise Oversight**

**12 CFR Part 1735**

**RIN 2550–AA08**

## Implementation of the Equal Access to Justice Act

**AGENCY:** Office of Federal Housing Enterprise Oversight, HUD.

**ACTION:** Final regulation.

**SUMMARY:** The Office of Federal Housing Enterprise Oversight (OFHEO) is publishing a final regulation that implements the Equal Access to Justice Act (Act). The Act provides for the award of fees and other expenses to eligible individuals and entities that are parties to adversary adjudications before the Federal government. The regulation establishes procedures for the filing and consideration of applications for awards of fees and expenses in connection with adversary adjudications before OFHEO.

**DATES:** This final regulation is effective June 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Isabella W. Sammons, Associate General Counsel, telephone (202) 414–3790, (not a toll-free number), Office of Federal Housing Enterprise Oversight, Fourth Floor, 1700 G Street, NW., Washington, DC 20552. The telephone number for the Telecommunications Device for the Deaf is (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** The Office of Federal Housing Enterprise Oversight (OFHEO) published a proposed regulation at 65 FR 7312 on February 14, 2000, that would implement the Equal Access to Justice Act (Act), 5 U.S.C. 504. OFHEO requested comments on the proposed regulation but did not receive any. Accordingly, the proposed regulation is published as a final regulation without change.

### Background

The Act provides that eligible individuals and entities that are parties to adversary adjudications before Federal agencies may file an application for an award of fees and other expenses. Eligible parties may receive an award for fees and other expenses incurred by them in connection with an adversary adjudication before OFHEO if they prevail over OFHEO, unless the position of OFHEO in the adversary adjudication was substantially justified. Eligible parties may also receive an award for fees and other expenses incurred by them in defending against a demand by OFHEO if the demand of OFHEO was substantially in excess of the decision in the adversary adjudication and was unreasonable when compared with such decision.

The Act requires that OFHEO and other Federal agencies establish procedures for the filing and consideration of applications for an award of fees and other expenses. Subpart A of the final regulation sets forth definitions, eligibility requirements, standards for awards, and allowable fees and expenses. Subpart B describes the information that must be included in an application for award and Subpart C provides the procedures for filing and consideration of an application for award.

The provisions of the final regulation reflect the 1996 amendments to the Act that were enacted pursuant to Pub. L. 104–121, 110 Stat. 862 (1996). Furthermore, to the extent appropriate, the provisions of the final regulation are substantially similar to the provisions of the Model Rules for Implementation of the Equal Access to Justice Act in Agency Proceedings, 1 CFR part 315 (1986) (51 FR 16659—16669 (May 6, 1986)).

### Regulatory Impact

*Executive Order 12866, Regulatory Planning and Review*

The final regulation is not classified as a significant rule under Executive Order 12866 because it will not result in an annual effect on the economy of $100 million or more or a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required and this final regulation has not been submitted to the Office of Management and Budget for review.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small businesses, or small organizations must include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency has certified that the regulation will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). OFHEO has considered the impact of the final regulation under the Regulatory Flexibility Act. The General Counsel of OFHEO certifies that the final regulation, if adopted, is not likely to have a significant economic impact on a substantial number of small business entities because the number of applications for awards by small entities is expected to be extremely small.

*Paperwork Reduction Act*

The final regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

*Unfunded Mandates Reform Act of 1995*

The final regulation does not require the preparation of an assessment statement in accordance with the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531. Assessment statements are not required for regulations that incorporate requirements specifically set forth in law. As explained in the preamble, the final regulation implements specific statutory requirements. In addition, the final regulation does not include a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the

private sector, of $100 million or more (adjusted annually for inflation) in any one year.

**List of Subjects in 12 CFR Part 1735**

Administrative practice and procedure, Equal access to justice.

Accordingly, for the reasons stated in the preamble, OFHEO adds part 1735 to chapter XVII of title 12 of the Code of Federal Regulations as follows:

## PART 1735—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT

### Subpart A—General Provisions

Sec.

1735.1 Purpose and scope.
1735.2 Definitions.
1735.3 Eligible parties.
1735.4 Standards for awards.
1735.5 Allowable fees and expenses.
1735.6 Rulemaking on maximum rate for fees.
1735.7 Awards against other agencies.
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### Subpart B—Information Required from Applicants

1735.10 Contents of the application for award.
1735.11 Request for confidentiality of net worth exhibit.
1735.12 Documentation of fees and expenses.
1735.13–1735.19 [Reserved]

### Subpart C—Procedures for Filing and Consideration of the Application for Award

1735.20 Filing and service of the application for award and related papers.
1735.21 Answer to the application for award.
1735.22 Reply to the answer.
1735.23 Comments by other parties.
1735.24 Settlement.
1735.25 Further proceedings on the application for award.
1735.26 Decision of the adjudicative officer.
1735.27 Review by OFHEO.
1735.28 Judicial review.
1735.29 Payment of award.

**Authority:** 5 U.S.C. 504(c)(1).

### Subpart A—General Provisions

#### § 1735.1 Purpose and scope.

(a) This part implements the Equal Access to Justice Act, 5 U.S.C. 504, by establishing procedures for the filing and consideration of applications for award of fees and other expenses to eligible individuals and entities who are parties to adversary adjudications before OFHEO.

(b) This part applies to the award of fees and other expenses in connection with adversary adjudications before OFHEO. However, if a court reviews the underlying decision of the adversary adjudication, an award for fees and other expenses may be made only pursuant to 28 U.S.C. 2412(d)(3).

#### § 1735.2 Definitions.

(a) *Adjudicative officer* means the official who presided at the underlying adversary adjudication, without regard to whether the official is designated as a hearing examiner, administrative law judge, administrative judge, or otherwise.

(b) *Adversary adjudication* means an administrative proceeding conducted by OFHEO under 5 U.S.C. 554 in which the position of OFHEO or any other agency of the United States is represented by counsel or otherwise, including but not limited to an adjudication conducted under 12 CFR part 1780. Any issue as to whether an administrative proceeding is an adversary adjudication for purposes of this part will be an issue for resolution in the proceeding on the application for award.

(c) *Affiliate* means an individual, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares or other interests of the party, or any corporation or other entity of which the party directly or indirectly owns or controls a majority of the voting shares or other interest, unless the adjudicative officer determines that it would be unjust and contrary to the purpose of the Equal Access to Justice Act in light of the actual relationship between the affiliated entities to consider them to be affiliates for purposes of this part.

(d) *Agency counsel* means the attorney or attorneys designated by the General Counsel of OFHEO to represent OFHEO in an adversary adjudication covered by this part.

(e) *Demand of OFHEO* means the express demand of OFHEO that led to the adversary adjudication, but does not include a recitation by OFHEO of the maximum statutory penalty when accompanied by an express demand for a lesser amount.

(f) *Fees and other expenses* include reasonable attorney or agent fees, the reasonable expenses of expert witnesses, and the reasonable cost of any study, analysis, engineering report, test, or project that is found by the agency to be necessary for the preparation of the eligible party's case.

(g) *Final disposition* means the date on which a decision or order disposing of the merits of the adversary adjudication or any other complete resolution of the adversary adjudication, such as a settlement or voluntary dismissal, becomes final and unappealable, both within the agency and to the courts.

(h) *OFHEO* means the Office of Federal Housing Enterprise Oversight.

(i) *Party* means an individual, partnership, corporation, association, or public or private organization that is named or admitted as a party, that is admitted as a party for limited purposes, or that is properly seeking and entitled as of right to be admitted as a party in an adversary adjudication.

(j) *Position of OFHEO* means the position taken by OFHEO in the adversary adjudication, including the action or failure to act by OFHEO upon which the adversary adjudication was based.

#### § 1735.3 Eligible parties.

(a) To be eligible for an award of fees and other expenses under § 1735.4(a), a party must be a small entity as defined in 5 U.S.C. 601.

(b)(1) To be eligible for an award of fees and other expenses for prevailing parties under § 1735.5(b), a party must be one of the following:

(i) An individual who has a net worth of not more than $2 million;

(ii) The sole owner of an unincorporated business who has a net worth of not more than $7 million, including both personal and business interest, and not more than 500 employees; however, a party who owns an unincorporated business will be considered to be an "individual" rather than the "sole owner of an unincorporated business" if the issues on which the party prevails are related primarily to personal interests rather than to business interests.

(iii) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), with not more than 500 employees;

(iv) A cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a), with not more than 500 employees; or

(v) Any other partnership, corporation, association, unit of local government, or organization that has a net worth of not more than $7 million and not more than 500 employees.

(2) For purposes of eligibility under paragraph (b) of this section:

(i) The employees of a party include all persons who regularly perform services for remuneration for the party, under the party's direction and control. Part-time employees shall be included on a proportional basis.

(ii) The net worth and number of employees of the party and its affiliates shall be aggregated to determine eligibility.

(iii) The net worth and number of employees of a party shall be

determined as of the date the underlying adversary adjudication was initiated.

(c) A party that participates in an adversary adjudication primarily on behalf of one or more entities that would be ineligible for an award is not itself eligible for an award.

**§ 1735.4 Standards for awards.**

(a) An eligible party that files an application for award of fees and other expenses in accordance with this part shall receive an award of fees and other expenses related to defending against a demand of OFHEO if the demand was in excess of the decision in the underlying adversary adjudication and was unreasonable when compared with the decision under the facts and circumstances of the case, unless the party has committed a willful violation of law or otherwise acted in bad faith, or unless special circumstances make an award unjust. The burden of proof that the demand of OFHEO was substantially in excess of the decision and is unreasonable when compared with the decision is on the eligible party.

(b) An eligible party that submits an application for award in accordance with this part shall receive an award of fees and other expenses incurred in connection with an adversary adjudication in which it prevailed or in a significant and discrete substantive portion of the adversary adjudication in which it prevailed, unless the position of OFHEO in the adversary adjudication was substantially justified or special circumstances make an award unjust. OFHEO has the burden of proof to show that its position was substantially justified and may do so by showing that its position was reasonable in law and in fact.

**§ 1735.5 Allowable fees and expenses.**

(a) Awards of fees and other expenses shall be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate to the party. However, except as provided in § 1735.6, an award for the fee of an attorney or agent may not exceed $125 per hour and an award to compensate an expert witness may not exceed the highest rate at which OFHEO pays expert witnesses. However, an award may also include the reasonable expenses of the attorney, agent, or expert witness as a separate item if he or she ordinarily charges clients separately for such expenses.

(b) In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the adjudicative officer shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fees for similar services; or, if the attorney, agent, or expert witness is an employee of the eligible party, the fully allocated costs of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the eligible party;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the adversary adjudication; and

(5) Such other factors as may bear on the value of the services provided.

(c) In determining the reasonable cost of any study, analysis, engineering report, test, project, or similar matter prepared on behalf of a party, the adjudicative officer shall consider the prevailing rate for similar services in the community in which the services were performed.

(d) Fees and other expenses incurred before the date on which an adversary adjudication was initiated will be awarded only if the eligible party can demonstrate that they were reasonably incurred in preparation for the adversary adjudication.

**§ 1735.6 Rulemaking on maximum rate for fees.**

If warranted by an increase in the cost of living or by special circumstances, OFHEO may adopt regulations providing for an award of attorney or agent fees at a rate higher than $125 per hour in adversary adjudications covered by this part. Special circumstances include the limited availability of attorneys or agents who are qualified to handle certain types of adversary adjudications. OFHEO will conduct any rulemaking proceedings for this purpose under the informal rulemaking procedures of the Administrative Procedures Act, 5 U.S.C. 553.

**§ 1735.7 Awards against other agencies.**

If another agency of the United States participates in an adversary adjudication before OFHEO and takes a position that was not substantially justified, the award or appropriate portion of the award to an eligible party that prevailed over that agency shall be made against that agency.

**§§ 1735.8—1735.9 [Reserved].**

## Subpart B—Information Required from Applicants

**§ 1735.10 Contents of the application for award.**

(a) An application for award of fees and other expenses under either § 1735.4(a) and § 1735.4(b) shall:

(1) Identify the applicant and the adversary adjudication for which an award is sought;

(2) State the amount of fees and other expenses for which an award is sought;

(3) Provide the statements and documentation required by paragraph (b) or (c) of this section and § 1735.12 and any additional information required by the adjudicative officer; and

(4) Be signed by the applicant or an authorized officer or attorney of the applicant and contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application is true and correct.

(b) An application for award under § 1735.4(a) shall show that the demand of OFHEO was substantially in excess of, and was unreasonable when compared to, the decision in the underlying adversary adjudication under the facts and circumstances of the case. It shall also show that the applicant is a small entity as defined in 5 U.S.C. 601.

(c) An application for award under § 1735.4(b) shall:

(1) Show that the applicant has prevailed in a significant and discrete substantive portion of the underlying adversary adjudication and identify the position of OFHEO in the adversary adjudication that the applicant alleges was not substantially justified;

(2) State the number of employees of the applicant and describe briefly the type and purposes of its organization or business (if the applicant is not an individual);

(3) State that the net worth of the applicant does not exceed $2 million, if the applicant is an individual; or for all other applicants, state that the net worth of the applicant and its affiliates, if any, does not exceed $7 million; and

(4) Include one of the following:

(i) A detailed exhibit showing the net worth (net worth exhibit) of the applicant and its affiliates, if any, when the underlying adversary adjudication was initiated. The net worth exhibit may be in any form convenient to the applicant as long as the net worth exhibit provides full disclosure of the assets and liabilities of the applicant and its affiliates, if any, and is sufficient to determine whether the applicant qualifies as an eligible party;

(ii) A copy of a ruling by the Internal Revenue Service that shows that the applicant qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3); or in the case of a tax-exempt organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the belief that the applicant qualifies under such section; or

(iii) A statement that the applicant is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act, 12 U.S.C. 1141j(a).

**§ 1735.11 Request for confidentiality of net worth exhibit.**

(a) The net worth exhibit described in § 1735.10(c)(4)(i) shall be included in the public record of the proceeding for the award of fees and other expenses, except if confidential treatment is requested and granted as provided in paragraph (b) of this section.

(b)(1) The applicant may request confidential treatment of the information in the net worth exhibit by filing a motion directly with the adjudicative officer in a sealed envelope labeled "Confidential Financial Information." If the adjudicative officer finds that the information should be withheld from public disclosure, any request to inspect or copy the information by another party or the public shall be resolved in accordance with the Freedom of Information Act, 5 U.S.C. 552b, and the Releasing Information regulation at 12 CFR part 1710.

(2) The motion shall:

(i) Include a copy of the portion of the net worth exhibit sought to be withheld;

(ii) Describe the information sought to be withheld; and

(iii) Explain why the information is exempt from disclosure under the Freedom of Information Act and why public disclosure of the information would adversely affect the applicant and is not in the public's interest.

(iv) Be served on agency counsel but need not be served on any other party to the proceeding.

**§ 1735.12 Documentation of fees and expenses.**

(a) The application for award shall be accompanied by full and itemized documentation of the fees and other expenses for which an award is sought. The adjudicative officer may require the applicant to provide vouchers, receipts, logs, or other documentation for any fees or expenses claimed.

(b) A separate itemized statement shall be submitted for each entity or individual whose services are covered by the application. Each itemized statement shall include:

(1) The hours spent by each entity or individual;

(2) A description of the specific services performed and the rates at which each fee has been computed; and

(3) Any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity.

**§§ 1735.13–1735.19 [Reserved].**

## Subpart C—Procedures for Filing and Consideration of the Application for Award

**§ 1735.20 Filing and service of the application for award and related papers.**

(a) An application for an award of fees and other expenses must be filed no later than 30 days after the final disposition of the underlying adversary adjudication.

(b) An application for award and other papers related to the proceedings on the application for award shall be filed and served on all parties in the same manner as papers are filed and served in the underlying adversary adjudication, except as otherwise provided in this part.

(c) The computation of time for filing and service of the application of award and other papers shall be computed in the same manner as in the underlying adversary adjudication.

**§ 1735.21 Answer to the application for award.**

(a) Agency counsel shall file an answer within 30 days after service of an application for award of fees and other expenses except as provided in paragraphs (b) and (c) of this section. In the answer, agency counsel shall explain any objections to the award requested and identify the facts relied upon to support the objections. If any of the alleged facts are not already in the record of the underlying adversary adjudication, agency counsel shall include with the answer either supporting affidavits or a request for further proceedings under § 1735.25.

(b) If agency counsel and the applicant believe that the issues in the application for award can be settled, they may jointly file a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer for an additional 30 days. Upon request by agency counsel and the applicant, the adjudicative officer may grant for good cause further time extensions.

(c) Agency counsel may request that the adjudicative officer extend the time period for filing an answer. If agency counsel does not answer or otherwise does not contest or settle the application for award within the 30-day period or the extended time period, the adjudicative officer may make an award of fees and other expenses upon a satisfactory showing of entitlement by the applicant.

**§ 1735.22 Reply to the answer.**

Within 15 days after service of an answer, the applicant may file a reply. If the reply is based on any alleged facts not already in the record of the underlying adversary adjudication, the applicant shall include with the reply either supporting affidavits or a request for further proceedings under § 1735.25.

**§ 1735.23 Comments by other parties.**

Any party to the underlying adversary adjudication other than the applicant and agency counsel may file comments on an application for award within 30 calendar days after it is served, or on an answer within 15 calendar days after it is served. A commenting party may not participate further in proceedings on the application unless the adjudicative officer determines that the public interest requires such participation in order to permit full exploration of matters raised in the comments.

**§ 1735.24 Settlement.**

The applicant and agency counsel may agree on a proposed settlement of an award before the final decision on the application for award is made, either in connection with a settlement of the underlying adversary adjudication or after the underlying adversary adjudication has been concluded. If the eligible party and agency counsel agree on a proposed settlement of an award before an application for award has been filed, the application shall be filed with the proposed settlement.

**§ 1735.25 Further proceedings on the application for award.**

(a) On request of either the applicant or agency counsel, on the adjudicative officer's own initiative, or as requested by the Director of OFHEO under § 1735.27, the adjudicative officer may order further proceedings, such as an informal conference, oral argument, additional written submissions, or, as to issues other than substantial justification (such as the applicant's eligibility or substantiation of fees and expenses), pertinent discovery or an evidential hearing. Such further proceedings shall be held only when necessary for full and fair resolution of the issues arising from the application

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for award and shall be conducted as promptly as possible. The issue as to whether the position of OFHEO in the underlying adversary adjudication was substantially justified shall be determined on the basis of the whole administrative record that was made in the underlying adversary adjudication.

(b) A request that the adjudicative officer order further proceedings under this section shall specifically identify the information sought on the disputed issues and shall explain why the additional proceedings are necessary to resolve the issues.

**§ 1735.26 Decision of the adjudicative officer.**

(a) The adjudicative officer shall make the initial decision on the basis of the written record, except if further proceedings are ordered under § 1735.25.

(b) The adjudicative officer shall issue a written initial decision on the application for award within 30 days after completion of proceedings on the application. The initial decision shall become the final decision of OFHEO after 30 days from the day it was issued, unless review is ordered under § 1735.27.

(c) In all initial decisions, the adjudicative officer shall include findings and conclusions with respect to the applicant's eligibility and an explanation of the reasons for any difference between the amount requested by the applicant and the amount awarded. If the applicant has sought an award against more than one agency, the adjudicative officer shall also include findings and conclusions with respect to the allocation of payment of any award made.

(d) In initial decisions on applications filed pursuant to § 1735.4(a), the adjudicative officer shall include findings and conclusions as to whether OFHEO made a demand that was substantially in excess of the decision in the underlying adversary adjudication and that was unreasonable when compared with that decision; and, if at issue, whether the applicant has committed a willful violation of the law or otherwise acted in bad faith, or whether special circumstances would make the award unjust.

(e) In decisions on applications filed pursuant to § 1735.4(b), the adjudicative officer shall include written findings and conclusions as to whether the applicant is a prevailing party and whether the position of OFHEO was substantially justified; and, if at issue, whether the applicant unduly protracted or delayed the underlying adversary adjudication or whether special circumstance make the award unjust.

**§ 1735.27 Review by OFHEO.**

Within 30 days after the adjudicative officer issues an initial decision under § 1735.26, either the applicant or agency counsel may request the Director of OFHEO to review the initial decision of the adjudicative officer. The Director of OFHEO or his or her designee may also decide, on his or her own initiative, to review the initial decision. Whether to review a decision is at the discretion of the Director of OFHEO or his or her designee. If review is ordered, the Director of OFHEO or his or her designee shall issue a final decision on the application for award or remand the application for award to the adjudicative officer for further proceedings under § 1735.25.

**§ 1735.28 Judicial review.**

Any party, other than the United States, that is dissatisfied with the final decision on an application for award of fees and expenses under this part may seek judicial review as provided in 5 U.S.C. 504(c)(2).

**§ 1735.29 Payment of award.**

To receive payment of an award of fees and other expenses granted under this part, the applicant shall submit a copy of the final decision that grants the award and a certification that the applicant will not seek review of the decision in the United States courts to the Director, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Washington, DC 20552. OFHEO shall pay the amount awarded to the applicant within 60 days of receipt of the submission of the copy of the final decision and the certification, unless judicial review of the award has been sought by any party to the proceedings.

Dated: May 2, 2000.

**Armando Falcon, Jr.,**

*Director, Office of Federal Housing Enterprise Oversight.*

[FR Doc. 00–11524 Filed 5–8–00; 8:45 am]

BILLING CODE 4220–01–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 2000–CE–04–AD; Amendment 39–11715; AD 2000–09–06]

RIN 2120–AA64

## Airworthiness Directives; Maule Aerospace Technology, Inc. M–4, M–5, M–6, M–7, MX–7, and MXT–7 Series Airplanes and Models MT–7–235 and M–8–235 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to certain Maule Aerospace Technology, Inc. (Maule) M–4, M–5, M–6, M–7, MX–7, and MXT–7 series airplanes and Models MT–7–235 and M–8–235 airplanes. This AD requires you to inspect all Nicopress™ sleeve terminal ends for correct size compression, with adjustment or replacement, as necessary. This AD results from a report of the rudder cable slipping out of the Nicopress™ sleeve while one of the affected airplanes was landing. The actions specified by this AD are intended to detect and correct improper crimping of the Nicopress™ sleeve, which could cause a control cable to slip from the sleeve. This could result in loss of rudder, elevator, aileron, or flap control.

**DATES:** This AD becomes effective on May 30, 2000. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of May 30, 2000.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before June 23, 2000.

**ADDRESSES:** Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–04–AD, 901 Locust, Room 506, Kansas City, MO 64106.

You may get the service information referenced in this AD from Maule Aerospace Technology Inc., 2099 Georgia Highway 133 South, Moultrie, GA 31768; telephone: (912) 985–2045, facsimile: (912) 890–2402.

You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–04–AD, 901 Locust, Room 506, Kansas City, MO 64106; or at the Office of the Federal

Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, GA 30349; telephone: (770) 703–6078, facsimile: (770) 703–6097.

**SUPPLEMENTARY INFORMATION:**

**Discussion**

*What Events Have Caused This AD?*

The FAA has received a report of the rudder cable slipping out of the Nicopress™ sleeve while a Maule Model M–7–235C airplane was landing. Investigation of this accident revealed that the Nicopress™ sleeve was not adequately crimped and was slightly larger than the gauge dimension.

*What Is the Cause of the Problem?*

Maule did not set a crimping tool to correct specification for the elevator and rudder cables that were installed on certain Maule airplane models on Type Certificate No. 3A23, Revision 26, dated April 6, 2000. Maule has no way of determining exactly what time frame the crimping tool was not set to specification. Each airplane utilizes approximately 27 Nicopress™ sleeves.

The airplane models affected are listed in the AD portion of this document.

*What Are the Consequences if the Condition Is Not Corrected?*

An improperly crimped Nicopress™ sleeve, if not detected and corrected, could cause a control cable to slip from the sleeve. This could result in loss of rudder, elevator, aileron, or flap control.

*Is There Service Information That Applies to This Subject?*

Maule has issued Mandatory Service Bulletin No. 20, dated December 27, 1999.

*What Are the Provisions of This Service Bulletin?*

The service bulletin:

- Includes procedures for inspection of all Nicopress™ sleeve terminal ends for correct size compression; and
- Specifies provisions for adjustment or replacement, as necessary.

**FAA's Determination and an Explanation of the Provisions of the AD**

*What Has FAA Decided?*

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, FAA has determined that:

- An unsafe condition exists or could develop on certain Maule M–4, M–5, M–6, M–7, MX–7, and MXT–7 series airplanes and Models MT–7–235 and M–8–235 airplanes of the same type design; and
- AD action should be taken in order to detect and correct improper crimping of the Nicopress™ sleeve, which could cause a control cable to slip from the sleeve.

*What Does This AD Require?*

This AD requires you to inspect all Nicopress™ sleeve terminal ends for correct size compression, with adjustment or replacement, as necessary.

*Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?*

Because the unsafe condition described in this document could result in loss of rudder, elevator, aileron, or flap control, FAA finds that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. The FAA will consider all comments received on or before the closing date. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–04-AD." We will date stamp and mail the postcard back to you.

**Regulatory Impact**

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. We have determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If FAA determines that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, we will prepare a final regulatory evaluation. You may obtain a copy of the evaluation (if required) from the Rules Docket.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

**2000–09–06 Maule Aerospace Technology, Inc.:** Amendment 39–11715; Docket No. 2000–CE–04–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplane models and serial numbers, certificated in any category:

GROUP 1 AIRPLANES

| Models | Serial numbers |
|---|---|
| MX–7–160C | 34001C. |
| M–7–260C | 30001C through 30004C, 30007C through 30011C, 30013C, and 30014C. |
| M–7–420AC | 29001C. |
| MX–7–180C | 28001C through 28011C. |
| MT–7–260 .. | 27001C and 27003C. |
| M–7–260 .... | 26002C through 26007C. |
| M–7–235C | 25001C through 25037C, 25040C, 25041C, and 25044C. |
| M–7–235A .. | 24001C. |
| M–7–235B .. | 23001C through 23056C, 23058C, and 23059C. |
| MX–7–180B | 22001C through 22016C. |
| MXT–7–180A. | 21001C through 21067C, 21070C, 21072C, 21076C, 21077C, 21079C, and 21081C. |
| MX–7–180A | 20001C through 20063C. |
| MX–7–160 .. | 19001C through 19046C. |
| MXT–7–160 | 17001C through 17008C. |
| MT–7–235 .. | 18001C through 18041C, 18044C, and 18047C. |
| M–8–235 .... | 15001C through 15005C. |
| MXT–7–180 | 14000C through 14095C. |
| MX–7–180 .. | 11066C through 11097C. |
| MX–7–235 .. | 10081C through 10122C. |

GROUP 1 AIRPLANES—Continued

| Models | Serial numbers |
|---|---|
| M–7–235 .... | 4078C, 4080C, 4083C, 4086C, and 4089C through 4132C. |
| M–6–235 .... | 7508C, 7510C, 7516C, and 7518C through 7521C. |

GROUP 2 AIRPLANES

| Models | Serial numbers |
|---|---|
| Bee Dee M–4. | 3 through 14. |
| M–4 ..... | 3 through 94 (Bee Dee: 3–14; and M–4: 15–94). |
| M–4C ..... | 1C through 11C. |
| M–4S ..... | 1S, 2S, and 3S. |
| M–4T ..... | 1T, 2T, and 3T. |
| M–4–210 .... | 1001 through 1045. |
| M–4–210C | 1001C through 1117C. |
| M–4–220C | 2001C through 2190C. |
| M–4–220S .. | 2001S. |
| M–4–180C | 3001C through 3006C. |
| M–5–200 .... | 8015C and 8022C. |
| M–5–210C | 6001C through 6206C. |
| M–5–220C | 5001C through 5057C. |
| M–5–235C | 7001C through 7248C, 7250C through 7353C, A7354C, A7355C, 7356C, 7357C, A7358C, 7359C, A7360C, A7361C, 7362C through 7365C, A7366C, A7367C, 7368C through 7376C, 7445C, 7451C, 7460C, 7467C, 7470C, 7478C through 7480C, 7484C through 7487C, and 7515C. |
| M–5–180C | 8001C through 8014C, 8016C through 8019C, 8021C, 8023C through 8042C, 8044C through 8064C, and 8068C through 8094C. |

GROUP 2 AIRPLANES—Continued

| Models | Serial numbers |
|---|---|
| M–5–210T .. | 9001C through 9010C. |
| M–6–235 .... | 7249C, 7356C, 7379C through 7444C, 7446C through 7450C, 7452C through 7459C, 7461C through 7466C, 7468C, 7469C, 7471C through 7475C, 7488C through 7507C, 7509C, 7511C through 7514C, and 7517C. |
| M–6–180 .... | 8020C, 8043C, and 8065C through 8067C. |
| M–7–235 .... | 4001C through 4077C, 4079C, 4081C, 4082C, 4084C, 4085C, 4087C, and 4088C. |
| M–7–235 .... | 12001C and 12002C. These airplanes were manufactured as Model M–7–235 airplanes and then modified in accordance with STC SA2661SO. This modification changed the model designation of these airplanes to M–7–420. |
| MX–7–235 .. | 10001C through 10080C. |
| MX–7–180 .. | 11001C through 11065C. |
| MX–7–420 .. | 13001C through 13003C. |

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct improper crimping of the Nicopress™ sleeve, which could cause a control cable to slip from the sleeve. This could result in loss of rudder, elevator, aileron, or flap control.

(d) *What must I do to address this problem?* To address this problem, accomplish the following:

| Action | Compliance time | Procedures |
|---|---|---|
| Inspect all Nicopress™ sleeve terminal ends for correct size compression.. | For Group 1 airplanes: Within the next 25 hours time-in-service (TIS) after May 30, 2000 (the effective date of this AD); and.<br>For Group 2 airplanes: Within the next 100 hours TIS after May 30, 2000 (the effective date of this AD).. | Accomplish in accordance with the ACTION TO BE TAKEN AND TOOLS REQUIRED section of Maule Mandatory Service Bulletin No. 20, dated December 27, 1999. |
| Adjust or replace any terminal compressions that are outside of the limits specified in the service information.. | Prior to further flight after the inspection required by this AD.. | Accomplish in accordance with the ACTION TO BE TAKEN AND TOOLS REQUIRED section of Maule Mandatory Service Bulletin No. 20, dated December 27, 1999. |
| Do not install a Nicopress™ sleeve without assuring that the terminal compressions are within the limits specified in the service information.. | As of May 30, 2000 (the effective date of this AD).. | Accomplish in accordance with the ACTION TO BE TAKEN AND TOOLS REQUIRED section of Maule Mandatory Service Bulletin No. 20, dated December 27, 1999. |

(e) *Can I comply with this AD in any other way?* (1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Atlanta Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, GA 30349; telephone: (770) 703–6078; facsimile, (770) 703–6097.

(g) *What if I need to fly the airplane to another location to comply with this AD?* FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD .

(h) *Are any service bulletins incorporated into this AD by reference?* You must accomplish the actions required by this AD in accordance with Maule Mandatory Service Bulletin No. 20, dated December 27, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Maule Aerospace Technology, Inc., 2099 Georgia Hwy. 133 South, Moultrie, GA 31768. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, MO, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on May 30, 2000.

Issued in Kansas City, Missouri, on April 27, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11176 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 97–NM–244–AD; Amendment 39–11704; AD 2000–08–18]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9 Series Airplanes, and Model MD–88 and MD–90–30 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 series airplanes, and Model MD–88 and MD–90–30 airplanes, that requires replacement of the lanyard assembly pins of the evacuation slides with solid corrosion-resistant pins. This amendment is prompted by a report that, due to stress corrosion on the lanyard pins, the arms of the lanyard assembly of the evacuation slide were found to be frozen. The actions specified by this AD are intended to prevent the improper deployment of the evacuation slide due to stress corrosion, which could delay or impede evacuation of passengers during an emergency.

**DATES:** Effective June 13, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 13, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, CA 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60).

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, WA; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Alan Sinclair, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; telephone (562) 627–5338; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 series airplanes, and Model MD–88 and MD–90–30 airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on November 26, 1999 (64 FR 66417). That action proposed to require replacement of the lanyard assembly pins of the evacuation slides with solid corrosion-resistant pins.

### Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Support for Proposed AD

One commenter supports the proposed AD. Another commenter states that the proposed AD does not affect its fleet.

### Requests To Revise Applicability Statement of Proposed AD

Two commenters request that the applicability statement of the proposed AD be revised to exclude freighter airplanes on which emergency evacuation slides have not been installed. The commenters state that such a revision would eliminate alternative method of compliance (AMOC) requests. The commenters did not provide any data to substantiate their request.

The FAA does not concur. The FAA is unable to verify that all freighter airplanes are not equipped with evacuation slides. Therefore, all affected freighter airplanes must be included in the applicability statement of the final rule. However, under the provisions of paragraph (c) of the final rule, the FAA may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that replacement of the lanyard pins with solid corrosion-resistant pin are not necessary.

One commenter questions whether Boeing latch assembly, part number (P/N) 69–70843–1, should be included in the applicability statement of the proposed AD. The commenter states that the roll pin, P/N MS39086–140, which resulted in the corrosion problem, is present in the Boeing latch assembly, as well as the Douglas latch assembly, P/N's 3961899–1 and 3956939–501.

The FAA has determined that the subject Boeing latch assemblies are not susceptible to stress corrosion, and therefore, are not subject to the identified unsafe condition of this AD. Therefore, no change to the final rule is necessary.

### Requests for Alternative Method of Compliance (AMOC)

One commenter requests that the FAA approve lanyard assembly pin, P/N MS16555–627, as an AMOC for the pin required by the AD (reference McDonnell Douglas Alert Service Bulletin DC9–25A357, dated February 11, 1997). The commenter states that this pin is shorter and would not require any machining. If the FAA does not approve the pin having P/N MS16555–627, the commenter requests that the FAA approve the installation of an unmodified pin, P/N MS16555–628, which would protrude from the latch assembly. The commenter states that both of these alternatives would not interfere with the operation of the lanyard or deployment of the slide and

would provide the same level of safety as the pin required by the AD.

The FAA does not concur. The FAA finds that the shorter pin would not provide an equivalent level of safety to that of the pin required by the AD, because the taper on the end of the shorter pin would not provide the same level of pin retention. The shorter pin could become loose and fall out of the latch, thus causing the latch to fail. The FAA also finds that a pin that extends past the surface of the latch could cause the latch to hang up and fail. Therefore, no change to the final rule is necessary.

One commenter requests that the proposed AD be revised to include an AMOC, which was approved by the airplane manufacturer, to eliminate the need of each airline making a request to the FAA on an individual basis. The commenter states that the AMOC involves a program to accomplish, among other things, an initial check of the lanyard and then to periodically check, clean, and refurbish the subject lanyards with new roll pins of the same P/N.

The FAA does not concur. Because Airplane Maintenance Programs vary from operator to operator, there are no assurances that each operator's Airplane Maintenance Program contains the identical actions required by this AD. However, under the provisions of paragraph (c) of the final rule, the FAA may consider requests for approval of an AMOC if sufficient data are submitted to substantiate that such an AMOC would provide an acceptable level of safety.

**Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

**Cost Impact**

There are approximately 2,167 McDonnell Douglas Model DC–9 series airplanes, and Model MD–88 and MD–90–30 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $144,000, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–08–18 McDonnell Douglas:** Amendment 39–11704. Docket 97-NM–244–AD.

*Applicability:* Model DC–9 series airplanes, and Model MD–88 airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC9–25A357, Revision 02, dated May 28, 1998; and Model MD–90–30 airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD90–25A019, dated February 11, 1997; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the improper deployment of the evacuation slide, which could delay or impede evacuation of passengers during an emergency, accomplish the following:

**Replacement**

(a) Within 180 days after the effective date of this AD, replace the lanyard assembly pins of the evacuation slides with solid corrosion-resistant pins, in accordance with McDonnell Douglas Alert Service Bulletin MD80–25A357, dated February 11, 1997, Revision 01, dated March 16, 1998, or Revision 02, dated May 28, 1998 (for Model DC–9 series airplanes and Model MD–88 airplanes); or McDonnell Douglas Alert Service Bulletin MD90–25A019, dated February 11, 1997 (for Model MD–90–30 airplanes); as applicable.

**Spares**

(b) As of the effective date of this AD, no lanyard assembly, part number (P/N) 3961899–1 or P/N 3956939–501, shall be installed on any airplane unless that assembly has been modified in accordance with the requirements of paragraph (a) of this AD.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(e) The replacement shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD80–25A357, dated February 11, 1997; McDonnell Douglas Alert Service Bulletin DC9–25A357, Revision 01, dated March 16, 1998; McDonnell Douglas Alert Service Bulletin DC9–25A357, Revision

02, dated May 28, 1998; or McDonnell Douglas Alert Service Bulletin MD90–25A019, dated February 11, 1997; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 13, 2000.

Issued in Renton, Washington, on April 19, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–10288 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 95

**[Docket No. 30029; Amdt. No. 422]**

### IFR Altitudes; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

**EFFECTIVE DATE:** 0901 UTC, June 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

### The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

### Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 95

Airspace Navigation (air).

Issued in Washington, D.C. on May 3, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC.

### PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 422 Effective Date: June 15, 2000]

| From | To | MEA |
|---|---|---|
| **Color Routes** | | |
| **§ 95.10 Amber Federal Airway 7 Is Added To Read** | | |
| Campbell Lake, AK NDB | Mineral Creek AK NDB | 12,100 |
| **Color Routes** | | |
| **§ 95.60 Blue Federal Airway 2 Is Added to Read** | | |
| Point Lay, AK NDB | Cape Lisburne, AK NDB/DME | 4,000 |
| Cape Lisbune, AK NDB/DME | Hotham, AK NDB | *8,000 |

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 422 Effective Date: June 15, 2000]

| From | To | MEA |
|---|---|---|
| *4,100–MOCA | | |
| Hotham, AK NDB | Tin City, AK NDB/DME | *5,000 |
| *4,300–MOCA | | |
| Tin City, AK NDB/DME | Fort Davis, AK NDB | *7,000 |
| *5,900–MOCA | | |
| **Color Routes** | | |
| **§ 95.60 Blue Federal Airway 4 Is Added To Read** | | |
| Bishop, AK NDB | Utopia Creek, AK NDB | *7,000 |
| *5,900–MCCA | | |
| Utopia Creek, AK NDB | Evansville, AK NDB | *8,000 |
| Evansville, AK NDB | Yukon River, AK NDB | *8,000 |
| *6,600–MOCA | | |
| **Color Routes** | | |
| **§ 95.60 Blue Federal Airway 5 Is Added To Read** | | |
| Cape Lisburne, AK NDB/DME | Point Hope, AK NDB | 4,000 |
| **Color Routes** | | |
| **§ 95.60 Blue Federal Airway 8 Is Added To Read** | | |
| Tin City, AK NDB/DME | Shishmaref, AK NDB | 4,000 |
| **Color Routes** | | |
| **§ 95.4 Green Federal Airway 1 Is Added To Read** | | |
| Mount Moffett, AK NDB/DME | Horth, AK FIX | 8,000 |
| *2,500–MOCA | | |
| Horth, AK FIX | Mordi, AK FIX | *8,000 |
| Mordi, AK FIX | Elfee, AK NDB | *8,000 |
| **Color Routes** | | |
| **§ 95.4 Green Federal Airway 4 Is Added To Read** | | |
| Borland, AK NDB/DME | Woody Island, AK NDB | *10,000 |
| **Color Routes** | | |
| **§ 95.4 Green Federal Airway 4 Is Added To Read** | | |
| Wood River, AK NDB | Iliamna, AK NDB/DME | *4,500 |
| *3,000–MOCA | | |
| **Color Routes** | | |
| **§ 95.56 Green Federal Airway 16 Is Added To Read** | | |
| Point Lay, AK NDB | Wainwright Village, AK NDB | *1,700 |
| *1,200–MOCA | | |
| Wainwright Village, AK NDB | Browerville, AK NDB | *1,600 |
| *1,100–MOCA | | |
| Browerville, AK NDB | Nuiqsut Village, AK NDB | 1,600 |
| Nuiqsut Village, AK NDB | Put River, AK NDB | *1,700 |
| *1,200–MOCA | | |
| **Color Routes** | | |
| **§ 95.57 Green Federal Airway 17 Is Added To Read** | | |
| Wainwright Village, AK NDB | Atqasuk, AK NDB | *1,600 |
| *1,100–MOCA | | |
| **Color Routes** | | |
| **§ 95.58 Green Federal Airway 18 Is Added To Read** | | |
| Hotham, AK NDB | Point Lay, AK NDB | *10,000 |
| *6,000–MOCA 0 | | |
| Point Lay, AK NDB | Atqasuk, AK NDB | 2,300 |
| **Color Routes** | | |
| **§ 95.20 Red Federal Airway 1 Is Added To Read** | | |
| St Paul Island, AK NDB/DME | Garrs, AK FIX | *4,600 |

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 422 Effective Date: June 15, 2000]

| From | To | MEA |
|---|---|---|
| *2,700–MOCA<br>Garrs, AK FIX | Saldo, AK NDB | 4,600 |
| **Color Routes** | | |
| **§ 95.20 Red Federal Airway 2 Is Added To Read** | | |
| Elfee, AK NDB | Port Heiden, AK NDB/DME | 6,000 |
| **§ 95.6001 Victor Routes—U.S.** | | |
| **§ 95.6004 VOR Federal Airway 4 Is Amended To Read in Part** | | |
| Saden, MO FIX<br>*1,700–MOCA | St Louis, MO VORTAC | *2,400 |
| **§ 95.6013 VOR Federal Airway 13 Is Amended To Read in Part** | | |
| Farmington, MN VORTAC<br>*5,500–MRA | *Wagnr, MN FIX | 5,500 |
| Wagner, MN FIX | Cinci, MN FIX | 5,500 |
| **§ 95.6077 VOR Federal Airway 77 Is Amended To Read in Part** | | |
| Topeka, KS VORTAC | St Joseph, MO VORTAC | 3,000 |
| **§ 95.6159 VOR Federal Airway 159 Is Amended To Read in Part** | | |
| Vero Beach, FL VORTAC<br>*2,500–MRA | *Presk, FL FIX | 2,900 |
| Presk, FL FIX<br>*1,500–MOCA | Orlando, FL VORTAC | *2,100 |
| **§ 95.6189 VOR Federal Airway 189 Is Amended To Read in Part** | | |
| Wright Brothers, NC VOR/DME<br>*1,300–MOCA | Darez, NC FIX | *6,000 |
| Darez, NC FIX<br>*2,600–MOCA | Tar River, NC VORTAC | *4,000 |
| **§ 95.6222 VOR Federal Airway 222 Is Amended To Read in Part** | | |
| Lake Charles, LA VORTAC<br>*1,500–MOCA | Maxon, LA FIX | *2,000 |
| Maxon, LA FIX<br>*3,000–MRA<br>**1,600–MOCA | *Wrack, LA FIX | **6,000 |
| Wrack, LA FIX<br>*2,000–MOCA | Mc Comb, MS VORTAC | *3,000 |
| **§ 95.6469 VOR Federal Airway 469 Is Amended To Read in Part** | | |
| Relee, VA FIX<br>*5,200–MOCA | Exras, VA FIX | *8,000 |
| Exras, VA FIX<br>*6,100–MOCA | Brucy, VA FIX | *10,000 |
| **§ 95.6552 VOR Federal Airway 552 Is Amended To Read in Part** | | |
| Lake Charles, LA VORTAC<br>*1,500–MOCA | Hatha, LA FIX | *2,000 |
| Hatha, LA FIX | Lafayette, LA VORTAC | 2,800 |
| **§ 95.6412 Hawaii VOR Federal Airway 12 Is Amended To Read in Part** | | |
| Maggi, HI FIX<br>*16,000–MRA<br>**1,200–,MOCA | *Shark, HI FIX | NE BND |

| From | To | MEA | MAA |
|---|---|---|---|
| **§ 95.7001 Jet Routes** | | | |
| **§ 95.7056 Jet Route No. 56 Is Amended To Read in Part** | | | |
| Salt Lake City, UT VORTAC<br># MEA is established with a Gap in navigation signal coverage. | HAYDEN, CO VOR/DME | 25000 | 45000 |
| **§ 95.7600 Jet Route No. 600 Is Added To Read** | | | |
| Mount Moffett, AK NDB/DME | EL/FEE, AK NDB | 18000 | 45000 |
| **§ 95.7601 Jet Route No. 601 Is Added To Read** | | | |
| Port Heiden, AK NDB/DME | Cold Bay, AK VORTAC | 18000 | 45000 |
| Cold Bay, AK VORTAC | St Paul Island, AK NDB/DME | 18000 | 45000 |
| **§ 95.7603 Jet Route No. 603 Is Added To Read** | | | |
| Elfee, AK NDB | Dillingham, AK VOR/DME | 18000 | 45000 |
| **§ 95.7604 Jet Route No. 604 Is Added To Read** | | | |
| Borland, AK NDB/DME | Woody Island, AK NDB | 18000 | 45000 |
| **§ 95.7605 Jet Route No. 605 Is Added To Read** | | | |
| Biorka Island, AK VORTAC | Middleton Island, AK VOR/DME | 23000 | 45000 |
| **§ 95.7606 Jet Route No. 606 Is Added To Read** | | | |
| St Paul Island, AK NDB/DME | Saldo, AK NDB | 180000 | 45000 |
| **§ 95.7617 Jet Route No. 617 Is Added To Read** | | | |
| Homer, AK VORTAC | Johnstone Point, AK VORTAC | 18000 | 45000 |
| **§ 95.7619 Jet Route No. 619 Is Added To Read** | | | |
| Cape Newenham, AK NDB | St Paul Island, AK NDB/DME | 18000 | 45000 |
| **§ 95.7711 Jet Route No. 711 Is Added To Read** | | | |
| Sitka, AK NDB | Laire, AK FIX | 18000 | 45000 |
| Laire, AK FIX | Hinchinbrook, AK NDB | 18000 | 45000 |

| From | To | Changeover Points | |
|---|---|---|---|
| | | Distance | From |
| **§ 95.8005 Jet Routes Changeover Points Airway Segment Is Added to Read** | | | |
| Homer, AK VORTAC | J627<br>Johnstone Pointe AK VORTAC | 63 | Homer |
| **95.1001 Direct Routes—U.S. Changover Points Color Routes Airway Segment Is Added to Read** | | | |
| Campbell Lake, AK NDB | A7<br>Mineral Creek, AK NDB | 69 | Campbell Lake |
| Cape Lisburne, AK NDB | B2<br>Hotham, AK NDB | 57 | Cape Lisburne |
| Browerville, AK NDB | G16<br>Nuiqsut, AK NDB | 82 | Browerville, AK NDB |
| Hotham, AK NDB | G18<br>Point Lay, AK NDB | 96 | Hotham, AK, NDB |
| Point Lay, AK NDB | Atqasuk, AK NDB | 50 | Point Lay, AK NDB |

[FR Doc. 00–11579 Filed 5–8–00; 8:45 am]
BILLING CODE 4910–13–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**21 CFR Part 177**

**[Docket No. 98F–1019]**

## Indirect Food Additives: Polymers

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyurethane resins manufactured from diphenylmethane diisocyanate, 1,4-butanediol, and adipic acid as a component of cap liners used on bottles in contact with food. This action responds to a petition filed by BF Goodrich Specialty Chemicals.

**DATES:** This rule is effective May 9, 2000. Submit written objections and requests for a hearing by June 8, 2000.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–418–3086.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of November 30, 1998 (63 FR 65793), FDA announced that a food additive petition (FAP 8B4631) had been filed by BF Goodrich Specialty Chemicals, 9911 Brecksville Rd., Cleveland, OH 44141. The petition proposed to amend the food additive regulations in § 177.1210 *Closures with sealing gaskets for food containers* (21 CFR 177.1210) to provide for the safe use of polyurethane resins manufactured from diphenylmethane diisocyanate, 1,4-butanediol, and adipic acid as a component of cap liners used on bottles in contact with food.

In its evaluation of the safety of these resins, FDA has reviewed the safety of the additive itself, the starting materials used, and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain residual amounts of methylene dianiline (MDA), which has been shown to cause cancer in test animals. MDA is produced when diphenylmethane diisocyanate (MDI), a starting material used in the manufacture of polyurethane resins, reacts with water. Residual amounts of reactants and manufacturing aids, such as MDA, are commonly found as contaminants in chemical products, including food additives.

### I. Determination of Safety

Under the general safety standard of section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The food additives anticancer, or Delaney clause of the act (section 409(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott* v. *FDA*, 728 F.2d 322 (6th Cir. 1984)).

### II. Safety of Petitioned Use of the Additive

The petitioner determined the levels of three migrants extracted from the additive, polyurethane resins manufactured from MDI, 1,4-butanediol, and adipic acid. These three migrants were 1,4-butanediol, oligomers of the additive, and MDA (the hydrolysis product of MDI). FDA agrees that the determination of the levels of these three types of migrants are appropriate to evaluate the safe use of the additive. FDA estimates that the petitioned use of the additive will result in exposure to 1,4-butanediol of not more than 90 micrograms per person per day (µg/p/d) while exposure to the other two migrants will be even lower (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the estimated dietary exposure resulting from the petitioned use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by MDA, the carcinogenic chemical that may be present as an impurity in the additive. This risk evaluation of MDA has two aspects: (1) Assessment of exposure to the impurity from the petitioned use of the additive; and (2) extrapolation of the risk observed in the animal bioassay to the conditions of probable exposure to humans.

#### *A. Methylene Dianiline*

FDA has estimated the exposure to MDA from the petitioned use of the additive in the manufacture of cap liners intended to contact food to be no more than 4.1 parts per trillion in the daily diet, or 0.012 µg/p/d (Refs. 1 and 5). The agency used data from a bioassay of MDA, sponsored by the National Toxicology Program, to estimate the upper-bound limit of lifetime human risk from exposure to MDA that may result from the proposed use of the additive (Ref. 3). The bioassay report showed that MDA ingestion produced tumors at multiple sites in both sexes of rats and mice.

Based on the agency's estimate that exposure to MDA will not exceed 0.012 µg/p/d, FDA estimates that the upper-bound limit of lifetime human risk for MDA from the petitioned use of the subject additive is $1 \times 10^{-8}$ or 1 in 100 million (Ref. 4). Because of numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to MDA is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to MDA would result from the petitioned use of the additive.

#### *B. Need for Specifications*

The agency also has considered whether specifications are necessary to control the amount of MDA present as an impurity in the additive. The agency finds that the specifications are not necessary for the following reasons: (1)

Because of the low level at which MDA may be expected to remain as an impurity following production of the additive, the agency would not expect the impurity to become a component of food at other than extremely low levels; and (2) the upper-bound limit of lifetime human risk from exposure to MDA is very low, less than 1 in 100 million.

### III. Conclusion on Safety

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as a component of cap liners for food-contact articles is safe, that the food additive will achieve its intended technical effect, and that the regulations in § 177.1210 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the contact person listed above. As provided in § 171.1(h), the agency will delete any materials from the documents that are not available for public disclosure before making the documents available for inspection.

### IV. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4631 (63 FR 65793, November 30, 1998). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

### V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

### VI. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by June 8, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

### VII. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum to the file dated May 19, 1999, from the Petitions Contract Working Group (HFS–205), concerning FAP 8B4631.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology" in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. "Carcinogenesis Studies of 4,4'''-Methylenedianiline Dihydrochloride) (CAS Reg. No. 13552–44–8) in F344/N Rats and B6C3F$_1$ Mice (Drinking Water Studies)," National Toxicology Program Technical Report Series, No. 248, June 1983.

4. Memorandum dated January 28, 1999, from the Regulatory Policy Branch (HFS–206), to Executive Secretary, Quantitative Risk Assessment Committee (QRAC) (HFS–308), entitled "Estimation of the Upper-Bound Lifetime Risk for Methylene-4,4'''-Dianiline (MDA): Subject of Food Additive Petition 8B4631 (BF Goodrich Specialty Chemicals)."

5. Memorandum dated May 13, 1999, from the Scientific Support Branch (HFS–207), entitled "FAP 8B4631 (MATS #1041)—Keller & Heckman (K & H), on Behalf of BF Goodrich Specialty Chemicals. Risk Assessment for Methylene Dianiline (MDA)."

### List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

## PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1210 is amended in table 1 in paragraph (b)(5) by alphabetically adding an entry to read as follows:

**§ 177.1210 Closures with sealing gaskets for food containers.**

* * * * *

(b) * * *

(5) * * *

TABLE 1

| List of substances | Limitations (expressed as percent by weight of closure-sealing gasket composition) |
|---|---|
| * * * * * * * | |
| Polyurethane resins manufactured from diphenylmethane diisocyanate, 1,4-butanediol, and adipic acid (CAS Reg. No. 26375–23–5). | For use only:<br>No limitation on amount used, but for use only in closure gasket compositions used in contact with food types VI–A and VI–C (up to 15 percent alcohol) under conditions of use D, E, F, and G, as described in § 176.170(c) of this chapter, tables 1 and 2, respectively. |
| * * * * * * * | |

* * * * *

Dated: April 28, 2000.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 00–11478 Filed 5–8–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 178

**[Docket No. 99F–1910]**

### Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-[4,6-bis(2,4-dimethylphenyl)-1,3,5-triazin-2-yl]-5-(octyloxy)phenol as a stabilizer for olefin polymers intended for use in contact with food. This action is in response to a petition filed by Cytec Industries, Inc.

**DATES:** This rule is effective May 9, 2000. Submit written objections and requests for a hearing by June 8, 2000.

**ADDRESSES:** Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

**SUPPLEMENTARY INFORMATION:** In a notice published in the **Federal Register** of June 22, 1999 (64 FR 33306), FDA announced that a food additive petition (FAP 9B4675) had been filed by Cytec Industries, Inc., c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington DC 20001. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of 2-[4,6-bis(2,4-dimethylphenyl)-1,3,5-triazin-2-yl]-5-(octyloxy)phenol as a stabilizer for olefin polymers intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) that the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4675. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by June 8, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

### List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

## PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

**Authority:** 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

**§ 178.2010 Antioxidants and/or stabilizers for polymers.**

* * * * *

(b) * * *

| Substances | Limitations |
|---|---|
| * * * * * * * | |
| 2-[4,6-Bis(2,4-dimethylphenyl)-1,3,5-triazin-2-yl]-5-(octyloxy)phenol (CAS Reg. No. 2725–22–6). | For use only:<br>1. At levels not to exceed 0.3 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter in contact with food types I, II, IV–B, VI, VII–B, and VIII described in § 176.170(c) of this chapter, table 1, under conditions of use D through G as described in § 176.170(c), table 2, of this chapter.<br>2. At levels not to exceed 0.1 percent by weight of polypropylene complying with § 177.1520(c) of this chapter, items 1.1a, 1.2, and 1.3 in contact with food under conditions of use A through H as described in § 176.170(c), table 2, of this chapter.<br>3. At levels not to exceed 0.04 percent by weight of polyethylene and olefin copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.1c, 3.2a, and 3.2b having a minimum density of 0.94 gram per cubic centimeter, in contact with food under conditions of use A through H as described in § 176.170, table 2, of this chapter provided that the finished articles used in contact with fatty food types III, IV–A, V, VII–A, and IX as described in table 1 of § 176.170(c) of this chapter hold a minimum of 2 gallons (7.6 liters) of food.<br>4. At levels not to exceed 0.4 percent by weight of ethylene copolymers complying with § 177.1520(c) of this chapter, items 3.1a, 3.1b, 3.1c, 3.2a, and 3.2b, having a density of less than 0.94 gram per cubic centimeter, in contact with food under conditions of use B through H, as described in § 176.170(c), table 2, of this chapter provided that the finished articles used in contact with fatty food types III, IV–A, V, VII–A, and IX hold a minimum of 5 gallons (18.9 liters) of food.<br>5. At levels not to exceed 0.04 percent by weight of polyethylene having a density of less than 0.94 gram per cubic centimeter, and olefin polymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.3a, 3.3b, 3.4, 3.5, 3.6, 4, 5, and 6, in contact with food under conditions of use D through G as described in § 176.170(c) of this chapter, table 2, provided that the finished articles used in contact with fatty food types III, IV–A, V, VII–A, and IX hold a minimum of 5 gallons (18.9 liters) of food. |
| * * * * * * * | |

Dated: April 27, 2000

**L. Robert Lake,**

*Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.*

[FR Doc. 00–11479 Filed 5–8–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 522

### Implantation or Injectable Dosage Form New Animal Drugs; Trenbolone and Estradiol

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental abbreviated new animal drug application (ANADA) filed by Ivy Laboratories, Div. of Ivy Animal Health, Inc. The supplemental ANADA provides for subcutaneous use of a cattle ear implant containing trenbolone and estradiol for pasture cattle for increased rate of weight gain. Technical changes are also made.

**DATES:** This rule is effective May 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jack Caldwell, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0217.

**SUPPLEMENTARY INFORMATION:** Ivy Laboratories, Div. of Ivy Animal Health, Inc., 8857 Bond St., Overland Park, KS 66214, filed supplemental ANADA 200–221 for use of Component® TE–G (40 milligrams (mg) trenbolone acetate and 8 mg estradiol, in 2 pellets, each pellet containing 20 mg of trenbolone acetate and 4 mg of estradiol) for increased rate of weight gain in pasture cattle (slaughter, stocker, and feeder steers and heifers). The supplemental ANADA is approved as of March 6, 2000, and the regulations in 21 CFR 522.2477 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because

it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

**List of Subjects in 21 CFR Part 522**

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

## PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

**Authority:** 21 U.S.C. 360b.

2. Section 522.2477 is amended by revising paragraphs (b), (d)(1)(i)(A), (d)(1)(i)(B), (d)(1)(i)(C), (d)(1)(ii), (d)(2)(i), (d)(2)(ii), and (d)(3)(i) to read as follows:

**§ 522.2477 Trenbolone acetate and estradiol.**

* * * * *

(b) *Sponsors.* See No. 012799 in § 510.600(c) of this chapter for use as in paragraphs (d)(1)(i)(A), (d)(1)(i)(C), (d)(1)(ii), (d)(1)(iii), (d)(2), and (d)(3) of this section. See No. 021641 in § 510.600(c) of this chapter for use as in paragraphs (d)(1)(i)(A), (d)(1)(i)(B), (d)(1)(ii), (d)(1)(iii), and (d)(3) of this section.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(A) 120 milligrams (mg) trenbolone acetate and 24 mg estradiol (one implant consisting of 6 pellets, each pellet containing 20 mg trenbolone acetate and 4 mg estradiol) per implant dose.

(B) 120 mg trenbolone acetate and 24 mg estradiol (one implant consisting of 7 pellets, each of 6 pellets containing 20 mg trenbolone acetate and 4 mg estradiol, and 1 pellet containing 29 mg tylosin tartrate) per implant dose.

(C) 200 mg trenbolone acetate and 20 mg estradiol (one implant consisting of 10 pellets, each pellet containing 20 mg trenbolone acetate and 2 mg estradiol) per implant dose.

(ii) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

* * * * *

(2) *Heifers fed in confinement for slaughter*—(i) *Amount.* 140 mg trenbolone acetate and 14 mg estradiol (one implant consisting of 7 pellets, each pellet containing 20 mg trenbolone acetate and 2 mg estradiol) per implant dose.

(ii) *Indications for use.* For increased rate of weight gain and improved feed efficiency.

* * * * *

(3) * * * (i) *Amount.* 40 mg trenbolone acetate and 8 mg estradiol (one implant consisting of 2 pellets, each pellet containing 20 mg trenbolone acetate and 4 mg estradiol) per implant dose.

* * * * *

Dated: April 25, 2000.

**Claire M. Lathers,**

*Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.*

[FR Doc. 00–11477 Filed 5–8–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 727

**RIN 0703–AA59**

### Legal Assistance

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its regulations concerning the provision of legal assistance to military members and other persons eligible for legal assistance to reflect recent changes to Chapter VII of the Manual of the Judge Advocate General.

**DATES:** Effective May 9, 2000.

**ADDRESSES:** Office of the Judge Advocate General (Code 36), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374–5066.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Steven L. Haycock, Judge Advocate General's Corps, U.S. Navy, Office of the Judge Advocate General (Code 36), 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number (202) 685–4642.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority cited below, the Department of the Navy amends 32 CFR Part 727, which is derived from Chapter VII of the Manual of the Judge Advocate General, to reflect changes to that regulation. The amendment relates to internal naval management and personnel practices, and is being published by the Department of the Navy solely for the guidance and interest of the public in accordance with 5 U.S.C. 552(a)(1). It has been determined that invitation of public comment on this amendment prior to adoption would be impracticable and is not required under the public rulemaking provisions of 32 CFR parts 296 and 701. It has also been determined that this rule is not a "significant regulatory action" as defined in Executive Order 12866.

**List of Subjects in 32 CFR Part 727**

Legal services, Military law, Military personnel.

Accordingly, 32 CFR part 727 is amended as follows:

## PART 727—LEGAL ASSISTANCE

1. The authority citation for part 727 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. 5031 and 5148; 32 CFR 700.206 and 700.1202.

2. Revise § 727.5 to read as follows:

**§ 727.5 Persons eligible for assistance.**

Legal assistance shall be available to members of the Armed Forces of the United States and their dependents, and military personnel of allied nations serving in the United States, its territories or possessions. Legal assistance is intended primarily for the benefit of active duty personnel during active service, including reservists (and members of the National Guard) on active duty for 30 days or more. As resources permit, legal assistance may be extended to retired military personnel, their dependents, survivors of members of the Armed Forces who would be eligible were the service member alive, reservists on active duty for single periods of 29 days or less, and in overseas areas, to civilians, other than local-hire employees, who are in the employ of, serving with, or accompanying the U.S. Armed Forces, and their dependents, when and if the workload of the office renders such service feasible, and other persons authorized by the Judge Advocate General of the Navy.

3. Amend § 727.6 by revising paragraphs (a) introductory text, (a)(2), (a)(6), and (d) to read as follows:

**§ 727.6 Functions of legal assistance officers.**

(a) *Basic duties.* A legal assistance officer, while performing legal assistance duties, in addition to performing any other duties which may be assigned to him/her:

* * * * *

(2) Shall serve as advocate and counsel for persons eligible for assistance in connection with their personal legal problems and may

prepare and sign correspondence on behalf of a client, negotiate with another party or his lawyer, and prepare all types of legal documents, including pleadings, as are appropriate.

* * * * *

(6) Shall advise persons with complaints of discrimination on policies and procedures under the Civil Rights Act of 1964 and pertinent Navy instructions.

* * * * *

(d) *Professional legal advice.* Legal assistance is authorized for personal legal affairs only, as contrasted with military justice problems, business ventures, or matters that are not of a personal nature. Legal assistance duties are separate and apart from responsibilities of trial counsel, defense counsel, or others involved in processing courts-martial, nonjudicial punishments, administrative boards or proceedings, and investigations. Only legal assistance officers are authorized to render services that call for the professional judgment of a lawyer. The legal assistance officer may delegate tasks to clerks, secretaries, and other lay personnel provided the officer maintains a direct relationship with the client, supervises the delegated work, and has complete professional responsibility for the work product. Services that call for the professional judgment of a lawyer include, but are not limited to, the preparation of wills and powers of attorney, advising personnel with respect to legal rights and relationships, negotiating contracts, and other matters requiring an educated ability to relate the general body and philosophy of law to a specified legal problem of a client. Guidance in this matter may be had from various official sources including the ethical considerations under the Code of Professional Responsibility of the American Bar Association.

4. Amend § 727.7 by revising paragraphs (a), (b), (d) and (e) to read as follows:

(a) *Assistance in official military matters.* Legal Assistance duties are separate and apart from the responsibilities of a trial counsel, defense counsel, or other officer involved in the processing of courts-martial, nonjudicial punishment, administrative boards or proceedings, investigations, or other official military matters. Frequently, a service member accused or suspected of an offense or conduct leading to an administrative proceeding will request advice from the legal assistance officer. In such a case, the service member should be advised of the proper procedures for obtaining counsel or advice. This limitation does not prevent the assignment of the same officer to perform the functions of a legal assistance officer and the functions of a defense counsel, counsel for respondent, or counsel for a party.

(b) *Domestic-relations cases.* In domestic-relations cases, a legal assistance officer may provide advice concerning the legal and practical implications of divorce, legal separation, annulment, custody, and paternity. Assistance and advice in domestic violence cases will be consistent with the Department of the Navy family advocacy program. If two or more eligible persons with conflicting interests seek legal assistance from the same office on the same matter, the party first establishing an attorney-client relationship will be provided representation. Other parties shall be advised that they are also eligible for assistance, but that it must be obtained from another source, with the assistance of and referral by the first office.

* * * * *

(d) *Proceedings involving the United States.* A legal assistance officer shall not advise on, assist in, or become involved with, individual interests opposed to or in conflict with the United States without the specific approval of the Judge Advocate General.

(e) *Telephone inquiries.* In the absence of unusual or compelling circumstances, legal advice should not be given over the telephone. This does not prohibit appropriate follow-up telephone discussions between the legal assistance attorney and the client.

5. Amend § 727.8 by revising the first sentence to read as follows:

**§ 727.8 Confidential and privileged character of service provided.**

All information and files pertaining to the persons served will be treated as confidential and privileged in the legal sense as outlined in the Code of Professional Responsibility, as opposed to confidential in the military sense of security information. * * *

6. Amend § 727.10 by revising paragraphs (a) and (c) to read as follows:

**§ 727.10 Fees, compensation, solicitation, and representation in civilian courts.**

(a) *General.* Active duty military personnel and civilian employees of the Navy and Marine Corps are prohibited from accepting or receiving, directly or indirectly, any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this part whether or not the service rendered is normally provided or available to such person under this part and whether or not the service is rendered during duty hours as part of official duties. Reserve judge advocates on inactive duty are prohibited from accepting or receiving any fee or compensation of any nature, in cash or otherwise, for legal services rendered to any person entitled to legal assistance under this part with respect to matters about which they consulted or advised said person in an official capacity.

* * * * *

(c) *Representation before civilian courts or agencies.* No active duty Navy or Marine Corps judge advocate may appear as counsel on behalf of any person entitled to legal assistance, except as provided in paragraph (a)(3) of § 727.6, or the Expanded Legal Assistance Program, or under guidelines prescribed in the Manual of the Judge Advocate General, before any civil court, civil administrative tribunal, civil regulatory body, or civil governmental agency, in any proceeding, whether or not a fee or other compensation is accepted or received, without prior written approval of the Judge Advocate General, the administrator of the applicable program, or the Commander, Naval Legal Service Command, as appropriate. Requests for such permission may be in the form prescribed in the Manual of the Judge Advocate General.

7. Amend § 727.12 by revising paragraph (b) to read as follows:

**§ 727.12 Communications.**

* * * * *

(b) The use of a legal assistance office letterhead within the Department of the Navy is authorized as an exception to the standard letterhead requirements contained in Department of Defense Instructions. Naval Legal Service Offices and other commands having authorized legal assistance officers are authorized to print and use letterheads without seal or official command designation in those matters in which the correspondence pertains solely to legal assistance matters. Legal assistance officers are directed to ensure that their correspondence does not imply United States Navy or command sponsorship or approval of the substance of the correspondence. Such correspondence is considered a private matter arising from the attorney-client relationship as indicated in § 727.8.

Dated: April 27, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–11505 Filed 5–8–00; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[COTP Western Alaska 00–001]**

**RIN 2115–AA97**

### Safety Zone; Kachemak Bay, Alaska; Correction

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; correction of effective dates.

**SUMMARY:** This document corrects the effective dates of temporary final rule (COTP Western Alaska 00–001) which published April 28, 2000. The temporary final rule establishes a temporary 200-yard radius safety zone around the M/V SWAN to ensure the safe and timely anchoring, loading, and departure of vessels and a barge operating in Kachemak Bay.

**DATES:** As of May 4, 2000, the effective dates of the temporary rule published at 65 FR 24874 are corrected to 12:01 a.m. on May 11, 2000 until 11:59 p.m. on May 13, 2000. The correction to § 165.T17–00–001 is effective from May 11, 2000 until May 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Rick Rodriguez, Chief of Port Operations, USCG Marine Safety Office, Anchorage, at (907) 271–6724.

**SUPPLEMENTARY INFORMATION:**

**Background**

On April 28, 2000, the Coast Guard published a temporary final rule entitled Safety Zone; Kachemak Bay, Alaska, in the **Federal Register** (65 FR 24874) to be effective from 12:01 a.m. on May 4, 2000, until 11:59 p.m. on May 9, 2000. The Coast Guard has been notified that the estimated time of arrival of the M/V SWAN has been changed to May 10, 2000.

**Need for Modification**

As published, the effective date of the temporary final rule is now incorrect and therefore needs to be changed to reflect the new arrival time of M/V SWAN.

**Modification of Publication**

Accordingly, the publication on April 28, 2000 of the temporary final rule (COTP Western Alaska 00–001), which is the subject of FR Doc. 00–10607, is corrected as follows:

1. On page 24874, in the second column, in the **DATES** section, lines 2 and 3, correct the dates "May 4, 2000"and "May 9, 2000" to read "May 11, 2000" and "May 13, 2000" respectively.

**§ 165.T17–00–001 [Corrected]**

2. On page 24875, in the second column, in § 165.T17–00–001, paragraph (b), lines 2 and 3, correct the dates "May 4, 2000" and "May 9, 2000" to read "May 11, 2000" and "May 13, 2000" respectively.

Dated: May 2, 2000.

**R. Rodriguez,**

*LCDR, U.S. Coast Guard, COTP, Western Alaska, Acting.*

[FR Doc. 00–11554 Filed 5–4–00; 3:15 pm]

**BILLING CODE 4910–15–P**

## POSTAL SERVICE

### 39 CFR Part 111

### Barcode Requirements for Special Services Labels

**AGENCY:** Postal Service.

**ACTION:** Extension of compliance date for commercially printed special services labels.

**SUMMARY:** In response to information received by the Postal Service from the mailing community, the Postal Service is extending the compliance date for barcoded special services labels from June 10, 2000, to February 3, 2001.

**DATES:** Effective May 9, 2000. All parties must comply with the final rules (published on January 24, 2000, at 65 FR 3609) for barcoding of special services labels and forms by February 3, 2001.

**FOR FURTHER INFORMATION CONTACT:** Tandelyia Samuels, (202) 268–5236.

**SUPPLEMENTARY INFORMATION:** On January 24, 2000, the Postal Service made a public announcement in the **Federal Register**, Volume 65, that any mailer using commercially printed special services labels on or after June 10, 2000, will be required to meet the new barcoded special services label requirements. In response to information received by the Postal Service from the mailing community since the January 24, 2000, announcement, the Postal Service is extending the compliance date for barcoded special services labels from June 10, 2000, to February 3, 2001. Any mail with PS Form 3800, Certified Mail Receipt, PS Form 3813P, Receipt for Insured Mail—Domestic-International, PS Form 8099, Receipt for Recorded Delivery, Label 200, Registered Mail, and PS Form 3804, Return Receipt for Merchandise, on or after February 3, 2001, will be required to meet the barcode requirements. The final rule changes affecting the barcoding of special services labels and forms are set forth in the June 1 update to the Domestic Mail Manual (DMM) and in the International Mail Manual (IMM). The technical requirements for producing barcoded special services labels and forms are published in Publication 109, Special Services Technical Guide—Postal Forms and Labels, published March 2000. Publication 109 is available on the Postal Service Web site (http://www.usps.com). Click on "Get Info," then "Postal Periodicals and Publications," then "Publications," and scroll to Publication 109.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–11588 Filed 5–8–00; 8:45 am]

**BILLING CODE 7710–12–U**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[FRL–6601–3]**

### Montana: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** Montana has applied to EPA for Final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements for Final authorization and is authorizing the State's changes through this immediate final action. EPA is publishing this rule to authorize the changes without a prior proposed rule because we believe this action is not controversial. Unless we get significant written comments opposing this authorization during the comment period, the decision to authorize Montana's changes to their hazardous waste program will take effect as provided below. If we receive significant comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. A separate document in the proposed rules section of this **Federal Register** will serve as the proposal to authorize the State's changes.

**DATES:** This Immediate Final Rule will become effective August 7, 2000, unless we receive significant adverse or critical written comments by June 23, 2000. If

significant adverse or critical written comments are received, we will publish a timely withdrawal of the rule in the **Federal Register**, informing the public that the rule will not take effect.

**ADDRESSES:** Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th St, Ste 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139. You can view and copy Montana's application at the following addresses: Air and Waste Management Bureau, Permitting and Compliance Division, Montana Department of Environmental Quality, Metcalf Building, 1520 East Sixth Ave., Helena, Montana 59620, Phone: 406/444–1430; and U.S. EPA Region VIII, Montana Office, 301 S. Park, Federal Building, Helena, MT 59626, Phone: 406/441–1130 ext 239.

**FOR FURTHER INFORMATION CONTACT:** Eric Finke, Waste and Toxics Team Leader, U.S. EPA, 301 S. Park, Drawer 10096, Helena, MT 59626, Phone: (406) 441–1130 ext 239, or Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

**SUPPLEMENTARY INFORMATION:**

### A. Why Are Revisions to State Programs Necessary?

States that have received final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize their changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

### B. What Decisions Have We Made in This Rule?

We conclude that Montana's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Montana Final authorization to operate its hazardous waste program with the changes described in the authorization application. Montana has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian Country, and for carrying out those portions of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by EPA under the authority of HSWA take effect immediately and will be implemented by EPA until the State is granted authorization.

### C. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Montana subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements. Montana has primary enforcement responsibilities under its state hazardous waste program for violations of the program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Conduct inspections, and require monitoring, tests, analyses, or reports; and
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Montana is being authorized are already effective, and are not changed by today's action.

### D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposed rule before today's rule because we view this as a routine program change and do not expect significant written comments opposing this approval. We are providing an opportunity for public comment at this time. In addition, in the proposed rules section of today's **Federal Register**, there is a separate document that proposes to authorize the State program changes. If we receive significant written comments opposing this authorization, that document will serve as a proposal to authorize the changes.

### E. What Happens if EPA Receives Written Comments Opposing This Action?

If we receive significant written comments opposing this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. We then will address all public comments in a later **Federal Register**. You may not have another opportunity to comment. If you want to comment on this action, you must do so at this time.

If we receive significant written comments opposing authorization of only a particular change to the State hazardous waste program, we will withdraw that part of the rule. However, the authorization of program changes that are not opposed by any comments will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective and which part is being withdrawn.

### F. What Has Montana Previously Been Authorized For?

Montana initially received Final authorization on July 11, 1984, effective July 25, 1984 (49 FR 28245) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on July 11, 1984, effective September 25, 1985 (49 FR 28245), and January 19 1994, effective March 21, 1994 (59 FR 02752).

### G. Notice of Change in the Numbering System for the Administrative Rules of Montana (ARM).

The Administrative Rules of Montana (ARM) were renumbered on October 30, 1995. The Montana hazardous waste rules that were previously found at ARM 16.44 are now found at ARM 17.54. All chapter and paragraph numbering remain the same (i.e., the old 16.44.101 is now 17.54.101) except as noted below:

| Old | New |
|---|---|
| 16.44.103 | 17.54.105 |
| 16.44.104 | 17.54.106 |
| 16.44.105 | 17.54.107 |
| 16.44.106 | 17.54.108 |
| 16.44.107 | 17.54.109 |
| 16.44.108 | 17.54.110 |
| 16.44.109 | 17.54.111 |
| 16.44.110 | 17.54.112 |
| 16.44.111 | 17.54.113 |
| 16.44.112 | 17.54.118 |
| 16.44.113 | 17.54.119 |
| 16.44.114 | 17.54.120 |
| 16.44.115 | 17.54.125 |
| 16.44.116 | 17.54.126 |
| 16.44.117 | 17.54.127 |
| 16.44.118 | 17.54.128 |
| 16.44.119 | 17.54.130 |
| 16.44.120 | 17.54.131 |
| 16.44.121 | 17.54.132 |
| 16.44.122 | 17.54.133 |
| 16.44.123 | 17.54.136 |
| 16.44.124 | 17.54.137 |
| 16.44.125 | 17.54.138 |
| 16.44.126 | 17.54.140 |
| 16.44.127 | 17.54.145 |
| 16.44.128 | 17.54.146 |
| 16.44.129 | 17.54.150 |
| 16.44.130 | 17.54.155 |

| Old | New | Old | New | Old | New |
|---|---|---|---|---|---|
| 16.44.202 | 17.54.201 | 16.44.814 | 17.54.820 | 16.44.413 | 17.54.418 |
| 16.44.304 | 17.54.307 | 16.44.815 | 17.54.821 | 16.44.415 | 17.54.421 |
| 16.44.305 | 17.54.308 | 16.44.816 | 17.54.822 | 16.44.1108 | 17.54.1112 |
| 16.44.306 | 17.54.309 | 16.44.817 | 17.54.823 | 16.44.1109 | 17.54.1113 |
| 16.44.307 | 17.54.310 | 16.44.818 | 17.54.824 | 16.44.1110 | 17.54.1114 |
| 16.44.308 | 17.54.312 | 16.44.819 | 17.54.825 | 16.44.1111 | 17.54.1118 |
| 16.44.310 | 17.54.315 | 16.44.820 | 17.54.830 | 16.44.1112 | 17.54.1119 |
| 16.44.311 | 17.54.316 | 16.44.821 | 17.54.831 | | |
| 16.44.405 | 17.54.408 | 16.44.822 | 17.54.832 | | |
| 16.44.406 | 17.54.409 | 16.44.823 | 17.54.833 | | |
| 16.44.407 | 17.54.410 | 16.44.904 | 17.54.905 | | |
| 16.44.416 | 17.54.425 | 16.44.905 | 17.54.907 | | |
| 16.44.417 | 17.54.426 | 16.44.906 | 17.54.908 | | |
| 16.44.418 | 17.54.427 | 16.44.907 | 17.54.909 | | |
| 16.44.425 | 17.54.435 | 16.44.908 | 17.54.910 | | |
| 16.44.430 | 17.54.440 | 16.44.909 | 17.54.911 | | |
| 16.44.703 | 17.54.705 | 16.44.910 | 17.54.912 | | |
| 16.44.804 | 17.54.807 | 16.44.911 | 17.54.915 | | |
| 16.44.805 | 17.54.808 | 16.44.1103 | 17.54.1105 | | |
| 16.44.806 | 17.54.809 | 16.44.1104 | 17.54.1106 | | |
| 16.44.807 | 17.54.810 | 16.44.1105 | 17.54.1107 | | |
| 16.44.808 | 17.54.811 | 16.44.1106 | 17.54.1108 | | |
| 16.44.809 | 17.54.812 | 16.44.1107 | 17.54.1109 | | |
| 16.44.810 | 17.54.813 | 16.44.408 | 17.54.411 | | |
| 16.44.811 | 17.54.814 | 16.44.410 | 17.54.415 | | |
| 16.44.812 | 17.54.817 | 16.44.411 | 17.54.416 | | |
| 16.44.813 | 17.54.818 | 16.44.412 | 17.54.417 | | |

### H. What Changes Are We Authorizing With Today's Action?

In February 1995, Montana submitted a final revision application, seeking authorization of program changes in accordance with 40 CFR 271.21.

We now make an immediate final decision, subject to receipt of significant written comments opposing this action, that Montana's hazardous waste program revision satisfies all of the requirements necessary for Final authorization. Therefore, we grant Montana Final authorization for the following program changes:

| Description of federal requirement | Analogous state authority [1] and effective date |
|---|---|
| Dioxin Waste Listing and Management Standards; 50 *FR* 01978, 01/14/85. (Checklist 14). | ARM 17.54.131, .310, .330, .331, .333, .351, .352, .401, .603, .609, .702. |
| Paint Filter Test; 50 *FR* 18370, 04/30/85. (Checklist 16) | ARM 17.54.609, .702. |
| Sharing of Information with the Agency for Toxic Substances and Disease Registry; HSWA 3019(b), 07/15/85. (Non-checklist SI). | ARM 17.54.1008; & MCA 2–6–102. |
| HSWA Codification Rule; 50 *FR* 28701, 07/15/85. (Checklist 17) | ARM 17.54.106, .107, .108, .111, .113, .126, .131, .132, .140, .303, .307, .309, .402, .408, .409, .426, .605, .609, .702; & MCA 75–10–406. |
| Listing of TDI, TDA, and DNT; 50 *FR* 42936, 10/23/85. (Checklist 18) | ARM 17.54.332, .333, .351, .352. |
| Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces; 50 *FR* 49164, 11/29/85; & 52 *FR* 11819, 04/13/87. (Checklist 19 & 19.1). | ARM 17.54.303, .309, .402, .609, .702. |
| Listing of Spent Solvents; 50 *FR* 53315, 12/31/85, & 51 *FR* 2702, 01/21/86. (Checklist 20). | ARM 17.54.331. |
| Listing of EDB Waste, 51 *FR* 5327, 02/13/86. (Checklist 21) | ARM 17.54.332, .351, .352. |
| Listing of Four Spent Solvents, 51 *FR* 6537, 02/25/86. (Checklist 22) | ARM 17.54.331, .333, .351, .352. |
| Codification Rule; Technical Correction (Paint Filter Test), 51 *FR* 19176, 05/28/96. (Checklist 25). | ARM 17.54.609. |
| Exports of Hazardous Waste, 51 *FR* 28664, 08/08/86. (Checklist 31) | ARM 17.54.201, .309, .402, .408, .426, .435, .440, .505. |
| Standards for Generators; Waste Minimization Certifications, 51 *FR* 35190, 10/01/86. (Checklist 32). | ARM 17.54.408. |
| Listing of EBDC, 51 *FR* 37725, 10/24/86. (Checklist 33) | ARM 17.54.332, .351, .352. |
| Farmer Exemptions; Technical Corrections, 53 *FR* 27164, 07/19/88. (Checklist 48). | ARM 17.54.105, .150, .401, .612. |
| Exports of Hazardous Waste; Technical Corrections, 56 *FR* 43704, 09/04/91. (Checklist 97). | ARM 17.54.435. |
| Land Disposal Restrictions; 51 *FR* 40572, 11/07/86,&52 *FR*21010, 06/04/87. (Checklist 34). | ARM 17.54.101, .112, .128, .131, .150, .201, .301, .307, .308, .309, .310, .320, .330, .401, .402, .504, .601, .609, .701, .702, .1008. |
| California List Waste Restrictions; 52 *FR* 25760, 07/08/87,&52 *FR* 41295, 11/27/87. (Checklist 39). | ARM 17.54.102, .128, .150, .440, .609, .610, .702. |
| Land Disposal Restrictions for First Third Scheduled Wastes; 53 *FR* 31138, 08/17/88, & 54 *FR* 8264, 02/27/89. (Checklist 50). | ARM 17.54.150, .309, .609, .702. |
| Land Disposal Restriction Amendments to First Third Scheduled Wastes, 54 *FR* 18836, 05/02/89. (Checklist 62). | ARM 17.54.150. |
| Land Disposal Restrictions for Second Third Scheduled Wastes, 54 *FR* 26594, 06/23/89. (Checklist 63). | ARM 17.54.150. |
| Land Disposal Restrictions; Corrections to First Third Scheduled Wastes, 54 *FR* 36967, 09/06/89, & 55 *FR* 23935, 06/13/90. (Checklist 66). | ARM 17.54.150. |
| Land Disposal Restrictions for Third Third Scheduled Wastes, 55 *FR* 22520, 06/01/90. (Checklist 78). | ARM 17.54.128, .150, .320, .321, .322, .323, .324, .331, .333, .352, .402, .421, .601, .609, .702. |
| Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendment, 56 *FR* 3864, 01/31/91. (Checklist 83). | ARM 17.54.128, .150, .303, .320, .331, .402, .421. |

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| Description of federal requirement | Analogous state authority [1] and effective date |
|---|---|
| Standards for Generators of Hazardous Waste, 53 *FR* 45089, 11/08/88. (Checklist 58). | ARM 17.54.408. |

[1] Administrative Rules of Montana (ARM), revised September 30, 1995, and the Montana Code Annotated (MCA).

**I. Where Are the Revised State Rules Different From the Federal Rules?**

The following State requirements are considered to be more stringent than the Federal requirements: ARM 17.54.113(4) and 17.54.126(2) as they relate to Boiler and Industrial Furnaces only and ARM 17.54.435(6) regarding Annual Reporting requirements. Nevertheless, these requirements are part of Montana's authorized program and are Federally enforceable.

States cannot assume the authority at 40 CFR 262.53 regarding the "Notifications of Intent to Export" and "Acknowledgments of Consent." EPA will continue to implement these requirements. As indicated in the above paragraph, Montana is more stringent because it requires reporting to the State (ARM 17.54.435(6)), as well as, the EPA.

**J. Who Handles Permits After This Authorization Takes Effect?**

Montana will issue and administer permits for all the provisions for which it is authorized. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that we issued prior to the effective date of this authorization. EPA will transfer any pending permit applications, completed permits, or pertinent file information to Montana within 30 days after the effective date of this approval. We will not issue any more new permits or new portions of permits for the provisions listed in the Table above after the effective date of this authorization. EPA and Montana have agreed to joint permitting and enforcement for those HSWA requirements for which Montana is not yet authorized.

**K. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Montana?**

Montana is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes:

1. Lands within the exterior boundaries of the following Indian Reservations located within the State of Montana:
   a. Blackfeet Indian Reservation
   b. Crow Tribe of Montana Indian Reservation
   c. Flathead Indian Reservation
   d. Fort Belknap Indian Reservation
   e. Fort Peck Indian Reservation
   f. Northern Cheyenne Indian Reservation
   g. Rocky Boy's Indian Reservation
2. Any land held in trust by the U.S. for an Indian tribe, and
3. Any other land, whether on or off a reservation that qualifies as Indian country.

Therefore, this action has no effect in Indian country where EPA will continue to implement and administer the RCRA program in these lands.

The State's application did not seek to demonstrate authority over Indian country in Montana. Before EPA could approve the State's program for any portion of Indian country, we must be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice.

**L. What Is Codification and Is EPA Codifying Montana's Hazardous Waste Program as Authorized in This Rule?**

Codification is the process of placing the State's authorized hazardous waste program statutes and regulations into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart BB for this authorization of Montana's program changes until a later date.

**M. Regulatory Analysis and Notices**

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the

existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

*Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action erely authorizes for the purpose of RCRA section 3006 those existing State requirements.

*Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*Compliance With Executive Order 12866*

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

*Compliance With Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves the State's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

*Compliance With Executive Order 13045*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it authorizes a state program.

*Compliance With Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not

significantly or uniquely affects the communities of Indian tribal governments. The State is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

*National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian country, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 28, 2000.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 00–11420 Filed 5–8–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 271**

**[FRL–6601–4]**

## South Dakota: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA is granting final authorization to the hazardous waste program revisions submitted by South Dakota. The Agency published a proposed rule on August 10, 1999 at 64 FR 43331 and provided for public comment. The public comment period ended on September 9, 1999. No comments were received regarding Resource Conservation and Recovery Act (RCRA) program issues and no further opportunity for comment will be provided.

**DATES:** This authorization will be effective on June 8, 2000.

**ADDRESSES:** You can view and copy South Dakota's applications at the following addresses:

SDDENR, from 9 AM to 5 PM, Joe Foss Building, 523 E. Capitol, Pierre, South Dakota 57501–3181. Contact: Carrie Jacobson, phone number (605) 773–3153; and

EPA Region VIII, from 8 AM to 4 PM, 999 18th Street, Suite 500, Denver, CO 80202–2466. Contact: Kris Shurr, phone number: (303) 312–6139.

**FOR FURTHER INFORMATION CONTACT:** Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, phone number: (303) 312–6139.

**SUPPLEMENTARY INFORMATION:** On August 1, 1997, September 3, 1997, and March 23, 1999, South Dakota submitted final complete program revision applications seeking authorization of their changes in accordance with 40 CFR 271.21. We now make a final decision that South Dakota's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. For a list of rules that become effective with this final rule, please see the proposed rule published in the August 10, 1999 **Federal Register** at 64 FR 43331.

**How This Action Affects Indian Country in South Dakota**

South Dakota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to: Lands within the exterior boundaries of the following Indian Reservations located within the State of South Dakota:

a. Cheyenne River Indian Reservation.
b. Crow Creek Indian Reservation.
c. Flandreau Indian Reservation.
d. Lower Brule Indian Reservation.
e. Pine Ridge Indian Reservation.
f. Rosebud Indian Reservation.
g. Standing Rock Indian Reservation.
h. Yankton Indian Reservation

EPA held a public hearing on December 2, 1999, in Badlands National Park, South Dakota, and accepted public comments on the question of the location and extent of Indian country within the State of South Dakota. In a forthcoming **Federal Register** notice, EPA will respond to comments and more specifically identify Indian country areas in the State of South Dakota.

**Regulatory Analysis and Notices**

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in

the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

*Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDFs are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing State requirements.

*Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*Compliance With Executive Order 12866*

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

*Compliance With Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves the State's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

*Compliance With Executive Order 13045*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) The Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive

Order 13045 because it authorizes a state program.

*Compliance With Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affects the communities of Indian tribal governments. The State is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

*National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian country, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 28, 2000.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 00–11421 Filed 5–8–00; 8:45 am]

BILLING CODE 6560–50–U

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 79**

**[MM Docket No. 95–176; FCC 00–136]**

## Implementation of Section 305 of the Telecommunications Act of 1996, Closed Captioning and Video Description of Video Programming: Accessibility of Emergency Programming

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document adopts regulations requiring emergency information that is provided to viewers be made accessible to persons with hearing disabilities. This action is necessary in order to comply with section 305 of the Telecommunications Act of 1996. This action is intended to further the protection of life, health, safety, and property, of persons with hearing disabilities.

**DATES:** The rule in this document contains information collection requirements that are not effective until approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of this rule. Written comments by the public on the new information collection are due July 10, 2000.

**ADDRESSES:** In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** Marcia Glauberman (202) 418–7200, TTY (202) 418–7172, or via Internet at *mglauber@fcc.gov*. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at (202) 418–0214, or via the Internet at *jboley@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Second Report and Order*, FCC 00–136, adopted April 13, 2000; released April 14, 2000. The full text of the Commission's *Second Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW, Washington, DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via Internet at *http://www.fcc.gov/csb/* or http://www.fcc.gov/cib/dro.

The *Second Report and Order* contains a new information collection subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection contained in this proceeding.

**Paperwork Reduction Act**

The *Second Report and Order* contains a new information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection contained in this *Second Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due July 10, 2000. Comments should address: (a) Whether the new collection of information is necessary for the proper performance of the functions of

the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Control Number:* 3060–XXXX.

*Title:* Accessibility of Programming Providing Emergency Information—Section 79.2.

*Form No.:* Not Applicable.

*Type of Review:* New collection.

*Respondents:* Individuals or households; business or other for-profit; not-for-profit institutions; and/or state, local or tribal governments.

*Number of Respondents:* 100 viewers and 100 video program distributors = 200 Total Respondents.

*Estimated Time per Response:* 1 and 2 hours, respectively.

*Total Annual Burden:* 300 hours.

*Cost to Respondents:* $ 16,200.

*Needs and Uses:* The information will be used by the Commission to enforce new § 79.2. Viewers may file complaints alleging violation of this rule with the Commission. The Commission will notify video programming distributors of the complaint, and the distributor will provide the Commission with a response to the complaint.

**Synopsis of the Second Report and Order**

1. The *Second Report and Order* ("Order") adopts a rule requiring that emergency information that is provided to viewers be made accessible to persons with hearing disabilities throughout the transition period established as part of the closed captioning rules. *See* 47 CFR 79.1. Such information may be made accessible either through closed captioning or by using a method of visual presentation. Emergency information is information, about a current emergency, that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency. In determining which particular details about the emergency need to be made accessible, programmers may rely on their own good faith judgments.

2. *Definition of emergency information.* We find that it is appropriate to define emergency information as information, about a current emergency, provided to viewers that is intended to further the protection of life, health, safety, and property, *i.e.*, critical details regarding the emergency and how to respond to the emergency. Examples of the types of emergencies covered could include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather. These examples are intended to provide guidance as to what is covered by the rule and are not intended to be an exhaustive list.

3. Our definition of emergency information will include the provision of critical details in an accessible manner. Critical details could include, among other things, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance. In determining whether particular details need to be made accessible, we will permit programmers to rely on their own good faith judgments. Under this rule, distributors are not required to provide in an accessible format all of the information about an emergency situation that they are providing to viewers aurally, only the aural information intended to further the protection of life, health, safety, and property.

4. *Accessibility of Emergency Information.* The rule we are adopting requires that emergency information that is provided in the audio portion of the programming must be accessible to persons with hearing disabilities, either through closed captioning or by using a method of visual presentation. Such methods include, but are not limited to, open captioning, crawls or scrolls. These rules apply regardless of whether the provision of information regarding an emergency occurs during a regularly scheduled newscast, an unscheduled break-in during regular programming, as part of continuing coverage of a situation, or in any other fashion. We will adopt the suggestion of some commenters that we restrict the application of the rule to the provision of emergency information that is primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.

5. As was noted in the June 1999 Fact Sheet on Closed Captioning, the Commission has received numerous reports of the loss of captioning during otherwise captioned programs. The requirement that video distributors "pass through" to viewers all captions they receive is intended to ensure that captioned programs are distributed with captions from beginning to end without exception. The Fact Sheet reminded video distributors that when providing other information, such as school closings or weather warnings, readable captions should continue to be provided. We endorse this interpretation and amend our rules to require that emergency information provided by means other than closed captioning should not block any closed captioning, and vice versa.

6. *Exemptions.* Because we are not mandating the use of closed captioning as the sole means for making emergency information accessible, we find that exemptions to this rule are unnecessary. Consistent with this conclusion, with respect to entities that are exempt from any aspect of the closed captioning rules, we find that such exemption does not extend to the obligation to provide accessible emergency information. Expenses for complying with this rule shall not be counted when making calculations of expenditures under 47 CFR 79.1(d)(11). All entities, therefore, must comply with the rule adopted in this Order.

7. *Responsibility for and determination of compliance.* As with the closed captioning rules, video programming distributors will be responsible for compliance with the rule and video programming distributors will not be responsible for video programming that is by law not subject to their editorial control, including but not limited to the signals of television broadcast stations distributed by multichannel video programming distributors. A local broadcast station licensee, as the video programming distributor, will be responsible for its compliance with the rule regardless of the delivery technology used to deliver its signals to consumers (*e.g.*, cable, direct broadcast satellite service). We note that many local or regional nonbroadcast networks are owned by the multichannel video programming distributors. Where the network is not owned by the multichannel video programming distributor, as we noted in the closed captioning rules, we expect that distributors will incorporate the requirement into their contracts with producers and owners, and that parties will negotiate for an efficient allocation of responsibilities.

8. Those entities that are permitted to count captions created using the electronic newsroom technique still must comply with this rule. Where they

cannot provide the required emergency information using this technique, they must use another method of visual presentation to ensure the same accessibility for persons with hearing disabilities as for any other viewer, as required by the rule.

9. In the *Order on Reconsideration* in this proceeding, 63 FR 55959 (October 20, 1998), we limited those entities for which the electronic newsroom technique may count towards compliance with the closed captioning rules. We stated that, as we move through the transition period, we will continue to review and expand the class of providers that cannot count the electronic newsroom technique towards compliance with the closed captioning rules, and that we expect that the ability to use the electronic newsroom technique will by far be the exception rather than the general rule, and that only those entities that are so small or who present unusual circumstances will be permitted to continue to use the electronic newsroom technique because live closed captioning would be an economic burden. To the extent we continue to permit entities to use the electronic newsroom technique, we will determine whether these entities will be permitted to continue to use means other than closed captioning for emergency information in the context of reviewing and expanding the limitation on the use of the electronic newsroom technique.

10. In recognition of this problem and viewers' frustration when captions are lost during a program, the current rules require video program distributors to transmit the original closed captions of a captioned program to viewers intact unless the program is edited and the captions would have to be reformatted. Video distributors also are responsible for making sure that their equipment is working properly to ensure the accurate transmission of the closed captions. Any loss of captions prior to the end of a program or scrambling of captions would be a violation of this rule.

11. *Enforcement.* Complaints may be filed with the Commission and viewers do not have to wait until after the end of the current calendar quarter before filing, or receiving a response to, their complaints. A complaint alleging a violation of this section may be transmitted to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. The complaint should include the name of the video programming distributor against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor of the complaint, and the distributor will reply to the complaint within 30 days.

12. *Effective Date.* The rule will be effective upon OMB approval.

## Final Regulatory Flexibility Analysis

13. As required by the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603. The RFA, 5 U.S.C. 601 *et seq.*, has been amended by the Contract with America Advancement Act of 1996, Public Law No. 104–121, 110 Stat. 847 (1996) ("CWAAA"). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"). An initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Further Notice of Proposed Rulemaking* ("FNPRM") in this proceeding. *Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility,* MM Docket No. 95–176, Further Notice of Proposed Rulemaking, 63 FR 3070 (January 21, 1998). The Commission sought written public comment on the proposals in the FNPRM, including comment on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

### *A. Need for, and Objectives of, This Second Report and Order*

14. Section 713 of the Communications Act, which was added by the Telecommunications Act of 1996, required the Commission to make new video programming fully accessible to persons with hearing disabilities. 47 U.S.C. 613. In the course of adopting rules to implement this section of the Act, the Commission noted its concern that viewers with hearing disabilities may not always have access to the same emergency information as is currently available to other viewers and decided to further examine ways to make this programming accessible. *See Report and Order,* 62 FR 48487 (September 16, 1997). This *Second Report and Order* adopts rules to ensure that emergency information is available to persons with hearing disabilities either through closed captioning or by using a method of visual presentation.

### *B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

15. Telecommunications for the Deaf, Inc. ("TDI") filed the only comment on the IRFA in the context of its general comments. It proposes that all video programming providers be required to contribute to a Commission administered fund based on their gross revenues. This fund would be used for rebates to small entities (*e.g.*, low power television stations, small cable operators) for the costs incurred when providing captioned emergency information. We decline to adopt this proposal since our rule does not require the closed captioning of emergency information. The rule imposes modest obligations on video programming distributors and provides each entity sufficient flexibility to determine the most feasible and affordable method for making emergency information accessible to persons with hearing disabilities.

16. TDI also states that we should not adopt a reporting requirement, except where a specified number of complaints have been logged for non-compliance, because a reporting requirement would impose an undue burden. TDI Comments at 4. The Commission decided that no reporting requirement was necessary to implement the rule, but rather to rely on a complaint process to ensure compliance. Therefore, we will not adopt TDI's suggestion to minimize reporting requirements.

### *C. Description and Estimate of the Number of Small Entities to Which the Rule Will Apply*

17. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the rules. 5 U.S.C. 603(b)(3). The RFA generally defines "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction" and "the same meaning as the term 'small business concern' under the Small Business Act" unless the Commission has developed one or more definitions that are appropriate for its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 15 U.S.C. 632). A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). 15 U.S.C. 632. Pursuant to 5 U.S.C. 601(3), the statutory definition of

a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**." Below we address the video programming distributors (i.e., multichannel video programming distributors ("MVPDs") and broadcast stations) subject to the rule adopted in this Order and provide estimates of the affected small entities.

18. *Small MVPDs.* The SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services, which includes all such companies with annual gross revenues of $11 million or less. 13 CFR 121.201. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,423 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992. The following provides a more precise estimate for each MVPD service individually.

19. *Cable Services or Systems.* The Commission has developed, with SBA's approval, its own definition of a "small cable company" and "small system" for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. 47 CFR 76.901(e). The Commission developed this definition based on its determinations that a small cable company is one with annual revenues of $100 million or less. Based on our most recent information, we estimate that there were 1,439 cable companies that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable companies. Consequently, we estimate that there are fewer than 1,439 small entity cable companies that may be affected by the proposal adopted in this *Second Report and Order*. The Commission's rules also define a "small system," for the purposes of cable rate regulation, as a cable system with 15,000 or fewer subscribers. 47 CFR 76.901(c). We do not request nor do we collect information concerning cable systems serving 15,000 or fewer subscribers and thus are unable to estimate at this time the number of small cable systems nationwide.

20. The Communications Act also contains a definition of a "small cable operator," which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." 47 U.S.C. 543(m)(2). The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 617,000 subscribers is deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. 47 CFR 76.1403(b). Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

21. *Multichannel Multipoint Distribution Service ("MMDS").* In its IFRA in this proceeding, the Commission included an analysis of local multipoint distribution systems ("LMDS"). At that time, there was one video programming distributor using LMDS frequencies to provide video services. Since the FNPRM, that distributor ceased operation and it appears that LMDS licensees will use these frequencies for services other than video distribution. MMDS systems, often referred to as "wireless cable," transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS"). The Commission has defined "small entity" for purposes of the auction of MDS frequencies as an entity that, together with its affiliates, has average gross annual revenues that are not more than $40 million for the preceding three calendar years. 47 CFR 21.961(b)(1).

This definition of a small entity in the context of MDS auctions has been approved by the SBA. The Commission completed its MDS auction in March 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. One of these small entities, O'ahu Wireless Cable, Inc., was subsequently acquired by GTE Media Ventures, Inc., which did not qualify as a small entity for purposes of the MDS auction.

22. MDS also includes licensees of stations authorized prior to the auction. As noted, the SBA has developed a definition of small entities for pay television services, which includes all such companies generating $11 million or less in annual receipts. 13 CFR 121.201. This definition includes multipoint distribution systems, and thus applies to MDS licensees and wireless cable operators that did not participate in the MDS auction. Information available to us indicates that there are 832 of these licensees and operators that do not generate revenue in excess of $11 million annually. Therefore, for purposes of the FRFA, we find there are approximately 892 small MDS providers as defined by the SBA and the Commission's auction rules.

23. The SBA definition of small entities for pay television services, which includes such companies generating $11 million in annual receipts, appears applicable to ITFS. 13 CFR 121.201. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in the definition of a small business. SBREFA also applies to nonprofit organizations and governmental organizations such as cities, counties, towns, townships, villages, school districts, or special districts, with populations of less than 50,000. 5 U.S.C. 601(5). However, we do not collect annual revenue data for ITFS licensees, and are not able to ascertain how many of the 100 non-educational licensees would be categorized as small under the SBA definition. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

24. *Satellite Master Antenna Television ("SMATV") Systems.* The SBA definition of small entities for cable and other pay television services specifically includes SMATV services and, thus, small entities are defined as all such companies generating $11 million or less in annual receipts. 13 CFR 121.201. Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that

these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we believe that a substantial number of SMATV operators qualify as small entities.

25. *Direct Broadcast Satellite ("DBS") Service.* The SBA includes DBS service in its classification of cable and other pay television services. Therefore, a small DBS service is defined as a company generating $11 million or less in annual receipts. 13 CFR 121.201. As of November 1999, there were four DBS licensees, one of which was not in operation. Providing DBS service requires a great investment of capital to build, launch, and operate satellite systems. Typically, small businesses do not have the financial ability to become DBS licensees because of the high implementation costs associated with launching satellites. Most recent industry statistics suggest that the revenue attributed to DBS subscribers for EchoStar was $682.8 million for the year of 1998 and $1.55 billion for DirecTV. We do not have similar revenue information for the third operating licensee, Dominion Video Satellite, Inc. However, we do not believe that any DBS licensees could be categorized as a small business.

26. *Home Satellite Dish ("HSD") Service.* The market for HSD service is difficult to quantify. HSD owners have access to more than 500 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 350 channels are scrambled and approximately 150 channels are unscrambled. To receive scrambled channels, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming packager. Thus, those HSD users that subscribe to a programming package are similar to consumers that subscribe to cable and other pay television services. Accordingly, it appears that the definition of small entity under SIC 4841 (i.e., all such companies generating $11 million or less in annual receipts), 13 CFR 121.201, would be applicable to this service.

27. According to the most recently available information, there are approximately 20 to 25 program packagers nationwide offering packages of scrambled programming to retail consumers. As of June 1999, these program packagers provide subscriptions to approximately 1,783,411 subscribers nationwide. This is an average of about 90,000 subscribers per program packager. This is substantially smaller than the 400,000 subscribers used in the Commission's definition of a small multiple system operator ("MSO"). Furthermore, because this is an average, it is likely that some program packagers may be substantially smaller.

28. *Open Video System ("OVS") Service.* As part of the Telecommunications Act of 1996, Congress established the OVS framework for the delivery of multichannel video programming service. 47 U.S.C. 571. This new service is similar to cable television and other pay television services. Although OVS is not specifically enumerated under SIC 4841, it is appropriate to include OVS in this classification and to apply the SBA definition of small entity, which includes all such companies generating $11 million or less in annual receipts, to OVS service. 13 CFR 121.201. The Commission has issued 37 certifications to operate OVS systems. Of these 37 certifications, MFS has withdrawn its two certifications for New York City and Boston because it does not intend to operate open video systems in these areas and Bell Atlantic shut down its Dover, New Jersey, system in favor of its distribution agreement with DirecTV. Of these 37 certifications, only one OVS operator, RCN, is providing service in various service areas across the United States. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. We believe that one OVS licensee may qualify as a small business concern. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

29. *Small Broadcast Stations.* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. 13 CFR 121.201, SIC 4833. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials.

30. There were 1,509 full-service television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,616 operating full-service television broadcasting stations in the nation as of September 1999. For 1992, the number of television stations that produced less than $10 million in revenue was 1,155 establishments. The amount of $10 million was used to estimate the number of small business establishments because the relevant Census categories stopped at $9,999,999 and began at $10,000,000. No category for $10.5 million existed. Thus, the number is as accurate as it is possible to calculate with the available information. Thus, the rule will affect approximately 1,616 television stations; approximately 77%, or 1,244, of those stations are considered small businesses. We use the 77% figure of television stations operating at less than $10 million for 1992 and apply it to the 1999 total of 1,616 television stations to arrive at stations categorized as small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

*D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

31. This *Second Report and Order* does not adopt any required reporting or recordkeeping. However, when a video programming distributor is notified by the Commission that a complaint alleging violation of the rule has been received, the distributor may submit records, certifications, or other documentation that demonstrate compliance with the rule.

*E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

32. In the FNPRM, the Commission sought information and comment regarding the appropriate rules and policies to promote and ensure the accessibility of emergency information to persons with hearing disabilities. We requested comment on whether separate transitional closed captioning requirements are needed for emergency information or whether there are other methods of providing accessibility for this type of programming.

33. In this *Second Report and Order*, the Commission defines emergency information and adopts a requirement that video programming distributors must make emergency information accessible to persons with hearing disabilities either through closed captioning or by using a method of visual presentation. Such methods include, but are not limited to, open captioning, crawls or scrolls. We concluded that a rule requiring closed captioning or a method of visual presentations achieves the goal of ensuring that the same critical information about an emergency is accessible to persons with hearing disabilities as is available to other viewers. The rule also provides significant flexibility to the video programming distributor by allowing it to determine the most feasible and affordable method for making such information accessible. Therefore, the rule will not impose an economic burden on video programming distributors, including small entities.

**F. Report to Congress**

34. The Commission will send a copy of this *Second Report and Order*, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this *Second Report and Order* and FRFA (or summary thereof) will also be published in the **Federal Register**, pursuant to 5 U.S.C.A. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

**Ordering Clauses**

35. Pursuant to the authority contained in sections 4(i), 303(r), and 713 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 613, the Commission's rules are amended by adding a new § 79.2 as shown in the rule changes. The amendments set forth in the rule changes shall become effective upon approval from the Office of Management and Budget.

36. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

**List of Subjects in 47 CFR Part 79**

Closed captioning of video programming.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

**Rule Changes**

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 79 as follows:

## PART 79—CLOSED CAPTIONING OF VIDEO PROGRAMMING

1. The authority citation for Part 79 continues to read as follows:

**Authority**: 47 U.S.C. 613.

2. Add § 79.2 to read as follows:

**§ 79.2 Accessibility of programming providing emergency information.**

(a) *Definitions.* (1) For purposes of this section, the definitions in § 79.1 apply.

(2) *Emergency information.* Information, about a current emergency, that is intended to further the protection of life, health, safety, and property, i.e., critical details regarding the emergency and how to respond to the emergency. Examples of the types of emergencies covered include tornadoes, hurricanes, floods, tidal waves, earthquakes, icing conditions, heavy snows, widespread fires, discharge of toxic gases, widespread power failures, industrial explosions, civil disorders, school closings and changes in school bus schedules resulting from such conditions, and warnings and watches of impending changes in weather.

**Note to paragraph (a)(2):** Critical details include, but are not limited to, specific details regarding the areas that will be affected by the emergency, evacuation orders, detailed descriptions of areas to be evacuated, specific evacuation routes, approved shelters or the way to take shelter in one's home, instructions on how to secure personal property, road closures, and how to obtain relief assistance.

(b) *Requirements for accessibility of programming providing emergency information.* (1) Video programming distributors must make emergency information, as defined in paragraph (a) of this section, that is provided in the audio portion of the programming accessible to persons with hearing disabilities, either through closed captioning or by using a method of visual presentation.

(2) This rule applies to emergency information primarily intended for distribution to an audience in the geographic area in which the emergency is occurring.

(3) Emergency information provided by means other than closed captioning should not block any closed captioning and any closed captioning provided should not block any emergency information provided by means other than closed captioning.

(c) *Complaint procedures.* A complaint alleging a violation of this section may be transmitted to the Commission by any reasonable means, such as letter, facsimile transmission, telephone (voice/TRS/TTY), Internet e-mail, audio-cassette recording, and Braille, or some other method that would best accommodate the complainant's disability. The complaint should include the name of the video programming distributor against whom the complaint is alleged, the date and time of the omission of emergency information, and the type of emergency. The Commission will notify the video programming distributor of the complaint, and the distributor will reply to the complaint within 30 days.

[FR Doc. 00–11483 Filed 5–8–00; 8:45 am]

BILLING CODE 6712–01–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AE43**

## Endangered and Threatened Wildlife and Plants; Final Determination of Threatened Status for the Koala

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Service determines threatened status for the Australian koala under the Endangered Species Act (16 U.S.C. 1531 *et seq.*) as amended. The eucalyptus forest and woodland ecosystems on which this arboreal marsupial depends have been greatly reduced. Despite several conservation actions by the Government of Australia and State governments, the limited koala habitat continues to deteriorate. The species also is threatened by fragmentation of the habitat that remains, disease, loss of genetic variation, and death by dogs and motor vehicles due to development. Although differences occur in the health status of local populations, we are not able to designate either the current subspecies or the koalas of particular States as distinct vertebrate population segments. Koalas are no longer exploited for their fur, and it is habitat loss and its secondary effects that now threaten the species. This rule extends the

Endangered Species Act's protection to koalas throughout Australia.

**DATES:** Effective June 8, 2000.

**ADDRESSES:** Please send correspondence concerning this rule to Chief, Office of Scientific Authority, ARLSQ 750; U.S. Fish and Wildlife Service; Washington, DC 20240; fax number 703–358–2276. Express and messenger deliveries should be addressed to Chief, Office of Scientific Authority, Room 750; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive; Arlington, Virginia 22203.

**FOR FURTHER INFORMATION CONTACT:** Susan Lieberman, Chief, Office of Scientific Authority, phone 703–358–1708, fax 703–358–2276, E-mail: r9osa@fws.gov.

**SUPPLEMENTARY INFORMATION:**

## Background

The koala (*Phascolarctos cinereus*) is an arboreal mammal found only in Australia. It has a compact body, large head and nose, large and furry ears, powerful limbs, and no significant tail. Mature koalas weigh from 4–15 kilograms (10–35 pounds), with larger animals in southern Australia. The koala is a marsupial, more closely related to kangaroos and possums than to true bears and other placental mammals. Koalas carry their young in a pouch for about 6 months. They occur in the forests and woodlands of central and eastern Queensland, eastern New South Wales, Victoria, and southeastern South Australia.

In a petition dated May 3, 1994, which we received on May 5, 1994, Australians for Animals (AFA) (in Australia) and the Fund for Animals (FFA) (in the United States) requested that the koala be classified as endangered in New South Wales and Victoria, and as threatened in Queensland. About 40 organizations in the United States and Australia were named as supporting the petition. The document included extensive data indicating that the koala has declined dramatically since European settlement of Australia began about 200 years ago and has lost more than half of its natural habitat because of human activity. Once numbering in the millions, the koala was intensively hunted for its fur up through the 1920s. It is totally dependent for food and shelter on certain types of trees within forests and woodlands. The destruction or degradation of this habitat would reduce the viability of populations, even if the animals were otherwise protected.

On October 4, 1994 (59 FR 50557), we announced a 90-day finding that the petition presented substantial information indicating that the requested action may be warranted. That notice also initiated a status review of the koala. On February 15, 1995 (60 FR 8620), we reopened the comment period on the status review until April 1, 1995. We sent a telegram to the U.S. embassy in Australia, asking that appropriate authorities be notified and asked to comment. We also presented the review directly to numerous concerned organizations and authorities. Of the approximately 400 responses received, the great majority were brief messages in support of listing, but several responses were from persons or organizations providing substantive comments based on firsthand knowledge of the situation.

On September 22, 1998 (63 FR 50547), we proposed the koala as threatened throughout its range, and we sought public comments. We received over 3,000 responses: The vast majority were cards with a printed message endorsing the comments of the International Wildlife Coalition and supporting threatened status for the koala, but personal letters also expressed support for listing the species. We also received letters with substantive comments on the proposal from persons with direct knowledge of koala biology; many of those comments came from persons or groups who had offered opinions and information on earlier notices. We also sought information from scientists on a number of outstanding issues.

### What Were the Comments of Those Who Opposed the Proposed Listing?

All of the Australian Federal and State authorities that commented on the proposal opposed it. They were joined by three other respondents, including two who represented zoological associations in Australia and the United States.

Dr. Colin Griffiths, Director of National Parks and Wildlife, submitted comments for Environment Australia, the agency responsible for koala policy on the national level. He stated that the Australian Government continues to object to our proposal to list the koala as a threatened species under U.S. law. Noting that, under the Endangered Species Protection Act 1992 (ESPA) no trade in koalas or koala products is permitted, Dr. Griffiths said "we have yet to see any explanation of how the listing of the koala in the United States would contribute to koala conservation." The submission also stated that the Endangered Species Scientific Subcommittee established under the ESPA has evaluated nominations of the koala both under "species that are endangered" and "species that are vulnerable." In each instance, the subcommittee concluded that the koala did not meet the criteria for listing at a national level.

We fully understand the view of the Australian Government on the status of a species that is native only within its boundaries, particularly where only an occasional zoo acquisition leaves the country. However, our Endangered Species Act (ESA) is international in scope, and we are compelled by law to evaluate petitions of species beyond U.S. boundaries.

Dr. Griffiths made the point that the Australian Government has taken a number of steps in koala conservation since the listing proposal came to us in 1994. A scientific advisory board has reported to the Minister of Environment that the species is relatively abundant and widespread nationally and not likely to become endangered within the next 25 years. In 1998, the legislation of the Commonwealth and the States protecting koalas was integrated into the National Koala Conservation Strategy. The Strategy was developed by the Australian and New Zealand Environment and Conservation Council and was included with the comments submitted by Environment Australia.

Finally, the submission made the objection raised by several others on the listing proposal: Australians particularly object to a rule in which we classify the species as threatened throughout its range rather than assess whether the koala warrants this classification in each State. While the ESA does not allow us to differentiate vertebrate populations solely on state or provincial boundaries (whereas we can on national boundaries), it does allow us to make these distinctions when significant biological differences exist between the populations. The issue that predominates is whether the three subspecies that have been described for koalas represent distinct vertebrate population segments.

Mr. Allan Holmes, Director of National Parks and Wildlife for the Department of Environment, Heritage and Aboriginal Affairs of South Australia, also made the point that the status of the koala varies regionally, and it is not considered nationally endangered or vulnerable. Koalas in South Australia are protected under the National Parks and Wildlife Act 1972 and are listed as rare under Schedule 9. In providing a history of koala management in the State, Mr. Holmes maintained that the classification as rare is misleading as the koala population in South Australia was at the western edge of its range even prior to European settlement. By 1930, the koala was considered extinct in South Australia.

and, as a consequence, a population was established on Kangaroo Island and subsequently at other sites on the mainland. Koala habitat is patchy in South Australia, largely due to forest fragmentation caused by 150 years of agricultural development. Koalas introduced to these patches have established populations and have frequently exceeded carrying-capacity with consequent damage to food trees. The letter affirmed the commitment of the Government of South Australia to ensuring that koalas are conserved in the State and that they are managed in such a way that will sustain them and their habitat. Mr. Holmes concluded that the current situation in South Australia with local overpopulation and genetic founder effects illustrates that the threats to koalas are different across Australia and that a single classification may not best serve conservation efforts for the species.

Mr. Michael Taylor, Secretary of the Department of Natural Resources and Environment for the State of Victoria, said that the status of the species has continuously improved from the 1920s when it was probably endangered, to its current status as a widespread and common species. The koala is protected wildlife under the provisions of Victoria's Wildlife Act 1975, which protects all indigenous terrestrial vertebrates, and the Flora and Fauna Guarantee Act 1998, which seeks to insure that species not only survive but retain their evolutionary potential in the wild. Under the provisions of that law, any person or group can nominate a species for listing, and it will be assessed by an independent Scientific Advisory Committee. Victoria's submission noted that, while 359 taxa have been nominated, the koala has not been one of them. Moreover, the government of Victoria has subjected all of its native vertebrates to the World Conservation Union criteria (IUCN, 1994), and, while over 200 taxa were listed as threatened at some level, the koala did not meet the criteria.

The submission provides a history of koala management in Victoria, documenting translocations by decade, as well as an assessment of the current distribution of koalas in the State. While densities of koalas vary widely, those that exceed three to four animals per hectare frequently result in overbrowsing. The results provided for 3 sites indicate a density of 1 koala per hectare is not uncommon, and extrapolation to the "broad vegetation types utilized by koala in Victoria" gives a total population estimate of 52,000 animals in the State of Victoria alone.

Mr. Taylor presented the specific actions that Victoria has taken in recent years to protect koalas and their habitat. Victoria's Biodiversity Strategy calls for a reversal in the decline of native vegetation with a goal of no net loss by 2001. The Planning and Environment Act of 1987 includes the objective to assist the protection of biodiversity, and the Land for Wildlife Program provides mechanisms to conserve areas of environmental significance. The view of the Department of Natural Resources and Environment is that Victoria has a strong viable koala population in the wild, and thus listing would only divert attention from the species that are under threat.

Mr. Brian Gilligan, Director General of the New South Wales National Parks and Wildlife Service, wrote that the population there is intermediate in physical size between the larger southern koalas in Victoria and South Australia and the smaller northern koalas in Queensland. The population in New South Wales was decimated by hunting until it was estimated to contain only 1,000 koalas by 1920. Researchers believed the population had recovered to 5,000–10,000 koalas by the 1970s. The koala was listed as vulnerable under the New South Wales Endangered Fauna Act 1991 and more recently has the protection of threatened species and the Threatened Species Conservation (TSC) Act 1995, which replaced the earlier law. Because the koala is an ecological specialist, it is vulnerable to local extinctions. The letter details several steps that New South Wales has taken to help koala recovery in the State. Under the State Environmental Planning Policy 1995, a detailed habitat assessment is required before approving development of greater than 1 hectare in local government areas where koalas are known to exist. As required of any vulnerable species, the TSC Act requires the National Parks and Wildlife Service to prepare a recovery plan within 10 years. Also, the New South Wales government has begun creating forest reserves under the Regional Forest Agreements (RFAs). The State government has reserved 600,000 hectares so far, and, by their assessment, a large proportion of this land is koala habitat.

Mr. Greg Gordon of Queensland National Parks and Wildlife Service qualified his earlier comments in the proposed rule, that koalas could become vulnerable in the future. "I would see this as a long-term possibility only, as a result of continuing land clearing, assuming clearing is unchecked. It is difficult to put a time frame on this but I would think it would be many decades away, e.g. 50–100 years." Gordon wrote that the main problem is that most koala sites have poor habitat protection as they occur on privately managed land, which may be at risk of partial or total clearing at some time in the future. He added that in Queensland conservation measures for private lands are being developed, and more effective habitat protection is likely to be available in the medium term.

Mr. Mark S. Canty submitted a letter opposing the proposal. He contrasted the national system of "Landcare" groups that have been forming in Australia, with the RFAs being set up by the government with the goal of preserving 15 percent of forest types that existed in Australia prior to 1750. Mr. Canty said that the result of these preservation targets has been an increase in areas being cleared by landholders to avert government decrees, and he expressed his concern that listing the koala would have the same negative impact, with landholders not reporting koala sightings for fear of being told how to manage their property. Mr. Canty expressed the view that agriculture and housing developments represent a greater threat to koalas than forestry practices. We fully understand this viewpoint, and we are aware that even the perception of imposed solutions stimulated by those living far from the effected land can have a counterproductive effect. Nothing in this listing in any way limits or directs specific measures in Australia for the benefit of koala conservation, on either the State or the Federal level.

Ms. Christine Hopkins, Executive Director of the Australian Regional Association of Zoological Parks and Aquaria (ARAZPA), provided valuable information related to the koala from the international to the state level. The summary of status and legislation was developed by the Monotreme & Marsupial Taxon Advisory Group. Convener Gary Stator said that the Taxon Advisory Group could see no basis to list the species as endangered, and Ms. Hopkins said the ARAZPA could find no evidence in support of listing the species as threatened.

Senior officials at the American Zoological Association (AZA) have modified the position stated in the previous submission of the AZA. Ms. Kristin Vehrs, Dr. Michael Hutchins, and Mr. Robert Howarth maintain that the data provided fail to meet the listing criteria under the Act, specifically that the species is threatened throughout its entire range. While acknowledging that certain koala populations in New South Wales and Queensland continue to be threatened, studies conducted in

Victoria and South Australia suggest that the koala has begun to reestablish itself there. AZA stated that while some areas may meet the habitat loss criterion for listing, none currently meet the overutilization criterion in this instance. They conclude that no commercial exploitation occurs, and the few koalas going to zoos for research and educational display do so under permits with conditions that are highly restrictive. AZA notes that while habitat loss has been extensive, the Commonwealth and each State have their own management plans to reverse that trend. We concur with the AZA comments that koalas do not face the same magnitude of threats throughout Australia. The criteria for a threatened species, however, is one that is likely to become endangered throughout all or a significant portion of its range.

**What Were the Substantive Comments of Those Who Favored Listing the Koala as Threatened?**

Ms. Valerie Thompson, North American Koala Population Manager for the AZA, expressed support for listing the koala as threatened. She based her view on field expeditions mapping koala habitat in conjunction with the Australia Koala Foundation. She also submitted letters from other AZA member institutions, responses to a packet of information on the listing that she had sent out as an Executive Committee member of the Marsupial and Monotreme Taxon Advisory Group. She concluded the AZA did not have a consensus on the koala listing and included letters from institutions and scientists in which nine favored listing, four opposed, and two abstained. The letters included with Ms. Thompson's submission reflected divergent views of the status of koala within the zoo community in the United States, as was evident from the submissions of the scientists in Australia. To list a species, we must determine it meets the criteria based on information from scientists surveying koalas and their habitat.

Mr. Michael Kennedy, Director of Humane Society International (HSI), reiterated support for the listing of the koala as threatened. He stated that habitat clearance, particularly in the States of New South Wales and Queensland, is the greatest threat to koala survival. HSI reviewed the legislative actions taken since the previous comment period. Nominations were submitted under the national ESPA 1992 to list the koala as "vulnerable" and "endangered" by different conservation groups; both of these nominations were denied, though some of the scientists evaluating the proposals favored them. In New South Wales, where four koala populations were nominated as "endangered" under the New South Wales TSC Act, 1995, HSI noted that only one of the nominations was successful. In 1996, the Australian Government published the first National State of the Environment Australia. The document concluded that the "greatest pressures on biodiversity come from demands on natural resources by increasing populations of humans, their affluence and their technology.* * * Habitat modification, has been and remains, the most significant cause of loss of biodiversity." The HSI letter stated that the Endangered Species Scientific Subcommittee (ESSS) recommended that vegetation clearance be recognized as a key threatening process as nominated by HSI. The Federal Minister for the Environment rejected the ESSS recommendation on legal but not biological grounds.

Ms. Deborah Tarbart, Executive Director of the Australia Koala Foundation (AKF), provided additional information on behalf of the foundation supporting the listing of the koala. The AKF has been actively adding areas to the Koala Habitat Atlas, and three of those areas were included as appendices with the submission. They demonstrate that a small percentage of primary koala habitat remains in particular areas that are associated with koalas. The AKF believes that overpopulation of koalas in some areas of Victoria and South Australia misdirects the debate, as they are atypical populations in isolated habitats.

The AKF submission also included papers on population trends and genetics of koalas presented at the Society for Conservation Biology meeting in Sydney, Australia, in 1998, and submitted for publication in the journal of that society. "Population trends and the conservation debate—issues affecting the conservation of koalas (*Phascolarctos cinereus*) in Australia" (Phillips 1998) provides demographic trends over several decades in three koala populations. Studies use different assessment methods; a covariance analysis shows that any differences in the slope of decline in the three areas are statistically not significantly different. The paper concludes that, because of the uncertainty inherent in population estimates and demographic trends, precautionary principles should be applied in conferring conservation status to species such as the koala.

The AKF appendixes also include an abstract and an unpublished review of koala genetics that have particular pertinence in determining whether State populations can be considered valid subspecies. They suggest that the view of koala subspecies is changing with new molecular data, and that information was important in the later discussion of subspecies as significant vertebrate population segments. The genetics review also provided a better understanding of the chlamydia that affects most koala populations. DNA analysis showed that the chlamydia species infecting koalas most commonly is *Chlamydia pecorum*, which also causes infections in domestic livestock (Glassick et al. 1966).

Ms. Julie Zyzniewski, President of the Koala Council in Queensland, wrote that, while the State and local governments have adopted some measures to stabilize the population in southeast Queensland, habitat destruction in the rest of the State and elsewhere in Australia had worsened. The Koala Council therefore strongly supports listing in the belief that it will provide moral support for community-based organizations such as the Koala Council.

Ms. Donna Hart and Dr. Ron Orenstein of the International Wildlife Coalition, based in the United States and Canada, reiterated their support of the listing. They maintained that the decline in eucalyptus-dominated woodland in southeastern Australia continues, and the policies of the many Australian jurisdictions appear to be aimed at accelerating this decline rather than halting it. As this is not true of all areas, IWC would favor a State-by-State listing.

Dr. Frank N. Carrick of the University of Queensland makes several points in support of the listing proposal. Queensland is the only State where the koala can be "considered to approach a natural condition in terms of number, distributional range and genetic and demographic integrity." The State also has one of the world's highest rates of clearing of native vegetation. Moreover, the riparian or coastal and lower altitude forests favored by koalas are the forests most extensively destroyed and fragmented for agriculture, grazing, intensive forestry, and residential development. The high-density koala population in southeastern Queensland—which Dr. Carrick sees as having a vital role in the survival of the species over evolutionary time—is the area of fastest human population growth in Australia. As for the ability of government regulation to reverse these trends, Dr. Carrick expressed the view that the Queensland Nature Conservation Act has inherent deficiencies that have resulted in the

downgrading of the classification of the koala from "permanently protected" to the "common fauna" category.

We concur that the State with the most robust koala population in Australia also has the population at most serious risk. While we recognize that the Queensland government has enacted a State Planning Policy (SPP1/95) to control land allocation processes that are threatening koala populations, it will take years of monitoring to determine whether the Policy has been effective and the trend has been reversed in Queensland.

Dr. Tony Norton, Royal Melbourne Institute of Technology, commented primarily on the forestry assessments that have been undertaken since the proposed listing. These assessments will serve as a basis for setting new guidelines for land allocation, forest management, and forestry sawlog and woodchip quotas over the next 20 years. Dr. Norton found that none of the assessments that have been completed so far have delivered their intended goals of a world class forest conservation reserve system or world class forest management practices and concludes that the habitat of the koala in the wild is endangered. He therefore reasserted his support for the listing to force Australian governments to meet both national and international commitments from the preservation of the country's biodiversity.

Mr. Robert Bertram of the South East Forests Conservation Council provided thorough documentation of the demise of the koala population in one part of New South Wales. At present 39 percent of the high-quality koala habitat in the area is reserved in National Parks, and resource agreements prevent reducing the intensity of current logging operations in the remainder of the quality habitat. Claiming that the government has demonstrated disregard for the known science and the precautionary principle in making land-use decisions, the Council gave its view that the situation of the koala in the region and across New South Wales on public land is uncertain at best.

Mr. D.J. Schubert writing on behalf of the original petitioners (AFA and FFA) expressed frustration with the delay in publishing the proposed rule from the petition submitted in May 1994. The AFA and FFA contend that conditions have only declined further since their earlier comments and that the koala now merits endangered status throughout its range. They concur with other comments that most of the habitat destruction is the result of timber, agriculture, mining, and development. Most of the clearing of eucalypt forests is for the export woodchip markets. The submission also points out that the Australian Government has redefined the forest to include woodlands, plantations, and other areas not regarded as native forest. The effect has been to increase the amount of land considered forest in Australia from 41 to 157 million hectares (Dovers *et al.* 1996). The AFA–FFA submission documents the development of the RFAs in Victoria, where the process has proceeded faster than in other States, and maintains that the new assessment provides "virtually no benefit" for the koala and its habitat. Given the specificity of the food and habitat requirements of the koala, inclusion of additional areas as RFAs may give an artificially high estimate of the land area that constitutes potential koala habitat.

**Why Should We Consider the Koala, a Species That Is Not Native to the United States and That Is Only Rarely Imported To Be Displayed in Zoos, for Listing Under the ESA?**

This question is one that people asked in letters from the Government of Australia as well as the States within the country. As the koala does not naturally cross national boundaries and is not in legal international commercial trade, why should we take the considerable time to consider the species as threatened?

The ESA is not restricted to species native to the United States, or those subject to international trade. The Act considers national boundaries, but makes that consideration secondary to the concern for the survival of species. The Act obligates us to make a determination in response to a petition.

As for the priority of such foreign species, with so many other important priorities in international wildlife conservation, we have proceeded deliberately with the listing process, sometimes to the dismay of the petitioners. We have found that, during listing consideration, with its requirements for public comment and consideration of those comments in developing a final decision, sometimes important strides have been made by the countries in the conservation measures that have been developed or enforced. In such cases, the ESA provides an important conservation benefit.

**Given That Koalas Occur Over Most of Their Historic Range and Are Overpopulated in Some Areas, How Can the Species Be Considered Threatened?**

While no agreement exists on an estimate of the number of koalas in Australia, most scientists concur that the species is still widespread. Neither the petitioners nor the Australian Nature Conservation Agency (Phillips 1990) attempted to provide a total estimate of current koala numbers in Australia. Other parties have suggested overall numbers ranging from about 40,000 to 400,000, with the Australian Koala Foundation supporting the lower figure. In their comments on the petition, Drs. Martin and Handasyde indicated that there probably are tens of thousands of koalas at each of several study sites in Victoria alone.

As we pointed out in the proposed rule, the actual number of koalas that were present at various times in the past and that may still exist is of much interest and helps to give some perspective but, as for many species, may not be the critical factor in determining whether the species is threatened. A low figure may reflect natural rarity of a population in marginal habitats. A high figure may be misleading if the entire habitat of the involved population faces imminent destruction.

In this instance, a significant amount of the remaining koala habitat will be lost in the near future if the current trend of land clearance is not reversed. As koalas still exist in many of these areas, if land use measures are carried out to preserve the habitat that supports koalas and many other species, robust populations can be maintained. Such land use policies have been proposed in some States.

**Given the Different Laws Under Which They Are Managed, Why Don't We Consider the Koala for Listing on a State-by-State Basis?**

We recognize the objections of the Australian Government, Australian State governments, and others to a blanket listing of the koala throughout its range. In the proposed rule, we stated that, if we received strong biological arguments, we would consider giving separate consideration to particular populations. It should be recognized, however, that koalas cannot be considered separate populations solely because they reside in different State jurisdictions.

Our February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722) establishes that, while international government boundaries with differences in management do qualify as discrete populations, political boundaries within countries do not. We do not specify significant populations solely by State in the United States, and we cannot do this in Australia.

However, three subspecies of koalas are currently recognized based on morphological differences in skins and skulls. The koala in northern Queensland (*Phascolarctos cinereus adustus*) is described as smaller and having a more reddish fur than the animals from New South Wales (*P.c. cinereus*), while the subspecies native to Victoria and South Australia (*P.c. victor*) is larger than the koalas of New South Wales, with a more uniformly brown coat color. The subspecies boundaries have been equated with the State borders, although there are no major geographical barriers separating the States of Queensland, New South Wales and Victoria. Scientists suggest that these differences represent variation along a cline and reflect adaptation to climate differences over the extensive range of the species. (Lee and Martin, 1988). What was necessary in this case was to determine whether these subspecies represent evolutionarily significant units—a geographically discrete set of historical populations (Ryder, 1986) that coincided with state borders.

**Do the Three Koala Subspecies Qualify as Distinct Vertebrate Population Segments?**

Our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722) requires that a population meet the dual criteria of discreteness and significance. In evaluating whether the koala subspecies meet the discreteness criterion, we reviewed a recently published study in which Australian scientists addressed this question (Houlden *et al.* 1999). A recent study of koala mitochondrial DNA from 200 koalas in 16 populations across their range showed that, while there are significant differences between local populations, those differences are not reflected in further differentiation consistent with the current subspecies designations. The authors conclude: "There was no support for a delineation between the *P.c. cinereus* and the *P.c. victor* subspecies. In addition, there is evidence to the contrary for the delineation between the *P.c. adustus* and *P.c. cinereus* at the Queensland /New South Wales border."

This conclusion is supported by recent genetic analyses of captive koalas as well (Takami, 1998). The current subspecies, dividing populations at State borders, do not constitute evolutionarily significant units nor do they meet the criteria for discrete vertebrate population segments.

While using the subspecies taxonomy may have been expedient, given the difference in management between States, we agree with views expressed by the scientists in Australia that "clearly the existing subspecific taxonomic classification of koalas may not adequately reflect actual levels of genetic diversity, and conservation priorities set on the basis of the currently recognized subspecies may be deficient" (Sherwin *et al.* 1998). Therefore, we cannot separate koala subspecies into distinct vertebrate population segments for purposes of listing under the Act.

**What Is the Status of the Koala in Regard to the Five ESA Listing Factors?**

Section 4(a)(1) of the ESA and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the following factors described in section 4(a)(1). These factors and their application to the koala (*Phascolarctos cinereus*) are as follows.

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The known historical range of the koala covered an extensive band of forest and woodland in eastern and central Queensland, eastern New South Wales, most of Victoria, and extreme southeastern South Australia. The government, the petitioners, and independent scientific authorities agree that the primary cause of the decline of the koala is destruction of its habitat. This situation is exacerbated by the species' high degree of specialization. Koalas favor particular species of eucalyptus, and populations tend to be concentrated at certain favorable sites. The reproductive rate is relatively low, the maturity rate is slow, and many of the young must disperse.

With human disruption of suitable eucalyptus forests and woodlands, the koala has disappeared from much of its original range. In designating the koala as "potentially vulnerable," the IUCN/SSC Australasian Marsupial and Monotreme Specialist Group noted that the geographic range of the species had declined by 50 to 90 percent (Kennedy 1992).

A publication of the Australian Nature Conservation Agency (Phillips 1990) contains the following statement: "The expansive forests where koalas once lived * * * have largely gone and those which remain are rapidly disappearing to make way for the needs of human society." The publication cited a 1984 report by the Australian Commonwealth Scientific and Industrial Research Organization (CSIRO) indicating that the total area of medium-to-tall trees in the four States inhabited by the koala is estimated to originally have been just over 1,230,000 square kilometers ($km^2$) [475,000 square miles ($mi^2$)], but that just over half of those forests, 670,000 $km^2$ (259,000 $mi^2$), had been removed or severely modified.

The petitioners and several of those who commented provided details on the continued habitat loss and modification. This problem is caused mainly by commercial logging, clearing for agriculture and urbanization, as well as disease and extensive dieback of the trees on which the koala depends. The problem is not only removal of the large eucalyptus trees used for food and shelter, but also elimination of vegetated dispersal routes, erosion, siltation of water sources, fragmentation through development of road networks, and other factors detrimental to maintenance of viable koala populations. Based on data compiled in the same 1984 CSIRO report cited above, the petitioners calculated the loss of forest during the past 200 years at 43–52 percent in Queensland, 60–80 percent in New South Wales, 59–75 percent in Victoria, and 79–100 percent in South Australia. An additional government report in 1992 estimated that 60 percent of the remaining forests in Australia are composed of eucalyptus, but that only 18 percent of these areas are unmodified by logging.

Subsequent to receipt of the petition, the Australian Department of the Environment, Sport and Territories issued two new pertinent reports (Glanznig 1995; Graetz et al. 1995). These documents indicate that the primary habitat utilized by the koala originally covered as much as 1,400,000 $km^2$ (540,000 $mi^2$), but that about 890,000 $km^2$ (340,000 $mi^2$), or approximately 63 percent, now has been cleared or thinned. Those figures may well be excessive, as the koala was not uniformly distributed throughout the involved region and tended to concentrate in certain favorable areas.

In any case, the new reports support the percentages of forest loss cited above for each of the States involved. Perhaps most significantly, such land clearance is not a phenomenon of the past but is continuing and even intensifying. The estimated annual average amount of land cleared in Queensland, New South Wales, and Victoria from 1983 to 1993 was approximately 4,600 $km^2$ (1,800 $mi^2$). Estimates for some recent years are approximately twice as great. Glanznig

(1995) pointed out that the amount of native vegetation cleared in Australia in 1990 was more than half that cleared in Brazilian Amazonia.

Not all of the clearing in Queensland, New South Wales, and Victoria is in koala habitat, and some of the clearing involves reclearing of secondary growth; nonetheless, a 1993 estimate cited by the petitioners indicates that, if the current rate of deforestation continues, Australia's forests would be eliminated in less than 250 years. Much of the forest loss is associated with the production of woodchips, mainly for exportation to paper mills in Japan. Therefore, we find that the koala is threatened in a significant portion of its range due to the present and threatened destruction, modification, and curtailment of its habitat.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Koala populations were devastated by the commercial fur trade. Populations may have fluctuated considerably through the 19th century in association with such factors as disease and the intensity of aboriginal hunting. It does seem evident, however, that in the early 20th century, the number of koalas in Australia was well into the millions. Such a figure is based on the number of koalas killed for the commercial fur market during that period. In some years, the number of koalas taken may have exceeded 2,000,000, and, as late as 1927, 600,000 to 1,000,000 were killed in Queensland alone. This destruction, possibly along with a *Chlamydia* epidemic (Phillips 1990), may have reduced koala numbers to just a few thousand. Subsequent conservation efforts, termination of the fur trade, and reintroduction apparently led to a partial recovery by the mid-20th century.

Today overutilization is not a problem. Although some animals reportedly are illegally hunted, and a few koalas are exported to zoos for educational purposes, we conclude that overutilization is not a factor threatening the survival of the species.

*C. Disease or Predation*

Experts have been concerned about the effects of the bacterium *Chlamydia*, which is known to occur in most koala populations. This disease-causing organism manifests itself in several ways, but especially through infections of the eyes and urinary tract. It apparently has long been associated with the koala and may have been responsible for devastating epidemics in the late 19th and early 20th centuries (Phillips 1990). Genetics research has shown that at least two species of *Chlamydia* infect koalas (Glassick et al. 1996). *Chlamydia pecorum* causes most of the reproductive tract disease in koalas, and this species also causes infections in domestic livestock (Jackson et al. 1997). The adverse effects of the disease are intensified through the stress caused by habitat loss and fragmentation. *Chlamydia* is widespread in mainland koala populations and evidently was responsible for recent declines at some localities, but it is not claimed to be an immediate threat to the overall survival of the species. In some areas, introduced koala populations that are *Chlamydia*-free show a higher reproductive rate requiring management to avoid overbrowsing of critical tree species. The koala is also subject to various other diseases and, particularly in areas of rapid development, is subject to predation and harassment by domestic dogs and other introduced animals. While disease and predation are exacerbating factors, they would not, in the absence of other factors, cause any koala population to be threatened.

*D. The Inadequacy of Existing Regulatory Mechanisms*

Although State laws generally protect the koala from direct taking and commercial utilization, much of the petitioners' argument is based on a lack of regulatory mechanisms that adequately protect the habitat of the species. Although a significant portion of the koala's remaining habitat is on government land, such ownership does not preclude logging and other modification. Researchers have particular concern that deforestation for the woodchip market is proceeding without proper assessment of environmental impacts. Even if such impacts were taken into account, the petitioners argue the welfare of the koala would not be given adequate attention because the species is not listed pursuant to Australia's ESPA. We can look at the situation of the koala in each State to determine the adequacy of the current regulations.

Though the koalas of Queensland are the smallest in size, the State has the largest koala population, and the most remaining koala habitat of the States. Queensland also has one of the highest rates of clearing of native vegetation. Under the National Forestry Policy, the rate of clearfelling continues to be high on private lands. According to the 1996 assessment of the Australian and New Zealand Environment and Conservation Research Council, the koala population is stable in some areas, thinly scattered in many others, and in steep decline in some coastal areas. A consensus exists that the population overall is declining at different rates depending largely on the degree of development. The situation is particularly critical in southeast Queensland, where urbanization threatens the still substantial koala population. Despite legislation that includes the Nature Conservation Act 1992 and the State Planning Policy 1995, the major threat is poor habitat protection for most of the koala population.

In New South Wales, koalas were once abundant throughout the eastern half of the State and driven to near extirpation by the 1920s. The State government estimates that the population recovered to 5,000–10,000 by the 1970s, with the largest and most secure population in the northwest part of the State. The State government also is concerned that continued habitat fragmentation could lead to local extinctions. For that reason, the koala was listed as a vulnerable species under the NSW Endangered Fauna (Interim Protection) Act, 1991. When that law was replaced by the Threatened Species Conservation Act, 1995, the koala continued to be designated as vulnerable by the independent Scientific Committee created with the new legislation. The New South Wales Scientific Committee recently decided that the Hawks Nest and Tea Gardens koalas meet the criteria of an endangered population.

Koalas are native to the Australia Capital Territory, although they were very rare by 1901. Currently the population is small and likely the descendants of several introductions from Victoria. Almost all of the koalas in Victoria represent the success of reintroduction efforts, as the species was extirpated in the State by the early 1900s, with the exception of three remnant populations (Lewis, 1934). Koalas were introduced to Phillip and French Islands by the 1890s, and it is from translocations of these populations, which began to overcrowd their island habitats, that the present population largely descends.

As reported in the review of previous comments, substantial disagreement exists on the actual numbers of koalas and their densities in some sites where they are abundant. In their submission, the Department of Natural Resources and Environment reports that population censuses indicate that densities of 0.5–1 animal per ha are not uncommon, and they supported that contention with recent data from three sites where over-browsing is occurring. The Department has recently conducted statewide vegetation mapping and

concluded that although 60 percent of koala habitat has been lost since European settlement, 5.2 million ha remain. If there is 1 koala per 100 ha in these habitats, the Department estimates a total population of at least 52,000 koalas.

There has been criticism of this extrapolation approach to koala population estimation, particularly as they assume habitat homogeneity over broad geographic areas. (Phillips, 1998). The AKF submission specifically cites the Strathbogie Ranges in Victoria to illustrate the high degree of uncertainty associated with the koala population estimation. Using an alternative estimation method of modeling population growth, Phillips (1998) gives an estimate of 5,000 for the area, an order magnitude lower than earlier estimates (Martin submitted to USFWS 1995).

We cannot resolve the wide discrepancy in estimates of the koalas in Victoria, and the underlying assumption of the carrying capacity of certain habitat type in the State. We do recognize that a continuous translocation program, while necessary to avoid ecological degradation of some plant communities, is not the best solution. The government of Victoria recognizes this as well and is taking further steps in its Biodiversity Strategy to reverse the decline of native vegetation by 2001. Victoria has managed its koala population to relative stability, albeit through intensive management.

At the time of European settlement, koalas occurred only in southeast South Australia, and by the 1930s they were considered extinct in the State. South Australia's present koala population is primarily in five localities and is the result of introductions from other States in Australia. Because these introductions come from disparate provenances and are relatively recent, the population in South Australia should not be considered a single subspecies. The population in the southeast of the State, the area where there were koalas at the time of European settlement, is the least stable, and additional reintroductions are planned. In contrast, on Kangaroo Island high koala density has led to the sustained overbrowsing on preferred food species. In 1998, 2,500 koalas on Kangaroo Island were sterilized and 850 were relocated to the southeast part of the State.

Land use practices vary enormously in different States, and they are currently undergoing evaluation and change in many jurisdictions. We conclude that the inadequacy of present regulations over a significant portion of the species' range is a factor in designating the koala as threatened.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

The petition and other sources indicate a number of additional problems confronting the koala. Perhaps most important from a long-term perspective is a loss of genetic variation resulting from fragmentation of habitat. Koalas show low levels of variation as measured at the protein and DNA levels. The genetic differentiation of isolated koala populations is becoming apparent, and in combination with high site philopatry and the species response to translocation, greatly increases the likelihood of inbreeding. This problem is further extenuated in populations that were founded from koalas that were maintained in a semi-natural environment on offshore islands. Lack of genetic variability could increase susceptibility to disease and other problems, particularly those resulting from rapidly changing Australian environments. Additional factors such as the increase in wildfires, attacks by domestic dogs, and automobile accidents all pose secondary threats that are the outcome of koala habitat decline.

**What Are the Available Conservation Measures as a Result of This Listing?**

Although habitat loss was a crucial factor in the determination that the koala is threatened, specific critical habitat is not being proposed, as its designation is not applicable to foreign species.

Conservation measures provided to species listed as endangered or threatened under the ESA include recognition, international cooperation, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages conservation measures by Federal, international, and private agencies, groups, and individuals.

Section 7(a) of the Act, as amended, and as implemented by regulations at 50 CFR part 402, requires Federal agencies to evaluate their actions that are to be conducted within the United States or on the high seas with respect to any species that is proposed or listed as endangered or threatened and with respect to its proposed or designated critical habitat (if any). Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service. We are not aware of such actions with respect to the species covered by this proposal, except as may apply to importation permit procedures.

Section 8(a) of the Act authorizes the provision of limited financial assistance for the development and management of programs that the Secretary of the Interior determines to be necessary or useful for the conservation of endangered and threatened species in foreign countries. Sections 8(b) and 8(c) of the Act authorize the Secretary to encourage conservation programs for foreign endangered and threatened species and to provide assistance for such programs in the form of personnel and the training of personnel.

Section 9 of the Act, and implementing regulations found at 50 CFR 17.21 and 17.31, set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any threatened wildlife. It also is illegal to possess, sell, deliver, transport, or ship any such wildlife that has been taken in violation of the Act. Certain exceptions apply to agents of the Service and State conservation agencies.

We may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Permits are available for scientific purposes, to enhance propagation or survival, or for incidental take in connection with otherwise lawful activities. These permits must also be consistent with the purposes and policy of the Act as required by Section 10(d). For threatened species, we may also issue permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

Our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), is to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effects of this listing on proposed or ongoing activities involving the species. Importations into and exportations from the United States, and interstate and

foreign commerce, of koalas (including tissues, parts, and products) from New South Wales and Queensland without a threatened species permit would be prohibited. Koalas removed from the wild or born in captivity prior to the date the species is listed under the Act would be considered "pre-Act" and would not require permits unless they enter commerce. When a specimen is sold or offered for sale, it loses its pre-Act status. Currently, 10 zoological institutions in the United States hold koalas. You can direct questions regarding permit requirements for U.S. activities to the Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203 (1–800–358–2104).

**Listing Priority Guidance**

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (Petitions filed under section 4 of the Act) is the fourth priority. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance.

**National Environmental Policy Act**

We have determined that we do not need to prepare an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**Required Determinations**

This rule does not require collection of information that requires approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This rule does not alter that information collection requirement.

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**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Regulation Promulgation**

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| MAMMALS | | | | | | | |
| * | * | * | * | * | * | * | |
| Koala | *Phascolarctos cinereus.* | Australia | Australia | T | 698 | NA | NA |
| * | * | * | * | * | * | * | |

Dated: April 25, 2000.

**Jamie Rappaport Clark,**

*Director.*

[FR Doc. 00–11507 Filed 5–8–00; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 65, No. 90
Tuesday, May 9, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

**10 CFR Chapter I**

**Revised High-Level Guidelines for Performance-Based Activities**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Request for comments.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is requesting public comment on its proposed revised high-level guidelines for developing a more performance-based regulatory framework. In addition, a process is proposed for implementing these guidelines. An on-line public workshop will be held to discuss the revisions and the proposed process.

**DATES:** The comment period expires June 23, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Our preference is for members of the public to use the on-line workshop on June 8, 2000 as the medium for providing comments.

**ADDRESSES:** Written comments may be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Hand deliver comments to 11555 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

**FOR FURTHER INFORMATION CONTACT:** N. Prasad Kadambi, (301) 415–5896, Internet: npk@nrc.gov of the Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

1. Background
2. On-Line Public Workshop
3. NRC Staff Response to Public Comments
4. Revised High-Level Guidelines
5. Implementation of Revised Guidelines

### 1. Background

In the Staff Requirements Memorandum (SRM) to SECY–99–176, "Plans for Pursuing Performance-Based Initiatives," issued on September 13, 1999, the Commission directed the staff to develop high-level guidelines to identify and assess the viability of candidate performance-based activities. In response, the staff developed proposed guidelines which were published in the **Federal Register** on January 24, 2000 (65 FR 3615). Comments from stakeholders were discussed at a public workshop held on March 1, 2000, and also obtained through the submission of letters. This FRN addresses the staff's response to those comments.

### 2. On-Line Public Workshop

The NRC will hold an on-line public workshop on June 8, 2000, for the purpose of soliciting stakeholder reaction to the staff's response to comments offered relative to the high level guidelines published in 65 FR 3615 and the resulting changes to the guidelines. In addition, this workshop is being offered to provide a second opportunity for comment from members of the public who were unable to attend the first workshop held on March 1, 2000.

This workshop will be conducted over the internet. Stakeholders will be able to log onto the NRC's "Rulemaking Forum" website and offer comments at any time but preferably on June 8, 2000. The concept includes interaction with cognizant staff over the period of the workshop. All relevant documents, including comments submitted electronically by others, will be available at this site. In recognition of the different time zones where stakeholders may be located, electronic comments submitted after normal NRC business hours will be posted on June 9, 2000. Effective June 1, 2000, the public is invited to check the NRC's website at: *http://ruleforum.llnl.gov/cgi-bin/rulemake?source=PBA_RFC* to obtain detailed instructions on how to participate in the on-line workshop.

Because some members of the public may not have ready access to the internet, an alternate method of communication will also be available during normal business hours on June 8, 2000. Toll free calls can be made to 1–800–368–5642. Callers may request Dr. N. Prasad Kadambi at 415–5896, or Dr. Sidney Feld at 415–6193 to take note of their comments.

### 3. NRC Staff Response to Public Comments

The **Federal Register** Notice (FRN), 65 FR 3615 on January 24, 2000, requested comments on the proposed high-level guidelines with particular interest in a set of specific questions. Comments were provided at the March 1, 2000 workshop and in writing. The workshop was conducted as a facilitated discussion among stakeholders representing a wide variety of interests, including NRC staff representatives from various program offices. A transcription of the workshop is available on the internet under the "Meeting Transcripts" link in the NRC external website.

In the January 24, 2000 FRN, the staff specifically requested comments on a number of key questions concerning the proposed guidelines. The NRC's response to comments has been structured within the framework of the questions published in the January FRN. Comments not associated directly with any of the questions are shown under the heading "Other Comments'.

The NRC's response to the comments and any indication as to how the guidelines have changed in response to the comments follows:

*A. Clarity and Specificity of the Guidelines*

1. Are the proposed guidelines appropriate and clear?

Diverse opinions were expressed regarding appropriateness and clarity of the guidelines with a strong indication that those opposed to the performance-based approach provided unfavorable responses and those supporting the approach provided favorable responses. Because the Commission has directed that performance-based initiatives be pursued, no revisions have been made in the main guidelines themselves. Revisions involving the amplifying language have been incorporated, as noted below.

2. Are there additional guidelines that would improve clarity and specificity?

One comment proposed a guideline to increase safety and another comment proposed a guideline to prevent incentives to "perverse" outcomes. As discussed below, a framework and process to increase safety by adding to

regulatory requirements (subject to the Backfit Rule) exists and it would not be efficient to duplicate this through additional guidelines. No changes were made in the main guidelines because safety and beneficial outcomes are generally desirable goals which form parts of normal staff considerations. However, the amplifying guidelines under "Maintain Safety" have been modified to emphasize that safety considerations will play the primary role in NRC's assessments. Since the Commission addressed the matter of encouraging and rewarding improved outcomes in the White Paper (SRM to SECY–98–144, "White Paper on Risk-Informed and Performance-Based Regulation") an amplifying guideline to this effect has been added. This amplifying guideline under overall net benefit generated a comment indicating a misunderstanding that cost would be given a greater emphasis than safety. A revision has been made regarding the considerations related to a simplified net benefit test.

3. How does the "high-level" nature of the guidelines affect the clarity and specificity of the guidelines?

The comments provided did not indicate any need to change any of the guidelines due to this factor. One commenter specifically endorsed the "high-level" approach to the guidelines, while also suggesting a graded approach incorporating a minimum acceptable risk. The staff interpreted "minimum acceptable risk" to mean a level of risk consistent with adequate protection considerations. The NRC agrees that a graded approach is appropriate for regulatory changes above and beyond adequate protection. The staff maintains that the guidelines, as currently formulated, allow for this; thus, no changes were made to address this comment.

*B. Implementation of the Guidelines*

1. What guidelines, if any, are mandatory for an activity to qualify as a performance-based initiative?

No mandatory guidelines were identified.

2. What is the best way to implement these guidelines?

An issue of considerable interest was whether a performance-based approach should be voluntary or not. Certain commenters believed that voluntary changes negatively affect the NRC's inspection and enforcement role whereas others maintained that changes must be voluntary to ensure flexibility on the part of licensees. It is anticipated that voluntary implementation will often be proposed, and where mandatory implementation is proposed, such a change would be subject to the Backfit Rule.

3. How should the Backfit Rule apply to the implementation of performance-based approaches?

Most commenters indicated that reliance on a performance-based approach would have no bearing on whether or not the Backfit Rule applied. The NRC concurs that increased reliance on a performance-based approach poses no unique considerations relative to the Backfit Rule. One commenter expressed the view that the Backfit Rule should apply to reductions in regulatory burden. This comment goes well beyond the scope of these guidelines as currently envisaged.

4. Should these guidelines be applied to all types of activity, *e.g.* should they be applied to petitions for rulemaking?

To the extent that commenters favored application of the guidelines, they also supported application to all activities directed at improving the effectiveness of regulations. However, the staff maintains that if the activity does not possess the necessary attributes to support identification as a performance-based approach, it cannot be considered a candidate. It is in this context that one commenter acknowledged that it may not be appropriate for some regulations, such as the Fitness for Duty Rule. It should be noted that the guidelines would be applied to NRC's determinations in responding to and resolving petitions for rulemaking.

5. Should these guidelines only be applied to new regulatory initiatives?

Although some comments preferred widespread implementation, NRC currently plans to only implement the guidelines for new initiatives primarily because of NRC resource constraints.

6. Will these guidelines be effective in determining whether we can make a regulatory initiative more performance-based?

In general, to the extent that any comments were offered in this regard, the response was in the affirmative.

*C. Establishment of Objective Performance Criteria*

1. In moving to performance-based requirements, should the current level of conservatism be maintained or should introduction of more realism be attempted?

Commenters expressed the view that the appropriate level of conservatism depends on the analysis methodology and the applicable assumptions. Defense-in-depth and uncertainty factors also need to be considered. One commenter stated that it should not be assumed that the level of defense-in-depth remain the same in a performance-based approach. In response to these comments, amplifying guidelines have been added under the main guideline of "Increase effectiveness, efficiency and realism of the NRC activities and decision-making".

2. What level of conservatism (safety margin) needs to be built into a performance criterion to avoid facing an immediate safety concern if the criterion is not met?

The comments and response from (C.1) above are also applicable here.

3. Recognizing that performance criteria can be set at different levels in a hierarchy (*e.g.*, component, train, system, release, dose), on what basis is an appropriate level in the hierarchy selected for setting performance-based requirements, and what is the appropriate level of conservatism for each tier in the hierarchy?

Oral and written comments expressed the view that performance criteria are best set at the function or system level. Some amplifying guidelines have been added under the main guideline of "Increase effectiveness, efficiency and realism of the NRC activities and decision-making".

4. Who would be responsible for proposing and justifying the acceptance limits and adequacy of objective criteria?

A commenter suggested that the proponent of a change should bear the responsibility for justifying the criteria and the adequacy of acceptance limits. Some amplifying guidelines have been added under the main guideline of "The performance-based approach can be incorporated into the regulatory framework".

5. What are examples of performance-based objectives that are not amenable to risk analyses such as PRA or Integrated Safety Assessment?

Examples offered were cross-cutting issues, including fitness-for-duty, safety conscious work environment and management effectiveness. No changes were made to the guidelines in response to these comments.

6. In the context of risk-informed regulation, to what extent should performance criteria account for potential risk from beyond-design-basis accidents (*i.e.*, severe accidents)?

A commenter stated that risk-informed regulation reaches beyond design basis events by its nature. Performance criteria would not normally go beyond the design basis. Exceptions, if they occur, are most likely if the design is found not to provide the expected safety margin. If exceptions arise, the generic issue

process followed by the staff is capable of addressing the special circumstances. As currently constructed, these considerations can be readily handled in the guidelines, and no changes in the guidelines were made.

*D. Identification and Use of Measurable (or Calculable) Parameters*

1. How and by whom are performance parameters to be determined?

Comments were presented expressing concern that the NRC would be entirely dependent on licensees' own reports regarding performance. One commenter has stated that information collection at nuclear facilities may require changes to better measure performance. In the NRC's view, performance parameters are typically determined jointly by NRC and licensees, with the NRC having final authority in the determination. Further, the NRC would always maintain vigilance over performance observations. If information collection requirements need to be changed to implement a performance-based approach, such proposals will be addressed in the context of the specific regulatory requirement under consideration. No changes were made in the guidelines on account of this consideration.

2. How do you decide what a relevant performance parameter is?

Some commenters expressed reservations with the use of performance parameters such as core damage frequency as a calculable parameter. Other comments cautioned against drawing broader conclusions (such as overall level of safety or lack thereof) from performance measures than may be justified. As these considerations are context specific, and the merits of specific performance parameters are explicitly considered by the guidelines, no changes are proposed in the guidelines.

3. How much uncertainty can be tolerated in the measurable or calculated parameters?

Comments indicate a strong connection between consideration of uncertainty and the level of conservatism in establishing the performance parameters and acceptance criteria. Changes made in response to (C.1) above are also applicable to this issue.

*E. Pilot Projects*

1. Would undertaking pilot projects in the reactor, materials, and waste arenas provide beneficial experience before finalizing the guidelines?

Some commenters stated that pilot projects would be useful, and others stated that they were not needed. One commenter suggested that it was important to learn appropriate lessons from implementation of the maintenance rule. Another commented that Option B of 10 CFR 50, Appendix J has already appropriately demonstrated the favorable results from a performance-based regulation. The staff plans to consider an exercise to apply the guidelines to specific regulations as part of the implementation process.

2. What should be the relationship between any such pilot projects and those being implemented to risk-inform the regulations?

Commenters generally stated that the ongoing pilot projects related to risk-informing the regulations need not be perturbed by including consideration of the guidelines, but appropriate coordination should be maintained. Any screening of regulations should be done one time as opposed to subjecting each regulation to various screenings at different times under different processes. The staff proposes to integrate the interfaces between performance-based and risk-informed activities so as to help ensure a more integrated approach and avoid duplication.

*F. Other Comments*

1. Eliminate all high-level guidelines used to evaluate opportunities for regulatory improvement (II. *Guidelines to Assess Performance-Based Regulatory Improvement*):

One commenter at the public workshop suggested that the set of guidelines to assess performance-based regulatory improvement be eliminated. The staff continues to believe that this set of guidelines constitutes an integral part of a structure and logic to consider explicitly the values important to any regulatory improvement program. No changes were made based on this comment.

2. Inclusion of the Advisory Committee on Medical Uses of Isotopes (ACMUI):

One commenter at the public workshop suggested that ACMUI should be included among the advisory committees which would have an opportunity to review the high-level guidelines. ACMUI has been included with ACRS and ACNW as committees whose feedback will be sought before the guidelines are submitted to the Commission.

3. Inclusion of perspective from the NRC regions in the work of the Performance-Based Regulations Working Group (PBRWG):

One commenter at the public workshop suggested that a representative from the NRC regional offices should be included in the PBRWG, which will play an instrumental role in developing and applying the guidelines. The NRC staff accepted the merit of this suggestion and regional representation has been added to the PBRWG.

4. Inspection and enforcement considerations:

An NRC staff member provided a comment that inspection and enforcement aspects should be front-end considerations. Another commenter has suggested that performance above a threshold should result in reduced NRC scrutiny. An amplifying guideline has been added under the guideline "The performance-based approach can be incorporated into the regulatory framework" to address this comment.

5. Consideration of a significantly different regulatory paradigm:

One commenter offered suggestions to significantly modify the regulatory framework so that any changes undertaken by the NRC would have as a pre-requisite an improvement in the level of safety. The proposals presented would have wide ranging impacts, and consideration of performance-based initiatives would be only tangentially related to most of them. No specific changes to the guidelines were made in consideration of these comments.

**4. Revised High-Level Guidelines**

The following proposed revised guidelines are to be applied in the reactor, materials, and waste arenas. The nature of the regulated activity would determine which guidelines apply and the extent of the application.

*I. Guidelines To Assess Viability*

The NRC will apply the following guidelines (which are based on the four attributes in the White Paper) to assess whether a more performance-based approach is viable for any given new regulatory initiative. This assessment would be applied on a case-by-case basis and would be based on an integrated consideration of the individual guidelines. The guidelines are listed below:

A. Measurable (or calculable) parameters to monitor acceptable plant and licensee performance exist or can be developed.

a. Directly measured parameter related to safety objective is preferred;

b. A calculated parameter may also be acceptable; if it is related to the safety objective of the regulatory activity.

c. Parameters which licensees can readily access, or are currently accessing, in real time are preferred.

d. Parameters monitored periodically to address postulated or design basis conditions may also be acceptable.

B. Objective criteria to assess performance exist or can be developed.

a. Objective criteria are established based on risk insights, deterministic analyses and/or performance history.

C. Licensees would have flexibility in meeting the established performance criteria when a performance-based approach is adopted.

a. Programs and processes used to achieve the established performance criteria would be at the licensee's discretion.

b. A consideration in incorporating flexibility to meet established performance criteria will be to encourage and reward improved outcomes.

D. A framework exists or can be developed such that performance criteria, if not met, will not result in an immediate safety concern.

a. A sufficient safety margin exists.

b. Time is available for taking corrective action to avoid the safety concern.

c. The licensee is capable of detecting and correcting performance degradation.

*II. Guidelines To Assess Performance-Based Regulatory Improvement*

If a more performance-based approach is deemed to be viable based on the guidelines in (I. Guidelines to Assess Viability) above, then the regulatory activity would be evaluated against the following set of guidelines to determine whether, on balance, after an integrated consideration of these guidelines, there are opportunities for regulatory improvement:

A. Maintain safety, protect the environment and the common defense and security.

a. Safety considerations play a primary role in assessing any improvement arising from the use of performance-based approaches.

b. The level of conservatism and uncertainty in the supporting analyses would be assessed to ensure adequate safety margins.

B. Increase public confidence.

a. An assessment would be made to determine if the emphasis on results and objective criteria (characteristics of a performance-based approach) can increase public confidence.

C. Increase effectiveness, efficiency and realism of the NRC activities and decision-making.

a. An assessment would be made of the level of conservatism existing in the currently applicable regulatory requirements considering analysis methodology and the applicable assumptions. Any proposal to increase or decrease conservatism would take into account uncertainty factors and defense-in-depth relative to the scenario under consideration.

b. An assessment would be made of the performance criteria and the level in the performance hierarchy where they have been set. In general, performance criteria should be set at a level commensurate with the function being performed. In most cases, performance criteria would be expected to be set at the system level or higher.

D. Reduce unnecessary regulatory burden.

E. A reasonable test shows an overall net benefit results from moving to a performance-based approach.

a. A reasonable test would begin with a qualitative approach to evaluate whether there is merit in changing the existing regulatory framework. When this question is approached from the perspective of existing practices in a mature industry, stakeholder support for change may need to be obtained.

b. Unless imposition of a safety improvement or other societal outcome is contemplated, expending resources for a change in regulatory practice would be justified in most cases only if NRC or licensee operations benefit from such a change. The primary source of initial information and feedback regarding potential benefits to licensees would be the licensees themselves.

c. A simplified definition of the overall net benefit (such as net reduction in worker radiation exposure) may be appropriate for weighing the immediate implications of a proposed change.

F. The performance-based approach can be incorporated into the regulatory framework.

a. The regulatory framework may include the regulation in the Code of Federal Regulations, the associated Regulatory Guide, NUREG, Standard Review Plan, Technical Specification, and/or inspection guidance.

b. A feasible performance-based approach would be one which can be directed specifically at changing one, some, or all of these components.

c. The proponent of the change to the components of the regulatory framework would have the responsibility to provide sufficient justification for the proposed change; all stakeholders would have the opportunity to provide feedback on the proposal, typically in a public meeting.

d. Inspection and enforcement considerations would be addressed during the formulation of regulatory changes rather than afterwards. Such considerations could include reduced NRC scrutiny if performance so warrants.

G. The performance-based approach would accommodate new technology.

a. The incentive to consider a performance-based approach may arise from development of new technologies as well as difficulty stemming from technological changes in finding spare components and parts.

b. Advanced technologies may provide more economical solutions to a regulatory issue, justifying consideration of a performance-based approach.

*III. Guidelines To Assure Consistency With Other Regulatory Principles*

A. A proposed change to a more performance-based approach is consistent and coherent with other overriding goals, principles and approaches involving the NRC's regulatory process.

a. The main sources of these principles are the Principles of Good Regulation, the Probabilistic Risk Assessment (PRA) Policy Statement, the Regulatory Guide 1.174, "An Approach for Using PRA in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," and the NRC's Strategic Plan.

b. Consistent with the high-level at which the guidance described above has been articulated, specific factors which need to be addressed in each case (such as defense in depth and treatment of uncertainties) would depend on the particular regulatory issues involved.

**5. Implementation of Revised Guidelines**

Implementation of the guidelines could have an agency-wide impact. Hence, implementing the revised guidelines requires that the staff obtain Commission approval for the guidelines themselves and the process for implementing them. Additionally, the NRC has been directed by Congress to revise existing outdated or paperwork-oriented regulations to make them performance-based. Subject to any Commission guidance received, the staff plans to apply the guidelines proposed in this FRN relative to meeting this Congressional mandate.

A two-step process is proposed to implement the above guidelines. Each step is addressed as follows:

*A. Step 1: Obtain Commission Approval of Guidelines*

Subsequent to the public workshop on June 8, 2000, the NRC staff will make presentations or provide information to the ACRS, ACNW and ACMUI so as to obtain their advice on the above

guidelines. The staff will propose sample case studies to exercise the guidelines. Included in the presentations will be a discussion of stakeholder comments and responses. The feedback from the advisory committees will be incorporated into a Commission paper, as appropriate, and the paper will be submitted to the Commission by August 21, 2000.

*B. Step 2: Implement the Finalized Guidelines into the Regulatory Improvement Process*

The guidelines, which will be used to identify and assess performance-based activities, will only be applied to new initiatives. The basic process would be institutionalized by incorporating the elements into internal NRC procedures. Regulatory requirements that are overly prescriptive may be proposed for improvement by members of the NRC staff, industry, or the public (as a petition for rulemaking, for example). More widespread acceptance of the guidelines would be likely if the guidelines were also used by industry to increase the level of performance-based activities. For example, the guidelines could be adopted for use by standards developing organizations or industry working groups as they develop proposals for consideration by NRC. NRC review of such proposals for incorporation into the regulatory framework would then be considerably more streamlined.

The guidelines would serve as one of the tools available to the staff to assess whether a more performance-based approach is appropriate for a given regulatory initiative. If the evaluation shows that safety improvements are justified, relevant requirements associated with the proposed change (*e.g.* compliance with the Backfit Rule, preparation of a regulatory analysis, etc.) would be undertaken. If the evaluation shows that unnecessary regulatory burden can be reduced, the proposed changes to requirements will most likely be voluntary. In either case, stakeholder input would be obtained in a timely manner.

Dated at Rockville, Maryland, this 3rd day of May, 2000.

**Charles E. Rossi,**

*Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.*

[FR Doc. 00–11535 Filed 5–8–00; 8:45 am]

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## FARM CREDIT ADMINISTRATION

**12 CFR Part 611**

**RIN 3052–AC00**

## Organization; Stockholder Vote on Like Lending Authority

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** We propose new regulations to carry out territorial consent requirements of the Farm Credit Act of 1971, as amended (Act).[1] Section 5.17 of the Act allows Farm Credit System (FCS or System) stockholders in certain areas of the country to vote on charters involving like lending authorities. The charter amendments would provide eligible customers the opportunity to obtain lending services from more than one association.

**DATES:** Please send your comments to us by June 8, 2000.

**ADDRESSES:** You may send comments by electronic mail to "reg-comm@fca.gov" or through the Pending Regulations section of our Web site at "www.fca.gov." You may also send comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or fax them to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

Eric Howard, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Joy Strickland, Senior Counsel, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:**

### I. Objectives

We are committed to removing territorial restrictions that prevent customers of the FCS from choosing their System lender. Recently, we announced that direct lender associations may apply for national (also referred to as nationwide) charters. In order to facilitate national charters, stockholder votes must be conducted by certain associations in Alabama, Louisiana, Mississippi, and New Mexico. Our objectives for the proposed rule are to:

- Implement the stockholder approvals required by statute; and
- Ensure stockholders are adequately informed and votes are conducted quickly and fairly.

### II. Background

*A. FCA Initiative*

On July 14, 1998, the Farm Credit Administration (FCA or Agency) Board issued a Philosophy Statement on Competition (Philosophy Statement). The Philosophy Statement described the FCA Board's framework for the Agency's chartering, policy development, and regulatory activities involving System corporate structures and related statutory authorities. The FCA Board believes removing the geographical constraints of System entities will promote greater efficiency, improve customer service, and ensure that they continue to meet the current and future needs of rural America. To carry out our philosophy, we researched strategies that conform to the Act and increase opportunities for rural and agricultural borrowers. Based on this analysis, our first priority is to remove geographic barriers by granting national charters to FCS direct lender associations.

We will accept applications from institutions for charter amendments. To facilitate the application process, we will be furnishing additional guidance to FCS institutions in the near future.

We note that the proposed voting requirements only apply to the geographic areas specifically referenced in the Farm Credit Banks and Associations Safety and Soundness Act of 1992 (1992 amendments).[2] Thus, they do not apply to nationwide charter requests outside of the areas covered by the 1992 amendments or any other FCA chartering actions not related to national charters.

*B. Statutory Requirements for Stockholder Votes*

Before we can grant full nationwide charters, we must fulfill two requirements of the Act affecting certain institutions in four states. In the 1992 amendments, Congress required stockholder voting on competitive charters in these areas.

The 1992 amendments require association stockholder votes in the geographic area in which the Federal Intermediate Credit Bank of Jackson or its successor (AgFirst Farm Credit Bank) is chartered to provide short-and

[1] Pub. L. 92–181, 85 Stat. 583 (Dec. 10, 1971).

[2] Pub. L. 102–552, 106 Stat. 4102 (Oct. 28, 1992).

intermediate-term credit and the Farm Credit Bank of Texas is chartered to provide long-term credit. The 1992 amendments also require the consent of stockholders of three production credit associations (PCAs) in New Mexico that were reassigned pursuant to section 433 of the Agricultural Credit Act of 1987. [3]

*C. Statutory Requirements for Bank and Certain New Mexico Association Boards of Directors Votes*

In addition to a stockholder vote by each of the covered associations, the 1992 amendments require the approval of the board of directors of their affiliated banks. Thus, the boards of directors of the Farm Credit Bank of Texas, AgFirst Farm Credit Bank, and the Farm Credit Bank of Wichita must vote to approve the issuance of competitive charters or charter amendments in certain areas. The 1992 amendments also require the approval of the board of directors of the New Mexico PCAs that were reassigned.

**III. The Proposed Regulations**

We are proposing regulations to carry out the statutory requirement for stockholder approvals. In addition, we believe the stockholders of the covered associations should have the opportunity to express their views on the issue of other institutions being able to lend in these geographic areas.

We have two primary objectives in setting up this approval process. The FCA Board believes an expedited process will be least burdensome to the stockholders and institutions involved and will best promote the implementation of the Philosophy Statement. We chose not to propose an alternative for implementing the statutory requirement. This alternative would have required the stockholders in the geographic areas covered by the 1992 amendments to vote on each nationwide charter application we receive. We believe that requiring multiple votes would be both costly and disruptive to the stockholders of the associations covered by the 1992 amendments.

Our other primary objective is to ensure that the process provides stockholders with full and fair disclosure on the issue of charter amendments affecting the territory of associations where they do business. The discussion that follows explains each section of the proposal.

*A. Section 611.1150—Definitions Used in the Proposed Regulations*

We provide definitions of four key terms in the proposed regulations. As part of our goal to use plain language in our regulations, we use the word "you" in the text of the proposed rule. We also use the term "covered association," which means the associations subject to section 5.17(a)(2)(B), (a)(2)(C), (a)(13), and (a)(14), specifically: First South Production Credit Association; Louisiana Federal Land Bank Association, FLCA; Federal Land Bank Association of North Alabama, FLCA; Federal Land Bank Association of South Alabama, FLCA; Federal Land Bank Association of North Mississippi, FLCA; FLBA of South Mississippi; Production Credit Association of Southern New Mexico; Production Credit Association of Eastern New Mexico; and the Production Credit Association of New Mexico.

We define the term "days" to mean calendar days unless otherwise specified. We also define "we" or "us" to mean the FCA.

*B. Section 611.1151—What Stockholders Must Decide*

The proposed rule requires the covered associations to call a vote of their stockholders to decide the following question:

Do you want a choice to borrow from other Farm Credit System associations?

If stockholders vote to approve the question, they will have the opportunity to borrow from other System associations that will be chartered to lend in their current association's lending area. They will also continue to have the opportunity to borrow from their current association. Voting against the question means other System associations will not be chartered to lend in their current association's lending area. However, the stockholders will be able to continue to borrow from their current association.

The FCA has several options for carrying out the requirements of section 5.17. For example, the stockholders in the areas covered by the 1992 amendments could vote on each request for a nationwide charter in those areas. There are currently 165 direct lender associations within the System. We expect requests for nationwide charters from most of these associations. As a result, we believe separate stockholder votes for each request for nationwide charters would be expensive and disruptive to the individual stockholders and the covered associations. To reduce this burden, we are proposing a streamlined process for obtaining stockholder approval on this issue. Thus, the stockholders of each covered association will vote on whether *any* other Farm Credit association should be given a charter or charter amendment that would allow it to exercise lending authority in the territory of the covered association.

*C. Section 611.1152—Bank and Certain New Mexico Association Boards of Directors Voting Requirements*

The proposed regulations implement the approval requirements for bank and certain New Mexico association boards of directors' votes. The approval requirements differ depending on the geographic area of the charter amendment. For the former Jackson district, the 1992 amendments require the approval of the board of directors of the Farm Credit Bank of Texas and AgFirst Farm Credit Bank.[4]

For the reassignments under section 433 of the Act, the 1992 amendments require the approval of the board of directors of the Farm Credit Bank of Texas and the Farm Credit Bank of Wichita.[5] In addition to the stockholders' and bank boards of directors' votes, the New Mexico associations that were reassigned pursuant to section 433 must conduct a vote of their boards of directors.

The banks' and certain New Mexico associations' boards of directors will vote on the following question:

Should the Farm Credit Administration issue a charter or charter amendment that would allow any Farm Credit System association to exercise lending authority in the territory(ies) now served by [list affected association(s)]?

Our proposal requires these votes to be completed and the results reported to the FCA on the first business day following notice by an independent third party as described in section F below.

*D. Section 611.1153—Contents of the Information Statement*

The proposed rule identifies the information necessary to ensure stockholders receive complete disclosure to enable them to make an informed decision when voting on the stockholder question. The Information Statement must contain the following:

- Notice of Meeting;
- Proxy Ballot and Instructions;

[3] Pub. L. 100–233, 101 Stat. 1568 (Jan. 6, 1988).

[4] Under section 5.17(a)(20(b), for each of the covered associations, only its affiliated bank board of directors will vote on the question in proposed § 611.1152(c).

[5] Under section 5.17(a)(13) and (14), for each of the covered associations, both the Farm Credit Bank of Texas and the Farm Credit Bank of Wichita will vote on the question in proposed § 611.1152(c).

- Brief Summary of the Question;
- Discussion of the Advantages and Disadvantages of Approving the Question;
- Association Board Statement or Recommendation (Optional); and,
- Statement by the Farm Credit Administration Board.

The Notice of Meeting (Notice) must give the date, time, and place of the stockholders' meeting. The Notice must include the question that will be considered and voted on by the stockholders. It must identify the requirements for stockholder approval, pursuant to proposed § 611.1157. It must also contain a reference to the proxy, proxy authorization, voting instructions included in the Information Statement, and the deadline for receipt of the proxy at the headquarters office. The Information Statement must be provided to all equity holders, including preferred stockholders, participation certificate holders, and others not eligible to vote. Although these non-voting equity holders cannot vote on the question, we are proposing to provide them with the Information Statement to keep them informed of the changes affecting their Association.

The proposed rule contains customary instructions for voting by proxy. The proxy ballot and instructions must allow stockholders to select someone other than a director to serve as proxy, provided that this person is a voting stockholder and will attend the meeting. The proxy ballot and instructions must point out that a stockholder may cancel the proxy at any time prior to balloting at the stockholders' meeting. The documents must provide a space for the stockholder to sign and date the proxy authorization. The proxy ballot must be separate from the proxy authorization to ensure the stockholder's rights to a secret ballot as required by section 4.20 of the Act. Therefore, you must ensure that there are no signatures on the ballot.

The Information Statement must include a brief summary of the question. The summary must provide background information on the FCA Board's Philosophy Statement. The summary must also include information on the territory currently served by the covered association. Finally, the summary must describe the question approval process.

The Information Statement must also include a discussion of the advantages and disadvantages of approving the question to the stockholders of the covered association. The discussion must present a balanced view of the advantages and disadvantages and provide justification for all statements that project future financial results, such as changes in operating costs, stock retirements, interest rates, earnings, and services available to customers.[6]

The boards of directors of the covered associations may include an optional statement on the question. This statement may include the directors' views and recommendation on the question and the reasons for the recommendation.

To further streamline the process, the FCA is including a model Information Statement with this proposal. We note, however, that although most of the requirements in the proposed rule are standard in stockholder disclosures, one item is unique. The FCA Board believes the disclosure should include information on its philosophy on competition to ensure that the stockholders can make an informed vote.

*E. Section 611.1154—Timeframes for Implementing the Regulations*

We are proposing a streamlined, fast-track process for implementing the rule. As previously discussed, we expect many requests for nationwide charters in the near future. The FCA Board believes the timely and efficient implementation of the Philosophy Statement and nationwide charters has the potential for lowering the cost of credit and improving service for customers. Thus, we are proposing a specific timeline for obtaining stockholder decisions on the question.

The first step in the timeline is preparing the Information Statement. The covered associations must prepare and send the Information Statement to the FCA within 20 days of the effective date of this rule. We are requiring submission by facsimile, electronic transmission, overnight mail, or similar expedited delivery method so we can review and approve the statement in the most efficient manner. In addition, FCA's model Information Statement should shorten the time necessary for the associations to prepare the document. We also note that after the FCA Board adopts the final regulations, we send them to Congress for a 30-day review period before they are effective. As a result, the associations will have at least 50 days after we adopt the rule to submit the Information Statement. We are proposing a 10-business day review period for the FCA, but plan to act on the Information Statements as quickly as possible. To ensure that the Information Statement provides accurate and complete information to stockholders on the question, we may change the Information Statement or require the association to change it.

When the associations receive FCA approval, they will have 14 days to duplicate and mail the statement. The proposal requires that the association hold a stockholder meeting 16 days after distribution of the statement. This includes the standard 5-day mailing time and 10 days for stockholder review. As a result, the stockholder meeting will take place on the first business day following the 10-day stockholder review period.

*F. Sections 611.1155 and 611.1156—Vote Tabulation and Notification*

The proposed regulations require that the stockholder votes be tabulated by an independent third party within 2 business days of the meeting. Use of an independent third party is a standard measure to ensure accuracy and objectivity. The independent third party must notify the association, the appropriate banks, and the FCA of the results of the vote on the same day they are tabulated.[7] Within 10 days, the independent third party will provide us a certified copy of the stockholders' vote on the question.

*G. Sections 611.1157, 611.1158, 611.1159 and 611.1160—Miscellaneous Issues*

For all the required votes, the proposed regulations incorporate the standard condition for approval or disapproval of the question by a majority of those stockholders and board members voting, at duly authorized meetings, according to the bylaws of the institution.

The proposal also requires the associations to notify the stockholders of the results of the votes referenced in §§ 611.1151 and 611.1152 within 10 days of the stockholder meeting. In order for the associations to do this, we are requiring the banks' boards of directors to notify the associations of their votes within 2 business days.

The proposed regulations contain the following prohibition: No director, officer, employee, or agent of a bank or an association may make any representation that appears to be a statement or recommendation of the FCA on the merits of the question. The FCA's position will be included in the Information Statement as required in proposed § 611.1153(a)(6).

[6] Any financial projections must conform to the guidance provided in Bookletter BL–007 entitled "Disclosure of Financial Forecasts" dated March 2, 1990. Partial forecasts or projected information will be subject to the evaluative criteria set forth in this Bookletter.

[7] When the association contracts with an independent third party, the association must instruct it as to which bank(s) must be notified of the results of the stockholder vote.

Finally, in the event the stockholders' and boards of directors' votes identified in proposed §§ 611.1151 and 611.1152, are not conducted, the proposed regulations provide that FCA will conduct the voting process.

**List of Subjects in 12 CFR Part 611**

Accounting, Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, we propose to amend part 611 of chapter VI, title 12 of the Code of Federal Regulations to read as follows:

## PART 611—ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

**Authority:** Secs. 1.3, 1.13, 2.0, 2.10, 3.0, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2021, 2071, 2091, 2121, 2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2279a—2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

2. Add subpart J to read as follows:

**Subpart J—Stockholder Vote on Like Lending Authority**

Sec.

611.1150 What definitions are used in this subpart?
611.1151 What must your stockholders decide?
611.1152 What votes must be conducted by bank and certain association boards of directors?
611.1153 What must the Information Statement contain?
611.1154 What is the timeframe for this vote?
611.1155 How are the votes tabulated?
611.1156 Who is notified of the results of the stockholder vote?
611.1157 How many votes are needed for passage of the questions?
611.1158 What notifications must be made?
611.1159 Are there additional requirements?
611.1160 What if the votes are not conducted?
Appendix A to Subpart J—Model Information Statement

### Subpart J—Stockholder Vote on Like Lending Authority

#### § 611.1150 What definitions are used in this subpart?

(a) *Days* means calendar days unless otherwise noted.

(b) *You or covered associations* means the associations subject to section 5.17(a)(2)(B), (a)(2)(C), (a)(13) and (a)(14) of the Farm Credit Act of 1971, as amended, specifically First South Production Credit Association; Louisiana Federal Land Bank Association, FLCA; Federal Land Bank Association of North Alabama, FLCA; Federal Land Bank Association of South Alabama, FLCA; Federal Land Bank Association of North Mississippi, FLCA; FLBA of South Mississippi; Production Credit Association of Southern New Mexico; Production Credit Association of Eastern New Mexico; and the Production Credit Association of New Mexico.

(c) *We or us* means the Farm Credit Administration.

#### § 611.1151 What must your stockholders decide?

(a) You must conduct a vote of your voting stockholders, voting in person or by proxy, at a duly authorized meeting, on this question:

Do you want a choice to borrow from other Farm Credit System associations?

(b) Before the vote on the question, you must prepare an Information Statement, obtain Farm Credit Administration approval of it, and distribute it to your stockholders.

#### § 611.1152 What votes must be conducted by bank and certain association boards of directors?

(a) On the first business day following the notice from the independent third party required by § 611.1156(a), the board of directors of the Farm Credit Bank of Texas, AgFirst Farm Credit Bank, and the Farm Credit Bank of Wichita must vote on the question in paragraph (c) of this section and report the results to us.

(b) On the first business day following the notice from the independent third party required by § 611.1156(a), the boards of directors of Production Credit Association of Southern New Mexico, Production Credit Association of Eastern New Mexico, and the Production Credit Association of New Mexico must vote on the question in paragraph (c) of this section and report the results to us.

(c) The boards of directors listed in paragraphs (a) and (b) of this section, voting at duly authorized meetings, must vote on the following question:

*Should the Farm Credit Administration issue a charter or charter amendment that would allow any Farm Credit System association to exercise lending authority in the territory(ies) now served by [list affected association(s)]?*

#### § 611.1153 What must the Information Statement contain?

(a) The Information Statement must include the question in § 611.1151(a) and must substantially conform to the model Information Statement provided as an appendix to this subpart. The Information Statement must include a:

(1) Notice of meeting;

(2) Proxy ballot and instructions;

(3) Brief summary of the question;

(4) Discussion of the advantages and disadvantages of approving the question;

(5) Association board statement or recommendation (optional); and

(6) Statement by the Farm Credit Administration Board.

(b) We may also require additional information in the Information Statement to ensure stockholders have accurate and adequate information.

#### § 611.1154 What is the timeframe for this vote?

(a) Within 20 days of the effective date of this section, you must prepare and send the Information Statement to us by facsimile, electronic transmission, overnight mail, or similar expedited delivery method.

(b) Not later than 10 business days after receipt of the Information Statement, we will review the Information Statement and notify you of our approval or denial. We may change the Information Statement or require you to change it to ensure that it provides accurate and complete information to stockholders on the question.

(c) Within 14 days of receipt of our approval of the Information Statement, you must mail the Information Statement to your voting stockholders.

(d) A 10-day stockholder review period will begin on the sixth day after the day you mail the Information Statement.

(e) A meeting of the stockholders must take place on the first business day following the end of the 10-day stockholder review period.

#### § 611.1155 How are the votes tabulated?

The votes will be tabulated by an independent third party within 2 business days of the stockholder meeting.

#### § 611.1156 Who is notified of the results of the stockholder vote?

(a) On the day the votes are tabulated, the independent third party must report the results to you, the appropriate bank(s), and us.

(b) Within 10 days of the stockholder meeting, the independent third party must provide the Farm Credit Administration with a certified copy of the stockholders' vote on the question.

#### § 611.1157 How many votes are needed for passage of the questions?

The votes in §§ 611.1151 and 611.1152 will be determined by the majority of those voting, in person or by proxy as appropriate, at a duly

authorized meeting in accordance with the associations' or banks' quorum requirements.

**§ 611.1158 What notifications must be made?**

(a) You must notify the stockholders of the results of the votes referenced in §§ 611.1151 and 611.1152 within 10 business days.

(b) The board of directors of the Farm Credit Bank of Texas and the AgFirst Farm Credit Bank must notify each of the covered associations with which they have a funding relationship of the results of the vote in § 611.1152(a) within 2 business days.

(c) The board of directors of the Farm Credit Bank of Texas and the Farm Credit Bank of Wichita must notify the Production Credit Association of Southern New Mexico, the Production Credit Association of Eastern New Mexico, and the Production Credit Association of New Mexico of the results of the vote in § 611.1152(a) within 2 business days.

**§ 611.1159 Are there additional requirements?**

No director, officer, employee, or agent of a bank or an association may make any representation that appears to be a statement or recommendation of the Farm Credit Administration on the merits of the question. The Farm Credit Administration's position will be included in the Information Statement.

**§ 611.1160 What if the votes are not conducted?**

In the event the stockholder and boards of directors votes identified in §§ 611.1151 and 611.1152, are not conducted in accordance with this subpart, the Farm Credit Administration will conduct the voting process.

## Appendix A to Subpart J—Model Information Statement

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**Note:** Appendix A contains a model information statement to aid in compliance with subpart J of part 611.

*A–1—Notice of Stockholders' Meeting of X Association*

A meeting of the stockholders of X Association will be held at (location) located at (address), on (date), beginning at (time).

At this meeting, you will be asked to vote on the following question:

Do you want a choice to borrow from other Farm Credit System associations?

The Farm Credit Administration (FCA) Board will accept applications from direct lender associations for national (also referred to as nationwide) charters. National charters would enable other Farm Credit System (System) lenders to make loans in the territory now served by your Association. As a result, you could have greater choice of System lenders in your area.

The Farm Credit Act of 1971, as amended (Act), requires approval by the voting stockholders of your Association before the FCA can issue a charter or amend a charter that would allow any System lender to make loans, of the same type as those that your Association can make, in the geographic territory now served by your Association. For the question to be approved, a majority of the voting stockholders of X Association voting, in person or by proxy, at a duly authorized meeting of such stockholders, must vote to approve the question. The Act requires other approvals before nationwide charters can be issued in the territory served by X Association. The approvals are explained in the brief summary of the question (Appendix A–5).

Attached is a packet of information related to the question. The packet includes a brief summary of the question; advantages/disadvantages of allowing other System associations to exercise lending authority for eligible customer in the geographic territory; a Board of Directors' Statement (optional); and a statement by the FCA Board.

Information on balloting and proxies is included under Appendix A–2, including the deadline of (date) for receipt of the proxy forms by your Association. If you have any questions about the Information Statement or the question, you may discuss them at the stockholders' meeting on (date). Your board of directors urges you to vote in person or by proxy at the stockholders' meeting.

If you are a nonvoting stockholder or holder of participation certificates, you cannot vote on the question. However, we sent you this Information Statement to keep you informed of the changes affecting your Association.

Name, Chief Executive Officer

Enclosures

*A–2—Proxy Instructions and Ballot*

If you are entitled to vote and are unable to attend the meeting in person, you may appoint a proxy to vote as you direct. The following are instructions for completing the Proxy Ballot and Proxy Form:

1. Complete the Proxy Ballot.

a. Mark either "APPROVE" or "DISAPPROVE" in the appropriate box on the Ballot. *Unmarked Proxy Ballots will be voted to approve the question.*

b. Enclose Proxy Ballot in the Ballot Envelope provided. Seal the envelope.

2. Complete the Proxy Form.

a. If you prefer, you may name as your proxy someone other than the directors named on the Proxy Form by writing in the name of the person in the blank space provided. Please note that for your vote to count, the person you name as proxy must be a voting stockholder of the association and must be present at the stockholders' meeting.

b. Date and sign the Proxy Form in the space indicated.

3. Enclose your signed and dated Proxy Form and sealed Ballot Envelope in the business reply envelope provided. Mail to your Association in the pre-addressed return envelope provided.

*For your vote to count, your Proxy Ballot and Proxy Form must be received in the association office no later than (time) on (date) or delivered to an election official prior to balloting at the stockholders' meeting.* You have the right to cancel your proxy at any time prior to the beginning of balloting at the stockholders' meeting.

*A–3—Proxy Form*

I, _____, as holder of stock and authorized to vote such stock in X Association, cancel any previous proxies and appoint (Name), Director, X Association, as my proxy, or I appoint _____, as my proxy to attend the association stockholders' meeting on (date), and any continuation or adjournment of the meeting, to vote for me on the question, and to act for me with the same effect as if I were personally present.

I understand that I may cancel this proxy and the authority it represents at any time prior to balloting at the stockholders' meeting. Unless cancelled, this proxy will expire upon the official announcement of the results of the vote on the question. I also understand that, if necessary, the person I name as my proxy can substitute someone else as my proxy and can later cancel that substitution.

Date:

Signature*

Representative Title**

*A–4—Ballot (For Use as Proxy Ballot or Voting in Person) X Association*

QUESTION: Do you want a choice to borrow from other Farm Credit System associations?

I direct that my Ballot be voted as follows:

__ APPROVE (Voting to approve means you will have the opportunity to borrow from:

- Your current association; *and*
- Other Farm Credit System associations that will be chartered to allow them to lend in your current association's lending area, as explained in the enclosed Information Statement.)

* Please sign exactly as your name appears on the above label.

** When signing as an executor, administrator, trustee, or guardian on behalf of a corporation or partnership, please sign your name on the first line and indicate your full representative title on the second line.

__ DISAPPROVE (Voting against means other Farm Credit System associations will not be chartered to allow them to lend in your current association's lending area. However, you will be able to continue to borrow from your current association, as explained in the enclosed Information Statement.)

*If I do not direct how this ballot shall be voted, I intend it to be cast to APPROVE the question.*

**Note:** For your vote to count, your Proxy Ballot and Proxy Form must be received in the association office no later than (time) on (date) or delivered to an election official prior to balloting at the stockholders' meeting. You have the right to cancel your proxy at any time prior to the beginning of balloting at the stockholders' meeting.

*A–5—Brief Summary of the Question*

In a July 14, 1998, Philosophy Statement, the FCA Board expressed its view that competition is beneficial for customers and will help ensure that the System will continue to meet the current and future needs of rural America. To facilitate competition and improve services for all farmers, ranchers, and other eligible customers, the FCA Board indicated its support for several measures including the removal of geographical restrictions of System entities.

The FCA Board will accept applications for national charters from System direct lender associations in the near future. Before the FCA can grant applications for full nationwide charters, however, the Agency must carry out two requirements of the Act that call for stockholder voting in certain areas of the country. Congress required stockholder voting in the geographic area in which the Federal Intermediate Credit Bank of Jackson or its successor (AgFirst Farm Credit Bank) is chartered to provide short- and intermediate-term credit and the Farm Credit Bank of Texas is chartered to provide long-term credit. Congress also required the consent of stockholders of three production credit associations in New Mexico pursuant to section 433 of the Agricultural Credit Act of 1987.

Your association serves the [counties/states of xxx], and (insert either (1) has territory that is within the geographic area of the successor to the former Federal Intermediate Credit Bank of Jackson or (2) reaffiliated under section 433.] As a result, you are being asked whether you approve the FCA's issuance of charters to associations that would allow them to make similar loans to you and other eligible customers in the territory of your Association.

Approval of the question does not, however, guarantee that other associations will be chartered to lend in your Association's territory. Following the stockholder vote on the question, the board of directors of the [insert appropriate bank] [and insert associations if this Information Statement refers to section 5.17 (a)(13) and (a)(14)] will also vote on the question. The question must be approved by a majority of the stockholders voting and a majority of the board of directors of the banks [and associations, if appropriate] before another System lender may be chartered to make similar loans in the territory of your Association. If approved by all parties involved, the FCA may grant requests from other FCS associations to serve the territory currently served by your Association.

*A–6—Advantages and Disadvantages of Approving the Question*

There are advantages and disadvantages of your approval of the question. The following is a brief discussion of the principal advantages and disadvantages to the stockholders of your Association. This discussion does not claim to provide a complete analysis of all the expected outcomes of approval of the question. In addition, there can be no assurance that any expected advantage or disadvantage below will take place in whole or part. The realization of any advantages and disadvantages depends on how each association implements its nationwide charter. You should also consider that the advantages and disadvantages affect not only you but all other eligible FCS customers and potential customers.

*ADVANTAGES*

Allowing other System associations to make loans in the territory of your Association may provide System customers in the [insert geographic area] with more choices for credit. You may have a greater choice of financial products because System lenders offer different loan products, interest rates, and repayment options. If the question is approved, you may have the freedom to select the System lender of your choice.

Competition for loans within a geographic area may also provide associations the opportunity and incentive to become more efficient and more competitive. This competition is likely to lower the cost of credit and improve the quality of service for you and other customers.

System lenders across the country may be better able to develop niche products and thus offer specialized lending services to customers in the territory of your Association and across the country. You may be able to obtain your main source of operational funding from one lender and specialized services from another. Nationwide charters may also enable System lenders to provide seamless credit to agricultural producers regardless of the producer's geographic location. E-commerce services may be enhanced after territorial restrictions are removed.

Finally, approval of this question may heighten awareness of each System lender's public policy mission for service within its original chartered territory. The FCA will continue to ensure that each System association fulfills its responsibility to make services available to all eligible customers within its current chartered territory.

*DISADVANTAGES*

As System lenders compete for customers, some associations may become less viable if added competitive pressures reduce profit margins. In addition, if the challenges associated with greater competition are not met, the capital investment of stockholders may be at a higher risk. There are 165 associations that may request nationwide charters. As a result, the management of your Association may be under increased pressure to provide efficient and cost effective services.

In the long run, some associations may be forced to cut back or eliminate certain services. Also, associations entering new geographic areas may primarily focus on larger or more profitable borrowers while less attention may be given to the more marginal borrowers in the associations' new and existing chartered territories.

Some associations may not be competitive in their present form and may have to merge or take other corporate restructuring actions to remain viable.

*A–7—X Association Board Statement (Optional)*

The Association board of directors may state its views and recommendation on the question and elaborate on the reasons for its recommendation.

*A–8—Statement of the FCA Board*

This statement will be provided during FCA's review period.

Dated: May 4, 2000.

**Nan P. Mitchem,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 00–11551 Filed 5–8–00; 8:45 am]

BILLING CODE 6705–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–SW–57–AD]**

### Airworthiness Directives; Schweizer Aircraft Corporation Model 269A, 269A–1, 269B, 269C, 269C–1, 269D, and TH–55A Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD) applicable to Schweizer Aircraft Corporation (Schweizer) Model 269A, 269A–1, 269B, 269C, 269C–1, and 269D helicopters. That AD currently requires inspecting the tail rotor swashplate shaft (shaft) nut for looseness and, if loose, inspecting the shaft for proper size; subsequently inspecting the shafts not previously inspected; and replacing any undersized shaft prior to further flight. This new action would reduce the applicability by specifying certain serial number tail rotor pitch control (pitch control) assemblies and shipping dates but would add the Schweizer Model TH–

55A helicopter to the applicability. This proposal is prompted by the discovery of an undersized replacement shaft during routine maintenance. The actions specified by this proposed AD are intended to prevent failure of the shaft, loss of the tail rotor, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before July 10, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–57–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** George J. Duckett, Aviation Safety Engineer, New York Aircraft Certification Office, FAA, 10 Fifth Street, 3rd Floor, Valley Stream, New York 11581, telephone (516) 256–7525, fax (516) 568–2716.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–57–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–57–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**Discussion**

The FAA issued AD 99–17–10, Amendment 39–11258, on August 4, 1999 (64 FR 44823, August 18, 1999), to require inspecting the shaft nut for looseness and, if loose, inspecting the shaft, part number (P/N) 269A6049–3, for proper size; subsequently inspecting the shafts not previously inspected; and replacing any undersized shaft prior to further flight. That action was prompted by the discovery of an undersized replacement shaft during routine maintenance. The requirements of that AD are intended to prevent failure of the shaft and subsequent loss of control of the helicopter.

Since the issuance of that AD, the FAA has determined that the TH–55A model helicopter could have an undersized shaft installed and should have been included in the applicability of AD 99–17–10. Additionally, we have received reports of undersized shafts shipped from the factory as spares between September 1 and December 1, 1998. This action requires inspecting each shaft nut for looseness and each shaft for improper size, replacing each shaft, as necessary, and adding Schweizer Model TH–55A to the applicability requirements.

The FAA has reviewed Schweizer Service Bulletins B–271.1 for Schweizer Models 269A, 269A–1, 269B, 269C, and TH–55A; C1B–009.1 for the Model 269C–1; and DB–007.1 for the Model 269D, all dated October 14, 1999. These service bulletins describe procedures for inspecting the shaft nut, P/N 269A6258, for looseness by using a firm hand pressure and inspecting the shaft, P/N 269A6049–3, for proper size.

Since an unsafe condition has been identified that is likely to exist or develop on other Schweizer Model 269A, 269A–1, 269B, 269C, 269C–1, 269D and TH–55A helicopters of these same type designs, the proposed AD would supersede AD 99–17–10 to require inspecting the shaft nut, P/N 269A6258, for looseness; inspecting the shaft, P/N 269A6049–3, for proper size; and replacing any undersized shaft with an airworthy shaft of the proper size for helicopters with equipment installed as follows:

- Shaft, P/N 269A6049–3, shipped from the factory between September 1 and December 1, 1998, and installed after the helicopter was manufactured, or
- Pitch control assembly, P/N 269A6050–5, with serial number with an "S" prefix and number 1047 through 1061.

The FAA estimates that 28 helicopters would be affected by this AD. For each helicopter, it would take 0.25 work hour to accomplish the 10-hour inspection and 3.6 work hours to accomplish the inspection and replacement, if necessary, at the 100-hour or annual inspection interval. The average labor rate is $60 per work hour. Required parts would cost approximately $1400 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $45,668.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this proposed action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

**PART 39—AIRWORTHINESS DIRECTIVES**

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–11258 and by adding a new airworthiness directive to read as follows:

**Schweizer Aircraft Corporation:** Docket No. 99-SW–57–AD. Supersedes AD 99–17–10, Amendment 39–11258, Docket No. 99–SW–31–AD.

*Applicability:* Model 269A, 269A–1, 269B, 269C, 269C–1, 269D and TH–55A helicopters, with a tail rotor swashplate shaft (shaft), part number (P/N) 269A6049–3, or a tail rotor pitch control assembly (pitch control), P/N 269A6050–5, with a serial number (S/N) with an "S" prefix and number 1047 through 1061, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the shaft, loss of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS);

(1) Determine whether the factory-installed shaft, part number (P/N) 269A6049–3, has been replaced with a shaft shipped from the factory between September 1 and December 1, 1998, inclusive, or if a pitch control, P/N 269A6050–5, with a S/N with an "S" prefix and numbers 1047 through 1061 is installed.

(2) If the factory ship date for a replacement shaft cannot be positively determined, if the shipping date was between September 1 and December 1, 1998, inclusive, or if the pitch control S/N has an "S" prefix and number 1047 through 1061,

(i) Before further flight and thereafter at intervals not to exceed 10 hours TIS, accomplish "Procedure, Part I," of Schweizer Service Bulletins B–271.1 for Models 269A, 269A–1, 269B, 269C and TH–55A helicopters; C1B–009.1 for the Model 269C–1, or DB–007.1 for the Model 269D, all dated October 14, 1999 (SB), as applicable.

(ii) At the next scheduled 100-hour or annual inspection, whichever occurs first, accomplish Part II, paragraphs a. through d., of the applicable SB. Shafts not meeting the requirements of paragraph d. of the applicable SB must be replaced with an airworthy shaft prior to further flight.

(b) Before installing a replacement shaft, determine the date the shaft was shipped from the factory. If the date was between September 1 and December 1, 1998, inclusive, or cannot be determined, accomplish the inspections required by Part II, paragraph d., of the applicable SB prior to installation. Replace any unairworthy shaft with an airworthy shaft.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on April 28, 2000.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–11523 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–SW–42–AD]**

### Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 430 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD) applicable to BHTC Model 430 helicopters. That AD requires inspecting all four main rotor adapter assemblies for evidence of flapping and lead-lag contact. That AD also requires installing a never-exceed-velocity (VNE) placard with markings on the airspeed indicator glass and instrument case and a revision to the rotorcraft flight manual (RFM) to reflect the airspeed revision. This action would provide mandatory terminating action for requirements of that AD by replacing the fluidlastic damper blade sets with improved sets that incorporate a pressure indicator to detect loss of damper fluid. This proposal is prompted by the need for a positive means of detecting loss of damper fluid that could result in main rotor tip path plane separation. The actions specified by the proposed AD are intended to prevent increased vibrations, damage to the main rotor system, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before July 10, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–42–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9–asw–adcomments@faa.gov. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–42–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–42–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**Discussion**

On September 26, 1997, the FAA issued AD No. 97–15–16, Amendment 39–10152 (62 FR 52653, October 9, 1997). That AD requires inspecting the BHTC Model 430 helicopter main rotor adapter assemblies for evidence of flapping and lead-lag contact. That AD also requires installing a VNE placard, with markings to reflect the airspeed restriction, and inserting revisions to the RFM to reflect the airspeed revisions. That action was prompted by a report of a main rotor tip path plane separation, which occurred during a ferry flight at airspeed of more than 140 knots indicated airspeed. The requirements of that AD are intended to prevent tip path plane separation, increased vibrations, damage to the main rotor system, and subsequent loss of control of the helicopter.

Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on BHTC Model 430 helicopters. Transport Canada advises that a main rotor tip path plane separation on a Model 430 helicopter was caused by the limited damping characteristics of the elastomeric lead-lag dampers.

Since the issuance of AD 97–15–16, BHTC has issued Alert Service Bulletin (ASB) 430–97–4, dated December 14, 1997, and ASB 430–98–8, dated December 31, 1998, that provide for replacing the fluidlastic damper blade sets with improved sets, part number (P/N) 430–310–104–105. The improved fluidlastic damper blade sets incorporate a pressure indicator to provide a positive means of leak detection, thereby replacing the requirements of ASB 430–97–2, dated July 11, 1997, and ASB 430–97–4, dated December 19, 1997.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 430 helicopters of the same type design, the proposed AD would maintain the same requirements as AD 97–15–16 until an improved fluidlastic damper blade set, P/N 430–310–104–105, is installed that incorporates a pressure indicator to detect loss of damper fluid.

The FAA estimates that 7 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 11 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The required parts would cost approximately $122,945 per set of 4. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $865,235 to replace the damper blade sets in the entire fleet.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing Amendment 39–10152 (62 FR 52653, October 9, 1997), and by adding a new airworthiness directive (AD), to read as follows:

**Bell Helicopter Textron Canada:** Docket No. 99–SW–42–AD. Supersedes AD 97–15–16, Amendment 39–10152, Docket 97–SW–24–AD.

*Applicability:* Model 430 helicopters, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent tip path plane separation, increased vibrations, damage to the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight:

(1) Inspect all four main rotor adapter assemblies for flapping contact between the adapter liners and the upper stop assembly plugs. Refer to Figures 1, 2, and 3 of the Accomplishment Instructions of Bell Helicopter Textron Canada (BHTC) Alert Service Bulletin (ASB) No. 430–97–2, dated July 11, 1997. Flapping contact is indicated by the scrubbing (or smudging) of the adapter liner surface, characteristic of relative motion between the surfaces of the adapter lines and upper stop assembly plugs.

(2) Inspect all four main rotor adapter assemblies for lead-lag contact between the adapter pads and the yoke assembly. Refer to Figures 1 and 2 of the Accomplishment Instructions of BHTC ASB No. 430–97–2, dated July 11, 1997. Lead-lag contact is indicated by a permanent indentation or split in the surface of the adapter pads.

(3) If the inspections in paragraphs (a)(1) or (a)(2) of this AD reveal that there has been contact, inspect and replace the main rotor yoke and stop assemblies in accordance with Part I, No. 3 of the Accomplishment Instructions of BHTC ASB No. 430–97–2, dated July 11, 1997, except return of any damaged upper stops to the manufacturer is not required.

(4) For helicopters with skid landing gear or retractable landing gear, remove the existing never-exceed-velocity (VNE) placard from the overhead console and install VNE placard, P/N 430–075–208–107, or P/N 430–075–208–109, as applicable, in accordance with Part II, of the Accomplishment Instructions of BHTC ASB No. 430–97–2, dated July 11, 1997.

(5) Install on each airspeed indicator a red arc between 120 knots and 150 knots to indicate that airspeeds above 120 knots indicated airspeed are prohibited. Install a slippage mark on each airspeed indicator glass and instrument case.

(6) Insert the temporary revisions, BHT–430–FM–1 and BHT–430–FMS–1, as appropriate, both dated July 7, 1997, into the rotorcraft flight manual.

(b) Within 100 hours time-in-service, (1) Remove the fluidlastic damper blade set, P/N 430–310–100–101 or 430–310–107–101 in accordance with the Accomplishment

Instructions of ASB 430–97–4, dated December 19, 1997, Part 1, steps 1 through 5, and install damper blade set, P/N 430–310–104–105, in accordance with the Accomplishment Instructions, Part I, of BHTC ASB 430–98–8, dated December 31, 1998.

(2) Return pilot and copilot airspeed indicators to their original configuration by removing the markings specified by paragraph (a)(5) of this AD.

(3) Remove the temporary revisions, BHT 430-FM–1 or BHT–430-FMS–1, as appropriate, both dated July 7, 1997. Insert the temporary revisions, BHT–430-FM–1, or BHT–430-FMS–1, as appropriate, both dated December 11, 1998, into the rotorcraft flight manual.

(c) If paragraph (b)(1) was previously accomplished by installation of fluidlastic damper blade set, P/N 430–310–104–103, remove fluidlastic damper blade set, P/N 430–310–104–103, and install fluidlastic damper blade set, P/N 430–310–104–105, in accordance with the Accomplishment Instructions of BHTC ASB 430–98–8, dated December 31, 1998.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, FAA, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD No. CF–97–23R1, dated March 30, 1999.

Issued in Fort Worth, Texas, on April 28, 2000.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–11522 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–ASO–17]**

### Proposed Amendment of Class E Airspace; Fort Payne, AL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend Class E airspace at Fort Payne, AL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Dekalb Medical Center, Fort Payne, AL. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action proposes to amend the Class E airspace for Fort Payne, AL, to the southwest, in order to include the point in space approach serving Dekalb Medical Center.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–17, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–17." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

#### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should request a copy of Advisory Circular No. 11–2A which describes the application procedure.

#### The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Fort Payne, AL. A GPS SIAP, helicopter point in space approach, has been developed for Dekalb Medical Center, Fort Payne, AL. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 171.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR 1959–1963 Comp., p. 389.

**§71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administrative Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999,is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ASO AL E5 Fort Payne, AL [Revised]**

Fort Payne, Isbell Field Airport, AL
Lat. 34°28′22″ N, long. 85°43′20″ W
Fort Payne, NDB
Lat. 34°31′16″ N, long. 85°40′24″ W
Dekalb Medical Center
Point In Space Coordinates
Lat. 34°26′57″ N, long. 85°44′45″ W)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Isbell Field Airport and within 8.3 miles northwest and 4.3 miles southeast of the Fort Payne NDB 040° bearing, extending from the NDB to 16 miles northeast of the NDB and that airspace within 6-mile radius of the point in space (lat. 34°26′57″ N, long. 85°44′45″ W) serving Dekalb Medical Center.

* * * * *

Issued in College Park, Georgia, on April 27, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–11574 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–ASO–16]**

**Proposed Amendment of Class E Airspace; Jasper, TN**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend Class E airspace at Jasper, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for North Jackson Hospital, Bridgeport, AL. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action proposes to amend the Class E airspace for Jasper, TN, to the southwest, in order to include the point in space approach serving North Jackson Hospital.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–16, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting each written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–16." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing such substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Jasper, TN. A GPS SIAP, helicopter point in space approach, has been developed for North Jackson Hospital, Bridgeport, AL. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant

regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ASO TN E5 Jasper, TN [Revised]**

Jasper, Mario County—Brown Field Airport, TN
Lat. 35°03′37″ N, long. 85°35′08″ W
North Jackson Hospital, Bridgeport, AL
Point In Space Coordinates
Lat. 34°55′10″ N, long. 85°45′32″ W)

That airspace extending upward from 700 feet above the surface within a 12.6-mile radius of Marion County—Brown Field and that airspace within a 6-mile radius of the point in space (lat. 34°55′10″ N, long. 85° 45′ 32″ W) serving North Jackson Hospital, Bridgeport, AL; excluding that airspace within the Chattanooga, TN, Class E airspace area.

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Issued in College Park, Georgia, on April 28, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–11575 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–ASO–18]**

### Proposed Amendment of Class E Airspace; Smithville, TN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend Class E airspace at Smithville, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Dekalb Country Hospital, Smithville, TN. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action proposes to amend the Class E airspace for Smithville, TN, to the southwest, in order to include the point in space approach serving Dekalb County Hospital.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–18; Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627/

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–18." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the ocmments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a malign list for future NPRMs should also request a copy of Advisory Circular No. 22–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Smithville, TN. A GPS SIAP, helicopter point in space approach, has been developed for Dekalb County Hospital, Smithville, TN. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR

71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of smaller titles under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ASO TN E5 Smithville, TN [Revised]**

Smithville Municipal Airport, TN
Lat. 35°59′07″ N, long. 85°48′34″ W
Dekalb County Hospital
Point in Space Coordinates
Lat. 35°58′17 ″N, long. 85°49′32″ W

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Smithville Municipal Airport and within a 6-mile radius of the point in space (lat. 35°58″17″ N, long. 85°49′32″ W serving Dekalb County Hospital; excluding that airspace within the McMinnville, TN, Class E airspace area.

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Issued in College Park, Georgia, on April 28, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division, Southern Region*

[FR Doc. 00–11576 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–ASO–19]**

### Proposed Amendment of Class E Airspace; Tullahoma, TN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This action proposes to amend Class E airspace at Tullahoma, TN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Manchester Medical Center, Manchester, TN. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP. This action proposes to amend the Class E airspace for Tullahoma, TN, to the northeast, in order to include the point in space approach serving Manchester Medical Center.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–19, Manager, Airspace Branch, ASO–520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ASO–19." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Tullahoma, TN. A GPS SIAP, helicopter point in space approach, has been developed for Manchester Medical Center, Manchester, TN. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from

700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, an effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airsapce, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E airsapce areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ASO TN E5 Tullahoma, TN [Revised]**

Tullahoma Regional Airport/Wm Northern Field, TN
Lat. 35°22′52″ N, long. 86°14′37″ W
Arnold Air Force Base
Lat. 35°23′33″N, long. 86°05′09″W
Winchester Municipal Airport
Lat. 35°10′39″ N, long. 86°03′58″ W
Manchester Medical Center
Point in Space Coordinates
Lat. 35°29′56″ N, long. 86°05′37″ W

That airspace extending upward from 700 feet above the surface with a 7-mile radius of Tullahoma Regional Airport/Wm Northern Field Airport and within a 7-mile radius of Arnold Air Force Base and within an 11-mile radius of Winchester Municipal Airport and within a 6-mile radius of the point in space (Lat. 35°29′56″ N, long. 86°05′37″ W) serving Manchester Medical Center; excluding that airspace within the Shelbyville, TN, Class E airspace area.

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Issued in College Park, Georgia, on April 28, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–11578 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–13–M

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**DEPARTMENT OF JUSTICE**

**Parole Commission**

**28 CFR Part 2**

**Paroling, Recommitting, and Supervising Federal Prisoners: Prisoners Serving Sentences Under the District of Columbia Code**

**AGENCY:** United States Parole Commission, Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The U.S. Parole Commission is soliciting public comment on a proposal to revise the guidelines at 28 CFR 2.80 that govern its decisions to grant and deny parole in the case of prisoners serving sentences for felony crimes under the District of Columbia Code. The proposal would translate the current Point Assignment Table at § 2.80 into guideline ranges, and would authorize the setting of presumptive release dates up to 36 months from the date of the parole hearing. The purpose of this proposal is to improve understanding by inmates and the public as to the impact that the guidelines will have in individual cases, and to facilitate successful release planning in advance of parole.

**DATES:** Comments must be received by July 10, 2000.

**ADDRESSES:** Send comments to Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, MD 20815.

**FOR FURTHER INFORMATION CONTACT:** Pamela A. Posch, Office of General Counsel, U.S. Parole Commission, 5550 Friendship Blvd., Chevy Chase, Maryland 20815, telephone (301) 492–5959.

**SUPPLEMENTARY INFORMATION:** The Commission solicits comment on a revision of 28 CFR 2.80 that it believes would make the guidelines for D.C. Code offenders more understandable to inmates and the public, fairer, and easier to administer. The proposal would: (1) Enhance the ability of inmates and the public, including victims of crime, to understand the guidelines and their impact in individual cases by translating the current point score into a guideline range at the initial and subsequent considerations; (2) provide more information to inmates as to their expected release dates by authorizing presumptive release dates up to 36 months from the date of the parole hearing (contingent upon good conduct and development of an adequate release plan); (3) facilitate release planning by setting presumptive release dates up to 36 months from the date of the parole hearing; (4) eliminate anomalies that occur in the current system with respect to penalizing inmates whose rehearings are delayed through no fault of their own or who are encouraged by staff to waive parole consideration until they complete institutional programs; and (5) reduce the maximum time between parole consideration hearings from five years to three years.

**Summary of the Proposal**

The proposed revision of § 2.80 would require the following decisionmaking procedure.

Under Step 1A, a Base Guideline Range would be determined from the Base Point Score. There is no change from the Base Point Score used in § 2.80. The Base Point Range (assuming no disciplinary infractions and ordinary program achievement) is simply made explicit.[1]

[1] Multiplying (A) the rehearing range in the current D.C. guidelines by (B) [the Base Point Score minus 3 points] (the number of rehearing required before parole assuming no disciplinary infractions and ordinary program achievement) produces the Base Point Range. For example, an inmate with a Base Point Score of 6 with no disciplinary infractions and ordinary program achievement at each hearing would have two rehearings with a rehearing range of 18–24 months each before the guidelines indicated parole. This translates to a guideline range of the Parole Eligibility Date plus 36–48 months. For most cases, the results under the current and proposes system will be the same.

Continued

Under Step 1B, a disciplinary guideline range is determined. Under Option 1, the current D.C. guideline points (at § 2.80) for disciplinary infractions are used but are translated into explicit ranges.[2] Option 2 presents an alternative approach to measuring the seriousness of disciplinary infractions. Option 1 would maintain the policy of the current guidelines with respect to disciplinary infractions. Option 2 would focus more directly on the seriousness of the disciplinary infraction itself.

Under Step 1C, an outstanding program achievement range is determined. Under Option 1, the current D.C. guideline points for outstanding program achievement are used but translated into explicit ranges that are implicit in the current guidelines.[3] In addition, the guidelines are simplified because the point for ordinary program achievement has already been built into the base guideline range. Option 2 presents an alternative approach to measuring outstanding program achievement. Under Option 2, the guideline range for outstanding program achievement is linked more directly on the number of months of outstanding program achievement.

**Purpose**

The Base Point Guideline Range, Disciplinary Range, and Outstanding Program Achievement Range are combined into a composite or total guideline range at the initial hearing. This would make clear to the inmate the amount of time he or she may expect to serve with continued good conduct and ordinary program achievement. The impact of outstanding program achievement as well as disciplinary infractions would also be made clear. Equally importantly, if release within three years was deemed appropriate by the Commission (as opposed to within 9 months under the current system), the inmate would be given a presumptive parole date (contingent upon continued good behavior and the development of a satisfactory release plan). In the Commission's opinion, presumptive release dates allow the inmate to plan better for release and provide a strong incentive for continued good conduct.

Additionally, with presumptive release dates the final review nine months before release (to ensure that the inmate has continued good conduct and consider any additional outstanding program achievement) can be conducted on the record rather by personal hearing. This is administratively more efficient and reduces the possibility of delay in scheduling the final hearing (*e.g.*, because of the transfer of the inmate between facilities) that may adversely impact the actual release date. Only if serious institutional misconduct is found at this record review would an in-person rehearing be scheduled.

**Invitation for Comment**

Comment is requested both on the overall structure, which would provide the inmate with a projected guideline range at the initial hearing (and at subsequent hearings, as modified by outstanding program achievement or disciplinary infractions) and allow the setting of presumptive release dates up to 36 months away. A record review would be conducted nine months prior to release to ensure that the inmate has continued good conduct and consider any additional outstanding program achievement. If a presumptive release date was not set, the prisoner would be heard no later than each 36 months in contrast to the current rules under which a rehearing may be delayed for up to 60 months.

Comment is specifically requested on whether the Commission, if it adopts the overall structure, should adopt Option 1 or Option 2 for consideration of disciplinary infractions. Option 1 replicates the current DC guidelines. Option 2 would provide results that in some cases would be the same as the current guidelines and in some cases would be different. In general, Option 2 provides results that have more gradations both at the upper and lower ends of the scale and deal with generic behaviors. Option 1 has more limited categories tied to how the conduct is classified by the D.C. Department of Corrections or Bureau of Prisons. Option 1 also weighs the defendant's current and prior record; *e.g.*, if two inmates commit the same disciplinary infraction but one has a higher base point score because of a low salient factor score or current or past violent offense, that inmate will receive a more severe disciplinary guideline range for that infraction (in addition to having received a longer base guideline range in the first place). Under Option 2, the penalties for the same disciplinary infraction will be the same for the two inmates. Because the inmate with the higher base point score will have the higher base guideline range, that inmate will continue to have a higher total guideline range, but the inmate's current or prior record will not be counted again in determining the time to be added for the disciplinary infraction itself.

Comment is specifically requested on whether the Commission, if it adopts the overall structure, should adopt Option 1 or Option 2 for consideration of outstanding program achievement. Option 1 replicates the current D.C. guidelines. Option 2 would provide results that in some cases would be the same as the current guidelines and in some cases would be different. Under Option 1, inmates with the same base point score (*e.g.*, BPS 6) receive the same credit for outstanding program achievement whether it is based on 100 months (*e.g.*, the time in custody prior to the initial hearing) or 18 months (*e.g.*, the time until the next rehearing). Under Option 2, the credit for outstanding program achievement is tied more directly to the number of months of outstanding program achievement.

**Proposed Implementation**

The proposed revision of 28 CFR 2.80 would be applied prospectively, *i.e.*, to D.C. Code prisoners who receive their initial hearings on or after the effective date of the final rule. If, however, a D.C. Code prisoner who was previously heard under § 2.80 would not be adversely affected by the new guidelines, the new guidelines would be applied retroactively at the prisoner's next scheduled rehearing.

**Outline of Proposed Revised Section 2.80 and Conforming Changes to Other Guidelines**

The proposed alternative to the guideline instructions at 28 CFR 2.80(h) would provide as follows. Both Option 1 and Option 2 are included:

*Step 1. Determine the Base Guideline Range*

A. Determine the Base Point Score (Using the SFS, Current or Prior Violence, and Death)

The Base Guideline Range for the Base Point Score is set forth below:

| Base point score | Base guideline range=parole eligibility date (determined by minimum sentence) + — |
|---|---|
| 10 | 136–172 months. |
| 9 | 110–140 months. |
| 8 | 72–96 months. |

There are a few differences because the current system lumps together certain dissimilar cases: for example, under the current system, an offender with a base point score of 5 who has outstanding program achievement and no disciplinary infractions will serve the same amount of time as an offender with ordinary program achievement.

[2] Multiplying the number of disciplinary points by the current rehearing range applicable to the current base point score determines this guideline range.

[3] Multiplying the outstanding program achievement point by the current rehearing range applicable to the current base point score determines this guideline range.

| Base point score | Base guideline range=parole eligibility date (determined by minimum sentence) + — |
|---|---|
| 7 | 54–72 months. |
| 6 | 36–48 months. |
| 5 | 18–24 months. |
| 4 or 3 | 12–18 months. |
| 2 or less | zero months. |

The guideline range for the base point score assumes no disciplinary infractions and ordinary program achievement.

**Note:** The Base Point Score is determined exactly the same as under the current guidelines at § 2.80. There is no substantive change.

B. Determine the Guideline Range for Disciplinary Infractions

Two options are set forth for comment. Option 1 translates the current D.C. point score into actual guideline ranges without any substantive change. Option 2 uses § 2.36 (the guidelines for disciplinary infractions used in Federal cases).

*Option 1.* Use the Current D.C. Disciplinary Points to determine the guideline range as follows:

| Base point score | Type of misbehavior | Guideline range |
|---|---|---|
| 10 | Aggravated | 52–64 months |
| 10 | Ordinary | 26–32 months |
| 9 | Aggravated | 44–56 months |
| 9 | Ordinary | 22–28 months |
| 5–8 | Aggravated | 36–48 months |
| 5–8 | Ordinary | 18–24 months |
| 0–4 | Aggravated | 24–36 months |
| 0–4 | Ordinary | 12–24 months |

*Option 2.* Determine the guideline range applicable to disciplinary infractions from section 2.36.

**Note:** Option 1 translates the current disciplinary point score into a guideline range without any substantive change. Option 2, in contrast, applies the guideline ranges for disciplinary infractions used in federal cases. The two options will produce different results in different cases. In general, Option 2 focuses more on the conduct underlying the disciplinary infraction and has finer gradations. Option 1 has fewer gradations for the disciplinary conduct and also varies the penalty for disciplinary infractions in part on the original base point score.

C. Determine the Guideline Range for Outstanding Program Achievement

Two options are set forth for comment. Option 1 translates the current D.C. outstanding program achievement points into a guideline range without any substantive change. Option 2 uses a formula based on the number months of in custody since the last consideration (or in the case of the initial hearing, the number of months in confinement).

*Option 1.* The outstanding program achievement guidelines as translated from the current D.C . point score are as follows:

| Base point score | Guideline range |
|---|---|
| 0–4 | 12–18 months |
| 5–8 | 18–24 months |
| 9 | 22–28 months |
| 10 | 26–32 months |

*Option 2.* If outstanding program achievement is found, the outstanding program achievement guideline is 25% of the number of months of outstanding program achievement.

- If this calculation results in a fractional month, it will be rounded up to the nearest whole month.
- If outstanding program achievement is found, the offender is ordinarily assumed to have outstanding program achievement for the total time in custody from the last consideration (or from the commitment date in the case of an initial hearing). If, however, the Commission expressly finds outstanding program achievement for only part of the time in custody (*e.g.*, at an initial hearing the inmate has been in custody for 10 years but has shown outstanding program achievement for only 5 years), the Commission may determine the outstanding program achievement guidelines on the actual amount of time with outstanding program achievement.

**Notes:** (1) Option 1 (the current D.C. guidelines) gives the same weight to outstanding program achievement whether over a period of 12 months or over a period of 100 months, and varies the weight according to the offenders base point score. Option 2, in contrast, determines on the number of months of outstanding program achievement credit for each offender directly according to the number of months of outstanding program participation.

(2) The current D.C. guidelines have an additional complexity of treating lack of ordinary program participation as equivalent to a separate disciplinary factor. Under both options of the proposed system, such lack of program participation could be addressed by placement of the decision within the applicable guideline range—or by an upward departure in extreme cases (*e.g.*, a serious offender who refused to participate in a necessary treatment program).

*Step 2. Determine the Total Guideline Range*

At the initial hearing, the total guideline range is: (1) The Base Guideline Range; plus (2) the Disciplinary Guideline Range (if any), minus the outstanding program achievement range. This is a straightforward arithmetic calculation (the same type of calculation is done in federal cases).

Example 1

A. Base Guideline Range=[58–64 months]
(Base Pt Score=5; Parole Eligibility Date at 40 months)
Base guideline range=[ 40 + (18–24) months]
B. Disciplinary Range=[12–18 months]
C. Outstanding Program Achievement Range=None
Total Guideline Range=70–82 months

Example 2

A. Base Guideline Range=[76–88 months]
(Base Pt Score=6; Parole Eligibility Date at 40 months)
Base guideline range=[ 40 + (36–48) months]
B. Disciplinary Range=Not applicable
C. Outstanding Program Achievement Range (Based Option 1)=[ – (18–24 months)]
Total Guideline Range=56–64 months

Example 3

A. Base Guideline Range=[116–128 months]
(Base Pt Score=6; Parole Eligibility Date at 80 months)
Base guideline range=[ 80 + (36–48) months]
B. Disciplinary Range=Not applicable
C. Outstanding Program Achievement Range=[ – (20 months) (Based on 80 months outstanding program from top and bottom achievement—Option 2) of guideline range]
Total Guideline Range=[96–108 months]

*Step 3. Select One of the Following Decisions*

A. Parole effective within 9 additional months;

B. Presumptive parole after 10–36 additional months; or

C. A Reconsideration hearing after 36 months; or

D. Continue to Expiration within 36 months.

If a presumptive parole date was given, there would be a record review 9 months prior to release (a changeover review) that would evaluate any disciplinary infractions or additional outstanding program achievement and retard or advance the date as appropriate, or schedule a rescission hearing if required.

*Step 4. Conducting a Reconsideration Hearing [if Required]*

At a three-year reconsideration hearing, the guideline ranges for

disciplinary record (since the last hearing) [step 1(b)] and outstanding program achievement (from the last hearing) [step 1(c)] will be determined and added to or subtracted from the total guideline range determined at the last hearing. Otherwise, the actions available to the Commission will be the same as at an initial hearing.

**Regulatory Assessment Requirements**

The U.S. Parole Commission has determined that this proposed rule would not be a significant rule within the meaning of Executive Order 12866. The proposed rule would not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 605(b), and is deemed by the Commission to be a rule of agency practice that will not substantially affect the rights or obligations of non-agency parties pursuant to section 804(3)(C) of the Congressional Review Act.

**List of Subjects in 28 CFR Part 2**

Administrative practice and procedure, Prisoners, Probation and parole.

**Authority:** 18 U.S.C. 4203(a)(1) and 4204(a)(6).

Dated: May 2, 2000.

**Michael J. Gaines,**

*Chairman, U.S. Parole Commission.*

[FR Doc. 00–11521 Filed 5–8–00; 8:45 am]

BILLING CODE 4410–31–P

## POSTAL SERVICE

### 39 CFR Part 111

### Loading Requirements for PVDS Mailings

**AGENCY:** Postal Service.

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** On December 23, 1999, the Postal Service published a Proposed Rule (64 FR 72044) seeking comments on a proposed revision to the Domestic Mail Manual (DMM) to require that, if Periodicals mail is on the same vehicle as Standard Mail in a plant-verified drop shipment (PVDS), then the Periodicals mail must be loaded toward the tail end of the trailer so that Periodicals mail can be offloaded first for each destination entry. On February 11, 2000, the Postal Service published a notice that extended the comment period for this proposed rule until March 15, 2000 (65 FR 6950).

Based on the comments received, the Postal Service is withdrawing the proposed rule. The loading requirement for Periodicals mail in a PVDS mailing will continue to be an optional—or preferred—method, but will not be required. Customers may access the current DMM requirements by going to the Postal Explorer Web site (http://pe.usps.gov). These specific mailing standards can be found in DMM E651.2.2, E652.4.2, P750.2.12, and P750.2.13.

**SUPPLEMENTARY INFORMATION:**

**Summary of Comments Received**

The Postal Service received a total of 16 comments in response to the Proposed Rule.

Seven comments supported making the loading of Periodicals toward the tail end of the trailer a requirement. All of these comments came from Periodicals publishers. Their support for the Proposed Rule is based on the assumption that delivery service would improve if Periodicals mail could be identified, offloaded from vehicles, and processed as soon as possible. One commenter pointed out that this Proposed Rule is consistent with the Postal Service's commitment to the mailing industry to improve the delivery service of Periodicals mail. The same commenter raised questions about how this Proposed Rule might affect Periodicals costs.

One commenter gave cautious support to the Proposed Rule for the reasons cited above.

Eight comments opposed the Proposed Rule. Most of these commenters are in the printing and mail transportation industries. These comments focused on the cost and logistics implications of a requirement to load Periodicals mail toward the tail end of the trailer for each stop. Many commenters believed that having to "stagger" Periodicals and Standard Mail within a vehicle for each scheduled stop would increase their costs. There also were concerns about OSHA and Department of Transportation requirements for vehicle loading and unloading.

All of the commenters who opposed the Proposed Rule mentioned that they support the current standards in the Domestic Mail Manual, which allows mailers the option of loading Periodicals mail toward the tail end of vehicles for each stop.

Based on these reasons and after extensive discussions with customers and internal departments, the Postal Service has decided to withdraw the Proposed Rule. The Domestic Mail Manual will continue to contain the optional, or preferred, method of loading Periodicals mail toward the tail end of vehicles so that the Periodicals mail can be offloaded first at each stop.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–11451 Filed 5–8–00; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[AR–8–1–7409; FRL—6603–9]**

### Approval and Promulgation of Implementation Plans; Arkansas; Regulation 19

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve revisions to the Arkansas State Implementation Plan (SIP or plan). Specifically, EPA proposes to approve a recodification of and revisions to Arkansas' SIP. These revisions were adopted by the Arkansas Department of Environmental Quality (ADEQ) on January 22, 1999, and submitted to EPA by the Governor of Arkansas on March 5, 1999. The EPA also proposes to incorporate into the Arkansas SIP portions of Arkansas regulation for its operating permits program which relate to the construction and modification of major sources. This is necessary because the submitted SIP revision incorporates these provisions to ensure that major sources which must receive an operating permit meet the Federal requirements relating to the construction and modification of major sources.

The EPA proposes to approve these revisions based upon our finding that the regulations meet the requirements of the Clean Air Act (the Act) pertaining to the approval of SIPs and the Federal regulations which describe the requirements that a SIP must meet.

Furthermore, EPA proposes to approve revisions to Arkansas' program for the prevention of significant deterioration (PSD) of air quality to replace the increments for total suspended particulates (TSP) with increments for particulate matter less than 10 microns (PM–10). In conjunction with this action, EPA also proposes to remove the TSP area designation tables in title 40 of the Code of Federal Regulations (40 CFR) part 81 for Arkansas. The EPA is taking no action on a Chapter 8 of the submittal of Regulation 19 which pertains to

designated facilities. The EPA will act on Chapter 8 in a separate action.

**DATE:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Written comments on this action should be addressed to Ms. Jole C. Luehrs, Chief, Air Permits Section (6PD–R), ATTENTION: Stanley M. Spruiell, at the EPA Region 6 Office listed below. Copies of documents relevant to this action, including the Technical Support Document, are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Permits Section (6PD–R), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Arkansas Department of Environmental Quality, Division of Air Pollution Control, 8001 National Drive, P.O. Box 8913, Little Rock, Arkansas 72219–8913.

**FOR FURTHER INFORMATION CONTACT:** Stanley M. Spruiell of the EPA Region 6 Air Permits Section at (214) 665–7253 at the address above or at spruiell.stanley@epa.gov.

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," or "our" means EPA.

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## I. Summary of Today's Action

### *A. What Action Are We Taking?*

We propose to approve Regulation 19 of the ADEQ, except for Chapter 8—Designated Facilities. Regulation 19 revises and recodifies the Arkansas SIP. The submitted regulation includes provisions which address the requirements of the Act and ensures the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) we promulgated under section 109 of the Act. The ADEQ adopted and submitted Regulation 19 under section 110 of the Act. The regulation includes:

—Enforceable emission limitations and other control measures and techniques,
—A program for enforcement of such measures,
—Provisions for the regulation of the modification and construction of stationary sources, and
—Other measures required under section 110 of the Act.

We also propose to incorporate into the Arkansas SIP portions of Arkansas Regulation 26—Regulation of the Arkansas Operating Permit Program, adopted July 23, 1993 and submitted to EPA on October 29, 1993. Under this proposal we will incorporate the provisions of Regulation 26 that are incorporated by reference by Regulation 19, Chapter 11. The provisions of Regulation 26 so incorporated are the provisions of Regulation 26 that meet the Federal requirements of 40 CFR part 51, subpart I as they apply to new and modified major sources that are permitted under Regulation 26.

We have reviewed the submittal and determine that Regulation 19 and the incorporated provisions of Regulation 26 meet the requirements of the Act. The following sections of this preamble summarize the requirements of regulations and our basis for proposing approval.

We have also prepared a Technical Support Document (TSD) which contains a detailed analysis of our evaluation and proposed approval of Regulation 19. The TSD is included as part of the public docket and is available at the addresses listed above.

### *B. Are There Provisions of Regulation 19 That We Are Not Acting On in Today's Proposal?*

We are taking no action on Chapter 8—Designated Facilities. Designated facilities are regulated under section 111(d) of the Act. The review process of State Plans for designated facilities is carried out separately from other SIP activities. Please see section XI of this preamble for further discussion of designated facilities and the basis for taking no action in today's proposal.

## II. What Are National Ambient Air Quality Standards?

Section 109 of the Act requires the EPA Administrator to establish NAAQS for air pollutants which the Administrator has issued air quality criteria (criteria pollutants). For each criteria pollutant, Administrator must establish

—A primary ambient air quality standard which is necessary to protect the public health, and
—A secondary ambient air quality standard to protect the public welfare from any known or anticipated adverse affects associated with the presence of such air pollutant.

We have established NAAQS in 40 CFR part 50, National Primary and Secondary Ambient Air Quality Standards. The criteria pollutants for which NAAQS exist are: sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead. Regulation 19 includes measures to ensure that NAAQS for these criteria pollutants are maintained.

## III. What Actions Has the State taken?

On January 22, 1999, ADEQ adopted Regulation 19—Regulations of the Arkansas Plan of Implementation for Air Pollution Control after holding a public hearing on November 23, 1998. Regulation 19 became effective as a State rule on February 15, 1999.

The Governor of Arkansas submitted Regulation 19 to us on March 5, 1999, and requested that we approve Regulation 19 as a revision to the Arkansas SIP. We reviewed the SIP submittal for administrative completeness to assure that it meets the criteria set forth in 40 CFR part 51, appendix V—Criteria for Determining the Completeness of Plan Submissions. We informed the Governor and ADEQ on May 25, 1999, that the submission met these criteria and is administratively complete. Our determination that the plan submission is administratively complete means that we consider it to be an official submission for the purposes of 40 CFR 51.103.

Regulation 19 includes the following Chapters and Appendix as described in Table 1 below:

TABLE 1.—CHAPTERS AND APPENDICES IN REGULATION 19 SUBMITTED BY ARKANSAS ON MARCH 5, 1999

| Chapter | Title |
|---|---|
| Chapter 1 ..... | Title, Intent, and Purpose. |
| Chapter 2 ..... | Definitions. |
| Chapter 3 ..... | Protection of the National Ambient Air Quality Standards. |
| Chapter 4 ..... | Minor Source Review. |
| Chapter 5 ..... | General Emission Limitations Applicable to Equipment. |

TABLE 1.—CHAPTERS AND APPENDICES IN REGULATION 19 SUBMITTED BY ARKANSAS ON MARCH 5, 1999—Continued

| Chapter | Title |
|---|---|
| Chapter 6 ..... | Upset and Emergency Conditions. |
| Chapter 7 ..... | Sampling, Monitoring, and reporting Requirements. |
| Chapter 8 ..... | Designated Facilities. |
| Chapter 9 ..... | Prevention of Significant Deterioration. |
| Chapter 10 ..... | Regulations for the Control of Volatile Organic Compounds. |
| Chapter 11 ..... | Major Source permitting Procedures. |
| Appendix A .... | Insignificant Activities List. |

**IV. Title, Intent, and Purpose—Chapter 1**

*A. What Has Changed Since the Last Approval?*

The provisions of Chapter 1 were previously identified in the Arkansas Rules of the Plan (ROP), Section 1—Title, Section 2—Purpose, and Section 9—Severability. These Sections were approved at 41 FR 43904 (October 5, 1976). These provisions are now recodified in Chapter 1, which is divided into Section 19.101—Title, Section 19.102—Applicability, Section 19.103—Intent and Construction, and Section 19.104—Severability.

Section 19.101 recodifies Arkansas ROP Section 1 and identifies the Title as "Regulations of the Arkansas Plan of Implementation of Air Pollution Control," also referred to as the "Regulations of the Plan" and "Regulation 19."

Section 19.102 recodifies portions of Arkansas ROP Section 2 and provides that Regulation 19 applies to any stationary source which has the potential to emit any Federally regulated pollutant.

Section 19.103 recodifies Arkansas ROP Section 2 and revises the Plan to more specifically identify the intent and construction of Regulation 19 as follows:

—Provide a clear delineation of the regulations of the ADEQ that are adopted to satisfy the requirements of the Act and the Federal regulations which stem from the Act. The Federal requirements that the ADEQ administers are: the NAAQS (40 CFR part 50), certain delegated subparts of the New Source Performance Standards (NSPS)(40 CFR part 60), provisions designed for PSD (40 CFR 52.21), minor new source review as described in Chapter 4 of Regulation 19 (40 CFR part 51) and certain delegated subpart of the National Emission Standards for Hazardous Air Pollutants (NESHAP)(40 CFR parts 61 and 63).

—Limits Federal enforceability to only those requirements mandated by Federal law and facilitates a permit system which provides for permit conditions that are federally enforceable as well as those conditions which are State enforceable.

—Presumes a single permit system which encompasses both Federal and State requirements.

—Promotes a streamlined permitting process which mitigates regulatory costs and provides flexibility in maintaining compliance with Federal mandates.

Section 19.104 recodifies Arkansas ROP Section 9 and provides that when a provision of Regulation 19 is determined to be invalid, such invalidity shall not affect other provisions of Regulation 19.

*B. Is Chapter 1 Approvable?*

Chapter 1 requires that sources in Arkansas meet all requirements of the Act and is therefore approvable.

**V. Definitions—Chapter 2**

*A. What Has Changed Since the Last Approval?*

The definitions were previously identified in Arkansas ROP, Section 3—Definitions. The definitions are now codified in Chapter 2 which lists and defines several terms that are used in Regulation 19. The TSD contains a detailed analysis of the definitions in Chapter 2 and the basis for our proposed approval.

*B. Is Chapter 2 Approvable?*

The definitions in Chapter 2 are consistent with the corresponding definitions in the Act and in applicable Federal regulations. We therefore propose to approve Chapter 2 of Regulation 19.

**VI. Protection of the National Ambient Air Quality Standards—Chapter 3**

*A. What Has Changed Since the Last Approval?*

The provisions of Chapter 3 were previously documented in Arkansas ROP Section 2. Chapter 3 is divided into Section 19.301—Purpose, Section 19.302—Department Responsibilities, Section 19.303—Regulated Source Responsibilities, and Section 19.304—Delegated Federal Programs.

Section 19.301 defines the purpose of Chapter 3 as identifying the responsibilities of the State and of regulated sources in meeting and maintaining the NAAQS. Section 19.302 identifies the ADEQ's responsibilities as taking precautions to prevent the NAAQS from being exceeded. The precautions include conducting air quality monitoring and using computer modeling (according to EPA approved models) when it reasonably expects air quality to be in excess of the NAAQS.

Section 19.303 identifies the responsibilities of the regulated sources. Such responsibilities include: (1) obtaining a permit when required by law or Regulation 19, (2) operating equipment in such manner as to meet applicable requirements of permits and regulations, and (3) repairing malfunctioning equipment and pollution control equipment as quickly as possible.

Section 19.304 requires sources to comply with all Federal programs that the ADEQ is responsible for administering. This includes: (1) certain delegated subparts of the NSPS (40 CFR part 60), (2) provisions designed for PSD (40 CFR 52.21), (3) certain delegated subparts of the NESHAP (40 CFR parts 61 and 63), which were promulgated September 28, 1998.

*B. Is Chapter 3 Approvable?*

As submitted, Chapter 3 incorporates the previously approved SIP with revisions which clarify how the ADEQ will maintain compliance with the NAAQS. We therefore propose to approve Chapter 3 of Regulation 19.

**VII. Minor Source Review—Chapter 4 and Parts of Chapters 3 and 5**

*A. What Has Changed Since the Last Approval?*

The currently approved SIP was approved on May 5, 1989, 54 FR 18494. The requirements for permitting the construction of new and modified sources were previously documented in Arkansas ROP, Section 4—Permits. The current requirements are documented in Regulation 19, Chapter 4 (Minor Source Review) and in parts of Chapter 3 (Protection of the National Ambient Air Quality Standards) and Chapter 5 (General Emission Limitations Applicable to Equipment). Chapter 4 and parts of Chapters 3 and 5 contains the requirements for permitting new and modified minor sources.[1] The following paragraphs address our evaluation of Chapter 4 and the minor source review provisions of Chapters 3 and 5.

[1] The permitting requirements for major sources are in Chapters 9 and 11. These Chapters are discussed in sections XII and XIV of this preamble.

Chapter 4 recodifies the permitting requirements for minor sources and divides the program as follows:

TABLE 2.—DESCRIPTION OF EACH SECTION IN CHAPTER 4

| Section | Title | Description |
|---|---|---|
| 19.401 | General Applicability | Identifies emission thresholds for each air pollutant for which a permit is required if the threshold is exceeded. |
| 19.402 | Approval Criteria | Requires a source to show that construction or modification does not violate control strategy and does not interfere with attainment or maintenance of a NAAQS. |
| 19.403 | Owner/Operator Responsibilities | Requires that issuance of a permit does not interfere with owner's or operator's responsibility to comply with applicable portions of Regulation 19. |
| 19.404 | Required Information | Identifies the minimum information required in a complete permit application. |
| 19.405 | Action on Application | Describes the administrative process for reviewing and issuing a permit. |
| 19.406 | Public Participation | Describes the procedures for public participation. |
| 19.407 | Permit Amendments | Describes the procedures for amending a permit. |
| 19.408 | Exemption from Permitting | Identifies construction activities which are exempt from permitting. |
| 19.409 | Transition | Provides for sources which become subject to Regulation 19 as of the effective date of the Regulation to submit application meeting Regulation 19 requirements within 180 days the date that Regulation 19 became effective as a State regulation (February 15, 1999). |
| 19.410 | Permit Revocation and Cancellation | Describes when the ADEQ may revoke or cancel a permit. |
| 19.411 | General Permits | Describes provisions by which a source may obtain a general permit. |
| 19.412 | Dispersion Modeling | Describes the requirements for dispersion modeling to demonstrate compliance with the NAAQS. |
| 19.413 | Confidentiality | Provides for confidential treatment of information or trade secrets which are included in a permit application. |

The TSD contains a more detailed description of each section and a detailed discussion of the basis for how each Section of Chapter 4 meets the Federal requirements in 40 CFR part 51, subpart I. The requirements of subpart I are discussed in greater detail in section VII.G of this preamble.

*B. Does Arkansas Address the Minor Source Review Requirements in Any In Other Part of Regulation 19?*

Arkansas also addresses requirements of 40 CFR part 51, subpart I in the following sections of Regulation 19:

Section 19.303. Department Responsibilities

Section 19.502. General Regulations

Section 19.504. Stack Height/Dispersion Regulations

Our analysis of Arkansas minor source review program includes our analysis of the new source review provisions of these sections in addition to the provisions of Chapter 4.[2]

[2] This section of the preamble only addresses Chapters 3 and 5 that pertain to minor source review. Other provisions of these Chapters, not related to minor source review are discussed elsewhere in this preamble as follows: Chapter 3 is discussed in Section VI and Chapter 5 is discussed in Section VIII.

*C. What Is Minor Source Review?*

Minor source review is the assessment of the emissions and their impacts on the ambient air from new and modified minor sources. The ADEQ adopted and submitted Chapter 4 as a revision to its SIP which includes its minor source review provisions. Chapter 4 includes a mechanism to assure that the emissions from new and modified minor sources:

—Do not violate the control strategy in its approved SIP and

—Do not interfere with the maintenance and attainment of the NAAQS.

*D. Why Is Minor Source Review Needed in the SIP?*

Minor source review is required by section 110(a)(2)(C) of the Act which requires each plan to "include a program to provide for the * * * regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that the national ambient air quality standards are achieved * * *"

We also require plans to address the construction and modification of a facility, building, structure, or installation in 40 CFR part 51, subpart I—Review of New Sources and Modifications (subpart I). These provisions require the plan to include provisions which ensure that new and modified sources will not violate applicable portions of the control strategy and will not interfere with the attainment or maintenance of a NAAQS.[3] See 40 CFR 51.160(a).

*E. What Is a Minor Source?*

A minor source is any source which does not meet the definition of a major source. The Act in section 302(j) defines the terms "major stationary source" and "major emitting facility" as "any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator)." Regulation 19.903(B) adopts these definitions. The provisions of Regulation 19, Chapter 4 apply only

[3] Subpart I applies to the construction and modification of all sources, including major and minor sources. Chapter 4 of Regulation 19 only addresses the review requirements applicable to minor sources. Arkansas addresses the review requirements for major sources in Regulation 19, Chapter 9—Prevention of Significant Deterioration (discussed in section XII of this preamble), and in Chapter 11—Major Source Permitting Procedures (discussed in section XIV of this preamble).

to sources which are not "major" under this definition.

*F. What Are the Federal Requirements for Review of New or Modified Minor Sources?*

As mentioned in section VII.C, the requirements of a program for review of new and modified sources are contained in subpart I. This subpart consists of sections 51.160–51.164 which apply to the review of new and modified sources.[4] We can approve any implementation plan which meets these requirements.

*G. Do the Minor Source Review Provisions of Chapters 3, 4, and 5 Meet the Requirements of Subpart I?*

The Tables 3 and 4 outline the requirements of subpart I and identifies the provisions of Regulation 19 which satisfy these subpart requirements.[5] The TSD contains a more detailed discussion on the subpart I requirements and of the Regulation 19 provisions which meet the requirements in subpart I.

TABLE 3.—CHART COMPARING 40 CFR PART 51, SUBPART I TO ARKANSAS REGULATION 19, CHAPTERS 3, 4, AND 5

| Provision of 40 CFR 51, subpart I | State rule for minor sources |
|---|---|
| Section 51.160 Legally enforceable procedures | |
| (a) Determine whether proposed construction or modification will violate control strategy or interfere with attainment or maintenance of a NAAQS. | Sections 19.401, 19.402, 19.403, 19.405, 19.407, 19.408, 19.410, 19.411, and 19.502. |
| (b) Prevent construction or modification which does not meet paragraph (a) as described above. | Sections 19.303, 19.402, 19.405, 19.410, 19.411, and 19.502. |
| (c) Submission of required information by owner or operator of source undergoing construction or modification. | Sections 19.404 and 19.405. |
| (d) Approval to construct does not affect responsibility to comply with control strategy. | Sections 19.303, 19.403, and 19.502. |
| (e) Identify types and sizes of facilities, buildings, structures, or installations that are subject to review. | Sections 19.401, 19.407, 19.40, 19.411, and Appendix A. |
| (f) Air quality data and dispersion and other air quality modeling ..... | Sections 19.302 and 19.412. |
| Section 51.161 Public availability of information | |
| (a) State or local agency must provide opportunity for public comment on information submitted, and include agency's analysis of effects the construction or modification on ambient air quality, and the agency's proposed approval or disapproval. | Sections 19.405, 19.406, and 19.411. |
| (b) Minimum requirements for public notice ..... | Sections 19.406 and 19.411. |
| (c) Public comment period other than 30 days if 30-day comment period conflicts with existing requirements. | N/A. |
| (d) Send copy of public notice to the EPA Regional Office, all other State and local air pollution control agencies having jurisdiction. | Section 19.406. |
| Section 51.162 Identification of responsible agency. | |
| Identify State or local agency responsible for meeting requirements of 40 CFR part 51, subpart I. | § 19.405 |
| Section 51.163 Administrative procedures | |
| Identify the administrative procedures that the responsible agency will follow in making the determination in 40 CFR 51.160. | Sections 19.404, 19.405, 19.406, 19.407, 19.408, 19.409, 19.410, 19.411, and 19.413. |
| Section 51.164 Stack height procedures | |
| The degree of emission limitation must not be affected by stack height that exceeds good engineering practice. | § 19.504. |

TABLE 4.—CHART COMPARING ARKANSAS REGULATION 19, CHAPTERS 3, 4, AND 5 TO 40 CFR PART 51, SUBPART I

| State rule for minor sources | Provision of 40 CFR 51, subpart I |
|---|---|
| Chapter 3—Protection of the National Ambient Air Quality Standards | |
| Section 19.303. Regulated Sources Responsibilities | Section 51.160(d). |

[4] Subpart I also includes sections 51.165, Permit requirements, and 51.166—Prevention of significant deterioration of air quality (PSD). The requirements of these sections apply only to the construction and modification of major sources as defined in those sections. Section 51.165 is applicable to the permitting of major sources and major modifications in nonattainment areas. At present, Arkansas has no nonattainment areas and section 51.165 does not apply. Section 51.166 applies to sources subject to PSD and is discussed in more detail in our evaluation of the PSD program in Chapter 9. See the discussion of the PSD program in section XII of this preamble.

[5] Please note that Tables 3 and 4 identify the provisions of Regulation 19 which satisfy the requirements of subpart I. In addition to Chapter 4—Minor Source Review, certain requirements of subpart I are also satisfied in a portion of Chapter 3—Protection of the National Ambient Air Quality Standards and Chapter 5—General Emission Limitations Applicable to Equipment.

TABLE 4.—CHART COMPARING ARKANSAS REGULATION 19, CHAPTERS 3, 4, AND 5 TO 40 CFR PART 51, SUBPART I—Continued

| State rule for minor sources | Provision of 40 CFR 51, subpart I |
|---|---|
| **Chapter 4—Minor Source Review** | |
| Section 19.401. General Applicability | Section 51.160(a) and (e). |
| Section 19.402. Approval Criteria | Section 51.160(a)–(b). |
| Section 19.403. Owner/Operator's Responsibilities | Section 51.160(d). |
| Section 19.404. Required Information | Sections 51.160(c) and 51.163. |
| Section 19.405. Action on Application | Sections 51.160(a)–(c); 51.161(a); 51.162; and 51.163. |
| Section 19.406. Public Participation | Sections 51.160(b); 51.161(a)-(b), and (d); and 51.163. |
| Section 19.407. Permit Amendments | Sections 51.160(a), (e); and § 51.163. |
| Section 19.408. Exemptions from Permitting | Sections 51.160(a), (e); and 51.163. |
| Section 19.409. Transition | Section 51.163. |
| Section 19.410. Permit Revocation and Cancellation | Sections 51.160(a)–(b); and 51.163. |
| Section 19.411. General Permits | Sections 51.160(a)–(b), and (e); 51.161(a)-(b); and 51.163. |
| Section 19.412. Dispersion Modeling | Section 51.160(f). |
| Section 19.413. Confidentiality | Section 51.163. |
| **Chapter 5—General Emission Limitations Applicable to Equipment** | |
| Section 19.502. General Regulations | Section 51.160(a)–(b). |
| Section 19.504. Stack Height/Dispersion Regulations | Section 51.164. |

*G. Are the Minor Source Review Provisions of Chapters 3, 4, and 5 Approvable?*

As shown in Tables 3 and 4 above, the Minor Source Review provisions of Chapters 3, 4, and 5 meet the requirements of subpart I. We therefore find that these provisions meet the requirements of the Act and the requirements of subpart I. We therefore propose to approve these Minor Source Review provisions of Regulation 19.

**VIII. General Emission Limitations Applicable to Equipment—Chapter 5**

*A. What Has Changed Since the Last Approval?*

The currently approved SIP was approved on January 12, 1982 (47 FR 01291), January 14, 1982 (47 FR 02113), and February 23, 1989 (54 FR 07764). Emission limitations were previously documented in Arkansas ROP, Sections 5 and 8. Section 5 contained the regulations for new and modified equipment. Section 8 contained the regulations for existing equipment. The current Chapter 5 consolidates ROP Sections 5 and 8 into a single regulation. The Chapter generally defines the Federally regulated air pollutant limitations applicable to all equipment subject to the plan.

The Chapter is divided into Sections defining the Purpose (Section 19.501), General Regulations (Section 19.502), Visible Emission Regulations (Section 19.503), Stack Height/Dispersion Regulations (Section 19.504), and Revised Emission Limitations (Section 19.505).

The Sections on General Regulations (19.502) and Stack Height/Dispersion (19.504) are discussed in Tables 3 and 4 in section IV of this preamble. These Tables identify the requirements of subpart I which these portions of Regulation 19 satisfy.

Section 19.503 documents the requirements for visible emissions and combines the requirements for new, modified, and existing equipment. It has been updated with terminology consistent with EPA Method 9 for the determination of opacity of visible emissions (40 CFR part 60, Appendix A).

Section 19.505 permits the Director to revise emission limitations upward or downward in certain situations. The Director may impose more restrictive emission limitations if necessary to protect the NAAQS. The Director may not approve a less stringent limitation if it would cause a violation of the NAAQS.

*B. Is Chapter 5 Approvable?*

Since the Chapter only consolidates requirements for new, modified, and existing equipment for visible emissions and updates the terminology, satisfies some requirements for subpart I, and restricts the Director's ability to approve revised emission limitations if the revision would violate the NAAQS, we propose approval of Chapter 5.

**IX. Upset and Emergency Conditions—Chapter 6**

*A. What Has Changed Since the Last Approval?*

The currently approved SIP was approved on August 27, 1981, 46 FR 43145. The provisions for upset conditions were previously contained in Arkansas ROP, Section 6. The current requirements in the event of an upset are documented in Chapter 6, Section 19.601. The requirements relating to an Emergency condition are contained in Section 19.602.

Section 601 defines an upset condition and sets requirements for action to minimize or eliminate the excess emissions. This Section meets the "enforcement discretion" approach and the "affirmative defense" criteria stated in EPA's Excess Emission Policy (see memo *State Implementation Plans (SIPs): Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown* from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation, to Regional Administrators, Regions I–X, September 20, 1999). It also establishes reporting requirements which meet the record keeping and reporting aspects of an exceedence.

Section 602 defines emergency condition, such as acts of nature which are beyond the control of the source or operator. It also outlines the steps required to take acceptable corrective action when emissions are exceeded.

*B. Is Chapter 6 Approvable?*

Chapter 6 meets EPA's policy on excess emissions, contains the necessary elements to make the requirements enforceable and is consistent with the current SIP. We propose approval of Chapter 6.

**X. Sampling, Monitoring, and Reporting Requirements—Chapter 7**

*A. What Has Changed Since the Last Approval?*

Sampling, monitoring, and reporting requirements were previously documented in Arkansas ROP, Section 7. The currently approved SIP was approved on August 27, 1981, 46 FR 43145. These requirements are now documented in Chapter 7, Section 19.701 through 19.706. In general, Chapter 7 applies only to federally regulated air pollutant emissions.

The Chapter is divided into Sections defining the Purpose of the Chapter (Section 19.701), requirements for Air Emissions Sampling (Section 19.702), Continuous Emissions Monitoring (Section 19.703), and Record Keeping and Reporting (Section 19.705). The Chapter has added Sections for a Notice of Completion (Section 19.704) and Public Availability of Emissions Data (Section 19.706).

The Sections on Air Emissions Sampling, Continuous Emissions Monitoring, and Record Keeping and Reporting are contextually similar to the previously approved SIP.

The Section added on Notice of Completion requires that for equipment for which a new major permit or major permit modification is required, the Department shall be notified in writing within 30 days of the date of commencement of construction or modification and the date of commencement of operation of the equipment.

The Section added for Public Availability of Emission Data requires that data obtained by the Department shall be correlated in units of applicable emissions limitations and made available to the public.

*B. Is Chapter 7 Approvable?*

Since the Chapter's major change is to make the requirements applicable to Federally regulated air pollutants, which is acceptable, the added Sections increase requirements, and the remaining sections are essentially unchanged, we propose approving Chapter 7.

**XI. 111(d) Designated Facilities—Chapter 8**

Under Section 111(d) of the Act, emission standards are to be adopted by the States and submitted to the EPA for approval. These standards limit the emissions of designated pollutants from existing facilities which, if new, would be subject to the NSPS. The procedures under which States submit these plans to control existing sources are defined in 40 CFR part 60, subpart B. The submittal and review process of these State Plans is carried out separately from other SIP activities. We are thus taking no action on Chapter 8 in today's proposal.

**XII. Prevention of Significant Deterioration of Air Quality—Chapter 9.**

*A. How Does Arkansas' SIP Currently Address PSD?*

Currently, the SIP requirements for PSD are approved as the PSD Supplement to the Arkansas Plan of Implementation For Air Pollution Control. We approved the initial plan submitted by the Governor on April 23, 1981 (adopted April 10, 1981), and revisions submitted June 3, 1988 (adopted March 25, 1988) and June 19, 1990 (adopted May 25, 1990). We approved the current Arkansas PSD program on May 2, 1991 (56 FR 20137). The current PSD program is documented in 40 CFR 52.170(c) in the table "EPA Approved Regulations in the Arkansas SIP" and 40 CFR 52.181.

*B. How Does Regulation 19 Address PSD?*

Arkansas recodified its PSD program in Regulation 19, Chapter 9. Chapter 9 recodifies the PSD regulations without substantive change except as discussed below.

*C. What Has Changed Since Our Last Approval of Arkansas' PSD Program?*

We replaced the PSD increments for TSP with increments for PM–10 on June 3, 1993 (58 FR 31622). We promulgated this revision to the Federal PSD permitting regulations in 40 CFR 52.21, as well as revision to the PSD permitting requirements that State programs must meet in order to be approved into the SIP in 40 CFR 51.166.

These revised regulations specified the implementation date for States with SIP-approved PSD permitting programs (including Arkansas) as the date that we approve the revised State PSD program containing the PM–10 increments. In accordance with 40 CFR 51.166(a)(6)(i), each State with a SIP-approved PSD program was required to adopt the PM–10 increment requirements, which Arkansas submitted and which we are approving in this action. For further background regarding the PM–10 increments, see the June 3, 1993, **Federal Register** document.

In order to address the PM–10 increments, the State of Arkansas revised Regulation 19, Chapter 9. Arkansas changed the date of which the Federal regulations are incorporated by reference from June 28, 1989 to June 3, 1994 (the effective date of the PM–10 increments). We have reviewed this revision and found that it addresses all of the required regulatory revisions for PM–10 increments. In today's action we propose to approve the recodification of Arkansas' PSD program and the revisions to incorporate the PM–10 increments into the SIP. We are also proposing, consistent with Arkansas' revisions, to remove the TSP area designation tables in 40 CFR part 81 for Arkansas.

*D. Why Are We Removing the TSP Area Designation Tables in 40 CFR Part 81 for Arkansas?*

Section 107(d) of the 1977 Amendments to the Act authorized each State to submit to the Administrator a list identifying those areas which: (1) do not meet a NAAQS (nonattainment areas), (2) cannot be classified on the basis of available ambient data (unclassifiable areas), and (3) have ambient air quality levels better than the NAAQS (attainment areas). In 1978, we published the original list of all area designations pursuant to section 107(d)(2) (section 107 areas), including those designations for TSP, in 40 CFR part 81.

One of the purposes stated in the Act for the section 107 areas is for implementation of the statutory requirements for PSD. The PSD provisions of part C of the Act generally apply in all section 107 areas that are designated attainment or unclassifiable (40 CFR 52.21(I)(3)). Under the PSD program, the air quality in an attainment or unclassifiable area is not allowed to deteriorate beyond prescribed maximum allowable increases in pollutant concentrations (*i.e.*, increments).

We revised the primary and secondary NAAQS for particulate matter on July 1, 1987 (52 FR 24634), eliminating TSP as the indicator for the NAAQS and replacing it with the PM–10 indicator. However, we did not delete the section 107 areas for TSP listed in 40 CFR part 81 at that time because there were no increments for PM–10 promulgated at that time.[6] States were required to continue implementing the TSP increments in order to prevent significant deterioration of particulate matter air quality until the PM–10 increments replaced the TSP

[6] We did not promulgate new PM–10 increments simultaneously with the promulgation of the PM–10 NAAQS. Under section 166(b) of the Act, we are authorized to promulgate new increments "not more than two years after the date of promulgation of * * * standards." Consequently, we temporarily retained the TSP increments, as well as the section 107 areas for TSP.

increments. With the State adoption and implementation of the PM–10 increments becoming effective, the TSP area designations generally serve no useful purpose relative to the PSD program. Instead, the PM–10 area designations now serve to properly identify those areas where air quality is better than the NAAQS, *i.e.*, "PSD areas," and to provide the geographic link necessary for implementation of the PM–10 increments.[7]

Thus, in the June 3, 1993, **Federal Register** document in which we promulgated the PM–10 increments, we stated that, for States with SIP-approved PSD programs, we would delete the TSP area designations at the same time we approve the revision to a State's plan incorporating the PM–10 increments. In deleting any State's TSP area designations, we must ensure that the deletion of those designations will not result in a relaxation of any control measures that ultimately protect the PM–10 NAAQS.

As stated above, Arkansas has adopted and submitted adequate PSD revisions for PM–10 increments. In addition, Arkansas has no TSP areas designated as nonattainment. All existing particulate control measures in the Arkansas SIP remain in effect to ensure continuing attainment and maintenance of the PM–10 standard throughout the State. Thus, deletion of the TSP area designations will not result in relaxation of any PM controls that would impact the PM–10 NAAQS. We believe it is appropriate at this time to delete the State's TSP designation tables in 40 CFR 81.304.

Consistent with the above discussion, we are proposing to delete all of Arkansas' existing TSP designation tables in 40 CFR 81.304 and placing these section 107 areas into the PM–10 area designation table in 40 CFR 81.304, consistent with the June 3, 1993 **Federal Register**.

*E. Is Chapter 9 approvable?*

The only significant changes to Chapter 9 is to incorporate the requirements for the PSD increments for PM–10. Since we have determined that the changes meet the requirements of the Act and of the Federal PSD requirements, we are proposing to approve Chapter 9. We are also proposing to TSP area designation tables in 40 CFR part 81 for Arkansas.

[7] Section 107(d)(4)(B)(iii) of the Act mandates that all areas not designated nonattainment for PM–10 by operation of law, are designated unclassifiable. The PM–10 increments apply in any area designated unclassifiable for PM–10.

**XIII. Regulations for the Control of Volatile Organic Compounds—Chapter 10**

*A. What has changed since the last approval?*

The currently approved SIP was approved, in general, January 29, 1980 (45 FR 06569) as Arkansas volatile organic compound (VOC) Regulations, Sections 1 through 6. The most recent revision to Sections 3 and 4 was on October 13, 1981 (46 FR 50370). The most recent revision to Section 5 was on February 7, 1983 (48 FR 05722). The current Regulation integrates the VOC rules into Regulation 19 as Chapter 10, Sections 19.1001 through 19.1006. The Regulation 19 Sections are essentially the same as the Arkansas VOC Rules Sections. The Regulation 19 Sections are Title (19.1001), Purpose (19.1002), Definitions (19.1003), General Provisions (19.1004), Provisions for Specific Processes (19.1005), and Severability (19.1006).

Sections 19.1003 and 19.1004 were changed by moving definitions for "Volatile Organic Compounds," "Sources " "Organic compounds with negligible photochemical reactivity," "Commission," and "Potential to emit" to Chapter 2 containing other definitions.

Section 19.1004 contains only minor wording changes which corrected previous version or removed redundant wording. The requirement for Lowest Achievable Emission Rate for new major sources is changed to mirror the requirements of the Act which are in effect as of the effective date of this regulation. This change updates the requirements to the Federal Clean Air Act requirements.

Section 19.1005 relating to *Surface Coating of Metal Parts and Products* was changed such that the requirement that if more than one emission limitation applies to a specific coating, then the most (rather than the least) stringent emission limitation shall be applied. Section 19.1005(F) relating to *External Floating Roof Tanks* was changed to reduce the gap area between the secondary seal and tank wall for vapor mounted seals. This is a more stringent requirement.

All other Sections in Chapter 10 were unchanged.

*B. Is Chapter 10 approvable?*

Since Chapter 10, VOC Regulations, is essentially the same as the previously approved VOC Regulations and the minor changes are acceptable, we propose approval of Chapter 10.

**XIV. Major Source Permitting Procedures—Chapter 11**

*A. What Does Chapter 11 Require?*

Chapter 11 of Regulation 19 addresses the permitting procedures for major sources which are also subject to Regulation 26, Arkansas' regulation for its operating permit program under title V.[8] Chapter 9 contains the process, already approved by EPA [9] for issuance of a new or major modification of an existing source which is major for purposes of PSD by virtue of incorporation by reference of the provisions of 40 CFR 52.21(b)–(r).[10] Chapter 11 requires major sources which are subject to Regulation 26 to also have their permit applications processed in accordance with the procedures contained in Regulation 26, which are incorporated by reference. Thus, Chapter 11 creates the nexus between the PSD and title V programs to allow Arkansas to issue one permit to its sources which are defined as major under both programs.

For minor sources, the permitting process is contained in Chapter 4 which complies with 40 CFR 51.160—51.164 as explained above. The process for issuance of major and minor construction permits was formerly in section 4 of the ROP. Chapters 4 and 9 of Regulation 19 do not, however, fully cover all PSD sources defined as major sources under section 302(j) of the Act and subject to Section 4 of the ROP. Chapter 11 is necessary to provide a process for permitting the following:

- Sources which are major for purposes of PSD but undergo a physical change or change in the method of operation which does not result in a significant net emission increase, *i.e.*, minor modifications. Such change therefore is not subject to PSD review.[11]

[8] This refers to the provisions of title V (Permits) of the Act (42 U.S.C. 7661, 7661a-7661f) and the implementing regulations under 40 CFR part 70 (State Operating Permit Programs). These provisions establish the elements that an operating permits program must meet under part 70. Arkansas' Regulation 26 contains the requirements of their operating permits program. Arkansas currently operates its title V program under an interim approval. *See* 60 FR 46171 (September 8, 1995). Arkansas is currently working with EPA to revise Regulation 26 to correct the deficiencies identified in the interim approval.

[9] *See* section XII in this preamble for a description of our approval of Arkansas' PSD program and of our evaluation of Chapter 9.

[10] Chapter 9, Section 19.904(A) incorporates the provisions of 40 CFR 52.21 (b) through (r).

[11] For purposes of PSD, 40 CFR 52.21(i)(1) provides that no stationary source or modification to which the paragraphs (j)—(r) apply shall begin actual construction without a permit which states that the source or modification meets such requirements. The provisions of section 52.21(j)-(r)

Continued

Subpart I, however, applies to the construction of all sources, including major and minor sources. Such change, therefore, must meet the applicable requirements of subpart I, sections 51.160–51.164. Regulation 26 contains the provisions which satisfy these provisions of subpart I.[12] These provisions are incorporated into Regulation 19 by Chapter 11.

• A source which is major for title V but not major for PSD. This would include a source whose potential to emit is 100 tons per year (TPY) or more but less than 250 TPY and is not one of the source types listed in 40 CFR 52.21(b)(1).[13] Although a new or modified source which is not a PSD major source is not subject to PSD, the applicable requirements of subpart I, sections 51.160–51.164 nonetheless continue to apply as explained above. Regulation 26 contains the provisions which satisfy these provisions of subpart I.[14] These provisions are incorporated into Regulation 19 by Chapter 11.

Chapter 11 incorporates the applicable requirements of subpart I (sections 51.160–164) that are in Regulation 26 into Regulation 19, which we are proposing to approve into the SIP. By approving Chapter 11, we will also be approving the subpart I provisions of Regulation 26 which are incorporated by reference.

Through Chapter 11, Arkansas will ensure that the construction and modification of sources subject to the Act's preconstruction review requirements will meet the applicable requirements of 40 CFR part 51, subpart I. The TSD includes our analysis of the provisions of Regulation 26 which ADEQ incorporates by reference into Regulation 19. The TSD documents how Regulation 26 meets the requirements of 40 CFR part 51, subpart I. It further demonstrates that the procedures in Regulation 26 will ensure that modifications which occur at title V sources will satisfy the requirements of the Act and subpart I. Table 4 below identifies the provisions of Regulation 26 which meet the requirements of subpart I. The TSD contains a detailed evaluation of how the subpart I requirements are met.

TABLE 4.—SUBPART I CHECKLIST—REVIEW OF NEW SOURCES AND MODIFICATIONS REVIEW REGULATIONS FOR ARKANSAS REGULATION 26 SOURCES

| Requirement of 40 CFR part 51, subpart I | Provisions of Regulation 19 and 26 which meet subpart I |
|---|---|
| Section 51.160 Legally enforceable procedures | Section 26.3(a)–(b).<br>Section 26.4(a)–(b), (h), (j)–(k).<br>Section 26.5(a)(1), (3)–(4), and (b).<br>Section 19.302(A)–(B).<br>Section 19.303(A)–(C).<br>Section 19.502(A)–(C). |
| Section 51.161 Public availability of information | Section 26.6(a), (b)(1)(i)–(ii), (v), (b)(4), (c)(1)–(2), (d)(1)–(2). |
| Section 51.162 Identification of responsible agency. | N/A (already in approved plan). |
| Section 51.163 Administrative procedures | Section 26.3(a)–(b).<br>Section 26.4(a)–(b), (h), (j)–(k).<br>Section 26.5(a)(1), (3)–(4), and (b).<br>Section 19.302(A)–(B).<br>Section 19.303(A)–(C).<br>Section 19.502(A)–(C). |
| Section 51.164 Stack height procedures | Section 26.6(a), (b)(1)(i)–(ii), (v), (b)(4), (c)(1)–(2), (d)(1)–(2).<br>Section 19.504. |
| Section 51.165 Permit Requirements. (nonattainment) | N/A. |
| Section 51.166 Permit Requirements (PSD) | Regulation 19, Chapter 9. |

Consistent with the above table, the ADEQ on March 21, 2000, forwarded a supplementary request that we incorporate only the provisions of Regulation 26 identified in Table 5 below into the SIP which in satisfaction of subpart I requirements. Accordingly we propose to incorporate the following provisions of Regulation 26 as shown in Table 5 below.

TABLE 5.—PROVISIONS OF REGULATION 26 PROPOSED TO BE INCORPORATED INTO THE SIP

| Provision of Regulation 26 to be incorporated into the SIP | Title of section |
|---|---|
| Section 26.3 | Requirements for a Permit, Applicability. |
| Section 26.3(a) | Requirement for a permit. |
| Section 26.3(b) | Sources subject to permitting. |
| Section 26.4 | Applications for Permits. |
| Section 26.4(a) | Duty to apply. |
| Section 26.4(b) | Standard application form and required information. |

apply to the construction of major sources and major modifications. "Major stationary source" is defined in section 52.21(b)(1) and "major modification" is defined in section 52.21(b)(2). A major modification is a physical change or change in the method of operation at a major stationary source which results in a significant net emissions increase. "Net emissions increase" is defined in section 52.21(b)(3) which describes how the net emissions increase is determined. Such increase is significant if it equals or exceeds the significance thresholds in section 52.21(b)(23). Thus minor modifications at major stationary sources do not fall within the purview of the PSD requirements.

[12] According to Regulation 26, Section 26.2(e), "applicable requirement" is defined as "Any standard or other requirements provided for in the applicable implementation plan approved or promulgated by the EPA through rulemaking under title I of the Act* * *"(PSD *inter alia*) (this includes Regulation 19 Chapter 3 which requires protection of the NAAQS).

[13] Section 52.21(b)(1) is the definition of "major stationary source." Under this definition, a source is major for PSD if its PTE is 100 TPY or more *and* the source belongs to one of the source categories listed in section 52.21(b)(1)(i)(*a*). Otherwise, a source is a PSD major only if its PTE is 250 TPY or more, pursuant to section 52.21(b)(1)(i)(*b*). Under section 302(j) of the Act and 40 CFR part 70, a "major source" includes any stationary source with a PTE of 100 TPY or more.

[14] See footnote 12.

TABLE 5.—PROVISIONS OF REGULATION 26 PROPOSED TO BE INCORPORATED INTO THE SIP—Continued

| Provision of Regulation 26 to be incorporated into the SIP | Title of section |
|---|---|
| Section 26.4(h) | Complete application. |
| Section 26.4(j) | Applicant's duty to supplement application. |
| Section 26.4(k) | Certification by responsible official. |
| Section 26.5 | Action on Application. |
| Section 26.5(a)(1), (3)–(4) | Action on part 70 applications. |
| Section 26.5(b) | Final action on permit application. |
| Section 26.6 | Permit Review by the Public, Affected States, and EPA. |
| Section 26.6(a) | Untitled. |
| Section 26.6(b)(1)(i)–(ii), (v), (b)(4) | Public participation. |
| Section 26.6(c)(1)–(2) | Transmission of permit information to the Administrator. |
| Section 26.6(d)(1)–(2) | Review of draft permit by affected states |

Our analysis of these provisions of Regulation 26 [15] are from the version of Regulation 26 which Arkansas adopted July 23, 1993, and submitted to us on October 29, 1993. The EPA approved this version of Regulation 26 as described in footnote 8. We will need to reexamine our analysis if Arkansas adopts Regulation 26 with significant changes and Arkansas may need to make further revisions to its SIP.

*B. Is Chapter 11 Approvable?*

Consistent with the discussion above and in the TSD, Chapter 11 meets the requirements of 40 CFR part 51, subpart I and are approvable.

**XV. Insignificant Activities List—Appendix A**

*Are There Any Activities That Do Not Need a Permit or Permit Revision?*

Section 19.408(A) of Regulation 19 provides that the types of activities or emissions that are listed in Appendix A are deemed insignificant on the basis of size, emission rate, production rate, or activity. By such listing, the Department exempts certain sources or types of sources from the requirements to obtain a permit or plan under this regulation. Listing in this part has no effect on any other law to which the activity may be subject. Any activity for which a state or Federal applicable requirement applies (such as NSPS , NESHAP, or Maximum Achievable Control Technology) is not insignificant, even if this activity meets the criteria below.

The TSD contains a detailed analysis of Section 19.408 and of Appendix A and a discussion of how these provisions meet subpart I.

*B. Is Appendix A Approvable?*

Consistent with our evaluation of Section 19.408 and of Appendix in the TSD, these provisions of Regulation 19 are approvable.

**XVI. Proposed Action**

We are proposing to approve the provisions of Regulation 19 as described in Table 6 below:

TABLE 6.—CHAPTERS AND APPENDICES IN REGULATION 19 THAT EPA PROPOSES TO APPROVE

| Chapter | Title |
|---|---|
| Chapter 1 | Title, Intent, and Purpose. |
| Chapter 2 | Definitions. |
| Chapter 3 | Protection of the National Ambient Air Quality Standards. |
| Chapter 4 | Minor Source Review. |
| Chapter 5 | General Emission Limitations Applicable to Equipment. |
| Chapter 6 | Upset and Emergency Conditions. |
| Chapter 7 | Sampling, Monitoring, and reporting Requirements. |
| Chapter 9 | Prevention of Significant Deterioration. |
| Chapter 10 | Regulations for the Control of Volatile Organic Compounds. |
| Chapter 11 | Major Source permitting Procedures. |
| Appendix A | Insignificant Activities List. |

We are taking no action on Chapter 8—Designated Facilities in today's proposal. As discussed in section XI, we review and approve the State Plans for designated facilities under subpart B of 40 CFR part 60. We will review and process Chapter 8 of Regulation 19 in a separate action.

**XVII. Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

*B. Executive Order 13132*

Executive 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) revokes and replaces Executive Order 12612, "Federalism," and Executive Order 12875, "Enhancing the Intergovernmental Partnership." Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

[15] Regulation 26 is Arkansas' regulation for its operating permit program under title V. Arkansas currently operates its title V program under an interim approval. *See* 60 FR 46171 (September 8, 1995).

*C. Executive Order 13045*

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it approves a State program.

*D. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Lead, Nitrogen oxides, Ozone, Particulate matter, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 28, 2000.

**Carl E. Edlund,**

*Acting Regional Administrator, Region 6*

[FR Doc. 00–11566 Filed 5–8–00; 8:45 am]

BILLING CODE 6560–50–P

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[FRL–6601–2]**

### Montana: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to grant Final authorization to the hazardous waste program changes submitted by Montana. In the "Rules" section of this **Federal Register**, we are authorizing the State's program changes as an immediate final rule without a prior proposed rule because we believe this action as not controversial. Unless we get written comments opposing this authorization during the comment period, the immediate final rule will become effective and the Agency will not take further action on this proposal. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect. EPA will address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

**DATES:** We must receive your comments by June 23, 2000.

**ADDRESSES:** Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th St, Ste 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139. You can view and copy Montana's application at the following addresses: Air and Waste Management Bureau, Permitting and Compliance

Division, Montana Department of Environmental Quality, Metcalf Building, 1520 East Sixth Ave., Helena, Montana 59620, Phone: 406/444–1430; and U.S. EPA Region VIII, Montana Office, 301 S. Park, Federal Building, Helena, MT 59626, Phone: 406/441–1130 ext 239.

**FOR FURTHER INFORMATION CONTACT:** Eric Finke, Waste and Toxics Team Leader, U.S. EPA, 301 S. Park, Drawer 10096, Helena, MT 59626, Phone: (406) 441–1130 ext 239, or Kris Shurr, EPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules" section of this **Federal Register**.

Dated: April 28, 2000.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

[FR Doc. 00–11422 Filed 5–8–00; 8:45 am]

**BILLING CODE 6560–50–U**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[FRL–6602–9]**

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Chemform, Inc. Site from the National Priorities List (NPL); request for comments.

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**SUMMARY:** The Environmental Protection Agency (EPA), Region 4, announces its intent to delete the Chemform, Inc. Superfund Site in Pompano Beach, Broward County, Florida, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes Appendix B of 40 CFR part 300 to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the Florida Department of Environmental Protection (FDEP) have determined that all appropriate response actions under CERCLA have been implemented and that no further response action is appropriate. Moreover, EPA and FDEP have determined that the response actions conducted at the Site to date have been protective of public health, welfare, and the environment.

**DATES:** Comments on the proposed deletion from the NPL should be submitted no later than June 8, 2000.

**ADDRESSES:** Comments may be mailed to: Mr. Jamey Watt, Remedial Project Manager, Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, GA 30303–3104.

Comprehensive information on this Site is available through the EPA Region 4 public docket, which is located at EPA's Region 4 office and is available for viewing by appointment from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the regional public docket should be directed to the EPA Region 4 docket office.

The address for the regional docket office is: Record Center, Environmental Protection Agency, Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3104, Phone: (404) 562–9530.

Background information from the regional public docket also is available for viewing at the Site information repository located at: Broward County Main Library, Government Documents, 100 South Andrews Avenue, N.E., Fort Lauderdale, Florida 33301.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jamey Watt, Environmental Protection Agency, Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104, (404) 562–8920.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents:**

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

### I. Introduction

EPA, Region 4, announces its intent to delete the Chemform, Inc. Superfund Site from the NPL, which constitutes Appendix B of the NCP, and requests comments on this proposed deletion. EPA identifies sites on the NPL that appear to present a significant risk to public health, welfare, or the environment. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Trust Fund (Fund). Pursuant to 40 CFR 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

EPA will accept comments concerning this Site for 30 days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Site meets the deletion criteria.

### II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from or recategorized on the NPL when no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

- Responsible parties or other persons have implemented all appropriate response actions required; or
- All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or
- The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

CERCLA Section 121 (c), 42 U.S.C. 9621 (c), provides that if a site is deleted from the NPL where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. The OU1 ROD signed on September 22, 1992, as amended by the Explanation of Significant Differences (ESD) signed on April 2, 1999, calls for such Five-Year Review events at the Site. Each Five-Year Review will examine the institutional controls identified at the Site and allow for additional ground water monitoring if necessary. Five-Year Reviews will continue until Site ground water meets maximum concentration limits (MCLs). The OU2 ROD selected remedy which addressed soil contamination did not require Five-Year Review events. Through soil excavation and removal actions, no hazardous substances remained in on-site soils above health-based levels. If new information becomes available that indicates a need for further action, EPA may initiate a remedial action. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

**III. Deletion Procedures**

EPA, Region 4, will accept and evaluate public comments before making a final decision on deletion from the NPL. Comments from the local community may be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this Site:

- EPA has recommended deletion and has prepared the relevant documents;
- The State has concurred with the deletion decision;
- Concurrent with this Notice of Intent to Delete, notices have been published in local newspapers and have been distributed to appropriate federal, state and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete;
- EPA has made all relevant documents available at the information repositories; and
- EPA will respond to significant comments, if any, submitted during the public comment period.

Deletion of the Site from the NPL does not itself, create, alter, or revoke any individual rights or obligations. The NPL is designed primarily for informational purposes to assist Agency management. As mentioned in section II of this document, 40 CFR 300.425(e)(3) provides that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions nor does it preclude future State action pursuant to State law.

The comments received on EPA's Notice of Intent to Delete during the notice and comment period will be evaluated by EPA before making the final decision to delete. EPA will prepare a Responsiveness Summary, if necessary, which will address the comments received during the public comment period.

A deletion occurs when the EPA Regional Administrator places a Notice of Deletion in the **Federal Register**. Any deletions from the NPL will be reflected in the next NPL update. Public notices and copies of the Responsiveness Summary, if necessary, will be made available to local residents by the Regional office.

**IV. Basis for Intended Site Deletion**

The following Site summary provides the EPA's rationale for deleting the Site from the NPL.

The four-acre Chemform, Inc. Site lies in a highly industrialized section of northeastern Broward County, Pompano Beach, Florida. Chemform, Inc. operated as a certified repair and refurbishment station of turbine engine components for the aerospace industry. Chemform, Inc. also helped design, manufacture, and market electrochemical machines for other industries in metal parts manufacturing.

In 1977, a Broward County Pollution Control Board inspector found Chemform, Inc. had violated county regulations by discharging industrial wastes (oily liquid and sludge) onto the ground. EPA conducted a site screening investigation in August 1985. In July 1986, an EPA contractor conducted a sampling investigation. This investigation found the main source area of contamination to be composed of inorganics in the soil. After evaluating the sampling results, EPA proposed the Site for the NPL on June 24, 1988. On October 4, 1989, the Chemform, Inc. Site was promulgated onto the NPL.

The Chemform, Inc. Site was divided into two Operable Units (OUs). Operable Unit 1 (OU1) addresses ground water contamination. Operable Unit 2 (OU2) addresses contaminated soils. There is a Record of Decision (ROD) for each operable unit. The OU1 ROD was signed on September 22, 1992 and documented a selected remedy of "No Action with Monitoring" for the ground water. The September 16, 1993 OU2 ROD selected remedy for soil was "No Further Action" due to previous soil removal operations.

The "No Action with Monitoring" selected remedy for OU1 was based on the Remedial Investigation results and risk assessment, which indicated no remediation of ground water was needed at the Site. This was due to soil and waste removal actions in 1992 designed to eliminate the potential for inorganic constituents to leach from surface and subsurface soils into the ground water. The OU1 ROD called for quarterly ground water monitoring of the contaminants of concern (COCs) for no less than one year. The COCs identified in the OU1 ROD were selected based upon their toxicological properties, concentrations and frequency of occurrence during the OU1 Remedial Investigation.

Post-ROD quarterly ground water monitoring of the COCs occurred from October 1993 to July 1994. Additional necessary ground water sampling occurred at the Site and is documented in the ESD signed on April 2, 1999. All post-ROD ground water monitoring results revealed that concentrations for the COCs were below Florida primary drinking water standards. However, as documented in the OU1 ESD, the presence of vinyl chloride in some post-ROD ground water samples resulted in the initiation of Five-Year Review events. Vinyl chloride was not identified as a COC in the OU1 ROD. The Five-Year Reviews will monitor current institutional controls and allow for ground water sampling if necessary to ensure that the Site remains protective of human health and the environment.

The OU2 ROD addressed soil contamination. Soil characterization at the Site began with the OU1 Remedial Investigation in October 1989 and continued through the Removal Action in June 1992. Contaminant levels were substantially reduced by soil and source area cleanup activities, which Chemform, Inc. conducted under EPA oversight. More than 2,000 cubic yards of contaminated surface and subsurface soils were excavated. Confirmatory sampling of surface and subsurface soils revealed Soil Cleanup Levels (SCLs) for inorganics under the Removal Action had been reached.

As part of the OU2 soil removal actions at the Site, a septic tank system was excavated and disposed of off-site in June 1992. Testing of the tank contents showed the presence of trichloroethene (TCE) and related organic compounds. Concerns over potential ground water contamination from these compounds led to additional ground water sampling subsequent to the post-ROD quarterly ground water sampling. This further sampling revealed the presence of one TCE related compound, vinyl chloride, which was not targeted as a COC in the OU1 ROD, above the MCL. The events and results are summarized in the ESD. Due to the presence of vinyl chloride above the MCL, the ESD documents the need for Five-Year Reviews to be performed at the Site. The presence of vinyl chloride does not indicate a current health threat at the Site. Public water supply lines service the Site and surrounding area. State and local ground water use controls prevent a future exposure route from occurring. A Five-Year Review policy will verify existing ground water use controls and, as determined necessary by EPA, continue ground water monitoring.

**Applicable Deletion Criteria**

One of the three criteria for site deletion, 40 CFR 300.425(e)(1)(ii), specifies that EPA may delete a site from the NPL if "all appropriate Fund-Financed Response under CERCLA has been implemented, and no further response action by responsible parties is appropriate." EPA, with the concurrence of FDEP, believes that this criterion for deletion has been met and the Site is protective of human health

and the environment. Subsequently, EPA is proposing the deletion of this Site from the NPL.

**State Concurrence**

The Florida Department of Environmental Protection concurs with the proposed deletion of the Chemform, Inc. Superfund Site from the NPL. FDEP submitted a "Letter of Concurrence" to EPA on November 22, 1999. EPA also worked closely with FDEP in establishing a five year review period in the ESD.

Reports that contain extensive Site characterization information are available for review, along with the RODs and ESD, in the Administrative Record. A Deletion Docket, which contains all pertinent information supporting the deletion recommendation, is also available to the public at the EPA Regional office and the local Site repository.

Dated: April 6, 2000.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region IV.*

[FR Doc. 00–11569 Filed 5–8–00; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 538

**[Docket No.: NHTSA–2000–7087]**

### Automotive Fuel Economy Manufacturing Incentives for Alternative Fuel Vehicles

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Request for comments.

**SUMMARY:** This document seeks comments to assist the National Highway Traffic Safety Administration (NHTSA) in the study of the success of the policy of providing corporate average fuel economy (CAFE) incentives for "dual-fuel" alternative fuel and gaseous dual-fuel vehicles and whether the agency should extend the incentive program for four years beyond MY 2004. Comments received in response to this document will be used to assist NHTSA in completing a study and issuing a report to Congress on or before September 30, 2000.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Comments to this document must refer to the docket number and notice number set forth above and be submitted (preferably two copies) to: U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590. Docket hours are 9 a.m. to 5 p.m. Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, D.C. 20590: For non-legal issues: Mr. Lawrence Fleming, Consumer Programs Division, Office of Planning and Consumer Programs, NPS–32, Room 5320, telephone (202) 366–4936, facsimile (202) 493-2290. For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, Room 5219, telephone (202) 366–5263, facsimile (202) 366–3820.

**SUPPLEMENTARY INFORMATION:** Corporate average fuel economy (CAFE) is the fuel economy, expressed in miles per gallon, of a manufacturer's fleet of: (1) Passenger cars, or (2) light trucks under 8,500 lbs. gross vehicle weight rating. Each manufacturer's average fuel economy is determined by the Environmental Protection Agency in accordance with procedures set forth in 49 U.S.C. 32904 and is calculated by computing the weighted fuel economy average of various model types of a manufacturer in a particular model year. The MY 2000 CAFE standard is 27.5 mpg for passenger cars and 20.7 mpg for light trucks. Failure to comply with the standard for either passenger car or light truck fleets in any given model year results in civil penalties of $5.50 for each tenth of a mile per gallon per vehicle. (49 U.S.C. 32912(b)).

Manufacturers can earn "credits" to offset deficiencies in their CAFE performance. Specifically, when the average fuel economy of the vehicles manufactured by a manufacturer in a particular model year exceeds the average fuel economy standard, the manufacturer earns credits. The number of credits a manufacturer earns is determined by multiplying the number of tenths of a mile per gallon by which the manufacturer exceeded the fuel economy standard in that model year times the number of vehicles they manufactured in that model year. These credits can be applied to any of the three consecutive model years immediately after, or if a carry-back plan is approved under 32903(b), before the model year for which the credits are earned. For a variety of reasons, credits are highly valued by manufacturers and provide a significant incentive to exceed the applicable standards for a given model year.

The Alternative Motor Fuels Act of 1988 ("AMFA'; Pub. L. 100–94, October 14, 1988) was enacted with the primary purpose of encouraging the development and use of methanol, ethanol and natural gas as transportation fuels and to promote the production of alternate fuel vehicles (AFVs) by auto manufacturers. To this end, AMFA contains provisions that allow for special treatment of vehicle fuel economy calculations for dedicated alternative fuel vehicles and dual-fuel vehicles that meet specified requirements. Passenger automobiles and light trucks that are eligible for special fuel economy calculations are "dedicated" and designed to operate exclusively on methanol or ethanol in composition of 70 percent or more or on natural gas; or "flexible fuel" vehicles that have the capability to operate on either conventional petroleum or a blend of alcohols in conjunction with either gasoline or diesel; or on natural gas. These vehicles also must meet energy efficiency and minimum driving range requirements. A manufacturer producing alternative fuel vehicles that meet energy efficiency and minimum driving range requirements may be able to raise their overall fleet fuel economy performance by manufacturing these vehicles.

AMFA directs the Secretary of Transportation to conduct a study and issue a report on the success of the policy of providing CAFE incentives for alternative dual-fuel vehicles by assessing alternative fuel use; cost and availability; the availability and affordability of vehicles capable of operating on either alternative or conventional fuel; the effect these vehicles have on the environment; energy conservation; and other relevant factors. This document seeks information and data that will assist the agency in conducting its assessment.

**1. Statutory Background**

Section 6 of AMFA amended the fuel economy provisions of Title V of the Motor Vehicle Information and Cost Savings Act by adding a new section 513 that contains incentives for the manufacture of vehicles designed to operate on alternative fuels, including dual-fuel vehicles. Dual-fuel vehicles are generally defined as one of two classes that operate on either alternative fuel and gasoline or diesel fuel, or those capable of operating on natural gas or either gasoline or diesel fuel. Section 513(h) specifically defined a "dual energy@ automobile as one that meets a minimum driving range and:

(i) Which is capable of operating on alcohol and on gasoline or diesel fuel;

(ii) Which provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Federal Government, while operating on alcohol as it does while operating on gasoline or diesel fuel; [and]

(iii) Which* * * provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Federal Government, while operating on a mixture of alcohol and gasoline or diesel fuel containing exactly 50 percent gasoline or diesel fuel as it does while operating on gasoline or diesel fuel as those vehicles capable of operating on alcohol and on either gasoline or diesel fuel, or those capable of operating on natural gas and on either gasoline or diesel fuel [.].

A "natural gas dual energy" automobile was defined as a vehicle that met specified minimum driving range, and:

(i) Which is capable of operating on natural gas and on gasoline or diesel fuel; [and]

(ii) Which provides equal or superior energy efficiency, as calculated for the applicable model year during fuel economy testing for the Federal Government, while operating on natural gas as it does while operating on gasoline or diesel fuel [.].

The Energy and Policy Act of 1992 added new provisions of Section 513 of the Motor Vehicle Information and Cost Savings Act. In addition, the definition of alternative fuel was expanded to include liquefied petroleum gas, hydrogen, liquid fuels derived from coal and biological materials, electricity and any other fuel that the Secretary of Transportation determines to be substantially non-petroleum based and have environmental and energy security benefits. The law also revised terminology by replacing "dual energy" and "natural gas dual energy" with "alternative fueled vehicles" in order to more appropriately reflect the expanded list of fuels.

Beginning in MY 1993, manufacturers of AFVs that met the minimum driving range and energy efficiency criteria could qualify for special treatment in the calculation of their CAFE by computing the weighted average of fuel economy while operating on gasoline or diesel fuel and when operating on the alcohol after dividing the alcohol fuel economy by a factor of 0.15. For instance, a dedicated AFV that would achieve 15 mpg fuel economy while operating on alcohol would have a CAFE calculated as follows:

FE=(1/0.15)(15)=100 miles per gallon

For alternative dual-fuel vehicles, an assumption is made that the vehicles would operate 50% of the time on the alternative fuel and 50% of the time operating on conventional fuel, resulting in a fuel economy that is based on a harmonic average of alternative and conventional fuel. The fuel economy for an alternative dual-fuel model is calculated by dividing 1.0 by the sum of 0.5 divided by the fuel economy as measured on the conventional fuel and 0.5 divided by the fuel economy as measured on the alternative fuel, using the 0.15 volumetric conversion factor. For example, for an alternative dual-fueled model that achieves 15 miles per gallon operating on an alcohol fuel and 25 mpg on the conventional fuel, the resulting CAFE value would be:

1/((0.5/ 25)+(0.5/100))=40 miles per gallon

The CAFE calculated values for a natural gas alternative fuel vehicle are arrived at in similar fashion. For the purposes of this calculation, the fuel economy is equal to the weighted average of the vehicle fuel economy while operating on natural gas and while operated on either gasoline or diesel fuel. Section 32905(c) specifies the energy equivalency of 100 cubic feet of natural gas to be equal to 0.823 gallons of gasoline, with the gallon equivalent of natural gas to be considered to have a fuel content equal to 0.15 gallons of fuel. The applicability of these special mileage calculation procedures is for vehicles manufactured for sale in MY 1993 through MY 2004, and the maximum allowable increase in a manufacturer's fleet average fuel economy attributed to these dual-fuel vehicles is 1.2 miles per gallon.

Section 32905(g) stipulates that the Secretary of Transportation (the Secretary), in consultation with the Secretary of Energy and the Administrator of the Environmental Protection Agency, shall submit a report to the Committee on Commerce, Science and Transportation and Governmental Affairs of the Senate, and the Committee on Energy and Commerce of the House of Representatives, a report containing the results of the study of the success of this alternative fuel vehicle mileage credit incentive policy and make recommendations whether to extend the program for up to an additional four (4) model years, with a maximum allowable increase in average fuel economy for a manufacturer attributed to dual-fuel vehicles of 0.9 miles per gallon. In preparation of this study and report, the Secretary is to consider the following factors:

(i) [T]he availability to the public of alternative fueled automobiles, and alternative fuels;

(ii) energy conservation and energy security;

(iii) environmental considerations; and

(iv) other relevant factors.

Upon completion of the study and report, the Secretary shall either promulgate a final rule that extends the incentive program for up to four additional model years, or issue public notice of the decision to terminate the incentive program with appropriate justification. The final rule or regulatory decision must be issued no later than December 31, 2001.

**2. The Intent of the Alternative Motor Fuels Act of 1988 and the Basis for Evaluation of the Study and Report**

It is clear that in creating special CAFE incentives for alternative fuel vehicles in AMFA and EPACT amendments, Congress intended to foster the commercialization of alternative fuels used for transportation and to further the development of the alternative fuel production, supply and distribution infrastructure. While AMFA has provisions for special CAFE calculations for both dedicated and dual-fuel vehicles, the statutory language directs that the study and report to Congress only assess the policy of providing CAFE incentives for dual-fuel vehicles and not dedicated AFVs. Accordingly, information on dedicated AFVs will be included in the study only as it pertains to evaluating the policy of providing CAFE mileage credits for dual-fuel vehicles.

It should be noted that while the Energy Policy Act of 1992 expanded the definition of alternative fuels to include liquefied petroleum gas, hydrogen, electrically powered and others, the rulemaking procedures for implementing the provisions of AMFA were already in process by the time these other energy source fuels were classified as "alternative" fuels, and the final rule implementing the related provisions of AMFA has procedures for CAFE credit calculations for alcohol and compressed natural gas powered vehicles only (ref: 59 FR 39368; August 3, 1994).

In executing the study and preparing the report, NHTSA will specifically attempt to evaluate the effect of the incentives upon the acceptance of alternative fuels as measured by the change in fuel use for light vehicle transportation. NHTSA will also examine the change in the number of vehicles that operate on alternative fuels manufactured since the 1993 model year and evidence, if any, that associates the design, development and production of these vehicles to the incentives offered in fuel economy calculations. Wherever possible, the costs and benefits to both consumers and industry will be

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analyzed as well as the impact upon energy security and the environment.

**3. Questions and Comments**

To assess the impacts of the CAFE incentives program as described above, NHTSA, in coordination with the Environmental Protection Agency and the Department of Energy, seeks specific information and relevant comments. Set forth below are questions organized under three categories to facilitate collection of data and relevant information: (1) The automobile industry; (2) the fuel industry; and (3) general interest. NHTSA invites comments and input from all interested parties on any of the questions listed in this document. The information sought by the agency will assist in the preparation of the study and report to Congress on the effect of CAFE incentives for dual-fuel and gaseous dual-fuel vehicles and the agency's determination on whether to continue the program with a reduced maximum attributed allowance through the 2008 model year. In providing a comment on a particular matter or in responding to a particular question, interested parties are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to statistical and cost data or marketing studies, and the source of such information. Wherever used, the terms "sale", "production" and "design" pertain to passenger cars and light trucks up to 8,500 lbs. gross vehicle weight rating that are manufactured either domestically or imported for sale in the United States and U.S. Territories and possessions, including lease sales, fleet sales, etc.

NHTSA requests information and comments to the following questions:

*(A) Questions/Issues Primarily Related to Automobile Manufacturers*

1. How and to what extent has the AMFA CAFE incentives program affected manufacturers' decisions to design, manufacture and sell dual-fuel alcohol and natural gas powered vehicles and other alternative fuel vehicles? Specifically for MY 1993 through MY 2000, list all the alternative fuel vehicles that are offered for sale and for each vehicle line, indicate whether credits were a major factor, a minor factor, or of little or no consideration to the company's decision to offer an alternative fuel vehicle.

2. What was/is the price differential for offering alcohol and compressed natural gas powered dual-fuel vehicles and other alternative fuel vehicles versus conventionally fueled models? Please provide examples of manufacturers' suggested retail price of applicable alternative fuel vehicle models versus the retail price of their conventional fuel counterpart models.

3. Using the response to Question 2, what was/is the "dollar value" of each AMFA qualifying vehicle, defined as the savings generated by avoiding CAFE penalties less the expenses associated with design and manufacturing of these alternative fuel vehicles?

4. What was/is the cost differential (on a per vehicle basis) to produce alcohol and compressed natural gas powered dual-fuel vehicles and other alternative fuel vehicles versus conventionally fueled models?

5. What new technologies have been specifically developed and implemented in order to accommodate the use of methanol/ethanol or natural gas to qualify for the fuel economy calculation benefit? What is the attributed cost of each of the technologies?

6. Have there been performance or durability problems associated with operating vehicles on methanol/ethanol or natural gas? If yes, please specify the nature (e.g., materials degradation due to incompatibility of oxygenated fuels, cold start and driveability issues, etc.) and the extent of the problems.

7. What efforts have manufacturers taken, or plan to take, to market dual-fuel or other alternative fuel vehicles to fleet operators? What information relative to performance or durability has been or will be provided by the fleet operators to the automobile manufacturer?

8. What initiatives have manufacturers and dealers taken to educate consumers about vehicles' capability to operate on an alternative fuel? Please provide any available owner's manual information, dealer bulletins, or other point of sale literature that is relevant.

9. What are the auto manufacturers' plans for MY 2001 through MY 2008 relative to the AMFA CAFE incentive program? How would the decision to extend the maximum allowable mileage increase at 0.9 mpg as prescribed by AMFA effect manufacturers' product strategy? Conversely, what effect would a decision not to extend the provision beyond MY 2004 have on manufacturers' product plans?

*(B) Questions/Issues Primarily Related to Fuel Producers, Distributors and Retailers*

1. How has the AMFA CAFE program affected the fuel industry's production and sales of alternative fuels from 1993 through 2000?

2. How has the AMFA CAFE program directly affected the number of alternative fuel refueling sites from 1993 through the present time?

3. How will the fuel industry's projected plans for production and distribution be affected by the decision to either continue or discontinue a vehicle-specific incentive program beyond 2004?

4. Does the fuel industry believe that changes to the infrastructure as a result of considerations other than/in addition to the AMFA CAFE credits program would be warranted in order to improve an alternative fuels infrastructure? Please recommend any possible changes other than AMFA CAFE incentives that would facilitate further development of that infrastructure.

5. What efforts have been made by the fuel industry and other groups to educate consumers and promote the use of methanol/ethanol or compressed natural gas as an alternative fuel?

*(C) Questions/Issues of General Interest*

1. How difficult is it for consumers to find fueling locations for, and availability information on, alternative fuels? How do they seek alternative fuel locations?

2. What are the most common consumer complaints regarding problems or concerns related to the use of the dual-fuel vehicles or availability of the alternative fuels?

3. Assuming an ample supply of alternative fuels and vehicles, would consumers be willing to use alternative fuels over conventional ones? Please provide the basis for this response.

4. What changes would be necessary to improve consumer awareness and acceptance of alternative fuel vehicles?

5. What other efforts could government or industry take to increase the use of alternative fuels?

6. Is there any information available on the approximate percentage of vehicle mileage for which a owner/driver of a dual-fuel vehicle uses the alternative fuel versus gasoline or diesel fuel? If so, should the "50/50 split" used in the credit calculation formula be revised to a value that more closely represents actual alternative fuel use?

7. Are there companion programs necessary to ensure that vehicles manufactured for purposes of complying with the CAFE requirement are actually using alternative fuels?

8. Has the AMFA CAFE program affected the total use of methanol/ethanol and compressed natural gas use? If so, how?

9. What changes could be made to this program, either from the vehicle production aspect or the fuel industry

aspect, that would be perceived as an even greater incentive to produce, distribute and market alternative fuels in the future?

10. In addition to energy conservation, energy security, environmental considerations, and the availability of alternative fuel vehicles and alternative fuels to the public, what other factors should be considered in the evaluation of the policy of providing additional CAFE credits for dual-fuel vehicles?

11. Do you believe the policy of providing additional CAFE credits for dual-fuel vehicles should be continued? Please explain the basis for your position.

NHTSA solicits public comments on this document. It is requested but not required that two copies be submitted.

**How Do I Prepare and Submit Comments?**

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the Docket number of this document in your comments.

Your primary comments must not be more than 15 pages long (49 CFR 553.21). However, you may attach additional documents to your primary comments. There is no limit on the length of the attachments.

Please send two paper copies of your comments to Docket Management or submit them electronically. The mailing address is: U. S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. If you submit your comments electronically, log onto the Dockets Management System website at *http://dms.dot.gov* and click on "Help and Information" or "Help/Info" to obtain instructions.

**How Can I Be Sure That My Comments Were Received?**

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

**How Do I Submit Confidential Business Information?**

If you wish to submit any information under claim of confidentiality, send three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NCC–01, National Highway Traffic Safety Administration, Room 5219, 400 Seventh Street, SW, Washington, DC 20590. Include a cover letter supplying the information specified in our confidential business information regulation (49 CFR Part 512).

In addition, send two copies from which you have deleted the claimed confidential business information to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590.

**Will the Agency Consider Late Comments?**

NHTSA will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, NHTSA will also consider comments that Docket Management receives after that date.

Please note that even after the comment closing date, NHTSA will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

**How Can I Read the Comments Submitted by Other People?**

You may read the comments by visiting Docket Management in person at Room PL–401, 400 Seventh Street, SW, Washington, DC from 9:00 a.m. to 5:00 p.m., Monday through Friday.

You may also see the comments on the Internet by taking the following steps:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/search/*)

(2) On that page, click on "search".

(3) On the next page (*http://dms.dot.gov/search/*) type in the four digit Docket number shown at the beginning of this Notice. Click on "search".

(4) On the next page, which contains Docket summary information for the Docket you selected, click on the desired comments. You may also download the comments.

**Authority:** (49 U.S.C. 32905(g); delegation of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: April 27, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 00–11046 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–59–P

# Notices

Federal Register
Vol. 65, No. 90
Tuesday, May 9, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Meeting of Advisory Committee on Emerging Markets

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the third meeting of the Advisory Committee on Emerging Markets will be held May 17, 2000. The role of the committee is to provide information and advice, based upon knowledge and expertise of the members, useful to the U.S. Department of Agriculture (USDA) in implementing the Emerging Markets Program. The committee will also advise USDA on ways to increase the involvement of the U.S. private sector in cooperative work with emerging markets in food and rural business systems and review proposals submitted to the Program.

**DATES:** The meeting will be held Wednesday, May 17, 2000, from 9:30 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250.

**SUPPLEMENTARY INFORMATION:** The purpose of this meeting is to review and discuss those proposals the Emerging Markets Office has received which may qualify for Emerging Markets Program funding. The minutes of the meeting announced in this Notice shall be available for review. The meeting is open to the public and members of the public may provide comments in writing to Douglas Freeman, Foreign Agricultural Service, Room 6506 South Building, U.S. Department of Agriculture, 14th and Independence Ave. SW, Washington, DC 20250, but should not make any oral comments at the meeting unless invited to do so by the Co-chairpersons.

Signed at Washington, DC, May 3, 2000.

**Timothy J. Galvin,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 00–11559 Filed 5–8–00; 8:45 am]

BILLING CODE 3410–10–M

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

**AGENCY:** Natural Resources Conservation Service (NRCS).

**ACTION:** Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

**SUMMARY:** It is the intention of NRCS in Indiana to issue two revised conservation practice standards in Section IV of the FOTG. The revised standards are Field Border (Code 386) and Use Exclusion (Code 472). These practices may be used in conservation systems that treat highly erodible land.

**DATES:** Comments will be received on or before June 8, 2000.

**ADDRESSES:** Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of these standards will be made available upon written or electronic request. You may submit electronic requests and comments to joe.gasperi@in.usda.gov.

**FOR FURTHER INFORMATION CONTACT:** Jane E. Hardisty, 317–290–3200.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: April 26, 2000.

**Jane E. Hardisty,**

*State Conservationist, Indianapolis, Indiana.*

[FR Doc. 00–11572 Filed 5–8–00; 8:45 am]

BILLING CODE 3410–16–U

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Invitation for Applications of Interest To Sell Intermediary Relending Program (IRP) Loans Under an Expanded Pilot—Extension of Time and Clarification of Issues

**AGENCY:** Rural Business-Cooperative Service (RBS), U.S. Department of Agriculture (USDA).

**ACTION:** Notice.

**SUMMARY:** On November 12, 1999 (64 FR 61575), RBS announced an expanded pilot sale of IRP intermediary loans made to third parties. The intended effect of the notice was to solicit applications of interest from intermediaries who wished to consider participation in the Fiscal Year (FY) 2000 loan sale. RBS stated that it would competitively select and authorize several intermediaries to sell an aggregate amount of approximately $50 million of the existing IRP portfolios in FY 2000 from among those intermediaries who have advanced at least 95 percent of IRP funding received by the intermediary. That announcement was also intended to provide notice to potential purchasers and other parties interested in structuring the sale of ultimate recipient notes. This notice restates and clarifies language in the November 12, 1999, notice and extends the length of time available to submit an application, due date for submission, and date by which any sale of loans is required to be complete.

None of the intermediaries which submitted an application were able to meet all basic criteria for eligibility. Several other interested parties communicated with RBS that, although they were potentially interested in participating in the sale, they did not intend to respond to the invitation due to the short 45-day deadline for responses during the December 1999

holiday season. The Agency is concerned that many intermediaries made a basic examination of their portfolios during the earlier 45-day period and determined preparation time was inadequate.

RBS believes that the expanded pilot sale is necessary to allow the Agency to: (1) Test whether there is a sufficient market for a large amount of these loans, whether sold as whole loans or in some other structure; and (2) give the Agency sufficient data to evaluate the effectiveness and long-term program impact of allowing such sales.

Therefore, RBS has decided to reopen consideration for entities to participate. There is no expectation by the Agency that, after receiving approval to participate from RBS, any or all intermediaries will determine that it is ultimately in their interest to negotiate or consummate a sale in the required time frame. If RBS determines after the pilot program that sufficient interest exists, the Agency intends to begin the formal rule-making process.

**DATES:** The deadline for receipt of the applications of interest in the third-party sale in the applicable Rural Development State Office (see **ADDRESSES** below) is 4:00 P.M. Eastern Time on July 10, 2000. Applications received after that date will not be considered for participation in the expanded pilot sale. Any application of interest already submitted by potential buyers for those portfolios, and offerors of other services to buyers or sellers, shall remain valid and need not be resubmitted by those parties. However, parties which submitted applications of interest may revise or withdraw those applications if they so choose. New applications from additional parties will also be allowed, although an application only facilitates contact between intermediaries, service providers, and purchasers, and is not required for an entity to either provide services or purchase loans.

A deadline for completion of any sale resulting from an intermediary is hereby established as December 31, 2000, to allow a timely evaluation of the pilot sale and permit the start of formal rule making. None of the basic criteria for eligibility have been revised from the November 12, 1999, notice. However, certain language in the original invitation has been clarified.

**ADDRESSES:** Applications to participate in the expanded pilot sale should be mailed to the Rural Development State Office for the State in which the intermediary is headquartered. Listed below are the following addresses for Rural Development State Offices:

Alabama
USDA Rural Development State Office, Sterling Center, Suite 601, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3400

Alaska
USDA Rural Development State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645–6539, (907) 761–7600

Arizona
USDA Rural Development State Office, 3003 North Central Avenue, Suite 900, Phoenix, AZ 85012–2906, (602) 280–8700

Arkansas
USDA Rural Development State Office, 700 West Capitol Avenue, Room 3416, Little Rock, AR 72201–3225, (501) 301–3200

California
USDA Rural Development State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800

Colorado
USDA Rural Development State Office, 655 Parfet Street, Room E–100, Lakewood, CO 80215, (303) 236–2801

Delaware-Maryland
USDA Rural Development State Office, 4607 South DuPont Highway, Camden, DE 19934–9998, (302) 697–4300

Florida/Virgin Islands
USDA Rural Development State Office, 4440 NW. 25th Place, Gainesville, FL 32614–7010, (352) 338–3400

Georgia
USDA Rural Development State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2162

Hawaii
USDA Rural Development State Office, Federal Building, Room 311, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8380

Idaho
USDA Rural Development State Office, 9173 West Barnes Drive, Suite A1, Boise, ID 83709, (208) 378–5600

Illinois
USDA Rural Development State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5235

Indiana
USDA Rural Development State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3100

Iowa
USDA Rural Development State Office, Federal Building, Room 873, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4663

Kansas
USDA Rural Development State Office, 1200 SW. Executive Drive, Topeka, KS 66615, (785) 271–2701

Kentucky
USDA Rural Development State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7300

Louisiana
USDA Rural Development State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7920

Maine
USDA Rural Development State Office, 444 Stillwater Avenue, Suite 2, Bangor, ME 04402–0405, (207) 990–9106

Massachusetts/Rhode Island/Connecticut
USDA Rural Development State Office, 451 West Street, Amherst, MA 01002, (413) 253–4300

Michigan
USDA Rural Development State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5100

Minnesota
USDA Rural Development State Office, 410 AgriBank Building 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7800

Mississippi
USDA Rural Development State Office, Federal Building, Suite 831 100 West Capitol Street, Jackson, MS 39269, (601) 965–4316

Missouri
USDA Rural Development State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0976

Montana
USDA Rural Development State Office, 900 Technology Blvd., Unit 1, Suite B, Bozeman, MT 59715, (406) 585–2580

Nebraska
USDA Rural Development State Office, Federal Building, Room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5551

Nevada
USDA Rural Development State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222

New Jersey
USDA Rural Development State Office, Tarnsfield Plaza, Suite 22, 790 Woodlane Road, Mt. Holly, NJ 08060, (609) 265–3600

New Mexico
USDA Rural Development State Office, 6200 Jefferson Street, NE., Room 255, Albuquerque, NM 87109, (505) 761–4950

New York
USDA Rural Development State Office, The Galleries of Syracuse 441 South Salina Street, Suite 357, Syracuse, NY 13202–2541, (315) 477–6400

North Carolina
USDA Rural Development State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2000

North Dakota
USDA Rural Development State Office, Federal Building, Room 208 220 East Rosser, Bismarck, ND 58502–1737, (701) 530–2037

Ohio
USDA Rural Development State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2500

Oklahoma
USDA Rural Development State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1000

Oregon
USDA Rural Development State Office, 101 SW Main Street, Suite 1410, Portland, OR 97204–3222, (503) 414–3300

Pennsylvania
USDA Rural Development State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2299

Puerto Rico
USDA Rural Development State Office, New San Juan Office Building, Room 501,159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095
South Carolina
USDA Rural Development State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5163
South Dakota
USDA Rural Development State Office, Federal Building, Room 210, 200 4th Street, SW. Huron, SD 57350, (605) 352–1100
Tennessee
USDA Rural Development State Office, 3322 West End Avenue, Suite 300, Nashville, TN 37203–1084, (615) 783–1300
Texas
USDA Rural Development State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9700
Utah,
USDA Rural Development State Office, Wallace F. Bennett Federal Building, 125 South State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4320
Vermont/New Hampshire
USDA Rural Development State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6000
Virginia
USDA Rural Development State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1550
Washington
USDA Rural Development State Office, 1835 Black Lake Boulevard, SW., Suite B, Olympia, WA 98512–5715, (360) 704–7740
West Virginia
USDA Rural Development State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4860
Wisconsin
USDA Rural Development State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7600
Wyoming
USDA Rural Development State Office, 100 East B, Federal Building, Room 1005, Casper, WY 82602, (307) 261–6300

**FOR FURTHER INFORMATION CONTACT:** David W. Lewis, Rural Business-Cooperative Service, USDA, Room 6858–S, Mail Stop 3224, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3224, Telephone (202) 690–0797.

**SUPPLEMENTARY INFORMATION:** IRP regulations published in 7 CFR part 4274, subpart D, and section 1323 of the Food and Security Act of 1985 (Public Law 99–198) (7 U.S.C. 1932 note), as amended by Public Law 99–425, authorized the Secretary to make loans to entities for the purposes and subject to the terms and conditions specified in the first, second, and last sentences of section 623(a) of the Community Economic Development Act of 1981 (42 U.S.C. 9812(a)). The intermediary loans previously approved and administered by the U.S. Department of Health and Human Services under 45 CFR part 1076, which were transferred to the USDA under the provisions of section 1323 of the Food Security Act of 1985, are not eligible for participation in the pilot sale.

The Agency initiated a pilot program, through a Memorandum of Understanding with the Colorado Housing and Finance Authority (CHFA) in May 1997 to allow CHFA to sell its ultimate recipient portfolio on the secondary market. CHFA was created to address the critical funding needs of community-based development lenders in Colorado. In consultation with the Office of Management and Budget (OMB) and the U.S. Department of the Treasury, RBS has decided to expand the pilot sale, on a limited basis, in order to gather additional information and experience for consideration in establishing a permanent sales program.

Selected applicants will be posted on the Agency web site and notified in writing. The benefit of this loan sale to the intermediary will be an increase in portfolio liquidity, allowing the intermediary to re-loan money back into the community. The Agency advances loans to eligible intermediaries that subsequently re-loan to eligible applicants, including individuals, public or private organizations, or other legal entities with authority to incur debt and carry out the purpose of the loan. During the application process for this pilot sale, an intermediary will express interest in selling its seasoned portfolio. The initial screening of the intermediaries and their portfolios will be the responsibility of the Rural Development State Offices. State Offices will make recommendations to the National Office, and the National Office will evaluate the applications of interest, along with State Office recommendations, and make final selections for loan sales.

RBS will maintain lists of intermediaries expressing interest in offering their portfolios for sale, potential buyers for those portfolios, and offerors of other services to buyers or sellers, *e.g.*, financial advisors. However, only intermediaries selected through the invitation of applications of interest process will be authorized to sell third-party loans. Intermediary applications of interest must include: (1) A history of the intermediary; (2) its latest audited financial statement; (3) summary data on each loan in the portfolio including original and current amount, interest rate, terms, loan maturities, and loan performance; (4) delinquency rate on all loans in its portfolio; (5) reserves for loan payments; (6) the number of jobs created or saved; (7) the Standard Industrial Code for each loan recipient; (8) write-off of bad debts history; (9) a proposal that illustrates how the sale of the intermediary's portfolio supports Rural Development Mission Area target objectives, *i.e.*, rural areas suffering fundamental, physical and economic stress, persistent poverty, out-migration, or as identified in the Rural Development State Strategic Plan; (10) non-federal fund leveraging of past or potential loans; and (11) the documentation of the need for added capital and unmet loan demand. It is important that the performance history of the overall portfolio, including any portion not proposed for sale, be fully detailed, including the volume and frequency of any delinquencies or default. It is equally important that intermediaries expedite the Agency review of their application of interest by responding to each of the questions in this notice in a format which allows a rapid evaluation of their response and minimizes the possibility that the reviewer will misunderstand the information provided.

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, the Agency has received emergency approval and clearance by OMB for the reporting and record keeping requirements contained in this Notice. The OMB control number for this information collection is 0570–0036.

**Criteria for Participation in the Ultimate Recipient Portfolio Sale**

The expansion of the pilot sale will be conducted on a competitive basis and under criteria set by RBS. The following criteria must be met (with adequate documentation provided) to be considered under this pilot sale.

1. Intermediaries must express interest in selling their entire ultimate recipient portfolio classified as seasoned loans (loans outstanding for at least 12 months).

The following qualifications also apply:

a. The ultimate recipient loans to be sold must be current according to their promissory notes and other agreements.

b. The current 30-day or more delinquency rate for the entire IRP portfolio, including the portion not proposed to be offered for sale, must not

exceed 3 percent of the outstanding loan balance.

c. In the aggregate, loans will be sold at "hold" or "market" value, which are synonymous terms.

d. Notes will be sold to the purchasers without recourse to the intermediary.

e. Annual portfolio writeoffs by the intermediary of its loans will not exceed an average of 1 percent of the outstanding loan balances over the past 3 years in the same portfolio, measured as the percentage of outstanding loan balances of the total seasoned portfolio. Intermediary applications for the pilot program will be evaluated on the RBS point scoring system on a nationwide basis.

f. All due diligence expenses in connection with the sale will be paid by the purchaser and reflected in any sales contract entered into between intermediary and purchaser.

g. Due diligence expenses will only be authorized by the Agency to be paid if the intermediary portfolio is selected for the loan sale. The intermediary will be released from any subsequent liability in regard to the sale of notes sold as non-recourse loans. The due diligence process does not need to be complete at the time the application of interest is filed.

h. Intermediaries agree to use sale proceeds only to make new loans under 7 CFR part 4274, subpart D, except, as shown below, the intermediary may use sale proceeds to continue to pay its debt service to RBS.

i. The sales proceeds will be tracked separately and will be deposited into the intermediary's revolving loan fund, recapitalizing the fund for the purpose of making new loans in accordance with the eligible purposes outlined in the current Agency regulations, work plan, and loan agreements.

j. Any sale of ultimate recipient loans must be completed by December 31, 2000.

2. Intermediaries, who have advanced at least 95 percent of the aggregate total funds loaned them by RBS under this program and who meet the stated criteria, are eligible to apply for participation in this expanded pilot. The intermediary must provide documentation for the unmet demand for third-party loans and its ability to re-lend all of the proceeds to eligible projects within 3 years from the date of the loan sale before it will be considered for participation in this expanded pilot. This documentation must include a list of loans turned down for lack of funds, the aggregate number and amount of viable loans considered but not made, and the policies under which the intermediary establishes rates and terms for the new loans to be made. [As one illustration, interest rate policy might be loans that will be at: (a) 2 percent interest if secured by a standby letter of credit from a financial institution; and (b) 5 percent if secured by other collateral. Another illustration might be to make loans at some rate in relation to Wall Street Journal Prime. Similarly, it is expected that the intermediary has some policy for setting maturities and balloon structures.] The intermediary may provide a survey indicating demand for additional funds. The intermediary must provide documentation evidencing project cost leveraging, reserves for losses, and loans made in Rural Development mission areas, targeted areas, and population. Refer to State Offices for details on target areas. The intermediary must reloan 95 percent of the replenished capital within the 3-year period following loan sale closing or at the end of the 3-year period must immediately make extra principal repayments on its IRP loans in the full amount of the undisbursed portion as required by current IRP regulations. Intermediaries selected to participate in the expanded third-party sale must maintain their IRP loans with the Agency in a current status. There will be no moratorium or deferment of payments granted on the loan to the intermediary from RBS to advance the new funds, and proceeds from the sale can be used for Agency debt service. Intermediaries must have sufficient alternative sources of funds to ensure IRP loan repayment and pay their administrative costs. Intermediaries permitted to sell their loan portfolios will be ineligible to apply for further IRP loans from RBS unless 95 percent of funds received from the sale have been advanced as loans. Upon selection of the IRP application for the loan sale, all pending IRP applications for funding for those applicants selected from the annual Agency appropriation cycle will be held in suspense. If the intermediary is unable to sell its loans under terms approved by RBS, the suspended IRP applications for funding will be reactivated for further funding consideration under the available Agency appropriation.

3. If there is Community Reinvestment Act credit associated with the loans, the amount of such credit is to be permanently noted, as it may influence the value to a final purchaser. RBS considers any financial contribution by the intermediary, other than meeting its own expenses associated with the sale, as potentially weakening the financial strength of the intermediary to meet its long-term obligation to RBS. Intermediary affiliate resources or contributions from private sources, used in "hold" or "market" value sale of the ultimate recipient portfolio, will not be either a debt or a contingent liability of the intermediary and will be closely scrutinized by the Agency to assure the sale does not weaken the intermediary financially. Only intermediaries selected for the loan sale are authorized to sell their ultimate recipient portfolio and, even if selected by RBS, they are under no obligation to ultimately consummate a sale.

4. RBS may authorize the non-recourse sale of less than a total portfolio if, in RBS's opinion, a partial sale of the portfolio is financially sound and benefits program objectives. The sale may be structured as a sale of whole loans or as any related structure.

5. The intermediary will advertise the sale of its loans in media with significant national distribution, to attract the greatest possible interest from a diverse client base. Advertising costs may be shared on a cooperative basis with other participating intermediaries to assist in defraying advertising expenses. Such cost will be the responsibility of the intermediary. It is the intent of RBS to develop a coordinated approach to soliciting interest from eligible intermediaries and potential purchasers of the portfolio to ensure an equitable opportunity to participate and to obtain the best prices for the portfolios.

6. Intermediaries, as authorized by the Agency, may retain or offer to retain servicing rights to their portfolio loans sold in the pilot loan sale. In the event the intermediary retains servicing rights, the intermediary shall analyze the portfolio it manages, the staffing and processing, it maintains to make and service loans in each portfolio, and the steps it expects to take to maintain adequate staffing to service and make loans and present such analysis to RBS, in writing, as part of its application. If selected under the pilot sale, the intermediary will be required to obtain certification, from the purchaser, that the sale of servicing will not result in an acceleration of ultimate recipient loans and that appropriate and adequate servicing will continue following the loan sale.

7. Recapitalized funds realized from the loan sale will be reloaned for eligible purposes in accordance with current IRP regulations found at 7 CFR part 4274, subpart D, and 7 CFR part 1951, subpart R; the approved work plan; and the same processing procedure as third-party loans made

from Agency (Federal) funds. Recapitalized funds resulting from the sale, even though not Agency IRP loan funds, will be administered in accordance with current regulations and the approved work plan. The Agency will exercise the same oversight responsibilities as required for projects receiving IRP Federal funds directly from the Agency. These responsibilities include Agency review of individual third-party loans prior to approval, conduct of environmental reviews, and the requirement that 25 percent of the loan amount for all third-party loans be financed from other sources until funds have revolved. Proceeds from the sale shall only be used for recapitalization of the IRP revolving fund and will not be co-mingled with funds from other programs until funds have revolved. As previously stated, funds may be used for servicing the intermediary's debt with RBS.

8. All reserves and other cash in the IRP revolving fund not immediately needed, for loans to ultimate recipients or other authorized uses, will be deposited in Federal Deposit Insurance Corporation (FDIC)-insured accounts in banks or other financial institutions. Such accounts will be fully covered by FDIC insurance or fully collateralized with U.S. Government obligations and must be interest bearing. Any interest earned thereon remains a part of the IRP revolving fund.

**IRP Ranking Criteria**

Priority points are determined as follows:

(MAXIMUM NUMBER OF POINTS INCLUDING ADMINISTRATOR PRIORITY POINTS: 110)

1. Percent of Portfolio Loaned—Maximum Points: 10.

a. Intermediary that has loaned out all of the IRP Federal funds (10 points).

b. Intermediary that has loaned out between 97–99 percent of the IRP Federal funds (8 points).

c. Intermediary that has loaned out 95 up to 97 percent of the IRP Federal funds (5 points).

2. Delinquencies—Maximum Points: 10.

a. Intermediary that has no ultimate recipient delinquency in its portfolio (10 points).

b. Intermediary that has 1 percent or less delinquencies in its portfolio based on outstanding loan balances (8 points).

c. Intermediary that has more than 1 percent but less than 2 percent delinquencies in its portfolio based on outstanding loan balances (5 points).

d. Intermediary that has between 2 percent up to and including 3 percent portfolio delinquency rate inclusive on outstanding loan balances (3 points).

3. Writeoffs of Bad Loans—Maximum Points: 10.

a. Intermediary that has no writeoffs of ultimate recipient loans over the past 3 fiscal years (10 points).

b. Intermediary that has written off 1 percent or less of the loan balances of its ultimate recipient loans over the past 3 fiscal years (8 points).

4. Maturity of Loans—Maximum Points: 10.

a. Intermediary that has an average ultimate recipient loan portfolio maturity of 10 years or more (10 points).

b. Intermediary that has an average ultimate recipient loan portfolio maturity of at least 7 but less than 10 years (8 points).

c. Intermediary that has an average ultimate recipient loan portfolio maturity of at least 5 but less than 7 years (5 points).

d. Intermediary that has an average ultimate recipient loan portfolio with maturity of at least 3 but less than 5 years (3 points).

e. Intermediary that has an average ultimate recipient loan portfolio maturity of at least 1 but less than 3 years (1 point).

5. Leverage: Intermediary that has Obtained Non-Federal Loan or Grant Funds to Pay a Portion of the Cost of the Ultimate Recipient Projects—Maximum Points: 10.

a. Fifty percent or more of the total project cost (10 points).

b. At least 25 percent but less than 50 percent of the total project cost (8 points).

c. At least 10 percent but less than 25 percent of the total project cost (5 points).

6. Rural Area—Maximum Points: 10.

a. Intermediary that has made two or more ultimate recipient loans or made 25 percent of the total loans, whichever is the greater, to ultimate recipients in unincorporated areas, and cities or towns with populations of 10,000 or less based on 1990 census data (10 points).

b. Intermediary that has made ultimate recipient loans in unincorporated areas, and cities or towns with a population of more than 10,000, up to and including 20,000, based on 1990 census data (5 points).

7. Reserves for Loan Payments—Maximum Points: 10. Intermediary that has established a cash reserve to make RBS loan payments:

a. Greater than 21 months (10 points).

b. Greater than 18 months but not exceeding 21 months (8 points).

c. Greater than 15 months but not exceeding 18 months (5 points).

d. Any reserve level equal to or greater than 12 months but not exceeding 15 months (3 points).

8. Community Reinvestment Act Requirements—Maximum Points: 10.

Intermediary's ultimate recipient loans that meet Community Reinvestment Act (CRA) requirements (10 points). The intermediary must determine, based on applicant information, which loans may qualify as Community Development Investments under the provisions of the CRA requirements. RBS is interested in how the intermediary made this determination and quantified the potential credits. RBS intends to assure that the intermediary obtains the maximum value from its portfolio and does not weaken its financial structure, as some potential purchasers may be willing to pay a premium for CRA credits of specific types in specific states. If the intermediary calls this to the attention of potential purchasers, a higher price may result. The Agency will rely on the applicant's submission of CRA data to assess the credibility of the applicant's submission.

a. Greater than 50 percent of portfolio principal meets CRA requirements (10 points).

b. Greater than 25 percent but not exceeding 50 percent of portfolio principal (8 points).

c. Greater than 10 percent but not exceeding 25 percent of portfolio principal (5 points).

d. Any dollar value greater than $0 but not exceeding 10 percent of portfolio principal (3 points).

9. Loans Sold at Par Value—Maximum Points: 5.

A par sale is defined as a sale in the aggregate which results in the receipt of sufficient funds from the sale of all principal and interest outstanding on the loans sold to third parties, which, together with funds already revolved, will allow the intermediary to meet its loan obligation to RBS. Note, this is not necessarily a sale which nominally sells each of the individual loans at or above the face value of the loan. Face value is defined as the note balance of an individual loan at the time of assessment.

10. Presidential/Administration Priority Areas: Empowerment Zones/Enterprise Communities, Pacific Northwest/Alaskan Initiative, Rural Development Mission Area, Targeted Areas and Population—Maximum Points: 15.

a. Intermediary that has loaned between 50 and 75 percent of its IRP funds in these targeted area populations (15 points).

b. Intermediary that has loaned between 25 up to 50 percent in these targeted area populations (10 points).

c. Intermediary that has loaned less than 25 percent of its IRP funds in targeted area populations (5 points).

11. Administrator's Priority Points—Maximum Points: 10. For purposes of evaluation of the proposals by intermediaries, this factor is based on the following sub-elements, each with a maximum number of points, which, in the aggregate, may reach up to a maximum of 10 points which the RBS Administrator may assign for proposals which present superior approaches to the stated criteria above, or which will lead to better geographic balance of intermediary loans, which would be included in the sale.

a. Geographic balance of the areas served by the intermediaries selected to participate in the sale (Maximum = 6 points).

b. Support of Rural Development Objectives: Does the proposal illustrate how the sale of the intermediary's portfolio supports Rural Development Mission Area target objectives, *i.e.*, Presidential or administration priority areas, rural areas suffering fundamental, physical and economic stress, persistent poverty, out migration, or as identified in the Rural Development State Strategic Plan? What percentage of RBS funds to this intermediary have gone into these targeted areas or to targeted populations? An exceptional effort by the intermediary to successfully lend over 75 percent in targeted areas in their present portfolio demonstrates their ability to do the same with revolved funds (Maximum = 4 points).

**Additional Application Requirements**

The intermediary's application must also include the following:

1. Intermediary Name, Street Address (or other postal delivery information), Contact Person, Telephone and Fax Numbers, appropriate E-Mail addresses for making contact, and, if the entity has a web site, the Uniform Resource Locator (URL) address for that site.

2. History of the Intermediary.

3. Modified Work Plan, Detailing Mission or Goals, Outreach Service Plan.

4. Summarize Each Ultimate Recipient Loan in the Format Outlined in Form RD 1951–4:

a. Name and address of ultimate recipient.

b. Type of business.

c. Use of loan funds.

d. Original amount of loan.

e. Date of loan.

f. Unpaid balance.

g. Interest rate.

h. Terms of loan/date of final payment.

i. Collateral, including lien position.

j. Loan status.

k. Number of consecutive loan payments ultimate recipient has made in accordance with the promissory note.

l. Standard Industrial Code on the ultimate recipient loan.

5. Summarize the Intermediary Ultimate Recipient Portfolio.

a. Range and average interest rates.

b. Range and average repayment term.

c. Percent of loans made for which intermediary received first lien.

d. Percent of loans made with real estate collateral.

e. Percent of loans made with machinery and equipment collateral.

f. Percent of outstanding loan balances with current repayment status on report date.

g. Percent of loan balances written off.

h. Percent of loans made with one or more payments late by 30 days or more.

i. Percent of loans made for which terms have been renegotiated.

j. Use of leverage on each ultimate recipient loan.

k. Population where ultimate recipient loans were made.

l. Identify loans in mission area targeted areas.

**Selections Announcement**

The Agency will announce on its Internet web site, 45 days after the end of the solicitation period, the intermediaries selected to participate in the expanded pilot sale, potential purchasers, and third parties interested in structuring the sale of ultimate recipient notes. The Business Programs web site is located at www.rurdev.usda.gov/rbs/busp/bpdir.htm. Click on "IRP 3rd Party Sale." Click on *"application"* in paragraph four to receive a copy of the invitation for application and subsequent updates on this loan sale via the Internet (e-mail and web site hot links included). The information will provide updated lists of interested intermediaries, third-party advisors, and third-party purchasers. RBS employees will be notified of loan sale selections via memorandum and the Agency Intranet. All intermediaries making an application of interest under the pilot program will also be notified, in writing, of their selection or non-selection and of third-party purchaser and financial advisor interest. To be included in the published listings, interested third parties (purchasers and advisors) must provide the following information:

**Third-Party Purchaser Requirements**

Third-party purchasers will provide the company name, address, contact person, telephone and fax numbers, e-mail address, and URL address (web site). The expression of interest must be in writing. A written letter accompanying the company history, expertise, examples, and references from the purchasers is required and will be submitted to the National Office, Attention: David Lewis, Loan Specialist, Business Programs Servicing Division, Rural Business-Cooperative Service, Rural Development, USDA, Stop 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224.

**Advisors—Structuring the Sale**

Advisors will provide the company name, address, contact person, telephone and fax numbers, e-mail address, and URL address (web site). The expression of interest must be in writing. A written letter accompanying the company history, expertise, examples, and references from the advisors is required and will be submitted to the National Office, Attention: David Lewis, Loan Specialist, Business Programs Servicing Division, Rural Business-Cooperative Service, Rural Development, USDA, Stop 3224, 1400 Independence Avenue, SW., Washington, DC 20250–3224.

**Other Matters**

1. Environmental Finding. A Finding of No Significant Impact, with respect to the environment, has been made by the Agency in accordance with RBS regulations at 7 CFR part 1940, subpart G, or its successor regulation.

2. Civil Rights Impact Analysis. It is the policy within the Rural Development mission area to ensure that the consequences of any proposed project approval do not negatively or disproportionately affect program beneficiaries by virtue of race, color, sex, national origin, religion, age, disability, sexual orientation, and marital or familial status, or because all or part of an individual's income is derived from any public assistance program. To ensure that any proposal under this demonstration program complies with these objectives, the RBS approval official will complete Form RD 2006–38, "Civil Rights Impact Analysis Certification."

3. Executive Order 13132, dated August 4, 1999, Federalism. The Agency has determined that the policies and procedures contained in this Notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the

Notice is not subject to review under the Order.

4. Prohibition Against Advance Information on Funding Decisions. RBS employees involved in the review of applications and in the making of funding decisions are restricted from providing advance information to any person (other than an authorized employee of RBS) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage.

Dated: May 2, 2000.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 00–11508 Filed 5–8–00; 8:45 am]

BILLING CODE 3410–XY–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 042600A]**

### International Whaling Commission; Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** NOAA makes use of a public Interagency Committee to assist in preparing for meetings of the International Whaling Commission (IWC). This notice defines guidelines for participating on the Committee and provides a tentative schedule of meetings and of important dates.

**DATES:** The May 17, 2000, Interagency Meeting will be held at 2:00 p.m. See **SUPPLEMENTARY INFORMATION** for tentative 2000 meeting schedules.

**ADDRESSES:** The May 17, 2000, meeting will be held in Room B841–B, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Cathy Campbell, (202) 482–2652.

**SUPPLEMENTARY INFORMATION:** The purpose of the May 17, 2000, Interagency Committee meeting is to review recent events relating to the IWC and to discuss the draft agenda and U.S. positions for the 2000 IWC annual meeting.

The Secretary of Commerce is charged with the responsibility of discharging the obligations of the United States under the International Convention for the Regulation of Whaling, 1946. This authority has been delegated to the Under Secretary for Oceans and Atmosphere. The U.S. Commissioner to the IWC has primary responsibility for the preparation and negotiation of U.S. positions on international issues concerning whaling and for all matters involving the IWC. He is staffed by the Department of Commerce and assisted by the Department of State, the Department of the Interior, the Marine Mammal Commission, and by other interested agencies.

Each year, NOAA conducts meetings and other activities to prepare for the annual meeting of the IWC. The major purpose of the preparatory meetings is to provide input in the development of policy by individuals and non-governmental organizations interested in whale conservation. NOAA believes that this participation is important for the effective development and implementation of U.S. policy concerning whaling. Any person with an identifiable interest in United States whale conservation policy may participate in the meetings, but NOAA reserves the authority to inquire about the interest of any person who appears at a meeting and to determine the appropriateness of that person's participation. Foreign nationals and persons who represent foreign governments may not attend. These stringent measures are necessary to promote the candid exchange of information and to establish the necessary basis for the relatively open process of preparing for IWC meetings that characterizes current practices.

**Tentative Meeting Schedule**

The tentative schedule of additional meetings and deadlines, including those of the IWC, during 2000 follows. Specific locations and times will be published in the **Federal Register**.

*May 17, 2000 (Rm B841–B, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C.)*: Interagency Committee meeting to review recent events relating to the IWC and to discuss the draft agenda and U.S. positions for the 2000 IWC annual meeting.

*June 5, 2000 (Rm B841–A, Herbert C. Hoover Building, Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C.)*: Interagency Committee meeting to review recent events relating to the IWC and to review U.S. positions for the 2000 IWC annual meeting.

*June 12–13, 2000 (Adelaide, Australia)*: IWC Scientific Committee Working Groups and Sub-committees.

*June 14–26, 2000 (Adelaide, Australia)*: IWC Scientific Committee.

*June 28–July 1, 2000 (Adelaide, Australia)*: IWC Commission Committees, Sub-committees and Working Groups.

*July 3–6, 2000 (Adelaide, Australia)*: IWC 52nd Annual Meeting.

**Special Accommodations**

Department of Commerce meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Cathy Campbell (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting date.

Dated: April 27, 2000.

**Don Knowles,**

*Director, Office Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–11550 Filed 5–8–00; 8:45 am]

BILLING CODE 3510–22–F

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0031, Procurement Contracts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to procurement activities.

**DATES:** Comments must be submitted on or before July 10, 2000.

**ADDRESSES:** Comments may be mailed to Steven A. Grossman, Office of Financial Management, U.S. Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Steven A. Grossman, (202) 418–5192; FAX: (202) 418–5529; email: *sgrossman@cftc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of

information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

*Procurement Contracts, OMB Control No. 3038–0031—Extension*

The information collected consists of procurement activities relating to solicitations, amendments to solicitations, requests for quotations, construction contracts, awards of contracts, performance bonds, and payment information for individuals (vendors) or contractors engaged in providing supplies or services.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

| Annual number of respondents | Frequency of response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|
| 151 | On occasion | 151 | 4 | 604 |

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of exchanges providing such weekly data to the Commission and the number of elevator operators from which the exchanges collect the data.

Dated: May 3, 2000.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–11525 Filed 5–8–00; 8:45 am]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0019, Stocks of Grain in Licensed Warehouses

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to information collected to assist the Commission in the prevention of market manipulation.

**DATES:** Comments must be submitted on or before July 10, 2000.

**ADDRESSES:** Comments may be mailed to Lamont L. Reese, Division Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Lamont L. Reese, (202) 418–5310; FAX: (202) 418–5527; email: *lreese@cftc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

*Stocks of Grain in Licensed Warehouses, OMB Control No. 3038–0019—Extension*

Under Commission Rule 1.44, 17 CFR 1.44, contract markets must require operators of warehouses regular for delivery to keep records on stocks of commodities and make reports on call by the Commission. The rule is designed to assist the Commission in the prevention of market manipulation and are promulgated pursuant to the Commission's rulemaking authority contained in section 5a of the Commodity Exchange Act, 7 U.S.C. 7a.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

| 17 CFR section | Annual number of respondents | Frequency of response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| 17 CFR 1.44 | 3 | Weekly | 1,701 | 1.04 | 1,769 |

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of exchanges providing such weekly data to the Commission and the number of elevator operators from which the exchanges collect the data.

Dated: May 3, 2000.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–11526 Filed 5–8–00; 8:45 am]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0018, Information Concerning Warehouses

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to information concerning warehouses and warehouse charges.

**DATES:** Comments must be submitted on or before July 10, 2000.

**ADDRESSES:** Comments may be mailed to Lamont L. Reese, Division Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street NW, Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Lamont L. Reese, (202) 418–5310; FAX: (202) 418–5527; email: *lreese@cftc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information"' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information of those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

*Information Concerning Warehouses, OMB Control No. 3038–0018—Extension*

Under Commission Rules 1.42 and 1.43, 17 CFR 1.42 and 1.43, contract markets must file a list of all warehouses regular for delivery. Upon call by the Commission, a schedule of warehouse charges and information concerning delivery notices must also be furnished. These rules are designed to assist the Commission in the prevention of market manipulation and are promulgated pursuant to the Commission's rulemaking authority contained in section 5a of the Commodity Exchange Act, 7 U.S.C. 7a.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

| 17 CFR section | Annual number of respondents | Frequency of response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| 17 CFR 1.42 & 1.43 | 11 | Weekly | 178 | .168 | 30 |

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of exchanges which file the information required under Rule 1.43.

Dated: May 3, 2000.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–11527 Filed 5–8–00; 8:45 am]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Renew Collection 3038–0017, Market Surveys

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to market surveys conducted to determine use of futures markets by commercial entities or to investigate underlying causes of marketwide phenomena.

**DATES:** Comments must be submitted on or before July 10, 2000.

**ADDRESSES:** Comments may be mailed to Lamont L. Reese, Division Economic Analysis, U.S. Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581.

**FOR FURTHER INFORMATION CONTACT:** Lamont L. Reese, (202) 418–5310; FAX: (202) 418–5527; email: *lreese@cftc.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses.

*Market Surveys, OMB Control No. 3038–0017—Extension*

Section 8(a)(i) and (ii) of the Commodity Exchange Act (Act) provide that for the efficient execution of the provisions of the Act and in order to inform Congress, the Commission may make investigations concerning futures markets and may publish general statistical information from such investigations. In certain instances in response to abrupt and substantial changes in market prices, Congressional inquiry or other reasons, the Commission may conduct full market investigation requiring that all persons holding futures positions on the date in question in a specific market be identified. In such cases the Commission issues its call for survey information pursuant to Rule 21.02, 17 CFR 21.02.

The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

| 17 CFR section | Annual number of respondents | Frequency of response | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| 17 CFR 21.02 | 400 | On occasion | 400 | 1.75 | 700 |

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of members of contract markets, futures commission merchants, and foreign brokers who receive an abbreviated call for information in machine-readable form.

Dated: May 3, 2000.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–11528 Filed 5–8–00; 8:45 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0075]**

### Submission for OMB Review; Comment Request Entitled Government Property

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0075).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Government Property. This OMB clearance expires on July 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology;

ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Comments may be submitted on or before July 10, 2000.

**ADDRESSES:** Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW., Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

"Property," as used in Part 45, means all property, both real and personal. It includes facilities, material, special tooling, special test equipment, and agency-peculiar property. Government property includes both Government-furnished property and contractor-acquired property.

Contractors are required to establish and maintain a property system that will control, protect, preserve, and maintain all Government property because the contractor is responsible and accountable for all Government property under the provisions of the contract including property located with subcontractors.

The contractor's property control records shall constitute the Government's official property records and shall be used to:

(a) Provide financial accounts for Government-owned property in the contractor's possession or control;

(b) Identify all Government property (to include a complete, current, auditable record of all transactions);

(c) Locate any item of Government property within a reasonable period of time.

This clearance covers the following requirements:

(a) FAR 45.307–2(b) requires a contractor to notify the contracting officer if it intends to acquire or fabricate special test equipment.

(b) FAR 45.502–1 requires a contractor to furnish written receipts for Government property.

(c) FAR 45.502–2 requires a contractor to submit a discrepancy report upon receipt of Government property when overages, shortages, or damages are discovered.

(d) FAR 45.504 requires a contractor to investigate and report all instances of loss, damage, or destruction of Government property.

(e) FAR 45.505–1 requires that basic information be placed on the contractor's property control records.

(f) FAR 45.505–3 requires a contractor to maintain records for Government material.

(g) FAR 45.505–4 requires a contractor to maintain records of special tooling and special test equipment.

(h) FAR 45.505–5 requires a contractor to maintain records of plant equipment.

(i) FAR 45.505–7 requires a contractor to maintain records of real property.

(j) FAR 45.505–8 requires a contractor to maintain scrap and salvage records.

(k) FAR 45.505–9 requires a contractor to maintain records of related data and information.

(l) FAR 45.505–10 requires a contractor to maintain records for completed products.

(m) FAR 45.505–11 requires a contractor to maintain records of transportation and installation costs of plant equipment.

(n) FAR 45.505–12 requires a contractor to maintain records of misdirected shipments.

(o) FAR 45.505–13 requires a contractor to maintain records of property returned for rework.

(p) FAR 45.505–14 requires a contractor to submit an annual report of Government property accountable to each agency contract.

(q) FAR 45.508–2 requires a contractor to report the results of physical inventories.

(r) FAR 45.509–1(a)(3) requires a contractor to record work accomplished in maintaining Government property.

(s) FAR 45.509–1(c) requires a contractor to report the need for major repair, replacement and other rehabilitation work.

(t) FAR 45.509–2(b)(2) requires a contractor to maintain utilization records.

(u) FAR 45.606–1 requires a contractor to submit inventory schedules.

(v) FAR 45.606–3(a) requires a contractor to correct and resubmit inventory schedules as necessary.

(w) FAR 52.245–2(a)(3) requires a contractor to notify the contracting officer when Government-furnished property is received and is not suitable for use.

(x) FAR 52.245–2(a)(4) requires a contractor to notify the contracting officer when government-furnished property is not timely delivered and the contracting officer will make a determination of the delay, if any, caused the contractor.

(y) FAR 52.245–2(b) requires a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(z) FAR 52.245–4 requires a contractor to submit a timely written request for an equitable adjustment when Government-furnished property is not furnished in a timely manner.

(aa) FAR 52.245–5(a)(4) requires a contractor to notify the contracting officer when Government-furnished property is received that is not suitable for use.

(bb) FAR 52.245–5(a)(5) requires a contractor to notify the contracting officer when Government-furnished property is not received in a timely manner.

(cc) FAR 52.245–5(b)(2) requests a contractor to submit a written request for an equitable adjustment if Government-furnished property is decreased, substituted, or withdrawn by the Government.

(dd) FAR 52.245–7(f) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ee) FAR 52.245–7(l)(2) requires a contractor to alert the contracting officer within 30 days of receiving facilities that are not suitable for use.

(ff) FAR 52.245–9(f) requires a contractor to submit a facilities use statement to the contracting officer within 90 days after the close of each rental period.

(gg) FAR 52.245–10(h)(2) requires a contractor to notify the contracting officer if facilities are received that are not suitable for the intended use.

(hh) FAR 52.245–11(e) requires a contractor to notify the contracting officer when use of all facilities falls below 75% of total use.

(ii) FAR 52.245–11(j)(2) requires a contractor to notify the contracting officer within 30 days of receiving facilities not suitable for intended use.

(jj) FAR 52.245–17 requires a contractor to maintain special tooling records.

(kk) FAR 52.245–18(b) requires a contractor to notify the contracting officer 30 days in advance of the contractor's intention to acquire or fabricate special test equipment (STE).

(ll) FAR 52.245–18(d) & (e) requires a contractor to furnish the names of subcontractors who acquire or fabricate special test equipment (STE) or components and comply with paragraph

(d) of this clause, and contractors must comply with the (b) paragraph of this clause if an engineering change requires acquisition or modification of STE. In so complying, the contractor shall identify the change order which requires the proposed acquisition, fabrication, or modification.

(mm) FAR 52.245–19 requires a contractor to notify the contracting officer if there is any change in the condition of property furnished "as is" from the time of inspection until time of receipt.

(nn) FAR 49.602–2(a)–(e) refers to the inventory schedule forms, SF's 1426 through 1434.

This information is used to facilitate the management of Government property in the possession of the contractor.

**B. Annual Reporting Burden**

*Number of Respondents:* 27,884.
*Responses per Respondent:* 488.6.
*Total Responses:* 13,624,759.
*Average Burden Hours Per Response:* .4826.
*Total Burden Hours:* 6,575,805.

The total burden hours have changed under this OMB clearance 9000–0075 to reflect the incorporation of hours currently associated with OMB clearance 9000–0151 (FAR Case 1995–013) which is due to expire in June 2000 and will not be renewed. The OMB collection burden associated with Government property nonetheless remains unchanged.

**Obtaining Copies of Proposals**

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0075, Government Property, in all correspondence.

Dated: May 2, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 00–11589 Filed 5–8–00; 8:45 am]

BILLING CODE 6820–EP–U

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Chief of Naval Operations (CNO) Executive Panel

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The CNO Executive Panel is to conduct the final briefing of the Navy Energy Strategy Short Study to the Chief of Naval Operations. This meeting will consist of discussions relating to proposed Navy Energy Strategy.

**DATE:** The meeting will be held on May 31, 2000 from 10 a.m. to 11 a.m.

**ADDRESSES:** The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

**FOR FURTHER INFORMATION CONTACT:** Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: April 27, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.*

[FR Doc. 00–11506 Filed 5–8–00; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before July 10, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 3, 2000.

**William Burrow,**

*Leader, Information Management Group, Office of the Chief Information Officer.*

**Office of the Undersecretary**

*Type of Review:* New Collection.
*Title:* National Evaluation of GEAR UP.
*Frequency:* Monthly, Annually, Weekly.
*Affected Public:* Businesses or other for-profit, Not-for-profit institutions, State, Local, or Tribal Gov't, SEAs or LEAs.
*Reporting and Recordkeeping Hour Burden:*

*Responses:* 11565
*Burden Hours:* 3981.

*Abstract:* The evaluation responds to the legislative requirement in Pub. L. 105–244, Section G to evaluate and report on the effectiveness of projects funded under the Gaining Early Awareness and Readiness for Undergraduate Programs (GEAR UP) program. Students' and parents' expectations for postsecondary education, their knowledge of the academic preparation needed and availability of financial resources, and students' academic performance will be compared over time for students in

schools participating in GEAR UP and in schools not receiving GEAR UP services. Outcomes for GEAR UP participants will be analyzed by type and intensity of service.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO@—IMG—Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at No.( ). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–11510 Filed 5–8–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals With Disabilities Education Act

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year (FY) 2000; correction.

**SUMMARY:** On April 28, 2000, a notice inviting applications for new awards under the Office of Special Education and Rehabilitative Services; Grant Applications under Part D, Subpart 2 of the Individuals with Disabilities Education Act was published in the **Federal Register** (65 FR 25155). The notice contained a "chart" (65 FR 25169–25170) that provided closing dates and other information regarding the transmittal of applications for the Fiscal Year 2000 competitions. The chart inadvertently listed the wrong "Estimated number of awards" information for two competitions. This notice corrects the "Estimated number of awards" information.

In addition, the notice incorrectly lists eligible applicants for focus 2 twice under the Research and Innovation to Improve Services and Results for Children with Disabilities program (65 FR 25156). This notice corrects the *Eligible Applicants* section for the Research and Innovation to Improve Services and Results for Children with Disabilities program (65 FR 25156) by clarifying that the first "For focus 2 * * *" in this section should read, "For focus 1 * * *".

**FOR FURTHER INFORMATION CONTACT:** For further information on this priority contact Debra Sturdivant, U.S. Department of Education, 400 Independence Avenue, SW, room 3317, Switzer Building, Washington, DC 20202–2641. FAX: (202) 205–8717 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet: Debra Sturdivant@ed.gov

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

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INDIVIDUALS WITH DISABILITIES EDUCATION ACT
APPLICATION NOTICE FOR FISCAL YEAR 2000

| CFDA No. and Name | Applications Available | Application Deadline Date | Deadline for Inter - governmental Review | Maximum Award (per year)* | Project Period | Page Limit** | Estimated # Of Awards |
|---|---|---|---|---|---|---|---|
| 84.324T Model Demonstration Projects | 05/05/00 | 06/16/00 | N/A | | Up to 48 mos. | 50 | 15 |
| Focus Area 1: First two 12-month funding periods | | | | $150,000 | | | |
| Focus Area 1: Final two 12-month funding periods | | | | $75,000 | | | |
| Focus Area 2 | | | | $180,000 | | 50/80 | 14 |
| 84.325B Training Center In Early Intervention for Infants and Toddlers Who Have Visual Impairments Including Blindness | 05/05/00 | 06/16/00 | 08/15/00 | $500,000 | Up to 60 mos | 70 | 1 |
| 84.325C Training Center In Early Intervention for Infants and Toddlers Who Have Hearing Impairments Including Deafness | 05/05/00 | 06/16/00 | 08/15/00 | $500,000 | Up to 60 mos. | 70 | 1 |
| 84.325F National IHE Faculty Enhancement Center to Improve Results for Children with Disabilities in School | 05/05/00 | 06/16/00 | 08/15/00 | $850,000 | Up to 60 mos. | 70 | 1 |
| 84.325Q Center to Inform Personnel Preparation Policy and Practice in Special Education | 05/05/00 | 06/16/00 | 08/15/00 | $850,000 | Up to 60 mos. | 70 | 1 |
| 84.327G Research Institute on the Use of Assistive Technology in Education | 05/05/00 | 06/23/00 | 08/22/00 | $700,000 | Up to 48 mos. | 70 | 1 |
| 84.327M Technology Research to Practice | 05/05/00 | 06/30/00 | 08/29/00 | $170,000 | 36 months. | 50 | 10 |
| 84.328M Parent Training and Information Centers | 05/05/00 | 06/23/00 | 08/22/00 | | Up to 60 mos. | 50 | 12 |
| Hawaii | | | | $160,680 | | | |
| Idaho | | | | $158,780 | | | |
| Louisiana | | | | $257,100 | | | |
| New Hampshire | | | | $158,600 | | | |
| North Carolina | | | | $311,700 | | | |
| Oklahoma | | | | $198,180 | | | |
| Pennsylvania | | | | $469,750 | | | |
| Rhode Island | | | | $159,400 | | | |
| Tennessee | | | | $279,800 | | | |
| West Virginia | | | | $160,680 | | | |
| Virgin Islands | | | | $107,820 | | | |
| American Samoa | | | | $107,120 | | | |
| New York (Interim) | | | | $339,800 | Up to 12 mos. | 50 | 2 |
| 84.329A An Evaluation of the State Improvement Grant Program | 05/05/00 | 06/30/00 | 08/29/00 | $500,000 | 60 months. | 70 | 1 |

*The Assistant Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for each priority for any single budget period of 12 months.
**Applicants must limit the Application Narrative, Part III of the Application, to the page limits noted above. Please refer to the "Page Limit" requirements included under each priority description and in the "General Requirements" section of this notice. The Assistant Secretary rejects and does not consider an application that does not adhere to this requirement.
NOTE: The Department of Education is not bound by any estimates in this notice.

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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Dated: May 3, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–11499 Filed 5–8–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### National Center for Education Statistics (NCES); Notice of Meeting of the Advisory Council on Education Statistics

**AGENCY:** U.S. Department of Education.

**ACTION:** Notice of meeting of the Advisory Council on Education Statistics.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics (ACES). Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

**DATES:** May 18–19, 2000.

**TIMES:** May 18, 2000—Full Council, 9:00 a.m.–1 p.m.; Statistics Committee, Policy Committee, and Management Committee, 1 p.m.–5 p.m. May 19, 2000—Statistics Committee, Policy Committee, and Management Committee, 8:30 a.m.–12 noon; Full Council, 12 noon—2:30 p.m.

**LOCATION:** The Wyndam Bristol Hotel, 2400 Pennsylvania Avenue NW, Washington, DC 20006.

**FOR FURTHER INFORMATION CONTACT:** Audrey Pendleton, National Center for Education Statistics, 1990 K Street NW, Room 9115, Washington, DC 20006.

**SUPPLEMENTARY INFORMATION:** The Advisory Council on Education Statistics (ACES) is established under Section 46(c)(1) of the Education Amendments of 1974, Public Law 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCS) in the Office of Educational Research and Improvement (OERI) and is responsible for advising on standards to ensure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. In addition, ACES is required to advise the Commissioner of NCES and the National Assessment Governing Board on technical and statistical matters related to the National Assessment of Educational Progress (NAEP). This meeting of the Council is open to the public. Individuals who will need accommodations for a disability in order to attend the meeting (i.e. interpreting services, assistive listening devices, materials in alternative format) should notify Audrey Pendleton at 202 502–7300 by no later than May 10, 2000. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

The proposed agenda includes the following:

- New member swearing-in;
- A status report from the NCES Commissioner on major Center initiatives; including the Department of Education's language for the reauthorization of NCES and ACES;
- The role of ACES in producing an annual report on the quality and usefulness of data collected and reported by the Center;
- Using results from the NCES Customer Service Surveys;

Individual meetings of the three ACES Committees will focus on specific topics:

- The agenda for the Statistics Committee includes a discussion of revision of NCES statistical standards, long-term trends in the NAEP writing assessment, and a proposed Recognition and Reward program using NAEP state results.
- The agenda for the Policy Committee includes discussion of the Early Childhood Longitudinal Survey Birth Cohort and use of the results of the NCES Customer Service Survey.
- The agenda for the Management Committee will also include use of the result of the NCES Customer Service Survey in addition to general management issues.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, National Center for Education Statistics, 1990 K Street NW, Room 9100, Washington, DC 20006.

**C. Kent McGuire,**

*Assistant Secretary for Educational Research and Improvement.*

[FR Doc. 00–11494 Filed 5–8–00; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF EDUCATION

### Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on August 29, 1999, an arbitration panel rendered a decision in the matter of *Michael L. Adams v. Michigan Commission for the Blind (Docket No. R-S/97–20)*. This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d-1(a) upon receipt of a complaint filed by petitioner, Michael L. Adams.

**FOR FURTHER INFORMATION CONTACT:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

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To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code

NOTE: The Department of Education is not bound by any estimates in this notice.

of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)) (the Act), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

**Background**

This dispute concerns the alleged improper denial by the Michigan Commission for the Blind, the State licensing agency (SLA), of Mr. Michael L. Adams' request to bid on a vending route at the Kalamazoo Psychiatric Facility in Kalamazoo, Michigan. A summary of the facts is as follows: On October 22, 1996, an opportunity to manage a vending route became available and was advertised under the SLA's established procedures. Complainant bid on the vending route. The SLA found that the candidate with the most seniority was not in compliance with its rules and policies. Complainant alleges that, while he was second in line in seniority and was in compliance, he was not selected.

Complainant alleges several irregularities in the SLA's procedures in awarding the vending route. First, complainant alleges that the SLA failed to award the vending route in accordance with its own rules and regulations regarding the timeframe of the award.

Second, complainant alleges that he, as the next qualified bidder, did not receive an offer from the SLA to operate the vending route because of complaints received about him from one of the facilities on the route. Complainant further states that, while the vending route was developed with the full participation of the Elected Committee of Blind Vendors, it was changed after private phone calls to members by the Business Enterprise Program staff and was not presented to an open committee meeting.

Complainant requested an administrative review of this matter, which was held on December 12, 1996. Subsequently, complainant requested that the SLA convene a full evidentiary hearing, which was held on March 26, 1997, and April 22, 1997.

In a decision dated May 30, 1997, the Administrative Law Judge (ALJ) recommended that the SLA evaluate the qualifications of the vendors who responded to the October 22, 1996, bid announcement for the vending route. If the SLA found the complainant to be the successful bidder, the ALJ ruled that the complainant should, with certain stipulations, be awarded the vending route.

In a letter dated June 23, 1997, the SLA transmitted to complainant a copy of its final agency action dated June 16, 1997, which rejected the decision of the ALJ.

On September 15, 1997, complainant was notified that the SLA intended to revoke his vending license at the Kalamazoo Psychiatric Hospital for alleged failure to comply with routine business and food service practices and to sign in and out of the facility. On November 24, 1997, Mr. Adams filed a request for a full evidentiary hearing, which was held on February 10, 1998. In a decision dated April 22, 1998, the ALJ recommended that the SLA not revoke Mr. Adams' vending facility license. In a letter dated June 15, 1998, the SLA transmitted to complainant a copy of its final agency action rejecting the ALJ's decision and revoking Mr. Adams' vending license.

In November, 1998, complainant amended his original complaint to include the issue of license revocation. It is these two decisions that complainant sought to have reviewed by a Federal arbitration panel. An arbitration panel heard these matters on April 27, 1999, and on August 17 and 20, 1999, respectively.

**Arbitration Panel Decision**

The issues before the arbitration panel were (1) whether the Michigan Commission for the Blind violated the Act (20 U.S.C. 107b–1(3)), the implementing regulations (34 CFR 395.14), and its own rules and regulations in allegedly improperly denying the complainant's bid on a vending route; and (2) whether the Michigan Commission for the Blind violated the Act, implementing regulations, and its own rules and regulations in improperly revoking Mr. Adams' vending license.

In a decision dated August 29, 1999, regarding issue #1, the majority of the panel after deliberation determined to adopt in total the decision and recommendation of the ALJ dated May 30, 1997. The majority ruled that Mr. Adams be compensated as follows: Mr. Adams must, for 12 months from the date of the award, be considered a priority bidder for any location within 50 miles of his home for any location or route for which he is qualified. Additionally, Mr. Adams is to respond to any offer with regard to a route or location within 7 days of that announcement.

Concerning issue #2, the complainant's license revocation, the majority of the panel after reviewing the ALJ's decision on April 22, 1998, determined that it should be adopted in total. The panel further ruled that Mr. Adams' vending license should be reinstated immediately and that Mr. Adams is to receive unbroken seniority from his original date of seniority to the present time.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: May 3, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–11500 Filed 5–8–00; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Los Alamos

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, May 24, 2000, 6 p.m.–9 p.m.

**ADDRESSES:** Highlands University, Kennedy Hall, 11th Street & University Avenue, Las Vegas, NM.

**FOR FURTHER INFORMATION CONTACT:** Ann DuBois, Northern New Mexico Citizens' Advisory Board, 1640 Old Pecos Trail, Suite H, Santa Fe, NM 87505. Phone: 505–989–1662; Fax: 505–989–1752; E-mail: *adubois@doeal.gov;* or Internet http:www.nmcab.org

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Board**

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

6:00 p.m.–6:30 p.m. Opening Activities
6:30 p.m.–7:00 p.m. Public Comment,
Committee Reports: Environmental Restoration
Monitoring and Surveillance
Waste Management
Community Outreach

Budget

Other Board business will be conducted as necessary.

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

**Minutes**

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9 a.m. and 4 p.m. on Monday–Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on May 4, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–11582 Filed 5–8–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Savannah River

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Savannah River. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Monday, May 22, 2000; 3:30 p.m.–9 p.m. Tuesday, May 23, 2000; 8:30 a.m.–4 p.m.

**ADDRESSES:** All meetings will be held at: DeSoto Hilton, 15 East Liberty Street, Savannah, GA 31412.

**FOR FURTHER INFORMATION CONTACT:** Gerri Flemming, Office of Environmental Quality, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; (803) 725–5374.

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Board**

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management and related activities.

**Tentative Agenda**

*Monday, May 22, 2000*

3:30 p.m. Executive Committee
6:30 p.m. Public Comment Session
7:00 p.m. Committee Meetings
9:00 p.m. Adjourn

*Tuesday, May 23, 2000*

8:30 a.m. Approval of Minutes, Agency Updates
Public Comment Session
Facilitator Update
Nuclear Materials Committee Report
Strategic and Long Term Issues Committee Report
Public Comment
12 p.m. Lunch Break
1 p.m. Center for Disease Health Effects Subcommittee Presentation
Waste Management Committee Report
Environmental Remediation Committee Report
Administrative Committee Report
Public Comments
4 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting.

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed to be resolved prior to publication.

**Minutes**

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802, or by calling (803) 725–5374.

Issued at Washington, DC on May 4, 2000.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–11583 Filed 5–8–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Sandia

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM–SSAB), Kirtland Area Office (Sandia).

**DATES:** Wednesday, May 17, 2000, 5:30 p.m.–9 p.m. (MST).

**ADDRESSES:** West Mesa Community Center, 5500 Glenrio Street, NW, Albuquerque, NM 87185, (505) 768–3499.

**FOR FURTHER INFORMATION CONTACT:** Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185 (505) 845–4094.

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Board**

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

5:30 p.m. Check-In/Agenda Approval/ Minutes
5:45 p.m. Meeting Manager Update—Press Release to the Media
6:00 p.m. Department of Energy Quarterly Presentation
7:00 p.m. Break
7:15 p.m. Stewardship
7:30 p.m. Public Comment
7:45 p.m. Draft Mixed Waste Landfill Report
Mechanism for Comment
Questions for Mark Baskaran
8:15 p.m. Class II Permit Modifications—No Further Action (NFAs)
8:45 p.m. Input into the June 21 Agenda
8:50 p.m. Adjourn

*Public Participation*

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

**Minutes**

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on May 4, 2000.

**Rachel Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–11587 Filed 5–8–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Pantex Plant

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATE AND TIME:** Tuesday, May 23, 2000, 10 a.m.–2:30 p.m.

**ADDRESSES:** The Radisson Inn—East Wing, I–40 & Lakeside, Amarillo, TX.

**FOR FURTHER INFORMATION CONTACT:** Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120; (806) 477–3125.

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Board**

The purpose of the Board is to advise the Department of Energy and its regulators in the areas of environmental restoration, waste management, and related activities.

**Tentative Agenda**

10:00 Agenda Review/Approval of Minutes
10:15 Co-Chair Comments
10:30 Task Force/Subcommittee Reports
11:00 Ex-Officio Reports
11:30 Updates—Concurrence Reports—DOE
12:00 Lunch
1:00 Presentation (To Be Decided)
2:00 Public Comments
2:15 Closing Comments
2:30 Adjourn

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and every reasonable provision will be made to accommodate the request in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved.

**Minutes**

The minutes of this meeting will be available for public review and copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX; phone (806) 371–5400. Hours of operation are from 7:45 a.m. to 10 p.m. Monday through Thursday; 7:45 a.m. to 5 p.m. on Friday; 8:30 a.m. to 12 noon on Saturday; and 2 p.m. to 6 p.m. on Sunday, except for Federal holidays.

Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX; phone (806) 537–3742. Hours of operation are from 9 a.m. to 7 p.m. on Monday; 9 a.m. to 5 p.m. Tuesday through Friday; and closed Saturday and Sunday as well as Federal holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC on May 4, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–11584 Filed 5–8–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Paducah

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, May 18, 2000, 5:30 p.m.–8:30 p.m.

**ADDRESS:** Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, KY.

**FOR FURTHER INFORMATION CONTACT:** John D. Sheppard, Site-Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, KY 42001, (270) 441–6804.

**SUPPLEMENTARY INFORMATION:**

**Purpose of the Board**

The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

**Tentative Agenda**

5:30 p.m. Informal Discussion
6:00 p.m. Call to Order
6:10 p.m. Approve Minutes
6:20 p.m. Presentations/Board Response/Public Comments
7:20 p.m. Sub Committee Reports/ Board Response/Public Comment
8:15 p.m. Administrative Issues
8:30 p.m. Adjourn

**Public Participation**

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

**Minutes**

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, KY between 8: a.m. and 5 p.m. Monday–Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, KY 42001 or by calling him at (270) 441–6804.

Issued at Washington, DC on May 4, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–11586 Filed 5–8–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Fossil Energy; The City of Burbank, California, Public Service Department, et al.; Orders Granting Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

[FE Docket No. 00–07–NG; 00–13–NG; 00–16–NG; 00–15–NG; 00–14–NG]

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Orders.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy gives notice that during March 2000, it issued Orders granting authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on April 27, 2000.

**John W. Glynn,**

*Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.*

**Appendix**

*Orders Granting Import/Export Authorizations*

DOE/FE AUTHORITY

| Order No. | Date issued | Importer/Exporter FE docket No. | Import volume | Export volume | Comments |
|---|---|---|---|---|---|
| 1572 ..... | 3/06/00 | The City of Burbank, California, Public Service Department 00–07–NG. | 4.8 Bcf ..... | | Import from Canada beginning on January 1, 2000, and extending through December 31, 2001. |
| 1574 ..... | 3/13/00 | Public Service Company of New Hampshire 00–13–NG. | 20 Bcf ..... | (40)(1) | Import and export from and to Canada over a two-year term beginning on the date of first delivery. |
| 1575 ..... | 3/20/00 | Coral LNG, Inc, 00–16–LNG ..... | 800 ..... | | BcfImport LNG from various sources over a two-year term beginning on the date of first delivery. |
| 1576 ..... | 3/22/00 | POCO Marketing Ltd, 00–15–NG ..... | 250 ..... | Bcf | Import from Canada over a two-year term beginning on the date of first delivery after March 31, 2000. |
| 1577 ..... | 3/22/00 | Gasoducto Rosarito, S. de R.L. de C. V., 00–14–NG. | 155 Bcf .... | | Export to Mexico over a two-year term beginning on the date of first delivery. |

[FR Doc. 00–11581 Filed 5–8–00; 8:45 am]
BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC99–715–001, FERC Form No. 715]**

### Information Collection Submitted for Review and Request for Comments

May 3, 2000.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). Any interested person may file comments on the collection of information directly with OMB and should address a copy of those comments to the Commission, as explained below. The Commission received comments from eleven entities in response to an earlier **FEDERAL REGISTER** notice of August 20, 1999 (64 FR 45522–23) and has responded to those comments in this submission.

**DATES:** Comments regarding this collection are best assured of having their full effect if received on or before June 8, 2000.

**ADDRESSES:** Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, 725 17th Street N.W., Washington, D.C. 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, 888 First Street, NE, Washington, DC 20426. Mr. Miller may be reached by telephone at (202) 208–1415 and by e-mail at mike.miller@ferc.fed.us

**SUPPLEMENTARY INFORMATION:**

**Description**

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC Form 715, "Annual Transmission Planning and Evaluation Report."

2. *Sponsor:* Federal Energy Regulatory Commission.

3. *Control No.:* 1902–0171. The Commission is now requesting that OMB approve a three year extension of the current expiration date, with no changes to the existing collection. This is a mandatory collection requirement.

4. *Necessity of Collection of Information:* Submission of the information is necessary to enable the Commission to carry out its responsibilities in implementing provisions of Section 213 of the Federal Power Act. Section 213(b) requires the Commission to collect annually from transmitting utilities sufficient information about their transmission systems to inform potential transmission customers, state regulatory authorities, and the public of available transmission capacity and constraints. This information collection also supports the Commission's expanded responsibilities under Sections 211, 212, 304, 307(a), 309 and 311 of the Federal Power Act as amended, for reviewing reliability issues, market structure relationships, for rate and other regulatory proceedings.

5. *Respondent Description:* The respondent universe currently comprises approximately 117 public utilities. There are 273 regulated transmitting utilities, however, many of these utilities submit some or all of the information through their North American Electric Reliability Council (NERC) regions. With three exceptions, power flow base cases are filed by each utility's NERC region, a total of nine regions. The descriptions of each utility's transmission planning assessment practices, including how reliability criteria are applied, the descriptions of the transmission planning reliability criteria used to evaluate system performance, system maps and diagrams are submitted separately by 117 respondents.

6. *Estimated Burden:* 18,720 total burden hours, 117 respondents, 1 response annually, 160 hours per response.

**Statutory Authority:** Sections 213 of the FPA (16 U.S.C. 8241) and Sections 211, 212, 304, 307(a), 309, and 311 of the Federal Power Act (FPA). (16 U.S.C. 824j–825(i)).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11487 Filed 5–8–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project Nos. 2576 and 2597]**

### Connecticut Light and Power Company; Notice of Public Information Meetings on the Housatonic Projects 2576 and 2597

May 3, 2000.

A significant number of hydroelectric licenses will expire between now and 2010. Among these are the Connecticut Light and Power Company's (CL&P) licenses for the Falls Village Project (Project No. 2597) and the Housatonic Project (Project No. 2576). Both of these projects are located on the Housatonic River, in the western portion of Connecticut in Fairfield, New Haven, and Litchfield Counties.

In its application for a new license, filed with the Federal Energy Regulatory Commission (Commission) on August 31, 1999, CL&P proposes to combine both projects under a single license for the Housatonic River Project (Project No. 2576). The existing licenses for the Falls Village Project and the Housatonic Project expire in August and September (respectively) of 2001.

Members of the public living in Western Connecticut have demonstrated significant interest in the Commission's licensing process as it pertains to this project, and Commission staff have received numerous requests for information about how members of the public might participate.

Consequently, Commission staff will hold two early evening public information meetings at New Milford and Falls Village, Connecticut, to familiarize the public with the Commission's hydropower licensing program.

Commission staff will present a brief overview of the Commission and its responsibilities, the status of this pending license application, a general description of the procedures Commission staff will use for the remainder of this license proceeding, and instructions on how members of the public may participate in this license proceeding.

While there will be an opportunity for questions and answers about Commission staff's presentation, all discussion of the merits of the pending application is strongly discouraged. At these meetings, Commission staff will entertain no questions pertaining to the merits of the pending application.

Interested persons are invited to attend either or both meetings scheduled as follows:

Tuesday, May 23, 2000, 7 to 9 p.m., New Milford High School Auditorium, 25 Sunny Valley Road, New Milford, CT 06776

Wednesday, May 24, 2000, 7 to 9 p.m., Housatonic Valley Regional High School Lecture Hall, 246 Warren Turnpike Road, Falls Village, CT 06031

Please direct any questions regarding these meetings to (1) James T. Griffin, via telephone, (202) 219–2799, email james.griffin@ferc.fed.us, or by letter to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426; or (2) John Whitefield via telephone (860) 665–3769, email whitjr@NU.COM, or by letter to the Connecticut Light & Power Company, P.O. Box 270, Hartford, CT 06141, or (3) both of these gentlemen.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11488 Filed 5–8–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–260–000]**

### Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 3, 2000.

Take notice that on April 28, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, with an effective date of June 1, 2000.

Texas Gas states that the proposed general rate case changes would increase revenues from jurisdictional transportation services by approximately $81 million, based on the twelve-month period ended January 31, 2000, as adjusted, compared with the underlying rates.

Texas Gas states that the adjustments in rates are attributable to:

(1) An increase in the utility rate base;

(2) Increases in depreciation expense;

(3) Increase in rate of return and related taxes; and

(4) Revised system rate design quantities.

Texas Gas further states that it has served copies of this filing upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boegers,**

*Secretary.*

[FR Doc. 00–11490 Filed 5–8–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 11243–016]**

### Cordova Electric Cooperative, Inc.; Notice of Availability of Final Environmental Assessment

May 3, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application requesting the Commission's approval of an application to amend the license for the Power Creek Project for the routing of a section of the licensed underground transmission line to an underwater route along the bottom of Eyak Lake. The Power Creek Project is located on Power Creek near Cordova, Alaska.

A Final Environmental Assessment (FEA) has been prepared by staff for the proposed action. In the FEA, Commission staff does not identify any significant impacts that would result from the Commission's approval of the proposed rerouting of a section of the project transmission to an underwater route. Thus, staff concludes that approval of the proposed amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

The FEA has been attached to and made a part of an Order Amending License, issued April 27, 2000, for the Power Creek Project (FERC No. 11243–016). Copies of the FEA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The FEA also may be viewed on the Web at *www.ferc.fed.us/online/rims.htm*. Call (202) 208–2222 for assistance.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11489 Filed 5–8–00; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6603–8]**

### Agency Information Collection Activities: Proposed Collection: Comment Request; Investigations Into Compliance of Stationary Sources with the Accidental Release Prevention Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: Investigations Into Possible Noncompliance of Stationary Sources with the Accidental Release Prevention Program, EPA ICR No. 1908.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before July 10, 2000.

**ADDRESSES:** Superfund Division, Office of Chemical Emergency Preparedness and Prevention, Region 5, United States Environmental Protection Agency, SC–6J, 77 W. Jackson Blvd., Chicago, Illinois 60604–3590.

**FOR FURTHER INFORMATION CONTACT:** Silvia Palomo, Telephone Number: (312) 353–2172, E-Mail:palomo.silvia@epa.gov

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are major stationary sources of air emissions that have applied for/or obtained a Title V operating permit.

*Title:* Investigations into Compliance of Stationary Sources with the Accidental Release Prevention Program

established in 40 CFR Part 68, EPA ICR No. 1956.01. This is a new collection.

*Abstract*: On June 20, 1996, EPA published risk management regulations mandated under the accidental release prevention provisions under the Clean Air Act Section 112(r)(7), 42 U.S.C. 7412(r)(7). These regulations were codified in 40 CFR Part 68. The intent of Section 112(r) is to prevent accidental releases to the air and mitigate the consequences of such releases by focusing prevention measures on chemicals that pose the greatest risk to the environment. The chemical accident prevention rule required owners and operators of stationary sources subject to the rule to submit a risk management plan by June 21, 1999 to EPA. The Office of Chemical Emergency Preparedness and Prevention (OCEPP), Superfund Division, Region 5, is responsible for implementing and enforcing the Risk Management Program. In order to fulfill its responsibilities as the implementing office, OCEPP will collect information from major stationary sources of air emissions to determine whether or not these sources are in compliance with the risk management program regulations. The information will be requested through certified mail and pursuant to Section 114(a) of the Clean Air Act, 42 U.S.C. 7414(a). Therefore, response to the information collection is mandatory.

Any information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, Part 2, Subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The information collected will include the names of the regulated substances used, produced, or stored on-site; amount of the regulated substances; copies of inventory records; copies of Material Safety Data Sheets; capacity of the container which stores or handles the regulated substance; and the number of employees.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Burden Statement*: EPA estimates that a total of 2,000 respondents will receive the request for information. The total burden for the respondents for this collection of information is estimated to be 3,000 hours with an average of 1.5 hours per response and a labor cost of $49. The responses will be one-time, and do not involve periodic reporting or recordkeeping. No capital or start-up expenses will be required Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 28, 2000.

**William Muno,**

*Director, Superfund Division.*

[FR Doc. 00–11568 Filed 5–8–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6603–6]**

## Clean Air Act Operating Permit Program; Petition for Objection to Proposed State Operating Permit for Exxon Chemical Americas' (Exxon) Polypropylene Unit Baton Rouge Polyolefins Plant Baton Rouge, East Baton Rouge Parish, Louisiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of final order on petition to object to State operating permit.

**SUMMARY:** This notice announces that the EPA Administrator has denied a petition to object to a proposed state operating permit issued by the Louisiana Department of Environmental Quality for Exxon's Chemical Americas proposed polypropylene unit at its Polyolefins Plant in Baton Rouge, Louisiana. Pursuant to section 505(b)(2) of the Clean Air Act (Act), the petitioners may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this decision under section 307 of the Act.

**ADDRESSES:** You may review copies of the final order, the petition, and other supporting information at EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at the following address: http://www.epa.gov/ttn/oarpg/t5pfpr.html.

**FOR FURTHER INFORMATION CONTACT:** Jole Luehrs, Chief, Air Permitting Section, Multimedia Planning and Permitting Division, EPA, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–7250, or e-mail at luehrs.jole@epa.gov.

**SUPPLEMENTARY INFORMATION:** The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Ms. Marylee Orr, Executive Director of the Louisiana Environmental Action Network (LEAN) submitted a petition to the Administrator on December 30, 1998, seeking EPA's objection to the title V operating permit issued for Exxon's proposed polypropylene unit at Exxon's polyolefins plant in Baton Rouge, Louisiana. The petition was submitted on behalf of the North Baton Rouge Environmental Association and LEAN (Petitioners). The petition objects to issuance of the Exxon permit on two grounds: (1) Alleged discrimination under Title VI of the Civil Rights Act; and (2) the Baton Rouge ozone

nonattainment area is not making reasonable further progress towards attainment, and that the additional emissions from the proposed polypropylene unit will adversely affect the ozone situation. Ms. Orr also submitted a letter supplementing the petition on behalf of LEAN on January 5, 1999, and another letter on March 1, 1999, requesting that the Exxon permit be reopened. The Region 6 Regional Administrator also addressed the second issue in a separate letter to the Petitioners.

On April 12, 2000, the Administrator issued an order denying the petition. The order explains the reasons for denying the Petitioners' claims.

Dated: April 28, 2000.

**Carl E. Edlund,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 00–11567 Filed 5–8–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6602–7]**

### Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), Union Pacific Railroad Wallace-Mullan Branch

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for comment.

**SUMMARY:** In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement with the Union Pacific Railroad Company for recovery of certain response costs concerning the Union Pacific Railroad Wallace-Mullan Branch in northern Idaho. The settlement requires Union Pacific to pay a total of $650,000 to the Hazardous Substance Superfund. The settlement includes a limited covenant not to sue pursuant to 42 U.S.C. 9607(a) and provides for contribution protection pursuant to 42 U.S.C. 9622(h). This administrative settlement will be superseded upon entry of a consent decree lodged on December 23, 1999, by the United States, State of Idaho, Coeur d'Alene, and Union Pacific, Case No. 99–606–N–EJL (D. Idaho), or will otherwise terminate three months from the effective date of the administrative settlement, unless otherwise agreed by the parties to this settlement. EPA will consider public comments on the proposed administrative settlement for thirty days. EPA may withdraw from or modify this proposed settlement should such comments disclose facts or considerations which indicate this proposed settlement is inappropriate, improper, or inadequate.

**DATES:** Written comments must be provided on or before June 8, 2000.

**ADDRESSES:** Comments should be addressed to Clifford J. Villa, Assistant Regional Counsel, Environmental Protection Agency, Region 10, 1200 Sixth Ave., ORC–158, Seattle, Washington 98101 and refer to In the Matter of Union Pacific Railroad Wallace-Mullan Branch Notice of Proposed Administrative Settlement.

Copies of the proposed settlement are available from: Clifford J. Villa, U.S. Environmental Protection Agency, Region 10, Office of Regional Counsel, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553–1185.

**FOR FURTHER INFORMATION CONTACT:** Clifford J. Villa at (206) 553–1185.

**Authority:** The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9622(i).

**Sheila M. Eckman,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 00–11570 Filed 5–8–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6604–1]**

### Public Water System Supervision Program Revision for the State of South Dakota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The State of South Dakota has revised its Public Water System Supervision (PWSS) Primacy Program. South Dakota's PWSS program, administered by the Drinking Water Program of the South Dakota Department of Environment and Natural Resources (DENR), has adopted regulations for lead and copper in drinking water that correspond to the National Primary Drinking Water Regulations (NPDWR) in 40 CFR part 141 Subpart I (56 FR 26460–26564). The Environmental Protection Agency (EPA) published a proposed primacy revision on August 16, 1999 at 64 FR 44521 and provided for public comment. The EPA also held a public hearing on December 2, 1999, in Badlands National Park, South Dakota (64 FR 61109). No comments were received regarding PWSS program issues. The EPA has completed its review of South Dakota's primacy revisions and has determined that they are no less stringent than the NPDWR. EPA therefore approves South Dakota's primacy revisions for the Lead and Copper Rule.

Today's approval action does not extend to public water systems in Indian Country as that term is defined in 18 U.S.C. 1151. Please see **SUPPLEMENTARY INFORMATION,** Item B.

**DATES:** This primacy revision approval will be effective June 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Linda Himmelbauer, Municipal Systems Unit, EPA Region 8 (8P–W–MS), 999 18th Street, Suite 500, Denver, Colorado 80202–2466, telephone 303–312–6263.

**SUPPLEMENTARY INFORMATION:**

#### A. Why Are Revisions to State Programs Necessary?

States which have received primacy from EPA under the SDWA must maintain a safe drinking water program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their program and ask EPA to approve the revisions to their programs. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur.

#### B. How Does Today's Action Affect Indian Country (18 U.S.C. Section 1151) in South Dakota?

South Dakota is not authorized to carry out its Public Water System Supervision program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to: Lands within the exterior boundaries of the following Indian Reservations located within the State of South Dakota:

a. Cheyenne River Indian Reservation.
b. Crow Creek Indian Reservation.
c. Flandreau Indian Reservation.
d. Lower Brule Indian Reservation.
e. Pine Ridge Indian Reservation.
f. Rosebud Indian Reservation.
g. Standing Rock Indian Reservation.
h. Yankton Indian Reservation.

EPA held a public hearing on December 2, 1999, in Badlands National Park, South Dakota, and accepted public comments on the question of the location and extent of Indian country within the State of South Dakota. In a forthcoming **Federal Register** notice, EPA will respond to comments and more specifically identify Indian country areas in the State of South Dakota.

**C. Reviewing Documents and Public Comments**

All documents relating to this determination are available for inspection at the following locations: (1) U.S. EPA Region 8, Municipal Systems Unit, 999 18th Street (4th floor), Denver, Colorado 80202–2466; (2) South Dakota Department of Environment and Natural Resources, Drinking Water Program, 523 East Capital Avenue, Pierre, South Dakota 57501.

Dated: May 1, 2000.

**Jack W. McGraw,**

*Acting Regional Administrator, Region 8.*

[FR Doc. 00–11565 Filed 5–8–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 1, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before July 10, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0697.

*Title:* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (Second Report and Order and Further Notice of Proposed Rulemaking Memorandum Opinion and Order on Reconsideration and Third Report and Order).

*Form Numbers:* FCC Forms 601, 602 and 603.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit; individuals or households; not-for-profit institutions; and state, local or tribal Government.

*Number of Respondents:* 600.

*Estimated Time Per Response:* 1 hour.

*Frequency of Response:* On occasion reporting requirement and recordkeeping requirement.

*Total Annual Burden:* 600 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* This collection is necessary to: lessen the administrative burden of licensees; determine the partitioned service areas and geographic area licensee's remaining service area of parties to an agreement; determine whether geographic area licensee and parties to agreements have met the applicable coverage requirements for their service areas; to determine whether the applicant is eligible to receive bidding credit as a small business; determine the real parties interest of any joint bidding agreements; and determine the appropriate unjust enrichment compensation to be remitted to the government.

*OMB Control Number:* 3060–0890.

*Title:* Settlement Agreements Among Parties in Contested Licensing Cases.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit, individuals or households.

*Number of Respondents:* 45.

*Estimated Time Per Response:* 3 hours.

*Frequency of Response:* On occasion.

*Total Annual Burden:* 115 hours.

*Total Annual Cost:* $7,650.

*Needs and Uses:* This collection requires that parties to certain settlement agreements obtain Commission approval before the settlement agreements take place. Each request for approval of a settlement must contain specific additional information and must also include a list of all applications and pleadings that were filed in the contested case or copies of them. Also, requests must include a summary of the contested case to include a full explanation of the issues raised in the case. Finally, the case involves an alleged violation of the rules, it must include either a waiver of a statement as to why a violation didn't or wouldn't occur.

*OMB Control Number:* 3060–0765.

*Title:* Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems (Further Notice of Proposed Rulemaking).

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit; individuals or households; not-for-profit institutions; federal government; and state, local or tribal government.

*Number of Respondents:* 50,000.

*Estimated Time Per Response:* 3 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 56,250 hours.

*Total Annual Cost:* $25,101,875.

*Needs and Uses:* This proceeding will further establish a regulatory scheme for the common carrier paging (CCP) and private carrier paging (PCP) services which will promote efficient licensing and competition in the commercial mobile radio marketplace. The information will be used by Commission personnel to determine if the licensee is a qualifying entity to obtain a partitioned license or disaggregated spectrum. Without such information, the Commission could not determine whether the licensee is operating in compliance with the Commission's rules.

*OMB Control Number:* 3060–0270.

*Title:* Section 90.443, Content of Station Records.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for profit, individual or households, not-for-profit institutions, and state, local and tribal government.

*Number of Respondents:* 57,410.

*Estimated Time Per Response:* .083 hours.

*Frequency of Response:* Recordkeeping requirement.

*Total Annual Burden:* 4,765 hours.
*Total Annual Cost:* N/A.
*Needs and Uses:* This rule section requires that licensees maintain records for certain services. Section 90.443(a) requires that all stations, the dates and pertinent details of any maintenance performed on station equipment, and the name and address of the service technician who did the work. If all the maintenance is performed by the same technician or service company, the name and address need be entered only once in the station's records. Section 90.433(b) requires private land stations that are interconnected with the public switched telephone network, the licensee must maintain a detailed description of how interconnection is accomplished. When telephone service costs are shared, at least one licensee participating in the cost sharing arrangement must maintain cost sharing records. A report of the cost distribution must be placed in the licensee's station records and made available to participants in the sharing and the Commission upon request. Maintenance records are used by licensee and/or Commission field personnel to note any recurring equipment problems that may pose an aviation hazard or cause interference.

Federal Communications Commission.
**Magalie Roman Salas,**
*Secretary.*
[FR Doc. 00–11482 Filed 5–8–00; 8:45 am]
BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket No. 92–237; DA 00–993]**

### Next Meeting of the North American Numbering Council

**AGENCY:** Federal Communications Commission.
**ACTION:** Notice.

**SUMMARY:** On May 5, 2000, the Commission released a public notice announcing the May 23 and 24, 2000, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

**FOR FURTHER INFORMATION CONTACT:** Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 12th Street, SW., Suite 6A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

**DATES:** Released: May 5, 2000.

The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, May 23, 2000, from 8:30 a.m. until 5:00 p.m., and on Wednesday, May 24, from 8:30 a.m. until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC.

**SUPPLEMENTARY INFORMATION:** This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

**Proposed Agenda**

*Tuesday, May 23, 2000*

1. Approval of April 25–26, 2000 meeting minutes.
2. North American Number Plan Administration (NANPA) Report.
3. North American Numbering Plan Administration (NANPA) Oversight Working Group Report. Presentation of 1999 NANPA annual performance review.
4. Numbering Resource Optimization (NRO) Working Group Report.
5. Industry Numbering Committee (INC) Report.
6. Ad Hoc Voluntary UNP Study Group Report. Status of business rule model.
7. Local Number Portability Administration (LNPA) Working Group Report. Updates on wireless wireline integration; Problem Identification Management (PIM); NPAC/SMC release status, and Slow Horse.
8. Assumptions Issue Management Group (IMG) final report for NANC review and approval.
9. Limited Liability Corporations (LLCs) and Number Portability Administration Centers (NPAC) activity update.
10. North American Billing and Collection (NBANC) Update.

*Wednesday, May 24, 2000*

11. Steering Group Report.
12. Industry Numbering Committee Report.
13. Number Pooling IMG Report. Update on May 2, 2000, meeting with FCC regarding the thousand block pooling administration technical requirements, Numbering Resource Optimization *Report and Order (NRO R&O)*, CC Docket 99–200 (paragraph 155).
14. Cost Recovery Working Group Report. Status of cost estimates *(NRO R&O* paragraph 56).
15. Public Participation (5 minutes each, if any).
16. Other Business.
17. Action Items and Decisions Reached.

Federal Communications Commission.
**Diane Griffin Harmon,**
*Deputy Chief, Network Services Division, Common Carrier Bureau.*
[FR Doc. 00–11645 Filed 5–8–00; 8:45 am]
BILLING CODE 6712–01–U

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 8:30 a.m. on Wednesday, May 10, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of title 5, United States Code, to consider matters relating to the Corporation's corporate, resolution, and supervisory activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: May 5, 2000.
Federal Deposit Insurance Corporation.
**Robert E. Feldman,**
*Executive Secretary.*
[FR Doc. 00–11669 Filed 5–5–00; 1:20 pm]
BILLING CODE 6714–01–M

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## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 00–10965) published on page 25729 of the issue for Wednesday, May 3, 2000.

Under the Federal Reserve Bank of Dallas heading, the entry for Eggemeyer Advisory Corporation, WJR Corporation, Caste Creek Capital, LLC, and Castle Creek Capital Partners Funds I, IIa and IIb, LP, all of Rancho Santa Fe, California, is revised to read as follows:

A Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Eggemeyer Advisory Corporation, WJR Corporation, Castle Creek Capital, LLC, and Castle Creek Capital Partners Funds I, IIa, and IIb, LP, all of Rancho Santa Fe, California, to acquire more than 5 percent of the voting shares of Independent Bankshares, Inc., Abilene, Texas, and thereby indirectly acquire Independent Financial Corporation, Dover, Delaware, and First State Bank, N.A., Abilene, Texas.

In connection with this application, Applicants also have applied to acquire up to 35 percent of the voting shares of State National Bancshares, Inc., Lubbock, Texas, and thereby indirectly acquire voting shares of State National Bancshares Delaware, Inc., Dover, Delaware, State National Bank of El Paso, El Paso, Texas, State National Bank of West Texas, Lubbock, Texas, and United Bank & Trust Company, Abilene, Texas.

Comments on this application must be received by May 26, 2000.

Board of Governors of the Federal Reserve System, May 3, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11474 Filed 5–8–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Community Investment Group, Ltd., Havana, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of The Havana National Bank, Havana, Illinois.

Board of Governors of the Federal Reserve System, May 3, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11475 Filed 5–8–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. Thoocon, Inc., Somerset, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of First Commerce Bancorp, Inc., Somerset, Kentucky, and thereby indirectly acquire Cumberland Security Bank, Somerset, Kentucky.

2. Park National Corporation, Newark, Ohio; to acquire100 percent of the voting shares of SNB Corp., Greenville, Ohio, and thereby indirectly acquire Second National Bank, Greenville, Ohio.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Minnwest Corporation, Minnetonka, Minnesota; to acquire 100 percent of the voting shares of Minnwest Bank Sioux Falls, Sioux Falls, South Dakota, a *de novo* bank.

Board of Governors of the Federal Reserve System, May 4, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11573 Filed 5–8–00; 8:45 am]

BILLING CODE 6210–01–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**[Program Announcement 00085]**

## Cooperative Agreement With the Association of Environmental Health Academic Programs; Notice of Availability of Funds

### A. Purpose

The Centers for Disease Control and Prevention, (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for the purpose of determining need and developing programs and curricula to strengthen State, local and tribal environmental health infrastructure; identifying and evaluating the effectiveness of core competencies to practice environmental health; preparing future professionals and educating current professionals to those competencies; and increasing the number of programs accredited by the National Environmental Health Science and Protection Accreditation Council (NEHSPAC).

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Environmental Health and Public Health Infrastructure. For the conference copy of "Healthy People 2010," visit the internet site: http://www.health.gov/healthypeople

### B. Eligible Applicant

Assistance will be provided only to the Association of Environmental Health Academic Programs (AEHAP). No other applications are solicited.

AEHAP is the only organization for conducting this program because:

1. AEHAP is the only association which represents all the undergraduate and graduate institutions with academic programs of environmental health accredited by the NEHSPAC as well as those seeking accreditation.

2. AEHAP has the critical framework in place for developing the technical competence, managerial capacity, and leadership potential of accredited undergraduate and graduate programs in environmental health.

3. AEHAP is uniquely positioned to communicate and consult with all of the accredited undergraduate and graduate programs of environmental health because the accredited programs are a part of the existing membership.

4. AEHAP has a documented ability to build effective partnerships and collaborative relationships with federal health agencies and appropriate national organizations.

5. AEHAP provides the structure and experience for instituting programs that strengthen the environmental health system at the State and local levels.

6. AEHAP, through its affiliation with non-accredited universities teaching environmental sciences and environmental health, can encourage growth of qualified and accredited academic institutions to meet the demand for entry level environmental health professionals.

### C. Availability of Funds

Approximately $100,000 is available in FY 2000 to fund this Cooperative Agreement. It is expected that the award will begin on or about September 1, 2000, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

### D. Program Requirements

In conducting activities to achieve the purpose of this Cooperative Agreement, the recipient shall be responsible for the activities under 1. (Recipient Activities), and CDC shall be responsible for conducting activities under 2. (CDC Activities):

*1. Recipient Activities*

a. Develop and implement a plan for addressing the national shortage of properly prepared and trained environmental health professionals.

b. Identify effective public health principles and incorporate into curricula of students entering the field of environmental health.

c. Identify capacity gaps and build the capacity of local environmental health programs to incorporate sound public health practice into their programs.

d. Develop and implement a plan to increase the number of accredited undergraduate and graduate programs in environmental health in areas of the country with a need for AEHAP prepared environmental health professionals by providing assistance to programs working to become accredited by the Environmental Health Science and Protection Accreditation Council.

e. Convene professional groups with diverse backgrounds to obtain their reviews and comments on plans and practices to prepare future and current environmental health professionals.

f. Develop liaisons with key federal, State, local and tribal agencies and professional groups in areas of environmental health.

g. Evaluate the effectiveness of the project's activities.

*2. CDC Activities*

a. Provide consultation, assistance, and guidance in planning and implementing program activities.

b. Assist in developing and implementing short- and long-term plans for improving environmental health practices at local communities.

c. Provide science-based collaboration and technical assistance in developing and implementing evaluation strategies for the program.

d. Facilitate collaboration between recipient and public and private sector agencies involved in environmental health at the national, regional, State and community levels.

e. Facilitate the exchange of program information among public and private agencies at all levels.

### E. Application Content

Use the information in the Program Requirements, Other Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

Provide a detailed budget and justification. A brief projection should be submitted that clearly separates direct and indirect costs.

### F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: www.cdc.gov/...Forms, or in the application kit.

On or before June 26, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Deadline:* Application shall be considered as meeting the deadline if it is either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Application:* Application which does not meet the criteria in (a) or (b) above is considered a late application, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

The application will be evaluated against the following criteria by an independent review group appointed by CDC.

1. Understanding of the problem (20 percent)

The applicant's ability to demonstrate an understanding of the nature of the problem to be addressed. This specifically includes description of the public health importance of the planned activities to be undertaken, and realistic presentation of proposed objectives.

2. Technical approach (25 percent)

The extent to which the applicant's proposal addresses: (1) An overall design strategy, including measurable time lines; and (2) management analysis of the data collected.

3. Ability to carry out the project (25 percent) Degree to which the applicant provides evidence of ability to carry out the proposed project and the extent to which the applicant documents demonstrated capability to achieve the purpose of this project.

4. Personnel (20 percent)

The extent to which professional personnel involved in this project are qualified, including evidence of experience similar to this project.

5. Plans for Administration (10 percent)

Adequacy of plans for administering the project.

6. Budget (not scored)

Itemized budget for conducting the project, along with justification, is provided and is reasonable and appropriate to the described project.

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with the original plus two copies of:

1. Semi-annual progress report;
2. Financial status report, no more than 90 days after the end of the budget period;
3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application package.

AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under section 301 and 317 of the Public Health Service Act, [42 U.S.C. section 241 and 247b] as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

To obtain additional information, contact: Sonia Rowell, Grants Management Specialist Grants Management Branch, Procurement and Grants Office Centers for Disease Control and Prevention (E–13) 2920 Brandywine Road, Room 3000 Atlanta, GA 30341 Telephone (770) 488–2724 Email address svp1@cdc.gov

For program technical assistance, contact: Patrick O. Bohan, National Center for Environmental Health, Centers for Disease Control and Prevention (F–48), 4770 Buford Highway NE, Atlanta, Georgia 30341, (770) 488–7303, E-mail address pfb3@cdc.gov.

The CDC Homepage address on the Internet is http://www.cdc.gov

Dated: May 3, 2000.

**Henry S. Cassell III,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–11514 Filed 5–8–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00076]**

### Cooperative Agreement for Early Hearing Detection and Intervention (EHDI) Tracking, Research, and Integration With Other Newborn Screening Programs; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year 2000 funds for a cooperative agreement program to promote the implementation and integration of State-based surveillance and tracking systems for Early Hearing Detection and Intervention (EHDI) and other disorders detected by newborn screening.

The purpose of the EHDI program includes screening newborns for hearing loss, audiologic evaluation to identify infants with hearing loss, and early intervention for children identified. This program addresses "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area Vision and Hearing. For the conference copy of "Healthy People 2010," visit the internet site: <http://www.health.gov/healthypeople>.

**B. Eligible Applicants**

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. Only one application from each State may be submitted.

Two levels of cooperative agreements will be awarded:

*Level I:* Eligible applicants for Level I funding are those that do not have an established State or regional centralized EHDI surveillance and tracking program, or are in the beginning stages of establishing their program and would like to expand or improve their existing surveillance and tracking program.

*Level II:* Eligible applicants for Level II funding are those that have an existing State or regional centralized EHDI population-based (*i.e.*, complete geographic coverage) surveillance and tracking program that includes data on at least 75 per cent of infants from a birth population of at least 30,000 live births per year. States with fewer births may form multi-State data collection regions in order to meet the eligibility requirements; these do not have to be composed of contiguous States. Level I applicants may belong only to one multi-State regional data collection site.

Applicants from multi-State regions must provide documentation from each State of their willingness to collaborate and pool data from each site in their proposed region. One State must be identified as the designated lead on a multi-State application. The lead State must submit the application and administer the award.

**Note:** Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying

activities shall not be eligible to receive Federal funds constituting an award, grant (cooperative agreement), contract, loan, or any other form.

**C. Availability of Funds**

Approximately $2,300,000 will be available in FY 2000 to fund up to 13 awards. It is expected that up to nine awards will be made to Level I applicants, ranging from $100,000–$150,000. It is expected that up to two awards will be made to Level II option 1 applicants and up to two awards will be made to Level II option 2 applicants. Level II awards are expected to range from $250,000–$350,000.

It is expected that awards will begin on or about September 1, 2000, and will be made for a 12-month budget period within a project period of up to five years, depending on availability of funds. Funding estimates may vary and are subject to change. Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and availability of funds.

*Use of Funds*

Project funds may not be used to supplant other available applicant or collaborating agency funds or to supplant State funds available for screening, diagnosis, intervention or tracking for hearing loss or other disorders detected by newborn screening. Project funds may not be used for construction, for lease or purchase of facilities or space, or for patient care.

**D. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1 (Recipient Activities'either Level I or Level II). CDC will be responsible for the activities listed under 2 (CDC Activities).

*1. Recipient Activities*

Level I

a. Establish and implement a State or regional surveillance and data tracking system to assure minimal loss to follow-up by monitoring the status and progress of infants through the three components of the EHDI program (screening, identification, and intervention).

b. Develop standardized data collection and tracking methods (*i.e.*, linking with birth certificate files) and forms, and data analysis plan in collaboration with other recipients.

c. Collect standardized EHDI data (including the type of hearing loss and type of intervention services)from appropriate sources, such as birthing hospitals, diagnostic centers and/or intervention programs.

d. Develop mechanisms to identify and collect standardized data on infants/children with late onset or progressive hearing loss.

e. Use State or regional EHDI data in order to obtain outcome data such as: unexpected clusters of infants with hearing loss in particular regions at particular times; unexpected differences in measure of EHDI screening performance between participating birthing hospitals; false positive rates; loss to follow-up rates.

f. Document concerns from parents and professionals about the EHDI process.

g. Collaborate with State programs such as Maternal and Child Health, Part C of the Individuals with Disabilities Education Act, private service programs, and advocacy groups to build a coordinated EHDI infrastructure.

h. Integrate with other screening programs that identify children with special health care needs such as newborn blood spot screening and birth defects surveillance.

i. Prepare and publish manuscript(s) which describes the tracking system, definitions, methodology, collaborative relationships, data collection, findings, and recommendations across sites. Collaboration with other participating sites is encouraged.

j. Develop an evaluation plan to monitor progress on activities and to assess the timeliness, completeness, and success of the project.

Level II

Level II applicants will be responsible for all required Level I activities, plus implementing either Option 1 or Option 2 below, but not both options.

*Option 1.* Under this option, Level II applicants will collaborate with other recipients to develop and participate in a common set of activities. Level II applicants are encouraged to develop collaborative relationships with universities. They will:

a. Share information and collaborate with other Level II recipients, and with other federal and national agencies (such as, but not limited to, Health Resources and Services Administration, National Institute on Deafness and other Communication Disorders, Directors of Speech and Hearing Programs in State Health and Welfare Agencies, Joint Committee on Infant Hearing, and advocacy groups) to develop a se' of core research questions and analytic guidelines for one or more of the following areas:

i. costs of EHDI programs,

ii. causes and associated factors for hearing loss,

iii. benefits of early identification and intervention for children with hearing loss,

iv. psychological and family issues.

b. Collaborate with other award recipients to implement a common research and analytic plan and analyze data.

c. Collaborate with other Level II award recipients in an anonymized research data set. Data analysis will be conducted at the State and federal levels with the data being maintained at the individual applicant sites.

d. Collect biological samples for children identified with hearing loss.

*Option 2.* Under this option, Level II applicants will be responsible for activities that build on the integration of EHDI with other newborn screening and monitoring systems. They will:

a. Collaborate with programs that perform State newborn blood spot screening to identify an annual birth cohort of infants for further monitoring. Each program will select two conditions to include in their cohort; either PKU or glactosemia as one condition, and either congenital hypothyroidism or hemoglobinopathies as the other.

b. Develop a plan that is integrated with the EHDI tracking system to determine the effectiveness of the program in identifying and tracking infants with the selected conditions.

c. Develop a plan to annually document the services received and the condition (i.e., medical and developmental complications) for each affected child included in the cohorts.

d. Collaborate with other Level II/ Option 2 award recipients to develop a data system for the cohorts that can be integrated with other newborn screening activities and can serve as a model for other State programs.

*2. CDC Activities*

a. Provide technical assistance as needed on the design, development, and evaluation methods and approaches used for State-based EHDI tracking and surveillance.

b. Provide technical assistance as needed on the development of research questions and analytic guidance;

c. Provide technical assistance as needed for the collection and analysis of data across sites.

d. Facilitate collaborative efforts to compile and disseminate program results through presentations and publications.

**E. Application Content**

Use the information in the Program Requirements, Application Content,

Evaluation Criteria, and Other Requirements sections to develop the application content. Forms are in the application kit. Applications will be evaluated on the criteria listed, so it is important to follow them in describing the program plan. The applicant should provide a detailed description of first-year activities and briefly describe future-year objectives and activities.

The application must contain the following:

*Cover Letter:* A one-page cover letter should state the Level and Option for which the applicant is applying and explain how the applicant fulfills eligibility requirements.

*Abstract and Table of Contents:* A one-page, single-spaced, typed abstract must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number. The abstract should clearly state which level of activities the applicant is applying for: Level I, Level II–Option 1, or Level II–Option 2. The abstract should briefly summarize the program for which funds are requested, the activities to be undertaken, and the applicant's organization structure. The abstract should precede the Program Narrative. A table of contents that provides page numbers for each of the following sections should follow the abstract (all pages must be numbered).

*Budget Justification:* The budget should be reasonable, clearly justified, and consistent with the intended use of the agreement funds. The applicant must include a detailed first-year budget justification with future annual projections. Budgets should include costs for travel for at least one project staff person to attend two two-day meetings. The applicant should provide a budget justification for each budget item. Proposed sub-contracts should identify the name of the contractor, if known; describe the services to be performed; provide an itemized budget and justification for the estimated costs of the contract; specify the period of performance; and describe the method of selection.

*Narrative:* The narrative should be no more than 25 double-spaced pages for Level I applicants and no more than 35 double-spaced pages for Level II applicants, printed on one side, with one inch margins, and unreduced font (12 pitch). The narrative must contain the following sections:

a. Understanding the Problem and Current Status
b. Goals and Objectives
c. Description of Program and Methodology
d. Evaluation Plan
e. Collaborative Efforts
f. Staffing and Management System (One-page CV or resume for each key personnel must be included in an attachment)
g. Organizational Structure and Facilities (Must include an organizational chart)
h. Human Subjects Review

**F. Submission and Deadline**

*Letter of Intent*

A letter of intent (LOI) is requested to enable CDC to determine the level of interest in the announcement. The LOI should specify the level (Level I or Level II, and the option if applying for Level II funding) for which the applicant is applying. Include name, address, and telephone number. The LOI is requested on or before June 6, 2000. Submit the letter of intent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Application*

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189) on or before July 6, 2000 to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the Objective Review Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications

Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

*1. Understanding the Problem (15%)*

a. Extent to which the applicant has a clear, concise understanding of the requirements and purpose of the cooperative agreement;

b. Extent to which the applicant understands the challenges, barriers, and problems associated with developing and implementing an EHDI tracking and surveillance program;

c. Extent to which the applicant describes the need for an EHDI program in their respective State(s) or the current status of their respective State(s) existing EHDI program: Number of infants/children with hearing loss; number of infants born, number of birthing hospitals with and without UNHS programs; number of infants screened, identified and referred to intervention; protocol for screening and referral, including informed consent information; description of EHDI tracking and surveillance system (if any exists); description of other relevant tracking, surveillance systems, or registries in the State and linkages with these systems or plans to link; description of diagnostic facilities and intervention services available in the State for infants/children with hearing loss;

d. Extent to which applicant shows willingness to integrate EHDI surveillance and tracking system with other newborn screening program activities.

*2. Goals and Objectives (10%)*

a. Extent to which applicant clearly describes the short- and long-term goals and objectives of the project;

b. Extent to which applicant's goals and objectives are consistent with the stated purpose of this announcement.

c. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation and justification when representation is limited or absent.

*3. Description of Program and Methodology (35%)*

a. Extent to which applicant describes target region and number of births/year in that region;

b. Extent to which applicant addresses all activities of Program Requirements relevant to their chosen Level/Option;

c. Extent to which applicant describes the methods to be used to carry out the activities and provides a time line which includes personnel and other resources to complete the project.

*4. Evaluation Plan (15%)*

Extent to which applicant describes an evaluation plan that will monitor progress, and assess timeliness, completeness, and success of the project;

*5. Collaborative Efforts (10%)*

a. Extent to which applicant describes their methods for collaboration with (and includes written assurances) from hospitals, diagnostic centers, and intervention services;

b. Extent to which collaborative efforts with other screening programs are documented;

c. (Level II only) Extent to which applicant is willing to work collaboratively with other agencies and recipients to develop multi-site research questions and analytic guidelines. If additional research questions are proposed in order to address local concerns, extent to which the applicant provides a rationale and need for choosing those questions, a clear description of the methodology to be used, the resources available or needed to carry out the project;

d. (Level II only) Extent to which applicant describes their plan for integrating the EHDI program with other screening programs such as blood spot screening and birth defect registries, (Letters of agreement and cooperation from collaborating screening programs should be included). Applicants must state their willingness to work collaboratively and to modify their projects if necessary in order to accommodate multi-site projects for the purpose of integration and standardization efforts.

*6. Staffing and Management System (10%)*

a. Extent to which key personnel have skills and experience to develop and implement an EHDI tracking and surveillance system;

b. Extent of the managerial ability to coordinate the tracking, surveillance, and research, and integration components of the project;

c. Extent to which expertise in abstracting screening, identification, and intervention records are demonstrated;

d. Extent to which expertise in epidemiologic methods, public health surveillance, data management and computer programming is demonstrated;

*7. Organizational Structure and Facilities (5%)*

Extent to which organization structure and facilities/space/equipment are adequate to carry out the activities of the program.

*8. Human Subjects Requirements (Not Scored)*

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

*9. Budget (Not Scored)*

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned program activities.

**H. Other Requirements**

Provide CDC with the original plus two copies of:

1. Semi-annual progress reports, no more than 30 days after the end of the report period.

2. Financial status report, no more than 90 days after the end of the budget period;

3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, *see* Addendum I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301 and 317 of the Public Health Service Act, 42 U.S.C. sections 241 and 247b, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

This and other documents may be downloaded through the CDC homepage on the Internet at http://www.cdc.gov (click on "Funding"). Refer to Program Announcement 00076 when you request information.

For business management technical assistance, contact: Mattie B. Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: 770–488–2718, E-mail address: mij3@cdc.gov.

For program technical assistance, contact: June Holstrum, Ph.D., Early Hearing Detection and Intervention Program, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop F–15, Atlanta, GA 30341–3717, Telephone number: 770–488–7361, E-mail address: Jholstrum@cdc.gov.

Dated: May 3, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–11513 Filed 5–8–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00077]**

### Innovative Technology Development Grant for the Assessment of Micronutrient Status in Humans Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for an innovative technology development grant program for the development of appropriate and sustainable technologies for the assessment of micronutrient status in humans. This program addresses "Healthy People 2010," a national activity to reduce morbidity and mortality and improve quality of life. This announcement is related to the focus areas of Nutrition and Overweight; Maternal, Infant, and Child Health; Diabetes; Mental Health and Mental Disorders; Immunization and Infectious Diseases. For the conference copy of "Healthy People 2010," visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of the program is to stimulate the development, commercialization, and application of innovative technologies which are rugged, portable, easy to operate and

maintain, cost effective, and sustainable. The program will assess micronutrient status in people at risk for micronutrient malnutrition living in developing countries. The program will also provide assessments of rural and inner-city populations of the developing and developed world, including domestic programs in the United States, such as the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). Such technologies may also have applicability in clinical laboratory and medical clinic settings.

**B. Eligible Applicants**

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, businesses, small minority businesses, other public and private nonprofit and for-profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

**C. Availability of Funds**

Approximately $500,000 is available in FY 2000 to fund up to three awards. It is expected that the average award will be $175,000. It is expected that the awards will begin on or about September 30,2000, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports, site visits, and the availability of funds.

**D. Programmatic Interest**

Programmatic interest is focused on:

1. Research and development leading to appropriate technology for assessing individual and/or population status with regard to the micronutrients of iodine, iron, vitamin A, and folic acid. The objective of the technology should be aimed at detecting or monitoring deficiencies (and/or excesses) of these micronutrients by direct or indirect measurements of the micronutrients or their metabolites in blood or urine, functional changes related to the deficiency (or excess) of the micronutrient, detection of deviations from typical individual patient characteristics (such as radiant or absorbed electromagnetic energy, expired volatile compounds, changes in visual perception, changes in neurologic function), or other approaches using technologies that range from very simple, such as dipstick or blood spot type tests, to "smart" biosensor or "nano-lab" technologies.

2. Development of the technology from research and development, through product testing, clinical evaluation, production, marketing, and technical support. Research which results ONLY in findings of academic interest with no practical application to the objectives of the grant will not be considered.

**E. Application Content**

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The application must be submitted unstapled and unbound.

Applications for research and development grants should include technology that:

1. Estimates the nutritional status of individuals or populations with regard to one or more of the micronutrients targeted by this program. Is accurate and traceable to an accepted accuracy base or reference standard. Is sufficiently precise and reproducible to be useful for epidemiologic purposes and/or for the management of individual cases.

2. Ability to operate under field conditions of varied temperature and humidity, is easy to operate and maintain, is economical, generates minimal disposables and/or biohazard waste, consumes minimal reagents, requires minimal training or operator expertise, and can be sustained.

3. Demonstrates portability, compact, energy efficient and, if external energy is required, is capable of operating from one or more power sources such as batteries, fuel cells, solar cells, or "house current."

4. Is non-invasive or minimally invasive, or requires very small amounts of blood, urine, saliva, or other accessible body fluids. If bodily fluids are required for the proposed technology, applicant must describe sample collection techniques, biohazard waste disposal, and specimen transport and storage requirements.

5. Demonstrates adequate specificity and sensitivity for the required purposes.

6. Demonstrates the capability to provide a hard copy or electronic output to document patient ID together with assayed values, if the technology used has electronic processing capability.

7. Demonstrates an understanding of the value of collaboration with other researchers, partnerships, contracts, venture capital relationships, etc., to accomplish the objectives of this project.

**F. Submission and Deadline**

Submit the original and five copies of PHS 398 (OMB Number 0925–0001). On or before July 10, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on or before the deadline date; or

b. Sent on or before the deadline date and received in time for submission to the Objective Review Panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Applications:* Applications which do not meet the criteria in a or b above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by a Special Emphasis Panel appointed by CDC.

*1. Technical Expertise and Research Capacity (30 percent)*

The applicant's ability to plan, implement, and conduct a successful research and development program aimed at clinical or nutritional measurement systems including the development and validation of analytical methods and/or instruments, and the ability to guide such development efforts from concept, through bench model or demonstration-of-concept prototype, to prototype for field/clinical testing and approval, to manufacture, production, marketing, distribution and support. (If applicant does not intend to carry the project from initial development through final production and marketing, a plan for how these steps will be accomplished through partnerships, or marketing/licensing of the technology to others should be described.)

*2. Technical Approach (30 percent)*

a. The overall technical merit of the research plan and the soundness and scientific validity of the proposed technologies. The research plan must be thoroughly described and must include a detailed explanation of the operating principles of the technology to be developed, and the rationale for selecting the nutritional status marker to be measured.

b. The adequacy of the research plan includes the extent to which the applicant has adequately addressed all issues described and how well the evaluation plan can be used to effectively measure progress towards the stated objectives.

c. The background of the application, the critical evaluation of existing knowledge, and the specific identification of the knowledge gaps which the application intends to address.

*3. Understanding the Problem (20 percent)*

Applicant's understanding of the nature and difficulty of nutritional assessments, and the special challenges imposed in field settings for sample collection, storage and transport, maintenance, supply, and technical support, and sustainability.

a. The clinical, nutritional, biochemical, and practical basis for the appropriate selection of measurement parameters for the micronutrient(s) addressed by the applicant.

b. The applicant's demonstration of an awareness and understanding of strengths and weaknesses of previous work related to the proposed technology.

*4. Program Personnel (10 percent)*

The extent to which the application has described:

a. The qualifications and commitment of the applicant including training and experience in chemistry, biochemistry, biomedical engineering, medicine, nutrition, or other relevant scientific disciplines.

b. The qualifications of the proposed key staff.

c. Detailed allocations of time and effort of staff devoted to the project.

d. Information on how the applicant will develop, implement, evaluate progress, and administer the program.

e. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

*5. Collaboration (5 percent)*

Collaboration is encouraged to accomplish the research objectives in a timely manner. The applicant should demonstrate the ability to collaborate and/or form partnerships with appropriate research centers, manufacturers, or commercial interests to conduct the described research and development plan.

6. *Plans to Publicize the Research Effort (5 percent)*

The applicant should provide an explanation of plans to encourage the publication of the research findings or otherwise make the information available to the public as soon as is feasible within the limits of protecting proprietary interests of the developer.

*7. Human Subjects Protection (Not Scored)*

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

*8. Budget (Not Scored)*

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of grant funds.

**H. Other Requirements**

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. semiannual progress reports;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under section 301(a) and 317 of the Public Health Service Act, [42 U.S.C. section 241(a) and 247(b), as amended.] The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

This and other CDC announcements may be downloaded through the CDC homepage on the Internet at http://www.cdc.gov (click on funding). Please refer to Program Announcement Number 00077 when requesting information. To receive an application kit, call 1–888–GRANTS (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have any questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Sonia V. Rowell, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2724, Email address: svp1@cdc.gov

For program technical assistance, contact: Dayton T. Miller, Ph.D., Centers for Disease Control and Prevention, 4770 Buford Highway (F–18), Atlanta, Georgia 30341, Telephone: (770) 488–4452, Email address: dtm1@cdc.gov

Dated: May 3, 2000.

**Henry S. Cassell, III,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–11515 Filed 5–8–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

### Mental Health and Community Safety Initiative for American Indian/Alaska Native Children, Youth and Families

**AGENCY:** Indian Health Service.

**ACTION:** Notice of funding availability for competitive grants for the Mental Health and Community Safety Initiative for American Indian/Alaska Native (AI/AN) Children, Youth, and Families.

**SUMMARY:** The Indian Health Service (IHS) announces the development of the Mental Health and Community Safety Initiative for American Indian/Alaska Native (AI/AN) Children, Youth, and Families and the availability of competitive grants under this Initiative for fiscal year (FY) 2000. Grants under this Initiative will be administered by the following Federal agencies: (1) The IHS and Substance Abuse and Mental Health Services Administration (SAMHSA), United States Department of Health and Human Services (HHS); (2) Office of Community Oriented Policing Services (COPS) and Office of Juvenile Justice and Delinquency Prevention (OJJDP), United States Department of Justice (DOJ); and (3) Office of Elementary and Secondary Education (OESE), United States Department of Education (ED).

The Initiative will provide tribes and tribal organizations with easy-to-access assistance in developing innovative strategies that focus on the mental health, behavioral, substance abuse, and community safety needs of AI/AN young people and their families through a coordinated Federal grant process. Total funding available for the four grant programs involved in the Initiative is $4.13 million.

Coordination of this effort has been initiated through the White House Domestic Policy Council and was announced at the June 7, 1999, White House Conference on Mental Health.

The primary purpose of the Initiative is to promote Indian youth mental health, education, and substance abuse-related (alcohol as well as drug abuse) services, and to support juvenile delinquency prevention and intervention through the creation and implementation of culturally sensitive programs. Grant funds will be available beginning in FY 2000 and a coordinated grant program will continue over a three-year period.

The Initiative will support tribes in providing a range of youth support services and programs to address the mental health and related needs of AI/AN young people and their families through various settings within the community, such as in the home, in the schools, in violence prevention education programs, in health care treatment programs, and in the juvenile justice system.

Interagency programs included in this effort have been selected based upon their combined potential to address comprehensively mental health, juvenile justice, substance abuse, and related issues. As part of this Initiative, tribes are encouraged to promote coordination and collaboration among the local programs that serve young people in their communities.

Tribes may apply for one or more of the grant programs included in the Initiative to address their programmatic needs. In submitting an application or applications, tribes should identify the complex community issues involved and demonstrate how the proposed application(s) will provide for a comprehensive approach to addressing and attempting to solve these issues.

**Government Agencies Providing Grants Funding**

*A. HHS Agencies Providing Grant Funding for the Initiative are: the IHS and the SAMHSA*

1. IHS

The IHS announces the availability of $1.13 million in FY 2000 for competitive grant awards for the AI/AN Mental Health Grants Program. Under this program, tribes and tribal organizations will be considered for two types of projects:

- Mental Health Projects will provide demonstration projects that serve the AI/AN children and youth involved with the juvenile justice system and their families. These projects should be targeted at providing culturally relevant systems of care resulting in reduced hospitalization, better case-management, and increased family participation in the treatment process.
- Child Abuse and Neglect Projects will provide projects that develop screening, evaluation, and referral systems in collaboration with tribal child protection teams for AI/AN children and youth in the juvenile justice system who have been abused and/or neglected. The grantee would be required to initiate the development of prevention programs targeting children and families at risk for abuse and neglect.

This program is included in the Catalog of Federal Domestic Assistance under #93.228. The deadline for receipt of applications is June 2, 2000.

For information regarding the IHS program, contact Lahoma Roebuck, Division of Clinical and Preventive Services, Indian Health Service, 5600 Fishers Ln., Rm. 6A–20, Rockville, MD 20857, (301) 443–1068, Fax: (301) 594–6213, e-mail: LRoebuck@hqe.ihs.gov

2. SAMHSA

The Center for Mental Health Service in partnership with the Center for Substance Abuse Treatment and the Center for Substance Abuse Prevention has available approximately $450,000 in FY 2000 for 1-year grant awards to tribal and urban Indian communities for the AI/AN Youth Priority Initiative. The average award may range from $50,000 to $150,000 depending on the size of the identified service population of the applicant.

This Initiative supports the adoption of exemplary practices related to the delivery and organization of services for AI/AN youth with serious emotional and substance abuse problems. Applicants must identify an exemplary practice specific to the needs of the AI/AN youth, and demonstrate the involvement of the tribal leadership, as well as education; law enforcement; and substance abuse, health, social services, and mental health entities in the community. Examples of an exemplary practice include: wrap-around, multi-systemic treatment, or case management services to improve access to services, increase family voice in the system of care, and reduce institutional placements; mentoring programs; culturally specific programs to restore rites of passage and intergenerational support; and gathering of Native American programs to convene youth serving programs; and peer counseling programs.

This program is described in the Catalog of Federal Domestic Assistance under #93.230. Deadline date for receipt of applications is May 10, 2000.

For information regarding the SAMHSA program, contact Jill Shepard Erickson, MSW Public Health Advisor, Child, Adolescent and Family Branch, Center for Mental Health Services, Substance Abuse and Mental Health Services Administration, Suite 11 C–16, Parklawn Building, 5600 Fishers Ln., Rm. 6A–54, Rockville, MD 20857, (301) 443–1333, Fax: (301) 443–3693, e-mail:jerickso@samhsa.gov

*B. DOJ Agencies Providing Grant Funding for the Initiative are: the COPS and the OJJDP*

1. COPS

The COPS announces the availability of $1.5 million for the Mental Health and Community Safety Initiative for AI/AN Children, Youth and Families. Grants will be awarded for salaries and benefits for new police officers, as well as law enforcement training and equipment, including technology and vehicles, for new and existing police officers. It is expected that resources

funded under this program (officer positions, equipment and/or training) will be used to meet the mental health, behavioral, and substance abuse needs for Native American youth and their families and provide a range of youth support services and programs both in the community and in the school arena. Sworn police officers may be deployed as Community Resource Officers or as School Resource Officers to engage in community policing activities. Salaries and benefits cover a 3-year period. A 25% local match requirement may be waived on the basis of demonstrated fiscal distress. All applicants must submit a written plan to retain their COPS-funded officer positions after Federal funding has ended.

Grants funded under the COPS initiative will be supplemented with $50,000 provided by OESE, ED, from FY 2000 Safe and Drug-free Schools and Communities Act National Program funds. These funds will be awarded to the recipients of COPS funds under this initiative and will be used to support alcohol, tobacco, and other drug or violence prevention activities in school-based settings to be implemented by police officers supported by COPS funds.

This program is described in the Catalog of Federal Domestic Assistance under #16710. The deadline for receipt of applications is May 26, 2000.

Contact for the COPS program: June Kress, Senior Policy Analyst, Office of Community Oriented Policing Services (COPS), U.S. Department of Justice, 1100 Vermont Avenue, NW 9th Floor, Washington, DC 20530, (202) 616–2915, Fax: (202) 616–9612, e-mail: *june.kress2@usdoj.gov*.

2. OJJDP

The purpose of the Tribal Youth Program (TYP) is to support and enhance tribal efforts for comprehensive delinquency prevention and control and for juvenile justice system improvement for Native American youth. In FY 2000, $1 million of the total appropriation for the TYP has been set aside to provide mental health services to youth in Tribal and/or State juvenile justice systems. The programs or projects to be funded must provide mental health services through one or more of the following activities:

(1) Reduce, control, and prevent crime and delinquency both by and against tribal youth;

(2) Provide interventions for court-involved tribal youth;

(3) Improve tribal juvenile justice systems; and

(4) Provide prevention programs focusing on alcohol and drugs.

The description for this program is located in #16.731 in the Catalog of Federal Domestic Assistance. The deadline for receipt of applications for this TYP Mental Health Initiative is June 15, 2000.

For more information, please contact: Chyrl Andrews, Acting Tribal Youth Manager, Office of Juvenile Justice and Delinquency Prevention (OJJDP), State Relations and Assistance Division, U.S. Department of Justice, 810 Seventh Street, NW, Washington, DC 20531, 202–307–5924, Fax: (202) 307–2819, e-mail: *andrewsc@ojp.usdoj.gov*

**Distribution of Grant Application Kits**

The IHS, SAMHSA, COPS, and OJJDP are preparing a single, consolidated grant application package that will include the program announcement and application kit for each of the four grant programs described above. The consolidated application package will be distributed in early May 2000. A package will be sent directly to (1) the Tribal Chairman of every federally recognized tribe; (2) the Director of every tribal organization as defined by section 4(1) of Pub. L. 93–638, Indian Self-Determination and Education Assistance Act, as amended, and (3) the Director of every tribal health department.

To request additional application packages, please contact: Office of Juvenile Justice and Delinquency Prevention, Juvenile Justice Clearinghouse, 2277 Research Boulevard, Rockville, Maryland 20850, Reference: White House Initiative on Mental Health (Solicitation #410), Telephone: 1–800–683–8736.

Dated: April 24, 2000.

**Michel E. Lincoln,**

*Deputy Director.*

[FR Doc. 00–11480 Filed 5–8–00; 8:45 am]

BILLING CODE 4160–16–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration (SAMHSA)

### Notice of Meetings

Pursuant to Public Law 92–463, notice is hereby given of the following meetings of SAMHSA Special Emphasis Panels I in May and June 2000.

A summary of the meetings and a roster of the members may be obtained from: Ms. Coral Sweeney, Review Specialist, SAMHSA, Office of Policy and Program Coordination, Division of Extramural Activities, Policy, and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: 301–443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meetings will include the review, discussion and evaluation of individual grant applications. These discussions could reveal personal information concerning individuals associated with the applications. Accordingly, these meetings are concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c) (6) and 5 U.S.C. App.2, § 10(d).

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).
*Meeting Dates:* May 15–19, 2000.
*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
*Closed:* May 15–19, 2000, 8:30 a.m.–5 p.m./adjournment.
*Panel:* Targeted Capacity Expansion, PA 00–001.
*Contact:* Peggy Thompson, Lead Review Administrator, Room 17–89, Parklawn Bldg. Telephone: 301–443–9912 / FAX: 301–443–3437.

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).
*Meeting Dates:* May 23–26, 2000.
*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
*Closed:* May 23–26, 2000.
*Panel:* Centers for the Application of Prevention Technologies, SP 00–005.
*Contact:* Peggy Riccio, Review Administrator, Room 17–89, Parklawn Building, 301–443–9996 and FAX 301–443–3437.

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).
*Meeting Dates:* June 5–8, 2000.
*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
*Closed:* June 5–8, 2000, 8:30 a.m.–5 p.m./Adjournment.
*Panel:* State Incentive Program, SP 00–004.
*Contact:* Stanley Kusnetz, Review Administrator, (301) 443–3042, Parklawn Building, Room 17–89.

*Committee Name:* SAMHSA, Special Emphasis Panel I (SEP I).
*Meeting Dates:* June 12–15, 2000.
*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
*Closed:* June 12–15, 2000, 8:30 a.m.–5 p.m./Adjournment.
*Panel:* Community Action Grants for Service Systems Change, CMHS PA 00–003.
*Contact:* Raquel Crider, Review Administrator, (301) 443–5063, Parklawn Building, Room 17–89.

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).
*Meeting Dates:* June 19–23, 2000.
*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.
*Closed:* June 19–23, 2000, 8:30 a.m.–5:00 p.m./Adjournment.
*Panel:* Community Action Grants for Service Systems Change, CSAT PA 00–002.

*Contact:* Peggy Riccio, Review Administrator, Parklawn Building, Room 17–89, (301) 443–9996.

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).

*Meeting Dates:* June 19–23, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Closed:* June 19–23, 2000, 8:30 a.m.–5:00 p.m./Adjournment.

*Panel:* Community Treatment Program, CSAT, PA 99–050.

*Contact:* Danielle Johnson, Review Administrator, (301) 443–6092, Parklawn Building, Room 17–89.

*Committee Name:* SAMHSA Special Emphasis Panel I (SEP I).

*Meeting Dates:* June 26–30, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Closed:* June 26–30, 2000, 8:30 a.m.–5:00 p.m./Adjournment.

*Panel:* Youth Violence Cooperative Agreement SM 00–005.

*Contact:* Michael Koscinski, Review Administrator, Room 17–89, Parklawn Building, (301) 443–6094.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: May 1, 2000.

**Coral Sweeney,**

*Review Specialist, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 00–11533 Filed 5–8–00; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration (SAMHSA)

### Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the following meeting of the SAMHSA Special Emphasis Panel II in June and July 2000.

A summary of the meeting may be obtained from: Ms. Coral M. Sweeney, SAMHSA, Division of Extramural Activities Policy and Review, 5600 Fishers Lane, Room 17–89, Rockville, Maryland 20857. Telephone: (301) 443–2998.

Substantive program information may be obtained from the individual named as Contact for the meeting listed below.

The meeting will include the review, discussion and evaluation of individual contract proposals. These discussions could reveal personal information concerning individuals associated with the proposals and confidential and financial information about an individual's proposal. The discussion may also reveal information about procurement activities exempt from disclosure by statute and trade secrets and commercial or financial information obtained from a person and privileged and confidential. Accordingly, the meeting is concerned with matters exempt from mandatory disclosure in Title 5 U.S.C. 552b(c)(3),(4), and (6) and 5 U.S.C. App. 2, § 10(d).

*Committee Name:* SAMHSA Special Emphasis Panel II.

*Panel:* Technical Assistance & Logistical Support 270–00–7077.

*Meeting Date:* June 1–2, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

*Closed:* June 1, 2000, 8:30 a.m.–5:00 p.m.; June 2, 2000, 8:30 a.m.–Adjournment.

*Contact:* Ferdinand Hui, Room 17–89, Parklawn Building, Telephone: (301) 443–9919 and FAX (301) 443–1587.

*Panel:* State Alcohol & Other Drugs (AOD) Systems Technical Review Project 270–00–7069.

*Meeting Date:* July 10–11, 2000.

*Place:* Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, Maryland 20814.

*Closed:* July 10, 2000 8:30 a.m.–5:00 p.m.; July 11, 2000, 8:30 a.m.–Adjournment.

*Contact:* Ferdinand Hui, Parklawn Building, Room 17–89, Telephone: (301) 443–9919 and FAX: (301)443–1587.

*Panel:* Indefinite Delivery & Indefinite Quantity, 277–00–6049.

*Meeting Date:* June 19–23, 2000.

*Meeting Place:* Bethesda Marriott, 51512 Pooks Hill Road, Bethesda, Maryland 20814.

*Closed:* July 19–23, 2000, 8:30 a.m.–5:00 p.m.

*Contact:* Ferdinand Hui, Parklawn Building, Room 17–89, Telephone: (301) 443–9919 and FAZ (301) 443–1587.

Dated: May 2, 2000.

**Coral Sweeney,**

*Review Specialist, SAMHSA.*

[FR Doc. 00–11534 Filed 5–8–00; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4560–C–06]**

### FY 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development and Empowerment Programs and Section 8 Housing Voucher Assistance; Technical Corrections for CDTA EDI, HOPE VI, HOPWA, Housing Counseling, ROSS, Section 202 and Section 811 Programs; and Extension of Application Due Dates for EDI and Two ROSS Initiatives

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Super Notice of Funding Availability (SuperNOFA) for HUD Grant Programs; Technical Correction.

**SUMMARY:** On February 24, 2000, HUD published its Fiscal Year (FY) 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance. This documents makes certain technical corrections to the following programs: Economic Development Initiative (EDI); HOPE VI; Housing Counseling; Housing Opportunities for Persons With AIDS (HOPWA); Resident Opportunity and Self-Sufficiency (ROSS); Section 202 Supportive Housing for the Elderly; and Section 811 Supportive Housing for Persons with Disabilities.

This document also extends the application due date for EDI and for two of the ROSS Program initiatives.

**DATES:** Except for the extension of the application due date for EDI and for two of the ROSS Program initiatives, all application due dates remain as published in the **Federal Register** on February 24, 2000. The application due date for the Outreach and Training Assistance Grants (OTAG) was extended to May 31, 2000, by notice published in the **Federal Register** on April 24, 2000.

**FOR FURTHER INFORMATION CONTACT:** For the Programs listed in this notice, please contact the office or individual listed in the "For Further Information" heading in the individual program section of the SuperNOFA, published on February 24, 2000.

**SUPPLEMENTARY INFORMATION:** On February 24, 2000 (65 FR 9322), HUD published its Fiscal Year (FY) 2000 Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance. The FY 2000 SuperNOFA announced the availability of approximately $2.424 billion in HUD program funds covering 39 grant categories within programs operated and administered by HUD offices and Section 8 housing voucher assistance.

This notice published in today's **Federal Register** makes certain corrections and clarifications to the funding availability announcements of the following programs: Community Development Technical Assistance (CDTA); Economic Development Initiative (EDI); HOPE VI Revitalization and Demolition; Housing Counseling; Housing Opportunities for Persons With AIDS (HOPWA); Resident Opportunity and Self-Sufficiency (ROSS); Section

202 Supportive Housing for the Elderly; and Section 811 Supportive Housing for Persons with Disabilities.

**II. Technical Corrections**

A summary of the technical corrections that will be made by this document are as follows. The page numbering shown in bracket identifies where the individual funding availability announcement that is being corrected can be found in the February 24, 2000 SuperNOFA, and the page numbering in parentheses identifies where the specific language that is being corrected can be found in the published SuperNOFA.

**Community Development Technical Assistance (CDTA) [Page 9389]**

HUD revises the first paragraph of Section VI (Application Submission Requirements) to correct the list of application submission requirements for the Housing Opportunities for Persons With AIDS (HOPWA) Technical Assistance component of this funding. The Budget Summary, described in Section VI.(H), applies to HOPWA and was inadvertently included in the list of items not applicable to HOPWA. (See page 9397, first column at top)

**Economic Development Initiative (EDI) [Page 9789]**

This notice extends the application due date for EDI from May 24, 2000, to June 13, 2000.

HUD is removing the limitation or "cap" on the maximum EDI award for a single regional economic development project application. (See page 9793, second column.) Due to their potentially larger size and regional impact, HUD determined that market conditions and the regional economic development project proposed should determine the appropriate amount of an award for a single regional economic development project application. Therefore, HUD will not apply a specific cap on the size of an award for a single regional economic development project application. However, the cap on the maximum EDI award for each general economic development project application remains. In addition, the overall limitation on awards for all regional economic development project applications approved under the FY 2000 SuperNOFA remains the same at $10,000,000.

In addition to this change, HUD corrects certain incorrect cites in the EDI funding availability announcement. On page 9790, in the first column, in the first full paragraph, the references to Section IV.(D) and Section VI.(D)(2) should be Section VI.

On page 9793, in the third column, numbered paragraph (4), the reference to Section IV.(E)(1) should be Section IV.(F)(1).

On page 9794, second and third column, the reference to Section V.(A)(4) in these columns should be Section IV(F) and Section V.(A)(3).

**HOPE VI Revitalization and Demolition Program [Page 9599]**

HUD revises the second sentence of paragraph (e) of Section III.(C)(1) which addresses the appropriate replacement homeownership assistance to clarify that the conditions for this assistance are limited to the following (1) HUD's approval of a homeownership proposal under section 24(d)(1)(J) of the Act; and (2) the 80 percent of area median income limitations. (See page 9601, third column.) HUD also corrects the statutory cite in Section VII.(A)(1)(b). The correct cite is section 537(c), not section 537(b). (See page 9618, second column.) Additionally, HUD revises Section IV(D)(1)(b) to clarify the matching requirement for HOPE VI grant funds used for community and supportive services.

**Housing Counseling [Page 9519]**

HUD further addresses the post-award process under Section II (Amount Allocated) by describing the award instrument to be executed by grantees and accompanying documentation. A new paragraph (4) is added to this section.

**Housing Opportunities for Persons With AIDS (HOPWA) [Page 9867]**

HUD corrects the chart in Appendix A that addresses "Non-Eligible Areas" found on page 9880. For the State of Maryland, the chart should read: State of Maryland (outside of Baltimore, Washington DC, and Wilmington, EMSA). For the State of New Hampshire, the chart should read: State of New Hampshire (outside of Boston, EMSA). HUD also corrects the HOPWA Project Budget Form in Appendix C (page 9891) to remind applicants that the requirements of section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) apply to housing rehabilitation, repair and conversion activities over $200,000.

**Resident Opportunity and Self-Sufficiency (ROSS) [Page 9697]**

HUD extends the application due date for the Capacity Building or Conflict Resolution and Resident Service Delivery Models initiatives to June 15, 2000.

The provision on "Ineligible Activities," paragraph (3) of Section III.(D)(3) (see page 9702, middle column) contains an incorrect cross-reference to Section III.(C)(7). The correct reference is to Section III.(C)(4).

Under the program description and listing of eligible activities for the Resident Service Delivery Model, HUD inadvertently omitted the paragraph on eligible administrative expenses that appears in the other initiatives. This provision is added as a new paragraph (h) on page 9704, first column, right before paragraph (5) on "Ineligible Activities."

In Section VI.(A) which addresses application submission requirements for all applicants, HUD clarifies that for Service Coordinator renewal grantees, they are not required to submit the ROSS Fact Sheet or ROSS Program Summary. (See page 9708, second column.)

In Section VI.(B) (Application Submission Requirements for RMBD Applications) to remove the last sentence of paragraph (B)(2) that states that submission of a memorandum of understanding (MOU) is not required as part of the application submission. (See page 9709, first column at top). This document is required to be submitted with the RMBD application, as stated earlier in the paragraph.

**Section 202 Supportive Housing for the Elderly [Page 9901]**

In Section V.(C), HUD corrects the order in which selection will be made out of the national residual funds. (See page 9908, third column, last paragraph before Section V.(D).) This correction is necessary because the national residual funds will be used first to fund two projects not funded in FY 1999 due to HUD error instead of to first restore units cut by the Multifamily Program Centers and Multifamily Hubs in order for them to fund the projects out of their FY 2000 Section 202 allocation. Additionally, the notice corrects an inaccurate definition of minority neighborhood. Since applications are to be rated on the suitability of sites from the standpoints of promoting a greater choice of housing opportunities for minority elderly persons/families and affirmatively furthering fair housing, it is important for sponsors to be able to accurately identify neighborhoods. (See page 9909, third column.)

**Section 811 Supportive Housing for Persons With Disabilities [Page 9929]**

As with the Section 202 Program, HUD corrects an inaccurate definition of minority neighborhood. (See page 9938, first column.) Under this program, since applications are to be rated on the suitability of sites from the standpoints

of promoting a greater choice of housing opportunities for minority persons with disabilities and affirmatively furthering fair housing, it is important for sponsors to be able to accurately identify neighborhoods. Additionally, HUD corrects the address and telephone number of the Atlanta Multifamily Hub. The address was printed incorrectly in the Appendix A of the Section 811 Program. (See page 9944.)

Accordingly, in the Super Notice of Funding Availability for Housing, Community Development, and Empowerment Programs and Section 8 Housing Voucher Assistance for Fiscal Year 2000, notice document 00–4123, beginning at 65 FR 9322, in the issue of Friday, February 24, 2000, the following corrections are made:

*1. Community Development Technical Assistance (CDTA) Section, Beginning at 65 FR 9389*

• On page 9396, third column, continuing on page 9397, first column, the first paragraph of Section VI (Application Submission Requirements) is corrected to read as follows:

In addition to the forms, certifications and assurances listed in Section II(G) of the General Section of the SuperNOFA (collectively referred to as the "standard forms"), your application must, at a minimum, contain the following items (except that the following paragraphs (C), (D), (E), (F), and (G) do not apply to HOPWA TA applicants). The standard forms can be found in Appendix B to the General Section of the SuperNOFA. The remaining forms can be found as Appendix B to this CD–TA program section of the SuperNOFA.

*2. Economic Development Initiative (EDI) Section, Beginning at 65 FR 9789*

• On page 9789, in the first column, under "Program Overview," corrects the paragraph on "Application Deadline" to read as follows:

*Application Deadline.* June 13, 2000.

• On page 9789, in the first column, under Section I, HUD corrects the first paragraph titled "Application Due Date to read as follows:

*Application Due Date.* Please submit your completed applications (one original and two copies) on or before 12:00 midnight, Eastern time, on June 13, 2000, to the addresses shown below. *In your transmittal letter, please indicate whether you are applying for funding as a general economic development project or a regional economic development project.*

• On page 9790, first column, HUD corrects the first six sentences of the first full paragraph in this column to read as follows:

One application shall be submitted for each regional economic development project which must consist of two parts: Part I, Lead Applicant's Submission, must include a Cooperative Agreement which stipulates a workplan for the regional economic development project. The Cooperative Agreement must be executed by the chief executives of the participating jurisdictions. The Cooperative Agreement workplan must indicate the overall purpose, objectives and accomplishments expected from carrying out the project. Your application shall also include the Standard Form 424, the required certifications signed by the lead applicant, and other materials as described in Section VI of this program section of this SuperNOFA. The lead applicant shall be responsible for coordinating actions of the workplan with respect to timing and scheduling. Part II of the application, Participating Members' Plans, shall contain discrete EDI and Section 108 loan guarantee requests by each participating member identifying activities to be financed by the jurisdiction with grant funds and guaranteed loan proceeds and shall meet the other requirements described more fully in Section VI. * * *

• On page 9793, second column, HUD corrects paragraph (2) in Section IV.(F) to read as follows:

(2) HUD will cap EDI awards at a maximum of $2 million for general economic development projects. Any application in excess of $1 million may be reduced below the amount requested by the applicant if HUD determines that such a reduction is appropriate.

• On page 9793, third column, HUD corrects numbered paragraph (4) to read as follows:

(4) In the event you are awarded an EDI grant that has been reduced below the original request (e.g. the application contained some activities that were ineligible or there were insufficient funds to fund the last competitive application at the full amount requested or there were technical deficiencies that could not be resolved), you will be required to modify your project plans and application to conform to the terms of HUD's approval before HUD will execute a grant agreement. HUD also will proportionately reduce or deobligate the EDI award if you do not submit approvable Section 108 loan guarantee applications on a timely basis (including any extension authorized by HUD) in the amount required by the EDI/108 leveraging ratio which will be approved by HUD as a special condition of the EDI grant award (see Section IV.(F)(1) above of this program section of the SuperNOFA). Any modifications or amendments to your application approved pursuant to this SuperNOFA, whether requested by you or by HUD, must be within the scope of the approved original EDI application in all respects material to rating the application, unless HUD determines that the revised application remains within the competitive range and is otherwise approvable under this SuperNOFA competition.

• On page 9794, in the second column, under Section V.(A)(2), numbered paragraph (a) is corrected to read as follows:

(a) All acceptable EDI grant applications for general economic development projects will be separately ranked in order of points assigned with the applications receiving more points ranking above those receiving fewer points. Acceptable economic development applications must meet the threshold requirements stipulated in the General Section of this SuperNOFA and be complete as required by the Submission requirements of this program section of this SuperNOFA. General economic development projects will be funded in rank order until the total aggregate amount of the applications funded is equal to up to $14.1 million (subject to the Department's discretion described in Section IV.(F) and Section V.(A)(3)).

• On page 9794, at the bottom of the second column and continuing to the third column, the second full paragraph under Section V.(A)(2)(b) is corrected to read as follows:

Economic development projects may include projects where the participating partners invest in one project with each participating partner's role (e.g. funding, planning) being explained to demonstrate how the activity is both necessary to further the regional objectives while accruing reasonable benefits to residents of the partner's jurisdiction. An economic development project might also include projects carried out within the boundaries of each participating member's jurisdiction where the effect of carrying out the project activities in multiple jurisdictions will create a regional synergy that will cause a reduction to or elimination of the regional problem or condition (e.g., high poverty levels, high unemployment). The workplan must describe such jurisdictional efforts and the extent to which their combined efforts accomplish the objectives of the regional economic development project. Regional economic development projects will be funded in rank order until the total aggregate amount of the applications funded is equal to up to $10 million (subject to the Department's

discretion described in Section IV.(F) and Section V.(A)(3);

*3. HOPE VI Revitalization and Demolition Program Section, Beginning at 65 FR 9599*

• On page 9601, third column, the introductory paragraph of paragraph (e) in Section III.(C)(1) is corrected to read as follows:

(e) Appropriate replacement homeownership assistance for displaced public housing residents or other low-income families. Subject to HUD's approval of a homeownership proposal under section 24(d)(1)(J) of the Act, and a family's meeting the 80 percent of Area Median Income (AMI) low-income family limitations under the 1937 Act, assistance may include: * * *

• On page 9606, Section IV(D)(1)(b) is corrected to read as follows:

(b) *Additional Community and Supportive Services Match.* In addition to supplemental amounts provided in accordance with subparagraph (a) above, if you are selected for funding and propose to use more than 5 percent of your HOPE VI grant for community and supportive services (you may use up to 15 percent of your grant for such services), you must certify that you will provide supplemental funds from sources other than HOPE VI in an amount equal to the difference between 5 percent of the HOPE VI grant and the amount used for community and supportive services. You will make this certification by signing the HOPE VI Revitalization Applicant Certifications. The certification form is included in Part V of the HOPE VI Application Kit, and the text of the certifications is included as Appendix A to this HOPE VI section of the SuperNOFA, below.

• On page 9618, second column, the introductory paragraph of paragraph (b) in Section VII.(A) is corrected to read as follows:

(b) *Priority Group 2:* A HOPE VI Demolition grant application that targets units included in a Conversion Plan that you have submitted to HUD on or before the HOPE VI Demolition grant application deadline date, or targets units that, at HUD's sole determination under section 537(c) of the Public Housing Reform Act of 1998, are subject to the removal requirements of 24 CFR part 971 and can be expected to be demolished in accordance with the time schedule required by Section IV(F)(1) of this HOPE VI section of the SuperNOFA, above. * * *

*4. Housing Counseling Section, Beginning at 65 FR 9519*

On page 9529, second column, a new paragraph (4) is added after paragraph (3) to read as follows:

(4) *Award Instrument.* All Housing Counseling Program awards shall be made on a cost reimbursement basis in accordance with the requirements in OMB Circulars A–87, Cost Principles for State and Local Governments and Indian Tribal Governments; and OMB Circular A–122, Cost Principles for Non-Profit Organizations, as applicable to your organization; and the administrative requirements established in OMB Circular A–102, which was implemented by 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Indian Tribal Governments; OMB Circular A–110, which was implemented by 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals and Other Non-Profit Organizations); and OMB Circular A–133 which was implemented by 24 CFR parts 84 and 85). If you receive an award you are also required to ensure that any sub-recipients also comply with the requirements in these circulars.

After selection, but prior to award of funds you will be required to submit to HUD either:

(a) A copy of your most recent audit conducted by the cognizant Federal agency or a Independent Public Accountant which states that: (i) Your financial accounting system meets the federal requirements for fund control and accountability as required by these OMB Circulars and (ii) establishes an indirect cost rate for your organization; or

(b) A certification from an Independent Public Accountant or the cognizant Federal agency government auditor, stating that (i) your financial accounting system meets the federal requirements for fund control and accountability as required by these OMB Circulars and (ii) establishes an indirect cost rate for your organization.

Your submission should include the name and telephone number of the Independent Auditor or the cognizant Federal Auditor. HUD cannot award funds to an organization unless its financial management system meets Federal requirements for funds control and accountability.

If your organization does not have an established indirect cost rate, you will be required to develop and submit an indirect cost proposal to HUD or the cognizant Federal Agency as applicable, for determination of an indirect cost rate which will govern your award. Funds will not be awarded until the determination of the Indirect Cost Rate.

*5. Housing Opportunities for Persons With AIDS (HOPWA) Section, Beginning at 65 FR 9867*

• On page 9880, the chart shown on Appendix for "Non-Eligible Areas" is corrected to read as follows for the States of Maryland and New Hampshire (the information concerning the other states is correct).

| State | NON-eligible areas |
|---|---|
| MD | State of Maryland (outside of Baltimore, Washington, DC, and Wilmington, EMSA |
| NH | State of New Hampshire (outside of Boston, EMSA). |

• On page 9891, the second row of the HOPWA Project Budget Form is corrected to read as follows:

| Eligible activity | Project funding | | |
|---|---|---|---|
| | A. HOPWA | B. Other | C. Total |
| 2. Rehabilitation, Repair, and | Conversion* | $ | $ |

*6. Resident Opportunity and Self-Sufficiency (ROSS) Section, Beginning at 65 FR 9697*

• On page 9697, in the first column, the Application Deadline in the "Program Overview" section is corrected to read as follows:

*Application Deadline.* June 15, 2000, for Resident Management and Business Development; June 15, 2000, for Capacity Building or Conflict Resolution;

June 15, 2000, for Resident Service Delivery Models; and

After publication of this SuperNOFA grant renewals will be accepted until all funds are awarded for Service Coordinators.

• On page 9697, in the first column, the first paragraph in Section I that

addresses "Application Due Date", is corrected to read as follows:

*Application Due Date.* Your completed application (one original and two copies) is due on or before 12:00 midnight, Eastern time, on the following application due dates to HUD Headquarters at the address shown below.

June 15, 2000, for Resident Management and Business Development;

June 15, 2000, for Capacity Building or Conflict Resolution;

June 15, 2000, for Resident Service Delivery Models; and

After publication of this SuperNOFA, grant renewals will be accepted until all funds are awarded for Service Coordinators.

See the General Section of this SuperNOFA for specific procedures governing the form of application submission (e.g., mail application, express mail, overnight delivery, or hand-carried).

• On page 9702, second column, the paragraph designated as paragraph "(3)" on "Ineligible Activities" is corrected to read as follows:

(3) *Ineligible Activities.* Ineligible activities are the same as those listed in Section III(C)(4) of this program section of the SuperNOFA, above.

• On page 9704, first column, before the paragraph designated as paragraph "(5)" on "Ineligible Activities" a new paragraph (h) is added to read as follows:

(h) *Administrative costs.* Administrative costs may include, but are not limited to purchase of furniture, office equipment and supplies, quality assurance, travel and utilities. Administrative costs must not exceed 20% of the total grant costs.

• On page 9708, under Section VI (Application Submission Requirements), the last paragraph in the first column that continues into the second column, is corrected to read as follows

All applicants, except for applicants that are Service Coordinator renewal grantees, must include the following information regardless of the category under which they are applying for funds. Service Coordinator renewal grantees are not required to submit items (2) and (3), the ROSS Fact Sheet, and ROSS Program Summary, respectively.

• On page 9708, third column, continuing to page 9709, first column, the second paragraph in Section VI.(B)(2) is corrected to read as follows:

(2) Your application must contain a signed Memorandum of Understanding (MOU) between the RA and PHA which describes the specific roles, responsibilities and activities to be undertaken by all parties to the MOU. Your MOU, at a minimum must identify the principal parties (i.e. the name of the PHA and RA, the terms of agreement), expectations or terms for each party, and indicate that the agreement pertains to the support of your grant application. This document is the basis for the foundation of the relationship between the RA and PHA. The MOU must be precise and outline the specific duties and objectives to be accomplished under the grant. All MOUs must be finalized, dated and signed by duly authorized officials of both the RA and PHA upon submission of the application.

*7. Section 202 Supportive Housing for the Elderly (Section 202 Program) Section, Beginning at 65 FR 9901*

• On page 9908, in the third column, the last paragraph of Section V.(C) is corrected to read as follows:

Funds remaining after these processes are completed will be returned to Headquarters. HUD will use these funds first to fund Metropolitan Low Income Housing and CDC, Inc., a FY 1999 application in the jurisdiction of the Columbia, SC Multifamily Program Center, and White Sands Manor, a FY 1999 application in the jurisdiction of the Jacksonville, FL Multifamily Hub. These projects were not funded in FY 1999 due to HUD error. Second, HUD will use these funds to restore units to projects reduced by HUD offices as a result of the instructions for using residual funds. Third, HUD will use these funds for selecting applications based on field offices' rankings beginning with the highest rated application nationwide. Only one application will be selected per HUD office from the national residual amount (except for the Columbia, SC Multifamily Program Center and Jacksonville, FL Multifamily Hub which are already receiving additional selections as described above). If there are no approvable applications in other HUD offices, the process will begin with the selection of the next highest rated application nationwide. This process will continue until all approvable applications are selected using the available remaining funds.

• On page 9909, third column, under Rating Factor 3 (Soundness of Approach), the third subparagraph under paragraph (b)(ii) is corrected to read as follows:

—In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population. The term "nonminority area" is defined as one in which the minority population is lower than 10 percent.

*8. Section 811 Supportive Housing for Persons With Disabilities (Section 811 Program) Section, Beginning at 65 FR 9929*

• On page 9938, first column, under Rating Factor 3 (Soundness of Approach), the third subparagraph under paragraph (b)(ii) is corrected to read as follows:

— In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population. The term "nonminority area" is defined as one in which the minority population is lower than 10 percent.

• On page 9944, first column, under Appendix A, the address for the Atlanta Office is corrected to read as follows: Atlanta Office, 40 Marietta Street—Five Points Plaza, Atlanta, GA 30303–2806, (404) 331–5001.

Dated: May 1, 2000.

**Saul N. Ramirez, Jr.,**

*Deputy Secretary.*

[FR Doc. 00–11552 Filed 5–8–00; 3:45 pm]

BILLING CODE 4210–32–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Proposed Information Collections; Request for Comment

**ACTION:** Notice of proposed information collection; request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) plans to submit the collection of information described below to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995. Copies of the specific information collection requirements, related forms and explanatory material may be obtained by contacting the Service's Information Collection Clearance Officer at the address provided below.

**DATES:** Consideration will be given to all comments received on or before July 10, 2000.

**ADDRESSES:** Comments and suggestions on the requirements should be sent to Rebecca A. Mullin, Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Suite 222, Arlington, VA 22203; 703/358–2287; or electronically to Rebecca__Mullin@fws.gov

**FOR FURTHER INFORMATION CONTACT:** Sylvia Cabrera at 4401 North Fairfax Drive, Suite 140, Arlington, VA 22203; 703/358–1842; or electronically to Sylvia__Cabrera@fws.gov

**SUPPLEMENTARY INFORMATION:** The OMB regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Public Law 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and record keeping activities (see 5 CFR 1320.8(d)). We are seeking clearance from the OMB to collect information in conjunction with carrying out our responsibilities under the Federal Aid in Sport Fish Restoration Act (16 U.S.C. 777–777K) commonly referred to as the Dingell-Johnson Act, and the Federal Aid in Wildlife Restoration Act (16 U.S.C. 699–699i) commonly referred to as the Pitman-Robertson Act. Under these acts, as amended, almost $400 million in grants are provided annually to States for projects to support sport fish and wildlife management and restoration, including the acquisition and improvement of aquatic resources, fishing access, fish stocking, and the acquisition and improvement of wildlife management areas, facilities, and access. Grants also are provided for aquatic education and hunter education, maintenance of completed projects, and research into the problems affecting fish and wildlife resources. Those projects help ensure that the American people have adequate opportunities for wildlife-related recreation. To assist in carrying out its responsibilities, the Service has sponsored national surveys of fishing and hunting at about 5 year intervals since 1955. The Bureau of the Census conducts the survey for the Service. The survey data are needed to allow the Service to effectively administer the Sport Fish and Wildlife Restoration Grant Programs, and to help States develop project proposals and conservation programs that meet the needs of their populations. The survey collects information on the number of people participating in wildlife-related recreation, the number of days and expenditures spent on those activities. Survey data are needed to provide comparable state level information on existing recreation demands and to provide a basis for projecting future demands to effectively meet the needs of the American people. The information is needed to evaluate the effectiveness of existing programs in meeting those needs, formulate new policies, develop programs, and support budget proposals and legislation for the benefit of sport fish and wildlife restoration. Data are needed to evaluate the status and trends of recreational uses, as well as the values and benefits, of fish and wildlife resources. The comprehensive comparable state-level data provided by the survey are not available from other sources. The Service is requesting a three year term of approval for this information collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

We invite your comments on: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection information; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents.

*Title:* 2001 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation (FHWAR).

*Approval Number:* New.

*Survey Form Numbers:* FH–2 (Screen), FH–3 (Sportsmen), FH–4 (non-consumptive) Questionnaires.

*Description and Use:* The 2001 National Survey of Fishing, Hunting, and Wildlife Associated Recreation will be the 10th one conducted since 1955. It is conducted every 5 years and is requested by the States through the International Association of Fish and Wildlife Agencies. It will be conducted by the Bureau of the Census using computer-assisted telephone or in-person interviews. A sample of sportsmen and non-consumptive participants will be selected from a household screen. Sample persons will be asked about their participation and expenditures. Three detailed interviews will be conducted during the survey year. The 2001 FHWAR Survey will be similar in scope to past surveys. It will generate information identified as priority data needed by the Federal and State fish and wildlife agencies responsible for administering the Sport Fish and Wildlife Restoration grant programs. Accordingly, the 2001 FHWAR Survey will be a comprehensive data base of fish and wildlife-related recreation activities such as freshwater, saltwater, and Great Lakes fishing; and big game, small game, migratory bird, and other animal hunting. Wildlife watching (non-consumptive) activities include wildlife observation, feeding, and photographing around the home and on trips away from home. Information is collected on days of participation, the species of animals sought, and how much money was spent on trips and for equipment. Information on the characteristics of participants include age, income, sex, education, race, and residency. The survey data has State level reliability. Federal and State fish and wildlife agencies use information from the survey as a basis to formulate management and policy decisions related to sport fish and wildlife restoration. Participation patterns and trend information assist in identifying present and future needs and demands. The information is used for planning the acquisition, development, and enhancement of fish and wildlife resources for the benefit of wildlife-related recreation. Data on expenditures, economic evaluation, and participation are used by land managing agencies to assess the value of fish and wildlife-related uses of natural resources. Expenditure information is used by States to estimate the economic impact of wildlife-related recreation expenditures on their economies and to support the dedication of tax revenues to support fish and wildlife restoration programs. The information collected on resident saltwater fishing will assist coastal States in determining the proper ratio for allocating funds between freshwater and saltwater projects as required by the Federal Aid in Sport Fish Restoration Act, as amended. The information is not readily available elsewhere because few States have saltwater licenses or conduct their own surveys. If the 2001 FHWAR Survey data were not available it would impair the ability of those States to meet their obligations under the Act.

In summary, the information collection is needed to assist the Fish and Wildlife Service and the State fish and wildlife agencies in administering the Sport Fish and Wildlife Restoration grant programs. The 2001 FHWAR Survey will provide up-to-date information on the uses and demands for wildlife-related recreation resources, trends in the uses of those resources, and a basis for developing and evaluating programs and projects to meet existing and future needs. The information collection is subject to the Paperwork Reduction Act requirements for such activity, which includes soliciting comments from the general public regarding the nature and burden imposed by the collection.

*Frequency of Collection:* Household screen interviews and the first detailed sportsmen and non-consumptive participant interviews will be

conducted April–June 2001. The second detailed interviews will be conducted September–October 2001. The third and last detailed interviews will be conducted January–March 2002.

*Description of Respondents:* Individuals.

*Estimated Completion Time:* We estimate the average completion time per respondent to be about 7 minutes for the screen and 15 minutes for the detailed interviews. A respondent will average 2 interviews during the survey period.

*Number of Respondents:* It is estimated that there will be 80,000 total respondents.

Dated: April 28, 2000.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 00–11223 Filed 5–8–00; 8:45 am]

BILLING CODE 4310–55–M

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Application

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application.

The following applicant has applied for a permit amendment to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

**Permit Number TE 809227–13**

*Applicant:* BHE Environmental, Inc., Cincinnati, Ohio.

The applicant requests a permit to take (collect) 33 fish species and 68 mussel species throughout their ranges in U.S. Fish and Wildlife Regions 3, 4 and 5. Activities are proposed for studies to identify populations of listed fish and mussel species and to develop methods to minimize or avoid project related impacts to those populations. The scientific research is aimed at enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: May 2, 2000.

**T.J. Miller,**

*Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

[FR Doc. 00–11542 Filed 5–8–00; 8:45 am]

BILLING CODE 4310–55–P

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for an Incidental Take Permit for Construction of Commercial and Residential Development on 110 Acres of the 446-acre Comanche Canyon Ranch in Travis County, Texas

**SUMMARY:** Comanche Canyon Ranch, Inc. (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit numbers TE–004683–0. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (Dendroica chrysoparia), Tooth Cave pseudoscorpion (Tartarocreagris texana), Kretschmarr Cave mold Beetle (Texamaurops reddelli), Bee Creek Cave harvestman (Texella reddelli), Bone Cave harvestman (Texella reyesi), Tooth Cave spider (Neoleptoneta myopica), and Tooth Cave ground beetle (Rhadine persephone). The proposed take would occur as a result of the construction of commercial and residential structures with associated streets and utilities on 110 acres of the 446-acre Comanche Canyon Ranch, Travis County, Texas.

The Service has completed the review of the draft Environmental Assessment/ Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application should be received on or before June 8, 2000.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Christina Longacre, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service Office, Austin, Texas at the above address. Please refer to permit number TE–004683–0 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Christina Longacre at the above U.S.Fish and Wildlife Service Office, Austin, TX.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler, Bone Cave harvestman, Tooth Cave spider, Bee Creek Cave harvestman, Tooth Cave pseudoscorpion, Tooth Cave ground beetle and the Kretschmarr Cave mold beetle. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

**Applicant**

Comanche Canyon Inc. plans to construct residential and commercial structures with associated streets and utilities in Travis County, Texas. This action will eliminate approximately 26 acres of habitat and indirectly impact 37 additional acres of golden-cheeked warbler habitat. The Applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by preserving a minimum of 213 acres on-site.

If any voids are encountered that contain the listed karst invertebrates, the Applicant will minimize and mitigate any impacts determined by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present would not add preserve

acreage and management to the area and was not economically feasible.

**Domenick R. Ciccone,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 00–11518 Filed 5–8–00; 8:45 am]

BILLING CODE 4510–55–U

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–040–00–1060–HI]**

### Notice of Intent To Gather Excess Wild Horses During Calendar Year 2000

**AGENCY:** Bureau of Land Management, Interior.

**SUMMARY:** The Bureau of Land Management (BLM), Rock Springs Field Office, prepared an environmental assessment for wild horse gathering inside and outside of wild horse herd management areas in 1999. The proposed action to gather excess wild horses to appropriate management levels was approved in a decision record on July 14, 1999. Gathering of excess wild horses to appropriate management levels was not completed in 1999. BLM is scheduled to continue gathering operations in the year 2000. The environmental assessment and decision record are available for review at the Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming. It is also available via the world wide web at: *http://www.wy.blm.gov/currentnews/wildhorses/WILDHORSEADOPTION.HTML* The planned gathering period will extend from July 15, 2000 until inclement weather prevents gathering operations. Up to 800 wild horses may be removed from four wild horse herd management areas including Great Divide Basin, White Mountain, Little Colorado, and Salt Wells Creek. Excess wild horses outside of the herd management areas in the North Baxter/Jack Morrow hills areas may also be removed.

**FOR FURTHER INFORMATION CONTACT:** John (Stan) McKee, Field Manager, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901 (307–352–0201).

Dated: May 3, 2000.

**John S. McKee,**

*Field Manager.*

[FR Doc. 00–11519 Filed 5–8–00; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Proposed Kykotsmovi Sewer Lagoon—Public Facility Project

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Notice of application for grant funding; public comment period for the Hopi Tribe's request to fund the Village of Kykotsmovi Sewer Lagoon—Public Facility Project.

**SUMMARY:** OSM is announcing its receipt of a grant application from the Hopi Abandoned Mine Land (AML) Program, in Kykotsmovi, Arizona. The Hopi Tribe is requesting $200,000 from the Abandoned Mine Reclamation Fund to pay the cost of upgrades to the existing wastewater infrastructure within the Village of Kykotsmovi on the Hopi Indian Reservation. In its application, the Hopi Tribe proposes paying for a percentage of the total construction cost as a public facility project (PFP) to offset various socioeconomic impacts to the community that is impacted by the mining of Hopi coal. The Chairman of the Hopi Tribe has determined that this project is necessary to prevent an imminent threat to human health and safety.

This notice describes when and where you may read the Grant Application that requests funding for the Village of Kykotsmovi—Sewer Lagoon Public Facilities Project. It also sets the time period during which you may send written comments on the request to OSM.

**DATES:** We will accept written comments until 4 p.m., d.s.t., June 8, 2000.

**ADDRESSES:** You should mail or hand-deliver your written comments to Willis L. Gainer, Albuquerque Field Office Director, at the address shown below.

You may preferably read the Hopi Tribes Grant Application for this proposed project during normal business hours Monday through Friday (excluding holidays) at the same address. However, OSM will send one free copy of the grant application to you if you contact OSM's Albuquerque Field Office.

Willis L. Gainer, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 505 Marquette Avenue NW., Suite 1200, Albuquerque, New Mexico 82601–1918.

**FOR FURTHER INFORMATION CONTACT:** Willis L. Gainer, Telephone: (505) 248–5070.

**SUPPLEMENTARY INFORMATION:**

#### I. Background on Title IV of SMCRA

Title IV of the Surface Mining Control and Reclamation Act (SMCRA) established an Abandoned Mine Land Reclamation (AMLR) Program. The purpose of the AMLR Program is to reclaim and restore lands and waters that were adversely affected by past mining. The AMLR Program is funded by a reclamation fee paid by active coal mining operations. Lands and waters eligible for reclamation under Title IV are primarily those that were mined, or affected by mining, and abandoned or inadequately reclaimed before August 3, 1977, and for which there is no continuing reclamation responsibility under State, Federal, or other laws.

Title IV of SMCRA allows States or Indian Tribes to submit AMLR plans to OSM. On behalf of the Secretary, OSM reviews those plans and considers any public comments received. If OSM determines that a State or Indian Tribe has the ability and necessary legislation to operate an AMLR program, the Secretary can approve it. The Secretary's approval gives a State or Tribe exclusive authority to put its AMLR plan into effect.

Once the Secretary approves a State's AMLR plan, the State or Tribe may apply to OSM for money to fund specific projects that will achieve the goals of its approved plan. OSM follows the requirements of the Federal regulations at 30 CFR parts 874, 875, and 886 when we review and approve such applications.

#### II. Background on the Hopi AML Plan

The Secretary of the Interior approved the Hopi Tribe's AML plan on June 28, 1988. General background information on the Hopi Tribe AML Plan, including the Secretary's findings and disposition of comments, can be found in the June 28, 1988, **Federal Register** (53 FR 25262). Subsequent actions concerning the Hopi Tribe's AML Plan can be found at 30 CFR 756.16, 756.17, and 756.18. Effective June 9, 1994, (59 FR 29721) the Director approved the Hopi Tribe's certification that it had addressed all known coal-related impacts on the Hopi Reservation that were eligible for funding.

As a result, the Hopi Tribe may submit annual grant requests for AML funds to address eligible lands, waters, and facilities impacted by noncoal mining and construction of new facilities in accordance with the provisions of Section 411 of SMCRA.

The effect of the Director's concurrence is to authorize the Hopi Tribe to use its AML funds for noncoal reclamation and construction of Public Facilities or Community Impact Projects in areas of the Hopi Reservation impacted by coal development, mining, or processing as provided in section 411 of SMCRA.

On March 31, 1997, OSM approved an amendment (62 FR 15112) to the Hopi AML Plan to add language at Section II, A(1) to provide for reclamation of any newly discovered coal hazards after certification. In the same **Federal Register** notice, OSM approved revisions to Section I, A of the Hopi AML Plan which state that the purpose of the Hopi AML plan is to: "Protect the health, safety, and general welfare of members of the Hopi Tribe and members of the general public from the harmful effects of past coal mining practices and past mineral mining and processing practices." In addition, OSM approved revised language that provides for other purposes as well such as to: (1) Address adverse effects of mining and processing practices on public facilities; (2) provide for public facilities in communities impacted by coal or other mineral mining and processing practices; and (3) address needs for activities or public facilities related to the coal or minerals industry on Hopi lands impacted by coal or minerals development.

Section II, B—Noncoal Reclamation After Certification, of the Hopi AML Plan states at paragraph (f): "Notwithstanding the requirements in paragraph (c) of this section, where the Chairman of the Hopi Tribe determines there is a need for activities or construction of specific public facilities related to the coal or mineral industry on Tribal lands impacted by coal or minerals development, and the Director of OSM concurs in such a need, the Tribe may submit to OSM a grant application requesting funds to carry out such activities or construction."

Paragraph (g) of this Section II, B states that the Hopi Tribe must specifically demonstrate: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on the coal or minerals industry on Hopi Indian lands; (3) the availability of funding from other sources and its percentage of the total costs; (4) Documentation from other State, Tribal, and Federal agencies with oversight for such utilities or facilities regarding what funding resources they have available and why this specific project is not being fully funded by their agency; (5) the impact on the Tribe, the public, and the minerals industry if the activity or facility is not funded; (6) The reason why this project should be selected before a priority project relating to the protection of the public health and safety or the environment from damages caused by past mining activities; and, (7) an analysis and review of the procedures used by the Tribe to notify and involve the public in this funding request and a copy of all comments received and their resolution by the Tribe.

In other words, once a State or Indian Tribe certifies that it has addressed all remaining abandoned coal mine problems and the Secretary concurs, then it may request funds to undertake abandoned noncoal mine reclamation, community impact assistance, and public facilities projects under sections 411(b), (e), and (f), of SMCRA.

Tribal law or regulations that apply to the proposed Kykotsmovi Sewage Lagoon Public Facilities Project funding request include the approved Hopi AML Plan and Hopi Water Code.

### III. The Hopi Tribe's Request for Funding 15% of the Cost of the Kykotsmovi Sewer Lagoon Public Facilities Project

In accordance with Section II (B)(f) of the Hopi AML Plan, the Hopi Tribe AML Program submitted to OSM a grant application dated February 2, 2000. In the application, the Hopi Tribe asked for $200,000 to pay for approximately 15 percent of the of the total cost of $1,222,059 for this jointly funded proposal to upgrade the Kykotsmovi Sewer Lagoon Facility. Other potential funding agencies include the Indian Health Service, Village of Kykotsmovi, Hopi Tribe, Bureau of Reclamation, the Hopi Tribal Housing Authority (HUD) and other sources.

The proposed project will expand the existing sewer system by installing new sewer lines and appurtenances to homes not presently serviced by the community sewer and construct a wastewater treatment and disposal facility to enlarge the system's treatment capability; and divert two-thirds of the waste water flow to the West lagoon in order to relieve overload conditions and abandonment of the East lagoon. The wastewater Treatment system will be modeled after components of the Advanced Integrated Wastewater Pond System (AIWPS).

The Tribal Chairman certified the need and urgency to fund this project. There is no remaining inventory of noncoal reclamation work remaining to be done on the Hopi Reservation, so the Hopi Tribe uses its AML fund solely for the purpose of Public Facilities Projects or Community Impact Projects. This proposed project appears to satisfy the priorities established by the Hopi Tribe, consistent with Section 411(f) of SMCRA.

This project is designed to mitigate potential impacts to human health and safety as expressed in the December 30, 1999, Executive Order issued by the Hopi Tribal Chairman. The Order declares a state of emergency to prevent an imminent threat to human health and safety associated with the strong potential for breeching of sewer lagoon causing raw sewage to discharge into Oraibi Wash. In addition, on April 14, 1998, the Village of Kykotsmovi Board of Directors passed a formal resolution supporting a project to upgrade the existing wastewater system, public meetings were held and comments from the community were addressed.

The Indian Health Service, as the primary agency responsible for sanitation projects, has taken the lead role in facilitating this project and together with the Village of Kykotsmovi and the Hopi AML Program have sought out other funding sources. The expected benefit of the project will be the avoidance of potential groundwater contamination and incidence of infectious diseases. In addition, the project will provide for reuse of water for pubic recreation.

### IV. How OSM Will Review the Hopi Tribe's Grant Application?

OSM will review this grant application with respect to the regulations at 30 CFR 875.15; specifically §§ 875.15(e) (1) through (7). As stated in those regulations, the application must include the following information: (1) The need or urgency for the activity or the construction of the public facility; (2) the expected impact the project will have on the Hopis' coal or minerals industry; (3) the availability of funding from other sources and, if other funding is provided, its percentage of the total cost involved; (4) documentation from the local, Tribal, State, and Federal agencies with oversight for such utilities or facilities describing what funding they have available and why their agency is not fully funding this specific project; (5) the impact on the Hopi Tribe, the public, and the minerals industry if the facility is not funded; (6) the reason why this project should be selected before the priority project relating to the protection of the public health and safety or the environment from the damage caused by past mining activities; and, (7) an analysis and review of the procedures the Hopi Tribe used to notify and involve the public in this request, and a copy of all comments

received and their resolution by the Hopi Tribe. The Hopi Tribe's application for the Kykotsmovi Sewer Lagoon Public Facilities Project contains the prescribed information for these seven items.

Section 875.15(f) requires OSM to evaluate all comments we receive and to determine whether the funding meets the requirements of §§ 875.15(e) (1) through (7) as described above. It also requires us to determine if the request is in the best interests of the Hopi Tribe's AML program. OSM will approve The Hopi Tribe's request to fund this project if we conclude that it meets all the requirements of 30 CFR 875.15.

**V. What To Do if You Want To Comment on the Proposed Project?**

OSM is asking for public comments on the Hopi Tribe's request for funds to pay for $200,000 (15%) of the total cost of the PFP. You are welcome to comment on the project. If you do, please send us written comments. Make sure your comments are specific and pertain to the Hopi Tribe's funding request in the context of the regulations at 30 CFR 875.15 and the provisions of section 411 of SMCRA. You should explain any recommendations you make. If we receive your comments after the time shown under **DATES** or at locations other than the Albuquerque Field Office (see **ADDRESSES**), we will not necessarily consider them in our final decision or include them in the administrative record.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking (or administrative) record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking (or administrative) record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: April 19, 2000.

**Willis L. Gainer,**

*Director, Albuquerque Field Office.*

[FR Doc. 00–11558 Filed 5–8–00; 8:45 am]

BILLING CODE 4310–05–P

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Submission for OMB Review; Comment Request

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Request for Comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its **Federal Register** Notice on this information collection request on February 29, 2000, in 65 FR 10822, at which time a 60-calendar day comment period was announced. This comment period ended April 29, 2000. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

**OPIC Agency Submitting Officer**

Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

**OMB Reviewer**

David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–3897.

**Summary of Form Under Review**

*Type of Request:* Revision of a currently approved collection.
*Title:* Self Monitoring Questionnaire for Insurance and Finance Projects.
*Form Number:* OPIC–162.
*Frequency of Use:* Annually.
*Type of Respondents:* Business or other individuals.
*Standard Industrial Classification Codes:* All.
*Description of Affected Public:* U.S. companies assisted by OPIC.
*Reporting Hours:* 3 hours per form.
*Number of Responses:* 200 per year.
*Federal Cost:* $6,000 per year.
*Authority for Information Collection:* Sections 231(k)2, of the Foreign Assistance Act of 1961, as amended.
*Abstract (Needs and Uses):* The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted projects on the U.S. economy and employment, as well as on the environment and economic development abroad.

Dated: May 3, 2000.

**Ralph Kaiser,**

*Assistant General Counsel, Administrative Affairs, Department of Legal Affairs.*

[FR Doc. 00–11501 Filed 5–8–00; 8:45 am]

BILLING CODE 3210–01–M

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Submission for OMB Review; Comment Request

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on February 29, 2000, in 65 FR 10822, at which time a 60-calendar day comment period was announced. This comment period ended April 29, 2000. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the

information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

*OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527; 202/336–8563.

*OMB Reviewer:* David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503, 202/395–3897.

**Summary of Form Under Review**

*Type of Request:* Reinstatement, without change, of a previously approved collection for which approval is expiring.

*Title:* OPIC Expedited Screening Questionnaire—Downstream Investments.

*Form Number:* OPIC–168.

*Frequency of Use:* Once per project submission.

*Type of Respondents:* OPIC on-lending facilities.

*Standard Industrial Classification Codes:* All.

*Description of Affected Public:* OPIC on-lending facilities.

*Reporting Hours:* 1 hour per form.

*Number of Responses:* 30 per year.

*Federal Cost:* $160 per year.

*Authority for Information Collection:* Section 231 (a–1) of the Foreign Assistance Act of 1961, as amended.

*Abstract (Needs and Uses):* This application will be sent to OPIC's on-lending facilities. The on-lending facilities will complete the information for companies in which the facility proposes to invest. The information collected will be reviewed to determine the expected effects of the projects on the U.S. economy and employment, as well as on the environment, economic development, and worker rights abroad.

Dated: May 3, 2000.

**Ralph Kaiser,**

*Assistant General Counsel, Administrative Affairs, Department of Legal Affairs.*

[FR Doc. 00–11502 Filed 5–8–00; 8:45 am]

BILLING CODE 3210–01–M

## OVERSEAS PRIVATE INVESTMENT CORPORATION

### Submission for OMB Review; Comment Request

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Request for comments.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency has prepared an information collection request for OMB review and approval and has requested public review and comment on the submission. OPIC published its first **Federal Register** Notice on this information collection request on February 29, 2000, in 65 FR 10821, at which time a 60-calendar day comment period was announced. This comment period ended April 29, 2000. No comments were received in response to this notice.

This information collection submission has now been submitted to OMB for review. Comments are again being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

**DATES:** Comments must be received on or before June 8, 2000.

**ADDRESSES:** Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the OMB Reviewer.

**FOR FURTHER INFORMATION CONTACT:**

**OPIC Agency Submitting Officer**

Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW, Washington, DC 20527; 202/336–8563.

**OMB Reviewer**

David Rostker, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, 202/395–3897.

**Summary of Form Under Review**

*Type of Request:* Revision of a currently approved collection.

*Title:* Self-Monitoring Questionnaire for Investment Fund Projects.

*Form Number:* OPIC–217.

*Frequency of Use:* Annually.

*Type of Respondents:* Business or other individuals.

*Standard Industrial Classification Codes:* All.

*Description of Affected Public:* U.S. companies assisted by OPIC.

*Reporting Hours:* 3 hours per form.

*Number of Responses:* 190 per year.

*Federal Cost:* $5,700 per year.

*Authority for Information Collection:* Sections 231(k)2, of the Foreign Assistance Act of 1961, as amended.

*Abstract (Needs and uses):* The questionnaire is completed by OPIC-assisted investors annually. The questionnaire allows OPIC's assessment of effects of OPIC-assisted fund projects on the U.S. economy and employment, as well as on the environment and economic development aboard.

Dated: May 3, 2000.

**Ralph Kaiser,**

*Assistant General Counsel, Administrative Affairs, Department of Legal Affairs.*

[FR Doc. 00–11503 Filed 5–8–00; 8:45 am]

BILLING CODE 3210–01–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of Information Collection under Review: Liberian Deferred Enforced Departure (DED) Supplement to Form I–765.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 1, 2000, at 65 FR 11083, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 8, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget,

Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Liberian Deferred Enforced Departure (DED) Supplement to Form I–765.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–765D, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Individuals or Households. The information contained in this form will be used by the INS to determine eligibility for the requested benefit. The data will enable adjudication officers to adjudicate the underlying benefit without the need of requiring individual interviews in local INS offices on the majority of applications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 15,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 15,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: March 2, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 00–11537 Filed 5–8–00; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Extension of Existing Collection; Comment Request

**ACTION:** Notice of Information Collection Under Review; Application to Extend/Change Nonimmigrant Status.

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The Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 1, 2000 at 65 FR 11084, allowing for a 60-day public comment period. No comments were received by the Immigration and Naturalization Service during that period. The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 8, 2000. This process is conducted in accordance with 5 CFR Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW., Washington, DC 20530. Comments may also be submitted to DOJ via facsimile to 202–514–1534.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Extension of currently approved information collection.

(2) *Title of the Form/Collection:* Application to Extend/Change Nonimmigrant Status.

(3) *Agency form number, if any,and the applicable component of the Department of Justice sponsoring the collection:* Form I–539. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by nonimmigrants to apply for extension of stay or change of nonimmigrant status. The INS will use the data on this form to determine eligibility for the requested benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 256,210 responses at 45 minutes (.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the*

*collection:* 192,158 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 2, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 00–11538 Filed 5–8–00; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of Information Collection under Review: Application—Alternative Inspection Services.

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The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **FEDERAL REGISTER** on February 22, 2000 at 65 FR 8739. The notice allowed for a 60-day public comment period. No public comment was received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 8, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application—Alternative Inspection Services.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–823. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individual or households. The information collected on this form will be used by the Immigration and Naturalization Service to determine eligibility for automated inspections programs and to secure those data elements necessary to confirm enrollment at the time of application for admission to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 500,000 responses at 70 minutes (1.166 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 583,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 2, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 00–11539 Filed 5–8–00; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 2053–00]**

### Notice of Intent To Prepare a Draft Environmental Impact Statement for the Construction of a Detention Facility in the Houston, Texas Area

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

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**SUMMARY:**

**Proposed Action**

The Immigration and Naturalization Service (INS) will prepare a Draft Environmental Impact Statement (DEIS) for evaluation of the environmental impacts of the construction of a Contractor-Owned Contractor-Operated (COCO) detention facility near Houston, Texas. The INS has a requirement to expand the total capacity in the area by 494 beds. The facility is needed in the Houston area (within a 35 mile radius from the George Bush International Airport) to house and care for illegal aliens detained by the INS for illegal entry into the United States. With regard to planned construction, the DEIS will

include evaluations of water, sewage system, parking, supporting administrative spaces, gates, gate access, lighting, and surveillance components. The direct project impacts, as well as cumulative impacts of the project, will also be addressed in the DEIS. According to the Council on Environmental Quality's regulation 40 CFR 1508.22, a scoping process is required prior to preparing a DEIS. As part of the DEIS process, the INS will hold a public meeting in the Houston, Texas area. Interested parties will be invited to help identify significant environmentally related items for evaluation in the DEIS. Notices will be published in the Houston local newspapers to provide the time, date, and location of the hearing.

**Alternatives**

The DEIS will include discussions of the alternative approaches to fulfilling the requirement for a detention facility in the area. This will include a review of potential construction sites within a 35-mile radius of the George Bush International Airport. The No Action alternative (i.e., cancellation of the proposed project) will also be reviewed.

**Scoping Process**

In developing the DEIS, interested parties and the public are invited to help decide the most significant issues to be examined. A scoping meeting will be held in the Houston area in the future. Notice of the meeting will be published in local newspapers prior to the meeting indicating the date, time, and location of the meeting.

**DEIS Preparation**

The identified significant and relevant scoping issues will be used to determine the environmental focus of the DEIS. Environmental experts will be used to prepare the analysis of the major environmental concerns in the DEIS. After completion, the DEIS will be made available for public review and comment prior to the preparation of the Final Environmental Impact Statement.

**FOR FURTHER INFORMATION CONTACT:** Richard Diefenbeck, Director of Facilities and Engineering Division, 425 "I" Street, NW, Washington, DC 20536, Telephone 202–514–3099.

Dated: May 1, 2000.

**Doris Miessner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 00–11555 Filed 5–8–00; 8:45 am]

**BILLING CODE 4410–10–M**

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 2054–00]**

### Notice of Intent To Prepare a Draft Environmental Impact Statement for the Construction of a Detention Facility in the Seattle, Washington Area

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

**SUMMARY:**

**Proposed Action**

The Immigration and Naturalization Service (INS) will prepare a Draft Environmental Impact Statement (DEIS) for evaluation of the environmental impacts of the construction of a Contractor-Owned Contractor-Operated (COCO) detention facility near Seattle, Washington. The INS has a requirement to expand the total capacity in the area by 500 beds. The facility is needed in the Seattle area to house and care for illegal aliens detained by the INS for illegal entry into the United States. With regard to planned construction, the DEIS will include evaluations of water, sewage system, parking, supporting administrative spaces, gates, gate access, lighting, and surveillance components. The direct project impacts, as well as cumulative impacts of the project, will also be addressed in the DEIS. According to the Council on Environmental Quality's regulation 40 CFR 1508.22, a scoping process is required prior to preparing a DEIS. As part of the DEIS process, the INS will hold a public meeting in the Seattle, Washington area. Interested parties will be invited to help identify significant environmentally related items for evaluation in the DEIS. Notice will be published in the Seattle local newspapers to provide the time, date, and location of the hearing.

**Alternatives**

The DEIS will include discussions of the alternative approaches to fulfilling the requirement for a detention facility in the area. This will include a review of potential construction sites. The No Action alternative (i.e., cancellation of the proposed project) will also be reviewed.

**Scoping Process**

In developing the DEIS, interested parties and the public are invited to help decide the most significant issues to be examined. A scoping meeting will be held in the Seattle area in the future. Notice of the meeting will be published in local newspapers prior to the meeting indicating the date, time, and location of the meeting.

**DEIS Preparation**

The identified significant and relevant scoping issues will be used to determine the environmental focus of the DEIS. Environmental experts will be used to prepared the analysis of the major environmental concerns in the DEIS. After completion, the DEIS will be made available for public review and comment prior to the preparation of the Final Environmental Impact Statement.

**FOR FURTHER INFORMATION CONTACT:** Richard Diefenbeck, Director of Facilities and Engineering Division, 425 "I" Street, NW, Washington, DC 20536, Telephone 202–514–3099.

Dated: May 1, 2000.

**Doris Meissner,**

*Commissioner, Immigration and Naturalization Service.*

[FR Doc. 00–11556 Filed 5–8–00; 8:45 am]

**BILLING CODE 4410–10–M**

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m., Tuesday, May 16, 2000.

**PLACE:** NTSB Board Room, 429 L'Enfant Plaza, S.W., Washington, D.C. 20594.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

7257—Special Investigation Report: Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver.

7258—Special Investigation Report: Truck Parking Areas.

7154A—Brief of Accident/Safety Recommendation: Resulting from a spill of hydrogen peroxide in cargo compartment on Northwest Airlines Flight 957 from Orlando, Florida to Memphis, Tennessee on October 28, 1998.

**NEWS MEDIA CONTACT:** Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Rhonda Underwood (202) 314–6065.

Dated: May 5, 2000.

**Rhonda Underwood,**

*Federal Register Liaison Officer.*

[FR Doc. 00–11707 Filed 5–5–00; 2:42 pm]

**BILLING CODE 7533–01–M**

**NUCLEAR REGULATORY COMMISSION**

**[Docket No. 50–440]**

**FirstEnergy Nuclear Operating Company, Perry Nuclear Power Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. NPF–58, issued to FirstEnergy Nuclear Operating Company (FENOC), for operation of the Perry Nuclear Power Plant, Unit 1 (Perry), located in Lake County, Ohio.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would allow FENOC to increase the maximum reactor core power level for facility operation from 3579 megawatts-thermal (MWt) to 3758 MWt, which is a five percent increase in rated core power.

The proposed action is in accordance with FENOC's application for amendment dated September 9, 1999, as supplemented by letters dated March 1 and March 13, 2000.

*Need for the Proposed Action*

The proposed action is needed to allow FENOC to increase the electrical output of the Perry facility and, thus, provide additional electrical power to service domestic and commercial areas of the licensee's grid.

*Environmental Impacts of the Proposed Action*

FENOC has submitted an environmental evaluation supporting the proposed power uprate and provided a summary of its conclusions concerning both the radiological and non-radiological environmental impacts of the proposed action. Based on the NRC's independent analyses and the evaluation performed by the licensee, the staff concludes that the proposed increase in power is not expected to result in a significant environmental impact.

*Radiological Environmental Assessment*

Radwaste Systems

The reactor coolant contains activated corrosion products, which are the result of metallic materials entering the water and being activated in the reactor region. Under power uprate conditions, the feedwater flow increases with power and the activation rate in the reactor region increases with power. The net result may be an increase in the activated corrosion product production. However, the total volume of processed waste is not expected to increase appreciably.

Non-condensible radioactive gas from the main condenser, along with air inleakage, normally contains activation gases (principally N–16, O–19 and N–13) and fission product radioactive noble gases. This is the major source of radioactive gas (greater than all other sources combined). These non-condensible gases, along with non-radioactive air, are continuously removed from the main condensers which discharge into the offgas system. The gaseous effluents will remain within the original limits following implementation of power uprate.

FENOC has concluded that the operation of the radwaste systems at Perry will not be impacted by operation at uprated power conditions and the slight increase in effluents discharged would continue to meet the requirements of 10 CFR part 20 and 10 CFR part 50, appendix I. Therefore, power uprate will not appreciably affect the ability to process liquid or gaseous radioactive effluents and there are no significant environmental effects from radiological releases.

Dose Consideration

FENOC evaluated the effects of power uprate on the radiation sources within the plant and the radiation levels during normal and post-accident conditions. Post-operation radiation levels in most areas of the plant are expected to increase by no more than the percentage increase in power level. In a few areas near the reactor water piping and liquid radwaste equipment, the increase could be slightly higher. In this regard, procedural controls are expected to compensate for increased radiation levels. Occupational doses for normal operations will be maintained within acceptable limits by the site ALARA (as-low-as-reasonably-achievable) program.

Power uprate does not involve significant increases in the offsite doses to the public from noble gases, airborne particulates, iodine, tritium, or liquid effluents. A review of the normal radiological effluent doses shows that at the current power level, doses are less than 1 percent of the doses allowed by Technical Specifications. Present offsite radiation levels are a negligible portion of background radiation. Therefore, the normal offsite doses are not significantly affected by operation at the uprated power level and remain below the limits of 10 CFR part 20 and 10 CFR part 50, appendix I.

The change in core inventory resulting from power uprate is expected to increase post-accident radiation levels by no more than the percentage increase in power level. The licensee reanalyzed the control rod drop accident, the loss-of-coolant accident, the fuel handling accident, the instrument line break accident, and the main steam line break accident for power uprate conditions. The slight increase in the post-accident radiation levels has no significant effect on the plant nor on the habitability of the control room envelope, the Emergency Operations Facility, or the Technical Support Center. Thus, the licensee has determined that access to areas requiring post-accident occupancy will not be significantly affected by power uprate. The licensee evaluated the whole body and thyroid doses at the exclusion area boundary that might result from the postulated design basis loss-of-coolant accident and determined that doses remain below established regulatory limits. Therefore, the results of the radiological analyses remain below the 10 CFR part 100 guidelines and all radiological safety margins are maintained.

Summary

The proposed power uprate will not significantly increase the probability or consequences of accidents, will not involve any new radiological release pathways, will not result in a significant increase in occupational or public radiation exposure, and will not result in significant additional fuel cycle environmental impacts. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

*Non-Radiological Environmental Assessment*

The licensee reviewed the non-radiological environmental impacts of power uprate based on information submitted in the Environmental Report, Operating License Stage (ER/OL), the NRC Final Environmental Statement (FES), and the requirements of the Environmental Protection Plan (EPP). Based on this review, the licensee concluded that the proposed uprate has no significant effect on the non-radiological elements of concern and the plant will be operated in an environmentally acceptable manner as established by the FES. In addition, the licensee states that existing Federal, State, and local regulatory permits presently in effect accommodate power uprate without modification.

The service water system at Perry was originally designed to support the operation of two units. Therefore, the design discharge temperature into Lake

Erie is based on two unit operation. As a result of power uprate to 105 percent of current licensed core power, there will be a slight increase in the normal heat loads rejected to the plant service water system. For normal operation, the maximum service water heat loads occur during peak summer months. The licensee calculates that the maximum summer discharge temperature for the service water system will be increased by 0.34°F, or from 90.1°F to 90.44°F. This increase in service water temperature will not exceed the original design discharge temperature.

The effect on cooling tower evaporation, makeup, and blowdown was evaluated and found to be acceptable. An increase in steam and condensate flow will result in a corresponding increase in the net heat rejection to the cooling tower. The cooling tower evaporation is calculated to increase from 14,554 gallons per minute (gpm) to 15,587 gpm, whereas the cooling tower drift and blowdown temperature are predicted to remain unchanged. In NUREG–0884 (Final Environmental Statement Related to the Operation of Perry Nuclear Power Plant, Units 1 and 2), the staff concluded that cooling tower induced icing and fogging with two cooling towers in operation would not adversely affect driving conditions, airports, shipping ports, or waterways in the vicinity of the plant. Considering that only one unit was completed at the Perry site, any increase in icing and fogging from the additional cooling tower evaporation would be bounded by the original two-unit analyses. There are no state regulated limits for cooling tower parameters.

FENOC determined that the effects of power uprate on air and land resources are negligible. The aesthetics of the physical plant and plant site, as well as actual land use, are not changed or increased by power uprate. An increase in operational consumption of natural resources is negligible and below the levels previously evaluated for two unit operation. Finally, air quality and noise levels remain the same as before the power uprate.

With regard to potential non-radiological impacts, the proposed action does not change the method of operation at Perry or the methods of handling effluents. No changes to land use would result and the proposed action does not involve any historic sites. Therefore, no new or different types of non-radiological environmental impacts are expected. Accordingly, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts but would reduce the operational flexibility that would be afforded by the proposed change. The environmental impacts of the proposed action and the alternative action are not significantly different.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Perry.

*Agencies and Persons Consulted*

In accordance with its stated policy, on May 1, 2000, the staff consulted with the Ohio State official, Ms. Carol O'Claire, of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 9, 1999, as supplemented on March 1 and March 13, 2000, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 3rd day of May 2000.

For the Nuclear Regulatory Commission.

**Anthony J. Mendiola,**

*Chief, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–11536 Filed 5–8–00; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF MANAGEMENT AND BUDGET

### Agency Information Collection Under Review by the Office of Management and Budget

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice of submission for OMB review; comment request.

**SUMMARY:** The Office of Management and Budget (OMB) has submitted the information collection listed as Appendix C at the end of this notice to the Office of Information and Regulatory Affairs (OIRA), OMB, for review under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). This new form will be required by OMB Circular A–21, "Cost Principles for Educational Institutions," for the submission of facilities and administrative rate proposals by educational institutions. On September 10, 1997, (62 FR 47721) OMB proposed the use of a standard format for submitting of facilities and administrative rate proposals by educational institutions. OMB received 35 comments from Federal agencies, universities and professional organizations, all of whom favored the development of such a form. Based upon this information, OMB issued a **Federal Register** notice on August 12, 1999, (64 FR 44062) which proposed to revise Circular A–21 to incorporate a new form. OMB received 40 comments from Federal agencies, universities and professional organizations. Most commenters agreed with the concept of a standard format that would streamline the rate proposal submission process. In addition, many commenters had questions and requested clarifications regarding data to be included in the form or the format of the form. Changes were made to the form as appropriate. The comments and OMB responses are summarized in the Comments and Responses section.

Once this new form receives clearance under the Paperwork Reduction Act, OMB will issue a final revision to incorporate the form in Circular A–21.

**DATES:** Submit comments on or before June 8, 2000.

**ADDRESSES:** Address comments to Ed Springer, Desk Officer, Office of Information and Regulatory Affairs (OIRA), OMB, 725 17th Street NW, Room 10236, New Executive Office Building, Washington, DC 20503. E-mail comments may be submitted to edward.springer@omb.eop.gov. Please include the full body of the comments in the text of the message and not as an

attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message. (Comments should also be addressed to the Office of Federal Financial Management at the address listed below.)

**FOR FURTHER INFORMATION CONTACT:** Gilbert Tran, Office of Federal Financial Management, Office of Management and Budget, (202) 395–3993 (e-mail Hai_M._Tran@omb.eop.gov).

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 0348–XXXX.

*Title:* Standard Form for Facilities and Administrative Rate Proposal.

*Form No:* N/A.

*Frequency:* On occasion.

*Type of Review:* New collection.

*Respondents:* Large universities.

*Number of Responses:* 282.

*Estimated Time Per Response:* 4 hours.

*Needs and Uses:* This provides a standardized format for the submission of facilities and administrative (F&A) rate proposals that would assist educational institutions in completing their F&A rate proposals more efficiently, and help the cognizant agency review each proposal on a more consistent basis. It will also facilitate the Federal government's effort to collect better information regarding educational institutions' F&A costs that could be useful in explaining variations in F&A rates among institutions. Copies of the above information collection proposal can be obtained by calling or writing Gilbert Tran at the address listed above.

**Comments and Responses**

*General*

*Comment:* Some commenters suggested that the estimated time of four hours needed to complete the standard format is gravely underestimated. They commented that the process of collecting data for the preparation of an institution's rate proposal and completing the standard format can take several months.

*Response:* OMB agrees that the process of collecting data and preparing the facilities and administrative rate proposal in accordance with Circular A–21 can take several months to complete depending on the size of the universities and the complexity of its proposals. The estimated four hours is only for the filling of prepared data in the standard format. Only three commenters indicated that the completion of the standard format will greatly increase grantees' workload. In addition, in consideration of the comments that cited some data requests as overly cumbersome and difficult to collect, OMB has reexamined all proposed data requests, discussed them with the Federal agencies and, consequently, deleted much of the requested data in the final version.

To further streamline and simplify the proposal submission process, OMB will work with the Federal agencies to encourage the submission of the standard format electronically.

*Comment:* Most commenters applauded the concept of a standard format that would streamline the rate proposal submission process. However, they requested that the implementation date be delayed to allow them to adjust to the new format requirements.

*Response:* OMB agrees. The implementation date is changed to apply to facilities and administrative proposals submitted on or after July 1, 2001 (instead of July 1, 2000). Earlier implementation of the revision is permitted and encouraged.

*Comment:* The revision should explicitly state that universities and cognizant agencies could agree to eliminate certain elements from the standard format, when applicable, particularly when a university uses the standard 24 percent to claim administrative costs, as allowed in section G.9 of Circular A–21, "Alternative method for administrative costs."

*Response:* OMB agreed. The final revision allows the cognizant agencies to grant exceptions, on an institution-by-institution basis, from all or portions of Part II of the standard format. For example, when a university uses the standard 24 percent to claim administrative costs as allowed in section G.9 of Circular A–21, the cognizant agency may waive all the requirements for detailed data in the administrative cost pools (*i.e.*, general administration, departmental administration and sponsored project administration). However, for consistency in data collection and reporting, information in Part I should not be waived (unless the information is not applicable to a particular institution).

*Comment:* Several commenters raised a concern about having to submit two standard format proposals in one fiscal year when they negotiate rates on a "fixed with carry-forward" basis. They do not see the need to submit a standard format proposal when the proposal is used only to determine the carry-forward amount.

*Response:* When an institution is required to submit a historical/incurred cost proposal solely to determine a carry-forward amount, the cognizant agency may waive all or part of the requirements to submit the standard format proposal as required in G.12 of Circular A–21.

*Part I, Schedule A*

*Comment:* Some commenters requested clarification of the information related to students, faculty and staff population in Part I, Schedule A, item d of the standard format. Does the population count include all affiliate organizations associated with the institution?

*Response:* The students, faculty and staff population information requested in Part I, Schedule A of the standard format should be based on full-time equivalents (FTE) for the institution only.

*Comment:* Several commenters suggested that the breakout of salaries and wages (and fringe benefits) by professional/professorial and other labor (as required in Part I, Schedule A, item h; and, Part II, "Rate Proposal Summary by Major Function," of the standard format) is not always maintained at the aggregate level by universities and may require significant effort to compute.

*Response:* OMB agreed that the requested data may not be readily available on the aggregate level at many universities. Therefore, this requested data is removed from the standard format in Part I (Schedule A, item h) and Part II, "Rate Proposal Summary by Major Function," item 3.(d) of the standard format. In addition, this information is usually available on a department-by-department basis with the departmental administration calculation schedules.

*Comment:* The breakout by salaries classification (i.e., professorial/professional and other labor) by major functions, as required in item h of Part I of the standard format, is difficult to accumulate and would require significant time and effort.

*Response:* This breakout requirement is removed. Item h now only requires the modified total direct costs for each major function by salaries and wages/fringes, and non-labor costs.

*Comment:* In item i of Part I, Schedule A of the standard format, the schedule seems to require information only on the allocation percentage of overhead pools to direct functions. Should cross-allocation percentage to other overhead pools be included? If cross allocations are excluded, the "total" column should be eliminated because the total percentage will not be 100 percent. Alternatively, another column (titled "Other") should be added to account for all cross allocations.

*Response:* For simplicity, cross allocation of an overhead pool to

another overhead pool (*e.g.*, allocation of interest expenses to buildings or equipment) is excluded from this schedule. The schedule will show only the allocation of F&A cost pools to major direct functions for which amounts should be readily available from the step-down allocation schedule. This "total" column is, therefore, eliminated. The "Other" column is used to display overhead allocation to other major institutional functions for which F&A rates are computed (*e.g.*, primate centers and applied physics laboratories).

*Comment:* In item i of Part I, Schedule A of the standard format, what should be included in the "other" column?

*Response:* The "other" column in item i of Part I of the standard format should reflect the percentage of the cost pool allocated to major functions (other than Instruction, Organized Research and OSA) for which rates are developed for billing purposes such as primate centers or applied physics laboratories.

*Part I, Schedule B*

*Comment:* What is the definition of the term "base year" used in Part I, Schedule B of the standard format? Does it refer to: (a) only historical (or incurred) cost financial information or (b) both historical and projected cost information related to an F&A rate proposal submission?

*Response:* The term "base year" refers to only historical (or incurred) cost data which is based on an institution's financial statements. To clarify this matter, the "base (or data) year" phrase at the beginning of Part I, Schedule B of the standard format has been changed to "Historical Base Year."

*Comment:* What should be included in "Land Improvements" line in Part I, Schedule B of the standard format?

*Response:* Under this title, the universities should report the distribution of "land improvements" costs to the universities' major functions and the computed percentage point for the overall F&A rates. "Land improvements" costs are defined in Circular A–21, section F.2.(b).4, as "depreciation or use allowances on certain capital improvements to land, such as paved parking areas, fences, sidewalks, and the like, not included in the cost of buildings."

*Comment:* Schedule B of Part I of the standard format should include a line for the utility cost adjustment of 1.3 percentage points, as allowed in section F.4.c of Circular A–21 for certain universities.

*Response:* OMB agreed. A line is added in schedule B of Part I of the standard format, under the "Operation & Maintenance" item to allow the applicable universities to report the utility cost adjustment in order to reflect all the rate components proposed in the F&A proposal.

*Comment:* What should be included in the "Other" line under the "Modified Total Direct Cost and F&A Rates" of Part I, Schedule B of the standard format?

*Response:* The "Other" line under the "Modified Total Direct Cost and F&A Rates" section of the standard format is used when a special rate (other than On-Campus or Off-Campus) is developed for any major functions included in the F&A proposal. Examples of special rates are research vessel rates and overseas training rates.

*Comment:* Some commenters suggested combining the categories of "Research Training Awards," "Other Awards," and "Non-Federal Sources" under the "Composition of Rate Base" in Part I of Schedule B of the standard format into one category called "Other Awards (not based on negotiated rates)." They suggested that the requested breakout is not necessary for the F&A proposal review.

*Response:* OMB disagreed. The breakout for the composition of rate base is necessary in two ways. First, the Federal Government wants to track the percentage of awards that are not fully reimbursed at the negotiated rates by source of funding and by types of awards. Secondly, the breakout is important to verify the reasonableness of space cost allocation to benefitting activities.

*Comment:* Where is the cost sharing amount reported under the "Composition of Rate Base" in Part I, Schedule B of the standard format?

*Response:* The amount of cost sharing, representing the costs on research projects that are borne by the universities, is reported under the "Organized Research" column on the "Non-Federal Sources" line item.

*Comment:* Under the "Miscellaneous Statistics" section of Part I, Schedule B of the standard format, data related to facilities' finance costs ( "percent of ASF Financed") should not be required if the university does not claim interest expenses on the F&A cost proposal (as some public universities do not). In addition, this information should only be requested for buildings that are more than 50 percent dedicated to research activities.

*Response:* OMB agreed that this information is not necessary when the university does not claim any interest costs for its facilities on its F&A cost proposal. The note (1) is changed to allow such exemption. However, for comparative analysis, data must be collected for all buildings regardless of their portion dedicated to research activities. This information is helpful in explaining the cost of research facilities and any increase of F&A rates over a period of time.

*Part II—Standard Documentation Requirements*

*Comment:* Item 1 in the General Information section of Part II of the standard format contains the phrase "financial statements including any affiliated organizations." What is the meaning of affiliated organizations and why is this data needed?

*Response:* Many large institutions provide administrative services to various units within their corporate structure. A school, for example, may furnish certain administrative services to an "affiliated" hospital. The school's financial statements would probably exclude these costs and the hospital's financial statements would include these costs. In this case, a review of consolidated financial statements, which include the affiliated unit, will be needed to support (i) the total cost of the shared services and (ii) the assignment of costs on the financial statements of the school and the hospital. The affiliated organizations exclude non-monetary relationships (*e.g.*, teaching rotation for medical students).

*Comment:* Under item 2 of the General Information section of the standard format, what does OMB mean by "relevant *detail* supporting the financial statement?" Does "detail" include all journal entries?

*Response:* In preparing an F&A proposal, a university is expected to start with its audited financial statements, prepared under generally accepted accounting principles (GAAP). and reclassify the accumulated costs into direct functions and cost pools as defined in Circular A–21. A reconciliation that includes all major reclassifications and adjustments must exist between these two documents to explain the differences. For example, all administrative costs are reported under "Institutional Support" on the university's financial statements. These costs could be reclassified to the general administrative, departmental administrative and sponsored project administrative cost pools for A–21 purposes. This provision requires that the university report the reclassified amounts along with a note to explain the nature of the reclassification. Detailed journal entries are not necessary for this request. In the final revision, the word "detail" is replaced with the word "data."

*Comment:* Several commenters indicated that the organized research base breakdown by college or school into four categories: (a) Federal awards receiving F&A cost based on the negotiated rate agreement, (b) Federal awards receiving less than the negotiated rates, (c) non-Federal awards, and (d) cost sharing (as requested in Part II, "General Information," item 5) is not readily available and would require extensive effort to produce. Some suggested that the information, in a summary level, is already available in Part I, Schedule B, under the "Composition of Rate Base" section of the standard format.

*Response:* In light of the possible excessive effort to produce the level of detail required for this request, OMB deleted this data requirement. OMB also agreed that similar data, in a summary level, is available in Part I, schedule B, "Composition of Rate Base" of the standard format.

*Comment:* Some commenters suggested that the requirement for a statement concerning the physical inventory requirement (Part II, "General Information," item 9.d of the standard format) be deleted because this requirement duplicates those required under section J.12.e, "Depreciation and use allowances," of the Circular.

*Response:* OMB agreed. The proposed statement of assurance regarding the physical inventory for equipment is removed in the final revision. Section J.12.e of Circular A–21 requires that "charges for use allowances or depreciation must be supported by adequate property records, and physical inventories must be taken at least once every two years to ensure that the assets exist and are usable." By completing the "Certificate of F&A Costs," as required in Section K.2.b of Circular A–21, the university certifies that it complies with the requirement of Section J.12.e of Circular A–21 for a biannual equipment physical inventory.

*Comment:* Some commenters suggested that the assurance statements regarding the compensation limits (Part II, "General Information," item 9.e of the standard format) be deleted because such assurance is already included in the Certification of F&A costs (Part II, "General Information," item 9.a of the standard format). If required, can the university include such an assurance statement with other assurance statements required under this section?

*Response:* The Certification of F&A costs, as required by Section K. of the Circular, does not currently provide any assurance regarding the compensation limits, established under separate program statutes. Such assurances are necessary to ascertain that costs charged against Federal programs do not exceed limits established by program statutes. The assurance statement regarding compensation limits can be (1) added to the Certification of F&A costs, (2) issued as a separate statement, or (3) combined with other assurance statements required by the Circular (*e.g.*, lobbying certification).

*Comment:* Some commenters suggested that the reference to "voluntary cost sharing" in Part II, "Rate Proposal Summary By Major Function," item 3.(a) of the standard format be deleted until the current debate on the reporting requirements for voluntary cost sharing is finalized.

*Response:* OMB agreed. The reference to "voluntary" cost sharing is deleted. The breakout between mandatory and voluntary cost sharing is therefore not required. Only the total cost sharing amount, as it is computed and reported on the institution's F&A rate proposal, is required for Schedule B of Part I, "Miscellaneous Statistics," and item 3.(a) of Part II, "Rate Proposal Summary" of the standard format.

*Comment:* Regarding the space survey required in Part II of the standard format, does it cover all buildings at the university or just the research buildings?

*Response:* The space survey should include all buildings at the university. An university's total square footage information by major functions is necessary to allocate the space related costs such as operation and maintenance, building and equipment depreciation (or use allowances), and interest costs.

*Comment:* In Part II of the standard format, under the "Operation and Maintenance," "General Administrative," "Departmental Administration," and "Sponsored Projects Administration" sections, OMB should delete the requirement for a breakout of total costs by labor and non-labor costs. Some commenters questioned the usefulness of this requirement for the cognizant agency's review, particularly when the administrative rates are capped at 26 percent.

*Response:* The requirement for breakout of total costs by labor and non-labor costs for the "General Administrative" and "Sponsored Projects Administration" is deleted; only total cost amounts are required for these two cost pools. However, this breakout is necessary for the review of the "Operation and Maintenance" (*e.g.*, analysis of various utility costs and maintenance project costs) and the "Departmental Administration" cost pools (*e.g.*, analysis of the direct charge equivalent computation).

Issued in Washington, DC, April 28, 2000.

**Joshua Gotbaum,**

*Executive Associate Director and Controller.*

OMB proposes to add the following section and Appendix to Circular A–21.

1. Add Section G.12 to read as follows:

12. *Standard Format for Submission.* For facilities and administrative (F&A) rate proposals submitted on or after July 1, 2001, educational institutions shall use the standard format, shown in Appendix C, to submit their F&A rate proposal to the cognizant agency. The cognizant agency may, on an institution-by-institution basis, grant exceptions from all or portions of Part II of the standard format requirement. This requirement does not apply to educational institutions which use the simplified method for calculating F&A rates, as described in Section H.

2. Add Appendix C (shown below):

## Appendix C

*OMB Circular A–21 Documentation Requirements for Facilities and Administrative (F&A) Rate Proposals Claiming Costs Under the Regular Method*

The documentation requirements for F&A rate proposals consist of two parts. Part I provides a schedule of summary data on the institution's F&A cost pools and their allocations, and the proposed F&A rates. For illustration, an example of a completed Part I is included. Part II describes the standard documentation to be submitted with the institution's F&A rate proposal.

**Part I: Summary Data Elements for F&A Rate Proposal—Schedule A**

Name of Institution: _____
Organization Number: (*Federal Use Only*)
Address: _____

a. Cognizant Federal Agency Rate Setting:__ Audit:__
b. Type of Institution Private ( ) Public/ State ( )
c. Fiscal Year _____
d. Institution Population (FTE)
Students:__
Faculty:__
Staff:____
e. Status of Disclosure Statement Required to Submit (Y/N)? ____
Due Dates: Initial: ____ Revised: ____
Date Submitted ____
Approved ( )Yes ( ) No Date: ____
f. Most Current F&A Rates (*i.e.*, final, predetermined, fixed) (Last three fiscal years)

| Type of rate | Fiscal year covered | Date of rate agreement | On-campus instruction | On-campus organized Research | On-campus OSA* | Off-campus instruction | Off-campus organized research | Off-campus OSA* |
|---|---|---|---|---|---|---|---|---|
| | | | | | | | | |

(*OSA= Other Sponsored Activities)

g. Base year costs associated with new buildings placed into service within the last five years (i.e., base year and four preceding years) by major functions proposed (in thousands).

| | Instruction | Organized research | OSA |
|---|---|---|---|
| Building Depreciation or Use Allowance | | | |
| Interest Expense | | | |
| Operation and Maintenance | | | |

h. Dollar amounts by major functions proposed—Base Year (in thousands)

| | Instruction | Organized research | OSA |
|---|---|---|---|
| Salaries & Wages/Fringes | | | |
| Non-labor Costs | | | |
| Modified Total Direct Costs | | | |

i. Percentage of cost pool dollars allocated to major functions proposed—Base Year

| | Instruction | Organized research | OSA | Other* |
|---|---|---|---|---|
| Building Depreciation or Use Allowance | | | | |
| Equipment Depreciation or Use Allowance | | | | |
| Interest Expense | | | | |
| Operation and Maintenance | | | | |
| Library | | | | |

*"Other" includes other major institutional functions for which F&A rates are computed such as primate centers or applied physics laboratories.

j. Proposed methodology for library costs: Standard Method: __Special Study:
k. Procedure for claiming fringe benefit costs: Specific Identification:__
Negotiated Rate:__
Other (see attached)__

**Part I: Summary Data Elements for F&A Rate Proposal—Schedule B**

—Name of Institution:
—Historical Base Year:

BASE YEAR RATE CALCULATION SUMMARY BY MAJOR FUNCTION (DOLLARS IN THOUSANDS)

| | Instruction | Organized research | OSA |
|---|---|---|---|
| **FACILITIES GROUP** | | | |
| Depreciation/Use Allowance | | | |
| • Buildings | $ | $ | $ % |
| • Equipment | $ % | $ | $ % |
| • Land Improvements | $ % | $ % | $ % |
| Interest Expense | $ % | $ % | $ % |
| Operation & Maintenance | $ % | $ % | $ % |
| Utility Cost Adjustment | $ % | $ % | $ % |
| Library | $ % | $ % | $ % |

BASE YEAR RATE CALCULATION SUMMARY BY MAJOR FUNCTION (DOLLARS IN THOUSANDS)—Continued

| | Instruction | Organized research | OSA |
|---|---|---|---|
| **ADMINISTRATIVE GROUP** | | | |
| General | $ % | $ % | $ % |
| Departmental | $ % | $ % | $ % |
| Sponsored Projects | $ % | $ % | $% |
| Student Services | $ % | $ % | $ % |
| Adjustment for 26% Limitation | % | % | % |
| **MODIFIED TOTAL DIRECT COST AND F&A RATES** | | | |
| On-Campus | $ % | $ % | $% |
| Off-Campus | $ % | $ % | |
| Other | $ % | $ % | $% |
| Total MTDC | $ | $ | $ |
| **COMPOSITION OF RATE BASE** | | | |
| Federal Awards | | | |
| On-Campus (negotiated rates) | $ | $ | $ |
| Off-Campus (negotiated rates) | $ | $ | $ |
| Research Training Awards | $ | $ | $ |
| Other Awards (not based on negotiated rates) | $ | $ | $ |
| Non-Federal Sources | $ | $ | $ |
| Total | $ | $ | $ |
| **MISCELLANEOUS STATISTICS** | | | |
| Cost Sharing in Rate Base | $ | $ | $ |
| Reassignable Square Feet (ASF) by Major Function | $ | $ | $ |
| Percent of ASF Financed (1) | | | |

**Note (1):** Ratio of ASF subject to financing divided by total ASF. If 20% of a building's acquisition cost is financed, then 20% of the ASF is considered ASF financed. This information is not required if the institution does not claim any interest costs on its F&A proposal.

**Part I—Example: Summary Data Elements for F&A Rate Proposal—Schedule A**

Name of Institution: University of XYZ

Organization Number: (*Federal, Use Only*)

Address: 100 Main St., Somewhere, ST 12345

a. Cognizant Federal Agency Rate Setting: HHS Audit: HHS

b. Type of Institution Private ( ) Public/State (X)

c. Fiscal Year July 1, 1997–June 30, 1998.

d. Institution Population (FTE)
Students: 12,000
Faculty: 1,759
Staff: 2,798

e. Status of Disclosure Statement Required to Submit (Y/N)? Yes
Due Dates: Initial: 06/30/98
Revised: 12/31/98
Date Submitted: 12/10/98
Approved (X) Yes ( ) No
Date: 06/13/ 99

f. Most Current F&A Rates (*i.e.*, final, predetermined, fixed) (Last three fiscal years)

| Type of rate | Fiscal year covered | Date of rate agreement | On-campus instruction | On-campus organized research | On-Campus OSA* | Off-campus instruction | Off-Campus organized research | Off-campus OSA* |
|---|---|---|---|---|---|---|---|---|
| Pred | 1999 | 09/15/96 | 78.0% | 52.5% | 38.3% | 26.0% | 26.0% | 20.0% |
| Pred | 1998 | 09/15/96 | 78.0% | 52.5% | 35.0% | 26.0% | 26.0% | 20.0% |
| Pred | 1977 | 09/15/96 | 76.0% | 53.0% | 35.0% | 26.0% | 26.0% | 20.0% |

(*OSA=Other Sponsored Activities)

g. Base year costs associated with new buildings placed into service within the last five years (i.e., base year and four preceding years) by major functions proposed (in thousands).

| | Instruction | Organized research | OSA |
|---|---|---|---|
| Building Depreciation or Use Allowance | 729 | 2,639 | 0 |
| Interest Expense | 0 | 1,794 | 0 |
| Operation and Maintenance | 1,280 | 4,632 | 0 |

h. Dollar amounts by major functions proposed—Base Year (in thousands)

| | Instruction | Organized research | OSA |
|---|---|---|---|
| Salaries & Wages/Fringes | 36,400 | 63,750 | 11,050 |
| Non-labor Costs | 19,600 | 21,250 | 1,950 |
| Modified Total Direct Costs | 56,000 | 85,000 | 13,000 |

i. Percentage of cost pool dollars allocated to major functions proposed—Base Year

| | Instruction | Organized research | OSA | Other* |
|---|---|---|---|---|
| Building Depreciation or Use Allowance | 40.0% | 44.0% | 2.5% | 7.0% |
| Equipment Depreciation or Use Allowance | 34.2% | 27.7% | 2.1% | 10.0% |
| Interest Expense | 29.9% | 32.4% | 1.9% | 0.0% |
| Operation and Maintenance | 32.8% | 35.6% | 2.1% | 15.0% |
| Library | 75.3% | 10.9% | 0.9% | 0.0% |

*"Other" includes other major institutional functions for which F&A rates are computed such as primate centers or applied physics laboratories.

j. Proposed methodology for library costs:
Standard Method: Yes
Special Study: No
k. Procedure for claiming fringe benefit costs:
Specific Identification: No
Negotiated Rate: Yes
Other (see attached)——

**Part I—Example: Summary Data Elements for F&A Rate Proposal—Schedule B**

Name of Institution: University of XYZ
Historical Base Year: 07/01/97 to 06/30/98

BASE YEAR RATE CALCULATION SUMMARY BY MAJOR FUNCTION (DOLLARS IN THOUSANDS)

| | Instruction | | Organized Research | | OSA | |
|---|---|---|---|---|---|---|
| | ($) | (%) | ($) | (%) | ($) | (%) |
| **FACILITIES GROUP** | | | | | | |
| Depreciation/Use Allowance | | | | | | |
| —Buildings | 4,861 | 9.6 | 5,278 | 6.9 | 306 | 2.6 |
| —Equipment | 3,082 | 6.1 | 2,496 | 3.3 | 194 | 1.7 |
| —Land Improvements | 1,992 | 4.0 | 133 | 0.2 | 17 | 0.1 |
| Interest Expense | 1,944 | 3.9 | 2,111 | 2.8 | 122 | 1.0 |
| Operation & Maintenance | 8,532 | 16.9 | 9,264 | 12.1 | 536 | 4.6 |
| Utility Cost Adjustment | 0 | 0.0 | 994 | 1.3 | 0 | 0.0 |
| Library | 7,910 | 15.7 | 1,146 | 1.5 | 96 | 0.8 |
| **ADMINISTRATIVE GROUP** | | | | | | |
| General | 1,535 | 2.7 | 2,330 | 2.7 | 356 | 2.7 |
| Departmental | 11,991 | 21.4 | 17,239 | 20.3 | 2,797 | 21.5 |
| Sponsored Projects | 89 | 0.2 | 2,693 | 3.2 | 412 | 3.2 |
| Student Services | 4,166 | 7.4 | 0 | 0.0 | 0 | 0.0 |
| Adjustment for 26 Limitation | | −5.7 | | −0.2 | | −1.4 |
| **MODIFIED TOTAL DIRECT COST AND F&A RATES** | | | | | | |
| On-Campus | 50,400 | 82.2 | 76,500 | 54.2 | 11,700 | 36.8 |
| Off-Campus | 5,600 | 26.0 | 8,500 | 26.0 | 1,300 | 26.0 |
| Other | 0 | 0.0 | 0 | 0.0 | 0 | 0.0 |
| Total MTDC | 56,000 | | 85,000 | | 13,000 | |
| **COMPOSITION OF RATE BASE** | | | | | | |
| Federal Awards | | | | | | |
| On-Campus (negotiated rates) | 1,000 | | 46,000 | | 900 | |
| Off-Campus (negotiated rates) | 120 | | 5,000 | | 400 | |
| Research Training Awards | 0 | | 0 | | 0 | |
| Other Awards (not based on negotiated rates) | 1,680 | | 8,500 | | 2,600 | |
| Non-Federal Sources | 53,200 | | 25,500 | | 9,100 | |
| Total | 56,000 | | 85,000 | | 13,000 | |

BASE YEAR RATE CALCULATION SUMMARY BY MAJOR FUNCTION (DOLLARS IN THOUSANDS)—Continued

| | Instruction | | Organized Research | | OSA | |
|---|---|---|---|---|---|---|
| | ($) | (%) | ($) | (%) | ($) | (%) |
| **MISCELLANEOUS STATISTICS** | | | | | | |
| Cost Sharing in Rate Base | (10,000) | | 10,000 | | 0 | |
| Assignable Square Feet (ASF) by Major Function | 83,611 ASF | | 90,778 ASF | | 5,256 ASF | |
| Percent of ASF Financed (1) | 7.0 | | 20.0 | | 30.0 | |

**Note (1):** Ratio of ASF subject to financing divided by total ASF. If 20 of a building's acquisition cost is financed, then 20 of the ASF is considered ASF financed. This information is not required if the institution does not claim any interest costs on its F&A rate proposal.

**Part II**

*Introduction*

This Part contains the standard documentation requirements that are needed by your cognizant agency to perform a review of your institution's F&A rate proposal. This documentation supports the development of proposed rates shown in Part I and will be submitted with your F&A rate proposal.

This listing contains minimum documentation requirements.

Additional documentation may be needed by your cognizant agency before completing a proposal review.

If there are any questions about these requirements, please contact your cognizant agency.

Documentation requirements would be cross-referenced to appropriate schedule(s) within the submitted F&A rate proposal.

*General Information*

Reference:

__ 1. Copy of audited financial statements including any affiliated organizations. The statements must be reconciled to the F&A base year cost calculation. Copy of most recently issued Circular A–133 audit reports

__ 2. Copy of relevant data supporting the financial statement, including a reconciliation schedule for each cost pool and rate base in the F&A base year cost calculation. A reconciliation schedule will show each reclassification and adjustment to the financial statements to arrive at the cost pools and rate bases in F&A base year cost calculation. Each reclassification and adjustment must be explained in notes to the reconciliation schedule

__ 3. Cost step-down schedule showing allocation of each F&A cost pool to the Major Functions and other cost pools

__ 4. Explanation for each proposed organized research rate component which exceeds the prior negotiated rate component by 10%

__ 5. Schedules clearly detailing composition and allocation base(s) of each F&A cost pool in base year cost calculation. If the institution has filed a Disclosure Statement (DS–2) submission, specific references (rather than narrative descriptions) from the DS–2 may be used

__ 6. Narrative description of composition of each F&A cost pool and allocation methodology. If the institution has filed a DS–2 submission, specific references (rather than narrative descriptions) from the DS–2 may be used

__ 7. Narrative description of changes in accounting or cost allocation methods made since the institution's last F&A submission. If the institution has filed a DS–2 submission, specific references (rather than narrative descriptions) from the DS–2 may be used

__ 8. Copy of reports on the conduct and results of special studies performed under Section E.2.d, when applicable

__ 9. Copy of the following:

(a) The Certificate of F&A Costs

(b) Lobbying Certification

(c) Description of procedures used to ensure that awards issued by the Federal Government do not subsidize the F&A costs allocable to awards made by non-Federal sources (*e.g.*, industry, foreign governments)

(d) Assurance Certification—for those institutions listed on Exhibit A—concerning disposition of Federal reimbursements associated with claims for depreciation/use allowances

(e) Assurance statement that institution is in compliance with Federal awarding agency limitations on compensation (*e.g.*, NIH salary limitation, executive compensation)

__ 10. If applicable, reconciliation of carry-forward amounts from prior years used in the current proposal

__ 11. Transmittal letter stipulating the type(s) of rates proposed, the fiscal year(s) covered by the proposal and the base year used

*Rate Proposal Summary by Major Function*

__ 1. Summary of F&A base year rates calculated by Major Function and special rates (*e.g.*, vessel rates) if applicable by component. These would be grouped by Administrative Components and Facilities Components. Total base year calculated rates would be disclosed, as well as allowable rates after the 26 percent limitation on Administrative Components

__ 2. A breakout of Modified Total Direct Cost (MTDC) rate base figures for each major function (and special rates, if applicable) by:

(a) On-Campus and Off-Campus amounts

(b) Federal awards

—Based on Negotiated Rates—On-Campus

—Based on Negotiated Rates—Off-Campus

—Research Training Awards

—Other Awards (not based on negotiated rates)

(c) Non-Federal Sources

__ 3. Miscellaneous Statistics including:

(a) Cost Sharing in the Rate Base

(b) Assignable Square Feet (ASF) by Major Function

(c) Percentage of ASF which is financed (by Major Function)

(d) A breakout of MTDC by Direct Salaries and Wages/ fringe benefits and non labor costs by major functions

__ 4. Future rate adjustments, if necessary, related to material changes since the base year. A clear description of the justification for each of the following:

(a) Changes by cost pool by year

(b) Changes in MTDC base by year

(c) Changes in F&A rates for future years

__ 5. Summary of future F&A rates, if necessary, by Major Function and special rates (*e.g.*, vessel rates) which lists each administrative and facilities component by year.

*Building Use Allowance and/or Depreciation*

__ 1. Reconciliation of building cost used to compute use allowance and/or depreciation with the financial statements. If depreciation is claimed in the F&A proposal and disclosed on the financial statements, provide a reconciliation of depreciation amounts with the financial statements.

**Note:** If an institution's financial statements do not disclose depreciation expense (*e.g.*, those subject to GASB), a reconciliation of claimed depreciation expense to the financial statements is not possible.

__ 2. A schedule showing amount by building of use allowance and/or depreciation distributed to all functions

__ 3. If a method different from the standard allocation method, described in section F.2.b, was used, describe method. Provide justification for its use and a schedule of allocation. If the institution has filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

__ 4. If depreciation is claimed, describe what useful lives by group and component have been used

*Equipment Use Allowances and/or Depreciation*

__ 1. Reconciliation of equipment cost used to compute use allowance and/or depreciation with the financial statements. If depreciation is claimed in the F&A proposal and disclosed on the financial statements, provide a reconciliation of depreciation amounts with the financial statements.

**Note:** If an institution's financial statements do not disclose depreciation expense (*e.g.*, those subject to GASB), a reconciliation of claimed depreciation expense to the financial statements is not possible.

__ 2. A schedule showing amount by building of use allowance and/or depreciation distributed to all functions

__ 3. If a method different from the standard allocation method, described in section F.2.b, was used, describe the method. Provide a justification for its use and a schedule of allocation. If the institution has filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

__ 4. If depreciation is claimed, describe what useful lives by asset class and component have been used

*Interest*

__ 1. Reconciliation of interest cost used in the F&A base year calculation to the financial statements

__ 2. A schedule showing amount of interest cost assigned to each building and a distribution to all benefitting functions within each building for each proposed "Major Function"

*Space Survey*

__ 1. A summary schedule of square footage by school, department, building and function

__ 2. The same schedule should then be sorted by school, building, department, and function

__ 3. Copies of space inventory instructions, forms, and definitions

*Operation and Maintenance (O&M)*

__ 1. A summary schedule of each major activity (or subpool) in O&M cost pool. It must show the costs by S&W/fringe benefits and all non-labor cost categories

__ 2. A schedule showing amount of O&M costs distributed to all functions

*General Administration (G&A)*

__ 1. A summary schedule of each activity (or subpool) in the G&A cost pool

__ 2. A schedule of costs in the modified total costs (MTC) allocation base

__ 3. If a method different from the standard MTC allocation method was used, describe the method. Provide a justification for its use and a schedule of allocation. If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

*Departmental Administration (DA)*

__ 1. Schedules of the DA summary by school, department and allocated to Major Functions by department

__ 2. Schedule identifying costs by S&W/fringe benefits and non-labor costs by department for the following functions:

(a) Direct (Major Functions)
—Instruction
—Organized Research
—Other Sponsored Activities
—Other

(b) Departmental Administration (excluding Deans)

(c) Dean's office

(d) Other, as appropriate

S&W/fringe benefits shall be further identified as follows:

(a) Faculty and other professional

(b) Administrative (*e.g.*, business officers, accountants, budget analysts, budget officers)

(c) Technicians (*e.g.*, lab technicians, glass washers)

(d) Secretaries and clerical

__ 3. Complete description of allocation method, bases and allocation sequences (*e.g.*, direct charge equivalent, 3.6 percent allowance). If a method different from the standard MTC allocation method was used, describe the method. Provide a justification for its use and a schedule of allocation. If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

__ 4. Show a detailed example (*i.e.*, illustration of your Direct Charge Equivalent (DCE) methodology) of the allocation process used for one department which has Instruction and Organized Research functions from each of the following schools: Medicine, Arts & Sciences and Engineering, as applicable

*Sponsored Projects Administration (SPA)*

__ 1. A summary schedule for each activity (or subpool) included in SPA cost pool

__ 2. A schedule of the sponsored projects direct costs in the MTC allocation base

__ 3. If a method different from the standard sponsored projects MTC allocation method was used, describe method. Provide justification for its use and a schedule of allocation. If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

*Library*

__ 1. A summary schedule for each activity included in library cost pool. It would show costs by salaries and wages, books, periodicals, and all other non-labor cost categories

__ 2. Schedule listing all credits to library costs

__ 3. A schedule of Full Time Equivalents (FTE) and salaries and wages in the bases used to allocate library costs to users of library services

__ 4. If the standard allocation methodology was not used, describe the alternative method and provide justification for its use. Provide schedules of allocation statistics by function. If school filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of the DS–2

*Student Services*

__ 1. If the proposed allocation base(s) differs from the stipulated standard allocation methodology provide:

(a) Justification for use of a nonstandard allocation methodology;

(b) Description of allocation procedure; and

(c) Statistical data to support proposed distribution process

If the institution filed a DS–2 submission, claimed allocation methodology may be referenced to specific section of DS–2.

[FR Doc. 00–11540 Filed 5–8–00; 8:45 am]

BILLING CODE 3110–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of May 8, 2000.

A closed meeting will be held on Thursday, May 11, 2000 at 11 a.m.

Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled Thursday, May 11, 2000 will be:

- Institution and settlement of injunctive actions; and
- Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 5, 2000.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–11668 Filed 5–5–00; 1:19 pm]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that TD Javelin Capital Fund, LP ("TD Javelin"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), TD Javelin Capital Fund II, LP ("TD Javelin II"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Act, and TD Lighthouse Capital Fund, LP ("TD Lighthouse", and together with TD Javelin and TD Javelin II, the "Funds"), 303 Detroit Street, Suite 301, Ann Arbor, Michigan 48104, an applicant for a Federal license under the Act, in connection with the financing of a small concern, are seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). The Funds propose to provide equity financing to t-Breeders, Inc. ("t-Breeders"), One Innovation Drive, Worcester, Massachusetts 01605. The financing is contemplated for product development and working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because TD Javelin, an Associate of the Funds, currently owns greater than 10 percent of t-Breeders and therefore t-Breeders is considered an Associate of each of the Funds as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: April 26, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00–11496 Filed 5–8–00; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that TD Javelin Capital Fund, LP ("TD Javelin I"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), and TD Javelin Capital Fund II, LP ("TD Javelin II", and together with TD Javelin I the "Funds"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Act, in connection with the financing of a small concern, have sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). The Funds propose to provide equity financing to Prolinx, Inc. ("Prolinx"), 22322 Twentieth Avenue South East, Bothell, Washington 98021. The financing is contemplated for product development and working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because TD Javelin I and its associate, Tullis-Dickerson Capital Focus II, LP, currently own greater than 10 percent of Prolinx, and therefore Prolinx is considered an Associate of each of TD Javelin I and TD Javelin II as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: April 26, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00–11498 Filed 5–8–00; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that TD Origen Fund, L.P. ("TD Origen"), 150 Washington Avenue, Suite 201, Santa Fe, New Mexico 87501, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), TD Javelin Capital Fund, LP ("TD Javelin I"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Act, and TD Javelin Capital Fund II, LP ("TD Javelin II"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223 (collectively "the Funds"), in connection with the financing of a small concern, have sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). The Funds propose to provide equity financing to Phase-1 Molecular Toxicology, Inc. ("Phase-1"), 2904 Rodeo Park Drive East, Santa Fe, New Mexico 97505. The financing is contemplated for product development and working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the

Regulations because TD Origen and TD Javelin, Associates of the Funds, currently own greater than 10 percent of Phase-1 and therefore Phase-1 is considered an Associate of each of the Funds as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: April 26, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00–11497 Filed 5–8–00; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[License No. 01/71–0372]**

### Zero Stage Capital VI, LP; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Zero Stage Capital VI, LP, 101 Main Street, Cambridge, MA 02142, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection the financing of a small concern, has sought an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). Zero Stage Capital VI proposes to provide equity financing to t-Breeders, Inc. ("t-Breeders"), One Innovation Drive, Worcester, Massachusetts 01605. The financing is contemplated for funding growth.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because Zero Stage Capital V, LP, an Associate of the Zero Stage Capital VI, currently owns greater than 10 percent of t-Breeders, Inc. and therefore t-Breeders, Inc. is considered an Associate of Zero Stage Capital VI as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW, Washington, DC 20416.

Dated: April 26, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00–11495 Filed 5–8–00; 8:45 am]

BILLING CODE 8025–01–P

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer and to the OMB Desk Officer at the following addresses:

(OMB) Office of Management and Budget, OIRA, Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW., Washington, D.C. 20503.

(SSA) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. Internet Retirement Insurance Benefit (IRIB) Application—0960–NEW. SSA plans to offer its customers a new Internet service that allows individuals to submit their request for Social Security benefits over the Internet. The information collected will be used by SSA to determine entitlement to retirement insurance benefits. Currently, applicants for retirement insurance benefits complete an SSA–1 by telephone or in person with the assistance of an SSA employee. The IRIB application will enable individuals to complete the application on their own electronically over the Internet.

Prior to national implementation later this year, SSA plans to pilot the IRIB Internet application process between July 2000 and September 2000 to gather data on:

- the volume of IRIB usage,
- the time required for members of the public to complete the IRIB screens,
- user satisfaction with the process, and the impact of the IRIB process on payment accuracy.

| | Pilot | National implementation |
|---|---|---|
| Number of Respondents | 560 | 139,308 |
| Frequency of Response | 1 | 1 |
| Average Burden Per Response (minutes) | 20 | 20 |
| Estimated Annual Burden (hours) | 187 | 46,436 |

2. Request for Internet Service—Authentication (RISA)—0960–0596. The information collected on the electronic request for Internet Service—Authentication is used by the Social Security Administration to identify its customers who are requesting Privacy Act protected information. The respondents are members of the public who request services from SSA through the Internet.

*Number of Respondents:* 21,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 1.5 minutes.

*Estimated Annual Burden:* 525 hours.

Dated: April 28, 2000.

**Frederick W. Brickenkamp,**

*Reports Clearance Officer.*

[FR Doc. 00–11476 Filed 5–8–00; 8:45 am]

BILLING CODE 4191–02–P

## DEPARTMENT OF STATE

**[Public Notice 3296]**

### Amendment to Culturally Significant Objects Imported for Exhibition Determinations: "1900: Art at the Crossroads"

**DEPARTMENT:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and

Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999, as amended by Delegation of Authority No. 236–1 of November 9, 1999, I hereby determine that an additional object to be included in the exhibit, "1900: Art at the Crossroads," imported from abroad for the temporary exhibition without profit within the United States, is of cultural significance. The object will be imported pursuant to a loan agreement with a foreign lender. I also determine that the temporary exhibition or display of the additional object at the Guggenheim Museum, New York, NY, from on or about May 18, 2000, to on or about September 10, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of all exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: May 2, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affair, United States Department of State.*

[FR Doc. 00–11557 Filed 5–8–00; 8:45 am]

BILLING CODE 4710–08–P

## DEPARTMENT OF STATE

**[Public Notice 3282]**

### Advisory Committee on International Communications and Information Policy; Change in Meeting Notice

The Department of State is rescheduling a special meeting of its Advisory Committee on International Communications and Information Policy. The meeting, originally scheduled for Monday, May 15, 2000, is being rescheduled to Monday, June 26, 2000, in order to allow additional time for written submissions.

The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

This special meeting will take the format of a hearing to solicit and receive testimony on the subject of "best practices" used by telecommunications regulators, competition authorities, and legislatures, etc. outside the United States that facilitate competition in the provision of telecommunications services and/or networks.

The purpose of the Advisory Committee soliciting this testimony is to develop a list of these best policies implemented by countries outside the United States that will be helpful to the Department of State and the U.S. Government more broadly in recognizing and promoting pro-competitive telecommunications practices abroad. The intent is that these will provide concrete examples of where and how telecommunications competition has been implemented successfully. These "best practices" may take the form of the adoption of general policies, particular sets of rules, particular pricing regimes, specific enforcement initiatives, a particular form of regulation or specific transition requirement in moving from a monopoly situation to a competitive environment.

The target audience from whom the Advisory Committee would like to solicit this testimony includes the telecommunications and information technology industries, consumer groups, academia, lawyers, and consultants, as well as from the general public.

The Advisory Committee requests that interested parties provide written submissions, not to exceed two pages for each best practice (not counting attachments), that answer the following questions:

**Best Practice**

1. What is the best practice? (Describe it. What competitive issues does it address? How has the practice been pro-competitive?)

2. Who implemented the practice and how transferable does the submitter think it will be to other countries?

3. What next steps can be taken to improve this practice?

4. Identify your name, organization, and contact information (phone number and e-mail address). Please state whether someone from your organization is willing to attend the meeting scheduled for June 26, 2000, at the Department of State in Washington to briefly present this suggestion (3–5 minute presentation depending upon the number of suggestions submitted).

Written material must be submitted electronically to the Executive Secretary of the Advisory Committee, Timothy C. Finton, at <fintontc@state.gov> no later than 5:00 p.m. (Eastern Daylight Time) on Wednesday, June 14. Additionally, hardcopies of submissions may be mailed to Timothy C. Finton at EB/CIP, Room 4826, U.S. Department of State, 2201 C Street, NW., Washington, DC to be received by June 14.

The meeting will be held on Monday, June 26, 2000, from 9:30 a.m.–11:30 a.m. in Room 1105 of the Main Building of the U.S. Department of State, located at 2201 "C" Street, NW., Washington, DC 20520.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc@state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the State Department building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@state.gov>.

Dated: May 4, 2000.

**Timothy C. Finton,**

*Executive Secretary, Advisory Committee on International Communications and Information Policy, Department of State.*

[FR Doc. 00–11667 Filed 5–8–00; 8:45 am]

BILLING CODE 4710–45–U

## TENNESSEE VALLEY AUTHORITY

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Tennessee Valley Authority (Meeting No. 1519)

**TIME AND DATE:** 9 am (CDT), May 11, 2000.

**PLACE:** Adam's Mark Memphis Hotel, Tennessee A Room, 939 Ridge lake Boulevard, Memphis, Tennessee.

**STATUS:** Open.

**Agenda**

Approval of minutes of meeting held on April 19, 2000.

*New Business*

C—Energy

C1. Contract with General Electric Company for the manufacture and turnkey installation of new combined-cycle power plant and cogeneration projects for 2003.

C2. Supplement to indefinite quantity Contract No. 00P61–259355–001 with Thomas & Betts Corporation for transmission and substation steel components and structures.

E—Real Property Transactions

E1. Grant of a permanent easement for a road to the City of Decatur, Alabama, affecting approximately 2.2 acres of land on Wheeler Reservoir in Morgan County, Alabama (Tract No. XTWR–111H).

E2. Grant of a permanent easement for a highway improvement project to the Tennessee Department of Transportation, affecting approximately 3.1 acres of land on Norris Reservoir in Union County, Tennessee (Tract No. XTNR–112H).

Information Items

1. Approval for TVA to pay the first year of membership dues in the TVA Retirees Association for TVA retirees.

For more information: Please call TVA Public Relations at (423–632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000.

Dated: May 4, 2000.

**Edward S. Christenbury,**

*General Counsel and Secretary.*

[FR Doc. 00–11673 Filed 5–5–00; 2:08 pm]

**BILLING CODE 8120–08–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Seven Current Public Collections of Information

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on seven currently approved public information collections which will be submitted to OMB for renewal.

**DATES:** Comments must be received on or before July 10, 2000.

**ADDRESSES:** Comments may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 613, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Ms. Judith Street at the above address or on (202) 267–9895.

**SUPPLEMENTARY INFORMATION:** The FAA solicits comments on the following seven current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection. Following are short synopses of the information collection activities which will be submitted to OMB for review and renewal:

1. 2120–0045, Bird/Other Wildlife Strike. The data collection is used by the FAA and the International Civil Aviation Organization (ICAO) to develop standards to cope with bird and other wildlife hazards to aircraft injury to personnel, and for wildlife habitat control methods on or adjacent to airports. The Bird/Other Wildlife-Strike Reports form a statistical base in providing assistance and monitoring of the overall national bird hazard program. The responses are on a voluntary basis from pilots or others seeing bird or other wildlife strikes to aircraft. It is estimated to take 5 minutes or less to complete the form. Based on previous counts, the estimated annual burden is 125 hours.

2. 2120–0557, Passenger Facility Charge. The Aviation Safety and Capacity Expansion Act of 1990 (Public Law 101–508) authorizes airports to impose passenger facility charges (PFC). The final rule (14 CFR 158) implementing this Act was effective June 28, 1991. This program requires public agencies and certain members of the aviation industry to prepare and submit applications and reports to the DOT/FAA. This program provides additional funding for airport development which is needed now and in the future. The respondents are air carriers and public agencies. The total annual burden is estimated to be 25,500 hours.

3. 2120–0559, Aviation Research Grants Program. The FAA Aviation Research and Development Grants Program establishes uniform policies and procedures for the award and administration of research grants to colleges, universities, not for profit organizations, and profit organizations for security research. The respondents are grantees. The estimated annual burden is 2800 hours.

4. 2120–0563, Part 161—Notice and Approval of Airport Noise and Access Restrictions, Part 161. The Airport Noise and Capacity Act of 1990, Public Law 101–508, mandates the formulation of a national noise policy. One part of that mandate is the development of a national program to review noise and access restrictions on the operation of Stage 2 and Stage 3 aircraft. Respondents are airport operation of proposing voluntary agreements and/or mandatory restrictions on Stage 2 and Stage 3 aircraft operations and aircraft operators that request reevaluation of a restriction. There are an estimated 18 respondents with an average annual burden of 32,000 hours.

5. 2120–0614, Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes. This information collection pertains to specific reporting requirements for affected operators under parts 121 and 135. A new paragraph was added to sections 121.314 and 135.169 to require each certificate holder to report, on a quarterly basis, the serial numbers of the airplanes in that holder's fleet in which all Class D compartments have been retrofitted to meet Class C or E requirements, and the serial numbers of airplanes that have Class D compartments yet to be retrofitted. It is estimated that there would be 130 certificate holder respondents for an annual hourly burden of 1000 hours.

6. 2120–0616, Revisions to Digital Flight Data Recorders. This rule requires that certain airplanes be equipped to accommodate additional digital flight data recorder parameters. The revisions follow a series of safety recommendations issued by the NTSB and the FAA's decision that the FDR rules should be revised to upgrade recorder capabilities in most transport airplanes. The revisions require additional information to be collected to enable more thorough accident or incident investigation and to enable industry to predict certain trends and make necessary modifications before an accident or incident occurs. The burden on the public is the cost of retrofitting the remaining aircraft.

7. 2120–0619, Commercial Passenger-Carrying Operations in Single Engine Aircraft Under Instrument Flight Rules. The information and recordkeeping requirements will be used by the operator to ensure that all maintenance performed on the standby vacuum and electrical systems is complete, accurate, and standardized to ensure continued airworthiness. The operator will also

use the information on the engine trend monitoring system to ensure engine reliability by analyzing the trend indicators and performing inspections or replacing engine parts as indicated. The respondents are an estimated 1800 part 135 operators. The estimated annual recordkeeping burden is 10,800 hours.

Issued in Washington, DC, on May 2, 2000.

**Steve Hopkins,**

*Manager, Standards and Information Division, APF–100.*

[FR Doc. 00–11492 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Notice of Availability and Public Hearing of the Draft Supplemental Environmental Impact Statement on the Buffalo Inner Harbor Project, New York

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of availability and public hearing of the draft supplemental environmental impact statement.

**SUMMARY:** The Federal Transit Administration (FTA) is issuing this notice to advise the public and interested agencies that a Draft Supplemental Environmental Impact Statement (Draft SEIS) will be available on the Buffalo Inner Harbor Project. This Draft SEIS is in response to a court order and is limited in scope to the issue of historic preservation. The Draft SEIS will address events and information that became available subsequent to the Final EIS (FEIS), which was issued February 12, 1999.

The Draft SEIS was prepared pursuant to an order filed in a civil action filed by Preservation Coalition on October 6, 1999, in the United States District Court for the Western District of New York under civil action number 99-CV–745S against FTA, NFTA, the New York State Thruway Authority, Empire State Development Corporation (ESDC), and the New York State Office of Parks, Recreation, and Historic Preservation. The Preservation Coalition challenged the Buffalo Inner Harbor Project on environmental and historic preservation grounds. On March 31, 2000, District Court Judge William M. Skretny ordered that a SEIS be prepared to consider the information learned during archaeological investigations conducted after the FEIS.

The court established a compressed timetable for the public comment period on the Draft SEIS. In accordance with the order, the Draft SEIS will be available for public comment between May 10, 2000, and May 31, 2000. Written comments must be received by 5:00 PM on May 31, 2000. A public hearing on the project will be held on May 24, 2000, from 7 to 9:00 p.m.

**DATES:** Comment due date/time: May 31, 2000, 5:00 PM. Public hearing date/time: May 24, 2000, 7–9 p.m.

**ADDRESSES:** Written comments are to be sent to Ruta Dzenis, AICP, Project Director, Empire State Development Corporation, 420 Main Street, Suite 717 Liberty Building, Buffalo, NY 14202. The address of the public hearing is Erie County Community College, Downtown Campus, Main Auditorium, Buffalo, NY 14203. The Auditorium entrance is along the Clinton Street side of the building and is accessible to the disabled. If there is a need for a translator for the hearing impaired or other special accommodations please notify Ms. Mary Coleman, Empire State Development Corporation, at (716) 856–8111 by Tuesday, May 16, 2000. Copies of the Draft SEIS are available by contacting Ms. Coleman. Copies of the draft SEIS are also available for review at the Buffalo and Erie County Public Library, Central Branch, Lafayette Square, Buffalo, NY 14202; the Niagara Falls Public Library, 1425 Main Street, Niagara Falls, NY 14305; and the University of Buffalo School of Architecture and Planning Library, Hayes Hall, South Campus, Buffalo NY 14216.

**FOR FURTHER INFORMATION CONTACT:** Anthony G. Carr, FTA Region II, One Bowling Green, Room 429; New York, NY 10004. Telephone (212) 668–2170.

Following the public comment period, a Final SEIS that responds to the comments will be prepared and made available to the public.

Issued on: May 3, 2000.

**Letitia Thompson,**

*Regional Administrator, Federal Transit Administration, Region II.*

[FR Doc. 00–11484 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–57–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2000–7111]**

### Notice of Receipt of Petition for Decision That all Nonconforming 1992–1994 Mercedes-Benz SE and SEL Passenger Car Models Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that all nonconforming 1992–1994 Mercedes-Benz SE and SEL passenger car models are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that all 1992–1994 Mercedes-Benz SE and SEL passenger car models that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is June 8, 2000.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

### Background

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to

conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies LLC of Baltimore, Maryland ("J.K.") (Registered Importer 90–006) has petitioned NHTSA to decide whether all nonconforming 1992–1994 Mercedes-Benz SE and SEL passenger car models are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are all 1992–1994 Mercedes-Benz SE and SEL passenger car models that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1992–1994 Mercedes-Benz SE and SEL passenger car models to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1992–1994 Mercedes-Benz SE and SEL passenger car models, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1992–1994 Mercedes-Benz SE and SEL passenger car models are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence * * **, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1992–1994 Mercedes-Benz SE and SEL passenger car models comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model high mounted stop lamp.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of U.S.-model doorbars in vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 3, 2000.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 00–11485 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**Docket No. NHTSA–2000–7225**

### Notice of Receipt of Petition for Decision That Nonconforming 1995–1998 Mercedes-Benz S Class Passenger Cars Are Eligible for Importation

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice of receipt of petition for decision that nonconforming 1995–1998 Mercedes-Benz S Class passenger cars are eligible for importation.

**SUMMARY:** This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1995–1998 Mercedes-Benz S Class passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United

States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

**DATES:** The closing date for comments on the petition is June 8, 2000.

**ADDRESSES:** Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm].

**FOR FURTHER INFORMATION CONTACT:** George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

**SUPPLEMENTARY INFORMATION:**

**Background**

Under 49 U.S.C. § 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. § 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

J.K. Technologies, LLC. of Baltimore, Maryland ("J.K.")(Registered Importer 90–006) has petitioned NHTSA to decide whether 1995–1998 Mercedes-Benz S Class passenger cars are eligible for importation into the United States. The vehicles which J.K. believes are substantially similar are 1995–1998 Mercedes-Benz S Class passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1995–1998 Mercedes-Benz S Class passenger cars to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

J.K. submitted information with its petition intended to demonstrate that non-U.S. certified 1995–1998 Mercedes-Benz S Class passenger cars, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1995–1998 Mercedes-Benz S Class passenger cars are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence* * * *, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1995–1998 Mercedes-Benz S Class passenger cars comply with the Bumper Standard found in 49 CFR Part 581.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) replacement of the speedometer with one calibrated in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) installation of U.S.-model headlamps and front sidemarker lamps; (b) installation of U.S.-model taillamp assemblies which incorporate rear sidemarker lights; (c) installation of a U.S.-model center high mounted stop lamp assembly.

Standard No. 110 *Tire Selection and Rims:* installation of a tire information placard.

Standard No. 111 *Rearview Mirror:* replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection:* installation of a warning buzzer and a warning buzzer microswitch in the steering lock assembly.

Standard No. 118 *Power Window Systems:* installation of a relay in the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 208 *Occupant Crash Protection:* (a) installation of a safety belt warning buzzer, wired to the driver's seat belt latch; (b) replacement of the driver's and passenger's side air bags, control units, sensors, seat belts and knee bolsters with U.S.-model components on vehicles that are not already so equipped. The petitioner states that the vehicles are equipped at the front and rear outboard seating positions with combination lap and shoulder belts that are self tensioning and capable of being released by means of a single red push-button, and with a lap belt in the rear center designated seating position.

Standard No. 214 *Side Impact Protection:* installation of U.S.-model doorbars in vehicles that are not already so equipped.

The petitioner also states that a vehicle identification plate must be affixed to the vehicle near the left windshield post and a reference and certification label must be affixed in the area of the left front door post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 am to 5 pm]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

**Authority:** 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: May 3, 2000.

**Marilynne Jacobs,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 00–11486 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket No. RSPA–00–7283; Notice No. 00–03]**

### Hazardous Materials Safety: Meeting for UN Packaging Certification Agencies

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** RSPA is hosting a meeting for its designated UN packaging certification agencies. This meeting provides an opportunity to discuss testing and certification requirements for UN packagings and to disseminate information regarding recent regulatory developments. This meeting is being held in conjunction with an RSPA-sponsored Hazardous Materials Multimodal Training Seminar on June 13 and 14, 2000.

**DATES:** The meeting will be held on Wednesday, June 14, 2000, from 9 am. to 4:30 pm; however, the meeting may end prior to 4:30 pm, depending upon public interest.

**ADDRESSES:** The meeting will be held at the Indian Lakes Resort, 250 W. Schick Road, Bloomingdale, IL 60108 (630–529–0200). For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Diane LaValle at the address or phone number listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

**FOR FURTHER INFORMATION CONTACT:** Christine Whitney, Office of Hazardous Materials Exemptions and Approvals, phone (202) 366–4512 or Diane LaValle, Office of Hazardous Materials Standards, phone (202) 366–8553, RSPA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:** On June 14, 2000, RSPA's Office of Hazardous Materials Safety ("we") will host a meeting for designated UN packaging certification agencies (*i.e.*, third party labs). This meeting will provide an opportunity for us to exchange information with third party labs concerning testing and certification requirements for UN packagings. We will also provide an update on the latest regulatory developments.

The meeting will be held in the Chicago, Illinois, area, in conjunction with a two-day multi-modal hazardous materials seminar on June 13 and 14. Because of space limitations, attendance at the third party lab meeting will be on a "first come-first served" basis. To confirm attendance, please call Christine Whitney or Diane LaValle at the phone numbers listed under **FOR FURTHER INFORMATION CONTACT.** Third party labs do not need to confirm attendance. Persons interested in participating in this public meeting need not be registered for the Hazardous Materials Multimodal Training Seminar.

This is an informal meeting intended to produce a dialogue between us and the third party labs concerning performance-oriented package testing and certification. There will be no transcript of the meeting; however, we will prepare minutes of the meeting and written questions and answers developed in response to issues raised. This information will be made available on the HazMat Safety Website (http://hazmat.dot.gov).

Issued in Washington, DC on May 4, 2000.

**Robert A. McGuire,**

*Acting Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 00–11580 Filed 5–8–00; 8:45 am]

BILLING CODE 4910–60–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1041–T

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1041–T, Allocation of Estimated Tax Payments to Beneficiaries.

**DATES:** Written comments should be received on or before July 10, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Allocation of Estimated Tax Payments to Beneficiaries.

*OMB Number:* 1545–1020.

*Form Number:* 1041–T.

*Abstract:* This form allows a trustee of a trust or an executor of an estate to make an election under Internal Revenue Code section 643(g) to allocate any payment of estimated tax to a beneficiary(ies). The IRS uses the information on the form to determine the correct amounts that are to be transferred from the fiduciary's account to the individual's account.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Responses:* 1,000.

*Estimated Time Per Respondent:* 1 hour, 1 minute.

*Estimated Total Annual Burden Hours:* 1,010.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

(b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11590 Filed 5–8–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 4970

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4970, Tax on Accumulation Distribution of Trusts.

**DATES:** Written comments should be received on or before July 10, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Tax on Accumulation Distribution of Trusts.

*OMB Number:* 1545–0192.

*Form Number:* 4970.

*Abstract:* Form 4970 is used by a beneficiary of a domestic or foreign trust to compute the tax adjustment attributable to an accumulation distribution. The form is used to verify whether the correct tax has been paid on the accumulation distribution.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Responses:* 30,000.

*Estimated Time Per Respondent:* 3 hours, 13 minutes.

*Estimated Total Annual Burden Hours:* 96,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11591 Filed 5–8–00; 8:45 am]

BILLING CODE 4830–01–P

# Corrections

Federal Register

Vol. 65, No. 90

Tuesday, May 9, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Generalized System of Preferences (GSP); Initiation of a Review to Consider the Designation of Nigeria as a Beneficiary Developing Country Under the GSP; Solicitation of Public Comments Relating to the Designation Criteria

*Correction*

In notice document 00–11071 appearing on page 25972 in the issue of Thursday, May 4, 2000, make the following correction:

On page 25972, in the third column, in the first full paragraph, in the 11th line, "July 10th" should read "June 5th".

[FR Doc. C0–11071 Filed 5–8–00; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 635

**[I.D. 110499B]**

**RIN 0648–AM79**

### Atlantic Highly Migratory Species; Pelagic Longline Management

*Correction*

In proposed rule document 00–10310 beginning on page 24440 in the issue of Wednesday, April 26, 2000, make the following correction:

On page 24441, the table should appear as follows:

| Discards and target species | No effort redistribution model (percent) | Redistribution of effort model (percent) |
|---|---|---|
| Swordfish Discards | –5.31 | –4.09 |
| Blue Marlin Discards | –1.36 | 1.16 |
| White Marlin Discards | –1.84 | 1.07 |
| Sailfish Discards | –5.20 | –0.75 |
| Large Coastal Shark Discards | –6.51 | –5.42 |
| Swordfish Kept | –2.45 | –1.69 |
| BAYS Tunas Kept | –2.04 | 1.35 |
| Dolphin (Mahi) Kept | –3.69 | –1.37 |
| Pelagic Sharks Kept | –2.38 | –1.82 |

[FR Doc. C0–10310 Filed 5–8–00; 8:45 am]

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Federal Register

Tuesday,
May 9, 2000

Part II

# United States Sentencing Commission

## Sentencing Guidelines for United States Courts; Notice

## UNITED STATES SENTENCING COMMISSION

### Sentencing Guidelines for United States Courts

**AGENCY:** United States Sentencing Commission.

**ACTION:** Notice of: (1) Promulgation of temporary, emergency amendment to the sentencing guidelines for copyright and trademark infringement, effective May 1, 2000; (2) submission to Congress of amendments to the sentencing guidelines; and (3) request for comment.

**SUMMARY:** The United States Sentencing Commission hereby gives notice of the following actions: (1) Pursuant to the No Electronic Theft (NET) Act, Pub. L. 105–147, the Commission has promulgated a temporary, emergency amendment to § 2B5.3 (Criminal Infringement of Copyright or Trademark) and accompanying commentary; (2) pursuant to its authority under 28 U.S.C. 994(a) and (p) and several congressional directives, the Commission has promulgated additional, non-emergency amendments to the sentencing guidelines, policy statements, commentary, and statutory index; and (3) the Commission requests public comment regarding whether the Commission should specify any of the non-emergency amendments for retroactive application to previously sentenced defendants.

**DATES:** The Commission has specified an effective date of May 1, 2000, for the emergency NET Act amendment and an effective date of November 1, 2000, for all non-emergency amendments to the sentencing guidelines, policy statements, commentary, and statutory index. Comments regarding whether the Commission should specify any of the non-emergency amendments for retroactive application to previously sentenced defendants should be received by the Commission not later than July 7, 2000.

**ADDRESSES:** Comments should be sent to: United States Sentencing Commission, One Columbus Circle, NE., Suite 2–500, South Lobby, Washington, DC, 20002–8002, Attn: Public Affairs.

**FOR FURTHER INFORMATION CONTACT:** Michael Courlander, Public Affairs Officer, 202–502–4590.

**SUPPLEMENTARY INFORMATION:**

**(1) Emergency NET Act Amendment**

The NET Act directed the Commission to: (A) Ensure that the applicable guideline range for a crime committed against intellectual property (including offenses set forth at section 506(a) of title 17, United States Code, and sections 2319, 2319A, and 2320 of title 18, United States Code) is sufficiently stringent to deter such a crime; and (B) ensure that the guidelines provide for consideration of the retail value and quantity of the items with respect to which the intellectual property offense was committed. The NET Act, as clarified by the Digital Theft Deterrence and Copyright Damages Improvement Act of 1998, Pub. L. 106–160, required the Commission to promulgate a temporary, emergency guideline amendment not later than April 6, 2000. In December 1999, the Commission published three options for promulgating an emergency amendment to § 2B5.3 (Criminal Infringement of Copyright or Trademark) and accompanying commentary to implement the NET Act directive. *See* 64 FR 72129, Dec. 23, 1999. After a public hearing (which, in part, focused on proposed options to implement the NET Act) and a review of additional public comment, the Commission passed an amendment on April 3, 2000, that responds to the directive. The amendment makes a number of modifications to the guideline, including changes to the monetary calculation found in § 2B5.3 and the addition of several mitigating and aggravating factors as a means of providing just and proportionate punishment while also seeking to achieve sufficient deterrence. The Commission specified an effective date of May 1, 2000, for this amendment.

**(2) Non-Emergency Amendments**

Section 994 of title 28, United States Code, empowers the Commission to promulgate sentencing guidelines and policy statements for federal courts. *See* 28 U.S.C. 994(a). Additionally, 28 U.S.C. 994 directs the Commission periodically to review and revise guidelines previously promulgated (*see* 28 U.S.C. 994(o)) and authorizes it to submit guideline amendments to the Congress at or after the beginning of a regular session of Congress but not later than May 1 (*see* 18 U.S.C. 994(p)). Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of proposed amendments was published in the **Federal Register** on December 23, 1999 (*see* 64 FR 72129), January 18, 2000 (*see* 65 FR 2663), and February 11, 2000 (*see* 65 FR 7080). The Commission held a public hearing on the proposed amendments in Washington, D.C., on March 23, 2000. After a review of hearing testimony and additional public comment, the Commission promulgated the amendments set forth below (including an amendment to make permanent the temporary, emergency NET Act amendment discussed in section (1)). On May 1, 2000, the Commission submitted these amendments to Congress with an effective date of November 1, 2000.

**(3) Retroactive Application**

The Commission requests comment regarding which, if any, of the non-emergency amendments submitted to Congress that may result in a lower guideline range should be made retroactive to previously sentenced defendants pursuant to § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range). For example, should the Commission make retroactive Amendments 8, 9, or 10, as set forth below, each of which may lower the guideline range for firearm offenders in certain situations?

**Authority:** 28 U.S.C. 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

**Diana E. Murphy,**
*Chair.*

### Amendments to the Sentencing Guidelines

Pursuant to section 994(p) of title 28, United States Code, the United States Sentencing Commission hereby submits to the Congress the following amendments to the sentencing guidelines and the reasons therefor. As authorized by such section, the Commission specifies an effective date of November 1, 2000, for these amendments.

*Amendments to the Sentencing Guidelines, Policy Statements, and Official Commentary*

1. *Amendment:* Section 1B1.1 is amended by striking subsection (a) in its entirety and inserting:

"(a) Determine, pursuant to § 1B1.2 (Applicable Guidelines), the offense guideline section from Chapter Two (Offense Conduct) applicable to the offense of conviction. *See* § 1B1.2.".

Section 1B1.2(a) is amended by striking "most" each place it appears; by striking "Provided, however" and inserting "However"; and by adding at the end the following:

"Refer to the Statutory Index (Appendix A) to determine the Chapter Two offense guideline, referenced in the Statutory Index for the offense of conviction. If the offense involved a conspiracy, attempt, or solicitation, refer to § 2X1.1 (Attempt, Solicitation, or Conspiracy) as well as the guideline

referenced in the Statutory Index for the substantive offense. For statutory provisions not listed in the Statutory Index, use the most analogous guideline. *See* § 2X5.1 (Other Offenses). The guidelines do not apply to any count of conviction that is a Class B or C misdemeanor or an infraction. *See* § 1B1.9 (Class B or C Misdemeanors and Infractions).".

The Commentary to § 1B1.2 captioned "Application Notes" is amended by striking the first paragraph of Note 1 and inserting the following:

"This section provides the basic rules for determining the guidelines applicable to the offense conduct under Chapter Two (Offense Conduct). The court is to use the Chapter Two guideline section referenced in the Statutory Index (Appendix A) for the offense of conviction. However, (A) in the case of a plea agreement containing a stipulation that specifically establishes a more serious offense than the offense of conviction, the Chapter Two offense guideline section applicable to the stipulated offense is to be used; and (B) for statutory provisions not listed in the Statutory Index, the most analogous guideline, determined pursuant to § 2X5.1 (Other Offenses), is to be used.

In the case of a particular statute that proscribes only a single type of criminal conduct, the offense of conviction and the conduct proscribed by the statute will coincide, and the Statutory Index will specify only one offense guideline for that offense of conviction. In the case of a particular statute that proscribes a variety of conduct that might constitute the subject of different offense guidelines, the Statutory Index may specify more than one offense guideline for that particular statute, and the court will determine which of the referenced guideline sections is most appropriate for the offense conduct charged in the count of which the defendant was convicted. If the offense involved a conspiracy, attempt, or solicitation, refer to § 2X1.1 (Attempt, Solicitation, or Conspiracy) as well as the guideline referenced in the Statutory Index for the substantive offense. For statutory provisions not listed in the Statutory Index, the most analogous guideline is to be used. *See* § 2X5.1 (Other Offenses).".

The Commentary to § 1B1.2 captioned "Application Notes" is amended by striking Note 3 in its entirety; and by redesignating Notes 4 and 5 as Notes 3 and 4, respectively.

The Commentary to § 2D1.2 captioned "Application Note" is amended in Note 1 by striking "Where" and inserting the following:

"This guideline applies only in a case in which the defendant is convicted of a statutory violation of drug trafficking in a protected location or involving an underage or pregnant individual (including an attempt or conspiracy to commit such a violation) or in a case in which the defendant stipulated to such a statutory violation. *See* § 1B1.2(a). In a case involving such a conviction but in which".

Appendix A (Statutory Index) is amended by striking the entire text of the "Introduction" and inserting the following:

"This index specifies the offense guideline section(s) in Chapter Two (Offense Conduct) applicable to the statute of conviction. If more than one guideline section is referenced for the particular statute, use the guideline most appropriate for the offense conduct charged in the count of which the defendant was convicted. For the rules governing the determination of the offense guideline section(s) from Chapter Two, and for any exceptions to those rules, *see* § 1B1.2 (Applicable Guidelines).".

The Commentary to § 2H1.1 captioned "Application Notes" is amended in Note 1 in the second paragraph by striking "Application Note 5" and inserting "Application Note 4".

*Reason for Amendment:* This amendment addresses a circuit conflict regarding whether the enhanced penalties in § 2D1.2 (Drug Offenses Occurring Near Protected Locations or Involving Underage or Pregnant Individuals) apply only in a case in which the defendant was convicted of an offense referenced to that guideline or, alternatively, in any case in which the defendant's relevant conduct included drug sales in a protected location or involving a protected individual. *Compare United States* v. *Chandler*, 125 F.3d 892, 897–98 (5th Cir. 1997) ("First, utilizing the Statutory Index located in Appendix A, the court determines the offense guideline section 'most applicable to the offense of conviction.' " Once the appropriate guideline is identified, a court can take relevant conduct into account only as it relates to factors set forth in that guideline); *United States* v. *Locklear*, 24 F.3d 641 (4th Cir. 1994) (finding that § 2D1.2 does not apply to convictions under 21 U.S.C. 841 based on the fact that the commentary to § 2D1.2 lists as the "Statutory Provisions" to which it is applicable 21 U.S.C. 859, 860, and 861, but not § 841. "[S]ection 2D1.2 is intended not to identify a specific offense characteristic which would, where applicable, increase the offense level over the base level assigned by § 2D1.1, but rather to define the base offense level for violations of 21 U.S.C. 859, 860 and 861."); *United States* v. *Saavedra*, 148 F.3d 1311 (11th Cir. 1998) (defendant's uncharged but relevant conduct is actually irrelevant to determining the sentencing guideline applicable to the defendant's offense; such conduct is properly considered only after the applicable guideline has been selected when the court is analyzing the various sentencing considerations within the guideline chosen, such as the base offense level, specific offense characteristics, and any cross references), *with United States* v. *Clay*, 117 F.3d 317 (6th Cir.), *cert. denied*, 118 S. Ct. 395 (1997) (applying § 2D1.2 to defendant convicted only of possession with intent to distribute under 21 U.S.C. 841 but not convicted of any statute referenced to § 2D1.2 based on underlying facts indicating defendant involved a juvenile in drug sales); *United States* v. *Oppedahl*, 998 F.2d 584 (8th Cir. 1993) (applying § 2D1.2 to defendant convicted of conspiracy to distribute and possess with intent to distribute based on fact that defendant's relevant conduct involved distribution within 1,000 feet of a school); *United States* v. *Robles*, 814 F. Supp. 1249 (E.D. Pa), aff'd (unpub.), 8 F.3d 814 (3d Cir. 1993) (looking to relevant conduct to determine appropriate guideline).

In promulgating this amendment, the Commission also was aware of case law that raises a similar issue regarding selection of a Chapter Two (Offense Conduct) guideline, different from that referenced in the Statutory Index (Appendix A), based on factors other than the conduct charged in the offense of conviction. *See United States* v. *Smith*, 186 F.3d 290 (3d Cir. 1999) (determining that § 2F1.1 (Fraud and Deceit) was most appropriate guideline rather than the listed guideline of § 2S1.1 (Laundering of Monetary Instruments)); *United States* v. *Brunson*, 882 F. 2d 151, 157 (5th Cir. 1989) ("It is not completely clear to us under what circumstances the Commission contemplated deviation from the suggested guidelines for an 'atypical' case.").

The amendment modifies §§ 1B1.1(a), 1B1.2(a), and the Statutory Index's introductory commentary to clarify the inter-relationship among these provisions. The clarification is intended to emphasize that the sentencing court must apply the offense guideline referenced in the Statutory Index for the statute of conviction unless the case falls within the limited "stipulation" exception set forth in § 1B1.2(a). Therefore, in order for the enhanced

penalties in § 2D1.2 to apply, the defendant must be convicted of an offense referenced to § 2D1.2, rather than simply have engaged in conduct described by that guideline. Furthermore, the amendment deletes Application Note 3 of § 1B1.2 (Applicable Guidelines), which provided that in many instances it would be appropriate for the court to consider the actual conduct of the offender, even if such conduct did not constitute an element of the offense. This application note describes a consideration that is more appropriate when applying § 1B1.3 (Relevant Conduct), and its current placement in § 1B1.2 apparently has caused confusion in applying that guideline's principles to determine the offense conduct guideline in Chapter Two most appropriate for the offense of conviction. In particular, the note has been used by some courts to permit a court to decline to use the offense guideline referenced in the Statutory Index in cases that were allegedly "atypical" or "outside the heartland." *See United States* v. *Smith*, supra.

Due to the absence of sufficient data, the Commission decided to defer to another amendment cycle the question of whether to delete § 2D1.2 and add an enhancement to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) for either (1) the real offense conduct of selling drugs in protected locations or involving protected individuals; or (2) a conviction for such conduct.

2. *Amendment:* Section 2A3.1(b) is amended by adding at the end the following:

"(6) If, to persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct, or if, to facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, the offense involved (A) the knowing misrepresentation of a participant's identity; or (B) the use of a computer or an Internet-access device, increase by 2 levels.".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 1 by inserting after "For purposes of this guideline—" the following:

'Minor' means an individual who had not attained the age of 18 years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 1 by inserting after "the base offense level under subsection (a)." the following paragraph:

"Prohibited sexual conduct" (A) means any sexual activity for which a person can be charged with a criminal offense; (B) includes the production of child pornography; and (C) does not include trafficking in, or possession of, child pornography. 'Child pornography' has the meaning given that term in 18 U.S.C. 2256(8).".

The Commentary to § 2A3.1 captioned "Application Notes" is amended by redesignating Notes 4 through 6 as Notes 5 through 7, respectively; and by inserting after Note 3 the following:

"4. The enhancement in subsection (b)(6)(A) applies in cases involving the misrepresentation of a participant's identity to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(6)(A) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(6)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(6)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

Subsection (b)(6)(B) provides an enhancement if a computer or an Internet-access device was used to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(6)(B) is intended to apply only to the use of a computer or an Internet-access device to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the minor from an airline's Internet site.".

Chapter Two, Part A, Subpart 3 is amended by striking § 2A3.2 in its entirety and inserting the following:

"§ 2A3.2. Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts

(a) Base Offense Level:

(1) 18, if the offense involved a violation of chapter 117 of title 18, United States Code; or

(2) 15, otherwise.

(b) Specific Offense Characteristics:

(1) If the victim was in the custody, care, or supervisory control of the defendant, increase by 2 levels.

(2) If subsection (b)(1) does not apply; and—

(A) the offense involved the knowing misrepresentation of a participant's identity to (i) persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct; or (ii) facilitate transportation or travel, by the victim or a participant, to engage in prohibited sexual conduct; or

(B) a participant otherwise unduly influenced the victim to engage in prohibited sexual conduct,

increase by 2 levels.

(3) If a computer or an Internet-access device was used to (A) persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by the victim or a participant, to engage in prohibited sexual conduct, increase by 2 levels.

(4) If (A) subsection (a)(1) applies; and (B) none of subsections (b)(1) through (b)(3) applies, decrease by 3 levels.

(c) Cross Reference:

(1) If the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse (as defined in 18 U.S.C. 2241 or 2242), apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse). If the victim had not attained the age of 12 years, § 2A3.1 shall apply, regardless of the "consent" of the victim.

Commentary

*Statutory Provision:* 18 U.S.C. 2243(a). For additional statutory provision(s), see Appendix A (Statutory Index).

*Application Notes:*

1. For purposes of this guideline—

'Participant' has the meaning given that term in Application Note 1 of § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Victim' means (A) an individual who, except as provided in subdivision (B),

had not attained the age of 16 years; or (B) an undercover law enforcement officer who represented to a participant that the officer had not attained the age of 16 years.

2. If the defendant committed the criminal sexual act in furtherance of a commercial scheme such as pandering, transporting persons for the purpose of prostitution, or the production of pornography, an upward departure may be warranted. *See* Chapter Five, Part K (Departures).

3. Subsection (b)(1) is intended to have broad application and is to be applied whenever the victim is entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

4. If the enhancement in subsection (b)(1) applies, do not apply subsection (b)(2) or § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

5. The enhancement in subsection (b)(2)(A) applies in cases involving the misrepresentation of a participant's identity to (A) persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by the victim or a participant, to engage in prohibited sexual conduct. Subsection (b)(2)(A) is intended to apply only to misrepresentations made directly to the victim or to a person who exercises custody, care, or supervisory control of the victim. Accordingly, the enhancement in subsection (b)(2)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the victim.

The misrepresentation to which the enhancement in subsection (b)(2)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to (A) persuade, induce, entice, or coerce the victim to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by the victim or a participant, to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

In determining whether subsection (b)(2)(B) applies, the court should closely consider the facts of the case to determine whether a participant's influence over the victim compromised the voluntariness of the victim's behavior.

In a case in which a participant is at least 10 years older than the victim, there shall be a rebuttable presumption, for purposes of subsection (b)(2)(B), that such participant unduly influenced the victim to engage in prohibited sexual conduct. In such a case, some degree of undue influence can be presumed because of the substantial difference in age between the participant and the victim.

If the victim was threatened or placed in fear, the cross reference in subsection (c)(1) will apply.

6. Subsection (b)(3) provides an enhancement if a computer or an Internet-access device was used to (A) persuade, induce, entice, coerce the victim to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by the victim or a participant, to engage in prohibited sexual conduct. Subsection (b)(3) is intended to apply only to the use of a computer or an Internet-access device to communicate directly with the victim or with a person who exercises custody, care, or supervisory control of the victim. Accordingly, the enhancement would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the victim from an airline's Internet site.

7. Subsection (c)(1) provides a cross reference to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) if the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse, as defined in 18 U.S.C. 2241 or 2242. For example, the cross reference to 2A3.1 shall apply if (A) the victim had not attained the age of 12 years (*see* 18 U.S.C. 2241(c)); (B) the victim had attained the age of 12 years but not attained the age of 16 years, and was placed in fear of death, serious bodily injury, or kidnaping (*see* 18 U.S.C. 2241(a),(c)); or (C) the victim was threatened or placed in fear other than fear of death, serious bodily injury, or kidnaping (*see* 18 U.S.C. 2242(1)).

8. If the defendant's criminal history includes a prior sentence for conduct that is similar to the instant offense, an upward departure may be warranted.

*Background:* This section applies to offenses involving the criminal sexual abuse of an individual who had not attained the age of 16 years. While this section applies to consensual sexual acts prosecuted under 18 U.S.C. 2243(a) that would be lawful but for the age of the victim, it also applies to cases, prosecuted under 18 U.S.C. 2243(a) or chapter 117 of title 18, United States Code, in which a participant took active measure(s) to unduly influence the victim to engage in prohibited sexual conduct and, thus, the voluntariness of the victim's behavior was compromised. A two-level enhancement is provided in subsection (b)(2) for such cases. It is assumed that at least a four-year age difference exists between the victim and the defendant, as specified in 18 U.S.C. 2243(a). A two-level enhancement is provided in subsection (b)(1) for a defendant who victimizes a minor under his supervision or care. However, if the victim had not attained the age of 12 years, § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) will apply, regardless of the "consent" of the victim.".

Section 2A3.3 is amended by inserting after subsection (a) the following:

"(b) Specific Offense Characteristics

(1) If the offense involved the knowing misrepresentation of a participant's identity to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, increase by 2 levels.

(2) If a computer or an Internet-access device was used to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, increase by 2 levels.".

The Commentary to § 2A3.3 captioned "Application Notes" is amended by striking Note 1 in its entirety and inserting the following:

"1. For purposes of this guideline—

'Minor' means an individual who had not attained the age of 18 years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Ward' means a person in official detention under the custodial, supervisory, or disciplinary authority of the defendant.";

by redesignating Note 2 as Note 4; and by inserting after Note 1 the following:

"2. The enhancement in subsection (b)(1) applies in cases involving the misrepresentation of a participant's identity to (A) persuade, induce, entice,

or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(1) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(1) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(1) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

3. Subsection (b)(2) provides an enhancement if a computer or an Internet-access device was used to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(2) is intended to apply only to the use of a computer or an Internet-access device to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the minor from an airline's Internet site.".

Section 2A3.4(b) is amended by adding at the end the following:

"(4) If the offense involved the knowing misrepresentation of a participant's identity to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, increase by 2 levels.

(5) If a computer or an Internet-access device was used to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct, increase by 2 levels.".

Section 2A3.4(c)(2) is amended by inserting "Under the Age of Sixteen Years" before "(Statutory Rape)".

The Commentary to § 2A3.4 captioned "Application Notes" is amended by redesignating Note 5 as Note 8; by redesignating Notes 1 through 4 as Notes 2 through 5, respectively; by inserting before redesignated Note 2 (formerly Note 1) the following:

"1. For purposes of this guideline—

'Minor' means an individual who had not attained the age of 18 years.

'Participant' has the meaning given that term in Application Note 1 of the Commentary to § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).";

and by adding after redesignated Note 5 (formerly Note 4), the following:

"6. The enhancement in subsection (b)(4) applies in cases involving the misrepresentation of a participant's identity to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(4) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(4) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(4) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

7. Subsection (b)(5) provides an enhancement if a computer or an Internet-access device was used to (A) persuade, induce, entice, or coerce a minor to engage in prohibited sexual conduct; or (B) facilitate transportation or travel, by a minor or a participant, to engage in prohibited sexual conduct. Subsection (b)(5) is intended to apply only to the use of a computer or an Internet-access device to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the minor from an airline's Internet site.".

Chapter Two, Part G, Subpart One is amended by striking the text of the title to Subpart One in its entirety and inserting the following:

"PROMOTING PROSTITUTION OR PROHIBITED SEXUAL CONDUCT";

and by striking § 2G1.1 in its entirety and inserting the following:

"§ 2G1.1. Promoting Prostitution or Prohibited Sexual Conduct

(a) Base Offense Level:

(1) 19, if the offense involved a minor; or

(2) 14, otherwise.

(b) Specific Offense Characteristics:

(1) If the offense involved (A) prostitution; and (B) the use of physical force, or coercion by threats or drugs or in any manner, increase by 4 levels.

(2) If the offense involved a victim who had (A) not attained the age of 12 years, increase by 4 levels; or (B) attained the age of 12 years but not attained the age of 16 years, increase by 2 levels.

(3) If subsection (b)(2) applies; and—

(A) the defendant was a parent, relative, or legal guardian of the victim; or

(B) the victim was otherwise in the custody, care, or supervisory control of the defendant,

increase by 2 levels.

(4) If subsection (b)(3) does not apply; and—

(A) the offense involved the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution; or

(B) a participant otherwise unduly influenced a minor to engage in prostitution,

increase by 2 levels.

(5) If a computer or an Internet-access device was used to (A) persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution; or (B) entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with a minor, increase by 2 levels.

(c) Cross References:

(1) If the offense involved causing, transporting, permitting, or offering or seeking by notice or advertisement, a person less than 18 years of age to engage in sexually explicit conduct for

the purpose of producing a visual depiction of such conduct, apply § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production).

(2) If the offense involved criminal sexual abuse, attempted criminal sexual abuse, or assault with intent to commit criminal sexual abuse, apply § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse). If the offense involved criminal sexual abuse of a minor who had not attained the age of 12 years, § 2A3.1 shall apply, regardless of the 'consent' of the victim.

(3) If the offense did not involve promoting prostitution, and neither subsection (c)(1) nor (c)(2) is applicable, apply § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact), as appropriate.

(d) Special Instruction:

(1) If the offense involved more than one victim, Chapter Three, Part D (Multiple Counts) shall be applied as if the promoting of prostitution or prohibited sexual conduct in respect to each victim had been contained in a separate count of conviction.

Commentary

*Statutory Provisions:* 8 U.S.C. 1328; 18 U.S.C. 2421, 2422, 2423(a), 2425.

*Application Notes:*

1. For purposes of this guideline—

'Minor' means an individual who had not attained the age of 18 years.

'Participant' has the meaning given that term in Application Note 1 of § 3B1.1 (Aggravating Role).

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Promoting prostitution' means persuading, inducing, enticing, or coercing a person to engage in prostitution, or to travel to engage in, prostitution.

'Victim' means a person transported, persuaded, induced, enticed, or coerced to engage in, or travel for the purpose of engaging in, prostitution or prohibited sexual conduct, whether or not the person consented to the prostitution or prohibited sexual conduct. Accordingly, 'victim' may include an undercover law enforcement officer.

2. Subsection (b)(1) provides an enhancement for physical force, or coercion, that occurs as part of a prostitution offense and anticipates no bodily injury. If bodily injury results, an upward departure may be warranted. *See* Chapter Five, Part K (Departures). For purposes of subsection (b)(1), 'coercion' includes any form of conduct that negates the voluntariness of the behavior of the victim. This enhancement would apply, for example, in a case in which the ability of the victim to appraise or control conduct was substantially impaired by drugs or alcohol. In the case of an adult victim, rather than a victim less than 18 years of age, this characteristic generally will not apply if the drug or alcohol was voluntarily taken.

3. For the purposes of § 3B1.1 (Aggravating Role), a victim, as defined in this guideline, is considered a participant only if that victim assisted in the promoting of prostitution or prohibited sexual conduct in respect to another victim.

4. For the purposes of Chapter Three, Part D (Multiple Counts), each person transported, persuaded, induced, enticed, or coerced to engage in, or travel to engage in, prostitution or prohibited sexual conduct is to be treated as a separate victim. Consequently, multiple counts involving more than one victim are not to be grouped together under § 3D1.2 (Groups of Closely-Related Counts). In addition, subsection (d)(1) directs that if the relevant conduct of an offense of conviction includes the promoting of prostitution or prohibited sexual conduct in respect to more than one victim, whether specifically cited in the count of conviction, each such victim shall be treated as if contained in a separate count of conviction.

5. Subsection (b)(3) is intended to have broad application and includes offenses involving a victim less than 18 years of age entrusted to the defendant, whether temporarily or permanently. For example, teachers, day care providers, baby-sitters, or other temporary caretakers are among those who would be subject to this enhancement. In determining whether to apply this enhancement, the court should look to the actual relationship that existed between the defendant and the victim and not simply to the legal status of the defendant-victim relationship.

6. If the enhancement in subsection (b)(3) applies, do not apply subsection (b)(4) or § 3B1.3 (Abuse of Position of Trust or Use of Special Skill).

7. The enhancement in subsection (b)(4)(A) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution. Subsection (b)(4)(A) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(4)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(4)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution.

Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

In determining whether subsection (b)(4)(B) applies, the court should closely consider the facts of the case to determine whether a participant's influence over the minor compromised the voluntariness of the minor's behavior.

In a case in which a participant is at least 10 years older than the minor, there shall be a rebuttable presumption, for purposes of subsection (b)(4)(B), that such participant unduly influenced the minor to engage in prostitution. In such a case, some degree of undue influence can be presumed because of the substantial difference in age between the participant and the minor.

8. Subsection (b)(5) provides an enhancement if a computer or an Internet-access device was used to (A) persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in prostitution; or (B) entice, encourage, offer, or solicit a person to engage in prohibited sexual conduct with a minor. Subsection (b)(5)(A) is intended to apply only to the use of a computer or an Internet-access device to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(5)(A) would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the minor from an airline's Internet site.

9. The cross reference in subsection (c)(1) is to be construed broadly to include all instances in which the offense involved employing, using, persuading, inducing, enticing, coercing, transporting, permitting, or offering or seeking by notice or advertisement, a person less than 18 years of age to engage in sexually explicit conduct for the purpose of

producing any visual depiction of such conduct. For purposes of subsection (c)(1), "sexually explicit conduct" has the meaning given that term in 18 U.S.C. 2256.

10. Subsection (c)(2) provides a cross reference to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) if the offense involved criminal sexual abuse or attempt to commit criminal sexual abuse, as defined in 18 U.S.C. 2241 or 2242. For example, the cross reference to § 2A3.1 shall apply if the offense involved criminal sexual abuse; and (A) the victim had not attained the age of 12 years (*see* 18 U.S.C. 2241(c)); (B) the victim had attained the age of 12 years but had not attained the age of 16 years, and was placed in fear of death, serious bodily injury, or kidnaping (*see* 18 U.S.C. 2241(a),(c)); or (C) the victim was threatened or placed in fear other than fear of death, serious bodily injury, or kidnaping (*see* 18 U.S.C. 2242(1)).

11. The cross reference in subsection (c)(3) addresses the case in which the offense did not involve promoting prostitution, neither subsection (c)(1) nor (c)(2) is applicable, and the offense involved prohibited sexual conduct other than the conduct covered by subsection (c)(1) or (c)(2). In such case, the guideline for the underlying prohibited sexual conduct is to be used; *i.e.*, § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact).

*Background:* This guideline covers offenses under chapter 117 of title 18, United States Code. Those offenses involve promoting prostitution or prohibited sexual conduct through a variety of means. Offenses that involve promoting prostitution under chapter 117 of such title are sentenced under this guideline, unless other prohibited sexual conduct occurs as part of the prostitution offense, in which case one of the cross references would apply. Offenses under chapter 117 of such title that do not involve promoting prostitution are to be sentenced under § 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material; Custodian Permitting Minor to Engage in Sexually Explicit Conduct; Advertisement for Minors to Engage in Production), § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse), § 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts) or § 2A3.4 (Abusive Sexual Contact or Attempt to Commit Abusive Sexual Contact), as appropriate, pursuant to the cross references provided in subsection (c).".

Section 2G2.1(b) is amended by striking subdivision (3) in its entirety and inserting the following:

"(3) If, for the purpose of producing sexually explicit material, the offense involved (A) the knowing misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage sexually explicit conduct; or (B) the use of a computer or an Internet-access device to (i) persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct, or to otherwise solicit participation by a minor in such conduct; or (ii) solicit participation with a minor in sexually explicit conduct, increase by 2 levels.".

The Commentary to § 2G2.1 captioned "Application Notes" is amended by redesignating Notes 1 through 3 as Notes 2 through 4, respectively; by inserting before redesignated Note 2 (formerly Note 1) the following:

"1. For purposes of this guideline, "minor" means an individual who had not attained the age of 18 years.";

and by adding at the end the following:

"5. The enhancement in subsection (b)(3)(A) applies in cases involving the misrepresentation of a participant's identity to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material. Subsection (b)(3)(A) is intended to apply only to misrepresentations made directly to a minor or to a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement in subsection (b)(3)(A) would not apply to a misrepresentation made by a participant to an airline representative in the course of making travel arrangements for the minor.

The misrepresentation to which the enhancement in subsection (b)(3)(A) may apply includes misrepresentation of a participant's name, age, occupation, gender, or status, as long as the misrepresentation was made with the intent to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material. Accordingly, use of a computer screen name, without such intent, would not be a sufficient basis for application of the enhancement.

Subsection (b)(3)(B)(i) provides an enhancement if a computer or an Internet-access device was used to persuade, induce, entice, coerce, or facilitate the travel of, a minor to engage in sexually explicit conduct for the purpose of producing sexually explicit material or otherwise to solicit participation by a minor in such conduct for such purpose. Subsection (b)(3)(B)(i) is intended to apply only to the use of a computer or an Internet-access device to communicate directly with a minor or with a person who exercises custody, care, or supervisory control of the minor. Accordingly, the enhancement would not apply to the use of a computer or an Internet-access device to obtain airline tickets for the minor from an airline's Internet site.".

Section 2G2.2(b) is amended by striking subdivision (2) in its entirety and inserting the following:

"(2) (Apply the Greatest) If the offense involved:

(A) Distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the retail value of the material, but by not less than 5 levels.

(B) Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by 5 levels.

(C) Distribution to a minor, increase by 5 levels.

(D) Distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, increase by 7 levels.

(E) Distribution other than distribution described in subdivisions (A) through

(D), increase by 2 levels.".

The Commentary to § 2G2.2 captioned "Application Notes" is amended by striking Note 1 in its entirety and inserting the following:

"1. For purposes of this guideline—

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of material involving the sexual exploitation of a minor.

'Distribution for pecuniary gain' means distribution for profit.

'Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. 'Thing of value' means anything of valuable consideration. For example, in a case involving the bartering of child pornographic material, the 'thing of value' is the child pornographic material received in exchange for other child pornographic material bartered in consideration for the material received.

'Distribution to a minor' means the knowing distribution to an individual who is a minor at the time of the offense, knowing or believing the individual is a minor at that time.

'Minor' means an individual who had not attained the age of 18 years.

'Pattern of activity involving the sexual abuse or exploitation of a minor' means any combination of two or more separate instances of the sexual abuse or sexual exploitation of a minor by the defendant, whether or not the abuse or exploitation (A) occurred during the course of the offense; (B) involved the same or different victims; or (C) resulted in a conviction for such conduct.

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).

'Sexual abuse or exploitation' means conduct constituting criminal sexual abuse of a minor, sexual exploitation of a minor, abusive sexual contact of a minor, any similar offense under state law, or an attempt or conspiracy to commit any of the above offenses. "Sexual abuse or exploitation" does not include trafficking in material relating to the sexual abuse or exploitation of a minor.

'Sexually explicit conduct' has the meaning given that term in 18 U.S.C. § 2256.".

The Commentary to § 2G2.4 is amended by adding at the end the following:

"Application Notes:

1. For purposes of this guideline—

'Minor' means an individual who had not attained the age of 18 years.

'Visual depiction' means any visual depiction described in 18 U.S.C. 2256(5) and (8).

2. For purposes of subsection (b)(2), a file that (A) contains a visual depiction; and (B) is stored on a magnetic, optical, digital, other electronic, or other storage medium or device, shall be considered to be one item.

If the offense involved a large number of visual depictions, an upward departure may be warranted, regardless of whether subsection (b)(2) applies.".

Section 2G3.1 is amended in the title by adding at the end "; Transferring Obscene Matter to a Minor".

Section 2G3.1(b) is amended by striking subdivision (1) in its entirety and inserting the following:

"(1) (Apply the Greatest) If the offense involved:

(A) Distribution for pecuniary gain, increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to the retail value of the material, but by not less than 5 levels.

(B) Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain, increase by 5 levels.

(C) Distribution to a minor, increase by 5 levels.

(D) Distribution to a minor that was intended to persuade, induce, entice, coerce, or facilitate the travel of, the minor to engage in prohibited sexual conduct, increase by 7 levels.

(E) Distribution other than distribution described in subdivisions (A) through (D), increase by 2 levels.".

The Commentary to § 2G3.1 captioned "Statutory Provisions" is amended by inserting "1470" after "1466".

The Commentary to § 2G3.1 captioned "Application Note" is amended by striking Note 1 in its entirety and inserting the following:

"1. For purposes of this guideline—

'Distribution' means any act, including production, transportation, and possession with intent to distribute, related to the transfer of obscene matter.

'Distribution for pecuniary gain' means distribution for profit.

'Distribution for the receipt, or expectation of receipt, of a thing of value, but not for pecuniary gain' means any transaction, including bartering or other in-kind transaction, that is conducted for a thing of value, but not for profit. 'Thing of value' means anything of valuable consideration.

'Distribution to a minor' means the knowing distribution to an individual who is a minor at the time of the offense, knowing or believing the individual is a minor at that time.

'Minor' means an individual who had not attained the age of 16 years.

'Prohibited sexual conduct' has the meaning given that term in Application Note 1 of the Commentary to § 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse).".

The Commentary to § 2G3.2 captioned "Background" is amended by inserting "Transferring Obscene Matter to a Minor" after "Transporting Obscene Matter".

Appendix A (Statutory Index) is amended by inserting after the line referenced to "18 U.S.C. 1468" the following new line:

"18 U.S.C. 1470 2G3.1"

and by inserting after the line referenced to "18 U.S.C. § 2423(b)" the following new line:

"18 U.S.C. 2425 2G1.1".

Reason for Amendment: This is a six-part amendment. The amendment is promulgated primarily in response to the Protection of Children from Sexual Predators Act of 1998, Pub. L. 105–314 (the "Act"), which contained several directives to the Commission.

First, the amendment addresses the Act's directives to provide enhancements to the guidelines covering aggravated sexual abuse, sexual abuse, and sexual abuse of a minor if (1) the defendant used a computer with the intent to persuade, induce, entice, coerce, or facilitate the transport of a minor to engage in any prohibited sexual activity; and (2) the defendant knowingly misrepresented the defendant's actual identity with the intent to persuade, induce, entice, coerce, or facilitate the transport of a minor to engage in any prohibited sexual conduct. The legislative history of the Act indicates congressional intent to ensure that persons who misrepresent themselves to a minor, or use computers or Internet-access devices to locate and gain access to a minor, are severely punished.

In response to these directives, the amendment provides separate, cumulative two-level enhancements in the sexual abuse guidelines, §§ 2A3.2 (Criminal Sexual Abuse of a Minor Under the Age of Sixteen Years (Statutory Rape) or Attempt to Commit Such Acts), 2A3.3 (Criminal Sexual Abuse of a Ward), and 2A3.4 (Abusive Sexual Contact), and in § 2G1.1 (Promoting Prostitution or Prohibited Sexual Conduct) for (1) the use of a computer or Internet-access device with the intent to persuade, induce, entice, coerce, or facilitate the transport of a minor to engage in any prohibited sexual conduct; and (2) misrepresentation of a criminally responsible person's identity with such an intent. The Commission has determined that, for offenses sentenced under these guidelines, the use of a computer or Internet-access device and the misrepresentation of identity represent separate, additional harms and increase the culpability of a defendant or criminal participant who engages, or attempts to engage, in such conduct. With respect to §§ 2A3.1 (Criminal Sexual Abuse; Attempt to Commit Criminal Sexual Abuse) and 2G2.1 (Sexually Exploiting a Minor by Production of Sexually Explicit Visual or Printed Material), the amendment treats these two types of aggravating conduct as alternative triggers for one enhancement. In these guidelines, the substantially higher base offense levels and other specific offense characteristics provide alternative guideline mechanisms to account, at least in part, for these harms and the defendant's increased culpability. Accordingly, the Commission determined that, in these guidelines, a single, two-level increase for the use of a computer or

misrepresentation adequately addresses the increased seriousness of these offenses.

Second, this amendment responds to the directive in the Act to provide a sentencing enhancement for offenses under chapter 117 of title 18, United States Code (relating to the transportation of minors for illegal sexual activity), while ensuring that the sentences, guidelines, and policy statements for offenders convicted of such offenses are appropriately severe and reasonably consistent with the other relevant directives and the relevant existing guidelines. In furtherance of this directive, the Commission initiated a comprehensive examination of §§ 2A3.2 and 2G1.1, the guidelines under which most cases prosecuted under such chapter are sentenced. The Commission intends to continue its comprehensive review of these guidelines and other guidelines that cover chapter 117 offenses in the next amendment cycle.

The amendment implements the directive to provide an enhancement for chapter 117 offenses, in part, through the enhancements provided in §§ 2A3.2 and 2G1.1 for misrepresentation of identity and use of a computer to facilitate such offenses. In addition, the amendment provides an alternative basis for a sentencing enhancement if a participant otherwise unduly influenced the victim to engage in prohibited sexual conduct. Despite the fact that § 2A3.2 nominally applies to consensual sexual acts with a person who had not attained the age of 16 years, Commission data indicated that many of the cases sentenced under § 2A3.2, directly or via a cross reference from § 2G1.1, involve some aspect of undue influence over the victim on the part of the defendant or other criminally responsible person. Analysis of these cases revealed conduct such as coercion, enticement, or other forms of undue influence by the defendant that compromised the voluntariness of the victim's behavior and, accordingly, increased the defendant's culpability for the crime. This prong of the new enhancement is designed to allow courts to consider closely the facts of the individual case. Furthermore, a rebuttable presumption is created that the offense involved undue influence if a participant was at least 10 years older than the victim. Data reviewed by the Commission suggested that such a presumption is appropriate because persons who are much older than a minor are frequently in a position to manipulate the minor due to increased knowledge, influence, and resources.

As a result of the Commission's comprehensive assessment of §§ 2A3.2 and 2G1.1, the amendment also makes several other modifications to these guidelines. The amendment provides, in § 2A3.2, an alternative base offense level of level 18 if the offense involved a violation of chapter 117 of title 18, United States Code. This alternative base offense level more fully implements a directive in the Sex Crimes Against Children Prevention Act of 1995, Pub. L. 104–71, to provide at least a three-level increase for offenses under 18 U.S.C. § 2423(a) involving the transportation of minors for prostitution or other prohibited sexual conduct. However, the amendment also provides for a three-level decrease if a defendant receives the higher alternative base offense level of level 18 and none of certain listed aggravating specific offense characteristics apply. This reduction recognizes that not all defendants convicted under chapter 117 have necessarily engaged in a more aggravated form of statutory rape conduct. The amendment also adds several definitions to § 2A3.2, including clarifying that "victim" includes an undercover police officer who represents to the perpetrator of the offense that the officer was under the age of 16 years. This change was made to ensure that offenders who are apprehended in an undercover operation are appropriately punished. In § 2G1.1, the amendment reallocates, without substantive change, five offense levels from subsection (b)(2) to the base offense level, for offenses involving a minor. Section 2G1.1(b)(1) also is amended to clarify that the offense must have involved prostitution in order for the enhancement for coercion, threats, or drugs to apply. The amendment also clarifies that, in §§ 2A3.2(c)(1) and 2G1.1(c)(2), the cross reference to § 2A3.1 shall apply if the offense involved criminal sexual abuse of a minor under the age of 12 years, regardless of the "consent" of the victim. Review of Commission data indicated that the cross reference to § 2A3.1 currently is not being applied in many cases in which the offense conduct suggests it should. In both §§ 2A3.2 and 2G1.1, the amendment also precludes application of the new enhancement for misrepresentation of identity and/or undue influence if the victim is in the custody, care, or supervisory control of the defendant.

Third, the amendment addresses the directive in the Act to clarify that the term "distribution of pornography" applies to the distribution of pornography for both monetary remuneration and a non-pecuniary interest. In response to the directive, the amendment modifies the enhancement in § 2G2.2 (Trafficking in Material Involving the Sexual Exploitation of a Minor), relating to the distribution of child pornographic material, as well as a similar enhancement in § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter; Transferring Obscene Matter to a Minor), relating to the distribution of obscene material. For each of these enhancements, the amendment (1) modifies the definition of "distribution" to mean any act, including production, transportation, and possession with intent to distribute, related to the transfer of the material, regardless of whether it was for pecuniary gain; and (2) provides for varying levels of enhancement depending upon the purpose and audience of the distribution. These varying levels are intended to respond to increased congressional concerns, as indicated in the legislative history of the Act, that pedophiles, including those who use the Internet, are using child pornographic and obscene material to desensitize children to sexual activity, to convince children that sexual activity involving children is normal, and to entice children to engage in sexual activity.

Fourth, the amendment clarifies the meaning of the term "item" in subsection (b)(2) of § 2G2.4 (Possession of Materials Depicting a Minor Engaged in Sexually Explicit Conduct). That subsection provides a two-level enhancement if the offense involved possession of ten or more items of child pornography. The amendment adopts the holding of all circuits that have addressed the matter that a computer file qualifies as an item for purposes of the enhancement. The amendment also provides for an invited upward departure if the offense involves a large number of visual depictions of child pornography, regardless of the number of "items" involved. This provision invites courts to depart upward in cases in which a particular item, such as a book or a computer file, contains an unusually large number of pornographic images involving children.

Fifth, the amendment addresses the new offense of transferring obscene matter to a minor, codified at 18 U.S.C. 1470, by referencing the offense in the Statutory Index (Appendix A) to § 2G3.1.

Sixth, the amendment addresses the new offense of prohibiting the knowing transmittal of identifying information about minors for criminal sexual purposes, codified at 18 U.S.C. 2425, by

referencing the new offense in the Statutory Index to § 2G1.1.

Because of the limited time available in this amendment cycle, the Commission was not able fully to respond to all of the directives of the Act. In the next amendment cycle, the Commission intends to continue consideration of the directive requiring that the Commission "provide for an appropriate enhancement in any case in which the defendant engaged in a pattern of activity of sexual abuse and exploitation of a minor." In addition, the Commission intends to consider further the general directive in the Act requiring the Commission to ensure "that the sentences, guidelines, and policy statements for offenders convicted of such offenses are appropriately severe and reasonably consistent with the other relevant directives and the relevant existing guidelines." Implementation of this directive may include, for example, an examination of the appropriate offense level for defendants convicted of sexual abuse offenses that are not committed in violation of chapter 117 of title 18, United States Code (*e.g.*, offenses committed on Native American lands).

3. *Amendment:* Section 2B5.3, effective May 1, 2000 (*see* USSC *Guidelines Manual* Supplement to 1998 Supplement to Appendix C, Amendment 590), is repromulgated, with minor editorial changes, as follows:

"§ 2B5.3. Criminal Infringement of Copyright or Trademark

(a) Base Offense Level: 8.

(b) Specific Offense Characteristics:

(1) If the infringement amount exceeded $2,000, increase by the number of levels from the table in § 2F1.1 (Fraud and Deceit) corresponding to that amount.

(2) If the offense involved the manufacture, importation, or uploading of infringing items, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.

(3) If the offense was not committed for commercial advantage or private financial gain, decrease by 2 levels, but the resulting offense level shall be not less than level 8.

(4) If the offense involved (A) the conscious or reckless risk of serious bodily injury; or (B) possession of a dangerous weapon (including a firearm) in connection with the offense, increase by 2 levels. If the resulting offense level is less than level 13, increase to level 13.

Commentary

*Statutory Provisions:* 17 U.S.C. 506(a); 18 U.S.C. 2318–2320, 2511. For additional statutory provision(s), *see* Appendix A (Statutory Index).

*Application Notes:*

1. Definitions.—For purposes of this guideline:

'Commercial advantage or private financial gain' means the receipt, or expectation of receipt, of anything of value, including other protected works.

'Infringed item' means the copyrighted or trademarked item with respect to which the crime against intellectual property was committed.

'Infringing item' means the item that violates the copyright or trademark laws.

'Uploading' means making an infringing item available on the Internet or a similar electronic bulletin board with the intent to enable other persons to download or otherwise copy, or have access to, the infringing item.

2. Determination of Infringement Amount.—This note applies to the determination of the infringement amount for purposes of subsection (b)(1).

(A) Use of Retail Value of Infringed Item.—The infringement amount is the retail value of the infringed item, multiplied by the number of infringing items, in a case involving any of the following:

(i) The infringing item (I) is, or appears to a reasonably informed purchaser to be, identical or substantially equivalent to the infringed item; or (II) is a digital or electronic reproduction of the infringed item.

(ii) The retail price of the infringing item is not less than 75% of the retail price of the infringed item.

(iii) The retail value of the infringing item is difficult or impossible to determine without unduly complicating or prolonging the sentencing proceeding.

(iv) The offense involves the illegal interception of a satellite cable transmission in violation of 18 U.S.C. 2511. (In a case involving such an offense, the 'retail value of the infringed item' is the price the user of the transmission would have paid to lawfully receive that transmission, and the 'infringed item' is the satellite transmission rather than the intercepting device.)

(v) The retail value of the infringed item provides a more accurate assessment of the pecuniary harm to the copyright or trademark owner than does the retail value of the infringing item.

(B) Use of Retail Value of Infringing Item.—The infringement amount is the retail value of the infringing item, multiplied by the number of infringing items, in any case not covered by subdivision (A) of this Application Note, including a case involving the unlawful recording of a musical performance in violation of 18 U.S.C. 2319A.

(C) Retail Value Defined.—For purposes of this Application Note, the 'retail value' of an infringed item or an infringing item is the retail price of that item in the market in which it is sold.

(D) Determination of Infringement Amount in Cases Involving a Variety of Infringing Items.—In a case involving a variety of infringing items, the infringement amount is the sum of all calculations made for those items under subdivisions (A) and (B) of this Application Note. For example, if the defendant sold both counterfeit videotapes that are identical in quality to the infringed videotapes and obviously inferior counterfeit handbags, the infringement amount, for purposes of subsection (b)(1), is the sum of the infringement amount calculated with respect to the counterfeit videotapes under subdivision (A)(i) (*i.e.*, the quantity of the infringing videotapes multiplied by the retail value of the infringed videotapes) and the infringement amount calculated with respect to the counterfeit handbags under subdivision (B) (*i.e.*, the quantity of the infringing handbags multiplied by the retail value of the infringing handbags).

3. Uploading.—With respect to uploading, subsection (b)(2) applies only to uploading with the intent to enable other persons to download or otherwise copy, or have access to, the infringing item. For example, this subsection applies in the case of illegally uploading copyrighted software to an Internet site, but it does not apply in the case of downloading or installing that software on a hard drive on the defendant's personal computer.

4. Application of § 3B1.3.—If the defendant de-encrypted or otherwise circumvented a technological security measure to gain initial access to an infringed item, an adjustment under § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) shall apply.

5. Upward Departure Considerations.—If the offense level determined under this guideline substantially understates the seriousness of the offense, an upward departure may be warranted. The following is a non-exhaustive list of factors that the court may consider in determining whether an upward departure may be warranted:

(A) The offense involved substantial harm to the reputation of the copyright or trademark owner.

(B) The offense was committed in connection with, or in furtherance of,

the criminal activities of a national, or international, organized criminal enterprise.

*Background:* This guideline treats copyright and trademark violations much like theft and fraud. Similar to the sentences for theft and fraud offenses, the sentences for defendants convicted of intellectual property offenses should reflect the nature and magnitude of the pecuniary harm caused by their crimes. Accordingly, similar to the loss enhancement in the theft and fraud guidelines, the infringement amount in subsection (b)(1) serves as a principal factor in determining the offense level for intellectual property offenses.

Subsection (b)(1) implements section 2(g) of the No Electronic Theft (NET) Act of 1997, Pub. L. 105–147, by using the retail value of the infringed item, multiplied by the number of infringing items, to determine the pecuniary harm for cases in which use of the retail value of the infringed item is a reasonable estimate of that harm. For cases referred to in Application Note 2(B), the Commission determined that use of the retail value of the infringed item would overstate the pecuniary harm or otherwise be inappropriate. In these types of cases, use of the retail value of the infringing item, multiplied by the number of those items, is a more reasonable estimate of the resulting pecuniary harm.

Section 2511 of title 18, United States Code, as amended by the Electronic Communications Act of 1986, prohibits the interception of satellite transmission for purposes of direct or indirect commercial advantage or private financial gain. Such violations are similar to copyright offenses and are therefore covered by this guideline.".

*Reason for Amendment:* This amendment is in response to section 2(g) of the No Electronic Theft (NET) Act of 1997, Pub. L. 105–147 ("the Act"). The Act directs the Commission to ensure that the applicable guideline range for intellectual property offenses (including offenses set forth at section 506(a) of title 17, United States Code, and sections 2319, 2319A, and 2320 of title 18, United States Code) is "sufficiently stringent to deter such a crime." It also more specifically requires that the guidelines "provide for consideration of the retail value and quantity of the items with respect to which the intellectual property offense was committed."

The amendment responds to the directives by making changes to the monetary calculation found in § 2B5.3 (Criminal Infringement of Copyright or Trademark). In addition, the amendment makes a number of other modifications to the infringement guideline, including the addition of several mitigating and aggravating factors, as further means of providing just and proportionate punishment while also seeking to achieve sufficient deterrence.

The monetary calculation in § 2B5.3(b)(1), similar to the loss enhancement in the theft and fraud guidelines, serves as an approximation of the pecuniary harm caused by the offense and is a principal factor in determining the offense level for intellectual property offenses. Prior to this amendment, the monetary calculation for all intellectual property crimes was based on the retail value of the infringing item multiplied by the quantity of infringing items. In response to the directive, the Commission refashioned this enhancement so as to use the retail value of the infringed item, multiplied by the number of infringing items, as a means of approximating the pecuniary harm for cases in which that calculation is believed most likely to provide a reasonable estimate of the resulting harm. Use of that calculation is believed to provide a reasonable approximation for those classes of infringement cases in which it is highly likely that the sale of an infringing item results in a displaced sale of the legitimate, infringed item. The amendment also requires that the retail value of the infringed item, multiplied by the number of infringing items, be used in certain other cases for reasons of practicality.

However, based upon a review of cases sentenced under the former § 2B5.3 over two years, the Commission further determined that using the above formula likely would overstate substantially the pecuniary harm caused to copyright and trademark owners in some cases currently sentenced under the guideline. For those cases, a one-to-one correlation between the sale of infringing items and the displaced sale of legitimate, infringed items is unlikely because the inferior quality of the infringing item and/or the greatly discounted price at which it is sold suggests that many purchasers of infringing items would not, or could not, have purchased the infringed item in the absence of the availability of the infringing item. The Commission therefore determined that, for these latter classes of cases (referred to in Application Note 2(B)), the retail value of the infringing item, multiplied by the number of those items, provides a more reasonable approximation of lost revenues to the copyright or trademark owner, and hence, of the pecuniary harm resulting from the offense.

This amendment also increases the base offense level from level 6 to level 8. The two-level increase in the base offense level brings the infringement guideline more in line with offense levels that would pertain under § 2F1.1 (Fraud and Deceit), assuming applicability under that guideline of the two-level enhancement for more than minimal planning. Based on a review of cases sentenced under the infringement guideline, if a more than minimal planning enhancement did exist in that guideline, it would apply in the vast majority of such cases because they involve this kind of aggravating conduct. Rather than provide a separate enhancement within the revised guideline for "more than minimal planning" conduct, the Commission determined that the infringement guideline should incorporate this type of conduct into the base offense level.

This amendment also provides an enhancement of two levels, and a minimum offense level of level 12, if the offense involved the manufacture, importation, or uploading of infringing items. The Commission determined that defendants who engage in such conduct are more culpable than other intellectual property offenders because they place infringing items into the stream of commerce, thereby enabling others to infringe the copyright or trademark. A review of cases sentenced under the guideline indicated applicability of this enhancement to approximately two-thirds of the cases.

This amendment also provides a two-level downward adjustment (but to a resulting offense level that is not less than offense level 8) if the offense was not committed for commercial advantage or private financial gain. This adjustment reflects the fact that the Act establishes lower statutory penalties for offenses that were not committed for commercial advantage or private financial gain.

This amendment also provides an enhancement of two levels, and a minimum offense level of level 13, if the offense involved the conscious or reckless risk of serious bodily injury or possession of a dangerous weapon in connection with the offense. Testimony received by the Commission indicated that the conscious or reckless risk of serious bodily injury may occur in some cases involving counterfeit consumer products. The Commission determined that this kind of aggravating conduct in connection with infringement cases should be treated under the guidelines in the same way it is treated in connection with fraud cases; therefore,

this enhancement is consistent with an identical provision in the fraud guideline.

The amendment also contains an application note expressly providing that the adjustment in § 3B1.3 (Abuse of Position of Trust or Use of Special Skill) shall apply if the defendant de-encrypted or otherwise circumvented a technological security measure to gain initial access to an infringed item. As stated in the background commentary to § 3B1.3, persons who use such a special skill to facilitate or commit a crime generally are viewed as more culpable.

Finally, this amendment contains two encouraged upward departure provisions. The Commission received public comment that indicated that infringement may cause substantial harm to the reputation of the copyright or trademark owner that is not accounted for in the monetary calculation. Public comment also indicated that some copyright and trademark offenses are committed in connection with, or in furtherance of, the criminal activities of certain organized crime enterprises. The amendment invites the court to consider an appropriate upward departure if either of these aggravating circumstances are present.

Pursuant to the emergency amendment authority of the Act, this amendment previously was promulgated as a temporary measure effective May 1, 2000. (*See* USSC *Guidelines Manual* Supplement to the 1998 Supplement to Appendix C, Amendment 590).

4. *Amendment:* Section 2D1.1(c)(1) is amended by striking "3 KG or more" before "of Methamphetamine (actual)" and inserting "1.5 KG or more"; and by striking "3 KG or more" before "of 'Ice' " and inserting "1.5 KG or more".

Section 2D1.1(c)(2) is amended by striking "at least 1 KG but less than 3 KG" before "of Methamphetamine (actual)" and inserting "at least 500 G but less than 1.5 KG"; and by striking "at least 1 KG but less than 3 KG" before "of 'Ice' " and inserting "at least 500 G but less than 1.5 KG".

Section 2D1.1(c)(3) is amended by striking "at least 300 G but less than 1 KG" before "of Methamphetamine (actual)" and inserting "at least 150 G but less than 500 G"; and by striking "at least 300 G but less than 1 KG" before "of 'Ice' " and inserting "at least 150 G but less than 500 G".

Section 2D1.1(c)(4) is amended by striking "at least 100 G but less than 300 G" before "of Methamphetamine (actual)" and inserting "at least 50 G but less than 150 G"; and by striking "at least 100 G but less than 300 G" before "of 'Ice' " and inserting "at least 50 G but less than 150 G".

Section 2D1.1(c)(5) is amended by striking "at least 70 G but less than 100 G" before "of Methamphetamine (actual)" and inserting "at least 35 G but less than 50 G"; and by striking "at least 70 G but less than 100 G" before "of "Ice' " and inserting "at least 35 G but less than 50 G".

Section 2D1.1(c)(6) is amended by striking "at least 40 G but less than 70 G" before "of Methamphetamine (actual)" and inserting "at least 20 G but less than 35 G"; and by striking "at least 40 G but less than 70 G" before "of 'Ice' " and inserting "at least 20 G but less than 35 G".

Section 2D1.1(c)(7) is amended by striking "at least 10 G but less than 40 G" before "of Methamphetamine (actual)" and inserting "at least 5 G but less than 20 G"; and by striking "at least 10 G but less than 40 G" before "of 'Ice' " and inserting "at least 5 G but less than 20 G".

Section 2D1.1(c)(8) is amended by striking "at least 8 G but less than 10 G" before "of Methamphetamine (actual)" and inserting "at least 4 G but less than 5 G"; and by striking "at least 8 G but less than 10 G" before "of 'Ice' " and inserting "at least 4 G but less than 5 G".

Section 2D1.1(c)(9) is amended by striking "at least 6 G but less than 8 G" before "of Methamphetamine (actual)" and inserting "at least 3 G but less than 4 G"; and by striking "at least 6 G but less than 8 G" before "of 'Ice' " and inserting "at least 3 G but less than 4 G".

Section 2D1.1(c)(10) is amended by striking "at least 4 G but less than 6 G" before "of Methamphetamine (actual)" and inserting "at least 2 G but less than 3 G"; and by striking "at least 4 G but less than 6 G" before "of 'Ice' " and inserting "at least 2 G but less than 3 G".

Section 2D1.1(c)(11) is amended by striking "at least 2 G but less than 4 G" before "of Methamphetamine (actual)" and inserting "at least 1 G but less than 2 G"; and by striking "at least 2 G but less than 4 G" before "of 'Ice' " and inserting "at least 1 G but less than 2 G".

Section 2D1.1(c)(12) is amended by striking "at least 1 G but less than 2 G" before "of Methamphetamine (actual)" and inserting "at least 500 MG but less than 1 G"; and by striking "at least 1 G but less than 2 G" before "of 'Ice' " and inserting "at least 500 MG but less than 1 G".

Section 2D1.1(c)(13) is amended by striking "at least 500 MG but less than 1 G" before "of Methamphetamine (actual)" and inserting "at least 250 MG but less than 500 MG"; and by striking "at least 500 MG but less than 1 G" before "of 'Ice' " and inserting "at least 250 MG but less than 500 MG".

Section 2D1.1(c)(14) is amended by striking "less than 500 MG" before "of Methamphetamine (actual)" and inserting "less than 250 MG"; and by striking "less than 500 MG" before "of 'Ice' " and inserting "less than 250 MG".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the subdivision of the "Drug Equivalency Tables" captioned "Cocaine and Other Schedule I and II Stimulants (and their immediate precursors)" in the line referenced to "Methamphetamine (Actual)" by striking "10 kg" and inserting "20 kg"; and in the line referenced to "Ice" by striking "10 kg" and inserting "20 kg".

*Reason for Amendment:* This amendment responds to statutory changes to the quantity of methamphetamine substance triggering mandatory minimum penalties, as prescribed in the Methamphetamine Trafficking Penalty Enhancement Act of 1998, Pub. L. 105–277 (the "Act"). This amendment conforms methamphetamine (actual) penalties, as specified in the Drug Quantity Table in § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking), to the more stringent mandatory minimums established by the Act. In taking this action, the Commission follows the approach set forth in the original guidelines for the other principal controlled substances for which mandatory minimum penalties have been established by Congress. No change was made in the guideline penalties for methamphetamine mixture offenses because those penalties already corresponded to the mandatory minimum penalties as amended by the Act. *See* USSC *Guidelines Manual* Appendix C, Amendment 555, effective November 1, 1997.

At the same time that it proposed this amendment, the Commission also had invited comment on whether it should increase penalties for offenses relating to Phenylacetone/P2P, when possessed for the purpose of manufacturing methamphetamine, or amend the Chemical Quantity Table in § 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical), relating to any chemical referenced in that table that is used to manufacture methamphetamine. However, in light of the Methamphetamine Anti-Proliferation Act of 1999, passed by the Senate Judiciary Committee on August 5, 1999, and similar pending House legislation,

the Commission has decided to defer action on these issues.

5. *Amendment:* Sections 2B5.1, 2F1.1, and 3A1.1, effective November 1, 1998 (*see* USSC *Guidelines Manual* Appendix C Supplement, Amendment 587), are repromulgated without change.

*Reason for Amendment:* This amendment implements, in a broader form, the directives to the Commission in section 6 of the Telemarketing Fraud Prevention Act of 1998, Pub. L. 105–184 ("the Act").

The Act directs the Commission to provide for "substantially increased penalties" for telemarketing frauds. It also more specifically requires that the guidelines provide "an additional appropriate sentencing enhancement, if the offense involved sophisticated means, including but not limited to sophisticated concealment efforts, such as perpetrating the offense from outside the United States," and "an additional appropriate sentencing enhancement for cases in which a large number of vulnerable victims, including but not limited to (telemarketing fraud victims over age 55), are affected by a fraudulent scheme or schemes."

This amendment responds to the directives by building upon the amendments to the fraud guideline, § 2F1.1 (Fraud and Deceit), that were submitted to Congress on May 1, 1998. (*See* USSC Guidelines Manual Appendix C Supplement, Amendment 577.) Those amendments added a specific offense characteristic for "mass-marketing," which is defined to include telemarketing, and a specific offense characteristic for sophisticated concealment.

This amendment broadens the "sophisticated concealment" enhancement to cover "sophisticated means" of executing or concealing a fraud offense. In addition, the amendment increases the enhancement under § 3A1.1 (Hate Crime Motivation or Vulnerable Victim), for offenses that impact a large number of vulnerable victims.

This amendment also makes a conforming amendment to § 2B5.1 in the definition of "United States".

In designing enhancements that may apply more broadly than the Act's above-stated directives minimally require, the Commission acts consistently with other directives in the Act (*e.g.*, section 6(c)(4) (requiring the Commission to ensure that its implementing amendments are reasonably consistent with other relevant directives to the Commission and other parts of the sentencing guidelines)) and with its basic mandate in sections 991 and 994 of title 28, United States Code (*e.g.*, 28 U.S.C. § 991(b)(1)(B)) (requiring sentencing policies that avoid unwarranted disparities among similarly situated defendants)).

Pursuant to the emergency amendment authority of the Act, this amendment previously was promulgated as a temporary measure effective November 1, 1998. (*See* USSC *Guidelines Manual* Appendix C Supplement, Amendment 587.)

6. *Amendment:* The Commentary to § 2B1.1 captioned "Application Notes" is amended by striking Note 4 in its entirety; by redesignating Notes 5 through 16 as Notes 4 through 15, respectively; and in Note 2 by striking the second paragraph in its entirety and inserting the following:

"If the offense involved making a fraudulent loan or credit card application, or other unlawful conduct involving a loan, a counterfeit access device, or an unauthorized access device, the loss is to be determined in accordance with the Commentary to § 2F1.1 (Fraud and Deceit). For example, in accordance with Application Note 17 of the Commentary to § 2F1.1, in a case involving an unauthorized access device (such as a stolen credit card), loss includes any unauthorized charge(s) made with the access device. In such a case, the loss shall be not less than $500 per unauthorized access device. For purposes of this application note, 'counterfeit access device' and 'unauthorized access device' have the meaning given those terms in 18 U.S.C. 1029(e)(2) and (e)(3), respectively.".

Section 2F1.1, as amended by Amendment 5 of this document, is further amended by redesignating subsections (b)(5) through (b)(7) as subsections (b)(6) through (b)(8), respectively; and by inserting after subsection (b)(4) the following:

"(5) If the offense involved—

(A) the possession or use of any device-making equipment;

(B) the production or trafficking of any unauthorized access device or counterfeit access device; or

(C) (i) the unauthorized transfer or use of any means of identification unlawfully to produce or obtain any other means of identification; or (ii) the possession of 5 or more means of identification that unlawfully were produced from another means of identification or obtained by the use of another means of identification,

increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.".

The Commentary to § 2F1.1 captioned "Application Notes", as amended by Amendment 5 of this document, is further amended in Note 12 in the first sentence by striking "fraudulent identification documents and" by striking the second sentence in its entirety; in the third sentence, by striking "the case of an offense involving false identification documents or access devices," and inserting "such a case," and by adding at the end the following paragraph:

"Offenses involving identification documents, false identification documents, and means of identification, in violation of 18 U.S.C. 1028, also are covered by this guideline. If the primary purpose of the offense was to violate, or assist another to violate, the law pertaining to naturalization, citizenship, or legal resident status, apply § 2L2.1 (Trafficking in a Document Relating to Naturalization) or § 2L2.2 (Fraudulently Acquiring Documents Relating to Naturalization), as appropriate, rather than § 2F1.1.".

The Commentary to § 2F1.1 captioned "Application Notes", as amended by Amendment 5 of this document, is further amended by redesignating Notes 15 through 20 as Notes 18 through 23, respectively; and by inserting after Note 14 the following:

"15. For purposes of subsection (b)(5)—

'Counterfeit access device' (A) has the meaning given that term in 18 U.S.C. 1029(e)(2); and (B) also includes a telecommunications instrument that has been modified or altered to obtain unauthorized use of telecommunications service. 'Telecommunications service' has the meaning given that term in 18 U.S.C. 1029(e)(9).

'Device-making equipment' (A) has the meaning given that term in 18 U.S.C. 1029(e)(6); and (B) also includes (i) any hardware or software that has been configured as described in 18 U.S.C. 1029(a)(9); and (ii) a scanning receiver referred to in 18 U.S.C. 1029(a)(8). 'Scanning receiver' has the meaning given that term in 18 U.S.C. 1029(e)(8).

'Means of identification' has the meaning given that term in 18 U.S.C. 1028(d)(3), except that such means of identification shall be of an actual (*i.e.*, not fictitious) individual other than the defendant or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct).

'Produce' includes manufacture, design, alter, authenticate, duplicate, or assemble. 'Production' includes manufacture, design, alteration, authentication, duplication, or assembly.

'Unauthorized access device' has the meaning given that term in 18 U.S.C. 1029(e)(3).

16. Subsection (b)(5)(C)(i) applies in a case in which a means of identification of an individual other than the defendant (or a person for whose conduct the defendant is accountable under § 1B1.3 (Relevant Conduct)) is used without that individual's authorization unlawfully to produce or obtain another means of identification.

Examples of conduct to which this subsection should apply are as follows:

(A) A defendant obtains an individual's name and social security number from a source (*e.g.*, from a piece of mail taken from the individual's mailbox) and obtains a bank loan in that individual's name. In this example, the account number of the bank loan is the other means of identification that has been obtained unlawfully.

(B) A defendant obtains an individual's name and address from a source (*e.g.*, from a driver's license in a stolen wallet) and applies for, obtains, and subsequently uses a credit card in that individual's name. In this example, the credit card is the other means of identification that has been obtained unlawfully.

Examples of conduct to which subsection (b)(5)(C)(i) should not apply are as follows:

(A) A defendant uses a credit card from a stolen wallet only to make a purchase. In such a case, the defendant has not used the stolen credit card to obtain another means of identification.

(B) A defendant forges another individual's signature to cash a stolen check. Forging another individual's signature is not producing another means of identification.

Subsection (b)(5)(C)(ii) applies in any case in which the offense involved the possession of 5 or more means of identification that unlawfully were produced or obtained, regardless of the number of individuals in whose name (or other identifying information) the means of identification were so produced or so obtained.

In a case involving unlawfully produced or unlawfully obtained means of identification, an upward departure may be warranted if the offense level does not adequately address the seriousness of the offense. Examples may include the following:

(A) The offense caused substantial harm to the victim's reputation or credit record, or the victim suffered a substantial inconvenience related to repairing the victim's reputation or a damaged credit record.

(B) An individual whose means of identification the defendant used to obtain unlawful means of identification is erroneously arrested or denied a job because an arrest record has been made in the individual's name.

(C) The defendant produced or obtained numerous means of identification with respect to one individual and essentially assumed that individual's identity.

17. In a case involving any counterfeit access device or unauthorized access device, loss includes any unauthorized charges made with the counterfeit access device or unauthorized access device. In any such case, loss shall be not less than $500 per access device. However, if the unauthorized access device is a means of telecommunications access that identifies a specific telecommunications instrument or telecommunications account (including an electronic serial number/mobile identification number (ESN/MIN) pair), and that means was only possessed, and not used, during the commission of the offense, loss shall be not less than $100 per unused means. For purposes of this application note, 'counterfeit access device' and 'unauthorized access device' have the meaning given those terms in Application Note 15.".

The Commentary to § 2F1.1 captioned "Application Notes", as amended by Amendment 5 of this document, is further amended in redesignated Note 18 (formerly Note 15) by striking "(b)(5)" each place it appears and inserting "(b)(6)".

The Commentary to § 2F1.1 captioned "Application Notes", as amended by Amendment 5 of this document, is further amended in redesignated Note 21 (formerly Note 18), by striking "(b)(7)" and inserting "(b)(8)".

The Commentary to § 2F1.1 captioned "Application Notes", as amended by Amendment 5 of this document, is further amended by striking redesignated Note 23 (formerly Note 20), in its entirety and inserting the following:

"23. If subsection (b)(5), subsection (b)(8)(A), or subsection (b)(8)(B) applies, there shall be a rebuttable presumption that the offense also involved more than minimal planning for purposes of subsection (b)(2).

If the conduct that forms the basis for an enhancement under subsection (b)(5) is the only conduct that forms the basis of an enhancement under subsection (b)(6), do not apply an enhancement under subsection (b)(6).".

The Commentary to § 2F1.1 captioned "Background", as amended by Amendment 5 of this document, is further amended by striking the sixth paragraph and all that follows through the end of the "Background" and inserting the following:

"Subsections (b)(5)(A) and(B) implement the instruction to the Commission in section 4 of the Wireless Telephone Protection Act, Public Law 105–172.

Subsection (b)(5)(C) implements the directive to the Commission in section 4 of the Identity Theft and Assumption Deterrence Act of 1998, Public Law 105–318. This subsection focuses principally on an aggravated form of identity theft known as 'affirmative identity theft' or 'breeding,' in which a defendant uses another individual's name, social security number, or some other form of identification (the 'means of identification') to 'breed' (*i.e.*, produce or obtain) new or additional forms of identification. Because 18 U.S.C. 1028(d) broadly defines 'means of identification,' the new or additional forms of identification can include items such as a driver's license, a credit card, or a bank loan. This subsection provides a minimum offense level of level 12, in part, because of the seriousness of the offense. The minimum offense level accounts for the fact that the means of identification that were 'bred' (*i.e.*, produced or obtained) often are within the defendant's exclusive control, making it difficult for the individual victim to detect that the victim's identity has been 'stolen.' Generally, the victim does not become aware of the offense until certain harms have already occurred (*e.g.*, a damaged credit rating or inability to obtain a loan). The minimum offense level also accounts for the non-monetary harm associated with these types of offenses, much of which may be difficult or impossible to quantify (*e.g.*, harm to the individual's reputation or credit rating, inconvenience, and other difficulties resulting from the offense). The legislative history of the Identity Theft and Assumption Deterrence Act of 1998 indicates that Congress was especially concerned with providing increased punishment for this type of harm.

Subsection (b)(6) implements, in a broader form, the instruction to the Commission in section 6(c)(2) of Public Law 105–184.

Subsection (b)(7)(B) implements, in a broader form, the instruction to the Commission in section 110512 of Public Law 103–322.

Subsection (b)(8)(A) implements, in a broader form, the instruction to the Commission in section 961(m) of Public Law 101–73.

Subsection (b)(8)(B) implements the instruction to the Commission in section 2507 of Public Law 101–647.

Subsection (c) implements the instruction to the Commission in section 805(c) of Public Law 104–132.".

*Reason for Amendment:* This is a five-part amendment. First, this amendment provides a two-level increase and a minimum offense level of level 12 for offenses involving (1) the possession or use of equipment that is used to manufacture access devices; (2) the production of, or trafficking in, unauthorized and counterfeit access devices, such as stolen credit cards and cloned wireless telephones; or (3) affirmative identity theft (*i.e.*, unlawfully producing from any means of identification any other means of identification). Affirmative identity theft, referred to in the research and analysis conducted by the Commission as the "breeding" of identification means, will result in an enhanced penalty in any case in which there is a transfer or use of another person's means of identification unlawfully to produce or "breed" additional means of identification, or in which there is the possession of five or more means of identification that were unlawfully produced.

Second, this amendment provides a rebuttable presumption that the offense involved more than minimal planning, and it contains a rule to avoid "double counting" between the existing enhancement for "sophisticated means" based on the same conduct.

Third, the amendment provides a revised minimum loss rule for offenses involving counterfeit or unauthorized access devices. Specifically, this rule requires that a minimum loss amount of $500 per access device be used when calculating the loss involved in the offense. However, for offenses that involve only the possession, and not the use, of a means of telecommunications access that identifies a specific telecommunications instrument or telecommunications account (*e.g.*, an ESN/MIN pair used to obtain telecommunications service in a wireless telephone), the rule provides a minimum loss amount of $100 per unused means.

Fourth, this amendment provides an encouraged upward departure if the offense level does not adequately reflect the seriousness of the offense conduct. Examples of cases in which a departure may be warranted include those in which (1) an identity theft caused substantial harm to the victim's reputation or credit record; (2) an individual is arrested, or is denied a job, because of a misidentification that results from an identity theft; or (3) a defendant essentially assumed the victim's identity.

Fifth, this amendment incorporates the statutory definitions of 18 U.S.C. 1028 and 1029, although it also broadens the definitions of "counterfeit access device" and "device-making equipment" for guideline purposes.

This amendment responds to the directives to the Commission contained in section 4 of the Identity Theft and Assumption Deterrence Act of 1998, Pub. L. 105–318(b)(1) ("ITADA") and section 2 of the Wireless Telephone Protection Act, Pub. L. 105–172 ("WTPA"). For the reasons discussed below and because of the overlap in some of the statutory definitions in the ITADA and the WTPA (particularly "access device," "telecommunication identifying information," and "means of identification"), enhancements have been consolidated into a single guideline amendment.

The ITADA and the WTPA directed the Commission to "review and amend the Federal sentencing guidelines and the policy statements of the Commission" to provide appropriate punishment for identity theft offenses under 18 U.S.C. 1028 and for offenses under 18 U.S.C. 1029 related to the cloning of wireless telephones.

The WTPA directed the Commission to review, among other factors, "the range of conduct covered by" cloning offenses. Although cloned telephones may be possessed and used in connection with a variety of offenses, the Commission determined that the possession or use of a cloned phone does not necessarily increase the seriousness of the underlying offense. However, the Commission decided that offenders who manufacture or distribute cloned telephones are more culpable than offenders who only possess them. Accordingly, the new enhancements at § 2F1.1(b)(5)(A) and (B) recognize that such offenders warrant greater punishment. However, to ensure that the guidelines apply consistently to similarly serious conduct regardless of the technology employed, this amendment provides for a broader enhancement that applies to the manufacture or distribution of any access device, including a cloned telephone.

The ITADA directed the Commission to assess certain specific factors in its consideration of appropriate penalties for identity theft, including: the number of victims; the harm to a victim's reputation and inconvenience caused by the offense; the number of means of identification, identification documents, or false identification documents involved in the offense; the range of offense conduct; and, the adequacy of the value of loss to an individual victim as a measure for establishing penalties.

In conducting research pursuant to the ITADA, the Commission learned that identity theft, as defined broadly under the new statutory provisions at 18 U.S.C. 1028(a)(7) and 1028(d)(3), occurs along a continuum of offense conduct. The most basic type of identity theft occurs when a thief steals a wallet and uses a stolen credit card to make a purchase or forges a signature to cash a stolen check. However, after analyzing the legislative history of the ITADA and Commission data, the Commission determined that the more aggravated and sophisticated forms of identity theft, about which Congress seemed particularly concerned, should be the focus of enhanced punishment under the guidelines. Such offense conduct, which generally occurs within the context of financial and credit account take-overs, involves affirmative activity to generate or "breed" another level of identification means without the knowledge of the individual victim whose identification means are misused, purloined, or "taken over". This activity is considered more sophisticated because of the additional steps the perpetrator takes to "breed" additional means of identification in order to conceal and continue the fraudulent conduct. Such sophisticated conduct makes detection by both the individual and institutional victims much more difficult. It also has the potential to increase harm, both monetary and non-monetary, to the individual victims (about whom Congress was particularly concerned in enacting the ITADA), and can result in substantial disruption of record-keeping by governmental agencies and private financial institutions upon which the stream of commerce depends. Thus, the Commission determined that this aggravated offense conduct, in contrast to the most basic forms of identity theft, merits enhanced punishment.

Accordingly, amended section § 2F1.1(b)(5)(C) recognizes that the conduct of generating or "breeding" identification means warrants substantial additional penalties. The minimum offense level of level 12 accounts for the fact that the defendant in an identity theft case typically has exclusive control over the "bred" means of identification, making it difficult for the individual victim to detect that the victim's identity has been stolen until substantial harms (*e.g.*, a damaged credit rating) have occurred. The minimum offense level also accounts for the non-monetary harms associated with identity theft (*e.g.*, harm to reputation or credit rating), which typically are

difficult to quantify. However, for cases in which the nature and scope of the harm to an individual victim is so egregious that the two-level enhancement and minimum offense level provide insufficient punishment, the amendment invites an upward departure.

The WTPA directed the Commission to review "the extent to which the value of the loss caused by the offenses * * * is an adequate measure for establishing penalties. * * *" The amendment provides a minimum loss rule in § 2F1.1 that extends to all access devices, not just to cloned wireless telephones. In so doing, similar fraud cases will be treated similarly regardless of the technology or type of access device used in the offense. Additionally, the Commission's research and data supported increasing the minimum loss amount, previously provided only in § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft), from $100 to $500 per access device. However, the data were insufficient to support using this increased amount in cases that involve only the possession, and not the use, of means of telecommunications access that identify a specific telecommunications instrument or account (*e.g.*, ESN/MIN pairs of wireless telephones). (An example of such a case is a defendant who possesses a list of ESN/MIN pairs but has not used any of those pairs to clone wireless telephones.) For such cases, the Commission decided that the minimum loss amount should be $100 per unused means.

7. *Amendment:* Section 2F1.1(b), as amended by Amendment 5 of this document, is further amended in subdivision (4) by striking "; or" after "agency" and inserting a semicolon; by inserting "a misrepresentation or other fraudulent action during the course of a bankruptcy proceeding; or (C) a" after "(B)"; and by inserting "prior, specific" before "judicial".

The Commentary to § 2F1.1 captioned "Application Notes", as amended by Amendment 5 of this document, is further amended by striking Note 6 in its entirety and inserting the following:

"6. Subsection (b)(4)(C) provides an enhancement if the defendant commits a fraud in contravention of a prior, official judicial or administrative warning, in the form of an order, injunction, decree, or process, to take or not to take a specified action. A defendant who does not comply with such a prior, official judicial or administrative warning demonstrates aggravated criminal intent and deserves additional punishment. If it is established that an entity the defendant controlled was a party to the prior proceeding that resulted in the official judicial or administrative action, and the defendant had knowledge of that prior decree or order, this enhancement applies even if the defendant was not a specifically named party in that prior case. For example, a defendant whose business previously was enjoined from selling a dangerous product, but who nonetheless engaged in fraudulent conduct to sell the product, is subject to this enhancement. This enhancement does not apply if the same conduct resulted in an enhancement pursuant to a provision found elsewhere in the guidelines (*e.g.*, a violation of a condition of release addressed in § 2J1.7 (Commission of Offense While on Release) or a violation of probation addressed in § 4A1.1 (Criminal History Category)).

If the conduct that forms the basis for an enhancement under (b)(4)(B) or (C) is the only conduct that forms the basis for an adjustment under § 3C1.1 (Obstruction of Justice), do not apply an adjustment under § 3C1.1.".

The Commentary to § 2F1.1 captioned "Background", as amended by Amendment 5 of this document, is further amended by striking the fourth sentence of the fourth paragraph and inserting the following:

"The commission of a fraud in the course of a bankruptcy proceeding subjects the defendant to an enhanced sentence because that fraudulent conduct undermines the bankruptcy process as well as harms others with an interest in the bankruptcy estate.".

*Reason for Amendment:* The amendment was prompted by the circuit conflict regarding whether the enhancement in § 2F1.1 (Fraud and Deceit) for "violation of any judicial or administrative order, injunction, decree, or process" applies to false statements made during bankruptcy proceedings. *Compare United States* v. *Saacks*, 131 F.3d 540 (5th Cir. 1997) (bankruptcy fraud implicates the violation of a judicial or administrative order or process within the meaning of the enhancement; *United States* v. *Michalek*, 54 F.3d 325 (7th Cir. 1995) (bankruptcy fraud is a "special procedure"; it is a violation of a specific adjudicatory process); *United States* v. *Lloyd*, 947 F.2d 339 (8th Cir. 1991) (knowing concealment of assets in bankruptcy fraud violates "judicial process"); *United States* v. *Welch*, 103 F.3d 906 (9th Cir. 1996) (same); *United States* v. *Messner*, 107 F.3d 1448 (10th Cir. 1997) (same); *United States* v. *Bellew*, 35 F.3d 518 (11th Cir. 1994) (knowing concealment of assets during bankruptcy proceedings qualifies as a violation of a "judicial order"), with *United States* v. *Shadduck*, 112 F.3d 523 (1st Cir. 1997) (falsely filling out bankruptcy forms does not violate judicial process since the debtor is not accorded a position of trust). *See also United States* v. *Carrozella*, 105 F. 3d 796 (2d Cir. 1997) (district court erred in enhancing the sentence for violation of judicial process in the case of a defendant who filed false accounts in probate court).

The majority of circuits have held that the current enhancement applies to a defendant who conceals assets in a bankruptcy case because the conduct violates a judicial order or violates judicial process. Commission data indicate that, in fiscal year 1998, 41 defendants received an increase for either "violation of a judicial order * * * or misrepresentation of a charitable organization." The data did not distinguish between the two parts of the enhancement.

This amendment creates a separate and distinct basis for a two-level enhancement under the fraud guideline for a misrepresentation or false statement made in the course of a bankruptcy proceeding. Additionally, the existing enhancement and its accompanying commentary are modified to make clear that, in order for the enhancement to apply in a fraud case not involving a bankruptcy proceeding, there must be a false statement in violation of a specific, prior order. Therefore, any case involving a bankruptcy fraud will result in a two-level enhancement, but in the case of a non-bankruptcy fraud, the enhancement will apply only if a defendant was given prior notice of a particular action. The Commission has decided to treat bankruptcy fraud more severely because of its adverse impact on the bankruptcy judicial process and because of the additional harm and seriousness involved in such conduct. *See United States* v. *Saacks*, 131 F.3d 540, 543 (5th Cir. 1997) (noting that bankruptcy fraud is more serious than "the most pedestrian federal fraud offense").

8. *Amendment:* Section 2K2.4 is amended by striking subsection (a) in its entirety and inserting the following:

"(a) If the defendant, whether or not convicted of another crime, was convicted of violating:

(1) Section 844(h) of title 18, United States Code, the guideline sentence is the term of imprisonment required by statute.

(2) Section 924(c) or section 929(a) of title 18, United States Code, the guideline sentence is the minimum term of imprisonment required by statute.".

The Commentary to § 2K2.4 captioned "Application Notes" is amended by striking Note 1 in its entirety and inserting the following:

"1. Section 844(h) of title 18, United State Code, provides a mandatory term of imprisonment of 10 years (or 20 years for the second or subsequent offense). Sections 924(c) and 929(a) of title 18, United States Code, provide mandatory minimum terms of imprisonment (*e.g.*, not less than five years). Subsection (a) reflects this distinction. Accordingly, the guideline sentence for a defendant convicted under 18 U.S.C. 844(h) is the term required by the statute, and the guideline sentence for a defendant convicted under 18 U.S.C. 924(c) or 929(a) is the minimum term required by the relevant statute. Each of 18 U.S.C. 844(h), 924(c), and 929(a) requires a term of imprisonment imposed under this section to run consecutively to any other term of imprisonment.

A sentence above the minimum term required by 18 U.S.C. 924(c) or 929(a) is an upward departure from the guideline sentence. A departure may be warranted, for example, to reflect the seriousness of the defendant's criminal history, particularly in a case in which the defendant is convicted of an 18 U.S.C. 924(c) or 929(a) offense and has at least two prior felony convictions for a crime of violence or a controlled substance offense that would have resulted in application of § 4B1.1 (Career Offender) if that guideline applied to these offenses. *See* Application Note 3.".

The Commentary to § 2K2.4 captioned "Background" is amended by striking the first sentence in its entirety and inserting the following:

"Section 844(h) of title 18, United States Code, provides a mandatory term of imprisonment. Sections 924(c) and 929(a) of title 18, United States Code, provide mandatory minimum terms of imprisonment. A sentence imposed pursuant to any of these statutes must be imposed to run consecutively to any other term of imprisonment.".

The Commentary to § 3D1.1 captioned "Application Note" is amended in Note 1 in the second sentence by striking "mandatory term of five years" and inserting "mandatory minimum terms of imprisonment, based on the conduct involved,"; and in the seventh sentence by inserting "minimum" after "mandatory".

The Commentary to § 5G1.2 is amended in the second sentence of the last paragraph by striking "mandatory term of five years" and inserting "mandatory minimum terms of imprisonment, based on the conduct involved,".

*Reason for Amendment:* This amendment revises § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) to (1) clarify how the minimum, consecutive terms of imprisonment mandated by the statutes indexed to this guideline should be treated for purposes of guideline application; and (2) specify guideline sentences, for all statutes indexed to § 2K2.4, that comply with the Commission's mandate in 28 U.S.C. 994(b)(2) (requiring guideline sentencing ranges in which the maximum shall not exceed the minimum by more than the greater of 25 percent or six months). The Act to Throttle the Criminal Use of Guns, Pub. L. 105–386, changed the penalty provisions in 18 U.S.C. 924(c) from fixed terms of years to ranges of "not less than" various terms of years. This effectively establishes mandatory minimum terms of imprisonment with implicit maximum terms of life. Section 929(a) of title 18, United States Code, contains similar provisions. Section 2K2.4 continues to provide that, in both cases, the term of imprisonment imposed under the statute should be determined independently of the usual guideline application rules and the sentence imposed should run consecutively to any other term of imprisonment. *See* § 5G1.2(a). However, § 2K2.4 previously stated that the term of imprisonment was that "required by statute." Because two of the statutes indexed to the guideline now provide for terms of a range of years, questions arose as to whether any sentence within the statutorily authorized range complied with the guidelines.

The amendment clarifies that the guideline sentence is the minimum term required by the statute of conviction, that a term greater than this minimum is an upward departure and should be imposed using the normal standards and procedures that apply to departures from the guideline range, and that such upward departures are invited under certain circumstances. *See* 18 U.S.C. 3553(b). For example, career offenders who are convicted both of an offense under 18 U.S.C. 924(c) and of an underlying crime of violence or drug trafficking typically will receive lengthy guideline sentences. This amendment modifies Application Note 1 of § 2K2.4 to encourage an upward departure in the unusual circumstance in which an offender is convicted only of 18 U.S.C. 924(c) and would have qualified as a career offender if that guideline applied to such convictions, or in other unusual circumstances in which the sentence in a particular case does not adequately reflect the seriousness of the defendant's criminal history. Because 18 U.S.C. 844(h) still provides for fixed terms of imprisonment, the amendment differentiates it from the two statutes that provide for terms of a range of years.

The amendment also contains technical and conforming changes: §§ 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2 (Sentencing on Multiple Counts of Conviction) are revised to reflect a change to the penalty provision of 18 U.S.C. 924(c).

9. *Amendment:* The Commentary to § 2K2.4 captioned "Application Notes" is amended in Note 2 by striking the first paragraph in its entirety and inserting the following:

"If a sentence under this guideline is imposed in conjunction with a sentence for an underlying offense, do not apply any specific offense characteristic for possession, brandishing, use, or discharge of an explosive or firearm when determining the sentence for the underlying offense. A sentence under this guideline accounts for any explosive or weapon enhancement for the underlying offense of conviction, including any such enhancement that would apply based on conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct). Do not apply any weapon enhancement in the guideline for the underlying offense, for example, if (A) a co-defendant, as part of the jointly undertaken criminal activity, possessed a firearm different from the one for which the defendant was convicted under 18 U.S.C. 924(c); or (B) in an ongoing drug trafficking offense, the defendant possessed a firearm other than the one for which the defendant was convicted under 18 U.S.C. 924(c). However, if a defendant is convicted of two armed bank robberies, but is convicted under 18 U.S.C. 924(c) in connection with only one of the robberies, a weapon enhancement would apply to the bank robbery which was not the basis for the 18 U.S.C. 924(c) conviction.

If the explosive or weapon that was possessed, brandished, used, or discharged in the course of the underlying offense also results in a conviction that would subject the defendant to an enhancement under § 2K1.3(b)(3) (pertaining to possession of explosive material in connection with another felony offense) or § 2K2.1(b)(5) (pertaining to possession of any firearm or ammunition in connection with another felony offense), do not apply that enhancement. A sentence under this guideline accounts for the conduct

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covered by these enhancements because of the relatedness of that conduct to the conduct that forms the basis for the conviction under 18 U.S.C. 844(h), 924(c) or 929(a). For example, if in addition to a conviction for an underlying offense of armed bank robbery, the defendant was convicted of being a felon in possession under 18 U.S.C. 922(g), the enhancement under § 2K2.1(b)(5) would not apply.".

The Commentary to § 2K2.4 captioned "Application Notes", as amended by Amendment 10 of this document, is further amended in Note 5 (formerly Note 4) in the third sentence by inserting "brandishing," after "possession,".

The Commentary to § 2K2.4 captioned "Background" is amended in the second sentence by inserting "brandishing," after "use,".

*Reason for Amendment:* This amendment expands the commentary in Application Note 2 of § 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) to clarify under what circumstances defendants sentenced for violations of 18 U.S.C. 924(c) in conjunction with convictions for other offenses may receive weapon enhancements contained in the guidelines for those other offenses. The amendment directs that no guideline weapon enhancement should be applied when determining the sentence for the crime of violence or drug trafficking offense underlying the 18 U.S.C. 924(c) conviction, nor for any conduct with respect to that offense for which the defendant is accountable under § 1B1.3 (Relevant Conduct). Guideline weapon enhancements may be applied, however, when determining the sentence for counts of conviction outside the scope of relevant conduct for the underlying offense (*e.g.*, a conviction for a second armed bank robbery for which no 18 U.S.C. 924(c) conviction was obtained).

For similar reasons, this amendment also expands the application note to clarify that offenders who receive a sentence under § 2K2.4 should not receive enhancements under § 2K1.3(b)(3) (pertaining to explosive material connected with another offense), or § 2K2.1(b)(5) (pertaining to firearms or ammunition possessed, used, or transferred in connection with another offense) with respect to any weapon, ammunition, or explosive connected to the offense underlying the count of conviction sentenced under § 2K2.4.

The purposes of this amendment are to (1) avoid unwarranted disparity and duplicative punishment; and (2) conform application of guideline weapon enhancements with general guideline principles. The relevant application note to § 2K2.4 previously stated that if a sentence was imposed under § 2K2.4 in conjunction with a sentence for "an underlying offense," no weapon enhancement should be applied with respect to the guideline for the underlying offense. Some courts interpreted "underlying offense" narrowly to mean only the "crime of violence" or "drug trafficking offense" that forms the basis for the 18 U.S.C. § 924(c) conviction. *See, e.g., United States* v. *Flennory*, 145 F.3d 1264, 1268–69 (11th Cir. 1998), *cert. denied*, 119 S.Ct. 1130 (1999). *But see United States* v. *Smith*, 196 F.3d 676, 679–82 (6th Cir. 1999) (a conviction under 18 U.S.C. 922(g) qualifies as an "underlying offense," and thus, application of the enhancement in § 2K2.1(b)(5) was impermissible double-counting). In other cases, offenders have received both the mandated statutory penalty and a guideline weapon enhancement in circumstances in which the guidelines generally would require a single weapon enhancement. *See United States* v. *Gonzalez*, 183 F.3d 1315, 1325–26 (11th Cir.), *cert. denied*, 120 S.Ct. 996 (2000) (both statutory and guideline increases may be imposed if defendant and accomplice used different weapons as part of a joint undertaking); *United States* v. *Willett*, 90 F.3d 404, 407–08 (9th Cir. 1996) (not double counting to apply both increases for separate weapons possessed by defendant). *But see United States* v. *Knobloch*, 131 F.3d 366, 372 (3d Cir. 1996) (error to apply guideline enhancement in addition to statutory penalty "even if the section 924(c)(1) sentence is for a different weapon than the weapon upon which the enhancement is predicated.").

The amendment clarifies application of the commentary, consistent with the definition of "offense" found in § 1B1.1 (Application Note 1(l)) and with general guideline principles. It addresses disparate application arising from conflicting interpretations of the current guideline in different courts, and is intended to avoid the duplicative punishment that results when sentences are increased under both the statutes and the guidelines for substantially the same harm.

Finally, Application Notes 2 and 4 and the Background Commentary of § 2K2.4 are revised to reflect changes to 18 U.S.C. 924(c), made by the Act to Throttle the Criminal Use of Guns, Pub. L. 105–386, with respect to "brandishing" a firearm.

10. *Amendment:* The Commentary to § 2K2.4 captioned "Application Notes" is amended by redesignating Notes 3 and 4 as Notes 4 and 5, respectively; and by inserting after Note 2 the following:

"3. Do not apply Chapter Three (Adjustments) and Chapter Four (Criminal History and Criminal Livelihood) to any offense sentenced under this guideline. Such offenses are excluded from application of these chapters because the guideline sentence for each offense is determined only by the relevant statute. *See* §§ 3D1.1 (Procedure for Determining Offense Level on Multiple Counts) and 5G1.2 (Sentencing on Multiple Counts of Conviction).".

The Commentary to § 4B1.2 captioned "Application Notes" is amended in Note 1 by striking "Possessing a firearm during and in relation to a crime of violence" and all that follows through the end of the first sentence and inserting the following:

"A prior conviction for violating 18 U.S.C. 924(c) or 929(a) is a 'prior felony conviction" for purposes of applying § 4B1.1 (Career Offender) if the prior offense of conviction established that the underlying offense was a "crime of violence" or "controlled substance offense.'".

The Commentary to § 4B1.2 captioned "Application Notes" is amended by redesignating Notes 2 and 3 as Notes 3 and 4, respectively; and by inserting after Note 1 the following:

"2. The guideline sentence for a conviction under 18 U.S.C. 924(c) or 929(a) is determined only by the statute and is imposed independently of any other sentence. *See* §§ 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes), 3D1.1 (Procedure for Determining Offense Level on Multiple Counts), and subsection (a) of § 5G1.2 (Sentencing on Multiple Counts of Conviction). Accordingly, do not apply this guideline if the only offense of conviction is for violating 18 U.S.C. 924(c) or 929(a). For provisions pertaining to an upward departure from the guideline sentence for a conviction under 18 U.S.C. 924(c) or 929(a), *see* Application Note 1 of § 2K2.4.".

*Reason for Amendment:* This amendment revises §§ 2K2.4 (Use of Firearm, Armor-Piercing Ammunition, or Explosive During or in Relation to Certain Crimes) and 4B1.2 (Definitions of Terms Used in Section 4B1.1) to clarify guideline application for offenders convicted under 18 U.S.C. 924(c) and 929(a) who might also qualify as career offenders under the rules and definitions provided in §§ 4B1.1 (Career Offender) and 4B1.2. Pending further study, the Commission

has deferred a decision on whether any or all convictions for violations of 18 U.S.C. 924(c) should be considered "instant offenses" for purposes of the career offender guideline. This amendment preserves the *status quo* as it existed prior to the statutory changes to 18 U.S.C. 924(c), made by the Act to Throttle the Criminal Use of Guns, Pub. L. 105–386, that established a statutory maximum of life for all violations of the statute.

This amendment adds a new Application Note 3 to § 2K2.4 directing courts not to apply Chapter Three (Adjustments) or Chapter Four (Criminal History and Criminal Livelihood) to any offense sentenced under § 2K2.4. This effectively prohibits the use of 18 U.S.C. § 924(c) convictions either to trigger application of the career offender guideline, § 4B1.1, or to determine the appropriate offense level under that guideline. Application Note 1 of § 4B1.2 also is amended to clarify, however, that prior convictions for violating 18 U.S.C. 924(c) will continue to qualify as "prior felony convictions" under the career offender guideline in most circumstances.

11. *Amendment:* The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1(c) by striking "that the weapon was pointed or waved about, or displayed in a threatening manner." and inserting the following: "that all or part of the weapon was displayed, or the presence of the weapon was otherwise made known to another person, in order to intimidate that person, regardless of whether the weapon was directly visible to that person. Accordingly, although the dangerous weapon does not have to be directly visible, the weapon must be present.".

The Commentary to § 1B1.1 captioned "Application Notes" is amended in Note 1 by striking subdivision (d) in its entirety and inserting the following:

"(d) 'Dangerous weapon' means (i) an instrument capable of inflicting death or serious bodily injury; or (ii) an object that is not an instrument capable of inflicting death or serious bodily injury but (I) closely resembles such an instrument; or (II) the defendant used the object in a manner that created the impression that the object was such an instrument (*e.g.* a defendant wrapped a hand in a towel during a bank robbery to create the appearance of a gun).".

Section 2A3.1(b)(1) is amended by striking "(including, but not limited to, the use or display of any dangerous weapon)".

The Commentary to § 2A3.1 captioned "Application Notes" is amended in Note 1 by striking "where any dangerous weapon was used," and inserting "if any dangerous weapon was used or"; and by striking ", or displayed to intimidate the victim".

Section 2B3.1(b)(2) is amended by striking "displayed," each place it appears.

The Commentary to § 2B3.1 captioned "Application Notes" is amended by striking Note 2 in its entirety and inserting the following:

"2. Consistent with Application Note 1(d)(ii) of § 1B1.1 (Application Instructions), an object shall be considered to be a dangerous weapon for purposes of subsection (b)(2)(E) if (A) the object closely resembles an instrument capable of inflicting death or serious bodily injury; or (B) the defendant used the object in a manner that created the impression that the object was an instrument capable of inflicting death or serious bodily injury (*e.g.*, a defendant wrapped a hand in a towel during a bank robbery to create the appearance of a gun).".

Section 2B3.2(b)(3) is amended by striking "displayed," each place it appears.

Section 2E2.1(b)(1)(C) is amended by striking ", displayed".

*Reason for Amendment:* This amendment conforms the guideline definition of "brandish" found at Application Note 1(c) of § 1B1.1 (Application Instructions) to a statutory definition, which was added by the Act to Throttle the Criminal Use of Guns, Pub. L. 105–386, and is codified at 18 U.S.C. 924(c)(4). The purposes of this amendment are to (1) avoid confusion that can be caused by different guideline and statutory definitions of identical terms; and (2) increase punishment in some circumstances for persons who "make the presence of the weapon known to another person, in order to intimidate that person," regardless of whether the weapon is visible. As was the case prior to this amendment, the guideline definition of "brandish" applies to all dangerous weapons and not only to firearms.

The definition of "dangerous weapon" in Application Note 1(d) of § 1B1.1 also is amended to clarify under what circumstances an object that is not an actual, dangerous weapon should be treated as one for purposes of guideline application. The amendment is in accord with the decisions in *United States* v. *Shores*, 966 F.2d 1383 (11th Cir. 1992) (toy gun carried but never used by a defendant qualifies as a dangerous weapon because of its potential, if it were used, to arouse fear in victims and dangerous reactions by police or security personnel) and *United States* v. *Dixon*, 982 F.2d 116 (3rd Cir. 1992) (hand wrapped in a towel qualifies as a dangerous weapon if the defendant's actions created the impression that the defendant possessed a dangerous weapon).

The amendment also deletes the term "displayed" wherever it appears in the *Guidelines Manual* in an enhancement with "brandished." Because "brandished" applies in any case in which "all or part of the weapon was displayed," the Commission determined the inclusion of "displayed" in these enhancements is redundant. This part of the amendment is not intended to make a substantive change in the guidelines.

12. *Amendment:* Chapter One, Part A, Subpart 4(b) is amended in the fifth sentence of the first paragraph by striking "and" before "the last"; and by inserting ",and § 5K2.19 (Post-Sentencing Rehabilitative Efforts)" after "(Coercion and Duress)".

Chapter Five, Part K, Subpart 2, is amended by inserting at the end the following:

"§ 5K2.19. *Post-Sentencing Rehabilitative Efforts* (Policy Statement)

Post-sentencing rehabilitative efforts, even if exceptional, undertaken by a defendant after imposition of a term of imprisonment for the instant offense are not an appropriate basis for a downward departure when resentencing the defendant for that offense. (Such efforts may provide a basis for early termination of supervised release under 18 U.S.C. 3583(e)(1).)

Commentary

*Background:* The Commission has determined that post-sentencing rehabilitative measures should not provide a basis for downward departure when resentencing a defendant initially sentenced to a term of imprisonment because such a departure would (1) be inconsistent with the policies established by Congress under 18 U.S.C. 3624(b) and other statutory provisions for reducing the time to be served by an imprisoned person; and (2) inequitably benefit only those who gain the opportunity to be resentenced *de novo*.".

*Reason for Amendment:* This amendment was prompted by the circuit conflict regarding whether sentencing courts may consider an offender's post-offense rehabilitative efforts while in prison or on probation as a basis for downward departure at resentencing following an appeal. *Compare United States* v. *Rhodes*, 145 F.3d 1375, 1379 (D.C. Cir. 1998) (post-conviction rehabilitation is not a prohibited factor and, therefore, sentencing courts may

consider it as a possible ground for downward departure at resentencing); *United States* v. *Bradstreet*, 207 F.3d 76 (1st Cir. 2000); *United States* v. *Core*, 125 F.3d 74, 75 (2d Cir. 1997) ("We find nothing in the pertinent statutes or the Sentencing Guidelines that prevents a sentencing judge from considering post-conviction rehabilitation in prison as a basis for departure if resentencing becomes necessary.") *cert. denied*, 118 S. Ct. 735 (1998); *United States* v. *Sally*, 116 F.3d 76, 80 (3d Cir. 1997) (holding that "post-offense rehabilitations efforts, including those which occur post-conviction, may constitute a sufficient factor warranting a downward departure"); *United States* v. *Rudolph*, 190 F.3d 720, 723 (6th Cir. 1999); *United States* v. *Green*, 152 F.3d 1202, 1207 (9th Cir. 1998) (*same*), *with United States* v. *Sims*, 174 F.3d 911 (8th Cir. 1999) (district court lacks authority at resentencing following an appeal to depart on ground of post-conviction rehabilitation which occurred after the original sentencing; refuses to extend holding regarding departures for post-offense rehabilitation to conduct that occurs in prison; departure based on post-conviction conduct infringes on statutory authority of the Bureau of Prisons to grant good-time credits). In *Sims*, the Eighth Circuit concluded that a rule allowing a departure at resentencing based on post-sentencing rehabilitation would result in unwarranted disparity because resentencing would be a fortuitous event benefitting only some defendants; would reinstate a parole-like system; and would interfere with the authority of the Bureau of Prisons to award good-time credits. *See Sims*, 174 F.3d at 912–13; *Rhodes*, 145 F.3d at 1384 (Silberman, J., dissenting).

The Commission determined that post-sentencing rehabilitative efforts should not provide a basis for a downward departure when resentencing a defendant initially sentenced to a term of imprisonment because such a departure would (1) be inconsistent with policies established by Congress under the Sentencing Reform Act, including the provisions of 18 U.S.C. 3624(b) for reducing the time to be served by an imprisoned person; and (2) inequitably benefit only those few who gain the opportunity to be resentenced *de novo*, while others, whose rehabilitative efforts may have been more substantial, could not benefit simply because they chose not to appeal or appealed unsuccessfully. Additionally, prohibition on downward departure for post-sentencing rehabilitative efforts is consistent with Commission policies expressed in § 1B1.10 (Reduction in Term of Imprisonment as a Result of Amended Guideline Range). This amendment does not restrict departures based on extraordinary post-offense rehabilitative efforts prior to sentencing. Such departures have been allowed by every circuit that has ruled on the matter post-*Koon*. *See e.g.*, *United States* v. *Brock*, 108 F.3d 31 (4th Cir. 1997).

13. *Amendment:* Chapter One, Part A, Subpart 4(d) is amended by adding an asterisk at the end of the last paragraph after the period; and by adding at the end the following footnote:

"*Note: Although the Commission had not addressed 'single acts of aberrant behavior' at the time the Introduction to the *Guidelines Manual* originally was written, it subsequently addressed the issue in Amendment 603 [this amendment], effective November 1, 2000. (*See* Supplement to Appendix C, Amendment 603.)".

Chapter Five, Part K, Subpart 2, as amended by Amendment 12 of this document, is further amended by adding at the end the following:

"§ 5K2.20. Aberrant Behavior (Policy Statement)

A sentence below the applicable guideline range may be warranted in an extraordinary case if the defendant's criminal conduct constituted aberrant behavior. However, the court may not depart below the guideline range on this basis if (1) the offense involved serious bodily injury or death; (2) the defendant discharged a firearm or otherwise used a firearm or a dangerous weapon; (3) the instant offense of conviction is a serious drug trafficking offense; (4) the defendant has more than one criminal history point, as determined under Chapter Four (Criminal History and Criminal Livelihood); or (5) the defendant has a prior federal, or state, felony conviction, regardless of whether the conviction is countable under Chapter Four.

Commentary

*Application Notes:*

1. For purposes of this policy statement—

'Aberrant behavior' means a single criminal occurrence or single criminal transaction that (A) was committed without significant planning; (B) was of limited duration; and (C) represents a marked deviation by the defendant from an otherwise law-abiding life.

'Dangerous weapon,' 'firearm,' 'otherwise used,' and 'serious bodily injury' have the meaning given those terms in the Commentary to § 1B1.1(Application Instructions).

'Serious drug trafficking offense' means any controlled substance offense under title 21, United States Code, other than simple possession under 21 U.S.C. § 844, that, because the defendant does not meet the criteria under § 5C1.2 (Limitation on Applicability of Statutory Mandatory Minimum Sentences in Certain Cases), results in the imposition of a mandatory minimum term of imprisonment upon the defendant.

2. In determining whether the court should depart on the basis of aberrant behavior, the court may consider the defendant's (A) mental and emotional conditions; (B) employment record; (C) record of prior good works; (D) motivation for committing the offense; and (E) efforts to mitigate the effects of the offense.".

*Reason for Amendment:* This amendment responds to a circuit conflict regarding whether, for purposes of downward departure from the guideline range, a "single act of aberrant behavior" (Chapter One, Part A, Subpart 4(d)) includes multiple acts occurring over a period of time. *Compare United States* v. *Grandmaison*, 77 F.3d 555 (1st Cir. 1996) (Sentencing Commission intended the word "single" to refer to the crime committed; therefore, "single acts of aberrant behavior" include multiple acts leading up to the commission of the crime; the district court should review the totality of circumstances); *Zecevic* v. *United States Parole Commission*, 163 F.3d 731 (2d Cir. 1998) (aberrant behavior is conduct which constitutes a short-lived departure from an otherwise law-abiding life, and the best test is the totality of the circumstances); *United States* v. *Takai*, 941 F.2d 738 (9th Cir. 1991) ("single act" refers to the particular action that is criminal, even though a whole series of acts lead up to the commission of the crime); *United States* v. *Pena*, 930 F.2d 1486 (10th Cir. 1991) (aberrational nature of the defendant's conduct and other circumstances justified departure), *with United States* v. *Marcello*, 13 F.3d 752 (3d Cir. 1994) (single act of aberrant behavior requires a spontaneous, thoughtless, single act involving lack of planning); *United States* v. *Glick*, 946 F.2d 335 (4th Cir. 1991) (conduct over a ten-week period involving a number of actions and extensive planning was not "single act of aberrant behavior"); *United States* v. *Williams*, 974 F.2d 25 (5th Cir. 1992) (a single act of aberrant behavior is generally spontaneous or thoughtless); *United States* v. *Carey*, 895 F.2d 318 (7th Cir. 1990) (single act of aberrant behavior contemplates a spontaneous and seemingly thoughtless act rather than one which was the result of substantial planning); *United States* v. *Garlich*, 951 F.2d 161 (8th Cir. 1991)

(fraud spanning one year and several transactions was not a "single act of aberrant behavior"); *United States* v. *Withrow*, 85 F.3d 527 (11th Cir. 1996) (a single act of aberrant behavior is not established unless the defendant is a first-time offender and the crime was a thoughtless act rather than one that was the result of substantial planning); *United States* v. *Dyce*, 78 F.3d 610 (D.C. Cir.), *amd. on reh.* 91 F.3d 1462 (D.C. Cir. 1996) (*same*).

This amendment addresses the circuit conflict but does not adopt *in toto* either the majority or minority circuit view on this issue. As a threshold matter, this amendment provides that the departure is available only in an extraordinary case. However, the amendment defines and describes "aberrant behavior" more flexibly than the interpretation of existing guideline language followed by the majority of circuits that have allowed a departure for aberrant behavior only in a case involving a single act that was spontaneous and seemingly thoughtless. The Commission concluded that this application of the current language in Chapter One is overly restrictive and may preclude departures for aberrant behavior in circumstances in which such a departure might be warranted. For this reason, the Commission attempted to slightly relax the "single act" rule in some respects, and provide guidance and limitations regarding what can be considered aberrant behavior. At the same time, the Commission also chose not to adopt the "totality of circumstances" approach endorsed by the minority of circuits, concluding that the latter approach is overly broad and vague. The Commission anticipates that this compromise amendment will not broadly expand departures for aberrant behavior.

The amendment creates a new policy statement and accompanying commentary in Chapter Five, Part K (Departures) that sets forth the parameters of conduct and criminal history that the Commission believes appropriately may warrant departure as "aberrant behavior." The policy statement provides, in pertinent part, that " 'aberrant behavior' means a single criminal occurrence or single criminal transaction." The Commission intends that the phrases "single criminal occurrence" and "single criminal transaction" will be somewhat broader than "single act", but will be limited in potential applicability to offenses (1) committed without significant planning; (2) of limited duration; and (3) that represent a marked deviation by the defendant from an otherwise law-abiding life. For offense conduct to be considered for departure as aberrant behavior, the offense conduct must, at a minimum, have these characteristics. The Commission chose these characteristics after reviewing case law and public comment that indicated some support for the appropriateness of these factors.

The policy statement places significant restrictions on the type of offense and the criminal history of the offender that can be considered for this departure. The restrictions on the type of offense that can qualify reflect a Commission concern that certain offense conduct is so serious that a departure premised on a finding of aberrant behavior should not be available to those offenders who engage in such conduct. Similarly, the restrictions on criminal history reflect a Commission view that defendants with significant prior criminal records should not qualify for a departure premised on the aberrant nature of their current conduct.

The Commission recognizes that a number of other factors may have some relevance in evaluating the appropriateness of a departure based on aberrant behavior. Some of the relevant factors identified in the case law and public comment are listed in an application note.

14. *Amendment:* The Commentary to § 1B1.4 captioned "Background" is amended by striking:

". For example, if the defendant committed two robberies, but as part of a plea negotiation entered a guilty plea to only one, the robbery that was not taken into account by the guidelines would provide a reason for sentencing at the top of the guideline range. In addition, information that does not enter into the determination of the applicable guideline sentencing range may be considered in determining whether and to what extent to depart from the guidelines.",

and inserting:

"in determining a sentence within the guideline range or from considering that information in determining whether and to what extent to depart from the guidelines. For example, if the defendant committed two robberies, but as part of a plea negotiation entered a guilty plea to only one, the robbery that was not taken into account by the guidelines would provide a reason for sentencing at the top of the guideline range and may provide a reason for sentencing above the guideline range.".

Chapter Five, Part K, Subpart 2, as amended by Amendment 13 of this document, is further amended by adding at the end the following:

"§ 5K2.21. Dismissed and Uncharged Conduct (Policy Statement)

The court may increase the sentence above the guideline range to reflect the actual seriousness of the offense based on conduct (1) underlying a charge dismissed as part of a plea agreement in the case, or underlying a potential charge not pursued in the case as part of a plea agreement or for any other reason; and (2) that did not enter into the determination of the applicable guideline range.".

Section 6B1.2(a) is amended in the second paragraph by striking "Provided, that" and inserting "However,".

The Commentary to § 6B1.2 is amended in the fourth paragraph by adding at the end the following:

"Section 5K2.21 (Dismissed and Uncharged Conduct) addresses the use, as a basis for upward departure, of conduct underlying a charge dismissed as part of a plea agreement in the case, or underlying a potential charge not pursued in the case as part of a plea agreement.".

*Reason for Amendment:* This amendment addresses the circuit conflict regarding whether a court can base an upward departure on conduct that was dismissed or not charged as part of a plea agreement in the case. According to the majority of circuits, the sentencing court, in determining the sentence to impose within the guideline range, or whether a departure from the guidelines is warranted, may consider without limitation any information concerning the background, character and conduct of the defendant, unless otherwise prohibited by law. *See* § 1B1.4 (Information to be Used in Imposing Sentence) and 18 U.S.C. 3661. These courts hold that § 6B1.2 (Standards for Acceptance of Plea Agreements) does not prohibit a court from considering conduct underlying counts dismissed pursuant to a plea agreement. The minority circuit view holds that a departure based on conduct uncharged or dismissed in the context of a plea agreement is inappropriate. Courts holding the minority view emphasize the need to protect the expectations of the parties to the plea agreement. *Compare United States* v. *Figaro*, 935 F.2d 4 (1st Cir. 1991) (allowing upward departure based on uncharged conduct); *United States* v. *Kim*, 896 F.2d 678 (2d Cir. 1990) (allowing upward departure based on related conduct that formed the basis of dismissed counts and based on prior similar misconduct not resulting in conviction); *United States* v. *Baird*, 109 F.3d 856 (3d Cir.), *cert. denied*, 118 S. Ct. 243 (1997) (allowing upward

departure based on dismissed counts if the conduct underlying the dismissed counts is related to the offense of conviction conduct) (citing *United States* v. *Watts*, 519 U.S. 148 (1997)); *United States* v. *Barber*, 119 F.2d 276, 283–84 (4th Cir. 1997) (*en banc*); *United States* v. *Cross*, 121 F.3d 234 (6th Cir. 1997) (allowing upward departure based on dismissed conduct) (citing *Watts*); *United States* v. *Ashburn*, 38 F.3d 803 (5th Cir. 1994) (allowing upward departure based on dismissed conduct); *United States* v. *Big Medicine*, 73 F.3d 994 (10th Cir. 1995) (allowing departure based on uncharged conduct), *with United States* v. *Ruffin*, 997 F.2d 343 (7th Cir. 1993) (error to depart based on counts dismissed as part of plea agreement); *United States* v. *Harris*, 70 F.3d 1001 (8th Cir. 1995) (*same*); *United States* v. *Lawton*, 193 F.3d 1087 (9th Cir. 1999) (court may not accept plea bargain and later consider dismissed charges for upward departure in sentencing).

This amendment allows courts to consider for upward departure purposes aggravating conduct that is dismissed or not charged in connection with a plea agreement. This approach is consistent with the principles that underlie § 1B1.4 and 18 U.S.C. 3661 and preserves flexibility for the sentencing judge to impose an appropriate sentence within the context of a charge-reduction plea agreement.

15. *Amendment:* Section 2B5.1(b)(2) is amended by inserting "level" after "increase to".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 20 by striking "Under subsection (b)(5), the enhancement" and inserting "Subsection (b)(5)"; by striking "under this subsection" and inserting "under subsection (b)(5)"; by striking "§ 5B1.3" and inserting "§§ 5B1.3"; and by striking "§ " before "5D1.3".

Section 2D1.11(b) is amended by adding at the end the following:

"(3) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels.".

Section 2D1.11(d) is amended in subdivision (9) by striking "At least 1.44 G but less than 1.92 KG of Isosafrole;" and inserting "At least 1.44 KG but less than 1.92 KG of Isosafrole;"; and by striking "At least 1.44 G but less than 1.92 KG of Safrole;" and inserting "At least 1.44 KG but less than 1.92 KG of Safrole;".

Section 2D1.11(d) is amended in subdivision (10) by striking "Less than 1.44 G" before "of Isosafrole;" and inserting "Less than 1.44 KG"; and by striking "Less than 1.44 G" before "of Safrole;" and inserting "Less than 1.44 KG".

The Commentary to § 2D1.11 captioned "Application Notes" is amended by adding at the end the following:

"8. Subsection (b)(3) applies if the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 5124, 9603(b). In some cases, the enhancement under subsection (b)(3) may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under § 5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under §§ 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release).".

Section 2D1.12(b) is amended by striking "Characteristic" and inserting "Characteristics"; and by adding at the end the following:

"(2) If the offense involved (A) an unlawful discharge, emission, or release into the environment of a hazardous or toxic substance; or (B) the unlawful transportation, treatment, storage, or disposal of a hazardous waste, increase by 2 levels.".

The Commentary to 2D1.12 captioned "Application Notes" is amended by adding at the end the following:

"3. Subsection (b)(2) applies if the conduct for which the defendant is accountable under § 1B1.3 (Relevant Conduct) involved any discharge, emission, release, transportation, treatment, storage, or disposal violation covered by the Resource Conservation and Recovery Act, 42 U.S.C. 6928(d), the Federal Water Pollution Control Act, 33 U.S.C. 1319(c), or the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 5124, 9603(b). In some cases, the enhancement under subsection (b)(2) may not adequately account for the seriousness of the environmental harm or other threat to public health or safety (including the health or safety of law enforcement and cleanup personnel). In such cases, an upward departure may be warranted. Additionally, any costs of environmental cleanup and harm to persons or property should be considered by the court in determining the amount of restitution under § 5E1.1 (Restitution) and in fashioning appropriate conditions of supervision under §§ 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release).".

The Commentary to § 2K2.1 captioned "Statutory Provisions" is amended by striking "(e), (f), (g), (h), (j)–(n)" and inserting "(e)–(i), (k)–(o)".

Section 5B1.3(a) is amended by striking the asterisk after "Conditions"; in subdivision (8) by striking the period after "§ 3563(a))" and inserting a semi-colon; and by adding at the end the following:

"(9) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.";

Section 5B1.3 is amended by striking the footnote at the end in its entirety as follows:

"*Note: Effective one year after November 26, 1997, section 3563(a) of Title 18, United States Code, was amended (by section 115 of Pub. L. 105–119) to add the following new mandatory condition of probation:

(9) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) (as amended by section 115 of Pub. L. 105–119) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.".

Section 5D1.3(a) is amended by striking the asterisk after "Conditions"; in subdivision (6) by striking the period after "§ 3013" and inserting a semi-colon; and by adding at the end the following:

"(7) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.";

Section 5D1.3 is amended by striking the footnote at the end in its entirety as follows:

"**Note:** Effective one year after November 26, 1997, section 3583(a) of Title 18, United States Code, was amended (by section 115 of Pub. L. 105–119) to add the following new mandatory condition of supervised release:

(7) a defendant convicted of a sexual offense as described in 18 U.S.C. 4042(c)(4) (as amended by section 115 of Pub. L. 105–119) shall report the address where the defendant will reside and any subsequent change of residence to the probation officer responsible for supervision, and shall register as a sex offender in any State where the person resides, is employed, carries on a vocation, or is a student.".

Reason for Amendment: This five-part amendment makes various technical and conforming changes.

First, the amendment corrects a typographical error in § 2B5.1 (Offenses Involving Counterfeit Bearer Obligations of the United States) by inserting a missing word in subsection (b)(2).

Second, the amendment corrects a typographical error in the Chemical Quantity Table in § 2D1.11 (Unlawfully Distributing, Importing, Exporting, or Possessing a Listed Chemical) regarding certain quantities of Isosafrole and Safrole by changing those quantities from grams to kilograms.

Third, the amendment corrects an omission that was made during prior, final deliberations by the Commission on amendments to implement the Comprehensive Methamphetamine Control Act of 1996 (the "Act"), Pub. L. 104–237. Specifically, the proposal amends §§ 2D1.11 and 2D1.12 (Unlawful Possession, Manufacture, Distribution, or Importation of Prohibited Flask or Equipment) to add an enhancement for environmental damage associated with methamphetamine offenses. The Commission previously had intended to amend these guidelines in this manner, but due to a technical oversight, the final amendment did not implement that intent.

The Act directed the Commission to determine whether the guidelines adequately punish environmental violations occurring in connection with precursor chemical offenses under 21 U.S.C. 841(d) and (g) (sentenced under § 2D1.11), and manufacturing equipment offenses under 21 U.S.C. 843(a)(6) and (7) (sentenced under § 2D1.12). On February 25, 1997, the Commission published two options to provide an increase for environmental damage associated with the manufacture of methamphetamine, the first by a specific offense characteristic, the second by an invited upward departure. *See* 62 FR 8487 (proposed Feb. 25, 1997). Both options proposed to make amendments to §§ 2D1.11, 2D1.12, and 2D1.13. Additionally, although the directive did not address manufacturing offenses under 21 U.S.C. 841(a), the Commission elected to use its broader guideline promulgation authority under 28 U.S.C. 994(a) to ensure that environmental violations occurring in connection with this more frequently occurring offense were treated similarly. Accordingly, the published options also included amendments to § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking).

The published options were revised prior to final action by the Commission. However, in the revision that was presented to the Commission for promulgation in late April 1997, amendments to §§ 2D1.11 and 2D1.12 mistakenly were omitted from the option to provide a specific offense characteristic, although that revision did refer to §§ 2D1.11 and 2D1.12 in the synopsis and included amendments to these guidelines in the upward departure option. (The revision did not include any amendments to guideline § 2D1.13, covering record-keeping offenses, because, upon further examination, it seemed unlikely that offenses sentenced under this guideline would involve environmental damage.) Accordingly, when the Commission voted to adopt the option providing the specific offense characteristic for §§ 2D1.1, 2D1.11, and 2D1.12, the vote effectively was limited to what was before the Commission, *i.e.*, an environmental damage enhancement for § 2D1.1 only. This amendment corrects that error and makes minor, conforming changes to the relevant application note in § 2D1.1.

Fourth, the amendment updates the Statutory Provisions of § 2K2.1 (Unlawful Receipt, Possession, or Transportation of Firearms or Ammunition) to conform to statutory re-designations made to 18 U.S.C. 924 (and already conformed in Appendix A (Statutory Index)).

Finally, the amendment updates §§ 5B1.3 (Conditions of Probation) and 5D1.3 (Conditions of Supervised Release). Effective November 26, 1998, 18 U.S.C. 3563(a) and 3583(a) were amended to add a new mandatory condition of probation and supervised release requiring a person convicted of a sexual offense described in 18 U.S.C. 4042(c)(4) (enumerating several sex offenses) to report to the probation officer the person's address and any subsequent change of address, and to register as a sex offender in the state in which the person resides. *See* section 115 of Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Pub. L. 105–119). Because the effective date of this change was later than the effective date of the last issued *Guidelines Manual* (November 1, 1998), the Commission did not amend §§ 5B1.3 and 5D1.3 to reflect the new condition. However, the Commission did provide a footnote in each guideline setting forth the new condition and alerting the user as to the date on which the condition became effective. This amendment includes the sex offender condition as a specific mandatory condition of probation and supervised release in both guidelines rather than in a footnote.

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Part III

# Department of Agriculture

Food and Nutrition Service

7 CFR Parts 210 and 220
National School Lunch Program and School Breakfast Program: Additional Menu Planning Approaches; Final Rule

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**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Parts 210 and 220**

**RIN: 0584–AC38**

# National School Lunch Program and School Breakfast Program: Additional Menu Planning Approaches

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Healthy Meals for Children Act expanded the number of approaches that schools may use to plan menus under the National School Lunch and School Breakfast Programs. One of the menu planning approaches specified in that law is the traditional meal pattern that was in effect in School Year 1994–95. This final rule also adds a method that allows schools to use "any reasonable approach" to plan menus. The various menu planning approaches now available allow schools greater flexibility in planning menus that both meet the nutrition requirements of the school lunch and breakfast programs and appeal to the nation's schoolchildren. We are also clarifying several State agency monitoring responsibilities associated with the implementation of the nutrition standards of the National School Lunch Act.

**EFFECTIVE DATE:** June 8, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302; telephone 703–305–2620.

**SUPPLEMENTARY INFORMATION:**

## Background

*What Is the Purpose of this Rule?*

The Food and Nutrition Service (FNS or we) published a proposed rule on May 15, 1998 (63 FR 27162), as another step in our efforts to enhance the nutritional quality of the National School Lunch Program (NSLP) and School Breakfast Program (SBP). That rule proposed to increase the number of menu planning approaches available to schools and to clarify how State agencies should assess the progress of schools in meeting the Dietary Guidelines for Americans ("the Dietary Guidelines") and other nutrition standards. The purpose of this final rule is to discuss the comments we received and any revisions we made to the proposal as well as to codify these changes into the regulations.

*How Has FNS Modified the Nutrition Requirements for School Lunches and Breakfasts?*

In 1995, we issued a final rule (60 FR 31188, June 13, 1995) that updated the nutrition requirements for school lunches and breakfasts. School lunches and breakfasts now must meet the Dietary Guidelines including limits on fat (30% or less of total calories) and saturated fat (less than 10% of total calories). School lunches and breakfasts must also meet specific minimum standards for key nutrients (protein, calcium, iron, Vitamin A and Vitamin C), and for calories.

To help schools implement the updated nutrition standards, we provided additional menu planning approaches. Initially, we added two analysis-based approaches—nutrient standard menu planning (NSMP) and assisted nutrient standard menu planning (ANSMP). Schools adopting these approaches use computer analyses of the menus to determine if they meet the appropriate nutrient and calorie levels as well as the limits on fat and saturated fat. Schools using NSMP analyze their own menus. Schools using ANSMP rely on an outside entity (such as another school district) to conduct an analysis of their menus. Along with the analysis, recipes, product specifications, and such are provided to support the analyzed menus.

We then developed a meal pattern or food-based menu planning approach for schools that preferred this type of approach. This food-based menu planning approach is called the enhanced food-based menu planning approach. It is "enhanced" as the number of servings of grains/breads and fruits/vegetables were increased to provide sources of low-fat calories. In 1995, when we published the final rule, the meal pattern that schools had used since the beginning of the lunch program was going to be phased out. However, as discussed below, that meal pattern as well as an option for schools to develop alternate menu planning approaches were made available through legislation.

## What Were the Provisions in the Proposed Rule?

The May 15, 1998, proposed rule addressed and requested comments on the following issues:

1. Reinstating the meal pattern in effect in School Year 1994–95 as one of the permanent menu planning approaches; this meal pattern is designated "the traditional food-based menu planning approach";
2. Establishing Recommended Dietary Allowances (RDAs) and calories levels for the traditional menu planning approach using the age/grade groups already established for the meal pattern;
3. Establishing guidelines for any reasonable approach to menu planning (hereinafter called alternate menu planning approach) with two tiers: Minor, pre-approved modifications to existing menu planning approaches and major changes to existing approaches or new approaches developed by either a school food authority (SFA) or a State agency;
4. Requiring approval for alternate menu planning approaches unless the alternate approach has on-going State agency support and assistance, has five or more SFAs adopting the approach and had a public notification issued prior to implementation of the alternate approach;
5. Requiring that any alternate menu planning approaches based on nutrient analysis use weighted averages and approved software unless the approach has on-going State agency support and assistance and five or more SFAs adopt the approach;
6. Clarifying certain monitoring procedures for State agencies; and
7. Citing the 1995 Dietary Guidelines.

## What Is the Statutory Basis for These Changes?

This final rule implements sections of two public laws (Pub. L.):

Pub.L. 104–149, the Healthy Meals for Children Act (May 29, 1996); and Pub.L. 104–193, the Personal Responsibility and Work Opportunity and Reconciliation Act of 1996 (August 22, 1996).

Pub.L. 104–149 expanded the number of menu planning approaches which schools may adopt. One menu planning approach specified in Pub.L. 104–149 is the approach that was in effect for School Year 1994–95. We named this menu planning approach the "traditional food-based menu planning approach." The other menu planning approach included in the statute was "any reasonable approach, within guidelines established by the Secretary. . . ."

Before a proposed rule to implement Pub.L. 104–149 was published, Pub.L. 104–193, was enacted. This law amended Section 9(f) of the National School Lunch Act (NSLA) (42 USC 1758(f)(1)(B)) to require that school lunches and breakfasts provide, over a week, one-third and one-fourth, respectively, of the RDAs established by the Food and Nutrition Board of the

National Research Council of the National Academy of Sciences. However, our regulations at 7 CFR § 210.10 already included these requirements.

**Who Commented on the Proposed Rule?**

The comment period for the proposed rule ended on November 12, 1998. We received a total of 70 comment letters. The following chart shows the distribution of commentors by type:

| Type of commentor | Number of responses |
|---|---|
| Local level school food service professionals | 29 |
| State level school food service professionals | 15 |
| Advocacy groups | 2 |
| School food service associations | 2 |
| Food industry and food industry groups | 19 |
| Health/nutrition professionals | 3 |
| Total | 70 |

**Discussion of comments and their resolution**

*What Did We Ask for Comments On?*

We solicited comments on the specific provisions to implement "any reasonable approach" to menu planning as well as other provisions concerning revisions to the nutrition standards and to the assessment requirements. In addition, we specifically requested comments on areas that were not proposed changes to the regulations. One of these areas was the appropriateness of the age/grade groups used to determine the nutrient levels under the traditional food-based menu planning approach.

*What Are the Basic Age/Grade Requirements for Planning School Lunches?*

In order to provide schools with a framework for menu planning and to reflect the increasing nutrient needs of children as they grow, we established age/grade groupings for both nutrient levels and, for the food-based menu planning approaches, portion sizes. Because we do not mandate portion sizes for the NSMP and ANSMP approaches, age/grade groupings are only established for nutrients. The age/grade groupings for the enhanced-food based approach (both portion sizes and nutrients) and the nutrient standard approach (nutrients only) are the same. Age/grade groupings for nutrients in the traditional food-based approach were not addressed when we initially established nutrient standards since that approach was to be phased-out.

When the traditional food-based menu planning approach was reinstated by law, we developed a chart with the RDA requirements that matched the age/grade groups used in the traditional approach in effect for school year 1994–1995. These age/grade groups are two preschool groups, grades K–3, and 4–12. There is an optional group for grades 7–12. We used the same groups as those already required for portion sizes since the law stipulated that the "school nutrition meal pattern in effect for the 1994–1995 school year" be one of the approaches available to schools. These age/grade groupings are different than the ones developed for the new menu planning approaches.

There are a significant number of schools that continue to use the traditional menu planning approach and offer lunches to all ages of children using only the meal pattern for grades 4–12 (Group IV). Use of Group IV for all students regardless of age is allowed by the regulations and is common practice in the NSLP. Because of this situation, we specifically asked for comments on the appropriateness of using a single age/grade group to establish the nutrient standards for schools using the traditional approach.

*What Did the Commentors Suggest?*

We received a total of 17 comments on this issue. Nine commentors supported use of the same set of age/grade groups for the nutrient levels for all menu planning approaches (preschool, K–6, 7–12, optional K–3). Eight commentors supported using the same age/grade groups for nutrient levels in both of the food-based menu planning approaches. The preferred groups were those established for the enhanced food-based menu planning approach.

As discussed earlier, we cannot make changes to the traditional food-based approach. Congress was clear that the traditional meal pattern must be available. Therefore, we are adopting without revision, the proposed changes at §§ 210.10(d)(1) and 220.8(c)(1), which provide the minimum requirements for nutrient levels under the traditional food-based menu planning approach. However, under the provisions for alternate menu planning approaches, we are adding two optional modifications for the lunch program concerning age/grade groups. These are discussed below.

*What Modifications of Age/Grade Groups Are Permitted Under the Food-Based Menu Planning Approaches?*

The first proposed modification concerned using age/grade groups for the majority of children enrolled. Children enrolled in a given school may span different age/grade groups for the nutrient and calorie levels and for the corresponding portion sizes for components under the food-based menu planning approaches. Under NSMP and ANSMP, if only one age or grade is outside the established levels for most of the children, schools may use the nutrition standards for the majority. We proposed extending this option to the food-based approaches for consistency and flexibility. We received nine comments on this provision, with seven supporting it. We are adopting this provision as final. Schools using either food-based approach may plan menus using the minimum nutrient and quantity requirements applicable to the majority of children as long as only one age or grade is outside the levels for the majority of children. This change is found at § 210.10(l)(2)(iii).

The second modification allows schools using the traditional food-based menu planning approach to adopt the nutrient standards developed for the other menu planning approaches. Under this modification, schools could do the following:

| For grades | Portion sizes | Nutrient levels |
|---|---|---|
| K–6 | Use the portion sizes for grades 4–12 from the traditional food-based menu planning approach. | Use the nutrient levels for grades K–6 from the other menu planning approaches. |
| 7–12 | Use the portion sizes for grades 4–12 from the traditional food-based menu planning approach. | Use the nutrient levels for grades 7–12 from the other menu planning approaches. |

This modification allows schools to continue to follow the familiar portion sizes from the traditional food-based menu planning approach for children in grades K–6 while adopting the more focused nutrient and calorie levels developed under the other menu planning approaches. For children in grades 7–12, this modification would

allow schools the option of following the portion sizes for grades 4–12 from the traditional food-based menu planning approach while meeting the nutrient and calorie levels specific to children in grades 7–12. Use of the more accurate groupings for the nutrient and calorie levels gives schools better information on how well they are meeting the needs of their students. The State agency would also use the modification as the basis for its nutrition assessment review. This modification is found at § 210.10(l)(2)(ii).

*Why Not Count a Grain-Based Dessert Under Both of the Food-Based Menu Planning Approaches?*

Under the enhanced food-based menu planning approach, schools may count one grain-based dessert each day towards the weekly total. This policy gives additional flexibility for menu planners as the number of required grain/bread items increased substantially over the number required for the traditional menu planning approach. For example, for grades 7–12, the traditional approach food-based menu planning approach requires eight grain/bread servings (but recommends 10 servings) while 15 servings are required for the enhanced food-based approach. We were asked to extend this policy to the traditional menu planning approach.

We did not propose making this option available as a modification allowed under alternate approach provisions. However, we requested comments on this issue. We received 28 comments on this issue, 21 of which supported extending counting grain-based desserts under the traditional menu planning approach. .

While most of the comments supported a provision that would count a grain-based dessert under the traditional menu planning approach, we are not including it in this final rule because none of the commentors provided a strong justification other than preference. We continue to believe that counting up to one grain-based dessert daily as a serving of the grains/breads component for the traditional food-based menu planning approach is too significant a proportion of the total number of required grain/bread items (up to 5 of only 8 servings versus up to 5 of 12 or 15 servings in the enhanced food-based menu planning approach). A child selecting a grains-based dessert on a daily basis would have the majority of their grains/breads component over the week met through the consumption of dessert.

*What Did Commentors Say About Reinstatement of the Traditional Meal Pattern?*

In the proposed rule, we incorporated the traditional meal pattern and any of its specific provisions in § § 210.10(k) and 220.8(g) which outline the food-based menu planning approaches. We received 25 comments on this provision with only two comments expressing concern that following the traditional menu planning approach makes it more difficult to meet the nutrition standards. The main concern of commentors about the traditional food-based menu planning approach is the age/grade groups used for the nutrition standards which we discussed earlier. We are hopeful that the optional modifications for the food-based menu planning approaches will alleviate the commentors' concerns. Therefore, the proposed provisions to incorporate the traditional meal pattern as a permanent option are adopted without change.

*What Guidelines Were Proposed for Alternate Menu Planning Approaches?*

Public Law 104–149 allows SFAs to use "any reasonable approach" to menu planning. The law also states that these alternate methods must meet guidelines established by the Secretary. We proposed two distinct classes of alternate menu planning approaches. First, there are those approaches which make relatively minor modifications to the four established menu planning approaches. For this type of approach, we proposed that State agencies establish a general policy allowing SFAs to adopt such approaches without prior approval from FNS. The second class of menu planning approaches involves unique proposals that depart significantly from existing approaches. Because this latter class of alternate menu planning approaches would be more unique, we proposed guidelines for their development.

*In General, What Did Commentors Say About the Provisions for Alternate Menu Planning Approaches?*

We received 23 comments on the overall concept of allowing States and SFAs to develop their own menu planning approaches. All but one comment supported the concept in general. We also received 13 comments on the guidelines we proposed for the alternate approaches. Ten of these comments stated that the guidelines were too complex, too restrictive, and needed to be more general in nature. We also received a number of comments on the specific provisions for alternate menu planning approaches which are discussed separately below.

We are required by the statute to provide guidelines for alternate menu planning approaches. We based these guidelines primarily on other statutory requirements such as serving fluid milk and meeting the Dietary Guidelines for Americans. The other guidelines we proposed addressed regulatory provisions on program and nutritional integrity for the school lunch and breakfast programs. Therefore, we are adopting the general structure for alternate menu planning approaches and their guidelines as final in § 210.10(l) and § 220.8(h). Revisions and modifications are discussed below in detail.

*What Was Proposed About Minor Pre-approved Modifications to Existing Menu Planning Approaches?*

The first class of alternate menu planning approaches proposed was specific, minor modifications to provisions of the existing menu planning approaches. While the State agency may require prior approval or may establish additional guidelines for their adoption, these modifications could be "pre-approved" as State agencies may allow their use without any additional review. The modifications we proposed only apply to the NSLP. Two of these modifications concern adapting age/grade groups to the school and were previously discussed. The third modification allows a weekly meat/meat alternate standard and is discussed below.

*What Was Proposed About the Weekly Meat/Meat Alternate Standard?*

We proposed that schools using either of the food-based menu planning approaches be allowed to vary the quantity of meat/meat alternate on a daily basis as long as the total amount served over the school week equals the minimum daily quantity multiplied by the number of serving days in the week. We were asked to consider this option because it is not always practical to offer the full daily minimum portion of the meat/meat alternate component required for the lunch program for the food-based menu planning approaches. For example, a serving of less than the required four tablespoons of peanut butter or two ounces of cheese in a sandwich may produce a more appealing entree while the full amount required can lead to waste. We proposed that the minimum amount of meat/meat alternate served on a given day could be only one ounce (or its equivalent) provided that the full 10 ounces (for grades 4–12 in the traditional approach/

grades 7–12 for the enhanced approach) or their equivalent of meat/meat alternate were available over a five day week. This would provide menu planners using a food-based approach much of the same flexibility enjoyed by their counterparts using NSMP while still ensuring that minimum quantities of essential foods were offered to children over a week's time. We noted that the option to vary the size of the meat component does not apply when the minimum quantity requirement is one ounce or less.

*What Did Commentors Say About the Proposal on a Weekly Meat/Meat Alternate Standard?*

We received 31 comments on this issue with 25 supporting the general idea. However, some of the commentors requested some clarification about how the option would work in schools with multiple choices of meat/meat alternate and those having offer versus serve (OVS) procedure. Other commentors noted that this modification would be difficult to monitor by State reviewers given the possibility of multiple choices of meat/meat alternate items. As the majority of comments supported this provision, we are adopting it as final (at § 210.10(l)(2)(i) as proposed. Below, we discuss the comments on how each day's meat/meat alternate choices (which may range from a one ounce minimum to two or more ounces) are counted when determining the weekly total.

*What Is the Amount That Counts Towards the Weekly Total?*

A number of commentors asked us to clarify how to consider multiple choices of meat/meat alternate items on a daily basis. For example, on Tuesday, the school offers a 3 ounce hamburger, a 1½ ounce grilled cheese sandwich, and a turkey sandwich with 2 ounces of meat. Which item or average would be used for the weekly total?

Commentors suggested that the item with the most ounces of meat/meat alternate be counted. This is similar to the method used to determine the weekly total for grains/breads and is most advantageous to schools. Others recommend that the item with the fewest ounces be counted. This would help to alleviate the concern of a few commentors that some children, especially under OVS, may not take items that would give them the full 10 ounces over the week. One commentor recommended that schools with various menu choices offer at least one two ounce meat/meat alternate item daily. While this would ensure that a child could select an item with two ounces of meat/meat alternate every day, it limits the school's flexibility to plan menus.

There are other components (fruits/vegetables and grains/breads) that have both daily and weekly minimums. We address how the weekly amounts are counted in guidance, not in the regulations. Therefore, to be consistent, we are not including this provision in the regulations. Also consistent with established practice and in response to some of the commentors' suggestions, schools would count the largest meat/meat alternate item offered. Using our earlier example, the three ounces of meat in the hamburger would be counted towards the weekly total. This method is easiest to track, both for schools and for State agency reviewers. We will be incorporating this method into our guidance materials as appropriate. In terms of nutritional integrity, the lunches offered by schools adopting this modification must continue to meet the appropriate nutrient levels and the Dietary Guidelines. Therefore, § 210.10(l)(2)(i), as proposed, is adopted as final without change.

*Should the Weekly Option for Meat/Meat Alternates Be Extended to the Breakfast Program?*

We did not propose extending this modification to the meat/meat alternate-grains/breads component of school breakfasts because flexibility is already provided under the food-based menu planning approaches. We did ask for comments on this issue. We received only seven comments—three supporting extending this option to the SBP and four recommending we do not include it as an option for the breakfast program. We are not extending this option to the SBP in the final rule. We continue to believe there is already adequate flexibility to vary portion sizes of the meat/meat alternate component in the breakfast program.

*What Was Proposed Concerning Major Changes or New Approaches Proposed by SFAs or State agencies?*

We also proposed guidelines for a second class of alternate menu planning approaches which involves major changes to one of the existing menu planning approaches. These alternate approaches could be developed by either SFAs or State agencies. We proposed some basic guidelines concerning written submissions, approval and monitoring procedures. We also provided other guidelines based primarily on the statutory requirements and those provisions that we felt were vital to the programs' nutritional and fiscal integrity in order to allow States agencies and SFAs maximum flexibility to develop creative alternate menu planning approaches. Below, we discuss the major guidelines and any comments received that addressed that guideline.

*What Were the General Comments About Alternate Approaches That Involved Major Changes?*

We received 13 comments on the overall policies for alternate approaches, with 3 commentors approving of the methodologies and 10 commentors disapproving. Those that disapproved felt the procedures were too complex and restrictive. Commentors stated that we needed more general guidelines that provided more flexibility. One commentor stated that the alternate approach should only need to demonstrate that the nutrition standards are met, that a reimbursable lunch or breakfast is easily identifiable and that the approach can be monitored.

In response to these general comments, as discussed earlier, we are required by the statute to issue guidelines on use of alternate menu planning approaches. The regulatory guidelines are limited to the statutory requirements and only those elements needed to support program integrity, such as an identifiable reimbursable lunch or breakfast. The guidelines and specific comments on them are discussed below.

*What Was Proposed About Written Submissions?*

We proposed that any alternate menu planning approaches be available in writing. A written document is needed for the State agency or FNS to review prior to approval and for the State agency to follow when monitoring compliance with the procedures of the alternate menu planning approach and with the nutrition assessment and compliance aspects of the programs. We proposed requiring that any alternate menu planning approach subject to State agency or FNS approval be submitted in writing. We also proposed that any alternate approach not needing prior approval must be available in writing for review purposes. We received no comments on written submissions. Therefore we are including the provision on written submissions in the final regulation at § § 210.10(l)(3) and 220.8(h)(2). We are also incorporating a notification procedure for certain State agency-level alternate approaches. When a State agency implements an alternate approach that is exempt from FNS approval, we are requiring that we be notified in writing of its use. This is simply a notification procedure to keep FNS informed and to

allow us to share this information with other State agencies that might wish to adopt a similar alternate approach. This provision is incorporated into § 210.10(l)(3) and § 220.8(h)(2).

*What Was Proposed Concerning the Approval of Major Changes Requested by SFAs?*

We proposed that any major change or new approaches developed by SFAs be subject to State agency review and approval. State agency approval is critical because major variations developed and used only by SFAs should be carefully assessed to gauge potential impact on the delivery of lunches and breakfasts to children, both nutritionally and fiscally. Further, SFAs would not have the benefit of the State agency's expertise when designing their own alternate menu planning approach. A State agency review would also help to ensure that program guidelines were met and that the SFA had the ability to administer an alternate menu planning approach. We received only four comments concerning approval of SFAs' proposed alternate approaches. Three commentors supported the prior approval requirement, while one commentor noted that the process will add to the State agency's workload. While we recognize that this is an additional task for State agencies, we also feel that a prior review and approval is vital to program integrity. Therefore, we are adopting the proposal without change at § 210.10(l)(3)(i) and § 220.8(h)(2)(i).

*In General, What Was Proposed About The Approval Process For State-Level Alternate Menu Planning Approaches?*

We proposed that only certain types of State agency-developed alternate menu planning approaches be subject to approval by FNS. State agency-developed alternate menu planning approaches would be reviewed and approved by FNS regional offices *unless* there was an on-going State agency/SFA partnership and enough SFAs intended to adopt the alternate menu planning approach to warrant the significant involvement of the State agency. We received only three comments on State-level approaches that required pre-approval, two of which supported the review and approval process. Therefore, we are adopting these provisions as proposed at § 210.10(l)(3)(ii) and § 220.8(h)(2)(ii).

*When Are State-Level Alternate Approaches Not Subject to FNS Approval?*

The next type of alternate menu planning approach could also involve either modifications to one of the existing menu planning approaches or development of an altogether new approach. However, we proposed that these alternate approaches would *not* need FNS approval if:

- The State agency is an active and on-going partner with the schools;
- There are a sufficient number of SFAs adopting the alternate approach to warrant the State agency's commitment of resources necessary to its successful operation; and
- The State agency issues an announcement notifying the public of the alternate menu planning approach.

By being an active and on-going partner with SFAs and thus continuing to be involved with the operation of the alternate approach, the State agency has an oversight role. Also, in this capacity, the State agency has the ability to promptly adjust the policies and procedures of the alternate approach to ensure efficient and effective operation and compliance with all applicable requirements. This type of State agency-developed alternate approach is intended to allow innovative, large-scale State agency-sponsored menu planning approaches to operate without prior approval.

We proposed that these alternate approaches must be adopted by at least five SFAs within the State. We also proposed that States issue a public announcement so that any concerned parents, students, or program administrators are advised of the change. We also requested comments on whether States should also hold public hearings (in accordance with established State procedures) on these types of alternate approaches.

*Are There Any Exemptions Specifically for State-Level Alternate Approaches With On-Going Support?*

Yes. We also proposed that alternate menu planning approaches supported by the State agency's expertise and technical assistance were not required to meet certain guidelines that are required for other major changes. These guidelines affect alternate menu planning approaches that use nutrient analysis. The two guidelines are the requirement to use FNS approved software and to weight the menu selections.

*What Did the Commentors Say About State Level Alternate Approaches With On-Going Support?*

We received a total of 26 comments on these types of alternate menu planning approaches, primarily on public announcements and hearings. Three commentors felt that there should be prior approval for any alternate approach that would be significantly different from the standard requirements. One commentor approved of the various exemptions, and one commentor felt that FNS approved software should be used.

We agree that any type of alternate menu planning approach needs to be scrutinized and needs oversight. We are establishing these controls for all alternate approaches, albeit in different ways. We are requiring prior review for any alternate approach developed by SFAs as we recognize that the State agency has the experience to determine if the alternative is feasible. The State agency needs to determine if all required elements are addressed and if the school has the resources to follow the alternate procedures. We also have established oversight for State agency-developed alternate approaches, depending upon how much on-going interaction the State agency will have with the schools using them. If the State agency will simply make their alternate approach available but not assist schools in a systematic way, we are requiring prior FNS approval to determine if the alternative is generally workable and if the required elements are met. We are, however, allowing additional flexibility for those States that commit to a continuous, systematic oversight of schools that adopt the alternate approach. Because we believe that we have established adequate methods for oversight, we are adopting the proposed requirements on the approval and guideline exemptions for alternate approaches with on-going State support. These provisions are found at § 210.10(l)(3)(iii) and § 220.8(h)(2)(iii).

*What Did Commentors Say About Public Announcements and Public Hearings?*

We proposed requiring that States issue a public announcement for any alternate menu planning approach developed by the State agency. We also asked for comments on the possibility of requiring a public hearing concerning the alternate approach. Twenty-one comments were received on these issues—seven on the public announcement proposal and 14 on the proposal for public hearings. Five of those that commented on the proposal for public announcements opposed it, saying notification should be left to the State agency, depending on any internal requirements. Two commentors supported the public announcement proposal, suggesting that a comment period be required. Fourteen commentors mentioned the proposed

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requirement for public hearings, and all opposed it.

Given the opposition, we are deleting our proposed requirement for a public announcement. We are also not adding a requirement for a public hearing. We feel that States should have the flexibility to determine if a public announcement is warranted, either by the nature of the intended changes to menu planning or by State law or precedent. Further, it would be difficult and inefficient for those States that do not have an existing procedure to establish a procedure just for our purposes. Therefore, this final rule does not include the provision that was proposed at §§ 210.10(l)(2)(iii)(C) and 220.8(h)(2)(iii)(C).

*What Were the Proposed Guidelines for Alternate Menu Planning Approaches?*

As we mentioned earlier, we established a limited number of guidelines for alternate approaches. These guidelines concerned: Offering fluid milk, offer versus serve, the nutrition standards, competitive foods, how various foods are counted towards meeting the requirements for reimbursable meals, identification of reimbursable lunch or breakfast, monitoring, weighted averages and approved software. In the preamble to the proposed rule, we discussed these guidelines in detail. In this final rule, we will summarize each and discuss any comments that were received on them.

*What Was Proposed About Offering Fluid Milk?*

Section 9(a)(2) of the NSLA (42 U.S.C. 1758(a)(2)) requires that schools offer fluid milk to children participating in the NSLP. Section 4(e)(1)(A) of the Child Nutrition Act of 1966 (CNA), (42 U.S.C. 1773 (e)(2)), requires that a combination of foods be served in the SBP and that breakfasts ". . . meet minimum nutritional requirements prescribed by the Secretary. . . ." The provision of fluid milk is one of the minimum nutritional requirements established for the SBP under § 220.8. Therefore, any alternate menu planning approach must also offer fluid milk for both the NSLP and SBP. Since we received no comments and because this requirement is statutory, we are adopting it as final without change. The provisions requiring that milk be offered in the school programs for any alternate menu planning approach are found in this final rule at § 210.10(l)(4)(i) and § 220.8(h)(3)(i), for the NSLP and SBP, respectively.

*What Was Proposed About Offer Versus Serve (OVS)?*

Section 9(a)(3)of the NSLA, (42 U.S.C.1758(a)(3)) requires that schools implement OVS in the NSLP for senior high school children; at local option, SFAs may adopt OVS in the lunch program for lower grades as well. Section 4(e)(2) of the CNA (42 U.S.C. 1773(e)(2)) gives local SFAs the option of adopting OVS for the SBP. We included the OVS provisions in the guidelines for alternate menu planning approaches, stressing that any modifications to OVS must be based on the existing regulatory OVS structures as much as possible. The description of the alternate approach must indicate what age/grade groups are included, how plate waste would be reduced and how the lunch or breakfast, as taken, will provide a reasonable level of nutrients and calories. Any modifications to the existing OVS procedures must include the number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable lunch or breakfast. We received no comments on this issue. We are adopting as final without changes at § 210.10(l)(4)(ii) and § 220.8(h)(3)(ii).

*What Was Proposed About Nutrition Standards?*

Section 9(f) of the NSLA (42 U.S.C. 1758(f)) requires school lunches to approximate, over a week's time, one-third of the RDAs (breakfasts must provide one-fourth) needed by growing children of different ages. In addition, menus must comply with the recommendations of the Dietary Guidelines. Because these requirements cannot be modified, we included them as guidelines for alternate approaches in the proposed rule.

We proposed that any alternate menu planning approach must show how these nutrition standards would be met for the age/grade groups to be served. We received no comments on this guideline and are adopting the proposed provisions as final at § 210.10(l)(4)(iii) and § 220.8(h)(3)(iii).

*What Was Proposed About Competitive Foods?*

For both the NSLP and SBP, Section 10(a) of the CNA (42 U.S.C. 1779(a)) requires regulations ". . . relating to the service of food . . . in competition with the (school meals) programs. . . ." To implement this provision, § 210.11(b) and § 220.12(a) prohibit the sale of "foods of minimal nutritional value" in the cafeteria area during the service of lunch or breakfast. Appendix B to each of these parts lists the foods considered to be foods of minimal nutritional value. Any alternate approach may not alter this statutory provision and the implementing regulations. We received no comments on this proposed guideline, so it is adopted as final without change at § 210.10(l)(4)(iv) and § 220.8(h)(3)(iv) for the lunch and breakfast programs, respectively.

*What Was Proposed About Determining How Various Foods Count Towards the Meal Pattern Under the Food-Based Alternate Menu Planning Approaches?*

We proposed that the current provisions on how foods are counted towards meeting the meal pattern requirements (found in § 210.10 and § 220.8, the appendices to Parts 210 and 220 and FNS instructions and guidance) apply to alternate menu planning approaches that were food-based (as opposed to nutrient analysis-based approaches) in design. Our standards on counting food items maintain the nutritional integrity of school meals by ensuring that foods used to satisfy quantity and component requirements provide a sufficient amount of the component to count toward meeting the meal requirements.

We received five comments on applying the policies on how foods are counted towards the meal patterns to alternate menu planning approaches. Four of the comments opposed it while one supported it. One commentor felt that policies on counting foods towards meeting the meal patterns do not ensure the nutritional integrity of meals. Another commentor felt we should allow for alternate means for counting foods towards the meal patterns to encourage experimentation.

We continue to believe that our policies on how foods are counted towards the meal patterns are needed to support use of appropriate food products in the school meals programs and to provide schools with guidance on how different food items meet all or part of the various food components. We have kept our guidance to a minimum, usually relying on the standards of identity established by other Federal agencies. Given the relatively small number of comments and the rationale for our current guidance, we are adopting, as final without changes, the proposed provision requiring that the policies on counting foods towards the meal patterns be followed for alternate menu planning approaches. These provisions are found at § 210.10(l)(4)(v) and § 220.8(h)(3)(v).

*Did Anyone Comment on Vegetable Protein Products?*

Eight commentors wanted us to reconsider our requirements on vegetable protein products in the NSLP and SBP. Since publication of this proposed rule on alternate menu planning approaches, we issued both a proposed (64 FR 38839; July 20, 1999) and final rule (65 FR 12429 March 9, 2000) on the use of VPP in the child nutrition programs. Please refer to these publications for information on this issue.

*What Was Proposed About How To Identify a Reimbursable Lunch or Breakfast?*

Our regulations currently define what must be contained in a reimbursable lunch or breakfast for the four menu planning approaches. (For additional information about what constitutes a reimbursable lunch or breakfast under the various approaches, please refer to 7 CFR 210.10 for the lunch program and 7 CFR 220.8 for the breakfast program.)

We proposed that an alternate menu planning approach should meet the existing food component and food item or menu item requirements for reimbursable lunches or breakfasts to the extent possible. However, if the existing procedures are modified, we proposed that the State agency or SFA detail what food components/food items or menu items constitute a reimbursable lunch or breakfast under the alternate menu planning approach. The alternate approach must describe the number of items and the types of items (and if applicable, the quantities for each item) and how a reimbursable lunch or breakfast is identified at the point of service by the children, the cashiers, and reviewers. We received no comments on this guideline. Therefore, the proposals are adopted as final at § 210.10(l)(4)(vi) and § 220.8(h)(3)(vi), respectively, for the school lunch and breakfast programs.

*What Was Proposed About Monitoring Alternate Approaches?*

Our regulations establish methods for determining if schools are meeting the administrative requirements for the school lunch or breakfast programs and for assessing compliance with the nutrition standards. One guideline proposed for alternate approaches addressed monitoring. This is needed because the State agency must be able to determine if reimbursable lunches are being offered, accepted, and properly counted and if the lunch service is in compliance with all of the nutrition and administrative standards. In the large majority of cases, alternate menu planning approaches probably can be monitored within the existing criteria for both coordinated review effort (CRE) and assessments of how schools are meeting the nutrition standards.

However, in some cases, the proposed alternate approach may not lend itself to the established nutrition assessment methods. In a nutrition assessment, the State agency reviews the school's nutrient analysis or conducts a nutrient analysis for those schools that use a food-based menu planning approach. Therefore, any alternate approach must indicate if it can be monitored under the existing criteria. If not, the alternate approach must include a method for the State agency's assessment. We anticipate that this will primarily involve a description of the records that schools maintain to document compliance with administrative and nutrition requirements.

We received only one comment on this guideline. The commentor stated that the school should not develop any monitoring criteria; rather, the State agency should do it. We reiterate that most alternate approaches will lend themselves to the existing monitoring procedures. The only time an SFA would need to address monitoring in the design of the alternate menu planning approach would be to indicate what differences there were in the structure of a reimbursable lunch and the like. The SFA would also need to indicate where and how the State agency would find the needed information to determine compliance with the nutrition standards. The SFA would not need to outline a monitoring system for the State agency to follow; rather, it would show differences between the existing menu planning approaches and their alternate approach and ways to assist the State agency with either using or adapting the standard monitoring procedures. Therefore, we are adopting this guideline as proposed without any changes. These provisions are found at § 210.10(l)(4)(vii) and § 220.8(h)(3)(vii) with conforming amendments at § 210.19(a).

*What Was Proposed About Using Weighted Averages for Alternate Menu Planning Approaches Based on Nutrient Standard Menu Planning?*

We proposed that alternate menu planning approaches using nutrient analysis have the analysis conducted based on weighting of all foods planned to be offered as part of the reimbursable lunch or breakfast based on planned production except for certain alternate approaches developed by State agencies. However, subsequent to issuing the proposed rule, Pub. L. 105–336, the Child Nutrition Reauthorization Act of 1998 was enacted. Section 102(b) of that law (42 U.S.C.1758(f)(4)(B)) prohibits the Department from requiring use of weighting until September 30, 2003. One commentor noted that the requirement for weighting was in violation of Pub. L. 105–336. In total, only three comment letters addressed this guideline. All of them opposed requiring this guideline. Weighting proportionately accounts for the popularity of the various foods and menu items offered.

We are amending the regulations to clarify that schools are *not* required to conduct a weighted nutrient analysis through September 30, 2003. Therefore, when either SFAs or State agencies conduct a nutrient analysis for any reason, weighting cannot be required by FNS. We are adding that date to the requirements (at § 210.10(l)(4)(viii) and § 220.8(h)(3)(viii)) on weighted averages under alternate menu planning approaches. Except for adding the date, the proposed provisions are adopted, as final. We are also adding the date at § 210.10(i)(5)(i) and § 220.8(e)(5)(i) which provide the requirements for the nutrient standard menu planning approach.

In the preamble to the proposed regulation, we requested comments on the use of a weighted nutrient analysis versus an unweighted method. We received 27 comments on this issue with eight commentors supporting the use of weighted averages and 19 opposing some aspect of weighted averages. As mentioned earlier, the provision on weighting is temporarily suspended. While we believe that weighted averages may be one method to reflect what students actually select (which then results in more accurate nutrient analysis), we are continuing to assess the accuracy of both weighted and unweighted averages as indicators of how well the nutrition standards are met.

*What Was Proposed About the Use of Approved Software for Alternate Approaches That Used Nutrient Analysis?*

We also proposed that alternate approaches use FNS approved software as required by §§ 210.10(i)(4) and 220.8(e)(4). Software used for nutrient analysis of school lunches and breakfasts must meet the minimum requirements established by FNS and must incorporate the Child Nutrition Database. Approved software is designed to meet the needs of school food service professionals and fulfills two essential criteria—the ability to

perform all the requirements of the regulations and the achievement of uniform results. However, we did propose to permit modification of this criterion if an alternate menu planning approach was developed by the State agency which would remain an active partner and was adopted by five or more SFAs.

We received five comments on this provision, all in opposition. We continue to believe that the use of approved software is vital to the nutritional integrity of the programs and that use of approved software (expect in very limited circumstances) assures that it meets the regulatory requirements. Also, there are a number of approved software packages available which schools can select depending on their specific needs. In those limited situations where schools using an alternate menu planning approach would not be required to use approved software, the State agency would be available to provide a continual source of guidance and expertise to assist schools. Therefore, we are adopting this guideline as proposed without changes at § 210.10(l)(4)(viii) and § 220.8(h)(3)(viii).

*What Clarifications Were Proposed About Assessing Compliance With the Nutrition Standards?*

We proposed amendments to § 210.18 and § 210.19 to clarify that the existing monitoring requirements apply to the traditional food-based menu planning approach. We also proposed some technical amendments to modify the terminology in § 210.18 and § 210.19. These changes clarify that these assessment and monitoring requirements apply to all menu planning approaches, including alternate approaches developed by State agencies or SFAs. We had no comments on these changes. Therefore, the amendments to § 210.18(b)(2)(ii), (g)(2), and (i)(3)(ii) and to § 210.19(c)(6)(i) are adopted as final without changes.

*What Was Proposed About Adjusting the Week Selected for the Nutrition Assessment?*

We proposed an adjustment to the period of the nutrition assessments to provide State agencies additional flexibility in choosing a week to evaluate. Currently, paragraphs (a)(1)(i) and (ii) of § 210.19 stipulate that the State agency must review the school's nutrition analysis or conduct an independent analysis for the last completed week prior to the assessment. However, some State agencies told us that for the administrative/CRE review under § 210.18, they can select the month prior to the month of the review as the sample period. Consequently, State agencies which elect to conduct nutrition assessments concurrently with CRE reviews will likely need to look at two different review periods during the same visit. To remedy this situation, we proposed that reviewers could conduct the nutrition standard assessment on any week of the current school year prior to the month of the review as long as that week still represented the current lunch or breakfast service.

We received 9 comments on this proposal, all but one of them supported the change. One commentor suggested that we delete the wording about a week "prior to" to the month in which the assessment is conducted. The commentor felt this limited the reviewer if s/he wanted to select a week in the month of the review. We are adopting this recommendation to provide reviewers with additional flexibility. We are making this modification to § 210.19 (a)(1)(i) but are otherwise adopting as final the changes as proposed to this paragraph.

*What Was Proposed About the Extent of Assessments?*

We proposed that State agencies must review at least one school for each type of menu planning used by the SFA. We also clarified that State agencies would only need to do a nutrition assessment on the lunch program unless the SFA uses a particular menu planning approach only for the breakfast program or only participates in the SBP. We received no comments on these proposed changes, so they are adopted at § 210.19(a)(1) as final without change.

*What Was Proposed About Conforming the CRE and Nutrition Assessment Cycles?*

We proposed a minor technical amendment to § 210.19(a)(1)(i) to make the cycle for nutrition assessments consistent with the cycle for administrative reviews under § 210.18. Originally, we established a five-year cycle for assessments of nutrition compliance and intended that cycle to run concurrently with the CRE cycle so that those States electing to conduct nutrition assessments at the same time as administrative reviews could do so efficiently. That first cycle began on July 1, 1996, unless the State agency authorized a temporary waiver of compliance with the nutrition standards, in which case the first year of the cycle could have begun as late as July 1, 1998. Consequently, the first five-year cycle would end as early as June 30, 2001 or as late as June 30, 2003, depending upon actual implementation. The current CRE cycle ends on June 30, 1998, however, and the next cycle will end on June 30, 2003. The two cycles are then out of sequence for State agencies which implement the regulations before School Year 1998/1999. We proposed a schedule to have the two cycles coincide by establishing an initial cycle of seven years for nutrition assessments, from July 1, 1996 through June 30, 2003. Thereafter, the cycles would be five years in length. We received 13 comments on this proposed provision, all but one of which supported the change. Therefore, we are adopting this proposal without change at § 210.19(a)(1)(i).

*What Technical Changes Were Proposed?*

We proposed to update references to the 1990 Dietary Guidelines for Americans to reflect the 1995 edition as well as the minor word changes between the two versions. We received no comments on these changes, so they are adopted as final at § 210.10(b) and § 220.8(a) and to the footnotes for the tables in §§ 210.10(c), 210.10(d), 220.8(b), and 220.8(c).

We proposed to revise the name of the database used in the nutrient analysis software from the "National Nutrient Database for the Child Nutrition Programs" to the "Child Nutrition Database." We received no comments on this and are adopting it as final at § 210.10(i) and § 220.8(e). We are also deleting obsolete sections of §§ 210.10 and 220.8 (paragraphs (o) and (m), respectively) as these refer to implementation deadlines that have passed. Sections 210.10a and 220.8a are also deleted as the pertinent provisions are now incorporated into §§ 210.10 and 220.8. As we received no comments on these technical changes, they are all adopted as final without change.

Please keep in mind, however, that we did rewrite most of §§ 210.10 and 220.8 in plain language. We may have reworded some of the proposed changes for simplicity. We also conformed the language for the traditional food-based menu planning approach to the terms used in the enhanced food-based menu planning approach. We did not intentionally revise the content of the proposed or existing regulations. Please note that we did not include the section on supplemental foods (§ 210.10(n)) as this section is being rewritten as a separate rulemaking to incorporate the recent expansion of the afterschool snack service. However, in the interests of plain language and in anticipation of the regulations that will incorporate the term, this regulation uses "afterschool snack" in lieu of "meal supplement"

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(the currently used term) and clarifies where requirements apply only to lunches and breakfasts and those that apply to all of the meal services including the afterschool snack service.

*Does This Final Rule Include Any Additional Technical Changes?*

Yes. This final rule designates a previously undesignated paragraph in § 210.18(i)(3)(i). This is only a technical amendment to conform our regulations to the formatting requirements of the Office of the Federal Register.

**Executive Order 12866**

This final rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

**Public Law 104–4**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally prepares a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory approaches and adopt the least costly, more cost-effective or least burdensome that achieves the objectives of the rule.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this final rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Regulatory Flexibility Act**

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Under Secretary for Food, Nutrition and Consumer Services has certified that this rule will not have a significant economic impact on a substantial number of small entities. The Department of Agriculture (the Department or USDA) does not anticipate any adverse fiscal impact on local schools as this rule expands the number of approaches available to plan menus for school lunches and breakfasts.

**Executive Order 12372**

The NSLP and the SBP are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555 and 10.553, respectively, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

**Executive Order 12988**

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This final rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of this preamble. Prior to any judicial challenge to the provisions of this final rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the NSLP and SBP, the administrative procedures are set forth under the following regulations: (1) SFA appeals of State agency findings as a result of an administrative review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) SFA appeals of FNS findings as a result of an administrative review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

**Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507, the information reporting and recordkeeping requirements included in this final rule were reviewed by the Office of Management and Budget (OMB). OMB approved these requirements for part 210 under control number 0584–0006.

**List of Subjects**

*7 CFR Part 210*

Children, Commodity School Program, Food assistance programs, Grant programs-social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

*7 CFR Part 220*

Children, Food assistance programs, Grant programs-social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

Accordingly, 7 CFR Parts 210 and 220 are amended as follows:

## PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 continues to read as follows:

**Authority:** 42 U.S.C. 1751–1760, 1779.

2. In part 210, the words "or § 210.10a, whichever is applicable" are removed wherever they appear in the following places:

a. § 210.9(b)(5);
b. § 210.9(c)(1);
c. § 210.16(b)(1);
d. § 210.19(a)(3);
e. Appendix A to Part 210; and
f. Appendix C to Part 210.

3. In part 210, the words "or § 210.10a(b), whichever is applicable" are removed wherever they appear in the following places:

a. § 210.7(c)(1)(v); and
b. § 210.15(b)(3).

4. In part 210, the words "or § 210.10a(j)(1), whichever is applicable" are removed wherever they appear in the following places:

a. § 210.4(b)(3);
b. § 210.7(d); and
c. § 210.9(c), introductory text.

**§ 210.2 [Amended].**

4. In § 210.2:

a. The definition of "*Food component*" is revised;

b. The definition of "*Food item*" is revised;

c. The definition of "*Lunch*" is revised; and

d. The definition of "*Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning*" is revised.

The revisions read as follows:

**§ 210.2 Definitions.**

* * * * *

*Food component* means one of the four food groups which comprise reimbursable meals planned under a food-based menu planning approach. The four food components are: meat/meat alternate; grains/breads; fruits/vegetables; and milk.

*Food item* means one of the five foods offered in lunches under a food-based menu planning approach: meat/meat alternate; grains/breads; two servings of fruits/vegetables; and milk.

*Lunch* means a meal service that meets the applicable nutrition standards

and portion sizes in § 210.10 for lunches.

* * * * *

*Nutrient Standard Menu Planning/ Assisted Nutrient Standard Menu Planning* means ways to develop lunch menus based on the analysis for nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met in accordance with § 210.10(i)(5). However, for the purposes of Assisted Nutrient Standard Menu Planning, lunch menu planning and analysis are completed by other entities and must incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority in accordance with § 210.10(j).

* * * * *

5. In § 210.10:

a. Paragraph (o) is removed;

b. Paragraphs (a) through (k) are revised;

c. Paragraphs (l) and (m) are redesignated as paragraphs (m) and (o), respectively, and are revised; and

d. A new paragraph (l) is added.

The revisions and additions read as follows:

**§ 210.10 What are the nutrition standards and menu planning approaches for lunches and the requirements for afterschool snacks?**

(a) *What are the general requirements?*

(1) *General nutrition requirements.* Schools must provide nutritious and well-balanced meals to all the children they serve.

(i) *Requirements for lunch.* For children age 2 or older, schools must offer lunches that meet, at a minimum, the nutrition standards in paragraph (b) of this section. Compliance with the nutrition standards and the appropriate nutrient and calorie levels is determined by averaging lunches planned to be offered over a school week. Under any menu planning approach, schools must plan and produce at least enough food to meet the appropriate calorie and nutrient levels for the ages/grades of the children in the school (see paragraphs (c), (d), (i)(1) or (l) of this section, depending on the menu planning approach used). Also, if schools use one of the food-based menu planning approaches, they must plan and produce at least enough food to offer each child the minimum quantities under the meal pattern (see paragraph (k) of this section). Schools offering lunches to infants must meet the meal pattern requirements in paragraph (o) of this section.

(ii) *Requirements for afterschool snacks.* Schools offering afterschool snacks in afterschool care programs must meet the meal pattern requirements in paragraph (n) of this section. Schools must plan and produce enough food to offer each child the minimum quantities under the meal pattern in paragraph (n) of this section. The component requirements for meal supplements served under the Child and Adult Care Food Program authorized under part 226 of this chapter also apply to afterschool snacks served in accordance with paragraph (n) of this section.

(2) *Unit pricing.* Schools must price each meal as a unit. Schools need to consider participation trends in an effort to provide one reimbursable lunch and, if applicable, one reimbursable afterschool snack for each child every day. If there are leftover meals, schools may offer them to the students but cannot get reimbursement for them.

(3) *Production and menu records.* Schools must keep production and menu records for the meals they produce. These records must show how the meals contribute to the required food components, food items or menu items every day. In addition, for lunches, these records must show how the lunches contribute to the nutrition standards in paragraph (b) of this section and the appropriate calorie and nutrient levels for the ages/grades of the children in the school (see paragraphs (c), (d), or (i)(1) or (l) of this section, depending on the menu planning approach used) over the school week. If applicable, schools or school food authorities must maintain nutritional analysis records to demonstrate that lunches meet, when averaged over each school week:

(i) The nutrition standards provided in paragraph (b) of this section; and

(ii) The nutrient and calorie levels for children for each age or grade group in accordance with paragraphs (c) or (i)(1) of this section or developed under paragraph (l) of this section.

(b) *What are the specific nutrition standards for lunches?* Children age 2 and above must be offered lunches that meet the following nutrition standards for their age/grade group:

(1) Provision of one-third of the Recommended Dietary Allowances (RDAs) for protein, calcium, iron, vitamin A and vitamin C in the appropriate levels for the ages/grades (see paragraphs (c), (d), (i)(1) or (l) of this section, depending on the menu planning approach used);

(2) Provision of the lunchtime energy allowances (calories) in the appropriate levels (see paragraphs (c), (d),(i)(1) or (l) of this section, depending on the menu planning approach used);

(3) These applicable recommendations from the 1995 Dietary Guidelines for Americans:

(i) Eat a variety of foods;

(ii) Limit total fat to 30 percent of total calories;

(iii) Limit saturated fat to less than 10 percent of total calories;

(iv) Choose a diet low in cholesterol;

(v) Choose a diet with plenty of grain products, vegetables, and fruits; and

(vi) Choose a diet moderate in salt and sodium.

(4) These measures of compliance with the applicable recommendations of the 1995 Dietary Guidelines for Americans:

(i) Limit the percent of calories from total fat to 30 percent of the actual number of calories offered;

(ii) Limit the percent of calories from saturated fat to less than 10 percent of the actual number of calories offered;

(iii) Reduce sodium and cholesterol levels; and

(iv) Increase the level of dietary fiber.

(5) School food authorities have several ways to plan menus. The minimum levels of nutrients and calories that lunches must offer depends on the menu planning approach used and the ages/grades served. The menu planning approaches are:

(i) Nutrient standard menu planning (see paragraphs (c) and (i) of this section);

(ii) Assisted nutrient standard menu planning (see paragraphs (c) and (j) of this section);

(iii) Traditional food-based menu planning (see paragraphs (d)(1) and (k) of this section);

(iv) Enhanced food-based menu planning (see paragraphs (d)(2) and (k) of this section); or

(v) Alternate menu planning (see paragraph (l) of this section).

(c) *What are the levels for nutrients and calories for lunches planned under the nutrient standard or assisted nutrient standard menu planning approaches?*

(1) *Required levels.* The required levels are:

| MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL LUNCHES NUTRIENT STANDARD MENU PLANNING APPROACHES (SCHOOL WEEK AVERAGES) | | | | |
|---|---|---|---|---|
| | MINIMUM REQUIREMENTS | | | OPTIONAL |
| NUTRIENTS AND ENERGY ALLOWANCES | Preschool | Grades K-6 | Grades 7-12 | Grades K-3 |
| Energy allowances (calories) | 517 | 664 | 825 | 633 |
| Total fat (as a percentage of actual total food energy) | [1] | [1, 2] | [2] | [1, 2] |
| Saturated fat (as a percentage of actual total food energy) | [1] | [1, 3] | [3] | [1, 3] |
| RDA for protein (g) | 7 | 10 | 16 | 9 |
| RDA for calcium (mg) | 267 | 286 | 400 | 267 |
| RDA for iron (mg) | 3.3 | 3.5 | 4.5 | 3.3 |
| RDA for Vitamin A (RE) | 150 | 224 | 300 | 200 |
| RDA for Vitamin C (mg) | 14 | 15 | 18 | 15 |

[1] The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

[2] Not to exceed 30 percent over a school week

[3] Less than 10 percent over a school week

(2) *Optional levels.* Optional levels are:

| OPTIONAL MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL LUNCHES NUTRIENT STANDARD MENU PLANNING APPROACHES (SCHOOL WEEK AVERAGES) | | | | |
|---|---|---|---|---|
| NUTRIENTS AND ENERGY ALLOWANCES | AGES 3-5 | AGES 7-10 | AGES 11-13 | AGES 14 AND ABOVE |
| Energy allowances (calories) | 558 | 667 | 783 | 846 |
| Total fat (as a percentage of actual total food energy) | [1,2] | [2] | [2] | [2] |
| Saturated fat (as a percentage of actual total food energy) | [1,3] | [3] | [3] | [3] |
| RDA for protein (g) | 7.3 | 9.3 | 15.0 | 16.7 |
| RDA for calcium (mg) | 267 | 267 | 400 | 400 |
| RDA for iron (mg) | 3.3 | 3.3 | 4.5 | 4.5 |
| RDA for Vitamin A (RE) | 158 | 233 | 300 | 300 |
| RDA for Vitamin C (mg) | 14.6 | 15 | 16.7 | 19.2 |

[1] The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

[2] Not to exceed 30 percent over a school week

[3] Less than 10 percent over a school week

(3) *Customized levels.* Schools may also develop a set of nutrient and calorie levels for a school week. These levels are customized for the age groups of the children in the particular school or school food authority.

(d) *What are the nutrient and calorie levels for lunches planned under the food-based menu planning approaches?*

(1) *Traditional approach.* For the traditional food-based menu planning approach, the required levels are:

| MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL LUNCHES<br>NUTRIENT STANDARD MENU PLANNING APPROACHES (SCHOOL WEEK AVERAGES) | | | | |
|---|---|---|---|---|
| | MINIMUM REQUIREMENTS | | | OPTIONAL |
| NUTRIENTS AND ENERGY ALLOWANCES | Preschool | Grades K-6 | Grades 7-12 | Grades K-3 |
| Energy allowances (calories) | 517 | 664 | 825 | 633 |
| Total fat (as a percentage of actual total food energy) | [1] | [1, 2] | [2] | [1, 2] |
| Saturated fat (as a percentage of actual total food energy) | [1] | [1, 3] | [3] | [1, 3] |
| RDA for protein (g) | 7 | 10 | 16 | 9 |
| RDA for calcium (mg) | 267 | 286 | 400 | 267 |
| RDA for iron (mg) | 3.3 | 3.5 | 4.5 | 3.3 |
| RDA for Vitamin A (RE) | 150 | 224 | 300 | 200 |
| RDA for Vitamin C (mg) | 14 | 15 | 18 | 15 |

[1] The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

[2] Not to exceed 30 percent over a school week

[3] Less than 10 percent over a school week

(2) *Enhanced approach.* For the enhanced food-based menu planning approach, the required levels are:

| MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL LUNCHES<br>ENHANCED FOOD-BASED MENU PLANNING APPROACH (SCHOOL WEEK AVERAGES) | | | | |
|---|---|---|---|---|
| | MINIMUM REQUIREMENTS | | | OPTIONAL |
| NUTRIENTS AND ENERGY ALLOWANCES | PRESCHOOL | GRADES K-6 | GRADES 7-12 | GRADES K-3 |
| Energy allowances (calories) | 517 | 664 | 825 | 633 |
| Total fat (as a percentage of actual total food energy) | [1] | [1, 2] | [2] | [1,2] |
| Saturated fat (as a percentage of actual total food energy) | [1] | [1, 3] | [3] | [1,3] |
| RDA for protein (g) | 7 | 10 | 16 | 9 |
| RDA for calcium (mg) | 267 | 286 | 400 | 267 |
| RDA for iron (mg) | 3.3 | 3.5 | 4.5 | 3.3 |
| RDA for Vitamin A (RE) | 150 | 224 | 300 | 200 |
| RDA for Vitamin C (mg) | 14 | 15 | 18 | 15 |

[1] The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

[2] Not to exceed 30 percent over a school week

[3] Less than 10 percent over a school week

(e) *Must schools offer choices at lunch?* FNS encourages schools to offer children a selection of foods and menu items at lunch. Choices provide variety and encourage consumption. Schools may offer choices of reimbursable lunches or foods within a reimbursable lunch. Children who are eligible for free or reduced price lunches must be allowed to take any reimbursable lunch or any choices offered as part of a reimbursable lunch. Schools may establish different unit prices for each lunch offered provided that the benefits made available to children eligible for free or reduced price lunches are not affected.

(f) *What are the requirements for lunch periods?*

(1) *Timing.* Schools must offer lunches meeting the requirements of this section during the period the school has designated as the lunch period. Schools must offer lunches between 10:00 a.m. and 2:00 p.m. Schools may request an exemption from these times only from FNS.

(2) *Lunch periods for young children.* With State agency approval, schools are encouraged to serve children ages one through five over two service periods. Schools may divide the quantities and/or the menu items, foods, or food items offered each time any way they wish.

(3) *Adequate lunch periods.* FNS encourages schools to provide sufficient lunch periods that are long enough to give all students enough time to be served and to eat their lunches.

(g) *What exceptions and variations are allowed in meals?*

(1) *Exceptions for medical or special dietary needs.* Schools must make substitutions in lunches and afterschool snacks for students who are considered to have a disability under 7 CFR part 15b and whose disability restricts their diet. Schools may also make substitutions for students who do not have a disability but who cannot consume the regular lunch or afterschool snack because of medical or other special dietary needs. Substitutions must be made on a case by case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Such statement must, in the case of a student with a disability, be signed by a physician or, in the case of a

student who is not disabled, by a recognized medical authority.

(2) *Variations for ethnic, religious, or economic reasons.* Schools should consider ethnic and religious preferences when planning and preparing meals. Variations on an experimental or continuing basis in the food components for the food-based menu planning approaches in paragraphs (k) or (n) of this section may be allowed by FNS. Any variations must be nutritionally sound and needed to meet ethnic, religious, or economic needs.

(3) *Exceptions for natural disasters.* If there is a natural disaster or other catastrophe, FNS may temporarily allow schools to serve meals for reimbursement that do not meet the requirements in this section.

(h) *What should schools do about nutrition disclosure?* FNS encourages schools to inform the students, parents, and the public about efforts they are making to meet the nutrition standards (see paragraph (b) of this section) for school lunches.

(i) *What are the requirements for lunches under the nutrient standard menu planning approach?*

(1) *Nutrient levels.*

(i) *Adjusting nutrient levels for young children.* Schools with children who are age 2 must at least meet the nutrition standards in paragraph (b) of this section and the preschool nutrient and calorie levels in paragraph (c)(1) of this section over a school week. Schools may also use the preschool nutrient and calorie levels in paragraph (c)(2) of this section or may calculate nutrient and calorie levels for two year olds. FNS has a method for calculating these levels in guidance materials for menu planning.

(ii) *Minimum levels for nutrients.* Lunches must at least offer the nutrient and calorie levels for the required grade groups in the table in paragraph (c)(1) of this section. Schools may also offer lunches meeting the nutrient and calorie levels for the age groups in paragraph (c)(2) of this section. If only one grade or age group is outside either of these established levels, schools may follow the levels for the majority of the children. Schools may also customize the nutrient and calorie levels for the children they serve. FNS has a method for calculating these levels in guidance materials for menu planning.

(2) *Reimbursable lunches.*

(i) *Contents of a reimbursable lunch.* A reimbursable lunch must include at least three menu items. One of those menu items must be an entree, and one must be fluid milk as a beverage. An entree is a combination of foods or is a single food item offered as the main course. All menu items or foods offered in a reimbursable lunch contribute to the nutrition standards in paragraph (b) of this section and to the levels of nutrients and calories that must be met in paragraphs (c) or (i)(1) of this section. Unless offered as part of a menu item in a reimbursable lunch, foods of minimal nutritional value (see appendix B to part 210) are not included in the nutrient analysis. Reimbursable lunches planned under the nutrient standard menu planning approach must meet the nutrition standards in paragraph (b) of this section and the appropriate nutrient and calorie levels in either paragraph (c) or paragraph (i)(1) of this section.

(ii) *Offer versus serve.* Schools must offer at least three menu items for lunches. Senior high (as defined by the State educational agency) school students must select at least two menu items and are allowed to decline a maximum of two menu items. The student must always take the entree. The price of a reimbursable lunch does not change if the student does not take a menu item or requests smaller portions. At the discretion of the school food authority, students below the senior high level may also participate in offer versus serve.

(3) *Doing the analysis.* Schools using nutrient standard menu planning must conduct the analysis on all menu items and foods offered in a reimbursable lunch. The analysis is conducted over a school week. Unless offered as part of a menu item in a reimbursable lunch, foods of minimal nutritional value (see appendix B to part 210) are not included in the nutrient analysis.

(4) *Software elements.*

(i) *The Child Nutrition Database.* The nutrient analysis is based on the Child Nutrition Database. This database is part of the software used to do a nutrient analysis. Software companies or others developing systems for schools may contact FNS for more information about the database.

(ii) *Software evaluation.* FNS or an FNS designee evaluates any nutrient analysis software before it may be used in schools. FNS or its designee determines if the software, as submitted, meets the minimum requirements. The approval of software does not mean that FNS or USDA endorses it. The software must be able to do all functions after the basic data is entered. The required functions include weighted averages and the optional combined analysis of the lunch and breakfast programs.

(5) *Nutrient analysis procedures.*

(i) *Weighted averages.* Schools must include all menu items and foods offered in reimbursable lunches in the nutrient analysis. Menu items and foods are included based on the portion sizes and projected serving amounts. They are also weighted based on their proportionate contribution to the lunches offered. This means that menu items or foods more frequently offered are weighted more heavily than those not offered as frequently. Schools calculate weighting as indicated by FNS guidance and by the guidance provided by the software. Through September 30, 2003, schools are not required to conduct a weighted analysis.

(ii) *Analyzed nutrients.* The analysis includes all menu items and foods offered over a school week. The analysis must determine the levels of: Calories, protein, vitamin A, vitamin C, iron, calcium, total fat, saturated fat, sodium, cholesterol and dietary fiber.

(iii) *Combining the analysis of the lunch and breakfast programs.* At their option, schools may combine the analysis of lunches offered under this part and breakfasts offered under part 220 of this Chapter. The analysis is done proportionately to the levels of participation in each program based on FNS guidance.

(6) *Comparing the results of the nutrient analysis.* Once the procedures in paragraph (i)(5) of this section are completed, schools must compare the results of the analysis to the appropriate nutrient and calorie levels, by age/grade groups, in paragraph (c) of this section or those developed under paragraph (i)(1) of this section. This comparison determines the school week's average. Schools must also make comparisons to the nutrition standards in paragraph (b) of this section to determine how well they are meeting the nutrition standards over the school week.

(7) *Adjustments to the menus.* Once schools know the results of the nutrient analysis based on the procedures in paragraphs (i)(5) and (i)(6) of this section, they must adjust future menu cycles to reflect production and how often the menu items and foods are offered. Schools may need to reanalyze menus when the students' selections change and, consequently, production levels change. Schools may need to change the menu items and foods offered given the students' selections and may need to modify the recipes and other specifications to make sure that the nutrition standards in paragraph (b) and either paragraphs (c) or (i)(1) of this section are met.

(8) *Standardized recipes.* If a school follows the nutrient standard menu planning approach, it must develop and follow standardized recipes. A standardized recipe is a recipe that was tested to provide an established yield and quantity using the same ingredients

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for both measurement and preparation methods. Any standardized recipes developed by USDA/FNS are in the Child Nutrition Database. If a school has its own recipes, they must be standardized and analyzed to determine the levels of calories, nutrients, and dietary components listed in paragraph (i)(5)(ii) of this section. Schools must add any local recipes to their local database as outlined in FNS guidance.

(9) *Processed foods.* The Child Nutrition Database includes a number of processed foods. Schools may use purchased processed foods and menu items that are not in the Child Nutrition Database. Schools or the State agency must add any locally purchased processed foods and menu items to their local database as outlined in FNS guidance. Schools or the State agency must obtain the levels of calories, nutrients, and dietary components listed in paragraph (i)(5)(ii) of this section.

(10) *Menu substitutions.* Schools may need to substitute foods or menu items in a menu that was already analyzed. If the substitution(s) occurs more than two weeks before the planned menu is served, the school must reanalyze the revised menu. If the substitution(s) occurs two weeks or less before the planned menu is served, the school does not need to do a reanalysis. However, schools should always try to substitute similar foods.

(11) *Meeting the nutrition standards.* The school's analysis shows whether their menus are meeting the nutrition standards in paragraph (b) of this section and the appropriate levels of nutrients and calories in paragraph (c) of this section or customized levels developed under paragraph (i)(1) of this section. If the analysis shows that the menu(s) are not meeting these standards, the school needs to take action to make sure that the lunches meet the nutrition standards and the calorie, nutrient, and dietary component levels. Actions may include technical assistance and training and may be taken by the State agency, the school food authority or by the school as needed.

(12) *Other Child Nutrition Programs and nutrient standard menu planning.* School food authorities that operate the Summer Food Service Program (part 225 of this chapter) and/or the Child and Adult Care Food Program (part 226 of this chapter) may, with State agency approval, prepare lunches for these programs using the nutrient standard menu planning approach for children age two and over. FNS has guidance on the levels of nutrients and calories for adult lunches under the Child and Adult Care Food Program. However, afterschool snacks continue to use the appropriate program's meal pattern.

(j) *What are the requirements for lunches under the assisted nutrient standard menu planning approach?* (1) *Definition of assisted nutrient standard menu planning.* Some school food authorities may not be able to do all of the procedures necessary for nutrient standard menu planning. The assisted nutrient standard menu planning approach provides schools with menu cycles developed and analyzed by other sources. These sources include the State agency, other school food authorities, consultants, or food service management companies.

(2) *Elements of assisted nutrient standard menu planning.* School food authorities using menu cycles developed under assisted nutrient standard menu planning must follow the procedures in paragraphs (i)(1) through (i)(10) of this section. The menu cycles must also incorporate local food preferences and accommodate local food service operations. The menus cycles must meet the nutrition standards in paragraph (b) of this section and meet the nutrient and calorie levels for nutrient standard menu planning in paragraph (c) or paragraph (i)(1) of this section. The supplier of the assisted nutrient standard menu planning approach must also develop and provide recipes, food product specifications, and preparation techniques. All of these components support the nutrient analysis results of the menus cycles used by the receiving school food authorities.

(3) *State agency approval.* Prior to its use, the State agency must approve the initial menu cycle, recipes and other specifications of the assisted nutrient standard menu planning approach. The State agency needs to ensure that all the steps required for nutrient analysis were followed. School food authorities may also ask the State agency for assistance with implementation of their assisted nutrient standard menu planning approach.

(4) *Required adjustments.* After the initial service of the menu cycle developed under the assisted nutrient standard menu planning approach, the nutrient analysis must be reassessed and appropriate adjustments made as discussed in paragraph (i)(7) of this section.

(5) *Final responsibility for meeting the nutrition standards.* The school food authority using the assisted nutrient standard menu planning approach retains responsibility for meeting the nutrition standards in paragraph (b) of this section and the calorie and nutrient levels in paragraph (c) or paragraph (i)(1) of this section.

(6) *Adjustments to the menus.* If the nutrient analysis shows that the lunches offered are not meeting the nutrition standards in paragraph (b) of this section and the calorie and nutrient levels in paragraph (c) or paragraph (i)(1) of this section, the State agency, school food authority or school must take action to make sure the lunches offered meet these requirements. Actions needed include technical assistance and training.

(7) *Other Child Nutrition Programs and assisted nutrient standard menu planning.* School food authorities that operate the Summer Food Service Program (part 225 of this chapter) and/or the Child and Adult Care Food Program (part 226 of this chapter) may, with State agency approval, prepare lunches for these programs using the assisted nutrient standard menu planning approach for children age two and over. FNS has guidance on the levels of nutrients and calories for adult lunches under the Child and Adult Care Food Program. However, afterschool snacks continue to use the appropriate program's meal pattern.

(k) *What are the requirements for lunches under the food-based menu planning approaches?* There are two menu planning approaches based on meal patterns, not nutrient analysis. These approaches are the traditional food-based menu planning approach and the enhanced food-based menu planning approach. Schools using one of these approaches offer food components in at least the minimum quantities required for the various grade groups.

(1) *Quantities for the traditional food-based menu planning approach.* (i) *Minimum quantities.* At a minimum, schools must offer five food items in the quantities in the following table:

| TRADITIONAL FOOD-BASED MENU PLANNING APPROACH–MEAL PATTERN FOR LUNCHES | | | | | |
|---|---|---|---|---|---|
| | MINIMUM QUANTITIES | | | | RECOMMENDED QUANTITIES |
| FOOD COMPONENTS AND FOOD ITEMS | GROUP I AGES 1-2 PRESCHOOL | GROUP II AGES 3-4 PRESCHOOL | GROUP III, AGES 5-8 GRADES K-3 | GROUP IV AGES 9 AND OLDER GRADES 4-12 | GROUP V AGES 12 AND OLDER GRADES 7-12 |
| Milk (as a beverage) | 6 fluid ounces | 6 fluid ounces | 8 fluid ounces | 8 fluid ounces | 8 fluid ounces |
| Meat or Meat Alternate (quantity of the edible portion as served): | | | | | |
| Lean meat, poultry, or fish | 1 ounce | 1 ½ ounces | 1 ½ ounces | 2 ounces | 3 ounces |
| Alternate Protein Products[1] | 1 ounce | 1 ½ ounces | 1 ½ ounces | 2 ounces | 3 ounces |
| Cheese | 1 ounce | 1 ½ ounces | 1 ½ ounces | 2 ounces | 3 ounces |
| Large egg | ½ | ¾ | ¾ | 1 | 1 ½ |
| Cooked dry beans or peas | ¼ cup | 3/8 cup | 3/8 cup | ½ cup | ¾ cup |
| Peanut butter or other nut or seed butters | 2 tablespoons | 3 tablespoons | 3 tablespoons | 4 tablespoons | 6 tablespoons |
| Yogurt, plain or flavored, unsweetened or sweetened | 4 ounces or ½ cup | 6 ounces or ¾ cup | 6 ounces or ¾ cup | 8 ounces or 1 cup | 12 ounces or 1 ½ cups |
| The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above: | | | | | |
| Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds = 1 ounce of cooked lean meat, poultry, or fish) | ½ ounce = 50% | ¾ ounce = 50% | ¾ ounce = 50% | 1 ounce = 50% | 1 ½ ounces = 50% |
| Vegetable or Fruit: 2 or more servings of vegetables, fruits or both | ½ cup | ½ cup | ½ cup | ¾ cup | ¾ cup |
| Grains/Breads: (servings per week): Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains | 5 servings per week[2] – minimum of ½ serving per day | 8 servings per week[2] – minimum of 1 serving per day | 8 servings per week[2] – minimum of 1 serving per day | 8 servings per week[2] – minimum of 1 serving per day | 10 servings per week[2] – minimum of 1 serving per day |

[1] Must meet the requirements in appendix A of this part.
[2] For the purposes of this table, a week equals five days.

(ii) *Use of Group IV quantities.* Schools that are able to provide quantities of food to children solely on the basis of their ages or grade level should do so. Schools that cannot serve children on the basis of age or grade level must provide all school age children Group IV portions as specified in the table in paragraph (k)(1)(i) of this section. Schools serving children on the basis of age or grade level must plan and produce sufficient quantities of food to provide Groups I-IV no less than the amounts specified for those children in the table in paragraph (k)(1)(i) of this section, and sufficient quantities of food to provide Group V no less than the specified amounts for Group IV. FNS recommends that schools plan and produce sufficient quantities of food to provide Group V children the larger amounts specified in the table in paragraph (k)(1)(i) of this section. Schools that provide increased portion sizes for Group V may comply with children's requests for smaller portion sizes of the food items; however, schools must plan and produce sufficient quantities of food to at least provide the serving sizes required for Group IV. Schools must ensure that lunches are served with the objective of providing the per lunch minimums for each age and grade level as specified in the table in paragraph (k)(1)(i) of this section.

(2) *Quantities for the enhanced food-based menu planning approach.* Schools must at least offer five food items in the quantities in the following table:

| ENHANCED FOOD-BASED MENU PLANNING APPROACH-MEAL PATTERN FOR LUNCHES | | | | | |
|---|---|---|---|---|---|
| | MINIMUM REQUIREMENTS | | | | OPTION FOR |
| FOOD COMPONENTS AND FOOD ITEMS | AGES 1-2 | PRESCHOOL | GRADES K-6 | GRADES 7-12 | GRADES K-3 |
| Milk (as a beverage) | 6 fluid ounces | 6 fluid ounces | 8 fluid ounces | 8 fluid ounces | 8 fluid ounces |
| Meat or Meat Alternate (quantity of the edible portion as served): | | | | | |
| Lean meat, poultry, or fish | 1 ounce | 1 ½ ounces | 2 ounces | 2 ounces | 1 ½ ounces |
| Alternate protein products[1] | 1 ounce | 1 ½ ounces | 2 ounces | 2 ounces | 1 ½ ounces |
| Cheese | 1 ounce | 1 ½ ounces | 2 ounces | 2 ounces | 1 ½ ounces |
| Large egg | ½ | ¾ | 1 | 1 | ¾ |
| Cooked dry beans or peas | ¼ cup | 3/8 cup | ½ cup | ½ cup | 3/8 cup |
| Peanut butter or other nut or seed butters | 2 tablespoons | 3 tablespoons | 4 tablespoons | 4 tablespoons | 3 tablespoons |
| Yogurt, plain or flavored, unsweetened or sweetened | 4 ounces or ½ cup | 6 ounces or ¾ cup | 8 ounces or 1 cup | 8 ounces or 1 cup | 6 ounces or ¾ cup |
| The following may be used to meet no more than 50% of the requirement and must be used in combination with any of the above: | | | | | |
| Peanuts, soynuts, tree nuts, or seeds, as listed in program guidance, or an equivalent quantity of any combination of the above meat/meat alternate (1 ounce of nuts/seeds equals 1 ounce of cooked lean meat, poultry or fish). | ½ ounce =50% | ¾ ounce =50% | 1 ounce =50% | 1 ounce =50% | ¾ ounce =50% |
| Vegetable or Fruit: 2 or more servings of vegetables, fruits or both | ½ cup | ½ cup | ¾ cup plus an extra ½ cup over a week[2] | 1 cup | ¾ cup |
| Grains/Breads (servings per week): Must be enriched or whole grain. A serving is a slice of bread or an equivalent serving of biscuits, rolls, etc., or ½ cup of cooked rice, macaroni, noodles, other pasta products or cereal grains | 5 servings per week[2] – minimum of ½ serving per day | 8 servings per week[2] – minimum of 1 serving per day | 12 servings per week[2] – minimum of 1 serving per day[3] | 15 servings per week[2] – minimum of 1 serving per day[3] | 10 servings per week[2] –minimum of 1 serving per day[3] |

[1] Must meet the requirements in appendix A of this part.
[2] For the purposes of this table, a week equals five days.
[3] Up to one grains/breads serving per day may be a dessert.

(3) *Requirements for the meat/meat alternate component.* The quantity of the meat/meat alternate component must be the edible portion as served. If the portion size of a food item for this component is excessive, the school must reduce that portion and supplement it with another meat/meat alternate to meet the full requirement. This component must be served in a main dish or in a main dish and only one other food item. Schools without daily choices in this component should not serve any one meat alternate or form of meat (for example, ground, diced, pieces) more than three times in the same week.

(i) *Enriched macaroni.* Enriched macaroni with fortified protein as defined in appendix A to this part may be used to meet part of the meat/meat alternate requirement when used as specified in appendix A to this part. An enriched macaroni product with fortified protein as defined in appendix A to this part may be used to meet part of the meat/meat alternate component or the grains/breads component but not as both food components in the same lunch.

(ii) *Nuts and seeds.* Nuts and seeds and their butters are allowed as meat alternates in accordance with program guidance. Acorns, chestnuts, and coconuts must not be used because of their low protein and iron content. Nut and seed meals or flours may be used only as allowed under appendix A to this part. Nuts or seeds may be used to meet no more than one-half of the meat/meat alternate component with another meat/meat alternate to meet the full requirement.

(iii) *Yogurt.* Yogurt may be used to meet all or part of the meat/meat alternate requirement. Yogurt may be either plain or flavored, unsweetened or sweetened. Noncommercial and/or nonstandardized yogurt products, such as frozen yogurt, homemade yogurt, yogurt flavored products, yogurt bars, yogurt covered fruit and/or nuts or similar products are not creditable. Four ounces (weight) or ½ cup (volume) of yogurt equals one ounce of the meat/meat alternate requirement.

(4) *Requirements for the vegetable/fruit component.*

(i) *General.* Full strength vegetable or fruit juice may be used to meet no more than one-half of the vegetable/fruit requirement. Cooked dry beans or peas may be counted as either a vegetable or as a meat alternate but not as both in the same meal.

(ii) *Minimum quantities for the enhanced food-based menu planning.* Under the enhanced food-based menu planning approach, children in kindergarten through grade six are offered vegetables/fruits in minimum daily servings plus an additional one-half cup in any combination over a five day period.

(5) *Requirements for the grains/breads component.*

(i) *Enriched or whole grains.* All grains/breads must be enriched or whole grain or made with enriched or whole grain meal or flour.

(ii) *Daily and weekly servings.* The requirement for the grain/bread component is based on minimum daily servings plus total servings over a five day period. Schools serving lunch 6 or 7 days per week should increase the weekly quantity by approximately 20 percent (⅕th) for each additional day. When schools operate less than 5 days per week, they may decrease the weekly quantity by approximately 20 percent (⅕th) for each day less than five. The servings for biscuits, rolls, muffins, and other grain/bread varieties are specified in the Food Buying Guide for Child Nutrition Programs (PA 1331), an FNS publication.

(iii) *Minimums under the traditional food-based menu planning approach.* Schools must offer at least one-half serving of the grain/bread component to children in Group I and at least one serving to children in Groups II–V daily. Schools which serve lunch at least 5 days a week shall serve a total of at least five servings of grains/breads to children in Group I and eight servings per week to children in Groups II–V.

(iv) *Desserts under the enhanced food-based menu planning approach.* Under the enhanced food-based menu planning approach, schools may count up to one grain-based dessert per day for children in grades K–12 towards meeting the grains/breads component.

(6) *Offer versus serve.* Schools must offer all five required food items. Senior high (as defined by the State educational agency) school students may decline up to two of the five food items. At the school food authority's option, students below senior high may decline one or two of the five food items. The price of a reimbursable lunch does not change if the student does not take a menu item or requests smaller portions.

(7) *Meal pattern exceptions for outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the grain/bread requirement.

(l) *What are the requirements for lunches planned using an alternate menu planning approach?*

(1) *Definition.* Alternate menu planning approaches are those adopted or developed by school food authorities or State agencies that differ from the standard approaches established in paragraphs (i) through (k) of this section. There are two types of alternate approaches. First, there are specific modifications provided in paragraph (l)(2) of this section. Second, there are major changes to the standard menu planning approaches or new menu planning approaches developed by school food authorities or State agencies (see paragraph (l)(3) of this section).

(2) *Use of modifications.* There are three modifications available to schools using one of the food-based menu planning approaches for lunches. State agencies may or may not require prior approval or may establish guidelines for using these modifications.

(i) *Modification to the meat/meat alternate component.* The required minimum quantities of the meat/meat alternate component in the food-based menu planning approaches may be offered as a weekly total with a one ounce (or its equivalent for certain meat alternates) minimum daily serving size. This modification does not apply if the minimum serving of meat/meat alternate is less than one ounce.

(ii) *Modification to age/grade groups under the traditional food-based menu planning approach.* Schools using the traditional food-based menu planning approach may:

(A) For children in grades K–6, use the portion sizes in Group IV in the table in paragraph (k)(1) of this section and follow the nutrient levels for children in grades K–6 in paragraphs (c)(1) and (d)(2) of this section; and/or

(B) For children in grades 7–12, use the portion sizes in Group IV in the table in paragraph (k)(1) of this section and follow the nutrient levels for children in grades 7–12 in paragraphs (c)(1) and (d)(2) of this section.

(iii) *Modification for the majority of children.* Under the traditional or enhanced food-based menu planning approaches, if only one age or grade is outside the established levels, schools may follow the levels for the majority of children for both quantities (see paragraph (k)) and the nutrition standards in paragraphs (b) and (d) of this section.

(3) *Use and approval of major changes or new alternate approaches.* Within the guidelines established for developing alternate menu planning approaches, school food authorities or State agencies may modify one of the established menu planning approaches in paragraphs (i) through (k) of this section or may develop their own menu planning approach. The alternate menu planning approach must be available in writing for review and monitoring purposes. No formal plan is required; guidance material, a handbook or protocol is sufficient. As appropriate, the material must address how the guidelines in paragraph (l)(4) of this section are met. A State agency that develops an alternate approach that is exempt from FNS approval under paragraph (l)(3)(iii) of this section must notify FNS in writing when implementing the alternate approach.

(i) *Approval of local level approaches.* Any school food authority-developed menu planning approach must have prior State agency review and approval.

(ii) *Approval of State agency approaches.* Unless exempt under paragraph (l)(3)(iii) of this section, any State agency-developed menu planning approach must have prior FNS approval.

(iii) *State agency approaches not subject to approval.* A State agency-developed menu planning approach does not need FNS approval if:

(A) Five or more school food authorities in the State use it; and

(B) The State agency maintains on-going oversight of the operation and evaluation of the approach and makes any needed adjustments to its policies and procedures to ensure that the appropriate guidelines of paragraph (l)(4) of this section are met.

(4) *Elements for major changes or new approaches.* Any alternate menu planning approach must:

(i) Offer fluid milk, as provided in paragraph (m) of this section;

(ii) Include offer versus serve for senior high students. Alternate menu planning approaches should follow the offer versus serve procedures in paragraphs (i)(2)(ii) and (k)(6) of this section, as appropriate. If these requirements are not followed, the plan must indicate:

(A) The affected age/grade groups;

(B) The number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable lunch under offer versus serve;

(C) How such procedures will reduce plate waste; and

(D) How a reasonable level of calories and nutrients for the lunch as taken is provided;

(iii) Meet the Recommended Dietary Allowances and lunchtime energy allowances (nutrient levels) and indicate the age/grade groups served and how the nutrient levels are met for those age/grade groups;

(iv) Follow the requirements for competitive foods in § 210.11 and appendix B to this part;

(v) Follow the requirements for counting food items and products towards the meal patterns. These requirements are found in paragraphs (k)(3) through (k)(5) and paragraph (m) of this section, in appendices A through

C to this part, and in instructions and guidance issued by FNS. This only applies if the alternate approach is a food-based menu planning approach;

(vi) Identify a reimbursable lunch at the point of service;

(A) To the extent possible, the procedures provided in paragraph (i)(2)(i) of this section for the nutrient standard or assisted nutrient standard menu planning approaches or for food-based menu planning approaches provided in paragraph (k) of this section must be followed. Any instructions or guidance issued by FNS that further defines the elements of a reimbursable lunch must be followed when using the existing regulatory provisions.

(B) Any alternate approach that deviates from the provisions in paragraph (i)(2)(i) or paragraph (k) of this section must indicate what constitutes a reimbursable lunch, including the number and type of items (and, if applicable, the quantities for the items) which comprise the lunch, and how a reimbursable lunch is to be identified at the point of service;

(vii) Explain how the alternate menu planning approach can be monitored under the applicable provisions of § 210.18 and § 210.19, including a description of the records that will be maintained to document compliance with the program's administrative and nutrition requirements. However, if the procedures under § 210.19 cannot be used to monitor the alternate approach, a description of procedures which will enable the State agency to assess compliance with the nutrition standards in paragraphs (b)(1) through (b)(4) of this section must be included; and

(viii) Follow the requirements for weighted analysis and for approved software for nutrient standard menu planning approaches as required by paragraphs (i)(4) and (i)(5) of this section unless a State agency-developed approach meets the criteria in paragraph (l)(3)(iii) of this section. Through September 30, 2003, schools are not required to conduct a weighted analysis.

(m) *What are the requirements for offering milk?*

(1) *Types of milk.* (i) Under all menu planning approaches for lunches, schools must offer students fluid milk. The types of milk offered must be consistent with the types of milk consumed in the previous year. However, if a particular type of milk constituted less than one percent (1%) of the total amount of milk consumed in the previous year, a school does not need to offer this type of milk. This does not preclude schools from offering additional types of milk.

(ii) All milk served in the Program must be pasteurized fluid milk which meets State and local standards for such milk. However, infants under 1 year of age must be served breast milk or iron-fortified infant formula. All milk must have vitamins A and D at levels specified by the Food and Drug Administration and must be consistent with State and local standards for such milk.

(2) *Inadequate milk supply.* If a school cannot get a supply of milk, it can still participate in the Program under the following conditions:

(i) If emergency conditions temporarily prevent a school that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may allow the school to serve meals during the emergency period with an alternate form of milk or without milk.

(ii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may approve the service of meals without fluid milk if the school uses an equivalent amount of canned milk or dry milk in the preparation of the meals. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, "milk" includes reconstituted or recombined milk, or as otherwise allowed by FNS through a written exception.

* * * * *

(o) *What are the requirements for the infant lunch pattern?*

(1) *Definitions.* (i) Infant cereal means any iron-fortified dry cereal especially formulated and generally recognized as cereal for infants which is routinely mixed with breast milk or iron-fortified infant formula prior to consumption.

(ii) Infant formula means any iron-fortified formula intended for dietary use solely as a food for normal, healthy infants. Formulas specifically formulated for infants with inborn errors of metabolism or digestive or absorptive problems are not included in this definition. Infant formula, when served, must be in liquid state at recommended dilution.

(2) *Requirements for lunches for infants under the age of one.* Infants under 1 year of age must be served an infant lunch as specified in this paragraph (o). Foods served in the infant lunch pattern must be of a texture and consistency appropriate for the particular age group served. Foods must be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible, the school should consult with the infant's parents in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food in the meal patterns in paragraph (o)(2)(iii) of this section must be provided to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. Either breast milk or iron-fortified infant formula must be served for the entire first year. For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered with additional ounces offered if the infant is still hungry. The infant lunch pattern must have at least each of the following components in the amounts indicated for the appropriate age group:

(i) Birth through 3 months—4 to 6 fluid ounces of breast milk or iron-fortified infant formula.

(ii) 4 through 7 months:

(A) 4 to 8 fluid ounces of breast milk or iron-fortified infant formula;

(B) 0 to 3 tablespoons of iron-fortified dry infant cereal (optional); and

(C) 0 to 3 tablespoons of fruit or vegetable of appropriate consistency or a combination of both (optional).

(iii) 8 through 11 months:

(A) 6 to 8 fluid ounces of breast milk or iron-fortified infant formula;

(B) 2 to 4 tablespoons of iron-fortified dry infant cereal and/or 1 to 4 tablespoons of meat, fish, poultry, egg yolk, or cooked dry beans or peas, or ½ to 2 ounces (weight) of cheese or 1 to 4 ounces (weight or volume) of cottage cheese, cheese food or cheese spread of appropriate consistency; and

(C) 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

LUNCH PATTERN FOR INFANTS

| | Birth through 3 months | 4 through 7 months | 8 through 11 months |
|---|---|---|---|
| Lunch | 4-6 fluid ounces of breast milk[2,3] or formula[1] | 4-8 fluid ounces of breast milk[2,3] or formula[1];<br><br>0-3 tablespoons of infant cereal[1,4];<br><br>0-3 tablespoons of fruit and/or vegetable[4] | 6-8 fluid ounces of breast milk[2,3] or formula[1];<br><br>and<br><br>2-4 tablespoons of infant cereal[1]; and/or<br><br>1-4 tablespoons of meat, fish, poultry, egg yolk, cooked dry beans, or peas; or<br><br>½-2 ounces of cheese; or<br><br>1-4 tablespoons of cottage cheese, cheese food, or cheese spread; and<br><br>1-4 tablespoons of fruit and/or vegetable |

[1] Infant formula and dry infant cereal must be iron-fortified.
[2] It is recommended that breast milk be served in place of formula from birth through 11 months.
[3] For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.
[4] A serving of this component is optional.

**§ 210.10a [Removed]**

6. Section 210.10a is removed.

**§ 210.15 [Amended]**

7. In section 210.15, paragraph (b)(2) is amended by removing the words "menu records as required under § 210.10a and production and".

**§ 210.18 [Amended]**

8. In section 210.18:

a. Paragraph (b)(2)(ii) is revised;

b. Paragraph (g)(2) is revised;

c. The first sentence of paragraph (h)(2) is revised;

d. Paragraph (i)(3) is amended by designating the undesignated paragraph following paragraph (i)(3)(i)(B) as paragraph (i)(3)(i)(C); and

e. Paragraph (i)(3)(ii) is revised.

The revisions read as follows:

**§ 210.18. Administrative reviews.**

* * * * *

(b) *Definitions.* * * *

(2) * * *

(ii) *Performance Standard 2—Meal Elements.* Lunches claimed for reimbursement within the school food authority contain meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.

* * * * *

(g) *Critical areas of review.* * * *

(2) *Performance Standard 2 (Lunches claimed for reimbursement within the school food authority contain meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.* For each school reviewed, the State agency must:

(i) For the day of the review, observe the serving line(s) to determine whether all required meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10 are offered.

(ii) For the day of the review, observe a significant number of the Program lunches counted at the point of service for each type of serving line, to determine whether those lunches contain the required number of meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.

(iii) Review menu records for the review period to determine whether all required meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10 have been offered.

(h) *General areas of review.* * * *

(2) *Food quantities.* For each school reviewed, the State agency must observe a significant number of Program lunches counted at the point of service for each type of serving line to determine whether those lunches appear to provide meal elements (food items/components, menu items or other items, as applicable) in the quantities required under § 210.10. * * *

* * * * *

(i) *Follow-up reviews.* * * *

(3) *Review thresholds.* * * *

(ii) For Performance Standard 2—10 percent or more of the total number of Program lunches observed in a school food authority are missing one or more of the required meal elements (food items/components, menu items or other items, as applicable) as required under § 210.10.

* * * * *

9. In § 210.19:

a. Redesignate paragraph (a)(1) introductory text, paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) as paragraphs (a)(1)(i), (a)(1)(iii), (a)(1)(iv), (a)(1)(v), and (a)(1)(vii), respectively, and add new paragraphs (a)(1)(ii) and (a)(1)(vi);

b. Revise newly redesignated paragraph (a)(1)(i);

c. Revise the first sentence in newly redesignated paragraph (a)(1)(iii);

d. Revise newly redesignated paragraph (a)(1)(iv); and

e. Revise paragraph (c)(6)(i).

The additions and revisions read as follows:

**§ 210.19 Additional responsibilities.**

(a) *General Program management.*

* * *

(1) *Compliance with nutrition standards.* (i) Beginning with School Year 1996–1997, State agencies shall evaluate compliance, over the school week, with the nutrition standards for lunches and, as applicable, for breakfasts. Review activity may be confined to lunches served under the Program unless a menu planning approach is used exclusively in the School Breakfast Program or unless the school food authority only offers breakfasts under the School Breakfast Program. For lunches, compliance with the requirements in § 210.10(b) and § 210.10(c), (d), or (i)(1) or the procedures developed under § 210.10(l), as applicable, is assessed. For breakfasts, see § 220.13(f)(3) of this chapter.

(A) These evaluations may be conducted at the same time a school food authority is scheduled for an administrative review in accordance with § 210.18. State agencies may also conduct these evaluations in conjunction with technical assistance visits, other reviews, or separately.

(B) The type of evaluation conducted by the State agency shall be determined by the menu planning approach chosen by the school food authority. At a minimum, the State agency shall review at least one school for each type of menu planning approach used in the school food authority.

(C) In addition, State agencies are encouraged to review breakfasts offered under the School Breakfast Program as well if the school food authority requires technical assistance from the State agency to meet the nutrition standards or if corrective action is needed. Such review shall determine compliance with the appropriate requirements in § 220.13(f)(3) of this chapter and may be done at the time of the initial review or as part of a follow-up to assess compliance with the nutrition standards.

(ii) At a minimum, State agencies shall conduct evaluations of compliance with the nutrition standards in § 210.10 and § 220.8 of this Chapter at least once during each 5-year review cycle provided that each school food authority is evaluated at least once every 6 years, *except that* the first cycle shall begin July 1, 1996, and shall end on June 30, 2003. The compliance evaluation for the nutrition standards shall be conducted on the menu for any week of the current school year in which such evaluation is conducted. The week selected must continue to represent the current menu planning approach(es).

(iii) For school food authorities choosing the nutrient standard or assisted nutrient standard menu planning approaches provided in § 210.10(i), § 210.10(j), § 220.8(e) or § 220.8(f) of this chapter, or developed under the procedures in § 210.10(l) or § 220.8(h) of this chapter, the State agency shall assess the nutrient analysis to determine if the school food authority is properly applying the methodology in these paragraphs, as applicable. * * *

(iv) For school food authorities choosing the food-based menu planning approaches provided in § 210.10(k) or § 220.8(g) of this chapter or developed under the procedures in § 210.10(l) or § 220.8(h) of this chapter, the State agency must determine if the nutrition standards in § 210.10 and § 220.8 of this chapter are met. The State agency shall conduct a nutrient analysis in accordance with the procedures in § 210.10(i) or § 220.8(e) of this chapter, as appropriate, except that the State agency may:

(A) Use the nutrient analysis of any school or school food authority that offers lunches or breakfasts using the food-based menu planning approaches provided in § 210.10(k) and § 220.8(g) of this chapter and that conducts its own nutrient analysis under the criteria for such analysis established in § 210.10 and § 220.8 of this chapter for the nutrient standard and assisted nutrient standard menu planning approaches; or

(B) Develop its own method for compliance reviews, subject to USDA approval.

* * * * *

(vi) For school food authorities following an alternate approach as provided under § 210.10(l) or § 220.8(h) of this chapter that does not allow for use of the monitoring procedures in paragraphs (a)(1)(ii) or (a)(1)(iii) of this section, the State agency shall monitor compliance following the procedures developed in accordance with § 210.10(l) or § 220.8(h) of this chapter, whichever is appropriate.

* * * * *

(c) *Fiscal action.* * * *

(6) *Exceptions.* * * *

(i) when any review or audit reveals that a school food authority is failing to meet the quantities for each meal element (food item/component, menu item or other items, as applicable) as required under § 210.10.

* * * * *

## PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation continues to read as follows:

**Authority:** 42 U.S.C. 1773, 1779, unless otherwise noted.

2. In part 220, the words "or § 220.8a, whichever is applicable" are removed wherever they appear in the following places:

a. § 220.2(b);

b. § 220.7(e)(2);

c. § 220.9(a);

d. Appendix A to Part 220; and

e. Appendix C to Part 220.

3. In § 220.2,

a. Revise paragraph (p–1), and

b. Amend paragraph (t) by removing the words "or § 220.8, whichever is applicable,".

The revision reads read as follows:

**§ 220.2 Definitions.**

* * * * *

(p–1) *Nutrient Standard Menu Planning/Assisted Nutrient Standard Menu Planning* means ways to develop breakfast menus based on the analysis for nutrients in the menu items and foods offered over a school week to determine if specific levels for a set of key nutrients and calories were met in accordance with § 220.8(e)(5). However, for the purposes of Assisted Nutrient Standard Menu Planning, breakfast menu planning and analysis are completed by other entities and must incorporate the production quantities needed to accommodate the specific service requirements of a particular school or school food authority in accordance with § 220.8(f).

* * * * *

4. Section 220.8 is revised to read as follows:

**§ 220.8. What are the nutrition standards and menu planning approaches for breakfasts?**

(a) *What are the nutrition standards for breakfasts for children age 2 and over?* School food authorities must ensure that participating schools provide nutritious and well-balanced breakfasts. For children age 2 and over, breakfasts, when averaged over a school week, must meet the nutrition standards and the appropriate nutrient and calorie levels in this section. The nutrition standards are:

(1) Provision of one-fourth of the Recommended Dietary Allowances

(RDA) for protein, calcium, iron, vitamin A and vitamin C in the appropriate levels (see paragraphs (b), (c), (e)(1), or (h) of this section);

(2) Provision of the breakfast energy allowances (calories) for children in the appropriate levels (see paragraphs (b), (c), (e)(1), or (h) of this section);

(3) These applicable recommendations of the 1995 Dietary Guidelines for Americans:

(i) Eat a variety of foods;

(ii) Limit total fat to 30 percent of total calories;

(iii) Limit saturated fat to less than 10 percent of total calories;

(iv) Choose a diet low in cholesterol;

(v) Choose a diet with plenty of grain products, vegetables, and fruits; and

(vi) Choose a diet moderate in salt and sodium.

(4) These measures of compliance with the applicable recommendations of the 1995 Dietary Guidelines for Americans:

(i) Limit the percent of calories from total fat to 30 percent of the actual number of calories offered;

(ii) Limit the percent of calories from saturated fat to less than 10 percent of the actual number of calories offered;

(iii) Reduce sodium and cholesterol levels; and

(iv) Increase the level of dietary fiber.

(5) School food authorities have several ways to plan menus. The minimum levels of nutrients and calories that breakfasts must offer depends on the menu planning approach used and the age/grades served. The menu planning approaches are:

(i) Nutrient standard menu planning (see paragraphs (b) and (e) of this section);

(ii) Assisted nutrient standard menu planning (see paragraphs (b) and (f) of this section);

(iii) Traditional food-based menu planning (see paragraphs (c) and (g)(1) of this section);

(iv) Enhanced food-based menu planning (see paragraphs (c) and (g)(2) of this section); or

(v) Alternate menu planning as provided for in paragraph (h) of this section.

(6) Schools must keep production and menu records for the breakfasts they produce. These records must show how the breakfasts contribute to the required food components, food items or menu items every day. In addition, these records must show how the breakfasts contribute to the nutrition standards in paragraph (a) of this section and the appropriate calorie and nutrient levels (see paragraphs (c), (d) or (h) of this section, depending on the menu planning approach used) over the school week. If applicable, schools or school food authorities must maintain nutritional analysis records to demonstrate that breakfasts, when averaged over each school week, meet:

(i) The nutrition standards provided in paragraph (a) of this section; and

(ii) The nutrient and calorie levels for children for each age or grade group in accordance with paragraphs (b), (e)(1) of this section or developed under paragraph (h) of this section.

(b) *What are the levels for nutrients and calories for breakfasts planned under the nutrient standard or assisted nutrient standard menu planning approaches?*

(1) The required levels are:

MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL BREAKFASTS
NUTRIENT STANDARD MENU PLANNING APPROACHES (SCHOOL WEEK AVERAGES)

| | MINIMUM REQUIREMENTS | | OPTIONAL |
|---|---|---|---|
| NUTRIENTS AND ENERGY ALLOWANCES | PRESCHOOL | GRADES K-12 | GRADES 7-12 |
| Energy allowances (calories) | 388 | 554 | 618 |
| Total fat (as a percentage of actual total food energy) | [1] | [1,2] | [2] |
| Saturated fat (as a percentage of actual total food energy) | [1] | [1,3] | [3] |
| RDA for protein (g) | 5 | 10 | 12 |
| RDA for calcium (mg) | 200 | 257 | 300 |
| RDA for iron (mg) | 2.5 | 3 | 3.4 |
| RDA for Vitamin A (RE) | 113 | 197 | 225 |
| RDA for Vitamin C (mg) | 11 | 13 | 14 |

[1] The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

[2] Not to exceed 30 percent over a school week

[3] Less than 10 percent over a school week

(2) Optional levels are:

| OPTIONAL MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL BREAKFASTS NUTRIENT STANDARD MENU PLANNING APPROACHES (SCHOOL WEEK AVERAGES) | | | | |
|---|---|---|---|---|
| NUTRIENTS AND ENERGY ALLOWANCES | AGES 3-6 | AGES 7-10 | AGES 11-13 | AGES 14 AND ABOVE |
| Energy allowances (calories) | 419 | 500 | 588 | 625 |
| Total fat (as a percentage of actual total food energy) | [1,2] | [2] | [2] | [2] |
| Saturated fat (as a percentage of actual total food energy) | [1,3] | [3] | [3] | [3] |
| RDA for protein (g) | 5.5 | 7 | 11.25 | 12.5 |
| RDA for calcium (mg) | 200 | 200 | 300 | 300 |
| RDA for iron (mg) | 2.5 | 2.5 | 3.4 | 3.4 |
| RDA for Vitamin A (RE) | 119 | 175 | 225 | 225 |
| RDA for Vitamin C (mg) | 11.00 | 11.25 | 12.5 | 14.4 |

[1] The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."
[2] Not to exceed 30 percent over a school week
[3] Less than 10 percent over a school week

(3) Schools may also develop a set of nutrient and calorie levels for a school week. These levels are customized for the age groups of the children in the particular school.

(c) *What are the nutrient and calorie levels for breakfasts planned under the food-based menu planning approaches?*

(1) *Traditional approach.* For the traditional food-based menu planning approach, the required levels are:

| MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL BREAKFASTS TRADITIONAL FOOD-BASED MENU PLANNING APPROACH (SCHOOL WEEK AVERAGES) | | | |
|---|---|---|---|
| NUTRIENTS AND ENERGY ALLOWANCES | AGE 2 | AGES 3,4,5 | GRADES K-12 |
| Energy allowances (calories) | 325 | 388 | 554 |
| Total fat (as a percentage of actual total food energy) | [1] | [1] | [1,2] |
| Saturated fat (as a percentage of actual total food energy) | [1] | [1] | [1,3] |
| RDA for protein (g) | 4 | 5 | 10 |
| RDA for calcium (mg) | 200 | 200 | 257 |
| RDA for iron (mg) | 2.5 | 2.5 | 3 |
| RDA for Vitamin A (RE) | 100 | 113 | 197 |
| RDA for Vitamin C (mg) | 10 | 11 | 13 |

[1] The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."
[2] Not to exceed 30 percent over a school week.
[3] Less than 10 percent over a school week.

(2) *Enhanced approach.* For the enhanced food-based menu planning approach, the required levels are:

| MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL BREAKFASTS ENHANCED FOOD-BASED MENU PLANNING APPROACH (SCHOOL WEEK AVERAGES) | | | |
|---|---|---|---|
| | REQUIRED FOR | | OPTION FOR |
| NUTRIENTS AND ENERGY ALLOWANCES | PRESCHOOL | GRADES K-12 | GRADES 7-12 |
| Energy allowances (calories) | 388 | 554 | 618 |
| Total fat (as a percentage of actual total food energy) | [1] | [1,2] | [2] |
| Saturated fat (as a percentage of actual total food energy) | [1] | [1, 3] | [3] |
| RDA for protein (g) | 5 | 10 | 12 |
| RDA for calcium (mg) | 200 | 257 | 300 |
| RDA for iron (mg) | 2.5 | 3 | 3.4 |
| RDA for Vitamin A (RE) | 113 | 197 | 225 |
| RDA for Vitamin C (mg) | 11 | 13 | 14 |

[1] The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."
[2] Not to exceed 30 percent over a school week.
[3] Less than 10 percent over a school week.

(d) *What exceptions and variations are allowed in reimbursable breakfasts?* (1) *Exceptions for medical or special dietary needs.* Schools must make substitutions in breakfasts for students who are considered to have a disability under 7 CFR Part 15b and whose disability restricts their diet. Schools may also make substitutions for students who do not have a disability but who cannot consume the regular breakfast because of medical or other special dietary needs. Substitutions must be made on a case by case basis only when supported by a statement of the need for substitutions that includes recommended alternate foods, unless otherwise exempted by FNS. Such statement must, in the case of a student with a disability, be signed by a physician or, in the case of a student who is not disabled, by a recognized medical authority.

(2) *Variations for ethnic, religious, or economic reasons.* Schools should consider ethnic and religious preferences when planning and preparing breakfasts. Variations on an experimental or continuing basis in the food components for the food-based menu planning approaches in paragraph (g) may be allowed by FNS. Any variations must be nutritionally sound and needed to meet ethnic, religious, or economic needs.

(3) *Exceptions for natural disasters.* If there is a natural disaster or other catastrophe, FNS may temporarily allow schools to serve breakfasts for reimbursement that do not meet the requirements in this section.

(e) *What are the requirements for the nutrient standard menu planning approach?*

(1) *Nutrient levels.*

(i) *Adjusting nutrient levels for young children.* Schools with children who are age 2 must at least meet the nutrition standards in paragraph (a) of this section and the preschool nutrient and calorie levels in paragraph (b)(1) of this section over a school week. Schools may also use the preschool nutrient and calorie levels in paragraph (b)(2) of this section or may calculate nutrient and calorie levels for two year olds. FNS has a method for calculating these levels in menu planning guidance materials.

(ii) *Minimum levels for nutrients.* Breakfasts must at least offer the nutrient and calorie levels for the required grade groups in the table in paragraph (b)(1) of this section. Schools may also offer breakfasts meeting the nutrient and calorie levels for the age groups in paragraph (b)(2) of this section. If only one grade or age group is outside the established levels, schools may follow the levels for the majority of the children. Schools may also customize the nutrient and calorie levels for the children they serve. FNS has a method for calculating these levels in guidance materials for menu planning.

(2) *Reimbursable breakfasts.*

(i) *Contents of a reimbursable breakfast.* A reimbursable breakfast must include at least three menu items. All menu items or foods offered in a reimbursable breakfast contribute to the nutrition standards in paragraph (a) of this section and to the levels of nutrients and calories that must be met in paragraphs (c) or (e)(1) of this section. Unless offered as part of a menu item in a reimbursable breakfast, foods of minimal nutritional value (see appendix B to part 220) are not included in the nutrient analysis. Reimbursable breakfasts planned under the nutrient standard menu planning approach must meet the nutrition standards in paragraph (a) of this section and the appropriate nutrient and calorie levels in paragraph (b) or (e)(1) of this section.

(ii) *Offer versus serve.* Schools must offer at least three menu items. At their option, school food authorities may allow students to select only two menu items and to decline a maximum of one menu item. The price of a reimbursable breakfast does not change if the student does not take a menu item or requests smaller portions.

(3) *Doing the analysis.* Schools using nutrient standard menu planning must conduct the analysis on all menu items and foods offered in a reimbursable breakfast. The analysis is conducted over a school week. Unless offered as part of a menu item in a reimbursable breakfast, foods of minimal nutritional value (see appendix B to part 220) are not included in the nutrient analysis.

(4) *Software elements.*

(i) *The Child Nutrition Database.* The nutrient analysis is based on the Child Nutrition Database. This database is part of the software used to do a nutrient analysis. Software companies or others developing systems for schools may contact FNS for more information about the database.

(ii) *Software evaluation.* FNS or an FNS designee evaluates any nutrient analysis software before it may be used in schools. FNS or its designee determines if the software, as submitted, meets the minimum requirements. The approval of software does not mean that FNS or USDA endorses it. The software must be able to do all functions after the basic data is entered. The required functions include weighted averages and the optional combined analysis of the lunch and breakfast programs.

(5) *Nutrient analysis procedures.*

(i) *Weighted averages.* Schools must include all menu items and foods offered in reimbursable breakfasts in the nutrient analysis. Menu items and foods are included based on the portion sizes and projected serving amounts. They are also weighted based on their proportionate contribution to the breakfasts offered. This means that menu items or foods more frequently offered are weighted more heavily than those not offered as frequently. Schools calculate weighting as indicated by FNS guidance and by the guidance provided by the software. Through September 30, 2003, schools are not required to conduct a weighted analysis.

(ii) *Analyzed nutrients.* The analysis includes all menu items and foods offered over a school week. The analysis must determine the levels of: Calories, protein, vitamin A, vitamin C, iron, calcium, total fat, saturated fat, sodium, cholesterol and dietary fiber.

(iii) *Combining the analysis of the lunch and breakfast programs.* At their option, schools may combine the analysis of breakfasts offered under this part and lunches offered under part 210 of this chapter. The analysis is done proportionately to the levels of participation in each program based on FNS guidance.

(6) *Comparing the results of the nutrient analysis.* Once the procedures in paragraph (i)(5) of this section are completed, schools must compare the results of the analysis to the appropriate nutrient and calorie levels, by age/grade groups, in paragraph (b) of this section or those developed under paragraph (e)(1) of this section. This comparison determines the school week's average. Schools must also make comparisons to the nutrition standards in paragraph (a) of this section to determine how well they are meeting the nutrition standards over the school week.

(7) *Adjustments to the menus.* Once schools know the results of the nutrient analysis based on the procedures in paragraphs (e)(5) and (e)(6) of this section, they must adjust future menu cycles to reflect production and how often the menu items and foods are offered. Schools may need to reanalyze menus when the students' selections and, consequently, production levels change. Schools may need to change the menu items and foods offered given the students' selections and may need to modify the recipes and other specifications to make sure that the nutrition standards in paragraph (a) and either paragraph (b) or (e)(1) of this section are met.

(8) *Standardized recipes.* If a school follows the nutrient standard menu planning approach, it must develop and follow standardized recipes. A standardized recipe is a recipe that was tested to provide an established yield and quantity using the same ingredients for both measurement and preparation methods. Any standardized recipes developed by USDA/FNS are in the Child Nutrition Database. If a school has its own recipes, they must be standardized and analyzed to determine the levels of calories, nutrients, and dietary components listed in paragraph (e)(5)(ii) of this section. Schools must add any local recipes to their local database as outlined in FNS guidance.

(9) *Processed foods.* The Child Nutrition Database includes a number of processed foods. Schools may use purchased processed foods and menu items that are not in the Child Nutrition Database. Schools or the State agency must add any locally purchased processed foods and menu items to their local database as outlined in FNS guidance. Schools or State agencies must obtain the levels of calories, nutrients, and dietary components listed in paragraph (e)(5)(ii) of this section.

(10) *Menu substitutions.* Schools may need to substitute foods or menu items in a menu that was already analyzed. If the substitution(s) occurs more than two weeks before the planned menu is served, the school must reanalyze the revised menu. If the substitution(s) occurs two weeks or less before the planned menu is served, the school does not need to do a reanalysis. However, schools should always try to substitute similar foods.

(11) *Meeting the nutrition standards.* The school's analysis shows whether their menus are meeting the nutrition standards in paragraph (a) of this section and the appropriate levels of nutrients and calories in paragraph (b) of this section or customized levels developed under paragraph (e)(1) of this section. If the analysis shows that the menu(s) are not meeting these standards, the school needs to take action to make sure that the breakfasts meet the nutrition standards and the calorie, nutrient, and dietary component levels. Actions may include technical assistance and training and may be taken by the State agency, the school food authority or by the school as needed.

(12) *Other Child Nutrition Programs and nutrient standard analysis menu planning.* School food authorities that operate the Summer Food Service Program (part 225 of this chapter) and/or the Child and Adult Care Food Program (part 226 of this chapter) may, with State agency approval, prepare breakfasts for these programs using the nutrient standard menu planning approach for children age two and over. FNS has guidance on the levels of nutrient and calories for adult breakfasts offered under the Child and Adult Care Food Program.

(f) *What are the requirements for the assisted nutrient standard menu planning approach?*

(1) *Definition of assisted nutrient standard menu planning.* Some school food authorities may not be able to do all of the procedures necessary for nutrient standard menu planning. The assisted nutrient standard menu planning approach provides schools with menu cycles developed and analyzed by other sources. These sources include the State agency, other schools, consultants, or food service management companies.

(2) *Elements of assisted nutrient standard menu planning.* School food authorities using menu cycles developed under assisted nutrient standard menu planning must follow the procedures in paragraphs (e)(1) through (e)(10) of this section. The menu cycles must also incorporate local food preferences and accommodate local food service operations. The menu cycles must meet the nutrition standards in paragraph (a) of this section and meet the applicable nutrient and calorie levels for nutrient standard menu planning in paragraphs (b) or (e)(1) of this section. The supplier of the assisted nutrient standard menu planning approach must also develop and provide recipes, food product specifications, and preparation techniques. All of these components support the nutrient analysis results of the menu cycles used by the receiving school food authorities.

(3) *State agency approval.* Prior to its use, the State agency must approve the initial menu cycle, recipes and other specifications of the assisted nutrient standard menu planning approach. The State agency needs to make sure all the steps required for nutrient analysis were followed. School food authorities may also ask the State agency for assistance with implementation of their assisted nutrient standard menu planning approach.

(4) *Required adjustments.* After the initial service of the menu cycle developed under the assisted nutrient standard menu planning approach, the nutrient analysis must be reassessed and appropriate adjustments made as discussed in paragraph (e)(7) of this section.

(5) *Final responsibility for meeting the nutrition standards.* The school food authority using the assisted nutrient standard menu planning approach

retains final responsibility for meeting the nutrition standards in paragraph (a) of this section and the applicable calorie and nutrient levels in paragraphs (b) or (e)(1) of this section.

(6) *Adjustments to the menus.* If the nutrient analysis shows that the breakfasts offered are not meeting the nutrition standards in paragraph (a) of this section and the applicable calorie and nutrient levels in paragraphs (b) or (e)(1) of this section, the State agency, school food authority or school must take action to make sure the breakfasts offered meet these requirements. Actions needed include technical assistance and training.

(7) *Other Child Nutrition Programs and assisted nutrient analysis menu planning.* School food authorities that operate the Summer Food Service Program (part 225 of this chapter) and/or the Child and Adult Care Food Program (part 226 of this chapter) may, with State agency approval, prepare breakfasts for these programs using the assisted nutrient standard menu planning approach for children age two and over. FNS has guidance on the levels of nutrients and calories for adult breakfasts offered under the Child and Adult Care Food Program.

(g) *What are the requirements for the food-based menu planning approaches?* (1) *Food items.* There are two menu planning approaches based on meal patterns, not nutrient analysis. These approaches are the traditional food-based menu planning approach and the enhanced food-based menu planning approach. Schools using one of these approaches must offer these food items in at least the portions required for various age/grade groups:

(i) A serving of fluid milk as a beverage or on cereal or used partly for both;

(ii) A serving of fruit or vegetable or both, or full-strength fruit or vegetable juice; and

(iii) Two servings from one of the following components or one serving from each component:

(A) Grains/breads; and/or

(B) Meat/meat alternate.

(2) *Quantities for the traditional food-based menu planning approach.* At a minimum, schools must offer the food items in the quantities specified for the appropriate age/grade group in the following table:

| TRADITIONAL FOOD-BASED MENU PLANNING APPROACH-MEAL PATTERN FOR BREAKFASTS | | | |
|---|---|---|---|
| FOOD COMPONENTS AND FOOD ITEMS | AGES 1-2 | AGES 3,4 AND 5 | GRADES K-12 |
| MILK (fluid) (as a beverage, on cereal or both) | 4 fluid ounces | 6 fluid ounces | 8 fluid ounces |
| JUICE/FRUIT/VEGETABLE: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice | ¼ cup | ½ cup | ½ cup |
| SELECT ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS, TWO FROM ONE COMPONENT, OR AN EQUIVALENT COMBINATION: | | | |
| GRAINS/BREADS : | | | |
| Whole-grain or enriched bread | ½ slice | ½ slice | 1 slice |
| Whole-grain or enriched biscuit, roll, muffin, etc. | ½ serving | ½ serving | 1 serving |
| Whole-grain, enriched or fortified cereal | ¼ cup or 1/3 ounce | 1/3 cup or ½ ounce | ¾ cup or 1 ounce |
| MEAT OR MEAT ALTERNATES: | | | |
| Meat/poultry or fish | ½ ounce | ½ ounce | 1 ounce |
| Alternate protein products[1] | ½ ounce | ½ ounce | 1 ounce |
| Cheese | ½ ounce | ½ ounce | 1 ounce |
| Large egg | ½ | ½ | ½ |
| Peanut butter or other nut or seed butters | 1 tablespoon | 1 tablespoon | 2 tablespoons |
| Cooked dry beans and peas | 2 tablespoons | 2 tablespoons | 4 tablespoons |
| Nuts and/or seeds (as listed in program guidance)[2] | ½ ounce | ½ ounce | 1 ounce |
| Yogurt, plain or flavored, unsweetened or sweetened | 2 ounces or ¼ cup | 2 ounces or ¼ cup | 4 ounces or ½ cup |

[1] Must meet the requirements in appendix A of this part.

[2] No more than 1 ounce of nuts and/or seeds may be served in any one breakfast.

(3) *Quantities for the enhanced food-based menu planning approach.* At a minimum, schools must offer the food items in the quantities specified for the appropriate age/grade group in the following table:

| ENHANCED FOOD-BASED MENU PLANNING APPROACH-MEAL PATTERN FOR BREAKFASTS | | | | |
|---|---|---|---|---|
| FOOD COMPONENTS AND FOOD ITEMS | REQUIRED FOR | | | OPTION FOR |
| | AGES 1-2 | PRESCHOOL | GRADES K-12 | GRADES 7-12 |
| Milk (fluid) (as a beverage, on cereal or both) | 4 fluid ounces | 6 fluid ounces | 8 fluid ounces | 8 fluid ounces |
| JUICE/FRUIT/VEGETABLE: Fruit and/or vegetable; or full-strength fruit juice or vegetable juice | ¼ cup | ½ cup | ½ cup | ½ cup |
| SELECT ONE SERVING FROM EACH OF THE FOLLOWING COMPONENTS, TWO FROM ONE COMPONENT OR AN EQUIVALENT COMBINATION: | | | | |
| GRAINS/BREADS: | | | | |
| Whole-grain or enriched bread | ½ slice | ½ slice | 1 slice | 1 slice |
| Whole-grain or enriched biscuit, roll, muffin, etc. | ½ serving | ½ serving | 1 serving | 1 serving |
| Whole-grain, enriched or fortified cereal | ¼ cup or 1/3 ounce | 1/3 cup or ½ ounce | ¾ cup or 1 ounce | ¾ cup or 1 ounce plus an additional serving of one of the Grains/Breads above. |
| MEAT OR MEAT ALTERNATES: | | | | |
| Meat/poultry or fish | ½ ounce | ½ ounce | 1 ounce | 1 ounce |
| Alternate protein products[1] | ½ ounce | ½ ounce | 1 ounce | 1 ounce |
| Cheese | ½ ounce | ½ ounce | 1 ounce | 1 ounce |
| Large egg | ½ | ½ | ½ | ½ |
| Peanut butter or other nut or seed butters | 1 tablespoon | 1 tablespoon | 2 tablespoons | 2 tablespoons |
| Cooked dry beans and peas | 2 tablespoons | 2 tablespoons | 4 tablespoons | 4 tablespoons |
| Nuts and/or seeds (as listed in program guidance)[2] | ½ ounce | ½ ounce | 1 ounce | 1 ounce |
| Yogurt, plain or flavored, unsweetened or sweetened | 2 ounces or ¼ cup | 2 ounces or ¼ cup | 4 ounces or ½ cup | 4 ounces or ½ cup |

[1] Must meet the requirements in appendix A of this part.

[2] No more than 1 ounce of nuts and/or seeds may be served in any one breakfast.

(4) *Offer versus serve.* Each school must offer all four required food items listed in paragraph (g)(1) of this section. At the option of the school food authority, each school may allow students to refuse one food item from any component. The refused food item may be any of the four items offered to the student. A student's decision to accept all four food items or to decline one of the four food items must not affect the charge for a reimbursable breakfast.

(5) *Meal pattern exceptions for outlying areas.* Schools in American Samoa, Puerto Rico and the Virgin Islands may serve a starchy vegetable such as yams, plantains, or sweet potatoes to meet the grain/bread requirement.

(h) *What are the requirements for alternate menu planning approaches?*

(1) *Definition.* Alternate menu planning approaches are those adopted or developed by school food authorities or State agencies that differ from the standard approaches established in paragraphs (e) through (g) of this section.

(2) *Use and approval of major changes or new alternate approaches.* Within the guidelines established for developing alternate menu planning approaches, school food authorities or State agencies may modify one of the established menu planning approaches in paragraphs (e) through (g) of this section or may develop their own menu planning approach. The alternate menu planning approach must be available in writing for review and monitoring purposes. No formal plan is required; guidance material, a handbook or protocol is sufficient. As appropriate, the material must address how the guidelines in paragraph (h)(3) of this section are met. A State agency that develops an alternate approach that is exempt from FNS approval under paragraph (h)(2)(iii) of this section must notify FNS in writing when implementing the alternate approach.

(i) *Approval of local level plans.* Any school food authority-developed menu planning approach must have prior State agency review and approval.

(ii) *Approval of State agency plans.* Unless exempt under paragraph (h)(2)(iii) of this section, any State agency-developed menu planning approach must have prior FNS approval.

(iii) *State agency plans not subject to approval.* A State agency-developed menu planning approach does not need FNS approval if:

(A) Five or more school food authorities in the State use it; and

(B) The State agency maintains on-going oversight of the operation and evaluation of the approach and makes any needed adjustments to its policies and procedures to ensure that the appropriate guidelines in paragraph (h)(3) of this section are met.

(3) *Elements for major changes or new approaches.* Any alternate menu planning approach must:

(i) offer fluid milk, as provided in paragraph (i) of this section;

(ii) include the procedures for offer versus serve if the school food authority chooses to implement the offer versus serve option. Alternate approaches should follow the offer versus serve procedures in paragraphs (e)(2)(ii) and (g)(4) of this section, as appropriate. If these requirements are not followed, the approach must indicate:

(A) The affected age/grade groups;

(B) The number and type of items (and, if applicable, the quantities for the items) that constitute a reimbursable breakfast under offer versus serve;

(C) How such procedures will reduce plate waste; and

(D) How a reasonable level of calories and nutrients for the breakfast as taken is provided.

(iii) Meet the Recommended Dietary Allowances and breakfast energy allowances (nutrient levels) and indicate the age/grade groups served and how the nutrient levels are met for those age/grade groups;

(iv) Follow the requirements for competitive foods in §§ 220.2(i–1) and 220.12 and appendix B to this part;

(v) Follow the requirements for counting food items and products towards meeting the meal patterns. These requirements are found in paragraphs (g) and (i) of this section, in appendices A through C to this part, and in instructions and guidance issued by FNS. This only applies if the alternate approach is a food-based menu planning approach.

(vi) Identify a reimbursable breakfast at the point of service.

(A) To the extent possible, the procedures provided in paragraph (e)(2)(i) of this section for nutrient standard or assisted nutrient standard menu planning approaches or for food-based menu planning approaches provided in paragraph (g) of this section must be followed. Any instructions or guidance issued by FNS that further defines the elements of a reimbursable breakfast must be followed when using the existing regulatory provisions.

(B) Any alternate approach that deviates from the provisions in paragraph (e)(2)(i) or paragraph (g) of this section must indicate what constitutes a reimbursable breakfast, including the number and type of items (and, if applicable, the quantities for the items) which comprise the breakfast, and how a reimbursable breakfast is to be identified at the point of service.

(vii) explain how the alternate menu planning approach can be monitored under the applicable provisions of § 210.18 and § 210.19 of this chapter, including a description of the records that will be maintained to document compliance with the program's administrative and nutrition requirements. However, if the procedures under § 210.19 of this chapter cannot be used to monitor the alternate approach, a description of review procedures which will enable the State agency to assess compliance with the nutrition standards in paragraphs (a)(1) through (a)(4) of this section must be included; and

(viii) follow the requirements for weighted analysis and for approved software for nutrient standard menu planning as required by paragraphs (e)(4) and (e)(5) of this section unless a State agency-developed approach meets the criteria in paragraph (h)(2)(iii) of this section. Through September 30, 2003, schools are not required to conduct a weighted analysis.

(i) *What are the requirements for offering milk?*

(1) *Serving milk.* A serving of milk as a beverage or on cereal or used in part for each purpose must be offered for breakfasts.

(2) *Inadequate milk supply.* If a school cannot get a supply of milk, it can still participate in the Program under the following conditions:

(i) If emergency conditions temporarily prevent a school that normally has a supply of fluid milk from obtaining delivery of such milk, the State agency may allow the school to serve breakfasts during the emergency period with an alternate form of milk or without milk.

(ii) If a school is unable to obtain a supply of any type of fluid milk on a continuing basis, the State agency may allow schools to substitute canned or dry milk in the required quantities in the preparation of breakfasts. In Alaska, Hawaii, American Samoa, Guam, Puerto Rico, and the Virgin Islands, if a sufficient supply of fluid milk cannot be obtained, "milk" includes reconstituted or recombined milk, or otherwise as allowed by FNS through a written exception.

(j) *What are the requirements for the infant meal pattern?* Schools must offer infants ages birth through 11 months of age an infant breakfast. Foods included in the infant breakfast pattern must be of texture and consistency appropriate for the age group served. Foods must be served to the infant during a span of time consistent with the infant's eating habits. For infants 4 through 7 months of age, solid foods are optional and should be introduced only when the infant is developmentally ready. Whenever possible, the school should consult with the infant's parents in making the decision to introduce solid foods. Solid foods should be introduced one at a time on a gradual basis with the intent of ensuring health and nutritional well-being. For infants 8 through 11 months of age, the total amount of food in the meal patterns in paragraph (j)(3) of this section must be provided to qualify for reimbursement. Additional foods may be served to infants 4 months of age and older with the intent of improving their overall nutrition. Breast milk, provided by the infant's mother, may be served in place of infant formula from birth through 11 months of age. Either breast milk or iron-fortified infant formula must be served for the entire first year. For some breastfed infants who regularly consume less than the

minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional ounces offered if the infant is still hungry. The infant breakfast pattern must have at least each of the following components in the amounts indicated for the appropriate age group:

(1) Birth through 3 months—4 to 6 fluid ounces of breast milk or iron-fortified infant formula.

(2) 4 through 7 months—4 to 8 fluid ounces of breast milk or iron-fortified infant formula; and 0 to 3 tablespoons of iron-fortified dry infant cereal (optional).

(3) 8 through 11 months—6 to 8 fluid ounces of breast milk or iron-fortified infant formula; 2 to 4 tablespoons of iron-fortified dry infant cereal; and 1 to 4 tablespoons of fruit or vegetable of appropriate consistency or a combination of both.

**BREAKFAST PATTERN FOR INFANTS**

| | Birth through 3 months | 4 through 7 months | 8 through 11 months |
|---|---|---|---|
| Breakfast | 4-6 fluid ounces formula[1] or breast milk[2,3] | 4-8 fluid ounces of formula[1] or breast milk[2,3]; 0-3 tablespoons of infant cereal[1,4] | 6-8 fluid ounces of formula[1] or breast milk[2,3] ; and 2-4 tablespoons of infant cereal[1]; and 1-4 tablespoons of fruit and/or vegetable |

[1] Infant formula and dry infant cereal must be iron-fortified.
[2] It is recommended that breast milk be served in place of formula from birth through 11 months.
[3] For some breastfed infants who regularly consume less than the minimum amount of breast milk per feeding, a serving of less than the minimum amount of breast milk may be offered, with additional breast milk offered if the infant is still hungry.
[4] A serving of this component is optional.

(k) *What about serving additional foods?* Schools may offer additional foods with breakfasts to children over one year of age.

(l) *Must schools offer choices at breakfast?* FNS encourages schools to offer children a selection of foods and menu items at breakfast. Choices provide variety and encourage consumption. Schools may offer choices of reimbursable breakfasts or foods within a reimbursable breakfast. When a school offers a selection of more than one type of breakfast or when it offers a variety of food components, menu items or foods and milk for choice as a reimbursable breakfast, the school must offer all children the same selection(s) regardless of whether the child is eligible for free or reduced price breakfasts or must pay the designated full price. The school may establish different unit prices for each type of breakfast offered provided that the benefits made available to children eligible for free or reduced price breakfasts are not affected.

(m) *What should schools do about nutrition disclosure?* FNS encourages schools to inform the students, parents, and the public about efforts they are making to meet the nutrition standards in paragraph (a) for school breakfasts.

**§ 220.8a [Removed].**

5. Section 220.8a is removed in its entirety.

6. In § 220.13, paragraph (f)(3) is revised to read as follows:

**§ 220.13 Special responsibilities of State agencies.**

* * * * *

(f) * * *

(3) For the purposes of compliance with the nutrition standards in § 220.8(a) and the nutrient and calorie levels in § 220.8(b) or (c) or those developed under § 220.8(e)(1) or (h), the State agency shall follow the provisions specified § 210.19(a)(1) of this chapter.

* * * * *

**§ 220.14 [Amended].**

7. In § 220.14, amend paragraph (h) by removing the words "or § 220.8a(a)(1), (b)(2), and (b)(3)".

Dated: April 27, 2000.

**Shirley R. Watkins,**

*Under Secretary, Food, Nutrition, and Consumer Services.*

[FR Doc. 00–11259 Filed 5–8–00; 8:45 am]

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Part IV

# Environmental Protection Agency

40 CFR Part 61

National Emission Standards for Hazardous Air Pollutants; Standard for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities; Standard for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licenses and Not Covered by Subpart H; Proposed Rule

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 61**

**[FRL–6604–2]**

**RIN 2060–AI90**

## National Emission Standards for Hazardous Air Pollutants; Standard for Emissions of Radionuclides Other Than Radon From Department of Energy Facilities; Standard for Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** EPA is proposing to amend its regulations as they apply to operations at any facility owned or operated by the Department of Energy (DOE) that emits any radionuclide other than radon-222 and radon-220 into the air and as they apply to non-DOE federal facilities in the radionuclide National Emission Standards Hazardous Air Pollutants (NESHAPs). These regulations require emission sampling, monitoring and calculations to identify compliance with the standard. To sample and monitor these radionuclide air emissions, both require radionuclide emissions from point sources to be measured in accordance with the guidance presented in the American National Standard Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities, ANSI 1969. This ANSI standard was revised and replaced by the new ANSI 1999 standard, entitled "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities." This proposed amendment will require the use of the new ANSI 1999 standard for newly constructed or modified sources subject to these radionuclide NESHAPs.

**DATES:** Comments on this proposed action must be received in writing at the address given below on or before by June 9, 2000. A public hearing will be held on July 12, 2000, in Washington, DC if a request for such a hearing is received by June 9, 2000.

**ADDRESSES:** Comments on the proposal should be submitted (in duplicate) to: Central Docket (6102), Attn: Docket No. A–94–60, U.S. Environmental Protection Agency, 401 M Street, SW, Room M1500, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the proposal, contact: Ms. Robin Anderson, Center for Waste Management, Office of Radiation and Indoor Air, U.S. Environmental Protection Agency, Mailstop 6608J, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by email: anderson.robin@epa.gov or by phone (202) 564–9385. For information concerning the public hearing, contact: Eleanor Thornton-Jones at the same address, by email: *thornton.eleanord@epa.gov* or by phone (202) 564–9773.

**SUPPLEMENTARY INFORMATION:**

### Docket

Docket A–94–60 contains the rulemaking record. The docket is available for public inspection between the hours of 8 a.m. and 5 p.m., Monday through Friday, in room M–1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460. A reasonable fee may be charged for copying.

### A. Background

*A. Regulatory History*

On October 31, 1989, we promulgated the National Emission Standards for Hazardous Air Pollutants (NESHAPs) under Section 112 of the Clean Air Act to control radionuclide emissions to the ambient air from a number of different source categories (54 FR 51654, December 15, 1989 (Docket A–94–60, Item II–A–1)). Subpart H of 40 CFR Part 61 is one of the source categories covered in this 1989 final rule. Facilities owned and operated by the Department of Energy (DOE) are covered by Subpart H. DOE administers many facilities, including government-owned, contractor-operated facilities across the country. Some facilities conduct nuclear energy and weapons research and development, some enrich uranium and produce plutonium for nuclear weapons and reactors, and some process, store and dispose of radioactive wastes. These facilities handle significant amounts of radioactive material and can emit radionuclides into the air. Some of the DOE facilities emitting radionuclides are on large sites covering hundreds of square miles in remote locations. Some of the smaller sites resemble typical industrial facilities and are located in suburban areas. These facilities emit a wide variety of radionuclides in various physical and chemical states. The purpose of Subpart H is to limit radionuclide emissions (not including radon) from the stacks and vents at DOE facilities so that no member of the public receives an effective dose equivalent of more than 10 millirem per year (mrem/yr).

Subpart I is the standard for non-DOE federal facilities in the radionuclide NESHAPs. The facilities in this category can emit a variety of radionuclides. These radionuclides can affect individuals by inhalation, ingestion, ground deposition and immersion pathways. Individual facilities may emit only one or two radionuclides affecting only one or two pathways. The purpose of Subpart I is to limit radionuclide emissions, including iodine, from the stacks and vents at non-DOE federal facilities including Department of Defense (DOD) and other research and industrial facilities so that no member of the public receives an effective dose equivalent of more than 10 mrem/year. Also, emissions of iodine shall not exceed an effective dose equivalent of 3 mrem/year to any member of the public.

Both Subparts H and I require emission sampling, monitoring and calculations to identify compliance with the standard. To sample and monitor these radionuclide air emissions, Subpart H in § 61.93, and Subpart I in § 61.107, require radionuclide emissions at all release points which have a potential to discharge radionuclides into the air which could cause an effective dose equivalent in excess of 1% of the standard. These measurements must be made in accordance with the guidance presented in the ANSI N13.1–1969, "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities." (Docket A–94–60, Item II–D–1) However, the 1969 ANSI standard has recently been revised, changed in scope, and retitled as, "ANSI N13.1–1999: Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities." (Docket A–94–60, Item II–D–3) It was published in the May 1999, *Health Physics Newsletter* by the Health Physics Society Standard Committee and its ANSI Working Group.

After October 1, 2000, ANSI N13.1–1999 will be the required sampling guide for any newly constructed source and any source undergoing modification resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.92 of Subpart H and § 61.102 of Subpart I.

*B. Purpose of ANSI N13.1–1999*

The original ANSI N13.1–1969 Standard, "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities," was developed to provide engineers and designers guidance to adequately sample air in the facility to determine the radiation exposure to facility workers and to members of the public. The new ANSI N13.1–1999 narrows the scope of the standard from any air in the facility to only ducts and stacks of nuclear facilities. It provides a performance-based criteria for the

design and use of systems for sampling the releases of airborne radioactive substances in ducts and stacks.

We determined that it would be appropriate to consider adopting the revised standard based on our independent review of ANSI N13.1–1999. Our review indicated that the difference between the two standards that could significantly impact the representativeness of the sample extracted was the requirement for multiple sampling nozzles and isokinetic sampling cited in ANSI N13.1–1999. In June 1994, we approved the use of single-point sampling using a shrouded probe as an alternative methodology to demonstrate compliance with 40 CFR Part 61, Subpart H, § 61.93(b)(2)(ii). However, this alternative methodology was never promulgated and subsequently not consistently used by DOE. ANSI N13.1–1999 advocates the use of single point sampling using a similar shrouded probe by stating, "the use of these rakes [multiple-point sampling nozzles] is no longer considered good practice." This assertion is supported by documented research on the shrouded probe. In a memo, dated August 26, 1993 (Docket A–94–60, Item II–D–7), from DOE to EPA, it was stated that:

> The single-point sampling systems for sampling radioactive particulate that are based upon the shrouded probe and located according to principles and criteria developed at LANL [Los Alamos National Laboratory] in collaboration with Texas A&M University, are simpler, more reliable and provide more representative sampling performance over a wide range of sampling conditions than the standard systems. Losses in the probe inlet and sampling transport line are significantly reduced.

Since 1997, DOE and EPA staff have met on a regular basis to discuss the significant issues surrounding Subpart H. In June 1999, DOE submitted a paper to the EPA entitled, "Proposed Implementation of ANSI N13.1–1999 at the Department of Energy."(Docket A–94–60, Item II–D–6) The purpose of this paper was to describe how DOE could implement ANSI N13.1–1999. This paper states that:

> ANSI N13.1–1999 appears to be appropriate for stack sampling and monitoring of radioactive emissions at new DOE facilities and at facilities that are undergoing significant modifications to ventilation systems. The standard describes a low cost, low maintenance measurement system, with superior performance and one that is easy to operate. It is the preferred system to install in new facilities. However, in existing DOE facilities, many require modifications that are difficult and costly. The single-point sampling approach is drastically different from the isokinetic, multi-probe sampling approach utilized in existing stack monitoring systems that are in compliance with ANSI N13.1–1969. Upgrades to the new ANSI require the complete removal of existing systems, with the installation of the new systems requiring substantial testing of stack flow characteristics and extensive retrofitting and rework of the stack.

We have taken into account the results of the DOE implementation paper, past research on the shrouded probe and the independent review of ANSI N13.1–1999 in developing this proposal to amend Subpart H and Subpart I to incorporate ANSI N13.1–1999 for any newly constructed sources and any source undergoing modification, resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.92 of Subpart H and § 61.102 of Subpart I.

**Discussion of the Proposal**

*A. Justification for the Proposal*

Justification for the proposal is centered around research which indicates that single-point sampling using the shrouded probe (ANSI N13.1–1999) is superior in performance to multi-point sampling using isokinetic probes (ANSI N13.1–1969). This conclusion is documented in the report "Single Point Aerosol Sampling: Evaluation of Mixing and Probe Performance in a Nuclear Stack" by John C. Rodgers *et al.* (1995) (Docket A–94–60, Item II–D–4). A summary of the results found in this paper is provided. The term "ANSI standard" used in this summary below refers to the ANSI N13.1–1969 standard.

Facilities of the DOE under Subpart H and non-DOE federal facilities under Subpart I are required under the EPA NESHAPs to continuously monitor radionuclide emissions from any stacks or ducts that could contribute more than 0.1 millirem per year to the most affected member of the public. ANSI N13.1–1969 serves several roles in implementation of the requirements of the radionuclide NESHAPs. First, it is intended to provide guidance on the number of sampling points that should be used at a given site, with the larger ducts requiring more sampling points than smaller ducts, and rectangularly-shaped ducts requiring more sampling points than circular ducts. As many as 20 sampling points are recommended for large rectangular ducts. However, the ANSI standard recognizes that fewer points may be used if careful evaluation of the sample extraction location shows that the concentration profile is relatively flat as a result of good mixing in the stack or duct. Second, the ANSI standard provides guidance on the design of probes; it recommends sharp-edged probes followed by 90° bends, with a constant internal diameter from the inlet through the elbow. Third, when the standard required multiple probes, it provides designs for rakes of such probes.

It has been known for some time (Rodgers, 1987; Turner et al, 1989; McFarland and Rodger, 1993) that the methodology prescribed in ANSI N13.1–1969 needed to be improved and updated. The use of the "8-and 2-criterion" is not a reliable predictor of stack mixing conditions. [For clarification, "8-and 2-criterion" comes from 40 CFR 60, Appendix A, Method 1: "Sampling or velocity measurement is performed at a site located at least eight stack or duct diameters downstream and two diameters upstream from any flow disturbance such as a bend, expansion, or contraction in the stack, or from a visible flame." ANSI N13.1–1969 provides a similar sampling method: "The distance from the transition or elbow to the point of sampling should be a minimum of five and preferably ten or more diameters downstream * * *. It is recommended that the velocity distribution be measured at the anticipated section to determine that flow is fully developed and mixing complete."] In particular, it does not provide assurance that fluid momentum and contaminant concentration are both well mixed at the sampling location. Use of a multi-nozzle rake can lead to significant internal wall losses of aerosol particles. Fan et al. (1992) tested such a probe and found that approximately 75% of liquid 10 μ aerodynamic diameter (AD) aerosol particles were impacted on the internal wall and only 25% transmitted through a rake to a filter collector. The most accurate and effective method of achieving continuous representative sampling of radioactive aerosol effluents is through the use of a suitably designed shrouded probe extracting samples from a single, properly prepared and located point in the flow.

ANSI N13.1–1999 endorses single point sampling of emissions and provides performance criteria for selecting the appropriate sampling location in the stack and criteria for evaluating the performance of the sampling probe and transport system. Sampling systems, based on the single point sampling approach, that meet the specified performance criteria will meet the precision and accuracy objective of this standard. This approach to sampling airborne, radioactive emissions from stacks and ducts is considered to be the best approach to achieving representative sampling of emissions at a low cost and low maintenance.

The paper, "Single Point Aerosol Sampling: Evaluation of Mixing and Probe Performance in a Nuclear Stack," by John C. Rodgers et al. concluded by indicating that:

> The transmission ratio (ratio of aerosol concentration at the probe exit plane to the concentration in the free stream) was 107% for a 113 L/min (4-cfm) anisokinetic shrouded probe, but only 20% for an isokinetic probe that follows the ANSI N13.1–1969 requirements. Even a specially designed isokinetic probe showed a transmission ratio of 63%. As a consequence of these limitations, recommendations for

Alternative Reference Methodologies (the shrouded probe) for representative sampling of stacks and ducts for emissions of radionuclides were prepared (McFarland and Rodgers, 1993). These were submitted by DOE to the EPA Administrator under the provisions of 40 CFR 61, Subpart H. EPA gave approval in November, 1994 for DOE to use the shrouded probe in its facilities (Nichols, 1994). (Docket A–94–60, Item II–C–1)

DOE has not consistently chosen to use the shrouded probe. Therefore, by incorporating ANSI N13.1–1999 into Subpart H and into Subpart I, DOE and non-DOE Federal facilities will be required to use ANSI N13.1–1999 for any newly constructed source and any source undergoing modification, resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.92 of Subpart H and § 61.102 of Subpart I. It is not required for existing systems to upgrade using ANSI N13.1–1999 because of the strong effort towards decontamination and decommissioning (D&D) as well as privatization by DOE. It both cases, DOE is involved with cleaning a facility and making it available for public use. It would therefore be unnecessary and costly for an existing source to upgrade to meet the ANSI N13.1–1999 standard and then perhaps in a few years not be in existence. However, our proposed rule allows DOE the option to apply ANSI N13.1–1999 to existing sources.

Comments are invited on this proposal. We will monitor the implementation of this amendment, once it is promulgated, to ensure compliance with the Agency objectives.

**Regulatory Analyses**

*Regulatory Flexibility Act*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this rule under section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b). EPA has further determined that this proposed rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The standards being amended apply only to Federal facilities.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Today's action contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local or tribal governments or the private sector.

*Paperwork Reduction Act*

There are no information collection requirements in this proposed rule.

*Review Under Executive Order 12866*

Under Executive Order 12866, 58 FR 51736 (October 4, 1993), EPA must determine whether a regulation is "significant" and therefore subject to review by the Office of Management and Budget. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

EPA has determined that this action does not meet any of the criteria enumerated above, and therefore does not constitute a "significant regulatory action" under the terms of the Order.

*Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

Executive Order 13045 applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions on environmental health or safety risks that may disproportionately affect children.

*Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal

governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule will not significantly or uniquely affect the communities of Indian tribal governments because it will not impose substantial direct compliance costs on such communities. Any cost to implement ANSI N13.1–1999 will be the responsibility of the applicable Federal facility. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*The National Technology Transfer and Advancement Act 2 of 1995 (NTTAA)*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agencies decides not to use available and applicable voluntary consensus standards.

In this rulemaking, EPA proposes to use the ANSI N13.1–1999, entitled, "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities," (ANS/HPS N13.1–1999) a consensus standard developed by the American National Standards Institute (ANSI) Working Group.

The American National Standards Institute (ANSI) has served as administrator and coordinator of the United States private sector voluntary standardization system for 80 years, by promoting and facilitating voluntary consensus standards and conformity assessment systems and by promoting their integrity.

**List of Subjects in 40 CFR Part 61**

Environmental protection, Air pollution control, Radionuclides, Radon, Reporting and recordkeeping requirements.

Dated: April 27, 2000.

**Robert Perciasepe,**

*Assistant Administrator for Air and Radiation.*

For the reasons set forth in the preamble, the Environmental Protection Agency proposes to amend 40 CFR part 61 as follows:

## PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

**Authority:** 42 U.S.C. 7401, 7412, 7414, 7416, 7601, and 7602.

### Subpart A—[Amended]

2. Section 61.18 is amended by adding paragraph (c)(2) to read as follows:

**§ 61.18 Incorporations by reference.**

* * * * *

(c) * * *

(2) ANSI N13.1–1999 "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities," IBR approved for § 61.93(b)(1)(i), (ii), (iii), (2)(i), (ii), (iii), (iv); and § 61.107(b)(1)(i), (ii), (iii), (2)(i), (ii), (iii), (iv).

* * * * *

### Subpart H—[Amended]

2. Section 61.93 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

**§ 61.93 Emission monitoring and test procedures.**

* * * * *

(b) * * *

(1) Effluent flow rate measurements shall be made using the following methods:

(i) For existing sources:

(A) Reference Method 2 of appendix A to part 60 of this chapter or ANSI N13.1–1999 "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities' (incorporated by reference—*see* § 61.18) shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(B) If Reference Method 2 of appendix A to part 60 of this chapter was used in paragraph (b)(1)(i)(A) of this section, then Reference Method 2A of Appendix A to part 60 of this chapter shall be used to measure flow rates through pipes and small vents. If ANSI N13.1–1999 was used in paragraph (b)(1)(i)(A) of this section then ANSI N13.1–1999 shall be used to measure flow rates through pipes and small vents.

(C) The frequency of the flow rate measurements shall depend upon the variability of the effluent flow rate. For variable flow rates, continuous or frequent flow rate measurements shall be made. For relatively constant flow rates, only periodic measurements are necessary. If ANSI N13.1–1999 was used in paragraph (b)(1)(i)(A) of this section then ANSI N13.1–1999 shall be used to determine the frequency of the flow rate measurements.

(ii) After October 1, 2000, for any newly constructed source and any source undergoing modification resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.92:

(A) ANSI N13.1–1999 shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(B) ANSI N13.1–1999 shall be used to measure flow rates through pipes and small vents.

(C) The frequency of the flow rate measurements shall depend upon the variability of the effluent flow rate. ANSI N13.1–1999 shall be used to determine the frequency of the flow rate measurements.

(2) Radionuclides shall be directly monitored or extracted, collected and measured using the following methods:

(i) For existing sources:

(A) If Reference Method 2 of appendix A to part 60 of this chapter was used in paragraph (b)(1)(i)(A) of this section, then Reference Method 1 of appendix A to part 60 of this chapter shall be used to select monitoring or sampling sites. If ANSI N13.1–1999 was used in paragraph (b)(1)(i)(A) of this section, then ANSI N13.1–1999 shall be used to select monitoring or sampling sites.

(B) If Reference Method 1 of appendix A to part 60 of this chapter was used in paragraph (b)(2)(i)(A) of this section, then the effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSI N13.1–1969 "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities" (including the guidance presented in appendix A or ANSIN13.1) (incorporated by reference—*see* § 61.18). If ANSI N13.1–1999 was used in paragraph (b)(2)(i)(A) of this section, then the effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSI N13.1–1999. The requirements for continuous sampling are applicable to batch

processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval or as stated in ANSI N13.1–1999. Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(C) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in appendix B, Method 114, of this part. Use of methods based on principles of measurement different from those described in appendix B, Method 114, of this part must have prior approval from the Administrator. EPA reserves the right to approve measurement procedures.

(D) A quality assurance program shall be conducted that meets the performance requirements described in appendix B, Method 114, of this part. However, if existing sources elect to following the criteria in ANSI N13.1–1999, then the quality assurance program in ANSI N13.1–1999 shall be used.

(ii) After October 1, 2000, for any newly constructed source and any source undergoing modification resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.92:

(A) ANSI N13.1–1999 shall be used to select monitoring or sampling sites.

(B) The effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance in ANSI N13.1–1999. The requirements for continuous sampling are applicable to batch processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval or as stated in ANSI N13.1–1999 "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities' (incorporated by reference—*see* § 61.18). Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(C) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in appendix B, Method 114, of this part. Use of methods based on principles of measurement different from those described in appendix B, Method 114, of this part must have prior approval from the Administrator. EPA reserves the right to approve measurement procedures.

(D) A quality assurance program shall be conducted that meets the performance requirements described in ANSI N13.1–1999.

* * * * *

**Subpart I—[Amended]**

3. Section 61.107 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

**§ 61.107 Emission determination.**

* * * * *

(b) * * *

(1) Effluent flow rate measurements shall be made using the following methods:

(i) For existing sources:

(A) Reference Method 2 of appendix A to part 60 of this chapter or ANSI N13.1–1999 "Sampling and Monitoring Releases of Airborne Radioactive Substances from the tacks and Ducts of Nuclear Facilities" (incorporated by reference—see § 61.18) shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(B) If Reference Method 2 of appendix A to part 60 of this chapter was used in paragraph (b)(1)(i)(A) of this section, then Reference Method 2A of Appendix A to part 60 of this chapter shall be used to measure flow rates through pipes and small vents. If ANSI N13.1–1999 was used in paragraph (b)(1)(i)(A) of this section then ANSI N13.1–1999 shall be used to measure flow rates through pipes and small vents.

(C) The frequency of the flow rate measurements shall depend upon the variability of the effluent flow rate. For variable flow rates, continuous or frequent flow rate measurements shall be made. For relatively constant flow rates, only periodic measurements are necessary. If ANSI N13.1–1999 was used in paragraph (b)(1)(i)(A) of this section, then ANSI N13.1–1999 shall be used to determine the frequency of the flow rate measurements.

(ii) After October 1, 2000, for any newly constructed source and any source undergoing modification resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.102:

(A) ANSI N13.1–1999 shall be used to determine velocity and volumetric flow rates for stacks and large vents.

(B) ANSI N13.1–1999 shall be used to measure flow rates through pipes and small vents.

(C) The frequency of the flow rate measurements shall depend upon the variability of the effluent flow rate. ANSI N13.1–1999 shall be used to determine the frequency of the flow rate measurements.

(2) Radionuclides shall be directly monitored or extracted, collected and measured using the following methods:

(i) For existing sources:

(A) If Reference Method 2 of appendix A to part 60 of this chapter was used in paragraph (b)(1)(i)(A) of this section, then Reference Method 1 of appendix A to part 60 of this chapter shall be used to select monitoring or sampling sites. If ANSI N13.1–1999 was used in paragraph (b)(1)(i)(A) of this section, then ANSI N13.1–1999 shall be used to select monitoring or sampling sites.

(B) If Reference Method 1 of appendix A part 60 was used in paragraph (b)(2)(i)(A) of this section, then the effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSI N13.1–1969 "Guide to Sampling Airborne Radioactive Materials in Nuclear Facilities" (including the guidance presented in appendix A or ANSIN13.1) (incorporated by reference—see § 61.18). If ANSI N13.1–1999 was used in paragraph (b)(2)(i)(A) of this section, then the effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance presented in ANSI N13.1–1999. The requirements for continuous sampling are applicable to batch processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval or as stated in ANSI N13.1–1999. Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(C) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in appendix B, Method 114, of this part. Use of methods based on principles of measurement different from those described in appendix B, Method 114, of this part must have prior approval from the Administrator. EPA reserves the right to approve measurement procedures.

(D) A quality assurance program shall be conducted that meets the performance requirements described in appendix B, Method 114, of this part.

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However, if existing sources elect to following the criteria in ANSI N13.1–1999, then the quality assurance program in ANSI N13.1–1999 shall be used.

(ii) After October 1, 2000, for any newly constructed source and any source undergoing modification resulting in the effective dose equivalent to be greater than 1% of the standard as prescribed in § 61.102:

(A) ANSI N13.1–1999 shall be used to select monitoring or sampling sites.

(B) The effluent stream shall be directly monitored continuously with an in-line detector or representative samples of the effluent stream shall be withdrawn continuously from the sampling site following the guidance in ANSI N13.1–1999. The requirements for continuous sampling are applicable to batch processes when the unit is in operation. Periodic sampling (grab samples) may be used only with EPA's prior approval or as stated in ANSI N13.1–1999 "Sampling and Monitoring Releases of Airborne Radioactive Substances from the Stacks and Ducts of Nuclear Facilities" (incorporated by reference—see § 61.18). Such approval may be granted in cases where continuous sampling is not practical and radionuclide emission rates are relatively constant. In such cases, grab samples shall be collected with sufficient frequency so as to provide a representative sample of the emissions.

(C) Radionuclides shall be collected and measured using procedures based on the principles of measurement described in appendix B, Method 114, of this part. Use of methods based on principles of measurement different from those described in appendix B, Method 114, of this part must have prior approval from the Administrator. EPA reserves the right to approve measurement procedures.

(D) A quality assurance program shall be conducted that meets the performance requirements described in ANSI N13.1–1999.

* * * * *

[FR Doc. 00–11553 Filed 5–8–00; 8:45 am]

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

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Lamprey Wild and Scenic River Extension Act (May 2, 2000; 114 Stat. 233)

**H.R. 1753/P.L. 106–193**

Methane Hydrate Research and Development Act of 2000 (May 2, 2000; 114 Stat. 234)

**H.R. 3090/P.L. 106–194**

To amend the Alaska Native Claims Settlement Act to restore certain lands to the Elim Native Corporation, and for other purposes. (May 2, 2000; 114 Stat. 239)

**H.J. Res. 86/P.L. 106–195**

Recognizing the 50th anniversary of the Korean War and the service by members of the Armed Forces during such war, and for other purposes. (May 2, 2000; 114 Stat. 244)

**S. 1567/P.L. 106–196**

To designate the United States courthouse located at 223 Broad Avenue in Albany, Georgia, as the "C.B. King United States Courthouse". (May 2, 2000; 114 Stat. 245)

**S. 1769/P.L. 106–197**

To exempt certain reports from automatic elimination and sunset pursuant to the Federal Reports Elimination and Sunset Act of 1995, and for other purposes. (May 2, 2000; 114 Stat. 246)

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 47

**[Docket No. FV00–363]**

### Amendments to Rules of Practice Under the Perishable Agricultural Commodities Act (PACA); Correction

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** The Department of Agriculture (USDA) published in the **Federal Register** on July 15, 1999, a final rule that amended the Rules of Practice under the Perishable Agriculture Commodities Act. This document corrects the amount of time allowed for filing a petition to reopen after default.

**EFFECTIVE DATE:** August 16, 1999.

**FOR FURTHER INFORMATION CONTACT:** Charles W. Parrott, Acting Chief, PACA Branch, Room 2095–So. Bldg., Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250, Phone (202) 720–4180, Email—charles.parrott@usda.gov.

**SUPPLEMENTARY INFORMATION:**

#### Background

The Department of Agriculture (Department) published a final rule in the **Federal Register** on July 15, 1999 (64 FR 38103), that amended several sections of the Rules of Practice to comply with the PACA Amendments of 1995, and made numerous other changes to enhance customer service.

#### Need for Correction

As published, the final regulations contain an error that may prove to be misleading and need to be clarified. The 30-day time period for filing a petition to reopen after default is in conflict with the statute and is being corrected to show a 20-day time period in order to remain consistent with the 20-day time period for filing a petition for reconsideration of an order.

#### List of Subjects in 7 CFR Part 47

Administrative practice and procedure, Agricultural commodities, Brokers

Accordingly, 7 CFR part 47 is corrected by making the following correcting amendment:

#### PART 47—[CORRECTED]

1. The authority citation for part 47 continues to read as follows:

**Authority:** 7 U.S.C. 499o; 7 C.F.R. 2.22(a)(1)(viii)(L), 2.79(a)(8)(xiii).

2. Revise paragraph (d) of § 47.24 to read as follows:

**§ 47.24 Rehearing, reargument, reconsideration of orders, reopening of hearings, reopening after default.**

* * * * *

(d) *Reopening after default.* The party in default in the filing of an answer or reply required or authorized under this part may petition to reopen the proceeding at any time prior to the expiration of 20 days from the date of service of the default order. If, in the judgment of the examiner, after notice to and consideration of the views of the other party(ies), there is good reason for granting such relief, the party in default will be allowed 20 days from the date of the order reopening the proceeding to file an answer.

Dated: May 4, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–11641 Filed 5–9–00; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

### 7 CFR Part 400

### General Administrative Regulations; Food Security Act of 1985, Implementation; Denial of Benefits; Correcting Amendment

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Correcting Amendment.

**SUMMARY:** This document contains a technical correction to subpart F of the General Administrative Regulations, concerning the denial of crop insurance when a person is ineligible due to a conviction of a controlled substance violation.

**EFFECTIVE DATE:** May 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bill Smith, Supervisory Insurance Management Specialist, Research and Development, Product Development Division, FCIC, at 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–7743 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

#### Background

The provision contained in 7 CFR part 400.47(a)(2) states that the application and policy of insurance will be canceled when a person becomes ineligible for crop insurance as a result of a conviction for planting, cultivating, growing, producing, harvesting or storing a controlled substance and that a person may submit a new application to obtain crop insurance coverage following the period of ineligibility. As published, the final regulation was not clear regarding the requirement to submit a new application.

#### Need for Correction

As published, the regulation is not clear and has proven to be misleading. Clarification of the requirement to submit a new application for crop insurance coverage following ineligibility is needed.

#### List of Subjects in 7 CFR Part 400

Crop insurance.

Accordingly, 7 CFR part 400 is corrected by making the following correcting amendment:

#### PART 400—GENERAL ADMINISTRATIVE REGULATIONS

#### Subpart F—Food Security Act of 1985, Implementation; Denial of Benefits

1. The authority citation for subpart F continues to read as follows:

**Authority:** Secs. 1506, 1516, Pub.L. 75–430, 52 Stat. 73,77, as amended (7 U.S.C. 1501 *et seq.*); sec. 1244, Pub.L. 99–198.

2. In § 400.47, paragraph (a)(2), is revised to read as follows:

**§ 400.47 Denial of crop insurance.**

(a) * * *

(2) The application and policy of insurance will be voided, or the person will be removed from the policy and the policyholder share reduced in accordance with 7 CFR 400.681(b), when any person becomes ineligible for crop insurance under the provisions of paragraph (a) of this section. To obtain crop insurance coverage following the period of ineligibility, the person must submit a new application for crop insurance.

* * * * *

Signed in Washington D.C., on April 11, 2000.

**Kenneth D. Ackerman,**

*Manage, Federal Crop Insurance Corporation.*

[FR Doc. 00–9598 Filed 5–9–00; 8:45 am]

BILLING CODE 3410–08–P

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 959

**[Docket No. FV00–959–2 FIR]**

## Onions Grown in South Texas; Change in Container Requirements

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule revising the container requirements for shipping onions to fresh processors under the South Texas onion marketing order. The marketing order regulates the handling of onions grown in South Texas and is administered locally by the South Texas Onion Committee (Committee). This rule continues to provide handlers additional marketing flexibility by allowing them to ship onions for peeling, chopping, and slicing in bulk trailer loads, 48-inch deep bulk bins, and tote bags. These changes allow the South Texas onion industry to better meet the needs of fresh processors and allow the industry to compete with other suppliers of onions for fresh processing.

**EFFECTIVE DATE:** June 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Belinda G. Garza, Regional Manager, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to revise the container requirements for onion shipments for peeling, chopping, and slicing prescribed under the South Texas onion marketing order. Handlers are allowed to ship onions for peeling, chopping, and slicing in bulk trailer loads, 48-inch deep bulk bins, and tote bags. Previously, onions for these purposes could only be shipped in 47 inch by 37½ inch by 36 inch deep bulk bins, having a volume of 63,450 cubic inches (hereinafter referred to as the "36-inch deep bulk bin"), or containers deemed similar by the Committee. A dimension tolerance for the bulk containers was also added. All handlers shipping onions for peeling, chopping, and slicing will continue to be required to meet grade, size, inspection, and safeguard requirements. The additional method of shipment and containers allows the South Texas onion industry to better meet the needs of fresh processors and allows the industry to compete with other suppliers of onions for fresh processing.

These changes were first unanimously recommended by the Committee at its meeting on September 16, 1999. At that meeting, the Chairman appointed a subcommittee to review the Committee's recommendations. On October 19, 1999, the Committee met again and unanimously approved the subcommittee's recommendations detailed herein.

Section 959.52 of the South Texas onion marketing order authorizes the establishment of grade, size, quality, maturity, and pack and container regulations for shipments of onions. Section 959.52(c) allows for the modification, suspension, or termination of such regulations when warranted. Section 959.53 authorizes changes to the order's regulations to facilitate the handling of onions for relief, charity, experimental purposes, export, or other purposes recommended by the Committee and approved by the Secretary. Section 959.54 of the order provides authority for the Committee to establish that onions handled for special purposes are handled only as authorized. Section 959.60 provides that whenever onions are regulated pursuant to § 959.52, such onions must be inspected by the inspection service and certified as meeting the applicable requirements. Section 959.80 of the order authorizes handler reporting requirements.

Section 959.322(f) of the order's rules and regulations provides specific safeguards for certain special purpose shipments of onions. Furthermore, paragraph (f)(3) of § 959.322 provides authority for the shipment of onions for fresh peeling, chopping, and slicing in 36-inch deep bulk bins, or containers deemed similar by the Committee. Such shipments are exempt from the container requirements specified in paragraph (c) of § 959.322, but are

required to be handled in accordance with the safeguard provisions of § 959.54, and meet the grade requirements in paragraph (a), the size requirements in paragraph (b), the inspection requirements in paragraph (d), and the safeguard requirements in paragraph (g) of § 959.322.

Previously, § 959.322(f)(3) allowed onion shipments for peeling, chopping, and slicing in 36-inch deep bulk bins, or containers deemed similar by the Committee. The Committee recommended that shipments of onions to these outlets be authorized in bulk trailer loads, 48-inch deep bulk bins (with the same length and width dimensions as the 36-inch deep bulk bin), and tote bags, and that the provisions on containers deemed similar be removed because it had caused confusion in the industry. In its place, the Committee recommended implementation of a dimension tolerance.

The market for onions for fresh processing uses has grown dramatically in the last five years. The food service industry is the fastest growing market for onions in the United States. Consumption of onions has increased, especially for onions used in restaurants, salad bars, and cafeterias in fresh peeled, chopped, or sliced form. Fresh process is an increasingly important market for the domestic onion industry, and is expected to continue growing.

Buyers of onions for fresh processing continually demand flexibility in container availability, and the Committee is always looking for ways to strengthen and expand the market for South Texas onions. The Committee believes that South Texas may enhance its ability to take full advantage of available marketing opportunities for fresh peeling, chopping, and slicing onions with the more flexible shipping container requirements. The more flexible containers and method of shipment allow the South Texas onion industry to better meet the needs of fresh processors and allow the industry to better compete with other suppliers of onions for fresh processing. The changes will open new markets for South Texas and help the industry increase its fresh processed onion market share. The Committee estimates that these changes will help the industry double shipments into these outlets.

Because the demand for fresh processed onions is increasing and Texas has not been able to market more of its crop in the conveyances and containers the trade desires, the trade has been going to other competing areas, that are not restricted by regulations, leaving Texas at a disadvantage. Other onion-growing areas can ship onions in bulk loads for peeling, chopping, and slicing purposes, but the South Texas onion industry could not do so because the regulations restricted shipments to 36-inch deep bulk bins. Competition from other onion production areas demands that the South Texas onion industry be able to quickly respond to buyer demands for other types of shipments. Also, other onion producing areas not bound by restrictions have the flexibility to ship fresh processing onions as needed by buyers. The added flexibility of these changes allows handlers to meet the competition from other areas and better meet buyer's needs.

The Committee also recommended adding tightly-woven mesh plastic tote bags 36 inches by 36 inches by 66 inches long with a capacity of approximately 2,000 pounds of onions for shipment to fresh processors. These tote bags are returnable and have four handles that are placed to fit forklifts. Ties are attached to each end of the bags and the onions are dumped by unfastening the bottom tie. Use of these bags helps speed up the unloading process, saving time and money for the fresh processors.

The total volume specification of 63,450 cubic inches for the 36-inch bulk bin previously included in the regulation did not allow any flexibility in the dimension of the container and the phrase "or containers deemed similar by the committee" lacked specificity and resulted in confusion. The Committee believed that a more precise tolerance was needed so that there was no room for misinterpretation by the industry. The Committee, therefore, recommended removing the phrase "and having a volume of 63,450 cubic inches, or containers deemed similar by the committee" and adding in its place provisions establishing a dimension tolerance of 2 inches for each dimension on all bulk containers used for shipping onions for peeling, chopping, and slicing. The 2-inch tolerance for each dimension on all bulk containers allows handlers to pack onions for peeling, chopping, and slicing in containers with dimensions slightly different from the sizes specified in the regulation. Identifying a specific dimension tolerance in the regulation prevents misunderstandings, and provides handlers packing flexibility. The addition of the container dimension tolerance recognizes the difficulty in producing containers with precise measurements all of the time.

The Committee recommended that the regulation specify that only 3-inch and larger onions be shipped for these purposes because smaller onions cannot be processed efficiently using available machinery. However, the provisions under which this action was being implemented did not authorize the establishment of a minimum size different than the 1-inch minimum currently in place for all shipments. Therefore, this recommendation was not implemented. Lastly, minor changes were made to the handling regulation for clarity.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 80 producers of South Texas onions in the production area and 37 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Most of the handlers in South Texas are vertically integrated corporations involved in producing, shipping, and marketing onions. For the 1998–99 marketing year, onions produced in the production area were shipped by the industry's 37 handlers with the average and median volume handled being 147,669 and 102,478 fifty-pound bag equivalents, respectively. In terms of production value, total revenues from the 37 handlers were estimated to be $43.7 million, with average and median revenues being $1.1 million, and $820,000, respectively.

The South Texas onion industry is characterized by producers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of onions. Alternative crops provide an opportunity to utilize many of the same

facilities and equipment not in use when the onion production season is complete. For this reason, typical onion producers and handlers either produce multiple crops or alternate crops within a single year.

Based on the SBA's definition of small entities, the Committee estimates that all the 37 handlers regulated by the order would be considered small entities if only their spring onion revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. All of the 80 producers may be classified as small entities based on the SBA definition if only their revenue from spring onions is considered. When revenues from all sources are considered, a majority of the producers would not be considered small entities because receipts would exceed $500,000.

This rule continues to revise the container requirements for onion shipments for peeling, chopping, and slicing prescribed under the South Texas onion marketing order. Shipments of onions for these purposes are permitted in bulk loads, 48-inch deep bulk bins, and tote bags, in addition to the approved 36-inch deep bulk bin. A dimension tolerance for the bulk containers was also added. All handlers shipping onions for peeling, chopping, and slicing continue to be required to meet grade, size, inspection, and safeguard requirements.

This rule change continues to allow South Texas onion handlers to supply existing markets, opens up new markets to satisfy fresh processor demand, and allows the industry to be more competitive in the marketplace. Allowing shipments of onions to fresh processors in bulk loads, 48-inch bulk bins, and tote bags, in addition to the 36-inch deep bulk bin, is expected by the Committee to double the shipments of Texas onions to fresh processed buyers. The increase in shipments is expected because the changes allow the South Texas onion industry to better meet the needs of fresh processors and allow the industry to compete with other suppliers of onions for fresh processing.

At the meetings, the Committee discussed the impact of these changes on handlers and producers and believed that the benefits of this rule were not expected to be disproportionately greater or less for small handlers or producers than for larger entities. The increased shipping flexibility is equally beneficial to all shippers regardless of size.

An alternative to this action was to maintain the status quo, however, the Committee believed that the regulation did not address the needs of handlers desiring to expand their fresh process onion marketing efforts. The Committee believed that the regulations should be modified to address these needs. The Committee further believed that not allowing different types of bulk shipments for peeling, chopping, and slicing would be detrimental to the South Texas onion industry. Allowing shipments of onions in additional bulk bins and in bulk loads will meet the industry's objective of marketing more onions. These changes provide the industry with additional marketing opportunities and allow the industry to be more competitive.

All handlers making onion shipments for relief, charity, processing, experimental purposes, or peeling, chopping, and slicing are required to apply for and obtain a Certificate of Privilege from the Committee to make such shipments. No additional reporting burden is estimated in making such applications because all 37 of the handlers in the Texas onion industry routinely apply each season for these certificates and this is expected to continue. However, this action imposes additional reporting requirements on the 37 onion handlers. Because this action fosters increased shipments, the handlers will file more Reports of Special Purpose Onion Shipments. This report accompanies each shipment and takes about .083 hours to complete. It is used to verify proper disposition of the onions. Previously, each of the 37 handlers shipped approximately 15 loads of onions for special purposes. The Committee estimates that this rule change will double the number of shipments going to these outlets to 30 loads per handler, which will result in an estimated burden to the previously-mentioned 37 handlers of about 92 hours.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0187. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

Further, the Committee's meetings were widely publicized throughout the onion industry and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the October 19, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 17 members, of which 10 are producers and 7 are handlers. Also, the Committee has subcommittees to review certain issues and make recommendations to the Committee. The subcommittee met on October 12, 1999, and discussed this issue in detail. The meeting was a public meeting and both large and small entities were able to participate and express their views. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

An interim final rule concerning this action was published in the **Federal Register** on February 16, 2000. Copies of the rule were mailed by the Committee's staff to all Committee members and onion handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended April 17, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's unanimous recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (65 FR 7711, February 16, 2000) will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 959**

Marketing agreements, Onions, Reporting and recordkeeping requirements.

**PART 959—ONIONS GROWN IN SOUTH TEXAS**

Accordingly, the interim final rule amending 7 CFR part 959 which was published at 65 FR 7711 on February 16,

2000, is adopted as a final rule without change.

Dated: May 4, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–11642 Filed 5–9–00; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 993

**[Docket No. FV00–993–2 FR]**

### Dried Prunes Produced in California; Undersized Regulation for the 2000–2001 Crop Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule changes the undersized prune regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 2000–2001 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets, and allows handlers to dispose of undersized prunes in such outlets as livestock feed. The Committee estimated that this rule will reduce the excess of dried prunes expected at the end of the 1999–2000 crop year by approximately 5,100 tons, leaving sufficient prunes to fulfill foreign and domestic trade demand.

**EFFECTIVE DATE:** August 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720-2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule changes the undersized regulation in § 993.49(c) of the prune marketing order for the 2000–2001 crop year for inventory management purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening will be increased from 23/32 to 24/32 of an inch in diameter; and for non-French prunes, the opening will be increased from 28/32 to 30/32 of an inch in diameter. This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. The rule will be in effect from August 1, 2000, through July 31, 2001, and was unanimously recommended by the Committee at a November 30, 1999, meeting.

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter. Section 993.49(c) of the prune marketing order establishes an undersized regulation of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also provides that the Secretary, upon a recommendation of the Committee, may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation. Section 993.50(g) states in part: "No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes* * *" Pursuant to § 993.52, minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the Secretary, on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized openings prescribed in § 993.49(c) to permit undersized regulations using openings of 23/32 or 24/32 of an inch for French prunes, and 28/32 or 30/32 of an inch for non-French prunes.

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by the Department at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and the Department established volume regulation percentages during the 1974–75 crop year with an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes. During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15, 1975; and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes, particularly small-sized prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77 and 1977–78 crop years, the Committee

recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products, such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes, particularly in the smaller sizes. During the 1998–99 crop year, an undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998). At its meeting on December 1, 1998, the Committee recognized that the 1998–99 prune crop was about 50 percent of the normal size; however, with the large carryin inventories and anticipated large 1999–2000 prune crop, the Committee unanimously recommended continuing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.406 (63 FR 23759, May 4, 1999) and made effective from August 1, 1999, through July 31, 2000.

For the 1998–99 crop year, the carryin inventory level reached a record high of 126,485 natural condition tons. Excessive inventories tend to dampen producer returns, and cause weak marketing conditions. The carryin for the 1999–2000 crop year was reduced to 59,944 natural condition tons. This reduction was due to the low level of salable production in 1998–99 (about 102,521 natural condition tons and 50 percent of a normal size crop) and the undersized prune regulation. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop has ranged between 35,353 and 42,071 natural condition tons since the 1996–97 crop year, while the actual inventory has ranged between 59,944 and 126,485 natural condition tons since that year. The desired inventory level for early season shipments fluctuates from year-to-year depending on market conditions.

At its meeting on November 30, 1999, the Committee unanimously recommended continuing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes during the 2000–2001 crop year to help manage large prune supplies. This regulation will be in effect from August 1, 2000, through July 31, 2001.

The Committee estimated that there will be an excess of about 8,200 natural condition tons of dried prunes as of July 31, 2000. This rule will continue to remove primarily small-sized prunes from human consumption channels, consistent with the undersized prune regulation that was implemented for the 1998–99 and 1999–2000 crop years. It is estimated that approximately 5,100 natural condition tons of small prunes will be removed from human consumption channels during the 2000–2001 crop year. This will leave sufficient prunes to fill domestic and foreign trade demand during the 2000–2001 crop year, and provide an adequate carryout on July 31, 2001, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop is about 42,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing for several more years (estimated at 350,845 natural condition tons by the year 2003); (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 1999–2000 crop years, the yield ranged from 1.2 to 2.6 versus a 10 year average of 2.2 tons per acre); and (4) California's continued excess supply situation. The production of these small sizes ranged from 1,332 to 8,778 natural condition tons during the 1990–91 through the 1998-99 crop years. The Committee concluded that it had to continue utilizing supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. The changes to the undersized regulation for the 2000–2001 crop year are the result of these deliberations, and the Committee's desire to bring supplies more in line with market needs.

The current oversupply situation facing the California prune industry has been caused by four consecutive large crops (1994–95 through 1997–98) of over 180,000 natural condition tons. This oversupply situation is expected to continue over the next few years due to new prune plantings in recent years with higher yields per acre. The recent prune plantings have a higher tree density per acre than the older prune plantings. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres; but by 1998–99, the non-bearing acreage had quadrupled to more than 26,000 acres. The 1996–97 through 1998–99 yields have ranged from 1.2 to 2.6 tons per acre. Over the last 10 years, the average was 2.2 tons per acre. The 1998–99 prune crop was exceptionally light, (about 50 percent of normal size or 103,000 tons), due to the unusually cool and wet weather conditions caused by the weather phenomenon known as El Nino. Although the small 1998–99 crop helped reduce the existing oversupply of small dried prunes, supplies of small dried prunes remain larger than needed to meet demand.

The 1999–2000 dried prune crop is expected to be 172,000 natural condition tons. Another large crop of about 200,000 natural condition tons is expected for the 2000–2001 crop year, partly because of an anticipated increase in bearing acreage.

Since the 1997–98 crop year, producer prices for the 24/32 of an inch in diameter French prunes have been about $40–50 per ton, about $260–270 per ton below the cost of production. The lower pricing of the smaller prunes continued in 1998–99 and 1999–2000. It is expected to continue as an incentive for production of larger size prunes. These larger sizes will help the industry better meet the increasing market demand for larger size pitted prunes.

The 1998–99 and 1999–2000 undersized prune rules of 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes have expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 1999, was 17,873 natural condition tons, and only about 5,130 natural condition tons of dried prunes are expected to be removed from the 1999–2000 marketable supply by the current undersized regulation. The Committee believes that the same undersized regulation also should be implemented during the 2000–2001 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 2000–2001 prune crop supplies, and more quickly

bring supplies in line with demand. Attainment of this goal will benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings will be continuous for the purposes of quality control even in above parity situations. It further states that any change (*i.e.*, increase) in the size of those openings will not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warrant the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers averaged about 49 percent of parity during the 1994 through 1998 seasons and is in a downward trend. As discussed later, the average grower price for prunes during the 2000–2001 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation will be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for volume control, not quality control. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented to improve product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters will not be applied to imported prunes.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 7 out of 20 handlers (35 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Thirteen of the 20 handlers (65 percent) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 109 producers, or less than 9 percent of the 1,250 total producers, could be considered large growers with annual income over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This final rule will establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 2000–2001 crop year for inventory management purposes. This change in regulation will result in more of the smaller sized prunes being classified as undersized prunes, and is expected to benefit producers, handlers, and consumers. Since prune handlers already use 24/32 and 30/32 grader screens, small and large producers and handlers will not incur extra costs to purchase new screen sizes. Moreover, because the quality related undersized regulation has been in place continuously since the early 1980's, the only additional cost resulting from the change in regulations to the larger screen openings will be the disposal of additional undersized prune tonnage (about 5,100 natural condition tons) to nonhuman consumption outlets. The larger screen openings currently in place for 1999–2000 are expected to remove 5,130 tons of dried prunes from the excess marketable supply. The Committee estimated that there will be an excess of about 8,200 natural condition tons of dried prunes on July 31, 2000. Implementation of the larger openings in 2000–2001 is expected to reduce the surplus by about 5,100 tons.

Because the benefits and costs of the action will be directly proportional to the quantity of 24/32 screen French prunes and 30/32 screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the action. While variation in sugar content, prune density, and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys (which account for over 99 percent of the State's production), the prunes produced are homogeneous enough that this action will not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large, but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or lesser for small handlers or producers than for larger entities. The only additional costs on producers and handlers expected from the increased openings will be the disposal of additional tonnage (now estimated to be about 5,100 tons) to nonhuman consumption outlets. These costs are expected to be minimal and will be offset by the benefits derived by the elimination of some of the excess supply of small-sized prunes.

At the November 30, 1999, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handlers and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for these small sizes is quite bleak, with producers losing about $260–270 on every ton they deliver to handlers. The 1999–2000 grower field price for 24/32 screen French prunes ranges between $40 and $50 per ton, the same as the 1998–99 year. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, transportation is at least $20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion and research) is $50 per ton. The total cost is about $330 per ton which equates to a loss of about $280–290 per ton for every ton of 24/32 screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, the Department has

evaluated the impact of the undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories should probably result in higher season-average prices which will benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes produced in California from human consumption outlets will eliminate an estimated 5,100 tons of small-sized dried prunes during the 2000–2001 crop year from the marketplace. This will help lessen the negative marketing and pricing effects resulting from the excess supply situation facing the industry. California prune handlers reported that they held 59,944 tons of natural condition prunes on July 31, 1999, the end of the 1998–99 crop year. The 59,944 ton year-end inventory is larger than what is desired for the prune industry. The desired industry inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 39,000 natural condition tons. This leaves an inventory surplus of about 18,000 tons. The near normal size 1999–2000 prune crop (172,000 tons) and undersized regulation will help reduce the surplus, but the anticipated large 2000–2001 prune crop is expected to further worsen the supply imbalance.

As the marketable dried prune inventories are reduced through this action, and producers continue to implement improved cultural and thinning practices to produce larger prunes, continued improvement in producer returns is expected.

For the 1994–95 through the 1998–99 crop years, the season average price received by the producers ranged from a high of $1,120 per ton to a low of $784 per ton during the 1998–99 crop year. The season average price received by producers during that 5-year period averaged about 49 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for the 1999–2000 season is expected to be about $905 per ton, or about 43 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change is needed to expedite that reduction. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation. These initiatives were not supported because they would not specifically eliminate the smallest, least valuable prunes which are in oversupply. Instead, the reserve pool and diversion program would eliminate larger size prunes from human consumption outlets. Reserve pools for prunes have historically been implemented on dried prunes regardless of the size of the prunes. While the marketing order also allows handlers to remove the larger prunes from the pool by replacing them with small prunes and the value difference in cash, this exchange would be cumbersome and expensive to administer compared to this rule.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for inventory management, not quality control purposes. The smaller diameter openings of $^{23}/_{32}$ of an inch for French prunes and $^{28}/_{32}$ of an inch for non-French prunes were implemented for the purpose of improving product quality. The increases to $^{24}/_{32}$ of an inch in diameter for French prunes and $^{30}/_{32}$ of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters will not be applied to imported prunes.

This action will not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Moreover, the Committee and its Supply Management Subcommittee have been reviewing this supply management problem for the second year, and this rule reflects their deliberations completely.

A proposed rule concerning this action was published in the **Federal Register** on Wednesday, January 19, 2000 (65 FR 2908). Copies of this rule were mailed or sent via facsimile to all Committee members, alternates and dried prune handlers. Finally, the rule was made available through the Internet by the U.S. Government Printing Office. The rule provided a comment period which ended April 17, 2000. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 993**

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

## PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. A new § 993.407 is added to read as follows:

**Note:** This section will not appear in the Code of Federal Regulations.

### § 993.407 Undersized prune regulation for the 2000–2001 crop year.

Pursuant to §§ 993.49 paragraph (c) and 993.52, an undersized prune regulation for the 2000–2001 crop year is hereby established. Undersized

prunes are prunes which pass through openings as follows: for French prunes, 24/32 of an inch in diameter; for non-French prunes, 30/32 of an inch in diameter.

Dated: May 4, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–11640 Filed 5–9–00; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Part 917

**[KY–218–FOR]**

### Kentucky Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSM is approving, with one exception, a proposed amendment to the Kentucky regulatory program (Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Kentucky is proposing revisions to the Kentucky Revised Statutes (KRS) pertaining to bonding and permits. The amendment is intended to revise the Kentucky program to be consistent with the corresponding Federal regulations.

**EFFECTIVE DATE:** May 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** William J. Kovacic, Field Office Director, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2894. Email: bkovacic@osmre.gov.

**SUPPLEMENTARY INFORMATION:**

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

### I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the May 18, 1982 **Federal Register** (47 FR 21404). You can find subsequent actions concerning conditions of approval and program amendments at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

### II. Submission of the Proposed Amendment

By letter dated April 23, 1998 (Administrative Record No. KY–1425), Kentucky submitted a proposed amendment to its program. House Bills (HB) 354, 498, and 593 (effective July 15, 1998) revise KRS sections 350.990(11), 350.131(2), 350.139(1), 350.990(1), and 350.060(16).

We announced receipt of the proposed amendment in the May 20, 1998, **Federal Register** (63 FR 27698), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on June 19, 1998.

### III. Director's Findings

Following, according to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the proposed amendment.

Any revisions that we do not specifically discuss below concern nonsubstantive wording changes or revised cross-references and paragraph notations to reflect organizational changes that result from this amendment.

*Reorganization*—HB 354 confirms Executive Order 97–714 (June 11, 1997) which changed the name of the Division of Abandoned Lands to the Division of Abandoned Mine Lands. At KRS 350.990(11), Kentucky proposes to correct the name in this section. While there are no corresponding Federal provisions, we are approving the revision because it does not alter the authority or responsibility of the Division of Abandoned Mine Lands, and is not, therefore, inconsistent with the requirements of SMCRA and the Federal regulations.

*Forfeited Bonds*—HB 498 completes the bonding reforms recommended in the 1993 joint study of the adequacy of reclamation bonds in Kentucky. At KRS 350.131(2), Kentucky proposes to return any unused bond funds, less any accrued interest, to the party from whom they were collected when the forfeited amount is more than the amount needed for reclamation.

The Federal regulations at 30 CFR 800.50(d)(2) provide that, where the amount of the performance bond forfeited exceeds the cost of reclamation, "the unused funds shall be returned * * * to the party from whom they were collected." However, both SMCRA and the Federal regulations are silent as to the disposition of any interest proceeds generated by the bond while it is in the possession of the regulatory authority. Therefore, while Kentucky's proposed requirement is not specifically authorized by SMCRA, it is nonetheless well within the discretion provided to the states by section 505 of SMCRA to propose more stringent regulation of surface coal mining and reclamation operations than do the provisions of SMCRA and its implementing regulations. Therefore, the Director finds the Kentucky proposal to be not inconsistent with the requirements of SMCRA or the Federal rules at 30 CFR part 800.

At KRS 350.139(1), Kentucky proposes to establish a bond forfeiture supplemental fund. All funds from the forfeiture of bonds will be placed in an interest-bearing account. The interest will become a supplemental fund and may be used to supplement forfeited bonds that are inadequate to complete the reclamation plan. The interest may be expended on lands other than those for which the bond was given. No more than 25 percent of the supplemental fund may be expended on any single site, unless a larger expenditure is necessary to abate an imminent danger to public health or safety.

At KRS 350.990(1), Kentucky proposes to establish a potential second source of money for the supplemental fund. The first $800,000 of the civil penalties Kentucky collects each year for coal mining violations goes to the State Treasury's General Fund. Any proceeds in excess of the first $800,000, collected in any fiscal year, go to the Kentucky Bond Pool Fund. Kentucky proposes to direct one-half of the excess that currently goes to the Bond Pool Fund to the new bond forfeiture supplemental fund, but only when the balance in the Bond Pool Fund is above the maximum of the operating range necessary to ensure its solvency. Currently, the maximum amount of money necessary to ensure the solvency of the Bond Pool Fund is $16 million. Accordingly, the amendment proposes no diversion of excess penalty income from the Bond Pool Fund to the bond forfeiture supplemental fund until the Bond Pool Fund reaches $16 million, or a larger amount established by the most recent actuarial study. The excess money collected will be deposited 50 percent to the Bond Pool Fund and 50 percent to the supplemental fund. If the Bond Pool Fund falls below $16 million (or a higher amount established by the actuarial study), all excess moneys will be deposited in the Bond Pool Fund until it reaches $16 million (or a higher amount).

In its submittal letter dated April 23, 1998 (Administrative Record No. KY–1425), Kentucky clarified that the interest generated becomes a supplemental fund that can be used to reclaim lands where a forfeited bond is insufficient to complete necessary reclamation. Because no moneys may be diverted away from the Bond Pool Fund except for proceeds in excess of the amount necessary to guarantee its solvency, Kentucky has stated that any such transfer of moneys into the supplemental fund will not endanger the solvency of the Bond Pool Fund.

We hereby approve the amendments to KRS 350.139(1) and 350.990(1), contained in House Bill 498, to the extent that the supplemental fund will be used as a supplement to the conventional, site specific performance bonds that must be furnished by permittees. The approval of these amendments in no way compromises the requirement that each such site specific performance bond must initially be determined to be sufficient in amount to assure completion of the reclamation plan and the satisfaction of all permit and Kentucky program requirements. Moreover, our approval of these amendments does not authorize Kentucky to use the supplemental fund as another alternative bonding program pursuant to section 509(c) of SMCRA. Rather, the supplemental fund may only be used for those sites for which the site specific performance bond, although initially determined to be sufficient to assure completion of reclamation, nevertheless is later found to be insufficient.

*Permit Renewal*—HB 593 revises KRS 350.060(16), pertaining to the renewal of expired permits. If a permit has expired or a permit renewal application has not been timely filed and the operator or permittee wants to continue the surface coal mining operation, Kentucky will issue a notice of noncompliance (NOV). The NOV will be considered complied with, and the permit may be renewed, if Kentucky receives a permit renewal application within 30 days of the receipt of the NOV. Upon submittal of a permit renewal application, the operator or permittee will be deemed to have timely filed the application and can continue, under the terms of the expired permit, the mining operation pending issuance of the permit renewal. Failure to comply with the remedial measures of the NOV will result in the cessation of the operation.

Section 506(a) of SMCRA precludes surface coal mining operations without a valid permit. Section 506(d)(3) requires that permit renewal applications be made 120 days prior to the permit expiration date.

We are approving the provisions at KRS 350.060(16) to the extent that they pertain to permit renewal applications that have not been timely filed, for permits that have not yet expired. Section 506(d)(3) of SMCRA does not specify that a cessation order must be issued if a permit renewal application is not filed timely. Therefore, while it has no Federal counterpart, this proposed provision is not inconsistent with SMCRA or the Federal regulations, to the extent that it requires a notice of noncompliance, which is the Kentucky equivalent of a Federal notice of violation (NOV), to be issued to a permittee who fails to file a timely application for a renewal. However, we are not approving Kentucky's proposal to issue a notice of noncompliance, instead of an Imminent Harm Cessation Order (IHCO) or its Kentucky equivalent, to a person who has not yet filed a renewal application when his permit expires, and who continues to mine on the expired permit. In such a case, an IHCO must be issued, in accordance with 30 CFR 843.11(a)(2), since surface coal mining operations conducted without a valid surface coal mining permit constitute a condition or practice which causes or can reasonably be expected to cause significant, imminent environmental harm to land, air or water resources. Simply put, where a permittee has not yet filed a renewal application at the time his permit expires, it must cease mining operations, and begin or continue all necessary reclamation activities, upon permit expiration. Because it would allow a person to continue mining in this situation, this portion of HB 593 is less stringent than Section 506 of SMCRA and less effective than the Federal regulations at 30 CFR 843.11. Specifically, we are not approving the phrase "if a permit has expired or," contained in KRS 350.060(16). OSM will announce its intention to set aside this portion of HB 593 in a future **Federal Register** notice.

In addition, we find that the amendment is less stringent than section 506 of SMCRA and less effective than the Federal regulations at 30 CFR 843.11 insofar as it allows an operator to continue mining on an expired permit after it has filed the permit renewal application within 30 days of the receipt of the notice of noncompliance, regardless of whether the application is filed before or after permit expiration. Federal law and regulations prohibit mining without a permit, and require that any such mining be immediately ceased. Therefore, we are also disapproving the following portion of KRS 350.060(16):

> Upon the submittal of a permit renewal application, the operator or permittee shall be deemed to have timely filed the permit renewal application and shall be entitled to continue, under the terms of the expired permit, the surface coal mining operation, pending the issuance of the permit renewal.

OSM will announce its intention to set aside this portion of HB 593 in a future **Federal Register** notice.

We are also requiring Kentucky to amend its program to make it clear that a person may not continue to mine on an expired permit, except where the permittee has filed a timely and complete application for renewal (*i.e.*, the application is filed at least 120 days before permit expiration) and the regulatory authority has not yet approved the renewal application at the time of permit expiration. Kentucky must also amend its program to require the issuance of an IHCO to any person mining on an expired permit, except as described in the preceding sentence.

## IV. Summary and Disposition of Comments

### *Public Comments*

We solicited public comments and provided an opportunity for a public hearing on the proposed amendment submitted on April 23, 1998. Because no one requested an opportunity to speak at a public hearing, none was held.

Two members of the public submitted comments. One commenter supported the amendment in its entirety. The second commenter supported the provisions of HB 354 and 498 but requested clarification that the supplemental bond fund will function as a supplemental source of money and not a SMCRA section 509(c) alternative bonding program. As discussed in section III above, Kentucky clarified that the interest generated becomes a supplemental fund that can be used to reclaim lands where a forfeited bond is insufficient to complete necessary reclamation. The approval of these amendments in no way compromises the requirement that each such site specific performance bond must initially be determined to be sufficient in amount to assure completion of the reclamation plan and the satisfaction of all permit and Kentucky program requirements. Moreover, our approval of these amendments does not authorize Kentucky to use the supplemental fund as another alternative bonding program pursuant to section 509(c) of SMCRA. Rather, the supplemental fund may only be used for those sites for which the site specific performance bond, although

initially determined to be sufficient to assure completion of reclamation, nevertheless is later found to be insufficient.

The second commenter opposes the provisions of HB 593, on several grounds. Each comment is summarized below, followed by our response.

First, the commenter contends that the bill violates the plain language of Section 506(d)(3) of SMCRA, which requires that "[a]pplication for permit renewal shall be made at least one hundred and twenty days prior to the expiration of the valid permit." (Emphasis added) "Shall", according to the commenter, "is the language of command, and is not to be read to allow filing of a permit renewal after the 120 day time frame, since the statute clearly demands "at least" 120 days."

We agree that the word "shall" is commonly used to denote a mandatory duty. As such, a fair reading of Section 506(d)(3) of SMCRA leads to the conclusion that permittees are under a compulsion to submit permit renewal applications at least 120 days prior to permit expiration. Failure to file, therefore, could bring some adverse consequence to bear upon the permittee. Section 506(d)(3) does not, however, state that the consequence of failure to comply with the 120 day deadline *must* be that the renewal cannot be granted under any circumstance, such as after the permittee submits an untimely application. Therefore, we believe that Kentucky may appropriately issue a notice of noncompliance, which is the State's counterpart to a Federal NOV, for failure to file a renewal application in a timely fashion. If the permittee then submits the renewal application, Kentucky may properly rule on it, employing the permit renewal criteria contained in its approved program.

The commenter also contends that:

> Approval of the state program amendment would be contrary to a long-standing interpretation of the Federal Act by the Secretary as prohibiting any reduction in the timetable for filing renewal applications. OSMRE has acknowledged this time frame to be binding on the agency, rejecting a request that the application filing deadline of 120 days be reduced to 60 days "because the 120-days are required by Section 506(d) of the Act." 44 FR 15016 (March 13, 1979). Thus the final regulation retained the 120 day requirement. 30 CFR part 771.21(b)(2), recodified at 30 CFR 774.15(b).
>
> Clearly, if reduction of the 120-day advance filing requirement to 60-days advance filing is inconsistent with Section 506(d), elimination of any advance filing and allowing post-expiration filings to relate back to the expired permit date is all the more inconsistent with the federal law.

We disagree, because the 120 day advance filing requirement is not being altered or compromised by the Kentucky amendment. Failure to comply with this requirement can constitute a violation of the Kentucky program, thereby resulting in issuance of a notice of noncompliance, along with the possible imposition of civil penalties. (Presumably, Kentucky could elect not to issue a notice of noncompliance for failure to file a timely renewal application, where the permittee has stated his intention to discontinue mining, and continue with reclamation activities only, upon expiration of the permit. Of course, Kentucky would be required to issue a cessation order to such a person, if the person continued to mine on the expired permit.)

Next, the commenter argues that the amendment violates Section 506(a) of SMCRA, which states that "no person shall engage in or carry out on lands within a State any surface coal mining operations unless such person has first obtained a permit * * *." The commenter contends that this amendment violates Section 506(a) because it:

> Would allow continued operations after the expiration of a valid permit, merely upon the filing of a renewal application. Thus, an individual could file a renewal application and continue to mine and remove coal, even where (i) the person might not be eligible for approval of a renewal application because the criteria for renewal are not met; (ii) the person does not follow through with the permitting.
>
> Section 506(a) demands that a permit be issued before surface coal mining operations occur. 30 CFR 773.11(a) likewise requires that a permit first be obtained, except where only reclamation activities remain to be accomplished on a site with a permit that has expired, in which case no renewal is necessary.
>
> To allow mining under an expired permit after the date of expiration of the permit violates Section 506(a) and 30 CFR 773.11(a), just as allowing the filing of a permit renewal application after the 120-day advance deadline or after the permit expiration, violates Section 506(d)(3).

As noted in our response above, we agree with the commenter that the untimely filing of a renewal application can constitute a violation of SMCRA Section 506(d)(3), but we believe Kentucky has sufficiently acknowledged this fact in its amendment, because it requires the issuance of a notice of noncompliance in such an instance, assuming the permittee wishes to continue mining after expiration of the current permit. We do *not* agree, however, that *allowing* the filing of a late renewal application violates Section 506(d)(3). Instead, we believe this provision is sufficiently flexible to allow consideration of untimely applications, so long as the permit renewal procedures, which include public participation, are properly followed.

We also agree that the allowance of continued mining operations after the permit has *expired* presents a different question. Generally, the Federal regulations state that mining without a valid surface coal mining permit constitutes a "condition or practice which causes or can reasonably be expected to cause significant imminent environmental harm * * *" for which the Regulatory Authority must issue an Imminent Harm Cessation Order (IHCO). As noted in Section III., above, we are therefore disapproving the Kentucky amendment to the extent that it requires the issuance of a notice of noncompliance, rather than an IHCO, to any person mining on an expired permit, where that person has not submitted an application for renewal. We are also disapproving that portion of the amendment that would allow an operator to continue mining under an expired permit after filing a permit renewal application within 30 days of issuance of the notice of noncompliance.

The commenter also argues that the amendment violates the requirements for permit renewal, and allows continued operations in derogation of public participation and advance agency review, insofar as it allows continued coal removal under an expired permit so long as the renewal application has been filed. The commenter states that SMCRA's legislative history makes clear that a right of renewal is limited "to anyvalid permit issued pursuant to this act * * * with respect to areas within the boundaries of the existing permit and upon written finding by the regulatory authority that terms of the existing permit are being met [* * *.]" H.R. Rept. No. 95–218, 95th Cong., 1st Sess.92 (1977). According to the commenter, a permit that has expired is no longer existing, and cannot be renewed, since renewal findings must be met for the current, not former, permit.

In response, we note that, under Section III., above, we are disapproving the amendment to the extent that it authorizes the issuance of a noncompliance order, rather than an IHCO, to an operator who continues to mine under an expired permit, and to the extent that it would allow the operator to continue mining under an expired permit if it submits a renewal application within 30 days of issuance of the notice of noncompliance.

However, the commenter apparently also contends that an expired permit cannot be renewed, under any circumstances. We do not believe a finding is required on this question, since our disapprovals require removal of all language pertaining to expired permits. However, we expect that we could approve a state program amendment that allows expired permits to be renewed, assuming all other renewal requirements are met, and assuming that mining is not permitted to resume until the renewal application is granted.

Next, the commenter argues that the amendment violates the state program obligation to administer and implement the state enforcement program in a manner consistent with Federal law and regulations, in that it directs the state to issue an enforcement action allowing continued mining under an expired permit, provided the renewal application is filed. The commenter contends that Kentucky must, in its enforcement of the approved program, issue a cessation order to a permittee that continues to mine on an expired permit, since Kentucky is bound to conform its enforcement authority to 30 CFR part 843.

In response, we note that, under Section III., above, we are disapproving the amendment to the extent that it authorizes the issuance of a noncompliance order, rather than an IHCO, to an operator who continues to mine under an expired permit, and to the extent that it would allow the operator to continue mining under an expired permit if it submits a renewal application within 30 days of issuance of the notice of noncompliance.

The commenter also opposes the amendment because it allows either the operator or the permittee to submit a permit renewal application. It is inappropriate, the commenter contends, to allow an operator to submit an application, unless the entity has power of attorney or other clear authority to bind the permittee. Otherwise, the operator could frustrate the intent of the permittee, in instances where the permittee does not desire to renew the permit. In response, we note that we are disapproving the sentence that implies that an operator may file a renewal application. Moreover, KRS 350.060(14), which is part of Kentucky's approved program, states that the "holders of the permit" may apply for renewal. We construe the word "holder" to be synonymous with "permittee."

Finally, the commenter believes the amendment violates the requirement of 30 CFR 843.11(f) and 30 CFR 840.13(b) that a cessation order may not be terminated until it is determined that all conditions, practices or violations listed in the order have been abated. The violation, which would be mining without a permit, is considered abated under the state law upon mere filing of the renewal application. Assuming arguendo, that all of the other legal infirmities with the state law were resolved, this mandated termination of an unresolved violation violates the state's enforcement obligation. The commenter argues that a state which has sought and obtained approval of a state regulatory program under SMCRA is under a mandatory, non-discretionary obligation to maintain, administer and enforce that program in a manner consistent with the Secretary's regulations and the federal Act. 30 CFR 733.11.

In response, we note that, under Section III., above, we are disapproving the amendment to the extent that it would allow the operator to continue mining under an expired permit if it submits a renewal application within 30 days of issuance of the notice of noncompliance.

The commenter also demands that the amendment be set aside by OSM. In response, we note that under Section III., above, OSM will announce its intention to set aside the disapproved portions of HB 593 in a future **Federal Register** notice.

*Federal Agency Comments*

According to 30 CFR 732.17(h)(11)(i), we solicited comments on the proposed amendment submitted on November 3, 1997, from various Federal agencies with an actual or potential interest in the Kentucky program. No comments were received.

*Environmental Protection Agency (EPA)*

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

None of the revisions that Kentucky proposed to make in its amendment pertain to air or water quality standards. Therefore, OSM did not request EPA's concurrence.

## V. Director's Decision

Based on the above findings, we approve, with the following exceptions, the proposed amendment as submitted by Kentucky on April 23, 1998.

We are not approving the phrase "if a permit has expired or," contained in KRS 350.060(16). Also, we are not approving the following portion of KRS 350.060(16):

> Upon the submittal of a permit renewal application, the operator or permittee shall be deemed to have timely filed the permit renewal application and shall be entitled to continue, under the terms of the expired permit, the surface coal mining operation, pending the issuance of the permit renewal.

We are also requiring Kentucky to amend its program to make it clear that a person may not continue to mine on an expired permit, except where the permittee has filed a timely and complete application for renewal (i.e., the application is filed at least 120 days before permit expiration) and the regulatory authority has not yet approved the renewal application at the time of permit expiration. Kentucky must also amend its program to require the issuance of an IHCO to any person mining on an expired permit, except as described in the preceding sentence.

The Federal regulations at 30 CFR part 917, codifying decisions concerning the Kentucky program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

*Effect of the Director's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Kentucky program, we will recognize only the statutes, regulations, and other materials approved by OSM, together with any consistent implementing policies, directives, and other materials. We will require that Kentucky enforce only such provisions.

## VI. Procedural Determinations

*Executive Order 12866*

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

*Executive Order 12988*

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

*National Environmental Policy Act*

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

*Paperwork Reduction Act*

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

*Regulatory Flexibility Act*

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

*Unfunded Mandates Reform Act*

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), this rule will not produce a Federal mandate of $100 million or greater in any given year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

**List of Subjects in 30 CFR Part 917**

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 28, 2000.

**Allen D. Klein,**

*Regional Director, Appalachian Regional Coordinating Center.*

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 917—KENTUCKY**

1. The authority citation for Part 917 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. Section 917.12 is added to read as follows:

**§ 917.12 State regulatory program and proposed program amendment provisions not approved.**

(a) The Director does not approve the following provisions of the proposed program amendment concerning permit renewals that Kentucky submitted on April 23, 1998:

(1) The phrase "* * * if a permit has expired or * * *" in KRS 350.060(16).

(2) The following sentence in KRS 350.060(16): "Upon the submittal of a permit renewal application, the operator or permittee shall be deemed to have timely filed the permit renewal application and shall be entitled to continue, under the terms of the expired permit, the surface coal mining operation, pending the issuance of the permit renewal."

(b) [Reserved]

3. The table in § 917.15 is amended by revising the table headings and adding a new entry in chronological order by "Date of Final Publication" to read as follows:

**§ 917.15 Approval of Kentucky regulatory program amendments.**

* * * * * *

| Original amendment submission date | Date of final publication | Citation/description of approved provisions |
|---|---|---|
| * * * | * | * * * |
| April 23, 1998 | 05/10/00 | KRS 350.060(16) [partial approval]; 350.131(2); 350.139(1); 350.990 (1), (3), (4), (9), and (11). |

* * * * *

4. Section 917.16 is amended by adding paragraph (o) to read as follows:

**§ 917.16 Required regulatory program amendments.**

* * * * *

(o) By July 10, 2000, Kentucky must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to:

(1) Clarify that a person may not continue to conduct surface coal mining operations under an expired permit unless the permittee filed a complete application for renewal at least 120 days before the permit expired and the regulatory authority had not yet approved or disapproved the application when the permit expired.

(2) Require the issuance of an imminent harm cessation order to any person conducting surface coal mining operations under an expired permit unless the permittee filed a complete application for renewal at least 120 days before the permit expired and the regulatory authority had not yet approved or disapproved the application when the permit expired.

[FR Doc. 00–11660 Filed 5–9–00; 8:45 am]

BILLING CODE 4310–05–P

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[CGD08–00–005]**

## Drawbridge Operating Regulation; Chef Menteur Pass, LA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the U.S. Highway 90 bridge across Chef Menteur Pass, mile 2.8, at Lake Catherine, Orleans Parish, Louisiana. This deviation will test a proposed change to the drawbridge operation schedule. This deviation will change the current morning bridge closure period from 5:30 a.m. to 7:30 a.m., Monday through Friday, except Federal holidays, so that the draw will open on the hour and half-hour during this period. The test deviation will be used to evaluate the effectiveness of a proposed change to the draw operation schedule.

**DATES:** This deviation is effective from Thursday, June 1, 2000 through Friday, June 30, 2000. Comments must be submitted by July 31, 2000.

**ADDRESSES:** You may mail comments to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration Branch, Eighth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

**SUPPLEMENTARY INFORMATION:** On February 23, 1999 the operating regulation for the Chef Menteur Pass Bridge was changed to allow the bridge to remain closed to navigation from 5:30 a.m. to 7:30 a.m., Monday through Friday, except Federal holidays. (CGD8–96–053, 64 FR 8720 dated February 23, 1999). The Coast Guard received numerous complaints from operators of commercial fishing vessels, stating that the special operating regulation does not meet the needs of navigation for local commercial fishermen because they are required to haul in their shrimp nets two hours earlier than necessary to be able pass through the bridge before the closure time. This cuts down trawling time resulting in loss of revenue. Based on complaints from local commercial fishermen, the Coast Guard has determined that the special drawbridge operating regulation may not meet the reasonable needs of navigation.

The Coast Guard is proposing a change to the regulation governing the operation of the bridge and has issued a Notice of Proposed Rulemaking (NPRM) published elsewhere in today's **Federal Register**. The NPRM requests comments on the Coast Guard's proposal to modify the 33 CFR 117.436 to require the bridge to open only on the hour and on the half-hour from 5:30 a.m. to 7:30 a.m., Monday through Friday, except Federal holidays. The draw shall open on signal at all other times or at any time for a vessel in distress. The deviation to the current regulations allows the Coast Guard to test the proposed schedule and evaluate its effectiveness before making a permanent change to the drawbridge opening regulation. Comments will be accepted through July 31, 2000.

Under the temporary deviation, the draw of the U. S. Highway 90 bridge across Chef Menteur Pass, mile 2.8 at Lake Catherine, Orleans Parish, Louisiana will open to navigation only on the hour and on the half-hour between the hours of 5:30 a.m. and 7:30 a.m. from June 1, 2000 through June 30, 2000. The draw shall open on signal at all other times or at any time for a vessel in distress.

Dated: May 1, 2000.

**K.J. Eldridge,**

*Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.*

[FR Doc. 00–11704 Filed 5–9–00; 8:45 am]

**BILLING CODE 4910–15–P**

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[COTP Western Alaska 00–004]**

**RIN 2115–AA97**

## Safety Zone; Redoubt Shoal, Cook Inlet, Alaska

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary 500-yard radius moving safety zone around the Exploratory Drilling Structure OSPREY as it is towed by Crowley Marine Service Tugs from Port Graham, Alaska to its set down site located in Redoubt Bay, Cook Inlet, Alaska. This safety zone is implemented to ensure the safe and timely movement and set down of the Drilling Structure OSPREY in Redoubt Bay, Cook Inlet, Alaska.

**DATES:** This temporary final rule is effective from 12:01 a.m. on July 7, 2000, until 11:59 p.m. on July 9, 2000.

**ADDRESSES:** The public docket for this rulemaking is maintained by Coast Guard Marine Safety Office Anchorage, 510 "L" Street, Suite 100, Anchorage, AK 99501. Materials in the public docket are available for inspection and copying at Coast Guard Marine Safety Office Anchorage. Normal Office hours are 7:30 a.m. to 4 p.m., Monday through Friday, except federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Rick Rodriguez, Chief of Port Operations, USCG Marine Safety Office, Anchorage, at (907) 271–6724.

**SUPPLEMENTARY INFORMATION:**

### Regulatory History

A notice of proposed rulemaking (NPRM) was not published for this regulation. In keeping with requirements of 5 U.S.C. 553(B), the Coast Guard finds that good cause exists for not publishing a NPRM. Publishing an NPRM and delaying the effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public. The OSPREY is a large structure that is difficult to maneuver and presents a potential hazard. Publishing an NPRM and delaying the effective date of the regulation is warranted because immediate action is necessary to protect participants and other vessel traffic from the potential hazards associated with this operation.

### Background and Purpose

The Coast Guard is establishing a temporary 500-yard radius moving safety zone on the navigable waters of the United States around the Exploratory Drilling Structure OSPREY as it is towed by Crowley Marine Service Tugs from Port Graham, Alaska to its set down site located in Redoubt Bay, Cook Inlet, Alaska, latitude 60°41′74″ W, longitude 151°40′33″ N. This safety zone is implemented to ensure the safe and timely movement

and set down of the Drilling Structure OSPREY in Redoubt Bay, Cook Inlet, Alaska. The 500-yard standoff of the safety zone also aids the safety of these evolutions by minimizing conflicts and hazards that might otherwise occur with other transiting vessels. The limited size of the zone is designed to minimize impact on other mariners transiting through the area.

**Regulatory Evaluation**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule will have significant economic impacts on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Because this safety zone is very small, will only be in effect for three days, and does not impede access to other maritime facilities in the area, the Coast Guard believes there will be no impact to small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because it establishes a safety zone. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and Executive Order 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Temporary Final Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165—[AMENDED]**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. From 12:01 a.m. on July 7, 2000, until 11:59 p.m. on July 9, 2000, § 165.T17–004 is temporarily added to read as follows:

**§ 165.T17–004 Safety Zone; Redoubt Bay, Cook Inlet, Alaska.**

(a) *Description.* The following area is a Safety Zone: All navigable waters within a 500-yard radius of the Exploratory Drilling Structure OSPREY as it transits between Port Graham and Redoubt Bay in Cook Inlet, Alaska.

(b) *Effective Dates.* This section is effective from 12:01 a.m. on July 7, 2000, until 11:59 p.m. on July 9, 2000.

(c) *Regulations.* (1) The Captain of the Port means the Captain of the Port, Western Alaska. The Captain of the Port may authorize or designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf as his representative.

(2) The general regulations governing safety zones contained in Title 33 Code of Federal Regulations, part 165.23 apply. No person or vessel may enter, transit through, anchor or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port, Western Alaska, or his representative. The Captain of the Port or his representative may be contacted in the vicinity of the OSPREY Platform via marine VHF channel 16. The Captain of the Port's representative can also be contacted by telephone at (907) 271–6700.

Dated: April 18, 2000.

**W. J. Hutmacher,**

*Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.*

[FR Doc. 00–11705 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–15–P

## POSTAL SERVICE

## 39 CFR Part 20

## Changes in International Postal Rates

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service, after considering the comments submitted in response to its request for comments on proposed changes in international postage rates published in the **Federal Register** on March 1, 2000 (65 FR 11023–11024), hereby gives notice that it is implementing the proposed rates for regular printed matter, small packets, and books and sheet music and delaying the implementation for the proposed publishers' periodical rates.

**EFFECTIVE DATES:** 12:01 a.m., May 28, 2000; 12:01 a.m., January 13, 2001.

**FOR FURTHER INFORMATION CONTACT:** John Alepa, (202) 268–4071; or John Reynolds, (202) 314–7334.

**SUPPLEMENTARY INFORMATION:** On March 1, 2000, the Postal Service published in the **Federal Register** a notice of proposed changes in international postage rates (65 FR 11023–11024). The Postal Service requested comments by March 31, 2000. No comments were received on the proposed rates for regular printed matter, small packets, and books and sheet music. Comments on the proposed rates for publishers' periodicals were received from seven mailers who use the publishers' periodical rates and an organization representing publishers. The comments centered on three areas of concern.

First, seven of the commenters mentioned the size of the proposed rate change, 15 percent for publishers' periodicals to countries other than Canada and Mexico and 20 percent for items to Mexico. Second, two mailers questioned the timing of the change, stating that budgets have already been set for the year, the increased expense is unanticipated, and subscription rates cannot be changed. Third, two commenters questioned the reliability of the cost data used by the Postal Service to set the new rates and requested that the Postal service re-examine the cost studies that underlie the rates.

The Postal Service believes the cost information on which it based the proposed publishers' periodicals rates is correct. This cost information comes from the same data systems used to develop domestic rates. Those systems are reviewed by the Postal Rates Commission during domestic rate proceedings and the international revenue and cost information is furnished to the Postal Rate Commission for its annual report to the Congress.

The rate changes proposed by the Postal Service are necessary to enable the rates of the affected categories of printed matter to better align with the costs involved in providing the service. However, the Postal Service believes that the commenters have raised valid concerns about the timing of the proposed rates for publishers' periodicals. By agreeing to defer the implementation date for that component of the rate change proposal, the Postal Service is seeking to provide affected mailers with additional time to incorporate postal rate adjustments into their corporate business plans.

Accordingly, the proposed surface rates for regular printed matter and small packets to Mexico and for books and sheet music to all countries except Canada will take effect at 12:01 a.m., May 28, 2000. The implementation date for the publishers' periodical rates to all countries except Canada is being deferred to 12:01 a.m., January 13, 2001.

The Postal Service hereby adopts the following postal rates and amends the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. *See* 39 CFR 20.1.

**List of Subjects in 39 CFR Part 20**

Foreign relations, International postal services.

**PART 20—[AMENDED]**

1. The authority citation for 39 CFR part 20 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. The International Mail Manual is amended to incorporate the following postal rates:

I. MEXICO—REGULAR PRINTED MATTER AND SMALL PACKETS (SURFACE)

| Weight not over | | Rate |
|---|---|---|
| Lb. | Oz. | |
| 0 | 1 | $0.72 |
| 0 | 2 | 0.96 |
| 0 | 3 | 1.27 |
| 0 | 4 | 1.50 |
| 0 | 5 | 1.80 |
| 0 | 6 | 1.80 |
| 0 | 7 | 2.22 |
| 0 | 8 | 2.22 |
| 0 | 9 | 2.63 |
| 0 | 10 | 2.63 |
| 0 | 11 | 2.96 |
| 0 | 12 | 2.96 |
| 0 | 13 | 3.37 |
| 0 | 14 | 3.37 |
| 0 | 15 | 3.77 |
| 1 | 0 | 3.77 |
| 1 | 2 | 4.12 |
| 1 | 4 | 4.46 |
| 1 | 6 | 4.81 |
| 1 | 8 | 5.16 |
| 1 | 10 | 5.50 |
| 1 | 12 | 5.84 |
| 1 | 14 | 6.19 |
| 2 | 0 | 6.54 |
| 3 | 0 | 8.84 |
| 4 | 0 | 11.15 |
| Each additional pound or fraction of a pound | | $2.30 |

(**Note:** Maximum weight is 4 pounds for small packets and 11 pounds for regular printed matter.)

II. BOOKS AND SHEET MUSIC (SURFACE)

| Weight not over (Lbs.) | Mexico | All other countries (except Canada and Mexico) |
|---|---|---|
| 1 | $2.26 | $2.24 |
| 2 | 3.94 | 3.97 |
| 3 | 5.38 | 5.35 |
| 4 | 6.82 | 6.73 |
| 5 | 8.26 | 8.11 |
| 6 | 9.70 | 9.49 |
| 7 | 11.14 | 10.87 |
| 8 | 12.58 | 12.25 |
| 9 | 14.02 | 13.63 |
| 10 | 15.46 | 15.01 |
| 11 | 16.90 | 16.39 |

III. PUBLISHERS' PERIODICALS (SURFACE)

| Weight not over | | Mexico | All other countries (except Canada and Mexico) |
|---|---|---|---|
| Lb. | Oz. | | |
| 0 | 1 | $0.48 | $0.44 |
| 0 | 2 | 0.60 | 0.55 |
| 0 | 3 | 0.78 | 0.71 |
| 0 | 4 | 0.90 | 0.83 |
| 0 | 5 | 1.13 | 1.05 |
| 0 | 6 | 1.13 | 1.05 |
| 0 | 7 | 1.36 | 1.27 |
| 0 | 8 | 1.36 | 1.27 |
| 0 | 9 | 1.57 | 1.50 |
| 0 | 10 | 1.57 | 1.50 |
| 0 | 11 | 1.80 | 1.71 |
| 0 | 12 | 1.80 | 1.71 |
| 0 | 13 | 2.03 | 1.93 |
| 0 | 14 | 2.03 | 1.93 |
| 0 | 15 | 2.26 | 2.15 |
| 0 | 16 | 2.26 | 2.15 |
| 0 | 18 | 2.46 | 2.36 |
| 0 | 20 | 2.68 | 2.56 |
| 0 | 22 | 2.88 | 2.77 |
| 0 | 24 | 3.10 | 2.98 |
| 0 | 26 | 3.30 | 3.19 |
| 0 | 28 | 3.52 | 3.39 |
| 0 | 30 | 3.72 | 3.60 |
| 0 | 32 | 3.94 | 3.81 |
| 3 | 0 | 5.38 | 5.13 |
| 4 | 0 | 6.82 | 6.45 |
| 5 | 0 | 8.26 | 7.77 |
| 6 | 0 | 9.70 | 9.10 |
| 7 | 0 | 11.14 | 10.42 |
| 8 | 0 | 12.58 | 11.74 |
| 9 | 0 | 14.02 | 13.06 |
| 10 | 0 | 15.46 | 14.39 |
| 11 | 0 | 16.90 | 15.71 |

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–11700 Filed 5–9–00; 8:45 am]

BILLING CODE 7710–12–U

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[OR–77–7292–a; FRL–6582–9]**

## Approval and Promulgation of State Implementation Plans: Oregon RACT Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA Region 10 is approving Oregon's reasonably available control technology (RACT) rule amendments for volatile organic compounds (VOC) as revision to the state implementation plan (SIP). These amendments were submitted to EPA on December 7, 1998 and were adopted by the Oregon Environmental Quality Commission on September 17, 1998 to be effective on

October 12, 1998. After publishing public notices in newspapers of general circulation, Oregon Department of Environmental Quality (ODEQ) held public hearings on July 15, 1998 in Corvallis, and on July 16, 1998 in Portland. The ODEQ did not receive any written or oral public comments affecting the proposed RACT rule amendments.

**DATES:** This direct final rule is effective on July 10, 2000 without further notice, unless EPA receives adverse comment by June 9, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Written comments must be submitted to Mr. Mahbubul Islam, Environmental Scientist, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101. Copies of the technical support document are available for public review at the EPA Region 10 office during normal business hours. Copies of documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wishing to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Oregon Department of Environmental Quality, Air Quality Division, 811 SW Sixth Avenue, Portland, OR 97204–1390. Telephone: (503) 229–5696. Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 410 M Street, SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Mahbubul Islam, Environmental Scientist, Office of Air Quality, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101, Telephone: (206) 553–6985.

**SUPPLEMENTARY INFORMATION:**

## I. What Is RACT?

RACT is the lowest emission limitation that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. The Portland ozone maintenance plan relies on RACT as a emission reduction strategy to maintain compliance with the standard for the next ten years. This rule addresses changes to RACT for existing sources of VOC's in Portland, Salem, and Medford areas.

There are two types of RACT which are applicable to sources: categorical and source-specific. The categorical RACT applies to a group of sources which have similar operations. The non categorical or source-specific RACT is applicable to sources which do not fit into one of the established RACT categories but have potential to emit in excess of 100 ton VOC's per year before considering any add-on controls.

## II. What Does This Rule Making Affect?

This rule making is needed to change the applicability of non-categorical RACT which is based on the definition of potential to emit (PTE). The revised rule makes the Oregon's definition of PTE consistent with the federal definition. The PTE for a source is now defined as the maximum emission capacity of a stationary source based on its physical and operational design without any add-on controls. In April 1997, the ODEQ proposed and adopted this new definition of PTE as a temporary rule as a part of the Portland ozone maintenance plan. The current rule will make the temporary rule permanent. Prior to the temporary rule, credits were given for any add-on control technology when PTE was calculated to determine applicability of the RACT requirements. The new rule requires an analysis based on pre-control conditions.

This rule approves a change in permit processing for the gasoline dispensing facilities. Currently, stage I and stage II permits are issued on an annual basis with annual fee collection. The new rule will allow permits to be issued for 10 years and fees to be collected on a biennial basis. This does not affect the requirements of the permit or the amount of permit fees, only the duration and frequency of collection. The change was necessary to reduce ODEQ's staff workload by decreasing the frequency of permit issuance and fee collection, and providing greater clarity and consistency in implementation.

In this rule, the vapor balance requirement for stage I/II sources is changed from a throughput of 10,000 gallons (30 day rolling average) to a capacity of 1500 gallons. This change was needed to maintain consistency and keep sources from alternating from being subject to the rules to not being subject to the rules based on their monthly throughput. The change exempts existing small (less than 1500 gallon) tanks from the submerged fill and vapor balance requirements. The new tanks of the same size are exempt from the vapor balance requirement only. This change could in theory allow small facilities to avoid control requirements, but in reality sources having such a small capacity do not exist. Also, the changes are not a relaxation of the existing rules, because gas dispensing facilities that have monthly throughput in excess of 10,000 gallons also have storage tanks which are larger than 1500 gallons. Thus, the same control requirement that is currently subject to the 10,000 gallon throughput trigger will be subject to the 1500 gallon capacity trigger.

This rule also contains a number of housekeeping, numbering and language changes, to reduce redundancy and ensure consistency. The revised language in the rules is intended to improve clarity and avoid confusion. The sections of the Oregon rules affected or modified in this rule making package are as follows: OAR 340–022–0100 through 340–022–0130; OAR 340–022–0170 through 340–022-0180; OAR 340–022–0300 through 340–022–0403; (RACT rules).

## III. Administrative Requirements

*Executive Orders*

A. Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR

19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective July 10, 2000 unless EPA receives adverse written comments by July 9, 2000.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 10, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

*B. Oregon Notice Provision*

During EPA's review of a SIP revision involving Oregon's statutory authority, a problem was detected which affected the enforceability of point source permit limitations. EPA determined that, because the five-day advance notice provision required by ORS 468.126(1) (1991) bars civil penalties from being imposed for certain permit violations, ORS 468 fails to provide the adequate enforcement authority that a state must demonstrate to obtain SIP approval, as specified in section 110 of the Clean Air Act and 40 CFR 51.230. Accordingly, the requirement to provide such notice would preclude federal approval of a section 110 SIP revision.

To correct the problem the Governor of Oregon signed into law new legislation amending ORS 468.126 on September 3, 1993. This amendment added paragraph ORS 468.126(2)(e) which provides that the five-day advance notice required by ORS 468.126(1) does not apply if the notice requirement will disqualify a state program from federal approval or delegation. ODEQ responded to EPA's understanding of the application of ORS 468.126(2)(e) and agreed that, because federal statutory requirements preclude the use of the five-day advance notice provision, no advance notice will be required for violations of SIP requirements contained in permits.

*C. Oregon Audit Privilege*

Another enforcement issue concerns Oregon's audit privilege and immunity law. Nothing in this action should be construed as making any determination or expressing any position regarding Oregon's Audit Privilege Act, ORS 468.963 enacted in 1993, or its impact upon any approved provision in the SIP, including the revision at issue here. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any other Clean Air Act Program resulting from the effect of Oregon's audit privilege and immunity law. A state audit privilege and immunity law can affect only state enforcement and cannot have any impact on federal enforcement authorities. EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by a state audit privilege or immunity law.

**List of Subjects 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 1, 2000.

**Chuck Findley,**

*Acting Regional Administrator, Region 10.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1.The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart MM—Oregon**

2. Section 52.1970 is amended by adding paragraph (c)(130) to read as follows:

**§ 52.1970 Identification of plan.**

* * * * *

(c) * * *

(130) The Environmental Protection Agency (EPA) approves various amendments to the Oregon State RACT rules for volatile organic compounds which are contained in a submittal to EPA, dated December 7, 1998.

(i) Incorporation by reference.

(A) EPA is approving the revised Oregon Regulations, as effective October 12, 1998: OAR 340–022–0100; OAR 340–022–0102; OAR 340–022–0104; OAR 340–022–0106; OAR 340–022–0107; OAR 340-022–110; OAR 340–022–0120; OAR 340–022–0125; OAR 340–022–0130; OAR 340–022–0170; OAR 340–022–0175; OAR 340–022–0180; OAR 340–022–0300; OAR 340–022–0400; OAR 340–022–0401; and OAR 340–022–0402.

(B) EPA is repealing/removing the following provision from the current incorporation by reference: OAR 340–022–0403, as effective August 14, 1996.

3. Section 52.1972 is amended by revising the section to read as follows:

**§ 52.1972 Approval Status.**

With the exceptions set forth in this subpart, the Administrator approves

Oregon's plan for the attainment and maintenancce of the national standards under section 110 of the Clean Air Act.

[FR Doc. 00–11671 Filed 5–9–00; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 52 and 81**

**[IN 119–1a; FRL–6601–5]**

## Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Indiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a redesignation request submitted by the State of Indiana. This action, which Indiana requested on March 2, 2000, redesignates Marion County (Indianapolis) to attainment of the National Ambient Air Quality Standards (NAAQS) for lead. In addition, EPA is also approving a maintenance plan for Marion County. The plan is designed to ensure maintenance of the lead NAAQS for at least 10 years. Indiana submitted the maintenance plan with the redesignation request.

**DATES:** This "direct final" rule is effective on July 10, 2000, unless EPA receives adverse written comments by June 9, 2000. If EPA receives an adverse written comment, EPA will publish a timely withdrawal of the rule in the **Federal Register** and will inform the public that the rule will not take effect.

**ADDRESSES:** You may send written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the revision request are available for inspection at the following address: Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (We recommend that you telephone Phuong Nguyen, Environmental Scientist, at (312) 886–6701 before visiting the Region 5 office.)

**FOR FURTHER INFORMATION CONTACT:** Phuong Nguyen at (312) 886–6701.

**SUPPLEMENTARY INFORMATION:** Throughout this document wherever "we", "us" or "our" are used we mean EPA. This supplemental information section is organized as follows:

**I. General Information**
1. What action is EPA taking today?
2. Why is EPA taking this action?
3. What is the background of this action?

**II. Evaluation of the Redesignation Request**
1. What criteria did EPA use to review the redesignation request?
2. Did Indiana satisfy these criteria for Marion County?

**III. Maintenance Plan**
What are the maintenance plan requirements and how does the submission meet maintenance plan requirements?

**IV. Final Rulemaking Action**
What action is EPA taking?

**V. Administrative Requirements**
A. Executive Order 12866
B. Executive Order 13045
C. Executive Order 13084
D. Executive Order 13132
E. Regulatory Flexibility
F. Unfunded Mandates
G. Submission to Congress and the Comptroller General
H. National Technology Transfer and Advancement Act
I. Petitions For Judicial Review

## I. General Information

### *1. What Action Is EPA Taking Today?*

In this action, EPA is approving the lead redesignation request submitted by the State of Indiana for Marion County. In addition, EPA is also approving the lead maintenance plan for this County.

### *2. Why IS EPA Taking This Action?*

EPA is taking this action because the redesignation request meets the five applicable Clean Air Act (Act) criteria. EPA designated Marion County as a nonattainment area for lead on November 6, 1991 (56 FR 56694). Marion County now, however, meets the lead NAAQS. Indiana reported that there have been no exceedances documented in Marion County at any monitoring site since the second quarter of 1994. Therefore, the monitoring data show that the NAAQS for lead has been attained in all portions of Marion County. The State has developed a maintenance plan for keeping lead levels within the health-based air quality standard for the next 10 years and beyond. This maintenance plan requires the County to consider impacts of future activities on air quality and to manage those activities.

### *3. What Is the Background for This Action?*

On November 6, 1991, EPA designated a small portion of Franklin Township, Marion County, Indiana as a primary nonattainment area for the lead NAAQS (56 FR 56694). On the same date, EPA designated another small portion of Wayne Township, in Marion County, Indiana as an unclassifiable area for lead.

Section 191(a) of the Act requires that States containing areas designated nonattainment for certain pollutants, including lead, submit a revision to their State Implementation Plan (SIP) meeting the requirements of part D, Title I of the Act, within 18 months of the nonattainment designation.

Section 192(a) of the Act further provides that SIPs must provide for attainment of the applicable NAAQS as expeditiously as practicable, but no later than 5 years from the date of the nonattainment designation.

On March 23, 1994, the State submitted a revised rule (326 IAC 15) and supplemented the submittal on September 21, 1994. EPA deemed the submittal complete in a September 23, 1994 letter, and approved the rule as part of the SIP on May 3, 1995 (60 FR 21717), fulfilling the requirement of section 192(a).

On February 25, 1997, Refined Metals Corporation sent a letter to the Indianapolis Environmental Resources Management Division (ERMD) stating that all operations at its facility would cease on February 28, 1997. On March 13, 1997, the Indianapolis ERMD received a second letter from the company requesting termination of its current operating permit. The company also withdrew its title V permit application. The Refined Metals facility was the only major lead source in the current nonattainment portion of Marion County.

## II. Evaluation of the Redesignation Request

### *1. What Criteria Did EPA Use to Review the Redesignation Request?*

Section 107(d)(3)(E) of the Act, as amended in 1990, establishes five requirements to be met before EPA may designate an area from nonattainment to attainment. These are:

(A) The area has attained the applicable NAAQS.

(B) The area has a fully-approved SIP under section 110(k) of the Act.

(C) The EPA has determined that the improvement in air quality in the area is due to permanent and enforceable emission reductions.

(D) The EPA has determined that the maintenance plan for the area has met all of the requirements of section 175A of the Act.

(E) The State has met all requirements applicable to the area under section 110 and part D of the Act.

*2. Did Indiana Satisfy These Criteria for Marion County?*

A. Demonstrated Attainment of the NAAQS

Relevant agency guidance is provided in both an April 21, 1983, document on "Section 107 Designation Policy Summary," and a September 4, 1992, document on "Procedures for processing requests to redesignate areas to attainment." The April 21, 1983, memorandum states that eight consecutive quarters of data showing lead NAAQS attainment are required for redesignation. The September 4, 1992, memorandum states that additional dispersion modeling is not required in support of a lead redesignation request if there is an adequate modeled attainment demonstration submitted and approved as part of the implemented SIP, and there is no indication of an existing air quality violation.

Indiana's March 2, 2000, submittal provided ambient monitoring data showing that Marion County has met the lead NAAQS for the period 1995 to 1998. The most recent air quality data shows there has been no exceedance reported in Marion County for the last 5 years (1995–1999).

Dispersion modeling is commonly used to demonstrate attainment of the lead NAAQS. Indiana used the ISCLT2 model to predict lead concentrations, as discussed in the May 3, 1995, **Federal Register** (60 FR 21717). Use of this analysis, in conjunction with information about current emission levels, also indicates that the NAAQS has been attained. No further dispersion modeling is needed for the County redesignation. Indiana has also provided evidence that sources in this County are complying with the specific limits in the SIP, 326 IAC 15–1–2. The Indiana lead SIP rule applies to all significant stationary sources of lead in the County. Based on this evidence, EPA concludes that emissions are sufficiently low to assure attainment throughout the area currently designated nonattainment.

B. Fully Approved SIP

The SIP for the area at issue must be fully approved under section 110(k) of the Act and must satisfy all requirements that apply under that section.

EPA's guidance for implementing section 110 of the Act is contained in the general preamble to title I (44 FR 20372, April 14, 1979; and 57 FR 13498, April 16, 1992). EPA has previously determined that the lead SIP for Marion County, with limits in 326 IAC 15–1–2, meets the requirements of section 110(a)(2)(D) and sections 191(a) and 192(a) of the Act. Specifically, EPA approved the lead SIP for Marion County (in 326 IAC 15–1–2) on May 3, 1995 (60 FR 21717).

The current submittal provides for the control of both stack and fugitive emissions by requiring revised emission limitations, improved monitoring, building enclosures, an amended fugitive lead dust plan, and contingency measures in the event that subsequent violations of the lead NAAQS occur. The previous modeling showed that ambient air quality in the vicinity of Refined Metals met the NAAQS, which is consistent with the monitored lead concentration for this action. Given that the major source in the area has shut down, emission levels are now well below the levels shown in 1995 modeling to be sufficient to achieve the NAAQS.

C. Permanent and Enforceable Reductions in Emissions

Indiana, in its submission, cites four factors which it believes helped the area attain the lead NAAQS. These are:

1. The permanent shutdown of the Refined Metals facility in the nonattainment portion of the County;
2. Implementation of the federal initiative requiring the elimination of lead in gasoline used by on-road mobile sources;
3. Compliance by Quemetco, Inc., with the lead SIP and the National Emission Standards for Hazardous Air Pollutants (NESHAP) for secondary lead smelters (40 CFR part 63, subpart X); and,
4. The permanent shutdown of four other facilities, which provided a small additional decrease of lead emissions in this area.

D. Fully Approved Maintenance Plan

Section 175(A) of the Act requires states that submit a redesignation request to include a maintenance plan to ensure that the attainment of the NAAQS for any pollutant is maintained. The maintenance plan is a SIP revision which provides for maintenance of relevant NAAQS in the area for at least ten years after the approval of a redesignation to attainment. Eight years after the redesignation, States must submit a revised maintenance plan demonstrating attainment for ten years following the initial ten-year period. To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures to assure that a state will promptly correct any violation of the standard that occurs after redesignation. The contingency provisions are to include a requirement that a state will implement all measures for controlling the air pollutant of concern that were contained in the SIP prior to redesignation.

The reductions discussed in section C above are permanent, and no significant increases in lead emission are expected. Therefore, we expect the area to remain in attainment. Additional discussion of the maintenance plan is provided below.

E. Part D and Section 110

To be redesignated to attainment, section 107(d)(3)(E) requires that an area must have met all applicable requirements of section 110(a)(2) and Part D of the Act. The EPA approved Indiana's previous SIP submittal because it satisfied all of the applicable Federal requirements (60 FR 21717). The submittal for Marion County also satisfies the requirements of sections 191(a) and 192(a) of the Act by providing the necessary elements to reach attainment of the lead NAAQS no later than 5 years from the January 6, 1992, nonattainment designation.

During 1994, an ambient monitor near the Refined Metals facility recorded some lead standard violations, apparently due to the company's failure to: keep the materials storage building under negative pressure; operate its continuous opacity monitor and to provide valid data for the M–1 baghouse; comply with the facility's lead dust control program; and maintain sweeper operating records. The complete shutdown of the Refined Metals facility on February 25, 1997, has eliminated most of the area's lead emissions.

**III. Maintenance Plan**

*What Are the Maintenance Plan Requirements and How Does the Submission Meet Maintenance Plan Requirements?*

Guidance on redesignations issued September 4, 1992 identified five topics for maintenance plans to address:

A. The Attainment Inventory

The State needs to identify the sources of emissions in the area as well as the emissions level sufficient to attain the lead NAAQS, and include emissions during the period when the area attained the NAAQS.

The March 2, 2000, submittal identified the lead emissions from major and minor permitted sources located in Marion County between 1985–1998. Indiana chose 1996 as the base year for the attainment emission inventory because that year has extensive lead emission data available.

**B. Maintenance Demonstration**

The State needs to demonstrate that future emissions will not exceed the level established by the attainment inventory.

On December 6, 1994, the Indiana Department of Environmental Management (IDEM) issued Refined Metals a notice of violation (Cause Number A–2521). On January 10, 1995, the IDEM and Refined Metals signed an agreed Order to Settle Cause Number A–2521. This agreement helped to decrease lead emissions from 2 tons per year in 1985 to 0.0179100 tons per year in 1996, and to eliminate all lead emissions entirely in 1997, due to the permanent shutdown of the Refined Metals facility.

Indiana projected the annual lead emissions increase from 1996 to 2010 to account for the increase in production at remaining sources in Marion County. The growth factors, which are contained in Enclosure C to the March 2, 2000, submittal, were used to calculate the projected growth in emissions from 1996 to 2010. Base on these factors, the annual lead emissions are expected to increase by 8.56% by the year 2010, from 2.897 tons per year in 1996 to 3.145 tons per year in 2010. The projected levels for the year 2010 will be considerably lower than the actual 1990 total Marion County lead emissions (9.331 tons per year). Therefore, even though other sources in the County are projected to have a slight emission increase by 2010, the projected emission levels are well below the levels needed to maintain the NAAQS.

C. Monitoring Network

The State must include provisions for continued operation of an appropriate air quality monitoring network.

The Indianapolis ERMD commits to continue monitoring for lead in Marion County at AIRS I.D. 18–097–0063 monitoring site and AIRS I.D. 18–097–0076 monitoring site located in the unclassifiable portion of the County, which is adjacent to the Quemetco, Inc. facility.

D. Verification of Continued Attainment

The State must show how it will track and verify the progress of the maintenance plan.

To verify future maintenance during the initial ten-year maintenance period, the IDEM will re-evaluate the emissions inventory once every three years. IDEM will re-evaluate the inventory based in part on the annual NET update. Indiana will prepare a new inventory if there is any new lead source growth or other changes from the initial attainment inventory.

E. Contingency Plan

The maintenance plan must include contingency measures which ensure prompt correction of any violation of the lead standards.

Future contingency measures for this area will include requiring any proposed stationary sources of lead emissions to comply with all applicable New Source Review provisions. The IDEM and the Indianapolis ERMD will also closely monitor existing stationary sources of lead emissions. These Agencies will use the two methods identified below to develop the additional controls to assure future attainment of the National Ambient Air Quality Standard for lead, if there is an exceedance of the lead standard:

1. During routine inspections of permitted stationary sources, the Indianapolis ERMD will evaluate any potential increases in lead emissions at these facilities, and,

2. The IDEM and the Indianapolis ERMD will examine the annual point source inventory for sources with increases in emissions and for any new sources. Emissions reporting is required by the annual "emission statement" reporting requirements found in 326 IAC 2–6.

EPA finds that these elements of Indiana's submittal satisfy applicable maintenance plan requirements.

**IV. Final Rulemaking Action**

*What Action Is EPA Taking?*

EPA is approving Indiana's lead redesignation request, which was submitted on March 2, 2000. In addition, EPA is also approving the maintenance plan for Marion County, which was submitted with the redesignation request, as adequately ensuring that the lead NAAQS will be maintained.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse written comments be filed. This action will be effective without further notice unless EPA receives relevant adverse written comment by June 9, 2000. Should the Agency receive such comments, it will publish a final rule informing the public that this action will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 10, 2000.

**V. Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

*B. Executive Order 13045*

*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*C. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian tribal

governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*D. Executive Order 13132*

*Federalism* (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*E. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.,* versus *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action proposes to approve pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective July 10, 2000 unless EPA receives adverse written comments by June 9, 2000.

*H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*I. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 10, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Intergovernmental relations, Lead, Reporting and recordkeeping requirements.

*40 CFR Part 81*

Environmental protection, Air pollution control, National parks, Wilderness areas.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 20, 2000.

**Francis X. Lyons,**

*Regional Administrator, Region 5.*

For the reasons stated in the preamble, title 40, Chapter I of the Code of Federal Regulation are amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart P—Indiana**

2. Section 52.797 is amended by removing the introductory text and adding paragraph (d) to read as follows:

**§ 52.797 Control strategy: Lead.**

* * * * *

(d) On March 2, 2000, Indiana submitted a maintenance plan for Marion County as part of its request to redesignate the County to attainment of the lead standard.

* * * * *

**PART 81—[AMENDED]**

1. The authority citation for part 81 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart C—Section 107 Attainment Status Designations**

2. The table in § 81.315 entitled "Indiana Lead" is amended to read as follows:

**§ 81.315 Indiana.**

* * * * *

INDIANA—LEAD

| Designated area | Designation | | Classification | |
|---|---|---|---|---|
| | Date | Type | Date | Type |
| Marion County (Part)—Part of Franklin Township: Thompson Road on the south; Emerson Avenue on the west; Five Points Road on the East; and Troy Avenue on the north. | July 10, 2000 | Attainment. | | |
| Marion County (Part)—Part of Wayne Township: Rockville Road on the north; Girls School Road on the east; Washington Street on the south; and Bridgeport Road on the west. | July 10, 2000 | Attainment. | | |
| Rest of State Not Designated. | | | | |
| * | * | * | * | * | * | * |

* * * * *

[FR Doc. 00–11423 Filed 5–9–00; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 180**

**[OPP–300994; FRL–6555–5]**

**RIN 2070–AB78**

## Myclobutanil; Pesticide Tolerances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes tolerances for combined residues of myclobutanil in or on a variety of food commodities. Rohm and Haas Company and the Interregional Research Project #4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

**DATES:** This regulation is effective May 10, 2000. Objections and requests for hearings, identified by docket control number OPP–300994, must be received by EPA on or before July 10, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300994 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Hoyt Jamerson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9368; and e-mail address: jamerson.hoyt@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you sell, distribute, manufacture, or use pesticides for agricultural applications, process food, distribute or sell food, or implement governmental pesticide regulations. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300994. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background and Statutory Findings

In the **Federal Register** of September 2, 1999 (64 FR 48165) (FRL–6049–5), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of pesticide petitions (PP) for tolerances by Rohm and Haas Company and IR–4. This notice included a summary of the petitions prepared by Rohm and Haas Company, the registrant. There were no comments received in response to the notice of filing.

The petitions requested that 40 CFR 180.443 be amended by establishing tolerances for combined residues of the fungicide myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound), in or on the following commodities:

1. *PP 7E4862.* IR–4 proposes the establishment of a tolerance for asparagus at 0.02 parts per million (ppm).

2. *PP 7E4866.* IR–4 proposes the establishment of a tolerance for the caneberry subgroup at 1.0 ppm. The petition was subsequently amended to propose the establishment of a tolerance for the caneberry subgroup at 2.0 ppm.

3. *PP 8E4939.* IR–4 proposes the establishment of tolerances for currant at 3.0 ppm and gooseberry at 2.0 ppm.

4. *PP 7E4877.* IR–4 proposes the establishment of a tolerance for mint at 3.0 ppm. The petition was revised to specify peppermint and spearmint tops at 3.0 ppm.

5. *PP 7E4861.* IR–4 proposes the establishment of a tolerance for snap beans at 1.0 ppm. The petition was amended to proposed a tolerance for succulent snap bean at 1.0 ppm.

6. *PP 4E4302.* IR–4 proposes the establishment of a tolerance for strawberry at 0.5 ppm.

7. *PP 1F4030.* Rohm and Haas Company proposes the establishment of tolerances for tomato at 0.3 ppm, tomato puree at 0.6 ppm and tomato paste at 1.2 ppm. The petition was subsequently amended to propose tolerances for tomato at 0.3 ppm, tomato puree at 0.5 ppm and tomato paste at 1.0 ppm.

8. *PP 9F3812.* Rohm and Haas Company proposes the establishment of a tolerance for the pome fruit group at 0.5 ppm. The petition was amended to propose a tolerance for mayhaw at 0.7 ppm and apple wet pomace at 1.3 ppm.

9. *PP 2F4155.* Rohm and Haas Company proposes the establishment of tolerances for the cucurbit vegetables group at 0.5 ppm. The petition was amended to propose a tolerance for the cucurbit vegetables group at 0.2 ppm. The petition was also amended to propose tolerances for indirect and inadvertent residues of myclobutanil (parent compound only) at 0.03 ppm for the following rotational crop groups: root and tuber vegetables group; leaves of root and tuber vegetables group; leafy vegetables (except Brassica vegetables) group; Brassica leafy vegetables group; legume vegetables group; foliage of legume vegetables group; fruiting vegetables group; cereal grains group; forage, fodder and straw of cereal grains group; and the nongrass animal feeds group.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through food and drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

## III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances for residues of myclobutanil on the named commodities. EPA's assessment of exposures and risks associated with establishing the tolerances follows.

*A. Toxicological Profile*

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by myclobutanil are discussed in this unit as well as the no observed adverse effect level (NOAEL) and the lowest observed adverse effect level (LOAEL) from the toxicity studies reviewed.

TABLE 1.— TOXICITY PROFILE OF MYCLOBUTANIL TECHNICAL

| Guideline/Study | Results |
|---|---|
| 82–1(a) Subchronic Feeding in Rats (13 weeks) | NOAEL: 1000 ppm<br>LOAEL: 3000 ppm based on increased liver, kidney weights; hypertrophy, necrosis in liver; pigmentation in convoluted kidney tubules; vacuolated adrenal cortex. |
| 82–1(a) Subchronic Feeding in Mice (13 weeks) | NOAEL: 45 mg/kg/day( 300 ppm)<br>LOAEL: 150 mg/kg/day (1000 ppm) based on hepatocytic hypertrophy, swollen-vacuolated centrilobular hepatocytes, single large hepatocyte vacuoles, centrilobular individual cell hepatocyte necrosis and centrilobular necrotic hepatitis; cytoplasmic eosinophilia and/or hypertrophy of the zona fasculata cells of the adrenal glands of males. |
| 82–1(b) Subchronic Feeding in Dogs (13 Weeks) | NOAEL: 5 mg/kg/day (200 ppm)<br>LOAEL: 20 mg/kg/day (800 ppm) based on liver changes including increased alkaline phosphatase, relative and absolute liver weight and hepatocellular hypertrophy. |
| 82–2 28–day Dermal Toxicity in Rats | NOAEL for systemic effects: greater than 100 mg a.i./kg/day (the highest dose in both studies)<br>LOAEL: not established<br>NOTE: this was conducted in 2 formulations rather than the technical (40WP - 41.36%; 2EC - 24.99%). |
| 83–1(b) Chronic Feeding Study in Dogs | NOAEL: 3.09 mg/kg/day (100 ppm)<br>LOAEL: 14.28 mg/kg/day (400 ppm) based on hepatocellular hypertrophy, increases in liver weights, "ballooned" hepatocytes and increases in alkaline phosphatase, SGPT and GGT. In addition, there were some possible slight hematological effects. |
| 83–2(b) Carcinogenicity study in mice | NOAEL: 13.7 mg/kg/day (100 ppm) for males<br>LOAEL: 70.2 mg/kg/day (500 ppm in males); not established in females. There were increased MFO (males and females); increased SGPT (females) & increased absolute & relative liver weights (males and females); increased incidences and severity of centrilobular hepatocytic hypertrophy, Kupffer cell pigmentation, periportal punctate vacuolation & individual hepatocellular necrosis (males); and increased incidences of focal hepatocellular alterations and multifocal hepatocellular vacuolation (males and females). Not tested at high enough dose levels in females. In a second carcinogenicity study in mice, female mice were tested at sufficiently high dose levels (2000 ppm (393.5 mg/kg/day)), no carcinogenic effects observed. |
| 83–2(b) Carcinogenicity study in mice | NOAEL: Not established<br>LOAEL: 2000 ppm (393.5 mg/kg/day) (only dose tested) based on decreases in body weight and body weight gain; increases in liver weights; hepatocellular hypertrophy; hepatocellular vacuolation; necrosis of single hypertrophied hepatocytes; yellow-brown pigment in the Kupffer cells and cytoplasmic eosinophilia and hypertrophy of the cells of the zona fasciculata area of the adrenal cortex. Not carcinogenic under the conditions of the study. |
| 83–5 Chronic Feeding/carcinogenicity study in rats | NOAEL: 2.49 mg/kg/day (50 ppm)<br>LOAEL: 9.94 mg/kg/day (200 ppm) based on decreased testes weights and increased testicular atrophy. Not tested at high enough dose levels. In a second chronic feeding/carcinogenicity study in rats, rats were tested at sufficiently high dose levels (2500 ppm: 125 mg/kg/day), no carcinogenic effects observed. |
| 83–5 Chronic feeding/carcinogenicity study in rats | NOAEL: Not established<br>LOAEL: 125 mg/kg/day (2500 ppm) (only dose tested) based on testicular atrophy and decreases in testes weights; increases in the incidences of centrilobular to midzonal hepatocellular enlargement and vacuolization in the liver of both sexes; increases in bilateral aspermatogenesis in the testes; increases in the incidence of hypospermia and cellular debris in the epididymides; and increased incidence of arteritis/periarteritis in the testes). No carcinogenic effects observed. |
| 83–3(a) Developmental Toxicity Study in Rats | Maternal NOAEL: 93.8 mg/kg/day<br>Maternal LOAEL: 312.6 mg/kg/day based on rough hair coat and salivation at 312.6 mg/kg/day and salivation, alopecia, desquamation and red exudate around mouth at 468.87 mg/kg/day.<br>Developmental NOAEL: 93.8 mg/kg/day Developmental LOAEL: 312.6 mg/kg/day based on increased incidences of 14th rudimentary and 7th cervical ribs at 312.6 and 468.9 mg/kg/day. |
| 83–3(b) Developmental Toxicity Study in Rabbits | Maternal NOAEL: 60 mg/kg/day<br>Maternal LOAEL: 200 mg/kg/day based on reduced body weight and body weight gain during the dosing period, clinical signs of toxicity and possibly abortions.<br>Developmental NOAEL: 60 mg/kg/day<br>Developmental LOAEL: 200 mg/kg/day based on increases in number of resorptions, decreases in litter size and a decrease in the viability index. |

TABLE 1.— TOXICITY PROFILE OF MYCLOBUTANIL TECHNICAL—Continued

| Guideline/Study | Results |
|---|---|
| 83–4 2-Generation Reproduction Toxicity in Rats | Systemic NOAEL: 2.5 mg/kg/day (50 ppm)<br>Systemic LOAEL: 10 mg/kg/day (200 ppm) based on increased liver weights and hepatocellular hypertrophy.<br>Reproductive NOAEL: 10 mg/kg/day (200 ppm)<br>Reproductive LOAEL: 50 mg/kg/day (1000 ppm) based on increased incidence in the number of stillborns and atrophy of the testes, epididymides and prostate.<br>Developmental NOAEL: 10 mg/kg/day (200 ppm)<br>Developmental LOAEL: 1000 ppm (50 mg/kg/day) based on decrease in pup body weight gain during lactation. |
| 84–2 Gene Mutation Assay (Ames Test) | No appreciable increase in the reversion to histidine protrophy of 4 *S. typhimurium*strains at 75 to 7500 µg/plate with & without S–9 activation. |
| 84–2 Gene Mutation Assay Mammalian Cells | Negative with and without metabolic activation up to 175 µg/ml. |
| 84–2 Structural Chromosomal Aberration Assay *In vivo*cytogenetics. | The level of 650 mg/kg did not cause a significant increase in chromosomal aberrations in bone marrow cells sampled over the entire mitotic cycle. |
| 84–2 Structural Chromosomal Aberration Assay *In vitro*cytogenetics. | Did not induce chromosomal aberrations with & without metabolic activation under the conditions of the study up to 200 µg/ml. |
| 84–2 Structural Chromosomal Aberration Assay Dominant Lethal Test. | Did not induce dominant lethal mutations under conditions of study at dose levels up to 735 mg/kg. |
| 84–2 Other Genotoxicity Assays (Unscheduled DNA Synthesis). | Did not induce an increase in unscheduled DNA synthesis up to toxic dose. 0.1–1000 µg/ml tested. |
| 85–1 Metabolism | Rapidly absorbed and excreted. Completely eliminated by 96 hrs. Extensively metabolized prior to excretion. Metabolic patterns similar for both sexes. Disposition & metabolism after pulse administration is linear over dose range. |
| 85–1 Metabolism | Completely and rapidly absorbed. Extensively metabolized and rapidly and essentially completely excreted. Elimination of label from plasma biphasic and evenly distribution between urine and feces. No tissue accumulation after 96 hours. |
| 85–1 Metabolism | At least 7 major metabolites recovered and identified. Highest amounts of radioactivity found in liver, kidneys, large and small intestines. No tissue accumulation. |
| 85–2 Dermal Absorption | Although this study is considered unacceptable, the potential dermal absorption is not expected to be greater than 50%. |

*B. Toxicological Endpoints*

The dose at which the NOAEL from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD=NOAEL/UF). Where an additional safety factor is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA Safety Factor (FQPA SF).

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology ($Q^*$) is the primary method currently used by the Agency to quantify carcinogenic risk. The $Q^*$ approach assumes that any amount of exposure will lead to some degree of cancer risk. A $Q^*$ is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as $1 \times 10^{-6}$ or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a "point of departure" is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure ($MOE_{cancer}$ = point of departure/exposures) is calculated.

TABLE 2.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR MYCLOBUTANIL FOR UES IN HUMAN RISK ASSESSMENT

| Exposure Scenario | Dose Used in Risk Assessment, UF | FQPA SF and Endpoint for Risk Assessment[1] | Study and Toxicological Effects |
|---|---|---|---|
| Acute Dietary females 13–50 years of age. | NOAEL = 60 mg/kg/day UF = 100<br>Acute RfD = 0.60 mg/kg/day ..... | FQPA SF = 1<br>aPAD = acute RfD + FQPA SF = [0.60] mg/kg/day. | Developmental Toxicity - rabbit<br>LOAEL = 200 mg/kg/day based on increased resorptions, decreased litter size and a decrease in the viability index. |
| Acute Dietary general population including infants and children. | none | not applicable | not applicable |
| Chronic Dietary all populations | NOAEL = 2.49 mg/kg/day<br>UF = 100 .....<br>Chronic RfD = 0.025 mg/kg/day ..... | FQPA SF = 1<br>cPAD = chronic RfD + FQPA SF = 0.025 mg/kg/day. | Chronic Toxicity/Carcinogenicity - rat<br>LOAEL = 9.94 mg/kg/day based on decreased testicular weights and increased testicular atrophy. |
| Short-Term Dermal (1 to 7 days) Residential. | dermal study NOAEL = 100 mg/kg/day | LOC for MOE = 100 (Residential, includes the FQPA SF) | 28–day Dermal Toxicity-rat<br>LOAEL = > 100 mg/kg/day based on no signs of toxicity at the high dose of 100 mg/kg a.i. |
| Intermediate-Term Dermal (1 week to several months) Residential. | oral study NOAEL= 10 mg/kg/day (dermal absorption rate = 50%) | LOC for MOE = 100 (Residential, includes the FQPA SF) | 2 Generation Reproduction Toxicity - rat<br>LOAEL = 50 mg/kg/day based on atrophy of the testes and prostate as well as an increase in the number of stillborn pups and a decrease in pup weight gain during lactation. |
| Long-Term Dermal (several months to lifetime) Residential. | oral study NOAEL= 2.49 mg/kg/day (dermal absorption rate = 50%) | LOC for MOE = 100 (Residential, includes the FQPA SF) | Chronic Toxicity/Carcinogenicity - rat<br>LOAEL = 9.94 mg/kg/day based on decreased testicular weights and increased testicular atrophy. |
| Short-Term Inhalation (1 to 7 days) Residential. | oral study NOAEL= 10 mg/kg/day (inhalation absorption rate = 100%) | LOC for MOE = 100 (Residential, includes the FQPA SF) | 2 Generation Reproduction Toxicity - rat<br>LOAEL = 50 mg/kg/day based on atrophy of the testes and prostate as well as an increase in the number of stillborn pups and a decrease in pup weight gain during lactation |
| Intermediate-Term Inhalation (1 week to several months) Residential. | oral study NOAEL= 10 mg/kg/day (inhalation absorption rate = 100%) | LOC for MOE = 100 (Residential, includes the FQPA SF) | 2 Generation Reproduction Toxicity - rabbit<br>LOAEL = 50 mg/kg/day based on atrophy of the testes and prostate as well as an increase in the number of stillborn pups and a decrease in pup weight gain during lactation. |
| Long-Term Inhalation (several months to lifetime) Residential. | oral study NOAEL= 2.49 mg/kg/day (inhalation absorption rate = 100%) | LOC for MOE = 100 (Residential, includes the FQPA SF) | chronic Toxicity/Carcinogenicity - rat<br>LOAEL = 9.94 mg/kg/day based on decreased testicular weights and increased testicular atrophy. |
| Cancer (oral, dermal, inhalation). | "Group E" | not applicable | not applicable |

[1] The reference to the FQPA Safety Factor refers to any additional safety factor retained due to concerns unique to the FQPA.

*C. Exposure Assessment*

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.443) for the combined residues of myclobutanil, in or on a variety of raw agricultural commodities. Permanent tolerances are established for the combined residues of myclobutanil and its alcohol metabolite (free and bound) in or on a variety of commodities at levels ranging from 0.02 to 25.0 ppm and in meat, milk, poultry, and eggs at levels ranging from 0.02 to 1.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures from myclobutanil in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1 day or single exposure. The Dietary Exposure Evaluation Model (DEEM®) analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessments: A tier 1 acute

analysis was performed using tolerance level residues and 100% crop treated (CT) information for all registered and proposed uses. The acute analysis was performed for females (13–50 years old) only (no acute endpoint was chosen for the general U.S. population).

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the DEEM® analysis evaluated the individual food consumption as reported by respondents in the USDA 1989–1992 nationwide CSFII and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The chronic analysis was performed using published and proposed tolerance levels for all commodities. For the chronic analysis, percent CT information was used for apples, apricots, cherries, grapes, nectarines, peaches, pears, plums, and cotton and 100% CT was assumed for all other commodities.

iii. *Cancer.* A cancer dietary exposure assessment was not performed since myclobutanil was not carcinogenic in two acceptable animal studies.

iv. *Anticipated residue and percent crop treated information.* Section 408(b)(2)(F) states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of percent crop treated (PCT) as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

The Agency used percent crop treated (PCT) information as follows.

| Crop | Percent crop treated |
|---|---|
| Apples | 40 |
| Apricots | 15 |
| Cherries | 40 |
| Cotton | <1 |
| Grapes | 45 |
| Nectarines | 20 |
| Peaches | 10 |
| Pears | < 1 |
| Plums | 15 |

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which myclobutanil may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive drinking water dietary exposure analysis and risk assessment for myclobutanil in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of myclobutanil.

The Agency uses the Generic Estimated Environmental Concentration (GENEEC) or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to estimate pesticide concentrations in surface water and SCI-GROW, which predicts pesticide concentrations in groundwater. In general, EPA will use GENEEC (a tier 1 model) before using PRZM/EXAMS (a tier 2 model) for a screening-level assessment for surface water. The GENEEC model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. GENEEC incorporates a farm pond scenario, while PRZM/EXAMS incorporate an index reservoir environment in place of the previous pond scenario. The PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to myclobutanil, they are further discussed in the aggregate risk sections below.

Based on the GENEEC and SCI-GROW models, the estimated environmental concentrations (EECs) of myclobutanil for acute exposure are estimated to be

115 parts per billion (ppb) in surface water and 2 ppb for ground water. The EECs for chronic exposures are estimated to be 31 ppb for surface water and 2 ppb for ground water.

3. *From non-dietary exposure.* Myclobutanil is currently registered for use on the following residential non-dietary sites: homeowner use on turf, roses, flowers, shrubs and trees. The term "residential exposure" is used in this document to refer to non-occupation, nondietary exposure resulting from pesticide uses in residential settings (e.g., pesticide uses for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets.) The risk assessment was conducted using the following exposure assumptions:

i. *Residential handler exposure.* Based on the residential use-patterns associated with myclobutanil, there is potential for exposures to handlers of myclobutanil. In order to present a high-end scenario of residential exposure, it was assumed that one person would complete all mixing, loading and application of myclobutanil. Exposure scenarios were assessed, at the maximum application rate, for mixing, loading, and application of a soluble concentrate product by trigger bottle sprayer (treating ornamental plants), and by hose-end sprayer (treating turfgrass) to represent the worst-case scenario for the proposed uses. There are no chemical specific data available to support the residential use scenarios of myclobutanil. Therefore, modeling (PHED v 1.1 surrogate table) was used to represent the highest potential for exposure from homeowner application of myclobutanil.

ii. *Residential post application exposure.* Potential residential exposures are expected following applications to lawns, ornamentals and home garden sites. Chemical-specific data are available to determine the potential risks from post-application activities. The registrant submitted a dislodgeable foliar residue (DFR) study on grapes for myclobutanil. Short-term post-application exposure estimates were done using the study determined DFR of 0.175 $\mu g/cm^2$ (on day 0). For intermediate-term post-application exposure, an average of DFRs from day 0 through day 14 was used. The post-application risk assessment is based on DFR data from the submitted study on grapes and generic assumptions as specified by the recently revised Residential SOPs.

Based on the use pattern, exposure to myclobutanil-treated ornamentals is expected to be incidental and short-term. Both short- and intermediate-term exposures are expected following lawn applications of myclobutanil. Short-term aggregate post-application exposure for the adult was done for dermal exposure to treated turf and ornamentals. Since there is no intermediate-term exposure for the residential handler, there is no aggregate intermediate-term exposure for the adult.

Short-term, non-dietary ingestion exposure to toddlers is not assessed since EPA did not detect an acute dietary or oral endpoint applicable to infants and children. Therefore, EPA does not expect short-term non-dietary exposure to pose a risk to infants and children. The only short-term toddler exposure that was considered consists of dermal post-application exposure. However, EPA determined that the short-term dermal exposure should not be aggregated with the short-term oral exposure because the toxic effects are different.

Additionally, intermediate-term, non-dietary ingestion exposure for toddlers is possible and was assessed using the intermediate-term dose and endpoint identified from the two generation reproduction toxicity study in rats. Intermediate-term aggregate exposure for toddlers combines non-dietary ingestion and dermal exposure from treated turf.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether myclobutanil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, myclobutanil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that myclobutanil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

*D. Safety Factor for Infants and Children*

1. *Safety factor for infants and children—i. In general.* FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data based on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

ii. *Prenatal and postnatal sensitivity.* There was no evidence of increased susceptibility in the developmental toxicity studies with rats and rabbits. The data from the 2-generation reproduction study in rats provided no indication of quantitative or qualitative increased susceptibility since maternal toxicity and reproductive toxicity occurred at the same dose.

iii. *Conclusion.* There is a complete toxicity data base for myclobutanil and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. EPA determined that the 10X safety factor to protect infants and children should be removed. The FQPA factor is removed because:

a. There are no toxicity or residential exposure data gaps in the consideration of the FQPA Safety Factor.

b. There was no evidence of increased susceptibility in the developmental toxicity studies with rats and rabbits and the 2-generation reproduction study in rats provided no indication of quantitative or qualitative increased susceptibility since maternal toxicity and reproductive toxicity occurred at the same dose.

c. A developmental neurotoxicity study is not required because neurotoxic compounds of similar structure were not identified and there was no evidence of neurotoxicity in the current toxicity database.

d. The exposure assessments will not underestimate the potential dietary (food and drinking water) and residential (non-occupational) exposures for infants and children from the use of myclobutanil.

*E. Aggregate Risks and Determination of Safety*

To estimate total aggregate exposure to a pesticide from food, drinking water,

and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water (EECs). DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2L/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and groundwater are less than the calculated DWLOCs, OPP concludes with reasonable certainty that exposures to myclobutanil in drinking water (when considered along with other sources of exposure for which OPP has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because OPP considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, OPP will reassess the potential impacts of myclobutanil on drinking water as a part of the aggregate risk assessment process.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food to myclobutanil will occupy 2% of the aPAD for females 13 years and older at the 95th percentile of exposure. In addition, despite the potential for acute dietary exposure to myclobutanil in drinking water, after calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of myclobutanil in surface and ground water (115 ppb and 2 ppb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the aPAD.

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR ACUTE EXPOSURE TO MYCLOBUTANIL

| Population Subgroup | aPAD (mg/kg) | %aPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Acute DWLOC (ppb) |
|---|---|---|---|---|---|
| Females (13 to 50 years) | 0. 60 | 2 | 115 | 2 | 18,000 |

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to myclobutanil from food will utilize 17% of the cPAD for the U.S. population, 48% of the cPAD for infants < 1 year old and 52% of the cPAD for children 1 to 6 years old. There are no residential uses for myclobutanil that result in chronic residential exposure. In addition, despite the potential for chronic dietary exposure to myclobutanil in drinking water, after calculating the DWLOCs and comparing them to conservative model estimated environmental concentrations of myclobutanil in surface and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

TABLE 4.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO MYCLOBUTANIL

| Population Subgroup | cPAD mg/kg/day | %cPAD (Food) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Chronic DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. Population | 0.025 | 17 | 31 | 2 | 720 |
| All Infants (<1 year old) | 0.025 | 48 | 31 | 2 | 130 |
| Children 1 to 6 years | 0.025 | 52 | 31 | 2 | 120 |
| Children 7 to 12 years | 0.025 | 26 | 31 | 2 | 190 |
| Females (13 to 50 years) | 0.025 | 11 | 31 | 2 | 670 |

3. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). EPA has determined that oral and dermal exposures can not be aggregated due to differences in the toxicological endpoints via the oral (developmental study) and dermal routes. Therefore, short-term aggregate risk is captured by assessment of acute risk above.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 650 for the U.S. population and 310 for infants and children. These aggregate MOEs do not exceed the Agency's level of concern (LOC = 100) for aggregate exposure to food and residential uses. In addition, DWLOCs were calculated to account for the potential of intermediate-term exposure to myclobutanil in drinking water. After calculating DWLOCs and comparing them to conservative model estimated environmental concentrations of myclobutanil in surface and ground water (31 ppb and 2 ppb, respectively), EPA does not expect the intermediate-term aggregate exposure to exceed the Agency's level of concern.

TABLE 5.—AGGREGATE RISK ASSESSMENT FOR INTERMEDIATE-TERM EXPOSURE TO MYCLOBUTANIL

| Population Subgroup | Aggregate MOE (Food + Residential) | Aggregate Level of Concern (LOC) | Surface Water EEC (ppb) | Ground Water EEC (ppb) | Intermediate-Term DWLOC (ppb) |
|---|---|---|---|---|---|
| U.S. Population | 605 | 100 | 31 | 2 | 3,000 |
| Infants and Children | 310 | 100 | 31 | 2 | 680 |

6. *Aggregate cancer risk for U.S. population.* Myclobutanil is not carcinogenic in either the rat or mouse and, therefore, is not expected to pose a cancer risk to humans.

7. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to myclobutanil residues.

## IV. Other Considerations

### *A. Analytical Enforcement Methodology*

An adequate enforcement method (Rohm and Haas Method 34S–88–10) is available to enforce the proposed tolerances. Quantitation is by gas liquid chromatography using a nitrogen/phosphorus detector for myclobutanil and an electron capture detector ($Ni^{63}$) for residues measured as the alcohol metabolite. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

### *B. International Residue Limits*

A Codex maximum residue limit (MRL) is presently established for residues of myclobutanil per se in/on pome fruit at 0.5 ppm. Canadian MRLs have been established for residues of (RS)-2-*p*-chlorophenyl-2-(1H-1,2,4-triazol-1-ylmethyl)hexanenitrile, including the free and conjugated forms of its metabolites (RS)-2-*p*-chlorophenyl-1-(1*H*-1,2,4-triazol-1-ylmethyl)-5-hydroxy-hexanenitrile and (RS)-2-*p*-chlorophenyl-2-(1*H*-1,2,4-triazol-1ylmethyl)-5-keto-hexanenitrile on apples and apple juice at 0.5 ppm. No Mexican MRLs have been established for the use on mayhaw. Harmonization with Codex or the Canadian MRLs is not possible as the tolerance expressions for both differ from the proposed U.S. tolerance.

### *C. Conditions*

Rohm and Haas has requested conditional registration for caneberry, currant, gooseberry, mayhaw, peppermint, spearmint, snap beans, and tomato. Upon receipt and evaluation of additional residue field trials for these crops, the Agency will reassess the registration and, if appropriate, will issue unconditional registration for these uses. In addition, the registration on cucurbits, mint, snap beans, strawberries and tomatoes will be conditional pending the submission and EPA review of a field rotational crop study.

## V. Conclusion

Therefore, tolerances are established for combined residues of myclobutanil in apple, wet pomace at 1.3 ppm; asparagus at 0.02 ppm; the caneberry subgroup at 2.0 ppm, the cucurbit vegetable group at 0.20 ppm, currant at 3.0 ppm, gooseberry at 2.0 ppm, mayhaw at 0.70 ppm; peppermint tops at 3.0 ppm, succulent snap bean at 1.0 ppm; spearmint tops at 3.0 ppm, strawberry at 0.50 ppm, tomato at 0.30 ppm; tomato, puree at 0.50 ppm; tomato, paste at 1.0 ppm. In addition tolerances for indirect and inadvertent residues of myclobutanil per se at 0.03 ppm are established in root and tuber vegetable group; leaves of root and tuber vegetable group; leafy vegetable, except Brassica, group; Brassica leafy vegetable group; legume vegetable group; fruiting vegetable group; cereal grains group; forage, fodder, and straw of cereal grains group; nongrass animal feed group; and foliage of legume vegetable group.

## VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

### *A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number 300994 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 10, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave, NW, Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at *tompkins.jim@epa.gov* , or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave, NW, Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave, NW, Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300994, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave, NW, Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## VII. Regulatory Assessment Requirements

This final rule establishes tolerances under FFDCA section 408(d) in response to petitions submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

## VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

## List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: April 28, 2000

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR chapter I is amended as follows:

## PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.443 is amended by revising the introductory text of paragraph (a), by adding alphabetically new entries to the table in paragraph (a), and by revising paragraph (d) the read as follows:

**§ 180.443 Myclobutanil; tolerances for residues.**

(a) *General.* Tolerances are established for combined residues of the fungicide myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile and its alcohol metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound), in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Apple, wet pomace | 1.3 |
| * * * * * | |
| Asparagus | 0.02 |
| * * * * * | |
| Bean, snap, succulent | 1.0 |
| Caneberry subgroup | 2.0 |
| * * * * * | |
| Currant | 3.0 |
| * * * * * | |
| Gooseberry | 2.0 |
| * * * * * | |
| Mayhaw | 0.70 |
| * * * * * | |
| Peppermint, tops | 3.0 |
| * * * * * | |
| Spearmint, tops | 3.0 |
| Strawberry | 0.50 |
| * * * * * | |
| Tomato | 0.30 |
| Tomato, puree | 0.50 |
| Tomato, paste | 1.0 |
| Vegetable, cucurbit, group | 0.20 |

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for residues of the fungicide myclobutanil alpha-butyl-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile in or on the following food commodities:

| Commodity | Parts per million |
|---|---|
| Animal Feed, Nongrass, Group | 0.03 |
| Grains, Cereal, Forage, Fodder, and Straw, Group | 0.03 |
| Grains, Cereal, Group | 0.03 |
| Vegetable, Brassica, Leafy, Group | 0.03 |
| Vegetable, Foliage of Legume, Group | 0.03 |
| Vegetable, Fruiting, Group | 0.03 |
| Vegetable, Leafy, Except Brassica, Group | 0.03 |
| Vegetable, Leaves of Root and Tuber, Group | 0.03 |
| Vegetable, Legume, Group | 0.03 |
| Vegetable, Root and Tuber, Group | 0.03 |

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BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 271

**[FRL–6600–4]**

### West Virginia: Final Authorization of State Hazardous Waste Management Program Revision

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** West Virginia has applied to EPA for Final authorization of the revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The revision covers statutory and regulatory changes to the State's authorized hazardous waste program, including the adoption of the Federal hazardous regulations, as amended through June 30, 1997, and the Federal final rules published in the **Federal Register** on December 8, 1997, May 26, 1998, June 8, 1998, and on June 19, 1998 with certain exceptions described in section H in the Supplementary Information section of this document. EPA has determined that its hazardous waste program revisions satisfy all of the requirements necessary to qualify for Final authorization, and is authorizing the state program revision through this immediate final action. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and does not anticipate adverse comments. However, in the proposed rules section of this **Federal Register**, EPA is publishing a separate document that will serve as a proposal to authorize the revision should the Agency receive adverse comment. If EPA receives comments that oppose this action or portion(s) thereof, we will publish a document in the **Federal Register** withdrawing this rule or portion(s) thereof before it takes effect and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes. Unless EPA receives adverse written comments during the review and comment period, the decision to authorize West Virginia's hazardous waste program revision will take effect as provided below.

**DATES:** This Final authorization for West Virginia will become effective without further notice on July 10, 2000, unless EPA receives adverse comments by June 9, 2000. Once again if EPA should receive such comments on its decision, the Agency will publish a timely withdrawal informing the public that this rule will not take effect.

**ADDRESSES:** Send written comments to Sharon McCauley, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–3376. EPA must receive your comments by June 9, 2000. Copies of the West Virginia program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8 a.m. to 4:30 p.m., Monday through Friday at the following addresses: West Virginia Division of Environmental Protection, Office of Waste Management, 1356 Hansford Street, Charleston, WV 25301–1401, Phone number: 304–558–4253 and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5254.

**FOR FURTHER INFORMATION CONTACT:** Sharon McCauley, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–3376.

**SUPPLEMENTARY INFORMATION:**

### A. Why Are Revisions to State Programs Necessary?

RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), provides for authorization of State hazardous waste programs under Subtitle C. Under RCRA section 3006, EPA may authorize a State to administer and enforce the RCRA hazardous waste

program. See also 40 CFR part 271. In fact, Congress designed RCRA so that the entire Subtitle C program would eventually be administered by the States in lieu of the Federal Government. This is because the States are closer to, and more familiar with, the regulated community and therefore are in a better position to administer the programs and respond to local needs effectively.

After receiving authorization, the State administers the program in lieu of the Federal government, although EPA retains enforcement authority under RCRA sections 3008, 3013, and 7003. Authorized States must revise their programs when EPA promulgates "new" Federal Standards that are more stringent or broader in scope than existing Federal Standards. States are not required to modify their programs when "new" Federal changes are less stringent than the existing Federal program or when changes reduce the scope of the existing Federal program. These changes are optional and are noted as such in the **Federal Register** (FR) documents in which the new Federal Standards are promulgated.

States which have received Final authorization for EPA under section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the States must revise their programs and apply for authorization of the revisions. Revisions to State hazardous waste programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must revise their programs because of changes to EPA's regulations in Title 40 of the Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

**B. What Decisions Have We Made In this Rule?**

EPA concludes that West Virginia's application for authorization of its program revisions meets all applicable statutory and regulatory requirements established by RCRA. Accordingly, EPA grants West Virginia Final authorization to operate its hazardous waste program as revised. West Virginia now has responsibility for permitting treatment, storage, and disposal facilities within its borders and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA. West Virginia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA, and to take enforcement actions under sections 3008, 3013 and 7003 of RCRA.

**C. What is the Effect of Today's Authorization Decision?**

The effect of this decision is that a facility in West Virginia subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. West Virginia has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports.
- Enforce RCRA requirements and suspend or revoke permits.
- Take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which West Virginia is being authorized by today's action are already effective, and are not changed by today's action.

**D. Why Wasn't There a Proposed Rule Before Today's Rule?**

EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial and expects no comments that oppose this action. EPA is providing an opportunity for public comment now. In the proposed rules section of today's **Federal Register** EPA is publishing a separate document that proposes to authorize the State changes. If EPA receives comments which oppose this authorization or portion(s) thereof, that document will serve as a proposal to authorize such changes.

**E. What Happens if EPA Receives Comments That Oppose This Action?**

If EPA receives comments that oppose this authorization decision or portion(s) thereof, we will withdraw this authorization decision, or those portion(s) for which EPA received comments opposing its decision, by publishing a document in the **Federal Register**. We will address all public comments in a subsequent final action based on the proposed rule.

If EPA receives comments that oppose only the authorization of a particular change to the State hazardous waste program, we may withdraw only that part of today's authorization rule. The authorization of the program changes that are not opposed by any comments may become effective on July 10, 2000. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

You should send written comments to Sharon McCauley, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–3376. We must receive your comments by June 8, 2000. You may not have an opportunity to comment again. If you want to comment on this action you must do so at this time.

**F. What Has West Virginia Previously Been Authorized For?**

West Virginia initially received Interim authorization, Phase I and Phase II, Components A and B on March 28, 1984. Effective May 29, 1986 (51 FR 17739), West Virginia received Final authorization to implement its base hazardous waste management program. Since receiving Final authorization, West Virginia has restructured its hazardous waste management program and revised its statutes and regulations. West Virginia's Attorney General's Statement, dated April 18, 1986, which was a component of the State's original Final authorization, cited the West Virginia Code, Chapter 20, Article 5E, as the State Hazardous Waste Management Act (HWMA). The West Virginia HWMA, Chapter 20 Article 5E, was originally written to give the primary implementation authority for the State's hazardous waste program (HWP) to the West Virginia Department of Natural Resources (WVDNR). Therefore, from 1981 until 1992, the WVDNR was the lead agency assigned HWP responsibilities. The State government, however, underwent a major reorganization in 1992 and the West Virginia Division of Environmental Protection (WVDEP) was formed. On July 1, 1992, Executive Order No. 8–92 signed by Governor Gaston Caperton transferred all sections of the Office of Waste Management from the WVDNR to the WVDEP. Subsequently, during the 1994 State Legislative Session, the Environmental Protection Reorganization Bill was passed, officially transferring all environmental statutes formerly enforced by the WVDNR to the WVDEP. In July 1994, the West Virginia Legislature enacted into law Article 18 of Chapter 22 of the West Virginia Code (W. Va. Code) which replaced Article 5E of Chapter 20 of the West Virginia as the State Hazardous

Waste Management Act (HWMA). The WVDEP was originally under the Department of Labor, Commerce and Environmental Resources. This Department was abolished by the Legislature in 1994, and the agencies were reorganized, with the WVDEP being placed under the Bureau of Environment. The Director of WVDEP also is the Commissioner of the Bureau of Environment and answers directly to the Governor.

The Office of Waste Management (OWM) is the office within WVDEP that is primarily responsible for regulation of hazardous waste management within the State. In 1997, OWM was restructured and an additional agency, the Office of Environmental Remediation, was created to regulate brownfields and voluntary clean-up sites. Additionally, within the WVDEP, the Office of Air Quality (OAQ) regulates hazardous waste air emissions; and outside of the WVDEP, two additional agencies, the Division of Highways (DOH) and the Public Service Commission (PSC), regulate aspects of hazardous waste transportation. Within the OWM, regulatory authority over hazardous waste is assigned to Compliance Assurance and Emergency Response (CAER) and the Hazardous Waste Management Section (HWMS). All aspects of hazardous waste management including compliance monitoring, enforcement and permitting are handled by these two sections, with the exception of air permits, which are handled by the OAQ. The OWM's Compliance Assurance and Emergency Response is the lead agency for communication between the State and the EPA, although HWMS and OAQ communicate with EPA on specific matters. CAER works with the Office of Legal Services (OLS) within DEP on matters such as the review of proposed rules and regulations and civil enforcement actions. West Virginia Code section 22–1–6(d)(7) (1996 Cumulative Supplement) authorized the Director of WVDEP to "employ in-house counsel to perform all legal services for the director and division, including, but not limited to, representing the director, any chief, the division or any office thereof in any administrative proceedings or in any proceeding in state or federal court."

The State Legislature has made numerous amendments to the regulations promulgated under the State's Hazardous Waste Management Act in order to remain consistent with, and equivalent to, the Federal regulations promulgated under RCRA Subtitle C. Specifically, West Virginia has revised the format of its hazardous waste regulations to one of adoption and incorporation of the full text of the Federal regulatory language, with modifications made as necessary, to incorporation of the Federal regulations by reference. Incorporation by reference is authorized by W. Va. Code section 22–1–3(c) which states "if the director determines that the rule should be the same in substance as a counterpart regulation, then to the greatest degree practical, such proposed rule shall incorporate by reference the counterpart federal regulation."

West Virginia submitted, on an annual basis, several draft regulations to EPA. The Agency reviewed each set of draft regulations and submitted comments to West Virginia. On January 13, 2000, West Virginia submitted a final complete program revision application, seeking authorization for the restructuring of its hazardous waste program, as well as authorization of its additional program revisions, in accordance with 40 CFR 271.21. EPA Region III worked closely with West Virginia to develop the authorization package; therefore, EPA's comments relative to West Virginia's legal authority to carry out the Federally-delegated programs, the scope of and coverage of activities regulated, State procedures, including the criteria for permit reviews, public participation and enforcement capabilities, were addressed before the submission of the final application by the State. The State also solicited public comments on its draft regulations. The EPA reviewed West Virginia's application, and now makes an immediate final decision, subject to receipt of adverse written comments, that West Virginia's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Consequently, EPA intends to grant West Virginia Final authorization for the program modifications contained in the program revision application.

### G. What Revisions Are We Authorizing With Today's Action?

West Virginia's program revision application includes State regulatory changes that are equivalent to the Federal regulations published in the July 1, 1997 version of Title 40 of the Code of Federal Regulations, parts 124, 260 through 266, 268, 270, 273 and 279, plus the Federal requirements for "Availability of Information," as addressed in RCRA section 3006(f), and the final rules published in the **Federal Register** on December 8, 1997 (62 FR 64636), May 26, 1998 (63 FR 28556), June 8, 1998 (63 FR 31266) and June 19, 1998 (63 FR 33782).

West Virginia is today seeking authority to administer the Federal requirements that are listed in the chart below. This chart also lists the State analogs that are being recognized as no less stringent than to the appropriate Federal requirements. Unless otherwise stated, the State's statutory references are to the West Virginia Code (W. Va. Code), 1994 Cumulative Supplement, Chapter 22—Environmental Resources, Article 1 (Division of Environmental Protection), Article 5 (Air Pollution Control), and Article 18 (Hazardous Waste Management Act). The regulatory references are to the following Legislative Rules: Title 33, Series 20, Code of State Regulations (33CSR20), "Hazardous Waste Management Rule", effective July 1, 1999; 45CSR25, "To Prevent and Control Air Pollution From Hazardous Waste Treatment, Storage, or Disposal Facilities," effective June 1, 1999; 157CSR7, "Emergency Rulemaking for the Transportation of Hazardous Wastes Upon Roads and Highways," effective April 28, 1999; as well as the proposed rules for "Transportation of Hazardous Waste Upon Roads and Highways" submitted to the State Legislative Review Committee on October 5, 1999; 150CSR11, "Rules and Regulations Governing the Transportation of Hazardous Waste By Rail," effective November 8, 1999; 46CSR12, "Requirements Governing Groundwater Standards," effective July 1, 1998; and 46CSR8, "Rules on Requests for Information," effective February 18, 1996.

| Federal requirement [1] | Analogous West Virginia authority |
|---|---|
| Part 260—Hazardous Waste Management System: General, as of July 1, 1997. | West Virginia Code (W. Va. Code) §§22–18–3, 22–18–5(a), 22–18–6(a), 22–18–6(a)(12)(D), 22–18–23; Hazardous Waste Management Regulations (HWMR) §§33–20–1.1, 33–20–1.6, 33–20–2.1 (except 2.1.a.2 and a.3), 33–20–2.2, 33–20–2.3, 33–20–2.4, 33–20–2.5, 45–25–1.5.a/Table 25–A (Item 22), 45–25–2, 45–25–3.1, 150–11–1.5, 150–11–6, 150–11–7, 157–7–2. |

| Federal requirement [1] | Analogous West Virginia authority |
|---|---|
| Part 261—Identification and Listing of Hazardous Waste, as of July 1, 1997. | W. Va. Code §§ 22–18–6(a)(2), 22–18–6(a)(12), 22–18–6(a)(13)(C), 22–18–5(a), 22–18–6(a), 22–18–23; HWMR §§ 33–20–1.6, 33–20–2.3, 33–20–3.1, 33–20–3.2, 33–20–3.4, 33–20–4.2.b, 45–25–1.5.a-Table 25–A (Item 20), 45–25–4.15, 45–25–6.1, 45–25–6.2, 150–11–1.5, 157–7–2.1. |
| Part 262—Standards Applicable to the Generators of Hazardous Wastes, as of July 1, 1997. | W. Va. Code §§ 22–18–6(a), 22–18–6(a)(3), 22–18–6(a)(12)(D), 22–18–6(a)(15), 22–18–6(a)(9), 22–18–7(a)-(c), 22–18–5(a), 22–18–23; HWMR §§ 33–20–1.6, 33–20–4, 33–20–5.1, 33–20–5.2, 33–20–5.3, 33–20–5.4, 45–25–1.5.a-Table 25–A (Item 21), 157–7–3.1.1. |
| Part 263—Standards Applicable to the Transporters of Hazardous Wastes, as of July 1, 1997. | W. Va. Code §§ 22–18–5(a), 22–18–6(a)(9), 22–18–6(a)(12)(D), 22–18–6(a)(15), 22–18–7(a)-(c), 22–18–23, 22–18–2(b)(2); HWMR §§ 33–20–1.6, 33–20–4, 33–20–6.1, 33–20–6.2, 150–11–1.1, 150–11–1.6, 150–11–1.7, 150–11–1.8, 150–11–1.10, 150–11–1.11, 150–11–1.13.1 & 1.13.2, 150–11–2.1.1, 150–11–2.1.2, 150–11–2.2 through 2.8, 150–11–3.1 through 3.4, 150–11–5.1 through 5.5, 157–7–1.1, 157–7–1.6, 157–7–2.7, 157–7–3.1 through 3.5, 157–7–4.1, 157–7–4.2, 157–7–4.3, 157–7–5.1, 157–7–5.3, 157–7–5.4, 157–7–6.1 through 6.5. |
| Part 264—Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, as of July 1, 1997. | W. Va. Code §§ 22–18–5(a)&(c), 22–12–4, 22–18–6(a), 22–18–6(a)(4), 22–18–6(a)(12)–(15), 22–18–7(e), 22–18–23, 22–18–25(1), 22–5–1, 22B–3–4; HWMR §§ 33–20–1.6, 33–20–1.6/Table 25–A (Item 10), 33–20–4, 33–20–7.1, 33–20–7.2, 33–20–7.4, 33–20–7.5, 33–20–7.6, 33–20–7.7, 33–20–7.8, 33–20–12, 45–25–1.1.a & b, 45–25–3.2, 45–25–3.2/Table 25–A (Items 1, 4, 6, 8, 10), 45–25–4.1, 45–25–4.2, 45–25–4.3, 45–25–4.4, 45–25–4.5/Table 25–A (Item 10), 45–25–4.6/Table 25–A (Item 10), 45–25–4.7, 45–25–4.8, 45–25–4.9, 45–25–4.10, 45–25–4.11, 45–25–4.12, 45–25–4.15. |
| Part 265—Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities, as of July 1, 1997. | W. Va. Code §§ 22–18–11, 22–18–5(a), 22–18–23, 22–18–6(a)(4); HWMR §§ 33–20–1.6, 33–20–8.1 through 8.6, 45–25–1.1.a & b, 45–25–3.2.d, 45–25–3.2/Table 25–A (Items 1, 6, 8, 10, 12), 45–25–4.1, 45–25–4.2, 45–25–4.3, 45–25–4.4, 45–25–4.5, 45–25–4.6, 45–25–4.7, 45–25–4.9, 45–25–4.10, 45–25–4.11, 45–25–4.15. |
| Part 266—Standards for the Management of Specific Hazardous Wastes and Specific Types of Hazardous Waste Management Facilities, as of July 1, 1997. | W. Va. Code §§ 22–18–5(a)&(c), 22–18–6(a), 22–18–6(a)(12), (13) & (15), 22–18–23, 22–5–1; HWMR §§ 33–20–1.6, 33–20–9, 45–25–1.1.a & b, 45–25–3.2/Table 25–A (Item 13), 150–11–1.1, 150–11–1.5, 150–11–10.1, 150–11–10.2 through 10.4, 150–11–10.5, 157–7–1.1, 157–7–1.6, 157–7–5.1. |
| Part 268—Land Disposal Restrictions, as of July 1, 1997 | W. Va. Code §§ 22–18–5(a), 22–18–6(a)(12)(A), 22–18–6(a)(12)(B); 22–18–6(a)(12)(D), 22–18–23, 22–18–6(a)(2); HWMR §§ 33–20–1.6, 33–20–10.1 through 10.4. |
| Part 270—The Hazardous Waste Permit Program, as of July 1, 1997. | W. Va. Code §§ 22–18–8, 22–18–6(a)(4)(G), 22–18–6(a)(5), 22–18–6(a)(8), 22–18–6(a)(11), 22–18–6(a)(13)(A),(B),&(C), 22–18–10, 22–18–11, 22–18–5(a), 22–18–23, 22–18–12; HWMR §§ 33–20–1.6, 33–20–11.1, 33–20–11.2, 33–20–11.3, 33–20–11.19, 33–20–11.20, 33–20–11.21, 33–20–11.22, 45–25–2, 45–25–3.2/Table 25–A (Items 2, 3, 5, 7, 9, 11, 14, 15, 18, 19), 45–25–4.13, 45–25–4.14, 45–25–5.15, 45–25–5.16. |
| Part 124—Permit Procedures, as of July 1, 1997 ..... | W. Va. Code §§ 22–18–8, 22–18–6(a)(5), 22–18–6(a)(8), 22–18–10, 22–18–23; HWMR §§ 33–20–11.8.a-f, 33–20–11.5, 33–20–11.6, 33–20–11.7, 33–20–11.9 (except 11.9.d), 33–20–11.10, 33–20–11.11, 33–20–11.12, 33–20–11.13, 33–20–11.14, 33–20–11.15, 33–20–11.16, 33–20–11.18.a, 33–20–11.18.b (except 11.18.b.7), 33–20–11.18.d, 45–25–5.4.a-f, 45–25–5.1, 45–25–5.2, 45–25–5.3, 45–25–5.5 (except 5.5.d), 45–25–5.6, 45–25–5.7, 45–25–5.8, 45–25–5.9, 45–25–5.10, 45–25–5.11, 45–25–5.12, 45–25–5.13, 45–25–5.14.a, 45–25–5.14.b, 45–25–5.14.d. |
| Part 273—Standards for Universal Waste Management, as of July 1, 1997. | W. Va. Code §§ 22–18–5(a) and § 22–18–23; HWMR §§ 33–20–1.6, 33–20–2.5.d, 33–20–13.1, 33–20–13.4 through 13.8, 150–11–1.1, 150–11–8.1 through 8.7, 157–7–1.1, 157–7–1.6, 157–7–5.1. |
| Part 279—Standards for the Management of Used Oil, as of July 1, 1997. | W. Va. Code §§ 22–18–6(a)(14), 22–18–6(a)(15), 22–18–23; HWMR §§ 33–20–1.6, 33–20–14.1, 33–20–14.2, 33–20–14.3, 45–25–3.2/Table 25–A (Item 16 &17), 150–11–1.1, 150–11–1.12, 150–11–9.1, 150–11–9.2, 150–11–9.3 through 9.9, 157–7–1.1, 157–7–1.6, 157–7–5.1. |
| **Non-HSWA Cluster I** | |
| Availability of Information (AI) (RCRA 3006(f) Checklist) .. | W. Va. Code § 22–18–12; The West Virginia Freedom of Information Act, W. Va. Code (1994 Supplement) Chapter 29B, § 29B–1–1 *et seq.*; HWMR §§ 33–20–11.19, 46–8–1 through 46–8–11. |
| **HSWA Cluster I** | |
| Sharing of Information With the Agency for Toxic Substances and Disease Registry (SI) (RCRA § 3019(b)). | W. Va. Code §§ 22–1–6(c), 22–18–12; HWMR § 33–20–11.19. |
| **RCRA Cluster VIII** | |
| Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, December 8, 1997 (62 FR 64636). (Revision Checklist 163). | W. Va. Code §§ 22–1–3(c), § 22–5–1, 22–18–6(a), 22–18–6(a)(13)(A)&(B); 22–18–23; HWMR §§ 33–20–1.6, 33–20–7.2, 33–20–7.8, 33–20–8.1, 33–20–8.6, 33–20–11.1, 45–25–1.1.a, & b, 45–25–1.5.a, 45–25–1.5.c, 45–25–3.2/Table 25–A (Items 6, 8, 10, 11). |

| Federal requirement [1] | Analogous West Virginia authority |
|---|---|
| Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes and Mineral Processing Wastes; Mineral Processing Secondary Metals and Bevill Exclusion Issues; Treatment Standards for Hazardous Soils, and Exclusion of Recycled Wood Preserving Wastewaters, May 26, 1998 (63 FR 28556), as amended on June 8, 1998 (63 FR 31266). (Revision Checklists 167A–F). | W. Va. Code §§ 22–18–6(a), 22–18–6(a)(12)(A), 22–18–6(a)(12)(B), 22–18–6(a)(12)(D), 22–18–23; HWMR §§ 33–20–1.6, 33–20–3.1, 33–20–3.5, 33–20–10.1, 33–20–10.6. |
| Hazardous Waste Combustors Revised Standards, June 19, 1998 (63 FR 33782). (Revision Checklist 168). | W. Va. Code §§ 22–18–6(a), 22–18–6(a)(5), 22–18–23; HWMR §§ 33–20–3.6, 33–20–11.9.d, 45–25–5.5.d, 45–25–6.3. |

[1] Federal Regulations as Published in the 40 CFR, as of July 1, 1997 (Base Program through RCRA Cluster VIII).

In today's action, EPA is authorizing West Virginia's program revisions based in part on emergency rules adopted by the West Virginia Division of Highways. Also in today's action, EPA is authorizing rules that are expected to be adopted by the West Virginia Legislature by March 30, 2000 which will replace the above-referenced emergency rules. These legislatively-adopted rules will be identical to the emergency rules, with the exception that the current incorporation by reference date of the Federal regulations will be updated from July 1, 1997 to July 1, 1998, and the current incorporation by reference date of the West Virginia Office of Waste Management's rules will be updated from July 1, 1998 to July 1, 1999, which is only a ministerial change without any legal implication for the purpose of these rules. EPA's authorization of these legislative rules will take effect on the date West Virginia's legislative rules take effect, which is likely to be on or before July 1, 2000—before the expiration of the emergency rules.

Due to an administrative oversight, the West Virginia Division of Highways did not submit final regulatory changes to the 1999 session of the West Virginia Legislature for approval, after the initial legislative review of draft regulations. In an effort to rectify this situation, the West Virginia Division of Highways adopted emergency rules on April 28, 1999 to address necessary regulatory revisions. These regulatory revisions were necessary to conform to updated EPA regulations and regulations of companion state agencies involved in the regulation of hazardous waste. These emergency rules (1) update obsolete regulatory and statutory references, along with new agency names, addresses and telephone numbers, (2) add provisions to require transporters to give a copy of the manifest to a U.S. Customs official at the point where waste departs from the United States, and (3) in accordance with EPA regulations, relax manifesting requirements for military munitions, universal wastes and used oil to be consistent with federal Department of Transportation rules. The Division of Highways' emergency rules are in effect only for 15 months (i.e., until July 28, 2000) or until rules adopted by the Legislature replace them, whichever occurs first.

EPA does not typically authorize states based in part on emergency rules because of their temporary nature. However, EPA is confident that the West Virginia Legislature will approve the conforming legislative rules that the Division of Highways will submit for approval in the upcoming legislative session because: (1) in preparation for the prior session of the Legislature, a legislative review committee already reviewed and commented on an initial draft of the regulations; (2) the Legislature has already approved substantively similar regulations for three other co-regulating authorities in West Virginia; and (3) the legislative review committee has already concurred on the regulations to be submitted for legislative approval in the spring of 2000.

EPA intends to authorize, at this time, both the Division of Highways' emergency rules and the legislative rules that will replace them. This eliminates the need for West Virginia to apply for, and for EPA to approve, a formal program revision for a perfunctory procedure which makes the Division of Highways' emergency rules permanent. Also, by authorizing the emergency and the legislative rules in one action rather than in two separate actions, it will be clearer to the public that both these aspects of the West Virginia hazardous waste program are now Federally authorized.

### H. Where Are the Revised State Rules Different From the Federal Rules?

The West Virginia hazardous waste program contains several provisions which are more stringent than is required by the RCRA program. The more stringent provisions are being recognized as a part of the Federally-authorized program and include the following:

1. At HWMR section 33–20–2.5, West Virginia is more stringent because the State has additional requirements for persons who have petitioned and received approval from EPA to include additional wastes as universal wastes.

2. West Virginia's provision at HWMR section 33–20–3.1.a is more stringent in that there are additional requirements to satisfy in order to qualify for an exemption as an operator of a wastewater treatment facility receiving mixtures of wastes.

3. At HWMR section 33–20–3.2, West Virginia excepts 40 CFR 261.5(f)(3)(iv)&(v) and 261.5(g)(3)(iv) and (v) from incorporation by reference and subjects conditionally exempt small quantity generators (CESQGs) to the notification requirements at HWMR section 33–20–4. West Virginia is more stringent because unlike the Federal provisions at 40 CFR 261.5(f)(3)(iv)&(v) and 261.5(g)(3)(iv)&(v), the State does not allow CESQGs to deliver hazardous wastes to facilities that are permitted, licensed or registered to manage municipal solid waste or non-municipal non-hazardous waste. The State is also more stringent by subjecting CESQGs to the notification requirements located in HWMR section 33–20–4.

4. At HWMR section 33–20–4.2.b, West Virginia subjects persons exempted from the Federal notification requirements as specified at 40 CFR 261.6(b) to the State's notification requirements.

5. At HWMR section 33–20–5.3 and 5.4, West Virginia has adopted the requirements addressed by 40 CFR part 262, subparts E and H, and has correctly left the implementation authority with EPA for the non-delegable hazardous waste import and export requirements. West Virginia is more stringent in that at sections 33–20–5.3 and 5.4, the State requires that copies of all documentation, manifests, exception reports, annual reports or records, inter alia, submitted to EPA must also be submitted to the Chief of the Office of

Waste Management within the same timeframes as specified in 40 CFR part 262, subparts E and H.

6. At HWMR section 33–20–7.4, West Virginia makes it clear that the notification requirements at 40 CFR 264.12(a)(1)&(2) are retained by EPA; however, the State requires that identical notice be sent to the Chief of the Office of Waste Management. This makes the State more stringent.

7. At HWMR section 33–20–8.3, West Virginia excepts the provisions of 40 CFR 265.12(a) from its incorporation by reference; thus, the provisions are retained by EPA. The State requires that identical notice be sent to the Chief of the Office of Waste Management, thus making the State more stringent.

8. At HWMR sections 150–11–5.3.1 & .2 and 157–7–6.3.1 & .2, West Virginia has more stringent notification requirements than 40 CFR 263.30(c)(1). Also, West Virginia has more stringent reporting requirements at sections 157–7–6.4.1 & .2 than found at 40 CFR 263.30(c)(2).

9. At HWMR section 33–20–13.6, West Virginia excepts 40 CFR 273.20, 273.40, and 273.56 from the substitution of terms in Subdivision 1.6.a. By doing so, EPA remains the regulatory agency for exports. The State is more stringent in that persons subject to the provisions of 40 CFR 273.20, 273.40, and 273.56 must file copies of all records submitted to EPA with West Virginia's Chief of the Office of Waste Management.

The State's regulations include a number of provisions that are not part of the State's program being authorized by today's action. Such provisions include the following:

1. West Virginia is not seeking authorization for the Federal delisting requirements at 40 CFR 260.22 [Revision Checklist 17B (50 FR 28702–28755, July 15, 1985), as amended (54 FR 27114, June 27, 1989)]. However, at section 33–20–2.4, the State requires that persons desiring to exclude a waste at a particular facility from the lists set forth at 40 CFR part 261 may petition the Chief of the Office of Waste Management for such an exclusion after having received approval from the Administrator of the Environmental Protection Agency. At section 33–20–2.4.a through 33–20–2.4.c, the State has additional requirements for persons who have petitioned and received approval from EPA to exclude a waste at a particular facility. At section 33–20–2.5, the State also has additional requirements for persons who have petitioned and received approval from EPA to include additional wastes as universal wastes. The State is planning to apply for this provision in subsequent authorization revision applications to be submitted on an annual basis, as necessary.

2. West Virginia is not seeking authority over the Federal corrective action program under HSWA as addressed by Revision Checklist 17L (50 FR 28702–28755, July 15, 1985), Revision Checklist 44A (52 FR 45788–45799, December 1, 1987), Revision Checklist 44B (52 FR 45788–45799, December 1, 1987), Revision Checklist 44C (52 FR 45788-45799, December 1, 1987), and Revision Checklist 121 (58 FR 8658–8685, February 16, 1993). EPA will continue to administer this part of the program. The State is planning to apply for this provision in subsequent authorization revision applications to be submitted on an annual basis, as necessary.

3. The provisions in 40 CFR part 262, subpart H were added by the final rule addressed by Revision Checklist 152 (61 FR 16920–16316, April 12, 1996). West Virginia has incorporated the 40 CFR part 262, subpart H provisions into its regulations; however, the State has excepted these requirements from the substitution of terms at section 33–20–1.6.a; because, those provisions that are not delegable to States remain the purview of EPA. West Virginia is not seeking authorization for the items in this checklist.

4. The West Virginia provisions at W. Va. Code section 22–18–6(a)(11), HWMR sections 33–20–11.4 and 45–25–7, addressing permit fees, are broader in scope than the Federal program.

5. In addition to pesticides, lead acid batteries, and thermostats included, at HWMR sections 33–20–2.1.a.2, 33–20–2.1.a.3, 33–20–3.3, 33–20–7.3, 33–20–8.2, 33–20–10.2, 33–20–11.2, 33–20–13.2 , 33–20–13.4 and 33–20–13.5, West Virginia also regulates mercury containing lamps as a universal waste, subject to the requirements of 40 CFR part 273, which the State incorporates by reference. The final rule of May 11, 1995 (60 FR 25492) permits States to add other hazardous wastes to their universal waste program. However, West Virginia is being authorized for only the three wastes streams included in the Federal program. The State is not being authorized for its requirements for mercury containing lamps. The State is planning to apply for this provision in subsequent authorization revision applications to be submitted on an annual basis, as necessary.

6. At W. Va. Code sections 22–18–25(2) and 22–18–25(3), West Virginia has authority that is analogous to RCRA section 3004(t) addressing direct cause of action against insurers. The Federal requirement is not applicable to States. West Virginia's law equivalent to RCRA section 3004(t) operates separately from the Federal law. In this situation, the West Virginia law which provides for a direct cause of action against insurers creates a parallel cause of action viable in State courts, but the cause of action does not limit the availability of the Federal action.

7. West Virginia is not seeking authorization for the Office of Air Quality provision at HWMR section 45–25–4.12 which requires owners and operators of hazardous waste treatment, storage and disposal facilities to use best available control technology (BACT) to limit the discharge of hazardous waste constituents to the atmosphere.

8. West Virginia's definition of solid waste at W. Va. Code section 22–18–3(16) is the same as the Federal definition at RCRA section 1004(27). W. Va. Code section 22–18–6(a)(2) provides the State with the authority to establish criteria for identifying the characteristics of hazardous waste and listing particular hazardous wastes which are subject to the provisions of the State's Hazardous Waste Management Act. However, West Virginia is not seeking authorization for the regulation of radioactive mixed wastes. The State is planning to apply for this provision in subsequent authorization revision applications to be submitted on an annual basis, as necessary.

Unless EPA receives comments opposing this action by June 9, 2000 and publishes a **Federal Register** document withdrawing the immediate final rule or portions thereof, this Final authorization approval will become effective without further notice on July 10, 2000.

### I. Who Handles Permits After This Authorization Takes Effect?

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based on the Federal provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization. EPA will also transfer any pending permit applications and pertinent file information to the State within thirty (30) days of the effective date of this authorization.

Upon authorization of the State program for any additional portions of HSWA, EPA will suspend issuance of Federal permits for hazardous waste treatment, storage, and disposal

facilities mandated by HSWA in the State, in those areas for which the State is receiving authorization. If EPA promulgates standards for additional processes or regulations mandated by HSWA not covered by the State's authorized program, EPA will process and enforce RCRA permits in the State in those new areas until the State receives final authorization of equivalent State standards. At such time that the State program is approved in the new areas, EPA will suspend issuance of Federal permits issued at the request of the permittee pursuant to 40 CFR 124.5 and 271.8.

EPA will be responsible for enforcing the terms and conditions of the Federal portion of the permits until they expire or are terminated in accordance with 40 CFR 124.5 and 271.8.

The State and EPA will jointly administer implementation of those HSWA provisions for which the State has not received authorization until such time as it receives authorization from EPA to implement the remaining HSWA provisions in lieu of EPA.

**J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in West Virginia?**

West Virginia is not seeking authorization to operate the program on Indian lands, since there are no Federally-recognized Indian Lands in the State.

**K. What Is Codification and Is EPA Codifying West Virginia's Hazardous Waste Program as Authorized in This Rule?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. EPA uses 40 CFR part 272 for codification of the decision to authorize West Virginia's program and for incorporation by reference of those provisions of its statutes and regulations that EPA will enforce under sections 3008, 3013 and 7003 of RCRA. EPA reserves amendment of 40 CFR part 272, subpart XX, for such future use.

**L. Regulatory Analysis and Notices**

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the West Virginia program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not apply to duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate TSDFs, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

*Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) a small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this authorization on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate TSDF's are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA section 3006 those existing State requirements.

*Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of

Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*Compliance With Executive Order 12866*

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

*Compliance With Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This authorization does not have federalism implications. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves West Virginia's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as a result of this action, newly authorized provisions of the State's program now apply in West Virginia in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State program provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus the requirements of section 6 of the Executive Order do not apply.

*Compliance With Executive Order 13045*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not concern an environmental health or safety risk that may have a disproportionate effect on children.

*Compliance With Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with the consulting option, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect communities of Indian tribal governments. West Virginia is not authorized to implement the RCRA hazardous waste program in Indian country, since there are no Federally-recognized Indian lands in the State.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

*National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve such technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

**Authority:** This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

[FR Doc. 00–11426 Filed 5–9–00; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

**[FRL–6604–3]**

## Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Immediate final rule.

**SUMMARY:** The State of Oklahoma has applied for Final authorization to revise its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA is now making an immediate final decision, subject to receipt of written comment that oppose this action, that Oklahoma's Hazardous Waste Program revision satisfies all of the requirements necessary to qualify for final authorization.

**DATES:** This immediate final rule is effective on July 10, 2000 without further notice, unless EPA receives adverse comments by June 9, 2000. Should EPA receive such comments, it will publish a timely document withdrawal informing the public that the rule will not take effect or affirm that the immdediate final rule will take effect as scheduled.

**ADDRESSES:** Written comments, referring to Docket Number Ok-00–2, should be sent to Alima Patterson Region 6 Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1145 Ross Avenue, Dallas, Texas 75202–2733. Copies of Oklahoma program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180–7180 and EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444.

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson (214) 665–8533.

**SUPPLEMENTARY INFORMATION:**

### A. Why Are Revisions to State Programs Necessary?

States that receive final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–266, 268, 270, 273, and 279.

### B. What Is the Effect of Today's Authorization Decision ?

The effect of this decision is that a facility in Oklahoma subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. Oklahoma has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Do inspections, and require monitoring, tests, analyses or reports, (2) enforce RCRA requirements and suspend or revoke permits, and (3) take enforcement actions regardless of whether the State has taken its own actions. This action does not impose additional requirements on the regulated community because the regulations for which Oklahoma is being authorized by today's action are already effective, and are not changed by today's action.

### C. What Is the History of Oklahoma's Final Authorization and Its Revisions?

Oklahoma initially received Final Authorization on January 10, 1985, (49 FR 50362) to implement its base hazardous waste management program. We authorized the following revisions: Oklahoma received authorization for revisions to its program on June 18, 1990 (55 FR 14280), effective November 27, 1990; (55 FR 39274) effective June 3, 1991; (56 FR 13411) effective November 19, 1991; (56 FR 47675) effective December 21, 1994; (59 FR 51116–51122) effective April 27, 1995; (60 FR 2699–2702) effective October 9, 1996; (61 FR 52884–52886), Technical Correction effective March 14, 1997 (62 FR 12100); effective February 8, 1999 (63 FR 67800–67802) and (65 FR 16528) effective April 28, 2000. The authorized Oklahoma RCRA program was incorporated by reference into the CFR effective December 13, 1993, and July 14, 1998. On October 21, 1999, Oklahoma applied approval of its complete program revision. In this application, Oklahoma is seeking approval of its program revision in accordance with § 271.21(b)(3).

Oklahoma statutes provide authority for a single State agency, the Oklahoma Department of Environmental Quality (ODEQ,) to administer the provisions of the State Hazardous Waste Management Program. These statutes are the Oklahoma Environmental Quality Act, 27 O.S. Supplement (Supp) 1997 §§ 1–1–101 *et seq*. General provisions of the Oklahoma Environmental Quality Code which may affect the Hazardous Waste Program, 27A O.S. Supp. 1997 §§ 2–1–101 through 2–3–507; and the Oklahoma Hazardous Waste Management Act (OHWMA), 27A O.S. Supp. 1997 §§ 2–7–101 *et seq*. No amendments were made to the above statutory authorities during the 1999 legislative session which will substantially affect the State Hazardous Waste Management Program.

On January 12, 1999, the Council voted to recommend permanent revocation of Oklahoma Administrative Code (OAC) 252:200 and permanent adoption of OAC 252:205. The permanent revocation of OAC 252:200 and permanent adoption of OAC 252:205 is a part of the ODEQ's effort to simplify and streamline it rules for the benefit of regulated entities and the public as well as the agency itself. This "rewrite" of Oklahoma's hazardous waste regulations is not intended to change substantive requirements previously found in OAC 252:200, but to make the requirements clearer and more concise. The effort stems in part from 1997 legislation requiring most Oklahoma administrative agencies to perform regulatory reviews. Due to extensive reworking of the language and rearrangement of the text, the ODEQ believes it is more understandable and straightforward to revoke Chapter 200 in its entirety and replace it with a new chapter, Chapter 205, than to present an amended version of Chapter 200.

These rules include provisions, found at OAC 252:205–3–1 through 252:200–3–7, to incorporate by reference, in accordance with the Guidelines For State Adoption of Federal Regulations By Reference, the following EPA Hazardous Waste Management Regulations as amended through July 1, 1998. [The provisions of Title 40 CFR part 124 which are required by 40 CFR part 271.14 as well as parts 124.31, 124.32, and 124.33; 40 CFR parts 260–266, with the exception of 40 CFR parts 260.20 through 260.22, 264.149, 264.150, 264.301(1), the Appendix VI to part 264, 265.149, and 265.150; 40 CFR part 268 except 268.5, 268.6, 268.10–13, 268.42(b) and 268.44; 40 CFR part 270

except 270.14(b)(18); 40 CFR part 273; and 40 CFR part 279]. Additionally, the rules adopt the new or superseding amendments to 40 CFR found in 63 FR 37780–37782 published July 14, 1998 dealing with used oil management standards. Oklahoma has added mercury-containing lamps as a "State only" universal waste, thereby modifying appropriate provisions of the above CFR citations.

The Board adopted these amendments on March 5, 1999 as permanent rules. These permanent rules which became effective on June 11, 1999, implement the State hazardous waste program, and are codified in the OAC at OAC 252:205 *et seq.*

The ODEQ remains the official agency of the State of Oklahoma, as designated by 27A O.S. Supp. 1998 Section 2–7–105(13) to cooperate with Federal agencies for purposes of hazardous waste regulation.

The OHWMA delegates authority to the ODEQ to administer the State hazardous waste program, including the statutory and regulatory provisions necessary to administer the RCRA cluster VIII provisions. Currently, Oklahoma Corporation Commission (OCC) regulates certain aspects of the oil and gas production and transportation industry in Oklahoma, including certain wastes generated by pipelines, bulk fuel sales terminals and certain tank farms. The ODEQ and the OCC have in place a ODEQ/OCC jurisdictional Guidance Document that reflects the current sate of affairs between the two agencies. The ODEQ exclusively regulates hazardous waste in Oklahoma (excluding Indian lands) and the OCC does not regulate hazardous waste in Oklahoma. The current ODEQ/OCC Jurisdictional Guidance Document was signed on January 27, 1999.

### D. What Revisions Are We Approving With Today's Action?

Oklahoma applied for final approval of its revision to its complete program in accordance with 40 CFR 271.21. Oklahoma's revisions consist of regulations which specifically govern RCRA Cluster VIII. Oklahoma requirements are included in a chart with this document. EPA is now making a final decision, subject to receipt of written comments that oppose this action, that Oklahoma's revisions of its hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Oklahoma final authorization for the following program revisions:

| Federal Citation | State Analog |
|---|---|
| 1. Land Disposal Restrictions Phase III—Emergency Extension of the K088 National Capacity Variance [62 FR 37694–37699], July 14, 1997. (Checklist 160). | 27A O.S. Supp. 1998 § 2–2–104 Added by Laws 1994, effective July 1, 1994, Annotated Oklahoma Statutes, 27 A. O.S. Supp 1998 § 2–7–106 Amended by Laws 1993, effective July 1, 1993, Rules 252:205–3–1 through 252:205–3–7 permanent effective June 11, 1999. |
| 2. Second Emergency Revision of the Land Disposal Restrictions Treatment Standards for Listed Hazardous Wastes From Carbamate Production [62 FR 45568–45573], August 28, 1997] (Checklist 161). | 27A O.S. Supp. 1998 § 2–2–104 Added by Laws 1994, effective July 1, 1994, 27A O.S. Supp 1998 § 2–7–106 Amended by Laws 1993, effective July 1, 1993, Rules 252:205–3–1 through 252:205–3–7 permanent effective June 11, 1999. |
| 3. Clarification of Standards for Hazardous Waste Land Disposal Restriction Treatment Variances [62 FR 64504–6409], December 5, 1997. (Checklist 162). | 27A O.S. Supp. 1998 § 2–2–104 Added by Laws 1994, effective July 1, 1994, 27A O.S. Supp 1998 § 2–7–106 Amended by Laws 1993, effective July 1, 1993, Rules 252:205–3–1 through 252:205–3–7 permanent effective June 11, 1999. |
| 4. Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators, Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers [62 FR 64636–64671], December 8, 1997. (Checklist 163). | 27A O.S. Supp. 1998 § 2–2–104 Added by Laws 1994, effective July 1, 1994, 27A O.S. Supp 1998 § 2–7–106 Amended by Laws 1993, effective July 1, 1993, Rules 252:205–3–1 through 252:205–3–7 permanent effective June 11, 1999. |
| 5. National Emission Standards for Hazardous Air Pollutants for Source Category: Pulp and Paper Production; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Pulp, Paper, and Paperboard Category [63 FR 18504–18751], April 15, 1998. (Checklist 164). | 27A O.S. Supp. 1998 § 2–2–104 Added by Laws 1994, effective July 1, 1994, 27A O.S. Supp 1998 § 2–7–106 Amended by Laws 1993, effective July 1, 1993, Rules 252:205–3–1 through 252:205–3–7 permanent effective June 11, 1999. |
| 12. Land Disposal Restrictions Phase IV—Exclusion of Recycled Wood Preserving Wastewaters [63 FR 28556], May 26, 1998. (Checklist 167F). | 27A O.S. Supp. 1998 § 2–2–104 Added by Laws 1994, effective July 1, 1994, 27A O.S. Supp 1998 § 2–7–106 Amended by Laws 1993, effective July 1, 1993, Rules 252:205–3–1 through 252:205–3–7 permanent effective June 11, 1999. |
| 13. Hazardous Waste Combustors; Revised Standards; Final Rule—Part 1: RCRA Comparable Fuel Exclusion; Permit Modifications for Hazardous Waste Combustion Units; Notification of Intent to Comply; Waste Minimization and Pollution Prevention Criteria for Compliance Extensions [63 FR 33782–33829], June 19, 1998. (Checklist 168). | 27A O.S. Supp. 1998 § 2–2–104 Added by Laws 1994, effective July 1, 1994, 27A O.S. Supp 1998 2–7–106 Amended by Laws 1993, effective July 1, 1993, Rules 252:205–3–1 through 252:205–3–7 permanent effective June 11, 1999. |

### E. What Decisions Has EPA Made?

We conclude that Oklahoma's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Oklahoma final authorization to operate its hazardous waste program as revised, assuming we receive no adverse comments as discussed above. Upon effective final approval Oklahoma will be responsible for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of Solid Waste Amendments of 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Oklahoma, including issuing permits, until the State is granted authorization to do so.

### F. How Do the Revised State Rules Differ From the Federal Rules?

In this authorization of the State of Oklahoma's program revisions for RCRA Cluster VIII, there are no provisions that are more stringent or broader in scope. Broader in scope requirements are not part of the authorized program and EPA can not enforce them.

**G. Who Handles Permits After This Authorization Takes Effect?**

The EPA will administer any RCRA permits or portions of permits it has issued to facilities in the State until the State becomes authorized. At the time the State program is authorized for new rules, EPA will transfer all permits or portions of permits issued by EPA to the State. The EPA will not issue any more permits or portions of permits for the provisions listed in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which the State is not yet authorized.

**H. Why Wasn't There a Proposed Rule Before Today's Notice?**

The EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial we expect no comments that oppose this action. The EPA is providing an opportunity for public comment now. In addition, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State changes. If EPA receives comments opposing this authorization, that document will serve as a proposal to authorize the changes.

**I. Where Do I Send My Comments and When Are They Due?**

You should send written comments to Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number OK–00–2. We must receive your comments by June 9, 2000. You will not have an opportunity to comment again. If you want to comment on this action, you must do so at this time.

**J. What Happens If EPA Receives Comments Opposing This Action?**

If EPA receives comments opposing this authorization, we will publish a second **Federal Register** document before the immediate final rule takes effect. The second document will withdraw the immediate final rule or identify the issues raised, respond to the comments, and affirm that the immediate final rule will take effect as scheduled.

**K. When Will This Approval Take Effect?**

Unless EPA receives comments opposing this action, this final authorization approval will become effective without further notice on July 10, 2000.

**L. Where Can I Review the State's Application?**

You can review and copy the State of Oklahoma's application from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180–7180 and EPA, Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

**M. How Does Today's Action Affect Indian Country in Oklahoma?**

Oklahoma is not authorized to carry out its Hazardous Waste Program in Indian Country within the State. This authority remains with EPA. Therefore, this action has no effect on Indian Country.

**N. What Is Codification?**

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, Subpart LL for this codification of Oklahoma's program changes until a later date.

**Regulatory Requirements**

*Compliance With Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12866.

*Compliance With Executive Order 13045*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) The OMB determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

*National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involved technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, the EPA must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least

burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that sections 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State of Oklahoma's program, and today's action dos not impose any additional obligations on regulated entities. In fact EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate Treatment, Storage, Disposal, Facilities, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

*Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organization, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate Treatment, Storage, Disposal, Facilities are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA 3006 those existing State requirements.

*Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" defined by 5 U.S.C. 804(2).

*Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

*Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities".

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian governments. The State of Oklahoma is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

*Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications". "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government".

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with

State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one State. This action simply approves Oklahoma's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as result of this action, those newly authorized provisions of the State's program now apply in the State of Oklahoma in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

**List of Subjects in 40 CFR Part 271**

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

**Authority:** This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: March 30, 2000.

**Jerry Clifford,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 00–11560 Filed 5–9–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Parts 1, 11, 73, and 74**

**[MM Docket No. 00–10; FCC 00–115]**

## Establishment of a Class A TV Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document implements the Community Broadcasters Protection Act of 1999, which directs the FCC to establish a Class A television service to provide a measure of primary status to certain low-power television stations. This document addresses a wide range of issues related to the implementation of the statute, including the protected service area of Class A stations, Class A interference protection requirements vis a vis other TV stations, eligibility criteria for Class A status, common ownership restrictions applicable to Class A stations, the treatment of modification applications filed by Class A licensees, and general operating requirements.

**DATES:** Effective July 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kim Matthews, Policy and Rules Division, Mass Media Bureau, (202) 418–2130, or Keith Larson, Office of the Bureau Chief, Mass Media Bureau, (202) 418–2600.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order (*"R&O"*), FCC 00–115, adopted March 28, 2000; released April 4, 2000. The full text of the Commission's *R&O* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. SW., Washington, DC. The complete text of this *R&O* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., NW., Washington, DC 20036.

### Synopsis of Report and Order

### I. Introduction

1. In this *R&O*, we establish a Class A television service to implement the Community Broadcasters Protection Act of 1999 (CBPA), which was signed into law November 29, 1999. Pursuant to the CBPA and our implementing rules, certain qualifying low-power television (LPTV) stations will be accorded Class A status. Class A licensees will have "primary" status as television broadcasters, thereby gaining a measure of protection from full-service television stations, even as those stations convert to digital format. The LPTV stations eligible for Class A status under the CBPA and our rules provide locally-originated programming, often to rural and certain urban communities that have either no or little access to such programming. LPTV stations are owned by a wide variety of licensees, including minorities and women, and often provide "niche" programming to residents of specific ethnic, racial, and interest communities. The actions we take today will facilitate the acquisition of capital needed by these stations to allow them to continue to provide free, over-the-air programming, including locally-originated programming, to their communities. In addition, by improving the commercial viability of LPTV stations that provide valuable programming, our action today is consistent with our fundamental goals of ensuring diversity and localism in television broadcasting.

### II. Background

2. From its creation by the Commission in 1982, the low power television service has been a "secondary spectrum priority" service whose members "may not cause objectionable interference to existing full-service stations, and . . . must yield to facilities increases of existing full-service stations or to new full-service stations where interference occurs. Currently, there are approximately 2,200 licensed LPTV stations in approximately 1,000 communities operating in all 50 states. These stations serve both rural and urban audiences. Because they operate at reduced power levels, LPTV stations serve a much smaller geographic region than full-service stations and can fit into areas where a higher power station cannot be accommodated in the Table of Allotments. In many cases, LPTV stations may be the only television station in an area providing local news, weather, and public affairs programming. Even in some well-served markets, LPTV stations may provide the only local service to residents of discrete geographical communities within those markets. Many LPTV stations air "niche" programming, often locally produced, to residents of specific ethnic, racial, and interest communities within the larger area, including programming in foreign languages.

3. In the CBPA, Congress found that the future of low-power television is uncertain. Because LPTV stations have secondary spectrum status, they can be displaced by full-service TV stations that seek to expand their own service area, or by new full-service stations seeking to enter the same market. The statute finds that this regulatory status affects the ability of LPTV stations to

raise necessary capital. In addition, Congress recognized that the conversion to digital television further complicates the uncertain future of LPTV stations. To facilitate the transition from analog to digital television, the Commission has provided a second channel for each full-service television licensee in the country that will be used for digital broadcasting during the period of conversion to an all-digital broadcast service. In assigning DTV channels, the Commission maintained the secondary status of LPTV stations and TV translators and, in order to provide all full-service stations with a second channel, was compelled to establish DTV allotments that will displace a number of LPTV stations. Although the Commission has taken a number of steps to mitigate the impact of the DTV transition on stations in the LPTV service, that transition nonetheless will have significant adverse effects on many stations, particularly LPTV stations operating in urban areas where there are few, if any, available replacement channels.

4. Congress sought in the CBPA to address some of these issues by providing certain low power television stations "primary" spectrum use status. The CBPA requires the Commission, within 120 days after the date of enactment, to prescribe regulations establishing a Class A television license available to qualifying LPTV stations. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees, and that Class A licensees be accorded primary status as television broadcasters as long as they continue to meet the requirements set forth in the statute for a qualifying low-power station. In addition, among other matters, the CBPA sets out certain certification and application procedures for low-power television licensees seeking Class A designation, prescribes the criteria low-power stations must meet to be eligible for a Class A license, and outlines the interference protection Class A applicants must provide to analog (or NTSC), digital (DTV), LPTV, and TV translator stations.

5. Congress also recognized, however, that, because, of the emerging DTV service, not all LPTV stations could be guaranteed a certain future. Congress recognized the importance and engineering complexity of the FCC's plan to convert full-service stations to digital format, and protected the ability of these stations to provide both digital and analog service during the transition.

## III. Discussion

### *A. Certification and Application for License*

#### 1. Statutory Timeframes

6. Section (f)(1)(A) of the CBPA requires the Commission, within 120 days after the date of enactment (November 29, 1999), to prescribe regulations establishing a Class A television service. The CBPA establishes a two-part certification and application procedure for LPTV stations seeking Class A status. First, the CBPA directed the Commission to send a notice to all LPTV licensees describing the requirements for Class A designation. Within 60 days of the date of enactment, licensees intending to seek Class A designation were required to submit to the Commission a certification of eligibility based on the applicable qualification requirements.

7. The CBPA provides that, absent a material deficiency in a licensee's certification of eligibility, the Commission shall grant the certification of eligibility to apply for Class A status. The CBPA further provides that licensees "may" submit an application for Class A designation "within 30 days after final regulations are adopted" implementing the CBPA. We will construe the phrase "final regulations" in this context to mean the effective date of the Class A rules adopted herein. Thus, Class A applications may be filed beginning on the effective date of the rules. Within 30 days after receipt of an application that is acceptable for filing, the Commission must act on the application.

#### 2. Ongoing Eligibility

8. *Decision.* We believe that the basic purpose of the CBPA was to afford existing LPTV stations a window of opportunity to convert to Class A stations. Therefore, we will not accept applications from LPTV stations that did not meet the statutory criteria and that did not file a certification of eligibility by the statutory deadline, absent compelling circumstances. To be eligible for a Class A license, an LPTV station must go through several steps. First, it must have filed a certification of eligibility within 60 days of the enactment of the CBPA. Second, the certification of eligibility must be approved by the Commission. Third, it must file an application for a Class A license, as we determine below, within 6 months from the effective date of the Class A rules. And fourth, that license must be granted. The first stage of this process has already ended; those potential applicants who seek Class A status must have already filed their certifications of eligibility.

9. The statute states that applicants "may" apply for licenses within 30 days after the adoption of final implementing rules, but gives no ultimate deadline. In order to allow sufficient time to potential applicants to prepare their applications, we will allow licensees that have filed timely certifications of eligibility to file Class A applications up to 6 months after the effective date of the rules we adopt today. We believe that establishing a 6 month period in which applications may be filed is consistent with the CBPA. The statute states that applicants "may" file license applications within 30 days from the adoption of final implementing rules. In contrast, the statute states that licensees intending to seek Class A designation "shall" file a certification of eligibility within 60 days after enactment. We believe that the use of the word "may" in relation to applications indicates that the 30 day filing period is permissive only. Thus, applicants are not required to file within 30 days following the adoption of final rules, and we have authority to provide for a longer filing period.

10. We find that the 6 month deadline for filing a Class A application is a reasonable time frame that will afford all LPTV applicants, including those who must file displacement applications, adequate time to prepare and file their Class A applications consistent with the rules we adopt today. Where potential applicants face circumstances beyond their control that prevent them from filing within 6 months, we will examine those instances on a case-by-case basis to determine their eligibility for filing. We will not, however, accept license applications from LPTV licensees who did not timely file certifications of eligibility because we do not believe that Congress intended to create an open-ended class of potential Class A stations.

### *B. Qualifying Low-Power Television Stations*

#### 1. Statutory Eligibility Criteria

11. Section (f)(2)(A) of the CBPA provides than an LPTV station may qualify for Class A status if, during the 90 days preceding the date of enactment of the statute: (1) The station broadcast a minimum of 18 hours per day; (2) the station broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, or the market area served by a group of commonly controlled low-power stations that carry common local

programming produced within the market area served by such group; and (3) the station was in compliance with the Commission's requirements for LPTV stations. In addition, from and after the date of its application for a Class A license, the station must be in compliance with the Commission's operating rules for full-power television stations. Alternatively, section (f)(2)(B) of the CBPA provides that a station may qualify for Class A status if "the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission."

2. Locally-Produced Programming

12. *Decision.* We will expand our definition of "market area" to encompass the area within the predicted Grade B contour determined by the Class A station's antenna height and power, which encloses a larger area than that of an LPTV station's protected service contour. With respect to a group of commonly controlled stations, the market area will be the area within the predicted Grade B contours of any of the stations in the commonly owned group.

13. Some commenters are concerned about the possible conflicts between the locally produced programming requirement and the existing main studio rule, arguing that we should either consider waivers of the main studio rule or not adopt so restrictive a definition of market area as to conflict with the rule. As discussed in this *R&O,* we have decided to require Class A stations to maintain a main studio located within their predicted Grade B contours. We have also decided to grandfather all main studio locations now in existence and operated by LPTV stations. To avoid any conflicts between the local market definition and our main studio rule, we will consider programming produced at the main studio of such grandfathered Class A stations to be locally produced programming even though the main studio is located outside the stations' Grade B contours.

3. Operating Requirements

14. *Decision.* We will adopt our proposal to apply to Class A applicants and licensees all part 73 regulations except for those that cannot apply for technical or other reasons. We believe that this course of action is most consistent with the language of the statute, which provides that from and after the date of an application for a Class A license, LPTV stations must comply with the operating rules for full-power television stations to be eligible for Class A status. Most commenters that addressed this issue agree that Class A stations should be required to comply with most part 73 obligations except for those that are clearly inappropriate or inapplicable.

15. The part 73 requirements that we will apply to Class A applicants and licensees are set forth below. Among other part 73 obligations, we will require that Class A applicants and licensees comply with the following: our rules governing informational and educational children's programming and the limits on commercialization during children's programming; the requirement to identify a children's programming liaison at the station and to provide information regarding the "core" educational and informational programming aired by the station to publishers of television program guides; the requirement to place in their file the quarterly forms 398; the political programming rules; the public inspection file rule, including the requirement to prepare and place in the public inspection file on a quarterly basis an issues/programs list; and station identification requirements. We will require Class A stations to comply with the Emergency Alert System (EAS) rules applicable to full-service television stations; for example, they will be required to have and operate a digital EAS encoder and perform the weekly and monthly EAS tests required of full-service stations. As provided in section (f)(1)(A)(ii) of the CBPA, Class A licensees must also continue to meet the requirements for a qualifying low-power station in order to continue to be accorded Class A status.

16. We will require Class A applicants and licensees to maintain a main studio. As Class A stations will be low-power and thus serve a smaller area than most full-service stations, we do not believe it is appropriate to permit Class A stations to locate their main studio within the principal community contour of any station serving that market, or 25 miles from the center of its community of license, as we permit for full-service stations. Instead, we will require Class A stations to locate their main studios within the station's Grade B contour, as determined pursuant to the Commission's rules. This will ensure that newly created main studios are more accessible to the population that receives the station's programming. We will grandfather all main studios now in existence and operated by LPTV stations. We do not believe it is necessary to require these stations to change the location of their existing studio, or build a new studio, to comply with our Class A rules. We will grandfather those main studios for purposes of our Class A main studio rule adopted in this *R&O.*

17. For purposes of our Class A rules, we will also modify a number of other requirements applicable to full-service television broadcast stations, including: (1) Minimum hours of operation of 18 hours per day, as required by the statute; (2) grandfather the use of LPTV broadcast transmitters; and (3) permit Class A stations to operate without a carrier frequency offset. We will permit qualified Class A station licensees to continue to operate their existing LPTV transmitters, provided these transmitters do not cause interference due to excessive emissions on frequencies outside of the station's assigned channel. We will require Class A stations seeking facilities increases under the more inclusive definition of "minor" changes we are adopting for these stations to specify operation on an offset frequency and to operate with a transmitter meeting the required frequency tolerance for offset operation.

18. We will not apply to Class A facilities the following provisions of part 73: (1) The NTSC and DTV Tables of Allotments (§§ 73.606 and 73.607); (2) mileage separations (§ 73.610); and (3) minimum power and antenna height requirements (§ 73.614). As qualifying LPTV stations are not governed by mileage separations, do not have allotted technical parameters, and will not have a community coverage requirement, these provisions of part 73 will not apply to Class A. LPTV stations are not subject to minimum power and antenna height requirements under part 74, and we will not impose any such requirements on Class A stations.

19. We will also exempt Class A facilities from the principal city coverage requirement of § 73.685(a) of the rules. At this time, we believe that it is unnecessary to require Class A stations to provide a requisite level of coverage over their community. Although LPTV stations are associated with a specific community on their license application, they are not subject to any requirement to provide a specified level of coverage to that community. As we indicated in the Notice of Proposed Rule Making ("*NPRM*"), (65 FR 3188, January 20, 2000), those Class A stations that are intended to serve an entire community that is otherwise unserved or underserved have ample incentive to provide service to the residents of the whole of that community without a mandatory requirement to do so. Other stations may intend to serve only a

narrow segment of their community. In view of the lower power levels at which LPTV stations now operate and at which Class A facilities will continue to operate, and the fact that in many cases these stations provide programming to areas where a higher power station could not be accommodated in the Table of Allotments, we do not believe a minimum coverage requirement is appropriate. If the circumstances regarding operation of Class A stations change in the future, including, for example, the permitted power levels of such facilities, we reserve the right to revisit the issue of minimum coverage requirements at that time.

20. As we proposed in the *NPRM*, we will also maintain for now the current LPTV maximum power levels for Class A stations. We believe that these power levels are sufficient to preserve existing service, which is consistent with Congress' objective underlying the CBPA. We believe that further power increases at this time could hinder the implementation of digital television, as well as limit the number of Class A stations that could be authorized. Moreover, we recently increased power levels for LPTV stations in our DTV *Sixth R&O* (62 FR 26684, May 14, 1997) and have not yet opened a filing window to permit stations to modify their facilities to take advantage of this power increase.

21. Several commenters propose that we require Class A licensees to certify annually their continued compliance with the Class A eligibility criteria and with applicable part 73 requirements. As we noted above, in addition to requiring Class A applicants and licensees to comply with the operating requirements for full-power television stations, the CBPA also requires that Class A licensees continue to meet the eligibility criteria established for a qualifying low-power station in order to retain Class A status. We will not adopt an annual certification or reporting requirement for Class A stations. We do not have such a general requirement for other television broadcast stations, and see no need to treat Class A stations differently. However, like other part 73 licensees, we will require Class A licensees to certify compliance with applicable FCC rules at time of renewal. In addition, as in the case of other part 73 licensees, Class A renewal applications will be subject to petitions to deny. Finally, we will require licensees seeking to assign or transfer a Class A license to certify on the application for transfer or assignment of license that the station has been operated in compliance with the rules applicable to Class A stations. We will also require Class A assignees and transferees to certify on their portion of the transfer or assignment application that they will operate the station in accordance with these rules.

22. We will place our rules governing the new Class A television service under part 73. As Class A stations must comply with the operating rules for full-service stations, which are found in part 73, it appears most logical to group the rules for Class A service with the full-service broadcast rules. LPTV stations that are not eligible for or choose not to apply for Class A status will continue to be governed by part 74 of our rules.

4. Alternative Eligibility Criteria

23. *Decision.* Congress mandated three Class A eligibility qualifications in the CBPA. For the 90 days prior to enactment of the CBPA, an applicant must have: (1) Broadcast a minimum of 18 hours per day, (2) broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, and (3) been in compliance with Commission requirements of LPTV stations. We will allow deviation from the strict statutory eligibility criteria only where such deviations are insignificant or when we determine that there are compelling circumstances, and that in light of those compelling circumstances, equity mandates such a deviation Examples of such compelling circumstances include a natural disaster or interference conflict which forced the station off the air during the 90 day period before enactment of the CBPA.

24. We will not establish a different set of criteria for foreign language stations that do not meet the local programming criteria. We recognize the valuable service provided by foreign language stations, but conclude that Congress' intent was to preserve the service of a small class of existing LPTV stations that were providing local programming. We appreciate the comments submitted by groups with foreign language programming that encourage us to allow such programming to meet the statutory requirement. We conclude, however, that foreign language stations should have the same eligibility requirements as any other potential Class A station.

25. We will not adopt separate eligibility criteria for translator stations under the CBPA, as requested by the National Translator Association (NTA). The statute limits eligibility to LPTV stations that produce local programming and can meet the operating rules applicable to full-service stations. We recognize, however, the extremely valuable service that translators provide, often representing the only source of free, over-the-air broadcasting in rural areas. Indeed, we expressly asked about according translators Class A status in the September 22 *NPRM*. While that proceeding has been terminated, we still believe that this is an issue that should be examined. Thus, we will institute a new proceeding seeking comment on whether translators should be permitted to qualify for some form of primary status, and what the eligibility requirements for such protection should be.

*C. Class A Interference Protection Rights and Responsibilities*

1. Class A Protected Service Area

26. *Decision.* We will adopt the proposal in the *NPRM* with respect to analog stations and define the following protected signal contour values for these stations: 62 dBu for channels 2–6, 68 dBu for channels 7–13, and 74 dBu for channels 14 and above, as calculated using the Commission's F(50,50) signal propagation curves. CBA and several LPTV station operators urge an expanded Class A protected contour, such as the TV Grade B contour. We recognize, as these commenters point out, that LPTV stations can be viewed in the areas between their protected contour and the Grade B contour of their facilities, just as the signals of NTSC stations are often viewed beyond their Grade B contours. In enacting the CBPA, Congress equated the service areas to be preserved with the LPTV signal contours, which have always been defined by the above field strength values. We agree with Fox that expanding contour protection for Class A stations would be inconsistent with the intent of the CBPA to preserve existing service. Also, as noted by the Association of Federal Communications Consulting Engineers (AFCCE), this would be likely to create new situations of prohibited contour overlap between LPTV stations where none currently exist. More than 2,000 LPTV stations have been engineered to fit into the broadcast landscape on the basis of protection to the LPTV service contours. The LPTV service is now mature, and service expectations are well established. We do not want to upset the balance that has been achieved between service and interference considerations. For these reasons, we will apply the LPTV service contour definitions to Class A stations as the basis for interference protection.

27. The above considerations are also relevant to our choice of protected signal contours for digital Class A stations. Some commenters favor use of

the DTV noise-limited signal contours for this purpose, which are comparable to NTSC Grade B contours. Use of these values would, in effect, expand protection for digital Class A stations, compared to that for analog Class A stations, whose protected contours are comparable to NTSC Grade A contours. Using these values would also create situations where Class A digital service contours would overlap with the interference-limited contours of analog LPTV and Class A stations. This "built-in" interference would occur to a lesser extent if the Class A digital protected contours were geographically smaller. Also, digital conversion opportunities for Class A and other services would be precluded to a lesser extent through the use of digital contour values more comparable to the Class A analog values. We will adopt the protected contour values suggested by the AFCCE, du Treil, Lundin & Rackley (du Treil), and the Society of Broadcast Engineers (SBE): 43 dBu for channels 2–6, 48 dBu for channels 7–13 and 51 dBu for channels 14–51. These values reflect the differences between analog LPTV protected contours and NTSC Grade B contours. For example, the analog LPTV and Grade B values for UHF stations are 74 dBu and 64 dBu, respectively—a 10 dB difference. This difference (or scaling factor) is added to the 41 dBu DTV noise-limited field strength value to obtain a protected contour of 51 dBu for UHF digital Class A stations. In a future proceeding, we will consider rules for permitting on-channel digital conversion for TV translator and non-Class A LPTV stations. We may wish to revisit the issue of Class A digital protected contour values at that time.

2. Time Protection Begins

28. *Decision.* We will adopt our proposal to commence preservation of the service area of LPTV stations from the date of receipt of an acceptable certification of eligibility filed pursuant to section (f)(1)(B) of the CBPA. As we stated in the *NPRM*, this timing appears most consistent with the CBPA's dual certification and application scheme for Class A status, despite the reference in the statute to the pendency of an application, as opposed to a certification, to trigger contour protection. Senator Conrad Burns, a sponsor of the CBPA in the Senate, introduced a statement on the Senate floor clarifying the issue of when an LPTV station's contour should be preserved. He stated in part: "It is clearly our intent that as soon as the Commission is in receipt of an acceptable certification notice, it should protect the contours of this station until final resolution of that application."

29. We disagree with MSTV/NAB that protection should begin from the time a Class A application is filed, rather than the date of filing of a certification of eligibility. This reading of the statute would render the separate certification of eligibility requirement meaningless. MSTV/NAB argue that protecting the more than 1700 eligibility certifications filed by the January 28, 2000 deadline would "paralyze" the Commission. However, more than a third of these certifications, on their face, do not comply with the eligibility criteria established in the CBPA and our rules adopted herein. Included in this group are certifications submitted by translator station licensees and permittees of unbuilt LPTV stations. Such licensees and permittees do not meet the eligibility standards of the CBPA and our rules. Accordingly, their certifications are not acceptable and will be dismissed. Similarly deficient are those certifications filed after the January 28, 2000 deadline and those certifications submitted by LPTV licensees whose stations aired no locally produced programming during the entire 90-day period preceding enactment of the CBPA. They too will be dismissed.

30. As discussed above, the CBPA permits the Commission to establish alternative criteria for Class A eligibility if it determines that the public interest, convenience and necessity would be served thereby, or for other reasons. Thus, there may be instances in which a certification of eligibility is filed but the corresponding Class A application may not be granted because the alternative eligibility showing cannot be approved. We also note that a Class A application could be denied if a certification of eligibility were later determined to be incorrect. In situations where the Commission determines that a Class A certification of eligibility or Class A application may not be granted, protection of the service contour of that facility will cease from the date the Commission determination is made.

3. Protection of Pending NTSC TV Applications and Facilities

31. *Decision.* Upon further reflection, and after careful consideration of the comments, we have reconsidered our proposal regarding interpretation of the interference protection that must be accorded by Class A to pending NTSC applications. Instead, we will adopt the proposal similar to that advanced by CBA in its comments to require Class A stations to protect both existing analog stations and full-service applicants that have completed all processing short of grant necessary to provide a reasonably ascertainable Grade B contour. We believe this proposal is both equitable and consistent with the CBPA. Specifically, we will require Class A applicants to protect the predicted Grade B contour (as of November 29, 1999, or as proposed in a change application filed on or before that date) of full-power analog stations licensed on or before November 29, 1999. We will also require Class A applicants to protect the Grade B contour of full-power analog facilities for which a construction permit was authorized on or before November 29, 1999. Finally, we will require Class A applicants to protect the facilities proposed in any application for full-power analog facilities that was pending on November 29, 1999, that had completed all processing short of grant as of that date, and for which the identity of the successful applicant is known. The applications in this latter category are post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut off from further filings. We will not require Class A applicants for initial Class A authorization to protect pending rule making petitions for new or modified NTSC channel allotments or full-service applications that were not accepted for filing by November 29, including most pending television freeze waiver applications.

32. We believe that protecting these categories of pending NTSC applications is consistent with both the language of the CBPA and the underlying intent of Congress. Section (f)(7)(A)(i) requires Class A applicants to show that they "will not cause" interference within "the predicted Grade B contour (as of the date of the enactment of [CBPA] * * * ) of any television station[s] transmitting in analog format." It is not immediately clear from the statutory language whether the station entitled to interference protection must have been "transmitting in analog format" as of the date of enactment of the CBPA in 1999, or as of the date it would experience the interference. We believe that a sound interpretation of the statutory language, in light of the considerations that follow, is that it refers to the nature of the service entitled to protection (*i.e.*, analog) rather than to its operational status on the date of enactment of the CBPA. Therefore, the analog station could be licensed, one for which an application is currently pending, or one for which a construction permit has been granted but which is not yet built.

The statute does require that analog stations entitled to protection must have had a "predicted Grade B contour (as of the date of the enactment of the [CBPA], or November 1, 1999, whichever is later, or as proposed in a change application filed on or before such date)." A station does not have to be operating, however, to have a "predicted grade B contour" as described in section (f)(7)(A)(i). A station proposed in a pending application or an unbuilt station with an outstanding construction permit may also have a predicted Grade B contour. Indeed, the clause referring to the predicted Grade B contour specifically includes predicted Grade B contours proposed in change applications filed before the specified date. Thus, this section explicitly contemplates that interference protection by Class A stations may extend to at least some analog stations that are not yet operating, but nonetheless had predicted Grade B contours as of the date specified in the statute. It would make no sense to protect pending change applications and licensed stations but not outstanding construction permits, which are closer to operational status. We believe that Congress included the reference to change applications to make it clear that those are entitled to protection, rather than to suggest that other applications or construction permits are not similarly protected.

33. Under this reading of the statute, section (f)(7)(A)(i) requires Class A applicants and licensees to protect "the predicted Grade B contour (as of * * * [November 29, 1999], or as proposed in a change application filed on or before such date)" of analog facilities. Thus, Class A stations must protect the predicted Grade B contour of analog stations licensed or granted a construction permit as of November 29, 1999, as well as of facilities proposed in certain pending analog applications. We note that the phrase "predicted Grade B contour" is singular. We believe that the best interpretation of this phrase, as modified by the parenthetical in section (f)(7)(A)(i), is that it limits the facilities proposed in applications pending as of November 29, 1999 that must be protected by Class A stations to those for which there is a single, reasonably ascertainable predicted Grade B contour as of that date. These applications consist of post-auction applications, applications proposed for grant in pending settlements, and any singleton applications cut off from further filing. The applications in each of these categories have progressed through the cut off stage and the identity of the successful applicant in each case has been determined. Class A applicants thus can identify a single predicted Grade B contour with respect to these applications for which protection must be afforded and are not required to show that they will not interfere with multiple, hypothetical contours that may not turn out to be actual contours, if the applicant in question does not ultimately receive the station license.

34. Moreover, we believe that this interpretation of the statute best reflects the intent of Congress as expressed in the overall statutory scheme. Under the interpretation we proposed in the *NPRM*, Class A applicants and licensees would not have been required to protect post-auction applications for which a construction permit had not been issued as of the date of enactment of the CBPA. There is no language in the statute or the legislative history that suggests that Congress intended a result so dramatically inconsistent with its grant of auction authority to the Commission in the Balanced Budget Act of 1997. As the Supreme Court recently noted, it is a "fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." The Court further stated that "the meaning of one statute may be affected by other Acts . . ." We agree with CBA that, in securing the future of qualified LPTV stations, Congress did not intend to disrupt the rights and long-settled expectations of applicants for pending NTSC facilities that have prosecuted their applications past the cut off stage and to the point that a final successful applicant has been identified. Instead, Congress intended to place Class A licensees on roughly even footing with full-service licensees, while protecting the DTV transition. These pending cut-off NTSC applications are protected against new full-service analog applicants, and therefore should be protected by Class A applicants.

35. We believe making these distinctions is consistent with Congress' intent because requiring Class A applicants to protect applications that have progressed through the cut-off stage strikes an appropriate balance between the rights of pending applicants versus the interests of LPTV stations seeking primary status. Applicants that have prosecuted their applications through the cut off stage and to the point that the identity of the successful applicant is known have in most cases invested substantial resources in filing and prosecuting their applications. Most of these applications have been pending for some time, and LPTV stations affected by the facilities proposed in these applications have long been on notice that they would ultimately be displaced or be required to reduce their facilities. Requiring Class A applicants to protect applications that had progressed through this stage by November 29, 1999 is both equitable and a reasonable reading of the CBPA.

4. New DTV Service

36. *Decision.* Upon further reflection, we have decided we should treat new DTV station applications in the same manner as we are treating new NTSC station applications. That is, we would require Class A applicants to protect pending applications for a new DTV station that were on file November 29, 1999 and that had completed all processing short of grant as of that date. However, there are no new DTV station applications that were pending November 29, 1999 or that are currently pending. Before such an application will be accepted, a rule making proceeding must be completed to allot a new DTV channel to a community. At this time, we have not completed any such rule making proceeding. In a new DTV allotment rule making, we will require protection of Class A stations. We will not require Class A applicants to protect pending allotment proposals from new DTV entrants, that is, petitioners who do not already have a DTV authorization.

5. DTV Maximization

*a. Definition of Maximization—*

37. *Decision.* We believe that the best interpretation of the term "maximization," as used in the statute, refers both to power and antenna height increases above the values allotted in the DTV Table, and to site changes that extend the service area of DTV facilities beyond the NTSC replication facilities. A broad interpretation of the term maximization is consistent with the CBPA's emphasis on protecting the digital transition. Permitting changes to technical parameters and sites gives broadcasters wider flexibility to maximize coverage and maximize service to the public. In addition, by construing the term maximization to include site changes sought by full-service DTV stations, we allow such stations greater flexibility to seek engineering solutions that provide for efficient spectrum use. In this regard, we have historically encouraged applicants to employ coordination and interference agreements, including co-location of facilities, as a means of resolving interference conflicts. Site changes are often integral to such agreements.

38. We indicated in the *NPRM* that the statutory language is ambiguous regarding the protection to be accorded by Class A applicants to DTV stations seeking to replicate or maximize power. Section (f)(1)(D), entitled "Resolution of Technical Problems," directs the Commission to preserve the service areas of LPTV licensees pending final resolution of a Class A application. That section further provides that if, after certification of eligibility for a Class A license, "technical problems arise requiring an engineering solution to a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments, the Commission shall make such modifications as necessary (1) to ensure replication of the full-power digital television applicant's service area * * *; and (2) to permit maximization of a full-power digital television applicant's service area * * * " (if the applicant has complied with the notification and application requirements established by that section). Although section (f)(1)(D) appears to tie replication and maximization to resolution of technical problems, section (f)(7) appears to require all applicants for a Class A license or modification of license to demonstrate protection to stations seeking to replicate or maximize power, as long as the station seeking to maximize has complied with the notification and application requirements of section (f)(1)(D), without reference to any need to resolve technical problems on the part of the DTV station. Despite the reference in section (f)(1)(D) to technical problems, we continue to believe it is more consistent with the statutory schemes both for Class A LPTV service and for digital full-service broadcasting to require Class A applicants to protect all stations seeking to replicate or maximize DTV power, as provided in section (f)(7)(ii), regardless of the existence of "technical problems." The large majority of commenters that addressed this issue concur with this view. Stations seeking to maximize must comply with the notification requirements in section (f)(1)(D). This interpretation seems most consistent with the intent of Congress to protect the ability of DTV stations to replicate and maximize service areas.

*b. Preserving the Right to Maximize*—39. *Decision.* As a preliminary matter, we believe that all DTV licensees are entitled, at a minimum, to replicate the service area of their analog station. As we stated in the *Sixth R&O* in the DTV proceeding, we believe that service replication is important to ensure that digital broadcasters can continue to reach the audiences to which they provide analog service and that viewers continue to have access to the stations they can receive over-the-air. In enacting the CBPA, Congress made clear that Class A service would not interfere with this service replication principle. As Congress stated, "recognizing the importance of, and the engineering complexity in, the FCC's plan to convert full-service television stations to digital format, [the CBPA] protects the ability of these stations to provide both digital and analog service *throughout their existing service areas.*"

40. The CBPA also recognizes and preserves the right of full-service television broadcasters to maximize their digital television service area, but balances this right against the provision of stability to Class A applicants and licensees. Sections (f)(1)(D) and (f)(7)(A) of the CBPA require Class A applicants to protect stations seeking to maximize power, if such stations have filed an application for maximization or a notice of intent to seek maximization by December 31, 1999, and filed a bona fide application for maximization by May 1, 2000.

41. There are 17 full-service television stations that have been allotted both NTSC and DTV channels that lie outside the DTV core spectrum. The Commission has stated that stations with both NTSC and DTV channels outside the core spectrum will be assigned new channels within the core from spectrum recovered after the transition. As a number of commenters in this proceeding point out, the deadlines established in the CBPA for filing an application for maximization create a dilemma for these stations. These stations are required to file a maximization application to preserve their rights; however, they either cannot or do not want to maximize facilities on an out-of-core channel. Several commenters argue that these stations should not be required to file a maximization plan based on their temporary out-of-core DTV assignment, as maximization is expensive and these stations will not be operating on those channels after the transition. Moreover, these commenters argue that requiring maximization on an out-of-core channel does not provide certainty to Class A stations because the required interference protection will ultimately involve a different in-core channel.

42. The problem of preserving the rights of full-service stations in this situation, and balancing those rights against the provision of certainty to Class A stations, is extremely complex. After careful consideration, we will adopt the following compromise. To preserve their ability to maximize once assigned a channel within the core, we will require stations with both NTSC and DTV channels outside the core to nonetheless maximize their DTV service area on their temporary out-of-core DTV channel. These stations must have filed a notice of intent to maximize and must file an application to maximize within the deadlines mandated by the CBPA. Once these stations are assigned a permanent in-core DTV channel, we will allow these stations to carry over to their in-core channel the maximized digital service area achieved on the out-of-core channel, to the extent that the in-core channel facilities for maintaining the maximized service area provide required interference protection to other DTV stations. Section (f)(1)(D) of the statute gives us broad authority to resolve problems arising with respect to replication and maximization, including problems involving the assignment of channels such as those faced by stations with out-of-core channel assignments. Thus, stations seeking to carry over their maximized service areas to their newly assigned in-core DTV channels will have priority over conflicting Class A facilities.

43. We believe this approach strikes a reasonable balance between the rights of full-service stations and Class A facilities. While we recognize that there may be inefficiencies involved in requiring maximization on an out-of-core channel to preserve the right to maximize later on an in-core channel, allowing all full-service stations outside the core to "reserve" the right to maximize on unidentified channels within the core reduces substantially the certainty that can be accorded to Class A facilities. As we recognized in our DTV biennial review, core spectrum is becoming increasingly crowded and it will become increasingly difficult to locate channels for all parties seeking DTV spectrum in the core after the transition. In view of the difficulty in establishing priorities among the numerous parties seeking in-core spectrum, we believe it is reasonable to require stations with both NTSC and DTV assignments outside the core to first maximize DTV service on an out-of-core channel in order to retain the right to replicate that maximized service area on an in-core channel.

44. We will apply a similar requirement to stations with an analog channel within the core and a DTV channel outside the core, as well as to those stations with both channels inside the core that intend to convert their DTV operations to their analog channel

at the end of the transition. These stations will also be required to maximize on their DTV channel in order to preserve their right to carry over that maximized service area to their analog in-core channel. We also believe that the CBPA requires that these stations must have filed a notice of intent to maximize and must file an application to maximize within the deadlines established in the statute. In addition, the maximized facilities they ultimately propose for DTV operation on their analog channel must provide required interference protection to other DTV stations. The election of a post-transition DTV channel by stations with both the analog and DTV allotments within the core is an issue discussed in our DTV biennial review.

*c. Allotment Adjustments.*—

45. *Decision.* As we indicated in the *NPRM*, we recognize that it may be necessary to permit DTV stations to change channels and make adjustments to station facilities in order to correct unforeseen technical problems. For example, it was necessary in some cases to make DTV Table allotments on adjacent channels at noncollocated antenna sites in the same markets, which raised concerns among broadcasters over possible adjacent channel interference. In addition to changing some of those allotments, we stated that we would address these concerns by tightening the DTV emission mask and by "allowing flexibility in our licensing process and for modification of individual allotments to encourage adjacent channel co-locations * * *" We also provided broadcasters with flexibility to deal with allotment problems, for example, by permitting allotment exchanges among licensees in the same or adjacent markets.

46. Section (f)(1)(D) of the CBPA gives full-service stations the flexibility to make these kinds of necessary adjustments to DTV allotment parameters, including channel changes, even after certification of an LPTV station's eligibility for Class A status. That section provides for an exception to protection of Class A facilities to resolve "technical problems" associated with DTV replication and maximization, and provides for such modifications when necessary to "a full-power station's allotted parameters or channel assignment in the digital television Table of Allotments." This language indicates that maximization encompasses channel changes as well as site changes and changes to technical parameters. Thus, stations that have filed an application for maximization or a notice of intent to maximize by December 31, 1999 and an application for maximization by May 1, 2000 have flexibility to make adjustments to the facilities proposed in these maximization applications where necessary to resolve technical problems that prevent implementation of the facilities proposed in these applications.

47. We will not require full-service stations requesting an adjustment to the DTV Table that will cause interference to the protected service contour of a Class A station to demonstrate that the adjustment can *only* be made in this fashion. We have outlined above the replication and maximization rights of full-service DTV licensees vis-a-vis Class A facilities, and do not believe that imposing additional obligations on DTV licensees to justify a modification request is warranted. However, we note that in the interest of ensuring efficient spectrum utilization we may question modification requests that unnecessarily impinge on Class A service. In addition, while we will not give Class A stations affected by allotment adjustments made to accommodate DTV stations the automatic right to exchange channels with the DTV station, we will consider such allotment exchanges on a case-by-case basis where both parties consent and where the parties meet all applicable interference requirements on the new channel. Where we determine such swaps meet interference and other criteria, we will not consider competing applications for these channels.

*D. Methods of Interference Protection to Class A Facilities*

48. *Decision.* We will adopt the protection methods proposed in the *NPRM*. We first present the standard methods for protecting Class A service and then discuss alternative methods that may be used on a waiver basis.

1. Analog Full-Service TV Protection to Analog Class A

49. We will require full-service analog TV stations to protect Class A stations by using the criteria in § 74.705, a position supported by the CBA, MSTV/NAB and other commenters. We agree with CBA that protection requirements generally based on distance separations would be impractical and spectrally inefficient because LPTV stations have been authorized at different antenna heights and powers on the basis of a contour protection methodology. Table 1 below gives the D/U ratios that must be met or exceeded at the Class A protected signal contours.

TABLE 1

| Service band | Protected Class A contour (dBu) | Co-channel D/U ratio (dB) | 1st upper adjacent channel D/U ratio (dB) | 1st lower adjacent channel D/U ratio (dB) | 14th upper adjacent channel D/U ratio (dB) | 15th upper adjacent channel D/U ratio (dB) |
|---|---|---|---|---|---|---|
| Low VHF (channel 2–6) | 62 | +28/45 | −12 | −6 | n/a | n/a |
| High VHF (channels 7–13) | 68 | +28/45 | −12 | −6 | n/a | n/a |
| UHF (channels 14–69) | 74 | +28/45 | −15 | −15 | −23 | −6 |

The Class A protected signal contours are to be determined by using the Commission F(50,50) signal propagation model. Potentially interfering signal levels at the protected contour are to be determined by using the F(50,10) propagation model for co-channel signals and the F(50,50) model for the 1st, 14th and 15th adjacent channel signals. Interference predictions will be based on the facilities proposed in the NTSC application. Parties with pending petitions for new NTSC channel allotments or those requesting modified channel allotments must identify reference facilities (site coordinates and elevation above mean sea level (msl), effective radiated power, antenna radiation center height above msl, and, if desired, antenna radiation pattern and orientation) for the purpose of showing the necessary contour protection.

50. We will adopt a 45 dB D/U ratio for co-channel interference protection for situations where a Class A station proposal does not specify a carrier frequency offset or where the proposed and protected co-channel stations specify the same offset. Where different offsets are specified between the proposed and protected stations, a 28 dB D/U ratio will apply. The TV Table of Allotments is constructed on the

basis of frequency offsets; that is, all full-service TV stations operate on different offset frequencies with respect to their nearby co-channel stations. Offset operation permits significantly more efficient utilization of the broadcast spectrum; there is a difference of 17 dB between the co-channel D/U ratios for offset and nonoffset operations. The LPTV rules permit, but do not require offset operation. As a means of facilitating a "minimization of interference and maximization of service" we agree with du Triel, Lundin & Rackley, Inc. (du Triel) that analog Class A stations should operate with a carrier frequency offset and realize the advantages of offset operation wherever possible. Many LPTV stations already operate on this basis. Nevertheless, we will not make operation with a carrier offset a condition for an initial Class A license. However, we will require Class A licensees seeking facilities increases to specify an offset in their modification applications unless they can demonstrate it would not be possible to realize the efficiencies of offset operation. For example, a Class A station could be situated between three or more neighboring co-channel NTSC, LPTV or translator stations that use all available carrier offsets: plus, minus and zero. Any offset chosen by the Class A station would be the same as that of one of the neighboring stations, rendering the 28 dB co-channel D/U ratio inapplicable. In that event, use of the 28 dB ratio could result in interference to the Class A station, and, therefore, the 45 dB co-channel D/U ratio will be applied.

51. Section 74.705 (a) of the LPTV rules generally requires the site of a proposed UHF LPTV station to be located at least 100 kilometers from the site of a protected full-service station operating on the 7th adjacent channel above the proposed channel. It also requires LPTV proposals for stations with more than 50 kilowatts of effective radiated power to be separated by at least 32 kilometers from full-service stations operating on the 2nd, 3rd, and 4th adjacent channel above or below the requested channel. We disagree with du Triel's proposal that we eliminate the 14th adjacent channel protection requirements in Table 1 above and the 32-kilometers spacing requirements for protection of Class A stations. Du Triel states that the potential for interference to a Class A station from stations operating on these "UHF taboo channels" is limited to the immediate vicinity of the "taboo channel" station's transmitter site. It also notes that because of their secondary status, LPTV stations have been authorized without consideration of interference that would be caused to them by "taboo channel" stations and that it is unaware of any instances of significant interference to LPTV stations by "taboo channel" full-service stations. Du Triel concludes that, with declining spectrum availability, it is "unreasonable" to require other NTSC stations (full-service, Class A and LPTV) to protect Class A stations operating on any "taboo" channel other than the upper 15th adjacent channel, which has a greater potential for interference. DLR does not propose eliminating the "taboo" interference requirements for Class A, LPTV and TV translator protection of full-service NTSC stations. If the operation of a full-service "taboo channel" TV station, with 1 megawatt or more of power, would pose a minimal interference risk to Class A service, the much lower power levels of Class A stations would pose even less risk to the service of full-power stations. Thus, if we were to eliminate requirements to protect Class A stations from interference on the "taboo channels," we would also eliminate all remaining requirements that Class A stations protect full-service stations operating on these channels. In the recently concluded DTV proceeding, the Commission relaxed several interference protection requirements for LPTV stations. While we understand du Triel's reasoning, it would not be appropriate to adopt further relaxation on the basis of the scant record on this issue in this proceeding. However, we believe du Triel's suggestions may warrant further consideration in a subsequent proceeding. We will also adopt our proposal in the *NPRM* to accept applications for NTSC facilities modifications that would not create new interference to Class A stations, beyond the interference already predicted by the authorized facilities of such NTSC stations; these would include, for example, facilities modifications that would not further decrease the D/U ratios at the Class A protected contour.

2. Analog LPTV, TV Translator, and Class A Protection to Analog Class A

52. We are adopting the proposal in the *NPRM* to apply the protection requirements in § 74.707 to protect Class A stations from LPTV, TV translators, and other Class A stations. Commenters supported this proposal to use the protection methods by which LPTV stations protect each other. This method is well-established and has been well-tested.

3. Full-Service DTV Protection to Analog Class A

53. Where interference protection to Class A stations is required, full-service DTV proposals must protect the Class A service contours in accordance with the D/U ratios in § 73.623(c)(2) of the DTV rules for "DTV into analog TV" protection. We will not eliminate protection requirements from DTV stations proposing operation on the "taboo" channels, as suggested by du Triel. The potential for interference to Class A stations, du Triel contends, would be limited to the immediate vicinity of the "taboo" channel DTV station's transmitter site. However, neither du Triel nor any other commenter analyzes the extent of such interference. Moreover, digital Class A stations, with significantly lower power levels, will be required to protect NTSC stations on the taboo channels. Parties filing petitions to amend the DTV Table, where required to protect Class A stations, must specify reference facilities that meet the above criteria. Several commenters favor basing protection on the provisions in § 73.622 of the DTV rules and OET Bulletin 69 ("OET 69") or, alternatively, allowing use of this methodology where contour protection requirements cannot be met. We agree that use of the methods by which DTV stations protect full-service NTSC stations would permit flexibility and could provide more accurate predictions of interference. However, at this time we will not adopt Class A protection standards centered around these methods. To do so would require extensive revisions to the computer interference model (FLR) used by the Commission and outside engineers to include the effects of LPTV, TV translator, and Class A stations. For now, the contour protection approach is straight forward and can be readily implemented without unduly affecting the preparation and processing of DTV applications. We will, however, permit use of the Longley-Rice terrain dependent propagation model and OET Bulletin 69 to support waivers of the Class A interference protection requirements. We will also permit Class A station and full-service station parties to negotiate interference agreements.

4. Full-Service NTSC and DTV Protection to Digital Class A

54. We will require full-service NTSC and DTV proposals to protect digital Class A service contours based on the protection ratios (D/U) in § 73.623(c)(2) of the DTV rules for "Analog TV into DTV" and "DTV into DTV." These ratios must be met or exceeded at the

protected digital signal contours of Class A stations. Where protection to a Class A station is required, parties filing petitions to amend the TV or DTV allotment tables must specify reference facilities that meet the applicable requirements. We will permit the use of OET 69 type showings in support of requests to waive these requirements, and we will permit interference agreements among the affected parties.

5. LPTV, TV Translator, and Class A Modification Protection to Digital Class A

55. We will adopt the requirements in § 74.706 of the LPTV rules for the contour protection of digital Class A stations. Application proposals for analog LPTV, TV translator and those of Class A facilities modifications must protect the service contours of digital Class A stations to the extent provided by the D/U ratios in this rule. Application proposals for digital Class A stations must protect the service contours of other digital Class A stations to the extent provided by the "DTV into DTV" D/U ratios of § 73.623(c) of the Commission's Rules. For both analog and digital applicants, we will permit terrain shielding, OET 69-type analysis, or interference agreements in support of requests to waive the protection requirements.

6. Alternative Means of Interference Protection

56. LPTV and TV translator applicants currently are permitted to support requests for waiver of certain interference protection rules on the basis of D/U ratio protection for co-located stations on 1st and 14th adjacent channels, terrain shielding and Longley-Rice terrain dependent propagation and OET 69-type methods. We are not adopting protection standards for Class A service based on these methods. However, we agree with AFCCE and other commenters that we should permit use of available means of interference analysis to support requests to waive the Class A contour protection requirements. We will permit waiver requests to be supported by interference analysis based on OET Bulletin 69, D/U ratios, terrain shielding and other considerations. With regard to OET Bulletin 69 studies, we will not permit a *de minimis* interference allowance. Interference among full-service stations that is *de minimis* usually occurs in the outer reaches of a station's service area between the NTSC Grade A and Grade B contours. Analog and digital Class A stations will not receive interference protection to the Grade B contour. Their protected service contours will be similar in extent to an NTSC station's Grade A contour, which is not nearly as vulnerable to *de minimis* service population reductions. Class A service areas will be smaller and to a greater extent more interference-limited than those of full-service stations. The viewing audience beyond the Class A LPTV service contour is unprotected, and we believe it would be unfair to subject Class A stations to additional reductions in service population. For these reasons we will not at this time apply a *de minimis* interference allowance to the protection of Class A stations. Where analysis is based on OET Bulletin 69 methods, we will allow a "service population" rounding tolerance of 0.5%, which is also allowed for NTSC applicants protecting DTV service. We will permit OET 69-type studies to take into account reductions in a Class A service population due to predicted interference from existing full-service, LPTV and TV translator stations (the "masking" of service) and, on this basis, applicants may demonstrate that their proposed facilities would not result in additional interference within the protected contours of Class A stations.

57. We concur with commenters who favor permitting Class A stations to enter into interference or relocation agreements with full-service, LPTV, TV translator and other Class A licensees, permittees or applicants. Paxson notes that full-service stations may now enter into voluntary channel coordination and interference agreements and believes that Class A stations with "quasi-primary" status should similarly be permitted to enter into agreements to resolve interference concerns. Our rules permit DTV stations to negotiate interference agreements with other analog and DTV stations, including the exchange of money or other compensation. Agreements will be approved if the Commission finds them to be consistent with the public interest. LPTV and TV translator licensees, permittees and applicants are also permitted to enter into interference agreements, such as those involving terrain shielding. We are persuaded that Class A stations should also be permitted to negotiate interference agreements or relocation arrangements with full-service, low power service and other Class A licensees, permittees or applicants. Agreements may include monetary compensation or other considerations from one station to another. Agreements must be submitted with the related applications for initial or modified broadcast facilities. The Commission will grant applications submitted pursuant to agreements if it finds the public interest would be served.

*E. Methods of Interference Protection by Class A to Other Facilities*

1. Class A Protection of NTSC

58. *Decision.* We are adopting the proposal from the *NPRM* that Class A stations protect the NTSC Grade B contour in the manner given in § 74.705 of the LPTV rules. It is supported by most of the commenters that addressed this issue. However, SBE suggests a different analysis based on the Longley-Rice propagation model with an NTSC TV station allowed to object if a Class A station would be the source of unique (not masked) interference to any viewers. SBE also indicates that this interference analysis should be based on the proposed main beam effective radiated power (ERP) and not on the ERP toward the radio horizon that LPTV and TV translator applicants are now permitted to use. We believe the SBE proposals would add unnecessary complexity to a well-established and well-tested process. Class A stations can be established without undue risk of excessive interference to NTSC TV stations if the Class A facilities conform to the LPTV protection standards contained in § 74.705 of our rules. Moreover, where a requested Class A station does not provide the protection required by that rule, § 74.705(e) specifies that a waiver can be requested based on terrain shielding and use of the Longley-Rice model to demonstrate that actual interference would not be predicted to occur.

2. Class A Protection of DTV

59. *Decision.* We are adopting the proposal from the *NPRM* regarding Class A protection of DTV service. Analog and digital Class A station proposals generally will be subject to the protection criteria in §§ 73.622 and 73.623 of our rules and in OET Bulletin 69. Commenters generally supported this proposal. Some commenters question allowing interference to 0.5% of the DTV service population as a rounding tolerance. NAB/MSTV are concerned about the cumulative effect of several Class A stations. SBE suggests that a DTV station should be allowed to object if a Class A station would be the source of unique (not masked) interference to any viewers in its authorized service area, although it agrees with use of the 0.5% criteria for interference to allotted DTV facilities. Media-Com Television, Inc. (Media-Com) supports the DTV interference analysis procedure, but suggests that we

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should allow interference to 2% of the population served by the DTV station to be considered *de minimis*, as we generally allow that amount of interference to be caused by other DTV stations. We are not persuaded that more than 0.5% interference should be allowed. Full-service NTSC stations are limited to that amount and the statute does not require higher status for Class A stations in this regard. Neither are we convinced that any one DTV station will be subject to interference from so many Class A stations that the cumulative loss of DTV service would be significant. Finally, we note that the statute provides that Class A applicants also must protect the DTV service areas provided in the DTV Table of Allotments and the DTV Table includes approximately 40 vacant noncommercial educational DTV allotments that must be protected.

3. Protection of LPTV and TV Translators

60. *Decision*. We are adopting the proposal from the *NPRM* that Class A stations protect the LPTV and TV translator protected contours on the basis of the standards given in § 74.707 of the LPTV rules, *i.e.*, on the basis of compliance with certain desired-to-undesired signal strength ratios. Commenters generally supported this proposal. SBE did request that we clarify that the specified LPTV and TV translator protection rule involves contour overlap prohibitions and not simply application of desired-to-undesired signal strength ratios. We will require protection pursuant to all provisions in § 74.707 of the rules, which are based on prohibited contour overlap. For purposes of implementing section (f)(7)(B) of the CBPA, we agree with K Licensee, Inc. (K Licensee) that interference caused within the protected contour of a licensed LPTV or TV translator station or that of a construction permit or pending application should not be counted against an applicant for a Class A authorization if that interference is permitted by the LPTV rules, taking into account the manner in which LPTV and TV translator stations are authorized. The rules require new LPTV stations to protect existing LPTV and TV translator stations within their defined protected contours. However, the rules do not prohibit new stations from receiving interference from existing stations. LPTV and TV translator stations may also enter into written agreements to accept interference from other LPTV or TV translator stations. As a result of these provisions, many LPTV stations or proposed stations may be predicted to receive interference within their protected contours from earlier-authorized stations. We believe it would be inconsistent with the objectives of the CBPA to count such permissible interference against applicants for Class A stations, nor should interference resulting from a negotiated agreement be counted. We are not permitting LPTV licensees to request facilities modifications in their applications for initial Class A authorizations. Therefore, any interference from existing LPTV facilities within the protected contours of later authorized and proposed LPTV and TV translator facilities is permitted by the LPTV rules and will be grandfathered for the purposes of section (f)(7)(B) of the CBPA.

4. Land Mobile Radio Services and TV Channel 16

61. *Decision*. With respect to general land mobile protection, we are adopting our proposal to use the criteria in § 74.709 of the rules. This proposal was supported by the NY Police and no commenters opposed it. With respect to the Channel 16 New York City situation, the NY Police object to the premise that there is no obligation for WEBR–LP, due to the waiver, to protect land mobile operations, indicating that the *NPRM* ignores the current practice between the member public safety agencies and WEBR–LP to coordinate actions and ensure that neither party interferes with the other's transmission. K Licensee argues that the Commission must implement specific interference requirements in a manner consistent with congressional intent and with sensitivity to the impact such implementation will have on deserving stations such as WEBR–LP, the only free Korean-language licensee serving New York City metropolitan area. We believe that it is most consistent with the statutory scheme and with the waiver granted for public safety land mobile use of Channel 16 in New York City that WEBR–LP and the NY Police continue to cooperate to ensure that neither party interferes with the other's transmission on Channel 16. The parties have entered into a written agreement pursuant to which they will advise each other at least 60 days in advance of any change, alteration, or modification in its transmission facilities that may adversely affect or cause interference to the other party's communications system(s). As requested by both parties, we have included a copy of this agreement in the record of this proceeding, and will include it in the record of any application filed by WEBR–LP to become a Class A television station. We believe that the current situation is satisfactory and that continued cooperation between the parties will permit maximal use of the spectrum in New York City.

*F. Change Applications*

62. *Decision*. In the event that a DTV station that has been granted a construction permit to maximize or significantly enhance its digital television service area later files an application to reduce its digital television service area, the protected contour of that station will be the reduced digital service area as long as that area is not less than the area resulting from the "replication" facilities provided in the DTV Table of Allotments. Where a DTV station chooses to operate with technical parameters less than those allotted in DTV Table, we will require Class A stations to nonetheless protect the service area produced by the "replication" facilities established in the Table. We agree with MSTV/NAB that the service areas in the DTV Table represent the minimum degree of interference protection that must be accorded by Class A stations to full-service stations. Section (f)(7)(A)(ii)(I) of the CBPA requires that Class A stations cause no interference to the digital service areas provided in the Table.

*G. Common Ownership*

63. *Decision*. After review of the record, we will adopt our initial tentative conclusion and will not impose any common ownership limitations on holders of the new Class A licenses. We agree with the commenters who argue that Congress intended that Class A stations be exempt from existing common ownership requirements and that this exemption should apply when a license is subsequently transferred to a buyer with other media interests. As noted above, Congress directed that common ownership with any other medium of mass communication will not disqualify a potential Class A licensee. We believe that the only logical outgrowth of Congress' language here is that the lack of common ownership rules would also apply to transferred ownership.

*H. Issuance of DTV Licenses to Class A, TV Translator, and LPTV Stations*

64. *Decision*. As an initial matter, we note that Class A stations may convert their existing channel to digital broadcasting at any time. However, we conclude that the plain reading of the CBPA, as well as the legislative history of the Act, does not require us to issue an additional license for DTV services to Class A or TV translator licensees, but

does require us to accept DTV applications from licensees of Class A or TV translator stations that meet the interference protection requirements that are identified in the statute.

65. As we stated in the *NPRM*, there currently are a number of full-service permittees and licensees who do not have a paired DTV channel because they received their construction permits after the cut-off date for eligibility for the initial paired DTV licenses. Some commenters contend that, if we decide to award additional channels for DTV, we should give priority to such full-service licensees and permittees who are currently precluded from applying for a paired DTV channel. WB, for example, suggests that any additional channels should first be awarded to full-service licensees, and that we should apply to Class A licensees the same technical and service rules as are applied to full-service licensees.

66. Although the statute requires us to accept Class A applications for additional DTV licenses, it does not direct us to issue such licenses to Class A licensees. We agree with MSTV and NAB that we should exercise restraint with respect to issuing additional DTV licenses in order to preserve spectrum to accommodate needs associated with the transition of full-service stations to digital service. Moreover, we find that the various issues concerning the means of issuing additional DTV licenses for Class A stations to be outside the scope of this rulemaking. We note that the transition to DTV is scheduled to end in 2006, and that a number of issues regarding the transition are yet to be resolved in future DTV proceedings. We therefore defer matters regarding the issuance of additional DTV licenses for Class A stations to a future rulemaking.

*I. Interim Qualifications*

1. Stations Operating Between 698 and 806 MHz

67. *Decision.* We will extend the presumption of displacement to LPTV stations and TV translators authorized on channels 52–59. We will permit these stations to file displacement applications immediately if they can locate a replacement channel within the core spectrum. The majority of the commenters that addressed this issue supported extending the presumption of displacement to these stations. Many of these stations would be barred from becoming Class A stations if they cannot secure a replacement channel below channel 52. We believe it is most consistent with Congress' intent to provide qualified LPTV stations the opportunity to obtain Class A status to permit such stations on channels 52–59 to seek a replacement channel now on which they may apply for a Class A license. Any displacement applications filed by LPTV (Class A or non-Class A) or TV translators will receive equal treatment for processing purposes.

68. We recognize that full-service NTSC broadcasters on channels 52–59 may also seek to relocate to an in-core channel and such a proposal may conflict with a displacement application filed by an LPTV station seeking to move from channels 52–59. For the time being, these full-service stations may continue to operate on their present channel and most of them have an in-core paired DTV channel allotment. Nevertheless, we do not want to grant a displacement application that might preclude a move to an in-core channel without giving these broadcasters an opportunity to seek such a channel change. The process for the full-service station moving to an in-core channel involves filing a petition for rule making seeking to amend the TV Table of Allotments. The Commission invites comments on the proposal in a *NPRM* and based on the record, decides whether or not to make the proposed change in a *R&O*. Conflicting proposals, referred to as counterproposals, must be filed during the time period for initial comments, so that an opportunity exists for comments on the counterproposal to be filed during the time period allowed for reply comments. In order to be considered in a channel-change rulemaking proceeding, a conflicting displacement application from an LPTV station that has been determined to be eligible for Class A status must be filed by the end of the initial comment filing period. Conflicting displacement applications filed after that date will be dismissed.

69. Where such a preclusive displacement application seeking to move from channels 52–59 to an in-core channel is filed by an LPTV station eligible for Class A status before a full-service rulemaking petition, we believe it is appropriate to allow a similar, limited opportunity for a conflicting proposal to be filed. Complete and acceptable displacement applications are announced in a Commission Public Notice called a "Proposed Grant List." We will identify any displacement applications filed by Class A eligible stations in future Proposed Grant Lists. Petitions for a channel change filed by a full-service NTSC licensee or permittee must be filed not later than 30 days from the release of the Public Notice proposing grant of a conflicting displacement application. Conflicting TV rulemaking petitions filed after that date must protect the Class A eligible LPTV station's displacement application. Similarly, we will apply the same procedures and time periods to other displacement applications filed by LPTV stations eligible for Class A status, seeking to move from channels 60–69, or from one in-core channel to another to avoid DTV or new NTSC interference.

70. We will require LPTV stations on channels 52–59 that are seeking Class A status to have filed a certification of eligibility within the time frame established in the statute (*i.e.*, by January 28, 2000). When a qualified LPTV station outside the core seeking Class A status locates an in-core channel, we will require the station to file a Class A application simultaneously with its application for modification of license to move to the in-core channel. We will provide interference protection to such stations on the in-core channel from the date of grant of a construction permit for the in-core channel. As the CBPA prohibits the award of Class A status to stations outside the core, we believe it would be inconsistent with the statute to provide interference protection on a channel outside the core. We believe it is appropriate to commence contour protection with the award of a construction permit on the in-core channel, rather than a license to cover construction, as these permittees will have already certified their eligibility for Class A status. Unlike other Class A applicants, we will not require LPTV licensees on out-of-core channels seeking Class A status to file a Class A application within 6 months of the date of adoption of this order. The CBPA provides that, if a qualified applicant for a Class A license operating on an out-of-core channel locates an in-core channel, the Commission "shall issue a Class A license simultaneously with the assignment of such channel." The statute does not impose a time limit on the filing of such applications. Accordingly, we will not impose any time limit on the filing of a Class A application by LPTV licensees operating on channels outside the core. However, we believe that, in most cases, it would be in the best interest of qualified LPTV stations operating outside the core to try to locate an in-core channel now, as the core spectrum is becoming increasingly crowded and it is likely to become increasingly difficult to locate an in-core channel in the future

2. Channels Off-Limits

71. *Decision.* We continue to believe that the requirement of section (f)(6)(B) of the CBPA that we protect the 175 channel allotments referenced in the

Commission's *Sixth R&O* in the DTV proceeding from Class A stations is effectively accomplished now because these channels are occupied by existing NTSC or DTV allotments. These channels will become available for other parties once full-power stations discontinue operation on one of their paired channels at the end of the DTV transition. Commenters that addressed this issue agreed with this view. Accordingly, we need not take further steps at this time to protect these channels from Class A service, and need not adopt our alternative proposal of prohibiting the authorization of Class A service on television channels 2–6.

*J. Class A Applications*

1. Application Forms

72. *Decision.* We are required, under the terms of the CBPA, to award Class A licenses within 30 days after receipt of acceptable applications. We have created a streamlined license application form to be used by LPTV stations that seek to convert to Class A status. That form, Form 302–CA, requires a series of certifications by the Class A applicant and is attached to this *R&O*. Where a construction permit to modify licensed facilities has been issued, a licensee may choose whether to file its Class A application on its license or on its authorized construction permit. Until that choice is made, we will protect the facilities reflected in the construction permit. We will not require a letter perfect application, but will accept applications on a "substantially complete" basis and will process them, as required by the statute, within 30 days unless the applications contain omissions or face challenges. For subsequent modification applications, Class A stations will be required to submit modified versions of Forms 301 and 302, to be released at a later date.

73. Normally, license applicants are not required to provide local public notice of their applications. However, since the nature of the underlying service is changing from secondary to primary service, Class A license applicants will be required to provide local public notice of their applications. Two weeks before and after submission of their applications, Class A applicants must provide weekly announcements to their listeners informing them that the applicant has applied for a Class A license, and announcing the public's ability to comment on the application prior to Commission action.

2. Class A Facilities Changes

74. *Decision.* We will adopt our proposal to define Class A facilities modifications in a manner that permits greater flexibility and does not require window application filings for most changes. Channel change requests, other than changes in frequency offset, will be considered major changes. All other proposed facilities changes will be considered "minor", including changes in station power, antenna height and antenna horizontal radiation pattern and orientation of directional antenna. Proposed changes in transmitting antenna site location will also be classified as minor, provided the protected signal contour resulting from the relocated site would overlap some portion of the protected contour based on the Class A station's authorized facilities. This approach will permit flexibility, while preventing Class A stations from relocating completely away from the viewing audiences they presently serve. Proposed site relocations that do meet this requirement will be considered major changes. Proposed changes in Class A facilities must meet applicable interference protection requirements with respect to DTV allotments, authorized DTV and NTSC TV service and must protect those pending station proposals that full-service NTSC TV applicants are required to protect. In addition, the CBPA requires proposals for Class A facilities changes to protect licensed LPTV and TV translator facilities, those authorized by construction permit, and those proposed in pending applications filed with the Commission prior to the filing of the Class A application.

75. Commenters are divided on whether proposed Class A facilities changes should be required to protect NTSC TV service based on authorized or maximum permissible facilities. Several commenters favor protection of maximum facilities. MSTV and NAB contend that this is necessary so as not to threaten the ability of DTV stations to return to their analog channels at the end of the DTV transition without incurring a loss of service area. However, we agree with du Treil and other commenters that this approach is not spectrally efficient because it would require protection of facilities that could never be authorized due to interference constraints. As a result, Class A licensees could be unnecessarily hindered in seeking facilities changes or locating replacement channels in the event of channel displacement. Therefore, Class A facilities modification proposals will be required to protect full-service TV Grade B contours based on authorized facilities. We will, however, permit full-service NTSC and Class A station licensees and permittees to file mutually exclusive minor change applications until grant of the pending NTSC and Class A minor change applications. Mutually exclusive applications will be resolved through the auction process in the event the parties do not eliminate the mutual exclusivity through "minor" engineering amendments to their applications. We will give notice of Class A facilities minor change applications in the manner notice is given for such NTSC TV applications. We will not establish a petition to deny period for Class A minor change applications; however, these applications will be subject to the filing of informal objections. We will also adopt the above provisions for digital Class A stations. Class A stations may file minor change applications for the purpose of converting to digital operations on their analog channels.

76. As contemplated in the *NPRM*, we will apply the more inclusive definition of minor facilities changes to TV translator and non-Class A LPTV stations in order to provide additional flexibility to these stations. NTA indicates that translators and non Class A LPTV stations would also benefit from the ability to file most facilities changes outside of application filing windows. We will continue authorizing in the normal manner those LPTV and TV translator applications that are filed pursuant to the current minor change definition in the LPTV rules. Minor change application proposals of non Class A LPTV and TV translator stations, filed under the more inclusive definition, must meet all applicable interference protection requirements to authorized stations. These applications must also protect the facilities proposed in full-service NTSC TV minor change applications, regardless of which applications are earlier filed. The CBPA requires Class A facilities modification proposals to protect earlier-filed LPTV and TV translator applications. Therefore, we are adopting a first-come, first-served policy with respect to the minor change applications of LPTV, TV translator, and Class A stations. We do not want minor change application proposals, under the more inclusive definition, to complicate the authorization of initial Class A licenses, nor displacement relief applications that may be filed shortly after adoption of this *R&O*. We note that displacement applications would have a higher priority than non-displacement minor change applications, regardless of which are filed earlier. For this reason, we will not permit the filing of Class A, LPTV

and TV translator facilities change applications, pursuant to the more inclusive minor change definition, until October 1, 2000. However, minor change applications under the less inclusive definition in the LPTV rules may continue to be filed by LPTV, TV translator, and Class A permittees and licensees.

3. Class A Channel Displacement Relief

77. *Decision.* The Commission will adopt its proposal and allow displaced Class A station licensees and permittees to apply for replacement channels on a first-come, first-served basis, not subject to mutually exclusive applications. We will adopt generally the displacement relief policies and procedures that apply in the low power television service. Class A stations causing or receiving interference with full-service NTSC TV, DTV or any other service or predicted to cause prohibited interference or to receive interference may apply at any time for a replacement channel, together with any technical changes that are necessary to eliminate or avoid interference or continue serving the area within the station's protected signal contour. Site relocation proposals will be permitted in displacement applications, provided the protected signal contour resulting from the relocated site would overlap some portion of the protected contour based on the Class A station's authorized facilities. Class A displacement relief applications will be filed as major change applications, given their protected status. Applications will not be mutually exclusive with other displacement applications unless filed on the same day and, in that event, will be subject to the auction procedures. These applications will be placed on public notice for a period not less than 30 days and will be subject to the filing of petitions to deny. Class A displacement relief applications will be afforded a higher priority than nondisplacement Class A, LPTV and TV translator applications, to the exclusion of those applications that are mutually exclusive with a Class A displacement application. We will not prioritize among Class A displacement applications, nor will these be afforded a higher priority than LPTV and TV translator displacement applications. Displacement applications filed on the same day by Class A, non-Class A LPTV or TV translator stations will be mutually exclusive and subject to the auction procedures. In such cases, we encourage engineering solutions to remove the mutual exclusivity wherever possible.

*K. Remaining Issues*

1. Call Signs

78. *Decision.* We will allow Class A stations to use standard television call signs with the suffix "–CA" to distinguish the stations from "–LP" stations. We agree with CBA, National Minority T.V., Inc. (NMTV) and others that use of the suffix "–LP" would create confusion between LPTV, LPFM and Class A stations. Upon grant of its initial Class A application, the qualifying LPTV licensee can change its station's existing numerical or four-letter low power call sign to a four-letter call sign with the "CA" suffix. Class A licensees should use the Mass Media Bureau's automated call sign reservation and authorization system to effectuate this change by accessing the call sign change request screen and providing the required information. While there is no fee payment required for the initial change to a four-letter "–CA" call sign, a subsequent change from one four-letter "–CA" call sign to another will require payment of a fee.

2. Certification of Class A Transmitters

79. *Decision.* We have decided to use the part 73 verification scheme for new Class A transmitters. Existing LPTV transmitters will eventually be replaced by digital equipment, so we will "grandfather" use of these analog transmitters, except where these transmitters cause interference due to spurious emissions on frequencies outside of the assigned channel. As noted above, Class A stations proposing facilities increases, such as increased power, must specify a frequency offset. Upon authorization to operate with a frequency offset, station licensees must use a transmitter capable of meeting a frequency tolerance of $+1/-1$ kHz.

3. Fees

80. *Decision.* Consistent with the use of a part 73 license application form (302–A), we will apply the existing full-service television license fee to initial Class A applications. This fee is lower than the minor modification fee. However, we will apply the low power regulatory fees to Class A stations going forward. Class A stations, while having greater rights than the preceding LPTV stations, will still be greatly limited in their power and height restrictions. To require the same regulatory fees as are required for full-power stations would be onerous to these small, local operations. We agree with the CBA that these lower regulatory fees are more appropriate in the Class A context, unless Congress legislates otherwise at some future time.

4. International Coordination Provisions

81. In establishing rules for Class A stations, the Commission is mindful of its obligations under its existing bilateral agreements with Canada and Mexico regarding the authorization of LPTV service in the common border areas. These agreements do not contain provisions for analog or digital Class A TV stations. Under the agreements, LPTV stations have a secondary status with respect to Canadian and Mexican primary television stations and allotments and must not cause interference to the reception of these stations, nor are LPTV stations protected against interference from these stations. The agreements also include provisions for notifying and coordinating LPTV station proposals in the border areas. We agree with Grupo Televisa, S.A. (Grupo) that any authorization of Class A stations must be consistent with international agreements. We will continue to apply the LPTV provisions in our existing agreements with Canada and Mexico to LPTV stations, including those that seek Class A status. Grupo believes we should not allow primary status for any LPTV station "that is required under the U.S.-Mexican TV agreements to be operated on a secondary basis or to be coordinated between the two governments." We will not grant an analog or digital Class A license to any LPTV station affected by the U.S.-Mexican or U.S. Canadian agreements without the expressed concurrence of Canada or Mexico. We will work over time to update the current bilateral agreements to recognize when possible Class A assignments. In the interim we will attempt to obtain temporary approval of Class A stations in the border area or on a case by case basis. However, any Class A stations authorized on this basis would be subject to any conditions resulting from the coordination process or any final bilateral agreement reached with Canada and Mexico.

5. Broadcast Auxiliary Frequencies

82. LPTV stations may be authorized to operate remote pickup stations and various TV broadcast auxiliary stations (BAS). Some LPTV stations use studio-to-transmitter links and other fixed microwave links. LPTV stations may also conduct electronic newsgathering operations on BAS frequencies. Licenses for television pickup, studio-transmitter link and point-to-point TV relay stations are issued to LPTV stations on a secondary basis, such that full-service stations may displace LPTV station use of broadcast auxiliary channels. We agree with SBE that once an LPTV

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station is authorized as a Class A station, all of that station's BAS licenses should automatically be upgraded to primary status; that is, upon receiving its initial Class A authorization, the station licensee will not be required separately to seek upgraded BAS licenses. Class A stations may also file applications under existing procedures, requesting authority to operate BAS stations on a primary basis. As SBE also points out, we remind Class A licensees of their responsibility to avoid interference with other users of a BAS channel, including the requirement to consult with a local frequency coordinating committee, if one exists.

## IV. Conclusion

83. In this *R&O*, we adopt regulations establishing a Class A television license for qualifying low power television stations in accordance with the Community Broadcasters Protection Act of 1999. The measure of primary Class A status afforded to qualifying low power television stations will provide stability and a brighter future to these stations that provide valuable local programming services in their communities, while protecting the transition to digital television.

## V. Administrative Matters

84. *Paperwork Reduction Act Analysis.* This *R&O* has been analyzed with respect to the Paperwork Reduction Act of 1995, and found to impose new or modified reporting and recordkeeping requirements or burdens on the public. Implementation of these new or modified reporting and recordkeeping requirements will be subject to approval by the Office of Management and Budget as prescribed by the Act.

85. *Regulatory Flexibility Analysis.* Pursuant to the Regulatory Flexibility Act of 1980, as amended, *see* 5 U.S.C. 604, the Commission's Final Regulatory Flexibility Analysis for this R&O is amended.

## VI. Ordering Clauses

86. Pursuant to authority contained in sections 1, 4(i), 303, and 336(f) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 303, and 336(f), part 73 of the Commission's rules, 47 CFR part 73, and part 74 of the Commission's rules, 47 CFR part 74, are amended as set forth below.

87. The amendments set forth shall be July 10, 2000. Class A applications may be filed beginning on the date the rules are effective.

88. The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this *R&O*, including the Final Regulatory Flexibility Act Analysis, to the Chief Counsel for the Small Business Administration.

This proceeding is terminated.

## IV. Final Regulatory Flexibility Analysis

89. As required by the Regulatory Flexibility Act (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM*. The Commission sought written public comment on the proposals in the *NPRM*, including comment on the IRFA. No comments were received in response to the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

*Need for, and Objectives of, the Adopted Rules*

90. The Community Broadcasters Protection Act of 1999 (CBPA) directed the Commission, within 120 days after the date of enactment, to prescribe regulations establishing a Class A television license available to licensees of qualifying low-power television (LPTV) stations. The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees, and that Class A licensees be accorded primary status as a television broadcaster as long as the station continues to meet the requirements set forth in the statute for a qualifying low-power station. In addition to other matters, the CBPA sets out certain certification and application procedures for low-power television licensees seeking to obtain Class A status, prescribes the criteria low-power stations must meet to be eligible for a Class A license, and outlines the interference protection Class A applicants must provide to analog (or "NTSC"), digital ("DTV"), LPTV, and TV translator stations. The Commission is adopting the *R&O* to implement the CBPA.

*Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

91. No comments were received in response to the IRFA.

*Description and Estimate of the Number of Small Entities to Which the Proposed Rules Apply*

92. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

93. *Small TV Broadcast Stations.* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts.

94. As directed by the CBPA, the *R&O* establishes a Class A television license available to licensees of qualifying LPTV stations. According to the Commission staff review of the BIA Publications, Inc., Master Access Television Analyzer Database, virtually all LPTV broadcast stations have revenues of less than $10.5 million. Currently, there are approximately 2,200 licensed LPTV stations. The Commission notes, however, that under SBA's definition, revenues of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. The Commission's estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

95. As directed by the CBPA, the *R&O* requires LPTV stations seeking Class A status to file certifications of eligibility and applications to convert to Class A. In addition, as directed by the CBPA, Class A stations must comply with the operating requirements for full-service television broadcast stations, including the requirements for informational and educational children's programming and the limits on commercialization during children's programming, the political programming rules, and the public inspection file rule. These rules contain a number of recordkeeping requirements that will apply to Class A stations.

*Steps Taken To Minimize Significant Impact on Small Entities, and Significant Alternatives Considered*

96. *Creating New Opportunities for Small Businesses.* Pursuant to the CBPA and the Commission's implementing rules, certain qualifying low-power television ("LPTV") stations will be accorded Class A status. Class A licensees will have "primary" status as television broadcasters, thereby gaining a measure of protection against full-service television stations, even as those

stations convert to digital format. The LPTV stations eligible for Class A status under the CBPA and the Commission's rules provide locally-originated programming, often to rural and certain urban communities that have either no or little access to local programming. LPTV stations are owned by a wide variety of licensees, including minorities and women, and often provide "niche" programming to residents of specific ethnic, racial, and interest communities. The provisions adopted in the *R&O* will facilitate the acquisition of capital needed by these stations to allow them to continue to provide free, over-the-air programming, including locally-originated programming, to their communities. In addition, by improving the commercial viability of LPTV stations that provide valuable programming, the *R&O* is consistent with the Commission's fundamental goals of ensuring diversity and localism in television broadcasting.

97. *Minimizing Impact on Existing Small Business Broadcast Stations.* The CBPA directs that Class A licensees be subject to the same license terms and renewal standards as full-power television licensees. However, the *R&O* adopts a number of rules designed to help LPTV stations seeking to convert to Class A status and exempts Class A licensees from part 73 rules that clearly cannot apply, either due to technical differences in the operation of low-power and full-power stations, or for other reasons. For example, although the *R&O* applies the Main Studio rule for the first time to LPTV stations who qualify as Class A stations, requiring them to locate their main studios within the station's Grade B contour, as determined pursuant to the Commission's rules, it grandfathers their main studios at the site in use as of November 28, 1999. The *R&O* also modifies a number of other requirements applicable to full-service television broadcast stations, including: (1) Requiring a minimum hours of operation of 18 hours per day, as required by the Statute; (2) grandfathering the use of LPTV broadcast transmitters and (3) permitting full-service NTSC stations to protect Class A stations on the basis of carrier frequency offsets.

98. In response to comments, the Commission will not apply to Class A facilities the following provisions of part 73: (1) the NTSC and DTV Tables of Allotments (§§ 73.606 and 73.607); (2) mileage separations (§ 73.610); and (3) minimum power and antenna height requirements (§ 73.614). The *R&O* also exempts Class A facilities from the principal city coverage requirement of § 73.685(a) of the rules. As proposed in the *NPRM*, the *R&O* maintains for now the current LPTV maximum power levels for Class A stations. In addition, the *R&O* does not adopt an annual certification or reporting requirement for Class A stations, but it does require licensees seeking to assign or transfer a Class A license to certify on the application for transfer or assignment of license that the station has been operated in compliance with the rules applicable to Class A stations. The *R&O* also requires that Class A renewal applications be subject to petitions to deny.

99. *Alternative eligibility criteria.* The CBPA grants the Commission authority to establish alternative eligibility criteria for LPTV stations seeking Class A designation if "the Commission determines that the public interest, convenience, and necessity would be served by treating the station as a qualifying low-power television station for purposes of this section, or for other reasons determined by the Commission."

100. Congress mandated three qualifications in the CBPA. For the 90 days prior to enactment of the CBPA, an applicant must have: (1) Broadcast a minimum of 18 hours per day, (2) broadcast an average of at least 3 hours per week of programming produced within the market area served by the station, and (3) been in compliance with Commission requirements of LPTV stations. The *R&O* allows deviation from the strict statutory eligibility criteria only where such deviations are insignificant or when the Commission determines that there are compelling circumstances, such as a natural disaster or interference forcing a station off the air, and that in light of those compelling circumstances, the interest of equity mandates such a deviation.

101. The *R&O* does not establish a different set of criteria for foreign language stations that do not meet the local programming criteria for a Class A license. Although the *R&O* recognizes the valuable service provided by foreign language stations, it concludes that congressional intent was to keep the class of stations granted this special status as a small class and that locally originated programming was an integral part of the specifics of the class. Finally, the *R&O* does not adopt separate eligibility criteria for translator stations, concluding that the statute limits eligibility to LPTV stations that produce local programming and can meet the operating rules applicable to full-service stations.

*Report to Congress*

102. The Commission will send a copy of the *R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *R&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *R&O* and FRFA (or summaries thereof) will also be published in the **Federal Register**. *See* 5 U.S.C. 604(b).

**List of Subjects**

*47 CFR Part 1*

Administrative practice and procedure.

*47 CFR Part 11*

Emergency alert system.

*47 CFR Part 73 and 74*

Television broadcasting.

Federal Communications Commission.

**William F. Caton,**

*Acting Secretary.*

For the reasons set forth in the preamble parts 1, 11, 73 and 74 of Title 47 of the U.S. Code of Federal Regulations is amended to read as follows:

## PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

**Authority:** 47 U.S.C. 1, 154(i), 154(j), 208, and 255.

* * * * *

2. Section 1.1104 is amended by adding an entry for the Class A Television Service to the table to read as follows:

**§ 1.1104 Schedule of charges for applications and other filings for the mass media services.**

* * * * *

8. Class A Television Service

| Action | FCC form No. | Fee amount | Payment type code | Address |
|---|---|---|---|---|
| a. New or major change construction permit. | 301–CA | $3,245 | MVT | FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| b. New license | 302–CA | 220 | MJT | FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| c. License renewal | 303–S | 130 | MGT | FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| d. Special Temporary Authority | Corres. and 159 | 130 | | FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| e. License assignment | 314 and 159 or | 725 | MPT | FCC, Mass Media Services, P.O. Box |
| | 316 and 159 | 105 | MDT | 358350, Pittsburgh, PA 15251–5350. |
| f. Transfer of control | 315 and 159 or | 725 | MPT | FCC, Mass Media Services, P.O. Box |
| | 316 and 159 | 105 | MDT | 358350, Pittsburgh, PA 15251–5350. |
| g. Main studio request | Corres. and 159 | 725 | MPT | FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |
| h. Call sign | Corres. and 159 | 75 | MBT | FCC, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165. |

3. Section 1.1153 is amended by adding an entry for Class A TV (47 CFR, part 73) to the table to read, as follows:

**§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.**

* * * * *

| | | |
|---|---|---|
| VIII. Class A TV (47 CFR, Part 73). | 290 | FCC, Class A, P.O. Box 358835, Pittsburgh, PA, 15251–5835. |

## PART 11—EMERGENCY ALERT SYSTEM (EAS)

4. The authority citation for part 11 continues to read as follows:

**Authority:** 47 U.S.C. 151, 154(i) and (o), 303(r), 544(g) and 606.

5. Section 11.11(a) is amended by adding the words "Class A television (CA) stations;" in the first sentence after the words "TV broadcast stations;" and revising the table "Timetable Broadcast Stations" to read as follows:

**§ 11.11 The Emergency Alert System (EAS).**

* * * * *

TIMETABLE BROADCAST STATIONS

| Requirement | AM and FM | TV | FM Class D | LPTV [1] | Class A TV |
|---|---|---|---|---|---|
| Two-tone encoder [2 3] | Y | Y | N | N | Y |
| Two-tone encoder [4 5] | Y | Y | Y | Y | Y |
| EAS decoder | Y 1/1/97 | Y 1/1/97 | Y 1/1/97 | Y 1/1/97 | Y |
| EAS encoder | Y 1/1/97 | Y 1/1/97 | N | N | Y |
| Audio message | Y 1/1/97 | Y 1/1/97 | Y 1/1/97 | Y 1/1/97 | Y |
| Video message | N/A | Y 1/1/97 | N/A | Y 1/1/97 | Y |

[1] LPTV stations that operate as television broadcast translator stations are exempt from the requirement to have EAS equipment.
[2] Effective July 1, 1995, the two-tone signal must be 8–25 seconds.
[3] Effective January 1, 1998, the two-tone signal may only be used to provide audio alerts to audiences before EAS emergency messages and the required monthly tests.
[4] Effective July 1, 1995, the two-tone decoder must respond to two-tone signals of 3–4 seconds duration.
[5] Effective January 1, 1998, the two-tone decoder will no longer be used.

* * * * *

6. Section 11.53 is amended by revising paragraph (a)(4) to read as follows:

**§ 11.53 Dissemination of Emergency Action Notification.**

(a) * * *

(4) Wire service to all subscribers (AM, FM, low power FM (LPFM), TV, LPTV, Class A television (CA) and other stations).

* * * * *

## PART 73—RADIO BROADCAST SERVICES

7. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

* * * * *

8. Subpart E is amended by adding § 73.613 to read as follows:

**§ 73.613 Protection of Class A TV stations.**

(a) An application for a new TV broadcast station or for changes in the operating facilities of an existing TV broadcast station will not be accepted for filing if it fails to comply with the requirements specified in this section.

**Note to § 73.613 (a):** Licensees and permittees of TV broadcast stations that were authorized on November 29, 1999 (and applicants for new TV stations that had been cut-off without competing applications or that were the winning bidder in a TV broadcast station auction as of that date, or that were the proposed remaining applicant in a group of mutually exclusive applications for which a settlement agreement was on file as of that date) may continue to operate with facilities that do not protect Class A TV stations. Applications filed on or before November 29, 1999 for a change in the operating facilities of such stations also are not required to protect Class A TV stations under the provisions of this section.

(b) Due to the frequency spacing which exists between TV channels 4 and 5, between channels 6 and 7, and between channels 13 and 14, first-adjacent channel protection standards shall not be applicable to these pairs of channels. Some interference protection requirements of this section only apply to stations transmitting on the UHF TV channels 14 through 51 (See § 73.603(a) of this part).

(c) A UHF TV broadcast station application will not be accepted if it specifies a site less than 100 kilometers from the transmitter site of a UHF Class A TV station operating on a channel which is the seventh channel above the requested channel. Compliance with this requirement shall be determined based on a distance computation rounded to the nearest kilometer.

(d) A UHF TV broadcast station application will not be accepted if it specifies a site less than 32 kilometers from the transmitter site of a UHF Class A TV station that is authorized an effective radiated power of more than 50 kilowatts and operating on a channel which is the second, third, or fourth channel above or below the requested channel. Compliance with this requirement shall be determined based on a distance computation rounded to the nearest kilometer.

(e) In cases where a TV broadcast station has been authorized facilities that do not meet the distance separation requirements of this section, an application to modify such a station's facilities will not be accepted if it decreases that separation.

(f) New interference must not be caused to Class A TV stations authorized pursuant to Subpart J of this part, within the protected contour defined in § 73.6010 of this part. For this prediction, the TV broadcast station field strength is calculated from the proposed effective radiated power and the antenna height above average terrain in pertinent directions using the methods in § 73.684 of this part.

(1) For co-channel protection, the field strength is calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part.

(2) For TV broadcast stations that do not specify the same channel as the Class A TV station to be protected, the field strength is calculated using the appropriate F(50,50) chart from Figure 9, 10, or 10b of § 73.699 of this part.

(g) A TV broadcast station application will not be accepted if the ratio in dB of its field strength to that of the Class A TV station at the Class A TV station's protected contour fails to meet the following:

(1) −45 dB for co-channel operations where the Class A TV station does not specify an offset carrier frequency or where the TV broadcast and Class A TV stations do not specify different offset carrier frequencies (zero, plus or minus) or −28 dB for offset carrier frequency operation where the TV broadcast and Class A TV stations specify different offset carrier frequencies.

(2) 6 dB when the protected Class A TV station operates on a VHF channel that is one channel above the requested channel.

(3) 12 dB when the protected Class A TV station operates on a VHF channel that is one channel below the requested channel.

(4) 15 dB when the protected Class A TV station operates on a UHF channel that is one channel above or below the requested channel.

(5) 23 dB when the protected Class A TV station operates on a UHF channel that is fourteen channels below the requested channel.

(6) 6 dB when the protected Class A TV station operates on a UHF channel that is fifteen channels below the requested channel.

(h) New interference must not be caused to digital Class A TV stations authorized pursuant to Subpart J of this part, within the protected contour defined in § 73.6010 of this part. A TV broadcast station application will not be accepted if the ratio in dB of the field strength of the digital Class A TV station at the digital Class A TV station's protected contour to the field strength resulting from the facilities proposed in the TV broadcast station application fails to meet the D/U signal ratios for "analog TV-into-DTV" specified in §§ 73.623(c)(2) and 73.623(c)(3) of this part. For digital Class A TV station protection, the TV broadcast station field strength is calculated from the proposed effective radiated power and the antenna height above average terrain in pertinent directions using the methods in § 73.684 of this part and using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part.

(i) In cases where a TV broadcast station has been authorized facilities that do not meet the interference protection requirements of this section, an application to modify such a station's facilities will not be accepted if it is predicted to cause new interference within the protected contour of the Class A TV or digital Class A TV station.

(j) In support of a request for waiver of the interference protection requirements of this section, an applicant for a TV broadcast station may make full use of terrain shielding and Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to Class A TV stations. Guidance on using the Longely-Rice methodology is provided in *OET Bulletin No. 69,* which is available through the Internet at http://www.fcc.gov/oet/info/ documents/bulletins/#69.

9. Section 73.623 is amended by adding paragraph (c)(5) to read as follows:

**§ 73.623 DTV applications and changes to DTV allotments.**

* * * * *

(c) * * *

(5) A DTV station application that proposes to expand the DTV station's allotted or authorized coverage area in any direction will not be accepted if it is predicted to cause interference to a Class A TV station or to a digital Class A TV station authorized pursuant to Subpart J of this part, within the protected contour defined in § 73.6010 of this part. This paragraph applies to all DTV applications filed after May 1, 2000, and to DTV applications filed between December 31, 1999 and April 30, 2000 unless the DTV station licensee or permittee notified the Commission of its intent to "maximize" by December 31, 1999.

(i) Interference is predicted to occur if the ratio in dB of the field strength of a Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part) fails to meet the D/U signal ratios for "DTV-into-analog TV" specified in paragraph (c)(2) of this section.

(ii) Interference is predicted to occur if the ratio in dB of the field strength of a digital Class A TV station at its protected contour to the field strength resulting from the facilities proposed in the DTV application (calculated using the appropriate F(50,10) chart from Figure 9a, 10a, or 10c of § 73.699 of this part) fails to meet the D/U signal ratios for "DTV-into-DTV" specified in paragraphs (c)(2) and (c)(3) of this section.

(iii) In support of a request for waiver of the interference protection requirements of this section, an applicant for a DTV broadcast station may make full use of terrain shielding and Longley-Rice terrain dependent propagation methods to demonstrate that the proposed facility would not be likely to cause interference to Class A TV stations. Guidance on using the Longely-Rice methodology is provided in *OET Bulletin No. 69,* which is available through the Internet at http://www.fcc.gov/oet/info/ documents/bulletins/#69.

* * * * *

10. Section 73.1001 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 73.1001 Scope.**

(a) The rules in this subpart are common to all AM, FM, TV and Class A TV broadcast services, commercial and noncommercial.

(b) Rules in part 73 applying exclusively to a particular broadcast service are contained in the following: AM, subpart A; FM, subpart B; Noncommercial Educational FM, subpart C; TV, subpart E; LPFM, subpart G; and Class A TV, subpart J.

* * * * *

11. Section 73.1120 is revised to read as follows:

**§ 73.1120 Station location.**

Each AM, FM, TV and Class A TV broadcast station will be licensed to the principal community or other political subdivision which it primarily serves. This principal community (city, town or other political subdivision) will be considered to be the geographical station location.

12. Section 73.1125 is amended by revising paragraphs (c), (d) and adding paragraph (e) to read as follows:

**§ 73.1125 Station main studio location.**

* * * * *

(c) Each Class A television station shall maintain a main studio at the site used by the station as of November 29, 1999 or a location within the station's Grade B contour, as defined in § 73.683 and calculated using the method specified in § 73.684 of this part.

(d) Relocation of the main studio may be made:

(1) From one point to another within the locations described in paragraph (a) or (c) of this section, or from a point outside the locations specified in paragraph (a) or (c) to one within those locations, without specific FCC authority, but notification to the FCC in Washington shall be made promptly.

(2) Written authority to locate a main studio outside the locations specified in paragraphs (a) or (c) of this section for the first time must be obtained from the Audio Services Division, Mass Media Bureau for AM and FM stations, or the Television Branch, Video Services Division for TV and Class A television stations before the studio may be moved to that location. Where the main studio is already authorized at a location outside those specified in paragraphs (a) or (c), and the licensee or permittee desires to specify a new location also located outside those locations, written authority must also be received from the Commission prior to the relocation of the main studio. Authority for these changes may be requested by filing a letter with an explanation of the proposed changes with the appropriate division. Licensees or permittees should also be aware that the filing of such a letter request does not imply approval of the relocation request, because each request is addressed on a case-by-case basis. A filing fee is required for commercial AM, FM, TV or Class A TV licensees or permittees filing a letter request under the section (see § 1.1104).

(e) Each AM, FM, TV and Class A TV broadcast station shall maintain a local telephone number in its community of license or a toll-free number.

13. Section 73.1201 is amended by revising paragraph (a) to read as follows:

**§ 73.1201 Station identification.**

(a) *When regularly required.* Broadcast station identification announcements shall be made: (1) at the beginning and ending of each time of operation, and (2) hourly, as close to the hour as feasible, at a natural break in program offerings. Television and Class A television broadcast stations may make these announcements visually or aurally.

* * * * *

14. Section 73.1202 is revised to read as follows:

**§ 73.1202 Retention of letters received from the public.**

All written comments and suggestions received from the public by licensees of commercial AM, FM, TV and Class A TV broadcast stations regarding operation of their station shall be maintained in the local public inspection file, unless the letter writer has requested that the letter not be made public or when the licensee feels that it should be excluded from the public inspection file because of the nature of its content, such as a defamatory or obscene letter.

(a) Letters shall be retained in the local public inspection file for three years from the date on which they are received by the licensee.

(b) Letters received by TV and Class A TV licensees shall be placed in one of the following separated subject categories: programming or non-programming. If comments in a letter relate to both categories, the licensee shall file it under the category to which the writer has given greater attention.

15. Section 73.1210 is amended by revising paragraphs (b) introductory text and (b)(3) to read as follows:

**§ 73.1210 TV/FM dual-language broadcasting in Puerto Rico.**

* * * * *

(b) Television and Class A television licensees in Puerto Rico may enter into dual-language time purchase agreements with FM broadcast licensees, subject to the following conditions:

* * * * *

(3) No television, Class A television, or FM broadcast station may devote more than 15 hours per week to dual-language broadcasting, nor may more than three (3) hours of such programming be presented on any given day.

* * * * *

16. Section 73.1211 is amended by revising paragraph (a) to read as follows:

**§ 73.1211 Broadcast of lottery information.**

(a) No licensee of an AM, FM, television, or Class A television broadcast station, except as in paragraph (c) of this section, shall broadcast any advertisement of or information concerning any lottery, gift enterprise, or similar scheme, offering prizes dependent in whole or in part upon lot or chance, or any list of the prizes drawn or awarded by means of any such lottery, gift enterprise or scheme, whether said list contains any part or all of such prizes. (18 U.S.C. 1304, 62 Stat. 763).

* * * * *

17. Section 73.1250 is amended by revising paragraph (h) to read as follows:

**§ 73.1250 Broadcasting emergency information.**

* * * * *

(h) Any emergency information transmitted by a TV or Class A TV station in accordance with this section shall be transmitted both aurally and visually or only visually. TV and Class A TV stations may use any method of visual presentation which results in a legible message conveying the essential emergency information. Methods which may be used include, but are not necessarily limited to, slides, electronic captioning, manual methods (e.g., hand printing) or mechanical printing processes. However, when an emergency operation is being conducted under a national, State or Local Area Emergency Alert System (EAS) plan, emergency information shall be transmitted both aurally and visually unless only the EAS codes are transmitted as specified in § 11.51(b) of this chapter.

18. Section 73.1400 is amended by revising the introductory text to read as follows:

**§ 73.1400 Transmission system monitoring and control.**

The licensee of an AM, FM, TV or Class A TV station is responsible for assuring that at all times the station operates within tolerances specified by

applicable technical rules contained in this part and in accordance with the terms of the station authorization. Any method of complying with applicable tolerances is permissible. The following are typical methods of transmission system operation:

* * * * *

19. Section 73.1540 is amended by revising paragraph (a) to read as follows:

**§ 73.1540 Carrier frequency measurements.**

(a) The carrier frequency of each AM and FM station and the visual carrier frequency and the difference between the visual carrier and the aural carrier or center frequency of each TV and Class A TV station shall be measured or determined as often as necessary to ensure that they are maintained within the prescribed tolerances.

* * * * *

20. Section 73.1545 is amended by adding paragraph (e) to read as follows:

**§ 73.1545 Carrier frequency departure tolerances.**

* * * * *

(e) *Class A TV stations.* The departure of the carrier frequency of Class A TV stations may not exceed the values specified in § 74.761 of this chapter. Provided, however, Class A TV stations licensed to operate with a maximum effective radiated power greater than the value specified in their initial Class A TV station authorization must comply with paragraph (c) of this section.

21. Section 73.1560 is amended by revising paragraph (c)(1) to read as follows:

**§ 73.1560 Operating power and mode tolerances.**

* * * * *

(c) *TV stations.* (1) Except as provided in paragraph (d) of this section, the visual output power of a TV or Class A TV transmitter, as determined by the procedures specified in Sec. 73.664, must be maintained as near as is practicable to the authorized transmitter output power and may not be less than 80% nor more than 110% of the authorized power.

* * * * *

22. Section 73.1570 is amended by revising the heading and paragraph (b)(3) to read as follows:

**§ 73.1570 Modulation levels: AM, FM, TV and Class A TV aural.**

* * * * *

(b) * * *

(3) *TV and Class A TV stations.* In no case shall the total modulation of the aural carrier exceed 100% on peaks of frequent recurrence, unless some other peak modulation level is specified in an instrument of authorization. For monophonic transmissions, 100% modulation is defined as +/ − 25 kHz.

* * * * *

23. Section 73.1580 is revised to read as follows:

**§ 73.1580 Transmission system inspections.**

Each AM, FM, TV and Class A TV station licensee or permittee must conduct periodic complete inspections of the transmitting system and all required monitors to ensure proper station operation.

24. Section 73.1590 is amended by revising paragraph (a) to read as follows:

**§ 73.1590 Equipment performance measurements.**

(a) The licensee of each AM, FM, TV and Class A TV station, except licensees of Class D non-commercial educational FM stations authorized to operate with 10 watts or less output power, must make equipment performance measurements for each main transmitter as follows:

* * * * *

25. Section 73.1615 is amended by revising the introductory text and paragraph (a) to read as follows:

**§ 73.1615 Operation during modification of facilities.**

When the licensee of an existing AM, FM, TV or Class A TV station is in the process of modifying existing facilities as authorized by a construction permit and determines it is necessary to either discontinue operation or to operate with temporary facilities to continue program service, the following procedures apply:

(a) Licensees holding a construction permit for modification of directional or nondirectional FM, TV or Class A TV or nondirectional AM station facilities may, without specific FCC authority, for a period not exceeding 30 days:

* * * * *

26. Section 73.1620 is amended by revising paragraphs (a) and (a)(1) to read as follows:

**§ 73.1620 Program tests.**

(a) Upon completion of construction of an AM, FM, TV or Class A TV station in accordance with the terms of the construction permit, the technical provisions of the application, the rules and regulations and the applicable engineering standards, program tests may be conducted in accordance with the following:

(1) The permittee of a nondirectional AM or FM station, or a nondirectional or directional TV or Class A TV station, may begin program tests upon notification to the FCC in Washington, DC provided that within 10 days thereafter, an application for a license is filed with the FCC in Washington, DC.

* * * * *

27. Section 73.1635 is amended by revising paragraph (a)(5) to read as follows:

**§ 73.1635 Special temporary authorizations (STA).**

(a) * * *

(5) Certain rules specify special considerations and procedures in situations requiring an STA or permit temporary operation at variance without prior authorization from the FCC when notification is filed as prescribed in the particular rules. See § 73.62, Directional antenna system tolerances; § 73.157, Antenna testing during daytime; § 73.158, Directional antenna monitoring points; § 73.691, Visual modulation monitoring; § 73.1250, Broadcasting emergency information; § 73.1350, Transmission system operation; § 73.1560, Operating power and mode tolerances; § 73.1570, Modulation levels: AM, FM, TV and Class A TV aural; § 73.1615, Operation during modification of facilities; § 73.1680, Emergency antennas; and § 73.1740, Minimum operating schedule.

* * * * *

28. Section 73.1660 is amended by revising paragraph (a) to read as follows:

**§ 73.1660 Acceptability of broadcast transmitters.**

(a) An AM, FM, LPFM, TV or Class A TV transmitter shall be verified for compliance with the requirements of this part following the procedures described in part 2 of the FCC rules.

* * * * *

29. Section 73.1665 is amended by revising paragraphs (a) and (b) to read as follows:

**§ 73.1665 Main transmitters.**

(a) Each AM, FM, TV and Class A TV broadcast station must have at least one main transmitter which complies with the provisions of the transmitter technical requirements for the type and class of station. A main transmitter is one which is used for regular program service having power ratings appropriate for the authorized operating power(s).

(b) There is no maximum power rating limit for FM, TV or Class A TV station transmitters, however, the maximum rated transmitter power of a main transmitter stalled at an AM station shall be as follows:

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| Authorized power | Maximum rated transmitter power (kW) |
|---|---|
| 0.25, 0.5, or 1 kW | 1 |
| 2.5 kW | 5 |
| 5 or 10 kW | 10 |
| 25 or 50 kW | 50 |

* * * * *

30. Section 73.1675 is amended by revising paragraphs (a)(1) and (c)(1) to read as follows:

**§ 73.1675 Auxiliary antennas.**

(a)(1) An auxiliary antenna is one that is permanently installed and available for use when the main antenna is out of service for repairs or replacement. An auxiliary antenna may be located at the same transmitter site as the station's main antenna or at a separate site. The service contour of the auxiliary antenna may not extend beyond the following corresponding contour for the main facility:

(i) AM stations: The 0.5 mV/m field strength contours.

(ii) FM stations: The 1.0 mV/m field strength contours.

(iii) TV stations: The Grade B coverage contours.

(iv) Class A TV stations: The protected contours defined in § 73.6010.

* * * * *

(c)(1) Where an FM, TV or Class A TV licensee proposes to use a formerly licensed main facility as an auxiliary facility, or proposes to modify a presently authorized auxiliary facility, and no changes in the height of the antenna radiation center are required in excess of the limits in § 73.1690(c)(1), the FM, TV or Class A TV licensee may apply for the proposed auxiliary facility by filing a modification of license application. The modified auxiliary facility must operate on the same channel as the licensed main facility. An exhibit must be provided with this license application to demonstrate compliance with § 73.1675(a). All FM, TV and Class A TV licensees may request a decrease from the authorized facility's ERP in the license application. An FM, TV or Class A TV licensee may also increase the ERP of the auxiliary facility in a license modification application, provided the application contains an analysis demonstrating compliance with the Commission's radiofrequency radiation guidelines, and an analysis showing that the auxiliary facility will comply with § 73.1675(a). Auxiliary facilities mounted on an AM antenna tower must also demonstrate compliance with § 73.1692 in the license application.

* * * * *

31. Section 73.1680 is amended by revising paragraph (b)(2) to read as follows:

**§ 73.1680 Emergency antennas.**

* * * * *

(b) * * *

(2) *FM, TV and Class A TV stations.* FM, TV and Class A TV stations may erect any suitable radiator, or use operable sections of the authorized antenna(s) as an emergency antenna.

* * * * *

32. Section 73.1690 is amended by revising paragraphs (a)(2), (b)(2), (b)(3), (b)(5), (b)(7), (b)(8), (c) introductory text, (c)(3), and (c)(4) to read as follows:

**§ 73.1690 Modification of transmission systems.**

* * * * *

(a) * * *

(2) Those that would cause the transmission system to exceed the equipment performance measurements prescribed for the class of service (AM, § 73.44; FM, §§ 73.317, 73.319, and 73.322; TV and Class A TV, §§ 73.682 and 73.687).

(b) * * *

(2) Any change in station geographic coordinates, including coordinate corrections. FM, TV and Class A TV directional stations must also file a construction permit application for any move of the antenna to another tower structure located at the same coordinates. Any change which would require an increase along any azimuth in the composite directional antenna pattern of an FM station from the composite directional antenna pattern authorized (see § 73.316), or any increase from the authorized directional antenna pattern for a TV broadcast (see § 73.685) or Class A TV station (see § 73.6025).

(3) Any change which would require an increase along any azimuth in the composite directional antenna pattern of an FM station from the composite directional antenna pattern authorized (see § 73.316), or any increase from the authorized directional antenna pattern for a TV broadcast (see § 73.685) or Class A TV station (see § 73.6025).

* * * * *

(5) Any decrease in the authorized power of an AM station or the ERP of a TV or Class A TV station, or any decrease or increase in the ERP of an FM commercial station, which is intended for compliance with the multiple ownership rules in § 73.3555.

* * * * *

(7) Any increase in the authorized ERP of a television station, Class A television station, FM commercial station, or noncommercial educational FM station, except as provided for in §§ 73.1690(c)(4), (c)(5), or (c)(7), or in § 73.1675(c)(1) in the case of auxiliary facilities.

(8) A commercial TV or noncommercial educational TV station operating on Channels 14 or Channel 69 or a Class A TV station on Channel 14 may increase its horizontally or vertically polarized ERP only after the grant of a construction permit. A television or Class A television station on Channels 15 through 21 within 341 km of a cochannel land mobile operation, or 225 km of a first-adjacent channel land mobile operation, must also obtain a construction permit before increasing the horizontally or vertically polarized ERP (see part 74, § 74.709(a) and (b) for tables of urban areas and corresponding reference coordinates of potentially affected land mobile operations).

(c) The following FM, TV and Class A TV station modifications may be made without prior authorization from the Commission. A modification of license application must be submitted to the Commission within 10 days of commencing program test operations pursuant to § 73.1620. With the exception of applications filed solely pursuant to paragraphs (c)(6), (c)(9), or (c)(10) of this section, the modification of license application must contain an exhibit demonstrating compliance with the Commission's radio frequency radiation guidelines. In addition, except for applications solely filed pursuant to paragraphs (c)(6) or (c)(9) of this section, where the installation is located within 3.2 km of an AM tower or is located on an AM tower, an exhibit demonstrating compliance with § 73.1692 is also required.

* * * * *

(4) Commercial and noncommercial educational FM stations operating on Channels 221 through 300 (except Class D), NTSC TV stations operating on Channels 2 through 13 and 22 through 68, Class A TV stations operating on Channels 2 through 13 and 22 through 51, and TV and Class A TV stations operating on Channels 15 through 21 that are in excess of 341 km (212 miles) from a cochannel land mobile operation or in excess of 225 km (140 miles) from a first-adjacent channel land mobile operation (see part 74, § 74.709(a) and (b) for tables of urban areas and reference coordinates of potentially affected land mobile operations), which operate omnidirectionally, may increase the vertically polarized effective radiated power up to the authorized horizontally polarized effective radiated power in a license modification

application. Noncommercial educational FM licensees and permittees on Channels 201 through 220, that do not use separate antennas mounted at different heights for the horizontally polarized ERP and the vertically polarized ERP, and are located in excess of the separations from a Channel 6 television station listed in Table A of § 73.525(a)(1), may also increase the vertical ERP, up to (but not exceeding) the authorized horizontally polarized ERP via a license modification application. Program test operations may commence at full power pursuant to § 73.1620(a)(1).

* * * * *

33. Section 73.1740 is amended by adding paragraph (a)(5) to read as follows:

**§ 73.1740 Minimum operating schedule.**

(a) * * *

(5) *Class A TV stations.* Not less than 18 hours in each day of the week.

* * * * *

34. Section 73.1870 is amended by revising paragraph (a) to read as follows:

**§ 73.1870 Chief operators.**

(a) The licensee of each AM, FM, TV or Class A TV broadcast station must designate a person to serve as the station's chief operator. At times when the chief operator is unavailable or unable to act (*e.g.*, vacations, sickness), the licensee shall designate another person as the acting chief operator on a temporary basis.

* * * * *

34. Section 73.2080 is amended by revising paragraph (a) to read as follows:

**§ 73.2080 Equal employment opportunities.**

(a) *General EEO Policy.* Equal opportunity in employment shall be afforded by all licensees or permittees of commercially or noncommercially operated AM, FM, TV, Class A TV, or international broadcast station (as defined in this part) to all qualified persons, and no person shall be discriminated against in employment by such stations because of race, color, religion, national origin, or sex.

* * * * *

35. The table in § 73.3500 (a) is amended by adding the entry "302–CA, Application for Class A Television Broadcasting Station Construction Permit or License," in numerical order to read as follows:

**§ 73.3500 Application and report forms.**

* * * * *

| | |
|---|---|
| 302–CA | Application for Class A Television Broadcasting Station Construction Permit or License |

* * * * *

36. Section 73.3516 is amended by revising paragraph (a) to read as follows:

**§ 73.3516 Specification of facilities.**

(a) An application for facilities in the AM, FM, TV or Class A TV broadcast services, or low power TV service shall be limited to one frequency, or channel, and no application will be accepted for filing if it requests an alternate frequency or channel. Applications specifying split frequency AM operations using one frequency during daytime hours complemented by a different frequency during nighttime hours will not be accepted for filing.

* * * * *

37. Section 73.3526 is amended by revising paragraphs (a)(2), (e)(11)(i) through (e)(11)(iii), and (e)(15), and by adding a paragraph (e)(17) to read as follows:

**§ 73.3526 Local public inspection file of commercial stations.**

(a) * * *

(2) Every permittee or licensee of an AM, FM, TV or Class A TV station in the commercial broadcast services shall maintain a public inspection file containing the material, relating to that station, described in paragraphs (e)(1) through (e)(10) and paragraph (e)(13) of this section. In addition, every permittee or licensee of a commercial TV or Class A TV station shall maintain for public inspection a file containing material, relating to that station, described in paragraphs (e)(11) and (e)(15) of this section, and every permittee or licensee of a commercial AM or FM station shall maintain for public inspection a file containing the material, relating to that station, described in paragraphs (e)(12) and (e)(14) of this section. A separate file shall be maintained for each station for which an authorization is outstanding, and the file shall be maintained so long as an authorization to operate the station is outstanding.

* * * * *

(e) * * *

(11)(i) *TV issues/programs lists.* For commercial TV and Class A TV broadcast stations, every three months a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period. The list for each calendar quarter is to be filed by the tenth day of the succeeding calendar quarter (*e.g.*, January 10 for the quarter October–December, April 10 for the quarter January–March, etc.) The list shall include a brief narrative describing what issues were given significant treatment and the programming that provided this treatment. The description of the programs shall include, but shall not be limited to, the time, date, duration, and title of each program in which the issue was treated. The lists described in this paragraph shall be retained in the public inspection file until final action has been taken on the station's next license renewal application.

(ii) *Records concerning commercial limits.* For commercial TV and Class A TV broadcast stations, records sufficient to permit substantiation of the station's certification, in its license renewal application, of compliance with the commercial limits on children's programming established in 47 U.S.C. 303a and 47 CFR 73.670. The records for each calendar quarter must be filed by the tenth day of the succeeding calendar quarter (*e.g.*, January 10 for the quarter October–December, April 10 for the quarter January–March, etc.). These records shall be retained until final action has been taken on the station's next license renewal application.

(iii) *Children's television programming reports.* For commercial TV and Class A TV broadcast stations, on a quarterly basis, a completed Children's Television Programming Report ("Report"), on FCC Form 398, reflecting efforts made by the licensee during the preceding quarter, and efforts planned for the next quarter, to serve the educational and informational needs of children. The Report for each quarter is to be filed by the tenth day of the succeeding calendar quarter. The Report shall identify the licensee's educational and informational programming efforts, including programs aired by the station that are specifically designed to serve the educational and informational needs of children, and it shall explain how programs identified as Core Programming meet the definition set forth in § 73.671(c). The Report shall include the name of the individual at the station responsible for collecting comments on the station's compliance with the Children's Television Act, and it shall be separated from other materials in the public inspection file. These Reports shall be retained in the public inspection file until final action has been taken on the station's next license renewal application. Licensees shall publicized in an appropriate manner the existence and location of these Reports. For an experimental period of three years, licensees shall file these Reports with the Commission on an annual basis, *i.e.*, four quarterly reports filed jointly each year, in electronic form as of January 10, 1999.

These reports shall be filed with the Commission on January 10, 1998, January 10, 1999, and January 10, 2000.

* * * * *

(15) *Must-carry or retransmission consent election.* Statements of a commercial television or Class A television station's election with respect to either must-carry or re-transmission consent, as defined in § 76.64 of this chapter. These records shall be retained for the duration of the three year election period to which the statement applies.

* * * * *

(17) *Class A TV continuing eligibility.* Documentation sufficient to demonstrate that the Class A television station is continuing to meet the eligibility requirements set forth at § 73.6001.

38. Section 73. 3536 is amended by adding a paragraph (c) to read as follows:

**§ 73.3536 Application for license to cover construction permit.**

* * * * *

(c) Eligible low power television stations which have been granted a certificate of eligibility may file FCC Form 302-CA, "Application for Class A Television Broadcast Station Construction Permit Or License."

39. Section 73.3550 is amended by revising paragraph (f) and (m) to read as follows:

**§ 73.3550 Requests for new or modified call sign assignments.**

* * * * *

(f) Only four-letter call signs (plus an LP, FM, TV or CA suffix, if used) will be assigned. The four letter call sign for LPFM stations will be followed by the suffix "-LP." However, subject to the other provisions of this section, a call sign of a station may be conformed to a commonly owned station holding a three-letter call assignment (plus FM, TV, CA or LP suffixes, if used).

* * * * *

(m) Where a requested call sign, without the "-FM," "-TV," "-CA" or "LP" suffix, would conform to the call sign of any other non-commonly owned station(s) operating in a different service, an applicant utilizing the on-line reservation and authorization system will be required to certify that consent to use the secondary call sign has been obtained from the holder of the primary call sign.

* * * * *

40. Section 73.3572 is amended by revising the section heading and paragraphs (a)(1) through (c) and paragraphs (e)(1) through (g) to read as follows:

**§ 73.3572 Processing of TV Broadcast, Class A TV Broadcast, low power TV, TV translator and TV booster station applications.**

(a) * * *

(1) In the first group are applications for new stations or major changes in the facilities of authorized stations. A major change for TV broadcast stations authorized under this part is any change in frequency or community of license which is in accord with a present allotment contained in the Table of Allotments (§ 73.606). Other requests for change in frequency or community of license for TV broadcast stations must first be submitted in the form of a petition for rulemaking to amend the Table of Allotments.

(2) In the case of Class A TV stations authorized under subpart J of this part and low power TV, TV translator, and TV booster stations authorized under part 74 of this chapter, a major change is any change in:

(i) Frequency (output channel), except a change in offset carrier frequency; or

(ii) Transmitting antenna location where the protected contour resulting from the change is not predicted to overlap any portion of the protected contour based on the station's authorized facilities.

(3) Other changes will be considered minor; provided, until October 1, 2000, proposed changes to the facilities of Class A TV, low power TV, TV translator and TV booster stations, other than a change in frequency, will be considered minor only if the change(s) will not increase the signal range of the Class A TV, low power TV or TV booster in any horizontal direction.

(4) The following provisions apply to displaced Class A TV, low power TV, TV translator and TV booster stations:

(i) In the case of an authorized low power TV, TV translator or TV booster which is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to § 74.705 of this chapter or interference with broadcast or other services under § 74.703 or § 74.709 of this chapter, an application for a change in output channel, together with technical modifications which are necessary to avoid interference (including a change in antenna location of less than 16.1km), will not be considered as an application for a major change in those facilities.

(ii) Provided further, that a low power TV, TV translator or TV booster station authorized on a channel from channel 52 to 69, or which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized DTV station pursuant to § 74.706 of this chapter, or which is located within the distances specified in paragraph (4)(iv) of this section to the coordinates of co-channel DTV authorizations (or allotment table coordinates if there are no authorized facilities at different coordinates), may at any time file a displacement relief application for a change in output channel, together with any technical modifications which are necessary to avoid interference or continue serving the station's protected service area. Such an application will not be considered as an application for a major change in those facilities. Where such an application is mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other nondisplacement relief applications for facilities modifications of Class A TV, low power TV, TV translator or TV booster stations, priority will be afforded to the displacement application(s) to the exclusion of the other applications.

(iii) A Class A TV station which is causing or receiving interference or is predicted to cause or receive interference to or from an authorized TV broadcast station pursuant to §§ 73.6011 or 73.613; a DTV station or allotment pursuant to §§ 73.6013 or 73.623, or which is located within the distances specified below in paragraph (iv) of this section to the coordinates of co-channel DTV authorizations (or allotment table coordinates if there are no authorized facilities at different coordinates); or other service that protects and/or is protected by Class A TV stations, may at any time file a displacement relief application for a change in channel, together with technical modifications that are necessary to avoid interference or continue serving the station's protected service area, provided the station's protected contour resulting from a relocation of the transmitting antenna is predicted to overlap some portion of the protected contour based on its authorized facilities. A Class A TV station displacement relief applications will be considered major change applications, and will be placed on public notice for a period of not less than 30 days to permit the filing of petitions to deny. However, these applications will not be subject to the filing of competing applications. Where a Class A displacement relief application becomes mutually exclusive with applications for new low power TV, TV translator or TV booster stations, or with other non-displacement relief applications for facilities modifications of Class A TV, low power TV, TV translator or TV booster stations, priority will be afforded to the Class A

TV displacement relief application(s) to the exclusion of other applications. Mutually exclusive displacement relief applications of Class A TV, low power TV, TV translators or TV booster stations filed on the same day will be subject to competitive bidding procedures if the mutual exclusivity is not resolved by an engineering solution.

(iv)(A) The geographic separations to co-channel DTV facilities or allotment reference coordinates, as applicable, within which to qualify for displacement relief are the following:

*(1)* Stations on UHF channels: 265 km (162 miles)

*(2)* Stations on VHF channels 2–6: 280 km (171 miles)

*(3)* Stations on VHF channels 7–13: 260 km (159 miles)

(B) Engineering showings of predicted interference may also be submitted to justify the need for displacement relief.

(v) Provided further, that the FCC may, within 15 days after acceptance of any other application for modification of facilities, advise the applicant that such application is considered to be one for a major change and therefore subject to the provisions of §§ 73.3522, 73.3580, and 1.1111 of this chapter pertaining to major changes. Such major modification applications filed for Class A TV, low power TV, TV translator, TV booster stations, and for a non-reserved television allotment, are subject to competitive bidding procedures and will be dismissed if filed outside a specified filing period. *See* 47 CFR 73.5002(a).

(b) A new file number will be assigned to an application for a new station or for major changes in the facilities of an authorized station, when it is amended so as to effect a major change, as defined in paragraphs (a)(1) or (a)(2) of this section, or result in a situation where the original party or parties to the application do not retain more than 50% ownership interest in the application as originally filed and § 73.3580 will apply to such amended application. An application for change in the facilities of any existing station will continue to carry the same file number even though (pursuant to FCC approval) an assignment of license or transfer of control of such licensee or permittee has taken place if, upon consummation, the application is amended to reflect the new ownership.

(c) Amendments to Class A TV, low power TV, TV translator, TV booster stations, or non-reserved television applications, which would require a new file number pursuant to paragraph (b) of this section, are subject to competitive bidding procedures and will be dismissed if filed outside a specified filing period. See 47 CFR 73.5002(a). When an amendment to an application for a reserved television allotment would require a new file number pursuant to paragraph (b) of this section, the applicant will have the opportunity to withdraw the amendment at any time prior to designation for a hearing if applicable; and may be afforded, subject to the discretion of the Administrative Law Judge, an opportunity to withdraw the amendment after designation for a hearing.

* * * * *

(e)(1) The FCC will specify by Public Notice, pursuant to § 73.5002, a period for filing applications for a new non-reserved television, low power TV and TV translator stations or for major modifications in the facilities of such authorized stations and major modifications in the facilities of Class A TV stations.

(2) Such applicants shall be subject to the provisions of §§ 1.2105 of this chapter and competitive bidding procedures. See 47 CFR 73.5000 et seq.

(f) Applications for minor modification of Class A TV, low power TV, TV translator and TV booster stations may be filed at any time, unless restricted by the FCC, and will be processed on a "first-come/first-served" basis, with the first acceptable application cutting off the filing rights of subsequent, competing applicants. Provided, however, that applications for minor modifications of Class A TV and those of TV broadcast stations may become mutually exclusive until grant of a pending Class A TV or TV broadcast minor modification application and will be subject to competitive bidding procedures.

(g) TV booster station applications may be filed at any time. Subsequent to filing, the FCC will release a Public Notice accepting for filing and proposing for grant those applications which are not mutually exclusive with any other TV translator, low power TV, TV booster, or Class A TV application, and providing for the filing of Petitions To Deny pursuant to § 73.3584.

41. Section 73.3580 is amended by revising the first and second sentence of paragraph (c) and adding paragraph (d)(5) to read as follows:

**§ 73. 3580 Local public notice of filing of broadcast applications.**

* * * * *

(c) An applicant who files an application or amendment thereto which is subject to the provisions of this section, must give notice of this filing in a newspaper. Exceptions to this requirement are applications for renewal of AM, FM, TV, Class A TV and international broadcasting stations; low power TV stations; TV and FM translator stations; TV boosters stations; FM boosters stations; and applications subject to paragraph (e) of this section.

* * * * *

(d) * * *

(5) An applicant who files for a Class A television license must give notice of this filing by broadcasting announcements on applicant's station. (Sample and schedule of announcements follow.) Newspaper publication is not required.

(i) The broadcast notice requirement for those filing for Class A television license applications and amendment thereto are as follows:

(A) *Pre-filing announcements.* Two weeks prior to the filing of the license application, the following announcement shall be broadcast on the 5th and 10th days of the two week period. The required announcements shall be made between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain Time) Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

(B) *On (date), the Federal Communications Commission granted (Station's call letters) a certification of eligibility to apply for Class A television status.* To become eligible for a Class A certificate of eligibility, a low power television licensee was required to certify that during the 90-day period ending November 28, 1999, the station:

(1) Broadcast a minimum of 18 hours per day;

(2) Broadcast an average of at least three hours per week of programming produced within the market area served by the station or by a group of commonly-owned low power television stations; and

(3) Had been in compliance with the Commission's regulations applicable to the low power television service. The Commission may also issue a certificate of eligibility to a licensee unable to satisfy the foregoing criteria, if it determines that the public interest, convenience and necessity would be served thereby.

(4) (Station's call letters) intends to file an application (FCC Form 302–CA) for a Class A television license in the near future. When filed, a copy of this application will be available at (address of location of the station's public inspection file) for public inspection during our regular business hours. Individuals who wish to advise the FCC of facts relating to the station's

eligibility for Class A status should file comments and petitions with the FCC prior to Commission action on this application.

(C) *Post-filing announcements.* The following announcement shall be broadcast on the 1st and 10th days following the filing of an application for a Class A television license. The required announcements shall be made between 6 p.m. and 11 p.m. (5 p.m. and 10 p.m. Central and Mountain Time). Stations broadcasting primarily in a foreign language should broadcast the announcements in that language.

(D) On (date of filing license application) (Station's call letters) filed an application, FCC Form 302–CA, for a Class A television license. Such stations are required to broadcast a minimum of 18 hours per day, and to average at least 3 hours of locally produced programming each week, and to comply with certain full-service television station operating requirements. A copy of this application is available for public inspection during our regular business hours at (address of location of the station's public inspection file). Individuals who wish to advise the FCC of facts relating to the station's eligibility for Class A status should file comments and petitions with the FCC prior to Commission action on this application.

* * * * *

42. Section 73.3612 is revised to read as follows:

**§ 73.3612 Annual employment report.**

Each licensee of permittee of a commercially or noncommercially operated AM, FM, TV, Class A TV or International Broadcast station with five or more employees shall file an annual employment report with the FCC on or before September 30 of each year on FCC Form 395.

43. Subpart J is added to read as follows.

## Subpart J—Class A Television Broadcast Stations

Sec.

73.6000 Definitions.
73.6001 Eligibility and service requirements.
73.6002 Licensing requirements.
73.6003—73.6005 [Reserved]
73.6006 Channel assignments.
73.6007 Power limitations.
73.6008 Distance computations.
73.6010 Class A TV station protected contour.
73.6011 Protection of TV broadcast stations.
73.6012 Protection of Class A TV, low power TV and TV translator stations.
73.6013 Protection of DTV stations.
73.6014 Protection of digital Class A TV stations.
73.6016 Digital Class A TV station protection of TV broadcast stations.
73.6017 Digital Class A TV station protection of Class A TV, low power TV and TV translator stations.
73.6018 Digital Class A TV station protection of DTV stations.
73.6019 Digital Class A TV station protection of digital Class A TV stations.
73.6020 Protection of stations in the land mobile radio service.
73.6022 Negotiated interference and relocation agreements.
73.6024 Transmission standards and system requirements.
73.6026 Broadcast regulations applicable to Class A television stations.

**§ 73.6000 Definitions.**

*Locally produced programming.* For the purpose of this subpart, locally produced programming is programming:

(1) Produced within the predicted Grade B contour of the station or within the predicted Grade B contours of any of the stations in a commonly owned group; or

(2) Programming produced at the station's main studio. See *Report and Order,* In the Matter of Establishment of a Class A Television Service, MM Docket No. 00–10, released April 4, 2000.

**§ 73.6001 Eligibility and service requirements.**

(a) Qualified low power television licensees which, during the 90-day period ending November 28, 1999, operated their stations in a manner consistent with the programming and operational standards set forth in the Community Broadcasters Protection Act of 1999, may be accorded primary status as Class A television licensees.

(b) Class A television broadcast stations are required to:

(1) Broadcast a minimum of 18 hours per day; and

(2) Broadcast an average of at least three hours per week of locally produced programming each quarter.

(c) Licensed Class A television broadcast stations shall be accorded primary status as a television broadcaster as long as the station continues to meet the minimum operating requirements for Class A status.

(d) Licensees unable to continue to meet the minimum operating requirements for Class A television stations, or which elect to revert to low power television status, shall promptly notify the Commission, in writing, and request a change in status.

**§ 73.6002 Licensing requirements.**

(a) A Class A television broadcast license will only be issued to a qualified low power television licensee that:

(1) Filed a Statement of Eligibility for Class A Low Power Television Station Status on or before January 28, 2000, which was granted by the Commission; and

(2) Files an acceptable application for a Class A Television license (FCC Form 302–CA).

**§§ 73.6003–73.6005 [Reserved]**

**§ 73.6006 Channel assignments.**

Class A TV stations will not be authorized on UHF TV channels 52 through 69, or on channels unavailable for TV broadcast station use pursuant to § 73.603 of this part.

**§ 73.6007 Power limitations.**

An application to change the facilities of an existing Class A TV station will not be accepted if it requests an effective radiated power that exceeds the power limitation specified in § 74.735 of this chapter.

**§ 73.6008 Distance computations.**

The distance between two reference points must be calculated in accordance with § 73.208(c) of this part.

**§ 73.6010 Class A TV station protected contour.**

(a) A Class A TV station will be protected from interference within the following predicted signal contours:

(1) 62 dBu for stations on Channels 2 through 6;

(2) 68 dBu for stations on Channels 7 through 13; and

(3) 74 dBu for stations on Channels 14 through 51.

(b) The Class A TV station protected contour is calculated from the effective radiated power and antenna height above average terrain, using the F(50,50) charts of Figure 9, 10 or 10b of § 73.699 of this part.

(c) A digital Class A TV station will be protected from interference within the following predicted signal contours:

(1) 43 dBu for stations on Channels 2 through 6;

(2) 48 dBu for stations on Channels 7 through 13; and

(3) 51 dBu for stations on Channels 14 through 51.

(d) The digital Class A TV station protected contour is calculated from the effective radiated power and antenna height above average terrain, using the F(50,90) signal propagation method specified in § 73.625(b)(1) of this part.

**§ 73.6011 Protection of TV broadcast stations.**

Class A TV stations must protect authorized TV broadcast stations, applications for minor changes in authorized TV broadcast stations filed

on or before November 29, 1999, and applications for new TV broadcast stations that had been cut-off without competing applications or that were the winning bidder in a TV broadcast station auction as of that date, or that were the proposed remaining applicant in a group of mutually-exclusive applications for which a settlement agreement was on file as of that date. Protection of these stations and applications must be based on the requirements specified in § 74.705 of this chapter. An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect these TV broadcast stations and applications pursuant to the requirements specified in § 74.705 of this chapter.

**§ 73.6012 Protection of Class A TV, low power TV and TV translator stations.**

An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect other authorized Class A TV, low power TV and TV translator stations and applications for changes in such stations filed prior to the date the Class A application is filed, pursuant to the requirements specified in § 74.707 of this chapter.

**§ 73.6013 Protection of DTV stations.**

Class A TV stations must protect the DTV service that would be provided by the facilities specified in the DTV Table of Allotments in § 73.622 of this part, by authorized DTV stations and by applications that propose to expand DTV stations' allotted or authorized coverage contour in any direction, if such applications either were filed before December 31, 1999 or were filed between December 31, 1999 and May 1, 2000 by a DTV station licensee or permittee that had notified the Commission of its intent to "maximize" by December 31, 1999. Protection of these allotments, stations and applications must be based on not causing predicted interference within the service area described in § 73.622(e) of this part. The interference analysis is based on the methods described in §§ 73.623(c)(2) through (c)(4) of this part, except that a Class A TV station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the DTV allotment, station or application. An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect these DTV allotments, stations and applications in accordance with this section.

**§ 73.6014 Protection of digital Class A TV stations.**

An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect authorized digital Class A TV stations and applications for changes in such stations filed prior to the date the Class A application is filed, pursuant to the requirements specified in § 74.706 of this chapter.

**§ 73.6016 Digital Class A TV station protection of TV broadcast stations.**

Digital Class A TV stations must protect authorized TV broadcast stations, applications for minor changes in authorized TV broadcast stations filed on or before November 29, 1999, and applications for new TV broadcast stations that had been cut-off without competing applications or that were the winning bidder in a TV broadcast station auction as of that date, or that were the proposed remaining applicant in a group of mutually-exclusive applications for which a settlement agreement was on file as of that date. This protection must be based on meeting the D/U ratios for "DTV-into-analog TV" specified in § 73.623(c)(2) of this part at the Grade B contour of the TV broadcast station or application. An application for DTV operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect these TV broadcast stations and applications pursuant to these requirements.

**§ 73.6017 Digital Class A TV station protection of Class A TV, low power TV, and TV translator stations.**

An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to meet the D/U ratios for "DTV-into-analog TV" specified in § 73.623(c)(2) of this part at the protected contours as defined in § 73.6010 of this part for other authorized Class A TV stations and § 74.707 of this chapter for low power TV and TV translator stations. This protection also must be afforded to applications for changes in other authorized Class A TV, low power TV and TV translator stations filed prior to the date the digital Class A application is filed.

**§ 73.6018 Digital Class A TV station protection of DTV stations.**

Digital Class A TV stations must protect the DTV service that would be provided by the facilities specified in the DTV Table of Allotments in § 73.622 of this part, by authorized DTV stations and by applications that propose to expand DTV stations' allotted or authorized coverage contour in any direction, if such applications either were filed before December 31, 1999 or were filed between December 31, 1999 and May 1, 2000 by a DTV station licensee or permittee that had notified the Commission of its intent to "maximize" by December 31, 1999. Protection of these allotments, stations and applications must be based on not causing predicted interference within the service area described in § 73.622(e) of this part. The interference analysis is based on the methods described in §§ 73.623(c)(2) through (c)(4) of this part, except that a digital Class A TV station must not cause a loss of service to 0.5 percent or more of the population predicted to receive service from the DTV allotment, station or application. An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to protect these DTV allotments, stations and applications in accordance with this section.

**§ 73.6019 Digital Class A TV station protection of digital Class A TV stations.**

An application for digital operation of an existing Class A TV station or to change the facilities of a digital Class A TV station will not be accepted if it fails to meet the D/U ratios for "DTV-into-DTV" specified in § 73.623(c)(2) through (c)(4) of this part at the protected contours as defined in § 73.6010 of this part for other authorized Class A TV stations and applications for changes filed prior to the date the digital Class A application is filed.

**§ 73.6020 Protection of stations in the land mobile radio service.**

An application to change the facilities of an existing Class A TV station will not be accepted if it fails to protect stations in the land mobile radio service pursuant to the requirements specified in § 74.709 of this chapter. In addition to the protection requirements specified in § 74.709(a) of this chapter, Class A TV stations must not cause interference to land mobile stations operating on channel 16 in New York, NY.

**§ 73.6022 Negotiated interference and relocation agreements.**

(a) Notwithstanding the technical criteria in this subpart, Subpart E of this part, and Subpart G of part 74 of this chapter regarding interference protection to and from Class A TV stations, Class A TV stations may negotiate agreements with parties of authorized and proposed analog TV, DTV, LPTV, TV translator, Class A TV stations or other affected parties to

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resolve interference concerns; *provided*, however, other relevant requirements are met with respect to the parties to the agreement. A written and signed agreement must be submitted with each application or other request for action by the Commission. Negotiated agreements under this paragraph can include the exchange of money or other considerations from one entity to another. Applications submitted pursuant to the provisions of this paragraph will be granted only if the Commission finds that such action is consistent with the public interest.

(b) A Class A TV station displaced in channel by a channel allotment change for a DTV station may seek to exchange channels with the DTV station, provided both parties consent in writing to the change and that the Class A station meets all applicable interference protection requirements on the new channel. Such requests will be treated on a case-by-case basis and, if approved, will not subject the Class A station to the filing of competing applications for the exchanged channel.

**§ 73.6024 Transmission standards and system requirements.**

(a) A Class A TV station must meet the requirements of §§ 73.682 and 73.687, except as provided in paragraph (b) of this section.

(b) A Class A TV station may continue to operate with the transmitter operated under its previous LPTV license, provided such operation does not cause any condition of uncorrectable interference due to radiation of radio frequency energy outside of the assigned channel. Such operation must continue to meet the requirements of §§ 74.736 and 74.750 of this chapter.

(c) A Class A TV station is not required to operate on an offset carrier frequency and must meet the frequency tolerance requirements of § 73.1545 of this part.

**§ 73.6025 Antenna system and station location.**

(a) Applications for modified Class A TV facilities proposing the use of directional antenna systems must be accompanied by the following:

(1) Complete description of the proposed antenna system, including the manufacturer and model number of the proposed directional antenna. In the case of a composite antenna composed of two or more individual antennas, the antenna should be described as a "composite" antenna. A full description of the design of the antenna should also be submitted.

(2) Relative field horizontal plane pattern (horizontal polarization only) of the proposed directional antenna. A value of 1.0 should be used for the maximum radiation. The plot of the pattern should be oriented so that 0 degrees (True North) corresponds to the maximum radiation of the directional antenna or, alternatively in the case of a symmetrical pattern, the line of symmetry. Where mechanical beam tilt is intended, the amount of tilt in degrees of the antenna vertical axis and the orientation of the downward tilt with respect to true North must be specified, and the horizontal plane pattern must reflect the use of mechanical beam tilt.

(3) A tabulation of the relative field pattern required in paragraph (a)(2), of this section. The tabulation should use the same zero degree reference as the plotted pattern, and be tabulated at least every 10 degrees. In addition, tabulated values of all maxima and minima, with their corresponding azimuths, should be submitted.

(4) Horizontal and vertical plane radiation patterns showing the effective radiated power, in dBk, for each direction. Sufficient vertical plane patterns must be included to indicate clearly the radiation characteristics of the antenna above and below the horizontal plane. In cases where the angles at which the maximum vertical radiation varies with azimuth, a separate vertical radiation pattern must be provided for each pertinent radial direction.

(5) The horizontal and vertical plane patterns that are required are the patterns for the complete directional antenna system. In the case of a composite antenna composed of two or more individual antennas, this means that the patterns for the composite antenna, not the patterns for each of the individual antennas, must be submitted.

(b) Applications for modified Class A TV facilities proposing to locate antennas within 61.0 meters (200 feet) of other Class A TV or TV broadcast antennas operating on a channel within 20 percent in frequency of the proposed channel, or proposing the use of antennas on Channels 5 or 6 within 61.0 meters (200 feet) of FM broadcast antennas, must include a showing as to the expected effect, if any, of such proximate operation.

(c) Where a Class A TV licensee or permittee proposes to mount an antenna on an AM antenna tower, or locate within 3.2 km of an AM directional station, the TV licensee or permittee must comply with Sec. 73.1692.

(d) Class A TV stations are subject to the provisions in § 73.685(d) regarding blanketing interference.

**§ 73.6026 Broadcast regulations applicable to Class A television stations.**

The following sections are applicable to Class A television stations:

§ 73.603 Numerical designation of television channels.
§ 73.635 Use of common antenna site.
§ 73.642 Subscription TV service.
§ 73.643 Subscription TV operating requirements.
§ 73.644 Subscription TV transmission systems.
§ 73.646 Telecommunications Service on the Vertical Blanking Interval and in the Visual Signal.
§ 73.653 Operation of TV aural and visual transmitters.
§ 73.658 Affiliation agreements and network program practice; territorial exclusivity in non-network program arrangements.
§ 73.664 Determining operating power.
§ 73.665 Use of TV aural baseband subcarriers.
§ 73.667 TV subsidiary communications services.
§ 73.669 TV stereophonic aural and multiplex subcarrier operation.
§ 73.670 Commercial limits in children's programs.
§ 73.671 Educational and informational programming for children.
§ 73.673 Public information initiatives regarding educational and informational programming for children.
§ 73.688 Indicating instruments.
§ 73.691 Visual modulation monitoring.

## PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES.

44. The authority citation for part 74 is revised to read as follows:

**Authority:** 47 U.S.C. 154, 303, 307, 336(f) and 554.

45. Section 74.432 is amended by revising paragraph (a) to read as follows:

**§ 74.432 Licensing requirements and procedures.**

(a) A license for a remote pickup station will be issued to: the licensee of an AM, FM, noncommercial FM, low power FM, TV, Class A TV, international broadcast or low power TV station; broadcast network-entity; or cable network-entity.

* * * * *

46. Section 74.600 is revised to read as follows:

**§ 74.600 Eligibility for license.**

A license for a station in this subpart will be issued only to a television broadcast station, a Class A TV station,

a television broadcast network-entity, a low power TV station, or a TV translator station.

47. Section 74.601 is revised to read as follows:

**§ 74.601 Classes of TV broadcast auxiliary stations.**

(a) *TV pickup stations.* A land mobile station used for the transmission of TV program material and related communications from scenes of events occurring at points removed from TV station studios to a TV broadcast, Class A TV or low power TV station or other purposes as authorized in § 74.631.

(b) *TV STL station (studio-transmitter link).* A fixed station used for the transmission of TV program material and related communications from the studio to the transmitter of a TV broadcast, Class A TV or low power TV station or other purposes as authorized in § 74.631.

(c) *TV relay station.* A fixed station used for transmission of TV program material and related communications for use by TV broadcast, Class A TV and low power TV stations or other purposes as authorized in § 74.631.

(d) *TV translator relay station.* A fixed station used for relaying programs and signals of TV broadcast or Class A TV stations to Class A TV, LPTV, TV translator, and to other communications facilities that the Commission may authorize or for other purposes as permitted by § 74.631.

(e) *TV broadcast licensee.* Licensees and permittees of TV broadcast, Class A TV and low power TV stations, unless specifically otherwise indicated.

(f) *TV microwave booster station.* A fixed station in the TV broadcast auxiliary service that receives and amplifies signals of a TV pickup, TV STL, TV relay, or TV translator relay station and retransmits them on the same frequency.

48. Section 74.602 is amended by revising paragraphs (f) and (h) to read as follows:

**§ 74.602 Frequency assignment.**

* * * * *

(f) TV auxiliary stations licensed to low power TV stations and translator relay stations will be assigned on a secondary basis, *i.e.*, subject to the condition that no harmful interference is caused to other TV auxiliary stations assigned to TV broadcast and Class A TV stations, or to community antenna relay stations (CARS) operating between 12,700 and 13,200 MHz. Auxiliary stations licensed to low power TV stations and translator relay stations must accept any interference caused by stations having primary use of TV auxiliary frequencies.

* * * * *

(h) TV STL and TV relay stations may be authorized, on a secondary basis and subject to the provisions of Subpart G of this chapter, to operate fixed point-to-point service on the UHF–TV channels 14–69. These stations must not interfere with and must accept interference from current and future full-power UHF–TV stations, Class A TV stations, LPTV stations, and TV translator stations. They will also be secondary to current land mobile stations (in areas where land mobile sharing is currently permitted and contingent on the decision reached in the pending Dockets No. 85–172 and No. 84–902).

* * * * *

49. Section 74.703 is amended by revising paragraph (a) to read as follows:

**§ 74.703 Interference.**

(a) An application for a new low power TV, TV translator, or TV booster station or for a change in the facilities of such an authorized station will not be granted when it is apparent that interference will be caused. Except where there is a written agreement between the affected parties to accept interference, or where it can be shown that interference will not occur due to terrain shielding and/or Longley-Rice terrain dependent propagation methods, the licensee of a new low power TV, TV translator, or TV booster shall protect existing low power TV and TV translator stations from interference within the protected contour defined in § 74.707 and shall protect existing Class A TV and digital Class A TV stations within the protected contours defined in § 73.6010 of this chapter. Such written agreement shall accompany the application. Guidance on using the Longley-Rice methodology is provided in OET Bulletin No. 69. Copies of OET Bulletin No. 69 may be inspected during normal business hours at the: Federal Communications Commission, 445 12th Street, S.W., Reference Information Center (Room CY–A257), Washington, DC 20554. This document is also available through the Internet on the FCC Home Page at http://www.fcc.gov/oet/info/documents/bulletins/#69.

* * * * *

50. Subpart G is amended by adding a new § 74.708 to read as follows:

**§ 74.708 Class A TV and digital Class A TV station protection.**

(a) The Class A TV and digital Class A TV station protected contours are specified in § 73.6010 of this chapter.

(b) An application to construct a new low power TV, TV translator, or TV booster station or change the facilities of an existing station will not be accepted if it fails to protect an authorized Class A TV or digital Class A TV station or an application for such a station filed prior to the date the low power TV, TV translator, or TV booster application is filed.

(c) Applications for low power TV, TV translator and TV booster stations shall protect Class A TV stations pursuant to the requirements specified in paragraphs (b) through (e) of § 74.707.

(d) Applications for low power TV, TV translator and TV booster stations shall protect digital Class A TV stations pursuant to the following requirements:

(i) An application must not specify an antenna site within the protected contour of a co-channel digital Class A TV station.

(ii) The ratio in dB of the field strength of the low power TV, TV translator or TV booster station to that of the digital Class A TV station must meet the requirements specified in paragraph (d) of § 74.706, calculated using the propagation methods specified in paragraph (c) of that section.

[FR Doc. 00–11481 Filed 5–9–00; 8:45 am]
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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1815, 1819, and 1852

### Elimination of Elements as a Category in Evaluations

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final Rule.

**SUMMARY:** This final rule amends the NASA FAR Supplement (NFS) by eliminating the term "elements" as a category in evaluations. NASA does not numerically weight and score "elements" and therefore they have ceased to have significance in the evaluation and award of NASA's contracts.

**EFFECTIVE DATE:** May 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Paul Brundage, (202) 358–0481, email: pbrundage@hq.nasa.gov.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

A proposed rule was published in the **Federal Register** on December 16, 1999 (64 FR 70208–70209). No comments were received. This final rule adopts the proposed rule without change.

**B. Regulatory Flexibility Act**

NASA certifies that this rule will not have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the change modifies administrative procedures and does not impose any new requirements on offerors or contractors.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose record keeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**Lists of Subjects in 48 CFR Parts 1815, 1819, and 1852**

Government procurement.

**Tom Luedtke,**

*Associate Administrator for Procurement.*

Accordingly, 48 CFR parts 1815, 1819, and 1852 are amended as follows:

1. The authority citation for 48 CFR Parts 1815, 1819, and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

## PART 1815—CONTRACTING BY NEGOTIATION

**1815.303 [Amended]**

2. In section 1815.303, paragraph (b)(i)(A) is amended by removing the words "and elements,".

3. In section 1815.304–70, paragraphs (a) and (b) are revised to read as follows:

**1815.304–70 NASA evaluation factors.**

(a) Typically, NASA establishes three evaluation factors: Mission Suitability, Cost/Price, and Past Performance. Evaluation factors may be further defined by subfactors. Evaluation subfactors should be structured to identify significant discriminators, or "key swingers"—the essential information required to support a source selection decision. Too many subfactors undermine effective proposal evaluation. All evaluation subfactors should be clearly defined to avoid overlap and redundancy.

(b) Mission Suitability factor. (1) This factor indicates the merit or excellence of the work to be performed or product to be delivered. It includes, as appropriate, both technical and management subfactors. Mission Suitability shall be numerically weighted and scored on a 1000-point scale.

(2) The Mission Suitability factor may identify evaluation subfactors to further define the content of the factor. Each Mission Suitability subfactor shall be weighted and scored. The adjectival rating percentages in 1815.305(a)(3)(A) shall be applied to the subfactor weight to determine the point score. The number of Mission Suitability subfactors is limited to five. The Mission Suitability evaluation subfactors and their weights shall be identified in the RFP.

(3) For cost reimbursement acquisitions, the Mission Suitability evaluation shall also include the results of any cost realism analysis. The RFP shall notify offerors that the realism of proposed costs may significantly affect their Mission Suitability scores.

* * * * *

4. In section 1815.370, paragraphs (b), (d)(4), and (h)(2) are revised; paragraph (h)(3)(ii) is amended by removing "elements,"; paragraph (i)(3) is amended by removing "and elements,"; and paragraphs (i)(6)(ii) and (i)(7) are revised to read as follows:

**1815.370 NASA source evaluation boards.**

* * * * *

(b) The SEB assists the SSA by providing expert analyses of the offerors' proposals in relation to the evaluation factors and subfactors contained in the solicitation. The SEB will prepare and present its findings to the SSA, avoiding trade-off judgments among either the individual offerors or among the evaluation factors. The SEB will not make recommendations for selection to the SSA.

* * * * *

(d) * * *

(4) An SEB committee functions as a factfinding arm of the SEB, usually in a broad grouping of related disciplines (e.g., technical or management). The committee evaluates in detail each proposal, or portion thereof, assigned by the SEB in accordance with the approved evaluation factors and subfactors and summarizes its evaluation in a written report to the SEB. The committee will also respond to requirements assigned by the SEB, including further justification or reconsideration of its findings. Committee chairpersons shall manage the administrative and procedural matters of their committees.

* * * * *

(h) * * *

(2) The presentation shall focus on the significant strengths, deficiencies, and significant weaknesses found in the proposals, the probable cost of each proposal, and any significant issues and problems identified by the SEB. This presentation must explain any applicable special standards of responsibility; evaluation factors and subfactors; the significant strengths and significant weaknesses of the offerors; the Government cost estimate, if applicable; the offerors' proposed cost/price; the probable cost; the proposed fee arrangements; and the final adjectival ratings and scores to the subfactor level.

* * * * *

(i) * * *

(6) * * *

(ii) Directly relate the significant strengths, deficiencies, and significant weaknesses to the evaluation factors and subfactors.

* * * * *

(7) *Final Mission Suitability Ratings and Scores.* Summarizes the evaluation subfactors, the maximum points achievable, and the scores of the offerors in the competitive range.

* * * * *

## PART 1819—SMALL BUSINESS PROGRAMS

**1819.7206 [Amended]**

5. In section 1819.7206, paragraph (a) is amended by removing the words "or element".

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

**1852.217–71 [Amended]**

6. In section 1852.217–71, "(OCTOBER 1998)" is revised to read "(MAY 2000)", and paragraph (g) is amended by removing the words "and elements".

**1852.217–72 [Amended]**

7. In section 1852.217–72, "(OCTOBER 1998)" is revised to read "(MAY 2000)", and paragraph (g) is amended by removing the words "and elements".

[FR Doc. 00–11729 Filed 5–9–00; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

**[Docket No. 000218046-0117; I.D. 121599F]**

**RIN 0648–AN42**

# Antarctic Marine Living Resources; Harvesting and Dealer Permits, and Catch Documentation

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to revise permit requirements for U.S. vessels harvesting, or transshipping catch of, *Dissostichus eleginoides* (Patagonian toothfish) and *Dissostichus mawsoni* (Antarctic toothfish) harvested in all waters, including those under the jurisdiction of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). These regulations govern U.S. harvesters, receivers, importers and exporters of toothfish wherever caught, as well as other Antarctic marine living resources. NMFS will no longer use "import" permits as part of its regulatory requirements, instead it will use "dealer" permits. Persons receiving, importing, or re-exporting toothfish are required to validate and submit *Dissostichus* Catch Documents (DCD) to NMFS. This rule implements U.S. obligations as a Contracting Party of CCAMLR to conserve Antarctic and Patagonian toothfish by preventing or otherwise discouraging unlawful harvest and trade in these species.

**DATES:** This final rule is effective May 5, 2000.

**ADDRESSES:** Copies of the Environmental Assessment and Regulatory Impact Review/Regulatory Flexibility Analysis (EA and RIR/RFA) supporting this action may be obtained from Dean Swanson, International Fisheries Division, Office of Sustainable Fisheries, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments involving the reporting burden estimates or any other aspects of the collection of information requirements contained in this final rule should be sent to both Dean Swanson, at the above address, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer). Comments sent by e-mail or the Internet will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Dean Swanson or Angela Somma at 301–713–2276 or FAX 301–713–2313.

**SUPPLEMENTARY INFORMATION:** The Antarctic fisheries are managed under the authority of the Antarctic Marine Living Resources Convention Act of 1984 (Act) codified at 16 U.S.C. 2431 *et seq.* NMFS implements CCAMLR conservation measures by regulations at 50 CFR part 300, subpart G. Background information about the need for revisions to the Antarctic fisheries regulations was provided in the preamble to the proposed rule (65 FR 13284, March 13, 2000) and is not repeated here.

## Comments and Responses

NMFS received written comments during the 30-day comment period on the proposed rule. When drafting the final EA and RIR/RFA and the final regulations, NMFS considered all comments received. Comments were received on the proposed rule from an industry trade association, several importers of toothfish, several environmental organizations, the U.S. Customs Service, and the Department of State. All supported the action taken by CCAMLR.

*Comment 1*: Several commenters objected to a continuation of the import permit requirements as applied to incoming toothfish at the same time as the DCD requirements are being implemented.

*Response*: NMFS intends to withdraw such import permit requirements by formal rulemaking once the DCD requirements have their intended effect within the United States and other CCAMLR member states.

*Comment 2*: Several commenters suggested that NMFS should review and approve the completeness and accuracy of a DCD before a shipment of toothfish arrives at U.S. Customs.

*Response*: As this alternative was not suggested or considered in the proposed rule and the EA, and the United States is legally obligated to implement the DCD requirements on May 7, 2000, it was not feasible to incorporate this suggestion into the rulemaking given the deadline. NMFS intends to discuss this suggestion with an interagency group with experience with pre-approval procedures for restricted imports to determine whether a pre-approval system can improve compliance with the CCAMLR catch documentation scheme. NMFS will consider the advice of this group and the results of compliance with the DCD scheme in determining whether to propose an amendment to this rule. NMFS is committed to implementing U.S. obligations arising from CCAMLR in a comprehensive manner that aims at full compliance by U.S. nationals and other individuals subject to U.S. jurisdiction.

*Comment 3:* One commenter expressed concern about the commercially sensitive nature of information required on the DCD.

*Response*: The DCD is a CCAMLR-prescribed form, and NMFS is not able to change it. NMFS does not believe any Privacy Act provisions are violated by the form.

*Comment 4:* One commenter said that, as written, the proposed rule is unclear whether the rule requires each landing of toothfish at U.S. ports by non-U.S. flag vessels to be accompanied by a DCD.

*Response*: Non-U.S. vessels are already prohibited by law from landing toothfish at U.S. ports (Nicholson Act, 46 U.S.C. 251–252). Therefore, NMFS does not believe that this issue needs to be addressed in this rulemaking. In addition, under the provisions at § 300.107(c)(2), all offloadings of toothfish by U.S. harvesting vessels must be accompanied by a DCD, and the provisions at § 300.107(c)(3) require a DCD for transshipment of toothfish as well. § 300.107 (c)(5) requires a DCD for the importation of toothfish regardless of the nationality of the vessel that brought it to port.

*Comment 5:* One commenter said that the rule will not prevent all shipments of toothfish accompanied by incomplete DCDs from entering into the customs territory of the United States because it requires merely that each shipment of toothfish coming into the United States be accompanied by a DCD.

*Response:* NMFS disagrees that this rule requires each shipment of toothfish coming into the United States only to be accompanied by a DCD. Each shipment of toothfish must be accompanied by a complete and validated DCD as required under the CCAMLR catch documentation scheme. The provision at § 300.107 (c)(1)(ii) says "No shipment of *Dissostichus* species shall be released for entry into the United States unless accompanied by a complete and validated CCAMLR DCD, except as provided in paragraph (c)(7) of this subsection."

*Comment 6*: One commenter said that CCAMLR/NMFS should consider mandatory use of a vessel monitoring system (VMS) as a precautionary measure in conjunction with the DCD by vessels offloading toothfish into the United States.

*Response*: CCAMLR requires VMS on harvesting vessels of its Contracting

Parties participating in some fisheries, but it does not have the legal authority to require the use of VMS on harvesting vessels of non-contracting parties. CCAMLR did not include VMS requirements within its new toothfish catch documentation scheme. NMFS, therefore, did not consider the alternative of including a VMS requirement in the present rulemaking.

**Changes From the Proposed Rule**

The two finfish species that are being added to the definition of "Antarctic finfishes," *Lepidonotothen kempi* and *Electrona carlsbergi*, were misspelled in the proposed rule. The spelling has been corrected.

The definition of "*Dissostichus* catch document (DCD)" has been corrected to delete the reference to vessels authorized to transship *Dissostichus* species because DCDs are not issued to transshipment vessels.

The definition of "transship" has been clarified to mean the transfer of fish or fish products from one vessel to another.

In § 300.107, paragraph (c) on catch documentation has been reformatted to improve readability.

In § 300.112, paragraph (k) has been clarified to apply to any U.S. flagged vessel that receives or attempts to receive *Dissostichus* species from a harvesting vessel at sea rather than any vessel subject to the jurisdiction of the United States that engages or attempts to engage in this activity.

In § 300.115, paragraph (b) is revised and paragraphs (q) and (r) have been added to enhance enforceability and clarify usage.

Throughout, reference to "the customs territory of the United States" has been changed to "the United States" to comport with the definition of "import" under the Act.

NMFS is not implementing the provisions contained in § 300.116 of the proposed rule at this time due to unresolved enforcement issues. NMFS will rely on existing statutory and regulatory authorities on a case-by-case basis when addressing any resources denied entry.

**Classification**

The Assistant Administrator for Fisheries (AA), NMFS, determined that this final rule is necessary for the conservation and management of Antarctic marine living resources and is consistent with the Antarctic Marine Living Resources Convention Act of 1984, and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification or the EA/RIR/RFA and the basis for this certification has not changed. Impacts were considered in the EA/RIR/RFA (see **ADDRESSES**).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the PRA. OMB has approved this collection-of-information requirement under OMB control number 0648–0194. The estimated burden for dealer permits to import is 30 minutes per occurrence. The estimated burden for applying for a dealer permit to re-export *Dissostichus* species is 30 minutes per occurrence, and the application for a harvest permit authorizing transshipment is estimated to take 12 minutes per occurrence. Completion and submission of an import ticket is estimated to take no more than 15 minutes per occurrence. The estimated burden for completion and submission of DCDs is 3 minutes for each submission by importers, 10 minutes for each submission by re-exporters, and 15 minutes for each submission by harvesting vessels and transshipers. The logbook requirement in § 300.107(a) is not subject to the PRA because it is a requirement imposed by an international organization rather than by NMFS.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to NMFS and to OMB (see **ADDRESSES**).

Because the implementation of CCAMLR DCD program becomes an obligation of the United States and other CCAMLR members on May 7, 2000, there is good cause to waive the 30-day delay in effectiveness for this rule under 5 U.S.C. 553 (d)(3). To fulfill its international obligations under CCAMLR, the United States must implement the DCD scheme by May 7, 2000. Successful implementation is dependent upon CCAMLR members implementing the scheme at the same time because the DCD can only be issued by the flag State of the harvesting vessel. Although U.S. vessels do not currently harvest toothfish, the United States is a significant importer. Because of this, the success of the global DCD scheme depends substantially on the United States implementing the harvest tracking system as close to May 7, 2000, as possible, to avoid confusion, to discourage trade in unlawfully harvested toothfish, and to facilitate international trade in lawful shipments of toothfish. The final rule provides a 60-day exception for toothfish harvested prior to the effective date of the final rule. The rule must be in effect by May 7, 2000, or as soon as practicable thereafter, and any delay would be contrary to the public interest and unnecessary.

**List of Subjects in 50 CFR Part 300**

Fisheries, Fishing, Fishing vessels, Foreign relations, Reporting and recordkeeping requirements, Statistics, Treaties.

Dated: May 5, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 300, subpart G, is amended as follows:

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

### Subpart G—Antarctic Marine Living Resources

1. The authority citation for part 300, subpart G, continues to read as follows:

**Authority:** 16 U.S.C. 2431 *et seq.*

2. In § 300.101, the definition of "Antarctic finfishes" is amended by adding an entry in the table for "Striped-eyed rockcod" immediately following the existing entry for "Grey Rockcod" and two others for "Antarctic toothfish" and "Lanternfish" immediately following the existing entry for "Patagonian toothfish." The definition of "Antarctic marine living resources or AMLR(s)" is revised, and the definitions for "Dealer", *Dissostichus* catch document (DCD)", "*Dissostichus* species" and "Transship" are added in alphabetical order to read as follows:

**§ 300.101 Definitions.**

* * * * *

*Antarctic finfishes* include the following:

| Scientific name | Common name |
|---|---|
| . . . . . | |
| *Lepidonotothen kempi* ..... | Striped-eyed rockcod. |
| . . . . . | |
| *Dissostichus mawsoni* .. | Antarctic toothfish. |
| *Electrona carlsbergi* | Lanternfish. |
| . . . . . | |

*Antarctic marine living resources or AMLR(s)* means:

(1) The populations of finfish, mollusks, crustaceans, and all other species of living organisms, including birds, found south of the Antarctic Convergence;

(2) All species of *Dissostichus*, wherever found; and

(3) All parts or products of those populations and species set forth in paragraphs (1) and (2) of this definition.

* * * * *

*Dealer* means the person who first receives AMLRs from a harvesting vessel or transshipment vessel or who imports AMLRs into, or re-exports AMLRs from, the United States.

* * * * *

*Dissostichus catch document (DCD)* means the uniquely numbered catch documentation form approved by the Commission and issued by a flag state to its vessels authorized to harvest *Dissostichus* species.

*Dissostichus species* means Patagonian toothfish and/or Antarctic toothfish and their parts or products.

* * * * *

*Transship* means the transfer of fish or fish products from one vessel to another.

3. Section 300.107 is revised to read as follows:

**§ 300.107 Reporting and recordkeeping requirements.**

(a) *Vessels.* The operator of any vessel required to have a permit under this subpart must:

(1) Accurately maintain on board the vessel a fishing logbook and all other reports and records required by its permit;

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector; and

(3) Within the time specified in the permit, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(b) *Dealers.* Dealers of AMLRs required to have a permit under this subpart must:

(1) Accurately maintain all reports and records required by their permits;

(2) Make such reports and records available for inspection upon the request of an authorized officer or CCAMLR inspector; and

(3) Within the time specified in the permit, submit a copy of such reports and records to NMFS at an address designated by NMFS.

(c) *Catch documentation*—(1) *General.* (i) The CCAMLR DCD must accompany all shipments of *Dissostichus* species as required in this subsection.

(ii) No shipment of *Dissostichus* species shall be released for entry into the United States unless accompanied by a complete and validated CCAMLR DCD, except as provided in paragraph (c)(7) of this section.

(2) *Harvesting vessels.* (i) In addition to any harvesting permit or authorization previously issued, a U.S. vessel harvesting or attenpting to harvest *Dissostichus* species must possess a DCD issued by NMFS which is non-transferrable. The master of the harvesting vessel must ensure that the catch information specified on the DCD is accurately recorded.

(ii) Prior to offloading of *Dissostichus* species, the master of the harvesting vessel must:

(A) electronically convey by the most rapid means possible catch information to NMFS and record on the DCD a confirmation number received from NMFS;

(B) Obtain on the DCD (or copies thereof) the signature(s) of the following persons: if catch is offloaded for transshipment, the master of the vessel(s) to which the catch is transferred; or if catch is offloaded for landing, the signature of both the responsible official(s) designated by NMFS in the harvesting permit, and the dealer(s) that receives the catch at the port(s) of landing; and

(C) Sign the DCD (or copies thereof), electronically convey by the most rapid means possible each copy to NMFS, and provide a copy to each recipient of the catch.

(iii) The master of the harvesting vessel must submit the original DCD (or all copies thereof with original signatures) to NMFS no later than 30 days after the end of the fishing season as authorized for that vessel on its harvesting permit.

(3) *Transshipment vessels.* (i) The master of a U.S. vessel issued a permit to transship *Dissostichus* species must, upon receipt of *Dissostichus* species, sign each DCD provided by the master of the harvesting vessel.

(ii) Prior to landing *Dissostichus* species, the master of the transshipping vessel must:

(A) Obtain on each DCD (or copies thereof) the signature(s) of both the responsible official(s) designated by NMFS in the permit, and the dealer(s) that receives the catch at the port(s) of landing and

(B) Sign each DCD (or copies thereof), and electronically convey by the most rapid means possible each copy to NMFS and to the flag state(s) of the harvesting vessel(s) and provide a copy to each dealer receiving *Dissostichus* species.

(iii) The master of the transshipping vessel must submit all DCDs with original signatures to NMFS no later than 30 days after offloading and retain copies for a period of 2 years.

(4) *Receivers upon landing.* Any dealer who receives *Dissostichus* species from a harvesting vessel or from a transshipment vessel must sign the DCD(s) provided by the master of the vessel.

(5) *Import.* (i) Any dealer who imports *Dissostichus* species must:

(A) Obtain the DCD(s) that accompany the import shipment;

(B) Mail or fax the DCD(s) to NMFS within 24 hours of the release from customs custody, and

(C) Retain a copy for his/her records and provide copies to exporters as needed.

(ii) Dealers must retain at their place of business a copy of the DCD for a period of 2 years from the date on the DCD.

(6) *Re-export.* (i) Any dealer who re-exports *Dissostichus* species must complete a *Dissostichus* re-export document by indicating:

(A) The amount from the original DCD(s) that is exported in the particular export shipment;

(B) The number of the original DCD(s);

(C) The name of the importer and point of import; and

(D) The exporter's name, address and permit number.

(ii) The dealer must then sign the re-export document and obtain validation by a responsible official(s) designated by NMFS.

(iii) The original validated *Dissostichus* re-export document and copies of the original DCD(s) must accompany the export shipment.

(iv) The dealer must retain a copy of the re-export document and copies of the DCD(s)at his/her place of business for a period of 2 years from the date on the DCD.

(7) *Exception. Dissostichus* species harvested prior to the effective date of this rule may be imported during the first 60 days following the effective date of this rule, provided that the date of the harvest(s) are corroborated on the dealer permit.

4. In § 300.112, paragraph (k) is added to read as follows:

**§ 300.112 Harvesting permits.**

* * * * *

(k) *Transshipment vessels.* Any U.S. flagged vessel that receives or attempts to receive *Dissostichus* species from a harvesting vessel at sea, regardless of whether such transshipment occurs in waters under the jurisdiction of CCAMLR, must obtain from NMFS a harvesting permit authorizing transshipment. Transshipment vessels must comply with the permitting provisions of this section with respect to harvesting vessels.

5. Section 300.113 is revised to read as follows:

**§ 300.113 Dealer permits.**

(a) *General.* (1) A dealer must obtain an AMLRs dealer permit from NMFS. Only those specific activities stipulated by the permit are authorized for the permit holder.

(2) An AMLR may be imported into the United States if its harvest has been authorized by a U.S.-issued individual permit or a harvesting permit issued under § 300.112 (a)(1) or its importation has been authorized by a NMFS-issued dealer permit issued under paragraph (a) of this section. AMLR's may not be released for entry into the United States unless accompanied by the harvesting permit, the individual permit, a NMFS-issued dealer permit, or a copy thereof.

(3) In addition to any applicable catch documentation required under § 300.107 (c)(1), the dealer is required to complete and return to NMFS, no later than 24 hours after the date of the importation, an import ticket reporting the importation. In no event may a marine mammal be imported into the United States unless authorized and accompanied by an import permit issued under the Marine Mammal Protection Act and/or the Endangered Species Act.

(4) A dealer permit issued under this section does not authorize the harvest or transshipment of any AMLR by or to a vessel of the United States.

(b) *Application.* Application forms for AMLR dealer permits are available from NMFS. A complete and accurate application must be submitted for each permit at least 30 days before the anticipated date of the first receipt, importation, or re-export.

(c) *Issuance.* NMFS may issue a dealer permit if it determines that the activity proposed by the dealer meets the requirements of the Act and that the resources were not or will not be harvested in violation of any conservation measure in force with respect to the United States or in violation of any regulation in this subpart.

(d) *Duration.* A permit issued under this section is valid from its date of issuance to its date of expiration unless it is revoked or suspended.

(e) *Transfer.* A permit issued under this section is not transferable or assignable.

(f) *Changes in information*–(1) *Pending applications.* Applicants for permits under this section must report in writing to NMFS any change in the information submitted in their permit applications. The processing period for the application will be extended as necessary to review and consider the change.

(2) *Issued permits.* Any entity issued a permit under this section must report in writing to NMFS any changes in previously submitted information. Any changes that would not result in a change in the receipt or importation authorized by the permit must be reported on the import ticket required to be submitted to NMFS no later than 24 hours after the date of receipt or importation. Any changes that would result in a change in the receipt or importation authorized by the permit, i.e., harvesting vessel or country of origin, type and quantity of the resource to be received or imported, and Convention statistical subarea from which the resource was harvested must be proposed in writing to NMFS and may not be undertaken unless authorized by NMFS through issuance of a revised or new permit.

(g) *Revision, suspension, or revocation.* A permit issued under this section may be revised, suspended, or revoked, based upon a violation of the permit, the Act, or this subpart. Failure to report a change in the information contained in a permit application voids the application or permit, as applicable. Title 15 CFR part 904 governs permit sanctions under this subpart.

6. In § 300.115, paragraph (b) is revised and paragraphs (q) and (r) are added to read as follows:

**§ 300.115 Prohibitions.**

* * * * *

(b) Import into or export from the United States any AMLRs taken by vessels without a permit to harvest those resources as required by § 300.112 (a)(1), or without applicable catch documentation as required by § 300.107 (c)(1), or without a dealer permit as required by § 300.113 (a)(1), or in violation of the terms and conditions for such import or export as specified on the permit.

* * * * *

(q) Provide incomplete or inaccurate information about the harvest, transshipment, landing, import or re-export of applicable species on any document required under this subpart.

(r) Receive AMLRs from a vessel without a dealer or harvesting permit issued under this subpart.

7. In § 300.116, paragraph (d) is added and reserved to read as follows:

**§ 300.116 Facilitation of enforcement and inspection.**

* * * * *

(d) *Disposition of resources denied entry.* [Reserved]

[FR Doc. 00–11666 Filed 5–5–00; 2:01 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 65, No. 91
Wednesday, May 10, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 76

**[Docket No. PRM–76–1]**

### United Plant Guard Workers of America; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; Notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by John M. Driskill on behalf of Local 111 of the United Plant Guard Workers of America. The petition has been docketed by the Commission and has been assigned Docket No. PRM–76–1. The petitioner requests that the NRC amend its regulations concerning security at gaseous diffusion plants to address sites that have both special nuclear material security concerns and protection of classified matter concerns; to require that these facilities be able to detect, respond to, and mitigate threats of a sabotage event; and to require that the security force be armed and empowered to make arrests in limited situations. The petitioner believes that these amendments are necessary to address the protection of classified information, equipment and materials, and special nuclear material at the gaseous diffusion plants.

**DATES:** Submit comments by July 24, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

**ADDRESSES:** Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov. This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll-free: 1–800–368–5642 or E-mail: DLM1@NRC.GOV.

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 30, 2000, the Nuclear Regulatory Commission (NRC) docketed a March 13, 2000, letter from John M. Driskill, President of Local 111 of the United Plant Guard Workers of America, to William Travers, the NRC's Executive Director for Operations, as a petition for rulemaking under 10 CFR 2.802. In this letter, Mr. Driskill requested that the NRC's regulations applicable to safeguards and security at gaseous diffusion plants be amended under 10 CFR 2.206. The § 2.206 process is applicable to actions that would suspend, modify, or revoke a license. Requests to add, amend, or remove a regulation are processed under 10 CFR 2.802. Therefore, Mr. Driskill's request was docketed under the procedures applicable to petitions for rulemaking contained in § 2.802.

#### The Regulations

The gaseous diffusion plants located in Piketon, Ohio and Paducah, Kentucky have obtained a certificate of compliance issued under the provisions of 10 CFR part 76. This ensures that these plants operate in compliance with those requirements considered necessary to protect the public health and safety from radiological hazards and to provide for the common defense and security. The regulations in Subpart E of Part 76 address safeguards and security requirements for the gaseous diffusion plants.

The gaseous diffusion plants process Category III levels of special nuclear material as described in 10 CFR 73.2. The petitioner notes that these types of quantities require a minimum level of security, as specified in 10 CFR 73.67, to minimize the possibility for the unauthorized removal of special nuclear material. The specified level of security is intended to be consistent with the potential consequences of such an action. The petitioner also notes that the regulations in 10 CFR part 95 establish security requirements for the protection of classified matter at the levels of confidential restricted data and secret restricted data. The petitioner further notes that these two security protocols are not similar.

#### The Requested Actions

The petitioner requests that the NRC amend its regulations applicable to safeguards and security at the Portsmouth and Paducah gaseous diffusion plants. The requested amendments would—

1. Require more stringent security programs to protect both the special nuclear material and classified matter;
2. Require that these facilities be able to detect, respond to, and mitigate threats of a sabotage event; and
3. Require the security force to be armed and empowered to make arrests in limited situations, such as for violations of the Atomic Energy Act.

#### Material Security and Classified Matter

The petitioner asserts that the regulations do not adequately address sites that have both nuclear material security concerns and classified matter concerns. The petitioner believes that the applicable regulations were not appropriately merged in the regulations governing gaseous diffusion plants to address a site that covers the protection of classified information, equipment and materials, and special nuclear material.

The petitioner provides an example of this situation in the Controlled Area Fence Line. The petitioner explains that the fence line serves as a minimum level of protection against the unauthorized removal of special nuclear material contained in 10 and 20 ton cylinders.

The petitioner explains that the portals and gates are in place to ensure that personnel who gain access to the controlled access area have the proper clearance or are under escort and ensuring that prohibited articles are not allowed into the controlled area. The petitioner believes that the missing element of security is whether the fence line, which the petitioner believes does minimize the unauthorized removal of special nuclear material of 10 and 20 ton cylinders, adequately protects against the unauthorized removal of restricted information, equipment, and other materials or the unauthorized access to these types of materials.

The petitioner asserts that other facilities that possess Category III quantities of special nuclear material regulated by the NRC do not share the level of concern for classified matter, equipment, and technology that exists at the gaseous diffusion plants. The petitioner suggests that the regulations concerning security programs at the gaseous diffusion plants, such as escort requirements and physical security measures, should be amended to be made more stringent to protect this technology.

**Sabotage Events**

According to the petitioner, the NRC typically relies on local law enforcement agencies to respond to incidents of workplace violence or sabotage at material licensee facilities. The petitioner states that the scope and complexity of a gaseous diffusion plant makes it far different from other types of NRC licensed materials facilities. Furthermore, the petitioner believes that these differences result in unique problems in relying on local law enforcement agencies to protect such a facility from violent incidents. The petitioner indicates that local law enforcement agencies in the vicinity of the Paducah plant have stated, for the record, that they should not be viewed as a replacement for on-site security because of their lack of knowledge of the plant site, the types of hazards contained in the plant, and their limited resources. The petitioner presents two letters, attached to the petition, from law enforcement agencies in the vicinity of the Paducah plant that support this contention.

Because of the unique nature of gaseous diffusion plants and the importance of their operation, the petitioner believes that a violent incident or an act of sabotage would affect national security. The petitioner also asserts that, because of the many radiological and toxicological hazards associated with these plants, an act of sabotage could adversely affect the safety of plant workers and the public.

The petitioner believes that these dangers were not addressed as part of the certification process. According to the petitioner, current NRC standards do not require a security force that is capable of preventing a sabotage event. The petitioner requests that the regulations be amended to require that security forces at the gaseous diffusion plants be able to detect, respond to, and mitigate violent incidents or acts of sabotage.

The petitioner also notes that current regulations do not require that the security force be armed or empowered to enforce the Atomic Energy Act. The petitioner requests that security officers at the gaseous diffusion plants be armed and empowered to make arrests in limited situations, such as for violations of the Atomic Energy Act.

Dated at Rockville, Maryland, this 4th day of May, 2000.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00–11662 Filed 5–9–00; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–NM–103–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–200, –300, –400, and –500 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–200, –300, –400, and –500 series airplanes. This proposal would require replacement of existing door handle mounting hub assemblies with new, improved hub assemblies. This proposal is prompted by reports of cracked or broken mounting hub assemblies for the interior door handles on the cabin doors. The actions specified by the proposed AD are intended to prevent cracking or breaking of the door handle mounting hub, which could result in the interior door handle breaking off while the door is being opened. In an emergency situation, this could impede evacuation of the airplane.

**DATES:** Comments must be received by June 26, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Keith Ladderud, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2780; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–103–AD."

The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–103–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The FAA has received reports indicating that cracked or broken mounting hub assemblies for the interior door handles on the cabin doors have been found on certain Boeing Model 737–200, –300, –400, and –500 series airplanes. The primary use of the interior door handle is to be turned to latch the door after the door is shut using the assist handles. If the interior door handle is also used to close the door, the moment arm of the door handle puts too much force on the existing aluminum door handle mounting hub, which causes the mounting hub to crack or break. This condition, if not corrected, could result in the interior door handle breaking off while the door is being opened. In an emergency situation, this could impede evacuation of the airplane.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Service Bulletin 737–25–1322, Revision 2, dated February 19, 1998. That service bulletin describes procedures for replacement of existing door handle mounting hub assemblies in the forward and aft entry doors, forward galley door, and aft service door, with new, improved hub assemblies. The new mounting hub assemblies are made of stainless steel and are stronger than the existing aluminum mounting hub assemblies. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

**Differences Between the Proposed Rule and the Service Information**

Operators should note that the proposed AD would require replacement of existing door handle mounting hub assemblies with new, improved hub assemblies within 18 months after the effective date of this AD. The service bulletin recommends that the mounting hub in the forward entry door be replaced at the next "A" check, and the mounting hub assemblies in the aft entry door, forward galley door, and aft service door be replaced at the next "C" check. In developing an appropriate compliance time for this proposed AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to replace the mounting hub assemblies (approximately 3 work hours per door). In light of all of these factors, the FAA finds an 18-month compliance time for initiating the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

**Cost Impact**

There are approximately 1,575 airplanes of the affected design in the worldwide fleet. The FAA estimates that 632 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane (3 work hours per door) to accomplish the proposed replacement, and that the average labor rate is $60 per work hour. Required parts would cost approximately $2,150 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,813,840, or $2,870 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 2000–NM–103–AD.

*Applicability:* Model 737–200, –300, –400, and –500 series airplanes; as listed in Boeing Service Bulletin 737–25–1322, Revision 2, dated February 19, 1998; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent cracking or breaking of the door handle mounting hub, which could result in the interior door handle breaking off while the door is being opened, and, in an emergency situation, could impede evacuation of the airplane, accomplish the following:

**Replacement**

(a) Within 18 months after the effective date of this AD, replace existing door handle mounting hub assemblies in the forward and aft entry doors, forward galley door, and aft service door, with new, improved hub assemblies, in accordance with Boeing Service Bulletin 737–25–1322, Revision 2, dated February 19, 1998.

**Note 2:** Replacements accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 737–25–1322, dated January 19, 1995, or Revision 1, dated December 19, 1996, are considered acceptable for compliance with paragraph (a) of this AD.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 4, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11725 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–NM–50–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A Military), and –40 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F (KC–10A military), and –40 series airplanes. This proposal would require performing repetitive ultrasonic inspections of the attaching bolts on the inboard and outboard support on the inboard and outboard flap assembly to detect failed bolts, or verifying the torque of the attaching bolts on the inboard support on the outboard flap; and follow-on actions. This proposal also would require replacing all bolts with bolts made from Inconel, which would constitute terminating action for the repetitive inspection requirements. This proposal is prompted by a report of an in-flight loss of the inboard flap assembly on an airplane during approach for landing. The actions specified by the proposed AD are intended to prevent in-flight loss of inboard and outboard flap assemblies due to failure of H–11 attaching bolts, which could result in reduced controllability of the airplane.

**DATES:** Comments must be received by June 26, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–50–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Ron Atmur, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5224; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–50–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–50–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The FAA has received a report of an in-flight loss of the left inboard flap assembly on a McDonnell Douglas Model DC–10 series airplane during approach for landing. Investigation revealed that bolts made from H–11 steel, which attach the outboard hinge to the lower surface of the flap, had failed. Analysis of the bolts determined the cause of failure to be stress corrosion. The FAA has received no damage or failure reports about the outboard flaps. However, the inboard and outboard hinges are attached to the lower surface of the flap using similar type design and the same material as the installation of the inboard flap outboard hinge. Failure of H–11 attaching bolts could result in an in-flight loss of inboard and outboard flap assemblies, and consequent reduced controllability of the airplane.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December

20, 1999. The service bulletin describes procedures for performing an ultrasonic inspection of the attaching bolts on the inboard and outboard support on the inboard and outboard flap assembly to detect failed bolts, or verifying the torque of the attaching bolts on the inboard support on the outboard flap, and follow-on actions. The follow-on actions include replacing any failed bolt and associated parts, if necessary; performing repetitive ultrasonic inspection of the subject area, if necessary; temporarily installing a new Inconel bolt without a new PLI washer; and replacing the PLI washer with a new washer; if necessary. The service bulletin also describes procedures for replacing all bolts with bolts made from Inconel, which would eliminate the need for the repetitive inspections.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

**Cost Impact**

There are approximately 412 airplanes of the affected design in the worldwide fleet. The FAA estimates that 244 airplanes of U.S. registry would be affected by this proposed AD.

It would take between 2 and 8 work hours per airplane to accomplish the proposed inspection/torque verification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection/torque verification proposed by this AD on U.S. operators is estimated to be between $29,280 and $117,120, or between $120 and $480 per airplane, per inspection cycle.

It would take approximately 288 work hours per airplane to accomplish the proposed bolt replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,987 per airplane. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $4,945,148, or $20,267 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Docket 2000–NM–50–AD.

*Applicability:* Model DC–10–10, –15, –30, –30F (KC–10A military), and –40 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 1999; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent in-flight loss of inboard and outboard flap assemblies due to failure of H–11 attaching bolts, which could result in reduced controllability of the airplane, accomplish the following:

**Inspection and Corrective Actions**

(a) Within 2 months after the effective date of this AD, perform an ultrasonic inspection of the attaching bolts on the inboard and outboard support on the inboard and outboard flap assembly to detect failed bolts, or verify the torque of the attaching bolts on the inboard support on the outboard flap, in accordance with McDonnell Douglas Alert Service Bulletin DC10–57A143, dated December 20, 1999.

(1) If no failed bolt is found, repeat the ultrasonic inspection thereafter at intervals not to exceed 6 months.

(2) If any failed bolt is found, prior to further flight, replace the bolt and associated parts with a new Inconel bolt and new associated parts in accordance with the service bulletin, except as provided by paragraphs (a)(2)(i) and (a)(2)(ii) of this AD. Accomplishment of the replacement constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1) of this AD for that bolt.

(i) If an Inconel bolt is not available for accomplishment of the replacement, replacement with a new H–11 steel bolt is acceptable provided that operators repeat the ultrasonic inspection thereafter at intervals not to exceed 6 months until the requirements of paragraph (b) of this AD are accomplished.

(ii) If a PLI washer is not available for accomplishment of the Inconel replacement, a new Inconel bolt can be temporarily installed without a new PLI washer provided that the bolt is torqued to the applicable value specified in the service bulletin. Within 6,000 flight hours after an Inconel bolt is torqued, replace the PLI washer with a new washer in accordance with the service bulletin.

**Bolt Replacement**

(b) Within 2 years after accomplishing the initial inspection required by paragraph (a) of this AD, accomplish the action specified in paragraph (a)(2) of this AD for all H–11 bolts. Accomplishment of the replacement of all H–11 bolts with Inconcel bolts constitutes terminating action for the requirements of this AD.

**Spares**

(c) As of 2 years after the effective date of this AD, no person shall install, on any

airplane, an H–11 steel bolt, part number 71658–8–44, 71658–7–44, 71658–7–54, 71658–7–56, 71658–7–29, 71658–9–31, 71658–9–34, 71658–9–38, 71658–9–41, 71658–10–41, 71658–7–26, 71658–7–27, or 71658–8–29, on the inboard or outboard flap assembly.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 4, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11724 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–368–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes. This proposal would require repetitive detailed visual and dye penetrant inspections of the backup struts in the left and right nacelles to detect discrepancies; and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the backup struts in the left and right nacelles due to fatigue cracking, which could result in loss of fail-safe redundancy in the design of the nacelle in terms of load capability.

**DATES:** Comments must be received by June 9, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–368–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–368–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–368–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB 2000 series airplanes. The LFV advises that field experience has revealed fatigue cracking in the internal backup struts in the forward part of the nacelle structure. Such cracking was found in the area of the welded splices for the upper and lower attachment fittings. In the lower end of the attachment fittings, cracks were found near the local cut-out in the tube or areas adjacent to the welding, and in the upper area in the radius of the attachment fittings. On one occasion, fatigue cracks resulted in complete failure of the backup strut. Such fatigue cracking, if not corrected, could result in failure of the backup struts in the left and right nacelles, which could result in loss of fail-safe redundancy in the design of the nacelle in terms of load capability.

### Explanation of Relevant Service Information

The manufacturer has issued Saab Service Bulletin 2000–54–023, Revision 01, dated January 28, 2000, which describes procedures for repetitive detailed visual and dye penetrant inspections of the backup struts in the left and right nacelles to detect discrepancies; and corrective actions, if necessary. Descriptions of the two types of inspections are as follows:

- The initial detailed visual inspection includes the upper areas of the backup strut around the welding in the pipe and in the attachment fittings.
- The initial dye penetrant inspection, using a Penetrant Type 1 (fluorescent dye) sensitivity level 2, includes the lower areas of the backup strut around the welding in the pipe and in the attachment fittings, and specifies taking special care to check the inside edge of the cutouts.

If any inspection reveals a failed backup strut, procedures include the following additional inspections of the engine mount surrounding structure:

- Detailed visual inspections of each engine mount strut and mounting

fittings, forward semi-circular collar/frame and aft beam, nacelle backup strut opposite side to the failed backup strut and attachment fittings at station 176/199, inboard and outboard upper and lower longerons of the nacelle, and upper and lower longerons at the attachment to the inboard and outboard upper and lower fittings of the nacelle.

• General visual inspections of the inner and outer side walls and side of the skin panels.

Discrepancies include fatigue cracking, a failed backup strut, and damage to the surrounding structure of the engine mount. Corrective actions include replacing any failed backup strut located in the hydraulic bay or electrical bay areas with a new backup strut, and performing additional inspections of the surrounding structure of the engine mount.

The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive No. 1–150R1, dated January 31, 2000, in order to assure the continued airworthiness of these airplanes in Sweden.

**FAA's Conclusions**

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as described below.

**Differences Between Proposed AD and Service Bulletin**

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for repair instructions for certain damage conditions, this proposed AD would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the LFV (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that a repair approved by either the FAA or the LFV would be acceptable for compliance with this proposed AD.

**Interim Action**

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

**Cost Impact**

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,440, or $480 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**SAAB Aircraft AB:** Docket 99–NM–368–AD.

*Applicability:* Model SAAB 2000 series airplanes, serial numbers –004 through –063 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the backup struts in the left and right nacelles due to fatigue cracking, which could result in loss of fail-safe redundancy in the design of the nacelle in terms of load capability, accomplish the following:

Repetitive Inspections

(a) For airplanes on which the dye penetrant inspection of the backup struts in the left and right nacelles specified in Saab Alert Service Bulletin 2000–A54–022, dated October 27, 1999, has not been accomplished prior to the effective date of this AD:

Within 200 flight hours after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–54–023, Revision 01, dated January 28, 2000.

(b) For airplanes on which the dye penetrant inspection of the backup struts in the left and right nacelle specified in Saab Alert Service Bulletin 2000–A54–022, dated October 27, 1999, has been accomplished prior to the effective date of this AD: Within 450 flight hours after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–54–023, Revision 01, dated January 28, 2000.

(1) Perform a detailed visual inspection of the upper areas of the backup strut around the welding in the pipe and in the attachment fittings to detect any discrepancy (including fatigue cracking or a failed backup strut) by accomplishing all actions specified in paragraph B.(1) of the Accomplishment Instructions of the service bulletin, in accordance with that service bulletin. Repeat the detailed visual inspection thereafter at intervals not to exceed 450 flight hours.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids (*e.g.*, mirror, magnifying lenses) may be used. Surface cleaning and elaborate access procedures may be required."

(2) Perform a dye penetrant inspection, using Penetrant Type 1 (fluorescent dye) sensitivity level 2, of the lower areas of the backup strut around the welding in the pipe and in the attachment fittings to detect any discrepancy (including fatigue cracking or a failed backup strut) by accomplishing all actions specified in paragraphs B.(2) and B.(3) of the service bulletin, as applicable, in accordance with that service bulletin.

(i) For airplanes on which all backup struts have accumulated less than 4,500 total flight hours as of the effective date of this AD, repeat the dye penetrant inspection thereafter at intervals not to exceed 1,650 flight hours, until any backup strut on the airplane has accumulated 4,500 total flight hours; then perform the repetitive inspection thereafter at the interval specified by paragraph (b)(2)(ii) of this AD.

(ii) For airplanes on which any backup strut has accumulated 4,500 or more total flight hours as of the effective date of this AD, repeat the dye penetrant inspection thereafter at intervals not to exceed 900 flight hours.

**Corrective Actions**

(c) If any discrepancy (including fatigue cracking, a failed backup strut, or damage to the surrounding structure of the engine mount) is detected during any inspection required by this AD: Prior to further flight, accomplish the applicable corrective actions (including performing additional inspections of the engine mount surrounding structure, and replacing any discrepant backup strut in the hydraulic or electrical bay areas with a new backup strut) specified by paragraph C. of the Accomplishment Instructions of Saab Service Bulletin 2000–54–023, Revision 01, dated January 28, 2000, in accordance with that service bulletin. For any repair condition for which the service bulletin specifies to contact the manufacturer for appropriate ACTION: Prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Luftfartsverket (LFV) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 4:** The subject of this AD is addressed in Swedish airworthiness directive No. 1–150R1, dated January 31, 2000.

Issued in Renton, Washington, on May 4, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11723 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–NM–255–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40 and –50 Series Airplanes and C–9 (Military) Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9 series airplanes and C–9 (military) airplanes, that currently requires repetitive ultrasonic or magnetic particle inspections to detect cracking of the engine pylon aft upper spar straps (caps); and if necessary, replacement of the strap with a new strap, or modification of the engine pylon rear spar straps, which constitutes terminating action for the repetitive inspections. This action would require new, improved repetitive ultrasonic inspections, and corrective actions, if necessary. This action also would require, among other items, a terminating action for the repetitive inspection requirements. This proposal is prompted by additional reports of fatigue cracking in the subject area on these airplanes. The actions specified by the proposed AD are intended to detect and correct such fatigue cracking, which could result in major damage to the adjacent structure of the pylon aft spar upper cap, and consequent reduced structural integrity of the airplane.

**DATES:** Comments must be received by June 26, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–255–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1-L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained

in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–255–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–255–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

In 1978, the FAA issued AD 78–01–16, amendment 39–3117, applicable to certain McDonnell Douglas Model DC–9 series airplanes and C–9 (military) airplanes. That AD requires repetitive ultrasonic or magnetic particle inspections to detect cracking of the engine pylon aft upper spar straps (caps); and if necessary, replacement of the strap with a new strap, or modification of the engine pylon rear spar straps (caps), which constitutes terminating action for the repetitive inspections. That action was prompted by reports of fatigue cracking of the pylon aft upper spar straps (caps). The requirements of that AD are intended to detect cracks and prevent failure of the engine pylon aft upper spar straps (caps).

**Actions Since Issuance of Previous Rule**

Since the issuance of AD 78–01–16, the FAA has received additional reports of fatigue cracking in the subject area on these airplanes. The airplanes on which the cracking occurred had accumulated between 19,000 and 36,000 landings. Investigation revealed that the repetitive ultrasonic inspections, as required by AD 78–01–16, do not adequately detect fatigue cracking in the subject area. Such fatigue cracking, if not detected and corrected, could result in major damage to the adjacent structure of the pylon aft spar upper cap, and consequent reduced structural integrity of the airplane.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin DC9–54A031, Revision 08, dated January 31, 2000, which describes procedures for new repetitive ultrasonic or magnetic particle inspections of the engine pylon aft upper spar straps (caps) to detect cracking; and corrective actions, if necessary. The corrective actions include reapplication of a sealant; modification of the rear spar upper strap (cap); and replacement of the bearing on the spar strap (cap) with a new annular groove bearing; as applicable. The service bulletin references McDonnell Douglas DC–9 Service Bulletin 54–31, Revision 4, dated March 28, 1991, as an additional source of service information for accomplishment of the modification.

The FAA also has reviewed and approved McDonnell Douglas DC–9 Service Bulletin 54–31, Revision 4, dated March 28, 1991. The service bulletin describes procedures for modification of the rear spar upper strap (cap), which would eliminate the need for the repetitive inspections specified in McDonnell Douglas Alert Service Bulletin DC9–54A031, Revision 08, dated January 31, 2000. The modification includes installation of access doors on the pylon rear spars, if applicable; replacement of the strap on the pylon upper rear spar cap with a new strap using new close tolerance attaching parts; and modification of the pylon-to-vibration isolator link.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 78–01–16 to continue to require repetitive ultrasonic or magnetic particle inspections to detect cracking of the engine pylon aft upper spar straps (caps); and if necessary, replacement of the strap with a new strap, or modification of the engine pylon rear spar straps (caps), which constitutes terminating action for the repetitive inspections. The proposed AD also would require accomplishment of the actions specified in the service bulletins described previously.

**Cost Impact**

There are approximately 809 Model DC–9–10, –20, –30, –40 and –50 series airplanes and C–9 (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 572 airplanes of U.S. registry would be affected by this proposed AD.

The ultrasonic inspection that is currently required by AD 78–01–16, and retained in this proposed AD, takes approximately 3 work hours, per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $180 per airplane, per inspection cycle.

The new ultrasonic inspection that is proposed in this AD action would take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new ultrasonic inspection proposed by this AD on U.S. operators is estimated to be $240 per airplane, per inspection cycle.

The new modification of the rear spar upper strap (cap) that is proposed in this AD action would take between approximately 349 and 412 work hours depending on the configuration of the affected airplane to accomplish, at an average labor rate of $60 per work hour. The cost of required parts would be between approximately $1,865 and $7,947 per airplane. Based on these figures, the cost impact of the new modification proposed by this AD on U.S. operators is estimated to be between $22,805 and $32,667 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional magnetic particle inspection that would be provided by this AD action, it would take approximately 7 work hours to accomplish it, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this action would be $420 per airplane, per inspection cycle.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the

various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–3117, and by adding a new airworthiness directive (AD), to read as follows:

**McDonnell Douglas:** Docket 99–NM–255–AD. Supersedes AD 78–01–16, Amendment 39–3117.

*Applicability:* Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, fuselage numbers 1 through 851, inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (p) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the pylon aft upper spar straps (caps), which could result in major damage to the adjacent structure of the pylon aft spar upper cap, and consequent reduced structural integrity of the airplane, accomplish the following:

**Restatement of Requirements of AD 78–01–16, Amendment 39–3117**

*Compliance Times*

(a) For airplanes that have accumulated 35,000 or more total landings as of February 13, 1978 (the effective date of AD 78–01–16, amendment 39–3117): Within 600 landings after February 13, 1978, unless already accomplished within the last 1,800 landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

(b) For airplanes that have accumulated between 30,000 and 34,999 total landings inclusive, as of February 13, 1978: Within 900 landings after February 13, 1978, unless already accomplished within the last 1,500 landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

(c) For airplanes that have accumulated between 25,000 and 29,999 total landings inclusive, as of February 13, 1978: Within 1,200 landings after February 13, 1978, unless already accomplished within the last 1,200 landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

(d) For airplanes that have accumulated between 15,000 and 24,999 total landings inclusive, as of February 13, 1978: Within 2,000 landings after February 13, 1978, unless already accomplished within the last 400 landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

(e) For airplanes that have accumulated less than 15,000 total landings as of February 13, 1978: Within 2,000 landings after the accumulation of 15,000 total landings, and thereafter at intervals not to exceed 2,400 landings, accomplish the actions specified in paragraph (f) of this AD.

*Repetitive Inspections and Corrective Actions*

(f) At the times specified in paragraphs (a) through (e), except as provided by paragraph (g) of this AD, perform an ultrasonic inspection of the engine pylon aft upper spar straps (caps), part number (P/N) 9958154–5/–6, or P/N 9958154–37/–38, to detect cracking, in accordance with paragraph 2.B of McDonnell Douglas DC–9 Service Bulletin A54–31, dated December 22, 1976, or in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Note 2:** Alternative methods of compliance approved previously prior to the effective date of this AD in accordance with the Chief, Aircraft Engineering Division, Western Region, are considered acceptable for compliance with paragraph (f) of this AD.

(1) If there is evidence of cracking, the magnetic particle inspection specified in paragraph 2.C of the service bulletin may be used to confirm the evidence of cracking.

(2) If any cracking is detected, prior to further flight, accomplish either paragraph (f)(2)(i) or (f)(2)(ii) of this AD in accordance with the service bulletin.

(i) Replace the strap with a new strap, P/N 9958154–5/–6, or P/N 9958154–37/–38, and repeat the inspection thereafter at intervals not to exceed 15,000 landings. Or

(ii) Modify the engine pylon rear spar straps (caps) in accordance with the service bulletin. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of this AD.

**Note 3:** Modification of the engine pylon rear spar straps (caps) accomplished prior to the effective date of this AD in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A54–31, Revision 2, dated December 22, 1977; Revision 3, dated June 20, 1986; Revision 4, dated March 26, 1987; Revision 5, dated March 25, 1991; or Revision 6, dated November 23, 1992; is considered acceptable for compliance with the requirements of paragraph (f)(2)(ii) of this AD.

*Optional Magnetic Particle Inspection*

(g) In lieu of accomplishing the ultrasonic inspection, at the times specified in paragraphs (a) through (e) of this AD, perform a magnetic particle inspection of the engine pylon aft upper spar straps (caps), P/N 9958154–5/–6, or P/N 9958154–37/–38, to detect cracking, in accordance with paragraph 2.C of McDonnell Douglas DC–9 Service Bulletin A54–31, dated December 22, 1976. If any cracking is detected, prior to further flight, accomplish the action specified in paragraph (f) of this AD. After two bearing replacements, accomplish the action specified in either paragraph (f)(2)(i) or (f)(2)(ii) of this AD.

**Note 4:** Ultrasonic or magnetic particle inspection of the engine pylon aft upper spar straps (caps) accomplished prior to the effective date of this AD in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A54–31, Revision 2, dated December 22, 1977; Revision 3, dated June 20, 1986; Revision 4, dated March 26, 1987; Revision 5, dated March 25, 1991; or Revision 6, dated November 23, 1992; is considered acceptable for compliance with the inspection requirements of paragraph (f) or (g) of this AD, as applicable.

**New Requirements of This AD**

*Repetitive Ultrasonic Inspections*

(h) For airplanes on which the modification/replacement specified in paragraph (f)(2)(ii) or (n) of this AD has not been accomplished, and on which the replacement specified in paragraph (f)(2)(i) of this AD has not been accomplished: Except as provided by paragraph (m) of this AD, perform an ultrasonic inspection of the engine pylon aft upper spar straps (caps) to detect cracking, in accordance with McDonnell Douglas Alert Service Bulletin DC9–54A031, Revision 08, dated January 31, 2000; at the time specified in paragraph

(h)(1), (h)(2), (h)(3), or (h)(4) of this AD, as applicable. Repeat this inspection thereafter at intervals not to exceed 2,400 landings.

Accomplishment of the ultrasonic inspection constitutes terminating action for the repetitive inspection requirements of paragraphs (a) through (f), (f)(2)(i), and (g) of this AD.

(1) For airplanes that have accumulated between 15,000 and 24,999 total landings as of the effective date of this AD: Within 2,000 landings or 6 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated between 25,000 and 29,999 total landings as of the effective date of this AD: Within 1,200 landings or 6 months after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated between 30,000 and 34,999 total landings as of the effective date of this AD: Within 900 landings or 6 months after the effective date of this AD, whichever occurs later.

(4) For airplanes that have accumulated 35,000 or more total landings as of the effective date of this AD: Within 600 landings or 6 months after the effective date of this AD, whichever occurs later.

(i) For airplanes on which the modification/replacement specified in paragraph (f)(2)(ii) or (n) of this AD has not been accomplished, and on which the replacement specified in paragraph (f)(2)(i) of this AD has been accomplished: Except as provided by paragraph (m) of this AD, perform an ultrasonic inspection of the engine pylon aft upper spar straps (caps) to detect cracking, in accordance with McDonnell Douglas Alert Service Bulletin DC9–54A031, Revision 08, dated January 31, 2000; at the time specified in paragraph (i)(1), (i)(2), (i)(3), or (i)(4) of this AD, as applicable. Repeat this inspection thereafter at intervals not to exceed 2,400 landings.

(1) For airplanes that have accumulated between 15,000 and 24,999 landings since installation of the new spar strap (cap): Within 2,000 landings or 6 months after the effective date of this AD, whichever occurs later.

(2) For airplanes that have accumulated between 25,000 and 29,999 landings since installation of the new spar strap (cap): Within 1,200 landings or 6 months after the effective date of this AD, whichever occurs later.

(3) For airplanes that have accumulated between 30,000 and 34,999 landings since installation of the new spar strap (cap): Within 900 landings or 6 months after the effective date of this AD, whichever occurs later.

(4) For airplanes that have accumulated 35,000 or more landings since installation of the new spar strap (cap): Within 600 landings or 6 months after the effective date of this AD, whichever occurs later.

(j) If no cracking is detected during any inspection required by paragraph (h), (i), or (m) of this AD, prior to further flight, reapply sealant in accordance with McDonnell Douglas Alert Service Bulletin DC9–54A031, Revision 08, dated January 31, 2000.

(k) If any cracking is detected during any inspection required by paragraph (h) or (i) of this AD, prior to further flight, accomplish the actions specified in paragraph (m) of this AD.

(l) If any cracking is detected during any inspection required by paragraph (h), (i), or (m) of this AD, prior to further flight, modify the rear spar upper strap (cap) in accordance with McDonnell Douglas DC–9 Service Bulletin 54–31, Revision 4, dated March 28, 1991. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of paragraphs (h) and (i) of this AD.

(m) In lieu of accomplishing the ultrasonic inspection required by paragraphs (h) and (i) of this AD, at the applicable times specified in paragraphs (h), (h)(1), (h)(2), (h)(3), (h)(4), (i), (i)(1), (i)(2), (i)(3), or (i)(4) of this AD, perform a magnetic particle inspection of the engine pylon aft upper spar strap (cap) for cracks, in accordance with McDonnell Douglas Alert Service Bulletin DC9–54A031, Revision 08, dated January 31, 2000. If no cracking is detected, prior to further flight, replace the bearing on the spar strap (cap) with a new annular groove bearing, in accordance with the service bulletin.

*Terminating Modification*

(n) Prior to the accumulation of 100,000 total landings, or within 6 months after the effective date of this AD, whichever occurs later, modify the rear spar upper strap (cap) in accordance with McDonnell Douglas DC–9 Service Bulletin 54–31, Revision 4, dated March 28, 1991. Accomplishment of the modification constitutes terminating action for the repetitive inspection requirements of paragraphs (h) and (i) of this AD.

(o) Accomplishment of the modification required by paragraph (l) or (n) of this AD constitutes compliance with the following:

(1) The actions specified in McDonnell Douglas Service Bulletin 54–27, Revision 4, dated April 2, 1990, that are required by AD 96–10–11, amendment 39–9618 (61 FR 24675, May 16, 1996) [which references "DC–9/MD80 Aging Aircraft Service Action Requirements Document" (SARD), McDonnell Douglas Report MDC K1572, Revision B, dated January 15, 1993, as the appropriate source of service information for accomplishment of the modification]; and

(2) The requirements of AD 72–09–01, amendment 39–2844 (which references McDonnell Douglas Service Bulletin 54–31, dated August 24, 1976, and McDonnell Douglas Service Bulletin 54–27, Revision 4, dated April 2, 1990, as appropriate sources of service information for accomplishment of the modification).

*Alternative Methods of Compliance*

(p) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Note 6:** Alternative methods of compliance, approved previously in accordance with AD 78–01–16, amendment 39–3117, are approved as alternative methods of compliance with this AD.

*Special Flight Permits*

(q) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 3, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11722 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–NM–60–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8 series –10 through –50, –61, –61F, –71, –71F airplanes, that currently requires a visual or eddy current inspection(s) of the left and right wing front spar lower caps to detect cracks migrating from attachment holes; and repair, if necessary. That AD also provided for an optional terminating modification of the front spar lower cap. This proposal is prompted by a report that additional cracking was found in the front spar lower cap of a wing. This action would require accomplishment of the previously optional terminating action. The proposed AD also would expand the applicability of the existing AD to include additional airplanes and to increase the interval for the repetitive eddy current inspections. The actions specified by the proposed AD are intended to prevent reduced structural integrity of the left or right wing due to metal fatigue failure of the front spar lower cap.

**DATES:** Comments must be received by June 26, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–60–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Greg DiLibero, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5231; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–60–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–60–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

On September 26, 1986, the FAA issued AD 86–20–06, amendment 39–5434 (51 FR 35502, October 6, 1986), applicable to certain McDonnell Douglas Model DC–8–10 through –50 inclusive, –61, –61F, –71, –71F series airplanes, to require repetitive visual or eddy current inspections to detect cracks of the left and right wing front spar lower caps between stations Xfs=515.00 and Xfs=526.760; and repair, if necessary. That AD also provides for an optional terminating modification for the repetitive inspection requirements. That action was prompted by reports of fatigue cracking on the spar caps of two airplanes. The requirements of that AD are intended to prevent reduced structural integrity of the left or right wing due to metal fatigue failure of the front spar lower cap.

**Actions Since Issuance of Previous Rule**

Since the issuance of AD 86–20–06, the FAA has received a report of two instances in which cracking was found in the front spar lower cap of a wing on affected airplanes that have accumulated between 46,093 and 48,942 flight hours. The cracking originated at an attachment hole in the forward leg and progressed to a point partially through the vertical and aft leg of the spar cap. The cause of such cracking has been attributed to material fatigue. The FAA has determined that accomplishment of the visual inspection(s) required by AD 86–20–06 does not adequately ensure timely detection of fatigue cracks in the subject area.

**Explanation of Relevant Service Information**

Subsequent to the finding of this new cracking, the manufacturer issued, and the FAA reviewed and approved McDonnell Douglas Service Bulletin DC8–57–090, Revision 05, dated June 16, 1997. The eddy current inspection and modification procedures are identical to those described in McDonnell Douglas DC–8 Service Bulletin 57–90, dated October 3, 1983 (which was referenced as the appropriate source of service information in AD 86–20–06). The only changes effected by Revision 05 of the service bulletin are to remove the inadequate visual inspection procedures; to add additional airplanes to the effectivity listing; and to add an inspection following accomplishment of the preventative modification. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 86–20–06 to continue to require an eddy current inspection(s) to detect cracks of the lower front spar caps of the wings at the attachment holes of the leading edge assembly between stations Xfs=515.000 and Xfs=526.760, and corrective actions, if necessary. The proposed AD would require accomplishment of the previously optional terminating action and a follow-on inspection. The proposed AD also would expand the applicability of the existing AD to include additional airplanes that are subject to the identified unsafe condition of this AD and to increase the interval for the repetitive eddy current inspections.

**Differences Between the Proposed Rule and the Service Bulletin**

Operators should note that, although the service bulletin recommends that the repetitive eddy current inspections be accomplished at intervals not to exceed 3,600 flight hours or 1 year, whichever occurs first, the proposed AD would require those inspection at intervals not to exceed 3,600 flight hours or 3 years, whichever occurs first. The FAA consulted with the manufacturer and has determined through a damage tolerance assessment that the subject fatigue cracking is dependant only on flight hours. However, because some affected airplanes have very low utilization rates, the FAA has determined that extending the calendar year repetitive inspection interval from 1 year to 3 years will ensure that the inspection is accomplished within an acceptable time frame. Therefore, the proposed rule would require that the eddy current inspection interval be 3,600 flight hours or 3 years, whichever occurs first.

Although the service bulletin recommends accomplishing the eddy

current inspection within 3,200 flight hours after the issue date of the service bulletin on airplanes that have accumulated 30,000 total flight hours, the proposed AD requires, for certain airplanes, that the inspection be accomplished within 3,200 flight hours or 2 years after the effective date of this AD, whichever occurs first. In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the inspection (two hours). In addition, the FAA has determined that all affected airplanes have accumulated 30,000 or more total flight cycles. In light of all of these factors, the FAA finds a compliance time of within 3,200 flight hours or 2 years after the effective date of this AD, whichever occurs first, for initiating the proposed actions to be warranted, in that it represents an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

**Cost Impact**

There are approximately 294 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 251 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 2 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $30,120, or $120 per airplane, per inspection cycle.

It would take approximately between 12 and 14 work hours per airplane to accomplish the proposed modification, and that the average labor rate is $60 per work hour. Required parts would cost approximately between $303 and $1,202 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $256,773, or $512,542, or between $1,023, or $2,042 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–5434 (51 FR 35502, October 6, 1986), and by adding a new airworthiness directive (AD), to read as follows:

**McDonnell Douglas:** Docket 99–NM–60–AD. Supersedes AD 86–20–06, Amendment 39–5434.

*Applicability:* Model DC–8 series airplanes, as listed in McDonnell Douglas Service Bulletin DC8–57–090, Revision 05, dated June 16, 1997; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the left or right wing due to metal fatigue failure of the front spar lower cap, accomplish the following:

**Note 2:** This AD will affect the inspections, corrective actions, and reports required by AD 93–01–15, amendment 39–8469 (58 FR 5576, January 22, 1993), for Principal Structural Elements (PSE) 57.08.021 and 57.08.022 of the DC–8 Supplemental Inspection Document (SID).

**Note 3:** Where there are differences between this AD and the referenced service bulletin, the AD prevails.

**Eddy Current Inspection**

(a) For Model DC–8–10 through DC–8–50, inclusive, DC–8–61, –61F, –71, and –71F series airplanes, equipped with left or right wing front spar lower cap, part number (P/N) 5597838–1 or –2; not modified in accordance with McDonnell Douglas DC–8 Service Bulletin 57–90, dated October 3, 1983: Perform an eddy current inspection to detect cracks of the lower front spar caps of the wings at the attachment holes of the leading edge assembly between stations Xfs=515.000 and Xfs=526.760, in accordance with McDonnell Douglas Service Bulletin DC8–57–090, Revision 05, dated June 16, 1997; at the time specified in either paragraph (a)(1), (a)(2), or (a)(3) of this AD, as applicable.

**Note 4:** Eddy current inspections accomplished prior to the effective date of this AD in accordance McDonnell Douglas DC–8 Service Bulletin 57–90, Revision 1, dated June 16, 1988; Revision 2, dated March 1, 1991; Revision 3, dated March 25, 1992; or Revision 4, dated March 3, 1995; are considered acceptable for compliance with the requirements of paragraph (a) of this AD.

(1) For airplanes on which the immediately preceding inspection was conducted using eddy current techniques in accordance with AD 86–20–06 prior to the effective date of this AD: Inspect within 3,600 flight hours or 3 years after accomplishment of the last eddy current inspection, whichever occurs first.

(2) For airplanes on which the immediately preceding inspection was conducted visually in accordance with AD 86–20–06 prior to the effective date of this AD: Inspect within 3,200 flight hours or 2 years after accomplishment of the last visual inspection, whichever occurs first.

(3) For airplanes on which a visual or eddy current inspection or the modification required by AD 86–20–06 has not been accomplished: Inspect prior to the accumulation of 30,000 total flight hours, or within 200 flight hours after the effective date of this AD.

(b) For airplanes other than those identified in paragraph (a) of this AD: Within 3,200 flight hours or 2 years after the effective date of this AD, whichever occurs first, perform the eddy current inspection specified in paragraph (a) of this AD.

**Repetitive Inspections**

(c) If no crack is detected during any inspection required by this AD, repeat the eddy current inspection thereafter at intervals not to exceed 3,600 flight hours or 3 years, whichever occurs first.

**Repair**

(d) If any crack is detected during any inspection required this AD, prior to further flight, accomplish the action specified in either paragraph (d)(1) or (d)(2) of this AD, as applicable.

(1) For cracks within the limits specified in Conditions 2 through 6, inclusive, Table 1 of paragraph 3.B.4 of the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC8–57–090, Revision 05, dated June 16, 1997: Modify the lower front spar cap in accordance with McDonnell Douglas Service Bulletin DC8–57–090, Revision 05, dated June 16, 1997. Accomplishment of the modification constitutes compliance with the requirements paragraphs (c) and (e) of this AD.

(2) For cracks that exceed the limits specified in Conditions 2 through 6, inclusive, Table 1 of paragraph 3.B.4 of the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC8–57–090, Revision 05, dated June 16, 1997: Repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Preventative Modification**

(e) Within 100,000 flight hours after the effective date of this AD, modify the lower front spar cap in accordance with paragraph 3.B.2.B of the Accomplishment Instructions of McDonnell Douglas Service Bulletin DC8–57–090, Revision 05, dated June 16, 1997. Accomplishment of the modification constitutes compliance with the requirements paragraphs (a), (b), and (c) of this AD.

**Note 5:** Modification of the lower front spar cap accomplished prior to the effective date of this AD in accordance with McDonnell Douglas DC–8 Service Bulletin 57–90, Revision 1, dated June 16, 1988; Revision 2, dated March 1, 1991; Revision 3, dated March 25, 1992; or Revision 4, dated March 3, 1995; is considered acceptable for compliance with the requirements of paragraph (d) of this AD.

(f) Accomplishment of the modification required by paragraph B. of AD 90–16–05, amendment 39–6614 (55 FR 31818, August 6, 1990) [which references "DC–8 Aging Aircraft Service Action Requirements Document" (SARD), McDonnell Douglas Report MDC K1579, Revision A, dated March 1, 1990, as the appropriate source of service information for accomplishing the modification] constitutes compliance with paragraphs (a), (b), (c), and (e) of this AD.

**Follow-On Inspection**

(g) Prior to the accumulation of 32,900 total flight hours following accomplishment of the modification required by either paragraph (d)(1) or (e) of this AD, or 2 years after the effective date of this AD, whichever occurs later, perform an inspection to detect cracks in the area specified in paragraph (a) of this AD, and corrective actions, if necessary, in accordance with a method approved by the Manager, Los Angeles ACO.

**Alternative Methods of Compliance**

(h)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 6:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 86–20–06, amendment 39–5434, are approved as alternative methods of compliance with this AD.

**Special Flight Permits**

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 3, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11721 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 98–NM–368–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon (Beech) Model MU–300, MU–300–10, 400, and 400A Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Raytheon (Beech) Model MU–300, MU–300–10, 400, and 400A series airplanes. This proposal would require repetitive inspections of the bleed air supply tube assemblies for discrepancies; and replacement of the bleed air tube assembly with a new bleed air tube assembly, if necessary. In lieu of accomplishing the repetitive inspections, this proposal also would provide for a revision of the Airworthiness Limitations to incorporate, among other things, certain inspections and compliance times to detect discrepancies of the subject area; and corrective action, if necessary. This proposal is prompted by reports of broken wire braiding in the bellows assembly of the bleed air supply tube assembly due to premature failure from loading. The actions specified by the proposed AD are intended to prevent the bleed air supply tube assembly from disconnecting and contacting other pneumatic or electrical systems of the airplane or expelling high temperature air on surrounding systems and structure. Such a condition could reduce the functional capabilities of the airplane or the ability of the flight crew to cope with adverse operating conditions.

**DATES:** Comments must be received by June 26, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–368–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Beechjet Premier Technical Support, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas.

**FOR FURTHER INFORMATION CONTACT:** Paul C. DeVore, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas, 67209, telephone, (316) 946–4142; fax, (316) 946–4407.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–368–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–368–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The FAA has received reports of broken wire braiding in the bellows assembly of the bleed air supply tube assembly on Raytheon (Beech) Model MU–300, MU–300–10, 400, and 400A series airplanes. Investigation revealed that the stainless steel wire mesh braiding that restrains the bellows is subject to loading, which causes the braiding to fail prematurely. Failure of the wire braiding, if not corrected, could cause the bleed air supply tube assembly to disconnect and contact other pneumatic or electrical systems of the airplane or expel high temperature air on surrounding systems and structure. Such a condition could reduce the functional capabilities of the airplane or the ability of the flight crew to cope with adverse operating conditions.

**New Revisions to Airworthiness Limitations Section**

The FAA has reviewed and approved Chapter 4, "Airworthiness Limitations" of Raytheon Aircraft Beechjet 400/400A Maintenance Manual (for Model MU–300–10, 400, and 400A series airplanes), Revision B23, dated December 18, 1998, and Section MR–11–00, "Airworthiness Limitations" of Raytheon Aircraft Diamond 1/1A MU–300 Maintenance Requirement Manual (for Model MU–300 series airplanes), Revision 8, dated December 18, 1998. These revisions describe, among other things, specific inspection and compliance times to detect broken wire braids, leakage, or rupture of the bellows assembly in the bleed air supply tube assembly; and corrective action, if necessary. The corrective action involves replacement of the bleed air tube assembly with a new bleed air tube assembly. Accomplishment of the procedures specified in the Airworthiness Limitations Section (ALS) or the repetitive inspections described below is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive general visual inspections of the bleed air supply tube assemblies for broken wire braiding on the bellows assemblies or for ruptured or leaking bellow assemblies; and replacement of the bleed air tube assembly with a new bleed air tube assembly, if necessary. In lieu of accomplishing the repetitive inspections, the proposed AD also would provide for a revision of the ALS of Raytheon Aircraft Beechjet 400/400A Maintenance Manual (for Model MU–300–10, 400, and 400A series airplanes), and Raytheon Aircraft Diamond 1/1A MU–300 Maintenance Manual (for Model MU–300 series airplanes) to incorporate Revision B23, dated December 18, 1998 (for Model MU–300–10, 400, and 400A series airplanes), and Revision 8, dated December 18, 1998 (for Model MU–300 series airplanes); as applicable.

**Cost Impact**

There are approximately 530 airplanes of the affected design in the worldwide fleet. The FAA estimates that 452 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $27,120, or $60 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action that would be provided by this AD action, it would take approximately 1 work hour to accomplish it, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the optional terminating action would be $60 per airplane.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Raytheon Aircraft Company (Formerly Beech):** Docket 98–NM–368–AD.

*Applicability:* All Model MU–300, MU–300–10, 400, and 400A series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the bleed air supply tube assembly from disconnecting and contacting other pneumatic or electrical systems of the airplane or expelling high temperature air on surrounding systems and structure, which could result in reduced functional capabilities of the airplane or the ability of the flight crew to cope with adverse operating conditions; accomplish the following:

**Inspection**

(a) Within 200 hours time-in-service after the effective date of this AD, except as provided by paragraph (b) of this AD, perform a general visual inspection of the bleed air supply tube assemblies for broken wire braiding on the bellows assemblies or for ruptured or leaking bellow assemblies. The bleed air supply tube assemblies are located within the aft fuselage and connect to mating ducting in the pylon area on the right and left side of the airplane. Repeat the inspection thereafter at intervals not to exceed 400 hours time-in-service. If any broken wire is detected or if any bellow assembly is ruptured or leaking, prior to further flight, replace the bleed air tube assembly with a new bleed air tube assembly.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

**Optional Implementation of Airworthiness Limitations Section**

(b) Instead of accomplishing the requirements of paragraph (a) of this AD, revise the Airworthiness Limitations Sections of the Instructions for Continued Airworthiness by incorporating the procedures specified in Chapter 4, "Airworthiness Limitations" of Raytheon Aircraft Beechjet 400/400A Maintenance Manual, Revision B23, dated December 18, 1998 (for Model MU–300–10, 400, and 400A series airplanes); or Section MR–11–00, "Airworthiness Limitations" of Raytheon Aircraft Diamond 1/1A MU–300 Maintenance Requirement Manual, Revision 8, dated December 18, 1998 (for Model MU–300 series airplanes); as applicable.

(c) Except as provided in paragraph (d) of this AD: After the action specified in paragraph (b) of this AD has been accomplished, no alternative inspections or inspection intervals may be approved for the part specified in paragraph (b) of this AD.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 3, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11720 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 98–NM–207–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 and A300–600 series airplanes. This proposal would require a high frequency eddy current (HFEC) inspection to detect cracking of the rear fittings of fuselage frame FR40 at stringer 27, and repetitive inspections or repair, as applicable. In lieu of accomplishing the repetitive inspections, this proposal requires a modification that would allow the inspection to be deferred for a certain period of time. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct fatigue cracking of the rear fittings of fuselage frame FR40 at stringer 27, which could result in reduced structural integrity of the airplane.

**DATES:** Comments must be received by June 9, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date

for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–207–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–207–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 and A300–600 series airplanes. The DGAC advises that fatigue cracks have been found in the rear fittings of fuselage frame FR40 at stringer 27 on in-service airplanes. These cracks are believed to be caused by a significant change in the geometry of the fitting combined with cabin pressure and wing loading. This condition, if not corrected, could result in reduced structural integrity of the airplane.

**Explanation of Relevant Service Information**

Airbus has issued Service Bulletins A300–53–0332 and A300–57–6075, both dated November 24, 1997, which describe procedures for repetitive high frequency eddy current (HFEC) inspections to detect cracks of the rear fittings of fuselage frame FR40 at stringer 27; and repair, if necessary. In lieu of accomplishing the repetitive inspections for cases where no cracking is detected, the service bulletins allow the deferral of the repetitive inspections provided that the modification described below is accomplished.

Airbus also has issued Service Bulletins A300–53–0333 and A300–57–6076, both dated November 24, 1997, which describe procedures for modification of the rear fittings of the fuselage frame FR40 at stringer 27. The modification includes defining a new stiffener geometry and chamfering the radius of the rear fittings of fuselage frame FR40.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified Service Bulletins A300–53–0332 and A300–57–6075 as mandatory and issued French airworthiness directive 98–028–242(B), dated January 28, 1998, in order to assure the continued airworthiness of these airplanes in France.

**FAA's Conclusions**

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

**Differences Between Proposed Rule and French Airworthiness Directive**

Operators should note that, although the service bulletins specify that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA, or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

Operators should note that, unlike particular provisions in Service Bulletins A300–53–0332 and A300–57–6075 regarding adjustment of the compliance times using an "adjustment-for-range" formula, this proposed AD would not permit formulaic adjustments of the inspection compliance times. The FAA has determined that such adjustments may present difficulties in determining if the applicable inspections and modifications have been complied with in the appropriate time frame. Further, while such adjustable compliance times are utilized as part of the Maintenance Review Board program, they do not fit practically into the AD tracking process for operators or for Principal Maintenance Inspectors attempting to ascertain compliance with AD's. Therefore, the FAA has determined that fixed compliance times should be specified for accomplishment of the actions required by this AD.

Additionally, after discussions with the DGAC and the manufacturer, the FAA has determined that flight hour maximums should be included as part of the compliance threshold and repetitive intervals for the inspections required by this proposed AD. Inclusion of a compliance threshold in terms of total flight hours as well as total flight cycles, and requiring inspection at the earlier of those times, will ensure that airplanes with longer than average flight times are inspected at a threshold and intervals necessary to maintain safety. Accordingly, the FAA has specified that the initial inspection must be accomplished at the earliest time an airplane reaches certain accumulated total flight cycles or total flight hours, and that repetitive inspections are to be accomplished at intervals not to exceed certain flight cycles or flight hours, whichever occurs first.

**Cost Impact**

There are approximately 344 Model A300 and A300–600 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 85 airplanes of U.S. registry would be affected by this AD. It would take approximately 1 work hour per airplane to accomplish the proposed HFEC inspection, at an average labor rate is $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $5,100, or $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the modification rather than the repetitive inspections, it would take approximately 3 work hours per airplane to accomplish. Based on these figures, the cost impact of the modification required by this proposed AD on U.S. operators is estimated to be $15,300 or $180 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Docket 98–NM–207–AD.

*Applicability:* Model A300 and A300–600 series airplanes, on which Airbus Modification 11525 has not been accomplished; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the rear fittings of fuselage frame FR40 at stringer 27, which could result in reduced structural integrity of the airplane, accomplish the following:

**Inspection**

(a) Perform a high frequency eddy current (HFEC) inspection to detect cracks in the stiffeners at stringer 27 of the rear fitting of fuselage frame FR40, left and right, in accordance with Airbus Service Bulletin A300–53–0332, dated November 24, 1997 (for Model A300 B2 and B4 series airplanes), or Airbus Service Bulletin A300–57–6075, dated November 24, 1997 (for Model A300–600 series airplanes); as applicable; at the applicable time specified in paragraph (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), or (a)(8) of this AD.

(1) For Model A300 B2 series airplanes that have accumulated less than 26,000 total flight cycles as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 11,100 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) Prior to the accumulation of 14,300 total flight hours, or within 3,800 flight hours after the effective date of this AD, whichever occurs later.

(2) For Model A300 B2 series airplanes that have accumulated 26,000 or more total flight cycles as of the effective date of this AD: Inspect within 2,200 flight cycles or 2,800 flight hours after the effective date of this AD, whichever occurs first.

(3) For Model A300 B4–100 series airplanes that have accumulated less than 20,000 total flight cycles as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(3)(i) and (a)(3)(ii) of this AD.

(i) Prior to the accumulation of 8,100 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) Prior to the accumulation of 15,700 total flight hours, or within 5,800 flight hours after the effective date of this AD, whichever occurs later.

(4) For Model A300 B4–100 series airplanes that have accumulated 20,000 or more total flight cycles as of the effective date of this AD: Inspect within 1,800 flight cycles or 3,400 flight hours after the effective date of this AD, whichever occurs first.

(5) For Model A300 B4–200 series airplanes that have accumulated less than 14,000 total flight cycles as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(5)(i) and (a)(5)(ii) of this AD.

(i) Prior to the accumulation of 8,300 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) Prior to the accumulation of 17,200 total flight hours, or within 6,200 flight hours after the effective date of this AD, whichever occurs later.

(6) For Model A300 B4–200 series airplanes that have accumulated 14,000 or more total flight cycles as of the effective date of this AD: Inspect within 1,700 flight cycles or 3,500 flight hours after the effective date of this AD, whichever occurs first.

(7) For Model A300–600 series airplanes that have accumulated less than 18,000 total flight cycles as of the effective date of this AD: Inspect at the earlier of the times specified in paragraphs (a)(7)(i) and (a)(7)(ii) of this AD.

(i) Prior to the accumulation of 5,800 total flight cycles, or within 2,700 flight cycles after the effective date of this AD, whichever occurs later.

(ii) Prior to the accumulation of 15,100 total flight hours, or within 7,000 flight hours after the effective date of this AD, whichever occurs later.

(8) For Model A300–600 series airplanes that have accumulated 18,000 or more total flight cycles as of the effective date of this AD: Inspect within 1,400 flight cycles or 3,600 flight hours after the effective date of this AD, whichever occurs first.

**Repetitive Inspections**

(b) If no crack is detected during the initial inspection required by paragraph (a) of this AD, except as provided by paragraph (e) of this AD, repeat the inspection required by paragraph (a) of this AD at the time specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable.

(1) For Model A300 B2 series airplanes: Repeat at intervals not to exceed 2,100 flight cycles or 2,700 flight hours, whichever occurs first.

(2) For Model A300 B4–100 series airplanes: Repeat at intervals not to exceed 1,500 flight cycles or 3,000 flight hours, whichever occurs first.

(3) For Model A300 B4–200 series airplanes: Repeat at intervals not to exceed 1,700 flight cycles or 3,500 flight hours, whichever occurs first.

(4) For Model A300–600 series airplanes: Repeat at intervals not to exceed 1,300 flight

cycles or 3,400 flight hours, whichever occurs first.

**Repair Cracking Found During Inspections**

(c) If any crack is found during any inspection required by paragraph (a) or (b) of this AD and the crack is less than 0.787 inches long, prior to further flight, repair in accordance with Airbus Service Bulletin A300–53–0332, dated November 24, 1997 (for Model A300 B2 and B4 series airplanes), or Airbus Service Bulletin A300–57–6075, dated November 24, 1997 (for Model A300–600 series airplanes); as applicable. Perform the inspection required by paragraph (a) of this AD one more time at the time specified in paragraph (c)(1), (c)(2), (c)(3), or (c)(4) of this AD, as applicable, and accomplish the actions specified in paragraph (f) or (g) of this AD, as applicable.

(1) For Model A300 B2 series airplanes: Within 42,400 flight cycles or 54,600 flight hours after accomplishment of the repair, whichever occurs first.

(2) For Model A300 B4–100 series airplanes: Within 29,300 flight cycles or 56,700 flight hours after accomplishment of the repair, whichever occurs first.

(3) For Model A300 B4–200 series airplanes: Within 31,900 flight cycles or 66,100 flight hours after accomplishment of the repair, whichever occurs first.

(4) For Model A300–600 series airplanes: Within 22,000 flight cycles or 57,500 flight hours after accomplishment of the repair, whichever occurs first.

(d) If any crack is found during any inspection required by paragraph (a) or (b) of this AD and the crack is 0.787 inches long or more, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Deferral of Repetitive Inspections by Modification**

(e) In lieu of accomplishing the requirements of paragraph (b) of this AD, prior to further flight after accomplishing the inspection required by paragraph (a) of this AD, modify the rear fitting at stringer 27 at FR40 of the center fuselage in accordance with Airbus Service Bulletin A300–53–0333, dated November 24, 1997 (Model A300 B2 and B4 series airplanes), or Airbus Service Bulletin A300–57–6076, dated November 24, 1997 (for Model A300–600 series airplanes); as applicable. Following accomplishment of the modification, perform the inspection required by paragraph (a) of this AD one more time at the time specified in paragraph (e)(1), (e)(2), (e)(3), or (e)(4) of this AD, as applicable, and accomplish the actions specified in paragraph (f) or (g) of this AD, as applicable.

(1) For Model A300 B2 series airplanes: Within 56,800 flight cycles or 73,100 flight hours after accomplishment of the modification, whichever occurs first.

(2) For Model A300 B4–100 series airplanes: Within 39,200 flight cycles or 75,900 flight hours after accomplishment of the modification, whichever occurs first.

(3) For Model A300 B4–200 series airplanes: Within 42,700 flight cycles or 88,400 flight hours after accomplishment of the modification, whichever occurs first.

(4) For Model A300–600 series airplanes: Within 29,400 flight cycles or 76,800 flight hours after accomplishment of the modification, whichever occurs first.

**Follow-On Action if No Cracking Is Found During Certain Inspections**

(f) If no crack is detected during the inspection required by paragraph (c) or (e) of this AD, prior to further flight, contact the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent) for the next inspection time(s), and repeat the inspection(s) thereafter at those times.

**Repair for Cracking Found During a Certain Inspection**

(g) If any crack is detected during the inspection required by paragraph (c) or (e) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Alternative Methods of Compliance**

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in French airworthiness directive 98–028–242 (B), dated January 28, 1998.

Issued in Renton, Washington, on May 3, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11719 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–ASO–15]**

## Proposed Establishment of Class E Airspace; Scottsboro, AL.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace at Scottsboro, AL. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Jackson County Hospital. As a result, controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

**DATES:** Comments must be received on or before June 9, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 00–ASO–15, Manager, Airspace Branch, ASO–520; P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5627.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed postcard on which the following

statement is made: "Comments to Airspace Docket No. 00–ASO–15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

**The Proposal**

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish Class E airspace at Scottsboro, AL. A GPS SIAP, helicopter point in space approach, has been developed for Jackson County Hospital. Controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by Reference, Navigation (Air).

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.*

**ASO AL E5 Scottsboro, AL [New]**

Jackson County Hospital
Point in Space Coordinates
(Lat. 34°39′47″ N, long. 86°01′54″ W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (Lat. 34°39′47″ N, long. 86°01′54″ W) serving Jackson County Hospital.

* * * * *

Issued in College Park, Georgia, on April 24, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–11708 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–13–M

## SOCIAL SECURITY ADMINISTRATION

**20 CFR Part 403**

**RIN 0960–AE95**

## Testimony by Employees and the Production of Records in Legal Proceedings

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Social Security Administration (SSA) is proposing to establish procedures governing testimony by SSA employees and the production of official records and information in legal proceedings to which SSA is not a party. This proposed rule provides procedures, requirements, and information on how SSA will handle these matters and expressly prohibits any production or testimony except as approved by the Commissioner of Social Security or as Federal law otherwise provides. This proposed rule will conserve and ensure more efficient use of SSA's resources in meeting the Agency's mission, promote consistency in decisionmaking, minimize the possibility of involving SSA in issues not related to its mission, maintain SSA's impartiality, protect sensitive and confidential information and the deliberative processes of SSA, and enhance SSA's ability to respond efficiently to requests for records, information, or testimony in a legal proceeding.

**DATES:** Your comments will be considered if we receive them no later than July 10, 2000.

**ADDRESSES:** Submit comments in writing to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703; send by telefax to (410) 966–2830; send by E-mail to regulations@ssa.gov; or deliver to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8:00 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

*Electronic Version:* The electronic file of this document is available on the date of publication in the Federal Register on the Internet site for the Government Printing Office at: *http://www.access.gpo.gov/sudocs/aces/aces140.html*. It is also available on the Internet site for SSA at: *http://www.ssa.gov*.

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**FOR FURTHER INFORMATION CONTACT:** Brad Howard, General Attorney, Office of the General Counsel, Room 617 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 966–1817, for information about this rule. For information on eligibility or claiming benefits, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

**SUPPLEMENTARY INFORMATION:**

**Clarity of This Regulation**

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. In addition to your substantive comments on this proposed rule, we invite your comments on how to make this proposed rule easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

**Background**

Until March 31, 1995, SSA was part of the Department of Health and Human Services (DHHS). SSA followed the DHHS regulations at 45 CFR part 2 regarding requests for records, information, or testimony in legal proceedings where the United States was not a party. The Social Security Independence and Program Improvements Act of 1994 (SSIPIA), Pub. L. 103–296, established SSA as an independent agency in the executive branch of the Federal government effective March 31, 1995, and vested general regulatory authority in the Commissioner of Social Security (the Commissioner). Under § 106(b) of the SSIPIA, DHHS regulations in effect immediately before March 31, 1995, that relate to functions vested in the Commissioner by reason of SSA's independence, continue to apply to SSA until the Commissioner modifies, suspends, terminates, or repeals them. In this notice, we propose to establish a new part 403 of our regulations, which would set forth the SSA rules for responding to requests for information, records, or testimony in legal proceedings. Once these rules take effect, the DHHS regulations at 45 CFR part 2 will no longer apply to SSA.

These rules, issued under the authority of 5 U.S.C. 301, are similar to rules issued by numerous government agencies and departments. Section 301 of Title 5, the "housekeeping statute," authorizes the head of an executive agency to issue "regulations for the government of his department, the conduct of its employees, the distribution and performance of its business and the custody, use, and preservation of its records, papers, and property." In *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951), the Supreme Court upheld the authority of Federal agencies to establish procedures similar to those proposed here pursuant to § 301. Federal courts have consistently held that a person seeking testimony or records from an agency must comply with the agency's "*Touhy* regulation" before seeking judicial enforcement of a subpoena. In addition, under section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), the Commissioner has authority to promulgate regulations necessary to the efficient administration of SSA functions.

**Explanation of Proposed Regulations**

SSA administers a wide variety of programs that affect almost 50 million beneficiaries and the general public. SSA maintains records on virtually every individual in the United States. The documents that SSA obtains or generates and our employees' expertise frequently are sought for use in legal proceedings in which SSA is neither involved nor has an interest. Each year, SSA receives thousands of requests for records and testimony. This proposed rule establishes SSA policies and procedures applicable to requests for official Agency information, records, or testimony in legal proceedings.

**Scope**

With some limited exceptions, this proposed rule would apply to all requests arising out of a legal proceeding for:

(1) SSA information or records; or

(2) Testimony from SSA employees concerning information acquired while performing official duties or because of the employees' official capacity.

A request for both testimony and records or other information is treated as two separate requests—one for testimony and one for records or other information—because some procedures apply only to requests for testimony.

This proposed rule applies to a broad range of legal proceedings. It adopts the definition of "record" found in SSA disclosure regulations; clarifies that "testimony" encompasses all types of sworn statements; and expands the definition of SSA "employee" to include past employees, persons acting on the Agency's behalf, and persons subject to the Agency's disclosure regulations.

**Note:** These definitions do not expand the Federal Government's obligation to provide legal representation.

The proposed rule explains that SSA employees may disclose records or other information only as permitted under the Agency's disclosure regulations and explains that SSA employees may provide testimony (even testimony related to records that the Agency may disclose) only with the Commissioner's explicit approval. The Commissioner may delegate this authority.

This proposed rule would not apply to requests for testimony:

- In an SSA administrative proceeding;
- Related to a case to which SSA is a party;
- From the United States Department of Justice;
- In a criminal proceeding to which the United States is a party;
- In a legal proceeding initiated by state or local authorities arising from an investigation or audit initiated by, or conducted in cooperation with, SSA's Office of the Inspector General;
- From either house of Congress;
- In a law enforcement proceeding related to threats or acts against SSA, its employees, or its operations; or
- Where Federal law or regulations expressly require a Federal employee to provide testimony.

These exceptions refine those listed in the DHHS regulations to focus more on specific SSA goals. For example, instead of the broad exceptions related to criminal or civil proceedings where the United States or any Federal agency is a party (45 CFR 2.1(d)(1)), we would provide more specific exceptions related to cases where SSA is a party, requests from the Department of Justice, and criminal proceedings to which the United States is a party. These changes address SSA's goals of full participation in cases when it is a party, and full cooperation and comity with the Agency's legal representatives (the Department of Justice). At the same time, the more narrowly tailored exceptions advance SSA goals of: (1) Not providing any unfair advantage to private litigants related to SSA testimony, and (2) making a full and fair evaluation of each applicant's need for testimony. Similarly, we have not included the exceptions found in the

DHHS regulations that concern DHHS agencies and employees, and we have clarified the relationship between this proposed rule and SSA's disclosure regulations (20 CFR parts 401 and 402) and added exceptions to enhance our ability to assist those protecting and furthering the interests of SSA.

**Certification**

Because we can certify copies of records in SSA's possession, the Commissioner generally would not authorize testimony intended only to authenticate those records. We propose to adopt certification rules different from those in the DHHS regulations to explain that SSA would not certify copies of records that have been released previously or have been otherwise outside SSA's control.

**Fees**

We charge a fee for production of records or information and certification. The fee schedules for these services are established in 20 CFR 401.95, and 20 CFR 402.155–185, as appropriate. We propose to charge for testimony. These fees will be calculated to reimburse the Federal government for the full cost of providing testimony, such as, but not limited to, salary or wages of the witness for time needed to prepare for testimony, any necessary travel time, and the cost of travel and attendance at the legal proceeding.

**Relation to SSA Disclosure Regulations (20 CFR Parts 401 and 402)**

The DHHS regulations at 45 CFR part 2 do not apply to matters covered in the SSA disclosure regulations at 20 CFR part 401. *See* 45 CFR 2.1(d)(6). The proposed part 403 would apply to such matters to the extent necessary to ensure that requests for testimony related to records receive the same treatment as other requests for testimony and to provide notice to requesters or courts when current law prohibits the disclosure of a requested record.

Nothing in this proposed rule affects the application of the rules in SSA's disclosure regulations. As provided in proposed § 403.105, if you request records or information in any legal proceeding covered by this proposed rule, SSA employees will not disclose the requested records or information unless authorized by SSA disclosure regulations. If the disclosure is not authorized, the decision to deny the request would be made by the appropriate SSA official under the SSA disclosure regulations. However, if disclosure is not authorized and your request states that a response is due on a particular date, we would make every reasonable effort to provide you with the written notification described in proposed § 403.145 on or before the specified date. We will also send you any notices required by part 401 or 402. If disclosure of records or information is authorized by the disclosure regulations but you request testimony concerning those matters, your request would be subject to the process for applying for testimony described in proposed § § 403.120 through 403.140. By focusing a requestor on the disclosure regulations (which usually require the consent of the individual to whom the requested record pertains) and the procedures for obtaining the Commissioner's permission for testimony, these regulations emphasize the most efficient means for obtaining information, records, or testimony.

**Subpoenas Duces Tecum**

Under the DHHS regulations, subpoenas duces tecum were deemed to be requests for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552, and were to be processed under the DHHS FOIA regulations. *See* 45 CFR 2.5. SSA has concluded that a more useful approach given the nature of SSA's records and operations would be to treat subpoenas duces tecum as requests for records within the scope of this proposed rule. Accordingly, SSA would apply the procedures in this proposed rule in responding to such subpoenas duces tecum.

**Procedures for Requesting Testimony**

In proposed § 403.120, we explain the process for requesting testimony. We would change the procedures used under the DHHS regulations for requesting testimony from an SSA employee to standardize the procedures and to make them more administratively efficient.

To obtain the testimony of an SSA employee in a legal proceeding, you must file a written application. As in the DHHS regulations, this proposed rule requires that the application set out the nature of the testimony sought, explain why the information is not available by other means, and explain why it is in SSA's interest to provide the testimony. In addition, this proposed rule requires you to explain in the application the relevance of the testimony to the issues involved in the legal proceeding and state the date and time when you need the testimony and the location where the testimony would be presented. Another change from the DHHS regulations would require you to submit the application for testimony to us at least 30 days in advance of the date when you need the testimony, or explain in your application why your application is not timely and why it is in SSA's interest to review the untimely application. Failure to submit a complete and timely application could result in the denial of the application or could cause delay in the decision on the application.

Unlike the DHHS regulations, this proposed rule would establish a central address for all applications for testimony by SSA employees for use in legal proceedings. This proposed rule would require that all applications (except applications involving the Office of the Inspector General) be sent to our Office of the General Counsel in Baltimore, Maryland. By using a central location, we can issue quicker responses and handle applications more efficiently and consistently.

**Deciding Whether To Approve an Application for Testimony—Factors We Consider**

Once we receive a complete application for testimony under this proposed rule, the Commissioner would consider whether to approve it. The Office of the General Counsel or another component of SSA may review your application. In consultation with these offices, the Commissioner would make a final decision on your application and notify you of that decision. *See* proposed § 403.135. To decide whether to approve the application, and therefore to authorize an SSA employee to provide testimony, the Commissioner would consider a number of factors such as:

- Whether providing the testimony would violate a statute, Executive Order, or regulation;
- Whether providing the testimony would unduly expend for private purposes the resources of the United States (including the time of SSA employees otherwise needed for official duties);
- Whether providing the testimony is in SSA's interest;
- Whether providing the testimony is consistent with SSA's policy of impartiality among private litigants;
- Whether providing the testimony will put confidential, sensitive, or privileged information at risk;
- Whether the testimony is available in a less burdensome form or from another source;
- Whether the testimony sought is limited to the purpose of the request;
- Whether providing the testimony sought is necessary to prevent a miscarriage of justice or to preserve the rights of an accused individual to due process in a criminal proceeding;

- Whether you previously have requested the same testimony in the same or a related proceeding;
- Whether another government agency is involved in the proceeding; and
- Whether you need the testimony to prevent fraud or similar misconduct.

*See* proposed § 403.130.

Under this proposed rule, if the Commissioner approves your application, the Commissioner decides the form by which SSA will provide the testimony. For example, if the Commissioner decides that SSA can meet your needs satisfactorily with a sworn written statement, he will not authorize oral testimony.

**Procedures When the Commissioner Denies Your Application or Does Not Act by the Return Date Specified in the Application or When Disclosure Is Not Authorized**

Under the DHHS regulations, if the Agency head denied approval for an employee to comply with a subpoena for testimony, or did not act by the return date in the subpoena, the employee was to appear at the stated time and place unless advised by the Office of the General Counsel that responding to the subpoena would be inappropriate. The only actions the employee was authorized to take at this appearance were to provide a copy of the regulations and to respectfully decline to testify or produce any documents. *See* 45 CFR § 2.4(b). Our experience suggests that under the prior procedures, SSA incurred the substantial cost of sending individuals to hearings, and that these appearances did not provide any significant service or information to the tribunal or the parties involved.

Proposed § 403.145 would provide that, in cases where SSA cannot respond to a request by the date specified in the application, SSA will make every reasonable effort to provide a statement to the requesting party and/or the court or other tribunal conducting the proceeding by the specified date. The statement would explain the following: compliance with the request is not authorized without the Commissioner's approval and approval has not yet been given; the requirements for obtaining approval; and, if the request complies with proposed § 403.120, the estimated time necessary for reaching a decision. If 20 CFR part 401 or 402 does not authorize disclosure of the requested records or information, the statement would explain the requirements for disclosure. Generally, if a response to a request for information, records, or testimony is due before the conditions of this part or 20 CFR part 401 or 402 are met, no SSA employee would appear before the tribunal or the parties involved in the proceeding.

**Waiving the Requirements of This Proposed Rule**

Under certain circumstances, this proposed rule would permit the Commissioner to grant an exception from any requirement related to your application for testimony. For example, proposed § 403.120(b) provides that if you apply for testimony by an SSA employee, you must submit the application at least 30 days before the date the testimony is needed. If, however, the Commissioner believes that a waiver of this requirement would be in the interests of SSA or would be necessary to prevent a miscarriage of justice, an exception may be granted. In addition, SSA employees may resolve requests for information informally (as they currently do in the ordinary course of business) by writing letters to claimants or other members of the public explaining procedures or other matters encompassed by the Social Security Act. Such letters may include information about an individual, if that person has provided written consent to disclosure as required in 20 CFR part 401. Such informal activity is not a waiver of the procedures described in this proposed rule since it does not involve a sworn statement by an SSA employee, but is an alternative means of assisting a person without providing employee testimony.

**Requests Involving the Office of the Inspector General**

This proposed rule provides that if you seek records or information of the Office of the Inspector General or the testimony of an employee of the Office of the Inspector General, the regulations in part 403 apply with two exceptions. The Inspector General or his or her designee would make any determination that the Commissioner would make. A separate address is provided for requests for Office of the Inspector General records or information or applications for the testimony of an employee of the Office of the Inspector General.

**Procedural Nature of the Regulations**

This proposed rule would be procedural, not substantive. Nevertheless, failure to comply with the procedures may be a basis for denying a request. This proposed rule does not create a right to obtain information, records, or the testimony of an SSA employee nor does it create any additional right or privilege not already available to SSA to deny such a request. Furthermore, this proposed rule creates no independent right of action against SSA or any of its employees.

**Regulatory Procedures**

*Executive Order 12866*

We have consulted with the Office of Management and Budget (OMB) and determined that these rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, they were not subject to OMB review.

*Regulatory Flexibility Act*

We certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

*Paperwork Reduction Act*

There is a reporting requirement in section 403.120(a),(b), and (c), which establishes the requirements for applying for the testimony of an SSA employee. As required by 44 U.S.C. 3507(d), we have submitted a copy of this information collection requirement to the Office of Management and Budget (OMB) for its review. Organizations and individuals desiring to submit comments on these information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attention: Desk Officer for SSA.

The public burden for this collection of information is estimated to average 30 minutes per application. This includes the time it will take to understand what is needed, gather the necessary facts, and provide the information. We expect that there will be approximately 40 applicants for testimony each year. Therefore, the annual reporting burden is expected to be 20 hours. If you have any comments or suggestions on this estimate, write to the Social Security Administration, ATTN: Reports Clearance Officer, 1–A–21 Operations Building, Baltimore, MD 21235.

SSA is soliciting comments from the public in order to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology (e.g., permitting electronic submission of responses).

(Catalog of Federal Domestic Assistance Program Nos. 93.773 Medicare-Hospital Insurance; 93.774 Medicare-Supplementary Medical Insurance; 96.001 Social Security-Disability Insurance; 96.002 Social Security-Retirement Insurance; 96.003 Special Benefits for Persons Aged 72 and Over; 96.004 Social Security-Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; and 96.006 Supplemental Security Income).

**List of Subjects in 20 CFR Part 403**

Courts, Government employees.

Dated: April 26, 2000.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

For reasons set out in the preamble, Chapter III of Title 20 of the Code of Federal Regulations is amended by adding a new part 403 to read as follows:

## PART 403—TESTIMONY BY EMPLOYEES AND THE PRODUCTION OF RECORDS AND INFORMATION IN LEGAL PROCEEDINGS

Sec.

403.100 When can an SSA employee testify or produce information or records in legal proceedings?
403.105 What is the relationship between this part and 20 CFR parts 401 and 402?
403.110 What special definitions apply to this part?
403.115 When does this part apply?
403.120 How must I request testimony?
403.125 How will requests for records, information, or testimony involving SSA's Office of the Inspector General be handled?
403.130 What factors may the Commissioner consider in determining whether SSA will grant my application for testimony?
403.135 What happens to my application for testimony?
403.140 If the Commissioner authorizes testimony, what will be the scope and form of that testimony?
403.145 What will SSA do if I have not satisfied the conditions in this part or in 20 CFR part 401 or 402?
403.150 Must I pay a fee if my request is granted?
403.155 Does SSA certify records?

**Authority:** Secs. 702(a)(5) and 1106 of the Social Security Act, 42 U.S.C. 902(a)(5) and 1306; 5 U.S.C. 301; 31 U.S.C. 9701.

### § 403.100 When can an SSA employee testify or produce information or records in legal proceedings?

An SSA employee can testify concerning any function of SSA or any information or record created or acquired by SSA as a result of the discharge of its official duties in any legal proceeding covered by this part only with the prior authorization of the Commissioner. An SSA employee can provide records or other information in a legal proceeding covered by this part only to the extent that doing so is consistent with 20 CFR parts 401 and 402. A request for both testimony and records or other information is considered two separate requests—one for testimony and one for records or other information. SSA maintains a policy of strict impartiality with respect to private litigants and seeks to minimize the disruption of official duties.

### § 403.105 What is the relationship between this part and 20 CFR parts 401 and 402?

(a) *General.* Disclosure of SSA's records and information contained in those records is governed by the regulations at 20 CFR parts 401 and 402. SSA employees will not disclose records or information in any legal proceeding covered by this part except as permitted by 20 CFR parts 401 and 402.

(b) *Requests for information or records that do not include testimony.* (1) If you do not request testimony, §§ 403.120–403.140 do not apply.

(2) If 20 CFR part 401 or 402 permits disclosure to you of any requested record or information, we will make every reasonable effort to provide the disclosable information or record to you on or before the date specified in your request.

(3) If neither 20 CFR part 401 nor 402 permits disclosure of information or a record you request, we will notify you as provided in § 403.145. We will also send you any notices required by part 401 or 402.

### § 403.110 What special definitions apply to this part?

The following definitions apply:

(a) *Application* means a written request for testimony that conforms to the requirements of § 403.120.

(b)(1) *Employee* includes—

(i) Any person employed in any capacity by SSA, currently or in the past;

(ii) Any person appointed by, or subject to the supervision, jurisdiction, or control of SSA, the Commissioner of Social Security, or any other SSA official, currently or in the past; and

(iii) Any person who is not described elsewhere in this definition but whose disclosure of information is subject to the regulations at 20 CFR part 401 currently or in the past.

(2) For purposes of this paragraph (b), a person subject to SSA's jurisdiction or control includes any person hired as a contractor by SSA, any person performing services for SSA under an agreement (such as an officer or employee of a State agency involved in determining disability for SSA), and any consultant (including medical or vocational experts or medical services or consultative examination providers), contractor, or subcontractor of such person. Such a person would also include any person who has served or is serving in any advisory capacity, formal or informal.

(3) For purposes of this paragraph (b), a person employed by SSA in the past is considered an employee only when the matter about which the person would testify is one in which he or she was personally involved while at SSA; where the matter concerns official information that the employee acquired while working, such as sensitive or confidential agency information; where the person purports to speak for SSA; or where significant SSA resources would be required to prepare the person to testify. Such a person would not be considered an employee when the person will rely only on expertise or general knowledge he or she acquired while working at SSA.

(c) *Commissioner* means the Commissioner of Social Security or his or her designee(s).

(d) *Legal proceeding* includes any pretrial, trial, and post-trial stage of any existing or reasonably anticipated judicial or administrative action, hearing, investigation, or similar proceeding before a court, commission, board, agency, or other tribunal, authority or entity, foreign or domestic. *Legal proceeding* also includes any deposition or other pretrial proceeding, including a formal or informal request for testimony by an attorney or any other person.

(e) *Record* has the same meaning as "record" in 20 CFR 402.30.

(f) *Request* means any attempt to obtain the production, disclosure, or release of information, records, or the testimony of an SSA employee, including any order, subpoena, or other command issued in a legal proceeding as well as any informal or other attempt (by any method) by a party or a party's representative.

(g) *SSA* means the Social Security Administration.

(h) *Testimony* includes any sworn statement (oral or written), including (but not limited to)—

(1) Any statement provided through personal appearance; deposition; or recorded interview; or provided by telephone, television, or videotape;

(2) Any response during discovery or other similar proceedings that would involve more than the mere physical production of records; and

(3) Any declaration made under penalty of perjury or any affidavit.

(i) *We* or *our* means the Social Security Administration.

(j) *You* means an individual or entity that submits a request for records, information or testimony.

**§ 403.115 When does this part apply?**

(a) Except as specified in paragraph (b) of this section, this part applies to any request in connection with any legal proceeding for SSA records or other information or for testimony from SSA or its employees. This part applies to requests for testimony related to SSA's functions or to any information or record created or acquired by SSA as a result of the discharge of its official duties.

(b) This part does not apply to requests for testimony—

(1) In an SSA administrative proceeding;

(2) In a legal proceeding to which SSA is a party ("SSA" here includes the Commissioner and any employee acting in his or her official capacity);

(3) From the United States Department of Justice;

(4) In a criminal proceeding in which the United States is a party;

(5) In a legal proceeding initiated by state or local authorities arising from an investigation or audit initiated by, or conducted in cooperation with, SSA's Office of the Inspector General;

(6) From either house of Congress;

(7) In a law enforcement proceeding related to threats or acts against SSA, its employees, or its operations ("SSA" here includes the Commissioner and any employee acting in his or her official capacity); or

(8) Where Federal law or regulations expressly require a Federal employee to provide testimony.

**§ 403.120 How must I request testimony?**

(a) You must submit a written application for testimony of an SSA employee. Your application must—

(1) Describe in detail the nature and relevance of the testimony sought in the legal proceeding;

(2) Include a detailed explanation as to why you need the testimony, why you cannot obtain the information you need from an alternative source, and why providing it to you would be in SSA's interest; and

(3) Provide the date and time that you need the testimony and the place where SSA would present it.

(b) You must submit a complete application to SSA at least 30 days in advance of the date that you need the testimony. If your application is submitted fewer than 30 days before that date, you must provide, in addition to the requirements set out above, a detailed explanation as to why—

(1) You did not apply in a timely fashion; and

(2) It is in SSA's interest to review the untimely application.

(c) You must send your application for testimony to: Office of the General Counsel, Social Security Administration, Post Office Box 17706, Baltimore, MD 21235–7760. (If you are requesting testimony of an employee of the Office of the Inspector General, send your application to the address in § 403.125.)

(d) The Commissioner has the sole discretion to waive any requirement in this section.

(e) If your application does not include each of the items required by paragraph (a) of this section, we may return it to you for additional information. Unless the Commissioner waives one or more requirements, we will not process an incomplete or untimely application.

**§ 403.125 How will requests for records, information, or testimony involving SSA's Office of the Inspector General be handled?**

A request for records or information of the Office of the Inspector General or the testimony of an employee of the Office of the Inspector General will be handled in accordance with the provisions of this part, except that the Inspector General or the Inspector General's designee will make those determinations that the Commissioner would make. Send your request for records or information pertaining to the Office of the Inspector General or your application for testimony of an employee of the Office of the Inspector General to: Office of the Inspector General, Social Security Administration, 300 Altmeyer Building, 6401 Security Blvd., Baltimore, MD 21235.

**§ 403.130 What factors may the Commissioner consider in determining whether SSA will grant my application for testimony?**

In deciding whether to authorize the testimony of an SSA employee, the Commissioner will consider applicable law and factors relating to your need and the burden to SSA. The considerations include, but are not limited to—

(a) Whether providing the testimony would violate a statute (such as 26 U.S.C. 6103 or section 1106 of the Social Security Act, 42 U.S.C. 1306), Executive Order, or regulation (such as 20 CFR part 401);

(b) Whether granting the application would unduly expend for private purposes the resources of the United States (including the time of SSA employees needed for official duties);

(c) Whether it is in SSA's interest to provide the testimony;

(d) Whether providing the testimony maintains SSA's policy of impartiality among private litigants;

(e) Whether providing the testimony will put confidential, sensitive, or privileged information at risk;

(f) Whether the testimony is available in a less burdensome form or from another source;

(g) Whether the testimony is limited to the purpose of the request;

(h) Whether providing the testimony is necessary to prevent a miscarriage of justice or to preserve the rights of an accused individual to due process in a criminal proceeding;

(i) Whether you have previously requested the same testimony in the same or a related proceeding;

(j) Whether another government agency is involved in the proceeding; or

(k) Whether you need the testimony to prevent fraud or similar misconduct.

**§ 403.135 What happens to my application for testimony?**

(a) If 20 CFR part 401 or 402 do not permit disclosure of information about which you seek testimony from an SSA employee, we will notify you under § 403.145.

(b) If 20 CFR part 401 or 402 permit disclosure of the information about which you seek testimony,

(1) The Commissioner makes the final decision on your application;

(2) All final decisions are in the sole discretion of the Commissioner; and

(3) We will notify you of the final decision on your application.

**§ 403.140 If the Commissioner authorizes testimony, what will be the scope and form of that testimony?**

The employee's testimony must be limited to matters that were specifically approved. We will provide testimony in the form that is least burdensome to SSA unless you provide sufficient information in your application for SSA to justify a different form. For example, we will provide an affidavit or declaration rather than a deposition and a deposition rather than trial testimony.

**§ 403.145 What will SSA do if I have not satisfied the conditions in this part or in 20 CFR part 401 or 402?**

(a) We will provide the following information, as appropriate, to you or the court or other tribunal conducting the legal proceeding if your request states that a response is due on a particular date and the conditions prescribed in this part, or the conditions for disclosure in 20 CFR part 401 or 402, are not satisfied or we anticipate that they will not be satisfied by that date:

(1) A statement that compliance with the request is not authorized under 20 CFR part 401 or 402, or is prohibited without the Commissioner's approval;

(2) The requirements for obtaining the approval of the Commissioner for testimony or for obtaining information, records, or testimony under 20 CFR part 401 or 402; and

(3) If the request complies with § 403.120, the estimated time necessary for a decision. We will make every reasonable effort to provide this information in writing on or before the date specified in your request.

(b) Generally, if a response to a request for information, records, or testimony is due before the conditions of this part or the conditions for disclosure in 20 CFR part 401 or 402 are met, no SSA employee will appear.

(c) SSA will seek the advice and assistance of the Department of Justice when appropriate.

**§ 403.150 Must I pay a fee if my request is granted?**

(a) *General.* Unless the Commissioner grants a waiver, you must pay fees for our services in providing information, records, or testimony. You must pay the fees as prescribed by the Commissioner. In addition, the Commissioner may require that you pay the fees in advance as a condition of providing the information, records, or testimony. Make fees payable to the Social Security Administration by check or money order.

(b) *Records or information.* Unless the Commissioner grants a waiver, you must pay the fees for production of records or information prescribed in 20 CFR 401.95 and 20 CFR 402.155 through 402.185, as appropriate.

(c) *Testimony.* Unless the Commissioner grants a waiver, you must pay fees calculated to reimburse the United States government for the full cost of providing the testimony. Those costs include, but are not limited to—

(1) The salary or wages of the witness and related costs for the time necessary to prepare for and provide the testimony and any travel time, and

(2) Other travel costs.

(d) *Waiver or reduction of fees.* The Commissioner may waive or reduce fees for providing information, records, or testimony under this part. The rules in 20 CFR 402.185 apply in determining whether to waive fees for the production of records. In deciding whether to waive or reduce fees for testimony or for production of information that does not constitute a record, the Commissioner may consider other factors, including but not limited to—

(1) The ability of the party responsible for the application to pay the full amount of the chargeable fees;

(2) The public interest, as described in 20 CFR 402.185, affected by complying with the application;

(3) The need for the testimony or information in order to prevent a miscarriage of justice;

(4) The extent to which providing the testimony or information serves SSA's interest; and

(5) The burden on SSA's resources required to provide the information or testimony.

**§ 403.155 Does SSA certify records?**

We can certify the authenticity of copies of records we disclose pursuant to 20 CFR parts 401 and 402, and this part. We will provide this service only in response to your written request. If we certify, we will do so at the time of the disclosure and will not certify copies of records that have left our custody. A request for certified copies of records previously released is considered a new request for records. Fees for this certification are set forth in 20 CFR 402.165(e).

[FR Doc. 00–11592 Filed 5–9–00; 8:45 am]
BILLING CODE 4191–02–U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD08–00–005]**

**RIN 2115–AE47**

### Drawbridge Operation Regulation; Chef Menteur Pass, LA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing a change to the regulation governing the operation of the U.S. Highway 90 bridge across Chef Menteur Pass, mile 2.8 at Lake Catherine, Orleans Parish, Louisiana. The proposal would change the current regulation which provides for a two-hour morning closure period between 5:30 a.m. and 7:30 a.m. Mondays through Fridays except Federal holidays and require the draw to open on the hour and half-hour between 5:30 a.m. to 7:30 a.m., Monday through Friday, except Federal holidays. This change would accommodate the navigation needs of commercial fishing vessels.

**DATES:** Comments and related material must reach the Coast Guard on or before July 31, 2000.

**ADDRESSES:** You may mail comments to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396, or deliver them to room 1313 at the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration Branch, Eighth Coast Guard District between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Phil Johnson, Bridge Administration Branch, 504–589–2965.

**SUPPLEMENTARY INFORMATION:**

#### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08–00–005), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold

one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

To meet the needs of commuters who cross the U.S. Highway 90 bridge each day en route to work in the Almonaster Industrial District, the Coast Guard issued a final rule effective February 23, 1999 (64 FR 8720) allowing the bridge to remain closed to navigation from 5:30 a.m. to 7:30 a.m., Monday Through Friday, except Federal holidays. The draw opens at any time for a vessel in distress.

Since the rule has been in effect, the Coast Guard received numerous complaints from operators of commercial fishing vessels stating that the regulation does not meet the needs of navigation for local commercial fishermen because they are required to haul in their shrimp nets earlier than necessary to be able pass through the bridge before the closure time. Local commercial fishermen generally trawl for shrimp during evening hours. This is because brown shrimp feed at night above the bottom. Once daylight occurs they bury themselves in the mud and can no longer be caught with trawl nets. Since the fishermen need to maximize trawling time, they work from sundown until sunrise then enter port and unload their catches. In order for them to transit the U.S. Highway 90 bridge before the 5:30 closure, they must haul in their nets as much as two hours early and head into port. This cuts down trawling time and causes loss of revenue. Based on complaints from local commercial fishermen, the Coast Guard determined that the current operating schedule may not meet the reasonable needs of navigation.

**Discussion of Proposed Rule**

This proposed rule would revise 33 CFR 117.436. In order to accommodate motorists who live in the Lake Catherine area and commute to work via the U. S. Highway 90 bridge across Chef Menteur Pass, mile 2.8, while providing for the needs of commercial fishermen, the Coast Guard is proposing to change the regulation to permit the draw to open to navigation only on the hour and on the half-hour from 5:30 a.m. to 7:30 a.m., Monday through Friday, except Federal holidays. The proposed regulation would allow for the free flow of vehicular traffic for the majority of the year, while still serving the reasonable needs of navigational interests.

A comment period, extending through July 31, 2000 will be allowed for mariners, motorists and other interested parties to provide comments and data on the proposed change. During the comment period, to test this proposed rule, the Coast Guard has issued a temporary deviation from the drawbridge operating regulations. The temporary deviation is published elsewhere in this **Federal Register**. The temporary deviation is in effect from June 1, 2000 through June 30, 2000 and will require that the draw open for the passage of vessels on the hour and on the half-hour from 5:30 a.m. to 7:30 a.m., Monday through Friday, except Federal holidays. The bridge will open on signal at all other times or at any time for a vessel in distress. We request comments on how the test schedule works during this period.

**Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This proposed rule will have a positive impact on the economic status of the local commercial fishermen as it provides them with adequate time to trawl. It will not create a significant adverse effect for the local motorists who cross the bridge on weekdays en route to work. The motorists will be able to adjust their commuting schedules to accommodate the hour and half-hour drawbridge openings.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The small entities concerned with this proposed rule are the local commercial fishermen who transit the bridge. This proposed rule will positively affect the local commercial fishermen by affording them adequate time to trawl. They will not be required to haul in their nets early in order to transit through the bridge en route to port.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Eighth Coast Guard District at the address above.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of

E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. This proposal will change an existing special drawbridge operating regulation promulgated by a Coast Guard Bridge Administration Program action. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.436 is revised to read as follows:

**§ 117.436 Chef Menteur Pass.**

The draw of the U.S. Highway 90 bridge, mile 2.8, at Lake Catherine, shall open on signal; except that, from 5:30 a.m. to 7:30 a.m., Monday through Friday except Federal holidays, the draw need open only on the hour and on the half-hour for the passage of vessels. The draw shall open at any time for a vessel in distress.

Dated: May 1, 2000.

**K.J. Eldridge,**

*Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.*

[FR Doc. 00–11703 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[OR–77–7292–b; FRL–6583–1]**

### Approval and Promulgation of State Implementation Plans: Oregon RACT Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Oregon for the purpose of revising the RACT Rule. The SIP revision was submitted by the State to satisfy certain Federal Clean Air Act requirements for a SIP. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received in writing by June 9, 2000.

**ADDRESSES:** Written comments should be addressed to Christine Lemmé, Environmental Protection Specialist (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the state submittal are available at the following addresses for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day with Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101 and/or The Oregon Department of Environmental Quality, Air Quality Division, 811 SW Sixth Avenue, Portland, OR 97204–1390. Telephone: (503) 229–5696.

**FOR FURTHER INFORMATION CONTACT:** Mahbubul Islam, Office of Air Quality (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–6985.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final rule which is located in the Rules Section of this **Federal Register**.

Dated: March 1, 2000.

**Chuck Findley,**

*Acting Regional Administrator, Region 10.*

[FR Doc. 00–11672 Filed 5–9–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 52 and 81**

**[IN 119–1b; FRL–6601–6]**

### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planing Purposes; Indiana

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a request submitted by the State of Indiana to redesignate Marion County, Indiana as attainment for lead (Pb). Indiana submitted this request on March 2, 2000. EPA is also proposing to approve the lead maintenance plan for Marion County. This plan is designed to ensure maintenance of the lead National Ambient Air Quality Standards (NAAQS) for at least 10 years.

**DATES:** EPA must receive written comments on this proposed rule by June 9, 2000.

**ADDRESSES:** Written comments may be mailed to J. Elmer Bortzer, Chief, Regulation Development Section, Air Program Branch (AR-18J), Region 5, at the address listed below.

Copies of the materials submitted by Indiana may be examined during normal business hours at the following location: Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Phuong Nguyen, Environmental Scientist, at (312) 886–6701.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we," "us," or "our" are used we mean EPA.

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I. What action is EPA taking today?
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**I. What Action Is EPA Taking Today?**

EPA is proposing to approve a lead redesignation request for Marion County, Indiana, which the State submitted on March 2, 2000. EPA is also proposing to approve the lead maintenance plan for Marion County, Indiana.

**II. Where Can I Find More Information About This Proposal And The Corresponding Direct Final?**

For additional information, see the direct final rule published in the rules section of this **Federal Register**.

Dated: April 20, 2000.

**Francis X. Lyons,**

*Regional Administrator, Region 5.*

[FR Doc. 00–11424 Filed 5–9–00; 8: 45 am]

BILLING CODE 6560–50–P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

**[FRL–6600–5]**

**West Virginia: Final Authorization of State Hazardous Waste Management Program Revisions**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** West Virginia has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to West Virginia. In the "Rules and Regulations" section of this **Federal Register**, EPA is authorizing the changes by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we get written comments which oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. If we get comments that oppose this action, we will withdraw the immediate final rule and it will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

**DATES:** Send your written comments by June 9, 2000.

**ADDRESSES:** Send written comments to Sharon McCauley, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–3376. You can examine copies of the materials submitted by West Virginia during normal business hours at the following locations: EPA Region III Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103, Phone number: (215) 814–5254; or West Virginia Division of Environmental Protection, Office of Waste Management, 1356 Hansford Street, Charleston, WV 25301–1401, Phone number: (304) 558–4253.

**FOR FURTHER INFORMATION CONTACT:** Sharon McCauley at the above address and phone number.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

[FR Doc. 00–11427 Filed 5–9–00; 8:45 am]

BILLING CODE 6560–50–P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 271**

**[FRL–6604–4]**

**Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Oklahoma**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule and request for comment.

**SUMMARY:** The EPA (also, "the Agency" in this preamble) proposes to grant final authorization to the hazardous waste program revisions submitted by the State of Oklahoma for its hazardous waste program revisions, specifically, revisions needed to meet Resource Conservation and Recovery Act (RCRA) Cluster VIII which contains Federal rules promulgated from July 1, 1997, to June 30, 1998. The RCRA Cluster VIII rules are listed in the rules section of this **Federal Register** (FR). In the "Rules and Regulations" section of this FR, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If the EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If the EPA receives adverse written comments, a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document will withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received on or before June 9, 2000.

**ADDRESSES:** Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Oklahoma during normal business hours at the following locations: EPA Region 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444 ; or Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180.

**FOR FURTHER INFORMATION CONTACT:** Alima Patterson (214) 665–8533.

**SUPPLEMENTARY INFORMATION:** For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register**.

Dated: March 30, 2000.

**Jerry Clifford,**

*Acting Regional Administrator, Region 6.*

[FR Doc. 00–11561 Filed 5–9–00; 8:45 am]

BILLING CODE 6560–50–P

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**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Part 73**

**[DA No. 00–922, MM Docket No. 00–70, RM–9843]**

**Radio Broadcasting Services; Key West, FL**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making

filed on behalf of Adolphus Warfield, Inc. requesting the allotment of Channel 244A at Key West, Florida, as the community's seventh commercial FM broadcast service. Channel 244A can be allotted to Key West without a site restriction at coordinates 24–33–06 and 81–47–48.

**DATES:** Comments must be filed on or before June 16, 2000, and reply comments on or before July 3, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Joseph A. Belisle, Leibowitz & Associates, P. A., One Southeast Third Avenue, Suite 1450, Miami, Florida 33131.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–70, adopted April 19, 2000, and released April 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–11655 Filed 5–9–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–943; MM Docket No. 00–72; RM–9853]**

### Radio Broadcasting Services; Covelo, CA

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Round Valley Unified School District, requesting the allotment of Channel 245A to Covelo, California, as that community's first local aural transmission service. Coordinates used for this proposal are 39–47–42 NL and 123–14–54 WL.

**DATES:** Comments must be filed on or before June 19, 2000, and reply comments on or before July 5, 2000.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554.

In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Round Valley Unified School District, Attn: Andrea Harris, Superintendent, Howard & High Streets, Covelo, CA 95428.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–72, adopted April 19, 2000, and released April 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–11656 Filed 5–9–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–943; MM Docket No. 00–71; RM–9852]**

### Radio Broadcasting Services; Olpe, KS

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Michael D. Law, requesting the allotment of Channel 276A to Olpe, Kansas, as that community's first local aural transmission service. Coordinates used for this proposal are 38–12–39 NL and 96–10–50 WL.

**DATES:** Comments must be filed on or before June 19, 2000, and reply comments on or before July 5, 2000.

**ADDRESSES:** Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Michael D. Law, 12462 Hallet, Olathe, KS 66062.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–71, adopted April 19, 2000, and released April 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY-A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission

consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–11657 Filed 5–9–00; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

## Endangered and Threatened Wildlife and Plants; 90-Day Finding for a Petition To Add Botrychium lineare (Slender Moonwort) to the List of Threatened and Endangered Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 90-day petition finding and initiation of status review.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. We find that the petitioner has presented substantial information indicating that listing *Botrychium lineare* (slender moonwort) may be warranted. With the publication of this notice, we are initiating a status review and will prepare a 12-month finding.

**DATES:** The finding announced in this document was made on April 12, 2000. To be considered in the 12-month finding for this petition, comments and information should be submitted to us by July 10, 2000.

**ADDRESSES:** Data, comments, information, or questions concerning this petition should be submitted to the Supervisor, U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 S. Vinnell Way, Room 368, Boise, Idaho 83709. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Robert Ruesink, Supervisor (see **ADDRESSES** section) (telephone 208/378–5243; facsimile 208/378–5262).

**SUPPLEMENTARY INFORMATION:**

### Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to demonstrate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and we are to publish the finding promptly in the **Federal Register**. If the finding is that substantial information was presented, we are also required to promptly commence a review of the status of the involved species and to disclose its findings within 12 months (12-month finding).

The processing of this petition conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of this 90-day petition finding is a Priority 4 action and is being completed in accordance with the current Listing Priority Guidance.

On July 28, 1999, we received a petition dated July 26, 1999, from the Biodiversity Legal Foundation. The petitioner requested that we list *Botrychium lineare* (slender moonwort) as endangered or threatened and designate critical habitat within a reasonable period of time following the listing. The petitioner submitted biological, distributional, historical, and other information and scientific references in support of the petition.

*Botrychium lineare* is a small perennial fern with a pale green leaf (trophophore) from 6 to 18 centimeters (2 to 7 inches) long. Leaf segments are typically linear and divided or forked at the ends. The sporophore (spore-bearing structure) is 1 to 2 times the length of the trophophore with a single main axis. Spores mature primarily in late June and July. This species was initially described in 1994 and is considered to be one of the more distinctive moonworts (Wagner and Wagner 1994). The habitat for *B. lineare* has been described as "deep grass and forbs of meadows, under trees in woods, and on shelves on limestone cliffs, mainly at higher elevations" (Wagner and Wagner 1994). However, a specific habitat description for the species is problematic because of its formerly widespread distribution ranging from sea level in Quebec to nearly 3,000 meters (m) (9,840 feet (ft)) in Boulder County, Colorado. The habitat at currently occupied sites in Oregon and Colorado consists of montane meadows with associated species including snowberry (*Symphoricarpos* spp.), huckleberry (*Vaccinium* spp.), reedgrass (*Calamagrostis* spp.) and other grasses, Engelmann spruce (*Picea engelmannii*), lodgepole pine (*Pinus contorta*), aspen (*Populus tremuloides*), and aspen dairy (*Erigeron* spp.) (Wagner and Wagner 1994; Peter Root, private contractor, pers. comm. 1999).

In the United States, *Botrychium lineare* has been documented from Idaho (Boundary County), Oregon (Wallowa County), Montana (Lake County), Colorado (Boulder and El Paso Counties), and California (Inyo County, although this report may be incorrect; the species may actually occur in Fresno County (Tim Thomas, Service, pers. comm. 1999)). In Canada, *B. lineare* was previously documented from two provinces, Quebec and New Brunswick (Wagner and Wagner 1994).

The petitioner stated that only three populations of *Botrychium lineare* are currently known to exist (two in Oregon and one in Colorado) and that the populations previously known from Idaho, Montana, California, Colorado (Boulder County), and Canada are thought to be extirpated. Plants at some of these sites have not been seen since the early 1900s (Wagner and Wagner 1994). Further investigation has identified two additional sites (one in Colorado (Root 1999) and one in Montana (Zika, pers. comm. 1999)) that support *B. lineare*. Of the two existing sites in northeastern Oregon, one occurs in the Hurricane Creek drainage in the Eagle Cap Wilderness (Wallowa-Whitman National Forest) and the other is found on a private inholding known as Lapover Ranch in the Lostine River drainage (Oregon Natural Heritage Program 1999; Zika *et al.* 1995). Elevation for the Oregon sites is approximately 1,600 meters (m) (5,300 feet (ft)). Two other sites are located along the Pikes Peak toll road at 2,700 m (9,000 ft) and 2,650 m (8,700 ft) in El Paso County, Colorado. The fifth site is located in Glacier National Park in

Montana at an elevation of about 1,500 m (4,800 ft).

The remaining populations of *Botrychium lineare* are extremely small, ranging in size from 2 to 53 individuals (Oregon Natural Heritage Program 1999; Carpenter 1996b). When last observed in 1993, the Lapover Ranch site had 14 individuals, and the Hurricane Creek site had 4 plants (Oregon Natural Heritage Program 1999). The higher elevation Pikes Peak site is the largest with 53 plants (Carpenter 1996b); the lower elevation Pikes Peak site (the newly discovered site) has only 2 plants (Root 1999). The recently discovered Glacier National Park site consists of about 10 plants, but more plants may be found in nearby meadows (Peter Zika, pers. comm. 1999).

Threats to this species include habitat succession as a result of fire suppression, livestock grazing, exotic species, development, timber harvest, roads, and recreation (Paula Brooks, pers. comm. 2000; Peter Zika, pers. comm. 1999; Oregon Natural Heritage Program 1999; Zika *et al.* 1995; Wagner and Wagner 1994). The petition also stated that mining is a threat to *Botrychium lineare*, but currently no mining activities appear to be threatening this species (Paula Brooks, pers. comm. 2000). The petitioner contends that habitat succession and fire suppression threaten *B. lineare* habitat on the Wallowa-Whitman National Forest. However, our understanding of the relationship of habitat succession and fire suppression to the persistence of *B. lineare* is unclear. For example, in a biological assessment for sensitive plants in the Lostine River canyon, a U.S. Forest Service botanist notes that "*Botrychium* species seem to be found in areas that receive natural disturbances such as fire and landslides, but we are not yet able to predict what disturbance interval or successional stage best suits them" (Hustafa 1999). Although the petitioner states that the lack of implementation of a controlled burning program in Lostine Canyon is a threat to *B. lineare*, this program (if implemented) would affect only Federal lands (Paula Brooks, Wallowa-Whitman National Forest, *in litt.*, 1999), and the species does not occur on Federal lands in this canyon.

Although the current threats to the species may not be fully understood, habitat occupied by *Botrychium lineare* in Oregon is extremely restricted. The Lostine site occupies an area of approximately 10 by 10 m (30 by 30 ft) (Wagner and Wagner 1994), and the Hurricane Creek site is found in an area up to 1 hectare (2.5 acres) in size (Oregon Natural Heritage Program 1999). Since the Hurricane Creek *B. lineare* site is adjacent to a popular hiking and pack trail, the site may be affected by recreational impacts such as trampling or campfires (Oregon Natural Heritage Program 1999). The population that is found on the Lapover Ranch is threatened by grazing, trampling, and possible development (Zika pers. comm. 1999).

The largest known *Botrychium lineare* site (based on number of individuals) at Pikes Peak is approximately 35 by 10 m (115 by 30 ft) in size and is located 100 m (330 ft) from the Pikes Peak toll road (Carpenter 1996a, 1996b). The petitioner contends that the site is threatened by recreational impacts. Although the toll road itself is heavily used, the *B. lineare* site is located along the lower half of the road and receives little recreational use (Steve Tapia, Pike and San Isabel National Forest, pers. comm. 1999). A possible threat to this species could result from maintenance of an adjacent power line, although permission from the Forest Service would have to be obtained prior to commencing any maintenance work (S. Tapia, pers. comm. 1999). This site is not affected by erosion or livestock grazing (S. Tapia, pers. comm. 1999; Carpenter 1996a). Threats to the lower elevation *B. lineare* site at Pikes Peak, containing far fewer plants, are unknown. However, this site may be subject to disturbance due to its proximity to the Pikes Peak toll road. Although habitat for *B. lineare* at Pikes Peak does not appear to be imminently threatened, the limited amount of occupied habitat makes this species potentially vulnerable to naturally occurring events or human activities.

The Glacier National Park site is located along the Babb-Many Glacier road (P. Zika, pers. comm. 1999). This site is vulnerable to road maintenance activities and to naturally occurring events.

We have reviewed the petition, literature cited in the petition, other available literature and data, and consulted with biologists familiar with *Botrychium lineare*. After reviewing the best scientific and commercial information available, the Service finds that the petition presents substantial information that listing *B. lineare* may be warranted. This species is currently known from only 5 sites, with a total of fewer than 100 individuals. The small population size, small amount of occupied habitat, and proximity of all the known sites to human disturbance suggest that this species may be threatened by a variety of factors.

When we make a positive 90-day finding, we are required to promptly commence a review of the status of the species. In the case of *Botrychium lineare*, we are requesting information on the status of the species throughout its range in the United States and Canada. We are soliciting information primarily on distribution, population status and trends, and documented threats. Section 4(b)(3)(B) of the Act requires that we make a finding within 1 year from the date the petition was received as to whether listing *B. lineare* as threatened or endangered is warranted (12-month finding).

The petitioner also requested that critical habitat be designated for *Botrychium lineare*. If the 12-month finding indicates that the petitioned action to list *B. lineare* as endangered or threatened is warranted, we would address the designation of critical habitat in a proposed rule to list the species.

### References Cited

Carpenter, A. 1996a. Monitoring plan for the rare fern, *Botrychium lineare*, on the Pikes Peak Ranger District, Pike-San Isabel National Forest, El Paso County, Colorado. The Nature Conservancy, Boulder, Colorado, dated May 14, 1996. 6 pages.

Carpenter, A. 1996b. Annual report of monitoring of the rare fern, *Botrychium lineare*, on the Pikes Peak Ranger District, Pike-San Isabel National Forest, El Paso County, Colorado. The Nature Conservancy, Boulder, Colorado, dated August 27, 1996. 3 pages + figures.

Hustafa, J. 1999. Biological assessment for sensitive plants, Lostine Recreation Facilities Project, Eagle Cap Ranger District, Wallowa-Whitman National Forest.

Oregon Natural Heritage Program. 1999. Element occurrence records for *Botrychium lineare*.

Root, P. 1999. A survey of possible additional populations of the narrow leaf moonwort on Pikes Peak (order number 43–82BH–8–0096). Prepared for the Pikes Peak Ranger District, U.S. Forest Service. 3 pages + figures.

Wagner, W.H. and F.S. Wagner. 1994. Another widely disjunct, rare and local North American moonwort (Ophioglossaceae: *Botrychium* subg. *Botrychium*). American Fern Journal 84(1):5–10.

Zika, P.F., R. Brainerd and B. Newhouse. 1995. Grapeferns and moonworts (*Botrychium*, Ophioglossaceae) in the Columbia Basin. A report submitted to the Eastside Ecosystem Management Project, U.S. Forest Service, Walla Walla, Washington. Pages 1, 20, and 26.


### Author

The author of this document is Edna Rey-Vizgirdas, U.S. Fish and Wildlife Service, Snake River Basin Office (see **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 12, 2000.

**Jamie Rappaport Clark,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 00–11684 Filed 5–9–00; 8:45 am]

**BILLING CODE 4310–55–P**

# Notices

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This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Northwest Sacramento Provincial Advisory Committee (PAC)

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on Thursday, May 18, 2000, at the Mt. Shasta Community Center, 629 Alder Street, Mt. Shasta, California. The meeting will start at 9 a.m. and adjourn at 3 p.m. Topics for the meeting are: (1) An update on the High Complex Fire; (2) update on the Clear Creek/ Resource Conservation District proposal; (3) update on the Story Creek Coordinated Resource Management Plan; and (4) public comment periods. All PAC meetings are open to the public. Interested citizens are encouraged to attend.

**FOR FURTHER INFORMATION CONTACT:** Connie Hendryx, USDA, Klamath National Forest, 11263 N. Highway 3, Fort Jones, California 96032; telephone 530–468–1281; TDD (530) 468–2783; email: *chendryx@fs.fed.us.*

Dated: May 4, 2000.

**Constance J. Hendryx,**

*PAC Support Staff.*

[FR Doc. 00–11646 Filed 5–9–00; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Request for Proposals: Fiscal Year 2000 Funding Opportunity for Research on Rural Cooperative Opportunities and Problems

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Business-Cooperative Service (RBS) announces the availability of approximately $300,000 in competitive cooperative agreement funds allocated from FY 2000 appropriations. RBS hereby requests proposals from institutions of higher education or nonprofit organizations interested in applying for competitively awarded cooperative agreements for research related to agricultural and nonagricultural cooperatives serving rural communities. The intent of the funding is to encourage research on critical issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities.

**DATES:** Cooperative agreement applications must be postmarked no later than June 30, 2000. Proposals postmarked after June 30, 2000, will not be considered for funding.

**ADDRESSES:** Send Proposals and other required materials to Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW, Washington, DC 20250–3252. Telephone: (202) 690–0368.

**FOR FURTHER INFORMATION CONTACT:** Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW, Washington, DC 20250–3252. Telephone: (202) 690–0368.

**SUPPLEMENTARY INFORMATION:**

#### General Information

This solicitation is issued pursuant to the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000 making appropriations for programs administered by USDA's RBS for the fiscal year ending September 30, 2000. The mission of RBS is to improve the quality of life in rural America by financing community facilities and businesses, providing technical assistance and creating effective strategies for rural development. RBS has authority to enter into cooperative agreements pursuant to section 607(b)(4) of the Rural Development Act of 1972, as amended by section 759A of the Federal Agriculture Improvement and Reform Act of 1996.

The primary objective of this funding is to encourage research through cooperative agreements on critical issues vital to the development and sustainability of user-owned cooperatives as a means of improving the quality of life in America's rural communities. Issue areas on which proposals should focus are:

(1) Equity management issues in new generation cooperatives including alternatives to appreciated delivery rights: the challenges, benefits, and pitfalls;

(2) Cooperatives and e-commerce: how the internet is changing the competitive landscape for farmer-owned businesses and their adaptation to it;

(3) Marketing-agencies-in-common: a case-study examination of successes and failures;

(4) The role of social capital in generating positive market outcomes for cooperatively owned agribusinesses;

(5) Governance and control issues in evolving cooperative structures and environments;

(6) Cooperatives as a means of putting global markets within reach of small farmers;

(7) The roles of cooperatives contracting and helping producers of identity-preserved crops match the needs of end-users and negotiate acceptable terms of trade; and

(8) Evaluation of cooperatives' roles in the changing market structure of the food and fiber system.

A cooperative agreement reflects a relationship between the United States Government and an eligible recipient where (1) The principal purpose of the relationship is the transfer of money, property, services, or anything of value to the eligible recipient to carry out research related to rural cooperatives; and (2) substantial involvement is anticipated between RBS acting for the United States Government, and the eligible recipient during the performance of the research in the agreement. A cooperative agreement is not a grant. Cooperative agreements are to be awarded on the basis of merit, quality, and relevance to advancing the purpose of federally-supported rural development programs that increase economic opportunities in farming and rural communities.

All forms required to apply are available from the Cooperative Services Program web-site at www.usda.gov/rbs/

coops/rrcop.htm, by calling (202) 690–0368, or faxing (202) 690–2723. Forms may also be requested via Internet by sending a message with your name, mailing address (not E-mail), and phone number to "thomas.stafford@usda.gov". When calling or e-mailing Cooperative Services, please indicate that you are requesting forms for Fiscal Year 2000 (FY 2000) Research on Rural Cooperative Opportunities and Problems (RRCOP). Forms will be mailed to you (not e-mailed or faxed) as quickly as possible. Forms are also usually available from the local university grants office.

**Use of Funds**

Funds may be used to pay up to 75 percent of the total cost (Federal plus non-Federal) for carrying out relevant projects. Applicants' contributions may be in cash or in-kind contribution and must be from nonfederal funds. Funds may not be used to: (1) Pay more than 75 percent of relevant project or administrative costs; (2) pay costs of preparing the application package; (3) fund political activities; or (4) pay costs incurred prior to the effective date of the cooperative agreement. Indirect costs may not exceed 10 percent of direct costs.

**Available Funds and Award Limitations**

The amount of funds available for cooperative agreements in FY 2000 is approximately $300,000. The actual number of cooperative agreements funded will depend on the quality of proposals received and the amount of funding requested. Maximum amount of Federal funds awarded for any one proposal will be $100,000. In 1999, the 15 awards may ranged from $15,000 to $100,000, with an average award of $59,000.

**Eligible Applicants**

Proposals may be submitted by public or private colleges or universities, research foundations maintained by a college or university, or private nonprofit organizations. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(4)), which engages in lobbying activities, is not eligible to apply.

**Methods for Evaluating and Ranking Applications**

Applications will be evaluated by a panel of RBS technical experts. Applications also will be evaluated competitively and points awarded as specified in the Evaluation Criteria and Weights section of this notice. After assigning points upon those criteria, applications will be listed in rank order and presented, along with funding level recommendations, to the Administrator of RBS, who will make the final decision on awarding of agreements. Applications will then be funded in rank order until all available funds have been expended. RBS reserves the right to make selections out of rank order to provide for a geographic or subject matter distribution of funded projects. In addition, timely completion of past cooperative agreements with RBS may be considered in awarding funds. With respect to any approved proposal, the amount of funding and the project period during which the project may be funded and will be completed, are subject to negotiation prior to finalization of the cooperative agreement.

**Evaluation Criteria and Weights**

RBS will initially determine whether the submitting organization is eligible and whether the application contains the information required by this notice. Prior to technical examination, each proposal will be reviewed for responsiveness to the funding solicitation. Proposals focusing on technical assistance, consulting, or problem solving for the benefit of a single cooperative are not encouraged. Submissions that do not fall within the guidelines as stated in the solicitation will be eliminated from the competition and will be returned to the applicant.

After this initial screening, RBS will use the following criteria to rate and rank proposals received in response to this notice of funding availability. The maximum number of points is 100. Failure to address any of the following criteria will disqualify the proposal:

(1) Relevance: Focuses on cooperatives serving rural areas and demonstrates a clear relationship with the research topics contained in this notice (maximum 20 points);

(2) Demonstrates potential to contribute innovative ideas or solutions to identified problems or issues (maximum 20 points);

(3) Shows capacity for broad applicability in facilitating new or improved cooperative development or new or improved cooperative approaches (maximum 15 points);

(4) Outlines a sound plan of work and appropriate methodology to accomplish the stated objective of the research (maximum 15 points);

(5) Adequately documents the need for and clearly defines the objectives of the research (maximum 10 points);

(6) Demonstrates cost effectiveness (maximum 10 points); and

(7) Identifies qualified resources and personnel, including a demonstrated track record of similar research (maximum 10 points).

**Deliverables**

Upon completion of the project, recipients will deliver the results of the research to RBS, in the form of a document of publishable quality, accompanied by all applicable supporting data. Publishable documents include, but are not limited to, manuscripts, videotapes, or software, or other media, as may be identified in approved proposals. RBS retains publishing rights to such documents, as well as rights to any raw or preliminary data collected as part of the project.

**Content of a Proposal**

A proposal should contain the following:

(1) *Form SF–424,* "Application for Federal Assistance."

(2) *Form SF–424A,* "Budget Information—Non-Construction Programs."

(3) *Form SF–424B,* "Assurances—Non-Construction Programs."

(4) *Form AD–1047,* "Certification Regarding Debarment, Suspension, and Other Responsibility Matters."

(5) *Form AD–1049,* "Certification Regarding Drug-Free Workplace Requirements."

(6) *Table of Contents:* For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

(7) *Project Summary.* A summary of the Project Proposal, not to exceed one-page, should include the following: title of the project; names of principal investigators and applicant organization; and a description of the overall goals and relevance of the project.

(8) *Project Proposal:* The application must contain a narrative statement describing the nature of the proposed research. The proposal must include at least the following:

(i) Project Title. The title of the proposed project must be brief, yet represent the major thrust of the project.

(ii) Project Leaders. List the names and contact information for the principal investigators. Minor collaborators or consultants should be so designated and not listed as principal investigators.

(iii) Need for the Project. A concisely worded rationale for the research must be presented. Included should be a summarization of the body of knowledge (literature review) which substantiates the need for the research. The need for the proposed research must be clearly and directly related to the facilitation of new or improved cooperative approaches.

(iv) Objectives of the Project. Discuss the specific objectives of the project and the impact of the research on end-users.

(v) Procedures. Discuss the hypotheses or questions being asked and the methodology or approach to be used in carrying out the proposed research and accomplishing the objectives. A description of any subcontracting arrangements to be used in carrying out the project must be included.

(vi) Time Table. A tentative schedule for conducting the major steps of the research must be included.

(vii) Expected Output. Describe how the results will be presented and disseminated. Include who will be responsible for any published output.

(viii) Coordination and Management Plan. Describe how the project will be coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration. Describe scope of RBS involvement in the project.

(9) *Personnel Support.* To assist reviewers in assessing the competence and experience of proposed principal investigators, the following must be included for each:

(i) Estimated time commitment to the project;

(ii) A one-page curriculum-vitae;

(iii) A chronological list of all publications during the past 5 years.

**What To Submit**

An original and two copies must be submitted in one package.

**When and Where To Submit**

Proposals must be postmarked no later than June 30, 2000. Proposals must be sent to Dr. Thomas H. Stafford, Director, Cooperative Marketing Division, Rural Business-Cooperative Service, USDA, Stop 3252, Room 4204, 1400 Independence Avenue SW., Washington, DC 20250–3252.

**Other Federal Statutes and Regulations That Apply**

Several other Federal statutes and regulations apply to proposals considered for review and to cooperative agreements awarded. These include but are not limited to:

7 CFR part 15, subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculturеu—Effectuation of Title VI of the Civil Rights Act of 1964.

7 CFR part 3015—Uniform Federal Assistance Regulations.

7 CFR part 3017—Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR part 3018—New Restrictions on Lobbying.

7 CFR part 3019—Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3052—Audits of States, Local Governments, and Non-Profit Organizations.

**Paperwork Reduction Act**

The collection information in this notice have received temporary emergency clearance by the Office of Management and Budget (OMB) under Control Number 0570–0028. However, in accordance with the Paperwork Reduction Act of 1995, RBS will seek standard OMB approval of the reporting requirements contained in the Notice and hereby opens a 60-day comment period.

*Abstract:* Approximately $300,000 in cooperative agreement funds has been allocated from the FY 2000 appropriations for programs administered by USDA's Rural Business-Cooperative Service (RBS) to encourage research related to rural cooperatives. The funds will be available to institutions of higher education and nonprofit organizations for research on issues vital to the development and sustainability of cooperatives as a means of improving the quality of life in America's rural communities. These issues include:

(1) Equity management issues in new generation cooperatives including alternatives to appreciated delivery rights: the challenges, benefits, and pitfalls;

(2) Cooperatives and e-commerce: how the internet is changing the competitive landscape for farmer-owned businesses and their adaptation to it;

(3) Marketing-agencies-in-common: a case-study examination of successes and failures;

(4) Roles of social capital in generating positive market outcomes for cooperatively owned agribusinesses;

(5) Governance and control issues in evolving cooperative structures and environments;

(6) Cooperatives as a means of putting global markets within reach of small farmers;

(7) Roles of cooperatives contracting and helping producers of identity-preserved crops match the needs of end-users and negotiate acceptable terms of trade; and

(8) Evaluation of cooperatives' roles in the changing market structure of the food and fiber system.

The funds will be awarded on a competitive basis using specific selection criteria.

**Public Burden in This Notice**

*Form SF–424, "Application for Federal Assistance"*

This application is used by applicants as a required face sheet for applications for Federal funding.

*Form SF–424A, "Budget Information-Non-Construction Programs"*

This form must be completed by applicants to show the project's anticipated budget breakdown in terms of expense categories and division of Federal and non-Federal sources of funds. Identifying the project's requested funding by expense category is necessary to assure that the expense is necessary for successful conduct of the project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute or regulation.

*SF–424B, "Assurances-Non-Construction Programs"*

This form must be completed by the applicant to provide the Federal government certain assurances of the applicant's legal authority to apply for Federal assistance and financial capability to pay the non-Federal share of project costs. The applicant also assures compliance with various legal and regulatory requirements as described in the form.

*Project Proposal*

All applicants must submit a project proposal containing the elements described in the notice and in the format prescribed. This allows for in-depth evaluation, as well as for consistency, organization, and clarity. The elements of the proposal are:

*Reporting Requirements*

Funding recipients will be required to submit written project performance reports on a quarterly basis. The project performance reports will include, but are not limited to: (1) A comparison of actual accomplishments to established objectives; (2) reasons established objectives were not met; (3) problems.

delays, or adverse conditions which will materially affect attainment of planned project objectives; (4) objectives for the next reporting period; and (5) status of compliance with any special conditions on the use of awarded funds.

**Record-Keeping Requirements**

Regulations require that financial records, supporting documents, statistical records, and all other records pertinent to the award will be retained for a period of at least 3 years after the agreement closing. The exception that records will be retained beyond 3 years is if audit findings have not been resolved.

*Estimate of Burden:* Public reporting burden for this collection is estimated to range from 15 minutes to 15 hours per response.

*Respondents:* Not-for-profit institutions.

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses per Respondent:* 5.

*Estimated Number of Responses:* 240.

*Estimated Total Annual Burden on Respondents:* Roman 1,140.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Branch, Support Services Division, (202) 692–0043.

**Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden to collect the required information, including the validity of the strategy used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All responses to this notice will be summarized, included in the request for OMB approval, and will become a matter of public record. Comments on the paperwork burden may be sent to Cheryl Thompson, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW, Washington, DC 20250–0742.

Dated: May 4, 2000.

**Wilbur T. Peer,**

*Acting Administrator, Rural Business-Cooperative Service.*

[FR Doc. 00–11639 Filed 5–9–00; 8:45 am]

BILLING CODE 3410–XY–U

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* National Employers Survey 2000.

*Form Number(s):* None.

*Agency Approval Number:* 0607–0787.

*Type of Request:* Reinstatement, with change, of an expired collection.

*Burden:* 6,500 hours.

*Number of Respondents:* 18,000.

*Avg Hours Per Response:* 21 and one half minutes.

*Needs and Uses:* The Census Bureau requests approval to conduct the 2000 National Employers Survey (NES–2000) which includes a linked Employee Survey. The Census Bureau conducted two earlier National Employers Surveys (1994 and 1997) and two supplemental Employer surveys (1996 and 1998). As with the previous surveys, NES 2000 will be conducted on a reimbursable basis through the Department of Education's Office of Educational Research and Improvement (OERI), and the National Center for Postsecondary Improvement (NCPI). Funding will be provided by the National Center for Education Statistics and the National School-to-Work Office.

The NES 2000 will provide specific and unique information on employers' recruiting, hiring, training, and other work environment and human resources practices from both the employer and employee perspectives. The NES 2000 will provide the Census Bureau with information on formal and informal training programs and participation by establishments in school-to-work programs of various types.

This data collection effort will provide, for the first-time, information collected from employees of a sample of the employer establishments. Employee histories and employee perceptions of training programs and their working environment will be collected directly from employees. The information from these employees will be linked to the employer information enabling analysts to identify those areas where employee and employer views are similar and where they are different.

The information from the linked surveys will help the sponsors and other concerned organizations to determine how our Nation's firms and schools can improve their effectiveness through improved education, recruiting and hiring, training, and school-to-work programs.

The NES 2000 will incorporate a telephone survey of 3,000 business establishments that completed the telephone interview for NES–III, the 1997 survey. As we conduct the telephone survey, we will ask employers to volunteer to participate in the employee survey. The survey of employees will cover up to 15,000 employees. Employers who volunteer to participate in the employee survey will receive 30 employee questionnaires and simple instructions on how to forward the questionnaires to a sample of their employees. The employees will then complete the questionnaires and mail them back to the Census Bureau.

*Affected Public:* Businesses or other for-profit organizations.

*Frequency:* One-time.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 USC, Section 182; National Education Statistics Act, Chapter 71, Title 20.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 5, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–11699 Filed 5–9–00; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Submission For OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for

clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of Economic Analysis.

*Title:* BEA Customer Satisfaction Survey

*Form Number(s):* Not applicable.

*Agency Approval Number:* None.

*Type of Request:* New.

*Burden:* 1,875 hours.

*Number of Respondents:* 7,500.

*Avg Hours Per Response:* 15 minutes.

*Needs and Uses:* The Bureau of Economic Analysis (BEA) would like to conduct a Customer Satisfaction Survey to obtain feedback from customers on the quality of BEA products and services. The results of the information collected will serve to assist BEA in improving the quality of its data products and its methods of dissemination.

BEA needs to inform and educate all of its staff about the public's perception of the agency. This customer satisfaction survey will give us first-hand knowledge of what our customers want, need, and expect from BEA. To more effectively inform and educate the public on what we do, how we do it, and why we do it, we need to obtain reliable information on how the public views our output. This results of this survey will serve that purpose.

The Survey and a cover letter with instructions on how to complete the survey will be mailed to 2,000 potential respondents. BEA will request that responses be returned 30 days after the mailing. The survey will also be posted on BEA's web site for 5,500 potential respondents. The survey will be designed so that all responses are anonymous and therefore eliminates the necessity for recordkeeping of respondents.

*Affected Public:* Individuals from profit and non-profit organizations and individuals from other Federal, state, and local government agencies.

*Frequency:* One-time.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Executive Order 12862, Section 1(b), of September 11, 1993.

*OMB Desk Officer:* Paul Bugg, (202) 395–3093.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14 and Constitution Avenue, NW, Washington, DC 20230, (202) 482–3272, (or via e-mail at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 5, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–11697 Filed 5–9–00; 8:45 am]

BILLING CODE 3510–06–P

## DEPARTMENT OF COMMERCE

### Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

*Agency:* U.S. Census Bureau.

*Title:* Census 2000 Evaluation: Survey of Partners.

*Form Number(s):* D–1401, D–1401A(L), D–1401.F1(L), D–1401.F2(L), D–1401A(E), D–1401.1(E), D–1401(E).

*Agency Approval Number:* None.

*Type of Request:* New collection.

*Burden:* 5,333 hours.

*Number of Respondents:* 16,000.

*Avg Hours Per Response:* 20 minutes.

*Needs and Uses:* The Census 2000 Partnership Program works to establish partnerships with State, local and tribal governments; private industry; local governments and community groups. The goal is to increase the awareness of the census and to increase response rates, especially among historically undercounted populations.

The program has both a national and a regional focus. On the national level, the program is designed to implement promotional activities that may be sponsored and/or supported by national/umbrella government and nongovernmental organizations. In addition, the Census Bureau will partner with Fortune 500 companies to promote the importance of the census through the services and products they provide.

The regional partnership program reflects the Census Bureau's belief that the foundation for broad-based participation in the census must be built at the community level. Its primary purpose is to establish partnerships with state, local, and tribal governments; community organizations; businesses and the media.

This request is for clearance of an evaluation of that partnership program to be carried out via an information collection. A contractor will survey a sample of partners through self-administered questionnaires. The questionnaire will ask the partners about the effectiveness of the marketing campaign and the partnership activities in motivating their constituents to complete and mail back their census questionnaires. The results will be used to evaluate the program, for 2010 planning purposes and to improve future census operations.

*Affected Public:* Businesses or other for-profit organizations, Not-for-profit organizations, Federal Government, State, Local or tribal Government.

*Frequency:* One-time.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 USC, sections 141 and 193.

*OMB Desk Officer:* Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 5, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–11698 Filed 5–9–00; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Census Bureau

### Current Population Survey (CPS)—Voting and Registration Supplement November 2000

**AGENCY:** U.S. Census Bureau, Department of Commerce.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before July 10, 2000.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Michelle Schwab, Census Bureau, FOB 3, Room 3340, Washington, DC 20233–8400, at (301) 457–3806.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Census Bureau is requesting clearance for the collection of data concerning the Voting and Registration Supplement to be conducted in conjunction with the November 2000 CPS. The Census Bureau sponsors these questions, which have been collected biennially in the CPS since 1964.

This survey has provided statistical information for tracking historical trends of voter and nonvoter characteristics in each Presidential or Congressional election since 1964. The data collected from the November supplement relates demographic characteristics (age, sex, race, education, occupation, and income) to voting and nonvoting behavior. The November CPS supplement is the only source of data that provides a comprehensive set of voter and nonvoter characteristics distinct from independent surveys, media polls, or other outside agencies. Federal, state, and local election officials use these data to formulate policies relating to the voting and registration process. College institutions, political party committees, research groups, and other private organizations also use the voting and registration data.

**II. Method of Collection**

The voting and registration information will be collected by both personal visit and telephone interviews in conjunction with the regular November CPS interviewing. All interviews are conducted using computer-assisted interviewing.

**III. Data**

*OMB Number:* 0607–0466.

*Form Number:* There are no forms. We conduct all interviewing on computers.

*Type of Review:* Regular.

*Affected Public:* Households.

*Estimated Number of Respondents:* 48,000.

*Estimated Time Per Response:* 1.5 minutes.

*Estimated Total Annual Burden Hours:* 1,200.

*Estimated Total Annual Cost:* There are no costs to the respondents other than their time to answer the CPS questions.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13, United States Code, Section 182; and Title 29, United States Code, Sections 1–9.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 4, 2000.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–11635 Filed 5–9–00; 8:45 am]

**BILLING CODE 3510–07–P**

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## DEPARTMENT OF COMMERCE

### Census Bureau

### Survey of Local Government Finances (School Systems), Forms F–33, F–33–1, F–33–L1, F–33–L2, and F33–L3

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before July 1, 2000.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Sharon Meade, Bureau of the Census, Governments Division, Washington, DC 20233–6800. Her telephone number is 301–457–1563.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The Census Bureau collects education finance data as part of its Annual Survey of State and Local Governments. This survey is the only comprehensive source of public fiscal data collected on a nationwide scale using uniform definitions, concepts and procedures. The collection covers the revenues, expenditures, debt, and assets of all public school systems. This data collection has been coordinated with the National Center for Education Statistics (NCES). The NCES uses this collection to satisfy its need for school system level finance data.

Information on the finance of our public schools is vital to assessing their effectiveness. This data collection makes it possible to access a single data base to obtain information on such things as per pupil expenditures and the percent of state, local, and federal funding for each school system. Recently, as exemplified by the establishment of the America 2000 education goals, there has been increased interest in improving the Nation's public schools. One result of this intensified interest has been a significant increase in the demand for school finance data.

The five forms used in the school finance portion of the survey are:

Form F–33. This form contains item descriptions and definitions of the elementary-secondary education finance items collected jointly by the Census Bureau and NCES. It is used primarily as a worksheet by the state education agencies that provide school finance data centrally for all of the school systems in their respective states. Most states supply their data by electronic means.

Form F–33–1. This form is used at the beginning of each survey period to solicit the assistance of the state education agencies  It establishes the

conditions by which the state education agencies provide their school finance data to the Census Bureau.

Form F–33–L1. This is a supplemental letter sent to the school systems in states where the state education agencies cannot provide information on the assets of individual school systems.

Form F–33–L2. This is a supplemental letter sent to the school systems in states where the state education agency cannot provide information on the indebtedness of individual school systems.

Form F–33–L3. This is a supplemental letter sent to the school systems in states where the state education agency cannot provide information on either indebtedness or assets. This letter combines the items requested on the forms F–33–L1 and F–33–L2.

The data to be collected is identical to the previous collections except as follows: The request for indebtedness information (Forms F–33–L2 and F–33–L3) is added because some state education agencies have been deleting this information from their data bases. Others have not been editing this information or following up when the school systems fail to report this information to the state.

New special processing items have been added for state payments made on behalf of the school systems in the areas of textbooks, and transportation. These items will make it possible for expenditure data to be more accurately reported at the functional level.

**II. Method of Collection**

Through central collection arrangements with the state education agencies, the Census Bureau collects almost all of the finance data for local school systems from state education agency data bases. The states transfer most of this information in electronic format on microcomputer disks and over the Internet. The Census Bureau has facilitated central collection of school finance data by accepting data in whatever formats the states elect to transmit.

**III. Data**

*OMB Number:* 0607–0700.
*Form Number:* F–33, F–33–1, F–33–L1, F–33–L2, F–33–L3.
*Type of Review:* Regular.
*Affected Public:* State and local governments.
*Estimated Number of Respondents:* 3500.
*Estimated Time Per Response:* 1.1 hours.
*Estimated Total Annual Burden Hours:* 3,737.
*Estimated Total Annual Cost:* 8,013.
*Respondent's Obligation:* Voluntary.
*Legal Authority:* Title 13 U.S.C., sections 161 and 181.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 4, 2000.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–11636 Filed 5–9–00; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 16–2000]**

### Foreign-Trade Zone 3—San Francisco, California Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the San Francisco Port Commission, grantee of Foreign-Trade Zone 3, requesting authority to expand its zone to include the San Francisco International Airport fuel system and related facilities, within the San Francisco Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 28, 2000.

FTZ 3 was approved on March 10, 1948 (Board Order 16, 13 F.R. 1459, 3/19/48). The zone project currently consists of 225,000 square feet at Piers 19 and 23 on the Embarcadero in San Francisco.

The applicant is now requesting authority to expand the general-purpose zone to include the jet fuel storage and distribution system (261 acres) at the San Francisco International Airport, which consists of the airport hydrant and storage facilities, two adjacent off-Airport terminals, a pipeline and two offsite terminals, as follows: *Proposed Site 2:* the jet fuel storage and delivery facilities at the San Francisco International Airport; the Chevron jet fuel tank farm (8.5 acres), the PS Trading tank farm (1 acre) and related pipelines between the tanks farms; jet fuel transmission pipelines and the terminal and cargo area hydrant pipelines; the petroleum and jet fuel storage facilities (26 acres) at the Brisbane Terminal (owned by SFPP, L.P.), 950 Tunnel Avenue, Brisbane; and, the petroleum and jet fuel storage facilities (7 acres) at the Equilon Terminal (owned by Equilon Enterprises LLC), 135 North Access Road, South San Francisco, including the 4.7 mile segment of the SFPP jet fuel pipeline from the two terminals to the airport; *Proposed Site 3:* (55 acres) at the petroleum facilities of Selby Terminal (owned by Shore Terminals LLC), 90 San Pablo Avenue, Crockett; and, *Proposed Site 4* (164 acres) at the petroleum facilities of Martinez Terminal (owned by Shore Terminals LLC), 2801 Waterfront Road, Martinez. The City of San Francisco owns fuel facilities at the airport and the land on which the Chevron tank farm and the PST tank farms are located (the companies own the improvements). In addition to the storage of jet fuel, the Brisbane, Equilon, Selby and Martinez Terminals may also be used for the receipt and storage of other petroleum products under zone procedures.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 10, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 24, 2000).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 250 Montgomery Street, 14th Floor, San Francisco, CA 94104–3406

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: May 1, 2000.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 00–11738 Filed 5–9–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## INTERNATIONAL TRADE ADMINISTRATION

**(A–421–701)**

## Notice of Preliminary Results of Antidumping Duty Administrative Review: Brass Sheet and Strip From the Netherlands

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on brass sheet and strip from the Netherlands. This review covers imports of brass sheet and strip from one producer/exporter during the period of review (POR), August 1, 1998 through July 31, 1999.

We preliminarily determine that sales of the subject merchandise have not been made below normal value (NV). If these preliminary results are adopted in the final results, we will instruct the U.S. Customs Service not to assess antidumping duties on the subject merchandise exported by this company.

**EFFECTIVE DATE:** May 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** John Brinkmann or Jarrod Goldfeder, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4126 or (202) 482–2305, respectively.

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act), by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR Part 351 (1999).

### Background

On August 12, 1988, the Department published in the **Federal Register** the antidumping duty order on brass sheet and strip from the Netherlands (53 FR 30455). On August 11, 1999, we published in the **Federal Register** the notice of "Opportunity to Request an Administrative Review" of this order, for the period August 1, 1998 through July 31, 1999 (64 FR 43649). On August 31, 1999, in accordance with 19 CFR 351.213(b), Outokumpu Copper Strip B.V. (OBV), the sole producer/exporter, and the petitioners [1] requested an administrative review of OBV's exports of the subject merchandise to the United States during this POR. OBV also requested that the Department revoke the antidumping duty order against brass sheet and strip from the Netherlands, pursuant to 19 CFR 351.222(b), based on the absence of dumping and the fact that OBV is not likely to sell the subject merchandise at less than NV in the future. OBV subsequently withdrew its revocation request on April 4, 2000. On September 24, 1999, in accordance with 19 CFR 351.221(b), the Department initiated this administrative review (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 64 FR 53318 (October 1, 1999)).

On October 4, 1999, the Department issued an antidumping questionnaire [2] to OBV. OBV submitted its response to sections A, B, and C in November 1999. The Section D questionnaire response was received in December 1999. The Department issued Section A, B, and C supplemental questionnaires in February 2000 and received responses in March 2000. The Department issued and received a response to the Section D supplemental questionnaire in April 2000.

### Scope of Review

Imports covered by this review are brass sheet and strip, other than leaded and tin brass sheet and strip, from the Netherlands. The chemical composition of the products under review is currently defined in the Copper Development Association (CDA) 200 Series or the Unified Numbering System (UNS) C2000 series. This review does not cover products the chemical compositions of which are defined by other CDA or UNS series. The physical dimensions of the products covered by this review are brass sheet and strip of solid rectangular cross section over 0.006 inch (0.15 millimeter) through 0.188 inch (4.8 millimeters) in gauge, regardless of width. Included in the scope are coiled, wound-on-reels (traverse wound), and cut-to-length products. The merchandise under review is currently classifiable under item 7409.21.00 and 7409.29.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

### Product Comparisons

In accordance with section 771(16) of the Act, the Department first attempted to match contemporaneous sales of products sold in the U.S. and home markets that were identical with respect to the following characteristics: (1) Type (alloy); (2) gauge (thickness); (3) width; (4) temper; (5) coating; and (6) packed form. Where there were no sales of identical merchandise in the home market to compare with U.S. sales, we compared U.S. sales with the most similar product based on the characteristics listed above, in descending order of priority.

For purposes of the preliminary results, we have calculated the adjustment for differences in merchandise based on the difference in the variable cost of manufacturing between each U.S. model and the most similar home market model selected for comparison.

### Comparisons to Normal Value

To determine whether OBV's sales of brass sheet and strip were made to the United States at less than NV, the Department compared the export price (EP) to the NV, as described in the "*Export Price*" and "*Normal Value*" sections of this notice. In accordance with section 777A(d)(2) of the Act, the Department calculated monthly

[1] The petitioners in this proceeding are Heyco Metals, Inc., Olin Corporation, PMX Industries, Inc., Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, United Auto Workers (Local 2367), and the United Steelworkers of America (AFL–CIO/CLC).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the subject merchandise under review, and the sales of the foreign like product in all of its markets. Sections B and C of the questionnaire request comparison market sales listings and U.S. sales listings, respectively. Section D requests additional information about the cost of production of the foreign like product and constructed value of the merchandise under review.

weighted-average prices for NV and compared these to individual U.S. transactions.

**Export Price**

For the price to the United States, we used EP in accordance with section 772(a) of the Act, because the subject merchandise was sold to an unaffiliated U.S. purchaser prior to the date of importation and CEP methodology was not otherwise warranted.

We calculated EP based on the packed, delivered prices to unaffiliated purchasers in the United States. In accordance with section 772(c)(2) of the Act, where appropriate, we deducted from the starting price international freight expense, marine insurance, U.S. brokerage and handling expenses, and U.S. Customs duties.

**Normal Value**

*A. Selection of Comparison Market*

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared OBV's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise. Since OBV's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like products were first sold in the home market, in the usual commercial quantities and in the ordinary course of trade.

*B. Cost of Production Analysis*

Because we disregarded sales that failed the cost test in the most recently completed review, we had reasonable grounds to believe or suspect that sales of the foreign like product under consideration for determining NV in this review may have been made at prices below the cost of production (COP), as provided in section 773(b)(2)(A)(ii) of the Act. *See Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip from the Netherlands*, 65 FR 742, 743 (January 6, 2000) (*Brass 97/98 Final Results*). Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by OBV.

**1. Calculation of COP**

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the respondent's cost of materials and fabrication employed in producing the foreign like product, plus the costs for selling, general, and administrative expenses (SG&A), including interest expense, and packing costs.

We relied on the home market sales and COP information that OBV provided in its questionnaire responses. Furthermore, we have calculated weighted-average monthly metal costs based on "metal fix prices." [3] For fabrication costs, we have used weighted-average annual costs. In addition, we computed SG&A on an annual basis as a ratio of the total SG&A expenses divided by the cost of sales.

*Use of Monthly Metal Cost Data.* OBV calculated and reported monthly per-unit manufacturing costs for metal because of the significant fluctuation in metal input prices (*i.e.*, copper and zinc) throughout the POR. [4] In the immediately preceding review, the Department calculated weighted-average monthly metal costs based on metal fix prices, and used weighted-average annual fabrication costs to calculate COP and constructed value (CV). *See Brass 97/98 Final Results*, 65 FR at 743. We explained in that review that OBV's reported metal costs make up a significant portion of the total cost of manufacturing brass sheet and strip, and that the market values of these inputs fluctuated sharply from the beginning to the end of the POR.

Our normal practice for a respondent in a country that is not experiencing high inflation is to calculate a single weighted-average cost for the entire POR except in unusual cases where this preferred method would not yield an appropriate comparison. *See, e.g., Final Determination of Sales at Less than Fair Value: Brass Sheet and Strip From Netherlands*, 53 FR 23431, 23432 (June 22, 1988) (*Brass LTFV Final Determination*) (dividing the period of investigation into three periods because of the significant metal price fluctuations during that period); *Final Results of Antidumping Administrative Review: Brass Sheet and Strip from Italy*, 52 FR 9235, 9236 (March 17, 1992) (*Brass Sheet and Strip from Italy*) (using monthly costs to resolve the distortive effects the fluctuating metal prices had on the margin calculations); *Final Determination of Sales at Less than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8925 (February 23, 1998) (the Department will utilize shorter cost periods if markets experience significant and consistent price declines); *Final Determination of Sales at Less than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above from the Republic of Korea*, 58 FR 15467, 15476 (March 23, 1993) (determining that the Department may use weighted-average costs of shorter periods where there exists a consistent downward trend in both U.S. and home market prices during the period); *Final Determination of Sales at Less than Fair Value: Erasable Programable Read Only Memories from Japan*, 51 FR 39680, 39682 (October 30, 1986) (finding that significant changes in the COP during a short period of time due to technological advancements and changes in production process justified the use of weighted-average costs of less than a year); and *Final Results of Antidumping Duty Administrative Review of Brass Sheet and Strip from Canada and Revocation, in Part, of the Antidumping Duty Order*, 56 FR 57317, 57318 (November 8, 1991) (using monthly metal costs to calculate differences in merchandise adjustments).

We have reviewed the information on the record of this review and find that both OBV's sales prices for the subject merchandise and the cost of metal used in the manufacture of this merchandise displayed an overall pattern of significant and consistent decline during the first half of the POR and a pattern of overall significant and sharp incline during the second half of the POR. As in the immediately preceding review, we believe that computing a single annual weighted-average cost under these circumstances would distort the results of the cost test since (1) the metal costs represent a significant percentage of the total cost of producing brass sheet and strip; (2) the cost of the metal fluctuated significantly

[3] In the immediately preceding review, we found that in the ordinary course of business, OBV accounts for metal as a pass-through item. Specifically, OBV requires its customers to purchase the metal inputs prior to fabrication. As a service to its customers, OBV purchases the metals on the customer's behalf. OBV then bills the customer for the cost of metals, the terms of which are set forth on the finished brass sales invoice. The parties determine the price of the metals at a metal fix date, which occurs prior to the invoice dates for sales of finished brass. Since OBV purchases the metal and then passes on the cost of the metal to the customer, the company records and recognizes the cost of this purchased metal in its accounting system. *See Brass 97/98 Final Results*, 65 FR at 747.

[4] Originally, OBV reported costs on a quarterly basis. *See* OBV's Section D questionnaire response, dated December 1, 1999. Based on our request in a supplemental cost questionnaire, OBV provided cost data files that had costs reported on both a quarterly and a monthly basis.

throughout the POR; and (3) those metal costs are treated as pass-through items when brass is sold to customers. In order to avoid this distortion, we have preliminarily relied upon the submitted monthly weighted-average metal costs rather than calculating single weighted-average annual costs.

We find that using monthly weighted-average metal costs, rather than quarterly or annual weighted-average costs, is the most appropriate method in this proceeding for several reasons. First, the record indicates that the price of metal fluctuated sharply on a monthly basis. *See* the proprietary memorandum from Geoffrey Craig to John Brinkmann, "Analysis of Metal Costs," dated May 2, 2000, on file in the Central Records Unit (CRU), Room B–099 of the Main Commerce Building. In this regard, by using the weighted-average monthly metal fix cost based on the company's metal fix date, we are able to make a contemporaneous comparison of metal values which results in a more accurate calculation of the margin of dumping in this case than using either quarterly or annual weighted-average costs. We also note that this method conforms with the manner in which OBV accounts for its metal transactions in its normal accounting records, which are kept in accordance with home market generally accepted accounting principles (GAAP). Specifically, the company records metal costs in its accounting system on the date on which the price of metal is fixed. This is consistent with section 773(f)(1)(A) of the Act, which provides that the Department normally calculates costs based on the exporter's or producer's records, as long as such records are kept in accordance with the GAAP of the exporting (or producing) country and reasonably reflect the costs associated with the production and sale of the merchandise.

Therefore, we compared monthly weighted-average COP figures for OBV, adjusted where appropriate, to home market sales of the foreign like product in the same month in which the metal price was fixed in order to determine whether these sales had been made at prices below the COP.

*Startup Adjustment.*—OBV claimed a startup adjustment to costs pursuant to section 773(f)(1)(C) of the Act, covering a nine-month startup period from January 1998 through September 1998 for its new continuous strip casting line, which replaced OBV's ring casting mill. In the preceding review, we determined that the start-up period ended on May 31, 1998, based upon evidence that OBV reached commercial production levels as of that date. *See Brass 97/98 Final Results*, 65 FR at 744–45. During the course of this review we have not received any new evidence, nor has OBV made any new arguments, that would persuade us to change our prior determination on this issue. Accordingly, in the current review, we preliminarily determine that OBV is not entitled to a start-up adjustment because we continue to find that the start-up period ended on May 31, 1998, a date which is prior to the start of the current review period. *See* the proprietary Memorandum from Stan Bowen to the File, "Analysis of Start-up Period," dated May 2, 2000, on file in the CRU. Consistent with the previous review, we have continued to amortize the capitalized startup costs and included a portion of the amortized costs in the calculation of COP. *See Brass 97/98 Final Results*, 65 FR at 743.

2. Test of Home Market Prices

After calculating COP, we tested to see whether home market sales of subject brass sheet and strip were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COP to the reported home market prices less any applicable movement charges, discounts and rebates, where appropriate.

3. Results of COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of OBV's home market sales for a model were at prices less than the COP, we did not disregard below-cost sales of that model because the Department determined that the below cost sales were not made within an extended period of time in "substantial quantities." Where 20 percent or more of OBV's home market sales of a given product were at prices less than the COP, we determined that such sales were made within an extended period of time in substantial quantities in accordance with section 773(b)(2)(C) of the Act. To determine whether such sales were at prices which would not permit the full recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act, we compared home market prices to the weighted-average COP for the POR. When we found that below-cost sales had been made in "substantial quantities" and were not at prices which would permit recovery of all costs within a reasonable period of time, we disregarded the below-cost sales in accordance with section 773(b)(1) of the Act.

While we disregarded some below-cost sales, sufficient sales remained that passed the cost test in the current review. Therefore, it was unnecessary to calculate CV in this case.

*C. Level of Trade (LOT)*

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, the Department determines NV based on sales in the comparison market at the same LOT as the EP transaction or, if applicable, CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from the exporter to the importer.

To determine whether comparison market sales are at different LOTs than EP or CEP sales, the Department examines stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated (or arm's length) customers. If the comparison-market sales are at a different LOT, and the differences affect price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, the Department makes a LOT adjustment under section 773(a)(7)(A) of the Act.

In this review, all of OBV's U.S. sales have been categorized as EP sales. OBV claims that the Department can match U.S. sales to identical sales at the same LOT in the home market and therefore a LOT adjustment is not necessary. OBV manufactures to order and ships directly to original equipment manufacturers (OEMs) in the United States and home market, and also ships directly to a home market trading company. In order to determine (1) whether the two home market customer categories constituted one LOT or distinct LOTs, and (2) whether U.S. sales were made at the same LOT as sales in the home market, we examined OBV's questionnaire responses with regard to its distribution system, including selling functions, class of customer and selling expenses. To determine whether there was more than one LOT in the home market, we examined the chain of distribution and the selling activities associated with sales reported by OBV to its two home market customer categories (*i.e.*, OEMs and trading company). We found that the two home market customer categories did not differ significantly from each other with respect to selling activities, although there were slight

differences between them for sales process/marketing support and freight and delivery. Based on our analysis, we found that the two home market categories constituted one LOT.

OBV reported EP sales to its unaffiliated U.S. customers in one customer category, OEMs, which we determined to constitute one LOT. To determine whether U.S. sales were made at the same LOT as sales in the home market, we compared the channel of distribution and the selling activities associated with sales reported by OBV to the single LOT in the Netherlands and that in the United States, and found that the LOT in these two markets were the same. Therefore, all price comparisons are at the same LOT and a LOT adjustment pursuant to section 773(a)(7)(A) of the Act is unwarranted.

*D. Calculation of Normal Value Based on Home-Market Prices*

Where appropriate, we deducted early-payment discounts, rebates, inland freight expense (plant-to-customer), inland insurance, and packing expense from the home market price in accordance with section 773(a)(6)(B) of the Act. We made adjustments, where appropriate, for differences in credit expenses between the U.S. and home market sales in accordance with section 773(a)(6)(C)(iii) of the Act.

We increased NV by U.S. packing expenses in accordance with section 773(a)(6)(A) of the Act. To the extent there were comparisons of U.S. merchandise to home market merchandise that were not identical but similar, the Department made adjustments to NV for differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

**Currency Conversion**

For purposes of these preliminary results, we made currency conversions in accordance with section 773A(a) of the Act, based on the official exchange rates published by the Federal Reserve. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation." In accordance with the Department's practice, we have determined as a general matter that a fluctuation exists when the daily exchange rate differs from a benchmark by 2.25 percent. The benchmark is defined as the rolling average of rates for the past 40 business days. When we determine that a fluctuation exists, we substitute the benchmark for the daily rate.

**Preliminary Results of Review**

As a result of our review, we preliminarily determine that the following percentage weighted-average margin exists for the period August 1, 1998 through July 31, 1999:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| OBV | zero. |

We will disclose the calculations used in our analysis to parties to this proceeding within five days of the publication date of this notice. *See* 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of the date of publication of this notice. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Parties who submit case briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 7 days after the date of filing of case briefs. The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, if requested, within 120 days from the publication of these preliminary results.

**Assessment Rate**

Upon completion of this review, the Department will issue appraisement instructions to the U.S. Customs Service. If these preliminary results are adopted in our final results, we will instruct the U.S. Customs Service to liquidate all entries subject to this review without regard to antidumping duties.

If these preliminary results are not adopted in the final results, we will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rates calculated in the final results of this review are above *de minimis* (*i.e.*, at or above 0.5 percent). For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins for all U.S. sales to each importer and dividing the amount by the total entered value of the sales to that importer.

**Cash Deposit Requirements**

As a result of a Sunset Review of brass sheet and strip from the Netherlands, the Department has revoked the antidumping duty order for this case, effective January 1, 2000. *See Revocation of Antidumping Duty Orders: Brass Sheet and Strip From the Republic of Korea, the Netherlands, and Sweden*, 65 FR 25305 (May 1, 2000). Therefore, we have instructed the Customs Service to terminate suspension of liquidation for all entries of subject merchandise made on or after January 1, 2000. We will issue additional instructions directing the Customs Service to liquidate all entries of brass sheet and strip made on or after January 1, 2000, without regard to antidumping duties.

Entries of subject merchandise made prior to January 1, 2000, will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending reviews of this order and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

**Notification to Importers**

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 2, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–11599 Filed 5–9–00; 8:45 am]

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**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[A–421–804]**

## Cold-Rolled Carbon Steel Flat Products From the Netherlands: Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to requests from the petitioners and respondent, the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands. The review covers one manufacturer/exporter of the subject merchandise to the United States during the period August 1, 1998 through July 31, 1999. The sole respondent did not respond to our supplemental questionnaire and subsequently withdrew from this review. As a result, we are basing our preliminary results on adverse facts available. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties on entries during the POR.

We invite interested parties to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) A statement of the issue; and (2) a brief summary of the argument.

**EFFECTIVE DATE:** May 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Deborah Scott or Robert James, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–2657 or (202) 482–0649, respectively.

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA) of 1994. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 351 (1999).

### Background

The Department of Commerce published an antidumping duty order on cold-rolled carbon steel flat products from the Netherlands on August 19, 1993 (58 FR 44172). The Department published a notice of "Opportunity To Request Administrative Review" of the antidumping duty order for the 1998–1999 review period on August 11, 1999 (64 FR 43649). On August 31, 1999, both the respondent, Hoogovens Staal BV and Hoogovens Steel USA, Inc. (Hoogovens), and petitioners (Bethlehem Steel Corporation, U.S. Steel Group (a Unit of USX Corporation), Ispat Inland Inc., LTV Steel Company, Inc. and National Steel Corporation) filed requests for review. We published a notice of initiation of the review on October 1, 1999 (64 FR 53318).

The Department is conducting this review in accordance with section 751(a) of the Tariff Act.

### Scope of the Review

The products covered by this review include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included in this review are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this review is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface. These HTS item numbers are provided for convenience and Customs purposes. The written description of the scope of this order remains dispositive.

### Use of Facts Available

Section 776(a)(2) of the Tariff Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

On October 5, 1999, the Department issued its antidumping questionnaire to Hoogovens. Hoogovens submitted its response to sections A, B, C, and the constructed value (CV) portion of section D on November 19, 1999. On December 9, 1999, petitioners alleged that Hoogovens had made sales in the home market at prices below its cost of production (COP) and requested that the Department commence a sales-below-cost investigation. Based on our review of petitioners' allegation, we determined that there were reasonable grounds to believe or suspect that Hoogovens had made sales of subject merchandise in the Netherlands at prices below COP. Thus, on December 22, 1999, the Department announced that it would initiate a sales-below-cost investigation to determine whether Hoogovens' sales of cold-rolled carbon steel flat products were made at prices below COP during the POR. We subsequently issued a letter requiring Hoogovens to submit home market COP data by January 20,

2000. Hoogovens timely responded to this initial COP questionnaire.

On January 18, 2000 the Department issued a supplemental questionnaire to address significant deficiencies in sections A, B, and C of Hoogovens' original questionnaire. In our supplemental questionnaire we requested clarification on issues such as the total value of home market sales and the calculation of various home market and U.S. movement and selling expenses. Additionally, the Department sought information concerning the sales process in the U.S. in order to determine whether Hoogovens' U.S. sales should be classified as export price (EP) or constructed export price (CEP) sales. We requested that Hoogovens respond to this supplemental questionnaire by February 1, 2000. In response to Hoogovens' requests on January 28, 2000 and February 8, 2000 to extend this deadline, the Department first granted an extension until February 15, 2000 and then a further extension until February 22, 2000. On February 17, 2000, Hoogovens submitted another request that the deadline for its response be postponed. The Department declined this third request for an extension.

Hoogovens did not submit a response to the Department's supplemental questionnaire. In a March 3, 2000 submission Hoogovens declared that it was withdrawing from this review because the recent merger between Hoogovens and British Steel to form the Corus Group rendered Hoogovens "unable at this time to devote the necessary resources to the Department's review."

Absent the supplemental information requested by the Department, we find that Hoogovens' original questionnaire response is unusable for purposes of our analysis. Pursuant to section 782(e) of the Tariff Act, the Department must consider information submitted by an interested party if all of the following criteria are met: (1) The information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority with respect to the information; and (5) the information can be used without undue difficulties.

Hoogovens withdrew from this review without ever responding to the Department's supplemental questionnaire. In failing to provide clarification on significant issues in this case, we have determined that Hoogovens did not act to the best of its ability. Without the additional information and clarification we requested on Hoogovens' home market sales value, U.S. sales process, and home market and U.S. expense calculations, the Department cannot determine whether the complete universe of home market sales was reported, whether Hoogovens Stahl USA's (HSUSA's) sales should be classified as EP or CEP, or whether Hoogovens has reported certain of its home market and U.S. expenses appropriately. Therefore, the information provided in the original questionnaire response does not serve as a reliable basis upon which to calculate a dumping margin for Hoogovens. Further, because of Hoogovens' withdrawal from this proceeding, the Department could not verify, as provided in section 782(i) of the Tariff Act, any of the information that Hoogovens placed on the record prior to its withdrawal.

Since Hoogovens failed to meet the requirements set forth in section 782(e) of the Tariff Act, we have determined that the information submitted by Hoogovens in this review cannot be used to make a determination in this case. Therefore, we determine that the use of facts available is warranted pursuant to section 776(a)(2)(A) and (C) of the Tariff Act because Hoogovens failed to provide information requested by the Department and significantly impeded this proceeding.

In addition, section 776(b) of the Tariff Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of the party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994).

The Department finds that in not responding to the supplemental questionnaire, Hoogovens failed to cooperate by not acting to the best of its ability to comply with requests for information. Therefore, pursuant to section 776(b) of the Tariff Act, we may, in making our determination, use an adverse inference in selecting from the facts otherwise available. This adverse inference may include reliance on data derived from the petition, a previous determination in an investigation or review, or any other information placed on the record. For this review we have assigned a margin of 19.32 percent as the facts available rate to Hoogovens. This rate represents the highest rate for any respondent in any prior segment of this proceeding, which happens to be a prior rate calculated for Hoogovens itself, as corrected pursuant to litigation. See Amended Final Determination Pursuant to CIT Decision: Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands, 61 FR 47871 (September 11, 1996).

Information from prior segments of the proceeding constitutes secondary information, and section 776(c) of the Tariff Act provides that the Department shall, to the extent practicable, corroborate secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (SAA) provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* the SAA at 870.

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g.*, Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review, 61 FR 6812, 6814 (February 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as facts

available. Again, this margin represents a calculated rate for Hoogovens, using its own data and as corrected pursuant to litigation. Therefore, we preliminarily find that the 19.32 percent rate is corroborated.

**Preliminary Results of the Review**

As a result of this review, we preliminarily determine that a weighted-average dumping margin of 19.32 percent exists for Hoogovens for the period August 1, 1998 through July 31, 1999.

Interested parties may submit written comments (case briefs) no later than 30 days after the date of publication of these preliminary results. Rebuttal comments (rebuttal briefs), which must be limited to issues raised in the case briefs, may be filed no later than 37 days after the date of publication of this notice. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument, not to exceed five pages in length. Any interested party may request a hearing within 30 days of publication. Requests for a hearing should specify the number of participants and identify the issues to be discussed. Any hearing, if requested, will be held two days after the submission of rebuttal briefs, if any, or the first working day thereafter. *See* 19 CFR 351.310(c) and (d). The Department will publish a notice of the final results of the administrative review, which will include the results of its analysis of issues raised by the parties, within 120 days of publication of these preliminary results. *See* 19 CFR 351.213(h).

**Cash Deposit**

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review the Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rate for Hoogovens will be the rate established in the final results of this administrative review; (2) for exporters not covered in this review, but covered in previous reviews or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the company-specific published for the most recent period; (3) if the exporter is not a firm covered in this review, previous reviews, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be that established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be 19.32 percent, the "all others" rate established in the original fair value investigation (61 FR 47871).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: Dated: May 2, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–11597 Filed 5–9–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–703]**

### Granular Polytetrafluoroethylene Resin From Italy; Preliminary Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of antidumping duty administrative review.

**SUMMARY:** In response to a request by the respondent, Ausimont S.p.A. (Ausimont), the Department of Commerce is conducting an administrative review of the antidumping duty order on granular polytetrafluoroethylene (PTFE) resin from Italy. The period of review is August 1, 1998, through July 31, 1999.

We preliminarily find that sales have not been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the Customs Service to assess no antidumping duties on the subject merchandise exported by Ausimont. We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument: (1) A statement of the issue, and (2) a brief summary of the argument.

**EFFECTIVE DATE:** May 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Magd Zalok or Charles Riggle, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4162 or (202) 482–0650, respectively.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations provided in 19 CFR Part 351 (1999).

**Background**

On August 30, 1988, the Department of Commerce (the Department) published in the **Federal Register** the antidumping duty order on granular PTFE resin from Italy (53 FR 33163). On August 27, 1999, we received a timely request for review from Ausimont and its U.S. affiliated company, Ausimont USA, the only respondent in this administrative review. On November 4, 1999, the Department published in the **Federal Register** a list of antidumping and countervailing duty cases with September anniversary dates for which we were initiating reviews. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 64 FR 60161. This initiation notice also included the initiation of this review of the antidumping duty order on granular PTFE resin from Italy because we inadvertently omitted this review from the previous initiation notice for antidumping cases with August anniversary dates.

We issued a questionnaire to Ausimont on October 8, 1999, followed by a supplemental questionnaire on February 8, 2000, and received

responses on November 5, November 19, November 29, December 17, 1999, and February 29, 2000.

On October 22, 1999, Ausimont requested that the Department apply the "special rule" in accordance with section 772(e) of the Act and exclude sales of further-manufactured wet raw polymer from the analysis in this review on the grounds that the value added to the imported wet raw polymer in the United States is at least 65 percent of the price charged to the first unaffiliated U.S. customer. On December 9, 1999, we rejected Ausimont's request to exclude the sales of further-manufactured wet raw polymer because the burden of using the Department's standard methodology is relatively low and the proportion of further-manufactured sales is sufficiently high as to raise concerns about the accuracy of the antidumping duty margin. *See* the December 9, 1999, memorandum, *Application of the Special Rule to Ausimont's Further-Manufactured Sales of Imported Wet Raw Polymer in the 1998–99 Administrative Review of the Antidumping Duty Order on Granular Polytetrafluoroethylene Resin from Italy,* which is on file in the Central Records Unit (CRU) (room B–099 of the main Commerce Building).

**Scope of the Review**

The product covered by this review is granular PTFE resin, filled or unfilled. This order also covers PTFE wet raw polymer exported from Italy to the United States. *See Granular Polytetrafluoroethylene Resin from Italy; Final Determination of Circumvention of Antidumping Duty Order,* 58 FR 26100 (April 30, 1993). This order excludes PTFE dispersions in water and fine powders. During the period covered by this review, the subject merchandise was classified under item number 3904.61.00 of the Harmonized Tariff Schedule of the United States (HTS). We are providing this HTS number for convenience and customs purposes only. The written description of the scope remains dispositive.

**Fair Value Comparisons**

We compared the constructed export price (CEP) to the NV, as described in the *Constructed Export Price* and *Normal Value* sections of this notice. Pursuant to section 777A(d)(2) of the Act, we compared the CEPs of individual transactions to contemporaneous monthly weighted-average prices of sales of the foreign like product.

We first attempted to compare contemporaneous sales of products sold in the United States and the comparison market that were identical with respect to the following characteristics: type, filler, percentage of filler, and grade. Where we were unable to compare sales of identical merchandise, we compared U.S. sales with comparison market sales of the most similar merchandise based on the characteristics listed above, in that order of priority.

Since there were appropriate comparison market sales of comparable merchandise, we did not need to compare the merchandise sold in the United States to constructed value (CV), in accordance with section 773(a)(4) of the Act.

**Constructed Export Price**

For all sales to the United States, we calculated CEP as defined in section 772(b) of the Act because all sales to unaffiliated parties were made after importation of the subject merchandise into the United States through Ausimont USA, the respondent's affiliate. We based the starting price for the calculation of CEP on the packed, delivered prices to unaffiliated purchasers in the United States. We adjusted the starting price, net of billing credit, for movement expenses, in accordance with section 772(c)(2)(A) of the Act, including domestic inland freight, international freight, marine insurance, brokerage and handling, U.S. inland freight, and U.S. customs duties.

In accordance with section 772(d)(1) of the Act, we deducted selling expenses incurred in connection with economic activity in the United States. These expenses include credit, inventory carrying costs, and indirect expenses incurred by Ausimont USA.

With respect to sales involving imported wet raw polymer that was further manufactured into finished PTFE resin in the United States, we deducted the cost of such further manufacturing in accordance with section 772(d)(2) of the Act.

Finally, we made an adjustment for the profit allocated to the above-referenced selling and further manufacturing expenses, in accordance with section 772(d)(3) of the Act.

No other adjustments were claimed or allowed.

**Normal Value**

In order to determine whether there was a sufficient volume of sales of granular PTFE resin in the home market to serve as a viable basis for calculating NV, we compared Ausimont's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a) of the Act. Because the aggregate volume of home market sales of the foreign like product was greater than 5 percent of the respective aggregate volume of U.S. sales for the subject merchandise, we determined that the home market provides a viable basis for calculating NV. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like product was first sold for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade.

We determined home market prices net of price adjustments (early payment discounts and rebates). Where applicable, we made adjustments for packing and movement expenses, in accordance with sections 773(a)(6)(A) and (B) of the Act. In order to adjust for differences in packing between the two markets, we deducted home market packing costs from NV and added U.S. packing costs. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise, pursuant to section 773(a)(6)(C)(ii) of the Act, and for other differences in the circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act. We made a COS adjustment for home market credit expense. Also, we made a CEP-offset adjustment to the NV for indirect selling expenses pursuant to section 773(a)(7)(B) of the Act as discussed in the *Level of Trade/CEP Offset* section below.

**Level of Trade/CEP Offset**

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales at the same level of trade in the comparison market as the level of trade of the U.S. sales. The NV level of trade is that of the starting-price sales in the comparison market. For CEP sales, such as those made by Ausimont in this review, the U.S. level of trade is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than that of the U.S. sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, if the NV level is more remote

from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See e.g., Industrial Nitrocellulose From the United Kingdom; Notice of Final Results of Antidumping Duty Administrative Review*, 65 FR 6148, 6151 (February 8, 2000) (*Industrial Nitrocellulose*).

In implementing these principles in this review, we obtained information from Ausimont about the marketing stage involved in the reported U.S. sales and in the home market sales, including a description of the selling activities performed by Ausimont for each channel of distribution. In identifying levels of trade for CEP and for home market sales, we considered the selling functions reflected in the CEP, after the deduction of expenses and profit under section 772(d) of the Act, and those reflected in the home market starting price before making any adjustments. We expect that, if claimed levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party claims that levels of trade are different for different groups of sales, the functions and activities of the seller should be dissimilar.

The record evidence before us in this review indicates that the home market and the CEP levels of trade have not changed from the 1996–97 review,[1] the most recently completed review in this case. As in prior segments of the proceeding, we determined that for Ausimont there was one home market level of trade and one U.S. level of trade (*i.e.*, the CEP level of trade). In the home market, Ausimont sold directly to fabricators. These sales primarily entailed selling activities such as technical assistance, engineering services, research and development, technical programs, and delivery services.

In determining the level of trade for the U.S. sales, we only considered the selling activities reflected in the price after making the appropriate adjustments under section 772(d) of the Act. *See e.g., Industrial Nitrocellulose*, 65 FR 6148, 6149–6150 (February 8, 2000). The CEP level of trade involves minimal selling functions such as invoicing and the occasional exchange of personnel between Ausimont S.p.A. and its U.S. affiliate. Based on a comparison of the home market level of trade and this CEP level of trade, we find the home market sales to be at a different level of trade from, and more remote from the factory than, the CEP sales.

Section 773(a)(7)(A) of the Act directs us to make an adjustment for difference in levels of trade where such differences affect price comparability. However, we were unable to quantify such price differences from information on the record. Because we have determined that the home-market level of trade is more remote from the factory than the CEP level of trade but the data necessary to calculate a level-of-trade adjustment are unavailable, we made a CEP-offset adjustment to NV pursuant to section 773(a)(7)(B) of the Act.

**Currency Conversion**

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York. Section 773A(a) of the Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars, unless the daily rate involves a "fluctuation."

**Preliminary Results of Review**

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists:

| Manufacturer/exporter | Period | Margin (percent) |
|---|---|---|
| Ausimont S.p.A. | 08/01/98–07/31/99 | 0.34 |

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding within five days after the date of publication of this notice any calculations performed in connection with these preliminary results. An interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. The Department will issue the final results of the administrative review, including the results of its analysis of issues raised in any such written comments or at a hearing, within 120 days of issuance of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to the Customs Service. If the final margin is above *de minimis*, for duty assessment purposes, we will calculate an importer-specific *ad valorem* duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate these duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. However, if these preliminary results are adopted in our final results, we will instruct the Customs Service to assess no antidumping duties on the merchandise subject to review pursuant to 19 CFR 351.106(c)(2).

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of granular PTFE resin from Italy entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Ausimont will be the rate established in the final results of administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value (LTFV) investigation or a previous review, the cash deposit will continue

[1] *See Notice of Final Results of Antidumping Duty Administrative Review: Granular Polytetrafluoroethylene Resin From Italy*, FR 63, 49080, 49083 (September 14, 1998), and *Notice of Preliminary Results of Antidumping Duty Administrative Review: Polytetrafluoroethylene Resin from Italy*, 63 FR 25826, 25827 (May 11, 1998).

to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 46.46 percent, the "all others" rate established in the LTFV investigation (50 FR 26019, June 24, 1985).

This notice also serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 2, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–11598 Filed 5–9–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–840]**

### Manganese Metal From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review of manganese metal from the People's Republic of China.

**SUMMARY:** We have determined that sales by China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation and by China Hunan International Economic Development (Group) Corporation have been made below normal value during the period of review of February 1, 1998, through January 31, 1999. Based on our analysis of the comments received, we have made changes in the margin calculation of China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation. Consequently, the final results differ from the preliminary results. The final weighted-average dumping margin for this firm is listed below in the section entitled "Final Results of the Review." Based on these final results of review, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and normal value on all appropriate entries. China Hunan International Economic Development (Group) Corporation did not respond to our questionnaire and has been assigned a dumping margin based on adverse facts available.

**EFFECTIVE DATE:** May 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Greg Campbell or Suresh Maniam, Group 1, Office I, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–2239 or (202) 482–0176, respectively.

**SUPPLEMENTARY INFORMATION:**

#### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (Department) regulations are to 19 CFR part 351 (1999).

#### Background

On December 9, 1999, the Department published the *Preliminary Results*.[1] The review covers two PRC exporters. The period of review (POR) is February 1, 1998, through January 31, 1999. We invited parties to comment on our preliminary results of review. At the request of certain interested parties, we held a public hearing on February 3, 2000. The Department has conducted this administrative review in accordance with section 751 of the Act.

#### Scope of Review

The merchandise covered by this review is manganese metal, which is composed principally of manganese, by weight, but also contains some impurities such as carbon, sulfur, phosphorous, iron and silicon. Manganese metal contains by weight not less than 95 percent manganese. All compositions, forms and sizes of manganese metal are included within the scope of this administrative review, including metal flake, powder, compressed powder, and fines. The subject merchandise is currently classifiable under subheadings 8111.00.45.00 and 8111.00.60.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 3, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

#### Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculation for China Metallurgical Import & Export Hunan Corporation/Hunan Nonferrous Metals Import & Export Associated Corporation (CMIECHN/CNIECHN). These changes are as follows:

*Ore 2:* To value Ore 2, we are using an average of two price quotations from separate Indian manganese ore producers. See the Decision Memo at Comment 4.

*Electricity:* We have derived a surrogate value for electricity based on electricity price data published by the Center for Monitoring Indian Economy (CMIE) and on an electricity-specific

[1] *Manganese Metal from the People's Republic of China; Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 64 FR 68999 (December 9, 1999) (*Preliminary Results*).

price index published by the Reserve Bank of India. See the Decision Memo at Comment 5.

*Factory Overhead, SG&A and Profit:* We have derived surrogate ratios for factory overhead, SG&A and profit based on financial data for Indian nonferrous metals producers, as published by the CMIE. See the Decision Memo at Comment 9.

*Ocean Freight:* We have used as a surrogate value for ocean freight information obtained from the Federal Maritime Commission on freight rates during the POR. See the Decision Memo at Comment 12.

**Final Results of Review**

We determine that the following percentage weighted-average margins exist for the period February 1, 1998, through January 31, 1999:

| Exporter | Margin (percent) |
|---|---|
| CMIECHN/CNIECHN | 36.49 |
| PRC-wide | 143.32 |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

In order to assess duties on appropriate entries as a result of this review, we have calculated entry-specific duty assessment rates based on the ratio of the amount of duty calculated for each of CMIECHN/CNIECHN's verified sales during the POR to the entered value of the corresponding entry. The Department will instruct the Customs Service to assess these rates on those entries which correspond to sales verified by the Department as having been made directly by CMIECHN/CNIECHN. With respect to Sumitomo Canada, Ltd. (SCL) and London & Scandinavian Metallurgical Co., Ltd. (LSM), third-country resellers which established the identity of their PRC suppliers, the Department will instruct Customs to liquidate these entries at the cash deposit rate in effect for their supplier(s) at the time of entry.

As discussed in the *Preliminary Results*,[2] however, the Customs entry data for the POR indicates that many more shipments of manganese metal listing CMIECHN/CNIECHN as the manufacturer/exporter were entered into the United States than the number of POR sales reported by CMIECHN/CNIECHN. On those entries listing CMIECHN/CNIECHN as the direct exporter but for which there are no corresponding verified sales or sales by LSM or SCL, the Department will instruct the Customs Service to assess the PRC-wide rate of 143.32 percent. This is consistent with the Department's practice as applied during the previous review.[3] The Department will likewise instruct the Customs Service to assess the PRC-wide rate on all POR entries from China Hunan International Economic Development (Group) Corporation (HIED) and on all entries from other PRC exporters that do not have separate rates.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of manganese metal from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for CMIECHN/CNIECHN will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) for sales made by LSM, SCL and other non-PRC exporters of subject merchandise from the PRC, the cash deposit rates will be those cash deposit rates in effect at the time of entry for their respective PRC supplier(s);[4] and (4) for all other PRC exporters, including HIED, the cash deposit rate will be 143.32 percent. This rate is the "PRC-wide" rate from the less-than-fair-value investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 771(i) of the Act.

Dated: May 3, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

**Appendix—List of Comments and Issues in the Decision Memorandum**

Comment 1: Application of China-wide Rate
Comment 2: Normal Value for SCL
Comment 3: Factual Information Regarding CMIECHN/CNIECHN
Comment 4: Ore Valuation
Comment 5: Electricity Valuation
Comment 6: Liquid Ammonia Valuation
Comment 7: Selenium Dioxide Valuation
Comment 8: Positive Mud Valuation
Comment 9: Factory Overhead, SG&A, and Profit Valuation
Comment 10: Excluding Labor from Factory Overhead and SG&A Ratios
Comment 11: Ocean Freight—Use of Reported Costs
Comment 12: Ocean Freight Valuation

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[2] 64 FR at 69001.

[3] *Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 64 FR 49449 (September 13, 1999).

[4] *See e.g., Manganese Metal from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 64 FR 49447 (September 13, 1999); *Fresh Garlic from the PRC; Final Results of Antidumping Duty Administrative Review and Partial Termination of Administrative Review*, 62 FR 23758, 23760 (May 1, 1997); *Sparklers from the PRC; Final Results of Antidumping Duty Administrative Review*, 61 FR 39630, 39631 (July 30, 1996).

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–201–504]**

### Porcelain-on-Steel Cookware From Mexico: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On November 5, 1999, the Department of Commerce published the preliminary results of the administrative

review of the antidumping duty order on porcelain-on-steel cookware from Mexico. The review covers two manufacturers/exporters. The period of review is December 1, 1997, through November 30, 1998.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final results differ from the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

**EFFECTIVE DATE:** May 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or Rebecca Trainor, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4929 or (202) 482–4007, respectively.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (1998).

### Background

The review covers two manufacturers/exporters, Cinsa, S.A. de C.V. (Cinsa) and Esmaltaciones de Norte America, S.A. de C.V. (ENASA). The period of review (POR) is December 1, 1997, through November 30, 1998.

On November 5, 1999, the Department published in the **Federal Register** the preliminary results of the twelfth antidumping duty administrative review of the antidumping duty order on porcelain-on-steel cookware from Mexico (64 FR 60417). On January 14, 2000, respondents submitted a supplemental questionnaire response. On February 3, 2000, the Department published in the **Federal Register** a notice of extension of the time limit for the final results of this review (65 FR 5311). On February 29 and March 1, 2000, the Department conducted a verification on the issue of reimbursement.

We invited parties to comment on the preliminary results of review. A public hearing was held on March 30, 2000. At this hearing the Department gave the petitioner and the respondents an opportunity to comment further on certain issues. On April 3, 2000, the respondents filed a post-hearing submission. The petitioner declined to file a submission in response to the Department's offer. The Department has conducted this administrative review in accordance with section 751 of the Act.

### Scope of Review

The products covered by this review are porcelain-on-steel cookware, including tea kettles, which do not have self-contained heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. This merchandise is currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheading 7323.94.00. Kitchenware currently classifiable under HTSUS subheading 7323.94.00.30 is not subject to the order. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

### Verification

Pursuant to section 782(i) of the Act, we verified the duty reimbursement information provided by Cinsa and ENASA using standard verification procedures, including the examination of relevant sales and financial records, as well as the selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report, dated March 15, 2000, and located in the public file in Room B–099 of the Department's main building.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 3, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

### Duty Reimbursement

For the reasons outlined in the Decision Memorandum, we have found that Cinsa and ENASA have rebutted the presumption of reimbursement as to twelfth review entries when they become due.

### Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. For a discussion of these changes, see the "Margin Calculations" section of the Decision Memo, which is on file in room B–099 at the Department and available on the Web at www.ita.doc.gov/import_admin/records/frn.

### Final Results of Review

We determine that the following weighted-average margin percentages exists for the period December 1, 1997, through November 30, 1998:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| Cinsa | 8.96 |
| ENASA | 27.37 |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated importer-specific assessment rates. We will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

### Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of the administrative review for all shipments of porcelain-on-steel cookware from Mexico entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for Cinsa and ENASA will be the rates shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate

will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 29.52. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: May 3, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

**Appendix—List of Issues**

1. Duty Reimbursement
2. Reclassification of All U.S. Sales as Constructed Export Price Sales
3. Indirect Selling Expenses Incurred in Mexico
4. Calculation of Cinsa International Corporation's Indirect Selling Expenses/ Bad Debt
5. Calculation of CEP Profit
6. CEP Offset Adjustment
7. Pre-Sale Warehousing Expenses
8. Model Matching Methodology

[FR Doc. 00–11735 Filed 5–9–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–814]**

### Pure Magnesium From Canada; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of 1998–1999 administrative review and intent not to revoke.

**SUMMARY:** The Department of Commerce is conducting an administrative review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 1998 through July 31, 1999. This review covers imports of pure magnesium from one producer/ exporter.

We have preliminarily found that sales of subject merchandise have not been made below normal value. We have also preliminarily determined not to revoke the order with respect to pure magnesium from Canada produced by Norsk Hydro Canada, Inc. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties.

Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

**EFFECTIVE DATE:** May 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Zak Smith or Melani Miller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0189 or (202) 482–0116, respectively.

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations refer to 19 CFR Part 351 (1998).

**Background**

The Department published an antidumping duty order on pure magnesium from Canada on August 31, 1992 (57 FR 39390). On August 11, 1999, the Department published a notice of "Opportunity to Request an Administrative Review" of this order (64 FR 43649). On August 13, 1999, Magnesium Corporation of America (the "petitioner") requested an administrative review of imports of the subject merchandise produced by Norsk Hydro Canada, Inc. ("NHCI"). NCHI made a similar request for review on August 18, 1999. We initiated the review on October 1, 1999. This review covers the period August 1, 1998 through July 31, 1999.

The Department is conducting this administrative review in accordance with section 751 of the Act.

**Scope of Review**

The product covered by this review is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope currently classifiable under subheading 8104.11.0000 of the Harmonized Tariff Schedule ("HTS"). The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

**Export Price**

For sales to the United States, we used export price ("EP") as defined in section 772(a) of the Act because the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. The use of constructed export prices was not warranted based on the facts of the record. EP was based on the packed, delivered, duties unpaid price to unaffiliated purchasers in the United States. We made a deduction for movement expenses in accordance with section 772(c)(2)(A) of the Act; this included the foreign and U.S. inland freight expenses.

**Normal Value**

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, pursuant to section 773(a)(1) of the Act, we based normal value ("NV") on home market sales.

We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and 773(a)(6)(B)(i) of the Act. We also made adjustments for movement expenses, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight. In addition, we made adjustments for differences in

circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on home market sales (credit expenses) and adding U.S. direct selling expenses (credit expenses).

**Revocation**

Pursuant to 19 CFR 351.222(b)(2), NHCI requested revocation of the antidumping duty order, in part. In accordance with 19 CFR 351.222(e), the request was accompanied by certifications that NHCI had not sold the subject merchandise at less than normal value during the current period of review and would not do so in the future. NHCI further certified that it sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. NHCI also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that NHCI, subsequent to the revocation, sold the subject merchandise at less than normal value.

We must determine, as a threshold matter, in accordance with 19 CFR 351.222, whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the request. *See* Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part, 64 FR 12977, 12978 (March 16, 1999) ("Fifth Review") and Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part, 64 FR 50489, 50490 (September 17, 1999) ("Sixth Review"). In the Fifth Review, we determined that NHCI did not sell the subject merchandise in the United States in commercial quantities in any of the three years cited by NHCI to support its request for revocation (the administrative review years 1994–1995, 1995–1996, and 1996–1997). In the Sixth Review, we determined that NHCI did not sell the subject merchandise in the United States in commercial quantities in two of the three years cited by NHCI to support its request for revocation (the administrative review years 1995–1996 and 1996–1997). Consistent with our findings in the Fifth Review and Sixth Review, we preliminarily find that NHCI does not qualify for revocation of the order on pure magnesium because it does not have three consecutive years of sales in commercial quantities at not less than normal value, as provided for in 19 CFR 351.222(b) and (e)(1)(ii). In particular, NHCI's sales in 1996–1997 were not in commercial quantities. (See the Memorandum from Team to Susan Kuhbach, "Commercial Quantities," dated April 20, 2000, for a discussion of NHCI's selling activity).

**Preliminary Results of the Review**

As a result of this review, we preliminarily determine that NHCI's margin for the period August 1, 1998, through July 31, 1999, is zero.

Any interested party may request a hearing within 30 days of publication of this notice. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice.

Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included. The Department will publish the final results of this administrative review subsequently, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of pure magnesium from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required for the company if its weighted-average margin is de minimis, i.e., less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21 percent, the "all others" rate established in Pure Magnesium from Canada; Amendment of Final Determination of Sales At Less Than Fair Value and Order in Accordance With Decision on Remand (58 FR 62643, November 29, 1993).

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 2, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–11600 Filed 5–9–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–810]**

### Certain Welded ASTM A–312 Stainless Steel Pipe From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On December 28, 1999, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on certain welded ASTM A–312 stainless steel pipe (WSSP) from Korea (64 FR 72645). The merchandise covered by this order is austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the

welded form of chromium-nickel pipe designated ASTM A–312. The review covers one manufacturer. The period of review is December 1, 1997 through November 30, 1998.

Based on our analysis of the comments received, we have made changes in the margin calculations. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

**EFFECTIVE DATE:** May 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Gilgunn or Mark Hoadley, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–0648 and (202) 482–0666, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

**Background**

On December 28, 1999, the Department published the preliminary results of administrative review of the antidumping duty order on WSSP from Korea (64 FR 72645). We invited parties to comment on our preliminary results of review. The Department has conducted this administrative review in accordance with section 751 of the Act.

**Scope of Review**

The merchandise covered by this order consists of austenitic stainless steel pipe that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A–312. WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines. Imports of these products are currently classifiable under the following United States Harmonized Tariff Schedule (HTS) subheadings: 7306.40.5005, 7306.40.5015, 7306.40.5045, 7306.40.5060 and 7306.40.5075. Although these subheadings include both pipes and tubes, the scope of this order is limited to welded austenitic stainless steel pipes. Although HTS subheadings are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Joseph A. Spetrini, Deputy Assistant Secretary for AD/CVD Enforcement Group III, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated April 26, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, located in room B–099 of the main Department of Commerce Building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results. These changes and corrections are discussed in the relevant sections of the Decision Memo, accessible in B–099 and on the Web at www.ita.doc.gov/import_admin/records/frn/.

**Final Results of Review**

We determine that the following percentage weighted-average margin exists for the period December 1, 1997 through November 30, 1998:

| Manufacturer/exporter | Margin (percent) |
|---|---|
| SeAH Steel Corporation Ltd. ..... | 1.02 |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer. We will direct Customs to assess the resulting percentage margins against the entered Customs values for the subject merchandise on each of that importer's entries under the relevant order during the review period.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of WSSP from Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed company will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 7.00 percent. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations

and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: April 26, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

**Appendix**

*List of Issues*

1. Cost of Production.
2. Model Matching.
3. Programming and Clerical Errors.

[FR Doc. 00–11737 Filed 5–9–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Export Trade Certificate of Review

**ACTION:** Notice of issuance of an amended export trade certificate of review, Application No. 88–3A012.

**SUMMARY:** The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to National Tooling & Machining Association ("NTMA") on October 18, 1988. Notice of issuance of the Certificate was published in the **Federal Register** on October 25, 1988 (53 FR 43140).

**FOR FURTHER INFORMATION CONTACT:** Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or at E-mail at oetca@ita.doc.gov.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. Sections 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1999).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of the certification in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Amended Certificate**

Export Trade Certificate of Review No. 88–00012, was issued to NTMA on October 18, 1988 (53 FR 43140, October 25, 1988) and previously amended on December 4, 1989 (54 FR 51914, December 19, 1989), and September 2, 1993 (58 FR 47868, September 13, 1993).

NTMA's Export Trade Certificate of Review has been amended to include the attached list of companies as "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)).

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated: May 3, 2000.

**Morton Schnabel,**

*Director, Office of Export Trading, Company Affairs.*

**Attachment**

b & b Tool Company, Inc., Rockford, IL
A & A Industries, Inc., Peabody, MA
A & A Machine Company, Inc., Southampton, PA
A & A Machine Shop, Inc., La Marque, TX
A & B Machine, Van Nuys, CA
A & B Machine Shop, Rockford, IL
A & B Tool & Manufacturing Corp., Toledo, OH
A & D Precision, Fremont, CA
A & E Custom Manufacturing, Kansas City, KS
A & E Machine Shop, Inc., Lone Star, TX
A & G Machine, Inc., Auburn, WA
A & S Tool & Die Company, Inc., Kernersville, NC
A A Precisioneering, Inc., Meadville, PA
A B A Division, Manchester, CT
A B C O Tool & Engineering, Phoenix, AZ
A B Heller, Inc., Milford, MI
A B N Industrial Co., Inc., Buena Park, CA
A B R Enterprises Inc., South Pasadena, CA
A C Machine, Inc., Akron, OH
A C Mfg. Co. Inc., Malden, MA
A E Cole Die & Engraving, Columbus, OH
A E Machine Works, Inc., Houston, TX
A F C Tool Company, Inc., Dayton, OH
A I M Tool & Die, Grand Haven, MI
A M C Precision, Inc., N. Tonawanda, NY
A M Design, E. Canton, OH
A M Machine Company, Inc., Baltimore, MD
A Mfg., Grand Terrace, CA
A S C Corporation, Owings Mills, MD
A T G, Inc., Houston, TX
A. C. Cut-Off, Inc., Azusa, CA
A+ Engineering, Ipswich, MA
A–G Tool & Die, Miamitown, OH
A-Line Tool & Die, Inc., Louisville, KY
A-RanD, Inc., Phoenix, AZ
A–W Engineering Company, Inc., Santa Fe Springs, CA
Abbott Machine & Tool, Inc., Toledo, OH
Abbott Tool, Inc., Toledo, OH
Ability Tool Company, Rockford, IL
Able Wire EDM, Inc., Brea, CA
Abrams Airborne Manufacturing, Tucson, AZ
Abrasive Machining Inc., Rockford, IL
Absolute Manufacturing, N. Chelmsford, MA
Absolute Turning & Machine, Tucson, AZ
Acadiana Hydraulic Works, Inc., New Iberia, LA
Accu Die & Mold Inc., Stevensville, MI
Accu-Right Laser Corporation, Villa Ridge, MO
Accu-Roll, Inc., Rochester, NY
Accudynamics, Inc., Middleboro, MA
Accudyne Aerospace, Palm Bay, FL
Accura Industries, Inc., Rochester, NY
Accurate Grinding & Mfg. Corp., Los Angeles, CA
Accurate Grinding Corp., Warwick, RI
Accurate Machine Co. Inc., Indianapolis, IN
Accurate MachineWorks, Inc., Newport Beach, CA
Accurate Machining, Mukilteo, WA
Accurate Manufacturing Company, Glendale, CA
Accurate Manufacturing Company, Alsip, IL
Accurate Products Co., Tucson, AZ
Accurite Machine & Mfg. Inc., Louisville, KY
Accutronics, Inc., Littleton, CO
AccuCraft, New Haven, MO
AccuRounds, Avon, MA
Ace Manufacturing Company, Cincinnati, OH
Ace Specialty Company, Inc., Tonawanda, NY
Ackley Machine Corporation, Moorestown, NJ
Acklin Stamping, Toledo, OH
Acme Brass & Machine Works, Inc., Kansas City, MO
Acra Aerospace, Inc., Anaheim, CA
Acraloc Corporation, Oak Ridge, TN
Acro Industries, Inc., Rochester, NY
Acro Tool & Die Company, Inc., Akron, OH
Actco Tool & Mfg. Co., Meadville, PA
Action Die & Tool Inc., Wyoming, MI
Action Mold & Machining, Inc., Grand Rapids, MI
Action Mold & Tool Co., Anaheim, CA
Action Precision Grinding Inc., North Tonawanda, NY

Action SuperAbrasive Products, Brimfield, OH
Action Tool & Die Inc., Rockford, IL
Action Tool & Manufacturing Inc., Dallas, TX
Active Tool Company, Meadville, PA
Acucut, Inc., Southington, CT
Acutec Precision Machining Inc., Saegertown, PA
Ada Machine Company, Inc., Santa Clara, CA
Adams Engineering, Division of Manufacturing Technology, Inc., South Bend, IN
Adaptive Technologies Inc., Springboro,OH
Addison Precision Mfg. Corp., Rochester, NY
Adena Tool Corporation, Dayton, OH
Admill Machine Company, Newington, CT
Adron Tool Corporation, Menomonee Falls, WI
Advance Gear & Machine Corp., Gardena, CA
Advance Manufacturing Corp., Cleveland, OH
Advance Manufacturing Technology, Salt Lake City, UT
Advanced Ceramic Technology, Orange, CA
Advanced Composite Products, Huntington Beach, CA
Advanced Cutting Tools, Inc., Clio, MI
Advanced Machine & Eng. Co., Rockford, IL
Advanced Machine Programming, Morgan Hill, CA
Advanced Machining Corporation, Salisbury, NC
Advanced Measurement Labs, Inc., Sun Valley, CA
Advanced Mold & Tooling Inc., Rochester, NY
Advanced Tooling Systems, Inc., Comstock Park, MI
Advantage Mold & Design, Meadville, PA
Aero Comm Machining, Wichita, KS
Aero Design & Manufacturing Co., Phoenix, AZ
Aero Engineering & Mfg. Company, Valencia, CA
Aero Gear, Inc., Windsor, CT
Aero Machining Company, Garden Grove, CA
Aero Mechanical Engineering, Inc., Huntington Beach, CA
Aero-Tech Engineering, Inc., Wichita, KS
Aerofab, Inc., Tucson, AZ
Aerofast Ltd., Scottsdale, AZ
Aerostar Aerospace Inc., Phoenix, AZ
Aetna Machine Company, Cochranton, PA
Aggressive Tool & Die, Inc., Coopersville, MI
Aggressive Tool & Die, Inc., Buckner, KY
Agrimson Tool Company, Brooklyn Park, MN
Ahaus Tool & Engineering, Inc., Richmond, IN
Aimco Precision, Inc., Phoenix, AZ
Airfoil Technology, Inc., Gilbert, AZ
Airmetal Corporation, Jackson, MI
Ajax Tool, Inc., Fort Wayne, IN
Akro Tool Co., Inc., Cincinnati, OH
Akron Steel Fabricators Company, Akron, OH
Akron Tool & Die Company, Inc., Akron, OH
Alamance Machine Company, Inc., Burlington, NC
Alart Tool & Die, Inc., Houston, TX
Albert Seisler Machine Corp., Mohnton, PA
Albertson & Hein, Inc., Wichita, KS
Albion Machine & Tool Company, Albion, MI
Alco Manufacturing, Inc., Santa Ana, CA
Alfred Manufacturing Company, Denver, CO
Alfro Custom Manufacturing, Waterbury, CT
Alger Machine Company, Inc., Rochester, NY
Alignment Engineering Co., Inc., Knoxville, TN
Alkron Manufacturing Corporation, Rochester, NY
All Five Tool Company, Inc., Bristol, CT
All Precision Mfg., LLC, Nokomis, IL
All Tool Company, Union, NJ
All Tools Company, Oklahoma City, OK
All Tools Texas, Inc., Houston, TX
All Weld Machine, Milpitas, CA
All-Tech Machine & Eng., Inc., San Jose, CA
All-Tech Machining, Inc., Wilmer, AL
Allen Aircraft Products, Inc., Ravenna, OH
Allen Precision Industries, Inc., Asheboro, NC
Allen Precision Machining Co., Angleton, TX
Allen Randall Enterprises, Inc., Akron, OH
Alliance Machine Tool Co., Inc., Louisville, KY
Allied Mechanical Products, Ontario, CA
Allied Screw Products, Inc., Mishawaka, IN
Allied Tool & Die Company, LLC, Phoenix, AZ
Allied Tool & Die, Inc., Cleveland, OH
Allied Tool & Machine Company, Kernersville, NC
Allied Tool & Machine, Inc., Saginaw, MI
Allied Tools Of Texas, Houston, TX
Alloy Metal Products, Hayward, CA
Alloy Tool Steel, Inc., Santa Fe Springs, CA
Allstate Tool & Die, Inc., Rochester, NY
Almar Mfg. & Engineering, Inc., Garden Valley, CA
Alpa Precision Machine Works, Houston, TX
Alpha Mold Inc., LLC, Huber Heights, OH
Alpha Mold West Inc., Broomfield, CO
Alpha Precision Machining Inc., Kent, WA
Alpha Tool & Machine Company, Bellmawr, NJ
Alpha Tooling, Inc., Santa Fe Springs, CA
Alpine Precision, Inc., North Billerica, MA
Alro Specialty Metals, St. Louis, MO
Alt's Tool & Machine, Inc., Santee, CA
Alta Engineering, Inc., Sun Valley, CA
Alton Products, Inc., Maumee, OH
Aluminum Precision Products, Inc., Santa Ana, CA
Alves Precision Engineered, Watertown, CT
Amatrol, Inc., Jeffersonville, IN
Ambel Precision Mfg. Corp., Bethel, CT
Ambox, Inc., Houston, TX
Amcraft Corporation, Oceanside, CA
American Machine & Gundrilling, Co., Maple Grove, MN
American Metal Masters, Inc., Plantsville, CT
American Mfg. & Machining, Inc., Racine, WI
American Mold & Engineering Co., Fridley, MN
American Precision Hydraulics, Huntington Beach, CA
American Precision Machining, Phoenix, AZ
American Precision Technologies, San Fernando, CA
American Tool & Die, Inc., Toledo, OH
American Wire EDM, Inc., Orange, CA
Amerimold, Inc., Mogadore, OH
Ameritech Die & Mold, Inc., Mooresville, NC
Ames Engineering Corp., Wilmington, DE
Amity Mold Company, Tipp City, OH
Ampswiss Engineering, Fremont, CA
Anchor Lamina Inc., Madison Heights, MI
Anchor Lamina Inc., Cheshire, CT
Anchor Tool & Die Company, Cleveland, OH
Anchor Tool & Die Company, Warren, MI
Anders Machine and Engraving, Rochester, NY
Anderson Tool & Engineering Co., Anderson, IN
Andrew Tool Company, Inc., Plymouth, MN
Anglo-American Mold, Inc., Louisville, KY
Angus Industries, LLC, Indianapolis, IN
Anmar Precision Components Inc., North Hollywood, CA
Anoplate Corporation, Syracuse, NY
Apex Machine Company, Ft. Lauderdale, FL

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Apex Machine Tool Company, Inc., Farmington, CT
Apex Manufacturing, Inc., Phoenix, AZ
Apex Precision Technologies, Inc., Indianapolis, IN
Apex Tool & Manufacturing, Inc., Evansville, IN
Apollo E.D.M. Company, Fraser, MI
Apollo Precision, Inc., Plymouth, MN
Apollo Products Inc., Willoughby, OH
Applegate EDM, Inc., Dallas, TX
Applied Engineering, Inc., Yankton, SD
Applied Technology Manufacturing, Owego, NY
Applied Technology Manufacturing, Rochester, NY
Aram Precision Tool & Die, Inc., Chatsworth, CA
Arc Drilling Inc., Garfield Heights, OH
Arc Weld Inc./A.W.I., West Newton, PA
Arca Systems, Tacoma, WA
Arco Industries, Inc., Dayton, OH
Arco Metals Corporation, Baltimore, MD
Ardekin Machine Company, Rockford, IL
Area Tool & Manufacturing, Inc., Meadville, PA
Argo Tool Corporation, Twinsburg, OH
Argus Machine, Inc., Tucson, AZ
Aries Tool, Inc., New Berlin, WI
Arkansas Tool & Die, Inc., North Little Rock, AR
Arken Manufacturing, Inc., Cleveland, OH
Arlington Machine & Tool Company, Fairfield, NJ
Arma Tool & Die Company, Inc., Ridgefield, CT
Armin Tool & Manufacturing Co., South Elgin, IL
Armstrong Machine Works, Inc., Rogersville, TN
Armstrong Mold, Machining Div., East Syracuse, NY
Armstrong-Blum Mfg. Co., Mt. Prospect, IL
Arnett Tool, Inc., New Paris, OH
Arrington Supply House, Inc., Tuscaloosa, AL
Arro Tool & Die, Inc., Lakewood, NY
Arrow Diversified Tooling, Inc., Ellington, CT
Arrow Grinding, Inc., Tonawanda, NY
Arrow Tool & Gage Company, Inc., Tulsa, OK
Arrowsmith International, Inc., Southfield, MI
Arthur J. Evers Corporation, Riverton, NJ
Artisan Associates, Detroit, MI
Artisan Machining, Inc., Bohemia, NY
Ascension Industries, North Tonawanda, NY
Ash Machine Corporation, Pataskala, OH
Aspen Precision Technologies, Petaluma, CA
Associated Electro-Mechanics, Springfield, MA
Associated Gear, Inc., Santa Fe Springs, CA
Associated Technologies, Brea, CA
Associated Toolmakers, Inc., Keokuk, IA
Associates Commercial Corp., Irving, TX
Astley Precision Machine Co., Irwin, PA
Astro Automation, Inc., Irwin, PA
Astro Machine Works Inc., Ephrata, PA
Astrotronics Inc., Mesa, AZ
Atec Tool & Engineering, Inc., Santa Clara, CA
Athens Industries, Southington, CT
Atkins Tool Company, Riverton, NJ
Atlantic Alloys, Inc., Bristol, RI
Atlantic Precision Products Inc., Biddeford, ME
Atlantic Tool & Die Company, Strongsville, OH
Atlantis Tool Corporation, Rochester, NY
Atlas Die & Manufacturing Co., Rockford, IL
Atlas Machine & Supply, Inc., Louisville, KY
Atlas Tool, Inc., Roseville, MI
Atols Tool & Mold Corporation, Schiller Park, IL
August Machine, Inc., Phoenix, AZ
Austin Machine Company Inc., O'Fallon, MO
Austinburg Machine, Inc., Austinburg, OH
Austro Mold Incorporated, Rochester, NY
Autocam Corporation, Kentwood, MI
Automated Cells & Equipment, Inc., Painted Post, NY
Automated EDM Incorporated, Ramsey, MN
Automatic Stamp Products, Inc., Cleveland, OH
Automation Technologies Corp., Cranston, RI
Automation Tool & Die, Inc., Brunswick, OH
Automation Tool Company, Cookeville, TN
Axian Technology, Phoenix, AZ
Axis Machining Inc., Slatersville, RI
Ay Machine Company, Ephrata, PA
Ay-Mac Precision, Inc., Yorba Linda, CA
Azbill Tool & Die, Inc., Huntington Beach, CA
AAA Machine Inc., Rochester, NY
ABBEC Manufacturing, Rochester, NY
ACMT, Inc. dba A C Tool & Machine, Louisville, KY
ALKAB Contract Manufacturing, Inc., New Kensington, PA
AMA Plastics, Corona, CA
AMS Production Machining Inc., Plainfield, IN
AMT Inc., Tullahoma, TN
APEC, LLC, Hingham, MA
AT Engineering & Mfg., Inc., Chatsworth, CA
B & A Design Inc., Vernon, CT
B & B Machine & Grinding Service, Denver, CO
B & B Manufacturing Company, Largo, FL
B & B Precision Mfg., Inc., Avon, NY
B & E Tool Company, Inc., Southwick, MA
B & G Quality Machine & Tool, Baltimore, MD
B & H Fabricators, Inc., Wilmington, CA
B & H Tool Co. Inc., San Marcos, CA
B & H Tool Works, Inc., Richmond, KY
B & K Engineering, Inc., Mountain View, CA
B & L Tool and Machine Company, Plainville, CT
B & R Mold, Inc., Simi Valley, CA
B & W Tool & Die, Inc., Dallas, TX
B C D Metal Products Inc., Malden, MA
B J Williams Machining Co., Edinboro, PA
B P I Corporation, Santa Clara, CA
B. Radtke & Sons, Inc., Round Lake Park, IL
B-W Grinding Service, Inc., Houston, TX
Babbitt Bearing, Inc., Syracuse, NY
Bachman Machine Company, Inc., St. Louis, MO
Bachmann Precision Machine, South El Monte, CA
Badge Machine Products, Inc., Canandaigua, NY
Baham & Sons Machine Works, Inc., Houston, TX
Bahrs Die & Stamping Company, Cincinnati, OH
Baker Hill Industries, Inc., Coral Springs, FL
Banner Machine Inc., Phoenix, AZ
Banner Tool & Die, Inc., Rockford, IL
Barberie Mold, Gardena, CA
Barile Precision Grinding Inc., Cleveland, OH
Basic VI, San Jose, CA
Bass Machining Inc., Baltimore, MD
Bateman Manufacturing Co., Inc., Hayward, CA
Baumann Engineering, Claremont, CA
Bawden Industries, Inc., Romulus, MI
Baxter Machine Products, Inc., Huntingdon, PA
Bay Industrial Machine, Green Bay, WI
Bayport Machine, Inc., La Porte, TX
Beach Mold & Tool, Inc., New Albany, IN
Beacon Tool Company, Inc., Whittier, CA
Beaver Fab Inc., Cedar Hill, TX
Beaver Tool & Machine Company, Inc., Feasterville, PA
Bechler Cams, Inc., Anaheim, CA
Beck Tool Incorporated, Edinboro, PA
Becker, Inc., Kenosha, WI
Becksted Machine, Inc., Tucson, AZ
Bedard Machine, Inc., Brea, CA
Beja Precision Manufacturing, Rochester, NY
Bel-Kur, Inc., Temperance, MI
Belco Tool & Mfg. Inc., Meadville, PA
Belgian Screw Machine Products, Jackson, MI

Bell Engineering, Inc., Saginaw, MI
Bell Tool, Inc., Germantown, WI
Bellco Precision Manufacturing, McKinney, TX
Beloit Precision Die Co. Inc., Beloit, WI
Benda Tool & Model Works, Hercules, CA
Bendon Gear Machine, Rockland, MA
Bennett Tool & Die Company, Nashville, TN
Bennett Tool & Machine, Fremont, CA
Benning Inc., Blaine, MN
Bent River Machine Inc., Clarkdale, AZ
Berman Tool & Die, Waldorf, MD
Bermar Associates, Inc., Troy, MI
Bertram Tool & Machine Co., Inc., Farrell, PA
Best Carbide Cutting Tools, Inc., Gardena, CA
Best Tool & Manufacturing Co., Kansas City, MO
Best Way Stamping Inc., La Mirada, CA
Bestway Industries, Inc., Cleveland, OH
Beta Machine Co. Inc., Cleveland, OH
Beta Tool & Mold/Dyna-Tech, Wadsworth, OH
Bilar Tool & Die Corporation, Warren, MI
Billet Industries, Inc., York, PA
Bishop Steering Technology, Inc., Indianapolis, IN
Blackburn Melton Mfg. Company, Houston, TX
Blackwood Grinding Inc., Hurst, TX
Blandford Machine & Tool Co., Louisville, KY
Blankinship Industries, Ltd., Kent, WA
Blue Chip Mold, Inc., Rochester, NY
Blue Chip Tool Company, Inc., New Castle, PA
Bluegrass Forging, Tool & Die, Shelbyville, KY
Bob's Tool & Cutter Grinding, Indianapolis, IN
Boehnen Tool Company, Cleveland, OH
Boice Industrial Corporation, Ruffsdale, PA
Bolttech Inc., West Newton, PA
Bopp-Busch Manufacturing Company, Au Gres, MI
Boring, Inc., Rockford, IL
Bosma Machine & Tool, Tipp City, OH
Boston Centerless Inc., Woburn, MA
Bowden Manufacturing Corp., Willoughby, OH
Boyce Machine, Inc., Cuyahoga Falls, OH
Boyle, Inc., Freeport, PA
Bra-Vor Tool & Die Company, Inc., Meadville, PA
Bradhart Products, Inc., Brighton, MI
Bramko Tool & Engineering, Inc., O'Fallon, MO
Bratt Machine Company Inc., No. Andover, MA
Brimar Products Inc., Fontana, CA
Brimfield Precision, Brimfield, MA
Brink's Machine Company, Inc., Alma, MI
Brinkman Tool & Die, Inc., Dayton, OH
Bristol Instrument Gears, Inc., Forestville, CT
Britt Tool Inc., Brazil, IN
Brittain Machine, Inc., Wichita, KS
Broadway Companies, Inc., Englewood, OH
Brogdon Tool & Die, Inc., Blue Springs, MO
Bromac, Inc., Mountain View, CA
Brookfield Machine, Inc., West Brookfield, MA
Brooklyn Machine & Mfg. Co. Inc., Cuyahoga Heights, OH
Brooklyn Scraping & Re-Machining, W. Lafayette, IN
Brown-Covey, Inc., Kansas City, MO
Brownstown Quality Tool & Design, Brownstown, IN
Budney Overhaul & Repair, LTD., Berlin, CT
Buerk Tool & Machine Corporation, Buffalo, NY
Buiter Tool & Die, Inc., Grand Rapids, MI
Bundy Manufacturing Inc., El Segundo, CA
Burckhardt America, Inc., Greensboro, NC
Burco Precision Products, Inc., Denton, TX
Burger Engineering, Inc., Olathe, KS
Burgess Brothers, Inc., Canton, MA
Burkland Textron Inc., Goodrich, MI
Burton Industries Inc., Mentor, OH
Burtree, Inc., Van Nuys, CA
BMCO Industries Inc., Cranston, RI
BNB Manufacturing Company, Inc., Winsted, CT
BT Laser, Inc., Santa Clara, CA
C + H Manufacturing Inc., Ontario, CA
C & C Machine Company, Akron, OH
C & C Manufacturing Corporation, Englewood, CO
C & J Industries Inc., Meadville, PA
C & M Machine Products, Inc., Willoughby, OH
C & R Manufacturing, Inc., Shawnee, KS
C & S Machine & Manufacturing, Louisville, KY
C & W Machine, Indianapolis, IN
C A R Engineering & Mfg., Victor, NY
C B Enterprises, Manchester, CT
C B Kaupp & Sons, Inc., Maplewood, NJ
C B S Manufacturing Company, Inc., Windsor, CT
C D M Tool & Mfg. Co., Inc., Hartford, WI
C F A Company, Inc., Milford, CT
C J Winter Machine Technologies, Rochester, NY
C K Tool, Harborcreek, PA
C M Gordon Industries Inc., Santa Fe Springs, CA
C M Industries, Inc., Old Saybrook, CT
C M Smillie & Company, Ferndale, MI
C N C Machine & Engineering, Colorado Springs, CO
C N C Precision Machining, Inc., Comstock Park, MI
C Q Machining, Inc., Phoenix, AZ
C R E Enterprises, Inc., Phoenix, AZ
C T D Machines, Inc., Los Angeles, CA
C T M, Inc., Grand Rapids, MI
C V Tool Company, Inc., Southington, CT
C. G. Tech, Inc., Phoenix, AZ
C.N.C. Tool & Mold, Naples, FL
C–P Mfg. Corp., Van Nuys, CA
Caco Pacific Corporation, Covina, CA
Cadco Program & Machine, St. Charles, MO
Cal-Weld, Fremont, CA
Calder Machine Co. (C M C), Florence, SC
California Composite Design, Inc., Santa Ana, CA
California Mold, Fullerton, CA
California Reamer Company Inc., Santa Fe Springs, CA
Calmax Machining, Inc., Santa Clara, CA
Cambridge Specialty Company, Inc., Kensington, CT
Cambridge Tool & Die Corp., Cambridge, OH
Cambridge Tool & Manufacturing, North Billerica, MA
Cameron Machine Shop, Inc., Richardson, TX
Campbell Grinding & Machine, Inc., Lewisville, TX
Campbell Machinery, Inc., Stow, OH
CamTech Systems Inc., Alhambra, CA
Canto Tool Corporation, Meadville, PA
Capitol Technologies, Inc., South Bend, IN
Capitol Tool & Die, L. P., Madison, TN
Carbi-Tech, Inc., Apollo, PA
Carbide Probes, Inc., Dayton, OH
Cardinal Machine Company, Inc., Strongsville, OH
Carius Tool Co., Inc., Cleveland, OH
Carlin Machine Company, Inc., Southborough, MA
Carlson Capital Manufacturing Co., Rockford, IL
Carlson Industrial Grinding Inc., Erie, PA
Carlson Tool & Manufacturing, Cedarburg, WI
Cascade Mold & Die, Inc., Portland, OR
Cass Screw Machine Products, Brooklyn Center, MN
Castle Precision Products, Stockton, CA
Catalina Precision Engineering, LLC, Orange, CA
Catalina Tool & Mold, Inc., Tucson, AZ
Cates Machine Shop, Inc., Tyler, TX
Cedar CNC Machining, Inc., Cedar Springs, MI
Cee-San Machine & Fabrication, Houston, TX
Cempi Industries Inc., Orange, CA
Centaur Tool & Die, Inc., Bowling Green, OH
Centennial Technologies, Inc., Saginaw, MI
Center Line Industries, Inc., West Springfield, MA

Center Line Machine Company, Lafayette, CO
Center Line Tool, Freeport, PA
Central Industrial Supply, Grand Prairie, TX
Central Mass. Machine, Inc., Holyoke, MA
Central States Machine Service, Elkhart, IN
Central Tool & Machine Co., Inc., Bridgeport, CT
Central Tool Company, Inc., Fortville, IN
Central Tools, Inc., Cranston, RI
Centric Machine & Instrument, Tampa, FL
Century Die Company, Fremont, OH
Century Mold Company, Inc., Rochester, NY
Century Tool & Engr., Inc., Indianapolis, IN
Cer Mac Inc., Horsham, PA
Certified Grinding & Machine, Rochester, NY
Certified Industries, II, LLC, Phoenix, AZ
Challenger Worldwide (USA), LLC, Chandler, AZ
Chalmers & Kubeck, Inc., Aston, PA
Chamtek Mfg., Inc., Rochester, NY
Chance Tool & Die Co., Inc., Cincinnati, OH
Chandler Tool & Design Inc., Rockford, IL
Chapman Engineering, Inc., Santa Ana, CA
Chapman Machine Company, Inc., Terryville, CT
Charmilles Technologies, Lincolnshire, IL
Chase Machine & Mfg. Co., Rochester, NY
Chelar Tool & Die, Inc., Belleville, IL
Cherokee Industries, Hampshire, IL
Cherry Valley Tool & Machine Inc., Belvidere, IL
Chicago Grinding & Machine Co., Melrose Park, IL
Chicago Mold Engineering Co., Inc., St. Charles, IL
Chickasha Manufacturing Company, Chickasha, OK
Chip-Makers Tooling Supply, Whittier, CA
Chippewa Tool & Manufacturing Co., Woodville, OH
Christie Manufacturing, Inc., Gainesville, TX
Christopher Tool & Manufacturing, Solon, OH
Circle-K-Industries, Sterling, VA
City Industrial Tool & Die, Harbor City, CA
Clarion Tech. Caledonia Tool, Caledonia, MI
Clark & Wheeler Engineering, Inc., Cerritos, CA
Clark-Reliance Corporation, Strongsville, OH
Clarke Engineering, Inc., North Hollywood, CA
Class Machine & Welding, Inc., Akron, OH
Classic Tool, Saegertown, PA
Classic Tool, Inc., Macedonia, OH
Classic Wire Cut Company, Inc., Valencia, CA
Clay & Bailey Mfg. Co., Kansas City, MO
Cleveland Electric Laboratories, Twinsburg, OH
Clifton Automatic Screw, Lake City, PA
Clifton Technical Company, Lincolnton, NC
Cloud Company, San Luis Obispo, CA
Coast Cutters Company, Inc., South El Monte, CA
Coastal Machine Company, Branford, CT
Cobak Tool & Manufacturing Co., St. Louis, MO
Coffey Associates, Washington, DC
Coleman-Fabro, Inc., Morgan Hill, CA
Collins Instrument Company, Angleton, TX
Collins Machine & Tool Co., Inc., Madison, TN
Collins Machine Works, Inc., Wellford, SC
Collins Manufacturing, Inc., Essex, MA
Colonial Machine & Tool Co., Inc., Coventry, RI
Colonial Machine Company, Kent, OH
Colorado Laser Marking, Inc., Colorado Springs, CO
Colorado Surface Grinding, Inc., Denver, CO
Columbia Machine Works, Inc., Columbia, TN
Columbia Products, Inc., Dallastown, PA
Comac Manufacturing Corporation, Oroville, CA
Comet Tool, Inc., Hopkins, MN
Comfab, Inc., Spartanburg, SC
Command Tooling Systems, Ramsey, MN
Commerce Grinding, Inc., Dallas, TX
Commercial Aircraft Products, Wichita, KS
Commonwealth Machine Co., Inc., Danville, VA
Companion Industries, Inc., Southington, CT
Competition Tooling, Inc., High Point, NC
Competitive Engineering Inc., Tucson, AZ
Composidie, Inc., Apollo, PA
Compu Die, Inc., Wyoming, MI
Compumachine Incorporated, Wilmington, MA
Computech Manufacturing Co., Inc., North Kansas City, MO
Computerized Machining Service, Englewood, CO
Concept Tool & Die Company, Euclid, OH
Conco Systems, Inc., Verona, PA
Condor Engineering, Inc., Colorado Springs, CO
Connecticut Jig Grinding, Inc., New Britain, CT
Connelly Machine Works, Santa Ana, CA
Connolly Tool & Machine Co., Dallas, TX
Connor Formed Metal Products, Grand Prairie, TX
Conroy & Knowlton, Inc., Los Angeles, CA
Consolidated Mold & Mfg. Inc., Kent, OH
Consulting-Design-Construction, Inc., Phoenix, AZ
Conti Machine Tool Company, Inc., Haverhill, MA
Conti Tool & Die Company, Akron, OH
Continental Precision, Inc., Phoenix, AZ
Continental Tool & Machine, Strongsville, OH
Continental Tool & Manufacturing, Lenexa, KS
Contour Metrological & Mfg., Inc., Troy, MI
Converse Industries Inc., Kenosha, WI
Convex Mold, Inc., Sterling Heights, MI
Cook Machine and Engineering, Gardena, CA
Cook Specialty Company, Green Lane, PA
Coorstek, Livermore, CA
Corbitt Mfg. Company, St. Louis, MO
Cornerstone Screw Machine, Burbank, CA
Corrigan Manufacturing Co., Inc., Rockford, IL
Corrugated Roller & Machine Inc., Santa Fe Springs, CA
Corry Custom Machine, Corry, PA
Corver Engineering Company, Inc., Detroit, MI
Cosar Mold, Inc., Brimfield, OH
Costa Machine, Inc., Akron, OH
Country Machine & Tool, Inc., Tipp City, OH
Coventry Carbide Tool, Coventry, RI
Covert Manufacturing, Inc., Galion, OH
Cox Mfg. Co. Inc., San Antonio, TX
Cox Tool Company, Inc., Excelsior Springs, MO
Craft Tech, Inc., Addison, TX
Craft-Tech Enterprises, Inc., Troy, MI
Craig Machinery & Design, Inc., Louisville, KY
Creative Precision, West, Phoenix, AZ
Creb Engineering, Inc., Pascoag, RI
Crenshaw Die & Manufacturing, Irvine, CA
Crest Manufacturing Company, Lincoln, RI
Criterion Tool & Die, Inc., Brook Park, OH
Crosrol, Inc., Greenville, SC
Crossland Machinery, Kansas City, MO
CrossRidge Precision, Oak Ridge, TN
Crowe Manufacturing Services Inc., Dayton, OH

Crown Machine, Inc., Rockford, IL
Crown Mfg. Co., Inc., Newark, CA
Crown Mold & Machine, Streetsboro, OH
Crown Tool & Die Co., Inc., Bridgeport, CT
Crucible Materials Corporation, Camillus, NY
Crush Master Grinding Corp., Walnut, CA
Cumberland Machine Company, Nashville, TN
Custom Engineering, Inc., Evansville, IN
Custom Gear & Machine, Inc., Rockford, IL
Custom Machine, Inc., Woburn, MA
Custom Machine, Inc., Cleveland, OH
Custom Mold & Design, Inc., New Hope, MN
Custom Tool & Design, Inc., Erie, PA
Custom Tool & Grinding Inc., Washington, PA
Custom Tool & Model Corp., Frankfort, NY
Cut-Right Tools Corporation, Willoughby, OH
CAMtech Precision Manufacturing, Jupiter, FL
CDL Manufacturing, Inc., Rochester, NY
CG Manufacturing Company, Willoughby, OH
CHIPSCO, Inc., Meadville, PA
D & B Industries, Inc., Dayton, OH
D & H Manufacturing Company, Fremont, CA
D & J Precision Machining, Inc., Hayward, CA
D & K Industries, Inc., Chatsworth, CA
D & M Precision Manufacturing, Vandergrift, PA
D & N Precision, Inc., San Jose, CA
D & R Precision Machining, San Jose, CA
D & S Manufacturing Corporation, Southwick, MA
D & S Mold & Tool Company, Inc., Marinette, WI
D K Mold & Engineering, Inc., Wyoming, MI
D M E Company, Madison Heights, MI
D M Machine & Tool, Kennerdell, PA
D M Machine Company, Inc., Willoughby, OH
D P I, Inc., Southampton, PA
D P Tool & Machine Inc., Avon, NY
D S A Precision Machining, Inc., Lakeville, NY
D S Greene Company, Inc., Wakefield, MA
D S Mfg., Inc., Ventura, CA
D–K Manufacturing Corporation, Fulton, NY
D-Velco Manufacturing, Phoenix, AZ
Dadeks Machine Works Corporation, Houston, TX
Daily Industrial Tools, Costa Mesa, CA
Dan McEachern Company, Alameda, CA
Dan's Precision Grinding, Sun Valley, CA
Danco Precision, Inc., Phoenixville, PA
Dane Systems, Inc., Stevensville, MI
Danly IEM, Chicago, IL
Data Mold & Tool, Inc., Walbridge, OH
Dave Jones Machinists, Mishawaka, IN
David Engineering & Mfg., Corona, CA
Davis Machine & Manufacturing, Arlington, TX
Davis Technologies, Inc., Poway, CA
Davken Inc., Brea, CA
Dayton Progress Corporation, Dayton, OH
Dayton Reliable Tool & Mfg. Co., Dayton, OH
DaCo Precision Manufacturers, Sandy, UT
De King Screw Products Inc., Burbank, CA
De Long Manufacturing Co., Inc., Santa Clara, CA
De-Lux Mold & Machine, Inc., Brady Lake, OH
Dean Machine, Cranston, RI
Dearborn Precision Tubular, Fryeburg, ME
Deck Brothers, Inc., Buffalo, NY
Dekalb Tool & Die, Inc., Tucker, GA
Delco Corporation, Akron, OH
Delco Machine & Gear, No. Long Beach, CA
Dell Tool, Penfield, NY
Delltronics, Inc., Englewood, CO
Delta Machine & Tool Company, Cleveland, OH
Delta Machining, Inc., Niles, MI
Delta Systems, Inc., Streetsboro, OH
Delta Tech, Inc., Mentor, OH
Demaich Industries, Inc., Johnston, RI
Dependable Machine Company, Inc., Indianapolis, IN
Dependable Tool & Manufacturing, Cleveland, OH
Desert Precision Mfg., Inc., Tucson, AZ
Designs For Tomorrow, Inc., St. Louis, MO
Desselle Maggard Corporation, Baton Rouge, LA
Detail Technologies, Inc., Grandville, MI
Detroit Tool & Engineering Co., Lebanon, MO
Deutsch ECD, Hemet, CA
Devtek Engineering, Colorado Springs, CO
Di-Matrix, Phoenix, AZ
Dial Machine Company, Andalusia, PA
Diamond Lake Tool, Inc., Anoka, MN
Diamond Machine Works, Inc., Seattle, WA
Diamond Mold & Die, Inc., Tallmadge, OH
Diamond Tool & Die Co., Inc., Euclid, OH
Diamond Tool & Engineering, Inc., Bertha, MN
Dickey & Son Machine & Tool Co., Indianapolis, IN
Dickson Machine & Tool, Inc., Dickson, TN
Die Cast Die and Mold, Inc., Perrysburg, OH
Die Dimensions, Kentwood, MI
Die Matic Corporation, Brooklyn Heights, OH
Die Products Corporation, Minneapolis, MN
Die Quip Corp., Bethel Park, PA
Die Tech Industries, Ltd., Providence, RI
Die-Matic Tool and Die, Inc., Grand Rapids, MI
Die-Mension Corporation, Brunswick, OH
Die-Namic Inc., Taylor, MI
Diemaster Tool & Mold, Inc., Macedonia, OH
Dietooling, Div. of Diemolding, Wampsville, NY
Digital Tool & Die, Inc., Grandville, MI
Dimac Manufacturing Co., Inc., Alexander, AR
Distinctive Machine Corporation, Grand Rapids, MI
Diversified Engraving Stamp, Akron, OH
Diversified Manufacturing, Lockport, NY
Diversified Tool & Die, Vista, CA
Diversified Tool, Inc., Mukwonago, WI
Dixie Tool & Die Co., Inc., Gadsden, AL
Dixon Automatic Tool, Inc., Rockford, IL
Double B Tool, San Leandro, CA
Double D Machine & Tool Company, Fremont, OH
Douglas Machine & Engineering Co., Davenport, IA
Downey Grinding Company, Inc., Downey, CA
Dowty's Machine Works, Inc., Baton Rouge, LA
Doyle Manufacturing, Inc., Holland, OH
Drabik Tool and Die Inc., Brook Park, OH
Draco Manufacturing, Inc., Ashtabula, OH
Drewco Corporation, Franksville, WI
Drill Masters Inc., Hamden, CT
Droitcour Company, Warwick, RI
Du-Well Grinding Company, Inc., Milwaukee, WI
Dugan Tool & Die Company, Toledo, OH
Dugan Tool & Die, Inc., Cottage Hills, IL
Dun-Rite Fabricating Inc., Saginaw, MI
Dun-Rite Industries, Inc., Monroe, MI
Dunn & Bybee Tool Company, Inc., Sparta, TN
Duplicate Parts Company, Inc., San Marcos, CA
Dura-Metal Products Corporation, Irwin, PA
Durivage Pattern & Mfg. Co. Inc., Williston, OH
DuWest Tool & Die, Inc., Cleveland, OH
Dwyer Instruments Inc., Grandview, MO
Dynamic Engineering, Inc., Minneapolis, MN
Dynamic Fabrication, Inc., Santa Ana, CA
Dynamic Machine & Fabricating, Phoenix, AZ

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Dynamic Technologies and Design, Grand Rapids, MI
Dynamic Tool & Design, Inc., Menomonee Falls, WI
DynaGrind Precision, Inc., New Kensington, PA
Dysinger Incorporated, Dayton, OH
DB Design Group Inc., Milpitas, CA
E&C Manufacturing Company, Inc., Toledo, OH
E B&Sons Machine Inc., Aliquippa, PA
E C M Of Florida, Jupiter, FL
E F Precision Inc., Willow Grove, PA
E J Codd Co. of Baltimore City & Codd Fabricators & Boiler Co., Inc., Baltimore, MD
E R C Concepts Company, Inc., Sunnyvale, CA
E W Johnson Company, Inc., Lewisville, TX
E.C.M. Mold & Die, Inc., Tucson, AZ
E.D.M. Exotics, Inc., Hayward, CA
E.T. Tool, Inc., Racine, WI
E-Fab, Inc., Santa Clara, CA
E-M-Solutions, Inc., Fremont, CA
Eagle Metalcraft, Inc., East Syracuse, NY
Eagle Mold Company, Inc., Carlisle, OH
Eagle Technology Group, St. Joseph, MI
Eagle Tool & Die Company Inc., Malvern, PA
Eagle Tool & Machine Company, Springfield, OH
Eason & Waller, Phoenix, AZ
East Coast Tool & Mfg., Inc., Orchard Park, NY
East Side Machine, Inc., Webster, NY
East Texas Machine Works, Inc., Longview, TX
Eastern Tool & Die, Inc., Newington, CT
Eaton Manufacturing, Inc., Fremont, CA
Ebway Corporation, Fort Lauderdale, FL
Eckert Enterprises Ltd., Tempe, AZ
Eckert Machining, Inc., San Jose, CA
Eclipse Mold, Inc., Clinton Township, MI
Eclipse Tool & Die, Inc., Wayland, MI
Ed Brown Products, Inc., Perry, MO
Edco, Inc., Toledo, OH
Edwards Enterprises, Newark, CA
Edwardsville Machine & Welding, Edwardsville, IL
Efficient Die & Mold Inc., Cleveland, OH
Egbert Precision, Inc., Woodland Park, CO
Egli Machine Company, Inc., Sidney, NY
Ehlert Tool Co., Inc., New Berlin, WI
Ehrhardt Tool & Machine Company, Granite City, IL
Eicom Corporation, Moraine, OH
Ejay's Machine Co., Inc., Fullerton, CA
Elcam Tool & Die, Inc., Wilcox, PA
Electra Form, Inc., Vandalia, OH
Electric Enterprise Inc., Stratford, CT
Electro Form Corporation, Binghamton, NY
Electro-Freeto Manufacturing Co., Wayland, MA
Electro-Mechanical Products, Inc., Denver, CO
Electro-Tech Machining, Long Beach, CA
Electroform Co. Inc., Machesney Park, IL
Electropolishing shop, Inc., Santa Clara, CA
Elgin Machine Corporation, Inwood, NY
Elite Tool & Machinery Systems, Inc., O'Fallon, MO
Elizabeth Carbide of North, Lexington, NC
Elizabeth Carbide Die Co., Inc., McKeesport, PA
Elliot Tool & Manufacturing Co., St. Louis, MO
Elliott's Precision, Inc., Peoria, AZ
Ellison Machine Company, Laurens, SC
Elrae Industries, Alden, NY
Emig Machine and Tool, Warwick, PA
Emmert Welding & Manufacturing, Independence, MO
Empire Manufacturing Corporation, Bridgeport, CT
Engbrecht Tool, Inc., San Jose, CA
Engineered Machine Tool, Inc., Wichita, KS
Engineered Pump Services, Inc., Pasadena, TX
Entek Corporation, Norman, OK
Enterprise Die & Mold, Inc., Grandville, MI
Enterprise Tool & Die, Brooklyn Heights, OH
Ephrata Precision Parts, Inc., Denver, PA
Epicor Software Corporation, Minneapolis, MN
Erca Tool Die & Stamping Company, Richmond Hill, NY
Erickson Tool & Machine Company, Rockford, IL
Erie Shore Machine Co., Inc., Cleveland, OH
Erie Specialty Products, Inc., Erie, PA
Ermco, Inc., Cleveland, OH
Estee Mold & Die, Inc., Dayton, OH
Esterle Mold & Machine Co., Stow, OH
Estul Tool & Manufacturing Co., Matthews, NC
Evans Tool & Die, Inc., Conyers, GA
Ever Fab, Inc., East Aurora, NY
Ever-Ready Tool, Inc., Pinellas Park, FL
Everett Pattern and Mfg., Inc., Middleton, MA
Everite Machine Products, Philadelphia, PA
Ewart-Ohlson Machine Company, Cuyahoga Falls, OH
Ex-Cel Machine & Tool, Inc., Louisville, KY
Exact Cutting Service, Inc., Brecksville, OH
Exact Tool & Die, Inc., Brook Park, OH
Exacta Tech Inc., Livermore, CA
Exacto, Inc. of South Bend, South Bend, IN
Excalibur Precision Machine Co., Hampstead, NH
Excel Machine Company, Philadelphia, PA
Excel Manufacturing Inc., Seymour, IN
Excel Manufacturing, Inc., Valencia, CA
Excel Stamping & Manufacturing, Houston, TX
Excel Tool & Mfg., Lenexa, KS
Executive Mold Corporation, Huber Heights, OH
Ezell Precision Tool Company, Clearwater, FL
EDM Supplies, Inc., Downey, CA
EISC, Inc., Toledo, OH
E2 Systems Inc., Blue Ash, OH
F & F Machine Specialties, Mishawaka, IN
F & G Tool & Die Company, Dayton, OH
F & L Tools Corporation, Corona, CA
F & S Tool, Inc., Erie, PA
F C Machine Tool & Design, Inc., Cuyahoga Falls, OH
F D T Precision Machine Co., Inc., Taunton, MA
F G A Inc., Baton Rouge, LA
F H Peterson Machine Corporation, Stoughton, MA
F K Instrument Co., Inc., Clearwater, FL
F M Machine Company, Akron, OH
F N Smith Corporation, Oregon, IL
F P Pla Tool & Manufacturing Co., Buffalo, NY
F R B Machine Inc., Emlenton, PA
F S G Inc, Mishawaka, IN
F T T Manufacturing Inc., Geneseo, NY
F Tinker & Sons Company, Pittsburgh, PA
F W Gartner Thermal Spraying Co., Houston, TX
F. S. Machining, Inc., Englewood, CO
F-Squared, Inc., Tarentum, PA
Fab Lab, Inc., Maryland Heights, MO
FabCorp, Inc., Houston, TX
Fairbanks Machine & Tool, Raytown, MO
Fairview Machine Company, Inc., Topsfield, MA
Faith Tool & Manufacturing, Inc., Willoughby, OH
Falcon Precision Machining Co., West Springfield, MA
Falls City Machine Technology, Louisville, KY
Falls Mold & Die, Inc., Stow, OH
Fame Tool & Manufacturing Co., Cincinnati, OH
Fantasy Manufacturing, Inc., Windsor, CA
Fargo Machine Company, Inc., Ashtabula, OH
Farzati Manufacturing Corp., Greensburg, PA
Fast Physics Inc., Tempe, AZ
Fay & Quartermaine Machining, El Monte, CA
Fay Tool & Die, Inc., Orlando, FL
Feedall, Inc., Willoughby, OH
Feilhauer's Machine Shop Inc., Cincinnati, OH
Feller Tool Co., Inc., Elyria, OH
Fenwick Machine & Tool, Piedmont, SC
Feral Productions LLC., Newark, CA

Ferriot Inc., Akron, OH
Fidelity Tool & Machine Company, Fort Lauderdale, FL
First International Bank, Hartford, CT
First Precision Machine, LLC, Blaine, MN
Fischer Precision Spindles, Inc., Berlin, CT
Fischer Tool & Die Corporation, Temperance, MI
Fitzwater Engineering Corp., Scituate, RI
Five Star Industries LLC, Dayton, OH
Five Star Tool Company, Inc., Rochester, NY
Flasche Models & Patterns, Inc., Cleveland, OH
Fleck Machine Company, Inc., Hanover, MD
Foriska Machine Shop, Saegertown, PA
Forrest Manufacturing Company, Houston, TX
Forster Tool & Mfg. Inc., Bensenville, IL
Forte Company, Kansas City, MO
Foster-Tobin Corp., Meadville, PA
Foundry Service & Supplies, Inc., Torrance, CA
Fox Valley Tool & Die, Inc., Kaukauna, WI
Franchino Mold & Engineering, Lansing, MI
Frank J. Stolitzka & Son, Inc., Akron, OH
Frasal Tool Co., Inc., Newington, CT
Frazier Aviation, Inc., San Fernando, CA
Fre-Mar Industries, Inc., North Royalton, OH
Frederick's Machine Shop, New Iberia, LA
Fredon Corporation, Mentor, OH
Freeport Welding & Fabricating, Freeport, TX
FreeMarkets, Pittsburgh, PA
Frost & Company, Charlestown, RI
Fulcrum Group, LLC, Hayward, CA
Fulton Industries, Inc., Rochester, IN
Fulton Tool Company, Inc., Fulton, NY
Furno Co. Inc., Pomona, CA
Future Fabricators, Phoenix, AZ
Future Tool & Die Company, Inc., Cleveland, OH
Future Tool & Die, Inc., Grandville, MI
Future Tool, Inc., Rockford, IL
Fyco Tool & Die, Inc., Houston, TX
FMF Racing, Rancho Dominguez, CA
G & G Tool Company, Inc., Sidney, OH
G & K Machine Company, Denver, CO
G & L Tool Corp., Agawam, MA
G B F Enterprises, Inc., Santa Ana, CA
G B Tool Company, Warwick, RI
G F T Manufacturing Company, Vandergrift, PA
G H Tool & Mold, Inc., Washington, MO
G M T Corporation, Waverly, IA
G R McCormick, Inc., Burbank, CA
G S C Manufacturing Inc., Indianapolis, IN
G S G Tool and Manufacturing, Meadville, PA
G S Precision, Inc., Brattleboro, VT
Gadsden Tool, Inc., Gadsden, AL
Gainesville Machining Inc., Gainesville, TX
Gales Manufacturing Corporation, Racine, WI
Galgon Industries, Inc., Fremont, CA
Gambar Products Company, Inc., Warwick, RI
Garcia Associates, Arlington, VA
Gatco, Inc., Plymouth, MI
Gauer Mold & Machine Company, Tallmadge, OH
Gaum, Inc., Robbinsville, NJ
Gear Manufacturing, Inc., Anaheim, CA
Gebhardt Machine Works, Inc., Portland, OR
Geiger Manufacturing, Inc., Stockton, CA
Gem City Engineering Company, Dayton, OH
Gene's Gundrilling Inc., Alahambra, CA
General Aluminium Forgings, Colorado Springs, CO
General Die Engraving, Inc., Peninsula, OH
General Engineering Company, Toledo, OH
General Grinding, Inc., Oakland, CA
General Machine Shop, Inc., Cheverly, MD
General Machine-Diecron, Inc., Griffin, GA
General Tool & Die Company, Inc., Racine, WI
General Tool Company, Cincinnati, OH
General Weldments Inc., Irwin, PA
Genesee Manufacturing Company, Rochester, NY
Genesee Precision Mfg., Inc., Avon, NY
Genesis Plastics & Engineering, Scottsburg, IN
Gentec Manufacturing Inc., San Jose, CA
Geometric Tool & Machine Co., Piedmont, SC
George Welsch & Son Company, Cleveland, OH
German Machine, Inc., Rochester, NY
Germantown Tool & Machine, Huntingdon Valley, PA
Gibbs Die Casting Corporation, Henderson, KY
Gibbs Machine Company, Inc., Greensboro, NC
Giddings & Lewis, Dayton, OH
Gilbert Engineering Company, Glendale, AZ
Gilbert Machine & Tool Company, Greene, NY
Gill Tool & Die, Inc., Grand Rapids, MI
Gillette Machine & Tool Company, Rochester, NY
Gillilan Machine Co., Inc., Mt. Juliet, TN
Girard Tool & Die/Jackburn Mfg., Girard, PA
Gischel Machine Company Inc., Baltimore, MD
Givmar Precision Machining, Mountain View, CA
Glaze Tool & Engineering, Inc., New Haven, IN
Glendale Machine Company, Inc., Solon, OH
Glendo Corporation, Emporia, KS
Glidden Machine & Tool, Inc., North Tonawanda, NY
Global Mfg. & Assembly, Phoenix, AZ
Global Precision, Inc., Davie, FL
Goebel Machine Service, Inc., Kansas City, MO
Golis Machine, Inc., Montrose, PA
Goodwin-Bradley Pattern Co., Inc., Providence, RI
Graham Tech Inc., Cochranton, PA
Granby Mold, Inc., Walled Lake, MI
Grand Valley Manufacturing, Titusville, PA
Graybill's Tool & Die, Inc., Manheim, PA
Great Lakes E.D.M. Inc., Clinton Twp., MI
Great Lakes Metal Treating, Inc., Tonawanda, NY
Great Lakes Precision Machine, Niles, MI
Great Western Grinding & Eng., Huntington Beach, CA
Grind All Precision Tool Co., Warren, MI
Grind-All, Inc., Cleveland, OH
Grinding Service & Mfg. Co., Bristol, CT
Grindworks Inc., Glendale, AZ
GrindC/O Inc., Chelmsford, MA
Grosmann Precision, Ballwin, MO
Grover Gundrilling, Inc., Norway, ME
Guill Tool & Engineering Co., West Warwick, RI
Gulf Machining, Pinellas Park, FL
Gulf South Machine/Drilex Corp., Houston, TX
Gurney Precision Machining, Saint Petersburg, FL
H & H Machine & Tool Company, Woonsocket, RI
H & H Machine Company, Whittier, CA
H & H Machine Shop Of Akron, Inc., Akron, OH
H & H Machined Products, Inc., Erie, PA
H & J Tool and Die Co., Inc., Bohemia, NY
H & K Machine Service Co. Inc., O'Fallon, MO
H & M Precision Machining, Santa Clara, CA
H & S Enterprises, Inc., Monrovia, CA
H & W Machine Company, Broomfield, CO
H & W Tool Company, Inc., Dover, NJ
H B Machine, Inc., Phoenix, AZ
H Brauning Company, Inc., Manassas, VA
H H Mercer, Inc., Mesquite, TX
H R M Machine, Inc., Costa Mesa, CA
H T P, Inc., Louisville, KY
H–B Tool & Cutter Grinding Inc., Willow Grove, PA
Haberman Machine, Inc., St. Paul, MN
Hackett Precision Company, Nashville, TN

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Hager Machine & Tool, Inc., Houston, TX
Haig Precision Mfg. Corp., Campbell, CA
Hal-West Technologies, Inc., Kent, WA
Hamblen Gage Corporation, Indianapolis, IN
Hamill Manufacturing Company, Trafford, PA
Hamilton Industries, Inc., Tempe, AZ
Hamilton Machine Co., Inc., Nashville, TN
Hamilton Mold & Machine, Inc., Cleveland, OH
Hamilton Tool Company, Inc., Meadville, PA
Hamlin Steel Products, Inc., Akron, OH
Hammill Manufacturing Company, Toledo, OH
Hammon Precision Technologies, Hayward, CA
Hanks Pattern Company, Montrose, MN
Hanover Machine Company, Ashland, VA
Hans Rudolph, Inc., Kansas City, MO
Hansen Engineering, Harbor City, CA
Hansford Manufacturing Corp., Rochester, NY
Hanson Mold, St. Joseph, MI
Har-Phill Machine Products, Inc., Tempe, AZ
Harding Machine, East Liberty, OH
Hardy Machine Inc., Hatfield, PA
Hardy-Reed Tool & Die Co., Manitou Beach, MI
Harley & Son, Inc., Yorba Linda, CA
Harrison Enterprise, Inc., Phoenix, AZ
Hartup Tool Inc., Columbus, IN
Haserodt Machine & Tool, Inc., Cleveland, OH
Haskell Machine & Tool, Inc., Homer, NY
Haumiller Engineering Company, Elgin, IL
Hawkeye Precision, Inc., Gilbert, AZ
Hawkins Machine Company, Inc., Coventry, RI
Hawkinson Mold Engineering Co., Alhambra, CA
Hayden Corporation, West Springfield, MA
Hayden Precision Industries, Orchard Park, NY
Heatherington Machine Corp., Orlando, FL
Heinhold Engineering & Machine, Salt Lake City, UT
Heisey Machine Co., Inc., Lancaster, PA
Heitz Machine & Manufacturing, Maryland Heights, MO
Hellebusch Tool & Die, Inc., Washington, MO
Helm Precision, Ltd., Phoenix, AZ
Henman Engineering & Machine, Muncie, IN
Herman Machine, Inc., Tallmadge, OH
Herrick & Cowell Company, Hamden, CT
Hetrick Mfg., Inc., Lower Burrell, PA
Heyden Mold & Bench Company, Tallmadge, OH
Heyl Engraving, Inc., Akron, OH
Hi Tech Manufacturing, LLC, Greensboro, NC
Hi-Tech Machining & Engineering LLC, Tucson, AZ
Hi-Tech Tool Industries, Inc., Troy, MI
Hi-Tech Tool, Inc., Lower Burrell, PA
Hiatt Metal Products Company, Muncie, IN
Hickory Machine Company, Inc., Newark, NY
High Tech Turning Co., Watertown, MA
High Tech West, Inc., Signal Hill, CA
High-Tech Industries, Holland, MI
Highland Mfg. Inc., Manchester, CT
Hill Engineering, Inc., Villa Park, IL
Hillcrest Precision Tool Co. Inc., Haverhill, MA
Hillcrest Tool & Die, Inc., Titusville, PA
Hilton Tool & Die Corporation, Rochester, NY
Hittle Machine & Tool Company, Indianapolis, IN
Hobson & Motzer, Inc., Durham, CT
Hodon Manufacturing Inc., Willoughby, OH
Hoercher Industries, Inc., East Rochester, NY
Hoffman Custom Tool & Die, Newport Beach, CA
Hoffstetter Tool & Die, Clearwater, FL
Hole Specialists, Inc., Ludlow, MA
Holland Hitch Co., Wylie, TX
Hollis Line Machine Co., Inc., Hollis, NH
Holmes Manufacturing Corporation, Cleveland, OH
Holton Mold & Engineering, Upland, CA
Homeyer Tool and Die Co., Marthasville, MO
Honemasters, Inc., Huntington Beach, CA
Hoop's Machine & Welding, Inc., Denton, TX
Hope Manufacturing, Inc., Greensboro, NC
Hoppe Tool, Inc., Chicopee, MA
Horizon Industries, Lancaster, PA
Horizon Tool & Die Corp., Grandville, MI
Houston Cutting Tools, Inc., Houston, TX
Howard Tool Co. Inc., Hampden, ME
Howell Tool & Machine, Flower Mound, TX
Howland Machine Corporation, Colorado Springs, CO
Hubbell Machine Company, Inc., Cleveland, OH
Humboldt Instrument Company, San Leandro, CA
Hunt Machine & Manufacturing Co., Tallmadge, OH
Huntington Beach Machining, Huntington Beach, CA
Huron Machine Products, Inc., Fort Lauderdale, FL
HydraWedge Corporation, El Segundo, CA
Hydro Aluminum Cedar Tools, Cedar Springs, MI
Hydrodyne Division Of FPI, Inc., Burbank, CA
Hydromat, Inc., St. Louis, MO
Hygrade Precision Technologies, Plainville, CT
Hytron Manufacturing Company, Huntington Beach, CA
HB Molding, Inc., Louisville, KY
I M I, Incorporated, Beaumont, TX
I T M, Inc., Shertz, TX
Ideal Grinding Technologies, Inc., Chatsworth, CA
Ideality Inc., Everett, WA
Imperial Die & Manufacturing Co., Cleveland, OH
Imperial Machine & Tool Company, Wadsworth, OH
Imperial Machining Co., Denver, CO
Imperial Mfg., Santa Fe Springs, CA
Imperial Newbould, Meadville, PA
Imperial Tool & Manufacturing Co., Lexington, KY
Independent Forge Company, Orange, CA
Indiana Tool & Die Company, Indiana, PA
Industrial Babbitt Bearing, Gonzales, LA
Industrial Custom Automatic, Dayton, OH
Industrial Grinding, Inc., Dayton, OH
Industrial Machine & Tool Co., Inc., Nashville, TN
Industrial Machine Company, Oklahoma City, OK
Industrial Machining Corporation, Santa Clara, CA
Industrial Maintenance, Lavergne, TN
Industrial Mold + Machine, Twinsburg, OH
Industrial Molds, Inc., Rockford, IL
Industrial Precision Products, Oswego, NY
Industrial Precision, Inc., Westfield, MA
Industrial Tool & Machine Co., Cuyahoga Falls, OH
Industrial Tool, Die & Engineering, Tucson, AZ
Industrial Tool, Inc., Minneapolis, MN
Industrial Tooling Technologies, Muskegon, MI
Ingersoll Contract Manufacturing, Loves Park, IL
Injection Mold & Machine Company, Akron, OH
Inland Tool & Manufacturing Co., Kansas City, KS
Inline Inc., Phoenix, AZ
Innex Industries, Inc., Rochester, NY
Innovative E D M, LLC, Troy, MI
Innovative Systems Machine, Toledo, OH
Inshield Die & Stamping Co., Toledo, OH
Insulate Industries, Auburn, WA
Integrated Machine Systems, Inc., Bethel, CT

Integrity Manufacturing, Colorado Springs, CO
Integrity Mfg. L.L.C., Farmington, CT
International Stamping Inc., Warwick, RI
International Tooling & Stamping, Mt. Juliet, TN
Interscope Manufacturing Inc., Middletown, OH
Intrex Corporation, Louisville, CO
Iverson Industries, Inc., Wyandotte, MI
ILM Tool, Inc., Hayward, CA
IMS, Inc., Decatur, AL
IQC, Inc., Vandalia, OH
ISO Machining, Inc., Pleasanton, CA
ITW CIP Tool and Die, Santa Fe Springs, CA
J & A Tool Company, Inc., Franklin, PA
J & F Machine Company, Cleveland, OH
J & F Machine Inc., Cypress, CA
J & J Tool Co., Inc., Louisville, KY
J & L Development, Inc., Keithville, LA
J & L EDM, Sunnyvale, CA
J & M Machine, Inc., Fairport Harbor, OH
J & M Unlimited, Ashland City, TN
J & S Centerless Grinding, New Britain, CT
J B Tool Die & Engineering, Inc., Fort Wayne, IN
J B Tool, Inc., Placentia, CA
J C B Precision Tool & Mold, Inc., Commerce City, CO
J D C Manufacturing, Inc., Redwood City, CA
J D Kauffman Machine Shop, Inc., Christiana, PA
J D Machining, Santa Clara, CA
J F Fredericks Tool Company, Inc., Farmington, CT
J I Machine Company, Inc., San Diego, CA
J K Tool & Die, Inc., Apollo, PA
J M Fabrication Corporation, Arlington, TX
J M Mold South, Easley, SC
J M Mold, Inc., Piqua, OH
J M P Industries, Inc., Cleveland, OH
J M S Mold & Engineering Co., South Bend, IN
J R Custom Metal Products, Inc., Wichita, KS
J Ross Miller & Sons, Inc., Kimberton, PA
J S Die & Mold, Inc., Byron Center, MI
J W Harwood Company, Cleveland, OH
J. C. Milling Co., Inc., Rockford, IL
J.B.A.T. t/a Cherry Hill, Cherry Hill, NJ
Jackman Machining, Corona, CA
Jackson & Heit Machine Company, Southampton, PA
Jackson's Precision Machine Co., Nashville, TN
Jacksonville Machine Inc., Jacksonville, IL
Jaco Engineering, Anaheim, CA
Jaco Tool & Die, Inc., Grand Rapids, MI
Jadco Inc., Springfield, MA
Jamison Mfg. Co., North Royalton, OH
Jaques Diamond Tool, Inc., Indianapolis, IN
Jasco Tools, Inc., Rochester, NY
Jason Tool & Engineering, Inc., Garden Grove, CA
Jatco Machine & Tool Company, Pittsburgh, PA
Jaycraft Corporation, Spring Valley, CA
Jena Tool Corporation, Dayton, OH
Jenkins Machine, Inc., Bethlehem, PA
Jenn Manufacturing Company, Inc., Warminster, PA
Jennison Corporation, Carnegie ,PA
Jergens Tool and Mold, Englewood, OH
Jergens, Inc., Cleveland, OH
Jeropa Swiss Precision, Inc., Escondido, CA
Jesel, Inc., Lakewood, NJ
Jesse Industries, Inc., Sparks, NV
Jet Products Co., Inc., Phoenix, AZ
Jetstream Water Cutting, Inc., Hayward, CA
Jewett Machine Mfg. Co., Inc., Richmond, VA
Jig Grinding Service Company, Cleveland, OH
Jirgens Modern Tool Corporation, Kalamazoo, MI
John Ramming Machine Company, St. Louis, MO
Johnson Engineering Company, Indianapolis, IN
Johnson Precision, Inc., Buffalo, NY
Johnson Tool, Inc., Fairview, PA
Johnstone Engineering & Machine, Parkesburg, PA
Joint Production Technology, Inc., Macomb, MI
Joint Venture Tool & Mold, Saegertown, PA
Jonco Tool Company, Racine, WI
Joseph Alziebler Company, Arleta, CA
Juell Machine Company, Inc., Pomona, CA
Just in Time CNC Machining Inc., Dansville, NY
JBK Manufacturing & Development, Dayton, OH
JRM Machine Company, St. Paul, MN
K & A Tooling, Santa Ana, CA
K & E Mfg. Company, Lee's Summit, MO
K & H Mold & Machine Division, Akron, OH
K & H Precision Products, Inc., Honeoye Falls, NY
K & M Machine-Fabricating, Inc., Cassopolis, MI
K & M Precision Machining, Inc., Signal Hill, CA
K & S Tool & Die, Inc., Meadville, PA
K & S Tool & Mfg. Company, Inc., Jamestown, NC
K L H Industries, Inc., Germantown, WI
K L N Precision Machining & Sheetmetal Corp., San Carlos, CA
K M F, Inc., Fairdale, KY
K M S Machine Works, Inc., Taunton, MA
K Mold & Engineering, Inc., Granger, IN
K V, Inc., Huntingdon Valley, PA
K.C.K. Tool & Die Co., Inc., Ferndale, MI
K-Form, Inc., Tustin, CA
Ka-Wood Gear & Machine Company, Madison Heights, MI
Kahre Brothers, Inc., Evansville, IN
Kalman Manufacturing, Morgan Hill, CA
Kamashian Engineering Inc., Bellflower, CA
Kamet, Santa Clara, CA
Kanis Machine & Manufacturing, Inc., Tewksbury, MA
Kansas City Screw Products Inc., Kansas City, MO
Karlson Machine Works, Inc., Phoenix, AZ
Kaskaskia Tool & Machine, Inc., New Athens, IL
Kaufhold Machine Shop, Inc., Lancaster, PA
Kearflex Engineering Company, Warwick, RI
Keck-Schmidt Tool & Die, South El Monte, CA
Kell-Strom Tool Company, Inc., Wethersfield, CT
Kellems & Coe Tool Corporation, Jeffersonville, IN
Keller Technology Corporation, Tonawanda, NY
Kelley Industries, Inc., Eighty Four, PA
Kelltech Precision Machining, Inc., San Jose, CA
Kelly & Thome, Pomona, CA
Kelm Manufacturing Company, Benton Harbor, MI
Kelmar, Inc., Midland, VA
Kem-Mil-Co, Hayward, CA
Kemco Tool & Machine Company, Fenton, MO
Kenlee Precision Corporation, Baltimore, MD
Kennametal Inc., Latrobe, PA
Kennedy & Bowden Machine Company, La Vergne, TN
Kennick Mold & Die, Inc., Cleveland, OH
Kentucky Machine & Tool Company, Louisville, KY
Kern Special Tools Company, Inc., New Britain, CT
Ketcham Diversified Tooling Inc., Meadville, PA
Kewill ERP, Inc., Edina, MN
Keyes Machine Works, Inc., Gates, NY
Keystone Electric Co., Inc., Baltimore, MD
Keystone Machine, Inc., Littlestown, PA
Kimberly Gear & Spline, Inc., Phoenix, AZ
King Machine & Engineering Co., Indianapolis, IN
King-Tek EDM & Precision Machining, Fullerton, CA
Kipp Group, Ontario, CA
Kirby Risk Precision Machining, Lafayette, IN
Kirca Precision, Rochester, NY

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Kiwanda Machine Works, Inc., Clackamas, OR
Klein Steel Service, Inc., Rochester, NY
Klix Tool Corporation, Syracuse, NY
Knight Machine & Tool, South Hadley, MA
Knowlton Manufacturing Company, Norwood, OH
Knust—S B O, Houston, TX
Kolar Inc., Ithaca, NY
Kolenda Tool & Die, Inc., Wyoming, MI
Kordenbrock Tool & Die Company, Cincinnati, OH
Kovacs Machine & Tool Company, Wallingford, CT
Krato Products Corporation, St. Louis, MO
Krause Tool, Inc., Golden, CO
Kuester Tool & Die Co., Inc., Quincy, IL
Kuhn Tool & Die Co., Meadville, PA
Kurt J. Lesker Company, Pittsburgh, PA
Kurt Manufacturing Company, Minneapolis, MN
KG Tool Company, Madison Township, OH
L & L Machine, Inc., Ludlow, MA
L & P Machine, Inc., Santa Clara, CA
L A I Southwest, Inc., Phoenix, AZ
L H Carbide Corporation, Fort Wayne, IN
L P I Corporation, Hollywood, FL
L R G Corporation, Jeannette, PA
L R W Cutting Tools, Inc., Phoenix, AZ
L T L Company, Inc., Rockford, IL
Lake Manufacturing Co., Inc., Wakefield, MA
Lakeside Manufacturing Company, Stevensville, MI
Lamb Machine & Tool Company, Indianapolis, IN
Lamina, Inc., Oak Park, MI
Lampin Corporation, Uxbridge, MA
Lancaster Machine Shop, Lancaster, TX
Lancaster Metal Products Company, Lancaster, OH
Lancaster Mold, Inc., Lancaster, PA
Lancaster Tool & Machine, Inc., Lancaster, PA
Land Specialties Manufacturing, Raytown, MO
Lane Enterprise, Rochester, NY
Lane Punch Corporation, Salisbury, NC
Laneko Engineering Company, Ft. Washington, PA
Laneko Roll Form, Inc., Hatfield, PA
Langenau Manufacturing Company, Cleveland, OH
Laser Automation, Inc., Chagrin Falls, OH
Laser Beam Technology, Hayward, CA
Laser Fare, Inc., Smithfield, RI
Laser Tool, Inc., Saegertown, PA
LaserFab Inc., Concord, CA
Lathe Tool Works, Inc., South San Francisco, CA
Lavigne Manufacturing, Inc., Cranston, RI
Layke Incorporated, Phoenix, AZ
Layke Tool & Manufacturing, Inc., Meadville, PA
LaBarge Products, Inc., St. Louis, MO
Ledford Engineering Company, Inc., Cedar Rapids, IA
Lee's Grinding, Inc., Cleveland, OH
Leech Industries, Inc., Meadville, PA
Lees Enterprise, Chatsworth, CA
Leese & Co., Inc., Greensburg, PA
Leggett & Platt, Inc., Whittier, CA
Leicester Die & Tool, Inc., Leicester, MA
Lenz Technology Inc., Mountain View, CA
Leonardi Manufacturing Co., Inc., Weedsport, NY
Lewis Aviation, Phoenix, AZ
Lewis Machine & Tool Co. Inc., Cuba, MO
Lewis Machine and Tool Company, Milan, IL
LeBlanc Grinding Company, Anaheim, CA
LeFiell Manufacturing Company, Santa Fe Springs, CA
Liberty Machine Inc., Fremont, CA
Liberty Precision Industries, Ltd., Rochester, NY
Libra Precision Machining, Tecumseh, MI
Light & Medium Fabricating, Inc., Willoughby, OH
Light Machines Corporation, Manchester, NH
Ligi Tool & Engineering, Inc., Pompano Beach, FL
Lilly Software Associates, Inc., Hampton, NH
Limmco, Inc., New Albany, IN
Linco, Inc., Phoenix, AZ
Lindberg Heat Treating, Paramount, CA
Linmark Machine Products, Inc., Union, MO
Little Rhody Machine Repair, Inc., Coventry, RI
Littlecrest Machine Shop, Inc., Houston, TX
Lloyd Company, Houston, TX
Lobart Company, Pacoima, CA
Loecy Precision Mfg., Mentor, OH
Lordon Engineering, Gardena, CA
Louis C. Morin Co. Inc., N. Billerica, MA
Loyal Machine Company, Inc., Chelsea, MA
Luick Quality Gage & Tool, Inc., Muncie, IN
Lunar Tool & Machinery Company, St. Louis, MO
Lunar Tool & Mold, Inc., North Royalton, OH
Lunquist Manufacturing Corp., Rockford, IL
Lux Manufacturing, Inc., Sunnyvale, CA
Lynn Welding Co. Inc., Newington, CT
Lyons Tool & Die Company, Meriden, CT
LAR-VEL Engineering, Rialto, CA
LOMA Automation Technologies, Inc., Louisville, KY
M & B Tool, Baldwinsville, NY
M & D Loe Manufacturing, Inc., Benicia, CA
M & H Engineering Company, Inc., Danvers, MA
M & H Tool & Die, Inc., Gadsden, AL
M & J Grinding & Tool Co., Holland, OH
M & J Valve Services, Inc., Lafayette, LA
M & S Holes Corporation, Roselle Park, NJ
M C I Tool & Die, Inc., Saginaw, MI
M C Mold & Machine, Inc., Tallmadge, OH
M D F Tool Corporation, North Royalton, OH
M F Engineering Co. Inc., Bristol, RI
M J C Machine Tooling, Hudson, NH
M J K Precision, Woodland Park, CO
M P Components, Grand Rapids, MI
M P E Machine Tool Inc., Corry, PA
M P T America Corporation, Valencia, CA
M P Technologies, Inc., Brecksville, OH
M S Willett, Inc., Cockeysville, MD
M T E, Inc., San Jose, CA
M T M Grinding, Thorndike, MA
M W Industries, Inc., Houston, TX
M. J. Machining, Inc., Sunnyvale, CA
M. R. Mold & Engineering Corp., Brea, CA
M-C Fabrication, Inc., Olathe, KS
M-Ron Corporation, Glendale, AZ
M-Tron Manufacturing Company, San Fernando, CA
Mac Machine and Metal Works, Inc., Connersville, IN
Mac-Mold Base, Inc., Romeo, MI
Machine Incorporated, Stoughton, MA
Machine Mastery, Santa Clara, CA
Machine Specialties, Inc., Greensboro, NC
Machine Tooling, Inc., Cleveland, OH
Machinist Cooperative, Gilroy, CA
Machinists, Inc., Seattle, WA
Macnab Manufacturing, Inc., Kent, WA
MacKay Manufacturing, Spokane, WA
Maddox Metal Works, Inc., Dallas, TX
Madgett Enterprises Inc., Milipitas, CA
Magdic Precision Tooling, Inc., East McKeesport, PA
Maghielse Tool Corporation, Grand Rapids, MI
Magic Manufacturing, Inc., Sunnyvale, CA
Magna Machine & Tool Company, New Castle, IN
Magnolia IronWorks, Inc., Lafayette, LA
Magnum Manufacturing Center, Inc., Colorado Springs, CO
Magnus Mfg. Corp., Shortsville, NY
Mahuta Tool Corp., Germantown, WI
Main Tool & Mfg. Co., Inc., Minneapolis, MN
Maine Machine Products, South Paris, ME
Mainline Machine, Inc., Broussard, LA
Majer Precision Engineering, Inc., Tempe, AZ
Major Tool & Machine, Inc., Indianapolis, IN
Makino, Mason, OH
Malmberg Engineering, Inc., Livermore, CA

Manda Machine Company, Inc., Dallas, TX
Manetek, Inc., Broussard, LA
Manheim Special Machine Shop, Manheim, PA
Mann Tool Company, Inc., Pacific, MO
Manor Research, Inc., Hayward, CA
Manufactured Technical Solutions, Jenison, MI
Manufacturers Tool & Die, Spencerport, NY
Manufacturing Machine Corp., Pawtucket, RI
Manufacturing Service Corp., West Hartford, CT
Marberry Machine, Inc., Houston, TX
Marco Manufacturing Company, Akron, OH
Marcy Machine, Inc., Grandview, MO
Mardon Tool & Die Company, Inc., Rochester, NY
Marena Industries, Inc., East Hartford, CT
Marini Tool & Die Company, Inc., Racine, WI
Maris Systems Design, Inc., Spencerport, NY
Mark Mold, Sanford, MI
Markham Machine Co. Inc., Akron, OH
Marlin Tool, Inc., Cuyahoga Falls, OH
Marquette Tool & Die Company, St. Louis, MO
Marshall Manufacturing Company, Minneapolis, MN
Martinek Manufacturing, Fremont, CA
Martinelli Machine, San Leandro, CA
Marton Tool & Die Company, Inc., Grand Rapids, MI
Masco Machine, Inc., Cleveland, OH
Mason Electric Company, San Fernando, CA
Massachusetts Machine Works Inc., Westwood, MA
Massey Industries, Inc., Houston, TX
Master Cutting & Engineering, Santa Fe Springs, CA
Master Industries Inc., Piqua, OH
Master Machine, Inc., Elkhart, IN
Master Precision Mold Technology, Greenville, MI
Master Precision Tool Corp., Sterling Heights, MI
Master Research & Manufacturing, San Fernando, CA
Master Tool & Die, Anaheim, CA
Master Tool & Mold, Inc., Grafton, WI
Mastercraft Mold, Inc., Phoenix, AZ
Mastercraft Precision, Inc., Milpitas, CA
Mastercraft Tool & Machine Co., Southington, CT
Mastercraft Tool Co., St. Louis, MO
Masterman Engineering, Kent, WA
Matthews Gauge, Inc., Santa Ana, CA
Maudlin & Son Manufacturing Co., Kemah, TX
Maxcor Manufacturing, Inc., Colorado Springs, CO
May Tool & Die, Inc., North Royalton, OH
May Tool & Mold Company, Inc., Kansas City, MO
Mayfran International, Cleveland, OH
MaTech Machining Technologies, Salisbury, MD
McAfee Tool & Die, Inc., Uniontown, OH
McCurdy Tool & Machine Inc., Caledonia, IL
McDanniels Machinery Company, Erie, PA
McDowell Enterprises, Inc., Elkhart, IN
McGill Manufacturing Company, Flint, MI
McGough & Kilguss, Providence, RI
McIvor Manufacturing, Inc., Buffalo, NY
McKee Carbide Tool Division, Olanta, PA
McKenzie Automation Systems, Inc., Rochester, NY
McNeal Enterprises, Inc., San Jose, CA
McNeill Manufacturing Company, Oakland, CA
McSwain Manufacturing Corp., Cincinnati, OH
Meadows Manufacturing Co., Inc., Sunnyvale, CA
Meadville Plating Company, Inc., Meadville, PA
Meadville Tool Grinding, Meadville, PA
Mechanical Manufacturing Corp., Sunrise, FL
Mechanical Metal Finishing Co., Gardena, CA
Mechanized Enterprises, Inc., Anaheim, CA
MechTronics of Arizona Corp., Phoenix, AZ
Medved Tool & Die Company, Milwaukee, WI
Menegay Machine & Tool Company, Canton, OH
Mercer Machine Company, Inc., Indianapolis, IN
Mercier Tool & Die Company, Canton, OH
Meriden Manufacturing, Meriden, CT
Merritt Tool Company, Inc., Kilgore, TX
Metal Cutting Specialists, Inc., Houston, TX
Metal Form Engineering, Redlands, CA
Metal Processors Inc., Stevensville, MI
Metal Tronics, Inc., Haverhill, MA
Metallon, Inc., Thomaston, CT
Metals USA, Flagg Steel Co., Inc., St. Louis, MO
Metalsa—Perfek, Novi, MI
Metco Manufacturing Company, Inc., Warrington, PA
Metplas, Inc., Natrona Heights, PA
Metric Machining, Monrovia, CA
Metric Precision Inc., Spartanburg, SC
Metro Manufacturing, Inc., Phoenix, AZ
Michigan Machining Inc., Mt. Morris, MI
Micro Chrome & Lapping, Inc., San Jose, CA
Micro Engineering Inc., Caledonia, MI
Micro Instrument Corporation, Rochester, NY
Micro Matic Tool, Inc., Youngstown, OH
Micro Precision Company, Houston, TX
Micro Precision Corporation, Lancaster, PA
Micro Punch & Die Company, Rockford, IL
Micro Surface Engineering, Inc., Los Angeles, CA
Micro Tool & Manufacturing, Inc., Meadville, PA
Micro-Tec, Chatsworth, CA
Micro-Tech Machine Inc., Newark, NY
Micro-Tronics, Inc., Tempe, AZ
Microfinish, Clayton, OH
Micropulse West, Inc., Tempe, AZ
Mid-Central Manufacturing, Inc., Wichita, KS
Mid-Continent Engineering, Inc., Minneapolis, MN
Mid-State Manufacturing, Inc., Milldale, CT
Mid-States Forging Die & Tool, Rockford, IL
Middle River Machine Services, Baltimore, MD
Midland Precision Machining, Inc., Tempe, AZ
Midway Mfg. Inc., Elyria, OH
Midwest Machine & Manufacturing Co, Muskegon, MI
Midwest Tool & Die Corporation, Fort Wayne, IN
Midwest Tool & Engineering Co., Dayton, OH
Mikana Manufacturing Co., Inc., San Dimas, CA
Mikron Machine, Inc., Cranesville, PA
Mikron Manufacturing, Inc., Colorado Springs, CO
Mil-Tool & Plastics Inc., Zephyrhills, FL
Milco Wire EDM, Inc., Huntington Beach, CA
Millat Industries Corp., Dayton, OH
Miller Equipment Corporation, Richmond, VA
Miller Machine & Design, Inc., Charlotte, NC
Miller Mold Company, Saginaw, MI
Millrite Machine Inc., Westfield, MA
Milrose Industries, Cleveland, OH
Miltronics, Inc., Painesville, OH
Milturn Corporation, Indianapolis, IN
Milwaukee Precision Corporation, Milwaukee, WI
Milwaukee Punch Corporation, Greendale, WI
Minco Tool & Mold Inc., Dayton, OH
Mission Tool & Manufacturing Co., Hayward, CA
Mitchell Machine, Inc., Springfield, MA
Mitchum Schaefer, Inc., Indianapolis, IN
Mittler Brothers Machine & Tool, Foristell, MO
Mod Tech Industries, Inc., Shawano, WI
Model Machine Company, Inc., Baltimore, MD
Model Mold & Machine Company, Noblesville, IN

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Modern Industries Inc., Phoenix, AZ
Modern Machine Company, San Jose, CA
Modern Machine Company, Bay City, MI
Modern Mold, Inc., Grand Rapids, MI
Modern Technologies Corp., Xenia, OH
Modular Mining Systems, Inc., Tucson, AZ
Mold Threads Inc., Branford, CT
Moldcraft, Inc., Depew, NY
Monks Manufacturing Co., Inc., Wilmington, MA
Monsees Tool & Die, Inc., Rochester, NY
Montgomery Machine Company, Houston, TX
Moon Tool & Die Inc., Conneaut Lake, PA
Moore Gear Mfg. Co., Inc., Hermann, MO
Moore Machine, Inc., Walkerton, IN
Moore Quality Tooling, Inc., Dayton, OH
Morlin Incorporated, Erie, PA
Morton & Company, Inc., Wilmington, MA
Moseys' Production Machinists, Anaheim, CA
Moss Machine/Module, San Francisco, CA
Motor Machine Co., Inc., Edison, NJ
Mountain States Automation, Inc., Englewood, CO
Mt. Sterling Industries, Mt. Sterling, KY
Mueller Machine & Tool Company, Berkeley, MO
Mullen Industries Inc., St. Clair, MO
Muller Tool Inc., Cheektowaga, NY
Multi Dimensional Machining Inc., Englewood, CO
Multi-Tool, Inc., Saegertown, PA
Mustang-Major Tool & Die Co., Eden, NY
Mutual Mold & Tool L.L.C., Attalla, AL
Mutual Precision, Inc., West Springfield, MA
Mutual Tool & Die, Inc., Dayton, OH
Myers Industries, Akron, OH
Myers Precision Grinding Company, Warrensville Hts., OH
Myles Tool Co., Inc., Sanborn, NY
MAC Tool & Die Corporation, Meadville, PA
MRC Technologies, Buffalo, NY
MTI Engineering Corp./Mitutoyo, Huntington Beach, CA
N C Dynamics, Inc., Long Beach, CA
N D T Industries, Inc., Dayton, OH
N E T & Die Company, Inc., Fulton, NY
Nashville Machine Company, Inc., Nashville, TN
Natco Machine & Welding Co., Inc., Houston, TX
National Carbide Die, McKeesport, PA
National Flight Services, Glendale, AZ
National Jet Company, Inc., LaVale, MD
National Tool & Machine Co. Inc., East St. Louis, IL
Nationwide Precision Products, Rochester, NY
Neal Manufacturing, Inc., Greensboro, NC
Nel-Mac Tool & Mfg. Inc., McKinney, TX
Nelson Bros. & Strom Co., Inc., Racine, WI
Nelson Engineering, Garden Grove, CA
Nelson Grinding, Inc., Fullerton, CA
Nelson Precision Drilling Co., Glastonbury, CT
Nemes Machine Co., Cuyahoga, OH
Nerjan Development Company, Stamford, CT
New Age Plastics, Inc., San Jose, CA
New Century Fabricators, Inc., New Iberia, LA
New Century Remanufacturing, Inc., Santa Fe Springs, CA
New Cov Fabrication Inc., Rochester, NY
New England Die Co., Inc., Waterbury, CT
New England Precision Grinding, Holliston, MA
New Standard Corporation, York, PA
Newman Machine Company, Inc., Greensboro, NC
Newton Tool & Manufacturing Co., Swedesboro, NJ
Niagara Punch & Die Corporation, Buffalo, NY
Nicholson Precision Instruments, Gaithersburg, MD
Nifty Bar, Inc., Penfield, NY
Niles Machine & Tool Works, Inc., Newark, CA
Nixon Tool Co., Inc., Richmond, IN
Noble Tool Corporation, Dayton, OH
Norbert Industries, Inc., Sterling Heights, MI
Nordon Tool & Mold, Inc., Rochester, NY
Noremac Manufacturing Corp., Westboro, MA
Norfil Manufacturing, Inc., Pacific, WA
Norman Noble, Inc., Cleveland, OH
Normike Industries, Inc., Plainville, CT
North Canton Tool Company, Inc., Canton, OH
North Central Tool & Die, Inc., Houston, TX
North Coast Tool & Mold Corp., Cleveland, OH
North Easton Machine Co., Inc., North Easton, MA
North Florida Tool Engineering, Jacksonville, FL
Northeast E D M, Newburyport, MA
Northeast Manufacturing Co., Inc., Stoneham, MA
Northeast Tool & Manufacturing, Indian Trail, NC
Northern Machine Tool Company, Muskegon, MI
Northland Extension Drills, Grove City, MN
Northmont Tool & Gage Inc., Clayton, OH
Northwest Machine Works, Inc., Grand Junction, CO
Northwest Tool & Die Company, Grand Rapids, MI
Northwest Tool & Die, Inc., Saegertown, PA
Northwest Tool Corporation, Tucson, AZ
Northwood Industries, Inc., Perrysburg, OH
Norton Advanced Ceramics, White House, TN
Norv's Molds, Inc., Nyssa, OR
Norwood Tool Company, Dayton, OH
Nova Manufacturing Company, North Hollywood, CA
Now-Tech Industries Inc., Lackawanna, NY
Nu-Tech Industries, Grandview, MO
Nu-Tool Industries, Inc., North Royalton, OH
Numeric Machine, Fremont, CA
Numeric Machining Co., Inc., West Springfield, MA
Numerical Precision, Inc., Wheeling, IL
Numerical Productions, Inc., Indianapolis, IN
Numet Machine, Stratford, CT
NuTec Tooling Systems, Inc., Meadville, PA
O & S Machine Company, Inc., Latrobe, PA
O–A, Inc., Agawam, MA
O A R Moldworks, Providence, RI
O E M Industries, Inc., Dallas, TX
O E M, Inc., Corvallis, OR
O-D Tool & Cutter Inc., Mansfield, MA
O'Keefe Ceramics, Woodland Park, CO
O'Neal Tool & Machine Co., Inc., DeSoto, MO
Oakley Die & Mold Company, Inc., Mason, OH
Obars Machine & Tool Company, Toledo, OH
Oberg Industries Inc., Freeport, PA
Oconee Machine & Tool Company, Westminster, SC
Oconnor Engineering Laboratories, Costa Mesa, CA
Ohio Gasket & Shim Company, Akron, OH
Ohio Transitional Machine & Tool, Toledo, OH
Ohlemacher Mold & Die, Strongsville, OH
Oilfield Die Manufacturing Co., Lafayette, LA
Okuma America Corporation, Charlotte, NC
Olson Mfg. & Distribution Inc., Shawnee, KS
Omax Corporation, Kent, WA
Omega One, Inc., Maple Heights, OH
Omega Tool, Inc., Menomonee Falls, WI
Omni Tool, Inc., Winston Salem, NC
Orange County Grinding, Anaheim, CA
Orchard Machine, Inc., Byron Center, MI
Orix Credit Alliance, Inc., Pasadena, CA
Osborn Products, Inc., Phoenix, AZ
Osley & Whitney, Inc., Westfield, MA

Ott Brothers Machine Company, Wichita, KS
Overland Bolling, Dallas, TX
Overton & Sons Tool & Die Co., Mooresville, IN
Overton Corporation, Willoughby, OH
OEM Controls Inc., Shelton, CT
P & A Tool & Die, Inc., Rochester, NY
P & N Machine Company, Inc., Houston, TX
P & P Mold & Die, Inc., Tallmadge, OH
P & R Industries, Inc., Rochester, NY
P D Q Machine & Tool Inc., Machesney Park, IL
P. J. M. Machine Inc., North Canton, OH
P. Tool & Die Company, Inc., N. Chili, NY
P–K Tool & Manufacturing Company, Chicago, IL
Pace Precision Products, Inc., Dubois, PA
Pacific Bearing Company, Rockford, IL
Pacific Precision Machine, Inc., San Carlos, CA
Pacific Tool & Die, Inc., Brunswick, OH
Pacific Tool Corporation, Englewood, CO
Pahl Tool Services, Cleveland, OH
Palma Tool & Die Company, Inc., Lancaster, NY
Palmer Machine Company Inc., Conway, NH
Palmer Manufacturing Company, Malden, MA
Parallax, Inc., Largo, FL
Paramount Machine & Tool Corp., Fairfield, NJ
Park Hill Machine, Inc., Lancaster, PA
Parker Plastics Corporation, Pittsburgh, PA
Parr-Green Mold and Machine Co., North Canton, OH
Parris Tool & Die Company, Goodlettsville, TN
Parrish Machine, Inc., South Bend, IN
Part-Rite, Inc., Cleveland, OH
Pasco Tool & Die, Inc., Meadville, PA
Patco Machine & Fab, Inc., Houston, TX
Path Technologies, Inc., Mentor, OH
Patkus Machine Company, Rockford, IL
Patriot Machine, Inc., St. Charles, MO
Patriot Precision Products, North Canton, OH
Patten Tool & Engineering, Inc., Kittery, ME
Paul E. Seymour Tool & Die Co., North East, PA
Peerless Precision, Inc., Westfield, MA
Peffen Machine Company, Nashville, TN
Peko Precision Products, Rochester, NY
Pell Engineering & Manufacturing, Pelham, NH
Penco Precision, Fontana, CA
Pendleton Tool Company, Inc., Erie, PA
Peninsula Screw Machine Products, Belmont, CA
Penn State Tool & Die Corp., North Huntingdon, PA
Penn United Tech, Inc., Saxonburg, PA
Pennoyer-Dodge Company, Glendale, CA
Pennsylvania Crusher, Cuyahoga Falls, OH
Pennsylvania Tool & Gages, Inc., Meadville, PA
Perfection Mold & Machine Co., Akron, OH
Perfection Tool & Mold Corp., Dayton, OH
Perfecto Tool & Engineering Co., Anderson, IN
Perfekta, Inc., Wichita, KS
Performance Grinding & Manufacturing, Inc., Tempe, AZ
Perry Tool & Research Inc., Hayward, CA
Petersen Precision Engineering, LLC, Redwood City, CA
Peterson Jig & Fixture, Inc., Rockford, MI
Pettey Machine Works, Inc., Trinity, AL
Petty Enterprises, Hollister, CA
Phil-Coin Machine & Tool Co., Hudson, MA
Philips Machining Company, Inc., Coopersville, MI
Philips Manufacturing Technology, South Plainfield, NJ
Phoenix Gear, Inc., Phoenix, AZ
Phoenix Grinding, Phoenix, AZ
Phoenix Precision Pattern Corp., Mesa, AZ
Phoenix Tool & Gage, Inc., Phoenix, AZ
Phoenix, Inc., Seekonk, MA
Piece-Maker Company, Troy, MI
Pierce Products, Inc., Cleveland, OH
Pierson Precision Inc., Campbell, CA
Pinehurst Tool & Die, Conneaut Lake, PA
Pinnacle Engineering Co., Inc., Manchester, MI
Pinnacle Manufacturing Co., Inc., Chandler, AZ
Pinnacle Tool & Engineering, Cleveland, OH
Pioneer Industries, Seattle, WA
Pioneer Motor Bearing Company, South San Francisco, CA
Pioneer Precision Grinding, Inc., West Springfield, MA
Pioneer Tool & Die Company, Akron, OH
Pioneer Tool & Die, Inc., Meadville, PA
Pioneer Tool Die & Machine Co., Ivyland, PA
Piper Plastics, Inc., Chandler, AZ
Pitt-Tex, Latrobe, PA
Plainfield Stamping Illinois, Inc., Plainfield, IL
Plano Machine & Instrument Inc., Gainesville, TX
Plas Tool Co., Niles, IL
Plastic Mold Technology Inc., Grand Rapids, MI
Plastipak Packaging, Inc., Medina, OH
PlastiFab Inc., Louisville, CO
Plating Technology, Inc., Columbus, OH
Pleasant Precision, Inc., Kenton, OH
Pleasanton Tool and Manufacturing ,Pleasanton, CA
Plesh Industries, Inc., Buffalo, NY
Pocal Industries Inc., Scranton, PA
Pol-Tek Industries, Ltd., Cheektowaga, NY
Polaris Machining, Inc., Marysville, WA
Polynetics, Inc., Fullerton, CA
Polytec Products Corporation, Menlo Park, CA
Ponderosa Industries, Inc., Denver, CO
Popp Machine & Tool, Inc., Louisville, KY
Port City Machine & Tool Company, Muskegon Heights, MI
Portage Knife Company, Inc., Mogadore, OH
Post Enterprises, Inc., Wichita, KS
Post Products, Inc., Kent, OH
Powder Metallurgy Company, Lewisville, TX
Powers Bros. Machine, Inc., Montebello, CA
Powill Manufacturing & Engineering, Inc., Phoenix, AZ
Practical Machine Company, Barberton, OH
Pre Tech Manufacturing, Bensenville, IL
Pre-Mec Corporation, Clinton Township, MI
Precise Products Corporation, Minneapolis, MN
Precise Technologies Inc., Largo, FL
Precise Technology, Inc., N. Versailles, PA
Precise Tool & Die, Inc., Leechburg, PA
Precision Aircraft Components, Dayton, OH
Precision Aircraft Machining, Sun Valley, CA
Precision Automated Machining, Englewood, CO
Precision Automation Co., Inc., Clarksville, IN
Precision Balancing & Analyzing, Mentor, OH
Precision Boring Company, Detroit, MI
Precision CNC Products, Canyon Country, CA
Precision Deburring Enterprises, Sun Valley, CA
Precision Die & Stamping Inc., Tempe, AZ
Precision Engineering & Mfg. Co., Haymarket, VA
Precision Engineering, Inc., Uxbridge, MA
Precision Gage & Tool Company, Dayton, OH
Precision Gage, Inc., Tempe, AZ
Precision Grinding & Mfg. Corp., Rochester, NY
Precision Grinding Inc., Phoenix, AZ
Precision Grinding, Inc., Birmingham, AL
Precision Identity Corporation, Campbell, CA
Precision Industries, Inc., Providence, RI

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Precision Industries, Inc., Baton Rouge, LA
Precision Lasers, Rochester, NY
Precision Machine & Engineering, Phoenix, AZ
Precision Machine & Instrument, Houston, TX
Precision Machine & Tool Co., Longview, TX
Precision Machine Company, Lancaster, PA
Precision Machine Rebuilding, Rogers, MN
Precision Manufacturing, Grand Junction, CO
Precision Metal Crafters, Ltd., Greensburg, PA
Precision Metal Fabrication, Dayton, OH
Precision Metal Tooling, Inc., San Leandro, CA
Precision Mold & Engineering, Warren, MI
Precision Mold Base Corporation, Tempe, AZ
Precision Mold Welding, Inc., Little Rock, AR
Precision Mold, Inc., Kent, WA
Precision Piece Parts Inc., Mishawaka, IN
Precision Products Inc., Greenwood, IN
Precision Resource, Huntington Beach, CA
Precision Resource Tool & Machine, Shelton, CT
Precision Resources, Hawthorne, CA
Precision Specialists, Inc., West Berlin, NJ
Precision Specialties, San Jose, CA
Precision Stamping & Tool, Inc., Irvine, CA
Precision Stamping, Inc., Farmers Branch, TX
Precision Technology, Inc., Chandler, AZ
Precision Tool & Die, Inc., Derry, NH
Precision Tool & Mold, Inc., Clearwater, FL
Precision Tool Work, Inc., New Iberia, LA
Precision Valve, Inc., Reno, NV
Precision Wire Cut Corporation, Waterbury, CT
Precision Wire EDM Service Inc., Grand Rapids, MI
Preferred Grinding Co., Inc., Dallas, TX
Preferred Tool & Die Co., Inc., Comstock Park, MI
Preferred Tool Company, Inc., Seymour, IN
Prescott Aerospace, Inc., Prescott Valley, AZ
Pressco Products, Kent, WA
Prestige Mold Incorporated, Rancho Cucamonga, CA
Price Products, Inc., Escondido, CA
Pride, Champlin, MN
Prima Die Castings, Inc., Clearwater, FL
Prime-Co Tool Inc., East Rochester, NY
Primeway Tool & Engineering Co., Madison Heights, MI
Pro-Mold, Inc., Spencerport, NY
Pro-Tech Machine, Inc., Burton, MI
Process Equipment Company, Tipp City, OH
Product Engineering Company, Columbus, IN
Production Saw Works, Inc., North Hollywood, CA
Production Tool & Mfg. Co., Portland, OR
Producto Machine Company, Bridgeport, CT
Professional Grinding, Inc., Akron, OH
Professional Instruments Co., Inc., Hopkins, MN
Professional Machine & Tool Co., Gallatin, TN
Professional Machine & Tool, Inc., Wichita, KS
Professional Machine Works, Inc., Houston, TX
Proficient Machining Co., Inc., Mentor, OH
Profile Grinding, Inc., Cleveland, OH
Proformance Manufacturing, Inc., Corona, CA
Progressive Concepts Machining, Pleasanton, CA
Progressive Machine & Design, LLC, Victor, NY
Progressive Metallizing & Machine Company, Inc., Akron, OH
Progressive Tool & Die, Inc., Gardena, CA
Progressive Tool Company, Waterloo, IA
Promax Tool Co., Rancho Cordova, CA
Prompt Machine Products, Inc., Chatsworth, CA
Proper Cutter, Inc., Guys Mills, PA
Proper Mold & Engineering, Inc., Center Line, MI
Prospect Mold Inc., Cuyahoga Falls, OH
Proteus Manufacturing Co., Inc., Woburn, MA
Proto Machine & Manufacturing, Kent, OH
Proto-Cam, Inc., Grand Rapids, MI
Proto-Design, Inc., Redmond, WA
Protonics Engineering Corp., Cerritos, CA
Prototype & Plastic Mold Co., Middletown, CT
ProMold, Inc., Cuyahoga Falls, OH
Puehler Tool Company, Valley View, OH
Puget Plastics Corporation, Tualatin, OR
Pullbrite, Inc., Fremont, CA
Punch Press Products, Inc., Los Angeles, CA
Punchcraft Company—Subsidiary of MascoTech, Inc., Warren, MI
PDT Tooling, Inc., Lincolnshire, IL
PMR, Inc., Avon, OH
PQ Enterprise, L.L.C., Grand Rapids, MI
PR Machine Works, Inc., Mansfield, OH
Q K Mold & Manufacturing, Inc., Kent, OH
Q M C Technologies, Inc., Depew, NY
Qualfab Machining, Redwood City, CA
Quality Centerless Grinding Corp., Middlefield, CT
Quality Engineering Services, Wallingford, CT
Quality Grinding & Machining, Bridgeport, CT
Quality Machine Engineering, Inc., Santa Rosa, CA
Quality Machine Inc., Plaistow, NH
Quality Machining Technology, Inc., Oakdale, CA
Quality Mold & Die, Inc., Santa Ana, CA
Quality Mold & Engineering, Baroda, MI
Quality Mold Shop, Inc., McMinnville, TN
Quality Precision, Inc., Hayward, CA
Quality Tool Company, Toledo, OH
Quantum Manufacturing, Inc., Burbank, CA
Quartztek Incorporated, Phoenix, AZ
Quick Turn Machine Co. Inc., Windsor Locks, CT
Quick-Way Stampings, Euless, TX
R & D Machine Shop, Dallas, TX
R & D Specialty/Manco, Phoenix, AZ
R & D Tool & Engineering, Lee's Summit, MO
R & G Precision Tool Inc., Thomaston, CT
R & H Manufacturing Inc., Kingston, PA
R & J Tool, Inc., Brookville, OH
R & M Machine Tool, Freeland, MI
R & M Manufacturing Company, Niles, MI
R & M Mold Manufacturing Co., Bloomsbury, NJ
R & R Precision Machine, Inc., Wichita, KS
R & S EDM, Inc., W. Springfield, MA
R & S Machining, Inc., Oakville, MO
R D C Machine, Inc., Santa Clara, CA
R Davis EDM, Anaheim, CA
R E F Machine Company, Inc., Middlefield, CT
R F Cook Manufacturing Co., Stow, OH
R G F Machining Technologies, Canon City, CO
R J S Corporation, Akron, OH
R M I, Van Nuys, CA
R Meschkat Precision Machining, Valencia, CA
R O C Carbon Company, Houston, TX
R S Precision Industries, Inc., Farmingdale, NY
R T R Slotting & Machine Inc., Cuyahoga Falls, OH
R W Machine, Inc., Houston, TX
R. W. Smith Company, Inc., Dallas, TX
Rainbow Tool & Machine Co., Inc., Gadsden, AL
Raloid Corporation, Reisterstown, MD
Ralph Stockton Valve Products, Houston, TX
Ram Tool, Inc., Grafton, WI
Ranger Tool & Die Company, Saginaw, MI
Rapid-Line Inc., Grand Rapids, MI
Rapidac Machine Corporation, Rochester, NY

Ratnik Industries, Inc., Victor, NY
Rawlings Engineering, Macon, GA
Ray Paradis Machine, Inc., Jackson, CA
Re-Del Engineering, Campbell, CA
Realco Diversified, Inc., Meadville, PA
Reardon Machine Co., Inc., St. Joseph, MO
Reata Engineering & Machine, Englewood, CO
Reber Machine & Tool Company, Muncie, IN
Rectack of America, Los Angeles, CA
Reed Instrument Company, Houston, TX
Reed Precision Microstructures, Santa Rosa, CA
Reese Machine Company, Inc., Ashtabula, OH
Reichert Stamping Company, Toledo, OH
Reid Industries, Inc., Roseville, MI
Reitz Tool & Die Company, Inc., Walbridge, OH
Reitz Tool, Inc., Cochranton, PA
Reliable EDM, Inc., Houston, TX
Remarc Manufacturing Inc., Hayward, CA
Remmele Engineering, Inc., New Brighton, MN
Remtex, Inc., Longview, TX
Reny & Company Inc., El Monte, CA
Repairtech International, Inc., Van Nuys, CA
Repko Tool Inc., Meadville, PA
Republic Industries, Louisville, KY
Republic-Lagun, Carson, CA
Research Tool Inc., East Haven, CT
Reuther Mold & Manufacturing Co., Cuyahoga Falls, OH
Revtek, Portland, OR
Reynolds Manufacturing Co., Inc., Rock Island, IL
Rhode Island Centerless, Inc., Johnston, RI
Rhode Island Precision Co., Inc., Providence, RI
Rich Tool & Die Company, Scarborough, ME
Richard Manufacturing Company, Milford, CT
Richard O. Schulz Company, Elmwood Park, IL
Richard Tool & Die Corporation, New Hudson, MI
Richard's Grinding, Inc., Cleveland, OH
Richards Machine Tool Company, Lancaster, NY
Richsal Corporation, Elyria, OH
Rick Sanford Machine Company, San Leandro, CA
Rickman Machine Company, Wichita, KS
Rid-Lom Precision Tool Corp., Rochester, NY
Ridge Machine & Welding Company, Toronto, OH
Riggins Engineering, Inc., Van Nuys, CA
Right Tool & Die, Inc., Toledo, OH
Rima Enterprises, Huntington Beach, CA
Ripley Machine Company, Inc., Akron, OH
Rite-Way Industries Inc., Louisville, KY
Riverview Machine Company, Inc., Holyoke, MA
Riviera Tool Company, Grand Rapids, MI
Robert C. Reetz Company, Inc., Pawtucket, RI
Roberts Aerospace Mfg. & Eng., Gardena, CA
Roberts Tool & Die Company, Chillicothe, MO
Roberts Tool Company, Inc., Northridge, CA
Robrad Tool & Engineering, Mesa, AZ
Rochester Gear, Inc., Rochester, NY
Rochester Manufacturing, Wellington, OH
Rockburl Industries Inc., Rochester, NY
Rockford Process Control, Inc., Rockford, IL
Rockford Tool & Manufacturing, Rockford, IL
Rockford Toolcraft, Inc., Rockford, IL
Rockhill Machining Industries, Barberton, OH
Rockstedt Tool & Die, Brunswick, OH
Rocon Manufacturing Corporation, Rochester, NY
Rogers Associates Machine Tool, Rochester, NY
Rogers Enterprises, Rochester, NY
Romac Electronics, Inc., Plainview, NY
Romold Inc., Rochester, NY
Ron Grob Company, Loveland, CO
Ron Mills and Company, Walnut, CA
Ronal Tool Company, Inc., York, PA
Ronart Industries, Inc., Detroit, MI
Ronlen Industries, Inc., Brunswick, OH
Rons Racing Products, Inc., Tucson, AZ
Rovi Products Incorporated, Simi Valley, CA
Royal Wire Products, Inc., N. Royalton, OH
Royalton Manufacturing, Inc., Cleveland, OH
Royster's Machine Shop, LLC, Henderson, KY
Rozal Industries, Inc., Farmingdale, NY
Rubbermaid, Inc.—Mold Division, Wooster, OH
Ruoff & Sons, Inc., Runnemede, NJ
Russing Machining Corp., Glendale, CA
Ryan Industries Inc., York, PA
RB Machine Co., Inc., Phoenix, AZ
REO Hydro-Pierce Inc., Detroit, MI
RREN Manufacturing & Engineering, Springfield, MA
S & B Jig Grinding, Inc., Loves Park, IL
S & B Tool & Die Co., Inc., Lancaster, PA
S & R CNC Machining, Arleta, CA
S & R Precision Company, LLC, Fremont, CA
S C Manufacturing, Akron, OH
S D S Machine, Inc., Hayward, CA
S G S Tool Company, Munroe Falls, OH
S L P Machine, Inc., Ham Lake, MN
S M K Fabricators, Inc., May, TX
S P M/Anaheim, Anaheim, CA
S P S Technologies, Santa Ana, CA
S. C. Machine, Chatsworth, CA
S.M.G. LLC, Buffalo, NY
Saeilo Manufacturing Industries, Blauvelt, NY
Safety Line, Oakland, CA
Sage Machine & Fabricating, Houston, TX
Sagehill Engineering, Inc., Menlo Park, CA
Saginaw Products Corporation, Saginaw, MI
Salamon Manufacturing Inc., Middletown, CT
Saliba Industries, Inc., Highland, IL
Salomon Smith Barney, Washington, DC
Samax Precision, Inc., Sunnyvale, CA
San Diego Swiss Machining, Inc., Chula Vista, CA
San Val Grinding Company, Burbank, CA
Sanders Tool & Mould Company, Hendersonville, TN
Sandor Tool & Manufacturing Co., Lawrence, MA
Sandy Bay Machine, Rockport, MA
Santin Engineering, Inc., West Peabody, MA
Satran Technical Enterprises, Mayer, AZ
Sattler Machine Products, Inc., Sharon Center, OH
Sawing Services Co., Chatsworth, CA
Sawtech, Lawrence, MA
Schaffer Grinding Company, Inc., Montebello, CA
Schill Corp., Toledo, OH
Schlitter Tool, Warren, MI
Schmald Tool & Die Inc., Burton, MI
Schmiede Corporation, Tullahoma, TN
Schneider & Marquard, Inc., Newton, NJ
Schober's Machine & Engineering, Alhambra, CA
Schoitz Engineering, Inc., Waterloo, IA
Schroeder Tool & Die Corporation, Van Nuys, CA
Schuetz Tool & Die, Inc., Hiawatha, KS
Schulze Tool Company, Independence, MO
Schwab Machine, Inc., Sandusky, OH
Scott County Machine & Tool Co., Scottsburg, IN
Seabury & Smith, Inc., Atlanta, GA
Sebewaing Tool & Engineering Co., Sebewaing, MI
Seemcor Inc., Englewood, NJ
Select Industrial Systems Inc., Fairborn, OH
Select Tool & Die—Tool Div., Dayton, OH
Select Tool & Eng., Inc., Elkhart, IN
SelfLube, Coopersville, MI
Selzer Tool & Die, Inc., Elyria, OH
Sematool Mold & Die Co., Santa Clara, CA
Serco, Covina, CA
Serrano Industries Inc., Bellflower, CA
Service Manufacturing and, Anaheim, CA

Service Tool & Die, Inc., Henderson, KY
Setters Tools, Inc., Piedmont, SC
Sharon Center Mold & Die, Sharon Center, OH
Shaw Industries, Inc., Franklin, PA
Shear Tool, Inc., Saginaw, MI
Sheets Tool & Manufacturing, Inc., Saegertown, PA
Shelby Engineering Company, Inc., Indianapolis, IN
Sherer Manufacturing, Clearwater, FL
Sherlock Machine Company, Clearwater, FL
Sherman Tool & Gage, Erie, PA
Shiloh Industries, Wellington, OH
Shookus Special Tools, Inc., Raymond, NH
Siam Precision, Inc., Phoenix, AZ
Sibley Machine & Foundry Corp., South Bend, IN
Sieger Engineering, Inc., S. San Francisco, CA
Sigma Precision Mfg., Inc., Aston, PA
Signa Molds & Engineering, Sylmar, CA
Signal Machine Company, New Holland, PA
Silicon Valley Mfg., Fremont, CA
Simons & Susslin Manufacturing, San Jose, CA
Sipco, Inc., Meadville, PA
Sirius Enterprises, Inc., Dallas, TX
Sirois Tool Co. Inc., Berlin, CT
Sisson Engineering Corp., Northfield, MA
Six Sigma, Louisville, KY
Ski-Way Machine Products Company, Euclid, OH
Skillcraft Machine Tool Company, West Hartford, CT
Skulsky, Inc., Gardena, CA
Skyfab, Inc., Denton, TX
Skyline Manufacturing Corp., Nashville, TN
Skylon Mold & Machining, Sugar Grove, PA
Skyway Manufacturing Corporation, Phoenix, AZ
Smith-Renaud, Inc., Cheshire, CT
Smith's Machine, Cottondale, AL
Smithfield Manufacturing, Inc., Clarksville, TN
Snyder Systems, Benicia, CA
Solar Tool & Die, Inc., Kansas City, MO
Sonic Machine & Tool, Inc., Tempe, AZ
Sonoma Precision Mfg. Co., Santa Rosa, CA
Sonora Precision Molds, Inc., Mi Wuk Village, CA
South Bay Machining, Santa Clara, CA
South Bend Form Tool Company, South Bend, IN
South Eastern Machining, Inc., Piedmont, SC
Southampton Manufacturing, Inc., Feasterville, PA
Southbridge Tool & Manufacturing, Dudley, MA
Southeastern Technology, Inc., Murfreesboro, TN
Southern Mfg. Technologies Inc., Tampa, FL
Southwest Industrial Services, Ft. Worth, TX
Southwest Manufacturing, Inc., Wichita, KS
Southwest Metalcraft Corporation, Tucson, AZ
Southwest Mold, Inc., Tempe, AZ
Southwest Precision Machining, Inc., North Royalton, OH
Southwest Replacement Parts, Stafford, TX
Space City Machine & Tool Co., Houston, TX
Spalding & Day Tool & Die Co., Louisville, KY
Spark Technologies, Inc., Schenley, PA
Spartak Products Inc., Houston, TX
Spartan Manufacturing Company, Garden Grove, CA
Special Tool & Engineering Corp., Indianapolis, IN
Specialty Machine & Hydraulics, Pleasantville, PA
Specialty Machines, Inc., Dayton, OH
Spectra-Physics Lasers Inc., Oroville, CA
Spenco Machine & Manufacturing, Temecula, CA
Spike Industries, North Lima, OH
Spin Pro Inc., Sunnyvale, CA
Spiral Grinding Company, Culver City, CA
Spirex Southwest, Gainesville, TX
Springfield Manufacturing, LLC, Clover, SC
Springfield Tool & Die, Inc., Greenville, SC
Sprint Tool & Die Inc., Meadville, PA
Spun Metals, Inc., Phoenix, AZ
St. Louis Tool & Mold, Valley Park, MO
Stadco, Los Angeles, CA
Standard Jig Boring Service, Inc., Akron, OH
Standard Machine Inc., Cleveland, OH
Standard Welding & Steel, Medina, OH
Stanek Tool Corporation, New Berlin, WI
Stanley Machining & Tool Corp., Carpentersville, IL
Star Tool & Die, Inc., Elkhart, IN
Star Tool & Engineering, Inc., Redwood City, CA
Starn Tool & Manufacturing Co., Meadville, PA
State Industrial Products, Inc., Phoenix, AZ
Stauble Machine & Tool Company, Louisville, KY
Stedcraft Inc., Torrington, CT
Steiner Fabrication, Phoenix, AZ
Stelted Manufacturing, Inc., Tempe, AZ
Sterling Engineering Corporation, Winsted, CT
Sterling Tool Company, Racine, WI
Stevens Manufacturing Co., Inc., Milford, CT
Stewart Manufacturing Company, Phoenix, AZ
Stieg Grinding Corporation, Rockford, IL
Stillion Industries, Ann Arbor, MI
Stillwater Technologies, Inc., Troy, OH
Stines' Machine, Inc., Vista, CA
Stone Machine & Tool, Inc., North Royalton, OH
Stoney Crest Regrind Service, Bridgeport, MI
Stott Tool & Machine Company, Amityville, NY
Streamline Tooling Systems, Muskegon, MI
Strobel Machine, Inc., Worthington, PA
Studwell Engineering, Inc., Sun Valley, CA
Subsea Ventures Inc., Houston, TX
Suburban Manufacturing Company, Euclid, OH
Summit Machine Company, Scottdale, PA
Summit Precision, Inc., Phoenix, AZ
Summit Tool & Mold Inc., Dayton, OH
Sun E.D.M., Inc., Tempe, AZ
Sun Polishing Corporation, North Royalton, OH
Sun Tool Company, Houston, TX
Sun Valley Tool, Inc., Tempe, AZ
Sunbelt Plastics, Inc., Frisco, TX
Sunrise Tool & Die, Inc., Henderson, KY
Sunset Tool Inc., Saint Joseph, MI
Super Finishers II, Phoenix, AZ
Superior Die Set Corporation, Oak Creek, WI
Superior Die Tool Machine Co., Columbus, OH
Superior Gear Box Company, Stockton, MO
Superior Jig, Inc., Anaheim, CA
Superior Mold Company, Ontario, CA
Superior Mold, Inc., Clearwater, FL
Superior Roll Forming Company, Valley City, OH
Superior Thread Rolling Company Inc., Arleta, CA
Superior Tool & Die Company, Bensalem, PA
Superior Tool & Die Company, Inc., Elkhart, IN
Superior Tool & Manufacturing, Branchburg, NJ
Superior Tool, Inc., Willow Street, PA
Supreme Tool & Die Company, Fenton, MO
Surface Manufacturing, Auburn, CA
Svedala Pumps & Process, Colorado Springs, CO
Swenton Tool & Die Company, Phoenix, NY
Swiss Specialties, Inc., Bohemia, NY
Swissco, Inc., Bell Gardens, CA
Swissline Precision Mfg. Inc., Cumberland, RI
Synergis Technologies Group, Grand Rapids, MI
Synergy Machine, Inc., Kent, WA
Syst-A-Matic Tool & Design, Meadville, PA
Systems 3, Inc., Tempe, AZ
SEPCO–ERIE, Erie, PA

SKS Die Casting and Machining, Alameda, CA
T & S Industrial Machining Corp., Woburn, MA
T C I Precision Metals, Gardena, CA
T J Tool and Mold, Guys Mills, PA
T M Industries, Inc., East Berlin, CT
T M Machine & Tool, Inc., Toledo, OH
T M S Inc., Lincoln, RI
T R Jones Machine Company, Inc., Crystal Lake, IL
T. J. Karg Company, Inc., Akron, OH
T–K & Associates, Inc., La Porte, IN
T–M Manufacturing Corporation, Sunnyvale, CA
Tag Engineering, Inc., Tucson, AZ
Tait Design & Machine Company Inc., Manheim, PA
Talbar, Inc., Meadville, PA
Talcott Machine Products, Inc., Meriden, CT
Talent Tool & Die, Inc., Berea, OH
Tana Corporation, Toledo, OH
Tangent Tool Inc., Fraser, MI
Tanner Oil Tools Inc., Houston, TX
Tapco USA Inc., Loves Park, IL
Target Precision, Meadville, PA
Taurus Tool & Engineering, Inc., Muncie, IN
Tebben Enterprises, Clara City, MN
Tech Industries, Inc., Cleveland, OH
Tech Manufacturing Company, Wright City, MO
Tech Mold, Inc., Tempe, AZ
Tech Ridge, Inc., South Chelmsford, MA
Tech Tool & Mold, Inc., Meadville, PA
Tech Tool and Machine Inc., Toledo, OH
Tech Tool, Inc., Detroit, MI
Tech-Etch, Inc., Plymouth, MA
Tech-Machine, Inc., Colorado Springs, CO
Techmetals, Inc., Dayton, OH
Techni-Cast Corporation, South Gate, CA
Techni-Products, Inc., East Longmeadow, MA
Technics 2000 Inc., Olathe, KS
Technodic, Inc., Providence, RI
Tecomet Thermo Electron, Tempe, AZ
Tedco, Inc., Cranston, RI
Teke Machine Corp., Rochester, NY
Tell Tool, Inc., Westfield, MA
Temco Corporation, Danvers, MA
Tenk Machine & Tool Company, Cleveland, OH
Tenneco Automotive/Monroe Auto, Hartwell, GA
Tennessee Metal Works, Inc., Nashville, TN
Tennessee Tool Corporation, Charlotte, TN
Terrell Manufacturing Inc., Strongsville, OH
Testand Corporation, Pawtucket, RI
Tetco, Inc., Plainville, CT
Teter Tool & Die, Inc., La Porte, IN
Texas Honing, Inc., Pearland, TX
Thaler Machine Company, Dayton, OH
Thayer Aerospace, Wichita, KS
The Bechdon Company, Inc., Upper Marlboro, MD
The Budd Company, Shelbyville, KY
The Chesapeake Machine Co., Baltimore, MD
The Die Works Inc., Hillsboro, MO
The Foster Group, Rochester, NY
The Goforth Corp., Fremont, CA
The Hanson Group, LTD., Ludlow, MA
The Sherman Corporation, Inglewood, CA
The Sullivan Corporation, Hartland, WI
The Timken Company, Canton, OH
The Will-Burt Company, Orrville, OH
Therm, Inc., Ithaca, NY
Thiel Tool & Engineering Co., St. Louis, MO
Thomas Machine Works, Inc., Newburyport, MA
Thompson Gundrilling, Inc., Van Nuys, CA
Thor Tool Corporation, San Leandro, CA
Thornhurst Manufacturing, Inc., Tampa, FL
Three-Way Pattern, Inc., Wichita, KS
Tidewater Machine Company, White Plains, MD
Time Machine & Stamping, Inc., Phoenix, AZ
Timon Tool & Die Co., Toledo, OH
Tipco Punch, Inc., Hamilton, OH
Tipp Machine & Tool, Inc., Tipp City, OH
Tisza Industries, Inc., Niles, MI
Titan, Inc., Sturtevant, WI
Toledo Blank, Inc., Toledo, OH
Tolerance Masters, Inc., Circle Pines, MN
Tomak Precision, Lebanon, OH
TomKen Tool & Engineering, Inc., Muncie, IN
Tool & Die Productions, Erie, PA
Tool Gauge & Machine Works, Inc., Tacoma, WA
Tool Mate Corporation, Cincinnati, OH
Tool Specialties Company, Hazelwood, MO
Tool Specialty Company, Los Angeles, CA
Tool Steel Service of California, Inc., Los Angeles, CA
Tool Tech Corporation, San Jose, CA
Tool Tech, Inc., Springfield, OH
Tool Technology, Inc., Danvers, MA
Tool Technology, Inc., Cookeville, TN
Tool-Matic Company, Inc., City Of Commerce, CA
Toolcomp Tooling & Components, Toledo, OH
Toolcraft of Phoenix, Inc., Glendale, AZ
Toolcraft Products, Inc., Dayton, OH
Toolex, Inc., Houston, TX
Tools Renewal Company, Birmingham, AL
Tools, Inc., Sussex, WI
Top Tool & Die, Inc., Cleveland, OH
Top Tool Company, Minneapolis, MN
Totally Radical Associates, Inc., Placentia, CA
Toth Industries, Inc., Toledo, OH
Toth Technologies, Cherry Hill, NJ
Tower Tool & Engineering, Inc., Machesney Park, IL
Trace-A-Matic Corporation, Brookfield, WI
Tracer Tool & Die Company Inc., Grand Rapids, MI
Trademark Die & Engineering, Comstock Park, MI
Tram Tek Inc., Phoenix, AZ
Trans-World Electric Inc., Port Arthur, TX
Treblig, Inc., Greenville, SC
Trec Industries, Inc., Brooklyn Heights, OH
Tree City Mold & Machine Co., Inc., Kent, OH
Treffers Precision, Inc., Phoenix, AZ
Tresco Tool, Inc., Guys Mills, PA
Tri Craft, Inc., Middleberg Heights, OH
Tri J Machine Company, Inc., Gardena, CA
Tri-City Machine Products, Inc., Peoria, IL
Tri-City Tool & Die, Inc., Bay City, MI
Tri-M-Mold, Inc., Stevensville, MI
Tri-Wire, Inc., Rockford, IL
Triad Plastic Technologies, Reno, NV
Triangle Mold & Machine Co. Inc., Hartville, OH
Triangle Tool Company, Erie, PA
Tricon Machine & Tool, Inc., Rochester, NY
Tricore Mold & Die, Machesney Park, IL
Tridecs Corporation, Hayward, CA
Trident Precision Manufacturing, Webster, NY
Trig Aerospace, Santa Ana, CA
Trim Systems, Inc., Seattle, WA
Trimac Manufacturing, Inc., Santa Clara, CA
Trimetric Specialties, Inc., Newark, CA
Trimline Tool, Inc., Grandville, MI
Trinity Tools, Inc., North Tonawanda, NY
Trio Tool & Die, Inc., Hawthorne, CA
Triple Quality Tool & Die, Inc., Bell, CA
Triple-T Cutting Tools Inc., West Berlin, NJ
Triplett Machine, Inc., Phelps, NY
Triplex Industries, Inc., Rochester, NY
Triumph Precision, Inc., Phoenix, AZ
Trojan Mfg. Co. Inc., Piqua, OH
Trotwood Corporation, Trotwood, OH
Tru Cut, Inc., Sebring, OH
Tru Form Manufacturing Corp., Rochester, NY
Tru Tool, Inc., Sturtevant, WI
True Cut EDM Inc., Garland, TX
True Position, Inc., Chatsworth, CA
True-Tech Corporation, Fremont, CA
Trueline Tool & Machine, Inc., Springfield, OH
Trust Technologies, Willoughby, OH
Trutron Corporation, Troy, MI
Tschida Engineering, Inc., Napa, CA

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Tucker Machine Company, North Branford, CT
Tura Machine Company, Folcroft, PA
Turbo Machine & Tool, Inc., Cleveland, OH
Turn-Tech, Inc., Decker Prairie, TX
Turner and Walima Mfg. Co., Inc., Essex, MA
Turner's Machine Shop, Phoenix, AZ
Twin City Plating Company, Minneapolis, MN
Two-M Precision Co., Inc., Willoughby, OH
Tydan Machining, Inc., Denton, TX
Tymar Precision Inc., Santa Clara, CA
TAB Manufacturing Corporation, Plainville, CT
TAE Corporation, Kent, WA
TC Precision Machine Inc., Dayton, OH
TCI Aluminum North, Hayward, CA
TLT-Babcock, Inc., Akron, OH
TMK Manufacturing Inc., Campbell, CA
U C O Tool & Die, Inc., Union City, OH
U F E Incorporated, Stillwater, MN
U M C, Inc., Hamel, MN
U P Machine & Engineering Co., Powers, MI
U S Machine & Tool, Inc., Murfreesboro, TN
Uddeholm, Santa Fe Springs, CA
Ugm, Inc., Santa Clara, CA
Ultra Precision, Inc., Freeport, PA
Ultra Stamping & Assembly, Inc., Rockford, IL
Ultra Tool & Manufacturing, Inc., Menomonee Falls, WI
Ultra-Tech, Inc., Kansas City, KS
Ultramation, Inc., Waco, TX
Ultron, Long Beach, CA
Uneco Manufacturing, Inc., Chicopee, MA
Unigraphics Solutions, Brookfield, WI
Unique Machine Company, Montgomeryville, PA
Unique Tool & Manufacturing, Randleman, NC
Unitech Enterprises, Inc., Rowland Heights, CA
Unitech, Inc., Kansas City, MO
United Centerless Grinding, East Hartford, CT
United Engineering Company, Kernersville, NC
United Machine Co., Inc., Wichita, KS
United Stars Aerospace, Inc., Kent, WA
United States Fittings, Inc., Warrensville Heights, OH
United Tool & Engineering Co., South Beloit, IL
United Tool & Engineering, Inc., Mishawaka, IN
United Tool & Mold Inc., Holland, MI
Universal Custom Process, Inc., Streetsboro, OH
Universal Precision Products Inc., Akron, OH
Universal Tool Company, Dayton, OH
Universal Tools & Manufacturing, Springfield, NJ
Universe Industries, Irvine, CA
Upland Fab, Inc., Upland, CA
USAeroteam, Dayton, OH
UT Technologies, Inc., Los Angeles, CA
V & M Tool Company, Inc., Perkasie, PA
V & S Die & Mold, Inc., Lakewood, OH
V A Machine & Tools, Inc., Broussard, LA
V Ash Machine Company, Cleveland, OH
V I Mfg., Webster, NY
V R C, Inc., Berea, OH
Valley Machine Works, Inc., Phoenix, AZ
Valley Tool & Die. Inc., North Royalton, OH
Valley Tool & Mfg. Inc., Grayslake, IL
Valley Tool Room, Inc., Phoenix, AZ
Vals Tool & Die Corp., Mount Vernon, NY
Value Tool & Engineering, Inc., South Bend, IN
Valv-Trol Company, Stow, OH
Van Engineering, Cincinnati, OH
Van Os Machine Works, Inc., St. Louis, MO
Van Reenen Tool & Die Inc., Rochester, NY
Van-Am Tool & Engineering, Inc., St. Joseph, MO
Vanderveer Industrial Plastics, Placentia, CA
Vanpro, Inc., Cambridge, MN
Vantage Mold & Tool Company, Akron, OH
Vaughn Manufacturing Company, Nashville, TN
Vektek, Inc., Emporia, KS
Venango Machine Products, Inc., Reno, PA
Venture Precision Machining Co., Champaign, IL
Venture Tool, Inc., Erie, PA
Ver-Sa-Til Associates, Inc., Chanhassen, MN
Versa-Tool, Inc., Meadville, PA
VersaTool & Die Machining, Beloit, WI
Vi-Tec Manufacturing Inc., Livermore, CA
Viking Tool & Engineering, Whitehall, MI
Viking Tool & Gage, Inc., Conneaut Lake, PA
Vistek Precision Machine Company, Ivyland, PA
Vitron Manufacturing, Inc., Phoenix, AZ
Vitullo & Associates, Inc., Warren, MI
Vobeda Machine & Tool Company, Racine, WI
Vogform Tool & Die Company, Inc., West Springfield, MA
Vulcan Tool Corporation, Dayton, OH
W + D Machinery Company, Inc., Overland Park, KS
W & H Stampings & Fineblanking, Inc., Hauppauge, NY
W D & J Machine & Engineering Inc., Fullerton, CA
W E C Technologies Corporation, Deer Park, NY
W G Strohwig Tool & Die, Inc., Richfield, WI
W M C Grinding, Inc., Santa Fe Springs, CA
W W G, Inc., Indianapolis, IN
Wagner Engineering, Inc., Gilbert, AZ
Waiteco Machine, Acton, MA
Wajo Tool and Die, Inc., East Hampstead, NH
Walco Tool & Engineering Corp., Lockport, IL
Walker Corporation, Ontario, CA
Walker Tool & Machine Company, Perrysburg, OH
Wallner Tooling/Expac, Inc., Rancho Cucamonga, CA
Waltco Engineering, Inc., Gardena, CA
Walter Tool & Mfg. Inc., Elgin, IL
Walz & Krenzer, Inc., Rochester, NY
Warmelin Precision Products, Hawthorne, CA
Waukesha Cutting Tools, Inc., Waukesha, WI
Waukesha Tool & Stamping Inc., Sussex, WI
Wausau Insurance Companies, Wausau, WI
Wayne Manufacturing, Inc., Boulder, CO
Webco Machine Products, Inc., Valley View, OH
Weco Metal Products, Ontario, NY
Weiss-Aug Co. Inc., East Hanover, NJ
Wejco Instruments Inc., Houston, TX
Weldex, Inc., Warren, MI
Weltek-Swiss, Englewood, CO
Wemco Precision Tool, Inc., Meadville, PA
Wentworth Company, Glastonbury, CT
Werkema Machine Company, Inc., Grand Rapids, MI
Wes Products, Madison Heights, MI
West Hartford Tool & Die Company, Newington, CT
West Milton Precision Machine, Vandalia, OH
West Pharmaceutical Services, Erie, PA
West Tool & Manufacturing, Inc., Cleveland, OH
West Valley Milling, Inc., Chatsworth, CA
West Valley Precision Inc., Santa Clara, CA
Westbrook Manufacturing, Inc., Dayton, OH
Western Machining, Inc., Fullerton, CA
Western Mass. MechTech, Inc., Ware, MA
Western Steel Cutting, Inc., San Jose, CA
Western Tap Manufacturing Co., Buena Park, CA
Westfield Gage Company, Inc., Westfield, MA
Westfield Manufacturing Corp., Westfield, IN
Westfield Tool & Die, Inc., Westfield, MA
Westlake Tool & Die Mfg., Avon, OH
Westtool Inc., Phoenix, AZ

White Machine, Inc., North Royalton, OH
White Machine, Inc., North Kingstown, RI
Whitehead Tool & Design, Inc., Guys Mills, PA
Wiegel Tool Works, Inc., Wood Dale, IL
Wightman Engineering Services, Santa Clara, CA
Wilco Die Tool Machine Company, Maryland Heights, MO
Wilkinson Mfg., Inc., Santa Clara, CA
Willer Tool Corporation, Jackson, WI
William Sopko & Sons Co., Inc., Cleveland, OH
Williams Controls Industries, Portland, OR
Williams Engineering & Manufacturing, Inc., Chatsworth, CA
Williams Machine, Inc., Lake Elsinore, CA
Windsor Tool & Die, Inc., Cleveland, OH
Winter's Grinding Service, Menomonee Falls, WI
Wire Cut Company, Inc., Buena Park, CA
Wire Tech E D M, Inc., Los Alamitos, CA
Wire Tech, LLC, Watertown, CT
Wirecut Technologies, Inc., Indianapolis, IN
Wiretec, Inc., Delmont, PA
WireCut E D M, Inc., Dallas, TX
Wisconsin Engraving Company, New Berlin, WI
Wisconsin Metalworking Machinery, Waukesha, WI
Wisconsin Mold Builders, LLC, Waukesha, WI
Wise Machine Co., Inc., Butler, PA
Wolfe Engineering, Inc., Campbell, CA
Wolverine Bronze Company, Roseville, MI
Wolverine Tool & Engineering, Belmont, MI
Wolverine Tool Company, St. Clair Shores, MI
Woodruff Corporation, Torrance, CA
Wright Brothers Welding & Sheet Metal, Inc., Hollister, CA
Wright Industries, Inc., Nashville, TN
Wright Industries, Inc., Gilbert, AZ
Wright-K Technology, Inc., Saginaw, MI
WADKO Precision, Inc., Houston, TX
WSI Industries, Inc., Long Lake, MN
X L I Corporation, Rochester, NY
Yates Tool, Inc., Medina, OH
Yoder Die Casting Corporation, Dayton, OH
Yorktown Precision Technologies, Yorktown, IN
Youngberg Industries, Inc., Belvidere, IL
Youngers Sons Mf, Viola, KS
Youngstown Plastic Tooling & Machinery, Inc., Youngstown, OH
Z & Z Machine Products, Inc., Racine, WI
Z M D Mold & Die, Inc., Mentor, OH
Zakar, Inc., Brockport, NY
Zip Tool & Die Co., Inc., Cleveland, OH
Zircon Precision Products, Inc., Tempe, AZ
Zuelzke Tool & Engineering, Milwaukee, WI
4 Axis Machining, Inc., Denver, CO
86 Tool Company, Cambridge Springs, PA

[FR Doc. 00–11637 Filed 5–9–00; 8:45 am]
BILLING CODE 3510–DR–U

## DEPARTMENT OF COMMERCE

### Technology Administration

### Office of Technology Policy; National Medal of Technology Nomination Evaluation Committee; Notice of Determination for Closure of Meeting

The National Medal of Technology Nomination Evaluation Committee has scheduled a meeting for May 22, 2000.

The Committee was established to assist the Department in executing its responsibility under 15 U.S.C. 3711. Under the provision, the Secretary is responsible for recommending to the President prospective recipients of the National Medal of Technology. The committee's recommendations are made after reviewing all nominations received in response to a public solicitation. The Committee is chartered to have twelve members.

*Time and Place:* The meeting will begin at 9 a.m. and end at 4 p.m. on May 22, 2000. The meeting will be held in Room 4807 at the U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, D.C. 20230. For further information contact: S.J. Dapkunas, Acting Director National Medal of Technology, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Herbert C. Hoover Building, Room 4226, Washington, D.C. 20230, Phone: 202–482–1424.

If a member of the public would like to submit written comments concerning the committee's affairs at any time before and after the meeting, written comments should be addressed to the Acting Director of the National Medal of Technology as indicated above.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel, have formally determined, pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended, that this meeting may be properly closed because it is concerned with matters that are within the purview of 5 U.S.C. 522(c)(9)(b). Specifically, it was determined that the meeting may be closed to the public because revealing information about Medal candidates would be likely to significantly frustrate implementation of a proposed agency action. A copy of the determination is available for public inspection in the Central Reference and Records Inspection Facility, Room 6219, Main Commerce.

In particular, the meeting will be closed to discuss the relative merits of persons and companies nominated for the Medal. Public disclosure of this information would be likely to significantly frustrate implementation of the National Medal of Technology program because premature publicity about candidates under consideration for the Medal, who may or may not ultimately receive the award, would be likely to discourage nominations for the Medal.

Due to closure of the meeting, copies of the minutes of the meeting will not be available, however a copy of the Notice of Determination will be available for public inspection and copying in the office of S.J. Dapkunas, Acting Director, National Medal of Technology, 1401 Constitution Avenue, N.W., Herbert Hoover Building, Room 4226, Washington, D.C. 20230, (Phone: 202–482–1424).

**Kelly H. Carnes,**
*Assistant Secretary for Technology Policy.*

[FR Doc. 00–11643 Filed 5–9–00; 8:45 am]
BILLING CODE 3510–18–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Board of Visitors Meeting

**AGENCY:** Department of Defense Acquisition University.

**ACTION:** Board of Visitors meeting.

**SUMMARY:** The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Packard Conference Center, Building 184, Ft. Belvoir, Virginia on Wednesday June 7, 2000 from 0900 until 1500. The purpose of this meeting is to report back to the BoV on continuing items of interest. The agenda will also include a presentation by a FY 1999 DAU External Acquisition Research Program awardee.

The meeting is open to the public; however, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mr. John Michel at 703.845.6756.

Dated: May 4, 2000.

**L.M. Bynum,**

*Alternate, OSD Federal Liaison Officer, Department of Defense.*

[FR Doc. 00–11602 Filed 5–9–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### The Joint Staff; National Defense University (NDU), Board of Visitors (BOV); Meeting

**AGENCY:** National Defense University.

**ACTION:** Notice of meeting.

**SUMMARY:** The President, National Defense University has scheduled a meeting of the Board of Visitors.

**DATES:** The meeting will be held between 1230–1530 on June 23, 2000.

**ADDRESSES:** The meeting will be held in Room 155B, Marshall Hall, Building 62, Fort Lesley J. McNair, Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Director, University Operations, National Defense University Fort Lesley J. McNair, Washington, D.C. 20319–6000. To reserve space, interested persons should phone (202) 685–3937.

**SUPPLEMENTARY INFORMATION:** The agenda will include present and future educational and research plans for the National Defense University and its components. The meeting is open to the public, but the limited space available for observers will be allocated on a first come, first served basis.

Dated: May 4, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–11603 Filed 5–9–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF EDUCATION

### Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on March 16,1999, and August 13, 1999, an arbitration panel rendered decisions on both merit and remedy in the matter of *James E. Waldie* v. *Alabama Department of Rehabilitation Services (Docket No. R–S/97–13).* This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a) upon receipt of a complaint filed by petitioner, James E. Waldie.

**FOR FURTHER INFORMATION:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington DC 20202–2738. Telephone: (202) 205–9317. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

#### Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:
http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d–2(c)) (the Act), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

#### Background

This dispute concerns the alleged improper denial by the Alabama Department of Rehabilitation Services, the State licensing agency (SLA), of Mr. James E. Waldie's request to bid on a full food service vending facility at Fort McClellan, Anniston, Alabama. A summary of the facts is as follows: In April 1996, the SLA informed licensed blind vendors of an opportunity to manage a full food service vending facility at Fort McClellan, Anniston, Alabama. Twelve persons bid on the Fort McClellan vending facility including Mr. James E. Waldie. On April 23, 1996, the selection committee, which included members of the Elected Committee of Blind Vendors, met to make the selection for the Fort McClellan vending facility. Following the selection committee's evaluation, they unanimously awarded the Fort McClellan location to another vendor. The decision to award the location to another vendor rather than complainant was based upon the successful vendor receiving the highest total number of points of any applicant, including additional points for seniority.

Mr. Waldie was informed of the SLA's decision to award the bid to another vendor for the Fort McClellan vending facility. Complainant requested that the SLA convene a full evidentiary hearing on this matter, which was held on January 2, 1997.

Following the hearing, the hearing officer affirmed the selection committee's decision to award the Fort McClellan bid to the other vendor, and the SLA adopted the hearing officer's decision as final agency action. It is this decision that complainant sought to have reviewed by a Federal arbitration panel. An arbitration panel heard this matter on November 16, 1998, concerning the merits of the case and on May 26, 1999, regarding the remedy given to Mr. Waldie.

#### Arbitration Panel Decision

The issue before the arbitration panel was whether the Alabama Department of Rehabilitation Services violated the policies and procedures governing the Business Enterprise Program of Alabama during the selection of a vendor/manager for the Fort McClellan, Anniston, Alabama facility pursuant to the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations (34 CFR part 395).

In ruling on the merits of the case, a majority of the panel determined that the successful bidder should have been disqualified since that vendor did not fulfill the training requirements for managing a full food service operation such as the Fort McClellan vending facility. In reaching that conclusion, the majority of the panel noted that the SLA had sponsored a special 18-week program dedicated solely to cafeteria operations and had stated that specific cafeteria training was a prerequisite for any individual to be selected for a cafeteria facility under the Business Enterprise Program.

The majority of the panel further noted that Mr. Waldie had completed this training while the successful bidder for the Fort McClellan vending facility had never taken this or similar cafeteria training. The majority of the panel concluded that, since the full food service operation at Fort McClellan was the equivalent of a cafeteria, the

successful bidder should have been disqualified for lack of training. Similarly the panel ruled that the successful bidder lacked food preparation experience and, therefore, did not meet the experience requirements for managing a full food service operation.

One panel member dissented.

In ruling on the question of remedy, a majority of the panel determined that Mr. Waldie did not prove under the facts of the case that he was entitled to damages. The panel ruled that had the successful bidder been disqualified, there was another individual with a higher score than Mr. Waldie who would have been chosen as the successful bidder for the Fort McClellan food service operation. The panel noted both the Eleventh Amendment and the Eleventh Circuit Court of Appeals decision in *Georgia Department of Human Resources* v. *Nash* 915 F.2d 1482 (11th Cir. 1990) barring the award of damages.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: May 4, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–11593 Filed 5–9–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Idaho Operations Office; Notice of Availability of Solicitation for Awards of Financial Assistance

**AGENCY:** Idaho Operations Office, DOE.

**ACTION:** Notice of availability of solicitation—Aluminum Visions of the Future.

**SUMMARY:** The U.S. Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research and development of technologies which will reduce energy consumption, reduce environmental impacts and enhance economic competitiveness of the domestic aluminum industry. The research is to address research priorities identified by the aluminum industry in the Aluminum Industry Technology Roadmap and the Inert Anode Roadmap, (available at the following URL: *http://www.oit.doe.gov/aluminum/alindust.shtml).*

**DATES:** The Standard Form 424, and the technical application (20 page maximum), must be submitted by 3:00 p.m. MST on Wednesday, July 12, 2000.

**ADDRESSES:** Applications should be submitted to: Elizabeth Dahl, Contract Specialist, Procurement Services Division, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Dahl, Contract Specialist at *dahlee@id.doe.gov,* facsimile at (208) 526–5548, or by telephone at (208) 526–7214.

**SUPPLEMENTARY INFORMATION:** Approximately $3,000,000 in combined fiscal year 2000 and 2001 federal funds is expected to be available to totally fund the first year of selected research efforts. DOE anticipates making four to six awards each with a duration of four years or less. This solicitation is requiring 50% cost share to ensure industrial involvement in each of the proposals and to ensure that the novel, energy efficient processes developed by this R&D program will be fully implemented by industry. There will be no waivers of this cost share requirement. Multi-partner collaborations between industry, university, and National Laboratory participants are encouraged. The issuance date of Solicitation Number DE–PS07–00ID13914 is on or about May 8, 2000. The solicitation is available in its full text via the Internet at the following address: *http://www.id.doe.gov/doeid/PSD/proc-div.html.* The statutory authority for this program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Public Law 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on May 3, 2000.

**R.J. Hoyles,**

*Director, Procurement Services Division.*

[FR Doc. 00–11728 Filed 5–9–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Idaho Operations Office, Trespassing On DOE Property: Idaho Operations Office Properties

**AGENCY:** Idaho Operations Office, Department of Energy.

**ACTION:** Notice of designation of Idaho operations office properties and facilities as off-limits areas.

**SUMMARY:** The Department of Energy (DOE) hereby amends and adds to the previously published site descriptions of various DOE and contractor occupied buildings as Off-Limits Areas. The locations are in Idaho Falls, Idaho, and various DOE vehicle/bus parking lots, which are located in Idaho Falls, Blackfoot, Mackay, Rexburg, Rigby, Highway 20 and Shelley New Sweden Road, and Pocatello. In accordance with 10 CFR Part 860, it is a federal crime under 42 U.S.C. 2278a for unauthorized persons to enter into or upon these Idaho Operations Office properties and facilities. If unauthorized entry into or upon these properties is into an area enclosed by a fence, wall, floor, roof or other such standard barrier, conviction for such unauthorized entry may result in a fine of not more than $100,000 or imprisonment for not more than one year or both. If unauthorized entry into or upon the properties is into an area not enclosed by a fence, wall, floor, roof, or other such standard barrier, conviction for such unauthorized entry may result in a fine of not more than $5,000.

**EFFECTIVE DATE:** May 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jo Ann Williams, Office of General Counsel, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6975, or M.M. McKnight, Office of Chief Counsel, Idaho Operations Office, 850 Energy Drive Place, Idaho Falls, Idaho 83401, (208) 526–0275.

**SUPPLEMENTARY INFORMATION:** The Department of Energy (DOE), successor agency to the Atomic Energy Commission (AEC), is authorized, pursuant to § 229 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2278a), and § 104 of the Energy Reorganization Act of 1974 (42 U.S.C. 5814), as implemented by 10 CFR Part 860, published in the **Federal Register** on September 14, 1993 (58 FR 47984–47985), and § 301 of the Department of Energy Organization Act (42 U.S.C. 7151), to prohibit unauthorized entry and the unauthorized introduction of weapons or dangerous materials into or upon any DOE facility, installation or real property. By notices dated August 5, 1988, (53 FR 29512), January 23, 1987 (52 FR 2580), and November 1, 1983 (48 FR 50390), DOE prohibited unauthorized entry into or upon the Idaho National Engineering Laboratory (now the Idaho National Engineering and Environmental Laboratory, or INEEL), and various DOE and contractor occupied facilities, including the Willow Creek Building and the DOE Headquarters Building. This notice includes DOE Vehicles and Bus Parking Facilities located in Idaho Falls, Arco, on Highway 20, Bonneville County,

Blackfoot, Mackay, Shelley, Rexburg, Rigby, and Pocatello, Idaho.

Since the last published notice on August 5, 1988, DOE has leased new facilities, and terminated its use of other facilities. For example, DOE–ID now occupies two buildings for its Idaho Operations Office Headquarters, known as ID North and ID South. In addition to other facilities listed below, DOE–ID's management and operating contractor currently occupies a relatively new building, the Energy Research Office Building, which heretofore has not been designated an Off-Limits Area.

The property descriptions and names of some facilities and property holdings have also changed, or contained errors when originally published. Today's notice reflects these additions, corrections, and modifications. Accordingly, the DOE prohibits the unauthorized entry and the unauthorized introduction of weapons or dangerous materials, as provided in §§ 860.3 and 860.4 into and upon these Idaho Operations Office sites. The sites referred to above have previously been designated as Off-Limits Areas, and this notice modifies or adds to those Off-Limits Areas. Descriptions of the sites being designated (or redesignated) at this time are as follows:

**1. Technical Support Annex**

1580 Sawtelle Street, Idaho Falls (EG&G Office TSA): Lot 2, Block 3, Hatch Grandview Subdivision, Division No. 3, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

**2. Technical Support Building**

1520 Sawtelle Street, Idaho Falls (EG&G Office TSB): Lot 1, Block 3, Hatch Grandview Subdivision, Division No. 3, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

**3. Energy Research Office Building**

2525 Fremont Avenue, Idaho Falls (Parking Lot and Office Building): Lots 5 & 7, Block 1, Boyer Addition, Division No. 1 First Amended, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

**4. ID—North Building**

1 Energy Drive, Idaho Falls: [Actual property address is 850 ENERGY DRIVE (Energy Inc.)]: Lot 1, Block 1, Energy Plaza, an addition to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof. If the Parking Lot directly across the street to the South from Energy Inc. is also being used, the legal description for that property is: Lot 1, Block 2, Energy Plaza, an addition to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

**5. ID—South Building**

785 Doe Place, Idaho Falls [Actual property address is 708 DOE Place (DOE Office)]; Lot 1 Block 1, D.O.E. Addition to the City of Idaho Falls, County of Bonneville, State of Idaho according to the recorded plat thereof.

**6. May Street North Building**

369 May Street, Idaho Falls (Litco Therman Science): Lots 41 & 42, Block 12, Capitol Hill Addition, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

**7. May Street South Building**

410 May Street, Idaho Falls (DOE): Lots 19, 20, 21 & 22, Capitol Hill Addition, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

**8. Willow Creek Building**

1955 Fremont Avenue Idaho Falls (Willow Creek Building): Lot 1, Block 1, Keefer Office Park Addition, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

**9. University Place**

1776 Science Center Drive, Idaho Falls (University Place): Government Lots 11 and 12, Section 12, Township 2 North, Range 37, East of the Boise Meridian, Bonneville County, Idaho, EXCEPTING THEREFROM: Beginning at a point on the East bank of the Snake River which bears S.31 degrees 12′43″ W. 771.32 feet from the Center of Section 12, Township 2 North, Range 37 East of the Boise Meridian; running thence S.89 degrees 52′ 00″ E. 101.59 feet; thence N.10 degrees 01′ 12″ W. 48.69 feet; thence N.19 degrees 09′04″ W. 34.02 feet; thence N.24 degrees 18′ 12″ E 72.29 feet; thence N.05 degrees 43′ 14″ W. 50.38 feet; thence N.03 degrees 30′22″ E. 77.80 feet; thence S.86 degrees 35′ 11″ E. 28.53 feet; thence N.03 degrees 34′ 41″ E. 113.18 feet; thence N.03 degrees 41′ 10″ W. 111.80 feet; thence N.07 degrees 17′ 24″ W. 126.51 feet; thence N.05 degrees 14′36″ W. 169.74 feet; thence N.11 degrees 21′28″ E. 74.42 feet; thence N.01 degrees 38′49″ W. 118.68 feet; thence N.00 degrees 23′55″ E. 131.89 feet; thence N.34 degrees 04′37″ E 66.30 feet; thence N.06 degrees 03′04″ E. 116.72; thence N.15 degrees 30′06″ W. 47.58 feet; thence N.62 degrees 58′40″ W. 107.67 feet to a point on the East bank of the Snake River; thence the following 14 courses along said East bank: (1) S.25 degrees 12′33″ W. 31.66 feet; (2) S. 15 degrees 30′06″ E. 77.32 feet; (3) S.06 degrees 03′04″ W. 72.73 feet; (4) S.34 degrees 04′37″ W. 71.61 feet; (5) S.00 degrees 23′55″ W. 163.94 feet; (6) S.01 degrees 38′49″ E 109.07 feet; (7) S.11 degrees 21′28″ W. 77.61 feet; (8) S.05 degrees 14′36″ E. 186.12 feet; (9) S.07 degrees 17′24″ E 125.15 feet; (10) S.03 degrees 41′10″ E. 102.31 feet; (11) S.03 degrees 34′41″ W. 162.50 feet; (12) S.24 degrees 18′12″ W. 151.21 feet; (13) S.19 degrees 09′04″ E. 65.88 feet; & (14) S.10 degrees 01′12″ E. 22.80 feet to the Point of Beginning.

**10. North Holmes Complex**

1570 N. Holmes Avenue, Idaho Falls [Actual property address is 1445 Northgate Mile], Lot 2, Block 1, Fred Meyer-Country Club Mall Subdivision to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

**11. Idaho Falls Bus Lot & Dispatch Building**

1345 Chaffin Lane, Idaho Falls [Actual property address is 1345 N. Woodruff Avenue (INEL Bus Station)]: The South 160.41 feet of Lot 8, and all of Lots 9 through 13, Block 1, Chaffin Addition, Division No. 2, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

**12. North Holmes Laboratory**

1405 Northgate Mile, Idaho Falls (EG&G Lab): Beginning at a point that is S.0 degrees 25′00″ W. along the section line 1024.1 feet and S.89 degrees 53′00″ E. 33.72 feet from the Northwest corner of Section 17, Township 2 North, Range 38, East of the Boise Meridian, Bonneville County, Idaho, and being on the East right-of-way line of Lewisville Highway, 40.0 feet from the centerline of said highway; thence S.89 degrees 53′00″ E. 471.0 feet; thence N.0 degrees 13′30″ E. 186.50 feet; thence N.89 degrees 53′00″ W. 471.0 feet to the East right-of-way line of Lewisville Highway; thence S.0 degrees 13′30″ W. 186.50 feet to the Point of Beginning. AND ALSO: Beginning at a point on the East line of Holmes Avenue that is S.0 degrees 25′00″ W. 837.64 feet along the City monumented section line and S.89 degrees 53′00″ E. 33.08 feet from the Northwest corner of Section 17, Township 2 North, Range 38, East of the Boise Meridian, Bonneville County, Idaho, said point of beginning being the Northwest corner of the property described by Instrument No. 739201, as

recorded in the Bonneville County Recorder's Office, and running thence S.89 degrees 53′00″ E. 471.0 feet to the Northeast corner of said property; thence N.0 degrees 13′30″ E. 1.13 feet; thence N.89 degrees 22′42″ W. 260.76 feet; thence S.89 degrees 10′55″ W. 210.29 feet to the Point of Beginning.

**13. North Yellowstone Laboratory**

1988 N. Yellowstone, Idaho Falls [Actual property address is 1980 N. Yellowstone Hwy (EG&G Office)]: Lot 1, Block 1, O'Dell Plaza, Division No. 1, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

**14. Woodruff Avenue Warehouse**

1965 N. Woodruff Avenue, Idaho Falls [Actual property address is 2010 N. Woodruff Avenue (Marshall's Tile & Supply)]: Lot 7, Block 4, Hodson Addition, First Amended, to the County of Bonneville, State of Idaho, according to the recorded plat thereof.

**15. Idaho Innovation Center/Bonneville County Technology Center**

2300 N. Yellowstone Highway, Idaho Falls (Bonneville County Parcels): Beginning at a point on the Southerly right-of-way line of U.S. Highway No. 191 that is S.0 degrees 16′17″ W. 661.51 feet along the section line and N.89 degrees 43′43″ W. 541.92 feet from the East Quarter Corner of Section 8, Township 2 North, Range 38, East of the Boise Meridian, Bonneville County, Idaho, said point of beginning being a point on a curve with a radius of 11399.20 and a tangent that bears S.55 degrees 07′29″ W.; thence to the left along said curve 278.44 feet through a central angle of 2 degrees 13′44″; thence S.45 degrees 43′51″ E. 190.28 feet; thence S.33 degrees 51′01″ E. 65.69 feet to a point of curve with a radius of 89.98 feet; thence to the left along said curve 100.39 feet through a central angle of 63 degrees 55′20″; thence N. 61 degrees 35′32″ E. 136.25 feet parallel with and 1.6 feet perpendicular from an existing building wall; thence N. 35 degrees 59′23″ E. 56.44 feet; thence N.33 degrees 17′20″ W. 336.50 feet to the Point of Beginning. AND ALSO: Beginning at a point on the Southerly right-of-way line of U.S. Highway No. 191, that is S.0 degrees 16′17″ W. 567.49 feet along the section line and N.89 degrees 43′43″ W. 406.29 feet from the East Quarter Corner of Section 8, Township 2 North, Range 38, East of the Boise Meridian, Bonneville County, Idaho, said point of beginning being a point on a curve with a radius of 11399.20 feet and a tangent that bears S.53 degrees 43′31″ W.; thence to the left along said curve 165.04 feet through a central angle of 0 degrees 49′46″; thence S.33 degrees 17′20″ E. 336.50 feet; thence N.35 degrees 59′23″ E. 158.93 feet; thence N.1 degrees 55′02″ W. 31.41 feet to the Southeast corner of an existing building; thence N.33 degrees 17′20″ W. 256.82 feet along the East wall of said building extended, to the Point of Beginning.

**16. Lincoln Road Storage**

910 Lincoln Road, Idaho Falls (Schwendiman Wholesale): Beginning a point that is N.89 degrees 55′00″ E. 196.2 feet from the Northwest corner of the Northeast Quarter of Section 17, Township 2 North, Range 38, East of the Boise Meridian, Bonneville County Idaho; and running thence N.89 degrees 55′00″ E along the section line, 100.0 feet; thence South 536.05 feet to the North line of Bel-Aire Addition to the City of Idaho Falls; thence Westerly along the North line of said addition 100.02 feet; thence North 536.9 feet to the North line of said Section 17 to the Point of Beginning. LESS the South 47 feet thereof. AND ALSO LESS: Beginning at a point that is N.89 degrees 55′00″ E 196.2 feet from the Northwest corner of the Northeast Quarter of said Section 17; thence South 28.48 feet; thence S.89 degrees 22′06″ E. 100.01 feet; thence North 29.73 feet to the North line of Section 17; thence S.89 degrees 55′00″ W. 100.0 feet to the Point of Beginning. AND ALSO LESS that certain property conveyed to the City of Idaho Falls by Right-of-Way Deed recorded as Instrument No. 707336, Deed Records of Bonneville County, Idaho.

**17. North Boulevard Annex**

2095 N. Boulevard, Idaho Falls [Actual property address is 2251 N. Boulevard (USA)]: Lot 1, Block 1, Marshall Research Park, Division No. 1, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof. AND ALSO, Lots 2 & 3, Marshall Research Park, Division No. 2, to the City of Idaho Falls, County of Bonneville, State of Idaho, according to the recorded plat thereof.

**18. Parking Lot Located at US 20 and Shelley New Sweden Road**

A parcel of land situated in the NW¼ NW¼, Section 21, Township 2 North, Range 37 East, Boise Meridian, Bonneville County, Idaho, more particularly described as follows: Commencing at the northwest corner of said northwest quarter of the northwest quarter (section corner, CP&F Instrument No. 944377); thence south 88 degrees 30′49″ east (of record as EAST), 40.78 feet, along the north boundary of said NW¼ NW¼ and along the southerly right of way of US Hwy-20, to the Point of Beginning; thence continuing south 88 degrees 30′49″ east, a distance of 299.80 feet, along said north boundary and said right of way of US Hwy-20; thence south 84 degrees 39′51″ east, a distance of 193.06 ft., along said right of way; thence 58.76 feet along the arc of a 25.00 foot radius curve right, said curve having a chord bearing south 17 degrees 19′56″ east, and a distance of 46.14 feet; thence south 50 degrees 00′00″ west, a distance of 304.50 feet; thence a distance of 351.58 feet along the arc of a 987.11 foot radius curve left, said curve having a chord bearing south 39 degrees 47′47″ west, a distance of 349.73 feet; thence a distance of 79.16 feet along the arc of a 30.00 foot radius curve right, said curve having a chord bearing north 74 degrees 49′06″ west, a distance of 58.11 feet; thence north 00 degrees 46′14″ east (of record as north 00 degrees 16′51″ east), a distance of 519.08 feet, parallel with the centerline of the existing Shelley New Sweden Road, to the Point of Beginning. Contains 3.424 acres, more or less.

**19. North Bethesda Office Park/ Rockville, Md**

Fee Simple Estate as to Parcel 1:

Being part of Lot 16, Higgins Estate, as shown and recorded in Plat Book 70 at Plat 6551 among the Land Records of Montgomery County, Maryland, and

Beginning for the same at a point of the easterly side of Woodglen Drive (as now dedicated 85 feet wide), said point being the southwest corner of said Lot 16, thence with part of said easterly side

(1) North 03 Degrees 53′27″ West 398.72 feet to the beginning point from Investex Management Corporation to Montgomery County, Maryland for the widening of Wall Lane and recorded in Liber 6295 at Folio 309 among said land records, thence with the southerly side of said Wall Lane and the 5th and 4th lines reversed, the two following lines;

(2) North 71 Degrees 00′04″ East 12.94 feet, thence;

(3) North 88 Degrees 57′56″ East 265.00 feet to intersect the common dividing line of said Lot 16 and Lot 15, Higgins Estate, as shown and recorded in Plat Book 69 at Plat 6530 among said land records, thence leaving Wall Lane and with the common lines of Lots 15 and 16 the two following lines;

(4) South 19 Degrees 32′26″ East 153.85 feet, thence;

(5) North 89 Degrees 00′49″ East 142.19 feet to the westerly side of Wisconsin Avenue (Rockville Pike) Maryland Route No. 355, thence with

said westerly side the six following lanes;

(6) South 19 Degrees 32′26″ East 186.69 feet, thence with an arc of a curve to the left whose radius is 22,978.32 feet an arc distance of 18.40 feet and a chord bearing distance of;

(7) South 19 Degrees 33′48″ East 18.40 feet, thence;

(8) South 70 Degrees 22′34″ West 22.00 feet, thence;

(9) South 19 Degrees 37′26″ East 30.00 feet, thence;

(10) North 70 Degrees 22′34″ East 22.00 feet, thence with an arc of a curve to the left whose radius is 22,978.32 feet and arc distance of 28.86 feet and a cord bearing and distance of;

(11) South 19 Degrees 41′52″ East 28.86 feet to a point in the southeast corner of said Lot 16, thence leaving said westerly side of Wisconsin Avenue wand with the southerly outline of said Lot 16;

(12) 88 Degrees 19′33″ West 532.40 feet to the point of beginning, containing 3.87544 acres.

**20. Mackay Bus Lot**

Lots 22, 23 and 24, Block 10, City of Mackay, Idaho Original Townsite, according to the official plat thereof on file with the Custer County, Idaho, Recorder.

**21. Rigby Bus Lot**

Land situated in Jefferson County, described below as: Commencing at a point 2 rods North of the Southeast corner of the Southeast quarter of Section Thirteen (13) in Township 4 North Range 38 East Boise Meridian, and running thence West 500 feet, thence North 200 feet, thence East 470 feet, thence North 200 feet, thence East 30 feet; thence South 400 feet to the place of beginning.

**22. Blackfoot Bus Lot**

A parcel of land situated in Bingham County, Idaho, being a portion of the SW¼ NW¼ of Section 33, Township 2 South, Range 35 East, Boise Meridian, described as follows, to-wit:

Commencing at the Southwest corner of the SW¼ NW¼ of Section 33, Township 2 South, Range 35 East, Boise Meridian; thence South 89 degrees 19′47″ East along the South line of said SW¼ NW¼, a distance of 30.0 feet, more or less, to a point in the Easterly right of way line of existing Groveland Road; thence North 0 degrees 23′07″ East (shown of record to be North) along said existing Easterly right of way line 429.75 feet to the Real Point of Beginning; thence East 435.6 feet; thence North 220.0 feet; thence West 435.0 feet, more or less, to a point in said existing Easterly right of way line; thence Southerly along said existing Easterly right of way line 220.0 feet, more or less, to the REAL POINT OF BEGINNING.

The area above described contains approximately 2.20 acres.

**23. Pocatello Bus Lot & Office Building**

A portion of Section 22, Township 6 South, Range 34 East, Boise Meridian, BANNOCK COUNTY, IDAHO described as follows: The South ½ West ½ West ½ Southeast ¼ Southeast ¼, EXCEPT a parcel of land deeded to State of Idaho by Instrument No. 315116 on April 3, 1956, described as follows:
Commencing at South west corner of Southeast ¼ Southeast ¼ of said Section 22; thence North along West line of said Southeast ¼ Southeast ¼ 660.0 feet to the True Point of Beginning; thence South 89 degrees 51′ East 330.65 feet to the East line of said South ½ West ½ West ½ Southeast ¼ Southeast ¼; thence South 0 degrees 10′ 30″ West, 477.4 feet; thence North 38 degrees 31′West 525.9 feet, more or less, to a point in West line of said South ½ West ½ West ½ Southeast ¼ Southeast ¼; thence North 0 degrees 10′30″ East 64.5 feet to True Point of Beginning.

**24. INEEL Research Center (IRC)—**

2351 North Boulevard: Lot 1 Block 1 Marshall Research Park, Lot 2 Block 2 Marshall Research Park, Lot 3 Block 2 Marshall Research Park.

**25. INEEL Supercomputing Center (ISC)**

1155 Foote Drive: Lot 6 Block 2 Hatch Grandview Division No. 3.

**26. INEEL Supercomputing Center (ISC) Parking Lot**

1155 Foote Drive: Beginning at the Northeast corner of Lot 1A, Block 2, in Division 4 of the Idaho Falls Airport Industrial Park, City of Idaho Falls, Bonneville County; thence proceeding west along the north property line a distance of approximately 180 feet, thence south in a direction parallel to the west property line until intersection with the south property line is reached, thence east along the south property line to the southeast corner, thence north to the point of beginning, containing approximately .83 acres.

**27. Jackson Outreach Office, Jackson, Wyoming (310 E. Pearl Street)**

The West 50 feet of Lot 1 of Block 3 of the Van Vleck Plat an Addition to the town of Jackson, Teton County, Wyoming, according to that plat recorded April 24, 1929 as Plat No. 116.

**28. Idaho National Engineering and Environmental Laboratory**

Commence at a point which is the SW. corner of sec. 31, T. 2N., R. 28E.; Thence N. approximately 11 miles to the NW. corner of sec. 7, T. 3N., R. 28E.; Thence E. approximately 1 mile to the NE. corner sec. 7, T. 3N., R, 28E.; Thence N. approximately one-fourth mile; Thence E. approximately one-fourth mile; Thence N. approximately one-fourth mile; Thence E. approximately one-fourth mile; Thence N. approximately one-fourth mile; Thence E. approximately one-half mile; Thence N. approximately one-fourth mile; to the NW. corner sec. 4, T. 3N., R. 28E.; Thence E. approximately one-half mile; Thence N. approximately one-fourth mile; Thence E. approximately one-half mile; Thence N. approximately one-fourth mile; Thence E. approximately one-fourth mile; Thence N. approximately one-fourth mile; Thence E. approximately one-half mile; Thence N. approximately one-fourth mile; Thence E. approximately one-half mile; Thence N. approximately one-fourth mile; Thence E. approximately one-fourth mile; Thence N. approximately one-fourth mile; Thence E. approximately one-half mile; Thence N. approximately one-fourth mile; Thence E. approximately one-half mile; Thence N. approximately one-fourth mile; Thence E. approximately one-fourth mile; Thence N. approximately one-half mile; Thence E. approximately one-fourth mile; Thence N. approximately one-half mile; Thence E. approximately one-fourth mile; Thence N. approximately one-half mile; Thence E. approximately one-fourth mile; Thence N. approximately one mile; Thence E. approximately one-fourth mile; Thence N. approximately 1¼ miles; Thence E. approximately one-fourth mile; to the NE. corner sec. 32, T. 5N., R. 29E.; Thence N. approximately 1 mile to NW. corner, sec. 28, T. 5N., R. 29E.; Thence E. approximately one-fourth mile; Thence N. approximately 1 mile; Thence E. approximately 3¾ miles to the NE. corner, sec. 24, T. 5N., R. 29E.; Thence N. approximately 1½ miles; Thence E. approximately 2 miles; Thence N. approximately one-half mile to the NW. corner, sec. 9, T. 5N., R. 30E.; Thence

E. approximately 1 mile to the NE. corner, sec. 9, T. 5N., R. 30E.; Thence N. approximately 7 miles to the NW. corner, sec. 3, T. 6N., R. 30E.; Thence E. approximately 2 miles to the NE. corner, sec. 2, T. 6N., R. 30E.; Thence N. approximately 9 miles to NW. corner, sec. 24, T. 8N., R. 30E.; Thence E. approximately 10½ miles; Thence S. approximately 5 miles; Thence E. approximately one-half mile to the NE. corner, sec. 18, T. 7N., R. 33E.; Thence S. approximately one-half mile; Thence E. approximately 1 mile; Thence S. approximately one-half mile to the SE. corner, sec. 17, T. 7N., R. 33E.; Thence E. approximately 1 mile to the NE. corner, sec. 21, T. 7N., R. 33E.; Thence S. approximately 2 miles to the SW. corner, sec. 28, T. 7N., R. 33E.; Thence W. approximately one-half mile; Thence S. approximately one-half mile; Thence W. approximately one-fourth mile; Thence S. approximately 2½ miles; Thence E. approximately three-fourths mile; Thence S. approximately 1 mile; Thence E. approximately 2 miles; Thence N. approximately 1 mile; Thence E. approximately three-fourths mile; Thence S. approximately one-fourth mile; Thence E. approximately one-fourth mile; Thence SE. parallel to Idaho Highway No. 28 approximately 1¼ miles to the SE. corner of sec. 18, T. 6N., R. 34E.; Thence W. approximately 2 miles; Thence S. approximately 1 mile; Thence E. approximately 1 mile; Thence S. approximately 2 miles; Thence E. approximately 1 mile; Thence S. approximately 1 mile; Thence E. approximately 1¾ mile; Thence S. approximately 9½ mile; Thence W. approximately one-fourth mile; Thence S. approximately 4 mile; Thence W. approximately one-half mile; Thence S. approximately one-fourth mile; Thence W. approximately one-fourth mile to the SW. corner, sec. 16, T. 3N., R. 34E.; Thence S. approximately 1 mile to the SE. corner, sec. 20, T. 3N., R. 34E.; Thence W. approximately one-half mile; Thence S. approximately three-fourths mile; Thence W. approximately 2¾ mile; Thence S. approximately one-eighth mile; Thence in a westerly direction approximately 4¾ miles; parallel to U.S. Highway No. 20 to the point of intersection with the W. boundary line of sec. 31, T. 3N., R. 33E.; Thence S. approximately 7 mile to the SE. corner sec. 36, T. 2N., R. 32E.; Thence W. approximately 8¼ mile; Thence N. approximately one-half mile; Thence W. approximately one-fourth mile; Thence S. approximately one-fourth mile; Thence W. approximately one-fourth mile; Thence S. approximately one-fourth mile; Thence W. approximately 1½ miles; Thence N. approximately one-eighth mile; Thence W. approximately one-fourth mile; Thence S. approximately one-eighth mile; Thence W. approximately 16½ miles to the point of beginning at the SW. corner, sec. 31, T. 2N., R. 28E.

Notices stating the pertinent prohibitions of §§ 860.3 and 860.4 and the penalties of 10 CFR 860.5 are being posted at all entrances of the above-referenced areas and at intervals along their perimeters, as provided in 10 CFR 860.6.

Dated at Washington, DC, this 4th day of May, 2000.

**Joseph S. Mahaley,**

*Director, Office of Security Affairs.*

[FR Doc. 00–11727 Filed 5–9–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–261–000]**

### Columbia Gulf Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2000.

Take notice that on May 1, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, with a proposed effective date of June 1, 2000.

Fifth Revised Sheet No. 317

Columbia Gulf states that the purpose of this filing is to set forth in its pro forma service agreement, applicable to Rate Schedule FTS–1, FTS–2, ITS–1, and ITS–2, contained in its Tariff an additional type of permissible discount that would allow Columbia Gulf to accept a production and/or reserve commitment in consideration for the granting of a discount.

Columbia Gulf states that copies of its filing have been mailed to all firm and interruptible customers and affected state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11618 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL00–71–000]**

### City of Detroit, Michigan v. The Detroit Edison Company; Notice of Complaint

May 4, 2000.

Take notice that on May 2, 2000, The City of Detroit, Michigan (Detroit) submitted a Complaint pursuant to Sections 206 and 306 of the Federal Power Act against the Detroit Edison Company (DECo). The Complaint alleges that DECo has improperly applied a penalty charge to certain power delivered by DECo to Detroit on July 27, 1999; that the parties' contract does not and should not provide for a penalty charge in the circumstances at issue.

Copies of the filing were served upon the Respondents and the Michigan Public Service Commission.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules and Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 22, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet athttp://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers

to the compliant shall also be due on or before May 22, 2000.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11634 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–287–049]**

### El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2000.

Take notice that on May 1, 2000, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, to become effective April, 1, 2000:

Twenty-Ninth Revised Sheet No. 30
Twenty-Fourth Revised Sheet No. 31
Sixth Revised Sheet No. 31A

El Paso states that the above tariff sheets are being filed to implement five negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11614 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP98–159–005]**

### El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2000.

Take notice that on May 1, 2000, El Paso Natural Gas Company (El Paso) tendered for filing to become part of its FERC Gas Tariff, Second Revised Volume No. 1–A, the following tariff sheets, with an effective date of May 1, 2000.

Third Revised Sheet No. 117
Fifth Revised Sheet No. 118

El Paso states that the tariff sheets are being filed to implement the settlement approved by the Commission at Docket No. CP98–159–003, *et al.* The tendered tariff sheets are proposed to become effective May 1, 2000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11625 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–262–000]**

### Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2000.

Take notice that on May 1, 2000, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with an effective March 27, 2000.

Fourth Revised Sheet No. 164
Fourth Revised Sheet No. 165
Second Revised Sheet No. 168A
Seventh Revised Sheet No. 169
First Revised Sheet No. 185

FGT states that on February 9, 2000, the Federal Energy Regulatory Commission (Commission) issued its final rule regarding the regulation of short-term interstate natural gas transportation services in Docket Nos. RM 98–10–000 and RM98–12–000 (Order No. 637). In the instant filing, FGT is filing to implement provisions of Order No. 637 regarding the waiver of the rate ceiling for short-term capacity release transactions and the prospective limitations on the availability of the Right-of-First Refusal ("ROFR").

FGT states that Order No. 637 provides for a waiver of the rate ceiling for short-term (less than one year) capacity release transactions until September 30, 2002 and requires pipelines to file tariff revisions within 180 days of the effective date of the rule, *i.e.*, March 27, 2000, to remove tariff provisions which are inconsistent with the removal of the rate ceiling. Accordingly, FGT is filing revised tariff sheets as required. Unless extended by Commission action the tariff provisions removing the price cap submitted herein shall not be effective after September 30, 2002, and FGT shall file revised tariff sheets as required.

FGT also states that it is filing revised tariff sheets implementing portions of Order No. 637 which provide that the Right-of-Refusal be applicable only to contracts at the maximum tariff rate having a term of twelve consecutive months or longer of service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section s 385.214 or 385.211 of the Commission's

Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11619 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP98–18–004]**

### Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2000.

Take notice that on May 1, 2000, Iroquois Gas Transmission System, L.P. tendered for filing Second Revised Sheet No. 6. Iroquois requests that the Commission approve the tariff sheets effective May 1, 2000.

Iroquois states that the revised tariff sheets reflect a negotiated rate between Iroquois and Duke Energy Trading and Marketing, LLC for transportation under Rate Schedule RTS beginning on May 1, 2000 through November 1, 2000.

Iroquois states that copies of its filing were served on all jurisdictional customers and interested state regulatory agencies and all parties to the proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11631 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–157–002]**

### Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2000.

Take notice that on April 28, 2000, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Original Sheet No. 901, to be effective May 1, 2000.

Kern River states that the purpose of this filing is to implement a negotiated rate transaction between Kern River and Sempra Energy Trading in accordance with Section 23 of Kern River's tariff and in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines.

Kern River states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11616 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Kern River Gas Transmission Company; Notice of Compliance Filing

[Docket No. RP00–157–003]

May 4. 2000.

Take notice that on April 28, 2000, Kern River Gas Transmission Company (Kern River) tendered the following tariff sheets for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, to be effective February 1, 2000.

Second Substitute Original Sheet No. 143
Second Substitute Original Sheet No. 144
Original Sheet No. 145
Original Sheet No. 146
Sheet Nos. 147–199 (Reserved)

Kern River states that the purpose of this filing is comply with the Commission's April 13, 2000 Order in this proceeding, which directed Kern River to revise certain language related to the bid evaluation and award criteria for negotiated rate bids.

Kern River states that it has served a copy of this filing upon each person designated on the official service list compiled by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11617 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–215–000]**

### National Fuel Gas Supply Corporation; Notice of Application

May 4, 2000

Take notice that on April 25, 2000, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP00–215–000 an application, pursuant to Section 7(b) of the Natural Gas Act and Part 157 of the Commission's Regulations, seeking permission and approval to abandon facilities within Wharton Storage Field in Potter County, Pennsylvania, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

National Fuel states that the WH–90 well is no longer useful due to poor injection performance and poor deliverability and needs to be reconditioned or plugged due to deterioration of the well casing. National Fuel further states that the well line will serve no purpose once the well is plugged and abandoned. Therefore, National Fuel proposes to abandon the facilities at Wharton Storage Field, in Potter County, Pennsylvania. Finally, National Fuel proposes to plug and abandon Well WH–90 and to abandon the associated well line TRW–90.

Any questions regarding this application should be directed to James R. Peterson, General Counsel of National Fuel, 10 Lafayette Square, Buffalo, New York 14203 at (716) 957–7702.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before May 25, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 3 85.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission Rules require that the protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the abandonment is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedures herein provide for, unless otherwise advised, it will be unnecessary for National Fuel to appear or to be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11626 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER97–1523–040, ER97–4234–036 and OA97–470–038]**

### New York Independent System Operator, Inc.; Notice of Filing

May 4, 2000.

Take notice that on April 18, 2000, the New York Independent System Operator, Inc. (NYISO) filed with the Federal Energy Regulatory Commission (Commission) a revised Addendum A (Attachment A) to its Market Monitoring Plan, with modifications to conform to the Commission's Order in New York Independent System Operator, Inc., *et al.*, 90 FERC ¶ 61,317 (2000).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 15, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11624 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–263–000]**

### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2000.

Take notice that on May 1, 2000, Northern Natural Gas Company (Northern) tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets proposed to be effective June 1, 2000.

Fourth Revised Sheet No. 267
Fifth Revised Sheet No. 268
Third Revised Sheet No. 269
First Revised Sheet No. 269A
Original Sheet No. 269B

Northern states that the purpose of this filing is to revise the tariff provisions relating to the price to resolve monthly imbalances. Specifically, Northern proposes to replace the Monthly Average Index Price with High, Low and Average Weekly System and Field Index Prices. Northern is proposing a pricing mechanism whereby the imbalance is valued based on an average weekly index price that differs for payable and receivable imbalances.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C.

20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11620 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–264–000]**

### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2000.

Take notice that on May 1, 2000, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to become effective June 1, 2000:

Fifth Revised Sheet No. 1
Sixth Revised Sheet No. 2
49 Revised Sheet No. 53
First Revised Sheet No. 56
Sheet No. 57
Fourth Revised Sheet No. 143
Ninth Revised Sheet No. 144
Third Revised Sheet No. 145
First Revised Sheet No. 158
Original Sheet No. 159
Original Sheet No. 160
Original Sheet No. 161
Original Sheet No. 162
Original Sheet No. 163
Original Sheet No. 164
Sheet No. 165
Fourth Revised Sheet No. 302
First Revised Sheet No. 461
Original Sheet No. 462
Sheet No. 463
Sixth Revised Sheet No. 206
Fifth Revised Sheet No. 220
Second Revised Sheet No. 228
Second Revised Sheet No. 251
Fourth Revised Sheet No. 252
Third Revised Sheet No. 261
Sixth Revised Sheet No. 263A
Sixth Revised Sheet No. 265
Third Revised Sheet No. 266
Second Revised Sheet No. 271
Fifth Revised Sheet No. 288
Second Revised Sheet No. 271
Fifth Revised Sheet No. 288
Third Revised Sheet No. 289
Third Revised Sheet No. 290
Fourth Revised Sheet No. 300

Northern is submitting the attached tariff sheets to implement an optional volumetric firm throughput service under new Rate Schedule VFT. This service will be available to new customers and as a conversion option for Northern's current firm customers under Rate Schedules TF and TFX. The rate for VFT service will be a one-part volumetric rate derived from Northern's current firm rates. For current Northern firm customers, VFT service permits a customer to convert all of its long-term (i.e., one year or more) firm transportation entitlement to a one-part, volumetric rate based on the customer's historical load factor. VFT service is also available to new customers desiring long-term capacity on Northern's system and would be based on the customer's projected load factor.

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11621 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–265–000]**

### Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2000.

Take notice that on May 1, 2000, Northern Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective June 1, 2000:

Thirteenth Revised Sheet No. 54
Eleventh Revised Sheet No. 61
Eleventh Revised Sheet No. 62
Eleventh Revised Sheet No. 63
Eleventh Revised Sheet No. 64

Northern states that the revised tariff sheets are being filed in accordance with Section 53 of Northern's General Terms and Conditions, which requires Northern to adjust its fuel Unaccounted for (UAF) gas percentages each June 1.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11622 Filed 5–09–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–278–000]**

### Northern Natural Gas Company; Notice of Application

May 4, 2000.

Take notice that on May 3, 2000, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124, filed in Docket No. CP00–278–000 an application pursuant to Sections 7(b) and (c) of the Natural Gas Act for permission and approval to abandon and replace certain pipeline facilities located in Iowa, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Northern proposes to abandon in place approximately 179 feet of 24-inch pipe on its A-Line in Pottawattamie County, Iowa, replacing it with 6-inch pipe and use the 24-inch pipe as casing for the 6-inch pipe. It is stated that the reason for the replacement is that there is a leak on the highway adjacent to the pipeline. It is asserted that the 6-inch line will have sufficient capacity to meet current maximum contract obligations. It is further asserted that the proposed abandonment and replacement will not result in any loss of service to Northern's existing customers. The cost of the proposed replacement is estimated at $78,000.

Any questions regarding the application should be directed to Keith L. Petersen, Director, Certificates and Reporting, at (402) 398–7200, Northern Natural Gas Company, P.O. Box 3330, Omaha, Nebraska 68103–0330.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 15, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, a motion to intervene or a protest in accordance the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act ad the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or to be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11627 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP91–229–028]**

### Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

May 4, 2000.

Take notice that on May 1, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets as listed in Appendix A attached to the filing, to be effective June 1, 2000.

Panhandle states that the purpose of this filing is to comply with Ordering Paragraph (A) of the Commission's Order Accepting Settlement and Authorizing Abandonment (Order) issued on August 28, 1992 in Docket No. RP91–229–000, *et al.*, 60 FERC ¶ 61,212 (1992).

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11613 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. GT00–30–000]**

### Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2000.

Take notice that on May 1, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to be effective June 1, 2000:

Third Revised Sheet No. 3B

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the system map to reflect changes in the pipeline facilities and the points at which service is provided.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11628 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–518–013]**

### PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

May 4, 2000.

Take notice that on May 1, 2000, PG&E Gas Transmission, Northwest Corporation (PG&E GT–NW) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1–A, the following tariff sheets with an effective date of May 1, 2000:

Ninth Revised Sheet No. 7
Original Sheet No. 7.01
Original Sheet No. 7C

PG&E GT–NW states that these sheets are being filed to reflect the implementation of three negotiated rate agreements.

PG&E GT–NW further states that a copy of this filing has been served on PG&E GT–NW's jurisdictional customers, and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11632 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–200–053]**

### Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 4, 2000.

Take notice that on April 28, 2000, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective May 1, 2000.

Second Revised Sheet No. 8C
Fourth Revised Sheet No. 8F

REGT states that the purpose of this filing is to reflect a change to an existing negotiated rate contract and the addition of a new negotiated rate contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc. fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11630 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–7–003]**

### Texas Eastern Transmission Corporation; Notice of Compliance Filing

May 4, 2000.

Take notice that on April 28, 2000, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed in Appendix A to the filing, with a proposed effective date of November 29, 1999.

Texas Eastern states that the filing is submitted pursuant to the Commission's Order on Rehearing and Clarification issued on April 14, 2000 (April 14 Order) in Docket Nos. RP00–7–001 and RP00–7–002, reflecting the removal from the Oakford storage rate base of $2,017,296 in cost of transportation of the working gas volumes to storage.

Texas Eastern states that the revised tariff sheets result in decreasing the Oakford storage cost-of-service reduction to the storage cost credit mechanism to $525,146 monthly. In addition, Texas Eastern states that upon approval of the revised tariff sheets filed herein Texas Eastern would propose to effect refunds with interest as required by the April 14 Order by crediting the calculated refund amount including interest to the next regular bill transmitted to each customer.

Texas Eastern states that copies of the filing were mailed to all affected customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11633 Filed 5–09–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–266–000]**

### TransColorado Gas Transmission Company; Notice of Tariff Filing

May 4, 2000.

Take notice that on May 1, 2000, TransColorado Gas Transmission Company (TransColorado) tenders for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 247 and First Revised Sheet No. 247A, to be effective June 1, 2000.

TransColorado states that the tariff sheets sets forth TransColorado's Fuel Gas Reimbursement Percentage (FGRP) calculation. The proposed tariff sheets revise the monthly variance calculations to state that the variance-adjustment component of the FGRP will be calculated on an annual basis instead of monthly.

TransColorado stated that a copy of this filing has been served upon its customers, the New Mexico Public Utilities Commission and the Colorado Public Utilities Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www. ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11623 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–24–004]**

### Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

May 4, 2000.

Take notice that on April 28, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets to comply with the Commission's Order issued on April 3, 2000 in Docket Nos. RP00–24–000, RP00–24–001, and RP00–24–002. The enclosed tariff sheets are proposed to be effective April 1, 2000.

Transco states that the purpose of the instant filing is to comply with the Commission's April 3 order in the referenced dockets to resume use of the cash out mechanism in effect on the Transco system prior to December 1, 1999.

Transco states that it is serving copies of the instant filing to its affected customers, State Commissions and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11615 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC00–76–000, et al.]**

### Indeck Capital, Inc. and Black Hills Corporation, et al.; Electric Rate and Corporate Regulation Filings

May 3, 2000.

Take notice that the following filings have been made with the Commission:

**1. Indeck Capital, Inc. and Black Hills Corporation**

[Docket No. EC00–76–000]

Take notice that on April 27, 2000, Indeck Capital, Inc. (Indeck) and Black Hills Corporation (Black Hills), tendered for filing Supplement No. 1 to Exhibit H of the Joint Application of Indeck Capital, Inc. (Indeck) and Black Hills Corporation (Black Hills) (collectively, Applicants) for Approval of the Transfer of Jurisdictional Assets Under Section 203 of the Federal Power Act and Request for Expedited Consideration (hereinafter, the Section 203 Application and Supplement No. 1, respectively). The Section 203 Application was filed on April 10, 2000, and seeks authorization to merge Indeck into Black Hills Energy Capital, Inc., a subsidiary of Black Hills Corporation. Supplement No. 1 supplements Exhibit H to the Application, which contains privileged and redacted copies of the Agreement and Plan of Merger between Indeck and Black Hills (the Merger Agreement). Supplement No. 1 supplements specific provisions of the Merger Agreement and is provided in both privileged and redacted form.

*Comment date:* June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. CinCap VII, LLC**

[Docket No. EG00–113–000]

Take notice that on April 26, 2000, CinCap VII, LLC (CinCap VII), with its principal office at 1100 Louisiana Street, Suite 4950, Houston, Texas 77002, filed a modification to its application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations, which was previously filed with the Commission on March 6, 2000.

CinCap VII requests that the reference to "gas storage" activities be deleted from its Application.

*Comment date:* May 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**3. TXU (No. 5) Pty Ltd**

[Docket No. EG00–137–000]

Take notice that on April 27, 2000, TXU (No. 5) Pty Ltd (TXU (No. 5) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and Part 365 of the Commission's regulations.

TXU No. 5 is an Australian corporation that is an indirect subsidiary of Texas Utilities Company, a Texas corporation which is an exempt holding company under the Public Utility Holding Company Act of 1935, as amended. TXU No. 5 is contemplating the lease of two electric generating facilities located in South Australia. Torrens Island Power Station A and Torrens Island Power Station B are each located on Torrens Island, South Australia.

*Comment date:* May 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**4. TXU (No. 5) Pty Ltd**

[Docket No. EG00–138–000]

Take notice that on April 27, 2000, TXU (No. 5) Pty Ltd (TXU (No. 5) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and Part 365 of the Commission's regulations.

TXU No. 5 is an Australian corporation that is an indirect subsidiary of Texas Utilities Company, a Texas corporation which is an exempt holding company under the Public Utility Holding Company Act of 1935, as amended. TXU No. 5 is contemplating the lease of four electric generating facilities located in South Australia. Dry Creek Power Station is located in the suburbs of Adelaide, South Australia. Mintaro Power Station is located in Mintaro, South Australia. Snuggery Power Station is located near Millicent, South Australia. Port Lincoln Power Station is located near Port Lincoln, South Australia.

*Comment date:* May 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**5. Orion Power Operating Services MidWest, Inc.**

[Docket No. EG00–139–000]

Take notice that on April 26, 2000, Orion Power Operating Services MidWest, Inc., with its principal office at 2000 Cliff Mine Road, Suite 200, Pittsburgh, PA 15275, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

*Comment date:* May 24, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**6. Dayton Power and Light Company**

[Docket Nos. OA96–64–006, OA97–131–001, OA97–132–001, OA97–133–001, OA97–134–001, OA97–138–001, OA97–142–001 and OA97–274–001]

Take notice that on April 28, 2000, The Dayton Power and Light Company (Dayton) tendered for filing its compliance report in the above-captioned dockets, a compliance report in response to the Commission's order in Allegheny Power Service Co., *et al.*, 90 FERC ¶ 61,224 (2000).

*Comment date:* June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Maine Public Service Company**

[Docket Nos. OA96–122–005]

Take notice that on April 28, 2000, Maine Public Service Company, submitted a status report in compliance with the Commission's February 29, 2000 order in Allegheny Power Service Co. *et al.*, 90 FERC ¶ 61,224 (2000).

*Comment date:* June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Arizona Public Service Company**

[Docket No. OA96–153–006]

Take notice that on April 28, 2000 , Arizona Public Service Company (APS) tendered for filing its compliance in response to the Commission's order in Allegheny Power Service Co., *et al.*, 90 FERC ¶ 61,224 (2000).

A copy of this filing has been served on the Arizona Corporation Commission.

*Comment date:* June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Carolina Power & Light Company**

[Docket No. OA96–198–004]

Take notice that on May 1, 2000, Carolina Power & Light Company tendered for filing with the Federal Energy Regulatory Commission (Commission), a letter in compliance with the Commission's order in Allegheny Power Service Co., *et al.* 90 FERC ¶ 61,224 (2000).

*Comment date:* June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Wisconsin Power & Light Company**

[Docket Nos. OA97–190–001 and OA97–409–001]

Take notice that on April 27, 2000, Wisconsin Power & Light Company, Wisconsin Public Service Corporation and Madison Gas & Electric Company submitted a compliance filing pursuant to the Commission's February 29, 2000 order in Allegheny Power Service Co., *et al.*, 90 FERC ¶ 61,224 (2000).

Copies of the filing were served on the persons named on the official service lists in these dockets.

*Comment date:* June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Minnesota Power & Light Company**

[Docket No. OA97–194–002]

Take notice that on April 25, 2000, Minnesota Power & Light Company filed a letter in compliance to the Commission's order in Allegheny Power Service Company, *et al.*, 90 FERC ¶ 61,224.

*Comment date:* June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Northeast Utilities Service Company**

[Docket Nos. OA97–300–001, OA97–563–001 and OA97–687–001]

Take notice that on April 28, 2000, Northeast Utilities Service Company (NUSCO) tendered for filing a report in compliance with the Commission's order in Allegheny Power Service Co., *et al.*, 90 FERC ¶ 61,224 (2000).

*Comment date:* June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Boston Edison Company**

[Docket No. OA97–674–001]

Take notice that on May 1, 2000 Boston Edison Company (BECo) filed a report in compliance with the Commission's February 29, 2000 order in Allegheny Power Service Co., *et al.*, 90 FERC ¶ 61,224. BECo states that all contested issues have been resolved in other proceedings and recommends that the Commission accept its filing and then terminate this docket.

*Comment date:* June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Pacific Gas and Electric Company**

[Docket Nos. ER99–2326–004 and EL99–68–004]

Take notice that on April 27, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing a wholesale transmission refund report in compliance with an Order of the Federal Energy Regulatory Commission, Docket Nos. ER98–2326–002 and EL99–68-000, dated January 31, 2000.

Copies of this filing have been served upon the California Independent System Operator, California Independent System Operator-registered Scheduling Coordinators, Southern California Edison Company, San Diego Gas and Electric Company, and the California Public Utilities Commission.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. Ameren Services Company**

[Docket No. ER00–1760–001]

Take notice that on April 27, 2000, Ameren Services Company (ASC), tendered for filing an executed Network Integration Transmission Service Agreement and an executed Network Operating Agreement, between ASC and the City of Farmington. ASC asserts that the purpose of the agreements is to permit ASC to provide service over its transmission and distribution facilities to the City of Farmington pursuant to the Ameren Open Access Tariff. The executed agreements supersede an unexecuted Network Service Agreement and an unexecuted Network Operating Agreement previously filed on March 1, 2000.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. New England Power Company**

[Docket No. ER00–2195–000]

Take notice that on April 27, 2000, New England Power Company tendered for filing an amendment to its April 13, 2000, filing in above-referenced proceeding, correcting an error contained in its letter of transmittal.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. NEPA Energy LP**

[Docket No. ER00–2316–000]

Take notice that on April 26, 2000, NEPA Energy LP, tendered for filing an Application for Order Accepting Rate Schedule for Power Sales at Market-Based Rates and Granting Waivers and Pre-Approvals of Certain Commission Regulations.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. Mid-Continent Area Power Pool**

[Docket No. ER00–2317–000]

Take notice that on April 26, 2000, Mid-Continent Area Power Pool (MAPP), tendered for filing for leave to implement modifications to its line loading relief procedures pending commission review.

*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)**

[Docket No. ER00–2318–000]

Take notice that on April 27, 2000, Allegheny Energy Service Corporation on Behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 78 to add Cinergy Capital & Trading, Inc., to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is April 26, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**20. PacifiCorp**

[Docket No. ER00–2319–000]

Take notice that on April 27, 2000, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, umbrella Transmission Service Agreements with Duke Energy Trading & Marketing under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11 (Tariff) and termination of a Service Agreement with Illinova Power Marketing, Inc. under the Tariff.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**21. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company, LLC**

[Docket No. ER00–2321–000]

Take notice that on April 27, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 1 to Supplement No. 22 to the Market Rate Tariff to incorporate a Netting Agreement with Duke Energy Trading and Marketing, L.L.C., into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of April 10, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**22. PJM Interconnection, L.L.C.**

[Docket No. ER00–2322–000]

Take notice that on April 27, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing a signature page to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA) for Metromedia Energy, Inc. (Metromedia), and an amended Schedule 17 listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including Metromedia, and each of the state electric regulatory commissions within the PJM Control Area.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**23. Tampa Electric Company**

[Docket No. ER00–2323–000]

Take notice that on April 27, 2000, Tampa Electric Company (Tampa Electric), tendered for filing a consent agreement among Tampa Electric, the City of Fort Meade, Florida (Fort Meade), and the Florida Municipal Power Agency (FMPA) that provides for conditions upon the assignment by Fort Meade to FMPA of a service agreement under Tampa Electric's wholesale requirements tariff.

Tampa Electric proposes that the consent agreement be made effective on February 1, 2000, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Fort Meade, FMPA, and the Florida Public Service Commission.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**24. Louisiana Generating LLC**

[Docket No. ER00–2324–000]

Take notice that on April 27, 2000, Louisiana Generating LLC tendered for filing under its market-based rate tariff 11 long-term service agreements with 11 Louisiana electric cooperatives. Louisiana Generating LLC also filed three assignment contracts with Southwestern Electric Power Company (SMEPA), South Mississippi Electric Power Association (SWEPCO), and the Municipal Energy Agency of Mississippi (MEAM). The underlying long-term power sales contracts between Louisiana Generating LLC and SMEPA, SWEPCO, and MEAM have been accepted for filing by the Commission in Docket No. ER00–1259–000.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**25. Idaho Power Company**

[Docket No. ER00–2329–000]

Take notice that on April 27, 2000, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission Service Agreements for Non-Firm Point-to-Point Transmission Service and Firm Point-to-Point Transmission Service between Idaho Power Company and British Columbia Power Exchange Corporation.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**26. California Power Exchange Corporation**

[Docket No. ER99–2229–000]

Take notice that on April 27, 2000, the California Power Exchange Corporation (CalPX), on behalf of its CalPX Trading Services Division (CTS), tendered for filing an index of CTS customers through March 31, 2000. This quarterly filing is required by the Commission's May 26, 1999 order in Docket No. ER99–2229–000, authorizing the establishment of a Block-Forward Market. The CalPX states that it has served copies of its filing on the affected customers and on the California Public Utilities Commission.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**27. Delmarva Power and Light Company**

[Docket No. ER00–2330–000]

Take notice that on April 27, 2000, Delmarva Power and Light Company (Delmarva), tendered for filing proposed tariff sheets for the PJM Interconnection, LLC's Open Access Transmission Tariff (PJM Tariff) to accommodate the State of Maryland's retail access program. The proposed tariff sheets describe the procedures for determining the peak load contributions and hourly load obligations for Delmarva's retail customers located in the Delmarva zone. This information is used in the determination of capacity, transmission, and hourly energy obligations.

Copies of the filing have been served on all the members of the PJM Interconnection, LLC and the Maryland Public Service Commission.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**28. Illinois Power Company**

[Docket No. ER00–2331–000]

Take notice that on April 27, 2000, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing firm and non-firm transmission agreements under which MIECO, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of May 1, 2000.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**29. Southwestern Public Service Company**

[Docket No. ER00–2332–000]

Take notice that on April 27, 2000, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), tendered for filing an executed umbrella service agreement under Southwestern's market-based sales tariff with Western Area Power Administration—Colorado River Storage Project. (WAPA–CRSP). This umbrella service agreement provides for Southwestern's sale and WAPA–CRSP's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**30. Horsehead Industries, Inc.**

[Docket No. ER00–2333–000]

Take notice that on April 27, 2000, Horsehead Industries, Inc., on behalf of itself and its unincorporated division Zinc Corporation of America, submitted for filing, pursuant to Section 205 of the Federal Power Act, and Part 35 of the Commission's regulations, a Petition for authorization to make sales of capacity, energy, and certain Ancillary Services, at market-based rates, and to reassign transmission capacity.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11612 Filed 5–9–00; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Extending Comment Period of Application for Amendment of License

May 4, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Application Type:* Amendment of License.

b. *Project No.:* 2101–068.

c. *Date Filed:* March 6, 2000 and April 20, 2000.

d. *Applicant:* Sacramento Municipal Utility District (SMUD).

e. *Name of Project:* Upper American River Hydroelectric Project (Camino Development).

f. *Location:* The Camino Development is located on the South Fork American River in El Dorado County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant's Contact:* Lon Maier, 6201 S Street, Sacramento, CA, 95817, (916) 732–6566.

i. *FERC Contact:* Any questions on this notice should be addressed to Doan Pham at (202) 219–2851 or e-mail address *doan.pham@ferc.fed.us.*

j. *Deadline for filing comments, motions to intervene, or protests:* May 31, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the Project Number (2101–068) on any comments, protests, or motions filed.

k. *Description of Amendment:* On April 20, 2000, SMUD filed a revised design plan for a deflection wall at the Camino Powerhouse. The original design plan was filed on March 6, 2000. The revised wall is 41 feet longer, and the connection point to the upstream retaining wall is relocated about 20 feet further upstream. The original comment period is extended by 21 days to give all participating parties additional time to review and comment on the revised design.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

*Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11629 Filed 5–9–00; 8:45 am]

**BILLING CODE 6717–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6604–6]**

### Agency Information Collection Activities: Continuing Collection; Comment Request; Detergent Gasoline

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Detergent Gasoline (EPA ICR Number 1655.04, OMB Control Number 2060–0275, expiration date: 4–30–00). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before July 10, 2000.

**ADDRESSES:** Transportation and Regional Programs Division, Office of Transportation and Air Quality, Office of Air and Radiation, Mail Code 6406J, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. A paper or electronic copy of the draft ICR may be obtained without charge by contacting the person listed below.

**FOR FURTHER INFORMATION CONTACT:** James W. Caldwell, (202) 564–9303, fax:(202) 565–2085, *caldwell.jim@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are those who (1) manufacture gasoline, post-refinery component, or detergent additives, (2) blend detergent additives into gasoline or post-refinery component, or (3) transport or receive a detergent additive, gasoline, or post-refinery component.

*Title:* Detergent Gasoline: Certification Requirements for Manufacturers of Detergent Additives; Requirements for Transferors and Transferees of Detergent Additives; Requirements for Blenders of Detergents into Gasoline or Post-refinery Component; Requirements for Manufacturers, Transferors, and Transferees of Gasoline or Post-refinery Component (40 CFR 80—Subpart G), EPA ICR Number 1655.04, OMB Control Number 2060–0275, expiration date: 4–30–00.

*Abstract:* Gasoline combustion results in the formation of engine deposits that contribute to increased emissions. Detergent additives deter deposit formation. The Clean Air Act requires gasoline to contain a detergent additive. The regulations at 40 CFR 80 subpart G specify certification requirements for manufacturers of detergent additives, recordkeeping or reporting requirements for blenders of detergents into gasoline or post-refinery component (any gasoline blending stock or any oxygenate which is blended with gasoline subsequent to the gasoline refining process), and reporting or recordkeeping requirements for manufacturers, transferors, or transferees of detergents, gasoline, or post-refinery component (PRC). These requirements ensure that (1) a detergent is effective before it is certified by EPA, (2) a certified detergent, at the minimum concentration necessary to be effective (known as the lowest additive concentration (LAC), is blended into gasoline, and (3) only gasoline which

contains a certified detergent at its LAC is delivered to the consumer. The EPA maintains a list of certified gasoline detergents, which is publicly available. As of March 2000 there were approximately 225 certified detergents and 16 detergent manufacturers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed at 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Burden Statement:* EPA estimates that the average burden for detergent certification is 60 hours and $3869, and that there will be approximately 50 applications for detergent certification each year for the next three years. Thus, the annual burden is estimated at 3000 hours and $193,450.

Most of the burden is incurred by the blenders of detergent into gasoline or PRC. The regulations require that they generate and maintain records of the amount of detergent blended and the amount of gasoline into which it is blended. These records are known as volumetric additive reconciliation (VAR) records and must demonstrate that the proper amount of a certified detergent has been used. For blenders with automated equipment, the annual burden is estimated at 150 hours and $8,373. There are approximately 1300 blenders which use automated equipment. Thus the annual burden is 195,000 hours and $10.9 million. For blenders with non-automated equipment, the annual burden is estimated at 500 hours and $27,910. It is estimated that there are 50 blenders in this category, for an annual burden of 25,000 hours and $1,395,500.

The other requirements are customary business practices, and thus do not incur additional burden. For example, the regulations require the generation, transfer, and storage of product transfer documents (PTDs) indicating the detergent status of a shipment of gasoline. PTDs containing a variety of information about the gasoline shipment are a standard business practice. Research, racing, and aviation gasolines are exempt.

There are no capital or start-up costs beyond those incurred by industry at the program's inception in 1995. There are no operating and maintenance costs beyond copying and postage. The total annual estimated burden for industry is 223,000 hours and $12.5 million. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 3, 2000.

**Merrylin Zaw-Mon,**

*Director, Transportation and Regional Programs Division.*

[FR Doc. 00–11675 Filed 5–9–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–34203B; FRL–6559–2]**

## Chlorpyrifos, Revised Pesticide Risk Assessment; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA will hold a public meeting to present the revised risk assessments for one organophosphate pesticide, chlorpyrifos, to interested stakeholders. This public meeting, called a "Technical Briefing," will provide an opportunity for stakeholders to learn about the data, information, and methodologies that the Agency used in revising its risk assessments for chlorpyrifos. In addition, representatives of the Department of Agriculture (USDA) will also provide ideas on possible risk management for chlorpyrifos.

**DATES:** The technical briefing will be held on Thursday, June 8, 2000, from 1 p.m. to 4 p.m.

**ADDRESSES:** The technical briefing will be held at the Holiday Inn Capitol at the Smithsonian, 550 C St., SW., Washington, DC 20024, (202) 479–4000.

**FOR FURTHER INFORMATION CONTACT:** By mail: Karen Angulo, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphate pesticides, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

2. *In person.* The Agency has established an official record under docket control number OPP–34203B.

The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

**II. What Action is the Agency Taking?**

This document announces the Agency's intention to hold a technical briefing for the organophosphate pesticide, chlorpyrifos. The Agency is presenting the revised risk assessments for chlorpyrifos to interested stakeholders. This technical briefing is designed to provide stakeholders with an opportunity to become even more informed about an organophosphate's risk assessment. EPA will describe in detail the revised risk assessments: Including the major points (e.g., contributors to risk estimates); how public comment on the preliminary risk assessment affected the revised risk assessment; and the pesticide use information/data that was used in developing the revised risk assessment. Stakeholders will have an opportunity to ask clarifying questions. In addition, representatives of the USDA will provide ideas on possible risk management.

The technical briefing is part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998 as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998 in response to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

The Agency will issue a **Federal Register** notice to provide an opportunity for public viewing of the chlorpyrifos revised risk assessments and related documents in the Public Information and Records Integrity Branch and on the OPP Internet web site that are described in Unit I.B.1, and to provide an opportunity for a 60-day public participation period during which the public may submit risk management and mitigation ideas, and recommendations and proposals for transition.

**List of Subjects**

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 8, 2000.

**Lois A. Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 00–11839 Filed 5–8–00; 2:48 pm]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30464A; FRL–6553–8]**

## Chlorfenapyr; Withdrawal of an Application To Register a Pesticide Product Containing a New Active Ingredient

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** American Cyanamid Company has withdrawn its application to register chlorfenapyr (4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1H-pyrrole-3-carbonitrile) pesticide products for use on cotton (EPA File Symbols 241–GAT and 241–GAI).

**FOR FURTHER INFORMATION CONTACT:** Ann Sibold, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–6502; fax number: 703–305–6596; e-mail address: sibold.ann@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*A. Does This Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34162. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public

version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

*C. What Action Is the Agency Taking?*

EPA is announcing that American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400 has withdrawn its application to register a pesticide containing chlorfenapyr for use on cotton as provided for in section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by the Food Quality Protection Act of 1996 (FQPA). Chlorfenapyr is an active ingredient not included in any previously registered pesticide product. Chlorfenapyr has been proposed for many uses on several pests. This withdrawal notice is applicable to the products PIRATE and ALERT for use on cotton.

EPA issued a notice in the **Federal Register** of December 2, 1998 (63 FR 66534) (FRL–6046–6), which announced American Cyanamid's submission of an application to register a pesticide product (EPA File Symbols 241–GAT and 241–GAI) containing an active ingredient, 4-bromo-2-(4-chlorophenyl)-1-(ethoxymethyl)-5-(trifluoromethyl)-1-pyrrole-3-carbonitrile (chlorfenapyr), not included in any previously registered pesticide product. The application was for an insecticide/miticide for use on cotton.

On January 20, 1999 (64 FR 3091) (FRL–6489–2), EPA published in the **Federal Register** a Notice of Availability of Risk/Benefit Assessments. These assessments were made available for public comment in the docket and at http://www.epa.gov/opprd001/chlorfenapyr/toc.htm. The Agency received approximately 400 public comments in the docket in response to the notice.

In addition, the Office of Pesticide Programs submitted EPA's and American Cyanamid's risk assessments to peer review by the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA") Scientific Advisory Panel ("SAP"). The SAP met twice to review the assessments. The SAP reports are available at:

http://www.epa.gov/oscpmont/sap/1999/july/finlrpt3.pdf

http://www.epa.gov/oscpmont/sap/1999/september/finalrpt.pdf.

The Agency also had extensive discussions with the United States Fish and Wildlife Service (FWS). The comments received by the FWS were taken into consideration in EPA's registration assessment.

On March 13, 2000, Susan H. Wayland, Acting Assistant Administrator for the Office of Prevention, Pesticides and Toxic Substances, signed a decision memorandum for the denial of chlorfenapyr use on cotton. Copies of the decision memorandum are available in the docket. American Cyanamid has since decided to withdraw its application for registration.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: May 2, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

FR Doc. 00–11677 Filed 5–9–00; 8:45 am

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–30495; FRL–6556–6]**

## Pesticide Product; Registration Applications

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces receipt of an application to register a pesticide product containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

**DATES:** Written comments, identified by the docket control number OPP–30495, must be received on or before June 9, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30495 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Driss Benmhend, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), 19th Floor, CM #2, 1921 Jefferson Highway, Arlington, VA 22202 (703) 308–9525; e-mail: benmhend.driss@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111 | Crop production |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30495. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any

information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30495 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30495. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want To Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. Registration Applications**

EPA received the following application to register a pesticide product containing an active ingredient not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of the application does not imply a decision by the Agency on the application.

*A Product Containing an Active Ingredient Not Included in Any Previously Registered Products*

72499–R. Applicant: Foliar Nutrient, Inc., c/o Landis International, Inc., P.O. Box 5126, Valdosta, GA 31603–5126. Product name: LEEX–A–PHOS FUNGICIDE. New Active Ingredient: Dipotassium phosphate. The product also contains the already registered active ingredient Dipotassium Phosphonate. Proposed classification: None. To use for the control of certain diseases in woody ornamentals, turfgrasses and non-bearing fruit and nut tree crops.

**Authority:** 7 U.S.C. 136.

**List of Subjects**

Environmental protection, Pesticides and pest.

Dated: May 2, 2000.

**Kathleen D. Knox,**

*Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

[FR Doc. 00–11676 Filed 5–9–00; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–00644; FRL–6495–3]**

## Pesticides; Draft Guidance for Pesticide Registants on Labeling Insect Repellents

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** The Agency is seeking comments on the draft Pesticide Registration (PR) Notice regarding insect repellents labeling restrictions for use on infants and children as well as restrictions on food fragrances and food colors. EPA is concerned that packaging and labeling specifically targeted to children may encourage inappropriate handling and use of such products by children notwithstanding the lower profile presence of label language prohibiting handling or use by children.

**DATES:** Comments, identified by docket control number OPP–00644, must be received on or before July 10, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00644 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Robyn Rose, Environmental Protection Agency (7511C), 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9581; fax number: (703) 308–7026; e-mail address: rose.robyn@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to those persons who manufacture and/or register products that repel insects from humans, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of This Document or Other Documents?*

1. *Electronically.* You may obtain electronic copies of this document and the draft PR Notice from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides. You can also go directly to the listings from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr.

2. *Fax on Demand.* You may request a faxed copy of the draft Pesticide Registration (PR) Notice entitled "Insect Repellents: Labeling Restrictions for Use on Infants and Children and Restrictions on Food Fragrances and Colors," by using a faxphone to call (202) 401–0527 and selecting item 6123. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00644. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00644 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6, Suite 8, or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00644. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI Information That I Want To Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. Background**

*A. What Guidance Does This Draft PR Notice Provide?*

The draft PR Notice referred to in this notice states EPA's current position on insect repellent claims targeted for use specifically on infants and children. Such products have typically borne statements such as, "Outdoor Protection for Kids" or "* * * for children" or "* * * for kids" or graphics featuring pictures of children. EPA believes that all claims as well as pictures of food or items predominantly associated with infants and children (*e.g.*, toys) may be misleading and the Agency does not intend to approve such claims in future registration applications. Additionally, this draft PR Notice states EPA's current position on insect repellents formulated to contain colors and fragrances predominantly associated with food (*e.g.*, grape, watermelon, or orange). This draft PR Notice outlines the procedure and time frame for registrants of currently registered insect repellents with claims targeted for use specifically on infants and children or containing

food colors or fragrances to make appropriate changes to product labels. EPA believes that the label changes and policy clarification set forth in this draft PR Notice will reduce risks associated with the use of currently registered products and will improve consumer understanding.

*B. What Questions/Issues Should You Consider?*

Would any combination of allowing child friendly graphics, food fragrances, or food colors increase the potential for children to want to ingest the product? What combinations should or should not be allowed?

1. *Labeling targeted for kids/children.* (a) Should it be acceptable to label pesticides for use on kids or any specific subset of the population?

(b) Do repellents labeled specifically for use on kids or children lead consumers to believe these products were specifically formulated for kids, safer for kids, or less effective for adults?

(c) Should pictures of toys and objects generally associated with children be allowed on insect repellent labels? Do these graphics lead the consumer to believe these products are formulated to be safer or specifically for children?

(d) Should pictures of children without the rest of the family (including adults) be allowed on a label?

(e) Would graphics including an entire family on insect repellent labels and statements such as "For the entire family" help clarify who can use the product?

2. *Products formulated with food fragrances.* (a) Are food fragrances (*e.g.*, grape, cherry, melon) in insect repellents potentially enticing children to ingest the product?

(b) Should the Agency allow any food fragrances in insect repellents applied to human skin?

(1) Should common household scents (e.g., lemon, citrus, coconut) be acceptable?

(2) Should non-food fragrances such as floral fragrances be acceptable?

(c) Could graphic depictions of food items entice children to eat the product? Should such graphics be allowed on an insect repellent label?

(d) What fragrances, if any, should be acceptable in insect repellents applied to human skin?

3. *Products formulated with food colors.* (a) Should insect repellents applied to human skin be allowed to contain colors? If so, what colors should be allowed?

(b) If colors are allowed, should it be allowed to refer to them by the color rather than the food (*e.g.*, purple rather than grape, blue rather than blueberry)?

(c) Will repellents formulated with food colors entice children to eat them?

(d) Some manufacturers believe that areas of exposed skin will be missed when applying insect repellents. Is there a protective benefit to incorporate colors which disappear when applied to the skin?

*C. Why Is a PR Notice Guidance and Not a Rule?*

The draft PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, this policy is not binding on either EPA or any outside parties. Although this guidance document provides a starting point for EPA decisions, EPA will depart from this policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that this policy is not appropriate for a specific pesticide or that the specific circumstances demonstrate that this policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting this guidance document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of this guidance.

The "revised" guidance will not be an unalterable document. Once a "revised" guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of commenting on this guidance document, EPA would welcome comments that specifically address how the guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

**List of Subjects**

Environmental protection, Food coloring, Food fragrances, Insect repellents, Labeling, Pesticides and pests.

Dated: April 28, 2000.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

[FR Doc. 00–11679 Filed 5–9–00; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

[OPP–00646; FRL–6496–8]

## Pesticides; Draft Guidance for Pesticide Registrants on Voluntary Pesticide Resistance Management Labeling Based on Mode/Target Site of Action on the Pest

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** EPA has developed guidance for pesticide registrants on voluntary pesticide resistance management labeling based on mode/target site of action for pesticide products that are intended for general agricultural use. This effort will help reduce the development of pesticide resistance based on mode/target site of action and lead to better environmental protection. These guidelines are the result of a joint effort of the United States, Canada, and Mexico under the North American Free Trade Agreement (NAFTA). The guidance provides consistency in resistance management labeling being considered for approval in any or all of the countries involved in NAFTA. The Agency seeks public comment on a draft Pesticide Registration (PR) notice entitled "Draft Guidance for Pesticide Registrants on Voluntary Pesticide Resistance Management Labeling Based on Mode/Target Site of Action on the Pest." This draft PR notice provides guidance to the registrant concerning schemes of classification of pesticides according to their mode/target site of action, a recommended standard presentation and format for showing group identification symbols on end-use product labels, and labeling resistance management strategies in the use directions.

**DATES:** Comments, identified by docket control number OPP–00646, must be received on or before July 10, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00646 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Sharlene R. Matten (7511C), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 605–0514; fax number:

(703) 308–7026; e-mail address: matten.sharlene@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to those persons who are required to register pesticides. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document and the draft PR notice from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. You can also go directly to the listings from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax-on-demand.* You may request a faxed copy of the draft PR notice entitled "Draft Guidance for Pesticide Registrants on Voluntary Pesticide Resistance Management Labeling Based on Mode/Target Site of Action on the Pest," by using a faxphone to call (202) 401–0527 and selecting item 6124. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00646. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00646 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6, Suite 8, or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00646. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI That I Want To Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Background

### *A. What Guidance Does This PR Notice Provide?*

EPA, Pest Management Regulatory Agency of Canada (PMRA), and Cicoplafest of Mexico are committed to long-term pest resistance management through pesticide resistance management and alternative pest management strategies. Under the auspices of NAFTA, the United States, Canada, and Mexico have joined together to develop and publish guidelines for voluntary pesticide resistance management labeling for implementation in North America. The development of these guidelines is part of the activities of the Risk Reduction Subcommittee of the NAFTA Technical Working Group on Pesticides. A uniform approach across North America will help reduce the development of pesticide resistance and support joint registration decisions by providing

consistency in resistance management labeling being considered for approval in any or all of the NAFTA countries. To implement this NAFTA initiative, the Office of Pesticide Programs (OPP) of EPA has developed a draft PR notice describing the voluntary pesticide resistance management labeling guidelines based on mode/target site of action for agricultural uses of herbicides, fungicides, bactericides, insecticides, and acaricides. Mode/target site of action refers to the biochemical mechanism by which the pesticide acts on the pest and should not be interpreted to imply that these chemicals share a common mechanism for purposes of cumulative human health risk assessment under the Food Quality Protection Act. (See EPA's document "Guidance for Identifying Pesticide Chemicals and Other Substances that Have a Common Mechanism of Toxicity" located at http://www.epa.gov/fedrgstr/EPA-PEST/1999/February/Day-05/6055.pdf).

The draft PR notice describes schemes of classification of pesticides according to their mode/target site of action (Appendices I–III) provides a recommended standard presentation and format for showing group identification symbols on end-use product labels, and provides guidelines for labeling resistance management strategies in the use directions.

*B. What Questions/Issues Should You Consider?*

The issues you should consider are as follows:

1. Proposed general classification schemes based on mode/target site of action for herbicides, fungicides, and insecticides (Appendices I–III).

2. Classification of pesticides with unknown mode/target site of action.

3. Proposed general resistance management labeling statements.

*C. Why is a PR Notice Guidance and Not a Rule?*

The draft PR notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, this policy is not binding on either EPA or any outside parties. Although this guidance document provides a starting point for EPA decisions, EPA will depart from this policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that this policy is not appropriate for a specific pesticide or that the specific circumstances demonstrate that this policy should be abandoned.

EPA has stated in this notice that it will make available revised guidance after consideration of public comment. Public comment is not being solicited for the purpose of converting this guidance document into a binding rule. EPA will not be codifying this policy in the Code of Federal Regulations. EPA is soliciting public comment so that it can make fully informed decisions regarding the content of this guidance.

The "revised" guidance will not be an unalterable document. Once a "revised" guidance document is issued, EPA will continue to treat it as guidance, not a rule. Accordingly, on a case-by-case basis EPA will decide whether it is appropriate to depart from the guidance or to modify the overall approach in the guidance. In the course of commenting on this guidance document, EPA would welcome comments that specifically address how the guidance document can be structured so that it provides meaningful guidance without imposing binding requirements.

**List of Subjects**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: April 18, 2000.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

[FR Doc. 00–11147 Filed 5–9–00; 8:45 am]

BILLING CODE 6560–50–F

## FARM CREDIT ADMINISTRATION

**[BM–3–MAY–00–04]**

### Official Names of Farm Credit System Institutions

**AGENCY:** Farm Credit Administration.

**ACTION:** Policy statement.

**SUMMARY:** The Farm Credit Administration (FCA) Board recently adopted a policy statement amending the FCA's policy on official names of Farm Credit System (FCS or System) institutions. FCA's objective was to ensure that the public can identify a System bank, association, or service corporation as belonging to the FCS and is not misled by the name the institution uses. The new policy expands the methods by which institutions may identify themselves as members of the System and adopts a policy for trade names and names of subsidiaries.

**EFFECTIVE DATE:** May 3, 2000.

**FOR FURTHER INFORMATION CONTACT:**

William G. Dunn, Financial Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,

or

Beth Salyer, Attorney-Advisor, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:** The FCA Board adopted a policy statement amending the FCA's policy on official names of FCS institutions. The policy statement, in its entirety, follows:

**Official Names of Farm Credit System Institutions; FCA–PS–78 [BM–03–MAY–00–04]**

*Effective Date:* May 3, 2000.

*Effect on Previous Action:* Supercedes FCA–PS–63 [NV–96–22] 05/30/96.

*Source of Authority:* Sections 1.3(b), 2.0(b)(8), 2.10(c), 3.0, 5.17(a)(2)(A), 7.0, 7.6(a), 7.8(a) of the Farm Credit Act of 1971, as amended; 12 CFR part 611.

The Farm Credit Administration (FCA or Agency) Board hereby adopts the following policy statement:

*Objective*

Our objective is to ensure that the public can identify a Farm Credit System (System) bank, association, or service corporation as belonging to the Farm Credit System and is not misled by the name the institution uses. We also believe that Farm Credit System institutions should have more flexibility in proposing official names for their institutions. Our prior policy required institutions' official names to include either a statutory or regulatory designation, or its corresponding acronym. The new policy expands the methods by which institutions may identify themselves as members of the System and adopts a policy for trade names and names of subsidiaries.

*Official Names*

The FCA Board will approve an official name for a Farm Credit System bank,[1] association, or service corporation that meets the following two requirements:

- The name includes *appropriate identification* of the institution as a System institution; and
- The name is not *misleading* or inappropriate.

*Appropriate identification* means the name contains either: (1) The relevant statutory or regulatory designation, or

[1] Farm Credit System bank includes Farm Credit Banks, Banks for Cooperatives, and Agricultural Credit Banks.

its corresponding acronym, or (2) other appropriate identification as a System institution. Relevant statutory and regulatory designations, and their corresponding acronyms, are as follows:

- Agricultural Credit Bank or ACB.
- Bank for Cooperatives or BC.
- Farm Credit Bank or FCB.
- Agricultural Credit Association or ACA.
- Production Credit Association or PCA.
- Federal Land Credit Association or FLCA.
- Federal Land Bank Association or FLBA.

Other *appropriate identification* as a System institution includes the following:

- Farm Credit Services.
- Farm Credit.
- FCS.
- A member of the Farm Credit System.

*Misleading* names are those that a reasonable person might find confusing. For example, we would not issue a charter to an institution requesting a name that is the same as or similar to that of an existing institution because the public might find this confusing. Merely avoiding identical names is not enough; to minimize confusion, a proposed name must sufficiently distinguish an institution from other institutions. If the Agency had approved a charter for an institution using MyTown, ACA, as its official name, it would not issue a charter for an institution proposing ACA of MyTown or MyTown Farm Credit Services, ACA, as its official name. Nor would we issue a charter with the phrase "farm credit association" as part of the official name, because the inevitable use of the acronym "FCA" would be confused with the name of the Agency. Also, we would not approve a name for an institution that could cause the public to confuse that institution's authorities and services with those of a commercial bank, thrift institution, or credit union. For example, we would not issue a charter to a System institution requesting the term "national bank" in its official name because this could cause confusion regarding the services the institution may offer.

*Trade Names*

A System institution may use a trade name. The trade name may not be misleading. If an institution uses a trade name, it must use both the official and trade names in all written communications.

*Related Issues*

If an ACA and its subsidiaries operate under substantially different names, they must clearly identify the parent/subsidiary relationship in all written communications. For example, if MyTown, PCA, is a subsidiary of EveryTown, ACA, the PCA must identify itself as a subsidiary of the parent ACA in its written communications.

Please note that while the FCA cannot reserve names, the Patent and Trademark Office will register names under certain conditions. When applying for a name change or new charter, System institutions should submit a statement indicating whether they have applied for a trademark in that name.

This statement addresses only FCA's policy. Other laws, such as Federal or state trademark laws, may apply. Institutions should ensure that their official and trade names do not infringe the trademarks or service marks of other companies. Institutions may wish to consult legal counsel to determine whether their proposed names could be challenged or protected under state or federal law.

Dated this 3rd day of May, 2000 by order of the Board.

Dated: May 4, 2000.

**Nan P. Mitchem,**

*Acting Secretary, Farm Credit Administration Board.*

[FR Doc. 00–11686 Filed 5–9–00; 8:45 am]

BILLING CODE 6705–01–P

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011691–001.

*Title:* The COSCON/KL/YMUK Mediterranean/U.S. East and Gulf Coast Vessel Sharing Agreement.

*Parties:*

Cosco Container Lines
Kawasaki Kisen Kaisha, Ltd.
Yangming (U.K.)Ltd.

*Synopsis:* The proposed modification specifically authorized Cosco to subcharter space it receives from the other two parties to Zim Israel Navigation Company Ltd. The parties request expedited review.

*Agreement No.:* 011708.

*Title:* Zim/COSCON Slot Charter Agreement.

*Parties:*

Zim Israel Navigation Company Ltd.
COSCO Container Lines Co. Ltd.

*Synopsis:* The proposed Agreement would permit the parties to charter space to one another and enter into related cooperative arrangements in the trade between United States East Coast ports and ports in countries bordering the Mediterranean Sea and inland points via all of the above ports. The parties request expedited review.

By Order of the Federal Maritime Commission.

Dated: May 5, 2000.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–11713 Filed 5–9–00; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 2, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before June 9, 2000. If you anticipate that you will be submitting comments, but find it

difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0368.

*Title:* Section 97.523, Question Pools.

*Form No.:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Individuals or households.

*Number of Respondents:* 3.

*Estimated Time Per Response:* 96 hours.

*Frequency of Response:* Recordkeeping requirement .

*Total Annual Burden:* 288 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* The recordkeeping requirement contained in Section 97.523 is necessary to permit question pools used in preparing amateur examinations to be maintained by Volunteer-Examiner Coordinators (VECs). These question pools must be published and made available to the public before the questions are used in an examination. The recordkeeping requirement contained in Section 97.523 is being revised to reflect a change to rule section 97.503(b) which resulted in a reduction in the number of written amateur operator examination elements from five to three as adopted in the Report and Order in WT Docket 98–143.

The information maintained by the VEC's is used to prepare amateur examinations. If this information were not maintained, the amateur examination program would deteriorate and become outdated. These examinations would not adequately measure the qualifications of the applicants.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–11658 Filed 5–9–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

April 28, 2000.

**SUMMARY:** The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before June 9, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–XXXX.

*Title:* Implementation of the Satellite Home Viewer Improvement Act of 1999. Enforcement Procedures for Retransmission Consent Violations Conforming to Section 325(e) of the Communications Act of 1934, as amended.

*Form Number:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 8.

*Estimate Time Per Response:* 2 hours.

*Frequency of Response:* Annual reporting requirement.

*Total Annual Burden:* 192 hours.

*Total Annual Costs:* $1,296.

*Needs and Uses:* Congress directed the FCC to adopt regulations that enforce procedures for retransmission consent violations to satellite carriers pursuant to the changes outlined in the Satellite Home Viewer Improvement Act of 1999 (SHVIA). The availability of such information will serve the purpose of informing the public of the method of broadcast signal carriage.

*OMB Control Number:* 3060–XXXX.

*Title:* Maritime Mobile Service Identity (MMSI).

*Form Number:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit entities; Individuals or households.

*Number of Respondents:* 2,000.

*Estimate Time Per Response:* 0.5 hours.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure

*Total Annual Burden:* 1,000 hours.

*Total Annual Costs:* None.

*Needs and Uses:* The information collection is needed to collect, search, and rescue information about each vessel issued a Maritime Mobile Service Identity (MMSI). An MMSI is a unique nine-digit number which functions similar to a "phone number" for contacting a specific vessel. Upon receiving a distress alert containing an MMSI, authorities such as the U.S. Coast Guard may use the MMSI to find out background information about the vessel, *e.g.*, the owner's name, intended route, and other radio equipment on board, and to help determine whether the alert is false. Thus, an accurate MMSI database can help to protect lives and property at sea by reducing the time it takes to locate vessels in distress.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–11659 Filed 5–9–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meeting Notice

**DATE AND TIME:** Tuesday, May 16, 2000 at 10:0 a.m.

**PLACE:** 999 E Street, NW, Washington, DC

**STATUS:** This meeting will be closed to the Public.

**ITEMS TO BE DISCUSSED:** Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, May 18, 2000 at 10:00 a.m.

**PLACE:** 999 E Street, NW, Washington, DC (Ninth Floor).

**STATUS:** This Meeting will be open to the Public.

**ITEMS TO BE DISCUSSED:** Correction and Approval of Minutes.

Draft Advisory Opinion 2000–06—Gerald M. Moan on behalf of the 2000 Convention Committee of the Reform Party U.S.A.

Proposal to initiate a Notice of Proposed Rulemaking on Political Committee Definition (11 C.F.R. 100.5).

Administrative Matters.

**PERSON TO CONTACT FOR INFORMATION:** Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

**Mary W. Dove,**

*Acting Secretary of the Commission.*

[FR Doc. 00–11881 Filed 5–8–00; 3:11 pm]

BILLING CODE 6715–01–M

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

**Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants**

Universal Consolidated Services, Inc., 145–32 157th Street, Suite 228, Jamaica, NY 11434; Officer: Nicholas Kim, Vice President (Qualifying Individual),

Peninsula Cargo, Inc., 11124 Narbel Avenue, Downey, CA 90241; Officers: Modesto M. Pascual, Vice President (Qualifying Individual), Roman Silvestre, President

**Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants**

Global Freight International, Inc. d/b/a, Interfreight Corporation, P.O. Box 6432, 100 Everett Avenue, Chelsea, MA 02150; Officers: Bernard A. Wilcken, President (Qualifying Individual), Ian C. Wilcken, Secretary

Dated: May 5, 2000.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–11714 Filed 5–9–00; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Reissuance of License;

Notice is hereby given that the following Ocean Transportation Intermediary license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by OSRA 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR 515.

| License No. | Name/address | Date reissued |
|---|---|---|
| 3706 .... | Chesapeake Bay Shipping and Warehousing, Inc., 3431 Benson Avenue, Suite E, Baltimore, MD 21227. | May 1, 1999. |

**Sandra L. Kusumoto,**

*Director, Bureau of Consumer Complaints and Licensing.*

[FR Doc. 00–11715 Filed 5–9–00; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**TIME AND DATE:** 12:00 noon, Monday, May 15, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 5, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11746 Filed 5–5–00; 4:54 pm]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

### Public Workshop: Competition Policy in the World of B2B Electronic Marketplaces

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice Announcing Workshop.

**SUMMARY:** The Federal Trade Commission ("FTC" or "Commission") will hold a public workshop on June 29, 2000, to examine issues of competition policy that arise in connection with business-to-business ("B2B") electronic marketplaces.

**DATES:** The workshop will be held on June 29, 2000, and written presentations may be submitted by that date.

**ADDRESSES:** The workshop will be held in Room 432 of the Federal Trade Commission Headquarters Building, 600 Pennsylvania Avenue, N.W., Washington, D.C. Any interested person may submit a written presentation that will be considered part of the public record of the workshop. Written presentations should be submitted in both hard copy and electronic form. Six hard copies of each submission should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Submissions should be captioned "Comments regarding B2B Electronic Marketplaces." Electronic submissions

may be sent by electronic mail to *b2bmarketplaces@ftc.gov*. Alternatively, electronic submissions may be filed on a 3½ inch computer disk with a label on the disk stating the name of the submitter and the name and version of the word processing program used to create the document.

**FOR FURTHER INFORMATION CONTACT:** To obtain information about the workshop, please contact Gail Levine, Assistant Director for Policy Planning, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, telephone (202) 326–3193, e-mail *glevine@ftc.gov*.

**SUPPLEMENTARY INFORMATION:**

**Overview**

B2B electronic marketplaces are software systems that allow buyers and sellers of similar goods to carry out procurement activities using common, industry-wide computer systems. Recent weeks have brought numerous announcements of plans to develop B2B electronic marketplaces that link competitors with suppliers willing to meet their purchasing needs. One possible model allows firms to place purchase orders using a joint, industry-wide computer system, with competitors potentially able to aggregate their orders.

B2B electronic marketplaces may create significant efficiencies. For example, the marketplaces could reduce transaction costs; generate volume-related scale economies by combining orders from multiple purchasers; improve inventory management; and facilitate bidding by a broad spectrum of potential suppliers. At the same time, the arrangements may raise certain antitrust issues. Forethought in planning may enable B2B electronic marketplaces to achieve their efficiencies without impairing competition.

The FTC plans to convene a workshop on June 29, 2000, that will bring together designers, owners, and operators of B2B electronic marketplaces, and the buyers and sellers who use or wish to use them, in a session designed to accumulate facts about new B2B exchanges and their likely effects on competition. The goal is to enhance understanding of how B2B electronic marketplaces function and the means by which they may generate efficiencies, and to identify any antitrust issues that they raise. A transcript of the discussions will be publicly available. Interested parties are invited to attend or to submit written presentations.

**Specific Questions To Be Addressed**

The workshop will seek input from designers, owners, and operators of B2B electronic marketplaces; buyers and sellers who use or wish to use them; and antitrust practitioners and others familiar with the competition issues that B2B electronic marketplaces may raise. It will address the following questions, among others:

*What Are the Existing and Likely Models for B2B Marketplaces? How Do They Work? What Can They Do?*

1. What are the business reasons driving the creation of B2B electronic marketplaces? What new efficiencies can such marketplaces create?
2. What industries have established B2B electronic marketplaces? How are they faring? What characteristics affect the suitability of any given industry for establishing a B2B electronic marketplace? Are B2B electronic marketplaces being established outside the United States?
3. How are prices determined in B2B electronic marketplaces? Through auctions? Other methods? Do methods of determining price vary when products are customized? How are quantities and other competitive terms determined?
4. Who owns such marketplaces—designers, operators, buyers, sellers, and/or others? What are possible ownership structures? What mechanisms are envisioned for their financing? How is membership determined and by whom?
5. How are B2B electronic marketplace rules established? Who establishes the rules? What types of rules are generally necessary? What factors affect which rules are necessary?
6. How and by whom are B2B electronic marketplaces governed and operated? What are alternative models?
7. How are the owners and operators of B2B electronic marketplaces compensated, and for what services are they compensated? Who determines the compensation?
8. What are likely scenarios for how B2B electronic marketplaces will compete with each other? Does it depend on the industry involved? Do buyers or sellers participate in more than one B2B electronic marketplace in a particular industry? Are there situations in which network effects may dictate that a single B2B electronic marketplace dominate a particular industry? Why are some B2B electronic marketplaces consolidating now?
9. In a B2B electronic marketplace, what can participants discover about each other's actions? Who can see transaction or bid prices or quantities? Who receives information about available capacity?
10. Is there advertising in B2B electronic marketplaces? If so, what type of information is conveyed? Who determines what advertising may be placed?
11. Does the design or operation of B2B marketplaces raise issues relating to intellectual property rights?

*Buyer Perspectives*

1. What business reasons prompt buyers to be interested in purchasing through B2B electronic marketplaces? For example, what savings do buyers anticipate from the use of such marketplaces? How were purchases made before the availability of such marketplaces? Are buyers based outside the United States participating in such marketplaces?
2. What are the sources of the expected savings? Are savings expected to come from reductions in transaction costs? From volume-related scale economies? From inventory reductions? From the ability to do business more readily with distant sellers? From the ability to compare prices more easily? From other sources?
3. What factors affect the desirability of purchasing through a B2B electronic marketplace and the extent of likely electronic marketplace usage? Does it matter whether the product at issue is homogeneous or differentiated?
4. Does it make a difference to buyers who owns or operates the B2B electronic marketplace? If so, why? How do buyers decide in which marketplaces to participate? What factors affect participation decisions?
5. Are there any factors other than price and other competitive terms that will affect buying decisions in B2B electronic marketplaces? For example, how important is a seller's reputation in such a setting?
6. What role do computer programs play in comparing prices or other competitive terms or in authorizing purchases in B2B electronic marketplaces?
7. What information, if any, can buyers receive about each other's purchases? Does complexity of the product affect the answer?
8. What rules do buyers typically want to govern B2B electronic marketplace solicitations? Are there circumstances when buyers wish to limit the number or identity of bidders or otherwise structure auction procedures?
9. Do B2B electronic marketplaces require participants to purchase minimum quantities or minimum

percentages of their needs through the exchange? Are there circumstances when it is likely to make business sense for a buyer to participate solely in one B2B electronic marketplace? What factors are relevant to whether a buyer participates in multiple B2B electronic marketplaces selling similar products?

10. What consequences can be expected to follow from a decision to join, or not to join, a B2B electronic marketplace? Do B2B electronic marketplaces have implications for wholesalers or other middlemen? For long-term contracting?

*Seller Perspectives*

1. What business reasons prompt sellers to be interested in selling through B2B electronic marketplaces? For example, what savings do sellers expect to gain through such marketplaces? How were sales made before the availability of such marketplaces? Are sellers based outside the United States participating in such marketplaces?

2. What are the sources of the expected savings? Are savings expected to come from reductions in transactions costs? From volume-related scale economies? From inventory reductions? From the ability to do business more readily with distant buyers? From other sources?

3. What factors affect the desirability of transacting business through B2B electronic marketplaces and the extent of likely electronic marketplace usage? Does it matter whether the product at issue is homogeneous or differentiated?

4. Does it make a difference to sellers who owns or operates the B2B electronic marketplace? If so, why? How do sellers decide in which marketplaces to participate? What factors affect participation decisions?

5. Are there any increased costs to sellers of doing business in B2B electronic marketplaces? Are any distribution costs increased? What effects will B2B electronic marketplaces likely have on sellers' profit margins?

6. Do sellers see competitors' prices posted on B2B electronic marketplaces? If so, how do sellers respond? What role do computer programs play?

7. What other information, if any, do B2B electronic marketplaces make available to sellers about competing sellers? For example, can sellers receive information about competitors' available capacity?

8. What rules do sellers typically want to govern B2B electronic marketplace solicitations? Are there circumstances when sellers may wish to limit the number or identity of possible purchasers or otherwise structure auction procedures?

9. Must a minimum level or percentage of sales be made through a B2B electronic marketplace in which a seller participates? Do B2B electronic marketplaces impose any other requirements affecting participants' outside sales?

10. What consequences can be expected to follow from a decision to join, or not to join, a B2B electronic marketplace? Do B2B electronic marketplaces have implications for wholesalers or other middlemen? For long-term contracting?

*Public Policy Perspectives*

1. What competition issues may be raised by B2B electronic marketplaces? What are likely procompetitive benefits, and what are possible anticompetitive concerns?

2. Under what circumstances are B2B electronic marketplaces likely to increase or diminish competition? What has the experience been so far?

3. How do B2B electronic marketplaces affect entry at the buyer or seller level? How does entry occur in the market for B2B electronic marketplaces?

4. What issues are relevant to structuring and implementing B2B electronic marketplaces so as to both realize efficiencies and avoid competition problems? For example, what mechanisms might be included to prevent inappropriate sharing of competitive, confidential information? Are any of these mechanisms likely to be impractical or undesirable from a business perspective?

5. Does the development of competition within and among B2B electronic marketplaces depend in part on any intellectual property rights relating to the design or operation of such marketplaces?

6. What implications, if any, do B2B electronic marketplaces have for market structure and market concentration?

The Commission welcomes suggestions for other questions that also should be addressed. Proposed questions, identified as such, may be sent by electronic mail to *b2bmarketplaces@ftc.gov*.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–11604 Filed 5–9–00; 8:45 am]

BILLING CODE 6750–01–P

## HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

### Notice of Intent To Extend an Information Collection

**AGENCY:** Harry S. Truman Scholarship Foundation.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Harry S. Truman Scholarship Foundation [Foundation] will publish periodic summaries of proposed projects.

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the forms of information technology.

**DATES:** Written comments on this notice must be received by July 10, 2000 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Contact Louis H. Blair, Executive Secretary, Harry S. Truman Scholarship Foundation, 712 Jackson Place, NW, Washington, DC 20006; telephone 202–395–4831; or send e-mail to *lblair@truman.gov*. You also may obtain a copy of the data collection instrument and instructions from Mr. Blair.

**SUPPLEMENTARY INFORMATION:**

*Title of Collection:* Truman Scholar Payment Request Form.

*OMB Approval Number:* 3200–0005.

*Expiration Date of Approval:* May 31, 1997.

*Type of Request:* Intent to seek approval to extend an information collection for three years.

*Proposed Project:* The Foundation has been providing scholarships since 1977 in compliance with PL 93–642. This data collection instrument is used to collect essential information to enable the Truman Scholarship Foundation to determine the amount of financial support to which each Truman Scholar is eligible and then to make the payment. A total response rate of 100% was provided by the 273 Truman

Scholars who received support in FY 1999.

*Estimate of Burden:* The Foundation estimates that, on average, 0.5 hours per Scholar applying for funds will be required to complete the Payment Request Form, for a total annual burden of 136.5 hours for all applicants.

*Respondents:* Individuals.

*Estimated Number of Responses:* 273.

*Estimated Total Annual Burden on Respondents:* 136.5 hours.

Dated: May 4, 2000.

**Louis H . Blair,**

*Executive Secretary.*

[FR Doc. 00–11726 Filed 5–9–00; 8:45 am]

BILLING CODE 6820–AD–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00063]**

### Interdisciplinary Evaluation of Combination Therapy for Uncomplicated Malaria; Notice of Availability of Funds

#### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Interdisciplinary Evaluations of Combination Therapy for Uncomplicated Malaria. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Immunization and Infectious Diseases. The purpose of the program is to evaluate the effectiveness of combination antimalarial therapy at district or multidistrict level in sub-Saharan Africa.

#### B. Eligible Applicants

Assistance will be provided only to Ifakara Health and Research Development Center (IHRDC), in Ifakara, United Republic of Tanzania. No other applications are solicited.

The United Republic of Tanzania is the only country located in sub-Saharan Africa where large portions of the country are located in areas of active, and intense, transmission of the parasite Plasmodium falciparum. They represent one of only a few countries where drug policy reform is underway because of antimalarial drug resistance and is actively engaged in developing and testing strategies for addressing the problem of antimalarial drug resistance. Antimalarial drug resistance to chloroquine, the traditional first-line treatment for uncomplicated malaria, has intensified to a point where the Ministry of Health has decided to switch to an alternative medicine, sulfadoxine/pyrimethamine (SP), for first-line treatment of malaria. Because of concerns that this strategy will be short lived due to pre-existing levels of drug resistance to SP, the Ministry of Health is keenly interested in understanding potential future options for addressing this pressing public health challenge.

The IHRDC in Ifakara, Tanzania, is a non-government organization that comes under the jurisdiction of the United Republic of Tanzania, Ministry of Health. The Ministry of Health has oversight of the IHRDC and must approve all actions taken on behalf of the United Republic of Tanzania. IHRDC is the only institution in sub-Saharan Africa that is located in an area of very intense malaria transmission, that is located in a country that: Is poised to adopt a national malaria treatment policy of SP while actively engaged in investigating future treatment options; is actively engaged in research activities that are directly related to the objectives listed above; and has the needed experience and capacity. Because of its work in malaria for more than a decade, IHRDC is an internationally respected research institution. Investigators at IHRDC have a detailed understanding of the epidemiologic patterns and geographic distribution of malaria infection and transmission in their area, are actively engaged in using state-of-the-art techniques for evaluating antimalarial drug resistance, and have needed and proven expertise in socio-behavioral research related to malaria. In addition, the IHRDC maintains a demographic surveillance system (DSS) covering approximately 55,000 individuals, allowing for measurement of public health impact of malaria treatment policies, and, through its existing collaborative links to other institutions and projects, has the ability to access comparable data from 2 additional DSS data bases (covering a total population of over 300,000 individuals). The IHRDC is the only organization that has the capacity to carry out large-scale community-based public health interventions, to conduct malaria research, and to correctly diagnose drug resistant malaria infections in its laboratories and field activities. They have the required field experience and demonstrated capacity in areas directly related to all 6 principal objectives of this proposed evaluation: (1) Using state-of-the-art methods of diagnosing antimalarial drug resistance, including in vivo, in vitro, and molecular methods; (2) monitoring for changes in gametocytemia rates; (3) socio-behavioral research related to malaria, malaria drug use practices, and malaria treatment seeking practices; (4) economics of malaria and malaria treatment; (5) research into the process development of public health policy related to malaria; and (6) monitoring for public health impact, including on a population level.

#### C. Availability of Funds

Approximately $500,000 is available in FY 2000 to fund one award. It is expected that the award will begin on or about August 30, 2000, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

Continuation awards within an approved project period may be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

#### D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting the activities under 1. (Recipient Activities) and CDC will be responsible for conducting the activities under 2. (CDC Activities).

*1. Recipient Activities*

a. Identify an appropriate set of districts for the evaluation of a pilot policy of antimalarial combination therapy, including comparison areas using SP monotherapy for treatment of all cases of uncomplicated malaria.

b. Design a multifaceted evaluation program to determine the effectiveness of antimalarial combination therapy on inhibiting development of drug resistance and decreasing malaria transmission, as well as to elucidate programmatic, behavioral, economic, or policy aspects of combination therapy that could either enhance or limit this effectiveness.

c. Define, collect, and analyze baseline data: Collect baseline data so that the public health impact of the interventions can be evaluated (including impact on mortality rates).

d. Carry out the evaluation activities.

e. Measure the effect of the national treatment policy compared with the pilot policy of combination therapy in terms of (1) inhibiting the development of resistance to SP; (2) interrupting

transmission of the parasite; and (3) describing the behavioral, economic, and policy determinants of the policies.

f. Disseminate research results by appropriate methods such as publication in journals, presentation at meetings, conferences, etc.

g. Develop a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project.

*2. CDC Activities*

CDC will provide technical assistance in the design and conduct of the research as needed to possibly include:

a. Providing assistance in the evaluation methods and analytic approach.

b. Performing selected laboratory tests, as requested by IHRDC, including analysis of drug resistance conferring mutations in parasite samples by polymerase chain reaction (PCR) or gene sequencing, testing of biologic samples for presence of antimalarial drugs; testing of pharmaceutical samples for quality.

c. Assisting in data collection, data management, analysis of research data, interpretation, and dissemination of research findings.

d. Collaborating in the design of the evaluation.

e. Providing educational and training materials, as appropriate.

f. Assisting in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

**E. Application Content**

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 10 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

**F. Submission and Application Deadline**

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before June 30, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

**G. Evaluation Criteria**

The application will be evaluated against the following criteria by an independent review group appointed by CDC.

*1. Background and Need (10 points)*

Extent to which applicant's discussion of the background for the proposed project demonstrates a clear understanding of the purpose and objectives of this cooperative agreement program. Extent to which applicant illustrates and justifies the need for the proposed project that is consistent with the purpose and objectives of this program.

*2. Capacity (30 points total)*

a. Extent to which applicant describes adequate resources and facilities (both technical and administrative) for conducting the project. This includes the capacity to conduct quality laboratory measurements. (15 points)

b. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research and programs related to that proposed as evidenced by curriculum vitae, publications, etc. (10 points)

c. Extent to which applicant includes letters of support from non-applicant organizations, individuals, etc. Extent to which the letters clearly indicate the author's commitment to participate as described in the operational plan. (5 points)

*3. Objectives and Technical Approach (60 points total)*

a. Extent to which applicant describes specific objectives of the proposed project which are consistent with the purpose and goals of this program and which are measurable and time-phased. (10 points)

b. Extent to which the applicant identifies appropriate populations for study, with an adequate size to evaluate the program. Extent to which adequate procedures are described for the protection of human subjects. (10 points)

c. Extent to which applicant presents a detailed operational plan for initiating and conducting the project, which clearly and appropriately addresses all recipient activities. Extent to which applicant clearly identifies specific assigned responsibilities for all key professional personnel. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (2) the proposed justification when representation is limited or absent, (3) a statement as to whether the design of the study is adequate to measure differences when warranted, and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. The extent to which applicant describes the existence of or plans to establish partnerships. (30 points)

d. Extent to which applicant provides a detailed and adequate plan for evaluating study results (including laboratory data and data on prescribing practices), as well as plans for evaluating progress toward achieving project objectives. (10 points)

*4. Budget (not scored)*

Extent to which the proposed budget is reasonable, clearly justifiable, and consistent with the intended use of cooperative agreement funds.

5. Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Annual progress reports,

2. Financial status report, no more than 90 days after the end of the budget period, and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under the Public Health Service Act, Sections

301(a) [42 U.S.C. 241(a)], 307 [42 U.S.C. 2421], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

If you have any questions after reviewing the contents of all documents, business management technical assistance may be obtained from: Van Malone, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone (770) 488–2764, Email address vxm7@cdc.gov.

For program technical assistance, contact: Peter B. Bloland, DVM, MPVM, Division of Parasitic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop F–22, Atlanta, GA 30333, Telephone (770) 488–7760, Email address: pbloland@cdc.gov.

Dated: May 4, 2000.

**Henry S. Cassell III,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–11647 Filed 5–9–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Subcommittee on Prevention of Intimate Partner Violence and Sexual Violence and the Injury Research Grant Review Committee (IRGRC): Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee and conference call committee meetings.

*Name:* Subcommittee on Prevention of Intimate Partner Violence and Sexual Violence of the IRGRC.

*Times and Dates:* 6:30 p.m.–9 p.m., June 4, 2000. 8 a.m–4 p.m., June 5, 2000.

*Place:* The Westin Atlanta Airport, 4736 Best Road, College Park, Georgia 30337

*Status:* Open: 6:30 p.m.–7 p.m., June 4, 2000. Closed: 7 p.m.–9 p.m., June 4, 2000, through 4 p.m., June 5, 2000.

*Purpose:* The Subcommittee advises IRGRC on the technical and scientific merit of injury prevention research grant applications on Prevention of Intimate Partner Violence and Sexual Violence.

*Matters To Be Discussed:* Agenda items include a description of the Subcommittee's responsibilities and review process, and review of grant applications.

*Name:* Injury Research Grant Review Committee.

*Time and Date:* 4:30 p.m.–5:30 p.m., June 5, 2000.

*Place:* The Westin Atlanta Airport, 4736 Best Road, College Park, Georgia 30337

*Status:* Open: 4:30 p.m.–4:45 p.m., June 5, 2000. Closed: 4:45 p.m.–5:30 p.m., June 5, 2000.

*Purpose:* This committee is charged with advising the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the scientific merit and technical feasibility of grant applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focus on prevention and control and to support injury prevention research centers.

*Matters To Be Discussed:* Agenda items include the purpose of the meeting and discussion and vote on the report of the Subcommittee on Prevention of Intimate Partner Violence and Sexual Violence.

Beginning at 7 p.m., June 4, through 4 p.m., June 5, the Subcommittee on Prevention of Intimate Partner Violence and Sexual Violence of the IRGRC will meet, and from 4:45–5:30 p.m., June 5, IRGRC will meet to conduct a review of grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Linda L. Dahlberg, Ph.D., Acting Executive Secretary, IRGRC, National Center for Injury Prevention and Control, CDC, 4770 Buford Highway, NE, M/S K60, Atlanta, Georgia 30341–3724, telephone 770/488–4496.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 3, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–11648 Filed 5–9–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Center for Disease Control and Prevention

### Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 65 FR 4979, dated February 2, 2000) is a amended to reflect the restructuring of the Office of Health and Safety, Office of the Director, Centers for Disease Control and Prevention (CDC).

Section C–B, Organization and Functions, is hereby amended as follows:

Add the following item to the mission statement for the *Office of Health and Safety (CA1):* (7) provides advice and counsel to the CDC Office of the Director on health and safety related matters.

After the functional statement for the *Office of the Director (CA11),* insert the following:

External Activities (CA112). (1) Manages CDC regulatory programs for which the Office of Health and Safety is responsible (i.e., import permit program [42 CFR 71], laboratory registration/ select agent transfer program [42 CFR 72.6], and infectious agents shipping regulation [42 CFR 72]; (2) develops and reviews national safety guidelines including the "CDC/NIH Biosafety in Microbiological and Biomedical Laboratories" and the infectious agent shipping regulations; (3) participates in CDC, HHS, and interagency committees and workgroups considering matters related to laboratory safety including the public health response to bioterrorism; (4) provides consultations and technical assistance to State and local health departments on matters related to laboratory safety; (5) provides consultation and technical assistance to CDC laboratories located outside the US; (6) manages the WHO Collaborating Center for Applied Biosafety and Training at CDC; (7) participates in other domestic and international laboratory safety activities as requested.

*Resource Management Activity (CA113).* (1) Develops and coordinates budgets for OHS; (2) plans, coordinates, and provides administrative, fiscal and management assistance, including personnel, travel, training, and contract

administration; (3) assists in formulating, developing, negotiating, managing, and administering service contracts; (4) coordinates, manages, and provides review and oversight of acquisition and reimbursable agreement activities; (5) develops and implements OHS administrative policies, procedures, and operations, and prepares special reports and studies; (6) manages OHS centralized computer databases and internal applications; (7) develops and coordinates the implementation of security programs; (8) designs, implements, and evaluates OHS communications strategies including marketing messages, materials, and methods; (9) provides oversight for the Employee Health Services Clinic and the Worksite Health Promotion Programs for employees in the Atlanta area and for the Employee Assistance Program for employees based in Atlanta and remote locations.

Delete in their entirety the titles and functional statements for the *Biosafety Branch (CA14)* and the *Chemical and Physical Hazards Branch (CA12)* and insert the following:

*Environmental, Health, and Safety Branch (CA13).* (1) Develops and implements occupational health and safety programs for CDC employees, facility visitors, and management, taking the lead for programs in chemical safety, ergonomics, indoor air quality, hazard communication, respiratory protection, personal protective equipment, safety equipment and systems, hearing conservation, physical safety, fire safety, lock out-tag out, confined spaces, electrical safety, emergency response, and others; (2) identifies, develops, and provides for specialized training in environmental, occupational health, and safety for CDC employees and management; (3) develops, implements, and manages the accident/incident prevention program, including conducting investigations and recommending corrective and preventative measures; (4) develops and implements CDC's environmental programs, including hazardous materials and waste management, recycling, pollution prevention, environmental permits, notifications, monitoring, and environmental audits; (5) conducts CDC property and site assessments; (6) reviews, evaluates, and recommends changes to contracts with environmental, health, and safety requirements, and reviews contractors' environmental, health, and safety programs to ensure protection of CDC personnel and property; (7) provides consultation, advice, recommendations, and direct support to CDC employees, supervisors, and management officials in environmental, health, and safety matters to ensure compliance with laws, regulations, rules, and CDC's environmental, health, and safety policies; (8) in cooperation with the CIOs, coordinates, develops, and implements consolidated emergency response plans to comply with Federal and local laws and regulations; (9) develops, coordinates, and implements fire safety program and emergency evacuation plans; (10) reviews plans and specifications of new construction and renovations and recommends changes and additions to ensure protection of CDC's employees and property, and compliance with environmental, occupational health, and safety laws, regulations, and codes; (11) develops and implements programs for identifying and abating asbestos, lead, and other hazardous materials at all CDC-owned facilities.

*Laboratory Safety Branch (CA15).* (1) Develops and implements programs for biosafety and radiation protection in all domestic CDC scientific and diagnostic laboratory programs and animal care and use facilities; (2) manages the laboratory safety program for biological, chemical, radiological, and other hazards, and—through advice and counsel to line management—ensures compliance with all Occupational Safety and Health Administration, Nuclear Regulatory Commission, and other Federal, State and local regulations and guidelines; (3) in coordination with program safety committees, conducts a comprehensive annual safety survey of all laboratory, animal and associated support work areas; (4) provides consultation and direct support to CDC laboratory and animal workers, supervisors, and management officials on working safely with biological, chemical, and radiological agents; (5) conducts risk assessments and hazard evaluations of biological, radiological, and chemical hazards; (6) advises CIOs on containment levels, work practices, immunizations, and selection and use of safety and monitoring equipment; (7) manages radiological waste program; (8) provides consultation and direct support for the decontamination of laboratory wastes, equipment, and laboratory facilities; (9) develops and manages a comprehensive safety program for the BSL–4 Maximum Containment Laboratory, smallpox repository, and other specialized containment operations; (10) provides safety training programs for biological, chemical, radiological, and other laboratory hazards; (11) provides a comprehensive incident emergency response, investigation and notification program for biological, radiological, and chemical spills and exposures; (12) manages a pathogen registration program to ensure compliance with Federal, State, and local requirements; (13) serves as a national and international resource on biological safety and laboratory safety.

Dated: April 27, 2000.

**Jeffrey P. Koplan,**

*Director.*

[FR Doc. 00–11733 Filed 5–9–00; 8:45 am]

BILLING CODE 4160–18–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Applications

**ACTION:** Notice of receipt of applications.

**SUMMARY:** The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

**Permit No. TE–25131**

*Applicant:* Dr. Lawrence E. Stevens, Flagstaff, Arizona.

Applicant requests authorization for scientific research and recovery purposes to collect in the wild and conduct activities with the Kanab ambersnail (*Oxyloma haydeni kanabensis*) in Arizona.

**Permit No. TE–25594**

*Applicant:* Clay Nelson, Flagstaff, Arizona.

Applicant requests authorization to conduct scientific research for recovery purposes for the Kanab ambersnail (*Oxyloma haydeni kanabensis*) at Northern Arizona University and Glen Canyon Dam, Coconino County, Arizona.

**Permit No. TE–26436**

*Applicant:* George Veni, San Antonio, Texas.

Applicant requests authorization for scientific research and recovery purposes to collect the following endangered or threatened in Texas:

Peck's Cave amphipod (*Stygobromus pecki*)

Coffin Cave Mold beetle (*Batrisodes texanus*)

Kretschmarr Cave Mold beetle (*Texamaurops reddelli*)

Tooth Cave ground beetle (*Rhadine persephone*)

Tooth Cave Pseudoscorpion (*Tartarocreagris texana*)
Bee Creek Cave harvestman (*Texella reddelli*)
Bone Cave harvestman (*Texella reyesi*)
Tooth Cave spider (*Neoleptoneta myopica*)
Texas blind salamander (*Typhlomolge rathbuni*)
Mexican long-nosed bat (*Leptonycteris nivalis*)
Barton Springs salamander (*Eurycea sosorum*)

The following species will not be collected but potentially impacted.

San Marcos salamander (*Eurycea nana*)
Fountain darter (*Etheostoma fonticola*)
Big Bend gambusia (*Gambusia gaigei*)
Clear Creek gambusia (*Gambusia heterochir*)
Pecos gambusia (*Gambusia nobilis*)
San Marcos gambusia (*Gambusia georgei*)
Comanche Springs pupfish (*Cyprinodon elegans*)
Leon Springs pupfish (*Cyprinodon bovinus*)
Comal Springs dryopid beetle (*Stygoparnus comalensis*)
Comal Springs riffle beetle (*Heterelmis comalensis*)
Texas wild rice (*Zizania texana*)

**Permit No. TE–829995**

*Applicant:* Dallas Zoo/Dallas Aquarium, Dallas, Texas.

Applicant requests authorization to monitor the reproductive success of the interior least tern (*Sterna antillarum athalassos*) in Dallas County, Texas.

**Permit No. TE–839505**

*Applicant:* Aaron D. Flesch, Tucson, Arizona.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) in Arizona and New Mexico.

**Permit No. TE—814933**

*Applicant:* Texas Parks and Wildlife Department, Austin, Texas.

Applicant requests authorization for scientific research and recovery purposes to collect and conduct activities for the Devil's River minnow (*Dionda diaboli*) in Texas.

**Permit No. TE–26700**

*Applicant:* John A. Kugler, Sonoita, Arizona.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys and collect Gila trout (*Oncorhynchus gilae*) in Santa Cruz, Cochise, Graham, Pima, Maricopa, and Yuma Counties, Arizona.

**Permit No. TE–26690**

*Applicant:* Dynamac Corporation, Corvallis, Oregon.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the Colorado pikeminnow (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and razorback sucker (*Xyrauchen texanus*) along the Verde River in Arizona.

**Permit No. TE–26711**

*Applicant:* Coconino National Forest, Flagstaff, Arizona.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*), bald eagle (*Haliaeetus leucocephalus*), Yuma clapper rail (*Rallus longirostris yumanensis*), black-footed ferret (*Mustela nigripes*), Colorado pikeminnow (*Ptychocheilus lucius*), razorback sucker (*Xyrauchen texanus*), and Gila topminnow (*Poeciliopsis occidentalis occidentalis*) in Arizona, Yavapai, and Coconino Counties, Arizona.

**DATES:** Written comments on these permit applications must be received on or before June 9, 2000.

**ADDRESS:** Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** The U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

**Bryan Arroyo,**

*Programmatic Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.*

[FR Doc. 00–11649 Filed 5–9–00; 8:45 am]
BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Geological Survey

### Federal Geographic Data Committee (FGDC); Public Review of the Digital Cartographic Standard for Geologic Map Symbolization

**ACTION:** Notice; Request for comments.

**SUMMARY:** The FGDC is conducting a public review of the proposed Digital Cartographic Standard for Geologic Map Symbolization. The purpose of this public review is to provide data users and producers an opportunity to comment on this standard in order to ensure that it meets their needs.

Participants in the public review are encouraged to provide comments that address specific issues/changes/additions that may result in revisions to the proposed standard. After formal FGDC endorsement of the standard, the standard and a summary analysis of the changes will be made available to the public.

**DATES:** The public review period begins on May 19, 2000. Comments must be received by September 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** The electronic version of the draft standard, in Portable Document Format (PDF), may be downloaded from vb <http://ncgmp.usgs.gov/fgdc_gds/mapsymb>.

Request for printed copies of the standard should be addressed to Matilde Moss, at <mmoss@usgs.gov> or at U.S. Geological Survey, 918 National Center, 12201 Sunrise Valley Drive, Reston, VA 20192. Note: there are a limited number of printed copies available, and so reviewers are encouraged to use the electronic version.

Reviewer's comments may be sent to the FGDC via e-mail, to <mapsymbol@geology.usgs.gov>. Review comments also may be sent by regular mail to: Map Symbol Review, c/o David R. Soller, U.S. Geological Survey, 908 National Center, Reston, VA 20192. Reviewers are strongly urged to use the review comment template—it may be downloaded from <http://ncgmp.usgs.gov/fgdc_gds/mapsymb>.

**SUPPLEMENTARY INFORMATION:** Following is from the Introduction to the Digital Cartographic Standard for Geologic Map Symbolization, submitted by the FGDC Geologic Data Subcommittee.

**Introduction**

*Objective*

This new draft standard is intended to provide to the Nation's producers and users of geologic map information a single, modern standard for the digital

cartographic representation of geologic features. The objective in developing this national standard for geologic map symbols, colors, and patterns is to aid in the production of geologic maps and related products, as well as to help provide maps and products that have a consistent appearance.

*Scope*

This new draft standard contains descriptions, examples, cartographic specifications, and notes on usage for a wide variety of symbols that may be used on typical digital geologic maps or related products such as cross sections. The standard is scale-independent, meaning that the symbols are appropriate for use with geologic mapping compiled or published at any scale. It is designed for use by anyone who either produces or uses digital geologic map information.

*Applicability*

This new draft standard applies to any geologic map information published by the Federal Government, whether released as hard-copy (in either offset-print or plot-on-demand format) or electronically (as either Portable Document Format (PDF) files or for computer-monitor display only). Non-Federal agencies and private companies that produce geologic map information are urged to adopt this standard as well.

*Related Standards*

This new draft standard will supersede any existing U.S. Geological Survey (USGS) formal or informal cartographic standards for geologic map information. During preparation of this new draft standard, its relation to other standards or standards-development activities was assessed, and no significant conflicts were found.

*Standards Development Procedures*

In 1995, a proposed standard was informally released by the USGS (U.S. geological Survey, 1995a, 1995b). In 1996, this proposed standard was formally reviewed by geologists and cartographers in the USGS, the Association of American State Geologists (AASG), which represents the state geological surveys, and the Federal Geographic Data Committee's (FGDC) Geologic Data Subcommittee (GDS), which is composed mostly of representatives from Federal agencies that produce or use geologic map information. That review indicated the need for some revision to the proposed standard prior to its consideration by the FGDC for adoption as a Federal standard.

In 1996, plans were outlined to create a revised and updated Federal standard, and the standards-development group was formed. A proposal to develop the revised standard was submitted by the FGDC's GDS (*see* http://ncgmp.usgs.gov/fgdc_gds/mapsymbprop.html), and the FGDC accepted that proposal in 1997. Later that year, the standards-development group produced a preliminary, beta version of the draft standard, which was circulated among selected USGS and state geological survey personnel for review. Comments were incorporated and, in 1999, the revised draft standard (Working Draft) was submitted to the FGDC's GDS for consideration. Upon review and subsequent approval by the GDS, the Working draft was submitted to the FGDC Standards Working Group, which approved the document for public review, pending adoption of minor changes. The changes were made, and this new draft standard document (Public Review Draft) is now available to the public for review and comment.

Upon completion of the 120-day public review period, comments to the Public Review Draft will be considered, and any necessary revisions will be made. The revised draft standard document then will be submitted to the FGDC for formal approval as the Federal standard for geologic map symbolization.

Because this new standard is intended for use with digital applications, an electronic implementation of the Public Review Draft has been prepared in PostScript format. This implementation has been informally released as a USGS Open-File Report (USGS, 1999). This PostScript implementation will enable reviewers to directly apply the standard to geologic maps or illustrations prepared in desktop illustration and (or) publishing software. As the formally approved standard evolves, the PostScript implementation will be updated as well. Additionally, partial work on an ArcInfo (v.7x) implementation has been completed, and this implementation may also be informally released as a USGS Open-File Report in the future. Information regarding updates to these and other implementation efforts will be posted on FGDC's GDS website (http://ncgmp.usg.gov/ fgdc_gds).

The Public Review Draft document is available in both printed and PDF formats. For information on the review mechanism and the deadline for submittal of review comments, as well as on how to obtain copies of the Public Review Draft, please see FGDC's GDS website (http:// ncgmp.usgs. gov/ fgdc _gds). Questions or comments may be addressed by e-mail to <mapsymbol@geology.usgs.gov> or, if preferred, by regular mail to Map Symbol Review, c/o David R. Soller, National Geologic Map Database project, U.S. Geological Survey, 908 National Center, Reston, Virginia, 20192.

*Maintenance Authority*

On behalf of the FGDC, the USGS will maintain the Federal standard; the responsibility for coordinating Federal geologic mapping information is stipulated by Office of Management and Budget Circular A–16 (see http://www.whitehouse.gov/omb/circulars/a016/a016.html). The Geologic Mapping Act of 1992 (and subsequent reauthorizations) stipulates a requirement for standards development under the auspices of the National Geologic Map Database (NGMDB). Under this authority, the NGMDB project will function on behalf of the USGS as coordinator of this maintenance activity (see http://ncgmp.usgs. gov/ngmdbproject/standards/general.html). Maintenance will be conducted in cooperation primarily with the AASG, which is the USGS's partner in the Geologic Mapping Act.

To assist in its maintenance efforts, the NMGDB project will coordinate a standing committee that, as needed, will review comments and suggestions for revisions, additions, and deletions to the standard. Committee membership will be drawn from, among others, the NGMDB project, the USGS scientific staff and Publications Groups, the AASG, and the academic community. This standards-maintenance mechanism will be tested by forming the committee before completion of the FGDC public review period, so that the committee might both help the GDS evaluate the comments received and assist in preparing the final version to be submitted for formal approval by the FGDC.

Dated: May 4, 2000.

**P. Patrick Leahy,**

*Chief Geologist, U.S. Geological Survey.*

[FR Doc. 00–11654 Filed 5–9–00; 8:45 am]

BILLING CODE 4310–Y7–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–962–1410–00–P; F–14874–K]**

### Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue

conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to NANA Regional Corporation, Inc., for the village of Kiana. The lands involved are in the vicinity of Kiana, Alaska.

| Serial No. and land description | Acreage |
|---|---|
| Kateel River Meridian, Alaska | |
| F–14874–K: T. 19 N., R. 6 W., Secs. 21, 22, 23, 27 & 28 | 3,200.00 |
| F–14874–K: T. 20 N., R. 9 W., Secs. 4 to 8, inclusive | 3,030.66 |
| F–14874–K: T. 17 N., R. 8 W., Secs. 5 & 6 | 1,162.15 |
| Aggregating | 7,392.81 |

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the Arctic Sounder Newspaper. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 (907) 271–5960.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until June 9, 2000 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

**Nora A. Benson,**

*Land Law Examiner, ANCSA Team Branch of 962 Adjudication.*

[FR Doc. 00–11650 Filed 5–9–00; 8:45 am]

BILLING CODE 4310–JA–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Managment

**[CA–5101ER A173; CACA–41878]**

### Proposed Plan Amendment

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of intent.

**SUMMARY:** Notice is hereby given that the Bureau of Land Management (BLM) has proposed a plan amendment to the California Desert Conservation Area Plan (1980) to partially exempt a proposed fiber optic cable right-of-way from designated utility corridors.

**DATES:** Written scoping comments must be received no later than June 13, 2000.

**ADDRESSES:** Written scoping comments should be addressed to the District Manager, El Paso Fiber Optic Cable, California Desert, 6221 Box Springs Blvd., Riverside, California 92507.

**FOR FURTHER INFORMATION CONTACT:** James L. Williams (909) 697–5390.

**SUPPLEMENTARY INFORMATION:** El Paso Energy Communication Co. has proposed to construct a buried fiber optic cable from Texas, through New Mexico, Arizona and terminating in Los Angles, California. The cable is inside a six inch conduit and is proposed to be place within or alongside existing roads and highways in a one foot wide 42 inch deep trench. The California portion begins at the City of Blythe and proceeds northwest along the Midland Road to its intersection with State Highway 62 where it proceeds west along side the highway to east of the City of Twentynine Palms where proceeds westerly on roads to State Highway 247. The fiber optic cable then continues west along State Highway 47, then State Highway 18, then State Highway 138 and then State Highway 14 into Los Angeles. The proposed right-of-way is a permanent 10 feet with a temporary 15 feet for construction purpose. The proposed right-of-way is not within a designated California Desert Plan (1980) utility corridor and, therefore, does not conform to the Desert Plan. A plan amendment is required to exempt it from the Desert Plan utility corridors.

Dated: May 3, 2000.

**Douglas Romoli,**

*Acting District Manager.*

[FR Doc. 00–11543 Filed 5–9–00; 8:45 am]

BILLING CODE 4310–40–U

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Availability of a Draft Supplement to the Final Environmental Impact Statement for Completion of the Natchez Trace Parkway, Tennessee, Alabama, Mississippi (1978)

**SUMMARY:** In accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969 (Public Law 91–190, as amended), this notice announces the availability of the Draft Supplement (DSEIS) to the Final Environmental Impact Statement for Natchez Trace Parkway which was published in 1978. This supplement is for the construction of Section 3P13 of the Natchez Trace Parkway through Ridgeland, Mississippi. The DSEIS evaluates the environmental consequences associated with the proposed action and the other alternatives on local traffic and transportation routes, cultural resources, wetlands, visual quality, visitor experience, economics and land use, and impact on nearby residents, among other topics.

**DATES:** This DSEIS will be on public review for 60 days following the date of Environmental Protection Agency's (EPA) publication of their notice of the DSEIS in the **Federal Register.** A public meeting will be scheduled no less than 30 days from publication of EPA's notice but during the 60 day review period. Time and place of the public meeting will be scheduled at a later date and will be publicized in area newspapers. Those listed on the Natchez Trace Parkway's database who have shown interest in the proposed project will be notified personally by letter from the Parkway Superintendent.

**ADDRESSES:** Public reading copies of the Natchez Trace Parkway's Section 3P13 DSEIS will be available for public review at the following locations:

1. Natchez Trace Parkway Headquarters, 2680 Natchez Trace Parkway, Tupelo, Mississippi 38804, (662) 680–4004
2. Jackson/Hinds Library System, Eudora Welty Library, 300 North State Street, Jackson, Mississippi 39201, (601) 968–5809 (This is the Headquarters or main library in Jackson.)

**FOR FURTHER INFORMATION CONTACT:** For copies of the DSEIS or additional information, please contact: Wendell A. Simpson, Superintendent, Natchez Trace Parkway, 2680 Natchez Trace Parkway, Tupelo, Mississippi 38804, Telephone: (662) 680–4004.

**SUPPLEMENTARY INFORMATION:** The Natchez Trace Parkway was established in 1938 to commemorate the Old Natchez Trace, a primitive network of trails that stretched from Natchez, Mississippi, to Nashville, Tennessee. Designed to follow the alignment of the historic trace as closely as the requirements of modern road construction allows, the Natchez Trace Parkway will upon completion, extend diagonally from Natchez to Nashville, a distance of approximately 444 miles.

The completion of a continuous parkway motor road between Natchez and Nashville by the National Park Service has been underway for more than 60 years. A decision on and construction of this short segment of the

parkway motor road, combined with other completed, in-progress, and planned NPS construction projects between I–20 and I–55 would permit the opening of the parkway motor road to through visitor vehicular use without the need for a detour through the greater metropolitan area of Jackson, Mississippi. The parkway's 1987 General Management Plan ranks the completion of the parkway motor road as one of its prominent management objectives.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address form the rulemaking record which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: April 28, 2000.

**W. Thomas Brown,**

*Regional Director, Southeast Region.*

[FR Doc. 00–11653 Filed 5–9–00 8:45 am]

BILLING CODE 4310–70–M

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent To Prepare an Environmental Impact Statement for the General Management Plan Amendment, Dry Tortugas National Park, Florida

**SUMMARY:** Notice is hereby given that in accordance with the Environmental Policy Act of 1969, the National Park Service has begun preparation of an Environmental Impact Statement on the General Management Plan Amendment for Dry Tortugas National Park. The statement will assess potential environmental impacts associated with various types and levels of visitor use and resources management within the park. Specific issues to be addressed include appropriate levels and types of visitor use at various park sites, protection of near pristine resources such as coral reefs and seagrass beds, protection of submerged cultural resources, and management of commercial services to provide transportation, assistance in educating visitors and providing them with experience in keeping with the purpose of the park. The amendment and statement will build on the 1983 Master Plan for the area, and will conform to Director's Order—2, the planning guidance for National Park Service units that became effective May 27, 1998.

Dry Tortugas National Park boundaries encompass a cluster of seven coral reef and sand islands, shoals and water surrounding the island, and Fort Jefferson, the park's central cultural feature. Proclaimed as Fort Jefferson National Monument in 1935, the area was from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**SUPPLEMENTARY INFORMATION:** The Draft and Final General Management Plan Amendment and Environmental Impact Statement will be made available to all known interested parties and appropriate agencies. Full public participation by federal, state, and local agencies as well as other concerned organizations and private citizens is invited throughout the preparation process of this document.

The responsible official for this environmental impact statement is Jerry Belson, Regional Director, Southeast Region, National Park Service, Atlanta Federal Center, 1924 Building, 100 Alabama Street, SW, Atlanta, Georgia 30303.

Dated: April 2, 2000.

**Daniel W. Brown,**

*Regional Director, Southeast Region.*

[FR Doc. 00–11652 Filed 5–9–00; 8:45 am]

BILLING CODE 4310–70–M

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## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 29, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by May 25, 2000.

**Carol D. Shull,**

*Keeper of the National Register.*

**CALIFORNIA**

**San Francisco County**

San Francisco—Oakland Bay Bridge, I–80, San Francisco, 00000525

**GEORGIA**

**Ben Hill County**

Dorminy—Massee House, 516 W. Central Ave., Fitzgerald, 00000529

**Calhoun County**

Edison Commercial Historic District, Hartford St./GA 37 and Turner St./GA 216, Edison, 00000528

**Morgan County**

Apalachee School, 5060 Lower Apalachee Rd., Apalachee, 00000527

**Newton County**

North Covington Historic District, N. Emory and Odum Sts. and Georgia (CSX) Railroad, Covington, 00000526

**INDIANA**

**Scott County**

Scott County Home, 1050 S. Main St., Scottsburg, 00000530

**IOWA**

**Lee County**

McConn, Daniel, Barn, 2095 IA 61, Fort Madison, 00000531

**Sac County**

Chief Black Hawk Statue, Crescent Park Dr., Lake View, 00000532

**KANSAS**

**Morris County**

Carlson, Oscar, House, KS 2, Burdick, 00000533

**MASSACHUSETTS**

**Hampshire County**

Amherst West Cemetery, Triangle St., Amherst, 00000534

**MICHIGAN**

**Muskegon County**

Navigation Structures at White Lake Harbor, South End of Lau Rd., Whitehall, 00000535

**MINNESOTA**

**Hennepin County**

East Lake Branch Library, 2916 E. Lake St., Minneapolis, 00000542
Franklin Branch Library, 1314 W. Franklin Ave., Minneapolis, 00000545
Linden Hills Branch Library, 2900 W. 43rd St., Minneapolis, 00000540

Roosevelt Branch Library, 4026 28th Ave. S, Minneapolis, 00000543
Summer Branch Library, 611 Emerson Ave. N, Minneapolis, 00000539
Thirty-sixth Street Branch Library, 347 E. 36th St., Minneapolis, 00000541
Walker Branch Library, 2901 Hennepin Ave. S, Minneapolis, 00000544

**MISSOURI**

**Cole County**

Ruthven, John B. and Elizabeth, House, 406 Cherry St., Jefferson City, 00000537

**Jackson County**

Simpson-Yeomans-Country Side Historic District (Boundary Increase), General vicinity of W. 51 Terrace, Wornall Rd., W. F7 W 57th St., Kansas City, 00000538

**NEW MEXICO**

**San Miguel County**

Rowe Pueblo, Address Restricted, Rowe, 00000547

**NEW YORK**

**Westchester County**

South Presbyterian Church, 343 Broadway, Dobbs Ferry, 00000548

**NORTH CAROLINA**

**Johnston County**

North Smithfield Historic District, Roughly bounded by Market, Front, North, and Seventh Sts., Smithfield, 00000550

**Wake County**

Carpenter Historic District, (Wake County MPS), Along Capenter-Morrisville Rd., E of CSX Railroad Tracks and W of Davis Dr., Cary, 00000549

**RHODE ISLAND**

**Kent County**

Rice City Historic District (Boundary Increase), 2172 Plainfield Pike, Coventry, 00000551

**Washington County**

Tottell House, 1747 Mooresfield Rd., South Kingstown, 00000552

**SOUTH CAROLINA**

**Aiken County**

Salley Historic District, Bounded by Pine, Ferguson, Poplar, and Aldrich Sts., Salley, 00000554

**Spartanburg County**

Church of the Advent, 141 Advent St., Spartanburg, 00000553

**TEXAS**

**Brazos County**

La Salle Hotel, (Bryan MRA) 120 S. Main St., Bryan, 00000555

**VIRGINIA**

**Halifax County**

Carlbrook, VA 663, jct. VA 684, Halifax, 00000556

**Richmond Independent city**

Carver Industrial Historic District, Marshall, Lombardy, Clay, and Harrison Sts., Richmond, 00000559

**Winchester Independent city**

Douglas School, 598 N. Kent St., Winchester, 00000558

**Wythe County**

Wythe County Poorhouse Farm, VA 2, Peppers Ferry Rd., Wytheville, 00000557

[FR Doc. 00–11594 Filed 5–9–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Bay-Delta Advisory Council's Delta Drinking Water Council Meeting

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** The Bay-Delta Advisory Council's (BDAC) Delta Drinking Water council will meet on May 31, 2000 to discuss several issues including the CALFED Drinking Water Improvement Strategy and projects related to the Strategy. This meeting is open to the public. Interested persons may make oral statements to the Delta Drinking Water Council or may file written statements for consideration.

**DATES:** The Bay-Delta Advisory Council's Delta Drinking Water Council meeting will be held from 1 p.m. to 3:30 p.m. on Wednesday, may 31, 2000.

**ADDRESSES:** This meeting will be held at the Resources Building, 1416 Ninth Street, Room 1206, Sacramento, CA 95814.

**FOR FURTHER INFORMATION CONTACT:** Judy Health, CALFED Bay-Delta Program, at (916) 653–2994. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

**SUPPLEMENTARY INFORMATION:** The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One are of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Delta Drinking Water Council to advise the CALFED Program and the CALFED Policy Group through BDAC on necessary adaptions to the Program's Drinking Water Quality Improvement Strategy to achieve CALFED's drinking water objectives.

Minutes of the meeting will be maintained by the Program, 1416 Ninth Street, Suite 1155, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday, within 30 days following the meeting.

Dated: May 4, 2000.

**Lester A. Snow,**

*Regional Director, Mid-Pacific Region.*

[FR Doc. 00–11651 Filed 5–9–00; 8:45 am]

BILLING CODE 4310–94–M

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### Notice of Proposed Information Collection

**AGENCY:** Office of Surface Mining Reclamation and Enforcement.

**ACTION:** Notice and request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for noncoal reclamation, 30 CFR Part 769.

**DATES:** Comments on the proposed information collection must be received by July 10, 2000, to be assured of consideration.

**ADDRESSES:** Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that increased members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities [see 5 CFR 1320.8(d)]. This notice identifies information collection that OSM will be submitting to OMB for extension. This collection is contained in 30 CFR Part 769, Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for each information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0098.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

*Title:* Petition process for designation of Federal lands as unsuitable for all or certain types of surface coal mining operations and for termination of previous designations—30 CFR Part 769.

*OMB Control Number:* 1029–0098.

*Summary:* This Part establishes the minimum procedures and standards foe designating Federal lands unsuitable for certain types of surface mining operations and for terminating designations pursuant to a petition. The information requested will aid the regulatory authority in the decision making process to approve or disapprove a request.

*Bureau Form Number:* None.

*Frequency of Collection:* Once.

*Description of Respondents:* People who may be adversely affected by surface mining of Federal lands.

*Total Annual Responses:* 1.

*Total Annual Burden Hours:* 130.

Dated: May 5, 2000.

**Richard G. Bryson,**

*Chief, Division of Regulatory Support.*

[FR Doc. 00–11661 Filed 5–9–00; 8:45 am]

BILLING CODE 4310–05–M

## INTERNATIONAL TRADE COMMISSION

### Agency Form Submitted for OMB Review

**AGENCY:** United States International Trade Commission.

**ACTION:** The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) requesting emergency processing for review and clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Commission has requested OMB approval of this submission by COB May 22, 2000. Effective Date: May 2, 2000.

**Purpose of Information Collection**

The forms are for use by the Commission in connection with investigation No. 332–413, The Economic Impact of U.S. Sanctions with Respect to Cuba, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the U.S. House Committee on Ways and Means. The Commission expects to deliver the results of its investigation to the Committee by February 15, 2001.

Summary of Proposal

(1) *Number of forms submitted:* One.

(2) *Title of form:* Telephone Survey—The Economic Impact of U.S. Sanctions with Respect to Cuba.

(3) *Type of request:* New.

(4) *Frequency of use:* telephone survey, single data gathering, scheduled for 2000.

(5) *Description of respondents:* Representative selection of U.S. companies and organizations that have been impacted by the imposition of U.S. sanctions on Cuba.

(6) *Estimated total number of respondents:* 200.

(7) *Estimated total number of hours to complete the forms:* 100.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

**FOR FURTHER INFORMATION CONTACT:** Copies of the forms and supporting documents may be obtained from Jonathan R. Coleman, Office of Industries, USITC (202–205–3465). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, ATTENTION: Docket Librarian. All comments should be specific, indicating which part of the survey is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TTD terminal (telephone no. 202–205–1810).

General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: May 5, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–11732 Filed 5–9–00; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–859 (Final)]**

### Circular Seamless Stainless Steel Hollow Products From Japan

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of the final phase of an antidumping investigation.

**SUMMARY:** The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–859 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from Japan of circular seamless stainless steel hollow products. [1]

[1] For purposes of this investigation, Commerce has defined the subject merchandise as "pipes, tubes, redraw hollows, and hollow bars, of circular cross-section, containing 10.5 percent or more by weight chromium, regardless of production process, outside diameter, wall thickness, length, industry specification (domestic, foreign or proprietary), grade or intended use. Common specifications for the subject circular seamless stainless steel hollow products include, but are not limited to, ASTM–A–213, ASTM–A–268, ASTM–A–269, ASTM–A–270, ASTM–A–271, ASTM–A–312, ASTM–A–376, ASTM–A–498, ASTM–A–511, ASTM–A–632, ASTM–A–731, ASTM–A–771, ASTM–A–789, ASTM–A–790, ASTM–A–826 and their proprietary or foreign equivalents."

Excluded from the scope of the investigation are: (1) finished oil country tubular goods ("OCTG") certified to American Petroleum Institute standards 5CT or 5D or to a proprietary OCTG specification; (2) OCTG coupling stock with "mother-child traceability"; (3) line pipe marked, produced, warranted, or certified only to API or proprietary line pipe specifications and used in a pipeline application; and (4) hollow drill bars and rods. Additional explanation of scope exclusions is presented in Commerce's preliminary notice of sales at LTFV (65 FR 25306, May 1, 2000).

The products subject to this investigation are covered by statistical reporting numbers 7304.10.5020; 7304.10.5050; 7304.10.5080; 7304.41.3005; 7304.41.3015; 7304.41.3045; 7304.41.6005; 7304.41.6015; 7304.41.6045; 7304.49.0005; 7304.49.0015; 7304.49.0045; and 7304.49.0060; of the Harmonized Tariff Schedule of the United States (HTS). The statistical reporting numbers are provided for convenience; the written description of the subject products is controlling.

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**EFFECTIVE DATE:** April 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Diane J. Mazur (202–205–3184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that imports of circular seamless stainless steel hollow products from Japan are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on October 26, 1999, by Altx, Inc., Watervliet, NY; American Extruded Products Corp., Beaver Falls, PA; DMV Stainless USA, Inc., Houston, TX; Salem Tube, Inc., Greenville, PA; Sandvik, Steel Co., Scranton, PA; International Extruded Products LLC d/b/a Wyman-Gordon Energy Products—IXP Buffalo, Buffalo, NY; and United Steelworkers of America, AFL–CIO/CLC, Pittsburgh, PA.

#### Participation in the Investigation and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

#### Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

#### Staff Report

The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on June 29, 2000, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

#### Hearing

The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on July 12, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 5, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 7, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

**Written Submissions**

Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is July 6, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is July 19, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 19, 2000. On August 10, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before August 14, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: May 4, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–11731 Filed 5–9–00; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 337–TA–414]**

### In the Matter of Certain Semiconductor Memory Devices and Products Containing Same; Notice of Commission Determination To Extend the Target Date for Completion of the Investigation

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to extend the target date for completion of the above-captioned investigation by 45 days, or until Monday, June 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Clara Kuehn, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205–3012. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:** The Commission ordered the institution of this investigation on September 18, 1998, based on a complaint filed on behalf of Micron Technology, Inc., 8000 South Federal Way, Boise, Idaho 83707–0006 ("complainant"). The notice of investigation was published in the **Federal Register** on September 25, 1998. 63 FR 51372 (1998).

The presiding administrative law judge (ALJ) issued his final initial determination (ID) on November 29, 1999, concluding that there was no violation of section 337. He found that: (a) Complainant failed to establish the requisite domestic industry showing for any of the three patents at issue; (b) all asserted claims of the patents are invalid; (c) none of the asserted claims of the patents are infringed; and (d) all of the patents are unenforceable for inequitable conduct. On February 1, 2000, the Commission determined to review the final ID in its entirety and two procedural issues. The notice of the Commission decision to review the final ID was published in the **Federal Register** on February 7, 2000. 65 FR 5890 (2000). On February 15, 2000, respondents, complainant, and the Commission investigation attorney (IA) filed written submissions on the issues under review. Responsive submissions were filed on February 22, 2000.

On April 4, 2000, complainant Micron and respondents Mosel Vitelic, Inc. and Mosel Vitelic Corp. (collectively "Mosel") filed a joint motion to terminate the investigation by settlement and vacate the ID. The IA filed a response to the joint motion on April 14, 2000. The joint motion is currently pending before the Commission. The Commission determined that, given the pending joint motion, the target date for completion of the investigation should be extended until Monday, June 26, 2000. The previous target date for completion of this investigation was May 11, 2000.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 201.14, 210.6, and 210.51(a) of the Commission's Rules of Practice and Procedure (19 CFR 201.14, 210.6, and 210.51(a)).

Copies of the public version of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000.

By order of the Commission.

Issued: May 4, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–11730 Filed 5–9–00; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** May 15, 2000 at 2 p.m.

**PLACE:** Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–841 (Final)(Certain Non-Frozen Concentrated Apple Juice from China)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on May 22, 2000.)
5. Inv. No. 731–TA–429 (Review) (Mechanical Transfer Presses from Japan)—briefing and vote. (The Commission will transmit its

determination to the Secretary of Commerce on May 26, 2000.)

6. Outstanding action jackets: (1) Document No. GC–00–020: Administrative matters.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: May 5, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–11755 Filed 5–8–00; 10:10 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** United States International Trade Commission.

**TIME AND DATE:** May 17, 2000 at 11:00 a.m.

**PLACE:** Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:**

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–677 (Review)(Coumarin from China)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on May 30, 2000.).
5. Outstanding action jackets: (1) Document No. GC–00–020: Administrative matters.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 5, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–11756 Filed 5–8–00; 10:10 am]

**BILLING CODE 7020–02–P**

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

**DATES:** Requests for copies must be received in writing on or before June 26, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

**ADDRESSES:** To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

**FOR FURTHER INFORMATION CONTACT:** Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

**SUPPLEMENTARY INFORMATION:** Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

### Schedules Pending

1. Department of Agriculture, Natural Resources Conservation Service (N1–114–98–1, 3 items, 1 temporary item). Copies of a magazine published by the Soil Conservation Service, 1935 through 1975. Copies of this publication are already in the National Archives. This schedule also provides for the permanent retention of records relating

to surveys conducted during the 1930s and 1940s.

2. Department of the Army, Agency-wide (N1–AU–98–10, 2 items, 2 temporary items). Records relating to access to privacy communications systems messages. Included are requests, approvals, disapprovals, documents stemming from investigative or judicial proceedings, and electronic copies of documents created using electronic mail and word processing. This schedule reduces the retention period for recordkeeping copies of these documents, which were previously approved for disposal.

3. Department of the Army, Agency-wide (N1–AU–99–8, 4 items, 4 temporary items). Records relating to the transfer of technology between designated Army laboratories and non-Federal collaborators, including copies of cooperative research and development agreements, patent license agreements, and related policy documents. This schedule also includes a database of agreements, working files, and electronic copies of documents created using electronic mail and word processing.

4. Department of the Army, Agency-wide (N1–AU–00–8, 2 items, 2 temporary items). Documents relating to the administration of insurance programs and retirement plans for employees paid from nonappropriated funds. This schedule authorizes the agency to change the format of records from microform to electronic image and also increases the retention period for recordkeeping copies, which were previously approved for disposal.

5. Department of Defense, Defense Intelligence Agency (N1–373–00–1, 21 items, 20 temporary items). Records of the agency's Missile and Space Intelligence Center (MSIC), including intelligence reference collections, files relating to management of threat simulator development, intelligence production management files, equipment tracking receipts, project development files, and ballistic missile performance databases. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are records related to the non-proliferation of ballistic missiles. Finished intelligence produced by MSIC was previously approved for permanent retention.

6. Department of Defense, National Imagery and Mapping Agency (N1–537–00–2, 110 items, 110 temporary items). Paper and electronic records relating to human resources, including electronic copies of documents created using electronic mail and word processing. Records relate to such subjects as overall human resources policies and programs, pay and allowances, recruitment and hiring of staff, diversity and equal employment opportunity programs, assignments and promotions, labor relations, awards, benefits, and injury compensation.

7. Department of Defense, National Reconnaissance Office (N1–525–00–1, 13 items, 13 temporary items). Records, including electronic copies of documents created using electronic mail and word processing, that relate to operational management matters (excluding records that pertain to reconnaissance systems), community service programs, personnel security cases, awards and decorations, and employee assistance programs. This schedule authorizes the agency to apply disposition instructions to records regardless of media.

8. Department of Energy, Agency-wide (N1–434–98–9, 7 items, 7 temporary items). Records relating to accountable officers' account files, including monthly memorandum reports, correspondence on auditing matters, and audit files, which were previously approved for disposal. Also included are electronic copies of documents created using electronic mail and word processing.

9. Department of Justice, Executive Office for U.S. Attorneys (N1–118–99–2, 6 items, 5 temporary items). Records relating to evaluations of the performance of U.S. Attorneys Offices. Included are such records as work papers, correspondence relating to issues identified during the evaluation process, reports and U.S. Attorneys' responses, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of final reports forwarded to the Office of the Inspector General for further action are proposed for permanent retention.

10. Department of Justice, Federal Bureau of Investigation (N1–65–00–2, 1 item, 1 temporary item). Criminal fingerprint cards and related records for individuals with multiple arrests born prior to January 1, 1929. This schedule reduces the retention period for these records, which were previously approved for disposal.

11. Department of Labor, Office of Workers' Compensation Programs (N1–217–00–1, 7 items, 7 temporary items). Case files relating to Federal employees who sustain injuries or illnesses in the course of their employment. Included are reports, claims, payment records, and claim determinations or rulings as well as electronic copies of documents created using electronic mail and word processing. This schedule reduces the retention period for case files, which were previously approved for disposal, in both paper and electronic format. It also authorizes the agency to destroy paper case records after they have been input into the electronic system.

12. Department of the Navy, Agency-wide (N1-NU–98–2, 130 items, 112 temporary items). Records of the Naval Criminal Investigative Service and other Navy law enforcement activities. Included are records relating to counterintelligence sources, security briefings of personnel prior to travel, operations security surveys, polygraph programs, the issuance of credentials and passes, the custody and control of evidence gathered in criminal investigations, and forensic lab activities. Also included are electronic copies of documents created using electronic mail and word processing. This schedule also changes descriptions, retention periods, and retirement instructions for previously scheduled series and authorizes the agency to maintain records in media other than paper.

13. Department of the Treasury, United States Mint (N1–104–99–1, 20 items, 17 temporary items). Copies of audit records accumulated by offices not responsible for their compilation or for monitoring, financial statements, contract audits, and auditing general correspondence files. This schedule also modifies descriptions, retention periods, or retirement instructions for several series of previously scheduled audit-related records and also includes electronic copies of documents created using electronic mail and word processing. Records proposed for permanent retention include recordkeeping copies of annual gold audit records accumulated by compiling and monitoring offices and audits conducted on programs related to agency products, such as coins and medals.

14. Department of the Treasury, United States Mint (N1-104–99–2, 18 items, 15 temporary items). Financial planning and analysis records. Included are such records as financial statements and reports documenting the allocation of funds, congressional budget hearing records, and financial planning and analyses general correspondence files. Also included are electronic copies of documents created using electronic mail and word processing. This schedule also modifies the descriptions and retirement instructions for such records as budget submissions to the Department of the Treasury and budget work papers, which were previously approved for disposal. Final versions of

annual budget submissions, cost production analyses reports for Mint products, and selected cost analysis benchmark studies are proposed for permanent retention.

15. Environmental Protection Agency, Agency-wide (N1–412–99–1, 8 items, 5 temporary items). Software and image files for the Superfund Document Management System. This imaging system serves as an index to the documents contained in the agency's permanent Superfund Site Files. Records proposed for permanent retention include an electronic index for the Superfund Site Files, electronic annotations regarding the content and context of the Superfund documents, and supporting documentation for the index and annotations records.

16. Federal Energy Regulatory Commission, Agency-wide (N1–138–00–5, 3 items, 3 temporary items). Correspondence providing informal staff advice, interpretations, and advisory opinions which do not represent the official views of the Commission and do not set precedent for future cases. Also included are electronic copies of records created using electronic mail and word processing.

17. Federal Energy Regulatory Commission, Office of Markets, Tariffs and Rates (N1–138–00–6, 6 items, 6 temporary items). Reports and submissions, discontinued prior to 1996, pertaining to such matters as gas storage, interstate pipelines, gas procurement, gas sale and resale, and refunds made by natural gas producers. These reports, which were previously approved for disposal, are proposed for immediate destruction.

18. Nuclear Regulatory Commission (N1–431–99–8, 2 items, 2 temporary items). Older records dating from the 1970s and 1980s. Records consist of draft Energy Department reports sent to the agency for review that do not include any annotations or comments and agency copies of Commission on Three Mile Island depositions and related Senate hearings, which are duplicates of Commission records already in the National Archives.

19. Social Security Administration, (N1–47–00–2, 2 items, 1 temporary item). Duplicate copies of issuances used for reference, including congressional committee prints, hearings and testimony, textbooks, and non-government conference proceedings. Records were accumulated by the Social Security Board and Federal Security Agency during the period 1936–1986. Proposed for permanent retention are annual reports of the Social Security Board and Federal Security Agency as well as official publications of the Department of Health, Education, and Welfare related to public assistance programs.

Dated: May 1, 2000.

**Michael J. Kurtz,**

*Assistant Archivist for Record Services—Washington, DC.*

[FR Doc. 00–11596 Filed 5–9–00; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Combined Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Combined Arts Advisory Panel, Opera section (Creativity, & Organizational Capacity categories), to the National Council on the Arts will be held from June 26–27, 2000 in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, D.C., 20506. A portion of this meeting, from 3:00 p.m. to 4:15 p.m. on June 27th, will be open to the public for policy discussion.

The remaining portions of this meeting, from 9:00 a.m. to 5:45 p.m. on June 26th and from 9:00 a.m. to 3:00 p.m. and 4:15 p.m. to 5:30 p.m. on June 27th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 12, 1999, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, D.C. 20506, or call 202/682–5691.

Dated: May 4, 2000.

**Kathy Plowitz-Worden,**

*Panel Coordinator, Panel Operations, National Endowment for the Arts.*

[FR Doc. 00–11685 Filed 5–9–00; 8:45 am]

BILLING CODE 7537–01–M

## NEIGHBORHOOD REINVESTMENT CORPORATION

### Sunshine Act Meeting; Twenty-Second Annual Meeting of the Board of Directors

**TIME AND DATE:** 2:30 P.M., Monday, May 22, 2000.

**PLACE:** Neighborhood Reinvestment Corporation, 1325 G Street, NW, Suite 800, Board Room, Washington, DC 20005.

**STATUS:** Open/Closed.

**CONTACT PERSON FOR MORE INFORMATION:** Jeffrey T. Bryson, General Counsel/Secretary (202) 220–2372.

**Agenda**

I. Call to Order
II. Approval of Minutes:
  March 22, 2000 Regular Meeting
III. Committee Reports
IV. Election of Officers
V. Board Appointments
VI. Resolution of Appreciation
VII. Proposed Pension Plan Amendments
VIII. Treasurer's Report
IX. Executive Director's Quarterly Management Report
X. Personnel Issues
XI. Adjourn

**Jeffrey T. Bryson,**

*General Counsel/Secretary.*

[FR Doc. 00–11883 Filed 5–8–00; 3:49 pm]

BILLING CODE 7570–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–272]**

### Public Service Electric and Gas Company; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–

70 issued to Public Service Electric and Gas Company (PSE&G), the licensee, for operation of the Salem Nuclear Generating Station, Unit No. 1 (Salem Unit No. 1), located in Salem County, New Jersey.

By application dated May 3, 2000, the licensee proposed a license amendment that would modify Technical Specification (TS) 3.1.3.2.1, and TS Surveillance Requirements 4.1.3.1.1 and 4.1.3.4. A note would be added to these sections stating that, during Cycle 14, the position of Rod 1SB2 will be determined indirectly by the movable incore detectors within 8 hours following its movement until the repair of the indication system for this rod. In addition, the note would indicate that, during reactor startup, the fully withdrawn position of Rod 1SB2 will be determined by current traces or other equivalent means, and subsequently verified by the movable incore detectors prior to entry into Mode 1. The note would be effective during the remainder of Cycle 14, or until repair of the indication system is completed. The indication system for Rod 1SB2 became inoperable on April 28, 2000. The position indication system indicates that the rod is fully inserted; however, the licensee has confirmed that the rod is in the fully withdrawn position based on flux mapping information from the movable incore detectors. Troubleshooting has resulted in a determination that the position indication system cannot be repaired with the reactor in Modes 1–4. With one analog rod position indicator inoperable, the TS currently requires that either (1) the position of the non-indicating rod be determined indirectly by the movable incore detectors once per 8 hours and within 1 hour of any motion that exceeds 24 steps, or (2) thermal power be reduced to less than 50% within 8 hours. The licensee is currently implementing option (1).

The licensee has also requested that the license amendment be reviewed and approved on an exigent basis in accordance with 10 CFR 50.91(a)(6). In its application, PSE&G stated that the position indication system cannot be repaired with the reactor at power and that the possibility exists that repairs cannot be made until the plant is shutdown. Personnel safety and concerns over occupational exposure to radiation dose prevent the safe completion of repairs while operating at power. The licensee also stated that the failure was unexpected and has resulted in a significant burden to plant operations personnel as well as the movable incore detectors. PSE&G is concerned that operation of the Unit 1 flux mapping system, by as much as 120 times per month to comply with compensatory actions required by TS, may have detrimental effects, such as increased wear and tear, on the incore system. Since the incore system was not designed to operate in this manner, an increased risk of significant equipment malfunction may further challenge the licensee's ability to perform other TS surveillances for which the incore system is normally used.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change reduces the frequency of verifying the position of one non-indicating rod using the movable incore detectors and allows a different means of verifying rod position during reactor startup. The inoperability of the normal position indicating system does not affect the probability of a rod drop, a rod misalignment, or any other analyzed accident.

The inoperability of the rod position indicator eliminates one means of detecting a rod drop or rod misalignment. Failure to detect a misaligned rod could affect the initial conditions of the accident analysis and thereby affect the consequences. Based upon the other means available for detecting rod drops and misalignment (*e.g.*, the urgent failure alarm), the increase in the likelihood of an undetected rod drop or misalignment is considered to be negligible. As a result, the initial conditions of the accident analysis are preserved and the consequences of previously analyzed accidents are unaffected.

Therefore, the change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change will not introduce any new accident initiators. The change only allows an extension to the previously approved frequency for verifying rod position for one non-indicating rod and allows a different means of verifying rod position during reactor startup.

Therefore, the change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change reduces the frequency of verifying the position of one non-indicating rod using the movable incore detectors and allows a different means of verifying rod position during reactor startup. The inoperability of the rod position indicator eliminates one means of detecting a rod drop or rod misalignment. Failure to detect a misaligned rod could affect the initial conditions of the accident analysis and thereby affect the associated margins of safety. Based upon the other means available for detecting rod drops and misalignment (e.g., the urgent failure alarm), the increase in the likelihood of an undetected rod drop or misalignment is considered to be negligible. As a result, the initial conditions of the accident analysis are preserved and the margins of safety are unaffected.

Therefore, the change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 24, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 3, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 4th day of May 2000.

For the Nuclear Regulatory Commission.

**Robert J. Fretz,**

*Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–11665 Filed 5–9–00; 8:45 am]

BILLING CODE 7590–01–P

**NUCLEAR REGULATORY COMMISSION**

**[Docket No: 040–8794]**

**Finding of No Significant Impact Related to Approval of Decommissioning Plan for the Molycorp, Inc. Facility York, Pennsylvania, License No. SMB–1408**

The U.S. Nuclear Regulatory Commission (NRC) is considering issuing an amendment to Source Materials License No. SMB–1408, held by Molycorp, Inc. (Molycorp or licensee), to authorize decommissioning of its facility in York, Pennsylvania. The objective of the decommissioning is to remediate the areas contaminated with thorium, uranium, and their daughter products, to allow the NRC to release Molycorp's York property for unrestricted use and to terminate the NRC radioactive materials license.

**Environmental Assessment Summary**

*Proposed Action*

In connection with the decontamination and decommissioning of its York facility, the licensee proposed the following activities: Decontamination and removal of buildings and other above-grade structures, with the exception of an office building and a warehouse, removal of concrete slabs and associated drains and sumps, excavation of the contaminated material exceeding the Site Decommissioning Management Plan (SDMP) Action Plan unrestricted use criteria (46 FR 52061), restoration of excavated areas with clean overburden, and transportation of the radioactively contaminated materials to an NRC approved interim storage or disposal facility. Further details are provided in the Environmental Assessment (EA).

Based on the NRC staff evaluation of the Molycorp's final Decommissioning Plan (DP), it was determined that the proposed decommissioning can be accomplished in compliance with the NRC public and occupational dose limits, effluent release limits, and residual radioactive material limits. In addition, the approval of the proposed action (*i.e.*, decommissioning of Molycorp's, York, Pennsylvania, facility in accordance with the commitments in the NRC license SMB–1408 and the final DP) will not result in a significant adverse impact on the environment.

*Need for Proposed Action*

The proposed action is necessary to remove the radioactive material attributable to licensed operations at the site to levels that permit unrestricted use of the site and termination of the radioactive source materials license SMB–1408.

*Environmental Impacts of the Proposed Action*

NRC staff reviewed the levels of contamination, the proposed remediation and decommissioning methods, and the radiological release criteria that will be used during the remediation and decommissioning. The radiological criteria are specified so that decommissioning activities will meet the 10 CFR part 20 radiation protection requirements. Worker and public doses will be limited so that exposures will not exceed Part 20 requirements and are as low as is reasonably achievable (ALARA).

The licensee will perform remediation in accordance with NRC's Action Plan to ensure timely cleanup of SDMP sites (57 FR 13385) and transportation of the excavated materials to an NRC approved interim storage or disposal facility.

The information for the York DP includes additional analyses of worker exposures from normal operations and an assessment of the potential for accidents. Because of the limited nature of activities planned for the York facility, potential worker exposures will most likely result from inhalation of airborne dust and shine from direct radiation. Potential public exposures are limited to inhalation of contaminated airborne dusts.

Information provided by the licensee indicates that past activities resulted in no measurable internal or external dose to any workers. The past activities included radiological characterization and building decontamination similar to the proposed activities. Therefore, radiation doses to workers from these activities are expected to be well within the limits of Part 20. Separate dose calculations to assess the impacts indicated that the excavator at the York site will receive an estimated maximum annual dose of 10.6 millirem (mrem) (predominantly from external exposure). The Part 20 annual worker dose limit is 5 rem (5000 mrem). As the estimated dose is well below the limit, no adverse impacts are expected based on the exposure calculations.

NRC staff analyzed the radiological impacts to the public from the planned decommissioning activities. Potential radiological impacts to the public from the decommissioning operations at the York facility are limited to similar release mechanisms pertaining to worker exposures (decontamination and excavation dusts), but require transport over greater distances to reach potential receptors. Therefore, much lower concentrations and doses are expected for members of the public in comparison to workers. The licensee estimated the public exposure at the York site boundary due to excavation to be about 0.059 mrem/yr. This dose is well below the NRC public dose limit (Part 20) of 100 mrem/yr, providing confidence that the potential for adverse environmental impacts is low. The licensee has included in its DP, further groundwater sampling and characterization to reduce uncertainty in current estimates and to assure that mitigative measures are not warranted. Therefore, NRC staff concludes that the licensee has provided adequate plans to ensure that potential radiological impacts to members of the public from the proposed decommissioning activities will not exceed NRC limits and are unlikely to result in adverse environmental impacts.

NRC staff also assessed the radiological impacts from transportation of contaminated soil and other wastes from the York site to an NRC approved interim storage or disposal facility. The most significant exposure pathway for the truck driver was estimated to be from direct exposure. The total radiation dose to the truck driver was estimated to be from direct exposure. The total radiation dose to the truck driver was estimated at 5.42 mrem for all shipments and 3.33 mrem during transport only (for comparison, the Part 20 occupational dose limit is 5000 mrem/yr). Other scenarios, such as transporting the wastes to another storage facility (example: Envirocare waste facility in Clive, Utah), were also considered and the resulting dose to the worker was found to be well below the NRC occupational dose limit. Also, the public dose from transport would be far less than that for the driver. NRC staff reviewed the calculations and found the doses and intakes are well within Part 20 limits.

NRC staff evaluated the radiological impacts from potential accidents. The information in the York facility DP states that potential site accident scenarios are unlikely to lead to doses that exceed 1 percent of the Part 20 dose limits. Potential accident scenarios considered include fire and loading or transfer mishaps. Considering the low potential for fire or explosion in existing building structures, the low quantities of material used during transfer operations, and the lack of highly concentrated radioactive materials at the site, NRC staff concludes that accidental releases of radioactive materials in quantities that could affect public health and safety are unlikely. The licensee has a procedure in place for emergency

response and notifications that provides additional safety assurance and, therefore, NRC staff concludes that the licensee has adequately addressed the potential for radiological accidents.

NRC staff also considered nonradiological impacts, such as transportation accidents, air quality and noise, chemicals and hazardous materials, and concluded that such impacts are negligible and will not result in adverse impacts. NRC staff also concludes that there are no environmental justice issues associated with the decommissioning of the York site, because there are no disproportionately high minority or low-income populations near the site. The licensee contacted the Pennsylvania Field Office of the U.S. Fish and Wildlife Service and determined that there are no endangered species on the York site.

*Alternatives to the Proposed Action*

The following alternatives, and the associated impacts and conclusions are described in the EA.

—No Action

—Cleanup for Unrestricted Use and Shipment to an Approved Disposal Site;

—On-Site Storage at the York site; and,

—On-Site Disposal at the York site.

**Conclusions**

Based on NRC staff evaluation of the final DP for the York site, it was determined that the proposed decommissioning can be accomplished in compliance with NRC's public and occupational dose limits, effluent release limits, and residual radioactive material limits. In addition, the approval of the proposed decommissioning of the York site will not result in a significant adverse impact on the public health and the environment.

NRC staff concludes that there are no reasonably available alternatives to the licensee's preferred action that are obviously superior.

**Agencies and Individuals Consulted**

NRC staff consulted with the Pennsylvania Department of Environmental Protection (PADEP) in the preparation of this EA. PADEP provided comments and questions on the draft EA. Appropriate comments and responses to the questions were incorporated into the final EA.

**Finding of No Significant Impact**

Based upon the EA, the Commission concludes that the proposed action will not have a significant impact on the quality of the human environment. Accordingly, the Commission has determined not to prepare an Environmental Impact Statement for the proposed action.

**Additional Information**

For further details with respect to the proposed action, see: (1) Molycorp's license amendment application dated August 14, 1995, and Molycorp's supplemental information and responses to NRC comments dated November 24, 1999; and (2) the complete EA. These documents are available for public inspection at web site http://www.nrc.gov/NRC/ADAMS/index.html.

Dated at Rockville, Maryland, this 3rd day of May 2000.

For the Nuclear Regulatory Commission.

**Larry W. Camper,**

*Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–11663 Filed 5–9–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Public Workshop To Discuss the Technical Basis Document for Dose Modeling To Support Decommissioning

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Workshop.

**SUMMARY:** This notice announces a public workshop to discuss a Technical Basis Document for dose modeling to support the decommissioning of nuclear facilities. The purpose of this workshop is to provide a forum for the Nuclear Regulatory Commission (NRC) staff, the nuclear industry, other regulatory agencies, and interested stakeholders to discuss the Technical Basis Document developed by the NRC to support the decommissioning of nuclear facilities.

**DATES:** June 7 and 8, 2000.

**SUPPLEMENTARY INFORMATION:** On October 21, 1998, (63 FR 56237) NRC announced that it was sponsoring a series of public workshops to support that staff's development of a Standard Review Plan (SRP) and other guidance for the decommissioning of nuclear facilities. NRC staff held a series of workshops on dose modeling, surveys, demonstrating ALARA, and restricted use/alternate criteria on December 1–2, 1998, January 21–22, 1999, March 18–19, 1999, June 16–17, 1999, August 18–19, 1999 and February 17–18, 2000. In addition, as draft SRP modules were completed, they were posted on the NRC website, for review and comment by interested individuals.

**ADDRESSES:** An agenda for the workshop will be posted on the NRC's website at: http://www.nrc.gov/NMSS/DWM/DECOM/decomm.htm. The workshop will be held at the NRC Headquarters, in the Auditorium of Two White Flint North Building, 11545 Rockville Pike, Rockville, Maryland. NRC staff strongly encourages interested stakeholders to attend and participate in this workshop, as it will offer a unique opportunity to provide the staff with insights, perspectives, and information that stakeholders feel is important for the NRC staff to consider as it finalizes the Technical Basis Document.

**FOR FURTHER INFORMATION CONTACT:** Dominick A. Orlando, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards (DWM/NMSS), at (301) 415–6749, or Rateb (Boby) Abu-Eid, High-Level Waste and Performance Assessment Branch, DWM/NMSS, at (301) 415–5811.

Dated at Rockville, Maryland this 3rd day of May, 2000.

For the Nuclear Regulatory Commission.

**Robert A. Nelson,**

*Acting Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–11664 Filed 5–9–00; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–24441; 812–11842]**

### Warburg, Pincus Balanced Fund, Inc., et al.; Notice of Application

May 4, 2000.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of application for an order under section 17(d) of the Investment Company Act of 1940 ("Act") and rule 17d–1 under the Act.

**APPLICANTS:** Warburg, Pincus Balanced Fund, Inc., Warburg, Pincus Capital Appreciation Fund, Warburg, Pincus Cash Reserve Fund, Inc., Warburg, Pincus Central & Eastern Europe Fund, Inc., Warburg, Pincus Emerging Growth Fund, Inc., Warburg, Pincus Emerging Markets II Fund, Inc., Warburg, Pincus European Equity Fund, Inc., Warburg, Pincus Fixed Income Fund, Warburg, Pincus Focus Fund, Inc., Warburg, Pincus Global Fixed Income Fund, Inc., Warburg, Pincus Global Post-Venture Capital Fund, Inc., Warburg, Pincus,

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Global Telecommunications Fund, Inc., Warburg, Pincus Growth & Income Fund, Inc., Warburg, Pincus Health Sciences Fund, Inc., Warburg, Pincus High Yield Fund, Inc., Warburg, Pincus Institutional Fund, Inc., Warburg, Pincus Intermediate Maturity Government Fund, Inc., Warburg, Pincus International Equity Fund, Inc., Warburg, Pincus International Growth Fund, Inc., Warburg, Pincus International Small Company Fund, Inc., Warburg, Pincus Japan Growth Fund, Inc., Warburg, Pincus Japan Small Company Fund, Inc., Warburg, Pincus Long Short Market Neutral Fund, Inc., Warburg, Pincus Major Foreign Markets Fund, Inc., Warburg, Pincus Municipal Bond Fund, Inc., Warburg, Pincus New York Intermediate Municipal Fund, Warburg, Pincus New York Tax Exempt Fund, Inc., Warburg, Pincus Small Company Growth Fund, Inc., Warburg, Pincus Small Company Value Fund, Inc., Warburg, Pincus Strategic Global Fixed Income Fund, Inc., Warburg, Pincus Trust, Warburg, Pincus Trust II, Warburg, Pincus U.S. Core Equity Fund, Inc., Warburg, Pincus U.S. Core Fixed Income Fund, Inc., Warburg, Pincus WorldPerks Money Market Fund, Inc., Warburg Pincus WorldPerks Tax Free Money Market Fund, Inc. (collectively, the "Warburg Pincus Funds") all existing and future series thereof, and Credit Suisse Asset Management, LLC ("CSAM").

**SUMMARY OF APPLICATION:** Applicants request an order to permit certain registered management investment companies to deposit their uninvested cash balances in one or more joint accounts to be used to enter into repurchase agreements.

**FILING DATE:** The application was filed on November 4, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 25, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Warburg Pincus Funds, 466 Lexington Avenue, New York, New York 10017; CSAM, One Citicorp Center, 153 East 53rd Street, New York, New York 10022.

**FOR FURTHER INFORMATION CONTACT:** Sara P. Crovitz,Seniro Counsel, at (202) 942–0667, or Michael W. Mundt, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0101, (202) 942–8090.

**Applicants' Representations**

1. The Warburg Pincus Funds are open-end management investment companies registered under the Act. CSAM, a Delaware limited liability company registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"), serves as the investment adviser to the Warburg Pincus Funds.[1] Applicants request that any relief granted pursuant to the application also apply to any other registered management investment company that now or in the future is advised or subadvised by CSAM (together with Warburg Pincus Funds, the "Funds").[2]

2. At the end of each trading day, applicants expect that some or all of the Funds will have uninvested cash balances in their respective custodian banks that would not otherwise be invested in portfolio securities. All of the Funds currently are authorized to invest at least a portion of their uninvested cash balances in short-term repurchase agreements.

3. Applicants propose to deposit some or all of the uninvested cash balances of the Funds remaining at the end of each trading day into one or more joint accounts ("Joint Accounts").[3] The daily balance of the Joint Accounts would be invested in short-term repurchase agreements ("Repurchase Agreements"), provided that: (a) the maximum maturity for Repurchase Agreements purchased through the Joint Accounts will not exceed 30 days; and (b) the Repurchase Agreements are "collateralized fully" as defined in Rule 2a–7 under the Act. A Fund would invest through a Joint Account only in Repurchase Agreements that are consistent with the Fund's investment objectives, policies and restrictions. A Fund's decision to use the Joint Accounts will be based on the same factors as a Fund's decision to make any other short-term liquid investment.

4. CSAM will not participate as an investor in the Joint Accounts and will collect no additional fee for its management of the Joint Accounts. CSAM will be responsible for investing amounts in the Joint Accounts, establishing accounting and control procedures, and ensuring fair and equitable treatment of the participating Funds.

5. Any Repurchase Agreements entered into through the Joint Accounts will comply with the standards and guidelines set forth in any existing and future positions of the Commission or its staff regarding repurchase agreement transactions. The Funds will not enter into "hold-in-custody" repurchase agreements (*i.e.*, repurchase agreements where the counterparty or one of its affiliated persons may have possession of, or control over, the collateral subject to the agreement).

**Applicants' Legal Analysis**

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibits an affiliated person of a registered investment company, or an affiliated person of such person, acting as principal, from participating in any joint enterprise or arrangement in which that investment company is a participant, unless the Commission has issued an order authorizing the arrangement. In passing on these applications, the Commission considers whether the participation of the registered investment company in the proposed joint arrangement is consistent with the provisions, policies and purposes of the Act and the extent to which participation is on a basis different from or less advantageous than that of other participants.

2. Section 2(a)(3) of the Act defines an "affiliated person" of another person to

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[1] CSAM includes, in addition to the company itself, any other entity controlling, controlled by, or under common control with CSAM that acts in the future as an investment adviser for the Funds (as defined below).

[2] Each Fund that currently intends to rely on the requested order is named as an applicant. Any Fund that relies on the requested order in the future will do so only in compliance with the terms and conditions of the application. The requested relief would apply to Funds subadvised by CSAM to the extent that CSAM manages the uninvested cash of those Funds.

[3] Certain Funds currently invest in Joint Accounts in reliance on a previous order. *Warburg, Pincus Balanced Fund, et al.*, Investment Company Act Release Nos. 22683 (May 27, 1997) (notice) and 22724 (June 23, 1997) (order). The requested order would supersede the previous order.

include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Applicants state that each Fund may be considered an "affiliated person" of each other Fund if CSAM, as investment adviser, is deemed to control each Fund. Applicants state that each Fund, by participating in the Joint Accounts, and CSAM, by managing the Joint Accounts, could be deemed to be "joint participants" in a "transaction" within the meaning of section 17(d) of the Act. In addition, applicants state that each Joint Account could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1.

3. Applicants submit that the proposed Joint Accounts meet the criteria of rule 17b–1 for issuance of an order. Applicants assert that no Fund will be in a less favorable position as a result of the Joint Accounts. Applicants state that each Fund's liability on any Repurchase Agreement will be limited to its interest in the investment. Applicants also assert that the proposed operation of the Joint Accounts will not result in any conflicts of interest among any of the Funds and CSAM.

4. Applicants state that the operation of the Joint Accounts could result in certain benefits to the Funds. Applicants state that the Funds may earn a higher rate of return on investments through the Joint Accounts relative to the returns they could earn individually. Under most market conditions, applicants assert, it is possible to negotiate a rate of return on larger investments that is higher than the rate of return available on smaller investments. In addition, applicants state that the enhanced purchasing power available through Joint Accounts may increase the number of dealers willing to enter into Repurchase Agreements with smaller Funds and may reduce the possibility that the Funds' cash balances remain uninvested. Applicants state that the Joint Accounts may result in certain administrative efficiencies and may lessen the potential for error by reducing the number of trade tickets and cash wires that must be processed by the sellers of Repurchase Agreements and by the Funds' custodians and accountants.

**Applicants' Conditions**

Applicants will comply with the following as conditions to any order granted by the Commission in connection with this application:

1. The Joint Accounts will consist of one or more separate cash accounts established at a custodian bank. A Joint Account may be established at more than one custodian bank and more than one Joint Account may be established at any custodian bank. A Fund may transfer a portion of its daily cash balances to more than one Joint Account. After the calculation of its daily cash balance and at the direction of CSAM, each Fund will transfer into one or more Joint Accounts the cash it intends to invest through the Joint Accounts. Each Fund whose regular custodian is a custodian other than the bank at which a proposed Joint Account will be maintained and that wishes to participate in the Joint Account will appoint the latter bank as a sub-custodian for the limited purposes of: (a) Receiving and disbursing cash; (b) holding any Repurchase Agreements; and (c) holding collateral received from a transaction effected through the Joint Account. All Funds that appoint such sub-custodians will have taken all necessary actions to authorize such bank as their legal custodian, including all actions required under the Act.

2. The Joint Accounts will not be distinguishable from any other accounts maintained by the Funds at their custodians except that monies from the Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have any indicia of a separate legal entity. The Joint Accounts will only be used to aggregate individual transactions necessary for the management of each Fund's daily uninvested cash balance.

3. Cash in the Joint Accounts will be invested in one or more Repurchase Agreements provided that: (a) The maximum maturity for Repurchase Agreements purchased through the Joint Accounts will not exceed 30 days; and (b) the Repurchase Agreements are "collateralized fully" as defined in Rule 2a–7 under the Act and satisfy the uniform standards set by the Funds for such investments. The securities subject to the Repurchase Agreements will be transferred to a Joint Account, and they will not be held by the Fund's repurchase counterparty or by an affiliated person of that counterparty.

4. Each Fund will participate in a Joint Account on the same basis as every other Fund in conformity with its respective investment objective or objectives, policies and restrictions. Any further Funds that participate in a Joint Account will be required to do so on the same terms and conditions as the existing Funds.

5. Each Fund, through its investment adviser and/or custodian, will maintain records (in conformity with Section 31 of the Act and the rules thereunder) documenting for any given day its aggregate investment in a Joint Account and its pro rata share of each Repurchase Agreement made through such Joint Account.

6. All assets held by a Joint Account will be valued on an amortized cost basis to extent permitted by applicable Commission releases, rules, letters or orders.

7. Each Fund valuing its net assets based on amortized cost in reliance upon rule 2a–7 under the Act will use the average maturity of the instrument(s) in the Joint Accounts in which such Fund has an interest (determined on a dollar-weighted basis) for the purpose of computing its average portfolio maturity with respect to the portion of its assets held in a Joint Account on that day.

8. Not every Fund participating in the Joint Accounts will necessarily have its cash invested in every Repurchase Agreement. However, to the extent a Fund's cash is applied to a particular Repurchase Agreement, the Fund will participate in and own its proportionate share of such Repurchase Agreement, and any income earned or accrued thereon, based upon the percentage of such investment purchased with amounts contributed by such Fund.

9. To ensure that there will be no opportunity for one Fund to use any part of a balance of a Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in any Joint Account for any reason. Each Fund will be permitted to draw down its entire balance at any time. Each Fund's decision to invest in a Joint Account will be solely at its option, and no Fund will be obligated either to invest in the Joint Accounts or to maintain any minimum balance in the Joint Accounts. In addition, each Fund will retain the sole rights of ownership of any of its assets, including interest payable on such assets, invested in the Joint Accounts.

10. CSAM will administer, manage and invest the cash balance in the Joint Accounts in accordance with and as part of its duties under the existing or any future investment advisory contracts with each Fund. CSAM will not collect any additional or separate fee for advising or managing any Joint Account.

11. The administration of the Joint Accounts will be within the fidelity bond coverage maintained for the Funds as required by section 17(g) of the Act and rule 17g–1 thereunder.

12. The boards of directors or trustees of the Funds participating in the Joint Accounts will adopt procedures pursuant to which the Joint Accounts

will operate and which will be reasonably designed to provide that the requirements set forth in the application are met. The directors or trustees will make and approve such changes that they deem necessary to ensure that such procedures are followed. In addition, the directors or trustees will determine, no less frequently than annually, that the Joint Accounts have been operated in accordance with the proposed procedures, and will permit a Fund to continue to participate therein only if it determines that there is a reasonable likelihood that the Fund and its shareholders will benefit from the Fund's continued participation.

13. Investments held in a Joint Account generally will not be sold prior to maturity except: (a) If CSAM believes that the investment no longer presents minimal credit risk; (b) if, as a result of a credit downgrading or otherwise, the investment no longer satisfies the investment criteria of all Funds participating in the investment; or (c) if the counterparty defaults. A Fund may, however, sell its fractional portion of an investment in a Joint Account prior to the maturity of the investment in such Joint Account if the cost of such transaction will be borne solely by the selling Fund and the transaction will not adversely affect the other Funds participating in that Joint Account. In no case will an early termination by less than all participating Funds be permitted if it will reduce the principal amount or yield received by other Funds participating in a particular Joint Account or otherwise adversely affect the other participating Funds. Each Fund participating in such Joint Account will be deemed to have consented to such sale and partition of the investment in such Joint Account.

14. Repurchase Agreements held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and will be subject to the restriction that a Fund may not invest more than 10%, in the case of a money market fund, or 15%, in the case of a non-money market fund (or such other percentages as set forth by the Commission from time to time) if its net assets in illiquid securities, and any similar restriction set forth in the Fund's investment restrictions and policies, if CSAM cannot sell the instrument, or the Fund's fractional interest in such instrument, pursuant to the preceding condition.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11681 Filed 5–9–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. IC–24440; File No. 812–12000]**

## New York Life Insurance and Annuity Corporation, et al., Notice of Application

May 3, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for an order under Section 6(c) of the Investment Company Act of 1940 ("1940 Act"), as amended granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of credits applied to premium payments made under certain deferred variable annuity policies and certificates.

**SUMMARY OF APPLICATION:** Applicants seek an order under Section 6(c) of the 1940 Act, to permit, under specified circumstances, the recapture of credits applied to premium payments made under: (i) Certain deferred variable annuity policies and certificates that NYLIAC will issue through SA III (the policies and certificates, including certain certificate data pages and endorsements, are referred to as "Mainstay Policies" or "LifeStages Policies," collectively, the "SA III Policies"), and (ii) policies and certificates, including certain certificate data pages and endorsements, the NYLIAC may issue in the future through SA III or any Future Account (collectively, the "Accounts") which policies and certificates, including certain certificate data pages and endorsements, are substantially similar to the SA III Policies in all material respects (the "Future Policies" together with the SA III Policies, "Policies"). Applicants also request that the order being sought extend to any National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with NYLIAC, whether existing or created in the future, that serves as a distributor or principal underwriter of the Policies offered through the Accounts (collectively, "NYLIAC Broker-Dealers").

**APPLICANTS:** New York Life Insurance and Annuity Corporation ("NYLIAC") and its NYLIAC Variable Annuity Separate Account—III ("SA III"), any other separate accounts of NYLIAC ("Future Accounts") that support in the future variable annuity policies and certificates that are substantially similar in all material respects to the SA III policies, and NYLife Distributors, Inc. ("NYLIFE Distributors") (collectively referred to herein as "Applicants").

**FILING DATES:** The Application was filed with the Commission on February 24, 2000, and amended and restated on May 3, 2000.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on May 26, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Applicants, c/o Linda M. Reimer, Esq., New York Life Insurance and Annuity Corporation, 51 Madison Avenue, New York, New York 10010.

**FOR FURTHER INFORMATION CONTACT:** Ronald A. Holinsky, Attorney, or Susan M. Olson, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

### Applicant's Representations

1. NYLIAC is a stock life insurance company organized under the laws of the State of Delaware. NYLIAC is licensed to sell life, accident and health insurance and annuities in the District of Columbia and all states. NYLIAC serves as depositor for SA III, which was established in 1994 pursuant to authority granted under a resolution of NYLIAC's Board of Directors. NYLIAC

also serves as depositor for several existing Future Accounts, one or more of which may support obligations under Future Policies. NYLIAC may establish additional Future Accounts for which it will serve as depositor.

2. NYLIFE Distributors is the principal underwriter of SA III. NYLIFE Distributors is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934, as amended, and is a member of the NASD. The SA III Policies are distributed by NYLIFE Distributors and sold by registered representatives of NYLIFE Securities, Inc., and registered representatives of unaffiliated broker-dealers that have entered into selling agreements with NYLIAC and NYLIFE Distributors. The SA III Policies also are distributed and sold by banking and financial institutions that have entered into selling agreements with NYLIAC or NYLIFE Distributors. NYLIFE Securities, Inc. and NYLIFE Distributors are wholly-owned subsidiaries of NYLIFE, LLC, which is a wholly-owned subsidiary of New York Life Insurance Company. NYLIFE Distributors may enter into similar arrangements for Future Policies. NYLIFE Distributors may act as principal underwriter for Future Accounts and distributor for Future Policies. A successor entity also may act as principal underwriter for any of the Accounts and distributor for any of the Policies.

3. SA III is a segregated asset account of NYLIAC. SA III is registered with the Commission as a unit investment trust under the 1940 Act. SA III will fund the variable benefits available under the SA III Policies. Units of interest in SA III under the SA III Policies it funds will be registered under the Securities Act of 1933 ("1933 Act"). NYLIAC may issue Future Policies through SA III or through Future Accounts. That portion of assets of SA III that is equal to the reserves and other SA III Policy liabilities with respect to SA III is not chargeable with liabilities arising out of any other business of NYLIAC. Any income, gains or losses, realized or unrealized, from assets allocated to SA III are, in accordance with the SA III Policies, credited to or charged against SA III, without regard to other income, gains or losses of NYLIAC. The same will be true of any Future Account.

4. Future Policies funded by SA III or any Future Accounts will be substantially similar to the SA III Policies in all material respects. Certain anticipated differences between SA III Policies and Future Policies are summarized below. SA III Policies will be sold by registered representatives of NYLIFE Securities, Inc., and unaffiliated broker-dealers that have entered into selling agreements with NYLIAC or NYLIFE Distributors. SA III Policies also will be sold by banking and financial institutions that have entered into selling agreements with NYLIAC and NYLIFE Distributors. NYLIAC may issue SA III Policies as individual or group flexible premium tax deffered variable annuity policies. NYLIAC may issue SA III Policies in connection with retirement plans that qualify for favorable federal income tax treatment under Sections 403, 408, or 457 of the Internal Revenue Code of 1986, as amended ("Code"). NYLIAC also may issue SA III Policies on a non-tax qualified basis. SA III Policies may be used for other purposes in the future, or offered only as qualified policies or non-qualified policies.

5. The minimum initial and subsequent premium payment for a non-qualified policy is $5,000 for Mainstay Policies and $2,000 for LifeStages Policies. The minimum initial and subsequent premium for a qualified policy is $2,000 for both the Mainstay and LifeStages Policies. The maximum aggregate premium payments without prior approval of NYLIAC is $1,000,000. The maximum age of any annuitant as of issue date is 80. NYLIAC does not accept subsequent premium payments after the annuity date unless otherwise agreed to

6. An owner call allocate premium payments or account value to one or more investment division of SA III, each of which will invest in a corresponding portfolio of a mutual fund. In addition, SA III Policies will permit premium payments to be allocated to fixed interest options funded through the fixed account ("Fixed Account") which provides a guarantee of the premium payment allocated thereto and interest for specified periods. Policy owners may receive annuity payments after annuitization on a fixed basis.

7. SA III currently consists of 26 investment divisions, all of which will be available under the SA III Policies. However, a policy owner may not allocate money to more than 18 variable investment divisions at any given time. Each investment division will invest in shares of a corresponding portfolio of an open-end, diversified series management investment company registered under the 1940 Act and whose shares are offered under the 1933 Act (each a "Fund" and collectively, "Funds"). The Funds currently available under the SA III Policies are managed by various entities affiliated and unaffiliated with NYLIAC. The investment divisions and the fixed interest options will comprise the initial "Allocation Alternatives" under the SA III Policies.

8. NYLIAC, at a later date, may determine to create additional investment divisions of SA III to invest in any additional portfolios of the Funds, or other portfolios or investments as may now or in the future be available. Similarly, investment divisions of SA III may be combined or eliminated from time to time. Future Policies may offer Funds managed by the same as well as other investment advisers.

9. SA III Policies provide for various withdrawal options, annuity benefits and payout annuity option; transfer privileges among Allocation Alternatives; dollar cost averaging; death benefits; and other features. Mainstay Policies have the following charges: (i) A surrender charge as a percentage of premium payments declining from 8% in years one, two, three and four to 0% in year nine and thereafter, with a specified free withdrawal amount; and (ii) separate account annual expenses at the annual rate of 1.6% assessed against the net assets of each investment division. Also, each year during the accumulation phase and on full surrender, an annual policy service charge of $30 is deducted proportionately from each Allocation Alternative. The annual maintenance fee will be waived if the Policy owner's account value is $100,000 or greater on the date this fee is due. The Funds each impose investment management fees and charges for other expenses. LifeStages Policies have the same charges as listed above except that under LifeStages Policies, the surrender charge as a percentage of premium payments declines from 8% in years one, two and three to 0% in year nine and thereafter.

10. Mainstay Policies have the following death benefit. If the policyholder or annuitant dies prior to the annuity commencement date, the designated beneficiary will receive, upon the receipt of proof of death, the greatest of: (1) The accumulation value, less any outstanding loan balance, less Credits (as defined below) applied within the 12 months immediately preceding death; (ii) the sum of all premium payments made, less any outstanding loan balance, partial withdrawals, and surrender charges on those partial withdrawals; or (iii) the reset value plus any additional premium payments made since the most recent reset anniversary, less any outstanding loan balance, proportional withdrawals made since the most recent reset anniversary, any surrender charges applicable to such proportional

withdrawals, and Credits applied within the 12 months immediately preceding death.

11. NYLIAC will apply a premium credit ("Credit") to the account of an SA III Policy owner whenever the owner makes a premium payment. The amount of the Credit will equal a percentage ("Credit Rate") of the premium payment according to the premium credit schedule then in effect. The Credit Rate applicable to a premium payment will depend on the total amount of premiums received under a Policy ("Total Accumulated Premiums"). In addition, if NYLIAC receives more than one premium payment within 180 days of the policy date (as defined in the Policy), NYLIAC will adjust the Credits applied to such payments using the Credit Rate applicable to the later payment(s) made during that period. NYLIAC will apply any additional Credit amounts resulting from such adjustments as of the date it receives the later premium payment(s).

NYLIAC proposes to use the following premium credit schedule for initial premium payments under the SA III Policies:

| Total accumulated premiums at least | But less than— | Credit rate[1] |
|---|---|---|
| Minimum | $50,000 | 3.0 |
| $50,000 | 100,000 | 3.25 |
| 100,000 | 500,000 | 4.5 |
| 500,000 | 1,000,000 | 4.5 |
| 1,000,000 | 2,500,000 | 4.5 |
| 2,500,000 | 5,000,000 | 5.0 |
| 5,000,000 | Unlimited | 5.0 |

[1] Credit rate as a percentage of premium payment.

NYLIAC may apply Credits for subsequent premium payments under SA III Policies using the same or a different credit schedule. In addition, NYLIAC may apply Credits for initial and subsequent premium payments under Future Policies using the same or a different premium credit schedule. The Credit Rate under future premium credit schedules will range between 2.0% to 6.0%. NYLIAC will notify Policy owners of any change in the premium credit schedule prior to implementing such change. NYLIAC currently does not expect to change the premium credit schedule more often than five times a year. Any change in the premium credit schedule will apply to all premium payments received after the schedule becomes effective.

12. NYLIAC will determine the premium breakpoint and credit percentages of future premium credit schedules based on several factors, including product expense levels, policy experience, and competitive position. NYLIAC expects to incur certain expenses, such as those related to policy issue, maintenance and servicing, that will affect the profitability of the policy. As premiums paid under a policy increase, these expenses should have less of an unfavorable impact on profitability. NYLIAC generally expects to be able to afford to apply larger Credits on larger policies. Accordingly, depending on future expense levels, NYLIAC may change future premium amount breakpoints or credit percentages to maintain a consistent level of profitability. In addition, NYLIAC expects different size policies to reflect different persistency or mortality experience that will affect the profitability of the policies. Poor persistency or high mortality experience will adversely affect profitability. NYLIAC generally expects to be able to afford to apply a larger Credit on policies with higher persistency or lower mortality experience. Accordingly, depending on whether future persistency or mortality experience is favorable or unfavorable, NYLIAC may change future premium amount breakpoints or credit percentages to maintain a consistent level of profitability. Finally, NYLIAC will monitor changes in the marketplace for policies with credit or similar features, and may change future premium amount breakpoints or credit percentages to maintain a competitive position in the marketplace.

13. NYLIAC will allocate Credits among the Allocation Alternatives in the same proportion as the corresponding premium payments are allocated by the owner. NYLIAC will fund Credits from its general account assets. The Credits are vested when applied, except under the following circumstances: (i) NYLIAC will recapture all Credits if the owner returns a SA III Policy to NYLIAC for a refund during the 10-day (or longer, if required) "free-look" period; and (ii) the amount of any death benefit will not include any Credit applied to an owner's account within 12 months of the date of death.

14. Applicants seek exemption pursuant to Section 6(c) of the 1940 Act from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act, and Rule 22c–1 thereunder, to the extent deemed necessary to permit NYLIAC to issue policies that provide for Credits upon the receipt of premium payments, and to recapture Credits in the following instances: (i) If the Policy owner returns the Policy to NYLIAC for a refund during the 10-day (or longer, if required) "free-look" period; and (ii) the amount of any death benefit will not include any Credit applied to an owner's account within 12 months of the date of death.

**Applicants' Legal Analysis**

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consist with the provisions of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act grant the exemptions requested below with respect to SA III Policies, and any Future Policies funded by SA III or Future Accounts, that are issued by NYLIAC and underwritten or distributed by NYLIFE Distributors or any other NYLIAC Broker-Dealers. Applicants undertake that Future Policies funded by SA III or any Future Account will be substantially similar in all material respects to the SA III Policies. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants represent that it is not administratively feasible to track the Credit amount in the Accounts after the Credit is applied. Accordingly, the asset-based charges applicable to the Accounts will be assessed against the entire amounts held in the respective Accounts, including the Credit amount, during the period when the owner's interest in the Credit is not completely vested. As a result, during such periods, the aggregate asset-based charges assessed against an owner's annuity account value will be higher than those that would be charged if the owner's annuity account value did not include the Credit.

3. Subsection (i) of Section 27 of the 1940 Act provides that Section 27 does not apply to any registered separate account funding variable insurance policies, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of that subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a policy funded by the registered separate account unless "(A) such contract is a redeemable security." Section 2(a)(32) of the 1940 Act defines "redeemable

security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate shares of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Credit recapture provisions summarized herein would not deprive a Policy owner of his or her proportionate share of the issuer's current net assets. An owner's interest in the amount of the Credit applied to his or her annuity account value upon receipt of an initial premium payment is not vested until the applicable free-look period has expired without return of the Policy. Similarly, an owner's interest in the amount of any Credits applied upon receipt of premium payments made during the 12 months prior to the date of death also is not vested. Until or unless the amount of any Credit is vested, NYLIAC retains the right and interest in the Credit amount, although not in any earnings attributable to that amount. Thus, Applicants argue that, when NYLIAC recaptures any Credit, it is simply retrieving its own assets, and because an owner's interest in the Credit is not vested, the owner has not been deprived of a proportionate share of the applicable Account's assets.

5. In addition, with respect to Credit recaptures upon the exercise of the free-look privilege, Applicants state that it would be patently unfair to allow an owner exercising that privilege to retain a Credit amount under a Policy that has been returned for a refund after a period of only a few days. Applicants state that if NYLIAC could not recapture the Credit, individuals could purchase a Policy with no intention of retaining it, and simply return it for a quick profit.

6. Furthermore, Applicants state that the recapture of Credits relating to premium payments made within 12 months of death is designed to provide NYLIAC with a measure of protection against "anti-selection." Applicants state that the risk here is that, rather than spreading premium payments over a number of years, an owner will make very large payments shortly before death, thereby leaving NYLIAC less time to recover the cost of the Credits applied, to its financial detriment. NYLIAC intends to recover the costs of the Credits applied through a portion of the early surrender charge and the separate account charge imposed under the Policies. NYLIAC may use any excess to recover distribution costs relating to the Policy and as a source of profit. The amounts recaptured equal the Credits provided by NYLIAC from its own general account assets, and any gain would remain as part of the Policy's value.

7. Applicants represent that the Credit will be attractive to and in the interest of investors because it will permit owners to put an amount greater than their premium payments to work for them in the selected Allocation Alternatives. Also, owners will retain any earnings attributable to the Credit and, unless any of the contingencies summarized above apply, the principal amount of the Credit.

8. Applicants submit that the provisions for recapture of any Credits under the SA III Policies do not, and any such Future Policy provisions will not, violate Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Credit under the circumstances described herein with respect to SA III Policies and any Future Policies, without the loss of the relief from Section 27 provided by Section 27(i).

9. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as are prescribed in Section 22(a) of the 1940 Act in respect of the rules which may be made by a registered securities association governing its members. Rule 22c–1 thereunder prohibits a registered investment company issuing a redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. Arguably, NYLIAC's recapture of the Credit might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the Accounts. Applicants contend, however, that the recapture of the Credit is not violative of Section 22(c) and Rule 22c–1. Applicants argue that the recapture of the Credit does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce as far as reasonable practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. To effect a recapture of the Credit, NYLIAC will redeem interests in an owner's annuity account at a price determined on the basis of the current net asset value of the respective Accounts. The amount recaptured will equal the amount of the Credit that NYLIAC paid out of its general account assets. Although owners will be entitled to retain any investment gain attributable to the Credit, the amount of such gain will be determined on the basis of the current net asset value of the respective Accounts. Thus, Applicants assert that no dilution will occur upon the recapture of a Credit. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit. However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Credit under the SA III Policies and Future Policies.

**Conclusion**

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the 1940 Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11606 Filed 5–9–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42755; File No. 4–434]**

**RIN 3235–AH92**

## Options Price Reporting Authority

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Proposed amendments to national market system plan.

**SUMMARY:** The Securities and Exchange Commission ("SEC" or "Commission") is proposing amendments to the Options Price Reporting Authority ("OPRA") Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The proposed amendments set forth two alternatives to establish a formula to allocate the message capacity of the OPRA system among the participant exchanges. The allocation formula is intended as a short-term solution to OPRA capacity shortages.

**DATES:** Comments should be submitted by June 9, 2000.

**ADDRESSES:** All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. 4–434; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site (*http://www.sec.gov*).

**FOR FURTHER INFORMATION CONTACT:** Deborah Flynn, Senior Special Counsel, at (202) 942–0075, Kelly Riley, Attorney, at (202) 942–0752, John Roeser, Attorney, at (202) 942–0762, Terri Evans, Special Counsel, at (202) 942–4162, and Heather Traeger, Attorney, at (202) 942–0763, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing amendments to the OPRA Plan [1] to allocate among the options exchanges OPRA's peak period message handling capacity. An allocation formula is needed because of OPRA's inability to increase its systems capacity within the short-term. Without sufficient capacity, options market data are delayed and, therefore, stale, which reduces market transparency and hampers efficient price discovery. When this occurs, the only market participants with up-to-date quote and trade information are those physically on the floor of a particular exchange. Those participants then have an informational advantage that is inconsistent with the goal of a fair and open market for all investors.

Consolidated options data offer enormous benefits to investors and the markets. The Commission is working with the OPRA participants to increase the capacity of the consolidated data systems and to empower the markets to individually ensure adequate data capacity in the future. In the meantime, an objective capacity allocation formula is essential to ensure that scarce OPRA systems capacity is allocated among the options exchanges on a fair and reasonable basis and that delays in the dissemination of options market data to the public are minimized.

An equitable allocation of capacity should ensure that all broker-dealers and investors have available to them accurate and timely information with respect to quotations for and transactions in options and would help to avoid delays and queues in the dissemination of options market information. The OPRA Plan participants have been unable to formulate an objective capacity allocation model. The Commission, therefore, is proposing these amendments to the OPRA Plan on its own initiative, pursuant to Section 11A under the Securities Exchange Act of 1934 ("Act") [2] and Rule 11Aa3–2 thereunder,[3] and is seeking comment from interested persons.

### I. Background

In 1981, the Commission approved the OPRA Plan as a national market system plan, pursuant to Sections 11A(a)(2) and 11A(a)(3)(B) of the Act.[4] The OPRA Plan governs the process by which options market data are collected from participant exchanges, consolidated, and disseminated.[5] Consolidated data help ensure that broker-dealers, markets, and investors have the best prices available for an option, from all markets trading that option class. It assists customers in setting the terms of their orders and in monitoring how well their brokers execute their orders. Consolidated data also assist brokers and markets in providing the best execution possible for an order.

Current OPRA participants include: Amex, CBOE, PCX, Phlx, and NYSE.[6] A policy committee composed of representatives from each participant exchange implements and, subject to Commission approval, amends the policies and procedures set forth in the OPRA Plan. This committee selected the Securities Industry Automation Corporation ("SIAC") as the facility for gathering the last sale and quote information from each of the participant exchanges and consolidating and disseminating it to approved vendors. All of the transactions executed on, and price quotations for options generated by, each options exchange are communicated to the public by OPRA through the facilities of its exclusive processor, SIAC. The messages are sent to OPRA and distributed to market data vendors on a consolidated basis for use by options market participants, including retail investors, broker-dealers, and the exchanges themselves.

#### *A. Systems Capacity*

Each trade that is executed on an options exchange, as well as each price change quoted on an options exchange, is reported to OPRA as a "message." The options markets generate messages for a substantial number of products. Currently, there are approximately 3,300 equity securities and indexes underlying listed options products, and

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[1] 1 OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (March 18, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the participant exchanges. The five exchanges that agreed to the OPRA Plan are the American Stock Exchange ("Amex"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("Phlx").

[2] 15 U.S.C. 78k–1.

[3] Rule 11Aa3–2 establishes procedures for initiating or approving amendments to national market system plans such as the OPRA Plan. Paragraph (b)(2) of Rule 11Aa3–2 permits the Commission to propose amendments to an effective national market system plan. Further, Paragraph (c)(2) of Rule 11Aa3–2 requires that promulgation of an amendment to an effective national market system plan initiated by the Commission be by rule. *See* 17 CFR 240.11Aa3–2(c)(2).

[4] 15 U.S.C. 78k–1(a)(2) and (3)(B); *see also* Securities Exchange Act Release No. 17638 (March 18, 1981), as amended; *see, e.g.*, Securities Exchange Act Release No. 40767 (December 9, 1998), 63 FR 69354 (December 16, 1998).

[5] OPRA was granted registration as a securities information processor by the Commission in 1976. *See* Securities Exchange Act Release No. 12035 (January 22, 1976), 41 FR 4372.

[6] The NYSE sold its options business to the CBOE in 1997. Nevertheless, the NYSE remains a participant of OPRA. The International Securities Exchange is seeking to become an OPRA participant.

more than 140,000 individual options series.[7] Trade and quote data are generated continuously during the hours that markets are open for each options product listed on each options exchange.

Quote message traffic represents the vast majority of the options message traffic generated.[8] Generally, quotes are generated automatically for individual options series based on changes in the underlying stock price or index value. In other words, every time a price changes for a particular equity security, the quotes for all of the options on that security or an index in which that security is represented are automatically updated on each exchange that trades those options. This enormous amount of quote message traffic is burdening the OPRA system, which threatens to compromise the reliability of options market data disseminated to market participants, including retail investors.

The number of messages generated by the exchanges on a daily basis has been growing exponentially. In January 1999, OPRA reported an average of only about 17 million messages per day. By January 2000, OPRA reported an average of 40 million messages per day. And, on April 4, 2000, OPRA reported 74.3 million messages.[9]

A more significant gauge of the level of options market data is messages per second. Messages per second, or "MPS," is just that—the number of messages (*i.e.*, options trade and quote data) reported to OPRA by the options exchanges during any given second of a trading day. The increases in this gauge have been nothing less than staggering. Between January 1998 and January 1999, OPRA reported an increase in one and five minute peaks from approximately 600 messages per second to approximately 1,400 messages per second. By January 2000, OPRA's reported one and five minute peaks reached approximately 2,900 messages per second. Currently, the exchanges are hitting OPRA's current systems capacity of 3,540 messages per second on an almost daily basis.

In the past, OPRA had generally been able to handle the peak messages per second generated by the exchanges. In January 1998, OPRA had systems capacity to handle 600 messages per second, with plans to upgrade its systems to handle more messages per second. In January 1999, OPRA had capacity to handle 1,900 messages per second and thus, was not in immediate danger of a system overload based on the peak messages per second reported. In January 2000, however, OPRA systems only had capacity to handle approximately 3,000 messages per second, which was dangerously close to being met.[10]

The significant increase in message traffic may be attributed to increased volume on the exchanges, increased volatility in the underlying equity securities, and increased multiple trading of previously exclusively-traded options products across the options exchanges. Dramatic growth in options quote message traffic is expected to continue in the near future as a new exchange enters the market,[11] products begin to trade in decimals rather than fractions, and quotes are disseminated with size.[12] The combination of these factors could result in a peak MPS rate as high as 38,000 MPS by the end of 2001, a ten-fold increase over existing capacity.

*B. OPRA's Capacity Initiatives*

As options message traffic has increased exponentially over the last few years, OPRA has directed SIAC to implement technological updates to accommodate the additional message traffic. Over the last year, however, it has become increasingly apparent that the message traffic expected to be generated by the options exchanges cannot be accommodated by the planned enhancements to the OPRA system.

In response to the systems capacity problems, OPRA, SIAC, as well as the options exchanges and their members, have worked to develop strategies to mitigate quote message traffic. In 1999, SIAC, at the request of the Commission, retained Stanford Research Institute ("SRI") to conduct a study and to recommend possible strategies aimed at mitigating the amount of options quote message traffic.[13] As part of this study, the options exchanges (including ISE), SIAC, OPRA, and the Securities Industry Association ("SIA") met over a period of six months to attempt to develop quote reduction and mitigation strategies.

A number of alternatives to reduce options message traffic were considered and SRI's findings were presented to Commission staff on December 14, 1999. To date, the options exchanges have, individually, implemented a number of internal mitigation strategies. The Commission expects the options exchanges to continue to consider other mitigation strategies that could be implemented as both long-term and short-term solutions. Nonetheless, quote traffic has continued to strain OPRA capacity.

**II. Discussion**

*A. Purpose of the Proposed OPRA Plan Amendment*

As discussed above, the Commission is greatly concerned about the lack of available OPRA systems capacity to accommodate the current and anticipated levels of options message traffic generated by the options exchanges. The Commission is concerned about the ability of OPRA to disseminate options market data on a real-time basis during times of high message traffic or high volatility in the equity markets. During these times, when systems capacity is stretched to the limit, OPRA data feeds may begin to queue, leading to the dissemination of stale market data to market participants. The Commission is concerned that without access to current market information, investors and other market participants will be unable to make informed options trading decisions.

To address mounting capacity problems, novel ways of obtaining adequate capacity to support the industry's continued growth will need to be identified, evaluated, and implemented. The Commission recognizes that wholesale changes to the manner in which capacity is obtained will not occur overnight. Therefore, the options markets must continue to work within the existing capacity infrastructure for the short-term.

The options exchanges have responded to this capacity crisis by agreeing to allocate existing OPRA systems capacity among themselves

[7] A series is a class of options, either all puts or all calls, on the same underlying security that have the same exercise price and maturity date.

[8] For example, in February 2000, the average number of quotes per day was 37.5 million and the average number of trades per day was 183,000.

[9] As discussed below, this tremendous increase in message traffic may be attributed, in part, to the increase in multiple listing of previously exclusively-traded option classes that began in August 1999.

[10] For example, on January 5, 2000, SIAC reported a one-minute peak of 2,970 MPS and on January 25, 2000, SIAC reported a five-minute peak of 2,868 MPS.

[11] The International Securities Exchange ("ISE") was registered as a national securities exchange for options trading on February 24, 2000. *See* Securities Exchange Act Release No. 42455, 65 FR 11387 (March 2, 2000).

[12] Currently, unlike quotes for equity securities, options price quotes currently are disseminated without size. Options quotes are expected to be disseminated with size in January 2001.

[13] On September 8, 1999, the Commission ordered the options exchanges to participate in the SRI quote mitigation study and to act jointly to develop quote mitigation strategies. Commission staff attended all meetings of this group. *See* Securities Exchange Act Release No. 41843 (September 8, 1999), 64 FR 50126 (September 15, 1999).

during peak periods,[14] while continuing to work on other short-term mitigation strategies, including delisting classes with little or no open interest and developing a cabinet for inactive options classes.[15] To date, the options markets have reluctantly agreed, on three occasions, to allocate the existing OPRA capacity among themselves during peak periods through temporary amendments to the OPRA Plan.[16] The capacity allocation used by the exchanges has been based loosely on the historical peaks experienced by each options market, and determined through negotiations among the markets. Despite repeated urgings by Commission staff, the options exchanges have been unable to formulate an equitable, more objective capacity allocation model, which would include incentives for the exchanges to reduce the excessive quoting of existing listings or to add new listings only with a sound business rationale. The Commission notes that each exchange has represented that the total messages per second allocated to it are insufficient to address its capacity needs. The Commission is concerned that the exchanges may be unable or unwilling to continue to allocate scarce OPRA capacity among themselves in the near future. The Commission believes the queuing that would undoubtedly result is unacceptable because all market participants would be subjected to unreliable market data, including stale quotes.

[14] During peak periods when capacity caps are imposed on the exchanges, the Commission believes that it is unacceptable for any options exchange to generate message traffic in excess of the level allocated to it pursuant to an approved OPRA Plan amendment. An exchange that transmits message traffic through inbound OPRA lines in excess of its allocation will cause queuing in the OPRA system, and consequently, will result in the dissemination of unreliable market data to all market participants, including retail investors. The options markets should take whatever steps are necessary to prevent delays in their quotes stream processed by OPRA. If an options exchange inadvertently generates and transmits to OPRA message traffic in excess of its allocation, the Commission expects that the exchange will notify the public that it has exceeded its established allocation and as a result, its disseminated quotes are likely to be unreliable.

[15] A cabinet would effectively inactivate those options classes placed in the "cabinet," so that the options exchanges would provide quotes to market participants only upon specific request, rather than disseminating continuous, two-sided quotations.

[16] 16 *See* Securities Exchange Act Release Nos. 42328 (January 11, 2000), 65 FR 2988 (January 19, 2000) (order approving File No. SR–OPRA–00–01); 42362 (January 28, 2000), 65 FR 5919 (February 7, 2000) (order approving File No. SR–OPRA–00–02); and 42493 (March 3, 2000), 65 FR 12597 (March 9, 2000) (order approving File No. SR–OPRA–00–03).

*B. Two Alternative Proposed Capacity Allocation Models*

The Commission is proposing to amend the OPRA Plan to establish a capacity allocation formula to be used in the short-term to allocate OPRA systems capacity among the options exchanges during peak periods. The Commission is proposing the following two alternative allocation models.

1. Alternative A

The first proposed capacity allocation model would allocate capacity during peak periods based on the average quotation volume of options classes listed on each exchange that have sufficient trading volume to meet a minimum threshold.[17] The proposed formula rewards quoting efficiency and restricts the allocation of capacity to an exchange in a particular options class in which the exchange's trading volume does not exceed certain thresholds. The Commission proposes that, on a quarterly basis,[18] OPRA would perform the required allocation calculation itself or contract with its processor or another third party to do so. The information necessary to calculate allocations pursuant to the proposed formula is based on quote and transaction data reported routinely to OPRA by the options exchanges pursuant to the OPRA Plan. OPRA would notify the options exchanges and the Commission of the specific allocations for peak periods that would be in place beginning one month after the calculation is made.

a. Included Classes

A critical element of the first Commission proposal is the concept that an exchange only receives a portion of the available capacity for those option classes in which the exchange's trading reaches some minimal threshold ("Included Classes").[19] The Commission is proposing that an options class be considered an Included Class for an exchange if during the three-month period, that exchange trades an average of: (i) 15 trades per day, if the class is multiply-listed, or (ii) 30 trades per day, if the class is exclusively-listed. Thus, an options exchange would receive capacity credit only for those options classes in which it exceeds these minimum levels of trading activity.

The Commission understands, however, that there are a number of ways to define the term Included Class. For this reason, the Commission is also seeking comment on several variations of the proposed definition. Specifically, the Commission seeks comment on whether the proposed 15/30 threshold levels are appropriate, or whether these thresholds should be lower or higher. For example, should an exchange only have to have an average one trade per day in a multiply-listed class for that class to be an Included Class? The Commission also seeks comment on the threshold for considering an exclusively traded options class as an Included Class. Specifically, should the minimum be on average 15 trades per day, or 45 trades per day, or another amount, rather than 30 trades per day as proposed? In addition, the Commission would like commenters' views on whether the exchanges should have the same average daily trading requirements for multiply-listed classes and exclusively-listed classes to be considered Included Classes. If commenters believe that multiply-listed and exclusively-listed options should be subject to the same minimum trading volume standard, the Commission seeks comment on what that standard should be. Finally, the Commission seeks comment on whether another measure, such as an exchange's average quarterly ratio of quotes-to-contract volume in an options class would be more appropriate to use for determining which classes are Included Classes for an exchange.

To permit new entrants a fair opportunity to compete with existing exchanges, the Commission is also proposing that all options classes listed by a new options market be considered Included Classes for 9 months. Only after the new exchange has been operating for nine months would the minimum threshold levels be applied in determining which options classes are Included Classes for purposes of the allocation of capacity.

The Commission recognizes the highly competitive environment in which the options exchanges operate. As such, the Commission is carefully considering whether the proposed

[17] The Commission proposes to include in the allocation formula a requirement that the trading volume of an option class meet certain minimum thresholds on an exchange before that options class will be counted for purposes of that exchange's allocation. As discussed below, this minimum threshold requirement is intended to limit any potential incentive for an exchange to add new products solely to obtain an additional allocation of capacity, without seriously committing to compete for order flow in those classes.

[18] The Commission proposes that the calculation be made on a quarterly basis to take into consideration the potential effect of the expiration cycle on the average quoting frequency and trading volume in individual option classes. The calculations would be based on quoting and trading activity during a calendar quarter (*e.g.*, January, February, and March) and the allocations would be effective beginning the second month following the end of the calendar quarter (*e.g.*, May 1).

[19] Proposed OPRA Plan Section III (m).

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capacity allocation model should include any special protections for new listings.[20] As the Commission strongly encourages competition both within and among the various options exchanges, a short-term "safe harbor" was contemplated for new listings (*e.g.*, three to six months), during which time the listing exchange would get credit towards its allocation for the new listing, even if it obtained little or no order flow in the particular class. The Commission's desire to provide a safe harbor for new listings was balanced against its concern about the potential that exchanges could abuse it by adding new listings merely to obtain a larger share of capacity and then, at the end of the established safe-harbor period, immediately delist those classes and add new listings. To limit this potential, the Commission proposes to include in the formula for capacity allocation only those options classes that meet the minimum trading levels. The Commission emphasizes that its proposal does not in any way limit the ability of the options exchanges to list new option classes. Instead, the proposed limits on what options classes are considered Included Classes, relate only to the extent to which a particular exchange would receive an allocation credit of capacity for a new listing.

b. Capacity Credit for Multiply and Exclusively Listed Options Classes

For each options class that is listed on more than one exchange, an exchange for which such class is an Included Class would be allocated capacity based on the average quoting frequency during the first half-hour of the trading day after the opening rotation across all exchanges for which such class is an Included Class. By allocating capacity based on the average level of quoting across the exchanges trading a particular option class, the Commission intends to encourage quoting efficiency in multiply-traded classes. For options classes listed on only one exchange, an exchange would be allocated capacity based on the average quote traffic generated within the first half-hour of trading after the opening rotation, if the exchange's trading volume was sufficient for that class to be an Included Class.[21] The Commission seeks comment as to the propriety of determining the average quoting frequency of multiply-traded and exclusively-traded options classes based on the quoting activity occurring during the first half-hour after the opening rotation.

2. Alternative B

As an alternative to allocating capacity based on the average quoting frequency of those options classes in which an exchange has sufficient volume to meet certain minimum thresholds, the Commission is proposing to allocate capacity using a modified equal share method. Specifically, under the proposed equal share method, capacity would be allocated equally among all the options exchanges with adjustments based on the market's ratio of quotes to contract volume. The more efficient the market (*i.e.*, the fewer quotes to contracts), the greater the allocation that market receives. Any options classes listed by an exchange during the preceding calendar quarter would be excluded from the ratio calculation. Excluding new listings from the ratio calculation would allow exchanges to list new options classes without being penalized in the allocation of capacity.

The equal allocation would be adjusted by an exchange's deviation from the average ratio of quotes-to-contracts traded multiplied by a dampening factor. The Commission is proposing that the dampening factor be 10% for the first Quote-to-Contract Volume Deviation calculation. The dampening factor will be reduced by one percent and a recalculation of the Quote-to-Contract Volume Deviation will be made if after the first calculation any exchange's capacity allocation falls below a pre-determined minimum, which the Commission is proposing to be 15% of all OPRA capacity. Recalculations of the Quote-to-Contract Volume Deviation will continue, reducing the dampening factor by one percent for each successive recalculation until all exchanges have at least the 15% minimum capacity allocation.

The Commission seeks comment on Alternative B as proposed, and on whether another relative performance criteria, such as quotes-to-number of trades, would be more appropriate. The Commission also seeks comment on what minimum portion of capacity an exchange should be guaranteed. For example, rather than 15%, is 10% a more appropriate minimum? The Commission also seeks comment about the propriety of the proposed dampening factor. Should the dampening factor for the first calculation be a factor other than 10%? In addition, should the dampening factor used in the recalculations be reduced from the factor used in the first calculation by a percentage other than one percent?

**III. Request for Public Comments**

The Commission seeks comments on adopting a capacity allocation formula, as described in this release. In addition to the requests for comments throughout the release, the Commission seeks comment on whether a capacity allocation formula to allocate OPRA systems capacity during peak periods is necessary and should be adopted. If an objective capacity allocation formula is desirable, commenters should address which of the Commission's proposals would most fairly allocate systems capacity among the options exchanges during peak periods. Commenters should also address whether there are any legal or policy reasons why the Commission should consider a different approach and a description of what that approach should be. The Commission seeks comment on the specific proposals set forth, as well as on the proposed calculation of the average quoting frequency for multiply-traded and exclusively-traded products and the proposed treatment of new listings and new entrants into the market. Commenters should also address the propriety of a quarterly allocation calculation and whether OPRA participants should be permitted to perform the calculation, and under what circumstances. In addition, the Commission seeks comment on whether, under either of the proposed allocation alternatives, options exchanges should receive capacity in units that could be traded among the options exchanges, with the resulting transactions reported to the Commission.

**IV. Costs and Benefits of the Proposed Plan Amendments**

The Commission is considering the costs and benefits of the proposed amendment to the OPRA Plan.

*A. Benefits*

The Commission believes that some form of capacity allocation should provide significant short-term benefits by avoiding delayed quotes. Currently, OPRA has the capacity to handle approximately 3,540 messages per second and the exchanges are approaching this level on an almost daily basis. On March 15, 2000, OPRA received 3,486 messages per second over a five-minute period and 3,544 messages per second over a one-minute period. The Commission believes that without a capacity allocation formula for peak message periods, peak message

[20] The Commission defines an options class as a "new" listing if the listing exchange does not currently list that class, regardless of whether another options exchange has previously listed the same option class.

[21] Proposed OPRA Plan Section III (m).

traffic may regularly exceed OPRA's capacity, especially with the entry of the ISE, the planned conversion to decimal pricing, and the dissemination of options quotes with size. If peak quoting rates exceed OPRA's systems capacity, an unacceptable level of queuing may occur and stale or selective market data may be transmitted to market participants and investors, thereby reducing market transparency and hampering efficient price discovery. As a result, investors may be making investment decisions based on stale or delayed quote information.

The Commission believes that, until sufficient capacity is available to the options markets, the adoption of an objective capacity allocation formula, such as one of those proposed by the Commission, should help to ensure that scarce OPRA systems capacity is allocated in an equitable manner. The Commission further believes that the adoption of objective criteria should bring additional transparency and consistency to the allocation process. By using an objective capacity allocation formula to determine each exchange's message traffic limitations during high volume or high volatility times, the Commission's proposal should enable the options markets to disseminate options market data on a real-time basis, which should foster competition. Further, the proposal should maintain efficient and orderly markets for options by ensuring that current market data is continuously available and reliable. Finally, the proposal should encourage each individual exchange to establish and utilize efficient quote reduction methods based on the amount of message capacity it has been allocated, thereby promoting efficiency.

*B. Costs*

Although the proposed capacity allocation formulas have been tailored to minimize the costs on any one exchange, the Commission expects that the options exchanges will experience some burdens because capacity will be limited during peak periods and the exchanges will have to reduce message traffic during peak times. This may result in the exchanges taking steps to delist or inactivate options that are not being actively traded or reduce the number of times that quotes can be refreshed for certain options classes. The Commission notes, however, that the options exchanges have previously agreed to allocate existing OPRA capacity during peak periods on three occasions, while continuing to work on other short-term and long-term mitigation strategies.

To assist the Commission in its evaluation of the costs and benefits that may result from the proposed alternatives, commenters are requested to provide analysis and data relating to the anticipated costs and benefits associated with the proposed allocation alternatives, as well as any possible anti-competitive impact of the proposed alternatives. Specifically, the Commission requests commenters to address whether any of the proposed alternatives would generate the anticipated benefits or impose any costs on U.S. investors or others.

**V. Effects on Competition, Efficiency, and Capital Formation**

Commenters should consider the proposed rule's effect on competition, efficiency and capital formation.

Section 23(a) of the Act[22] requires that the Commission, when promulgating rules under the Act, to consider the anti-competitive effects of such rules, if any, and to balance any impact against the regulatory benefits gained in furtherance of the purposes of the Act. Section 3(f) of the Act[23] requires the Commission, when engaging in rulemaking, to consider or determine whether the action is necessary or appropriate in the public interest, and whether the action would promote efficiency, competition, and capital formation.

The Commission solicits comments on the impact of the proposed rules on competition. Specifically, the Commission requests commenters to address how the proposed rule would affect competition between and among the options exchanges, market participants and investors. Further, the Commission requests comment on the proposal's effect on efficiency and capital formation.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[24] the Commission is also requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. If possible, commenters should provide empirical data to support their views.

**VI. Initial Regulatory Flexibility Analysis**

This Initial Regulatory Flexibility Analysis ("IRFA") has been prepared in accordance with Section 3 of the Regulatory Flexibility Act ("RFA").[25] It relates to proposed amendments to the OPRA Plan to establish a capacity allocation model to allocate OPRA systems capacity among the options exchanges during peak periods.

*A. Reasons for and Objectives of the Proposal*

Although the participant exchanges have agreed to previous short-term capacity allocations and continue to work on short-term mitigation strategies, they have been unable to formulate a fair and objective capacity allocation model, which would include disincentives to quote existing listings or to add new listings excessively without a sound business rationale. The Commission is proposing to amend the OPRA Plan on its own initiative, until a long-term solution to the options industry's capacity problems has been implemented.

The objective of the proposed capacity allocation model is to achieve the statutory goals regarding the maintenance of fair and orderly markets to assure efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities. The adoption of an objective capacity allocation model to allocate fairly OPRA systems capacity among the options exchanges during peak periods until a long-term solution to the capacity problem is achieved is intended to prevent queuing and delays in the dissemination of options market information that would result in market participants receiving unreliable market data.

*B. Legal Basis*

Section 11A(a)(3)(B) of the Act[26] authorizes the Commission, by rule or order, to authorize or require self-regulatory organizations ("SROs") to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating or regulating a national market system (or a subsystem thereof) or one or more facilities thereof. Rule 11Aa3–2[27] establishes procedures for the proposal of amendments to national market system plans, such as the OPRA Plan. Paragraph (b)(2) of Rule 11Aa3–2[28] states that the Commission may propose amendments to an effective national market system plan by publishing the text of the amendment together with a statement of purpose of the amendments.

[22] 15 U.S.C. 78w(a).
[23] 15 U.S.C. 78c(f).
[24] Pub. L. No. 104–121, tit. II, 110 stat. 857.
[25] 5 U.S.C. 603(a).
[26] 15 U.S.C. 78k–1(a)(3)(B).
[27] 17 CFR 240.11Aa3–2.
[28] 17 CFR 240.11Aa3–2(b)(2).

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*C. Small Entities Affected by the Proposed Amendments*

The proposal would directly affect Amex, CBOE, ISE, PCX, and Phlx, none of which are small entities. Paragraph (e) of the Rule 0–10[29] states that the term "small business," when referring to an exchange, means any exchange that has been exempted from the reporting requirements of Rule 11Aa3–1.[30] Thus, there would be no impact for purposes of the RFA on small businesses.

*D. Reporting, Recordkeeping, and Other Compliance Requirements*

The proposals would not impose any new reporting, recordkeeping, or other compliance requirements.

*E. Duplicative, Overlapping or Conflicting Federal Rules*

The Commission believes that there are no rules that duplicate, overlap or conflict with the proposed rules.

*F. Significant Alternatives*

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant economic impact on small entities. In connection with the proposal, the Commission considered the following alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the Rule for small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the Rule, or any part thereof, for small entities. The Commission believes that none of the above alternatives is applicable. The OPRA Plan participants are the only parties that are subject to the requirements of the OPRA Plan. The OPRA Plan participants are all national SROs and, as such, are not "small entities." Therefore, the Commission does not believe the alternatives are applicable to the proposal.

**G. Solicitation of Comments**

The Commission encourages the submission of comments with respect to any aspect of this IRFA. In particular, the Commission seeks comment on: (i) the number of small entities, if any, that would be affected by the proposed amendment; and (ii) the impact that the proposed amendment would have, if any, on such entities. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed amendment is adopted, and will be in the same public file as comments on the proposed amendments themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. 4–434; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room. Electronically submitted comment letters also will be posted on the Commission's Internet web site (http://www.sec.gov).

**VII. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed amendments do not impose recordkeeping or information collection requirements, or other collections of information which require approval of the Office of Management and Budget under 44 U.S.C. 3501, *et. seq.*

**VIII. Description of Alternative Proposed Amendments to the OPRA Plan**

The Commission hereby proposes to amend the OPRA Plan to provide for a specific formula to allocate capacity among the options exchanges during peak usage periods pursuant to Rule 11Aa3–2(b)(2) and (c)(1)[31] and the Commission's authority under Section 11A(a)(3)(B) of the Act.[32]

**Alternative A**

* * * * *

*III. Definitions*

(a)–(k) No change.

(l) *Relevant Calendar Quarter.*

*(i) For the capacity allocation commencing on May 1 of each year, the Relevant Calendar Quarter shall mean the months of January, February, and March.*

*(ii) For the capacity allocation commencing on August 1 of each year, the Relevant Calendar Quarter shall mean the months of April, May, and June.*

*(iii) For the capacity allocation commencing on November 1 of each year, the Relevant Calendar Quarter shall mean the months of July, August and September.*

*(iv) For the capacity allocation commencing on February 1 of each year, the Relevant Calendar Quarter shall mean the months of October, November and December.*

*(m) "Included Class" means any options class listed by an OPRA participant:*

*(i) For which such participant executes during the Relevant Calendar Quarter an average of at least 15 trades per day if the options class is multiply-listed;*

*(ii) For which such participant executes during the Relevant Calendar Quarter an average of at least 30 trades per day if the options class is exclusively listed; or*

*(iii) That during the Relevant Calendar Quarter has been trading options for fewer than 270 calendar days.*

*(n) An OPRA participant that is operating an options market receives a "Capacity Credit" for each options class that is an Included Class for that participant equal to:*

*(i) For a multiply-traded options class, the average quote messages generated during the Relevant Calendar Quarter by all OPRA participants, for which such class is an Included Class, during the first half-hour of trading after the opening rotation is completed divided by the number of such OPRA participants; or*

*(ii) For an exclusively-listed options class, the average quote messages generated during the Relevant Calendar Quarter by the OPRA participant during the first half-hour of trading after the opening rotation is completed.*

*(o) "Allocation Percentage" for an OPRA participant means the total of all such participant's Capacity Credits divided by the total of all Capacity Credits for all OPRA participants.*

*IV. No Change*

*V. (a)–(c) No Change*

(d) *Quarterly Calculation of Capacity Allocation.*

(i) *On the first of February, May, August and November of each year, each OPRA participant that operates an options exchange will receive an allocation of OPRA's peak period systems capacity in an amount equal to its Allocation Percentage multiplied by the total OPRA systems capacity.*

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[29] 17 CFR 240.0–10(e).

[30] 17 CFR 240.11Aa3–1.

[31] 17 CFR 240.11Aa3–2(b)(2) and (c)(1).

[32] 15 U.S.C. 78k–1(a)(3)(B). Section 11A(a)(3)(B) authorizes the Commission, in furtherance of its statutory directive to facilitate the development of a national market system, by rule or order, to authorize or require SROs to act jointly with respect to matters as to which they share authority under the Act in planning, developing, operating, or regulating a national market system (or subsystem thereof) or one or more facilities thereof.

(ii) *OPRA will calculate the capacity allocation specified in paragraph (d)(i) as soon as possible after the end of the Relevant Calendar Quarter. OPRA will use data to make this calculation that is provided to it by the OPRA participants. Alternatively, OPRA can contract with its processor or with another third party to perform this calculation. OPRA will notify the OPRA participants and the Commission of the capacity allocation for peak periods promptly after such calculation is made.*

*(e)* [d] Indemnification.

(i)–(ii) No change.

* * * * *

**Alternative B**

* * * * *

*III. Definitions*

(a)–(k) No change.

*(l) Relevant Calendar Quarter.*

*(i) For the capacity allocation commencing on May 1 of each year, the Relevant Calendar Quarter shall mean the months of January, February, and March.*

*(ii) For the capacity allocation commencing on August 1 of each year, the Relevant Calendar Quarter shall mean the months of April, May, and June.*

*(iii) For the capacity allocation commencing on November 1 of each year, the Relevant Calendar Quarter shall mean the months of July, August and September.*

*(iv) For the capacity allocation commencing on February 1 of each year, the Relevant Calendar Quarter shall mean the months of October, November and December.*

*(m) "Quotes-to-Contract Volume" for an OPRA participant means the average daily quotes in options classes listed for more than 3 calendar months generated during the Relevant Calendar Quarter by a participant divided by the average daily contract volume traded in options classes listed for more than 3 calendar months by that participant during the same calendar quarter.*

*(n) "Average Quotes-to-Contract Volume" means the average Quote-to-Contract Volume of all OPRA participants during the Relevant Calendar Quarter computed by adding together the Quotes-to-Contract Volume for each participant and dividing by the number of participants.*

*(o) "Quotes-to-Contract Volume Deviation" for an OPRA participant is calculated using the following formula:*

*(1—(Quotes-to-Contract Volume for that OPRA participant/ Average Quotes-to-Contract Volume)) * Dampening Factor.*

*(d) "Equal Share" means one divided by the number of OPRA participants that are operating an options market.*

*(d)* No Change

*(d)* (a)–(c) No change.

*(d) Quarterly Calculation of Capacity Allocation*

*(i) On the first of February, May, August, and November of each year, each OPRA participant that operates an options exchange will receive an allocation of OPRA's systems capacity in an amount equal to the sum of the Equal Share and such participant's Quotes-to-Contract Volume Deviation. For purposes of calculating the Quote-to-Contract Volume Deviation, the Dampening Factor shall equal 10%.*

*(ii) Notwithstanding paragraph (d)(i), in no event shall an OPRA participant that operates an options exchange receive a capacity allocation that is less than 15% of OPRA's systems capacity. If the initial calculation of the Quote-to-Contract Volume Deviation results in an options exchange receiving an allocation of less than 15% of the total OPRA system's capacity, the Quote-to-Contract Volume Deviation will be recalculated as follows:*

*a. The first recalculation shall consist of a downward adjustment of the Dampening Factor by 1% (i.e., to 9%) applied to all OPRA participants.*

*b. If after the first recalculation, any OPRA participant that operates an options exchange still receives less than 15% of OPRA's systems capacity, the recalculations shall continue by adjusting the Dampening Factor downward by 1% until all OPRA participants have at least 15% of OPRA's systems capacity.*

*(iii) OPRA will calculate the capacity allocation specified in paragraph (d)(i) as soon as possible after the end of the Relevant Calendar Quarter. OPRA will use data to make this calculation that is provided to it by the OPRA participants. Alternatively, OPRA can contract with its processor or with another third party to perform this calculation. OPRA will notify the OPRA participants and the Commission of the capacity allocation for peak periods promptly after such calculation is made.*

*(e)* [d] Indemnification.

(i)–(ii) No change.

* * * * *

By the Commission.

Dated: May 4, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11680 Filed 5–9–00; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[File No. 500–1]**

### In the Matter of Asthma Disease Management, Inc.; Order of Suspension of Trading

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Asthma Disease Management, Inc., a Nevada corporation, with its principal place of business in Berlin, New Jersey. Questions have been raised about the adequacy and accuracy of publicly disseminated information, concerning, among other things, purported contracts between Asthma Disease Management, Inc. and three health maintenance organizations: Cape Health Plan (f/k/a Cape Medical) of Detroit, Michigan; Horizon Mercy of Trenton, New Jersey; and HMA of Philadelphia, Pennsylvania.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed company is suspended for the period from 9:30 a.m. EDT, May 8, 2000, through 11:59 p.m. EDT, on May 19, 2000.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11798 Filed 5–8–00; 12:15 pm]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42752; File No. SR–Amex–00–18]**

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Options Transaction Fees for Non-Member Broker-Dealers

May 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby give that on April 7, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19–4.

change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Amex proposes to increase equity options transaction fees for non-member broker dealer orders.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspect of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Amex proposes to increase equity options transaction fees for non-member broker-dealer orders. The Amex currently imposes a transaction charge on options trades executed on the Exchange. The charges vary depending on whether the transaction involves an equity or index option and whether the transaction is executed for a specialist or market maker account, a member firm's proprietary account, a non-member broker-dealer, or a customer account. The Amex also imposes a charge for clearance of options trades and an options floor brokerage charge, which also depends upon the type of account for which the trade is executed. In addition, all three types for charges—transaction, options clearance, and options floor brokerage—are subject to caps on the number of options contracts subject to the charges on a given day.[3]

Recently, the Amex eliminated all options transaction, clearance, and floor brokerage fees for customer equity options orders.[4] To offset the elimination of these fees for customer equity options orders, the Exchange raised the equity options transaction fee from $0.07 to $0.19 per contract side for member firm proprietary orders and from $0.08 to $0.17 per contract side for specialist and market maker orders. Now, to further offset the elimination of options transaction, clearance and brokerage fees for customer equity option orders, the Exchange proposes to increase the equity options transaction fee for non-member broker-dealer orders from $0.07 to $0.19 per contract side. This revised fee will also apply to both LEAPS[5] and FLEX[6] options. Equity options clearance and floor brokerage fees for non-member-dealers will remain unchanged at $0.04 and $0.03 per contract side, respectively.

*2. Statutory Basis*

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(4)[8] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

*B. Self-Regulatory Organization's Statements on Burden on Competition*

The Amex does not believe that the proposed rule change will impose any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange has neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested person are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–Amex–00–18 and should be submitted by May 31, 2000.

For the Commission, by the Division on Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11607 Filed 5–9–00; 8:45 am]

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[3] The current caps are set at 2000 contracts for customer trades and 3000 contracts for member firm proprietary, non-member broker-dealer, specialist, and market maker trades.

[4] *See* Securities Exchange Act Release No. 42675, (April 13, 2000). 65 FR 21223 (April 20, 2000).

[5] LEAPS are Long Term Equity Anticipation Securities or options with durations of up to 36 months. *See* Amex Rule 903C.

[6] FLEX options are customized options with individually specified terms such as strike price, expiration date, and exercise style. *See* Amex Rule 900G.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42748; International Series Release No. 1222; File No. SR–Amex–98–49]**

## Self-Regulatory Organizations; American Stock Exchange LLC; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3, 4, and 5 to the Proposed Rule Change Relating to Listing Additional Series of World Equity Benchmark Shares™

May 2, 2000.

**I. Introduction**

On December 23, 1998, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission

("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to list additional series of World Equity Benchmark Shares ("WEBS"). The Exchange submitted Amendment No. 1 to its proposal on February 24, 1999,[3] and Amendment No. 2 on April 9, 1999.[4] The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on April 29, 1999.[5] No comments were received on the proposal. The Exchange submitted Amendment No. 3 to its proposed rule change on December 15, 1999,[6] Amendment No. 4 on January 11, 2000,[7] and Amendment No. 5 on March 20, 2000.[8] This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment Nos. 3, 4, and 5.

## II. Description of the Proposal

On March 4, 1996, the Commission approved Amex's listing and trading of Index Fund Shares under Amex Rules 1000A *et seq.*[9] Index Fund Shares are shares issued by an open-end management investment company that seek to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic equity market index.

The first Index Fund Shares approved for listing on the Exchange were seventeen series of WEBS issued by Foreign Fund, Inc. (now WEBS Index Fund, Inc.) ("Fund"), based on the following Morgan Stanley Capital international ("MSCI") indices: Australia, Austria, Belgium, Canada, France, Germany, Hong Kong, Italy, Japan, Malaysia, Mexico (Free), Netherlands, Singapore (Free), Spain, Sweden, Switzerland and the United Kingdom.[10] These WEBS Index Series have been trading on the Amex since March 18, 1996.

The Exchange is proposing to list six additional WEBS Index Series based on the following MSCI indices: MSCI EMU Index,[11] MSCI Brazil (Free) Index, MSCI South Korea Index, MSCI South Africa Index, MSCI Taiwan Index, and MSCI United States Index.

Issuances of WEBS by the Fund are made only in Creation Unit size aggregations or multiples thereof. The size of the applicable Creation Unit size aggregation will be set forth in the Fund's prospectus and varies from one WEBS Index Series to another, but is generally substantial (*e.g.*, value in excess of $450,000 per Creation Unit). The Fund issues and sells WEBS through SEI Investments Distribution Company ("Distributor"),[12] the distributor and principal underwriter, on a continuous basis at the NAV per share next determined after an order to purchase WEBS in Creation Unit size aggregations is received in proper form.[13] According to the Amex, following issuance, WEBS are traded on the Exchange like other equity securities by professionals, as well as retail and institutional investors.

Creation Unit size aggregations of WEBS are generally issued in exchange for the "in kind" deposit of a specified portfolio of securities, together with a cash payment representing, in part, the amount of dividends accrued up to the time of issuance. Amex states that such deposits are made primarily by institutional investors, arbitrageurs and the Exchange specialist. Redemption of WEBS is generally made on an in-kind basis, with a portfolio of securities and cash exchanged for WEBS that have been tendered for redemption. Issuances or redemptions could also occur for cash under specified circumstances (*e.g.*, if it is not possible to effect delivery of securities underlying the specific series in a particular foreign country) and at other times in the discretion of the Fund.

Local restrictions on transfers of securities to and between certain types of foreign investors in Korea, Taiwan and Brazil preclude in-kind creations and redemptions of Creation Units of the Korea, Taiwan and Brazil WEBS Index Series. Accordingly, these series have been structured so that Creation Units may be created and redeemed solely for cash until such time (if ever) as the local restrictions are changed in a way that permits such transactions to occur on an in-kind basis.[14] In addition, each of the three series will charge creation and redemption fees intended to offset the cost of brokerage and market impact associated with buying and selling the baskets of stock held by such Series.[15]

According to the Amex, an important advantage of "in-kind" redemptions and creations is that the Fund is not exposed to execution risk or execution costs. Amex stated in its proposal that although the Korea, Taiwan and Brazil WEBS Index Series will not benefit from in-kind redemptions and creations, it is expected that the fact that continuous sales and redemptions are available will result in WEBS Index Series trading close to their NAV. Amex further notes that the relevant markets are among the largest and most liquid emerging markets. As of August 31, 1999, the market capitalizations of the Korean, Taiwanese and Brazilian stock markets were approximately BRL 262.7 billion

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Restated 19b–4 Filing marked Amendment No. 1 ("Amendment No. 1").

[4] *See* Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Katherine England, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 8, 1999 ("Amendment No. 2").

[5] *See* Securities Exchange Act Release No. 41322 (April 22, 1999), 64 FR 23138.

[6] In Amendment No. 3, the Exchange clarified the Fund's policies relating to the weighting of securities and industries in a WEBS index; the need for cash creations and redemptions in Korea, Taiwan, and Brazil; the surveillance procedures; the calculation of the indicative optimized portfolio value; and provided general information regarding the value of a creation unit and the expected NAV of individual shares. *See* Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Terri Evans, Special Counsel, Division, Commission, dated December 14, 1999 ("Amendment No. 3").

[7] In Amendment No. 4, the Exchange withdrew the WEBS Index Series based on the following MSCI Indicies: Greece, Indonesia (Free), Portugal, Thailand (Free) and Turkey. *See* Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Terri Evans, Special Counsel, Division, Commission, dated January 6, 2000 ("Amendment No. 4").

[8] In Amendment No. 5, AMEX explained and clarified that the computation of the Net Asset Value ("NAV") for the Korea, Taiwan and Brazil WEBS Index Series will occur at times different than was reflected in Amendment No. 3. The computation of the NAV for the Korea and Taiwan WEBS Index Series will occur at 8:30 a.m. New York Time. The NAV computation for the Brazil WEBS Index Series will occur at 5:00 p.m. New York Time. In addition, the Exchange clarified that Funds Distributor, Inc. will be replaced by SEI Investments Distribution Company no later than March 28, 2000. *See* Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Terri Evans, Special Counsel, Division, Commission, dated March 16, 2000 ("Amendment No. 5").

[9] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[10] "World Equity Benchmark Shares" and "WEBS" are service marks of Morgan Stanley Group, Inc. "MSCI" and "MSCI Indices" are service marks of Morgan Stanley & Co. Incorporated.

[11] *See* Amendment No. 4, *supra* note 7. The MSCI EMU Index is comprised of stocks of companies from countries participating in the EMU. Currently, eleven countries are participating in the EMU: Austria, Belgium, Finland, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal and Spain. The MSCI EMU is currently comprised of stocks of companies from ten of these EMU countries (*e.g.*, all of the EMU countries except Luxembourg). MSCI has advised that it may, in accordance with its methodology, change the composition of MSCI EMU in the future, such changes could include adding stock(s) of companies from Luxembourg or from any other country that becomes a participant in EMU.

[12] *See* Amendment No. 5, *supra* note 8.

[13] *See infra* Section II.B, Criteria for Initial and Continued Listing.

[14] *See* Amendment No. 3, *supra* note 6.

[15] *Id.* Information regarding such fees will be included in the prospectus and information circular. Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Terri Evans, Special Counsel, Division, Commission, on May 1, 2000.

or $137 billion; KRW 280,229.5 billion or $237.4 billion; and TWD 10,393.1 billion or $326.4 billion, respectively.

Barclays Global Fund Advisors, the Fund's investment advisor ("Advisor"), is of the view that the Fund should ordinarily be able to buy and sell Creation Unit size baskets of stocks promptly after receipt of an order (ordinarily on the business day after receipt of an order). The Fund currently intends to compute the NAV of each of the Korea and Taiwan WEBS Index Series at 8:30 a.m. New York Time, which is only a few hours after the close of each of the Korea and Taiwan markets. Amex notes, as with any open-end fund, a purchase or redemption order in respect of a WEBS Index Series is priced at the NAV of the series that is next determined after receipt of such an order. For example, if an order to purchase one or more Creation Units of Korea WEBS Index Series is entered with the Fund's Distributor at 4:00 p.m. New York Time on Tuesday, the cash amount to be required to be transferred to the Fund would be based on the NAV of the Korea WEBS Index Series as of 8:30 a.m. New York Time on Wednesday (*i.e.*, the next business day). According to the Amex, the Fund believes that timing the calculation of the NAV as of 8:30 a.m. New York Time will significantly lessen the exposure of the Korea and Taiwan WEBS Index Series and their shareholders to the risk of price movements in the local securities markets, because if the Korea or Taiwan WEBS Index Series receives a purchase or redemption order during the trading day in New York (when orders are accepted), that Series will have an opportunity to purchase or dispose of portfolio securities in the local market prior to the determination of the NAV following the close of the local market. Similarly, to ensure that the NAV of the Brazil WEBS Index Series is priced based on the closing prices in the Brazil markets, the Fund currently intends to compute the NAV of each of the Brazil WEBS Index Series at 5:00 p.m. New York Time.[16]

The Fund makes available on a daily basis a list of the names and the required number of shares of each of the securities to be deposited in connection with the issuance of a particular WEBS Index Series in Creation Unit size aggregations, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends.

A WEBS Index Series may make periodic distributions of dividends from net investment income, including net foreign currency gains, if any, in an amount approximately equal to accumulated dividends on securities held by the WEBS Index Series during the applicable period, net of expenses and liabilities for such period.

The NAV for each WEBS Index Series is calculated by the Fund's administrator, PFPC Inc. ("Administrator"). After calculation, such NAVs are available to the public from the Fund's Distributor via a toll free telephone number, and are also available to National Securities Clearing Corporation ("NSCC") participants through data made available from NSCC.

WEBS are registered in book entry form through The Depository Trust Company. Trading in WEBS on the Exchange is effected until 4:00 p.m. (ET) each business day. The minimum trading increment for WEBS is 1/16 of $1.00, pursuant to Amex Rule 127, Commentary .02.

*A. MSCI Indices*

In this proposal, Amex submitted a description of the methodology used to calculate the MSCI Indices, which was prepared by MSCI. The following description, provided by Amex, supplements the description previously submitted to the Commission in connection with the Exchange's initial proposal to list WEBS.

Each MSCI Index on which a WEBS Index Series is based is calculated by MSCI for each trading day in the applicable foreign exchange markets based on official closing prices of the applicable foreign exchange markets. For each trading day, MSCI publicly disseminates each index value for the previous day's close. MSCI Indices are reported periodically in major financial publications worldwide, and are also available through vendors of financial information.[17]

There are two broad categories of changes to the MSCI Indices. The first consists of market-driven changes, including mergers, acquisitions, and bankruptcies. These are announced and implemented as they occur. The second category consists of structural changes to reflect the evolution of a market that may occur due to changes industry composition or regulations, among other reasons. Structural changes to MSCI Indices may occur only on four dates throughout the year: The first business day of March, June, September and December. The changes are announced at least two weeks in advance.

As noted in the WEBS prospectus for the initial seventeen WEBS Index Series (Registration No. 33–97598), the investment objective of each WEBS Index Series is to seek to provide investment results that correspond generally to the price and yield performance of public securities traded in the aggregate in particular markets, as represented by specific MSCI benchmark indices. Each WEBS Index Series utilizes a "passive" or indexing investment approach, which attempts to approximate the investment performance of its benchmark index through quantitative analytical procedures. Each Index Series has the policy to remain as fully invested as practicable in a pool of securities the performance of which will approximate the performance of the benchmark MSCI Index taken in its entirety. MSCI generally seeks to have 60% of the capitalization of a country's stock market reflected in the MSCI Index for such country, although in some cases, other considerations may result in an MSCI Index reflecting less or more than this percentage.

The Fund maintains several policies relating to the weighting of securities in a WEBS Index Series, which serve to prevent excessive weighting by individual securities. For example, in order for the Fund to qualify for tax treatment as a regulated investment company, it must meet several requirements under the Internal Revenue Code. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (1) at least 50% of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5% of the value of the Fund's assets and not greater than 10% of the outstanding voting securities of such issuer, and (2) not more than 25% of the value of its total assets may be invested in the securities of any one issuer, or of two or more issuers that are controlled by the Fund (within the meaning of section 851(b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or businesses or related trades or businesses (other than U.S. government

[16] *See* Amendment No. 5, *supra* note 8. The timing of the calculation of the NAV for Brazil, South Korea, and Taiwan and the potential market impact of the Fund buying or selling securities in those markets will be disclosed in the prospectus and information circular. Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Terri Evans, Special Counsel, Division, Commission, on May 1, 2000.

[17] *See also, infra* Section II.C, Dissemination of Indicative Optimized Portfolio Value.

securities or the securities of other regulated investment companies).[18]

The Fund also maintains an industry concentration policy of all WEBS Index Series. With respect to the two most heavily weighted industries or groups of industries in its benchmark MSCI Index, a WEBS Index Series will invest in securities (consistent with its investment objective and other investment policies) so that the weighting of each such industry or group of industries in the WEBS Index Series does not diverge by more than 10% from the respective weighting of such industry or group of industries in its benchmark MSCI Index. An exception to this policy is that if investment in the stock of a single issuer would account for more than 25% of the WEBS Index Series, the WEBS Index Series will invest less than 25% of its net assets in such stock and will reallocate the excess to stock(s) in the same industry or group of industries, and/or stock(s) in another industry or group of industries, in its benchmark MSCI Index. Each WEBS Index Series will evaluate these industry weightings at least weekly, and at the time of evaluation will adjust its portfolio composition to the extent necessary to maintain compliance with the above policy. A WEBS Index series may not concentrate its investments except as discussed above. This policy is a fundamental investment policy and may not be changed without the approval of a majority of a WEBS Index Series shareholders.[19]

Through the application of portfolio sampling, each of the WEBS Index Series is expected to contain less than all of the component stocks in its respective benchmark MSCI Index. The following tables set forth the number of stocks contained in the Benchmark MSCI Index, and the initial number of stocks expected to be included in each corresponding WEBS Index Series (data as of December 3, 1999).

| County/Region | Number of stocks in benchmark MSCI index | Number of stocks in WEBS index series |
|---|---|---|
| Brazil | 47 | 41 |
| South Korea | 92 | 92 |
| South Africa | 46 | 39 |
| Taiwan | 76 | 69 |
| United States | 324 | 155 |
| EMU | 317 | 125 |

Each WEBS Index Series has a policy to remain as fully invested as practicable in a pool of equity securities. Each WEBS Index Series will normally invest at least 95% of its total assets in stocks that are represented in its benchmark MSCI Index except, in limited circumstances, to assist in meeting shareholder redemptions of Creation Units. In order to comply with the Internal Revenue Code, and manage corporate actions and index changes in the smaller markets, each of the Brazil (Free), South Korea, South Africa, and Taiwan WEBS Index Series will at all times invest at least 80% of its total assets in such stocks and at least half of the remaining 20% of its total assets in such stocks or in stocks included in the relevant market but not in its benchmark MSCI Index.[20]

The Exchange believes that these requirements and policies prevent any WEBS Index Series from being excessively weighted in any single security or small group of securities and significantly reduce concerns that trading in a particular WEBS Index Series could become a surrogate for trading in unregistered securities.[21]

As stated above, a WEBS Index Series does not hold all of the issues that comprise the subject MSCI Index, but attempts to hold a representative sample of the securities in the Index utilizing a technique known as "portfolio sampling." As noted in the WEBS prospectus, it is expected that, over time, the "expected tracking error" of a WEBS Index Series relative to the performance of the relevant MSCI Index will be less than 5%. An expected tracking error of 5% means that there is a 68% probability that the net return on the asset value for the Index Series (including dividends and without reflecting expenses) will be between 95% and 105% of the return of the subject MSCI Index after one year without rebalancing the portfolio composition. While no particular level of tracking error is assured, the Fund's Advisor, monitors the tracking error of each Index Series on an ongoing basis and seeks to minimize tracking error to the maximum extent possible. Semi-annual and annual reports of the Fund disclose tracking error over the previous six-month periods, and in the event that tracking error exceeds 5%, the Fund Board of Directors will consider what action might be appropriate.

*B. Criteria for Initial and Continued Listing*

WEBS are subject to the criteria for initial and continued listing of Index Fund Shares in Amex Rule 1002A. For each of the six WEBS Index Series, it is anticipated that a minimum of two Creation Units will be required to be outstanding at the start of trading, with the exception of the United States WEBS Index Series and the EMU Index Series, for which one Creation Unit will be required to be outstanding at commencement of trading. It is anticipated that a Creation Unit will consist of 50,000 WEBS except for the United States WEBS Index Series and EMU WEBS Index Series, for which the anticipated minimums are 500,000 and 200,000 WEBS, respectively. The value of a Creation Unit at the start of trading would in all cases be in excess of $500,000. It is expected that the NAV of an individual share will initially range from $10 to $25.[22] The Fund will establish a minimum number of WEBS shares per Creation Unit for each Index Series prior to commencement of trading, which minimum number will be disclosed in the Fund's prospectus. According to the Exchange, the proposed minimum number of WEBS outstanding at the start of trading for each WEBS Index Series is sufficient to provide market outstanding at the start of trading for each WEBS Index Series is sufficient to provide market liquidity and to further the Fund's objective to seek to provide investment results that correspond generally to the price and yield performance of a specified MSCI Index.

*C. Dissemination of Indicative Optimized Portfolio Value*

As noted above, MSCI disseminates values for each MSCI Index once each trading day, based on closing prices in the relevant exchange market. In addition, the Fund makes available on a daily basis the names and required number of shares of each of the securities to be deposited in connection with the issuance of WEBS in Creation Unit size aggregations for each WEBS Index Series, as well as information relating to the required cash payment representing, in part, the amount of accrued dividends applicable to such WEBS Index Series. This information is made available by the Fund's Advisor to any NSCC participant requesting such information. In addition, other investors can request such information directly from the Fund's Distributor. The NAV for each WEBS Index Series is calculated daily by the Fund's Administrator.

In order to provide updated information relating to each WEBS

[18] *See* Amendment No. 3, *supra* note 6.

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Terri Evans, Special Counsel, Division, Commission, on January 31, 2000.

Index Series for use by investors, professionals and persons wishing to create or redeem WEBS,[23] the Exchange currently disseminates through the facilities of the Consolidated Tape Association ("CTA") an updated "indicative optimized protfolio value" ("Value") for each of the seventeen WEBS Index Series currently traded as calculated by Bloomberg, L.P. The Exchange will also disseminate a Value for the proposed six new WEBS Index Series over CTA facilities (Network B) as calculated by a securities information provider ("Value calculator"). The Value for the proposed WEBS Index Series will be calculated by Bloomberg, L.P. in the same manner utilized by Bloomberg to calculate the Value for the seventeen WEBS index series that are currently trading.[24] The Value is disseminated on a per WEBS basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m. (ET). The equity securities values included in the Value are the values of the designated portfolio of equity securities ("Deposit Securities") constituting an optimized representation of the benchmark MSCI foreign index for each WEBS Index Series, which is the same as the portfolio that to be utilized generally in connection with creations and redemptions of WEBS in Creation Unit Size aggregations on that day. The equity securities included in the Value reflect the same market capitalization weighting as the Deposit Securities in the optimized for the particular WEBS Index Series. In addition to the value of the Deposit Securities for each WEBS Index Series, the Value includes a cash component consisting of estimated accrued dividend and other income, less expenses. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home country currency.

The Value does not reflect the value of all securities included in the applicable benchmark MSCI index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by the Fund for each WEBS Index Series at a particular point in time. Therefore, Amex has stated that the Value of a per WEBS basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV of the Fund, which is calculated only once a day. While the Value disseminated by the Amex at 9:30 a.m. is generally very close to the most recently calculated Fund NAV on a per WEBS basis,[25] Amex notes that it is possible that the value of the portfolio of securities held by the Fund for a particular WEBS Index Series may diverge from the Deposit Securities Values during any trading day. In such case, the Value will not precisely reflect the value of the Fund portfolio. Following calculation of the NAV by the Fund's Administrator as of 4:00 p.m. (ET),[26] the Value on a per WEBS basis can be expected to be the same as the NAV of the Fund on a per WEBS basis.

However, during the trading day, Amex believes the Value can be expected to closely approximate the value per WEBS share of the portfolio of securities for each WEBS Index Series except under unusual circumstances (*e.g.*, in the case of extensive rebalancing of multiple securities in a WEBS Index Series at the same time by the Fund Advisor). According to the Amex, the circumstances that might cause the Value to be based on calculations different from the valuation per WEBS share of the actual portfolio of an Index Series would not be different than circumstances causing any index fund or trust to diverge from the underlying benchmark index.

The Exchange believes that dissemination of the Value based on the Deposit Securities provides additional information regarding each WEBS Index Series that is not otherwise available to the public and is useful to professionals and investors in connection with WEBS trading on the Exchange or the creation or redemption of WEBS.

For South Korea and Taiwan, there is no overlap in trading hours between the foreign markets and the Amex. Therefore, for each Index Series, the Value calculator will utilize closing prices (in applicable foreign currency prices) in the principal foreign market for securities in the WEBS portfolio, and convert the price to U.S. dollars. This Value will be updated every 15 seconds during Amex trading hours to reflect changes in currency exchange rates between the U.S. dollar and the applicable foreign currency. The Value will also include the applicable estimated cash component for each WEBS Index Series.

For Brazil, South Africa, and countries included in the MSCI EMU Index, which have trading hours overlapping regular Amex trading hours, the Value calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign market or markets, and convert such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but the Amex is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign market close. The Value will also include the applicable estimated cash component for each Index Series.

For United States WEBS Index Series, the Value calculator will update the Value at least every 15 seconds, and such Value will included the applicable estimated cash component.

*D. Original and Annual Listing Fees*

The Amex original listing fee applicable to the listing of WEBS Index Series is $5,000 per WEBS Index Series. In addition, the annual listing fee applicable to WEBS Index Series under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding WEBS in all series, including the seventeen existing series and the additional series proposed herein.

*E. Stop and Stop Limit Orders*

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively priced based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated Index Fund Shares, including WEBS, as eligible for this treatment.[27]

*F. Amex Rule 190*

Amex Rule 190, Commentary .04, applies to Index Fund Shares listed on the Exchange, including WEBS. Commentary .04 states that nothing in Amex Rule 190(a) should be construed to restrict a specialist registered in a security issued by an investment company from purchasing and redeeming the listed security, or securities that can be subdivided or

[23] WEBS cannot be redeemed individually but must be redeemed in Creation Unit size aggregations applicable to the specific WEBS Index Series.

[24] *See* Amendment No. 3, *supra* note 6.

[25] A slight difference between the Value disseminated at 9:30 a.m. and the most recently calculated Fund NAV can be expected because the Value will include an estimated cash amount consisting principally of any dividend accruals for the Deposit Securities going "ex-dividend" on that day.

[26] The NAV for Korea and Taiwan will be calculated at 8:30 a.m. New York Time and 5 p.m. New York Time of Brazil. *See* Amendment No. 5, *supra* note 8.

[27] *See* Securities Exchange Act Release No. 29063 (April 10, 1991) 56 FR 15652 (April 17, 1991) note 9 (regarding Exchange designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c)).

converted into the listed security, from the issuer as appropriate to facilitate the maintenance of a fair and orderly market.

*G. Prospectus Delivery, Purchases, Redemptions, and Suitability*

The Exchange, in an Information Circular to Exchange members and member organizations, will inform members and member organizations, prior to commencement of trading, that investors purchasing WEBS are required to receive a Fund prospectus prior to or concurrently with the confirmation of a transaction therein. The prospectus will disclose, among other matters, that the NAV is determined for Brazil, South Korea, and Taiwan at different times than other MSCI WEBS Index Series. Further the prospectus will disclose the possible market impact of the Fund buying or selling securities in Brazil, South Korea, and Taiwan prior to the calculation of the NAV,[28] as well as the creation and redemption fees for those WEBS.[29]

In the Amex's Information Circular, members and member organizations will be informed that procedures for purchases and redemptions of WEBS in Creation Unit Size are described in the Fund prospectus and statement of additional information, and that WEBS are not individually redeemable but are redeemable only in Creation Unit Size aggregations or multiples thereof. Further, the Information Circular will discuss certain factors that make the Brazil, South Korea, and Taiwan WEBS Series different from the other WEBS Index Series. This includes that the NAV for Brazil, South Korea, and Taiwan is determined at a different time than the other WEBS Index Series; there is a fee for creations and redemptions for WEBS based on Brazil, South Korea, and Taiwan; and there is a potential market impact of the Fund buying and selling in those three markets prior to the calculation of the NAV.[30] The Information Circular will also inform members and member organizations of the characteristics of the specific series and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

*H. Trading Halts and Surveillance*

In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in Index Fund Shares, including WEBS. These factors would include, but are not limited to: (1) The extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.[31] In addition, trading in WEBS will be halted if the circuit breaker parameters under Amex Rule 117 have been reached.

Exchange surveillance procedures applicable to trading in the proposed WEBS Index Series are the same as those applicable to WEBS currently trading on the Exchange.[32]

**III. Discussion**

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6(b)(5) of the Act.[33] The Commission believes that the Exchange's proposal to list and trade WEBS will provide investors with a convenient way of participating in the foreign securities markets. The Commission believes that the Exchange's proposal should help to provide investors with increased flexibility in satisfying their investment needs by allowing them to purchase and sell securities at negotiated prices throughout the business day that replicate the performance of several portfolios of stocks.[34] Accordingly, the Commission finds that the Exchange's proposal will facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[35]

The estimated cost of an individual WEBS, approximately $10 to $25, should make it attractive to individual retail investors who wish to hold a security replicating the performance of a portfolio of foreign stocks. Moreover, the Commission believes that WEBS will provide investors with several advantages over standard open-end investment companies specializing in such stocks. In particular, investors will be able to trade WEBS continuously throughout the business day in secondary market transactions at negotiated prices.[36] Accordingly, WEBS should allow investors to: (1) Respond quickly to market changes through intra-day trading opportunities; (2) engage in hedging strategies not currently available to retain investors; and (3) reduce transaction costs for trading a portfolio of securities.

Although the value of WEBS will be based on the value of the securities and cash held in the Fund, WEBS are not leveraged instruments.[37] In essence, WEBS are equity securities that represent an interest in a portfolio of stocks designed to reflect the applicable MSCI Index. Accordingly, it is appropriate to regulate WEBS in a manner similar to other equity securities. Nevertheless, the Commission believes that the unique nature of WEBS raise certain product design, disclosure, trading, and other issues that must be addressed.

*A. WEBS Generally*

The Commission believes that the proposed WEBS are reasonably designed to provide investors with an investment vehicle that substantially reflects in value the index it is based upon, and, in turn, the performance of

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[28] Telephone conversation between Georgia Bullitt, Vice President, Morgan Stanley Dean Witter, and Belinda Blaine, Associate Director, Division, Commission, on March 28, 2000.

[29] Telephone conservation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, and Terri Evans, Special Counsel, Division, Commission, on May 1, 2000.

[30] *Id.*

[31] *See* Amex Rule 918C.

[32] *See* Amendment No. 3, *supra* note 6.

[33] 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that is has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[34] The Commission notes that unlike typical open-end investment companies, where investors have the right to redeem their fund shares on a daily basis, investors in WEBS can redeem in Creation Unit size aggregations only.

[35] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of exchange trading for new products upon a finding that the introduction of the product is in the public interest. Such a finding would be difficult with respect to a product that served no investment, hedging or other economic functions, because any benefits that might be derived by market participants would likely be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[36] Because of potential arbitrage opportunities, the Commission believes that WEBS will not trade at a material discount or premium in relation to their NAV. The mere potential for arbitrage should keep the market price of WEBS comparable to their NAVs; therefore, arbitrage activity likely will not be significant. In addition, the Fund will generally redeem in-kind, thereby enabling the Fund to invest most of its assets in securities comprising the MSCI Indices.

[37] In contrast, proposals to list exchange-traded derivative products that contain a built-in leverage feature or component raise additional regulatory issues, including heightened concerns regarding manipulation, market impact, and customer suitability. *See e.g.*, Securities Exchange Act Release No. 36165 (August 29, 1995), 60 FR 46653 (relating to the establishment of uniform listing and trading guidelines for stock index, currency, and currency index warrants).

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the specified foreign equities market. WEBS will be deemed equity securities subject to Amex rule governing the trading of equity securities. As such, the Commission finds that adequate rules and procedures exist to govern the trading of WEBS. In this regard, the Commission notes that MSCI imposes specified criteria in the selection of Index components. MSGI generally seeks to have 60% of a market's capitalization reflected in that market's corresponding index. In selecting components for a given Index, MSCI excludes issues that are either small or higher illiquid. Index constituents are selected on the basis of seeking to maximize float and liquidity, reflecting a market's size and industry profiles, and minimizing cross-ownership.

The aim of this component selection process is to make index components highly representative of the over-all economic sector make-up and market capitalization of a given market. At the same time, securities that are illiquid or have a restricted float are avoided. The Commission believes that these criteria should serve to ensure that the underlying securities of these indices are well capitalized and actively traded. The Commission also notes that a WEBS series normally will invest at least 95% of its total assets in such stocks, represented by the benchmark index. Three of the new WEBS, however, are normally only required to invest at least 80% of their total assets in stocks represented in its benchmark MSCI Index, with at least half of the remaining 20% in such stocks or in stocks included in the relevant market but not its benchmark MSCI Index. The Commission believes nevertheless that these procedures provide sufficient investment in the underlying Index. As stated above, each WEBS Index Series has a policy to concentrate its investments in an industry or industries if, and to the extent that, its corresponding MSCI Index concentrates in such industry or industries, except where the stock of a single issuer would account for more than 25% of the WEBS Index Series. While the Commission believes these requirements should help to reduce concerns that the WEBS could become a surrogate for trading in a single or a few unregistered stocks, in the event that a series of WEBS were to become such a surrogate, the Commission would expect the Amex to take action immediately to delist the securities to ensure compliance with the Act.

A WEBS series will not hold all of the securities that comprise the subject MSCI Index, but will attempt to hold a representative selection of such securities by means of "portfolio sampling."[38] Moreover, no WEBS series currently is expected to have fewer than seventeen of the component securities of the corresponding MSCI Index.[39] The Commission believes that taken together, the foregoing are adequate to characterize WEBS as bona fide index funds. The Commission would be concerned, however, if the capitalization percentages or minimum number of WEBS component securities were to fall to a level such that the WEBS portfolio no longer would substantially reflect their corresponding WEBS indices.[40]

*B. Disclosure*

The Commission believes that the Exchange's proposal should ensure that investors have information that will allow them to be adequately apprised of the terms, characteristics, and risks of trading WEBS.[41] As noted above, all WEBS investors; including secondary market purchasers, will receive a prospectus regarding the product. Because WEBS will be in continuous distribution, the prospectus delivery requirements of the Securities Act of 1933 will apply both to initial investors, and to all investors purchasing such securities in secondary market transaction on the Amex. The prospectus will address the special characteristics of a particular WEBS Index Series, including a statement regarding their redeemability and method of creation. As noted above, certain features make three of the WEBS Series operate different from the other WEBS Index Series. Accordingly, the prospectus will disclose that the NAV for Brazil, South Korea, and Taiwan is determined at different times than other MSCI WEBS Index Series. Further, the prospectus will disclose the possible market impact of the Fund buying or selling securities in Brazil, South Korea, and Taiwan and the creation and redemption fees, intended to offset the brokerage fees and market impact associate with buying and selling securities held by the Fund, that will be charged for those three indices.

The Commission also notes that upon the initial listing of any class of WEBS, the Exchange will issue a circular to its members explaining the unique characteristics and risks of this type of security. The circular also will note Exchange members' responsibilities under Exchange Rule 411 ("know your customer rule") regarding transactions in WEBS. Exchange Rule 411 generally requires that members use due diligence to learn the essential facts relative to every customer, every order or account accepted.[42] The circular also will address members' responsibility to deliver a prospectus to all investors as well as highlight the characteristics of purchases in WEBS, including that they only are redeemable in Creation Unit size aggregations. In addition, the Information Circular will disclose that the NAV for Brazil, South Korea, and Taiwan is determined at different times than other MSCI WEBS Index Series. Further, the Information Circular will disclose the possible market impact of the Fund buying or selling securities in Brazil, South Korea, and Taiwan and the creation and redemption fees that will be charged for those three indices.

*C. Dissemination of WEBS Portfolio Information*

The Commission believes that the Values the Exchange proposes to have disseminated for the six WEBS series will provide investors with timely and useful information concerning the value of WEBS or a per WEBS basis. The Exchange represents that the information will be disseminated through the facilities of the CTA and will reflect currently available information concerning the value of the assets comprising the Deposit Securities. This information will be disseminated every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4 p.m., New York Time. In addition, since it is expected that the Value will closely track the applicable WEBS series, the Commission believes that the Values will provide investors with adequate information to determine the intra-day value of a given WEBS series. The Commission expects that the Amex will monitor the disseminated Value, and if the Amex were to determine that the Value does not closely track applicable WEBS series, it

[38] *See supra* Country/Region Table in Section II.A. MSCI Indices.

[39] Telephone conversation between Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Exchange, and Terri Evans, Special Counsel, Division, Commission, on February 17, 2000.

[40] Among other issues that may arise under the federal securities laws, such an occurrence could raise the issue of whether WEBS trading would remain consistent with Amex listing standards for Index Fund Shares, as well as the surrogate trading issue noted above.

[41] The Exchange states that it may, in the future, seek to obtain an exemption from the prospectus delivery requirement, either with respect to WEBS or other Index Fund Shares listed on the Exchange. In the event it obtains such an exemption, the Exchange will discuss with Commission staff the appropriate level of the disclosure that should be required with respect to the Index Fund Shares being listed, and will file any necessary rule change to provide for such disclosure.

[42] Amex Rule 411.

would arrange to disseminate an adequate alternative value.

*D. Specialists*

The Commission finds that it is consistent with the Act to allow a specialist registered in a security issued by an Investment Company to purchase or redeem the listed security from the issuers as appropriate to facilitate the maintenance of a fair and orderly market in that security. As noted in the original WEBS order, which also permitted specialist purchases and redemptions, the Commission believes that such market activities should enhance liquidity in such securities and facilitate a specialist's market-making responsibilities. In addition, because the specialist only will be able to purchase and redeem Units on the same terms and conditions as any other investor at NAV in accordance with the terms of the Fund prospectus and statement of additional information, the Commission believes that concerns regarding potential abuse are minimized. The Exchange's existing surveillance procedures also should ensure that such purchases are only for the purpose of maintaining fair and orderly markets, and not for any other improper or speculative purposes. Finally, the Commission notes that its approval of this aspect of the Exchange's rule proposal does not address any other requirements or obligations under the federal securities laws that may be applicable.

*E. Surveillance*

The Commission notes that surveillance of the new WEBS product is the same as the original WEBS products. The Commission believes that the surveillance procedures developed by the Amex for WEBS are adequate to address concerns associated with the listing and trading of such securities, including any concerns associated with purchasing and redeeming Creation Units.

When a broker dealer, such as Morgan Stanley Dean Witter ("MSDW"), or a broker dealer's affiliate, such as MSCI, in involved in the development and maintenance of a stock index upon which a product such as WEBS is based, the broker-dealer and its affiliate should have procedures designed specifically to address the improper sharing of information. The Commission notes that MSCI has implemented procedures to prevent the misuse of material, non-public information regarding changes to component stocks in the WEBS Index Series. The Commission believes that the information barrier procedures put in place by MSCI address the unauthorized transfer and misuse of material, non-public information.

*F. Stop and Stop Limit Orders*

The Commission believes that the Amex's proposal to designate the additional WEBS Index Series as eligible for election by quotation with the prior approval of a Floor Official is consistent with the Act. Amex Rule 154, Commentary.04(c) generally provides that stop and stop limit orders to buy or sell a security or index of securities may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Rule 154, Commentary.04(c)(1–v). Rule 154, Commentary.04(c)(v) states that election by quotation only is available for such derivative securities as are designated by the Exchange as eligible for such treatment. The Exchange's proposal would so designate WEBS.

As previously noted by the Commission, allowing stop and stop limit orders in WEBS to be elected by quotation, a rule typically used in the options context, is appropriate because, as a result of their derivative nature, WEBS are in effect equity securities that have a pricing and trading relationship to the underlying securities similar to the relationship between options and their underlying securities.[43]

*G. Scope of the Commission's Order*

The Commission is approving in general the Exchange's proposed listing standards for the six new WEBS described herein. Other similarly structured products, including WEBS based on MSCI Indices not described herein, would require review by the Commission pursuant to Section 19(b) of the Act[44] prior to being traded on the Exchange.

*H. Accelerated Approval of Amendment Nos. 3, 4 and 5*

The Commission finds good cause for approving Amendment Nos. 3, 4 and 5 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment No. 3 merely clarifies certain aspects of the proposed rule change, such as the Fund's policy with respect to the weighting of securities in a WEBS Index Series; cash creations and redemptions for Korea, Taiwan and Brazil WEBS Index Series; surveillance procedures; and the value of individual shares. Amendment No. 4 merely withdraws WEBS Index Series based on five different countries. And finally, Amendment No. 5 clarifies the timing of when the NAV for Brazil South Korea, and Taiwan is calculated. The Commission notes that all of the countries upon which the Exchange is proposing to trade new WEBS were disclosed during comment period and no comments were received.

The Commission believes that Amendment No. 3 strengthens the Exchange's proposal, because it provides greater information to investors regarding the weighting of securities in a WEBS Index Series. In addition, Amendment No. 3 assures investors that the Exchange's surveillance procedures for its current WEBS Index Series will apply to the six new WEBS Index Series. Further, the use of cash in lieu of "in-kind" creations and redemptions is consistent with Amex Rule 1000A. The Commission also believes that it is appropriate for the Exchange to withdraw five of the WEBS Index Series in Amendment No. 4. The Commission notes that Amendment No. 5 merely changes the timing of the NAV calculation for the Korea, Taiwan, and Brazil WEBS Index Series. As noted above, the Fund believes that the timing of the calculation of the NAV until the next day will significantly lessen exposure of the Korea and Taiwan WEBS Index Series and their shareholders to the risk of price movements in the local market. In addition, the timing of the NAV calculation of the Brazil WEBS Index Series should help to ensure that it is based on the Brazilian markets' closing prices. While there may be a market impact as a result of this change, this is disclosed in the prospectus given to all investors trading in WEBS and the Information Circular. Accordingly, the Commission believes that there is good cause, consistent with Sections 6(b)(5) and 19(b) of the Act,[45] to improve Amendment Nos. 3, 4, and 5 to the proposal on an accelerated basis.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3, 4, and 5, including whether Amendment Nos. 3, 4, and 5 are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed

[43] *See* generally Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (approving Amex proposal relating to stop and stop limit orders in certain equity securities).

[44] 15 U.S.C. 78s(b)

[45] 15 U.S.C. 78f(b)(5) and 78s(b).

rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–98–49 and should be submitted by May 31, 2000.

**V. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–Amex–98–49), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11611 Filed 5–9–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42751; File No. SR–NASD–99–76]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the National Association of Securities Dealers, Inc. Relating to Amendments to the Code of Procedure and Other Provisions

May 3, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On April 17, 2000, NASD Regulation amended its proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASD Regulation is proposing amendments to the NASD Code of Procedure and other provisions of the NASD Rules, that include: (1) Clarifying the Department of Market Regulation's role in disciplinary proceedings; (2) requiring members to designate, as the custodian of the record of the Form BDW, persons who are associated with the firm at the time the forms are filed; (3) clarifying the authority of hearing officers and making some limited changes to that authority; (4) clarifying the scope of the Association's document production requirements; (5) providing for hearing panel review of staff determinations to impose limitations on member firm's business activities because of financial and/or operational difficulties; (6) providing for changes to the process for appeals of disciplinary actions, statutory disqualification proceedings, and certain other accelerated proceedings; (7) providing for a streamlined process to impose bars or expulsions for the failure to provide information to the Association; and (8) providing for a process by which the Association can more expeditiously cancel memberships of firms that fail to meet the Association's eligibility and qualification standards. The text of the proposed rule change is available at the Office of the Secretary, the NASD and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The NASD Code of Procedure (the "Code"), implemented on August 7, 1997, provides detailed requirements governing NASD Regulation's process for:

(1) Authorizing, litigating, and issuing disciplinary decisions;

(2) Providing for appeals of those decisions;

(3) Taking certain actions through categories of accelerated proceedings; and

(4) Determining requests for relief from statutory disqualifications.

Since August 7, 1997, the Association staff has had significant experience under the Code, and has noted certain areas that need to be clarified or changed. The Association is proposing a series of clarifying and substantive amendments to the Code and other provisions as described below.

*Custodian of the Record.* Firms often list persons not associated with the firms as custodians of records on the SEC Form BDW, and then the Association may have difficulty obtaining records when firms no longer conduct business. The Association is proposing to establish NASD Rule 3121 that would require members to designate, as the custodians of the record on the Form BDW, persons who are associated with the firms at the time the forms are filed.

*Eligibility of Panel Members.* In certain circumstances, the National Adjudicatory Council (NAC) or the Review Subcommittee of the NAC (Review Subcommittee) may appoint panels to conduct hearings. Under NASD Rule 1015, only one panel member can be from the NAC, unless a panel member is also a former NASD Regulation Director or NASD Governor. The Association believes that this unnecessarily limits the pool of potential panelists. The Association believes that members of the NAC possess specialized expertise that may not be fully utilized under the current rule language. Accordingly, the Association is proposing to eliminate this restriction.

*Market Regulation's Role in Disciplinary Process.* Both the Department of Market Regulation and the Department of Enforcement represent NASD Regulation in formal disciplinary matters under the Code. However, the disciplinary rules only refer to the Department of Enforcement as the representative of the Association

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[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Alden S. Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 17, 2000 ("Amendment No. 1"). Amendment No. 1 made substantive changes to the proposed rule language, including the deletion of certain provisions in the 9300 Series. Review of Disciplinary Proceeding by National Adjudicatory Council and NASD Board; Application for Commission Review.

in these matters. The Department of Market Regulation also represents NASD Regulation under a delegation of authority from the Department of Enforcement, as stated in NASD Rule 9120(e). The Association is proposing amending the Code to clarify the Department of Market Regulation's role in the disciplinary process.

*Investigations.* The NASD Rule 8220 Series permits the Department of Enforcement to initiate proceedings to suspend or cancel membership from the Association or suspend the association of a person with a member based upon the failure to provide information. These proceedings may be initiated for the failure to provide information pursuant to an Association request or the failure to make required filings with the Association, such as FOCUS reports, or to keep membership applications or supporting documents current. Since the Rule 8220 Series proceedings are brought on an accelerated basis, the Association is proposing to amend the Rule 8220 Series to:

(1) As discussed below (under the heading *Failure To Respond*), limit the use of Rule 8220 Series proceedings to address the most serious on-going violations concerning associated persons and members who fail to provide the Association with requested information; and

(2) Limit the sanctions available under Rule 8220 proceedings to suspensions.

Finally, the Association is proposing to amend the service provision under the Rule 8220 Series to make it consistent with the service provision under the Rule 9530 Series, a similar rule series. The Association is proposing that both the Rule 8220 Series and the Rule 9530 Series service provisions permit personal service, service by facsimile, and service by overnight courier. The Association is further proposing to clarify that attempted delivery of a document by an overnight courier constitutes service under these provisions.

*Service of Papers—Address Changes.* NASD Rule 9134(b)(1) states that service of papers on a natural person in a disciplinary proceeding must be at the person's residential address as reflected in the Central Registration Depository (CRD). If the Association staff has actual knowledge that the person's residential CRD address is out of date, then in addition to service at the residential address as reflected in the CRD, service should also be make at the person's last know residential address and the CRD address of the firm with which the person is associated or affiliated, if he/she is currently in the industry. The Association is proposing to modify the rule to permit adjudicators to waive the requirement of sending papers to CRD addresses when they are no longer valid, and there is a more current address available. This change would only relate to documents served on respondents after complaints have been served.

Further, the Association is proposing to amend NASD Rule 9135(a) to clarify that complaints shall be deemed timely filed so long as they are either mailed or delivered to the Office of Hearing Officers within the two-year jurisdictional period, as outlined in the By-Laws.

*Severance of Cases.* NASD Rule 9214, "Consolidation of Disciplinary Proceedings," authorizes the Chief Hearing Officer to order the consolidation of disciplinary hearings. The Association is now proposing to amend NASD Rule 9214 to state that the Chief Hearing Officer has authority to sever disciplinary proceedings involving multiple respondents into two or more proceedings. Under the rule proposal, the Chief Hearing Officer may order the severance of a disciplinary matter into two or more disciplinary proceedings, upon his or her own motion, or upon motion of a Party.

In determining whether to order the severance, the Chief Hearing Office shall consider: (1) Whether the same or similar evidence reasonably should be expected to be offered at each of the possible hearings; (2) whether the severance would conserve the time and resources of the Parties; and (3) whether any unfair prejudice would be suffered by one or more of the Parties if the severance is (not) ordered. If the Chief Hearing Officer issues an order to sever a disciplinary proceeding for which a Hearing Panel, or if applicable, Extended Hearing Panel has been appointed, the Chief Hearing Officer's order shall specify whether the same Hearing Panel or, if applicable, Extended Hearing Panel, shall preside over the severed disciplinary proceedings, or whether a new Hearing Panel(s) or, if applicable extended Hearing Panel(s), shall preside over all severed proceedings, based on the criteria set forth in NASD Rules 9231 and 9232.

*Producing Documents.* The Association is proposing amendments to NASD Rule 9253 to clarify the scope of the Association's document production requirements. NASD Rule 9251(a) requires Association staff to make available to respondents documents prepared or obtained by the staff in connection with the investigations that led to the institution of a disciplinary proceeding. Exceptions to the production requirements are listed in NASD Rule 9251(b), and include examination and inspection reports and internal employee communication. Notwithstanding these exceptions, documents containing the staff's investigative techniques might become discoverable under Rule 9253, if staff members are called as witnesses during hearings. NASD Rule 9253 requires Association staff to produce written statements made or adopted by staff members, if they relate to the subject matter of those persons' testimony. It also requires the staff to produce contemporaneously recorded recitals of oral statements made by witnesses, if those written statements are substantially verbatim.

The proposed modifications of NASD Rule 9253 clarify that the only portions of routine examination or inspection reports, internal employee communications, and any other internal documents that are required to be produced, under this rule, are the portions outlining the substance of (and any conclusions regarding) oral statement made by persons who are not employees of the Association when evidence of those statements are offered by Association staff during disciplinary hearings.

*Amending Complaints.* The Association is proposing to modify its rules regarding amending complaints to more closely follow the Federal Rules of Civil Procedure ("FRCP). The FRECP do not limit the types of amendments that may be made to complaints. NASD Rule 9212, however, only permits amendments to "new matters of fact or law." The Association is proposing to amend the rule to eliminate this restriction. Thus, for instance, under the proposed rule change, the Association staff could amend complaints to include additional respondents. Further, the FRCP permit amendments to make complaints conform to the evidence presented. The Association is proposing to modify NASD Rule 9212 to permit such amendments. Also, the FRCP state that amendments to complaints will be freely granted when justice so requires. The Association is proposing to amend NASD Rule 9212 to state that amendments to complaints will be freely granted when justice so requires. Association staff will need to obtain hearing officer approval to amend complaints after answers have been filed.

*Effective Dates of Sanctions.* The Central Registration Depository currently sets the effective dates of the imposition of sanctions imposed under the Code by notifying respondents in

writing when fines are due and of the effective date of suspensions. The Association is proposing to amend NASD Rules 9216, 9268, 9269, and 9360 to state that the effective dates of sanctions are the dates set by the Association staff, unless stated otherwise in orders, decisions, or settlement agreements. As a result of these changes, the Association believes that IM–8310–2 is no longer needed and, accordingly, is proposing it be deleted. This change will not affect the NASD's policy of automatically staying the imposition of the fines, disgorgement and suspensions, pending review.

*Summary Dispositions.* NASD Rule 9264(a) authorizes either the Association or respondents to file motions to summarily dispose of "any or all the causes of action in the complaint." This rule however, does not permit parties to move to eliminate issues that do not involve entire "causes of actions." The Association is proposing to modify NASD Rule 9264(a) to track the language in the FRCP, which permits courts to dismiss issues.

Further, the Association is proposing to modify NASD Rule 9264 to authorize hearing officers to deny, grant, or defer motions to dismiss without referring the matter to the full panel. The authority to grant such motions would be limited to jurisdictional issues, such as whether the complaint was filed within the two-year jurisdictional period. The Association believes that Hearing Officers should be permitted to dismiss such motions which generally are technical legal questions, and do not require the input of industry representatives.

*Default Decisions.* NASD Rule 9269 provides that motions to set aside default decisions should be made to the Review Subcommittee or the NAC. The hearing officers who issue the default decisions, however, are particularly familiar with the matters. The Association is proposing to modify the rule to state that a motion to set aside a default decision should be made to the hearing officers that originally decided the motion for a default decision. If the hearing officer that issued the original order is not available, the Chief Hearing Officer shall appoint another hearing officer to decide the motion. Appeals from such denials could be made to the NAC or the Review Subcommittee.

*Remand Cases.* NASD Rule 9349 authorizes the NAC to remand disciplinary cases to hearing panels. The Association is proposing to amend NASD Rules 9344 and 9349 to clarify that the Review Subcommittee may also remand disciplinary cases to hearing panels.

*Office of General Counsel.* Under NASD Rules 9311 and 9312, the General Counsel of NASD Regulation is required to obtain Review Subcommittee or NAC authorization to order parties to brief particular matters. The General Counsel rarely seeks additional briefing on particular points, but where the General Counsel believes that additional briefing is necessary, the Review Subcommittee or the NAC would most likely order it. Thus, requiring the General counsel to seek authorization for additional briefing is an unnecessary use of resources. The Association is proposing that this requirement be eliminated. The Association is proposing to include in the rules a process by which parties may challenge, before the Review subcommittee or the NAC, requests for additional briefing made by the General Counsel.

*Briefing Schedules.* NASD Rule 9347(b) establishes briefing schedules for papers filed in NAC proceedings. The Association is proposing amending this rule to clarify that the time periods listed in the rule are only applicable to the principal briefing schedule and not applicable to the briefing of subsequent collateral issues.

*Procedures for Regulation of Activities of a Member Experiencing Financing or Operational Difficulties.* Under the NADA Rule 9410 Series, the Department of Member Regulation issues notices and holds initial hearings to determine whether members must limit their business activities as a result of financial and/or operational difficulties. Members can appeal Member Regulation's decisions to NAC, and the NAC or the Review Subcommittee will appoint a Subcommittee to participate in the review. The Association is proposing to amend the rule series to provide that firms may appeal limitations in notices issued by the Department of Member Regulation to hearing panels that will consist of a hearing officer and two other panelists. Under the proposal, the Department of Member Regulation would not hold hearings, and the NAC would not participate in matters handled under this rule series.

Currently, an NASD Governor may initiate the review of a decision issued by the NAC, under the NASD rule 9410 Series, not later than the next meeting of the NASD Board that is at least 15 days after the date on which the NASD Board reviews the proposed written decision of the NAC. The Association is proposing to replace this procedure with a mechanism by which the Executive Committee of the NASD Board may initiate the review of the hearing panel decision for a period of 15 days. Currently, the Department of Member Regulations's decision is stayed unless otherwise ordered by the NAC decision. The Association is proposing to modify this provision to provide that the Department of Member Regulation's recommendation is stayed unless ordered otherwise by the Executive Committee.

*Other Proceedings.* Two categories of expedited proceedings available under the NASD Rule 9510 Series are referred to as "Summary Proceedings" and "Non-Summary Proceedings." The key differences between Summary and Non-Summary proceedings are that: (1) In a Summary Proceeding, the Association can impose sanctions against a member or associated person before a hearing is held and a final Association decision is served, whereas in a Non-Summary Proceeding, generally a hearing must be held and a final decision served before any sanction may be imposed; (2) a Summary Proceeding requires prior authorization by the NASD Board of Governors, whereas a Non-Summary Proceeding may be initiated by staff without Board involvement; and (3) while the various forms of Summary Proceedings are enumerated in Section 15A(h)(3) of the Act,[4] the othe reforms of expedited proceedings, including Non-Summary, are not.

The Association is proposing several amendments to the rules that govern the Code's Summary and Non-Summary Proceedings. Under the current rules, it is unclear as to whether hearing officers have all of the powers in Summary and Non-Summary Proceedings (the Rule 9500 Series) that they have in regular disciplinary proceedings (the Rule 9200 Series). The Association is proposing to add a provision to the NASD Rule 9500 series stating that: The hearing officer shall have authority to do all things necessary and appropriate to discharge his or her duties as set forth under Rule 9235."

NASD Rule 9514(a)(1) requires that requests for hearings be filed within 7 days of receipt of suspension letters (or, with respect to notice of a pre-use filing requirement under Rule 2210(c)(4) and Rule 2220(c)(2), within 30 days of such notice). The Association is proposing to amend NASD Rule 9514(a)(2) to clarify that if the member or person subject to the notice does not timely request a hearing under Rule 9514(a)(1), the notice shall constitute final Association action.

NASD Rule 9514(d)(2) states that Non-Summary Proceedings held under

[4] 15 U.S.C. 78o–3(h)(3).

the Rule 9500 Series need to be held within 21 days after respondent requests a hearing. Hearing panels may, during the initial 21-day periods, extend the time in which the hearings shall be held by additional 21-day periods. The Association believes that these periods are too short, and is proposing amending the rule to extend the initial period to 40 days, with an additional 30 days of further extension. Since the suspension is not in effect during this time, this additional time will not prejudice respondents, and it will provide the staff and respondents with ample time to prepare for hearings.

NASD Rule 9516 gives firms/persons suspended or limited under these provisions the opportunity to become reinstated on the grounds of full compliance with the conditions of the suspension or limitation. The request needs to be filed with the department or office of the Association that acted as the party in the proceeding. If the department head denies reinstatement, the party may file a request for relief with the NASD Board, and the NASD Board must respond in writing within 14 days. The Association believes that the matters appealed, however, do not require NASD Board review. The Association is proposing that appeals under NASD Rule 9516 be addressed by the Review Subcommittee of the National Adjudicatory Council, rather than the NASD Board.

*Eligibility Proceedings.* The Association is proposing several changes to the NASD Rule 9520 Series that govern the process by which persons may become or remain associated with a member, notwithstanding the existence of a statutory disqualification or for a current member or person associated with a member to obtain relief from the eligibility or qualification requirements. First, the NASD Rule 9520 Series does not state whether extensions of time or waivers of time limitations for filing of papers or holding of hearings may be granted. The Association is proposing to create NASD Rule 9524(a)(5) that permits such actions by consent of all the parties. Further, the eligibility rules do not state whether the disqualification hearing panel or the NAC may order that the record be supplemented. The Association is proposing to create NASD Rule 9524(a)(3)(c) to permit the Hearing Panel to order the Parties to supplement the record with any additional evidence the Hearing Panel deems necessary.

NASD Rule 9524(b)(3) states that NASD Regulation's statutory disqualification recommendations become effective upon service on applicants. However, only the denials are effective upon service on applicants (subject to the applicant requesting a stay of effectiveness from the Commission). Approval decisions are not effective until the Commission has either sent an acknowledgment letter to NASD Regulation (usually within 30 days, and the SEC can request a further 60-day extension of that period), or the Commission has entered an order in cases that have involved a previously-entered SEC bar (there is no time limitation for the entry of such an order). The Association is proposing to amend this rule to reflect these points.

If a member files an application for relief under the eligibility rules, the NAC or the Review Subcommittee appoints a hearing panel composed of two or more members who are current or former members of the NAC or former Directors or Governors. The Association is proposing that NASD Rule 9524(a)(1) be amended to state that members of the Statutory Disqualification Committee may also serve on hearing panels.

NASD Rule 9524(a)(3) states that if the Association staff initiated the proceedings, the Association will give to the applicant all documents that were relied on by the Association in issuing its notice. However, most applications are started by member firms, not the Association. The Association is proposing to amend this rule to reflect this fact.

The Association is also proposing to amend NASD Rule 9524(a)(3) to provide that once an application is filed, CRD will gather all of the information necessary to process the application, including:

(1) CRD records for the disqualified member, sponsoring member, and/or disqualified person, and the proposed supervisor; and

(2) All of the information submitted by the disqualified member or sponsoring member in support of the application.

Proposed NASD Rule 9524(a)(3) would further provide that CRD will prepare an index of these documents, and simultaneously provide this index and copies of the documents to the disqualified member or sponsoring member, the Office of the General Counsel of NASD Regulation, and the Department of Member Regulation. The rule also would require the Department of Member Regulation to submit its recommendation and supporting documents to the hearing panel and the disqualified member or sponsoring member within 10 business days of the hearing, unless the parties otherwise agree. Similarly, the disqualified member or sponsoring member would be required to submit its documents to the hearing panel and the Department of Member Regulation within 10 business days of the hearing, unless otherwise agreed.

Amendments to the NASD Rule 9520 Series also concern the review procedures undertaken by Association staff in the case of certain disqualifying events. In particular, the Association is proposing to amend NASD Rule 9522(e) to permit members to submit a written request for relief (rather than an MC–400 application) in cases where the disqualified member or person is subject to an injunction that was entered 10 or more years prior to the proposed administration or association. Under Exchange Act Rule 19h–1,[5] the NASD is not required to provide any notice to the Commission of the proposed admission or association in these types of cases. The Association also proposes that members be able to file a written request for relief in cases where a member requests to change the supervisor of a disqualified person or where, for instance, the New York Stock Exchange has determined to approve the proposed association of a disqualified person and the NASD concurs with the determination. Member Regulation would also be granted discretion to approve the written request for relief in these cases, if it deemed such action to be consistent with the public interest and the protection of investors.

The Association also proposes to amend the NASD Rule 9520 Series to permit Member Regulation to approve an MC–400 application for relief in those cases where the disqualifying event is excepted from the "full" notice requirements of Rule 19h–1, but where a "short form" notification to the Commission under Rule 19h–1 is still required. In these cases, the member would be required to file an MC–400, but Member Regulation would have the discretion to approve the application when consistent with the public interest and the protection of investors.

In addition, the Association is proposing new Rule 9523 to permit Member Regulation to recommend the membership or continued membership of a disqualified member or sponsoring member or the association or continuing association of a disqualified person pursuant to a supervisory plan. The procedures set forth in proposed NASD Rule 9523 are modeled on current Rule 9216 concerning Acceptance, Waiver, and Consent procedures, and are intended to avoid the requirement of a formal hearing and decision by the Statutory Disqualification Committee (and its hearing panels) in cases that

[5] 17 CFR 240.19h–1.

generally only involve the issue of what type of supervisory plan is appropriate for the disqualified member or person. Under proposed NASD Rule 9523, the member would be required to file an MC–400 application with the NASD. Member Regulation, however, would have the discretion to recommend the approval of the application in the event an appropriate supervisory plan is established. The member would be required to execute a letter consenting to the imposition of the supervisory plan. The letter and the supervisory plan would then be submitted to the Office of General Counsel and/or the Chairman of the Statutory Disqualification Committee for review and possible approval. While both the Office of General Counsel and the Committee Chairman would have authority to approve the application or refer it to the NAC, only the Committee Chairman would be permitted to reject the application.

*Failure To Respond.* As noted above (under the heading "Investigations"), proceedings initiated under the Rule 8220 Series are designed to address the most serious on-going violations concerning associated persons and members that are failing to provide the Association with information. For this reason, these proceedings are brought on an accelerated basis.

The Association is proposing to create a new Rule 9540 Series that could be used against those who fail to provide the Association with information, required filings, or keep membership applications or supporting documents current. Under the proposed NASD Rule 9540 Series, the Association would send notices informing respondents that failure to provide the Association with previously requested information or required filings or the failure to keep its membership application or supporting documents current will result in suspensions, unless the information is provided to the Association within 20 days. Respondents would have five days to request hearings to challenge proposed suspensions. These hearings would be conducted before three-member hearing panels, and the hearing panels would have the authority to order any fitting sanctions, including expulsions and bars. Respondents who fail to request hearings to challenge the suspension during the six-month period following the receipt of notices initiating proceedings under this rule series will be automatically barred or expelled.

Further, the Association is proposing to include in the proposed NASD Rule 9540 Series a process by which the Department of Member Regulation could quickly cancel the memberships of firms that fail to meet the Association's eligibility and qualification standards. Under the proposal, the Association would send letters to members informing them that their memberships will be canceled within 20 days of receipt of the letters, unless the firm becomes eligible for continuance in membership within this time period. The members will be provided opportunities to request hearings within five days of service of the notices to challenge the proposed cancellations. The hearings would be held before Hearings Officers.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[6] which require that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The NASD believes that the proposed rule change is consistent with Section 15A(b)(7) of the Act[7] in that it works to adequately safeguard the interests of investors while establishing fair and reasonable rules for its members and persons associated with its members. The rule change is consistent with Section 15A(b)(8) of the Act[8] in that it furthers the statutory goals of providing a fair procedure for disciplining members and associated persons.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD Regulation does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

On August 10, 1999, the proposed rule change was published for comment in NASD *Notice to Members Number 99–73*. No comments were received in response to the Notice to Members.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the NASD consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–76 and should be submitted by May 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11610 Filed 5–9–00; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78o–3(b)(6).

[7] 15 U.S.C. 78o–3(b)(7).

[8] 15 U.S.C. 78o–3(b)(8).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42754; File No. SR–NASD–00–18]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendment No. 1 thereto Relating to the Entry of Locking/Crossing Quotations Prior to the Nasdaq Market Opening

May 3, 2000.

Pursuant to Section 19(b0(1) of the Securities Exchange Act of 1934

("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association;"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq", filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. On April 18, 2000, the NASD and Nasdaq submitted Amendment No. 1 to the proposal.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq proposes to amend NASD Rule 4613(e) as it relates to the entry of locking/crossing quotations prior to the market's open. Proposed new language is *italicized.*

**4613. Character of Quotations**

(a)–(d) No Changes

(e) Locked and Crossed Markets

(1) A market maker shall not, except under extraordinary circumstances, enter or maintain quotations in Nasdaq during normal business hours if:

(A) the bid quotation entered is equal to (*"lock"*) or greater than (*"cross"*) the asked quotation of another market maker entering quotations in the same security; or

(B) the asked quotation is equal to (*"lock"*) or less than (*"cross"*) the bid quotation of another market maker entering quotations in the same security.

(C) Obligations Regarding Locked/Crossed Market Conditions Prior to Market Opening

(i) No Change.

(ii) Locked/Crossed market Between 9:20 and 9:29:59 a.m.—If a market maker locks or crosses the market between 9:20 and 9:29:59 a.m. Eastern Time, the market maker must immediately send through SelectNet to the market maker whose quotes it is locking or crossing a Trade-or-move Message that is at the receiving market maker's quoted price and that is for at least 5,000 shares (in instances where there are multiple market makers to a lock/cross, the locking/crossing market maker must send a message to each party the lock/cross and the aggregate size of all such messages must be at least 5,000 shares); *provided, however, that if a market participant is representing an agency order (as defined in subparagraph (iv) of this rule), the market participant shall be required to send a Trade-or-Move Message(s) in an amount equal to the agency order, even if that order is less than 5,000 shares.* A market maker that receives a Trade-or-Move Message during this period and that is a party to a lock/cross, must within 30 seconds of receiving such message either: fill the incoming Trade-or-Move Message for the full size of the message; or move its bid down (offer up) by a quotation increment that unlocks/uncrosses the market. A market participant shall not be subject to the 5,000 share requirement of this rule if the market participant is representing agency interest only.

(iii) No Change.

*(iv) For the purposes of this rule "agency order" shall mean an order(s) that is for the benefit of the account of a natural person executing securities transactions with or through or receiving investment banking services from a broker/dealer, or for the benefit of an "institutional account" as defined in NASD Rule 3110. An agency order shall not include an order(s) that is for the benefit of a market maker in the security at issue, but shall include an order(s) that is for the benefit of a broker/dealer that is not a market maker in the security at issue.*

(2)–(3) No Change.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

Nasdaq is proposing a rule to amend NASD Rule 4613(e), to permit market participants, when representing agency interests, to lock/cross the market at the actual size of the agency order, instead of 5,000 shares as currently required by rule.

1. Background

On February 7, 2000, the Commission approved amendments to NASD Rule 4613(e), which relate to the entry of locking/crossing quotes by Nasdaq market participants—market maker and electronic communications networks ("ECNs")—prior to the market's open.[4] As amended and approved by the Commission, NASD Rule 4613(e) provides that if a market participant locks/crosses the market between 9:20 a.m. and 9:29:59 a.m. Eastern Time, the market participant *must* send the market maker(s) or ECN(s) being locked/crossed, a SelectNet® message that has appended to it a "TRD OR MOV" administrative message ("Trade-or-Move Message")[5] The aggregate size of these Trade-or-Move Messages must be at least 5,000 shares.[6] (Thus, in order to lock/cross the market during this 10 minute before the market opens, a market participant must send a Trade-or-Move Message for 5,000 shares and be willing to trade at least this amount.)[7] The party being locked or crossed must respond to the Trade-or Move Message within 30 seconds by trading in full with the incoming message or moving its quotation to a price level that resolves the locked/crossed market.[8]

2. Purpose

The 5,000 share requirement that is currently in the rule requires market makers, ECNs, and customers thereof, who initiate a lock/cross to send a Trade-or Move(s) for a total of a least 5,000 shares. This requirement applies even if the market maker or ECN is representing an agency order for less than 5,000 shares. Therefore, as currently written and approved, an ECN, market maker, and customer thereof, may not lock/cross the market unless he/she is willing to trade at least 5,000 shares. Some market participants have raised concerns that NASD Rule 4613(e) may exclude certain agency interests from being reflected in the pre-opening market if that interest is less than 5,000 shares.[9]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4

[3] *See* letter from Robert E. Aber, General Counsel and Senior Vice President, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated April 14, 2000 ("Amendment No. 1"). In Amendment No. 1, Nasdaq corrected an inadvertent misstatement contained in an example describing the proposal's operation.

[4] *See* Exchange Act Release No. 42400 (February 7, 2000), 65 FR 7407 (February 14, 2000) (order approving File No. SR–NASD–99–23 to amend NASD Rule 4613(e)).

[5] *Id.*

[6] *Id.*

[7] Under the current rule, a market participant would be prohibited from locking/crossing the market in the ten minute period prior to the open unless the actively locking/crossing market participant is willing to trade at least 5,000 shares.

[8] *See* note 4, *above.*

[9] *Id.*

In light of these concerns, Nasdaq proposes to amend NASD Rule 4613(e) to allow a market participant to lock/cross the market for less than 5,000 shares if they are representing only agency orders. Under the amendment, if between 9:20 a.m. and 9:29:59 a.m., a market participant receives an agency order that would lock/cross the market, the market participant may lock/cross the market and sent a Trade-or Move Message for the "actual size" of the agency order, instead of 5,000 shares. (For purposes of the amended rule, an agency order would not include an order for the account of a market maker in the issue, but would include orders for individuals, institutions and broker/dealers whoa re not market makers in the security at issue). In essence, agency orders would be "exempt" from the 5,000 share requirement. Market participant whose proprietary quotes lock/cross the market between 9:20 and 9:29:59 a.m., would still be subject to the 5,000 aggregate share size requirement for Trade-or Move Messages. Thus, if a market participant wishes to lock/cross the market while acting as principal, the market participant must send an aggregate of at least 5,000 shares, through a Trade-or Move Message, to the parties being locket/crossed.

For example, at 9:21 a.m. the market is $20 to $20⅛, and MMA is alone at the inside offer. ECN1 receives an order from a public customer to sell shares at $20⅛. Under the current rule, ECN1 would be required to lock the market and then send a Trade-or Move Message to MMA for 5,000 shares. Under the proposed amendment, ECN1 would be required to send MMA a Trade-or Move message for the actual size of the agency order—800 shares.[10] If the order that ECN1 received at 9:21 a.m. represented an order that was for the account of MMB, ECN1 would be prohibited from locking for only 800 shares.

As a second example, at 9:21 a.m. the market is $20 to $29⅛, with MMA along at the inside offer. MMG receives an 800 share customer limit order to sell at $20¼, which the customer has requested be displayed in the pre-opening. MMG also wishes to cross the market at the $20¼ price, while acting in a proprietary capacity. Note that only the agency interest is exempt from the 5,000 share requirement. Accordingly, MMG must send a Trade-or Move Message for at least 5,800 shares—5,000 covering his proprietary interest and 800 covering the customer limit order/agency.[11] In short a market maker is not permitted to meet the 5,000 share requirement by "free-riding" off of its customer orders that customers specifically have requested be displayed and executed in the market prior to the open.

The requirement that a market maker send a Trade-or Move Message for the actual size of agency interest plus 5,000 shares, only applies when a market maker wishes to lock/cross the market proprietary and simultaneously is displaying agency interest pursuant to an understanding with the customer. This requirement does not apply when the marker maker is holding agency interest where there is not understanding with the customer to have its order displayed and/or executed prior to the market's open, and the market maker otherwise is engaging in *bona fide* market making activity during the pre-opening period.

3. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[12] and Sections 11A of the Act.[13] Section 15A(b)(6)[14] requires that the rules of a registered national securities association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 11A(a)(1)(C)[15] provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) and the practicability of brokers executing investors orders in the best market; and (5) an opportunity for investors orders to be executed without the participation of a dealer.

Nasdaq believes that the amendment to NASD Rule 4613(e) is consistent with Sections 15A(b)(6) and 11A(a)(1)(C).[16] The proposed amendments create equal access among market participants (market makers and ECNs) consistent with Sections 15A(b)(6) and 11A(a)(1)(C).[17] Locked/crossed markets present serious market integrity and investor protection issues, as they disrupt the orderly function of the market and in turn have an impact on the processing of investor orders. Nasdaq believes that by allowing agency orders to be displayed in the market at their actual share sizes for purposes of resolving locked/crossed markets will increase investor protection by providing; (1) Greater access to the market, (2) increased liquidity, and (3) transparency of orders in the marketplace. Nasdaq believes that these benefits will provide greater trading, processing, and pricing efficiency and stability in the pre-opening market. Nasdaq also believes that by allowing agency quotes to be sent at "actual size" rather than at the 5,000 share size, market participants will have increased opportunities to evaluate and access the depth and liquidity of securities prior to the opening of the market.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory

[10] Under the prior language of NASD Rule 4613(e), ECN1 would have been required to send 5,000 shares along with its Trade-or Move SelectNet message. This 5,000 share size requirement of the Trade-or-Move SelectNet message would have effectively precluded agency orders from participating in the opening market.

[11] This assumes that the customer has an agreement with MMG that its limit order will be represented and potentially executed prior to the market's open.

[12] 15 U.S.C. 78o–3(b)(6).

[13] 15 U.S.C. 78k–1(a).

[14] 15 U.S.C. 78o–3(b)(6).

[15] 15 U.S.C. 78k–1(a)(1)(C).

[16] 15 U.S.C. 78o–3(b)(6) and 15 U.S.C. 78k–1(a)(1)(C).

[17] 15 U.S.C. 78o–3(b)(6) and 15 U.S.C. 78k–1(a)(1)(C).

organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the proposal, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–00–18 and should be submitted by May 31, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11683 Filed 5–9–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42747; File No. SR–NSCC–98–14]**

## Self-Regulatory Organization; National Securities Clearing Corporation; Order Approving a Proposed Rule Change Relating to Ceasing to Act for a Member

May 2, 2000.

On December 8, 1998, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–NSCC–98–14) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on June 17, 1999.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

**I. Description**

The rule change eliminates the distinction between those instances where NSCC declines or ceases to act for a member because the member is insolvent and where NSCC declines or ceases to act for a member for another reason. The rule change also permits NSCC to complete certain open RVP/DVP transactions of an insolvent broker-dealer that is a member or clears through a member.

*a. Declining or Ceasing To Act*

NSCC's procedures for ceasing to act for an insolvent member were set forth in former Section 3 of Rule 18. Its procedures for ceasing to act when the member is not insolvent were set forth in Section 2 of Rule 18. Former Sections 2(a) and (b) (non-insolvency scenario) and Sections 3(a) and (b) (insolvency scenario) set forth the transactions which could be eliminated by NSCC from its processing when it ceased to act for a member. Generally, these sections provided that if NSCC gave notice that it was ceasing to act for a member before NSCC issued the security balance orders in a pending balance order accounting operation or before NSCC issued the consolidated trade summary in a pending continuous net settlement accounting operation for that member's pending trades. NSCC could in its discretion exclude that member's trades from the balance order or continuous net settlement accounting operation. Trades so executed would have to be settled between the parties outside of NSCC.

Under the rule change, new Sections 2(a)(i) and (ii) replace Sections 2(a) and (b) and Sections 3(a) and (b) and specifically tie the exclusion of a trade to whether or not the trade has been guaranteed by NSCC. New Section 2(a)(iii) addresses the exclusion of security orders issued with respect to "special trades" and transactions in foreign securities. Prior to the rule change, the exclusion of these trades was only addressed in the insolvency portion of NSCC's rules, former Section 3(c)(iii).

Former Section 2(c) set forth NSCC's procedures for handling envelope transactions when it ceased to act for a solvent member. Former Section 3 of NSCC's rules did not address envelop transactions when NSCC ceased to act for an insolvent member. New Section 4 mirrors former Section 2(c) and addresses the completion of envelope transactions of a member for whom NSCC has ceased to act regardless of the solvency status of the member.

Former Sections 2(d)(i) and (ii) and Section 3(b)(ii) governed the completion of CNS trades. According to NSCC, when it ceases to act for a member, it completes CNS trades through a qualified securities depository regardless of whether the member was solvent. However, only former Section 2 (non-insolvency scenario) specifically addressed the completion of these trades through a qualified securities depository. Accordingly, new Section 5 clarifies that CNS transactions will be completed through a qualified securities depository regardless of the solvency status of the relevant member unless in an insolvency scenario the rules of the relevant insolvency regime doe not allow NSCC to take certain actions with respect to the completion of CNS trades.

Former Sections 2(d)(iii) and 3(c)(ii) addressed the closing out of any remaining CNS transactions. Under the rule change, this is now covered in new Section 6(a).

Former Sections 2(b) and 3(c)(ii) pertained to the completion of balance order transactions after NSCC ceases to act for a member. Although NSCC's procedures for completing balance order transactions are the same regardless of whether NSCC is ceasing to act for a solvent or insolvent member, only former Section 3 detailed how NSCC would close-out balance order transactions and how members were to submit related close-out losses to NSCC. The rule change adopts new Section 6(b), which is similar to former Sections 3(c) and (d). New Section 6(b) governs the close-out of balance order transactions regardless of whether an insolvency situation exists.

The language contained in former Section 2(e), which set forth NSCC's rights with respect to any balance due to it from a member after NSCC had ceased to act for the member, technically only applied in non-insolvency scenarios. Under the rule change, the language of Section 2(e) now appears in Section 7(a) and applies to both insolvency and non-insolvency scenarios. The language set forth in former Sections 2(f) and (f), which provided that NSCC would maintain a lien on all property a member places with NSCC as security for any and all liabilities of the member to NSCC now appears in Section 7(f).

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[18] *See* 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 41504 (June 9, 1999), 64 FR 32586 (June 17, 1999).

The rule change also adds the following terms to NSCC Rule 1 (Definition and Description): "CNS Position," "New Close Out Position," "RVP/DVP Transaction," and "RVP/DVP Customer."

*b. DVP/RVP Transactions*

The rule change adds a new Section 3 to Rule 18, which pertains to CNS or balance order RVP/DVP transactions.[3] The RVP/DVP transactions covered by proposed Section 3 are those in which the RVP/DVP customer[4] (1) has executed an RVP/DVP transaction with the NSCC member for which NSCC has ceased to act or with an introducing broker-dealer which clears through an NSCC member for which NSCC has ceased to act and (2) would have taken delivery of the cash or securities from the broker-dealer for which NSCC has ceased to ace on an RVP/DVP basis at its custodian bank or other depository agent in the absence of the default.

Under the new rule, after NSCC has ceased to act for a member, NSCC will attempt to complete: (1) All open RVP/DVP transactions of which NSCC is aware prior to ceasing to act but only to the extent that the completion of the RVP/DVP transactions would not increase the size of the position in any security that NSCC would have to close-out and (2) any additional open RVP/DVP transactions to the extent deemed appropriate by NSCC's Board of Directors. NSCC's obligation set forth in (1) remains regardless of whether NSCC would gain or lose money by completing such transactions, and any determinations by the NSCC Board to complete any additional RVP/DVP transactions would be made without regard to the potential profit or loss for NSCC in any individual transaction. In either case, NSCC would have no obligation to complete any open RVP/DVP transaction in an issue if: (1) NSCC believed it could not complete all RVP/DVP transactions in such issue that it would be obligated to attempt to complete under this new provision; (2) there were allegations of fraud or other questionable activities with respect to an issue; or (3) NSCC believed that the completion of an RVP/DVP transaction in an issue could not be completed.

[3] The term "RVP/DVP transaction" is defined in NSCC Rule 1 to mean any wholly executory receipt-versus-payment or delivery-versus-payment transaction between an NSCC member and an RVP/DVP customer. The term "RVP/DVP customer" is defined in Rule 1 to mean a party who has executed a RVP/DVP transaction with an NSCC member for whom NSCC has declined or ceased to act, or with an introducing broker who clears through an NSCC member for whom NSCC has declined or ceased to act.

[4] *Supra* note 3.

The rule change requires NSCC to provide notice of NSCC's intent to complete the RVP/DVP transactions to the trustee or receiver of the member for whom NSCC has ceased to act (if one has been appointed) and to the relevant RVP/DVP customers or the RVP/DVP customers' depository agents or their depository agents' depositories. This notice will alert the RVP/DVP customer that completion of any such transaction with NSCC constitutes a presumed waiver by the RVP/DVP customer of any claim arising out of such transactions against the member for whom NSCC has ceased to act, its receiver or trustee (or any successor trustee), or SIPC.[5]

## II. Discussion

Section 17A(b)(3)(F)[6] of the Act requires that the rules of a clearing agency be designed among other things, to protect investors and the public interest. As set forth below, the Commission finds that NSCC's rule change is consistent with this obligation under the Act.

The Commission finds that allowing NSCC to complete RVP/DVP transactions after it ceases to act for an insolvent member could benefit customers, counterparties, and creditors of the insolvent broker-dealer by minimizing the disruptive market effects and the large administrative burdens and costs associated with the insolvency of a broker-dealer. The Commission also finds that the merging within NSCC's rules of the actions NSCC will take when it ceases to act for a member, regardless of whether it ceases to act because of the insolvency of the member or for some other reason, simplifies and makes clearer NSCC rules without effecting any real changes to its rules. As such, the Commission finds that NSCC's proposed rule change is consistent with NSCC's statutory obligation to protect investors and the public interest.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–NSCC–98–14) be, and hereby is, approved.

[5] This notice would typically be sent via The Depository Trust Company's electronic message dissemination system.

[6] 15 U.S.C. 78q–1(b)(3)(F).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

**Margaret McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11608 Filed 5–9–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42746; File No. SR–NYSE–99–34]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Relating to the Exchange's Allocation Policy and Procedures

May 2, 2000.

## I. Introduction

On July 20, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending the Exchange's Allocation Policy and Procedures ("Policy"). On February 7, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 9, 2000.[4] This order approves the NYSE proposal, as amended.

## II. Description of the Proposal

According to the Exchange, its Policy is intended to: (1) Ensure that the allocation process for securities is based on fairness and consistency and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) provide an incentive for ongoing enhancement of performance by specialist units; (3) provide the best possible match between a specialist unit and security; and (4) contribute to the strength of the specialist system.

Since 1987, the Exchange's Quality of Markets Committee has appointed a number of Allocation Review Committees ("ARCs") to review the

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240. 19b–4.

[3] *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Terri Evans, Attorney, Division of Market Regulation ("Division"), Commission, dated February 4, 2000 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 42487 (March. 2, 2000), 65 FR 12603.

Policy and make recommendations with respect to changes.[5] In February 1999, the Quality of Markets Committee again appointed an ARC, ARC V, to review the Policy and make recommendations with respect to improvements in the allocation process. Those recommendations, which the Exchange is proposing as changes to the Policy, are discussed below.

*A. Composition of Allocation Committee*

Currently, the Allocation Committee is composed of nine members, consisting of seven floor brokers (including (1) three broker Governors (one of whom may be an independent/two dollar broker) and (2) four other floor brokers from the Allocation Panel) ("Panel") (one of whom must be an independent/two dollar broker)) and two allied members from the Market Performance Committee or the Panel. The Allocation Committee presently does not have representation from institutional investor organizations. The proposal would add one institutional investor representative member to the Allocation Committee, drawn from the Panel or from the institutional investor members of the Market Performance Committee. The Exchange does not believe that it is necessary to expand the size of the Allocation Committee. Therefore, the Exchange proposes to decrease the number of floor brokers on the Committee from seven to six by decreasing the number of other floor brokers from the Panel to three (one of whom must be an independent/two dollar broker).

*B. Composition of Allocation Panel*

According to the NYSE, the Panel is the resource from which the Allocation Committee is assembled. A Panel is appointed by the Exchange's Quality of Markets Committee from individuals nominated by the Exchange's membership. The Panel consists of 28 floor brokers; twelve allied members (including the four allied members serving on the Market Performance Committee); eight floor broker Governors, who are part of the Panel by virtue of their appointment as Governors; and a minimum of five Senior Floor Official brokers.

The Exchange proposes three changes to the composition of the Panel. First, the Exchange proposes to expand the Panel to add nine institutional investor organization representatives, including the five serving on the Market Performance Committee, to be consistent with the proposal to add institutional investor representatives to the Allocation Committee. Representatives from institutional investor organizations would be chosen in the same manner as other Panel members, (*i.e.*, through nominations from the membership and appointment by the Quality Markets Committee). Second, the Exchange is proposing to increase the number of floor broker Governors on the Panel from eight to ten to reflect the increased number of floor Governors appointed under Exchange Rule 46.[6] Finally, at the time the number of floor Governors was increased, the number of allied member representatives on the Market Performance Committee was increased from four to five. Therefore, the Exchange proposes to amend the composition of the Panel to reflect this increase.

Under these proposed revisions to the Policy, the new composition of the Panel would be 28 floor brokers; 13 allied members (including the five allied members serving on the Market Performance Committee); nine institutional members (including the five representatives of institutional investor organizations serving on the Market Performance Committee); then floor broker Governors, who are part of the Panel by virtue of their appointment as Governors; and a minimum of five Senior Floor Official brokers.

*C. Allocation Committee Quorum Requirement*

The proposal would not alter the Allocation Committee's existing quorum requirement that there be at least six floor brokers, at least two of whom are Governors, and one allied member. According to the Exchange, the presence of the instutional representative would not be required for a quorum because, at times, it may be difficult to obtain the participation of a representative of an institutional investor organization.

*D. Contact Between Listing Companies and Specialist Units*

Under the Policy, specialist units or any individual acting on their behalf are prohibited from having any contact with a company that has applied for listing from the date applications (known as "green sheets") are solicited from specialists for the purpose of allocating the stock to a specialist organization. The Exchange proposes to change this non-contact period to the earlier of the date written notice is given that the listing company filed its listing application with the Exchange or the date allocation applications are solicited, (*i.e.*, the date the "green sheet" is posted). The Exchange presently publishes this notice of listing applications in its Weekly Bulletin. This proposal would move the start of the period as to when contact is prohibited to an earlier date in those cases where the "green sheet" is issued after the Weekly Bulletin notice of an application to list has been published.

*E. Listing Company Request for Additional Specialist Information Following Interviews*

The Policy currently permits a listing company to pick its specialist unit after interviewing a pool of three, four, or five units selected by the Allocation Committee. Furthermore, any follow-up questions conveyed to the Exchange from a listing company regarding specialist unit(s) it interviewed are restricted to questions regarding publicly-available information. The Exchange must approve the request and all units in the group of units interviewed must be notified by the Exchange of the request.

The NYSE proposes that if a listing company has a follow-up question for any specialist unit(s) it interviewed, it must be conveyed to the Exchange. The Exchange would contact the unit(s) to which the question pertains and would provide any information received from the unit(s) to the listing company. The NYSE further proposes to eliminate the requirement that only publicly-available information be provided and the language requiring Exchange approval, as well as the requirement that the Exchange notify the other units interviewed of the company's request.

*F. Common Stock Listing After Preferred*

Currently, the Policy does not address the situation involving a common stock being listed after its preferred stock has been allocated. Accordingly, the Exchange is proposing that the allocation of the common stock of a company listing after its preferred stock has been listed would be open to all specialist units. Under the terms of the proposal, the company may select Option 1 (in which the Allocation Committee selects the specialist unit to be allocated the company's stock) or Option 2 (in which the company selects a specialist unit from among a group of units chosen by the Allcoation Committee). If Option 2 is selected, the specialist unit that trades the preferred stock must be included in the group of units comprising the interview pool. The company would not be able to

[5] See Securities Exchange Act Release No. 38372 (March 7, 1997), 62 FR 13421 (March 20, 1997) (containing recommendations made by ARCs I through IV).

[6] The floor broker Governors are automatically members of the Market Performance Committee and the Panel.

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select the specialist unit trading the preferred stock without going through the allocation process.

*G. Listed Company Mergers*

Currently, when two listed companies merge, the merged entity is assigned to the specialist in the company that is determined to be the survivor-in-fact. Where no surviving entity can be identified, the matter is referred to the Allocation Committee and all specialists are invited to apply. The merged company may request either Option 1 or Option 2, with no provisions to include or exclude any unit from consideration by the Allocation Committee. The Exchange notes that there is no provision for the merged company to select a unit that trades one of the listed companies, which is merging, without going through the allocation interview process.

The Exchange is proposing several changes to the Policy relating to listed company mergers. The Exchange is proposing that in cases where no surviving entity can be identified, the listing company would be permitted to select one of the units trading the merging companies without going through the allocation process. If the listing company determines to go to allocation, it may select Option 1 or Option 2. Under Option 1, the company would not be able to request that the Allocation Committee not allocate the stock to one of the units trading the merging companies. If the company chooses Option 2, the interview pool would consist of the specialist units of the merging companies and must include additional units. The number of additional units must be consistent with the Policy requirement that each pool consists of three to five units. Under Option 2, the company would not be permitted to request that any of the units trading the merging companies be excluded from the interview pool.

*H. Listed/Unlisted Company Mergers*

Currently, if the unlisted company is the survivor-in-fact, the company may choose to remain registered with the unit that traded the listed company involved in the merger or may request that the matter be referred to allocation, with applications invited from all units. The company may request that the unit trading the listed company not be allocated the stock (and, as a result, not be included in the pool of units under Option 2) and the Allocation Committee must honor that request.

The Exchange is proposing to conform this Policy to the proposed Policy involving listed company mergers with no survivor-in-fact. Therefore, the Policy would be amended to preclude the unlisted company from excluding from consideration by the Allocation Committee the specialist unit that trades the listed company. Further, the Policy would require that if the unlisted company chooses Option 2, the unit trading the listed company must be included in the allocation pool.

*I. Issuance of Tracking ("Target") Stock*

These securities (also known as "letter stock") typically are "targeted" to a specific aspect of an issuer's overall business. There are two instances in which "target" stocks are being listed. The first involves situations in which the "target" stock is being "uncoupled" from the listed company, and itself listing on the Exchange. Under the current Policy, when such a security is "uncoupled" and becomes an independent listing, it remains with the specialist registered in the stock prior to its separate listing ("original stock"), unless the listing company requests that the new stock be referred to the Allocation Committee. The second type of "target" stock involves a listed company issuing a "target" stock to track a separate business line. In these instances, the issue is assigned by Exchange staff to the specialist in the listed company issuing the "target" stock. As a result, the new listing company (the "target" stock) has no input in the allocation decision. As a result, the Exchange proposes to amend the Policy to conform to the spin off/related company policy.

Target stocks, whether the target stock itself is joining the Exchange as a separate listing (*e.g.*, Con Edison Inc. issuing distinct securities in Con Edison of New York) or where the target stock represents a tracking of a business line of the current listed company (*e.g.*, GM and GMH), will be treated in the same manner as spin-offs and listing of related companies. According to the exchange, the Policy allows the listed/listing company to choose to stay with the specialist unit registered in the related listed company or be referred to the Allocation Committee. In the latter case, the company may request not to be allocated to the parent's specialist and the Allocation Committee will honor such request. Alternatively, the company may request the exclusion or inclusion of the parent's specialist in the allocation pool under Option 2.

*J. Allocation Sunset Policy*

When the Exchange allocates a company that is listing its shares from its initial public offering, that allocation decision remains effective for three months. If the company does not list within that time, the matter is referred again to the Allocation Committee. However, the Exchange is proposing to amend the Policy to permit a listing company to choose whether to stay with the merged specialist unit, or be referred to allocation if the selected specialist unit mergers or is involved in ■ combination within the three-month period.

*K. Listing Company Attendees at Specialist Interviews*

The current Policy requires that a senior official of the listing company of the rank of Corporate Secretary or above be present at the interviews with specialists under Option 2. In the case of structured products' listings,[7] the corporate makeup contemplated by the existing requirement often does not exist. The Exchange proposes to amend the Policy to clarify that any senior officer[8] of the issuer may be present at the interview to satisfy the requirement.

**III. Discussion**

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act,[10] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. Further, the Commission finds that the proposal also is consistent with Section 11(b) of the Act[11] and Rule 11b–1[12] thereunder, which allow exchanges t promulgate rules relating to specialists to ensure fair and orderly markets.

Specialists play a crucial role in providing stability, liquidity, and continuity to the trading of securities. Among the obligations imposed upon the specialists by the Exchange, and by the Act and the rules thereunder, is the maintenance of fair and orderly markets in their designated securities.[13] To ensure that specialists fulfill these obligations, it is important that the Exchange develop and maintain stock

[7] A structured product is a security, which is based on the value of another security.

[8] The structured product company would designate which of its officers is a senior officer.

[9] In approving this rule, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78k(b).

[12] 17 CFR 240.11b–1.

[13] *See* 17 CFR 240.11b–1; NYSE Rule 104.

allocation procedures and policies that provide specialists an initiative to strive for optimal performance.

*A. Composition of Allocation Committee*

The Exchange first proposes to add one institutional investor representative member to the Allocation Committee drawn from the Panel or from the institutional investor members of the Market Performance Committee. In conjunction with this proposed change, the Exchange proposes to decrease the number of floor brokers on the Allocation Committee from seven to six by decreasing the number of other floor brokers from the Panel to three. The Commission believes that institutional investors are significant participants in the securities markets, including the Exchange and, therefore, that such representation enhances the expertise and objectivity of the allocation process. The Commission further believes that it is reasonable for the Exchange to determine not to increase the size of the Allocation Committee with the addition of an institutional investor.

*B. Composition of Allocation Panel*

The Exchange also proposes three changes to the composition of the Panel. First, in order to be consistent with the proposal to add institutional investor representatives to the Allocation Committee, the Exchange proposes to expand the Panel to add nine institutional investor organization representatives, including the five serving on the Market Performance Committee. Second, the Exchange proposes to increase the number of floor broker Governors on the Panel from eight to ten to reflect the increased number of floor Governors appointed under Exchange Rule 46. Third, the Exchange proposes to amend the composition of the Panel to reflect the increase in the number of allied member representatives on the Market Performance Committee from four to five. The Commission believes that these changes to the composition of the Panel are reasonable and consistent with the Act, and merely reflect the proposed inclusion of institutional investor representatives in the allocation process or incorporate prior changes made by the Exchange.

*C. Quorum*

The Exchange believes that it may be difficult at times to obtain the participation of an institutional investor representative and therefore has decided not to change the Allocation Committee's existing quorum requirement. The Commission recognizes that while institutional investor participation may be preferred, it may be difficult to have such participation at all times without delaying the allocation process. Therefore, the Commission believes that it is reasonable not to change the quorum requirement to reflect the addition of institutional investor representatives on the Allocation Committee.

*D. Contact Between Listing Companies and Specialist Units*

The proposal also changes the non-contact period between listing companies and specialist units to the earlier of the date written notice is given that the listing company filed its listing application with the Exchange or the date allocation applications are solicited. The Commission believes that once the listing process has begun, the Exchange may want to limit contacts between specialists and the listing company to avoid the appearance of impropriety and, therefore, it is appropriate to extend the limitation on contact to reflect the earliest notification to the specialist units of the company's intent to apply.

*E. Requests for Additional Specialist Information*

The proposal further amends the Policy with respect to requests by a listing company for additional specialist information following interviews. Specifically, the proposal provides that if a listing company has a follow-up question for any specialist unit(s) it interviewed, it must be conveyed to the Exchange, which would then contact the unit(s) to which the question pertains and provide any information received from the unit(s) to the listing company. The proposal also eliminates the requirement that only publicly-available information be provided and the language requiring Exchange approval, as well as the requirement that the Exchange notify other units of the company's request.

The Commission believes that these changes should allow listing companies greater latitude in obtaining information from specialist, as well as reduce the burden on both the listing company and prospective specialist units. For example, in some cases, the listing company may have received information during the interview from one specialist and desires to obtain similar information about the other specialists to better compare the specialists. In other cases, the listing company may only be interested in one or more of the specialists in the pool and consequently, only desire information on those specific specialists. Therefore, the proposed changes should reduce the burden on listing companies because the companies would only have to review responses from selected specialist. In addition, it should also reduce the burden on specialists to provide information that the listing company may not be interested in receiving from that particular specialist.

*F. Common Stock Listing After Preferred*

With respect to situations where a common stock is to be listed after its preferred stock has been allocated, the proposal provides that the allocation of the common stock would be open to all units. As a result, a company would not be able to select the specialist unit trading the preferred stock without going through the allocation process. The Commission notes that because of the potential greater volume associated with trading a common stock listing, a listing company may have different criteria for selecting a specialist for its common stock. Therefore, the Commission believes that the proposed change would ensure that all special units would be allowed to compete for the common stock listing on an equal basis and is, accordingly, appropriate.

*G. Listed Company Mergers*

With respect to listed company mergers, the proposal provides for several changes. First, where no surviving entity of a merger can be identified, the listing company would be allowed to select one of the units trading the merging companies without going through the allocation interview process. The Commission believes that this would make the allocation process more efficient and less time-consuming for the listing company in those instances in which the company ultimately may have decided that it would select one of the units trading the merging companies.

Under the proposal, a listing company may also request that the listing go to the Allocation Committee under Option 1 or Option 2. Under Option 1, the company would not be able to request that the Allocation Committee not allocate the stock to one of the units trading the merging companies. If the company chooses Option 2, the interview pool would consist of the specialist units of the merging companies and must include additional units. Under Option 2, the company would not be permitted to request that any of the units trading the merging companies be excluded from the interview pool. The Commission believes that this approach strikes an appropriate balance between the

interests of specialist units, who have developed a relationship and a history of market-making performance with a listed company, and the interests of listed companies in choosing the most appropriate unit to be their specialist. The Commission also believes that this proposal provides the current specialist(s) with a reasonable opportunity to present their case to the merged company's new management without, of course, any guarantee of receiving the allocation. Accordingly, the Commission believes that the proposed changes would assist in providing the opportunity for input and choice on the part of the listing company, and as such, are appropriate and consistent with the Act.

*H. Listed/Unlisted Company Mergers*

The Exchange's proposal under Options 1 and 2 to preclude a company resulting from a merger between a listed company and an unlisted company from excluding from consideration by the Allocation Committee the specialist unit that trades the listed company is appropriate because it ensures that all specialist units would be allowed to compete to the allocation on an equal basis.

*I. Issuance of Tracking Stock*

The Commission notes that the Exchange is conforming its treatment of target stocks to its treatment of spin-offs and the listing of related companies. In this situation, the Commission believes that this is appropriate since target stocks may have a similar relationship with the parent's specialist. If the patent company is unsatisfied with the specialist's performance to date, the Commission believes it is unnecessary to include this unit in the pool if the company so requests. In the same vein, if the parent company is satisfied with the specialist's performance but wishes to avail itself of the opportunity to interview other units, the company should have the option of including such specialist in the interview pool along with other specialists selected by the Allocation Committee. Finally, it is important to bear in mind that senior management of the subject companies is often the same as that of the parent (or there is substantial overlap), and, therefore, the choice of a specialist would be influenced by an assessment of the current relationship and market-making performance.

*J. Allocation Sunset Policy*

With respect to the Exchange's three-month allocation sunset policy, the Commission believes that in a situation where the selected specialist unit merges or is involved in a combination within the three-month period, the proposal to permit the listing company to choose whether to stay with the merged specialist unit or be referred to allocation, is appropriate. In this regard, the Commission recognizes that the listing company should have an ability to reconsider its choice given the changed circumstances.

*K. Listing Company Attendees at Specialist Interviews*

Finally, with respect to the current Policy, whereby a senior official of the listing company of the rank of Corporate Secretary or above must be present at interviews with specialist units under Option 2, the Commission believes that the proposal to accommodate the listing of a structured product company by clarifying that any officer designated as senior by the company may be allowed to satisfy the requirement is appropriate, as the corporate makeup of such a company does not always exist in a manner contemplated by the current Policy.

In summary, the Commission believes that the Exchange's Policy can serve as an effective incentive for specialist units to maintain high levels of performance and market quality to be considered for, and ultimately awarded, additional listings. This in turn may benefit the execution of public orders and promote competition among specialist units.

**IV. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NYSE–99–34), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42758; File No. SR–NYSE–99–48]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Change To Rescind Exchange Rule 390

On December 10, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to rescind Exchange rule 390. The proposed rule change was published for comment in the **Federal Register** on February 28, 2000.[3] The release publishing notice of the proposed rule change also included a Commission request for comment on issues relating to market fragmentation. The comment period relating to the rescission of Exchange rule 390 expired on March 20, 2000. The Commission has received twelve comments letters explicitly addressing whether Rule 390 should be rescinded. These comments are summarized in section II below. The comment period on issues related to market fragmentation has been extended for two weeks and now expires on May 12, 2000.[4]

Off-board trading restrictions such as Rule 390 have long been questioned as attempts by exchanges with dominant market shares to prohibit competition from other market centers. On their face, such restrictions run contrary to the Exchange Act's objectives to assure fair competition among market centers and to eliminate unnecessary burdens on competition. The NYSE has defended Rule 390 on the basis that it was intended to address market fragmentation by promoting interaction of investor orders without the participation of a dealer, which also is a principal objective of the Exchange Act. Even granting the importance of this objective, however, Rule 390 is overbroad as a tool to address market fragmentation—it applies in many situations that do nothing to promote investor order interaction. In the after-hours context, for example, it creates an artificial incentive for trades to be routed to foreign markets. Rule 390 also effectively restricts the competitive opportunities of electronic communications networks ("ECNs"), which use innovative technology to operate agency markets that offer investors a high degree of order interaction. To avoid the anticompetitive effect of the Rule, some ECONs even have indicated that they would accept the very substantial regulatory responsibilities associated with registering as a national securities exchange, thereby foregoing the streamlined requirements available

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 ("Concept Release").

[4] Securities Exchange Act Release No. 42723 (April 26, 2000).

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under Regulations ATS. Rescission of Rule 390 will eliminate these distortions of competition. The Commission will address legitimate concerns about assuring an opportunity for interaction of investor orders in the context of its ongoing review of fragmentation issues.

In an age when advancing technology and expanding trading volume are unleashing powerful forces for change and new competitive challenges for the U.S. securities markets, both at home and abroad, the continued existence of regulatory rules that attempt to prohibit competition can no longer be justified. Such rules typically succeed only in distorting competition and introducing unnecessary costs. The NYSE operates a market of very high quality. It recognizes that success in the future will depend on its ability to adapt and meet competitive challenges by continuing to provide a market that well-serves the interests of investors. The NYSE's proposed rule change to rescind Rule 390 is approved.

## I. Description of Proposed Rule Change

The proposed rule change rescinds Rule 390, which generally prohibits NYSE members and their affiliates from effecting transactions in NYSE-listed securities away from a national securities exchange. Two Commission rules already limit the reach of Rule 390. Exchange Act Rule 19c–3 [5] limits the application of Rule 390 to stocks listed on the NYSE as of April 26, 1979. Exchange Act Rule 19c–1 [6] permits NYSE members to trade as agent in the over-the-counter market with another person, except when the member also is acting as agent for such other person. In addition, Rule 390 itself contains ten specific exceptions for unusual situations, such as a transaction that is part of a primary distribution by an issuer.[7] Finally, an interpretation of the Rule permits members and their affiliates to trade as principal or agent on any organized foreign exchange at any time, and to trade as principal or agent in a foreign country's over-the-counter market after regular trading hours.[8]

The NYSE stated in its description of the proposed rule change that the intended purpose of Rule 390 was to maximize the opportunity for customer orders to interact with one another in agency auction markets and be executed without the participation of a dealer. The NYSE also discussed its concerns that broker-dealer internalization practices and market fragmentation would increase in the wake of Rule 390's rescission. It asserted that internalization—broker-dealers trading as principal against their customer order flow—results in the most objectionable of all forms of market fragmentation: the execution of captive customers' orders in a manner that isolates them from meaningful interaction with other buying and selling interest. The NYSE asserted that such practices not only decrease competitive interaction among market centers, but also isolate segments of the total public order flow and impede competition among orders, with no price benefit to the orders being internalized.

To address these concerns, the NYSE requested the Commission to adopt a new market-wide rule prohibiting broker-dealers from trading as principal against their customer orders unless they provide a price to the order that is better than the national best bid or offer against which the order might otherwise be executed. The NYSE asserted that this market-wide rule would assure that investors receive the fairest pricing of their internalized orders and would eliminate broker-dealer conflicts of interest in trading against their own customer order flow to capture the spread. The Commission's Concept Release sets forth the NYSE's proposal as one of the six potential options on which comment is requested.[9]

## II. Summary of Comments

The Commission received twelve comment letters explicitly addressing whether Rule 390 should be rescinded.[10] No commenter asserted that the Rule should be retained. Nearly all believed that the Rule imposed an unnecessary burden on competition. Four commenters, however, believed that the Commission should not approve the proposed rule change until it also addressed fragmentation concerns.

Many commenters supported rescinding Rule 390 on the ground that it is an unnecessary or inappropriate burden on competition.[11] The STA asserted that the rule is "an anachronism that limits liquidity and competition and thereof constrains investors from always obtaining the best possible price." ITG stated that the rule "imposes an unnecessary barrier to competition in listed securities between exchanges and other markets" and "imposes unnecessary costs on market participants." Instinet stated that "[a]among the most significant factors that make such [off-board trading] rules obsolete is the development of electronic intermarket linkages that will ensure nationwide access to the best bids and offers available in any marketplace." Although supporting the rescission of the rule, AGC Specialist Partners stated that Rule 390 was "not intended as an anti-competitive initiative but as a protection for the public to ensure the proper exposure of their orders."

Several of these commenters also noted that rescission of the Rule would enhance the opportunity for competition between exchange markets and alternative trading systems.[12] The SIA stated that "technological advances and recent regulatory developments [have] led to the development of a host of alternative trading systems that provide a similar capability operating alongside the established markets in an intensely competitive environment," and that "[t]here is simply no justification for regulations such as Rule 390 that restrict off-board trading."

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[5] 17 CFR 240.19c–3.

[6] 17 CFR 240.19c–1.

[7] NYSE Rule 290(c)(i).

[8] NYSE Rule 290, Supplementary Material .10, Interpretations of the Market Responsibility Rule.

[9] Concept Release, note 3 above, section IV.C.2.b.

[10] George Reichhelm, General Partner, and Andrew Schwarz, General Partner, AGS Specialist Partners, dated March 16, 2000 ("AGS Letter"); Deborah A. Lamb, Chair, Advocacy Committee, and Maria J. A. Clark, Office of General Counsel, Association for Investment Management and Research, dated March 15, 2000 ("AIMR Letter"); Fredric W. Rittereiser, Chairman and Chief Executive Officer, and William W. Uchimoto, Executive Vice President and General Counsel, Ashton Technology Group, Inc., dated March 20, 2000 ("Ashton Technology Letter"); George W. Mann, Jr., Senior Vice President and General Counsel, Boston Stock Exchange, dated March 17, 2000 ("BSE Letter"); Craig S. Tyle, General Counsel, Investment Company Institute, dated March 20, 2000 ("ICI Letter"); John Oddie, Chief Executive Officer, Global Equities, Instinet Corporation, dated March 20, 2000 ("Instinet Letter"); Timothy H. Hosking, ITG, Inc., dated March 17, 2000 ("ITG Letter"); Kenneth D. Pasternak, President and Chief Executive Officer, and Walter F. Raquet, Executive Vice President, Knight/Trimark Group, Inc., dated March 21, 2000 ("Knight/Trimark Letter"); Robin Roger, Managing Director and Counsel, Morgan Stanley Dean Witter, dated March 27, 2000 ("Morgan Stanley Letter"); Richard G. Ketchum, President, National Association of Securities Dealers, Inc., dated March 31, 2000 ("NASD Letter"); Marc E. Lackritz, President, Securities Industry Association, dated March 21, 2000 ("SIA Letter"); Robert C. King, Chairman, and Lee Korins, President and Chief Executive Officer, Security Traders Association, dated March 15, 2000 ("STA Letter").

In addition, the Commission has received other letters that address fragmentation issues, but do not address explicitly whether Rule 390 should be rescinded. Copies of all comment letters are available for inspection and copying in File No. SR–NYSE–99–48 in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Electronically-submitted comment letters are posted on the Commission's Internet web site (http://www.sec.gov).

[11] AIMR Letter; Ashton Technology Letter; ICI Letter; Instinet Letter; ITG Letter; Knight/Trimark Letter; Morgan Stanley Letter; NASD Letter; SIA Letter; STA Letter.

[12] ITG Letter; Morgan Stanley Letter; SIA Letter

Morgan Stanley noted that "the rule still may hinder the establishment and development of alternative OTC trading systems and markets in non-19c–3 listed stocks."

Other commenter believed that the Commission should take action to address possible collateral effects that could occur in the wake of rescinding Rule 390.[13] Ashton Technology stated that is supported the rescission of the rule "if conditioned upon adoption of the NYSE Proposal as modified by an order exposure alternative, applying equally to upstairs market makers and exchange specialists, and calling for a new high powered routing mechanism with auto-execution capabilities to access and trade against 'exposed' orders." The ICI supported the NYSE's recommendation that the Commission adopt "a ma-ket-wide requirement that broker-dealers not be permitted to trade as principal with their own customer order unless they provide for 'price improvement,' *i.e.*, a price to the order that is better than the national bid or offer against which the order might otherwise be executed." Nevertheless, ICI believed that the rescission of Rule 390 should not be delayed while the Commission considered whether to adopt a price improvement requirement.

Other commenters did not support the NYSE's proposal. The Knight/Trimark Group stated that the "NYSE's" recommendation that the Commission adopt a new rule requiring broker-dealers to improve on the NBBO if they trade with customer orders as principal is an attempt to replace an Exchange rule that is explicitly anticompetitive with a Commission rule that is implicitly anticompetitive." The NASD criticized the NYSE proposal because it believed the proposal would "allow NYSE specialists to match the NBBO, while requiring market makers to attempt to improve [the NBBO] and also to bear the risk of the NBBO moving away in the interim." The NASD stated that best execution and order display obligations could achieve the same objectives as the NYSE's proposal.

Other commenters believed that the Commission should not approve the rescission of Rule 390 until it addressed market fragmentation issues.[14] The AIMR noted that while it tentatively supports the rescission of the Rule, it "strongly believes that the present issue and those surrounding market fragmentation, which the Commission highlighted in its official request for public comment, are so closely related that the Commission cannot meaningfully consider each issue in isolation of the others." It requested that the Commission delay its decision regarding Rule 390 until the Commission had reviewed all public comments addressing possible market fragmentation and related issues. Finally, the BSE stated that "[a]t the very least, perhaps the Commission should deny the NYSE's requests to rescind Rule 390 until the Commission is satisfied that is rescission will not have a deleterious impact on the market, or until it has decided on the solution to any such anticipated deleterious impact".

In contrast, other commenters did not believe that the approval of Rule 390 should be delayed.[15] The STA stated that "the question of internalization of customer orders touches upon a great number of important, compelling and interrelated issues regarding the roles of the exchanges, market makers, ECNs and investors," and that it was "inappropriate to link this complex and possibly contentious proposal with the proposal to rescind Rule 390." Morgan Stanley also believed that the Commission should not delay in its approval of the proposed rule change "pending its determination of what regulatory action should be taken to address the fragmentation issues."[16]

## III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6 of the Exchange Act[17] and the rules and regulations thereunder applicable to a national securities exchange.[18] In particular, the Commission finds the proposed rule change is consistent with section 6(b)(5), which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act. The rescission of Rule 390 also is consistent with section 11A of the Exchange Act,[19] which sets forth the findings and objectives that are to guide the Commission in its oversight of the national market system. Rescinding Rule 390 will help further the national market system objective in section 11A(a)(1)(C)(i) to assure the economically efficient execution of securities transactions and in section 11A(a)(1)(C)(ii) to assure fair competition between exchange markets and markets other than exchange markets.

Rule 390 long has been questioned by the Commission and others because it directly restricts a certain type of market center competition—competition between exchange markets and markets other than exchange markets.[20] Given the explicit national market system objective to assure fair competition among market centers, as well as the requirement that the rules of a national securities exchange not impose any burden on competition not necessary or appropriate in furtherance of the Exchange Act, Rule 390 has been suspect on its face.

The NYSE has defended Rule 390 on the basis that is purpose was not to protect the NYSE's competitive position, but to protect customer interests by assuring a greater opportunity for interaction of investors' orders without the participation of a dealer. This type of order interaction is also a principal objective of the national market system set forth in section 11A(a)(1)(C)(v) of the Exchange Act. Over the years, the Commission has sought to cut back on Rule 390 in ways that would reduce its anticompetitive nature without inappropriately reducing the opportunity for investor orders to interact. Exchange Act Rule 19c–1 allows NYSE members to execute trades in markets other than exchange markets as agents for their customers. Exchange Act Rule 19c–3 systematically has reduced the scope of Rule 390 over time as more and more companies have listed their stocks on the NYSE in the years since 1979. Nevertheless, the Rule still applies to securities that generate nearly one-half of total NYSE trading volume.

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[13] AGS Letter; Ashton Technology Letter; ICI Letter.

[14] AGS Letter; AIMR Letter; Ashton Technology Letter; BSE Letter.

[15] ICI Letter; Morgan Stanley Letter; STA Letter.

[16] Morgan Stanley also recommended that the NYSE file an additional proposal with the Commission to rescind Exchange Rule 393, asserting that it no longer serves "any valid regulatory purpose." Rule 393 requires members to obtain NYSE approval prior to participating in an off-board secondary distribution of an NYSE-listed security.

[17] 15 U.S.C. 78f.

[18] In approving this proposal, the Commission also has considered its impact on efficiency, competition, and capitel formation. 15 U.S.C. 78c(f).

[19] 15 U.S.C. 78k–1.

[20] *See, e.g.*, Exchange Act Section 11A(c)(4), 15 U.S.C. 78k–1(c)(4) (provision added to the Exchange Act in 1975 directing the Commission to review exchange rules that impose off-board trading restrictions); Securities Exchange Act Release no. 11628 (Sept. 2, 1975), 40 FR 41808 (Commission commences proceedings under Exchange Act Section 19(c) to determine whether to amend or abrogate exchange rules that impose off-board trading restrictions.

including many of the most active NYSE issues.[21]

The Commission believes that whatever beneficial effect Rule 390 may have in enhancing the interaction of investor orders can no longer justify anticompetitive nature. To the extent the Rule promotes the interaction of investors' orders, it does so in an undesirable way—by attempting a direct restriction on competition. Such attempts can never be wholly successful and typically succeed primarily in distorting, rather than eliminating, competition and introducing unnecessary costs. An egregious effect of Rule 390 is the artificial incentive it provides for NYSE members to route orders to foreign OTC markets for execution after regular trading hours. Such distortions can no longer be justified in an increasingly competitive international environment.[22]

In addition, Rule 390 is much too broad even when considered solely as a tool to address market fragmentation and to promote the interaction of investor orders. As noted by several commenters, the Rule effectively restricts NYSE members from participating in markets operated by ECNs or ATSs.[23] These market centers offer their customers, among other things, agency limit order books that provide a high degree of investor order interaction. Using advanced technology for communicating and organizing information, ECNs can offer a number of advantages to investors, including low costs, fast display of limit orders, and fast executions against displayed trading interest.

These ECN limit order markets also can benefit the national market system as a whole by enhancing the process of public price discovery. Displayed limit orders are perhaps the most significant source of price competition in the securities markets. Limit order markets also allow for both investor and broker-dealer participation, but minimize principal-agent conflicts by adopting trading rules that establish a level playing field for the trading interest of both investors and broker-dealers—principally through price/time priority rules. Whatever limit order is first in line at the best price, whether submitted by investor or broker-dealer, such limit order has the right to trade first at that price. Price competition in invigorated and spreads are narrowed because those who improve the best bid or offer through limit orders know that they will be the first to trade. The price/time priority rules of limit order markets also can enhance depth and liquidity by providing an incentive for trading interest to stack up at prices that are at or around the best bid and offer. Because the second, third, and fourth orders in line at a price will be the second, third, and fourth to trade at that price (and so on), there is a strong incentive to submit limit orders even at prices that match or are outside the best bid or offer. The deeper a market, the less vulnerable it will be to excessive short-term price swings.[24]

In recent years, the Commission has taken a number of steps that have paved the way for ECNs to compete with established market centers and be integrated into the national market system. In 1996, the Commission adopted the Order Handling Rules,[25] which required, among other things, the inclusion in the consolidated national best bid and offer ("NBBO") of limit order prices and sizes that improved the market for a security (by either improving the price of the NBBO or adding significant depth to the NBBO). These rules applied to both customer limit orders handled by specialists and market makers, as well as the limit orders of specialists and market makers themselves if they were displayed in an ECN. In 1998, the Commission adopted Regulation ATS,[26] which provides a streamlined regulatory regime for trading systems (including ECNs) that choose to be regulated as ATSs. In addition, ATSs with significant trading volume are required to display publicly their "top-of-book" trading interest in the consolidated national quote stream, even if such interest is not associated with a specialist or market maker. Most recently, the Commission approved a proposed rule change by the NASD that would enable ECNs to participate in the Intermarket Trading System that links market centers trading listed securities.[27] With the rescission of Rule 390, yet another regulatory barrier to competition will be eliminated.

The Commission emphasizes strongly, however, that its desire to clear away regulatory barriers to competition from ECNs in the listed market should not be interpreted as an indication of whether the ECNs will or should attract a significant amount of listed market share. That will be determined by competition. Similarly, the Commission's criticism of Rule 390 should not be interpreted as a criticism of the quality of the NYSE's market. To the contrary, studies repeatedly have demonstrated the merits of the NYSE's market, both in terms of its execution quality and its public price discovery function.[28]

The NYSE offers a multi-facted trading mechanism that can accommodate a wide variety of participants and trading strategies. Like the ECNs, it offers a limit order book with price/time priority among orders on the book. In addition, the NYSE, through its floor, offers a mechanism for investors with large trading interest to be represented in the market. Such investors typically will not display their full interest in a limit order because it likely would move the market against them, thereby increasing their transaction costs or even precluding any execution at all. The NYSE floor allows the large trading interest to interact with trading interest of all sizes on the other side of the market.[29] This enhanced

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[21] Jeffrey Bacidore, Katharine Ross & George Sofianos, *Quantifying Best Execution at the New York Stock Exchange: Market Orders*, NYSE Working Paper 99–05 (December 1999) at 1 n.2 ("At the end of October 1999, 23 percent of NYSE issues accounting for 46 percent of the volume were subject to Rule 390.").

[22] The trades executed in foreign markets also are not subject to NYSE surveillance or the Commission's regulatory oversight.

[23] For example, none of the various exceptions to, and limitations on, the scope of Rule 390 would generally allow an NYSE member to trade as principal in a U.S. market operated by an ECN.

[24] *See* Concept Release, note 3 above, at n.26 and accompanying text.

[25] Securities Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290.

[26] Securities Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844.

[27] Securities Exchange Act Release No. 42536 (Mar. 16, 2000), 65 FR 15401.

[28] *See, e.g.*, Hendrik Bessembinder, *Trade Execution Costs on NASDAQ and the NYSE: A Post-Reform Comparison*, 34 J. Financial & Quantitative Analysis 387, 389 (2999) (" This study finds that trade execution costs remain larger on NASDAQ compared to the NYSE even after the new SEC order-handling rules are implemented, and that the difference in average trading costs is not attributable to variation in observable economic characteristics of the listed stocks."); Marshall E. Blume & Michael A. Goldstein *Quotes, Order Flow, and Price Discovery*, 52 J. Finance 221, 232 (1997) ("The NYSE bid price equals on average the best bid price 97.1 percent of the time, and the NYSE ask price equals the best ask price 96.9 percent of the time."); Joel Hasbrouck, *One Security, Many Markets: Determining the Contributions to Price Discovery*, 50 J. Finance 1175, 1197 (1995) (an analysis of "price discovery for equities traded on the NYSE and regional exchanges revealed that "price discovery appears to be concentrated at the NYSE: the median information share is 92.7 percent"); Justin Schack, *Cost Cotnainment*, Institutional Investor, Nov. 1999, at 43 (worldwide survey of institutional investor trading costs found that "[f]or the first time even NYSE-listed shares took top honors for the cheapest cost of execution anywhere in the world"); *compare* Louis K.C. Chan & Josef Lakonishok, *Institutional Equity Trading Costs: NYSE verus Nasdaq*, 52 J. Finance 713, (1997) (comparison of execution costs for institutional investors on Nasdaq and NYSE found that "costs are lower on Nasdaq for trades in comparatively smaller firms, while costs for trading larger stocks are lower on NYSE").

[29] Some ECNs offer an opportunity for large trading interest to interact by including a reserve

opportunity for interaction can benefit both large and small investors. Indeed, the NYSE's very substantial price improvement rate for smaller orders is attributable to such interaction—more than 50% of market orders of less than 500 shares routed to the NYSE floor in stocks with a quoted spread of greater than 1/16th are executed at a price better than the NBBO.[30]

Finally, the NYSE has adopted a comprehensive set of trading rules that address the potential principal-agent conflicts that can arise when both broker-dealers and their customers trade in the same market center. These rules are intended to prevent NYSE members and professionals from obtaining unfair advantages in trading. In addition, the NYSE incorporates one market maker—the specialist—into its trading mechanism. Specialist trading is limited to help assure that it supplements, but does not supplant, public trading interest and thereby contributes to a fair and orderly market.[31] The NYSE also monitors the actual performance of its specialists to assure that they comply with their affirmative and negative market-making responsibilities.

The outcome of the competition between the NYSE and other market centers will depend on which market centers are most able to serve investor interests by providing the highest quality trading services at the lowest possible costs. The Commission's regulatory task is removing unwarranted regulatory barriers to competition between the NYSE and other market centers. Its approval of the rescission of Rule 390 is intended solely to free the forces of competition and allow investor interests to control the success or failure of individual market centers.

Freeing of forces of competition to serve investor interests underlies the Commission's comprehensive review of issues related to market fragmentation. As discussed in the Concept Release, the Commission is concerned about certain broker-dealer practices that may substantially reduce the opportunity for investor orders to interact. Reduced order interaction may hamper price competition, interfere with the process of public price discovery, and detract from the depth and stability of the markets.

Currently, brokers that handle customer orders have a strong financial incentive either to internalize their orders by trading against them as principal or to route their orders to dealers that will trade against them as principal and share a portion of the profits with the broker. Internalization and payment for order flow arrangements provide dealers with a guaranteed source of order flow, eliminating the need to compete aggressively for orders on the basis of their displayed quotation. Instead, the dealers can merely match the prices that are publicly displayed by other market centers. These prices in many cases will represent limit orders that are displayed by agency market centers (such as the NYSE or an ECN). The limit orders may be denied an opportunity for an execution if dealers choose not be route orders to the market center displaying the limit orders and instead match the limit order prices.[32]

Price-matching dealers thereby take advantage of the public price discovery provided by other market centers (which must make their best prices publicly available pursuant to Exchange Act price transparency requirements), but do not themselves necessarily contribute to the process of public price discovery. Moreover, if a substantial portion of the total order flow in a security is subject to dealer price-matching arrangements, it reduces the ability of other dealers to compete successfully for order flow on the basis of their displayed quotations. In both cases (unfilled limit orders and disregarded dealer quotations), those market participants who are willing to participate in public price discovery by displaying firm trading interest at the best prices are not rewarded for their efforts. This creates disincentives for vigorous price competition, which, in turn, could lead to wider bid-asked spreads, less depth, and higher transaction costs. These adverse effects would harm all orders, not just the ones that are subject to internalization and payment for order flow arrangements. Consequently, a loss of execution quality and market efficiency may not be detectable simply by comparing the execution prices of orders that are subject to such arrangements with those that are not.

Moreover, an agent-principal monitoring problem may tend to perpetuate rather than alleviate the isolation of investor orders that are subject to internalization and payment for order flow arrangements. It can be very difficult for retail customers to monitor the quality of execution provided by their brokers, particularly in fast-moving markets.[33] Given the difficulty of monitoring execution quality, the most rational strategy for any individual customer may be simply to opt for the lowest commission possible (which may be low in part because the broker is receiving payment for order flow, part of which is passed on the customer). If many individual customers adopt this strategy, it could blunt the forces that otherwise would reward market centers that offer high quality executions.

Finally, the fragmentation concerns raised in the Concept Release are not limited to assuring that investors receive at least the best *displayed* prices, whatever they happen to be. Assuring that investors receive the best prices displayed anywhere in the national market system is crucial, but is not sufficient to assure that the best prices displayed in the system are the most efficient prices reasonably possible. For example, the spread between the best displayed bid and the best displayed offer may be wider than it otherwise would be if a

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size feature in their limit order book. *See* Concept Release, note 3 above, at text accompanying n.27.

[30] *See Quantifying Best Execution*, note 21 above, at Table 10 & Table 14. A market's price improvement rate is affected by the quality of the publicly displayed quotations that are "price-improved." The quality of the NYSE's public quotations is one of the issues addressed in the studies cited in note 28 above.

[31] *See* Kenneth A. Kavajecz, *A Specialist's Quoted Depth and the Limit Order Book*, 54 J. Finance 747, 753 (1999) (comparison of spreads on NYSE limit order book with specialist's quoted spreads "suggests that the specialist plays an important role in narrowing the spread the market participants face when demanding liquidity, especially for smaller (less frequently traded) stocks.").

[32] In February 2000, the agency markets operated by ECNs executed approximately 19% of the share volume in Nasdaq securities, a drop of 3% from September 1999. *See* NASD Economic Research Dept., <*http://www.marketdata.nasdaq.com*> (visited April 10, 2000) (In February 2000, ECNs that are ATSs collectively accounted for 19.2% of Nasdaq share volume, 25.1% of Nasdaq dollar volume, and 24.6% of Nasdaq trades.); NASD Economic Research Dept., <*http://www.marketdata.nasdaq.com*> (visited Dec. 11, 1999) (In September 1999, ECNs that are ATSs collectively accounted for 22.2% of Nasdaq share volume, 29.2% of Nasdaq dollar volume, and 28.0% of Nasdaq trades.). In calculating the market share of ATSs, the NASD adds orders executed internally on an ATS and the orders routed to an ATS for execution. Orders routed out to another market participant are not included.

[33] *See, e.g.*, Lawrence Harris, *Consolidation, Fragmentation, Segmentation, and Regulation, in Modernizing U.S. Securities Regulation: Economic and Legal Perspectives* 269, 286 (Kenneth Lehn & Robert W. Kamphius, Jr., eds., 1992) ("[F]ew brokerage clients—and probably no small clients—can observe, monitor, and measure their brokers' efforts at low cost. Given the high volatility of securities prices, the general lack of real-time market information available to most brokerage clients, and the high cost of processing that information even when it is readily available, most clients cannot accurately determine whether their orders are well executed or not. Moreover, even if they could measure their broker's performance, fairly evaluating that information is still more difficult. A fair evaluation would require that the clients compare the quality of service offered by at least a few different brokers") (footnotes omitted). Retail investors have greater access to real-time market information today than in 1992. The order barriers to monitoring execution quality continue to exist.

market structure fails to promote vigorous price competition.[34] Similarly, the depth of trading interest at the best displayed prices may be very thin, so that prices will be more volatile than they otherwise would be if a market structure does not reward traders for displaying multiple orders (and thereby adding depth) at the best prices. In addition, some market centers offer investors an opportunity for price improvement—an execution at a price better than the best displayed prices. To meet their best execution responsibilities, brokers must take these price improvement opportunities into consideration in deciding where to route customers orders.

Several commenters believed that the Commission should not approve the rescission of Rule 390 until it had addressed market fragmentation concerns. The Commission does not believe, however, that the potential fragmentation of the listed market due to an increase in internalization and payment for order flow arrangement warrants a delay in approving the proposed rule change. First, the Commission already has commenced its review of market fragmentation issues, and the comment period for the Concept Release ends on May 12, 2000. Several of the six potential options to address fragmentation set forth in the Concept Release would address internalization and payment for order flow arrangements.[35] The Concept Release also requests comment on any additional options, or modifications of any of the six options, that commenters believe would be useful in addressing fragmentation.[36] Second, the Commission intends to monitor any significant changes in the order-routing practices of NYSE members resulting from the rescission of Rule 390, particularly decisions to internalize their customer order flow. To comply with the duty of best execution owed their customers, brokers would need to assure that such changes further their customers' interests and not merely their own.

[34] The spread between the best bid and offer is an indication of the premium that must be paid by investors seeking liquidity and therefore of the efficiency of the market. *See* Concept Release, note 3 above, at n.20 and accompanying text.

[35] *See* Concept Release, note 3 above, section IV.C.2.b.

[36] After the end of the comment period, the Commission intends to review expeditiously the comments submitted in response to the Concept Release and determine what, if any, further action is necessary.

## IV. Conclusion

*It is Therefore Ordered,* pursuant to Section 19(b)(2) of the Act,[37] that the proposed rule change (SR–NYSE–99–48) is approved.

By the Commission.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11682 Filed 5–9–00; 8:45 am]

BILLING CODE 8010–01–M

[37] 15 U.S.C. 78s(b)(2).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3241]**

### State of Ohio; Amendment #1

In accordance with information received from the Federal Emergency Management Agency, the above-numbered Declaration is hereby amended to extend the deadline for filing applications for physical damage as a result of this disaster from May 6, 2000 to May 8, 2000.

All other information remains the same, *i.e.*, the deadline for filing applications for economic injury is December 7, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 28, 2000.

**Bernard Kulik,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 00–11644 Filed 5–9–00; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 3307]**

### Culturally Significant Objects Imported for Exhibition Determinations: "Painting on Light: Drawings and Stained Glass in the Age of Durer and Holbein"

**DEPARTMENT:** United States Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Painting on Light: Drawings and Stained Glass in the Age of Durer and Holbein," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the J. Paul Getty Museum in Los Angeles, CA, from July 11, 2000 through September 24, 2000, and at the St. Louis Museum of Art in St. Louis, MO from November 4, 2000 through January 7, 2001 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 4, 2000.

**William B. Bader,**

*Assistant Secretary for Educational and Cultural Affairs, United States Department of State.*

[FR Doc. 00–11701 Filed 5–9–00; 8:45 am]

BILLING CODE 4710–08–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed During the Week Ending April 7, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2000–7203.

*Date Filed:* April 5, 2000.

*Parties:* Members of the International Air Transport Association.

*Subject:*

PTC COMP 0609 dated 31 March 2000

Mail Vote 074—Resolution 024j

Special Construction Rules (Amending)

Intended effective date: 15 April 2000

**Andrea M. Jenkins,**

*Federal Register Liaison.*

[FR Doc. 00–11687 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed During the Week Ending April 14, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2000–7234.
*Date Filed:* April 11, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:*
PTC2 AFR 0078 dated 29 February 2000 (Mail Vote 068)
TC2 Within Africa Resolutions r1-r29
PTC2 AFR 0081 dated 24 March 2000
Adopting Mail Vote 068
Minutes—PTC2 AFR 0079 dated 29 February 2000
TC2 Africa Policy Group Report
Tables—PTC2 AFR FARES 0030 dated 4 April 2000
Intended effective date: 1 May 2000

**Andrea M. Jenkins,**
*Federal Register Liaison.*
[FR Doc. 00–11688 Filed 5–9–00; 8:45 am]
BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed During the Week Ending April 28, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

*Docket Number:* OST–2000–7289.
*Date Filed:* April 26, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:* CBPP/5/Reso/003/99 dated September 8, 1999
Finally Adopted Resos & Recommended Practices r1–3
Minutes—CBPP/5/Meet r–1–600a r–2–606 r–3–RP1600d
Intended effective date: November 17, 1999.

*Docket Number:* OST–2000–7313.
*Date Filed:* April 27, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:* Mail Vote 075 Resolution 002
TC1/TC12 USA/US Territories—Austria, Belgium, Chile, Germany, Italy, Netherlands, Scandinavia, Switzerland Standard Revalidating/Adopting/Amending Resolution
Intended effective date: 1 October 2000.

*Docket Number:* OST–2000–7314.
*Date Filed:* April 27, 2000.
*Parties:* Members of the International Air Transport Association.
*Subject:* PTC2 EUR 0307 dated 18 April 2000 TC2 Within Europe Expedited Resolution 002d
Intended effective date: 15 May 2000.

**Andrea M. Jenkins,**
*Federal Register Liaison.*
[FR Doc. 00–11691 Filed 5–9–00; 8:45 am]
BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending April 21, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–2000–7277.
*Date Filed:* April 21, 2000.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 12, 2000.
*Description:* Application of Mandarin Airlines Company, Ltd. ("Mandarin") pursuant to 49 U.S.C. 41301, 41305 and subpart Q, applies for a foreign air carrier permit to allow it to engage in scheduled foreign air transportation of persons, property, and mail between Taipei, Taiwan, and Saipan, Commonwealth of the Northern Mariana Islands.

*Docket Number:* OST–2000–7281.
*Date Filed:* April 21, 2000.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 12, 2000.
*Description:* Application of Air Namibia (Pty) Ltd. pursuant to 49 U.S.C. 40109, 41302, parts 211, 302 and subpart Q, applies for a foreign air carrier permit authorizing it to engage in scheduled foreign air transportation of persons, property and mail between a point or points in Namibia, on the one hand, via intermediate points in both directions, to a point or points in the United States, on the other hand. Air Namibia also requests authority to operate charters pursuant to 14 CFR section 212.

**Andrea M. Jenkins,**
*Federal Register Liaison.*
[FR Doc. 00–11689 Filed 5–9–00; 8:45 am]
BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending April 28, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–1999–6319.
*Date Filed:* April 28, 2000.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 19, 2000.
*Description:* Amendment of Northwest Airlines, Inc. to its application pursuant to 49 U.S.C. 41102 and subpart B, of its Route 564 U.S.-Mexico certificate authority to request that the Department add a Houston-Mazatlan segment to Northwest's Route 564.

**Andrea M. Jenkins,**
*Federal Register Liaison.*
[FR Doc. 00–11690 Filed 5–9–00; 8:45 am]
BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending April 14, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

*Docket Number:* OST–2000–7231.
*Date Filed:* April 11, 2000.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 2, 2000.
*Description:* Application of Air-Serv, Inc. d/b/a AirServ ("AirServ") pursuant to 49 U.S.C. Section 41102, Parts 201, 204 and Subpart B, applies for a certificate of public convenience and necessity to authorize it to engage in foreign charter air transportation of persons, property and mail.

*Docket Number:* OST–2000–7232.
*Date Filed:* April 11, 2000.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 2, 2000.
*Description:* Application of Air-Serv, Inc. d/b/a AirServ ("AirServ") pursuant to 49 U.S.C. Section 41102, Parts 201, 204 and Subpart B, applies for a certificate of public convenience and necessity to engage in interstate charter air transportation of persons, property and mail.

*Docket Number:* OST–2000–7251.
*Date Filed:* April 13, 2000.
*Due Date for Answers, Conforming Applications, or Motion to Modify Scope:* May 4, 2000.
*Description:* Application of C.A.L. Cargo Air Lines Ltd. ("C.A.L.") pursuant to 49 U.S.C. Section 41302, Part 211.20 and Subpart B, applies for an initial foreign air carrier permit to provide foreign air transportation of property and mail between Tel Aviv and New York (JFK)/Chicago (O'Hare) via Luxembourg and Gander, Newfoundland and to provide all cargo foreign air transportation under charter pursuant to the provisions of 14 CFR Part 212.

**Andrea M. Jenkins,**
*Federal Register Liaison.*
[FR Doc. 00–11692 Filed 5–9–00; 8:45 am]
BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Federal Railroad Administration

### Federal Transit Administration

### Office of the Secretary of Transportation

### Applications for TIFIA Credit Assistance

**AGENCIES:** Federal Highway Administration (FHWA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Office of the Secretary of Transportation (OST), DOT.

**ACTION:** Notice of availability of funds inviting applications for credit assistance for major surface transportation projects.

**SUMMARY:** The Transportation Equity Act for the 21st Century (TEA–21) created the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA). The TIFIA authorizes the Department of Transportation (DOT) to provide credit assistance in the form of secured (direct) loans, lines of credit, and loan guarantees to public and private sponsors of eligible surface transportation projects. The TIFIA regulations (49 CFR part 80, as published in the **Federal Register**, Vol. 64, No. 105, on Wednesday, June 2, 1999) provide specific guidance on the program requirements.

Although the DOT is currently contemplating revisions to the regulations, the Final Rule as published in the **Federal Register** on June 2, 1999 remains applicable to this notice.

Funding for this program is limited, and projects requesting assistance will be evaluated and selected by the DOT on a competitive basis. Following selections, term sheets will be issued and credit agreements will be developed through negotiations between the project sponsors and the DOT. The DOT expects that approximately $81 million in net budget authority will be available in fiscal year 2000 to fund the subsidy costs of up to approximately $1.673 billion in Federal credit assistance.

**DATES:** For consideration in this application cycle, letters of interest must be submitted by 4:30 p.m. EDT on Wednesday, May 31, 2000. The deadline for receipt of the completed application and the non-refundable $5,000 application fee is 4:30 p.m. EDT on Wednesday, July 5, 2000. Applications received in the offices of the DOT after that date and time will not be considered. Applications sent to the DOT electronically or by facsimile will not be accepted. Applicants should refer to the TIFIA Application for Federal Credit Assistance, which specifies the number of hard copies (plus original) required for each section of the application as well as those sections of the application requiring electronic versions.

**ADDRESSES:** Both the letters of interest and completed applications should be submitted to the attention of Ms. Stephanie Kaufman, Office of Budget and Program Performance, Department of Transportation, Room 10105, B–10, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** FHWA: Mr. Max Inman, Office of Budget and Finance, Federal-Aid Financial Management Division, (202) 366–0673; FRA: Ms. JoAnne McGowan, Office of Passenger and Freight Services, Freight Program Division, (202) 493–6390; FTA: Mr. Paul Marx, Office of Policy Development, (202) 366–1734; OST: Ms. Stephanie Kaufman, Office of Budget and Program Performance, (202) 366–9649; Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Hearing- and speech-impaired persons may use TTY by calling the Federal Information Relay Service at 1–800–877–8339. Additional information, including the TIFIA program guide and application materials, can be obtained from the TIFIA web site at http://tifia.fhwa.dot.gov.

**SUPPLEMENTARY INFORMATION:**

#### Types of Credit Assistance Available

The DOT may provide credit assistance in the form of secured (direct) loans, loan guarantees, and lines of credit. These types of credit assistance are defined in 23 U.S.C. 181 and 49 CFR 80.3.

#### Program Funding and Limitations on Assistance

The TIFIA provides annual funding levels for both total credit amounts (*i.e.*, the total principal amounts that may be committed in the form of direct loans, loan guarantees, or lines of credit) and subsidy amounts (*i.e.*, the amounts of

budget authority available to cover the estimated present value of the Government's expected losses associated with the provision of credit instruments, net of any fee income). Funding for the subsidy amounts is provided in the form of budget authority funded from the Highway Trust Fund (other than the Mass Transit Account). Total Federal credit amounts authorized for the TIFIA program are $1.8 billion in fiscal year (FY) 2000; $2.2 billion in FY 2001; $2.4 billion in FY 2002; and $2.6 billion in FY 2003. These amounts lapse if not awarded by the end of the fiscal year for which they are provided.

To support these credit amounts, the TIFIA provides budget authority to fund the maximum subsidy amounts of $90 million in FY 2000; $110 million in FY 2001; $120 million in FY 2002; and $130 million in FY 2003. Of these amounts, the Secretary may use up to $2 million for each of the fiscal years for administrative expenses. Any budget authority not obligated in the fiscal year for which it is authorized remains available for obligation in subsequent years.

The TIFIA budget authority is subject to an annual obligation limitation that may be established in appropriations law. Like the funding for certain other administrative or allocated programs (not apportioned to the States) that are subject to the annual Federal-aid highway obligation limitation, the amount of TIFIA budget authority that is available to fund credit instruments in a given year may be less than the amount originally authorized for that year. The extent of any budget authority reduction will depend on the ratio of the obligation limitation, which is determined annually in the appropriations process, to the contract authority for the Federal-aid highway program, which was established in TEA–21. For FY 2000, this reduction is 12.9 percent, or $11.6 million. The credit amounts authorized in the TIFIA are not subject to this annual reduction.

The DOT expects that approximately $81 million in net budget authority will be available in FY 2000 to fund the TIFIA credit assistance program. This approximation takes into account unused FY 1999 budget authority, the reduction in FY 2000 budget authority due to the annual obligation limitation, and administrative expenses authorized by the TIFIA statute. The amount of net budget authority available for new TIFIA commitments in FY 2000 also may be affected by credit subsidy adjustments to obligations for prior TIFIA commitments.

The total amount of Federal credit assistance available for new TIFIA commitments in FY 2000 is approximately $1.673 billion, which is less than the $1.8 billion authorization level as a result of contingent TIFIA commitments made in FY 1999.

The amount of credit assistance that may be provided to a project under the TIFIA is limited to not more than 33 percent of eligible project costs.

**Eligible Projects**

Highway, rail, transit, and intermodal projects (including intelligent transportation systems) may receive credit assistance under the TIFIA. See the definition of "project" in 23 U.S.C. 181(9) and 49 CFR 80.3 for a description of eligible projects.

**Threshold Criteria**

Certain threshold criteria must be met by projects seeking TIFIA credit assistance. These eligibility criteria are detailed in 23 U.S.C. 182(a) and 49 CFR 80.13.

**Rating Opinions**

A project sponsor must submit with its application a preliminary rating opinion letter from one or more of the nationally recognized credit rating agencies, as detailed in 23 U.S.C. 182(b)(2)(B) and 49 CFR 80.11. The letter must indicate the reasonable potential for the senior obligations funding the project to receive an investment grade rating. This preliminary rating agency opinion will be based on the financing structure proposed by the project sponsor. A project that does not demonstrate the potential for its senior obligations to receive an investment grade rating will not be considered by the DOT.

The DOT will also use the preliminary rating opinion letter to assess the potential default risk on the requested TIFIA instrument. Therefore, the letter should also provide a preliminary assessment of the strength of either the overall project or the requested TIFIA credit instrument, whichever assessment best reflects the rating agency's preliminary evaluation of the default risk on the requested TIFIA instrument.

Each project selected for TIFIA credit assistance must obtain an investment grade rating on its senior debt obligations and a revised opinion on the default risk of its TIFIA credit instrument before the DOT will execute a credit agreement and disburse funds.

**Application and Selection Process**

Each applicant for TIFIA credit assistance will be required to submit a letter of interest and subsequently an application to the DOT to be considered for approval. The following describes the application process:

1. *Letter of Interest.* Initially, any applicant seeking TIFIA credit assistance must submit a brief letter of interest to the DOT by Wednesday, May 31, 2000. The letter of interest should include a brief project description (including its purpose, basic design features, and estimated capital cost), basic information about the proposed financing for the project (including a preliminary summary of sources and uses of funds and the type and amount of credit assistance requested from the DOT), and a description of the proposed project participants. The letter also should summarize the status of the project's environmental review (*i.e.*, has the project received a Categorical Exclusion, Finding of No Significant Impact, or Record of Decision or, at a minimum, has a draft Environmental Impact Statement been circulated). The letter of interest should not exceed five pages. A multi-modal DOT Credit Program Working Group will review this preliminary submission to ensure that the project meets the most basic requirements for participation in the TIFIA program. The Working Group will then designate a lead modal agency (FHWA, FRA, or FTA) for the project.

2. *Application.* Once approved for further review, the applicant will be notified by a representative from the designated modal agency of its eligibility to submit a formal application. The applicant must submit all required materials (generally described in 49 CFR 80.7 and detailed in the TIFIA application) to the DOT by Wednesday, July 5, 2000. The TIFIA application and additional program information may be obtained from the TIFIA web site at http://tifia.fhwa.dot.gov or through one of the program contacts listed in this notice.

3. *Sponsor Presentation.* Each applicant that passes an initial screening of the application for completeness and satisfies the threshold criteria will be invited to make an oral presentation to the DOT on behalf of its project. The DOT plans to schedule presentations within two weeks of the application deadline, and will discuss the structure and content of the presentation with the applicant at the time of the invitation.

4. *Project Selection.* Based on the application and oral presentation, the DOT will evaluate each project's distinct public benefits and contribution to program goals according to each of the selection criteria described in 23 U.S.C. 182(b) and 49 CFR 80.15. The Secretary of Transportation intends to make final project selections within six

to eight weeks of the application deadline.

**Fees**

For this application cycle, the DOT will require each TIFIA applicant to pay a non-refundable application fee of $5,000. Checks should be made payable to the Federal Highway Administration. The project sponsor applying for TIFIA credit assistance must submit this payment by the application deadline of July 5, 2000. There will be no credit processing fee for this application cycle. Selected applicants will, however, be required to pay fees for loan servicing activities associated with their TIFIA credit instruments. For subsequent application cycles, the DOT may adjust the amount of the application fee and may establish a credit processing fee (to recover all or a portion of the costs to the DOT of evaluating applications, selecting projects to receive assistance, and negotiating term sheets and credit agreements) on the basis of its program implementation experience. The DOT will publish these amounts in each **Federal Register** solicitation for applications.

Applicants shall not include application or credit processing fees or any other expenses associated with the application process (such as charges associated with obtaining the required preliminary rating opinion letter) among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

If there is insufficient budget authority to fund the TIFIA credit instrument for a qualified project that has been selected to receive assistance, the DOT and the approved applicant may agree upon a supplemental fee to be paid by or on behalf of the approved applicant at the time of execution of a term sheet to reduce the subsidy cost of that project. No such fee may be included among eligible project costs for the purpose of calculating the maximum 33 percent credit amount.

Dated: May 4, 2000.

**Rodney E. Slater,**

*Secretary, Department of Transportation.*

[FR Doc. 00–11693 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG 2000–7330]**

### Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Numbers 2115–0506, and 2115–0505

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to request the approval of OMB for the renewal of two Information Collection Requests (ICRs). These ICRs comprise (1) Declaration of Inspection; and (2) Plan Approval and Records for Tank, Passenger, Cargo and Miscellaneous Vessels, Mobile Offshore Drilling Units, Nautical Schools, Oceanographic Vessels, and Electrical Engineering. Before submitting the ICRs to OMB, the Coast Guard is asking for comments on the collections described below.

**DATES:** Comments must reach the Coast Guard on or before July 10, 2000.

**ADDRESSES:** You may mail comments to the Docket Management System (DMS) [USCG 2000–7330], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The DMS maintains the public docket for these requests. Comments will become part of this docket and will be available for inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICRs are available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

**Request for Comments**

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2000–7330] and the specific ICR to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

**Information Collection Requests**

1. *Title:* Declaration of Inspection.
*OMB Control Number:* 2115–0506.
*Summary:* The Coast Guard uses Declarations of Inspection (DOIs) to help prevent spills of oil and hazardous materials, and prevent damage to facilities or vessels. Persons-in-charge of transfers must review and certify compliance with procedures specified by the terms of the DOIs.
*Need:* 33 U.S.C. 1221 authorizes the Coast Guard to establish rules to prevent the discharge of oil and hazardous material from vessels and facilities. (The rules for DOIs appear at 33 CFR 156.150 and 46 CFR 35.35–30.) The Coast Guard uses the Declarations to ensure the integrity of facilities and vessels.
*Respondents:* Persons-in-charge of transfers.
*Frequency:* On occasion.
*Burden:* The estimated burden is 28,332 hours annually.

2. *Title:* Plan Approval and Records for Tank, Passenger, Cargo and Miscellaneous Vessels, Mobile Offshore Drilling Units, Nautical Schools, Oceanographic Vessels, and Electrical Engineering.
*OMB Control Number:* 2115–0505.
*Summary:* This collection of information requires the shipyard, designer, or manufacturer for the construction of a vessel to submit plans, technical information, and operating manuals to the Coast Guard.
*Need:* 46 U.S.C. 3301 and 3306 make the Coast Guard responsible for enforcing rules that promote the safety of life and property in marine transportation. The Coast Guard uses the information collected to ensure that a vessel meets the applicable standards of construction, arrangement, and equipment.
*Respondents:* Shipyards, designers, and manufacturers of certain vessels.
*Frequency:* On occasion.
*Burden:* The estimated burden is 5,286 hours annually.

Dated: May 1, 2000.

**Daniel F. Sheehan,**

*Director of Information and Technology.*

[FR Doc. 00–11706 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2000–16]**

### Petitions for Waiver; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for waivers received and of dispositions of prior petitions.

**SUMMARY:** This notice contains the summary of a petition requesting a waiver from the interim compliance date required of 14 CFR part 91, § 91.867. Requesting a waiver is allowed through § 91.871. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before May 25, 2000.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. 28680, 800 Independence Avenue, SW., Washington, D.C. 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Angela Anderson (202) 267–9681 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Dated: Issued in Washington, D.C., on May 5, 2000.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petition for Waiver**

*Docket No.:* 30028.

*Petitioner:* Aeroflot Russian International Airlines.

*Sections of the FAR Affected:* 14 CFR 91.873.

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, P.L. 106–181 amended the Airport Noise and Capacity Act of 1990, 49 U.S.C. § 47528(b), to allow foreign air carriers, for a limited time, to apply for a waiver from the Stage 3 aircraft requirement of 49 U.S.C. 47528(a).

*Description of Relief Sought:* To permit Aeroflot to operate two Stage 2 IL–62 and one Stage 2 IL–76(F) aircraft pending the replacement of those aircraft with Stage 3 aircraft to resume the air transportation between Seattle and Khabarovsk.

[FR Doc. 00–11711 Filed 5–09–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2000–17]**

### Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of dispositions of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments on petitions received must identify the petition docket number involved and must be received on or before May 31, 2000.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200, Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Cherie Jack (202) 267–7271, Forest Rawls (202) 267–8033, or Venessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC., on May 5, 2000.

**Donald P. Byrne,**

*Assistant Chief Counsel for Regulations.*

**Petitions for Exemption**

*Docket No.:* 29900.

*Petitioner:* Atlantic Coast Airlines and Trans State Airlines.

*Section of the FAR Affected:* 14 CFR 121.344(d)(1).

*Description of Relief Sought:* To permit ASA and TSA to operate its Jetstream-41 (J–41) aircraft without meeting the requirements of 14 CFR 121.344(d)(1).

*Docket No.:* 29941.

*Petitioner:* Hawaiian Airlines, Inc.

*Section of the FAR Affected:* 14 CFR 25.857(c), 25.858, 121.314(c).

*Description of Relief Sought:* To allow Hawaiian Airlines to operate, until May 15, 2001, one DC10–10 airspace beyond the cargo compartment modification deadline of March 30, 2001.

*Docket No.:* 29981.

*Petitioner:* Delta Air Lines, Inc.

*Section of the FAR Affected:* 14 CFR 25.857(c), 25.858, 121.314(c).

*Description of Relief Sought:* To permit Delta Air Lines to operate, until September 20, 2001, nine L–1011 airplanes beyond the cargo compartment modification deadline of March 19, 2001.

**Dispositions of Petitions**

*Docket No.:* 28419.

*Petitioner:* United Parcel Service.

*Section of the FAR Affected:* 14 CFR 121.433(c)(1)(iii), 121.440(s).

121.441(a)(1) and (b)(1), and appendix F to part 121.

*Description of Relief Sought/ Disposition:* To permit UPS to combine recurrent flight and ground training and proficiency checks for UPS's pilots in command, seconds in command, and flight engineers in a single annual training and proficiency evaluation program.

*Grant, 04/06/2000, Exemption No. 6434B.*

*Docket No.:* 29883.

*Petitioner:* Embry-Riddle Aeronautical University.

*Section of the FAR Affected:* 14 CFR 61.65(a)(1).

*Description of Relief Sought/ Disposition:* To permit ERAU to permit students enrolled in ERAU's AGATE III to take concurrently the private pilot and instrument rating practical test, subject to certain conditions and limitations.

*Grant, 04/14/2000, Exemption No. 7168.*

*Docket No.:* 29930.

*Petitioner:* Gulfshore Helicopters.

*Section of the FAR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit Gulfshore to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

*Grant, 03/24/2000, Exemption No. 7155.*

*Docket No.:* 28434.

*Petitioner:* Mercy Air Service, Inc.

*Section of the FAR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit Mercy Air Service to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

*Grant, 03/27/2000, Exemption No. 6769A.*

*Docket No.:* 29782.

*Petitioner:* Mr. Roy Earnest Duckworth.

*Section of the FAR Affected:* 14 CFR 61.129(c)(4)(ii).

*Description of Relief Sought/ Disposition:* To permit Mr. Duckworth to obtain a commercial pilot certificate with a rotorcraft category and helicopter class rating without accomplishing the requirement for 5 hours of solo night flying, subject to certain conditions and limitations.

*Grant, 04/04/2000, Exemption No. 7165.*

*Docket No.:* 29195.

*Petitioner:* Premium Jets, Inc.

*Section of the FAR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit Premier Jets to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

*Grant, 03/27/2000, Exemption No. 7160.*

*Docket No.:* 29737.

*Petitioner:* Air Jamaica Limited.

*Section of the FAR Affected:* 14 CFR 145.47(b).

*Description of Relief Sought/ Disposition:* To permit Air Jamaica to use the calibration standards of the Jamaica Bureau of Standards rather than the calibration standards of the NIST, formerly the NBS, to test its inspection and test equipment, subject to certain conditions and limitations.

*Grant, 03/20/2000, Exemption No. 7152.*

*Docket No.:* 28144.

*Petitioner:* Perris Valley Skydiving.

*Section of the FAR Affected:* 14 CFR 105.43(a).

*Description of Relief Sought/ Disposition:* To permit nonstudent parachutists who are foreign nationals to participate in PVS-sponsored events without complying with the parachute equipment and packing requirements of § 105.43(a).

*Grant, 03/29/2000, Exemption No. 6745A.*

*Docket No.:* 29913.

*Petitioner:* Franklin County Sport Parachute Center, Inc., dba Carolina Sky Sports.

*Section of the FAR Affected:* 14 CFR 105.43(a).

*Description of Relief Sought/ Disposition:* To permit CSS to allow nonstudent parachutists who are foreign nationals to use parachutes that do not meet the requirements of 105.43(a), subject to certain conditions and limitations.

*Grant, 03/21/2000, Exemption No. 7175.*

*Docket No.:* 29949.

*Petitioner:* Air Transport International, L.L.C.

*Section of the FAR Affected:* 14 CFR 121.310(d)(4).

*Description of Relief Sought/ Disposition:* To permit ATI to operate its DC–8 airplanes in passenger-carrying operations without a cockpit control device for each emergency light, subject to certain conditions and limitations.

*Grant, 03/29/2000, Exemption No. 7156.*

*Docket No.:* 29985.

*Petitioner:* Alpha Aviation, Inc.

*Section of the FAR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit Alpha Aviation to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

*Grant, 04/07/2000, Exemption No. 7164.*

*Docket No.:* 29853.

*Petitioner:* JRG Design Inc.

*Section of the FAR Affected:* 14 CFR 25.857(e).

*Description of Relief Sought/ Disposition:* To permit supplemental type certification of DC–10–30F and –40F freighter airplanes with a Class E cargo compartment, with accommodations for up to two supernumeraries immediately aft of the cockpit as proposed, to include the airplane being equipped as proposed with two floor-level emergency exists with escape slide/rafts subject to several conditions.

*Grant, 04/03/2000, Exemption No. 7161.*

*Docket No.:* 28118.

*Petitioner:* King Airlines.

*Section of the FAR Affected:* 14 CFR 135.143(c)(2).

*Description of Relief Sought/ Disposition:* To permit King Airlines to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

*Grant, 03/30/2000, Exemption No. 6093B.*

*Docket No.:* 29496.

*Petitioner:* Blue Mountain Air dba Blue Mountain Lodge.

*Section of the FAR Affected:* 14 CFR 43.3(a) and (g), and paragraph c of appendix A to part 43.

*Description of Relief Sought/ Disposition:* To permit BML's pilots to perform the preventative maintenance functions listed in paragraph c of appendix A to part 43 on an aircraft operated under 14 CFR part 135.

*Denial, 03/21/2000, Exemption No. 7158.*

*Docket No.:* 29483.

*Petitioner:* Jackson Police Department.

*Section of the FAR Affected:* 14 CFR 61.195(g)(1), 91.109(a).

*Description of Relief Sought/ Disposition:* To permit Jackson PD pilots in training to use public aircraft to log the aeronautical experience required by § 61.39 to take the practical test for issuance of a pilot certificate and aircraft rating.

*Denial, 02/28/2000, Exemption No. 7133.*

*Docket No.:* 29842.

*Petitioner:* Mr. Lawrence M. Schilling.

*Section of the FAR Affected:* 14 CFR 121.383(c).

*Description of Relief Sought/ Disposition:* To permit Mr. Schilling to act as a pilot in-operations conducted under part 121 after reaching his 60th birthday.

*Denial, 04/04/2000, Exemption No. 7166.*

[FR Doc. 00–11712 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Chicago Midway Airport, Chicago, IL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Intent to Rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before June 9, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, IL 60018.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas R. Walker, Commissioner of the city of Chicago Department of Aviation at the following address: Chicago O'Hare International Airport, P.O. Box 66142, Chicago, IL 60666.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Chicago Department of Aviation under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Mr. Philip M. Smithmeyer, Manager, Chicago Airports District Office, 2300 East Devon Avenue, Room 320, Des Plaines, IL 60018, (847) 294–7335. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chicago Midway Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 14, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Chicago Department of Aviation was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 3, 2000.

The following is a brief overview of the application.

*PFC application number:* 00–08–C–00–MDW.

*Level of the proposed PFC:* $3.00.

*Actual charge effective date:* September 1, 1993.

*Revised estimated charge expiration date:* November 1, 2044.

*Total estimated PFC revenue:* $20,000,000.00

*Brief description of proposed project:* Residential sound insulation of approximately 600 homes.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: air taxi operators.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the city of Chicago Department of Aviation.

Issued in Des Plaines, Illinois on April 26, 2000.

**Barbara Jordan,**

*Acting Manager, Planning/Programming Branch, Airports Division, Great Lakes Region.*

[FR Doc. 00–11709 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application (00–05–C–00–CLM) To Impose and Use a Passenger Facility Charge (PFC) at William R. Fairchild International Airport, Submitted by the Port of Port Angeles, Port Angeles, WA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at William R. Fairchild International Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

**DATES:** Comments must be received on or before June 9, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jeffrey Robb, Airport Manager, at the following address: Port of Port Angeles, P.O. Box 1350, Port Angeles, WA 98362.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to William R. Fairchild International Airport, under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Ms. Suzanne Lee-Pang, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application (00–05–C–00–CLM) to impose and use PFC revenue at William R. Fairchild International Airport, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On April 28, 2000, the FAA determined that the application to impose and use the revenue from a PFC, submitted by the Port of Port Angeles, William R. Fairchild International Airport, Port Angeles, Washington, was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 29, 2000.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00

*Proposed charge effective date:* August 1, 2000.

*Proposed charge expiration date:* May 1, 2003.

*Total requested for use approval:* $211,683.00.

*Brief description of proposed projects:*

*Impose and Use Projects:* Construct runway 08 safety area; Expand terminal building; Security fencing; Taxiway

safety area grading; Runway 08 safety area drainage design and engineering; Passenger lift; Upgrade baggage handling equipment; Airport layout plan update; Vehicle security gate.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Part 135 Air Taxi/Commercial Operators who conduct operations in air commerce carrying persons for compensation or hire, including air taxi/commercial operators offering on-demand, non-scheduled public or private charters.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the William R. Fairchild International Airport.

Issued in Renton, Washington on April 28, 2000.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 00–11710 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Marine Transportation System National Advisory Council

**ACTION:** National Advisory Council Public Meeting.

**SUMMARY:** The Maritime Administration announces that the Marine Transportation System National Advisory Council (MTSNAC) will hold its first meeting to discuss the Council's role in attaining the desired MTS and formulate an initial Council Action Plan. A public comment period is scheduled for 2:45 to 3:15. To provide time for as many people to speak as possible, speaking time for each individual will be limited to three minutes. Members of the public who would like to speak are asked to contact Kathleen Dunn by May 22, 2000. Commenters will be placed on the agenda in the order in which notifications are received. If time allows, additional comments will be permitted. Oral comments must be submitted in writing at the meeting. Additional written comments are welcome and must be filed by June 8, 2000.

**DATES:** The meeting will be held on Wednesday May 24, 2000, from 8:30 AM to 5 PM.

**ADDRESSES:** The meeting will be held in Ballrooms A and B of the Commonwealth Ballroom of the Holiday Inn and Suites, Historic District Alexandria, 625 First Street, Alexandria, Virginia 22314.

**FOR FURTHER INFORMATION CONTACT:** Kathleen R. Dunn, (202) 366–2307; Maritime Administration, MAR 810, Room 7209, Washington, DC 20590; Kathleen.Dunn@marad.dot.gov.

**Authority:** 5 U.S.C. App 2, Sec.9(a)(2); 41 CFR 101–6.1005; DOT Order 1120.3B.

Dated: May 5, 2000.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00–11747 Filed 5–9–00; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Research and Development Programs Meeting

**AGENCY:** National Highway Traffic Safety Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** This notice announces and provides the agenda for a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will describe and discuss specific research and development projects.

**DATES AND TIMES:** The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on June 15, 2000, beginning at 1:30 p.m. and ending at approximately 4:30 p.m. Questions may be submitted in advance regarding the agency's research and development projects. Questions must be submitted in writing by June 5, 2000, to the Office of the Associate Administrator for Research and Development, NHTSA, at the mailing address, E-mail address, or fax number given below. If sufficient time is available, questions received after June 5, 2000, will be answered at the meeting during the discussion period. The individual, group, or company asking a question does not have to be present for the question to be answered. A consolidated list of answers to questions submitted by June 5, 2000, will be available at the meeting and will be mailed to requesters after the meeting.

**ADDRESSES:** The meeting will be held at NHTSA's Vehicle Research and Test Center (VRTC), East Liberty, Ohio 43319. Directions to VRTC, as well as this **Federal Register** notice, will be available on NHTSA's Web site, at Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/, or by contacting Susie Weiser at VRTC, East Liberty, Ohio, at (937) 666–4511. Questions for the June 15, 2000, meeting relating to the agency's research and development programs should be submitted to the Office of the Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Room 6206, 400 Seventh St., SW., Washington, DC 20590. The fax number is (202) 366–5930.

**SUPPLEMENTARY INFORMATION:** In recent years, since April 1993, NHTSA has provided detailed information about its research and development programs in presentations at a series of public meetings. The purpose is to make available more complete and timely information regarding the agency's research and development programs. This is the twenty-sixth meeting in that series, and it will be held on June 15, 2000, at the Vehicle Research and Test Center, East Liberty, Ohio 43319. To expedite clearance into the VRTC facility, persons who plan to attend the public meeting should contact Susie Weiser, VRTC, East Liberty, Ohio, at (937) 666–4511 by close of business June 13, 2000.

Beginning at 1:30 p.m. and concluding by 4:30 p.m., NHTSA's Office of Research and Development will discuss the following topics:

(1) Overview of Effort to Ready New Test Dummies for Federal Motor Vehicle Safety Standard No. 208;

(2) Preliminary Observations from Side Impact Air Bag Testing;

(3) Preliminary Test Results from School Bus Restraint Testing; and

(4) Status and Overview of NHTSA's Antilock Brake System (ABS) Program.

Based upon time and interest, tours may be given of the Transportation Research Center of Ohio and VRTC facilities. Attendees should indicate interest in this when providing their names for the meeting to Susie Weiser, VRTC, East Liberty, Ohio, at (937) 666–4511 by close of business June 13, 2000.

Additionally, if any interested parties would like to make a presentation regarding technical issues concerning any of NHTSA's research programs,

information concerning the proposed topic and speaker should be submitted in writing to the Associate Administrator for Research and Development, NHTSA, at the mailing address or telefax number given below by 5 p.m. on June 5, 2000.

Any questions regarding research projects that have been submitted in writing not later than 5 p.m. on June 5, 2000, will be answered at the public meeting. The summary minutes of the meeting, copies of materials handed out at the meeting, and answers to the questions submitted for response at the meeting will be available for public inspection in the DOT Docket in Washington, DC, within 3 weeks after the meeting. Copies of this material will then be available at ten cents a page upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. The DOT Docket is open to the public from 10 a.m. to 5 p.m. The summary minutes, handouts, and answers to the previously submitted questions will also be available on NHTSA's Web site at Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announce/meetings/.

NHTSA will provide technical aids to participants as necessary, during the Research and Development Programs Meeting. Thus, any person desiring the assistance of "auxiliary aids" (*e.g.*, sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Rita Gibbons by telephone on (202) 366–4862, by telefax on (202) 366-5930, or by E-mail at rgibbons@nhtsa.dot.gov by 5 p.m. June 5, 2000.

Should it be necessary to cancel the meeting due to inclement weather or to any another emergencies, a decision to cancel will be made as soon as possible and posted immediately on NHTSA's Web site at Announcements/Public Meetings at URL http://www.nhtsa.dot.gov/nhtsa/announcements/meetings/. If you do not have access to the Web site, you may call the information contact listed below and leave your telephone or telefax number. You will be called only if the meeting is postponed or canceled.

The next public meeting to discuss NHTSA's research and development projects is scheduled for September 14, 2000, at the Tysons Westpark Hotel, 8401 Westpark Drive, McLean, Virginia. The meeting will begin at 1:30 p.m. and will end at approximately 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Rita Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: (202) 366–4862. Fax number: (202) 366–5930. E-mail: rgibbons@nhtsa.dot.gov.

Issued: May 4, 2000.

**Raymond P. Owings,**

*Associate Administrator for Research and Development.*

[FR Doc. 00–11694 Filed 5–9–00; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

### Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

**AGENCY:** Bureau of Transportation Statistics, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request abstracted below has been forwarded to the Office of Management and Budget for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 5, 2000 [65 FR 554–555].

**DATES:** Comments must be submitted on or before June 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bernie Stankus, (202) 366–4387, DOT, Office of Airline Information, Room 4125, K–25, 400 Seventh Street, NW., Washington, DC 20590–0001.

**SUPPLEMENTARY INFORMATION:**

**Bureau of Transportation Statistics**

*Title:* Report of Extension to Political Candidates.

*Type of Request:* Extension of a currently approved Collection.

*OMB Control Number:* 2138–0016.

*Form(s):* BTS Form 183.

*Affected Public:* Certificated air carriers.

*Abstract:* An air carrier must submit monthly reports to the Department when the indebtedness for transportation furnished to a candidate, running for Federal office, or to persons acting on behalf of such candidates, exceeds $5,000 on the last day of a month during the 6 months before an election or nomination. After that period, the air carrier shall file such a report with the Office of Airline Information not later than the 20th day following the end of the calendar month in which the election or nomination takes place and thereafter when any change occurs in that report, until a negative report is filed. For Form 183 purposes, a "negative report" is one that indicates an indebtedness of $5,000 or less.

These disclosures have tended to reduce the lag time between when transportation is furnished to political candidates and when it is paid. In the past, such lag time resulted in substantial balances in accounts receivable to some air carriers. This led Congress to enact the Federal Election Campaign Act.

When there are carriers submitting Form 183, the Office of Airline Information compiles a monthly report identifying unpaid balances due air carriers from political candidates and sends the report to the Federal Election Commission.

*Estimated Annual Burden Hours:* 24.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention BTS Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**Donald W. Bright,**

*Acting Director, Office of Airline Information, Bureau of Transportation Statistics.*

[FR Doc. 00–11716 Filed 5–9–00; 8:45 am]

**BILLING CODE 4910–FE–P**

## DEPARTMENT OF TRANSPORTATION

### Bureau of Transportation Statistics

### Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

**AGENCY:** Bureau of Transportation Statistics, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on January 5, 2000 [65 FR 555–557].

**DATES:** Comments must be submitted on or before June 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bernie Stankus, (202) 366–4387, DOT, Office of Airline Information, Room 4125, K–25, 400 Seventh Street, N.W., Washington, D.C. 20590–0001.

**SUPPLEMENTARY INFORMATION:**

**Bureau of Transportation Statistics (BTS)**

*Title:* Report of Traffic and Capacity Statistics—The T–100 System.

*Type of Request:* Extension of a currently approved Collection.

*OMB Control Number:* 2138–0040.

*Form(s):* BTS Schedule T–100 and Form T–100(f).

*Affected Public:* Large certificated and foreign air carriers.

*Abstract:* Large certificated and foreign air carriers submit BTS Form 41, Schedule T–100 and BTS Form T–100(f), respectively.

These reports provide segment and on-flight traffic data. DOT uses the data in safety surveillance, bilateral negotiations, distribution of airport improvement funds, air traffic control, essential air service determinations, etc.

*Estimated Annual Burden Hours:* 15,084.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW, Washington, DC 20503, Attention BTS Desk Officer.

Comments are Invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**Donald W. Bright,**

*Acting Director, Office of Airline Information, Bureau of Transportation Statistics.*

[FR Doc. 00–11717 Filed 5–9–00; 8:45 am]

**BILLING CODE 4910–FE–M**

VOL 65 ISS 91 MY 10 2000 UMI

# Corrections

Federal Register
Vol. 65, No. 91
Wednesday, May 10, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF DEFENSE

### 48 CFR Part 219 and Appendix I to Chapter 2

**[DFARS Case 99–D307]**

### Defense Federal Acquisition Regulation Supplement; Mentor-Protege Program Improvements

*Correction*

In rule document 00–2946, beginning on page 6554, in the issue of Thursday, February 10, 2000, make the following corrections:

**219.7102 [Corrected]**

1. On page 6556, in the first column, in section 219.7102(d)(1)(ii), in the sixth line, "SADBU" should read "(SADBU".

**219.7103–2 [Corrected]**

2. On the same page, in the same column, in section 219.7103–2(b), in the sixth line, "firms" should read "firm".

3. On the same page, in the second column, in section 219.7103–2(e) introductory text, in the third line, "cost" should read "costs".

4. On the same page, in the same column, in section 219.7103–2(f), in the first line, "Authorized" should read "Authorize".

**219.7104 [Corrected]**

5. On the same page, in the same column, in section 219.7104(a), in the first line, "Development" should read "Developmental".

**Appendix I—Corrected**

6. On page 6557, in the second column in paragraph (c), in the seventh line, "it" should read "if".

7. On page 6558, in the second column, in paragraph (c)(2)(v), in the first line "an" should read "An".

8. On the same page, in the same column, in paragraph (f), in the fourth line, after "manager" add "may".

9. On page 6559, in the second column in paragraph (f)(6), in the fourth line, "Investment" should read "Investments".

10. On the same page, in the same column, in the third line from the bottom, "the" should read "that".

11. On the same page, in the third column, in paragraph (d), in the sixth line, "52.232.12" should read "52.232–12".

12. On the same page, in the same column, in the same paragraph, in the seventh line, "Reimbursements" should read "Reimbursement".

13. On the same page, in the same column, in the same paragraph, in the ninth line, "FARS" should read "DFARS".

14. On page 6560, in the first column, in paragraph (e)(1), in the second line, "time" should read "times".

15. On the same page, in the second column, in pagragraph (l), in the second line, the second "be" should be removed.

16. On the same page, in the third column, in paragraph, (a)(3)(i), in the second line, "assistances" should read "assistance".

[FR Doc. C0–2946 Filed 5–9–00; 8:45 am]
BILLING CODE 1505–01–D

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Wednesday,
May 10, 2000

Part II

# Environmental Protection Agency

40 CFR Parts 141 and 142
National Primary Drinking Water Regulations: Ground Water Rule; Proposed Rules

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 141 and 142**

**[WH–FRL–6584–4]**

**RIN 2040–AA97**

## National Primary Drinking Water Regulations: Ground Water Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** EPA is proposing to require a targeted risk-based regulatory strategy for all ground water systems. The proposed requirements provide a meaningful opportunity to reduce public health risk associated with the consumption of waterborne pathogens from fecal contamination for a substantial number of people served by ground water sources.

The proposed strategy addresses risks through a multiple-barrier approach that relies on five major components: periodic sanitary surveys of ground water systems requiring the evaluation of eight elements and the identification of significant deficiencies; hydrogeologic assessments to identify wells sensitive to fecal contamination; source water monitoring for systems drawing from sensitive wells without treatment or with other indications of risk; a requirement for correction of significant deficiencies and fecal contamination (by eliminating the source of contamination, correcting the significant deficiency, providing an alternative source water, or providing a treatment which achieves at least 99.99 percent (4-log) inactivation or removal of viruses), and compliance monitoring to insure disinfection treatment is reliably operated where it is used.

EPA believes that the combination of these components strikes an appropriate regulatory balance which tailors the intensity or burden of protective measures and follow-up actions with the risk being addressed. In addition to proposing requirements for ground water systems, EPA requests comment on ways to address the problem of transient providers of water who furnish drinking water to large numbers of people for a limited period of time. One possible solution is to adopt alternative definitions for "public water systems" which is currently defined as "one that serves 25 or more people or has 15 or more service connections and operates at least 60 days per year. EPA is only requesting comment on this issue. The Agency is not today proposing to change the definition of "public water system ," or modify related provisions. If EPA decides to take action on this issue, EPA will publish a proposal at a later date.

**DATES:** The EPA must receive comments on or before July 10, 2000.

**ADDRESSES:** References, supporting documents and public comments (and additional comments as they are provided) are available for review at EPA's Drinking Water Docket #W–98–23: 401 M Street, SW, Washington, DC 20460 from 9 a.m. to 4 p.m., Eastern Time, Monday through Friday, excluding Federal holidays.

You may submit comments by mail to the docket at: 1200 Pennsylvania Ave., NW, Washington, DC 20460 or by sending electronic mail (e-mail) to ow-docket@epa.gov. Hand deliveries should be delivered to: EPA's Drinking Water Docket at 401 M Street, SW, Washington, DC 20460.

For access to docket materials, please call 202/260–3027 to schedule an appointment and obtain the room number.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the Safe Drinking Water Hotline, telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time. For technical inquiries, contact the Office of Ground Water and Drinking Water (MC 4607), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., N.W. Washington, DC 20460; telephone (202) 260–3309.

**SUPPLEMENTARY INFORMATION:**

### Regulated Entities

Entities potentially regulated by the Ground Water Rule are public water systems using ground water. Regulated categories and entities include:

| Category | Examples of regulated entities |
|---|---|
| Industry | Public ground water systems. |
| State, Local, Tribal, or Federal Governments. | Public ground water systems. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 141.400(b) of this proposed rule. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT**.

### Abbreviations Used in This Notice

AWWA: American Water Works Association
ASDWA: Association of State Drinking Water Administrators
AWWARF: American Water Works Association Research Foundation
BMP: Best Management Practice
CDC: Centers for Disease Control and Prevention
CT: The residual concentration of disinfectant multiplied by the contact time
CWS: community water system
CWSS: Community Water System Survey
DBP: disinfection byproducts
ELR: Environmental Law Reporter
EPA: Environmental Protection Agency
FR: Federal Register
GAO: Government Accounting Office
GWR: Ground Water Rule
GWS: ground water system
HAA5: Haloacetic acids consisting of the sum of mono-, di-, and trichloroacetic acids, and mono-and dibromoacetic acids
HAV: Hepatitis A Virus
ICR: Information Collection Rule
IESWTR: Interim Enhanced Surface Water Treatment Rule
IT: UV irradiance multiplied by the contact time
m: meter
ml: milliliters
MCL: maximum contaminant level
MCLG: maximum contaminant level goal
mg/L: milligrams per liter
MPN: most probable number
MWCO: molecular weight cut-off
NCWS: non-community water system
NTNCWS: non-transient non-community water system
PCR: polymerase chain reaction
PWS: public water system
RO: reverse osmosis
RT–PCR: reverse-transcriptase, polymerase chain reaction
SBREFA: Small Business Regulatory Enforcement Fairness Act
SDWA: Safe Drinking Water Act
SDWIS: Safe Drinking Water Information System
Stage 1 DBPR: Stage 1 Disjnfectants/ Disinfection Byproducts Rule
Stage 2 DBPR: Stage 2 Disinfectants/ Disinfection Byproducts Rule
SWAPP: Source Water Assessment and Protection Program
SWTR: Surface Water Treatment Rule
TCR: Total Coliform Rule
TNCWS: transient non-community water system
TTHM: total trihalomethanes
UIC: Underground Injection Control
USGS: United States Geological Survey
US EPA: United States Environmental Protection Agency
UV: ultraviolet radiation
WHP: Wellhead Protection

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## I. Introduction and Background

The purpose of this section is to provide background on existing regulations that affect ground water systems and current state practices.

### *A. Statutory Authority*

This section discusses the Safe Drinking Water Act (SDWA) requirements which EPA must meet in developing the Ground Water Rule (GWR).

EPA has the responsibility to develop a GWR which not only specifies the appropriate use of disinfection but, just as important, addresses other components of ground water systems to ensure public health protection. Section 1412(b)(8) states that EPA develop regulations specifying the use of disinfectants for ground water systems "as necessary." Under these provisions, EPA has the responsibility to develop a ground water rule which specifies the appropriate use of disinfection, and, in addition, addresses other components of ground water systems to ensure public health protection.

### *B. Existing Regulations*

This section briefly describes the existing regulations that apply to ground water systems. These rules are the baseline for developing the GWR. The regulations that will be discussed include the Total Coliform Rule (TCR)(US EPA, 1989a), Surface Water Treatment Rule (SWTR)(US EPA, 1989b), Interim Enhanced Surface Water Treatment Rule (IESWTR)(US EPA 1998d), Information Collection Rule (ICR)(US EPA, 1996b), Stage 1 Disinfectant/Disinfection Byproducts Rule (Stage 1 DBPR)(US EPA, 1998e), Underground Injection Control Program (US EPA, 1999g) and the Source Water Assessment and Protection Program/Wellhead Protection Program.

1. Total Coliform Rule

The Total Coliform Rule (TCR), promulgated on June 29, 1989 (54 FR 27544)(US EPA,1989a) covers all public water systems. The rule protects public water supplies from disease-causing organisms (pathogens), and it is the most important regulation applicable to drinking water from ground water systems.

Total coliforms are a group of closely related bacteria that are generally free-living in the environment, but are also normally present in water contaminated with human and animal feces. They generally do not cause disease (there are some exceptions). Specifically, coliforms are used as a screen for fecal contamination, as well as to determine the efficiency of treatment and the integrity of the water distribution system. The presence of total coliforms in drinking water indicates that the system is either fecally contaminated or vulnerable to fecal contamination.

The TCR requires systems to monitor their distribution system for total coliforms at a frequency that depends upon the number of people served and whether the system is a community water system (CWS) or non-community water system (NCWS). The monitoring frequency ranges from 480 samples per month for the largest systems to once annually for some of the smallest systems. If a system has a total coliform-positive sample, it must (1) test that sample for the presence of fecal coliform or *E. coli*, (2) collect three repeat samples (four, if the system collects one routine sample or fewer per month) within 24 hours and analyze them for total coliforms (and then fecal coliform or *E. coli*, if positive), and (3) collect at least five routine samples in the next month of sampling regardless of system size.

Under the TCR, a system that collects 40 or more samples per month (generally systems that serve more than 33,000 people) violates the maximum contaminant level (MCL) for total coliforms if more than 5.0% of the samples (routine + repeat) it collects per month are total coliform-positive. A system that collects fewer than 40 samples per month violates the MCL if two samples (routine or repeat samples) during the month are total coliform-positive. For any size system, if two consecutive total coliform-positive samples occur at a site during a month, and one is also fecal coliform/*E. coli*-positive, the system has an acute violation of the MCL, and must provide public notification immediately. The presence of fecal coliforms or *E. coli* indicates that recent fecal contamination is present in the drinking water.

The TCR also requires a sanitary survey every five years (ten years for a protected, disinfected, ground water system) for every system that takes fewer than five samples per month (the monitoring frequency for systems serving 4,100 people or fewer, which is approximately 97% of GWS). Other provisions of the TCR include criteria for invalidating a positive or negative sample and a sample siting plan to ensure that all parts of the distribution system are monitored over time.

2. Surface Water Treatment Rule and Interim Enhanced Surface Water Treatment Rule

The Surface Water Treatment Rule, promulgated in June 29, 1989 (54 FR 27486)(40 CFR Part 141, Subpart H)(US EPA 1989b), covers all systems that use surface water or ground water under the direct influence of surface water. It is intended to protect against exposure to *Giardia lamblia*, viruses, and *Legionella*, as well as many other pathogens. The rule requires all such systems to reduce the level of Giardia by 99.9% (3-log reduction) and viruses by 99.99% (4-log reduction). Under this rule, all surface water systems must disinfect. The vast majority must also filter, unless they meet certain EPA-specified filter avoidance criteria that define high source water quality. More specifically, the SWTR requires: (1) A 0.2 mg/L disinfectant residual entering the distribution system, (2) maintenance of a detectable disinfectant residual in all parts of the distribution system; (3) compliance with a combined filter effluent performance standard for turbidity (*i.e.*, for rapid granular filters, 5 nephelometric turbidity units (NTU) maximum; 0.5 NTU maximum for 95% of measurements (taken every 4 hours) during a month); and 4) watershed protection and other requirements for unfiltered systems. The SWTR set a maximum contaminant level goal (MCLG) of zero for *Giardia*, viruses, and *Legionella*. The MCLG is a non-enforceable level based only on health effects.

On December 16, 1998, EPA promulgated the Interim Enhanced Surface Water Treatment Rule (IESWTR) (63 FR 69478)(US EPA, 1998d). The IESWTR covers all systems that use surface water, or ground water under the direct influence of surface water, that serve 10,000 people or greater. Key provisions include: a 2-log *Cryptosporidium* removal requirement for filtered systems; strengthened combined filter effluent turbidity performance standards (1 NTU maximum; 0.3 NTU maximum for 95% of measurements during a month); individual filter turbidity provisions; disinfection benchmark provisions to ensure continued levels of microbial protection while facilities take the necessary steps to comply with new disinfection byproduct (DBP) standards; inclusion of *Cryptosporidium* in the definition of ground water under the direct influence of surface water and in the watershed control requirements for unfiltered public water systems; requirements for covers on new finished water reservoirs; sanitary surveys for all surface water systems regardless of size; and an MCLG of zero for *Cryptosporidium*. In a parallel rulemaking, EPA has proposed a companion microbial regulation for surface water systems serving less than 10,000 people, the Long Term 1 Enhanced Surface Water Treatment Rule.

3. Information Collection Rule

The Information Collection Rule, promulgated on May 14, 1996 (61 FR 24368)(40 CFR part 141, Subpart M)(US EPA, 1996b), is a monitoring and data reporting rule. The data and information provided by this rule will support development of the Stage 2 Disinfection Byproducts Rule and a related microbial rule, the Long Term 2 Enhanced SWTR, scheduled for promulgation in May 2002.

The ICR applied to large water systems serving at least 100,000 people, and ground water systems serving at least 50,000 people. About 300 systems operating 500 treatment plants were involved. The ICR required systems to collect source water samples, and in some cases finished water samples, monthly for 18 months, and test them for *Giardia*, *Cryptosporidium*, viruses, total coliforms, and either fecal coliforms or *E. coli*. The ICR also required systems to determine the concentrations of a range of disinfectant and disinfection byproducts in different parts of the system. These disinfection byproducts form when disinfectants used for pathogen control react with naturally occurring total organic compounds (TOC) already present in source water. Some of these byproducts are toxic or carcinogenic. The rule also required systems to provide specified operating and engineering data to EPA. The required 18 months of monitoring under the ICR ended in December 1998.

As noted earlier, the only ground water systems affected by the ICR were those that served at least 50,000 people. These systems had to conduct treatment study applicability monitoring (by measuring TOC levels) and, in some

cases, studies to assess the effectiveness of granular activated carbon or membranes to remove DBP precursors. In addition, ground water systems serving at least 100,000 people had to obtain disinfectant and DBP occurrence and treatment data. EPA is still processing the ICR data, and has not used this information in developing the GWR.

4. Stage 1 Disinfectants/Disinfection Byproducts Rule

The Stage 1 Disinfectants/Disinfection Byproducts Rule (Stage 1 DBPR) (63 FR 69389; December 16, 1998) (US EPA, 1998e) sets maximum residual disinfection level limits for chlorine, chloramines, and chlorine dioxide, and MCLs for chlorite, bromate, and two groups of disinfection byproducts: total trihalomethanes (TTHMs) and haloacetic acids (HAA5). TTHMs consist of the sum of chloroform, bromodichloromethane, dibromochloromethane, and bromoform. HAA5 consist of the sum of mono-, di-, and trichloroacetic acids, and mono- and dibromoacetic acids. The rule requires water systems that use surface water or ground water to remove specified percentages of organic materials, measured as total organic carbon (TOC), that may react with disinfectants to form DBPs. Under the rule, precursor removal will be achieved through a treatment technique (enhanced coagulation or enhanced softening) unless a system meets alternative criteria.

The Stage 1 DBPR applies to all CWSs and non-transient NCWSs, both surface water systems and ground water systems, that treat their water with a chemical disinfectant for either primary or residual treatment. In addition, certain requirements for chlorine dioxide apply to transient water systems.

A ground water system that disinfects with chlorine or other chemical disinfectant must comply with the Stage 1 DBPR by December 2003. Sampling frequency will depend upon the number of people served. Ground water systems not under the direct influence of surface water that serve 10,000 people or greater must take one sample per quarter per treatment plant, and analyze for TTHMs and HAA5; systems that serve fewer than 10,000 people must take one sample per year per treatment plant during the month of warmest water temperature, and analyze for the same chemicals. Systems must monitor for chlorine or chloramines at the same location and time that they monitor for total coliforms. Additional monitoring for other chemicals is required for systems that use ozone or chlorine dioxide.

5. Underground Injection Control Program

In 1980, EPA established an Underground Injection Control (UIC) Program (US EPA, 1999g) to prevent injection practices which contaminate sources of drinking water. The UIC Program protects both underground sources of drinking water and ground water under the direct influence of surface water, which includes at least 41 percent of the streams and rivers in the U.S. during dry periods. Injection is a common and long-standing method of placing fluids underground for disposal, storage, replenishment of ground water, enhanced recovery of oil and gas, and mineral recovery. These fluids often contain contaminants. The EPA sets minimum requirements for effective State programs to ensure that injection practices, or "injection wells" as they are called in the UIC Program, are operated safely. EPA or the appropriate State regulatory agency may impose on any injection well, requirements for siting, construction, corrective action, operation, maintenance, monitoring, reporting, plugging and abandonment, and impose penalties on violators. The UIC Program regulations are designed to recognize varying geologic, hydrologic or historic conditions among different States or areas within a State.

The UIC Program regulations are found under Title 40 of the Code of Federal Regulations (CFR), Parts 124, and 144–148. Section 144.6 divides injection practices into five categories or classes of wells. Classes I, II, and III are wells which inject fluids beneath and away from aquifers used by ground water systems into confined geologic formations. These wells are associated with municipal or industrial waste disposal, hazardous waste or radioactive waste sites, oil and gas production, and extraction of minerals. Class IV and most of Class V are wells which inject contaminants, into or above aquifers which may be used by ground water systems. Class IV wells inject hazardous or highly radioactive wastes and are banned by all States and EPA. Class V wells include storm water and agricultural drainage wells, dry wells, floor drains and similar types of shallow disposal systems which discharge directly or indirectly to ground water, but in any case, must not endanger the ground water resources. However, Class V wells which may pose the greatest potential threat to ground water systems include poorly-designed or malfunctioning large-capacity septic tanks, leach fields and cesspools associated with solely sanitary wastewater disposal. Malfunctioning septic systems can result in the release of disease-causing microorganisms including enteric viral and bacterial pathogens to surface and ground water. Multi-family, commercial, manufacturing, recreational, and municipal facilities, particularly those located in unsewered areas sometimes dispose both sanitary waste and process wastewater containing harmful chemicals in Class V wells. This combination can increase the risk of contamination to aquifers used by ground water systems. Approximately half of the States have adopted primary enforcement authority for the regulation in whole or part and, therefore, have primary enforcement responsibility (primacy). State enforcement activities range from notices of improper activities to penalties and well closures. For those States which do not have primacy, the EPA Regional Offices perform the enforcement duties. (Note: the UIC Program does not regulate individual or single family residential septic systems and cesspools which inject solely sanitary wastewater) (40 CFR 144.1(g)(1)(2)). EPA has finalized banning large capacity cesspools in ground water source water protection areas (64 FR 234, December 7, 1999)(USEPA, 1999g).

6. Source Water Assessment and Protection Program (SWAPP) and the Wellhead Protection (WHP) Program

The Wellhead Protection Program (WHP Program) in SDWA section 1428 requires every State to develop a program that protects ground water sources of public drinking water. The intended result of the WHP Program are local pollution prevention programs that reduce or eliminate the threats of contamination to ground water sources of drinking water. To do this, States delineate wellhead protection areas (WHPA) in which sources of contamination are managed to minimize ground water contamination. WHPA boundaries are determined based on factors such as well pumping rates, time-of-travel of ground water flowing to the well, aquifer boundaries, and degree of aquifer protection by the overlying geology. These hydrogeologic characteristics have a direct effect on the likelihood and extent of contamination. Currently, 48 States and two territories have a WHP Program in place.

A new Source Water Assessment and Protection Program (SWAPP) was incorporated into SDWA section 1453 and requires each State to establish a SWAPP that describes how the State will: (1) Delineate source water

protection areas; (2) inventory significant contaminants in these areas; and (3) determine the susceptibility of each public water supply to contamination. This program builds upon the WHP Program; however, it addresses both ground water and surface water sources of public drinking water. The States' SWAPP were approved by EPA by November, 1999. Under the SWAPP, the State must complete source water assessments for all PWSs by November 6, 2001, although EPA may grant an extension to May 6, 2003. A summary of the results of the source water assessments must then be made available to the public in CWSs' Consumer Confidence Reports. The 1996 Amendments to the SDWA do not require States to protect water sources after the assessments are completed.

EPA seeks, in today's proposed GWR, to incorporate the States' SWAPP and WHP Programs into an overall Agency program for protecting ground water sources of public drinking water by encouraging States to use information gathered through these programs in site-specific sanitary surveys and hydrogeologic sensitivity assessments where appropriate.

*C. Industry Profile—Baseline Information*

1. Definitions and Data Sources

Outlined in the following section are data sources relied upon by the Agency to develop baseline information for the GWR. The baseline information is important to understanding how various regulatory options might affect risk reduction and the cost to small public water systems. The information shows that there is a large number of systems which solely utilize ground water, over 156,000. In addition, most of the ground water systems are small, with 97% serving 3,300 or fewer people. However, 55% of the people served by ground water sources get their drinking water from systems which serve 10,000 or more persons (one percent of the systems).

A public water system (PWS) is one that serves 25 or more people or has 15 or more service connections and operates at least 60 days per year. The following discussion of PWSs is based on the current definition of PWS (i.e., operating at least 60 days a year). A PWS can be publicly owned or privately owned. EPA classifies PWSs as community water systems (CWSs) or non-community water systems (NCWSs). CWSs are those that serve at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. NCWSs do not have year-round residents, but serve at least 15 service connections used by travelers or intermittent users for at least 60 days each year, or serving an average of 25 individuals for at least 60 days a year. NCWSs are further classified as either transient or non-transient. A non-transient non-community water system (NTNCWS) serves at least 25 of the same persons over six months per year (*e.g.*, factories and schools with their own water source). Transient non-community water systems (TNCWS) do not serve at least 25 of the same persons over six months per year (*e.g.*, many restaurants, rest stops, parks). The majority of ground water systems are NCWSs, with 60% (93,618) transient and 12% (19,322) non-transient. CWSs make up the remaining 28% (44,910) of all ground water systems. Although there are far more NCWSs, CWSs serve a far larger number of people.

Over 88 million people are served by CWSs that use ground water and 20 million people are served by NCWSs that use ground water. An overlap occurs because most people are served by both types of systems which may also include a combination of ground and surface water. For example, a person may be served by a surface water community water system (CWS) at home and by a ground water non-community water system (NCWS) at work.

EPA uses two primary sources of information to characterize the universe of ground water systems: the Safe Drinking Water Information System (SDWIS) and the Community Water System Survey (CWSS) (US EPA, 1997c). EPA's SDWIS contains data on all PWSs as reported by States and EPA Regions. This data reflects both mandatory and optional reporting components. States must report the location of the system, system type (CWS, TNCWS, or NTNCWS), primary raw water source (ground water, surface water or ground water under the direct influence of surface water), and violations. States may also report, at their option, type of treatment and ownership type. EPA does not have complete data on the discretionary items (such as treatment) in SDWIS for every system; this is especially common for NCWSs.

The second source of information, CWSS, is a detailed survey of surface and ground water CWSs conducted by EPA in 1995 (US EPA, 1997c). The CWSS includes information such as the number of system operators, revenues, expenses, treatment practices, source water protection measures, and capacity (*i.e.*, the amount of water the system is designed to deliver). The CWSS contains data from 1,980 water systems, and is stratified to represent CWSs across the U.S. Of the 1,980 water systems that were surveyed by CWSS, 1,020 are ground water systems; 510 are surface water systems; and 450 represent purchased water systems. Among the ground water systems represented, approximately 17% were from systems serving 100 persons or less; 20% were from systems serving 101–500 persons; 13% were from systems serving 501–1,000 persons; 14% were from systems serving 1,001–3,300 persons; 15% were from systems serving 3,301–10,000 persons; 10% were from systems serving 10,001–50,000 persons; and 11% were from systems serving 50,001 or more persons.

Baseline profile data for ground water systems from SDWIS and CWSS are summarized later. The data on system ownership, treatment, and operator information is from the CWSS.

2. Alternate Definition of "Public Water System" and the Problem of Short-Term Water Providers

EPA is not today proposing to change the definition of "public water supply," nor proposing additional requirements for short-term water providers. If EPA decides to take either action, EPA will publish a proposal at a later date. However, EPA requests comment on the following issues.

A PWS is one that serves 25 or more people or has 15 or more service connections and operates at least 60 days per year. EPA requests comment on the definition of "public water system" specifically, shortening the time period within the regulatory definition (§ 141.2). Section 1401(4)(A) of the SDWA defines public water system as one that "regularly serves at least twenty-five individuals." EPA by regulation defined the minimum time period that a system "regularly" serves as 60 days. See 40 FR 59566, December 24, 1975 for a discussion of the definition. The current definition applies after a minimum of 1,500 consumer servings (60 days multiplied by 25 individuals). However, some drinking water providers serve far more people during just a few events. For example, out-door public events may occur at a site just a few days a year but may draw thousands of people to each event. Such drinking water providers thus can affect the public health of a similar number of persons in a short period of time as a system that serves fewer people for a longer period. EPA wants to provide the same public health protection in these situations. Only

contaminants that cause adverse health effects through small volumes or short exposure (*e.g.*, acute contaminants such as microbes, nitrate and nitrite) are of concern at these short term events. Therefore, EPA is considering changing the definition of "public water system" by reducing the 60 day time frame to 30 days and including events drawing many people on one or just a few days, specifically by adding the phrase, "or serves at least 750 people for one or more days" to the end of the current definition of "public water system." In other words, for short-term providers, the term "regularly serves" would be defined in terms of the number of persons served rather than days of service, but the minimum number of persons served would be equivalent to the number of servings for longer-term systems. EPA requests comment on this issue. Rather than the simple total of 750 (30 days times 25 people), should EPA include a minimum of persons served days (calculated by multiplying the average number of individuals served by the number of days the system serves water)? What should that number be? Should there be a sliding scale (*e.g.*, for a system operating one day and serving more than 10,000 consumers, and systems operating more than 30 days and serving 2,000 consumers)? EPA requests comments on defining/identifying systems, implementation, public notice, training, monitoring and record keeping and reporting issues for these systems if they were included.

As an alternate to changing the definition EPA is also considering and requesting comments on requiring under section 1431 of the SDWA or other appropriate authorities that transient water providers or other types of drinking water systems (including those not currently defined as public water systems) monitor for acute contaminants prior to providing water to the public and requiring that any such provider that finds acute contaminants at a level above the MCL not be allowed to serve drinking water until it is corrected. Currently, transient public water systems must currently monitor for total coliforms, nitrate and nitrite. In addition, transient public water systems using surface water or ground water under the direct influence of surface water must comply with the treatment technique requirements of the SWTR. EPA is also considering proposing requiring any non-community water system that is not operated year round monitor for: fecal coliforms, nitrate and nitrate, and that monitoring required to show treatment technique compliance (*e.g.*, *Cryptosporidium*) no more than 30 days prior to beginning operation for that season. EPA requests comment on what time frame the monitoring should be completed prior to beginning operation (*i.e.*, 10 or 15 days).

3. Number and Size of Ground Water Systems

Nationally, SDWIS indicates that there are approximately157,000 public water systems that use ground water solely (SDWIS, 1997). Slightly more than 13,000 additional systems use surface water. SDWIS only describes any system that uses any amount of surface water as a surface water system. SDWIS therefore, does not have information on the number of systems that mix ground water and surface water. Under the SDWA and for purposes of the Regulatory Flexibility Act (RFA) analysis, EPA defines a small system as serving fewer than 10,000 people. According to SDWIS (1997), 96.6% of the 42,413 CWSs and virtually all of the NCWSs that use ground water serve fewer than 10,000 persons and thus are "small." Collectively, 99% of systems serve fewer than 10,000 people. About 97% of the systems (152,555) serve 3,300 people or fewer (totaling over 31 million people nationally). The purpose of these requirements would be to prevent any endangerment to public health that might occur if these short-term, high volume providers dispense drinking water that is untested and potentially contaminated.

4. Location of Ground Water Systems

Ground water systems are located in all 50 States, many tribal lands and most United States territories. The number of ground water systems varies substantially by State. The largest numbers of ground water systems are in the States of Wisconsin, Michigan, Pennsylvania, New York and Minnesota. These five States, each with over 8,000 ground water systems, account for over 50,698 ground water systems—one third of the total number in the U.S. By contrast, Hawaii (126), Kentucky (287), Rhode Island (430), and the United States territories (<254) have the fewest ground water systems (See Table I–1).

5. Ownership of Ground Water Systems

For ground water CWSs, 36% are publicly operated, 35% are owned and operated by private entities whose primary business is providing drinking water, and 29% are ancillary water systems which are operated by entities whose primary business is not providing drinking water, but do so to support their primary business (*e.g.*, mobile home park operators). The distribution of ownership type, however, varies significantly with the size of the system. For example, over 90% of the ground water systems serving less than 100 people are privately owned or are ancillary systems. For systems serving over 100,000 people, only 16% are privately owned and none are ancillary systems.

TABLE I–1.—NUMBER OF GROUND WATER SYSTEMS AND POPULATIONS SERVED BY STATE AND SYSTEM TYPE

| State/territory | CWSs | | TNCWSs | | NTNCWSs | |
|---|---|---|---|---|---|---|
| | Number of systems | Population served | Number of systems | Population served | Number of systems | Population served |
| Alabama | 345 | 1,283,469 | 123 | 11,170 | 46 | 21,182 |
| Alaska | 511 | 342,722 | 906 | 97,647 | 0 | 0 |
| American Samoa | 10 | 48,692 | 0 | 0 | 0 | 0 |
| Arizona | 783 | 1,308,843 | 602 | 120,126 | 216 | 100,317 |
| Arkansas | 480 | 1,003,145 | 442 | 22,521 | 57 | 13,528 |
| California | 2,831 | 14,223,977 | 3,698 | 1,301,671 | 1,018 | 359,096 |
| Colorado | 548 | 927,917 | 1,061 | 153,454 | 133 | 34,884 |
| Commonwealth of the Northern Marianas | 30 | 50,769 | 7 | 620 | 6 | 3,039 |
| Connecticut | 537 | 311,771 | 3,360 | 2,980,181 | 641 | 121,664 |
| Delaware | 225 | 173,460 | 215 | 57,634 | 86 | 24,840 |
| District of Columbia | 0 | 0 | 0 | 0 | 0 | 0 |
| Florida | 2,019 | 13,132,468 | 3,660 | 304,865 | 1,119 | 286,055 |
| Georgia | 1,465 | 1,484,860 | 663 | 127,661 | 291 | 80,240 |
| Guam | 6 | 20,220 | 0 | 0 | 2 | 770 |

TABLE I–1.—NUMBER OF GROUND WATER SYSTEMS AND POPULATIONS SERVED BY STATE AND SYSTEM TYPE—Continued

| State/territory | CWSs | | TNCWSs | | NTNCWSs | |
|---|---|---|---|---|---|---|
| | Number of systems | Population served | Number of systems | Population served | Number of systems | Population served |
| Hawaii | 109 | 1,247,315 | 3 | 1,125 | 14 | 7,437 |
| Idaho | 658 | 579,778 | 1,033 | 125,873 | 265 | 68,195 |
| Illinois | 1,255 | 2,606,104 | 3,715 | 413,000 | 446 | 142,655 |
| Indiana | 806 | 1,826,820 | 2,984 | 327,229 | 693 | 158,102 |
| Iowa | 1,033 | 1,239,902 | 639 | 78,653 | 133 | 35,715 |
| Kansas | 601 | 747,169 | 110 | 4,481 | 67 | 23,602 |
| Kentucky | 124 | 271,630 | 83 | 9,374 | 80 | 21,620 |
| Louisiana | 1,211 | 2,707,805 | 482 | 115,804 | 234 | 88,070 |
| Maryland | 448 | 519,289 | 2,509 | 93,757 | 495 | 142,171 |
| Massachusetts | 360 | 1,396,430 | 863 | 209,476 | 229 | 67,650 |
| Michigan | 1,185 | 1,602,792 | 8,930 | 1,187,331 | 1,718 | 344,654 |
| Minnesota | 919 | 2,074,843 | 6,963 | 252,602 | 672 | 49,514 |
| Mississippi | 1,253 | 2,586,680 | 169 | 28,006 | 126 | 89,416 |
| Missouri | 1,194 | 1,638,152 | 1,040 | 138,894 | 227 | 76,360 |
| Montana | 554 | 267,597 | 1,011 | 140,745 | 215 | 38,504 |
| Nebraska | 616 | 811,112 | 584 | 22,241 | 189 | 26,219 |
| Nevada | 250 | 187,509 | 273 | 55,792 | 91 | 28,497 |
| New Hampshire | 621 | 262,371 | 1,012 | 181,949 | 421 | 77,505 |
| New Jersey | 516 | 2,339,500 | 2,955 | 346,484 | 1,009 | 274,758 |
| New Mexico | 600 | 1,235,920 | 506 | 74,256 | 149 | 38,101 |
| New York | 1,940 | 4,396,557 | 5,742 | 853,533 | 693 | 248,223 |
| North Carolina | 1,900 | 1,271,804 | 5,373 | 542,400 | 655 | 198,136 |
| North Dakota | 258 | 239,874 | 215 | 16,910 | 22 | 2,349 |
| Ohio | 1,129 | 3,555,876 | 3,545 | 533,921 | 1,116 | 276,441 |
| Oklahoma | 556 | 671,287 | 302 | 34,172 | 123 | 20,419 |
| Oregon | 677 | 622,157 | 1,390 | 233,477 | 332 | 67,531 |
| Pennsylvania | 1,788 | 1,567,696 | 7,017 | 922,336 | 1,251 | 480,328 |
| Puerto Rico | 207 | 623,958 | 4 | 765 | 43 | 36,426 |
| Rhode Island | 59 | 127,854 | 300 | 48,875 | 71 | 25,246 |
| South Carolina | 550 | 671,878 | 577 | 54,837 | 248 | 71,239 |
| South Dakota | 367 | 250,742 | 243 | 42,949 | 25 | 3,072 |
| Tennessee | 193 | 1,312,996 | 503 | 61,504 | 58 | 11,010 |
| Texas | 3,613 | 6,150,001 | 1,378 | 245,171 | 748 | 253,468 |
| Tribes | 685 | 330,466 | 0 | 0 | 82 | 20,833 |
| Utah | 335 | 583,506 | 439 | 79,371 | 52 | 20,969 |
| U.S. Virgin Islands | 0 | 0 | 0 | 0 | 0 | 0 |
| Vermont | 346 | 154,521 | 718 | 523,079 | 1 | 25 |
| Virginia | 1,199 | 584,779 | 1,911 | 443,920 | 772 | 312,422 |
| Washington | 2,092 | 2,299,340 | 1,498 | 283,735 | 287 | 70,009 |
| West Virginia | 297 | 304,888 | 644 | 47,313 | 182 | 39,318 |
| Wisconsin | 1,117 | 1,947,016 | 9,704 | 731,781 | 1,049 | 214,561 |

*D. Effectiveness of Various Best Management Practices in Ground Water Systems*

There are numerous sanitation practices, called best management practices (BMPs), to prevent, identify and correct contamination in a water supply. These practices relate to well siting, well construction, distribution system design and operations. Examples of BMPs that form a barrier to ground water contamination include drilling into a protected aquifer; siting a well away from sources of contamination; identifying and controlling contamination sources; and disinfection. BMPs that form a barrier to well contamination include well casing, well seals, and grouting the well. Distribution system BMPs include disinfection; maintaining positive pressure; flushing water mains; and adopting cross connection control programs. Surveillance BMPs such as sanitary surveys are conducted to identify weaknesses in the barriers.

EPA recognizes that BMPs can and do contribute significantly to the safety of drinking water; however, the effectiveness of each individual practice can be difficult to measure. Two studies, State Ground Water Management Practices—Which Practices are Linked to Significantly Lower Rates of Total Coliform Rule Violations? (US EPA, 1997d) and the Analysis of Best Management Practices for Community Ground Water Systems (Association of State Drinking Water Administrators, or ASDWA, 1998), were conducted to examine the relative effectiveness of BMPs in reducing microbial contamination of ground water systems. The EPA study compared BMP implementation at the State level to total coliform MCL violation rates of community ground water systems over a four year period. The ASDWA study compared BMP implementation to detections of both total and fecal coliform in community ground water systems over a two year period.

A third study was conducted by EPA, Ground Water Disinfection and Protective Practices in the United States, (US EPA, 1996a) to review State practices and requirements for the protection of drinking water that has ground water as its source.

1. EPA Report on State Ground Water Management Practices

In the EPA study, State Ground Water Management Practices—Which

Practices are Linked to Significantly Lower Rates of Total Coliform Rule Violations? (US EPA, 1997d), 12 BMPs were compared to the MCL violation rate for total coliform in community water systems by State. The 12 State BMPs were taken from the EPA report Ground Water Disinfection and Protective Practices in the United States (US EPA, 1996a). The study used total coliform MCL violation data in SDWIS for community water systems for Fiscal Years 1993 through 1996. In the study, pairwise and stepwise linear regression analyses were used to determine if there was a statistically significant difference in the TCR MCL violation rates between those States that practice a particular BMP and those that do not. From this perspective, BMPs associated with lower violation rates are considered effective. The 12 BMPs included in the study were well construction codes, well/pump disinfection requirements, sanitary surveys, disinfection of new/repaired mains, cross connection controls, operator certification, minimum setback distances, EPA approved State Wellhead Protection Programs, periodic flushing of mains, wellhead monitoring, hydrogeologic criteria, and disinfection.

Six of the 12 State management practices were unsuitable for pairwise analysis because these practices were present in nearly all States. Therefore, a comparison of TCR MCL violation rates in States with and without these practices could not be made. The BMPs for which analysis were not done were: well construction codes, well/pump disinfection requirements, sanitary surveys, disinfection of new/required mains, cross connection controls, and operator certification. However, these six management practices were evaluated as part of the 1998 Best Management Practices Survey conducted by ASDWA. -

Using a pairwise statistical analysis, two of the remaining six practices, disinfection and hydrogeologic criteria, showed a significant statistical relationship (at a .01 and a .05 level of confidence, respectively) in lowering the statewide median TCR violation rates, with disinfection showing the strongest relationship. In this analysis, disinfection is defined as the maintenance of at least a chlorine residual or its equivalent at the entry point or in the distribution system. The report focused its analysis on disinfection practices among 20 States, comparing the 10 highest disinfecting States with the 10 lowest disinfection States. Specifically, the 10 States with the highest percentage of disinfected CWSs had an average MCL violation rate of 16% over the four year period, versus a 33% violation rate for the ten States with the lowest disinfection rates. States that require hydrogeologic criteria for well siting and construction decisions had significantly lower median MCL violation rates than States that do not use these criteria (15.4% vs. 24.6%). The other four practices, minimum setback distances from pollution sources, EPA approved Wellhead Protection Programs, periodic flushing of the distribution system, and wellhead monitoring, did not show a significant relationship in lowering TCR violation rates at the State level. The report does not provide information on the statistical significance of these results.

The four year time frame for the statistical analyses was chosen as a more accurate reflection of the effectiveness of statewide management practices given the high degree of variability in the TCR violation rate from year to year. Different trends emerge when annual rates are compared. There is not enough data to determine if the year to year variability, shown in the FY 96 data, correlates to a change in State management practices.

In a second analysis, stepwise linear regression was used on the six best management practices to further explain the variability among States in their reported TCR MCL violation rates. This analysis examines both the simultaneous effect of several BMPs on the State TCR MCL violation rate and evaluates which of the practices may explain the variability in the TCR violation rate among States. Ascertaining how much of the State-to-State variability can be explained by each of the practices is an important question given that the TCR requirements are the same for all States. The results of this analysis indicate that disinfection is the single largest factor in explaining the difference in the TCR violation rate among States. In general, the higher the rate of disinfection, the lower the rate of TCR MCL violations.

Uncertainties associated with this analysis were: (1) Whether a State's BMP requirements are fully implemented at the system level; (2) what effect the six State BMPs not analyzed had on violation rates; (3) the degree of voluntary implementation of BMPs; and (4) the effect of not including State practices required only under certain circumstances. Nonetheless, this data on State management practices indicates that there is a significant association between disinfection and a lower TCR MCL violation rate.

2. ASDWA Analysis of BMPs for Community Ground Water Systems

In the ASDWA study, The Analysis of Best Management Practices for Community Ground Water Systems (ASDWA, 1998), a working group selected 28 BMPs that represent four major areas of plant operations and developed and distributed a survey to all 50 State drinking water programs. Each State was asked to select eight systems in each of the three following categories: (1) Systems with no detections of total coliform; (2) systems with total coliform detections only; and (3) systems with both total coliform and fecal coliform (or *E. coli*) detections. For each system, the State was asked to report which of 28 BMPs listed were used by the system during a two year period (1995 and 1996). Thirty-six States responded to the survey, each completing up to 24 individual system surveys, providing data for 812 systems.

The survey results were analyzed using both descriptive statistics and two statistical models—pairwise and logistical regression. The descriptive statistics illustrate the characteristics of a system but cannot isolate the effect of a particular BMP from the effects of other BMPs. The statistical models were used to describe the relationship between implementation of individual or a group of BMPs and a reduction in total or fecal coliform detections.

A pairwise association analysis (*i.e.*, comparing a system that implements a particular BMP to one that does not) was used to determine if the use of a BMP reduced the percentage of positive total coliform samples. The analysis determined that a significant association was found between 21 of the 28 BMPs and systems with no total coliform detections. The two BMPs with the strongest correlation to fewer total coliform detections were correction of deficiencies identified by the sanitary survey and operator certification (ASDWA, 1998).

Using pairwise analysis for systems with fecal coliform (based only on those systems with at least one positive total coliform sample), the study found a significant association for eight of the twenty-eight BMPs. These eight BMPs include: system wells constructed according to State regulations, routine disinfection after well or pump repair, treatment for purposes other than disinfection, system maintaining acceptable pressure at all times, water distribution tanks are designed according to State requirements, systems are in compliance with State permitting requirements, systems have corrected deficiencies noted by the State

and system and operators receive routine training and education. According to the results, fewer BMPs are found to be significant in this analysis than the total coliform analysis. These results are expected given that the analysis of fecal coliform and *E. coli* only evaluate systems with at least one total coliform positive detection. Fecal coliform and *E. coli* tests are more specific to organisms found in human and animal feces, whereas total coliform tests indicate the presence of a broader class of enteric organisms. For this reason, there are fewer data points to model the association of BMPs with fecal coliform. Therefore, this analysis sets apart only the BMPs significant in preventing or eliminating fecal contamination.

Using the logistical regression technique, three BMPs were associated with a significant reduction of total coliform-positive samples: (1) Maintaining a disinfectant residual; (2) operator training; and (3) correcting deficiencies identified by the State as part of a sanitary survey. The two BMPs associated with a significant reduction of fecal coliform/*E. coli*-positive samples were treatment for purposes other than disinfection, *e.g.*, iron removal, and operator training. Another analysis was constructed using Logit models for four categories of BMPs to consider the effects of BMPs in groups rather than individually. Out of the four categories (Source Protection/ Construction, Treatment, Distribution System, and Management and Oversight), the Management and Oversight category showed the most significant association with reduced coliform detections.

The ASDWA survey also evaluated the effectiveness of BMPs with regard to system size. For systems serving less than 500 persons, correction of deficiencies identified by the State, and regular training and education of operators were the most significant in reducing microbial contamination. Routine disinfection after well or pump repair had the greatest significance among systems serving between 501 and 3,300 persons, while maintaining a disinfection residual had the greatest significance among systems serving between 3301 and 10,000 persons.

Overall, this study found that the percentage of systems implementing BMPs is highest among systems with no total coliform detections. In addition, systems that routinely educate and train their operators were more likely to implement other BMPs than systems with no regular training. Similarly, those systems that practice disinfection (contact time or maintain disinfection residual) were more likely to implement other BMPs than systems that do not disinfect. Observations about the implementation of BMPs suggests that many BMPs are interrelated, therefore, it is difficult to isolate the effect of an individual BMP.

3. EPA Report on Ground Water Disinfection and Protective Practices

The purpose of the EPA study, Ground Water Disinfection and Protective Practices in the United States, (US EPA, 1996a) was to compile and assess State regulations, guidance, codes, and other materials pertaining to protection of public health from microbial contamination in public water systems using ground water.

The information compiled included the following:

- Wellhead/ground water protection information;
- Ground water disinfection requirements;
- Well siting and construction requirements/guidelines;
- Sanitary survey requirements/ guidelines;
- Distribution system protection requirements/guidelines; and
- Operator certification requirements.

The study found that there are widespread, but diverse requirements for the protection of drinking water that has ground water as its source. Few of these protective practices are used by all States and there is a variety of interpretations of the same practice. For example, 47 States specify minimum setback distances from sources of microbial contamination but show a wide range of setback distances for the same type of contaminant source; 49 States drinking water programs require disinfection of some sort, but when and where disinfection is required varies considerably; and of the 48 States that have well construction codes, 21 States do not require consideration of hydrogeological criteria in the approval of the siting of a well.

Overall, the study found that although many States appear to require similar BMPs, the nature, scope, and detail of these requirements varies considerably at the national level.

*E. Outreach Activities*

1. Public Meetings

As part of the 1986 amendments to the Safe Drinking Water Act (SDWA) Section 1412(b)(8), Congress directed EPA to promulgate a national primary drinking water regulation (NPDWR) requiring disinfection as a treatment technique for all public water systems, including those served by surface water and ground water. In 1987, EPA began developing a rule to cover ground water systems. This effort included a preliminary public meeting on the issues in 1990 (see 55 FR 21093, May 22, 1990, US EPA, 1990a). In 1992, EPA circulated a strawman draft for comment (see 57 FR 33960, July 31, 1992) (US EPA, 1992a).

From 1990 to 1997, EPA conducted technical discussions on a number of issues, primarily to establish a reasonable means of establishing whether a ground water source was vulnerable to fecal contamination and thus pathogens. This effort was accomplished through *ad hoc* working groups during more than 50 conference calls with participation of EPA Headquarters, EPA Regional offices, States, local governments, academicians, and trade associations. In addition, technical meetings were held in Irvine, California in July 1996, (US EPA, 1996c) and in Austin, Texas in March 1997 (US EPA, 1997e).

The SDWA was amended in August 1996, and as a result, several statutory provisions were added establishing new drinking water requirements. Specifically, Congress required under section 1412(b)(8) that EPA develop regulations specifying the use of disinfectants for ground water systems "as necessary." These amendments established a new regulatory framework that required EPA to set criteria for States to determine whether ground water systems need to disinfect. In December 1997, EPA held its first of a series of stakeholder meetings to present a summary of the findings resulting both from technical discussions held since 1990 and from information generated by internal EPA working groups with the intention of developing disinfection criteria for ground water systems.

EPA held a preliminary Ground Water Rule meeting on December 18 and 19, 1997, in Washington, DC for the purpose of engaging all interested stakeholders in the analysis of data to support the GWR. The two day meeting covered discussions on the implications of the data, solicited further data from stakeholders, and reviewed EPA's next steps for rule development, data analysis and stakeholder involvement.

Since December 1997, EPA has held GWR stakeholder meetings in Portland, OR, Madison, WI, Dallas, TX, Lincoln, NE, and Washington, DC along with three early involvement meetings with State representatives. In addition, EPA has received valuable input from small system operators as part of an Agency outreach initiative under the Small Business Regulatory Enforcement Fairness Act. See section VI for more

information on the SBREFA process. Taken together, these stakeholder meetings have been crucial both in obtaining feedback and getting additional information as well as in guiding the Agency's consideration and development of different regulatory components.

The Agency's goal in developing the GWR is to reduce the risk of illness caused by microbial contamination in public water systems relying on ground water. The series of GWR stakeholder meetings were beneficial in assisting EPA in understanding how State strategies fit together as part of a national strategy. For more information see the (Stakeholders Meeting Summary, Resolve, July 27, 1998).

Portland, OR, GWR Stakeholder Meeting

There were four different regulatory approaches presented in the first of a series of stakeholder meetings held in Portland, OR, in May 1998: the Barrier Assessment Approach, the Existing State Practices Approach, the Setback Approach, and the Checklist Approach (Stakeholder Meetings Summary, Resolve, July 27, 1998). All approaches address, to varying degrees, three main areas: minimum program requirements or baseline measures, identification of high risk wells, and corrective action. Discussions on the potential approaches centered around determining triggers that could place a well in a high priority category and which minimum set of BMPs should be implemented at high risk wells.

Madison, WI GWR Stakeholder Meeting

There were three approaches presented in a June 9, 1998, GWR stakeholder meeting held in Madison, WI: Status Quo Approach, Baseline Approach, and Disinfection Approach. Regulatory approaches were revised in response to stakeholder input from the earlier GWR stakeholder meetings, representing a continuum of requirements, from Existing Status Quo to mandatory disinfection for all ground water systems. EPA emphasized that existing occurrence data does not appear to support mandatory disinfection across the board, but that the Agency would still appreciate stakeholder input on a range of options. The approaches presented were based on monitoring, inspections, BMPs and disinfection.

Dallas, TX GWR Stakeholder Meeting

A third GWR meeting on June 25, 1998 in Dallas, TX, provided slight modifications to the regulatory approaches, but for the most part the regulatory approach remained unchanged from the Madison meeting held in early June. EPA continued to emphasize the need to identify and strengthen the potential barriers to contamination. Among the three approaches, (Status Quo, Progressive and Universal Disinfection) the Progressive approach was considered the more viable regulatory option to ensure public health protection among public water systems.

Early Involvement Meetings

ASDWA held three early involvement meetings (EIMs) on the GWR. The first EIM followed the May 5, 1998 stakeholder meeting in Portland, OR. The second EIM meeting was held in Washington, DC on July 14 and 15, 1998 and the third meeting was held in Chicago, IL on April 7 and 8, 1999. Representatives from 12 States, four EPA Regions, ASDWA and EPA Headquarters participated in the May 6 and 7, 1998 meeting in Portland, OR. The second EIM involved 10 State representatives, ASDWA, and EPA Headquarters. The third EIM included one Region, seven State representatives, ASDWA and EPA Headquarters. The purpose of the meetings was to review the findings and comments from the stakeholder meetings and to work together to further refine GWR regulatory options. EPA and States discussed a range of issues including risk, exposure, strategies for identifying high risk systems, occurrence data, and regulatory implementation barriers.

2. Review and Comment of Preliminary Draft GWR Preamble

EPA developed a preliminary draft preamble reflecting a wide range of input from numerous stakeholders across the country including four public meetings, three EIMs with State representatives, in addition to valuable input received from small system operators as part of the outreach process established by SBREFA.

To facilitate the rule development process, the preliminary draft preamble was made available to the public via the Internet through EPA's website site on February 3, 1999. Approximately 300 copies were mailed to participants of the public meetings or to those who requested a copy. EPA welcomed any comments, suggestions, or concerns reviewers had on either the general direction or the technical basis of the proposal. EPA closed the email box on February 23, 1999 and continued to receive written comments through the mail through March 17, 1999. Because this was an informal process, EPA did not prepare a formal response to the comments. Nonetheless, the Agency carefully reviewed and evaluated all comments and technical suggestions and greatly appreciated the input and feedback provided by these outreach efforts.

Eighty individual comment letters were received. Commenters included: State and local government representatives, trade associations, academic institutions, businesses and other Federal agencies. Microbial monitoring received the most individual comments. Sanitary survey, sensitivity assessment and treatment issues were next, respectively.

## II. Public Health Risk

The purpose of this section is to discuss the health risk associated with pathogens in ground waters. More detailed information about pathogens may be found in three EPA drinking water criteria documents for viruses (US EPA 1985a; 1999b; 1999c), three EPA criteria documents for bacteria (US EPA 1984a, b; 1985b) and the GWR Occurrence and Monitoring Document (US EPA, 1999d). EPA requests comment on all the information presented in this section, and the potential impact of proposed regulatory provisions on public health risk.

*A. Introduction*

Enteric viral and bacterial pathogens are excreted in the feces of infected individuals. Many bacterial pathogens can infect both humans and animals. Bacterial pathogens that infect humans can also be found in animal feces. In contrast, enteric viruses that are human pathogens generally only infect humans, and thus are only found in human feces. These organisms are able to survive in sewage and leachate derived from septic tanks (septage) and sewer lines. When sewage and septage are released into the environment, they are a source of fecal contamination. Fecal contamination is a very general term that includes all of the organisms found in feces, both pathogenic and non-pathogenic, as well as chemicals.

Fecal contamination of ground water can occur by several routes. First, fecal contamination can reach the ground water source from failed septic systems, leaking sewer lines, and from land discharge by passage through soils and fissures. Twenty-five million households in the United States use conventional onsite wastewater treatment systems, according to the 1990 Census. These systems include systems with septic systems and leach fields. A national estimate for failure rates of these systems is not available; however, a National Small Flows Clearinghouse survey reports that in

1993 alone, 90,632 failures were reported. (USEPA, 1997f). The volume of septic tank waste, alone, that is released into the subsurface has been estimated at one trillion gallons per year (Canter and Knox, 1984). This contamination may eventually reach the intake zone of a drinking water well. Second, fecal contamination from the surface may enter a drinking water well along the casing or through cracks in the sanitary seal if it is not properly constructed, protected, or maintained. Third, fecal contamination may also enter the distribution system when cross connection controls fail or when negative pressure in a leaking pipe allows contaminant infiltration.

Biofilms in distribution systems may harbor bacterial pathogens, especially the opportunistic pathogens that cause illness primarily in individuals with weakened immune systems. These bacterial pathogens may have entered the distribution system as part of fecal matter from humans or other animals. Biofilms may also harbor viral pathogens (Quignon *et al.*, 1997), but, unlike some bacterial pathogens, viruses do not grow in the biofilm. However, a biofilm may protect the viruses against disinfectants and help them survive longer.

Although not the basis for today's proposed rule, there are additional waterborne pathogens that EPA is currently evaluating. These include bacterial pathogens that may be free-living in the environment, and thus not necessarily associated with fecal contamination. These pathogens include *Legionella* (causes Legionnaires Disease and Pontiac Fever), *Pseudomonas aeruginosa*, and *Mycobacterium avium-intracellulare*. Many of these bacteria can colonize pipes of the distribution system and plumbing systems and may play a role in causing waterborne disease that is currently under study. EPA recognizes the potential risk of such organisms, but believes that more research needs to be conducted before they can be considered for regulation. Also, the Agency is aware that *Giardia* and *Cryptosporidium* have occurred in ground water systems (GWSs) (Hancock *et al.*, 1998), causing outbreaks in such systems (Solo-Gabriele and Neumeister, 1996). However, by definition under § 141.2 ground waters with significant occurrence of large diameter pathogens such as *Giardia* or *Cryptosporidium* are considered ground water under the direct influence of surface water and are already subject to the SWTR and IESWTR. The Agency is also not addressing in the GWR the important issue of toxic or carcinogenic chemicals in the GWR. This issue is instead covered in other regulations that address chemicals.

In order to assess the public health risk associated with drinking ground water, EPA has evaluated information and conducted analysis in a number of important areas discussed in more detail later. These include: (1) Recent waterborne disease outbreak data; (2) dose-response data and other health effects data from a range of pathogens; (3) occurrence data from ground water studies and surveys; (4) an assessment of the current baseline ground water protection provided by existing regulations; and (5) an analysis of risk.

*B. Waterborne Disease Outbreak Data*

The purpose of this section is to present a detailed review of waterborne disease outbreaks associated with ground waters. Outbreak characterization is useful for indicating relative degrees of risk associated with different types of source water and systems.

The Centers for Disease Control and Prevention (CDC) maintains a database of information on waterborne disease outbreaks in the United States. The database is based upon responses to a voluntary and confidential survey form that is completed by State and local public health officials. CDC defines a waterborne disease outbreak as occurring when at least two persons experience a similar illness after ingesting a specific drinking water (Kramer *et al.*, 1996). Data from the CDC database appears in Tables II–1, II–2, II–3, and II–4.

The National Research Council strongly suggests that the number of identified and reported outbreaks in the CDC database (both for surface and ground waters) represents a small percentage of actual waterborne disease outbreaks (Safe Water From Every Tap, National Research Council, 1997; Bennett *et al.*, 1987; Hopkins *et. al.*, 1985 for Colorado data). In practice, most waterborne outbreaks in community water systems are not recognized until a sizable proportion of the population is ill (Perz *et al.*, 1998; Craun 1996), perhaps 1% to 2% of the population (Craun, 1996). Some of the reasons for the lack of recognition and reporting of outbreaks, most of which were noted by the National Research Council (1997), are as follows:

- Some States do not have active disease surveillance systems. Thus, States that report the most outbreaks may not be those in which the most outbreaks occur.
- Even in States with effective disease surveillance systems, health officials may not recognize the occurrence of small outbreaks. In cities, large outbreaks are more likely to be recognized than sporadic cases or small outbreaks in which ill persons may consult different physicians. Even so, health authorities did not recognize the massive outbreak (403,000 illnesses) of waterborne cryptosporidiosis that occurred in Milwaukee, WI, in 1993, until the disease incidence was near or at its peak (MacKenzie *et al.*, 1994). The outbreak was recognized when a pharmacist noticed that the sale of over-the-counter diarrheal medicine was very high and consequently notified health authorities.
- Most cases of waterborne disease are characterized by general symptoms (diarrhea, vomiting, *etc.*) that cannot be distinguished from other sources (*e.g.*, food).
- Only a small fraction of people who develop diarrheal illness seek medical assistance.
- Many public health care providers may not have sufficient information to request the appropriate clinical test.
- If a clinical test is ordered, the patient must comply, a laboratory must be available and proficient, and a positive result must be reported in a timely manner to the health agency.
- Not all outbreaks are effectively investigated. Outbreaks are included in the CDC database only if water quality and/or epidemiological data are collected to document that drinking water was the route of disease transmission. Monitoring after the recognition of an outbreak may be too late in detecting intermittent or a one-time contamination event.
- Some States do not always report identified waterborne disease outbreaks to the CDC. Reporting outbreaks is voluntary.
- The vast majority of ground water systems are non-community water systems (NCWSs). Outbreaks associated with NCWSs are less likely to be recognized than those in community water systems because NCWSs generally serve nonresidential areas and transient populations.

There is also the issue of endemic waterborne disease. Endemic waterborne disease may be defined as any waterborne disease not associated with an outbreak. A more precise definition is the normal level of waterborne disease in a community. Under this definition, an outbreak would represent a spike in the incidence of disease. Based on this definition, the level of endemic waterborne disease in a community may be quite high. For example, 14%-40% of the normal gastrointestinal illness in a community in Quebec was associated

with drinking treated water from a surface water source (Payment *et al.*, 1997). Significant levels of endemic disease could also be associated with ground waters. Because endemic waterborne disease may be a significant and substantially preventable source of health risk, under the directive of the 1996 SDWA Amendments, EPA is jointly pursuing with CDC a multi-city study of waterborne disease occurrence in an effort to provide greater understanding of this risk. EPA believes that some meaningful percentage of the nationwide occurrence of endemic waterborne disease is in ground water systems (GWSs). EPA believes that the prudent policy of prevention embodied in this proposal with regard to identified sources of substantial microbial risk to GWSs gains further justification as a counter to the endemic occurrence of waterborne disease. EPA solicits comment and any data that can increase knowledge of these endemic risks, in particular any studies on such risk in GWSs.

CDC Waterborne Disease Outbreak Data

Outbreak data collected by CDC are presented in Tables II–1, II–2 , II–3, and II–4. Table II–1 provides outbreak data for all public water systems (surface and ground water). Table II–2 shows sources of waterborne disease outbreaks for GWSs. Table II–3 identifies the etiology of waterborne outbreaks in GWSs. Table II–4 shows causes associated with waterborne disease outbreaks and illnesses in GWSs.

According to CDC, between 1971 and 1996 a total of 643 outbreaks and 571,161 cases of illnesses were reported (see Table II–1); however, the total includes 403,000 cases from a single surface water outbreak caused by *Cryptosporidium* in Milwaukee, WI in 1993. Excluding the Milwaukee outbreak from the data set, 642 outbreaks and 168,161 cases of illness were reported during the same period of time. Ground water sources were associated with 371 (58%) of the total outbreaks and 16% of the associated illness (54% of the illness if the Milwaukee outbreak is excluded). In comparison, surface water sources were associated with 216 (33%) of the total outbreaks and 82% of the associated illness (40% of the illness if the Milwaukee outbreak is excluded). Although the data in Table II–1 indicate that NCWSs using ground water had twice as many outbreaks as CWSs using ground water, this may reflect the fact that there are over twice as many NCWSs as CWSs.

The outbreak data indicate that the major deficiency in ground water systems was source water contamination—either untreated or inadequately treated ground water (see Table II–2). Contaminated source water was the cause of 86% of the outbreaks in ground water systems. Contamination due to source water was the cause of 68% of the outbreaks for CWSs, while for NCWSs it was 92%. Distribution system deficiencies were associated with 29% of the outbreaks in CWSs and in five percent of the NCWSs.

Of the 371 outbreaks in ground water systems, 91 (25%) were associated with specific viral or bacterial pathogens, while 22 (6%) were associated with chemicals (see Table II–3). Etiologic agents were not identified in 232 (63%) outbreaks. The diversity of disease agents is similar to that of surface water, with a variety of protozoa, viruses, and bacteria. As stated previously, a ground water with *Cryptosporidium* or *Giardia* is, by definition, a "ground water under the direct influence of surface water", and is thus subject to the microbial treatment requirements of a surface water system (*i.e.*, SWTR or IESWTR). According to CDC's data, bacterial pathogens were responsible for more outbreaks (57) than were viral pathogens (34). However, EPA suspects that many, perhaps a majority, of the outbreaks where an agent was not determined (232) were virus-caused, given the fact that it is generally more difficult to analyze for viral pathogens than bacterial pathogens. The fecal bacterial pathogen, *Shigella*, caused far more reported outbreaks (eight percent) than any other single agent.

Table II–4 shows outbreak data since 1991, the year in which the TCR became effective. Untreated ground water and inadequate treatment were collectively associated with 73% of the outbreaks in ground water systems between 1991–1996.

Large outbreaks are rarely associated with ground water systems because most ground water systems are small. However, one large outbreak occurred in Georgetown, TX, in 1980 (Hejkal *et al.*, 1982) where 7,900 people became ill. Coxsackievirus and hepatitis A virus were found in the raw well water in a karst hydrogeologic setting; the outbreak was the result of source water contamination. Another occurred in 1965, in Riverside, CA, where about 16,000 illnesses resulted from exposure to *Salmonella typhimurium* in the source water (Boring, 1971).

Most of the outbreaks were caused by agents of gastrointestinal illness. Normally, the disease is self-limiting and the patient is well within one week or less. However, in some cases, deaths have occurred. In 1989, four deaths (243 illnesses) occurred in Cabool, MO, as a result of distribution system contamination by *E. coli* 0157:H7 (Swerdlow *et al.*, 1992; Geldreich *et al.*, 1992). In 1993, seven deaths (650 illnesses) occurred in Gideon, MO, as a result of distribution system contamination by Salmonella typhimurium (Angulo, 1997). Both cases involved ground water systems. Waterborne disease in ground water systems has also caused serious illness such as hemolytic uremic syndrome (six reported cases in two outbreaks), which includes kidney failure, especially in children and the elderly. Two cases of hemolytic uremic syndrome were reported during the Cabool outbreak, the affected individuals being three and 79 years of age. Deep wells are not immune from contamination; for example, an outbreak of gastroenteritis caused by the Norwalk virus (900 illnesses) was associated with a 600-foot well (Lawson *et al.*, 1991).

Collectively, the data indicate that outbreaks in ground water systems are a problem and that source contamination and inadequate treatment (or treatment failures) are responsible for the great majority of outbreaks. The outbreaks are caused by a variety of pathogens, most of which cause short term gastrointestinal disease.

TABLE II–1.—COMPARISON OF OUTBREAKS AND OUTBREAK-RELATED ILLNESSES FROM GROUND WATER AND SURFACE WATER FOR THE PERIOD 1971–1996 [1] [2]

| Water source | Total outbreaks[1] | Cases of illnesses | Outbreaks in CWSs | Outbreaks in NCWSs | Total CWS[4] | Total NCWS[4] |
|---|---|---|---|---|---|---|
| Ground | 371 (58%) | 90,815 (16%) | 113 | 258 | 43,908 | 112,940 |
| Surface | 216 (33%) | 469,721[2] (82%) | 142 | 43 | 10,760 | 2,848 |
| Other | 56 (9%) | 10,625 (2%) | 29 | 19 | ..... | ..... |

TABLE II–1.—COMPARISON OF OUTBREAKS AND OUTBREAK-RELATED ILLNESSES FROM GROUND WATER AND SURFACE WATER FOR THE PERIOD 1971–1996 [1] [2]—Continued

| Water source | Total outbreaks[1] | Cases of illnesses | Outbreaks in CWSs | Outbreaks in NCWSs | Total CWS[4] | Total NCWS[4] |
|---|---|---|---|---|---|---|
| All Systems[3] | 643 (100%) | 571,161 (100%) | 284 | 320 | 54,668 | 115,788 |

[1] Modified from Craun and Calderon, 1994, plus 1995–1996 data.
[2] Includes 403,000 cases of illness from a single outbreak in Milwaukee, Wisconsin, 1993.
[3] Includes outbreaks in CWSs + NCWSs + Private wells.
[4] Safe Drinking Water Information System, 1998.

TABLE II–2.—SOURCES OF WATERBORNE DISEASE OUTBREAKS, PUBLIC GROUND WATER SYSTEMS, 1971–1996 [1,2].

| Type of contamination | Total | Percent of total | CWSs | Percent of total | NCWSs | Percent of total |
|---|---|---|---|---|---|---|
| Source | 274 | 86 | 53 | 68 | 221 | 92 |
| Untreated | 150 | 47 | 20 | 26 | 130 | 54 |
| Disinfected | 122 | 38 | 31 | 40 | 91 | 38 |
| Filtered | 2 | 1 | 2 | 3 | 0 | 0 |
| Distribution System | 35 | 11 | 23 | 29 | 12 | 5 |
| Unknown Cause | 9 | 3 | 2 | 3 | 7 | 3 |
| Total | 318 | 100 | 78 | 100 | 240 | 100 |

[1] Source water could not be identified for 29 CWSs and 19 NCWSs with outbreaks, and thus these systems are not included in the table.
[2] Excludes outbreaks caused by protozoa and chemicals.

TABLE II–3.—ETIOLOGY OF OUTBREAKS IN GROUND WATER SYSTEMS, 1971–96, CWSS AND NCWSS

| Causative agent | Outbreaks | Percent |
|---|---|---|
| *Undetermined* | *232* | *63* |
| *Chemical* | *22* | *6* |
| *Giardia* | [1] 21 | 6 |
| *Cryptosporidium* | [1] 4 | 1 |
| *E. histolytica* | 1 | <1 |
| *Total Protozoa* | *26* | *7* |
| Hepatitis A | 18 | 5 |
| Norwalk Agent | 16 | 5 |
| *Total Virus* | *34* | *9* |
| *Shigella* | 30 | 8 |
| *Campylobacter* | 10 | 3 |
| *Salmonella*, non-typhoid | 10 | 3 |
| *E. coli* | 4 | 1 |
| *S. typhi* | 1 | <1 |
| *Yersinia* | 1 | <1 |
| *Plesiomonas shigelloides* | 1 | <1 |
| *Total Bacteria* | *57* | *15* |
| *Total* | *371* | *100* |

[1] Ground waters with *Giardia* and *Cryptosporidium* are regulated under the SWTR and IESWTR. These systems would likely not be considered ground water systems for purposes of this rule.

TABLE II–4.—CAUSES OF OUTBREAKS IN GROUND WATER SYSTEMS, 1991–1996

| Cause | Number of outbreaks | Cases of illness | Percent of outbreak-related illnesses |
|---|---|---|---|
| Untreated Ground Water | 18 | 2924 | 51 |
| Distribution System Deficiency | 6 | 944 | 17 |
| Treatment Deficiency | 17 | 1260 | 22 |
| Miscellaneous, Unknown Cause | 3 | 568 | 10 |
| Total | 44 | 5696 | 100 |

[1] Excludes protozoa and chemicals.

C. Ground Water Occurrence Studies

The purpose of this section is to present data on the occurrence of waterborne pathogens and indicators of fecal contamination in ground water supplying PWS wells. These data are important to GWR development because they provide insight on: (1) The extent to which ground water may be contaminated; (2) possible fecal indicators for source water monitoring under the GWR; and (3) a national estimate of ground water pathogen occurrence. In addition, determining the occurrence of microbial contaminants in ground water sources of drinking water is necessary to yield a quantified national estimate of public health risk.

EPA has reviewed data from13 recent or on-going studies of pathogen and/or fecal indicator occurrence in ground waters that supply PWSs. While most of these studies were not designed to yield a nationally representative sample of ground water systems, one of the studies (Abbaszadegan *et al.*, 1999, or the "AWWARF study") was later expanded to include a nationally representative range of hydrogeologic settings. This study was used as the basis of EPA's quantitative assessment of baseline risk from viral contamination of ground water, which is also a component of the quantitative benefits assessment for the proposed rule. Short narratives on each of the studies are provided in the next sections. The study design and results for each study are summarized in Table II–6, at the end of the narratives. The Agency decided not to combine the data from these studies, because of the different method protocols and scopes.

Each occurrence study investigated a combination of different pathogenic and/or indicator viruses and bacteria. Indicator viruses and bacteria may be non-pathogenic but are associated with fecal contamination and are transmitted through the same pathways as pathogenic viruses and bacteria. The samples analyzed in each study were tested for viral pathogens such as enteroviruses (a group of human viruses also referred to as "total cultureable viruses") and/or bacterial pathogens such as *Legionella* and *Aeromonas*. Several studies used the polymerase chain reaction (PCR) as part of the method for determining the presence of pathogenic viruses. Bacterial indicators of fecal contamination tested included enterococci (or fecal streptococci, which are closely related), and fecal coliforms (or *E. coli*, which is closely related), and *Clostridium perfringens*. Most studies tested for total coliforms, which are not considered a direct fecal indicator since they also include coliforms that live in soil. Viral indicators of fecal contamination were all bacteriophage, which are viruses that infect bacteria. Among the bacteriophage tested were somatic coliphage and/or male-specific coliphage, both of which infect the bacterium *E. coli*. Bacteroides phage were tested in two studies and *Salmonella* phage in one study.

While this section presents a summary of each study, a more detailed explanation of one study (Abbaszadegan *et al.*, 1999) (AWWARF Study) is provided, as it is the broadest study in scope. The hydrogeology of individual wells is mentioned in addition to the microbial results, because EPA considers hydrogeology an important factor in source water contamination. Hydrogeology is discussed in greater detail in section III.B.

1. Abbaszadegan et al. (1999) (AWWARF Study)

Of the 13 studies, the AWWARF study sampled the largest number of wells, examined the widest array of well and system characteristics, and tested sites in 35 States across the U.S., located in hydrogeologic settings representative of national hydrogeology. The objectives of the AWWARF study were to: (1) Determine the occurrence of virus contamination in source water of public ground water systems; (2) investigate water quality parameters and occurrence of microbial indicators in ground water and possible correlation with human viruses; and (3) develop a statistically-based screening method to identify wells at risk of fecal contamination. A summary of AWWARF results are presented in Tables II–5 and II–6.

Many of the initial sites were selected to evaluate the effectiveness of a method based on the reverse-transcriptase, polymerase chain reaction (RT–PCR) technique to detect pathogenic viruses in ground water. Sites for this portion of the study were selected based on the following criteria: (1) Ground water sites with high concentrations of minerals, metals, or TOC; (2) sites with a previous detection of any virus or bacteria in the ground water source; (3) sites with potential exposure to contaminants due to agricultural activities near the well, industrial activities near the well, or septic tanks near the well; and (4) sites with different pH values, temperatures, depths, production capacities and aquifer types. Sites were selected for the virus occurrence project based upon their geological characteristics to balance out the range of geologies so that the sites in aggregate more closely matched the national geologic profile of ground water sources. Sites for the virus occurrence study were selected from an initial mailing to 500 utilities that currently disinfect their water; 160 utilities with 750 wells volunteered to be included in the study. In total, 448 wells were sampled for the study. AWWARF excluded sites from the investigation if: (1) It was known to be under the influence of surface water; (2) the well log records were not available; or (3) it was considered poorly constructed.

EPA subsequently compared nitrate concentrations from a national database of nitrate concentrations in ground water (Lanfear, 1992) with nitrate data measured in the AWWARF study wells. The purpose of the comparison was to determine if there was any statistically significant difference between the nitrate levels in the AWWARF wells as compared with the national distribution of nitrate concentration data. Nitrate was chosen for this comparison because there is a large, national database available. Each data set contained 216 samples selected so that proportionately, wells of equal depth were analyzed in each comparison. The national data were selected randomly from a database of more than 100,000 wells; all available AWWARF data were used. In analyzing the data, EPA noted that the national data is biased by multiple sampling of many shallow monitoring wells in farming regions leading to a few wells having exceptionally high nitrate levels. In order to minimize the impact of these wells on the analysis, EPA chose a small random subset comparable in size to the sample in the AWWARF study. Thus, the data are not directly comparable with PWS wells. Census data were used to divide the national nitrate database into urban and rural components. The analysis showed that the AWWARF wells had nitrate concentrations that were not significantly different from the national data or from the urban and rural components. Thus, using nitrate concentration as a surrogate, EPA concludes that, by this measure, the AWWARF wells are nationally representative.

All samples were collected by the systems. AWWARF provided a sample kit containing all needed equipment and a video illustrating the details of appropriate sampling and storage procedures. A total of 539 samples were collected from 448 sites in 35 States. The preliminary results indicate that of the 448 wells sampled, about 64% were located in unconsolidated aquifers, 27% in consolidated aquifers including consolidated sedimentary strata, and 9% in unknown geology. Unconsolidated aquifers are made of

loosely packed (uncemented) particles, such as sand grains or gravel, while consolidated aquifers are comprised of compacted (cemented) particles or crystalline rock (*e.g.*, granite, limestone). As discussed further in section III.B., the degree and type of consolidation may affect the transport of pathogens from a source of fecal contamination to the well. The percentages of sites sampled from these geologic settings are similar to those of national ground water production from unconsolidated and consolidated hydrogeologic settings (modified by AWWARF, from United States Geological Survey (USGS) Circular 1081, 1990). The data indicate that 174 sites (39%) were within 150 feet of a known sewage source, and an additional 127 sites (28%) were within 550 feet of a known sewage source. There is no comparable data on the distribution nationally of wells relative to sewage sources. EPA notes however, that the proximity to these sources is not inconsistent with State standards across the country. For example, 41 States have setback distances (the minimum distance between a source of contamination and a well) that are less than or equal to 100 feet for sources of microbial contaminants. Only five States appear to require setback from all sewage sources of more than 200 feet. The preliminary results also indicated that a total of 25 sites were sampled more than once. Most sites were from systems that serve greater than 3,300 people, and almost all systems maintain a disinfectant residual.

In the study, systems collected at least 400 gallons (1,512 liters) of water and concentrated it using a filter-adsorption and elution method. The concentrated samples were then sent to the researchers for analysis. The presence of enteroviruses was determined by two procedures: a cell culture assay and a procedure using the RT–PCR technique. The RT–PCR technique was also used to determine the presence of hepatitis A virus, rotavirus, and Norwalk virus. The researchers also tested each well for total coliforms, enterococci, *Clostridium perfringens*, somatic coliphage, and male-specific coliphage to establish their relationship with enterovirus and to get a better indication of the percentage of fecally contaminated wells.

Preliminary results indicated that fecal contamination occurs in a subset of PWS wells (see Table II–5). The investigators detected pathogenic viruses, either by cell culture or RT–PCR analyses, in a significant percentage of samples.

TABLE II–5.—PRELIMINARY RESULTS OF AWWARF STUDY

| Assay | Percent of wells positive (number positive/samples analyzed) |
|---|---|
| Enteroviruses (cell culture) | 4.8% (21/442) |
| Bacterial Indicators | 15.1% |
| Total coliforms | 9.9% (44/445) |
| enterococci | 8.7% (31/355) |
| *Clostridium perfringen* spores | 1.8% (1/57) |
| Coliphage Indicators | 20.7% |
| Male-specific coliphage (*Salmonella* WG–49 host) | 9.5% (42/440) |
| Somatic coliphage (*E. coli* C host) | 4.1% (18/444) |
| Somatic and male-specific coliphage (*E. coli* C–3000 host) | 10.8% (48/444) |
| PCR | 31.5% |
| Norwalk viruses (PCR) | 0.96% (3/312) |
| Enteroviruses (PCR) | 15.9% (68/427) |
| Rotaviruses (PCR) | 14.6% (62/425) |
| Hepatitis A viruses (PCR) | 7.2% (31/429) |

2. Lieberman et al., (1994, 1999) (EPA/AWWARF Study)

The study objectives included the following: (1) develop and evaluate a molecular biology (PCR) monitoring method; (2) obtain occurrence data for human enteric viruses and *Legionella* (a bacterial pathogen) in ground water; and (3) assess the microbial indicators of fecal contamination. These objectives were accomplished by sampling vulnerable wells nominated by States to confirm the presence of fecal indicators (Phase I) and then choosing a subset of these for monthly sampling for one year (Phase II).

In Phase I, well vulnerability was established using historical microbial occurrence data and waterborne disease outbreak history, known sources of human fecal contamination in close proximity to the well, and sensitive hydrogeologic features (*e.g.*, karst). Ninety-six of the 180 potentially vulnerable wells were selected for additional consideration. Selected wells were located in 22 States and 2 US territories. Additional water quality information was then successfully obtained for 94 of the wells through use of a single one liter grab sample which was subsequently tested for several microbial indicators (see Table II–6). The wells from Phase I served as the well selection pool for Phase II sampling.

In Phase II, 23 of the Phase I wells were selected for monthly sampling for one year. Seven additional wells were selected from a list of state-nominated wells for a total of 30 wells, located in 17 States and 2 US territories. The additional seven wells were based on other criteria, including historical water quality data, known contaminant sources in proximity to the well, hydrogeologic character or to replace wells that were no longer available for sampling. Samples were analyzed for enteroviruses, *Legionella*, enterococci, *E. coli*, *Clostridium perfringens*, total coliforms, somatic coliphage, male-specific coliphage and Bacteroides phage. For each sample analyzed for enteric viruses and bacteriophages, an average of approximately 6,000 liters of water were filtered and analyzed by cell culture.

Twenty samples from seven wells were enterovirus positive and were speciated by serotyping. Coxsackievirus and echovirus, as well as reovirus, were identified. The range in virus concentration in enterovirus-positive samples was 0.9–212 MPN/100 liters (MPN, or most probable number, is an estimate of concentration).

The hydrogeologic settings for the seven enterovirus-positive wells were

karst (3), a gravel aquifer (1), fractured bedrock (2), and a sandy soil and alluvial aquifer (1). The karst wells were all positive more than once. The gravel aquifer was also enterovirus-positive more than once, with 4 of 12 monthly samples positive.

3. Missouri Ozark Aquifer Study #1

The purpose of this study was to determine the water quality in recently constructed community public water system wells in the Ozark Plateau region of Missouri. This largely rural region is characterized by carbonate aquifers, both confined and unconfined, with numerous karst features throughout. A confining layer is defined in this study as a layer of material that is not very permeable to ground water flow and that overlays an aquifer and acts to prevent water movement into the aquifer.

The US Geological Survey, working with the Missouri Department of Natural Resources, selected a total of 109 wells, in both unconfined and confined aquifers (Davis and Witt, 1998, 1999). In order to eliminate poorly constructed wells from the study, most of the selected wells had been constructed within the last 15 years. Wells were also selected to obtain good coverage of the aquifer and to reflect the variability in land use. All wells were sampled twice, in summer and winter. Evidence of fecal contamination was found in a number of wells. Thirteen wells had samples that were PCR-positive for enterovirus.

4. Missouri Ozark Aquifer Study #2

The purpose of this study is to determine the water quality in older (pre-1970) CWS wells in the Ozark Plateau region of Missouri to supplement the Missouri Ozark Aquifer Study #1, by Davis and Witt (1998, 1999). This largely rural region is characterized by carbonate aquifers, both confined and unconfined, with numerous karst features throughout.

The US Geological Survey, working with the Missouri Department of Natural Resources, sampled a total of 106 wells (Femmer, 1999), in both unconfined and confined aquifers. Wells (all of which were constructed before 1970) were selected for monitoring to obtain good coverage of the aquifer, and to reflect the variability in land use. Priority was given to wells that had completion records, well operation and maintenance history and wells currently being used. Each well was sampled once (during the spring). No wells were enterovirus-positive by cell culture.

5. Missouri Alluvial Aquifer Study

The purpose of this study was to determine water quality in wells located in areas that were subjected to recent flooding. The wells are located primarily in the thick, wide alluvium of the Missouri and Mississippi rivers. Sampling (117 samples) occurred during the period of March through June 1996. Twelve wells served as control wells (uncontaminated) and were sited in "deep rock" aquifers or upland areas. A total of 64 wells were sampled.

Many of the wells had been flooded. Fifty-five were affected by a flood in 1995. In addition, some of the wells sampled had been flooded around the surface well casing prior to the sampling event, and several were flooded at the time of sampling (Vaughn, 1996).

6. Wisconsin Migrant Worker Camp Study

The purpose of this study was to determine the quality of drinking water in the 21 public ground water systems serving migrant worker camps in Wisconsin (US EPA, 1998a). These transient, non-community water systems are located in three geographic locations across the State. Each well was sampled monthly for six months, from May through November, 1997. The study conducted sampling for male-specific coliphage, total coliforms and *E. coli*. When detections of coliforms occurred, the specific type of coliform was further identified (speciated). One total coliform positive sample was identified to contain *Klebsiella pneumoniae*. Along with the microbial indicators, nitrate and pesticides were also measured.

Other factors were compared to the microbial and chemical sampling results of the study. Well construction records were available for 14 of the wells. The mean casing depth was 109 feet (range 40 to 282 feet) and the mean total well depth was 155 feet (range 44 to 414 feet). Most of these 14 wells are also reported to terminate in a sand or sandstone formation.

Investigators detected male-specific coliphage in 20 of 21 wells during the six-month sampling period, but never detected *E. coli*. In addition, four wells had nitrate levels that exceeded the EPA MCL for nitrate.

7. EPA Vulnerability Study

The purpose of this study was to conduct a pilot test of a new vulnerability assessment method by determining whether it could predict microbial monitoring results (U.S. EPA 1998b). The vulnerability assessment assigned low or high vulnerability to wells according to their hydrogeologic settings, well construction and age, and distances from contaminant sources. A total of 30 wells in eight States were selected to represent ten hydrogeologic settings. Selection was based on the following criteria: (1) Wells representing a variety of conditions relevant to the vulnerability predictions; (2) wells with nearby sources of potential fecal contamination; and (3) wells with sufficient well and hydrogeologic information available.

Samples were taken and tested for enteroviruses (both by cell culture and PCR), hepatitis A virus (HAV) (by PCR), rotavirus (by PCR), Norwalk virus (by PCR), and several indicators (total coliforms, enterococci, male-specific coliphage, and somatic coliphage). The only positive result was one PCR sample positive for HAV.

8. US-Mexico Border Study

The purpose of this study was to determine water quality in wells sited in alluvium along the Rio Grande River between El Paso, Texas and the New Mexico border (U.S. EPA, in preparation). The 17 wells selected were perceived to be the most vulnerable, based on well depth, chloride concentration and proximity to contamination sources, especially the Rio Grande River.

The wells tested are relatively shallow and all serve less than 10,000 people. One well serves 8,000 people, while seven wells serve fewer than 100 people. Well depths range from 65 feet to 261 feet, but most are about 150 feet deep. This signifies that water was collected from the middle aquifer, a shallow but potable aquifer. Wells shallower than 65 feet contain chloride concentrations prohibitively high for drinking water.

Samples were collected from each well and tested for enteroviruses (by cell culture), somatic coliphage, and male-specific coliphage. None of the sites were positive for any of the viruses tested.

9. Whittier, CA, Coliphage Study

The purpose of this study was to determine the presence of fecal contamination in all wells located within 500 feet down-gradient of a water recharge infiltration basin (Yanko *et al.*, 1999). The 23 wells were sampled once per month for six months.

The wells are sited in similar hydrogeologic settings, although they vary in age and depth. The hydrogeologic setting is primarily a thick layer of unconsolidated sand, with lesser amounts of other sized grains. About 30% of the recharge volume to

the wells is reclaimed water. Wells were all constructed between 1919 and 1989 and produce water from depths ranging from 60–888 feet.

The wells were sampled monthly for a six month period. The samples were tested for total coliforms and indicators of fecal contamination, including male specific coliphage, somatic coliphage, and *E. coli*. Coliphage were found in all wells, and repeatedly in 20 of the 23 wells.

10. Oahu, HI Study

The purpose of this study was to establish a water quality monitoring program to assess the microbial quality of deep ground water used to supply Honolulu (Fujioka and Yoneyama, 1997). A total of 71 wells were sampled, 32 of which were sampled for viruses and 39 of which were sampled for bacteria. The wells are located in carbonate or basalt aquifers.

Each of the wells was tested for several pathogens and indicators of fecal contamination. Bacterial samples taken from 39 wells (79 samples) were tested for total coliforms, fecal streptococci, *Clostridium perfringens*, heterotrophic bacteria (by m-HPC), and *Legionella* (by PCR). Sample volumes were 100 mL for *C. perfringens* and heterotrophic bacteria, and both 100 mL and 500 mL for coliforms and fecal streptococci. For FRNA coliphage (male-specific coliphage), one liter samples from 32 wells (35 samples) were tested by membrane adsorption-elution method, while 24 wells (24 samples) were tested by an enrichment technique developed by Yanko. None of the wells were coliphage-positive, and only one sample each was positive for *E. coli* and fecal streptococci.

11. New England Study

The purpose of this study was to: (1) Determine the prevalence of enteric pathogens in New England's public water supply wells; (2) assess the vulnerability of different systems; and (3) evaluate various fecal indicators.

Wells were selected based on the following criteria: (1) Must have constant withdrawal throughout the year; (2) must be near septic systems, (3) should have, if possible, a history of violations of the MCL for total coliforms or elevated nitrate levels; and (4) must not have direct infiltration by surface water (Doherty, 1998).

Wells were nominated, characterized, selected and sampled by regulatory staff of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. The selection process considered wells in different hydrogeologic settings. Of the 124 total wells, 69 (56%) were located in unconfined aquifers, 31 (25%) were located in bedrock aquifers, 10 (8%) were located in confined aquifer hydrogeologic settings, and 14 (11%) were located in unknown aquifer settings. Each well was sampled quarterly for one year. Enterococci were identified in 20 of 124 wells (16%) and in 6 of 31 (19%) bedrock aquifer wells. Two wells were enterovirus-positive using cell culture methods, both in unconsolidated aquifers. One of these two wells is 38 feet deep and the other well is 60 feet deep. Final results from this study are not yet available.

12. California Study

The purpose of this research is two-fold: (1) To assess the vulnerability of ground water to viral contamination through repeated monitoring, and (2) to assess the potential for bacteria and coliphages to serve as indicators of the vulnerability of ground water to viral contamination (Yates 1999).

Eighteen wells were tested monthly for human enteroviruses (by cell culture (direct RT–PCR, Immunomagnetic separation reverse transcriptase (IMS–RT–PCR) and integrated cell culture RT–PCR) and PCR), HAV (by PCR), rotaviruses (by PCR), somatic and male-specific coliphage, and total coliforms and fecal streptococci. The depth of the wells is variable, but is on the order of about 200 feet (the deeper the well, the less likely contamination). There are some intermittent confining layers.

Of the 230 samples tested for enteroviruses, 6 samples from 6 of the 18 wells were cell culture positive for enteroviruses. Final results from this study are not yet available.

13. Three State PWS Study (Wisconsin, Maryland and Minnesota)

The purpose of the three-state study is to characterize the extent of viral contamination in PWS wells by testing wells in differing hydrogeologic regions and considering contamination over time (Battigelli, 1999). Wells were sampled quarterly for one year in Wisconsin (25 wells), Minnesota (25 wells), and will be sampled in Maryland (up to 35 wells).

Three wells in Wisconsin were positive for enteroviruses by cell culture. Final results for this study are not yet available.

TABLE II–6.—GROUND WATER MICROBIAL OCCURRENCE STUDIES/SURVEYS

| Study | Number of PWS wells sampled and location | Sampling frequency/volume | Indicators monitored (number of POS. wells/number of wells total, unless otherwise indicated) | Pathogenic viruses, *Legionella* (number of POS. wells/number of wells total, unless otherwise indicated) |
|---|---|---|---|---|
| 1. AWWARF Study. | 448 wells; 35 States. | Sampled once (25 wells sampled twice); 539 samples total, not all analyses conducted on all samples. Sampling volumes: 1512L eluated for virus analyses (5 liter equivalent for RT–PCR, 600L for cell culture), Coliphage 15L, Bacteria 200 mL. | Male-sp. coliphage, host *Salmonella* WG–49 (42/440); Somatic coliphage, host *E. coli C* (18/444); Coliphage, host *E. coli* C–3000 (48/444); Total coliform (44/445); enterococci (31/355); *C. perfringens* (1/57). | *Cell Culture:* Enterovirus (21/442); *PCR:* Rotavirus (62/425), Hepatitis A virus (31/429), Norwalk virus (3/312), Enterovirus (68/427). |
| 2a. EPA/AWWARF Phase I Study. | 94 wells; 22 States plus PR and USVI. | One sample, 1 L ..... | Somatic coliphage 5/94; 1*; Total coliform 31/94; 9*; *E. coli* 18/94; 5*; enterococci 17/94; 3*; *C. perfringens* 4/94; 0*; *indicates number of wells positive in Phase I which were not positive or not sampled in Phase II. | |

TABLE II–6.—GROUND WATER MICROBIAL OCCURRENCE STUDIES/SURVEYS—Continued

| Study | Number of PWS wells sampled and location | Sampling frequency/volume | Indicators monitored (number of POS. wells/number of wells total, unless otherwise indicated) | Pathogenic viruses, *Legionella* (number of POS. wells/number of wells total, unless otherwise indicated) |
|---|---|---|---|---|
| 2b. EPA/ AWWARF—Phase II Study. | 30, of which 23 were from Phase I; 17 States plus PR and USVI. | Monthly for one year; Average volume filtered: 6,037 L; Microscopic Particulate Analysis (MPA) data available for each well. | Somatic coliphage (16/30); Male specific coliphage (6/30); *Bacteroides* bacteriophage (6/30); Somatic *Salmonella* bacteriophage (6/30); Total coliform (24/30); enterococci (21/30); *C. perfringens*(10/30); *E. coli* (15/30); *E. coli* H7:O157 (0/7). | *Cell Culture*: Enterovirus (7/30); *PCR*: polio, entero, Hepatitis A, Norwalk, rota (results not available), (300+ samples from 30 wells; several wells cell culture positive multiple times); *Legionella* sp. (14/30), *Legionella pneumophila* (6/30). |
| 3. Missouri Ozark Plateau Study #1 (Davis and Witt, 1999). | 109 wells ..... | Two samples/well, 25 wells sampled once for tritium, 200–300 L ground water filtered at the well head. | Somatic coliphage (1/109); Male specific coliphage (10/109); Fecal streptococci (1/109); Fecal coliform (2/109); *E. coli* (0/109). | *Cell Culture*: Enterovirus (0/109); *PCR*: Enterovirus (13/109). |
| 4. Missouri Ozark Plateau Studies #2 (Femmer, 1999) (pre-1970 wells). | 106 wells ..... | One sample, 200–300 L filtered at the well head. | Somatic coliphage (3/106); Male specific coliphage (3/106); Fecal streptococci (8/106); Fecal coliform (8/106); *E. coli* (9/106). | Study in progress; *Cell Culture*: Enterovirus (0/106). |
| 5. Missouri Alluvial Study. | 64 wells ..... | Sampling occurred during a four month period. Some sampling done during flooding. | Somatic coliphage (1/81); Male specific coliphage (1/81); *Bacteroides* bacteriophage (1/81); Total coliform (33/81); Fecal coliform (5/81); Fecal streptococci (12/81). | *Cell Culture*: Enterovirus (1//81). |
| 6. Wisconsin Migrant Worker Camp Study. | 21 wells ..... | Monthly: Bacteria—6 mos.; Phage—5 mos.; Bacteria—100 mL; Phage—1L. | Male specific coliphage (20/21); Total coliform (14/21); *E. coli* (0/21); *K. pneumoniae* (1/21). | |
| 7. EPA Vulnerability Study. | 30 wells in 8 States. | Each well visited once. Two 1L grab samples and 1500–L sample Equiv. vol. 650L for enterovirus, 100 mL for bacteria, 10 mL to 100L for coliphage, PCR?. | Male specific coliphage (0/30); Somatic coliphage (2/24; large volume); Total coliform (4/30); enterococci (0/30). | *Cell Culture*: enterovirus (0/30); *PCR*: HAV (1/30), Rota (0/30), Norwalk (0/30), enterovirus (0/30). |
| 8. US-Mexico Border Study (TX and NM). | 17 wells ..... | 3 (300–1000 gallon) samples/well | Male specific coliphage (0/17); Somatic coliphage (0/17). | *Cell Culture*: Enterovirus (0/17). |
| 9. Whittier, CA, Coliphage Study. | 23 wells ..... | Once a month for 6 months; 4L samples. | Male specific coliphage (18/23); Somatic coliphage (23/23); Total coliform (4/23); *E. coli* (0/23). | |
| 10. Oahu, Hawaii Study. | Virus—32 wells Bacteria—39 wells. | Each well sampled 1–4 times; total 79 samples, Virus—1–L; *C. perfringens*, HPC—0.1L; Coliforms, fecal strep—0.1L and 0.5L. | Male specific coliphage (0/32); Somatic coliphage (0/32); Total Coliform (3/39); *E. coli* (1/39); Fecal Streptococci (1/39); *C. perfringens* (0/39). | *Legionella* sp. (PCR; 15/26), *Legionella pneumophila* (PCR; 1/27). |
| 11. New England Study. | 124 wells; 6 States. | Each well sampled four times over one year; Up to 1500–L sample for virus. | Study in progress; Male specific coliphage (4/79); Somatic coliphage (1/70); Total coliform (27/124); Aeromonas hydrophila (19/122); *C. perfringens* (6/119); *E. coli* (0/124); enterococci (20/124). | Study in progress; *Cell Culture*: Enterovirus (2/122); *PCR*: Enterovirus (results not available). |
| 12. California Study. | 18 wells ..... | 14 of 18 wells sampled 12 to 22 times (monthly); Average sample volume 1784 L (range 240–3331 L) 1 l grab sample for indicators; (Coliphage analyzed using 10 mL grab samples, 1–L enrichment samples, IMDS filter eluates and filter concentrates). | Study in progress; Male specific coliphage: (hosts *E. coli* FAMP, S. *typhimurium* WG–49) (4/18); Somatic coliphage: host *E. coli* 13706 (13/18); Total coliform (7/18); Fecal streptococci (0/18). | Study in progress; *Cell Culture*: enterovirus (6/18); *PCR*: HAV (0/18), Rota (0/18), enterovirus (direct RT–PCR) (6/18), IMS–RT–PCR (10/18), Integrated *Cell Culture* PCR enterovirus (4/18)). |
| 13. Three-State Study (Wisconsin, Maryland, Minnesota). | 50 wells (25 from MN, 25 from WI, additional wells from MD). | Each well sampled four times over one year. | Study in progress; Somatic coliphage; Male specific coliphage; Total coliform; enterococci; *C. perfringens*; *E. coli*. | Study in progress; *Cell Culture*: enterovirus (3/25). |

*D. Health Effects of Waterborne Viral and Bacterial Pathogens*

To assess the public health risk associated with a waterborne pathogen, or group of pathogens, both occurrence data and health effects data are needed. The previous section discussed the occurrence in ground water of pathogens and indicators of fecal contamination. This section discusses the health effects associated with waterborne pathogens, first viral agents and then bacterial.

Viral Pathogens

Table II–7 and II–8 list viral and bacterial pathogens that have caused waterborne disease in ground waters. Unlike some bacterial pathogens, viruses cannot reproduce or proliferate outside a host cell. Viruses that infect cells lining the human gut are enteric viruses. With a few exceptions, viruses that can infect human cells typically cannot infect the cells of other animals and vice versa. This contrasts with many bacterial pathogens, which often have a broader host range. Some enteric viral pathogens associated with water may infect cells in addition to those in the gut, thereby causing mild or serious secondary effects such as myocarditis, conjunctivitis, meningitis or hepatitis. There is also increasing evidence that the human body reacts to foreign invasion by viruses in ways that may also be detrimental. For example, one hypothesis for the cause of adult onset diabetes is that the human body, responding to coxsackie B5 virus infection, attacks pancreatic cells in an auto-immune reaction as a result of similarities between certain pancreas cells and the viruses (Solimena and De Camilli, 1995).

When humans are infected by a virus that infects gut cells, the virus becomes capable of reproducing. As a result, humans shed viruses in stool, typically for only a short period (weeks to a few months). Shedding often occurs in the absence of any signs of clinical illness. Regardless of whether the virus causes clinical illness, the viruses being shed may infect other people directly (by person-to-person spread, contact with infected surfaces, *etc.*) and is referred to as secondary spread. Waterborne viral pathogens thus may infect others via a variety of routes.

TABLE II–7.—SOME ILLNESSES CAUSED BY FECAL VIRAL PATHOGENS

| Enteric virus | Illness |
|---|---|
| Poliovirus | *Paralysis.* |
| Coxsackievirus A | *Meningitis*, fever, respiratory disease. |
| Coxsackievirus B | *Myocarditis*, congenital heart disease, rash, fever, *meningitis*, encephalitis, *pleurodynia*, diabetes melitis, *eye infections.* |
| Echovirus | *Meningitis*, encephalitis, *rash, fever, gastroenteritis.* |
| Norwalk virus and other caliciviruses | *Gastroenteritis.* |
| Hepatitis A virus | *Hepatitis.* |
| Hepatitis E virus | *Hepatitis.* |
| Small round structured viruses (probably caliciviruses) | *Gastroenteritis.* |
| Rotavirus | *Gastroenteritis.* |
| Enteric Adenovirus | Respiratory disease, *eye infections*, gastroenteritis. |
| Astrovirus | *Gastroenteritis.* |

(Data from the 1994 Encyclopedia of Microbiology, *Underline*indicates disease causality rather than association)(Lederberg, 1992).

**Bacterial Pathogens**

Bacterial pathogens may be primary pathogens (those that can cause illness in most individuals) or secondary or opportunistic pathogens (those that primarily cause illness only in sensitive sub-populations). Unlike most primary pathogens, some opportunistic bacterial pathogens can colonize and grow in the biofilm in water system distribution lines. Some waterborne bacterial agents cause disease by rapid growth and dissemination (*e.g.*, *Salmonella*) while others primarily cause disease via toxin production (*e.g.*, *Shigella*, *E. coli* O157, *Campylobacter jejuni*). *Campylobacter*, *E. coli* and *Salmonella* have a host range that includes both animals and humans; *Shigella* is associated with humans and some other primates (Geldreich, 1996). As noted previously, some waterborne bacterial pathogens can survive a long time outside their hosts.

Most of the waterborne bacterial pathogens cause gastrointestinal illness, but some can cause severe illness too. For example, *Legionella* causes Legionnaires Disease, a form of pneumonia that has a fatality rate of about 15%. It can also cause Pontiac Fever, which is much less severe than Legionnaires Disease, but causes illness in almost everyone exposed. A few strains of *E. coli* can cause severe disease, including kidney failure. One strain, *E. coli* O157:H7 has caused several waterborne disease outbreaks since 1990. It is a prime cause of bloody diarrhea in infants, and can cause hemorrhagic colitis (severe abdominal cramping and bloody diarrhea). In a small percentage of cases, hemorrhagic colitis can lead to a life-threatening complication known as hemolytic uremic syndrome (HUS), which involves destruction of red blood cells and acute kidney failure. From 3% to 5% of HUS cases are fatal (CDC, 1999), and most commonly found in young children and the elderly. Some of the opportunistic pathogens can also cause a variety of illnesses including meningitis, septicemia, and pneumonia (Rusin *et al.*, 1997).

TABLE II–8.—SOME ILLNESSES CAUSED BY MAJOR WATERBORNE BACTERIAL PATHOGENS

| Bacterial pathogen | Illnesses |
|---|---|
| *Campylobacter jejuni* | Gastroenteritis, meningitis, associated with reactive arthritis and Guillain-Barre paralysis. |
| *Shigella* species | Gastroenteritis, dysentery, hemolytic uremic syndrome, convulsions in young children, associated with Reiters Disease (reactive arthropathy). |
| *Salmonella* species | Gastroenteritis, septicemia, anorexia, arthritis, cholecystitis, meningitis, pericarditis, pneumonia, typhoid fever. |

TABLE II–8.—SOME ILLNESSES CAUSED BY MAJOR WATERBORNE BACTERIAL PATHOGENS—Continued

| Bacterial pathogen | Illnesses |
|---|---|
| *Vibrio cholerae* | Cholera (dehydration and kidney failure). |
| *Escherichia coli* (several species) | Gastroenteritis, hemolytic uremic syndrome (kidney failure). |
| *Yersinia entercolitica* | Gastroenteritis, acute mesenteric lymphadenitis, joint pain. |
| *Legionella species* | Legionnaires Disease, Pontiac Fever |

(Data from the 1994 Encyclopedia of Microbiology, Underline indicates disease causality rather than association)(Lederberg, 1992).

*E. Risk Estimate*

1. Baseline Risk Characterization

This section provides an estimate of the number of people that may be at risk of microbial illness associated with consumption of fecally contaminated drinking water in populations served by ground water systems. EPA has prepared estimates of the numbers of people at risk of viral illness (and possibly death) from three conditions in which fecal contamination may be introduced to ground water systems: fecal contamination in the source water of systems without disinfection; fecal contamination in the source water of systems with inadequate (less than 4-log as discussed later) or failed disinfection; and fecal contamination of the distribution system.

The first condition in which EPA characterizes the baseline risk is for source contaminated ground water systems which do not have disinfection treatment. EPA characterizes the risk to consumers in these systems in five steps: (1) Calculating the population served by undisinfected systems using ground water sources; (2) determining the occurrence of the pathogens of concern in these systems; (3) assessing the exposure to the pathogens of concern; (4) determining the pathogenicity (likelihood of infection) based on dose-response information for each of the pathogens characterized; and (5) calculating the number of illnesses among the population served resulting from consumption of water containing the pathogens.

EPA then estimates additional illnesses resulting from systems with inadequate or failed disinfection treatment and fecally contaminated source water, and systems in which fecal contamination is introduced into the distribution system. These additional illnesses are estimated based on the causes of contamination which lead to waterborne disease outbreaks reported to the CDC in ground water systems from 1991 to 1996. To estimate these additional illnesses, EPA calculated the ratio of the outbreak illnesses in systems with inadequate or failed disinfection treatment to outbreak illnesses in systems without any disinfection, and the ratio of outbreak illnesses in systems with distribution system contamination to outbreak illnesses in systems without any disinfection.

2. Summary of Basic Assumptions

This risk assessment uses a number of assumptions to arrive at an estimate of the number of people at risk of illness or death due to consumption of water from systems with fecal contamination. Some of these assumptions are necessary because data in these areas simply does not exist.

The feasibility of performing a risk analysis on each and every microbial contaminant is diminished when considering the wide range of different microbial contaminants that exist, and that detection methods for all of these contaminants do not exist. Therefore, the risk assessment assumes that the only people exposed to viral contamination are the people served by those wells which test positive for the two viruses used in the risk assessment model, and the exposed population will be exposed to the virus concentration throughout the entire year. The assumption that the population is exposed only to viruses which are accurately described by the model viruses may lead to an underestimation of exposure.

The model viruses which were chosen to act as surrogates for all viruses fall into two categories; those viruses which have low-to-moderate infectivity but relatively severe health effects, and those viruses which have high infectivity but relatively mild health effects. Exposure to viruses that do not fall into these categories may result in an underestimate or overestimate of risk. Risks are not directly quantified for bacterial contaminants because EPA does not have sufficient data to directly model bacterial risk. However, EPA has adjusted its risk estimate for viral illness to approximate for the risk of bacterial illness.

The simplifying assumptions used in this risk assessment, as well as assessing the exposure in only the positive wells, yields an estimated average risk that EPA assumes is a best estimate of the actual risk given available data.

3. Population Served by Untreated Ground Water Systems

EPA estimates there are 44,000 community ground water systems (CWS) serving 88 million people; 19,000 non-transient, non-community ground water systems (NTNCWS) serving five million people; and 93,000 transient non-community ground water systems (TNCWS) serving 15 million people (SDWIS, 1997a). Of these systems, EPA estimates that 68% percent of CWSs are disinfected (CWSS, 1997) (US EPA, 1997c). Larger CWSs are more likely to practice disinfection than are smaller CWSs (*e.g.*, 81% of CWSs serving more than 100,000 people are disinfected while 45% of systems serving less than 100 people disinfect. Estimates of treatment for noncommunity water systems are not as detailed. However, based upon information from State drinking water programs, EPA estimates 28% of NTNCWS and 18% of TNCWS disinfect (US EPA, 1996a).

Based upon the number of people served by ground water systems, and the percentage of systems which disinfect, EPA estimates that 18 million people are served untreated ground water from CWSs, four million people are served untreated water from NTNCWSs, and 13 million people are served untreated water from TNCWSs. There is a potential for double or triple counting of the same people within these estimates since a number of people may be served ground water from more than one of the system type categories. For example, a person may consume water from a CWS at home, and a NTNCWS at work or a TNCS while on vacation. EPA has addressed the potential for double counting in the analysis by assuming that individuals do not consume water from each system type every day (see section V).

4. Pathogens Modeled

EPA is concerned about ground water systems which are fecally contaminated since drinking water in these systems may contain pathogenic viruses and/or bacteria. A wide number of viral and bacterial pathogens have been associated with waterborne disease in ground water systems. However, there are inadequate data for EPA to

characterize the risk attributable to each pathogen because detection methods are not available for all pathogens. Additionally, detection methods which are available may be insensitive and incapable of detecting the presence of viruses at very low concentrations. However, even at low concentrations, viruses in drinking water can result in infection. To the extent that detection methods do not exist for a particular pathogen, there may be a resultant underestimation of the risk of illness and death.

In this analysis, EPA estimates the number of illnesses annually associated with two types of pathogenic viruses found in fecally contaminated ground water. These two types of viruses are designated as Type A and Type B viruses for this analysis. Type A viruses represent those viruses which are highly infective, yet have relatively mild symptoms (*e.g.*, gastroenteritis). For this analysis, rotavirus is used as a surrogate for all Type A viruses because rotavirus has been detected in drinking water sources, dose-response data have been prepared for rotavirus and rotavirus has been implicated as the etiologic agent in incidents of waterborne disease. Type B viruses represent those viruses which have low-to-moderate infectivity, yet have potentially more severe symptoms (*e.g.*, myocarditis), and are represented by echovirus. Echovirus also has available dose-response data (Regli *et al*, 1991) and has been implicated in a waterborne disease outbreak (Haefliger *et al.*, 1998).

The risk assessment used model viruses as surrogates of the actual viruses present. As a result, the risk assessment provides an estimation of risks. The additional risks from other viruses may be higher or lower depending on their occurrence or pathogenicity. For example, if the risk assessment estimated the risks from exposure to Norwalk virus (a Type A virus), using rotavirus as a surrogate, the morbidity rate may be higher for adults than the rate assumed in the model. An outbreak in an Arizona resort in 1989 was believed to be caused by a Norwalk-like virus. This agent may have been responsible for an outbreak which caused illness in 110 out of 240 guests of all ages (Lawson *et al*, 1991), a 46% morbidity rate. This is much higher than the morbidity rate of 10% for Type A virus among people older than two. National occurrence data do not exist for many of the other pathogens that may occur in drinking water; therefore, EPA has limited its estimation of risk to only those viral pathogens for which occurrence data and dose response data are available.

Occurrence studies show a significant occurrence of bacterial indicators in ground water wells; for example, almost 9% percent of the wells sampled in the AWWARF study tested positive for the presence of enterococci (Abbaszadegan *et al.*, 1999). However, EPA cannot directly estimate national illnesses from bacterial pathogens such as *Salmonella*, due to a lack of occurrence data for those pathogens. EPA believes that the majority of waterborne illnesses due to unknown etiological agents are caused by viruses because viruses move more readily in the ground, remain viable longer and are more infectious than bacteria. Also, more methodologies exist for the identification of bacterial pathogens than for viral pathogens and therefore bacterial pathogens are more likely to be identifiable. The CDC data shows that for every 100 viral or unknown etiological agent illnesses there were 20 bacterial illnesses. Therefore, EPA estimates that the number of viral illnesses can be increased by 20% to account for bacterial illnesses in ground water systems.

5. Microbial Occurrence and Concentrations

EPA reviewed the ground water viral occurrence data (see discussion of occurrence studies in section II. C.) to develop estimates of: the portion of ground water sources which are contaminated with viruses, the period of time in which the wells are contaminated, and the concentration of viruses within the contaminated wells. EPA believes that improperly constructed wells may have significantly higher virus occurrence and concentrations than properly constructed wells (wells which do not comply with State well construction codes). Improperly constructed wells are likely to have more pathways for the introduction of viruses and less natural filtration by the overlying hydrogeologic material. Therefore, the exposure and risks from consumption of water from improperly constructed wells will most likely be higher. As a result, the exposure and risks should be assessed separately for properly and improperly constructed wells in order to develop a range reflecting national conditions.

EPA determined that the study conducted by AWWARF represents conditions in properly constructed wells and the EPA/AWWARF (Lieberman *et al.*, 1994, 1999) study represents conditions in improperly constructed wells. EPA selected the AWWARF study as representative of properly constructed wells (*e.g.*, wells with casing and grout to confining layers, sanitary seals, *etc.*) because it excluded wells of improper construction and the wells sampled were representative of hydrogeologic conditions for water supply wells in the United States. However, the wells selected may not have been representative of the probability of fecal contamination in ground water wells nationally. As noted in section II.C.1., one-third of the wells in this study were originally selected for the purpose of evaluating the effectiveness of the PCR method based on criteria that may over represent high risk wells. The remaining two-thirds were selected to balance the sample with wells that were representative of hydrogeologic conditions for drinking water wells nationally. EPA requests comment and data which would help assess the representativeness of the wells in the AWWARF study sample. However, EPA believes that the AWWARF study data represents the best currently available data on occurrence of viral pathogens in properly constructed wells and has thus used it as the basis of baseline incidence estimates.

EPA selected the EPA/AWWARF study to be representative of wells of improper construction because it sampled wells which were determined to be vulnerable to contamination. The EPA/AWWARF study considered wells as vulnerable based on one or more of the following considerations: hydrogeology, well construction, State nominations, microbial sampling results, close proximity to known sources of fecal contamination, and water quality history. For the purposes of the risk assessment, all wells determined to be vulnerable were used as surrogates for improperly constructed wells. The results from this study may over estimate the risks from improperly-constructed wells generally, since it included only wells that were deliberately selected through a several step process to be highly vulnerable to contamination (see section II.C.2.). EPA estimated that 83% of systems have properly constructed wells based upon data from ASDWA's Survey of Best Management Practices for Community Ground Water Systems (ASDWA, 1998).

The AWWARF study data include viral cell culture assay results which detect the presence of viable enterovirus (including echovirus and other Type B viruses) in the samples. Twenty-one of the 442 wells sampled (4.8%) tested positive for the Type B viral cell culture. EPA determined that this data can be used to estimate the percentage of properly constructed wells which are contaminated at a given point in time with Type B viruses. The AWWARF

study data also include rotavirus PCR results which indicate that 62 of the 425 (14.6%) wells sampled contained rotavirus genetic material. EPA determined that the PCR results may be an overestimation of the portion of wells with viable Type A viruses since PCR methods do not distinguish between viable and non-viable viruses. To calculate the portion of PCR positive wells which contain viable viruses EPA compared the enterovirus (Type B) cell culture results to the enterovirus (Type B) PCR analysis and found that for every enterovirus cell culture positive well, there were 3.3 PCR enterovirus positive wells. EPA estimated that the 1/3.3 rotavirus PCR wells contained viable virus, and therefore 4.4% (14.6%/3.3) of all properly constructed wells were contaminated with Type B viruses at any one time. Viral and bacterial indicator data indicate there are a greater percentage of wells in the study which were fecally contaminated than contained the viral pathogens at the time of sampling. For example, almost 16% of all wells tested positive for viral cell culture, male specific coliphage or enterococci.

The EPA/AWWARF study sampled wells vulnerable to contamination monthly for a one year period and found that 6.0% of the samples tested positive for enterovirus (Type B) cell culture. Since cell culture methods are not available for rotavirus (the representative of Type A viruses), the EPA/AWWARF study tested samples using PCR methods for the presence of rotavirus to estimate the occurrence of Type A viruses in improperly constructed wells. However, the PCR data is still under review by researchers and unavailable for consideration in this analysis. EPA therefore based the estimate of occurrence of viable Type A viruses in improperly constructed wells on the ratio of viable Type A virus in the AWWARF study (4.4%) to Type B viruses in the AWWARF study (4.7%). Applying this ratio (4.4%/4.7%) to the percentage of improperly constructed wells containing Type B viruses (6.0%), EPA estimates the percentage of improperly constructed wells with Type A virus contamination is 5.5%.

EPA estimated Type A and Type B virus concentrations are 0.36 viruses/100L for properly constructed wells based on the mean enterovirus concentration in the AWWARF study. EPA also estimated Type A and Type B virus concentrations to be 29 viruses/100L for improperly constructed wells based on the mean enterovirus concentration in EPA/AWWARF study. Although these studies determined the concentrations of enteroviruses (Type B viruses) only, for the purposes of this analysis EPA assumed the concentrations of Type A viruses and Type B viruses were equivalent.

6. Exposure to Potentially Contaminated Ground Water

EPA developed estimates of the population potentially exposed to viral pathogens based upon the estimates of population served by undisinfected systems and the portions of those systems which are estimated to be virally contaminated. In CWS, 18 million people are served undisinfected ground water. Assuming 17% of wells serving these people are improperly constructed (and 83% are properly constructed) from the results of the ASDWA BMP Survey (ASDWA, 1997), and Type A viruses occur in 4.4% of properly constructed wells and 5.5% of improperly constructed wells, the population potentially exposed to Type A viruses in CWS is 842,000. Similar calculations can be conducted to obtain the population exposed to Type A viruses in NTNCWS, as well as Type B viruses in all ground water systems. EPA's estimates of the population potentially exposed to the viruses are presented in Table II–9. Many of the people exposed to the Type A viruses are also exposed to the Type B viruses, therefore these number cannot be added.

TABLE II–9.—POPULATION POTENTIALLY EXPOSED TO VIRALLY CONTAMINATED DRINKING WATER IN UNDISINFECTED GROUND WATER SYSTEMS

| System type | Population potentially exposed to type A virus | Population potentially exposed to type B virus |
|---|---|---|
| CWS ..... | 842,000 | 918,000 |
| NTNCWS .. | 175,000 | 191,000 |
| TNCWS ..... | 567,000 | 619,000 |

To estimate the risk of illness from consumption of undisinfected ground water, EPA estimated people consume an average 1.2 liters of water per day based upon the 1994–1996 USDA Continuing Survey of Food Intakes by Individuals (US EPA, 2000a). EPA accounted for the variability in consumption by modeling consumption as a custom distribution fit to age groups in the survey data. EPA also assumed that people consume water from CWSs 350 days per year; from NTNCWSs 250 days per year; and from TNCWSs 15 days per year. EPA notes that these assumptions may allow for some double counting of exposure, but EPA is not aware of data to allow a more refined breakdown of consumption. EPA requests comment on these assumptions.

7. Pathogenicity

After estimating the population potentially exposed to untreated (i.e., not disinfected) contaminated ground water and the amount of water consumed, the next step is to assess the pathogenicity of the viruses. Once viruses are consumed, the likelihood of infection and illness varies depending on the virus.

For this analysis, the likelihood of infection from ingestion of one or more Type A or Type B viruses are estimated based on dose response equations developed for rotavirus (Ward *et al.*, 1986) and echovirus (Schiff *et al.*, 1984), respectively. These equations estimate the annual probability of infection following consumption of a specified virus and are based on studies of healthy volunteers. The volunteers for these studies are typically between the ages of 20 and 50, and therefore, may underestimate the probability of infection in sensitive subpopulations (*e.g.*, children and elderly) and the immunocompromised (*e.g.*, nursing home residents and AIDS patients). Rotavirus dose-response information was used to represent Type A viruses, while echovirus dose-response information was used to represent Type B viruses.

Once a person becomes infected, the likelihood of illness (morbidity) varies, depending on the pathogen and the sensitivity of the consumer. For Type A viruses, EPA assumed the percent of people becoming ill once infected is 88% for children under the age of two (Kapikian and Chanock, 1996). EPA assumed a morbidity rate of 10% for all other populations based upon a study of a rotavirus outbreak (Foster *et al.*, 1980) and incidents of rotavirus in families with infants ill with rotavirus (Wenman *et al.*, 1979).

EPA assumed the percent of people infected with Type B viruses who become ill also varies with age: 50% for children five years of age and less, 57% for individuals between 5 and 16 years of age, and 33% for people older than 16. EPA estimated these age-specific morbidity values based on data from a community-wide echovirus type 30 epidemic (Hall *et al.*, 1970) and from the New York Viral Watch (Kogon *et al.*, 1969).

Secondary illnesses result from individuals being exposed to individuals who contracted the illness from drinking water. For this analysis, EPA estimates the additional number of

people who become ill as a result of secondary spread. For Type A viruses, EPA assumed that an additional 0.55 people will become ill from every child that becomes ill through consumption of drinking water. This assumption is based on a study of children under five years old, ill with rotavirus, who spread the illness to others in their households (Kapikian and Chanock, 1996). For Type B viruses EPA assumed that 0.35 additional people will become ill through secondary spread. This assumption was based on a review of various epidemiological studies for echovirus (Morens *et al.*, 1991). There is some uncertainty as to the exact rate of secondary spread for Type B viruses, so EPA has assumed that the secondary spread rates range from 0.11 to 0.55.

The probability that an ill person will die as a result of an illness is referred to as mortality. EPA expects Type A viruses to result in far fewer deaths than Type B viruses. EPA assumed a mortality rate for all age groups of 0.00073 percent. This assumption was based on an estimate of 20 rotavirus deaths per year out of 2,730,000 cases of rotavirus diarrhea in children 0–4 years old (Tucker *et al.*, 1998). EPA assumed the mortality rate for Type B viruses be 0.92 percent for infants one month or less. This assumption was based upon studies of hospitalized infants (Kaplan and Klein, 1983). For the rest of the population, EPA assumed that 0.04 percent of people ill from Type B viruses will die. These estimates may underestimate the number of infant deaths due to Type B viral illnesses, since Jenista et al. (1984) and Modlin (1986) reported a three percent case fatality rate for infants (one month or less) which is three times the value used in the model.

8. Potential Illnesses

EPA estimates, based upon the assumptions described earlier, that 98,000 viral illnesses each year are caused by consuming drinking water in undisinfected public ground water systems. EPA further estimates that nine of these people die each year.

EPA believes there are additional waterborne illnesses and deaths among consumers of drinking water from public ground water systems beyond those estimated due to contaminated source waters in undisinfected systems. Between 1991 and 1996 there were 1,260 waterborne outbreak illnesses reported to CDC which were attributed to microbial contamination of the source and inadequate or interrupted disinfection, and 944 waterborne illnesses reported to CDC which were attributed to distribution system contamination in ground water systems. In that same period there were 2,924 reported outbreak illnesses in source contaminated undisinfected system. This results in 0.43 (1,260/2,924) additional illnesses in source contaminated, ground water systems with failed disinfection for every illness from undisinfected, fecally contaminated ground water. Based on similar analysis, there are also 0.32 (944/2,924) additional illnesses due to distribution system contamination for every one illness due to source contamination in undisinfected ground water systems. (This ratio does not apply to transient noncommunity water systems, because they do not have distribution systems.) EPA assumed the ratios of the causes of reported outbreak illnesses is equal to the ratio of the causes of all waterborne illnesses. Therefore, EPA estimates, based upon these ratios, that an average of 42,000 additional illnesses and four additional deaths occur each year as a result of source contamination and inadequate or interrupted disinfection. EPA also estimates that an average of 28,000 additional illnesses and three additional deaths are caused each year by distribution system contamination. Table II–10 presents the estimates of viral illness and death under current conditions.

TABLE II–10.—ESTIMATES OF BASELINE VIRAL ILLNESS AND DEATH DUE TO CONTAMINATION OF PUBLIC GROUND WATER SYSTEMS

| Cause of contamination | No. of type A virus illnesses | No. of type A virus deaths | No. of type B virus illnesses | No. of type B virus deaths | total illnesses types A & B | Total deaths types A & B |
|---|---|---|---|---|---|---|
| Source contamination/undisinfected system | 78,000 | 1 | 20,000 | 8 | 98,000 | 9 |
| Source contamination/disinfected system | 34,000 | ..... | 8,000 | 4 | 42,000 | 4 |
| Distribution system contamination | 22,000 | ..... | 6,000 | 3 | 28,000 | 3 |
| All Causes | 134,000 | 1 | 34,000 | 14 | 168,000 | 16 |

Because of a lack of occurrence data for bacterial pathogens in ground water, risks from bacterial contamination of ground water sources and distribution systems are not quantified in this assessment. Although it is believed that viruses are more readily transported through the subsurface than bacteria (Sinton *et al.*, 1997), ground water system disease outbreaks caused by bacterial pathogens such as *Shigella*, *Salmonella* spp., and *Campylobacter* spp. and *E. coli* O157:H7 have been reported. For the period 1971–1996, 56 outbreaks, resulting in more than 10,000 illnesses and 11 deaths, were attributed to bacterial pathogen contamination of public ground water systems. More than 20% of these bacterial outbreaks occurred since 1991, and several outbreaks were attributed to gross fecal contamination of distribution lines.

As previously stated, there may be an additional 20% of illnesses caused by bacterial pathogens (in the absence of viral pathogens) in fecally contaminated ground water. Therefore, the numbers of illnesses and deaths presented in Table II–10 may underestimate the true numbers of annual illnesses and deaths by 20% (an estimated 34,000 additional illnesses and three additional deaths).

9. Summary of Key Observations

In conclusion, EPA believes that at any one point in time (most approximately 90 percent) ground water systems provide uncontaminated water. However, the risk characterization described herein indicates that a subset of ground water systems represent a potential risk to public health, which clearly supports the need to proceed with regulation of these systems. According to the assessment, EPA estimates that approximately 168,000 people are at risk to viral illness and 16 people are at risk of death, annually. It is noted that this analysis focuses primarily on the potential of gastrointestinal illness caused by exposure to viruses, therefore; the potential for additional illnesses from ground water contaminated only by pathogenic bacteria also exists and may account for an additional 34,000 illnesses and three deaths annually.

Therefore, the estimate of illnesses represents a potential underestimate of the actual illnesses attributed to consumption of water from ground water systems. Based on this analysis EPA believes that risk of microbial illness exists for a substantial number of people served by ground water systems. Consequently, EPA believes that the proposed regulatory provisions discussed later provide a meaningful opportunity for public health risk reduction.

10. Request for Comments

EPA seeks comment on the data, criteria and methodology used in the risk assessment, and where any different approaches may be appropriate. EPA also seeks comment on the assumptions used in this assessment, as well as the conclusions reached, and any additional data that commenters may be able to provide on occurrence, exposure, infectivity, morbidity, or mortality associated with microbial pathogens in ground water.

*F. Conclusion*

In EPA's judgment, the data and information presented in previous sections relating to outbreaks, occurrence, adverse microbial health effects, exposure, and risk characterization demonstrate that there are contaminants of concerns that exist in ground water at levels and at frequencies of public health concern. Moreover, as discussed in detail later, the Agency believes there are targeted risk-based regulatory strategies that provide a meaningful opportunity to reduce public health risk for a substantial number of people served by ground water sources.

EPA recognizes that there are particular challenges associated with developing an effective regulatory approach for ground water systems. These include first, the large number of ground water systems; second, the fact that only a subset of these systems appear to have microbial contamination (although a larger number are likely to be vulnerable); and third, that most ground water systems range from being small to very small in terms of population served. These factors combine to underscore the fact that a one-size-fits-all approach cannot work. This point was made repeatedly by participants in public stakeholder meetings across the country, and EPA agrees. The task therefore is to develop a protective public health approach which ensures a baseline of protection for all consumers of ground water and sets in place an increasingly targeted strategy to identify high risk or high priority systems that require greater scrutiny or further action.

## III. Discussion of Proposed GWR Requirements

The information outlined earlier indicates that the primary causes of waterborne related illnesses are associated with source water contamination and untreated ground water, source water contamination and unreliable treatment, water system deficiencies, and a subset of waterborne disease outbreaks of unknown causes. The requirements and options proposed today address each of these areas through a multiple-barrier approach which relies upon five major components: periodic sanitary surveys of ground water systems requiring the evaluation of eight elements and the identification of significant deficiencies; hydrogeologic assessments to identify wells sensitive to fecal contamination; source water monitoring for systems drawing from sensitive wells without treatment or with other indications of risk; a requirement for correction of significant deficiencies and fecal contamination through the following actions: eliminate the source of contamination, correct the significant deficiency, provide an alternative source water, or provide a treatment which achieves at least 99.99 percent (4-log) inactivation or removal of viruses, and compliance monitoring to insure disinfection treatment is reliably operated where it is used.

*A. Sanitary Surveys*

1. Overview and Purpose

A key element of the multiple-barrier approach is periodic inspection of ground water systems through sanitary surveys. According to the Total Coliform Rule (TCR), a sanitary survey is an onsite review of the water source, facilities, equipment, operation and maintenance of a public water system for the purpose of evaluating the adequacy of such source, facilities, equipment, operation and maintenance for producing and distributing safe drinking water (40 CFR 141.2). The Agency believes that periodic sanitary surveys, along with appropriate corrective actions, are indispensable for assuring the long-term quality and safety of drinking water. When properly conducted, sanitary surveys can provide important information on a water system's design and operations and can identify minor and significant deficiencies for correction before they become major problems. By taking steps to correct deficiencies exposed by a sanitary survey, the system provides an additional barrier to microbial contamination of drinking water.

The Agency proposes the following sanitary survey requirements: (1) States, or authorized agents, conduct sanitary surveys for all ground water systems at least once every three years for CWSs and at least once every five years for NCWSs; (2) sanitary surveys address all eight elements set out in the EPA/State Joint Guidance on sanitary surveys (outlined later in this section); (3) States provide systems with written notification which describes and identifies all significant deficiencies no later than 30 days of the on-site survey; and (4) systems consult with the State and take corrective action for any significant deficiencies no later than 90 days of receiving written notification of such deficiencies, or submit a schedule and plan to the State for correcting these deficiencies within the same 90 day period; and (5) States must confirm that the deficiencies have been addressed within 30 days after the scheduled correction of the deficiencies.

A ground water system that has been identified as having significant deficiencies must do one or more of the following: eliminate the source of contamination, correct the significant deficiency, provide an alternate source water, or provide a treatment which reliably achieves at least 99.99 percent (4-log) inactivation or removal of viruses before or at the first customer. Ground water systems which provide 4-log inactivation or removal of viruses will be required to conduct compliance monitoring to demonstrate treatment effectiveness. The ground water system must consult with the State to determine which of the approaches, or combination of approaches, are appropriate for meeting the treatment technique requirement. Ground water systems unable to address the significant deficiencies in 90 days, must develop a specific plan and schedule for meeting this treatment technique requirement, submit them to the State, and receive State approval before the end of the same 90-day period. For the purposes of this paragraph, a "significant deficiency" includes, : a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the State determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.

Sanitary surveys provide a comprehensive and accurate record of the components of water systems, assess the operating conditions and adequacy of the water system, and determine if

past recommendations have been implemented effectively. The purpose of the survey is to evaluate and document the capabilities of the water system's sources, treatment, storage, distribution network, operation and maintenance, and overall management in order to ensure the provision of safe drinking water. In addition, sanitary surveys provide an opportunity for State drinking water officials or approved third party inspectors to visit the water system and educate operators about proper monitoring and sampling procedures, provide technical assistance, and inform them of any changes in regulations.

Sanitary surveys have historically been conducted by State drinking water programs as a preventative tool to identify water system deficiencies that could pose a threat to public health. In 1976, EPA regulations established, as a condition of primacy, that States develop a systematic program for conducting sanitary surveys, with priority given to public water systems not in compliance with drinking water regulations (40 CFR 142.10 (b)(2)). This primacy requirement did not define the scope of sanitary surveys or specify minimum criteria.

In 1989, the TCR included a provision that requires systems that serve 4,100 people or less and collecting fewer than five routine total coliform samples per month to conduct a periodic sanitary survey every five years, with an exception made for NCWS that use protected and disinfected ground water to conduct the survey every ten years. The TCR, however, does not establish what must be addressed in a sanitary survey or how such a survey should be conducted. The responsibility is on the system rather than the State for completing the sanitary survey (40 CFR 141.21(d)(2)). The TCR requires systems to use either a State official or an agent approved by the State to conduct the sanitary survey.

The IESWTR (63 FR 69478, December 16, 1998), established requirements for primacy States to conduct sanitary surveys for all systems using surface water or ground water under the direct influence of surface water. The rule also requires States to have the appropriate authority for ensuring that systems address significant deficiencies. The State must perform a survey at least once every three years for CWSs and every five years for NCWSs. These surveys must encompass the eight major areas defined by the EPA/State Joint Guidance (discussed in section 3).

This GWR proposal and the IESWTR differ in the requirements for a system to correct any significant deficiency. In the IESWTR, States are specifically required to have the appropriate rules or other authority to require systems to respond in writing to significant deficiencies outlined in a sanitary survey report within at least 45 days. A system, under this 45-day time frame, is required to notify the State in writing how and on what schedule it will address significant deficiencies noted in the survey. This GWR proposal differs from the IESWTR by proposing to require ground water systems to correct significant deficiencies and to do so within 90 days or seek a State approved schedule for plans requiring longer than 90 days.

2. General Accounting Office Sanitary Survey Investigation

In 1993, the US General Accounting Office (US GAO) investigated State sanitary survey practices. The US GAO found that many sanitary surveys were deficient, and that follow-up on major problems was often lacking. This investigation, which is described next, was published as a report, *Key Quality Assurance Program is Flawed and Underfunded* (US GAO 1993).

US GAO was directed by Congress to review State sanitary survey programs due to congressional concern that many States were cutting back on these programs, and thus undermining public health. Congress asked US GAO to determine in its report whether sanitary surveys are comprehensive enough to determine if a water system is providing safe drinking water and what the results indicate about water systems nationwide.

As part of this effort, GAO sent a detailed questionnaire to 49 States to attain a nationwide perspective on whether the States were conducting sanitary surveys, the frequency and comprehensiveness of the surveys, and what the survey results indicate about the operation and condition of water systems. To obtain more detailed information, the GAO also focused on 200 specific sanitary surveys conducted on CWSs in four States (Illinois, Montana, New Hampshire and Tennessee). This information was summarized in the GAO's report (US GAO 1993). The GAO report presented a number of key concerns, as discussed next.

Frequency Varies Among States and is Declining Overall. At least 36 States had a policy to conduct surveys of CWSs at intervals of three years or less; however, only 21 of these States were conducting surveys at this frequency. The remaining 15 States reported they were unable to implement this policy because their inspectors had other competing responsibilities that often took precedence over non-mandated requirements (*e.g.*, sanitary surveys). Overall, the frequencies of the surveys vary from quarterly to 10 years. According to the report, States have reduced the frequency of surveys since 1988, a downward trend that is expected to continue.

Comprehensiveness of Sanitary Surveys is Inconsistent. The report indicates that a comprehensive sanitary survey, as recommended in Appendix K of EPA's SWTR Guidance Manual (US EPA, 1990b), is frequently not conducted. Forty-five out of 48 States omitted one or more key elements defined in the 1990 guidance manual. The GAO noted wide variation among States in the comprehensiveness of their sanitary surveys. Some States, for example, omit inspections of water distribution systems and/or other key components or operations of water systems, others do not provide complete documentation of sanitary survey results. Based on a review of the 200 sanitary surveys, survey results which identify deficiencies were found to be inconsistently interpreted from one surveyor to another. In some cases, systems' deficiencies that could have been detected during a comprehensive survey may not be found until after water quality is affected and the root cause(s) investigated. By that time, however, consumers may already have ingested contaminated water (US GAO, 1993).

Limited Efforts to Ensure that Deficiencies are Corrected. The GAO found that follow-up procedures for deficiencies were weak. The detailed review of the four States' sanitary surveys indicated that deficiencies frequently go uncorrected. Of the 200 surveys examined, about 80% disclosed deficiencies and 60% cited deficiencies that had already been identified in previous surveys. Of particular concern was the GAO finding that smaller systems (serving 3,300 or less) are in greatest need of improvements. Small systems compose a significant majority of all ground water systems. Ninety-nine percent (approximately 154,000) of ground water systems serve fewer than 10,000 people and ninety-seven percent (approximately 151,000) serve 3,300 or fewer people.

Results Poorly Documented. The GAO also found variation in how States document and interpret survey results. Proper documentation would facilitate follow-up on the problems detected.

GAO recommended EPA work with States to establish minimum criteria on how surveys should be conducted and documented and to develop procedures

to ensure deficiencies are corrected. This proposal addresses these recommendations.

3. ASDWA/EPA Guidance on Sanitary Surveys

Recognizing the essential role of sanitary surveys and the need to define the broad areas that all sanitary surveys should cover, EPA and ASDWA prepared a joint guidance on sanitary surveys entitled EPA/State Joint Guidance on Sanitary Surveys (1995). The guidance identified the following eight broad components that should be covered in a sanitary survey: source, treatment, distribution system, finished water storage, pumps and pump facilities and controls, monitoring/reporting/data verification, water system management and operations, and operator compliance with State requirements. The EPA/State Joint Guidance does not provide detailed instructions on evaluating criteria under the eight elements; however, EPA has recently issued detailed supplementary information as technical assistance (April 1999, Guidance Manual for Conducting Sanitary Surveys of Public Water Systems)(US EPA, 1999e).

—Source. The water supply source is the first opportunity for controlling contaminants. The reliability, quality, and quantity of the source should be evaluated during the sanitary survey using available information including results of source water assessments or other relevant information. A survey should assess the potential for contamination from activities within the watershed as well as from the physical components and condition of the source facility.

—Treatment. The treatment phase should consider evaluation of the handling, storage, use and application of treatment chemicals if the system includes application of any chemicals. A review of the treatment process should include assessment of the operation, maintenance, record keeping and management practices of the treatment system.

—Distribution System. Given the potential for contamination to spread throughout the distribution system, a thorough inspection of the distribution network is important. Review of leakage that could result in entrance of contaminants, monitoring of disinfection residual, installation and repair procedures of mains and services, as well as an assessment of the conditions of all piping and associated fixtures are necessary to maintain distribution system integrity.

—Finished Water Storage. A survey of the storage facilities is critical to ensuring the availability of safe water, and the adequacy of construction and maintenance of the facilities.

—Pumps/Pump Facilities and Controls. Pumps and pump facilities are essential components of all water systems. A survey should verify that the pump and its facilities are of appropriate design and properly operated and maintained.

—Monitoring/Reporting/Data Verification. Monitoring and reporting are needed to determine compliance with drinking water provisions, as well as to verify the effectiveness of source protection, preventative maintenance, treatment, and other compliance-related issues regarding water quality or quantity.

—Water System Management/Operations. The operation and maintenance of any water system is dependent on effective oversight and management. A review of the management process should ensure continued and reliable operation is being met through adequate staffing, operating supplies, and equipment repair and replacement. Effective management also includes ensuring the system's long-term financial viability.

—Operator compliance with State requirements. A system operator plays a critical role in the reliable delivery of safe drinking water. Operator compliance with State requirements includes state-specific operation and maintenance requirements, training and certification requirements, and overall competency with on-site observations of system performance.

4. Other Studies

As previously described (see section I.D.2.), ASDWA examined 28 different BMPs to determine the effectiveness of each BMP in controlling microbial contamination. Within this study, 91.4% of systems surveyed had implemented a sanitary survey within the previous five years. The ASDWA survey found no significant association with systems that conducted sanitary surveys and no total coliform detections. The insignificance of the association between sanitary surveys and the detection of bacteria may be due to the fact that State sanitary surveys are designed to identify problems (ASDWA, 1998). However, correction of sanitary survey deficiencies was correlated with lower levels of total coliform, fecal coliform, and *E. coli*.

EPA conducted a survey published in Ground Water Disinfection and Protective Practices in the United States (US EPA 1996a), which confirmed the GAO finding that considerable variability among States exists with regard to the scope and comprehensiveness of sanitary surveys.

The Environmental Law Reporter (ELR), a private database of State and Federal statutes and regulations, provides some information on current State regulations for ground water systems. According to the ELR, only the State of Washington does not require sanitary surveys under the TCR requirement at 40 CFR 141.21(d). However, most State regulations found in the ELR are general in nature and do not specifically address the eight EPA/State Joint Guidance sanitary survey components. State regulations vary considerably in terms of types of systems surveyed, the content of the survey, and who is designated to conduct the surveys (*e.g.*, a sanitarian). The database indicates that the majority of States (46 out of 50) do not specifically require systems to correct deficiencies. Significantly, a number of States do not appear to have legal authority to require correction of deficiencies. The ELR findings contained in the Baseline Profile Document for the Ground Water Rule (US EPA, 1999f) indicate that many sanitary survey provisions do not appear in State regulations. The GAO report confirmed that many States incorporated sanitary survey requirements into policy, thereby undercutting their legal enforceability.

5. Proposed Requirements

EPA proposes to require periodic State sanitary surveys for all ground water systems specifically addressing all of the applicable sanitary survey elements noted earlier, regardless of population size served.

With regard to the frequency of sanitary surveys, EPA proposes to require the State or a state-authorized third party to conduct sanitary surveys for all ground water systems at least once every three years for CWSs and at least once every five years for NCWSs. This approach would be consistent with the requirements of the IESWTR. CWSs would be allowed to follow a five-year frequency if the system either treats to 4-log inactivation or removal of viruses or has an outstanding performance record in each of the applicable eight areas documented in previous inspections and has no history of TCR MCL or monitoring violations since the last sanitary survey. A State must, as part of its primacy application, include how it will decide whether a system has outstanding performance and is thus eligible for sanitary surveys at a reduced frequency.

The Agency believes that periodic sanitary surveys, along with appropriate corrective measures, are indispensable for ensuring the long-term safety of drinking water. By taking steps to correct deficiencies exposed by a sanitary survey, the system provides an additional barrier to pathogens entering the drinking water.

The definition of a sanitary survey used in the GWR differs from the definition of a sanitary survey in 40 CFR 141.2 by a parenthetical clause. For the purpose of Subpart S, a sanitary survey is "an onsite review of the water source (identifying sources of contamination by using results of source water assessments or other relevant information where available), facilities, equipment, operation, maintenance and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water." This reflects a recommendation by the 1997 M/DBP Federal Advisory Committee Act that sanitary inspectors should use source water assessments and other information where available as part of the overall evaluation of systems. This change in definition reflects the value of Source Water Assessment and Protection Programs (SWAPPs) required by Congress in the 1996 SDWA amendments and the importance of utilizing information generated as a result of that activity.

EPA is also proposing to require that State inspectors, as part of each sanitary survey, evaluate all applicable components defined in the EPA/State Joint Guidance on Sanitary Surveys and identify any significant deficiencies. Some stakeholders have suggested the comprehensiveness of sanitary surveys be tailored based upon system size and type. EPA requests comment on whether this would be an appropriate approach and if so, what factors or criteria should be considered in tailoring the scope or complexity of the sanitary survey.

Individual components of a sanitary survey may be separately completed as part of a staged or phased State review process as part of ongoing State inspection programs within the established frequency interval. In its primacy package, a State which plans to complete the sanitary survey in such a staged or phased review process must indicate which approach it will take and provide the rationale for the specified time frames for sanitary surveys conducted on a staged or phased approach basis.

EPA proposes to regard the requirements for sanitary surveys under the GWR as meeting the requirements for sanitary surveys under the TCR (40 CFR 141.21). The reason for this is that the frequency and criteria of a sanitary survey under the GWR is more stringent than that for the TCR. For example, the TCR does not define a sanitary survey as precisely as the GWR, which requires an evaluation of eight elements. In addition, the frequency of the sanitary survey under the TCR for CWSs is every five years, compared to three years (at least initially) under the GWR. Also, the TCR requires a survey every ten years for disinfected NCWSs using protected ground waters, as compared to every five years under the GWR. The scope of the systems that must conduct a sanitary survey also differs; under the TCR only systems that collect fewer than five routine samples per month and serve less than 4,100 persons are required to undergo a sanitary survey, compared to all ground water systems under the GWR. Given that the proposed sanitary survey requirements under the GWR are more stringent than those under the TCR, EPA notes that a survey under the TCR cannot replace one conducted under the GWR, unless that survey meets the criteria specified in the GWR.

As part of today's rule, a "significant deficiency" as identified by a sanitary survey includes: A defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the State determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers. This is a working definition developed by the EPA GWR workgroup.

The Agency proposes to require the State to provide the system with written notification which identifies and describes any significant deficiencies found in a sanitary survey no later than 30 days after completing the on-site survey. States would not be required, in this rule, to provide the system with a complete sanitary survey report within the 30 days of completing the on-site survey. Rather, this rule requires that, at a minimum, the State provide the system a written list which clearly identifies and describes all significant deficiencies as identified during the on-site survey.

EPA proposes to require a system to: (1) Correct any significant deficiencies identified in a sanitary survey as soon as possible, but no later than 90 days of receiving State written notification of such deficiencies, or (2) to submit a specific schedule and receive State approval on the schedule for correcting the deficiencies within the same 90-day period. The system must consult the State within this 90-day period to determine the corrective action approach appropriate for that system, consistent with the State's general approach outlined in their primacy package. In performing a corrective action, the system must eliminate the source of contamination, correct the significant deficiency, provide an alternate source water, or provide a treatment which reliably achieves at least 99.99 percent (4-log) inactivation or removal of viruses before or at the first customer. Ground water systems which provide 4-log inactivation or removal of viruses will be required to conduct compliance monitoring to demonstrate treatment effectiveness. There are cases in which one or more of the corrective actions listed previously may be inappropriate for the nature of the problem, and in these cases only appropriate corrective actions must be taken. For example, a system with a significant deficiency in the distribution system should not install treatment at the source water as the corrective action; that system should correct the problem in the distribution system. There may also be fecal sources that a State does not identify as a significant deficiency, however the State may choose to use their authority to require source water monitoring to monitor the influence of that fecal source. Ground water systems which provide 4-log inactivation or removal of viruses will be required to conduct compliance monitoring to demonstrate treatment effectiveness. States must confirm that the deficiency has been corrected, either through written confirmation from systems or a site visit by the State, within 30 days after the 90-day or scheduled correction of the deficiency. Systems providing 4-log inactivation or removal of viruses need not undergo a hydrogeologic sensitivity assessment or monitor their source water for fecal indicators.

As noted earlier, States would be required to have the appropriate rules or other authority to: (1) Ensure that public ground water systems correct any significant deficiencies identified in the written notification provided by the State (including providing an alternative source or 4-log inactivation or removal of viruses); and (2) ensure that a public ground water system confirm in writing any significant deficiency corrections made as a result of sanitary survey findings.

The requirements in today's rule do not preclude a State from enforcing corrective action on any significant deficiencies whether or not they are identified through a sanitary survey.

EPA is also proposing to require States, as part of their primacy application, to indicate how they will

define what constitutes a significant deficiency found in a sanitary survey for purposes of this rule. EPA believes that this requirement would provide the State sufficient latitude to work within their existing programs in addressing significant deficiencies yet provide facilities and the public with clear notice as to what kinds of system conditions constitute a significant deficiency. EPA recognizes the importance of enabling States the flexibility to identify and define sanitary survey deficiencies in broad categories under this requirement (*e.g.*, unsafe source, improper well construction, *etc.*).

Also, in its primacy application, States must specify if and how they will integrate SWAPP susceptibility determinations into the sanitary survey or the definition of significant deficiencies.

Based upon input from a number of State and EPA Regional office experts, significant deficiencies of ground water systems may include but are not limited, to the following types of deficiencies:

—Unsafe source (*e.g.*, septic systems, sewer lines, feed lots nearby);
—Wells of improper construction;
—Presence of fecal indicators in raw water samples;
—Lack of proper cross connection control for treatment chemicals;
—Lack of redundant mechanical components where chlorination is required for disinfection;
—Improper venting of storage tank;
—Lack of proper screening of overflow pipe and drain;
—Inadequate roofing (*e.g.*, holes in the storage tank, improper hatch construction);
—Inadequate internal cleaning and maintenance of storage tank;
—Unprotected cross connection (*e.g.*, hose bibs without vacuum breakers);
—Unacceptable system leakage that could result in entrance of contaminants;
—Inadequate monitoring of disinfectant residual and TCR MCL or monitoring violations.

6. Reporting and Record Keeping Requirements

The GWR does not change the requirements on the system and the State to maintain reports and records of sanitary survey information as specified in 40 CFR 141.33(c) and 142.14(d)(1).

7. Request for Comments

EPA requests comment on all the information presented earlier and the potential impacts on public health and regulatory provisions of the GWR. In addition, EPA specifically requests comments on alternative approaches.

*Alternative Approaches*

a. Content of a Sanitary Survey

i. Grandfathering and Scope of Sanitary Survey

EPA requests comment on "grandfathering" of surveys conducted under the TCR if those surveys addressed all eight EPA/State Joint Guidance on Sanitary Surveys components. Under what circumstances should grandfathering be allowed? Are there circumstances under which grandfathering should be allowed even if the survey did not address all eight components?

EPA is seeking comment on the level of detail EPA should use in establishing the sanitary survey requirement which addresses the eight sanitary survey components.

ii. Definition of Significant Deficiency

EPA is also seeking comment on the proposed definition of "significant deficiencies." In this regard, EPA is requesting comment on whether or not the Agency should promulgate a minimum list of specific significant deficiencies for all States to use in their programs.

iii. Well Construction and Age

EPA considered specifying, in addition to sanitary survey elements, well construction deficiencies and well age as surrogate measures of well performance as part of the hydrogeologic sensitivity assessment (HSA) or as an independent component from the sanitary survey or HSA. EPA considered identifying older wells as those more likely to be contaminated because of degradation to the construction materials over time. EPA concluded that wells may have been constructed adequately to protect public health, but records to document such construction may no longer be available. Given these circumstances, EPA recognizes that down-hole test methods to evaluate well construction, as required for some hazardous waste disposal methods, is neither desirable nor feasible for PWS wells. In addition, EPA found that there were few data to support the concept that older wells were more likely to be contaminated. In fact, data from two studies encompassing more than 200 wells in Missouri suggest that newer wells were more likely to be contaminated than older wells (Davis and Witt, 1998, 1999 and Femmer, 1999). Thus, EPA decided not to include well construction and age as measures of the potential fecal hazard to PWS wells.

Almost all States have well construction standards, and trade associations, such as the American Water Works Association and the National Ground Water Association, have also provided recommendations for well construction. EPA recognizes the importance of designing, constructing and maintaining wells so as to maximize well life and yield and to minimize potential harmful contamination. Therefore, the Agency requests comment on whether well construction and age should be considered as a required element within a sanitary survey or specifically identified by States as a significant deficiency. EPA also requests comment on criteria for evaluating well construction and age.

b. Frequency

EPA believes that a sanitary survey cycle of at least once every three years for CWSs (with certain exceptions discussed previously) and at least once every five years for NCWSs most properly balances public health protection and State burden issues and is consistent with the frequency required for surface water systems. However, the Agency seeks comment on whether other alternative time cycles might be appropriate together with any applicable rationale that supports that alternative frequency cycle. Specifically, EPA requests comment on requiring States to conduct sanitary surveys for all ground water systems every five years. EPA also requests comment on allowing States to conduct sanitary surveys less often than once every 5 years if the system provides 4-log inactivation or removal. The Agency requests comment on the resource implications for States and small systems to perform these surveys with a frequency of 3–5 years.

In addition, the Agency seeks comment on requiring the State to conduct a sanitary survey for new systems prior to the system serving water to the public. This requirement would serve as an added public health measure to ensure new systems are in compliance with the GWR sanitary survey provisions.

c. Follow-Up Requirements

EPA requests comment on requiring States to schedule an on-site inspection as follow-up to verify correction of significant deficiencies, rather than allowing States to accept written certification from systems to verify the correction. EPA requests comment on alternative approaches for a State to verify that a significant deficiency has

been corrected. EPA notes that follow-up in this context only applies to significant deficiencies.

d. Public Involvement

EPA requests comment on including public involvement and/or meetings for certain systems to discuss the results of sanitary surveys. Congress wrote requirements for extensive public information and involvement in programs and decisions affecting drinking water safety throughout the 1996 amendments to SDWA. For example, in addition to the new requirement for CWSs to produce and distribute annually a Consumer Confidence Report, the public notice requirements for PWSs regarding violations of a national drinking water standard were made more effective, and States were required to "make readily available to the public" an annual report to the Administrator on the statewide record of PWS violations, see (SDWA 1414(c)(1)–(3)). Each State's triennial report to the Governor on the effectiveness of and progress under the capacity development strategy must also be available to the public. (See SDWA section 1420(c)(3)). EPA must make the information from the occurrence database "available to the public in readily accessible form." (See SDWA section 1445(g)(5)). The public must be provided with notice and an opportunity to comment on the annual priority list of projects eligible for State Revolving Fund (SRF) assistance that States will publish as a part of their SRF intended use plans (See SDWA section 1452(b)(3)(B)). States "shall make the results of the source water assessments * * * available to the public." (See SDWA section 1453(a)(7)). And, under several specific provisions of the SDWA as well as the Administrative Procedure Act, EPA generally must publish and make regulations, and a number of guidance and information documents, available for public notice and comment.

These requirements, and others like them, are integral to both the philosophy and operation of the amended SDWA. They reflect Congress' view that public confidence in drinking water safety and informed support for any needed improvements must rest on full disclosure of all significant information about water system conditions and quality, from source to tap.

The 1996 SDWA Amendments, and EPA's implementation of them, consistently provide for such disclosure and involvement by means that are informative, timely, understandable, and practicable for each size group of PWSs subject to them. EPA believes that the principles of public information and involvement must apply with equal validity to the GWR, and is considering including in the final rule provisions to apply these principles, for disclosure and involvement. EPA believes that the following approach meets both tests and principles, but solicits comment on alternative means of doing so.

EPA requests comment on what approaches might be practicable, not burdensome and workable to involve the public in working with their system to address the results of their system's sanitary survey. Specifically, EPA requests comment on requiring ground water CWSs to notify their consumers, as part of the next billing cycle, of the completion of any sanitary survey, and any significant deficiency(s) and corrective action(s) identified. The system would also have to make information concerning the sanitary survey available to the public upon request. Alternatively, the system might be required to notify customers of the availability of the survey only, and provide copies on request, or include information about the survey in the annual Consumer Confidence Report (CCR). EPA requests comment on whether this approach should be extended to transient and nontransient NCWSs as well. EPA also requests comment on what approaches might be practicable, not burdensome and workable to involve the public in working with their system to address the results of their system's sanitary survey.

*B. Hydrogeologic Sensitivity Assessment*

1. Overview and Purpose

Occurrence data collected at the source from public ground water systems suggest that a small percentage of all ground water systems are fecally contaminated. Because of the large number of ground water systems (156,000), the GWR carefully targets the high priority systems and has minimal regulatory burden for the remaining low priority systems. The GWR screens all systems for priority and only requires corrective action for fecally contaminated systems and systems with significant deficiencies. Thus, the challenge of the hydrogeologic sensitivity assessment is to identify ground water wells sensitive to fecal contamination. The assessment supplements the sanitary survey by evaluating the risk factors associated with the hydrogeologic setting of the system. EPA believes requiring hydrogeologic sensitivity analysis for all non-disinfecting ground water systems will reduce risk of waterborne disease by identifying systems with incomplete natural attenuation of fecal contamination. EPA bases the following requirements on: CDC outbreak case studies, USGS studies of ground water flow, State vulnerability maps, and US National Research Council reports on predicting ground water vulnerability.

For the purposes of this rulemaking, EPA intends the term "well" to include any method or device that conveys ground water to the ground water system. The term "well" include springs, springboxes, vertical and horizontal wells and infiltration galleries so long as they meet the general applicability of the GWR (see section 141.400). The GWR does not apply to PWSs that are designated ground water under the direct influence of surface water; such systems are subject to the SWTR and IESWTR. EPA requests comment on this definition of "well."

The hydrogeologic sensitivity assessment is a simple, low burden, cost-effective approach that will allow States to screen for high priority systems. Systems that are situated in certain hydrogeologic settings are more likely to become contaminated. EPA believes that a well obtaining water from a karst, fractured bedrock or gravel hydrogeologic setting is sensitive to fecal contamination unless the well is protected by a hydrogeologic barrier. A State may add additional sensitive hydrogeologic settings (*e.g.*, volcanic aquifers) if it believes that it is necessary to do so to protect public health. A hydrogeologic barrier is defined as the physical, biological and chemical factors, singularly or in combination, that prevent the movement of viable pathogens from a contaminant source to a public supply well. In this proposal, a confining layer is one example of a hydrogeologic barrier. The strategy is for a State to consider hydrogeologic sensitivity first. If ground water systems not treating to 4-log inactivation of viruses are located in sensitive hydrogeologic settings, then the strategy allows the State to consider the presence of any existing hydrogeologic barriers that act to protect public health. If a hydrogeologic barrier is present, then the State can nullify the determination that a system is located in a sensitive hydrogeologic setting. If no suitable hydrogeologic barrier exists, then the GWR requires the system to conduct monthly fecal indicator source water monitoring. Finally, for those systems where monitoring results are positive for the presence of fecal indicators, under the proposed GWR, States may require systems to eliminate

the source of contamination, correct the significant deficiency, provide an alternate source water, or provide a treatment which reliably achieves at least 99.99 percent (4-log) inactivation or removal of viruses before or at the first customer. GWSs which provide 4-log inactivation or removal of viruses will be required to conduct compliance monitoring to demonstrate treatment effectiveness.

The States have experience implementing a wide variety of methods suitable for identifying hydrogeologically sensitive systems. Also, the States may collect hydrogeologic information through their SWAPP (see section I.B.) that is useful for the hydrogeologic sensitivity assessments under the GWR. EPA believes that it would be beneficial if the States coordinate their SWAPP analysis with the GWR. By using the information generated in the SWAPP for the GWR hydrogeologic sensitivity assessment, States can effectively reduce the burden associated with this requirement.

EPA-approved vulnerability assessments conducted for the purpose of granting waivers under the Phase II and Phase V Rules may also serve as sources of hydrogeologic information useful to the State in assessing the hydrogeologic sensitivity of its GWSs under the GWR. Under the Phase II (56 FR 30268, July 1, 1991d)(US EPA,1991) and Phase V (57 FR 31821, July 17, 1992)(US EPA,1992b) Rules, monitoring waivers may be granted to individual systems for specific regulated chemicals (*e.g.*, PCBs and cyanide). Monitoring frequencies may be reduced or eliminated by the State if the system obtains a waiver based on previous sampling results and/or an assessment of the system's vulnerability to each Phase II and V contaminant. This evaluation must include the sampling results of neighboring systems, the environmental persistence and transport of the contaminant(s) under review, how well the source is protected by geology and well design, Wellhead Protection Assessments, and proximity of potential contamination sites and activities.

*2. Hydrogeologic Sensitivity*

Sensitive hydrogeologic settings occur in aquifer types that are characterized by large interconnected openings (void space) and, therefore, may transmit ground water at rapid velocities with virtually no removal of pathogens. Sensitive aquifers may be present at or near the ground surface or they may be covered by overlying aquifers or soils. An aquifer is sensitive, independent of its depth or the nature of the overlying material, because average water velocities within that aquifer are rapid. This allows microbial contaminants to be transported long distances from their source at or near the surface and especially in the absence of a hydrogeologic barrier. In the following paragraphs, each sensitive aquifer type is briefly characterized. It is often difficult to determine the actual contaminant removal capabilities of an aquifer and the and ground water velocities within an aquifer. Consequently, the aquifer rock type can be a surrogate measure in the hydrogeologic sensitivity assessment. All soil and rocks have void space, but aquifers have the largest interconnected void space. The voids are filled with water that is tapped by a well. Without these interconnections, the water could not flow to a well. In those aquifers with the largest interconnected void space, ground water velocities can be comparable to the velocity of a river, and the rate of travel can be measured in kilometers per day (US EPA, 1997b). Compared to velocities in fine-grained granular aquifers (aquifers that are not considered sensitive under the GWR), ground water velocities in fractured media are large (Freeze and Cherry, 1979). Sensitive aquifers allow fecal contaminants to travel rapidly to a well, with little loss in number due to inactivation or removal.

In the GWR, three aquifer types are identified as sensitive: (1) Karst aquifers, (2) fractured bedrock aquifers, and (3) gravel aquifers. Each aquifer type is characterized by the differing nature and origin of the interconnected void space. These distinctions are important to hydrogeologists identifying these aquifer types. To meet the requirements of the hydrogeologic sensitivity assessment of the GWR, it is sufficient for States to identify the aquifer type supplying a system. Karst, fractured bedrock and gravel aquifer types are at high risk to fecal contamination by virtue of their capability to rapidly transmit fecal contamination long distances over short time periods.

Several means can be used to evaluate wells to determine if they are located in one of the three sensitive hydrogeologic settings proposed under the GWR. For example, hydrogeologic data are available from published and unpublished materials such as maps, reports, and well logs. The United States Geologic Service (USGS), U.S. Department of Agriculture's Natural Resource Conservation Service, USGS Earth Resources Observation System Data Center, the EPA Source Water Assessment and Protection Program and Wellhead Protection Program, State geological surveys, and universities have substantial amounts of regional and site-specific information. The USGS has published a national karst map (USGS, 1984) on which States can locate karst settings. Karst and other aquifers may also be identified on finer scale maps published by States or counties. For example, the State of Kentucky contains substantial karst terrain, documented in complete geologic maps at the scale of one inch: 2000 feet (7.5 minute quadrangles).

States can base assessments on available information about the age and character of the regional geology, regional maps and rock outcrop locations. For example, in a karst setting, the State may have some additional information such as: (1) Observations of typical karst features such as sinkholes and disappearing streams; (2) well driller logs which noted the presence of limestone or crystalline calcite (a mineral that grows into openings in rock) or a drop in the drill string as it penetrated a karst opening; or (3) geologic reports (or unpublished geological observations) which identify the presence of limestone in rock outcrops in the vicinity of the well.

(a) Karst Aquifers

Karst aquifers are aquifers formed in soluble materials (limestone, dolomite, marble and bedded gypsum) that have openings at least as large as a few millimeters in radius (EPA 1997b). Over geologic time periods, infiltrating precipitation (especially acid rain) moving through the aquifer has enlarged, by dissolution, the small openings that existed when the rock was formed. In mature karst terrain, characterized by relatively pure limestone located in regions with high precipitation, caves or caverns are formed in the subsurface, often large enough for human passage. Ground water has the potential to flow rapidly through karst because the void spaces are large and have a high degree of interconnection. In addition to the openings created by solution removal, karst aquifers, like all consolidated geologic formations, also contain fractures that transmit ground water. The size of these fractures may be small, but the fractures may also be more numerous than solution-enhanced openings. The fractures may or may not have a high degree of interconnection, and the degree of interconnection is a primary factor that controls the velocity of the ground water.

Quinlan (1989) suggests that about 20 percent of the U.S. is underlain by limestone or dolomite which may be karst aquifers. East of the Mississippi River, almost forty percent of the U.S. is underlain by limestone, dolomite or marble that may be karst aquifers (Quinlan, 1989). Karst areas are often identified by the formation of sinkholes at the ground surface. A sinkhole forms when the roof of a cave collapses and the material that was overlying the cave is dissolved or otherwise carried away by streams flowing through the cave. Sinkholes may also form or become enlarged as the direct result of vertical ground water flow dissolving the rock material to form a vertical passageway. Sinkholes represent direct pathways for fecal contamination to enter the aquifer from the surface. The surface topography may also be characterized by dry stream valleys in regions of high rainfall, by streams that flow on the ground surface but suddenly sink below ground to flow within a cave and by large springs where underground streams return to the surface. The degree of karst development in Missouri has been defined by Davis and Witt (1998) as primary and secondary karst: primary containing more than ten sinkholes per 100 square miles and secondary karst containing between one and ten sinkholes per 100 square miles. Other features suitable for identifying karst aquifers are described in EPA (1997b).

The most direct method for ground water velocity determinations consists of introducing a tracer substance at one point in the ground water flow path and observing its arrival at other points in the path, usually at monitoring wells (Freeze and Cherry, 1979). Using tracer studies, ground water velocities in karst aquifers have been measured as high as 0.5 kilometers (km) per hour (US EPA, 1997b). In Florida, ground water velocities surrounding a well have been measured at several hundred meters (m) per hour (US EPA, 1997b). At Mammoth Cave, Kentucky, ground water velocities have been measured at more than 300 m per hour (US EPA, 1997b). In a confined karst aquifer in Germany, ground water traveled 200 m in less than 4 days (Orth *et al.*, 1997). In the Edwards Aquifer, Texas, Slade *et al.*, (1986) reported that dye traveled 200 feet in ten minutes. The water level in one well (582 feet deep with a water table 240 feet deep) began rising within one hour after a rainfall (Slade *et al.*, 1986). These data suggest that ground water flows extremely rapidly through karst aquifers. Because ground water flows rapidly through karst aquifers, these aquifers are considered to be hydrogeologically sensitive aquifers under the GWR.

(b) Fractured Bedrock

Bouchier (1998) characterizes a fractured bedrock aquifer as an aquifer which has fractures that provide the dominant flow-path. Although all rock types have fractures, the rock types most susceptible to fracturing are igneous and metamorphic rock types (US EPA, 1991c).

Freeze and Cherry (1979) report void space as high as 10 percent of total volume in igneous and metamorphic rock. These rock types readily become fractured in the shallow subsurface as a result of shifts in the Earth's crust. Most fractures are smaller than one millimeter (mm) in width but each fracture's capability to transmit ground water varies significantly with the width of the fracture. A one mm fracture will transmit 1,000 times more water than a 0.1 mm fracture, provided that other factors are constant (*e.g.*, hydraulic gradient) (Freeze and Cherry, 1979). Data presented in Freeze and Cherry (1979) suggest that the first 200 feet beneath the ground surface produces the highest water yields to wells. These data suggest that the fractures are both more numerous and more interconnected in the first 200 feet interval. The rate of ground water travel in fractured rock can be estimated through the results of tracer tests. Malard *et al.*, (1994) report that dye traveled 43 m in a fractured aquifer in two hours. Becker *et. al.*, (1998) report that water traveled 36 m in about 30 minutes. Therefore, ground water may travel as quickly as several hundreds of meters per day in fractured bedrock, comparable to travel times in karst aquifers.

Aquifers that are comprised of igneous or metamorphic rock are often fractured bedrock aquifers, and their size is typically larger than a few tens or hundreds of square miles in area. EPA (1991c) has compiled a map showing the distribution of fractured bedrock aquifers in the U.S. Because ground water flows rapidly through fractured bedrock aquifers, these aquifers are considered to be hydrogeologically sensitive aquifers under the GWR.

(c) Gravel Hydrogeology

Gravel aquifers are deposits of unconsolidated gravel, cobbles and boulders (material larger in size than pebbles). Due to the large grain sizes of gravel aquifers, ground water travels rapidly within these aquifers with little to no removal or filtration of contaminants from the ground water. Such gravel aquifers are typically produced by catastrophic floods, physical weathering by glaciers, flash-floods at the periphery of mountainous terrain or at fault-basin boundaries. For example, glacial flooding has produced the Spokane-Rathdrum Prairie aquifer which extends from Spokane, Washington to Coeur d'Alene, Idaho. Another gravel aquifer is associated with glacial flooding along the Umatilla River in Milton-Freewater, Oregon. The boulder zone in the Jacobs Sandstone and Baraboo Quartzite near Baraboo, Wisconsin may represent another example. Typically, these aquifers are small.

Gravel aquifers are generally not alluvial aquifers. Alluvial aquifers, associated with typical river processes, normally have high proportions of sand mixed with the gravel. Sand or finer materials provide a higher probability of microorganism removal by the aquifer particles (Freeze and Cherry, 1979), and, therefore, greater public health protection. Because ground water flows rapidly through gravel aquifers, these aquifers are considered to be hydrogeologically sensitive aquifers under the GWR.

3. Hydrogeologic Barrier

The second part of the hydrogeologic sensitivity assessment is determining the presence of a hydrogeologic barrier. Under the GWR, the States perform an initial screen for hydrogeologic sensitivity by determining whether a PWS utilizes a fractured bedrock, karst or gravel aquifer. States would then examine systems located in these sensitive aquifers and determine whether a hydrogeologic barrier is present. A hydrogeologic barrier consists of physical, chemical, and biological factors that, singularly or in combination, prevent the movement of viable pathogens from a contaminant source to a public water supply well. If the State determines that a hydrogeologic barrier is present, the hydrogeologic setting is no longer considered sensitive to fecal contamination. If no such barrier is present or if insufficient information is available to make such a determination, the system would be identified as a sensitive system.

It is difficult to describe a single, detailed methodology for identifying a hydrogeologic barrier that can be used on a national basis. Geological and geochemical conditions, climate, and land uses are highly variable throughout the United States. In its primacy application, each State seeking consideration of a proposed hydrogeologic barrier under the rule may identify an approach for

determining the presence of a hydrogeologic barrier that addresses its own unique set of these variables (*e.g.*, geological and geochemical conditions, climate, and land uses). In determining the presence of a hydrogeologic barrier, the State should evaluate specific characteristics of the hydrogeologic setting, discussed in more detail in the following paragraphs.

Examples of characteristics to be considered in determining the presence of a hydrogeologic barrier include, but are not limited to: (1) Subsurface vertical and horizontal ground water travel times or distances sufficiently large so that pathogens become inactivated as they travel from a source to a public water supply well, or (2) unsaturated geological materials sufficiently thick so that infiltrating precipitation mixed with fecal contaminants is effectively filtered during downward flow to the water table.

A confining layer is one type of hydrogeologic barrier EPA has identified which can result in sufficient protection in many settings. A confining layer may protect sensitive aquifers from fecal contamination. It is defined as a layer of material that is not very permeable to ground water flow which overlies an aquifer and acts to prevent water movement into the aquifer (US EPA, 1991b). Confined aquifers are bounded by confining layers and, therefore, generally occur at depth, separated from the water table aquifer at the surface. Confining layers are typically identified by the high water pressures in the underlying aquifer. Where present, a confining layer will separate an aquifer of high pressure from an overlying aquifer of lower pressure. The high water pressure in a confined aquifer can force water to flow naturally (without pumping) to heights greater than the ground surface, as in an artesian well. The confining layer is comprised of fine-grained materials such as clay particles, either as an unconsolidated layer or as a consolidated rock (*e.g.*, shale). The small size of clay particles restricts the movement of water across or through the clay layer. Freeze and Cherry (1979) determined that water would take almost 10,000 years to pass through a 10 meters-thick unfractured layer of silt and clay deposited at the bottom of a glacial lake, such as the layers present in the northern part of the United States and the southern part of Canada. Therefore, the presence of a confining layer can provide public health protection.

However, confining layers may be breached and, therefore, unprotective. Breaches may be natural (*e.g.*, partly removed by erosion, sinkholes, faults, and fractures) or caused by humans (*e.g.*, wells, mines, and boreholes). For example, an unplugged, abandoned well that breaches the confining layer is capable of providing a pathway through the confining layer, allowing water and contaminant infiltration into ground water. A thicker, unpunctured confining layer is considered most protective of the underlying aquifer. The State should consider such confined aquifer characteristics in determining the adequacy of a confining layer as a hydrogeologic barrier.

EPA proposes to use the presence of a confining layer that is protective of the aquifer to act as a hydrogeologic barrier and nullify a sensitivity determination. Where the confining layer integrity is compromised by breaches or if the aquifer appears at the surface near the water supply well, the State shall determine if the layer is performing adequately to protect the well, and, therefore, public health. EPA estimates approximately 15 percent of undisinfected ground water system sources will be determined to be hydrogeologically sensitive (see RIA section 6.2.1.1).

4. Alternative Approaches to Hydrogeologic Sensitivity Assessment

EPA recognizes that the States have substantial experience characterizing hydrogeology. Most States require some hydrogeologic information for reasons such as to delineate wellhead protection areas, manage ground water extraction or assess ground water contamination. EPA recognizes that there is no single approach for identifying systems at risk from source water contamination. In the GWR, a selected subset of hydrogeologic settings (karst, fractured bedrock and gravel aquifers) is hydrogeologically sensitive. These hydrogeologic settings are identified through regional and local maps that show the general distribution of these settings. Other approaches considered by EPA to identify sensitive systems, but not selected, require additional data that may not be available to all States. In the following paragraphs, alternative methods to identify sensitive systems are discussed, including the data requirements for implementing each approach.

(a) Horizontal Ground Water Travel Time

Horizontal ground water travel time is the time that a water volume requires to travel through an aquifer from a fecal contamination source to a well. Viruses are longer lived than bacteria. Therefore, the ground water travel time should allow sufficient virus die-off to take place such that the concentration of viruses in the well water would be at or below a 1 in 10,000 annual risk level (Regli *et. al.*, 1991). However, travel time determinations are site specific, and some methods are expensive and/or difficult to perform. Therefore, EPA is not prescribing a particular travel time as a hydrogeologic sensitivity assessment criterion under the GWR. Travel time information may be useful for evaluating hydrogeologic barrier performance, and States may make use of this information where available.

Ground water travel time measurement methods include conservative tracer tests (*e.g.*, dyes, stable isotopes), and travel time calculations. Conservative tracer tests may be used in all aquifer types including karst and fractured bedrock, as well as porous media aquifers. Tracer tests are expensive and difficult to perform. Ground water travel time calculations are only suitable for porous media aquifers. Because travel time methods are site-specific and their associated levels of uncertainty vary, EPA is not prescribing one travel time number or method to be used nationally.

In evaluating whether to require a specific ground water travel time, EPA recognized that there are three problems with requiring this method for all States. First, all ground water travel time calculations require measurement of the aquifer porosity (void space). Aquifer porosity data are rare and usually must be estimated based on the aquifer character (*e.g.*, sand, or sand and gravel). Second, ground water travel time calculations require knowledge of the distance traveled and water velocity; however, calculating travel time is complicated because ground water does not travel in a straight line. The ground water's flow path can be nearly straight, as in the case of cavernous karst or it can be very convoluted as found in fractured media. Third, the ground water travel time value represents the average travel time of a large water volume moving toward a well. Some water arrives more quickly than the average. Because viruses and bacteria are small in size their charge effects become important. As a result, some fecal contaminants may take the fastest path from source to well and arrive faster than the average water volume. Fecal contaminants introduced into an aquifer may or may not be channeled into flow paths that move faster than the average water volume. Thus, a calculation of the average ground water travel time is not as protective as the calculation of the first arrival time of the

ground water volume. Because of the additional uncertainty in calculating first arrival times, average travel times must be augmented with a safety factor. Travel time data, where available, may assist States in evaluating hydrogeologic barriers for localities where all sources of fecal contamination have been identified.

(b) Setback Distance

A setback distance is the distance between a well and a potential contamination source. Many States already use setback distances around a well as exclusion zones in which septic tanks are prohibited.

EPA compiled data on State sanitary setback distances for PWS wells. EPA found that there is little uniformity among the States. State setback distances from septic tanks or drain fields for new PWS wells range from 50 to 500 feet. Moreover, some States have differing setback distances depending on the well type (*e.g.*, CWS versus NTNCWS and TNCWS ), the well pumping rate (*e.g.*, greater or less than 50 gallons per minute) or the microbial contaminant source type (*e.g.*, 50 feet from a septic tank and 10 feet from a sewer line).

EPA considered using a strategy that included the setback distance as an element in determining the potential fecal hazard to systems. In this strategy, wells located near contamination sources are at risk. EPA concluded that it would be difficult to implement this strategy on a national scale for two reasons. First, the differing State setback distance requirements suggests that there is substantial disagreement among the States about an appropriate setback distance. Second, any setback distance selected for use in the GWR must be sufficiently large so as to protect a well from fecal contamination. The complexity of the processes that govern virus and bacterial transport in ground water and the variability of ground water velocity in sensitive hydrogeologic settings make it difficult, if not impossible, for EPA to specify setback distances that will be protective of public health for all hydrogeologic settings. Thus, EPA concluded that there was insufficient scientific data to mandate national setback distances in the GWR.

(c) Well and Water Table Depth

Well depth is the vertical distance between the ground surface and the well intake interval or the bottom of the well. Water table depth is the vertical distance between the ground surface and the water table. Infiltrating ground water can require substantial time to reach a deep well or a deep water table because precipitation infiltrating downward to the water table and vertical ground water flow within an aquifer are typically slow, and thus the long infiltration path to a deep well or water table provides opportunities for inactivation or removal of pathogens and is protective against source water contamination.

EPA considered identifying well depth and water table depth as alternative hydrogeologic sensitivity methods. Two key pieces of information would then be needed for each well: (1) Aquifer measurements that describe its capability to vertically transmit ground water and (2) measurements from the soil and other material overlying the water table that describe its capability to transmit infiltrating precipitation mixed with fecal contamination. EPA believes that few data are available to describe vertical ground water flow or infiltration on a national level. Thus, EPA concluded that there was insufficient data available to determine a well depth at which there exists a fecal contamination risk for all systems on a national scale.

*5. Proposed Requirements*

(a) Assessment Criteria

Today's proposal provides that States shall identify high priority systems through a hydrogeologic sensitivity assessment. In this assessment, wells located in karst, fractured bedrock or gravel hydrogeologic settings are determined to be sensitive. The information provided in previous paragraphs shows that the wells located in these hydrogeologic settings are potentially at risk of fecal contamination because ground water velocities are high and fecal contamination can travel long distances over a short time. A hydrogeologic barrier can protect a sensitive aquifer, and if present, can nullify the sensitivity determination. In its primacy application, a State shall identify its approach to determine the presence of a hydrogeologic barrier. For example, a State may choose to consider a specific depth, hydraulic conductivity, and the presence of improperly abandoned wells. For systems with one or more wells that potentially produce ground water from multiple aquifers, the State shall identify its approach to making separate hydrogeologic sensitivity determinations and, if appropriate, hydrogeologic barriers identifications, for each well. For example, a State may choose to consider a specific depth and hydraulic conductivity, improperly abandoned wells. The system shall provide to the State or EPA, at its request, any pertinent existing information that would allow the State to perform a hydrogeologic sensitivity analysis. The hydrogeologic sensitivity assessment does not necessarily require an on-site visit by the State, provided the State has adequate information (geologic surveys, *etc.*) to make the assessment without a site visit.

Discussions of proposed monitoring requirements for hydrogeologically sensitive systems are found in section III.D., and corrective action requirements are found in section III.E.

(b) Frequency of Assessment

The States, or their authorized agent, shall conduct one hydrogeologic sensitivity assessments for each GWS that does not provide treatment to 4-log inactivation or removal of viruses. States shall conduct the hydrogeologic sensitivity assessment for all existing CWSs no later than three years after publication of the final rule in the **Federal Register** and for all existing NCWSs no later than five years after publication of the final rule in the **Federal Register**. States shall complete the hydrogeologic sensitivity assessment prior to a new ground water system providing drinking water for public consumption. EPA requests comment on these time frames. Some stakeholders have indicated that an assessment for hydrogeologically sensitive areas (karst, gravel, fractured rock) of a State can be quickly performed at the State level. If such data can be quickly gathered and an assessment easily performed, EPA questions putting off the routine monitoring requirements and public health protection that it would bring for three or five years. EPA requests comment on requiring the State to perform the hydrogeologic sensitivity assessment within one year of the effective date of the final GWR.

(c) Reporting and Record Keeping Requirements

The State shall keep records of the supporting information and explanation of the technical basis for determinations of hydrogeologic sensitivity and of the presence of hydrogeologic barriers. The State shall keep a list of ground water systems which have had a sensitivity assessment completed during the previous year, a list of those systems which are sensitive, a list of those systems that are sensitive, but for which the State has determined a hydrogeologic barrier exists at the site sufficient for protecting public health, and a record of an annual evaluation of the State's program for conducting hydrogeologic sensitivity assessments.

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*6. Request for Comments*

EPA requests comments on all the information presented earlier and the potential impacts on public health and the regulatory provisions of the GWR.

**a. Routine Monitoring Without State Assessment**

EPA requests comment on requiring systems to perform routine monitoring if the State fails to conduct a hydrogeologic sensitivity assessment. Under this provision, if the State fails to conduct a hydrogeologic sensitivity assessment within the time frame specified by the GWR, the systems would conduct fecal indicator monitoring once per month for every month they serve water to the public (see section § 141.403(d), microbial analytical methods). The time frame for completing sensitivity assessments for all existing CWSs is no later than three years after the date of publication of the final rule in the **Federal Register**, and the time frame for all existing NCWSs is no later than five years after the date of publication of the final rule in the **Federal Register**. The systems could discontinue monitoring only after the State conducts a hydrogeologic sensitivity assessment and determines that the systems are not sensitive, or if the systems initiate and continue treatment to achieve 4-log inactivation or removal of viruses.

b. Vulnerability Assessment

EPA requests comment on a detailed, on-site vulnerability investigation as an alternative to the Hydrogeologic Sensitivity Assessment. The alternative hydrogeologic investigation will assess the performance of all existing hydrogeologic barriers such as unsaturated zone thickness and composition (including the soil), the saturated zone thickness and composition above the well, intake interval, the frequency, duration and intensity of precipitation for all aquifer types, and will also require a detailed investigation of the well construction conditions by a certified well technician and a review of the well construction-related documentation from the sanitary survey and SWAPP assessment. The results of the detailed investigation must demonstrate that the existing hydrogeologic barriers, aquifer type and the well construction function to prevent the movement of viable pathogens from a contaminant source to a public water supply well. The demonstration may include ground water age dating, natural or artificial tracer test data, or ground water modeling results. See EPA 1998b for more information on vulnerability assessments.

c. Sandy Aquifers

EPA is proposing to require States to identify systems in karst, gravel and fractured rock aquifer settings as sensitive and these systems must perform routine source water monitoring. On March 13, 2000, the Drinking Water Committee of the Science Advisory Board (DWCSAB) reviewed this issue and made several recommendations to EPA concerning a draft of this proposal. EPA requests comment on two DWCSAB recommendations concerning the hydrogeologic sensitivity assessment. The committee recommended that all ground water sources be required to monitor for bacterial indicators and coliphage for at least one year—regardless of sensitivity determination. As an alternative approach, the committee recommended sand aquifers be included as sensitive settings. This recommendations was based on column studies of virus transport in soils that showed that viruses move rapidly through sandy soils and field studies of virus transport from septic tanks showing rapid movement into ground water from sandy coastal plains.

*C. Cross Connection Control*

EPA is concerned about introduction of fecal contamination through distribution systems; however, EPA has not proposed cross connection control requirements in the GWR. EPA will work with the Microbial/DBP FACA to consider whether cross connection control should be required in future microbial regulations, particularly during the development of the Long Term 2 ESWTR, in the context of a broad range of issues related to distribution systems. EPA will also request input from the FACA on whether to require systems to maintain disinfection residual throughout the distribution system. EPA seeks comments or additional supporting data related to cross connection control or other distribution system issues. In particular to cross connections, the Agency requests public comment on: (1) Whether EPA should require States and/or systems to have a cross connection control program, (2) what specific criteria, if any, should be included in such a requirement, (3) how often a program should be evaluated, (4) and whether EPA should limit any requirement to only those connections identified as a cross connection by the public water system or the State. The Agency also requests comment on what other regulatory measures EPA should consider to prevent contamination of drinking water in the distribution system.

*D. Source Water Monitoring*

1. Overview and Purpose

As previously stated, EPA recognizes that there are particular challenges associated with developing an effective regulatory approach for ground water systems. These include the large number of ground water systems that would be regulated, the fact that only a subset of these systems appear to have fecal contamination (although a larger number are likely to be sensitive), and that most ground water systems range from small to very small in terms of the population served. These factors combine to underscore the limitations of an across-the-board disinfection approach to regulation.

As part of the multiple-barrier approach, EPA proposes source water monitoring requirements that fulfill the need for a targeted risk-based regulatory strategy by identifying those systems with source water contamination and systems with high sensitivity to possible fecal contamination—specifically undisinfected systems located in hydrogeologically sensitive aquifers. EPA believes that the proposed requirements provide a meaningful opportunity to reduce public health risk for a substantial number of people served by ground water sources. This section provides detailed information on current monitoring requirements, monitoring data, indicators of fecal contamination, co-occurrence issues, and describes the proposed requirements.

EPA proposes the following source water monitoring requirements for systems that do not treat 4-log removal and/or inactivation of viruses: (1) A system must collect a source water sample within 24 hours of receiving notification of a total coliform-positive sample taken in compliance with the TCR, and test for the presence of *E. coli*, enterococci or coliphage; and (2) any system identified by the State as hydrogeologically sensitive through a sensitivity assessment (see § 141.403) must conduct routine monthly monitoring, during the months the system supplies water to the public, and analyze for *E. coli*, enterococci or coliphage. In either case, if any sample is fecal indicator-positive, the system would have to notify the State immediately and then the system must take corrective action.

Currently, all systems must comply with the TCR (see section I.B.1.) and the MCL for nitrates and nitrites. In

addition, CWSs and NTNCWSs must monitor at the entrance of the distribution system for 15 additional inorganic chemicals associated with an MCL (*e.g.*, antimony, arsenic) and sometimes other inorganic chemicals not associated with an MCL (calcium, orthophosphate, silica, sodium, sulphate; 40 CFR 141.23(b) and (c)). Systems will also have to comply with the Stage 1 DBPR, if they use a chemical disinfectant. CWSs must additionally monitor for certain organic chemicals and certain radionuclides. Ground water systems under the direct influence of surface water must satisfy the requirements of the SWTR and IESWTR.

Microbial monitoring plays an important role in detecting fecal contamination in source waters, as well as in assessing best management practices, including in-place disinfection adequacy and distribution system integrity. It is the most direct way to determine the presence of fecal contamination. However, because of limitations on sample volume, monitoring frequency, and the species of microorganisms that can reasonably be monitored, non-detection of a fecal indicator does not necessarily mean fecal contamination is absent (see Tables III–2 and 3).

2. Indicators of Fecal Contamination

Two approaches for determining whether a well is contaminated are to monitor for the presence of either specific pathogens or more general indicators of fecal contamination. Monitoring for individual pathogens, however, is impractical because the large number and variety of pathogens require extensive sampling and numerous analytical methods. This is a process which is extremely time-consuming, expensive, and also technically demanding. Moreover, methods are not available for some pathogens and pathogen concentrations in water are usually sufficiently small so as to require analysis of large-volume samples, which significantly increases analytical costs. For these reasons, EPA is focusing on indicators of fecal contamination as a screening tool rather than on individual pathogens themselves. The Agency is considering several promising fecal indicators: *E. coli*, enterococci, somatic coliphage, and male-specific coliphage. Because these indicators are closely associated with fecal contamination, EPA believes that even a single positive sample should require urgent State notification and other follow-up activities.

EPA considered three bacterial microorganisms as indicators of fecal contamination: *E. coli*, enterococci, and *C. perfringens*. *E. coli* and enterococci are both closely associated with fresh fecal contamination and are found in high concentrations in sewage and septage. Analytical methods are commercially available, simple, reliable, and inexpensive. *E. coli* is monitored under the TCR, and *E. coli* and enterococci are recommended by EPA as indicators for fecally contaminated recreational waters. A drawback is that these two groups may die out more quickly or be less mobile in the subsurface environment than some waterborne pathogens.

As with *E. coli* and enterococci, *C. perfringens* is common in sewage (about $10^6$ organisms per liter) and is associated with fecal contamination. Methods of detection are commercially available, simple, reliable, and relatively inexpensive. *C. perfringens* forms protective spores (endospores), and these spores survive much longer in some environments than most pathogens. Thus, these spores may be present in old fecal contamination where fecal pathogens are no longer viable. EPA rejected *C. perfringens* as an indicator of fecal contamination for GWSs based on co-occurrence data showing that the organism is seldom present in ground water when other fecal indicators are present (Lieberman *et. al.*, 1999).

Enteric viruses, much smaller in size than bacteria such as *E. coli*, may be more mobile than bacteria because they can slip through small soil pores more rapidly. Thus, viral pathogens may sometimes be present in ground water in the absence of bacterial indicators of fecal contamination. However, other factors such as sorption to soil and aquifer particles are also important in affecting the relative transport of viruses and bacteria in ground water.

The coliphage are viruses that infect the bacterium *E. coli*. Because they do not often infect other bacteria, they (like *E. coli*) are closely associated with recent fecal contamination. Because they are viruses, their stability and transport within soil and under aquifer environmental conditions may be similar to the fate and transport of pathogenic viruses. There are two categories of coliphage—somatic coliphage and male-specific coliphage. The somatic coliphage are a heterogenous group that enters the cell wall of *E. coli*. The male-specific (also called the F-specific) phage are those that only enter through tiny hair-like appendages (pili) to the cell wall.

There are issues about using coliphage as an indicator of fecal contamination in small communities. Individuals do not consistently shed coliphage. For example, Osawa *et al.* (1981) found that only 2.3% of infected individuals shed male-specific phage. Thus, the occurrence of these viruses in small septic tanks, which is an important source of fecal contamination in ground water wells, is uncertain. The issue of frequency and abundance is important because a primary source of fecal contamination in wells is thought to be nearby leaking septic tanks.

To answer this question, EPA funded a study to determine (Deborde, 1998, 1999) the frequency and density of coliphage occurrence in household septic tanks. Deborde (1998) collected and analyzed a sample from each of 100 sites in the Northwest and from each of 12 sites in the Midwest (3), Southwest (3), Northeast (3), and Southeast (3). All 112 samples were analyzed for male-specific coliphage, while 33 were also analyzed for somatic coliphage. Table III–1 shows that male-specific coliphage are present in about one-third of the septic tank samples, while somatic coliphage are present in two thirds of the samples tested. However, when found, the male-specific coliphage are present at a slightly higher level. The number of possible people per household (and therefore the number of virus sources) varied from one to seven, with an average of 2.8. In the next phase of the study, Deborde (1999), selected ten of the 112 sites (five coliphage-positive, five coliphage-negative) and collected three quarterly samples from each. The data indicate that significant changes in density occur over time. For the male-specific phage, the number of positive sites was 40%, 60% and 40% for quarter 2, 3, and 4, respectively. For the somatic phage, the number of positive sites was 70%, 80% and 50% during these same three quarters. As in the first phase, somatic phage were detected more frequently and the male-specific phage were (when detected) more abundant.

The data indicate that household septic tanks often (50–80%) contain measurable levels of somatic coliphage, suggesting that the somatic coliphage may be an appropriate indicator of fecal contamination in nearby source waters. However, the male-specific coliphage were present in the septic tanks in slightly less than half the sites at any one time. Based on these data, male-specific phage may not be suitable for detecting fecal contamination in source waters if the most likely contamination source is a household septic tank.

TABLE III–1.—FREQUENCY AND DENSITY OF COLIPHAGE IN HOUSEHOLD SEPTIC TANKS, PRELIMINARY RESULTS (DEBORDE, 1998)

| Coliphage | Presence | Density [1] |
|---|---|---|
| Male-specific. | 36% (44/112) | $9.7 \times 10^5$ PFU [1]/L |
| Somatic .... | 67% (22/33) | $1.3 \times 10^5$ PFU [1]/L |

[1] Plaque-Forming Units (PFU).

Analytical methods for coliphage are available and are far less expensive than methods for pathogenic virus detection. However, the coliphage detection methods are still somewhat more expensive than those for the common indicator bacteria. EPA is in the process of funding the development of more sensitive, less expensive analytical methods for the somatic and male-specific coliphage.

EPA also considered methods using polymerase chain reaction (PCR) for identifying specific viruses. PCR amplifies the nucleic acid of the targeted virus, which then can be detected and identified by various procedures. An advantage of this method over those for coliphage is that it can identify the presence of specific viruses pathogenic to humans. Methods using PCR may be specific, sensitive, and much more rapid than other methods for pathogenic virus. However, current PCR technology cannot yet determine whether a virus is viable or infectious and is significantly more expensive than the culture methods for the above fecal indicators (currently about $250–300 per sample). EPA expects substantial reductions in this cost as the method is further developed. Nevertheless, in spite of the current limitations of PCR, a positive result in a ground water sample would strongly imply that a pathway exists for virus contamination of ground water.

EPA did not consider total coliform bacteria or heterotrophic bacteria as fecal indicators because both groups grow naturally in soil and water, and thus are not specific indicators of fecal contamination.

According to a survey of ground water data by the AWWARF study (see Table II–6), *C. perfringens* was only detected in one of 57 samples (1.8%). Thus, EPA eliminated this organism from consideration. See Tables III–2 and 3 for occurrence data on candidate indicators.

TABLE III–2.—PRESENCE/ABSENCE OF INDICATORS AT ENTEROVIRUS-POSITIVE SITES (GENERALLY, ONE SAMPLE/SITE)

| Study | Number of positive enterovirus sites | Total coliforms (100 mL) | *E. coli* or fecal coliforms | Enterococci or fecal streptococci (100 mL) | Somatic phage (100 L) | F–specific phage (100 L) |
|---|---|---|---|---|---|---|
| AWWARF Study | 22 | 4 | NA | [1]2 | [2]0 | [2]2 (3) |
| Missouri Alluvial Study | 11 | 5 | 3 | 5 | 1 | 0 |
| Missouri Ozark Plateau | 10 | 0 | 0 | 0 | 0 | 2 |

[1] Only 11 enterovirus-positive sites tested.
[2] 15 liter samples.

TABLE III–3.—DATA FROM EPA/AWWARF STUDY. NUMBER OF TIMES INDICATOR WAS POSITIVE IN 12 MONTHLY SAMPLES AT ENTEROVIRUS-CONTAMINATED SITES [1]

| Enterovirus-positive site (≥ 1/12 pos) | Total coliform-positive | *E. coli* positive | Enterococci-positive | Somatic coliphage-positive [II] | F–specific coliphage positive [2] |
|---|---|---|---|---|---|
| 029 | 12 | 12 | 12 | 12 | 11 |
| 031 | 12 | 6 | 5 | 9 | 3 |
| 047 | 12 | 10 | 12 | 12 | 4 |
| 061 | 11 | 11 | 10 | 11 | 8 |
| 091 | 10 | 3 | 5 | 12 | 0 |
| 097 | 5 | 0 | 1 | 4 | 0 |
| 099 | 2 | 0 | 1 | 0 | 1 |
| Total | 64 | 42 | 46 | 60 | 27 |

[1] Sample volume: bacteria 300 mL; coliphage most between 10–100L; enterovirus: average of 6.037 L.
[2] Host for somatic coliphage: *E. coli* C; host for F-specific coliphage: WG49.

The data strongly shows that a single negative sample is usually not sufficient to demonstrate the absence of fecal contamination, and that repeated sampling is necessary. Based on the data, EPA does not believe that one fecal indicator is clearly superior to the others.

The coliphage sample volume in the studies in Table III–3 ranged from 10L to 100L (compared to 100–300 mL for the bacterial indicators). EPA believes that it would be unreasonable to expect systems to collect and transport these high water volumes. However, as stated earlier, several sensitive coliphage methods have been developed that can be used with a more reasonable volume (100–1000 mL).

Thus, for the reasons indicated earlier, EPA is proposing *E. coli*, coliphage and enterococci as appropriate monitoring tools for source water. Because these three fecal indicators are closely associated with fecal contamination, the Agency believes that a single source water positive *E. coli*, coliphage or enterococci sample is sufficient to consider the source water as fecally contaminated. Repeated sampling is proposed for routine monitoring (described in the next section) since it may take more than one sample to identify intermittent contamination. Additional support for this approach is provided by Christian and Pipes (Christian and Pipes, 1983), who found that coliforms follow a lognormal distribution pattern in small distribution systems (*i.e.*, coliforms are not uniformly distributed). EPA has no reason to suspect that this non-uniform pattern should be different in source waters. Only one additional sample is proposed after triggered monitoring (described in the next section) since the

sample is taken immediately after an indication of contamination.

The Agency recognizes that errors in sample collection and testing may contaminate a sample, and therefore would allow the State to invalidate such samples, on a case-by-case basis, in the same manner required under the TCR (141.21(c)(1)(i) and (iii) for invalidating total coliform samples. However, EPA believes that errors in sample collection rarely lead to contamination. This is based on a study by Pipes and Christian (Pipes and Christian, 1982), where water samplers and other individuals tried to contaminate 111 sample bottles containing 100-mL of sterile dechlorinated tap water by placing a finger into the mouth of each bottle and shaking the bottle vigorously for about 5 seconds. Only 5.4% of the samples were found to contain total coliforms.

Thus, the Agency believes that States should invalidate positive samples sparingly. Under the GWR, the State would be allowed to invalidate a positive source water sample if (1) the laboratory establishes that improper sample analysis caused the positive result or (2) the State has substantial grounds to believe that a positive result is due to a circumstance or condition which does not reflect source water quality, documents this in writing, and signs the document. In this case, another source water sample must be taken within 24 hours of receiving notice from the State.

*3. Proposed Requirements*

a. Routine Source Water Monitoring

EPA stated in the previous section on hydrogeology that a State would be required to determine the hydrogeological sensitivity of each system not treating to 4-log inactivation or removal of viruses. If the State determines that the well(s) serving such a system draws water from a sensitive aquifer, that system would be required to collect a source water sample each month that it provides water to the public and test the sample for the fecal indicator specified. If any sample contains a fecal indicator, the system would be required to notify the State immediately and address the contamination within 90 days unless the State has approved a longer schedule (see § 141.404).

Under the GWR, if a system detects no fecal indicator-positive samples after 12 monthly samples, the State would be allowed to reduce routine source water monitoring to quarterly. The State would be allowed, after the first year of monthly samples, to waive source water monitoring altogether for a system if the State determines that fecal contamination of the well(s) is highly unlikely, based on sampling history, land use pattern, disposal practices in the recharge area, and proximity of septic tanks and other fecal contamination sources. PWSs that do not operate year-round would need to conduct monthly sampling for more than one year to collect the twelve monthly samples. EPA requests comment on allowing such systems to monitor monthly for only one seasonal period when the system is in operation.

b. Source Water Sample After a Total Coliform-Positive Under the TCR

EPA proposes that when a non-disinfecting ground water system is notified that a sample is total coliform-positive under the TCR, that system would have to collect, within 24 hours of being notified, at least one source water sample. This requirement would be in addition to all monitoring and testing requirements under the TCR. The source water sample would be tested for either *E. coli*, coliphage or enterococci, as determined by the State. A system that chooses to first test for total coliforms in the source water, and then test any total coliform-positive culture for *E. coli* would meet the requirement.

If any sample is *E. coli*-positive, coliphage-positive or enterococci-positive, the system would be required to meet § 141.404. EPA believes that a total coliform-positive sample in the distribution system, followed by a fecal indicator-positive sample in the source water, indicates a serious contamination problem.

The Agency would allow the State to waive source water monitoring for any system, on a case-by-case basis, if the State determines that the total coliform-positive is associated solely with a distribution system problem. In this case, a State official would be required to document the decision, including the rationale for this decision, in writing, and sign the document.

c. Confirmation of Positive Source Water Sample

The Agency recognizes that false-positive results may occasionally occur with most microbial methods (*i.e.*, a non-target microbe is identified by the method as a target microbe). For example, the false-positive rate for *E. coli* is 7.2% for the E*Colite Test, 2.5% for the ColiBlue24 Test, and 4.3% for the membrane filter test using MI Agar.

Therefore, EPA would allow the State to invalidate a positive source water sample where a laboratory establishes that improper sample analyses caused the positive result or if the State has substantial grounds to believe that a positive result was due to a circumstance or condition that did not reflect source water quality and documents this in writing. For example, a State may invalidate a positive source water sample if a subsequent validation step for the same sample fails to confirm the presence of the fecal indicator being used. These provisions are consistent with the invalidation criteria under the TCR (40 CFR 141.21(c)).

EPA believes that, in the interest of public health, a positive sample by any of the methods listed in Table III–4 should be regarded as a fecal indicator-positive source water sample. This assumption is supported by the Pipes and Christian study (Pipes and Christian, 1982) study mentioned previously, which shows that sample collector handling error is rarely a cause of fecal contamination. Nevertheless, the Agency recognizes that contamination during sampling and analysis may occur, albeit rarely, and is proposing to allow the State to invalidate a fecal indicator-positive in a routine monitoring sample under certain circumstances in the manner described in this section. EPA is also proposing to allow confirmation of a fecal indicator-positive routine source water sample. Specifically, the rule would permit the State to allow a system to waive compliance with the treatment technique in § 141.404, after a single fecal indicator-positive source water sample on a case-by-case basis, if—

(1) The system collects five repeat source water samples within 24 hours after being notified of a source water-positive result;

(2) The system has the samples analyzed for the same fecal indicator as the original sample;

(3) All the repeat samples are fecal indicator-negative; and

(4) All required source water samples (routine and triggered) during the past five years were fecal indicator-negative.

Under this approach, a system would not necessarily have to comply with the specified treatment requirements on the basis of a single, isolated fecal indicator-positive sample if all additional monitoring showed that no problem exists. The Agency believes that this limited level of confirmation would not undermine public health protection. Conversely, the Agency believes that two fecal indicator-positive source water samples at a site provides strong evidence that the source water has been fecally contaminated.

The Agency is also proposing that a total coliform-positive sample in the

distribution system accompanied by a fecal indicator-positive source water sample be sufficient grounds for requiring compliance with the treatment requirements. The Agency argues that it would be unreasonable to expect a sample collector to accidently contaminate two samples taken at least one day apart, and also contends that the likelihood of a false-positive result occurring in both of two samples is much lower than in a single sample. Thus, the Agency believes that, in this circumstance, there is a significant probability that the source water is indeed fecally contaminated. Moreover, the Agency notes that, under the TCR, two consecutive total coliform-positive samples, one of which is *E. coli*-positive, is sufficient grounds for an acute violation of the MCL for total coliforms. For these reasons, EPA believes that it is reasonable to require a system with a total coliform-positive sample in the distribution system followed by a fecal indicator-positive source water sample to comply with the treatment requirements. However, EPA also recognizes that, by itself, a positive total coliform result is not always an indication of fecal contamination (even if the sample result is not a false positive). EPA requests comment on waiving compliance of the treatment techniques after a single positive triggered monitoring source water sample based upon five negative repeat samples as described previously in this section.

*4. Analytical Methods*

EPA proposes to approve the following methods (listed in 141.403), with the sample volume of 100 mL, for source water monitoring of *E. coli*, enterococci and coliphage. A system would have to use one of these methods. Most of the proposed analytical methods for *E. coli* for source water monitoring are consensus methods described in Standard Methods for the Examination of Water and Wastewater (19th and 20th ed.). The three *E. coli* methods that are not consensus methods are newly developed: MI agar (a membrane filter method), the ColiBlue 24 test (a membrane filter method) and the E*Colite test (a defined dehydrated medium to which water is added). EPA has already evaluated and approved these three methods for use under the TCR. Information about these methods is available in the **Federal Register** (63 FR 41134–41143, July 31, 1998; 64 FR 2538–2544, January 14, 1999) and in the EPAWater Docket. Of the three enterococci methods, two are consensus methods in Standard Methods; while the third (Enterolert) was described in a peer-reviewed journal article (Budnick *et al.*, 1996). The description for each of the proposed *E. coli* and enterococci methods state explicitly that the method is appropriate for fresh waters or drinking waters.

EPA is proposing the approval of two newly developed coliphage methods for detecting fecal contamination.

The Agency has conducted performance studies on the two proposed methods, using ten laboratories: a new two-step enrichment method and a single-agar layer method used for decades, but recently optimized for ground water samples. For the two-step enrichment method, using 100-mL spiked water samples (reagent water and ground water) and two *E. coli* hosts (CN–13 and $F_{amp}$), laboratories detected one plaque-forming unit (PFU) 60–90% of the time. For the optimized single-agar layer method, using the same water type and volume (but higher coliphage spike) and same two *E. coli* hosts, recoveries ranged from 61% to 178%, based upon a coliphage spike level determined by a standard double-agar layer test.

Based upon the results of performance testing, EPA believes that these two coliphage tests are satisfactory for monitoring ground water in compliance with this rule. The two test protocols and study results are available for review in EPA's Water Docket.

EPA is proposing requiring that systems collect and test at least a 100-mL sample volume. The Agency recognizes that a 1–L sample volume will provide ten times more sensitivity than a 100-mL sample. However, the Agency also understands that the greater sample volume would also weigh ten times more, and thus cost more to ship to a laboratory. Data exists that indicate more frequent smaller-volume samples are better in detecting fecal contamination than a smaller number of high volume samples (Haas,1993). AWWARF is funding a study on this issue, and data should be available shortly. The Agency requests comment on the most appropriate sample volume.

For any of the methods described previously, the maximum allowable time between ground water sample collection and the initiation of analysis in the certified laboratory, is 30 hours. This would be consistent with the TCR. The Agency would prefer a shorter time, but believes that a sizable percentage of small systems have difficulty getting their samples to a certified laboratory within 30 hours. In addition, unlike the SWTR where the density is measured, EPA is proposing in the GWR to require analysis for microorganism detection alone. The Agency believes that the detection of an organism is less sensitive to change than measurement of density, and thus a 30-hour transit time would be reasonable.

5. Request for Comments

EPA requests comments on proposed indicators of fecal contamination and analytical methods. In addition, EPA requests comments on the following alternative approaches.

(a) Source Water Samples after an MCL Violation of the TCR

EPA requests comment on requiring a system that violates the MCL for total coliforms, or detects a single fecal coliform/*E. coli*-positive sample under the TCR, to collect five source water samples, rather than a single source water sample as proposed. The Agency believes this alternative approach would be reasonable, given that both events are sufficiently important to require the system to notify the State (and, for a MCL violation, the public) as opposed to a single total coliform-positive sample which does not require notification. Under this approach, systems would be required to collect five source water samples within 24 hours for every MCL violation or positive *E. coli* or fecal coliform sample in the distribution system and test them for one of the EPA-specified fecal indicators. If any source water sample were positive, the system would have to treat or otherwise protect the drinking water. This monitoring requirement would be in addition to requirements under the TCR.

(b) Sampling of Representative Wells

EPA recognizes that most CWSs have more than one well, raising the question about whether the system would need to monitor all wells or just one representative well. One approach would be to require a system to sample all wells because this approach provides more reliable public health protection. However, the Agency notes that wells belonging to a system may vary in their sensitivity to fecal contamination.

If a system is drawing water from more than one well in a hydrogeologically sensitive aquifer, EPA believes that all such wells should be sampled routinely, unless the State can identify a single representative well or, the well (or subset of wells) sensitive to fecal contamination. If a system is required to collect a source water sample as a result of a total coliform-positive sample in the distribution system (triggered monitoring), EPA believes that all wells should be sampled, unless the State can identify a single representative well or the well (or

subset of wells) most vulnerable to fecal contamination. Alternatively, if the total coliform-positive sample was found in a part of the distribution system supplied by a single well, then it might be acceptable to sample that specific well alone. The Agency seeks comment on these alternatives and other approaches.

EPA recognizes that systems may have storage tanks or other water holding tanks between the wellhead and the distribution system. Therefore the Agency also requests comment on whether further definition is needed for exactly where source water samples should be taken; *e.g.*, at the well, the tank, or at any point before the water enters the distribution system. The Agency seeks comment on where source water samples should be collected.

(c) Distribution System Monitoring for Fecal Indicators

One alternative approach for distribution system monitoring is to augment total coliform/*E. coli* testing in the distribution system with one or more additional fecal indicators. For example, under this approach, a system would be required to monitor coliphage or enterococci at the same frequency as it monitors for total coliforms. This approach recognizes that fecal indicators differ in their effectiveness in detecting fecal contamination, and that this effectiveness may vary with environmental conditions. Thus, more than one fecal indicator should stand a greater likelihood of detecting fecal contamination than a single indicator (*i.e., E. coli* under the TCR). This approach would be more expensive for systems, but may be counterbalanced by the greater likelihood of detecting fecal contamination. EPA seeks comment on this monitoring approach.

(d) Persistent Monitoring Non-Compliers

EPA requests comment on defining a persistent non-complier of monitoring requirements and, specifically what any additional monitoring, public notification or treatment requirements should pertain to them.

(e) Monitoring of Disinfecting Systems

Some States currently require disinfected systems to monitor their source water to ensure that the system would be protected against the potential risk of fecal contamination in the event of a disinfectant failure. The Agency requests comment on requiring a disinfected system to test its source water periodically.

The Agency also requests comment on requiring all ground water systems (including those that disinfect to 4-log removal/ inactivation of viruses) to collect a source water sample after a total coliform-positive in the distribution system (triggered monitoring). Systems may want or need to change their disinfection practices or take other source water protection actions based on discovering that their source water is contaminated.

(f) Multiple Fecal Indicators

EPA is proposing to require ground water systems to monitor coliphage, *E. coli*, or enterococci, as determined by the State, in the source water. On March 13, 2000, the Drinking Water Committee of the Science Advisory Board (DWCSAB) made a few recommendations to EPA concerning a draft of this proposal.

The DWCSAB recommended unanimously, and the Agency is requesting comment on, requiring monitoring for both bacterial and viral indicators for both routine and triggered monitoring. Specifically, EPA is requesting comment on whether systems that must monitor their source water be required to monitor for both a bacterium (*E.coli* or enterococci) and virus (male specific and somatic coliphage). As discussed earlier, occurrence data show that fecal indicators differ in their scope and this may vary with environmental conditions. The DWCSAB noted that the scientific literature documents significant differences between transport and survival of bacteria and viruses. Coliphage and human viruses are smaller than bacterial indicators and thus under certain conditions may travel faster through the ground than bacteria; alternately, bacterial indicators are often at much higher concentrations in fecal matter than coliphage, and thus may be a more sensitive indicator than coliphage relatively near the contamination source. The use of both bacteria and coliphage indicators could provide better ability to detect fecal contamination and greater protection of human health. However it would also entail a higher probability of false positive results, and higher sampling costs to the systems.

The DWCSAB believed that the proposed indicators (*E.coli,* enterococci, and coliphage) are appropriate. The DWCSAB noted that both *E. coli* and enterococci are effective bacterial indicators. *E. coli* methods may be more familiar to many laboratories which may be advantageous. The enterococci may be somewhat hardier in terms of environmental persistence and perhaps more fecal specific. The media for enterococci is more selective and less subject to background growth with regards to the viral indicators. The DWCSAB recommended both somatic and male-specific coliphage be required when viral monitoring of the source water is conducted because they will detect a larger population of coliphage. The DWCSAB stated that laboratory methods are available to detect both coliphages and that they believe that a method can be made available to detect both coliphages on a single host (using a single host such as *E. coli* C3000) so that it would not be necessary to collect and test two samples for coliphage.

(g) Monitoring Frequency and Number of Samples To Identify Fecal Contamination

As stated previously, the proposed rule would require systems with sensitive wells to conduct monthly routine monitoring. The Agency believes that monitoring more frequently than monthly would increase the probability for detecting fecal indicator organisms sooner in a fecally contaminated well. However, the Agency also recognizes that more intensive monitoring could be overly burdensome to many small systems. Less than monthly monitoring would likely delay fecal contamination detection, and thus continue a possible health risk for a longer time. EPA concludes that monthly monitoring is the most appropriate balance between monitoring costs and prompt fecal contamination detection.

The total number of samples needed to determine whether a ground water is fecally contaminated depends on the fecal indicator used, the sample volume, and the level and duration of fecal contamination in the source water. Because the EPA/AWWARF study described in section II.C.2. monitored contaminated wells repeatedly, the results of this study were used to assess the likelihood (95%, 99%, 99.9% confidence) of detecting fecal contamination with different indicators, number of samples and level of fecal contamination actually in the ground water. The Agency then determined the minimum number of samples necessary to detect contamination, allowing for a small percentage of samples where fecal contamination is not detected. The EPA/AWWARF study operated in two phases. In Phase I, the EPA/AWWARF researchers identified a set of 93 wells thought to be vulnerable to fecal contamination. In Phase II, the researchers conducted further analysis, including monthly monitoring for virus and bacteria, on a subset of 23 of the Phase I wells which demonstrated total coliform and/or fecal bacteria contamination and on an additional 7

wells chosen for their unique physical or chemical characteristics.

From the wells tested in Phase II of the EPA/AWWARF study, seven sites tested positive for enterovirus in at least one sample of the twelve collected during the year. These seven waters are considered to be representative of ground water that are highly fecally contaminated at least part of the year. In such waters, a good indicator should be present in almost every sample, therefore, the number of non-detects should be very low. Combining the monthly results for these seven waters, there are 84 results for each indicator. Table III–5 shows the proportion of positives among the 84 results for each of four indicators.

TABLE III–5.—INDICATOR PERFORMANCE IN SEVEN HIGHLY-CONTAMINATED WATERS

| Indicator | Samples positive (percent) (N=84) |
|---|---|
| *E. coli* | 50 |
| Enterococci | 54.8 |
| Somatic Coliphage | 71.4 |
| F-Specific Coliphage | 32.1 |

N = number of samples.

If P is the probability of a positive sampling result (a detect) for a single indicator sample assay, then the probability of at least one positive result for N repeated independent samples is $1-(1-P)^N$. The probability of "N" non-detects is $(1-P)^N$. Table III–6 shows the probabilities of "N" non-detects for the same indicators as a function of the number of independent sample assays (N).

TABLE III–6.—PROBABILITY OF NON-DETECTS IN GROUND WATER THAT IS HIGHLY FECALLY CONTAMINATED AT LEAST PART OF THE YEAR (WHERE 'N' IS THE NUMBER OF INDEPENDENT ASSAYS)

| Indicator [1] | Number of samples (N) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | N = 1 (percent) | N = 2 (percent) | N = 4 (percent) | N = 6 (percent) | N = 12 (percent) | N = 24 (percent) | N* 5 percent | N*1 1 percent | N* 0.1 percent |
| E.coli | 50 | 25 | 6.3 | 1.6 | <0.1 | <0.1 | 5 | 7 | 10 |
| Enterococci | 45.2 | 20.5 | 4.2 | 0.9 | <0.1 | <0.1 | 4 | 6 | 9 |
| Somatic Coliphage | 28.6 | 8.2 | 0.7 | 0.1 | <0.1 | <0.1 | 3 | 4 | 6 |
| F-Specific Coliphage | 67.9 | 46 | 21.2 | 9.8 | <1.0 | <0.1 | 8 | 12 | 18 |

Sample volume was 300 ml for *E. coli* and enterococci, 10–100L for coliphage
N* = Smallest number of samples for which the error rate is less than or equal to the specified percentage (5%, 1%, 0.1%).

Table III–6 shows that six to18 source water samples are needed, depending on the fecal indicator (and sample volume used), to determine with a 99.9% probability that a fecal indicator positive will be detected in ground water that is highly contaminated at least part of the year.

A similar analysis was conducted using the results for the 10 waters that tested positive for *E. coli* at least once (N=12), but negative for enterovirus. These waters were defined as moderately contaminated during at least part of the year. Because these waters probably do not contain enteroviruses at easily detectable levels, the incidence of waterborne disease is probably less. Table III–7 shows the probabilities of "N" non-detects for different numbers of independent sample assays (N).

TABLE III–7.—PROBABILITY OF NON-DETECTS IN GROUND WATER THAT IS MODERATELY FECALLY CONTAMINATED AT LEAST PART OF THE YEAR (WHERE 'N' IS THE NUMBER OF INDEPENDENT ASSAYS)

| Indicator | Number of samples (N) | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| | N = 1 (percent) | N = 2 (percent) | N = 4 (percent) | N = 6 (percent) | N = 12 (percent) | N = 24 (percent) | N* 5 percent | N* 1 percent | N* 0.1 percent |
| *E.coli* | 71.7 | 51.4 | 26.4 | 13.5 | 1.8 | <0.1 | 9 | 14 | 21 |
| Enterococci | 67.5 | 45.6 | 20.8 | 9.55 | 0.9 | <0.1 | 8 | 12 | 18 |
| Somatic | 72.5 | 52.6 | 27.6 | 14.5 | 2.1 | <0.1 | 10 | 15 | 22 |
| F-Specific | 96.7 | 93.4 | 87.3 | 81.6 | 66.6 | 44.3 | 89 | 136 | 204 |

Sample volume was 300 ml for *E. coli* and enterococci, 10–100L for coliphage
N* = Smallest number of samples for which the error rate is less than or equal to 5.0%, 1% and 0.1%.

Table III–7, shows that 8 to 89 samples are needed, depending on the indicator selected, to determine with a 95% probability that a fecal indicator positive will be detected in a well that is moderately contaminated at least part of the year.

Based on the data described previously and statistics, EPA concludes that, given a margin of safety for the analysis, 12 samples would be sufficient for determining the presence of fecal contamination in sensitive wells. For systems operating year round, 12 monthly samples will provide data throughout the year, increasing the likelihood of detecting the seasonal presence of fecal contamination.

EPA requests comment on the monitoring approach discussed previously and the analysis and the assumptions used.

(h) Triggered Monitoring in Systems Without a Distribution System

EPA believes that circumstances exist that might not require the collection of a source water sample after a total coliform-positive sample in the distribution system. For example, if an

undisinfected system does not have a distribution system, any sample taken for compliance with the TCR is essentially a source water sample. Therefore, the Agency is requesting comment on whether to allow States to waive "triggered" source water sampling for systems without distribution systems if the system is also taking TCR samples at least quarterly. If the total coliform-positive sample from the distribution system is fecal coliform- or *E. coli*-positive, the system would be required to meet the treatment technique. There might also be provisions for repeat sampling in this case.

(i) Routine Monitoring in Systems Without a Distribution System.

EPA requests comment on whether to allow States to substitute TCR monitoring for routine monitoring in hydrogeologically sensitive systems if the system does not have a distribution system and takes at least one total coliform sample per month under the TCR for every month it provides water to the public. Such a system would be monitoring source water under the TCR. The State would be allowed to reduce or waive monthly monitoring after twelve negative monthly samples. The rule would require a system that has a total coliform-positive sample that is also *E. coli* (or fecal coliform)-positive to meet the treatment requirements in § 141.404.

(j) Source Water Monitoring for All Systems

EPA is proposing to require source water monitoring requirements for systems that do not treat to 4-log inactivation or removal of viruses and have either a total coliform-positive sample taken in compliance with the TCR, or any system identified by the State as hydrogeologically sensitive. On March 13, 2000 the Drinking Water Committee of the Science Advisory Board (DWCSAB) reviewed this issue and made several recommendations to EPA concerning a draft of this proposal. The DWCSAB raised concerns that under this approach many untreated ground water systems will not be monitored at the source, particularly in light of available occurrence data indicating contamination between 4 and 31 percent of ground water systems, a number of which many not be located in hydrogeologically sensitive areas. DWCSAB unanimously recommended that all ground water systems monitor for both bacterial and viral indicators. EPA requests comment on whether routine source water samples should be required for all ground water systems that do not notify the State that they achieved 4-log inactivation or removal of virus. EPA also requests comment upon the appropriate frequency (monthly or quarterly) for routine monitoring if it were required for all systems. EPA also requests comment upon whether this monitoring should be performed in conjunction with sanitary surveys so as to provide data for the sanitary survey and to reduce the capacity burden on laboratories by taking advantage of the phased timing of sanitary surveys (every 3 years for CWSs and every 5 years for NCWs).

*E. Treatment Techniques for Systems With Fecally Contaminated Source Water or Uncorrected Significant Deficiencies*

1. Overview and Purpose

EPA proposes that a public ground water system with uncorrected significant deficiencies or fecally contaminated source water must apply a treatment technique or develop application for a longer State-approved treatment technique within 90 days of notification of the problem. Under the SDWA, the State may extend the 90 day deadline up to two additional years if the State determines that additional time is necessary for capital improvements (SDWA, 1412(b)(10)). As part of this requirement and in consultation with the State, systems must eliminate the source of contamination, correct the significant deficiency, provide an alternate source water, or provide a treatment which reliably achieves at least 99.99 percent (4-log) inactivation or removal of viruses before or at the first customer. Ground water systems which provide 4-log inactivation or removal of viruses will be required to conduct compliance monitoring to demonstrate treatment effectiveness.

EPA is proposing 99.99% (4-log) virus inactivation or removal as the minimum level of treatment since it is the level required of surface water systems under the SWTR and because, the World Health Organization (WHO) states that disinfection processes must achieve at least 4-log reduction of enteric viruses (WHO, 1996). Which treatment technique approach is chosen will depend on existing State programs, policies or regulations. States must describe in their primacy application the treatment technique they will require and under what circumstances. If the treatment technique is not provided within 90 days, or if it is not implemented by the system in accordance with schedule requirements, the system is in violation of the treatment technique requirements of the GWR.

States and systems can select a number of treatment technologies to achieve 4-log virus inactivation or removal. The treatment technologies which have demonstrated the ability to achieve 4-log virus inactivation are chlorine, chlorine followed by ammonia (chloramines), chlorine dioxide, ozone, ultraviolet radiation (UV) and anodic oxidation. Reverse osmosis (RO) and nanofiltration (NF) have demonstrated the ability to achieve 4-log removal of viruses.

The Agency is also proposing requirements for systems that treat to monitor the disinfection and State notification requirements any time a system fails to disinfect to 4-log inactivation or removal of viruses. As part of this proposal, systems serving 3,300 or more people per day must monitor the disinfection continuously. Systems serving fewer than 3,300 people per day must monitor the disinfection by taking daily grab samples. When a system continuously monitors chemical disinfection, the system must notify the State any time the residual disinfectant concentration falls below the State-determined residual disinfectant concentration and is not restored within four hours. When a system monitors chemical disinfection by taking daily grab samples the system must maintain the State-determined residual disinfectant concentration in all samples taken. If any sample does not contain the required concentration, the system must take follow-up samples every four hours until the required residual disinfectant concentration is restored. The system must notify the State any time the system does not restore the disinfectant concentration to the required level within 4 hours.

a. Background

A key element of the multiple-barrier approach is disinfection where fecal contamination or significant deficiencies are not or cannot be corrected. EPA recognizes that the GWR must provide system-specific flexibility due to the diverse configuration and variability of the numerous public ground water systems in operation and allow for State-specific flexibility. Therefore, the proposed treatment technique requirements are designed to support the multiple-barrier approach, yet provide flexibility to meet system-specific concerns.

EPA recognizes that States use varying approaches and that a State's preferred approach comes from extensive experience in dealing with uncorrected significant deficiencies and

contaminated source water. States may require systems to take differing approaches to providing treatment techniques, depending upon many factors, including the system's configuration, or State policies or regulations. Therefore, the proposed GWR attempts to build on the strengths of existing State programs, yet provide requirements which ensure safe drinking water for all consumers. Under the proposed GWR, States may require systems to eliminate the source of contamination, correct the significant deficiency, provide an alternate source water, or provide a treatment which reliably achieves at least 99.99 percent (4-log) inactivation or removal of viruses before or at the first customer. Ground water systems which provide 4-log inactivation or removal of viruses will be required to conduct compliance monitoring to demonstrate treatment effectiveness. For example, a State may have a policy or regulation requiring a system to consider an alternative source of safe drinking water before considering the use of disinfection. Alternatively, the State may require the system to disinfect to 4-log virus inactivation without first considering the use of corrective BMPs or alternative sources of safe drinking water. The approach the State will use to require a treatment technique for uncorrected significant deficiencies or fecally contaminated source water must be described in the State's primary enforcement application (primacy). EPA expects a State to build upon existing ground water programs to meet today's proposed regulations. In any case, systems which do not provide the appropriate State-determined treatment technique within the 90 day deadline, and do not have a State-approved plan in place for complying with the treatment technique requirement within 90 days, are in violation of the treatment technique requirements of the GWR.

b. Corrective Action Background Information

This section presents background information used by EPA to develop the proposed treatment technique requirements for ground water systems with uncorrected sanitary survey significant deficiencies or fecally contaminated source water. Specifically discussed is information related to current State treatment technique requirements, and the protectiveness of treatment techniques, as well as a discussion of disinfection as it relates to uncorrected significant deficiencies and fecally contaminated source water.

i. Alternative Sources of Safe Drinking Water

Limited data exists on the effectiveness of systems using an alternative source as a treatment technique against uncorrected significant deficiencies or fecally contaminated source water. However, since many States require a wide range of BMPs to be followed prior to placing an alternative source into service, it is believed that this treatment technique would be effective. In addition, some States require the local hydrogeology or sources of contamination to be considered for all new sources of drinking water, and would, therefore, provide some assurance that an alternative source as a treatment technique is effective. Several States require systems with source water contamination to provide an alternative source, if possible.

ii. Background Information on Eliminating the Source of Contamination

As with the effectiveness of providing alternative source water as a treatment technique for uncorrected significant deficiencies or fecally contaminated source water, limited data exists on the effectiveness of eliminating the source of contamination as a treatment technique. The report on the Analysis of Best Management Practices for Community Ground Water Systems Survey Data Collected by the Association of State Drinking Water Administrators (ASDWA, 1998) provides information on the effectiveness of BMPs in reducing total coliform positives, however, it does not address those BMPs used in response to a source water fecal contamination event. The report does show that when correcting significant deficiencies, a significant pairwise association exists in reducing both total and fecal coliform positive samples. A wide range of State requirements exist for the use of BMPs, with some States requiring the use of one or more BMPs in response to contamination events.

iii. Disinfection

Under today's proposal, disinfection is defined as the inactivation or removal of fecal microbial contamination. As noted earlier, corrective actions to met the GWR treatment technique includes disinfection. Chemical disinfection of viruses involves providing a dosage of a disinfectant for a period of time for the purposes of inactivating the viruses. For most treatment strategies, the level of inactivation achieved varies depending on the target microorganism, residual disinfectant concentration, ground water temperature and pH, water quality and the contact time. The CT value is the residual disinfectant concentration multiplied by the contact time. Specifically, the contact time is the time in minutes it takes the water to move between the point of disinfectant application and a point before or at the first customer during peak hourly flow. The concentration is the residual disinfectant concentration in mg/L before or at the first customer, but at or after the point the contact time is measured. A system compares the CT value achieved to the published CT value for a given level of treatment (*e.g.*, 4-log inactivation of viruses) to determine the level of treatment attained. As long as the CT value achieved by the system meets or exceeds the CT value needed to inactivate viruses to 4-log, the system meets the treatment technique requirement.

Four-log virus inactivation can also be achieved by UV disinfection, which differs from some other treatment technologies, in that providing a residual concentration is not possible. When using UV disinfection, a light dosage is applied to the water to target the attainment of IT values (measured in $mWs/cm^2$). IT is the light irradiance (measured in $mW/cm^2$) to which the target organisms are exposed, multiplied by the time for which the irradiance is applied (measured in seconds). A system compares the IT value achieved to the published IT value for a given level of treatment (*e.g.*, 4-log inactivation of viruses) to determine the level of treatment attained. Systems required to disinfect with UV disinfection under the GWR must provide 4-log inactivation of viruses at a minimum. As long as the system attains IT values necessary for 4-log virus inactivation, the system meets the treatment technique requirement.

Removal, in the context of treatment of microbially contaminated ground water, is the physical straining of the microbial contamination, and is usually accomplished through filtration. For the purposes of disinfection of microbially contaminated ground water, removal is accomplished by membrane processes. Membrane processes physically remove viruses from the water based on the size of the virus and the size of the membrane's pores. When the absolute size of the membrane's pores (the molecular weight cut-off, or MWCO) are substantially smaller than the diameter of the virus, removal of the virus can be achieved. Therefore, membrane filtration technologies with MWCO substantially less than the diameter of

viruses can be effective treatment technologies for 4-log virus removal.

iv. State Requirements

EPA used the Baseline Profile Document for the Ground Water Rule (USEPA, 1999f) to assess current State treatment technique requirements. The EPA survey Ground Water Disinfection and Protective Practices in the United States (US EPA, 1996a) was used where the Baseline Profile Document for the Ground Water Rule (USEPA, 1999f) lacked certain information. These data are important in illustrating the wide range of State requirements that exists in ground water systems. The GWR attempts to build on existing State practices and provide State flexibility to address system-specific concerns.

Based on an analysis of information in the Baseline Profile Document for the Ground Water Rule (USEPA, 1999f), there is great variability nationwide in State statutes, regulations, and policies for when and how systems must apply treatment techniques. The variability ranges from 11 States requiring across-the-board disinfection, several other States requiring systems to attempt to eliminate the real or potential source of fecal contamination before considering disinfection, to some States requiring systems with fecally contaminated source water to provide an alternative source of safe drinking water. Almost all of the States have statutes, regulations, or policies for treatment techniques that define under what circumstances treatment techniques are necessary. Twenty-eight of the 39 States which do not require across-the-board disinfection require application of treatment techniques based on the microbial quality of the water and 12 of the 39 require application of treatment techniques based on the sanitary quality of the system.

How a system applies treatment techniques also varies considerably from State to State. For example, 36 of the 50 States specify requirements on the use of disinfectant residuals in the distribution system, while five States require 4-log inactivation of viruses at the source.

v. Disinfection Technologies

In ground water systems, 4-log inactivation of viruses can be accomplished by disinfection with free chlorine, chloramines, chlorine dioxide, ozone, on-site oxidant generation (anodic oxidation) or ultraviolet radiation (UV). Reverse osmosis (RO) and nanofiltration (NF) can achieve 4-log removal of viruses. Chlorine, chloramines, chlorine dioxide, ozone, UV, RO and NF are all listed as small system compliance technologies for the SWTR. EPA also suggests that small systems consider on-site oxidant generation for SWTR compliance purposes (US EPA, 1998c).

Chemical disinfection technologies are commonly used to provide disinfection prior to distribution, and must attain specific CT values (which vary depending on the technology) to achieve 4-log virus inactivation. Free chlorine disinfection is the most commonly practiced chemical disinfection technology, and requires a CT value of four to provide 4-log inactivation of viruses at a water temperature of 15°C, and a pH of 6–9 (USEPA, 1991a).

The required CT values for 4-log virus inactivation when using chloramines or chlorine dioxide are higher than when using free chlorine (Table III–8). The CT values for 4-log inactivation of viruses at a pH of 6–9 and a temperature of 15°C are 16.7 mg-min/L for chlorine dioxide and 994 mg-min/L for chloramines (US EPA, 1991a). The CT value for chloramines applies to systems which generate chloramines by the addition of free chlorine, followed by the addition of ammonia. This chloramine CT value for 15°C was obtained by extrapolating CT values from a study performed by Sobsey, *et al*, (1988) at 5°C. These CT values for chlorine and chloramines studied HAV, which, compared to other viruses which occur in fecally contaminated ground water, is relatively resistant to chlorine disinfection. The CT value for chlorine dioxide was obtained from a study of chlorine dioxide inactivation of HAV by chlorine dioxide at 5°C (Sobsey, *et al.*, 1988). The CT value obtained in this study was adjusted to 15°C, and had a safety factor of two applied. Considering that chlorine dioxide has a higher CT value than chlorine and due to site specific situations, chlorine dioxide may not be a feasible disinfection technology for all systems. Additional studies have been conducted using free chlorine on Coxsackie virus B5 and poliovirus 1 (Kelly and Sanderson, 1958), and information on these studies is provided in Table III–8. Although the CT values for HAV were included in the guidance manual to the SWTR intended for surface water systems, the CT values are applicable to ground water systems, since they are based on disinfectant residual (*i.e.*, after demand) concentrations.

Many systems apply free chlorine disinfection in a contact basin prior to distribution for virus inactivation, followed by ammonia addition prior to distribution (to form chloramines) to protect the water as it travels through the distribution system, since chloramines provide a longer lasting residual than free chlorine. Due to the high CT value for chloramines, some additional disinfection prior to distribution would probably be needed.

A system that must disinfect may also need to increase the CT value attained if the CT value attained does not achieve the 4-log inactivation of viruses. Under some circumstances, this can be accomplished by providing a higher disinfectant dosage (and hence, a higher disinfectant residual), or a longer contact time (by providing additional storage). Data from the CWSS (1995) suggests that many CWSs (and some NCWSs) served by ground water may already have storage in place and may be able to achieve 4-log virus inactivation without additional storage. According to the CWSS, 59% of community ground water systems have distribution system storage tanks, including 34% of systems serving less than 100 people (CWSS, 1995). This number increases to 95% for systems serving 10,001–100,000 people. Twenty-eight percent of ancillary community ground water systems were found to have storage. According to the CWSS, ancillary systems are those systems for which providing drinking water is not their primary business (*e.g.*, restaurants).

TABLE III–8. DISINFECTION STUDIES USING CHLORINE, CHLORINE DIOXIDE AND CHLORAMINES ON VIRUSES

| Studies conducted | | | Effectiveness | | Additional notes | |
|---|---|---|---|---|---|---|
| Disinfectant | Virus studied | Reference & date | Log removal | CT | Residual | Comments |
| Chlorine | HAV | Sobsey *et al.*, 1988 | 4 | [1]4 | Y | safety factor = 3 |
| | | Sobsey *et al.*, 1988 | 4 | [1]30 | Y | $_{p}$H = 10 safety factor = 3 |
| | Coxsackie B5 | Kelly & Sanderson, 1958 | 4 | ~1.07 | Y | $_{p}$H = 6, T = 28°C |

TABLE III–8. DISINFECTION STUDIES USING CHLORINE, CHLORINE DIOXIDE AND CHLORAMINES ON VIRUSES—Continued

| Studies conducted | | | Effectiveness | | Additional notes | |
|---|---|---|---|---|---|---|
| Disinfectant | Virus studied | Reference & date | Log removal | CT | Residual | Comments |
| | [1] Poliovirus | Kelly & Sanderson, 1958 | 4 | ~7.8 | Y | 4-log at 5°C |
| Chloramine | HAV | Sobsey *et al.*, 1988 | 4 | [1] 994 | Y | |
| [2] Chlorine dioxide | HAV | Sobsey *et al.*, 1988 | 4 | [1] 16.7 | Y | safety factor = 2 |

[1] CT values are for 15°C and a $_pH$ of 6–9, unless otherwise noted.
[2] Table adapted from Technologies and Costs for Ground Water Disinfection (USEPA, 1993).

Ozone, unlike chlorine dioxide and chloramines, is a stronger disinfectant than chlorine and would require less contact time (and less storage) at a similar dosage (Table III–9) to inactivate viruses. The CT value for 4-log inactivation of HAV using ozone is 0.6 mg-min/L at a pH of 6–9 and a temperature of 15°C (US EPA, 1991a). The CT data for ozone were obtained from a study by Roy *et al.*, (1982). This study obtained data for 2-log inactivation of poliovirus 1 at 5°C. The CT value for 4-log virus inactivation listed in Table III–8 is an extrapolation of the 2-log inactivation value assuming first-order kinetics, as well as an adjustment for inactivation at 15°C. In addition, a safety factor of three was applied to the CT values. However, the CT value required for 4-log virus inactivation may depend on the virus. Poliovirus 1 (Kaneko, 1989) and enteric viruses (Finch *et al.*, 1992) have demonstrated other CT requirements in studies; however, it is uncertain whether or not all other experimental conditions were the same (*e.g.*, temperature) .

Numerous studies on viral inactivation using UV have been conducted, with Table III–9 presenting some of the findings. According to these studies, 4-log UV disinfection of HAV requires an IT of between 16 mWs/cm$^2$ (Battigelli *et. al.*, 1993) and 39.4 mWs/cm$^2$ (Wilson *et al.*, 1992). IT is the UV light irradiance multiplied by the contact time. Other studies have shown variable IT values, depending on the virus studied (Table III–9). Harris *et al.* (1987) found that an IT of 120 mWs/cm$^2$ (including a safety factor of 3) was required for 4-log inactivation of poliovirus. Unlike many of the other alternative treatment technologies, the efficacy of UV disinfection is not dependent on the temperature and $_pH$.

TABLE III–9.—DISINFECTION STUDIES USING OZONE, MEMBRANE FILTERS AND UV ON VIRUSES

| Studies conducted | | | Effectiveness | | Additional notes | |
|---|---|---|---|---|---|---|
| Disinfectant | Virus studied | Reference E & date | Log removal | CT | Residual | Comments |
| [4] Ozone | Poliovirus | Roy *et al.*,1982 | 4 | [1] 0.6 | N | safety factor = 3. |
| | Poliovirus | Herbold *et al.*,1989 | 4–6 | .008 | N | T = 10°C. |
| | | Kaneko, 1989 | 4 | 5 | N | |
| | enterics | Finch *et al.*,1992 | 4 | 3 | N | |
| | HAV | Hall & Sobsey, 1993. | 3.9–6.0 | 0.167 | N | Also MS2. |
| | | Herbold *et al.*,1989 | 4–6 | 0.22 | N | T = 10°C. |
| | | Vaughn *et al.*,1990 | 4 | 0.40 | N | T = 4°C. |
| | MS2 | Finch *et al.*,1992 | 2.7–7 | 7.2 | N | T = 22°C. |
| | | Finch *et al.*,1992 | 4 | .013 | N | T = 22°C. |
| RO | <0.5 nm | Jacangelo *et al.*,1995. | [2] 100% removal | 50–70% recovery | N | MWCO<0.5 nm. |
| | MS2 | Adham *et al.*,1998 | 1.4–7.4 | N/A | N | |
| NF | ~0.5–13 nm | US EPA, 1993 | [2] 100% removal | 60–80% recovery | N | MWCO 200–400 Daltons. |
| UV[3] [4] | MS2 | Snicer *et al.*,1996 | 4 | 87.4–93 | N | Ground water. |
| | | Roessler & Severin, 1996. | 4 | ~63 | N | |
| | HAV | Wiedenmann *et al.*,1993. | 4 | ~20 | N | |
| | | Battigelli *et al.*,1993 | 4 | 16 | N | |
| | | Wilson *et al.*,1992 | 4 | 39.4 | N | Also Rota SA11, Poliovirus 1. |
| [3] [4] UV continued | Rotavirus | Roessler & Severin, 1996. | 4 | ~25 | N | |
| | Poliovirus | Harris *et al.*,1987 | 4 | 120 | N | Safety factor = 3. |
| | | Chang *et al.*,1985 | 3–4 | ~30 | N | |
| | Rotavirus SA11 | Battigelli *et al.*,1993 | 4 | 42 | N | Approximately 4-log. |
| | | Chang *et al.*,1985 | 3–4 | ~30 | N | |
| | Coxsackie B5 | Battigelli *et al.*,1993 | 4 | 29 | N | Approximately 4-log. |

[1] CT values are values for 15 °C and a pH of 6–9, unless otherwise noted.
[2] Removal based on pore size.
[3] Inactivation measured by IT, rather than CT. IT is the UV irradiance multiplied by the contact time.
[4] Table adapted from Technologies and Costs for Ground Water Disinfection (USEPA, 1993)

When systems use anodic oxidation the primary disinfectant generated is free chlorine. Therefore, the CT value for anodic oxidation is the same as free chlorine (Table III–8). However, when using anodic oxidation other disinfectants are also generated, and data suggests that the combined effects of these disinfectants are stronger than that of free chlorine alone; however, this effect has not been substantiated.

Removal as a ground water treatment technique provides public health protection through physical filtering of water using membrane processes. The effectiveness of a particular membrane technology depends on the size of the target organism and the size of the membrane's pores (Table III–9). Membrane filters achieve removals when the MWCO of the filter is significantly smaller than the diameter of the target organism. Viruses range in diameter from approximately 20–900 nm and may be effectively removed using reverse osmosis (RO) and nanofiltration (NF), having MWCOs of approximately 5 nm and 30 nm, respectively. Those technologies which provide removal of microbial contamination cannot provide a disinfectant residual, and must be applied prior to the distribution of the water.

vi. Free Chlorine in the Distribution System

Chlorine disinfection is the most commonly practiced disinfection technology for microbial contamination of ground water. Many ground water systems which practice chlorine disinfection do so by providing a free chlorine residual at the entry point to the distribution system. In general, the level of inactivation achieved using disinfectants such as chlorine increases the longer the disinfectant is in contact with the water (*i.e.*, contact time). This is true only when there is an available supply of chlorine. When the chlorine dissipates there is no further increase in the inactivation level. Therefore, when systems use a chlorine residual at the entry point to the distribution system, microbes (including viruses) are inactivated at varying levels through the length of the distribution system, and the risk of illness from pathogens originating in the source water decreases with increased travel time through a well-maintained distribution system if there is sufficient residual. For example, if customers at the first service connection in the water main receive water disinfected to 4-log virus inactivation, those customers farther along the distribution main would receive water disinfected to levels greater than 4-logs as long as disinfectant remains, and no additional contamination has entered the distribution system.

EPA conducted analyses to evaluate the potential effectiveness of a free chlorine distribution system residual to provide 4-log inactivation of viruses originating in the source water. It was assumed that the customer at the first service connection received water disinfected to 4-log virus inactivation. Preliminary analysis indicates that a number of ground water systems can achieve at least 4-log virus inactivation throughout the distribution system. Some systems can provide this log inactivation by maintaining a 0.2 mg/l free chlorine residual at the entry point to the distribution system (as required by the SWTR) and a contact time of 20 minutes prior to the first customer. Data suggests that as many as 77% of small community ground water systems (*i.e.*, serving less than 10,000 customers) may achieve 4-log virus inactivation prior to the first customer during maximum flow conditions (AWWA, unpublished data 1998). When a ground water system uses a free chlorine distribution system residual to disinfect contaminated source water, the level of virus inactivation is likely well in excess of 4-log, especially when taking into account the time the water awaits usage in the customers' piping beyond the service connection. This extra holding time in the distribution system increases the CT value achieved and therefore increases the log inactivation level achieved. A system may also need to apply a free chlorine residual at the entry point to the distribution system that is higher than 0.2 mg/L to maintain a detectable residual throughout the distribution system, which may lead to higher levels of virus inactivation. In these instances, increased levels of protection would be provided for customers served by all service connections along the distribution main. Assuming 4-log virus inactivation at the first customer, it could also be assumed that customers at service connections at later points in the distribution system would receive water disinfected to higher levels of inactivation, in many cases much higher.

For some systems application of a 0.2 mg/L free chlorine residual at the entry point to the distribution system and a detectable free chlorine residual throughout the distribution system will not achieve 4-log virus inactivation. In some cases this will be because the system does not achieve adequate contact time, and these systems may have to increase the contact time by installing extra distribution system storage, increasing the free chlorine residual concentration, adding supplemental disinfection (such as disinfection in a contact basin) or reconfiguring the system. However, based on 1998 AWWA data, EPA believes that most ground water CWSs will have sufficient contact time.

EPA considered requiring systems to apply a disinfectant residual at the entry point to the distribution system and maintain a detectable disinfectant residual throughout the distribution system. However, EPA decided against including it in the proposed GWR since a disinfectant residual is more accepted as a distribution system tool than for controlling source water contamination. EPA will address the issue of maintaining a residual in future rulemaking efforts (*e.g.* long term 2 ESWTR) as part of a broad discussion on distribution system issues for all PWSs.

2. Proposed Requirements

EPA proposes the following requirements for ground water systems with an uncorrected significant deficiency or fecally contaminated source water. The requirements for treatment techniques, disinfection monitoring, and notification to ensure public health protection are addressed.

EPA proposes treatment technique requirements as one barrier in the multiple barrier approach. Treatment techniques contribute to public health protection by eliminating public exposure to the source of pathogens, through eliminating the source of contamination, requiring the system to provide an alternative source as the State deems appropriate, correcting significant deficiencies that can act as a potential pathway for contamination, or disinfection to remove, or inactivate the microbial contaminants. Information related to the effectiveness of these treatment techniques can be found in the ASDWA BMP study Results and Analysis of ASDWA Survey of BMPs in Community Ground Water Systems (ASDWA, 1998), as well as the SWTR.

a. Treatment Technique Requirements for Systems With Uncorrected Significant Deficiencies or Source Water Contamination

EPA proposes requiring ground water systems with an uncorrected significant deficiency or source water contamination to apply an appropriate treatment technique, as determined by the State, within 90 days of detection of the significant deficiency or source water contamination. If they cannot apply an appropriate treatment technique within that time frame, they must at a minimum have a State-

approved plan and specific schedule for doing so. Treatment techniques include: eliminate the source of contamination, correct the significant deficiency, provide an alternate source water, or provide a treatment which reliably achieves at least 99.99 percent (4-log) inactivation or removal of viruses before or at the first customer. Some treatment techniques are inappropriate solutions for the nature of the problem. For example, a system with contamination entering the distribution system must not address the problem by providing treatment at the source.

Ground water systems which provide 4-log inactivation or removal of viruses will be required to conduct compliance monitoring to demonstrate treatment effectiveness. If a system is unable to address the significant deficiency within 90 days, the system must develop a specific plan and schedule for providing a treatment technique, submit the plan and schedule to the State and receive State approval on the plan and schedule within the same 90 days. EPA expects the system to consult with the State on interim measures to ensure safe water is provided during the 90 day correction time frame. During this 90 day period the State and system must identify and apply a permanent treatment technique appropriate for that system, consistent with the State's general approach outlined in their primacy package. If the treatment technique is not complete within 90 days (or the deadline specified in the State-approved plan), the system is in violation of the treatment technique requirements of the GWR.

b. Disinfection Options

EPA proposes requiring systems that disinfect due to uncorrected significant deficiencies or fecally contaminated source water to provide disinfection adequate to achieve at least 4-log inactivation or removal of viruses as determined by the State. When a system provides disinfection for uncorrected significant deficiencies or fecally contaminated source water, EPA recommends that the State use EPA-published CT tables to determine what treatment technologies and what disinfection parameters are appropriate for the system. If a system is currently providing 4-log disinfection and therefore does not monitor the source water for fecal indicators, per § 140.403, then that system must meet the definition and requirements of disinfection as described in this section.

c. Monitoring the Effectiveness and Reliability of Treatment

EPA proposes requiring systems with uncorrected significant deficiencies or fecally contaminated source water under this proposal to monitor the effectiveness and reliability of disinfection as follows. This monitoring must be conducted following the last point of treatment, but prior to each point of entry to the distribution system.

Sysfems serving 3,300 or more people that chemically disinfect must monitor (using continuous monitoring equipment fitted with an alarm) and maintain the required residual disinfectant concentration continuously to ensure that 4-log virus inactivation is provided every day the system serves water to the public. EPA recommends that the State use EPA-developed CT tables to determine if the system meets the residual concentration and contact time requirements necessary to achieve 4-log virus inactivation. As a point of comparison, the surface water system size cutoff for systems to measure the residual disinfectant four or fewer times per day is 3,300 people served.

Systems serving 3,300 or fewer people that chemically disinfect must monitor and maintain the residual disinfectant concentration every day the system serves water to the public. The system will monitor by taking daily grab samples and measuring for the State-determined concentration of disinfectant to ensure that 4-log virus inactivation is provided. EPA recommends that the State use EPA-developed CT tables to determine if the system meets the residual concentration and contact time requirements necessary to achieve 4-log virus inactivation. If the daily grab measurement falls below the State-determined value, the system must take follow-up samples every four hours until the required residual disinfectant concentration is restored.

Systems using UV disinfection must monitor for and maintain the State-prescribed UV irradiance level continuously to ensure that 4-log virus inactivation is provided every day the system serves water to the public. EPA recommends that the State use EPA-developed IT tables to determine if the system meets the irradiance and contact time requirements necessary to achieve 4-log virus inactivation.

Systems that use membrane filtration as a treatment technology are assumed to achieve at least 4-log removal of viruses when the membrane process is operated in accordance with State-specified compliance criteria, or as provided by EPA, and the integrity of the membrane is intact. Applicable membrane filtration technologies are RO, NF and any membrane filters developed in the future that have MWCOs that can achieve 4-log virus removal.

When monitoring on a continuous basis, the system must notify the State any time the residual disinfectant concentration or irradiance falls below the State-prescribed level and is not restored within four hours. This notification must be made as soon as possible, but in no case later than the end of the next business day.

When the system takes daily grab sample measurements, the system must notify the State any time the residual disinfectant concentration falls below the State-prescribed level and is not restored within four hours. This notification must be made as soon as possible, but in no case later than the end of the next business day.

Any time a system using membrane filtration as a treatment technology fails to operate the process in accordance with State-specified compliance criteria, or as provided by EPA, or a failure of the membrane integrity occurs, and the compliance operation or integrity is not restored within four hours, the system must notify the State. This notification must be made as soon as possible, but in no case later than the end of the next business day.

These requirements are consistent with those for surface water systems. Four hours is the cutoff time by which a surface water system must restore the free chlorine residual level at entry to the distribution system to 0.2 mg/L, if the free chlorine residual at entry to the distribution system falls below 0.2 mg/L. In addition, a surface water system must notify the State anytime the residual disinfectant entering the distribution system falls below 0.2 mg/L and is not restored within 4 hours. This notification must be made by the end of the next business day.

EPA proposes that systems which were required to provide treatment for uncorrected significant deficiencies or fecally contaminated source water may discontinue treatment if the State determines the need for treatment no longer exists and documents such a decision.

d. Eliminating the Source of Contamination

For systems eliminating the source of contamination, EPA proposes that the system and State develop a strategy using appropriate BMPs considering the characteristics of the system and the nature of the significant deficiency or contamination.

e. Reporting Outbreaks

As required in 141.32(a)(iii)(D) for undisinfected surface water systems; EPA proposes that if any ground water system has reason to believe that a disease outbreak is potentially attributable to their drinking water, it must report the outbreak to the State as soon as possible, but in no case later than the end of the next business day.

f. Treatment Technique Violations

The GWR proposes the following three treatment technique violations, requiring the ground water system to give public notification:

(a) A ground water system with a significant deficiency identified by a State, which does not correct the deficiency, provide an alternative source, or provide 4-log inactivation or removal of viruses within 90 days, or does not obtain, within the same 90 days, State approval of a plan and schedule for meeting the treatment technique requirement, is in violation of the treatment technique.

(b) A ground water system that detects fecal contamination in the source water and does not eliminate the source of contamination, correct the significant deficiency, provide an alternate source water, or provide a treatment which reliably achieves at least 99.99 percent (4-log) inactivation or removal of viruses before or at the first customer within 90 days, or does not obtain within the same 90 days, State approval of a plan for meeting this treatment technique requirement, is in violation of the treatment technique unless the detected sample is invalidated by the State or the treatment technique is waived by the State. Ground water systems which provide 4-log inactivation or removal of viruses will be required to conduct compliance monitoring to demonstrate treatment effectiveness.

(c) A ground water system which fails to address either a significant deficiency as provided in (a) or fecal contamination as provided in (b) according to the State-approved plan, or by the State-approved deadline, is in violation of the treatment technique. In addition, a ground water system which fails to maintain 4-log inactivation or removal of viruses, once required, is in violation of the treatment technique, if the failure is not corrected within four hours.

EPA requests comment on which (if any) of these proposed treatment technique violations should or should not be treatment technique violations. EPA also requests comment as to whether a ground water system which has a source water sample that is positive for E. coli, coliphage or enterococci should be in violation of the treatment technique.

3. Public Notification

Sections 1414(c)(1) and (c)(2) of the 1996 SDWA, as amended, require that public water systems notify persons served when violations of drinking water standards occur. EPA has recently (64 FR 25963, May 13, 1999) proposed to revise the public notification regulations to incorporate new statutory provisions enacted under the 1996 SDWA amendments. EPA recently promulgated the final Public Notification Rule (PNR), under part 141. Subsequent EPA drinking water regulations that affect public notification requirements will amend the PNR as a part of each individual rulemaking. The GWR is proposing Tier 1 (discussed next) public notification requirements for the treatment technique violations (see § 141.405). EPA requests comment on the GWR public notification requirements.

The purpose of public notification is to alert customers to potential risks from violations of drinking water standards and to inform them of any steps they should take to avoid or minimize such risks. A public water system is required to give public notice when it fails to comply with existing drinking water regulations, has been granted a variance or exemption from the regulations, or is facing other situations posing a potential risk to public health. Public water systems are required to provide such notices to all persons served by the water system. The proposed PNR divides the public notice requirements into three tiers, based on the seriousness of the violation or situation.

Tier 1 is for violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure. Notice is required within 24 hours of the violation. Drinking water regulations requiring a Tier 1 notice include: Violation of the TCR, where fecal contamination is present; nitrate violations; chlorine dioxide violations; and other waterborne emergencies. The State is explicitly authorized to add other violations and situations to the Tier 1 list when necessary to protect public health from short-term exposure.

Tier 2 is for other violations and situations with potential to have serious adverse effects on human health. Notice is required within 30 days, with extension up to three months at the discretion of the State or primacy agency. Violations requiring a Tier 2 notice include all other MCL and treatment technique violations and specific monitoring violations when determined by the State.

Tier 3 is for all other violations and situations requiring a public notice not included in Tier 1 and Tier 2. Notice is required within 12 months of the violation, and may be included in the Consumer Confidence Report at the option of the water system. Violations requiring a Tier 3 notice are principally the monitoring violations.

Today's regulatory action proposes to make the presence of a fecal indicator in a source water sample, failure to monitor source water and treatment technique violations as Tier 1 public notification requirements. Any GWSs with a violation or situation requiring Tier 1 public notification must notify the public within 24 hours of the violation. GWS's that must make an annual CCR report, as discussed in III.A.7.d., must include any Tier 1 violations or situations in their next CCR report and include the health effects language described later in Appendix B of subpart Q. The following violations or situations require Tier 1 notice:

(a) A ground water system which has a source water sample that is positive for *E. coli*, coliphage, or enterococci under § 141.403, unless it is invalidated under § 141.403(i);

(b) Failure to conduct required monitoring, including triggered monitoring when a system has a positive total coliform sample in the distribution system and routine monitoring when the system is identified by the State as hydrogeologically sensitive;

(c) A ground water system with a significant deficiency identified by a State which does not correct the deficiency, provide an alternative source, or provide 4-log inactivation or removal of viruses within 90 days, or does not obtain, within the same 90 days, State approval of a plan and schedule for meeting the treatment technique requirement in § 141.404;

(d) A ground water system that detects fecal contamination in the source water and does not eliminate the source of contamination, provide an alternative water source, or provide 4-log inactivation or removal of viruses within 90 days, or does not obtain within the same 90 days, State approval of a plan for meeting this treatment technique requirement (unless the detected sample is invalidated under § 141.403(i) or the treatment technique is waived under § 141.403(j)); and

(e) A ground water system which fails to address either a significant deficiency as provided in (c) or fecal contamination as provided in (d) according to the

State-approved plan, or by the State-approved deadline. (In addition, a ground water system which fails to maintain 4-log inactivation or removal of viruses, once required, is in violation of the treatment technique if the failure is not corrected within 4 hours.)

EPA believes that these violations pose an immediate and serious public health threat. Fecal contamination is an acute contaminant and therefore illnesses and even deaths can occur through small volumes or short exposure to fecally contaminated drinking water. Illnesses can be avoided by alerting the public immediately. The proposed tiering requirements under the GWR are designed to be consistent with those for the Total Coliform Rule. Failure to test for fecal coliform or *E. coli* when any repeat sample tests positive for coliform is considered a Tier 1 violation requiring a Tier 1 notice under current Public Notification Regulations. EPA believes that failure to collect source water samples as proposed under the GWR poses an equivalent public health threat to the failure to test for fecal coliform or *E. coli* under the TCR. EPA believes that an undisinfected ground water system with either a TC positive in the distribution system or with a source found to be hydrogeologically sensitive has an increased likelihood of microbial contamination that if not monitored, presents a public health threat which requires immediate notice. EPA acknowledges that in some circumstances, the hydrogeologic sensitivity assessment may not be as indicative of the presence of microbial contamination in the ground water system as is the presence of total coliform in the distribution system. Given this potential situation, the Agency requests comment upon whether the failure to perform routine source water monitoring should be considered a lower Tier violation to avoid alarming the public unnecessarily. EPA also requests comment on the other proposed public notification requirements presented in this section.

4. Request for Comments

EPA requests comments on all the information presented earlier and the potential impacts on public health and regulatory provisions of the GWR. In addition, EPA specifically requests comments on the following alternative approaches. In particular, EPA requests comment on the following public health issues associated with disinfection. Stakeholders have raised concern about the potential risk from improperly managed or applied chemical disinfectants. Some stakeholders suggest that requiring small system operators who may lack training or expertise to apply chemical disinfection could lead to collateral health and safety risks. EPA requests comment on this issue. The Agency also requests input on alternative approaches for addressing demonstrated microbial contamination and the associated acute microbial health risks.

Alternative Approaches

a. Distribution System Residuals

EPA requests comment on requiring a 0.2 mg/L free chlorine residual at the entry points to the distribution system and a detectable free chlorine residual throughout the distribution system for all or some systems (*e.g.*, all systems serving 3,300 or more people). EPA also seeks comment on whether or not systems should be able to use a 0.2 mg/L free chlorine residual at the entry to, and detectable throughout, the distribution system to meet the disinfection requirements proposed as part of the GWR.

b. Other Log-Inactivation Levels

EPA seeks comment on the adequacy of 4-log virus inactivation or removal to protect public health from fecally contaminated ground water sources. Additionally, EPA requests comment on requiring additional levels of disinfection under certain circumstances. For example, increasing the log virus inactivation may be appropriate for contaminated systems with known sources of fecal contamination in close proximity to a well.

c. Supplemental Disinfection Strategies

EPA requests comment on whether, for certain systems with source water contamination, it may not be possible to achieve 4-log virus inactivation at the first customer either because of the distribution system size or configuration (*e.g.*, the first customer is relatively close to the point of disinfectant application). EPA requests comment on possible supplemental disinfection strategies.

d. Mandatory Disinfection for Systems in Sensitive Hydrogeology

EPA seeks comment on requiring disinfection for ground water systems which obtain their water from a sensitive aquifer regardless of microbial monitoring results (see section III.B.). This would provide proactive public health protection by disinfecting a sensitive source water before contamination becomes apparent.

e. Point-of-Entry Devices

EPA seeks comment on EPA approving the use of point-of-entry devices to disinfect contaminated source water. This would allow systems to provide protection to individual households, and may be cost-effective for some very small systems. However, the system would be responsible for maintaining the devices and this could result in significant expenditure of resources.

f. Across-the-Board Disinfection

EPA seeks comment on requiring all systems to disinfect, or requiring disinfection based on system type (*e.g.*, CWS), or size of the system (*e.g.*, greater than 3,300). The SWTR requires all systems obtaining their water from a surface water source to disinfect. EPA notes that 1996 SDWA, as amended requires that EPA should develop regulations requiring disinfection for ground water systems "as necessary".

g. Health and Fiscal Impacts on Small Systems (i.e., Competing Priorities)

EPA requests comment on whether or not potential health effects and fiscal impacts specific for small systems should be included in the GWR. Specifically, EPA seeks comment on what other regulatory priorities will compete with the GWR and what implementation issues this will present (*e.g.*, disinfection under the GWR versus compliance with the DBPR, difficulty in obtaining resources for simultaneous compliance with arsenic, radon, ground water and DBP regulations).

h. Differing Disinfection Strategies for Significant Deficiencies and Source Water Contamination

EPA seeks comment on whether a different disinfection strategy should be required depending on whether the system has an uncorrected significant deficiencies or fecally contaminated source water. Under this alternative, EPA could require systems with uncorrected significant deficiencies to provide only a disinfectant residual of 0.2 mg/L free chlorine at entry to the distribution system, while those systems with fecally contaminated source water would be required to provide disinfection to ensure that the system achieves 4-log virus inactivation or removal prior to entry to the distribution system.

i. Shutting Down Systems With Uncorrected Significant Deficiencies

EPA seeks comment on whether and based on what criteria systems with uncorrected significant deficiencies should not be allowed to disinfect as a

treatment technique, but instead would not be allowed to serve water to the public. Under certain circumstances this approach is used by some States. For example, disinfection is not an effective strategy for treating the significant deficiency of poor distribution system integrity.

j. Correction Time Frame

EPA requests comment on the criteria States must use to determine the adequacy of schedules which go beyond 90 days (*e.g.*, corrections which require significant capital investments or external technical expertise).

EPA also requests comment on an alternative approach for addressing correction of significant deficiencies. The alternate approach consists of: (1) A requirement that the State notify the system in writing within 30 days of conducting the sanitary survey listing the significant deficiency, (2) a requirement for the system to correct the significant deficiencies as soon as possible, but no later than 180 days of receipt of the letter from the State or in compliance with a schedule of any length agreed upon by the State, and (3) the requirement that the system notify the State in writing that the significant deficiencies have been corrected within 10 days after the date of completion. Under this alternative, a system that does not correct significant deficiencies within 180 days or within the time frames of a schedule agreed upon by the State is in violation of a treatment technique and must provide public notice. The Agency seeks comment on whether this particular alternative correction scheme would be appropriate for the purposes of this rule.

The Agency is also seeking comment on a second alternative approach for establishing deadlines to complete corrective actions of significant deficiencies. Under this approach, States, as part of their primacy requirement to identify and define the significant deficiencies, may develop and submit to EPA for approval, deadlines for the completion of corrective actions for specific types or categories of significant deficiencies. When a specific corrective action is not implemented within the State deadline, a State must take appropriate action to ensure that the system meets the corrective action requirement. Any corrective action that extends beyond 180 days to complete, must be enforceable by the State through a compliance agreement or an administrative order or judicial order. As part of primacy, the State must also provide a plan for how the State will meet the time frames established in their procedures for identifying, reporting, correcting, and certifying significant deficiencies within the 180 days. The Agency seeks comment on whether this alternative correction scheme might also be appropriate.

k. Required Disinfectant Residual Concentration

EPA requests comment on requiring systems that disinfect to maintain a specified default disinfectant residual level. This requirement would apply when the State fails to provide the system with a State-determined disinfectant concentration to meet the 4-log inactivation/removal requirement within the 90-day correction time frame. Under this approach, systems that must treat would be required to maintain a 0.2 mg/L free chlorine residual at entry to the distribution system and a detectable free chlorine residual throughout the distribution system. EPA also requests comment on other concentrations of residual free chlorine to be maintained both at entry to the distribution system and throughout the distribution system (*e.g.*, 0.5 mg/L free chlorine at entry to the distribution system and 0.2 mg/L free chlorine throughout the distribution system).

l. Record Keeping for 4-log Inactivation Requirements

EPA requests comment upon whether systems which disinfect to comply with the GWR must maintain records of the State notification of the proper residual concentrations (when using chemical disinfection), irradiance level (when using UV), or State-specified compliance criteria (when using membrane filtrations) needed to achieve 4-log inactivation or removal of virus. EPA also requests comment on systems keeping records of the level of disinfectant residuals maintained, as well as how long the system should keep the records (*e.g.*, three years). These records may be valuable in the operation of the system because they will serve as permanent records for subsequent operators and/or owners of the ground water system.

m. Differing Monitoring Requirements for Consecutive Systems

EPA requests comment on any GWR requirements that should not apply to consecutive systems. Consecutive systems are those PWSs that receive some or all of their water from other PWSs. Such systems would certainly need to undergo the proposed sanitary survey to assure that they are delivering safe water to their customers. EPA also requests comment on whether the hydrogeologic sensitivity assessment and any corresponding source water monitoring should be the responsibility of the water seller or the consecutive system. EPA requests comments on whether or not a consecutive system should be required to monitor treatment compliance in their distribution system if the seller has met 4-log inactivation or removal of viruses. In addition, EPA requests comment on the selling system being required to conduct triggered source water monitoring when the consecutive system has a total-coliform positive in the distribution system.

n. State Primacy Requirements

EPA requests comment on the scope and appropriateness of the GWR State primacy requirements. The primacy requirements include the following:

- *Sanitary surveys*: State will describe how it will implement the sanitary survey, including rationales and time frames for phasing in sanitary surveys, how it will decide that a CWS has outstanding performance, and how the State will utilize data from its SWAPP;
- *Hydrogeologic Sensitivity Assessment:* State will identify its approach to determining the adequacy of a hydrogeologic barrier, if present;
- *Source Water Monitoring:* State will describe its approach and rationale for determining which of the fecal indicators (*E. Coli, coliphage* or *enterococci*) ground water systems must use for routine and/or triggered monitoring;
- *Treatment Techniques:* State will describe treatment techniques, including how it will provide systems with the disinfectant concentration (or irradiance) and contact time required to achieve 4-log virus inactivation; the approach the State must use to determine which specific treatment option (correcting the deficiency, eliminating the source of contamination, providing an alternative source, or providing 4-log inactivation or removal of viruses) is appropriate for addressing significant deficiencies or fecally contaminated source water and under what circumstances; and how the State will consult with ground water systems regarding the treatment technique requirements.

o. State Reporting Requirements

The proposed rule contains many reporting requirements for States to submit to EPA. EPA requests comment on the scope and appropriateness of these reporting requirements. The GWR reporting requirements include the following:

- *Sanitary Survey:* State will report an annual list of ground water systems that have had a sanitary survey

completed during the previous year and an annual evaluation of the State's program for conducting sanitary surveys.

• *Hydrogeologic Sensitivity Assessment:* State will report lists of ground water systems that have had a sensitivity assessment completed during the previous year, those ground water systems which are sensitive, ground water systems which are sensitive, but for which the State has determined that a hydrogeologic barrier exists, and an annual evaluation of the State's program for conducting hydrogeologic sensitivity assessments.

• *Source Water Monitoring:* State will report an annual list of ground water systems that have had to test the source water, a list of determinations of invalid samples, and a list of waivers of source water monitoring provided by the State.

• *Treatment Techniques:* State will report lists of ground water systems that have had to meet treatment technique requirements for significant deficiencies or contaminated source water, determinations to discontinue 4-log inactivation or removal of viruses, ground water systems that violated the treatment technique requirements, and an annual list of ground water systems that have notified the State that they are currently providing 4-log inactivation or removal of viruses.

## IV. Implementation

This section describes the regulations and other procedures and policies States have to adopt, and the requirements that public ground water systems would have to meet to implement today's proposal were it to be finalized as proposed. Also discussed are the compliance deadlines for these requirements. States must continue to meet all other conditions of primacy in Part 142 and ground water systems must continue to meet all other applicable requirements of Part 141.

Section 1413 of the SDWA establishes requirements that a State or eligible Indian Tribe must meet to maintain primary enforcement responsibility (primacy) for its public water systems. These include (1) adopting drinking water regulations that are no less stringent than Federal NPDWRs in effect under sections 1412(a) and 1412(b) of the Act, (2) adopting and implementing adequate procedures for enforcement, (3) keeping records and making reports available on activities that EPA requires by regulation, (4) issuing variances and exemptions (if allowed by the State) under conditions no less stringent than allowed by sections 1415 and 1416, and (5) adopting and being capable of implementing an adequate plan for the provision of safe drinking water under emergency situations.

40 CFR part 142 sets out the specific program implementation requirements for States to obtain primacy for the Public Water Supply Supervision (PWSS) Program, as authorized under section 1413 of the Act. In addition to adopting the basic primacy requirements, States may be required to adopt special primacy provisions pertaining to a specific regulation. These regulation-specific provisions may be necessary where implementation of the NPDWR involves activities beyond those in the generic rule. States are required by 40 CFR 142.12 to include these regulation-specific provisions in an application for approval of their program revisions. These State primacy requirements apply to today's proposed rule, along with the special primacy requirements discussed next. The proposed regulatory language under section 142 applies to the States. The proposed regulatory language in section 141 applies to the public water systems.

The 1996 SDWA amendments (see section 1412(b)(10)) provide 3 years after promulgation for compliance with new regulatory requirements. Accordingly, the GWR requirements that apply to the PWS directly, specifically requirements found under section 141 of this proposal (monitoring and corrective action), are effective three years after the promulgation date. The State may, in the case of an individual system, provide additional time of up to two years if necessary, for capital improvements in accordance with the statute.

Section 1413(a)(1) allows States two years after promulgation of the final GWR to adopt drinking water regulations that are no less stringent than the final GWR. EPA proposes to require States to submit their primacy application concerning the GWR (see section 142 of the proposed regulatory language) within two years of the promulgation of the final GWR and EPA will review and approve (if appropriate) the application within 90 days of submittal (1413(b)(2). This schedule will provide all States with approved primacy for the GWR by the three years after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

If the GWR is finalized as proposed today, the States will have three years from the effective date (six years from the GWR promulgation date) to complete all community water system sanitary surveys and five years from the effective date (eight years from the GWR promulgation date) to complete all non-community water system sanitary surveys. The monitoring and corrective action requirements would be effective on the effective date of the final rule (three years after the GWR promulgation date).

## V. Economic Analysis (Health Risk Reduction and Cost Analysis)

This section summarizes the Health Risk Reduction and Cost Analysis in support of the GWR as required by section 1412(b)(3)(C) of the 1996 SDWA. In addition, under Executive Order 12866, Regulatory Planning and Review, EPA must estimate the costs and benefits of the GWR in a Regulatory Impact Analysis (RIA) and submit the analysis to the Office of Management and Budget (OMB) in conjunction with publishing the proposed rule. EPA has prepared an RIA to comply with the requirements of this Order and the SDWA Health Risk Reduction and Cost Analysis (USEPA, 1999a). The RIA has been published on the Agency's web site, and can be found at http://www.epa.gov/safewater. The RIA can also be found in the docket for this rulemaking (US EPA, 1999a).

The goal of the following section is to provide an analysis of the costs, benefits, and other impacts to support decision making during the development of the GWR.

### *A. Overview*

The analysis conducted for this rule quantifies cost and benefits for four scenarios; the proposed regulatory option (multi-barrier option), the sanitary survey option, the sanitary survey and triggered monitoring option, and the across-the-board disinfection option. All options include the sanitary survey provision. The sanitary survey option would require the primacy agent to perform surveys every three to five years, depending on the type of system. If any significant deficiency is identified, a system is required to correct it. The sanitary survey and triggered monitoring option adds a source water fecal indicator monitoring requirement triggered by a total coliform positive sample in the distribution system. The multi-barrier option adds a hydrogeologic sensitivity assessment to these elements which, if a system is found to be sensitive, results in a routine source water fecal indicator monitoring requirement. The multi-barrier option and the sanitary survey and triggered monitoring options are both a targeted regulatory approach designed to identify wells that are fecally contaminated or are at a high risk for contamination. The across-the-board disinfection option would require all systems to install treatment instead

of trying to identify only the high risk systems; therefore, it has no requirement for sensitivity assessment or microbial monitoring.

Costs for each option varied and were driven by the number of systems that would need to fix a significant deficiency or take corrective action, such as installing treatment or rehabilitating a well, in response to fecal contamination. The majority of costs for all options, with the exception of the across-the-board option, are the result of systems having to fix an actual or potential fecal contamination problem. The mean annual costs of the various options range from $73 million to $777 million using a three percent discount rate and $76 million to $866 million using a seven percent discount rate. (Note some costs have not been quantified and are not included in these totals, see section V.B.)

These total annual quantified costs can be compared to the annual monetized benefits of the GWR. The annual mean benefits of the various rule options range from $33 million to $283 million. This result is based on the quantification of the number of acute viral illnesses and deaths avoided attributable to this rule. This rule will also decrease bacterial illness and death associated with fecal contamination of ground water. EPA did not directly calculate the actual numbers of illness associated with bacterially contaminated ground water because the Agency lacked the necessary bacterial pathogen occurrence data (*e.g.*, number of wells contaminated with *Salmonella*) to include it in the risk model. However, in order to monetize the benefit from reduced bacterial illnesses and deaths from fecally contaminated ground water, the Agency used the ratio of viral and unknown etiology outbreak illnesses to bacterial outbreak illnesses reported to CDC for waterborne outbreaks in ground water systems.

Several non-health benefits from this rule were also considered by EPA but were not monetized. The non-health benefits of this rule include avoided outbreak response costs (such as the costs of providing public health warnings and boiling drinking water), and possibly the avoided costs of averting behavior and reduced uncertainty about drinking water quality. There are also non-monetized disbenefits, such as increased exposure to DBPs.

Additional analysis was conducted by EPA to look at the incremental impacts of the various rule options, impacts on households, benefits from reduction in co-occurring contaminants, and increases in risk from other contaminants. Finally, the Agency evaluated the uncertainty regarding the risk, benefits, and cost estimates.

*B. Quantifiable and Non-Quantifiable Costs*

In estimating the cost of each rule option, the Agency considered impacts on public water systems and on States. The GWR will result in increased costs to some PWSs for monitoring, corrective action of significant deficiencies, and installing treatment, but these vary depending on the option. With all rule options, a greater portion of the regulatory burden will be placed on those systems that do not currently disinfect to a 4-log inactivation of virus. States will incur costs for an incremental increase in sanitary survey requirements, for conducting hydrogeologic sensitivity assessments, and for follow-up inspections. Both systems and States would incur implementation costs. Some costs of today's rule options were not quantified (such as land acquisition, public notification costs and corrections to all potential significant deficiencies (See section V. B.4.)).

1. Total Annual Costs

In order to calculate the national costs of compliance, the Agency used a Monte-Carlo simulation model specifically developed for the GWR. The main advantage of this modeling approach is that, in addition to providing average compliance costs, it also estimates the range of costs within each PWS size and category. It also allowed the Agency to capture the variability in PWS configuration, current treatment in place and source water quality.

Table V–1 shows the estimated mean and range of annual costs for each rule option. At both a three and seven percent discount rate for the first three options, the costs increase as more components are added for identifying fecally contaminated wells and wells vulnerable to fecal contamination. The fourth option of across-the-board disinfection is the most costly because it would require all systems to install treatment regardless of actual fecal contamination or the potential to become fecally contaminated. Costs for the States to implement these rule options are also included in the four cost estimates. Discount rates of three and seven percent were used to calculate the annualized value for the national compliance cost estimate. The seven percent rate represents the standard discount rate required by OMB for benefit-cost analyses of government programs and regulations.

TABLE V–1.—ANNUAL COSTS OF RULE OPTIONS ($MILLION)

| Option | 3% Discount rate $million mean [range] | 7% Discount rate $million mean [range] |
|---|---|---|
| Sanitary Survey | $73 [$71–$74] | $76 [$74–78] |
| Sanitary Survey and Triggered Monitoring | $158 [$153–$162] | $169 [$163–174] |
| Multi-barrier (Proposed) Option | $183 [$177–188] | $199 [$192–206] |
| Across-the-Board Disinfection | $777 [$744–$810] | $866 [$823–$909] |

2. System Costs

In order to calculate the cost impact of each rule option on public water systems, EPA had to estimate the current baseline of systems and their current treatment practices, and then estimate how many systems would be affected by the various option requirements based on national occurrence information. The industry baseline discussion is located in section I.C. of this preamble. Estimates of the cost compliance requirements for each rule option are captured in a decision

tree analysis. The decision tree is comprised of various percentage estimates of the number of systems that will fall into each regulatory component category. Rule components include corrective action costs or costs to address significant deficiencies, monitoring costs, start-up costs, and reporting costs. Each of the rule options contains various combinations of these rule components with the sanitary survey option containing the fewest requirements.

Overall, these rule options provide a great amount of flexibility, with the exception of across-the-board disinfection, and this has complicated the cost analysis. Data were not always available to estimate the number of systems that would fall under the various rule components. EPA used data, where available but also consulted with experts and stakeholders to get the best possible estimates of the cost of this rule. More information on the GWR decision tree and how each element was estimated can be found in the Appendix to the GWR RIA (US EPA, 1999a).

As previously mentioned, the main cost component of the first three rule options results from systems having to take corrective action in response to fecal contamination or to fix significant deficiencies that could result in well contamination. In order to analyze the different rule options, the Agency had to distinguish between correction of significant deficiencies and the corrective actions that result from a confirmed source water positive sample for *E. coli*, enterococci or coliphage. In addition, it would be extremely challenging to cost out all conceivable corrective actions or significant deficiencies that a system could potentially encounter. As a result, the Agency focused on a representative estimate of potential types of corrective actions and significant deficiencies as shown in Table V–2 and Table V–3, respectively.

The choice of treatment technique (in consultation with the State) is also influenced by the size of the system. This is captured in the decision tree analysis by assigning probabilities (by system size) that a certain corrective action will be chosen. These probabilities are based on the relative cost of each action, data on existing disinfection practices, and best professional judgment. Additional significant deficiencies related to improper treatment were included in the cost analysis for systems that currently disinfect. These deficiencies are also captured in the decision tree and are listed in Table V–3.

TABLE V–2.—TREATMENT TECHNIQUES TO ADDRESS POSITIVE SOURCE WATER SAMPLES

| Corrective action: [1] |
|---|
| Rehabilitating an existing well |
| Drilling a new well |
| Purchasing water (consolidation) |
| Eliminating known sources of contamination |
| Installing disinfection (8 choices of technologies) |

[1] Choice varies with systems size and corrective action feasibility.

Each treatment technique can be addressed by various low or high cost alternatives. For example, a lower cost fix for many systems would be to rehabilitate a well while a higher cost fix would be to drill a new well. It is possible that not all States, in coordination with systems, would choose the relatively lower cost alternative of well rehabilitation. It would depend on the well itself and also the problem that was being addressed. In addition, if the model predicted that a system would install treatment, the choice of treatment is contingent on system size. To capture these alternative possibilities, the Agency considered different combinations of low and high cost alternatives. For instance, when the low cost corrective action alternative was run, the model estimated a greater percentage of systems choosing the lower cost well rehabilitation option versus the higher cost option of drilling a new well. To account for the uncertainty in the types of significant deficiencies identified and in the treatment technique taken, the cost model was run for each of the following combinations of low and high costs alternatives.

- Low significant deficiency cost/low treatment technique cost
- Low significant deficiency cost/high treatment technique cost
- High significant deficiency cost/low treatment technique cost
- High significant deficiency cost/high treatment technique cost

These combinations of low and high cost are reflected in the range of cost estimates shown in Table V–1 for the multi-barrier option (proposed option), the sanitary survey and triggered monitoring option, and the across-the-board option. For the sanitary survey option, only the high and low costs associated with significant deficiencies were included in the analysis. As stated earlier, treatment technique costs are the result of source water monitoring which is not included with the sanitary survey option.

TABLE V–3.—SIGNIFICANT DEFICIENCIES

| Significant deficiencies |
|---|
| Unsealed well or inadequate well seal |
| Improper well construction |
| Inadequate roofing on a finished water storage tank |
| Evidence of vandalism at finished water storage tank |
| Unprotected cross connection in the distribution system |
| Booster pump station which lacks duplicate pumps |
| Additional significant deficiencies for disinfecting systems: |
| Inadequate disinfection contact time |
| Inadequate application of treatment chemicals |

In addition to the treatment technique costs, EPA estimated the cost to systems for monitoring. All options would have some monitoring costs. However, the monitoring costs vary depending on the rule option as indicated in Table V–4. Regardless of the option, the triggered and routine monitoring applies only to systems that do not disinfect to a 4-log inactivation of virus.

Both the triggered and routine monitoring costs are calculated based on the cost of the test and the operator's time to take and transport the sample. EPA assumed that if this source water sample is positive, all systems would take five repeat samples to confirm the positive (although this is an optional rule component). For routine monitoring, the Agency assumed that all systems would monitor their source water monthly for the first year and quarterly thereafter at the States' determination. However, in some cases the State may allow the system to discontinue monitoring after 12 monthly samples or it could also require the system to continue with monthly monitoring. The cost of disinfectant compliance monitoring varies with system size and would be required for any system that currently disinfects or installs treatment as a result of the GWR. For large systems, EPA assumed that an automated monitoring system would be installed; for smaller systems, EPA assumed that a daily grab sample would be taken. A more detailed explanation of each of these monitoring schemes is located in section III. D. and section III E.2.c.

TABLE V–4.—MONITORING REQUIREMENTS BY RULE OPTION

| Option | Triggered monitoring | Routine monitoring | Disinfectant compliance monitoring |
|---|---|---|---|
| Sanitary Survey | | | ✔ |
| Sanitary Survey and Triggered Monitoring Option | ✔ | | ✔ |
| Multi-barrier (Proposed) Option | ✔ | ✔ | ✔ |
| Across-the Board Disinfection Option | | | ✔ |

Finally, the Agency accounted for a system's start-up costs to comply with the GWR . These costs include time to read and understand the rule, mobilization and planning, and training. EPA assumed start-up costs would remain constant across the rule options. The Agency also estimated system costs for reporting and recordkeeping of any positive source water samples.

3. State Costs

Similar to the system cost, State costs also vary by rule option. Depending on the option, States would face increased costs from the incremental difference in the sanitary survey requirements and frequency, from conducting a one-time hydrogeologic sensitivity assessments, and tracking monitoring information for those options with a monitoring requirement. States would also have start-up and annual costs for data management and training. If a system needs longer than 90 days to complete a treatment technique or repair a significant deficiency, the State would have to approve the time schedule and plan.

By including start-up costs, annual fixed costs, and incremental sanitary survey costs in the decision tree analysis for all rule options, EPA accounted for these State costs. The analysis also assumed costs for State review and approval of plans for treatment techniques. The cost for the one-time sensitivity assessments is included for the proposed rule option analysis.

4. Non-Quantifiable Costs

Although EPA has estimated the cost of all the rule's components on drinking water systems and States, there are some costs that the Agency did not quantify. These non-quantifiable costs result from uncertainties surrounding rule assumptions and from modeling assumptions. For example, EPA did not estimate a cost for systems to acquire land if they needed to build a treatment facility or drill a new well. This was not considered because many systems will be able to construct new wells or treatment facilities on land already owned by the utility. In addition, if the cost of land was prohibitive, a system may chose another lower cost alternative such as connecting to another source. A cost for systems choosing this alternative is quantified in the analysis. The cost estimates do not include costs for public notification which are proposed. These estimates have not been included because EPA has no data on which to base an estimate of the number of treatment techniques violations or the number of times systems will fail to perform source water monitoring.

In addition, the Agency did not develop costs for all conceivable significant deficiencies or corrective actions that a system may encounter. Instead, a representative sample was chosen as shown in Tables V–2 and V–3.

*C. Quantifiable and Non-Quantifiable Health and Non-Health Related Benefits*

The primary benefits of today's proposed rule come from reductions in the risks of microbial illness from drinking water. In particular, the GWR focuses on reducing illness and death associated with viral infection. Exposure to waterborne bacterial pathogens are also reduced by this rule and the benefits are monetized, but not by the same method used to calculate reductions in viral illness and death because of data limitations. It is likely that these monetized illness calculations which are based on a cost of illness (COI) rather than a willingness to pay (WTP) approach, underestimate the true benefit because they do not include pain and suffering associated with viral and bacterial illness.

Additional health benefits such as reduced chronic illness were investigated, but were not quantified or monetized in this analysis. Other non-health benefits will likely result from this rule but were also not quantified or monetized. These non-health related benefits are discussed in sections V.A. and V.C. 2.

1. Quantifiable Health Benefits

The benefits analysis focused on estimating reductions in viral and bacterial illness and death that would result from each of the rule options. The first part of the analysis estimates the baseline (pre-GWR) level of illness as a result of microbial contamination of ground water. A discussion about how the Agency estimated this baseline risk is located in section II. E. of today's proposal. An important component of these risk estimates is the effect that these pathogens have on children (especially infants) because they are more likely to have severe illness and die from viral infection than the general population. A detailed discussion of risks to children is located in section VI. G.

The second part of the analysis focused on the reduction in risk that results from the various rule components. These components include identifying high risk wells, fixing significant deficiencies, increased monitoring for some systems, and possibly installing treatment in the event that a problem can not be fixed or a new source found. To calculate these changes, the risk-assessment model was re-run using new assumptions based on reductions in viral exposure which results from different levels of fecal contamination identified by each rule option.

To model the reduction in source contamination that would result from implementation of the four regulatory options, EPA assumed reductions in the number of ground water systems/points of entry that are potentially contaminated with viral pathogens under baseline conditions. The reduction varies with expectations regarding the effectiveness of each option in identifying and correcting significant defects at the source. Reductions in treatment failure rate and in distribution system contamination are also addressed for each option. The estimated reductions in contamination which are expected for each rule option are summarized in Table V–4a. These estimates are based upon information from consultations by the Agency with stakeholders and the Agency's best professional judgement regarding the effectiveness of sanitary surveys and upon co-occurrence rates of fecal indicators with pathogenic viruses. See section 5.3 of the GWR RIA for a detailed discussion of the basis for the estimated reductions.

TABLE V–4A. ESTIMATED CONTAMINATION REDUCTIONS FOR GWR OPTIONS

[In Percent]

| Regulatory option | Estimated reduction in viral source contamination of undisinfected ground water sources | | Estimated reduction in rate of disinfection failure for GWSs with viral contamination of the source | Estimated reduction in distribution system contamination with virus of GWSs |
|---|---|---|---|---|
| | Properly constructed | Improperly constructed | | |
| Option 1. Sanitary Survey Only | 0 | 40–60 | 0–26 (CWS)<br>0–43 (NCWS)[1] | 0–25<br>(NA for TNC)[2] |
| Option 2. Sanitary Survey and Triggered Monitoring | 30–54 | 58–82 | 77–100 | 0–25<br>(NA for TNC)[2] |
| Option 3. Multi-Barrier (Proposed) | 38–77 | 63–91 | 77–100 | 0–25<br>(NA for TNC)[2] |
| Option 4. Across-the-Board Disinfection | 100 | 100 | 77–100 | 0–25<br>(NA for TNC)[2] |

[1] Non-community water systems (NCWS), both transient and nontransient, have an estimated reduced risk of contamination of 0–43%; community water systems (CWS) reduced risk is 0–26%.
[2] Reduction of risk in transient non-community (TNC) systems was not considered.

After the reductions in viral illnesses and death were estimated, the Agency estimated the monetized benefit from the reduction in bacterial illnesses and death associated with each rule option. EPA could not directly calculate the actual numbers of illnesses and death associated with bacterially contaminated ground water because the Agency lacked the necessary pathogen occurrence information to include it in the risk model. In order to estimate the benefit from reducing bacterial illnesses and deaths from fecally contaminated ground water, the Agency relied on CDC's outbreak data ratio of viral outbreaks and outbreaks of unknown etiology believed to be viral to bacterial outbreaks in ground water. These data indicate that for every five viral outbreaks, there is one bacterial outbreak. It was further assumed that the cost of these bacterial illnesses would be comparable to viral illness estimates.

To assign a monetary value to the illness, EPA estimated costs-of-illness ranging from $158 to $19,711 depending upon the age of the individual and severity of illness (see Exhibits 5–9 and 5–10 in the RIA). These are considered lower-bound estimates of actual benefits because it does not include the pain and discomfort associated with the illness. This issue is discussed in greater detail in the GWR RIA (USEPA, 1999a). Mortalities were valued using a value of statistical life estimate (VSL) of $6.3 million consistent with EPA policy. The VSL estimate is based on a best-fit distribution of 26 VSL studies and this distribution has a mean of $4.8 million per life in 1990 dollars. For this analysis, EPA updated this number to 1999 dollars which results in a mean VSL value of $6.3 million. Table V–5 shows the annual monetized benefits by rule option.

TABLE V–5.—QUANTIFIED AND MONETIZED BENEFITS BY RULE OPTION ($MILLION)

| Options | Morbidity $million [range] | Mortality $million [range] | Total $million [range] |
|---|---|---|---|
| Sanitary Survey | $22<br>[$7 to $38] | $11<br>[$2 to $20] | $33<br>[$9 to $58] |
| Sanitary Survey and Triggered Monitoring | $120<br>[$100 to $140] | $58<br>[$47 to $68] | $178<br>[$147 to $209] |
| Multi-Barrier Proposed ( Option) | $139<br>[$115 to $163] | $66<br>[$54 to $79] | $205<br>[$169 to $242] |
| Across-the-Board Disinfection | $192<br>[$174 to $210] | $91<br>[$81 to $101] | $283<br>[$255 to $311] |

2. Non-Quantifiable Health and Non-Health Related Benefits

Although viral and some bacterial illness have been linked to chronic diseases, insufficient data was available to forecast the number of avoided chronic cases that would result from each rule option. A review of medical and epidemiological data identified several chronic diseases linked to viral infections. The strongest evidence links Group B coxsackievirus infections with Type 1-insulin-dependent diabetes and also to heart disease. Bacterial illness can also result in longer-term complications including arthritis, recurrent colitis, and hemolytic uremic syndrome. Most of these chronic illnesses and longer term complications are extremely costly to treat.

Using cost-of-illness (COI) estimates instead of willingness-to-pay (WTP) estimates to monetize the benefit from illness reduction generally results in underestimating the actual benefits of these reductions. In general, the COI approach is considered a lower bound estimate of WTP because COI does not include pain and suffering. EPA requests comment on the use of an appropriate WTP study to calculate the reduction in illness benefits of this rule.

*D. Incremental Costs and Benefits*

Today's proposed rule options represent the incremental costs and benefits of this rule. Both costs and benefits increase as more fecal contamination detection measures are added to the sanitary surveys for the first three options. The proposed option has the highest cost of these three incremental options, but it also produces incrementally more benefits.

The fourth option, across-the-board disinfection, is the most costly because it would require all systems to install treatment or to upgrade to 4-log removal/inactivation. It would not provide the flexibility of the other three options and would not target specifically high risk systems. Similar to the first three options, this option also includes the sanitary survey provision. This is included to address problems in the distribution systems and with disinfection failure.

Table V–6 and Table V–6a show the monetized costs, benefits and net benefits for all four options using both a three percent and seven percent discount rate, respectively. It is important to remember that non-quantified costs and benefits are not included in these net benefit numbers.

TABLE V–6.—NET BENEFITS—3% DISCOUNT RATE ($MILLION)

| Options | Mean annual costs (3%) $million | Mean annual benefits [1] $million | Net benefits of the means $million |
|---|---|---|---|
| Sanitary Survey | $73 | $33 | ($40) |
| Sanitary Survey and Triggered Monitoring | 158 | 178 | 20 |
| Multi-Barrier (Proposed) | 183 | 205 | 22 |
| Across-the-board Disinfection | 777 | 283 | (494) |

[1] Does not include non-quantified benefits which would increase the net benefits of these rule options.

TABLE V–6A.—NET BENEFITS—7% DISCOUNT RATE ($MILLION)

| Options | Mean annual costs (7%) $million | Mean annual benefits [1] $million | Net benefits $million |
|---|---|---|---|
| Sanitary Survey | $76 | $33 | ($43) |
| Sanitary Survey and Triggered Monitoring | 169 | 178 | 9 |
| Multi-Barrier (Proposed) | 199 | 205 | 6 |
| Across-the-board Disinfection | 866 | 283 | (583) |

[1] Does not include non-quantified benefits which would increase the net benefits of these rule options.

*E. Impacts on Households*

Overall, the average annual cost per household for the first three rule options are small across most system size categories as shown in Table V–7. However, costs are greater for the smallest size category across all options. This occurs because there are fewer households per system to share the cost of any corrective action or monitoring incurred by the systems. For example, under the Multi-Barrier option household costs would increase by approximately $5 per month for those served by the smallest size systems (<100 people) while those served by the largest size systems (>100,000 people) would face only a $0.02 increase in monthly household costs. As previously mentioned, the majority of the cost from the first three rule options is the result of systems having to correct significant deficiencies in their systems or to take corrective action in response to fecal contamination. On average, household costs resulting from the first three rule options increase from $2.45 to $3.86 annually. The most expensive option, across-the-board disinfection, also has the highest average household costs at $19.37 annually.

TABLE V–7.—AVERAGE ANNUAL HOUSEHOLD COST FOR GWR OPTIONS FOR CWS TAKING CORRECTIVE ACTION OR FIXING SIGNIFICANT DEFECTS

| Size categories | Sanitary survey option | Sanitary survey and triggered monitoring option | Multi-barrier option (proposed) | Across-the-board disinfection option |
|---|---|---|---|---|
| <100 | $29.86 | $67.19 | $62.48 | $191.87 |
| 101–500 | 11.23 | 15.02 | 18.95 | 81.38 |
| 501–1,000 | 5.72 | 6.29 | 6.25 | 38.79 |
| 1,001–3,300 | 2.99 | 2.91 | 3.39 | 23.45 |
| 3,301–10,000 | 1.39 | 1.46 | 2.74 | 16.78 |
| 10,001–50,000 | 0.62 | 0.59 | 0.62 | 4.87 |
| 50,001–100,000 | 0.30 | 0.70 | 1.01 | 10.37 |
| 100,001–1,000,000 | 0.32 | 0.20 | 0.27 | 1.66 |
| Average | 2.45 | 3.34 | 3.86 | 19.37 |

*F. Cost Savings From Simultaneous Reduction of Co-Occurring Contaminants*

If a system chooses to install treatment, it may choose a technology that would also address other drinking water contaminants. For example, when using packed tower aeration to treat radon, it is the accepted engineering practice, and in some States an existing requirement, to also install disinfection treatment for removal of microbial contaminants introduced in the aeration treatment process. Depending on the dosage and contact time, the routine disinfection would also address possible or actual fecal contamination in the source water. If systems had an iron or manganese problem, the addition of an oxidant and filtration can treat this problem as well as fecal contamination. Also, some membrane technologies installed to remove bacteria or viruses can reduce or eliminate many other drinking water contaminants including arsenic. EPA is currently in the process of proposing rules to address radon and arsenic. Because of the difficulties in establishing which systems would have all three problems of fecal contamination, radon, and arsenic or any combination of the three, no estimate was made of the potential cost savings from addressing more than one contaminant simultaneously. EPA also recognizes that while there may be savings from treating several contaminants simultaneously relative to treating each of them separately, there may also be significant economic impacts to some systems (especially small systems), if they have to address several contaminants in a relatively short time frame. Because of the lack of good data on co-occurrence of contaminants, EPA has not considered these simultaneous impacts in the analysis of household and per system costs.

*G. Risk Increases From Other Contaminants*

The RIA for today's rule contains a detailed discussion of the increased risk from other contaminants that may result from GWR requirements. Most of the risk stems from currently untreated systems installing disinfection. When disinfection is first introduced into a previously undisinfected system, the disinfectant can react with pipe scale causing increased risk from some contaminants and water quality problems. Contaminants that may be released include lead, copper, and arsenic. It could also lead to a temporary discoloration of the water as the scale is loosened from the pipe. These risks can be reduced by gradually phasing in disinfection to the system, by routine flushing of distribution system mains and by maintaining a proper corrosion control program.

Using a chlorine-based disinfectant or ozone could also result in an increased risk from disinfection byproducts (DBPs). Risk from DBPs has already been addressed in the Stage 1 Disinfection Byproducts Rule and is currently being further considered by the Stage II M–DBP FACA. Systems could avoid this problem by choosing an alternative disinfection technology such as ultraviolet disinfection or membrane filtration, though this may increase treatment costs. The GWR cost estimate includes such additional treatment costs for a portion of systems taking corrective action.

*H. Other Factors: Uncertainty in Risk, Benefits, and Cost Estimates*

Today's proposal models the current baseline risk from fecal contamination in ground water as well as the reduction in risk and the cost for four rule options. There is uncertainty in the baseline number of systems, the risk calculation, the cost estimates, and the interaction of other rules currently being developed. These uncertainties are discussed further in the following section.

The baseline number of systems is uncertain because of data limitations in the Safe Drinking Water Information System (SDWIS). For example, some systems use both ground and surface water but because of other regulatory requirements they are labeled in SDWIS as surface water. Therefore, EPA does not have a reliable estimate of how many of these mixed systems exist. To the extent that systems classified in SDWS as surface water or ground water under the influence of surface water may also have ground water wells not under the influence of surface water and thus be subject to this rule, the costs and benefits estimated here would be understated. In addition, the SDWIS data on non-community water systems does not have a consistent reporting convention for population served. Some States may report the population served over the course of a year, while others may report the population served on an average day. Also, SDWIS does not require States to provide information on current disinfection practices and, in some cases, it may overestimate the daily population served. For example, a park may report the population served yearly instead of daily. EPA is looking at new approaches to address these issues, and both are discussed in the Requests for Comment section V.I.

The risk calculations concerning the baseline number of illnesses and the reduction of illnesses that results from the various rule options contains uncertainty. For example, a nationally representative study of baseline microbial occurrence in ground water does not exist. EPA chose the AWWARF study (described in section II.C.1) to represent properly constructed wells because, of the thirteen available studies, it is the most representative of national geology. EPA also relied on data from the EPA/AWWARF study to represent improperly constructed wells because this study targeted wells vulnerable to contamination and tested wells monthly for a year. However, EPA recognizes the variable nature of these studies, as discussed in detail in section II.C. Additionally, EPA had to rely on CDC outbreak data to characterize the causes of endemic ground water disease. As discussed in section II. B., the U.S. National Research Council suggests that CDC numbers only represent a small percentage of actual waterborne disease outbreaks. The Agency also assumes that the occurrence of fecal contamination will remain constant throughout the implementation of the rule. However, this might not be the case if increased development results in fecal contamination of a larger number of aquifers in areas served by ground water systems or if other rules, such as the TMDL, CAFO, and Class V UIC Well Rules result in decreased fecal contamination.

EPA did not have dose-response data for all viruses and bacteria associated with previous ground water disease outbreaks. For viral illness, the Agency used echo and rota viruses as surrogates for all pathogenic viruses from fecal contamination that can be found in ground water. By using these two viruses, the Agency is capturing the effects of both low-to-medium infectivity viruses that cause severe illness and high infectivity viruses that cause more mild illness. Further, there is considerable uncertainty in the dose-response functions used, even for these two viruses. Dose-response was modeled in two steps. First, infectivity, or the percentage of people in the different age groups who become infected after exposure to a given quantity of water with a given concentration of viruses, was estimated. Then morbidity, or the percentage of infected people who actually become ill was estimated. There is likely to be variability in both of these parameters across populations and based on case specific circumstances, and only limited data are available. Another uncertainty

concerns the number of baseline bacterial illness caused by ground water contamination. The bacterial risk could not be modeled because of lack of occurrence and dose-response data. Estimates of bacterial illness were made based on a ratio of bacterial to viral outbreak as documented by CDC and applied to the viral risk estimate discussed previously. There is also considerable uncertainty in quantifying the effectiveness of various regulatory options in reducing risk. There is little data currently on which to base quantitative estimates of the effectiveness of sanitary surveys or routine monitoring in reducing microbial risk, though there is some qualitative research suggesting that these can be effective strategies. To model risk reduction quantitatively, EPA relied primarily on best professional judgment. The quantitative estimates of risk reduction used in the analysis are summarized in Table V–4a.

There is also uncertainty in the valuation of risk reduction benefits. For this analysis EPA used a COI approach based on the direct medical care costs as well as the indirect costs of becoming ill. However, there is uncertainty in these estimates and variability in the COI across populations and geographic regions. In general, however, COI estimates understate benefits because they do not account for the value people place on reduced pain and suffering.

Some costs of today's proposed rule are also uncertain because of the diverse nature of possible significant deficiencies systems would need to address. Also, the rule's flexibility leads to some uncertainty in estimates of who will be affected by each rule component and how States and systems will respond to significant deficiencies. These uncertainties could either under or overestimate the costs of the rule.

EPA is in the process of proposing regulations for radon and arsenic in drinking water, which can impact some ground water systems. EPA also intends to finalize the Stage II Disinfection Byproducts Rule by the statutory deadline of May 2002. It is extremely difficult to estimate the combined effects of these future regulations on ground water systems because of various combinations of contaminants that some systems may need to address. However, it is possible for a system to choose treatment technologies that would deal with multiple problems. Therefore, the total cost impact of these drinking water rules is uncertain; however, it may be less than the estimated total cost of all individual rules combined. Conversely, the impacts on households and individual systems of multiple rules is cumulative, and in some cases maybe greater than the impacts estimated in the RIA of each rule separately.

*I. Benefit Cost Determination*

The Agency has determined that the benefits of the proposed GWR justify the costs. The mean quantified benefits exceed the mean quantified costs by $22 million using a three percent discount rate and $6 million using a seven percent discount rate. EPA made this determination based on provisions of the multi-barrier option that include improved sanitary surveys, hydrogeologic sensitivity assessments triggered and routine monitoring provisions corrective actions, and compliance monitoring. Overall, these elements will reduce the risk of microbial contamination reaching the consumer. The quantified cost of these provisions were compared to the monetized benefits that result from the reduction in viral and bacterial illness and death. In addition, other non-monetized benefits further justify the costs of this rule.

*J. Request for Comment*

The Agency requests comment on all aspects of the GWR RIA. Specifically, EPA seeks input into the following two issues.

1. NTNC and TNC Flow Estimates

In the GWR RIA, EPA estimates the cost of the GWR on NTNC and TNC water systems by using flow models. However, these flow models were developed to estimate flows only for CWS and they may not accurately represent the much smaller flows generally found in NTNC and TNC systems. The effect of the overestimate in flow would be to inflate the cost of the rule for these systems. The Agency requests comment on an alternative flow analysis for NTNC and TNC water systems described next.

Instead of using the population served data to determine the average flow for use in the rule's cost calculations, this alternative approach would re-categorize NTNC and TNC water systems based on service type (*e.g.*, restaurants or parks). Service type would be obtained from SDWIS data. However, service type data is not always available because it is a voluntary SDWIS data field. Where unavailable, the service type would be assigned based on statistical analysis. Estimates of service type design flows would be obtained from engineering design manuals and best professional judgment if no design manual specifications exist.

In addition, each service type category would also have corresponding rates for average population served and average water consumption. These would be used to determine contaminant exposure which is used in the benefit determination. Note that the current approach of assuming that the entire population served drinks an average of 1.2 liters per day for 250 days (from NTNCWSs) and 15 days (from TNCWs) may lead to an overestimation of benefits. For example, schools and churches would be two separate service type categories. They each would have their own corresponding average design flow, average population served (rather than the population as reported in SDWIS), and average water consumption rates. These elements could be used to estimate a rule's benefits and costs for the average church and the average school.

2. Mixed Systems

Current regulations require that all systems that use any amount of surface water as a source be categorized as surface water systems. This classification applies even if the majority of water in a system is from a ground water source. Therefore, SDWIS does not provide the Agency with information to identify how many mixed systems exist. This information would help the Agency to better understand regulatory impacts. Further, to the extent that mixed systems are classified as surface water, the costs and benefits of this proposed rule are underestimated.

EPA is investigating ways to identify how many mixed systems exist and how many mix their ground and surface water sources at the same entry point or at separate entry points within the same distribution systems. For example, a system may have several plants/entry points that feed the same distribution system. One of these entry points may mix and treat surface water with ground water prior to its entry into the distribution system. Another entry point might use ground water exclusively for its source while a different entry point would exclusively use surface water. However, all three entry points would supply the same system classified in SDWIS as surface water.

One method EPA could use to address this issue would be to analyze CWSS data then extrapolate this information to SDWIS to obtain a national estimate of mixed systems. CWSS data, from approximately 1,900 systems, details sources of supply at the level of the entry point to the distribution system and further subdivides flow by source type. The Agency is considering this

national estimate of mixed systems to regroup surface water systems for certain impact analyses when regulations only impact one type of source. For example, surface water systems that get more than 50 percent of their flow from ground water would be counted as a ground water system in the regulatory impact analysis for this rule. The Agency requests comment on this methodology and its applicability for use in regulatory impact analysis.

## VI. Other Requirements

### *A. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

1. Background

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

2. Use of Alternative Definition

The RFA provides default definitions for each type of small entity. It also authorizes an agency to use alternative definitions for each category of small entity, "which are appropriate to the activities of the agency" after proposing the alternative definition(s) in the **Federal Register** and taking comment (5 U.S.C. secs. 601(3)—(5)). In addition, agencies must consult with SBA's Chief Counsel for Advocacy to establish an alternative small business definition.

EPA is proposing the GWR which contains provisions which apply to small PWSs serving fewer than 10,000 persons. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. Because this definition does not correspond to the definitions of "small" for small businesses, governments, and non-profit organizations, EPA requested comment on an alternative definition of "small entity" in the preamble to the proposed Consumer Confidence Report (CCR) regulation (63 FR 7620, February 13, 1998). Comments showed that stakeholders support the proposed alternative definition. EPA also consulted with the SBA Office of Advocacy on the definition as it relates to small business analysis. In the preamble to the final CCR regulation (63 FR 4511, August 19, 1998). EPA stated its intent to establish this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it in this proposed rulemaking. The SBA Office of Advocacy agrees with the use of this definition in this rulemaking.

3. *Initial Regulatory Flexibility Analysis*

In accordance with section 603 of the RFA, EPA prepared an initial regulatory flexibility analysis (IRFA) that examined the impact of the proposed rule on small entities along with regulatory alternatives that could reduce that impact. The IRFA addresses the following issues:

- The reasons the Agency is considering this action;
- The objectives of, and legal basis for the proposed rule;
- The number and types of small entities to which the rule will apply;
- Projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the reports and records;
- The other relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule; and,
- Any significant alternatives to the components under consideration which accomplish the stated objectives of applicable statutes and which may minimize any significant economic impact of the proposed rule on small entities.

a. The Reasons the Agency Is Considering This Action

EPA believes that there is a substantial likelihood that fecal contamination of ground water supplies is occurring at frequencies and levels which present public health concern. Fecal contamination refers to the contaminants, particularly the microorganisms, contained in human or animal feces. These microorganisms may include bacterial and viral pathogens which can cause illnesses in the individuals which consume them.

Fecal contamination is introduced to ground water from a number of sources including, septic systems, leaking sewer pipes, landfills, sewage lagoons, cesspools, and storm water runoff. Microorganisms can be transported with the ground water as it moves through an aquifer. In addition, the transport of microorganisms to wells or other ground water system sources can also be affected by poor well construction (*e.g.*, improper well seals) which can result in large, open conduits for fecal contamination to pass unimpeded into the water supply.

Waterborne pathogens contained in fecally contaminated water can result in a variety of illnesses which range in the severity of their outcomes from mild diarrhea to kidney failure or heart disease. The populations which are particularly sensitive to waterborne and other pathogens include, infants, young children, pregnant and lactating women, the elderly and the chronically ill. These individuals may be more likely to become ill as a result of exposure to the pathogens, and are likely to have a more severe illness. A complete discussion of the public health concerns addressed by the GWR can be found in section II of the preamble.

b. The Objectives of, and the Legal Basis for, the Proposed Rule

EPA is proposing the GWR pursuant to section 1412(b)(8) of the SDWA, as amended in 1996, which directs EPA to "promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems."

The 1996 amendments establish a statutory deadline of May 2002. EPA, however, intends to finalize the GWR in the year 2000 to coincide with implementation of other drinking water regulations and programs, such as the Disinfection Byproducts Rule, the Arsenic Rule, the Radon Rule and the Source Water Assessment and Protection Program (SWAPP). EPA believes systems and States will better plan for changes in operation and capital improvements if they presented them with future regulatory requirements at one time.

c. Number of Small Entities Affected

According to the December 1997 data from EPA's Safe Drinking Water Information System (SDWIS), there are 156,846 community water systems and non-community water supplies providing potable ground water to the public, of which 155,254 (99 percent) are classified by EPA as small entities. EPA estimates that these small ground water systems serve a population of more than 48 million. Roughly one-quarter of these systems are estimated to be community water systems serving fixed populations on a year-round basis.

Under the proposed option, all community and non-community water systems are affected by at least one requirement; the sanitary survey provision. The other GWR components are estimated to affect different numbers

of small systems. For example, over 4,300 small systems are expected to have to fix significant deficiencies each year.

d. Small Entity Impacts

Reporting and Recordkeeping for the Proposed GWR

Under the proposed Multi-Barrier option, there are a number of recordkeeping and reporting requirements for all ground water system (including small systems). To minimize the burden with these provisions, the EPA is proposing a targeted risk-based regulatory strategy whereby the monitoring requirements are based on system characteristics and not directly related to system size. In this manner, the multi-barrier option takes a system-specific approach to regulation, although a sanitary survey is required of all community and non-transient non-community water systems. However, the implementation schedule for this requirement is staggered (*e.g.*, every three to five years for CWSs and every five years for NCWSs), which should provide some relief for small systems because there are proportionately more NCWSs.

To address concerns over the potential cost of additional monitoring for small systems, the proposed GWR leverages the existing TCR monitoring framework to the extent possible (*e.g.*, by using the results of the routine TCR monitoring to determine if source water monitoring is required). In this proposal, only systems that do not reliably treat to 4-log inactivation or removal of viruses are required to test for the presence of *E. coli*, coliphage, or enterococci in the source water within 24 hours of a total coliform positive sample in the distribution system.

Only systems determined to be hydrogeologically sensitive and do not already treat to 4-log inactivation or removal of viruses are required to conduct the additional routine monitoring. If no fecal indicators are found after 12 months of monitoring, the State may reduce the monitoring frequency for that system. Similarly, if a non-sensitive system does not have a distribution system, any sample taken for TCR compliance is effectively a source water sample, so an additional triggered source water sample would not be required. In both cases, however, if the system has a positive sample for *E. coli*, coliphage, or fecal coliform, the system is required to conduct the necessary follow-up actions.

Small Entity Compliance Costs for the Proposed GWR

Estimates of the cost of complying with each component of the multi-barrier approach are presented next. The estimated impacts for this proposed option are based on the national mean compliance cost across the four compliance scenarios. System-level impacts are investigated using various corrective action and significant defects scenarios. The high correction action/low significant defect scenario is considered a typical cost estimate. For more information on these scenarios and cost assumptions, consult the Regulatory Impact Analysis for the Proposed Ground Water Rule (USEPA, 1999a) which is available for review in the water docket.

In determining the costs and benefits of this proposed rule, EPA considered the full range of both potential costs and benefits for the rule. The flexibility of the risk-based targeted approach of the rule aims to reduce the cost of compliance with the rule. Small systems will benefit from the flexibility provided in this design. For example, a small system with fecal contamination will, in consultation with the State, be able to select the least costly corrective action. Also, small systems serving less than 3,300 people which disinfect will only be required to monitor their treatment effectiveness one time per day as opposed to the continuous monitoring required for larger systems which disinfect. Estimates of annual CWS compliance costs for the multi-barrier approach are presented in Table VI–1.

TABLE VI–1.—ANNUAL COMPLIANCE COSTS FOR THE PROPOSED GWR BY CWS SYSTEM SIZE AND TYPE

| CWS system type | System size/population served | | | | |
|---|---|---|---|---|---|
| | <100 | 101–500 | 501–1,000 | 1,001–3,300 | 3,301–10K |
| Publicly-Owned | $825 | $934 | $1,238$ | $1,950 | $4,480 |
| Privately-Owned | 799 | 933 | 1,449 | 1,730 | 5,358 |
| All Systems | 805 | 933 | 1,328 | 1,893 | 4,652 |

e. Coordination With Other Federal Rules

To avoid duplication of effort, the proposed GWR encourages States to use their source water assessments when the assessment provides data relevant to the sensitivity assessment of a system. Although not a regulatory program, source water assessments are currently being performed by States. The schedule for the sensitivity assessment (within six years for CWS and eight years for NCWS) should allow States to complete the assessment and the first round of sanitary surveys concurrently if they choose to do so.

EPA has structured this GWR proposal as a targeted, risk-based approach to reducing fecal contamination. The only regulatory requirement that applies to all ground water systems is the sanitary survey. The Agency has also considered other drinking water contaminants that may be of concern when a system install disinfection. Specifically, adding disinfection may result in an increase in other contaminants of concern, depending on the characteristics of the source water and the distribution system. These contaminants include disinfection byproducts, lead, copper, and arsenic. EPA believes that these issues, when they occur will be very localized and may be addressed through selection of the appropriate corrective action. EPA has provided States and systems with the flexibility to select among a variety of corrective actions. These include options such as UV disinfection, or purchasing water from another source, which would avoid these types of problems.

f. Minimization of Economic Burden

Description of Regulatory Options

As a result of the input received from stakeholders, the EPA workgroup, and other interested parties, EPA constructed four regulatory options:

The sanitary survey option, the sanitary survey and triggered monitoring option, the multi-barrier option, and the across-the-board disinfection option. These options are described in more detail in section III of this preamble.

On an annual basis, the cost of the proposed alternative ranges from $182.7 million to $198.6 million, using a three and seven percent discount rate. System costs make up 89 percent of the total

rule costs. In developing this proposal, however, EPA considered the recommendations to minimize the cost impact to small systems. The proposed multi-barrier, risk-based approach was designed to achieve maximum public health protection while avoiding excessive compliance costs associated with Across-the-Board Disinfection regulatory compliance requirements.

To mitigate the associated compliance cost increases across water systems, the proposed GWR also provides States with considerable flexibility when implementing the rule. This flexibility will allow States to work within their existing program. Similarly, the rule allows States to consider the characteristics of individual systems when determining an appropriate corrective action. For example, States have the flexibility to allow systems to obtain a new source, or use any disinfection treatment technology, provided it achieves 4-log inactivation or removal of pathogens.

4. Small Entity Outreach and Small Business Advocacy Review Panel

As required by section 609(b) of the RFA, as amended by SBREFA, EPA also conducted outreach to small entities and convened a Small Business Advocacy Review Panel to obtain advice and recommendations of representatives of the small entities that potentially would be subject to the rule's requirements. The SBAR Panel members for the GWR were the Small Business Advocacy Chair of the Environmental Protection Agency, the Director of the Standards and Risk Management Division in the Office of Ground Water and Drinking Water (OGWDW) within EPA's Office of Water, the Administrator for the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB), and the Chief Counsel for Advocacy of the Small Business Administration (SBA). The Panel convened on April 10, 1998, and met seven times before the end of the 60-day Panel period on June 8, 1998. The SBAR Panel's report Final Report of the SBREFA Small Business Advocacy Review Panel on EPA's Planned Proposed Rule for National Primary Drinking Water Regulations: Ground Water, the small entity representatives (SERs) comments on components of the GWR, and the background information provided to the SBAR Panel and the SERs are available for review in the Office of Water docket. This information and the Panel's recommendations are summarized in section VI.A.4.a.

Prior to convening the SBAR Panel, EPA consulted with a group of 22 SERs likely to be impacted by a GWR. The SERs included small system operators, local government officials (including elected officials), small business owners (*e.g.*, a bed and breakfast with its own water supply), and small nonprofit organizations (*e.g.*, a church with its own water supply for the congregation). The SERs were provided with background information on the GWR, on the need for the rule and the potential requirements. The SERs were asked to provide input on the potential impacts of the rule from their perspective. All 22 SERs commented on the information provided. These comments were provided to the SBAR Panel when the Panel convened. After a teleconference between the SERs and the Panel, the SERs were invited to provide additional comments on the information provided. Three SERs provided additional comments on the rule components after the teleconference. In general, the SERs consulted on the GWR were concerned about the impact of the rule on small water systems (because of their small staff and limited budgets), the additional monitoring that might be required, and the data and resources necessary to conduct a hydrogeologic sensitivity assessment or sanitary survey. There was also considerable discussion about how nationally representative the source data was. SER suggested providing flexibility to the States implementing these provisions and opposed mandatory disinfection across-the-board. SERs expressed support for existing monitoring requirements as a means of determining compliance, and some supported increased requirements for total coliform monitoring.

Consistent with the RFA/SBREFA requirements, the Panel evaluated the assembled materials and small-entity comments related to the elements of the IRFA. A copy of the Panel report is in the Office of Water docket for this proposed rule.

a. Number of Small Entities to Which the Rule Will Apply

When the IRFA was prepared, EPA estimated that there were over 157,000 small ground water systems that could be affected by the GWR, serving a population of more than 48 million. Roughly one-third of these systems are community water systems (CWS). The remainder are non-community water systems (NCWS) (*i.e.* non-transient non-community such as schools and transient non-community such as restaurants). A more detailed and current discussion of the impact of the proposed rule on small entities can be found in section V of this preamble.

The SBAR Panel recommended that, given the number of systems that could be affected by the rule, EPA should consider focusing compliance requirements on those systems most at risk of fecal contamination. The GWR addresses this issue and is designed to target the systems at highest risk. Risk characterization is based on system characteristics, *i.e.*, significant deficiencies in operation or maintenance and hydrogeologic sensitivity to contamination. A system is not required to perform an action such as source water microbial monitoring until the State has cause to believe the system is at risk.

The Panel also recommended that the rule requirements be based on system size. Because the GWR is a targeted risk-based rule, the regulatory strategy is based on system-specific risk indicators that are not directly related to system size. However, the monitoring required for treatment effectiveness (compliance monitoring) varies based on system size. Ninety-seven percent of all ground water systems serve less than 3,300 people. Under the proposed GWR, disinfecting ground water systems serving less than 3,300 people must monitor treatment by taking daily grab samples. Disinfecting ground water systems serving 3,300 or more people must monitor treatment continuously.

The SBAR Panel advocated that States be provided with flexibility when implementing the rule. The GWR also addresses this issue. As discussed earlier in sections III.A.1. and 2. of this proposal, States have considerable flexibility in addressing potential problems in small systems. In particular, States have the flexibility to define and identify significant system deficiencies and to describe their approaches to identifying the presence of hydrogeologic barriers to contamination. States also have the flexibility to require correction of fecal contamination or use any disinfection treatment technology, provided it achieves 4-log (99.99%) inactivation or removal of viruses. Similarly, the rule allows States to consider the characteristics of individual systems when determining an appropriate corrective action.

b. Record Keeping and Reporting and Other Compliance Requirements

Because small systems frequently have minimal staff and resources, including data on the underlying hydrogeology of the system, the SBAR Panel recommended that EPA focus the record keeping, reporting, and compliance requirements on those systems at greatest risk of fecal

contamination. The Panel also recommended that EPA consider tailoring the requirements based on system size (*e.g.*, the smaller systems would not have to monitor as frequently or perform sanitary surveys on the same schedule.)

The GWR proposed today is a targeted risk-based regulatory strategy. The regulatory strategy is based on system characteristics (*i.e.*, hydrogeologic sensitivity; TCR positive in the distribution system) and is not directly related to system size. However, the monitoring required for treatment effectiveness (compliance monitoring) varies based on system size. Ninety-seven percent of all ground water systems serve less than 3,300 people. Under the proposed GWR, disinfecting ground water systems serving less than 3,300 people must monitor treatment by taking daily grab samples. Disinfecting ground water systems serving 3,300 or more people must monitor treatment continuously. In addition, the only across-the-board requirement is for sanitary surveys, but the implementation schedule is staggered (*e.g.*, every 3 years for CWS and every 5 years for NCWS) which should provide some relief for small systems because there are proportionately more that are NCWS. EPA is also requesting comment on several options that would reduce the required frequency of sanitary surveys. Because many small systems may not have easy access to the records that would ideally be available for a hydrogeologic sensitivity assessment or a sanitary survey, EPA, after consulting with stakeholders and the SBAR Panel, has determined that it will not use the lack of adequate well records, the lack of a cross connection program, or intermittent pressure fluctuations as automatic triggers to indicate risk of potential contamination. These factors may be considered along with others that more definitively demonstrate risk. This strategy will enable States to focus their resources on the systems which need the most surveillance or follow-up action and will avoid penalizing systems with limited resources.

With respect to the potential cost of additional monitoring for small systems, particularly if the rule required viral monitoring, the SBAR Panel offered several recommendations. First, the Panel suggested that, to the extent possible, the GWR should build on the existing monitoring framework in the TCR. Given the low cost of the Total Coliform test, the Panel noted that an increase in the frequency and the locations for TCR monitoring or additional samples in the source water if the system has a Total Coliform positive sample would be preferable to other fecal indicator tests, given the current cost of a viral test. However, the Panel also recommended that the EPA continue to develop a lower cost, more accurate test to identify viral and bacterial contamination in drinking water.

Today's proposal does build on the existing TCR monitoring framework by using the results of the TCR monitoring to determine if source water monitoring is required. In the proposal, a system is required to test for the presence of *E. coli*, coliphage, or enterococci in the source water within 24 hours of a total coliform positive sample in the distribution system. Only systems determined to be hydrogeologically sensitive that do not already treat their water to 4-log inactivation or removal are required to conduct the additional routine monitoring. These systems must test their source water monthly. If no fecal indicators are found after 12 consecutive months of monitoring, the State may reduce the monitoring frequency for that system. Similarly, if a non-sensitive system does not have a distribution system, any sample taken for TCR compliance is effectively a source water sample so an additional triggered source water sample would not be required. In both cases, however, if the system has an *E. coli*, coliphage, or fecal coliform positive sample, the system is required to conduct the necessary follow-up actions.

The GWR also has incorporated low-cost fecal contamination indicator tests. EPA-approved methods for detecting bacterial indicators of fecal contamination, including *E. coli* and enterococci, are already widely used and are low cost (approximately $25 per sample). In addition, EPA is currently developing viral monitoring methods which will cost approximately the same as existing bacterial methods.

The SBAR Panel recommended that States be provided with flexibility when implementing the rule. For example, while States must have the authority to require the correction of significant deficiencies, States should also have the flexibility to determine which deficiencies are "significant" from a public health perspective. When a State determines that corrective action is necessary, it should have the flexibility to determine what actions a system should take, including but not limited to disinfection. Similarly, States should also have the flexibility to require disinfection across-the-board for all or a subset of the public water supply systems in their State. States should also be given the flexibility to choose from the full range of disinfection technologies that will meet the public health goals of the rule.

As discussed earlier in sections III.A.1. and 2. of this proposal, States have considerable flexibility in addressing potential problems in small systems particularly with respect to sanitary survey, where States define and identify significant deficiencies, and in conducting hydrogeologic sensitivity assessments. The GWR allows States flexibility to work within their existing programs and define and identify significant deficiencies. States also have the flexibility to require correction of fecal contamination or use any disinfection treatment technology, provided it achieves 4-log (99.99%) inactivation or removal of viruses. Similarly, the rule allows States to consider the characteristics of individual systems when determining an appropriate corrective action.

The Panel was also concerned about the potential cost of disinfection and recommended that EPA include a full range of variables when determining both the potential cost burden and benefits of the rule.

In determining the costs and benefits of today's proposed rule, EPA considered the full range of both potential costs and benefits for the rule. The flexibility in the rule is designed to reduce the cost of compliance with the rule, particularly for small systems. While determining the costs of the various technologies, EPA has estimated the percentage of systems in consultation with the States that will choose between the different technologies, in part based on system size. When determining the benefits of today's proposal, EPA considered a range of benefits from reduction in illness and mortality to outbreak cost avoided and possibly reduced uncertainty and averting behaviors. However, only reductions in acute viral and bacterial illness and decreases in mortality from virus are monetized. More detailed cost and benefit information is included in the GWR RIA (US EPA, 1999a) for today's proposal. Because systems are highly variable, the SBAR Panel recommended that States be given the flexibility to determine appropriate maintenance or cross connection control measures for each system and to the extent practicable maintenance measures should be performance-based.

EPA recognizes that systems' characteristics are highly variable. States have considerable flexibility when working with systems to address significant deficiencies, conduct hydrogeological sensitivity assessments,

and take corrective action. Cross connection control will be considered under a future rulemaking (*i.e.*, the Long Term 2 Enhanced Surface Water Treatment Rule).

c. Other Federal Rules

To avoid duplication of effort, the SBAR Panel recommended using the State Source Water Assessment and Protection Program (SWAPP) plans and susceptibility assessments as a component of the hydrogeologic sensitivity assessment process. To further streamline the process, especially for small systems, the Panel also recommended combining the hydrogeologic sensitivity assessment with the sanitary surveys.

In today's GWR proposal, States are encouraged to use their SWAPP assessments when the assessment provides data relevant to the hydrogeologic sensitivity assessment of a system. The schedule for sensitivity assessments (six years after the GWR is promulgated in the **Federal Register** for CWS and eight years after the GWR is promulgated in the **Federal Register** for NCWS) should allow States to complete the assessment and the first round of sanitary surveys concurrently if they choose to do so.

d. Significant Alternatives

Because the SBREFA consultation was conducted early in the regulatory development process before there was a draft proposal, few comments were received on specific regulatory alternatives. In general, the SERs supported the approach described in the outreach materials while at the same time commenting on particular aspects of the approach that might be burdensome or otherwise problematic. Their concerns echo the comments received on other parts of the IRFA.

The SBAR Panel reiterated their suggestion that compliance requirements be tailored to the system size. In particular, if the minimum monitoring frequency and the frequency for sanitary surveys for the smallest systems (*e.g.*, those serving less than 500 people) could be reduced, it would reduce both the resources necessary to comply with the rule and record keeping required by the system.

EPA has structured today's proposal as a targeted risk-based approach to reducing fecal contamination. The only requirement that affects all GWSs is the sanitary survey. The required frequency for sanitary surveys for community systems is once every three years which may be changed by the State to once every five years if the system either treats to 4-log inactivation or removal of virus or has an outstanding performance record documented in previous inspections and has no history of total coliform MCL or monitoring violations since the last sanitary survey under current ownership. The required frequency for sanitary surveys is once every five years for noncommunity systems. The majority of the small systems are noncommunity systems so the majority of systems will only have a sanitary survey once every five years. At this frequency, EPA believes that the requirements will not be burdensome for even the smallest systems, however EPA is also requesting comment on less frequent sanitary survey requirements.

Similarly, the only additional monitoring requirements in today's proposal are for undisinfected systems that are either located in sensitive hydrogeologic settings or have a total coliform positive sample in the distribution system. The monitoring required for a total coliform positive sample under the TCR would be a one-time event while the monitoring for sensitive systems would be on a routine monthly basis for at least 12 samples.

Finally, the SBAR Panel noted that disinfection of public water supplies may result in an increase in other contaminants of concern, depending on the characteristics of the source water and the distribution system. Of particular concern were disinfection byproducts, lead, copper, and arsenic.

EPA has discussed these issues previously in section V.G. of the GWR preamble. EPA believes that these issues, when they occur, will typically be localized and transitory. These risk/risk tradeoffs are considered qualitatively in the RIA and EPA will provide guidance on how to address these issues when the rule is finalized.

e. Other Comments

The panel members could not reach consensus regarding the use of occurrence data to support the rule. Some panel members expressed the concern that the occurrence estimates discussed by EPA with the SERs overestimated the actual occurrence of fecal contamination and the studies used did not provide a true picture of national occurrence. EPA recognizes and understands the concerns about the available data expressed by these panel members. However, the Agency believes, after consulting with experts in the field, that the available data may underestimate the extent of ground water contamination because of limitations with sampling methods and frequency. EPA believes that a central issue for all participants and stakeholders in this rulemaking is how to interpret the available data. EPA agrees that the GWR must be based on the best available data, good science and sound analysis. The studies described in the materials presented to the SERs and SBAR Panel during the SBREFA process were conducted at different times and for different reasons; each requires careful analysis to ensure its proper use and to avoid misuse. A more detailed discussion of the occurrence studies and request for comment on their interpretation is provided in section II.C. of today's proposal.

EPA invites comments on all aspects of the proposal and its impacts on small entities.

*B. Paperwork Reduction Act*

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1934.01) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at farmer.sandy@epamail.epa.gov, or by calling (202) 260–2740. A copy may also be downloaded from the Internet at http://www.epa.gov/icr. For technical information about the collection contact Jini Mohanty by calling (202) 260–6415.

The information collected as a result of this rule will allow the States and EPA to make decisions and evaluate compliance with the rule. For the first three years after the promulgation of the GWR, the major information requirements are for States and PWSs to prepare for implementation of the rule. The information collection requirements in Part 141, for systems, and Part 142, for States are mandatory. The information collected is not confidential.

EPA estimates that the annual burden on PWSs and States for reporting and record keeping will be 326,215 hours. This is based on an estimate that 56 States and territories will each need to provide 3 responses each year with an average of 524 hours per response, and that 52,331 systems will each provide 2.3 responses each year with an average of less than 2 hours per response. The labor burden is estimated for the following activities: Reading and understanding the rule, planning, training, and meeting primacy requirements. The recordkeeping and reporting burden also includes capital costs of $1,376,302 for capital

improvements by PWSs (installation of disinfection monitoring equipment).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave, N.W.; Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 10, 2000, a comment to OMB is best assured of having its full effect if OMB receives it by June 9, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*C. Unfunded Mandates Reform Act*

1. Summary of UMRA Requirements

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in State, local and tribal government expenditures, in the aggregate, or private sector expenditures, of $100 million or more in any one year. Before promulgating an EPA rule, for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under section 203 of the UMRA, a small government agency plan. The plan must provide for notification to potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates; and informing, educating, and advising small governments on compliance with the regulatory requirements.

2. Written Statement for Rules With Federal Mandates of $100 Million or More

EPA has determined that this rule contains a Federal mandate that may result in expenditures of $100 million or more for the private sector in any one year.

Table VI–2 presents a breakdown of the estimated $182.7 to$198.6 million annual cost for today's proposed rule (the proposed Multi-Barrier Option). Public ground water systems owned by State, local and tribal governments will incur $51.2 to $56.5 million of these costs and States will incur an additional $20.1 to $22.1 million for a total public sector cost of $71.3 to $78.7 million dollars per year. Public ground water systems which are owned by private entities will incur a total cost of $111.5 to $ 119.9 million per year, $5.5 to $7 million of which is incurred by entities that operate a public water system as a means of supporting their primary business (*e.g.*, a mobile home park operator).

TABLE VI–2.—PUBLIC AND PRIVATE COSTS FOR OF THE PROPOSED GWR

| System type | Annual mean cost range* (millions $) | Percent of total cost |
|---|---|---|
| Public PWS Cost | $51.2 to $56.5 | 28 |
| State Cost ..... | 20.1 to 22.1 .... | 11 |
| Total Public Cost | 71.3 to 78.7 .... | 40 |
| Private PWS Cost | 106.0 to 113.0 | 57 |
| Ancillary PWS Cost. | 5.5 to 7.0 ..... | 4 |
| Total Private Cost. | 111.5 to 119.9 | 60 |
| Total Cost ..... | 182.7 to 198.6 | 100 |

Note: Cost range based upon a 3% and 7% discount rate.

Thus, today's rule is subject to the requirements of sections 202 and 205 of the UMRA, and EPA has prepared a written statement which is summarized next. A more detailed description of this analysis is presented in EPA's Regulatory Impact Analysis of the GWR (US EPA, 1999a) which is included in the Office of Water docket for this rule.

a. Authorizing Legislation

Today's proposed rule is promulgated pursuant to section 1412(b)(8) of the SDWA, as amended in 1996, which directs EPA to "promulgate national primary drinking water regulations requiring disinfection as a treatment technique for all public water systems, including surface water systems and, as necessary, ground water systems."

Section 1412 (b)(8) also establishes a statutory deadline for promulgation of the GWR of no later than the date on which the Administrator promulgates a Stage II rulemaking for disinfectants and disinfection byproducts. EPA intends to finalize the GWR in the year 2000 to allow systems to consider the combined impact of this rule, the radon rule, the arsenic rule and the Stage 1 DBP rule on their design and treatment modification as well as their capital investment decisions. EPA believes States and systems will better plan for changes in operation and capital improvements, if they are presented with future requirements at one time.

b. Cost Benefit Analysis

Section V of this preamble discusses the cost and benefits associated with the GWR . Also, EPA's Regulatory Impact Analysis of the GWR (US EPA, 1999a) contains a detailed cost benefit analysis. The analysis quantifies cost and benefits for four scenarios: the proposed regulatory option, the sanitary survey

option, the sanitary survey and triggered monitoring option, and the across-the-board disinfection option. Table VI–3 summarizes the range of annual costs and benefits for each rule option.

TABLE VI–3.—ANNUAL BENEFITS AND COSTS OF RULE OPTIONS ($MILLION)

| Option | Annual benefits [1] mean [range] $million | Annual costs (3%) mean [range] $million | Annual costs [2] (7%) mean [range] $million |
|---|---|---|---|
| Sanitary Survey | $33 [$9 to $58] | $73 [$71 to $74] | $76 [$74 to $78] |
| Sanitary Survey and Triggered Monitoring | $178 [$147 to $209] | $158 [$152 to $19] | $169 [$163 to $174] |
| Multi-barrier (Proposed ) Option | $205 [$169 to $242] | $183 [$177 to $188] | $199 [$192 to $206] |
| Across-the-Board Disinfection | $283 [$255 to $311] | $777 [$744 to $810] | $866 [$823 to $909] |

[1] does not include benefits from reduction in chronic illness, reduced pain and suffering, or non-health benefits.
[2] does not include non-quantified costs such as land acquisition or increases in other contaminants (*e.g.*, DBPs).

Costs varied with each option and were driven by the number of systems that would need to fix a significant deficiency, take corrective action in response to fecal contamination, or install treatment. The annual mean cost of the four rule options ranges from $73 million to $866 million using a three percent and seven percent discount rate. For the first three options, the costs increase as more components are added for identifying fecally contaminated wells and wells sensitive to fecal contamination. However, the cost of these components (*e.g.*, hydrogeologic sensitivity assessment, routine and triggered monitoring) are minor compared to the costs of correcting fecal contamination. The fourth option of across-the-board disinfection is the most costly because it would require all systems to have treatment regardless of actual or potential fecal contamination. Costs for the States to implement this rule are also included in the four cost estimates. Some costs, such as land acquisition where necessary to install treatment, were not included because of the difficulty of estimating them.

These total annual monetized costs can be compared to the annual monetized benefits of the GWR. The annual monetized mean benefits of today's rule range from $33 million to $283 million as shown in Table VI–2. This result is based on the quantification of the number of acute viral illnesses and deaths avoided attributable to each option as well as the reduction in acute bacterial illness attributable to each option. For illness, EPA used a cost-of-illness number to estimate the benefits from the reduction in viral illness that result from this rule. This is considered a lower-bound estimate of actual benefits because it does not include the pain and discomfort associated with the illness. Mortalities were valued using a value of statistical life estimate consistent with EPA policy.

This rule will also decrease bacterial illness associated with fecal contamination of ground water. EPA did not directly calculate the actual numbers of illness associated with bacterially contaminated ground water because the Agency lacked the necessary pathogen occurrence data to include it in the risk model. However, in order to get an estimate of the number of bacterial illness from fecally contaminated ground water, the Agency used the ratio of viral and unknown etiology outbreak illness to bacterial outbreak illnesses reported to CDC's for waterborne outbreaks in ground water. It was further assumed that the cost of these bacterial illnesses would be comparable to viral illness estimates. This rule also considered but did not monetize the health benefit from the reduction in chronic illness associated with some viral and bacterial infections (see section II.D.).

Various Federal programs exist to provide financial assistance to State, local, and tribal governments in complying with this rule. The Federal government provides funding to States that have primary enforcement responsibility for their drinking water programs through the Public Water Systems Supervision Grants Program. Additional funding is available from other programs administered either by EPA or other Federal agencies. These include EPA's Drinking Water State Revolving Fund (DWSRF), U.S. Department of Agriculture's Rural Utilities' Loan and Grant Program, and Housing and Urban Development's Community Development Block Grant Program.

For example, SDWA authorizes the Administrator of the EPA to award capitalization grants to States, which in turn can provide low cost loans and other types of assistance to eligible public water systems. The DWSRF assists public water systems with financing the costs of infrastructure needed to achieve or maintain compliance with SDWA requirements. Each State has considerable flexibility in determining the design of its DWSRF Program and to direct funding toward its most pressing compliance and public health protection needs. States may also, on a matching basis, use up to 10 percent of their DWSRF allotments for each fiscal year to assist in running the State drinking water program. In addition, States have the flexibility to transfer a portion of funds to the Drinking Water State Revolving Fund from the Clean Water State Revolving Fund.

Furthermore, a State can use the financial resources of the DWSRF to assist small systems, the majority of which are ground water systems. In fact, a minimum of 15% of a State's DWSRF grant must be used to provide infrastructure loans to small systems. Two percent of the State's grant may be used to provide technical assistance to small systems. For small systems that are disadvantaged, up to 30% of a State's DWSRF may be used for increased loan subsidies. Under the DWSRF, Tribes have a separate set-aside which they can use.

In addition to the DWSRF, money is available from the Department of Agriculture's Rural Utility Service (RUS) and Housing and Urban Development's Community

Development Block Grant (CDBG) program. RUS provides loans, guaranteed loans, and grants to improve, repair, or construct water supply and distribution systems in rural areas and towns up to 10,000 people. In Fiscal Year 1997, the RUS had over $1.3 billion in available funds. Also, three sources of funding exist under the CDBG program to finance building and improvements of public facilities such as water systems. The three sources of funding include: (1) direct grants to communities with populations over 200,000; (2) direct grants to States, which they in turn award to smaller communities, rural areas, and colonias in Arizona, California, New Mexico, and Texas; and (3) direct grants to US. Territories and Trusts. The CDBG budget for Fiscal Year 1997 totaled over $4 billion dollars.

c. Estimates of Future Compliance Costs and Disproportionate Budgetary Effects

To meet the UMRA requirement in section 202, EPA analyzed future compliance costs and possible disproportionate budgetary effects. The Agency believes that the cost estimates, indicated earlier and discussed in more detail in section V of this rule, accurately characterize future compliance costs of the proposed rule.

In analyzing disproportionate impacts, the Agency considered three measures: reviewing the impacts on small systems versus large systems; reviewing the costs to public versus private water systems; and reviewing the household costs for each proposed rule option. It is also possible that some States or EPA Regions may face greater challenges from the GWR because they have comparatively more ground water systems. However, States that have a larger percentage of systems also receive a greater share of the Public Water Systems Supervision Grants Program and the DWSRF. A detailed analysis of these impacts is presented in the Regulatory Impact Analysis of the GWR (US EPA, 1999a).

The first measure of disproportionate impact considers the cost incurred by small and large systems. As a group, small systems will experience a greater impact than large systems under the GWR. The higher cost to the small ground water systems is mostly attributable to the large number of these types of systems (*i.e.*, 99% of ground water systems serve <10,000). Other reasons for the disparity include: (1) Large systems are more likely to already disinfect their ground water (disinfection exempts a system from triggered and routine monitoring), (2) large systems typically have greater technical and operational expertise, and (3) they are more likely to engage in source water protection programs. The potential economic impact among the small systems will be the greatest for systems serving less than 100 persons, as shown in Table VI–4.

TABLE VI–4.—AVERAGE ANNUAL HOUSEHOLD COSTS FOR GWR OPTIONS FOR CWS TAKING CORRECTIVE ACTION OR FIXING SIGNIFICANT DEFECTS

| Size categories | Sanitary survey option | Sanitary survey and triggered monitoring option | Multi-barrier option (proposed) | Across-the-board disinfection option |
|---|---|---|---|---|
| 100 | 29.86 | 67.19 | 62.48 | 191.87 |
| 101–500 | 11.23 | 15.02 | 18.95 | 81.38 |
| 501–1,000 | 5.72 | 6.29 | 6.25 | 38.79 |
| 1,001–3,300 | 2.99 | 2.91 | 3.39 | 23.45 |
| 3,301–10,000 | 1.39 | 1.46 | 2.74 | 16.78 |
| 10,001–50,000 | 0.62 | 0.59 | 0.62 | 4.87 |
| 50,001–100,000 | 0.30 | 0.70 | 1.01 | 10.37 |
| 100,001–1,000,000 | 0.32 | 0.20 | 0.27 | 1.66 |
| Average | 2.45 | 3.34 | 3.86 | 19.37 |

The second measure of impact is the relative total cost to privately owned water systems compared to that incurred by publicly owned water systems. The majority of the small systems are privately-owned (61% of the total). As a result, privately-owned systems as a group will have a slightly larger share of the total costs of the rule. However, EPA has no basis for expecting cost per-system to differ systematically with ownership.

The third measure, household costs, can also be used to gauge the impact of a regulation and to determine whether there are disproportionately high impacts in particular segments of the population. Table VI–4 shows household costs by system size for each rule component. On average, annual household costs increases attributable to the first three rule options range from $2.45 to $3.86 (Table VI–4). For these three options, 90 percent of households will face less than a $5 increase in annual household costs. The most expensive option, Across-the-Board Disinfection, results in the highest average annual household costs of $19.37. However, household costs increase across all options for those households served by the smallest sized systems. This occurs because they serve fewer households, and as a result, there are fewer households to share the system's compliance costs.

d. Macro-economic Effects

Under UMRA section 202, EPA is required to estimate the potential macro-economic effects of the regulation. These types of effects include those on productivity, economic growth, full employment, creation of productive jobs, and international competitiveness. Macro-economic effects tend to be measurable in nationwide econometric models only if the economic impact of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP). In 1998, real GDP was $7,552 billion, so a rule would have to cost at least $18 billion to have a measurable effect. A regulation with a smaller aggregate effect is unlikely to have any measurable impact unless it is highly focused on a particular geographic region or economic sector. The macro-economic effects on the national economy from the GWR should not have a measurable effect because the total annual costs for the proposed option range from $183 million to $199 million per year using a three and seven percent discount rate. Even the most expensive option, Across-the-Board Disinfection falls below the measurable threshold. The costs are not expected to be highly focused on a particular geographic region or sector.

e. Summary of EPA's Consultation With State, Local, and Tribal Governments and Their Concerns

Consistent with the intergovernmental consultation provisions of section 204 of UMRA, EPA has initiated consultations with the governmental entities affected by this rule. EPA held four public meetings for all stakeholders and three Association of State Drinking Water Administrators early involvement meetings. Because of the GWR's impact on small entities, the Agency convened a Small Business Advocacy Review (SBAR) Panel in accordance with the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) to address small entity concerns, including small local governments specifically. EPA consulted with small entity representatives prior to convening the Panel to get their input on the GWR. Of the 22 small entity participants, five represented small governments. A more detailed description of the SBREFA process can be found in section VI.A. of this preamble. EPA also made presentations on the GWR to the national and some local chapters of the American Water Works Association, the Ground Water Foundation, the National Ground Water Association, the National Rural Water Association, and the National League of Cities. Twelve State drinking water representatives also participated in the Agency's GWR workgroup.

In addition to these consultations, EPA circulated a draft of this proposed rule and requested comment from the public through an informal process. Specifically, on February 3, 1999, EPA posted on the EPA's Internet web page and mailed out over 300 copies of the draft to people who had attended the 1997 and 1998 public stakeholder meetings as well as people on the EPA workgroup. EPA received 80 letters or electronic responses to this draft: 34 from State government (representing 30 different States), 26 from local governments, ten from trade associations, six from Federal government agencies, and four from other people/organizations. No comments were received from tribal governments. EPA reviewed the comments carefully and considered their merit. Today's proposal reflects many of the commenters' points and suggestions. For example, numerous commenters felt that proposing a requirement to monitor source water using coliphage at this time was premature based on currently available data. EPA has recently completed round robin testing of coliphage methods and is requesting comment on the use of these methods.

To inform and involve tribal governments in the rulemaking process, EPA presented the GWR at the 16th Annual Consumer Conference of the National Indian Health Board, at the annual conference of the National Tribal Environmental Council, and at an EPA Office of Ground Water and Drinking Water (OGWDW)/Inter Tribal Council of Arizona, Inc. tribal consultation meeting. Over 900 attendees representing Tribes from across the country attended the National Indian Health Board's Consumer Conference and over 100 Tribes were represented at the annual conference of the National Tribal Environmental Council. At both conferences, an EPA representative conducted two workshops on EPA's drinking water program and upcoming regulations, including the GWR.

Comments received from tribal governments regarding the GWR focused on concerns and some opposition to mandatory disinfection for ground water systems. They also suggested that any waiver process be adequately characterized by guidance and simple to implement. EPA agrees with concerns of Tribes and has designed the proposed GWR so that disinfection is not mandatory. Systems will have the opportunity to correct significant deficiencies, eliminate the source of contamination, obtain a new source of water, or install disinfection to achieve 4-log inactivation or removal of virus. However, some systems in coordination with the primacy agent or State, might choose disinfection over these other options because it may be the least costly alternative.

At the OGWDW/Inter Tribal Council of Arizona meeting, representatives from 15 Tribes participated. In addition, over 500 Tribes and tribal organizations were sent the presentation materials and meeting summary. Because many Tribes have ground water systems, participants expressed concerns over some elements of the rule. Specifically, they had concerns about how the primacy agent would determine significant deficiencies identified in a sanitary survey and how the sensitivity assessment would be conducted. Because no Tribes currently have primacy, EPA is the primacy agent and will identify significant deficiencies as part of sanitary surveys and conduct the hydrogeologic sensitivity assessment as outlined in section III. A. and III.B. of this preamble.

The Agency believes the proposed option in the GWR will provide public health benefits to individuals by reducing their exposure to fecal contamination through targeted expenditures to address significant deficiencies or fecal contamination. As discussed earlier in paragraph IV.C.1.c, over 90 percent of households will incur additional costs of less than $3.00 per month based on EPA's proposed regulatory approach. EPA will consider other options for the final rule as outlined in this proposal and discussed next.

f. Regulatory Alternatives Considered

As required under section 205 of the UMRA, EPA considered several regulatory alternatives and numerous methods to identify ground water systems most at risk to microbial contamination. A detailed discussion of these alternatives can be found in section V of the preamble and also in the RIA for the GWR(US EPA, 1999a). Today's proposal also seeks comment on many regulatory options that EPA will consider for the final rule.

g. Selection of the Least Costly, Most Cost-Effective or Least Burdensome Alternative That Achieves the Objectives of the Rule

As discussed earlier, EPA has considered various regulatory options that would reduce microbial contamination in ground water systems. EPA believes that the proposed option as described in today's rule, is the most cost effective option that achieves the rule's objective to reduce the risk of illness and death from microbial contamination in PWS relying on ground water. This option is a targeted approach where costs are driven by the number of systems having to fix fecal contamination problems and correct significant deficiencies that could lead to fecal contamination. EPA requests comment on how possible modifications to the proposed option, as outlined in section III of the preamble, may affect not only the cost but also the objectives of this rule.

3. Impacts on Small Governments

In developing this rule, EPA consulted with small governments to address impacts of regulatory requirements in the rule that might significantly or uniquely affect small governments. In preparation for the proposed GWR, EPA conducted an analysis on small government impacts and included small government officials or their designated representatives in the rulemaking process. As discussed previously, a variety of stakeholders, including small governments, had the opportunity for timely and meaningful participation in the regulatory

development process through the SBREFA process, public stakeholder meetings, and tribal meetings. Representatives of small governments took part in the SBREFA process for this rulemaking and they also attended public stakeholder meetings. Through such participation and exchange, EPA notified some potentially affected small governments of requirements under consideration and provided officials of affected small governments with an opportunity to have meaningful and timely input into the development of regulatory proposals. A more detailed discussion of the SBREFA process and stakeholder meetings can be found in section VI.A. and section VI.C.2.e, respectively.

In addition, EPA will educate, inform, and advise small systems including those operated by small government about GWR requirements. One of the most important components of this process will be the Small Entity Compliance Guide which is required by the SBREFA of 1996. This plain-English guide will explain what actions a small entity must take to comply with the rule. Also, the Agency is developing fact sheets that concisely describe various aspects and requirements of the GWR.

D. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub L. No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through the Office of Management and Budget (OMB), explanations when the Agency decides not to use available and applicable voluntary consensus standards.

EPA also notes that the Agency plans to implement in the future a performance-based measurement system (PBMS) that would allow the option of using either performance criteria or reference methods in its drinking water regulatory programs. The Agency is determining the specific steps necessary to implement PBMS in its programs. Final decisions have not yet been made concerning the implementation of PBMS in water programs. However, EPA is evaluating what relevant performance characteristics should be specified for monitoring methods used in the water programs under a PBMS approach to ensure adequate data quality. EPA would then specify performance requirements in its regulations to ensure that any method used for determination of a regulated analyte is at least equivalent to the performance achieved by other currently approved methods.

Once EPA has made its final determinations regarding implementation of PBMS in programs under the Safe Drinking Water Act, EPA would incorporate specific provisions of PBMS into its regulations, which may include specification of the performance characteristics for measurement of regulated contaminants in the drinking water program regulations.

1. Microbial Monitoring Methods

The proposed rulemaking involves technical standards. Ground water systems that are identified by the State as having hydrogeologically sensitive wells as described in §§ 142.16(k)(3) and 141.403(a), and ground water systems that have a TCR positive sample as described in § 141.403(b) of today's proposed rule must sample and test their source water. GWSs must test for at least one of the following fecal indicators: *E. coli*, enterococci and coliphage using one of the methods in § 141.403(d) and discussed in greater detail in III.D.4. Table VI–5 lists the microbial methods which must be used for source water monitoring.

EPA proposes to use several approved methods. For testing *E. coli* and enterococci, the methods in § 141.403(d) are either consensus methods or new methods that EPA has recently approved for drinking water monitoring with the exception of Enterolert (a method for enterococci) for which EPA is proposing approval through this rulemaking. EPA is also proposing testing source waters for the presence for coliphage. EPA proposes to use EPA Method 1601: Two-Step Enrichment Presence-Absence Procedure and EPA Method 1602: Single Agar layer Procedure.

While the Agency identified Standards Methods, Method 9211D Coliphage Detection (20th edition of Standard Methods for the Examination of Water and Wastewater) as being potentially applicable, EPA does not propose to use it in this rulemaking. The use of this voluntary consensus standard would not meet the Agency's needs because the method does not detect male specific coliphage, the sample volume is inappropriately small (20 ml versus the GWR's proposed 100 ml sample requirement), and according to the method, the sensitivity may not be high enough to detect one coliphage in a 100 ml sample. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

TABLE VI–5.—MICROBIAL METHODS

| Analytical methods for source water monitoring | |
|---|---|
| Indicator | Method[1] |
| *E. coli* ..... | Colilert Test (Method 9223B)[2 3]<br>Colisure Test (Method 9223B)[2 3]<br>Membrane Filter Method with MI Agar[4 5]<br>m-ColiBlue24 Test[4 6]<br>E*Colite Test[4 7]<br>May also use the EC–MUG (Method 9212F)[2] and NA–MUG (Method 9222G)[2] *E. coli* confirmation step § 141.21(f)(6) after the EPA approved Total Coliform methods in § 141.21(f)(3) |
| enterococci ..... | Multiple-Tube Tech. (Method 9230B)[1]<br>Membrane Filter Tech. (Method 9230C)[1 8]<br>Enterolert[3] |
| Coliphage ..... | EPA Method 1601: Two-Step Enrichment Presence-Absence Procedure[9]<br>EPA Method 1602: Single Agar layer Procedure[9] |

[1] The time from sample collection to initiation of analysis may not exceed 30 hours. Systems are encouraged but not required to hold samples below 10 °C during transit.

[2] Methods are approved and described in Standard Methods for the Examination of Water and Wastewater (20th edition).

[3] Medium available through IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092.

[4] EPA approved drinking water methods.

[5] Brenner, K.P., C.C. Rankin, Y.R. Roybal, G.N. Stelma, P.V. Scarpino, and A.P. Dufour. 1993. New medium for the simultaneous detection of total coliforms and *Escherichia coli* in water. Appl. Environ. Microbiol. 59:3534–3544.

[6] Hach Company, 100 Dayton Ave., Ames, IA 50010.

[7] Charm Sciences, Inc., 36 Franklin St., Malden, MA 02148–4120.

[8] Proposed for EPA approval, EPA Method 1600: MF Test Method for enterococci in Water (EPA–821–R–97–004 (May 1997)) is an approved variation of Standard Method 9230C.

[9] Proposed for EPA approval are EPA Methods 1601 and 1602, which are available from the EPA's Water Resources Center, Mail code: RC–4100, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

*E. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866, (58 FR 51,735,October 4,1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this rule is a "significant regulatory action". As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

*F. Executive Order 12898: Environmental Justice*

Executive Order 12898 establishes a Federal policy for incorporating environmental justice into Federal agency missions by directing agencies to identify and address disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority and low-income populations. The Agency has considered environmental justice issues concerning the potential impacts of this action and has consulted with minority and low-income stakeholders.

The Environmental Justice Executive Order requires the Agency to consider environmental justice issues in the rulemaking and to consult with minority and low-income stakeholders. There are two aspects of today's proposed rule that relate specifically to this policy: the overall nature of the rule, and the convening of a stakeholder meeting specifically to address environmental justice issues. The GWR applies to all public water systems: community water systems, nontransient noncommunity water systems, and transient noncommunity water systems that use ground water as their source water. Consequently, the health protection benefits provided by this proposal are equal across all income and minority groups served by these systems. Existing regulations such as the SWTR and IESWTR provide similar health benefit protection to communities that use surface water or ground water under the direct influence of surface water.

As part of EPA's responsibilities to comply with Executive Order 12898, the Agency held a stakeholder meeting on March 12, 1998 to address various components of pending drinking water regulations; and how they may impact sensitive sub-populations, minority populations, and low-income populations. Topics discussed included treatment techniques, costs and benefits, data quality, health effects, and the regulatory process. Participants included national, State, tribal, municipal, and individual stakeholders. EPA conducted the meetings by video conference call with participants in eleven cities. This meeting was a continuation of stakeholder meetings that started in 1995 to obtain input on the Agency's drinking water programs. The major objectives for the March 12, 1998 meeting were: solicit ideas from environmental justice (EJ) stakeholders on known issues concerning current drinking water regulatory efforts; identify key issues of concern to EJ stakeholders; and receive suggestions from EJ stakeholders concerning ways to increase representation of EJ communities in EPA's Office of Water regulatory efforts. In addition, EPA developed a plain-English guide specifically for this meeting to assist stakeholders in understanding the multiple and sometimes complex drinking water issues.

*G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is subject to this Executive Order because it is an economically significant regulatory action as defined by Executive Order 12866, and EPA believes that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Accordingly, EPA has evaluated the environmental health or safety effects of viruses on children. The results of this evaluation are contained in section II.E. of the preamble and in the RIA for today's rule (US EPA, 1999a). A copy of RIA and its supporting documents have been placed in the Office of Water docket for this proposal.

1. Risk of Viral Illness to Children and Pregnant Women

The risk of illness and death due to viral contamination of drinking water depends on several factors, including the age and the immune status of the exposed individual. Two groups that are at increased risk of illness and mortality due to waterborne pathogens are children and pregnant women (Gerba *et al.*, 1996). For example, rotavirus infections can occur in people of all ages, however they primarily affect young children (US EPA, 1999b). Infants and young children have higher rates of infection and disease from enteroviruses than other age groups (US EPA, 1999b). Several viruses that can be transmitted through water can have serious health consequences in children. Enteroviruses (which include poliovirus, coxsackievirus and echovirus) have been implicated in cases of paralytic polio, heart disease, encephalitis, hemorrhagic conjunctivitis, hand-foot-and-mouth disease and diabetes mellitis (CDC, 1997; Modlin, 1997; Melnick, 1996; Cherry, 1995; Berlin and Rorabaugh, 1993; Smith, 1970; Dalldorf and Melnick, 1965). Women may be at increased risk from enteric viruses during pregnancy (Gerba *et al.*, 1996). Enterovirus infections in pregnant women can also be transmitted to the unborn child late in pregnancy, sometimes resulting in severe illness in the newborn (US EPA, 1999c). Coxsackievirus and echovirus may be transmitted from the mother to the child *in utero* (Gerba *et al.*, 1996).

To comply with Executive Order 13045, EPA calculated the baseline risk (*e.g.*, risk without this rule) and with-rule reduction of risk from waterborne illness and mortality for children. To address the disproportionate risk of waterborne illness and mortality to children under this rulemaking, EPA applied age-specific parameters regarding morbidity to the risk assessment. The risk assessment first

extracted the proportion of the population that falls into several age categories that may be more or less susceptible to waterborne viral illness than the general population. The extraction was done separately for two model viruses. Bacterial illnesses are not addressed in this analysis, however, EPA estimates that bacterial illnesses account for an additional 20% of viral illnesses.

When assessing the risk of illness due to viruses of low-to-medium infectivity (using echovirus as a surrogate), the age categories used were less than one month of age, one month to five years of age, five to sixteen years of age and greater than sixteen years of age. It was assumed that 50% of children less than five years old would become ill once infected with low-to-medium infectivity viruses; while 57% of children five years to sixteen years of age and 33% of people over sixteen would become ill once infected. This estimate was based on a community-wide echovirus type 30 epidemic (Hall, 1970). See Appendix A of the RIA.

When assessing the risk of illness due to viruses of high infectivity (using rotavirus as a surrogate) the age categories used were less than two years of age, two to five years of age, five to sixteen years old and greater than sixteen years old. It was assumed that 88% of children less than two years old would become ill once infected with high infectivity viruses; while 40% was assumed for everyone else. The morbidity rates for high infectivity viruses were based on data from Kapikian and Chanock (1996) for children less than two. For other age categories, EPA has conservatively estimated a morbidity of 10 based upon studies of rotavirus illness in households with newborn children (Wenman *et al.*, 1979) and of an outbreak in an isolated community (Foster *et. al.*, 1980). See Appendix A of the RIA.

In addition to illness, EPA also considered child mortality attributable to waterborne microbial illness. For low-to-medium infectivity viruses, 0.92% of children less than one month of age who become ill were assumed to die based on information from Jenista *et al.*, (1984) and Modlin (1986), while .041% of people greater than one month old who become ill were assumed to die. For viruses of high infectivity, 0.00073% of infected children less than four years old were assumed to die (Tucker *et al.*, 1998). The low-to-medium infectivity viruses result in a higher mortality rate than the high infectivity viruses because the low-to-medium infectivity viruses cause more serious health effects.

The proposed GWR specifically targets systems with existing or potential fecal contamination, including viral contamination. To estimate the benefits to children from today's proposed rule, the Agency calculated the number of illnesses and deaths avoided by the rule for the children less than 5 years old and for children between the ages of 5 and 16. Table VI–6 presents a summary of these estimates. Overall, the proposed rule would result in 26,566 less illnesses caused by viruses per year occurring in children 16 years of age and less. The proposed rule is also expected to result in 2 less deaths per year due to viral illness among children aged 16 or less.

TABLE VI–6.—REDUCTIONS OF VIRAL ILLNESS AND DEATH IN CHILDREN RESULTING FROM VARIOUS REGULATORY APPROACHES

| Options | Illness reduction (ages 0–5) | Death reduction (ages 0–5) | Illness reduction (5–16 years old) | Death reduction (5–16 years old) |
|---|---|---|---|---|
| Sanitary Survey Only | 2,292 | 0 | 1,773 | 0 |
| Sanitary Survey and Triggered Monitoring | 13,044 | 1 | 9,974 | 1 |
| Multi-barrier (Proposed) | 15,058 | 1 | 11,508 | 1 |
| Across-the-board Disinfection | 21,125 | 1 | 16,059 | 2 |

The Agency believes the proposed multi-barrier approach will provide the most cost-effective method of reducing viral and bacterial illness in children that results from contaminated ground water. The proposed option will reduce 3,500 more cases of viral illness in children each year than the sanitary survey and triggered monitoring option. This additional reduction is obtained with only a slightly larger increase in total annual costs. Conversely, the additional reductions in illness gained with the across-the-board option comes at a much higher cost. It is estimated that the across-the-board option will cost approximately $12,000 more per case of illness avoided than the multi-barrier approach.

2. Full Analysis of the Microbial Risk Assessment

A full analysis of the microbial risk assessment is provided in the Appendix to the RIA for the proposed GWR, and a summary is provided in this preamble (see section II.E.).

The public is invited to submit or identify peer-reviewed studies and data, of which EPA may not be aware, that assessed results of early life exposure to viruses and bacteria.

*H. Consultations with the Science Advisory Board, National Drinking Water Advisory Council, and the Secretary of Health and Human Services*

In accordance with section 1412 (d) and (e) of the SDWA, the Agency did consult with the Science Advisory Board and will request comment from the National Drinking Water Advisory Council (NDWAC) and the Secretary of Health and Human Services on the proposed rule.

*I. Executive Order on Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999). requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications". "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government". Under section 6 of Executive Order 13132, EPA may not issue a regulation that has Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has Federalism implications and that preempts State

law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the final rule, a Federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with Federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the Agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

EPA has concluded that this proposed rule may have Federalism implications since it may impose substantial direct compliance costs on local governments, and the Federal government will not provide the funds necessary to pay those cost. Accordingly, EPA provides the following FSIS as required by section 6(b) of Executive Order 13132.

As discussed in section I.A., EPA met with a variety of State and local representatives including several local elected officials, who provided meaningful and timely input in the development of the proposed rule. Summaries of the meetings have been included in the public record for this proposed rulemaking. EPA consulted extensively with State, local, and tribal governments. For example, four public stakeholder meetings were held in Washington, DC, Portland, Oregon, Madison Wisconsin and Dallas, Texas. EPA also held three early involvement meetings with the Association of State Drinking Water Administrators. Several key issues were raised by stakeholders regarding the GWR provisions, many of which were related to reducing burden and maintaining flexibility. The Office of Water was able to reduce burden and increase flexibility by creating a targeted risk based approach which builds upon existing State programs. It should be noted that this rule is important because it will reduce the incidence of fecally contaminated drinking water supplies by requiring corrective actions for fecally contaminated systems or systems with a significant risk of fecal contamination resulting in a reduced waterborne illness. Because consultation on this proposed rule occurred before the November 2, 1999, effective date of Executive Order 13132, EPA will initiate discussions with State and local elected officials regarding the implications of this rule during the public comment period.

*J. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

EPA has concluded that this rule will significantly affect communities of Indian tribal governments because 92 percent of PWSs in Indian Country are ground water systems. It will also impose substantial direct compliance costs on such communities, and the Federal government will not provide the funds necessary to pay the direct costs incurred by the tribal governments in complying with the rule. In developing this rule, EPA consulted with representatives of tribal governments pursuant to Executive Order 13084. EPA's consultation, the nature of the tribal governments' concerns, and EPA's position supporting the need for this rule are discussed in section VI.C. which addresses compliance with UMRA.

As described in section VI.C.2.e. of the UMRA discussion, EPA held extensive public meetings that provided the opportunity for meaningful and timely input in the development of the proposed rule. Summaries of the meetings have been included in the Office of Water public docket for this rulemaking. In addition, the Agency presented the rule and asked for comment at three tribal conferences. Two consultations took place at national conferences; one for the National Indian Health Board and the other for the National Tribal Environmental Council. The third consultation was conducted in conjunction with the Inter-Tribal Council of Arizona, Inc. A more detailed discussion of these consultations can be found in the UMRA consultation section (section VI.C.2.c.).

*K. Plain Language*

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write its rules in plain language. EPA invites comments on how to make this proposed rule easier to understand. For example: Has EPA organized the material to suit commenters' needs? Are the requirements in the rule clearly stated? Does the rule contain technical language or jargon that is not clear? Would a different format (grouping and order of sections, use of headings, paragraphs) make the rule easier to understand? Would shorter sections make this rule easier to understand? Could EPA improve clarity by adding tables, lists, or diagrams? What else could EPA do to make the rule easier to understand?

## VII. Public Comment Procedures

EPA invites you to provide your views on this proposal, approaches we have not considered, the potential impacts of the various options (including possible unintended consequences), and any data or information that you would like the Agency to consider. Many of the sections within today's proposed rule contain "Request for Comment" portions which the Agency is also interested in receiving comment on.

*A. Deadlines for Comment*

Send your comments on or before July 10, 2000. Comments received after this date may not be considered in decision making on the proposed rule.

*B. Where To Send Comment*

Send an original and 3 copies of your comments and enclosures (including references) to W–98–23 Comment Clerk, Water Docket (MC4101), USEPA, 1200 Pennsylvania Ave., NW, Washington DC 20460. Hand deliveries should be delivered to the Comment Clerk, Water Docket (MC4101), USEPA 401 M , Washington, D.C. 20460. Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as an

ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by the docket number W–98–23. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Those who comment and want EPA to acknowledge receipt of their comments must enclose a self-addressed stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov.

*C. Guidelines for Commenting*

To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters should use a separate paragraph for each issue discussed. Note that the Agency is not soliciting comment on, nor will it respond to, comments on previously published regulatory language that is included in this notice to ease the reader's understanding of proposed language. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide technical information and/or data to support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate.
5. Indicate what you support, as well as what you disagree with.
6. Provide specific examples to illustrate your concerns.
7. Make sure to submit your comments by the deadline in this proposed rule.
8. At the beginning of your comments (*e.g.*, as part of the "Subject" heading), be sure to properly identify the document you are commenting on. You can do this by providing the docket control number assigned to the proposed rule, along with the name, date, and *Federal Register* citation.

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## List of Subjects in 40 CFR Parts 141 and 142

Environmental protection, Indians-lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water.

Dated: April 17, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, title 40 chapter I of the Code of Federal Regulations is proposed to be amended as follows:

## PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–4, 300j–9, and 300j–11.

2. Section 141.21 is amended by adding paragraph (d)(3) to read as follows:

**§ 141.21 Coliform sampling.**

* * * * *

(d) * * *

(3) Sanitary surveys conducted by the State under § 142.16(k)(2) of this chapter, at the frequencies specified, may be used to meet the sanitary surveys requirements of this section.

* * * * *

3. Section 141.154 is amended by adding paragraph (f) to read as follows:

**§ 141.154 Required additional health information.**

* * * * *

(f) Ground water systems that detect *E. coli*, enterococci or coliphage in the source water as required by § 141.403 must include the health effects language prescribed by Appendix B of subpart Q of this part.

* * * * *

4. Section 141.202 as added by the final rule published on May 4, 2000 is amended by adding entry (9) in numerical order to the table in paragraph (a) to read as follows:

**§ 141.202 Tier 1 Public Notice—Form, manner, and frequency of notice.**

(a) * * *

Table 1 to § 141.202—violation categories and other situations requiring a tier 1 public notice

| | | | | |
|---|---|---|---|---|
| • | • | • | • | • |
| (9) Violation of the treatment technique for the Ground Water Rule (as specified in § 141.405(a) through (c) or when *E. coli*, enterococci, or coliphage are present as specified in § 141.403) or when the water system fails to test for *E. coli*, enterococci, coliphage (as specified in § 141.403). | | | | |
| • | • | • | • | • |

5. Appendix A of subpart Q as added by the final rule published on May 4, 2000 is amended by adding entry 8. under I.A. "Microbiological Contaminants" and by adding entry G. under IV. "Other Situations Requiring Public Notification" to read as follows:

APPENDIX A TO SUBPART Q OF PART 141.—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE [1] (INCLUDING D/DBP AND IESWTR VIOLATIONS)

| Contaminant | MCL/MRDL/TT violations [2] | | Monitoring and testing procedure violations | |
|---|---|---|---|---|
| | Tier of public notice required | Citation | Tier of public notice required | Citation |
| * * * * * * * | | | | |
| A. Microbiological Contaminants | | | | |
| * * * * * * * | | | | |
| 8. GWR TT violations | 1 | 141.405 | N/A | N/A |
| * * * * * * * | | | | |
| **IV. Other Situations Requiring Public Notification** | | | | |
| * * * * * * * | | | | |
| G. Fecal indicators for GWR: *E. coli*, enterococci, coliphage | 1 | 141.403 | 1 | 141.403 |

Appendix A Endnotes

[1] Violations and other situations not listed in this table (*e.g.*, reporting violations and failure to prepare Consumer Confidence Reports), do not require notice, unless otherwise determined by the primacy agency. Primacy agencies may, at their option, also require a more stringent public notice tier (*e.g.*, Tier 1 instead of Tier 2 or Tier 2 instead of Tier 3) for specific violations and situations listed in this Appendix, as authorized under § &141.202(a) and § 141.203(a).

[2] MCL—Maximum contaminant level, MRDL-Maximum residual disinfectant level, TT—Treatment technique.

* * * * *

6. Appendix B to subpart Q as added by the final rule published on May 4, 2000 is amended by adding a new entry 1c in numerical order un A. "Microbiological Contaminants" and by redisinating entries C. through H. as D. through I. and adding a new C. in alphabetical order to read as follows:

APPENDIX B OF SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

| Contaminant | MCLG [1] | mg/L | MCL [2] mg/L | |
|---|---|---|---|---|
| * * * * * * * | | | | |
| A. Microbiological Contaminants | | | | |
| * * * * * * * | | | | |
| 1c. Fecal indicators (GWR): | | | | |
| i. *E. coli* | Zero | None | Fecal indicators are bacteria or viruses whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, some of the elderly, and people with severely compromised immune systems | |
| ii. enterococci | None | | | |
| iii. coliphage | None | | | |
| * * * * * * * | | | | |
| C. Ground Water Rule (GWR) TT violations. | None | TT | Inadequately treated or inadequately protected water may contain disease-causing organisms. These organisms include bacteria and viruses which can cause symptoms such as diarrhea, nausea, cramps, and associated headaches. | |
| * * * * * * * | | | | |

Appendix B Endnotes

1. MCLG—Maximum contaminant level goal.
2. MCL—Maximum contaminant level.

* * * * *

7. Appendix C to subpart Q as added in the final rule published on May 4, 2000 amended by adding the following abbreviation in alphabetical order to read as follow:

**Appendix C to Subpart Q of Part 141—List of Acronyms Used in Public Notification Regulation**

* * * * *

GWR Ground Water Rule

* * * * *

9. A new subpart S is proposed to be added to read as follows:

**Subpart S—Ground Water Rule**

Sec.

141.400 General requirements and applicability.
141.401 Sanitary survey information request.
141.402 Hydrogeologic sensitivity assessment information request.
141.403 Microbial monitoring of source water and analytical methods.
141.404 Treatment technique requirements.
141.405 Treatment technique violations.
141.406 Reporting and record keeping.

## Subpart S—Ground Water Rule

### § 141.400 General requirements and applicability.

(a) *Scope of this subpart.* The requirements of this subpart S constitute national primary drinking water regulations.

(b) *Applicability.* All public water systems that are served solely by ground water. The requirements in this subpart also apply to subpart H systems that distribute ground water that is not treated to 4-log inactivation or removal of viruses before entry into the distribution system. Systems supplied by ground water under the direct influence of surface water are regulated under subparts H and P of this part, not under this subpart. For the purposes of this subpart, "ground water system" is defined as any public water system meeting this applicability statement.

(c) *General requirements.* These regulations in this subpart establish requirements related to sanitary surveys, hydrogeologic sensitivity assessments, and source water microbial monitoring performed at ground water systems as defined by paragraph (b) of this section. The regulations in this subpart also establish treatment technique requirements for these ground water systems which have fecally contaminated source waters, as demonstrated under § 141.403, or significant deficiencies as identified in a sanitary survey conducted by a State under either § 142.16(k)(2) of this chapter or by EPA under SDWA section 1445. Ground water systems with fecally contaminated source water or significant deficiencies must meet one or more of the following treatment technique requirements: eliminate the source of contamination, correct the significant deficiency, provide an alternate source water, or provide a treatment which reliably achieves at least 99.99 percent (4-log) inactivation or removal of viruses before or at the first customer. Ground water systems which provide 4-log inactivation or removal of viruses will be required to conduct compliance monitoring to demonstrate treatment effectiveness.

(d) *Compliance dates.* Ground water systems must comply with the requirements of this subpart beginning [DATE 3 YEARS AFTER PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER.

### § 141.401 Sanitary survey information request.

Ground water systems must provide the State at its request, any pertinent existing information that would allow the State to perform a sanitary survey as described in § 142.16(k)(2) of this chapter. For the purposes of this subpart, "sanitary survey," as conducted by the State, includes but is not limited to an onsite review of the water source (identifying sources of contamination by using results of source water assessments or other relevant information where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.

### § 141.402 Hydrogeologic sensitivity assessment information request.

Ground water systems must provide the State at its request, any pertinent existing information that would allow the State to perform a hydrogeologic sensitivity assessment as described in § 142.16(k)(3) of this chapter.

### § 141.403 Microbial monitoring of source water and analytical methods.

(a) *Routine monitoring.* Any ground water system that draws water from a hydrogeologically sensitive drinking water source, as determined under § 142.16(k)(3) of this chapter, and that does not provide 4-log inactivation or removal of viruses, must collect a source water sample each month that it provides water to the public and test the sample for the fecal indicator specified by the State under paragraph (d) of this section. Ground water systems must begin monitoring the month after being notified of the hydrogeologic sensitivity assessment.

(b) *Triggered monitoring.* Any ground water system that does not provide 4-log inactivation or removal of viruses, and is notified of a total coliform-positive sample under § 141.21, must collect, within 24 hours of notification, at least one source water sample and have the sample tested for the fecal indicator specified by the State under paragraph (d) of this section. This requirement is in addition to all monitoring and testing requirements under § 141.21.

(c) *Systems with disinfection.* Ground water systems currently providing 4-log inactivation or removal of viruses must notify the State of such and must conduct compliance monitoring in accordance with § 141.404(c). This notification must be made by the effective date of the rule. All new systems must notify the State of the level of virus inactivation they are achieving prior to serving their first customer.

(d) *Analytical methods.* Source water samples must be tested for one of the following fecal indicators: *E. coli*, coliphage, or enterococci, as specified by the State. For whichever fecal indicator is specified by the State, the ground water system must use one of the analytical methods listed in the following table:

ANALYTICAL METHODS FOR SOURCE WATER MONITORING

| Indicator | Method[1] |
|---|---|
| *E. coli* | Colilert Test (Method 9223B)[2, 3] |
| | Colisure Test (Method 9223B)[2, 3] |
| | Membrane Filter Method with MI Agar[4, 8] |
| | m-ColiBlue24 Test[4, 6] |
| | E*Colite Test[4, 7] |
| | May also use the EC-MUG (Method 9212F)[2] and NA-MUG (Method 9222G)[2] *E. coli* confirmation step § 141.21(f)(6) after the EPA approved Total Coliform methods in § 141.21(f)(3) |
| enterococci | Multiple-Tube Tech. (Method 9230B)[1] |
| | Membrane Filter Tech. (Method 9230C)[1, 8] |
| | Enterolert[3] |
| Coliphage | EPA Method 1601: Two-Step Enrichment Presence-Absence Procedure[9] |
| | EPA Method 1602: Single Agar layer Procedure[9] |

[1] The time from sample collection to initiation of analysis may not exceed 30 hours. Systems are encouraged but not required to hold samples below 10°C during transit.

[2] Methods are approved and described in Standard Methods for the Examination of Water and Wastewater (20th edition).

[3] Medium available through IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, Maine 04092.

[4] EPA approved drinking water methods.

[5] Brenner, K.P., C.C. Rankin, Y.R. Roybal, G.N. Stelma, P.V. Scarpino, and A.P. Dufour. 1993. New medium for the simultaneous detection of total coliforms and *Escherichia coli* in water. Appl. Environ. Microbiol. 59:3534–3544.

[6] Hach Company, 100 Dayton Ave., Ames, IA 50010.

[7] Charm Sciences, Inc., 36 Franklin St., Malden, MA 02148–4120.

[8] Proposed for EPA approval, EPA Method 1600: MF Test Method for enterococci in Water (EPA–821–R–97–004 (May 1997)) is an approved variation of Standard Method 9230C.

[9] Proposed for EPA approval are EPA Methods 1601 and 1602, which are available from the EPA's Water Resources Center, Mail code: RC–4100, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

(e) *Notification of State.* If any source water sample is positive for *E. coli*, coliphage, or enterococci, the ground water system shall notify the State as soon as possible after the system is notified of the test result, but in no case later than the end of the next business day, and take corrective action in accordance with § 141.404(b).

(f) *Resampling after invalidation.* Where the State invalidates a positive source water sample under paragraph (i) of this section, the ground water system must collect another source water sample and have it analyzed for the same fecal indicator within 24 hours of being notified of the invalidation.

(g) *Triggered monitoring waiver.* The State may waive triggered source water monitoring as described in § 141.403(b) due to a total coliform-positive sample, on a case-by-case basis, if the State determines that the total coliform positive sample is associated solely with a demonstrated distribution system problem. In such a case, a State official must document the decision, including the rationale for the decision, in writing, and sign the document.

(h) *Reduce frequency for routine monitoring.* The State may reduce routine source water monitoring to quarterly if a hydrogeologically sensitive ground water system detects no fecal indicator-positive samples in the most recent twelve monthly samples, during the months the ground water system is in operation. Moreover, the State may, after those twelve monthly samples, waive source water monitoring altogether for a ground water system if the State determines, and documents the determination in writing, that fecal contamination of the well(s) has not been identified and is highly unlikely based on the sampling history, land use pattern, disposal practices in the recharge area, and proximity of septic tanks and other fecal contamination sources. If the State determines that circumstances have changed, the State has the discretion to reinstate routine monthly monitoring. In any case, a State official must document the determination in writing, including the rationale for the determination, addressing each factor noted in this paragraph and sign the document.

(i) *Invalidation of samples.* A source water sample may be determined by the State to be invalid only if the laboratory establishes that improper sample analysis occurred or the State has substantial grounds to believe that a sample result is due to circumstances that do not reflect source water quality. In such a case, a State official must document the decision, including the rationale for the decision, in writing, and sign the document. The written documentation must state the specific cause of the invalid sample and what action the ground water system or laboratory has taken or will take to correct this problem. A positive sample may not be invalidated by the State solely on the grounds that repeat samples are negative.

(j) *Repeat sampling.* A ground water system may apply to the State, and the State may consider, on a one-time basis, to waive compliance with the treatment technique requirements in § 141.404(b), after a single fecal indicator-positive from a routine source water sample as required in § 141.403(a), if all the following conditions are met:

(1) The ground water system collects five repeat source water samples within 24 hours after being notified of a source water fecal indicator positive result;

(2) The ground water system has the samples analyzed for the same fecal indicator as the original sample;

(3) All the repeat samples are fecal indicator negative; and

(4) All required source water samples (routine and triggered) during the past five years were fecal indicator-negative.

**§ 141.404 Treatment technique requirements.**

(a) *Ground water systems with significant deficiencies.* As soon as possible, but no later than 90 days after receiving written notification from the State of a significant deficiency, a ground water system must do one or more of the following: eliminate the source of contamination, correct the significant deficiency, provide an alternate source water, or provide a treatment which reliably achieves at least 99.99 percent (4-log) inactivation or removal of viruses before or at the first customer. Ground water systems which provide 4-log inactivation or removal of viruses will be required to conduct compliance monitoring to demonstrate treatment effectiveness. The ground water system must consult with the State to determine which of the approaches, or combination of approaches, are appropriate for meeting the treatment technique requirement. Ground water systems unable to address the significant deficiencies in 90 days, must develop a specific plan and schedule for meeting this treatment technique requirement, submit them to the State, and receive State approval before the end of the same 90-day period. For the purposes of this paragraph, a "significant deficiency" includes: a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the State determines to be causing, or has potential for causing the introduction of contamination into the water delivered to consumers.

(b) *Ground water systems with source water contamination.* As soon as possible, but no later than 90 days after the ground water system is notified that a source water sample is positive for a fecal indicator, the ground water system must do one or more of the following: eliminate the source of contamination, correct the significant deficiency, provide an alternate source water, or provide a treatment which reliably achieves at least 99.99 percent (4-log) inactivation or removal of viruses before or at the first customer. Ground water systems which provide 4-log inactivation or removal of viruses will be required to conduct compliance monitoring to demonstrate treatment effectiveness. The ground water system must consult with the State to determine which of the approaches, or combination of approaches, are appropriate for meeting the treatment technique requirement. Ground water systems unable to address the contamination problem in 90 days must develop a specific plan and schedule for meeting this treatment technique requirement, submit them to the State, and receive State approval before the end of the same 90-day period specified previously. This requirement also applies to ground water systems for which States have waived source water monitoring under § 141.403(h) and have a fecal coliform-or E. coli-positive while testing under § 141.21.

(c) *Compliance monitoring.* Ground water systems that provide 4-log inactivation or removal of viruses, or begin treatment pursuant to paragraph (a) or (b) of this section, must monitor the effectiveness and reliability of treatment as follows:

(1) *Chemical disinfection.* (i) Ground water systems serving 3,300 or more people must continuously monitor and maintain the State-determined residual disinfectant concentration every day the ground water system serves water to the public.

(ii) Ground water systems serving fewer than 3,300 people must monitor and maintain the State-determined residual disinfectant concentration every day the ground water system serves water to the public. The ground water system will monitor by taking a daily grab sample during the hour of peak flow or another time specified by the State. If any daily grab sample measurement falls below the State-determined residual disinfectant concentration, the ground water system must take follow-up samples every four hours until the residual disinfectant concentration is restored to the State-determined level.

(2) *UV disinfection.* Ground water systems using UV disinfection must continuously monitor for and maintain the State-prescribed UV irradiance level every day the ground water system serves water to the public.

(3) *Membrane filtration.* Ground water systems that use membrane filtration as a treatment technology are assumed to be achieving at least 4-log removal of viruses when the membrane process is operated in accordance with State-specified compliance criteria developed under § 142.16(k)(5)(ii) of this chapter, or as provided by EPA, and the integrity of the membrane is intact. Applicable membrane filtration technologies are reverse osmosis (RO), nanofiltration (NF), and any membrane filters developed in the future that have absolute MWCOs (molecular weight cut-offs) that can achieve 4-log virus removal.

(d) *Discontinuing treatment.* Ground water systems may discontinue 4-log inactivation or removal of viruses if the State determines based on an on-site investigation, and documents that determination in writing, that the need for 4-log inactivation or removal of viruses no longer exists. Ground water systems are subject to triggered monitoring in accordance with § 141.403(b).

**§ 141.405 Treatment technique violations.**

The following are treatment technique violations which require the ground water system to give public notification pursuant to Appendix A of subpart Q of this part, using the language specified in Appendix B of subpart Q of this part.

(a) A ground water system with a significant deficiency identified by a State (as defined in § 141.401) which does not correct the deficiency, provide an alternative source, or provide 4-log inactivation or removal of viruses within 90 days, or does not obtain, within the same 90 days, State approval of a plan and schedule for meeting the treatment technique requirement in § 141.404, is in violation of the treatment technique.

(b) A ground water system that detects fecal contamination in the source water and does not eliminate the source of contamination, correct the significant deficiency, provide an alternate source water, or provide a treatment which reliably achieves at least 99.99 percent (4-log) inactivation or removal of viruses before or at the first customer within 90 days, or does not obtain within the same 90 days, State approval of a plan for meeting this treatment technique requirement, is in violation of the treatment technique unless the detected sample is invalidated under § 141.403(i) or the treatment technique is waived under § 141.403(j). Ground water systems which provide 4-log inactivation or removal of viruses will be required to conduct compliance monitoring to demonstrate treatment effectiveness.

(c) A ground water system which fails to address either a significant deficiency as provided in paragraph (a) of this section or fecal contamination as provided in paragraph (b) of this section according to the State-approved plan, or by the State-approved deadline, is in violation of the treatment technique. In addition, a ground water system which fails to maintain 4-log inactivation or removal of viruses, is in violation of the treatment technique, if the failure is not corrected within four hours.

**§ 141.406 Reporting and record keeping.**

(a) *Reporting.* In addition to the requirements of § 141.31, ground water systems regulated under this subpart must provide the following information to the State:

(1) Ground water systems conducting continuous monitoring must notify the State any time the residual disinfectant concentration (irradiance in the case of UV) falls below the State-determined value and is not restored within 4 hours. The ground water system must notify the State as soon as possible, but in no case later than the end of the next business day.

(2) Ground water systems taking daily grab samples must notify the State any time the residual disinfectant concentration falls below the State-determined value and is not restored within 4 hours, as determined by follow-up samples. The ground water system must notify the State as soon as possible, but in no case later than the end of the next business day.

(3) Ground water systems using membrane filtration must notify the State any time the membrane is not operated in accordance with standard operation and maintenance procedures for more than 4 hours, or any failure of the membrane integrity occurs and is not restored within 4 hours. The ground water system must notify the State as soon as possible, but in no case later than the end of the next business day. These operation and maintenance procedures will be provided by EPA or developed by the State under § 142.16(k)(5)(ii) of this chapter.

(4) If any source water sample is positive for *E. coli*, coliphage, or enterococci, the ground water system shall notify the State as soon as possible, but in no case later than the end of the next business day, and take corrective action in accordance with § 141.404(b).

(5) If any ground water system has reason to believe that a disease outbreak is potentially attributable to their drinking water, it must report the outbreak to the State as soon as possible, but in no case later than the end of the next business day.

(6) After implementation of any required treatment techniques, a ground water system must provide as soon as possible, but in no case later than the end of the next business day, written confirmation to the State that the corrective action required by § 141.404(a) and (b) were met.

(7) Notification that the ground water system is currently providing 4-log inactivation or removal of viruses.

(b) *Record keeping.* In addition to the requirements of § 141.33, ground water systems regulated under this subpart must maintain the following information in their records:

(1) Documentation showing the fecal indicator the State is requiring the ground water system to use.

(2) Documentation showing consultation with the State on approaches for addressing significant deficiencies including alternative plans and schedules and State approval of such plans and schedules.

(3) Documentation showing consultation with the State on approaches for addressing source water fecal contamination including alternative plans and schedules and State approval of such plans and schedules.

## PART 142—NATIONAL PRIMARY DRINKING WATER REGULATIONS IMPLEMENTATION

1. The authority citation for part 142 continues to read as follows:

**Authority:** 42 U.S.C. 300f, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-4, 300j-9, and 300j-11.

2. Section 142.14 is amended by adding paragraph (d)(17) to read as follows:

**§ 142.14 Records kept by States.**

* * * * *

(d) * * *

(17) Records of the currently applicable or most recent State determinations, including all supporting information and an explanation of the technical basis for each decision, made under the following provisions of 40 CFR part 141, subpart S for the Ground Water Rule.

(i) Section 142.16(k)(3)—State determinations of source water hydrogeologic sensitivity, and determinations of the presence of hydrogeologic barriers.

(ii) Section 141.404(c) " notification to individual ground water systems of the proper residual disinfection concentrations (when using chemical disinfection), irradiance level (when using UV), or EPA-specified or State specified compliance criteria (when using membrane filtration) needed to achieve 4-log inactivation of viruses.

(iii) Section 141.403(g)—waivers of triggered monitoring.

(iv) Section 141.403(h)—reductions of monitoring.

(v) Section 141.403(i)—invalidation of positive source water samples.

(vi) Section 141.403(j)—waiver of compliance with treatment technique requirements.

(vii) Section 141.404(a)—notifications of significant deficiencies, consultation with the ground water systems, including written confirmation of corrections of significant deficiencies by ground water systems and written records of State site visits and approved plans and schedules.

(ix) Section 141.404(d)—determinations of when a ground water system can discontinue 4-log inactivation or removal of viruses.

* * * * *

3. Section 142.15 is amended by adding paragraphs (c)(6) through (10) to read as follows:

**§ 142.15 Reports by States.**

* * * * *

(c) * * *

(6) Sanitary surveys. An annual list of ground water systems that have had a sanitary survey completed during the previous year and an annual evaluation of the State's program for conducting sanitary surveys under § 142.16(k)(2).

(7) Hydrogeologic sensitivity assessments. An annual list of ground water systems that have had a sensitivity assessment completed during the previous year, a list of those ground water systems which are sensitive, a list of ground water systems which are sensitive, but for which the State has determined that a hydrogeologic barrier exists at the site sufficient for protecting public health, and an annual evaluation of the State's program for conducting hydrogeologic sensitivity assessments under § 142.16 (k)(3).

(8) Source water microbial monitoring. An annual list of ground water systems that have had to test the source water as described under § 141.403 of this chapter, a list of determinations of invalid samples, and a list of waivers of source water monitoring provided by the State.

(9) Treatment technique compliance. An annual list of ground water systems that have had to meet treatment technique requirements for significant deficiencies or contaminated source water under § 141.404 of this chapter, a list of determinations to discontinue 4-log inactivation or removal of viruses, and a list of ground water systems that violated the treatment technique requirements.

(10) Ground water systems providing 4-log inactivation or removal of viruses. An annual list of ground water systems that have notified the State that they are currently providing 4-log inactivation or removal of viruses.

* * * * *

4. Section 142.16 is amended by adding and reserving paragraphs (i) and (j) and adding paragraph (k) to read as follows:

**§ 142.16 Special primacy requirements.**

* * * * *

(i) [Reserved]

(j) [Reserved]

(k) Requirements for States to adopt 40 CFR part 141, subpart S. In addition to the general primacy requirements specified elsewhere in this part, including the requirement that State regulations are no less stringent than the Federal requirements, an application for approval of a State program revision that adopts 40 CFR part 141, subpart S, must contain a description of how the State will accomplish the following program requirements:

(1) *Enforceable requirements.* (i) States must have the appropriate rules or other authority to ensure that ground water systems take the steps necessary to address, in accordance with § 141.404(a) of this chapter, any significant deficiencies identified in the written notification provided by the State as required under paragraph (k)(2) of this section.

(ii) States must have appropriate rules or other authority to ensure that ground water systems respond in writing in regard to the resolution of significant deficiencies identified in the written notification provided by the State following identification of the significant deficiencies.

(iii) States must have the appropriate rules or other authority to ensure that ground water systems take the steps necessary to address, in accordance with § 141.404(b) of this chapter, any fecal contamination identified during routine or triggered monitoring in accordance with § 141.403(a) and (b) of this chapter.

(2) *Sanitary survey.* In its primacy application the State must describe how it, or an authorized agent, will implement a sanitary survey program that meets the requirements of this section.

(i) For the purposes of this paragraph (k)(2), "sanitary survey" includes, but is not limited to, an onsite review of the water source (identifying sources of contamination by using results of source water assessments or other relevant information where available), facilities, equipment, operation, maintenance, and monitoring compliance of a public water system to evaluate the adequacy of the system, its sources and operations and the distribution of safe drinking water.

(ii) The State, or an authorized agent, must conduct sanitary surveys for all ground water systems. The sanitary survey must address the eight sanitary survey components listed in paragraphs (k)(2)(ii)(A) through (H) of this section no less frequently than every three years for community systems and no less frequently than every five years for noncommunity systems. The first sanitary survey for community water systems must be completed by [DATE 6 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] and for noncommunity water systems, must be completed by [DATE 8 YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(A) Source.

(B) Treatment.

(C) Distribution system.

(D) Finished water storage.

(E) Pumps, pump facilities, and controls.

(F) Monitoring and reporting and data verification.

(G) System management and operation.

(H) Operator compliance with State requirements.

(iii) After the initial sanitary survey for ground water systems in accordance with § 142.16(k)(2)(ii), the State may reduce the frequency of sanitary surveys for community water systems to no less frequently than every five years, if the ground water system either treats to 4-log inactivation or removal of viruses or has an outstanding performance record documented in previous inspections and has no history of total coliform MCL or monitoring violations under § 141.21 of this chapter as determined by the State, since the last sanitary survey under the current ownership. In its primacy application, the State must describe how it will decide whether a community water system has outstanding performance and is thus eligible for sanitary surveys at a reduced frequency.

(iv) States may complete components of a sanitary survey as part of a staged or phased State review process within the established frequency specified in paragraph (k)(2)(ii) or (iii) of this section. In its primacy application, a State which plan to complete the sanitary survey in a staged or phased State review process must indicate which approach it will take and provide the rationale for the specified time frames for sanitary surveys conducted on a staged or phased approach basis.

(v) Sanitary surveys that meet the requirements of this subpart, including the requisite eight components identified in paragraph (k)(2)(ii) of this section and conducted at the specified frequency, are considered to meet the requirements for sanitary surveys under the Total Coliform Rule (TCR) as described in § 141.21 of this chapter. Note however, compliance only with the TCR sanitary survey requirements may not be adequate to meet the revised scope and frequency sanitary survey requirement of this subpart.

(vi) States must provide ground water systems with written notification identifying and describing any significant deficiencies identified at the ground water system no later than 30 days after identifying the significant deficiencies. States will provide ground water systems with written notification by certified mail or on-site from the sanitary survey inspector. In its primacy application, the State must indicate how it will define what constitutes a significant deficiency for purposes of this subpart. For the purposes of this paragraph, a "significant deficiency" includes: a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the State determines to be causing, or has potential for causing the introduction of contamination into the water delivered to consumers.

(vii) In its primacy application, the State must describe how it will consult with the ground water system regarding the treatment technique requirements specified in § 141.404 and criteria for determining when a ground water system has met the 4-log inactivation or removal of viruses of this chapter.

(viii) States must confirm that the deficiency has been addressed, either through written confirmation from ground water systems or a site visit by the State, within 30 days after the ground water system has met the treatment technique requirements under § 141.404(a) of this chapter.

(ix) In its primacy application, the State must specify if and how it will integrate Source Water Assessment and Protection Program (SWAPP) susceptibility determinations into the sanitary survey and the definition of significant deficiency.

(3) *Hydrogeologic sensitivity assessments.* (i) For the purposes of this paragraph (k)(3), "hydrogeologic sensitivity assessment" means the methodology used by the State to identify whether ground water systems are obtaining water from karst, gravel, or fractured bedrock aquifers. A State may add additional hydrogeologic sensitive settings, *e.g.*, volcanic aquifers. A well obtaining water from a karst, gravel or fractured bedrock aquifer is sensitive to fecal contamination unless the well is protected by a hydrogeologic barrier. A "hydrogeologic barrier" consists of physical, chemical and biological factors that, singularly or in combination, prevent the movement of viable pathogens from a contaminant source to a ground water system well.

(ii) The State, or an authorized agent, must conduct a one-time hydrogeologic sensitivity assessment for all existing ground water systems not providing 4-log inactivation or removal of viruses by [DATE SIX YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] for community water systems and by [DATE EIGHT YEARS AFTER DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER] for non-community water systems. The State, or an authorized agent, must conduct a hydrogeologic sensitivity assessment for new systems prior to their serving water to the public.

(iii) In its primacy application, a State must identify its approach to determine the adequacy of a hydrogeologic barrier, if present, as part of its effort to determine the sensitivity of a ground water system in a hydrogeologic sensitivity assessment.

(4) *Source water microbial monitoring.* (i) In its primacy application, the State must identify its approach and rationale for determining which of the fecal indicators (E. coli, coliphage, or enterococci) ground water systems must use in accordance with § 141.403(d) of this chapter.

(ii) The State may waive triggered source water monitoring as described in § 141.403(b) of this chapter due to a total coliform-positive sample, on a case-by-case basis, if the State determines that the total coliform positive sample is associated solely with a demonstrated distribution system problem. In such a case, a State official must document the decision, including the rationale for the decision, in writing, and sign the document.

(iii) The State may reduce routine source water monitoring to quarterly if a hydrogeologically sensitive ground water system detects no fecal indicator-positive samples in the most recent twelve consecutive monthly samples during the months the ground water system is in operation. Moreover, the State may, after those twelve consecutive monthly samples, waive source water monitoring altogether for a ground water system if the State determines, in writing, that fecal contamination of the well(s) has not been identified and is highly unlikely, based on the sampling history, land use pattern, disposal practices in the recharge area, and proximity of septic tanks and other fecal contamination sources. If the State determines that circumstances have changed, the State has the discretion to reinstate routine monthly monitoring. In any case, a State official must document the determination in writing, including the rationale for the determination, and sign the document.

(iv) The State may determine a source water sample to be invalid only if the laboratory establishes that improper sample analysis occurred or the State has substantial grounds to believe that a sample result is due to circumstances that do not reflect source water quality. In such a case, a State official must document the decision, including the rationale for the decision, in writing, and sign the document. The written documentation must state the specific cause of the invalid sample and what action the ground water system or laboratory has taken or must take to

correct this problem. A positive sample may not be invalidated by the State solely on the grounds that repeat samples are negative, though this could be considered along with other evidence that the original sample result does not reflect source water quality.

(v) A ground water system may apply to the State, and the State may consider, on a one-time basis, to waive compliance with the treatment technique requirements in § 141.404(a) of this chapter, after a single fecal indicator-positive from a routine source water sample as required in § 141.403(a) of this chapter, if all the following conditions are met:

(A) The ground water system collects five repeat source water samples within 24 hours after being notified of a source water fecal positive result;

(B) The ground water system has the samples analyzed for the same fecal indicator as the original sample;

(C) All the repeat samples are fecal indicator negative; and

(D) All previous source water samples (routine and triggered) during the past 5 years were fecal indicator-negative.

(5) *Treatment technique requirements.*. (i) In its primacy application, the State must describe how it must provide every ground water system treating to 4-log inactivation or removal the disinfectant concentration (or irradiance) and contact time to achieve 4-log virus inactivation or removal. EPA recommends that the State use applicable EPA-developed CT tables (IT (the product of irradiance, in $mW/cm^2$, multiplied by exposure time, in seconds) in the case of UV disinfection) to determine the concentration (or irradiance) and contact time that it will require ground water systems to achieve 4-log virus inactivation.

(ii) If the State intends to approve membrane filtration for treatment it must, in its primacy application, describe the monitoring and compliance requirements, including membrane integrity testing, that it will require of ground water systems to demonstrate proper operation of membrane filtration technologies.

(iii) In its primacy application, a State must describe the approach it must use to determine which specific treatment technique option (correcting the deficiency, eliminating the source of contamination, providing an alternative source, or providing 4-log inactivation or removal of viruses) is appropriate for addressing significant deficiencies or fecally contaminated source water and under what circumstances. In addition, the State must describe the approach it intends to use when consulting with ground water systems on determining the treatment technique options.

(iv) States must confirm that the ground water system has addressed the source water fecal contamination identified under routine or triggered monitoring in accordance with § 141.403(a) and (b) of this chapter, either through written confirmation from ground water systems or a site visit by the State, within 30 days after the ground water system has met the treatment technique requirements under § 141.404(b) of this chapter.

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Part III

# Department of Agriculture

**Forest Service**

**36 CFR Part 294**

**Special Areas; Roadless Area Conservation; Proposed Rules**

**DEPARTMENT OF AGRICULTURE**

**Forest Service**

**36 CFR Part 294**

**RIN 0596–AB77**

**Special Areas; Roadless Area Conservation**

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of proposed rulemaking; request for comment.

**SUMMARY:** The Forest Service is proposing new regulations to protect certain roadless areas within the National Forest System. This proposed rulemaking would prohibit road construction and reconstruction in most inventoried roadless areas of the National Forest System and require evaluation of roadless area characteristics in the context of overall multiple-use objectives during land and resource management plan revisions. This proposal is in response to strong public sentiment for protecting roadless areas and the clean water, biological diversity, wildlife habitat, forest health, dispersed recreational opportunities, and other public benefits provided by these areas. This action also responds to budgetary concerns and the need to balance forest management objectives with funding priorities. The intent of this rulemaking is to provide lasting protection in the context of multiple-use management for inventoried roadless areas and other unroaded areas within the National Forest System. The Forest Service invites written comments on this proposed rule and will analyze and consider those comments in the development of a final rule.

**DATES:** Written comments must be received by July 17, 2000.

**ADDRESSES:** Send written comments to the USDA Forest Service—CAET, Attention: Roadless Areas Proposed Rule, P.O. Box 221090, Salt Lake City, Utah, 84122. Reviewers, who wish to send comment by e-mail, may do so by accessing the worldwide web at roadless.fs.fed.us and selecting the comment option. Comments may also be sent via fax to 877–703–2494.

Comments received in response to this rulemaking, including names and addresses when provided, will be considered part of the public record and will be available for public inspection and copying.

A copy of the Draft Environmental Impact Statement (DEIS), the DEIS Summary, and other information related to this rulemaking is available at the roadless.fs.fed.us website. Reviewers may request printed copies or compact disks, as available, of the Draft Environmental Impact Statement and the Summary by writing to the Rocky Mountain Research Station, Publication Distribution, 240 West Prospect Road, Fort Collins, CO 80526–2098. Fax orders will be accepted at 800–777–5805. When ordering, requesters must specify if they wish to receive the summary or full set of documents and if the material should be provided in print or on disk. Additional information is available at the roadless.fs.fed.us website as well as by calling the number listed under the **FOR FURTHER INFORMATION CONTACT** heading.

**FOR FURTHER INFORMATION CONTACT:** Scott Conroy, Project Director, (703) 605–5299.

**SUPPLEMENTARY INFORMATION:** The following outline displays the contents of the Supplementary Information section of this proposed rule:

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**Background**

The Forest Service is responsible for managing the lands and resources of the National Forest System, including 192 million acres of land in 42 states, the Virgin Islands, and Puerto Rico. The system is composed of 155 national forests, 20 national grasslands, and various other lands under the jurisdiction of the Secretary of Agriculture. The Multiple-Use Sustained-Yield Act of 1960 (16 U.S.C. 528) and the National Forest Management Act of 1976 (16 U.S.C. 1600 *et seq.*), direct that National Forest System lands are to be managed for a variety of uses on a multiple-use basis to provide a continued supply of products, services, and values without impairment of the productivity of the land.

*National Forest System Land Designations*

The Forest Service used the most recent inventory available for each national forest and grassland to identify the inventoried roadless areas addressed by this rulemaking. It used land and resource management plans, other assessments, and the Roadless Area Review and Evaluation (RARE) II inventory. The Forest Service began identifying roadless areas through RARE I in 1972. In 1979, the agency completed RARE II, a more extensive national inventory of roadless areas. RARE II built on the data in RARE I, and in most cases forest plans and other assessments were built on RARE II. In the limited circumstances where a forest plan or other assessment did not have a more recent inventory of roadless areas, the Forest Service used the RARE II inventory.

Using these inventories, the Forest Service has identified 54.3 million acres of inventoried roadless areas that are the subject of this rulemaking (Table 1). Road building is currently not allowed in 20.5 million of these 54.3 million acres. Many are designated as primitive or semi-primitive recreation areas in existing forest plans. Road building is allowed in the remaining 33.8 million acres of inventoried roadless areas subject to this rule. Within the total 54.3 million acres of inventoried roadless areas, an estimated 2.8 million acres have been roaded since they were inventoried. The remaining 51.5 million acres are the unroaded portions of inventoried roadless areas addressed in the rule.

Table 1 also displays the acreage of Congressionally designated areas and all other National Forest System lands. The National Forest System contains 42.4

million acres of Congressionally designated areas, such as Wilderness or Wild and Scenic Rivers. In addition to inventoried roadless areas and areas designated by Congress, there are 95.2 million acres of other National Forest System lands. There are approximately 386,000 miles of Forest Service roads, as well as other county, state, and federal roads, in these 95.2 million acres. However, some of these 95.2 million acres are unroaded areas where conservation of roadless characteristics may be desirable. Under current policy and forest plan direction, road building continues to be allowed in a substantial portion of the 95.2 million acres of other National Forest System lands and the 33.8 million acres of inventoried roadless areas.

TABLE 1.—NATIONAL FOREST SYSTEM DESIGNATIONS

| | Inventoried Roadless Areas | | | Wilderness [1] and other areas designated by Congress | All other National Forest System Lands |
|---|---|---|---|---|---|
| | Total | Roads allowed | Roads not allowed | | |
| Acres In Millions | 54.3 | 33.8 | 20.5 | 42.4 | 95.2 |
| Percentage of Total National Forest System | 28.0 | 17.0 | 11.0 | 22.0 | 50.0 |

[1] Road construction is not allowed in the 35 million acres in the National Wilderness Preservation System.

*Management of Roadless Areas*

The Forest Service presently manages a 386,000-mile road system that supports a wide variety of uses, activities, and management actions. Areas without roads have inherent characteristics and values that are becoming scarce in an increasingly developed landscape. While National Forest System inventoried roadless areas represent only about two percent of the United States' land base, they provide significant opportunities for dispersed recreation, sources of public drinking water, and large undisturbed landscapes that provide privacy and seclusion. In addition, these areas serve as bulwarks against the spread of invasive species and often provide important habitat for rare plant and animal species, support the diversity of native species, and provide opportunities for monitoring and research. Roadless areas remain roadless due to the difficulties in developing facilities, roads, and trails in rugged terrain; the high cost of development; the environmental sensitivity and high ecological values of roadless areas; low suitability for timber production; designated use for unroaded forms of recreation; controversy associated with development of roadless areas; and other factors.

Under current agency management policies, local agency officials have the authority to make decisions about road construction in the national forests and grasslands on a case-by-case basis. Agency officials make such decisions at the local level either through the forest planning process or through site-specific, project-level decisions. These planning processes require comprehensive public notice and comment. Additional information about the current planning process is included in the preamble discussion for proposed section 294.13.

**Proposed Roadless Area Conservation Rule**

The proposed roadless area conservation rule has a two-fold purpose. First, the Forest Service is proposing to immediately stop activities that have the greatest likelihood of degrading desirable characteristics of inventoried roadless areas, based on decisions made at the national level through this public rulemaking process. Second, the Forest Service is proposing to ensure that the significant characteristics of both inventoried roadless and other unroaded areas (that is, generally smaller areas never previously inventoried) are identified and considered through local forest planning efforts. The proposed rule would establish a framework whereby the Forest Service: (1) manages inventoried roadless areas partly by national decisionmaking and partly through local forest planning efforts, and (2) manages other unroaded non-inventoried areas exclusively through the local planning process.

At the national level, the rulemaking would apply to all National Forest System lands and would prohibit road construction in almost all inventoried roadless areas, with a few limited narrow exceptions. The national decision process would reduce the time, expense, and controversy associated with making case-by-case decisions at the local forest level concerning the construction and reconstruction of roads in inventoried roadless areas, and preserve options for dealing with these areas for the future.

The proposed rule also recognizes the role of local forest decisionmaking for management of both inventoried roadless and smaller or uninventoried unroaded areas. The rule would establish procedures whereby local decisionmakers would consider social and ecological characteristics of inventoried roadless and other unroaded areas through their local forest planning efforts. With respect to inventoried areas, local responsible officials could not authorize the construction or reconstruction of roads but would retain discretion to consider appropriate additional management protection for inventoried roadless areas. For smaller uninventoried unroaded areas, the responsible official would evaluate the quality and importance of their characteristics, select those to be protected, and determine the level of protection through the forest planning process. Local officials' discretionary decisions would be informed by their evaluation of the quality and importance of the characteristics of the areas and their determination of whether these characteristics should be protected.

At the national level, the proposed rule covers inventoried roadless areas within the Tongass National Forest in a special provision. That provision postpones a decision regarding protection of these areas until April 2004, and specifically notes that the decision would be subject to existing statutory direction uniquely applicable to the Tongass National Forest.

Additional background information is included in the draft environmental impact statement accompanying this rulemaking. The draft statement discloses information about the physical, biological, social, and economic environments relevant to the proposed action. The entire draft environmental impact statement, or a summary, is available at the address listed in the **ADDRESSES** section of this proposed rule.

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**Regulatory Initiatives**

On January 28, 1998, the Forest Service gave advance notice of its intent to propose revising the National Forest Transportation System regulations (63 FR 4350) to address needed changes in how the agency's road system is developed, used, and maintained. On the same date, the agency also proposed a rule to suspend temporarily road construction and reconstruction in certain areas (63 FR 4354) and requested comment. The agency received more than 119,000 responses. On February 12, 1999, the agency published an interim final rule, which temporarily suspended road construction and reconstruction in most roadless areas of the National Forest System (64 FR 7290). The interim rule is intended to provide time for the agency to develop a long-term road management strategy and to consider more fully public concerns about roadless areas and road management.

On October 13, 1999, President Clinton directed the Forest Service to engage in rulemaking to protect roadless areas that "represent some of the last, best, unprotected wildland anywhere in our Nation." On October 19, 1999, the agency published a notice of intent to prepare an environmental impact statement and to announce the initiation of a public rulemaking process to propose the protection of certain roadless areas within the National Forest System (64 FR 56306). To assist in the development of the rule and alternatives, the agency requested public comment on the scope of the environmental analysis, on the identification of alternatives to the proposal, and on whether the rulemaking should apply to the Tongass National Forest in Alaska.

As part of the scoping process, the agency conducted 10 regional and national public meetings and also held local meetings, which were hosted by the 127 national forest and grassland headquarters. Attendance at the public meetings ranged from as few as 5 people to over 700; typical registration was 50 to 100 people in most communities. Total attendance for all public meetings was approximately 16,000. The agency has received approximately 365,000 written responses to the notice of intent, including approximately 336,000 form letters, from individuals, groups, organizations, and other government agencies.

The agency has used these comments to further refine the scope of the decision to be made, identify significant issues, shape the alternatives, identify possible mitigation measures, and direct the "effects analysis" in the draft environmental impact statement. The six major topics that were identified as a result of the scoping process include issues related to: (1) access; (2) identification of "other unroaded" areas; (3) exemptions; (4) environmental, social, and economic effects; (5) the degree of local involvement in roadless area decisions; and (6) the impacts to communities that depend on the use of National Forest System lands. The draft environmental impact statement. which accompanies this proposed rule includes a more complete description of the issues; alternatives; and environmental, social, and economic effects that were identified as a result of comments submitted in response to the notice of intent.

Having considered the scoping comments and having identified and analyzed alternatives and effects, the agency is proposing a rule to amend Part 294—Special Areas, of Title 36 of the Code of Federal Regulations. The provisions of the proposed rule include a national prohibition on road construction or reconstruction in the unroaded portions of inventoried roadless areas and, during forest plan revision, evaluation of roadless characteristics in the context of overall multiple-use objectives.

This rulemaking is not an effort to expand the National Wilderness Preservation System. The Forest Service recognizes that only Congress may designate wilderness. The Forest Service will continue managing inventoried roadless areas and other unroaded areas within the multiple-use framework required by law.

*Other Regulatory Initiatives*

The agency has also recently proposed other regulations and policies that address the management of the National Forest System and how the agency must make decisions about road construction in national forests and grasslands.

*Proposed Land and Resource Management Planning Rule.* The Forest Service proposed this rule on October 5, 1999 (64 FR 54074). This rule proposes to revise the agency's regulations under the National Forest Management Act. The proposed rule would provide for the long-term sustainability of national forests and grasslands, ensure collaboration with the public, and integrate science more effectively into the planning process. The proposed rule would allow the Forest Service to make special designations for roadless and unroaded areas.

*Proposed Road Management Rule and Policy.* The agency proposed this rule and administrative policy on March 3, 2000 (65 FR 11676). The administrative policy would establish procedures for making decisions about road construction, reconstruction, and decommissioning in national forests. The proposed policy would require that the Forest Service incorporate a science-based road analysis into other analyses and assessments and also conduct a science-based road analysis for any new proposed road construction. The proposed policy also would require the Forest Service to emphasize maintenance and decommissioning of roads over the construction of new roads. In addition, the policy proposes transitional procedures (FSM 7710.32, paragraphs 2 and 3) that address road construction in sensitive roadless and unroaded areas until forest plan revision. The transitional procedures require that responsible officials identify a compelling need and complete an environmental impact statement signed by the Regional Forester before road construction can occur in inventoried roadless and other unroaded areas. The proposed roadless area conservation rule, if adopted, would replace the road management policy's transition language regarding inventoried roadless areas and other unroaded areas.

**Section-by-Section Discussion of the Proposed Rule**

*Authority*

This proposed rule is within the scope of the Secretary of Agriculture's authority, as granted by the Organic Administration Act of 1897 (16 U.S.C. 551), "to regulate the occupancy and use and to preserve the forests thereon from destruction." Congress elaborated on this duty in the Multiple-Use Sustained-Yield Act of 1960 by directing the Secretary of Agriculture to administer National Forest System lands to achieve the multiple use and sustained yield of renewable resources "without impairment of the productivity of the land" (16 U.S.C. 528–531). Furthermore, National Forest System management must be accomplished in compliance with a host of administrative and environmental laws. Of particular relevance to this proposal is the Secretary of Agriculture's responsibility for the administration of an adequate system of roads and trails on the National Forest System authorized by the National Forest Roads and Trails Act (16 U.S.C. 532–538).

The Forest and Rangeland Renewable Resources Planning Act, as amended, directs the Secretary of Agriculture to install a proper system of transportation that is both economically and environmentally sound. Furthermore, all roads are to be "designed to standards appropriate for the intended uses, considering safety, cost of transportation, and impacts on land and resources" (16 U.S.C. 1608 (c)).

The Forest Service has regulations to guide road management, at 36 CFR part 212, in accordance with their responsibility for management of forest development roads and trails under the authority of the Surface Transportation Assistance Act of 1978 (23 U.S.C. 201, 205). As mentioned previously, the agency has published a proposal to amend regulations at 36 CFR part 212. Also, the Secretary has been granted broad authority under the Forest and Rangeland Renewable Resources Planning Act, as amended, to establish such rules as he determines necessary and desirable to manage the national forests. (16 U.S.C. 1613).

*Proposed § 294.10—Purpose*

This section of the proposed rule identifies that the agency's goal is to provide lasting protection for inventoried roadless areas and other unroaded areas in the context of multiple-use management. That goal would be accomplished through the combination of limited national prohibitions set out in § 294.12 and the procedural mechanisms set out in § 294.13.

*Proposed § 294.11—Definitions*

This section of the rule sets out the terms and definitions used in this proposed regulation. The section first defines inventoried roadless areas. These areas were identified using various forest planning and assessment processes, including RARE II, forest plan revisions, and the Southern Appalachian Assessment. The 1996 Southern Appalachian Assessment was a state and federal interagency review of that region's environmental health and ecological problems. Roadless areas were inventoried as part of that assessment.

These plans and assessments resulted in the currently mapped configurations, referred to as "inventoried roadless areas." The maps are maintained at the national headquarters of the Forest Service and are the official maps for the proposed rule. In the event a modification to correct any clerical, typographical, or other technical error is needed, the change will be made to the national headquarters maps and the corrected copies of the maps made available on the web at roadless.fs.fed.us/. Prior to finalizing this proposed rule, map adjustments may be made for forests and grasslands currently undergoing assessments or land and resource management plan revisions.

For the purposes of this rulemaking, the agency is proposing definitions for various categories of roads. These definitions reflect the agency's best efforts to coordinate the use of these terms with other initiatives that use similar terminology. The defined road terms are: road, classified road, unclassified road, road construction, and road reconstruction. The Forest Service encourages reviewers to closely scrutinize these definitions with the understanding that the terms and definitions used in the final rule will be coordinated with the terminology used in other agency initiatives.

An unroaded area is defined as any area without the presence of a classified road, which is of a size and configuration sufficient to protect the inherent characteristics associated with its unroaded condition. This definition also is similar to the definition used in the proposed road management policy (also called transportation rule).

A definition is proposed for the term "unroaded portion of an inventoried roadless area." This definition clarifies that the prohibition and evaluation requirements of this proposed rule are not intended to apply to the portions of inventoried roadless areas that have had classified roads constructed since the area was inventoried. It should be noted that the criteria used to identify and inventory roadless areas in forest planning (Forest Service Handbook 1909.17, chapter 7) allowed the presence of certain types of classified roads, as long as the area, otherwise, met certain minimum criteria.

*Proposed § 294.12—Prohibition on Road Construction and Reconstruction in Inventoried Roadless Areas.*

Paragraph (a) of this section proposes to prohibit road construction or reconstruction in the unroaded portions of inventoried roadless areas, except for the circumstances listed in proposed paragraphs (b)(1) through (b)(4) and paragraph (c). Nothing in this section is intended to prohibit the authorized construction or maintenance of motorized or non-motorized trails of any size that are classified and managed as trails pursuant to agency direction (FSM 2350).

Proposed paragraph 294.12 (b) would allow certain limited exceptions to the road construction prohibition. The exceptions in proposed paragraphs (b)(1) and (b)(3) parallel the exceptions used in the interim roads rule (64 FR 7290). The public health and safety exception at proposed paragraph (b)(1) would apply only when needed to protect public health and safety in cases of an imminent threat of a catastrophic event that might result in the loss of life or property. It is not intended to be construed as permission to engage in routine forest health activities, such as temporary road construction for thinning to reduce mortality due to insect and disease infestation.

The exception in proposed paragraph (b)(2) would permit entry for activities undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) and other identified statutes. An example of a Superfund activity is to correct the bleeding of toxic chemicals from an abandoned mine.

Proposed paragraph (b)(3) would permit the construction and reconstruction of a road pursuant to valid existing rights granted in statute or treaty, or pursuant to a reserved or outstanding right. These include, but are not limited to, rights of access provided in the Alaska National Interest Lands Conservation Act of 1980 (ANILCA), highway rights-of way granted under R.S. 2477, and rights granted under the General Mining Law of 1872, as amended.

Proposed paragraph (b)(4) would permit realignment of an existing road when it is causing irreparable resource damage in its current location. The road must be essential for public or private access, management, or public health and safety, and the damage cannot be corrected by maintenance.

Proposed paragraph (c) specifies that inventoried roadless areas in the Tongass National Forest will be addressed in a different way, as proposed in paragraph 294.13 (e). The notice of intent indicated that the Forest Service would determine whether or not the proposed rule should apply to the Tongass National Forest. The Forest Service is proposing to delay consideration of protecting inventoried roadless areas for the Tongass National Forest until April 2004, in light of recent Forest Plan decisions that conserve roadless areas and a Southeast Alaska economy that is in transition. The amount and distribution of roadless areas figured prominently in a 1997 Regional Forester decision for the Tongass Land Management Plan. In 1999, the Under Secretary for Natural Resources and the Environment issued a Record of Decision for the Tongass

Land Management Plan in response to several appeals that identified issues related to roadless areas and the qualities they provide. The 1999 decision administratively protected additional lands from road construction and extended harvest rotation in some areas, thus slowing the rate of road construction and harvest. Currently, 82 percent of the Tongass National Forest's approximate 17 million acres is allocated for land use prescriptions that prohibit or limit road construction.

With the recent closure of pulp mills and the ending of long-term timber sale contracts, the timber economy of Southeast Alaska is transitioning to a competitive bid process. About two-thirds of the total timber harvest planned on the Tongass National Forest over the next 5 years is projected to come from inventoried roadless areas. If road construction is prohibited in inventoried roadless areas, approximately 95 percent of the timber harvest within those areas would be eliminated. Under current circumstances, use of the Tongass National Forest's inventoried roadless areas for timber production contributes to the Forest Service's effort to seek to meet (within the meaning of section 101 of the Tongass Timber Reform Act) market demand for timber in the Tongass National Forest, consistent with providing for the multiple use and sustained yield of all renewable forest resources. However, with the continuing transition of the southeast Alaska timber market to an independent bid market, coupled with the long-term projected decline in timber demand for southeast Alaska timber, it is also possible that, by 2004 (when a review of the revised Tongass Land Management Plan is required), the long term demand for timber may be substantially reduced and market demand could be met consistent with protecting existing inventoried roadless areas. Hence, protection of these areas is excluded from proposed § 294.12 and, as noted in subsequent discussion, the decision of whether to prohibit road construction is deferred until 2004, as provided in proposed paragraph 294.13 (e).

Proposed paragraph (d) would permit maintenance activities for classified roads included in an inventoried roadless area; however, reconstruction that would expand road size or use beyond the current level would not be permitted. The responsible official is expected to apply a science-based roads analysis when determining whether an unclassified road is needed for long-term management of National Forest System lands and should be classified and maintained.

*Proposed § 294.13—Consideration of Roadless Area Conservation During Forest Plan Revision*

This section of the proposed rule would require that the responsible official evaluate the quality and importance of the roadless area characteristics and determine whether and how the characteristics should be protected in the context of overall multiple-use objectives during forest plan revision. Under the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976 (NFMA), the Secretary of Agriculture is required to "develop, maintain, and, as appropriate, revise land and resource management plans for units of the National Forest System" (16 U.S.C. 1604(a)). Land and resource management plans (also referred to as forest plans), in large part, furnish overall programmatic guidance for the management of individual national forests and grasslands. An approved land and resource management plan is the product of a comprehensive notice and comment process, which was established by Congress in the National Forest Management Act (NFMA). The land and resource management plan provides direction to ensure coordination of multiple uses (such as, outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness) and the sustained yield of products and services (16 U.S.C. 1604(e)).

Forest plan approval, amendment, and revision does not authorize, fund, or carry out any projects, unless specifically addressed in the document that discloses the decision. Projects are implemented through project-level, site-specific decisions, which are analyzed and disclosed to the public. The proposed rule would not alter this staged decisionmaking system for forest planning and project decisionmaking. However, the proposed rule would no doubt influence decisions made at each stage by requiring the consideration of roadless values and characteristics in the forest planning process. The prohibition against road construction and reconstruction in inventoried roadless areas, as described in proposed paragraph 294.12 (a), would establish a constraint on local decisionmaking, whether at the planning or project decisionmaking stage with respect to these areas. In contrast, the language in proposed § 294.13 imposes no specific, substantive constraint on local decisionmaking, but does add additional considerations at the time of the revision of forest plans. These supplemental requirements do not alter the forest planning and project decisionmaking processes.

Currently, all national forests and grasslands operate under land and resource management plans developed under the existing forest planning regulations at part 219 of title 36 of the Code of Federal Regulations. Plans are changed by revision and amendment. The National Forest Management Act requires revision of plans at least every 15 years, although revision may occur whenever circumstances affecting the entire plan area or major portions of the plan have changed significantly.

Proposed paragraph (a) provides that, during plan revision, the responsible official must evaluate the quality and importance of specified roadless area characteristics. Proposed paragraph (b) (1) would require that the evaluation be applied to the unroaded portions of inventoried roadless areas to determine whether additional management restrictions, over and above those required in proposed paragraph 294.12 (a), are appropriate. Proposed paragraph (b) (2) of this section sets out criteria for selecting other unroaded areas to be considered. At the time of forest plan revision, the responsible official must determine what unroaded areas are of a sufficient size, shape, and location to merit review. It is not the intent of the agency to create a situation where all unroaded areas, or areas of a certain size, must be mapped. The agency believes that the method of selection or delineation of unroaded areas for evaluation under § 294.13 (b) (2) is best left to the local official's judgment.

Proposed paragraphs (c) and (d) state that, following the evaluation of characteristics required in paragraph (a), the responsible official must determine, in the context of overall multiple-use objectives, whether and, if so, how the characteristics should be protected. Proposed paragraphs 294.13 (c) and (d) are set out in separate paragraphs to clarify that the requirement to determine whether the characteristics merit protection applies to the unroaded portions of inventoried roadless areas, in addition to the prohibitions in § 294.12, as well as to other unroaded areas. During plan revision, responsible officials would be required to evaluate the characteristics in the unroaded portions of inventoried roadless areas to determine whether additional protection is warranted over and above the prohibition on new roads. In addition, with respect to other unroaded areas, as identified in paragraph (b) (2), the responsible official must select areas in which the characteristics merit protection.

Proposed paragraph (e) identifies special review provisions for the Tongass National Forest. The responsible official would determine whether the prohibitions and provisions of paragraphs (a), (b), and (d) of § 294.12 should apply to any or all of the unroaded portions of inventoried roadless areas on the Tongass National Forest. In making that determination, the responsible official must consider, among other things, the provisions of section 101 of the Tongass Timber Reform Act. This section, amending Section 705 of the Alaska National Interest Lands Conservation Act, requires the agency to seek to provide a supply of timber from the Tongass National Forest that meets market demand, consistent with providing for the multiple use and sustained yield of all renewable resources, subject to appropriations, other applicable laws, and requirements of the National Forest Management Act of 1976. The responsible official's evaluation would be conducted in association with the 5-year review (beginning in April, 2004) of the April 1999 Tongass Land and Resource Management Plan, pursuant to 36 CFR 219 (10)(g). A forest plan amendment or revision would be initiated, including full opportunity for public involvement, if the responsible official determines that some or all of the inventoried roadless areas on the Tongass National Forest merit the protection provided by section 294.12.

Proposed paragraph (f) is intended to clarify that nothing in this section requires or allows a responsible official to overrule the § 294.12 prohibition on road construction or reconstruction in inventoried roadless areas during plan revision. The prohibitions established in proposed § 294.12 are permanent limitations, which may only be changed through rulemaking, not through forest plan amendment or revision.

The agency has identified eight broad characteristics of roadless areas.

*Proposed Roadless Characteristics*

(1) *Soil, water, and air.* These three key resources are the foundation upon which other resource values and outputs depend. Healthy watersheds provide clean water for domestic, agricultural, and industrial uses; help maintain abundant and healthy fish and wildlife populations; and are the basis for many forms of outdoor recreation. Healthy watersheds provide a steady flow of high quality water, maintain an adequate supply of water, and reduce flooding. Managing land uses to keep watersheds properly functioning and in natural balance is critical to maintaining watershed health and productivity. Roadless areas generally have attributes that promote watershed health, primarily because minimal ground-disturbing activities have occurred. Ground disturbing activities can accelerate erosion, increase sediment yields, and disrupt normal flow processes. Roadless areas maintain healthy and productive soils, which promote water entry into aquifers, minimize accelerated runoff, and provide for a diverse and abundant plant community important to both human and animal health. Roadless areas are less likely to suffer from human-caused landslides and other soil movement that fill streams with sediment and debris and disrupt normal stream processes. Roadless areas also have less dust and vehicle emissions, which reduce air quality, elevate human health risks, and diminish water quality. Roadless areas help maintain the high quality visibility that forest users seek when visiting the national forests.

(2) *Sources of public drinking water.* National Forest System lands contain watersheds that are important sources of public drinking water. Careful management of these watersheds is crucial in maintaining the flow of clean, cool water to a growing population. While some land management activities are already restricted in designated municipal watersheds, multiple-use management is a common practice in most watersheds that serve as source areas for public drinking water. Allowing management activities that promote roadless characteristics while minimizing activities that increase pollution risk are critical steps in protecting public drinking water sources and in saving local communities the financial burden of the additional water filtration and treatment costs.

(3) *Diversity of plant and animal communities.* The diversity of plant and animal communities and the overall biodiversity supported by these areas represent an important part of the nation's natural heritage. Unroaded areas are more likely than roaded areas to support greater ecosystem health, including the diversity of native and desired non-native plant and animal communities, due to the absence of disturbances caused by roads and accompanying activities. Healthy ecosystems can be characterized by the degree to which ecological factors and their interactions are reasonably complete and functioning for continued resilience, productivity, and renewal of the ecosystem. Native plant and animal communities tend to be more intact in these less disturbed areas. Roadless areas also conserve native biodiversity, by providing a buffer against the spread of invasive species.

Conserving biodiversity offers many benefits to society. The public has recognized the importance of protecting species and ecosystems for their utilitarian, subsistence, and intrinsic values. Important benefits provided by healthy ecosystems, with diverse organisms and intact natural processes, include: (1) conservation of air, water, and soil quality and (2) sustainable levels of goods and services, including viable and desired levels of both game and non-game species. In addition to these important reasons for maintaining healthy ecosystems with a full component of biodiversity, many species are valuable for medicinal and agricultural purposes.

Protecting and maintaining biodiversity also provides the opportunity for the appreciation and enjoyment of natural beauty and gives future generations the chance to experience wild places, with their unique living plant and animal communities.

(4) *Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land.* Roadless areas function as biological strongholds and refuges for many species. These areas help to maintain native species viability and biodiversity. Based on scientific estimates, over 500 United States species are known, or are suspected, to be extinct. Of the nation's species currently listed as threatened, endangered, or proposed for listing under the Endangered Species Act, approximately 25 percent of animal species and 15 percent of plant species are likely to have habitat within inventoried roadless areas in the National Forest System. Many of these areas, individually and cumulatively, play an important role in maintaining habitat that provides for species viability and biological diversity, and may be instrumental in preserving many threatened, endangered or sensitive species.

(5) *Primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation.* In roadless areas, people have the opportunity to enjoy unique recreational experiences that are usually not available in more developed areas. These opportunities include the chance to experience renewal, isolation, independence, and closeness to nature in mostly undisturbed settings. The Forest Service manages environmental settings to provide, among other things, opportunities for recreational

experiences. The Recreation Opportunity Spectrum (ROS Users Guide, FSM 2311 and FSH 2309.27) was developed to provide a framework for classifying and defining segments of outdoor recreational environments, potential activities, and experiential opportunities.

The Recreation Opportunity Spectrum's settings, activities, and opportunities represent a continuum that is divided into six classes: primitive, semi-primitive non-motorized, semi-primitive motorized, roaded natural, rural, and urban. Inventoried roadless and other unroaded areas are characterized mainly by the primitive, semi-primitive non-motorized, and semi-primitive motorized classes.

Primitive and semi-primitive non-motorized classes often have many wilderness attributes; however, unlike wilderness, the use of mountain bikes and other mechanized means of travel, such as those used by people with disabilities, can be permitted. In addition, these classes have fewer restrictions on motorized tools, search and rescue operations, and aircraft use than in wilderness areas.

In semi-primitive motorized settings, there is little evidence of managerial control, yet these areas allow some motorized activities, such as: off-highway vehicle, over-snow vehicle, motorboat, and helicopter use; chainsaw and other motorized tool use; and appropriate motor vehicle use for other resource management activities. In addition, persons with disabilities have enhanced access capability in semi-primitive motorized class areas.

Inventoried roadless and other unroaded areas may provide outstanding opportunities for other dispersed recreational activities, such as hiking, fishing, camping, hunting, picnicking, wildlife viewing, cross-country skiing, and canoeing. All of these activities and those mentioned for the semi-primitive motorized class may occur in areas on the developed end of the spectrum, but the experience is different. Roaded natural, rural, and urban classes are characterized by increased interactions with other people, more sights and sounds of human development and activity, more management restrictions and controls, and more landscape modification resulting from resource management activities.

Inventoried roadless and other unroaded areas are the last remaining relatively undisturbed landscapes outside of wilderness and similarly designated areas. The demand for motorized and non-motorized recreation opportunities is increasing. As these lands continue to be developed, the supply of unroaded lands that are available for dispersed recreation is reduced.

(6) *Reference landscapes.* An objective on National Forest System lands is to create and maintain sustainable ecosystems that can support human needs indefinitely. To reach that goal, both human and ecological processes and their interactions must be understood. The body of knowledge about the effects of management activities over long periods of time and on large landscapes is very limited. However, there is an increasing emphasis on the importance of obtaining information about large-scale ecological patterns, processes, and the impact of management activities.

Reference landscapes can provide comparison areas for evaluation and monitoring. These areas provide a natural setting that may be useful as a comparison to study the effects of more intensely managed areas.

Reference areas are not intended to exclude all management activities. The management approach used for these lands should be directed by the assessment of local conditions and the questions and solutions sought by scientists, managers, and the public. For example, reference areas may provide useful long-term information about approaches to restoring historical fire regimes and fuel loads in the intermountain West. In this case, various management scenarios can be applied: some areas may be allowed to burn only by wildland fire, some allowed to use prescribed fire, others allowed a combination of thinning and prescribed fire, and yet still other areas selected for fire suppression. By applying various management scenarios, the agency may better understand how to more effectively manage healthy diverse ecosystems.

(7) *Landscape character and scenic integrity.* High quality scenery, especially scenery with natural-appearing landscapes, is a primary reason that people choose to recreate. In addition, quality scenery contributes directly to real estate values in neighboring communities and residential areas.

Scenic quality is based on two definable elements—landscape character and scenic integrity. "Landscape character" is the overall visual impression of landscape attributes that provides a landscape with an identity and sense of place. It consists of the combination of physical, biological, and cultural attributes that makes each landscape identifiable and distinct. "Scenic integrity" is a measure of the wholeness or completeness of the visual landscape, including the degree of deviation from the overall landscape character. A landscape that is perceived to have minimal to no deviation from its natural landscape is rated as very high or high scenic integrity. Those landscapes that are heavily altered may have low to very low scenic integrity.

The scenic integrity of landscapes in inventoried roadless areas and other unroaded areas is generally high. However, altered landscapes, which exist in some of these areas due to activities such as mining, timber harvesting, grazing, and special uses, tend to have lower levels of scenic integrity.

(8) *Traditional cultural properties and sacred sites.* Traditional cultural properties are places, sites, structures, art, or objects that have played an important role in the cultural history of a group. Sacred sites are places that have special religious significance to a group. Traditional cultural properties and sacred sites may be eligible for protection under the National Historic Preservation Act. However, many of them have not yet been inventoried, especially those that occur in roadless areas.

Roadless areas may have traditional cultural properties and sacred sites, which are in a relatively unaltered state, thereby, maintaining their original character. There is reduced opportunity for vandalism, human disturbance, and unintended damage to these properties and sites in roadless areas because of the lack of disturbance in those areas.

Roadless areas also enhance the ability of groups to continue customary uses of traditional cultural properties and sacred sites. For example, many sacred sites are used by Native Americans for ceremonial purposes. These ceremonies may require privacy, which is possible due to the relative remoteness of roadless areas.

(9) *Other locally identified unique characteristics.* This optional provision is proposed to provide local officials, in partnership with interested members of the public, the opportunity to identify characteristics that are unique to a specific area. Inventoried roadless areas and other unroaded areas may offer unique characteristics and values, which are not covered by the other characteristics. Examples of additional characteristics might be uncommon geological formations, which are valued for their scientific and scenic qualities, or unique wetland complexes. While some of the unique characteristics may only have local importance, others could have regional or even global

significance, such as roadless areas that provide important stopover spots for long-ranging migratory birds. Such unique areas may become increasingly important, as other areas are developed.

Roadless areas may have unique social, cultural, or historical characteristics, which are dependent on the roadless character of the landscape. Examples of these characteristics include ceremonial sites, places for local events, areas prized for collection of non-timber forest products, exceptional hunting and fishing opportunities, or areas of historic significance.

In addition, the national requirement to evaluate characteristics of roadless areas, would safeguard many of the social values that are associated with those characteristics. These social values include: (1) the quality of human health through such actions as protecting air and water quality; (2) experiential values, such as appreciation of scenic beauty, solitude, and attachment to places or historical or cultural sites; (3) natural areas used for scientific research and teaching; and (4) other aspects, such as valuing the natural areas for their own sake or desiring to leave a legacy for future generations.

*Proposed § 294.14—Scope and Applicability*

If the proposed rule is adopted, it would apply prospectively, not retroactively. This provision is essential to avoid disruption and confusion among Forest Service officials and the public. Any project or activity decision signed prior to the effective date of the final regulation would be allowed, but not required, to proceed. The date of the responsible official's record of decision, decision notice, or decision memorandum would be the authorization date.

Furthermore, road construction or reconstruction associated with ongoing implementation of long-term special use authorizations would not be prohibited. For example, all activities anticipated in an authorized ski area's master plan, including associated road construction, would not be barred even if a specific decision authorizing road construction has not been made as of the effective date of the final regulation. Subsequent authorizations would remain subject to all applicable laws, regulations, and permit requirements. Requests to expand permitted use would be subject to the prohibition in § 294.12.

The proposed regulation also clarifies that forest plan amendments would not be required when the final rule becomes effective. Just as development and approval of forest plans must conform to existing laws and regulations, forest plan management direction can be superseded by new laws or regulations. The Forest Service believes that requiring "conforming amendments" to forest plans would be redundant of the rulemaking process.

Local responsible officials' discretion to initiate land and resource management plan amendments, as deemed necessary, would not be limited by this provision. There may be instances where local officials elect to initiate amendment or revision of forest and grassland plans following final promulgation of this rule. Forest Service officials have several mechanisms that allow for evaluation of forest and grassland plan implementation, including plan-specific monitoring requirements, the 5-year review, the amendment and revision process, and, of course, project-level decisionmaking. A determination to amend or revise a land and resource management plan is based on a variety of factors. Forest Supervisors and Regional Foresters have substantial discretion in determining whether or not to initiate plan amendments or revisions.

**Summary**

The Forest Service believes that it is important to protect the roadless characteristics of unroaded areas within the context of its multiple-use mandate. The agency seeks to protect these characteristics in two ways. First, the proposed rule proposes to place a national prohibition on road construction or reconstruction in inventoried roadless areas. Second, responsible officials would be required to consider and evaluate the characteristics of all roadless areas, including inventoried areas and smaller or uninventoried areas, in the context of forest plan revisions. Although the proposed rule emphasizes the importance of the characteristics of unroaded areas, it does not propose to direct local managers to reach particular results. Rather, it is intended to allow them the flexibility to consider the values of these areas in the larger context of multiple-use management. The Forest Service invites written comments on both the draft environmental impact statement and the proposed rule and will consider those comments in developing the final environmental impact statement and the final rule. The final rule will be published in the **Federal Register**.

**Regulatory Impact**

This proposed rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this is a significant rule as defined by Executive Order 12866 because of the level of public interest expressed in response to the notice of intent to prepare a draft environmental impact statement. Accordingly, OMB has reviewed this proposed rule. A cost-benefit analysis has been prepared and is summarized in the following discussion.

**Summary of the Results of the Cost-benefit Analysis**

The agency has conducted a cost-benefit analysis on the impact of this proposed rulemaking. Table 2 presents the costs and benefits that the agency was able to quantify or qualitatively describe. The agency is soliciting public comment on all categories of costs and benefits and welcomes information to further describe these effects. Comments containing specific data to support estimates of potential costs and benefits will be most useful and are more likely to be incorporated into the agency's final cost-benefit analysis. The agency will make a reasonable effort to further pursue estimating the costs and benefits of this rulemaking, and will use the information gained in public comment to finalize the cost-benefit analysis to the extent feasible and appropriate.

Few of the benefits and costs associated with the proposed rule were quantifiable, and; therefore, many of the costs and benefits are described qualitatively. Although the analysis does not provide a quantitative measure of net benefits, the agency believes the benefits of the rule, as proposed, would outweigh the costs. Local level analysis cannot easily incorporate the economic effects associated with nationally significant issues. Therefore, the agency believes the aggregate transactions costs (costs associated with the time and effort needed to make decisions) of local level decisions would be much higher than the transactions costs of a national policy, because of the controversy surrounding roadless area management.

Most of the benefits of the rule result from maintaining roadless areas in their current state, and therefore maintaining the current stream of benefits from these areas. The costs are primarily associated with lost opportunities, since the proposed rule, if finalized as proposed, would limit some types of activities that might have occurred in the future without this rule. Table 2 summarizes the potential benefits and costs of the rule, as proposed. The benefits and costs, described in Table 2, are associated with the requirement to

prohibit road construction and reconstruction in the approximately 43 million acres of unroaded inventoried roadless areas.

*Potential Benefits of the Prohibition on Road Construction*

Undisturbed landscapes provide a variety of monetary and non-monetary benefits to the public. Many of these benefits are associated with the protection of ecological, social, and economic values in roadless areas.

Air and water quality would be maintained at a higher level than at the baseline (current management conditions). Higher water quality provides a higher level of protection for drinking water sources, reduces treatment costs at downstream facilities, and maintains the value of water-based recreation activities. Higher air quality protects values associated with visibility, including recreation and adjacent private property values.

A greater degree of protection of biological diversity and threatened and endangered species would occur if roads were prohibited in inventoried roadless areas as opposed to the baseline. As a result, ecological values would be maintained. Passive use values related to the existence of biological diversity and threatened and endangered species would be maintained, as well as values associated with protecting these areas for future generations.

A number of other benefits are associated with maintaining healthy wildlife and fish populations at a level higher than at the baseline. Some game species are likely to benefit from this protection, which would maintain quality hunting and fishing experiences both within the unroaded portions of inventoried roadless areas and beyond. Other types of recreation experiences, such as wildlife viewing, also would benefit.

Roadless areas are important in providing remote recreation opportunities. A greater number of acres in these recreation settings would be maintained than at the baseline. Remote areas are also important settings for many outfitter and guide services. Maintaining these areas increases the ability of the agency to accommodate additional demand for these types of recreation special use authorizations.

Roadless areas provide a remote recreation experience without the activity restrictions of wilderness use (for example, off-highway vehicle use and mountain biking). Maintaining roadless areas would likely lessen pressure on wilderness areas compared to the baseline.

The risk of introducing non-native invasive species would be reduced if road access were not available. This is beneficial to grazing permittees with allotments in roadless areas, and to collectors of non-timber forest products because forage quality and quantity, and forest products that cannot compete with invasive species would be maintained. The reduced probability of introduction would also be beneficial to forest health in inventoried roadless areas, and would contribute to the maintenance of biological diversity.

Some planned timber sales into the unroaded portions of inventoried roadless areas would likely be below cost. To the extent that these sales would not take place, a financial efficiency savings would be realized.

Implementing the rule, as proposed, could result in agency cost savings. First, local appeals and litigation about some management activities in roadless areas could be reduced, which would avoid future costs. Secondly, the reduction in miles of roads constructed would reduce the number of miles the agency is responsible for maintaining, resulting in avoiding up to an additional $565,000 per year of costs.

*Potential Costs of the Prohibition on Road Construction*

The prohibition on road construction and reconstruction would reduce roaded access to resources within the unroaded portions of inventoried roadless areas compared to the baseline. Roads are required for most timber sales to be economically feasible. For those sales that are financially profitable, the proposed rule would reduce net revenues. In addition to lost revenue, there would be fewer jobs (250 direct timber jobs) and less income ($11.7 million in timber-related labor income per year) generated from timber harvest.

Receipts from timber sales would also decline, which would reduce payments to states by about $1.4 million per year. Jobs associated with road construction and reconstruction for timber harvest and other activities would also be less than at the baseline. Somewhere between 6 and 32 direct jobs could be affected by reduced road construction and reconstruction.

The impact on mineral resources is expected to be greatest for leasable (such as oil, gas, coal, and geothermal) and saleable (such as sand, gravel, stone, and pumice) minerals, since development might not be economically feasible without road access. The agency also has more management discretion regarding whether to allow access to these commodities than locatables (metallic and nonmetallic minerals on public domain land). Exploration costs for locatable minerals may increase under the restrictions of this rule as well. The increase in exploration and development costs may reduce the number of leases relative to the baseline, which reduces the number of jobs, income, and payments to states associated with these activities. In the near term the impact is expected to be minimal, since there has been limited industry interest in most leasables on National Forest System lands.

New roads have the potential to reduce operating costs for other users, for example, grazing permittees and collectors of non-timber forest products by allowing faster and easier access. These potential cost reductions would not be realized if road construction is prohibited. However, it is unknown whether planned roads would in fact be useful to these groups, since their proximity to grazing allotments and desirable products is unknown.

New roads built for other purposes also provide additional access for recreationists, including hunters and anglers. The agency builds few roads for recreation purposes, and this pattern is unlikely to change. However, the costs imposed on these groups by not building new roads would be minimal, since the agency would close most of the roads built for resource extraction once the extraction is complete. Therefore, the number of road miles that would be available for recreational or other uses would be small.

Opportunities for some types of recreation special uses may be limited in the future. Developed recreation use and roaded recreation uses in general are likely to occur at higher densities than under the baseline, since expansion into the unroaded portions of inventoried roadless areas would not occur. However, this expansion would be a small area in any particular year. The development of new ski areas would be unlikely.

Other, non-recreation special uses may be limited in the future as well. Such special uses include communication sites, and energy-related transmission uses (such as ditches and pipelines, and electric transmission lines).

Fewer acres of inventoried roadless areas would likely be treated for forest health purposes. Most moderate and high risk forests in inventoried roadless areas would be given a low priority for treatment, unless there was an imminent threat to public safety, private property, water quality, or threatened and endangered species. The change in the number of acres that potentially would be treated is small relative to the

total acres at risk, but there could be a slight increase in the risk from catastrophic fire or insect and disease from reduced treatment opportunities.

Agency costs would increase compared to the baseline for some types of activities. Fuel treatment and other forest health treatment costs in the unroaded portions of inventoried roadless areas would increase.

The goods and services that could not be produced on the unroaded portions of inventoried roadless areas without road construction are likely to be produced either on other parts of National Forest System lands, or on other lands. Substitute production could result in adverse environmental effects on these other lands.

*Potential Costs and Benefits of the Requirement to Consider Roadless Characteristics*

The procedural provisions in the proposed rule do not directly implement or prohibit any ground-disturbing activity. The procedures are designed to give local decision-makers direction in design and implementation of local projects. The exact location and acreage of each potentially affected area is unknown. The procedural provisions would be applied to the 54 million acres of inventoried roadless areas, as well as up to 95 million acres of other National Forest System lands. The procedures would add about $11 million to planning costs over the next 5–15 years.

Since individual project proposals and local roadless characteristics are highly variable, estimating associated benefits and costs of implementing procedures would be speculative. Since it is reasonable to assume that the proposed procedural requirements would reinforce the effects achieved by the proposed requirements to prohibit road construction and reconstruction and that the procedural requirements would apply to a greater area than inventoried roadless areas, the economic effects are likely to be somewhat greater than the effects described by resource area.

TABLE 2.—SUMMARY OF COSTS AND BENEFITS OF THE PROHIBITION ON ROAD CONSTRUCTION IN THE PROPOSED ROADLESS AREA CONSERVATION RULE COMPARED TO CONTINUATION OF CURRENT MANAGEMENT PRACTICES

| Category | Assessment method |
|---|---|
| Potential Benefits: | |
| Air quality maintained at higher level in roadless and unroaded areas | Qualitative discussion. |
| Water quality maintained at higher level in roadless and unroaded areas | Qualitative discussion. |
| Larger land base for dispersed recreation activities in remote settings in roadless and unroaded areas | Qualitative discussion. |
| Quality of fishing and hunting maintained at higher level for recreation, commercial, and subsistence users in roadless and unroaded areas. | Qualitative discussion. |
| Forage quality for livestock grazing and some non-timber forest products maintained at higher level due to smaller probability of introduction of non-native invasive species. | Qualitative discussion. |
| Existence and bequest values maintained at higher levels because of increased protection of biological diversity and threatened and endangered species.. | Qualitative discussion. |
| Agency costs savings from reduced appeals and litigation on roadless management | Qualitative discussion. |
| Agency cost savings of up to $565,000 per year from reduced road maintenance costs | Agency estimate based on previous expenditures. |
| Potential Costs: | |
| Fewer timber related jobs: about 250 direct and 480 total jobs | Agency estimate using TSPIRS [1] data and IMPLAN [2] model multipliers. |
| Less timber related income per year: $11.7 million direct income and $21 million total income | Agency estimate using TSPIRS data and IMPLAN [2] model multipliers. |
| Less timber-related payments to states, up to $1.4 million per year | Agency estimate using TSPIRS data and National Forest Fund receipts data. |
| Fewer jobs associated with road construction, ranging from 6–36 jobs | Agency estimate using previous expenditures and IMPLAN model multipliers. |
| Increased exploration and development costs for leasable minerals (such as oil, gas, coal, geothermal) | Qualitative discussion. |
| Increased exploration costs for locatable minerals (metallic or nonmetallic minerals) | Qualitative discussion. |
| Increased exploration costs for saleable minerals (such as sand, stone, gravel, pumice) | Qualitative discussion. |
| Increased operating costs for grazing permittees and collectors of non-timber products | Qualitative discussion. |
| Reduced opportunities for roaded recreation | Qualitative discussion. |
| Decline in special-use authorizations (such as communications sites, electric transmission lines, pipelines). | Qualitative discussion. |
| Fewer opportunities for forest health treatments | Qualitative discussion. |

[1] TSPIRS is the Forest Service's Timber Sales Program Information Reporting System.
[2] IMPLAN (Impact Analysis for Planning) is the input-output model used by the Forest Service.

**Summary of the Results of the Initial Regulatory Flexibility Analysis**

For any agency that is subject to the notice and comment requirements of 5 U.S.C. 553 or any other law, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) directs that the agency prepare and make available for public comment an initial regulatory flexibility analysis. If the agency determines that the rulemaking will not have a significant impact on a substantial number of small entities, the initial regulatory flexibility analysis requirement does not apply, but the agency must make a certification of no significant impact.

The Forest Service expects that this roadless area conservation rulemaking will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (RFA). Moreover, because the proposed rule does not directly regulate small entities, the Forest Service does not believe that an initial regulatory

flexibility analysis is required. Nevertheless, given the significant public interest in the rulemaking and the comment received on this specific issue during the scoping process, the agency has prepared an initial regulatory flexibility analysis. Public comment is invited on the initial regulatory flexibility analysis, a summary of which follows. The full analysis is available upon request by calling the telephone number noted in the **FOR FURTHER INFORMATION CONTACT** section of this document and on the world wide web at roadless.fs.fed.us/.

Data for linking the proposed rule to effects on small businesses is limited. The agency does not typically collect information about the size of businesses that seek permission to operate on National Forest System lands.

The rulemaking has the potential to affect a subset of small businesses that may seek opportunities on National Forest System lands in the future. The primary effect of the rule, when finalized, is the potential to affect the future supply of outputs or opportunities for businesses. The effect of the rulemaking on local governments is tied to any possible reductions in commodity outputs in cases where some portion of federal receipts is returned to the states for distribution to counties.

Small businesses in the wood products sector most likely to be affected are logging and sawmill operations. Reductions in the harvest of softwood sawtimber, particularly in the western United States are most likely to affect small businesses, since these sectors are dominated by small business. With the exception of the Forest Service Intermountain Region (Utah, Nevada, western Wyoming, and southern Idaho), reductions in harvest are estimated to range from less than 1 percent to 2 percent. The reduction in the Intermountain Region is estimated to be 8 percent.

Small businesses in the mineral sector most likely to be affected are businesses that develop saleable minerals such as sand and gravel, and leasable minerals such as oil, gas, and coal. The prohibition on road construction and reconstruction could reduce opportunities in the future to develop mineral commodities that cannot be extracted without road access. Small businesses are more likely to be involved in the development of saleable minerals, and less likely to be involved in development of energy minerals.

The potential effects on small businesses involved in livestock grazing and the collection of non-timber forest products are expected to be negligible. There will be fewer roads available for their future use under the proposed rule, but the number of miles is minor compared to the entire National Forest System road system.

Special use authorizations on National Forest System land could be affected by the proposed rule, if road access is required. Most of the special uses potentially affected are dominated by large businesses, such as businesses in communication, electric services, gas production and distribution, and resort development. Small businesses with outfitter and guide permits are expected to benefit from the proposed rule, since these businesses are often dependent on providing services to recreation users interested in remote recreation activities that are often found in inventoried roadless and other unroaded areas.

The proposed rule is also likely to affect small governments that qualify as small entities. Many small communities around National Forest System lands receive a portion of receipts from commodity sales on National Forest System lands. A reduction in commodity production is likely to reduce revenues to these entities, although the estimated reduction is expected to be small in most regions. The estimated reduction in payments to states related to timber receipts would be about 1 to 2 percent, except in the Intermountain Region, where the reduction is estimated to be 8 percent.

The agency is soliciting comment and information on the potential impacts that this proposed rule and the alternatives to this rule (detailed in the Draft Environmental Impact Statement) might have on small entities. (Pursuant to the Regulatory Flexibility Act, these entities include small businesses, small organizations, and small governmental jurisdictions.) The agency welcomes information on the number and types of small entities potentially impacted and the significance of these potential impacts, specifically information about potential costs, changes in revenue or prices, regional or community-level impacts, and characteristics of the potentially impacted entities. The agency also welcomes suggestions from the public on how alternatives to this rule may minimize the impacts on small businesses. For more information on the agency's small entity impact analysis, including a list of specific questions on small entity impacts to which the agency is seeking responses from the public, please see the Initial Regulatory Flexibility Analysis, available at the website address listed under **ADDRESSES** or by calling the telephone number listed under the **FOR FURTHER INFORMATION CONTACT** sections of the preamble. The agency will use the information provided to make a determination on the regulatory flexibility analysis needed at the final rule stage.

### Unfunded Mandates Reform

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Department has assessed the effects of this proposed rule on state, local, and tribal governments, and on the private sector. This proposed rule does not compel the expenditure of $100 million or more by any state, local, or tribal government, or anyone in the private sector. Therefore, a statement under section 202 of the Act is not required.

### Environmental Impact

The agency has elected to prepare a draft environmental impact statement in concert with this proposed rule. This document may be obtained from various sources as indicated in the **ADDRESSES** section of this document. Reviewers are encouraged to include comments on the draft environmental impact statement along with any comments submitted on the proposed rule.

### No Takings Implications

This proposed rule has been reviewed for its impact on private property rights under Executive Order 12630. It has been determined that this proposed rule does not pose a risk of taking Constitutionally-protected private property; in fact, the proposed rule honors access to private property pursuant to statute and to outstanding or reserved rights.

### Civil Justice Reform Act

This proposed rule revision has been reviewed under Executive Order 12988, Civil Justice Reform. The proposed revision: (1) Preempts all state and local laws and regulations that are found to be in conflict with or that would impede its full implementation; (2) does not retroactively affect existing permits, contracts, or other instruments authorizing the occupancy and use of National Forest System lands, and (3) does not require administrative proceedings before parties may file suit in court challenging these provisions.

### Controlling Paperwork Burdens on the Public

This proposed rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR Part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995

(44 U.S.C. 3501, *et seq.*) and implementing regulations at 5 CFR Part 1320 do not apply.

**Federalism**

The agency has considered this proposed rule under the requirements of Executive Order 12612 and has made a preliminary assessment that the proposed rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, the agency has determined that no further assessment on federalism implications is necessary at this time. In addition, the agency has reviewed the consultation requirements under Executive Order 13132, effective November 2, 1999. This new Order calls for enhanced consultation with state and local government officials and emphasizes increased sensitivity to their concerns.

In the spirit of these new requirements, Forest Service line officers in the field were asked to make contact with tribes to ensure awareness of the initiative and of the rulemaking process. Outreach to tribes has been conducted at the national forest and grassland level, which is how Forest Service government-to-government dialog with tribes is typically conducted.

Outreach to state and local governments has taken place both in the field and Washington offices. Forest Service officials have contacted state and local governmental officials and staffs to explain the notice of intent and the rulemaking process. The agency has met with and responded to a variety of information requests from local officials and state organizations, such as the National Governors Association and the Western Governors Association.

Also, the agency has carefully considered, in the development of this proposed rule, the comments received from states, tribes, and local governments in response to the Notice of Intent to Prepare an Environmental Impact Statement published October 19, 1999 (64 FR 56306). Following publication of this proposed rule, the agency will meet with state, tribal, and local government officials to explain and clarify the proposed rule and the accompanying environmental impact statement. Finally, prior to adopting a final rule, the agency will consider the extent to which additional consultation is appropriate under Executive Order 13132.

**Conclusion**

The Forest Service proposes to prohibit road construction in inventoried roadless areas with certain limited exceptions. In addition, the agency proposes to require responsible officials to consider and evaluate roadless characteristics at the time of forest plan revision. The Forest Service invites written comments and will consider those comments in developing the final rule that will be published in the **Federal Register** and in preparing the Final Environmental Impact Statement.

**List of Subjects in 36 CFR Part 294**

National forests, Navigation (air), Recreation and recreation areas, Wilderness areas.

For the reasons set forth in the preamble, the Forest Service proposes to amend Chapter II of Title 36 of the Code of Federal Regulations as follows:

## PART 294—SPECIAL AREAS

1. Designate §§ 294.1 and 294.2 as subpart A and add a subpart heading to read as follows:

### Subpart A—Special Areas

2. Add subpart B to part 294 to read as follows:

### Subpart B—Protection of Roadless Areas

Sec.

294.10 Purpose.
294.11 Definitions.
294.12 Prohibition on road construction and reconstruction in inventoried roadless areas.
294.13 Consideration of roadless area conservation during forest plan revision.
294.14 Scope and applicability.

**Authority:** 16 U.S.C. 472, 551, 1131, 1608, 1613; 23 U.S.C. 201, 205.

### Subpart B—Protection of Roadless Areas

**§ 294.10 Purpose.**

The purpose of this subpart is to provide lasting protection in the context of multiple-use management for inventoried roadless areas and other unroaded areas within the National Forest System.

**§ 294.11 Definitions.**

The following definitions apply to this subpart:

*Inventoried roadless areas.* Undeveloped areas typically exceeding 5,000 acres that met the minimum criteria for wilderness consideration under the Wilderness Act and that were inventoried during the Forest Service's Roadless Area Review and Evaluation (RARE II) process, subsequent assessments, or forest planning. These areas are identified in a set of inventoried roadless area maps, contained in *Forest Service Roadless Area Conservation, Draft Environmental Impact Statement, Volume 2*, dated May 2000, which are held at the National headquarters office of the Forest Service.

*Responsible official.* The Forest Service line officer with the authority and responsibility to make decisions regarding protection and management of inventoried roadless areas and other unroaded areas pursuant to this subpart.

*Road.* A motor vehicle travelway over 50 inches wide, unless classified and managed as a trail. A road may be classified or unclassified.

(1) *Classified road.* A road within the National Forest System planned or managed for motor vehicle access including state roads, county roads, private roads, permitted roads, and Forest Service roads.

(2) *Unclassified road.* A road not intended to be part of, and not managed as part of, the forest transportation system, such as temporary roads, unplanned roads, off-road vehicle tracks, and abandoned travelways.

*Road construction.* A capital improvement that results in the addition of new road miles to the forest transportation system.

*Road maintenance.* The ongoing minor restoration and upkeep of a road necessary to retain the road's approved traffic service level.

*Road reconstruction.* A capital improvement that requires the alteration or expansion of a road and usually results in realignment, improvement, or rebuilding as defined as follows:

(1) *Realignment.* Construction activities that result in the new location of an existing road or portions of roads in order to expand its capacity, change its original design function, or increase its traffic service level. The investment may include decommissioning the abandoned sections of roadway.

(2) *Improvement.* Construction activities that are needed to increase a road's traffic service level, expand its capacity, or change its original design function.

(3) *Rebuilding.* Construction activities that are needed to restore a road to its approved traffic service level and that result in increasing its capacity or changing its original design function.

*Unroaded area.* Any area, without the presence of a classified road, of a size and configuration sufficient to protect the inherent characteristics associated with its unroaded condition.

*Unroaded portion of an inventoried roadless area.* A portion of an

inventoried roadless area in which no classified road has been constructed since the area was inventoried.

**§ 294.12 Prohibition on road construction and reconstruction in inventoried roadless areas.**

(a) Roads may not be constructed or reconstructed in the unroaded portions of inventoried roadless areas of the National Forest System, except as provided in paragraphs (b) through (c) of this section. This prohibition covers classified and unclassified roads.

(b) Notwithstanding the prohibition in paragraph (a) of this section, a road may be constructed or reconstructed in an inventoried roadless area if the responsible official determines that one of the following circumstances exists:

(1) A road is needed to protect public health and safety in cases of an imminent threat of flood, fire, or other catastrophic event that, without intervention, would cause the loss of life or property;

(2) A road is needed to conduct a response action under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) or to conduct a natural resource restoration action under CERCLA (42 U.S.C. 9601, 9603, 9607, 9620), section 311 of the Clean Water Act (33 U.S.C. 1251, 1254, 1323, 1324, 1329, 1342, 1344), or the Oil Pollution Act (33 U.S.C. 2701 *et seq.*);

(3) A road is needed pursuant to reserved or outstanding rights or as provided for by statute or treaty; or

(4) Road realignment is needed to prevent irreparable resource damage by an existing road that is deemed essential for public or private access, management, or public health and safety, and such damage cannot be corrected by maintenance.

(c) The prohibition in paragraph (a) of this section does not apply to the Tongass National Forest, except as provided for in § 294.13(e).

(d) The responsible official may maintain classified roads that were constructed in inventoried roadless areas prior to the effective date of this rule.

**§ 294.13 Consideration of roadless area conservation during forest plan revision.**

(a) At the time of land and resource management plan revision, for the areas listed in paragraph (b) of this section, the responsible official must evaluate the quality and importance of the following characteristics:

(1) Soil, water, and air;

(2) Sources of public drinking water;

(3) Diversity of plant and animal communities;

(4) Habitat for threatened, endangered, proposed, candidate, and sensitive species and for those species dependent on large, undisturbed areas of land;

(5) Primitive, semi-primitive non-motorized, and semi-primitive motorized classes of dispersed recreation;

(6) Reference landscapes;

(7) Landscape character and scenic integrity;

(8) Traditional cultural properties and sacred sites; and

(9) Other locally identified unique characteristics.

(b) The evaluation of characteristics required in paragraph (a) of this section applies to the following areas:

(1) The unroaded portions of inventoried roadless areas; and

(2) Unroaded areas (other than inventoried roadless areas) that, in the judgment of the responsible official, are of a sufficient size, shape, and position within the landscape to reasonably achieve the long-term conservation of the characteristics in paragraph (a) of this section. Such areas may include those that provide important corridors for wildlife movement, or areas that share a common boundary of considerable length with an inventoried roadless area, with a component of the National Wild and Scenic River System, or with unroaded areas of 5,000 acres or more on lands administered by Federal agencies. In selecting areas, the responsible official should consider the distance from, and the scarcity of, other unroaded areas, particularly for those areas east of the 100th meridian.

(c) At the time of land and resource management plan revision, based on the evaluation required by paragraph (a) of this section, the responsible official must determine, in the context of overall-multiple use objectives, whether management protections, in addition to those set forth in § 294.12, should apply to the unroaded portions of inventoried roadless areas.

(d) At the time of land and resource management plan revision, based on the evaluation required by paragraph (a) of this section, the responsible official must determine with respect to unroaded areas, other than inventoried roadless areas, in the context of overall multiple-use objectives, which areas warrant protection and the level of protection to be afforded.

(e) As part of the 5-year review of the April 1999 revised Tongass Land and Resource Management Plan pursuant to § 219.10 (g) of this chapter, the responsible official must initiate an evaluation pursuant to paragraph (a) of this section for the unroaded portions of inventoried roadless areas in the Tongass National Forest and must determine whether the prohibitions and provisions in § 294.12 (a), (b), and (d) should be applied to any or all of such inventoried roadless areas. In making that determination, the responsible official must consider the provisions of section 101 of the Tongass Timber Reform Act (Public Law 101–626, 104 Stat. 4426).

(f) No provision in this section authorizes the responsible official to reconsider or set aside the prohibition established in § 294.12.

**§ 294.14 Scope and applicability.**

(a) This subpart does not suspend or modify any existing permit, contract, or other legal instrument authorizing the occupancy and use of National Forest System land.

(b) This subpart does not compel the amendment or revision of any land and resource management plan.

(c) This subpart does not suspend or modify any decision made prior to [Effective date of final rule].

(d) If any provision of the regulations in this subpart or its application to any person or circumstances is held invalid, the remainder of the regulations in this subpart and their application remain in force.

Dated: April 21, 2000.

**Mike Dombeck,**

*Chief.*

[FR Doc. 00–11304 Filed 5–9–00; 8:45 am]

BILLING CODE 3410–11–P

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## DEPARTMENT OF AGRICULTURE

### Forest Service

### 36 CFR Part 294

**RIN 0596–AB77**

### Special Areas; Roadless Area Conservation

**AGENCY:** Forest Service, USDA.

**ACTION:** Proposed rule; public meetings.

**SUMMARY:** The Forest Service gives notice of public meetings to be held to address the proposed Roadless Area Conservation rule that appears elsewhere in this separate part of today's **Federal Register**. The agency will host two separate sets of regional and local public meetings: Informational meetings and public comment forums held later in the public comment period. In addition to sending written comment on the proposed rule, the draft environmental impact statement, and other accompanying documents to the address listed in the proposed rule,

individuals and organizations may also submit written comments at both sets of public meetings. Oral comments will be accepted at the public comment forums. All comments will be added to the rulemaking record and considered by the agency in drafting the final rule. A schedule of meeting types, locations, dates, times, and contacts is set out in the appendix to this document.

**DATES:** The dates for the public meetings are listed in a table in an appendix to this document. Written comments on the proposed rule and accompanying documents must be received by July 17, 2000.

**ADDRESSES:** The locations for the public meetings are set out in the appendix to this document. Written comments on the proposed rule and draft environmental impact statement may be sent via postal delivery to: USDA Forest Service—CAET; Attention: Roadless Areas Proposed Rule; Post Office Box 221090; Salt Lake City, Utah, 84122. Written comments also may be submitted via facsimile machine to 1–877–703–2494 or by accessing the worldwide web at roadless.fs.fed.us and selecting the comment option.

**FOR FURTHER INFORMATION CONTACT:** Scott D. Conroy, Project Director, at 703–605–5299.

**SUPPLEMENTARY INFORMATION:** Public meetings are scheduled for the times and locations shown in the table in the appendix to this document. Those interested in attending the public meetings are strongly encouraged to contact the hosting Forest Service office or to check the Roadless Area Conservation Project website at roadless.fs.fed.us to verify that the meeting information given in the appendix of this notice has not changed and to be informed if additional meetings are added. The Forest Service's worldwide website at fs.fed.us/links/forests.shtml contains an index of Forest Service offices by name, State, and region.

Dated: May 2, 2000.

**Mike Dombeck,**

*Chief.*

## APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| AL: | | | | | |
| National Forests In Alabama. | Information | May 30 | Holiday Inn, I–65 and Oxmoor Road, Birmingham. | 6:00 p.m. to 8:00 p.m | Joy Patty, (334) 241–8130, jpatty@fs.fed.us. |
| National Forests In Alabama. | Comment | June 28 | Holiday Inn, I–65 and Oxmoor Road, Birmingham. | 6:00 p.m. to 8:00 p.m | Joy Patty, (334) 241–8130 jpatty@fs.fed.us. |
| AK: | | | | | |
| Chugach National Forest Supervisor's Office. | Information | May 31 | Loussac Library, 3600 Denali Street, Anchorage. | 7:00 p.m. to 9:00 p.m | Doug Stockdale, (907) 272–2500, dstockdale@fs.fed.us. |
| Chugach National Forest Supervisor's Office. | Comment | June 28 | Loussac Library 3600 Denali Street, Anchorage. | 7:00 p.m. to 9:00 p.m | Doug Stockdale, (907) 272–2500, dstockdale@fs.fed.us. |
| Chugach National Forest Cordova Ranger District. | Information | May 24 | Cordova Ranger District, 612 Second Street, Cordova. | 5:00 p.m. to 7:00 p.m | Cal Baker, (907) 424–4728, cbaker@fs.fed.us. |
| Chugach National Forest Cordova Ranger District. | Comment | June 22 | Cordova Ranger District, 612 Second Street, Cordova. | 5:00 p.m. to 7:00 p.m | Cal Baker, (907) 424–4728, cbaker@fs.fed.us. |
| Chugach National Forest Glacier Ranger District. | Information | June 1 | Glacier Ranger District, Forest Station Road, Girdwood. | 7:00 p.m. to 9:00 p.m | Deidre St. Louis, (907) 754–2317 dstlouis@fs.fed.us. |
| Chugach National Forest Glacier Ranger District. | Comment | June 27 | Glacier Ranger District Forest, Station Road, Girdwood. | 7:00 p.m. to 9:00 p.m. | Deidre St. Louis, (907) 754–2317, dstlouis@fs.fed.us. |
| Chugach National Forest Seward Ranger District. | Information | May 25 | Alaska Sealife Center, 301 Railway Avenue Seward. | 7:00 p.m. to 9:00 p.m | Mike Kania, (907) 224–4107, mkania@fs.fed.us. |
| Chugach National Forest Seward Ranger District. | Comment | June 21 | Avtec Building, Fourth Avenue, Seward. | 7:00 p.m. to 9:00 p.m | Mike Kania, (907) 224–4107, mkania@fs.fed.us. |
| Tongass National Forest Regional Office, Juneau Ranger District and Admiralty National Monument. | Information | May 24 | Centennial Hall, 101 Egan Drive, Juneau. | 7:00 p.m. to 10:00 p.m | Bruce Rene, (907) 586–8701, brene@fs.fed.us. |
| Tongass National Forest Regional Office, Juneau RD, And Admiralty National Monument. | Comment | June 19 | ANB Hall, 320 West Willoughby, Juneau. | 5:00 p.m. to 10:00 p.m | Bruce Rene, (907) 586–8701, brene@fs.fed.us. |
| Tongass National Forest, Craig Ranger District. | Information | May 26 | Craig City Hall, 500 Third Street, Craig. | 4:00 p.m. to 9:00 p.m | Dale Kanen, (907) 826–1600, dkanen@fs.fed.us. |
| Tongass National Forest, Craig Ranger District. | Comment | June 30 | Craig City Hall, 500 Third Street, Craig. | 4:00 p.m. to 9:00 p.m | Dale Kanen, (907) 826–1600, dkanen@fs.fed.us. |
| Tongass National Forest, Hoonah Ranger District. | Information | May 23 | District Office, 430A Airport Way, Hoonah. | 6:00 p.m. to 8:00 p.m | Paul Matter, (907) 945–3631, pmatter@fs.fed.us. |
| Tongass National Forest, Hoonah Ranger District. | Comment | June 22 | District Office, 430A Airport Way, Hoonah. | 6:00 p.m. to 8:00 p.m | Paul Matter, (907) 945–3631, pmatter@fs.fed.us. |

## APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Tongass National Forest, Ketchikan Supervisor's Office and Ketchikan-Misty Ranger District. | Information | May 25 | Southeast Alaska, Discovery Center 50 Main Street, Ketchikan. | 6:00 p.m. to 10:00 p.m | Susan Marthaller, (907) 228–4124, smarthaller @fs.fed.us. |
| Tongass National Forest, Ketchikan Supervisor's Office and Ketchikan-Misty Ranger District. | Comment | June 22 | Southeast Alaska, Discovery Center 50 Main Street, Ketchikan. | 6:00 p.m. to 10:00 p.m | Susan Marthaller, (907) 228–4124, smarthaller @fs.fed.us. |
| Tongass National Forest, Petersburg Supervisor's Office and Ranger District. | Information | May 31 | City Council Chambers, 10 South Nordic Drive, Petersburg. | 7:00 p.m. to 9:30 p.m | Patty Grantham, (907) 772–5900, pagrantham @fs.fed.us. |
| Tongass National Forest, Petersburg Supervisor's Office and Ranger District. | Comment | June 28 | City Council Chambers 10 South Nordic Drive, Petersburg. | 7:00 p.m. to 9:30 p.m | Patty Grantham, (907) 772–5900, pagrantham @fs.fed.us. |
| Tongass National Forest, Petersburg Ranger District. | Information | May 25 | Kake Community Hall, Kake. | 7:00 p.m. to 9:30 p.m | Patty Grantham, (907) 772–5900, pagrantham @fs.fed.us. |
| Tongass National Forest, Petersburg, Ranger District. | Comment | June 29 | Kake Community Hall, Kake. | 7:00 p.m. to 9:30 p.m | Patty Grantham, (907) 772–5900, pagrantham @fs.fed.us. |
| Tongass National Forest, Sitka Ranger District. | Information | May 30 | Harrigan Centennial Hall, 330 Harbor Drive, Sitka. | 7:00 p.m. to 10:00 p.m | Jim Franzel, (907) 747–4218, jfranzel@fs.fed.us. |
| Tongass National Forest, Sitka Ranger District. | Comment | June 26 | Harrigan Centennial Hall, 330 Harbor Drive, Sitka. | 7:00 p.m. to 10:00 p.m | Jim Franzel, (907) 747–4218. jfranzel@fs.fed.us. |
| Tongass National Forest, Thorne Bay Ranger District. | Information | May 30 | Bay Chalet, 1008 Sandy Beach Road, Thorne Bay. | 6:30 p.m. to 8:00 p.m | Dave Schmid, (907) 828–3304, dschmid@fs.fed.us. |
| Tongass National Forest, Thorne Bay Ranger District. | Comment | June 27 | Bay Chalet, 1008 Sandy Beach Road, Thorne Bay. | 6:30 p.m. to 8:00 p.m | Dave Schmid, (907) 828–3304, dschmid@fs.fed.us. |
| Tongass National Forest, Wrangell Ranger District. | Information | May 31 | Wrangell District Office, 525 Bennett, Wrangell. | 1:00 p.m. to 7:00 p.m | Randy Hojem, (907) 874–7556, rhojem@fs.fed.us. |
| Tongass National Forest, Wrangell Ranger District. | Comment | June 28 | Wrangell District Office, 525 Bennett, Wrangell. | 6:00 p.m. to 9:00 p.m | Randy Hojem, (907) 874–7556, rhojem@fs.fed.us. |
| Tongass National Forest, Yakutat Ranger District. | Information | May 25 | Yakutat District Office, 712 Ocean Cape, Yakutat. | 9:00 a.m. to 4:00 p.m | Meg Mitchell, (907) 784–3359, mmitchel01 @fs.fed.us. |
| Tongass National Forest, Yakutat Ranger District. | Comment | June 29 | Yakutat District Office, 712 Ocean Cape, Yakutat. | 7:00 p.m. to 9:00 p.m | Meg Mitchell, (907) 784–3359, mmitchel01 @fs.fed.us. |
| AR: | | | | | |
| Ozark—Saint Francis National Forests. | Information | June 1 | Arkansas Technical University, Old Student Union, 207 West O Street, Russellville. | 6:00 p.m. to 9:00 p.m | Deryl Jevons, (501) 964–7210, djevons@fs.fed.us. |
| Ozark—Saint Francis National Forests. | Comment | June 27 | Arkansas Technical University, Old Student Union, 207 West O Street, Russellville. | 6:00 p.m. to 9:00 p.m | Deryl Jevons, (501) 964–7210, djevons@fs.fed.us. |
| AR/OK: | | | | | |
| Ouachita National Forest. | Information | June 5 | Clarion Hotel, Highway 7, South Hot Springs, Arkansas. | 6:00 p.m. to 8:00 p.m | Bill Pell, (501) 321–5320, bpell@fs.fed.us. |
| Ouachita National Forest. | Information | June [illegible] | Rich Mountain Community College, 1100 College Drive, Mena. | 6:00 p.m. to 9:00 p.m | Bill Pell, (501) 321–5320, bpell@fs.fed.us. |
| Ouachita National Forest. | Comment | June 20 | Rich Mountain Community College, 1100 College Drive, Mena. | 6:00 p.m. to 9:00 p.m | Bill Pell, (501) 321–5320, bpell@fs.fed.us. |
| Ouachita National Forest. | Comment | June 22 | Clarion Hotel, Highway 7, South Hot Springs, Arkansas. | 6:00 p.m. to 9:00 p.m | Bill Pell, (501) 321–5320, bpell@fs.fed.us. |
| AZ: | | | | | |
| Apache-Sitgreaves National Forests. | Information | May 26 | 309 South Mountain Avenue, Springerville. | 7:00 p.m. to 10:00 p.m | Jim Anderson, (520) 333–4301 janderson08, @fs.fed.us. |
| Apache-Sitgreaves National Forests. | Comment | June 22 | 309 South Mountain Avenue, Springerville. | 7:00 p.m. to 10:00 p.m | Jim Anderson, (520) 333–4301, janderson08 @fs.fed.us. |

## APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Coconino-Kaibab National Forests. | Information | May 16 | Flagstaff High School, 400 West Elm Street, Flagstaff. | 4:00 p.m. to 7:00 p.m | Katherine Farr, (520) 527–3411, kfarr@fs.fed.us or Karen Malis-Clarke, (520) 527–3492 keclark@fs.fed.us. |
| Coconino-Kaibab National Forests. | Comment | June 14 | Flagstaff High School, 400 West Elm Street, Flagstaff. | 4:00 p.m. to 7:00 p.m | Katherine Farr, (520) 527–3411 kfarr@fs.fed.us or Karen Malis-Clarke (520) 527–3492 keclark@fs.fed.us. |
| Coronado National Forest. | Information | May 22 | Doubletree Hotel, 455 South Alvernon Way, Tucson. | 6:00 p.m. to 8:00 p.m | Gail Aschenbrenner, (526) 670–4552 gaschenbrenner@fs.fed.us. |
| Coronado National Forest. | Comment | June 26 | Doubletree Hotel, 455 South Alvernon Way, Tucson. | 6:00 p.m. to 8:00 p.m | Gail Aschenbrenner, (526) 670–4552 gaschenbrenner@fs.fed.us. |
| Prescott National Forest. | Information | May 24 | Prescott Fire Center, 2400 Melville Drive, Prescott. | 7:00 p.m. to 9:00 p.m | Cynthia Moody, (520) 771–4874 cmoody@fs.fed.us. |
| Prescott National Forest. | Comment | June 21 | Prescott Fire Center, 2400 Melville Drive, Prescott. | 7:00 p.m. to 9:00 p.m | Cynthia Moody, (520) 771–4874 cmoody@fs.fed.us. |
| Tonto National Forest .. | Information | May 23 | Tonto Supervisor's Office, Conference Room, 2324 East McDowell Road, Phoenix. | 1:00 p.m. to 8:00 p.m | Jim Payne or Paul Stewart (602) 225–5200 jwpayne@fs.fed.us. |
| Tonto National Forest .. | Comment | June 21 | Embassy Suites, 44th and McDowell Road, Phoenix. | 6:00 p.m. to 9:00 p.m | Jim Payne or Paul Stewart, (602) 225–5200 jwpayne@fs.fed.us. |
| CA: | | | | | |
| Angeles National Forest. | Information | May 31 | Glendora Public Library, 140 Glendora Avenue, Glendora. | 2:00 p.m. to 8:00 p.m | Randi Jorgensen, (626) 574–5206 rjorgensen@fs.fed.us. |
| Angeles National Forest. | Information | June 1 | Antelope Valley College, 3041 West Avenue K, Lancaster. | 2:00 p.m. to 8:00 p.m | Randi Jorgensen, (626) 574–5206 rjorgensen@fs.fed.us. |
| Angeles National Forest. | Comment | June 27 | Valencia Town Center, 24201 West Valencia Boulevard, Santa Clarita. | 1:00 p.m. to 4:00 p.m | Randi Jorgensen, (626) 574–5206 rjorgensen@fs.fed.us. |
| Angeles National Forest. | Comment | June 28 | Glendora Public Library, 140 Glendora Avenue, Glendora. | 6:00 p.m. to 9:00 p.m | Randi Jorgensen, (626) 574–5206 rjorgensen@fs.fed.us. |
| Angeles National Forest. | Comment | June 29 | Antelope Valley College, 3041 West Avenue K, Lancaster. | 6 p.m. to 9:00 p.m | Randi Jorgensen, (626) 574–5206 rjorgensen@fs.fed.us. |
| Cleveland National Forest. | Information | May 31 | Supervisor's Office, 10845 Rancho Bernardo Road #200, San Diego. | 7:00 p.m. to 9:00 p.m | Joan Wynn, (858) 674–2984 jwynn01@fs.fed.us. |
| Cleveland National Forest. | Comment | June 28 | Supervisor's Office, 10845 Rancho Bernardo Road #200, San Diego. | 7:00 p.m. to 9:00 p.m | Joan Wynn, (858) 674–2984 jwynn01@fs.fed.us. |
| Eldorado National Forest. | Information | May 24 | Ponderosa High School Cafeteria, 3361 Ponderosa Road, Shingle Springs. | 7:00 p.m. to 9:00 p.m | Holly Salvestrin, (530) 621–5205 hsalvestrin@fs.fed us, or Frank Mosbacher, (530) 622–5061 fmosbacher@fs.fed.us. |
| Eldorado National Forest. | Comment | June 13 | Ponderosa High School Theatre, 3361 Ponderosa Road, Shingle Springs. | 3:00 p.m. to 9:30 p.m | Holly Salvestrin, (530) 621–5205, hsalvestrin@fs.fed.us or Frank Mosbacher, (530) 622–5061, fmosbacher@fs fed.us. |
| Inyo National Forest .... | Information | May 31 | Mammoth Lakes Community Center, Forest Trail, Mammoth Lakes. | 4:00 p.m. to 7:30 p.m | Nancy Upham, (760) 873–2427, nupham/r5_Inyo NF@fs.fed.us. |
| Inyo National Forest .... | Information | June 1 | Our Lady of Perpetual Help Parish Hall, 649 Home Street, Bishop. | 4:00 p.m. to 7:30 p.m | Nancy Upham, (760) 873–2427, nupham/r5_Inyo NF@fs.fed.us. |
| Inyo National Forest .... | Comment | June 20 | Mammoth Lakes Community Center, Forest Trail, Mammoth Lakes. | 6:00 p.m. to 9:00 p.m | Nancy Upham, (760) 873–2427, nupham/r5_Inyo NF@fs.fed.us. |

## APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Inyo National Forest .... | Comment ..... | June 21 ..... | Our Lady of Perpetual Help Parish Hall, 849 Home Street, Bishop. | 5:00 p.m. to 9:00 p.m ..... | Nancy Upham, (760) 873–2427 nupham/r5_Inyo NF@fs.fed.us. |
| Klamath National Forest. | Information ..... | May 25 ..... | Miner's Inn Convention Center, 211 East Main Yreka. | 7:00 p.m. to 9:00 p.m ..... | Jon Silvius, (530) 842–6131, jsilvius@fs.fed.us. |
| Klamath National Forest. | Comment ..... | June 29 ..... | Miner's Inn Convention Center, 211 East Main, Yreka. | 4:00 p.m. to 8:00 p.m ..... | Jon Silvius, (530) 842–6131, jsilvius@fs.fed.us. |
| Lassen National Forest | Information ..... | May 23 ..... | Almanor Ranger District Memorial Building, 225 Gay Street, Chester. | 7:00 p.m. to 9:00 p.m ..... | Jeanette Ling, (530) 258–2141, jling@fs.fed.us. |
| Lassen National Forest | Information ..... | May 24 ..... | Hat Creek Ranger District Conference Room, 43225 East Highway 299, Falls Mills. | 7:00 p.m. to 9:00 p.m ..... | Jeanette Ling, (530) 335–5521, jling@fs.fed.us. |
| Lassen National Forest | Information ..... | May 25 ..... | Lassen Supervisor's Office, 2550 Riverside Drive, Susanville. | 7:00 p.m. to 9:00 p.m ..... | Jeanette Ling, (530) 257–2151, jling@fs.fed.us. |
| Lassen National Forest | Comment ..... | June 27 ..... | Almanor Ranger District Memorial Building, 225 Gay Street Chester. | 7:00 p.m. to 9:00 p.m ..... | Jeanette Ling, (530) 258–2141, jling@fs.fed.us. |
| Lassen National Forest | Comment ..... | June 28 ..... | Hat Creek Ranger District Conference Room, 43225 East Highway 299, Falls Mills. | 7:00 p.m. to 9:00 p.m ..... | Jeanette Ling, (530) 335–5521, jling@fs.fed.us. |
| Lassen National Forest | Comment ..... | June 29 ..... | Lassen County Fairgrounds, Jensen Hall, 195 Russell Avenue, Susanville. | 7:00 p.m. to 9:00 p.m ..... | Jeanette Ling, (530) 257–2151, jling@fs.fed.us. |
| Los Padres National Forest. | Information ..... | May 25 ..... | San Luis Obispo Veterans Building, Main Hall, 801 Grand Avenue, San Luis Obispo. | 7:00 p.m. to 10:00 p.m ... | Kathy Good, (805) 683–6711, kggood@fs.fed.us or Jim Turner, (805) 683–6711, jturner01@fs.fed.us. |
| Los Padres National Forest. | Comment ..... | June 27 ..... | San Luis Obispo Veterans Building, Main Hall, 801 Grand Avenue, San Luis Obispo. | 7:00 p.m. to 10:00 p.m ... | Kathy Good, (805) 683–6711, kggood@fs.fed.us or Jim Turner (805) 683–6711, jturner01@fs.fed.us. |
| Los Padres National Forest. | Information ..... | May 30 ..... | Goleta Community Center, 5679 Hollister Avenue, Goleta. | 7:00 p.m. to 10:00 p.m ... | Kathy Good, (805) 683–6711, kggood@fs.fed.us or Jim Turner, (805) 683–6711, jturner01@fs.fed.us. |
| Los Padres National Forest. | Comment ..... | June 29 ..... | Goleta Community Center, 5679 Hollister Avenue, Goleta. | 7:00 p.m. to 10:00 p.m ... | Kathy Good, (805) 683–6711, kggood@fs.fed.us or Jim Turner (805) 683–6711, jturner01@fs.fed.us. |
| Los Padres National Forest. | Information ..... | June 5 ..... | Frazier Park Senior Community Center, 300 Park Drive, Frazier Park. | 7:00 p.m. to 10:00 p.m ... | Kathy Good, (805) 683–6711, kggood@fs.fed.us or Jim Turner (805) 683–6711, jturner01@fs.fed.us. |
| Mendocino National Forest. | Information ..... | May 24 ..... | Ukiah Convention Center, 200 South School Street, Ukiah. | 6:30 p.m. to 9:00 p.m ..... | Phoebe Brown, (530) 934–3316, pybrown@fs.fed.us. |
| Mendocino National Forest. | Comment ..... | June 22 ..... | Ukiah Convention Center, 200 South School Street, Ukiah. | 6:30 p.m. to 9:00 p.m ..... | Phoebe Brown (530) 934–3316, pybrown@fs.fed.us. |
| Modoc National Forest | Information ..... | May 23 ..... | USDA Conference Room, 800 West Twelfth Street, Alturas. | 6:30 p.m. to 9:00 p.m ..... | Curt Aarstad, (530) 233–8846, CAarstad/r5_modoc@fs.fs.us. |
| Modoc National Forest | Comment ..... | June 22 ..... | USDA Conference Room, 800 West Twelfth Street, Alturas. | 6:30 p.m. to 9:00 p.m ..... | Curt Aarstad, (530) 233–8846, CAarstad/r5_modoc@fs.fs.us |
| Plumas National Forest | Information ..... | May 31 ..... | Tulsa Scott Pavilion, Plumas-Sierra County, Fairgrounds Road, Quincy. | 7:00 p.m. to 10:00 p.m ... | Lee Anne Shramel Taylor, (530) 283–7850, eataylor@fs.fed.us. |
| Plumas National Forest | Comment ..... | June 21 ..... | Tulsa Scott Pavilion, Plumas-Sierra County, Fairgrounds Road, Quincy. | 7:00 p.m. to 10:00 p.m ... | Lee Anne Shramel Taylor,(530) 283–7850, eataylor@fs.fed.us. |

APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Plumas National Forest | Information | May 25 | Chico Area Recreation District Community Center, 545 Vallombrosa Avenue, Chico. | 7:00 p.m. to 10:00 p.m | Lee Anne Shramel Taylor, (530) 283–7850, eataylor@fs.fed.us or Phoebe Brown, (530) 934–3316, pybrown@fs.fed.us. |
| Plumas National Forest | Comment | 6/26/00 | Chico Area Recreation District Community Center, 545 Vallombrosa Avenue, Chico. | 7:00 p.m. to 10:00 p.m | Lee Anne Shramel Taylor, (530) 283–7850, eataylor@fs.fed.us; Phoebe Brown (530) 934–3316, pybrown@fs.fed.us. |
| San Bernardino National Forest. | Information | May 24 | University of Redlands, Case Loma Room, Redlands. | 7:00 p.m. to 9:00 p.m | Ruth Wenstrom, (909) 383–5588, rwenstrom@fs.fed.us. |
| San Bernardino National Forest. | Comment | June 27 | University of Redlands, Case Loma Room, Redlands. | 2:00 p.m. to 4.30 p.m and 6:00 p.m. to 9:00 p.m. | Ruth Wenstrom, (909) 383–5588, rwenstrom@fs.fed.us. |
| San Bernardino National Forest. | Information | May 22 | James Simpson Hall, Hemet. | 7:00 p.m. to 9:00 p.m | Ruth Wenstrom (909) 383–5588, rwenstrom@fs.fed.us. |
| San Bernardino National Forest. | Comment | June 29 | James Simpson Hall, Hemet. | 2:00 p.m. to 4.30 p.m. and 6:00 p.m to 9:00 p.m.. | Ruth Wenstrom, (909) 383–5588, rwenstrom@fs.fed.us. |
| Sequoia National Forest. | Information | May 24 | Porterville College Theater, 100 East College Drive, Porterville. | 7:00 p.m. to 9:30 p.m | Julie Allen, (559) 784–1500, extension 1160 jallen/r5_sequoia@fs.fed.us or jallen/sequoia@fs.fed.us. |
| Sequoia National Forest. | Comment | June 24 | Visalia Convention Center, San Joaquin Room, 303 East Acequia, Visalia. | 10:00 a.m. to 12:00 p.m. and 1:00 p.m. to 3:00 p.m. | Julie Allen (559) 784–1500, ext 1160, jallen/r5_sequoia@fs.fed.us or jallen/sequoia@fs.fed.us. |
| Shasta-Trinity National Forests. | Information | May 23 | Holiday Inn, 1900 Hilltop Drive, Redding. | 7:00 p.m. to 9:00 p.m | Duane Lyon, (530) 242–2207, dlyon/r5_shastatrinity@fs.fed.us. |
| Shasta-Trinity National Forests. | Comment | June 28 | Holiday Inn, 1900 Hilltop Drive, Redding. | 3:00 p.m. to 8:00 p.m | Duane Lyon, (530) 242–2207 dlyon/r5_shastatrinity@fs.fed.us. |
| Sierra National Forest .. | Information | May 30 | Clovis Veterans Memorial Building, Third and Hughes, Clovis,. | 6:00 p.m. to 8:30 p.m | Sue Exline, (559) 297–0706., ext. 4804, skexline@fs.fed.us. |
| Sierra National Forest .. | Information | June 1 | Clovis Veterans Memorial Building, Third and Hughes, Clovis. | 6:00 p.m. to 8:30 p.m | Sue Exline, (559) 297–0706 ext. 4804, skexline@fs.fed.us. |
| Sierra National Forest .. | Comment | June 20 | Clovis Veterans Memorial Building, Third and Hughes, Clovis. | 3:00 p.m. to 5:00 p.m. and 6:30 p.m to 8:30 p.m. | Sue Exline, (559) 297–0706 ext. 4804, skexline@fs.fed.us |
| Six Rivers National Forest. | Information | May 23 | Redwood Acres Turf Room, 3750 Harris Avenue, Eureka. | 6:00 p.m. to 9:00 p.m | Bill Pidanick, (707) 441–3673, bpidanick@fs.fed.us. |
| Six Rivers National Forest. | Information | May 25 | Crescent City Cultural Center, 1001 Front Street, Crescent City. | 6:00 p.m. to 9:00 p.m | Bill Pidanick, (707) 441–3673, bpidanick@fs.fed.us. |
| Six Rivers National Forest. | Comment | June 22 | Crescent City Cultural Center, 1001 Front Street, Crescent City. | 6:00 p.m. to 9:00 p.m | Bill Pidanick, (707) 441–3673 bpidanick@fs.fed.us. |
| Six Rivers National Forest. | Comment | June 28 | Redwood Acres Turf Room, 3750 Harris Avenue, Eureka. | 6:00 p.m. to 9:00 p.m | Contact Bill Pidanick, (707) 441–3673, bpidanick@fs.fed.us. |
| Stanislaus National Forest. | Information | May 24 | Sonora Oaks Best Western, Hess Avenue, Highway 108, Sonora. | 7:00 p.m. to 9:00 p.m | John J. Maschi, (209) 532–3671 ext. 317, jmaschi@fs.fed.us. |
| Stanislaus National Forest. | Comment | June 24 | Sonora Oaks Best Western, Hess Avenue, Highway 108, Sonora. | 1:00 p.m. to 5:00 p.m | John J. Maschi, (209) 532–3671 ext. 317, jmaschi@fs.fed.us. |
| Tahoe National Forest | Information | May 23 | Truckee Donner Recreation and Park District Community Center, 10046 Church Street, Truckee. | 7:00 p.m. to 9:00 p.m | Ann Westling, (530) 478–6205, awestling@fs.fed.us. |
| Tahoe National Forest | Information | May 30 | Board of Realtors Crown Point Hall, 226 Crown Point Circle, Grass Valley. | 6.30 p.m. to 8.30 p.m | Ann Westling, (530) 478–6205, awestling@fs.fed.us. |

APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Tahoe National Forest | Comment | June 20 | Board of Realtors Crown Point Hall, 226 Crown Point Circle, Grass Valley. | 6.30 p.m. to 8.30 p.m | Ann Westling, (530) 478–6205, awestling@fs.fed.us. |
| Tahoe National Forest | Comment | June 27 | Truckee Donner Recreation and Park District Community Center 10046 Church Street, Truckee. | 7:00 p.m. to 9:00 p.m | Ann Westling, (530) 478–6205, awestling@fs.fed.us. |
| Lake Tahoe Basin Management Unit. | Information | May 24 | Eldorado City Library, 1000 Rufas Allen Road, South Lake, Tahoe. | 7:00 p.m. to 9:00 p.m | Linda Massey, (530) 573–2688 lmassey@fs.fed.us. |
| Lake Tahoe Basin Management Unit. | Information | May 25 | North Tahoe Conference Center, 8318 North Lake Boulevard, Kings Beach. | 7:00 p.m. to 9:00 p.m | Linda Massey, (530) 573–2688 lmassey@fs.fed.us. |
| Lake Tahoe Basin Management Unit. | Comment | June 21 | Eldorado City Library, 1000 Rufas Allen Road, South Lake, Tahoe. | 7:00 p.m. to 9:00 p.m | Linda Massey, (530) 573–2688 lmassey@fs.fed.us. |
| Lake Tahoe Basin Management Unit. | Comment | June 22 | North Tahoe Conference Center, 8318 North Lake Boulevard, Kings Beach. | 7:00 p.m. to 9:00 p.m | Linda Massey, (530) 573–2688 lmassey@fs.fed.us. |
| Regional Office | Information | May 31 | Sacramento Convention Center, 1400 J Street, Sacramento. | 1:00 p.m. to 4:00 p.m. and 6:30 p.m. to 9:30 p.m. | Mike Srago, (777) 562–8951 msrago@fs.fed.us. |
| Regional Office | Comment | June 28 | Holiday Inn Northeast, 5321 Date Avenue, Sacramento. | 1:00 p.m. to 5:00 p.m. and 6:00 p.m. to 10:00 p.m. | Mike Srago, (777) 562–8951 msrago@fs.fed.us. |
| CO: | | | | | |
| Regional Office | Information | May 22 | Regional Office, 740 Simms Street, Golden. | 4:00 p.m. to 8:00 p.m | Pam Skeels, (303) 275–5152 pskeels@fs.fed.us. |
| Regional Office | Comment | June 22 | Regional Office, 740 Simms Street, Golden. | 3:00 p.m. to 8:00 p.m | Pam Skeels, (303) 275–5152 pskeels@fs.fed.us. |
| Arapaho-Roosevelt National Forests. | Information | May 24 | Boulder Ranger District, 2140 Yarmouth Avenue, Southeast corner of US Highway 36 and Yarmouth, Boulder. | 4:00 p.m. to 8:00 p.m | Karen Roth, (970) 498–1377 kroth@fs.fed.us. |
| Arapaho-Roosevelt National Forests. | Comment | June 20 | Boulder Ranger District, 2140 Yarmouth Avenue, Southeast corner of US Highway 36 and Yarmouth, Boulder. | 3:00 p.m. to 8:00 p.m | Karen Roth, (970) 498–1377 kroth@fs.fed.us. |
| White River National Forest. | Information | June 5 | First Choice Inns, 51359 US Highway 6, Glenwood Springs. | 4:00 p.m. to 7:00 p.m | Sue Froeschle, (970) 945–3249 sfroeschle@fs.fed.us. |
| White River National Forest. | Comment | June 22 | First Choice Inns, 51359 US Highway 6, Glenwood Springs. | 4:00 p.m. to 7:00 p.m | Sue Froeschle, (970) 945–3249 sfroeschle@fs.fed.us. |
| Pike—San Isabel National Forests. | Information | May 23 | Pueblo Convention Center Ballroom, 320 Central Main Street, Pueblo. | 5:00 p.m. to 7:30 p.m | Barb Timock, (719) 585–3738 btimock@fs.fed.us. |
| Pike—San Isabel National Forests. | Comment | June 28 | Pueblo Convention Center Ballroom, 320 Central Main Street, Pueblo. | 4:00 p.m. to 8:00 p.m | Barb Timock, (719) 585–3738 btimock@fs.fed.us. |
| Pike—San Isabel National Forests. | Information | May 31 | Chafee County Fairgrounds, 10165 County Road 120, Salida. | 5:00 p.m. to 7:00 p.m | Barb Timock, (719) 585–3738 btimock@fs.fed.us. |
| Pike—San Isabel National Forests. | Comment | June 20 | Chafee County Fairgrounds, 10165 County Road 120 Salida. | 4:00 p.m. to 8:00 p.m | Barb Timock, (719) 585–3738 btimock@fs.fed.us. |
| Grand Mesa, Uncompahgre, and Gunnison National Forests. | Information | May 22 | Mesa College Liff Auditorium, Twelfth and Elm, Grand Junction. | 4:00 p.m. to 8:00 p.m | Pamella Wilson, plwilson@fs.fed.us or Lew French lfrench@fs.fed.us, (970) 874–6627. |
| Grand Mesa, Uncompahgre, and Gunnison National Forests. | Comment | June 27 | Mesa College, Liff Auditorium, Twelfth and Elm, Grand Junction. | 4:00 p.m. to 8:00 p.m | Pamella Wilson, plwilson@fs.fed.us or Lew French, lfrench@fs.fed.us, (970) 874–6627. |

APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| San Juan National Forest. | Information | May 31 | San Juan Public Lands Center, 15 Burnett Court Durango. | 4:00 p.m. to 8:00 p.m | Thurman Wilson, (970)385–1246, twilson02@fs.fed.us. |
| San Juan National Forest. | Comment | June 27 | San Juan Public Lands Center, 15 Burnett Court Durango. | 3:00 p.m. to 8:00 p.m | Thurman Wilson, (970)385–1246 twilson02@fs fed.us. |
| Rio Grande National Forest. | Information | May 24 | Bill Metz Elementary School, Second Avenue and Broadway, Monte Vista. | 7:00 p.m. to 10:00 p.m | Dean Erhard (719)852–5941, derhard@fs.fed.us. |
| Rio Grande National Forest. | Comment | June 21 | Bill Metz Elementary School, Second Avenue and Broadway, Monte Vista. | 7:00 p.m. to 10:00 p.m | Dean Erhard (719)852–5941, derhard@fs.fed.us |
| CO/WY: | | | | | |
| Medicine Bow-Routt National Forests. | Information | May 23 | Hahns Peak/Bears Ear Ranger Station. 925 Weiss Drive, Steamboat Springs. | 4:00 p.m. to 7:00 p.m | Denise Germann, (970)870–2214, dgermann@fs.fed.us. |
| Medicine Bow-Routt National Forests. | Comment | June 21 | Hahns Peak/Bears Ear Ranger Station, 925 Weiss Drive, Steamboat Springs. | 5:30 p.m. to 8:00 p.m | Denise Germann, (970)870–2214, dgermann@fs.fed.us. |
| DC: | | | | | |
| Washington Office | Information | May 24 | Hyatt Hotel 1325 Wilson Boulevard Arlington Virginia. | 5:00 p.m. to 9:00 p.m | Martin Esparza (703) 605–5168, mesparza@fs.fed.us. |
| Washington Office | Comment | June 26 | Hyatt Hotel, 1325 Wilson Boulevard, Arlington, Virginia. | 5:00 p.m. to 10:00 p.m | Martin Esparza (703) 605–5168, mesparza@fs.fed.us. |
| FL: | | | | | |
| National Forests In Florida. | Information | May 31 | Sheraton Gainesville, 2900 Southwest Thirteenth Street, Gainesville. | 6:00 p.m. to 9:00 p.m | Richard Shelfer, (850) 942–9353, rshelfer@fs.fed.us. or Denise Rains, (850) 942–9838. |
| National Forests In Florida. | Comment | June 29 | Sheraton Gainesville, 2900 Southwest Thirteenth Street, Gainesville. | 6:00 p.m. to 9:00 p.m | Richard Shelfer, (850) 942–9353, rshelfer@fs.fed.us. or Denise Rains, (850) 942–9838. |
| GA: | | | | | |
| Regional Office | Information | May 31 | Gwinnett Civic Center, 6400 Sugarloaf Parkway, Duluth. | 6:30 p.m. to 9:30 p.m | Robert Wilhelm, (404) 347–7076, rwilhelm@fs.fed.us. |
| Regional Office | Comment | June 28 | Gwinnett Civic Center, 6400 Sugarloaf Parkway, Duluth. | 6:30 p.m. to 9:30 p.m | Robert Wilhelm, (404) 347–7076, rwilhelm@fs.fed.us. |
| Chattahoochee-Oconee National Forests. | Information | May 25 | Gainesville College Continuous Education Auditorium, 3820 Mundy Mill Road, Gainesville. | 6:00 p.m. to 9:00 p.m | John Petrick, (770) 297–3005, jpetrick@fs.fed.us. |
| Chattahoochee-Oconee National Forests. | Comment | June 21 | Gainesville College Continuous Education Auditorium, 3820 Mundy Mill Road, Gainesville. | 6:00 p.m. to 9:00 p.m | John Petrick, (770) 297–3005, jpetrick@fs.fed.us. |
| ID: | | | | | |
| Boise National Forest | Information | May 22 | Idaho City Community Hall Idaho City. | 7:00 p.m. to 9:00 p.m | Jennifer Jones, (208) 373–4100 jjones11@fs.fed.us. |
| Boise National Forest | Information | May 23 | Boise Centre On the Grove, Eagle Room, 850 West Front Street, Boise. | 2:00 p.m. to 5:00 p.m. and 6:00 p.m. to 9:00 p.m. | Jennifer Jones, (208) 373–4100, jjones11@fs fed.us. |
| Boise National Forest | Comment | June 29 | Nampa Civic Center, 311 Third Street South, Nampa. | 9:00 a.m. to 9:00 p.m | Jennifer Jones, (208) 373–4100, jjones11@fs fed.us. |
| Caribou-Targhee National Forests. | Information | May 17 | University Place, 2000 Science Center Drive, Idaho Falls. | 7:00 p.m. to 9:00 p.m | Jerry Reese, (208) 236–7500 or (208) 624–3151, jbreese@fs.fed.us. |
| Caribou-Targhee National Forests. | Information | May 18 | Idaho State University, Student Union, Little Wood Room, 1065 South Eighth Street, Pocatello. | 7:00 p.m. to 9:00 p.m | Jerry Reese, (208) 236–7500 or (208) 624–3151, jbreese@fs.fed.us. |
| Caribou-Targhee National Forests. | Comment | June 21 | University Place, 2000 Science Center Drive, Idaho Falls. | 7:00 p.m. to 10:00 p.m | Jerry Reese, (208) 236–7500 or (208) 624–3151, jbreese@fs.fed.us. |

## APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Idaho Panhandle National Forest. | Information | May 24 | Supervisor's Office, 3815 Schreiber Way, Coeur d'Alene. | 4:00 p.m. to 7:00 p.m | Dave O'Brien, 208–765–7319, dobrien/r1IPNF@fs.fed.us. |
| Idaho Panhandle National Forest. | Comment | June 21 | Supervisor's Office, 3815 Schreiber Way, Coeur d'Alene. | 4:00 p.m. to 7:00 p.m | Dave O'Brien (208) 765–7319, dobrien/r1IPNF@fs.fed.us. |
| Nez Perce National Forest. | Information | May 17 | Kooskia City Hall 026 South Main, Kooskia. | 4:00 p.m. to 8:00 p.m | Cliff Mitchell, cmitchell@fs.fed.us or Elayne Murphy, (208) 476–4541 emurphy@fs.fed. us. |
| Nez Perce National Forest. | Information | May 18 | Salmon River High School Riggins. | 6:00 p.m. to 9:00 p.m | Dick Artley, dartley@fs.fed.us or Laura Smith, (208) 983–1950, lasmith@fs.fed.us. |
| Nez Perce National Forest. | Information | May 30 | Elk City Public School, Elk City. | 6:00 p.m. to 9:00 p.m | Dick Artley, dartley@fs.fed.us or Laura Smith, 208) 983–1950, lasmith@fs.fed.us. |
| Nez Perce National Forest. | Information | May 31 | Grangeville High School, Grangeville. | 6:00 p.m. to 9:00 p.m | Dick Artley, dartley@fs.fed.us or Laura Smith, (208) 983–1950, lasmith@fs.fed.us. |
| Nez Perce National Forest. | Information | May 24 | Lewis and Clark College, Clearwater and Snake Conference Rooms, 500 Eighth Avenue, Lewiston. | 6:00 p.m. to 9:00 p.m | Cliff Mitchell, cmitchell@fs.fed.us or Elayne Murphy, (208) 476–4541 emurphy@fs.fed.us |
| Nez Perce National Forest. | Comment | June 21 (and June 22, if needed). | Grangeville High School, Grangeville. | 1:00 p.m. to 8:00 p.m | Dick Artley, dartley@fs.fed.us or Laura Smith, (208) 983–1950, lasmith@fs.fed.us. |
| Nez Perce National Forest. | Information | June 27 | Lewiston High School Auditorium, 1114 Ninth Street, Lewiston. | 1:00 p.m. to 10:00 p.m | Cliff Mitchell, cmitchell@fs.fed.us. or Elayne Murphy, (208) 476–,4541 emurphy@fs.fed.us. |
| Payette National Forest | Information | May 23 | Payette Lakes Middle School, Dinehard and Sampson Streets, McCall. | 5:00 p.m. to 9:00 p.m | Dave Alexander, dalexander@fs.fed.us or Miera Crawford (208) 634–0700. |
| Payette National Forest | Comment | June 20 | Payette Lakes Middle School, Multipurpose Room, Payette. | 6:00 p.m. to 10:00 p.m | Dave Alexander, dalexander@fs.fed.us or Miera Crawford, (208) 634–0700. |
| Salmon-Challis National Forests. | Information | May 24 | Challis Ranger District Office Conference Room, Hwy 93, Challis. | 7:00 p.m. to 9:00 p.m | Kent Fuellenbach, (208) 756–5145, kfullenbach@fs.fed.us. |
| Salmon-Challis National Forests. | Information | May 25 | Salmon Valley Community Center, 200 Main Street, Salmon. | 7:00 p.m. to 9:00 p.m | Kent Fuellenbach, (208) 756–5145, kfullenbach@fs.fed.us. |
| Salmon-Challis National Forests. | Information | May 30 | Business Incubation Center, 159 North Idaho Street, Arco. | 7:00 p.m. to 9:00 p.m | Kent Fuellenbach, (208) 756–5145, kfullenbach@fs.fed.us. |
| Salmon-Challis National Forests. | Information | May 31 | Mackay Senior Citizens Building, 301 Cedar Avenue, Mackay. | 7:00 p.m. to 9:00 p.m | Kent Fuellenbach, (208) 756–5145, kfullenbach@fs.fed.us. |
| Salmon-Challis National Forests. | Comment | June 19 | Challis Middle School Auditorium, Challis. | 7:00 p.m. to 9:00 p.m | Kent Fuellanbach, (208) 756–5145, kfullenbach@fs.fed.us. |
| Salmon-Challis National Forests. | Comment | June 20 | Salmon Valley Community Center, 200 Main Street, Salmon. | 7:00 p.m. to 9:00 p.m | Kent Fuellenbach, (208) 756–5145, kfullenbach@fs.fed.us. |
| Sawtooth National Forest. | Information | May 24 | College of Southern Idaho, Taylor Administration Building, Cedar and Sage Rooms, 315 Falls Avenue, Twin Falls. | 7:00 p.m. to 9:00 p.m | Ed Waldapfel, (208) 737–3200, waldapfel@fs.fed.us. |
| Sawtooth National Forest. | Information | May 24 | Ketchum City Hall, 480 East Avenue North, Ketchum. | 7:00 p.m. to 9:00 p.m | Kurt Nelson, (208) 622–5371 knelson@fs.fed.us. |

APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Sawtooth National Forest. | Comment | June 22 | College of Southern Idaho, Taylor Administration Building, Cedar and Sage Rooms, 315 Falls Avenue, Twin Falls. | 6:30 p.m. to 9:30 p.m | Ed Waldapfel, (208) 737–3200, waldapfel@fs.fed.us. |
| Sawtooth National Forest. | Comment | June 22 | Ketchum City Hall, 480 East Avenue North, Ketchum. | 6:30 p.m. to 9:30 p.m | Kurt Nelson, (208) 622–5371, knelson@fs.fed.us. |
| Clearwater National Forest. | Information | May 16 | Orofino High School Cafeteria, 1115 School Road, Orofino. | 4:00 p.m. to 8:00 p.m | Cliff Mitchell or Elayne Murphy, (208) 476–4541, emurphy@fs.fed.us. |
| Clearwater National Forest. | Information | May 17 | Kooskia City Hall, 026 South Main, Kooskia. | 4:00 p.m. to 8:00 p.m | Cliff Mitchell or Elayne Murphy, (208) 476–4541, emurphy@fs.fed.us. |
| Clearwater National Forest. | Information | May 18 | Latah County Fairgrounds Exhibit Building, 1021 Harold, Moscow. | 4:00 p.m. to 8:00 p.m | Cliff Mitchell or Elayne Murphy, (208) 476–4541, emurphy@fs.fed.us. |
| Clearwater National Forest. | Information | May 23 | Lewis Clark College, Clearwater and Snake Conference Rooms, Lewiston. | 4:00 p.m. to 8:00 p.m | Cliff Mitchell or Elayne Murphy, (208) 476–4541, emurphy@fs.fed.us. |
| Clearwater National Forest. | Comment | June 20 | Orofino High School Gym, 1115 School Road, Orofino. | 1:00 p.m. to 10:00 p.m | Cliff Mitchell or Elayne Murphy, (208) 476–4541, emurphy@fs.fed.us. |
| Clearwater National Forest. | Comment | June 27 | Lewiston High School Auditorium, 1114 Ninth Street, Lewiston. | 1:00 p.m. to 10:00 p.m | Cliff Mitchell or Elayne Murphy, (208) 476–4541, emurphy@fs.fed.us. |
| IL: | | | | | |
| Midewin National Tallgrass Prairie. | Information | May 24 | Wilmington City Hall, 1165 South Water Street, Wilmington. | 3:00 p.m. to 6:00 p.m | Marta Witt, (815) 423–6370, mwitt@fs.fed.us. |
| Midewin National Tallgrass Prairie. | Comment | June 21 | Wilmington City Hall, 1165 South Water Street; Wilmington. | 3:00 p.m. to 6:00 p.m | Marta Witt, (815) 423–6370, mwitt@fs.fed.us. |
| Shawnee National Forest. | Information | May 30 | Marion Convention Center, 2600 West DeYoung, Marion. | 6:30 p.m. to 9:30 p.m | Steve Hupe, (618) 253–7114, shupe@fs.fed.us. |
| Shawnee National Forest. | Comment | June 20 | Marion Convention Center, 2600 West DeYoung, Marion. | 6:00 p.m. to 9:30 p.m | Steve Hupe, (618) 253–7114, shupe@fs.fed.us |
| IN: | | | | | |
| Hoosier National Forest | Information | May 22 | Morgan County Fair Building, Kendall Room, 1749 Hospital Drive, Martinsville. | 6:00 p.m. to 9:00 p.m | Wilma Reed Manne, (812) 277–3580, (812) 275–5987, wmanne@fs.fed.us. |
| Hoosier National Forest | Comment | June 27 | Morgan County Fair Building, Kendall Room, 1749 Hospital Drive, Martinsville. | 6:00 p.m. to 9:00 p.m | Wilma Reed Manne, (812) 277–3580, (812) 275–5987, wmanne@fs.fed.us. |
| Hoosier National Forest | Information | May 23 | Fulton Hill Community Center, 855 Walnut Street, Troy. | 6:00 p.m. to 9:00 p.m | Wilma Reed Manne, (812) 277–3580, (812) 275–5987, wmanne@fs.fed.us. |
| Hoosier National Forest | Comment | June 28 | Fulton Hill Community Center, 855 Walnut Street, Troy. | 6:00 p.m. to 9:00 p.m | Wilma Reed Manne, (812) 277–3580, (812) 275–5987, wmanne@fs.fed.us. |
| KY: | | | | | |
| Daniel Boone National Forest. | Information | May 22 | Clark County Public Library, 370 South Burns Avenue, Winchester. | 3:00 p.m. to 5:00 p.m. and 7:00 p.m. to 9:00 p.m. | Kevin Lawrence, (859) 745–3152, klawrence01 @fs.fed.us. |
| Daniel Boone National Forest. | Comment | June 27 | Fayette County Extension Office, 1145 Red Mile Place, Lexington. | 3:00 p.m. to 4:30 p.m. and 7:00 p.m. to 8.30 p.m. | Kevin Lawrence, (859) 745–3152, klawrence01 @fs.fed.us. |
| LA: | | | | | |
| Kisatchie National Forest. | Information | May 25 | Alexandria Forestry Center, Third Floor Conference Room, 2500 Shreveport Highway, Pineville. | 6:00 p.m. to 9:00 p.m | Cindy Dancak, (318) 473–7109, cdancak@fs.fed.us. |

## APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Kisatchie National Forest. | Comment | June 22 | Alexandria Forestry Center, Third Floor Conference Room, 2500 Shreveport Highway, Pineville. | 6:00 p.m. to 9:00 p.m | Cindy Dancak, (318) 473–7109, cdancak@fs.fed.us. |
| MI: | | | | | |
| Hiawatha National Forest. | Information | June 1 | Manistique High School, 100 North Cedar, Manistique. | 5:00 p.m. to 8:00 p.m | Lee Ann Loupe, (906) 789–3329, lloupe@fs.fed.us. |
| Hiawatha National Forest. | Comment | June 28 | Schoolcraft County Courthouse, 300 Walnut, Manistique. | 5:00 p.m. to 8:00 p.m | Lee Ann Loupe, (906) 789–3329, lloupe@fs.fed.us. |
| Huron—Manistee National Forests. | Information | May 24 | Holiday Inn 2650 South I–75 Business Loop, Grayling. | 6:30 p.m. to 9:00 p.m | Tracy Tophooven, (231) 775–2421 ttophooven@fs.fed.us. |
| Huron—Manistee National Forests. | Comment | June 21 | Holiday Inn 2650 South I–75 Business Loop, Grayling. | 6:30 p.m. to 9:00 p.m | Tracy Tophooven, (231) 775–2421 ttophooven@fs.fed.us. |
| Ottawa National Forest | Information | May 31 | Ewen Town Hall, Ewen | 6:30 p.m. to 9:00 p.m | Bob Brenner, (906) 932–1330, extension 317, rbrenner@fs.fed.us. |
| Ottawa National Forest | Comment | June 28 | Ewen Town Hall, Ewen | 6:00 p.m. to 9:30 p.m | Bob Brenner, (906) 932–1330, extension 317, rbrenner@fs.fed.us. |
| MN: | | | | | |
| Chippewa National Forest. | Information | May 17 | Sawmill Inn, 2301 Pokegama Avenue, Grand Rapids. | 6:00 p.m. to 9:00 p.m | Kay Getting, (218) 335–8673, kgetting@fs.fed.us. |
| Chippewa National Forest. | Comment | June 28 | Sawmill Inn, 2301 Pokegama Avenue, Grand Rapids. | 6:00 p.m. to 9:00 p.m | Kay Getting, (218) 335–8673, kgetting@fs.fed.us. |
| Superior National Forest. | Information | May 23 | Barkers Island Inn and Convention Center, 300 Marina Drive, Superior, Wisconsin. | 12:30 p.m. to 4:30 p.m | Duane Lula, (218) 626–4383, dlula@fs.fed.us. |
| Superior National Forest. | Comment | June 22 | Holiday Inn, 200 West Superior Street, Duluth. | 12:30 p.m. to 4:30 p.m | Duane Lula, (218) 626–4383, dlula@fs.fed.us. |
| MS: | | | | | |
| National Forests In Mississippi. | Information | June 1 | Ramada Inn Southwest Conference Center, 1525 Ellis Avenue, Jackson. | 2:30 p.m. to 5:30 p.m. and 6:00 p.m. to 8:30 p.m. | Jeff Long, (601) 965–4391, extension 149, Jlong@fs.fed.us. |
| National Forests In Mississippi. | Comment | June 29 | Ramada Inn Southwest Conference Center, 1525 Ellis Avenue, Jackson. | 2:30 p.m. to 5:30 p.m. and 6:00 p.m. to 8:30 p.m. | Jeff Long, (601) 965–4391, Ext. 149, Jlong@fs.fed.us. |
| MO: | | | | | |
| Mark Twain National Forest. | Information | June 2 | University Center, Room 101, East Eleventh and Rolla Streets, Rolla. | 7:00 p.m. to 10:00 p.m | Laura Watts, (573) 364–4621, ljwatts@fs.fed.us. |
| Mark Twain National Forest. | Information | June 3 | University Center, Room 101, East Eleventh and Rolla Streets, Rolla. | 12:00 p.m. to 3:00 p.m | Laura Watts, (573) 364–4621, ljwatts@fs.fed.us. |
| Mark Twain National Forest. | Comment | June 24 | Rolla Middle School Auditorium, 1111 Soest Road, Rolla. | 12:00 p.m. to 3:00 p.m | Laura Watts, (573) 364–4621, ljwatts@fs.fed.us. |
| MT: | | | | | |
| Beaverhead—Deerlodge National Forests, Wisdom Ranger District. | Information | May 22 | Wisdom Community Center, Wisdom. | 4:00 p.m. to 8:00 p.m | Jack de Golia, (406) 683–3984, jdegolia@fs.fed.us. |
| Beaverhead—Deerlodge National Forests, Butte Ranger District. | Information | May 23 | Butte Ranger Station, 1820 Meadowlark Lane, Butte. | 4:00 p.m. to 8:00 p.m | Jack de Golia, (406) 683–3984, jdegolia@fs.fed.us. |
| Beaverhead—Deerlodge National Forests, Wise River Ranger Distnct. | Information | May 23 | Grange Hall Divide | 4:00 p.m. to 8:00 p.m | Jack de Golia, (406) 683–3984, jdegolia@fs.fed.us. |
| Beaverhead—Deerlodge National Forests, Dillon Ranger District. | Information | May 24 | USDA Service Center, 420 Barrett Street, Dillon. | 4:00 p.m. to 8:00 p.m | Jack de Golia, (406) 683–3984, jdegolia@fs.fed.us. |
| Beaverhead—Deerlodge National Forests, Pintler Ranger Distnct. | Information | May 25 | USDA Service Center 1, Hollenback Road, Deer Lodge. | 4:00 p.m. to 8:00 p.m | Jack de Golia, (406) 683–3984, jdegolia@fs.fed.us. |

APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Beaverhead—Deerlodge National Forests, Pintler Ranger District. | Information | May 26 | Forest Service Office, Philipsburg. | 12:00 p.m. to 4:00 p.m. | Jack de Golia, (406) 683–3984, jdegolia@fs.fed.us. |
| Beaverhead—Deerlodge National Forests, Jefferson Ranger District. | Information | May 30 | Forest Service Bunkhouse, 12 Depot Hill Road, Boulder. | 4:00 p.m. to 8:00 p.m | Jack de Golia, (406) 683–3984, jdegolia@fs.fed.us. |
| Beaverhead—Deerlodge National Forests, Jefferson Ranger District. | Information | May 31 | USDA Service Center, #3 Whitetail Road, Whitehall. | 4:00 p.m. to 8:00 p.m | Jack de Golia, (406) 683–3984, jdegolia@fs.fed.us. |
| Beaverhead—Deerlodge National Forests, Madison Ranger District. | Information | June 1 | Forest Service Office, Main Street, Sheridan. | 4:00 p.m. to 8:00 p.m | Jack de Golia, (406) 683–3984, jdegolia@fs.fed.us. |
| Beaverhead—Deerlodge National Forests, Madison Ranger District. | Information | June 2 | Forest Service Office, 5 Forest Service Road, Ennis. | 4:00 p.m. to 8:00 p.m | Jack de Golia (406) 683–3984, jdegolia@fs.fed.us. |
| Beaverhead—Deerlodge National Forests. | Comment | June 22 | Ramada Copper King Inn, 4655 Harrison Avenue, Butte. | 4:00 p.m. to 5:30 p.m. and 7:00 p.m. to 8:30 p.m. | Jack de Golia (406) 683–3984, jdegolia@fs.fed.us. |
| Beaverhead—Deerlodge National Forests. | Comment | June 26 | Western Montana College, Beier Auditorium (formerly Main Auditorium), Dillon. | 4:00 p.m. to 5:30 p.m. and 7:00 p.m. to 8:30 p.m. | Jack de Golia (406) 683–3984, jdegolia@fs.fed.us. |
| Bitterroot National Forest. | Information | May 30 | Community Center, 223 South Second Street, Hamilton. | 7:00 p.m. to 9:00 p.m | Dixie Dies (406) 363–7154, ddies@fs.fed.us. |
| Bitterroot National Forest. | Comment | June 20 | Community Center, 223 South Second Street, Hamilton. | 7:00 p.m. to 9:00 p.m | Dixie Dies (406) 363–7154, ddies@fs.fed.us. |
| Custer National Forest | Information | May 23 | Forest Supervisor's Office, 1310 Main Street, Billings. | 4:30 p.m. to 8:30 p.m | Mark Slacks, 406–657–6200, extension 240, or Buck Feist, 406–657–6200, extension 239. |
| Custer National Forest | Comment | June 27 | Billings Hotel and Convention Center (formerly Clarion Hotel), 1223 Mullowney Lane, Billings. | 5:00 p.m. to 9:00 p.m | Mark Slacks, 406–657–6200, extension 240, or Buck Feist, 406–657–6200, extension 239. |
| Flathead National Forest. | Information | May 31 | Outlaw Inn, 1701 Hwy 93 South, Kalispell. | 7:00 p.m. to 9:00 p.m | Allen Rowley, (406) 758–5252, arowley@fs.fed.us. |
| Flathead National Forest. | Information | June 1 | Outlaw Inn, 1701 Hwy 93 South, Kalispell. | 7:00 p.m. to 9:00 p.m | Allen Rowley, (406) 758–5252, arowley@fs.fed.us. |
| Flathead National Forest. | Comment | June 26 | Cavanaugs Center, 20 North Main, Kalispell. | 7:00 p.m. to 9:00 p.m | Allen Rowley, (406) 758–5252, arowley@fs.fed.us. |
| Flathead National Forest. | Comment | June 27 | Cavanaugs Center, 20 North Main, Kalispell. | 7:00 p.m. to 9:00 p.m | Allen Rowley, (406) 758–5252, arowley@fs.fed.us. |
| Flathead National Forest. | Comment | June 28 | Cavanaugs Center, 20 North Main, Kalispell. | 7:00 p.m. to 9:00 p.m | Allen Rowley, (406) 758–5252, arowley@fs.fed.us. |
| Gallatin National Forest | Information | May 23 | Gallatin Room, Holiday Inn, 5 Baxter Lane, Bozeman. | 7:00 p.m. to 9:00 p.m | Jim Devitt, (406) 587–6749, jdevitt@fs.fed.us. |
| Gallatin National Forest | Comment | June 20 | Gallatin Room, Holiday Inn, 5 Baxter Lane, Bozeman. | 3:30 p.m. to 5:30 p.m. and 6:30 p.m. to 8:30 p.m. | Jim Devitt, (406) 587–6749, jdevitt@fs.fed.us. |
| Helena National Forest | Information | May 23 | Helena NF Supervisors Office, 2880 Skyway Drive, Helena. | 4:00 p.m. to 8:00 p.m | Maggie Pittman, (406) 449–5201, mpittman@fs.fed.us. |
| Kootenai National Forest. | Information | May 30 | City Hall, 925 East Spruce Street, Libby. | 7:00 p.m. to 10:00 p.m | Jeff Scussel (406) 293–6211, jscussel@fs.fed.us. |
| Helena National Forest | Comment | June 20 | Cavanaugh's Colonial Inn, 2301 Colonial Drive, Helena. | 6:00 p.m. to 9:00 p.m | Maggie Pittman, (406) 449–5201, mpittman@fs.fed.us. |
| Kootenai National Forest. | Comment | June 27 | City Hall, 925 East Spruce Street, Libby. | 7:00 p.m. to 10:00 p.m | Jeff Scussel (406) 293–6211, jscussel@fs.fed.us. |
| Lewis and Clark National Forests. | Information | June 1 | Lewis and Clark Interpretive Center, 4201 Giant Springs Road, Great Falls. | 7:00 p.m. to 9:00 p.m | Bonnie Dearing, 406–791–7754, bdearing@fs.fed.us. |

APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Lewis and Clark National Forests. | Comment | June 19 | Civic Center, Central Avenue, Great Falls. | 7:00 p.m. to 9:00 p.m | Bonnie Dearing, 406–791–7754, bdearing@fs.fed.us. |
| Northern Region and Lolo National Forest. | Information | May 23 | Doubletree Hotel, 100 Madison Street, Missoula. | 6:30 p.m. to 9:00 p.m | Marcia Hogan (406) 329–1024, mlhogan@fs.fed.us. |
| Lolo National Forest, Thompson Falls/Plains, Ranger District. | Information | May 24 | Plains High School, 412 Rittenour Street, Plains. | 6:30 p.m. to 9:00 p.m | Marcia Hogan (406) 329–1024, mlhogan@fs.fed.us. |
| Northern Region and Lolo National Forest. | Comment | June 21 | Doubletree Hotel, 100 Madison Street, Missoula. | 7:00 p.m. to 9:00 p.m | Marcia Hogan (406) 329–1024, mlhogan@fs.fed.us. |
| NE/SD: | | | | | |
| Nebraska National Forest. | Information | May 30 | Country Kitchen, 1250 West Tenth Street, Chadron. | 5:00 p.m. to 8:00 p.m | Cheri Bashor, (308) 432–0300, ebashor/r2__nebraska@fs.fed.us. |
| Nebraska National Forest. | Information | May 30 | Country Kitchen, 1250 West Tenth Street, Chadron. | 5:00 p.m. to 8:00 p.m | Cheri Bashor, (308) 432–0300, cbashor/r2__nebraska@fs.fed.us |
| Nebraska National Forest. | Comment | June 20 | Country Kitchen, 1250 West Tenth Street, Chadron. | 6:30 p.m. to 9:00 p.m | Cheri Bashor, (308) 432–0300, cbashor/r2__nebraska@fs.fed.us. |
| NV: | | | | | |
| Humboldt—Toiyabe National Forests, Tonopah Ranger District. | Information | May 15 | Tonopah Convention Center, 310 Brougher Avenue, Tonopah. | 6:00 p.m. to 9:30 p.m | John Haney, (775) 482–6286, jhaney@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Ely Ranger District. | Information | May 22 | Bristlecone Convention Center, 160 Sixth Street, Ely. | 6:00 p.m. to 9:30 p.m | Jay Pence, (775) 289–3031, jpence@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Austin Ranger District. | Information | May 23 | Austin Town Hall, 135 Court Street, Austin. | 6:00 p.m. to 9:30 p.m | Joe Shaw, (775) 964–2671 jshaw@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Northeast Nevada EcoUnit. | Information | May 25 | EcoUnit Forest Service Office, 2035 Last Chance Road. | 6:00 p.m. to 8:30 p.m | Erin Oconner, (775) 738–5171, Joe Shaw, eoconner@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Santa Rosa Ranger District. | Information | May 25 | Santa Rosa Ranger District, 1200 Winnemucca Boulevard, Winnemucca. | 6:00 p.m. to 9:30 p.m | Erin Oconner, (775) 623–5025, eoconner@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Supervisor's Office and Carson Ranger District. | Information | May 30 | Galena High School, 3600 Butch Cassidy, Reno. | 6:00 p.m. to 9:30 p.m | Rick Connell, (775) 331–6444, rconnell@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Spring Mountains National Recreation Area. | Information | May 31 | Sahara West Library, 9600 West Sahara Avenue, Multipurpose Room, Las Vegas. | 1:00 p.m. to 4:30 p.m. and 6:00 p.m. to 8:30 p.m. | Betty Blodgett, (702) 873–8800, eblodgett@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Bridgeport Ranger District. | Information | June 1 | Memorial Hall, 100 Sinclair Street, Bridgeport, CA. | 6:00 p.m. to 9:30 p.m | Kathy Lucich, (760) 932–7070, klucich@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Ely Ranger District. | Comment | June 12 | Bristlecone Convention Center, 160 Sixth Street, Ely. | 6:00 p.m. to 9:30 p.m | Jay Pence, (775) 289–3031, jpence@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Austin Ranger District. | Comment | June 13 | Austin Town Hall, 135 Court Street, Austin. | 6:00 p.m. to 9:30 p.m | Joe Shaw, (775) 964–2671, jshaw01@fs.fed.us. |

APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Humboldt—Toiyabe National Forests, Santa Rosa Ranger District. | Comment | June 15 | Humboldt County Convention Center, 50 West Winnemucca Boulevard, Winnemucca. | 6:00 p.m. to 9:30 p.m | Erin Oconner, (775) 623–5025, eoconner@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Bridgeport Ranger District. | Comment | June 19 | Memorial Hall, 100 Sinclair Street, Bridgeport, CA. | 6:00 p.m. to 9:30 p.m | Kathy Lucich, (760) 932–7070, klucich@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Tonopah Ranger District. | Comment | June 14 | Tonopah Convention Center, 310 Brougher Avenue, Tonopah. | 6:00 p.m. to 9:30 p.m | John Haney, (775) 482–6286, jhaney@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Northeast Nevada EcoUnit. | Comment | June 21 | Elko Convention Center, 700 Moren Way Elko. | 6:00 p.m. to 9:30 p.m | Erin Oconner, (775) 738–5171, eoconner@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Supervisor's Office and Carson Ranger District. | Comment | June 22 | Galena High School, 3600 Butch Cassidy, Reno. | 6:00 p.m. to 9:30 p.m | Rick Connell, (775) 331–6444, rconnell@fs.fed.us. |
| Humboldt—Toiyabe National Forests, Spring Mountains National Recreation Area. | Comment | June 29 | Sahara West Library, Multipurpose Room 9600 West Sahara Avenue, Las Vegas. | 2:00 p.m. to 4:30 p.m. and 6:00 p.m. to 8.30 p.m. | Betty Blodgett, (702) 873–8800, eblodgett@fs.fed.us |
| NH: | | | | | |
| White Mountain National Forest.. | Information | May 23 | Holiday Inn 172 North Main, Concord. | 6:00 p.m. to 9:00 p.m | Colleen Mainville, (603) 528–8796, cmainvil@fs.fed.us. |
| White Mountain National Forest. | Information | May 24 | Town and Country Motor Inn, Route 2 Gorham. | 6:00 p.m. to 9:00 p.m | Colleen Mainville (603) 528–8796, cmainvil@fs.fed. us. |
| White Mountain National Forest. | Information | June 26 | Holiday Inn, 172 North Main Concord. | 3:00 p.m. to 9:00 p.m | Colleen Mainville, (603) 528–8796, cmainvil@fs.fed. us. |
| White Mountain National Forest. | Comment | June 28 | Town and Country Motor Inn, Route 2, Gorham. | 3:00 p.m. to 9:00 p.m | Colleen Mainville (603) 528–8796 cmainvil@fs.fed. us. |
| NM: | | | | | |
| Carson National Forest | Information | May 23 | El Taoseno Room, Coronado Hall Civic Center Plaza Drive, Taos. | 7:00 p.m. to 9:00 p.m | Audrey Kuykendall, (505) 758–6212, akuykendall@fs.fed.us. |
| Carson National Forest | Comment | June 26 | Council Chambers, Coronado Hall Civic Center, Plaza Drive, Taos. | 7:00 p.m. to 9:00 p.m | Audrey Kuykendall, (505) 758–6212, akuykendall@fs.fed.us. |
| Cibola National Forest | Information | May 18 | Albuquerque Convention Center, La Cienega Room Second and Copper Streets, Albuquerque. | 6:30 p.m. to 9:30 p.m | Vicky Estrada, (505) 346–2650 vestrada@fs.fed.us. |
| Cibola National Forest | Comment | June 20 | Albuquerque Convention Center, La Cienega Room, Second and Copper Streets, Albuquerque. | 6:30 p.m. to 9:30 p.m | Vicky Estrada, (505) 346–2650, vestrada@fs.fed.us. |
| Gila National Forest | Information | May 22 | Bayard Community Center, 209 Hurley Avenue, Bayard. | 6:00 p.m. to 8:00 p.m | Laura Browning, (505) 388–8201, lbrowning@fs.fed.us |
| Gila National Forest | Comment | June 26 | Bayard Community Center, 209 Hurley Avenue, Bayard. | 6:00 p.m. to 8:00 p.m | Laura Browning, (505) 388–8201, lbrowning@fs.fed.us, |
| Lincoln National Forest | Information | May 23 | Cloudcroft Middle School, Highway 82, Cloudcroft. | 6:00 p.m. to 9:00 p.m | Johnny Wilson, (505) 434–7230, jwilson@fs.fed.us. |
| Lincoln National Forest | Information | May 25 | Riodoso District Civic Center, 111 Sierra Blanca Drive, Riodoso. | 6:00 p.m. to 9:00 p.m | Johnny Wilson, (505) 434–7230, jwilson@fs.fed.us. |
| Lincoln National Forest | Information | May 31 | Carlsbad Municipal Library Annex, Halaguena Park, Carlsbad. | 6:00 p.m. to 9:00 p.m | Johnny Wilson, (505) 434–7230, jwilson@fs.fed.us. |

APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Lincoln National Forest | Comment | June 22 | Cloudcroft Middle School, Highway 82, Cloudcroft. | 5:00 p.m. to 9:00 p.m | Johnny Wilson, (505) 434–7230, jwilson @fs.fed.us. |
| Santa Fe National Forest. | Information | May 18 | Albuquerque Convention Center, La Cienega Room, Second and Copper Streets, Albuquerque. | 6:00 p.m. to 9:30 p.m | Susan Bruin, (505) 438–7829, vestrada @fs.fed.us. |
| Santa Fe National Forest. | Information | May 23 | El Taoseno Room, Coronado Hall Civic Center, Plaza Drive, Taos. | 7:00 p.m. to 9:00 p.m | Susan Bruin, (505) 438–7829, vestrada @fs.fed.us. |
| Santa Fe National Forest. | Comment | June 20 | Albuquerque Convention Center, La Cienega Room, Second and Copper Streets, Albuquerque. | 6:30 p.m. to 9:30 p.m | Susan Bruin, (505) 438–7829, vestrada @fs.fed.us. |
| Santa Fe National Forest. | Comment | June 26 | Council Chambers, Coronado Hall Civic Center, Plaza Drive Taos. | 7:00 p.m. to 9:00 p.m | Susan Bruin, (505) 438–7829, vestrada@fs.fed.us. |
| Regional Office | Information | May 18 | Albuquerque Convention Center, La Cienega Room, Second and Copper Streets, Albuquerque. | 6:00 p.m. to 9:30 p.m | Ron Pugh, (505) 842–3256, rlpugh @fs.fed.us. |
| Regional Office | Comment | June 20 | Albuquerque Convention Center, La Cienega Room, Second and Copper Streets, Albuquerque. | 6:00 p.m. to 9:30 p.m | Ron Pugh, (505) 842–3256, rlpugh @fs.fed.us. |
| NC: | | | | | |
| National Forests In North Carolina. | Information | May 17 | Owen Conference Center, University of North Carolina at Asheville, One University Heights, Ashville. | 6:00 p.m. to 9:00 p.m | Carol Milholen, (828) 257–4860, cmilholen @fs.fed.us. |
| National Forests In North Carolina. | Comment | June 10 | Owen Conference Center, University of North Carolina at Asheville, One University Heights, Asheville. | 9:00 a.m. to 12:00 p.m | Carol Milholen, (828) 257–4860, cmilholen @fs.fed.us. |
| ND: | | | | | |
| Dakota Prairie National Grassland. | Information | May 24 | Supervisor's Office, 240 West Century Avenue, Bismark. | 7:00 p.m. to 9:00 p.m | Steve Williams, (701) 250–4443, swilliams/r1dpng@fs.fed.us. |
| Dakota Prairie National Grassland. | Comment | June 28 | Supervisor's Office, 240 West Century Avenue, Bismark. | 7:00 p.m. to 9:00 p.m | Steve Williams, (701) 250–4443, swilliams/r1dpng@fs.fed.us. |
| OH: | | | | | |
| Wayne National Forest | Information | May 31 | Ramada Inn, 15770 State Route 691, Nelsonville. | 6:30 p.m. to 9:30 p.m | Bob Gianniny, (740) 592–0200, rgianniny@fs.fed.us. |
| Wayne National Forest | Comment | June 21 | Ramada Inn, 15770 State Route 691, Nelsonville. | 7:00 p.m. to 9:00 p.m | Bob Gianniny, (740) 592–0200, rgianniny@fs.fed.us. |
| OR/WA: | | | | | |
| Columbia River, Gorge National Scenic Area, Gifford Pinchot National Forest, Mount Hood National Forest. | Information | May 30 | Best Western Inn, I–84 Exit 64, Hood River. | 3:00 p.m. to 8:00 p.m | Virginia Kelly, (541) 308–1720, vkelly@fs.fed.us; John Roland, (360) 891–5099, jroland@fs.fed.us; Glen Sachet, (503) 668–1791, gsachet@fs.fed.us. |
| Columbia River, Gorge National Scenic Area, Gifford Pinchot National Forest, Mount Hood National Forest. | Comment | June 29 | Best Western Inn, I–84 Exit 64, Hood River. | 3:00 p.m. to 8:00 p.m | Virginia Kelly, (541) 308–1720, vkelly@fs.fed.us; John Roland, (360) 891–5099, jroland@fs.fed.us.; Glen Sachet, (503) 668–1791 gsachet@fs.fed.us. |
| OR: | | | | | |
| Deschutes National Forest. | Information | May 23 | National Guard Armory, 875 SW Simpson Avenue, Bend. | 6:00 p.m. to 9:00 p.m | Gery Ferguson, (541) 383–5538, gferguson@fs.fed.us., |
| Deschutes National Forest and Ochoco National Forest. | Comment | June 20 | National Guard Armory, 875 SW Simpson Avenue, Bend. | 6:00 p.m. to 9:00 p.m | Gery Ferguson, (541) 383–5538, gferguson@fs.fed.us or Bill Rice, (541) 416–6647, wjrice@fs.fed.us. |

APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Fremont National Forest. | Information | May 25 | Lakeview Inter-agency Office, 1300 South G Street, Lakeview. | 6:00 p.m. to 8:00 p.m | Steve Egeline, (541) 947–6205, segeline@fs.fed.us. |
| Fremont National Forest. | Comment | June 29 | Lakeview Inter-agency Office, 1300 South G Street, Lakeview. | 6:00 p.m. to 8:00 p.m | Steve Egeline, (541) 947–6205, segeline@fs.fed.us. |
| Malheur National Forest. | Information | May 23 | Forest Headquarters, 431 Patterson Bridge Road, John Day. | 6:30 p.m. to 9:00 p.m | Sharon Sweeney, (541) 575–3144, srsweeney@fs.fed.us. |
| Malheur National Forest. | Information | May 31 | Senior Center 17, South Alder, Avenue, Burns. | 6:30 p.m. to 8:30 p.m | Sharon Sweeney, (541) 575–3144, srsweeney@fs.fed.us |
| Malheur National Forest. | Comment | June 28 | Forest Headquarters, 431 Patterson Bridge Road, John Day. | 5:00 p.m. to 8:00 p.m | Lyle Powers, (541) 575–3141, lepowers@fs.fed.us. |
| Mount Hood National Forest and Regional Office. | Information | May 31 | Oregon Convention Center, 777 NE Martin Luther King Junior Boulevard, Portland. | 1:00 p.m. to 9:00 p.m | Glen Sachet (503) 668–1791 gsachet@fs.fed.us or Tom Hussey, (503) 808–2285, thussey@fs.fed.us. |
| Mount Hood National Forest. | Comment | June 27 | Briarwood Inn 2752 Hogan Road Gresham. | 3:00 p.m. to 8:00 p.m | Glen Sachet, (503) 668–1791, gsachet@fs.fed.us. |
| Ochoco National Forest | Information | May 31 | Forest Headquarters, 3160 NE Third Street, Prineville. | 7:00 p.m. to 9:00 p.m | Bill Rice, (541) 416–6647, wjnce@fs.fed.us. |
| Regional Office | Comment | June 20 | Oregon Convention Center, 777 NE Martin Luther King Junior Boulevard, Portland. | 2:00 p.m. to 9:00 p.m | Tom Hussey, (503) 808–2285, thussey@fs.fed.us. |
| Regional Office | Comment | June 21 | Oregon Convention Center, 777 NE Martin Luther King Junior Boulevard, Portland. | 2:00 p.m. to 10:00 p.m | Tom Hussey, (503) 808–2285 thussey@fs.fed.us. |
| Rogue River National Forest. | Information | May 31 | Red Lion Hotel, 200 North Riverside Avenue, Medford. | 6:00 p.m. to 9:00 p.m | Mary Marrs, (541) 471–6515, mmarrs@fs.fed.us. |
| Rogue River National Forest. | Comment | June 28 | Red Lion Hotel, 200 North Riverside Avenue, Medford. | 6:00 p.m. to 9:00 p.m | Mary Marrs, (541) 471–6515, mmarrs@fs.fed.us. |
| Siskiyou National Forest. | Information | May 30 | Gold Beach Resort, Convention Center, 29232 South Ellensburg, Gold Beach. | 6:00 p.m. to 9:00 p.m | Mary Marrs, (541) 471–6515, mmarrs@fs.fed.us. |
| Siskiyou National Forest. | Information | June 1 | Rogue Bank, Floral Exhibit Building, Josephine County Fairgrounds, Grants Pass. | 6:00 p.m. to 9:00 p.m | Mary Marrs, (541) 471–6515, mmarrs@fs.fed.us. |
| Siskiyou National Forest. | Comment | June 27 | Gold Beach Resort Convention Center, 29232 South Ellensburg, Gold Beach. | 6:00 p.m. to 9:00 p.m | Mary Marrs, (541) 471–6515, mmarrs@fs.fed.us. |
| Siuslaw National Forest and Willamette National Forest. | Information | May 22 | Red Lion Hotel, Jefferson Room, 3301 Market Street, Salem. | 6:30 p.m. to 9:00 p.m | Craig Snider, (541) 750–7077, cbsnider@fs.fed.us or Neal Forrester, (541) 465–6924, nforrester@fs.fed.us. |
| Siuslaw National Forest | Information | May 25 | Eugene Water and Electric Board, 500 East Fourth Avenue, Eugene. | 6:30 p.m. to 9:00 p.m | Craig Snider, (541) 750–7077, cbsnider@fs.fed.us. |
| Siuslaw National Forest | Information | May 30 | Highland View Middle School, 1920 Highland Drive, Corvallis. | 6:30 p.m. to 9:00 p.m | Craig Snider, (541) 750–7077, cbsnider@fs.fed.us. |
| Siuslaw National Forest | Information | May 31 | Florence Events Center, 715 Quince Street, Florence. | 6:30 p.m. to 9:00 p.m | Craig Snider, (541) 750–7077, cbsnider@fs.fed.us. |
| Siuslaw National Forest | Information | June 1 | Beaver Fire Hall, 20055 Blaine Road, Beaver. | 6:30 p.m. to 9:00 p.m. | Craig Snider, (541) 750–7077, cbsnider@fs.fed.us. |
| Siuslaw National Forest and Willamette National Forest. | Comment | June 19 | Salem City Council Chambers, 555 Liberty Street SE, Salem. | 6:30 p.m. to 9:00 p.m | Craig Snider, (541) 750–7077 cbsnider@fs.fed.us or Neal Forrester, (541) 465–6924, nforrester@fs.fed.us. |

APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Siuslaw National Forest | Comment | June 20 | Florence Events Center, 715 Quince Street, Florence. | 6:30 p.m. to 9:00 p.m | Craig Snider, (541) 750–7077, cbsnider@fs.fed.us. |
| Siuslaw National Forest | Comment | June 21 | Highland View Middle School, 1920 Highland Drive, Corvallis. | 6:30 p.m. to 9:00 p.m | Craig Snider, (541) 750–7077, cbsnider@fs.fed.us. |
| Siuslaw National Forest | Comment | June 22 | Eugene City Council Chambers, 777 Pearl Street, Eugene. | 6:30 p.m. to 9:00 p.m | Craig Snider, (541) 750–7077, cbsnider@fs.fed.us. |
| Umatilla National Forest. | Information | May 24 | Supervisor's Office, 2517 SW Hailey Avenue, Pendleton. | 6:00 p.m. to 9:00 p.m | Ed Pugh, (541) 278–3716, epugh@fs.fed.us. |
| Umatilla National Forest. | Information | May 30 | Ukiah High School, Hill Street, Ukiah. | 6:00 p.m. to 9:00 p.m | Craig Smith-Dixon, (541) 427–3231, cmdixon@fs.fed.us. |
| Umatilla National Forest. | Comment | June 28 | Supervisor's Office, 2517 SW Hailey Avenue, Pendleton. | 6:00 p.m. to 8:30 p.m | Ed Pugh, (541) 278–3716, epugh@fs.fed.us. |
| Umpqua National Forest. | Information | May 23 | Cottage Grove Ranger Station, 78405 Cedar Park Road, Cottage Grove. | 7:00 p.m. to 8:30 p.m | Cheryl Walters, (541) 957–3259, crwalters@fs.fed.us. |
| Umpqua National Forest. | Information | May 25 | Douglas County Library, 1409 NE Diamond Lake Boulevard, Roseburg. | 5:30 p.m. to 8:00 p.m | Cheryl Walters, (541) 957–3259, crwalters@fs.fed.us. |
| Umpqua National Forest. | Comment | June 20 | Ranger Station, 78405 Cedar Park Road, Cottage Grove. | 7:00 p.m. to 8:30 p.m | Cheryl Walters, (541) 957–3259, crwalters@fs.fed.us. |
| Umpqua National Forest. | Comment | June 22 | Douglas County Library, 1409 NE Diamond Lake Boulevard, Roseburg. | 5:30 p.m. to 8:00 p.m | Cheryl Walters, (541) 957–3259, crwalters@fs.fed.us. |
| Wallowa Whitman National Forest. | Information | May 31 | Sunridge Inn, 1 Sunridge Lane, Baker City. | 5:00 p.m. to 8:00 p.m | Annie Hanson, (541) 523–6391, ahanson@fs.fed.us. |
| Wallowa Whitman National Forest. | Comment | June 28 | Sunridge Inn, 1 Sunridge Lane, Baker City. | 5:00 p.m. to 8:00 p.m | Annie Hanson, (541) 523–6391, ahanson@fs.fed.us. |
| Willamette National Forest. | Information | May 25 | Eugene Water and Electric Board, 500 East Fourth Avenue, Eugene. | 6:30 p.m. to 9:00 p.m | Neal Forrester, (541) 465–6924, nforrester@fs.fed.us. |
| Willamette National Forest. | Information | May 30 | Highland View Middle School, 1920 Highland Drive, Corvallis. | 6:30 p.m. to 9:00 p.m | Neal Forrester, (541) 465–6924, nforrester@fs.fed.us. |
| Willamette National Forest. | Information | May 31 | McKenzie School District Office, 51187 Blue River Drive, Vida. | 6:30 p.m. to 9:00 p.m | Neal Forrester, (541) 465–6924, nforrester@fs.fed.us. |
| Willamette National Forest. | Information | June 1 | Sweet Home Ranger Station, 3225 Hwy 20, Sweet Home. | 6:30 p.m. to 9:00 p.m | Neal Forrester, (541) 465–6924, nforrester@fs.fed.us. |
| Willamette National Forest. | Information | June 5 | Mill City Middle School, 450 Southwest Evergreen, Mill City. | 6:30 p.m. to 9:00 p.m | Neal Forrester, (541) 465–6924, nforrester@fs.fed.us. |
| Willamette National Forest. | Information | June 6 | Middle Fork Ranger District Office, 49098 Salmon Creek Road, Oakridge. | 6:30 p.m. to 9:00 p.m | Neal Forrester, (541) 465–6924, nforrester@fs.fed.us. |
| Willamette National Forest. | Comment | June 19 | Salem City Council Chambers, 555 Liberty Street, Salem. | 6:30 p.m. to 9:00 p.m | Neal Forrester, (541) 465–6924, nforrester@fs.fed.us. |
| Willamette National Forest. | Comment | June 21 | Highland View Middle School, 1920 Highland Drive, Corvallis. | 6:30 p.m. to 9:00 p.m | Neal Forrester, (541) 465–6924, nforrester@fs.fed.us. |
| Willamette National Forest. | Comment | June 22 | Eugene City Council Chambers, 77 Pearl Street, Eugene. | 6:30 p.m. to 9:00 p.m | Neal Forrester, (541) 465–6924, nforrester@fs.fed.us. |
| Winema National Forest. | Information | May 23 | Forest Headquarters, 2819 Dahlia Street, Klamath Falls. | 6:00 p.m. to 8:00 p.m | Frank Erickson, (541) 883–6715, fserickson@fs.fed.us. |
| Winema National Forest. | Comment | June 28 | Forest Headquarters, 2819 Dahlia Street, Klamath Falls. | 5:00 p.m. to 9:00 p.m | Frank Erickson, (541) 883–6715, fserickson@fs.fed.us. |
| PA: | | | | | |
| Allegheny National Forest. | Information | June 3 | Slater Room, Warren Public Library, Market Street, Warren. | 9:00 a.m. to 12:00 p.m | Gary Kell, (814) 723–5150, gkell@fs.fed.us. |
| Allegheny National Forest. | Comment | June 20 | Sheffield Fire Hall, Route 948, Sheffield. | 6:00 p.m. to 8:00 p.m | Gary Kell, (814) 723–5150, gkell@fs.fed.us. |

## APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| PR: | | | | | |
| Caribbean National Forest. | Information | May 24 | Catalina Service Center, Highway PR 191 Km 44. | 6:00 p.m. to 8:00 p.m | Ricardo Garcia, (787) 888–1810, rgarcia@fs.fed.us |
| Caribbean National Forest. | Comment | June 28 | Catalina Service Center, Highway PR 191 Km 44. | 6:00 p.m. to 8:00 p.m | Ricardo Garcia, (787) 888–1810, rgarcia@fs.fed.us. |
| SC: | | | | | |
| Francis Marion—Sumter National Forests. | Information | May 30 | Forest Supervisor's Office, 4931 Broad River Road, Columbia. | 5:30 p.m. to 8:30 p.m | Robbin Cooper, (803) 561–4000 rcooper&@fs.fed.us |
| Francis Marion—Sumter National Forests. | Comment | June 27 | Forest Supervisor's Office, 4931 Broad River Road, Columbia. | 5:30 p.m. to 8:30 p.m | Robbin Cooper, (803) 561–4000, rcooper@fs.fed.us. |
| SD/WY: | | | | | |
| Black Hills—Nebraska National Forests. | Information | May 25 | Ramkota, 2110 LaCrosse Street, Rapid City. | 6:00 p.m. to 9:00 p.m | Dennis Neill, 605–673–2251, dneill@fs.fed.us, Jerry Schumacher, (308) 432–0300, jschumacher@fs.fed.us. |
| Black Hills—Nebraska National Forests. | Comment | June 27 | Ramkota, 2110 LaCrosse Street, Rapid City. | 11:00 p.m. to 8:00 p.m | Dennis Neill, 605–673–2251, dneill@fs.fed.us, Jerry Schumacher, (308) 432–0300, jschumacher@fs.fed.us. |
| TN: | | | | | |
| Cherokee National Forest. | Information | May 23 | Cleveland State Community College, 3535 Adkisson Drive NW, Cleveland. | 1:00 p.m. to 3:00 p.m. and 7:00 p.m. to 9:00 p.m. | Keith Sandifer, (423) 476–9736, ksandifer@fs.fed.us. |
| Cherokee National Forest. | Comment | June 20 | Cleveland State Community College, 3535 Adkisson Drive NW, Cleveland. | 7:00 p.m. to 9:30 p.m | Keith Sandifer, (423) 476–9736, ksandifer@fs.fed.us |
| TX: | | | | | |
| National Forests and Grasslands in Texas. | Information | June 6 | Federal Building, Room 116, 701 North First Street, Lufkin. | 6:00 p.m. to 8:00 p.m | Gay Ippolito, (409) 639–8501, gippolito@fs.fed.us. |
| National Forests and Grasslands in Texas. | Information | June 27 | Federal Building, Room 116, 701 North First Street, Lufkin. | 6:00 p.m. to 8:00 p.m | Gay Ippolito, (409) 639–8501, gippolito@fs.fed.us. |
| UT: | | | | | |
| Ashley National Forest | Information | May 16 | Western Wyoming College, Meeting Room, Green River Center 1, Green River. | 3:00 p.m. to 7:00 p.m | Laura Jo West, (435) 789–1181, ljwest@fs.fed.us. |
| Ashley National Forest | Information | May 17 | Crossroads Senior center, 50 East 200 South, Roosevelt. | 7:00 p.m. to 9:00 p.m | Laura Jo West, (435) 789–1181, ljwest@fs.fed.us. |
| Ashley National Forest | Information | May 23 | Western Park Convention Center, 302 East 200 South, Vernal. | 7:00 p.m. to 9:00 p.m | Laura Jo West, (435) 789–1181, ljwest@fs.fed.us. |
| Ashley National Forest | Comment | June 27 | Western Wyoming College Meeting Room, Green River Center 1, Green River, WY. | 5:00 p.m. to 8:00 p.m | Laura Jo West, (435) 789–1181, ljwest@fs.fed.us. |
| Ashley National Forest | Comment | June 28 | Golden Age Center, 155 South 100 West, Vernal. | 5:00 p.m. to 8:00 p.m | Laura Jo West, (435) 789–1181, ljwest@fs.fed.us. |
| Dixie National Forest | Information | May 31 | Hunter Conference Center, Southern Utah University, Cedar City. | 7:00 p.m. to 9:00 p.m | Fran Reynolds, (435) 865–3700, freynolds@fs.fed.us. |
| Dixie National Forest | Comment | June 27 | Hunter Conference Center, Southern Utah University, Cedar City. | 7:00 p.m. to 9:00 p.m | Fran Reynolds, (435) 865–3700, freynolds@fs.fed.us. |
| Fishlake National Forest,. | Information | May 30 | Sevier County Courthouse auditorium (basement), 250 North Main, Richfield. | 7:00 p.m. to 9:00 p.m | Linda Jackson, (435) 896–9233, lljackson@fs.fed.us. |
| Fishlake National Forest. | Comment | June 21 | Sevier County Courthouse Commissioner's Chambers, 250 North Main, Richfield. | 7:00 p.m. to 9:00 p.m | Linda Jackson, (435) 896–9233, lljackson@fs.fed.us. |
| Manti-LaSal National Forest. | Information | May 16 | Courthouse, 75 East Main Castle, Dale. | 6:00 p.m. to 8:00 p.m | Glenn Casamassa, (435) 637–2817, gcasamassa@fs.fed.us. |

APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Manti-LaSal National Forest. | Information | May 17 | Courthouse, 117 South Main, Monticello. | 6:30 p.m. to 8:00 p.m | Glenn Casamassa, (435) 637–2817, gcasamass-a@fs.fed.us. |
| Manti-LaSal National Forest. | Information | May 18 | Courthouse, 160 North Main, Manti, Utah. | 6:30 p.m. to 8:30 p.m | Glenn Casamassa, (435) 637–2817, gcasamass-a@fs.fed.us. |
| Manti-LaSal National Forest. | Comment | June 7 | Courthouse, 120 East Main, Castle, Dale. | 1:00 p.m. to 5:30 p.m | Glenn Casamassa, (435) 637–2817, gcasamass-a@fs.fed.us. |
| Uinta National Forest | Information | June 1 | Provo Marriott Hotel, 101 West 100 North, Provo. | 6:30 p.m. to 9:30 p.m | Loyal Clark, (801) 342–5100, lfclark@fs.fed.us. |
| Uinta National Forest | Comment | June 28 | Provo Marriott Hotel, 101 West 100 North, Provo. | 6:30 p.m. to 9:30 p.m | Loyal Clark, (801) 342–5100, lfclark@fs.fed.us. |
| Wasatch—Cache National Forest. | Information | May 22 | Sweet Library, 455 F Street, Salt Lake City. | 6:00 p.m. to 8:00 p.m | Donna Wilson, (801) 524–3900, dlwilson@fs.fed.us. |
| Wasatch—Cache National Forest. | Comment | June 20 | Highland High School Little Theater, 2166 South 1700 East, Salt Lake City. | 4:30 p.m. to 8:30 p.m | Wasatch-Cache NF, (801) 524–3900, dlwilson@fs.fed.us. |
| VA: | | | | | |
| George Washington—Jefferson National Forests. | Information | May 22 | Holiday Inn—Airport, 6626 Thirlane Road, Roanoke. | 6:00 p.m. to 9:00 p.m | Ken Landgraf, (540) 265–5100, klandgraf@fs.fed.us. |
| George Washington—Jefferson National Forests. | Comment | June 20 | Holiday Inn—Airport, 6626 Thirlane Road, Roanoke. | 5:30 p.m. to 9:00 p.m | Ken Landgraf, (540) 265–5170, klandgraf@fs.fed.us. |
| VT: | | | | | |
| Green Mountain—Finger Lakes National Forest. | Information | May 24 | Franklin Room Howe Center, 1 Scale Avenue, Rutland. | 6:00 p.m. to 9:00 p.m | Rob Clark, (802) 362–2307, ext. 222, rclark01@fs.fed.us. |
| Green Mountain—Finger Lakes National Forest. | Comment | June 27 | Franklin Room Howe Center, 1 Scale Avenue, Rutland. | 3:00 p.m. to 9:00 p.m | Rob Clark, (802)362–2307, ext. 222, rclark01@fs.fed.us. |
| WA: | | | | | |
| Colville National Forest | Information | May 31 | Colville Community College, 985 South Elm, Colville. | 7:00 p.m. to 9:00 p.m | George Buckingham, (509) 684–7106, gbuckingham @fs.fed.us. |
| Colville National Forest | Information | June 6 | Spokane City Hall, Spokane. | 7:00 p.m. to 9:00 p.m | George Buckingham, (509) 684–7106 gbuckingham, @fs.fed.us. |
| Colville National Forest | Comment | June 15 | Spokane City Hall, Spokane. | 2:00 p.m. to 10:00 p.m | George Buckingham, (509) 684–7106, gbuckingham, @fs.fed.us. |
| Colville National Forest | Comment | June 19 | Colville Community College, 985 South Elm, Colville. | 2:00 p.m. to 10:00 p.m | George Buckingham, (509) 684–7106, gbuckingham, @fs.fed.us |
| Gifford Pinchot National Forest. | Information | June 1 | Forest Headquarters, 51st Circle, Vancouver. | 3:00 p.m. to 8:00 p.m | John Roland, (360) 891–5099, jroland@fs.fed.us |
| Gifford Pinchot National Forest. | Comment | June 27 | Forest Headquarters, 51st Circle, Vancouver. | 1:00 p.m. to 9:00 p.m | John Roland, (360) 891–5099, jroland@fs.fed.us. |
| Gifford Pinchot National Forest. | Information | May 25 | Morton High School Auditorium, 152 West Lake Avenue, Morton. | 7:00 p.m. to 10:00 p.m | Harry Cody, (360) 497–1105, hcody@fs.fed.us. |
| Gifford Pinchot National Forest. | Comment | June 20 | Morton High School Auditorium, 152 West Lake Avenue, Morton. | 3:00 p.m. to 8:00 p.m | Harry Cody, (360) 497–1105, hcody@fs.fed.us. |
| Mount Baker—Snoqualmie National Forest. | Comment | June 28 | Seattle Center, Olympic Room, 305 Harrison Street, Seattle. | 1:00 p.m. to 10:00 p.m | Ron Dehart, (425) 744–3573, rdehart@fs.fed.us. |
| Mount Baker—Snoqualmie National Forest. | Comment | June 24 | Everett Pacific Hotel, Orcas Room, 3105 Pine Street, Everett. | 9:00 a.m. to 4:00 p.m | Ron Dehart, (425) 744–3573, rdehart@fs.fed.us. |
| Mount Baker—Snoqualmie National Forest. | Information | June 1 | Mount Baker Ranger District Office, 2105 Highway, 20 Sedro, Woolley. | 4:00 p.m. to 8:00 p.m | Ron Dehart, (425) 744–3573, rdehart@fs.fed.us. |

APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| Mount Baker—Snoqualmie National Forest. | Information | May 31 | Everett Pacific Hotel, Orcas Room, 3105 Pine Street, Everett. | 4:00 p.m. to 8:00 p.m | Ron Dehart, (425) 744–3573, rdehart@fs.fed.us. |
| Okanogan National Forest. | Information | May 24 | Agriplex Fairgrounds, 175 Rodeo Trail Road, Okanogan. | 1:30 p.m. to 4:00 p.m., and 6:30 p.m. to 9:00 p.m. | Jan Flatten, (509) 826–3277, jflatten@fs.fed.us. |
| Okanogan National Forest. | Comment | June 22 | Performing Arts Center, 14 South Cedar, Omak. | 10:00 a.m. to 12:00 p.m., and 1:00 p.m. to 4:00 p.m., and 6:30 p.m. to 9:00 p.m. | Jan Flatten, 826–3277, jflatten@fs.fed.us. |
| Olympic National Forest. | Information | May 31 | City of Port Angeles Council Chambers, 321 East Fifth Street, Port Angeles. | 6:00 p.m. to 9:00 p.m | Ward Hoffman, (360) 956–2375, whoffman@fs.fed.us. |
| Olympic National Forest. | Information | May 22 | Forest Headquarters, 1835 Black Lake Boulevard Southwest, Olympia. | 6:00 p.m. to 9:00 p.m | Ward Hoffman, (360) 956–2375, whoffman@fs.fed.us. |
| Olympic National Forest. | Comment | June 21 | City of Port Angeles Council Chambers, 321 East Fifth Street, Port Angeles. | 5:00 p.m. to 9:00 p.m | Ward Hoffman, (360) 956–2375, whoffman@fs.fed.us. |
| Olympic National Forest. | Comment | June 22 | Forest Headquarters, 1835 Black Lake Boulevard Southwest, Olympia. | 5:00 p.m. to 9:00 p.m | Ward Hoffman, (360) 956–2375, whoffman@fs.fed.us. |
| Umatilla National Forest. | Information | May 31 | Walla Walla Ranger Station, 1415 West Rose, Walla Walla. | 6:00 p.m. to 9:00 p.m | Mary Gibson, (509) 522–6290, mgibson@fs.fed.us. |
| Umatilla National Forest. | Comment | June 29 | Walla Walla Ranger Station, 1415 West Rose, Walla Walla. | 6:00 p.m. to 8:30 p.m | Mary Gibson, (509) 522–6290, mgibson@fs.fed.us. |
| Wenatchee National Forest. | Information | May 25 | Wenatchee Convention Center, 121 North Wenatchee Avenue, Wenatchee. | 1:30 p.m. to 4:00 p.m., and 6:30 p.m. to 9:00 p.m. | Marti Ames, (509) 662–4335, mames@fs.fed.us. |
| Wenatchee National Forest. | Information | May 30 | Hal Holmes Center, 201 North Ruby, Ellensburg. | 1:30 p.m. to 4:00 p.m., and 6:30 p.m. to 9:00 p.m. | Marti Ames, (509) 662–4335, mames@fs.fed.us. |
| Wenatchee National Forest. | Information | June 1 | Cavanaugh's Gateway, 9 North Ninth Street, Yakima. | 1:30 p.m. to 4:00 p.m., and 6:30 p.m. to 9:00 p.m. | Marti Ames, (509) 662–4335, mames@fs.fed.us. |
| Wenatchee National Forest. | Comment | June 20 | Wenatchee Convention Center, 121 North Wenatchee Avenue, Wenatchee. | 10:00 a.m. to 12:00 p.m., and 1:00 p.m. to 4:00 p.m., and 6:30 p.m. to 9:00 p.m. | Marti Ames, (509) 662–4335, mames@fs.fed.us. |
| Wenatchee National Forest. | Comment | June 27 | Hal Holmes Center, 201 North Ruby, Ellensburg. | 10:00 a.m. to 12:00 p.m., and 1:00 p.m. to 4:00 p.m., and 6:30 p.m. to 9:00 p.m. | Marti Ames, (509) 662–4335, mames@fs.fed.us. |
| Wenatchee National Forest. | Comment | June 29 | Cavanaugh's Gateway, 9 North Ninth Street, Yakima. | 10:00 a.m. to 12:00 p.m., and 1:00 p.m. to 4:00 p.m., and 6:30 p.m. to 9:00 p.m. | Marti Ames, (509) 662–4335, mames@fs.fed.us. |
| WI: | | | | | |
| Regional Office | Information | May 22 | Hyatt Hotel, 333 West Kilbourne, Milwaukee. | 4:00 p.m. to 8:00 p.m | Gary Harris, (414) 297–3199, grharris@fs.fed.us. |
| Regional Office | Comment | June 20 | Hyatt Hotel, 333 West Kilbourne, Milwaukee. | 4:00 p.m. to 9:00 p.m | Gary Harris, (414) 297–3199, grharris@fs.fed.us. |
| Chequamegon—Nicolet National Forest. | Information | May 24 | Crandon High School, Highway 8 West, Crandon. | 6:00 p.m. to 9:00 p.m | Michael T. Miller, (715) 362–1343, |
| Chequamegon—Nicolet National Forest. | Comment | June 21 | Park Falls City Library, 410 Division Street, Park Falls. | 6:00 p.m. to 9:00 p.m | Michael T. Miller, (715) 362–1343, |
| Chequamegon—Nicolet National Forest. | Information | May 25 | Park Falls City Library, 410 Division Street, Park Falls. | 6:00 p.m. to 9:00 p.m | Michael T. Miller, (715) 362–1343, |
| Chequamegon—Nicolet National Forest. | Comment | June 20 | Crandon High School, Highway 8 West, Crandon. | 6:00 p.m. to 9:00 p.m | Michael T. Miller, (715) 362–1343, |
| WV: | | | | | |
| Monongahela National Forest. | Information | May 30 | Seneca Rocks Discovery Center, Route 28, Seneca Rocks. | 7:00 p.m. to 10:00 p.m | Joe Rozich, (304) 636–1800 ext. 277; |
| Monongahela National Forest. | Comment | June 24 | Seneca Rocks Discovery Center, Route 28, Seneca Rocks. | 9:00 a.m. to 12:00 p.m | Joe Rozich, (304) 636–1800 ext. 277, |

## APPENDIX—PROPOSED RULE FOR ROADLESS AREA CONSERVATION PUBLIC MEETINGS—Continued

| State and administrative unit | Meeting purpose (information or comment) | Meeting date (2000) | Meeting location (street city) | Meeting time | Contact person (name, phone number, and electronic mail address) |
|---|---|---|---|---|---|
| WY: | | | | | |
| Bridger—Teton National Forests. | Information | May 30 | Teton County Library, Jackson, Wyoming. | 7:00 p.m. to 9:00 p.m | Rick Anderson, (307) 739–5500, |
| Bridger—Teton National Forests. | Comment | June 27 | Teton County Library, Jackson, Wyoming. | 6:00 p.m. to 9:00 p.m | Rick Anderson, (307) 739–5500, |
| Bridger—Teton National Forests. | Information | May 31 | Afton City Hall, 416 Washington Street, Large Conference Room, Afton. | 7:00 p.m. to 9:00 p.m | Rick Anderson, (307) 739–5500, |
| Bridger—Teton National Forests. | Comment | June 28 | Afton City Hall, 416 Washington Street, Large Conference Room, Afton. | 6:00 p.m. to 9:00 p.m | Rick Anderson, (307) 739–5500, |
| Medicine Bow-Routt National Forests. | Information | May 23 | Casper Parkway Plaza, 123 West E Street, Casper. | 3:00 p.m. to 8:00 p.m | Dee Hines, (307) 745–2473, dhines@fs.fed.us. |
| Medicine Bow—Routt National Forests. | Comment | June 27 | Casper Parkway Plaza, 123 West E Street, Casper. | 2:00 p.m. to 8:00 p.m | Dee Hines, (307) 745–2473, dhines@fs.fed.us. |
| Medicine Bow—Routt National Forests. | Information | May 22 | Holiday Inn, 2313 Soldier Springs Road, Laramie. | 3:00 p.m. to 8:00 p.m | Dee Hines, (307) 745–2473, dhines@fs.fed.us. |
| Medicine Bow—Routt National Forests. | Comment | June 28 | Holiday Inn, 2313 Soldier Springs Road, Laramie. | 2:00 p.m. to 8:00 p.m | Dee Hines, (307) 745–2473, dhines@fs.fed.us. |
| Shoshone National Forest. | Information | May 30 | Holiday Inn, 1701 Sheridan, Cody. | 4:00 p.m. to 7:00 p.m | Gordon Warren, (307) 527–6241, |
| Shoshone National Forest. | Information | May 31 | Holiday Inn, 1701 Sheridan, Cody. | 4:00 p.m. to 7:00 p.m | Gordon Warren, (307) 527–6241, |
| Shoshone National Forest. | Comment | June 27 | Holiday Inn, 900 East Sunset, Riverton. | 2:00 p.m. to 7:00 p.m | Gordon Warren, (307) 527–6241, |
| Shoshone National Forest. | Comment | June 28 | Holiday Inn, 900 East Sunset, Riverton. | 2:00 p.m. to 7:00 p.m | Gordon Warren, (307) 527–6241, |
| Bighorn National Forest | Information | June 1 | Holiday Inn Convention Center, 1809 Sugarland Drive, Sheridan. | 4:00 p.m. to 8:00 p.m | Joel Strong, (307) 672–0751, |
| Bighorn National Forest | Comment | June 26 | Sheridan Center Best Western, 612 North Main, Sheridan. | 4:00 p.m. to 8:00 p.m | Joel Strong, (307) 672–0751, |
| Bighorn National Forest | Information | June 2 | BLM Conference Room, 101 South 23rd, Worland. | 4:00 p.m. to 8:00 p.m | Joel Strong, (307) 672–0751, |
| Bighorn National Forest | Comment | June 27 | BLM Conference Room, 101 South 23rd, Worland. | 4:00 p.m. to 8:00 p.m | Joel Strong, (307) 672–0751, |

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Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 2, 11, 15, 23, and 42
Federal Acquisition Regulation; Energy Efficiency of Supplies and Services; Proposed Rule

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 2, 11, 15, 23, and 42**

**[FAR Case No. 1999–011]**

**RIN 9000–AI71**

## Federal Acquisition Regulation; Energy Efficiency of Supplies and Services

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13123 of June 3, 1999, Greening the Government through Efficient Energy Management.

**DATES:** Interested parties should submit comments in writing on or before July 10, 2000 to be considered in the formulation of a final rule.

**ADDRESSES:** Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999–011@gsa.gov. Please submit comments only and cite FAR case 1999–011 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAR case 1999–011.

**SUPPLEMENTARY INFORMATION:**

### A. Background

This proposed rule amends the FAR to implement E.O. 13123. The proposed rule—

1. Defines in subpart 2.1, Definitions—

(a) "Energy-efficient product" (relocated and revised from FAR 23.704);

(b) "Energy-savings performance contract" (see 10 CFR 436, Subpart B); and

(c) "Renewable energy" and "renewable energy technology" (see sections 710 and 711 of E.O. 13123);

2. Revises the policies and sources of authority in Part 11;

3. Revises part 15 to alert agencies to the special procedures at 10 CFR 436.33(b) that agencies must use when evaluating unsolicited proposals for energy-savings performance contacts (ESPCs);

4. Revises and relocates guidance on energy-efficient products and services from subpart 23.7 to subpart 23.2 so that subpart 23.7 now focuses exclusively on environmentally preferable products and services;

5. Revises subpart 23.2 by—

(a) Renaming the subpart "Energy and Water Efficiency, and Renewable Energy" to reflect its expanded subject area;

(b) Deleting outdated definitions and guidance;

(c) Adding guidance on energy- and water-efficient products (*e.g.*, ENERGY STAR®) and services, and ESPCs; and

(d) Directing contracting officers to sources for more detailed guidance and information; and

6. Makes a number of editorial changes.

The Councils proposed in FAR case 1998–015 other FAR amendments to Subpart 23.7 to implement E.O. 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition. The Councils published a proposed rule on FAR case 1998–015 in the **Federal Register** on September 23, 1999 (64 FR 51656). After comments have been reconciled, the Councils will publish a final rule on these other changes to Subpart 23.7.

This rule was not subject to Office of Management and Budget review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

### B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because this rule simply provides additional guidance to Government contracting and technical personnel with respect to the Government's preference, currently set forth in FAR subpart 23.7, for buying environmentally preferable and energy-efficient products and services. This rule requires a contracting officer, when acquiring an energy-using product, to purchase an energy-efficient product (where life-cycle cost-effective and available), *i.e.*, a product that is in the upper 25 percent of energy efficiency as designated by the Department of Energy's (DOE's) Federal Energy Management Program or that meets DOE and Environmental Protection Agency (EPA) criteria for use of the "ENERGY STAR®" trademark label. The 25 percent benchmark for determining energy efficiency is currently addressed at FAR 23.704. Small entities that offer products to the Government may use the ENERGY STAR® label, if the product meets DOE and EPA criteria. The rule also provides guidance to contracting officers on the use of energy-savings performance contracts as alternatives to the traditional method of financing energy efficiency improvements.

An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–011), in correspondence.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 2, 11, 15, 23, and 42

Government procurement.

Dated: May 4, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 11, 15, 23, and 42 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 11, 15, 23, and 42 continues to read as follows:

**Authority:** 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

## PART 2—DEFINITIONS OF WORDS AND TERMS

2. In section 2.101, add, in alphabetical order, the definitions "Energy-efficient product," "Energy-savings performance contract," "Renewable energy," and "Renewable energy technology" to read as follows:

**2.101 Definitions.**

* * * * *

*Energy-efficient product* means a product that—

(1) Meets Department of Energy and Environmental Protection Agency criteria for use of the Energy Star trademark label; or

(2) Is in the upper 25 percent of efficiency for all similar products as designated by the Department of Energy's Federal Energy Management Program.

*Energy-savings performance contract* means a contract that requires the contractor to—

(1) Perform services for the design, acquisition, financing, installation, testing, operation, and where appropriate, maintenance and repair, of an identified energy conservation measure or series of measures at one or more locations;

(2) Incur the costs of implementing the energy savings measures, including at least the cost (if any) incurred in making energy audits, acquiring and installing equipment, and training personnel in exchange for a predetermined share of the value of the energy savings directly resulting from implementation of such measures during the term of the contract; and

(3) Guarantee future energy and cost savings to the Government.

* * * * *

*Renewable energy* means energy produced by solar, wind, geothermal, and biomass power.

*Renewable energy technology* means—

(1) Technologies that use renewable energy to provide light, heat, cooling, or mechanical or electrical energy for use in facilities or other activities; or

(2) The use of integrated whole-building designs that rely upon renewable energy resources, including passive solar design.

* * * * *

## PART 11—DESCRIBING AGENCY NEEDS

3. In section 11.002, revise paragraph (d) to read as follows:

**11.002 Policy.**

* * * * *

(d)(1) The Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*), Executive Order 13101 of September 14, 1998, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, and Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, establish requirements for acquiring—

(i) Products containing recovered materials;

(ii) Environmentally preferable products and services;

(iii) Energy-efficient products and services; and

(iv) Products and services that utilize renewable energy technologies.

(2) Executive agencies must consider use of recovered materials, energy efficiency, environmentally preferable purchasing criteria developed by the EPA, and environmental objectives (see subparts 23.2 and 23.4 and 23.703(b)) when—

(i) Developing, reviewing, or revising Federal and military specifications, product descriptions (including commercial item descriptions) and standards;

(ii) Describing Government requirements for supplies and services; and

(iii) Developing source selection factors.

* * * * *

4. In section 11.101, revise paragraph (b) to read as follows:

**11.101 Order of precedence for requirements documents.**

* * * * *

(b) Agencies must prepare requirements documents to achieve maximum practicable—

(1) Energy efficiency, including using renewable energy technologies; and

(2) Use of recovered material, other materials that are environmentally preferable, energy-efficient and water-efficient products, and renewable energy technologies (see subparts 23.2, 23.4, and 23.7).

* * * * *

## PART 15—CONTRACTING BY NEGOTIATION

5. In section 15.603, add paragraph (e) to read as follows:

**15.603 General.**

* * * * *

(e) Agencies must evaluate unsolicited proposals for energy-savings performance contracts in accordance with the procedures in 10 CFR 436.33(b).

## PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

6. Revise the heading and text of section 23.000 to read as follows:

**23.000 Scope.**

This part prescribes acquisition policies and procedures supporting the Government's program for ensuring a drug-free workplace and for protecting and improving the quality of the environment by—

(a) Controlling pollution;

(b) Managing energy and water use in Government facilities efficiently;

(c) Using renewable energy and renewable energy technologies;

(d) Acquiring energy-efficient products and services, environmentally preferable products, and products that use recovered materials; and

(e) Requiring contractors to identify hazardous materials.

7. Revise subpart 23.2 to read as follows:

### Subpart 23.2—Energy and Water Efficiency and Renewable Energy

Sec.

23.200 Scope.
23.201 Authorities.
23.202 Policy.
23.203 Energy-efficient products.
23.204 Energy-savings performance contracts (ESPC).

**23.200 Scope.**

(a) This subpart prescribes policies and procedures for—

(1) Acquiring energy- and water-efficient products and services, and products that use renewable energy technology; and

(2) Using an energy-savings performance contract to obtain energy-efficient technologies at Government facilities without Government capital expense.

(b) This subpart applies to acquisitions in the United States, its possessions and territories, Puerto Rico, and the Northern Mariana Islands. Agencies conducting acquisitions outside of these areas must use their best efforts to comply with this subpart.

**23.201 Authorities.**

(a) Energy Policy and Conservation Act (42 U.S.C. 6361(a)(1)) and Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6901, *et seq.*).

(b) National Energy Conservation Policy Act (42 U.S.C. 8253, 8262g, and 8287).

(c) Executive Order 11912 of April 13, 1976, Delegations of Authority under the Energy Policy and Conservation Act.

(d) Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management.

**23.202 Policy.**

The Government's policy is to acquire supplies and services that promote energy and water efficiency, advance the use of renewable energy products, and help foster markets for emerging technologies.

**23.203 Energy-efficient products.**

(a) If life-cycle cost-effective and available—

(1) When acquiring energy-using products, contracting officers must purchase ENERGY STAR® or other energy-efficient products designated by the Department of Energy's Federal Energy Management Program (FEMP); or

(2) When contracting for design, construction, renovation, or maintenance of a public building that will include energy-using products, the design specification must specify or the agency specifications must require that the contractor provide ENERGY STAR® or other energy-efficient products.

(b) Information is available via the Internet on—

(1) ENERGY STAR® at http://www.energystar.gov/; and

(2) FEMP at http://www.eren.doe.gov/femp/procurement.

**23.204 Energy-savings performance contracts (ESPC).**

(a) Section 403 of Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management, requires an agency to make maximum use of the authority provided in the National Energy Conservation Policy Act (42 U.S.C. 8287) to use an ESPC, when life-cycle cost-effective, to reduce energy use and cost in the agency's facilities and operations.

(b) Under an ESPC, an agency can contract with an energy service company for a period not to exceed 25 years to improve energy efficiency in one or more agency facilities at no direct capital cost to the United States Treasury. The energy service company finances the capital costs of implementing energy conservation measures and receives, in return, a contractually determined share of the cost savings that result.

(c) To solicit and award an ESPC, the contracting officer—

(1) Must use the procedures, selection method, and terms and conditions provided at 10 CFR part 436, subpart B; and

(2) May use the "Qualified List" of energy service companies established by the Department of Energy and other agencies.

**Subpart 23.7—Contracting for Environmentally Preferable Products and Services**

8. Revise the heading of Subpart 23.7 to read as set forth above.

9. Revise section 23.701 to read as follows:

**23.701 Applicability.**

This subpart prescribes policies for acquiring environmentally preferable products and services.

10. Amend section 23.702 by revising paragraph (f) to read as follows:

**23.702 Authorities.**

* * * * *

(f) Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management.

**23.703 [Removed]**

**23.704 through 23.706 [Redesignated as 23.703 through 23.705]**

11. Remove section 23.703 and redesignate sections 23.704 through 23.706 as sections 23.703 through 23.705, respectively.

12. In addition to the changes above, in newly redesignated section 23.703, remove paragraph (b)(2) and redesignate paragraphs (b)(3) through (b)(6) as paragraphs (b)(2) through (b)(5), respectively.

**PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES**

13. In section 42.302, revise paragraph (a)(68) to read as follows:

**42.302 Contract administration functions.**

(a) * * *

(68) Ensure contractor environmental practices are evaluated for possible adverse impact on contract performance or cost, and, as part of quality assurance procedures (part 46), monitor contractor compliance with environmental requirements specified in the contract. ACO responsibilities include, but are not limited to—

(i) Requesting environmental technical assistance, if needed; and

(ii) Ensuring that the contractor complies with—

(A) Specifications requiring the use of environmentally preferable products, energy-efficient products, and materials or delivery of end items with specified recovered material content; and

(B) Reporting requirements relating to recovered material content utilized in contract performance (see subpart 23.4).

* * * * *

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Wednesday,
May 10, 2000

Part V

# Department of Education

34 CFR Part 300
Assistance to States for the Education of Children With Disabilities; Proposed Rule

VOL 65 ISS 91 MY 10 2000 UMI

**DEPARTMENT OF EDUCATION**

**34 CFR Part 300**

**RIN 1820–AB51**

## Assistance to States for the Education of Children With Disabilities

**AGENCY:** Office of Special Education and Rehabilitative Services, Department of Education.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Secretary proposes to amend the regulations governing the Assistance to States for the Education of Children with Disabilities program under Part B of the Individuals with Disabilities Education Act (IDEA). This amendment is needed to implement the statutory provision that for any fiscal year in which the appropriation for section 611 of part B of IDEA exceeds $4.1 billion, a local educational agency (LEA) may treat as local funds up to 20 percent of the amount it receives under that part that exceeds the amount it received during the prior fiscal year. The proposed regulation would ensure effective implementation of this statutory provision by providing clarity about the funds that can be included in this calculation, and would reduce the potential for audit exceptions.

**DATES:** We must receive your comments on or before August 8, 2000.

**ADDRESSES:** Address all comments about these proposed regulations to Thomas B. Irvin, Office of Special Education and Rehabilitative Services, U.S. Department of Education, Room 3090, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202–2570.

If you prefer to send your comments through the internet, use the following address: Comments@ed.gov.

You must use the term "4.1 billion provision" in the subject line of your electronic message.

**FOR FURTHER INFORMATION CONTACT:** JoLeta Reynolds (202) 205–5507. If you use a telecommunication device for the deaf (TDD), you may call the TDD number at (202) 205–5465.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to Katie Mimcey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

**SUPPLEMENTARY INFORMATION:**

### Invitation to Comment

We invite you to submit comments regarding this proposed regulation.

We also invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from the proposed regulation. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed regulation in Room 3090, Mary E. Switzer Building, 330 C Street SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

### Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed regulation. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

### Background

The IDEA Amendments of 1997 (Pub. L. 105–17) added a provision related to the permissive treatment of a portion of Part B funds by LEAs for maintenance of effort and non-supplanting purposes in certain fiscal years (see section 613(a)(2)(C) of the Act and § 300.233 of the current regulations). Under that provision, for any fiscal year (FY) for which the appropriation for section 611 of IDEA exceeds $4.1 billion, an LEA may treat as local funds, for maintenance of effort and non-supplanting purposes, up to 20 percent of the amount it receives that exceeds the amount it received under Part B during the prior year. Under § 300.233 an LEA is able to meet the maintenance of effort requirement of § 300.231 and non-supplant requirement of § 300.230(c) even though it reduces the amount of local or local and State funds that it spends on the Part B program, by an amount equal to the amount of Federal funds that may be treated as local funds. The Federal fiscal year 1999 was the first year that section 611 appropriation exceeded $4.1 billion.

State and local educational agency officials have told the Department that they believe it is not clear from the provision whether the funds affected are only those that an LEA receives through statutory subgrants under section 611(g), or whether the provision also applies to other Part B funding sources (*i.e.*, subgrants to LEAs for capacity-building and improvement under section 611(f)(4); other funds the SEA may provide to LEAs under section 611(f); or funds provided under section 619 (Preschool Grants program)). Further, because section 613(a)(2)(C) refers to an amount of funds that an LEA "receives" in one fiscal year compared to the amount it "received" in the prior fiscal year, and because agencies may, at any one point in time, be using funds appropriated in several Federal fiscal years, agency officials are uncertain as to how to determine that an LEA has "received" Federal funds.

Because section 613(a)(2)(C) of IDEA and § 300.233(a)(1) (which tracks the statutory language) may not be sufficiently clear with respect to which precise funds are affected, this could result in the provision being interpreted and applied differently from LEA to LEA. If that situation were to occur, it could result in a significant increase in the number of audit exceptions against LEAs. Thus, it is important to set out in the regulations a clear interpretation of section 613(a)(2)(C) to support its consistent application across LEAs and States, and to reduce the potential for audit exceptions.

In light of the statutory structure for distribution of Federal funds to LEAs, we believe that the most reasonable interpretation is to apply that provision only to subgrants to LEAs under section 611(g) of the Act (§ 300.712 of the regulations) from funds appropriated for one Federal fiscal year compared to funds appropriated for the prior Federal fiscal year. This interpretation (as reflected in the proposed regulation) would ensure that an LEA could treat as local funds up to 20 percent of the increase in the amount it is entitled to receive as a subgrant under § 300.712 for any fiscal year for which the Federal appropriation to carry out section 611 of the IDEA exceeds $4,100,000,000. Excluded from the Federal funds that can be treated as local funds will be subgrants to LEAs for capacity-building and improvement under section 611(f)(4) (§ 300.622); other funds the SEA may provide to LEAs under section 611(f) (§ 300.602); and funds provided under section 619 (Preschool Grants program) (34 CFR Part 301).

First, if IDEA funds that States have the authority to provide to LEAs on a discretionary basis, such as subgrants to LEAs for capacity building and improvement under section 611(f)(4) (§ 300.622) and other funds the SEA may provide to LEAs under section

611(f) (§ 300.602), are included in this calculation, it would result in some LEAs receiving a proportionately greater benefit from this provision than other LEAs based on receipt of funds that may be earmarked for a specific, time-limited purpose. This would lead to inequitable results of the § 300.233 exception across LEAs in a State. In addition, including section 619 formula grant funds (34 CFR Part 301) in the calculation does not appear to be justified as the 'trigger' appropriation is the amount appropriated under section 611.

The proposed regulation also would provide that if funds are being withheld from an LEA or have been reallocated to other LEAs, those funds would not be included in this calculation, as they would not be available to the LEA for the provision of special education and related services to children with disabilities.

Below are examples showing how this proposed regulation would apply under several situations:

- *Example 1*: An LEA receives $100,000 in Federal LEA Subgrant funds under section 611(g) of the Act in one fiscal year (FY–1), and $120,000 in section 611(g) funds in the following fiscal year (FY–2). The LEA may treat as local funds up to 20 percent of the $20,000 in section 611(g) funds it receives in FY–2 (*i.e.*, up to $4,000), since this is the amount that exceeds the amount it received in the prior year.
- *Example 2*: An LEA, in one fiscal year (FY–1), receives $100,000 in section 611(g) funds, and $20,000 in LEA discretionary funds under section 611(f) of the Act; and in the following fiscal year (FY–2), the LEA receives $120,000 in section 611(g) funds, but does not receive any funds under section 611(f). The LEA may treat as local funds up to 20 percent of the $20,000 in section 611(g) funds it receives in FY–2 (*i.e.*, up to $4,000), since this is the amount of section 611(g) funds that exceeds the amount it received in FY–1.
- *Example 3*: An LEA had all of its section 611(g) funds ($100,000) withheld in one fiscal year (FY–1); but in the next fiscal year (FY–2), the LEA received a total of $220,000 in section 611(g) funds (*i.e.*, $100,000 for FY–1, plus $120,000 for FY–2). Because the LEA would have been entitled to $100,000 in FY–1, the LEA may treat as local funds up 20 percent of the $20,000 in FY–2 that exceeded its FY–1 allotment, or up to $4,000.
- *Example 4*: An LEA received $100,000 under section 611(g) in one fiscal year (FY–1), and would have received $120,000 in section 611(g) funds for the next fiscal year (FY–2); but the LEA has all of its section 611(g) funds withheld in FY–2. The LEA would have no section 611(g) funds that could be treated as local funds in FY–2.

By clearly articulating that the standard refers to funds that an LEA is eligible to receive from a particular Federal appropriation, the proposed regulation would provide for consistent application from year to year across LEAs. It also would provide necessary clarity to budget officials and auditors, and ensure that each LEA receives a comparable benefit from this statutory provision.

It is important to note that § 303.233(b) of the existing regulation (which tracks the statutory language under section 613(a)(2)(C)(ii)) provides that "If an SEA determines that an LEA is not meeting the requirements of this part, the SEA may prohibit the LEA from treating funds received under Part B of the Act as local funds under paragraph (a)(1) of this section for any fiscal year, but only if it is authorized to do so by the State constitution or a State statute."

Federal fiscal year 1999 was the first year that the section 611 appropriation exceeded $4.1 billion. However, since awards for fiscal year 1999 have already been made, these proposed regulations would be effective only for fiscal year 2000 and later appropriations. Thus, under the proposed regulation, FY 1999 would be the "previous fiscal year" for purposes of determining the amount of an LEA's FY 2000 grant under § 300.712 that it may treat as local funds. The amount of increase from FY 1999 to FY 2000 for purposes of this calculation would be based on the amount of funds the LEA was eligible to receive under § 300.712 in each of those years, rather than the amount it received during a particular year, or some other amount. Funds that were withheld from the LEA could not be considered.

**Executive Order 12866**

*1. Potential Cost and Benefits*

Under Executive Order 12866, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this regulatory action, we have determined that the benefits would justify the costs.

We have also determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

Summary of Potential Costs and Benefits

The potential costs and benefits of this proposed regulation are discussed elsewhere in this document under the Supplementary Information section.

*2. Clarity of the Regulations*

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

We invite comments on how to make this proposed regulation easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulation clearly stated?
- Does the proposed regulation contain technical terms or other wording that interferes with its clarity?
- Does the format of the proposed regulation (use of headings, paragraphing, *etc.*) aid or reduce it's clarity?
- Could the description of the proposed regulation in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulation easier to understand? If so, how?
- What else could we do to make the proposed regulation easier to understand?

Send any comments that concern how the Department could make this proposed regulation easier to understand to the person listed in the **ADDRESSES** section of the preamble.

**Regulatory Flexibility Act Certification**

The Secretary certifies that these proposed regulations would not have significant economic impact on a substantial number of small entities. The small entities affected would be small LEAs. The regulations would benefit the small entities affected by clarifying the statutory requirements and reducing the possibility of audit exceptions. By ensuring consistency, the regulations would promote more effective and efficient program administration.

**Paperwork Reduction Act of 1995**

This proposed regulation does not contain any information collection requirements.

**Intergovernmental Review**

This program is subject to Executive Order 12372 and the regulations in 34

CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

**Assessment of Educational Impact**

The Secretary particularly requests comments on whether this proposed regulation would require transmission of information that any other agency or authority of the United States gathers or makes available.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

*http://ocfo.ed.gov/fedreg.htm*
*http://www.ed.gov/news.html*

To use the PDF you must have Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–800–293–6498; or in the Washington, D.C., area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

*http://www.access.gpo.gov/nara/index.html*

(Catalog of Federal Domestic Assistance Number: 84.027 Assistance to States for the Education of Children with Disabilities)

**List of Subjects in 34 CFR Part 300**

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private schools, Reporting and recordkeeping requirements.

Dated: February 29, 2000.

**Richard W. Riley,**

*Secretary of Education.*

For the reasons described in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations as follows:

## PART 300—ASSISTANCE TO STATES FOR THE EDUCATION OF CHILDREN WITH DISABILITIES PROGRAM

1. The authority citation for part 300 continues to read as follows:

**Authority:** 20 U.S.C. 1411–1420, unless otherwise noted.

2. Section 300.233 is amended by revising paragraph (a)(1), and by adding a new paragraph (a)(3), to read as follows:

**§ 300.233 Treatment of Federal funds in certain fiscal years.**

(a)(1) Subject to paragraphs (a)(2), (a)(3), and (b) of this section, for any fiscal year for which amounts appropriated to carry out section 611 of the Act exceed $4,100,000,000, an LEA may treat as local funds up to 20 percent of the amount of funds it is eligible to receive under § 300.712 from that appropriation that exceeds the amount from funds appropriated for the previous fiscal year that the LEA was eligible to receive under § 300.712.

* * * * *

(3) For purposes of this section, an LEA is not eligible to receive funds that have been withheld under § 300.197 or 300.587 or have been reallocated to other LEAs in the State under § 300.714.

* * * * *

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Part VI

# Department of Housing and Urban Development

**Notice of PHAs Eligible for FY 2000 Funding and Final Opportunity To Obtain FY 1999 Funding Under the Public Housing Drug Elimination Program; Notice**

VOL 65 ISS 91 MY 10 2000 UMI

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4451–N–07]

## Notice of PHAs Eligible for FY 2000 Funding and Final Opportunity To Obtain FY 1999 Funding Under the Public Housing Drug Elimination Program

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of PHAs eligible for FY 2000 funding and final opportunity to obtain FY 1999 funding under the Public Housing Drug Elimination Program (PHDEP).

**SUMMARY:** The Department of Housing and Urban Development (HUD) is publishing the list of public housing agencies (PHAs) eligible to receive FY 2000 PHDEP funding and also notifying PHAs that are eligible, but have not applied, to receive Public Housing Drug Elimination Program (PHDEP) FY 1999 funding that they have one final opportunity to apply for this funding.

**DATES:** Application due date (for PHAs listed in this notice that are eligible for FY 1999 PHDEP funding but that have not yet applied): June 26, 2000.

A PHA that qualifies to receive PHDEP funding for FY 2000 must include a PHDEP plan that meets the requirements of 24 CFR 761.21 with its PHA Plan submitted pursuant to 24 CFR part 903 and applicable PIH Notices.

**ADDRESSES:** For FY 1999 PHDEP funding: Submit an original and two copies of the information requested to the local Field Office with delegated public housing responsibilities: Attention: Director, Office of Public Housing. For a listing of Field Offices, please see the application kit, or the Appendix published in the February 26, 1999 SuperNOFA at 64 FR 9767.

**FOR FURTHER INFORMATION CONTACT:** Bertha M. Jones, Program Analyst, Community Safety and Conservation Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1197 x.4237 (this is not a toll-free number). For further information on the PHA Plan (including applicable PIH Notices) see HUD's PHA Plan website at http://www.hud.gov/pih/pha/plans/phaps-home.html or contact Beth Cooper, Program Analyst, Office of Policy, Program and Legislative Initiatives, telephone (202) 708–0713. Hearing or speech-impaired individuals may access these numbers via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Final Opportunity To Obtain FY 1999 PHDEP Funding

In a final rule published September 14, 1999 (64 FR 49899) implementing the formula allocation of PHDEP funding, HUD published a list of PHAs eligible for FY 1999 funding. The listed PHAs were required to submit an application in accordance with the Notice Withdrawing and Reissuing the FY 1999 PHDEP NOFA published on May 12, 1999 (64 FR 25746) in order to receive this funding.

Of the approximately $231,750,000 in FY 1999 funding made available, $5,960,669 has not been claimed by 110 PHAs that were eligible to receive funding but did not submit applications. HUD is providing these PHAs, listed below along with the amounts they are eligible to receive, one final opportunity to receive FY 1999 PHDEP funding. Any PHA included in the list must submit an application in accordance with the May 12, 1999 notice by the date listed in the **DATES:** heading at the beginning of this notice in order to receive FY 1999 PHDEP funding.

| PHA code and PHA name | Amount |
|---|---|
| AL175—Livingston Housing Authority | $25,000 |
| AL178—Dadeville Housing Authority | 25,000 |
| AR037—Prescott Housing Authority | 25,000 |
| AZ003—Glendale Housing Authority | 34,091 |
| AZ008—Winslow Housing Authority | 25,000 |
| AZ013—Yuma County Housing Authority | 34,971 |
| AZ023—Nogales Housing Authority | 49,926 |
| AZ038—Peoria Housing Authority | 25,000 |
| CA007—County of Sacramento Housing & Redevelopment Agency | 234,017 |
| CA009—Upland Housing Authority | 25,000 |
| CA025—City of Eureka Housing Authority | 43,548 |
| CA030—Tulare County Housing Authority | 157,037 |
| CA058—City of Berkeley Housing Authority | 25,000 |
| CA059—County of Santa Clara Housing Authority | 116,568 |
| CA067—ALameda County Housing Authority | 51,026 |
| CA142—Dublin Housing Authority | 32,991 |
| CO0014—Wellington Housing Authority | 21,000 |
| CO028—Colorado Springs Housing Authority | 155,498 |
| CO035—Greeley Housing Authority | 25,000 |
| CO041—Fort Collins Housing Authority | 33,871 |
| CO049—Lakewood Housing Authority | 45,968 |
| CO052—Aurora Housing Authority | 44,208 |
| CO059—Louisville Housing Authority | 6,500 |
| CO061—Boulder County Housing Authority | 25,000 |
| FL061—Dunedin Housing Authority | 25,000 |
| FL119—Boca Raton Housing Authority | 25,000 |
| FL136—Hollywood Housing Authority | 26,393 |
| GA081—Hartwell Housing Authority | 39,589 |
| GA085—Quitman Housing Authority | 47,727 |
| GA161—Harris County Housing Authority | 21,500 |
| GA214—Ellaville Housing Authority | 20,000 |
| IA018—Sioux City Housing Authority | 15,000 |
| IA023—Council Bluffs Housing Authority | 64,882 |
| IA050—Waterloo Housing Authority | 25,000 |

IA131—
ID021—
IL009—
IL078—
IN020—
IN021—
KS004—
KS038—
KS043—
KS063—
KS068—
MD012—
MI003—
MI004—
MI014—
MI031—
MI035—
MI055—
MI089—
MI157—
MN152—
MO003—
MO030—
MO070—
MT002—
NC059—
NC174—
NE002—
NE003—
NE125—
NE153—
NE174—
NY029—
NY033—
NY077—
OH023—
OR014—
PA003—
PA004—
PA071—
RI011—
SD016—
SD045—
TN008—
TN011—
TN041—
TN076—
TN095—
TX020—
TX085—
TX092—
TX173—
TX257—
TX379—
TX395—
TX406—
TX452—
UT002—
UT011—
UT025—
VA013—
VT005—
WA006
WA025
WA030
WA041
WA042
WA054
WA055
WI074—
WI183—
WV006

| PHA code and PHA name | Amount |
|---|---|
| IA131—Central Iowa Housing AUthority | 30,352 |
| ID021—Ada Housing Authority | 5,000 |
| IL009—Henry County Housing AUthority | 102,492 |
| IL078—Bond City Housing Authority | 33,871 |
| IN020—Mishawaka Housing | 65,762 |
| IN021—Terre Haute | 191,788 |
| KS004—Wichita Housing Authority | 127,126 |
| KS038—Salina Housing Authority | 35,850 |
| KS043—Olathe Housing Authority | 28,592 |
| KS063—Manhattan Housing Authority | 57,624 |
| KS068—Leavenworth Housing Authority | 25,000 |
| MD012—Havre De Grace Housing Authority | 25,000 |
| MI003—Dearborn Housing Commission Housing Authority | 73,240 |
| MI004—Hamtramck Housing Commission Housing Authority | 98,973 |
| MI014—Albion Housing Commission | 48,387 |
| MI031—Muskegon Heights Housing Authority | 76,759 |
| MI035—Battle Creek Housing Commission | 91,715 |
| MI055—Livonia Housing Commission | 38,929 |
| MI089—Taylor Housing Commission | 25,000 |
| MI157—Sterling Heights Housing Commission | 33,651 |
| MN152—Bloomington HRA Housing Authority | 10,000 |
| MO003—St. Joseph Housing Authority | 39,589 |
| MO030—Lee's Summit Housing Authority | 25,513 |
| MO070—Richmond Housing Authority | 25,953 |
| MT002—Great Falls Housing Authority | 107,771 |
| NC059—Housing Authority of Graham | 37,390 |
| NC174—Vance County Housing Authority | 25,000 |
| NE002—Lincoln Housing Authority | 70,381 |
| NE003—Hall County Housing Authority | 86,437 |
| NE125—North Platte Housing Authority | 54,985 |
| NE153—Douglas County Housing Authority | 25,000 |
| NE174—Bellevue Housing Authority | 25,000 |
| NY029—Lackawanna Housing Authority | 107,990 |
| NY033—Rensselaer Housing Authority | 32,111 |
| NY077—Town of Islip Housing Authority | 77,419 |
| OH023—London Metropolitan Housing Authority | 25,000 |
| OR014—Marion Housing Authority | 24,500 |
| PA003—Scranton Housing Authority | 291,420 |
| PA004—Allentown Housing Authority | 317,814 |
| PA071—Berks County Housing Authority | 45,968 |
| RI011—Warwick Housing Authority | 114,149 |
| SD016—Sioux Falls Housing Authority | 12,500 |
| SD045—Pennington County Housing Authority | 109,970 |
| TN008—Paris Housing Authority | 43,108 |
| TN011—Pulaski Housing Authority | 52,786 |
| TN041—Covington Housing Authority | 58,064 |
| TN076—Elizabethton Housing and Development Agency | 71,701 |
| TN095—Shelby County Housing Authority | 38,490 |
| TX020—Bryan Housing Authority | 65,982 |
| TX085—Victoria Housing Authority | 70,601 |
| TX092—Ladonia Housing Authority | 10,000 |
| TX173—Port Isabel Housing Authority | 33,431 |
| TX257—Slaton Housing Authority | 25,000 |
| TX379—Midland Housing Authority | 25,000 |
| TX395—Port Lavaca Housing Authority | 25,000 |
| TX406—Huntsville Housing Authority | 25,000 |
| TX452—Bexar County Housing Authority | 15,000 |
| UT002—Ogden Housing Authority | 48,387 |
| UT011—Utah County Housing Authority | 25,000 |
| UT025—West Valley City Housing Authority | 9,000 |
| VA013—Lynchburg Redevelopment & Housing Authority | 74,560 |
| VT005—Barre Housing Authority | 81,158 |
| WA006—Everett Housing Authority | 137,903 |
| WA025—Bellingham Housing Authority | 116,129 |
| WA030—Sedro Woolley Housing Authority | 25,000 |
| WA041—Whatcom County Housing Authority | 25,000 |
| WA042—Yakima Housing Authority | 29,472 |
| WA054—Pierce County Housing Authority | 34,091 |
| WA055—Spokane Housing Authority | 27,493 |
| WI074—Green Bay Housing Authority | 44,868 |
| WI183—Racine County Housing Authority | 11,000 |
| WV006—Martinsburg Housing Authority | 71,920 |

| PHA code and PHA name | Amount |
|---|---|
| WV009—Fairmont Housing Authority | 29,912 |
| WV018—Bluefield Housing Authority | 36,290 |
| WV027—Clarksburg Housing Authority | 71,041 |
| Total | 5,960,669 |

**II. Reporting Requirements Reminder**

In accordance with 24 CFR 761.35, recipients of PHDEP funds are required to report the performance of approved activities for each grant on a semi-annual basis and to report final performance at the end of the grant term. The semi-annual performance report must be submitted electronically over the Internet by accessing the following URL address: http://www.hud.gov/pih/systems/ibs/phdep/phdep.html. The semi-annual financial status report (SF 269A—not an electronic submission) must be submitted to the appropriate Field Office or Area Offices of ONAP.

Grantees are required to submit semi-annual reports by July 30th for the January-June reporting period and by January 31st for the July-December reporting period. PHDEP grant funds may be suspended if reports are not submitted by the deadline.

**III. PHAs Eligible for FY 2000 Funding**

The following tables are the listings of PHAs that qualify for PHDEP Funding for FY 2000. There is one table for each of the three categories of eligible PHAs. The first table includes an eligibility designation of "R" in the third column, which means that each listed PHA is eligible for funding as a "preference PHA" under § 761.15(a)(2). In Table 2, the designation of "N1" in the third column means the PHA was designated eligible on the basis of need as determined under the formula in § 761.15(a)(3). In Table 3, the designation of "N2" means the PHA is eligible on the basis of need as a PHA that qualified for funding under FYs 1996, 1997 or 1998, but was not funded because of the unavailability of funds, in accordance with § 761.15(a)(4).

The source of data for these listings is the PIH Information Center (PIC) and was captured in the PHDEP Formula database on March 7, 2000. The data captured reflects the PHA's inventory as of September 30, 1999.

TABLE 1

| PHA code and PHA name | Eligibility |
|---|---|
| AK001—ALASKA HOUSING FINANCE CORPORATION | R |
| AL001—BIRMINGHAM | R |
| AL002—MOBILE | R |
| AL004—ANNISTON | R |
| AL005—PHENIX CITY | R |
| AL006—MONTGOMERY | R |
| AL007—DOTHAN | R |
| AL008—SELMA | R |
| AL010—FAIRFIELD | R |
| AL012—JASPER | R |
| AL014—GUNTERSVILLE | R |
| AL047—HUNTSVILLE | R |
| AL048—DECATUR | R |
| AL049—GREATER GADSDEN | R |
| AL050—AUBURN | R |
| AL054—FLORENCE | R |
| AL056—HALEYVILLE | R |
| AL057—SYLACAUGA | R |
| AL060—RUSSELLVILLE | R |
| AL061—OPELIKA | R |
| AL062—LANETT | R |
| AL064—CARBON HILL | R |
| AL068—SHEFFIELD | R |
| AL069—LEEDS | R |
| AL071—GUIN | R |
| AL073—OZARK | R |
| AL077—TUSCALOOSA | R |
| AL086—JEFFERSON COUNTY | R |
| AL088—LUVERNE | R |
| AL094—GEORGIANA | R |
| AL098—ALICEVILLE | R |
| AL099—SCOTTSBORO | R |
| AL105—TALLADEGA | R |
| AL110—PIEDMONT | R |
| AL112—OPP | R |
| AL114—LINEVILLE | R |
| AL115—ENTERPRISE | R |
| AL116—YORK | R |
| AL118—EUFAULA | R |
| AL122—CHILDERSBURG | R |

TABLE 1—Continued

| PHA code and PHA name | Eligibility |
|---|---|
| AL125—BESSEMER | R |
| AL128—SAMSON | R |
| AL129—WALKER COUNTY | R |
| AL131—PRATTVILLE | R |
| AL132—GOODWATER | R |
| AL136—ASHLAND | R |
| AL139—JACKSONVILLE | R |
| AL147—BRIDGEPORT | R |
| AL152—NORTHPORT | R |
| AL155—GREENVILLE | R |
| AL157—GREENSBORO | R |
| AL159—LAFAYETTE | R |
| AL160—TUSKEGEE | R |
| AL165—FOLEY | R |
| AL166—CHICKASAW | R |
| AL167—STEVENSON | R |
| AL169—PRICHARD | R |
| AL171—UNIONTOWN | R |
| AL172—TALLASSEE | R |
| AL173—MONROEVILLE | R |
| AL174—ALEXANDER CITY | R |
| AL177—TROY | R |
| AL178—DADEVILLE | R |
| AL179—DALEVILLE | R |
| AL181—EVERGREEN | R |
| AL182—TRIANA | R |
| AL190—GREENE COUNTY | R |
| AL192—SO CENTRAL ALABAMA REGIONAL | R |
| AL199—VALLEY | R |
| AL202—MOBILE COUNTY | R |
| AR002—NORTH LITTLE ROCK HOUSING AUTHORITY | R |
| AR003—FORT SMITH | R |
| AR004—LITTLE ROCK HOUSING AUTHORITY | R |
| AR006—CONWAY HOUSING AUTHORITY | R |
| AR015—TEXARKANA | R |
| AR016—CAMDEN HOUSING AUTHORITY | R |
| AR017—PINE BLUFF HOUSING AUTHORITY | R |
| AR018—MAGNOLIA | R |
| AR031—HOT SPRINGS HOUSING AUTHORITY | R |
| AR037—PRESCOTT | R |
| AR051—CLARKSVILLE | R |
| AR065—STEPHENS | R |
| AR094—MALVERN HOUSING AUTHORITY | R |
| AR099—FORREST CITYRA | R |
| AR131—JONESBORO URBAN RENEWAL HA | R |
| AZ001—PHOENIX | R |
| AZ003—GLENDALE | R |
| AZ004—TUCSON | R |
| AZ006—FLAGSTAFF | R |
| AZ008—WINSLOW | R |
| AZ009—MARICOPA COUNTY | R |
| AZ010—PINAL COUNTY | R |
| AZ021—ELOY | R |
| AZ023—NOGALES | R |
| AZ025—SOUTH TUCSON | R |
| AZ028—CHANDLER | R |
| AZ035—YUMA CITY | R |
| AZ041—WILLIAMS | R |
| CA001—SAN FRANCISCO HSG AUTH | R |
| CA002—LOS ANGELES COUNTY (HACOLA) | R |
| CA003—OAKLAND HOUSING AUTHORITY | R |
| CA004—LOS ANGELES CITY (HACLA) | R |
| CA005—CITY OF SACRAMENTO | R |
| CA006—CITY OF FRESNO HSG AUTH | R |
| CA007—COUNTY OF SACRAMENTO | R |
| CA008—KERN COUNTY | R |
| CA010—CITY OF RICHMOND HSG AUTH | R |
| CA011—COUNTY OF CONTRA COSTA HSG AUT | R |
| CA019—SAN BERNARDINO COUNTY | R |
| CA021—SANTA BARBARA COUNTY | R |
| CA023—COUNTY OF MERCED HOUSING AUTHO | R |
| CA024—COUNTY OF SAN JOAQUIN HOUSING | R |

TABLE 1—Continued

| PHA code and PHA name | Eligibility |
|---|---|
| CA025—CITY OF EUREKA HSG AUTH | R |
| CA026—COUNTY OF STANISLAUS HOUSING A | R |
| CA027—RIVERSIDE COUNTY | R |
| CA028—COUNTY OF FRESNO HSG AUTH | R |
| CA031—OXNARD | R |
| CA033—COUNTY OF MONTEREY HSG AUTH | R |
| CA039—CALEXICO CITY | R |
| CA044—YOLO COUNTY HSG AUTHORITY | R |
| CA052—COUNTY OF MARIN HOUSING AUTHOR | R |
| CA062—CITY OF ALAMEDA HOUSING AUTHOR | R |
| CA063—SAN DIEGO HOUSING COMMISSION | R |
| CA064—SAN LUIS OBISPO | R |
| CA069—CITY OF MADERA HOUSING AUTHORI | R |
| CA076—SANTA BARBARA CITY | R |
| CA092—VENTURA COUNTY | R |
| CA143—IMPERIAL VALLEY HOUSING AUTHORITY | R |
| CO001—DENVER | R |
| CO002—PUEBLO | R |
| CO016—BOULDER CITY | R |
| CT001—BRIDGEPORT HOUSING AUTHORITY | R |
| CT002—NORWALK HOUSING AUTHORITY | R |
| CT003—HARTFORD HOUSING AUTHORITY | R |
| CT004—NEW HAVEN HOUSING AUTHORITY | R |
| CT005—NEW BRITAIN HOUSING AUTHORITY | R |
| CT006—WATERBURY HOUSING AUTHORITY | R |
| CT007—STAMFORD HOUSING AUTHORITY | R |
| CT009—MIDDLETOWN HOUSING AUTHORITY | R |
| CT011—MERIDEN HOUSING AUTHORITY | R |
| CT013—EAST HARTFORD HOUSING AUTHORITY | R |
| CT015—ANSONIA HOUSING AUTHORITY | R |
| CT018—NORWICH HOUSING AUTHORITY | R |
| CT019—GREENWICH HOUSING AUTHORITY | R |
| CT020—DANBURY HOUSING AUTHORITY | R |
| CT023—BRISTOL HOUSING AUTHORITY | R |
| CT026—MANCHESTER HOUSING AUTHORITY | R |
| CT027—STRATFORD HOUSING AUTHORITY | R |
| CT029—WEST HAVEN HOUSING AUTHORITY | R |
| DC001—D.C HOUSING AUTHORITY | R |
| DE001—WILMINGTON HOUSING AUTHORITY | R |
| DE002—DOVER HOUSING AUTHORITY | R |
| DE004—DELAWARE STATE HSNG AUTH | R |
| FL001—JACKSONVILLE | R |
| FL002—ST. PETERSBURG | R |
| FL003—TAMPA | R |
| FL004—ORLANDO | R |
| FL005—MIAMI-DADE | R |
| FL006—PENSACOLA (AHC) | R |
| FL007—DAYTONA BEACH | R |
| FL008—SARASOTA | R |
| FL009—WEST PALM BEACH | R |
| FL010—FT. LAUDERDALE | R |
| FL011—LAKELAND | R |
| FL013—KEY WEST | R |
| FL015—NW FLORIDA REGIONAL | R |
| FL016—SANFORD | R |
| FL018—PANAMA CITY | R |
| FL019—COCOA | R |
| FL020—BREVARD COUNTY | R |
| FL022—NEW SMYRNA BEACH | R |
| FL023—BRADENTON | R |
| FL025—TITUSVILLE | R |
| FL028—POMPANO BEACH | R |
| FL032—OCALA | R |
| FL041—FT. PIERCE | R |
| FL046—CRESTVIEW | R |
| FL047FT.—MYERS | R |
| FL055—ARCADIA | R |
| FL056—MELBOURNE | R |
| FL057—PALATKA | R |
| FL060—PUNTA GORDA | R |
| FL063—GAINESVILLE | R |
| FL066—HIALEAH | R |

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TABLE 1—Continued

| PHA code and PHA name | Eligibility |
|---|---|
| FL069—FORT WALTON BEACH | R |
| FL070—ALACHUA COUNTY | R |
| FL071—LAKE WALES | R |
| FL072—DELAND | R |
| FL073—TALLAHASSEE | R |
| FL075—CLEARWATER | R |
| FL076—RIVIERA BEACH | R |
| FL079—BROWARD COUNTY | R |
| FL080—PALM BEACH COUNTY | R |
| FL081—DEERFIELD BEACH | R |
| FL083—DELRAY BEACH | R |
| FL104—PASCO COUNTY | R |
| FL139—WINTER HAVEN | R |
| FL144—MONROE COUNTY | R |
| GA001—AUGUSTA | R |
| GA002—SAVANNAH | R |
| GA003—ATHENS | R |
| GA004—COLUMBUS | R |
| GA005—ROME | R |
| GA006—ATLANTA | R |
| GA007—MACON | R |
| GA009—BRUNSWICK | R |
| GA010—MARIETTA | R |
| GA011—DECATUR | R |
| GA023—ALBANY | R |
| GA025—CEDARTOWN | R |
| GA028—WAYCROSS | R |
| GA059—GAINESVILLE | R |
| GA060—MOULTRIE | R |
| GA062—AMERICUS | R |
| GA063—CORDELE | R |
| GA065—WEST POINT | R |
| GA066—JESUP | R |
| GA069—DUBLIN | R |
| GA072—EATONTON | R |
| GA073—MONROE | R |
| GA074—ELBERTON | R |
| GA075—TOCCOA | R |
| GA076—DOUGLAS CITY | R |
| GA077—COCHRAN | R |
| GA078—EAST POINT | R |
| GA080—EASTMAN | R |
| GA082—CORNELIA | R |
| GA085—QUITMAN | R |
| GA090—ROYSTON | R |
| GA093—LAWRENCEVILLE | R |
| GA094—LAVONIA | R |
| GA095—NEWNAN | R |
| GA096—CAMILLA | R |
| GA098—PELHAM | R |
| GA100—VALDOSTA | R |
| GA102—ROCKMART | R |
| GA115—CLAYTON | R |
| GA116—CARROLLTON | R |
| GA119—CALHOUN | R |
| GA120—LYONS | R |
| GA133—ALMA | R |
| GA134—BLACKSHEAR | R |
| GA145—VIDALIA | R |
| GA147—SOCIAL CIRCLE | R |
| GA148—DALLAS | R |
| GA153—SUMMERVILLE | R |
| GA160—WARNER ROBINS | R |
| GA171—LOGANVILLE | R |
| GA182—MCDONOUGH | R |
| GA183—WINDER | R |
| GA193—MADISON | R |
| GA200—MILLEDGEVILLE | R |
| GA204—SENOIA | R |
| GA213—CANTON | R |
| GA226—CUTHBERT | R |
| GA232—COLLEGE PARK | R |

TABLE 1—Continued

| PHA code and PHA name | Eligibility |
|---|---|
| GA237—DEKALB COUNTY | R |
| GA247—THOMASTON | R |
| GA254—BREMEN | R |
| GA264—FULTON COUNTY | R |
| GA268—HOUSTON COUNTY | R |
| GA280—FLINT AREA CONSOLIDATED | R |
| GA281—ETOWAH AREA | R |
| GQ001—GUAM | R |
| HI001—HAWAII HOUSING AND COMMUNITY DEVELOPMENT CORPORATI | R |
| IA020—DES MOINES | R |
| IL001—EAST ST. LOUIS HSG AUTH | R |
| IL002—CHICAGO HOUSING AUTHORITY | R |
| IL003—PEORIA HOUSING AUTHORITY | R |
| IL004—SPRINGFIELD HOUSING AUTHORITY | R |
| IL006—CHAMPAIGN COUNTY HSG AUTH | R |
| IL007—ALEXANDER COUNTY HSG AUTH | R |
| IL009—HENRY COUNTY HSG AUTH | R |
| IL011—DANVILLE HOUSING AUTHORITY | R |
| IL012—DECATUR HOUSING AUTHORITY | R |
| IL014—LASALLE COUNTY HSG AUTH | R |
| IL015—MADISON COUNTY HSG AUTH | R |
| IL018—ROCK ISLAND CITY HSG AUTH | R |
| IL022—ROCKFORD HOUSING AUTH | R |
| IL024—JOLIET HOUSING AUTHORITY | R |
| IL025—COOK COUNTY HSG AUTH | R |
| IL026—WAUKEGAN HSG AUTH | R |
| IL029—FREEPORT HOUSING AUTHORITY | R |
| IL030—ST. CLAIR CY HSG AUTH | R |
| IL039—KANKAKEE CTY HSG AUTH | R |
| IL051—BLOOMINGTON HSG AUTH | R |
| IL052—RANDOLPH CTY HSG AUTH | R |
| IL053—JACKSON CTY HSG AUTH | R |
| IL055—ALTON HSG AUTH | R |
| IL056—LAKE CTY HSG AUTH | R |
| IL059—JEFFERSON CTY HSG AUTH | R |
| IL061—FRANKLIN CTY HSG AUTH | R |
| IL078—BOND CTY HSG AUTH | R |
| IL083—WINNEBAGO CTY HSG AUTH | R |
| IL085—KNOX CTY HSG AUTH | R |
| IL090—AURORA HSG AUTH | R |
| IL091—WARREN CTY HSG AUTH | R |
| IL092—ELGIN HSG AUTH | R |
| IN003—FORT WAYNE HOUSING AUTHORITY | R |
| IN005—MUNCIE HOUSING AUTHORITY | R |
| IN007—KOKOMO HOUSING AUTHORITY | R |
| IN010—HAMMOND HOUSING AUTHORITY | R |
| IN011—GARY HOUSING AUTHORITY | R |
| IN015—SOUTH BEND HOUSING AUTHORITY | R |
| IN016—EVANSVILLE HOUSING AUTHORITY | R |
| IN017—INDIANAPOLIS HOUSING AGENCY | R |
| IN019—MICHIGAN CITY HOUSING AUTHORITY | R |
| IN023—JEFFERSONVILLE HOUSING AUTHORITY | R |
| IN026—ELKHART HOUSING AUTHORITY | R |
| IN029—EAST CHICAGO HOUSING AUTHORITY | R |
| KS001—KANSAS CITY, KS | R |
| KS002—TOPEKA | R |
| KS017—ATCHISON | R |
| KS053—LAWRENCE | R |
| KS062—CHANUTE | R |
| KS063—MANHATTAN | R |
| KY001—HA LOUISVILLE | R |
| KY002—HA COVINGTON | R |
| KY003—HA FRANKFORT | R |
| KY004—HA LEXINGTON | R |
| KY006—HA PADUCAH | R |
| KY011—HA HOPKINSVILLE | R |
| KY012—HENDERSON H/A | R |
| KY014—DANVILLE | R |
| KY016—RICHMOND | R |
| KY017—HA MAYSVILLE | R |
| KY020—MT STERLING | R |
| KY021—HA CYNTHIANA | R |

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TABLE 1—Continued

| PHA code and PHA name | Eligibility |
|---|---|
| KY022—HA LEBANON | R |
| KY025—LYON COUNTY | R |
| KY027—HA PAINTSVILLE | R |
| KY029—CUMBERLAND | R |
| KY030—MURRAY | R |
| KY031—WILLIAMSBURG | R |
| KY033—CATLETTSBURG | R |
| KY037—HICKMAN | R |
| KY038—MARTIN | R |
| KY041—MORGANTOWN | R |
| KY043—FULTON | R |
| KY047—CAMPBELLSVILLE | R |
| KY059—FALMOUTH | R |
| KY061—HA GEORGETOWN | R |
| KY063—BOWLING GREEN | R |
| KY064—COLUMBIA | R |
| KY070—CENTRAL CITY | R |
| KY072—PRINCETON | R |
| KY099—FRANKLIN | R |
| KY105—HOUSING AUTH OF JEFFERSON COUN | R |
| KY107—HA PIKEVILLE | R |
| LA001—NEW ORLEANS HOUSING AUTHORITY | R |
| LA003—EAST BATON ROUGE HSG AUTHORITY | R |
| LA004—LAKE CHARLES HOUSING AUTHORITY | R |
| LA005—LAFAYETTE (CITY) HOUSING AUTHORITY | R |
| LA006—MONROE HOUSING AUTHORITY | R |
| LA012—KENNER HOUSING AUTHORITY | R |
| LA027—NEW IBERIA HOUSING AUTHORITY | R |
| LA030—VILLE PLATTE HOUSING AUTHORITY | R |
| LA036—MORGAN CITY HOUSING AUTHORITY | R |
| LA045—ARCADIA HOUSING AUHTORITY | R |
| LA054—RUSTON HOUSING AUTHORITY | R |
| LA070—PATTERSON HOUSING AUTHORITY | R |
| LA080—LAFOURCHE PARISH HOUSING AUTHORITY | R |
| LA086—DERIDDER HOUSING AUTHORITY | R |
| LA089—HOMER HOUSING AUTHORITY | R |
| LA092—ST JAMES PARISH HOUSING AUTHORITY | R |
| LA095—ST. JOHN THE BAPTIST PARISH HOUSING AUTHORITY | R |
| LA106—DEQUINCY HOUSING AUTHORITY | R |
| LA115—NATCHITOCHES CITY HOUSING AUTHORITY | R |
| LA118—JENNINGS HOUSING AUTHORITY | R |
| LA166—NATCHITOCHES PARISH HOUSING AUTHORITY | R |
| MA001—LOWELL HOUSING AUTHORITY | R |
| MA002—BOSTON HOUSING AUTHORITY | R |
| MA003—CAMBRIDGE HOUSING AUTHORITY | R |
| MA005—HOLYOKE HOUSING AUTHORITY | R |
| MA006—FALL RIVER HOUSING AUTHORITY | R |
| MA007—NEW BEDFORD HOUSING AUTHORITY | R |
| MA008—CHICOPEE HOUSING AUTHORITY | R |
| MA010—LAWRENCE HOUSING AUTHORITY | R |
| MA012—WORCESTER HOUSING AUTHORITY | R |
| MA014—REVERE HOUSING AUTHORITY | R |
| MA015—MEDFORD HOUSING AUTHORITY | R |
| MA016—CHELSEA HOUSING AUTHORITY | R |
| MA017—TAUNTON HOUSING AUTHORITY | R |
| MA019—WOBURN HOUSING AUTHORITY | R |
| MA022—MALDEN HOUSING AUTHORITY | R |
| MA023—LYNN HOUSING AUTHORITY | R |
| MA024—BROCKTON HOUSING AUTHORITY | R |
| MA025—GLOUCESTER HOUSING AUTHORITY | R |
| MA028—FRAMINGHAM HOUSING AUTHORITY | R |
| MA031—SOMERVILLE HOUSING AUTHORITY | R |
| MA033—BROOKLINE HOUSING AUTHORITY | R |
| MA035—SPRINGFIELD HOUSING AUTHORITY | R |
| MD001—ANNAPOLIS HOUSING AUTHORITY | R |
| MD002—BALTIMORE CITY HOUSING AUTHORITY | R |
| MD003—FREDERICK HOUSING AUTHORITY | R |
| MD004—MONTGOMERY CO HOUSING AUTHORITY | R |
| MD005—CUMBERLAND HOUSING AUTHORITY | R |
| MD006—HAGERSTOWN HOUSING AUTHORITY | R |
| MD007—ROCKVILLE HOUSING AUTHORITY | R |
| MD012—HAVRE DE GRACE HOUSING AUTHORITY | R |

TABLE 1—Continued

| PHA code and PHA name | Eligibility |
|---|---|
| MD013—ST. MICHAELS HOUSING AUTHORITY | R |
| MD015—PRINCE GEORGES COUNTY HOUSING AUTHORITY | R |
| MD018—ANNE ARUNDEL COUNTY HOUSING AU | R |
| ME003—PORTLAND HOUSING AUTHORITY | R |
| ME005—LEWISTON HOUSING AUTHORITY | R |
| ME006—BRUNSWICK HOUSING AUTHORITY | R |
| MI001—DETROIT HC | R |
| MI004—HAMTRAMCK HC | R |
| MI005—PONTIAC HC | R |
| MI006—SAGINAW HC | R |
| MI007—ECORSE HC | R |
| MI008—RIVER ROUGE HC | R |
| MI009—FLINT HC | R |
| MI010—BENTON HARBOR HSG COMM | R |
| MI014—ALBION HGS COMM | R |
| MI026—YPSILANTI HC | R |
| MI027—INKSTER HC | R |
| MI028—MOUNT CLEMENS HC | R |
| MI031—MUSKEGON HEIGHTS | R |
| MI039—PORT HURON HC | R |
| MI058—LANSING HOUSING COMMISSION | R |
| MI064—ANN ARBOR HC | R |
| MI072—ROMULUS HC | R |
| MI073—GRAND RAPIDS HOUSING COMM | R |
| MN001—ST PAUL PHA | R |
| MN002—MINNEAPOLIS PHA | R |
| MN003—DULUTH HRA | R |
| MO001—ST. LOUIS HOUSING AUTHORITY | R |
| MO002—KANSAS CITY, MO | R |
| MO004—ST. LOUIS COUNTY HOUSING AUTHO | R |
| MO005—KINLOCH HA | R |
| MO007—COLUMBIA HOUSING AUTHORITY | R |
| MO009—JEFFERSON CITY HOUSING AUTHORITY | R |
| MO010—MEXICO HOUSING AUTHORITY | R |
| MO011—MOBERLY HA | R |
| MO012—CHARLESTON HA | R |
| MO014—FULTON HOUSING AUTHORITY | R |
| MO017—INDEPENDENCE | R |
| MO031—CLINTON | R |
| MO058—SPRINGFIELD | R |
| MO068—RICHLAND | R |
| MO070—RICHMOND | R |
| MO111—MACON HOUSING AUTHORITY | R |
| MO129—HANNIBAL HOUSING AUTHORITY | R |
| MO132—OLIVETTE HA | R |
| MO138—WELLSTON HA | R |
| MO218—PAGEDALE HA | R |
| MO220—HILLSDALE HA | R |
| MS001—HATTIESBURG | R |
| MS002—LAUREL | R |
| MS003—MCCOMB | R |
| MS004—MERIDIAN | R |
| MS005—HA BILOXI | R |
| MS007—CLARKSDALE | R |
| MS019—MISS REG HSG AUTH IV | R |
| MS030—HA MISSISSIPPI REGIONAL NO V | R |
| MS040—MISS REGIONAL H/A VIII | R |
| MS047—STARKVILLE | R |
| MS058—MISS REGIONAL H/A VI | R |
| MS059—WEST POINT | R |
| MS060—BROOKHAVEN | R |
| MS062—HOLLY SPRINGS | R |
| MS063—YAZOO CITY | R |
| MS064—BAY ST. LOUIS | R |
| MS066—PICAYUNE | R |
| MS07—1ABERDEEN | R |
| MS072—CORINTH | R |
| MS076—COLUMBUS | R |
| MS077—TUPELO | R |
| MS079—LOUISVILLE | R |
| MS082—WINONA | R |
| MS084—SUMMIT | R |

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TABLE 1—Continued

| PHA code and PHA name | Eligibility |
|---|---|
| MS086—VICKSBURG | R |
| MS090—SENATOBIA | R |
| MS093—OXFORD | R |
| MS099—LUMBERTON | R |
| MS101—WAVELAND | R |
| MS103—JACKSON | R |
| MS105—NATCHEZ | R |
| MS107—HSG AUTH CITY OF GREENWOOD MS | R |
| MS117—ATTALA COUNTY | R |
| MS121—ITTA BENA | R |
| MT001—BILLINGS | R |
| MT002—GREAT FALLS | R |
| MT004—HELENA | R |
| NC001—HA WILMINGTON | R |
| NC002—RALEIGH HA | R |
| NC003—HA CHARLOTTE | R |
| NC004—KINSTON H/A | R |
| NC005—NEW BERN | R |
| NC006—HA HIGH POINT | R |
| NC007—HA ASHEVILLE | R |
| NC008—CITY OF CONCORD | R |
| NC009—FAYETTEVILLE METROPOLITAN H/A | R |
| NC010—EASTERN CAROLINA REGIONAL | R |
| NC011—HA GREENSBORO | R |
| NC012—HA WINSTON-SALEM | R |
| NC013—HA DURHAM | R |
| NC014—HA LUMBERTON | R |
| NC015—HA GOLDSBORO | R |
| NC016—SALISBURY | R |
| NC018—HA LAURINBURG | R |
| NC019—HA ROCKY MOUNT | R |
| NC020—HA WILSON | R |
| NC022—H/A CITY OF GREENVILLE | R |
| NC025—HA ROCKINGHAM | R |
| NC026—ELIZABETH CITY | R |
| NC027—HENDERSONVILLE | R |
| NC028—BENSON | R |
| NC031—HERTFORD | R |
| NC032—HA WASHINGTON | R |
| NC035—HA SANFORD | R |
| NC036—SELMA | R |
| NC039—HA LEXINGTON | R |
| NC040—SMITHFIELD | R |
| NC043—TROY | R |
| NC046—CHAPEL HILL | R |
| NC047—FAIRMONT | R |
| NC048—MAXTON | R |
| NC049—MORGANTON | R |
| NC052—SOUTHERN PINES | R |
| NC053—HAMLET | R |
| NC056—HA HICKORY | R |
| NC057—GASTONIA H/A | R |
| NC059—H A GRAHAM | R |
| NC060—ROXBORO | R |
| NC061—BEAUFORT | R |
| NC065—HA MONROE | R |
| NC066—BURLINGTON | R |
| NC069—NORTH WILKESBORO | R |
| NC070—HA LINCOLNTON | R |
| NC071—HA THOMASVILLE | R |
| NC072—HA STATESVILLE | R |
| NC073—OXFORD | R |
| NC074—LENOIR | R |
| NC075—HA ALBEMARLE | R |
| NC076—FARMVILLE | R |
| NC077—HA WILLIAMSTON | R |
| NC079—DUNN | R |
| NC081—HA ASHEBORO | R |
| NC082—AYDEN | R |
| NC084—ROBESON COUNTY | R |
| NC085—AHOSKIE | R |
| NC088—BELMONT | R |

TABLE 1—Continued

| PHA code and PHA name | Eligibility |
|---|---|
| NC095—FOREST CITY | R |
| NC102—HA ROWAN COUNTY | R |
| NC114—PEMBROKE | R |
| NC117—ROANOKE RAPIDS | R |
| NC174—VANCE COUNTY | R |
| NE001—OMAHA HOUSING AUTHORITY | R |
| NE003—HALL COUNTY HOUSING AUTHORITY | R |
| NE078—SCOTTS BLUFF HOUSING AUTHORITY | R |
| NH001—MANCHESTER HOUSING AUTHORITY | R |
| NH002—NASHUA HOUSING AUTHORITY | R |
| NH003—DOVER HOUSING AUTHORITY | R |
| NH005—CONCORD HOUSING AUTHORITY | R |
| NH007—LACONIA HOUSING & REDEVELOPMENT AUTHORITY | R |
| NH009—LEBANON HOUSING AUTHORITY | R |
| NJ002—NEWARK HA | R |
| NJ003—ELIZABETH HA | R |
| NJ004—NORTH BERGEN HA | R |
| NJ005—TRENTON HA | R |
| NJ006—PERTH AMBOY HA | R |
| NJ007—ASBURY PARK HA | R |
| NJ008—LONG BRANCH HA | R |
| NJ009—JERSEY CITY HA | R |
| NJ010—CAMDEN H A | R |
| NJ012—BAYONNE HA | R |
| NJ013—PASSAIC HA | R |
| NJ014—ATLANTIC CITY HA | R |
| NJ015—HOBOKEN HA | R |
| NJ016—HARRISON H A | R |
| NJ021—PATERSON HA | R |
| NJ022—NEW BRUNSWICK HA | R |
| NJ023—MORRISTOWN HA | R |
| NJ025—ORANGE CITY HA | R |
| NJ026—UNION CITY HA | R |
| NJ030—WEST NEW YORK HA | R |
| NJ032—RAHWAY HA | R |
| NJ033—WOODBRIDGE HA | R |
| NJ034—GARFIELD H A | R |
| NJ037—IRVINGTON HA | R |
| NJ039—PLANFIELD HA | R |
| NJ041—HIGHLANDS H A | R |
| NJ042—FRANKLIN H A | R |
| NJ043—EDISON HA | R |
| NJ045—HIGHTSTOWN H A | R |
| NJ047—CARTERET HA | R |
| NJ048—NEPTUNE HA | R |
| NJ049—BRIDGETON HA | R |
| NJ050—EAST ORANGE HA | R |
| NJ051—GLASSBORO HA | R |
| NJ054—LAKEWOOD HA | R |
| NJ058—SALEM HA | R |
| NJ059—PLEASANTVILLE H A | R |
| NJ061—MILLVILLE HA | R |
| NJ063—VINELAND HA | R |
| NJ080—WILDWOOD H A | R |
| NM001—ALBUQUERQUE HOUSING AUTHORITY | R |
| NM003—LAS CRUCES HOUSING AUTHORITY | R |
| NM004—ALAMOGORDO HOUSING AUTHORITY | R |
| NM007—LAS VEGAS HOUSING AUTHORITY | R |
| NM009—SANTA FE CIVIC HOUSING AUTHORITY | R |
| NM020—TRUTH OR CONSEQUENCES HOUSING AUTHORITY | R |
| NM035—BERNALILLO (TOWN OF) HOUSING AUTHORITY | R |
| NM038—TAOS COUNTY HOUSING AUTHORITY | R |
| NM050—SANTA FE COUNTY HSG AUTHORITY | R |
| NV001—CITY OF RENO HSG AUTHORITY | R |
| NV002—CITY OF LAS VEGAS HSG AUTH | R |
| NV007—NORTH LAS VEGAS HOUSING AUTHOR | R |
| NV013—COUNTY OF CLARK HOUSING AUTHOR | R |
| NY001—SYRACUSE HA | R |
| NY002—BUFFALO MUNICIPAL HA | R |
| NY003—YONKERS HA, CITY OF | R |
| NY005—NEW YORK CITY HA | R |
| NY006—UTICA HA | R |

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TABLE 1—Continued

| PHA code and PHA name | Eligibility |
|---|---|
| NY008—TUCKAHOE HA | R |
| NY009—ALBANY HA | R |
| NY011—NIAGARA FALLS HA | R |
| NY012—TROY HA | R |
| NY014—PORT CHESTER HA | R |
| NY016—BINGHAMTON HA | R |
| NY018—PLATTSBURGH HA | R |
| NY019—HERKIMER HA | R |
| NY020—SARATOGA SPRINGS HA | R |
| NY022—COHOES HA | R |
| NY023—FREEPORT HA | R |
| NY025—WATERVLIET HA | R |
| NY028—SCHENECTADY HA | R |
| NY029—LACKAWANNA HA | R |
| NY031—MASSENA HA | R |
| NY032—CATSKILL HA | R |
| NY033—RENSSELAER HA | R |
| NY041—ROCHESTER HA | R |
| NY044—GENEVA HA | R |
| NY045—KINGSTON HA | R |
| NY046—HEMPSTEAD HA, TOWN OF | R |
| NY050—LONG BEACH HA | R |
| NY054—ITHACA HA | R |
| NY056—SPRING VALLEY HA | R |
| NY057—GREENBURGH HA | R |
| NY059—ILION HA | R |
| NY060—AMSTERDAM HA | R |
| NY061—HUDSON HA | R |
| NY062—POUGHKEEPSIE HA | R |
| NY069—GLEN COVE HA | R |
| NY071—MONTICELLO HA | R |
| NY082—PEEKSKILL HA | R |
| NY088—NEW ROCHELLE HA | R |
| NY089—NEWARK HA | R |
| OH001—COLUMBUS MHA | R |
| OH002—YOUNGSTOWN MHA | R |
| OH003—CUYAHOGA MHA | R |
| OH004—CINCINNATI MHA | R |
| OH005—DAYTON MHA | R |
| OH006—LUCAS MHA | R |
| OH007—AKRON MHA | R |
| OH008—TRUMBULL MHA | R |
| OH009—ZANESVILLE MHA | R |
| OH010—PORTSMOUTH MHA | R |
| OH012—LORAIN MHA | R |
| OH014—JEFFERSON MHA | R |
| OH015—BUTLER MHA | R |
| OH018—STARK MHA | R |
| OH021—SPRINGFIELD MHA | R |
| OH023—LONDON MHA | R |
| OH024—CHILLICOTHE MHA | R |
| OH026—COLUMBIANA MHA | R |
| OH029—ASHTABULA MHA | R |
| OH037—COSHOCTON MHA | R |
| OH044—ALLEN MHA | R |
| OK002—OKLAHOMA CITY | R |
| OK004—IDABEL | R |
| OK005—LAWTON | R |
| OK044—HUGO | R |
| OK062—MC ALESTER | R |
| OK073—TULSA | R |
| OK095—SHAWNEE | R |
| OK099—MUSKOGEE | R |
| OK139—NORMAN | R |
| OK146—STILLWATER | R |
| OR001—CLACKAMAS | R |
| OR002—HAP | R |
| OR005—LINCOLN | R |
| OR006—LANE | R |
| OR009—NORTH BEND | R |
| OR011—SALEM | R |
| PA001—HOUSING AUTH CITY OF PITTSBURG | R |

TABLE 1—Continued

| PHA code and PHA name | Eligibility |
|---|---|
| PA002—PHILADELPHIA HOUSING AUTHORITY | R |
| PA003—SCRANTON HOUSING AUTHORITY | R |
| PA004—ALLENTOWN HOUSING AUTHORITY | R |
| PA005—MCKEESPORT HOUSING AUTHORITY | R |
| PA006—ALLEGHENY COUNTY HOUSING AUTHO | R |
| PA007—CHESTER HOUSING AUTHORITY | R |
| PA008—HARRISBURG HOUSING AUTHORITY | R |
| PA009—READING HOUSING AUTHORITY | R |
| PA011—BETHLEHEM HOUSING AUTHORITY | R |
| PA012—MONTGOMERY COUNTY HOUSING AUTH | R |
| PA013—ERIE CITY HOUSING AUTHORITY | R |
| PA014—BEAVER COUNTY HOUSING AUTHORIT | R |
| PA015—FAYETTE COUNTY HOUSING AUTHORI | R |
| PA017—WASHINGTON COUNTY HOUSING AUTH | R |
| PA018—WESTMORELAND COUNTY HSG AUTHOR | R |
| PA019—JOHNSTOWN HOUSING AUTHORITY | R |
| PA020—MERCER COUNTY HOUSING AUTHORIT | R |
| PA022—YORK CITY HOUSING AUTHORITY | R |
| PA023—DELAWARE COUNTY HOUSING AUTHOR | R |
| PA024—EASTON HOUSING AUTHORITY | R |
| PA026—HOUSING AUTH CO OF LAWRENCE | R |
| PA036—LANCASTER HOUSING AUTHORITY | R |
| PA038—LACKAWANNA COUNTY HOUSING AUTH | R |
| PA044—HAZLETON HOUSING AUTHORITY | R |
| PA046—HOUS AUTH OF THE CO OF CHESTER | R |
| PA047—WILKES BARRE HOUSING AUTHORITY | R |
| PA051—BUCKS COUNTY HOUSING AUTHORITY | R |
| PA057—LUZERNE COUNTY HOUSING AUTHORI | R |
| PA088—CENTRE COUNTY HOUSING AUTHORIT | R |
| RI001—PROVIDENCE HOUSING AUTHORITY | R |
| RI002—PAWTUCKET HOUSING AUTHORITY | R |
| RI003—WOONSOCKET HOUSING AUTHORITY | R |
| RI005—NEWPORT HOUSING AUTHORITY | R |
| PQ005—PRPHA | R |
| SC001—CHARLESTON | R |
| SC002—COLUMBIA | R |
| SC003—SPARTANBURG | R |
| SC004—GREENVILLE | R |
| SC007—AIKEN | R |
| SC008—SOUTH CAROLINA REGION NO 1 | R |
| SC017—GAFFNEY | R |
| SC022—ROCK HILL | R |
| SC024—SOUTH CAROLINA REGION NO 3 | R |
| SC025—CONWAY | R |
| SC026—BEAUFORT | R |
| SC027—FLORENCE | R |
| SC028—GEORGETOWN | R |
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| SC057—NORTH CHARLESTON | R |
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| TN004—CHATTANOOGA HOUSING AUTHORITY | R |
| TN005—MDHA | R |
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| TN010—CLARKSVILLE | R |
| TN011—PULASKI | R |
| TN013—BROWNSVILLE | R |
| TN014—FAYETTEVILLE | R |
| TN020—MURFREESBORO | R |
| TN024—TULLAHOMA | R |
| TN027—HUMBOLDT | R |
| TN029—GALLATIN | R |
| TN033—COOKEVILLE | R |
| TN035—FRANKLIN | R |

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TABLE 1—Continued

| PHA code and PHA name | Eligibility |
|---|---|
| TN036—SPRINGFIELD | R |
| TN039—SHELBYVILLE | R |
| TN042—CROSSVILLE HOUSING AUTHORITY | R |
| TN048—LAWRENCEBURG | R |
| TN053—MCMINNVILLE | R |
| TN054—CLEVELAND HOUSING AUTHORITY | R |
| TN057—RIPLEY | R |
| TN065—MARYVILLE HOUSING AUTHORITY | R |
| TN075—NEWBERN | R |
| TN088—OAK RIDGE HOUSING AUTHORITY | R |
| TX001—AUSTIN HOUSING AUTHORITY | R |
| TX003—EL PASO | R |
| TX004—FORT WORTH | R |
| TX005—HOUSTON HOUSING AUTHORITY | R |
| TX006—SAN ANTONIO HOUSING AUTHORITY | R |
| TX007—BROWNSVILLE HOUSING AUTHORITY | R |
| TX008—CORPUS CHRISTI HOUSING AUTHORITY | R |
| TX009—DALLAS | R |
| TX010—WACO | R |
| TX011—LAREDO HOUSING AUTHORITY | R |
| TX012—BAYTOWN HOUSING AUTHORITY | R |
| TX014—TEXARKANA | R |
| TX016—DEL RIO HOUSING AUTHORITY | R |
| TX017—GALVESTON HOUSING AUTHORITY | R |
| TX018—LUBBOCK | R |
| TX022—WICHITA FALLS | R |
| TX023—BEAUMONT | R |
| TX024—COMMERCE | R |
| TX025—SAN BENITO HOUSING AUTHORITY | R |
| TX026—DENISON | R |
| TX027—MCKINNEY | R |
| TX028—MC ALLEN HOUSING AUTHORITY | R |
| TX029—MERCEDES HOUSING AUTHORITY | R |
| TX030—TEMPLE | R |
| TX032—TEXAS CITY HOUSING AUTHORITY | R |
| TX034—PORT ARTHUR | R |
| TX037—ORANGE | R |
| TX046—MISSION HOUSING AUTHORITY | R |
| TX048—PARIS | R |
| TX051—WESLACO HOUSING AUTHORITY | R |
| TX054—NEW BOSTON | R |
| TX062—EDINBURG HOUSING AUTHORITY | R |
| TX064—ALAMO HOUSING AUTHORITY | R |
| TX065—HARLINGEN HOUSING AUTHORITY | R |
| TX073—PHARR HOUSING AUTHORITY | R |
| TX078—SHERMAN | R |
| TX085—VICTORIA HOUSING AUTHORITY | R |
| TX087—SAN MARCOS HOUSING AUTHORITY | R |
| TX114—KINGSVILLE HOUSING AUTHORITY | R |
| TX128—PLANO | R |
| TX163—ROBSTOWN HOUSING AUTHORITY | R |
| TX177—DONNA HOUSING AUTHORITY | R |
| TX257—SLATON | R |
| TX327—ABILENE | R |
| TX355—EL CAMPO HOUSING AUTHORITY | R |
| TX395—PORT LAVACA HOUSING AUTHORITY | R |
| TX406—HUNTSVILLE HOUSING AUTHORITY | R |
| TX408—MONAHANS | R |
| TX439—ANTHONY | R |
| TX448—LA JOYA HOUSING AUTHORITY | R |
| TX449—ROMA HOUSING AUTHORITY | R |
| TX455—ODESSA | R |
| TX470—SAN ANGELO | R |
| TX486—NACOGDOCHES | R |
| TX509—CAMERON COUNTY HOUSING AUTHORITY | R |
| TX538—EL PASO COUNTY | R |
| UT003—SALT LAKE COUNTY | R |
| UT004—SALT LAKE CITY | R |
| UT007—PROVO CITY | R |
| VA001—PORTSMOUTH REDEVELOPMENT & H/A | R |
| VA002—BRISTOL REDEVELOPMENT HOUSING | R |
| VA003—NEWPORT NEWS REDEVELOPMENT & H | R |

TABLE 1—Continued

| PHA code and PHA name | Eligibility |
|---|---|
| VA004—ALEXANDRIA REDEVELOPMENT & H/A | R |
| VA005—HOPEWELL REDEVELOPMENT & H/A | R |
| VA006—NORFOLK REDEVELOPMENT & H/A | R |
| VA007—RICHMOND REDEVELOPMENT & H/A | R |
| VA010—DANVILLE REDEVELOPMENT AND H/A | R |
| VA011—ROANOKE REDEVELOPMENT & H/A | R |
| VA012—CHESAPEAKE REDEVELOPMENT & H/A | R |
| VA015—NORTON REDEVELOPMENT & H/A | R |
| VA017—HAMPTON REDEVELOPEMENT & HSG A | R |
| VA019—FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY | R |
| VA020—PETERSBURG REDEVELOPMENT & H/A | R |
| VA022—WAYNESBORO REDEVELOPMENT & H/A | R |
| VA025—SUFFOLK REDEVELOPMENT & H/A | R |
| VA029—CUMBERLAND PLATEAU REGIONAL H/ | R |
| VQ001—VIHA | R |
| VT005—BARRE HOUSING AUTHORITY | R |
| WA001—SEATTLE HA | R |
| WA002—KING CO HA | R |
| WA003—BREMERTON HA | R |
| WA004—CLALLAM CO HA | R |
| WA005—TACOMA HA | R |
| WA008—VANCOUVER | R |
| WA021—PASCO HA | R |
| WA025—BELLINGHAM HA | R |
| WA036—KITSAP CO HA | R |
| WA039—SNOHOMISH CO HA | R |
| WA042—YAKIMA HA | R |
| WI001—SUPERIOR HA | R |
| WI002—MILWAUKEE HA | R |
| WI003—MADISON HA | R |
| WV001—CHARLESTON HOUSING AUTHORITY | R |
| WV003—WHEELING HOUSING AUTHORITY | R |
| WV004—HUNTINGTON HOUSING AUTHORITY | R |
| WV005—PARKERSBURG HOUSING AUTHORITY | R |
| WV006—MARTINSBURG HOUSING AUTHORITY | R |
| WV008—WILLIAMSON HOUSING AUTHORITY | R |
| WV011—MOUNDSVILLE HOUSING AUTHORITY | R |
| WV014—BENWOOD HOUSING AUTHORITY | R |
| WV018—BLUEFIELD HOUSING AUTHORITY | R |
| WV019—MCMECHEN HOUSING AUTHORITY | R |
| WV022—SOUTH CHARLESTON HOUSING AUTHORITY | R |
| WV027—CLARKSBURG HOUSING AUTHORITY | R |
| WV036—KANAWHA COUNTY HOUSING AUTHORITY | R |

TABLE 2

| PHA Code and PHA Name | Eligibility |
|---|---|
| AZ038—PEORIA | N1 |
| CA009—UPLAND HOUSING | N1 |
| CA030—TULARE COUNTY HOUSING AUTH | N1 |
| CA035—SAN BUENAVENTURA CITY | N1 |
| CA058—CITY OF BERKELEY HOUSING AUTHO | N1 |
| CA059—COUNTY OF SANTA CLARA HOUSING | N1 |
| CA108—SAN DIEGO COUNTY | N1 |
| CA142—DUBLIN | N1 |
| CO014—WELLINGTON | N1 |
| CO028—COLORADO SPRINGS | N1 |
| CO035—GREELEY | N1 |
| CO041—FORT COLLINS | N1 |
| CO049—LAKEWOOD | N1 |
| CO052—AURORA | N1 |
| CO059—LOUISVILLE | N1 |
| CO061—BOULDER COUNTY | N1 |
| CO070—LONGMONT | N1 |
| FL017—MIAMI BEACH | N1 |
| FL061—DUNEDIN | N1 |
| FL062—PINELLAS COUNTY | N1 |
| FL119—BOCA RATON | N1 |
| FL136—HOLLYWOOD | N1 |
| GA129—LEE COUNTY | N1 |

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| PHA Code and PHA Name | Eligibility |
|---|---|
| GA161—HARRIS COUNTY | N1 |
| GA179—BUENA VISTA | N1 |
| GA214—ELLAVILLE | N1 |
| IA018—SIOUX CITY | N1 |
| IA023—COUNCIL BLUFFS | N1 |
| IA045—DAVENPORT | N1 |
| IA050—WATERLOO | N1 |
| IA131—CENTRAL IOWA | N1 |
| ID013—BOISE CITY | N1 |
| ID020—IHFA | N1 |
| ID021—ADA | N1 |
| IL005—GRANITE CITY HOUSING AUTHORITY | N1 |
| IN004—DELAWARE COUNTY HOUSING AUTHORITY | N1 |
| IN006—ANDERSON HOUSING AUTHORITY | N1 |
| IN020—MISHAWAKA HOUSING AUTHORITY | N1 |
| IN021—TERRE HAUTE HOUSING AUTHORITY | N1 |
| IN022—BLOOMINGTON HOUSING AUTHORITY | N1 |
| KS004—WICHITA | N1 |
| KS038—SALINA | N1 |
| KS043—OLATHE | N1 |
| KS068—LEAVENWORTH | N1 |
| KS071—GARDEN CITY | N1 |
| LA002—SHREVEPORT HSG AUTHORITY | N1 |
| LA023—ALEXANDRIA HOUSING AUTHORITY | N1 |
| LA042—BOSSIER CITY HOUSING AUTHORITY | N1 |
| MA020—QUINCY HOUSING AUTHORITY | N1 |
| MI003—DEARBORN HC | N1 |
| MI035—BATTLE CREEK HSG COMMISSION | N1 |
| MI040—CLINTON TOWNSHIP HC | N1 |
| MI055—LIVONIA HC | N1 |
| MI089—TAYLOR HC | N1 |
| MI115—WYOMING HC | N1 |
| MI157—STERLING HEIGHTS HC | N1 |
| MI180—NEW HAVEN HC | N1 |
| MN152—BLOOMINGTON HRA | N1 |
| MO003—ST JOSEPH | N1 |
| MO006—ST CHARLES HOUSING AUTHORITY | N1 |
| MO030—LEE'S SUMMIT | N1 |
| NC044—MOUNT GILEAD | N1 |
| ND014—FARGO | N1 |
| NE002—LINCOLN HOUSING AUTHORITY | N1 |
| NE004—KEARNEY HOUSING AUTHORITY | N1 |
| NE153—DOUGLAS COUNTY HOUSING AUTHORI | N1 |
| NM002—CLOVIS HOUSING AUTHORITY | N1 |
| NM057—BERNALILLO COUNTY HOUSING AUTHORITY | N1 |
| NM062—DONA ANA COUNTY HOUSING AUTHORITY | N1 |
| NM063—REGION VI HOUSING AUTHORITY | N1 |
| OR014—MARION | N1 |
| OR015—JACKSON | N1 |
| PA071—BERKS COUNTY HOUSING AUTHORITY | N1 |
| RI011—WARWICK HOUSING AUTHORITY | N1 |
| SC056—CHARLESTON COUNTY | N1 |
| SD016—SIOUX FALLS | N1 |
| SD045—PENNINGTON COUNTY | N1 |
| TN095—SHELBY COUNTY | N1 |
| TN11—KNOX COUNTY HOUSING AUTHORITY | N1 |
| TX020—BRYAN HOUSING AUTHORITY | N1 |
| TX079—KILLEEN | N1 |
| TX379—MIDLAND | N1 |
| TX452—BEXAR COUNTY HOUSING AUTHORITY | N1 |
| TX480—TRAVIS COUNTY HOUSING AUTHORITY | N1 |
| UT002—OGDEN | N1 |
| UT011—UTAH COUNTY | N1 |
| UT025—WEST VALLEY CITY | N1 |
| VA013—LYNCHBURG REDEVELOPMENT & H/A | N1 |
| WA006—EVERETT HA | N1 |
| WA011—RENTON HA | N1 |
| WA012—KENNEWICK HA | N1 |
| WA030—SEDRO WOOLLEY HA | N1 |
| WA041—WHATCOM CO HA | N1 |
| WA054—PIERCE CO HA | N1 |
| WA055—SPOKANE HA | N1 |

TABLE 2—Continued

| PHA Code and PHA Name | Eligibility |
|---|---|
| WI006—LA CROSSE HA | N1 |
| WI074—GREEN BAY HA | N1 |

TABLE 3

| PHA Code and PHA Name | Eligibility |
|---|---|
| AL175—LIVINGSTON | N2 |
| AR148—ENGLAND | N2 |
| AZ013—YUMA COUNTY | N2 |
| CA067—ALAMEDA COUNTY HSG AUTH | N2 |
| GA081—HARTWELL | N2 |
| GA201—JASPER | N2 |
| IA107—FORT DODGE | N2 |
| KY015—HA NEWPORT | N2 |
| LA029—CROWLEY | N2 |
| LA055—OPELOUSAS HOUSING AUTHORITY | N2 |
| LA103—SLIDELL HOUSING AUTHORITY | N2 |
| LA123—WINNFIELD HOUSING AUTHORITY | N2 |
| MN151—OLMSTED COUNTY HRA | N2 |
| MT003—BUTTE | N2 |
| NC017—REDEVELOPMENT COMM TARBORO | N2 |
| NY077—ISLIP HA, TOWN OF | N2 |
| NY085—HEMPSTEAD HA, VILLAGE OF | N2 |
| OH031—PORTAGE MHA | N2 |
| PA031—ALTOONA HOUSING AUTHORITY | N2 |
| PA052—LEBANON COUNTY HOUSING AUTHORI | N2 |
| TN008—PARIS | N2 |
| TN041—COVINGTON | N2 |
| TN076—ELIZABETHTON HOUSING AND DEVELOPMENT | N2 |
| TX015—WAXAHACHIE | N2 |
| TX019—EAGLE PASS HOUSING AUTHORITY | N2 |
| TX038—BONHAM | N2 |
| TX092—LADONIA | N2 |
| TX113—ORANGE COUNTY | N2 |
| TX173—PORT ISABEL HOUSING AUTHORITY | N2 |
| TX300—CARRIZO SPRINGS HOUSING AUTHORITY | N2 |
| WV009—FAIRMONT HOUSING AUTHORITY | N2 |

Dated: May 3, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

[FR Doc. 00–11696 Filed 5–9–00; 8:45 am]

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**S.J. Res. 40/P.L. 106–198**

Providing for the appointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 249)

**S.J. Res. 42/P.L. 106–199**

Providing for the reappointment of Manuel L. Ibanez as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 250)

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### THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

**FOR:** Any person who uses the Federal Register and Code of Federal Regulations.

**WHO:** Sponsored by the Office of the Federal Register.

**WHAT:** Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

**WASHINGTON, DC**

**WHEN:** May 23, 2000 at 9:00 am.

**WHERE:** Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

**RESERVATIONS:** 202–523–4538

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**Reader Aids**
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# Presidential Documents

Title 3—

## The President

**Proclamation 7304 of May 5, 2000**

## Global Science and Technology Week, 2000

**By the President of the United States of America**

**A Proclamation**

At its core, science is an international endeavor. The fundamental workings of nature—the function of a gene, the quantum behavior of matter and energy, the chemistry of the atmosphere—are not the sole province of any one nation. At the same time, many of the greatest challenges our Nation faces are of global concern. Issues such as poverty, disease, pollution, and sustainable energy production transcend national boundaries, and their solutions require international collaboration. With the advent of the Internet and the revolution in communications technology, such cooperation is more achievable—and more productive—than ever before.

In recent years, America has participated in numerous scientific endeavors that illustrate the feasibility and the benefits of international cooperation. For example, as one of 16 participating nations, we are advancing the frontiers of space exploration through a partnership to build the International Space Station. Working together in the unique environment of space, we will strive to solve crucial problems in medicine and ecology and lay the foundations for developing space-based commerce.

We are also participating in an international scientific effort to map and sequence all human chromosomes. With the completion of the Human Genome Project, we will have unprecedented knowledge about the cause of such genetic diseases as muscular dystrophy and Alzheimer's and greater hope of preventing them in the future.

Since the 1980s, under the auspices of the United Nations Environment Program and the World Meteorological Organization, American scientists have been working with hundreds of scientists around the world to identify, understand, and raise public awareness about the threat to our planet's ozone layer. Our collaborative efforts have led to an international agreement to eliminate nearly all production of offending chemicals in industrialized countries and to work to reduce their production in developing countries.

Our Nation continues to reap rewards from these and other important international scientific efforts. We benefit enormously from the large and growing international scientific community within our borders. For generations, the world's brightest scientists have come to our country to study and conduct research, and many choose to remain here permanently. From Albert Einstein to four of this year's Nobel laureates, foreign-born scientists in America have made extraordinary contributions to science and technology and have played a vital role in the unprecedented prosperity and economic growth we have experienced in recent years.

The great French scientist Louis Pasteur noted more than a century ago that "science knows no country, because knowledge belongs to humanity, and is the torch which illuminates the world." During Global Science and Technology Week, America joins the world community in celebrating the immeasurable benefits we have enjoyed from international scientific collaboration and looks forward to a future of even greater achievements.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 7 to May 13, 2000, as Global Science and Technology Week. I call upon students, educators, and all the people of the United States to learn more about the international nature of science and technology and the contributions that international scientists have made to our Nation's progress and prosperity.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–12004
Filed 5–10–00; 8:45 am]
Billing code 3195–01–P

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# Rules and Regulations

Federal Register
Vol. 65, No. 92
Thursday, May 11, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 99–078–2]**

### Imported Fire Ant; Quarantined Areas and Treatment Dosage

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the imported fire ant regulations by designating as quarantined areas portions of two counties in California. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States. The interim rule also amended the treatment provisions in the appendix to the imported fire ant regulations by lowering the dosage rate of bifenthrin wettable powder for the treatment of containerized nursery plants.

**EFFECTIVE DATE:** The interim rule became effective on November 5, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ronald P. Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5255.

**SUPPLEMENTARY INFORMATION:**

#### Background

In an interim rule effective and published in the **Federal Register** on November 5, 1999 (64 FR 60333–60335, Docket No. 99–078–1), we amended the imported fire ant (IFA) regulations in 7 CFR part 301 by designating as quarantined areas portions of Los Angeles and Riverside Counties in California. We also amended the treatment provisions in the appendix to the IFA regulations by lowering the dosage rate of bifenthrin wettable powder for the treatment of containerized nursery plants.

Comments on the interim rule were required to be received on or before January 4, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### Regulatory Flexibility Act

This action affirms an interim rule that amended the IFA regulations by designating as quarantined areas portions of Los Angeles and Riverside Counties in California. As a result of that action, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

There are approximately 1,219 agricultural entities in the newly regulated areas with annual sales totaling almost $1.29 billion. We have identified approximately 706 affected entities in the newly regulated areas, including wholesale nurseries producing bedding plants and woody ornamentals, wholesale nurseries producing woody ornamentals and turf, retail nurseries, soil moving contracting companies, and landscaping and yard maintenance companies. The majority of these entities would be considered small businesses. In 1997, the market value of nursery crop sales for the affected entities was $243,738,000. We do not know how many of the affected entities move regulated articles interstate; however, the availability of various IFA treatments, which permit the interstate movement of regulated articles with only a small additional cost, minimizes any adverse economic effects due to the interim rule. The average cost for treating a 1 gallon container, which contains one nursery plant, is 2 cents. The average treatment cost for a standard shipment of 10,000 nursery plants, worth anywhere between $10,000 and $250,000, is $200. Entities that do not move regulated articles interstate remain unaffected by the interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant impact on a substantial number of small entities.

#### List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

#### PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 64 FR 60333–60335.

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 4th day of May 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–11829 Filed 5–10–00; 8:45 am]

BILLING CODE 3410–34–U

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 00–007–1]**

### Imported Fire Ant; Quarantined Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Interim rule and request for comments.

**SUMMARY:** We are amending the imported fire ant regulations by designating as quarantined areas all or portions of 2 counties in Arkansas, 14

counties in North Carolina, and 19 counties in Tennessee. As a result of this action, the interstate movement of regulated articles from those areas will be restricted. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States. We are also removing the references to the Imported Fire Ant Program Manual in the appendix to the imported fire ant regulations because there is no relevant information in the Imported Fire Ant Program Manual that is not also in the appendix.

**DATES:** This interim rule is effective May 11, 2000. We invite you to comment on this docket. We will consider all comments that we receive by July 10, 2000.

**ADDRESSES:** Please send your comment and three copies to:

Docket No. 00–007–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–007–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Milberg, Operations Officer, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5255.

**SUPPLEMENTARY INFORMATION:**

**Background**

The imported fire ant regulations (contained in 7 CFR 301.81 through 301.81–10, and referred to below as the regulations) quarantine infested States or infested areas within States and restrict the interstate movement of regulated articles to prevent the artificial spread of the imported fire ant.

The imported fire ant, *Solenopsis invicta* Buren and *Solenopsis richteri* Forel, is an aggressive, stinging insect that, in large numbers, can seriously injure and even kill livestock, pets, and humans. The imported fire ant feeds on crops and builds large, hard mounds that damage farm and field machinery. The imported fire ant is not native to the United States. The regulations are intended to prevent the imported fire ant from spreading throughout its ecological range within the country.

The regulations in § 301.81–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, that is infested with the imported fire ant. The Administrator will designate less than an entire State as a quarantined area only under the following conditions: (1) The State has adopted and is enforcing restrictions on the intrastate movement of the regulated articles listed in § 301.81–2 that are equivalent to the interstate movement restrictions imposed by the regulations; and (2) designating less than the entire State will prevent the spread of the imported fire ant. The Administrator may include uninfested acreage within a quarantined area due to its proximity to an infestation or its inseparability from an infested locality for quarantine purposes.

In §§ 301.81–3, paragraph (e) lists quarantined areas. We are amending § 301.81–3(e) by adding portions of Clark and Hot Springs Counties in Arkansas; Bertie, Camden, Chatham, Chowan, Currituck, Edgecombe, Gaston, Greene, Martin, Mecklenburg, Pasquotank, Perquimans, Wake, and Wayne Counties in North Carolina; and Decatur, Fayette, Franklin, Giles, Haywood, Henderson, Lewis, Lawrence, Lincoln, Madison, Marion, Marshall, McMinn, Meigs, Monroe, Moore, Perry, Rhea, and Shelby Counties in Tennessee. We are taking this action because recent surveys conducted by APHIS and State and county agencies reveal that the imported fire ant has spread to these areas. See the rule portion of this document for specific descriptions of the new quarantined areas. Interested parties may also view a map showing the imported fire ant infested areas in the continental United States on the Internet at http://www.aphis.usda.gov/oa/antmap.html.

We are also removing the references to the Imported Fire Ant Program Manual in the appendix to Subpart—Imported Fire Ant. Currently, in the appendix, under III. A., "Instructions to Inspectors" (at the beginning of the appendix), inspectors are instructed to know and follow instructions in the Imported Fire Ant Program Manual (relevant portions of which constitute the appendix), the PPQ Treatment Manual, the pesticide label, and exemptions for the treatment or other procedures used to authorize the movement of regulated articles. There is no relevant information in the Imported Fire Ant Program Manual that is not also in these other materials.

**Emergency Action**

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this rule without prior opportunity for public comment. Immediate action is necessary to prevent the artificial spread of the imported fire ant into noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the imported fire ant regulations by designating as quarantined areas all or portions of 2 counties in Arkansas, 14 counties in North Carolina, and 19 counties in Tennessee. This action is necessary to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

**Executive Order 12372**

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

State and local officials. (See 7 CFR Part 3015, subpart V.)

**Executive Order 12988**

This interim rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**National Environmental Policy Act**

An environmental assessment and finding of no significant impact have been prepared for this interim rule. The assessment provides a basis for the conclusion that the methods employed to regulate the imported fire ant will not significantly affect the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT**.

**Paperwork Reduction Act**

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

## PART 301 DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

2. In § 301.81–3, paragraph (e), the list of quarantined areas is amended as follows:

a. By removing the entries for Hot Springs County, Arkansas; Bertie, Chowan, Greene. Martin, Mecklenburg, Perquimans, and Wayne Counties, North Carolina; and Decatur, Fayette, Franklin, Giles, Henderson, Lawrence, Lincoln, Madison, Marion, McMinn, and Shelby Counties, Tennessee.

b. By adding, in alphabetical order, entries for Clark and Hot Springs Counties, Arkansas; Bertie, Camden, Chatham, Chowan, Currituck, Edgecombe, Gaston, Greene, Martin, Mecklenburg, Pasquotank, Perquimans, Wake, and Wayne Counties, North Carolina; and Decatur, Fayette, Franklin, Giles, Haywood, Henderson, Lawrence, Lewis, Lincoln, Madison, Marion, Marshall, McMinn, Meigs, Monroe, Moore, Perry, Rhea, and Shelby Counties, Tennessee, to read as follows:

**§ 301.81–3 Quarantined areas.**

* * * * *

(e) * * *

* * * * *

Arkansas

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*Clark County*. The entire county.

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*Hot Springs County*. The entire county.

* * * * *

North Carolina

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*Bertie County*. That portion of the county bounded by a line beginning at the intersection of State Highway 11/42 and the Hertford/Bertie County line; then east along the Hertford/Bertie County line to the Bertie/Chowan County line; then south along the Bertie/Chowan County line to the Bertie/Martin County line; then west along the Bertie/Martin County line to State Highway 11/42; then north along State Highway 11/42 to the point of beginning.

* * * * *

*Camden County*. That portion of the county bounded by a line beginning at the intersection of State Road 1112 and State Highway 343; then east along State Highway 343 to State Road 1107; then south along State Road 1107 to the Camden/Pasquotank County line; then north along the Camden/Pasquotank County line to State Road 1112; then north along State Road 1112 to the point of beginning.

* * * * *

*Chatham County*. That portion of the county bounded by a line beginning at the intersection of the Chatham/Randolph County line and U.S. Highway 64; then east along U.S. Highway 64 to the Chatham/Wake County line; then south along the Chatham/Wake County line to the Chatham/Harnett County line; then south along the Chatham/Harnett County line to the Chatham/Lee County line; then west along the Chatham/Lee County line to the Chatham/Moore County line; then west along the Chatham/Moore County line to the Chatham/Randolph County line; then north along the Chatham/Randolph County line to the point of beginning.

*Chowan County*. That portion of the county bounded by a line beginning at the intersection of the Chowan/Gates County line and State Highway 32; then south along State Highway 32 to State Highway 37; then east along State Highway 37 to the Chowan/Perquimans County line; then south along the Chowan/Perquimans County line to the shoreline of the Albemarle Sound; then west along the shoreline of the Albemarle Sound to the Chowan/Bertie County line; then north along the Chowan/Bertie County line to the Chowan/Hertford County line; then north along the Chowan/Hertford County line to the Chowan/Gates County line; then east along the Chowan/Gates County line to the point of beginning.

* * * * *

*Currituck County*. That portion of the county bounded by a line beginning at the intersection of the Currituck/Camden County line and State Road 1112; then east along State Road 1112 to U.S. Highway 158; then south along U.S. Highway 158 to State Road 1111; then east along State Road 1111 to the shoreline of the Atlantic Ocean; then south along the shoreline of the Atlantic Ocean to the Currituck/Duck County line; then south and west along the Currituck/Duck County line to the Currituck/Camden County line; then north along the Currituck/Camden County line to the point of beginning.

* * * * *

*Edgecombe County*. That portion of the county bounded by a line beginning at the intersection of State Highway 33

and State Highway 111; then east along State Highway 111 to State Highway 142; then east along State Highway 142 to the Edgecombe/Martin County line; then south along the Edgecombe/Martin County line to the Edgecombe/Pitt County line; then west along the Edgecombe/Pitt County line to State Highway 33; then north along State Highway 33 to the point of beginning.

*Gaston County*. That portion of the county bounded by a line beginning at the intersection of the Gaston/Cleveland County line and Interstate Highway 85; then north and east along Interstate Highway 85 to the Gaston/Mecklenburg County line; then south along the Gaston/Mecklenburg County line to the North Carolina/South Carolina State line; then west along the North Carolina/South Caroline State line to the Gaston/Cleveland County line; then north along the Gaston/Cleveland County line to the point of beginning.

*Greene County*. The entire county.

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*Martin County*. That portion of the county bounded by a line beginning at the intersection of the Martin/Edgecombe County line and State Highway 142; then east along State Highway 142 to State Highway 125; then north along State Highway 125 to State Road 1429; then east along State Road 1429 to the Martin/Bertie County line; then south along the Martin/Bertie County line to the Martin/Washington County line; then south along the Martin/Washington County line to the Martin/Beaufort County line; then west along the Martin/Beaufort County line to the Martin/Pitt County line; then north along the Martin/Pitt County line to the Martin/Edgecombe County line; then north along the Martin/Edgecombe County line to the point of beginning.

*Mecklenburg County*. The entire county.

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*Pasquotank County*. That portion of the county bounded by a line beginning at the intersection of the Pasquotank/Perquimans County line and U.S. Highway 17; then east along U.S. Highway 17 to the Pasquotank/Camden County line; then south along the Pasquotank/Camden County line to the shoreline of the Albemarle Sound; then west along the shoreline of the Albemarle Sound to the Pasquotank/Perquimans County line; then north along the Pasquotank/Perquimans County line to the point of beginning.

* * * * *

*Perquimans County*. That portion of the county bounded by a line beginning at the intersection of the Perquimans/Chowan County line and State Road 1118; then east along State Road 1118 to State Road 1200; then north along State Road 1200 to State Road 1213; then east along State Road 1213 to State Road 1214; then southeast along State Road 1214 to State Road 1221; then northeast along State Road 1221 to the Perquimans/Pasquotank County line; then south along the Perquimans/Pasquotank County line to the shoreline of the Albemarle Sound; then west along the shoreline of the Albemarle Sound to the Perquimans/Chowan County line; then north along the Perquimans/Chowan County line to the point of beginning.

* * * * *

*Wake County*. That portion of the county bounded by a line beginning at the intersection of State Highway 55 and the Wake/Durham County line; then south along the Wake/Durham County line to U.S. Highway 1; then north along U.S. Highway 1 to U.S. Highway 70; then north along U.S. Highway 70 to the Wake/Durham County line; then south and west along the Wake/Durham County line to the point of beginning.

* * * * *

*Wayne County*. That portion of the county bounded by a line beginning at the intersection of the Wayne/Johnston County line and U.S. Highway 70; then east along U.S. Highway 70 to State Highway 111; then north along State Highway 111 to State Road 1572; then southeast along State Road 1572 to U.S. Highway 13; then east along U.S. Highway 13 to the Wayne/Greene County line; then south along the Wayne/Greene County line to the Wayne/Lenoir County line; then south along the Wayne/Lenoir County line to the Wayne/Duplin County line; then west along the Wayne/Duplin County line to the Wayne/Sampson County line; then west along the Wayne/Sampson County line to the Wayne/Johnston County line; then north along the Wayne/Johnston County line to the point of beginning.

* * * * *

Tennessee

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*Decatur County*. That portion of the county bounded by a line beginning at the intersection of the Decatur/Henderson County line and Interstate Highway 40; then east along Interstate Highway 40 to the Decatur/Benton County line; then southeast along the Decatur/Benton County line to the Decatur/Perry County line; then south along the Decatur/Perry County line to the Decatur/Wayne County line; then south along the Decatur/Wayne County line to the Decatur/Hardin County line; then west along the Decatur/Hardin County line to the Decatur/Henderson County line; then north along the Decatur/Henderson County line to the point of beginning.

*Fayette County*. The entire county.

*Franklin County*. That portion of the county bounded by a line beginning at the intersection of the Franklin/Moore County line and State Highway 50; then east along State Highway 50 to U.S. Highway 64 going east to U.S. Highway Alternate 41 to the Grundy/Marion County line; then south along the Franklin/Marion County line to the Tennessee/Alabama State line; then west along the Tennessee/Alabama State line to the Franklin/Lincoln County line; then north along the Franklin/Lincoln County line to the Franklin/Moore County line; then north along the Franklin/Moore County line to the point of beginning.

*Giles County*. That portion of the county bounded by a line beginning at the intersection of the Giles/Lawrence County line and U.S. Highway 64; then east along U.S. Highway 64 to U.S. Highway 31; then north along U.S. Highway 31 to State Highway 129; then east along State Highway 129 to the Giles/Marshall County line; then south along the Giles/Marshall County line to the Giles/Lincoln County line; then south along the Giles/Lincoln County line to the Tennessee/Alabama State line; then west along the Tennessee/Alabama State line to the Giles/Lawrence County line; then north along the Giles/Lawrence county line to the point of beginning.

* * * * *

*Haywood County*. That portion of the county bounded by a line beginning at the intersection of the Haywood/Fayette County line and Interstate Highway 40; then east along Interstate Highway 40 to the Haywood/Madison County line; then south along the Haywood/Madison County line to the Haywood/Hardeman County line; then west along the Haywood/Hardeman County line to the Haywood/Fayette County line; then west along the Haywood/Fayette county line to the point of beginning.

*Henderson County*. That portion of the county bounded by a line beginning at the intersection of the Henderson/Madison County line and Interstate Highway 40; then east along Interstate Highway 40 to the Henderson/Decatur County line; then south along the Henderson/Decatur County line to the Henderson/Hardin County line; then west along the Henderson/Hardin County line to the Henderson/Chester County line; then north along the Henderson/Chester County line to the

Henderson/Madison County line; then north along the Henderson/Madison County line to the point of beginning.

*Lawrence County.* The entire county.

*Lewis County.* That portion of the county bounded by a line beginning at the intersection of the Lewis/Perry County line and State Highway 48; then east along State Highway 48 to State Highway 20; then southeast along State Highway 20 to the Lewis/Lawrence County line; then west along the Lewis/Lawrence County line to the Lewis/Wayne County line; then north along the Lewis/Wayne County line to the Lewis/Perry County line; then north along the Lewis/Perry County line to the point of beginning.

*Lincoln County.* That portion of the county bounded by a line beginning at the intersection of the Lincoln/Marshall County line and State Highway 50; then east along State Highway 50 to the Lincoln/Moore County line; then south along the Lincoln/Moore County line to the Lincoln/Franklin County line; then south along the Lincoln/Franklin County line to the Tennessee/Alabama State Line; then west along the Tennessee/Alabama State line to the Lincoln/Giles County line; then north along the Lincoln/Giles County line to the point of beginning.

*Madison County.* The entire county.

*Marion County.* The entire county.

*Marshall County.* That portion of the county bounded by a line beginning at the intersection of the Marshall/Giles County line and State Highway 129; then east along State Highway 129 to U.S. Highway Alternate 31; then north along U.S. Highway Alternate 31 to State Highway 50; then southeast along State Highway 50 to the Marshall/Lincoln County line; then west along the Marshall/Lincoln County line to the Marshall/Giles County line; then north along the Marshall/Giles County line to the point of beginning.

*McMinn County.* The entire county.

* * * * *

*Meigs County.* The entire county.

*Monroe County.* That portion of the county bounded by a line beginning at the intersection of the Monroe/McMinn County line and State Highway 68 (including the entire city limits of Tellico Plains); then south along State Highway 68 to the Monroe/Polk County line; then west along the Monroe/Polk County line to the Monroe/McMinn County line; then north along the Monroe/McMinn County line to the point of beginning.

*Moore County.* That portion of the county bounded by a line beginning at the intersection of the Moore/Lincoln County line and State Highway 50; then east along State Highway 50 to the Moore/Franklin County line; then south along the Moore/Franklin County line to the Moore/Lincoln County line; then west and north along the Moore/Lincoln County line to the point of beginning.

*Perry County.* That portion of the county lying south of latitude 35°45′.

* * * * *

*Rhea County.* The entire county.

*Shelby County.* The entire county.

* * * * *

3. In part 301, Subpart—Imported Fire Ant (§§ 301.81–301.81–10), the appendix is amended as follows:

a. By revising the title of the appendix and removing footnote 8.

b. Under III. A., by revising the first paragraph.

c. Under III. C. 4. *Exclusion, Bifenthrin,* by revising paragraph (b).

d. Under III. C. 4. *Enforcement,* by revising the second, third, and sixth paragraphs.

**Appendix to Subpart "Imported Fire Ant"**

III. Regulatory Procedures

A. *Instructions to Inspectors.* Inspectors must know and follow instructions in the PPQ Treatment Manual, the pesticide label, and exemptions (Section 18 or 24 (c) of FIFRA) for the treatment or other procedures used to authorize the movement of regulated articles. These will serve as a basis for explaining such procedures to persons interested in moving articles affected by the quarantine. Inspectors shall furnish completed information to anyone interested in moving regulated articles.

* * * * *

C. *Approved Treatments.*

* * * * *

4. Imported-Fire-Ant-Free Nursery—Containerized Plants Only

* * * * *

*Exclusion*

*Bifenthrin*

* * * * *

(b) Treated with bifenthrin drench upon delivery in accordance with this appendix (III.C.3.b), and within 180 days be either:

* * * * *

*Enforcement*

* * * * *

If imported fire ants are detected in nursery stock during an inspection by a Federal or State inspector, issuance of certificates for movement shall be suspended until necessary treatments are applied and the plants and nursery premises are determined to be free of the imported fire ant. A Federal or State inspector may declare a nursery to be free of the imported fire ant upon reinspection of the premises. This inspection must be conducted no sooner than 30 days after treatment to ensure its effectiveness. During this period, certification may be based upon the drench or immersion treatment provided in paragraph III.C.3. of this appendix, titled "Plants—Balled or in Containers."

Upon notification by the department of agriculture in any State of destination that a confirmed imported fire ant infestation was found on a shipment from a nursery considered free of the imported fire ant, the department of agriculture in the State of origin shall cease its certification of shipments from that nursery. An investigation by Federal or State inspectors will commence immediately to determine the probable source of the problem and to ensure that the problem is resolved. If the problem is an infestation, issuance of certification for movement on the basis of imported-fire-ant-free premises will be suspended until treatment and elimination of the infestation is completed. Reinstatement into the program will be granted upon determination that the nursery premises are free of the imported fire ant, and that all other provisions of this subpart are being followed.

* * * * *

This imported-fire-ant-free nursery program is not mandatory for movement of regulated articles. Plants, balled or in containers, may otherwise be certified for movement using the chlorpyrifos, bifenthrin, or tefluthrin treatments described in paragraph III.C.3 of this appendix, titled "Plants, Balled or in Containers." However, certification for movement under the imported-fire-ant-free nursery program will be granted only if all of the provisions of this subpart are followed.

* * * * *

Done in Washington, DC, this 4th day of May 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–11830 Filed 5–10–00; 8:45 am]

BILLING CODE 3410–34–U

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 985

[Docket No. FV–00–985–2 FR]

## Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of Administrative Rules and Regulations Governing Issuance of Additional Allotment Base to New Producers

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule reduces the number of regions established for issuing additional allotment base to new producers from three regions to two regions and revises the procedure used for determining the distribution of

additional allotment base to new producers. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule to provide a more equitable distribution of allotment base to new producers.

**EFFECTIVE DATE:** May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Order No. 985 (7 CFR Part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The spearmint oil order is a volume control program that authorizes the regulation of spearmint oil produced in the Far West through annual allotment percentages and salable quantities for Class 1 (Scotch) and Class 3 (Native) spearmint oils. The salable quantity limits the quantity of each class of spearmint oil that may be marketed from each season's crop. Each producer is allotted a share of the salable quantity by applying the allotment percentage to that producer's allotment base for the applicable class of spearmint oil. Handlers may not purchase spearmint oil in excess of a producer's annual allotment, or from producers who have not been issued an allotment base under the order.

Section 985.53(d)(1) requires the Committee to annually make additional allotment base available in an amount not greater than 1 percent of the total allotment base for each class of spearmint oil. The order specifies that 50 percent of the additional allotment base be made available for new producers and 50 percent be made available for existing producers. A new producer is any person who has never been issued allotment base for a class of oil, and an existing producer is any person who has been issued allotment base for a class of oil. Provision is made in the order for new producers to apply to the Committee for the annually available additional allotment base, which in turn is issued to applicants in each oil class by lottery. The additional allotment base being made available to existing producers is distributed equally among all existing producers who apply.

Section 985.53(d)(3) of the order provides authority for the establishment of rules governing the annual distribution of additional allotment base. Accordingly, on October 6, 1999, the Committee unanimously recommended revising § 985.153 of the order's rules and regulations to provide a more equitable distribution of allotment base to new producers. Section 985.153 provides regulations for the issuance of additional allotment base to new and existing producers.

This final rule: (1) Reduces the number of regions established for issuing additional allotment base to new producers from three regions to two regions; and (2) revises the procedure used for determining the distribution of additional allotment base to new producers to take into account the reduced number of regions.

Currently, § 985.153(c) establishes the regions for issuing additional allotment base as follows:

(A) Region 1—The State of Oregon and those portions of Utah and Nevada included in the production area.

(B) Region 2—The State of Idaho.

(C) Region 3—The State of Washington.

Under the current provisions, the names of all eligible new producers were placed in separate lots per class of oil and region. Names are then drawn based on the amount of additional allotment base available and the Committee's determination of the minimum economic enterprise required to produce each class of oil. These procedures result in three new Scotch spearmint oil producers (one from each region) receiving approximately 3,100 pounds of allotment base each, and three new Native spearmint oil producers (one from each region) receiving approximately 3,400 pounds of allotment base each.

This rule replaces the three regions with the following two regions:

(A) Region A—The State of Washington.

(B) Region B—All areas of the production area outside the State of Washington.

Additionally, this rule modifies the method used to draw names by specifying that the names of all eligible new producers are placed in separate lots based on two regions rather than three regions. For each class of oil, separate drawings will be held from a list of all applicants from Region A, from a list of all applicants from Region B, and from a list of all remaining applicants from Regions A and B combined. If, in any marketing year, there are no requests in a class of oil from eligible new producers in a region, such unused allotment base will be issued to two eligible new producers whose names are selected by drawing from a lot containing the names of all remaining eligible new producers from the other region for that class of oil. Thus, depending upon the amount of additional base available and the minimum economic enterprise needed for oil production, three new producers of each class of oil will receive equal portions of the additional base made available each year.

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The Committee made this recommendation after its analysis of statistics relating to current spearmint oil production and the number of requests received each year for additional allotment base from the various States included in the production area. The following tables show the number of actual applications for additional Scotch and Native spearmint oil base over the most recent ten-year period:

APPLICATIONS FOR ADDITIONAL SCOTCH SPEARMINT OIL BASE

| | WA | ID | OR | UT | NV |
|---|---|---|---|---|---|
| 1991 | 99 | 42 | 17 | 3 | 0 |
| 1992 | 90 | 47 | 16 | 3 | 0 |
| 1993 | 40 | 21 | 4 | 1 | 0 |
| 1994 | 27 | 22 | 5 | 1 | 0 |
| 1995 | 42 | 21 | 3 | 0 | 0 |
| 1996 | 31 | 19 | 3 | 0 | 0 |
| 1997 | 35 | 16 | 2 | 0 | 0 |
| 1998 | 32 | 26 | 1 | 0 | 0 |
| 1999 | 25 | 22 | 0 | 1 | 0 |
| 2000 | 21 | 9 | 0 | 0 | 0 |

APPLICATIONS FOR ADDITIONAL NATIVE SPEARMINT OIL BASE

| | WA | ID | OR | UT | NV |
|---|---|---|---|---|---|
| 1991 | 112 | 27 | 16 | 5 | 0 |
| 1992 | 100 | 49 | 19 | 5 | 0 |
| 1993 | 47 | 28 | 5 | 2 | 0 |
| 1994 | 44 | 24 | 8 | 3 | 0 |
| 1995 | 56 | 21 | 8 | 2 | 0 |
| 1996 | 44 | 19 | 3 | 0 | 0 |
| 1997 | 43 | 19 | 2 | 1 | 0 |
| 1998 | 39 | 23 | 2 | 0 | 0 |
| 1999 | 31 | 23 | 0 | 0 | 1 |
| 2000 | 26 | 15 | 2 | 0 | 0 |

As shown in the above tables, there has consistently been few applications received from new producers in the States of Oregon, Utah, and Nevada, while the number of applications from new producers in Washington, followed to a lesser extent by the number of applications from new producers in Idaho, has consistently been much higher. Committee records also show that the number of producers, as well as the amount of allotment base held by those producers, is greatest in Washington followed in decreasing order by Idaho, Oregon, Utah, and Nevada. Therefore, reducing the number of regions from 3 to 2, and changing the procedures used in distributing the base will result in a more equitable distribution of allotment base to new producers. The changes will also make the additional allotment base available to new producers from the States which have historically requested the most base.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 7 spearmint oil handlers subject to regulation under the order, and approximately 119 producers of Class 1 (Scotch) spearmint oil and approximately 105 producers of Class 3 (Native) spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers could be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would thus have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would fall into the SBA category of large businesses.

Small spearmint oil producers generally are not extensively diversified

and as such are more at risk to market fluctuations. Such small producers generally need to market their entire annual crop and do not have the luxury of having other crops to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because incomes from alternate crops could support the operation for a period of time. Being reasonably assured of a stable price and market provides small producing entities with the ability to maintain proper cash flow and to meet annual expenses. Thus, the market and price stability provided by the order potentially benefit the small producer more than such provisions benefit large producers. Even though a majority of handlers and producers of spearmint oil may not be classified as small entities, the volume control feature of this order has small entity orientation. The order has contributed to the stabilization of producer prices.

Section 985.53 of the order provides that each year the Committee make available additional allotment base for each class of oil in the amount of no more than 1 percent of the total allotment base for that class of oil. This affords an orderly method for new spearmint oil producers to enter into business and existing producers the ability to expand their operations as the spearmint oil market and individual conditions warrant. One-half of the 1 percent increase is issued annually by lot to eligible new producers for each class of oil. To be eligible, a producer must never have been issued allotment base for the class of spearmint oil such producer is making application for, and have the ability to produce such spearmint oil. The ability to produce spearmint oil is generally demonstrated when a producer has experience at farming, and owns or rents the equipment and land necessary to successfully produce spearmint oil.

This rule: (1) Reduces the number of regions established for issuing additional allotment base to new producers from three regions to two regions; and (2) revises the procedure used for determining the distribution of additional allotment base to new producers to take into account the reduced number of regions. The Committee recommended this rule to provide for a more equitable distribution of allotment base to new producers.

During its deliberations, the Committee considered alternatives to their recommendation. The first option discussed would have left § 985.153(c) unchanged. This was rejected because of the need to develop a more equitable method of issuing additional base given the light application record from some of the States within the production area. The Committee also discussed eliminating the use of different regions in its additional allotment base issuance procedure and having one drawing for the calculated number of recipients per class of oil for the entire production area. This option was also rejected because it would not ensure geographic distribution of the additional base.

The Committee made its recommendation after careful consideration of available information, including the aforementioned alternative recommendations, the minimum economic enterprise required for spearmint oil production, historical statistics relating to the locations of the producers applying for the annual additional allotment base, and other factors such as number of producers by State and the amount of allotment base held by such producers. Based on its review, the Committee believes that the action recommended is the best option available to ensure that the objectives sought will be achieved.

The information collection requirements contained in the section of the order's rules and regulations being amended by this rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB No. 0581–0065. This action will not impose any additional reporting or record keeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule was published in the **Federal Register** on February 17, 2000 (65 FR 8069). A 60-day comment period was provided to allow interested persons the opportunity to respond to the proposal, including any regulatory and informational impacts of this action on small businesses. A copy of the proposed rule was faxed and mailed to the Committee office, which in turn notified Committee members and spearmint oil producers and handlers of the proposed action. In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. A copy of the proposal was also made available on the Internet by the U.S. Government Printing Office. No comments were received. Accordingly, no changes are made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 985**

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR Part 985 is amended as follows:

## PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In § 985.153, paragraph (c) is revised to read as follows:

**§ 985.153 Issuance of additional allotment base to new and existing producers.**

* * * * *

(c) *Issuance—(1) New producers.* (i) *Regions:* For the purpose of issuing additional allotment base to new producers, the production area is divided into the following regions:

(A) *Region A.* The State of Washington.

(B) *Region B.* All areas of the production area outside the State of Washington.

(ii) Each year, the Committee shall determine the size of the minimum economic enterprise required to produce each class of oil. The Committee shall thereafter calculate the number of new producers who will receive allotment base under this section for each class of oil. The Committee shall include that information in its announcements to new producers in each region informing them when to submit requests for allotment base. The Committee shall

determine whether the new producers requesting additional base have ability to produce spearmint oil. The names of all eligible new producers from each region shall be placed in separate lots per class of oil. For each class of oil, separate drawings shall be held from a list of all applicants from Region A, from a list of all applicants from Region B, and from a list of all remaining applicants from Regions A and B combined. If, in any marketing year, there are no requests in a class of oil from eligible new producers in a region, such unused allotment base shall be issued to two eligible new producers whose names are selected by drawing from a lot containing the names of all remaining eligible new producers from the other region for that class of oil. The Committee shall immediately notify each new producer whose name was drawn and issue that producer an allotment base in the appropriate amount.

* * * * *

Dated: May 5, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–11836 Filed 5–10–00; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1436

RIN 0560–AG00

### Farm Storage Facility Loan Program

**AGENCY:** Commodity Credit Corporation, USDA.

**ACTION:** Interim rule.

**SUMMARY:** This rule implements the Commodity Credit Corporation's (CCC's) Farm Storage Facility Loan program utilizing authority in the CCC Charter Act. The program will provide financing for producers to build or upgrade farm storage and handling facilities.

**DATES:** This rule is effective May 11, 2000. Comments concerning this rule should be received on or before June 12, 2000 to be assured consideration. Comments on the information collections in this rule must be received by July 10, 2000 to be assured consideration.

**ADDRESSES:** Comments must be submitted to Grady Bilberry, Director, Price Support Division, Farm Service Agency, 1400 Independence Avenue, S.W., STOP 0512, Washington, DC 20250–0512.

**FOR FURTHER INFORMATION CONTACT:** Chris Kyer, (202) 720–7935 or e-mail chris_kyer@wdc.fsa.usda.gov.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule is issued in conformance with Executive Order 12866 and has been determined to be economically significant and has been reviewed by the Office of Management and Budget.

**Regulatory Flexibility Act**

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

**Environmental Evaluation**

It has been determined by an Environmental Evaluation that this program, as a whole, will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement for the program is needed. However, because it is possible that individual projects may have limited impacts on the local environment, environmental evaluations for each project will be conducted to determine the need for environmental assessment and/or mitigation.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

**Executive Order 12372**

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

**The Unfunded Mandates Reform Act of 1995**

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Paperwork Reduction Act of 1995**

A Notice with request for comments on the information collection is part of this proposed rule. An emergency information collection package has been sent to OMB for review.

In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) request for approval of a new information collection in support of the Farm Storage Facility Loan Program.

*Title:* 7 CFR 1436, Farm Storage Facility Loan Program Regulations.

*OMB Control Number:* 0506–NEW.

*Type of Request:* Approval of an information collection.

*Abstract:* This information is needed to administer the CCC's Farm Storage Facility Loan Program. The information will be gathered from producers needing additional on-farm grain storage and handling capacity to determine whether they are eligible for loans.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 22 minutes per producer.

*Respondents: Eligible producers:* 200,000.

*Estimated Number of Respondents:* 50,000.

*Estimated Number of Responses per Respondent:* 2.

*Estimated Total Annual Burden on Respondents:* 47,250 hours.

Proposed topics for comments are: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Chris Kyer, USDA—Farm Service Agency—Price Support Division. 1400 Independence Avenue, SW., STOP 0512, Washington, DC 20250–0512; Telephone (202) 720–7935 or e-mail chris_kyer@wdc.fsa.usda.gov. Copies

of the information collection may be obtained from Chris Kyer at the above address.

All responses to this notice will be summarized. All comments will also become a matter of public record.

**Executive Order 12612**

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

**Immediate Effectiveness of This Rule**

It has been determined that this rule should be issued as an interim rule, without prior comment, but subject to modification on the consideration of those comments that are timely received. It has been determined that to delay the implementation of the rule pending comment would be impracticable and contrary to the public interest. That finding is based on the current shortage of available storage, rapidly changing market needs that are forcing producers to consider new storage arrangement on their farms, and the lack of material adverse effect on other parties. With respect to storage availability, recent data indicates a critical shortage of storage that continues to deteriorate. The Deputy Administrator for Commodity Operations, Farm Service Agency, recently completed an analysis of on-farm and commercial grain storage utilization, which showed that the utilization of both on-farm and commercial storage had increased from 79 percent utilization in 1996 to 95 percent utilization in 1999. At the time of the review, eleven key grain producing states were utilizing over one hundred percent of available storage capacity when including temporary and emergency storage. Four other states were at ninety percent of storage capacity. The fifteen states identified with ninety percent or above utilization of grain storage capacity are: Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Ohio, South Dakota, and Wisconsin. In 1998 the requests by warehouse operators with CCC Uniform Grain Storage Agreements for emergency (on the ground) storage were at a level of 192.3 million bushels; for 1999, that level increased to 238.1 million bushels.

Also, in the meantime, changing market needs are putting pressure on producers to build new facilities since some buyers of grain seek to limit purchases to specialty grains that are not genetically modified or to segregate either specialty crops or grains that are not genetically modified. To meet those demands, while utilizing the benefits of genetically modified grains for other markets, the producer may find it necessary to grow different kinds of grain in which case they may need separate storage facilities in order to guarantee the proper identity of the grains. Many producers, however, will not be able to meet that need without the assistance provided for in this rule and will not be able to do so in a timely manner for this crop year unless this rule is made effective immediately. In addition, a delay in implementing this rule could also mean that producers, who otherwise might be helped and who are the most in need, will be unable to take full advantage of CCC's nonrecourse marketing assistance loan program for the current marketing year. For those producers who cannot store their crops, the only program option available is the loan deficiency payment available at the time of harvest, thus denying those producers the ability to delay marketings until a more favorable market situation might arise. Moreover, the lack of adequate facilities can mean that the producer also loses out on the other guarantees and assistance that a marketing loan can afford the producer such as the special benefits that can inure to a producer as a result of a marketing loan when the producer has reached the maximum limitation on the amount of payments that the producer can receive in the form of loan deficiency payments or marketing loan gains.

Storage conditions have not improved materially in the last few months so as to relieve the shortage of storage and, therefore, there is a critical need to act as quickly as possible. The public interest in this respect has been established by the Congressional direction contained in Section 4(h) of the CCC Charter Act (15 U.S.C. 714b(h)), which requires a storage program whenever it is determined that there is a shortage of a storage. Furthermore, while the need for immediate assistance is critical, the potential harm to other parties, by issuance of this rule as an interim rule, is expected to be minimal by comparison. In addition, the rule is flexible enough so that, in the event that any comments are received that would dictate a reason to suspend the program, a suspension could be imposed before the response to the comments is published. Even after the interim rule is issued, it will take some time to complete loan applications. As a result, a delay in the start-up of the program until comments could be received would put availability of the program beyond the time in which many producers in need of storage could obtain relief for the current crop year. This could be damaging not only to the producers themselves but also to the effort to increase the marketability in all markets of U.S.-produced grains.

Accordingly, for all the foregoing reasons, it has been determined that the provisions of this rule should be made effective immediately.

**The Small Business Regulatory Enforcement Fairness Act**

The finding made above, that this rule should be made effective immediately, applies for all purposes including, but not limited, to the provisions of 5 U.S.C. 808 of the Small Business regulatory Enforcement Fairness Act (SBREFA), which provides that a rule may, without regard to certain special Congressional oversight measures provided for in SBREFA, take effect at such time as the agency may determine if the agency finds for good cause that public notice is impracticable, unnecessary, or contrary to the public interest. For the reasons set out, it has been determined that delay would be contrary to the public interest and that the rule should be made effective immediately.

**Cost Benefit Analysis Summary**

U.S. grain storage capacity steadily declined from 1987 to 1997. Storage capacity has increased modestly since its low in 1997, but increases have not been sufficient to keep pace with growing production. Despite persistent harvest-time storage capacity shortfalls and the advantages of on-farm storage for producers, low commodity prices and reduced farm income will limit the ability of producers to significantly expand their on-farm storage. The Farm Storage Facility Loan Program will add additional storage capacity in deficit areas and help farmers adapt to identity preserved storage and handling requirements for genetically enhanced organisms. One direct benefit to producers from the Farm Storage Facility Loan Program would be reduced financing costs on facility construction. Interest savings for a farmer on the construction of a 15,000-bushel grain bin could total as much as $3,840 under the program when compared with financing through some commercial banks. Producers would also benefit from the potential for higher

market returns on their crops because on-farm storage capacity creates pricing and hedging opportunities that can significantly increase marketing returns. The Farm Storage Facility Loan Program is expected to expand on-farm storage by more than 750 million bushels over the next 5 years.

**Background**

Section 5(b) of the CCC Charter Act (15 U.S.C. 714c(b)) authorizes CCC to use its general powers to make available materials and facilities required in connection with the production and marketing of agricultural commodities. Section 4(f) of the CCC Charter Act (15 U.S.C. 714b(h)) provides that the Corporation may make loans to grain producers needing storage facilities and that loans shall be made in areas in which the Secretary determines that there is a deficiency of such storage.

CCC made loans for storage facilities intermittently since 1948 and stopped making new storage facility loans in 1982 based on studies that revealed that producers had sufficient storage for their crops. Since 1995, the storage situation has changed. Storage capacity utilization rates are running extremely high and storage shortages exist in some areas. The net decrease in storage capacity from 1996 to 1998 has been about 79.5 million bushels, of nearly 1 percent of total capacity. During this same period, grain production increased by nearly 8 percent, from 14 billion bushels in 1996 to 15 billion bushels in 1998. As a result, there is insufficient capacity to allow farmers to store their grain, forcing farmers to sell at harvest when prices are usually at their lowest.

CCC's immediate intent is to use this program to address the existing shortage of grain storage. However, section 5(b) of the CCC Charter Act, gives CCC broad authority to make "available materials and facilities required in connection with the production and marketing of agricultural commodities". Thus, CCC will explore marking available facility loans for the storage of commodities harvested as other than grain such as silage, alternative types of storage arrangements such as "condominium storage", or storage facilities for other agricultural products. Since CCC has not identified shortages in storage facilities for other than whole grain or analyzed the feasibility of alternative storage arrangements, it would be improper to implement such provisions under an interim rule. CCC is seeking comments during the comment period on all of these aforementioned areas. Comments received will be given consideration for inclusion in the final rule.

On February 2, 2000, the Secretary announced the availability of financing for farm storage and handling facilities. Based upon this announcement, producers may have made commitments to construct on-farm storage facilities. The decision has been made to extend loan eligibility to those producers who took action on or after February 2, 2000 based on the Secretary's announcement.

Although a similar program was available in the past, this rule allows for a new farm storage facility loan program with terms and conditions that differ from the previous program. The rule calls for eligible producers to apply for farm storage facility loans at their FSA administrative county office. Producers requesting loans must provide information regarding the need for farm storage capacity and the storage facility they propose to construct. They must also establish that they are eligible for the program, and that the site proposed for a storage structure does not adversely impact the environment.

Specific eligibility requirements for applicants are a satisfactory credit rating as determined by CCC; no delinquent Federal debt as defined by the Debt Collection Improvement Act of 1996; production of facility loan commodities; proof of crop insurance from FCIC or a private company; compliance with USDA provisions for highly erodible land and wetlands; ability to repay the debt resulting from the program; compliance with any applicable local zoning, land use and building codes for the applicable farm storage facility structures; and need for new or additional farm grain storage or handling capacity. This information is needed by CCC to make loans where there is a bonafide need, and to make loans that will be repaid on time.

County offices will use existing office records to determine if the producer is in compliance with highly erodible land and wetlands provisions. The county office will utilize a government wide system to identify if the applicant is delinquent on any Federal debt. The applicant's credit history will be obtained using existing credit reporting agencies that are contracted to FSA. Proof of crop insurance must be provided by the applicant in the form of an approved crop insurance application or statement of coverage for the current crop year. Applicants must provide copies of local building permits, if applicable, to demonstrate compliance with local land use laws.

Applicants will be required to file requests for farm storage facility loans on form CCC–185, Loan Application for Farm Storage Facility and Drying Equipment Loan Program. The applicant must provide information that is generally unavailable to CCC from other sources, such as, name, address, tax identification number and phone number of the person applying for the loan; the purpose of the loan and the amount of the loan requested; and details about the type and cost of the storage structure, and related handling systems, or drying systems the applicant proposes to install. This information becomes the basis for the net cost of eligible components which determines the amount of the loan. Producers must also provide specific commodity production data that supports the determination the producer requires storage or that existing facility loan commodity storage capacity is not adequate. This will help insure that CCC is not lending funds on capacity that is not needed. The applicant must provide information regarding whether the facility equipment has been purchased, delivered, or installed.

The applicant must sign CCC–185 when it is complete and will be provided a copy. Information to support the applicant's request will also be necessary. Financial information will be obtained from the applicant to determine if the applicant has the means to provide the required down payment and to make future loan installments. The applicant will be asked to verify debts and assets in order to prepare an accurate balance sheet and cash flow statement. The applicant will be asked to sign the form authorizing financial institutions and creditors to release asset and debt information to CCC. The applicant will be required to sign a UCC–1 Financing Statement and other forms as needed to grant CCC a security interest in the proposed structure and equipment. Upon acceptance of a complete application, a CCC representative will conduct a lien search as needed.

Borrowers must maintain the collateral in good condition; pay loan installments and real estate taxes on time, and maintain all peril structural, and if applicable, flood insurance policies. FSA will conduct annual collateral checks. If installments are not paid during each due and payable period, collection activity will proceed according to standard CCC policy.

**List of Subjects in 7 CFR Part 1436**

Applicability, administration, definitions, availability of loans, eligible borrowers, eligible storage facilities, term of loan, security of loan, amount of loan and loan application approvals, downpayment, interest, repayment of loan, taxes, maintenance,

disbursements, sale or conveyance, environmental compliance.

Accordingly, for the reasons set forth in the preamble, the Commodity Credit Corporation adds 7 CFR part 1436 to read as follows:

## PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

Sec.

1436.1 Applicability.
1436.2 Administration.
1436.3 Definitions.
1436.4 Availability of loans.
1436.5 Eligible borrowers.
1436.6 Eligible storage facilities or handling equipment.
1436.7 Term of loans.
1436 8 Security for loan.
1436.9 Loan amount and loan application approvals.
1436.10 Down payment.
1436.11 Disbursements.
1436.12 Interest.
1436.13 Repayment of loan.
1436.14 Taxes.
1436.15 Maintenance.
1436.16 Sale or conveyance.
1436.17 Environmental compliance.

**Authority:** 15 U.S.C. 714 *et seq.*

## PART 1436—FARM STORAGE FACILITY LOAN PROGRAM REGULATIONS

### § 1436.1 Applicability.

The regulations of this part provide the terms and conditions under which CCC may provide low-cost financing for producers to build or upgrade on-farm storage and handling facilities. Because liens and security interests related to this activity may be governed by state law, CCC may adapt certain procedures relating to those issues that may vary between states.

### § 1436.2 Administration.

(a) The Farm Storage Facility Loan Program shall be administered under the general supervision of the Executive Vice President, CCC or designee and shall be carried out in the field by State FSA committees, county FSA committees and FSA employees.

(b) State FSA committees, county FSA committees and FSA employees, do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State FSA committee shall take any action required by these regulations that has not been taken by the county committee. The State FSA committee shall also:

(1) Correct, or require the county FSA committee to correct, any action taken by such county FSA committee that is not in accordance with the regulations of this part; and

(2) Require the county FSA committee to withhold taking any action that is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county FSA committee shall preclude the Executive Vice President, CCC, or a designee, or the Administrator, FSA, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by the State or county FSA committee.

(e) The Deputy Administrator, Farm Programs, FSA, may authorize State and county FSA committees to waive or modify deadlines and other program requirements in cases where lateness or failure to meet such other requirements does not adversely affect the operation of the Farm Storage Facility Loan Program.

(f) A representative of CCC may execute Farm Storage Facility Loan Program applications and related documents only under the terms and conditions determined and announced by CCC. Any such document that is not executed in accordance with such terms and conditions, including any purported execution prior to the date authorized by CCC, shall be null and void.

(g) The Deputy Administrator may suspend this program at any time when it appears that there is no shortage of storage that needs to be addressed or where some other reason shall arise for which it appears that the program goals can be achieved more efficiently in a manner different from that provided for this part.

### § 1436.3 Definitions.

The following definitions shall be applicable to the program authorized by this part and will be used in all aspects of administering this program:

*Aggregate outstanding balance* means the sum of the outstanding balances of all loans disbursed to the applicant.

*Assumption* means the act or agreement by which one borrower takes over or assumes the mortgage debt of another borrower.

*Collateral* means the storage structure, drying equipment or handling equipment securing the loan.

*Consent, disclaimer, severance, or subordination agreement* means an agreement under which a party may consent to the security interest of another in property, disclaim security interest in property, or subordinate security interest in property to the interest of another party.

*Facility loan commodity* means wheat, rice, soybeans, sunflower seed, canola, rapeseed, safflower, flaxseed, mustard seed, crambe, other oilseeds as determined and announced by CCC, corn, grain sorghum, oats, or barley harvested as whole grain.

*Financing statement.* means a document that gives legal notice of a lien on chattel property when properly filed or recorded.

*Non-movable or non-salable collateral* means either collateral the county committee determines cannot be sold and moved to a new location because of the type of construction or collateral that has deteriorated to the point that it has no sale recovery value.

*Person* means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise, or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien in the United States.

*Uniform Commercial Code* means the multi-state code of laws covering commercial transactions such as sales, negotiable instruments, and secured transactions.

### § 1436.4 Availability of loans.

(a) An application for a loan shall be submitted to the administrative county office that maintains the records of the farm or farms to which the application applies. Upon request, the applicant shall furnish information and documents as the state or county committee deems reasonably necessary to support the application. This may include financial statements, receipted bills, invoices, purchase orders, specifications, drawings, plats, or written authorization of ingress and egress.

(b) Producers who authorize actions without an approved loan, do so at their own risk and without creating any liability on behalf of CCC except for producers who between February 2, 2000 and May 11, 2000 took action based on the announcement of the program. Such action may include, but is not limited to, entering into purchase contracts, purchases of materials, taking delivery of parts, site preparation, and construction.

### § 1436.5 Eligible borrowers.

(a) The term "eligible borrower" means any person who, as landowner, landlord, operator, producer, tenant, leaseholder, or sharecropper:

(1) Has a satisfactory credit history, and demonstrates an ability to repay the debt arising under this program;

(2) Has no delinquent Federal debt defined by the Debt Collection Improvement Act of 1996;

(3) Is a producer of a facility loan commodity;

(4) Demonstrates a need for increased storage capacity;

(5) Provides proof of crop insurance from FCIC or a private company;

(6) Is in compliance with USDA provisions for highly erodible land and wetlands conservation according to 7 CFR part 12;

(7) Demonstrates compliance with any applicable local zoning, land use, and building codes for the applicable farm storage facility structures;

(8) Provides proof of flood insurance if CCC determines such insurance is necessary to protect the interests of CCC, and proof of all peril structural insurance, to CCC annually; and

(9) Demonstrates compliance with the National Environmental Policy Act regulations at 40 CFR, parts 1500 through 1508.

(b) [Reserved]

**§ 1436.6 Eligible storage facilities for handing equipment.**

(a) Loans may be made only for the purchase and installation of eligible storage facilities and permanently affixed drying and handling equipment, or for the remodeling of existing storage facilities or permanently affixed drying and handling equipment as provided in this section. Eligible storage and handling facilities shall include the following:

(1) New conventional-type cribs or bins designed and engineered for whole grain storage and having a useful life of at least 10 years;

(2) Oxygen-limiting and other upright silo-type structures designed for whole grain storage and having a useful life of at least 10 years; and

(3) Flat-type storage structures for which the primary use is to store whole grain.

(b) The calculation of the loan amount may include costs associated with building or improving an eligible storage and handling facility, including:

(1) Permanently affixed grain handling equipment and grain drying equipment, including perforated floors considered to be essential to the proper functioning of the grain storage system;

(2) Safety equipment such as lighting, inside and outside ladders;

(3) Equipment to improve, maintain, or monitor the quality of stored grain, such as cleaners, moisture testers, and heat detectors;

(4) Electrical equipment, including labor and materials for installation, such as lighting, motors, and wiring integral to the proper operation of the grain storage and handling equipment; and

(5) Concrete foundations, aprons, pits, and pads (including site preparation, labor and materials) essential to the proper operation of the grain storage and handling equipment.

(c) Ineligible storage and handling equipment with respect to which no loans for installation or related costs shall be disbursed under this part include:

(1) Portable grain drying equipment and portable augers;

(2) Structures of a temporary nature that require the weight or bulk of the stored commodity to maintain its shape (such as fences or bags);

(3) Structures that are bunker-type, horizontal, or open silos;

(4) Structures that are not suitable for storing the facility loan commodities for which a need is determined; and

(5) Storage structures to be used for commercial purposes. Commercial purpose is defined as the storage and handling of grain, whether paid or unpaid, for persons other than the loan applicant. State FSA committees may allow, subject to the approval of the Deputy Administrator, Farm Programs, FSA, exceptions to this requirement if an applicant is otherwise eligible and the intent and purpose of the Farm Storage Facility Loan program is being met. Any facility that is in working proximity to any commercial storage operation, shall be considered to be part of a commercial storage operation.

(d) Loans may be approved for financing additions to more modifications of an existing storage facility to increase storage capacity if the county FSA committee determines that the modification is necessary to increase the storage capacity of the unit and is not for maintenance, repair, or replacement of items such as motors, fans, or wiring.

**§ 1436.7 Term of loan.**

The maximum term of the loan shall be 7 years from the date of execution of a promissory note and security agreement. No extensions of the loan term will be granted.

**§ 1436.8 Security for loan.**

(a) All loans shall be secured by a promissory note and security agreement covering the farm storage facility. The promissory note and security agreement shall grant CCC a security interest in the collateral and shall be perfected in the manner specified in accordance with applicable state law. CCC's security interest in the collateral shall constitute the sole security interest in such collateral except for prior liens on the underlying realty that by operation of law attaches to the collateral if it is or becomes a fixture. If any such prior lien on the realty will attach to the collateral, a waiver, severance, or subordination of such lien must be obtained in writing from each person having an interest in the real estate on which the collateral is to be located. No additional liens or encumbrances may be placed on the storage facility after the loan is approved unless CCC approves otherwise in writing.

(b) A lien on the real estate on which the farm storage facility is located will be required on all loans in the form of a real estate mortgage, deed of trust, or other security instrument approved by the CCC. For loan amounts exceeding $50,000, CCC's interest in the real estate shall be superior to all other lien holders. If the real estate is covered by a prior lien, a lien may be obtained by means of a subordination agreement prescribed by CCC. CCC will not require such an agreement from any agency of the Department of Agriculture.

(c) Real estate liens may cover an acreage of land separate from the collateral if a lien on the underlying real estate is not feasible and if:

(1) The borrower owns the separate acreage; and

(2) The acreage is large and valuable enough, in the approving authority's opinion, to insure repayment of the loan.

(d) Notwithstanding paragraphs (a), (b) and (c) of this section, a borrower, in lieu of such liens as are otherwise required by those paragraphs, may provide a letter of credit, bond, or other form of security, as approved by CCC.

(e) If an existing structure is remodeled and an addition becomes an attached, integral part of the existing storage structure, CCC's security interest shall include the existing storage structure.

(f) The cost of filing and recording all real estate liens and later subordinations will be paid by the borrower. CCC shall pay such costs relating to filing and recording financing statements.

**§ 1436.9 Loan amount and loan application approvals.**

(a) The cost on which the loan shall be based is the net cost of the eligible facility, accessories, and services to the applicant after discounts and rebates, not to exceed a maximum per-bushel cost established by the State FSA committee.

(b) The net cost for storage and handling equipment may include purchase price, sales tax, shipping, and delivery charges. The net cost shall not include secondhand material or any

other item that is determined by the approving authority to be ineligible for loan.

(c) The principal amount of any farm storage facility loan shall be 75 percent of the net cost of the applicant's needed storage or handling equipment not to exceed $100,000. Borrowers are limited to obtaining one loan per fiscal year under this part.

(d) The aggregate outstanding balance of all facility loans for any one borrower may not exceed $100,000.

(e) When a storage structure has a larger capacity than the applicant's needed capacity, as determined by CCC, the net cost eligible for a loan shall be prorated. Only costs associated with the applicant's needed storage capacity will be loan-eligible.

(f) The county FSA committee may approve applications, if loan funds are available, up to the maximum approval amount unless the State FSA committee establishes a lower limit for country FSA committee approval authority.

(g) Loan approvals will expire four months after the date of approval unless extended in writing for an additional four months by the State FSA committee.

**§ 1436.10 Down payment.**

(a) A minimum down payment representing the difference between the net cost of the storage facility and the amount of the loan determined in accordance with § 1436.9 shall be made by the loan applicant to the supplier or contractor before the loan is disbursed.

(b) The down payment shall be in cash unless some other form of payment is approved by CCC.

(c) The down payment may not include any trade-in, discount, rebate, credit, deferred payment, post-dated check, or promissory note to the supplier or contractor.

**§ 1436.11 Disbursement.**

(a) Disbursement of the loan by CCC will be made when the farm storage facility has been delivered, erected, constructed, assembled, or installed and a CCC representative has inspected and approved such facility.

(b) Disbursement will be made only if the borrower furnishes satisfactory evidence of the total cost of the facility and payment of all debts on the facility in excess of the amount of the loan.

(c) Disbursement may be made jointly to the borrower and the contractor or supplier, except disbursement may be made to the borrower if CCC determines the borrower has paid the contractor or supplier all amounts that are due and owing with respect to the facility.

**§ 1436.12 Interest.**

(a) Loans shall bear interest at the rate equivalent to the rate of interest charged on Treasury securities of comparable maturity on the date the loan is approved.

(b) The interest rate for each loan will remain in effect for the term of the loan.

(c) The loan applicant shall pay a non-refundable application fee of at least $45 to CCC

**§ 1436.13 Payment of loan.**

(a) Equal installments of principal plus interest will be amortized over the loan term. Installments are due and payable by no later than the last day of each 12 month period of the loan, until the principal plus interest has been paid in full.

(b) The payment of each installment may be by cash, money order, wire transfer, or by personal, certified, or cashier's check. Repayment shall be applied first to accrued interest and then to principal.

(c) A claim will be established in accordance with 7 CFR part 1403 for the principal and accrued interest amount due and late payment interest for any installment that is not paid within 30 days after the due and payable date.

(d) Loan amounts outstanding, whether or not overdue, may be collected from payments that the borrower may otherwise be due to receive as marketing loan gains or other payments under 7 CFR part 1421 or 7 CFR part 1427. In the even that a claim is established against a borrower for any amount due under this part, the provisions of 7 CFR part 1403 may be used to recover the debt from other Federal payments or loans.

(e) CCC may declare the entire indebtedness immediately due and payable if the borrower violates any of the terms and conditions of this part, fails to pay any installment on time, or breaches any of the terms and conditions of any of the instruments executed in connection with the loan, or if the collateral is used in connection with any unauthorized commercial operation including, but not limited to, elevators, warehouses, dryers or processing plants, during the life of the loan.

(f) The loan may be paid in full or in part at any time before maturity.

(g) Upon payment of a loan, CCC shall release CCC's security interest in the collateral.

**§ 1436.14 Taxes.**

The borrower must pay all real and personal property taxes that may affect CCC's security interest in all collateral securing the note evidencing the loan. To protect its interests, CCC may pay any unpaid taxes with respect to the collateral securing a loan made in accordance with this part, and if CCC does so, the borrower shall reimburse CCC for such payment, and if unpaid by the borrower, such debt shall become part of the current installment due.

**§ 1436.15 Maintenance.**

(a) The borrower must maintain the loan collateral in a condition suitable for the storage of one or more of the facility loan commodities.

(b) Until the loan has been repaid, the borrower shall be liable for all damages to or destruction of the collateral. CCC shall not assume any loss of the loan collateral.

(c) CCC shall conduct annual collateral checks to insure compliance with this section.

(d) Structures must be insured against all perils in all cases and must also be insured against flooding if the structure is located in a flood plain, as determined by CCC. Proof of flood insurance, if required, and proof of all peril structural insurance, must be provided to CCC annually. CCC must be listed as a loss payee on all peril and flood insurance policies.

(e) CCC shall have rights in ingress and egress where the facility is located. Failure of the borrower to secure such access will render a borrower ineligible for the loan and, if a loan has already been made shall constitute a loan violation for which the remaining balance of the loan shall became due immediately.

**§ 1436.16 Sale or conveyance.**

(a) The collateral or land securing a loan may be sold by CCC whenever CCC has declared the entire indebtedness immediately due and owing under this part or when the borrower voluntarily conveys the collateral to CCC before repaying the loan. Before a borrower sells or conveys the facilities or other property securing a loan without repaying the loan in full, the borrower shall obtain approval for the sale or conveyance from the county FSA committee.

(b) Assumption of a farm storage facility loan is permitted.

**§ 1436.17 Environmental compliance.**

(a) Except as otherwise specified in this section, prior to approval of any farm storage facility loan, an environmental evaluation will be completed to determine if the proposed action will have any adverse impacts on the environmental and cultural resources.

(b) If it is determined that a proposed action or group of proposed actions will

not result in any adverse impact, the action will be considered as being categorically excluded for the purpose of compliance with the National Environmental Policy Act (NEPA), 40 CFR parts 1500 through 1508.

(c)(1) If adverse environmental impacts, either direct or indirect, are identified, an environmental assessment will be completed in accordance with the Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of NEPA to the extent required by law.

(2) The environmental assessment will be used to develop an action that results in no significant environmental impact on the human environment or cultural resources.

(3) No action will be approved that has been determined to have significant impacts on the human environment or cultural resources.

(d)(1) In order to minimize the exposure to environmental liabilities from the presence of contamination on real estate collateral, an evaluation will be made of the economic and environmental risks to the real estate collateral posted by the presence of hazardous substances and petroleum products.

(2) If the evaluation made under paragraph (d)(1) of this section reveals that the collateral is or may be contaminated, then the applicant will be notified and given an option of offering as collateral other real estate that is free from contamination or remediating the contamination on the original site offered as collateral.

Signed at Washington, D.C., on May 8, 2000.

**Keith Kelly,**

*Executive Vice President, Commodity Credit Corporation.*

[FR Doc. 00–11833 Filed 5–10–00; 8:45 am]

BILLING CODE 3410–05–M

## FEDERAL TRADE COMMISSION

### 16 CFR Part 305

### Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** Federal Trade Commission amends its Appliance Labeling Rule by publishing new ranges of comparability to be used on required labels for clothes washers. These ranges of comparability supersede the ranges published on March 27, 2000, 65 FR 16132, which become effective July 14, 2000; however, manufacturers are not required to use those March 27, 2000 ranges.

**EFFECTIVE DATE:** September 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, D.C. 20580 (202–326–3035).

**SUPPLEMENTARY INFORMATION:** The Appliance Labeling Rule ("Rule") was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.[1] The Rule covers eight categories of major household appliances. Clothes washers are among those categories. The Rule also covers pool heaters, 59 FR 49556 (Sept. 28, 1994), and contains requirements that pertain to fluorescent lamp ballasts, 54 FR 28031 (July 5, 1989), certain plumbing products, 58 FR 54955 ((Oct. 25, 1993), and certain lighting products, 59 FR 25176 (May 13, 1994, eff. May 15, 1995).

The Rule requires manufacturers of all covered appliances and pool heaters to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or efficiency figure and a "range of comparability." This range shows the highest and lowest energy consumption or efficiencies for all comparable appliance models so consumers can compare the energy consumption or efficiency of other models (perhaps competing brands) similar to the labeled model. The Rule also requires manufacturers to include, on labels for some products, a secondary energy usage disclosure in the form of an estimated annual operating cost based on a specified DOE national average cost for the fuel the appliance uses.

Section 305.8(b) of the Rule requires manufacturers, after filing an initial report, to report certain information annually to the Commission by specified dates for each product type.[2] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual energy consumption or energy efficiency ratings for the appliances derived from tests performed pursuant to the DOE test procedures. Because manufacturers regularly add new models to their lines, improve existing models, and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information consistent with these changes, under Section 305.10 of the Rule the Commission will publish new ranges if an analysis of the new information indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission will publish a statement that the prior ranges remain in effect for the next year.

Manufacturers of clothes washers have made the required 2000 submissions of data for this product category. In analyzing the data, the Commission has grouped the figures in accordance with the revisions to Appendix F (Clothes Washers) published on March 27, 2000, 65 FR 16132, which eliminated the top-loading and front-loading categories for clothes washers.

Accordingly, the Commission is publishing these new 2000 ranges of comparability in the format of the revised Appendix for the clothes washer category. Today's ranges of comparability supersede the ranges (which were based on 1999 submissions) that were published along with the March 27, 2000 amendment eliminating the top-loading and front-loading categories, which have an effective date of July 14, 2000; however, manufacturers are not required to use those ranges.

In consideration of the foregoing, the Commission revises Appendix F of its Appliance Labeling Rule by publishing the following ranges of comparability for use in required disclosures (including labeling) for clothes washers manufactured on or after September 18, 2000. In addition, as of September 18, 2000, manufactured must base the disclosures of estimated annual operating cost required at the bottom of the EnergyGuide for clothes washers on the 2000 Representative Average Unit Costs of Energy for electricity (8.03 cents per kilo Watt-hour) and natural gas (68.8 cents per therm) that were published by DOE on February 7, 2000

[1] 42 U.S.C. 6294. The statute also requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.

[2] Reports for clothes washers are due March 1.

(65 FR 5860), and by the Commission on April 17, 2000, 65 FR 20352.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to a Regulatory Flexibility Act analysis (5 U.S.C. 603–604) are not applicable to this proceeding because the amendments do no impose any new obligations on entities regulated by the Appliance Labeling Rule. Thus, the amendments will not have a "significant economic impact on a substantial number of small entities" (5 U.S.C. 605). The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605(b)), that the amendments announced today will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require "collections of information" (*i.e.*, recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget ("OMB"), 44 U.S.C. 3502. The Commission currently has OMB clearance for the Rule's information collection requirements (OMB No. 3084–0069). The amendment will not impose any new information collection requirements. Instead, it will provide manufacturers with revised ranges of comparability to use on the EnergyGuide labels already required by the Rule.

**List of Subjects in 16 CFR Part 305**

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

**PART 305—[AMENDED]**

1. The authority citation for Part 305 continues to read as follows:

**Authority:** 42 U.S.C. 6294.

2. Appendix F to Part 305 is revised to read as follows:

**Appendix F to Part 305—Clothes Washers**

*Range Information*

"Compact" includes all household clothes washers with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

"Standard" includes all household clothes washers with a tub capacity of 1.6 cu. ft or 13 gallons of water or more.

| Capacity | Range of estimated annual energy consumption (kWh/yr.) | |
|---|---|---|
| | Low | High |
| Compact .. | 576 | 607 |
| Standard .. | 177 | 1298 |

**Cost Information**

When the above ranges of comparability are used on EnergyGuide labels for clothes washers, the estimated annual operating cost disclosures appearing in the box at the bottom of the labels must be derived using the 2000 Representative Average Unit Costs for electricity (8.03¢ per kilo Watt-hour) and natural gas (68.8¢ per therm), and the text below the box must identify the costs as such.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–11605 Filed 5–10–00; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 25

**[Docket No. 00N–0085]**

### National Environmental Policy Act; Food Contact Substance Notification System

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Direct final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending its regulations on environmental impact considerations as part of the agency's implementation of the FDA Modernization Act (FDAMA) of 1997. FDAMA amended the Federal Food, Drug, and Cosmetic Act (the act) to establish a notification process for food contact substances (FCS); this process will be the primary method for authorizing new uses of food additives that are FCS, and it will largely replace the existing food additive petition process for such substances. The regulations will expand the existing categorical exclusions to include allowing a notification submitted under the act to become effective and will amend the list of those actions that require an environmental assessment (EA) to add allowing a notification under the act to become effective in cases where a categorical exclusion doesn't apply. This will allow notifiers of FCS to claim the categorical exclusions now available to sponsors of other requests for authorization of FCS. Elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule, under FDA's usual procedures for notice and comment to provide a procedural framework to finalize the rule in the event the agency receives any significant adverse comment and withdraws the direct final rule.

**DATES:** This rule is effective August 24, 2000. Submit written comments by July 25, 2000. If FDA receives no significant adverse comments within the specified comment period, the agency intends to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period on this direct final rule ends. If timely significant adverse comments are received, the agency will publish a document in the **Federal Register** withdrawing this direct final rule before its effective date.

**ADDRESSES:** Submit written comments on the direct final rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

**SUPPLEMENTARY INFORMATION:**

**I. Introduction**

In 1958, Congress amended the act to require premarket approval of food additives (sections 201(s), 402(a)(2)(C), and 409 (21 U.S.C. 321(s), 342(a)(2)(C), and 348)). "Food additive" is defined in section 201(s) of the act as "any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food," unless, among other reasons, such substance is generally recognized as safe (GRAS) by qualified experts or is prior sanctioned for its intended use. Under section 409 of the act as originally established, food additives require premarket approval by FDA and publication of a regulation authorizing their intended use. Subsequently, in 1995, FDA codified a process, the "threshold of regulation" process (21 CFR 170.39), by which certain food additives may be exempted from the requirement of a listing regulation if the

substance is expected to migrate to food at only negligible levels (60 FR 36582, July 17, 1995).

More recently, FDAMA amended section 409 of the act to establish a premarket notification (PMN) process as the primary method for authorizing new uses of food additives that are FCS. FDA expects most new uses of FCS that previously would have been regulated by issuance of a listing regulation in response to a food additive petition or would have been exempted from the requirement of a regulation under the threshold of regulation process will be the subject of PMN's.

As part of the agency's process of implementing FDAMA's amendments to section 409 of the act, FDA convened a public meeting on March 12, 1999, to provide interested parties with an opportunity to comment on FDA's current thinking on administration of the PMN process. As a result of the March 12, 1999, public meeting, FDA received comments on the applicability of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.* (1998)) to the notification process for food contact substances. FDA has considered those comments in developing this direct final rule and the companion proposed rule. FDA has filed copies of the transcript of the meeting and the comments received from interested parties with the Dockets Management Branch (address above) (Docket No. 99N–0235). The transcript and comments are available for public review at the Dockets Management Branch.

## II. Analysis of the Applicability of NEPA to the Notification Process

As part of implementing the FDAMA amendments on food contact substances, FDA has considered the applicability of NEPA to the PMN process. As discussed in more detail in this section, FDA has concluded that agency activities under section 409(h) of the act are subject to NEPA's procedural requirements. Furthermore, as also discussed in this section, FDA currently expects that most PMN's will be subject to a categorical exclusion. (See 40 CFR 1508.4; 21 CFR 25.30 and 25.32.)

Congress enacted NEPA in 1969 to ensure that Federal Government agencies consider the environmental effects of proposed Federal actions. NEPA's purpose is to ensure that "the Agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts." (*Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989).) NEPA requires agencies to "include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on * * * the environmental impact of the proposed action * * *." (See 42 U.S.C. 4332(2)(C).) Regulations implementing NEPA define "major federal action" as:

> * * * actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (40 CFR 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as Agency action (40 CFR 1508.18).

FDA has concluded that under the NEPA implementing regulations, NEPA applies to FDA's decision not to object to a PMN. Under section 409(h) of the act, if FDA does not object to an FCS notification within 120 days of filing, the notification becomes effective and the substance may legally be marketed for the notified use. As discussed in more detail, under the relevant case law, FDA has concluded that this inaction constitutes final agency action under the Administrative Procedure Act (APA). As a final agency action, FDA's decision not to object is subject to NEPA's procedural requirements.

Under the APA, unless otherwise provided by statute, only "final Agency action" is subject to judicial review (5 U.S.C. 704). The Supreme Court recently held that to meet the finality requirement, agency action "must mark the consummation of the Agency's decision making process—it must not be of a merely tentative or interlocutory nature," and "must be one by which rights or obligations have been determined, or from which legal consequences will flow." (*Bennett* v. *Spear*, 520 U.S. 154, 177 (1997).) Both conditions must be satisfied for agency action to be considered "final." *Id.* Inaction under section 409(h) of the act meets both parts of this test. First, the consummation requirement is met because, by operation of law, if FDA does not object, the agency can be considered to have reached its conclusion about the safety of the substance. Second, the determination of rights and obligations requirement is met because, under section 409(h)(2)(A) of the act, the notifier may now market the FCS for the notified use in the United States. This authorization for marketing is a "direct and appreciable" legal consequence of the agency's decision not to object. *Id.* at 178.

FDA currently believes that a notification for a food contact substance must contain either an EA or a claim of categorical exclusion. If the environmental component of a notification is missing or deficient under 21 CFR 25.40, the agency will not accept the notification for review. In cases where the agency does not accept a notification based on deficiencies in environmental information, FDA expects to inform the notifier in writing within 30 days of receipt of the submission.

In adopting procedures to implement NEPA, Federal agencies are directed to reduce paperwork (40 CFR 1500.4 and 1500.2(b)) and to reduce delay (40 CFR 1500.5) by using several means, including the use of categorical exclusions. A categorical exclusion is a category of actions which do not individually or cumulatively have a significant effect on the human environment and for which neither an EA nor an Environmental Impact Statement (EIS) is required (40 CFR 1508.4).

FDA has identified a number of categorical exclusions in its environmental regulations in part 25 (21 CFR part 25), including some specified uses of certain food packaging materials when approval is sought through the food additive petition process or exemption through the threshold of regulation process. For example, when the substance is a component of a coating of a finished food-packaging material or is present in such material at not greater than 5 percent-by-weight, and it is expected to remain with the finished food contact material through use by the consumer, neither an EA nor EIS is required to be submitted (§ 25.32(i)).

This direct final rule amends § 25.20(i) to add allowing a notification submitted under section 409(h) of the act to become effective to the list of those actions that require an EA. In addition this document will expand the existing categorical exclusions in § 25.32(i), (j), (k), (q), and (r) to include allowing a notification submitted under section 409(h) of the act to become effective. Any existing categorical exclusions for food additive petitions or threshold of regulation exemption requests for such food contact materials could logically be extended to cover PMN's for such materials because the effects on the environment of allowing marketing of the substances—regardless of the process of authorization—are comparable in either case. Based on FDA's experience, the agency

anticipates that a majority of PMN's will be subject to a categorical exclusion.

### III. Rulemaking Action

In the **Federal Register** of November 21, 1997 (62 FR 62466), FDA described when and how it will employ direct final rulemaking. FDA believes that this rule is appropriate for direct final rulemaking because FDA views this rule as making noncontroversial amendments to an existing regulation, and FDA anticipates no significant adverse comment. Consistent with FDA's procedures on direct final rulemaking, elsewhere in this issue of the **Federal Register**, FDA is publishing a companion proposed rule to amend the existing relevant regulations in part 25. The companion proposed rule is identical to the direct final rule. The companion proposed rule provides a procedural framework within which the rule may be finalized in the event that the direct final rule is withdrawn because of any significant adverse comment. The comment period for the direct final rule runs concurrently with the comment period of the companion proposed rule. Any comments received under the companion proposed rule will be considered as comments regarding the direct final rule.

FDA is providing a comment period on the direct final rule of 75 days after May 11, 2000. If the agency receives any significant adverse comments, FDA intends to withdraw this final rule by publication of a document in the **Federal Register** within 30 days after the comment period ends. A significant adverse comment is a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered significant or adverse under this procedure. For example, a comment requesting an amendment of part 25 requirements for food additive petitions will not be considered a significant adverse comment because it is outside the scope of the direct final rule. On the other hand, a comment recommending an additional change to the rule may be considered a significant adverse comment if the comment explains why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

If FDA withdraws the direct final rule, all comments received will be considered under the companion proposed rule in developing a final rule under the usual notice-and-comment procedures of the APA (5 U.S.C. 552 *et seq.*). If FDA receives no significant adverse comment during the specified comment period, FDA intends to publish a confirmation document in the **Federal Register** within 30 days after the comment period ends. Because the direct final rule grants an exemption from the requirement to file an EA, under 5 U.S.C. 553(d), the rule may be made immediately effective. Therefore, FDA intends to make the direct final rule effective on the date the confirmation document is published in the **Federal Register**.

### IV. Analysis of Economic Impacts

#### *A. Benefit-Cost Analysis*

FDA has examined the economic implications of this final rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered significant if it raises novel legal or policy issues. FDA has determined that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4), requiring cost-benefit and other analyses, in section 1531(a) defines a significant rule as "a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100,000,000 (adjusted annually for inflation) in any 1 year." FDA has determined that this final rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the Small Business Regulatory Enforcement Fairness Act, FDA has determined that this final rule is not a major rule for the purpose of congressional review.

The final rule allows firms using the new notification process for food contact substances to claim the same categorical exclusions from the requirement of an EA that are currently applicable for food additive petitions and threshold of regulation exemption requests for the same uses. The rule therefore imposes no additional costs on producers or consumers.

#### *B. Small Entity Analysis*

FDA has examined the economic implications of this final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect on the rule on small entities. The agency certifies that this final rule will not have a significant impact on a substantial number of small entities.

This final rule will permit notifiers under the new notification process for FCS to claim the same categorical exclusions from the requirement of an EA that are currently applicable for food additive petitions and threshold of regulation exemption requests for the same uses. The final rule will not result in any additional costs to any firm. Therefore, this final rule will not have a significant impact on a substantial number of small entities.

### V. Paperwork Reduction Act of 1995

This direct final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

### VI. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on

the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**VII. Comments**

Interested persons may, on or before July 25, 2000, submit to the Dockets Management Branch (address above) written comments regarding this direct final rule. This comment period runs concurrently with the comment period for the companion proposed rule. Two copies of any comment are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. All comments received will be considered comments regarding the proposed rule and this direct final rule. In the event the direct final rule is withdrawn, all comments received regarding the companion proposed rule and the direct final rule will be considered comments on the proposed rule.

**VIII. Report to Congress**

For purposes of congressional review requirements under 5 U.S.C. 801–808, the report to Congress for this direct final rule will be issued when FDA confirms the effective date of this rule. Thus, no report is due at this time. If, however, a significant adverse comment is received, the agency will withdraw this direct final rule and no report will be issued to Congress.

**List of Subjects in 21 CFR Part 25**

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 25 is amended as follows:

## PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

1. The authority citation for 21 CFR part 25 continues to read as follows:

**Authority:** 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533 as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356–360.

2. Section 25.20 is amended by revising paragraph (i) to read as follows:

**§ 25.20 Actions requiring preparation of an environmental assessment.**

* * * * *

(i) Approval of food additive petitions and color additive petitions, approval of requests for exemptions for investigational use of food additives, the granting of requests for exemption from regulation as a food additive under § 170.39 of this chapter, and allowing notifications submitted under 21 U.S.C. 348(h) to become effective, unless categorically excluded in § 25.32(b), (c), (i), (j), (k), (l), (o), (q), or (r).

* * * * *

3. Section 25.32 is amended by revising paragraphs (i), (j), (k), (q), and (r) to read as follows:

**§ 25.32 Foods, food additives, and color additives.**

* * * * *

(i) Approval of a food additive petition or GRAS affirmation petition, the granting of a request for exemption from regulation as a food additive under § 170.39 of this chapter, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective, when the substance is present in finished food-packaging material at not greater than 5 percent-by-weight and is expected to remain with finished food-packaging material through use by consumers or when the substance is a component of a coating of a finished food-packaging material.

(j) Approval of a food additive petition or GRAS affirmation petition, the granting of a request for exemption from regulation as a food additive under § 170.39 of this chapter, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective, when the substance is to be used as a component of a food-contact surface of permanent or semipermanent equipment or of another food-contact article intended for repeated use.

(k) Approval of a food additive petition, color additive petition, or GRAS affirmation petition, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective, for substances added directly to food that are intended to remain in food through ingestion by consumers and that are not intended to replace macronutrients in food.

* * * * *

(q) Approval of a food additive petition, the granting of a request for exemption from regulation as a food additive under § 170.39 of this chapter, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective for a substance registered by the Environmental Protection Agency under FIFRA for the same use requested in the petition, request for exemption, or notification.

(r) Approval of a food additive petition, color additive, GRAS affirmation petition, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective for a substance that occurs naturally in the environment, when the action does not alter significantly the concentration or distribution of the substance, its metabolites, or degradation products in the environment.

Dated: January 24, 2000.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 00–11749 Filed 5–10–00; 8:45 am]

BILLING CODE 4160–01–F

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[CA 154–0236; FRL–6587–1]**

## Revisions to the California State Implementation Plan, Mojave Desert Air Quality Management District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is finalizing a limited approval and limited disapproval of revisions to the Mojave Desert Air Quality Management District portion of the California State Implementation Plan (SIP). This action was proposed in the **Federal Register** on March 2, 2000 and concerns oxide of nitrogen ($NO_x$) emissions from cement kilns. Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), this action simultaneously approves local rules that regulate these emission sources and directs California to correct rule deficiencies.

**EFFECTIVE DATE:** This rule is effective on June 12, 2000.

**ADDRESSES:** You can inspect copies of the administrative record for this action at EPA's Region IX office during normal business hours. You can inspect copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule

Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.
Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383

**FOR FURTHER INFORMATION CONTACT:** Max Fantillo, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1183.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

## I. Proposed Action

On March 2, 2000 (42 FR 11275), EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

| Local agency | Rule # | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| MDAQMD | 1161 | Portland Cement Kilns | 06/28/95 | 06/29/95 |

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because some rule provisions conflict with section 110 and part D of the Act. These provisions include the following:

1. Alternative Compliance Strategy in Section (D).
2. Exemption during start-up and shutdown in Section (G)(1)(a).
3. Referencing a rule not approved in State Implementation Plan in Section (G)(1)(c).

Our proposed action contains more information on the rule and our evaluation.

## II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received no comments.

## III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3), EPA is simultaneously finalizing a limited disapproval of the rule. As a result, sanctions will be imposed unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of this action. These sanctions will be imposed under section 179 of the Act as described in 59 FR 39832 (August 4, 1994). In addition, EPA must promulgate a federal implementation plan (FIP) under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. Note that the submitted rule has been adopted by the MDAQMD, and EPA's final limited disapproval does not prevent the local agency from enforcing it.

## IV. Administrative Requirements

### *A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

### *B. Executive Order 13045*

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

### *C. Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

### *D. Executive Order 13132*

Executive Order 13121, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism

implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

*H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*I. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 10, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, volatile organic compounds.

Dated: April 16, 2000.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52— [AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart F—California**

2. Section 52.220 is amended by adding paragraphs (c)(274) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(274) New and amended regulations for the following APCD were submitted on June 29, 1995, by the Governor's designee.

(i) Incorporation by reference.

(A) Mojave Desert Air Quality Management District.

(*1*) Rule 1161, adopted on June 28, 1995.

* * * * *

[FR Doc. 00–11674 Filed 5–10–00; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[AL–53–200019(a); FRL–6605–8]**

## Approval and Promulgation of Implementation Plans—Alabama: Approval of Revisions to the Alabama State Implementation Plan: Transportation Conformity Interagency Memorandum of Agreement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is approving a revision to the Alabama State Implementation Plan (SIP) that contains the transportation conformity rule pursuant to sections 110(k) and 176 of the Clean Air Act as amended in 1990 (Act). The transportation conformity rule assures that projected emissions from transportation plans and projects in air quality nonattainment or maintenance areas stay within the motor vehicle emissions ceiling contained in the SIP. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirements at the State level per regulations on Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws. This EPA approval action streamlines the conformity process and allows direct consultation among agencies at the local level. This final approval action is limited to certain regulations on Transportation Conformity. Rationale for approving this SIP revision is provided in the **SUPPLEMENTARY INFORMATION** Section of this action.

**DATES:** This direct final rule is effective on July 10, 2000, without further notice, unless EPA receives adverse comment by June 12, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** All comments should be addressed to Kelly Sheckler at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, Ariel Rios Building, N.W., Washington, DC 20460.

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104. Attn: Kelly Sheckler, (404) 562–9042.

Alabama Department of Environmental Management, Post Office Box 301463, 1400 Coliseum Boulevard, Montgomery, Alabama 36130–1463.

**FOR FURTHER INFORMATION CONTACT:** Kelly Sheckler, at 404/562–9042, E-mail: Sheckler.Kelly@epa.gov.

**SUPPLEMENTARY INFORMATION:** Outlined below are the contents of this document:

I. Background
A. What is a SIP?
B. What is the Federal approval process for a SIP?
C. What is transportation conformity?
D. Why must the State submit a transportation conformity SIP?
E. How does transportation conformity work?
II. Approval of the State Transportation Conformity Rule
A. What did the State submit?
B. What is EPA approving today and why?
C. How did the State satisfy the interagency consultation process (40 CFR 93.105)?
D. How does the State's submittal address the United States Court of Appeals for the District of Columbia Circuit ruling overturning the grace period for new nonattainment areas (40 CFR 93.102(d)) in the Sierra Club v. Environmental Protection Agency lawsuit?
E. What other parts of the rule are excluded?
III. Opportunity for Public Comments
IV. Administrative Requirements

### I. Background

*A. What Is a SIP?*

The states, under section 110 of the Act, must develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by EPA. The Act, under section 109, established these NAAQS which currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP, which protects air quality and contains emission control plans for NAAQS nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

*B. What Is the Federal Approval Process for a SIP?*

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the Federally enforceable SIP. This process generally includes a public notice, public comment period, public hearing, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to EPA for inclusion in the Federally enforceable SIP. EPA must then determine the appropriate Federal action, provide public notice, and request additional public comment on the action. The possible Federal actions include: approval, disapproval, conditional approval and limited approval/disapproval. If adverse comments are received, EPA must consider and address the comments before taking final action.

EPA incorporates state regulations and supporting information (sent under section 110 of the Act) into the Federally approved SIP through the approval action. EPA maintains records of all such SIP actions in the CFR at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The EPA does not reproduce the text of the Federally approved state regulations in the CFR. They are "incorporated by reference," which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

*C. What Is Transportation Conformity?*

Conformity first appeared as a requirement in the Act's 1977 amendments (Pub. L. 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The 1990 Amendments to the Act expanded the scope and content of the conformity concept by defining conformity to a SIP. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of

such standards. Also, the Act states that no Federal activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. The requirements of section 176(c) of the Clean Air Act apply to all departments, agencies and instrumentalities of the Federal government. Transportation conformity refers only to the conformity of transportation plans, programs and projects that are funded or approved under title 23 U.S.C. of the Federal Transit Act.

*D. Why Must the State Submit a Transportation Conformity SIP?*

A transportation conformity SIP is a plan which contains criteria and procedures for the Department of Transportation (DOT), Metropolitan Planning Organizations (MPOs), and other state or local agencies to assess the conformity of transportation plans, programs and projects to ensure that they do not cause or contribute to new violations of a NAAQS in the area substantially affected by the project, increase the frequency or severity of existing violations of a standard in such area or delay timely attainment. 40 CFR Part 51.390, subpart T requires states to submit a SIP that establishes criteria for conformity to EPA. 40 CFR Part 93, subpart A, provides the criteria the SIP must meet to satisfy 40 CFR Part 51.390.

EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each state submit a revision to its SIP including conformity criteria and procedures. EPA published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR Part 51, subpart T and 40 CFR Part 93, subpart A. EPA required the states to adopt and submit a transportation conformity SIP revision to the appropriate EPA Regional Office by November 25, 1994. The State of Alabama submitted a transportation conformity SIP to the EPA Region 4 on November 15, 1994. EPA did not take action on this SIP because the Agency was in the process of revising the transportation conformity requirements. EPA revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780), and codified the revisions under 40 CFR Part 51, subpart T and 40 CFR Part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws (62 FR 43780). EPA's action of August 15, 1997, required the states to change their rules and submit a SIP revision to EPA by August 15, 1998. States may choose to develop in place of regulations, a memorandum of agreement (MOA) which establishes the roles and procedures for transportation conformity. The MOA includes the detailed consultation procedures developed for that particular area. The MOA's are enforceable through the signature of all the transportation and air quality agencies, including the Federal Highway Administration, Federal Transit Administration and the Environmental Protection Agency.

*E. How Does Transportation Conformity Work?*

The Federal or state transportation conformity rule applies to all NAAQS nonattainment and maintenance areas in the state. The Metropolitan Planning Organizations (MPO), the State Department of Transportation (DOT) (in absence of a MPO), and U.S. Department of Transportation (USDOT) make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs (TIP), transportation plans, and projects. The MPOs calculate the projected emissions that will result from implementation of the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the Federally approved motor vehicle emissions ceiling in order for USDOT to make a positive conformity determination with respect to the SIP.

## II. Approval of the State Transportation Conformity Rule

*A. What Did the State Submit?*

The State of Alabama chose to address the transportation conformity SIP requirement through the development of an MOA. On April 3, 2000, the State of Alabama, through the Department of Environmental Management (ADEM), submitted the State's transportation conformity and consultation interagency MOA to EPA as a revision to the SIP. The Alabama Administrative Code Chapter 335–3–17 Conformity of Federal Actions to State Implementation Plans and Code of Alabama 1975, sections 22–28–14, 22–22A–5, 22–22A–6, 22–22A–8, and 41–22–9 effective April 27, 1995 and amended November 21, 1996 and March 27, 1998 adopted by the Alabama General Assembly in 1992, contains the necessary authority for the revision to the SIP. ADEM held a public hearing on December 21, 1999 and no comments from the general public were received. The MOA was developed with appropriate interagency consultation.

*B. What Is EPA Approving Today and Why?*

EPA is approving the Alabama transportation conformity MOA that establishes procedures for interagency consultation and adoption of Chapter 335–3–17 as amended by the state on March 27, 1998, that incorporates by reference the Environmental Protection Agency regulations in 40 CFR 93 Subpart A (July 1, 1997), and 62 FR 43780 [08/15/97; amendments] Transportation Conformity and Subpart B General Conformity, that the Director of the ADEM submitted to the Region 4 office of the EPA on April 3, 2000, except for the following sections for incorporation by reference: 40 CFR Parts 93.102(c), 93.104(d), 93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b). The rationale for exclusion of these sections is discussed in Section II.E of this action. The ADEM Transportation Conformity MOA only contains the detailed interagency consultation procedure as required by 93.105.

EPA has evaluated this SIP revision and has determined that the State has met the requirements of Federal transportation conformity rule as described in 40 CFR Part 51, subpart T and 40 CFR Part 93, subpart A. The ADEM has satisfied the public participation and comprehensive interagency consultation requirement during development and adoption of the MOA at the local level. Therefore, EPA is approving the MOA as a revision to the Alabama SIP and Chapter 335–3–17–.01 and .02 Conformity of Federal Actions to State Implementation Plans.

*C. How Did the State Satisfy the Interagency Consultation Process [40 CFR 93.105]?*

EPA's rule requires the states to develop their own processes and procedures for interagency consultation among the Federal, state, and local agencies and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision must include processes and procedures to be followed by the MPO, state DOT, and USDOT in

consulting with the state and local air quality agencies and EPA before making conformity determinations. The transportation conformity SIP revision must also include processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and USDOT.

The State of Alabama developed its consultation rule based on the elements contained in 40 CFR 93.105, and included it in the MOA, Exhibit 1. As a first step, the State worked with the existing transportation planning organization's interagency committee that included representatives from the State air quality agency, State Department of Transportation, the Birmingham Regional Planning Commission (BRPC), Birmingham Metropolitan Planning Organization (MPO), Federal Highway Administration—Alabama Division, Federal Transit Administration, Jefferson County Department of Health (JCDH), Jefferson County Transit Authority (B–JCTA), and EPA. The interagency committee met regularly and drafted the consultation rules considering elements in 40 CFR Part 93.105 and 23 CFR Part 450, and integrated the local procedures and processes into the consultation MOA. The consultation process developed in this MOA is unique to the State of Alabama. The MOA is enforceable against the parties by their consent in the MOA to allow the Attorney General for the State of Alabama to sue any or all of the agencies for specific performance or other relief on behalf of the citizens of Alabama in *paren. patrial*. We have determined that the State adequately included all elements of 40 CFR Part 93.105 and that the MOA meets the EPA SIP requirements.

*D. How the State's Submittal Addresses the United States Court of Appeals for the District of Columbia Circuit Ruling Overturning the Grace Period for New Nonattainment Areas (40 CFR 93.102(d)) in Sierra Club v. Environmental Protection Agency Lawsuit?*

The Sierra Club challenged this section of the second set of amendments to the transportation conformity rule arguing that allowing a 120 day grace period was unlawful under the Act. On November 4, 1997, the United States Court of Appeals for the District of Columbia Circuit held in Sierra Club v. Environmental Protection Agency, No. 96–1007, determined that EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, the State has excluded this section from its rule. EPA agrees with the State's action as it is consistent with the United States Court of Appeals for the District of Columbia Circuit ruling. Further, the exclusion of 40 CFR 93.102(d) will not prevent EPA from approving the State transportation conformity SIP.

*E. What Other Parts of the Rule Are Excluded?*

EPA promulgated the third set amendments to the transportation conformity rule on August 15, 1997. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in Environmental Defense Fund v. Environmental Protection Agency, No. 97–1637. The Court granted the environmental group's petition for review and ruled that sections 40 CFR 93.102(c)(1), 93.121(a)(1), and 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination that Federal actions will not cause or increase violations or delay attainment. The sections of the rule that were impacted by this decision were:

(a) 40 CFR 93.102(c)(1) which allowed certain projects for which the National Environmental Policy Act (NEPA) process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity "lapse". A lapse is a situation in which the conformity determination for the transportation plan or TIP has expired, and there is no currently conforming transportation plan and TIP. As such, there are restrictions on proceeding with federally funded and regionally significant projects.

(b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (budgets) in the submitted SIPs after 45 days if EPA had not declared them inadequate;

(c) 40 CFR 93.120(a)(2) which allowed use of the budgets in a disapproved SIP for 120 days after disapproval;

(d) 40 CFR 93.121(a)(1) which allowed the nonfederally funded, regionally significant projects to proceed if included in the first three years of the most recent conforming transportation plan and transportation improvement program, even if conformity status is currently lapsed; and

(e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval.

States were required to submit transportation conformity SIPs to satisfy the requirements for the third set of amendments to the transportation conformity rule by August 15, 1998. Many of these SIP submittals, developed prior to the March 2, 1999 Court ruling, included provisions from the transportation conformity rule verbatim. As such, the State of Alabama's SIP revision included sections which the Court ruled unlawful or remanded for consistency with the Act. Therefore, in accordance with the Court's ruling, EPA can not approve the request to incorporate by reference those portions of the Transportation conformity rule affected by the March 2, 1999 Court ruling. All other portions of the rule are incorporated by reference are approved by this.

The State of Alabama submitted additional information which has complied with the EPA requirements for a transportation conformity SIP and has adopted the Federal rules in an MOA which were in effect at the time that the transportation conformity SIP was due to the EPA. If the Court had issued its ruling before adoption and SIP submittal by the ADEM, EPA believes the ADEM would have removed these sections from its rule which incorporates 40 CFR Part 93, subparts A and B. The ADEM has expended its resources and time to prepare this SIP and meet the statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP in a timely manner.

The ADEM will be required to submit a SIP revision in the future when EPA revises its rule to comply with the Court decision. Because the Court decision has invalidated the aforementioned affected provisions, EPA believes that it is reasonable to exclude the corresponding sections of the State rules from this SIP approval action. As a result, EPA is not taking any SIP action on the following Sections of the Alabama Chapter 335–3–17 to incorporate by reference 40 CFR 93, Subpart A and B: sections 93.102(c), 93.104(d), 93.109(c)–(f), 93.118(e), 93.120(a)(2), 93.121(a)(1), and 93.124(b). The conformity determinations affected by these sections should comply with the relevant requirements of the statutory provisions of the Act underlying the Court's decision on these issues. EPA will be issuing guidance on how to implement these provisions in the interim prior to EPA's amendment of the Federal transportation conformity rule. Once this Federal rule has been revised, conformity determinations in Alabama should comply with the

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requirements of the revised Federal rule until corresponding provisions of the Alabama conformity SIP have been approved by EPA.

### III. Opportunity for Public Comments

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on July 10, 2000, without further notice unless EPA receives adverse comment by June 12, 2000. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

### IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 10, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 28, 2000.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

Part 52 of chapter I, title 40, *Code of Federal Regulations* is amended as follows:

## PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart—Alabama

2. Section 52.50 is amended by adding a new entry at the end of the table in paragraph (c) to read as follows:

**§ 52.50 Identification of plan.**

* * * * *

(c) EPA approved Alabama regulatory provisions.

EPA APPROVED ALABAMA REGULATIONS FOR ALABAMA

| State citation | Title subject | Adoption date | EPA approval date | Federal Register notice |
|---|---|---|---|---|
| * | * | * | * | * |
| Chapter No. 335–3–17, Section 335–3–1–.01. | Transportation Conformity | March 27, 1998 | May 11, 2000 | 65 FR 30361 |

EPA APPROVED ALABAMA REGULATIONS FOR ALABAMA—Continued

| State citation | Title subject | Adoption date | EPA approval date | Federal Register notice |
|---|---|---|---|---|
| Chapter No. 335–3–17, Section 335–3–1–.02. | General Conformity | March 27, 1998 | May 11, 2000 | 65 FR 30362 |
| * | * | * | * | * |

3. Section 52.50 is amended by adding a new entry at the end of the table in paragraph (e) to read as follows:

**§ 52.50 Identification of plan.**

* * * * *

(e) EPA-approved Alabama non-regulatory provisions.

EPA APPROVED ALABAMA NON-REGULATORY PROVISIONS

| Provision | State effective date | EPA approval date | FEDERAL REGISTER notice | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| Alabama Interagency Transportation Conformity Memorandum of Agreement. | January 20, 2000 | May 11, 2000 | 65 FR 30362. | |

[FR Doc. 00–11813 Filed 5–10–00; 8:45 am]
BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

**National Oceanic and Atmospheric Administration**

**50 CFR Part 622**

**[Docket No. 991112303–0069–02; I.D. 100499A]**

**RIN 0648–AM01**

# Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications for Gulf Group King and Spanish Mackerel

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** In accordance with the framework procedure for adjusting management measures of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS implements increases in the total allowable catch (TAC) and the bag limit for Gulf group Spanish mackerel and establishes a new fishing season for the Gulf group king mackerel gillnet fishery. The intended effects of this rule are to enhance the economic and social benefits from the Gulf group king and Spanish mackerel fisheries while maintaining healthy stocks.

**DATES:** This final rule is effective June 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steve Branstetter, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Steve.Branstetter@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils and was approved by NMFS and implemented by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Gulf of Mexico Fishery Management Council (Council) recommended, and NMFS published, a proposed rule (64 FR 71388, December 21, 1999) to implement increases in the total allowable catch (TAC) and the bag limit for Gulf group Spanish mackerel and a new fishing season for the Gulf group king mackerel gillnet fishery. The proposed rule described the need and rationale for these measures, which are not repeated here.

### Comments and Responses

Three individuals submitted comments; several of the points raised by the commenters were the same. The relevant points and NMFS' responses are presented here:

*Comment 1:* Two commenters opposed the delay in the opening date of the gillnet season from November 1 to the Tuesday after the Martin Luther King, Jr., holiday in January. One commenter believed that this action would shorten the season substantially and create an economic hardship on the fishery. The commenter suggested that a viable alternative would be to retain the November 1 opening date and close all weekends and holidays. The second commenter believed that altering the opening date for the gillnet fishery was discriminatory against the hook-and-line fishery and that the action was being taken without any evaluations of the sociological impacts on other commercial and charter king mackerel fishermen.

*Response:* NMFS can only approve, partially approve, or disapprove actions submitted by the Councils and cannot substitute alternative actions for those submitted by the Councils. Therefore, NMFS did not consider retaining the opening date of November 1 for the gillnet fishery, with all weekends and holidays closed. Nevertheless, the intent of the change in the fishing season is to avoid quota overruns due to the 3-day holiday. The change in the opening date of the gillnet season should have little overall impact on the fishery regarding its ability to meet the gillnet quota. The fishery normally does not begin to harvest fish until after January 1 and has the capacity to meet its quota in a week's time. Since 1995, all landings occurred in January or early February, except in 1998 when some landings were recorded in November and December. During this timeframe, the fishery has met its quota in 7 to 31 days.

Delaying the opening date for the gillnet sector of the fishery should not impact the other fishing sectors. The gillnet fishery has a dedicated quota that historically has been harvested during the month of January and February, with as much as 50 to 100 percent of

that quota being harvested within only 3 to 4 days. Fishing effort is unlikely to be concentrated into a shorter timeframe under the new opening date than has been demonstrated in the past, nor would this impinge on the ability of other sectors to harvest king mackerel under their allocations or quotas. On the other hand, delaying the opening date and closing weekends to fishing should enhance NMFS' ability to close the fishery when the quota is reached without allowing overruns to occur during time periods when a closure notice cannot be published in the **Federal Register**.

*Comment 2:* One commenter requested NMFS to reconsider its decision to continue the zero-fish bag limit for Gulf group king mackerel for the captains and crews of for-hire vessels. The commenter stated that there was no evidence to substantiate that a two-fish captain and crew bag limit contributed to overruns of the recreational allocation. The commenter pointed out that, during the 1997/1998 fishing year, the recreational allocation was exceeded by only 3 percent; in 1998/1999, the recreational allocation was not met; and based on preliminary information available from the Marine Recreational Fishing Statistics Survey (MRFSS) for king mackerel catches in the Gulf of Mexico, it appeared that the recreational allocation would not be met for the 1999/2000 fishing year.

*Response:* In establishing a zero-fish bag limit for captains and crews of for-hire vessels (64 FR 45457, August 20, 1999) NMFS stated that the catch attributable to this segment of the fishery contributed to overruns of the recreational allocation, led to bag limit enforcement problems, and adversely impacted fishing mortality estimates when those recreationally caught fish were subsequently sold and then counted against the commercial quota. NMFS considered the Council's proposed measure for a two-fish bag limit for captains and crew to be contrary to the goals and objectives of the FMP and the requirements of the Magnuson-Stevens Act to maintain and rebuild overfished stocks. Therefore, NMFS disapproved the measure and did not propose a rule to reinstate a two-fish bag limit for captains and crew. Further rationale for this decision is contained in the proposed rule (64 FR 71388, December 21, 1999).

NMFS acknowledges that, during the 1997/1998 and 1998/1999 fishing years, the recreational catch was either under or only slightly over the allocation. Nevertheless, since 1986, recreational catch has exceeded the allocation by an average of 37 percent, and the charterboat fishery accounts for more than half of the total recreational landings of Gulf group king mackerel. NMFS estimates that a 10- to 12-percent reduction in recreational catch of Gulf group king mackerel could be achieved from the zero-fish bag limit for the captains and crews of for-hire vessels.

Catches of Gulf group king mackerel cannot be directly calculated solely from MRFSS data for the Gulf of Mexico. During the period November 1 through March 31, Gulf group king mackerel is considered to extend northward along the Atlantic coast of Florida to the Flagler/Volusia County line. Large numbers of king mackerel are caught on the Atlantic coast during this time. Thus, any estimates of recreational catch based solely on Gulf of Mexico surveys will underestimate the total catch for Gulf group king mackerel.

## Classification

This final rule has been determined to be significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection-of-information requirement subject to the Paperwork Reduction Act.

## List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 5, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.34, paragraph (p) is added to read as follows:

### § 622.34 Gulf EEZ seasonal and/or area closures.

* * * * *

(p) *Closures of the Gulf group king mackerel gillnet fishery.* The gillnet fishery for Gulf group king mackerel in or from the Gulf EEZ is closed each fishing year from July 1 until 6:00 a.m. on the day after the Martin Luther King Jr. Federal holiday. The gillnet fishery also is closed during all subsequent weekends and observed Federal holidays, except for the first weekend following the Martin Luther King Jr. holiday which will remain open to the gillnet fishery provided a notification of closure of that fishery has not been filed under § 622.43(a). Weekend closures are effective from 6:00 a.m. Saturday to 6:00 a.m. Monday. Holiday closures are effective from 6:00 a.m. on the observed Federal holiday to 6:00 a.m. the following day. All times are eastern standard time. During these closures, a person aboard a vessel using or possessing a gillnet with a stretched-mesh size of 4.75 inches (12.1 cm) or larger in the southern Florida west coast subzone may not fish for or possess Gulf group king mackerel.

3. In § 622.39, paragraph (c)(1)(iv) is revised to read as follows:

### § 622.39 Bag and possession limits.

* * * * *

(c) * * *

(1) * * *

(iv) Gulf migratory group Spanish mackerel—15.

* * * * *

4. In § 622.42, paragraph (c)(2)(i) is revised to read as follows:

### § 622.42 Quotas.

* * * * *

(c) * * *

(2) * * *

(i) *Gulf migratory group.* The quota for the Gulf migratory group of Spanish mackerel is 5.187 million lb (2.353 million kg).

* * * * *

5. In § 622.44, paragraph (a)(2)(ii)(A)(*1*) is revised to read as follows:

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**§ 622.44 Commercial trip limits.**

* * * * *

(a) * * *

(2) * * *

(ii) * * *

(A) * * *

(*1*) In the southern Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit with a gillnet endorsement has been issued, as required under § 622.4(a)(2)(ii), in amounts not exceeding 25,000 lb (11,340 kg) per day, provided the gillnet fishery for Gulf group king mackerel is not closed under § 622.34(p) or § 622.43(a).

* * * * *

[FR Doc. 00–11876 Filed 5–10–00; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 65, No. 92
Thursday, May 11, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 319

**[Docket No. 00–003–1]**

### Mexican Hass Avocado Import Program

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Request for comments.

**SUMMARY:** The Government of Mexico has requested that the Animal and Plant Health Inspection Service consider amending its regulations regarding the importation of Hass avocado fruit from Mexico to expand the number of States in which the fruit may be distributed and to increase the length of the shipping season during which Hass avocados may be imported into the United States. In this notice, we are asking the public for its comments and recommendations regarding the scope of our review and are soliciting any additional data or information that may have a bearing on our review of the Mexican Government's request. We will use any information gathered through this notice as we consider the Mexican Government's request that we expand the length of the shipping season during which, and the number of approved States into which, Mexican Hass avocados may be imported into the United States.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by August 9, 2000.

**ADDRESSES:** Please send your comment and three copies to:

Docket No. 00–003–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–003–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne D. Burnett, Senior Import Specialist, Phytosanitary Issues Management Team, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1236; (301) 734–6799.

**SUPPLEMENTARY INFORMATION:**

#### Background

The regulations in "Subpart Fruits and Vegetables" (7 CFR 319.56 through 319.56–8) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests, including fruit flies, that are new to or not widely distributed within the United States.

Under the regulations in 7 CFR 319.56–2ff, fresh Hass avocado fruit grown in approved orchards in approved municipalities in Michoacan, Mexico, may be imported into specified areas of the United States, subject to certain conditions. Currently, those regulations allow Mexican Hass avocados to be imported into the United States only during the months of November, December, January, and February. Further, the fruit may only be distributed in the following northeastern States: Connecticut, Delaware, the District of Columbia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, Virginia, West Virginia, and Wisconsin.

The Government of Mexico has requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations regarding the importation of Mexican Hass avocados to (1) increase the number of States into which the avocados may be imported and (2) to allow the shipping season to begin 1 month earlier (October rather than November) and end 1 month later (March rather than February).

With regard to increasing the number of approved States, Mexico has asked that we consider allowing Hass avocados to be imported into additional northern-tier States that, like the currently approved northeastern States, do not contain host material for any of the avocado-specific pests of concern identified in the regulations and that have climatic conditions that do not support the establishment of fruit flies. The Mexican Government has not yet identified the specific States that it believes might meet those criteria, and we anticipate that Mexico would seek additional information from APHIS before making such a specific request.

Studies conducted by the U.S. Department of Agriculture's Agricultural Research Service have shown that the Mexican fruit fly is less active and oviposits less at temperatures below 70 °F. Median temperatures in the Michoacan production areas during the current shipping season of November through February are consistently below 70 °F, thus the climate is not favorable to fruit fly activity during those months. In establishing the current November through February shipping season, we considered the unfavorable climate in the Michoacan production areas along with the Hass avocado's non-preferred host status and concluded that the infestation threat posed to the avocados by *Anastrepha* spp. fruit flies would be insignificant. In requesting the lengthened shipping season, the Mexican Government has stated that the median temperatures in the Michoacan production areas during October and March are consistently below 70 °F, just as is the case during the current November through February shipping season. Preliminary temperature data provided by Mexico covering the years 1990 through 1999 indicate that only once during that period did the median temperature rise above 70 °F during October or March (72.3 °F, recorded at the Comision Nacional del Agua climate monitoring station in the municipality of Periban, Michoacan, in March 1992).

In our review of the Mexican Government's request, we anticipate

that we will consider information such as the pest risk assessment and risk management analysis prepared for the rulemaking that established the current program; fruit fly trapping data and pest survey data from the growing area; fruit cutting data from both the packinghouses in Mexico and the U.S. port-of-entry inspections; temperature data for the production areas in Mexico, the currently approved States, and any States that might be added; and the results of APHIS' most recent comprehensive review of the Mexican Hass avocado program. Copies of this information may be obtained by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

We are asking the public for its comments and recommendations regarding the scope of our review and are soliciting any additional data or information that may have a bearing on our review of the Mexican Government's request. We wish to emphasize the preliminary nature of our review; we are not, at this time, proposing to make any changes to the provisions of the current Mexican avocado import program found in § 319.56–2ff. We would, therefore, ask that any comments focus on the scientific, technical, or other issues that commenters believe should be considered during our review of the Mexican Government's request.

If, after completing our review of the available data and any pertinent information submitted by the public, we conclude that there are sufficient data available to support Mexico's request, APHIS will prepare a proposed rule for public comment before making any final decision to approve additional States to receive Mexican Hass avocados or to expand the shipping season to include the months of October and March.

**Authority:** 7 U.S.C. 150dd, 150ee, 150ff, 151–167, 450, 2803, and 2809; 21 U.S.C. 136 and 136a.

Done in Washington, DC, this 8th day of May 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–11835 Filed 5–10–00; 8:45 am]

**BILLING CODE 3410–34–P**

## RAILROAD RETIREMENT BOARD

### 20 CFR Part 217

**RIN 3220–AB45**

### Application for Annuity or Lump Sum

**AGENCY:** Railroad Retirement Board.

**ACTION:** Proposed rule.

**SUMMARY:** The Railroad Retirement Board hereby proposes to amend its regulations to enable a divorced spouse who remarries the employee within six months of the divorce to use the spouse application to qualify for a divorced spouse annuity for the period prior to the remarriage. This amendment will eliminate the necessity for the spouse to file a separate application for a short period of benefits.

**DATES:** Comments must be received on or before July 10, 2000.

**ADDRESSES:** Comments may be addressed to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

**FOR FURTHER INFORMATION CONTACT:** Michael C. Litt, General Attorney, Railroad Retirement Board, telephone (312) 751–4929, TTD (312) 751–4701.

**SUPPLEMENTARY INFORMATION:** Section 217.8 of the Board's regulations describes situations where the Board will accept an application filed for one type of annuity as an application for another type of annuity. An application may be effective for the period six months prior to the date of filing. This amendment will add a provision to enable a divorced spouse who remarries the employee within six months of the divorce to use the spouse application to qualify for a divorced spouse annuity for the period after the divorce and prior to the remarriage. In such cases the requirement that a claimant be married to the employee for a period of one year prior to application for a spouse annuity, as required by § 216.54 of this part, is waived.

The Board, with the concurrence of the Office of Management and Budget, has determined that this is not a significant regulatory action under Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

**List of Subjects in 20 CFR Part 217**

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, the Railroad Retirement Board proposes to amend chapter II of title 20 of the Code of Federal Regulations as follows:

### PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

1. The authority citation for part 217 continues to read as follows:

**Authority:** 45 U.S.C. 231d and 45 U.S.C. 231f.

2. In subpart B, § 217.8, redesignate paragraphs (m) through (u) as (n) through (v), and add a new paragraph (m) to read as follows:

**§ 217.8 When one application satisfies the filing requirement for other benefits.**

* * * * *

(m) A divorced spouse annuity if the spouse claimant has remarried the employee during the six-month retroactive period of the spouse annuity application.

* * * * *

Dated: May 4, 2000.

By authority of the Board.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 00–11855 Filed 5–10–00; 8:45 am]

**BILLING CODE 7905–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 25

**[Docket No. 00N–0085]**

### National Environmental Policy Act; Food Contact Substance Notification System; Companion to Direct Final Rule

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) is proposing to amend its regulations on environmental impact considerations as part of the agency's implementation of the FDA Modernization Act (FDAMA) of 1997. FDAMA amended the Federal Food, Drug, and Cosmetic Act (the act) to establish a notification process for food contact substances (FCS); this process will be the primary method for authorizing new uses of food additives that are FCS, and it will largely replace the existing food additive petition process for such substances. The regulations will expand the existing categorical exclusions to include allowing a notification submitted under the act to become effective and will amend the list of those actions that require an environmental assessment (EA) to add allowing a notification under the act to become effective in cases where a categorical exclusion doesn't apply. This will allow notifiers of FCS to claim the categorical exclusions now available to sponsors of other requests for authorization of FCS. This proposed rule is a companion document to the direct final rule

published elsewhere in this issue of the **Federal Register**.

**DATES:** Submit written comments on this proposed rule by July 25, 2000. If FDA receives no significant adverse comment on the provisions of these regulations within the specified comment period, the agency intends to publish a document confirming the effective date of the final rule in the **Federal Register** within 30 days after the comment period in the direct final rule ends. The direct final rule will be effective August 24, 2000.

**ADDRESSES:** Submit written comments on this companion proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

### *A. Rulemaking*

This proposed rule is a companion to the direct final rule published in the final rules section of this issue of the **Federal Register**. The direct final rule and this companion proposed rule are substantively identical. FDA is publishing the direct final rule because the rule contains noncontroversial changes, and FDA anticipates that it will receive no significant adverse comments. If no significant adverse comment is received in response to the direct final rule, no further action will be taken related to this proposed rule. Instead, FDA will publish a confirmation document within 30 days after the comment period ends confirming that the direct final rule will go into effect on August 24, 2000. Additional information about FDA's direct final rulemaking procedures is set forth in a guidance published in the **Federal Register** of November 21, 1997 (62 FR 62466).

The comment period for this companion proposed rule runs concurrently with the direct final rule's comment period. Any comments received under this companion proposed rule will also be considered as comments regarding the direct final rule. If FDA receives any significant adverse comment regarding either this proposed rule or the direct final rule, FDA will publish a document withdrawing the direct final rule within 30 days after the comment period ends and will proceed to respond to all of the comments under this companion proposed rule using customary notice-and-comment procedures. A significant adverse comment is a comment that explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In determining whether a significant adverse comment is sufficient to terminate a direct final rulemaking, FDA will consider whether the comment raises an issue serious enough to warrant a substantive response in a notice-and-comment process. Comments that are frivolous, insubstantial, or outside the scope of the rule will not be considered adverse under this procedure. For example, a comment recommending a rule change in addition to the rule will not be considered a significant adverse comment, unless the comment states why the rule would be ineffective without the additional change. In addition, if a significant adverse comment applies to an amendment, paragraph, or section of this rule and that provision can be severed from the remainder of the rule, FDA may adopt as final those provisions of the rule that are not the subject of a significant adverse comment.

### *B. Background*

In 1958, Congress amended the act to require premarket approval of food additives (sections 201(s), 402(a)(2)(C), and 409 of the act (21 U.S.C. 321(s), 342(a)(2)(C), and 348)). "Food additive" is defined in section 201(s) of the act as "any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food," unless, among other reasons, such substance is generally recognized as safe by qualified experts or is prior sanctioned for its intended use. Under section 409 of the act as originally established, food additives require premarket approval by FDA and publication of a regulation authorizing their intended use. Subsequently, in 1995, FDA codified a process, the "threshold of regulation" process (21 CFR 170.39), by which certain food additives may be exempted from the requirement of a listing regulation if the substance is expected to migrate to food at only negligible levels (60 FR 36582, July 17, 1995).

More recently, FDAMA amended section 409 of the act to establish a premarket notification (PMN) process as the primary method for authorizing new uses of food additives that are FCS. FDA expects most new uses of FCS that previously would have been regulated by issuance of a listing regulation in response to a food additive petition or would have been exempted from the requirement of a regulation under the threshold of regulation process will be the subject of PMN's.

As part of the agency's process of implementing FDAMA's amendments to section 409 of the act, FDA convened a public meeting on March 12, 1999, to provide interested parties with an opportunity to comment on FDA's current thinking on administration of the PMN process. As a result of the March 12, 1999, public meeting, FDA received comments on the applicability of the National Environmental Policy Act (NEPA) (42 U.S.C. 4321, *et seq.* (1998)), to the notification process for food contact substances. FDA has considered those comments in developing the direct final rule and this companion proposed rule. FDA has filed copies of the transcript of the meeting and the comments received from interested parties with the Dockets Management Branch (address above) (Docket No. 99N–0235). The transcript and comments are available for public review at the Dockets Management Branch.

## II. Analysis of the Applicability of NEPA to the Notification Process

As part of implementing the FDAMA amendments on food contact substances, FDA has considered the applicability of NEPA to the PMN process. As discussed in more detail below, FDA has concluded that agency activities under section 409(h) of the act are subject to NEPA's procedural requirements. Furthermore, as also discussed below, FDA currently expects that most PMN's will be subject to a categorical exclusion (see 40 CFR 1508.4; §§ 25.30 and 25.32 (21 CFR 25.30 and 25.32)).

Congress enacted NEPA in 1969 to ensure that Federal Government agencies consider the environmental effects of proposed Federal actions. NEPA's purpose is to ensure that "the Agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts." *Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989). NEPA requires agencies to "include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on the environmental impact of the proposed

action * * *" (see 42 U.S.C. 4332(2)(C)). Regulations implementing NEPA define "major Federal action" as:

> * * * actions with effects that may be major and which are potentially subject to Federal control and responsibility. Major reinforces but does not have a meaning independent of significantly (40 CFR 1508.27). Actions include the circumstance where the responsible officials fail to act and that failure to act is reviewable by courts or administrative tribunals under the Administrative Procedure Act or other applicable law as Agency action (40 CFR 1508.18).

FDA has concluded that under the NEPA implementing regulations, NEPA applies to FDA's decision not to object to a PMN. Under section 409(h) of the act, if FDA does not object to an FCS notification within 120 days of filing, the notification becomes effective and the substance may legally be marketed for the notified use. As discussed in more detail below, under the relevant case law, FDA has concluded that this inaction constitutes final agency action under the Administrative Procedure Act (APA). As a final agency action, FDA's decision not to object is subject to NEPA's procedural requirements.

Under the APA, unless otherwise provided by statute, only "final Agency action" is subject to judicial review (5 U.S.C. 704). The Supreme Court recently held that to meet the finality requirement, agency action "must mark the consummation of the Agency's decision making process it must not be of a merely tentative or interlocutory nature," and "must be one by which rights or obligations have been determined, or from which legal consequences will flow." *Bennett* v. *Spear*, 520 U.S. 154, 177 (1997). Both conditions must be satisfied for agency action to be considered "final." *Id.* Inaction under section 409(h) of the act meets both parts of this test. First, the consummation requirement is met because by operation of law, if FDA does not object, the agency can be considered to have reached its conclusion about the safety of the substance. Second, the determination of rights and obligations requirement is met because, under section 409(h)(2)(A) of the act, the notifier may now market the FCS for the notified use in the United States. This authorization for marketing is a "direct and appreciable" legal consequence of the agency's decision not to object. *Id.* at 178.

FDA currently believes that a notification for a food contact substance must contain either an EA or a claim of categorical exclusion. If the environmental component of a notification is missing or deficient under 21 CFR 25.40, the agency will not accept the notification for review. In cases where the agency does not accept a notification based on deficiencies in environmental information, FDA expects to inform the notifier in writing within 30 days of receipt of the submission.

In adopting procedures to implement NEPA, Federal agencies are directed to reduce paperwork (40 CFR 1500.4 and 1500.2(b)) and to reduce delay (40 CFR 1500.5) by using several means, including the use of categorical exclusions. A categorical exclusion is a category of actions that do not individually or cumulatively have a significant effect on the human environment and for which neither an EA nor an environmental impact statement (EIS) is required (40 CFR 1508.4).

FDA has identified a number of categorical exclusions in its environmental regulations in part 25 (21 CFR part 25), including some specified uses of certain food packaging materials when approval is sought through the food additive petition process or exemption through the threshold of regulation process. For example, when the substance is a component of a coating of a finished food-packaging material or is present in such material at not greater than 5 percent-by-weight, and is expected to remain with the finished food contact material through use by the consumer, neither an EA nor EIS is required to be submitted (§ 25.32(i)).

This companion proposed rule proposes to amend § 25.20(i) to add allowing a notification submitted under section 409(h) of the act to become effective to the list of those actions that require an EA. In addition this document will expand the existing categorical exclusions in § 25.32(i), (j), (k), (q), and (r) to include allowing a notification submitted under section 409(h) of the act to become effective. Any existing categorical exclusions for food additive petitions or threshold of regulation exemption requests for such food contact materials could logically be extended to cover PMN's for such materials because the effects on the environment of allowing marketing of the substances—regardless of the process of authorization—are comparable in either case. Based on FDA's experience, the agency anticipates that a majority of PMN's will be subject to a categorical exclusion.

## III. Analysis of Economic impacts

### *A. Benefit-Cost Analysis*

FDA has examined the economic implications of this companion proposed rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including: Having an annual effect on the economy of $100 million, adversely affecting a sector of the economy in a material way, adversely affecting competition, or adversely affecting jobs. A regulation is also considered significant if it raises novel legal or policy issues. FDA has determined that this companion proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4), requiring cost-benefit and other analyses, in section 1531(a) defines a significant rule as "a Federal mandate that may result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation) in any 1 year." FDA has determined that this companion proposed rule does not constitute a significant rule under the Unfunded Mandates Reform Act.

The Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121) defines a major rule for the purpose of congressional review as having caused or being likely to cause one or more of the following: An annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the Small Business, Regulatory Enforcement Fairness Act, FDA has determined that this companion proposed rule is not a major rule for the purpose of congressional review.

The companion proposed rule allows firms using the new notification process for food contact substances to claim the same categorical exclusions from the requirement of an EA that are currently applicable for food additive petitions

and threshold of regulation exemption requests for the same uses. The rule therefore imposes no additional costs on producers or consumers.

*B. Small Entity Analysis*

FDA has examined the economic implications of this companion proposed rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant economic impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would lessen the economic effect on the rule on small entities. The agency certifies that this companion proposed rule will not have a significant impact on a substantial number of small entities.

This companion proposed rule will permit notifiers under the new notification process for FCS to claim the same categorical exclusions from the requirement of an EA that are currently applicable for food additive petitions and threshold of regulation exemption requests for the same uses. The proposed rule will not result in any additional costs to any firm. Therefore, this proposed rule will not have a significant impact on a substantial number of small entities.

**IV. Paperwork Reduction Act of 1995**

FDA tentatively concludes that this companion proposed rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

**V. Environmental Impact**

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

**VI. Comments**

Interested persons may, by July 24, 2000, submit to the Dockets Management Branch (address above) written comments regarding this proposal. This comment period runs concurrently with the comment period for the direct final rule. Two copies of any comment are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. All received comments will be considered as comments regarding the direct final rule and this proposed rule. In the event the direct final rule is withdrawn, all comments received will be considered comments on this proposed rule.

**List of Subjects in 21 CFR Part 25**

Environmental impact statements, Foreign relations, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 25 be amended as follows:

## PART 25—ENVIRONMENTAL IMPACT CONSIDERATIONS

1. The authority citation for 21 CFR part 25 continues to read as follows:

**Authority:** 21 U.S.C. 321–393; 42 U.S.C. 262, 263b–264; 42 U.S.C. 4321, 4332; 40 CFR parts 1500–1508; E.O. 11514, 35 FR 4247, 3 CFR, 1971 Comp., p. 531–533 as amended by E.O. 11991, 42 FR 26967, 3 CFR, 1978 Comp., p. 123–124 and E.O. 12114, 44 FR 1957, 3 CFR, 1980 Comp., p. 356–360.

2. Section 25.20 is amended by revising paragraph (i) to read as follows:

**§ 25.20 Actions requiring preparation of an environmental assessment.**

* * * * *

(i) Approval of food additive petitions and color additive petitions, approval of requests for exemptions for investigational use of food additives, the granting of requests for exemption from regulation as a food additive under § 170.39 of this chapter, and allowing notifications submitted under 21 U.S.C. 348(h) to become effective, unless categorically excluded in § 25.32(b), (c), (i), (j), (k), (l), (o), (q), or (r).

* * * * *

3. Section 25.32 is amended by revising paragraphs (i), (j), (k), (q), and (r) to read as follows:

**§ 25.32 Foods, food additives, and color additives.**

* * * * *

(i) Approval of a food additive petition or GRAS affirmation petition, the granting of a request for exemption from regulation as a food additive under § 170.39 of this chapter, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective, when the substance is present in finished food-packaging material at not greater than 5 percent-by-weight and is expected to remain with finished food-packaging material through use by consumers or when the substance is a component of a coating of a finished food-packaging material.

(j) Approval of a food additive petition or GRAS affirmation petition, the granting of a request for exemption from regulation as a food additive under § 170.39 of this chapter, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective, when the substance is to be used as a component of a food-contact surface of permanent or semipermanent equipment or of another food-contact article intended for repeated use.

(k) Approval of a food additive petition, color additive petition, or GRAS affirmation petition, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective, for substances added directly to food that are intended to remain in food through ingestion by consumers and that are not intended to replace macronutrients in food.

* * * * *

(q) Approval of a food additive petition, the granting of a request for exemption from regulation as a food additive under § 170.39 of this chapter, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective for a substance registered by the Environmental Protection Agency under FIFRA for the same use requested in the petition, request for an exemption, or notification.

(r) Approval of a food additive petition, color additive, GRAS affirmation petition, or allowing a notification submitted under 21 U.S.C. 348(h) to become effective for a substance that occurs naturally in the environment, when the action does not alter significantly the concentration or distribution of the substance, its metabolites, or degradation products in the environment.

Dated: January 24, 2000.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 00–11750 Filed 5–10–00; 8:45 am]

BILLING CODE 4160–01–F

## OVERSEAS PRIVATE INVESTMENT CORPORATION

**22 CFR Part 706**

**RIN 3420–ZA00**

**Information Disclosure**

**AGENCY:** Overseas Private Investment Corporation.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule revises the Overseas Private Investment Corporation's ("OPIC") Freedom of Information Act ("FOIA") regulations by

making substantive and administrative changes. These revisions are intended to supersede OPIC's current FOIA regulations, located at this Part. The proposed rule incorporates the FOIA revisions contained in the Electronic Freedom of Information Act Amendments of 1996 ("EFOIA"), conforms OPIC's regulations to current OPIC FOIA practices, and converts the regulations to a plain English format. The proposed rule also reflects the disclosure principles established by the President and the Attorney General in their FOIA Policy Memorandum of October 4, 1993. Finally, the proposed rule adds a notice to OPIC's business submitters concerning access to OPIC records that have been transferred to the legal custody and control of the National Archives of the United States ("National Archives").

**DATES:** Comments must be received by June 12, 2000; however, late filed comments will be considered to the extent practicable.

**ADDRESSES:** Mail or hand-deliver comments to Laura A. Naide, FOIA Director, Overseas Private Investment Corporation, 1100 New York Avenue, N.W., Washington, D.C. 20527, fax them to Ms. Naide at (202) 408–0297, or send them by electronic mail to lnaid@opic.gov. Please send comments by only one method. Comments will be available for review upon request.

**FOR FURTHER INFORMATION CONTACT:** Laura A. Naide, FOIA Director, (202) 336–8426, or Eli H. Landy, FOIA Counsel, (202) 336–8418.

**SUPPLEMENTARY INFORMATION:** This revision of Part 706 incorporates changes to the language and structure of the regulations and adds new provisions to implement the EFOIA (Pub. L. 104–231). New provisions implementing the amendments are found at § 706.12 (defining "search" to include electronic searches), § 706.21 (electronic reading room), § 706.31 (format of disclosure), § 706.32 (timing of responses), and § 706.33 (material withheld). OPIC is already complying with these statutory requirements; this proposed revision serves as OPIC's formal codification of the applicable law and its practice.

Under the EFOIA, an agency may provide by regulation for multiple "tracks" in responding to FOIA requests, depending upon the amount of time and work entailed in responding to different kinds of requests ("multitrack processing"). OPIC has decided not to propose multitrack processing. Because OPIC receives a limited number of FOIA requests each year and is able to respond to the great majority of them on a timely basis, OPIC does not need to provide separate processing tracks for more complicated versus simpler FOIA requests.

Proposed revisions of OPIC's fee schedule can be found at § 706.34. The duplication charge will remain fifteen cents per page, while the document search and review charges will increase to $16 and $35 per hour, respectively. The amount at or below which OPIC will not charge a fee is set at $15.

This revision also notifies OPIC's business submitters of the Federal Records Act requirement that OPIC transfer legal custody and control of certain records to the National Archives pursuant to applicable federal records schedules.

**Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. 601)**

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the head of OPIC has certified that this regulation, as promulgated, will not have a significant economic impact on a substantial number of small entities. The proposed rule implements the FOIA, a statute concerning the release of federal records, and does not economically impact Federal Government relations with the private sector. Further, under the FOIA, agencies may recover only the direct costs of searching for, reviewing, and duplicating the records processed for requesters. Based on OPIC's experience, these fees are nominal.

**Executive Order 12866**

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Office of Management and Budget has determined that this proposed rule is a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and, accordingly, that Office has reviewed this rule.

**Unfunded Mandates Reform Act of 1995**

This regulation will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

**Small Business Regulatory Enforcement Fairness Act of 1996**

This proposed rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This regulation will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

**List of Subjects in 22 CFR Part 706**

Confidential business information, Freedom of information.

For the reasons stated in the preamble, OPIC proposes to revise 22 CFR Part 706 to read as follows:

## PART 706—INFORMATION DISCLOSURE

**Subpart A—General**

Sec.
706.11 General provisions.
706.12 Definitions.

**Subpart B—Procedures for Obtaining Publicly Available Records**

706.21 What types of OPIC records are publicly available, and how do I obtain access to or copies of these records?

**Subpart C—Procedures for Obtaining Records Under the FOIA**

706.31 How do I request copies of or access to OPIC records that are not otherwise available to the public?
706.32 When will I receive a response to my FOIA request?
706.33 How will OPIC respond to my FOIA request?
706.34 What, if any, fees will I be charged?
706.35 When will OPIC reduce or waive fees?
706.36 How may I appeal a partial or total denial of records?

**Subpart D—Rights of Submitters of Confidential Business Information**

706.41 How should business submitters designate business information in materials submitted to OPIC?
706.42 When will OPIC notify business submitters of a pending FOIA request?
706.43 Who will OPIC notify if a FOIA civil lawsuit is filed?
706.44 What happens to business information contained in OPIC records transferred to the National Archives of the United States?

**Authority:** 5 U.S.C. 552; 44 U.S.C. 2901, *et seq.*; Executive Order 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

### Subpart A—General

**§ 706.11 General provisions.**

(a) *Purpose.* The purpose of this part is to help interested parties obtain access to the Overseas Private Investment Corporation's (OPIC's)

records. Many OPIC records may be accessed by the public without filing a formal request under the Freedom of Information Act (FOIA). Records that are not routinely available, however, must be requested under the FOIA. This part also informs OPIC's business submitters of their right to be notified of a request for disclosure of business information and to object to such disclosure. Finally, this part provides information about FOIA requests for records that OPIC has transferred to the National Archives of the United States (National Archives).

(b) *Policy.* OPIC's policy is to make its records available to the public to the greatest extent possible, in keeping with the spirit of the FOIA. This policy includes providing reasonably segregable information from documents that also contain information that may be withheld under the FOIA. However, implementation of this policy also reflects OPIC's view that the soundness and viability of many of its programs depend in large measure upon full and reliable commercial, financial, technical and business information received from applicants for assistance and that the willingness of those applicants to provide such information depends on OPIC's ability to hold it in confidence. Consequently, except as provided by applicable law and this part, information provided to OPIC in confidence will not be disclosed without the submitter's consent.

(c) *Scope.* This part applies to all agency records in OPIC's possession and control. This part does not compel OPIC to create records or to ask outside parties to provide documents in order to satisfy a FOIA request. OPIC may, however, in its discretion and in consultation with a FOIA requester, create a new record as a partial or complete response to a FOIA request. In responding to requests for information, OPIC will consider only those records within its possession and control as of the date of the request. This regulation does not apply to requests for records under the Privacy Act, 5 U.S.C. 552a. OPIC regulations governing such requests are located at 22 CFR part 707.

(d) *OPIC Internet site.* OPIC maintains an Internet site at www.opic.gov. This site contains information on OPIC functions, activities, programs, and transactions. OPIC encourages all prospective requesters of information, whether under FOIA or otherwise, to visit its Internet site prior to submitting a request.

(e) *OPIC address.* OPIC is located at 1100 New York Avenue, N.W., Washington, D.C. 20527. All correspondence should be sent to this address.

**§ 706.12 Definitions.**

For purposes of this part, the following definitions shall apply:

*All other requesters.* Requesters other than commercial use requesters, educational and non-commercial scientific requesters, or representatives of the news media.

*Business information.* Trade secrets and confidential or privileged commercial or financial information obtained from any person, including, but not necessarily limited to, information contained in individual case files relating to such activities as insurance, loans and loan guaranties.

*Business submitter.* Any person that provides business information to OPIC.

*Educational institution.* A preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, or an institution of professional or vocational education.

*FOIA.* The Freedom of Information Act, as amended, 5 U.S.C. 552.

*Non-commercial scientific institution.* An institution that is operated for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry, and that is not operated solely for purposes of furthering a business, trade, or profit interest.

*OPIC.* The Overseas Private Investment Corporation.

*Person.* An individual, partnership, corporation, association, or organization, other than a federal government agency.

*Record.* All papers, memoranda, or other documentary material, or copies thereof, regardless of physical form or characteristics, created or received by OPIC and within OPIC's possession and control. *Record* does not include publications that are available to the public through the **Federal Register**, sale or free distribution.

*Redaction.* The process of removing non-disclosable material from a record so that the remainder may be released.

*Representative of the news media.* A person actively gathering information on behalf of an entity organized and operated to publish or broadcast news to the public. Freelance journalists shall qualify as representatives of the news media when they can demonstrate that a request is reasonably likely to lead to publication.

*Request.* Any request made to OPIC under the FOIA.

*Requester.* Any person making a request.

*Review.* The examination of a record located in response to a request in order to determine whether any portion of the record is exempt from disclosure. *Review* also includes processing any record for disclosure—for example, doing all that is necessary to redact and prepare the record for disclosure. *Review* also includes time spent considering any formal objection to disclosure made by a business submitter, but does not include time spent resolving general legal or policy issues regarding the application of exemptions.

*Search.* The process of looking for and retrieving records or information responsive to a request. It includes page-by-page or line-by-line identification of information within records and also includes reasonable efforts to locate and retrieve information from records maintained in electronic form or format.

*Working days.* All calendar days excluding Saturdays, Sundays, Federal Government holidays, and any other day on which OPIC is not open for business.

## Subpart B—Procedures for Obtaining Publicly Available Records

**§ 706.21 What types of OPIC records are publicly available, and how do I obtain access to or copies of these records?**

(a) *Electronic access.* (1) Many OPIC records are readily available to the public by electronic access, including OPIC's Annual Report, OPIC's Program Handbook, OPIC press releases, and application forms for OPIC assistance. Persons seeking information are encouraged to visit OPIC's Internet site at: *www.opic.gov.*

(2) Records relating to OPIC's FOIA program, including records required by the FOIA to be made electronically available, records which have been the subject of frequent FOIA requests, and OPIC's annual FOIA Report are available in OPIC's Electronic Reading Room. OPIC's Electronic Reading Room may be accessed through the "FOIA" link on OPIC's Internet site at: *www.opic.gov.* The Electronic Reading Room also contains an index of records available electronically. Generally, only records created after November 1, 1996 are available electronically.

(b) *Offline access.* Publicly-available OPIC materials are readily available on OPIC's Internet site at *www.opic.gov.* If you do not have access to the Internet, you may obtain many of the same materials by contacting one or more of the sources listed as follows:

(1) *General information.* General information (*e.g.*, OPIC's Annual Report, OPIC's Program Handbook, and

application forms for OPIC assistance) are available from OPIC's Information Officer. To obtain access to or copies of these records, call (202) 336–8400 and ask to be connected with the Information Officer or write to the Information Officer.

(2) *Claims information.* OPIC's Department of Legal Affairs maintains public information files relating to the determination of claims filed under OPIC's political risk insurance contracts and a list of all claims resolved by cash settlements or guaranties. To obtain access to or copies of these records, call (202) 336–8400 and ask to be connected with the Claims Assistant in Legal Affairs or write to the Claims Assistant, Department of Legal Affairs.

(3) *Materials concerning OPIC's Board of Directors.* The Corporate Secretary maintains public information files containing the minutes of the public portions of Board of Directors meetings, as well as public-releasable Board resolutions. To obtain access to or copies of these records, call (202) 336–8400 and ask to be connected with the Corporate Secretary or write to the Corporate Secretary.

(4) *Press releases.* OPIC's Press Office maintains copies of OPIC's press releases. To obtain access to or copies of these records, call (202) 336–8400 and ask to be connected with the Press Office or write to the Press Office.

(5) *Reading room material.* Pursuant to the FOIA, OPIC maintains certain documents for public inspection and photocopying, including documents that have been the subject of frequent FOIA requests. To obtain access to or copies of these records, call (202) 336–8400 and ask to be connected with the FOIA Director or write to the FOIA Director. OPIC maintains an index of FOIA reading room records, which is updated regularly.

## Subpart C—Procedures for Obtaining Records Under the FOIA

### § 706.31 How do I request copies of or access to OPIC records that are not otherwise available to the public?

(a) *Submitting a request.* To request records that are not otherwise available to the public, submit a written request to OPIC's FOIA Director either by mail, by hand delivery, or by facsimile transmission to (202) 408–0297. You must sign your request, or it must be signed on your behalf, and the request must state that you are requesting records under the FOIA. Your request is considered received by OPIC upon actual receipt by OPIC's FOIA Director.

(b) *Format.* Although FOIA requests do not need to follow a specific format, you must include the following information:

(1) You must reasonably describe the records you seek. This means that you must provide enough detail to enable OPIC personnel to locate the records with a reasonable amount of effort. Whenever possible, your request should include specific information about each record sought, such as the date, title or name, author, recipient, and subject matter of the record. Any request that does not reasonably describe the records sought will not be considered received by OPIC until the request is clarified. OPIC will make reasonable efforts to contact you to clarify your request, as necessary.

(2) You must state the format (*e.g.*, paper, computer disk, etc.) in which you would like OPIC to provide the requested records. If you don't state a preference, you will receive any released records in the format most convenient to OPIC.

(3) You must include your mailing address and telephone number.

(4) You must state your willingness to pay all costs chargeable under this part or, alternately, your willingness to pay fees up to a specified limit. If you believe that you qualify for a partial or total fee waiver, you should request a waiver and provide justification as required by § 706.35. If your request does not contain a fee statement or a request for a fee waiver, OPIC will advise you of the requirements of this paragraph (b)(4). If you fail to respond within ten working days of such notification, OPIC will not continue to process your request.

### § 706.32 When will I receive a response to my FOIA request?

(a) *General.* The FOIA requires OPIC to respond within twenty working days after the date on which OPIC's FOIA Director received the request.

(b) *Order of processing.* Generally, OPIC responds to FOIA requests in the order in which they are received.

(c) *Extensions.* (1) In unusual circumstances, OPIC may require an extension of time in which to respond to your request. OPIC will provide written notice to you whenever such unusual circumstances exist. Unusual circumstances may include: the need to search for and collect requested records from storage facilities located outside OPIC's premises; the need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are requested in a single request; or the need for consultation with another agency having a substantial interest in the request. If the extension is expected to exceed ten working days, OPIC will offer you the opportunity to:

(i) Alter your request so that processing may be accelerated; or

(ii) Propose an alternative, feasible time frame for processing the request.

(2) Where OPIC reasonably believes that multiple requests submitted by a requester, or by a group of requesters acting in concert, constitute a single request that would otherwise involve unusual circumstances, and the requests involve clearly related matters, they may be aggregated for purposes of this section.

(d) *Expedited processing.* (1) OPIC will expedite processing of your FOIA request if you provide information indicating that one of the following factors is present:

(i) Circumstances in which the lack of expedited treatment could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) An urgent need to inform the public about an actual or alleged federal government activity, if the request is made by a person primarily engaged in disseminating information.

(2) You may make a request for expedited processing at the time you submit your FOIA request or at any later time. If you make such a request, you must submit a statement, certified to be true and correct to the best of your belief, explaining in detail the basis for requesting expedited processing. OPIC will notify you of its determination concerning your request for expedited processing within ten days after the date of your request. You may appeal a denial of a request for expedited processing under the provisions at § 706.36. OPIC will grant expedited consideration to any such appeal.

### § 706.33 How will OPIC respond to my FOIA request?

(a) *OPIC response.* You will be notified in writing once OPIC makes a determination concerning your request. OPIC will respond by providing the requested records to you in whole or in part and/or by denying your request in whole or in part, or by notifying you that OPIC will produce or withhold, in whole or in part, the requested records. If there are fees owing, OPIC will respond to you once you have paid the fees.

(1) *Segregable records.* If OPIC determines that part(s) of a record are exempt from disclosure under the FOIA, any reasonably segregable part of the record will be provided to you after redaction of the exempt material. OPIC will mark or annotate any such record to show both the amount and the

location of the redacted information wherever practicable. If segregation would render the document meaningless, however, OPIC will withhold the entire record.

(2) *Denials.* A denial is a determination to withhold any requested record in whole or in part, a determination that a requested record cannot be located, or a determination that what you requested is not a record subject to the FOIA. If OPIC denies all or part of your request, you will be provided:

(i) The name, title, and signature of the person responsible for the determination;

(ii) The statutory basis for non-disclosure;

(iii) A statement that the denial may be appealed under § 706.36 and a brief description of the requirements of § 706.36; and

(iv) If entire documents or document pages are withheld, an estimated volume of the amount of material withheld unless providing such an estimate would harm an interest protected by the FOIA exemption under which the denial is made.

(b) *Referrals to other government agencies.* If you request a record in OPIC's possession that was created or classified by another Federal agency, your request will be referred to that agency for direct response to you. OPIC will notify you of any such referral.

**§ 706.34 What, if any, fees will I be charged?**

(a) *General policy.* You will generally be charged for costs incurred by OPIC in complying with your FOIA request, in accordance with paragraph (c) of this section and as required or permitted by law. As explained more fully in paragraph (c) of this section, fees will vary according to your requester status.

(1) Search fees are $16 per hour.

(2) Review fees are $35 per hour.

(3) Duplication costs are $.15 per page for photocopying, and direct costs for all other media (including any operator time involved).

(b) *Anticipated fees.* Your FOIA request must specifically state that all costs chargeable under this section will be paid or, alternatively, that they will be paid up to a specified limit. If your request makes no reference to anticipated fees and your request is expected to involve fees of more than $25, or OPIC estimates that the fees will exceed the dollar limit specified in your request, OPIC will promptly notify you of the estimated fees.

(c) *Uniform Fee Schedule.* Fees will be charged according to your requester status.

(1) *Commercial use requesters.* Commercial use requesters will be charged the cost of all time spent searching for and reviewing for release the requested records, and for all duplication costs.

(2) *Educational and non-commercial scientific institution requesters.* Educational and non-commercial scientific institution requesters will be charged only the costs of duplication. No fee will be charged for the costs of photocopying the first 100 pages of documents or for the first $15 of other media costs. To be eligible for inclusion in this category, you must show that your request is being made under the auspices of a qualifying educational institution or non-commercial scientific institution and that the records are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(3) *Representatives of the news media.* Representatives of the news media will be charged only the costs of duplication. No fee will be charged for the costs of photocopying the first 100 pages of documents or for the first $15 of other media costs. To be eligible for inclusion in this category, you must be a representative of the news media and your request must not be made for a commercial use. A request for records that supports the news dissemination function of the requester is not considered to be a request that is for a commercial use.

(4) *All other requesters.* All other requesters will be charged for the cost of any search time in excess of two hours, photocopying any documents in excess of 100 pages, and any costs in excess of the first $15 of other media costs.

(d) *Fees for searches that produce no records.* Fees will be charged as provided in this section even if OPIC's search and review does not generate any disclosable records.

(e) *Special services charges.* At its discretion, OPIC may comply with requests for special services such as certification of documents or shipping methods other than regular U.S. mail. You will be charged the direct costs of any such services.

(f) *Advance payments.* Where OPIC estimates that allowable fees are likely to exceed $250, you will be required to make an advance payment of the entire fee before OPIC continues to process your request. You will be provided an opportunity to narrow the scope of your request if you do not want to pay the entire amount of the estimated fees.

(g) *Restrictions on assessing fees.* With the exception of commercial use requesters, the FOIA requires agencies to provide the first 100 pages of photocopying and the first two hours of search time to requesters without charge. Moreover, the FOIA prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of collecting the fee would be equal to or greater than the fee itself. OPIC has determined that its cost of collecting a FOIA fee is $15. In implementing these provisions, OPIC will not begin to assess fees until after providing the free search and reproduction, except for commercial use requesters. For example, for a request that would involve two hours and ten minutes of search time and results in 105 pages of documents, OPIC will determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost is equal to or less than the cost of collecting the fee, there will be no charge to the requester.

(h) *Failure to pay fees.* (1) OPIC will begin assessing interest charges on the 31st day following the date of billing. Interest will be at the rate prescribed in section 3717 of Title 31 of the United States Code.

(2) If you previously failed to pay a FOIA fee to OPIC in a timely fashion, you must pay the full amount owed plus any applicable interest as provided above and make an advance payment of the full amount of the estimated fee before OPIC processes a new FOIA request from you.

(3) When OPIC acts under paragraph (h)(1) or (2) of this section, the administrative time limits for processing FOIA requests (i.e. 20 working days from receipt of initial request and 20 working days from receipt of appeals plus permissible extensions) will begin only after OPIC has received full payment of all applicable fees and interest.

**§ 706.35 When will OPIC waive or reduce fees?**

(a) In accordance with the FOIA's fee waiver provisions, OPIC will furnish documents to you without charge or at a reduced charge if disclosure of the information you request is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in your commercial interest. In determining whether a fee waiver is appropriate, OPIC will consider the following factors:

(1) Whether the subject of the requested records concerns the

operations or activities of the government;

(2) Whether disclosure of the requested information is likely to contribute significantly to public understanding of government operations or activities;

(3) Whether you have the intention and ability to disseminate the information to the public;

(4) Whether the information is already in the public domain;

(5) Whether you have a commercial interest that would be furthered by the disclosure; and, if so,

(6) Whether the magnitude of your identified commercial interest is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in your commercial interest.

(b) *Justification.* In all cases, you have the burden of presenting sufficient evidence or information to justify the requested fee waiver or reduction.

(c) *Inspection.* You may come to OPIC's offices to inspect any releasable records that you requested, without charge to you except for search, review, and/or duplication fees which are otherwise payable.

(d) *Other provisions.* (1) *Aggregating requesters.* When OPIC reasonably believes that a requester or group of requesters is attempting to break down a request into a series of requests for the purpose of evading the assessment of fees, OPIC will aggregate any such requesters and charge accordingly.

(2) *Remittances.* All payments under this section should be in the form of a check or a bank draft drawn on a bank located in the United States. Remittances shall be made payable to the order of United States Treasury and mailed to the OPIC FOIA Director.

**§ 706.36 How may I appeal a partial or total denial of records?**

(a) *Procedure.* If your request for records has been denied in whole or in part, you may file an appeal within twenty working days following the date on which you receive OPIC's denial. Your appeal should be addressed to OPIC's Vice President and General Counsel. Your appeal is considered received by OPIC upon actual receipt by OPIC's Vice President and General Counsel. You should clearly mark your envelope and appeal letter as a "Freedom of Information Act Appeal." Your appeal letter should reasonably describe the information or records requested and any other pertinent facts and statements.

(b) *Response.* OPIC's Vice President and General Counsel or his/her designee will render a written decision within twenty working days after the date of OPIC's receipt of the appeal, unless an extension of up to ten working days is deemed necessary in accordance with the procedures set forth in § 706.32. If your appeal is denied in whole or in part, the decision will explain OPIC's rationale for upholding the denial. If your appeal is granted in whole or in part, the information or requested records will be made available promptly, provided the requirements of § 706.34 regarding payment of fees are satisfied.

## Subpart D—Rights of Submitters of Confidential Business Information

**§ 706.41. How should business submitters designate business information in materials submitted to OPIC?**

All business submitters should use good-faith efforts to designate, by appropriate markings, either at the time of submission or within a reasonable amount of time thereafter, any portions of their submissions that they consider to be protected from disclosure under the FOIA. These markings will be considered by OPIC in responding to a FOIA request, but such markings will not be dispositive as to whether the marked information is ultimately released.

**§ 706.42 When will OPIC notify business submitters of a pending FOIA request?**

(a) Except as provided in paragraphs (c) and (e) of this section, OPIC's FOIA Director will promptly notify a business submitter in writing that a request for disclosure has been made for any business information provided by the submitter. This notification will describe the nature and scope of the request, advise the submitter of its right to submit written objections in response to the request, and inform the submitter of OPIC's intent to disclose the business information on the expiration of ten working days from the date of the notice. The notice will either describe the business information requested or include copies of the requested records.

(b)(1) The business submitter may, at any time prior to the disclosure date described in paragraph (a) of this section, submit to OPIC's FOIA Director detailed written objections to the disclosure of the requested information, specifying the grounds upon which it contends that the information should not be disclosed. In setting forth such grounds, the submitter should specify, to the maximum extent feasible, the basis of its belief that the nondisclosure of any item of information requested is mandated or permitted by law. In the case of information that the submitter believes to be exempt from disclosure under subsection (b)(4) of the FOIA, the submitter shall explain why the information is considered a trade secret or commercial or financial information that is privileged or confidential and either:

(i) How disclosure of the information would cause substantial competitive harm to the submitter; or

(ii) Why the information should be considered voluntarily submitted and why it is information that would not customarily be publicly released by the submitter.

(2) Information provided by a business submitter pursuant to paragraph (b)(1) of this section may itself be subject to disclosure under the FOIA.

(c) The period for providing OPIC with objections to disclosure of information may be extended by OPIC upon receipt of a written request for an extension from the business submitter. Such written request shall set forth the date upon which the objections are expected to be completed and shall provide reasonable justification for the extension. OPIC may, in its discretion, permit more than one extension.

(d) OPIC may sustain or deny the submitter's objections, in whole or in part. If OPIC denies the submitter's objections, in whole or in part, OPIC will promptly notify the business submitter of its determination at least five working days prior to release of the information. The notification will include:

(1) A statement of the reasons for OPIC's decision not to sustain the business submitter's objections;

(2) A description of the information to be disclosed, or a copy thereof; and

(3) A specific disclosure date.

(e) OPIC will not ordinarily notify the business submitter pursuant to paragraph (a) of this section if:

(1) OPIC determines that the FOIA request should be (1) denied;

(2) The disclosure is required by law (other than pursuant to 5 U.S.C. 552); or

(3) The information has been published or otherwise made available to the public, including material described in § 706.21.

**§ 706.43 Who will OPIC notify if a FOIA civil lawsuit is filed?**

Whenever a requester files a lawsuit seeking to compel the disclosure of business information, OPIC will promptly notify any business submitter(s) that submitted information at issue in the lawsuit.

**§ 706.44 What happens to business information contained in OPIC records transferred to the National Archives of the United States?**

Pursuant to the Federal Records Act, 44 U.S.C. 2901, *et seq.*, OPIC transfers legal custody and control of records with permanent historical value to the National Archives. These records are transferred in accordance with OPIC's records retention schedules, which are approved by the Archivist of the United States. Transfers of project records generally occur five years after closeout of the project (e.g., most records are not transferred to the National Archives until they are at least 25 years old). If a FOIA request is made for records that have been transferred, the National Archives has the sole authority to review the records and determine whether or not to apply FOIA exemptions. The National Archives is not required to inform OPIC about the FOIA request or to seek OPIC's opinion on disclosure of the records.

Dated: May 3, 2000.

**Laura A. Naide,**

*FOIA Director and Senior Administrative Counsel.*

[FR Doc. 00–11504 Filed 5–10–00; 8:45 am]

BILLING CODE 3210–01–P

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### 31 CFR Part 10

**[REG–111835–99]**

**RIN 1545–AY05**

### Regulations Governing Practice Before the Internal Revenue Service

**AGENCY:** Office of the Secretary, Treasury.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** This document provides advance notice of proposed rulemaking to amend the regulations governing practice before the Internal Revenue Service (IRS), which appear in the Code of Federal Regulations and in pamphlet form as Treasury Department Circular No. 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers before the IRS. This document also invites individuals and organizations to submit comments on revising Circular No. 230 to address general standards of practice and standards of practice relating to tax shelters.

**DATES:** Submit comments on or before July 5, 2000.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG–111835–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–111835–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Submit comments and data via electronic mail (email) to http://www.irs.gov/tax_regs/regslist.html.

**FOR FURTHER INFORMATION CONTACT:** Concerning issues for comment, Richard Goldstein at (202) 622–7880; concerning submissions of comments and delivering comments, Guy Traynor, (202) 622–7180; (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 330 of title 31 of the United States Code authorizes the Secretary of the Treasury to regulate the practice of representatives before the Department and, after notice and an opportunity for a proceeding, to suspend or disbar from practice before the Department those representatives who are incompetent, disreputable, or who violate regulations prescribed under section 330. Pursuant to section 330, the Secretary has published the regulations in Circular No. 230 (31 CFR part 10). These regulations authorize the Director of Practice to act upon applications for enrollment to practice before the IRS, to institute proceedings for suspension or disbarment from practice before the IRS, to make inquiries with respect to matters under the Director's jurisdiction, and to perform such other duties as are necessary to carry out these functions.

The regulations have been amended from time to time to address various specific issues in need of resolution. For example, on February 23, 1984, the regulations were amended to provide standards for providing opinions used in tax shelter offerings (49 FR 6719). On October 17, 1985, the regulations were amended to conform to legislative changes requiring the disqualification of an appraiser who is assessed a penalty under section 6701 for aiding and abetting the understatement of a tax liability (50 FR 42014). The regulations were most recently amended on June 20, 1994 (59 FR 31523) to provide standards for tax return preparation, to limit the use of contingent fees in return or refund claim preparation, to provide expedited rules for suspension, and to clarify or amend certain other items.

On June 15, 1999, the Director of Practice published an advance notice of proposed rulemaking (64 FR 31994) requesting comments on amendments to the regulations that would take into account legal developments, professional integrity and fairness to practitioners, taxpayer service, and sound tax administration. The Treasury Department received several comments and is currently reviewing them. The 1999 advance notice of proposed rulemaking contemplated a notice of proposed rulemaking that would make general revisions to Circular No. 230.

## II. Tax Shelters

Following the release of the advance notice of proposed rulemaking, the Treasury Department issued a report on the proliferation of corporate tax shelters. See "The Problem of Corporate Tax Shelters: Discussion, Analysis and Legislative Proposals," Department of the Treasury, July 1999. In February of this year, the Treasury Department and the IRS took steps to deter abusive shelters by publishing temporary regulations requiring disclosure of certain transactions by corporate taxpayers (TD 8877, 65 FR 11205), registration of confidential corporate tax shelters (TD 8876, 65 FR 11215), and maintenance of lists of investors in certain tax shelters (TD 8875, 65 FR 11211).

In addition, practitioners and organizations, such as the Section of Taxation of the ABA, have recommended that the Treasury Department revise Circular No. 230 to raise the standards for providing advice with respect to corporate tax shelters. The Treasury Department and the IRS agree that it is appropriate to review the standards that should be followed by practitioners who provide advice with respect to such transactions.

## III. Request for Comments

The Treasury Department and the IRS invite comments relating to standards of practice governing tax shelters and other general matters. The Treasury Department and the IRS are particularly interested in receiving comments on the following matters.

*A. Opinion Standards of Circular No. 230*

1. Whether the opinion standards in § 10.33 (relating to tax opinions provided for the marketing of tax shelters) should be revised.

2. Whether Circular No. 230 should establish standards for tax opinions other than those provided for in § 10.33

or § 10.51 (relating to false opinions). Particularly, whether Circular No. 230 should establish standards for opinions intended to provide legal justification for the treatment of an item for purposes of § 1.6664–4(e) of the Regulations on Procedure and Administration (relating to the reasonable cause exception).

3. Whether an opinion provided for legal justification for purposes of § 1.6664–4(e) of the regulations should specifically state that it is provided for this purpose.

4. For purposes of the foregoing:

a. Whether the factual due diligence standards set forth in § 10.33(a)(1) should be applied to tax shelter opinions other than those provided for the marketing of tax shelters.

b. Whether the factual due diligence standards should be modified to further limit the circumstances under which a practitioner may rely on factual assertions of other persons and to require a practitioner to specify the measures taken to confirm the facts.

c. Under what circumstances, if any, Circular No. 230 should permit a practitioner to base an opinion upon hypothetical facts or factual assumptions and conclusions, including assumptions regarding the existence of a business purpose and the significance of such purpose relative to the intended tax benefits.

d. Whether Circular No. 230 should require that the opinion state that the transaction in question was analyzed under all applicable judicial doctrines (including the step transaction, business purpose, economic substance, substance over form, and sham transaction doctrines).

e. Whether Circular No. 230 should require that an opinion state unambiguously that there is a greater than 50 percent likelihood that the taxpayer will prevail with respect to each material tax issue and with respect to the material tax benefits in the aggregate.

*B. Contingent Fees*

1. Whether § 10.28 should prohibit a practitioner from charging a fee for an opinion or advice relating to a position taken or to be taken by a taxpayer in an original return where such fee is contingent upon whether the tax treatment of the transaction is sustained, and whether § 10.28 should prohibit a practitioner from providing an indemnity to a taxpayer with respect to a position taken or to be taken in an original return.

2. Whether § 10.28 should continue to permit a practitioner to charge a contingent fee for assisting a client in filing an amended return or claim for refund when the practitioner reasonably anticipates at the time the fee arrangement is entered into that the amended return or claim will receive substantive review from the Service.

*C. Conditions of Confidentiality*

1. Whether there are circumstances in which Circular No. 230 should prohibit a practitioner from agreeing to conditions of confidentiality other than conditions of confidentiality imposed by reasons of privilege. If so, how should confidentiality be defined?

2. Whether Circular No. 230 should prohibit a practitioner from asking a client to agree to conditions of confidentiality.

*D. Sanctions*

1. Whether § 10.24 should be modified to clarify what types of relationships with suspended persons are prohibited.

2. Whether there are circumstances in which a practitioner's failure to comply with the rules under Circular No. 230 should be attributed to the firm with which the practitioner is associated so that the practitioner and the firm (or all practitioners in the firm) may be subject to discipline under Circular No. 230.

3. Whether Circular No. 230 can or should provide a broader array of sanctions, such as censure, for violation of its provisions.

4. Whether the identities of those who are disciplined under Circular No. 230 should be exposed to greater publicity. If so, how should greater publicity be achieved?

*E. General Issues*

1. Whether § 10.7(c)(1) should be modified to permit, under limited circumstances, an individual who is not authorized to practice before the IRS to represent a taxpayer without obtaining authorization for a special appearance from the Director of Practice under § 10.7(d).

2. Whether and to what extent § 10.21 should be modified regarding the actions a practitioner must take when he or she discovers that there is an error or omission on a return or other document.

3. Whether § 10.22 should be modified to define what constitutes due diligence.

4. Whether § 10.29 should be expanded to define conflicting interests and to delineate what constitutes informed consent permitting a practitioner to represent clients with conflicting interests.

5. How the provisions of § 10.30(a)(2), regarding uninvited solicitations, should be modified in light of *Edenfield* v. *Fane*, 507 U.S. 761 (1993).

6. Whether the definition of communication in § 10.30(c) should be expanded specifically to include certain forms of electronic communications and whether there are any special considerations that should be addressed regarding these forms of communication for purposes of § 10.30.

7. Whether the § 10.51 definition of disreputable conduct should be expanded to include conviction of any felony.

In addition to the foregoing issues, the Treasury Department and the IRS invite comments on any other changes that are necessary or appropriate to carry out the purposes of Circular No. 230.

Dated: May 5, 2000.

**Neal Wolin,**

*General Counsel.*

[FR Doc. 00–11702 Filed 5–5–00; 3:35 pm]

BILLING CODE 4830–01–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[CGD01–00–004]**

**RIN 2115–AA97**

## Safety Zone: New York Harbor, Western Long Island Sound, East and Hudson Rivers Fireworks.

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish 20 permanent safety zones for fireworks displays located on New York Harbor, western Long Island Sound, the East River, and the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the events. This action establishes permanent exclusion areas that are only active prior to the start of the fireworks display until shortly after the fireworks display is completed, and is intended to restrict vessel traffic in a portion of New York Harbor, western Long Island Sound, the East and Hudson Rivers.

**DATES:** Comments and related material must reach the Coast Guard on or before June 12, 2000.

**ADDRESSES:** You may mail comments and related material to Waterways Oversight Branch (CGD01–00–004), Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from

the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–00–004), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. The comment period for this proposed regulation is 30 days. This time period is adequate to allow local input because the locations have been used for fireworks displays in previous years. The shortened comment period will still allow the full 30-day publication requirement prior to the final rule becoming effective. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

The Coast Guard proposes to establish 20 permanent safety zones that will be activated for fireworks displays occurring throughout the year that are not held on an annual basis but are normally held in one of these 20 locations. The 20 locations are Coney Island in New York Harbor; Elizabeth, New Jersey on the Arthur Kill; Peningo Neck, Satans Toe, Larchmont, Manursing Island, Glen Island, Twin Island, Davenport Neck, and two locations in Hempstead Harbor in western Long Island Sound; Pier 14, Manhattan, Hunters Point, and Wards Island in the East River; The Battery, Battery Park City, and Pier 90, Manhattan; Yonkers, Hastings-on-Hudson, and Pier D, Jersey City in the Hudson River. The Coast Guard received 33 applications for fireworks displays in these areas from 1998 to 1999. In 1997, the Coast Guard received 10 applications for fireworks displays in these locations. In the past, temporary safety zones were established with limited notice for preparation by the U.S. Coast Guard and limited opportunity for public comment. Establishing permanent safety zones by notice and comment rulemaking at least gives the public the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active. The Coast Guard has received no prior notice of any impact caused by the previous events. Marine traffic would still be able to transit around the proposed safety zones. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the proposed safety zones.

This proposed rule revises 33 CFR 165.168, which was published in the **Federal Register** on January 7, 2000 (65 FR 1065). It adds twenty permanent safety zones to the five existing ones in 33 CFR 165.168, and it lists all twenty five by the body of water in which they are located.

**Discussion of Proposed Rule**

The proposed sizes of these safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 6–12 inch mortars fired from a barge or shore, combined with the Coast Guard's knowledge of tide and current conditions in these areas. Proposed barge and land site locations, and mortar sizes were adjusted to try and ensure the proposed safety zone locations would not interfere with any known marinas or piers. The 20 proposed safety zones are:

*New York Harbor*

The proposed safety zone in Lower New York Bay includes all waters of Lower New York Bay within a 250-yard radius of the fireworks land shoot located on the south end of Steeplechase Pier, Coney Island, in approximate position 40°34′11″ N 073°59′00″ W (NAD 1983). The proposed safety zone prevents vessels from transiting a portion of Lower New York Bay, and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic will still be able to transit through Lower New York Bay during the event. Additionally, Steeplechase Pier does not accept marine traffic and there are no commercial or recreational piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone on the Arthur Kill includes all waters of the Arthur Kill within a 150-yard radius of the fireworks land shoot located in Elizabeth, New Jersey, in approximate position 40°38′50″ N 074°10′58″ W (NAD 1983), about 675 yards west of Arthur Kill Channel Buoy 20 (LLNR 36780). The proposed safety zone prevents vessels from transiting a portion of the Arthur Kill, and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic will still be able to transit through the southern 90 yards of the Arthur Kill opposite the display site in Elizabeth, New Jersey during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

*Western Long Island Sound*

The proposed safety zone at Peningo Neck includes all waters of western Long Island Sound within a 300-yard radius of the fireworks barge in approximate position 40°56′21″ N 073°41′23″ W (NAD 1983), about 525 yards east of Milton Point, Peningo Neck. The proposed safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone east of Satans Toe includes all waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°55′21″ N 073°43′41″ W (NAD 1983), about 635 yards northeast of Larchmont Harbor (East Entrance) Light 2 (LLNR 25720).

The proposed safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone off Larchmont, west of the entrance to Horseshoe Harbor includes all waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°54′45″ N 073°44′55″ W (NAD 1983), about 450 yards southwest of the entrance to Horseshoe Harbor. The proposed safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone south of Manursing Island includes all waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°57′47″ N 073°40′06″ W (NAD 1983), about 380 yards north of Rye Beach Transport Rock Buoy 2 (LLNR 25570). The proposed safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone east of Glen Island includes all waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°53′12″ N 073°46′33″ W (NAD 1983), about 350 yards east of the northeast corner of Glen Island. The proposed safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from commercial or recreational piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone around the southeast corner of Twin Island includes all waters of western Long Island Sound within a 200-yard radius of the fireworks land shoot in approximate position 40°52′10″ N 073°47′07″ W (NAD 1983), at the east end of Orchard Beach. The proposed safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone off Davenport Neck includes all waters of western Long Island Sound within a 360-yard radius of the fireworks barge in Federal Anchorage No. 1–A, in approximate position 40°53′46″ N 073°46′04″ W (NAD 1983), about 360 yards northwest of Emerald Rock Buoy (LLNR 25810). The proposed safety zone prevents vessels from transiting a portion of Federal Anchorage No. 1–A and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will be able to anchor in the unaffected northern and southern portions of Federal Anchorage No. 1–A. Federal Anchorage No. 1–B, to the north, and Federal Anchorage No. 1, to the south, are also available for vessel use. Marine traffic will still be able to transit through western Long Island Sound during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone in northern Hempstead Harbor, Long Island Sound, includes all waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51′58″ N 073°39′34″ W (NAD 1983), about 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065). The proposed safety zone prevents vessels from transiting a portion of Hempstead Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Hempstead Harbor during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone in southern Hempstead Harbor, Long Island Sound, includes all waters of Hempstead Harbor within a 180-yard radius of the fireworks barge in approximate position 40°49′50″ N 073°39′12″ W (NAD 1983), about 190 yards north of Bar Beach. The proposed safety zone prevents vessels from transiting a portion of Hempstead Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through Hempstead Harbor during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

*East River*

The proposed safety zone southeast of Pier 14, Manhattan, includes all waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°42′07.5″ N 074°00′06″ W (NAD 1983), about 250 yards southeast of Pier 14, Manhattan. The proposed safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will be able to transit through the eastern 100 yards and the western 70 yards of the 530-yard wide East River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

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The proposed safety zone west of Hunters Point includes all waters of the East River within a 300-yard radius of the fireworks barge in approximate position 40°44′24″ N 073°58′00″ W (NAD 1983), about 780 yards south of Belmont Island. The proposed safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 225 yards and the eastern 85 yards of the 900-yard wide East River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone at Wards Island includes all waters of the East River within a 150-yard radius of the fireworks land shoot in approximate position 40°46′55.5″ N 073°55′33″ W (NAD 1983), about 200 yards northeast of the Triboro Bridge. The proposed safety zone prevents vessels from transiting a portion of the East River and is needed to protect boaters from the hazards associated with fireworks launched from shore in the area. Marine traffic will still be able to transit through the eastern 150 yards of the 300-yard wide East River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

*Hudson River*

The proposed safety zone south of The Battery, Manhattan, includes all waters of the Hudson River and Anchorage Channel within a 360-yard radius of the fireworks barge in approximate position 40°42′00″ N 074°01′17″ W (NAD 1983), about 500 yards south of The Battery. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and Anchorage Channel and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 675 yards of the 1500-yard wide Hudson River and through the eastern 350 yards of the 1200-yard wide Anchorage Channel during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone southwest of North Cove Yacht Harbor, Manhattan, includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42′39″ N 074°01′21″ W (NAD 1983), about 480 yards southwest of North Cove Yacht Harbor. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 470 yards of the 1215-yard wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone west of Pier 90, Manhattan, includes all waters of the Hudson River within a 300-yard radius of the fireworks barge in approximate position 40°46′12″ N 074°00′18″ W (NAD 1983), about 425 yards west of the west end of Pier 90, Manhattan. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 175 yards and the eastern 140 yards of the 915-yard wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone west of Yonkers includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°56′14.5″ N 073°54′33″ W (NAD 1983), about 475 yards northwest of Yonkers Municipal Pier. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 715 yards and eastern 115 yards of the 1550 yard-wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone west of Hastings-on-Hudson includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°59′44.5″ N 073°53′28″ W (NAD 1983), about 425 yards west of Hastings-on-Hudson, NY. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 675 yards and eastern 60 yards of the 1315 yard-wide Hudson River during the event. Additionally, vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The proposed safety zone southeast of Pier D, Jersey City, includes all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42′57.5″ N 074°01′34″ W (NAD 1983), about 375 yards southeast of Pier D, Jersey City. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the eastern 440 yards of the 1120-yard wide Hudson River during the event. Additionally, Pier D does not accept marine traffic and vessels would not be precluded from mooring at or getting underway from any piers in the vicinity of the proposed safety zone. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this proposed safety zone.

The actual dates that these safety zones will be activated are not known by the Coast Guard at this time. Coast Guard Activities New York will give notice of the activation of each safety zone by all appropriate means to provide the widest publicity among the affected segments of the public. This will include publication in the Local Notice to Mariners. Marine information broadcasts will also be made for these events beginning 24 to 48 hours before the event is scheduled to begin. Facsimile broadcasts may also be made to notify the public. The Coast Guard expects that the notice of the activation of each permanent safety zone in this rulemaking will normally be made

between thirty and fourteen days before the zone is actually activated. Fireworks barges used in the locations stated in this rulemaking will also have a sign on the port and starboard side of the barge labeled "FIREWORKS BARGE". This will provide on-scene notice that the safety zone the fireworks barge is located in is or will be activated on that day. This sign will consist of 10″ high by 1.5″ wide red lettering on a white background. Displays launched from shore sites will have a sign labeled "FIREWORKS SITE" with the same size requirements. There will also be a Coast Guard patrol vessel on scene 30 minutes before the display is scheduled to start until 15 minutes after its completion to enforce each safety zone.

The effective period for each proposed safety zone is from 8 p.m. e.s.t. to 1 a.m. e.s.t. However, vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York, or designated Coast Guard patrol personnel on scene, as provided for in 33 CFR 165.23. Generally, blanket permission to enter, remain in, or transit through these safety zones will be given except for the 45-minute period that a Coast Guard patrol vessel is present.

This rule is being proposed to provide for the safety of life on navigable waters during the events and to give the marine community the opportunity to comment on the proposed zone locations, size, and length of time the zones will be active.

**Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This finding is based on the minimal time that vessels will be restricted from the zones, and all of the zones are in areas where the Coast Guard expects insignificant adverse impact on all mariners from the zones' activation. Vessels may also still transit through Lower New York Bay, the Arthur Kill, western Long Island Sound, the East and Hudson Rivers, and Anchorage Channel during these events. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones. Advance notifications would also be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts. Facsimile broadcasts may also be made to notify the public. Additionally, the Coast Guard anticipates that there will only be 20–25 total activations of these safety zones per year.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Port of New York/New Jersey and western Long Island Sound during the times these zones are activated.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: Vessel traffic could transit around all 20 safety zones. Vessels would not be precluded from getting underway, or mooring at, any piers or marinas currently located in the vicinity of the proposed safety zones. Before the effective period, we would issue maritime advisories widely available to users of the Port of New York/New Jersey by local notice to mariners and marine information broadcasts. Facsimile broadcasts may also be made.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**Federalism**

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes 20 safety zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Revise § 165.168 to read as follows:

**§ 165.168 Safety Zones: New York Harbor, Western Long Island Sound, East and Hudson Rivers Fireworks.**

(a) *New York Harbor.* Figure 1 displays the safety zone areas in (a)(1) through (a)(6).

(1) *Liberty Island Safety Zone:* All waters of Upper New York Bay within a 360-yard radius of the fireworks barge in approximate position 40°41′16.5″N 074°02′23″W (NAD 1983), located in Federal Anchorage 20–C, about 360 yards east of Liberty Island.

(2) *Ellis Island Safety Zone:* All waters of Upper New York Bay within a 360-yard radius of the fireworks barge located between Federal Anchorages 20–A and 20–B, in approximate position 40°41′45″N 074°02′09″W (NAD 1983), about 365 yards east of Ellis Island.

(3) *South Beach, Staten Island Safety Zone:* All waters of Lower New York Bay within a 360-yard radius of the fireworks barge in approximate position 40°35′11″N 074°03′42″W (NAD 1983), about 350 yards east of South Beach, Staten Island.

(4) *Raritan Bay Safety Zone:* All waters of Raritan Bay in the vicinity of the Raritan River Cutoff and Ward Point Bend (West) within a 240-yard radius of the fireworks barge in approximate position 40°30′04″N 074°15′35″W (NAD 1983), about 240 yards east of Raritan River Cutoff Channel Buoy 2 (LLNR 36595).

(5) *Coney Island Safety Zone:* All waters of Lower New York Bay within a 250-yard radius of the fireworks land shoot located on the south end of Steeplechase Pier, Coney Island, in approximate position 40°34′11″N 073°59′00″W (NAD 1983).

(6) *Arthur Kill, Elizabeth, New Jersey Safety Zone:* All waters of the Arthur Kill within a 150-yard radius of the fireworks land shoot located in Elizabeth, New Jersey, in approximate position 40°38′50″N 074°10′58″W (NAD 1983), about 675 yards west of Arthur Kill Channel Buoy 20 (LLNR 36780).

(b) *Western Long Island Sound.* Figure 2 displays the safety zone areas in (b)(1) through (b)(9).

(1) *Peningo Neck, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 300-yard radius of the fireworks barge in approximate position 40°56′21″N 073°41′23″W (NAD 1983), about 525 yards east of Milton Point, Peningo Neck, New York.

(2) *Satans Toe, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°55′21″N 073°43′41″W (NAD 1983), about 635 yards northeast of Larchmont Harbor (East Entrance) Light 2 (LLNR 25720).

(3) *Larchmont, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°54′45″N 073°44′55″W (NAD 1983), about 450 yards southwest of the entrance to Horseshoe Harbor.

(4) *Manursing Island, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°57′47″N 073°40′06″W (NAD 1983), about 380 yards north of Rye Beach Transport Rock Buoy 2 (LLNR 25570).

(5) *Glen Island, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 240-yard radius of the fireworks barge in approximate position 40°53′12″N 073°46′33″W (NAD 1983), about 350 yards east of the northeast corner of Glen Island, New York.

(6) *Twin Island, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 200-yard radius of the fireworks land shoot in approximate position 40°52′10″N 073°47′07″W (NAD 1983), at the east end of Orchard Beach, New York.

(7) *Davenport Neck, Western Long Island Sound Safety Zone:* All waters of western Long Island Sound within a 360-yard radius of the fireworks barge in Federal Anchorage No. 1–A, in approximate position 40°53′46″N 073°46′04″W (NAD 1983), about 360 yards northwest of Emerald Rock Buoy (LLNR 25810).

(8) *Glen Cove, Hempstead Harbor Safety Zone:* All waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51′58″N 073°39′34″W (NAD 1983), about 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065).

(9) *Bar Beach, Hempstead Harbor Safety Zone:* All waters of Hempstead Harbor within a 180-yard radius of the fireworks barge in approximate position 40°49′50″N 073°39′12″W (NAD 1983), about 190 yards north of Bar Beach, Hempstead Harbor, New York.

(c) *East River.* Figure 3 displays the safety zone areas in (c)(1) through (c)(3).

(1) *Pier 14, East River Safety Zone:* All waters of the East River within a 180-yard radius of the fireworks barge in approximate position 40°42′07.5″N 074°00′06″W (NAD 1983), about 250 yards southeast of Pier 14, Manhattan, New York.

(2) *Hunters Point, East River Safety Zone:* All waters of the East River within a 300-yard radius of the fireworks barge in approximate position 40°44′24″ N 073°58′00″W (NAD 1983), about 780 yards south of Belmont Island.

(3) *Wards Island, East River Safety Zone:* All waters of the East River within a 150-yard radius of the fireworks land shoot in approximate position 40°46′55.5″N 073°55′33″W (NAD 1983), about 200 yards northeast of the Triboro Bridge.

(d) *Hudson River.* Figure 4 displays the safety zone areas in (d)(1) through (d)(7).

(1) *Pier 60, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′49″N 074°01′02″W (NAD 1983), about 500 yards west of Pier 60, Manhattan, New York.

(2) *The Battery, Hudson River Safety Zone:* All waters of the Hudson River and Anchorage Channel within a 360-yard radius of the fireworks barge in approximate position 40°42′00″N 074°01′17″W (NAD 1983), about 500 yards south of The Battery, Manhattan, New York.

(3) *Battery Park City, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42′39″N 074°01′21″W (NAD 1983), about 480 yards southwest of North Cove Yacht Harbor, Manhattan, New York.

(4) *Pier 90, Hudson River Safety Zone:* All waters of the Hudson River within a 300-yard radius of the fireworks barge in approximate position 40°46′12″N 074°00′18″W (NAD 1983), about 425 yards west of the west end of Pier 90, Manhattan, New York.

(5) *Yonkers, New York, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°56′14.5″N 073°54′33″W (NAD 1983), about 475 yards northwest of the Yonkers Municipal Pier, New York.

(6) *Hastings-on-Hudson, New York, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°59′44.5″N 073°53′28″W (NAD 1983), about 425 yards west of Hastings-on-Hudson, New York.

(7) *Pier D, Hudson River Safety Zone:* All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°42′57.5″N 074°01′34″W (NAD 1983), about 375 yards southeast of Pier D, Jersey City, New Jersey.

(e) *Notification.* Coast Guard Activities New York will cause notice of the activation of these safety zones to be made by all appropriate means to effect the widest publicity among the affected segments of the public, including publication in the local notice to mariners, marine information broadcasts, and facsimile. Fireworks barges used in these locations will also have a sign on their port and starboard side labeled "FIREWORKS BARGE". This sign will consist of 10" high by 1.5" wide red lettering on a white background. Fireworks launched from shore sites will display a sign labeled "FIREWORKS SITE" with the same dimensions.

(f) *Effective Period.* This section is effective from 8 p.m. e.s.t. to 1 a.m. e.s.t. each day a barge with a "FIREWORKS BARGE" sign on the port and starboard side is on-scene or a "FIREWORKS SITE" sign is posted in a location listed in paragraphs (a) through (d) of this section. Vessels may enter, remain in, or transit through these safety zones during this time frame if authorized by the Captain of the Port New York or designated Coast Guard patrol personnel on scene.

(g) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

BILLING CODE 4910–15–U

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Illustrations to § 165.168

Figure 1
§ 165.168(a) New York Harbor Fireworks Safety Zones drawn to scale.

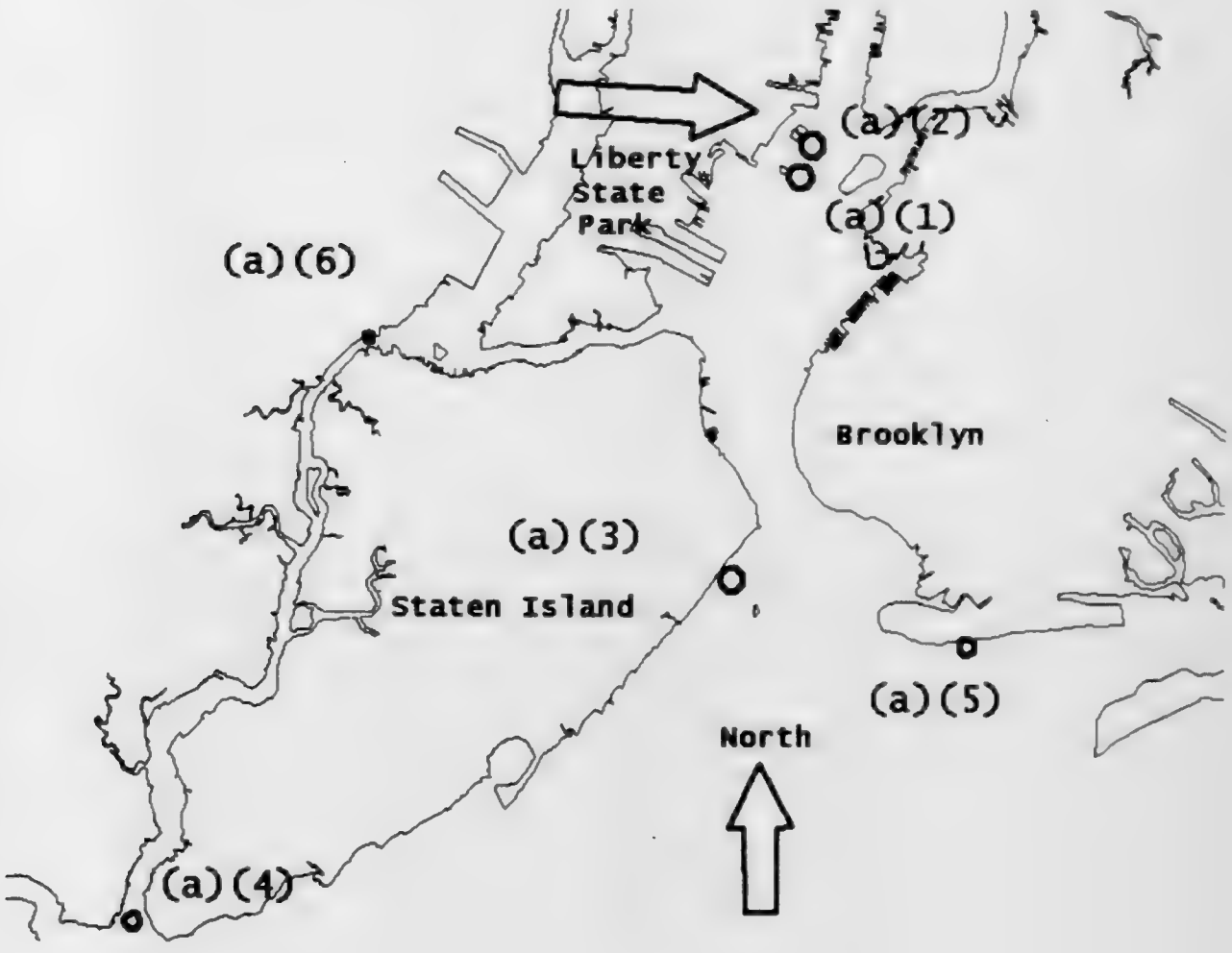

Figure 2
§ 165.168(b) Western Long Island Sound Fireworks Safety Zones drawn to scale.

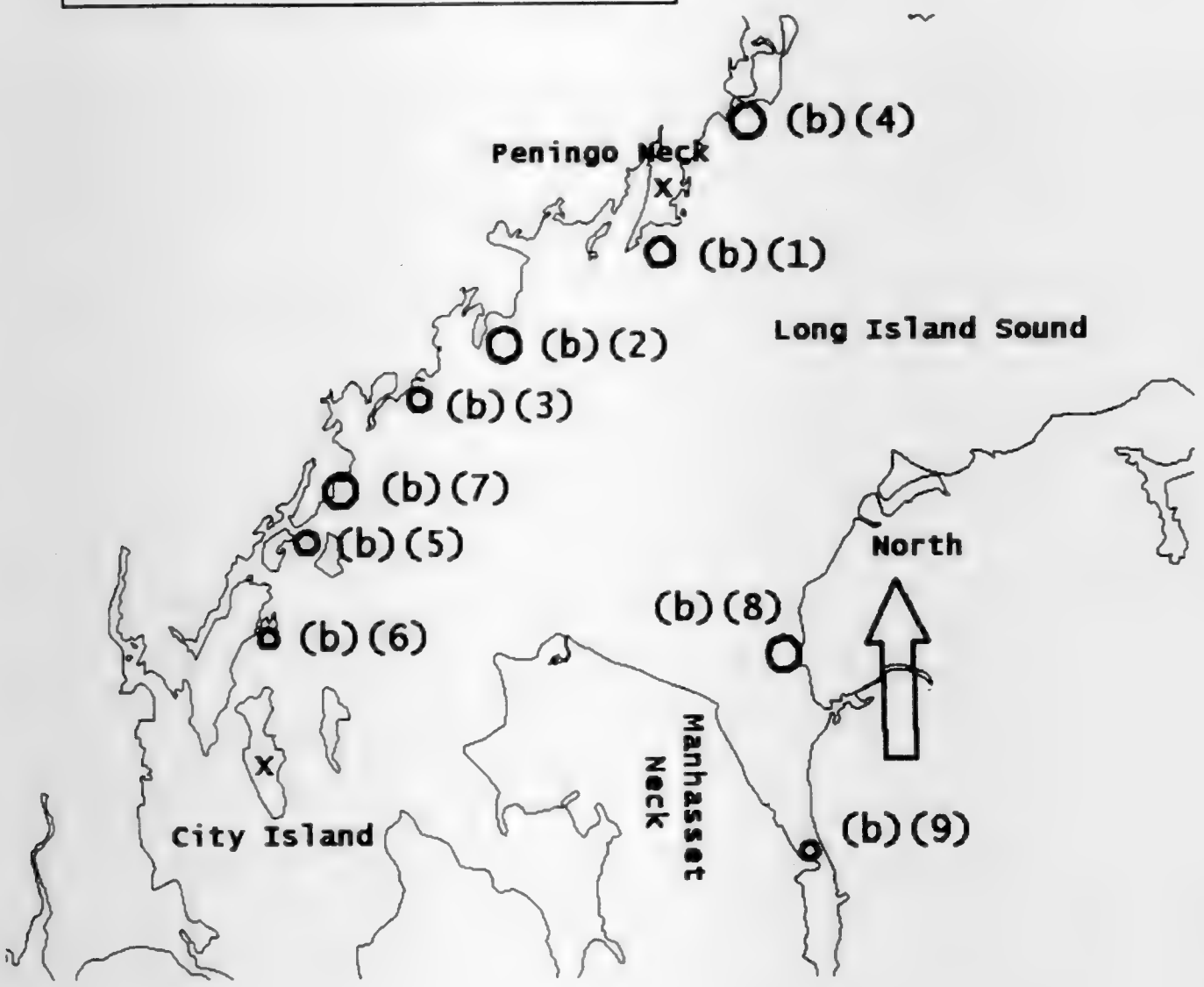


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Figure 3
§ 165.168(c) East River Fireworks Safety Zones drawn to scale.

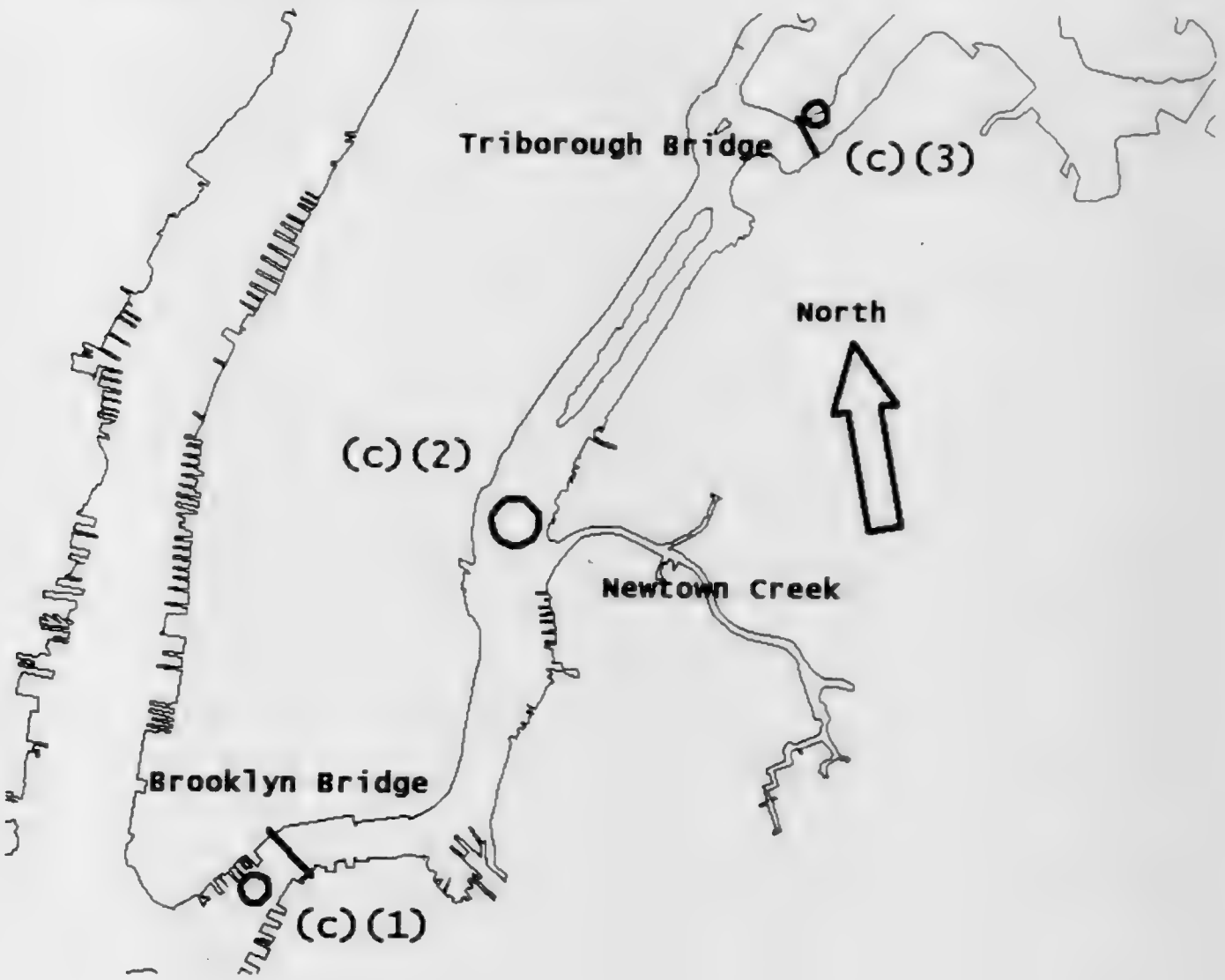

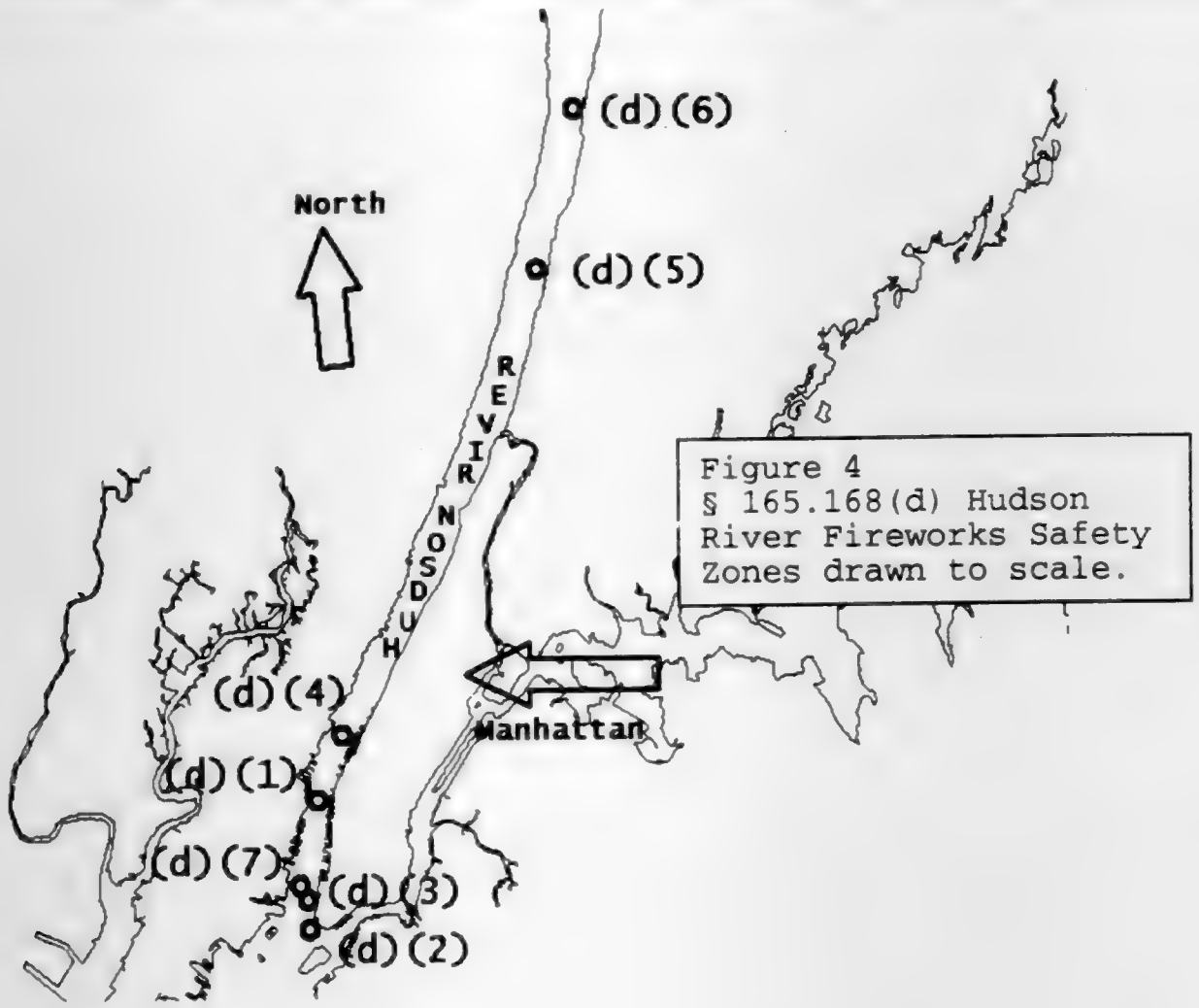


Figure 4
§ 165.168(d) Hudson River Fireworks Safety Zones drawn to scale.

Dated: May 4, 2000.

**L.M. Brooks,**

*Captain, U.S. Coast Guard, Captain of the Port, New York Acting.*

[FR Doc. 00–11873 Filed 5–10–00; 8:45 am]

BILLING CODE 4910–15–C

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[AL–53–200019(B); FRL–6605–7]**

## Approval and Promulgation of Implementation Plans; Alabama: Approval of Revisions to the Alabama State Implementation Plan: Transportation Conformity Interagency Memorandum of Agreement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Alabama State Implementation Plan (SIP) that contains transportation conformity rules. If EPA approves this transportation conformity SIP revision, the State will be able to implement and enforce the Federal transportation conformity requirements at the State level per regulations on Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. of the Federal Transit Laws. EPA's proposed action would streamline the conformity process and allow direct consultation among agencies at the local levels. EPA's proposed approval is limited to certain regulations on (Transportation Conformity).

In the Final Rules Section of this **Federal Register**, the EPA is approving Alabama SIP revision, under sections 110(k) and 176 of the Clean Air Act, as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before June 12, 2000.

**ADDRESSES:** All comments should be addressed to Kelly Sheckler at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the state submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Attn: Kelly Sheckler, (404) 562–9042.

Alabama Department of Natural Resources, Environmental Protection Division, Air Protection Division, 4244 International Parkway, Suite 136, Atlanta, Georgia 30354.

**FOR FURTHER INFORMATION CONTACT:** Kelly Sheckler at 404/562–9042, E-mail: Sheckler.Kelly@epa.gov.

Dated: April 28, 2000.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 00–11814 Filed 5–10–00; 8:45 am]

BILLING CODE 6560–50–P

# Notices

Federal Register
Vol. 65, No. 92
Thursday, May 11, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. TB–00–14]**

### Burley Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

*Name:* Burley Tobacco Advisory Committee.
*Date:* June 14, 2000.
*Time:* 9 a.m.
*Place:* Campbell House Inn, South Colonial Hall, 1375 Harrodsburg Road, Lexington, Kentucky 40504.
*Purpose:* To elect officers, recommend opening dates, discuss selling schedules, review the operational policies and procedures, and other related matters for the 2000–2001 burley tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, AG 0280, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456; (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by June 7, 2000, and inform us of your needs.

Dated: May 4, 2000.

**John P. Duncan III,**

*Deputy Administrator, Tobacco Programs.*

[FR Doc. 00–11838 Filed 5–10–00; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. TB–00–15]**

### Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

*Name:* Flue-Cured Tobacco Advisory Committee.
*Date:* June 15, 2000.
*Time:* 9 a.m.
*Place:* United States Department of Agriculture, (USDA), Agricultural Marketing Service (AMS), Tobacco Programs, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.
*Purpose:* To establish submarketing areas, discuss selling schedules, recommend opening dates, review the operational policies and procedures, and other related matters for the 2000 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, AG 0280, Room 502 Annex Building, P.O. Box 96456, Washington, D.C. 20090–6456; (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by June 7, 2000, and inform us of your needs.

Dated: May 4, 2000.

**John P. Duncan III,**

*Deputy Administrator, Tobacco Programs.*

[FR Doc. 00–11837 Filed 5–10–00; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 00–029–1]**

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Approved information collection extension; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of animal disease surveillance programs.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by July 10, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 00–029–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–029–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the use of VS Form 10–4, contact Mr. Carl Nagle, Administrative Officer, National Veterinary Services Laboratories, VS, APHIS, P.O. Box 844, Ames, IA 50010; (515) 663–7357. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

**SUPPLEMENTARY INFORMATION:**

*Title:* Specimen Submission.
*OMB Number:* 0579–0090.
*Expiration Date of Approval:* April 30, 2000.
*Type of Request:* Extension of a currently approved information collection.
*Abstract:* The United States Department of Agriculture is responsible for preventing the spread of

contagious, infectious, or communicable animal diseases from one State to another, and for eradicating such diseases from the United States when feasible.

Disease prevention is the most effective method for maintaining a healthy animal population and enhancing our ability to compete in exporting animals and animal products.

Disease prevention cannot be accomplished without the existence of an effective disease surveillance program, an activity that is carried out by the Veterinary Services (VS) division of USDA's Animal and Plant Health Inspection Service (APHIS). The VS Form 10–4 is a critical component of our disease surveillance mission; it is routinely used whenever specimens (such as blood, milk, tissue, or urine) from any animal (including cattle, swine, sheep, goats, horses, and poultry) are submitted to our National Veterinary Services Laboratories for disease testing.

We are asking the Office of Management and Budget (OMB) to approve, for an additional 3 years, our use of this VS Form 10–4 in connection with our regulations.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our Agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses).

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average .5 hours per response.

*Respondents:* State, Federal, and accredited veterinarians.

*Estimated annual number of respondents:* 12,000.

*Estimated annual number of responses per respondent:* 2.524.

*Estimated total annual burden on respondents:* 15,149 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 4th day of May 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–11831 Filed 5–10–00; 8:45 am]

BILLING CODE 3410–34–U

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 00–043–1]**

### National Wildlife Services Advisory Committee; Meeting

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** We are giving notice of a meeting of the National Wildlife Services Advisory Committee.

**DATES:** The meeting will be held on June 14–15, 2000, from 8 a.m. to 5 p.m.

**ADDRESSES:** The meeting will be held at the National Wildlife Research Center in the Longs Peak Room, 4101 LaPorte Avenue, Fort Collins, CO.

**FOR FURTHER INFORMATION CONTACT:** Ms. Joanne Garrett, Acting Director, Operational Support Staff, WS, APHIS, 4700 River Road Unit 87, Riverdale, MD 20737–1234; (301) 734–7921.

**SUPPLEMENTARY INFORMATION:** The National Wildlife Services Advisory Committee (Committee) advises the Secretary of Agriculture concerning policies, program issues, and research needed to conduct the Wildlife Services (WS) program. The Committee also serves as a public forum enabling those affected by the WS program to have a voice in the program's policies.

The meeting will focus on operational and research activities and will be open to the public. Due to time constraints, the public will not be able to participate in the Committee's discussions. However, written statements concerning meeting topics may be filed with the Committee before or after the meeting by sending them to Ms. Joanne Garrett at the address listed under **FOR FURTHER INFORMATION CONTACT**, or may be filed at the meeting. Please refer to Docket No. 00–043–1 when submitting your statements.

This notice of meeting is given pursuant to section 10 of the Federal Advisory Committee Act.

Done in Washington, DC, this 4th day of May 2000.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–11832 Filed 5–10–00; 8:45 am]

BILLING CODE 3410–34–U

## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### Request for Extension of a Currently Approved Information Collection

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Farm Service Agency (FSA) intends to request an extension for a currently approved information collection in support of the Agricultural Foreign Investment Disclosure Act of 1978 (AFIDA).

**DATES:** Comments on this notice must be received on or before July 10, 2000 to be assured consideration.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Blevins, Agricultural Foreign Investment Specialist, Regulatory Review and Foreign Investment Disclosure Branch, Operations Review and Analysis Staff, USDA, FSA, STOP 0540, 1400 Independence Avenue, SW, Washington, DC 20250–0540, (202) 720–0604.

**SUPPLEMENTARY INFORMATION:**

*Title:* Agricultural Foreign Investment Disclosure Act Report.

*OMB Control Number:* 0560–0097.

*Expiration Date of Approval:* August 31, 2000.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* AFIDA requires foreign persons who hold, acquire, or dispose of any interest in U.S. agricultural land to report the transactions to the FSA on an AFIDA report. The information so collected is made available to States. Also, although not required by law, the information collected from the AFIDA reports is used to prepare an annual report to Congress and the President concerning the effect of foreign investment upon family farms and rural communities so that Congress may review the annual report and decide if further regulatory action is required.

*Estimate of Burden:* Public reporting burden for this collection of information

is estimated to average .4818 hours per response.

*Respondents:* Foreign investors, corporate employees, farm managers or attorneys.

*Estimated Number of Respondents:* 4,375.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Responses:* 4,375.

*Estimated Total Annual Burden on Respondents:* 2,108 hours.

Proposed topics for comment include: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information collected; or (d) ways to minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to Patricia A. Blevins, Agricultural Foreign Investment Specialist, Regulatory Review and Foreign Investment Disclosure Branch, Operations Review and Analysis Staff, USDA, FSA, STOP 0540, 1400 Independence Avenue, SW, Washington, DC 20250–0540, (202) 720–0604.

All comments to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Signed at Washington, DC, on May 8, 2000.

**Keith Kelly,**

*Administrator, Farm Service Agency.*

[FR Doc. 00–11834 Filed 5–10–00; 8:45 am]

BILLING CODE 3410–05–P

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Revision to Section IV of the Field Office Technical Guide; Oregon and Washington State

**AGENCY:** Natural Resources Conservation Service

**ACTION:** Notice of change.

**SUMMARY:** Pursuant to Section 343 of Subtitle E of the Federal Agriculture Improvement and Reform Act of 1996 (FAIRA) that requires the Secretary of Agriculture to provide public notice and comment under Section 553 of Title 5, United States Code, with regard to any future technical guides that are used to carry out Subtitles A, B, and C of title XII of the Food Security Act of 1985 (16 U.S.C. 3801 *et seq.*), the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice of revisions to applicable conservation practices in Section IV of the Field Office Technical Guide (FOTG) located in Oregon and Washington State.

The proposed revisions to conservation practices in Section IV of State Technical Guides are subject to these provisions, since one or more could be used as part of a conservation management system to comply with the Highly Erodible Land Conservation or Wetland Conservation requirements.

At this time, two versions of conservation practice standard 777 Residue Management, Direct Seed (Interim) are being added and/or revised to Section IV of the FOTG; one for Oregon and one for Washington (see below):

- Residue Management, Direct Seed (Interim) (Oregon)—NRCS Code Number 777
- Residue Management, Direct Seed (Interim) (Washington)—NRCS Code Number 777

You may request a hard copy of the practice standards and provide your comments to:

Oregon

Roy Carlson, State Resource Conservationist, 101 SW Main Street, Suite 1300, Portland, OR, 97204–3221, (503) 414–3277

Washington

Marty Seamons, Program Support Specialist, W. 316 Boone Avenue, Suite 450, Spokane, WA 99201–2348, (509) 323–2967

You may also obtain a copy of both Oregon and/or Washington's practice standard by accessing the NRCS Washington State Internet website. The internet address is: *http://www.wa.nrcs.usda.gov/nrcs/*

Click on "Field Office Technical Guide" on the left side of the page, then click on "Section IV," then "Index of Draft Standards and Specifications for Review and Comment," and finally click on the blue star of the appropriate standard.

Dated: April 28, 2000.

**Leonard Jordan,**

*State Conservationist.*

[FR Doc. 00–11842 Filed 5–10–00; 8:45 am]

BILLING CODE 3410–06–M

## AMTRAK REFORM COUNCIL

### Notice of Meeting

**AGENCY:** Amtrak Reform Council.

**ACTION:** Notice of Special Public Outreach Hearing for the State of California and a Public Business Meeting.

**SUMMARY:** As provided in section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a special public outreach meeting of the Council with representatives from the State of California to discuss Amtrak's California services and the California State Rail Program. The Council has invited to the Outreach Hearing, various state legislators, California Department of Transportation officials, various rail corridor officials, rail commuter officials, and Amtrak executives. They will discuss all aspects of current and future intercity railroad passenger service in the State of California.

**DATES:** The Special Public Outreach Hearing will be held on Thursday, May 18, 2000 from 9:00 a.m. to 5:00 p.m. and the Business Meeting will be held on Friday, May 19, 2000 from 8:00 a.m. to 12:00 p.m. Both the Hearing and Business Meeting are opened to the general public.

**ADDRESSES:** Both the Outreach Hearing and Business Meeting will take place in the Folsom Room at the Hilton Sacramento Arden West, 2200 Harvard Street, Sacramento, CA 95816. Persons in need of special arrangements should contact the person listed below.

**FOR FURTHER INFORMATION CONTACT:** Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, SW., Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061. You can also visit the ARC's website at www.amtrakreformcouncil.gov, for information regarding ARC's upcoming events, the agenda for meetings, the ARC's First Annual Report, information about the ARC Staff and the Council Members and much more.

**SUPPLEMENTARY INFORMATION:** The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions;

that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that, after two years, the ARC has the authority to determine whether Amtrak can meet certain financial goals specified under the ARAA and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President and Congressional leaders. Members serve a five-year term.

Issued in Washington, DC, May 4, 2000.

**Thomas A. Till,**

*Executive Director.*

[FR Doc. 00–11782 Filed 5–10–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Format for Petition Requesting Relief Under U.S. Countervailing Duty Law

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506 (c)(2)(A)).

**DATES:** Written comments must be submitted on or before July 10, 2000.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, (202) 482–3272, Email Lengelme@doc.gov., Department of Commerce, Room 5033, 14 & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202)482-3272.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument and instructions should be directed to: Norbert Gannon, Office of Policy, Import Administration, Room 3716, 14 & Constitution Ave, NW, Washington DC 20230; phone (202) 482–3605 and fax: (202) 482–2308.

**SUPPLEMENTARY INFORMATION:** *Abstract:* The International Trade Administration, Import Administration, AD/CVD Enforcement, implements the U.S. anti-dumping and countervailing duty law. Import Administration investigates allegations of unfair trade practices by foreign governments and producers and, in conjunction with the U.S. International Trade Commission, can impose duties on the product in question to offset the unfair practices. Form ITA 366–P—Format for Petition Requesting Relief Under the U.S. Countervailing Duty Law—is designed for U.S. companies or industries that are unfamiliar with the countervailing duty law and the petition process. The Form is designed for potential petitioners that believe a foreign competitor is being subsidized unfairly. Since a variety of detailed information is required under the law before initiation of a countervailing duty investigation, the Form is designed to extract such information in the least burdensome manner possible.

**I. Method of Collection**

Form ITA 366-P is sent by request to potential U.S. petitioners.

**II. Data**

*OMB Number:* 0625–0148.
*Form Number:* ITA–366P.
*Type of Review:* Regular Submission.
*Affected Public:* U.S. companies or industries that suspect the presence of unfair competition from subsidized foreign enterprises.
*Estimated Number of Respondents:* 5.
*Estimated Time per Response:* 40 hours.
*Estimated Total Annual Burden Hours:* 200.

Estimated Total Annual Cost: Assuming the number of petitioners remains the same, with a total of 40 hours per respondent, at an estimated cost of $70 per hour, the total annual cost is $14,000.

**III. Requested for Comments**

*Comments are invited on:* (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 5, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–11791 Filed 5–10–00; 8:45 am]

BILLING CODE 3510–CW–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Environmental Technologies Trade Advisory Committee (ETTAC)

**AGENCY:** International Trade Administration, US Department of Commerce.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Environmental Technologies Trade Advisory Committee will hold a plenary meeting from 9–4:30 on May 18, 2000. Lunch is not included. The ETTAC was created on May 31, 1994, to advise the U.S. government on policies and programs to expand U.S. exports of environmental products and services.

**DATE AND PLACE:** May 18, 2000. The meeting will take place in Room 6800 of the Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The plenary meeting will welcome new members, include an ethics briefing, guest speaker on AID-Trade issues, and round table discussion on the international water sector with senior government officials.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sage Chandler, Department of Commerce, Office of Environmental Technologies Exports. Phone: 202–482–1500.

Dated: May 1, 2000.

**Sage Chandler,**

*Designated Federal Official, Office of Environmental Technologies Exports.*

[FR Doc. 00–11752 Filed 5–10–00; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 042700B]**

### Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of an application for a scientific research/enhancement permit

(1250) and receipt of an application to modify a permit (1048).

**SUMMARY:** Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received a permit application from the Columbia River Inter-Tribal Fish Commission (CRITFC) at Portland, OR (1250); and NMFS has received an application for permit modifications from the Sonoma County Water Agency (SCWA) in Santa Rosa, CA (1048).

**DATES:** Comments or requests for a public hearing on either the new application or modification request must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 p.m. Pacific daylight time on June 12, 2000.

**ADDRESSES:** Written comments on either the new application or modification request should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For permit 1250: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (ph: 503–230–5400, fax: 503–230–5435).

For permit 1048: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (ph: 707–575–6066, fax: 707–578–3435).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

**FOR FURTHER INFORMATION CONTACT:** For permit 1048: Dan Logan, Protected Resources Division, Santa Rosa, CA (ph: 707–575–6053, fax: 707–578–3435, e-mail: Dan.Logan@noaa.gov).

For permit 1250: Herbert Pollard, Boise, ID (ph: 208–378–5614, fax: 208–378–5699, e-mail: Herbert.Pollard@noaa.gov)

**SUPPLEMENTARY INFORMATION:**

### Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

### Species Covered in This Notice

The following species, evolutionarily significant units (ESU's), and runs are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SnR) spring/summer, threatened SnR fall.

Coho salmon (*Oncorhynchus kisutch*): threatened Central California Coast (CCC).

Sockeye salmon (*Oncorhynchus nerka*): endangered SnR.

Steelhead (*Oncorhynchus mykiss*): threatened CCC, threatened SnR.

To date, protective regulations for threatened SnR steelhead under section 4(d) of the ESA have not been promulgated by NMFS. Protective regulations are currently proposed for threatened CCC and SnR steelhead (64 FR 73479, December 30, 1999). This notice of receipt of applications requesting takes of these species is issued as a precaution in the event that NMFS issues final protective regulations. The initiation of a 30-day public comment period on the applications, including their proposed takes of CCC or SnR steelhead, does not presuppose the contents of the eventual final protective regulations.

### New Application Received

CRITFC (1250) requests a 5-year permit that would authorize annual takes of adult and juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon associated with a hatchery supplementation program at Johnson Creek (JoCr), a tributary of the South Fork Salmon River in Idaho. The primary goal of CRITFC's proposed hatchery supplementation program is to forestall the extinction of the summer chinook salmon population in JoCr and to avoid further losses of the genetic variation that may be necessary to recover the stock. The objectives of CRITFC's program are to: (1) Establish an annual supply of chinook salmon broodstock capable of meeting annual supplementation production criteria, (2) maintain and restore natural spawning populations of chinook salmon in JoCr, (3) increase the species' chances for long-term survival by supplementing the natural production of chinook salmon in JoCr with hatchery-produced fish, (4) increase nutrient enrichment in JoCr, and (5) ultimately reestablish sport and tribal fisheries for chinook salmon in the Salmon River Basin. ESA-listed adult chinook salmon that return to the watershed each year are proposed to be captured at the JoCr weir, anesthetized, marked with external identifiers, and maintained in holding ponds for up to 24 hours. CRITFC proposes to retain a percentage of the ESA-listed adult chinook salmon that return to the weir each year for hatchery broodstock and to release all of the ESA-listed adult chinook salmon not retained for broodstock above the weir to spawn naturally. ESA-listed adult chinook salmon retained for broodstock are proposed to be transferred to adult holding ponds at the Idaho Department of Fish and Game's McCall Fish Hatchery or adjacent to the JoCr weir, inoculated for diseases, and spawned. The resulting progeny are proposed to be reared in the hatchery, tagged and/or marked with identifiers (coded wires, visual implant elastomer tags, passive integrated transponders), and released as smolts in the JoCr watershed where they will be allowed to acclimate prior to their volitional emigration to the ocean. Annual incidental takes of SnR sockeye salmon, SnR fall chinook salmon, and SnR steelhead associated with annual releases of juvenile fish from the program are also requested.

### Modification Request Received

SCWA requests a modification to permit 1048 for takes of adult and juvenile CCC steelhead associated with population studies, carcass counts, redd surveys, genetic analyses, and habitat quality evaluation. SCWA proposed to develop and implement a monitoring program to identify long-term population trends and stock size estimates that can be used to assist in the restoration of salmonid populations in the Russian River basin. Presently, permit 1048 authorizes intentional takes of adult and juvenile CCC coho salmon for projects within the Russian River basin. This requested modification

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would add intentional takes of adult and juvenile CCC steelhead to the SCWA permit.

Dated: May 3, 2000.

**Wanda L. Cain,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–11875 Filed 5–10–00; 8:45 am]

BILLING CODE 3510–22–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the United Arab Emirates

May 5, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, carryover, carryforward, carryforward used and the recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70225, published on December 16, 1999.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

May 5, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the United Arab Emirates and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 12, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 219 | 1,659,976 square meters. |
| 226/313 | 2,838,600 square meters. |
| 317 | 45,792,385 square meters. |
| 334/634 | 338,298 dozen. |
| 335/635/835 | 209,221 dozen. |
| 336/636 | 280,808 dozen. |
| 338/339 | 881,953 dozen of which not more than 535,311 dozen shall be in Categories 338–S/339–S [2]. |
| 340/640 | 469,758 dozen. |
| 341/641 | 432,944 dozen. |
| 342/642 | 360,854 dozen. |
| 347/348 | 596,492 dozen of which not more than 313,583 dozen shall be in Categories 347–T/348–T [3]. |
| 351/651 | 233,660 dozen. |
| 352 | 346,837 dozen. |
| 369–O [4] | 827,787 kilograms. |
| 369–S [5] | 124,337 kilograms. |
| 647/648 | 418,424 dozen. |
| 847 | 287,181 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 347–T: only HTS numbers 6103.19.2015, 6103.19.9020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.8010, 6112.11.0050, 6113.00.9038, 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–T: only HTS numbers 6104.12.0030, 6104.19.8030, 6104.22.0040, 6104.29.2034, 6104.62.2006, 6104.62.2011, 6104.62.2026, 6104.62.2028, 6104.69.8022, 6112.11.0060, 6113.00.9042, 6117.90.9060, 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[4] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S): 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[5] Category 369–S: only HTS number 6307.10.2005.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–11790 Filed 5–10–00; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Proposed Information Collection; Commander, Navy Recruiting Command

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Commander, Navy Recruiting Command announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by July 10, 2000.

**ADDRESSES:** Send written comments and recommendations on the proposed information collection to Navy Recruiting Command (Code 356), 5722 Integrity Drive, Millington, TN 38054–5057.

**FOR FURTHER INFORMATION CONTACT:** To request additional information or to obtain a copy of the proposal and associated collection instruments, contact NCCS George Pond at 901–874–9295 or Mr. Bob Phillips (Code 3561) at 901–874–9312.

**SUPPLEMENTARY INFORMATION:**

*Form Title and OMB Number:* Enlistee Financial Statement; OMB Control Number 0703–0020.

*Needs and Uses:* All persons interested in entering the U.S. Navy or U.S. Naval Reserve who have someone either fully or partially dependent on them for financial support, must provide information on their current financial situation which will determine if the individual will be able to meet his/her financial obligations on Navy pay. The information is provided by the prospective enlistee during an interview with a Navy recruiter. The information provided on NAVCRUIT Form 1130/13 is used by Navy recruiters and by recruiting management personnel in assessing the Navy applicant's ability to meet financial obligations, thereby preventing the enlistment of, and subsequent management difficulties with people who cannot reasonably expect to meet their financial obligations on Navy pay.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 47,630.

*Number of Respondents:* 86,600.

*Responses per Respondent:* 1.

*Average Burden per Response:* 33 minutes.

*Frequency:* On occasion.

**Authority:** 44 U.S.C. Sec. 3506(c)(2)(A)

Dated: May 2, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–11843 Filed 5–10–00; 8:45 am]

**BILLING CODE 3810–FF–P**

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Proposed Information Collection; Commander, Navy Recruiting Command

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Commander, Navy Recruiting Command announces a proposed extension of an approved public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by July 10, 2000.

**ADDRESSES:** Send written comments and recommendations on the proposed information collection to Navy Recruiting Command (Code 80), 5722 Integrity Drive, Millington, TN 38054–5057.

**FOR FURTHER INFORMATION CONTACT:** To request additional information or to obtain a copy of the proposal and associated collection instruments, contact Commander Howington at 901–874–9388.

**SUPPLEMENTARY INFORMATION:**

*Form Title and OMB Number:* Navy Advertising Effectiveness Study; OMB Control Number 0703–0032.

*Needs and Uses:* The Navy Advertising Effectiveness Study measures advertising effectiveness and provides data for strategies to be used in advertising. This information is used to determine management decisions on objectives and strategies of advertising, media selection, and the evaluation of the advertising and recruiting process.

*Affected Public:* Individuals or households.

*Annual Burden Hours:* 500.

*Number of Respondents:* 1,000.

*Responses per Respondent:* 1.

*Average Burden per Response:* 30 minutes.

*Frequency:* Semi-annually.

**Authority:** 44 U.S.C. 3506(c)(2)(A)

Dated: May 2, 2000.

**J. L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–11844 Filed 5–10–00; 8:45 am]

**BILLING CODE 3810–FF–P**

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Partially Exclusive License; National Technology Transfer Center (NTTC)

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Department of the Navy hereby gives notice of a prospective license to National Technology Transfer Center (NTTC), 316 Washington Ave, Wheeling, WV 26003 to the Government-owned invention described in U.S. Patent No. 5,601,452 issued on February 11, 1999 for "NON-ARCING CLAMP FOR AUTOMOTIVE BATTERY JUMPER CABLES" to Anthony A. Ruffa.

**DATES:** Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than June 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael J. McGowan, Patent Counsel, Naval Undersea Warfare Center, Newport Division (NUWCDIVNPT) Code 00OC, Bldg. 112T, 1176 Howell Street, Newport, RI 02841, telephone 1–401–832–4736.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: May 3, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.*

[FR Doc. 00–11845 Filed 5–10–00; 8:45 am]

**BILLING CODE 3810–FF–P**

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## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before July 10, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public

participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 5, 2000.

**William Burrow,**

*Leader, Information Management Group, Office of the Chief Information Officer.*

**Office of Elementary and Secondary Education**

*Type of Review:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Title:* Gun-Free Schools Act Report (KA).

*Frequency:* Annually.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs (primary).

*Reporting and Recordkeeping Hour Burden:*

*Responses:* 12672.

*Burden Hours:* 27042.

*Abstract:* The Gun-Free Schools Act (GFSA) requires each State to provide annual reports to the Secretary concerning implementation of the Act's requirements regarding expulsions from schools resulting from weapons violations. The GFSA requires the Secretary to report to Congress if any State is not in compliance with the GFSA, and requires the Secretary to collect data on the incidence of children with disabilities engaging in threatening behavior or bringing weapons to school.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (703) 426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–11792 Filed 5–10–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Notice of Availability of Solicitation

**AGENCY:** Idaho Operations Office, Department of Energy.

**ACTION:** Notice of availability of solicitation—biobased products industry.

**SUMMARY:** The U.S. Department of Energy (DOE), Idaho Operations Office (ID), on behalf of the Office of Industrial Technologies, is seeking applications from private and public institutions of higher learning to promote multidisciplinary education and training programs for graduate students at the Masters or Ph.D. levels in the area of renewable bioproducts. The emerging biobased products industry uses crops, trees, wastes and by-products to make chemical feedstocks and a huge range of everyday consumer goods, like plastics, paints and adhesives. Contributions to this new industry would come from traditional academic programs in crop production, such as agronomy, crop and soil sciences and forestry; programs in environmental sciences, such as ecology, and water and timber management; basic science programs, such as genomics, biology and microbiology; and, programs in industrial production technologies, such as fermentation design, fluid mechanics and systems management. The objective of this new education initiative is to produce graduates who can enter the complex biobased products industry and effectively integrate the knowledge from a wide range of technologies that are necessary for this industry to grow.

**DATES:** The deadline for receipt of applications is 3 p.m. MDT June 20, 2000.

**ADDRESSES:** Applications should be submitted to: Procurement Services Division, U. S. Department of Energy, Idaho Operations Office, Attention: Marshall Garr [DE–PS07–00ID13962], 850 Energy Drive, MS 1221, Idaho Falls, Idaho 83401–1563.

**FOR FURTHER INFORMATION CONTACT:** Marshall Garr, Contract Specialist, at *garrmc@id.doe.gov*, telephone (208) 526–1536.

**SUPPLEMENTARY INFORMATION:** The statutory authority for this program is the Federal Non-Nuclear Energy Research & Development Act of 1974 (Pub. L. 93–577). DOE anticipates approximately 3–5 grant awards will be made, ranging from approximately $70,000 to $100,000 each year for a maximum of three years in duration. These grants will cover both the costs for establishing a new cross-cutting academic and research program in this field as well as full stipends for 2 or so deserving graduate students at the Masters or Ph.D. level. The issuance date of Solicitation No. DE–PS07–00ID13962 will be May 5, 2000. The solicitation will be available in full text via the Internet at the following address: *http://www.id.doe.gov/doeid/psd/proc-div.html*. Technical and non-technical questions should be submitted in writing to Marshall Garr by e-mail *garrmc@id.doe.gov*, or facsimile at 208–526–5548 no later than May 19, 2000.

Issued in Idaho Falls on May 4, 2000.

**R. Jeffrey Hoyles,**

*Director, Procurement Services Division*

[FR Doc. 00–11867 Filed 5–10–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–267–000]**

### ANR Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

May 5, 2000.

Take notice that on May 1, 2000, ANR Pipeline Company (ANR) tendered for filing as part of FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to be effective June 1, 2000.

**Primary Case**

Twenty-Eighth Revised Sheet No. 17
Second Revised Sheet No. 141

**Alternate Case**

Alternate Twenty-Eight Revised Sheet No. 17

ANR states that this filing includes both a primary and an alternative set of tariff sheets. In its primary case, ANR seeks to reduce its currently effective cashout surcharge applicable to all cashout activity to $0.000, and implement an interim cashout surcharge applicable to service under Rate Schedules PTSB1, PTS–2 and PTS–3 for the purpose of giving ANR an opportunity to recover its cumulative cashout imbalance. The interim change of $0.0120 per Dth is estimated to be in effect for a period of one year. In the alternative, if the primary case is not accepted by the Commission, ANR proposes to increase its currently effective cashout surcharge, from $0.1211 per Dth to $0.3344, pursuant to section 15.5 of the General Terms and Conditions of its tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11779 Filed 5–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–268–000]**

### Destin Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff and Requests for Waiver

May 5, 2000.

Take notice that on May 2, 2000, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets attached as Appendix A to the filing, proposed to become effective June 1, 2000.

Destin states that the purpose of this filing is to make certain housekeeping changes and to reflect a change in operator status as a result of the pending sale of Southern Natural Gas Company's (Southern) one-third ownership interest in Destin to Amoco Destin Pipeline Company (Amoco). A change in operator status is necessitated since the original operator, Southern, will no longer be a member-owner of Destin. Amoco and Tejas Destin, LLC will jointly operate the Destin pipeline system as more fully described in the application.

Destin also requests waiver of Order No. 587–I, to implement Internet Communications by December 31, 2000, and of its tariff requirements to offer shippers the option of electronic service agreements and other legal documents.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11780 Filed 5–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–1026–000]**

### Indianapolis Power & Light Company; Notice of Informal Settlement Conference

May 5, 2000.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10 a.m. on Thursday, May 11, 2000, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Edith Gilmore at (202) 208–2158.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11774 Filed 5–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–176–019]**

### Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

May 5, 2000.

Take notice that on May 2, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Original Sheet No. 26K, to be effective May 1, 2000.

Natural states that the purpose of this filing is to implement a negotiated rate transaction with Central Illinois Light Company (CILCO) under Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural further states that this transaction is being filed in accordance with the Commission's ruling that a transportation rate inclusive of surcharges would be considered a negotiated rate transaction.

Natural requests waiver of section 49.1(e) of the General Terms and Conditions of its Tariff and of the Commission's Regulations, including the 30-day notice requirement of section 154.207, to the extent necessary to permit Original Sheet No. 26K to become effective May 1, 2000.

Natural states that copies of the filing are being mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion

to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11778 Filed 5–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–231–000]**

### Southern Natural Gas Company; Notice of Application

May 5, 2000.

Take notice that on April 28, 2000, Southern Natural Gas Company (Southern), AmSouth-Sonat Tower, 1900 Fifth Avenue North, Birmingham, Alabama 35203, filed in Docket No. CP00–231–000 an application pursuant to Section 7 of the Natural Gas Act (NGA), for a certificate of public convenience and necessity authorizing Southern to construct, install, and operate a 3,500 horsepower compressor unit at its existing Wrens Compressor Station in Jefferson County, Georgia, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Ms. Patricia S. Francis, Senior Counsel, Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563 or call (205) 325–7696.

Southern states that the proposed compressor addition is an integral part of an Offer of Settlement filed by Southern on March 10, 2000, in Docket Nos. RP99–496–000 and RP99–496–001 to resolve all outstanding issues in Southern's Section 4 rate proceeding. Southern also states that pursuant to Article X of the Offer of Settlement, it requests permission to roll the costs of the compressor addition into its system-wide rates in Southern's next rate case. Southern estimates that the compressor addition will cost about $5.2 million.

Southern states that the proposed compressor addition will improve system operations at a critical compressor station on Southern's South Maine Line which provides service to Southern's existing customers. Specifically, Southern states that the compressor addition will stabilize pressures at the eastern end of its system and will reduce the amount of switching between its South Main Lines and Wrens Savannah Lines.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before May May 26, 2000, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties, or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11773 Filed 5–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–48–000]**

### Tennessee Gas Pipeline Company; Notice of Site Visit

May 5, 2000.

On May 16 and 17, 2000 the Office of Energy Projects (OEP) staff will inspect Tennessee Gas Pipeline Company's (TGP) proposed route and potential alternative routes for the Londonderry 20" Replacement Project in Middlesex County, Massachusetts, and Hillsboro and Rockingham Counties, New Hampshire. The areas will be inspected by automobile and on foot. Representatives of TGP will accompany the OEP staff. Anyone interested in

participating in the site visits must provide their own transportation.

For additional information, contact Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11772 Filed 5–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–2325–000, et al.]**

### Indiana Michigan Power Company, et al.; Electric Rate and Corporate Regulation Filings

May 3, 2000.

[Docket No. ER00–2325–000]

**1. Indiana Michigan Power Company, d/b/a American Electric Power**

Take notice that the following filings have been made with the Commission:

Take notice that on April 27, 2000, Indiana Michigan Power Company, d/b/a American Electric Power (AEP), tendered for filing with the Commission Addenda to the service agreements under which AEP provides wholesale electric service to certain members of the Indiana Municipal Power Agency (IMPA). Specifically, AEP provides wholesale electric service to the City of Anderson and the Town of Frankton under AEP's FERC Rate Schedule 74 by a service agreement dated September 1, 1982, to the City of Columbia City under AEP's FERC Tariff MRS, Original Volume No. 4, by a service agreement dated May 14, 1968, and to the City of Richmond under AEP's Rate Schedule 70 by a service agreement dated January 2, 1977.

AEP requests that the Addenda be made effective beginning with the March 2000 billing month and states that a copy of its filing was served upon IMPA and the Indiana Utility Regulatory Commission.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. MidAmerican Energy Company**

[Docket No. ER00–2326–000]

Take notice that on April 27, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered for filing with the Commission a Non-Firm Transmission Service Agreement with Conectiv Energy Supply, Inc. dated April 14, 2000, entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of April 14, 2000, for the Agreement with Conectiv Energy, and accordingly seeks a waiver of the Commission's notice requirement.

MidAmerican has served a copy of the filing on Conectiv Energy, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Arizona Public Service Company**

[Docket No. ER00–2327–000]

Take notice that on April 27, 2000, Arizona Public Service Company (APS) tendered for filing Amendment No. 1 to APS–FPC Rate Schedule No. 23 with the Public Service Company of New Mexico (PNM) to change the termination provisions.

Copies of this filing have been served on PNM, the New Mexico Public Utilities Commission and the Arizona Corporation Commission.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Southern Indiana Gas and Electric Company**

[Docket No. ER00–2328–000]

Take notice that on April 27, 2000, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing service agreements for firm and non-firm transmission service under Part II of its Transmission Services Tariff with Conectiv Energy Supply, Inc.

Copies of the filing were served upon each of the parties to the service agreement.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11770 Filed 5–10–00; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–2372–000, et al.]**

### PPL Montana, LLC, et al.; Electric Rate and Corporate Regulation Filings

May 4, 2000.

Take notice that the following filings have been made with the Commission:

**1. PPL Montana, LLC**

[Docket No. ER00–2372–000]

Take notice that on April 28, 2000, PPL Montana, LLC (PPL Montana) filed a Service Agreement dated March 17, 2000 with Energy West Resources, Inc. (Energy West) under PPL Montana's Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1. The Service Agreement adds Energy West as an eligible customer under the Tariff.

PPL Montana requests an effective date of March 31, 2000 for the Service Agreement.

PPL Montana states that Commercial Energy has been served with a copy of this filing.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Energy East Corporation and CMP Group, Inc.**

[Docket No. ER00–2373–000]

Take notice that on April 26, 2000, Central Maine Power Company (CMP or Central Maine) submitted for filing revised pages to CMP's Open Access Transmission Tariff in compliance with the Commission's April 3, 2000 order in Docket No. EC00–01-000. CMP states the revised pages reflect a reduction to CMP's otherwise applicable Local Point-To-Point Transmission Service charges for transactions that involve wheels from a generator on CMP's non-pool transmission facilities system.

CMP states that copies of the filing have been served upon all parties identified on the official service list for this proceeding.

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*Comment date:* May 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Florida Power Corporation**

[Docket No. OA96–73–003]

Take notice that on April 28, 2000, Florida Power Corporation tendered for filing with the Federal Energy Regulatory Commission (Commission), a letter in compliance with the Commission's order in Allegheny Power Service Co., et al., 90 FERC ¶ 61,224 (2000).

*Comment date:* June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Florida Power Corporation**

[Docket No. OA97–362–001]

Take notice that on April 28, 2000, Florida Power Corporation tendered for filing with the Federal Energy Regulatory Commission (Commission), a letter in compliance with the Commission's order in Allegheny Power Service Co., et al., 90 FERC ¶ 61,224 (2000).

*Comment date:* June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Florida Power Corporation**

[Docket No. OA97–389–001]

Take notice that on April 28, 2000, Florida Power Corporation tendered for filing with the Federal Energy Regulatory Commission (Commission), a letter in compliance with the Commission's order in Allegheny Power Service Co., et al., 90 FERC ¶ 61,224 (2000).

*Comment date:* June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER98–1438–006]

Take notice that on April 28, 2000, the Midwest ISO Transmission Owners, submitted their transmission loss factors that will be used in connection with the loss recovery methodology of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). The Midwest ISO Transmission Owners state that the filing of revised loss factors that are consistent with the transmission loss recovery method set forth in the Midwest ISO Tariff is required by the April 6, 1999 "Additional Joint Stipulation between the Midwest ISO Participants and the Commission Trial Staff Concerning Recovery of Losses" in Docket Nos. ER98–1438–000, et al.

The Midwest ISO Transmission Owners request that the Commission find in a final order issued no later than September 1, 2001 that the loss factors are just and reasonable so that final approved loss factors can be available for use in connection with the Midwest ISO Tariff when such Tariff becomes effective.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11771 Filed 5–10–00; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 5, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Appplication:* Application to Convey 7.43 Acres of Project Land for Housing Development.

b. *Project No.:* 516–321.

c. *Date Filed:* March 20, 2000.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda.

f. *Location:* The project is located in Saluda, Lexington, Newberry and Richland Counties, SC.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Thomas G. Eppink, Esquire, Senior Attorney, South Carolina Electric & Gas Company, Legal Department—130, Columbia, SC 29218, (803) 217–9448, or, Beth Trump, Real Estate Coordinator, (803) 217–7912.

i. *FERC contact:* John K. Hannula, (202) 219–0116.

j. *Deadline for filing comments, motions to intervene and protest:* 30 days from the issuance date of this notice.

Please include the project number (516–321) on any comments or motions filed. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

k. *Description of the Application:* South Carolina Electric & Gas Company requests Commission approval to sell three adjacent parcels of project fringeland totaling 7.43 acres to Mr. Jim Byrum for residential development. The parcels are located on the Hawley Creek area off Route 358 just north of Newberry Shores, approximately 7 miles south of the Town of Prosperity, Newberry County, South Carolina.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1317. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named

documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of any agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11775 Filed 5–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

May 5, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Application to Convey 6.94 Acres of Project Land for Housing Development.

b. *Project No.:* 516–319.

c. *Date Filed:* March 20, 2000.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda.

f. *Location:* The project is located in Saluda, Lexington, Newberry and Richland Counties, SC.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Thomas G. Eppink, Senior Attorney, South Carolina Electric & Gas Company, Legal Department-130, Columbia, SC 29218, (803) 217–9448, or, Beth Trump, Real Estate Coordinator, (803) 217–7912.

i. *FERC contact:* John K. Hannula, (202) 219–0116.

j. *Deadline for filing comments, motions to intervene and protest:* 30 days from the issuance date of this notice

Please include the project number (516–319) on any comments or motions filed. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

k. *Description of the Application:* South Carolina Electric & Gas Company requests Commission approval to sell two adjacent parcels of project fringeland totaling 6.94 acres to Bass Harbor for residential development. The parcels are located just east of Harmon's Bridge off County Road 44, approximately 12 miles northeast of the Town of Saluda, Saluda County, South Carolina.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11776 Filed 5–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

May 5, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License 5 Megawatts or Less.

b. *Project No.:* P–2721–013.

c. *Date filed:* September 28, 1998.

d. *Applicant:* Penobscot Hydro, LLC.

e. *Names of Project:* Howland Project.

f. *Location:* On the Piscataquis River, near the Town of Howland, in Penobscot County, Maine. This project does not utilize any federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Scott Hall, Director of Environmental Services, Penobscot Hydro, LLC, P.O. Box 276, Milford, ME 04461–0276, or call (207) 827–5364.

i. *FERC Contact:* ED Lee (202) at 219–2808 or E-mail at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A dam, located about 500 feet upstream of the confluence with the Penobscot River, and consisting of: a 114.5-foot-long concrete cutoff wall at the north embankment, a 6-foot-long non-overflow abutment, a 570-foot-long and about 9-foot-high concrete overflow spillway with 3-foot 9-inch-high wooden flashboards, a 85-foot-long gated spillway section with four 9-foot by 9-foot steel roller flood gates, a 20-foot-long non-overflow section containing the exit for the Denil fishway, and a 76-foot-long forebay entrance deck; (2) a 108.5-foot-long, 28.5-foot-wide, and 18-foot-high powerhouse integral with the dam; (3) three turbine generator units, for a total project installed capacity of 1,875 kilowatts (kW); (4) a 4-foot-wide concrete Denil fishway with wooden baffles, for upstream fish passage; (5) downstream fish passage facilities consisting of a 5-foot 9-inch-wide trash sluice gate fitted with a 3-foot 6-inch-deep bellmouth weir, and powerhouse trash racks with one-inch clear spacing; (6) a 4.7-mile-long, 270-acre project reservoir, with a normal reservoir elevation of 148.2 feet (USGS datum); (7) an outdoor substation connected by a short transmission line to the Stanford Substation in West Enfield; and (8) appurtenant facilities. The applicant estimates that the project average annual generation would be 8,300 MWh.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20246, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h. above.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Environmental and Engineering Review, Office of Energy Projects, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11777 Filed 5–10–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Regulations Governing Off-the-Record Communications; Public Notice

May 5, 2000.

This constitutes notice, in accordance with 18 CFR 385.220I(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Exempt:

| | | |
|---|---|---|
| 1. CP99–392–000 | 4–5–00 | Ms. Grace Bunner. |
| 2. CP99–17–000 and CP00–392–000 | 1–21–00 | John Wisniewski. |
| 3. CP00–6–000 | 3–23–00 | Ken Huntington. |
| 4. Project Nos. 10865 and 11495 | 5–2–00 | Herman Almojera. |
| 5. Project No. 3090 | 3–20–00 | Michael J. Bartlett. |
| 6. Project No. 3090 | 4–11–00 | Kenneth C. Carr. |

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11781 Filed 5–10–00; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6604–9]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request, Standards of Performance for New Stationary Sources Nonmetallic Minerals Processing Plants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart OOO, Standards of Performance for New Stationary Sources—Nonmetallic Mineral Processing, OMB Control Number 2060–0050 expiration date 6/30/00. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before June 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at farmer.sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1084.06. For technical questions about the ICR contact Greg Fried at EPA by phone at (202) 564–7016 or by Email at fried.gregory@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* NSPS Subpart OOO, Standards of Performance for New Stationary Sources, Nonmetallic Minerals Processing, OMB Control Number 2060–0050, EPA ICR No. 1084.06, expiration date 6/30/00. This is a request for extension of a currently approved collection.

*Abstract:* This standard applies to owners or operators of new, modified, or reconstructed facilities at nonmetallic mineral processing plants that commenced construction, modification, or reconstruction after August 1, 1985. Nonmetallic mineral processing includes the following affected facilities: each crusher, grinding mill, screening operation, bucket elevator, belt conveyor, bagging operation, storage bin, and enclosed truck or railcar loading station. Affected facilities in the plant process that are subject to 40 CFR part 60, subpart F for Portland Cement NSPS, or subpart I, Asphalt Concrete Plants NSPS, are not subject to this NSPS, subpart OOO.

Respondents must submit the following one-time-only reports: notification of the date of construction or reconstruction, notification of the actual date of initial startup, notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate, notification of demonstration of the continuous emission monitor system (CMS) where the CMS is required (wet scrubber), notification of the date of the initial performance test, and the results of the initial performance test.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 1999; no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information on existing facilities is estimated to average 13 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Nonmetallic Mineral Processing Plants.

*Estimated Number of Respondents:* 4,305.

*Frequency of Response:* Initial.

*Estimated Total Annual Hour Burden:* 30,876 hours.

*Estimated Total Annualized Capital, O&M Cost Burden:* 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1084.06 and OMB Control No. 2060–0050 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania, Ave., NW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 2, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–11815 Filed 5–10–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6605–1]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Emissions Standards for Hazardous Air Pollutants (NESHAP)—Phosphoric Acid Manufacturing and Phosphate Fertilizers Production

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP—Phosphoric Acid Manufacturing and Phosphate Fertilizers Production, 40 CFR part 63, subparts AA and BB, OMB No. 2060–0361, expiration 6/30/00. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before June 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by

E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1790.02. For technical questions about the ICR contact Stephen Howie, at 202–564–4146.

**SUPPLEMENTARY INFORMATION:**

*Title:* NESHAP—Phosphoric Acid Manufacturing and Phosphate Fertilizers Production OMB No. 2060–0361, ICR No. 1790.02, expiration 6/30/00. This is a request for extension of a currently approved collection.

*Abstract:* Owners/operators of affected phosphoric acid manufacturing and phosphate fertilizer production must submit one-time notifications (where applicable) and annual reports on performance test results. Semiannual reports for periods of operation during which the monitoring parameter boundaries established during the initial compliance test are exceeded (or reports certifying that no exceedances have occurred) also are required.

Subparts AA and BB require respondents to install monitoring devices to measure the pressure drop and liquid flow rate for wet scrubbers. These operating parameters are permitted to vary within ranges determined concurrently with performance tests. Exceedances of the operating ranges are considered violations of the site-specific operating limits.

The standards require sources to determine and record the amount of phosphatic feed material processed or stored on a daily basis. Respondents also maintain records of specific information needed to determine that the standards are being achieved and maintained.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 21, 2000; no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 21.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Phosphoric Acid Manufacturing and Phosphate Fertilizers Production Plants.

*Estimated Number of Respondents:* 15.

*Frequency of Response:* Initial, Semi-Annually.

*Estimated Number of Responses:* 193.

*Estimated Total Annual Hour Burden:* 4,143.

*Estimated Total Annualized Capital, O&M Cost Burden:* $ 66,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1790.02 and OMB Control No. 2060–0361 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 2, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–11816 Filed 5–10–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6605–2]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request, Standards of Performance for New Stationary Sources Phosphate Fertilizer Industry

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Standards of Performance for New Stationary Sources —Phosphate Fertilizer Industry— NSPS part 60, subparts T, U, V, W, and X, OMB Control No. 2060–0037, expiration 8/31/00. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before June 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No.1061.08. For technical questions about the ICR, contact Stephen Howie, (202) 564–4146.

**SUPPLEMENTARY INFORMATION:**

*Title:* Standards of Performance for Phosphate Fertilizer Industry, OMB Control No. 2060–0037; EPA ICR No 1061.08, expiration 8/31/00. This is a request for extension of a currently approved collection.

*Abstract:* The Administrator has judged that fluoride emissions from the phosphate fertilizer industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Phosphate fertilizer plant and phosphate bearing feed owners/operators of phosphate fertilizer plants must notify EPA of construction, modification, start-ups, shutdowns, malfunctions, and dates and results of the initial performance test. Owners/operators must install, calibrate, and maintain monitoring devices to continuously measure/record pressure drop across scrubbers.

Recordkeeping shall consist of: the occurrence and duration of all startups and malfunctions as described; initial performance tests results; amount of phosphate feed material; equivalent calculated amounts of $P_2O_5$, and pressure drops across scrubber systems. Startups, shutdowns and malfunctions must be recorded as they occur. Performance test records must contain information necessary to determine conditions of performance test and performance test measurements. Equivalent $P_2O_5$, stored or amount of feed must be recorded daily. The CMS shall record pressure drop across

scrubbers continuously and automatically.

Reporting shall include: initial notifications listed; and initial performance test results.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 21, 2000; no comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 87.5 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Phosphate Fertilizer Industry.

*Estimated Number of Respondents:* 11.

*Frequency of Response:* 1.

*Estimated Number of Responses:* 11.

*Estimated Total Annual Hour Burden:* 963 hours.

*Estimated Total Annualized Capital, O&M Cost Burden:* 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1061.08 and OMB Control No. 2060–0037 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 2, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–11819 Filed 5–10–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6605–6]**

### Notice of Availability of Funds for Source Water Protection

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) seeks proposals from organizations interested in working with communities across the nation that are served by public water systems with highly or moderately susceptible drinking water sources to protect their sources of drinking water from contamination using a watershed or "resource-based" approach.

EPA is providing this financial support to:

- Facilitate the establishment of a technical field presence nationwide to help communities that would benefit from collaborative source water protection actions with other communities; and
- Assist communities across the country in addressing the obstacles to protecting their water resources and lowering the susceptibility of source waters through a watershed or "resource-based" planning approach.

EPA intends to use at least part of the funds to help an organization interested in establishing a national network of field technicians to assist communities with watershed or resource-based planning to protect their water supplies. However, EPA is very interested in seeing other types of approaches to help communities across the country protect drinking water sources, such as an approach that provides direct financial assistance and technical support to communities through means other than a field presence. Depending upon the proposals received, EPA will consider awarding a second grant that would complement a field technician approach.

**DATES:** All project proposals must be received by EPA no later than June 12, 2000.

**ADDRESSES:** Send five copies of the complete proposal to: Betsy Henry (4606), Office of Ground Water and Drinking Water, U.S. EPA, 1200 Pennsylvania Ave, NW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Betsy Henry, (202) 260–2399.

**SUPPLEMENTARY INFORMATION:**

#### Background

*What Is a State or Tribal Source Water Assessment?*

As mandated by the Safe Drinking Water Act Amendments of 1996, a state's source water assessment identifies the area that supplies water to each public drinking water system within the state, inventories the significant potential sources of contamination, and analyzes how susceptible the drinking water source is to contamination (often referred to as a "susceptibility determination"). The Amendments allocated funding to states to complete source water assessments for all 170,000 public water systems. The results of these assessments are to be provided to each water supplier and made widely accessible to the public by 2003. EPA is also helping Tribes complete source water assessments of public water supplies in Indian Country.

The assessments are intended to give communities the information that they need to make informed decisions to protect their drinking water sources from contamination.

*What Is a Highly or Moderately Susceptible Source Water Area?*

There is a high degree of flexibility in how a state determines the susceptibility of its public water systems. The organization would need to work with the state source water programs to identify those public water systems or areas of the state that the state determines are highly or moderately susceptible to contamination and would most benefit from source water protection planning on a watershed or resource-wide scale.

*What Is Source Water Protection?*

Source water protection is the establishment of barriers that significantly lower the risk of contaminants of concern entering waters serving as public drinking water supplies. Building upon State or Tribal source water assessments, more communities will be examining what actions are necessary to protect their

sources of drinking water from the identified potential threats, and lower the susceptibility of their water supply to contamination. Planning is a critical first step so that a community or group of communities can use their limited resources to most effectively target sources of contamination that pose the highest or most immediate threats. Many communities need assistance working through the planning process.

Ideally, communities with public water systems that share the same resource or common threats would work together to identify their needs and jointly set priorities. Some basic planning elements include:

- An analysis of the state or tribal source water assessment for the systems involved in the planning.
- Identification of preventative action priorities and recommended measures for addressing them, including costs.
- Identification of an approach for determining the effect of the proposed priority actions on lowering the threats to source waters.
- Identification of alternative water supplies which would be needed in the case of emergencies (contingency planning).

Many communities also need assistance in addressing their priority preventative actions. Preventative actions might include land acquisition, land use ordinance establishment, leaky underground gas tank removal from sensitive areas, relocation of high-risk threats, or other measures.

*What Is "Resource-Based" Source Water Protection?*

A resource-based approach to source water protection promotes partnerships between public water systems that share a common source (river, lake, spring or aquifer) or face common contaminant threats. The approach encourages joint protection of water supplies through a single planning and prioritization process. A single water system might also benefit from a resource-based approach if the community can not adequately protect its drinking water source without collaborating with communities in the same watershed or recharge area that may have more control over potential threats to the water supply.

While similar, a resource-based approach is distinguished from watershed planning by focusing also on ground water areas that may not coincide with a watershed boundary. It is distinguished from traditional wellhead protection planning by broadening the scope from the traditional water system-by-system planning approach to planning on a shared resource scale that is based on natural geological and hydrological boundaries. However, a resource-based approach is not necessarily the same as large aquifer-wide planning (such as the Edwards aquifer) or a large watershed (*e.g.* Mississippi basin). These large scales often are beyond the scope of what is realistic or necessary for protecting sources of drinking water.

*Why Is EPA Limiting the Focus to Highly or Moderately Susceptible Source Waters, and Using a Watershed or Resource-Wide Approach?*

There are over 170,000 public water systems in the United States. While States have resources through the State Revolving Fund Programs, EPA has limited discretionary resources to help local communities implement source water protection for all of these systems' sources of drinking water. EPA believes that communities with public water supplies that are most susceptible to contamination should be the communities first targeted for assistance to identify and implement preventative measures to protect their drinking water sources.

EPA is also trying to encourage watershed-based or resource-based approaches to source water protection as an alternative to the traditional water system-by-system wellhead protection approach. This "multi-system" planning process can be more cost effective because one protection plan serves several systems. Also, it can result in a level of protection that is sometimes more effective in lowering threats, since threats to water quality are not always close to the intake or wellhead.

**Funding Level and Statutory Authority**

Funding is authorized under the Safe Drinking Water Act 42 U.S.C. 300j–1(c)(3)(C).

Total funding available for distribution is $1.4 million dollars. EPA intends to disburse these funds to one or possibly two organizations if, based on the applications received, communities will benefit from two approaches that complement one another.

**Proposal Contents**

- Interested applicants should submit a work plan that:
- Outlines the approach to assisting communities to engage in community-based source water protection planning and priority action implementation.
- Includes a budget for no less than $700,000 and no more than $1.4 million for implementing the approach over a two-year period.
- Provides biographies of the project leaders.

**Eligibility Criteria**

- The recipient organization must be a not-for-profit organization, educational institution, or public agency that meets the following criteria:
- Experience providing technical assistance to communities implementing community-based environmental programs for protecting drinking water, ground water or surface water quality.
- Experience working with communities to do resource-based/watershed or multi-jurisdictional planning, and facilitating partnerships between disparate stakeholders.
- Access to an established network capable of working with communities nationwide.
- Experience working with state agencies.
- Experience handling large grants of $700,000 or more, timely periodic reporting of progress and displaying the results of those grants to a wide public.

**EPA Project Proposal Evaluation Criteria**

EPA will evaluate all applicants based on the following criteria:

- Clearly outlines the approach that the organization will take to assist communities in a variety of regions across the country served by public water systems that have state-identified highly or moderately susceptible source waters. (30 points)
- Demonstrates knowledge of source water protection and ability to provide assistance to communities to effectively protect their drinking water supplies and address their highest priority needs. (25 points)
- Describes approach to community involvement in source water protection planning. (20)
- Identifies innovative means of networking the different communities receiving assistance with one another. (20 points)
- Leverages other resources as part of the proposed approach. (5 points)

**Application Procedure**

Please submit five copies of a proposal that includes a narrative work plan and budget that does not exceed 10 single spaced pages, with one-inch margins and 12-point font, stapled in one corner with no binding. You may also include up to 15 pages of supplementary material, such as the resumes and summaries of prior work. After EPA review, selected applicants will be asked to submit an SF–424.

**Schedule of Activities**

This is the estimated schedule of activities for review and award of proposals.

- Day 30: Proposals due 30 days after publication of **Federal Register** notice.
- Day 44: All applicants notified of government review status.
- Day 54: Selected applicant(s) submit a SF–424.
- July 10: Selected application(s) forwarded to EPA grants office.
- Aug. 10: Grants processing complete/Congressional notifications.

Dated: May 4, 2000.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 00–11818 Filed 5–10–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6605–5]**

## Peer Review Meeting on the Draft Guidance Document Entitled: Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities (Peer Review Draft, July 1998)

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of peer review panel meeting.

**SUMMARY:** The Environmental Protection Agency's ("EPA" or "the Agency") contractor, Tech Law, is announcing a meeting for the external, scientific peer review of the EPA draft guidance document entitled: *Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities* (Peer Review Draft, July 1998—EPA530–D–98–001A, B, & C) and the update to the document entitled: Errata dated August 2, 1999. The meeting will be organized, convened and conducted by Tech Law and will be held on May 24 and 25, 2000 in Dallas, Texas at the EPA Region VI building. Given the interest expressed by members of the public concerning this guidance document, the meeting will be open to the public for observation. The purpose of the meeting is to afford an opportunity for the members of Tech Law's review panel to present their individual peer review comments and discuss scientific and technical issues related to this guidance with other technical experts. All peer review comments will be incorporated into a summary by Tech Law and presented to EPA as recommendations. Tech Law's recommendations will be considered by the Agency during finalization of the document.

*Background*

This EPA document, Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities (HHRAP), is a three volume set of guidance for performing risk assessments on hazardous waste combustion facilities. Risk assessments can provide a basis for risk management decisions in hazardous waste combustor permitting to ensure that the permits are protective of human health and the environment. This guidance was released via **Federal Register** on Friday, October 30, 1998 (63 FR 58381–58382). It updated and replaced an earlier draft guidance entitled: "Guidance for Performing Screening Level Risk Analyses at Combustion Facilities Burning Hazardous Wastes" (April 15, 1994 draft). This new guidance was prepared by EPA's Region VI Center for Combustion Science and Engineering in coordination with the Office of Solid Waste (OSW). The guidance contains the OSW's recommended approach for conducting site-specific risk assessments on RCRA hazardous waste combustors. This guidance includes recommended parameters, pathways and algorithms to evaluate both direct and indirect risks.

The goal of the Agency's peer review process is to enhance the quality and credibility of Agency decision-making by ensuring that the scientific and technical work products relied on as part of the decision-making process receive the appropriate level of review by independent, scientific and technical experts. EPA has selected a contractor, Tech Law Inc., to conduct a comprehensive peer review of this guidance document. To that end, Tech Law, has selected nine independent experts reviewers that have not participated in the development of the document. The peer review panel is comprised of specialists which represent scientific disciplines generally covered in the HHRAP. The scientific disciplines chosen consist of combustion engineering, air dispersion modeling, fate and transport, human health exposure assessment, and human health toxicology.

The peer reviewers have been asked to respond to charge questions about the guidance document. Two types of charge statements were issued to the reviewers. All of the reviewers were asked to reply to charge questions which were general in nature. In addition, each expert was charged with specific technical questions which relate to their specialty. A number of the technical questions charged to the reviewers were chosen directly from public comments received on the guidance. To obtain or view copies of the human health risk assessment guidance document, the charges to the peer reviewers, the pre-meeting comments from the peer reviewers, or the public comments received on the document, see the supplementary information section below.

**DATES:** The meeting will begin on Wednesday, May 24 and end on Thursday, May 25, 2000. It will start at 8:30 am and end at 5:00 pm, daily.

**ADDRESSES:** The meeting will be held at EPA's Region VI building, at Fountain Place, 1445 Ross Avenue Dallas, Texas. Since seating capacity is limited, please contact Antoinette Todd of Tech Law, by telephone at (214) 953–0045, or by E-mail at ATodd@Techlawinc.com by May 19, 2000 at 4:30 pm (central time) to reserve a seat at the workshop as an observer. Seating space will be filled on a first-come, first-served basis. A limited amount of time at the end of each afternoon will be reserved for comments from the observers. Observers who wish to make a short presentation to the peer review panel (limited to 5 minutes in length) should register with Tech Law by May 19 at 4:30 pm (central time), as well. The amount of time allocated for each observer making comment may changed at the discretion of Tech Law, depending on the meeting circumstances. It is expected that all public statements presented at this meeting will not repeat any previously submitted oral or written statements. Comments should focus on the scientific and technical aspects of the document and the proceedings of the meeting. Since commenting time is limited, it will be filled on a first-come, first-served basis.

**FOR FURTHER INFORMATION CONTACT:** For technical and logistical inquires, contact Steve Cowan, of Tech Law by telephone, at (214) 953–0045; facsimile at (214) 754–0819; or by E-mail at SCowan@Techlawinc.com.

**SUPPLEMENTARY INFORMATION:** Copies of the (1) draft guidance document, Human Health Risk Assessment Protocol for Hazardous Waste Combustion Facilities (HHRAP); (2) Errata; (3) public comments received on the document; (4) peer review charges; and (5) peer review pre-meeting comments can be viewed or requested as follows.

The HHRAP, Errata, peer review charges can be viewed on the world wide web at http://www.epa.gov/epaoswer/hazwaste/combust/risk.htm. The peer review pre-meeting comments will be available after May 11, 2000.

For paper copies of the above listed documents, in addition to the public comments on the guidance, contact the RCRA Information Center (RIC), by telephone at (703) 603–9230, or by mail at Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ) Ariel Rios Building 1200 Pennsylvania Ave. N.W. Washington, DC 20460. For the a copy of the HHRAP, please reference the document numbers, EPA530–D–98–001A for volume 1, EPA530–D–98–001B for volume 2, and EPA530–D–98–001C for volume 3. The HHRAP is also available in a CD-ROM version.

In addition, the documents will be made available for public viewing from 9 a.m. to 4 p.m. Monday through Friday (except Federal holidays) in the RIC, located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington Virginia. To review docket materials, the public must make an appointment by calling (703) 603–9230 and reference the docket identification number, F–98–HHRA–FFFFF. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15 per page. The docket index and notice are available electronically.

Dated: May 3, 2000.

**Matthew Hale,**

*Acting Director, Office of Solid Waste.*

[FR Doc. 00–11817 Filed 5–10–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6605–3]**

### Microbial and Disinfectants/ Disinfection Byproducts Advisory Committee; Notice of Meetings

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of meetings.

**SUMMARY:** Under section 10(a)(2) of Public Law 920423, "The Federal Advisory Committee Act," notice is hereby given of a series of meetings of the Microbial and Disinfectants/ Disinfection Byproducts Advisory Committee established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*). All meetings are scheduled from 9 a.m. to 5 p.m. eastern time, and will be held at RESOLVE, Inc., 1255 23rd Street, NW, Suite 275 Washington DC 20037. The meetings are open to the public, but due to past experience, seating will be limited.

The meetings are scheduled for: June 1–2, to discuss results of Technical Working Group analysis; June 27–28, to continue discussions on results of Technical Working Group analysis; and draft Agreement in Principle; and July 27, to finalize Agreement in Principle.

Statements from the public will be taken if time permits.

For more information, please contact Martha M. Kucera, Designated Federal Officer, Microbial and Disinfectants/ Disinfection Byproducts Advisory Committee, U.S. EPA, Office of Ground Water and Drinking Water, Mailcode 4607, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. The telephone number is 202–260–7773 or E-mail kucera.martha@epamail.epa.gov.

Dated: May 1, 2000.

**Cynthia C. Dougherty,**

*Director, Office of Ground Water and Drinking Water.*

[FR Doc. 00–11820 Filed 5–10–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–34223; FRL–6558–3]**

### Organophosphate Pesticides; Availability of Preliminary Risk Assessments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of documents that were developed as part of the EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the preliminary human health risk assessments and related documents for malathion. This notice also starts a 60-day public comment period for the preliminary risk assessments. Comments and data are to be limited to issues directly associated with the organophosphate pesticide that has risk assessments placed in the docket and should be limited to issues raised in those documents. By allowing access and opportunity for comment on the preliminary risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for some, if not all, of these organophosphate pesticides. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

**DATES:** Written comments and data on these assessments, identified by the docket control number OPP–34223, must be received on or before July 10, 2000.

**ADDRESSES:** Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify the docket control number in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Karen Angulo, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the preliminary risk assessments for malathion, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://

www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the preliminary risk assessments for this organophosphate pesticide may also be accessed at http://www.epa.gov/pesticides/op.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34223. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments and data through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify the docket control number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34223. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want To Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. Background

*A. What Action Is the Agency Taking?*

EPA is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the FFDCA, as amended by the FQPA. The Agency's preliminary risk assessments for malathion are available in the organophosphate pesticide docket for malathion.

Included in the organophosphate pesticide docket are the Agency's preliminary risk assessments. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the organophosphate pesticide listed in this notice. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for this organophosphate pesticide. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

As the preliminary risk assessments for the remaining organophosphate pesticides are completed and registrants are given a 30-day review period to identify possible computational or other clear errors in the risk assessments, these risk assessments and registrant responses will be placed in the individual organophosphate pesticide dockets. A notice of availability for subsequent assessments will appear in the **Federal Register**.

The Agency is providing an opportunity, through this notice, for interested parties to provide written comments and data and input to the Agency on the preliminary risk assessments for the organophosphate pesticide specified in this notice. Such comments and data and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemical. Comments and data should be limited to issues raised within the preliminary risk assessments and

associated documents. EPA will provide other opportunities for public comment and data on other science issues associated with the organophosphate pesticide tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and data should be submitted by July 10, 2000 at the address given under Unit I. Comments and data will become part of the Agency record for the organophosphate pesticide specified in this notice.

**List of Subjects**

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 3, 2000.

**Lois A. Rossi,**

*Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 00–11870 Filed 5–10–00; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting; Closed Commission Meeting, Monday, May 15, 2000

May 8, 2000.

The Federal Communications Commission will hold a Closed Meeting on the subject listed below on Monday, May 15, 2000, following the Open Meeting, which is scheduled to commence at 9:30 a.m., in Room TW–C305, at 445 12th Street, SW., Washington, DC.

*Item No., Bureau, and Subject*

1—Enforcement—Title: Report on Pending Common Carrier Investigations.

Summary: The Enforcement Bureau will report to the Commission on several pending common carrier investigations.

This item is closed to the public because it concerns investigatory matters. (See 47 CFR Sec. 0.603(g)).

The following persons are expected to attend: Commissioners and their Assistants, Managing Director, The Secretary, Enforcement Bureau Chief and members of his staff, General Counsel and members of his staff, Common Carrier Bureau Chief and members of his staff.

Action by the Commission May 8, 2000. Commissioners, Kennard, Chairman; Ness, Furchtgott-Roth, Powell and Tristanti voting to consider these matters in Closed Session.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–12003 Filed 5–9–00; 2:18 pm]

BILLING CODE 6712–01–M

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting; Open Commission Meeting, Monday, May 15, 2000

May 8, 2000.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Monday, May 15, 2000, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW, Washington, DC.

*Item No., Bureau, and Subject*

1—Common Carrier and Office of Engineering and Technology—Title: 2000 Biennial Regulatory Review of Part 68 of the Commission's Rules and Regulations (CC Docket No. 99–216).

Summary: The Commission will consider a Notice of Proposed Rulemaking to streamline Part 68 technical rules and registration process.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its_inc@ix.netcom.com. Their Internet address is *http://www.itsi.com*. This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet.

For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–12002 Filed 5–9–00; 2:18 pm]

BILLING CODE 6712–01–M

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 25, 2000.

A. **Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. *Stephen Panepinto*, Plaquemine, Louisiana; to acquire additional voting shares of Plaquemine Bancshares Corporation, Plaquemine, Louisiana, and thereby indirectly acquire additional voting shares of Plaquemine Bank & Trust Company, Plaquemine, Louisiana.

B. **Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *Robert E. Ehrlich*, Milliken, Colorado; to acquire voting shares of First Gothenburg Bancshares, Inc., Gothenburg, Nebraska, and thereby indirectly acquire voting shares of First State Bank, Gothenburg, Nebraska.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Robert B. Mathieu*, Delhi, Louisiana; to acquire additional voting shares of Delhi Bancshares, Inc., Delhi, Louisiana, and thereby indirectly

acquire additional voting shares of Guaranty Bank & Trust Company of Delhi, Delhi, Louisiana.

Dated: Board of Governors of the Federal Reserve System, May 5, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11783 Filed 5–10–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice of to the offices of the Board of Governors. Comments must be received not later than May 26, 2000.

A. **Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. *Francis O. Bourg, Jr., Francis O. Bourg, III, Augustine Bourg Taylor, Josephine Bourg Junot, and Dean Paul Chauvin, Jr.*, (collectively) Houma, Louisiana; to acquire additional voting shares of South Louisiana Financial Corporation, Houma, Louisiana, and thereby indirectly acquire additional voting shares of South Louisiana Bank, Houma, Louisiana.

Board of Governors of the Federal Reserve System, May 8, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11880 Filed 5–10–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 2000.

A. **Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. *City Savings Bancshares, Inc.*, Deridder, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of City Savings Bank & Trust Company, Deridder, Louisiana.

B. **Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *Nebraska Bankshares, Inc.*, Farnam, Nebraska; Stockmens Financial Corporation, Rushville, Nebraska; and Stamford Banco., Inc., Stamford, Nebraska; to each buy more than 10 percent of the voting shares of First Gothenburg Bancshares, Inc., Gothenburg, Nebraska, and thereby indirectly acquire First State Bank, Gothenburg, Nebraska.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Plains Bancorp, Inc.*, Lubbock, Texas; to merge with Sudan Bancshares, Inc., Sudan, Texas, and thereby indirectly acquire First National Bank, Sudan, Texas.

D. **Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. *Pacific Capital Bancorp*, Santa Barbara, California; to acquire 100 percent of the voting shares of San Benito Bank, Hollister, California.

2. *Westamerica Bancorporation*, San Rafael, California; to acquire 100 percent of the voting shares of First Counties Bank, Clearlake, California.

3. *Pacific Capital Bancorp*, Santa Barbara, California; to merge with Los Robles Bancorp, Thousand Oaks, California, and thereby indirectly acquire Los Robles Bank, Thousand Oaks, California.

Board of Governors of the Federal Reserve System, May 5, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11784 Filed 5–10–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 26, 2000.

**A. Federal Reserve Bank of Boston** (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

*1. Washington Trust Bancorp, Inc.*, Westerly, Rhode Island; to acquire Phoenix Investment Management Company, Inc., Providence, Rhode Island, and thereby engage in investment advisory services consistent with section 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, May 8, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–11879 Filed 5–10–00; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

### Public Forum: Warranty Protection for High-Tech Products and Services

**AGENCY:** Federal Trade Commission.

**ACTION:** Initial notice requesting academic papers and public comment and announcing public forum.

**SUMMARY:** The Federal Trade Commission plans to hold a public forum to examine warranty protection for software and other computer information products and services that are marketed to consumers, and seeks academic papers and public comment to inform this examination.

**DATES:** Papers and written comments are requested to be submitted on or before September 11, 2000. The forum will be held during the fall of 2000.

**ADDRESSES:** Six hard copies of each paper and written comment should be submitted to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW., Washington, DC 20580. Alternatively, the Commission will accept papers and comments submitted to the following e-mail address: "software-comments@ftc.gov." The content of any papers or comments submitted by e-mail should be organized in sequentially numbered paragraphs. All submissions should be captioned "High-Tech Warranty Project—Comment, P994413."

*Form and Availability of Comments:* To enable prompt review and accessibility to the public, papers and comments also should be submitted, if possible, in electronic form, on either a 5¼ or 3½ inch computer disk, with a disk label stating the name of the submitter and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format.)

Papers and written comments will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, 16 CFR Part 4.9, on normal business days between the hours of 8:30 a.m. and 5:00 p.m. at Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The Commission will make this notice and, to the extent possible, all papers or comments received in electronic form in response to this notice available to the public through the Internet at the following address: http://www.ftc.gov.

**FOR FURTHER INFORMATION CONTACT:** The exact dates, location, and information about public participation in the forum will be announced later by **Federal Register** notice. For questions about this request for academic papers and comments, contact either:

Adam Cohn, Attorney, Division of Marketing Practice, Bureau of Consumer protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–3411; or

Carole Danielson, Senior Investigator, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone (202) 326–3115.

**SUPPLEMENTARY INFORMATION:**

### Background: Magnuson-Moss Warranty Act

In 1975, Congress passed the Magnuson-Moss Warranty Act ("Act") [1] in response to a number of widespread problems consumers encountered when the products they purchased were defective. First, warranties were often very vague or extremely technical and thus difficult to understand and interpret. Second, companies often gave a narrow written warranty, but then disclaimed all implied warranties in the same document, thus providing the consumer with little or no recourse if the product turned out to be defective. Third, some manufacturers restricted the warranty and limited its remedies to such an extent that the warranty proved to be useless to consumers. Finally, the lack of privity with a distant manufacturer often precluded the consumer from seeking a remedy in court.

In addressing these problems, the Congress did not mandate that manufacturers or sellers provide written warranties on consumer products, nor did it mandate substantive warranty terms for consumer products. Rather, Congress mandated that any company that chooses to give a written warranty on a consumer product must follow some basic ground rules. As set forth in the Magnuson-Moss Warranty Act and in the regulations promulgated under the Act,[2] these basic ground rules were designed to ensure: that warranties for consumer products be clear and understandable; that warranties not become vehicles to disclaim or otherwise restrict substantive consumer rights provided by state law; that warranties be available prior to sale so consumers could know the warranty terms before buying the product and could compare the warranties of different sellers; and, that sellers and manufacturers honor the terms of their warranties. Finally, the Act gave consumers the right to sue for any violation of the Act, including breach of express or implied warranty.

### Software and Other Computer Information Products and Services

Today, many of the issues that were important three decades ago in the context of written consumer product warranties are being debated in the context of mass market "shrinkwrap" or "clickwrap" software licenses. For example, software licenses may be written in technical, or otherwise complicated language that some consumers might find difficult to understand. Additionally, just as written warranties prior to 1975 were sometimes used to disclaim substantive implied warranty protections provided by state law, some of today's mass market software licenses contain provisions that seek to disclaim similar state-implied warranty protections (*e.g.*, fitness, merchantability). Moreover, some mass market software licenses may not be available for consumers to review until after the consumer has paid for the software. Thus, consumers may be unaware of the terms and conditions until after the product is purchased.[3]

[1] 15 U.S.C. 2301 *et seq.*

[2] 16 C.F.R. parts 701, 702 and 703.

[3] Many of these issues have recently been debated in the context of the drafting of a proposed state law, drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). That proposed law, entitled the "Uniform Computer Information Transaction Act" (UCITA), would, among other things, affirm the enforceability of mass market software licenses. Many of the provisions of UCITA, including the provisions dealing with mass market licenses, have raised concern among some consumer groups and law enforcement officials, including the staff of the Federal Trade Commission. The FTC staff advocacy letters can be found on the Commission's web site

Continued

In seeking public comment and holding a public forum, the Commission hopes to facilitate discussion of how government, private industry, and consumer advocates can work together to ensure that consumers receive adequate information when purchasing software and other computer information products and services. Additional concerns include how to ensure that consumers are able to retain existing protections afforded by state law and compare warranty protections when shopping for software and other computer information products and services.

**Invitation To Comment**

The Commission requests that interested parties, including academics, industry members, consumer advocates, and government representatives, submit academic papers or written comments on any issue of fact, law, or policy that may inform the Commission's examination of warranty protection for software and other high-tech consumer goods and services. Please provide copies of any studies, surveys, research, or other empirical data referenced in responses.

The questions set forth below are intended only as examples of the issues relevant to the Commission's examination. Commenters are invited to discuss any relevant issue, regardless of whether it is identified below.

*General*

1. What warranty protections exist for consumers who purchase software and other computer information products and services?

2. What expectations do consumers have about reliability of software and other computer information products and services? Are these expectations met?

3. What remedies are typically available to consumers if software or another computer information product or service fails to perform as the consumer expected?

a. What warranty remedies are available to purchasers of such products and services?

b. What remedies are supplied by state or federal law?

c. Do consumers seek to invoke these remedies, and if so, how often are they successful?

4. Are consumers able to comparison shop for different computer information products or services based on the terms of warranty coverage? Are consumers interested in doing so? Do manufacturers or sellers of software and other computer information products and services compete with each other on the basis of warranty coverage?

5. Do the current protections encourage efficiency in the timing, selection, and amount of detail in information conveyed to consumers?

6. Do existing laws and industry practices protect consumers in the event that software and other computer information products or services are defective? How often does this occur?

7. What developments are underway by private or public entities at the international, national, state, or local levels that would have an impact on consumer's rights in the context of transactions involving software or other computer information products and services?

a. How would the proposed Uniform Computer Information Transactions Act (UCITA) affect consumers?

b. What role, if any, would be appropriate for the federal government with respect to protecting consumers who purchase software or other computer information products and services? What role, if any, would be appropriate for state and local government? Consumer groups? Private industry?

c. Are there international developments prompting uniformity of software or other computer information products and services?

*Effect of Mass Market Licenses on Warranty Protection*

8. What is the impact of characterizing a mass-market software transaction as a license as opposed to a sale of goods?

a. What is the rationale for such a characterization?

b. What are the legal implications of this characterization?

c. How does this affect consumers?

d. To what extent, if any, should software transactions be treated differently from transactions involving other intellectual property, such as the sale of compact discs, videocassettes, and printed books?

e. Are some types of products involving intellectual property better suited to be distributed to consumers in license transactions as opposed to a sale of goods? Why?

9. To what extent, if any, do mass market licenses for software typically create express warranties?

10. To what extent, if any, do implied warranties arise in the context of mass market licenses for software?

11. To what extent, if any, do mass market licenses for software typically disclaim express or implied warranties?

12. How are consumers affected by the use of "shrinkwrap" or "clickwrap" licenses in mass market purchases of software?

a. How are these licenses treated under existing law—that is, to what extent are these licenses enforceable?

b. What types of terms are typically included in a software license?

c. What types license of terms are beneficial to consumers? What types of terms may cause consumer harm? What legal recourse do consumers have in such circumstances?

d. To what extent are the terms of shrinkwrap or clickwrap licenses currently available to interested consumers prior to purchase?

e. What is the impact of license terms mandating certain types of alternative dispute resolution, such as arbitration? How frequently, if at all, are such terms enforced by licensors?

f. Do shrinkwrap or clickwrap licenses discourage firms from competing on the basis of licensing terms? If so, which terms would be more likely to change if there were full prior sale disclosure? Why?

13. What role, if any, does the Magnuson-Moss Warranty Act play in the marketing, sale, or licensing of software or other computer information products or services to consumers?

a. Is it appropriate that software be treated as a "consumer product" subject to the Act?

b. Is it appropriate that software be treated as "tangible personal property" subject to the Act?

c. Is it appropriate for the typical consumer transaction to acquire software to be treated as a "sale" of software subject to the Act?

d. Is it appropriate that software licenses be treated as a "warranties" subject to the Act?

*Future Trends: High-Tech Legal Theories in the Low-Tech Marketplace*

14. Recent proposed revisions to UCC Article 2 (sale of goods) suggest that post-sale disclosure of terms may become acceptable in the sale of goods content. What would be the costs and benefits of applying a licensing model to goods covered by UCC Article 2? Does this suggest the importation of a licensing model into such sales of goods? If so, what effect, if any, will this have on consumers?

*Public Forum*

15. What should be the primary focus and scope of the Commission's initial public forum on "Warranty Protection for High-Tech Products and Services?"

16. Which interests should be represented at the Commission's initial

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at *http://www.ftc.gov/be/v990010.htm* and *http://www.ftc.gov/be/v980032.htm*.

public forum on "Warranty Protection for High-Tech Products and Services?"

**Authority:** 15 U.S.C. 41 *et seq.*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–11802 Filed 5–10–00; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### HIV; Preventing Transmission Through Transplantation of Human Tissue Organs; U.S. Public Health Service Guidelines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

*Name:* Consultation to discuss the revision of the U.S. Public Health Service Guidelines for Preventing Transmission of Human Immunodeficiency Virus Through Transplantation of Human Tissue and Organs [MMWR/May 20, 1994/Vol.43/ No.RR–8].

*Times and Dates:* 8:30 a.m.–5 p.m., June 26, 2000. 8:30 a.m.–4:30 p.m., June 27, 2000.

*Place:* Holiday Inn Select, 130 Clairmont Avenue, Decatur, Georgia 30030.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

*Purpose:* Attendees will discuss the potential revisions to the U.S. Public Health Service recommendations for guidelines for Preventing Transmission of Human Immunodeficiency Virus Through Transplantation of Human Tissue and Organs [MMWR/May 20, 1994/Vol. 43/ No.RR–8].

*Matters To Be Discussed:* Agenda items will include recent research regarding the transplantation of human tissue and organs.

**FOR FURTHER INFORMATION CONTACT:** Mary Helen Witten, Division of HIV/AIDS Prevention—Surveillance and Epidemiology, Office of the Director, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road NE, MS D–21, Atlanta, Georgia 30333, 404–639–4592 or muw4@cdc.gov or, Dr. Kenneth A. Clark, Division of HIV/AIDS Prevention—Surveillance and Epidemiology, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road NE, MS E–46, Atlanta, Georgia 30333, 404–639–2085 or KClark@cdc.gov.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 3, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–11794 Filed 5–10–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Stigma Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) Announces the Following Meeting

*Name:* Stigma Meeting.

*Time and Date:* 9:30 a.m.–4 p.m., June 9, 2000.

*Place:* Hyatt Regency Hotel, 265 Peachtree Street, Atlanta, Georgia 30303.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 54 people.

*Purpose:* To discern the role of stigma in communications efforts directed at HIV positive and negative persons. To consult and collaborate with leading experts to develop strategies for future efforts in prevention and to fine tune existing communications plans. Our continued efforts to reach those at highest-risk for HIV will necessitate collaboration among organizations and audiences infrequently reached through CDC's traditional methods.

*Matters To Be Discussed:* Agenda items include an overview of the stigma issue, presentations on research on stigma and HIV, and an expert panel discussion of public health and private sector efforts which could together begin to counter stigma associated with HIV testing and early entrance into care.

**FOR FURTHER INFORMATION CONTACT:** Michelle Bonds, National Center for HIV, STD, and TB Prevention, Office of Communications, 1600 Clifton Road, NE, M/S E–07, Atlanta, Georgia 30333, telephone 404/639–8890.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 3, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–11793 Filed 5–10–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### ADMINISTRATION FOR CHILDREN AND FAMILIES

### Statement of Organization, Functions and Delegations of Authority

**AGENCY:** Office of Legislative Affairs and Budget (OLAB)/ACF/DHHS.

**ACTION:** Notice.

**SUMMARY:** This Notice amends Part K of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) as follows: Chapter KT, Office of Legislative Affairs and Budget (OLAB), (63 FR 45510), as last amended, August 26, 1998. This notice reflects the consolidation of the two budget divisions in the Office of Legislative Affairs and Budget into one division to improve its efficiency and effectiveness. Specifically, delete Chapter KT in its entirety, and replace with the following:

KT.00 Mission. The Office of Legislative Affairs and Budget (OLAB) provides leadership in the development of legislation, budget, and policy, ensuring consistency in these areas among ACF program and staff offices, and with ACF and the Department's vision and goals. It advises the Assistant Secretary for Children and Families on all policy and programmatic matters, which substantially impact the agency's legislative program, budget development, budget execution and regulatory agenda. The Office serves as the primary contact for the Department, the Executive Branch, and the Congress on all legislative, budget development and execution and regulatory activities.

KT.10 Organization. A Director, who reports to the Assistant Secretary for

Children and Families, heads the Office of Legislative Affairs and Budget. The Office is organized as follows: Office of the Director (KTA), Division of Legislative and Regulatory Affairs (KTB), Division of Budget (KTC).

KT.20 Functions. A. The Office of the Director provides direction and executive leadership to the Office of Legislative Affairs and Budget in administering its responsibilities. It serves as the principal advisor to the Assistant Secretary for Children and Families on all policy and programmatic matters which substantially impact on legislative affairs, budget development, budget execution and the regulatory agenda. It represents the Assistant Secretary on budget, policy and legislative matters and serves as the primary ACF contact for the Department, the Executive Branch and Congress on these activities.

B. The Division of Legislative and Regulatory Affairs serves as the focal point for congressional liaison in ACF; provides guidance to the Assistant Secretary for Children and Families and senior ACF staff on congressional activities and relations; manages the preparation of testimony and briefings for programmatic and budget-related hearings; negotiates clearance of testimony; monitors hearings and other congressional activities which affect ACF programs; and responds to congressional inquiries.

The Division manages the ACF legislative planning cycle and the development of Reports to Congress; reviews and analyzes a wide range of congressional policy documents including: legislative proposals, pending legislation, and bill reports; solicits and synthesizes internal ACF comments on such documents; negotiates legislative policy positions with the Department and the Executive Branch; and reviews other policy significant documents to ensure consistency with statutory and congressional intent and the agency legislative agenda.

The Division manages the ACF regulatory development process; negotiates regulatory policy positions with the Department and the Executive Branch; and provides guidance to ACF program and staff components on policy and programmatic matters related to the regulatory development process.

C. The Division of Budget manages the development and presentation of ACF's budget; provides guidance to ACF program and staff components in preparing material in support of budget development; provides guidance to the Assistant Secretary for Children and Families and senior program staff on policy and programmatic matters which substantially impact the budget development process; monitors budget-related hearings and other congressional activities which affect the ACF budget; responds to congressional inquiries on the budget; and, negotiates budget issues with the Department and the Executive Branch.

The Division requests apportionments from OMB for appropriated funds and issues allotments to program and staff offices; manages internal ACF funds control; provides guidance to senior program staff and budget contacts in management of their program and administrative funds; and, assists in reconciling any discrepancies found in CORE accounting reports and data-flow reports.

The Division manages the preparation of a comprehensive administrative (salaries and expenses) budget for ACF; provides guidance to the Assistant Secretary for Children and Families and senior ACF staff on all aspects of the agency's administrative budget; provides guidance to ACF program and staff components in preparing material in support of the administrative budget and tracking and reconciling expenditures throughout the fiscal year to ensure appropriate fiscal accountability and prudent spending patterns.

The Division designs and develops budget estimating modes and procedures to project future program costs in order to influence decision-making regarding ACF program budgets and policy; evaluates on a continuing basis complex national budget issues to assess overall impact on immediate, foreseeable, and long-range program direction; provides guidance to the Assistant Secretary for Children and Families and senior ACF staff on budget forecasts for all major ACF programs; negotiates budget forecasting issues with the Department and the Executive Branch; and responds to Congressional Budget Office, Congressional Research Service and general congressional inquiries regarding ACF budget projections.

The Division reviews and analyzes other policy significant documents to ensure consistency with ACF's budget, vision and goals.

Dated: May 8, 2000.

**Madeline Mocko,**

*Director, Office of Legislative Affairs and Budget.*

[FR Doc. 00–11877 Filed 5–10–00; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–1500]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Health Insurance Common Claims Form and Supporting Regulations in 42 CAR 414.40, 424.32, and 424.44; *Form No.:* HCFA–1500, 1490U, and 1490S (OMB# 0938–0008); *Use:* This form is a standardized form for use in the Medicare/Medicaid programs to apply for reimbursement for covered services; *Frequency:* On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 1,321,417; *Total Annual Responses:* 717,876,097; Total Annual Hours: 44,460,460.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to

the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 2050.

Dated: April 17, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–11846 Filed 5–10–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–312]**

### Agency Information Collection Activities: Submission For OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* New Collection;

*Title of Information Collection:* Conflict of Interest and Ownership and Control Information;

*Form No.:* HCFA–R–312 (OMB# 0938–NEW);

*Use:* This Conflict of Interest questionnaire is sent to all Medicare Fiscal Intermediaries (FIs) and Carriers to collect full and complete information on any entity's or individual's ownership interest (defined as a 5 per centum or more) in an organization that may present a potential conflict of interest in their role as a Medicare FI or Carrier. The information gathered is used to ensure that all potential, apparent and actual conflicts of interest involving Medicare contracts are appropriately mitigated and that employees of the contractors, including officers, directors, trustees and members of their immediate families, do not utilize their positions with the contractor for their own private business interest to the detriment of the Medicare program.;

*Frequency:* Annually;

*Affected Public:* Not-for-profit institutions, and Business or other for-profit;

*Number of Respondents:* 42;

*Total Annual Responses:* 42;

*Total Annual Hours:* 126.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's web site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 25, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–11847 Filed 5–10–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### Program Exclusions: April 2000

**AGENCY:** Office of Inspector General, HHS.

**ACTION:** Notice of program exclusions.

During the month of April 2000, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

| Subject, City, State | Effective date |
|---|---|
| **Program-Related Convictions** | |
| Akpan, Adelia, Brooklyn, NY | 05/18/2000 |
| Andrickson, Eduardo, Flushing, NY | 05/18/2000 |
| Arcilla, Coleen Burke, Ronkonkoma, NY | 05/18/2000 |
| Arrillaga, Abenamar, White Deer, PA | 05/18/2000 |
| Askanazi, Jeffrey, Hudson, OH | 05/18/2000 |
| Balakrishna, Banga M., Bloomfield Hills, MI | 05/18/2000 |
| Beehm, William, Penfield, NY | 05/18/2000 |
| Berlin, Sanford, Tucson, AZ | 05/18/2000 |
| | 05/18/2000 |
| Blanchard, Douglas J., Orange Park, FL | 05/18/2000 |
| Boudreaux, Jeffrey D., Baton Rouge, LA | 05/18/2000 |
| Burnette, Barbara E., Boca Raton, FL | 05/18/2000 |
| Cornett, Marston, Hazard, KY | 05/18/2000 |
| Costa, Karen T., Northfield, NH | 05/18/2000 |
| Darty, Gwendolyn W., Mobile, AL | 05/18/2000 |
| Doble, Brook A., Shoreline, WA | 05/18/2000 |
| Dubovoy, Alexander, Mineola, NY | 05/18/2000 |
| Eastern Medical Billing, Inc., Lewisburg, PA | 05/18/2000 |
| Elk Transportation, Inc., Lewisburg, PA | 05/18/2000 |
| Fort, Daniel, Miami, FL | 05/18/2000 |
| Frazier, Jerry Lee, Sr., Harvey, LA | 05/18/2000 |
| Freitag, Joseph Harry, Denver, CO | 05/18/2000 |
| Fuller, Marie Rose, Medford, OR | 05/18/2000 |
| Garcia, Gerald H., Jr., Bisbee, AZ | 05/18/2000 |
| Gates, Eveline, Lafayette, NY | 05/18/2000 |
| Gomez, Francisco, Bronx, NY | 05/18/2000 |
| Harris, William H., Toledo, OH | 05/18/2000 |
| Hasan, Isa, Northville, MI | 05/18/2000 |
| Hurley, Samantha L., Daleville, IN | 05/18/2000 |
| Independence Ems, Inc., Lewisburg, PA | 05/18/2000 |
| Jarrell, Jay A., Chapel Hill, NC | 05/18/2000 |
| Kestel, Scott C., Ontario, OR | 05/18/2000 |
| Kirwan, Jonathan J., Penfield, NY | 05/18/2000 |
| Lenard, Kimberly, Oden, AR | 05/18/2000 |
| Leon, Jack, Vineland, NJ | 05/18/2000 |
| Leonard, Jonathan B., New York, NY | 05/18/2000 |
| Lunsford Wood, Juanita, Pine Bluff, AR | 05/18/2000 |

| Subject, City, State | Effective date |
|---|---|
| Mansfield, Rebecca J., Benton, AR | 05/18/2000 |
| Mason, Tracy, Cabot, AR | 05/18/2000 |
| Medical Services Corps, Inc., Lewisburg, PA | 05/18/2000 |
| Medmaster Service, Inc., Lutz, FL | 12/2/2000 |
| Miller Cab Company, Hazard, KY | 05/18/2000 |
| Moreano, Augusto G., Dix Hills, NY | 05/18/2000 |
| Munoz, Ruben, Hialeah Gardens, FL | 05/18/2000 |
| NCC Transportation, Inc., Lewisburg, PA | 05/18/2000 |
| Nelson, Tamara H., Alpine, Tx | 05/18/2000 |
| Nguyen, Danh The, N Las Vegas, NV | 05/18/2000 |
| Oganesyan, Gagik, Sherman Oaks, CA | 05/18/2000 |
| Parikh, Jyotika, N Woodmere, NY | 05/18/2000 |
| Phillips, Henry J., Cooperstown, NY | 05/18/2000 |
| Plinto, Stephen T., Parlin, NJ | 05/18/2000 |
| Podlaseck, David A., Lewisburg, PA | 05/18/2000 |
| Poklaseck, Joseph Anthony, Lewisburg, PA | 05/18/2000 |
| Reynolds, Darl E., Columbus, OH | 05/18/2000 |
| Rosati, Samuel M., Bradford, PA | 05/18/2000 |
| Saakian, Manouk, N Hollywood, CA | 05/18/2000 |
| Safe-T Ambulette, Inc., Bronx, NY | 05/18/2000 |
| Shah, Jitrendra C., Staten Island, NY | 05/18/2000 |
| Showalter, Carl Robert, Harrisonburg, VA | 05/18/2000 |
| Sorongon, Marcelino, Ramsey, NJ | 05/18/2000 |
| Stabeno, Vonnie Peel, Elgin, TX | 05/18/2000 |
| Syme, Robert U., Lewisburg PA | 05/18/2000 |
| Thompson-Johnson, Elizabeth, College Park, GA | 05/18/2000 |
| Ting, Li-Jen, Lancaster, OH | 05/18/2000 |
| Torres, Graciela N., Miami, FL | 05/18/2000 |
| Whiteside, Robert W., Brentwood, TN | 05/18/2000 |
| Yang, Gai-Fu, Flushing, NY | 01/12/2000 |
| You, Dynnard Lenny, Long Beach, CA | 05/18/2000 |
| Zarate, Juan C., Lake in the Hills, IL | 10/27/1999 |
| **Felony Conviction for Health Care Fraud** | |
| Aaron, Howard, Fairton, NJ | 05/18/2000 |
| Burstein, Alan G., Williamsville, NY | 05/18/2000 |
| Byers, Karen C, Greenville, SC | 05/18/2000 |
| Cafferky, Kevin, Landsdale, PA | 05/18/2000 |
| Hall, Cathy, L., Duncanville, AL | 05/18/2000 |
| Hinkle, Cynthia D., Chesterfield, VA | 05/18/2000 |
| Kirks, Donald R., San Antonio, TX | 05/18/2000 |
| Levine, Edward J., Colts Neck, NJ | 05/18/2000 |
| Tripp, Donna F., Delton, FL | 05/18/2000 |

| Subject, City, State | Effective date |
|---|---|
| **Felony Control Substances Conviction** | |
| Czarnecki, Mary E., Leesburg, VA | 05/18/2000 |
| Eastburn, Timothy D., Sarasota, FL | 05/18/2000 |
| Gulla, Frank T., Wayne, NJ | 05/18/2000 |
| Hocevar, William J., Madison, OH | 05/18/2000 |
| Marchese, Joseph M., Dunmore, PA | 05/18/2000 |
| Miko, Leland Richard, Hayward, CA | 05/18/2000 |
| Naughton, Lourdes Ann, Scranton, PA | 05/18/2000 |
| Nuttle, Dana Kay, Pawnee, OK | 05/18/2000 |
| Parri, Bernadette, Peckville, PA | 05/18/2000 |
| Powell, Sherry Campbell, Shippensburg, PA | 05/18/2000 |
| Rosato, Donald J., Montgomery, PA | 05/18/2000 |
| Samecki, Conrad J. Jr., Plains, PA | 05/18/2000 |
| Woods, Patrice Morgan, Camp Hill, PA | 05/18/2000 |
| Zito, Joseph Anthony, New York, NY | 05/18/2000 |
| **Patient Abuse Neglect Convictions** | |
| Berry, Ricky Lee, Oklahoma City, OK | 05/18/2000 |
| Carroll, Nancy C., Senatobia, MS | 05/18/2000 |
| Coffey, Edward M., Englewood, CO | 05/18/2000 |
| Daly, Sara Rivers, N Charleston, SC | 05/18/2000 |
| Dawson, Deanna, Clinton, MS | 05/18/2000 |
| Dennis, Tonya D., Camden, AR | 05/18/2000 |
| Exum, Parthenia, Wilmington, DE | 05/18/2000 |
| Ford, Dale Allen, Crossville, TN | 05/18/2000 |
| Freeman, Dean Andre, San Quentin, CA | 05/18/2000 |
| Gregory, Doris, Lucedale, MS | 05/18/2000 |
| Hamilton, Cynthia, Alton, IL | 05/18/2000 |
| Harrington, James William, II., Sherwood, AR | 05/18/2000 |
| Hernandez, Juanita, Corpus Christi, TX | 05/18/2000 |
| Hill, Gail Leniase, Shreveport, LA | 05/18/2000 |
| Howze, Tyrone, New York, NY | 05/18/2000 |
| Jennings, Diane A., Garfield Hgts, OH | 05/18/2000 |
| Jones, Terrence, Youngstown, OH | 05/18/2000 |
| Kinoo, Samuel, Richmond, VA | 05/18/2000 |
| Long, Joanne D., Homer, NY | 05/18/2000 |
| Macpeek, Elizabeth L., Lyndonville, NY | 05/18/2000 |
| Mathews, Mariamma, Ridgewood, NY | 05/18/2000 |
| Metzler, Jacklyn L., Newark, DE | 05/18/2000 |
| Miller, Tammy L., Lawrenceville, IL | 05/18/2000 |
| Miller, Phyllis D., Cincinnati, OH | 05/18/2000 |
| Moore, Heather, Elmira, NY | 05/18/2000 |
| Moore, Joseph, Philadelphia, PA | 05/18/2000 |
| Mullins, Kendra D., Lawton, OK | 05/18/2000 |
| Page, Dorothy, Union, MS | 05/18/2000 |

| Subject, City, State | Effective date |
|---|---|
| Parker, Chester A., E Cleveland, OH | 05/18/2000 |
| Posner, Robert S., Brooklyn, NY | 05/18/2000 |
| Prater, Lavonda, Bedford Hills, NY | 05/18/2000 |
| Randall, Margaret Ann, Shutesbury, MA | 05/18/2000 |
| Rhein, Anna L., Wooster, OH | 05/18/2000 |
| Riley, Dawn M., Pekin, IL | 05/18/2000 |
| Robinson, Paula Ann, McQueeney, TX | 05/18/2000 |
| Rubadue, Bernard James, Ogdensburg, NY | 05/18/2000 |
| Rumley, Linda Ruth, Gage,OK | 05/18/2000 |
| Sanders, Felicia, Freeport, NY | 05/18/2000 |
| Steele, Elizabeth, Morton, MS | 05/18/2000 |
| Stiggins, Laura D., Arkport, NY | 05/18/2000 |
| Tillman, Harold, Lawton, OK | 05/18/2000 |
| Williams, Rachel M., Toledo, OH | 05/18/2000 |
| Wright, Stephanie, Baltimore, MD | 05/18/2000 |
| **Conviction for Health Care Fraud** | |
| Carpenter, Selena M., Waterville, ME | 05/18/2000 |
| Crushfield, Toni, Saint Rose, LA | 05/18/2000 |
| Cushnie, William Paul, Angola, NY | 05/18/2000 |
| Griffin, Antonia Danielle, Zachary, LA | 05/18/2000 |
| **License Revocation/Suspension/ Surrendered** | |
| Abourmahboub, Shahram, Norwood, MA | 05/18/2000 |
| Adams, Barton J., Manchester Ctr, VT | 05/18/2000 |
| Allain, Joseph Michael, Abbeville, LA | 05/18/2000 |
| Allen, Jason Wayne, Desert Hot Springs, CA | 05/18/2000 |
| Anderson, Madeline C., Southampton, PA | 05/18/2000 |
| Andrews, Maya Janica, Colton, CA | 05/18/2000 |
| Arminski, Mari-Jo, Bradbury, CA | 05/18/2000 |
| Armstrong, John Franklin, New Braunfels, TX | 05/18/2000 |
| Atteridge, Gail Marcia, Princeton, TX | 05/18/2000 |
| Baker, Pamela A., Birmingham, AL | 05/18/2000 |
| Ballard, Joyce M., Naples, FL | 05/18/2000 |
| Beckman, Sherry Lynn, Hoover, AL | 05/18/2000 |
| Bendall, Sherry Ann, Laguna Hills, CA | 05/18/2000 |
| Benninghoff, John C., Eagan, MN | 05/18/2000 |
| Biggs, Donna L., Portsmouth, VA | 05/18/2000 |
| Bouchard, Carol, Pittsburg, PA | 05/18/2000 |
| Boykin, Lesa Ann, Decatur, AL | 05/18/2000 |
| Briones, Ricardo Aguila, Temecula, CA | 05/18/2000 |
| Bronder, Rosemry, Mitchellville, MD | 05/18/2000 |
| Brown, Stephanie Michelle, Birmingham, AL | 05/18/2000 |

| Subject, City, State | Effective date |
|---|---|
| Burke, Robert C., Los Angeles, CA | 05/18/2000 |
| Burwell, Jeffrey Eugene, Plain City, OH | 05/18/2000 |
| Chard-Yaron, Robert, San Diego, CA | 05/18/2000 |
| Christian, Kimary Ann, Killeen, TX | 05/18/2000 |
| Claney, Jonathan Holt, Norristown, PA | 05/18/2000 |
| Clawser, Samuel M., Leesburg, FL | 05/18/2000 |
| Clemmer, Lisa A., Boyertown, PA | 05/18/2000 |
| Cloutier, Jennifer, Portsmouth, NH | 05/18/2000 |
| Costopoulos, Aleta M., Westboro, MA | 05/18/2000 |
| Cote, Roberta L., Manchester, NH | 05/18/2000 |
| Criqui, Mary, Cheshire, CT | 05/18/2000 |
| Cullen, Judith, Wolcott, CT | 05/18/2000 |
| Culpepper, Lora Nell, Montgomery, AL | 05/18/2000 |
| Davis, Theresa Jean Trimble Lanett, AL | 05/18/2000 |
| Delaney, Mary Ann White, Louisville, KY | 05/18/2000 |
| Demary, Deborah Harrington, Windsor, MA | 05/18/2000 |
| Derioto, Toni Anne, Boston, MA | 05/18/2000 |
| Dittman, Beverly Stroup, Lewis Run, PA | 05/18/2000 |
| Dominguez, Ralph Zepherinus, Ontario, CA | 05/18/2000 |
| Donaho, Robert C., Peoria, IL | 05/18/2000 |
| Dunlap, Yvonne Delores, Mobile, AL | 05/18/2000 |
| Durrell, Charles Lyle, Jr., South Barre, VT | 05/18/2000 |
| Edmunds, John J., Londonderry, NH | 05/18/2000 |
| Eldred, Julie A., Derry, NH | 05/18/2000 |
| Ellis, Sheryl, Charlevoix, MI | 05/18/2000 |
| Emberling, Merlelyn Gaea, Cumby, TX | 05/18/2000 |
| Emery, Phyllis, Antrim, NH | 05/18/2000 |
| Erb, Celine Strzelecki, West Chester, PA | 05/18/2000 |
| Fagenstorm, Patrick Cregor, San Diego, CA | 05/18/2000 |
| Fallwell, Tobi Jo, Copperas Cover, TX | 05/18/2000 |
| Fisher, Marian L., Titusville, FL | 05/18/2000 |
| Flynn, Kathleen M., W. Warwick, RI | 05/18/2000 |
| Ford, Deborah L., Findlay, OH | 05/18/2000 |
| Frankel, Lee, Freehold, NJ | 05/18/2000 |
| Frawley, Gale D., Dover, MA | 05/18/2000 |
| Garcia, Ingrid Judith, San Bernardino, CA | 05/18/2000 |
| Gebo, Kevin Patrick, Tallahassee, FL | 05/18/2000 |
| Gercken, Dawn Theresa Schorr, Birmingham, AL | 05/18/2000 |
| Gilmore, Keith J., Philadelphia, PA | 05/18/2000 |
| Girouard, Herve J., Bedford, MA | 05/18/2000 |
| Glick-Scroggins, Beth Ann, Alameda, CA | 05/18/2000 |
| Goris, Lynnette M., Parma, MI | 05/18/2000 |
| Gray, Kirk Derek, Ventura, CA | 05/18/2000 |
| Greenwood, Lisa Stoudt, Trappe, PA | 05/18/2000 |
| Grimes, James M., Baltimore, MD | 05/18/2000 |
| Habib, Roshdy, Bulter, AL | 05/18/2000 |
| Hansen, Barbara J., Fargo, ND | 05/18/2000 |
| Harrison, Debra A., Mantachie, MS | 05/18/2000 |
| Healy, Paul Richard, Culver City, CA | 05/18/2000 |
| Henley, Patrick E., Anniston, AL | 05/18/2000 |
| Higgins, Andrew E., Sheffield, MA | 05/18/2000 |
| Highwood, Antonio, San Antonio, TX | 05/18/2000 |
| Holt, James Francis, Atascadero, CA | 05/18/2000 |
| Howell, Teresa, Providence, RI | 05/18/2000 |
| Hubbard, Patricia M., St. Johnsbury, VT | 05/18/2000 |
| Hughes, Kelly Denise, Wasco, CA | 05/18/2000 |
| Hughes, Herschel Roland, Riverside, CA | 05/18/2000 |
| Hutchings, Lori A., Medford, MA | 05/18/2000 |
| Hyde, Michael Evan, San Diego, CA | 05/18/2000 |
| Imhoff, Barbara A., Aliquippa, PA | 05/18/2000 |
| Jacob, Sosamma Mathai, Dallas, TX | 05/18/2000 |
| Janota, Rudy, Coppell, TX | 05/18/2000 |
| Jardon, Leonard A., Burbank, CA | 05/18/2000 |
| Johnson, Tyrone Joseph, San Diego, CA | 05/18/2000 |
| Johnson-Pommier, Lynne, Virginia, MN | 05/18/2000 |
| Johnston, Jack H., Ellijay, GA | 05/18/2000 |
| Jones, Patricia E., Mulkeytown, IL | 05/18/2000 |
| Kelly, Bonnie R., Aurora, IL | 05/18/2000 |
| Kerns, Donna R., Staunton, VA | 05/18/2000 |
| Kim, Ray Kyusuk, Santa Ana, CA | 05/18/2000 |
| King, Kimberly Ann, Waxahachie, TX | 05/18/2000 |
| Koch, Patricia Alice, Fremont, CA | 05/18/2000 |
| Lambert, Vickie L., Pinckney, MI | 05/18/2000 |
| Lange, Sylvia R., Woonsocket, RI | 05/18/2000 |
| Lapre, Katherine A., New Bedford, MA | 05/18/2000 |
| Lee, Carlvent Todd, Tuskegee, AL | 05/18/2000 |
| Levan, Judith Margaret, Cypress, TX | 05/18/2000 |
| Lim, Denna Mae, Marysville, CA | 05/18/2000 |
| Lindenberg, Dresina, Bradenton, FL | 05/18/2000 |
| Lockhart, Charles Ronnie, Jr., Birmingham, AL | 05/18/2000 |
| Lockwood, Laura F., Edgewater, FL | 05/18/2000 |
| Lucas, Cynthia A., Green Valley Lake, CA | 05/18/2000 |
| Lynn, Gary B., Oakford, IL | 05/18/2000 |
| Mappes, Michael R., Plymouth, MA | 05/18/2000 |
| Maraggia, Debra Denise, Gilmer, TX | 05/18/2000 |
| Marshall, Raymond G., Danville, KY | 05/18/2000 |
| Martina, John Gordon, Larkspur, CA | 05/18/2000 |
| Martinez, Michael Angelo, Fresno, CA | 05/18/2000 |
| Maxwell, Clifton, Fontana, CA | 05/18/2000 |
| McCrae, Cheryl, Phoenix, AZ | 05/18/2000 |
| McDonald, Susan Jill, Strathmore, CA | 05/18/2000 |
| McGowen, Brenda Jane, Putney, VT | 05/18/2000 |
| McKenzie, Kenneth Ray, Freedom, CA | 05/18/2000 |
| McKeon, Sally A., North Adams, MA | 05/18/2000 |
| McNulty, Christine M., Lowell, MA | 05/18/2000 |
| Meek, Charles G., Jacksonville, FL | 05/18/2000 |
| Mendoza, Jeanette Marie, San Bernardino, CA | 05/18/2000 |
| Mettetal, Ray Wallace, Jr., Petersburg, VA | 05/18/2000 |
| Mims, Andrea F. Vaughn, Dothan, AL | 05/18/2000 |
| Mitchel, Debrann Washington, Elizabeth City, NC | 05/18/2000 |
| Mix, Jo Ann Hyde, Mt Dora, FL | 05/18/2000 |
| Monroe, Nina Suzette, Tuscaloosa, AL | 05/18/2000 |
| Montgomery, James Joseph, Santa Ana, CA | 05/18/2000 |
| Moore, Minnie Rose Hudson, Midfield, AL | 05/18/2000 |
| Moore, Tracy Lynn, Dallas, TX | 05/18/2000 |
| Morris, Jennifer L., Ft. Myers, FL | 05/18/2000 |
| Morrison, Toni L., Davison, MI | 05/18/2000 |
| Mosley, Victoria Henry, Scottsburg, VA | 05/18/2000 |
| Mouton, Joan Theresa, Sacramento, CA | 05/18/2000 |
| Myers, Edward Cary, Mineral Wells, TX | 05/18/2000 |
| Napoli, Anthony J., Saco, ME | 05/18/2000 |
| Naylor, Janice, Smyrna, GA | 05/18/2000 |
| Neblett, Sandra Elaine, Bryan, TX | 05/18/2000 |
| Nelson, Douglas C., Lake Park, IA | 05/18/2000 |
| Newberry, Dena L., Decatur, IL | 05/18/2000 |
| Newman, Lee David, Los Angeles, CA | 05/18/2000 |
| Newman, Enloe O., Baldwin Park, CA | 05/18/2000 |
| Nicholas, Martin Price, Birmingham, AL | 05/18/2000 |
| Odom-Hickey, William Alex, Philadelphia, PA | 05/18/2000 |
| Ouimet, Michael H., Foxboro, MA | 05/18/2000 |
| Panganiban, Antoinette Tapat A., Lakewood, CA | 05/18/2000 |
| Parker, Ramona C., Jacksonville, FL | 05/18/2000 |
| Payne, Diane Denise, Fort Worth, TX | 05/18/2000 |

| Subject, City, State | Effective date |
|---|---|
| Pfeiffer, Marilyn L., Gainesville, FL | 05/18/2000 |
| Phelps, Luann, Manchester, NH | 05/18/2000 |
| Platt, Robin Anne, W. Covina, CA | 05/18/2000 |
| Pokki, Aaron E., Templeton, MA | 05/18/2000 |
| Posey, Linda Sue Hooper, Cherokee, AL | 05/18/2000 |
| Prentiss, Bettie W., Madison, VA | 05/18/2000 |
| Prior, William Franklin Jr., Aiken, SC | 05/18/2000 |
| Rafferty, Sharon D., Anchorage, AK | 05/18/2000 |
| Rees, David G. Jr., Great Britain | 05/18/2000 |
| Richardson, Elton Louis, Los Angeles, CA | 05/18/2000 |
| Robertson, Dorothy Ann, Dallas, TX | 05/18/2000 |
| Rockett, Joan, Manchester, NH | 05/18/2000 |
| Ross, Tonya L., Stockbridge, VT | 05/18/2000 |
| Rucker, Susan B., Portsmouth, NH | 05/18/2000 |
| Rudofski, Sharon L., Walled Lake, MI | 05/18/2000 |
| Sacks, Irving B., Moss Beach, CA | 05/18/2000 |
| Sakmar, Daniel Andrew, Pittsburgh, PA | 05/18/2000 |
| Salzameda, Richard Gustavo, San Bernardino, CA | 05/18/2000 |
| Schmidt, Theresa Cox, Philadelphia, PA | 05/18/2000 |
| Sessler, Connie L., Shell Rock, IA | 05/18/2000 |
| Shoemaker, Willa Mae Wells, Liberty, KY | 05/18/2000 |
| Simpson, Cynthia L., Shady Hill, FL | 05/18/2000 |
| Slater, Linda Lee, Orange, TX | 05/18/2000 |
| Smith, Cynthia Floree, Delhi, CA | 05/18/2000 |
| Smith, Leslie Marie, Landers, CA | 05/18/2000 |
| Smith, Sheila K., Flora, IL | 05/18/2000 |
| Smith, Dennis J., Revere, MA | 05/18/2000 |
| Snyder, Celia V., Vista, CA | 05/18/2000 |
| Stallman, Mark, Chicago, IL | 05/18/2000 |
| Stevens, Katherine Retha, Clearlake, CA | 05/18/2000 |
| Stokes, Carlos D., Chicago, IL | 05/18/2000 |
| Stone, Mildred V., Craftsbury, VT | 05/18/2000 |
| Street, Steven Wayne, Hudson, FL | 05/18/2000 |
| Stumpf, Craig Allen, Delray Beach, FL | 05/18/2000 |
| Sturm, Mary J., Rochester Hills, MI | 05/18/2000 |
| Su, Yong Fang, Garden Grove, CA | 05/18/2000 |
| Sullivan, Elizabeth M., Shelburne, VT | 05/18/2000 |
| Swaim, James Ray, Jr., Wichita Falls, TX | 05/18/2000 |
| Swarts, Shirley Elaine, Fresno, CA | 05/18/2000 |
| Tate, Joni James, Muscle Shoals, AL | 05/18/2000 |
| Taylor, Henry Keith, Thousand Oaks, CA | 05/18/2000 |
| Thatcher, Wendy L., South Dennis, MA | 05/18/2000 |
| Thompson, Barbara G., Dearborn, MI | 05/18/2000 |
| Todd, Diane Ona, Billerica, MA | 05/18/2000 |
| Tomillo, Pamela, West Haven, CT | 05/18/2000 |
| Townes, Emma B., Midlothian, VA | 05/18/2000 |
| Ward, Donna Kaye Williams, Decatur, AL | 05/18/2000 |
| Warren, William E., Shoreview, MN | 05/18/2000 |
| Weeks, Glenn, Madison, AL | 05/18/2000 |
| Weston, Martha Louise-Leathers, Russell, PA | 05/18/2000 |
| Willis, Paul Randall, Auburn, AL | 05/18/2000 |
| Worley, Anthony Wayne, Alta Loma, CA | 05/18/2000 |
| Youngue, Eugene L., III, Pittsburgh, PA | 05/18/2000 |
| Zaffer, Sheila L., Lake Forest, IL | 05/18/2000 |
| **Federal/State Exclusion/Suspension** | |
| Chen, Samuel, Chicago, IL | 05/18/2000 |
| Competent Care, Inc., Newburgh, NY | 05/18/2000 |
| Crevar, David, Clairton, PA | 05/18/2000 |
| Medicine Shoppe, Clairton, PA | 05/18/2000 |
| **Fraud/Kickbacks** | |
| Fromer, Carl, Staten Island, NY | 03/30/2000 |
| Kimberly Home Health Care, Inc., Melville, NY | 07/19/2000 |
| Pozzi, Deborah, Wood Dale, IL | 02/03/2000 |
| **Owned/Controlled by Convicted Excluded** | |
| ABC Eureka Medical Rentals, Hialeah, FL | 05/18/2000 |
| Affordable Dental Care of Cape, Boca Raton, FL | 05/18/2000 |
| Doherty Chiropractic, Abington, MA | 05/18/2000 |
| Marketing & Management Special, Atlanta, GA | 05/18/2000 |
| Professional Medical Care, Inc., Miami, FL | 05/18/2000 |
| Prometo Counseling Center, Inc., Miami, FL | 05/18/2000 |
| Southwest Health Services, Inc., Stone Mountain, GA | 05/18/2000 |
| Southwest Health Services, Inc., Atlanta, GA | 05/18/2000 |
| Speech Pathology Service, Inc., Parairie Village, KS | 05/18/2000 |
| Tri-County Medical Clinic, LTD., Vandalia, IL | 05/18/2000 |
| Wallace Chiropractic Center, Artesia, NM | 03/31/2000 |
| **Default on Heal Loan** | |
| Alesescu, Kenneth J., Auburn, CA | 04/05/2000 |
| Alley, Michael K., N. Little Rock, AR | 05/18/2000 |
| Anderson-McGruder, Denise, Detroit, MI | 03/31/2000 |
| Antolos, John, New York, NY | 05/18/2000 |
| Bedell, Andrew D., Tulsa, OK | 03/30/2000 |
| Bohn, Ralph R., Louisville, KY | 05/18/2000 |
| Bunker, Lane P., Longmont, CO | 05/18/2000 |
| Cantong, David E., San Gabriel, CA | 05/18/2000 |
| Carr, Terry A., Maryville, WI | 05/18/2000 |
| Dale-Frimml, Jaymee J., Nampa, ID | 05/18/2000 |
| Davidson, Clifford M., Knoxville, TN | 03/29/2000 |
| Dennis, Gwenda B., Laguna Hills, CA | 05/18/2000 |
| Dugan-Santaloci, Blaise N., Brockton, MA | 05/18/2000 |
| Ellenberger, Lori M., Riverside, CA | 05/18/2000 |
| Erickson, Thomas M., Cornelius, NC | 05/18/2000 |
| Gergen, Daivid W., Nags Head, NC | 05/18/2000 |
| Ginzburg, Asya, Stamford, CT | 05/18/2000 |
| Gray, Cynthia, D., Vancouver, WA | 05/18/2000 |
| Guerrier, Donald D., Jamaica, NY | 05/18/2000 |
| Hancock, John T., Mooresburg, TN | 05/18/2000 |
| Head, Philip A., Jr., Galveston, TX | 04/11/2000 |
| Homer, Milton H., Kent, WA | 05/18/2000 |
| Hunter, Jennifer E., Metairie, LA | 05/18/2000 |
| Husain, Mehtab, Lewisburg, PA | 02/09/2000 |
| Jones, Carma Rochelle, Stafford, TX | 05/18/2000 |
| Kershner, Patricia A., Jonesboro, GA | 05/18/2000 |
| Kidd, Crayton C., Farmington Hills, MI | 05/18/2000 |
| Kratt, Thomas William, Nacogdoches, TX | 04/05.2000 |
| Kullrich, Regant T., Oakhurst, CA | 04/05/2000 |
| Lapham, David V., Danboro, PA | 05/18/2000 |
| Madrid, Martha, Encino, CA | 05/18/2000 |
| Mason, Peggy J., Venice, FL | 05/18/2000 |
| Matsuzaki, Maurice M., Honolulu, HI | 05/18/2000 |
| Noble, Craig J., Redford, MI | 04/05/2000 |
| O'Brien, Stephanie M., Decatur, GA | 05/18/2000 |
| Oksenholt, Lorrie M., Reno, NV | 03/13/2000 |
| Pak, Jae S., Santa Ana, CA | 05/18/2000 |
| Pizarro, Joanna C., Aliso Viejo, CA | 05/18/2000 |
| Sartz, Patrick M., Chandler, AZ | 05/18/2000 |
| Scopelliti, Aldo R., W.Long Branch, NJ | 05/18/2000 |
| Seymour, Mark A., Elkridge, MD | 05/18/2000 |
| Smith, Gwendolyn D., Tuscaloosa, Al | 05/18/2000 |
| Smith, Jill D., San Andreas, CA | 05/18/2000 |
| Stockslager, Viki L., Toledo, OH | 05/18/2000 |
| Stone, John L., Bay Springs, MS | 05/18/2000 |
| Stumpf, Gregory R., Ozark, MO | 05/18/2000 |
| Trusty, George, Syracuse, NY | 05/18/2000 |
| Turner, Joshua, Far Rockaway, NY | 05/18/2000 |
| Von Eberstein, Harle A., Lakewood, CO | 05/18/2000 |

| Subject, City, State | Effective date |
|---|---|
| Wade, Michael J., Coachella, CA | 05/18/2000 |
| Wallace, Richard Larry, Jr., Artesia, NM | 03/31/2000 |
| Will, Richard S., Radnor, PA | 05/18/2000 |

Dated: May 2, 2000.

**Calvin Anderson,**

*Acting Director, Health Care Administrative Sanctions, Office of Inspector General.*

[FR Doc. 00–11848 Filed 5–10–00; 8:45 am]

BILLING CODE 4150–04–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request; Miniaturized Wearable Transdermal Alcohol Monitor

**SUMMARY:** In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

**PROPOSED COLLECTION:** *Title:* Miniaturized Wearable Transdermal Alcohol Monitor. *Type of Information Collection Request:* New. *Need and Use of Information Collection:* This Small Business Innovation Research two-year study is designed to complete the development and clinical testing of a miniaturized wearable Transdermal Alcohol Sensor/Recorder (TAS) that is ready for evaluation in various medical and forensic markets. The overall goal of the project is to refine the specifications of Giner, Inc.'s prototype TAS for miniaturization and to improve wearability for extended periods of time on the wrist or upper arm, maintaining all of the functionality of the current device. Testing on adult volunteers while they are consuming alcohol will determine wearability, performance, reliability, and reproducibility of the TAS in both clinical and normal living/working conditions. The subjects in two small clinical studies will be asked to keep a daily log of activities, including eating and drinking, while they are wearing the TAS for up 14 days. At the conclusion of the experiment, they will be interviewed about their drinking during the test period using the Time Line Followback (TLFB), a standard clinical interview instrument. A relative of each subject (collateral) will also be interviewed to corroborate the subjects' drinking record. A small sample of alcoholics will wear the TAS for 24 hours, while undergoing detoxification treatment under a physician's care, to evaluate the TAS response to high blood alcohol levels. They will be interviewed about their drinking in the past week using the TLFB. The findings of the studies will be used by the contractor to validate the performance of the re-designed TAS in different settings where monitoring of alcohol ingestion is desirable. *Frequency of Response:* Once, twice, or daily for 14 days. *Affected Public:* Individuals. *Type of Respondents:* Alcoholics, social drinkers, collaterals (ages 21–65). The annual reporting burden is as follows:

YEAR 1

| Type of respondents | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|
| Alcoholics | 6 | 1 | 0.1667 | 1 |
| Social Drinkers | 12 | 16 | 0.1667 | 32 |
| Collaterals | 12 | 2 | 0.1667 | 4 |
| Total | | | | 37 |

YEAR 2

| Type of respondents | Estimated number of respondents | Estimated number of responses per respondent | Average burden hours per response | Estimated total annual burden hours requested |
|---|---|---|---|---|
| Social Drinkers | 42 | 15 | 0.1667 | 105 |
| Collaterals | 42 | 1 | 0.1667 | 7 |
| Total | | | | 112 |

There are no costs to Respondents to report. Social drinker respondents who consume alcohol in controlled settings, wear the TAS, and keep daily log are paid $100–$150 for their participation. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

*Request for Comments:* Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

*For Further Information:* To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Laurie Foudin, Program Administrator, Biomedical Research Branch, Division of Basic Research, NIAAA, 6000 Executive Blvd., MSC

7003, Bethesda, MD 20892–7003, or call (301) 443–0912 or E-mail your request, including your address to: lf29z@nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before July 10, 2000.

Dated: May 2, 2000.

**Stephen Long,**

*Executive Officer, NIAAA.*

[FR Doc. 00–11739 Filed 5–10–00; 8:45 am]

BILLING CODE 4140–10–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center of Complementary and Alternative Medicine Special Emphasis Panel.

*Date:* May 19, 2000.

*Time:* 1:30 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 9000 Rockville Pike, Bldg 31, Room 5B50, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* John C. Chah, Scientific Review Administrator, National Institutes of Health, NCCAM, Building 31, Room 5B50, 9000 Rockville Pike, Bethesda, MD 20892, 301–402–4334, johnc@od.nih.gov.

Dated: May 3, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11760 Filed 5–10–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Center For Research Resources; amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Research Resources Council, May 18, 2000, 8 am to May 18, 2000, 5 pm, National Institutes of Health, 9000 Rockville Pike, Conference Room 6, Building 31C, Bethesda, MD, 20892 which was published in the **Federal Register** on April 5, 2000, 00–8316.

The meeting will be open to the public from 9:15 a.m. until 1:30 p.m., closed to the public from 1:30 p.m. to 3:30 p.m., and open to the public from 3:30 p.m. to adjournment. The meeting is partially closed to the public.

Dated: May 3, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11765 Filed 5–10–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Mentored Patient-Oriented Res. Career Development Awards (K23), Midcareer Investigator Awards in Patient-Oriented Research (K24), and Mentored Quantitative Research Career Develop. Awards (K25).

*Date:* May 30–31, 2000.

*Time:* 7 pm to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Diane M. Reid, Scientific Review Administrator, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, (301) 435–0277.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Transitional Career Development Award in Women's Health Research.

*Date:* May 31, 2000.

*Time:* 4 pm to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Diane M. Reid, Scientific Review Administrator, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, (301) 435–0277.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Specialized Centers of Research (SCOR) in Hemostatic and Thrombotic Diseases.

*Date:* June 1–2, 2000.

*Time:* 7 pm to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Diane M. Reid, Scientific Review Administrator, NIH, NHLBI, DEA, Two Rockledge Center, 6701 Rockledge Drive, Room 7182, Bethesda, MD 20892–7924, (301) 435–0277.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Molecular Genetics of Hypertension SCOR.

*Date:* June 22–23, 2000.

*Time:* 7 pm to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, MD 21044.

*Contact Person:* Jeffrey H. Hurst, Leader, Vascular/Blood Scientific Review Group, Rockledge Center II, 6701 Rockledge Drive, Suite 7208, Bethesda, MD 20892–7924, 301/435/0303.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel, Cellular and Molecular Mechanisms of Diabetic Cardiomyopathy.

*Date:* June 29–30, 2000.

*Time:* 7 pm to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* S. Charles Selden, Scientific Review Administrator, NIH/NHLBI/DEA, Rockledge Center II, 6701 Rockledge Drive, Suite 7196, Bethesda, MD 20892–7924, 301/435–0288.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 3, 2000.
**LaVerne Y. Stringfield,**
*Director, Office of Federal Advisory Committee Policy.*
[FR Doc. 00–11761 Filed 5–10–00; 8:45 am]
BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Oxygen Sensing During Intermittent Hypoxia.
*Date:* May 31, 2000.
*Time:* 8 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
*Contact Person:* Anne P Clark, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7186 Bethesda, MD 20892–7924, (301) 435–0280.

*Name of Committee:* National Heart, Lung, and Blood Institute Special Emphasis Panel; Mentored Clinical Scientist Development Awards.
*Date:* June 15, 2000.
*Time:* 8 am to 5 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
*Contact Person:* Eric H Brown, Scientific Review Administrator, NIH/NHLB/DEA, Review Branch, Rockledge Building II, 7204, 6701 Rockledge Drive, Bethesda, MD 20892–7924, (301) 435–0299, browne@gwgate.nhlbi.nih.gov.
(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 3, 2000.
**LaVerne Y. Stringfield,**
*Director, Office of Federal Advisory Committee Policy.*
[FR Doc. 00–11762 Filed 5–10–00; 8:45 am]
BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Amended Notice Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Drug Abuse, May 16, 2000, 1 p.m. to May 17, 2000, 11:30 a.m., Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 which was published in the **Federal Register** on April 25, 2000, Volume 65 FR 24493.

The agenda of the meeting has been changed. On May 16, from 1 p.m. to 4 p.m., the meeting will be closed to the public, and on May 17, from 9 a.m. to 11:30 a.m., the meeting will be open to the public. The meeting is partially closed to the public.

Dated: May 4, 2000.
**LaVerne Y. Stringfield,**
*Director, Office of Federal Advisory Committee Policy.*
[FR Doc. 00–11757 Filed 5–10–00; 8:45 am]
BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.
*Date:* June 12, 2000.
*Open:* 8:30 am to 12:00 pm.
*Agenda:* The meeting will be open to the public to discuss administrative details relating to Council business and special reports.
*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.
*Closed:* 1:00 pm to 5:00 pm.
*Agenda:* To review and evaluate grant applications and/or proposals.
*Place:* 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.
*Contact Person:* Steven J. Hausman, Deputy Director, NIAMS/NIH, Bldg 31, Room 4C–32, 31 Center Dr., MSC 2350, Bethesda, MD 20892–2350.
(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 4, 2000.
**LaVerne Y. Stringfield,**
*Director, Office of Federal Advisory Committee Policy.*
[FR Doc. 00–11764 Filed 5–10–00; 8:45 am]
BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial properly such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communications Disorders Special Emphasis Panel.

*Date:* June 16, 2000.
*Time:* 8 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* The Westin Fairfax Hotel, 2100 Massachusetts Ave., NW., Washington, DC 20008.
*Contact Person:* Craig A. Jordan, Chief, Scientific Review Branch, NIH/NIDCD/DER, Executive Plaza South, Room 400C, Bethesda, MD 20892–7180, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11766 Filed 5–10–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Deafness and Other Communication Disorders Special Emphasis Panel.
*Date:* June 29, 2000.
*Time:* 11:30 am to 1:00 pm.
*Agenda:* To review and evaluate grant applications.
*Place:* Executive Plaza South, Room 400C, 6120 Executive Blvd., Rockville, MD 20852 (Telephone Conference Call.
*Contact Person:* Melissa Stick, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11767 Filed 5–10–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Allergy, Immunology, and Transplantation Research Committee.
*Date:* June 1–2, 2000.
*Open:* June 1, 2000, 8:30 a.m. to 9:15 a.m.
*Agenda:* Discussion of administrative details relating to committee business and program review.
*Place:* Hyatt Arlington Hotel, Salon A Room, 1325 Wilson Blvd., Arlington, VA 22209.
*Closed:* June 1, 2000, 9:15 a.m. to adjournment.
*Agenda:* To review and evaluate grant applications.
*Place:* Hyatt Arlington Hotel, Salon A Room, 1325 Wilson Blvd., Arlington, VA 22209.
*Contact Person:* Madelon C. Halula, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610; 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11768 Filed 5–10–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel.
*Date:* May 31, 2000.
*Time:* 1 p.m. to 4 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* 6700–B Rockledge, Room 2217, Bethesda, MD 20892 (telephone conference call).
*Contact Person:* M. Sayeed Quraishi, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610; 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11769 Filed 5–10–00; 8:45 am]

BILLING CODE 4140–01–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Library of Medicine; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Library of Medicine Special Emphasis Panel; Internet Connections for Medical Institutions.

*Date:* June 8–9, 2000.

*Time:* June 8, 2000, 1:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Time:* June 9, 2000, 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Sharee Pepper, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (301) 594–4933.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 3, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11759 Filed 5–10–00; 8:45 am]

BILLING CODE 4140–01–M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of health**

**Center for Scientific Review; Notice of Closed meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* May 10, 2000.

*Time:* 10 am to 11 am.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Carl D. Banner, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* May 10, 2000.

*Time:* 10:30 am to 12 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Priscilla B. Chen, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 3, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11758 Filed 5–10–00; 8:45 am]

BILLING CODE 4140–01–M

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**Center For Scientific Review; Notice of Closed Meetings**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552(b)(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* May 10, 2000.

*Time:* 1:00 pm to 4:00 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* May 16, 2000.

*Time:* 10:00 am to 11:00 am.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Gloria B. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3166, MSC 7848, Bethesda, MD 20892, (301) 435–1017, leving@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* May 17, 2000.

*Time:* 11:00 am to 12:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Lawrence N. Yager, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, 301–435–0903, yagerl@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333,

93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 4, 2000.

**Anna Snouffer,**

*Acting Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–11763 Filed 5–10–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of the latest forms of automated collection techniques or other forms of information technology.

**Proposed Project: 2001 National Household Survey on Drug Abuse—(0930–0110, Revision)**

SAMHSA's National Household Survey on Drug Abuse (NHSDA) is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

For the 2001 NHSDA, additional questions in the following substantive areas are planned: serious mental illness for adults; selected mental disorders for youth (12 to 17 years old); one question regarding state Children's Health Insurance Program (CHIP) coverage for respondents (12 to 19 years old); revised questions on cigarette dependence; questions on marketplace issues and knowledge of state laws regarding marijuana use; questions on smoking "bidis" and "kreteks" (flavored cigarettes); and two questions that use the "item count" methodology to estimate use of specific hard-core drugs. The remaining modular components of the NHSDA questionnaire will remain essentially unchanged except for minor modifications to wording and selective elimination of sufficient questions to allow for the additional burden of the questions listed above.

As in 1999 and 2000, the sample size of the survey for 2001 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is 94,945 hours as shown below:

| | Number of respondents | Responses per respondent | Average burden per response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| Household screener | 241,500 | 1 | 0.083 | 20,045 hrs. |
| NHSDA | 70,000 | 1 | 1.07 | 74,900 |
| Total | | | | 94,945 |

Please send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Parklawn Building, 5600 Fishers Lane, Room 16–105, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: May 5, 2000.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 00–11795 Filed 5–10–00; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. Docket No. FR–4491–N–04]**

### Draft SEQRA/NEPA Environmental Impact Report/Environmental Impact Statement (EIR/EIS); City of Yonkers, NY; Affordable Housing Ordinance (AHO) Mandated By a 1988 Federal Long-Term Plan Order

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** The Department of Housing and Urban Development gives this notice to the public that the City of Yonkers, New York, intends to prepare an Environmental Impact Report/Environmental Impact Statement (EIR/EIS) for a proposed apartment project located at 1105–1135 Warburton Avenue containing 524 units, 58 units (11% of the total units) of which are intended to be affordable housing.

This notice is in accordance with regulations of the Council on Environmental Quality as described in 40 CFR parts 1500–1508. Federal agencies having jurisdiction by law, special expertise, or other special interest should report their interests and indicate their readiness to aid in the EIR/EIS efforts as a "Cooperating Agency". Particularly solicited is information on reports or other environmental studies planned or completed in the project area, major issues and dates which the EIR/EIS should consider and recommend mitigation measures and alternatives associated with the proposed project.

A Draft EIR/EIS will be completed and pubished about June 30, 2000 for the proposed action described herein. Comments relating to the Draft EIR/EIS

are requested and will be accepted by the contact person listed below. When the Draft EIR/EIS is completed, a notice will be sent to individuals and groups known to be interested in the Draft EIR/EIS. Any person or agency interested in receiving a notice and making comment on the Draft EIR/EIS should contact the person listed below.

**ADDRESSES:** All interested agencies, groups and persons are invited to submit written comments on the within-named project and the Draft EIR/EIS to: Lee Ellman, Planning Director, Department of Planning and Development, City of Yonkers, 87 Nepperhan Avenue, Suite 311, Yonkers, New York, 10701, (914) 377–6558. Comments pertaining to the proposed project should be received by the person and office named above within 15 days of the publication of this notice in order for all comments to be considered in the preparation of the Draft EIR/EIS.

**SUPPLEMENTARY INFORMATION:** The City of Yonkers, acting on behalf of the U.S. Department of Housing and Urban Development will prepare an EIR/EIS to analyze the potential impacts of developing a 4.6 acre property, located on the west side of Warburton Avenue, north of Odell Avenue. The proposed project would include 524 units of housing with a 2-building rental apartment complex. It is proposed that 58, studio, one and two bedroom affordable units will be mixed with market rate units.

Amenities of the complex are to include a fitness center, swimming pool, a club room and enclosed parking for use by residents. The entire building is expected to be 597,380 square feet in size with 705 parking spaces.

A 0.91 acre portion is wetland. On site mitigation is expected to retain a portion of the wetland. Off site mitigation will create additional wetland areas. Both of these actions will be subject to approval by the Army Corps of Engineers under application number 1999–10770–YN.

The project is expected to take advantage of 80/20 Program tax exempt financing and federal tax credits to offset the loss of revenue from the affordable housing units.

**Need for the EIS**

It has been determined that the project may constitute an action significantly affecting the quality of the human environment and an Environmental Impact Report/Environmental Impact Statement will be prepared by the City of Yonkers in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190) on such project.

Responses to this notice will be used to:

1. Determine significant environmental issues
2. Identify data which the EIS/EIR should address, and,
3. Identify agencies and other parties which will participate in the EIR/EIS process and the basis for their involvement.

This notice is in accordance with the regulations of Housing and Urban Development under its rule (HUD Title 24, Part 58, Subpart G, Section 58.55) and of the Council on Environmental Quality under its rule (40 CFR part 1500–1508).

**Scoping**

This notice is part of the process used for scoping the EIR/EIS. Responses will help determine the significant environmental issues, identify data which the EIR/EIS should address, and help identify cooperating agencies.

A scoping session to determine the issues of the Draft EIR/EIS was opened on March 23, 2000. The closing of the scoping session will not be less than fifteen (15) days after the publication of this notice.

The Draft EIR/EIS will be published on or about June 30, 2000 and will be on file, and available for public inspection, at the address listed above. Copies may also be obtained upon request at the same address.

This notice shall be in effect for one year. If one year after the publication of the Notice in the **Federal Register** a Draft EIS has not been filed on the project, then the Notice for that project shall be cancelled. If the Draft EIS is expected more than one year after the publication of this Notice, a new updated Notice shall be published.

Dated: May 5, 2000.

**Richard H. Broun,**

*Director, Office of Community Viability.*

[FR Doc. 00–11751 Filed 5–10–00; 8:45 am]

BILLING CODE 4210–29–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

*Applicant:* James A. Miner, Duluth, MN, PRT–024284.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Jack Sprayberry, Cloudcroft, NM, PRT–025803.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Daniel H. Smith, Jr., San Jose, CA, PRT–025801.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Steven E. Hopkins, Fairfield, CA, PRT–025798.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Nancy Hecox, Selah, WA, PRT–021715.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* David M. Russell, Richardson, TX, PRT–026604.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Timothy R. Hauck, Mt. Pleasant, MI, PRT–026605.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Rusty R. Rokita, Hardin, MT, PRT–026606.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Juan F. Gutierrez, Birmingham, AL, PRT–026607.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

**Marine Mammal**

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

*Applicant:* James Adams, Fruitport, MI, PRT–026025.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort sea polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* William J. Freeman, Tullahoma, TN, PRT–026124.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* Jon C. Bumstead, Newaygo, MI 026138.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* Rocky Hall, Henderson, TX, PRT–025796.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* Rocky Hall, Henderson, TX, PRT–025795.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* Terry Luetgert, Geneva, IL, PRT–026126.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* Ron Winstead, McLean, IL, PRT–026127.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* Michael E. O'Banion, Bettendorf, IA, PRT–026608.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* David L. Swenson, Hudson, WI, PRT–026610.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* Richard T. Adams, Verdi, NV, PRT–026611.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* Dennis L. Kemmick, Columbia, PA, PRT–026613.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* John D. Freitag, Trappe, MD, PRT–026616.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* David Hartman, Canfield, OH, PRT–026772.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* Melvin Wilson, Chehalis, WA, PRT–026768.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* William E. Schwartz, Bossier City, LA, PRT–026830.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Resolute Bay polar bear population, Northwest Territories, Canada for personal use.

*Applicant:* Leonard Bernstein, New Milford, NJ, PRT–026771.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 5, 2000.

**Kristen Nelson,**

*Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 00–11785 Filed 5–10–00; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered Species Permit Applications

**AGENCY:** Fish and Wildlife Service, DOI.

**ACTION:** Notice of receipt of permit applications.

**SUMMARY:** The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 USC 1531 *et seq.*).

**Permit No. TE–776608**

*Applicant:* Monk and Associates, Walnut Creek, California.

The applicant requests a permit to take (capture and handle) the California tiger salamander (*Ambystoma*

*californiense*) in conjunction with presence or absence surveys in Santa Barbara County, California for the purpose of enhancing its survival.

**Permit No. TE–025200**

*Applicant:* Kathleen L. Whitney, Santa Barbara, California.

The applicant requests a permit to take (harass by survey, locate and monitor nests, capture, band, and release) the southwestern willow flycatcher (*Empidonax traillii extimus*) and take (monitor nests, capture, band, and release) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with scientific research through out each species range in California for the purpose of enhancing their survival.

**Permit No. TE–025197**

*Applicant:* Lockheed Martin Environmental Services, Las Vegas, Nevada.

The applicant requests a permit to take (harass by survey, capture and handle, collect tissue samples, and collect voucher specimens) the razorback sucker (*Xyrauchen texanus*) and Colorado squawfish (*Ptychocheilus lucius*) in conjunction with presence or absence surveys and scientific research throughout each species range for the purpose of enhancing their survival.

**Permit No. TE–025394**

*Applicant:* David B. Waller, San Diego, California.

The applicant requests a permit to take (survey by pursuit) the Quino checkerspot butterfly (*Euphydryas editha quino*) in conjunction with presence or absence surveys throughout its range for the purpose of enhancing its survival.

**Permit No. TE–837308**

*Applicant:* John K. Konecny, Escondido, California.

The permittee requests an amendment to his permit to: take (harass by survey) the Yuma clapper rail (*Rallus longirostris yumanensis*); take (harass by survey, locate and monitor nests, capture, band, and release) the southwestern willow flycatcher (*Empidonax traillii extimus*); and take (monitor nests, capture, band, and release) the least Bell's vireo (*Vireo bellii pusillus*) in conjunction with surveys and population monitoring throughout each species range in the State of Arizona for the purpose of enhancing their survival.

**Permit No. TE–826200**

*Applicant:* California Department of Parks and Recreation, Bay Area District, Pescadero, California.

The permittee requests an amendment to his permit to take (capture) the San Francisco garter snake (*Thamnophis sirtalis tetrataenia*) and take (capture, mark) the California red-legged frog (*Rana aurora draytonii*) in conjunction with population monitoring and habitat enhancement within Ano Nuevo State Park, California for the purpose of enhancing their survival.

**Permit No. TE–025434**

*Applicant:* Russell N. Holmes, Bureau of Land Management, Roseburg, Oregon.

The applicant requests a permit to remove and reduce to possession specimens of *Plagiobothrys hirtus* (rough popcornflower) in conjunction with recovery efforts within Douglas County, Oregon for the purpose of enhancing its survival.

**Permit No. TE–025732**

*Applicant:* Samuel S. Sweet, University of California, Santa Barbara, California.

The applicant requests a permit to take (capture and handle) the California tiger salamander (*Ambystoma californiense*) in conjunction with presence or absence surveys in Santa Barbara County, California for the purpose of enhancing its survival.

**Permit No. TE–025944**

*Applicant:* Chris Farmer, Santa Barbara, California.

The applicant requests a permit to: take (harass by survey and monitor nests) the southwestern willow flycatcher (*Empidonax traillii extimus*); take (monitor nests) the least Bell's vireo (*Vireo bellii pusillus*); and take (harass by survey) the California least tern (*Sterna antillarum browni*) in conjunction with presence or absence surveys throughout each species range in California for the purpose of enhancing their survival.

**Permit No. TE–026485**

*Applicant:* Dr. David Kingsley, Stanford University School of Medicine, Stanford, California.

The applicant requests a permit to take (capture, handle, and collect) the unarmored threespine stickleback (*Gasterosteus aculeatus williamsoni*) in conjunction with genetic research throughout the species range in California for the purpose of enhancing its survival.

**DATES:** Written comments on these permit applications must be received on or before June 12, 2000.

**ADDRESSES:** Written data or comments should be submitted to the Chief, Endangered Species, Ecological Services, Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

**Thomas J. Dwyer,**

*Acting Regional Director, Region 1, Portland, Oregon.*

[FR Doc. 00–11796 Filed 5–10–00; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Sport Fishing and Boating Partnership Council

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of meeting.

**SUMMARY:** As provided in Section 10(a)(2) of the Federal Advisory Committee Act, the Fish and Wildlife Service announces a meeting designed to foster partnerships to enhance public awareness of the importance of aquatic resources and the social and economic benefits of recreational fishing and boating in the United States. This meeting, sponsored by the Sport Fishing and Boating Partnership Council (Council), is open to the public, and interested persons may make oral statements to the Council or may file written statements for consideration.

**DATES:** June 6, 2000, 1:30 p.m. to 4 p.m.

**ADDRESSES:** The meeting will be held at the Radisson Hotel Old Town, 901 N. Fairfax St., Alexandria, Virginia 22314, telephone (703) 683–6000, FAX (703) 683–7597.

Summary minutes of the conference will be maintained by the Council Coordinator at 4040 N. Fairfax Dr., Room 132A, Arlington, VA 22203, and will be available for public inspection during regular business hours within 30

days following the meeting. Personal copies may be purchased for the cost of duplication.

**FOR FURTHER INFORMATION CONTACT:** Laury Parramore, Council Coordinator, at (703) 358–1711.

**SUPPLEMENTARY INFORMATION:** The Sport Fishing and Boating Partnership Council was formed in January 1993 to advise the Secretary of the Interior through the Fish and Wildlife Service Director about sportfishing and boating issues. The Council represents the interests of the public and private sectors of the sport fishing and boating communities and is organized to enhance partnerships among industry, constituency groups, and government. The 18-member Council includes the director of the Service and the president of the International Association of Fish and Wildlife Agencies, who both serve in ex officio capacities. Other Council members are directors from state agencies responsible for managing recreational fish and wildlife resources and individuals who represent the interests of saltwater and freshwater recreational fishing, recreational boating, the recreational fishing and boating industries, recreational fisheries resources conservation, aquatic resource outreach and education, and tourism. On June 6, 20000, the Council will convene to discuss: (1) Progress on a report containing recommendations for improving the National Fish Hatchery System. The report was requested by the Director of the Fish and Wildlife Service and is being written by the Hatchery Project Steering Committee, a subgroup of the Council's Technical Working Group. (2) The Council's work in its role as a facilitator of discussions with Federal and State agencies and other sportfishing and boating interests concerning a variety of national boating and fisheries management issues. (3) The Council's role in providing the Interior Secretary with information about the implementation of the Strategic Plan for the National Outreach and Communications Program. The Secretary approved the plan in February 1999, and the 5-year, $36 million federally funded outreach campaign authorized by the 1998 Sportfishing and Boating Safety Act is now being implemented by the Recreational Boating and Fishing Foundation, a private, nonprofit organization.

Dated: May 3, 2000.

**John G. Rogers,**

*Deputy Director.*

[FR Doc. 00–11517 Filed 5–10–00; 8:45 am]

**BILLING CODE 4310–55–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**(WY–060—1320–EL, WYW141435)**

### Availability of a Final Environmental Impact Statement on the Horse Creek Federal Coal Lease Application in the Wyoming Powder River Basin

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Availability of a Final Environmental Impact Statement on the Horse Creek Federal coal lease application in the decertified Powder River Federal Coal Production Region, Wyoming.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) and implementing regulations, and other applicable statutes, the Bureau of Land Management (BLM) announces the availability of the Final Environmental Impact Statement (FEIS) for the Horse Creek Federal coal lease application in the Wyoming Powder River Basin pursuant to 43 CFR 3425.3. This Federal coal lease application has been assigned case file number WYW141435. The FEIS analyzes the impacts of issuing a Federal coal lease for the proposed Horse Creek Federal coal tract. The Horse Creek tract is being considered for sale as a result of a coal lease application received from the Antelope Coal Company (ACC) on February 14, 1997. The tract includes approximately 2,838 acres containing approximately 356.5 million tons of geologically in-place Federal coal reserves in Campbell and Converse Counties, Wyoming. It was applied for as a maintenance tract for ACC's adjacent Antelope Mine, located in northern Converse County, Wyoming. ACC is a subsidiary of Kennecott Energy Company.

**DATES:** A 30-day availability period for the FEIS will start on the date that the Environmental Protection Agency publishes a notice of availability of the FEIS in the **Federal Register**. Following the 30-day availability period, a Record of Decision will be prepared and distributed.

**ADDRESSES:** Please address questions, comments, or requests for copies of the FEIS to the Casper District Office, Bureau of Land Management, Attn: Nancy Doelger, 2987 Prospector Drive, Casper, Wyoming 82604. Fax them to (307) 261–7587 or e-mail them to casper__wymail@blm.gov (Attn: Nancy Doelger).

**FOR FURTHER INFORMATION CONTACT:** Nancy Doelger or Mike Karbs at the above address or phone: 307–261–7600.

**SUPPLEMENTARY INFORMATION:** The application for the Horse Creek Federal coal tract was filed as a maintenance tract lease-by-application (LBA) under the provisions of 43 Code of Federal Regulations (CFR) 3425.1.

On February 14, 1997, ACC filed coal lease application WYW141435 for the Horse Creek Federal coal tract with the BLM. On May 1, 1998, ACC modified the Horse Creek application. The modified Horse Creek Federal coal tract includes the following lands:

T. 41 N., R. 71 W., 6th PM Wyoming
Sec. 14, lots 5 thru 7, and 10 thru 15;
Sec. 15, lots 6 thru 11, and 14 thru 16;
Sec. 22, lots 1, 3 thru 6, and 9 thru 13;
Sec. 23, lots 2 thru 7, and 10 thru 16;
Sec. 25, lots 11 and 12 (S ½);
Sec. 26, lots 1 thru 8, 12, and 13;
Sec. 27, lots 1 thru 3, 5, 12 thru 14, and 16;
Sec. 34, lots 1, 7, 8 thru 10, and 16;
Sec. 35, lots 8 thru 10.

The area described contains 2,837.91 acres more or less with an estimated 356.5 million tons of geologically in-place coal.

The Antelope Mine, which is adjacent to the lease application area, has an approved mining and reclamation plan from the Land Quality Division of the Wyoming Department of Environmental Quality and an approved air quality permit from the Air Quality Division of the Wyoming Department of Environmental Quality to mine up to 30 million tons of coal per year. According to the application filed for the Horse Creek Federal coal tract, the maintenance tract would be mined to extend the life of the existing mine.

The Powder River Regional Coal Team (RCT) reviewed the Horse Creek Federal coal lease application at their meeting on April 23, 1997, in Casper, Wyoming, and recommended that it be processed. The RCT was notified in writing of the modified tract configuration.

A public hearing was held at 7:00 p.m. on Wednesday, December 8, 1999, at the Holiday Inn, 2009 S. Douglas Highway, Gillette, Wyoming. The purpose of the hearing was to receive comments on the FEIS, on the fair market value, the maximum economic recovery, and the proposed competitive sale of the coal included in the proposed Horse Creek Federal coal tract. Comments on the DEIS were accepted for 60 days following November 12, 1999, the date that the Environmental Protection Agency (EPA) published their notice of availability of the FEIS in the **Federal Register**. The comment period for the Draft Environmental Impact Statement (DEIS) ended on January 12, 2000. Nine comments were

received on the DEIS and these are included with responses in the FEIS.

The FEIS analyzes three alternatives. The Proposed Action is to hold a competitive sealed-bid sale and issue a lease for the tract as applied for to the successful qualified bidder, if the bid meets or exceeds the fair market value of the tract as determined by the BLM. This is the preferred alternative of the BLM. The second alternative, Alternative 1, is the No Action Alternative which assumes that the tract will not be leased. The third alternative, Alternative 2, is to hold a competitive sealed-bid sale and issue a lease for the tract as modified by BLM to the successful qualified bidder, if the bid meets or exceeds the fair market value of the tract as determined by the BLM.

The Office of Surface Mining Reclamation and Enforcement is a cooperating agency in the preparation of the EIS because it is the Federal agency that would review the mining plans for the tract if it is leased, and recommend approval or disapproval of the mining plans to the Secretary of the Interior.

The lease application area is within the boundaries of the Thunder Basin National Grasslands. Some of the surface lands in the area were formerly under the jurisdiction of the United States and were administered by the U.S. Forest Service (USFS) as part of the Thunder Basin National Grasslands. As a result of recent land exchanges between the USFS and local landowners, however, there are no longer any surface lands within the lease application area that are under the jurisdiction of the USFS, and as a result, the USFS is not a cooperating agency in the preparation of this EIS.

Issues of concern that were identified related to this lease application include the potential impacts to wetlands, aquifers, agricultural producers, wildlife, wildlife habitat, wildlife-based recreation, cultural resources, public land access, and regional visibility that may occur if a lease is issued for this tract, and the potential for conflict with development of existing oil and gas leases in this area including coal bed methane. There are no producing oil or gas wells on the lease application area.

Comments received on the FEIS during the 30-day availability period, including names and street addresses of respondents, will be available for public review at the Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming, during regular business hours (8 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives of officials of organizations or businesses, will be made available for public inspection in their entirety.

Dated: May 5, 2000.

**Alan R. Pierson,**

*State Director.*

[FR Doc. 00–11797 Filed 5–10–00; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–930–1430–ET; Nev–059798]**

### Public Land Order No. 7443; Partial Revocation of Public Land Order No. 3512; Nevada

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order partially revokes a public land order insofar as it affects 700.12 acres of public land withdrawn for use by the Bureau of Reclamation for the Robert B. Griffith Water Project. The land is no longer needed for the purpose for which it was withdrawn and the revocation is needed to facilitate a pending land exchange. The land will remain closed to location and entry under the mining laws, and from operation of the mineral leasing and geothermal leasing laws in accordance with Section 4(c) of the Southern Nevada Public Land Management Act of 1998.

**EFFECTIVE DATE:** June 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dennis J. Samuelson, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 775–861–6532.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 3512, which withdrew public land for the Bureau of Reclamation's Robert B. Griffith Project, is hereby revoked insofar as it affects the following described land:

**Mount Diablo Meridian**

T. 21 S., R. 63 E.,
Sec. 26, lots 1, 6 to 13, inclusive, 16, 18 to 21, inclusive, and 23;
Sec. 27, SE¼;
Sec. 34, lots 8, 10 to 13, inclusive, 15, 17, 24, and 26.
Sec. 35, lot 11.

The area described contains 700.12 acres in Clark County.

2. The land described in paragraph 1 is hereby made available for disposal in accordance with Section 4 of the Southern Nevada Public Land Management Act of 1998, Public Law 105–263, 112 Stat. 2343, *et seq.*

Dated: April 28, 2000.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

[FR Doc. 00–11850 Filed 5–10–00; 8:45 am]

BILLING CODE 4310–HC–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–958–1430–ET; GP0–0063; (OR–19008, OR–19087)]**

### Public Land Order No. 7444; Revocation of Executive Order Dated January 19, 1917, and Partial Revocation of Secretarial Order Dated January 19, 1917; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order revokes an Executive order in its entirety and partially revokes a Secretarial order as to 3,690.67 acres of lands withdrawn for Bureau of Land Management Powersite Reserve No. 582 and Water Power Designation No. 3. The lands are no longer needed for the purpose for which they were withdrawn. This action will open approximately 3,690.67 acres to surface entry, subject to other segregations of record. All of the lands have been and will remain open to mining and mineral leasing subject to other segregations of record.

**EFFECTIVE DATE:** August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Allison O'Brien, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6171.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated January 19, 1917 and the Secretarial Order dated January 19, 1917, which established Bureau of Land Management Power Site Reserve No. 582 and Water Power Designation No. 3 respectively, are hereby revoked insofar as they affect the following described lands:

**Willamette Meridian**

T. 41 S., R. 5 E.,
Sec. 13, lots 1 and 2.
T. 40 S., R. 6 E.,
Sec. 1, lots 5, 6, 7, and 10, and NW¼SE¼;
Sec. 11, E½SW¼ and SE¼;
Sec. 13;
Sec. 23, lots 1 to 10, inclusive, SE¼ NE¼, W½NW¼, N½SE¼, and SW¼SE¼;
Sec. 27, lot 1, NE¼NE¼, S½NE¼, N½SE¼ and SW¼SE¼;
Sec. 35, lots 1 to 5, inclusive, and E½W½.
T. 41 S., R. 6 E.,
Sec. 3, N½NE¼, SE¼NE¼, NW¼, W½SW¼, NE¼SE¼ and S½SE¼;
Sec. 5, SE¼SE¼;
Sec. 7, lots 2, 3, 4, 9, 10, 11, and 12, NE¼, N½SE¼, and SW¼SE¼;
Sec. 9, NW¼NE¼, S½NE¼, NW¼, SE¼.
The areas described aggregate approximately 3,690.67 acres in Klamath County.

2. At 8:30 a.m. on August 10, 2000, the lands described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid and existing rights, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on August 10, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The State of Oregon has a preference right as to the lands described in paragraph 1, except for other segregations of record, for public highway right-of-way or material sites for a period of 90 days from the date of publication of this order and any location, entry, selection, or subsequent patent shall be subject to any rights granted the State as provided by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994).

Dated: April 28, 2000.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

[FR Doc. 00–11849 Filed 5–10–00; 8:45 am]

BILLING CODE 4310–33–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–020–00–1430–ES; NMNM 102549]**

### Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following public lands in Santa Fe County, New Mexico have been examined and found suitable for classification for lease or conveyance to Santa Fe County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Santa Fe County proposes to use the lands for a recreation area and community center.

**New Mexico Principal Meridian**

T. 20 N., R. 9 E.,
Sec. 4, lot 35.
Containing approximately 5.76 acres.

The lands are not needed for Federal Purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease/conveyance, when issued, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Taos Resource Area, 226 Cruz Alta, Taos, NM 87571.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Field Manager, BLM Taos Field Office, 226 Cruz Alta Road, Taos, New Mexico 87571.

**Classification Comments**

Interested parties may submit comments involving the suitability of the land for a recreation area and community center location for Santa Fe County. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

**Application Comments**

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposed use.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register.**

Dated: May 1, 2000.

**Ron Huntsinger,**

*Field Manager.*

[FR Doc. 00–11753 Filed 5–10–00; 8:45 am]

BILLING CODE 4310–FB–M

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[UT–050–4210–05; UTU–75929]**

### Realty Actions; Sales, Leases etc; Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action.

**SUMMARY:** The following public lands in Sanpete County, Utah, have been examined and found suitable for classification for conveyance to Sanpete County Sanitary Landfill Cooperative under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Sanpete County proposes to use the lands for a Class I landfill.

**Salt Lake Meridian**

T.19 S., R.1 E.
Section 24: SE¼SW¼, SW¼SE¼,
Section 25: W½NE¼, E½NW¼, NE¼SW¼, NW¼SE¼, S½SE¼.
containing 400 acres more or less.

The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest.

The patent, when issued will be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Domestic livestock grazing use by J.D. Jackson as holder of grazing permit No. 435262 for the Gunnison Valley Allotment. The right of the permittee to graze livestock on the public land identified above pursuant to the terms and conditions of his permit and this clause shall expire on August 31, 2002.

5. Domestic livestock grazing use by Bryce Christensen as holder of grazing permit No. 435360 for the Sanpitch Allotment. The right of the permittee to graze livestock on the public land identified above pursuant to the terms and conditions of his permit and this clause shall expire on August 31, 2002.

Detailed information concerning this action is available at the office of Bureau of Land Management, 150 East 900 North, Richfield, Utah, 84701.

Publication of this notice constitutes notice to the grazing permittees of the Sanpitch and Gunnison Valley Allotments that their grazing leases may be directly affected by this action. Specifically, the permitted Animal Unit Months (AUMs) and acres in Sanpitch allotment will be reduced by 110 acres and 9 AUMs. The Gunnison Valley allotment will be reduced by 270 acres and 51 AUMs.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publications of this notice, interested persons may submit comments regarding the proposed conveyance or classification of the lands to the Richfield Field Manager, Richfield Field Office, 150 East 900 North, Richfield, Utah 84701. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

**Classification Comments**

Interested parties may submit comments involving the suitability of the land for a landfill. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with the local planning and zoning, or if the use is consistent with State and Federal programs.

**Application Comments**

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not related to the suitability of the land for a landfill.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: May 3, 2000.

**Jerry Goodman,**

*Richfield Field Manager.*

[FR Doc. 00–11852 Filed 5–10–00; 8:45 am]

BILLING CODE 4310–D9–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–960–1910–BJ–4377] ES–50669, Group 163, Wisconsin]**

### Notice of Filing of Plat Survey; Wisconsin

The plat of the dependent resurvey of a portion of the east and north boundaries, and a portion of the subdivisional lines, Township 51 North, Range 4 West, 4th Principal Meridian, Wisconsin, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on June 12, 2000.

The survey was requested by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., June 12, 2000.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: April 27, 2000.

**Stephen G. Kopach,**

*Chief Cadastral Surveyor.*

[FR Doc. 00–11851 Filed 5–10–00; 8:45 am]

BILLING CODE 4310–GJ–P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of a revision to a currently approved information collection (OMB Control Number 1010–0071).

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal to revise the currently approved collection of information discussed below on relief or reduction in royalty rates. We intend to submit this collection of information to the Office of Management and Budget (OMB) for approval. The Paperwork Reduction Act of 1995 (PRA) provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**DATES:** Submit written comments by July 10, 2000.

**ADDRESSES:** Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

**SUPPLEMENTARY INFORMATION:**

*Title:* 30 CFR Part 203, Relief or Reduction in Royalty Rates.

*OMB Control Number:* 1010–0071.

*Abstract:* The Outer Continental Shelf (OCS) Lands Act, as amended by Public Law 104–58, Deep Water Royalty Relief Act (DWRRA), gives the Secretary of the Interior (Secretary) the authority to reduce or eliminate royalty or any net profit share specified in OCS oil and gas leases to promote increased production.

The DWRRA also authorized the Secretary to suspend royalties when necessary to promote development or recovery of marginal resources on producing or non-producing leases in the Gulf of Mexico (GOM) West of 87 degrees, 30 minutes West longitude.

Section 302 of the DWRRA provides that new production from a lease in existence on November 28, 1995, in a water depth of at least 200 meters, and in the GOM west of 87 degrees, 30 minutes West longitude qualifies for royalty suspension in certain situations. To grant a royalty suspension, the Secretary must determine that the new production or development would not be economic in the absence of royalty relief. The Secretary must then determine the volume of production on which no royalty would be due in order to make the new production from the lease economically viable. This determination must be done on a case-by-case basis.

In addition, Federal policy and statute require us to recover the cost of services that confer special benefits to identifiable non-Federal recipients. The Independent Offices Appropriation Act (31 U.S.C. 9701), OMB Circular A–25, and the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996) authorize MMS to collect these fees to reimburse us for the cost to process applications or assessments.

Regulations at 30 CFR part 203 implement these statutes and policy and require respondents to pay a fee to request royalty relief. Section 30 CFR 203.3 states that, "We will specify the necessary fees for each of the types of royalty-relief applications and possible MMS audits in a Notice to Lessees. We will periodically update the fees to reflect changes in costs as well as provide other information necessary to administer royalty relief." Our submission to OMB will request approval of revised application fees and establishment of a new category of applications (special relief for marginal operations) and associated fee. The fee revisions are based on our experience in administering the program over the past several years.

Responses are required to obtain or retain a benefit. Proprietary information respondents submit is protected according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2) and 30 CFR 03.63(b) and 30 CFR 250.196. No items of a sensitive nature are collected.

*Frequency:* The frequency is on occasion.

*Estimated Number and Description of Respondents:* Approximately 130 Federal OCS oil and gas lessees.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* The currently approved burden for this information collection is 14,704 hours. Due to a decrease in the estimated number of applications submitted each year, we will be decreasing the annual burden to 4,855 hours (refer to burden chart).

*Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden:* There are two non-hour costs associated with this information collection. The currently approved non-hour cost burden is $1,833,250. Due to a decrease in the estimated number of applications submitted each year and the revised fee schedule, we will be decreasing the annual cost burden to $661,000. This estimate is based on:

(a) Application and audit fees. The total annual estimated cost burden for these fees is $345,600 (refer to burden chart).

(b) Cost of reports prepared by independent certified public accountants. Under § 203.81, a report prepared by an independent certified public accountant (CPA) must accompany the application and post-production report (except expansion project, short form, and preview assessment applications are excluded). The OCS Lands Act applications will require this report only once; the DWRRA applications will require this report at two stages—with the application and post-production development report for successful applicants. We estimate approximately 7 submissions each year at an average cost of $45,000 per report, for a total estimated annual cost burden of $315,000.

BURDEN BREAKDOWN CHART

| Reporting or recordkeeping requirement 30 CFR Part 203 | Application/Audit Fees | | |
|---|---|---|---|
| | Annual responses | Hours per response | Annual burden hours |
| **OCS Lands Act Reporting** | | | |
| Application—leases that generate earnings that can't sustain continued production (end-of-life lease). | 2 Applications | 200 hours | 400 |
| | Application 2 × $12,000 = $24,000* Audit 1 × $10,000 = $10,000 | | |
| Application—special relief for marginal producing lease (expect less than 1 per year-new category). | 1 Application | 250 hours | 250 |
| | Application 1 × $15,000 = $15,000* Audit 1 × $10,000 = $10,000 | | |
| § 203.55 Renounce relief arrangement (seldom, if ever will be used; minimal burden to prepare letter). | 1 Letter | 1 hour | 1 |
| § 203.81 Required reports. | Burden included with applications | | |
| OCS Lands Act Reporting Subtotal | 4 responses | N/A | 651 hours |
| | Processing Fees = $59,000 | | |
| **DWRAA Reporting** | | | |
| Application—leases in designated areas of GOM deep water acquired in lease sale before 11/28/95 and are producing (deep water expansion project). | 1 Application | 600 hours | 600 |
| | Application 1 × $39,000 = $39,000 No Audit | | |
| Application—leases in designated areas of deep water GOM, acquired in lease sale before 11/28/95 or after 11/28/2000, that have not produced (pre-act or post-2000 deep water leases). | 1 Application | 1,000 hours | 1,000 |

BURDEN BREAKDOWN CHART—Continued

| Reporting or recordkeeping requirement 30 CFR Part 203 | Application/Audit Fees | | |
|---|---|---|---|
| | Annual responses | Hours per response | Annual burden hours |
| Application—short form to add or assign pre-act lease | 1 Application | Application 1 × $49,000 = $49,000* Audit 1 × $25,000 = $25,000 40 hours | 40 |
| Application—preview assessment (seldom if ever will be used as applicants opt for binding determination by MMS instead; minimal burden if used). | 1 Application | Application 1 × $1,000 = $1,000 No Audit 900 hours | 900 |
| Application—special relief for marginal expansion project or marginal non—producing lease (expect less than 1 per year-new category). | 1 Application | Application 1 x $46,600 = $46,600 No Audit 1,000 hours | 1,000 |
| Redetermination | 1Redetermination | Application 1 × $49,000 = $49,000 Audit 1 × $20,000 = $20,000 500 hours | 500 |
| § 203.70 Submit fabricator's confirmation report | 2 Reports | Application 1 × $32,000 = $32,000* Audit 1 × $25,000 = $25,000 20 hours | 40 |
| § 203.70 Submit post-production development report | 2 Reports* | 50 hours | 100 |
| § 203.77 Renounce relief arrangement (seldom, if ever, will be used; minimal burden to prepare letter). | 1 Letter | 1 hour | 1 |
| § 203.79(a) Request reconsideration of MMS field designation | 1 Request | 5 hours | 5 |
| § 203.79(c) Request extension of deadline to start construction | 1 Request | 2 hours | 2 |
| § 203.81 Required reports. | Burden included with applications | | 0 |
| DWRRA Reporting Subtotal | 13 Reponses | N/A | 4,188 Hours |
| | Processing Fees = $286,600 | | |
| **Recordkeeping Burden** | | | |
| § 203.91 Retain supporting cost records for post-production development/fabrication reports (records retained as usual/customary business practice; minimal burden to make available at MMS request. | 2 Record-keepers | 8 | 16 Hours |
| Total Annual Burden | 19 Responses | N/A | 4,855 Hours |

*CPA certification expense burden also imposed on applicant.

*Comments:*3 We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB. In calculating the burden, we assumed that respondents perform many of the requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

(1) We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Are the estimates of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

(2) In addition, the PRA requires agencies to estimate the total annual reporting "non-hour cost" burden to respondents or recordkeepers resulting from the collection of information. In addition to the costs previously discussed, we need to know if you have other costs associated with the collection of this information for either total capital and startup cost components or annual operation, maintenance, and purchase of service components. Your estimates should consider the costs to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information; monitoring, sampling, drilling, and testing equipment; and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, (202) 208–7744).

Dated: May 2, 2000.

**John V. Mirabella,**

*Acting Chief, Engineering and Operations Division.*

[FR Doc. 00–11853 Filed 5–10–00; 8:45 am]

BILLING CODE 4310–MR–P

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## INTERNATIONAL TRADE COMMISSION

### Summary of Commission Practice Relating to Administrative Protective Orders

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Summary of Commission practice relating to administrative protective orders.

**SUMMARY:** Since February 1991, the U.S. International Trade Commission ("Commission") has issued an annual report on the status of its practice with respect to violations of its administrative protective orders ("APOs") in investigations under Title VII of the Tariff Act of 1930 in response to a direction contained in the Conference Report to the Customs and Trade Act of 1990. Over time, the Commission has added to its report discussions of APO breaches in Commission proceedings other than Title VII and violations of the Commission's rule on bracketing business proprietary information ("BPI") (the "24-hour rule"), 19 CFR 207.3(c). This notice provides a summary of investigations of breaches in Title VII investigations for the period ending December 31, 1999. There were no investigations of breaches for other Commission proceedings or for 24-hour rule violations during that period. The Commission intends that this report educate representatives of parties to Commission proceedings as to some specific types of APO breaches encountered by the Commission and the corresponding types of actions the Commission has taken.

**FOR FURTHER INFORMATION CONTACT:** Carol McCue Verratti, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone (202) 205–3088. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810. General information concerning the Commission can also be obtained by accessing its Internet server (*http://www.usitc.gov*).

**SUPPLEMENTARY INFORMATION:** Representatives of parties to investigations conducted under Title VII of the Tariff Act of 1930 may enter into APOs that permit them, under strict conditions, to obtain access to BPI of other parties. See 19 U.S.C. 1677f; 19 CFR 207.7. The discussion below describes APO breach investigations that the Commission has completed, including a description of actions taken in response to breaches. The discussion covers breach investigations completed during calendar year 1999.

Since 1991, the Commission has published annually a summary of its actions in response to violations of Commission APOs and the 24-hour rule. See 56 *FR* 4846 (Feb. 6, 1991); 57 *FR* 12,335 (Apr. 9, 1992); 58 *FR* 21,991 (Apr. 26, 1993); 59 *FR* 16,834 (Apr. 8, 1994); 60 *FR* 24,880 (May 10, 1995); 61 *FR* 21,203 (May 9, 1996); 62 *FR* 13,164 (March 19, 1997); 63 *FR* 25064 (May 6, 1998); 64 *FR* 23355 (April 30, 1999). This report does not provide an exclusive list of conduct that will be deemed to be a breach of the Commission's APOs. APO breach inquiries are considered on a case-by-case basis.

As part of the effort to educate practitioners about the Commission's current APO practice, the Commission Secretary issued in April 1996 a revised edition of *An Introduction to Administrative Protective Order Practice in Antidumping and Countervailing Duty Investigations* (Pub. No. 2961). This document is available upon request from the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, tel. (202) 205–2000.

### I. In General

The current APO form for antidumping and countervailing duty investigations, which the Commission has used since March 1995, requires the applicant to swear that he or she will:

(1) Not divulge any of the BPI obtained under the APO and not otherwise available to him, to any person other than—

(i) personnel of the Commission concerned with the investigation,

(ii) the person or agency from whom the BPI was obtained,

(iii) a person whose application for disclosure of BPI under this APO has been granted by the Secretary, and

(iv) other persons, such as paralegals and clerical staff, who (a) are employed or supervised by and under the direction and control of the authorized applicant or another authorized applicant in the same firm whose application has been granted; (b) have a need thereof in connection with the investigation; (c) are not involved in competitive decisionmaking for the interested party which is a party to the investigation; and (d) have submitted to the Secretary a signed Acknowledgment for Clerical Personnel in the form attached hereto (the authorized applicant shall sign such acknowledgment and will be deemed responsible for such persons' compliance with the APO);

(2) Use such BPI solely for the purposes of the Commission investigation [or for binational panel review of such Commission investigation or until superceded by a judicial protective order in a judicial review of the proceeding];

(3) Not consult with any person not described in paragraph (1) concerning BPI disclosed under this APO without first having received the written consent of the Secretary and the party or the representative of the party from whom such BPI was obtained;

(4) Whenever materials (*e.g.*, documents, computer disks, etc.) containing such BPI are not being used, store such material in a locked file cabinet, vault, safe, or other suitable container (N.B.: storage of BPI on so-called hard disk computer media is to be avoided, because mere erasure of data from such media may not irrecoverably destroy the BPI and may result in violation of paragraph C of the APO);

(5) Serve all materials containing BPI disclosed under this APO as directed by the Secretary and pursuant to section 207.7(f) of the Commission's rules;

(6) Transmit such document containing BPI disclosed under this APO:

(i) with a cover sheet identifying the document as containing BPI,

(ii) with all BPI enclosed in brackets and each page warning that the document contains BPI,

(iii) if the document is to be filed by a deadline, with each page marked "Bracketing of BPI not final for one business day after date of filing," and

(iv) if by mail, within two envelopes, the inner one sealed and marked "Business Proprietary Information—To be opened only by [name of recipient]", and the outer one sealed and not marked as containing BPI;

(7) Comply with the provision of this APO and section 207.7 of the Commission's rules;

(8) Make true and accurate representations in the authorized applicant's application and promptly notify the Secretary of any changes that occur after the submission of the application and that affect the representations made in the application (*e.g.*, change in personnel assigned to the investigation);

(9) Report promptly and confirm in writing to the Secretary any possible breach of the APO; and

(10) Acknowledge that breach of the APO may subject the authorized applicant and other persons to such sanctions or other actions as the Commission deems appropriate including the administrative sanctions

and actions set out in this APO. The APO further provides that breach of protective order may subject an applicant to:

(1) Disbarment from practice in any capacity before the Commission along with such person's partners, associates, employer, and employees, for up to seven years following publication of a determination that the order has been breached;

(2) Referral to the United States Attorney;

(3) In the case of an attorney, accountant, or other professional, referral to the ethics panel of the appropriate professional association;

(4) Such other administrative sanctions as the Commission determines to be appropriate, including public release of or striking from the record any information or briefs submitted by, or on behalf of, such person or the party he represents; denial of further access to business proprietary information in the current or any future investigations before the Commission; and issuance of a public or private letter of reprimand; and

(5) Such other actions, including but not limited to, a warning letter, as the Commission determines to be appropriate.

Commission employees are not signatories to the Commission's APOs and do not obtain access to BPI through APO procedures. Consequently, they are not subject to the requirements of the APO with respect to the handling of BPI. However, Commission employees are subject to strict statutory and regulatory constraints concerning BPI, and face potentially severe penalties for noncompliance. *See* 18 U.S.C. 1905; Title 5, U.S. Code; and Commission personnel policies implementing the statutes. Although the Privacy Act (5 U.S.C. 552a) limits the Commission's authority to disclose any personnel action against agency employees, this should not lead the public to conclude that no such actions have been taken.

An important provision of the Commission's rules relating to BPI is the "24-hour" rule. This rule provides that parties have one business day after the deadline for filing documents containing BPI to file a public version of the document. The rule also permits changes to the bracketing of information in the proprietary version within this one-day period. No changes— other than changes in bracketing—may be made to the proprietary version. The rule was intended to reduce the incidence of APO breaches caused by inadequate bracketing and improper placement of BPI. The Commission urges parties to make use of the rule. If a party wishes to make changes to a document other than bracketing, such as typographical changes or other corrections, the party must ask for an extension of time to file an amendment document pursuant to section 201.14(b)(2) of the Commission's rules.

## II. Investigations of Alleged APO Breaches

Upon finding evidence of a breach or receiving information that there is a reason to believe one has occurred, the Commission Secretary notifies relevant offices in the agency that an APO breach investigation file has been opened. Upon receiving notification from the Secretary, the Office of General Counsel (OGC) begins to investigate the matter. The OGC prepares a letter of inquiry to be sent to the alleged breacher over the Secretary's signature to ascertain the alleged breacher's views on whether a breach has occurred. If, after reviewing the response and other relevant information, the Commission determines that a breach has occurred, the Commission often issues a second letter asking the breacher to address the questions of mitigating or aggravating circumstances and possible sanctions or other actions. The Commission then determines what action to take in response to the breach. In some cases, the Commission has determined that although a breach has occurred, sanctions are not warranted, and therefore has found it unnecessary to issue a second letter concerning what sanctions might be appropriate. Instead, it issues a warning letter to the individual. The Commission retains sole authority to determine whether a breach has occurred and, if so, the appropriate action to be taken.

The records of Commission investigations of alleged APO breaches in antidumping and countervailing duty cases are not publicly available and are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. 552, section 135(b) of the Customs and Trade Act of 1990, and 19 U.S.C. 1677f(g).

The breach most frequently investigated by the Commission involves the APO's prohibition on the dissemination of BPI to unauthorized persons. Such dissemination usually occurs as the result of failure to delete BPI from public versions of documents filed with the Commission or transmission of proprietary versions of documents to unauthorized recipients. Other breaches have included: the failure to bracket properly BPI in proprietary documents filed with the Commission; the failure to report immediately known violations of an APO; and the failure to supervise adequately non-legal personnel in the handling of BPI.

Counsel participating in Title VII investigations have recently reported to the Commission two potential breaches involving the electronic transmission of public versions of documents. In both cases, the document transmitted appears to be a public document with BPI omitted from brackets. However, the BPI is actually retrievable by manipulating codes in the computer software programs. The Commission is currently conducting investigations of these potential breaches and has not made any determination at this time.

The Commission advised in the preamble to the notice of proposed rulemaking in 1990 that it will permit authorized applicants a certain amount of discretion in choosing the most appropriate method of safeguarding the confidentiality of the information. However, the Commission cautioned authorized applicants that they would be held responsible for safeguarding the confidentiality of all BPI to which they are granted access and warned applicants about the potential hazards of storage on hard disk. The caution in that preamble is restated here:

> [T]he Commission suggests that certain safeguards would seem to be particularly useful. When storing business proprietary information on computer disks, for example, storage on floppy disks rather than hard disks is recommended, because deletion of information from a hard disk does not necessarily erase the information, which can often be retrieved using a utilities program. Further, use of business proprietary information on a computer with the capability to communicate with users outside the authorized applicant's office incurs the risk of unauthorized access to the information through such communication. If a computer malfunctions, all business proprietary information should be erased from the machine before it is removed from the authorized applicant's office for repair. While no safeguard program will insulate an authorized applicant from sanctions in the event of a breach of the administrative protective order, such a program may be a mitigating factor. Preamble to notice of proposed rulemaking, 55 Fed. Reg. 24,100, 21,103 (June 14, 1990).

Sanctions for APO violations serve two basic interests: (a) preserving the confidence of submitters of BPI in the Commission as a reliable protector of BPI; and (b) disciplining breachers and deterring future violations. As the Conference Report to the Omnibus Trade and Competitiveness Act of 1988 observed, "the effective enforcement of limited disclosure under administrative protective order depends in part on the extent to which private parties have

confidence that there are effective sanctions against violation." H.R. Conf. Rep. No. 576, 100th Cong., 1st Sess. 623 (1988).

The Commission has worked to develop consistent jurisprudence, not only in determining whether a breach has occurred, but also in selecting an appropriate response. In determining the appropriate response, the Commission generally considers mitigating factors such as the unintentional nature of the breach, the lack of prior breaches committed by the breaching party, the corrective measures taken by the breaching party, and the promptness with which the breaching party reported the violation to the Commission. The Commission also considers aggravating circumstances, especially whether persons not under the APO actually read the BPI. The Commission considers whether there are prior breaches by the same person or persons in other investigations and multiple breaches by the same person or persons in the same investigation.

The Commission's rules permit economists or consultants to obtain access to BPI under the APO if the economist or consultant is under the direction and control of an attorney under the APO, or if the economist or consultant appears regularly before the Commission and represents an interested party who is a party to the investigation. 19 CFR 207.7(a)(3)(B) and (C). Economists and consultants who obtain access to BPI under the APO under the direction and control of an attorney nonetheless remain individually responsible for complying with the APO. In appropriate circumstances, for example, an economist under the direction and control of an attorney may be held responsible for a breach of the APO by failing to redact APO information from a document that is subsequently filed with the Commission and served as a public document. This is so even though the attorney exercising direction or control over the economist or consultant may also be held responsible for the breach of the APO.

**III. Specific Investigations in Which Breaches Were Found**

The Commission presents the following case studies to educate users about the types of APO breaches found by the Commission. The case studies provide the factual background, the actions taken by the Commission, and the factors considered by the Commission in determining the appropriate actions. The Commission has not included some of the specific facts in the descriptions of investigations where disclosure of such facts could reveal the identity of a particular breacher. Thus, in some cases, apparent inconsistencies in the facts set forth in this notice result from the Commission's inability to disclose particular facts more fully.

*Case 1.* At the direction of the lead attorney in an investigation, a law firm secretary sent copies of a hearing transcript to three of the law firm's clients who were nonsignatories to the APO. The lead attorney became aware of a potential breach of the APO when one of the clients advised him that he had received the *in camera* version of the hearing transcript. The attorney made arrangements to have one transcript returned without being reviewed and a second returned without the envelope being opened. The attorney had Federal Express intercept the third copy before it was delivered; it was returned unopened. The attorney informed the Commission's Secretary ten days after becoming aware of the potential breach. The Commission determined that the lead attorney and a secretary had breached the APO by transmitting the *in camera* transcript of the Commission hearing to persons who were not signatories of the APO. In reaching its decision to issue warning letters to the attorney and the secretary, the Commission considered that this was the only breach in which they had been involved, the breach was unintentional, prompt action was taken to remedy the breach, and there was no information available to suggest that the BPI disclosed was actually reviewed by persons not already on the APO. In addition, the Commission noted in the warning letter to the secretary that she had been acting under the direction of an attorney. The 10-day delay in advising the Commission of the breach was mitigated by the fact that the attorney had been out of the country and prompt action had been taken to retrieve the documents. Noting that the breach arose from a systematic omission of procedures at the law firm for checking Commission documents for BPI, the Commission recommended that the attorney and the firm review their practices for handling Commission documents under the Commission's administrative protective order procedures in order to prevent a recurrence of this type of incident. The Commission determined that the other attorney in the law firm who was a signatory of the APO did not breach the APO.

*Case 2.* An attorney for a party to a Commission investigation informed the Commission by letter that a lead attorney representing another party to the investigation failed to comply with the return or destruction requirements of the APO. Specifically, the lead attorney failed to destroy the APO documents within 60 days after completion of the investigation; he failed to provide certification of destruction from all attorneys in his firm on the APO; and he provided a certificate for an attorney who was not on the APO. The lead attorney did file a certificate of destruction more than two years later than required by the APO.

In responding to the Commission's letter of inquiry, the attorney admitted that there had been a technical violation of the APO, but he explained that the material had been mistakenly retained during the period that the Department of Commerce investigation was under appeal. During that time the material had been secured in a locked file cabinet, no unauthorized persons viewed the material, and it was destroyed promptly at the conclusion of the Commerce appeal process. He also explained that one attorney had left the firm and was unavailable to provide a certificate of destruction. The non-APO attorney who had signed a certificate of destruction actually had no access to the APO materials.

The Commission determined that a breach had occurred for failing to meet the deadlines in the APO to return or destroy and for failing to certify to the destruction of the materials issued to him under the APO. The Commission noted that the deadlines in the APO are clearly stated and the waiver of the 60-day destruction or return deadline is provided for only in the case of an appeal of the Commission determination, not for an appeal of a Commerce determination. The Commission issued a private letter of reprimand to the attorney. The letter dictated additional restrictions and requirements with which the lead attorney must comply until the record of the breach is expunged, two years from the date of the private letter of reprimand. In reaching its decision on the sanction, the Commission considered that this was the third APO breach by this attorney within a short period of time and that this attorney appears before the Commission on a regular basis. Noting that the breach did not appear to have involved willful misbehavior or gross negligence, it was decided that a public letter of reprimand was not called for in that instance. The attorney was warned, however, that if he is found to have committed another APO breach before his prior breaches are expunged, the Commission would consider a more public form of sanction.

*Case 3.* Counsel in an investigation filed the public version of a document which contained BPI. The BPI had not been bracketed in the confidential version of the brief, and, therefore, was not redacted from the public version of the document. Once counsel became aware of the potential breach, they immediately contacted counsel identified on both the public and APO service lists and instructed them to destroy the pages containing the unredacted BPI. On the next business day, counsel notified the Commission's Secretary of the possible breach and filed corrected pages with the parties and with the Commission.

The Commission determined that two of the three attorneys who signed the document breached the APO by failing to redact BPI from a public version of the document. In making its determination to issue a private letter of reprimand to the lead attorney, the Commission considered that, although the breaches appeared to have been inadvertent and the attorney made prompt efforts to limit the possibility of disclosure to persons not already under the APO, the attorney was involved in multiple breaches over a relatively short period.

In determining not to sanction the second attorney, but instead to issue a letter of warning to that attorney, the Commission considered that this was the only breach in which this attorney had been involved, the breach was unintentional, and that prompt action was taken to remedy the breach.

The Commission determined that the third attorney whose name appeared on the document did not breach the APO because he did not have any responsibility in the preparation or filing of the document.

*Case 4.* Counsel representing a party to an investigation filed a public document which contained a page from which bracketed information had not been redacted. Counsel discovered the error, contacted the Commission's Office of the Secretary the morning after the filing, and corrected the public version of the document before it was placed on file for public inspection. Counsel stated in their affidavits that the error was discovered and corrected prior to service of the public version on the other parties to the investigation, so that no unauthorized person actually saw business proprietary information. In their response to the Commission inquiry, counsel contended that no breach occurred because, although the information in question was bracketed in the documents they cited, it was publicly available from other sources.

The Commission determined that three attorneys breached the APO. Two of the attorneys failed to redact certain bracketed information which contained specific statements not publicly available. They did not breach the APO with regard to their failure to redact information which was in the public domain at the time they filed their document with the Commission. The Commission determined that the third attorney, the lead attorney, breached the APO by failing to provide adequate supervision over the handling of BPI or to delegate supervisory authority in a reasonable manner. In determining to issue private letters of reprimand to the three attorneys, the Commission considered that the one of the attorneys was involved in three separate breaches and two of the attorneys were involved in two separate breaches of Commission APOs within a short period of time. Mitigating factors were that they reported and corrected the breach promptly and that the firm strengthened its APO procedures subsequent to the breaches. With regard to the lead attorney, the Commission considered that delegating final authority for APO compliance to an attorney who had committed two breaches over a short period of time and a junior attorney who had recently committed an APO breach was not reasonable when there was another experienced attorney available who could have overseen their work. Because one of the attorneys had been involved in three separate breaches over a short period of time and other attorneys in his firm had also been involved in multiple breaches during the same period, the Commission required that the attorney, prior to his next appearance in a Commission investigation, prepare and conduct an APO compliance class for all firm attorneys and staff, and submit to the Commission any materials used in the class and certifications that the class occurred and that all such attorneys and staff attended. The Commission determined that an attorney and a law clerk who were not involved in the preparation of the document did not breach the APO.

*Case 5.* An attorney and an economic consultant representing a party in a Commission investigation filed a public document which contained unbracketed and undeleted BPI. The potential breach was discovered by both the Commission staff and the counsel on the day the document was filed, and counsel took immediate action to retrieve all of the service copies of the unbracketed document and destroy them. The error was discovered and remedial action was taken quickly enough that the document filed with the Commission was not made available to the public either as hard copy or through the electronic system.

The Commission determined that the attorney and the economic consultant employed by the law firm had breached the APO by not protecting BPI. They mislabeled the document containing BPI as public; they failed to place a warning on each page of the document that contained BPI; and they failed to bracket the BPI and remove it from a public version of the document. In reaching its breach determination, the Commission considered that failure to follow the APO rules and thereby leaving BPI unprotected and potentially available to be disclosed is sufficient to constitute a breach.

The Commission did not issue a sanction but instead issued warning letters to the attorney and economic consultant. In reaching its decision on sanctions, the Commission considered that the breach was unintentional, neither the attorney nor the economist had previously breached a Commission APO, and the law firm acted quickly to mitigate any harmful effects of the breach. The Commission determined that two attorneys, one of whom was the lead attorney, did not breach the APO because they were not involved in the preparation, review, signing or filing of the document. In its letter to the lead attorney, the Commission acknowledged his immediate action to mitigate the effects of the errors which led to the breach.

*Case 6.* An associate with a law firm representing a party to an investigation prepared an outline of testimony for a client/witness who was a nonsignatory to the APO and, although he had been advised earlier in the day by the lead attorney that the information was BPI, he included the BPI covered under the APO in the outline. The associate then sent an e-mail message to the client with the outline as an attachment. The potential breach was discovered by the lead attorney when he reviewed the outline the next day, and he immediately took steps to retrieve and replace the outline containing the BPI before it was read by the nonsignatory and to inform the Commission Secretary of the potential breach.

The Commission determined that the associate attorney breached the APO by transmitting to a client who was not a signatory to the APO a document which he prepared that contained BPI. In reaching its decision to issue a warning letter, the Commission considered that this was the only breach in which the attorney was involved, that the breach

was unintentional, that prompt action was taken to remedy the breach, and that neither the client nor any other non-signatory of the APO actually read the document. The Commission determined that the other attorneys on the APO, including the lead attorney, did not breach the APO because they did not participate in the breach.

### IV. Investigations in Which No Breach Was Found

During 1999, the Commission completed two investigations in which no breach was found.

*Case 1.* An attorney in an investigation filed a public version of a document which contained bracketed but unredacted information. The bracketed information consisted of citations to submissions by two parties to the investigation which were contained in a footnote of the document. The Commission determined that the attorney did not breach the APO by failing to redact the information because the information revealed was publicly available, and the only information which could be inferred from the citations was otherwise publicly available.

*Case 2.* An attorney in an investigation obtained under an APO release of documents a copy of a telephone note containing a summary of a conversation between a Commission employee and an employee of the Department of Commerce (Commerce). The attorney called the Commerce employee and discussed the contents of the note with him. The Commerce employee advised the Commission employee of his concern that the attorney's call involved a possible breach of the APO. The Commission determined that the attorney did not breach the APO because the Commerce employee was the person who provided the BPI to the Commission, and an attorney's discussion of information released under the APO with the person or agency from whom the BPI was obtained is permissible.

Issued: May 5, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–11878 Filed 5–10–00; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 2065–00; AG Order No. 2302–2000]**

**RIN 1115–AE26**

### Extension of Designation of Honduras Under Temporary Protected Status Program

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** This notice extends the Attorney General's designation of Honduras under the Temporary Protected Status (TPS) program until July 5, 2001. Eligible nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on August 20, 1999, or who registered after the date under the late initial registration provision. Persons who are eligible for late initial registration may register for TPS during this extension.

**EFFECTIVE DATES:** The extension of the TPS designation for Honduras is effective July 6, 2000, and will remain in effect until July 5, 2001. The 30-day re-registration period begins May 11, 2000 and will remain in effect until June 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael Hardin, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

**SUPPLEMENTARY INFORMATION:**

#### What Authority Does the Attorney General Have To Extend the Designation of Honduras Under the TPS Program?

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the designated foreign state. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state continues to meet the conditions for designation, the period of designation is extended, pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). Through such an extension, TPS is available only to persons who have been continuously physically present since January 5, 1999, and have continuously resided in the United States from December 30, 1998.

#### Why Did the Attorney General Decide to Extend the TPS Designation for Honduras?

On January 5, 1999, the Attorney General initially designated Honduras for TPS for a period of 18 months. 64 FR 524 (Jan. 5, 1999). The Departments of State and Justice have recently reviewed conditions within Honduras. The review resulted in a consensus that a 12-month extension is warranted. The reasons for the extension are explained in a State Department memorandum that states: "The conditions which led to the original designation are less severe, but continue to cause substantial disruption to living conditions in Honduras." The memorandum also states that "[a]ccording to best estimates, roughly half of the destruction in Honduras remains unaddressed, and 12,000 people remain homeless while many more are in temporary shelters."

The State Department memorandum concludes that reconstruction efforts should make significant progress during the 2000 calendar year. An Immigration and Naturalization Service memorandum concurs with the State Department, finding that Honduras has made little progress in recovering from Hurricane Mitch and that the minor reconstruction that has taken place has not sufficiently countered the devastation to warrant the termination of TPS. For example, the memorandum reports that "[i]n many cases, survivors of Mitch are in the same situation they were in a year ago with estimates of between 30,000 and 250,000 remaining in temporary shelters surviving on provisions from the World Food Program."

Based on these recommendations, the Attorney General finds the situation in Honduras meets the conditions for extension under section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). There continues to be a substantial, but temporary, disruption of living conditions in Honduras as a result of environmental disaster, and Honduras continues to be unable, temporarily, to handle adequately the return of its nationals. 8 U.S.C. 1254a(b)(1)(B)(i)–(ii). Therefore, the review failed to show that country conditions have improved to a degree that supports termination. Even in cases where conditions have improved, the Act provides for automatic extension in the absence of a determination by the Attorney General that country conditions no longer support a TPS designation. Since the Attorney General did not determine that

the conditions in Honduras no longer warrant TPS, the designation is automatically extended.

On the basis of these findings, an extension of the TPS designation for Honduras is warranted for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

**If I Currently Have TPS, How Do I Register for an Extension?**

Only persons previously granted TPS or those with pending applications under the initial Honduras designation may apply for an extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins May 11, 2000 and ends June 12, 2000. Additionally, you must file a Form I–765, Application for Employment Authorization. See the chart below to determine whether you must submit the one-hundred dollar ($100) filing fee with the Form I–765.

CHART 1

| If | Then |
|---|---|
| You are applying for employment authorization through July 5, 2001. | You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee. |
| You already have employment authorization or do not require employment authorization. | You must complete and file the Form I–765 with no fee. |
| You are applying for employment authorization and are requesting a fee waiver. | You must complete and file the Form I–765, a fee waiver request, and the requisite affidavit (and any other information), in accordance with 8 CFR 244.20. |

To re-register for TPS, you also must include two identification photographs (1½″ x 1½″).

**Is Late Initial Registration Possible?**

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Honduras under 8 CFR 244.2(f)(2). Late initial registration applicants must meet the following requirements:

- Be a national of Honduras (or an alien having no nationality who last habitually resided in Honduras);
- Have been continuously physically present in the United States since January 5, 1999;
- Have continuously resided in the United States since December 30, 1998; and
- Be admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the initial registration period from January 5, 1999, through July 5, 1999, he or she:

- Was in valid nonimmigrant status, or had been granted voluntary departure status or any relief from removal;
- Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review or appeal;

Was a parolee or has a pending request for reparole; or

Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the qualifying condition. 8 CFR 244.2(g).

**Where Should I File for an Extension of TPS?**

Persons seeking to register for an extension of TPS must submit an application and accompanying materials to the Immigration and Naturalization Service's Service Center that has jurisdiction over the applicant's place of residence.

If you live in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, West Virginia, or in the U.S. Virgin Islands, please mail your application to: Vermont Service Center, ATTN: TPS, 75 Lower Welden Street, St. Albans, VT 05479.

If you live in Arizona, California, Guam, Hawaii or Nevada, please mail your application to: California Service Center, ATTN: TPS, 24000 Avila Road, 2nd Floor Laguna Niguel, CA 92677–8111.

If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, please mail your application to: Texas Service Center, P.O. Box 850997, Mesquite, TX 75185–0997.

If you live elsewhere in the United States, please mail your application to: Nebraska Service Center, P.O. Box 87821, Lincoln, NE 68501–7821.

**When Can I Register for an Extension of TPS?**

The 30-day re-registration period begins May 11, 2000 and will remain in effect until June 12, 2000.

**Can I Apply for an Extension of My Work Authorization if I Have Been Granted Employment Authorization on the Basis of My Pending Form I–821, and as of July 5, 2000, My Form I–821 Is Still Pending?**

Yes, you can apply for an extension of your employment authorization. Follow the instructions in Chart 1 and submit your application to the service center that has jurisdiction over your place of residence during the 30-day registration period listed above.

**How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?**

An application for TPS does not preclude or affect an application for asylum or any other immigration benefit. A national of Honduras (or alien having no nationality who last habitually resided in Honduras) who is otherwise eligible for TPS and has applied for or plans to apply for asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also be grounds of denial for TPS. For example, a person who has been convicted of an aggravated felony is not eligible for asylum or TPS.

**Does This Extension Allow Nationals of Honduras (or Aliens Having No Nationality Who Last Habitually Resided in Honduras) Who Entered the United States After December 30, 1998, To File for TPS?**

No. This is a notice of an extension of the TPS designation for Honduras, not a notice of redesignation of Honduras under the TPS program. An extension of TPS does not change the required dates of continuous physical presence and residence in the United States, and does not expand the TPS program to include nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who arrived in the United States after the date of the initial designation, in this case, January 5, 1999, or the date designated for continuous residence, in this case, December 30, 1998.

**Notice of Extension of Designation of Honduras Under the TPS Program**

By the authority vested in me as Attorney General under sections 244(b)(3)(A) and (C), and (b)(1) of the Act, I have consulted with the appropriate agencies of the Government concerning whether the conditions under which Honduras was initially designated for TPS continue to exist. As a result, I determine that the conditions for the initial designation of TPS for Honduras continue to be met. 8 U.S.C. 1254a(b)(3)(A) and (C), (b)(1). Accordingly, I order as follows:

(1) The designation of Honduras under section 244(b) of the Act is extended for an additional 12-month period from July 6, 2000, until July 5, 2001. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 100,000 nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from July 6, 2000, through July 5, 2001, a national of Honduras (or alien having no nationality who last habitually resided in Honduras) who received a grant of TPS (or has an application pending) during the initial period of designation from January 5, 1999, until July 5, 2000, must re-register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning May 11, 2000 and ending on June 12, 2000. Late re-registration will be allowed only for good cause pursuant to 8 CFR 244.17(c).

(4) Pursuant to section 224(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before July 5, 2001, the designation of Honduras under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the reasons underlying it, will be published in the **Federal Register**.

(5) Information concerning the TPS program for nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) will be available at local Service offices upon publication of this notice and on the INS website at http://www.ins.usdoj.gov.

Dated: May 5, 2000.

**Janet Reno,**

*Attorney General.*

[FR Doc. 00–11786 Filed 5–10–00; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

**[INS No. 2064–00; AG Order No. 2301–2000]**

**RIN 1115–AE26**

### Extension of Designation of Nicaragua Under Temporary Protected Status Program

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** This notice extends the Attorney General's designation of Nicaragua under the Temporary Protected Status (TPS) program until July 5, 2001. Eligible nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) may re-register for TPS and an extension of employment authorization. Re-registration is limited to persons who registered during the initial registration period, which ended on August 20, 1999, or who registered after that date under the late initial registration provision. Persons who are eligible for late initial registration may register for TPS during this extension.

**EFFECTIVE DATES:** The extension of the TPS designation for Nicaragua is effective July 6, 2000, and will remain in effect until July 5, 2001. The 30-day re-registration period begins May 11, 2000 and will remain in effect until June 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael Hardin, Residence and Status Services Branch, Adjudications, Immigration and Naturalization Service, Room 3214, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

**SUPPLEMENTARY INFORMATION:**

**What Authority Does the Attorney General Have To Extend the Designation of Nicaragua Under the TPS Program?**

Section 244(b)(3)(A) of the Immigration and Nationality Act (Act) states that at least 60 days before the end of an extension or a designation, the Attorney General must review conditions in the designated foreign state. 8 U.S.C. 1254a(b)(3)(A). If the Attorney General determines that the foreign state continues to meet the conditions for designation, the period of designation is extended, pursuant to section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). Through such an extension, TPS is available only to persons who have been continuously physically present since January 5, 1999, and have continuously resided in the United States from December 30, 1998.

**Why Did the Attorney General Decide To Extend the TPS Designation for Nicaragua?**

On January 5, 1999, the Attorney General initially designated Nicaragua for TPS for a period of 18 months. 64 FR 526 (Jan. 5, 1999). The Departments of State and Justice have recently reviewed conditions within Nicaragua. The review resulted in a consensus that a 12-month extension is warranted. The reasons for the extension are explained in a State Department memorandum that states: "The conditions which led to the original designation are less severe, but continue to cause substantial disruption to living conditions in Nicaragua." The memorandum also states that "a significant portion of the U.S. and international aid promised for assisting in reconstruction is still being delivered."

The State Department memorandum concludes that reconstruction efforts should accelerate during the 2000 calendar year. An Immigration and Naturalization Service memorandum concurs with the State Department, finding that although Nicaragua has made some progress in recovering from Hurricane Mitch, the recovery has been very slow, especially in the areas of housing and infrastructure. For example, the memorandum reports that "[a]ccording to [a] Nicaraguan non-governmental umbrella organization * * * of the tens of thousands of houses destroyed by Mitch, only 2,500 had been replaced a year after the storm struck."

Based on these recommendations, the Attorney General finds the situation in Nicaragua meets the conditions for extension of TPS under section 244(b)(3)(C) of the Act. 8 U.S.C. 1254a(b)(3)(C). There continues to be a substantial, but temporary, disruption of living conditions in Nicaragua as a result of an environmental disaster, and Nicaragua continues to be unable, temporarily, to handle adequately the return of its nationals. 8 U.S.C. 1254a(b)(1)(B)(i)–(ii). Therefore, the review failed to show that country conditions have improved to a degree that supports termination. Even in cases where conditions have improved, the Act provides for automatic extension in the absence of a determination by the

Attorney General that country conditions no longer support a TPS designation. Since the Attorney General did not determine that the conditions in Nicaragua no longer warrant TPS, the designation must be extended.

On the basis of these findings, an extension of the TPS designation for Nicaragua is warranted for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

**If I Currently Have TPS, How Do I Register for an Extension?**

Only persons previously granted TPS or those with applications pending under the initial Nicaragua designation may apply for an extension by filing a Form I–821, Application for TPS, without the fee, during the re-registration period that begins May 11, 2000 and ends June 12, 2000. Additionally, you must file a Form I–765, Application for Employment Authorization. See the chart below to determine whether you must submit the one-hundred dollar ($100) filing fee with the Form I–765.

CHART 1

| If | Then |
|---|---|
| You are applying for employment authorization through July 5, 2001. | You must complete and file the Form I–765, Application for Employment Authorization, with the one-hundred dollar ($100) fee. |
| You already have employment authorization or do not require employment authorization. | You must complete and file the Form I–765 with no fee. |
| You are applying for employment authorization and are requesting a fee waiver. | You must complete and file Form I–765, a fee waiver request, and the requisite affidavit (and any other information), in accordance with 8 CFR 244.20. |

To re-register for TPS, you also must include two identification photographs (1½″ × 1½″).

**Is Late Initial Registration Possible?**

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Nicaragua under 8 CFR 244.2(f)(2). Late initial registration applicants must meet the following requirements:

- Be a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua);
- Have been continuously physically present in the United States since January 5, 1999;
- Have continuously resided in the United States since December 30, 1998; and
- Be admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the initial registration period from January 5, 1999, through July 5, 1999, he or she:

- Was in valid nonimmigrant status, or had been granted voluntary departure status or any relief from removal;
- Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review or appeal;
- Was a parolee or has a pending request for reparole; or
- Was the spouse or child of an alien currently eligible to be a TPS registrant. 8 CFR 244.2(f)(2).

An applicant for late initial registration must register no later than sixty (60) days from the expiration or termination of the qualifying condition. 8 CFR 244.2(g).

**Where Should I File for an Extension of TPS?**

Persons seeking to register for an extension of TPS must submit an application and accompanying materials to the Immigration and Naturalization Service's service center that has jurisdiction over the applicant's place of residence.

If you live in Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Puerto Rico, Rhode Island, Vermont, Virginia, West Virginia, or in the U.S. Virgin Islands, please mail your application to: Vermont Service Center, Attn: TPS, 75 Lower Welden Street, St. Albans, VT 05479.

If you live in Arizona, California, Guam, Hawaii or Nevada, please mail your application to: California Service Center, Attn: TPS, 24000 Avila Road, 2nd Floor, Laguna Niguel, CA 92677–8111.

If you live in Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, New Mexico, North Carolina, Oklahoma, South Carolina, Tennessee, or Texas, please mail your application to: Texas Service Center, P.O. Box 850997, Mesquite, TX 75185–0997.

If you live elsewhere in the United States, please mail your application to: Nebraska Service Center, P.O. Box 87821, Lincoln, NE 68501–7821.

**When Can I Register for an Extension of TPS?**

The 30-day re-registration period begins May 11, 2000 and will remain in effect until June 12, 2000.

**Can I Apply for an Extension of My Work Authorization if I Have Been Granted Employment Authorization on the Basis of My Pending Form I–821, and as of July 5, 2000, My Form I–821 Is Still Pending?**

Yes, you can apply for an extension of your employment authorization. Follow the instructions in Chart 1 and submit your application to the service center that has jurisdiction over your place of residence during the 30-day registration period listed above.

**How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?**

An application for TPS does not preclude or affect an application for asylum or any other immigration benefit. A national of Nicaragua (or alien having no nationality who last habitually resided in Nicaragua) who is otherwise eligible for TPS and has applied for or plans to apply for asylum, but who has not yet been granted asylum or withholding of removal, may also apply for TPS. Denial of an application for asylum or any other immigration benefit does not affect an applicant's ability to register for TPS, although the grounds of denial may also be grounds of denial for TPS. For example, a person who has been convicted of an aggravated felony is not eligible for asylum or TPS.

**Does This Extension Allow Nationals of Nicaragua (or Aliens Having No Nationality Who Last Habitually Resided in Nicaragua) Who Entered the United States After December 30, 1998, To File for TPS?**

No. This is a notice of an extension of the TPS designation for Nicaragua, not a notice of redesignation of Nicaragua under the TPS program. An extension of TPS does not change the required dates of continuous physical presence and residence in the United States, and does not expand the TPS program to include nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who arrived in the United States after the date of the initial designation, in this case, January 5, 1999, or the date designated for

continuous residence, in this case, December 30, 1998.

**Notice of Extension of Designation of Nicaragua Under the TPS Program**

By the authority vested in me as Attorney General under sections 244(b)(3)(A) and (C), and (b)(1) of the Act, I have consulted with the appropriate agencies of the Government concerning whether the conditions under which Nicaragua was initially designated for TPS continue to exist. As a result, I determine that the conditions for the initial designation of TPS for Nicaragua continue to be met. 8 U.S.C. 1254a(b)(3)(A) and (C), (b)(1). Accordingly, I order as follows:

(1) The designation of Nicaragua under section 244(b) of the Act is extended for an additional 12-month period from July 6, 2000, until July 5, 2001. 8 U.S.C. 1254a(b)(3)(C).

(2) I estimate that there are approximately 6,000 nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have been granted TPS and who are eligible for re-registration.

(3) In order to be eligible for TPS during the period from July 6, 2000, through July 5, 2001, a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua) who received a grant of TPS (or has an application pending) during the initial period of designation from January 5, 1999, until July 5, 2000, must re-register for TPS by filing a new Application for Temporary Protected Status, Form I–821, along with an Application for Employment Authorization, Form I–765, within the 30-day period beginning May 11, 2000 and ending on June 12, 2000. Late re-registration will be allowed only for good cause pursuant to 8 CFR 244.17(c).

(4) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before July 5, 2001, the designation of Nicaragua under the TPS program to determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the reasons underlying it, will be published in the **Federal Register**.

(5) Information concerning the TPS program for nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) will be available at local Service offices upon publication of this notice and on the INS website at http://www.ins.usdoj.gov.

Dated: May 5, 2000.

**Janet Reno,**

*Attorney General.*

[FR Doc. 00–11787 Filed 5–10–00; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF LABOR

### Office of the Secretary

### Submission for OMB Emergency Review; Comment Request

May 5, 2000.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by June 27, 2000. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Ira L. Mills, on 202–219–5095 ext. 129.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics, Office of Management and Budget, Room 10235, Washington, D.C. 20503.

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

*Agency:* Bureau of Labor Statistics.

*Title:* July 2000 Current Population Survey Supplement on Race and Ethnicity.

*OMB Number:* 1220–0155.

Reinstatement, with change, of a previously approved collection for which approval has expired.

*Frequency:* On occasion.

*Affected Public:* Individuals and households.

*Number of Respondents:* 120,000.

*Estimated Time Per Respondent:* 2 minutes.

*Total Burden Hours:* 4,000 hours.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintaining):* $0.

*Description:* The purpose of the July 2000 Current Population Survey (CPS) Supplement on Race and Ethnicity, conducted by the Bureau of Labor Statistics (BLS), is to investigate the effects of changes to the race and ethnicity questions that will be implemented in January 2003. These changes are designed to conform to the 1997 standards on the collection of racial and ethnic data issued by the Office of Management and Budget (OMB). The collection of these data now will allow the BLS to examine changes in the reporting of economic characteristics of racial and ethnic groups that are likely to result from implementation in 2003. The BLS also will use Supplement data to evaluate bridging alternatives for use with trend analysis. The supplement data can be used to inform other survey programs about the probable effects of adopting the new standards in their surveys.

**Ira L. Mills,**

*Departmental Clearance Officer.*

[FR Doc. 00–11828 Filed 5–10–00; 8:45 am]

BILLING CODE 4510–24–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the

workers' firm, or an appropriate subdivision, thereof, have become totally or partially separated;

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely; and

(3) That increase of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production

**Negative Determinations for Worker Adjustment Assistance**

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–37,495; Wolverine Tube, Inc., Roxboro, NC*
*TA–W–37,397; Katz Lace Corp., New York, NY*
*TA–W–37,406; York Refrigeration, Waynesboro Div., Waynesboro, PA*
*TA–W–37,289; M. Glosser & Sons Scrap Yard, Johnstown, Pa*

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*TA–W–37,506; Ingersoll-Rand Transportation Organization, Los Angeles, CA*
*TA–W–37,517; United States Sales Corp., San Fernando, CA*
*TA–W–37,390; Target Retail Store, Mt. Carmel, IL*
*TA–W–37,392; Alphabet, Inc., El Paso, TX*
*TA–W–37,474; Now Fabrics, Inc., New York, NY*
*TA–W–37,472; MCNIC Oil and Gas Co., Detroit, MI*
*TA–W–37,542; GPM, Bartlesville, OK*
*TA–W–37,435; Oshkosh B'Gosh, Inc., Oshkosh Distribution Center, Oshkosh, WI*
*TA–W–37,495;*

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

*TA–W–37,500; Ultra Building Systems, Inc., Hackensack, NJ*
*TA–W–37,490; Brechteen, Chesterfield, MI*
*TA–W–37,259; ASC (Automobile Specialist Convertible), Rancho Dominquez, CA*
*TA–W–37,481; Inland Refining, Woods Cross, UT*
*TA–W–37,402; Midas, Inc., Bedford Park, IL*

Increased imports did not contribute importantly to worker separations at the firm.

*TA–W–37,404; Border Apparel Laundry, Inc., El Paso, TX*

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Sales or production did not decline during the relevant period as required for certification.

*TA–W–37,459; Rohm and Haas Co., Philadelphia, PA*

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification.

**Affirmative Determinations for Worker Adjustment Assistance**

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

*TA–W–37,267; Haas Tailoring Co, Baltimore, MD: January 11, 1999.*
*TA–W–37,370; Lees Curtain Co., Inc., Mansfield, MO: February 1, 1999.*
*TA–W–37,391; Hewlett Packard, San Jose, CA: February 8, 1999.*
*TA–W–37,128; Nucor Corp., Nucor Fastener Div., Conway AR: November 12, 1998.*
*TA–W–37,430; Square D Co., Oshkosh, WI: February 17, 1999.*
*TA–W–37,381; United States Leather, Inc., Pfister & Vogel Leather, Milwaukee, WI: February 4, 1999.*
*TA–W–37,205; Belmont Garment Dyers, Formerly Reading Dyeing & Finishing, Inc., Reading, PA: December 12, 1998.*
*TA–W–37,377; Duro Finishing, Fall River, MA: February 9, 1999.*
*TA–W–37,443; Russell Corp., Jerzees Activewear, Geneva, AL: February 25, 1999.*
*TA–W–37,468 & A; Great American Knitting Mills, Inc., Pottstown, PA and Bally, PA: March 3, 1999.*
*TA–W–37,483; American Identify, Ocean Springs, MS: March 8, 1999.*
*TA–W–37,471; Huffy Bicycle Co., Southhaven, MS: February 24, 1999.*
*TA–W–37,538; North American Heaters, Franklin, TN: March 16, 1999.*
*TA–W–37,551; PDH Corp., d/b/a Omnigrid, Inc., Burlington, WA: March 24, 1999.*
*TA–W–37,512; London International Group LLC, Centre Plant, Dothan, AL: January 10, 1999.*
*TA–W–37,470; Radionic's Inc., Salinas, CA: September 13, 1998.*
*TA–W–37,418; Baker Atlas, Prudhoe Bay, AK: February 15, 1999.*
*TA–W–37,414; Propper International Sales, Inc., Waverly, TN: February 11, 2000.*
*TA–W–37,555; Alrose Shoe Co, Div. of Ballet Makers, Inc., Exeter, NH: March 28, 1999.*
*TA–W–37,466; Rochester Button Co., S. Boston, VA: March 1, 1999.*
*TA–W–37,436; Alliance Labeling & Decorating, Inc., Allentown, PA: February 15, 1999.*
*TA–W–37,497; Russell Athletic Div. of Russell Corp., Ashland, AL: March 10, 1999.*
*TA–W–37,432; Globe Manufacturing Corp., Latex Operations, Fall River, MA: February 24, 1999.*
*TA–W–37,494; Border Apparel, Inc., El Paso, TX: February 17, 1999.*
*TA–W–37,458; House of Perfection, Inc., Williston Manufacturing Co., Williston, SC: March 3, 1999.*
*TA–W–37,441; Kobe Precision, Inc., Hayward, CA: February 23, 1999.*
*TA–W–37,469; Sherwood Market House, Alliance, OH: March 6, 1999.*
*TA–W–37,424; Pincus Brothers-Maxwell, Philadelphia, PA: April 13, 1999.*
*TA–W–37,407; Briggs Manufacturing Co., Robinson, IL: February 24, 1999.*
*TA–W–37,528; Trinity Fitting & Flange Group, Inc., Ackerman, MS: March 11, 1999.*
*TA–W–37,540; Kimberly Clark Corp., Durafab, Inc., Cleburne, TX: March 28, 1999.*
*TA–W–37,428; Valley Cities Apparel, Sayre, PA: February 23, 1999.*
*TA–W–37,457 & A; Best Manufacturing Co., Johnson City Div., Johnson City, TN and Moss Point, MS: March 6, 1999.*
*TA–W–37,536; Telema Electronics, Inc., St. James, MO: March 21, 1999.*
*TA–W–37,431; Magnecomp Corp., Temecula, CA: May 1, 2000.*
*TA–W–37,507; American Identity, Canton, SD: March 8, 1999.*
*TA–W–37,479; Rocky Shoes & Boots, Inc., Nelsonville, OH: March 7, 1999.*
*TA–W–37,421; Whistler Automation Products, Novi, MI: October 12,, 1998.*
*TA–W–37,355; Medtronic Perfusion Systems, Minneapolis, MN: January 28, 1999.*
*TA–W–37,525; Old Deerfield Fabrics, Inc., Cedar Grove, NJ: March 8, 1999.*
*TA–W–37,480 & A, B, C; Chevron Information Technology Co (CITC),*

*A Div. of Chevron USA, Inc., Headquartered in San Ramon, CA, Concord, CA, Evanston, WY and all locations in the States of TX and LA: March 10, 1999.*

*TA–W–37,450; Xomox Corp., Cincinnati, OH: March 3, 1999.*

*TA–W–37,504; MTF, Inc., West Lawn, PA: March 15, 1999.*

*TA–W–37,526; Milco Industries, Inc., Bloomsburg, PA: March 21, 1999.*

*TA–W–37,445; Lenox, Inc., Smithfield, RI: February 28, 1999.*

*TA–W–37,453; Jantzen, Inc., Seneca, SC: February 28, 1999.*

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

**Negative Determinations NAFTA–TAA**

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

*NAFTA–TAA–03809; Fedco Automotive Components Co., Inc., Div. of Stant Corp., buffalo, NY*

*NAFTA–TAA–03692: Western Moulding Co., Snowflake, AZ*

*NAFTA–TAA–03814; Chevron Products Co., El Paso, TX*

*NAFTA–TAA–03723; Lees Curtain Co., Inc., Mansfield, MO*

*NAFTA–TAA–03781; Rochester Button Co., S. Boston, VA*

*NAFTA–TAA–03782; LaCrosse Footwear, Inc., La Crosse, WI*

*NAFTA–TAA–03713; Wolverine Tube, Inc., Roxboro, NC*

*NAFTA–TAA–03795; Rohm and Haas Co., Philadelphia, PA*

*NAFTA–TAA–03747; Briggs Manufacturing Co., Robinson, IL*

*NAFTA–TAA–03766; Valley Cities Apparel, Sayre, PA*

*NAFTA–TAA–03751; York Refrigeration, Waynesboro Div., Waynesboro, PA*

*NAFTA–TAA–03748; Circular Banding Co., In., Athens, GA*

*NAFTA–TAA–03813; C.P. Lighting, Inc., Pottsville, PA*

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

*NAFTA–TAA–03745; Alphabet, Inc., El Paso, TX*

*NAFTA–TAA–03854; Chevron Products Co., Roosevelt, UT*

*NAFTA–TAA–03817; United States Saes Corp., San Fernando, CA*

*NAFTA–TAA–03754; Oshkosh B'Gosh, Inc., Oshkosh Distribution Center, Oshkosh, WI*

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

*NAFTA–TAA–03743; Border Apparel Laundry, Inc., El Paso, TX*

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers in such workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment. Sales or production did not decline during the relevant period as required for certification.

**Affirmative Determinations NAFTA–TAA**

*NAFTA–TAA–03764; AMETEK, United States Gauge Div., Bartow, FL: February 21, 1999.*

*NAFTA–TAA–03847; Taylor Precision Products, L.P., Fletcher, NC: June 9, 2000.*

*NAFTA–TAA–03808; Woodgrain Millwork, Inc., Lakeview Operation, Lakeview, OR: March 15, 1999.*

*NAFTA–TAA–03807; Toshiba Display Devices, Inc., Horseheads, NY: March 9, 1999.*

*NAFTA–TAA–03684; Allied Signal, Honeywell, Inc., Torrance, CA: January 13, 1999.*

*NAFTA–TAA–03632; Belmont Garment Dyers, Formerly Beading Dyeing & Finishing, Inc., Reading, PA: December 9, 1998.*

*NAFTA–TAA–03772; Russell Corp., Jerzees Activewear, Geneva, AL: February 25, 1999.*

*NAFTA–TAA–03736; Square D Company, Oshkosh, WI: February 17, 1999.*

*NAFTA–TAA–03662; Alliance Labeling and Decorating, Inc., Allentown, PA: February 15, 1999.*

*NAFTA–TAA–03776; Pincus Brothers-Maxwell, Philadelphia, PA: March 2, 1999.*

*NAFTA–TAA–03791; House of Perfection, Inc., Williston Manufacturing Co., Williston, SC: March 8, 1999.*

*NAFTA–TAA–03727 A, B, C, D, & E; the Johnstown Knitting Mill Co. including the following divisions: Glenfield Div., Glenfield, NY: Montgomery St. Div., Johnstown, NY; Comrie Ave. Div., Johnstown, NY; Fort Plain Div., Fort Plain, NY; New York City Div., NY; and the Diana Knitting Corp., Johnstown, NY: February 3, 1999.*

*NAFTA–TAA–03826; Talema Electronics, Inc., St. James, MO: March 21, 1999.*

*NAFTA–TAA–03816; North American Heaters, Franklin, TN: March 16, 1999.*

*NAFTA–TAA–03815; Russell Athletic Div. of Russel Corp., Ashland, AL: March 10, 1999.*

*NAFTA–TAA–03792 & A; Great American Knitting Mills, Inc., Pottstown, PA and Bally, PA: March 6, 1999.*

*NAFTA–TAA–03798; Kimberly-Clark Corp., Durafab, Inc., Cleburne, TX: March 3, 1999.*

*NAFTA–TAA–03804; Border Apparel, Inc., El Paso, TX: February 17, 1999.*

*NAFTA–TAA–03712; Medtronic Perfusion Systems, Minneapolis, MN: January 28, 1999.*

*NAFTA–TAA–03770; TI Group Automotive Systems, Maquoketa, IA: February 15, 1999.*

*NAFTA–TAA–03806; MTF, Inc., West Lawn, PA: March 15, 1999.*

*NAFTA–TAA–03763; Ithaca Industries, Inc., Glennville, GA: February 28, 1999.*

*NAFTA–TAA–03700; Standard Candy Co., Hard Candy Div., Nashville, TN: January 31, 1999.*
*NAFTA–TAA–03841; Elisie Undergarment Corp., Hialeah, FL: April 7, 1999.*
*NAFTA–TAA–03824; Mattel Operations, Inc., a Div. of Mattel, Beaverton, OR: March 29, 1999.*

I hereby certify that the aforementioned determinations were issued during the month of April, 2000. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 2, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–11825 Filed 5–10–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37, 511]**

### Avent Inc.; Kimberly-Clark Corporation, Tuscon, Arizona; Notice of Termination of Investment

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 27, 2000, in response to a worker petition which was filed by the company on behalf of workers at Avent Inc., a Division of Kimberly-Clark Corporation, located in Tucson, Arizona.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of April, 2000.

**Grant D. Beale,**

*Program Manager, Office of Trade Adjustment Assistance.*

[FR Doc. 00–11827 Filed 5–10–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 22, 2000 after publication in F.R.).

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 22, 2000, publication in F.R.).

The petition filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of April, 2000.

**Grant. D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

### Appendix

PETITIONS INSTITUTED ON 04/17/2000

| TA–W | Subject Firm (Petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 37,566 .... | Bigsby Accessories, Inc (Wkrs) ..... | Kalamazoo, MI ..... | 04/05/2000 | vibrators, palm pedals, foot pedals. |
| 37,567 .... | Niemand Industries (Wrks) ..... | Marion, AL ..... | 03/24/2000 | cosmetic containers. |
| 37,568 .... | Oregon Manufacturing (Comp) ..... | Klamath Falls, OR ..... | 03/24/2000 | electronic assemblies. |
| 37,569 .... | National Castings (Comp) ..... | Cicero, IL ..... | 03/16/2000 | sideframes, bolsters, yokes. |
| 37,570 .... | Lilly Industries, Inc (Comp) ..... | Paulsboro, NJ ..... | 03/07/2000 | industrial coatings. |
| 37,571 .... | Rugged Sportswear LLC (Wrks) ..... | LaGrange, NC ..... | 03/31/2000 | sweatshirts, sweatpants, and sweatshorts. |
| 37,572 .... | Litton Data Systems (Wrks) ..... | Agoura, CA ..... | 03/12/2000 | printed circuit boards. |
| 37,573 .... | Santa Cruz Industries (Wrks) ..... | Santa Cruz, CA ..... | 03/29/2000 | point-of-purchase displays. |
| 37,574 .... | Illinois Tool Works Co (Wrks) ..... | Mechanicsburg, PA .... | 03/28/2000 | plastic packaging. |
| 37,575 .... | Southeastern Apparel (Wrks) ..... | Johnson City, TN ..... | 03/20/2000 | denim jeans and cotton casual slacks. |
| 37,576 .... | Bar-Sew (Wrks) ..... | Lehighton, PA ..... | 03/31/2000 | ladies' blouses. |
| 37,577 .... | Electro-Tec Corp (Comp) ..... | Blacksburg, VA ..... | 04/03/2000 | slip rings for cat scans, military radar. |
| 37,578 .... | Vantiy Fair Intimates (Comp) ..... | Jackson, AL ..... | 03/24/2000 | intimate apparel. |
| 37,579 .... | Chicago Steel (Wrks) ..... | Gadsen, AL ..... | 04/03/2000 | material handlers. |
| 37,580 .... | Tally Sportsear (Wrks) ..... | Lancaster, SC ..... | 04/03/2000 | tee-shirts. |
| 37,581 .... | General Electric (IUE) ..... | Tell City, IN ..... | 03/09/2000 | dishwasher motors. |
| 37,582 .... | Forge Products Corp (Comp) ..... | Cleveland, OH ..... | 03/15/2000 | steel forging. |
| 37,583 .... | Trinity Industries (USWA) ..... | Lyndora, PA ..... | 04/01/2000 | fabrication of railroad parts. |
| 37,584 .... | Quebecor World, Inc (Comp) ..... | St. Paul, MN ..... | 04/06/2000 | commercial printing. |
| 37,585 .... | MESPO/MAMIYE (Wrks) ..... | Hollis, NY ..... | 04/03/2000 | umbrellas. |
| 37,586 .... | Enefco International (Comp) ..... | Auburn, ME ..... | 04/04/2000 | shoe counters. |
| 37,587 .... | Milco Industries (Wrks) ..... | New York, NY ..... | 03/30/2000 | sleepwear and loungewear. |
| 37,588 .... | Coloplast, Amotex Plant (Wrks) ..... | Centre, AL ..... | 03/27/2000 | mastectomy bras. |
| 37,589 .... | New America Wood Products (Wrks) ..... | Winlock, WA ..... | 03/30/2000 | hardwood dimensional lumber. |
| 37,590 .... | NGK Metals Corp (Wrks) ..... | Reading, PA ..... | 04/05/2000 | beryllium copper strip alloys. |
| 37,591 .... | Hazan Group (The) (UNITE) ..... | Secaucus, NJ ..... | 04/04/2000 | ladies' sportswear. |

PETITIONS INSTITUTED ON 04/17/2000—Continued

| TA–W | Subject Firm (Petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 37,592 .... | Macedonia Fashions ..... | Brooklyn, NY ..... | 03/27/2000 | knitted goods. |

[FR Doc. 00–11824 Filed 5–10–00 8:45 am]
BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 22, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than May 22, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 24th day of April 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

APPENDIX

[Petitions instituted on 04/24/2000]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 37,593 ..... | Pennzoil—Quaker State (PACE) ..... | Rouseville, PA ..... | 04/10/2000 | Lubricant Fuels. |
| 37,594 ..... | Manchester Manufacturer (Wkrs) ..... | Manchester, OH ..... | 04/11/2000 | Trousers. |
| 37,595 ..... | Humpery's, Inc. (Wkrs) ..... | Chicago, IL ..... | 04/03/2000 | Leather Belts. |
| 37,596 ..... | Bethlehem Corp. (The), (Co.) ..... | Easton, PA ..... | 04/11/2000 | Porcupine Processors. |
| 37,597 ..... | Willamette Industries (Wkrs) ..... | Lebanon, OR ..... | 04/04/2000 | Conveyor Systems, LVL Presses. |
| 37,598 ..... | Hatch, Inc. (Co.) ..... | El Paso, TX ..... | 04/05/2000 | Control Systems Integrators. |
| 37,599 ..... | United States Enrichment (PACE) ..... | Paducah, KY ..... | 04/10/2000 | Uranium Hexaflouride. |
| 37,600 ..... | Trinity Industries (UAW) ..... | Mt. Orab, OH ..... | 04/05/2000 | Rail Cars. |
| 37,601 ..... | Styl-Rite Optics, Inc. (Wkrs) ..... | Miami, FL ..... | 04/10/2000 | Ophthalmic Frames. |
| 37,602 ..... | Wil Gro Fertilizer (Co.) ..... | Pryor, OK ..... | 04/03/2000 | Anhydrous Ammonia. |
| 37,603 ..... | A. Schulman, Inc. (PACE) ..... | Orange, TX ..... | 04/24/2000 | Plastic Products. |
| 37,604 ..... | Coho Resources (Wkrs) ..... | Dallas, TX ..... | 04/06/2000 | Oil and Gas. |
| 37,605 ..... | Hyperion Seating Corp. (Wkrs) ..... | Lewisburg, TN ..... | 04/03/2000 | Car Seats—Front and Rear. |
| 37,606 ..... | Rocky Apparel (Wkrs) ..... | Greenwood, MS ..... | 03/28/2000 | Blue Jeans. |
| 37,607 ..... | Henry I. Siegel (Co.) ..... | Bruceton, TN ..... | 04/12/2000 | Denim Jeans and Sportswear. |
| 37,608 ..... | Concord Fabrics (Wkrs) ..... | New York, NY ..... | 03/30/2000 | Printed Cotton Fabric. |
| 37,609 ..... | TI Group Automotive (Co.) ..... | Valdosta, GA ..... | 03/28/2000 | Engine and Transmission Oil Cooler Lines. |
| 37,610 ..... | Tenk Machine and Tool (Wkrs) ..... | Cleveland, OH ..... | 03/27/2000 | Repair Steel Mill Equipment. |
| 37,611 ..... | T and S Sewing, Inc. (Wkrs) ..... | Hialeah Gardens, FL ... | 04/04/2000 | Ladies' Blouses and T-Shirts. |
| 37,612 ..... | AST Research, Inc. (Wkrs) ..... | Fort Worth, TX ..... | 04/10/2000 | Desk Top Computers. |
| 37,613 ..... | Sandvik Milford (IAMAW) ..... | Branford, CT ..... | 04/04/2000 | Bandsaw Blades. |
| 37,614 ..... | Imation Corporation (Wkrs) ..... | Oakdale, MN ..... | 04/07/2000 | Electrophoto. Color Printer Components. |
| 37,615 ..... | Mr. Coffee (Co.) ..... | Glenwillow, OH ..... | 04/14/2000 | Coffee and Tea Brewers. |
| 37,616 ..... | Chavez Sings, Inc. (Co.) ..... | El Paso, TX ..... | 03/31/2000 | Custom-Made Signs. |
| 37,617 ..... | Troutman Foundry (Co.) ..... | Statesville, NC ..... | 04/10/2000 | Grey Cast Iron Castings. |
| 37,618 ..... | Minard Run Oil Co. (Wkrs) ..... | Bradford, PA ..... | 04/02/2000 | Natural Gas and Oil. |
| 37,619 ..... | Furniture Crafters (Co.) ..... | Grants Pass, OR ..... | 04/12/2000 | Office Furniture. |
| 37,620 ..... | Johanna York, Inc. (Co.) ..... | New York, NY ..... | 04/14/2000 | Dresses. |
| 37,621 ..... | Westwood Lighting (Co.) ..... | El Paso, TX ..... | 04/17/2000 | Brass Lamps. |
| 37,622 ..... | Milano Fashion Inc. (UNITE) ..... | Passaic, NJ ..... | 04/06/2000 | Ladies' Coats. |
| 37,623 ..... | Lear Corporation (Wkrs) ..... | El Paso, TX ..... | 04/14/2000 | Dies for Crimping Cables. |

[FR Doc. 00–11822 Filed 5–10–00; 8:45 am]
BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–3805]**

### Avent Inc. Kimberly-Clark Corporation Tucson, AZ; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 15, 2000, in response to a worker petition which was filed on behalf of workers at Avent Inc., Kimberly-Clark Corporation, Tucson, Arizona.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 28th day of April, 2000.

**Grant D. Beale,**

*Program Manager, Office of Trade Adjustment Assistance.*

[FR Doc. 00–11826 Filed 5–10–00; 8:45 am]
BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Pub. L. 103–182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigation are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request is filed in writing with the Director of DTAA not later than May 22, 2000.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than May 22, 2000.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 4th day of May 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

APPENDIX

| Subject firm | Location | Date received at Governor's Office | Petition number | Articles produced |
|---|---|---|---|---|
| Swiss–M–Tex (Wkrs) | Travelers Rest, SC | 03/21/2000 | NAFTA–3,810 | embroidered textile products. |
| Stant Manufacturing (IBB) | Connersvile, IN | 03/16/2000 | NAFTA–3,811 | plated fuel rails. |
| Exide Corporation (Co.) | Reading, PA | 03/22/2000 | NAFTA–3,812 | auto batteries. |
| C.P. Lighting (Wkrs) | Pottsville, PA | 03/22/2000 | NAFTA–3,813 | finished table & floor lamps. |
| Chevron Products (UNITE) | El Paso, TX | 03/22/2000 | NAFTA–3,814 | gasoline, diesel, propane & butane. |
| Russell Athletic Division (Co.) | Ashland, AL | 03/22/2000 | NAFTA–3,815 | knit apparel. |
| North American Heaters (Co.) | Franklin, TN | 03/20/2000 | NAFTA–3,816 | electrical heating elements. |
| United States Sales (Wkrs) | San Fernando, CA | 03/20/2000 | NAFTA–3,817 | warehouse & distribution center. |
| Chic by H.I.S.—Sierra Pacific Apparel (Co.). | Visalia, CA | 03/22/2000 | NAFTA–3,818 | jeans. |
| Anchor Lamina America (Wkrs) | Cheshire, CT | 03/06/2000 | NAFTA–3,819 | die sets, machined plates etc. |
| Labeling Systems (Co.) | Oakland, NJ | 03/27/2000 | NAFTA–3,820 | labeling machine. |
| Quebecor World (Co.) | Nashville, TN | 03/27/2000 | NAFTA–3,821 | commercial printing of books, magazines. |
| American Recreation Products (Co.) | Mineola, TX | 03/28/2000 | NAFTA–3,822 | sleeping bags. |
| Alliance Carolina Tool and Mold (Co.) | Arden, NC | 03/27/2000 | NAFTA–3,823 | plastic injected molded parts. |
| Mattel Operations (Co.) | Beaverton, OR | 04/03/2000 | NAFTA–3,824 | view master reels. |
| C and L Textiles (Co.) | Cooper City, FL | 04/03/2000 | NAFTA–3,825 | men's & women's clothing. |
| Talema Electronics (Co.) | St. James, MO | 03/29/2000 | NAFTA–3826 | toroidal transformers. |
| Ross Corporation (Co.) | Eugene, OR | 03/29/2000 | NAFTA–3,827 | heavy logging equipment. |
| Oregon Manufacturing (Co.) | Klamath Falls, OR | 03/29/2000 | NAFTA–3,828 | electronics. |

APPENDIX—Continued

| Subject firm | Location | Date received at Governor's Office | Petition number | Articles produced |
|---|---|---|---|---|
| Hexcel Corporation (Wkrs) | Kent, WA | 03/28/2000 | NAFTA–3,829 | air line space components. |
| Willamette Industrial (Wkrs) | Dallas, OR | 03/28/2000 | NAFTA–3,830 | plywood. |
| Midwest Micro (Wkrs) | Iron Ridge, WI | 03/27/2000 | NAFTA–3,831 | computer. |
| Finishing 2000 (UNITE) | El Paso, TX | 04/03/2000 | NAFTA–3,832 | jeans. |
| Berne Apparel (Wkrs) | Berne, IN | 04/03/2000 | NAFTA–3,833 | work apparel. |
| Seagate Technology (Wkrs) | Oklahoma City, OK | 04/05/2000 | NAFTA–3,834 | hard drive. |
| American Industrial Container (UE) | Meadville, PA | 04/07/2000 | NAFTA–3,835 | industrial containers. |
| Sony Professional Products (Wkrs) | Boca Raton, FL | 04/05/2000 | NAFTA–3,836 | video screen/airline entertainment. |
| K and D Clothing (UNITE) | Philadelphia, PA | 04/05/2000 | NAFTA–3,837 | men's suits. |
| Rugged Sportswear (Wkrs) | La Grange, NC | 04/04/2000 | NAFTA–3,838 | sweatshirts, sweatpants & sweatshorts. |
| Ametek Aerospace (IUE) | Wilmington, MA | 02/18/2000 | NAFTA–3,839 | cables and thermocouples. |
| Tally Sportswear (Wkrs) | Lancaster, SC | 04/10/2000 | NAFTA–3,840 | t-shirts. |
| Elsie Undergarment (Wkrs) | Hialeah, FL | 04/07/2000 | NAFTA–3,841 | lingerie. |
| IBM—International Business Machines (Wkrs). | Rochester, MN | 03/03/2000 | NAFTA–3,842 | electronic computer products. |
| Trinity Industries (Wkrs) | Lyndora, PA | 04/10/2000 | NAFTA–3,843 | railroad cars. |
| Thomson Consumer Electronics (IBEW) | Indianapolis, IN | 04/11/2000 | NAFTA–3,844 | single sided printed circuit boards. |
| Howeywell (USWA) | Ironton, OH | 04/12/2000 | NAFTA–3,845 | naphthalene. |
| Willamette (Wkrs) | Lebanon, OR | 04/13/2000 | NAFTA–3,846 | lvl presses, convyor systems. |
| Taylor Precisions Products (Co.) | Fletcher, NC | 04/07/2000 | NAFTA–3,847 | precisions measuring products. |
| Coho Resources (Wkrs) | Dallas, TX | 04/13/2000 | NAFTA–3,848 | oil and gas. |
| A. Schulman (PACE) | Orange, TX | 04/12/2000 | NAFTA–3,849 | polyurethane products. |
| Tecumseh Products (Wkrs) | Somerset, KY | 03/06/2000 | NAFTA–3,850 | compressors. |
| ABC NACO (Co.) | Cicero, IL | 04/10/2000 | NAFTA–3,851 | sideframes & bolsters. |
| Troutman Foundry (Co.) | Statesville, NC | 04/17/2000 | NAFTA–3,852 | grey iron castings. |
| Hatch (CO.) | El Paso, TX | 04/10/2000 | NAFTA–3,853 | power & control system integrators. |
| Chevron Products (Wkrs) | Roosevelt, UT | 03/27/2000 | NAFTA–3,854 | lifting & transportation crude oil. |
| Minard Run Oil (Wkrs) | Bradford, PA | 04/17/2000 | NAFTA–3,855 | crude oil & natural gas. |
| RHI Refractories America (USWA) | Womelsdorf, PA | 04/18/2000 | NAFTA–3,856 | magnesia chrome refractories. |
| Fort James (Co.) | Clatskanie, OR | 04/11/2000 | NAFTA–3,857 | groundwood speciality. |
| Raychem—Tyco Electronics (Co.) | Fuquay-Varina, NC | 04/20/2000 | NAFTA–3,858 | telecommunication cable. |
| ICI Explosives (Co.) | Joplin, MO | 04/25/2000 | NAFTA–3,859 | ammonium nitrate. |
| Pennzoil Quaker State (Co.) | Rouseville, PA | 04/21/2000 | NAFTA–3,860 | oil. |
| Cross Supply (Wkrs) | Olney, IL | 11/15/1999 | NAFTA–3,861 | oil. |
| Elcon Products International (Co.) | Fremont, CA | 04/20/2000 | NAFTA–3,862 | electrical assemblies. |
| Westwood Lighting (Co.) | El Paso, TX | 04/20/2000 | NAFTA–3,863 | lamps. |
| DTM Products—Flextronics In't (Wkrs) | Niwot, CO | 04/19/2000 | NAFTA–3,864 | small plastic parts. |
| Sharp Manufacturing (Wkrs) | Memphis, TN | 04/24/2000 | NAFTA–3,865 | television. |
| Furniture Crafts (Wkrs) | Grants Pass, OR | 04/24/2000 | NAFTA–3,866 | office furniture. |
| Sensus Tech (USWA) | Uniontown, PA | 04/12/2000 | NAFTA–3,867 | water meters. |
| Frontier Foundry (Wkrs) | Titusville, PA | 04/26/2000 | NAFTA–3,868 | aluminum steel castings. |
| Cooper Energy Services (Co.) | Grove City, PA | 04/27/2000 | NAFTA–3,869 | pistones. |
| Fairway Foods of Michigan (Wkrs) | Menominee, MI | 04/25/2000 | NAFTA–3,870 | fruits & vegetables. |
| Mr. Coffee—Sunbeam Products (Co.) | Glenwillow, OH | 04/17/2000 | NAFTA–3,871 | coffee & tea makers. |
| Philips Electronics North America (Co.) | Wartburg, TN | 04/21/2000 | NAFTA–3,872 | power supply transformer. |
| Solectron (Co.) | Sunwancee, GA | 04/25/2000 | NAFTA–3,873 | cellular mobile telephones. |
| Long Handles Shirts (Co.) | Monroe, NC | 04/27/2000 | NAFTA–3,874 | men's knit shirts. |
| Motor Coils (IUE) | Braddock, PA | 05/01/2000 | NAFTA–3,875 | traction motors. |
| Chavez Signs (Wkrs) | El Paso, TX | 05/01/2000 | NAFTA–3,876 | plywood. |

APPENDIX—Continued

| Subject firm | Location | Date received at Governor's Office | Petition number | Articles produced |
|---|---|---|---|---|
| Erie Controls (Co.) | Milwaukee, WI | 04/26/2000 | NAFTA–3,877 | electrical components. |
| Kongsberg (Wkrs) | Livania, MI | 03/29/2000 | NAFTA–3,878 | seat heaters. |

[FR Doc. 00–11823 Filed 5–10–00; 8:45 am]
BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### Federal Advisory Council on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the Federal Advisory Council on Occupational Safety and Health (FACOSH), established under Section 1–5 of Executive Order 12196 on February 6, 1980, and published in the **Federal Register**, February 27, 1980 (45 FR 1279). FACOSH will meet on May 31, 2000, starting at 1:30 p.m., in Room N–3437 A/B/C/D of the Department of Labor Frances Perkins Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210. The meeting will adjourn at approximately 3:30 p.m., and will be open to the public. All persons wishing to attend this meeting must exhibit a photo identification to security personnel.

Agenda items will include:

1. Call to Order
2. NASA Safety and Occupational Health Program Overview
3. Reports by Subcommittees
4. Status Reports on Pending Items
5. New Business
6. Adjournment

Written data, views or comments may be submitted, preferably with 20 copies, to the Office of Federal Agency Programs at the address provided below. All such submissions, received by May 25, 2000, will be provided to the members of the Federal Advisory Council and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Office of Federal Agency Programs by the close of business on May 25, 2000. The request should state the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Those who request the opportunity to address the Federal Advisory Council may be allowed to speak, as time permits, at the discretion of the Chairperson. Individuals with disabilities who wish to attend the meeting and need special accommodations should contact John E. Plummer at the address indicated below.

For additional information, please contact John E. Plummer, Director, Office of Federal Agency Programs, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3112, 200 Constitution Avenue, N.W., Washington, DC 20210, telephone number (202) 693–2122. An official record of the meeting will be available for public inspection at the Office of Federal Agency Programs.

Signed at Washington, DC, this 5th day of May 2000.

**Charles N. Jeffress,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 00–11821 Filed 5–10–00; 8:45 am]
BILLING CODE 4510–26–P

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Cooperative Agreement for: Documentation of Successful ArtsREACH and Creative Links Grant Projects

**AGENCY:** National Endowment for the Arts, NFAH.

**ACTION:** Notification of Availability.

**SUMMARY:** The National Endowment for the Arts is requesting proposals leading to one (1) award of a Cooperative Agreement for an effort to document successful ArtsREACH and Creative Links grant projects for use as case studies by other community-based coalitions, and for public information. Approximately 30 successful ArtsREACH projects and 15 Creative Links projects will be documentation and two publications will be prepared for printing and web site posting. In addition, materials such as photographs, audio, and/or video tapes may be assembled and prepared for posting on the Agency Web site. Those interested in receiving the solicitation package should reference Program Solicitation PS 00–05 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored. It is anticipated that the Program Solicitation will also be posted on the Endowment's Web site at http://www.arts.gov.

**DATES:** Program Solicitation PS 00–05 is scheduled for release approximately May 26, 2000 with proposals due on June 28, 2000.

**ADDRESSES:** Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:** William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, D.C. 20506 (202/682–5482).

**William I. Hummel,**

*Coordinator, Cooperative Agreements.*

[FR Doc. 00–11854 Filed 5–10–00; 8:45 am]
BILLING CODE 7537–01–M

## NUCLEAR REGULATORY COMMISSION

### Carolina Power & Light Company

**[Docket No. 50–261]**

### Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee), to withdraw its March 26, 1999, application for proposed amendment to Facility Operating License No. DPR–23 for the H. B. Robinson Steam Electric Plant, Unit No. 2, located in Darlington County, South Carolina.

The proposed amendment would have modified the facility technical specifications pertaining to the required action and completion time for the ultimate heat sink in the event that the

service water temperature exceeded 95°F.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on July 28, 1999 (64 FR 40905). However, by letter dated April 25, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 26, 1999, and the licensee's letter dated April 25, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 3rd day of May 2000.

For the Nuclear Regulatory Commission.

**Ram Subbaratnam,**

*Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–11801 Filed 5–10–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

**[Docket Number 40–6622]**

### Pathfinder Mines Corporation

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of Receipt of Application from Pathfinder Mines Corporation to establish Alternate Concentration Limits in Source Material License SUA–442 for the Shirley Basin, Wyoming, uranium mill site; Notice of Opportunity for a Hearing.

**SUMMARY:** Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated April 3, 2000, an application from Pathfinder Mines Corporation to establish Alternate Concentration Limits and, accordingly, amend Condition 47 of its Source Material License No. SUA–442 for the Shirley Basin Wyoming, uranium mill.

**FOR FURTHER INFORMATION CONTACT:** Mohammad W. Haque, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–6640.

**SUPPLEMENTARY INFORMATION:** Pathfinder Mines Corporation's application to amend Source Material License SUA–442, which describes the proposed change and the reasons for the request, is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(d), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Pathfinder Mines Corporation, 935 Pendell Boulevard, P.O. Box 730, Mills, Wyoming 82644, Attention: Tom Hardgrove; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852 or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 45 days of the publication of this notice in the **Federal Register**. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear regulatory Commission, Washington, D.C. 20555.

Dated at Rockville, Maryland, this 4th day of May, 2000.

**Thomas H. Essig,**

*Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–11799 Filed 5–10–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING MEETING:** Nuclear Regulatory Commission.

**DATE:** Weeks of May 8, 15, 22, 29, June 5, and 12, 2000.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public and Closed

**MATTERS TO BE CONSIDERED:**

*Week of May 8*

Monday, May 8

10 a.m. Briefing on Lessons Learned from the Nuclear Criticality Accident at Tokai-Mura and the Implications on the NRC's Program (Public Meeting) (Contact: Bill Troskoski, 301–415–8076)

Tuesday, May 9

8:55 a.m. Affirmation Session (Public Meeting) (If needed)

9 a.m. Meeting with Stakeholders on Efforts Regarding Release of Solid Material (Public Meeting) (Contact: Frank Cardile, 301–415–6185)

*Week of May 15—Tentative*

Tuesday, May 16

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

*Week of May 22—Tentative*

Thursday, May 25

8:30 a.m. Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: Joe Shea, 301–415–1727)

10:15 a.m. Briefing on Status of

Regional Programs, Performance and Plans (Public Meeting) (Contact: Joe Shea, 301–415–1727)
1:30 p.m. Briefing on Improvements to 2.206 Process (Public Meeting) (Contact: Andrew Kugler, 301–415–2828)

*Week of May 29—Tentative*

Tuesday, May 30
9:25 a.m. Affirmation Session (Public Meeting) (If needed)

*Week of June 5*

There are no meetings scheduled for the Week of June 5.

*Week of June 12—Tentative*

Tuesday, June 13
9:25 a.m. Affirmation Session (Public Meeting) (If needed)
9:30 a.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Paul Lohaus, 301–415–3340)
1 p.m. Meeting with Korean Peninsula Energy Development Organization (KEDO) and State Department (Public Meeting) (Contact: Donna Chaney, 301–415–2644)

* THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDINGS)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

**ADDITIONAL INFORMATION:** By a vote of 5–0 on May 3, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of a: Final Rule: Revision of Part 50, Appendix K, "ECCS Evaluation Models"; b: GPU NUCLEAR, INC., Docket No. 50–219–LT; Petition to Intervene; and, c: MOAB MILL RECLAMATION TRUST, Docket No. 40–3453–LT; Petition to Intervene" (PUBLIC MEETING) be held on May 3, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: May 5, 2000.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 00–11945 Filed 5–9–00; 10:23 am]

**BILLING CODE 7590–01–M**

## NUCLEAR REGULATORY COMMISSION

### Notice of a Website for the Interagency Steering Committee on Radiation Standards

**SUMMARY:** This notice announces the website for the Interagency Steering Committee on Radiation Standards (ISCORS) at *www.iscors.org*. ISCORS was formed in response to an October 27, 1994, letter from Senator John Glenn to the U.S. Nuclear Regulatory Commission (NRC), U.S. Environmental Protection Agency (EPA), and the Office of Science and Technology Policy (OSTP). In this letter, Senator Glenn charged EPA and the NRC, in coordination with the Committee on Interagency Radiation Research and Policy Coordination (CIRRPC), to develop a plan for a "path forward" to address the inconsistencies, gaps, and overlaps in current radiation protection standards. ISCORS is also one of the committees OSTP recommended for achieving the goals of the now defunct CIRRPC.

The objectives of ISCORS include:

(1) Facilitating a consensus on acceptable levels of radiation risk to the public and workers;

(2) Promoting consistent risk assessment and risk management approaches in setting and implementing standards for occupational and public protection from ionizing radiation;

(3) Promoting completeness and coherence of Federal standards for radiation protection; and

(4) Identifying interagency issues and coordinating their resolution.

Since its inception, NRC and EPA have co-chaired ISCORS. The current co-chairs are John T. Greeves, NRC, and Frank Marcinowski, EPA. In addition to NRC and EPA, ISCORS membership also includes senior managers from the Department of Defense, Department of Energy, Department of Labor's Occupational Safety and Health Administration, Department of Transportation, and Department of Health and Human Services; representatives of the Office of Management and Budget (OMB), OSTP, and the States are observers at meetings.

ISCORS meetings involve pre-decisional intragovernmental discussions and, as such, are not normally open for observation by members of the public or media. However, summary meeting notes are available in NRC's Public Document Room and now will be made available at the website. ISCORS meets approximately once each calendar quarter.

The full ISCORS committee establishes subcommittees to conduct the committee's technical work. The full committee establishes these subcommittees as needed to address specific issues of concern or significant interest to ISCORS. ISCORS has formed the following subcommittees: Cleanup; mixed waste; recycle; risk harmonization; sewage sludge; naturally occurring radioactive materials (NORM); and Federal guidance. The subcommittees minutes and activities will also be available at the website.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Santiago, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission at (301) 415–7269; or Behram Shroff, Office of Air and Radiation, U.S. Environmental Protection Agency at (202) 564–9707.

Dated at Rockville, Maryland this 5th day of May, 2000.

For the Nuclear Regulatory Commission.

**John T. Greeves,**

*Director, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–11800 Filed 5–10–00; 8:45 am]

**BILLING CODE 7590–01–P**

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to

the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Vocational Report; OMB 3220–0141.

Section 2 of the Railroad Retirement Act (RRA) provides for payment of disability annuities to qualified employees and widow(ers). The establishment of permanent disability for work in the applicants "regular occupation" or for work in any regular employment is prescribed in 20 CFR 220.12 and 220.13 respectively.

The RRB utilizes Form G–251, Vocational Report, to obtain an applicant's work history. This information is used by the RRB to determine the effect of a disability on an applicant's ability to work. Form G–251 is designed for use with the RRB's disability benefit application forms and is provided to all applicants for employee disability annuities and to those applicants for a widow(er)'s disability annuity who indicate that they have been employed at some time. Completion is required to obtain or retain a benefit. One response is requested of each respondent.

The RRB proposed non-burden impacting formatting and editorial changes to Form G–251. The completion time for Form G–251 is estimated at between thirty and 40 minutes per response. The RRB estimates that approximately 6,000 Form G–251's are completed annually.

**FOR FURTHER INFORMATION CONTACT:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 00–11856 Filed 5–10–00; 8:45 am]

BILLING CODE 7905–01–M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and budget for review and approval.

**Summary of Proposals**

(1) *Collection title:* Employment Deemed Service Month Questionnaire.

(2)*Form(s) submitted:* GL–99.

(3) *OMB Number:* 3220–0156.

(4) *Expiration date of current OMB clearance:* 6/30/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other-for-profit.

(7) *Estimated annual number of respondents:* 150.

(8) *Total annual responses:* 4,000.

(9) *Total annual reporting hours:* 133.

(10) *Collection description:* Under Section 3(i) of the Railroad Retirement Act, the Railroad Retirement Board may deem months of service in cases where an employee does not actually work in every month of the year. The collection obtains service and compensation information from railroad employers needed to determine if an employee may be credited with additional months of railroad service.

**FOR FURTHER INFORMATION CONTACT:** Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Joe Lackey (202–395–7316), Office of management and Budget, Room 10230, New Executive Office Building, Washington, D.C. 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 00–11857 Filed 5–10–00; 8:45 am]

BILLING CODE 7905–01–M

## RAILROAD RETIREMENT BOARD

### Agency Forms Submitted for OMB Review

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

**Summary of Proposal(s)**

(1) *Collection title:* Employment Representatives' Status and Compensation Reports.

(2) *Form(s) submitted:* DC–2a, DC–2.

(3) *OMB Number:* 3220–0014.

(4) *Expiration date of current OMB clearance:* 7/31/2000.

(5) *Type of request:* Extension of a currently approved collection.

(6) *Respondents:* Business or other-for-profit.

(7) *Estimated annual number of respondents:* 65.

(8) *Total annual responses:* 65.

(9) *Total annual reporting hours:* 33.

(10) *Collection description:* Benefits are provided under the Railroad Retirement Act (RRA) for individuals who are employee representatives as defined in section 1 of the RRA. The collection obtains information regarding the status of such individuals and their compensation.

**FOR FURTHER INFORMATION CONTACT:** Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Joe Lackey (202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 00–11858 Filed 5–10–00; 8:45 am]

BILLING CODE 7905–01–M

## RAILROAD RETIREMENT BOARD

### Sunshine Act Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 17, 2000, 9 a.m. at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

(1) Report on Quality Audit of Railroad Retirement Board Occupational Disability Process.

(2) Medicare Transition.

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: May 8, 2000.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 00–11944 Filed 5–9–00; 10:07 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Docket No. Rel. No. IC–24442; File No. 812–11826]**

**Warburg, Pincus Trust, et al.**

May 5, 2000.

**AGENCY:** Securities and Exchange Commission (the "SEC" or the "Commission").

**ACTION:** Notice of application for an order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act") for exemptions from the provisions of Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act and Rules 6e–2(b)(15) and 6e–3(T)(b)(15) thereunder.

*Summary of Application:* Applicants seek an order to permit shares of Warburg, Pincus Trust I ("Trust I") and Warburg, Pincus Trust II ("Trust II") (each, a "Trust" and together with Trust I, the "Trusts") and shares of any other investment company or series thereof that is designed to fund insurance products and for which Credit Suisse Asset Management, LLC ("CSAM") or any of its affiliates may serve, immediately upon commencement of operation as a registered investment company or in the future, as investment adviser, administrator, manager, principal underwrite or sponsor (the Trusts, their respective existing and future investment portfolios and such other investment companies or investment portfolios thereof hereinafter referred to, individually, as a "Fund" and collectively as "Funds") to be sold to and held by (a) variable annuity and variable life insurance separate accounts of both affiliated and unaffiliated life insurance companies; and (b) qualified pension and retirement plans outside of the separate account context ("Qualified Plans"). The order would supersede an existing order (the "Existing Order") previously granted by the Commission to Trust I on December 19, 1995.

*Applicants:* Warburg, Pincus Trust, Warburg, Pincus Trust II and Credit Suisse Asset Management, LLC.

*Filing Date:* The application was filed on October 28, 1999, and amended and restated on May 3, 2000.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the Secretary of the SEC and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 26, 2000, and accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 153 East 53rd Street, New York, New York 10022.

**FOR FURTHER INFORMATION CONTACT:** Zandra Y. Bailes, Senior Counsel, or Susan M. Olson, Branch Chief, Division of Investment Management, Office of Insurance Products, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** Following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the SEC, 450 Fifth Street, N.W., Washington, D.C. 20549 (tel. (202) 942–8090).

### Applicants' Representations

1. The Existing Order [1] was granted to certain Funds, including Trust I, and Warburg Pincus Asset Management, Inc. ("Warburg") to permit those Funds to offer their respective shares to (a) variable annuity and variable life insurance separate accounts of both affiliate and unaffiliated life companies and (b) qualified pension and retirement plans outside of the separate account context. On February 15, 199, the parent companies of Warburg entered into an agreement with Credit Sussie Group ("Credit Sussie"), a global financial service company based in Switzerland, under which Credit Suisse would acquire Warbug (the "Acquisition"). In conjunction with the Acquisition, Credit Suisse merged Warburg into its existing U.S. asset management business, which was converted from Credit Suisse Asset Management, a New York general partnership, into CSAM, prior to the consummation of the merger. The Acquisition and merger of CSAM and Warburg occurred simultaneously on July 6, 1999.

2. Each Trust is a Massachusetts business trust registered under the 1940 Act as an open-end management investment company. Trust I is currently comprised of six portfolios: the Emerging Growth Portfolio, the Emerging Markets Portfolio, the Growth & Income Portfolio, the International Equity Portfolio, the Post-Venture Capital Portfolio and the Small Company Growth Portfolio. Thrust II is comprised of two portfolios: the Fixed Income Portfolio and the Global Fixed Income Portfolio. Each Trust may offer additional portfolios in the future.

3. CSAM, a Delaware limited liability company, is registered with the Commission under the Investment Advisers Act of 1940 and serves as the investment adviser for each of the Funds.

4. Each Trust offers its shares to and its shares are held by separate accounts, which are registered with the Commission under the 1940 Act as unit investment trusts ("Separate Accounts"), of various life insurance companies to serve as an investment vehicle for life and variable annuity contracts issued by such insurance companies. Insurance companies whose separate account or accounts own shares of the Funds are referred to herein as "Participating Insurance Companies." Shares of the Trust may also be held by separate accounts that are not registered as investment companies under the 1940 Act pursuant to an exemption therefrom.

5. Each Participating Insurance Company will have the legal obligation of satisfying all applicable requirements under both state and federal law. Each Participating Insurance Company will enter into a fund participating agreement with the applicable Trust on behalf of the Fund in which the Participating Insurance Company invests. The role of the Funds under this agreement, insofar as the federal securities laws are applicable, will consists of offering their shares to the Separate Accounts and fulfilling any conditions that the Commission may impose upon granting the order requested in the application.

6. Applicants propose that each Trust continue to have the ability to offer and sell shares directly to Qualified Plans. The Funds propose to offer shares to any Qualified Plans that can, consistent with applicable law, invest in the Funds consistent with the Funds serving as investment vehicles for Separate Accounts.

### Applicants' Legal Analysis

1. In connection with the funding of scheduled premium variable life insurance contracts issued through a Separate Account, Rule 6e–2(b)(15) under the 1940 Act provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. The

[1] *Warburg, Pincus Trust, et al.*, Investment Company Act Release No. IC–21607 (Dec. 19, 1995) (order), Investment Company Act Release No. IC–21522 (Nov. 20, 1995) (notice). Trust II was not a named party to the prior exemptive application because it had not yet been organized. Trust II has relied on the Existing Order because the prior application requested relief for shares of any other investment company or series thereof designed of fund insurance products and for which Warburg Pincus Asset Management, Inc. or its affiliates serves as investment adviser.

exemptions granted under Rule 6e–(b)(15) are available, however, only when all of the assets of the separate account consist of the shares of one or more registered management investment companies which offer their shares "*exclusively* to variable life insurance separate accounts of the life insurer, or of any affiliated life insurance company." (emphasis supplied) Therefore, the relief granted by Rule 6e–2(b)(15) is not available with respect to a scheduled premium variable life insurance separate account that owns shares of an investment company that also offers its shares to a variable annuity separate account of the same or of any affiliated or unaffiliated life insurance company. The use of a common management investment company as the underlying investment medium for both variable annuity and variable life insurance separate accounts of the same life insurance company or of any affiliated life insurance company is referred to herein as "mixed funding." In addition, the relief granted by Rule 6e–2(b)(15) is not available if shares of the underlying management investment company are offered to variable life insurance separate accounts of unaffiliated life insurance companies.

The use of a common management investment company as the underlying investment medium for variable life separate accounts of unaffiliated insurance companies is referred to herein as "shared funding".

2. Applicants state that the basis for the relief granted by Rule 6e–2(b)(15) is not affected by the purchase of shares of the Funds by Qualified Plans. However, because the relief under Rules 6e–2(b)(15) and 6e–3(b)(15) is available only where shares of the underlying fund are offered exclusively to separate accounts of insurance companies, additional exemptive relief is necessary if shares of the Funds are also to be sold to Qualified Plans.

3. In connection with the funding of flexible premium variable life insurance contracts issued through a separate account registered under the 1940 Act as a unit investment trust, Rule 6e–3(T)(b)(15) provides partial exemptions from Sections 9(a), 13(a), 15(a) and 15(b) of the 1940 Act. However, these exemptions are available only where all of the assets of the separate account consist of shares of one or more registered management investment companies which offers their shares "*exclusively* to separate accounts of the life insurer, or of any affiliated life insurance company, offering either scheduled contracts or flexible contracts, or both; or which also offer their shares to variable annuity separate accounts of the life insurer or of an affiliated life insurance company" (emphasis supplied). Therefore, Rule 6e–3(T) permits mixed funding with respect to a flexible premium variable life insurance separate account subject to certain conditions. However, Rule 6e–3(T) does not permit shared funding because the relief granted by Rule 6e–3(T)(b)(15) is not available with respect to a flexible premium variable life insurance separate account that owns shares of an investment company that also offers its shares to separate accounts (including variable annuity and flexible premium and scheduled premium variable life insurance separate accounts) of unaffiliated life insurance companies.

4. In addition, Applicants state that because the relief granted under Rule 6e–3(T)(b)(15) is available only when shares of the underlying fund are offered exclusively to separate accounts, exemptive relief is necessary if shares of the Funds are also to be sold to Qualified Plans.

5. Applicants state that changes in the tax law subsequent to the adoption of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) afford the Trusts the opportunity to increase their respective asset bases by selling shares of the Funds to Qualified Plans. Section 817(h) of the Internal Revenue code of 1986, as amended (the "Code"), imposes certain diversification standards on the assets underlying variable annuity contracts and variable life insurance contracts such as those held in the Funds. The Code provides that a variable contract shall not be treated as an annuity contract or life insurance contract for any period (or any subsequent period) for which the investments of the underlying assets are not, in accordance with regulations issued by the Treasury Department (the "Regulations"), adequately diversified. On March 2, 1989, the Treasury Department issued Regulations (Treas. Reg. 1.817–5) which established diversification requirements for investment companies' portfolios underlying variable contracts. The Regulations provide that, in order to meet the diversification requirements, all of the beneficial interests in the underlying investment company must be held by the segregated asset account of one or more life insurance companies. However, the Regulations also contain certain exceptions to this requirement, one of which allows shares of an investment company to be held by the trustee of a qualified pension or retirement plan, without adversely affecting the status of the investment company as an adequately diversified underlying investment for variable life contracts issued through such segregated asset accounts (Treas. Reg. 1.817–5(f)(3)(iii).

6. Applicants also note that the promulgation of Rules 6e–2(b)(15) and 6e–3(T)(b)(15) preceded the issuance of the Regulations, which made it possible for shares of an investment company to be held by the trustee of a Qualified Plan without adversely affecting the ability of shares in the same investment company to also be held by the separate accounts of insurance companies in connection with their variable contracts.

7. In general, Section 9(a) of the 1940 Act disqualifies any person convicted of certain offenses, and any company affiliated with that person, from serving in various capacities with respect to an underlying registered management investment company. More specifically, Section 9(a)(3) provides that it is unlawful for any company to serve as investment adviser to or principal underwriter for any registered open-end investment company if an affiliated person of the company is subject to a disqualification enumerated in Sections 9(a)(1) or (2) of the 1940 Act. However, Rules 6e–2(b)(15)(i) and (ii) and 6e–3(T)(b)(15)(i) and (ii) provide exemptions from Section 9(a) under certain circumstances, subject to the limitations on mixed and shared funding. These exemptions limit the application of the eligibility restrictions to affiliated individuals or companies that directly participate in the management or administration of the underlying investment company.

8. Applicants state that Rules 6e–2(b)(15) and 6e–3(T)(b)(15) recognize that it is not necessary for the protection of investors or the purposes fairly intended by the policy and provisions of the 1940 Act to apply the provisions of Section 9(a) to the many individuals involved in a large insurance company complex, most of whom typically will have no involvement in matters pertaining to investment companies funding the Separate Accounts. The Participating Insurance Companies are not expected to play any role in the management or administration of the Funds. Therefore, Applicants assert that applying the restrictions of Section 9(a) serves no regulatory purpose. Applicants further assert that such restrictions could reduce the net rates of return realized by contractowners due to increased monitoring costs.

9. Applicants state that Rules 6e–2(b)(15)(iii) and 6e–3(T)(b)(15)(iii) provide partial exemptions from Sections 13(a), 15(a) and 15(b) of the 1940 Act to the extent that those sections have been deemed by the Commission to require "pass-through"

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voting with respect to management investment company shares held by a Separate Account to permit the Participating Insurance Company to disregard the voting instructions of its contractowner in certain limited circumstances. More specifically, Rules 6e–2(b)(15)(iii)(A) and 6e–3(T)(b)(15)(iii)(A) provide that the Participating Insurance Company may disregard the voting instructions of its contractowner in connection with the voting shares of an underlying fund if such instructions would require such shares to be voted to cause such companies to make (or refrain from making) certain investments which would result in changes in the subclassification or investment objectives of such companies or to approve or disapprove any contract between a fund and its investment adviser, when required to do so by an insurance regulatory authority and subject to the provisions of paragraphs (b)(5)(i) and (b)(7)(ii)(A) of the Rules. In additions, Rules 6e–(b)(15)(iii)(B) and 6e–3(T)(b)(15)(iii)(A)(*2*) provide that the insurance company may disregard voting instructions of contractowners if the contractowners initiate any change in the investment company's investment policies, principal underwriter or any investment adviser (subject to paragraphs (b)(5)(ii) and (b)(7)(ii)(B) and (C) of the Rules).

10. Applicants further represent that the Funds' sale of shares to Qualified Plans will not have any impact on the relief requested in this regard. Applicants state that shares of the Funds sold to Qualified Plans would be held by the trustees of such Qualified Plans as required by Section 403(a) of ERISA. Section 403(a) also provides that the trustee(s) must have exclusive authority and discretion to manage and control the Qualified Plan with two exceptions: (a) When the Qualified Plan expressly provides that the trustees are subject to the direction of a named fiduciary who is not a trustee, in which the trustee are subject to proper directions made in accordance with the terms of the Qualified Plan and not contrary to ERISA; and (b) when the authority to manage, acquire or dispose of asserts of the Qualified Plan is delegated to one or more investment managers pursuant to Section 402(c)(3) of ERISA. Unless one of the above two exceptions stated in Section 403(a) applies, Qualified Plan trustees have the exclusive authority and responsibility for voting proxies.

11. Where a named fiduciary appoints and investment manager, the investment manager has the responsibility to vote the shares held unless the right to votes such shares is reserved to the trustees or the named fiduciary. The Qualified Plans may have their trustee(s) or other fiduciaries exercise voting rights attributable to investment securities held by the Qualified Plans in their discretion. Some Qualified Plans, however, may provide for the trustee(s), an investment adviser (or advisers), or another named fiduciary to exercise voting rights in accordance with instructions from participants.

12. When a Qualified Plan does not provide participants with the right to give voting instructions, Applicants submit that there is no potential for material irreconcilable conflicts of interest between or among variable contract holders and Qualified Plan participants with respect to voting of the respective Fund's shares. Accordingly, Applicants note that unlike the case with insurance company separate accounts, the issue of the resolution of material irreconcilable conflicts with respect to voting is not present with respect to Qualified Plans since the Qualified Plans are not entitled to pass-through voting privileges.

13. Where a Qualified Plans provides participants with the right to give voting instructions, Applicants submit there is no reason to believe that participants in Qualified Plans generally or those in a particular Plan, either as a single group or in combination with participants in other Qualified Plans, would vote in a manner that would disadvantage contract holders. The purchase of shares of the Funds by Qualified Plans that provide voting rights does not present any complications not otherwise occasioned by mixed or shared funding.

14. Applicants assert that no increased conflicts of interest would be presented by the granting of the requested relief. Shared funding does not present any issues that do not already exist where a single insurance company is licensed to do business in several states. Where insurers are domiciled in different states, it is possible that the particular state insurance regulatory body in a state in which one insurance company is domiciled could require action that is inconsistent with the requirement of insurance regulators of other states in which other insurance companies are domiciled. Applicants state that the fact that a single insurer and its affiliates offer their insurance products in different states doe not create a significantly different or enlarged problem.

15. Applicants submit that shared funding is not different than the use of the same investment company as the funding vehicle for affiliated insurers, which Rules 6e–2(b)(15) and 6e–3(T)(b)(15) permit under various circumstances. Applicants state that affiliation does not reduce the potential, if any exists, for differences in state regulatory requirements. In any event, Applicants submit that the conditions set forth in the application and included in this notice are designed to safeguard against and provide procedures for resolving any adverse effects that differences among state regulatory requirements may produce. For instance, if a particular state insurance regulator's decision conflict with the majority of other state regulators, the affected insurer may be required to withdraw its Separate Account's investment in the relevant Funds.

16. Applicants further assert that affiliation does not eliminate the potential, of any exist, for divergent judgments as to the advisability or legality of a change in investment policies, principal underwriter, or investment adviser initiated by contractowners. The potential for disagreement is limited by the requirements in Rules 6e–2 and 6e–3(T) that an insurance company's disregard of voting instructions be reasonable and based on specific good faith determinations. However, if the insurance company's decision to disregard contractowners' voting instructions represents a minority position or would preclude a majority vote, the insurer may be required, at the election of the relevant Fund, to withdraw its Separate Account's investment in such Funds, and no charge or penalty would be imposed upon contractowners as a result of such withdrawal.

17. Applicants submit that no reason exists why the investment policies of the Funds with mixed funding would or should be materially different from what they would or should be if the Funds funded only variable annuity or only variable life insurance policies. Applicants represent that the Funds will be managed to attempt to achieve their investment objectives, and will not be managed to favor or disfavor any particular insurer or type of insurance product.

18. Applicants do not believe that the sale of shares of the Funds to Qualified Plans will increase the potential for material irreconcilable conflicts of interest between or among different types of investors. In particular, Applicants see very little potential for such conflicts beyond that which would otherwise exist between variable annuity and variable life insurance contractowners.

19. As noted above, Section 817(h) of the Code imposes certain diversification standards on the underlying assets of variable annuity and variable life insurance contracts held in the portfolios of management investment companies. Treasury Regulation 1.817–5(f)(3)(iii), which established diversification requirements for such portfolios, specifically permits, among other things, "qualified pension or retirement plans" and separate accounts to share the same underlying management investment company. Therefore, Applicants state that neither the Code, nor the Treasury Regulations, nor the Revenue Rulings thereunder present any inherent conflicts of interest between or among Qualified Plan participants and variable contractowners if Qualified Plans and variable annuity and variable life separate accounts all invest in the same management investment company.

20. Applicants note that while there are differences in the manner in which distributions from variable contracts and Qualified Plans are taxed, the tax consequences do not raise any conflicts of interest. When distributions are to be made, and a Separate Account or Qualified Plan is unable to net purchase payments to make the distributions, the Separate Account and the Qualified Plan will redeem shares of the Funds at their net asset value in conformity with Rule 22c–1 under the 1940 Act (without the imposition of any sales charge) to provide proceeds to meet distribution needs. A Participating Insurance Company will make distributions in accordance with the terms of the variable contract.

21. With respect to voting rights, Applicants state that it is possible to provide an equitable means of giving voting rights to Separate Account contractowners and to Qualified Plans. Applicants represent that the Funds will inform each Separate Account and Qualified Plan of their respective share of ownership in the respective Fund. A Participating Insurance Company will then solicit voting instructions consistent with the "pass through" voting requirement. Qualified Plans and Separate Accounts will each have the opportunity to exercise voting rights with respect to their shares in the Funds, although only the Separate Accounts are required to pass through their vote to contractowners. The voting rights provided to Qualified Plans with respect to shares of Funds would be no different from the voting rights that are provided to Qualified Plans with respect to shares of funds offered to the general public.

22. Applicants submit that the ability of the Funds to sell their respective shares directly to Qualified Plans does not create a "senior security," as such term is defined under Section 18(g) of the 1940 Act, with respect to any variable annuity or variable life insurance contractowner as opposed to a Qualified Plan participant. As noted above, regardless of the rights and benefits of Qualified Plan participants, or contractowners under variable contracts, the Qualified Plan and the Separate Accounts have rights only with respect to their respective shares of the Funds. They can only redeem such shares at their net asset value. No shareholder of any Funds has any preference over any other shareholder with respect to distribution of assets or payment of dividends.

23. Applicants submit that there are no conflicts between the contractowners of the Separate Accounts and the Qualified Plan participants with respect to state insurance commissioners' veto powers over investment objectives. State insurance commissioners have been given the veto power in recognition of the fact that insurance companies usually cannot simply redeem their separate accounts out of one fund and invest in another. Generally, time-consuming complex transactions must be undertaken to accomplish such redemptions and transfers. Conversely, trustees of Qualified Plans or the participants in participant-directed Qualified Plans can make the decision quickly and redeem their shares from the Funds and reinvest in another funding vehicle without the same regulatory impediments or, as is the case with most Qualified Plans, even hold cash pending suitable investment. Therefore, Applicants conclude that even if there should arise issues where the interests of contractowners and the interests of Qualified Plans are in conflict, the issues can be almost immediately resolved because the trustees of (or participants in) the Qualified Plans can, on their own, redeem the shares out of the Funds.

24. Applicants also assert that there is no greater potential for material irreconcilable conflicts arising between the interests of Qualified Plan participants and contractowners of Separate Accounts from possible future changes in the federal tax laws than that which already exists between variable annuity contractowners and variable life insurance contractowners.

25. Applicants state that various factors have limited the number of insurance companies that offer variable annuities and variable life insurance contracts. These factors include the costs of organizing and operating a funding medium, the lack of expertise with respect to investment management (principally with respect to stock and money market investments) and the lack of name recognition by the public as investment experts. In particular, some smaller life insurance companies may not find it economically feasible, or within their investment or administrative expertise, to enter the variable contract business on their own. Applicants submit that use of the Funds as common investment vehicles for variable contracts helps alleviate these concerns because Participating Insurance Companies benefit not only from the investment advisory and administrative expertise of the Funds' investment adviser, but also from the cost efficiencies and investment flexibility afforded by a large pool of funds. Therefore, making the Funds available for mixed and shared funding may encourage more insurance companies to offer variable contracts, and accordingly could result in increased competition with respect to both variable contract design and pricing, which can be expected to result in more product variation and lower charges. Applicants assert that mixed and shared funding also would benefit contractowners by eliminating a significant portion of the costs of establishing and administering separate funds. Furthermore, Applicants assert that the sale of shares of the Funds to Qualified Plans in addition to Separate Accounts of Participating Insurance Companies will result in an increased amount of assets available for investment by the Funds. This may benefit contractowners by promoting economies of scale, by permitting increased safety of investments through greater diversification, and by making the addition of new portfolios more feasible.

**Applicants' Conditions**

Applicants have consented to the following conditions:

1. A majority of the Board of Trustees (each, a "Board") of each fund shall consist of persons who are not "interested persons" thereof, as defined by Section 2(a)(19) of the 1940 Act, and the rules thereunder, and as modified by any applicable orders of the Commission, except that if this condition is not met by reason of the death, disqualification or bona fide resignation of any Trustee or Director, then the operation of this condition shall be suspended: (a) for a period of 45 days if the vacancy or vacancies may be filled by the appropriate Board; (b) for a period of 60 days if a vote of

shareholders is required to fill the vacancy or vacancies; or (c) for such longer period as the Commission may prescribe by order upon application.

2. Each Board will monitor its respective Funds for the existence of any material irreconcilable conflict among the interests of the contract holders of all Separate Accounts and of participants of Qualified Plans investing in the respective Funds and determine what action, if any, should be taken in response to any such conflicts. A material irreconcilable conflict may arise for a variety of reasons, including: (a) an action by any state insurance regulatory authority; (b) a change in applicable federal or state insurance, tax or securities laws or regulations, or a public ruling, private letter ruling, no-action or interpretive letter, or any similar action by insurance, tax or securities regulatory authorities; (c) an administrative or judicial decision in any relevant proceeding; (d) the manner in which the investments of the Funds are managed; (e) a difference in voting instructions given by owners of variable annuity contracts, owners of variable life insurance contracts and trustees of the Qualified Plans; (f) a decision by a Participating Insurance Company to disregard the voting instructions of contract holders; or (g) if applicable, a decision by a Qualified Plan to disregard the voting instructions of Qualified Plan participants.

3. The Participating Insurance Companies, CSAM (or any other investment manager of a Fund), and any Plan that executes a fund participation agreement upon becoming an owner of 10% or more of the assets of the Fund (the "Participants") shall report any potential or existing conflicts to the Board of the relevant Trust. Participants will be responsible for assisting the appropriate Board in carrying out its responsibilities under these conditions by providing such Board with all information reasonably necessary for such Board to consider any issues raised. This responsibility includes, but is not limited to, an obligation by each insurance company Participant to inform the Board whenever it has determined to disregard contract holders' voting instructions, and, if pass-through voting is applicable, an obligation of each Qualified Plan to inform the Board whenever it has determined to disregard Qualified Plan participant voting instructions. The responsibility to report such conflicts and information, and to assist the respective Boards, will be contractual obligations of all Participants under their agreements governing participation in the Funds, and such agreements, in the case of insurance company Participants, shall be carried out with a view only to the interests of contract holders and, if applicable, Qualified Plan participants.

4. If it is determined by a majority of the Board of a Trust, or a majority of its disinterested members, that a material irreconcilable conflict exists, the relevant Participant shall, at their expense and to the extent reasonably practicable (as determined by a majority of the disinterested members of such Board), take whatever steps are necessary to eliminate the material irreconcilable conflict, up to and including: (a) withdrawing the assets allocable to some or all of the Separate Accounts from the Funds and reinvesting such assets in a different investment medium, which may include another portfolio of the relevant Fund, if any, or, in the case of insurance company Participants, submitting the question whether such segregation should be implemented to a vote of all affected contract holders and, as appropriate, segregating the assets of any appropriate group (*i.e.*, annuity contract holders, life insurance contract holders or variable contract holders of one of more Participant) that votes in favor of such segregation, or offering to the affected contract holders the option of making such a change; (b) in the case of participating Qualified Plans, withdrawing the assets allocable to some or all of the Qualified Plans from the relevant Fund and reinvesting those assets in a different investment medium; and (c) establishing a new registered management investment company or managed separate account. If a material irreconcilable conflict arises because of an insurance company Participant's decision to disregard contract holders' voting instructions and that decision represents a minority position or would preclude a majority vote, such Participant may be required, at the relevant Fund's election, to withdraw its separate account's investment in the Fund, and no charge or penalty will be imposed as a result of such withdrawal. If a material irreconcilable conflict arises because of a Qualified Plan's decision to disregard Qualified Plan participant voting instructions, if applicable, and that decision represents a minority position or would preclude a majority vote, the Qualified Plan may be required, at the election of the relevant Fund, to withdraw its investment in such Fund, and no charge or penalty imposed as a result of such withdrawal.

The responsibility to take remedial action in the event of a determination by a Board of a material irreconcilable conflict, and to bear the cost of such remedial action, will be a contractual obligation of all Participants under their agreements governing participation in the Funds, and this responsibility will be carried out with a view only to the interests of contract holders and participants in Qualified Plans, as applicable. For purposes of this Condition 4, a majority of the disinterested members of a Board shall determine whether any proposed action adequately remedies any material irreconcilable conflict, but in no event will the relevant Fund or CSAM (or any other investment adviser of the Funds) be required to establish a new funding medium for any variable contract. No insurance company Participant will be required to establish a new funding medium for any variable contracts if an offer to do so has been declined by the vote of a majority of contract holders materially affected by the irreconcilable material conflict. Further, no Qualified Plan shall be required by this Condition 4 to establish a new funding medium for the Qualified Plan if: (a) a majority of the Qualified Plan participants materially and adversely affected by the irreconcilable material conflict vote to decline such offer, or (b) pursuant to documents governing the Qualified Plan, the Qualified Plan makes such decision without a Qualified Plan participant vote.

5. The determination by a Board of the existence of a material irreconcilable conflict and its implications shall be made known promptly in writing to all Participants.

6. Insurance company Participants will provide pass-through voting privileges to all contract holders to the extent that the Commission continues to interpret the 1940 Act to require pass-through voting for contract holders. Accordingly, such Participants, where applicable, will vote shares of a Fund held in its Separate Accounts in a manner consistent with voting instructions timely received from contract holders. Insurance company Participants shall be responsible for assuring that each Separate Account investing in a Fund calculates voting privileges in a manner consistent with other Participants. The obligation to calculate voting privileges as provided in the Application shall be a contractual obligation of all insurance company Participants under the agreement governing participation in a Fund. Each insurance company Participant will vote shares for which it has not received timely voting instructions as well as shares it owns in the same proportion as it votes those shares for which it has received instructions. Each Qualified

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Plan shall vote as required by applicable law and its governing Qualified Plan documents.

7. Each Fund will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Fund), and, in particular, each Fund will either provide for annual meetings (except to the extent that the Commission may interpret Section 16 of the 1940 Act not to require such meetings) or comply with Section 16(c) of the 1940 Act (although the Funds are not one of the trusts described in Section 16(c) of the 1940 Act), as well as with Section 16(a), and, if applicable, Section 16(b) of the 1940 Act. Further, each Fund will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

8. Each Fund will notify all Participants that disclosure in Separate Account or Qualified Plan prospectuses, or other disclosure documents, regarding potential risks of mixed and shared funding may be appropriate. Each Fund shall disclose in its prospectus that: (a) shares of the Fund may be offered to insurance company separate accounts of both annuity and life insurance variable contracts, an Qualified Plans; (b) due to differences of tax treatment and other considerations, the interests of various contract holders participating in the Funds and the interests of Qualified Plans investing in the Funds may at some time be in conflict; and (c) the Board will monitor events in order to identify the existence of any material irreconcilable conflicts and to determine what action, if any, should be taken in response to any such conflict.

9. The Participants shall at least annualy submit to each Board such reports, materials or data as such Boards may reasonably request so that such Boards may fully carry out obligations imposed upon them by the conditions contained in the Application. Such reports, materials and data shall be submitted more frequently if deemed appropriate by the Boards. The obligations of the Participants to provide these reports, materials and data to the appropriate Board when it so reasonably requests, shall be a contractual obligation of all Participants under the agreement governing their participation in the Funds.

10. All reports received by a board with respect to potential or existing conflicts and all board action with regard to (a) determination of the existence of a conflict, (b) notification of Participants of the existence of a conflict and (c) determination of whether any proposed action adequately remedies a conflict, will be properly recorded in the minutes of the meetings of the appropriate Board or other appropriate records, and such minutes or other records will be made available to the Commission upon request.

11. If and to the extent Rule 6–92 or 6–93(T) is amended, or proposed Rule 6–93 is adopted, to provide exemptive relief from any provision of the 1940 Act or the rules thereunder with respect to mixed and shared funding on terms and conditions materially different from any exemptions granted in the order requested by Applicants, then the Funds and/or the Participants, as appropriate, shall take such steps as may be necessary to comply with Rule 6–92 or 6–93(T), as amended, or Rule 6–93, as adopted, to the extent such rules are applicable.

12. None of the Funds will accept a purchase order from a Qualified Plan if such purchase would make the Qualified Plan shareholder an owner of 10% or more of the assets of a Fund unless such Qualified Plan executes a fund participation agreement with such Fund that includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition at the time of its initial purchase of shares of a Fund.

**Conclusion**

For the reasons summarized above, Applicants assert that the requested exemptions are necessary or appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11864 Filed 5–10–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34– 42750; File No. SR–CBOE–99–60]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Maintenance Standards for the Dow Jones High Yield Select Ten Index

May 2, 2000.

### I. Introduction

On November 9, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 [2] thereunder, a proposed rule change. In its proposal, the CBOE seeks to clarify certain procedures regarding the maintenance of the Dow Jones High Yield Select 10 Index ("Index"). The proposed rule change was published for comment in the **Federal Register** on February 28, 2000.[3] The Commission received no comments on the proposed rule change and this order approves the proposal.

### II. Description of the Proposal

The CBOE currently lists and trades European-style, cash-settled options on the Dow Jones High Yield Select 10 Index, an equal weighted index composed of the ten highest yielding stocks from the 30 stocks in the Dow Jones Industrial Average ("DJIA"). The Index was designed to replicate a popular contrarian strategy that assumes that the ten highest yielding stocks in the DJIA are oversold and therefore, undervalued relative to the other stocks in the average. The index is reconstituted annually and the stocks comprising the index are retained for a full year.

Normally, the Index represents a subset of the DJIA. However, Dow Jones can change the components of the DJIA at any time, and in some cases remove stocks that also happen to be components of the Index. The strategy upon which the Index is based, and the convention followed by investors and money managers, calls for the portfolio to be held for a full year even if certain components are no longer part of the DJIA.

The maintenance procedures set forth in SR–CBOE–97–63 state that if it

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42439 (Feburary 18, 2000), 65 FR 10573.

becomes necessary to remove a stock from the Index, it will be replaced by the stock in the DJIA which has the highest yield of the stocks not already in the Index.[4] CBOE intended for this passage to describe the actions it would take if the shares of an Index component became unavailable for trading, either due to a corporate action such as a takeover or merger, or due to bankruptcy. However, CBOE made no distinction between this type of component change and a discretionary component change in the Dow Jones Industrial Average, in which the shares of a company removed from the DJIA continue to trade.[5]

CBOE, therefore, proposes to clarify its maintenance procedures under which component changes can be made to the Index. Specifically, if it becomes necessary to remove a stock from the Index in the event that its shares cease to trade and a proxy for those shares is not available, it will be replaced by the stock in the DJIA that has the highest yield of the stocks not already in the Index. If a stock is removed from the DJIA at the discretion of Dow Jones, but its shares continue to trade, that stock will remain in the Index until the time of the annual re-balancing.

### III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act.[6] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[7] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposal is consistent with the Act because it helps protect investors. In the proposal, CBOE sets forth its procedures for maintaining the Index when the Dow Jones corporation decides to replace a stock in the Dow Jones Industrial Average. CBOE's procedures will now be consistent with industry practice for maintaining the Index, which should help protect investors by eliminating potential confusion about the composition of the Index. Further, this clarification helps protect investors because it gives investors advance notice about the treatment of the Index and, therefore, allows them to make an informed investment decision.

### IV. Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–99–60) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11804 Filed 5–10–00; 8:45 am]

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[4] *See* Securities Exchange Act Release No. 39453 (December 16, 1997), 62 FR 67101 (December 23, 1997) (order approving SR–CBOE–97–63).

[5] On November 1, 1999, Dow Jones removed four stocks from the DJIA and replaced these stocks with new ones. These four stocks also happened to be components of the Index, *i.e.*, four of the highest yielding stocks in the DJIA. Before this component change in the DJIA, CBOE realized that, contrary to industry practice, its maintenance rules for the index required it to remove the four stocks from the Index. To prevent these Four stocks from being removed from the Index until the annual rebalancing of the Index, CBOE submitted a rule change under Section 19(b)(3)(A) of the Act. *See* Securities Exchange Act Release No. 42187 (November 30, 1999), 64 FR 68708 (December 8, 1999).

[6] In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42761; File No. SR–NASD–00–24]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Disclosure Requirements for Transactions Involving Callable Common Stock and Amendment Nos. 1 and 2 Thereto

May 5, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 25, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. On May 1, 2000 and May 3, 2000, the Exchange submitted Amendment Nos. 1 and 2, respectively, to the proposed rule change.[3]

The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to interpret NASD Rule 2110, Standards of Commercial Honor and Principles of Trade, to require a member that provides a written confirmation for a transaction involving callable common stock to disclose on the written confirmation that the security is callable and that the customer may wish to contact the member for more information. Below is the text of the proposed rule change. Proposed new language is italicized.

**IM–2110–6. Confirmation of Callable Common Stock**

*Any member providing a customer confirmation pursuant to SEC Rule 10b–10 in connection with any transaction in callable common stock shall disclose on such confirmation that:*

- *The security is callable common stock; and*
- *A customer may contact the member for more information concerning the security.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basic for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

An issuer's common stock generally continues to trade on a market until the issuer fails to meet the market's listing requirements, combines with another

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment Nos. 1 and 2, the Exchange reworded the proposed language in the interpretation for clarity. No substantive changes were made in the amendments. *See* Letters from Gary L. Goldsholle, Assistant General Counsel, NASD Regulation, to Katherine A. England, Assistant Director, Division of Market Regulation ("Division"), SEC, dated April 28, 2000 ("Amendment No. 1") and May 2, 2000 ("Amendment No. 2").

company, or voluntarily delists for another market. Occasionally, common stock will be callable, that is, subject to being called away from a shareholder, either by the issuer or a third party. Typically, the price at which callable common stock is called away from a shareholder is at a premium to the then prevailing market price or pursuant to a schedule of prices announced at the time the common stock is issued. [4]

An investor purchasing callable common stock is subject to unique risks not typically associated with ownership of common stock, even where such stock is called away at a premium. Moreover, the ability of an issuer's common stock to be called away from a shareholder generally will be a material fact to an investor. Accordingly, NASD Regulation believes that high standards of commercial honor and just and equitable principles of trade require that any member that provides a written confirmation for a transaction involving callable common stock must disclose on the confirmation that the security is callable and that the customer may contact the member for more information. NASD Regulation emphasizes that the disclosure of the call feature on the confirmation in no way relieves a member of its obligation to consider the callable nature of the security when complying with any applicable suitability obligations.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, [5] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that callable common stock is subject to unique and material risks not typically associated with ownership of common stock; therefore, any member that provides a written confirmation for a transaction involving callable common stock must disclose that the security is callable and that the customer may contact the member for more information.

[4] Because callable common stock combines the features of more than one category of securities (*i.e.*, common stock and a call option), the staff of The Nasdaq Stock Market will evaluate whether callable common stock is eligible for inclusion in the Nasdaq National Market pursuant to the "other securities" provisions of NASD Rule 4420(f).

[5] 15 U.S.C. 78*o*–3(b)(6).

*B. Self-Regulatory Organization's Statement on Burden on Competition*

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

NASD Regulation has neither solicited nor received written comments.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule and, therefore, has become effective upon filing pursuant to section 19(b)(3)(A)(i) of the Act [6] and paragraph (f)(1) of Rule 19b-4 thereunder. [7]

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for insepection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer SR–NASD–00–24 and should be submitted by June 1, 2000.

[6] 15 U.S.C. 78s(b)(3)(A)(i).

[7] 17 C.F.R. 240.19b–4(f)(1).

For the Commission by the Division of Market Regulation, pursuant to delegated authority. [8]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11806 Filed 5–10–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42760; File No. SR–NASD–99–26]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Denial of Access Procedures

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on May 27, 1999, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation") filed with the Securities and Exchange Commission ("Commission") the proposed rule change. The Association submitted Amendment No. 1 to its proposal on August 24, 1999. [3] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. [4]

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

NASD Regulation is proposing to amend the NASD Rule 9510 Series of the National Association of Securities Dealers, Inc. ("NASD" or "Association") to: (i) Expand the circumstances under which an aggrieved Party may request a hearing to challenge an Association action that the Party believes constitutes a "denial of access;" (ii) expand the pool of potential hearing panelists in

[8] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NASD clarified: (1) Operational distinctions between the NASD Regulation and the NASD; (2) what initiates a proceeding; and (3) other technical matters. *See* Restated 19b–4 filing marked Amendment No. 1 ("Amendment No. 1").

[4] Technical and clarifying changes to the notice were made pursuant to a telephone conversation between Eric Moss, Assistant General Counsel, Office of the General Counsel, NASD Regulation, and Katherine England, Assistant Director, Division of Market Regulation, Commission, on April 28, 2000.

denial of access proceedings, and simplify the process by which panelists are selected; (iii) establish the General Counsel for the NASD as the custodian of the record in denial of access cases; and (iv) make other changes. Below is the text of the proposed rule change. Proposed new language is in *italics*; proposed deletions are in [brakets].

* * * * *

9000. CODE OF PROCEDURE

9120. Definitions

(a) through (w) No change.

(x) "Party"

With respect to a particular proceeding, the term "Party" means:

(1) through (2) No change.

(3) in the Rule 9510 Series, the department or office designated under Rule 9514(b) or a member or person that is the subject of a notice under Rule 9512 or Rule 9513*(a) or an aggrieved Party who initiates a proceeding under Rule 9513(b) to review an action taken by the Association under Rule 9511(a)(2)(B);* or

(4) No change.

(y) through (cc) No change.

* * * * *

9500. OTHER PROCEEDINGS

9510. Summary and Non-Summary Proceedings

9511. Purpose and Computation of Time

(a) Purpose

The Rule 9510 Series sets forth procedures for *the conduct and review of:* (1) summary proceedings authorized by Section 15A(h)(3) of the Act; [and] non-summary proceedings [to impose] *regarding the imposition of* (A) a suspension or cancellation for failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation pursuant to Article VI, Section 3 of the NASD By-Laws; (B) a suspension or cancellation of a member, or a limitation or prohibition on any member, associated person, or other person with respect to access to services offered by the Association or a member thereof, if the Association determines that such member or person does not meet the qualification requirements or other prerequisites for such access or such member or person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association; (C) an advertising pre-use filing requirement; or *(D) a suspension or cancellation of the membership of a member or the registration of a person for failure to comply with a permanent cease and desist order entered pursuant to a decision issued under the Rule 9200 Series or Rule 9300 Series or a temporary cease and desist order entered pursuant to a decision issued under the Rule 9800 Series.*[5]

(b) No Change.

* * *

9513. Initiation of Proceedings for Non-Summary Limitation, or Prohibition [Non-Summary Proceeding]

(a) *Initiation of Proceeding by Association* [Notice]

No change.

(b) *Initiation of Proceeding by Aggrieved Party*

*An aggrieved Party may initiate a proceeding authorized under Rule 9511(a)(2)(B) by filing a request for a hearing under Rule 9514 to challenge the Associations' actions.*

*(c)* Effective Date

For any cancellation or suspension or pursuant to Rule 9511(a)(2)(A), the effective date shall be at least 15 days after service of the notice on the member or associated person. For any action taken pursuant to Rule 9511(a)(2)(B) or (D), the effective date shall be at least seven days after service of the notice on the member or person. *or the date when the Party otherwise learns of the limitation or prohibition on access to services (which ever occurs first). E*[e]except that the effective date for a notice of a limitation or prohibition on access to services offered by the Association or a member thereof with respect to services to which the member, associated person, or other person does not have access *or is requesting expanded access,* shall be upon receipt of the notice, *or the date when the Party otherwise learns of a limitation or prohibition on access to services (whichever occurs first).*[6]

9514. Hearing and Decision

(a) Request

(1) Request by Member, Associated Person, or Other Person

A member, associated person, or other person who is subject to a notice issued under Rule 2210, 2220, 9512(a), or 9513(a) *or who initiates a proceeding under rule 9513(b),* may file a written request for a hearing with the *General Counsel for the NASD* [Association]. The request shall state the specific grounds for *requesting the hearing to review the Association's action(s)* [setting aside the notice]. The request shall be filed pursuant to Rules 9135, 9136, and 9137 within seven days after service of the notice under Rule 9512 or 9513*(a),* [or,] with respect to notice of a pre-use filing requirement under Rule 2210(c)(4) and Rule 2220(c)(2), within 30 days of such notice, *or with respect to a proceeding initiated under rule 9513(b), within seven days after the date that the Party learns of the anticipated Association action for which the Party is seeking review.* The member, associated person, or other person may withdraw its request for a hearing at any time by filing a written notice with the Association pursuant to Rules 9135, 9136, and 9137.

*In the event that the Association issues a notice under Rule 9513(a) regarding limitation or prohibition will respect to access to services offered by the Association, or a member thereof, and an aggrieved party also attempts to initiate a proceeding under Rule 9513(b) to challenge the Association action covered by the notice issued under Rule 9513(a), the aggrieved party will be entitled to one hearing on the matter. The proceeding will be deemed to be initiated by the notice issued under Rule 9513(a), unless the aggrieved party has mailed or otherwise served on the Association the request for hearing prior to receiving the notice, which case, the*

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[5] The language in proposed NASD Rule 9511(a) reflects proposed language changes from pending File No. SR–NASD–98–80. *See* Securities Exchange Act Release No. 40826 (December 22, 1998); 63 FR 71984 (December 30, 1998) (Proposed rule change to enable the NASD to issue temporary cease and desist orders). In SR–NASD–98–80, NASD Regulation proposed modifying NASD Rule 9511(a) as follows (additions are *italicized;* deletions are [bracketed]): "The Rule 9510 Series sets forth procedures for: (1) summary proceedings authorized by Section 15A(h)(3) of the Act; and (2) non-summary proceedings to impose (A) a suspension or cancellation for failure to comply with an arbitration award or a settlement agreement related to an arbitration or mediation pursuant to Article VI, Section 3 of the NASD By-Laws; (B) a suspension or cancellation of a member, or a limitation or prohibition on any member, associated person, or other person with respect to access to services offered by the Association or a member thereof, if the Association determines that such member or person does not meet the qualification requirements or other prerequisites for such access or such member or person cannot be permitted to continue to have such access with safety to investors, creditors, members, or the Association; [or] (C) an advertising pre-use filing requirement*; or (D) a suspension or cancellation of the membership of a member of the registration of a person for failure to comply with a permanent cease and desist order entered pursuant to a decision issued under the Rule 9200 Series or Rule 9300 Series or a temporary cease and desist order entered pursuant to a decision issued under the Rule 9800 Series.*"

[6] In SR–NASD–98–80, NASD Regulation proposed modifying NASD Rule 9513(b) as follows: "For any cancellation or suspension pursuant to Rule 9511(a)(2)(A), the effective date shall be at least 15 days after service of the notice on the member or associated person. For any action *taken* pursuant to Rule 9511(a)(2)(B) *or (D),* the effective date shall be at least seven days after service of the notice on the member or person, except that the effective date for a notice of a limitation or prohibition on access to services offered by the Association or a member thereof with respect to services to which the member, associated person, or other person does not have access shall be upon receipt of the notice." *See* note 5, *above*

*proceeding will be deemed to be initiated by the request for hearing under Rule 9513(b).*

(2) Failure to File Request

If the member, associated person, or other person subject to the notice issued under Rule 2210, 220, 9512(a), or 9513(a) does not file a written request for a hearing under subparagraph (1), the notice shall constitute final action by the Association. *For purposes of proceedings initiated under Rule 9513(b), if a member, associated person, or other person does not file a written request for a hearing pursuant to subparagraph (1) of the Rule, the Association's action with respect to a limitation or prohibition on access to services will constitute final Association action.*

(3) Ex Parte Communications

No change.

(b) Designation of Party for the Association and Appointment of Hearing Panel

If a member, associated person, or other person subject to a notice under Rule 2210, 2220, 9512, or 9513*(a)* files a written request for a hearing *or initiates a proceeding under Rule 9513(b),* an appropriate department or office of the Association shall be designated as a Party in the proceeding, and a Hearing Panel shall be appointed.

(1) If the President of NASD Regulation or NASD Regulation staff issued the notice initiating the proceeding under Rule 2210, 2220, 9512(a), or 9513(a), *or if an aggrieved party initiates a hearing under Rule 9513(b) to challenge NASD Regulation staff action(s),* the President of NASD Regulation shall designate an appropriate NASD Regulation department or office as Party. For proceeding initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or medication, the Chief Hearing Officer shall appoint a Hearing Panel composed of a Hearing Office. For any other proceedings initiated under Rule 2210, 2220, 9512(a) or 9513(a) by the President of NASD Regulation or NASD Regulation staff, the NASD Regulation Board shall appoint a Hearing Panel composed of two or more members; one member shall be a Director of NASD Regulation, and the remaining member or members shall be *Hearing Officer(s) or* current or former Directors of NASD Regulation or Governors. The President of NASD Regulation may not serve on a Hearing Panel.

(2) If the President of Nasdaq or Nasdaq staff issued the notice under Rule 9512(a) or 9513(a) *or if an aggrieved party initiates a hearing under Rule 9513(b) to challenge Nasdaq staff action(s),* the President of Nasdaq shall designate an appropriate Nasdaq department or office as a Party, and the Nasdaq Board shall appoint a Hearing Panel. The Hearing Panel shall be composed of two or more members. One member shall be director of Nasdaq, and the remaining member or members shall be *Hearing Officers or* current or former directors of Nasdaq or Governors. The President of Nasdaq may not serve on the Hearing Panel.

(c) Stays

(1) Summary Proceeding

No change.

(2) Non-Summary Proceeding

Unless the NASD Board *or the Executive Committee of the NASD Board* orders otherwise, a request for a hearing shall stay the notice issued under Rule 2210, 2220, [or] 9513 *(a), or the Association action challenged under Rule 9513(b),* except that a request for a hearing shall not stay: *(i)* a notice of a limitation or prohibition on services offered by the Association or a member thereof with respect to services to which a member, associated person, or other person does not have access *or is requesting expanded access; or (ii) the Association action challenged under Rule 9513(b) with respect to services to which a member, associated person, or other person does not have access or is requesting expanded access.*

(d) Time of Hearing

(1) Summary Proceeding

No change.

(2) Non-Summary Proceeding

If a member, associated person, or other person [who is subject to a notice issued under Rule 2210, 2220, or 9513(a)] files a written request for a hearing *under 9514(a) (except for proceedings brought under 9512(a)),* a hearing shall be held within 21 days after the filing of the request for hearing. The Hearing Panel may, during the initial 21 day period, extend the time in which the hearing shall be held by an additional 21 days on its own motion or at the request of a Party *for good cause shown.* Not less than five days before the hearing, the Hearing Panel shall provide written notice to the Parties of the location date, and time of the hearing by facsimile or overnight commercial courier.

(e) Transmission of Documents

(1) Not less than five days before the hearing, the Association shall provide to the member, associated person, or other person who requested the hearing, by facsimile or overnight commercial courier, all documents that were considered in issuing the notice under Rule 2210, 2220, 9512, or 9513, *or were considered by the Association in making the determination to take the action being challenged under Rule 9513(b),* unless a document meets the criteria of Rule 9251(b)(1)(A), (B), or (C). A document that meets such criteria shall not constitute part of the record, but shall be retained by the Association until the date upon which the Association serves a final decision *and the period for review lapses* or, if applicable, upon the conclusion of any review by the Commission or the federal courts.

(2) No change.

(f) Hearing Panel Consideration

(1) through (4) No change.

(5) Custodian of the Record

[If the President of NASD Regulation or NASD Regulation staff initiated the proceeding under Rule 2210, 2220, 9512, or 9513, t]*T*he [Office of the] General Counsel of NASD [Regulation] shall be the custodian of the record *for proceedings initiated under Rule 2210, 2220, 9512, or 9513,* except that the Office of Hearing Officers shall be the custodian of record for proceedings initiated under Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. [If the President of Nasdaq or Nasdaq staff initiated the proceeding under Rule 9512 or 9513, the Office of General Counsel of Nasdaq shall be the custodian of the record.]

(6) No change.

(g) Decision of the Hearing Panel

(1) through (2) No change.

(3) Contents of Decision

The decision shall include:

(A) through (B) No change.

(C) *if applicable,* the grounds for issuing the notice under Rule 2210, 2220, 9512, or 9513*(a);*

(D) *if applicable, either: (i) an explanation why the action being challenged under Rule 9513(b) is not a limitation or prohibition on access to services subject to review under Section 19 of the Act; or (ii) the grounds for the limitation or prohibition to access to service that is the basis for the proceeding;*

*(E)* a statement of findings of fact with respect to any act or practice that was alleged to have been committed or omitted by the member, associated person, or other person;

*(F)*[(E)] a statement in support of the disposition of the principal issues raised in the proceedings; and

*(G)*[(F)] if a summary suspension, limitation, or prohibition continues to be imposed, the specific grounds for imposing such suspension, limitation, or prohibition, and the terms of the suspension, limitation, or prohibition;

or, if a non-summary suspension, cancellation, bar, limitation, prohibition or pre-use filing requirement is to be imposed or continue to be imposed, its effective date, time, and terms.

(4) No change.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, NASD Regulation included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(1) Purpose

A. *Initiating Denial of Access Proceedings.* Currently, before the Association takes an action that it believes constitutes a denial of access, the Association issues a notice under NASD Rule 9513 that informs a Party that: (1) it is taking such an action; and (2) the Party has a right to appeal the matter. Under NASD Rule 9514, a Party may not request a hearing to challenge an alleged denial of access unless the requisite notice was issued under NASD Rule 9513.

Under the current procedures, the Association is generally the "gatekeeper" to the appeal process because the NASD must make the legal conclusion [7] that a matter constitutes a denial of access to services requiring the issuance of a notice. The current rules create difficulties in situations where the NASD does not issue an NASD Rule 9513 notice because it does not believe an action constitutes a denial of access to services but where the Party who is the subject of the action believes the underlying action amounts to a denial of access to services.

The proposed rule change defines the circumstances under which an aggrieved Party may request a hearing under NASD Rule 9514 for the purpose of reviewing Association action concerning a purported denial of access. The NASD is proposing removal of the Association's function as gatekeeper for determining whether a Party may request review of a denial of access. Under the proposed rule change, either the Association or the aggrieved Party (regardless of whether a notification of the limitation or prohibition is sent under NASD Rule 9513) may seek to initiate a denial of access proceeding under NASD Rule 9514. Thus, the proposed rule change would liberalize the Association's procedures for initiating denial of access hearings. In those instances where staff intends to take an action that it believes constitutes a denial of access, the staff will issue the NASD Rule 9513(a) notice.

B. *Hearing Panel.* The proposed rule change would expand the pool from which a Hearing Panel may be drawn for hearings requested under NASD Rule 9514 to include Hearing Officers.

C. *Custodian of the Record.* Under the proposed rule change, the General Counsel for the NASD would be the custodian of record in proceedings initiated under NASD Rule 2210, 2220, 9512, or 9513, except that the Office of Hearing Officers would be the custodian of record for the proceedings initiated under NASD Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. Currently, the Code provides that if the President of NASD Regulation or NASD Regulation staff initiated the proceeding under NASD Rule 2210, 2220, 9512, or 9513, the Office of the General Counsel of NASD Regulation would be the custodian of the record, except that the Office of Hearing Officers would be the custodian of record for proceedings initiated under NASD Rule 9513(a) concerning failure to comply with an arbitration award or a settlement agreement related to an NASD arbitration or mediation. If the President of Nasdaq or Nasdaq staff initiated the proceeding under NASD Rule 9512 or 9513, the Office of the General Counsel of Nasdaq would be the custodian of the record.

D. *Replacement of NASD Rule 4800 and 9700 Series.* On May 4, 1999, the Commission approved SR–NASD–98–88, which replaced the existing NASD Rule 4800 Series (NASD Rule 4810 through 4890, inclusive) with a new Code of Procedure for review of Nasdaq listing determinations.[8] File number SR–NASD–98–88 also temporarily relocated the existing NASD Rule 4800 Series—which relates to other grievances concerning the automated systems—to the NASD Rule 9700 Series, pending submission and approval of the subject Rule Filing on denial of access proceedings. SR–NASD–98–88 also deleted the NASD Rule 9700 Series immediately upon approval of revisions to the NASD Rule 9500 Series contained in this filing. Accordingly, upon approval of this rule filing, the NASD Rule 9700 Series will be deleted and denials of access involving Nasdaq's automated systems will be reviewed through the NASD Rule 9500 Series procedures.

(2) Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[9] which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASD believes that the rule change is consistent with Section 15A(b)(8) [10] in that it furthers the statutory goals of providing a fair procedure for imposing prohibitions or limitations on Association services. Under the proposed rule change, the Code would be amended so as to eliminate the Association from serving as the gatekeeper for determining whether an aggrieved Party may seek a hearing to determine whether that Party has been improperly denied access to Association services, thus allowing for greater access to the protections afforded by Section 15(A)(b)(8).[11]

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Written comments were neither solicited nor received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[7] The Commission notes that NASD conclusions of law are not binding on the Commission.

[8] *See* Securities Exchange Act Release No. 41367 (May 4, 1999), 64 FR 25942 (May 13, 1999) (Order approving File No. SR–NASD–98–88).

[9] 15 U.S.C. 78*o*–3(b)(6).

[10] 15 U.S.C. 17*o*–3(b)(8).

[11] *Id.*

publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–99–26 and should be submitted by June 1, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11807 Filed 5–10–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42757; File No. SR–NYSE–99–44]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc; Order Approving Proposed Rule Change Relating to NYSE Rule 103A

May 4, 2000.

**I. Introduction**

On November 3, 1999, the New York Stock Exchange, Inc ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission "SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] a proposed rule change relating to NYSE Rule 103A. The proposed rule change was published for comment in the **Federal Register** on March 14, 2000.[3] The Commission did not receive any comment letters with respect to the proposal. This order approves the Exchange's proposal.

**II. Description of the Proposal**

*1. Purpose*

The Exchange proposed to amend Rule 103A (Special Stock Reallocation) to codify the Market Performance Committee's ("MPC") authority with respect to allocation freezes, stock assignments and reassignments, specialist unit organizational changes, and Floor member qualification and continuing education requirements.

a. Allocation Freezes

Currently, Rule 103A provides the MPC the authority to establish and administer measures of specialist performance, conduct performance improvement actions when a specialist unit does not meet the performance standards in Rule 103A, and reallocate stocks if a unit does not achieve its specified goals when subject to a performance improvement action. The Exchange represented that these standards help to establish and maintain acceptable levels of specialist performance, thereby enhancing the competitiveness of the Exchange's specialist system. The purpose of a performance improvement action is to provide assistance and guidance to specialist units to enable them to enhance their performance. When a performance improvement action is initiated, a specialist unit is required to submit a performance improvement plan addressing how it intends to improve performance to the MPC. Based on the MPC's review of the performance improvement plan, the MPC has the authority to preclude a specialist unit, that is subject to a performance improvement action, from applying to be allocated any newly-listing company (an "allocation freeze") if the MPC believes such action is appropriate.

The Exchange proposed to amend Rule 103A to allow the MPC to exercise its discretion in imposing allocation freezes. In certain instances, the Committee will determine that a unit's performance is not as strong as other units' performance, although the unit's performance fully meets the Rule 103A performance standards. For example, this may occur when a specialist unit's scores on the quarterly Specialist Performance Evaluation Questionnaire are above Rule 103A perfomace standards, however, the unit may have lower scores than other units over a period of several quarters, resulting in persistent lower rankings in the bottom quartile. In these instances, the Exchange believes the MPC should be able to use its professional judgment to provide incentives to specialist units to encourage them to enhance their performance. Therefore, the Exchange proposes to add to Rule 103A authority for the Committee to initiate an allocation freeze for a unit, without initiating a formal performance improvement action. The Commission expects the NYSE's MPC to exercise its discretion consistent with the purpose of the Act.

b. Receipt of New Listings During an Allocation Freeze

Under the Exchange's Allocation Policy and Procedures (the "Allocation Policy") the are circumstances when a newly-listing company may choose its specialist unit. For example, a newly-listing company that is related to an already listed company many choose to stay with the current specialist for the listed company or choose to go through the Allocation Committee.[4] The newly-listing company may choose to stay with the current specialist for the related listed company even if such unit it is under an allocation freeze imposed by the MPC as long as the unit is not subject to a performance improvement action.

Similarly, under the Allocation Policy, the newly-listing company may choose its specialist from among a group of specialist units chosen by the Allocation Committee. The Allocation Committee has the ability to exclude or include the current specialist for the related company in such a group. If the specialist unit was under an allocation freeze imposed by the MPC, it would not be precluded from being placed in the group or chosen by the newly-listing company as long as the allocation freeze was not the result of a performance improvement action.

c. Floor Member Qualification and Continuing Education

The Exchange also proposes to amend Rule 103A to make mandatory (i) participation by proposed Floor members in an Exchange-sponsored

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] Securities Exchange Act Release No. 34–42501 (March 7, 2000), 65 FR 13801.

[4] *See* Securities Exchange Act Release No. 42487 (March 2, 2000), 65 FR 13801 (March 9, 2000).

education program before such individuals would be permitted to act as members on the Floor; and (ii) participation by all Floor members in an Exchange-sponsored educational program, conducted semi-annually, and at such other times as may be appropriate in connection with any particular matter or matters. Rule 103A would also make it mandatory for Floor members to participate in any testing programs the Exchange may introduce from time to time in connection with the mandatory education program.

d. Stock Assignments and Reassignments and Organizational Changes of Specialist Units

The Exchange proposes to amend rule 103A to codify the Committee's authority with respect to approving stock assignments and reassignments, assignments in special stock situations, and organizational changes to specialist units. Such situations typically involve (i) changes in a specialist unit's organizational structure effecting control of the specialist unit, such as split-ups and mergers; (ii) withdrawal of individual specialists from one specialist unit, where the specialists propose to register with another unit and transfer certain securities to such other unit; and (iii) assignments of newly-listed securities to a specialist unit already registered in a security with a trading relationship to the newly-listed securities (*e.g.*, a corporate restructuring of a listed company; stocks involved in mergers of listed companies; and immediate relisting of a listed company that delisted for technical reasons). In all of these situations, the MPC will review the proposal, and approve the matter if the Committee believes that market quality in the securities subject to the proposal will not be eroded.

## III. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6 of the Act [5] and the rules and regulations thereunder applicable to a national security exchange.[6] In particular, the Commission finds the proposed rule change is consistent with Section 6(b)(5) of the Act [7] which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to remote impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

Specialists play a crucial role in providing stability, continuity, and liquidity to the trading of securities. Specialists are obligated by the NYSE and the Act and rules thereunder, [8] to maintain fair and orderly markets in designated securities. The Commission supports effective NYSE oversight of the specialist's activities and performance, including comparing a specialist's score on the quarterly Specialist Evaluation Questionnaire with other specialist's scores in an effort to provide an incentive to increase specialist performance. The Commission believes that giving the MPC the discretion to impose an allocation freeze should provide the Exchange with the means to identify and correct poor specialist performance and to ascertain whether specialists are maintaining fair and orderly markets in their assigned securities.

Furthermore, the proposed floor member qualification and continuing education requirements are a result of NYSE's undertakings.[9] The NYSE pledged to design and implement a mandatory, regular education program for Floor members that would address Floor members' obligations and prohibitions under the federal securities laws and NYSE rules.[10] The Commission believes that NYSE's proposal to require Floor members to participate in an education program prior to being permitted to act as members is appropriate and consistent with this undertaking. Also, the semi-annual, or more frequent as the NYSE deems appropriate, educational programs for all Floor members satisfies the NYSE's undertaking to provide regular, mandatory education programs. The Exchange also proposed mandatory testing programs that should ensure that Floor members are aware of Floor members' obligations and prohibitions under the federal securities laws and NYSE rules.

As a result, because the proposed amendment of NYSE Rule 103A promotes increased specialist performance and creates mandatory and regular training for all floor members, the Commission believes that NYSE's proposed amendment to Rule 103A is consistent with the provisions of the Act discussed above.

## IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–NYSE–99–42), including amendments Nos. 1 and 2, is approved.

By the Commission, for the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11803 Filed 5–10–00; 8:45 am]

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[5] 15 U.S.C. 78f.

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* 17 CFR 240.11b–1; NYSE Rule 104.

[9] *See* Securities Exchange Act Release No. 41574, 70 S.E.C. Docket 106 (June 29, 1999).

[10] *See id* at 9.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42756; File No. SR–PCX–99–10]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 4 and 5 to the Proposed Rule Change by the Pacific Exchange, Inc. Amending Its Disciplinary Procedures

May 4, 2000.

## I. Introduction

On April 2, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), [1] and Rule 19b–4 thereunder, [2] a proposed rule change to amend its disciplinary procedures. On June 25, 1999, January 18, 2000, and January 19, 2000, respectively, the PCX filed Amendment Nos. 1, 2 and 3 to the proposed rule change.[3] The proposed rule change including Amendments Nos. 1, 2 and 3 were published for comment in the **Federal Register** on February 10, 2000.[4] On April 21, 2000, the PCX filed Amendment No. 4 to the proposal. [5] On April 28, 2000, the PCX

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letters from Michael D. Pierson, Director, Regulatory Policy, PCX, to Michael A. Walinskas, Associate Director, Division of Market Regulation ("Division"), SEC, dated June 24, 1999 ("Amendment No. 1") from Michael D. Pierson to Jennifer Colihan, Attorney, Division, SEC, dated January 7, 2000 ("Amendment No. 2"); from Michael D. Pierson to Kelly Riley, Attorney, Division, SEC, dated January 14, 2000 ("Amendment No. 3").

[4] *See* Exchange Act Release No. 42384 (February 3, 2000), 65 FR 6675.

[5] *See* Letter from Robert Pacileo, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Senior Special Counsel, Division, SEC, dated April 20,

Continued

filed Amendment No. 5 to the proposal.[6]

The Commission received no comments regarding the proposal. This notice and order approves the proposed rule change, as amended, and solicits comments from interested persons on Amendment Nos. 4 and 5.

**II. Description of the Proposal**

The PCX is proposing to amend its disciplinary proceedings rules,[7] and in particular, to add new rules to codify the independent function of PCX Regulatory Staff; to clarify what communications are improper in the context of pending investigations or disciplinary proceedings; and to provide PCX Regulatory Staff with the ability to issue formal complaints for the alleged violation of Exchange rules.

*A. Independence of Regulatory Staff*

PCX proposes to amend Rule 10.2 governing the procedures for investigating possible violations of Exchange rules to ensure the independence of the PCX Regulatory Staff, and guarantee its separation from the Exchange's commercial interests. The rule is being modified to explicitly state that the Exchange's Regulatory Staff will function independently of the commercial interests of the Exchange and will have the sole discretion to investigate possible violations within the disciplinary jurisdiction of the Exchange. The proposed rule further provides that no member of the Board of Governors or the Executive Committee or non-Regulatory Staff may interfere with or attempt to influence the process or resolution of any pending investigation or disciplinary proceeding.

The Exchange is also proposing to make various technical and housekeeping changes to the text of PCX Rule 10.2, which will now cover both Exchange investigations and regulatory cooperation.

*B. Ex Parte Communications*

The Exchange is proposing to adopt new PCX Rule 10.3 to codify specific provisions governing ex parte communications. The new rule codifies what communications regarding pending investigations and disciplinary proceedings are improper.

The proposed ex parte rules make clear that no person who is a subject of a pending Exchange investigation or pending disciplinary proceeding or any interested PCX staff member[8] may make an ex parte communication to a member of the Board of Governors, a member of any committee with disciplinary jurisdiction, or any member of the Exchange Regulatory Staff. The proposed rule further provides that no person who is a member of a Hearing Panel or the disciplinary committee with jurisdiction over an investigation or disciplinary proceeding or any interested PCX staff member[9] may make an ex parte communication to a member of the Board of Governors, a member of the Executive Committee, any member of Exchange Regulatory Staff, or the subject of a pending Exchange investigation or disciplinary proceeding. Next, the proposed rule prohibits members of the Board of Governors and the Exchange Committee, as well as interested PCX staff members[10] from making an ex parte communication to any member of Exchange Regulatory Staff, the subject of a pending Exchange investigation or pending disciplinary proceeding or a member of a Hearing panel or the disciplinary committee with jurisdiction over the investigation or disciplinary proceeding.

With respect to the disclosure of prohibited communications, proposed PCX Rule 10.3(b) provides that any person who receives or makes a communication prohibited by the Rule must promptly submit a copy of any written communications and/or a substantive description of any oral communications to Exchange Regulatory Staff for inclusion in the record of the investigation or disciplinary proceeding.

Proposed Exchange Rule 10.3(c) sets forth remedies applicable to situations in which prohibited communications have been made. Specifically, the rule provides that any member, member organization, associated person, or interested PCX staff member who made, or knowingly caused to be made, a communication prohibited by subsection (a) will be subject to disciplinary action. The rule further provides that an Exchange disciplinary committee, to the extent consistent with the interests of justice, may issue to the member, member organization or associated person responsible for the communication or who benefited from the communication an order to show cause why the claim, defense or interest of the member, member organization or associated person should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision.

Proposed PCX Rule 10.3(d) clarifies that nothing in the rule on ex parte communications prohibits the members of a disciplinary committee or Exchange Regulatory Staff from discussing a pending investigation or disciplinary proceeding at a meeting of the committee in connection with: (1) The adjudication of the investigation pursuant to the Minor Rule Plan; (2) the determination of whether to impose informal discipline; (3) the determination of whether to authorize a complaint or take no further action; or (4) the determination of whether to accept an offer of settlement.

Proposed Commentary .01 to Exchange Rule 10.3 defines an "ex parte communication" as an oral or written communication made without notice to all parties, *i.e.*, Exchange Regulatory Staff and the subjects of investigations or respondents in disciplinary proceedings. The Commentary further states that a written communication is ex parte unless a copy has been previously or simultaneously delivered to all interested parties. It further provides that an oral communication is ex parte unless it is made in the presence of all interested parties except those who, on adequate prior notice, declined to be present.[11]

*C. Complaints*

PCX Rule 10.3, which the PCX proposes to renumber as Rule 10.4, currently provides that formal complaints for alleged violations of

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2000 ("Amendment No. 4"). Among other things, Amendment No. 4 added language to prohibit interested PCX staff with knowledge of a pending Exchange investigation or disciplinary proceeding from making ex parte communications. Amendment No. 4 also proposed language to permit an Exchange disciplinary committee to issue to interested PCX staff responsible for an ex parte communication, or the party who benefited from the communication to show cause why the claim of the interested PCX staff should not be adversely affected by reason for the ex parte communication, including, but not limited to the entry of an adverse summary decision.

[6] *See* Letter from Robert Pacileo, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Senior Special Counsel, Division, SEC, dated April 27, 2000 ("Amendment No. 5"). In Amendment No. 5, the Exchange proposed to add Rule 10.3(e) which would require a member of a Hearing Panel, or the disciplinary committee with jurisdiction over a proceeding, to recuse himself or herself in the event a conflict of interest exists.

[7] The Commission notes that the Exchange has proposed a similar disciplinary structure and procedures for the Pacific Equities, Inc. *See* Exchange Act Release No. 42178 (Nov. 24, 1999), 64 FR 68136 (Dec. 6, 1999) (File No. SR–PCX–99–39).

[8] *See* Amendment No. 4, *supra* note 5.

[9] *See* Amendment No. 4, *supra* note 5.

[10] *See* Amendment No. 4, *supra* note 5.

[11] In Amendment No. 4, the PCX deleted Commentary .02 to PCX Rule 10.3 which provided that a disciplinary proceeding will be considered to be pending from the date that a Complaint has been issued pursuant to Rule 10.5 until the proceeding, including any appeals, becomes final. The PCX represented in Amendment No. 4 that it will amend SR–PCX–00–06 to include this as a commentary to another PCX disciplinary rule.

Exchange rules (and other provisions) may be authorized by the PCX Board of Governors, by the Executive Committee of the Exchange, or by any standing committee designated by the Board of Governors to review disciplinary proceedings. The Exchange is proposing to modify that provision so that only Exchange Regulatory Staff designated by the Exchange and any standing committee designated by the Board of Governors to review disciplinary proceedings has the authority to determine whether there is probable cause to issue a formal complaint, *i.e.*, probable cause for finding that a violation within the disciplinary jurisdiction of the Exchange has occurred and that further proceedings are warranted. The PCX also proposes to make certain technical changes to the text of current Exchange Rule 10.3 for clarification purposes, *e.g.*, changing the term "charged" to "alleged."

Further, PCX proposes to amend its rule governing complaints to provide that at any time prior to service of the written answer to the Complaint, the Complaint may be amended to allege new matters of fact or law. However, after service of the written answer, the Complaint may only be amended if the Hearing Panel concludes that good cause exists for the amendment based upon the submission of a written motion by the Exchange.

Finally, the Exchange is proposing to adopt new Commentary .01 to new PCX Rule 10.4 to provide that the term "probable cause" means facts and circumstances that establish a reasonable likelihood that the person committed the violation at issue.

*D. Summary Determinations*

The Exchange proposes to renumber PCX Rule 10.5 to Rule 10.4(c).

**III. Discussion**

For the reasons discussed below, the Commission finds that the proposed changes to the PCX Rules governing investigations and regulatory cooperation, ex parte communications and complaints are consistent with the Act, improve the current disciplinary system, and should provide fair and efficient procedures for conducting investigations.[12] Therefore, the Commission finds that the proposed rule change is consistent with Section 6(b) of the Act,[13] and in particular with Sections 6(b)(5),[14] 6(b)(6)[15] and Section 6(b)(7)[17] of the Act.

Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.[17] Section 6(b)(6) requires, among other things, that the rules of an exchange provide that its members shall be appropriately disciplined for violations of the Act, the rules and regulations thereunder or the rules of an exchange.[18] Section 6(b)(7) requires that the rules of an Exchange, among other things, should provide a fair procedure for disciplining members.[19]

*A. Investigations and Regulatory Cooperation*

The Commission finds that the proposed rule change, which removes the authority of the Board of Governors, Executive Committee, the Ethics and Business Conduct Committee and the Floor Trading Committee to review disciplinary proceedings to be consistent with the requirements of the Act.

The proposal gives the Exchange's Regulatory Staff the authority to determine whether to investigate potential violations within the disciplinary jurisdiction of the Exchange. This provision should prevent inappropriate commercial interests from improperly influencing the Exchange's disciplinary process consistent with the requirements of Section 6(b)(7).[20] This proposal should help to ensure that the Exchange's disciplinary process operates in a fair manner without potential improper, unrelated business processes.

The Commission believes that the Exchange has struck an appropriate balance by permitting Governors and members of the aforementioned committees to submit complaints alleging possible violations of Exchange Rules and/or violations of the Act to the Regulatory Staff for investigation, but then prohibiting them from further participation in the investigation or proceedings. In this way, the Governors and committee members continue to have a voice and the ability to bring potential violations to the attention of the Regulatory Staff, but are not given undue control and influence over the proceedings to the disadvantage of Exchange members.

The Commission further finds that the Exchange's explicit proposed rule prohibiting members of the Board of Governors or the Executive Committee or other non-Regulatory Staff persons from interfering with or attempting to influence any pending investigation or disciplinary proceeding is appropriate.

The Exchange's proposed rule accurately echoes the Commission's belief that persons responsible for investigations and disciplinary proceedings should enjoy autonomy and independence from inappropriate pressures. The Commission further finds that the PCX's initiative to separate the investigatory functions of the Regulatory Staff from the commercial interests of Exchange members is another step toward ensuring that the PCX disciplinary process is well insulated and fair to all participants.

*B. Ex Parte Communications*

The PCX has proposed a new rule that defines and prohibits ex parte communications between disciplinary committee members, the Board of Governors, and the parties to a disciplinary investigation or proceeding. In the Commission's view, it is appropriate for the Exchange to prohibit ex parte communications between the disciplinary committees and panels and the parties or their representatives during the disciplinary proceedings. The Commissions also finds that the boundaries set by the Exchange in defining the prohibited communications should help ensure that no party can unfairly advance his or her position in an investigation or disciplinary proceeding through discussion or other communication outside of the proceeding's forum. In addition, the Commission finds that the parties subject to the prohibition on ex parte communications include those who reasonably would be expected to participate in a disciplinary proceeding.

The Commission also approves of the manner in which the Exchange proposes to handle violations of the prohibition on ex parte communications. First, the proposed rule requires complete disclosure of the communication in the form of a written memorandum describing any oral communication and copies of any written communication for inclusion in the record of the investigation or disciplinary proceeding. The proposed rule then states that the party responsible for the ex parte communication will be subject to disciplinary action. The proposed rule then grants the disciplinary committee the authority to demand that the party who made the ex parte communication,

[12] In approving this proposal, the Commission has considered the proposed rules' impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78f(b)(6).

[16] 15 U.S.C. 78f(b)(7).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78f(b)(6).

[19] 15 U.S.C. 78f(b)(7).

[20] 15 U.S.C 78f(b)(7).

or the party who benefited from the communication, show cause why the claim, defense or interest of that party should not be adversely affected by reason of such ex parte communication, including but not limited to the entry of an adverse summary decision. The Commission finds that the consequences set out by the Exchange for violating the prohibition on ex parte communication are appropriate and should be an effective deterrent for committing violations and thus, the Commission finds that these provisions are consistent with Section 6(b)(6) of the Act.[21]

The Commission further believes that it is appropriate to recognize certain circumstances under which ex parte communications are permissible. The Exchange's proposed rule provides that members of a disciplinary committee or Exchange Regulatory Staff are not prohibited from engaging in ex parte communications when discussing: (1) The adjudication of the investigation pursuant to the Minor Rule Plan; (2) the determination of whether to impose informal discipline; (3) the determination of whether to authorize a complaint or take no further action; or (4) the determination of whether to accept an offer of settlement. The Commission finds that lifting the general prohibition against ex parte communications in these situations should ensure that the disciplinary process operates efficiently by providing all persons involved in the settlement process or the pre-complaint resolution process with the flexibility to attempt to dispose of a disciplinary matter without formal proceedings being initiated.

*C. Complaints*

As with the proposed rule governing investigations, the Exchange is proposing to modify its rule governing the initiation of formal disciplinary proceedings following an investigation to provide that only Exchange Regulatory Staff and standing committees designated by the Board of Governors to review disciplinary proceedings have the authority to determine whether there is probable cause to issue a formal complaint, *i.e.*, probable cause for finding that a violation within the disciplinary jurisdiction of the Exchange has occurred and that further proceedings are warranted. Under the current rule, both the members of the Board of Governors and the Executive Committee have the authority to initiate disciplinary actions.

The Commission supports the Exchange's initiative to provide the Regulatory Staff and the committee with jurisdiction over disciplinary proceedings independent from the Board of Governors and Executive Committee. The Commission believes that this independence will allow the Exchange to implement a vigorous and evenhanded enforcement program.

The Exchange is also proposing to add a section to its rule that would allow the Exchange to amend its complaint freely anytime before a Respondent serves his or her answers thereto. However, the proposed rule provides that after the Respondent serves his or her answer, the Exchange may only amend the complaint with the consent of the hearing panel upon a showing of good cause. The Exchange finds that this procedure is fair to both parties because it protects those persons accused of violating Exchange rules from facing an unlimited number of new allegations throughout the disciplinary process, while also providing the Exchange with the ability to add new claims. The Commission believes that this provision is consistent with both Sections 6(b)(6) and 6(b)(7) because it enables the Exchange to bring new actions as information regarding potential violations becomes known in a manner that is fair to the subject of the complaint. Further, this provision also limits the Exchange's ability to delay proceedings by continually amending its complaint. After an answer has been submitted, the Exchange must show good cause to amend a complaint. This should ensure that disciplinary proceedings are completed in a timely fashion and provides respondents with a level of certainty as to the allegations being asserted. Moreover, by having the hearing panel make a finding of good cause to amend a complaint, the Commission believes that inappropriate and improper amendments should be prevented. The proposal should protect respondents from unlimited amendments which could lead to uncertain proceedings and undue delays in the disciplinary process.

Finally, the Commission believes that this amendment is consistent with Section 6(b)(5) of the Act[22] because it permits the Exchange, subject to specified restrictions, to amend its complaints to enforce its rules. This should ensure that members are disciplined for violations alleged to have been committed. Thus, the rule should assist the Exchange in seeking to prevent fraudulent and manipulative acts by its members to sufficiently protect investors and the public interest.

**IV. Amendment No. 4**

The Commission finds good cause for approving Amendment No. 4 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 4, the Exchange added interested PCX staff members to the category of persons who are prohibited from engaging in ex parte communications. The Commission believes that this addition will provide extra assurance to those involved in disciplinary proceedings that the proceedings will be conducted fairly and impartially. Additionally, in the event that an interested PCX staff member does participate in an ex parte communication in violation of the proposed Rule, Amendment No. 4 allows an Exchange disciplinary committee to demand that the interested PCX Staff member show cause why the claim of the PCX should not be adversely affected because of the ex parte communication, thus holding the Exchange to the same level of responsibility as those persons being investigated.

Finally, Amendment No. 4 makes technical non-substantive changes to the proposal such as moving a commentary to another location within the disciplinary rules, and correcting language to provide for parallel construction of sentences and clarity.

The Commission finds that the PCX's proposed changes in Amendment No. 4 further strengthen and clarify the proposed rule change and raise no new regulatory issues. Further, the Commission believes that Amendment No. 4 does not significantly alter the original proposal which was subject to a full notice and comment period. Therefore, the Commission finds that granting accelerated approval to Amendment No. 4 is appropriate and consistent with Section 19(b)(2) of the Act.[23]

**V. Amendment No. 5**

The Commission finds good cause for approving Amendment No. 5 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 5, the Exchange seeks to adopt language that would prohibit any member of a disciplinary committee or a hearing panel from participating in a proceeding if that person has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned. The

[21] 15 U.S.C. 78s(b)(6).

[22] 15 U.S.C. 78f(b)(5).

[23] 15 U.S.C. 78s(b)(2).

Commission believes that the addition of this provision is appropriate in that it will increase the level of fairness and impartiality in disciplinary proceedings and will aid in the dispassionate application of the disciplinary rules. The Commission believes that the PCX has proposed a reasonable standard under which an adjudicator or participant in the disciplinary process must recuse him or herself or may be disqualified by the Chief Executive Officer of the PCX.

**VI. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 4 and 5, including whether the proposed amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX.

All submissions should refer to File No. SR–PCX–99–10 and should be submitted by June 1, 2000.

**VII. Conclusion**

For all of the aforementioned reasons, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–PCX–99–10), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11805 Filed 5–10–00; 8:45 am]

BILLING CODE 8010–01–M

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Economic Injury Disaster #9H20]**

**State of New York (and Contiguous Counties in the State of New Jersey)**

New York County and the contiguous counties of Bronx, Kings, and Queens in the State of New York, and Bergen and Hudson Counties in New Jersey constitute an economic injury disaster loan area as a result of a water main break, and subsequent flooding, that occurred on March 2, 2000. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on February 5, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South, 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number for the State of New Jersey is 9H2100.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: May 3, 2000.

**Aida Alvarez,**

*Administrator*

[FR Doc. 00–11869 Filed 5–10–00; 8:45 am]

BILLING CODE 8025–01–P

## TENNESSEE VALLEY AUTHORITY

**Addition of Electric Generation for Peaking and Baseload Capacity at Greenfield Sites, Haywood County, Tennessee**

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Issuance of Record of Decision.

**SUMMARY:** This notice is provided in accordance with the Council on Environmental Quality's regulations (40 CFR parts 1500 to 1508) and TVA's procedures implementing the National Environmental Policy Act. TVA has decided to adopt the preferred alternative identified in its *Final Environmental Impact Statement for Addition of Electric Generation Peaking and Baseload Capacity at Greenfield Sites, Haywood County, Tennessee.*

The Final Environmental Impact Statement (FEIS) was made available to the public on March 16, 2000. A Notice of Availability (NOA) of the Final EIS was published by the Environmental Protection Agency in the **Federal Register** on March 31, 2000. Under the preferred alternative, TVA has decided to construct natural gas-fired simple cycle combustion turbine power plants with up to 1,400 Megawatts (MW) of capacity at the Lagoon Creek Site. The construction will occur in two 700 MW phases.

**FOR FURTHER INFORMATION CONTACT:** Greg Askew, Senior Specialist, National Environmental Policy Act, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, mail stop WT 8C, Knoxville, Tennessee 37902–1499; telephone (865) 632–6418 or e-mail gaskew@tva.gov.

**SUPPLEMENTARY INFORMATION:**

**Background**

In December 1995, TVA issued its *Energy 2020 Integrated Resource Plan and Final Programmatic Environmental Impact Statement.* This document projected demands for electricity in the TVA power service area through the year 2020 and evaluated different ways of meeting these projected increases. Under the forecast adopted by TVA, the demand for electricity was projected to exceed TVA's 1996 generating capacity of 28,000 (MW) by approximately 6,250 MW in the year 2005. TVA decided to meet this demand through a combination of supply-side options and customer service options.

Since 1995, TVA has added about 2,700 MW of generating capacity and 1,400 MW in option-purchase agreements to meet the increasing power demand in the Tennessee Valley (TVA 1999a). Incrementally, the 2,700 MW growth in capacity consists of operational efficiencies resulting from capital improvements at existing fossil, nuclear and hydro power production facilities, along with additions in capacity at several locations.

Over the next few years, TVA plans to further increase capacity by 2,400 MW through improvements to existing units and the addition of peaking units at existing fossil plants. However, these increases may not be enough to maintain adequate reserve capacity.

It is reasonable to expect that the delivery of reliable and economic power to customers will require TVA to continue to pursue all of the portfolio options recommended in Energy Vision 2020, both demand-side and supply-side. Consistent with Energy Vision 2020, from which this EIS tiers, each of the portfolio options received an appropriate environmental review before a decision was made to proceed with implementation. Those actions are

not considered to be competing projects for the purposes of presenting and comparing environmental impacts in this EIS. Future projects would receive similar project-specific reviews for implementation.

One of the supply-side options was to construct additional peaking capacity within the TVA power system. Tiering from the Energy Vision 2020 EIS, this FEIS for Addition of Electric Generation Peaking and Baseload Capacity at Greenfield Sites, Haywood County, Tennessee evaluates the decision of adding up to 1,700 MW of peaking and baseload capacity at one of three undeveloped (greenfield) sites in Haywood County, Tennessee. The evaluation considered the following: the No Action Alternative, and nine Action Alternatives based on combinations of three power plant configurations sites at each of the three candidate sites. Other options evaluated included transmission connectivity and distribution, and natural gas fuel supply. The three candidate sites were selected based primarily on the following criteria: power transmission (system support, connection cost, and system losses), natural gas supply (pipeline availability, capacity, and delivered fuel cost), air quality impacts (likelihood of the area being able to incorporate additional emissions), and water supply (surface or groundwater availability). The alternative selected was based on both economic and environmental considerations.

On June 3, 1999, TVA issued a Notice of Intent (NOI) to prepare an EIS on its proposed construction of additional peaking and baseload capacity at greenfield sites. Newspaper announcements were published on April 14 and 15 for a public scoping meeting to be held on April 19. Approximately 25 persons attended the open house format meeting that also included a presentation by TVA management and staff. Public comments received at this meeting were considered in preparing the draft EIS. A Notice of Availability (NOA) of the draft EIS was published by the Environmental Protection Agency (EPA) in the **Federal Register** on December 17, 1999. A public information and comment meeting was held on January 13, 2000. After considering all comments, TVA revised the EIS appropriately. The Final EIS was distributed to commenting agencies and the public on March 16, 2000. A NOA of the final EIS was published by EPA in the **Federal Register** on March 31, 2000.

**Alternatives Considered**

Alternative methods of meeting TVA's future electrical generation capacity requirements were evaluated in Energy Vision 2020. One of the selected methods was to construct additional electric generation capacity within the TVA system. Tiering from Energy Vision 2020, to address the capacity additions, two alternatives were evaluated: a No Action Alternative and an Action Alternative.

The No Action Alternative would result in TVA not constructing a combustion turbine generating plant at any of the three candidate sites in Haywood County, Tennessee. TVA would either undertake no new activities to meet anticipated demands by June 2001 for peaking power or would rely exclusively on options from the Energy Vision 2020 portfolio that do not involve construction and operation new TVA fossil plant(s). Under this alternative, TVA would select another fossil alternative evaluated in Energy Vision 2020, such as option purchase agreements or spot market purchases. There is a significant risk based on TVA's experience that these alternatives would not enable TVA to meet future demands of its customers for low cost and reliable power, and thus, not meet TVA's need.

Under the action alternative TVA considered nine alternatives. Three power plant configurations were each considered for construction at each of three candidate sites. The three power plant configurations are: (1) 700 MW of simple-cycle combustion turbines for peaking, (2) 1,400 MW of simple-cycle combustion turbines for peaking, and (3) 700 MW of simple cycle combustion turbines for peaking plus 1,000 MW of combined-cycle combustion turbines for baseload operation for a total of 1,700 MW. The three candidate sites are similar, undeveloped agricultural sites all located in Haywood County, Tennessee.

Under the Preferred Alternative, TVA would construct peaking capacity additions of up to 1,400 MW in two 700 MW phases at the Lagoon Creek Site. Natural gas-fired simple-cycle combustion turbines (CTs) would be constructed. These CTs are designed to operate with dual fuel capability firing either natural gas or low sulfur distillate fuel oil to maximize fuel flexibility and lower operational costs. For nitrogen oxides control, these CTs would be equipped with dry low nitrogen oxides ($NO_x$) burners for natural gas firing and would use water injection for $NO_x$ control when firing No. 2 distillate oil. The first 700 MW of capacity additions are proposed to be operational by June 2001. In addition to the CTs, associated transmission lines serving as a connection to TVA's power distribution system and natural gas interconnection pipelines would be constructed.

**Decision**

TVA has decided to implement the Preferred Alternative of constructing up to 1,400 MW of peaking capacity in two 700 MW phases at the Lagoon Creek Site. TVA will also build the associated transmission lines serving as a connection to the TVA power distribution system as well as the natural gas supply pipeline connection. This will help TVA meet the projected demand for electricity in its service area as well as maintain reliable service to TVA customers.

**Environmentally Preferred Alternative**

TVA has concluded that construction and operation of a 700 MW peaking plant at the Lagoon Creek Site is the environmentally preferred alternative. This plant configuration is the smallest of the three alternatives and accordingly has the least land disturbance and lower annual air pollutant emissions. Also, as a simple-cycle combustion turbine, there are minimal water supply requirements and minimal wastewater discharges. Additionally, the Lagoon Creek Site is more remote than the other two candidate sites which lessens noise impacts and visual affects. The larger acreage of the Lagoon Creek Site offers an increased buffer between the plant and future residential development. Also, no cultural resources eligible for listing on the National Register of Historic Places are present.

**Environmental Consequences and Commitments**

No significant adverse environmental impacts were identified in the EIS. Standard construction and best management practices (BMPs) would be followed in all aspects of the project construction and operation to avoid or minimize adverse environmental impacts. In addition, TVA has adopted the following mitigation measures:

*Air Resources*

- Open construction areas and unpaved roads would be sprinkled with water to reduce fugitive dust emissions.
- Use of low sulfur fuel oil.
- Use of Dry Low $NO_x$ burners when firing natural gas to control $NO_x$ emissions; water injection will be used as $NO_x$ control measure when firing oil.
- Use of best available control technology to minimize emission of other criteria air pollutants.

*Surface Water Resources*

- Construct retention/settling pond(s) as early in the construction phase as feasibly possible.
- Retention pond(s) would be used to manage/release site runoff.
- Oil/water separator(s) would be used to collect oil from oil using/storage area stormwater runoff.
- Areas disturbed by the initial phase of construction, such as equipment laydown areas and construction temporary parking, would be revegetated before beginning the second phase of construction, if applicable.
- Revegetate along transmission line ROWs to reduce erosion.

*Groundwater Resources*

- If neighboring wells are adversely affected by aquifer drawdowns, TVA would modify the well to lower the pump intake, install a new well or provide a connection to public water supplies, if available, or otherwise take appropriate action to remedy the problem.

*Floodplains and Flood Risk*

- If a site within a floodplain is selected, all flood damageable facilities and equipment would be elevated above or floodproofed to the 100-year flood elevation to ensure compliance with Executive Order 11988.

*Aquatic Ecology*

- Monitoring of aquatic life impacts will be conducted during periods of wet stream blasting, if conducted.
- Bore or directionally drill pipelines under perennial stream beds or unique aquatic habitats or use flume stream crossing techniques.

*Wetlands*

- Use existing roads, ROWs, and higher elevations, when feasible, for movement of construction vehicles along proposed linear features, such as pipelines and transmission lines.

*Transportation*

- Implement a pavement maintenance program during construction and required physical improvements, such as paving, addition of shoulders to select roads off SR 19 to minimize negative effects on local travel.
- After completing construction activities, pave Old SR 19 from its eastern intersection with SR 19 west to its intersection with Elm Tree Road.
- Require heavy haulers to assess all bridge crossings for potential capacity upgrades.
- At all transmission line and pipeline road crossings, require adherence to guidelines in Manual on Uniform Traffic Control Devices.
- Require trucks to meet all safety standards and road load limits.

*Land Use/Soils*

- Segregate and replace topsoil from pipeline trenches to preserve fertility.

*Visual Resources*

- Exterior lighting would be turned off when not needed.
- Elm Tree Road, from its point of intersection with Old SR 19 west to the plant entrance(s), would be covered with a six inch layer of crushed limestone, moistened, and compacted to reduce dust generation during construction activities and then paved after completion of construction activities.
- Pave all high-traffic onsite roads to prevent dust generation.

*Cultural Resources*

- Conduct Phase I/II archaeological survey for selected NG pipeline route to Texas Gas, if this supply option is deemed appropriate.

*Environmental Noise*

- Blasting mats will be used to reduce and muffle noise released by explosions created during blasting, if conducted.
- Conduct field monitoring after plant becomes operational to determine magnitude of site specific impacts. Appropriate and cost-effective mitigation measures would be identified and implemented if determined necessary. Potential measures include turbine silencers, acoustic treatment or addition of enclosures, and/or construction of berms to deflect noise from sensitive receptors.

*Safety and Health*

- Conduct 100% x-rays on natural gas pipe welds, maintain x-ray records in accordance with DOT requirements, install shut-off valves at each end of the pipeline which close in the event of an abnormal operating condition.

**Public Comment on the FEIS**

TVA received several public comments on the FEIS, including from the Environmental Protection Agency (EPA). The EPA comments were in further response to TVA responses to EPA comments on the DEIS. Select comments from the EPA relevant to the adequacy of the FEIS and TVA's responses are summarized below.

*EPA comment on TVA response 43* in the FEIS concerned the need for additional cumulative air quality assessment for sulfur dioxide ($SO_2$). TVA's response is as follows: TVA believes that the cumulative air impacts analysis presented in Section 4.6.1.1 of the Final EIS is rigorous and adequate to describe the environmental impacts of the proposed actions combined with the impacts of other area sources. That analysis, which consisted of modeling the proposed sources and adding the current levels of pollution in the vicinity, which include the impacts of any other sources contributing to ground level concentrations. This approach is especially effective in a rural area such as Haywood County where few industrial sources of air pollution exist (no significant industrial sources of air pollution are closer than eight miles distant). The approach certainly provides a conservative assessment of cumulative impacts since it combines the highest values actually measured during the year of record with the highest predicted concentrations related to plant operation, and assumes they would simultaneously occur in time and space (which is extremely unlikely). The cumulative impacts analysis contained in the Final EIS is not intended to suffice for any "increment consuming analysis" required for a PSD application. As EPA is aware, the purpose of the NEPA review is to describe environmental impacts relative to standards and criteria which define where impacts to human health and welfare begin to occur. For this purpose, the National Ambient Air Quality Standards are commonly used as measures of significance. On the other hand, the levels used to guide the PSD permitting procedure are not rigorously consistent, and are sometimes unrelated totally, with concentrations at which impacts to human health or welfare occur. Consequently, no comparison with PSD increment levels is made in Section 4.6.1.1. One would not expect the cumulative impacts analysis contained in the EIS to necessarily meet the needs of the increment consuming analysis required under some circumstances for PSD, and TVA makes no claims that it does in this case. Mr. James Lee's January 18, 2000, letter stated that a cumulative impact analysis (meaning increment consuming analysis), was not warranted because the $SO_2$ emissions for the plant alternative being permitted (2B) are not excessive and are at a considerable distance to Mingo Wilderness Area.

*EPA comment on TVA response 52* in the FEIS concerned noise mitigation. More specific information was requested concerning mitigation methods and at what threshold mitigation would be performed. Source

reduction was recommended by EPA for noise attenuation. TVA's response is as follows: TVA has committed to further study the noise levels in the vicinity of the site to determine whether additional noise mitigation is needed and to identify appropriate mitigation methods. Source reduction in noise levels may not be the most cost effective way to prevent adverse impacts to area residents. TVA prefers to follow a plan to confirm the existence of community noise concerns, and to obtain adequate noise data which would allow for the verification of the legitimacy of the complaints and support the structuring of a suitable mitigation measure. This approach would avoid committing to a solution to a problem which may or may not exist, or be the best solution. As noted in the FEIS, potential mitigation measures include techniques for reducing noise at its source and methods that would reduce noise at receptor locations.

*EPA comment on TVA response 55* in the FEIS expressed a potential for an environmental justice (EJ) concern based on the demographics presented by TVA. There were also questions concerning the extent and success of public interaction with respect to EJ. TVA's response is as follows: As discussed in the FEIS, there are only three occupied dwellings within one mile of the Lagoon Creek Site. The EIS found only minimal environmental impacts and no significant environmental impacts on the residents of area surrounding the site. Due to the lack of significant impacts and the sparse population in the area, no EJ concerns were found. As discussed in Chapter 2 of the FEIS, the site screening process included several other sites for this project, but they were determined to be less suitable than the sites in Haywood County. Some of these sites have relatively smaller minority populations than does Haywood County. Residents of the surrounding area were given various options for expressing any concerns they might have. All affected landowners (over 100), which included all adjacent properties, were sent copies of the Executive Summaries of the Draft and Final EISs, along with an invitation to the public meeting on the DEIS. The meeting itself included not only a presentation about the project, but also, prior to the formal presentation, an open house where anyone could talk individually with TVA staff to discuss concerns or ask questions. Fewer than fifteen private citizens attended the public meeting on the DEIS, despite several paid advertisements in local and regional newspapers and a TVA news release, each describing the availability of the DEIS and the public meeting date and time. No oral or written comments were received from any Haywood County resident not affiliated with local government. Among the elected officials involved, participants included one African American member of County Commission. None of the public comments received expressed concern about EJ issues. Benefits associated with the project include increased public revenues, along with a very small increase in employment and income in the area

*EPA comment on TVA response 57* in the FEIS was concerned with induced economic impacts due to increased power system reliability. TVA's response is as follows: Our approach in preparing the FEIS section on Indirect Impacts was to assess the local (within the county) induced impacts of the proposed project. In keeping with CEQ guidance for evaluating indirect or induced effects, we believe that the regional effects of this proposal are not "reasonably foreseeable", or close enough in time and distance to the proposed project for a meaningful evaluation. Such an evaluation would certainly be speculative and qualitative, since it could not be predicted how, where, and when the additional peaking power would be used in the region, and consequently of little use to decision-makers regarding initiation of the proposal. We agree that basic utilities are critical to the economic viability of most any industry. TVA's mandate, as defined in the 1933 TVA Act, is, among other things, to provide reliable, low-cost power to the Tennessee Valley region and to foster industrial development for the economic good of the people of the region. It is our hope that more reliable peaking power and other infrastructure being developed by TVA will be attractive to potential new industries and lead to the expansion of existing ones. However, we believe that economic growth should not sacrifice environmental quality. We further believe that the regulatory programs of the various Valley states, in conjunction with TVA programs for sustaining the quality of the environment in the region, will allow economic growth to occur in a manner that maintains or enhances environmental quality.

Dated: May 1, 2000.

**Joseph R. Bynum,**

*Executive Vice President, Fossil Power Group.*

[FR Doc. 00–11859 Filed 5–10–00; 8:45 am]

BILLING CODE 8120–08–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Changes in Permissible Stage 2 Airplane Operations

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of statutory changes.

**SUMMARY:** The FAA is publishing notice of further changes to the Airport Noise and Capacity Act that except certain airplanes from the law and allow operation of Stage 2 airplanes after December 31, 1999, under specified circumstances. This notice is necessitated by Congressional action taken in April 2000 to modify the statutory changes adopted in November 1999. This notice explains the effect of the changes.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thomas Connor, Manager, Noise Division (AEE–100), Office of Environment and Energy, FAA, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8933, fax (202) 267–5594, email *Thomas. Connor@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

**Background**

The Airport Noise and Capacity Act of 1990 (ANCA) prohibits the operation of civil subsonic turbojet Stage 2 airplanes over 75,000 pounds in the contiguous United States after December 31, 1999. The original version of the law did not distinguish airplanes by type of certification or operation. The waiver provisions of the original law are very limited, and address only limited revenues operation of Stage 2 airplanes by U.S. air carriers.

On November 29, 1999, the President signed into law certain changes to ANCA that affect operators of Stage 2 airplanes. The prohibit on revenue operations of Stage 2 airplanes after December 31, 1999, remained in effect. The Federal Aviation Administration (FAA) was not granted any new authority to allow anyone to operate at Stage 2 airplane in revenue service after December 31, 1999. The changes to the law were summarized in the **Federal Register** document published December 17, 1999 (64 FR 70571).

On April 5, 2000, new authorizing legislation became effective. That bill, the Wendell H. Ford Aviation investment and Reform Act for the 21st Century, Public Law 10–181 (Apr. 5, 2000; 114 Stat. 61) (AIR 21) repealed the legislative changes that were adopted in November 1999 and were described in the **Federal Register** notice cited above.

The repealed provisions were re-enacted in AIR 21 with two additions.

**New Provisions**

*Foreign Air Carrier Waivers*

The original language of ANCA did not allow foreign air carriers to apply for a waiver from the Stage 2 prohibition in the law. The AIR 21 amendment expanded the waiver provision, 49 U.S.C. 47528(b), to allow foreign air carriers, for a limited time, to apply for a waiver from the Stage 3 aircraft requirement of 49 U.S.C. 47528(a). The amendment requires that a foreign air carrier seeking a waiver must apply "not later than * * * the 15th day following the date of enactment of [AIR 21]." The law was enacted April 5, 2000; foreign air carriers seeking a waiver from section 47528(a) must have filed an application for waiver no later than April 20, 2000.

The FAA will consider any waiver request filed by a foreign air carrier under the same criteria that were used to evaluate requests from domestic air carriers. Those criteria are published at 14 CFR 91.873, and were summarized in a **Federal Register** notice published on March 2, 1998 (63 FR 10123).

*Relationship to Part 161 Actions*

In AIR 21, Congress re-enacted the provisions that direct the Secretary of Transportation to permit certain nonrevenue flights to Stage 2 airplanes over 75,000 pounds, 49 U.S.C. 47528(f). A new paragraph (g), which reads as follows, was added to that section:

(g) Statutory Construction.—Nothing in this section may be construed as interfering with, nullifying, or otherwise affecting determinations made by the Federal Aviation Administration, or to be made by the Administration with respect to applications under part 161 of title 14, Code of Federal Regulations, that were pending on November 1, 1999.

Promulgated by the FAA in 1991 pursuant to ANCA, 14 CFR part 161 is titled "Notice and Approval of Airport Noise Access Restrictions," and provides a procedure under which local airport authorities may impose restrictions on Stage 2 and Stage 3 airplanes. On November 1, 1999, there was one restriction on operation of Stage 2 airplanes that had been adopted by a local airport authority but had not yet become effective. Prior to November 1, 1999, the FAA had made a determination that this local restriction was pre-empted by Federal law. The FAA understands new paragraph (g) to mean that this prior determination, and any future determination regarding the local restriction, are not affected by the new provisions added to section 47528 by AIR 21.

The FAA has consistently held that the statutory waiver authority it was granted in ANCA in 1990 (49 U.S.C. 47528(b)) preempts any conflicting restriction adopted by a local airport authority. Similarly, the authority that permits nonrevenue Stage 2 flights under section 47528(f) also preempts any conflicting local regulations. This position is affirmed by the AIR 21 language, in that the authority given in section 47528(f) is not discretionary. The law states that "the Secretary *shall permit*" Stage 2 flights that fall under one of the categories listed in the law (emphasis added). The FAA's interpretation of the new language in paragraph (g) is consistent with the non-discretionary nature of the FAA's authority under section 47528(f).

**Previous Statutory Changes**

As discussed above, the statutory change that allows the FAA to grant special flight authorizations for the nonrevenue operation of certain Stage 2 airplanes was re-enacted in AIR 21. Accordingly, except for the additions noted above, the explanations provided in the FAA's December 17, 1999 **Federal Register** notice remain applicable, and the application procedure and form have not been changed.

The FAA still plans to amend its regulations at 14 CFR part 91, subpart I, that are affected by the changes to its statutory authority. The reasons for these amendments remain the same as published in December 1999.

The FAA was required under the November 1999 legislation, and again by AIR 21, to publish notice of the procedures it will use to implement the Stage 2 nonrevenue flight authority. This notice fulfills that requirement by informing affected persons that the application procedure for a special flight authorization for nonrevenue Stage 2 flight remains as published in December 1999.

The special flight authorization application can be obtained on the FAA's web site (http://*www.aee.faa.gov/sfa/*), or by fax or mail by contacting the Office of Environment and Energy at the number listed in the For Further Information Contact section above. The FAA reminds operators that requests for special flight authorizations for nonrevenue Stage 2 flights should be filed 30 days before the planned flight.

Operators of Stage 2 airplanes that have any questions concerning their rights or requirements under AIR 21 language are encouraged to contact the FAA as soon as possible.

Issued in Washington, DC on May 2, 2000.

**Paul R. Dykeman,**

*Deputy Director, Office of Environment and Energy.*

[FR Doc. 00–11325 Filed 5–10–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Faulkner County, Arkansas

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for a proposed highway project in Faulkner County, Arkansas.

**FOR FURTHER INFORMATION CONTACT:** Amy Heflin, Community Planner, Federal Highway Administration, 700 West Capitol, Rm 3130 Federal Office Building, Little Rock, Arkansas 72201–3298, Telephone: (501) 324–5625; or Ronnie Hall, City Engineer, City of Conway, 100 East Robins, Conway, Arkansas 72032, Telephone: (501) 450–6165; or Mike Lynch, Project Manager, Garver Engineers, P.O. Box 50, Little Rock, Arkansas 72203, Telephone (501) 376–3633.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the City of Conway, Arkansas, and the Arkansas Highway and Transportation Department will prepare an environmental impact statement (EIS) on a proposal to construct a western loop in Faulkner County, Arkansas. The proposed project would involve the construction of an arterial on a new alignment starting west of the City of Conway at Interstate Highway 40 and terminating South of the City of Conway on Interstate Highway 40. Construction of a western loop is considered necessary to provide for the existing and projected traffic demand. A proposed alignment and typical section for this proposed project will be formulated during development of the EIS. Alternatives under consideration include taking no action and location alternatives to be identified during the EIS process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this project. An agency scoping meeting is planned early in the project

development process. A series of public meetings will be held in the City of Conway. In addition, a public hearing will be held. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: May 3, 2000.

**Gary A. DalPorto,**

*Planning and Research Engineer, FHWA, Little Rock, Arkansas.*

[FR Doc. 00–11861 Filed 5–10–00; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Impact Statement: Tucker County, West Virginia

**AGENCY:** Federal Highway Administration (FHWA), DOT

**ACTION:** Notice of Intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that a Supplemental Environmental Impact Statement (SEIS) will be prepared for the Blackwater Avoidance area of the Thomas-to-Davis portion of the Parsons-to-Davis project of the proposed Appalachian Corridor H highway in Tucker County, West Virginia.

**FOR FURTHER INFORMATION CONTACT:** Henry E. Compton, Division Environmental Coordinator, Federal Highway Administration, West Virginia Division, Geary Plaza, Suite 200, 700 Washington Street East, Charleston, West Virginia, 25301, Telephone: (304) 347–5268.

**SUPPLEMENTARY INFORMATION:** In accordance with a court approved settlement agreement, the FHWA in cooperation with the West Virginia Department of Transportation (WVDOT) will prepare an SEIS to examine one or more potential alignment shifts for the Thomas-to-Davis section of Parsons-to-Davis project of the proposed Appalachian Corridor H highway in Tucker County, West Virginia. A Record of Decision (ROD) for the entire Appalachian Corridor H highhway (FHWA–WV–EIS–92–01–F) from Aggregates to the WV/VA state line, a distance of approximately 100 miles, was approved on August 2, 1996. The proposed Parsons-to-Davis project will provide a divided four-lane, partial control of access highway on new location for a distance of approximately 9 miles. The purpose of this project is to provide safe and efficient travel between population centers in Tucker County (Parsons Area and Thomas/Davis Area), while also contributing to the completion of Corridor H in West Virginia.

Alternates under consideration in the SEIS will be: (1) The no-action alternative, (2) the preferred alternative that was approved in the 1996 ROD, and (2) one or more alternatives that avoid the Blackwater Area identified in Exhibit 4 of the court approved Corridor H Settlement Agreement. Based on preliminary studies, it is expected that the avoidance alternatives considered in the SEIS will include one or more alignments that would shift the project to the north, resulting in additional connections to US 219, WV Route 32, and WV Route 93 in the vicinity of the towns of Thomas and Davis. However, final decisions on the scope of the SEIS will be made only after an opportunity for comment by interested agencies and the public during the scoping process, which will occur in May 2000.

Letters describing the proposed action and soliciting comments will be sent to appropriate federal, state, and local agencies, and to private organizations and citizens who have expressed or are known to have an interest in this proposal.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 2, 2000.

**Henry E. Compton,**

*Environmental Coordinator, Charleston, West Virginia.*

[FR Doc. 00–11860 Filed 5–10–00; 8:45 am]

BILLING CODE 4910–22–M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket Number FRA–1999–6364]**

### Northeast Illinois Railroad Corporation; Cancellation of Public Hearing

On April 4, 2000, the Federal Railroad Administration (FRA) published a notice in the **Federal Register** (65 FR 17704) announcing that a public hearing will be held based upon the Northeast Illinois Railroad Corporation's (Metra) request seeking a permanent waiver of compliance with the *Passenger Equipment Safety Standards*, 49 CFR part 238.303, which requires exterior calendar day inspection, and 238.313, which requires a class one brake test be performed by a qualified maintenance person. Metra has withdrawn its request; therefore, the hearing scheduled for Tuesday, May 16, 2000, in Chicago, Illinois, has been canceled.

FRA regrets any inconvenience occasioned by the cancellation of this hearing.

Issued in Washington, DC on May 8, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–11865 Filed 5–10–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Safety Advisory 2000–1

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Safety Advisory.

**SUMMARY:** FRA is issuing Safety Advisory 2000–1 addressing safety concerns involving Model B1 relays, manufactured by General Railway Signal (GRS), between the years 1960 and 1985, and their potential to stick and remain in the energized position. ALSTOM Signaling, Inc., which has acquired GRS, estimates that approximately 2,000,000 relays are affected worldwide.

**FOR FURTHER INFORMATION CONTACT:** William E. Goodman, Staff Director, Signal and Train Control Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, NW, RRS–13, Mail Stop 25, Washington, DC 20590 (telephone 202–493–6325) or Mark Tessler, Trial Attorney, Office of Chief Counsel, 1120 Vermont Avenue, NW , RCC–12, Mail

Stop 10, Washington, DC 20590 (telephone 202–493–6061).

**SUPPLEMENTARY INFORMATION:** In a Safety Notice issued on August 18, 1995, GRS stated that it had received reports of ten incidents of a residual screw in the armature of a Type B1 relay not releasing from the lower core head surface within the specified time. GRS stated that this condition could develop in any application using one or more B1 relays. FRA is concerned about potential malfunctions in such relays which are critical to signal systems and their impact on safety if they do not operate within specified parameters.

In its Safety Notice, GRS concluded that:

1. The condition arises from the transfer of material from the cadmium-tin plated core head to the copper-silicon residual screw, which can cause the residual screw to adhere to the core head.

2. Any B1 relay manufactured by GRS between January 1960 and December 1985 incorporating residual screw Part No. 20360–012–00 (Catalog No. P62–255) could develop this condition.

3. The condition is more likely to occur in B1 Relays normally in the energized position used in one or more of the following circumstances:

a. High temperature, *i.e.* ambient temperatures above 100 degrees Fahrenheit (38 degrees Celsius) on a regular basis; and/or

b. Number of operations of the B1 Relay is less than four (4) times per day.

In order to avoid this condition, GRS recommended that all B1 Relays manufactured between January 1960 and December 1985 incorporating screw Part No. 20360–012–00 should be modified by replacing the residual screw in accordance with instructions provided by GRS.

FRA has determined that the safety of railroad employees and the general public compels the issuance of this Safety Advisory. Occurrences of GRS B1 Type relay failures have caused FRA serious concern about the safety of certain relays. The relays of concern were first identified by General Railway Signal, now ALSTOM Signaling, in a Safety Notice issued August 18, 1995. Any B1 relay manufactured by GRS between January 1960 and December 1985 incorporating residual screw Part No. 20360–012–00 (Catalog No. P62–255) could develop the condition of concern. The condition arises from the transfer of material from the cadmium-tin plated core head to the copper-silicon residual screw, which can cause the residual screw to adhere to the core head, not allowing the armature to release from the lower core head surface within the specified time. The GRS recommended corrective action was to clean the relays, replace the residual screw, and in some cases replace the relay cores and bracket.

In July of 1999, after B1 relay failures were reported on the signal system of Washington Metropolitan Area Transit Authority, the FRA notified the Association of American Railroads, the American Public Transit Association, and the American Short Line and Regional Railroad Association, making those associations aware of the potential safety issue and asking that they bring the matter to the attention of their members.

**Recommended Action**

Subsequent to the July 1999 industry notification, additional reports of B1 relay failures have been reported to FRA. Due to these reports FRA is issuing this Safety Advisory, to again make all users of B1 relays aware of the potential problem and its recognized solution. While FRA is not at this time requiring immediate inspection and repair or replacement of all such relays, FRA strongly recommends that railroads accelerate B1 relay inspection and testing programs so that all B1 relays have been inspected (and repaired or replaced, if necessary) as soon as possible. FRA further recommends that all inspection and testing forces be made aware of this problem and especially of the likelihood that the condition is more likely to occur in B1 relays normally in the energized position and used in high temperature on a regular basis, or in which the number of operations of the relay is less than four times per day. (See GRS Safety Notice.).

FRA notes that present railroad safety regulations at title 49 of the Code of Federal Regulations require periodic testing of each relay affecting the safety of train operations (49 CFR 236.106) and each relay affecting the proper functioning of grade crossing warning systems (49 CFR 234.263). FRA further notes that 49 CFR 236.11 and 234.207 require that when any essential component of a signal system or highway rail crossing warning system fails to perform its intended signaling function or is not in correspondence with known operating conditions, the cause shall be determined and the faulty component adjusted, repaired, or replaced without undue delay. Therefore, if the B1 relay fails to perform as intended, pursuant to §§ 236.11 and 234.207, it must be replaced.

Copies of the Safety Notice issued by GRS, will be made available through the Regional Signal & Train Control Specialist or through the Signal & Train Control Division at FRA Headquarters, at 202–493–6325.

Issued in Washington, DC on May 5, 2000.

**George Gavalla,**

*Associate Administrator for Safety.*

[FR Doc. 00–11866 Filed 5–10–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 4, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before June 12, 2000 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0805.

*Form Number:* IRS Form 5472.

*Type of Review:* Extension.

*Title:* Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business.

*Description:* Form 5472 is used to report information transactions between a U.S. corporation that is 25% foreign owned or a foreign corporation that is engaged in a U.S. trade or business and related foreign parties. The IRA uses Form 5472 to determine if inventory or other costs deducted by the U.S. or foreign corporation are correct.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/Recordkeepers:* 75,000.

*Estimated Burden Hours Per Respondent/Recordkeeper:*

Recordkeeping—17 hr., 42 min.

Learning about the law or the form—3 hr., 5 min.

Preparing and sending the form to the IRS—3 hr., 30 min.

*Frequency of Response:* Annually.

*Estimated Total Reporting/ Recordkeeping Burden:* 1,821,000 hours.

*OMB Number:* 1545–1682.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Return-Free Tax Filing System Focus Group Interviews.

*Description:* As required by the IRS Restructuring and Reform Act of 1998, the IRS will be reporting to Congress annually on its progress in developing a Return-Free Tax Filing System. The purpose of these focus groups is to collect information to accurately and objectively establish a benchmark of current levels of taxpayer acceptance and potential use of a Return-Free Tax System. The focus groups would also provide the IRS with information to be used in marketing and communications efforts related to Return-Free. Such a system may eliminate the need for taxpayer-initiated filing with the IRS, even electronic filing.

*Respondents:* Individuals or households.

*Estimated Number of Respondents:* 480.

*Estimated Burden Hours Per Respondent:* 2 hours, 30 minutes.

*Frequency of Response:* Other (one-time only).

*Estimated Total Reporting Burden:* 160 hours.

*OMB Number:* 1545–1684.

*Form Number:* None.

*Type of Review:* Extension.

*Title:* Pre-Filing Agreements Pilot Program.

*Description:* Notice 2000–12 describes a pilot program under which certain large business taxpayers may request examination and resolution of a specific issues relating to tax returns they expect to file between September and December, 2000. The resolution of such issues under the pilot program will be memorialized by a type of closing agreement under Code section 7121 called a pre-filing agreement.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 24.

*Estimated Burden Hours Per Respondent/Recordkeeper:* 40 hours, 17 minutes.

*Frequency of Response:* On occasion.

*Estimated Total Reporting/ Recordkeeping Burden:* 967 hours.

*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**

*Departmental Reports Management Officer.*

[FR Doc. 00–11754 Filed 5–10–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8752

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8752, Required Payment or Refund Under Section 7519.

**DATES:** Written comments should be received on or before July 10, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Required Payment or Refund Under Section 7519.

*OMB Number:* 1545–1181.

*Form Number:* 8752.

*Abstract:* Partnerships and S corporations use Form 8752 to compute and report the payment required under Internal Revenue Code section 7519 or to obtain a refund of net prior year payments. Such payments are required of any partnership or S corporation that has elected under Code section 444 to have a tax year other than a required tax year.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and farms.

*Estimated Number of Respondents:* 72,000.

*Estimated Time Per Respondent:* 7 hr., 34 min.

*Estimated Total Annual Burden Hours:* 545,040.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11740 Filed 5–10–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8824

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent

burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8824, Like-Kind Exchanges.

**DATES:** Written comments should be received on or before July 10, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Like-Kind Exchanges.

*OMB Number:* 1545–1190.

*Form Number:* 8824.

*Abstract:* Form 8824 is used by individuals, corporations, partnerships, and other entities to report the exchange of business or investment property, and the deferral of gains from such transactions under Internal Revenue Code section 1031. It is also used to report the deferral of gain under Code section 1043 from conflict-of-interest sales by certain members of the executive branch of the Federal government.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households and business or other for-profit organizations.

*Estimated Number of Respondents:* 200,000.

*Estimated Time Per Respondent:* 1 hrs., 46 min.

*Estimated Total Annual Burden Hours:* 351,897.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11741 Filed 5–10–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 6781

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6781, Gains and Losses From Section 1256 Contracts and Straddles.

**DATES:** Written comments should be received on or before July 10, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Gains and Losses From Section 1256 Contracts and Straddles.

*OMB Number:* 1545–0644.

*Form Number:* 6781.

*Abstract:* Form 6781 is used by taxpayers in computing their gains and losses on Internal Revenue Code section 1256 contracts under the marked-to-market rules and gains and losses under Code section 1092 from straddle positions. The data is used to verify that the tax reported accurately reflects any such gains and losses.

*Current Actions:* There are no changes being made to Form 6781 at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and individuals.

*Estimated Number of Respondents:* 100,000.

*Estimated Time Per Respondent:* 17 hrs., 50 min.

*Estimated Total Annual Burden Hours:* 1,784,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11742 Filed 5–10–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 5735 and Schedule P (Form 5735)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5735, Possessions Corporation Tax Credit (Under Sections 936 and 30A), and Schedule P (Form 5735), Allocation of Income and Expenses Under Section 936(h)(5).

**DATES:** Written comments should be received on or before July 10, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, Room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Possessions Corporation Tax Credit (Under sections 936 and 30A), and Allocation of Income and Expenses Under Section 936(h)(5).

*OMB Number:* 1545–0217.

*Form Number:* Form 5735 and Schedule P (Form 5735).

*Abstract:* Form 5735 is used to compute the possessions corporation tax credit under Internal Revenue Code sections 936 and 30A. Schedule P (Form 5735) is used by corporations that elect to share their income or expenses with their affiliates. The forms provide the IRS with information to determine if the corporations have computed the tax credit and the cost-sharing or profit-split method of allocating income and expenses.

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 1,371.

*Estimated Time Per Respondent:* 23 hrs., 52 min.

*Estimated Total Annual Burden Hours:* 32,713.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11743 Filed 5–10–00; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 3520–A

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner.

**DATES:** Written comments should be received on or before July 10, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Annual Information Return of Foreign Trust With a U.S. Owner.

*OMB Number:* 1545–0160.

*Form Number:* 3520–A.

*Abstract:* Internal Revenue Code section 6048(b) requires that foreign trusts with at least one U.S. beneficiary must file an annual information return. Form 3520–A is used to report the income and deductions of the foreign trust and provide statements to the U.S. owners and beneficiaries. IRS uses Form 3520–A to determine if the U.S. owner of the trust has included the net income of the trust in its gross income.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households and business or other-for-profit organizations.

*Estimated Number of Responses:* 500.

*Estimated Time Per Respondent:* 43 hours, 2 minutes.

*Estimated Total Annual Burden Hours:* 21,515.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11744 Filed 5–10–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1066 and Schedule Q (Form 1066)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return and Schedule Q (Form 1066), Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.

**DATES:** Written comments should be received on or before July 10, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Form 1066, U.S. Real Estate Mortgage Investment Conduit (REMIC) Income Tax Return and Schedule Q (Form 1066), Quarterly Notice to Residual Interest Holder of REMIC Taxable Income or Net Loss Allocation.

*OMB Number:* 1545–1014.

*Form Number:* Form 1066 and Schedule Q (Form 1066).

*Abstract:* Form 1066 and Schedule Q (Form 1066) are used by a real estate mortgage investment conduit (REMIC) to figure its tax liability and income and other tax-related information to pass through to its residual holders. IRS uses the information to determine the correct tax liability of the REMIC and its residual holders.

*Current Actions:* There are no changes being made to the forms at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 4,917.

*Estimated Time Per Respondent:* 149 hours, 52 minutes.

*Estimated Total Annual Burden Hours:* 736,862.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11745 Filed 5–10–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1120–A

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1120–A, U.S. Corporation Short-Form Income Tax Return.

**DATES:** Written comments should be received on or before July 10, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Carol Savage,

(202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* U.S. Corporation Short-Form Income Tax Return.

*OMB Number:* 1545–0890.

*Form Number:* 1120–A.

*Abstract:* Form 1120–A is used by small corporations with less than $500,000 of income and assets to compute their taxable income and tax liability. The IRS uses Form 1120–A to determine whether these corporations have correctly computed their tax liability.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations and farms.

*Estimated Number of Responses:* 285,777.

*Estimated Time Per Respondent:* 113 hours, 40 minutes.

*Estimated Total Annual Burden Hours:* 32,481,414.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11748 Filed 5–10–00; 8:45 am]

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Part II

# Environmental Protection Agency

40 CFR Part 300
National Priorities List for Uncontrolled Hazardous Waste Sites; Final Rule & Proposed Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[FRL–6603–3]**

## National Priorities List for Uncontrolled Hazardous Waste Sites

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds 7 new sites to the NPL; all to the General Superfund Section of the NPL.

**EFFECTIVE DATE:** The effective date for this amendment to the NPL shall be June 12, 2000.

**ADDRESSES:** For addresses for the Headquarters and Regional dockets, as well as further details on what these dockets contain, see Section II, "Availability of Information to the Public" in the **SUPPLEMENTARY INFORMATION** portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center; Office of Emergency and Remedial Response (mail code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW; Washington, DC 20460; or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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## I. Background

### *A. What Are CERCLA and SARA?*

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

### *B. What Is the NCP?*

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." ("Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

### *C. What Is the National Priorities List (NPL)?*

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities Section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

*D. How Are Sites Listed on the NPL?*

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on February 4, 2000 (65 FR 5435).

*E. What Happens to Sites on the NPL?*

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions * * *." 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

*F. How Are Site Boundaries Defined?*

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (*e.g.*, the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (*e.g.*, it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (*e.g.*, where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the name "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the problem presented by the release" will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals

more information about the location of the contamination or release.

*G. How Are Sites Removed From the NPL?*

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of April 27, 2000, the Agency has deleted 212 sites from the NPL.

*H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?*

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of April 27, 2000, EPA has deleted portions of 18 sites.

*I. What Is the Construction Completion List (CCL)?*

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (*e.g.*, institutional controls); or (3) the site qualifies for deletion from the NPL.

Of the 212 sites that have been deleted from the NPL, 203 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). As of April 27, 2000, there are a total of 685 sites on the CCL. This total includes the 212 deleted sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

**II. Availability of Information to the Public**

*A. Can I Review the Documents Relevant to This Final Rule?*

Yes, documents relating to the evaluation and scoring of the sites in this final rule are contained in dockets located both at EPA Headquarters and in the Regional offices.

*B. What Documents Are Available for Review at the Headquarters Docket?*

The Headquarters docket for this rule contains, for each site, the HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule—May 2000."

*C. What Documents Are Available for Review at the Regional Dockets?*

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the sites located in their Region. These reference documents are available only in the Regional dockets.

*D. How Do I Access the Documents?*

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917.

The contact information for the Regional dockets is as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7224

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343

Robert Phillips, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–6699

*E. How Can I Obtain a Current List of NPL Sites?*

You may obtain a current list of NPL sites via the Internet at http://www.epa.gov/superfund/ (look under site information category) or by contacting the Superfund Docket (see contact information above).

**III. Contents of This Final Rule**

*A. Additions to the NPL*

This final rule adds 7 sites to the NPL; all to the General Superfund Section of the NPL. Table 1 presents the 7 sites in the General Superfund Section. Sites in the table are arranged alphabetically by State.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

| State | Site name | City/county |
|---|---|---|
| AR ..... | Ouachita Nevada Wood Treater. | Reader. |
| CA ..... | Leviathan Mine ... | Alpine County. |
| FL ..... | Callaway & Son Drum Service. | Lake Alfred. |
| FL ..... | Landia Chemical Company. | Lakeland. |

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION—Continued

| State | Site name | City/county |
|---|---|---|
| NY ..... | Old Roosevelt Field Contaminated Ground Water Area. | Garden City. |
| UT ..... | Intermountain Waste Oil Refinery. | Bountiful. |
| WA .... | Midnite Mine ..... | Wellpinit. |

Number of Sites Added to the General Superfund Section: 7.

*B. Status of NPL*

With the 7 new sites added to the NPL in today's final rule; the NPL now contains 1,227 final sites; 1,068 in the General Superfund Section and 159 in the Federal Facilities Section. With a separate rule (published elsewhere in today's **Federal Register**) proposing to add 14 new sites to the NPL, there are now 62 sites proposed and awaiting final agency action, 55 in the General Superfund Section and 7 in the Federal Facilities Section. Final and proposed sites now total 1,289. (These numbers reflect the status of sites as of April 27, 2000. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

*C. What Did EPA Do With the Public Comments It Received?*

EPA reviewed all comments received on the sites in this rule. The Midnite Mine site was proposed on February 16, 1999 (64 FR 7564). The Intermountain Waste Oil Refinery site and the Leviathan Mine site were proposed on October 22, 1999 (64 FR 56992). The following sites were proposed on February 4, 2000 (65 FR 5435): Ouachita Nevada Wood Treater, Callaway & Son Drum Service, Landia Chemical Company, and Old Roosevelt Field Contaminated Ground Water Area.

For Ouachita Nevada Wood Treater, Callaway & Son Drum Service, Landia Chemical Company, and Old Roosevelt Field Contaminated Ground Water Area sites, EPA received no comments affecting the HRS scoring of these sites and therefore, EPA is placing them on the final NPL at this time.

EPA responded to all relevant comments received on the other sites. EPA's responses to site-specific public comments are addressed in the "Support Document for the Revised National Priorities List Final Rule—May 2000".

## IV. Executive Order 12866

*A. What Is Executive Order 12866?*

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

*B. Is This Final Rule Subject to Executive Order 12866 Review?*

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

## V. Unfunded Mandates

*A. What Is the Unfunded Mandates Reform Act (UMRA)?*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

*B. Does UMRA Apply to This Final Rule?*

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

## VI. Effect on Small Businesses

*A. What Is the Regulatory Flexibility Act?*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment

a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

*B. Does the Regulatory Flexibility Act Apply to This Final Rule?*

No. While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

## VII. Possible Changes to the Effective Date of the Rule

*A. Has This Rule Been Submitted to Congress and the General Accounting Office?*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*B. Could the Effective Date of This Final Rule Change?*

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

*C. What Could Cause the Effective Date of This Rule to Change?*

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

## VIII. National Technology Transfer and Advancement Act

*A. What Is the National Technology Transfer and Advancement Act?*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to

provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

*B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?*

No. This rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**IX. Executive Order 12898**

*A. What Is Executive Order 12898?*

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

*B. Does Executive Order 12898 Apply to This Final Rule?*

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

**X. Executive Order 13045**

*A. What Is Executive Order 13045?*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

*B. Does Executive Order 13045 Apply to This Final Rule?*

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

**XI. Paperwork Reduction Act**

*A. What Is the Paperwork Reduction Act?*

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

*B. Does the Paperwork Reduction Act Apply to This Final Rule?*

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

**XII. Executive Orders on Federalism**

*What Are the Executive Orders on Federalism and Are They Applicable to This Final Rule?*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

**XIII. Executive Order 13084**

*What Is Executive Order 13084 and Is It Applicable to This Final Rule?*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of

Executive Order 13084 do not apply to this rule.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: May 3, 2000.

**Timothy Fields, Jr.,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

40 CFR part 300 is amended as follows:

**PART 300—[AMENDED]**

1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E. O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 of Appendix B to Part 300 is amended by adding the following sites in alphabetical order to read as follows:

**Appendix B to Part 300—National Priorities List**

TABLE 1.—GENERAL SUPERFUND SECTION

| State | Site name | City/county | Notes (a) |
|---|---|---|---|
| * | * * * * * | * | * |
| AR | Ouachita Nevada Wood Treater | Reader. | |
| * | * * * * * | * | * |
| CA | Leviathan Mine | Alpine County. | |
| * | * * * * * | * | * |
| FL | Callaway & Son Drum Service | Lake Alfred. | |
| * | * * * * * | * | * |
| FL | Landia Chemical Company | Lakeland. | |
| * | * * * * * | * | * |
| NY | Old Roosevelt Field Contaminated Ground Water Area | Garden City. | |
| * | * * * * * | * | * |
| UT | Intermountain Waste Oil Refinery | Bountiful. | |
| * | * * * * * | * | * |
| WA | Midnite Mine | Wellpinit. | |
| * | * * * * * | * | * |

(a) A=Based on issuance of health advisory by Agency for Toxic Substance and Disease Registry (if scored, HRS score need not be ≤ 28.50).
C=Sites on construction completion list.
S=State top priority (included among the 100 top priority sites regardless of score).
P=Sites with partial deletion(s).

[FR Doc. 00–11562 Filed 5–10–00; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 300**

**[FRL–6603–2]**

## National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule No. 32

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This proposed rule proposes to add 14 new sites to the NPL. All of the sites are being proposed to the General Superfund Section of the NPL.

**DATES:** Comments regarding any of these proposed listings must be submitted (postmarked) on or before July 10, 2000.

**ADDRESSES:** By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; (Mail Code 5201G); 1200 Pennsylvania Avenue NW, Washington, DC 20460.

By Express Mail: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. Environmental Protection Agency; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, "Public Review/Public Comment," of the Supplementary Information portion of this preamble.

**FOR FURTHER INFORMATION CONTACT:** Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G); U.S. Environmental Protection Agency; 1200 Pennsylvania Avenue NW, Washington, DC 20460; or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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## I. Background

### *A. What Are CERCLA and SARA?*

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

### *B. What Is the NCP?*

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." "Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases (42 U.S.C. 9601(23)).

### *C. What Is the National Priorities List (NPL)?*

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or

contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund Section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities Section"). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

*D. How Are Sites Listed on the NPL?*

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on February 4, 2000 (65 FR 5435).

*E. What Happens to Sites on the NPL?*

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions. * * *" 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

*F. How Are Site Boundaries Defined?*

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the problem presented by the release" will be determined by a Remedial Investigation/Feasibility Study ("RI/FS") as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the

threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

*G. How Are Sites Removed From the NPL?*

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of April 27, 2000, the Agency has deleted 212 sites from the NPL.

*H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?*

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of April 27, 2000, EPA has deleted portions of 18 sites.

*I. What Is the Construction Completion List (CCL)?*

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

Of the 212 sites that have been deleted from the NPL, 203 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). As of April 27, 2000, there are a total of 685 sites on the CCL. This total includes the 212 deleted sites. For the most up-to-date information on the CCL, see EPA's Internet site at *http://www.epa.gov/superfund*.

## II. Public Review/Public Comment

*A. Can I Review the Documents Relevant to This Proposed Rule?*

Yes, documents that form the basis for EPA's evaluation and scoring of the sites in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Regional offices.

*B. How Do I Access the Documents?*

You may view the documents, by appointment only, in the Headquarters or the Regional dockets after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Regional dockets is as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HSC, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356.

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435.

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Joellen O'Neill, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 901 North 5th Street, Kansas City, KS 66101; 913/551–7224.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

Robert Phillips, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–110, Seattle, WA 98101; 206/553–6699.

You may also request copies from EPA Headquarters or the Regional dockets. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

*C. What Documents Are Available for Public Review at the Headquarters Docket?*

The Headquarters docket for this rule contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

*D. What Documents Are Available for Public Review at the Regional Dockets?*

The Regional dockets for this rule contain all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the sites. These reference documents are available only in the Regional dockets.

*E. How Do I Submit My Comments?*

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section. Please note that the addresses differ according to method of delivery. There are two different addresses that depend on whether comments are sent by express mail or by postal mail.

*F. What Happens to My Comments?*

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

*G. What Should I Consider When Preparing My Comments?*

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

*H. Can I Submit Comments After the Public Comment Period Is Over?*

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

*I. Can I View Public Comments Submitted by Others?*

During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

*J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?*

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

## III. Contents of This Proposed Rule

*A. Proposed Additions to the NPL*

With today's proposed rule, EPA is proposing to add 14 new sites to the NPL; all to the General Superfund Section of the NPL. (However, it should be noted that the Lower Darby Creek Area site in the Delaware and Philadelphia Counties of Pennsylvania, is located in part on federally owned land. There is no separate category for mixed-ownership sites, and the facts at this site are such that EPA believes it more appropriate to propose the site in the General Superfund Section of the NPL. In particular, the sources of contamination on the Federal portion of the site are few compared to the sources on private land, and contamination is not the result of the U.S. Department of Interior, which currently manages the Federal portion of the site. EPA emphasizes that the designation of a site in the Federal Facility Section or the General Superfund Section of the NPL has no legal significance and is purely informational in nature.)

The sites in this proposed rulemaking are being proposed based on HRS scores of 28.50 or above. The sites are presented in Table 1 which follows this preamble.

*B. Status of NPL*

A final rule published elsewhere in today's **Federal Register** finalizes 7 sites to the NPL; resulting in an NPL of 1,227 final sites; 1,068 in the General Superfund Section and 159 in the Federal Facilities Section. With this proposal of 14 new sites, there are now 62 sites proposed and awaiting final agency action, 55 in the General Superfund Section and 7 in the Federal Facilities Section. Final and proposed sites now total 1,289. (These numbers reflect the status of sites as of April 27, 2000. Site deletions occurring after this date may affect these numbers at time of publication in the **Federal Register**.)

*C. Amendments to Proposed Site Listings*

In today's proposed rule, EPA is also amending the proposed rules for two sites proposed to the NPL; the Indian Refinery-Texaco Lawrenceville site located in Lawrenceville, Illinois and the Smeltertown site in Salida, Colorado.

The Indian Refinery site was proposed to the NPL on July 28, 1998 (63 FR 40247) and EPA is amending the HRS documentation record by providing an addendum containing a revised rationale to the CERCLA petroleum exclusion. This addendum is provided in the EPA Headquarters and Region 5 Dockets.

The Smeltertown site was proposed to the NPL on February 7, 1992 (57 FR 4824) and EPA is amending the HRS documentation record by providing an addendum that excludes the CoZinCo facility (Operable Unit 3) from the scope of the listing. In accordance with EPA policy on deferral to the Resource Conservation and Recovery Act (RCRA) program (See e.g., 51 FR 21059 (June 10, 1986)), the Agency has deferred the CoZinCo facility to the Colorado Hazardous Waste Act (CHWA) program, which is an authorized State program under the RCRA. This addendum is provided in the EPA HQ and Region 8 dockets.

EPA will accept comments on both sites that are relevant to the information provided in the addendums to the documentation records for these proposals only. (See "Dates" section of this preamble for end date of the comment period.) EPA is not accepting comments on other aspects of the proposals that are not affected by the addendums. Please note that EPA has already accepted comments on the original HRS documentation records at the time the sites were proposed to the NPL.

## IV. Executive Order 12866

*A. What Is Executive Order 12866?*

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of

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recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

*B. Is This Proposed Rule Subject to Executive Order 12866 Review?*

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

**V. Unfunded Mandates**

*A. What Is the Unfunded Mandates Reform Act (UMRA)?*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

*B. Does UMRA Apply to This Proposed Rule?*

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

**VI. Effect on Small Businesses**

*A. What Is the Regulatory Flexibility Act?*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

*B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?*

No. While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

**VII. National Technology Transfer and Advancement Act**

*A. What Is the National Technology Transfer and Advancement Act?*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides

not to use available and applicable voluntary consensus standards.

*B. Does the National Technology Transfer and Advancement Act Apply to This Proposed Rule?*

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**VIII. Executive Order 12898**

*A. What Is Executive Order 12898?*

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

*B. Does Executive Order 12898 Apply to This Proposed Rule?*

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

**IX. Executive Order 13045**

*A. What Is Executive Order 13045?*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

*B. Does Executive Order 13045 Apply to This Proposed Rule?*

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this proposed rule present a disproportionate risk to children.

**X. Paperwork Reduction Act**

*A. What Is the Paperwork Reduction Act?*

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

*B. Does the Paperwork Reduction Act Apply to This Proposed Rule?*

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

**XI. Executive Orders on Federalism**

*What Are the Executive Orders on Federalism and Are They Applicable to This Proposed Rule?*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

**XII. Executive Order 13084**

*What Is Executive Order 13084 and Is It Applicable to This Proposed Rule?*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of

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Executive Order 13084 do not apply to this proposed rule.

TABLE 1.—NATIONAL PRIORITIES LIST PROPOSED RULE NO. 32, GENERAL SUPERFUND SECTION

| State | Site name | City/county |
|---|---|---|
| AL | Capitol City Plume | Montgomery. |
| CT | Scovill Industrial Landfill | Waterbury. |
| FL | Southern Solvents, Inc. | Tampa. |
| LA | Talen's Landing Bulk Plant | Grand Cheniere. |
| MS | Davis Timber Company | Hattiesburg. |
| MT | Lockwood Solvent Ground Water Plume | Billings. |
| NH | Mohawk Tannery | Nashua. |
| NM | Molycorp, Inc | Questa. |
| NY | Hudson Technologies, Inc. | Hillburn. |
| OK | Imperial Refining Company | Ardmore. |
| PA | Lower Darby Creek Area | Delaware and Philadelphia Counties. |
| SD | Gilt Edge Mine | Lead. |
| TX | Palmer Barge Line | Port Arthur. |
| WA | Hamilton/Labree Roads Ground Water Contamination | Chehalis. |

Number of Sites Proposed to General Superfund Section: 14.

**List of Subjects in 40 CFR Part 300**

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: May 3, 2000.

**Timothy Fields, Jr.,**

*Assistant Administrator, Office of Solid Waste and Emergency Response.*

[FR Doc. 00–11563 Filed 5–10–00; 8:45 am]

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Part III

# Department of Housing and Urban Development

**24 CFR Part 84**

**Adoption of Revisions to OMB Circular A–110; Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations; Interim Rule**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 84**

**[Docket No. FR–4573–I–01]**

**RIN 2501–AC68**

## Adoption of Revisions to OMB Circular A–110; Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

**AGENCY:** Office of the Secretary, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This interim rule revises HUD's regulations that implement the requirements of the Office of Management and Budget (OMB) Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." OMB issued a final revision to Circular A–110 on September 30, 1999, which was published on October 8, 1999. This interim rule will provide uniform administrative requirements for all grants and cooperative agreements to institutions of higher education, hospitals, and other non-profit organizations.

**DATES:** *Effective Date:* June 12, 2000.
*Comment Due Date:* July 10, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this interim rule to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–0500. Comments should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying during regular business hours (weekdays 7:30 a.m. to 5:30 p.m. Eastern time) at the above address. Facsimile (FAX) comments are not acceptable.

**FOR FURTHER INFORMATION CONTACT:** For general issues regarding this interim rule, please contact Charles Gale, Director, Office of Grants Management, Department of Health and Human Services at (202) 690–6377. For agency-specific issues, please contact William E. Dobrzykowski, Assistant Chief Financial Officer, (202) 708–1946. (This is not a toll-free number.) Hearing-impaired or speech-impaired individuals may access the voice telephone number listed above by calling the Federal Information Relay Service during working hours at 1–800–877–8339. The full text of OMB Circular A–110, the text of the September 30th notice of final revision, and a chart showing where each agency has codified the Circular into regulation may be obtained by accessing OMB's home page (http://www.whitehouse.gov/omb), under the heading "Grants Management."

**SUPPLEMENTARY INFORMATION:**

### Background

In the Fiscal Year 1999 appropriations for the Office of Management and Budget (Public Law 105–277) the Congress directed OMB to amend Circular A–110 (Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations) "to require Federal awarding agencies to ensure that all data produced under an award will be made available to the public through the procedures established under the Freedom of Information Act." The directed amendment also provides for a reasonable fee to cover the costs incurred in responding to a request.

In directing OMB to revise Circular A–110, Congress entrusted OMB with the authority to resolve statutory ambiguities, the obligation to address implementation issues the statute did not address, and the discretion to balance the need for public access to research data with protections of the research process. In developing the revision, OMB sought to implement the statutory language fairly, in the context of its legislative history. This required a balanced approach that (1) furthered the interest of the public in obtaining the information needed to validate Federally-funded research findings, (2) ensured that research can continue to be conducted in accordance with the traditional scientific process, and (3) implemented a public access process that will be workable in practice.

OMB finalized the revision on September 30, 1999 (64 FR 54926, October 8, 1999). Before publication of this final revision, OMB published a Notice of Proposed Revision on February 4, 1999 (64 FR 5684), and a request for comments on clarifying changes to the proposed revision on August 11, 1999 (64 FR 43786). OMB received over 9,000 comments on the proposed revision and over 3,000 comments on the clarifying changes.

This interim rule amends HUD's regulations that codify the requirements of Circular A–110 to reflect OMB's final revision to OMB Circular A–110.

### Findings and Certifications

*Environmental Impact*

This amendment is categorically excluded from review under the National Environmental Policy Act (42 U.S.C. 4321). In keeping with the exclusion provided for in 24 CFR 50.19(c)(1), this amendment does not direct, provide for assistance and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c), this amendment is categorically excluded because it amends an existing document where the existing document as a whole would not fall within the exclusion in 24 CFR 50.19(c)91), but the amendment by itself would do so.

*Regulatory Planning and Review*

The Office of Management and Budget has reviewed this rule under Executive Order 12866 (captioned "Regulatory Planning and Review") and determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m.) at the Office of the General Counsel, Rules Docket Clerk, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500.

*Regulatory Flexibility Act*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication and by approving it certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. This rule concerns the information pertaining to the award of Federal funds that must be provided in response to Freedom of Information Act requests.

*Federalism Impact*

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless

the relevant requirements of section 6 of the Executive Order are met. This interim rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

*Unfunded Mandates Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This interim rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

**List of Subjects in 24 CFR Part 84**

Accounting, Audit requirements, Colleges and universities, Grant programs—housing and community development, Loan programs—housing and community development, Non-profit organizations, Reporting and recordkeeping requirements.

Accordingly, part 84 of title 24 of the Code of Federal Regulations is amended as follows:

## PART 84—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS

1. The part heading for part 84 is revised to read as set forth above.

2. The authority citation for part 84 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d).

3. In § 84.36, paragraph (c) is revised, paragraph (d) is redesignated as paragraph (e), and a new paragraph (d) is added to read as follows:

**§ 84.36 Intangible property.**

* * * * *

(c) HUD has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for HUD purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by HUD in developing an agency action that has the force and effect of law, HUD shall request, and the recipient shall provide, within a reasonable time, the research data so that they can be made available to the public through the procedures established under the FOIA. If HUD obtains the research data solely in response to a FOIA request, HUD may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by HUD, the recipient, and applicable subrecipients. This fee is in addition to any fees HUD may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This "recorded" material excludes physical objects (e.g., laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) HUD publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by HUD in developing an agency action that has the force and effect of law* is defined as when HUD publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

* * * * *

Dated: April 18, 2000.

**Andrew Cuomo,**

*Secretary.*

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Part IV

# Department of Housing and Urban Development

**Fiscal Year 2000 Notice of Funding Availability for the Indian Housing Drug Elimination; Notices**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR–4574–N–01]**

## Fiscal Year 2000 Notice of Funding Availability for the Indian Housing Drug Elimination

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of Funding Availability (NOFA).

**SUMMARY:** *Purpose of the Program:* To provide grants to eliminate drugs and drug-related crime in American Indian and Alaskan Native communities.

*Available Funds:* Approximately $22,000,000 in FY 1999 ($11 million) and FY 2000 ($11 million) funds is being made available for Indian Housing Drug Elimination Program (IHDEP) grants.

*Eligible Applicants:* Indian Tribes and recipients of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA recipients).

*Application Deadline:* July 10, 2000.

*Match:* None.

**ADDITIONAL INFORMATION:** If you are interested in applying for funding under this program, please read the balance of this NOFA which will provide you with detailed information regarding the submission of an application, program requirements, the application selection process to be used by HUD in selecting applications for funding, and other valuable information relative to an application submission and participation in the program covered by this NOFA.

### I. Application Due Date, Submission Address, Application Kits, Further Information, and Technical Assistance

*Application Due Date:* July 10, 2000. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

(A) *Delivered Applications.* The application deadline for delivered applications under this NOFA is on or before 6 PM local time of the application due date.

(B) *Mailed Applications.* Applications will be considered timely filed if postmarked before midnight on the application due date and received by 6 PM local time within ten (10) days of that date.

(C) *Applications Sent By Overnight Delivery.* Overnight delivery items will be considered timely filed if received before or on the application due date by 6 PM local time, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

*Address For Submitting Applications.* Submit an original and two identical copies of the application by the application due date at the local Area Office of Native American Programs (AONAP) Attention: local HUD Administrator, Area Office of Native American Programs (AONAP). A list of local offices is attached as Appendix A to this NOFA.

*For Application Kits.* To receive a copy of the Indian Housing Drug Elimination Program application kit, please call the Public and Indian Housing Resource Center at 1–800–955–2232. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. When requesting an application kit, please refer to the Indian Housing Drug Elimination Program (IHDEP). Please provide your name, address, including zip code, and telephone number (including area code). The application kit contains information on all exhibits, forms, and certifications required for IHDEP.

*For Further Information and Technical Assistance.* Please call the local AONAPs with jurisdiction over your Tribe/tribally designated housing entity (TDHE) or HUD's Public and Indian Housing Resource Center at 1–800–955–2232 or Tracy C. Outlaw, National Office of Native American Programs (ONAP), Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1600 (these are not toll-free numbers). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. Also, please see ONAP's website at http://www.codetalk.fed.us.html where you will be able to download a copy of the IHDEP NOFA and application kit from the Internet.

### II. Amount Allocated

Approximately $22 million is being made available under this NOFA, of which approximately $11 million is from the FY 1999 HUD Appropriations Act (Pub.L. 105–276, approved October 21, 1998) and approximately $11 million is from the FY 2000 HUD Appropriations Act (Pub.L. 106–74, approved October 20, 1999).

### III. Program Description; Eligible Applicants; Eligible/Ineligible Activities

(A) *Program Description.* Funds are only available for Tribes and NAHASDA recipients to develop and finance drug and drug-related crime elimination efforts in their developments. You may use funds for enhancing security within your developments, making physical improvements to enhance security; and/or developing and implementing prevention, intervention and treatment programs to stop drug use in Indian housing communities.

(B) *Eligible Applicants.* Eligible applicants are only Indian Tribes (Tribes) and NAHASDA recipients. "NAHASDA recipient" means a recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), and has the same meaning as recipient provided in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*). "NAHASDA recipient" includes both Tribes and TDHEs. (A Tribe can apply either in its own name or through its TDHE. A TDHE cannot apply on behalf of a Tribe that is applying on its own behalf.) Resident Management Corporations (RMCs), incorporated Resident Councils (RCs) and Resident Organizations (ROs) are eligible for funding as sub-grantees. RMCs RCs, and ROs that were operating pursuant to 24 CFR part 950 are eligible for funding from Tribes or TDHEs as subgrantees to develop security and substance abuse prevention programs.

If you are a Tribe/TDHE that submitted a Public and Indian Housing Drug Elimination Program (PIHDEP) application under the February 26, 1999 PIHDEP NOFA, you do not need to submit another IHDEP application under this NOFA. This application will be considered complete unless you receive notification from the AONAP in your jurisdiction informing you of the technical deficiencies that must be corrected in order for your application to be considered eligible for review. However, because of the changes that are Native American specific to this FY 1999—2000 IHDEP NOFA, we strongly suggest that you update the application that you submitted by the new IHDEP deadline of July 10, 2000. Please be advised that the new IHDEP NOFA contains changes in the five rating factors for evaluating applications for award and in the grant award amounts. If you need specific information or data from the application that you submitted in response to the February 26, 1999 NOFA, please contact the appropriate AONAP in your jurisdiction to obtain the information that you need.

If you are a Tribe/TDHE that responded to the Notice Withdrawing and Reissuing the FY 1999 PIHDEP NOFA published on May 12, 1999 (64

FR 25746) that requested that applicants submit documents based on submission requirements in Section III, A. through F. of that Notice, you will need to submit the required information in the FY 1999–2000 IHDEP application kit which contains all of the required forms and certifications for this IHDEP NOFA.

(C) *Eligible/Ineligible Activities.* IHDEP grants may be used for seven types of activities including: (1) Physical improvements specifically designed to enhance security; (2) programs designed to reduce use of drugs in and around Indian housing developments including drug-abuse prevention, intervention, referral, and treatment; (3) funding for non-profit resident management corporations, Resident Councils (RCs), and Resident Organizations (ROs) to develop security and drug abuse prevention programs involving site residents; (4) employment of security personnel; (5) employment of personnel to investigate and provide evidence in administrative or judicial proceedings; (6) reimbursement of local law enforcement agencies for additional security and protective services; and (7) training, communications equipment, and related equipment for use by voluntary tenant patrols.

Following is a discussion by activity type of what can and cannot be funded and specific requirements or items that need to be discussed in your application if you are including that activity in your application.

(1) *Physical Improvements to Enhance Security.* (a) Physical improvements specifically designed to enhance security may include: installing barriers, speed bumps, lighting systems, fences, surveillance equipment (*e.g.,* Closed Circuit Television (CCTV), computers and software, fax machines, cameras, monitors, and supporting equipment), bolts, locks, and landscaping or reconfiguring common areas to discourage drug-related crime.

(i) All physical improvements must be accessible to persons with disabilities. For example, locks or buzzer systems that are not accessible to persons with restricted or impaired strength, mobility, or hearing may not be funded by IHDEP. Defensible space improvements must comply with civil rights requirements and cannot exclude or segregate people because of their race, color, or national origin from benefits, services, or other terms or conditions of housing. All physical improvements must meet the accessibility requirements of 24 CFR part 8 and the provisions found in section 504 of the Rehabilitation Act of 1973 and other relevant federal, State and local statutes that apply.

(ii) Funding is permitted for the purchase or lease of house trailers of any type that are not designated as a building if they are used for eligible community policing, educational programs for youth and adults, employment training facility, youth activities, and drug abuse treatment activities. A justification of purchase versus lease must be supported by your cost-benefit analysis.

(b) *Ineligible Improvements.* (i) Physical improvements that involve demolishing any units in a development.

(ii) Physical improvements that would displace persons are ineligible.

(iii) Acquiring real property.

(2) *Programs to Reduce Drug Use (Prevention, Intervention, Treatment, Structured Aftercare and Support Systems).* (a) *General Requirements and Strategies.* HUD is looking for you to structure your substance abuse prevention, intervention, treatment, and aftercare program using a "continuum of care" approach. A "continuum of care" approach includes not just treating the addiction or dependency but also providing aftercare, mentoring, and support services such as day care, family counseling, education, training, employment development opportunities, and other activities.

You must develop a substance abuse/sobriety (remission)/treatment (dependency) strategy to adequately plan your substance abuse prevention, intervention, treatment, and structured aftercare efforts. In many cases, you may want to include education, training, and employment opportunities for residents. When undertaking these activities, you should be leveraging your IHDEP resources with other Federal, State, local and Tribal resources. For example, your application may propose providing space and other infrastructure for these efforts with other tribal agencies providing staff and other resources at limited or no cost. Your application should also discuss how your strategy incorporates existing community resources and how they will be used in your program. The strategy should also document how community resources will be provided on-site, or how participants will be referred and transported to treatment programs that are not on-site.

A community-based approach also requires you to develop a culturally appropriate strategy. Curricula, activities, and staff should address the cultural issues of the local community, which requires your application to indicate your familiarity and facility with the language and cultural norms of the community. As applicable, your strategy should discuss cultural competencies associated specifically with your Native American or Alaskan Native community.

Your activities should focus resources directly to tribal residents and families.

For all activities involving education, training and employment, you should demonstrate efforts to coordinate with Federal, Tribal, State and local employment training and development services, including "welfare to work" efforts.

The current Diagnostic and Statistical Manual (DSM) of Mental Disorders of the American Psychiatric Association dated May 1994, contains information on substance abuse, dependency and structured aftercare. For more information about this reference, contact: APPI, 1400 K. Street, NW, Suite 1100, Washington, DC 20005 on 1(800) 368–5777 or World Wide Web site at http:www.appi.org.

Eligible activities may include:

(i) Substance abuse prevention, intervention, and referral programs;

(ii) Programs of local social, faith-based and/or other organizations that provide treatment services (contractual or otherwise) for dependency/remission; and

(iii) Structured aftercare/support system programs.

(b) *Activities must be in the "Indian area".* IHDEP funding is permitted for programs that reduce/eliminate drug-related crime in the "Indian area" as defined in 24 CFR 1000.10 of the NAHASDA regulations as the area in which an Indian tribe operates affordable housing programs or the area in which a TDHE is authorized by one or more Indian tribes to operate affordable housing programs.

(c) *Eligible cost.* (i) Funding is permitted for reasonable, necessary, and justified purchasing or leasing (whichever is documented as the most cost effective) of vehicles for transporting adult and youth residents for education, job training, and off-site treatment programs directly related to reducing drugs and drug-related crime. The cost reasonableness can be determined by a comparison of the number of participants in and anticipated costs of these programs compared to the purchase or lease cost of the vehicles. If these costs are included in your application, you must include a description of why the expenses are necessary. Under no circumstances are these vehicles to be used for other than their intended purpose under your grant.

(ii) Funding is permitted for reasonable, necessary and justified program costs, such as meals and

beverages incurred only for training, education and employment activities, including provisions for daycare and youth services directly related to reducing drugs and drug-related crime. Refer to Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local and Indian Tribal Governments.

(d) *Prevention.* Prevention programs must demonstrate that they will provide directly, or otherwise make available, services designed to distribute substance/drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services including daycare in the housing development or the community for tribal residents and families.

Prevention programs should provide a comprehensive prevention approach for residents that address the individual resident and his or her relationship to family, peers, and the community. Your prevention programs activities should identify and change the causal factors present in tribal communities that lead to drug-related crime thereby lowering the risk of drug usage. Many components of a comprehensive approach, including refusal and restraint skills training programs or drug, substance abuse/dependency and family counseling, and daycare may already be available in the tribal community developments and should be included to the maximum extent possible in your proposed program of activities.

The following eligible activities under a prevention program are discussed in more detail below: educational opportunities; family and other support services including daycare; youth services; and economic and educational opportunities for resident adult and youth activities.

(i) *Educational Opportunities.* The causes and effects of illegal drug/substance abuse must be discussed in a culturally appropriate and structured setting. You may contract (in accordance with 24 CFR 85.36) to provide such knowledge and skills through training programs. The professionals contracted to provide these services are required to base their services on your needs assessment and program plan. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of tribal housing residents.

(ii) *Family and Other Support Services.* "Supportive services" are services that allow families to have access to prevention, educational and employment opportunities. Supportive services may include: child care; employment training; computer skills training; remedial education; substance abuse counseling; help in getting a high school equivalency certificate; and other services to reduce drug-related crime.

(iii) *Youth Services.* Proposed youth prevention programs must demonstrate that they have included groups composed of young people ages 8 through 18. Your youth prevention activities should be coordinated by adults but have tribal youth actively involved in organizing youth leadership, sports, recreational, cultural and other activities. Eligible youth services may include: youth sports; youth leadership skills training; cultural and recreational activities/camps; youth entrepreneurship; negotiation, mediation/peacemaking; and cross-cultural communication. These youth services provide an alternative to drugs and drug-related criminal activity for Native American youth. Youth leadership skills training may include training in leadership, peer pressure reversal, resistance or refusal skills, life skills, goal planning, parenting skills, youth entrepreneurship; negotiation, mediation/peacemaking; and cross-cultural communication and other relevant topics. Youth leadership training should be designed to place youth in leadership roles including: mentors to younger program participants, assistant coaches, managers, and team captains. Cultural and recreational activities may include ethnic heritage classes, art, dance, drama and music appreciation.

The following are eligible youth services expenses:

(*1*) Salaries and expenses for staff for youth sports programs and cultural activities and leadership training;

(*2*) Sports and recreation equipment to be used by participants;

(*3*) Funding for non-profit subgrantees that provide scheduled organized sports competitions, cultural, educational, recreational or other activities, including but not limited to: United National Indian Tribal Youth, Inc. (UNITY); Wings of America, Native American Sports Council, Boys and Girls Clubs, YMCAs, YWCAs, the Inner City Games, Association of Midnight Basketball Leagues.

(*4*) Liability insurance costs for youth sports activities.

(iv) *Economic and Educational Opportunities for Resident Adult and Youth.* Your proposed economic and educational activities must provide residents opportunities for interaction with, or referral to, established higher education, vocational institutions -and/or private sector businesses in the immediate surrounding communities with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals and become self-sufficient.

You should discuss your economic and educational opportunities for residents and youth activities in the context of "welfare to work" and related Federal, Tribal, State and local government efforts for employment training, education and employment opportunities related to the goals of "welfare to work." Establishing or referring adults and youths to computer learning centers, employment service centers (coordinated with Federal, Tribal, State and local employment offices), and micro-business centers are eligible activities. Funding is permitted for the purchase or lease of house trailers if they are used for the activities listed above and as specified in Section C.(1)(ii) of this NOFA.

Limited educational scholarships are permitted under this section. No one individual award may exceed $500, and there is a total maximum scholarship program cap of $10,000. Educational scholarship IHDEP funds must be obligated and expended during the term of your IHDEP grant which is (24) twenty-four months. You must demonstrate in your plan and timetable the scholarship strategy; the financial and management controls that will be used; and projected outcomes.

(e) *Intervention.* The aim of intervention is to identify or detect residents with substance abuse issues, assist them in modifying their behavior, and in getting early treatment, and structured aftercare.

(f) *Substance Abuse/Dependency Treatment.* (1) Treatment funded under this program should be "in and around" the premises of the housing authority/development(s) you proposed for funding. In undertaking substance abuse/dependency treatment programs, you must establish a confidentiality policy regarding medical and disability related information.

(i) Funds awarded for substance abuse/dependency treatment must be targeted towards developing and implementing, or expanding and improving sobriety maintenance, substance-free maintenance support groups, substance abuse counseling, referral treatment services, and short or long range structured aftercare for residents.

(ii) Your proposed drug program must address the following goals for residents:

(*1*) Increasing accessibility of treatment services;

(*2*) Decreasing drug-related crime "in and around" your tribal development(s)

by reducing and/or eliminating drug use; and

(3) Providing services designed for youth and/or adult drug abusers and recovering addicts (*e.g.*, prenatal and postpartum care, specialized family and parental counseling, parenting classes, domestic or youth violence counseling).

(iii) You must discuss in your overall strategy the following factors:

(1) Formal referral arrangements to other treatment programs in cases where the resident is able to obtain treatment costs from sources other than this program.

(2) Family/youth counseling.

(3) Linkages to educational and vocational training and employment counseling.

(4) Coordination of services from and to appropriate local substance abuse/treatment agencies, HIV-related service agencies, mental health and public health programs.

(iv) As applicable, you must demonstrate a working partnership with the Single State Agency or local, Tribal or State license provider or authority with substance abuse program(s) coordination responsibilities to coordinate, develop and implement your substance dependency treatment proposal.

(v) You must demonstrate that counselors (contractual or otherwise) meet Federal, State, Tribal, and local government licensing, bonding, training, certification and continuing training re-certification requirements.

(vi) You must get certification from the Single State Agency or tribal agency with substance abuse and dependency programs coordination responsibilities so that your proposed program is consistent with the tribal plan; and that the service(s) meets all Federal, State, Tribal and local government medical licensing, training, bonding, and certification requirements.

(vii) Funding is permitted for drug treatment of tribal residents at local in-patient medical treatment programs and facilities. IHDEP funding for structured in-patient drug treatment using IHDEP funds is limited to 60 days, and structured drug out-patient treatment, which includes individual/family aftercare, is limited to 6 months. If you are undertaking drug treatment programs, your proposal must demonstrate how individuals that complete drug treatment will be provided employment training, education and employment opportunities.

(viii) Funding is permitted for detoxification procedures designed to reduce or eliminate the short-term presence of toxic substances in the body tissues of a patient.

(ix) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a short/long period of supportive therapy (*e.g.* methadone maintenance), rather than for immediate control of a disorder.

(3) *Resident Management Corporations (RMCs), Resident Councils (RCs), and Resident Organizations (ROs) Programs.* RMCs, and incorporated RCs and ROs, may be a subcontractor to their Tribe/TDHE, to develop security and substance abuse prevention programs for residents. Such programs may include voluntary tenant patrol activities, substance abuse education, intervention, and referral programs, youth programs, and outreach efforts. The elimination of drug-related crime within the tribal community must have the active involvement and commitment of tribal residents and their organizations.

To enhance the ability of Tribes/TDHEs, to combat drug-related crime within their developments, RCs, RMCs, and ROs may undertake program management functions. Sub-contracts with the RMC/RC/RO must include the amount of funding, applicable terms, conditions, financial controls, payment mechanism schedule, performance and financial report requirements, special conditions, including sanctions for violating the agreement, and monitoring requirements.

Costs must not be incurred until a written contract is executed.

(4) *Employment of Tribal Security Personnel.* You may employ tribal security personnel. You are encouraged to involve police officials residing in tribal housing to partake in IHDEP security-related programs. The following specific requirements apply to all employment of security personnel activities funded under IHDEP:

(a) *Compliance.* Security guard personnel tribal police departments must meet and demonstrate compliance with, all relevant Federal, State, Tribal or local government insurance, licensing, certification, training, bonding, or other law enforcement requirements.

(b) *Law Enforcement Service Agreement.* You must enter into a law enforcement service agreement with the local law enforcement agency and if applicable, the contract provider of security. Your service agreement must include:

(i) The activities security guard personnel or the tribal police department will perform; the scope of authority; written policies, procedures, and practices that will govern security personnel or tribal police department performance (*i.e.*, a policy manual and how security guard personnel or the tribal police department shall coordinate activities with your local law enforcement agency);

(ii) The types of activities that your approved security guard personnel or the tribal police department are expressly prohibited from undertaking.

(c) *Policy Manual.* Security guard personnel services and tribal police departments must be guided by a policy manual that directs the activities of its personnel and contains the policies, procedures, and general orders that regulate conduct and describes in detail how jobs are to be performed. The policy manual must exist before HUD will execute your grant agreement. To comply with State police department standards and/or Commission on Accreditation Law Enforcement Agencies (CALEA), you must also ensure all security guard personnel and tribal police officers are trained in the following areas. These areas must also be covered in your policy manual:

(i) Use of force;

(ii) Resident contacts;

(iii) Enforcement of HA rules;

(iv) Training in sex discrimination and sexual harassment;

(v) Training in civil rights;

(vi) Training in racial tolerance and diversity;

(vii) Response criteria to calls;

(viii) Pursuits;

(ix) Arrest procedures;

(x) Reporting of crimes and workload;

(xi) Feedback procedures to victims;

(xii) Citizens' complaint procedures;

(xiii) Internal affairs investigations;

(xiv) Towing of vehicles;

(xv) Authorized weapons and other equipment;

(xvi) Radio procedures internally and with local police;

(xvii) Training requirements;

(xviii) Patrol procedures;

(xix) Scheduling of meetings with residents;

(xx) Reports to be completed;

(xxi) Record keeping and position descriptions on all personnel;

(xxii) Post assignments;

(xxiii) Monitoring;

(xxiv) Self-evaluation program requirements;and

(xxv) First aid training.

(d) *Data Management.* A daily activity and incident complaint form approved by the Tribe/TDHE must be used by security personnel and officers for the collection and analysis of criminal incidents and responses to service calls. Security guard personnel and tribal police departments must establish and

maintain a system of records management for the daily activity and incident complaint forms that appropriately ensures the confidentially of personal criminal information. Management Information Systems (MIS) (computers, software, and associated equipment) are eligible costs that the Tribe/TDHE may include in support of collection and analysis activities.

(5) *Security Personnel Services.* Contracting for, or direct tribal police department employment of, security personnel services in and around housing development(s) is permitted under this program. However, contracts for security personnel services must be awarded on a competitive basis.

(a) *Eligible Services—Over and Above.* Security guard personnel funded by this program must perform services that are over and above those usually performed by local municipal law enforcement agencies on a routine basis. Eligible services may include patrolling inside buildings, providing personnel services at building entrances to check for proper identification, or patrolling and checking car parking lots for appropriate parking decals.

(b) *Employment of Residents.* HUD encourages you to employ qualified resident(s) as security guard personnel, and/or to contract with security guard personnel firms that demonstrate a program to employ qualified residents as security guard personnel.

(c) If you are an applicant seeking funding for this activity, you must describe the current level of local law enforcement agency baseline services being provided to the tribal development(s) proposed for assistance. Local law enforcement baseline services are defined as ordinary and routine services provided to the residents as part of the overall city and/or county-wide deployment of police resources to respond to crime and other public safety incidents including: 911 communications, processing calls for service, routine patrol officer responses to calls for service, and investigative follow-up of criminal activity.

(d) If you are requesting funding for tribal police department officers, you must have car-to-car (or other vehicles) and portable-to-portable radio communications links between tribal police officers and local law enforcement officers to assure a coordinated and safe response to crimes or calls for services. The use of scanners (radio monitors) is not sufficient to meet the requirements of this section. If you do not have such links you must submit a plan and timetable for the implementation of such communications links.

(e) Community policing under IHDEP is defined as a method of providing law enforcement services partnership among residents, police, schools, churches, government services, the private sector, and other local, State, Tribal, and Federal law enforcement agencies to prevent crime and improve the quality of life by addressing the conditions and problems that lead to crime and fear of crime. Community policing uses proactive measures including foot patrols, bicycle patrols, and motor scooter patrols. It also includes activities where police officers operate out of police mini-stations, and other community-based facilities in tribal communities providing human resource activities with youth, and citizen contacts. This concept empowers police officers at the beat and zone level and residents in neighborhoods to:

(i) Reduce crime and fear of crime;

(ii) Ensure the maintenance of order;

(iii) Provide referrals of residents, victims, and homeless persons to social services and government agencies;

(iv) Ensure feedback of police actions to victims of crime; and

(v) Promote a law enforcement value system based on the needs and rights of residents.

(6) *Reimbursement of Local Law Enforcement Agencies for Additional (Supplemental—Over and Above Local Law Enforcement Baseline Services) Security and Protective Services.* Additional security and protective services are permitted if services are over and above the local police department's current level of baseline services. Tribes and TDHEs are required to identify the level of local law enforcement services received and the increased level of services to be received in their local Cooperation Agreement.

(7) *Employment of Investigators.* Employment of, and equipment for, one or more individuals to investigate drug-related crime "in and around" the real property comprising your development(s) and providing evidence relating to such crime in any administrative or judicial proceedings is permitted. Under this section, reimbursable costs associated with the investigation of drug-related crimes (*e.g.*, travel directly related to the investigator's activities, or costs associated with the investigator's testimony at judicial or administrative proceedings) may only be those directly incurred by the investigator.

(a) If you are a tribe/TDHE that employs investigators funded by this program, you must demonstrate compliance with all relevant Federal, Tribal, State or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(b) Both you and the provider of the investigative services are required to execute a written agreement that describes the following:

(i) The activities that your investigators will perform, their scope of authority, reports to be completed, established investigative policies, procedures, and practices that will govern their performance (*i.e.*, a Policy Manual) and how your investigators will coordinate their activities with local, State, Tribal, and Federal law enforcement agencies; and prohibited activities.

(ii) The activities the Tribal investigators are expressly prohibited from undertaking.

(c) Your investigator(s) may use IHDEP funds to purchase or lease any law enforcement clothing or equipment, such as vehicles, uniforms, ammunition, firearms/weapons, or vehicles; including cars, vans, buses, protective vests, and any other supportive equipment.

(d) Your investigator(s) shall report on drug-related crime in your developments. You must establish, implement and maintain a system of records management that ensures confidentiality of criminal records and information. Tribal-approved activity forms must be used for collection, analysis and reporting of activities by your investigators. You are encouraged to develop and use Management Information Systems (MIS) (computers, software, hardware, and associated equipment) and hire management personnel for crime and workload reporting in support of your crime prevention and security activities.

(8) *Voluntary Tenant Patrols.* Members of tenant patrols must be volunteers and must be residents of the tribal development(s). Volunteers must have extensive background investigations to ensure there are no outstanding warrants or arrest records for past crimes, especially crimes against children. Voluntary tenant patrols are expected to patrol in your development(s) proposed for assistance, and to report illegal activities to appropriate local, State, Tribal, and Federal law enforcement agencies, as appropriate.

(a) Training equipment, including uniforms for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted. All costs must be reasonable, necessary and justified. Bicycles, motor scooters, all season uniforms and associated equipment to be used, exclusively, by the members of

your voluntary tenant patrol are eligible items. Voluntary tenant patrol uniforms and equipment must be identified with your specific tribal development(s) identification and markings.

(b) Tribes/TDHEs are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this program. The cost of this insurance is eligible.

(c) If you are funding voluntary tenant patrol activities, you, your local law enforcement agency, and the tenant patrol, before expending grant funds, are required to execute a written agreement that includes:

(i) The nature of the activities to be performed by your voluntary tenant patrol, the patrol's scope of authority, assignment, policies, procedures, and practices that will govern the voluntary tenant patrol's performance and how the patrol will coordinate its activities with the law enforcement agency;

(ii) The activities the voluntary tenant patrol is expressly prohibited from undertaking and that the carrying or use of firearms, weapons, nightsticks, clubs, handcuffs, or mace is prohibited;

(iii) Required initial and on-going voluntary tenant patrol training members will receive from the local law enforcement agency; (please note that training by HUD-approved trainers and/or the local law enforcement agency is required before putting a voluntary tenant patrol into effect); and

(iv) Voluntary tenant patrol members will be subject to individual or collective liability for any actions undertaken outside the scope of their authority (described in paragraph (ii) above) and that such acts are not covered under your housing authority liability insurance.

(d) IHDEP grant funds must not be used for any type of financial compensation, such as full-time wages or salaries for voluntary tenant and/or patrol participants. Funding for tribe/TDHE personnel or resident(s) to be hired to coordinate this activity is permitted. Excessive staffing is not permitted.

(9) *Evaluation of IHDEP Activities.* Funding is permitted to contractually hire organizations and/or consultant(s) to conduct an independent assessment and evaluation of the effectiveness of your IHDEP program.

(D) *Ineligible Activities.* IHDEP funding *is not permitted* for any of the activities listed below.

(1) Costs incurred before the effective date of your grant agreement (Form HUD–1044), including, but not limited to, consultant fees related to the development of your application or the actual writing of your application.

(2) The purchase of controlled substances for any purpose. Controlled substance shall have the meaning provided in section 102 of the Controlled Substance Act (21 U.S.C. 802).

(3) Compensation of informants, including confidential informants. These should be part of the baseline services provided and budgeted by local law enforcement agencies.

(4) Direct purchase or lease of clothing or equipment, vehicles (including cars, vans, and buses), uniforms, ammunition, firearms/weapons, protective vests, and any other supportive equipment for use in law enforcement or military enforcement except for eligible tribal police department and investigator activities listed in this NOFA.

(5) Construction of facility space in a building or unit, and the costs of retrofitting/modifying existing buildings owned by the tribe/TDHE for purposes other than: community policing mini-station operations, adult/youth education, employment training facilities, and drug abuse treatment activities.

(6) Organized fund raising, advertising, financial campaigns, endowment drives, solicitation of gifts and bequests, rallies, marches, community celebrations, stipends and similar expenses.

(7) Court costs and attorneys fees related to screening or evicting residents for drug-related crime are not allowable.

(8) IHDEP grant funds cannot be transferred to any Federal agency.

(9) Costs to establish councils, resident associations, resident organizations, and resident corporations are not allowable.

(10) Indirect costs are not allowable.

(11) Supplant existing positions/activities. For purposes of the IHDEP, supplanting is defined as "taking the place of or to supersede".

(12) Alcohol-exclusive activities and programs are not eligible for funding under this NOFA, although activities and programs may address situations of multiple abuse involving controlled substances and alcohol.

## IV. Program Requirements

The following requirements apply to IHDEP funding:

(A) *Grant Award Amounts.* HUD is distributing grant funds for IHDEP under this NOFA on a national competition basis. The maximum grant award amounts are computed for IHDEP on a sliding scale, using an overall maximum cap, depending upon the number of Tribe/TDHE units eligible for funding. This figure (number of eligible units for funding) will determine the grant amount that the Tribe/TDHE is eligible to receive if they meet the IHDEP criteria and score a minimum of 70 out of 105 points.

(1) *Amount per unit.* (a) For tribes/TDHEs with 1–1,250 units: The maximum grant award cap is $600 multiplied by the number of eligible units.

(b) For tribes/TDHEs with 1,251 or more units: The maximum grant award cap is $520 multiplied by the number of eligible units; up to, but not to exceed, a maximum grant award of $3 million dollars.

(2) *Units counted.* (a) The unit count includes rental, Turnkey III and Mutual Help Homeownership units which have not been conveyed to a homebuyer, and Section 23 lease housing bond-financed projects. Such units must be counted as Formula Current Assisted Stock under the Indian Housing Block Grant Program.

(b) Eligible units are those units which are under management and fully developed.

(c) Use the number of units counted as Formula Current Assisted Stock for Fiscal Year 2000 as defined in 24 CFR 1000.316. Please verify your Formula Current Assisted Stock figures with your local AONAP for accuracy.

(d) Units that are developed or assisted under NAHASDA are not included in the unit count outlined above, however, they are eligible to receive assistance under the IHDEP.

(B) *Complying with Civil Rights Requirements.* To protect and insure the civil rights of occupants of HUD-sponsored housing and residents around that housing, your proposed strategies should ensure that you do not undertake crime-fighting and drug prevention activities that violate civil rights and fair housing statutes. You may not use race, color, sex, religion, national origin, disability or familial status to profile persons as suspects or otherwise target them in conducting these activities. You are encouraged to involve as many segments of your intended population as possible in developing and implementing your strategies.

(C) *Confidentiality of Records Requirements.* You must establish a confidentiality policy regarding medical and disability-related information for programs involving prevention, intervention, or substance abuse/dependency treatment and aftercare.

(D) *Commingling of Funds.* Tribes or TDHEs must not commingle funds of multiple HUD programs including: Economic Development and Supportive

Services (EDSS); Tenant Opportunity Program (TOP); Indian Housing Block Grant (IHBG); and Family Investment Center (FIC). In Fiscal Year 2000, funding for EDSS and TOP activities was replaced by the new Resident Opportunities and Self-Sufficiency (ROSS) Program. The first ROSS notice of funding availability was published as part of HUD's SuperNOFA, published on February 24, 2000. (See 65 FR 9322 at 9697.)

(E) *Term of Grant.* Your grant funds must be expended within 24 months after HUD executes a Grant Agreement. There will be no extensions of this grant term and at the end of the grant term all unspent funds will be returned to HUD.

(F) *Reports and Close-out.* (1) In accordance with 24 CFR 761.35, if funded, you are required to submit semiannually a IHDEP Semi-Annual Performance Report and the Semi-Annual Financial Status Report (SF–269A) to the appropriate HUD AONAP. These IHDEP Semi-Annual Performance Reports shall cover the periods ending June 30 and December 31, and must be submitted to HUD by July 30 and January 31 of each year.

(2) At grant completion, you must comply with the close-out requirements described in Public Housing Notice PIH 98–60(HA), entitled "Grant Close-out Procedures," and by the end of the grant term, return unexpended grant funds to the Department, according to applicable requirements.

**V. Application Selection Process**

(A) *Rating and Ranking.* (1) *General.* HUD will rate and rank applications based on the 5 rating factors listed in Section V. (B) of this NOFA, below. HUD will select and fund the highest ranking applications based on total score, and continue the process until all funds allocated to it have been awarded or to the point where there are insufficient acceptable applications to award funds. The maximum number of points for this program is 105.

(2) *Tiebreakers.* In the event of a tie, HUD will select the highest ranking application that can be fully funded. In the event that two eligible applications receive the same score, and both cannot be funded because of insufficient funds, the applicant with the highest score in rating factor two will be funded. If rating factor two is scored identically, the scores in rating factors one and four will be compared in that order, until one of the applications receives a higher score. If both applications still score the same then the application which requests the least funding will be selected in order to promote the more efficient use of resources.

(B) *Factors For Award to Evaluate and Rank Applications.* Your application must address the five (5) factors, and subfactors listed below. The maximum number of points for this program is 105. Your application must receive a score of at least 70 points to be eligible for funding.

*Rating Factor 1: Capacity of the Applicant and Relevant Organizational Experience (20 Points)*

This factor addresses the extent to which you have the capacity, the proper organizational experience and resources to implement the proposed activities in a timely and effective manner. The rating of the "applicant" or the "applicant's organization and staff" for technical merit, unless otherwise specified, includes any subcontractors, consultants, subrecipients, and members of consortia which are firmly committed to your project. In rating this factor, HUD will consider the following:

(1) (10 points) The knowledge and experience of your staff and your administrative capability to manage grants of this size and type. This includes your administrative support and procurement entities, defined organizational lines of authority, and demonstrated fiscal management capacity.

(2) (10 points) Past performance in administering Drug Elimination grants and/or other Federal, state or local grants of similar size and complexity during the last three (3) years.

You must identify your participation in HUD grant programs within the last three years and discuss the degree of your success in implementing planned activities, achieving program goals and objectives, timely drawdown of funds, timely submission of required reports with satisfactory outcomes within budget and schedule, audit compliance, whether there are, and the extent of any, unresolved findings and/or outstanding recommendations from prior HUD reviews or audits undertaken by HUD, HUD-Office of Inspector General, the General Accounting Office (GAO) or independent public accountants (IPAs). For tribes/TDHEs that had previously applied as IHAs, HUD will consider the results of: agency monitoring of records, Line of Credit Control System Reports (LOCCS) on the status of prior grants, audits and other relevant information available to HUD on your capacity to undertake this grant.

*Rating Factor 2: Need/Extent of the Problem (30 Points)*

This factor examines the extent to which there is a need for funding the proposed program activities to address a documented problem in your proposed target area (*i.e.*, the degree of the severity of the drug-related crime problem in the project proposed for funding). In responding to this factor, you will be evaluated on: (1) The extent to which a critical level of need for your proposed activities is explained; and (2) the urgency of meeting the need in the target area. You must include in your response a description of the extent and nature of drug-related crime "in or around" the housing units or developments proposed for funding.

Applicants will be evaluated on the following:

(1) (15 points) "Objective Crime Data" relevant to your target area. To the extent that you can provide objective drug-related crime data specific to the community or targeted development proposed for funding, you will be awarded up to 15 points or up to a total of 5 points if substantial information is provided as to why Objective Crime Data could not be obtained. Objective crime data must include the most current and specific Part I Crime data and relevant Part II Crime data available from the FBI's Uniform Crime Reporting Program (UCR) system or the local law enforcement's crime statistics. Part I Crimes include: homicide; rape; robbery; aggravated assault; burglary; larceny; auto theft; and arson. Part II drug-related crimes include: drug abuse violations; simple assault; vandalism; weapons violations; and other crimes which you are proposing to be targeted as part of your grant. In assessing this subfactor, HUD will consider the extent of specificity that the statistical data is provided and the data's specificity to the targeted sites (*e.g.*, data specific to those targeted developments proposed for funding by Part I crime type versus tribe/TDHE-wide data by aggregated Part I crimes).

The objective crime data provided in your application will become a "baseline" against which the success of your grant activities will be measured if funded. If you did not provide objective crime data, please provide information as to why objective crime data could not be obtained; the efforts being made to obtain it; what efforts will be made during the grant period to begin obtaining the data; and an explanation of how you plan to measure how grant activities will result in reducing drug-related crime in the targeted developments and what will be used as a baseline.

(2) (15 Points) *Other Data Supporting the extent of Drug and Drug-related Crime.* You must identify supporting data indicating the extent of drugs and drug-related crime problems in the

developments proposed for assistance under your program. HUD will consider the extent and quality of the data provided. Examples of the data include:

(a) Surveys of residents and staff in your targeted developments about drugs and drug-related crime or on-site reviews to determine drug/crime activity;

(b) Government or scholarly studies or other research in the past year that analyze drug-related crime activity in your targeted developments.

(c) Annual vandalism cost at your targeted developments, to include elevator vandalism (where appropriate) and other vandalism attributable to drug-related crime as a ratio to total annual approved budget for the targeted developments.

(d) Information from schools, health service providers, residents and Federal, State, local, and Tribal officials, and the verifiable opinions and observations of individuals having direct knowledge of drug-related crime and the nature and frequency of these problems in developments proposed for assistance. (These individuals may include Federal, State, Tribal, and local government law enforcement officials, resident or community leaders, school officials, community medical officials, substance abuse, treatment (dependency/remission) or counseling professionals, or other social service providers).

(e) The school dropout rate and level of absenteeism for youth that you can relate to drug-related crime as a percentage or ratio of the rate outside the area.

(f) The number of lease terminations or evictions for drug-related crime at the targeted developments; and

(g) The number of emergency room admissions for drug use or that result from drug-related crime. Such information may be obtained from police departments and/or fire departments, emergency medical service agencies and hospitals.

(h) The number of police calls for service from tribe/TDHE developments that include resident initiated calls, officer-initiated calls, domestic violence calls, drug distribution complaints, found drug paraphernalia, gang activity, graffiti that reflects drugs or gang-related activity, vandalism, drug arrests, and abandoned vehicles.

*Rating Factor 3: Soundness of Approach—(Quality of the Plan) (35 Points)*

This factor examines the quality and effectiveness of your proposed work plan. In rating this factor, HUD will consider the impact of your activities on the drug and drug-related crime problems identified in Factor 2 and the extent to which you identify attainable goals, objectives, and performance measures to ensure that; tangible benefits can be attained by the community and by your target population.

Your application must include a detailed narrative describing: each proposed activity for your developments proposed for assistance; the amount and extent of resources committed to each activity or service proposed; measurable goals and objectives for all major program activities that focus on outcome and results; and the process used to collect the data needed to report progress made against these goals.

In evaluating this factor, HUD will consider the following:

(1) The strength of your plan to address the drug-related crime problem, and the problems associated with drug-related crime in your developments proposed for funding, the resources allocated, and how well the proposed activities fit with the plan, including:

(a) The extent to which you have stated:

(i) Performance goals that will measure program outcomes;

(ii) The actual baseline data which will establish a starting point against which program outcomes will be measured and stated expected results for all major grant activities proposed in your application; What performance measurement system exists for providing information to HUD semi-annually on progress made in achieving the established outcome goals.

(b) The extent to which you have designed your major activities to meet stated, measurable goals and objectives for drug and drug-related crime reduction. Outcomes include accomplishments, results, impact, and the ultimate effects of your program on the drug or crime problem in your target/project area. The goals must be objective, quantifiable, and/or qualitative and they must be stated in such a way that at the end of the 24 month grant, one can determine if the activities were effective.

(c) The extent to which you define specific crime reduction goals that are measurable. For example, "eliminating or reducing crime and drug-related crime" is not a specific nor measurable goal, whereas a goal of, "reducing Part 1 reported homicides or Part II drug abuse, *etc.* by 5% in development X by the end of the 24 month grant period based on measurements against the baseline year crime selection rate in the targeted development X as stated in the application," is specific and measurable.

(d) The rationale for your proposed activities and methods used including evidence that proposed activities have been effective in similar circumstances in controlling drug-related crime.

(e) Provide evidence of existing youth programs and activities that reduce substance abuse among youth, aftercare services for youth involved in the juvenile justice system, social services for children with emotional and behavioral problems, programs to reduce delinquency and gang participation, improve academic performance and reduce the dropout rate through the use of mentors, drug and alcohol education, conflict resolution and counseling.

*Rating Factor 4: Leveraging Resources—(Support of Residents, the Local Government and the Community in Planning and Implementing the Proposed Activities) (10 Points)*

This factor addresses your ability to secure community and government resources that can be combined with HUD's program resources to achieve program purposes.

(1) In assessing this factor, HUD will consider the following:

(a) Written evidence of firm commitment of funding, staff, or in-kind resources, partnership agreements, and on-going or planned cooperative efforts with law enforcement agencies, local, State, Tribal or national entities who have committed services through a memoranda of understanding (MOU), or memorandum of agreements (MOA) to participate. Such commitments must be signed by an official of the organization legally able to make commitments for the organization.

(b) This evidence of commitment must include organization name, resources, and responsibilities of each participant to increase the effectiveness of the proposed program activities. The signed, written agreement may be contingent upon an applicant receiving a grant award. This also includes interagency activities already undertaken, participation in local, state, Tribal or Federal anti-drug related crime efforts.such as: education, training and employment provision components of Welfare Reform efforts which may include descriptions of Tribal TANF plans and participation in Native Employment Works (NEW) program, or any of the following programs administered by the Department of Justice such as Operation Weed and Seed, Community Oriented Policing Services Tribal Resources Grant Program (COPS), Indian Tribal Courts, Drug-Free Communities Support Program, Tribal Youth Program, Safe

Start Initiative, STOP Violence Against Indian Women Discretionary Grants and Mental Health and Juvenile Justice Program. Successful coordination of your law enforcement, or other activities with local, state, Tribal or Federal law enforcement agencies to foster meaningful collaborations and strengthen community anti-drug coalition efforts to reduce substance abuse among youth and adults and actions implemented to eradicate violent crime.

(2) In evaluating this factor, HUD will also consider the extent to which these initiatives are used to leverage resources for your tribe/TDHE community, and are part of the comprehensive plan and performance measures outlines in Rating Factor 3, Soundness of Approach—Quality of the Plan.

(a) Your application must describe what role residents in your targeted developments, applicable community leaders and organizations, and law enforcement agencies have had in planning the activities described in your application, what role they will have in implementing such activities for the duration of your grant and how services may be sustained beyond the grant term.

(b) Your application must include a discussion and written evidence (*i.e.*, comments from residents, minutes from community meetings) of the extent to which community representatives and Tribal, local, state and Federal Government officials, including law enforcement agency officials were actively involved in the design and implementation of your plan and will continue to be involved in implementing such activities during and after the period of your IHDEP funding.

(c) Your application must demonstrate the extent to which the relevant governmental jurisdiction has met its local law enforcement obligations under the Cooperation Agreement with your organization (as required by the Annual Contributions Contract with HUD). You must describe the current level of baseline local law enforcement services being provided to your housing authority/developments proposed for assistance.

*Rating Factor 5: Comprehensiveness and Coordination (10 Points)*

This factor addresses the extent to which you have coordinated your activities with other known organizations, and is working towards addressing a need in a holistic and comprehensive manner through linkages with other activities in your community. In evaluating this factor, HUD will consider the extent to which you can demonstrate you have:

(1) Coordinated your proposed activities with those of other groups or organizations prior to submission in order to best complement, support and address the needs of your community as identified in Rating Factor 2: Need/Extent of the Problem. Any written agreements, MOUs/MOAs in place, or that will be in place after award should be described and/or included.

(2) Taken specific steps to become active in your community's Indian Housing Block Grant process by providing evidence that you have addressed crime prevention and safety issues, and that your proposed activities reflect the priorities, needs, goals or objectives of crime prevention and safety in the Indian Housing Plan (IHP).

(3) Taken specific steps to develop linkages to coordinate comprehensive solutions through meetings, information networks, planning processes or other mechanisms with:

(a) Other HUD-funded projects/activities outside the scope of those covered by the IHP; and

(b) Other Federal, State, or locally funded activities, including those proposed, or on-going that will sustain a comprehensive system to address the needs of your community.

**VI. Application Submission Requirements**

(A) You must submit the required IHDEP FY 1999–2000 Application Kit that contains all of the requisite forms in order to be considered for IHDEP funding. Your application submitted to HUD must also include items required under Section V. Application Selection Process, of this NOFA, including the plan to address the problem of drug-related crime in the developments proposed for funding.

(B) You must submit no more than one application per Tribe or TDHE on behalf of the Tribe for the IHDEP. In addition, joint applications that include more than one TDHE representing the Tribe are permitted only in those cases where they have a single administration (such as a TDHE managing several tribes under contract or TDHEs sharing a common executive director). In those cases, a separate budget, plan and timetable, and unit count shall be supplied in the application. In addition, you must respond to the factors for award for each tribe/TDHE for which you are acting as administrator and requesting funds, if your responses would be different (*e.g.*, the tribes are in different jurisdictions and, therefore, the Indian Housing Plans, crime data, etc. would all be different). The application kit includes the forms, certifications and assurances required under this NOFA.

(C) Each IHDEP application must include the following items:

(1) An application cover letter.

(2) A summary of the proposed program activities in five (5) sentences or less.

(3) A description of the subgrantees, if applicable. The description must include the names of the subgrantees, as well as the relative roles and contributions of each subgrantee in implementing the IHDEP grant activities.

(4) An overall budget and timetable that includes separate budgets, goals, and timetables for each activity, and addresses milestones towards achieving each described goal. You must also describe the contributions and implementation responsibilities of each partner for each activity, goal, and milestone.

(5) A description of the number of staff, the titles, professional qualifications, and respective roles of the staff assigned full or part-time to grant implementation.

(6) Lines of accountability (including an organization chart) for implementing the grant activity, coordinating the partnership, and assuring that the commitment made by you and your subgrantees, if any, will be met.

(7) A narrative of the plan that will address the problem of drug-related crime in the developments proposed for funding.

(8) Responses to each of the five Rating Factors in this NOFA: (1) Capacity of the Applicant and relevant organizational Experience, (2) Need/Extent of the Problem, (3) Soundness of Approach, (4) Leveraging Resources and (5) Comprehensiveness and Coordination.

(9) The following forms which are included in the FY 1999—2000 IHDEP Application Kit: Standard Form-424, Application for Federal Assistance, Congressional Notification, Standard Form-424A, Budget Information (non-construction programs), with activity budget narrative/and supporting documentation, as applicable, attachment, Executive Summary and Implementation Schedule, Standard Form-424B, Assurances, (non-construction programs), Standard Form-2880, Applicant/Recipient Disclosure/Update Report, Application Cover Letter, Budget Narrative, Form HUD–50070 Drug-Free Workplace Certification, Form HUD–50071 Lobbying Certification, SF–LLL Disclosure of Lobbying Activities Certification, Standard Form, Certification of Debarment and Suspension, Certification of Consistency with the Indian Housing Plan,

Certification of Resident Management Corporations, Resident Councils, Resident Organizations and Residents, and Acknowledgment of Application Receipt.

**VII. Corrections to Deficient Applications**

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you, however, to clarify an item in your application or to correct technical deficiencies. You should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of your response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may, however, contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. *Examples* of curable (correctable) technical deficiencies include your failure to submit the proper certifications or your failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. You must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If your deficiency is not corrected within this time period, HUD will reject your application as incomplete, and it will not be considered for funding.

**VIII. Findings and Certifications**

(A) *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

(B) *Paperwork Reduction Act Statement.* The information collection requirements contained in this Notice have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0124. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(C) *Prohibition Against Lobbying Activities.* You the applicant may be subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment) prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. If you are subject, you are required to certify, using the certification found at Appendix A to 24 CFR part 87, that you will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form–LLL, "Disclosure of Lobbying Activities," any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts.

Tribes and TDHEs established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.

(D) *Section 102 of the HUD Reform Act; Documentation and Public Access Requirements.* Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (Form HUD–2880) submitted in connection with this NOFA. Update reports (also Form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(E) *Section 103 HUD Reform Act.* HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(F) *Catalog of Federal Domestic Assistance Number.* The Catalog of

Federal Domestic Assistance number for the Public and Indian Housing Drug Elimination Program is 14.854.

**IX. Environmental Requirements**

Certain eligible activities under this IHDEP NOFA are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321) and are not subject to review under related laws, in accordance with 24 CFR 50.19(b)(4), (b)(12), or (b)(13). If the IHDEP application proposes the use of grant funds to assist any non-exempt activities, HUD will perform an environmental review to the extent required by 24 CFR part 50, prior to grant award.

**X. Authority**

Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 *et seq.*), as amended.

Dated: May 8, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

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## APPENDIX A

| TRIBES & IHAs LOCATED | ONAP ADDRESS |
|---|---|
| East of the Mississippi River (including all of Minnesota and Iowa):<br><br>**Kevin Fitzgibbons** | Eastern/Woodlands Office of Native American Programs, 5API<br>Metcalfe Federal Building<br>77 West Jackson Boulevard, Room 2400<br>Chicago, Illinois 60604-3507<br>(312) 886-4532 or (800) 735-3239; Fax (312) 353-8936<br>TDD Numbers:1-800-927-9275 or 312 886-3741 |
| Louisiana, Missouri, Kansas, Oklahoma, and Texas (except for Isleta del Sur):<br><br>**Wayne Sims** | Southern Plains Office of Native American Programs, 6IPI<br>500 West Main Street, Suite 400<br>Oklahoma City, Oklahoma 73102<br>(405) 553-7521; Fax (405) 553-7403 |
| Colorado, Montana, Nebraska North Dakota, South Dakota, Wyoming and Utah:<br><br>**Mike Boyd, Acting Admin.** | Northern Plains Office of Native American Programs, 8API<br>Wells Fargo Tower North<br>633 17th Street<br>Denver, Colorado 80202-3607<br>(303) 672-5465; Fax (303) 672-5003<br>TDD Number: (303) 844-6158 |
| Arizona, California, New Mexico, Nevada, and Isleta del Sur in Texas:<br><br>**Raphael Mecham** | Southwest Office of Native American Programs, 9EPI<br>Two Arizona Center<br>400 North Fifth Street, Suite 1650<br>Phoenix, Arizona 85004-2361<br>(602) 379-4156; Fax (602) 379-3101<br>TDD Number: 602-379-4156<br>or<br>Albuquerque Divison of Native American Programs, 9EPIQ<br>Albuquerque Plaza<br>201 3rd Street, NW, Suite 1830<br>Albuquerque, New Mexico 87102-3368<br>(505) 346-6923; Fax (505) 346-6927<br>TDD Number: None |
| Idaho, Oregon and Washington:<br><br>**Ken A. Bowring** | Northwest Office of Native American Programs, OAPI<br>909 First Avenue, Suite 300<br>Seattle, Washington 98104-1000<br>(206) 220-5276; Fax (206) 220-5234<br>TDD Number: (206) 220-5185 |
| Alaska:<br><br>**Marlin Knight** | Alaska Office of Native American Programs, OCPI<br>University Plaza Building<br>949 East 36th Avenue, Suite 401<br>Anchorage, Alaska 99508-4399<br>(907) 271-4633; Fax (907) 271-4605<br>TDD Number: (907) 271-5115 |

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Federal Register

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Part V

# Department of Commerce

**National Telecommunications and Information Administration**

**Public Telecommunications Facilities Program (PTFP); Notices**

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## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

[Docket Number: 000410097–0097–01]

RIN 0648–ZA11

### Public Telecommunications Facilities Program (PTFP)

**AGENCY:** National Telecommunications and Information Administration, Commerce.

**ACTION:** Notice of applications received.

**SUMMARY:** The National Telecommunications and Information Administration (NTIA) previously announced the solicitation of grant applications for the Public Telecommunications Facilities Program (PTFP). This notice announces the list of applications received and notifies any interested party that it may file comments with the Agency supporting or opposing an application.

**FOR FURTHER INFORMATION CONTACT:** William Cooperman, Director, Public Telecommunications Facilities Program, telephone: (202) 482–5802; fax: (202) 482–2156. Information about the PTFP can also be obtained electronically via Internet. The PTFP Internet site can be accessed at http://www.ntia.doc.gov.

**SUPPLEMENTARY INFORMATION:** By **Federal Register** notice dated December 23, 1999, the NTIA, within the Department of Commerce, announced that it was soliciting grant applications for the Public Telecommunications Facilities Program (PTFP). NTIA announced that the closing date for receipt of PTFP applications was 8 p.m. EST, February 17, 2000.

In all, the PTFP received 278 applications from 53 states and territories (including the District of Columbia). The total amount of funds requested by the applicants is $233 million. Requests for FY 2000 funds total $130 million with an additional $103 million requested during FY 2001–2003 as part of multi-year digital television applications.

Notice is hereby given that the PTFP received applications from the following organizations. The list includes all applications received. Identification of any application only indicates its receipt. It does not indicate that it has been accepted for review, has been determined to be eligible for funding, or that an application will receive an award. Further information about each application is available on the PTFP Internet site at http://www.ntia.doc.gov.

Any interested party may file comments with the Agency supporting or opposing an application and setting forth the grounds for support or opposition. PTFP will forward a copy of any opposing comments to the applicant. Comments must be sent to PTFP at the following address: NTIA/PTFP, Room 4625, 1401 Constitution Ave., N.W., Washington, D.C. 20230.

The Agency will incorporate all comments from the public and any replies from the applicant in the applicant's official file.

Alabama
- File No. 00165 Alabama ETV Commission (Birmingham)
- File No. 00084 Troy State University (Troy)

Alaska
- File No. 00186 Alaska Public Radio Network (Anchorage)
- File No. 00262 Alaska Public Telecommunications (Anchorage)
- File No. 00116 Kuskokwim Public Broadcasting Corporation (McGrath)
- File No. 00035 Pribilof School District (Saint Paul Island)
- File No. 00136 Talkeetna Community Radio, Inc. (Talkeetna)

American Samoa
- File No. 00214 KVZK, American Samoa Government (Pago Pago)

Arizona
- File No. 00128 Arizona State University (Tempe)
- File No. 00026 Northern Arizona University (Flagstaff)
- File No. 00254 Tohono O'odham Nation (Sells)
- File No. 00149 University of Arizona (Tucson)
- File No. 00150 University of Arizona (Tucson)

Arkansas
- File No. 00123 Arkansas Educational TV Commission (Conway)

California
- File No. 00152 CSPP Research and Service Foundation (San Diego)
- File No. 00189 California State University/Northridge Foundation (Northridge)
- File No. 00131 California State University/Sacramento (Sacramento)
- File No. 00137 California State University/Sacramento (Sacramento)
- File No. 00135 California State University/Stanislaus (Turlock)
- File No. 00146 Coast Community College District (Huntington Beach)
- File No. 00068 Humboldt State University (Arcata)
- File No. 00031 KTEH–TV Foundation (San Jose)
- File No. 00040 KVIE, Inc. (Sacramento)
- File No. 00052 Los Angeles Unified School District (Los Angeles)
- File No. 00261 Peralta Community College District (Oakland)
- File No. 00090 Radio Bilingue, Inc. (Fresno)
- File No. 00093 Radio Bilingue, Inc. (Fresno)
- File No. 00218 Rural California Broadcasting Corporation (Rohnert Park)
- File No. 00195 Rural California Broadcasting Corporation (Rohnert Park)
- File No. 00223 Rural California Broadcasting Corporation (Rohnert Park)
- File No. 00229 San Bernardino Community College (San Bernardino)
- File No. 00095 San Diego Community College District (San Diego)
- File No. 00170 San Diego State University Foundation (San Diego)
- File No. 00014 San Mateo County Community College (San Mateo)
- File No. 00125 Santa Monica Community College District (Santa Monica)
- File No. 00187 South Orange Co. Community College (Mission Viejo)
- File No. 00108 The National Hispanic University (San Jose)
- File No. 00088 University of California/Santa Cruz (Santa Cruz)
- File No. 00181 University of Southern California (Los Angeles)
- File No. 00039 Valley Public Television (Fresno)

Colorado
- File No. 00109 Boulder Community Broadcast Association (Boulder)
- File No. 00169 Colorado State Board of Agriculture (Durango)
- File No. 00194 Denver Educational Broadcasting (Denver)
- File No. 00027 Front Range Educational Media Corporation (Denver)
- File No. 00018 Grand Valley Public Radio Co, Inc. (Grand Junction)
- File No. 00101 KUTE Incorporated (Ignacio)
- File No. 00083 San Miguel Educational Fund (Telluride)

Connecticut
- File No. 00208 Connecticut Public Broadcasting (Hartford)

District of Columbia
- File No. 00211 American University (Washington)
- File No. 00272 Howard University (Washington)
- File No. 00273 Howard University (Washington)

Florida
- File No. 00064 Barry Telecommunications, Inc. (Boynton Beach)
- File No. 00067 Barry Telecommunications, Inc. (Boynton Beach)
- File No. 00242 Barry Telecommunications, Inc. (Boynton Beach)
- File No. 00134 City of Cape Coral (Cape Coral)
- File No. 00251 Community TV Foundation of South Florida (Miami)
- File No. 00066 Community Communications, Inc. (Orlando)
- File No. 00046 Florida Gulf Coast University (Fort Myers)
- File No. 00053 Florida Gulf Coast University (Fort Myers)
- File No. 00078 Florida State University (Tallahassee)
- File No. 00117 Florida State University (Tallahassee)
- File No. 00118 Florida State University (Tallahassee)
- File No. 00119 Florida State University (Tallahassee)

File No. 00112 Florida West Coast Public Broadcasting (Tampa)
File No. 00096 Sarasota County Government (Sarasota)
File No. 00102 School Board of Miami-Dade County (Miami)
File No. 00184 School Board of Miami-Dade County (Miami)
File No. 00028 University of Florida (Gainesville)
File No. 00151 University of Florida (Gainesville)
File No. 00192 University of Florida (Gainesville)
File No. 00059 University of South Florida (Tampa)
File No. 00202 University of South Florida (Tampa)
File No. 00054 WJCT, Inc. (Jacksonville)
File No. 00178 WJCT-FM (Jacksonville)
Georgia
File No. 00226 Clark Atlanta University (Atlanta)
File No. 00258 Fort Valley State University (Fort Valley)
File No. 00063 Georgia Public Broadcasting (Atlanta)
File No. 00191 Valdosta State University (Valdosta)
File No. 00225 West Georgia Telecommunications (Carrollton)
Guam
File No. 00147 University of Guam (Mangilao)
Idaho
File No. 00263 Boise State University Foundation (Boise)
File No. 00158 Idaho Public Television (Boise)
Illinois
File No. 00033 Black Hawk College (Moline)
File No. 00034 Black Hawk College (Moline)
File No. 00260 Illinois Valley Public Telecommunications Corporation (Peoria)
File No. 00233 LPE Foundation (Schaumburg)
File No. 00144 Loyola University Chicago (Chicago)
File No. 00069 Southern Illinois University (Carbondale)
File No. 00175 University of Illinois (Champaign)
File No. 00241 University of Illinois (Champaign)
File No. 00259 West Central Illinois Educational Telecommunications Corporation (Springfield)
File No. 00038 Window to the World Communications (Chicago)
Indiana
File No. 00274 Ball State University (Muncie)
File No. 00248 Fort Wayne Public Television, Inc. (Fort Wayne)
File No. 00143 Indiana University (Bloomington)
File No. 00244 Metro Indianapolis Public Broadcasting (Indianapolis)
File No. 00247 Metro Indianapolis Public Broadcasting (Indianapolis)
File No. 00055 Michiana Public Broadcasting Corporation (Elkhart)
File No. 00130 Tri-State Public Teleplex, Inc. (Evansville)
Iowa
File No. 00227 Iowa Public Broadcasting Board (Johnston)
File No. 00113 Iowa Public Television (Johnston)
File No. 00114 Iowa Public Television (Johnston)
File No. 00203 Iowa State University (Ames)
File No. 00204 Iowa State University (Ames)
File No. 00271 Iowa State University (Ames)
File No. 00008 University of Northern Iowa (Cedar Falls)
File No. 00010 University of Northern Iowa (Cedar Falls)
Kansas
File No. 00016 Kansas Public Telecommunications Service (Wichita)
File No. 00177 Kanza Society, Inc. (Garden City)
File No. 00087 Washburn University of Topeka (Topeka)
Kentucky
File No. 00176 City of Sparta Police & Fire Department (Sparta)
File No. 00089 Eastern Kentucky University (Richmond)
File No. 00185 Kentucky Authority for ETV ( Lexington)
File No. 00250 Morehead State University (Morehead)
Louisiana
File No. 00171 Educational Broadcasting Foundation (Metairie)
File No. 00007 Louisiana Public Broadcasting (Baton Rouge)
Maine
File No. 00013 Maine Public Broadcasting Corporation (Bangor)
File No. 00029 Maine Public Broadcasting Corporation (Bangor)
Maryland
File No. 00085 Maryland Public Television (Owings Mills)
File No. 00139 University of Maryland Eastern Shore (Princess Anne)
Massachusetts
File No. 00103 Boston University (Boston)
File No. 00110 Technology Broadcasting Corporation (Cambridge)
File No. 00166 University of Massachusetts, Boston (Boston)
File No. 00115 University of Massachusetts/Boston (Boston)
File No. 00126 WGBH Educational Foundation (Boston)
File No. 00127 WGBH Educational Foundation (Boston)
Michigan
File No. 00120 Central Michigan University (Mt. Pleasant)
File No. 00140 Central Michigan University (Mt. Pleasant)
File No. 00228 Delta College (University Center)
File No. 00161 Grand Valley State University (Grand Rapids)
File No. 00012 Northern Michigan University (Marquette)
File No. 00076 Northern Michigan University (Marquette)
File No. 00024 University of Michigan (Flint)
File No. 00224 Wayne State University (Detroit)
Minnesota
File No. 00041 Asian Media Access (Minneapolis)
File No. 00074 Austin Independent School District 492 (Austin)
File No. 00050 Duluth-Superior Area Educational TV (Duluth)
File No. 00081 Faribault Community TV & Multimedia Center (Faribault)
File No. 00238 Fresh Air, Inc. (Minneapolis)
File No. 00197 Minnesota Public Radio (St. Paul)
File No. 00037 Northern Minnesota PTV, Inc. (Bemidji)
File No. 00062 Northern Minnesota PTV, Inc. (Bemidji)
File No. 00082 Northern Minnesota PTV, Inc. (Bemidji)
File No. 00198 Pioneer Public Television (Appleton)
File No. 00159 Southern California Public Radio (St. Paul)
File No. 00015 Twin Cities Public Television, Inc. (St. Paul)
File No. 00023 Twin Cities Public Television, Inc (St. Paul)
Mississippi
File No. 00222 Mississippi Authority for ETV (Jackson)
Missouri
File No. 00060 New Wave Corporation (Columbia)
File No. 00164 Public Television 19, Inc. (Kansas City)
File No. 00266 Southeast Missouri State (Cape Girardeau)
File No. 00036 Southwest Missouri State (Springfield)
File No. 00269 St. Louis Regional Ed & PTV Comm (St. Louis)
Montana
File No. 00168 Billings Community Cable Corporation (Billings)
File No. 00264 Northern Cheyenne Tribe (Lame Deer)
File No. 00257 Piegan Institute, Inc. (Browning)
Nebraska
File No. 00071 Educational Service Unit 7 (Columbus)
File No. 00100 Nebraska Educational T/C Commission (Lincoln)
File No. 00267 Nebraska Educational T/C Commission (Lincoln)
File No. 00020 University of Nebraska/Omaha (Omaha)
Nevada
File No. 00075 Channel 5 Public Broadcasting, Inc. (Reno)
File No. 00072 Clark County School District (Las Vegas)
File No. 00001 University & Comm. College System of Nevada (Reno)
File No. 00111 University of Nevada (Reno)
New Hampshire
File No. 00193 Dartmouth College (Hanover)
File No. 00051 New Hampshire Public Radio, Inc. (Concord)
File No. 00002 University of New Hampshire (Durham)
New Jersey

File No. 00231 New Jersey Public Broadcasting (Trenton)
File No. 00180 New Jersey Public Broadcasting Authority (Trenton)
File No. 00212 Newark Public Radio, Inc. (Newark)

New Mexico
File No. 00160 Eastern New Mexico University (Portales)
File No. 00058 University of New Mexico (Albuquerque)

New York
File No. 00129 Educational Broadcasting Corporation (New York)
File No. 00153 Long Island Education TV Council (Plaineview)
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File No. 00061 Public Council of Central New York (Syracuse)
File No. 00270 St. Lawrence University (Canton)
File No. 00239 Syracuse University (Syracuse)
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North Carolina
File No. 00094 Eastern Band of Cherokee Indians (Cherokee)
File No. 00032 Gospel and Deliverance Ministries (Lumberton)
File No. 00132 Southwestern Community College (Sylva)
File No. 00070 University of North Carolina (Chapel Hill)
File No. 00091 University of North Carolina (Chapel Hill)
File No. 00209 University of North Carolina (Research Triangle Park)
File No. 00196 Word of God Christian Academy, Inc. (Raleigh)

North Dakota
File No. 00207 Prairie Public Broadcasting, Inc. (Fargo)
File No. 00210 Prairie Public Broadcasting, Inc. (Fargo)
File No. 00265 Prairie Public Broadcasting, Inc. (Fargo)

Northern Marianas
File No. 00124 Northern Marianas Public Schools (Saipan)

Ohio
File No. 00245 Antioch University (Yellow Springs)
File No. 00156 Columbus Board of Education (Columbus)
File No. 00021 ETV Association of Metropolitan Cleveland (Cleveland)
File No. 00022 ETV Association of Metropolitan Cleveland (Cleveland)
File No. 00190 Greater Cincinnati TV Educ Foundation (Cincinnati)
File No. 00252 Greater Dayton Public Television (Dayton)
File No. 00200 Northeastern Educational TV of Ohio (Kent)
File No. 00206 Ohio State University (Columbus)
File No. 00268 Ohio State University (Columbus)
File No. 00006 Ohio University (Athens)
File No. 00142 Public Broadcasting Foundation of NW Ohio (Toledo)
File No. 00017 Resources & Instruction/ Staff Excellence (Cincinnati)

Oklahoma
File No. 00182 Cameron University (Lawton)
File No. 00183 Cameron University (Lawton)
File No. 00107 Oklahoma Educational TV Authority (Oklahoma City)
File No. 00057 University of Oklahoma (Norman)

Oregon
File No. 00240 Blue Mountain Community College (Pendleton)
File No. 00104 Oregon Public Broadcasting (Portland)

Pennsylvania
File No. 00141 Crawford County Regional Alliance (Meadville)
File No. 00163 Lehigh Valley Public T/C Corporation (Bethleham)
File No. 00047 Northeastern Pennsylvania ETV Association (Pittston)
File No. 00049 Northeastern Pennsylvania ETV Association (Pittston)
File No. 00004 Pennsylvania State University (University Park)
File No. 00073 Pennsylvania State University (University Park)
File No. 00097 Public Broadcasting of NW Pennsylvania (Erie)
File No. 00098 Public Broadcasting of NW Pennsylvania (Erie)
File No. 00249 Pennsylvania State University (University Park)
File No. 00105 WHYY, Inc. (Philadelphia)
File No. 00213 WITF, Inc. (Harrisburg)
File No. 00230 WITF, Inc. (Harrisburg)
File No. 00077 WQED Pittsburgh (Pittsburgh)
File No. 00122 WQED Pittsburgh (Pittsburgh)

Puerto Rico
File No. 00205 Ana G. Mendez University System (San Juan)
File No. 00219 University of Puerto Rico (San Juan)

Rhode Island
File No. 00232 Rhode Island Public T/C Authority (Providence)

South Carolina
File No. 00019 South Carolina ETV (Columbia)
File No. 00065 South Carolina ETV (Columbia)

South Dakota
File No. 00201 South Dakota Board of Directors for ETV (Vermillion)

Tennessee
File No. 00253 Greater Chattanooga Public TV Corporation (Chattanooga)
File No. 00216 Mid-South Public Communications Foundation (Memphis)
File No. 00217 Mid-South Public Communications Foundation (Memphis)
File No. 00009 Nashville Public Television (Nashville)
File No. 00003 University of Tennessee/ Chattanooga (Chattanooga)

Texas
File No. 00174 Alamo Public T/C Council (San Antonio)
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Utah
File No. 00121 Brigham Young University (Provo)
File No. 00043 Moab Public Radio (Moab)
File No. 00044 University of Utah (Salt Lake City)
File No. 00148 University of Utah (Salt Lake City)
File No. 00255 Utah State University (Logan)

Vermont
File No. 00162 Vermont ETV, Inc. (Colchester)

Virgin Island
File No. 00243 Virgin Islands Public TV System (Charlotte Amalie)

Virginia
File No. 00235 Central Virginia Educational Telecommunications Corporation (Falls Church)
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File No. 00048 Shenandoah Valley Educational TV (Harrisonburg)
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File No. 00256 Valley Voice Friends (Harrisonburg)

Washington
File No. 00275 Bates Technical College (Tacoma)
File No. 00278 City of Centralia (Centralia)
File No. 00030 KCTS Television (Seattle)
File No. 00042 KCTS Television (Seattle)
File No. 00011 Spokane School Dist #81/ KSPS–TV (Spokane)
File No. 00086 Washington State University (Pullman)
File No. 00056 Washington State University (Pullman)

West Virginia
File No. 00237 HOPE Community Development Corporation (Charleston)
File No. 00099 Tyler Consolidated Middle/High School (Sistersville)
File No. 00276 WV Educational Broadcasting (Charleston)
File No. 00277 WV Educational Broadcasting (Charleston)

Wisconsin
File No. 00145 Educational Communications Board (Madison)
File No. 00215 La Crosse Med. Health Sci. Consortium (La Crosse)
File No. 00133 Lac Courte Oreilles Public Broadcasting (Hayward)

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File No. 00199 Milwaukee Area Technical College (Milwaukee)
File No. 00220 University of Wisconsin (Madison)
File No. 00092 Wisconsin Public Radio (Madison)
File No. 00154 Clay County Communications Ltd. (Clendenin)

**Bernadette McGuire-Rivera,**
*Associate Administrator, Office of Telecommunications and Information Applications.*

[FR Doc. 00–11868 Filed 5–10–00; 8:45 am]
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**Federal Register**

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Thursday, May 11, 2000

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**S.J. Res. 40/P.L. 106–198**

Providing for the appointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 249)

**S.J. Res. 42/P.L. 106–199**

Providing for the reappointment of Manuel L. Ibanez as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 250)

**Last List May 5, 2000**

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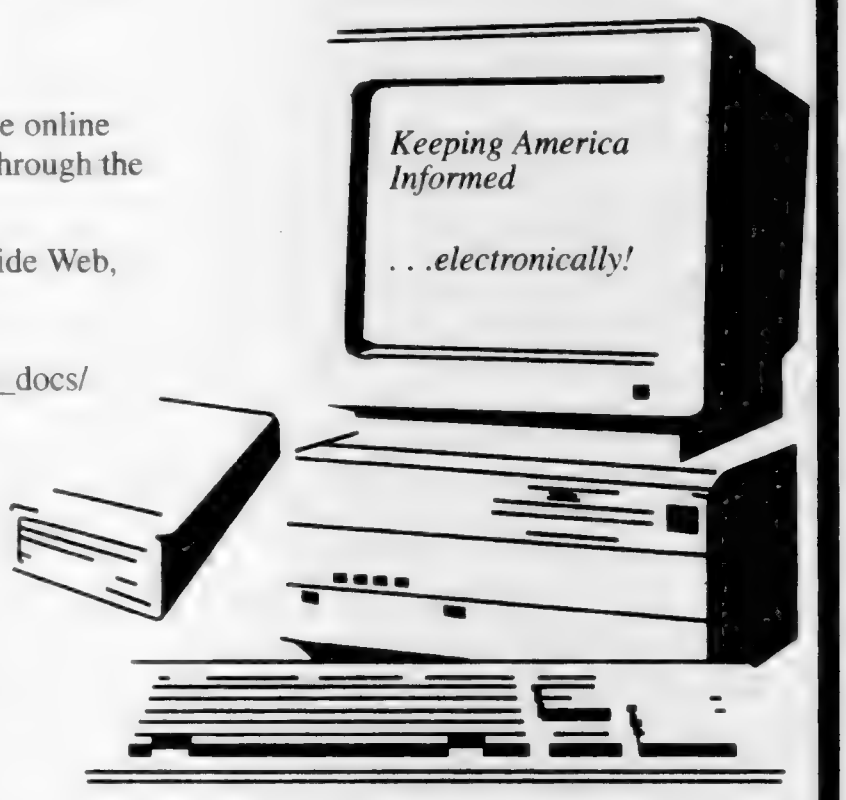


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**WHERE:** Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

**RESERVATIONS:** 202–523–4538

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# Presidential Documents

Title 3—

## The President

**Executive Order 13155 of May 10, 2000**

## Access to HIV/AIDS Pharmaceuticals and Medical Technologies

By the authority vested in me as President by the Constitution and the laws of the United States of America, including sections 141 and chapter 1 of title III of the Trade Act of 1974, as amended (19 U.S.C. 2171, 2411–2420), section 307 of the Public Health Service Act (42 U.S.C. 2421), and section 104 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151b), and in accordance with executive branch policy on health-related intellectual property matters to promote access to essential medicines, it is hereby ordered as follows:

**Section 1.** *Policy.* (a) In administering sections 301–310 of the Trade Act of 1974, the United States shall not seek, through negotiation or otherwise, the revocation or revision of any intellectual property law or policy of a beneficiary sub-Saharan African country, as determined by the President, that regulates HIV/AIDS pharmaceuticals or medical technologies if the law or policy of the country:

(1) promotes access to HIV/AIDS pharmaceuticals or medical technologies for affected populations in that country; and

(2) provides adequate and effective intellectual property protection consistent with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) referred to in section 101(d)(15) of the Uruguay Round Agreements Act (19 U.S.C. 3511(d)(15)).

(b) The United States shall encourage all beneficiary sub-Saharan African countries to implement policies designed to address the underlying causes of the HIV/AIDS crisis by, among other things, making efforts to encourage practices that will prevent further transmission and infection and to stimulate development of the infrastructure necessary to deliver adequate health services, and by encouraging policies that provide an incentive for public and private research on, and development of, vaccines and other medical innovations that will combat the HIV/AIDS epidemic in Africa.

**Sec. 2.** *Rationale:* (a) This order finds that:

(1) since the onset of the worldwide HIV/AIDS epidemic, approximately 34 million people living in sub-Saharan Africa have been infected with the disease;

(2) of those infected, approximately 11.5 million have died;

(3) the deaths represent 83 percent of the total HIV/AIDS-related deaths worldwide; and

(4) access to effective therapeutics for HIV/AIDS is determined by issues of price, health system infrastructure for delivery, and sustainable financing.

(b) In light of these findings, this order recognizes that:

(1) it is in the interest of the United States to take all reasonable steps to prevent further spread of infectious disease, particularly HIV/AIDS;

(2) there is critical need for effective incentives to develop new pharmaceuticals, vaccines, and therapies to combat the HIV/AIDS crisis, including effective global intellectual property standards designed to foster pharmaceutical and medical innovation;

(3) the overriding priority for responding to the crisis of HIV/AIDS in sub-Saharan Africa should be to improve public education and to encourage

practices that will prevent further transmission and infection, and to stimulate development of the infrastructure necessary to deliver adequate health care services;

(4) the United States should work with individual countries in sub-Saharan Africa to assist them in development of effective public education campaigns aimed at the prevention of HIV/AIDS transmission and infection, and to improve their health care infrastructure to promote improved access to quality health care for their citizens in general, and particularly with respect to the HIV/AIDS epidemic;

(5) an effective United States response to the crisis in sub-Saharan Africa must focus in the short term on preventive programs designed to reduce the frequency of new infections and remove the stigma of the disease, and should place a priority on basic health services that can be used to treat opportunistic infections, sexually transmitted infections, and complications associated with HIV/AIDS so as to prolong the duration and improve the quality of life of those with the disease;

(6) an effective United States response to the crisis must also focus on the development of HIV/AIDS vaccines to prevent the spread of the disease;

(7) the innovative capacity of the United States in the commercial and public pharmaceutical research sectors is unmatched in the world, and the participation of both these sectors will be a critical element in any successful program to respond to the HIV/AIDS crisis in sub-Saharan Africa;

(8) the TRIPS Agreement recognizes the importance of promoting effective and adequate protection of intellectual property rights and the right of countries to adopt measures necessary to protect public health;

(9) individual countries should have the ability to take measures to address the HIV/AIDS epidemic, provided that such measures are consistent with their international obligations; and

(10) successful initiatives will require effective partnerships and cooperation among governments, international organizations, nongovernmental organizations, and the private sector, and greater consideration should be given to financial, legal, and other incentives that will promote improved prevention and treatment actions.

**Sec. 3.** *Scope.* (a) This order prohibits the United States Government from taking action pursuant to section 301(b) of the Trade Act of 1974 with respect to any law or policy in beneficiary sub-Saharan African countries that promotes access to HIV/AIDS pharmaceuticals or medical technologies and that provides adequate and effective intellectual property protection consistent with the TRIPS Agreement. However, this order does not prohibit United States Government officials from evaluating, determining, or expressing concern about whether such a law or policy promotes access to HIV/AIDS pharmaceuticals or medical technologies or provides adequate and effective intellectual property protection consistent with the TRIPS Agreement. In addition, this order does not prohibit United States Government officials from consulting with or otherwise discussing with sub-Saharan African governments whether such law or policy meets the conditions set forth in section 1(a) of this order. Moreover, this order does not prohibit the United States Government from invoking the dispute settlement procedures of the World Trade Organization to examine whether any such law or policy is consistent with the Uruguay Round Agreements, referred to in section 101(d) of the Uruguay Round Agreements Act.

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(b) This order is intended only to improve the internal management of the executive branch and is not intended to, and does not create, any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

William J. Clinton

THE WHITE HOUSE,
*May 10, 2000.*

[FR Doc. 00–12177
Filed 5–11–00; 8:45 am]
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# Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 989**

**[Docket No. FV00–989–2 FR]**

## Raisins Produced From Grapes Grown in California; Increase in Compensation Rate for Handlers' Services Performed Regarding Reserve Raisins

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule increases, by approximately 15 percent, the compensation rate for handlers' services performed in connection with reserve raisins covered under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). These changes are necessary to reflect current industry costs.

**EFFECTIVE DATE:** August 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698; or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule increases the compensation rate for handlers' services performed in connection with reserve raisins covered under the order. Under the order, handlers are compensated for receiving, storing, fumigating, and handling reserve tonnage raisins acquired during a crop year. This rule increases this rate from $40 to $46 per ton to reflect current industry costs. This action was unanimously recommended by the Committee on November 10, 1999. Additional payment for reserve raisins held beyond the crop year of acquisition will be increased from $2.00 to $2.30 per ton for the first 3 months, and from $1.03 to $1.18 per ton per month for the remaining 9 months. This action was unanimously recommended by the Committee on January 13, 2000.

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Reserve raisins are disposed of through certain programs authorized under the order. For instance, reserve raisins may be sold by the Committee to handlers for free use; used in diversion programs; carried over as a hedge against a short crop the following year; or disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Proceeds generated from sales of reserve raisins are also used to support handler sales to export markets, which are generally lower-priced than the domestic market. Net proceeds from sales of reserve raisins are distributed to the reserve pool's equity holders, primarily producers.

Section 989.66(f) of the order specifies that handlers be compensated for receiving, storing, fumigating, and handling that tonnage of reserve raisins determined by the reserve percentage of a crop year and held by them for the account of the Committee, in accordance with a schedule of payments established by the Committee and approved by the Secretary. Such compensation is paid by the Committee to handlers as soon as practicable after the end of the second quarter of the crop year (January) and quarterly thereafter. The crop year runs from August 1 through July 31. The order also requires that the Committee review this rate annually.

Section 989.401(a) of the order's rules and regulations specifies that handlers be compensated at a rate of $40 per ton

(natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling reserve raisins acquired during a particular crop year. The Committee conducted a survey among handlers to obtain data on the current costs of receiving, storing, fumigating, and handling raisins. The survey showed that such costs ranged from about $40 to $71.50 per ton. After analyzing the survey, the Committee recommended that the compensation rate provided for such services performed in connection with reserve raisins be increased from $40 to $46 per ton to reflect current industry costs. Paragraph (a)(1) of § 989.401 is modified accordingly.

In addition, the Committee recommended that payment to handlers for reserve raisins held beyond the end of a crop year be increased by the same percentage (15 percent). Additional payment for reserve raisins held beyond the crop year of acquisition is thus increased from $2.00 to $2.30 per ton for the first 3 months (August through October), and from $1.03 to $1.18 per ton per month for the remaining 9 months (November through July). Paragraph (b) of § 989.401 is modified accordingly.

This final rule also makes a minor correction to paragraph (b) of § 989.401. That paragraph, which, as indicated above, specifies the additional payment for reserve raisins held beyond the crop year of acquisition, states such additional payment for months reflecting a crop year from September 1 through August 31. However, the order was amended in 1976 to change the crop year from August 1 through July 31. Thus, the first 3 months of the crop year are August through October, rather than September through November, and the remaining 9 months of the crop year are the period November through July. Paragraph (b) of § 989.401 is modified accordingly.

Finally, this final rule makes a conforming change to paragraph (c) of § 989.401 regarding rental payment on boxes and bins containing raisins held beyond the crop year of acquisition. Persons who furnish boxes or bins used for storing reserve raisins are compensated for the use of such containers. Section 989.401(c) currently reflects a crop year from September 1 through August 31 and is modified to reflect the current August 1 through July 31 crop year.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Thirteen of the 20 handlers have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources. No more than 7 handlers and a majority of producers of California raisins may be classified as small entities.

Pursuant to § 989.66(f) of the order, this rule increases the compensation rate for handlers' services performed in connection with reserve raisins covered under the order. This rule revises paragraphs (a)(1) and (b) of § 989.401, respectively, to increase the handlers' compensation for receiving, storing, fumigating, and handling reserve raisins acquired during a particular crop year from $40 to $46 per ton, and increases such additional payment for reserve raisins held beyond the crop year of acquisition from $2.00 to $2.30 per ton for the first 3 months (August through October), and from $1.03 to $1.18 per ton per month for the remaining 9 months (November through July). These changes are necessary to reflect current industry costs. Conforming changes are also made to paragraphs (b) and (c) of § 989.401 to reflect the current August 1 through July 31 crop year.

Regarding the impact of this rule on affected entities, handlers and producers, the order provides that handlers store reserve raisins for the account of the Committee. Net proceeds from sales of such reserve raisins are distributed back to the reserve pool's equity holders, primarily producers. Handlers are compensated from reserve pool funds for their costs in receiving, storing, fumigating, and handling reserve raisins. Currently, handlers are compensated at a rate of $40 per ton for reserve raisins acquired during a particular crop year. For example, for the 1997–98 crop year, about 130,000 tons of raisins were held in reserve, and handlers were compensated a total of about $5.7 million from the 1997–98 reserve pool. A Committee survey showed that handler costs regarding reserve raisins has increased in recent years and that handlers have been absorbing these costs. Increasing the $40 per ton fee to $46 per ton for reserve raisins acquired during a particular crop year more appropriately reflects the costs incurred by handlers and thereby reduces net proceeds to equity holders. There should be no disproportionate impact of this action on small entities. Costs are allocated to equity holders based on their proportionate share of raisins in the reserve pool. In addition, this cost is incorporated into the price of reserve raisins that are sold to handlers for free use. Thus, the reserve pool is ultimately reimbursed for some of this cost.

Other alternatives to the rates adopted herein were considered by the raisin industry prior to the Committee's recommendations. The Committee's Administrative Issues Subcommittee met on November 9, 1999, and considered rates of $44 and $50 per ton for services performed in connection with reserve raisins acquired during a crop year. Ultimately, the Committee concluded that the $46 per ton rate for services performed during the year of acquisition, and comparable rates for the succeeding crop year, were appropriate.

This final rule increases the compensation rate for handlers' services regarding reserve tonnage raisins. Accordingly, this action imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's Administrative Issues Subcommittee meeting on November 9, 1999, and the Committee meetings on November 10, 1999, and on January 13, 2000, where this action was deliberated were all public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

A proposed rule concerning this action was published in the **Federal Register** on February 9, 2000 (65 FR 6341). Copies of the rule were mailed by the Committee staff to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended April 10, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab/html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 989**

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

## PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. In § 989.401, paragraphs (a)(1), (b), and (c) are revised to read as follows:

**§ 989.401 Payments for services performed with respect to reserve tonnage raisins.**

(a) *Payment for crop year of acquisition.* (1) *Receiving, storing, fumigating, and handling.* Each handler shall be compensated at a rate of $46 per ton (natural condition weight at the time of acquisition) for receiving, storing, fumigating, and handling the reserve tonnage raisins, as determined by the final reserve tonnage percentage, acquired during a particular crop year and held by the handler for the account of the Committee during all or any part of the same crop year.

* * * * *

(b) *Additional payment for reserve tonnage raisins held beyond the crop year of acquisition.* Additional payment for reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler holding such raisins for the account of the Committee on August 1 shall be compensated for storing, handling, and fumigating such raisins at the rate of $2.30 per ton per month, or any part thereof, between August 1 and October 31, and at the rate of $1.18 per ton per month, or any part thereof, between November 1 and July 31. Such services shall be completed so that the Committee is assured that the raisins are maintained in good condition.

(c) *Payment of rental on boxes and bins containing raisins held beyond the crop year of acquisition.* Payment of rental on boxes and bins containing reserve tonnage raisins held beyond the crop year of acquisition shall be made in accordance with this paragraph. Each handler, producer, dehydrator, and other person who furnishes boxes or bins in which such raisins are held for the account of the Committee on August 1 shall be compensated for the use of such boxes and bins. The rate of compensation shall be: For boxes, two and one-half cents per day, not to exceed a total payment of $1 per box per year, per average net weight of raisins in a sweatbox, with equivalent rates for raisins in boxes other than sweatboxes; and for bins 20 cents per day per bin, not to exceed a total of $10 per bin per year. For purposes of this paragraph, *box* means any container with a capacity of less than 1,000 pounds, and *bin* means any container with a capacity of 1,000 pounds or more. The average net weight of raisins in each type of box shall be the industry average as computed by the Committee for the box in which the raisins are so held. No further compensation shall be paid unless the raisins are so held in the boxes on the succeeding August 1.

Dated: May 8, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–11922 Filed 5–11–00; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF THE TREASURY

### Office of Thrift Supervision

### 12 CFR Parts 563, 563c, and 563g

**[No. 2000–43]**

**RIN 1550–AB38**

### Transfer and Repurchase of Government Securities

**AGENCY:** Office of Thrift Supervision, Treasury.

**ACTION:** Direct Final Rule: confirmation of effective date.

**SUMMARY:** This document confirms the effective date of the direct final rule removing the Office of Thrift Supervision's regulation on the transfer and repurchase of government securities. We did not receive any written adverse comments in response to the direct final rule.

**EFFECTIVE DATE:** The direct final rule, published on March 28, 2000 (65 FR 16302–305), is effective May 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ed O'Connell, (202) 906–5694, Project Manager, Supervision Policy: or Teresa Scott (202) 906–6478, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

**Authority:** 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831i, 3806; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78p, 78w; 42 U.S.C. 4106.

Dated: May 8, 2000.≤

By the Office of Thrift Supervision.

**Ellen Seidman,**

*Director.*

[FR Doc. 00–11910 Filed 5–11–00; 8:45 am]

BILLING CODE 6720–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–NE–04–AD; Amendment 39–11723; AD 2000–09–14]**

**RIN 2120–AA64**

### Airworthiness Directives; Rolls-Royce plc RB211–535 Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is

applicable to Rolls-Royce plc RB211–535 series turbofan engines. This AD will require removal from service of suspect radial drive steady bearings with certain serial number prefixes and replacement with serviceable parts. This amendment was prompted by reports of a number of radial drive steady bearing failures from distinct batches of parts. The actions specified by this AD are intended to prevent radial drive steady bearing failure, which could result in an in-flight engine shutdown and smoke and fumes in the cabin.

**DATES:** Effective date July 11, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Rolls-Royce plc, P.O. Box 31, Derby, DE24 8BJ, UK; telephone 011–44–1332–242424. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7747, fax 781–238–7199.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Rolls-Royce plc (R–R) RB211–535 series turbofan engines was published in the **Federal Register** on March 23, 2000 (65 FR 15584). That action proposed to require removal from service of defective radial drive steady bearings manufactured during certain dates and replacement with serviceable parts.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Requests to Change Compliance Thresholds

Four commenters request that the FAA change the threshold from xxx hours "time-in-service" to xxx hours "since the effective date of this AD." The commenters state that, based on the fleet utilization rate, in certain cases engines installed with the suspect bearings would be out of compliance on the effective date of this AD.

The FAA agrees. The FAA will revise paragraphs (a)(1) and (a)(2) to read "time-in-service after the effective date of this AD," instead of "time-in-service-since-new."

Three commenters request that the FAA increase the thresholds of paragraphs (a)(1) and (a)(2). One commenter requests an increase from 1,500 and 2,400 hours time-in-service (TIS) to 2,100 and 3,300 hours TIS, respectively. A second commenter requests an increase from 1,500 and 2,400 hours TIS to 2,000 and 3,200 hours TIS, respectively. These commenters state that, for the specific operators that will be affected by this AD, at least seven have higher utilization rates. Additionally, operator utilization historically increases during the summer months when the AD will be effective. Therefore, the commenters recommend the respective increases in compliance time in order to avoid a potential disruption to operators. A third commenter requests an increase from 1,500 and 2,400 hours TIS to 1,700 and 2,720 hours TIS, respectively. The commenter states that the proposed limits impose a significant burden as several affected engines will exceed their respective hour limits before reaching their respective calendar days.

The FAA partially agrees with these requests. The FAA will increase the threshold limits in paragraph (a)(1) from 1,500 hours to 1,700 hours TIS after the effective date of this AD. The compliance end date will remain September 30, 2000. The FAA will increase the threshold limits in paragraph (a)(2) from 2,400 hours to 2,720 hours TIS after the effective date of this AD. The compliance end date will remain December 31, 2000.

### Request to Use Manufacturer's Calendar Time Limit

One commenter requests that the FAA use the manufacturer's calendar time limit only. The commenter states that the additional 1,500 hour limit placed on the suspect bearings, which is to be calculated from time-since-new, would make certain engines out of compliance from the effective date of the AD. The commenter states that by using only the manufacturer's calendar time limit, the operators would be allowed to source and properly schedule the replacement of these bearings.

The FAA does not agree. The calendar compliance date in the AD was determined by a risk analysis with a normal utilization rate of the engine. To prevent unsafe conditions for certain high usage engines, the AD proposes a calendar compliance date in conjunction with operating hours limits. Additionally, based on other comments received, the "time-in-service-since-new" threshold will be revised in the final rule to "time-in-service after the effective date of this AD." This change should enable the operators to source and schedule replacement of these bearings.

### Revise Economic Analysis

One commenter states that the number of engines installed on aircraft of U.S. registry should be revised. Since only engines that were built new or required a new radial drive steady bearing during the period of July 26, 1998, and September 30, 1999, are affected, the number installed on aircraft of U.S. registry is 102 engines.

The FAA agrees. Based on the revised estimate of 102 affected engines installed on aircraft of U.S. registry, the total cost impact of the AD on U.S. operators is reduced from $160,000 to $40,800. The economic analysis section of the final rule will be revised accordingly.

### Clarification of Paragraph (b)(2)

One commenter requests clarification of paragraph (b)(2). The commenter believes that the FAA's intent is that two engines with suspect bearings must not be installed on the same aircraft, until all the suspect bearings are removed per paragraphs (a)(1) and (a)(2). The commenter states that this paragraph, as written, seems redundant and looks like a similar requirement to that of deleted service bulletin RB.211–72–C810.

The FAA does not agree that paragraph (b)(2) is redundant. The intent of paragraph (b)(2) is to prevent the installation of two engines with suspect bearings on the same airplane. This additional requirement ensures that engines with the suspect bearings that have not yet reached the compliance thresholds of paragraphs (a)(1) and (a)(2) will not be installed on the same airplane, thereby reducing the potential for an unsafe condition.

### Explanation of Change to Compliance Section

The FAA has revised the compliance section to insert a note on service information. This note references Rolls-Royce Service Bulletin No. RB.211–72–C930, dated December 22, 1999, which provides additional information on identifying and replacing the suspect bearings. This note has been numbered Note 2; the proposed Note 2 has been renumbered Note 3.

### Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air

safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Economic Analysis**

There are approximately 1,000 engines of the affected design in the worldwide fleet. The FAA estimates that 102 engines installed on aircraft of US registry will be affected by this AD. It will take approximately 4 work hours per engine to accomplish the required actions. The average labor rate is $60 per work hour. Required parts will cost approximately $160 per engine. Based on these figures, the total cost impact of the AD on US operators is estimated to be $40,800.

**Regulatory Impact**

This rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–09–14 Rolls-Royce plc:** Amendment 39–11723. Docket No. 2000–NE–04–AD.

*Applicability:* Rolls-Royce plc RB211–535 series turbofan engines, with radial drive steady bearings with outer race serial number (S/N) prefixes: DLJO, DLJP, DLOQ, DLSK, and DMBA, installed. Affected engines are those that have had a new bearing fitted at overhaul, were new production engines, or had a bearing changed in service between July 26, 1998, and September 30, 1999. These engines are installed on but not limited to Boeing 757 series aircraft and Tupolev Tu204 series aircraft.

**Note 1:** This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent radial drive steady bearing failure, which could result in an in-flight engine shutdown and smoke and fumes in the cabin, accomplish the following:

Remove Suspect Bearings

(a) Remove from service radial drive steady bearings identified in the applicability paragraph of this AD and replace with serviceable parts as follows:

(1) For engines that had the suspect radial drive steady bearings installed during a shop visit or on-wing, remove from service before accumulating 1,700 hours time-in-service (TIS) after the effective date of this AD, but no later than September 30, 2000.

(2) For engines that had the suspect radial drive steady bearings installed in factory production, remove from service before accumulating 2,720 hours TIS after the effective date of this AD, but no later than December 31, 2000.

**Note 2:** Rolls-Royce plc Mandatory Service Bulletin No. RB.211–72–C930, dated December 22, 1999, provides additional information on identifying and replacing the suspect bearings.

**Do Not Install Suspect Bearings**

(b) As of the effective date of this AD, accomplish the following:

(1) Do not install radial drive steady bearings from the five affected batches listed in the applicability paragraph of this AD at overhaul, in service, or at new production.

(2) If performing an engine change, do not allow two engines that have bearings from any of the five affected batches listed in the applicability paragraph of this AD to be installed on the same airplane.

**Serviceable Parts**

(3) For the purpose of this AD, serviceable bearings are those which are not listed in the applicability paragraph of this AD. Current outer race S/N prefix DPSF or alphabetically subsequent prefix is considered serviceable.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

**Ferry Flights**

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

**Effective Date**

(e) This amendment becomes effective on July 11, 2000.

Issued in Burlington, Massachusetts, on May 5, 2000.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–11862 Filed 5–11–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–NM–253–AD; Amendment 39–11720; AD 2000–09–11]**

**RIN 2120–AA64**

## Airworthiness Directives; Fokker Model F.28 Mark 0070 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F.28

Mark 0070 series airplanes. This action requires a one-time inspection to detect loose bolts attaching the gustlock counter-bracket to the pulley on the elevator tension regulator assembly, and corrective action, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent restricted elevator movement and consequent reduced controllability of the airplane.

**DATES:** Effective May 30, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2000.

Comments for inclusion in the Rules Docket must be received on or before June 12, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–253–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, notified the FAA that an unsafe condition may exist on certain Fokker Model F.28 Mark 0070 series airplanes. The RLD advises that, during a routine landing of a Model F.28 Mark 0070 series airplane, the flight crew could not move the control column to its fully aft position. A subsequent inspection revealed that one of the three bolts attaching the gustlock counter-bracket to a pulley on the elevator tension regulator assembly became loose. The bolt had moved outwards slightly, obstructing the driving lever of the elevator and thus restricting the elevator deflection to 21 degrees (airplane nose up) instead of the normal 25 degrees. This condition, if not corrected, could result in reduced controllability of the airplane.

**Explanation of Relevant Service Information**

Fokker has issued Service Bulletin SBF100–27–076, dated July 1, 1999, which describes procedures for a one-time general visual inspection to detect discrepancies, and corrective action, if necessary. Discrepancies include improper installation, loose bolts, sealant damage or an insufficient amount of sealant, and incorrect torque values of the bolts or nuts. Corrective actions include removing the sealant (if present) from the bolt head and nut and checking the torque value of the bolt and nut; replacing any discrepant bolt, washer, or nut with a new component; ensuring specified torque values; and applying sealant to the bolt head and nut to prevent corrosion.

Accomplishment of the inspections and corrective actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The RLD classified this service bulletin as mandatory and issued Dutch airworthiness directive 1999–094, dated July 30, 1999, in order to assure the continued airworthiness of these airplanes in the Netherlands.

**FAA's Conclusions**

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of the Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent restricted elevator movement and consequent reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the service bulletin described previously, except as described below.

**Differences Between the Proposed AD and the Service Bulletin**

Operators should note that, although the effectivity listing in the Planning Information of the service bulletin specifies "Model F.28 Mark 0070/0100" series airplanes, the applicability statement of this proposed AD specifies only "Model F.28 Mark 0070 series airplanes." The FAA has determined that none of the affected Model F.28 Mark 0100 series airplanes are currently eligible for import into the United States; therefore, no action is required for those airplanes by this AD. In addition, the FAA points out that only two of the airplanes listed in the service bulletin are included in this proposed AD because only serial numbers 11565 and 11569 are eligible for import into the United States; the other serial numbers listed in the service bulletin are not eligible for import into the United States.

**Cost Impact**

None of the Model F.28 Mark 0070 series airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish the required actions, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $60 per airplane.

**Determination of Rule's Effective Date**

Since this AD action does not affect any airplane that is currently on the U.S. register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

**Comments Invited**

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications

shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–253–AD." The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–09–11 Fokker Services B.V.:** Amendment 39–11720. Docket 99–NM–253–AD.

*Applicability:* Model F.28 Mark 0070 airplanes, serial numbers 11565 and 11569; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent restricted elevator movement and consequent reduced controllability of the airplane, accomplish the following:

**Inspection**

(a) Within 2 months after the effective date of this AD, perform a one-time general visual inspection of the elevator gustlock counter-bracket of the elevator tension regulator assembly to detect any discrepancy (including improper installation, loose bolts, sealant damage or an insufficient amount of sealant, and incorrect torque values of the bolts or nuts), in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–27–076, dated July 1, 1999.

(1) If no discrepancy is detected, no further action is required by this AD.

(2) If any discrepancy is detected, prior to further flight, accomplish the applicable corrective actions [removing the sealant (if present) from the bolt head and nut and checking the torque value of the bolt and nut; replacing any discrepant bolt, washer, or nut with a new component; ensuring specified torque values; and applying sealant to the bolt head and nut to prevent corrosion], in accordance with the service bulletin.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or drop-light, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(d) The actions shall be done in accordance with Fokker Service Bulletin SBF100–27–076, dated July 1, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Services B.V., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in Dutch airworthiness directive 1999–094, dated July 30, 1999.

(e) This amendment becomes effective on May 30, 2000.

Issued in Renton, Washington, on May 3, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11546 Filed 5–11–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–242–AD; Amendment 39–11717; AD 2000–09–08]

RIN 2120–AA64

# Airworthiness Directives; Boeing Model 747–100, –200, 747SP, and 747SR Series Airplanes Equipped With Pratt & Whitney JT9D–7, –7A, –7F, and –7J Series Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100, –200, 747SP, and 747SR series airplanes, that requires one-time detailed visual and eddy current inspections to detect cracking of the nose cowl mounting flange; rework of the nose cowl mounting flange; eddy current inspection to detect cracking of the reworked nose cowl mounting flange; and corrective action, if necessary. This amendment is prompted by reports of the nose cowl separating from the engine and departing the airplane following severe engine vibration. The actions specified by this AD are intended to prevent separation of the nose cowl from the engine, which could cause collateral damage to the airplane, and, possibly, reduced controllability of the airplane.

**DATES:** Effective June 16, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 16, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207.

This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Dionne Krebs, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2250; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–100, –200, 747SP, and 747SR series airplanes was published in the **Federal Register** on October 6, 1999 (64 FR 54240). That action proposed to require one-time detailed visual and eddy current inspections to detect cracking of the nose cowl mounting flange; rework of the nose cowl mounting flange; eddy current inspection to detect cracking of the reworked nose cowl mounting flange; and corrective action, if necessary.

## Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

## Support for the Proposed Rule

One commenter supports the proposed rule.

## Request to Remove Paragraph (c)

Two commenters (who otherwise support the proposal) request that paragraph (c) of the proposed rule be eliminated. That paragraph reads, "As of the effective date of this AD, no person shall install a nose cowl on any airplane, unless it has been inspected and modified in accordance with paragraph (a) of this AD." One commenter states that this paragraph would effectively require modification of nose cowls well before the 24-month compliance time, which could result in an airplane being out of service for an extended period if an unexpected engine change is necessary. The other commenter states that, if paragraph (c) is included in the final rule, the commenter would have to purchase at least one additional spare nose cowl, because approximately 50 percent of its engine changes occur at locations that do not have a spare nose cowl. The commenter states that if an engine change occurs at a location that does not have a spare modified nose cowl, the time necessary to return the airplane to service will increase by at least six hours, which would result in lengthy flight delays or cancellations that would be costly and would cause disruptions for the traveling public. The commenter states that purchasing a new spare nose cowl would be expensive and would require a lead time of 300 days.

The FAA concurs with the commenters' request to eliminate paragraph (c) of the proposed rule. The FAA's intent is to allow operators to accomplish the necessary inspections and rework during a regularly scheduled maintenance interval. Therefore, paragraph (c) of the proposed rule has not been included in this final rule. The FAA finds that eliminating paragraph (c) of the proposed rule will not adversely impact the safety of the affected airplane fleet and will allow more flexibility for operators in complying with the requirements within the specified compliance time.

## Request to Extend Compliance Time

One commenter requests that paragraph (a) of the proposed rule be revised to extend the compliance time from 24 months, as proposed, to 36 months. The commenter states that the "very aggressive incorporation rate requirements" are not justified, given that there have been few incidents of nose cowl separations. The commenter states that extending the compliance time would allow the required actions to be accomplished during scheduled maintenance opportunities.

The FAA does not concur with the commenter's request. In developing an appropriate compliance time for this action, the FAA considered the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the requirements of this AD. In consideration of these items, as well as the reports of six in-service nose cowl separations, the FAA has determined that 24 months represents an appropriate interval of time allowable wherein the modifications can be accomplished during scheduled maintenance intervals for the majority of affected operators and an acceptable level of safety can be maintained. No change to the final rule is necessary in this regard.

## Challenge to Justification for Proposed Requirements

One commenter, an operator, states that, while it has no technical objection to the rework of the nose cowl mounting flange described in the proposed rule, it cannot recall any incident on its fleet of affected airplanes, in which ingestion of a foreign object into the engine resulted in separation of the nose cowl. The commenter questions the conditions that existed and the events that occurred during the incidents of nose cowl separation referenced in the proposed rule. The commenter challenges the justification for the proposed requirements if the FAA determines that unique conditions or circumstances led to the incidents in question. The commenter makes no specific request for a change to the proposed rule.

The FAA infers that the commenter is requesting that the FAA consider withdrawing the proposed rule. The FAA does not concur. The information that the FAA has received regarding incidents of nose cowl separation does not suggest that there were any conditions common to all incidents besides the configuration of the nose cowl mounting flange. The information has led the FAA to determine that the 37-bolt mounting flange configuration is not adequate to retain the nose cowl on Pratt & Whitney JT9D series engines, and that the modification of the nose cowl mounting flange described in the proposed rule is necessary. No change to the final rule is necessary in this regard.

**Request to Remove References to "Reduced Controllability of the Airplane"**

One commenter states that, "To date, no evidence of reduced airplane controllability during or after separation [of the nose cowl] has been reported." The commenter makes no specific request and provides no further information related to its comment.

The FAA infers that the commenter is requesting that references to "reduced controllability of the airplane" be removed from the proposed rule. The FAA concurs with the commenter's statement that there have been no reported instances of reduced airplane controllability during or after the separation of a nose cowl. However, the potential exists for reduced controllability during or after the separation of a nose cowl, if the separated nose cowl comes into contact with the airplane. This possibility is the basis for determining that the separation of a nose cowl is an unsafe condition. Therefore, the FAA finds that no change to the final rule is necessary in this regard.

**Request to Revise "Explanation of Relevant Service Information" Section**

One commenter, the manufacturer, states that the service bulletin referenced in the proposed rule was issued not as an inspection bulletin to detect cracking in the mounting flange, but, instead, to provide instructions for strengthening the attachment capability of the nose cowl by increasing the number of attachment fasteners. The commenter also states that it has not received reports of cracking in the nose cowl flange, nor has cracking been identified as the cause of the nose cowl separation. The commenter further states that the eddy current and detailed visual inspections described in the service bulletin are a common maintenance/rework practice after machining operations such as drilling holes, to ensure that no damage was done during the operation.

The commenter makes no specific request for a change to the proposed rule. However, the FAA infers that the commenter is requesting that the "Explanation of Relevant Service Information" section of the proposed rule be revised to eliminate references to cracking and to clarify the purpose of the eddy current and detailed visual inspections. The FAA concurs with the commenter's description of the intent of the service bulletin; however, because the referenced section is not restated in the final rule, no change to this section is necessary. In response to this comment, the FAA has also reviewed the explanation of the unsafe condition in the "Discussion" section of the proposed rule, and finds that the section accurately describes the intent and background of the proposed rule. No change to the final rule is necessary in this regard.

**Request to Revise Cost Impact Estimate**

One commenter requests an increase in the cost estimate of the proposed rule. The commenter points out that the proposed rule estimates that it will take approximately 19 work hours per airplane to accomplish the proposed actions, while the service bulletin estimates approximately 34 work hours per airplane for the actions described in the service bulletin. Also, the commenter points out that the cost figures in the proposed rule do not account for the cost of accomplishing the proposed actions on spare nose cowls, which the commenter estimates will take approximately 5.5 work hours per nose cowl.

The FAA infers that the commenter is requesting that the cost impact information in the final rule be revised to reflect the service bulletin estimates and to incorporate the estimated cost for inspecting and reworking spares. The FAA does not concur with the commenter's request. The cost impact information in AD rulemaking actions describes only the "direct" costs of the specific actions required by this AD. The number of work hours necessary to accomplish the required actions (specified as 19 in the cost impact information in the proposed rule and restated below) was provided to the FAA by the manufacturer based on the best data available to date. This number represents the time necessary to perform only the actions actually required by this AD. The FAA recognizes that, in accomplishing the requirements of any AD, operators may incur "incidental" costs in addition to the "direct" costs. The cost analysis in AD rulemaking actions, however, typically does not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. Because incidental costs may vary significantly from operator to operator, they are almost impossible to calculate. In addition, the estimated cost to modify "spare" parts is not typically included in AD rulemaking actions. No change to the final rule is necessary in this regard.

**Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

There are approximately 257 airplanes of the affected design in the worldwide fleet. The FAA estimates that 106 airplanes of U.S. registry will be affected by this AD, that it will take approximately 19 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $500 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $173,840, or $1,640 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

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will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–09–08 Boeing:** Amendment 39–11717. Docket 99–NM–242–AD.

*Applicability:* Model 747–100, –200, 747SP, and 747SR series airplanes; certificated in any category; equipped with Pratt & Whitney JT9D–7, –7A, –7F, and –7J series engines.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent separation of the nose cowl from the engine, which could cause collateral damage to the airplane, and, possibly, reduced controllability of the airplane, accomplish the following:

**One-Time Inspections and Rework**

(a) Within 24 months after the effective date of this AD, perform one-time detailed visual and eddy current inspections to detect cracking of the existing nose cowl mounting flange, rework the nose cowl mounting flange to increase the number of attachment fastener holes from 37 to 67, and perform a one-time eddy current inspection to detect cracking of the new fastener holes in the reworked nose cowl mounting flange, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–71–2290, dated March 18, 1999.

**Note 2:** For the purposes of this AD, a detailed visual inspection is defined as "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aides such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

**Corrective Action**

(b) If any crack is found during any inspection required by paragraph (a) of this AD: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(e) Except as provided by paragraph (b) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–71–2290, dated March 18, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Effective Date**

(f) This amendment becomes effective on June 16, 2000.

Issued in Renton, Washington, on May 3, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11545 Filed 5–11–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–NM–212–AD; Amendment 39–11716; AD 2000–09–07]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–10–10, –15, –30, –30F, and –40 Series Airplanes, and KC–10A (Military) Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F, and –40 series airplanes, and KC–10A (military) airplanes, that requires a one-time general visual inspection of circuit breakers to determine the manufacturer of the circuit breakers, and corrective action, if necessary. This amendment is prompted by incidents of smoke and electrical odor in the flight compartment and cabin area as a result of failure of circuit breakers. The actions specified by this AD are intended to prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin.

**DATES:** Effective June 16, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 16, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA,

Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–10–10, –15, –30, –30F, and –40 series airplanes, and KC–10A (military) airplanes was published in the **Federal Register** on January 26, 2000 (65 FR 4188). That action proposed to require a one-time general visual inspection of circuit breakers to determine the manufacturer of the circuit breakers, and corrective action, if necessary.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

**Support for the Proposed Rule**

Two commenters support the proposed rule.

**Requests to Revise Compliance Times**

One commenter requests that the compliance time for accomplishing the one-time general visual inspection be extended from the proposed 18 months to 26 months. The commenter states that such an extension will allow the inspection to be accomplished at a regularly scheduled maintenance visit. The commenter also states that the proposed 18-month compliance time would cause it to remove nine airplanes from service, which would cost $42,775 per airplane, per day.

The FAA partially concurs. The FAA finds that the compliance times can be extended somewhat. Extending the compliance time by 6 additional months will not adversely affect safety, and will allow the inspection to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. Paragraph (a) of the final rule has been revised to specify a compliance time of 24 months.

Two commenters request that the compliance time for accomplishing the replacement of the circuit breaker be extended from the proposed "prior to further flight" to "at the next scheduled maintenance visit, but not later than 18 months after the effective date of this AD." One commenter states that if there is a large number of suspect circuit breakers found during the inspection, there may not be sufficient spares available to return the airplane to service. The commenter also states that the requested extension will give operators and maintenance organizations time to order and replace the circuit breakers. Another commenter states that, because the number of circuit breakers cannot be determined on each airplane without accomplishing the proposed inspection, it would be difficult for operators to pre-order replacement units. As a result, airplanes could be grounded while waiting for parts.

The FAA has confirmed the parts availability problem and, therefore, concurs with the commenters' request. The FAA has determined that replacement of the circuit breaker at the next scheduled maintenance visit, but not later than 24 months after the effective date of this AD will not adversely affect safety. The final rule has been revised accordingly.

**Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

There are approximately 412 airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry will be affected by this AD, it will take approximately 80 work hours per airplane to accomplish the required inspection of the circuit breakers (over 700 installed on each airplane), and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,440,000, or $4,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–09–07 McDonnell Douglas:** Amendment 39–11716. Docket 99–NM–212–AD.

*Applicability:* Model DC–10–10, –15, –30, –30F, and –40 series airplanes, and KC–10A (military) airplanes, as listed in McDonnell Douglas Alert Service Bulletin DC10–24A161, dated October 29, 1999; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For

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airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent internal overheating and arcing of circuit breakers and airplane wiring due to long-term use and breakdown of internal components of the circuit breakers, which could result in smoke and fire in the flight compartment and main cabin, accomplish the following:

**Inspection and Replacement, if Necessary**

(a) Within 24 months after effective date of this AD: Perform a one-time general visual inspection of circuit breakers to determine the manufacturer of the circuit breaker in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A161, dated October 29, 1999.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(1) If no Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation circuit breaker is found, no further action is required by this paragraph.

(2) If any Wood Electric Corporation or Wood Electric Division of Potter Brumfield Corporation circuit breaker is found, at the next scheduled maintenance visit, but not later than 24 months after the effective date of this AD, replace the circuit breaker with a new circuit breaker in accordance with the service bulletin.

**Spares**

(b) As of the effective date of this AD, no person shall install, on any airplane, a circuit breaker, part number 104–205–104, 104–210–104, 104–215–104, 104–220–104, 104–225–104, 104–230–104, 104–235–104, 104–250–104, 447–205–102, 448–205–102, 505–205–102, 506–205–102, 447–507–102, 448–507–102, 505–507–102, 506–507–102, 447–210–102, 448–210–102, 505–210–102, 506–210–102, 447–215–102, 448–215–102, 505–215–102, 506–215–102, 447–220–102, 448–220–102, 505–220–102, 506–220–102, 447–225–102, 448–225–102, 505–225–102, 506–225–102, 448–235–102, 505–235–102, 506–235–102.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(e) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A161, dated October 29, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 16, 2000.

Issued in Renton, Washington, on May 3, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11544 Filed 5–11–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–NM–362–AD; Amendment 39–11719; AD 2000–09–10]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300–600 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300–600 series airplanes, that requires modification of certain electrical looms of the nose and main landing gear and modification of the rotor shaft attachment of the nose and main landing gear tachometers. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent erratic operation of the wheel tachometers, which could result in degradation of the braking performance, and possible increased landing roll.

**DATES:** Effective June 16, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 16, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300–600 series airplanes was published in the **Federal Register** on February 24, 2000 (65 FR 9223). That action proposed to require modification of certain electrical looms of the nose and main landing gear and modification of the rotor shaft attachment of the nose and main landing gear tachometers.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

**Conclusion**

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

**Cost Impact**

The FAA estimates that 79 airplanes of U.S. registry will be affected by this AD.

It will take approximately 7 work hours per airplane to accomplish the required modification of the electrical looms, at an average labor rate of $60 per work hour. Required parts will cost approximately $687 per airplane. Based on these figures, the cost impact of the modification of the electrical looms required by this AD on U.S. operators is estimated to be $87,453, or $1,107 per airplane.

It will take approximately 13 work hours per airplane to accomplish the required modification of the rotor shaft attachment, at an average labor rate of $60 per work hour. Required parts will cost approximately $169 per airplane. Based on these figures, the cost impact of the modification of the rotor shaft attachment required by this AD on U.S. operators is estimated to be $74,971, or $949 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–09–10 Airbus Industrie:** Amendment 39–11719. Docket 99–NM–362–AD.

*Applicability:* Model A300–600 series airplanes, certificated in any category, except those airplanes on which Airbus Modifications 11661 and 11676 (Airbus Service Bulletin A300–32–6069) and 12095 (Airbus Service Bulletin A300–32–6077) have been installed.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent erratic operation of the wheel tachometers, which could result in degradation of the braking performance, and possible increased landing roll, accomplish the following:

**Modifications**

(a) Within 18 months after the effective date of this AD, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Modify the electrical looms of the nose and main landing gear, in accordance with Airbus Service Bulletin A300–32–6069, Revision 01, dated December 29, 1999; and

(2) Modify the rotor shaft attachment of the nose and main landing gear tachometers, in accordance with Airbus Service Bulletin A300–32–6077, Revision 01, dated September 25, 1999.

**Note 2:** Messier-Dowty Service Bulletins 470–32–779, dated April 14, 1997, and 470–32–777, dated July 1, 1997, are referenced in Airbus Service Bulletin A300–32–6069. Messier-Bugatti Service Bulletin C20105–32–782, dated October 17, 1996, is referenced in Airbus Service Bulletin A300–32–6077. The Messier-Dowty and Messier-Bugatti service bulletins are additional sources of service information for accomplishing the applicable actions required by this AD.

**Note 3:** Accomplishment of the modifications required by paragraph (a) of this AD, prior to the effective date of this AD, in accordance with Airbus Service Bulletin A300–32–6069, dated June 13, 1997, or A300–32–6077, dated May 28, 1999, is considered acceptable for compliance with the applicable requirements specified by this AD.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(d) The modifications shall be done in accordance with Airbus Service Bulletin A300–32–6069, Revision 01, dated December 29, 1999; and Airbus Service Bulletin A300–32–6077, Revision 01, dated September 25, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 5:** The subject of this AD is addressed in French airworthiness directive 1999–428–295(B), dated November 3, 1999.

(e) This amendment becomes effective on June 16, 2000.

Issued in Renton, Washington, on May 3, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11548 Filed 5–11–00; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 99–NM–372–AD; Amendment 39–11721; AD 2000–09–12]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon (Beech) Model 400A and 400T Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon (Beech) Model 400A and 400T series airplanes, that requires replacement of temperature switch assemblies of the wing ice protection system with new, improved parts. This amendment is prompted by reports of electrical continuity problems with solder joints on the temperature switches of the wing ice protection system. The actions specified by this AD are intended to prevent detachment or breakage of wires in the temperature switch assemblies of the wing ice protection system. Such detachment or breakage of wires could result in the flightcrew not being advised of an over-temperature situation on the leading edge of the wing, which could result in structural damage to the wing.

**DATES:** Effective June 16, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 16, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Beechjet/Premier Technical Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Philip Petty, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4139; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon (Beech) Model 400A and 400T series airplanes was published in the **Federal Register** on January 12, 2000 (65 FR 1836). That action proposed to require replacement of temperature switch assemblies of the wing ice protection system with new, improved parts.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 404 airplanes of the affected design in the worldwide fleet. The FAA estimates that 366 airplanes of U.S. registry will be affected by this AD, that it will take approximately 30 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $658,800, or $1,800 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

### Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–09–12 Raytheon Aircraft Company (Formerly Beech):** Amendment 39–11721. Docket 99–NM–372–AD.

*Applicability:* Model 400A series airplanes, having serial numbers RK–01 through RK–188 inclusive; Model 400T (T–1A) series airplanes, having serial numbers TT–01 through TT–180 inclusive; and Model 400T (TX) series airplanes, having serial numbers TX–01 through TX–09 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent detachment or breakage of wires in the temperature switch assemblies of the wing ice protection system, which could result in the flightcrew not being advised of an over-temperature situation on the leading edge of the wing, and consequent structural damage to the wing, accomplish the following:

**Replacement**

(a) At the next scheduled inspection, but no later than 200 flight hours after the effective date of this AD, replace temperature switch assemblies of the wing ice protection system with new, improved temperature switch assemblies, in accordance with Raytheon Service Bulletin 30–3008, Revision 1, dated August 1999.

**Note 2:** Replacements accomplished prior to the effective date of this AD in accordance with Raytheon Service Bulletin 30–3008, dated March 1999, are considered acceptable for compliance with the applicable action specified in this AD.

**Spares**

(b) As of the effective date of this AD, no person shall install, on any airplane, a temperature switch assembly having a part number listed in the "Old Part Number" column of the table in 2.D. of Raytheon Service Bulletin 30–3008, Revision 1, dated August 1999.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(e) The replacement shall be done in accordance with Raytheon Service Bulletin 30–3008, Revision 1, dated August 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Manager Service Engineering, Beechjet/Premier Technical Support Department, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 16, 2000.

Issued in Renton, Washington, on May 3, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11549 Filed 5–11–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–NM–305–AD; Amendment 39–11718; AD 2000–09–09]**

**RIN 2120–AA64**

## Airworthiness Directives; EMBRAER Model EMB–145 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain EMBRAER Model EMB–145 series airplanes, that currently requires revisions to the Airplane Flight Manual (AFM) to provide the flight crew with updated procedures for prohibiting use of the autopilot below 1,500 feet above ground level, emergency procedures for pitch trim runaway, and abnormal procedures for autopilot trim failure and stabilizer out of trim. That AD also requires installation of certain warning placards. This amendment requires replacement of a certain integrated computer with a new integrated computer; installation of an upgraded integrated computers checklist; and removal of certain placards and certain limitations in the AFM. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the pitch trim system, which could cause undetected autopilot trim runaway, and consequent reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss.

**DATES:** Effective June 16, 2000.

The incorporation by reference of EMBRAER Service Bulletin S.B. 145–31–0010, dated March 18, 1999, as listed in the regulations, is approved by the Director of the Federal Register as of June 16, 2000.

The incorporation by reference of EMBRAER Alert Service Bulletin, S.B. 145–31–A010, dated December 15, 1998, as listed in the regulations, was previously approved by the Director of the Federal Register as of February 2, 1999 (64 FR 4521, January 29, 1999).

**ADDRESSES:** The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Rob Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 99–01–12, amendment 39–11015 (64 FR 4521, January 29, 1999), which is applicable to certain EMBRAER Model EMB–145 series airplanes, was published in the **Federal Register** on December 29, 1999 (64 FR 72964). The action proposed to require revisions to the Airplane Flight Manual to provide the flight crew with updated procedures for prohibiting use of the autopilot below 1,500 feet above ground level, emergency procedures for pitch trim runaway, and abnormal procedures for autopilot trim failure and stabilizer out of trim. That AD also requires installation of certain warning placards. This amendment requires replacement of a certain integrated

computer with a new integrated computer; installation of an upgraded integrated computers checklist; and removal of certain placards and certain limitations in the AFM.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

**Conclusion**

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

**Cost Impact**

There are approximately 46 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 99–01–12, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $2,760, or $60 per airplane.

The new integrated computer replacement, checklist installation and placard removals that are required by this AD action take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $675 per airplane. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $33,810, or $735 per airplane.

The removal of AFM limitations that is required by this AD action takes approximately 1 work hour per airplane to accomplish. Based on these figures, the cost impact of the requirements of this AD on U.S. operators is estimated to be $2,760, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–11015 (64 FR 4521, January 29, 1999), and by adding a new airworthiness directive (AD), amendment 39–11718, to read as follows:

**2000–09–09 Empresa Brasileira De Aeronautica S.A.** (EMBRAER): Amendment 39–11718. Docket 99–NM–305–AD. Supersedes AD 99–01–12, Amendment 39–11015.

*Applicability:* Model EMB–145 series airplanes, serial numbers 145004 through 145047 inclusive and 145049 through 145051 inclusive; certificated in any category; equipped with IC–600 #1 having part number (P/N) 7017000–82402; excluding those airplanes on which the modification specified in any of the following EMBRAER service bulletins has been accomplished: EMBRAER Service Bulletin S.B. 145–22–0001, dated May 7, 1998; EMBRAER Service Bulletin S.B. 145–22–0004, Revision 01, dated July 30, 1998; EMBRAER Service Bulletin S.B. 145–31–0007, Revision 02, dated June 30, 1998.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the pitch trim system, which could cause undetected autopilot trim runaway, and result in reduced controllability of the airplane, uncommanded autopilot disconnect, and excessive altitude loss; accomplish the following:

**Restatement of Requirements of AD 99–01–12**

*Placard Installation and AFM Revision*

(a) Within 20 flight hours after February 2, 1999 (the effective date of AD 99–01–12, amendment 39–11015), accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD.

(1) Install warning placards, P/N 145–39641–001, on the left and right sides of the cockpit glare shield panel, using double-face tape (or similar), in accordance with EMBRAER Alert Service Bulletin S.B. 145–31–A010, dated December 15, 1998, which states:

"DO NOT OPERATE AUTOPILOT BELOW 1,500 FT A.G.L."

(2) Revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) (in the "AUTOPILOT" section) to include the information contained in this paragraph of the AD. This may be accomplished by inserting a copy of this AD in the AFM.

**"Autopilot**

THE USE OF AUTOPILOT BELOW 1,500 FEET IS PROHIBITED."

(3) Revise the Emergency Procedures Section of the FAA-approved AFM (in the "PITCH TRIM RUNAWAY" section) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

**"Pitch Trim Runaway**

Immediately and simultaneously:
Control Column—HOLD FIRMLY
Quick Disconnect Button—PRESS AND HOLD
Pitch Trim Main System—OFF
Pitch Trim Back Up System—OFF
Quick Disconnect Button—RELEASE
If control column forces are excessive, try to recover airplane control by turning one system on and trimming the airplane as necessary. Initiate with the backup system. Leave the failed system off.
If neither system is operative:
PITCH TRIM INOPERATIVE Procedure—COMPLETE
Autopilot—OFF

Do not use the autopilot for the remainder of the flight."

(4) Revise the Abnormal Procedures Section of the FAA-approved AFM (in the "AUTOPILOT" section) to include the following statement. This may be accomplished by inserting a copy of this AD in the AFM.

**"Autopilot Trim Failed**

PITCH TRIM RUNAWAY Procedure—PERFORM

**Stabilizer Out of Trim**

PITCH TRIM RUNAWAY Procedure—PERFORM"

**New Requirements of this Ad**

*Terminating Action*

(b) Within 500 flight hours after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD. Accomplishment of paragraph (b) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) Replace the integrated computer IC–600 #1, P/N 7017000–82402, with a new integrated computer, P/N 7017000–82422; install an upgraded integrated computers checklist; and remove warning placards, P/N 145–39641–001, on the left and right sides of the cockpit glare shield panel required by paragraph (a)(1) of this AD; in accordance with EMBRAER Service Bulletin S.B. 145–31–0010, dated March 18, 1999.

**Note 2:** Installation of an upgraded integrated computers checklist is required only if an integrated computers checklist is currently installed on the airplane.

(2) Remove the limitations required by paragraphs (a)(2), (a)(3), and (a)(4) of this AD from the AFM.

*Alternative Methods of Compliance*

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance/Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

*Special Flight Permits*

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(e) Except as provided by paragraph (a)(2) of this AD: The actions shall be done in accordance with EMBRAER Alert Service Bulletin S.B. 145–31-A010, dated December 15, 1998, and EMBRAER Service Bulletin S.B. 145–31–0010, dated March 18, 1999.

(1) The incorporation by reference of EMBRAER Service Bulletin S.B. 145–31–0010, dated March 18, 1999, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Alert Service Bulletin S.B. 145–31-A010, dated December 15, 1998, was previously approved by the Director of the Federal Register as of February 2, 1999 (64 FR 4521, January 29, 1999).

(3) Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 4:** The subject of this AD is addressed in Brazilian airworthiness directive 98–12–01R1, dated May 26, 1999.

(f) This amendment becomes effective on June 16, 2000.

Issued in Renton, Washington, on May 3, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11547 Filed 5–11–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–ASO–4]**

### Establishment of Class E Airspace; Andrews—Murphy, NC; Correction

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; correction.

**SUMMARY:** This action corrects an error in the airspace description of a final rule that was published in the **Federal Register** on March 31, 2000 (65 FR 17133), Airspace Docket No. 00–ASO–4. The final rule establishes Class E airspace at Andrews—Murphy, NC.

**EFFECTIVE DATE:** Effective 0901 UTC, June 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

**SUPPLEMENTARY INFORMATION:**

**History**

**Federal Register** Document 00–7959, Airspace Docket No. 00–ASO–4, published on March 31, 2000 (65 FR 17133), established Class E airspace at Andrews—Murphy, NC. The airspace description inadvertently omitted language excluding the Class E airspace area at Knoxville, TN. This action corrects the error.

**Correction to Final Rule**

Accordingly, pursuant to the authority delegated to me, the airspace description for the Class E airspace area at Andrews—Murphy, NC, incorporated by reference at § 71–1 and published in the **Federal Register** on March 31, 2000 (65 FR 17133), is corrected as follows:

**§ 71.1 [Corrected]**

**ASO NC E5 Andrews—Murphy, NC [Corrected]**

1. On page 17134, column 1, line 2, correct the airspace description by adding "; excluding that airspace within the Knoxville, TN, Class E airspace" after "NC".

Issued in College Park, Georgia, on April 20, 2000.

**Nancy B. Shelton,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 00–10714 Filed 5–11–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### 21 CFR Part 1301

**[DEA–200S]**

### Schedules of Controlled Substances: Addition of Gamma-Hydroxybutyric Acid to Schedule I; Extension of Application of Order Form Requirement for Certain Persons

**AGENCY:** Drug Enforcement Administration (DEA), Justice.

**ACTION:** Supplementary statement to final rule.

**SUMMARY:** On March 13, 2000, DEA published a final rule (65 FR 13235) implementing the provisions of Pub. L. 106–172 "The Samantha Reid and Hillory J. Farias Date-Rape Prevention Act of 1999", placing gamma-hydroxybutyric acid (GHB) and its salts, isomers, and salts of isomers into Schedule I of the Controlled Substances Act (CSA). The final rule placed Food and Drug Administration (FDA) approved products containing GHB in Schedule III, if or when these products are approved. The final rule required that any person who manufactures, distributes, dispenses, imports or

exports GHB or who engages in research or conducts instructional activities with GHB, or who proposes to engage in such activities, submit an application for Schedule I registration in accordance with Title 21, Code of Federal Regulations (CFR), Part 1301 by May 12, 2000. Persons wishing to handle GHB for any of the above listed purposes must conduct all transactions using DEA Form 222, U.S. Official Order Forms for Schedule I and II Controlled Substances. Since these forms are provided only to registrants, this notice is providing an extension in the application of the order form requirement for GHB for persons submitting a registration application by May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7297.

**SUPPLEMENTARY INFORMATION:**

**What Did DEA's Final Rule Accomplish?**

On March 13, 2000, DEA published a final rule (65 FR 13235) implementing the provisions of Pub. L. 106–172 "The Samantha Reid and Hillory J. Farias Date-Rape Prevention Act of 1999", placing gamma-hydroxybutyric acid (GHB) and its salts, isomers, and salts of isomers into Schedule I of the Controlled Substances Act (CSA).

The final rule noted that, pursuant to 21 CFR Part 1301, any person who manufactures, distributes, dispenses, imports or exports GHB or who engages in research or conducts instructional activities with GHB, or who proposes to engage in such activities, must submit an application for Schedule I registration by May 12, 2000. This was the first scheduling action involving GHB, and DEA recognized that persons distributing GHB for legitimate purposes would need time to comply with the new regulations.

**Why Is DEA Providing an Extension of the Application of the Order Form Requirement and to Whom Does This Extension Apply?**

At the same time, DEA required that persons wishing to distribute GHB for any of the above listed purposes must conduct all transactions using DEA Form 222, U.S. Official Order Forms for Schedule I and II Controlled Substances, as required by 21 CFR 1305.03. Given the DEA does not provide order forms until registration is approved, it would not be possible for applicants to comply with the order form requirements of the final rule while their application for registration is pending. Therefore, DEA is providing and extension in the application of the order form requirement for GHB for persons submitting a registration application by May 12, 2000. Persons who have submitted a registration application by May 12, 2000 may continue to handle and conduct transactions involving GHB. These persons must keep records regarding each transaction containing information required on the order form. Distributions of GHB may occur without the order form while applications for registration are pending. However, once registration is approved, and order forms have been received, these registrants must complete order forms for the transactions which have been conducted and must distribute the order forms according to the requirements of the regulations.

**To Whom Does This Extension Not Apply?**

The extension of the application of the order form requirement for GHB does not apply to persons submitting an application for registration after May 12, 2000. Persons submitting an application for registration after May 12, 2000 may not handle or conduct transactions involving GHB until registration has been granted by the Administration.

**Regulatory Certifications**

*Regulatory Flexibility Act*

The Deputy Assistant Administrator hereby certifies that this rulemaking has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). It will not have a significant financial impact on a substantial number of small business entities. This supplementary statement to the final rule provides an extension of the application of the order form requirement for GHB, permitting persons to distribute GHB without using an official order form until those persons have been registered by the Administration.

*Executive Order 12866*

The Deputy Assistant Administrator further certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 Section 1(b). DEA has determined that this is not a significant rulemaking action. This supplementary statement to the final rule permits distributions of GHB to occur without the use of order forms until persons are registered with the Administration. Therefore, this action has not been reviewed by the Office of Management and Budget.

*Executive Order 13132*

This action has been analyzed in accordance with the principles and criteria in Executive Order 13132, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*Unfunded Mandates Reform Act of 1995*

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provision of the Unfunded Mandates Reform Act of 1995. Small Business Regulatory Enforcement Fairness Act of 1996.

This rule is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

*Plain Language Instructions*

The Drug Enforcement Administration makes every effort to write clearly. If you have suggestions as to how to improve the clarity of this regulation, call or write Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, telephone (202) 307–7297.

Dated: May 5, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control.*

[FR Doc. 00–11884 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–09–M

## PRESIDENTIAL COMMISSION ON THE ASSIGNMENT OF WOMEN IN THE ARMED FORCES

**32 CFR Chapter XXIX**

**Removal of CFR Chapter**

Since the Presidential Commission on the Assignment of Women in the Armed Forces is legally terminated and its regulations are no longer in force and effect, the Office of the Federal Register is removing 32 CFR Chapter XXIX from

the Code of Federal Regulations, in compliance with the provisions in 1 CFR 8.2.

Accordingly, 32 CFR is amended by removing part 2900 and vacating chapter XXIX.

[FR Doc. 00–55506 Filed 5–11–00; 8:45 am]
BILLING CODE 1505–01–D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

[OPP–300767A; FRL–6558–5]

RIn 2070–Ab78

### Dicamba, Pesticide Tolerances; Technical Amendment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; technical amendment.

**SUMMARY:** EPA published in the **Federal Register** of January 6, 1999, a document establishing tolerances for residues of dicamba in/on various raw agricultural commodities. BASF Corporation requested the tolerances under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170). The regulation was amended to include a new metabolite and new commodities, as described in the Final Rule. Tolerances for soybean, forage, and hay were inadvertently omitted from § 180.227(a)(3). This technical amendment corrects this error by listing these commodities in the existing regulation.

**DATES:** This technical amendment is effective May 12, 2000. Objections and requests for hearings, identified by docket control number OPP–300767A, must be received by EPA on or before July 11, 2000.

**ADDRESSES:** Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300767A in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joanne Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9356; e-mail: miller.joanne@epamail.epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production.<br>Animal production.<br>Food manufacturing.<br>Pesticide manufacturing. |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the Federal Register listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300767A. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. Background

EPA published a document on January 6, 1999 (64 FR 759) (FRL–6049–2), establishing, revising, and revoking tolerances for residues of dicamba in/on various raw agricultural commodities. This regulation established maximum permissible levels for residues of dicamba in/on food commodities pursuant to section 408(b)(2)(D) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. Specifically, EPA amended § 180.227 by redesignating then existing paragraphs (b) and (c) as paragraphs (a)(2) and (a)(3), respectively. EPA further amended § 180.227 by revising newly designated paragraph (a)(2). In the revision of § 180.227(a)(2), EPA left out the tolerances for soybean, forage and soybean, hay with the intention of including those tolerances in newly designated paragraph (a)(3). However, entries for soybean, forage and soybean, hay were inadvertently omitted from the table in paragraph (a)(3). This technical amendment corrects that oversight. The tolerance levels for soybean, forage and soybean, hay were listed correctly throughout the document. The correct tolerance levels, 0.01 ppm in/on soybean forage and hay, will be restored by this technical amendment. The tolerances were not revoked and have been enforceable during the lapse of time they did not appear in the regulation.

## III. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will

continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

*A. What Do I Need to Do to File an Objection or Request a Hearing?*

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300767A in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 11, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300767A, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

*B. When Will the Agency Grant a Request for a Hearing?*

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

## IV. Regulatory Assessment Requirements

This final rule does not impose any new requirements. It only implements a technical amendment to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled "Federal Register Enhancing the Intergovernmental Partnership" (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled "Consultation and Coordination with Indian Tribal Governments" 63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice and comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.).

### V. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this rule in the **Federal Register**. This is a technical correction to the **Federal Register** and is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 4, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

Therefore, 40 CFR part 180 is amended as follows:

1. The authority citation for part 180 continues to read as follows:

**Authority:** 21 U.S.C. 321(q), 346(a), and 374.

2. In § 180.227, the table to paragraph (a)(3) is amended by adding alphabetically entries for the commodities "soybean, forage" and "soybean, hay", to read as follows:

**§ 180.227 Dicamba; tolerances for residues.**

(a) * * *

(3) * * *

| Commodity | Parts per million |
|---|---|
| * * * * * | |
| Soybean, forage | 0.01 |
| Soybean, hay | 0.01 |
| * * * * * | |

* * * * *

[FR Doc. 00–11872 Filed 5–11–00; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

### Criteria for the Management of Disposal Sites for Ocean Dumping

*CFR Correction*

In Title 40 of the Code of Federal Regulations, parts 190–259, revised as of July 1, 1999, page 229, § 228.15 is corrected in paragraph (j)(11)(i) by removing "93°dprime;W." and adding in its place "93°49′23″W.".

[FR Doc. 00–55507 Filed 5–11–00; 8:45 am]

BILLING CODE 1505–01–D

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 64

**[Docket No. FEMA–7735]**

### Suspension of Community Eligibility

**AGENCY:** Federal Emergency Management Agency, FEMA.

**ACTION:** Final rule.

**SUMMARY:** This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

**EFFECTIVE DATES:** The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

**ADDRESSES:** If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

**FOR FURTHER INFORMATION CONTACT:** Donna M. Dannels, Branch Chief, Policy, Assessment and Outreach Division, Mitigation Directorate, 500 C Street, S.W., Room 411, Washington, D.C. 20472, (202) 646–3098.

**SUPPLEMENTARY INFORMATION:** The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to

the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

**National Environmental Policy Act**

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

**Regulatory Flexibility Act**

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

**Regulatory Classification**

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

**Paperwork Reduction Act**

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

**Executive Order 12612, Federalism**

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

**Executive Order 12778, Civil Justice Reform**

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

**List of Subjects in 44 CFR Part 64**

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

## PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

**Authority:** 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

**§ 64.6 [Amended]**

2. The tables published under the authority of § 64.6 are amended as follows:

64.6—LIST OF ELIGIBLE COMMUNITIES

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| **Region I** | | | | |
| New Hampshire: Brentwood, town of, Rockingham County. | 330125 | June 10, 1975, Emerg.; April 15, 1981; Reg. May 4, 2000 ..... | 05–04–00 | 05–04–00 |
| Charlestown: town of, Sullivan County. | 330153 | November 3, 1975, Emerg.; April 15, 1981; Reg. May 4, 2000 | 05–04–00 | 05–04–00 |
| Walpole, town of, Cheshire County. | 330027 | June 9, 1975, Emerg.; April 15, 1981; Reg. May 4, 2000 ..... | 05–04–00 | 05–04–00 |
| **Region II** | | | | |
| New York: Cooperstown, village of, Otsego County. | 360665 | May 28, 1975, Emerg.; February 1, 1988, Reg. May 4, 2000 | 05–04–00 | 05–04–00 |
| Greenwich, village of, Washington County. | 360887 | April 2, 1975, Emerg.; April 17, 1985, Reg. May 4, 2000 ..... | 05–04–00 | 05–04–00 |
| New Bremen, town of, Lewis County. | 360373 | January 2, 1976, Emerg.; June 19, 1985, Reg. May 4, 2000 .. | 05–04–00 | 05–04–00 |
| New York Mills, village of, Oneida County. | 360537 | May 23, 1975, Emerg.; May 16, 1983, Reg. May 4, 2000 ..... | 05–04–00 | 05–04–00 |
| Whitesboro, village of, Oneida County. | 360566 | March 15, 1974, Emerg.; February 1, 1978, Reg. May 4, 2000. | 05–04–00 | 05–04–00 |
| Whitestown, town of, Oneida County. | 360567 | May 13, 1975, Emerg.; September 15, 1983, Reg. May 4, 2000. | 05–04–00 | 05–04–00 |
| Yorkville, village of, Oneida County. | 360568 | September 19, 1974, Emerg.; June 1, 1983, Reg. May 4, 2000. | 05–04–00 | 05–04–00 |
| **Region III** | | | | |
| West Virginia: Grant County, unincorporated areas. | 540038 | October 22, 1975, Emerg.; August 1, 1987, Reg. May 4, 2000 | 05–04–00 | 05–04–00 |
| Petersburg, city of, Grant County. | 540039 | April 18, 1975, Emerg.; June 18, 1987, Reg. May 4, 2000 ..... | 05–04–00 | 05–04–00 |
| **Region IV** | | | | |
| North Carolina: Spring Lake, town of, Cumberland County. | 370484 | February 14, 1997, Reg.; May 4, 2000, Susp ..... | 05–04–00 | 05–04–00 |
| **Region V** | | | | |
| Minnesota: Elk River, city of, Sherburne County. | 270436 | February 19, 1974, Emerg.; May 2, 1977, Susp. May 4, 2000 | 05–04–00 | 05–04–00 |
| Sherburne County, unincorporated areas. | 270435 | May 16, 1974, Emerg.; May 19, 1981, Susp. May 4, 2000 ..... | 05–04–00 | 05–04–00 |
| **Region X** | | | | |
| Washington: Aberdeen, city of, Grays Harbor County. | 530058 | May 9, 1974, Emerg.; July 16, 1984, Susp. May 4, 2000 ..... | 05–04–00 | 05–04–00 |

64.6—LIST OF ELIGIBLE COMMUNITIES—Continued

| State and location | Community No. | Effective date authorization/cancellation of sale of flood insurance in community | Current effective map date | Date certain Federal assistance no longer available in special flood hazard areas |
|---|---|---|---|---|
| **Region II** | | | | |
| New York: Clarkstown, town of, Rockland County. | 360679 | October 24, 1974, Emerg.; March 2, 1983, Susp. May 18, 2000. | 05–18–00 | 05–18–00 |
| Painted Post, village of, Steuben County. | 360779 | February 23, 1973, Emerg.; September 30, 1977, Susp. May 18, 2000. | 05–18–00 | 05–18–00 |
| **Region III** | | | | |
| West Virginia: Logan County, unincorporated areas. | 545536 | January 29, 1971, Emerg.; April 7, 1972, Susp. May 18, 2000 | 05–18–00 | 05–18–00 |
| Morgan County, unincorporated areas. | 540144 | October 28, 1975, Emerg.; July 1, 1987, Susp. May 18, 2000 | 05–18–00 | 05–18–00 |
| **Region V** | | | | |
| Wisconsin: Crawford County, unincorporated areas. | 555551 | March 19, 1971, Emerg.; April 20, 1973, Susp. May 18, 2000 | 05–18–00 | 05–18–00 |

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: April 28, 2000.

**Michael J. Armstrong,**

*Associate Director for Mitigation.*

[FR Doc. 00–11988 Filed 5–11–00; 8:45 am]

BILLING CODE 6718–05–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–944; MM Docket No. 96–242; RM–8940, RM–9243]**

### Radio Broadcasting Services; Cheyenne, WY, Grover, CO.

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Montgomery Broadcasting Limited Liability Company, allots Channel 229A to Cheyenne, Wyoming, and dismisses the counterproposal for Channel 229C2 at Grover, Colorado, filed by Magic City Media at its request. *See* 61 FR 65509 (December 13, 1996). Channel 229A can be allotted to Cheyenne in compliance with the Commission's minimum distance separation requirements, with respect to domestic allotments, with a site restriction of 9.7 kilometers (6.0 miles), at coordinates 41–12–39 and 104–44–54. A filing window will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

**DATES:** Effective June 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Victoria McCauley Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 96–242, adopted April 19, 2000, and released April 28, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

### PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channel 229A at Cheyenne.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–11913 Filed 5–11–00; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[I.D. 050500G]**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Texas Closure

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Adjustment of the beginning date of the Texas closure.

**SUMMARY:** NMFS announces an adjustment to the start of the annual closure of the shrimp fishery in the exclusive economic zone (EEZ) off Texas. The closure is normally from May 15 to July 15 each year. For 2000, the closure will begin on May 11. The Texas closure is intended to prohibit the harvest of brown shrimp during the major period of emigration from Texas estuaries to the Gulf of Mexico so the shrimp may reach a larger, more valuable size and to prevent the waste of brown shrimp that would be discarded in fishing operations because of their small size.

**DATES:** The EEZ off Texas is closed to trawl fishing, except for trawling for royal red shrimp beyond the 100-fathom (183 meter) depth contour, from 30 minutes after sunset, May 11, 2000, to 30 minutes after sunset, July 15, 2000, unless the latter date is changed through notification in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Steve Branstetter, 813-570-5305.

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico shrimp fishery is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council and is implemented by regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Implementing regulations at 50 CFR 622.34 describe the Texas closure and provide for adjustments to the beginning and ending dates by the Regional Administrator, Southeast Region, NMFS, under specified criteria.

The beginning and ending dates of the Texas closure are based on biological sampling by Texas Parks and Wildlife Department (TPWD). This sampling is used to project when brown shrimp in Texas bays and estuaries will reach a mean size of 90 mm, and begin strong emigrations out of the bays and estuaries during maximum duration ebb tides. Sampling during the spring of 2000 indicates that brown shrimp will be leaving the Texas estuaries earlier than normal. Thus, to provide adequate protection of small brown shrimp emigrating from the Texas estuaries, NMFS has determined that an adjustment to the closure date is necessary. During the closure, the EEZ off Texas is closed to all trawl fishing, except for vessels trawling for royal red shrimp beyond the 100-fathom (183-m) depth contour. State waters off Texas will also be closed commencing at 30 minutes after sunset on May 11, 2000.

The termination date of the Texas closure is based on continued sampling by TPWD to develop projections of when brown shrimp will reach a mean size of 112 mm, and when maximum duration ebb tides will occur. If there is a need to adjust the July 15 date for the termination of the closure, notification of the revised termination date will be published in the **Federal Register**.

### Classification

This action is authorized by 50 CFR 622.26(b) and is exempt from review under Executive Order 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 8, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12032 Filed 5–11–00; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 000407096–0096–01; 040300C]**

## Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 33 to the Northeast Multispecies Fishery Management Plan; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** On April 24, 2000, NMFS published a final rule implementing Framework Adjustment 33 to the Northeast Multispecies Fishery Management Plan. The final rule implementing Framework Adjustment 33 contained errors. The effective date of the increase in the haddock landing limit specified in § 648.86(a)(1)(i) and (ii), and the paragraph numbering of the new paragraph (e) in § 648.89, Recreational and charter/party restrictions, are corrected in this document. In addition, the amendatory instruction for the revision to § 648.23 indicated that paragraph (b)(4) would be revised rather than only the introductory text to paragraph (b)(4). Also, three metric conversions (pounds to kilograms) for haddock contained in the preamble are incorrect. This document corrects these errors.

**DATES:** Sections 648.23(b)(4) introductory text, and 648.86(a)(1)(i) and (ii) are effective May 1, 2000. Section 648.89(e) contains information collection requirements and is not effective until approved by the Office of Management and Budget (OMB). When OMB approval is received, NMFS will announce the effective date of § 648.89(e) in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Richard A. Pearson, Fishery Policy Analyst, 978–281–9279.

**SUPPLEMENTARY INFORMATION:** In the final rule published April 24, 2000, at 65 FR 21658, the preamble indicated that the haddock daily landing limit during the May 1–September 30 period was increased to 3,000 lb/DAS (1,360.8 kg/DAS), or part of a DAS, with a maximum possession limit of 30,000 lb (13,608 kg) per trip. The preamble also indicated that the daily landing limit will increase on October 1, 2000, to 5,000 lb/DAS (2,268 kg/DAS), with a maximum possession limit of 50,000 lb (22,680 kg) per trip. However, § 648.86(a)(1)(i) of the final rule inadvertently indicated that the 3,000 lb/DAS (1,360.8 kg/DAS) landing limit would be in effect through August 31, rather than September 30, and that the increase in the landing limit reflected in § 648.86(a)(1)(ii) would occur on September 1, 2000, rather than on October 1, 2000. This document corrects the effective date of the haddock increase contained in § 648.86(a)(1)(i) and (ii) to be consistent with the preamble language. In addition, in the paragraph entitled "Haddock Measures" and in the haddock discussion contained in the Classification section three of the metric conversions for haddock are incorrect. This document corrects those errors.

In § 648.23, amendatory instruction 4 indicated that paragraph (b)(4) was revised. However, the intent was to revise only the introductory text of § 648.23(b)(4). This document corrects the amendatory instruction.

Also, we added a new paragraph (e) to § 648.89. However, the subparagraphs of new paragraph (e)(3) were incorrectly designated. This document corrects that error.

1. On page 21661, in the first column under "Haddock Measures", in the first sentence, in the eighth line of this paragraph, remove "period to 3,000 lb/DAS (1,360.7 kg/" and add, in its place, "period to 3,000 lb/DAS (1,360.8 kg/".

2. On page 21663, in the third column, first full paragraph, in the fourth sentence, in the 24th through 26th lines, remove "limit to 3,000 lbs/DAS (2,268 kg/DAS), with a maximum possession limit of 30,000 lb (13,680 kg) per trip." and add, in its place, "limit to 3,000 lb/DAS (1,360.8 kg/DAS), with a maximum possession limit of 30,000 lb (13,608 kg) per trip."

### § 648.23 [Corrected]

3. On page 21665, in column one, amendatory instruction no. 4 is corrected to read as follows:

"4. In § 648.23, paragraph (b)(4) introductory text is revised to read as follows:"

### § 648.86 [Corrected]

4. On page 21666, in § 648.86(a)(1)(i), in the first sentence, remove "August 31," and add, in its place, "September 30,".

5. On page 21666, in § 648.86(a)(1)(ii), in the first sentence, remove "September 1" and add, in its place, "October 1".

### § 648.89 [Corrected]

6. On page 21667, in § 648.89(e)(3), in the second and third columns, the

paragraphs designated as (A), (B), and (C), and (D) are correctly designated as (i), (ii), (iii), and (iv).

Dated: May 8, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12030 Filed 5–11–00; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 970703166–8209–04; I.D. 060997A]**

**RIN 0648–AH65**

## Fisheries of the Exclusive Zone Economic Zone Off Alaska; License Limitation Program; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Correcting amendments.

**SUMMARY:** NMFS is correcting a final rule implementing the License Limitation Program (LLP) established for the groundfish fisheries in the Bering Sea and Aleutian Islands area (BSAI), the groundfish fisheries in the Gulf of Alaska (GOA), and the crab fisheries in the BSAI, which was published in the **Federal Register** of Thursday, October 1, 1998.

**DATES:** Effective January 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Jay Ginter, 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

### Background

The LLP is a limited access system authorized under section 303(d) of the Magnuson-Stevens Fishery Conservation and Management Act. The LLP is designed to limit the number, size and operation of vessels that may be used in the affected groundfish and crab fisheries. The North Pacific Fishery Management Council (Council) adopted the LLP in June 1995. The Council officially submitted the LLP to NMFS in June 1997. A proposed rule to implement the LLP was published on August 15, 1997 (62 FR 43865). The LLP was approved by NMFS on September 12, 1997. A final rule to implement the LLP was published on October 1, 1998 (63 FR 52642). Additional rules to implement an application process and a transfer process for LLP licenses were proposed on April 19, 1999 (64 FR 19113) and published as final on August 6, 1999 (64 FR 42826).

One of the licensing requirements adopted by the Council for vessels greater than or equal to 125 feet (38.1 m) length overall (LOA) to participate in the groundfish fisheries in the Western GOA was to have made at least one landing in the Western GOA in any 2 of the 4 calendar years 1992, 1993, 1994, or 1995, through June 17, 1995. The LLP proposed rule discussed this requirement in the preamble (at 62 FR 43869) and in the proposed rule text at § 679.4(i)(4)(ii)(E). Vessels that are equal to or greater than 125 feet (38.1 m) LOA were defined as "category 'A'" vessels. The proposed rule text described this particular licensing requirement as follows:

> "A vessel assigned to vessel category 'A' must have made at least one legal landing of any amount of license limitation groundfish harvested in each of any 2 calendar years from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area for a Western Gulf area endorsement."

NMFS' approval of the Council's LLP recommendation included approval of this particular licensing requirement as an integral part of the overall LLP. The final rule implementing the LLP also discussed this licensing requirement in the preamble (at 63 FR 52645) as a documented harvest " * * * in each of any 2 calendar years from January 1992 through June 17, 1995 * * *." However, the final rule text (63 FR 52655, § 679.4(i)(4)(ii)(C)) erroneously omitted the phrase, "in each of any 2 calendar years," and wrongly indicates that only one documented harvest of groundfish needs to be made by category "A" vessels during the period January 1992, through June 17, 1995, to satisfy the license endorsement criteria for the Western GOA area.

Paragraph (i) was redesignated as paragraph (k) on October 13, 1998 (63 FR 54753).

### Need for Correction

As published, the final regulations contain errors, which may prove to be misleading and need to be clarified.

### List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and Recordkeeping requirements.

Accordingly, 50 CFR part 679 is corrected by making the following correcting amendments:

## PART 679–FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.4(k)(4)(ii)(C)(1) is revised to read as follows:

**§ 679.4 Permits.**

* * * * *

(k) * * *

(4) * * *

(ii) * * *

(C) *Western Gulf Area Endorsement.*

*(1) Vessel length category "A."* For a license to be assigned a Western Gulf area endorsement based on the participation from a vessel in vessel length category "A," at least one documented harvest of any amount of license limitation groundfish must have been made from that vessel in each of any 2 calendar years from January 1, 1992, through June 17, 1995, in the Western Area of the Gulf of Alaska or in State waters shoreward of that area.

* * * * *

Dated: May 8, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12028 Filed 5–11–00; 8:45 am]

BILLING CODE 3510–22–F

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# Proposed Rules

Federal Register
Vol. 65, No. 93
Friday, May 12, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

**10 CFR Part 50**

**[Docket No. PRM–50–70]**

## Eric Joseph Epstein; Receipt of Petition for Rulemaking

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Petition for rulemaking; Notice of receipt.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking filed by Mr. Eric Joseph Epstein. The petition, docketed on January 3, 2000, has been assigned Docket No. PRM–50–70. The petitioner requests that NRC amend its financial assurance requirements for decommissioning nuclear power reactors to: (1) Require uniform reporting and recordkeeping for all "proportional owners" of nuclear generating stations (defined by the petitioner as partial owners of nuclear generating stations who are not licensees); (2) modify and strengthen current nuclear decommissioning accounting requirements for proportional owners; and (3) require proportional owners to conduct a prudency review to determine a balanced formula for decommissioning funding that includes not only ratepayers and taxpayers but shareholders and board members of rural electric cooperatives as well. The petitioner believes that the proposed amendments would eliminate the funding gap for decommissioning between nuclear power licensees and proportional owners of nuclear generating stations.

**DATES:** Submit comments by July 26, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

**ADDRESSES:** Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

For a copy of the petition, write to David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website at http://ruleforum.llnl.gov. This site allows you to upload comments as files in any format, if your web browser supports the function. For information about the interactive rulemaking website, contact Carol Gallagher, (301) 415–5905 e-mail:cag@nrc.gov.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone: 301–415–7162 or Toll Free: 1–800–368–5642 or e-mail:dlm1@nrc.gov.

**SUPPLEMENTARY INFORMATION:**

### The Petitioner

The petitioner, Eric Joseph Epstein, has been actively involved since 1985 in testifying, filing, and intervening on nuclear decommissioning and radioactive waste isolation issues before the NRC and the Pennsylvania Public Utility Commission. The petitioner's research and testimony have focused on Peach Bottom, Units 1, 2, and 3; the Saxton Experimental Reactor; Shippingport Atomic Power Station; the Susquehanna Steam Electric Station (SSES), Units 1 and 2; and Three Mile Island (TMI), Units 1 and 2. The petitioner states that he and General Public Utilities Nuclear (GPUN) sponsored and invested $890,000 in remote robotics research relating to nuclear decommissioning.

### Petitioner's Concern

Mr. Epstein submitted his petition for rulemaking because he believes the funding component for decommissioning provided by proportional owners of nuclear generating stations, including rural electric cooperatives (RECs), is fatally flawed and likely to contribute to inadequate funding.

The petitioner states that proportional owners are not required to submit periodic cost projections, conduct site-specific studies, or coordinate with the power reactor licensee. Also, the petitioner states that proportional owners are not mandated by the NRC to verify, report, or monitor recordkeeping relating to nuclear decommissioning funding mechanisms.

The petitioner believes it is grossly unfair and inequitable to require Federal taxpayers and State ratepayers to provide a financial safety net for the nuclear investments of proportional owners. The petitioner offers the following reasons to support his belief: (1) Proportional owners, including RECs, aggressively supported construction, licensing, and operation of nuclear generating stations; (2) they were fully cognizant that no commercial nuclear reactor had been decommissioned, and that a solution to nuclear waste disposal did not exist; (3) neither the utility, industry, proportional owners, nor RECs, have actively sponsored decommissioning research or sought good faith solutions to the permanent storage and isolation of low-level and high-level radioactive waste; and (4) proportional owners and RECs, willfully pursued a financial investment in nuclear energy which they knew was fraught with huge uncertainties.

### Background

*Definition of an Electric Utility*

The petitioner states that utility deregulation has caused concern regarding future rate recovery for the nuclear industry. The petitioner explains that NRC had anticipated the nuclear industry's financial apprehension and acted accordingly by promulgating regulations to resolve the industry's concern. The petitioner notes that the NRC published proposed amendments on September 10, 1997 (62 FR 47588), in response to the potential deregulation of the power generating

industry and to questions as to whether it should modify its current regulations concerning decommissioning funds and their financial mechanisms. The proposed rule was issued as a final rule on September 22, 1998 (63 FR 50465), a fact not indicated by the petitioner.

The petitioner states that the NRC extended the definition of an "electric utility" to include:

> An entity whose rates are established by a regulatory authority by mechanisms that cover only a portion of the costs collected in this manner. Public utility districts, municipalities, rural electric cooperatives and State and Federal agencies, including associations of any of the foregoing, that establish their own rates are included within the meaning of "electric utility." (Section 50.2, Definitions, [September 10, 1997; 62 FR 47605].)

However, according to the petitioner, the NRC created a legal loophole for proportional owners and RECs, by limiting reporting and recordkeeping requirements to "power reactor licensees," thus enabling partial owners to be free from NRC scrutiny. The petitioner recommends that NRC mandate that all partial owners of nuclear generating stations, including RECs, be subject to reporting and recordkeeping requirements and pre-funding thresholds and timetables in Section 50.75 (a) through (e).

*Current Problems Associated With Cost Estimates for Radiological Decommissioning*

The petitioner questions the reliability of nuclear decommissioning cost projections provided by industry consultant, Thomas LaGuardia, and TLG, Inc. The petitioner states that TLG-based decommissioning estimates on flawed and specious field studies extrapolated from small, minimally contaminated, and prematurely shut-down nuclear reactors.

The petitioner states that wild fluctuation in the cost estimates for radiological decommissioning are attributable to the lack of actual decommissioning experience at large nuclear generating stations, over 1000 megawatts electric (MWe), or at plants that have operated for their full, planned lifespan. The petitioner indicates that the largest nuclear power plant to be fully decommissioned was Shippingport Atomic Power Station, a 72 MWe light-water breeder reactor that is substantially smaller than SSES, Units 1 and 2 (1050 MWe for each unit).

The petitioner states that TLG, Inc., admitted that Shippingport was "almost like a pilot plant." The petitioner believes that the immense differences between Shippingport and the SSES make any financial comparison between the two inadequate and baseless. The petitioner states that although several other nuclear reactors are being prepared for decommissioning, they provide little meaningful decommissioning experience that could be used to reliably predict the decommissioning costs of SSES. As examples, the petitioner provides detailed discussions regarding the decommissioning cases of Yankee Rowe and Shoreham.

The petitioner states that no commercial nuclear power plant has been decommissioned, decontaminated, and returned to free-release. According to the petitioner, nuclear decontamination and decommissioning technologies are in their infancy. The petitioner characterizes the NRC's treatment of prematurely shutdown reactors as follows: (1) There is a reluctance to undertake, initiate or finance decommissioning research; (2) prematurely shutdown reactors place an additional financial strain on the licensee; and (3) these reactors have been retired for mechanical or economic reasons. [United States Nuclear Regulatory Commission, Advisory Panel for the Decommissioning of Three Mile Island Unit-2, September 23, 1993].

The petitioner states that Pennsylvania Power and Light, Inc. (PP&L) contracted with TLG to construct decommissioning cost estimates based on work completed at Shippingport, Shoreham, Yankee Rowe, and small prototype reactors such as: BONUS (17 MWe), Elk River (20 MWe), and Pathfinder (60 MWe). The petitioner asserts that TLG's estimates relied on: (1) The development of nonexistent technologies; (2) anticipated projected cost of radioactive disposal; and (3) the assumption that costs for decommissioning small and short-lived reactors can be accurately extrapolated to apply to large commercial reactors operating for 40 years.

The petitioner indicates that in 1981, PP&L predicted that its share to decommission SSES would be between $135 and $191 million. The petitioner notes that estimate has increased by at least 553 percent in the last 19 years.

*Proportional Confusion: The Case of the Allegheny Electric Cooperative and Pennsylvania Power and Light, Inc.*

The petitioner questions Allegheny Electric Cooperative's (Allegheny) method for calculating decommissioning cost. The petitioner states that Allegheny owns 10 percent of the SSES, while PP&L owns 90 percent. The petitioner states that Allegheny is responsible for 10 percent of the projected funding target for decommissioning. The petitioner states that PP&L's consultant, TLG, estimates PP&L's share for decommissioning SSES to be $724 million. Therefore, according to the petitioner, Allegheny's share would be $79 million of the $804 million projected cost for decommissioning. However, the petitioner asserts that Allegheny has set aside only 5 percent (rather than 10 percent) of its projected share of the cost of decommissioning. According to the petitioner, the Allegheny's Director of Finance and Administrative Service states that Allegheny is basing its decommissioning estimates on data provided by PP&L ( i.e., Allegheny's portion of the estimated cost of decommissioning SSES is approximately $37.8 million and is being accrued over the estimated useful life of the plant). The petitioner asserts that Allegheny does not know what method it is employing to calculate decommissioning cost. In addition, PP&L does not actively monitor Allegheny's obligations.

The petitioner characterizes the uncertainty between decommissioning partners as crucial and potentially debilitating and believes that the question of financial responsibility is increasingly important since PP&L has no enforcement mechanism to compel Allegheny to fund 10 percent of the decommissioning cost. The petitioner adds that Allegheny is owned and controlled by 14 distribution cooperatives. Allegheny is not regulated by the Public Utility Commission (PUC) and does not have publicly traded stock. Therefore, the petitioner assets there is no behavior modifying mechanism to allow State regulators or PP&L shareholders to oversee Allegheny's contributions.

The petitioner believes that Allegheny's tenuous financial position regarding decommissioning savings will place a greater fiscal burden on PP&L by: (1) Creating further uncertainties about PP&L's ability to meet its financial commitments to decommission SSES; (2) undermining TLG's net decommissioning estimates; and (3) radically skewing TLG's contingency factor. The petitioner asserts that if this scenario is realized by other power reactor licensees and their proportional partners, the ripple effect could be staggering and could potentially expose ratepayers and taxpayers to billions of dollars in nuclear decommissioning shortfalls. In addition, the petitioner states that although the NRC requires that all nuclear power plants be returned to greenfield, i.e., the original environmental status of the facilities

prior to construction, it does not mandate cost estimates for non-radiological decommissioning. Furthermore, the petitioner asserts that greenfield has not been achieved by any large commercial nuclear plant, and utilities are not required to save for the mandated restoration; therefore, placing additional strain on the companies' ability to finance radiological and non-radiological decommissioning.

*Planned Operating Life for Nuclear Generating Stations*

The petitioner states that experience at large commercial nuclear power plants over 200 MW has clearly demonstrated that TLG's assumption that nuclear units will operate for 40 years contradicts existing nuclear experience. The petitioner has identified and provided detailed information on 13 nuclear power plants that have shut down prematurely. The petitioner states that a sense of fair play, intergenerational equity, and fiduciary accountability should direct proportional owners, including RECs, to plan for decommissioning on the basis of the assumption that their nuclear units will prematurely shut down. The petitioner adds that operating capacity and historical evidence from commercial nuclear power plants do not indicate that nuclear power plants will operate for 40 years. The petitioner assesses that there are chronic shortfalls between targeted funding levels and actual costs for nuclear decommissioning. The petitioner asserts that the burden of proof lies with the power reactor licensees and their partners to demonstrate that the 40-year lifespan that they predicate their financial planning upon is realistic. The petitioner believes the nuclear industry has exacerbated this problem by refusing to provide adequate funding for nuclear decontamination and decommissioning.

*Spent Fuel Isolation*

The petitioner states that a significant problem for nuclear generating stations is that the fuel storage capacity will be exhausted before the plant license expires. The petitioner states that because there is no location to store spent fuel permanently, nuclear facilities have become de facto high-level, radioactive waste sites, and many are currently proposing to increase the capacity to store this waste using an untested, commercial waste technology (dry cask storage). The petitioner contends that the additional cost of increasing the capacity of spent fuel will have a significant effect on decommissioning. The petitioner notes that at SSES, spent fuel costs were omitted from TLG's decommissioning estimate. The petitioner explains that: (1) Isolation of high-level radioactive waste, which is primarily composed of spent nuclear fuel, cannot be separated from nuclear decommissioning; (2) at the earliest, Yucca Mountain, the designated repository for the storage of nuclear waste, will be available in 2010; (3) nuclear generating stations cannot be immediately decontaminated and decommissioned with spent fuel on site or inside the vessel; (4) aggressive and destructive decontamination cleanup processes will be unavailable until spent fuel is removed from the nuclear plant's temporary storage facilities; (5) front-end decommissioning tasks require skilled workers for site-specific tasks; and (6) labor costs are erratic and should be linked to inflationary indices.

The petitioner charges that NRC and the nuclear industry devote scant resources to decommissioning research and development. The petitioner believes that this laissez-faire approach should not be rewarded by financially penalizing ratepayers and taxpayers. The petitioner warns that if a long-term solution to spent fuel isolation is not found in the near future, many nuclear generating stations will be shut down prematurely because of a lack of storage space. Therefore, the petitioner believes that cost projections by proportional owners and RECs, must include variable funding scenarios in the event a high-level radioactive isolation site is not available during a premature shutdown, or at the end of a plant's planned 40-year operating life span.

*Low-Level Radioactive Waste Isolation*

The petitioner states that TLG provided nuclear waste storage and nuclear decommissioning cost estimates for all Pennsylvania utilities regulated by the PUC. The petitioner states that TLG's representative based his cost estimates for low-level radioactive waste (LLRW) disposal on the assumption that the Appalachian Compact would be available when SSES closes (1995 PP&L Base Rate Case, Page 1034, Lines 17–20). The petitioner states that the representative concluded that the disposal of LLRW is the most expensive component in the decommissioning formula (Page 2091, Lines 21–25); however, the representative conceded that it may be necessary to recompute cost estimates for disposal because the Barnwell storage facility for LLRW will be open for 7 to 10 years for all states except North Carolina (Page 2108, Lines 4–9). The petitioner notes that PP&L has not reconfigured the cost of LLRW disposal since Barnwell opened July 5, 1995.

The petitioner asserts that in addition to recomputing the cost of LLRW disposal, the reopening of Barnwell has definitely postponed the siting of a waste facility in Pennsylvania. The petitioner notes the Appalachian States LLRW Commission Executive Director observed: "If Barnwell's going to be open to the entire country for at least the next 10 years, is there really a pressing need to continue work on regional disposal facilities?" The petitioner states that on June 18, 1998, the Appalachian States LLRW Commission voted to support the Pennsylvania Department of Environmental Protection's suspension of the siting process for an LLRW disposal facility.

*Court Cases*

The petitioner states that United States regulatory law has never recognized the right of utilities to recover imprudent, highly speculative utility expenditures, citing Bluefield Water Works & Improvement Company v. Public Service Commission of the State of West Virginia, 262 U.S. 668, 678 (1923) and State of Missouri ex rel. Southwestern Bell Telephone Company v. Public Service Commission of Missouri, 262 U.S. 276, 289 (1923).

The petitioner has included detailed information from other court cases that recommend prudency review of requests by utilities for rate increases. The petitioner asserts that the concerns expressed in the various court cases discussed in this petition by the commissions vested with the responsibility of approving rate hike requests, tax increases, and recovery of new construction costs, are valid and applicable to the issue of imprudent "stranded costs" and grossly inadequate decommissioning projections. The petitioner recommends that an extensive prudency review of the costs incurred by power reactor licensees, their partners, and RECs, in the construction of nuclear power plants and subsequent decisions by the owners and operators in their continuing operation is mandated by the speculative and imprudent nature of corporate management.

*Petitioner's Conclusion*

The petitioner states that data clearly demonstrate that the majority of commercial nuclear power plants will not operate through their planned operating life of 40 years. The petitioner believes that while the power reactor licensees are entitled to recover a portion of decommissioning funding

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through the rate and tax relief processes, they are not entitled to a full and complete rebate on "stranded investments" and shortfalls that will arise because funding targets for decommissioning have been underfunded. The petitioner believes that shareholders and board members of electric utilities and RECs, must assume responsibility for their business decision. The petitioner adds that to allow artificial definitions concerning ownership of nuclear power plants to insulate those who cogently made capital investments is immoral, unethical, and an endorsement of corporate socialism. The petitioner asserts that shareholders profit from imprudent investment decisions and are accorded relief when error of mismanagement becomes manifest. The petitioner believes that society, the nuclear industry, proportional owners and RECs, must assume responsibility for their investment strategies.

*Remedies*

The petitioner recommends the following remedies:

1. RECs, and proportional partners of nuclear generating stations that are not specified as the power reactor licensee must conduct a revised and updated site-specific analysis biennially based on prevailing realities that include a recognition that the NRC is redefining the concept of "electric utility'; scientifically verifiable cost projections for the nuclear decommissioning "target'; premature shutdowns of a substantial number of commercial nuclear generating stations; dry cask storage planning and construction; the asserted indisputable fact that Yucca Mountain will not be available at the time the spent fuel capacity has been breached at many operating nuclear generating stations; and, the asserted reality that the concept of regional low-level waste facilities has been supplanted by the extended operating life of "low-level" radioactive waste facilities.

2. Prevailing legal precedent undermines the notion that nuclear partnerships are entitled to full rate relief from present ratepayers and taxpayers for nuclear decommissioning costs. A sense of fair play, intergenerational equity, and risk sharing between ratepayers and taxpayers on one hand, and shareholders and board members on the other, necessitate that the NRC direct and extend the conditions and mandates promulgated in Section 50.75, Reporting and Recordkeeping for Decommissioning Planning, (a), (b), (c), (d), (e), and (f), to include all partners in nuclear generating stations, including board members of RECs; and,

3. After implementing remedies (1) and (2), NRC must compel proportional owners of nuclear power generating stations, including RECs, to conduct prudency reviews.

The petition, which consists of a 37-page brief, provides additional justification and support for the requested amendments not included in this **Federal Register** notice. The NRC requests that commenters consider, among other matters raised by petitioner, whether all of the remedies requested by petitioner are within the regulatory scope and jurisdiction of the NRC. By publishing this notice, the NRC is not concluding that it has jurisdiction over all of petitioner's requested remedies. Members of the public interested in filing comments on PRM-50-70 are urged to obtain a copy of the petition by writing to the address under **ADDRESSES** or by viewing the petition at the NRC website at http://ruleforum.llnl.gov.

Dated at Rockville, Maryland this 8th date of May 2000.

For the Nuclear Regulatory Commission.

**Annette Vietti-Cook,**

*Secretary of the Commission.*

[FR Doc. 00-11955 Filed 5-11-00; 8:45 am]

**BILLING CODE 7590-01-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000-NM-91-AD]**

**RIN 2120-AA64**

## Airworthiness Directives; Boeing Model 767 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes. This proposal would require installation of sleeving on the 90-minute auxiliary power unit (APU) standby power feeder cable at body station 1351. This proposal is prompted by a report of damage to the 90-minute APU standby power feeder cable caused by shifting of unrestrained cargo containers during flight. The actions specified by the proposed AD are intended to prevent damage to the 90-minute APU standby power feeder cable, which could result in arcing between the standby power feeder cable and the shroud of the APU fuel line, penetration of the fuel line shroud, and a consequent fire in the main deck floor above the aft cargo compartment.

**DATES:** Comments must be received by June 26, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 2000-NM-91-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Holly Thorson, Aerospace Engineer, Propulsion Branch, ANM-140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-1357; fax (425) 227-1181.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice

must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–91–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–91–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The FAA has received a report indicating that unrestrained cargo containers shifted during flight and caused damage on a Boeing Model 767 series airplane that is equipped with an auxiliary power unit (APU) extended standby power system. The cargo containers damaged the 90-minute APU standby power feeder cable and the cabin floor support beam at body station (BS) 1351 on the right side of the airplane. Investigation revealed evidence of arcing between the cable and the beam. Though the reported damage occurred on the right side of the airplane, an unrestrained cargo container that shifts during flight could cause similar damage on the left side of the airplane. On the left side of the airplane, the 90-minute APU standby power feeder cable is routed close to the APU fuel line. Should damage to the 90-minute APU standby power feeder cable occur on the left side of the airplane, the damaged power feeder cable could arc against the shroud of the APU fuel line. This condition, if not corrected, could result in penetration of the fuel line shroud and a consequent fire in the main deck floor above the aft cargo compartment.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Alert Service Bulletin 767–24A0126, dated February 24, 2000. That alert service bulletin describes procedures for installation of sleeving on the 90-minute APU standby power feeder cable at BS 1351 on the left side of the airplane. Installation of this sleeving is intended to protect the cable from being damaged in the event that an unrestrained cargo container shifts during flight and impacts the cable. Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

**Cost Impact**

There are approximately 151 airplanes of the affected design in the worldwide fleet. The FAA estimates that 14 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed action, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $840, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Boeing:** Docket 2000–NM–91–AD.

*Applicability:* Model 767 series airplanes; as listed in Boeing Alert Service Bulletin 767–24A0126, dated February 24, 2000; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent damage to the 90-minute auxiliary power unit (APU) standby power feeder cable, which could result in arcing between the standby power feeder cable and the shroud of the APU fuel line, penetration of the fuel line shroud, and a consequent fire in the main deck floor above the aft cargo compartment, accomplish the following:

**Installation of Sleeving**

(a) Within 6 months after the effective date of this AD, install sleeving on the 90-minute APU standby power feeder cable at body station 1351 on the left side of the airplane, in accordance with Boeing Alert Service Bulletin 767–24A0126, dated February 24, 2000.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 8, 2000.

**Vi L. Lipski,**

*Acting Manager,, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11952 Filed 5–11–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF COMMERCE

## International Trade Administration

## DEPARTMENT OF THE TREASURY

## Customs Service

## 15 CFR Part 301

**[Docket No. 000331091–0091–01]**

**RIN 0625–AA47**

## Proposed Changes in Procedures for Florence Agreement Program

**AGENCIES:** Import Administration, International Trade Administration, Department of Commerce; U.S. Customs Service, Department of the Treasury.

**ACTION:** Proposed rule and request for comments.

**SUMMARY:** This action invites public comment on a proposal to amend the regulations which govern duty-free entry of scientific instruments and apparatus, by educational and nonprofit institutions, into the United States. The amendments are being proposed for the purposes of making the technical changes required by the passage of the Omnibus Trade and Competitiveness Act of 1988 and by passage of the Miscellaneous Trade and Technical Corrections Act of 1999; updating the regulations by specifying the correct court of review, taking into account terminological changes in the scientific community, and by extending the waiver for repair components to maintenance tools as well; and simplifying and clarifying the regulations for the using community by clarifying the commercial use provisions and removing redundant requirements, adding information about procedures for obtaining duty refunds, reducing the number of copies required for resubmissions and permitting performance data obtained in tests or trials as evidence of guaranteed specifications.

**DATES:** Written comments must be received on or before June 12, 2000.

**ADDRESSES:** Address written comments to Gerald Zerdy, Program Manager, Statutory Import Programs Staff, Room 4211, U.S. Department of Commerce, Washington D.C. 20230.

**FOR FURTHER INFORMATION CONTACT:** Gerald Zerdy, (202) 482–1660, same address as above.

**SUPPLEMENTARY INFORMATION:** The Departments of Commerce and the Treasury are proposing to amend Part 301, Chapter III, Subtitle B of Title 15 of the Code of Federal Regulations relating to their responsibilities under the Educational, Scientific, and Cultural Materials Importation Act of 1966 (the "Act"; Pub. L. 89–651; 80 Stat. 897).

The proposed rule would make the necessary technical changes to reflect the conversion from the Tariff Schedule of the United States (TSUS) to the Harmonized Tariff Schedule of the United States (HTSUS); and the modification made by Proclamation 5978 of May 12, 1989, which was issued pursuant to sections 1121 and 1204 of the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) and section 604 of the Trade Act of 1974 (Pub. L. 93–618), as amended; and the statutory amendment made by section 2402 of the Miscellaneous Trade and Technical Corrections Act of 1999 (Pub. L. 106–36). The proposed rule would also make editorial and administrative changes, including updating terminology.

Specifically, we propose amending § 301.2(h) to provide further information about the entry of accessories for existing instruments.

We propose amending paragraph (r) of § 301.2 to permit performance data obtained from a trial or test run of an instrument, under conditions specified by the applicant, to be used as evidence for a guaranteed specification since this is sometimes stipulated as a condition for purchase or provides the basis for selecting one instrument over another. In the past, applicants have regularly cited such ad hoc performance data to support their justification for duty exemption.

We propose removing the language in § 301.4(a)(1) that refers to specific documentation Customs may require to establish the applicant's nonprofit or tax exempt status. The proposed revision leaves the method of this determination to the discretion of Customs.

We propose amending § 301.4(a)(3) to further emphasize that an applicant may not participate in the development and evaluation of an instrument, beyond routine acceptance testing and calibration, if substantial benefits accrue to the manufacturer as a result of such participation for which the applicant receives a valuable consideration. The purpose of this change is to clarify the conditions of compliance with the statutory prohibition of commercial use within five years of entry (see § 301.1(c)(1)).

We propose amending § 301.5(a)(1) by making copies of applications available for public inspection within five days of receipt from Customs instead of the ten days currently specified in the regulations. This amendment would bring the rule into accord with established practice.

The proposed rule would eliminate § 301.5(a)(7), which relates to the routine sending of copies of applications to interested domestic manufacturers. Use of this service has been extremely limited. While the routine provision of copies would be eliminated, we would continue to provide copies on a case-by-case basis if requested.

We propose amending § 301.5(c)(3) by removing language requesting consultants to provide advice within 30 days. Routine interagency procedures do not require codification. "National Bureau of Standards" would be replaced by "National Institute of Standards and Technology."

We propose to reduce the paperwork burden on applicants by amending § 301.5(e)(3) to permit resubmissions by facsimile, e-mail or other electronic means in addition to posted mail, and to permit resubmissions with an original copy only instead of in quadruplicate. We also propose amending § 301.5(e)(5) to conform with this change.

We propose to eliminate § 301.5(e)(9), which provides for comment by interested parties on resubmitted applications. Interested parties are afforded ample opportunity to comment on the original applications. Also, applicants are not permitted to introduce new purposes or other material changes in a resubmission. Accordingly, no useful purpose is served by the existing procedure.

We propose to amend § 301.8(d) to inform the applicant that estimated duties levied by U.S. Customs at the time of entry may be refundable, and to instruct the applicant to contact Customs at the port of entry for information and claims status.

Presidential Proclamation 5978 of May 12, 1989, issued pursuant to sections 1121 and 1204 of the Omnibus Trade and Competitiveness Act of 1988 and section 604 of the Trade Act of 1974, as amended, added maintenance tools for scientific instruments to the list

of items eligible for duty-free import under the Act. Accordingly, we propose amending § 301.10 (a) to add maintenance tools to the scope of the waiver already in place for repair tools.

**Regulatory Flexibility Act**

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule, if promulgated as final, will not have a significant economic impact on a substantial number of small entities. This is because the rulemaking is primarily to update, clarify, and simplify the regulations, make technical changes and reduce paperwork.

**Paperwork Reduction Act**

This rulemaking involves information collection activities subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, which are currently approved by the Office of Management and Budget under control number 0625–0037. The proposed amendments reduce the information burden on the public by, among other things, eliminating the need for copies in a resubmission, making provision for resubmissions in electronic formats and eliminating the need to make application for maintenance tools.

**Executive Order 12866**

It has been determined that the proposed rulemaking is not significant for purposes of Executive Order 12866.

**List of Subjects in 15 CFR Part 301**

Administrative practice and procedure, Customs duties and inspection, Educational facilities, Imports, Nonprofit organizations, Scientific equipment.

For reasons set forth above, 15 CFR part 301 is proposed to be amended as follows:

**PART 301—[AMENDED]**

1. The authority citation for part 301 is revised to read as follows:

**Authority:** Sec. 6 (c), Pub. L. 89–651, 80 Stat. 897, 899; Sec. 2402, Pub. L. 106–36, 113 Stat. 127, 168.

2. Amend part 301 as follows:

a. Revise all references to "tariff item 851.60", "item 851.60", or "item 851.60, TSUS" to read "subheading 9810.00.60, HTSUS".

b. Revise all references to "item 851.65" or "tariff item 851.65" to read "subheading 9810.00.65, HTSUS".

3. Amend § 301.1 as follows:

a. Paragraph (b)(1) is amended by removing ", contracted to by approximately 89 countries";

b. Paragraph (d) is amended by removing "Headnote 6, TSUS" from the first sentence and adding "U.S. Note 6, Subchapter X, Chapter 98, HTSUS" in its place; by removing "and Operations" in the second sentence; and by removing "Deputy" in the third sentence;

c. Revise paragraphs (b)(3), (c)(1) and (c)(2); and

d. Add paragraph (c)(4).

**§ 301.1 General provisions.**

* * * * *

(b) * * *

(3) The Annex D provisions are implemented for U.S. purposes in Subchapter X, Chapter 98, Harmonized Tariff Schedule of the United States (HTSUS).

(c) Summary of statutory procedures and requirements. (1) U.S. Note 1, Subchapter X, Chapter 98, HTSUS, provides, among other things, that articles covered by subheadings 9810.00.60 (scientific instruments and apparatus), 9810.00.65 (repair components therefor) and 9810.00.67 (tools for maintaining and testing the above therefor), HTSUS, must be exclusively for the use of the institutions involved and not for distribution, sale, or other commercial use within five years after having been entered. These articles may be transferred to another qualified nonprofit institution, but any commercial use within five years of entry shall result in the assessment of applicable duties pursuant to § 301.9(c).

(2) An institution wishing to enter an instrument or apparatus under tariff subheading 9810.00.60, HTSUS, must file an application with the Secretary of the Treasury (U.S. Customs Service) in accordance with these regulations. If the application is made in accordance with the regulations, notice of the application is published in the **Federal Register** to provide an opportunity for interested persons and government agencies to present views. The application is reviewed by the Secretary of Commerce (Director, Statutory Import Programs Staff) , who decides whether or not duty-free entry may be accorded the instrument and publishes the decision in the **Federal Register**. An appeal of the final decision may be filed with the U.S. Court of Appeals for the Federal Circuit, on questions of law only, within 20 days after publication in the **Federal Register**.

* * * * *

(4) Tools specifically designed to be used for the maintenance, checking, gauging or repair of instruments or apparatus admitted under subheadings 9810.00.65 and 9810.00.67, HTSUS, require no application and may be entered duty-free in accordance with the procedures prescribed in § 301.10.

* * * * *

**§ 301.2 [Amended]**

4. Amend § 301.2 as follows:

a. Paragraph (f) is amended by removing "only" in the first sentence; by removing "classifiable under the tariff items specified in headnote 6(a) of part 4 of Schedule 8" and adding in its place "specified in U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS"; and by adding the following after the second sentence: "The term "instrument" also covers separable components of an instrument that are imported for assembly in the United States in such instrument where that instrument, due to its size, cannot feasibly be imported in its assembled state. The components, as well as the assembled instrument itself, must be classifiable under the tariff provisions listed in U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS. See § 301.2(k) and § 301.3(f).";

b. Paragraph (f)(5) is amended by removing all that follows "under bond under" and adding in its place the following: "subheading 9813.00.30, HTSUS, subject to the provisions of U.S. Note 1(a), Subchapter XIII, Chapter 98, HTSUS, and must be exported or destroyed within the time period specified in that U.S. Note.";

c. Paragraph (h) is amended by adding a new sentence to the end of the paragraph to read: "The existing instrument, for which the accessory is being purchased, may be domestic or, if foreign, it need not have entered duty free under subheading 9810.00.60, HTSUS.";

d. Paragraph (k) is amended by adding the following at the end of the paragraph: "The above notwithstanding, separable components of some instruments may be eligible for duty-free treatment. See § 301.2(f).";

e. Paragraph (r) is amended by removing "angstroms" in the second sentence and adding "nanometers" in its place, and by adding a sentence at the end of the paragraph to read: "Performance results on a test sample run at the applicant's request may be cited as evidence for or against a guaranteed specification."; and

f. Paragraph(s) is amended by removing "and/" from the first sentence, removing the last sentence and adding in its place the following: "Also, characteristics such as size, weight, appearance, durability, reliability, complexity (or simplicity), ease of

operation, ease of maintenance, productivity, versatility, "state of the art" design, specific design and compatibility with currently owned or ordered equipment are not pertinent unless the applicant demonstrates that the characteristic is necessary for the accomplishment of its scientific purposes."

5. Amend § 301.3 as follows:

a. Paragraph (d) is amended by removing "One copy of the form" from the second sentence and adding in its place "One of these copies";

b. Redesignate paragraph (f) as paragraph (g); and

c. Add a new paragraph (f).

**§ 301.3 Application for duty-free entry of scientific instruments.**

* * * * *

(f) An application for components of an instrument to be assembled in the United States as described in § 301.2(f) may be filed provided that all of the components for the complete, assembled instrument are covered by, and fully described in, the application. See also § 301.2(k).

* * * * *

6. In § 301.4, paragraphs (a)(1), (a)(2) and the first two sentences of (a)(3) are revised to read as follows:

**§ 301.4 Processing of applications by the Department of the Treasury (U.S. Customs Service).**

(a) * * *

(1) Whether the institution is a nonprofit private or public institution established for research and educational purposes and therefore authorized to import instruments into the U.S. under subheading 9810.00.60, HTSUS. In making this determination, the Commissioner may require applicants to document their eligibility under this paragraph;

(2) Whether the instrument or apparatus falls within the classes of instruments eligible for duty-free entry consideration under subheading 9810.00.60, HTSUS. For eligible classes, see U.S. Note 6(a), Subchapter X, Chapter 98, HTSUS; and

(3) Whether the instrument or apparatus is for the exclusive use of the applicant institution and is not intended to be used for commercial purposes. For the purposes of this section, commercial uses would include, but not necessarily be limited to: distribution, lease or sale of the instrument by the applicant institution; any use by, or for the primary benefit of, a commercial entity; or use of the instrument for demonstration purposes in return for a fee, price discount or other valuable consideration. Evaluation, modification or testing of the foreign instrument, beyond normal, routine acceptance testing and calibration, to enhance or expand its capabilities primarily to benefit the manufacturer in return for a discount or other valuable consideration, may be considered a commercial benefit. * * *

* * * * *

7. Amend § 301.5 as follows:

a. Paragraph (a)(1) is amended by removing "10" from the first sentence and adding "5" in its place;

b. Paragraph (a)(2) is amended by removing "contained in Question 11 of the form" in the second sentence and adding "on the form" in its place, and by adding "pursuant to paragraph (e) of this section" at the end of the last sentence;

c. Paragraph (a)(3) is amended by removing the last sentence;

d. Paragraph (a)(4)(v) is amended by removing "submitted a formal" and adding "issued an" in its place;

e. Paragraph (a)(5) is amended by removing "on an application" from the first sentence, by removing "in his discretion, may entertain comments filed untimely to the extent that they contain factual information, as opposed to arguments, explanations, or recommendations" from the second sentence and by adding "at his discretion, may take into account factual information contained in untimely comments" in its place;

f. Paragraph (a)(6) is amended by removing "apprise" from the first sentence and adding "inform" in its place, by removing "routinely" from the second sentence, removing "commentor's" from the last sentence and adding "provider's" in its place, and by removing "on a particular application" from the last sentence;

g. Paragraph (a)(7) is removed;

h. Paragraph (b) is revised;

i. Paragraph (c)(2), is amended by removing the word "the" between "to" and "appropriate" and by removing "written";

j. Paragraph (c)(3) is amended by removing the first sentence, by removing "may" from the second sentence, and by removing "National Bureau of Standards" and adding "National Institute of Standards and Technology" in its place in the second sentence;

k. Paragraph (d)(1)(i) is amended by removing "combines" from the fourth sentence and adding "brings together" in its place, and by removing "instrument(s)" in the last sentence and adding "instrument" in its place;

l. Paragraph (d)(1)(ii) is amended by removing "conversion" from the last sentence and adding "adaptation" in its place, and by removing "for such programs" from the last sentence;

m. Add a paragraph (d)(5); and

n. Revise paragraphs (e) introductory text, (e)(2) and (e)(3); add a sentence to the end of paragraph (e)(5); and remove paragraph (e)(9).

**§ 301.5 Processing of applications by the Department of Commerce.**

* * * * *

(b) *Additions to the record.* The Director may solicit from the applicant, from foreign or domestic manufacturers, their agents, or any other person or Government agency considered by the Director to have related competence, any additional information the Director considers necessary to make a decision. The Director may attach conditions and time limitations upon the provision of such information and may draw appropriate inferences from a person's failure to provide the requested information.

* * * * *

(d) * * *

(5) Processing of applications for components. (i) The Director may process an application for components which are to be assembled in the United States into an instrument or apparatus which, due to its size, cannot be imported in its assembled state (see § 301.2(k)) as if it were an application for the assembled instrument. A finding by the Director that no equivalent instrument is being manufactured in the United States shall, subject to paragraph (d)(5)(ii) of this section, qualify all the associated components, provided they are entered within the period established by the Director, taking into account both the scientific needs of the importing institution and the potential for development of related domestic manufacturing capacity.

(ii) Notwithstanding a finding under paragraph (d)(5)(i) of this section that no equivalent instrument is being manufactured in the United States, the Director shall disqualify a particular component for duty-free treatment if the Director finds that the component is being manufactured in the United States.

(e) *Denial without prejudice to resubmission (DWOP).* The Director may, at any stage in the processing of an application by the Department of Commerce, DWOP an application if it contains any deficiency which, in the Director's judgment, prevents a determination on its merits. The Director shall state the deficiencies of the application in the DWOP letter to the applicant.

* * * * *

(2) If granted, extensions of time will generally be limited to 30 days.

(3) Resubmissions must reference the application number of the earlier submission. The resubmission may be made by letter to the Director. The record of a resubmitted application shall include the original submission on file with the Department. Any new material or information contained in a resubmission, which should address the specific deficiencies cited in the DWOP letter, should be clearly labeled and referenced to the applicable question on the application form. The resubmission must be for the instrument covered by the original application unless the DWOP letter specifies to the contrary. The resubmission shall be subject to the certification made on the original application.

* * * * *

(5) * * * Resubmission by fax, e-mail or other electronic means is acceptable provided an appropriate return number or address is provided in the transmittal. Resubmissions must clearly indicate the date of transmittal to the Director.

8. Amend § 301.6 by revising paragraphs (a) and (c) to read as follows:

**§ 301.6 Appeals.**

(a) An appeal from a final decision made by the Director under § 301.5(f) may be taken in accordance with U.S. Note 6(e), Subchapter X, Chapter 98, HTSUS, only to the U.S. Court of Appeals for the Federal Circuit and only on questions of law, within 20 days after publication of the decision in the **Federal Register**. If at any time while its application is under consideration by the Court of Appeals on an appeal from a finding by the Director an institution cancels an order for the instrument to which the application relates or ceases to have a firm intention to order such instrument, the institution shall promptly notify the court.

* * * * *

(c) Questions regarding appeal procedures should be addressed directly to the U.S. Court of Appeals for the Federal Circuit, Clerk's Office, Washington, DC 20439.

**§ 301.7 [Amended]**

9. Amend § 301.7 by removing "(see § 301.6(a))" from the first sentence of paragraph (a).

10. Amend § 301.8 as follows:

a. Amend paragraph (a)(1) by adding "(as defined in 19 CFR 101.1)" after "Customs territory of the United States";

b. Amend the second sentence of paragraph (a)(5) by adding the words "either by delaying importation or by placing the instrument in a bonded warehouse or foreign trade zone," after the words "duty-free entry of the instrument,";

c. Amend paragraph (b) by removing "above" and "mentioned" from the first sentence;

d. Amend paragraph (c) by removing "of § 301.8" in the first sentence and adding a comma after "provisions";

e. Revise paragraph (d) to read as follows:

**§ 301.8 Instructions for entering instruments through U.S. Customs under subheading 9810.00.60, HTSUS.**

* * * * *

(d) *Payment of duties.* The importer of record will be billed for payment of duties when Customs determines that such payment is due. If a refund of a deposit made pursuant to paragraph (a)(4) of this section is due, the importer should contact Customs officials at the port of entry, not the Department of Commerce.

**§ 301.9 [Amended]**

11. Amend § 301.9 by removing "latter" from the first sentence of the introductory text of paragraph (a) and adding "receiving" in its place.

12. § 301.10 is revised to read as follows:

**§ 301.10 Importation of repair components and maintenance tools under HTSUS subheadings 9810.00.65 and 9810.00.67 for instruments previously the subject of an entry liquidated under subheading 9810.00.60, HTSUS.**

(a) An institution owning an instrument that was the subject of an entry liquidated duty-free under subheading 9810.00.60, HTSUS, that wishes to enter repair components or maintenance tools for that instrument may do so without regard to the application procedures required for entry under subheading 9810.00.60, HTSUS. The institution must certify to Customs officials at the port of entry that such components are repair components for that instrument under subheading 9810.00.65, HTSUS, or that the tools are maintenance tools necessary for the repair, checking, gauging or maintenance of that instrument under subheading 9810.00.67, HTSUS.

(b) Instruments entered under subheading 9810.00.60, HTSUS, and subsequently returned to the foreign manufacturer for repair, replacement or modification are not covered by subheading 9810.00.65 or 9810.00.67, HTSUS, although they may, upon return to the United States, be eligible for a reduced duty payment under subheading 9802.00.40 or 9802.00.50, HTSUS (covering articles exported for repairs or alterations) or may be made the subject of a new application under subheading 9810.00.60, HTSUS.

**Robert S. LaRussa,**

*Assistant Secretary for Import Administration.*

**Raymond W. Kelly,**

*Commissioner of Customs.*

Dated: May 3, 2000.

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–11734 Filed 5–11–00; 8:45 am]

BILLING CODES 3510–DS–P; 4820–02–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA No. 00–916, MM Docket No. 00–69, RM–9850]**

### Radio Broadcasting Services; Cheboygan and Rogers City, MI

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition filed by Escanaba License Corp. proposing the allotment of Channel 260C2 at Cheboygan, Michigan. The coordinates for Channel 260C2 at Cheboygan are 45–33–53 and 84–07–54. There is a site restriction 28.7 kilometers (17.8 miles) east of the community. To accommodate the new allotment at Cheboygan, we shall also propose to substitute Channel 292C2 for Channel 260C2 at Rogers City, Michigan, and modification of the license for Station WHAK to specify operation on Channel 292C2. The coordinates for Channel 292C2 at Rogers City are 45–23–53 and 83–55–19. Canadian concurrence will be requested for the allotments at Cheboygan and Rogers City, Michigan.

**DATES:** Comments must be filed on or before June 16, 2000, and reply comments on or before July 3, 2000.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Lyle Robert Evans, President, Escanaba License Corp., 1101 Ludington Street, Escanaba, Michigan 49829.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–69, adopted April 12, 2000, and released April 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–11912 Filed 5–11–00; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[I.D. 050500A]**

**RIN 0648–AK74**

### Fisheries of the Exclusive Economic Zone Off Alaska; Prohibition of Groundfish Fishing and Anchoring in the Sitka Pinnacles Marine Reserve

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The North Pacific Fishery Management Council (Council) has submitted Amendment 59 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). This amendment would prohibit vessels holding a Federal fisheries permit from fishing for groundfish or anchoring in the proposed Sitka Pinnacles Marine Reserve, a 2.5-square nautical mile (nm) area near Cape Edgecumbe. Amendment 59 is necessary to allow this area to function more fully as a marine refuge and would complement State regulations. The prohibition of boat anchoring by vessels under Federal jurisdiction would help prevent degradation of this fragile habitat.

**DATES:** Comments on Amendment 59 must be submitted by July 11, 2000.

**ADDRESSES:** Comments should be submitted to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel. Comments may also be sent via facsimile (fax) to 907–586–7465, or hand delivered or sent by courier to the Federal Building, Room 453, Juneau, AK. Comments will not be accepted if submitted via e-mail or the Internet.

Copies of Amendment 59 to the FMP and the Environmental Assessment/Regulatory Impact Review/Initial Flexibility Analysis prepared for the amendment are available from the North Pacific Fishery Management Council, 605 West 4th Avenue, Suite 306, Anchorage, AK 99501–2252; telephone 907–271–2809.

**FOR FURTHER INFORMATION CONTACT:** Nina Mollett, 907–586–7462, nina.mollett@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The Council adopted Amendment 59 to the FMP at its June 1998 meeting pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). If approved by NMFS, this amendment would prohibit vessels holding a Federal fisheries permit from fishing for groundfish or anchoring in the Sitka Pinnacles Marine Reserve, a 2.5-square nm area of unusually productive and fragile habitat near Cape Edgecumbe. In addition, the amendment would prohibit fishing for halibut or anchoring in the area by vessels required to have on board an individual fishing quota (IFQ) halibut permit under § 679.4(b). In addition, the area would be closed to sport fishing for halibut as defined at § 300.61, or anchoring by vessels having halibut on board. The International Pacific Halibut Commission manages Pacific halibut pursuant to the Northern Pacific Halibut Act.

The proposed Sitka Pinnacles Marine Reserve provides habitat for a variety of species at different life stages. Large numbers of juvenile and adult rockfish find shelter and protection among the sea plants and invertebrates growing on the rock walls. Closure of this area would protect the fragile ecosystem in the pinnacles. It would prevent the harvest or bycatch of species using the pinnacles during critical portions of their life histories, and would allow a vital ecosystem to maintain natural population levels in an area surrounded by heavy fishing pressure.

The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any fishery management plan or fishery management plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving a fishery management plan or amendment, immediately publish a notification in the **Federal Register** that the amendment is available for public review and comment. This action constitutes such notice for FMP Amendment 59. NMFS will consider the public comments received during the comment period in determining whether to approve Amendment 59. To be considered, a comment must be received by close of business on the last day of the comment period (see **DATES**), regardless of the comment's postmark or transmission date. A proposed rule that would implement the amendment may be published in the **Federal Register** for public comment following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the amendment in order to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment or to the proposed rule, will be considered in the approval/disapproval decision; comments received after that date will not be considered in the approval/disapproval decision on the amendment.

Dated: May 8, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12027 Filed 5–11–00; 8:45 am]

**BILLING CODE 3510–22–F**

# Notices

Federal Register
Vol. 65, No. 93
Friday, May 12, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Submission for OMB Review; Comment Request

May 8, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

**Food and Nutrition Service**

*Title:* FNS Nutrition Education and Promotion Campaign.

*OMB Control Number:* 0584–NEW.

*Summary of Collection:* The mission of FNS includes improving the eating habits of the nation's children. To that end, FNS plans to launch a five-year national nutrition education and promotion campaign targeting preschool and school-aged children and their caregivers. Section 6(a)(3) of the Richard B. Russell National School Lunch Act provides the authority for educating USDA School Lunch Program participants about nutrition. The campaign will employ social marketing techniques to convey motivational and behavior-focused messages about healthy eating and physical activity to FNS program participants. FNS will collect information using focus group discussion sessions and semi-structured interviews.

*Need and Use of the Information:* The information collected will provide FNS with insights on how best to reach and motivate preschool and school-aged children and their caregivers to make behavioral changes consistent with the new Dietary Guidelines for Americans. The information will be used to determine those messages and materials that best resonate with the target audience. If information is not collected, valuable consumer input from FNS' culturally and ethnically diverse low-income population would not be obtained.

*Description of Respondents:* Individuals or household; Not-for-profit institutions; Federal Government; State, Local, or Tribal Government.

*Number of Respondents:* 288.

*Frequency of Responses:* Reporting: Other (One-time/Focus Groups).

*Total Burden Hours:* 293.

**Farm Service Agency**

*Title:* Noninsured Crop Disaster Assistance Program.

*OMB Control Number:* 0560–0175.

*Summary of Collection:* The collection of crop planting and production data is necessary for the Commodity Credit Corporation (CCC) to calculate the producer's approved yield on the basis of actual production history. Information collection relative to the occurrence of crop damage or loss production and application for Noninsured Crop Disaster Assistance Program (NAP) is necessary for CCC to accept and consider a request for assistance under NAP and to facilitate eligibility determinations. Assistance under the NAP is authorized by Section 196 of the Federal Agriculture Improvement and Reform Act of 1996 and implemented by regulations at 7 CFR part 1437. NAP provides eligible producers of eligible crops with protection to the catastrophic risk protection plan of crop insurance. It helps reduce production risks faced by producers of crops for which Federal crop insurance is not available. It also reduces financial losses that occur when natural disasters cause a catastrophic loss of production or prevented planting of an eligible crop. The Farm Service Agency (FSA) will collect information using forms CCC–451, CCC–576, CCC–441, CCC–576–1 and CCC–452.

*Need and Use of the Information:* FSA will collect the producer's name, address, identification number, farm and tract, acreage, ownership, location, crop history, planted acreage, production, yield, share, etc. The information will be used to identify eligible NAP participants, acreage and location, crop and commodities. If information is not collected FSA will not be able to identify and determine eligible participants and crops being planted or produced, or provide assistance to agricultural producers who as a result of natural disaster have suffered catastrophic losses of agricultural crops of commodities.

*Description of Respondents:* Individuals or household; Business or other for-profit; Not-for-profit institutions; Farms.

*Number of Respondents:* 497,000.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Other (disaster).

*Total Burden Hours:* 4,605,088.

**Foreign Agricultural Service**

*Title:* Declaration of Sale.

*OMB Control Number:* 0551–0009.

*Summary of Collection:* Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, (Public Law 480 (P.L. 480), 83rd Congress) provides for U.S. government financing of sales of U.S. agricultural commodities to friendly foreign countries. Within the U.S. government, the Foreign Agricultural Service (FAS)

of the Department of Agriculture (USDA) is responsible for administering Title I agreements. After a Pub. L. 480, Title I agreement is signed, the government of the importing country requests FAS to issue a purchase authorization (PA). After receiving USDA price approval (based on the information provided in the telephonic notice of sale) and after a Commodity Credit Corporation (CCC) registration number for the sale has been provided to the supplier, the supplier prepares Form FAS–359, "Declaration of Sale" and submits it to FAS. The form should contain the same information that was provided in the telephonic notice of sale.

*Need and Use of the Information:* FAS will collect the name and address of the supplier, date and time of the sale, contract quantity and tolerance, delivery period and terms, price, commodity description, port or coast of export and supplier's contract number.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 15.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 22.25.

**Foreign Agricultural Service**

*Title:* Regulations—Financing Commercial Sales of Agricultural Commodities Under Title I, P.L. 480—Recordkeeping and Reporting Requirements

*OMB Control Number:* 0551–0005.

*Summary of Collection:* Title I of the Agricultural Trade Development and Assistance Act of 1954, as amended, (Public Law 480 (P.L. 480), 83rd Congress) authorizes the Commodity Credit Corporation (CCC) to finance the sale and exportation of agricultural commodities on concessional credit terms. Prospect commodity suppliers must provide information to the Department to determine eligibility. Commodity supplier must report details of sales for price approval and to submit to USDA, Foreign Agricultural Services (FAS), for approval, information on any amendments to the sales. Shipping agents nominated by importing countries must submit information to allow identification of possible conflicts of interest.

*Need and Use of the Information:* FAS will collect information to insure that (1) suppliers keep accurate records on Title 1 transactions; (2) suppliers permit access to authorized USDA representatives (such as auditors and investigators); and, (3) suppliers retain records for three years after final payment. FAS will review the sales prices to ensure that it is within the prevailing range of export market prices use the information. If the information were not collected FAS would not be able to monitor the sales made under P.L. 480, Title I to ensure that they comply with the regulations and that available funds have not been exceeded.

*Description of Respondents:* Business or other for-profit.

*Number of Respondents:* 65.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion.

*Totla Burden Hours:* 423.

**Agricultural Marketing Service**

*Title:* Winter Pears Grown in Oregon, Washington, and California, marketing Order No. 927.

*OMB Control Number:* 0581–0089.

*Summary of Collection:* Marketing Order No 927 (7 CFR Part 927), covering winter pears grown in Oregon, Washington, and California emanates from enabling legislation (the Agricultural Marketing Agreement Act of 1937, Secs, 1–19 Stat. 31 as amended; 7 U.S.C. 601–674). Growers approved the marketing order in referendum, as specified by the Act. The order authorizes the issuance of grade, size, quantity, inspection, and reporting requirements for any variety of winter pears. The Agricultural Marketing Service (AMS) will collect information using form FV–22, FB–119, FV–119A, and FV–120.

*Needs and use of the Information:* AMS will collect information to allow growers to vote on amendments or continuance of the marketing order.

*Description Of Respondents:* Business or other for-profit; Farms.

*Number of Respondents:* 1,890.

*Frequency of Responses:* Recordkeeping; Reporting: On occasion; Biennially.

*Total Burden Hours:* 3,567.

**Rural Utilities Service**

*Title:* Certification of Authority.

*OMB Control Number:* 0572–0074.

*Summary of Collection:* The Rural Utilities Service (RUS) is a credit agency of the U.S. Department of Agriculture (USDA). It makes mortgage loans and loan guarantees to finance electric, telecommunications, and water and waste facilities in rural areas. Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.*, as amended, (RE ACT) and as prescribed by Office of Management and Budget (OMB) Circular A–129, Policies for Federal Credit Programs and Non-Tax Receivables, which states that agencies must, based on a review of a loan application, determine that an applicant complies with statutory, regulatory, and administrative eligibility requirements for loan assistance. A major factor in managing loan programs is controlling the advancement of funds. RUS Form 675 allows this control to be achieved by providing a list of authorized signatures against which signatures requesting funds are compared.

*Need and Use of the Information:* RUS will collect information to ensure that only authorized representatives of the borrowers signs the lending requisition form. Without the information RUS would not know if the request for a loan advance was legitimate or not and so the potential for waste, loss, unauthorized use, and misappropriation would be increased.

*Description of Respondents:* Not-for-profit institutions; Business or other for-profit.

*Number of Respondents:* 450.

*Frequency of Responses:* Reporting: On occasion.

*Total Burden Hours:* 45.

**Natural Resources Conservation Service**

*Title:* Long Term Contracting.

*OMB Control Number:* 0578–0013.

*Summary of Collection:* The Long Term Contracting regulations at 7 CFR Part 630, and the Conservation program regulations at 7 CFR Parts 622, 624, 631, 632, 634, 636, 701, 702, 752, 1410, and 1467 set forth the basic policies, program provisions, and eligibility requirements for owners and opertors to enter into and carry out long-term conservation program contracts with technical assistance under the various program. These programs authorize federal technical and financial long-term cost sharing assistance for conservation treatment with eligible land users. The financial assistance is based on a conservation plan, which is made a part of an agreement or contract for a period of not less than five years to not more than 15 years. Under the terms of the agreement, the participant agrees to apply, or arrange to apply, the conservation treatment specified in the conservation plan. In return for this agreement, federal cost-share payments are made to the land user, or third party, upon successful application of the conservation treatment. The Natural Resource and Conservation Service (NRCS) will collect information using several NRCS forms.

*Need and Use of the Information:* NRCS will collect information on cost sharing and technical assistance, making land use changes and install measure to conserve, develop and utilize soil, water, and related natural resources on participant's land. NRCS uses the information to ensure the proper utilization of program funds.

*Description of Respondents:* Farms; Individuals or households; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 198,517.

*Frequency of Responses:* Reporting: Annually.

*Total Burden Hours:* 162,388.8.

**Barbara LaCour,**

*Departmental Clearance Officer.*

[FR Doc. 00–11923 Filed 5–11–00; 8:45 am]

BILLING CODE 3410–01–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Newspapers Used for Publication of Legal Notice of Appealable Decisions for the Northern Region; Idaho, Montana, North Dakota, and Portions of South Dakota and Eastern Washington.

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This notice lists the newspapers that will be used by all Ranger Districts, Forests, and the Regional Office of the Northern Region to publish legal notice of all decisions subject to appeal under 36 CFR 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215 and 217 and to publish notices for public comment and notice of decision subject to the provisions of 36 CFR 215. The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices for public comment or decisions; thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

**DATES:** Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after May 15, 2000. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Interregional NEPA, Appeals and Litigation Leader; Northern Region; P.O. Box 7669; Missoula, Montana 59807. Phone: (406) 329–3647.

The newspapers to be used are as follows:

**Northern Regional Office**

Regional Forester decisions in Montana: The Missoulian, Great Falls Tribune, and The Billings Gazette.

Regional Forester decisions in Northern Idaho and Eastern Washington: The Spokesman Review.

Regional Forester decisions in North Dakota: Bismarck Tribune.

Regional Forester decisions in South Dakota: Rapid City Journal.

*Beaverhead/Deerlodge*—Montana Standard.

*Bitterroot*—Ravalli Republic.

*Clearwater*—Lewiston Morning Tribune.

*Custer*—Billings Gazette (Montana) Rapid City Journal (South Dakota).

*Dakota Prairie National Grasslands*—Bismarck Tribune (North Dakota) Rapid City Journal (South Dakota).

*Flathead*—Daily Interlake.

*Gallatin*—Bozeman Chronicle.

*Helena*—Independent Record.

*Idaho Panhandle*—Spokesman Review.

*Kootenai*—Daily Interlake.

*Lewis & Clark*—Great Falls Tribune.

*Lolo*—Missoulian.

*Nez Perce*—Lewiston Morning Tribune.

Supplemental notices may be placed in any newspaper, but time frames/deadlines will be calculated based upon notices in newspapers of record listed above.

Dated: May 7, 2000.

**Kathleen A. McAllister,**

*Deputy Regional Forester.*

[FR Doc. 00–11946 Filed 5–11–00; 8:45 am]

BILLING CODE 3410–11–M

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to Procurement List.

**SUMMARY:** The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** June 12, 2000.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot, (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

*Commodities*

American Flag
M.R. 1011
NPA: Chester County Branch of the PAB, Coatesville, Pennsylvania

Mailers, Audio Cassette
8105–01–386–2181
8105–01–386–2189
NPA: York County Blind Center, York, Pennsylvania

Marine Security Guard Accessories
8465–00–NIB–0047
8465–00–NIB–0048
8465–00–NIB–0049
8465–00–NIB–0050
8465–00–NIB–0051
8465–00–NIB–0052
8465–00–NIB–0053
8465–00–NIB–0054
NPA: Industries of the Blind, Inc., Greensboro, North Carolina

Skin Protectant Plus, Effective Prevention
9999–00–NSH–0001
9999–00–NSH–0002

9999–00–NSH–0003
NPA: ACT Corp., Daytona Beach, Florida

**Services**

Grounds Maintenance, Playground Areas, Camp Lejeune, North Carolina
NPA: Coastal Enterprises of Jacksonville, Inc., Jacksonville, North Carolina

Janitorial/Custodial, Sandra Day O'Connor Federal Building, 401 West Washington Street, Phoenix, Arizona
NPA: Goodwill Community Services, Inc., Phoenix, Arizona

Janitorial/Custodial, U.S. Coast Guard, Elizabeth City, North Carolina
NPA: Skills Inc., Hertford, North Carolina

Publication File Maintenance for National Environmental Publications, Internet Site (NEPIS) Website, Environmental Protection Agency, Cincinnati, Ohio
NPA: The Clovernook Center, Opportunities f/t Blind, Cincinnati, Ohio

**Leon A. Wilson, Jr.,**
*Executive Director.*

[FR Doc. 00–11993 Filed 5–11–00; 8:45 am]
BILLING CODE 6353–01–P

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Additions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Additions to the Procurement List.

**SUMMARY:** This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

**EFFECTIVE DATE:** June 12, 2000.

**ADDRESS:** Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

**FOR FURTHER INFORMATION CONTACT:** Louis R. Bartalot (703) 603–7740.

**SUPPLEMENTARY INFORMATION:** On October 8, 1999, February 4, and March 3, 17, 24, and 31, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 54862 and 65 FR 5492, 11548, 14532, 15897, and 17255) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodities and services.
3. The action will result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

**Commodities**

Fossfill® Pillows
M.R. 770 (Standard Pillow)
M.R. 771 (Queen Pillow)
M.R. 772 (King Pillow)
First Aid Kit, Small Craft
6545–01–168–6893
First Aid Kit, Gun Crew
6545–00–920–7125
Medical Equipment Set, Ground Ambulance
6545–01–141–9476
Medical Equipment Set, Laboratory, Field
6545–01–191–8970
Medical Equipment Set, Trauma, Field
6545–01–191–8972
Medical Equipment Set, X-Ray, Field
6545–01–191–8971

**Services**

Acquisition & Distribution of AA-Cell Batteries, Tier AD
6135–00–643–1309
Defense Supply Center—Richmond
Richmond, Virginia

Base Supply Center, Operation of Individual Equipment Element Store and HAZMART
Little Rock Air Force Base, Arkansas

Eyewear Prescription Service at the following locations:

Department of Veterans Administration Medical Center Outpatient Clinic
3510 Augusta Road, Greenville, South Carolina

Department of Veterans Affairs Medical Center
6439 Garners Ferry Road, Columbia, South Carolina

Janitorial/Custodial for the following locations in Pasadena, California:
U.S. Court of Appeals
125 South Grand Avenue

Social Security Administration Building
104 Mentor Street

Janitorial/Custodial
Bureau of Reclamation, Farmington Construction Office (FCO), 2200 Bloomfield Highway, Farmington, New Mexico

Janitorial/Custodial
Veterans Affairs Outpatient Clinic, 3420 Veterans Circle, Beaumont, Texas

Janitorial/Custodial
U.S. Immigration & Naturalization Service, Institutional Hearing Program, 7405Cl Highway 75 South, Huntsville, Texas

Janitorial/Custodial
Naval and Marine Corps Reserve Center, Fort Douglas, 116 Pollock Road, Salt Lake City, Utah

Janitorial/Grounds Maintenance
Federal Courthouse, Pocatello, Idaho

Operation of Individual Equipment Element Store
Eielson Air Force Base, Alaska

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

**Leon A. Wilson, Jr.,**
*Executive Director.*

[FR Doc. 00–11994 Filed 5–11–00; 8:45 am]
BILLING CODE 6353–01–P

## DEPARTMENT OF COMMERCE

**[I.D. 050800LE]**

### Submission for OMB Review; Proposed Information Collection; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency*: National Oceanic and Atmospheric Administration.

*Title*: Scientific Research, Public Display, and Enhancement Permits Under the Marine Mammal Protection Act, the Fur Seal Act and the Endangered Species Act.

*Agency Form Number(s)*: None.

*OMB Approval Number*: 0648–0084.

*Type of Request*: Reinstatement, without change, of a previously approved collection.

*Burden*: 6,165 hours.

*Number of Respondents*: 461.

*Average Hours Per Response*: **4 minutes to 20 hours depending on the requirement**.

*Needs and Uses*: The Marine Mammal Protection Act, the Fur Seal Act of 1966, and the Endangered Species Act of 1973 mandate the protection and

conservation of marine mammals and other protected species/parts/products, and prohibit the taking, importation, and export of protected species except under certain circumstances. Exemptions for scientific research, enhancement, photography for educational or commercial purposes, public display, and certain other limited purposes are allowed provided permits are applied for and received or other necessary authorization is obtained.

*Affected Public*: Individuals or households, businesses or other for-profit organizations, not-for-profit institutions, Federal, state, local or tribal governments.

*Frequency*: Annually.

*Respondent's Obligation*: Mandatory.

*OMB Desk Officer*: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 4, 2000.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–12029 Filed 5–11–00; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

**[I.D. 050800C]**

### Submission for OMB Review; Proposed Information Collection; Comment Request

The Department of Commerce has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Agency*: National Oceanic and Atmospheric Administration (NOAA).

*Title*: StormReady Application Form.

*Agency Form Number(s)*: None.

*OMB Approval Number*: None.

*Type of Request*: Emergency.

*Burden Hours*: 40.

*Number of Respondents*: 40.

*Average Hours Per Response*: 1.

*Needs and Uses*: StormReady is a community-recognition program for emergency management. The StormReady Application Form allows the National Weather Service to collect the information needed to recognize communities that are sufficiently prepared for adverse weather before an event happens.

*Affected Public*: State, Local, or Tribal Governments.

*Frequency*: On occasion, biennial.

*Respondent's Obligation*: Voluntary.

*OMB Desk Officer*: David Rostker, (202) 395-3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482-3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at lengelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 5, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–12031 Filed 5–11–00; 8:45 am]

BILLING CODE 3510–KE–F

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Export Trade Certificate of Review

**ACTION:** Notice of issuance of an amended Export Trade Certificate of Review, Application No. 94–3A007.

**SUMMARY:** The Department of Commerce has issued an amended Export Trade Certificate of Review to Florida Citrus Exports, L.C. on May 8, 2000. Notice of issuance of the original Certificate was published in the **Federal Register** on March 8, 1995 (60 FR 12735).

**FOR FURTHER INFORMATION CONTACT:** Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131, oetca@ita.doc.gov. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR part 325 (1998).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

**Description of Amended Certificate**

Export Trade Certificate of Review No. 94–0007, was issued to Florida Citrus Exports, L.C. on February 23, 1995 (60 FR 12735, March 8, 1995), and lastly amended on May 5, 1998 (63 FR 25833, May 11, 1998).

USSC's Export Trade Certificate of Review has been amended to:

1. Add the following companies as new "Members" of the Certificate within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Harbor Island Citrus, Inc., Vero Beach, FL (Controlling Entity: First Atlantic Citrus, Inc., Vero Beach, FL); Minton Sun, Inc., Ft. Pierce, FL (Controlling Entity: Triple M Investment Company, Ft. Pierce, FL) and Seald Sweet LLC, Vero Beach, FL and

(2) Change the listing of the name of the "Member" Florida Fresh Citrus Sales, Inc. to River One International Marketing, Inc.

A copy of the amended certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Dated: May 8, 2000.

**Morton Schnabel,**

*Director, Office of Export Trading Company Affairs.*

[FR Doc. 00–12049 Filed 5–11–00; 8:45 am]

BILLING CODE 3510–DR–P

## DEPARTMENT OF COMMERCE

### International Trade Administration Business Development Trade Mission to Egypt, Kenya, and South Africa

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce invites U.S. companies to participate in Acting Assistant Secretary and Director General Marjory Searing's Business Development Trade Mission to Egypt, Kenya, and South Africa, October 1–7, 2000.

**DATES:** All applications must be received by August 4, 2000. Applications received after that date will be considered on a space available basis.

**ADDRESSES:** Applications may be submitted to Grace Wiggins, Department of Commerce, 14th and Constitution Avenue, N.W., Room 3810, Washington, D.C. 20230, Tel: 202–482–6482.

**FOR FURTHER INFORMATION CONTACT:** Grace Wiggins, Department of Commerce Tel.: 202–482–6482; Fax (202) 482–6482.

**SUPPLEMENTARY INFORMATION:** Acting Assistant Secretary and Director General of the U.S. and Foreign Commercial Service Marjory Searing will lead a senior-level business development trade mission, of approximately 10–15 companies, focusing on women-owned and women-managed businesses to the countries of Egypt, Kenya and South Africa. This Business Development Mission is being organized to coincide with the Global Summit of Women 2000: Africa being held in Johannesburg, South Africa on October 5–7. While the trade mission and summit focus on women-owned and/or managed companies, participation is not limited to such businesses and all interested U.S. companies are encouraged to apply. The mission will visit Cairo, Egypt; Nairobi, Kenya; and Johannesburg, South Africa with an optional stop to Cape Town, South Africa. The overall focus of the trip will be commercial opportunities for U.S. companies, presented by the continuing market liberalization and privatization happening in these countries.

Best sectors offering opportunities for American firms include but are not limited to environmental equipment and services, Telecommunications, medical and computer equipment and software, information technology, fashion and jewelry, cosmetic/hair products and security and safety equipment.

Dated: May 8, 2000.

**Sherry Lewis-Khanna,**

*Special Assistant, Office of Domestic Operations.*

[FR Doc. 00–11915 Filed 5–11–00; 8:45 am]

**BILLING CODE 3510–FP–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Alcoa Point Comfort/Lavaca Bay NPL Site, Point Comfort, TX: Notice of Availability and Request for Comments on a Revised Draft Damage Assessment and Restoration Plan/ Environmental Assessment for Recreational Fishing Service Losses

**AGENCIES:** National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Department of the Interior (DOI); Texas Parks and Wildlife Department (TPWD); Texas General Land Office (TGLO); and Texas Natural Resources and Conservation Commission (TNRCC).

**ACTION:** Notice of availability of a Revised Draft Damage Assessment and Restoration Plan and Environmental Assessment for recreational fishing service losses associated with the Alcoa Point Comfort/Lavaca Bay National Priorities List (NPL) Site, and of a 30-day period for public comment on the plan beginning May 12, 2000.

**SUMMARY:** Pursuant to 43 CFR Sections 11.32 and 11.81—.82, notice is hereby given that a document entitled, "Revised Draft Damage Assessment and Restoration Plan and Environmental Assessment for the Point Comfort/ Lavaca Bay NPL Site Recreational Fishing Service Losses" (Revised Draft DARP/EA) is available for public review and comment. This document describes revisions to the Draft Damage Assessment and Restoration Plan and Environmental Assessment (Draft DARP/EA), which was released for public review and comment on September 28, 1999. The Draft DARP/ EA described the assessment of recreational fishing service losses attributable to hazardous substances released from the Alcoa Point Comfort/ Lavaca Bay NPL Site ('Lavaca Bay Site' or 'Site') and the restoration actions preferred to compensate for those losses. As a result of the public comments received on the Draft DARP/EA, the restoration alternatives identified to compensate for such losses have been revised. The Revised Draft DARP/EA summarizes these public comments and identifies changes to the restoration plan that were determined to be necessary in light of the comments and other information received. The Revised Draft DARP/EA is being released to allow public comment on the revised restoration alternatives now proposed for inclusion in the Final DARP/EA for the recreational fishing service losses.

**DATES:** Comments on the Revised Draft DARP/EA must be submitted in writing on or before June 12, 2000.

**ADDRESSES:** Requests for copies of the Revised Draft DARP/EA should be sent to Richard Seiler of TNRCC, MC142, P.O. Box 13087, Austin, TX 78711–3087 or Tony Penn of NOAA, 1305 East West Highway, Station 10218, Silver Spring, MD 20910. Written comments on the plan should be sent either to Richard Seiler of TNRCC or Tony Penn of NOAA at the addresses listed above.

**SUPPLEMENTARY INFORMATION:** The Alcoa Point Comfort/Lavaca Bay NPL Site is located in Point Comfort, Calhoun County, Texas and encompasses releases of hazardous substances from Alcoa's Point Comfort Operations facility. Between 1948 and the present, Alcoa constructed and operated several types of manufacturing processes at this facility, including aluminum smelting, carbon paste and briquette manufacturing, gas processing, chlor-alkali processing, and alumina refining. Past operations at the facility resulted in the release of hazardous substances into the environment, including the discharge of mercury-containing wastewater into Lavaca Bay from 1966 to 1970 and releases of mercury into the bay through groundwater. In April 1988, the Texas Department of Health (TDH) issued a "closure order" prohibiting the taking of finfish and crabs for consumption from a specific area near the facility due to elevated mercury concentrations in these resources.

The Alcoa Point Comfort/Lavaca Bay Site was added to the NPL, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9601, effective on March 25, 1994 (59 FR 8724; February 23, 1994). The Site was listed primarily due to the presence of mercury in several species of fish and crab in Lavaca Bay, the fishing closure imposed by TDH, and the presence of mercury and other hazardous substances in bay sediments adjacent to the facility. Alcoa, the State of Texas and the U.S. Environmental Protection Agency (EPA) signed an Administrative Order on Consent (AOC) under CERCLA in March 1994 providing for the conduct of a remedial investigation and feasibility study (RI/FS) for the Site.

NOAA, DOI, TPWD, TGLO and TNRCC (collectively, the Trustees) are designated natural resource trustees under Section 107(f) of CERCLA, Section 311 of the Federal Water Pollution and Control Act (FWPCA), 33 U.S.C. Section 1321, and other applicable federal or state laws, including Subpart G of the National Oil

and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Sections 300.600—300.615. The Trustees are authorized to act on behalf of the public under these authorities to protect and restore natural resources and resource services injured or lost as a result of discharges or releases of hazardous substances.

Paralleling the RI/FS process for the Site, the Trustees have undertaken an assessment of the natural resource injuries and service losses resulting from releases of hazardous substances attributable to the Site and of the restoration actions necessary to address those losses. This assessment process has been aided and supported by Alcoa's cooperation pursuant to a Memorandum of Agreement between Alcoa and the Trustees, which was effective January 14, 1997. Both the Draft DARP/EA and the Revised Draft DARP/EA have been developed under the cooperative assessment framework outlined in the MOA.

The Draft DARP/EA was released for public review on September 28, 1999. That document described the assessment procedures used to define the recreational fishing service losses, including to scale restoration actions, and identified the restoration actions preferred to compensate for those service losses, based on the benefits of restoration to both pier/shore-mode and boat-mode anglers. None of the public comments received on the Draft DARP/EA raised any issue regarding the assessment methodology described therein or the restoration actions proposed to compensate for pier/shore-mode fishing losses. As such, these plan elements will be included in the Final DARP/EA. Significant public comments were received, however, relating to the restoration action proposed in the Draft DARP/EA to address the boat-mode fishing losses and, based upon these comments, the Trustees found it necessary to revise that portion of the plan. The Revised Draft DARP/EA summarizes the public comments received, identifies the revised, preferred restoration alternatives to address the remainder of the recreational fishing service losses, and explains the basis and rationale for that change. The Revised Draft DARP/EA is being released to allow for public review and comment on the preferred restoration alternatives now identified to restore or replace the remainder of the recreational fishing services needed to compensate the public for recreational fishing losses due to the closure.

The Revised Draft DARP/EA does not address any other natural resource injuries or service losses that may be attributable to the Site. Other resource injuries or losses are being considered by the Trustees but will be addressed in one or more subsequent damage assessment and restoration plans.

**FOR FURTHER INFORMATION CONTACT:** For further information contact: Richard Seiler at (512) 239–2523, email: rseiler@tnrcc.state.tx.us or Tony Penn, at (301) 713–3038 x197, email: tony.penn@noaa.gov

Dated: May 3, 2000.

**Captain Ted I. Lillestolen,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

[FR Doc. 00–11512 Filed 5–11–00; 8:45 am]

**BILLING CODE 3510–JE–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**Docket No. [000411103–0103–01; I.D. No. 021400B]**

**RIN: [0648–ZA86]**

### Announcement of Funding Opportunity for the Southeast Bering Sea Carrying Capacity Research Project.

**AGENCY:** Center for Sponsored Coastal Ocean Research (CSCOR)/Coastal Ocean Program (COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Solicitation of research proposals for the Southeast Bering Sea Carrying Capacity Research Project.

**SUMMARY:** The NOAA Coastal Ocean Program announces an opportunity for ecosystem dynamics studies on the southeastern Bering Sea shelf as part of the Southeast Bering Sea Carrying Capacity (SEBSCC) project. This announcement solicits 1-year and 2-year proposals for synthesis and limited monitoring to begin at the start of fiscal year (FY) 2001 (October 1, 2000), contingent upon the availability of funds and facilities. This Phase III announcement addresses years five and six of SEBSCC. Funding for SEBSCC will terminate at the end of Phase III (September 30, 2002).

This notice solicits applications for research projects from eligible non-Federal and Federal applicants. In an effort to maximize the use of limited resources, applications from non-Federal, non-NOAA Federal and NOAA applicants will be competed against each other. Research proposals selected for funding from non-Federal researchers will be funded through a project grant. Research proposals selected for funding from non-NOAA Federal applicants will be funded through an interagency transfer provided legal authority exists for the federal applicant to receive funds from another agency. Research proposals selected for funding from NOAA will be funded through NOAA.

**DATES:** The deadline for receipt of proposals at the COP office is 3 p.m. local time on July 11, 2000.

**ADDRESSES:** Submit the original and 13 copies of your proposal to the COP Office (SEBSCC 2001), SSMC#3, 9th Floor, Station 9700, 1315 East-West Highway, Silver Spring, MD 20910. In addition, submit an electronic copy of the proposal in either WordPerfect or MSWord format at time of initial application. NOAA Standard Form Applications with instructions are accessible on the following COP Internet Site: http://www.cop.noaa.gov under the COP Grants Support Section, Part D, Application Forms for Initial Proposal Submission.

Further information on this program and summaries and results of all projects funded under Phases I and II of SEBSCC are available from SEBSCC's web site at http://www.pmel.noaa.gov/sebscc and COP's web site at http://www.cop.noaa.gov

**FOR FURTHER INFORMATION CONTACT:** Technical Information: Allen Macklin at Pacific Marine Environmental Laboratory, 7600 Sand Point Way, Seattle, WA, 98115-0070, 206–526-6798, Internet: Allen.Macklin@noaa.gov, or Elizabeth Turner, SEBSCC 2001 Program Manager, Coastal Ocean Program Office, 301–713–3338/ext 135, Internet: Elizabeth.Turner@noaa.gov.

Business Management Information: Leslie McDonald, COP Grants Office, 301–713–3338/ext 137; Internet: Leslie.McDonald@noaa.gov.

**SUPPLEMENTARY INFORMATION:**

#### Background

*Program Description*

For complete program description and other requirements criteria for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual notification in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page. It is anticipated that final selections for funding will be made in late fiscal year 2000.

The Bering Sea ecosystem experiences interannual and climate variability. Oceanographic conditions observed during Phases I and II of SEBSCC

differed in several key respects. For example, summer of 1997 brought warm (+3 degree C) sea temperature anomalies, unusually strong stratification, a coccolithophorid bloom, and reduced numbers of foraging sea birds and returning salmon. The year 1999 brought cold sea temperatures that have not been seen since the mid-1970s.

Strong contrasts in ocean conditions provide a basis for synthesis and comparison of the role of oceanic conditions on the carrying capacity of the Bering Sea. Specifically, proposals are sought that examine existing data to understand how oceanographic changes affect the food web and food supply to higher trophic level animals. Also, proposals are sought that seek to test whether selected biophysical indices can be used to identify the state of the ecosystem and the juvenile walleye pollock (*Theragra chalcogramma*) resource and to measure the predictive capability of those indices.

The Bering Sea ecosystem is among the most productive of high-latitude seas and supports large populations of marine fish, birds and mammals. This productivity is important to the U.S. economy in that fish and shellfish from the region constitute almost 5 percent of the world and 40 percent of the U.S. fisheries harvest. Pollock, salmon, halibut, and crab generate over 2 billion dollars per year in fisheries revenue and provide a major source of protein. The overwhelming dominance of pollock in the Bering Sea means that this species currently plays a singularly important role in this ecosystem. SEBSCC Phase I and II research sought to understand the processes controlling the Bering Sea ecosystem. During those studies, several indications of ecosystem change were detected. The synthesis phase of SEBSCC is designed to assimilate research findings on biophysical processes underlying the ecosystem change in the Bering Sea.

Quantifying the relative importance of natural variations and human-induced variations in explaining upper trophic level ecosystem changes is a key management issue for the Bering Sea. Differentiating trends in fish stock abundance attributable to human exploitation from trends due to natural variations is difficult because the fisheries and environmental time series are often short or incomplete. Trends are seldom stable and can be subject to regional variation. Important lower trophic level changes include those natural and anthropogenic variations that cause shifts in the production of new organic matter and its vertical distribution.

SEBSCC postulates that a large fraction of the Bering Sea ecosystem energy passes through the pollock population. Juvenile pollock respond to and potentially impact primary and secondary production through grazing, and influence the availability of food for upper trophic level species, including adult pollock, seabirds, and marine mammals. Pollock provide an important measure of the condition of the present ecosystem, and may be an indicator of changes in the Bering Sea over the last three decades and in the future.

The SEBSCC program is designed to improve our understanding of the Bering Sea ecosystem; the results of this endeavor will directly assist fishery and resource managers.

*SEBSCC Goal and Phase III Objectives*

The goal of SEBSCC is to increase understanding of the southeastern Bering Sea pelagic ecosystem. New information will be used to develop and test annual indices of pre-recruit (age–0 and age–1) pollock abundance that will support management of pollock stocks and help determine food availability to other species.

The specific objectives for Phase III are to:

(1) Develop indices for pre-recruit pollock in the Bering Sea by using several complimentary approaches;

(2) Provide limited monitoring to test proposed indices;

(3) Provide a synthesis of current Bering Sea ecosystem research, as documented in a special journal issue to be published in 2001 and other sources, for publication in the Coastal Ocean Program Decision Analysis Series.

*Structure of the Research Program*

SEBSCC is a NOAA COP regional ecosystem project begun in 1996. This continuing effort is managed by the University of Alaska Fairbanks, NOAA's Alaska Fisheries Science Center, and NOAA's Pacific Marine Environmental Laboratory. SEBSCC synthesis research comprises three components: modeling and index development, monitoring, and synthesis/assessment of results of process-oriented field studies.

(1) *Modeling and index development*: This effort is designed to synthesize results generated by SEBSCC or by other programs and historical data, using conceptual, theoretical, statistical, and numerical models to investigate the ecosystem, especially the role of pollock. Proposals are encouraged that will provide spatially explicit biophysical models that quantify the influence of ocean forcing on the bioenergetics, life history, and age structure of pollock populations in the Bering Sea.

The time period should emphasize information gained through process studies and system observations during the SEBSCC years 1995–1999 or a broader retrospective period from the 1970s to the 1999s. SEBSCC anticipates funding three or four parallel but complementary approaches to synthesis of information on the Bering Sea and development of pollock recruitment indices. These include, but are not limited to:

(a) Fisheries modeling that emphasizes a top-down approach, but includes the impact of juvenile pollock and some spatial and ecosystem dependence;

(b) Coupled biophysical models that contrast transport and food variability in the different SEBSCC years 1995–1999, and treat pollock to age 6 months;

(c) Conceptual/observationally based studies to develop and test indices, including, but not limited to, retrospective analysis of the performance of selected ecosystem parameters that are leading indicators of pollock production and/or ecosystem change.

Investigators should demonstrate how their research would improve our understanding of the impacts of ocean forcing on marine production and how these findings can be used to improve resource management of the eastern Bering Sea. Efforts to quantify uncertainty in model predictions are highly encouraged.

(2) *Monitoring*: The aim of the monitoring component is to provide the basis for interannual comparison of the population processes and their coupling to the physical structure and variability of the environment. Shipboard studies help to determine the distribution and abundance of target organisms in relation to their physical environment. SEBSCC suggests the continuation of the biophysical mooring at Site 2 and a spring biological cruise that measures water properties, nutrients, zooplankton and larval pollock at previous SEBSCC sites. Funding is available for making observations and data processing.

(3) *Written synthesis/assessment of results of process studies*: Research results from SEBSCC Phases I and II and other programs are to be submitted to a special journal issue by September 2000. Under this AO, there is an opportunity for researchers to use the content of the special issue, additional SEBSCC material and other information to produce a manuscript for inclusion in a Coastal Ocean Program Decision Analysis Series report. The manuscript will review SEBSCC and other research

results, evaluate their importance in meeting the goals of SEBSCC and management needs, discuss progress in understanding the ecosystem of the southeastern Bering Sea, and make recommendations for future research.

*About Phases I and II*

Proposals for Phase I studies were requested in 1996 and funded in fiscal years 1997 and 1998. Summaries and results of all projects funded under Phase I of SEBSCC are available from the SEBSCC web site, see **ADDRESSES**.

Central Scientific issues for Phase I included the following:

(1) *Influence of climate variability on the Bering Sea ecosystem*: Was there historical evidence for a biophysical regime shift on the Bering Sea shelf? How was this reflected in ecological relationships and species mix? Are there "top-down" ecosystem effects associated with climate variations as well as with "bottom-up" effects?

(2) *Limited population growth on the Bering Sea shelf*: Was there evidence of a single species carrying capacity, e.g. for pollock, or a more complex structure? What is the ecological role of pollock on the Bering Sea shelf, i.e. how are pollock, forage fish, and apex species linked through energetics and life history? How important is cannibalism?

(3) *Influence of oceanographic conditions of biological distribution on the shelf*: How do the separate mixing domains, sea ice, and cold pool influence the overlap or separation between predators and prey?

(4) *Possible influences on primary and secondary production regimes*: What were the sources of nutrients to the southeastern Bering Sea shelf, and what processes affected their availability? Has the variability in sea ice extent and timing been the primary factor influencing productivity? What has determined the relative allocation of organic carbon going to benthos versus that remaining in the pelagic system? What are the lower trophic level structure and energetics on the shelf in summer and winter, especially regarding euphausiids? What is the role of gelatinous organisms?

Proposals for Phase II studies were requested in 1998 and funded in FYs 1999 and 2000. Summaries and results of all projects funded under Phase II of SEBSCC are available from the SEBSCC web site, see **ADDRESSES**.

The specific objectives for Phase II were to:

(1) Determine how changes in on-shelf transport of nutrients impact pelagic food webs. This includes determination of how timing, duration, magnitude, and species composition of primary, secondary, and forage fish production affect food availability for higher trophic levels.

(2) Determine how climate variability influences the spatial overlap of pollock of different life stages, and how the availability of juvenile pollock to predators affects pollock survival rate.

**Part I: Schedule and Proposal Submission**

The provisions for proposal preparation provided here are mandatory. Proposals received after the published deadline or proposals that deviate from the prescribed format will be returned to the sender without further consideration. This announcement and additional background information will be made available on the COP home page.

Full proposals addressing Phase III, objective (1), should cover a 2-year project period, i.e., from date of award through twenty-four (24) consecutive months. Proposals addressing Phase III, objective (2), should cover a 1-year period, FY 2001. Proposals addressing objective (3) should cover a 1-year period commencing with acceptance of manuscripts for the special journal issue (approximately spring 2001). Prospective investigators should provide a full scientific justification for their research and not simply reiterate justifications laid out in this AO or in previous documents.

Proposals should be written to allow adequate review of the details of such things as goals and objectives, conceptual framework, methodological approaches, integration with other likely projects and syntheses. Variables to be used as candidate indices are to be directly mentioned and justified.

Successful proposers are strongly encouraged to present preliminary results at the Tenth Annual PICES meeting planned for Victoria, B.C., Canada, in October 2001. Travel costs for the meeting may be included in prospective budgets. In addition, it would be helpful if a statement is included as to how proposed efforts are related to efforts of other potential investigators; interdisciplinary and multi-trophic level coordination are particularly encouraged. Because of an 8–page limitation for the project description, individual proposals with overly complex structure and large numbers of investigators are discouraged.

*Full Proposals*

Applications submitted to this announcement require an original proposal and 13 proposal copies at time of submission. This requirement includes color or high-resolution graphics, unusually sized materials (not 8.5" x 11", or 21.6 cm x 28 cm), or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. In addition, an electronic copy of the proposal in either WordPerfect or MSWord format is requested at time of initial application. The stated requirements for the number of original proposal copies provide for a timely review process because of the large number of technical reviewers. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

*Required Elements*

All recipients are to follow closely the instructions and requirements in the preparation of the standard NOAA Application Forms and Kit requirements listed in Part II: Further Supplementary Information, paragraph (10) of this document. Each proposal must also include the following eight elements:

(1) *Signed summary title page*: The title page should be signed by the PI and the institutional representative. The summary title page identifies the project's title starting with the acronym SEBSCC 2000, a short title (<50 characters), and the lead principal investigator's name and affiliation, complete address, phone, FAX, and E-mail information. The requested budget for each fiscal year should be included on the summary title page. Multi-institution proposals must include signed summary title pages from each institution.

(2) *One-page abstract/project summary*: The Project Summary (Abstract) Form, which is to be submitted at time of application, shall include an introduction of the problem, rationale, scientific objectives and/or hypotheses to be tested, and a brief summary of work to be completed. State whether you are proposing modeling and index development, monitoring, or synthesis/assessment of process studies.

For modeling and index development, describe the method(s) to be used, the relation to potential pollock indices, and the hypothesis to be tested. For monitoring, state the relationship to existing observations and to development of a pre-recruit index. The prescribed COP format for the Project Summary Form can be found on the COP Internet site under the COP Grants Support Section.

The summary should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost, and budget period and

should be written in the third person. The summary is used to help compare proposals quickly and allows the respondents to summarize these key points in their own words.

(3) *Statement of work/project description*: The project description section should not exceed eight pages of text and five figures. It is important to provide a full scientific justification for the research; and not to simply reiterate justifications presented in this document. Page and figure limits are inclusive of figures and other visual materials, but exclusive of references and milestone chart. This section should include:

(a) The objective for the period of proposed work and its expected result and significance;

(b) The relation to the present state of knowledge in the field and relation to previous work and work in progress by the proposing principal investigator(s);

(c) A discussion of how the proposed project lends value to the program goals and provides synthesis and support for selection of indices, if applicable;

(d) A project management statement that clearly identifies the functions of each PI within a team;

(e) A potential coordination with other investigators;

(f) An intent to adhere to NOAA's specific requirements that environmental data be submitted to the National Oceanographic Data Center; adherence to the data policy that is posted on SEBSCC's home page; and

(g) References cited: Reference information is required. Each reference must include the names of all authors in the same sequence in which they appear in the publications, the article title, volume number, page numbers, and year of publications. While there is no established page limitation, this section should include bibliographical information only and should not be used to provide parenthetical information outside of 8–page project description.

(4) *Milestone chart*: Time lines of major tasks covering the 12– to 24-month duration of the proposed project.

(5) *Budget*: At time of proposal submission, all applicants shall submit the Standard Form, SF–424 (Rev 7–97), Application for Federal Assistance, to indicate the total amount of funding proposed for the whole project period. In lieu of the Standard Form 424A, Budget Information (Non-Construction), at time of original application, all proposers are required to submit a COP Summary Proposal Budget Form for each fiscal year increment (i.e., 2001, 2002). Multi-institution proposals must include budget forms from each institution.

This budget form, compatible with forms in use by other agencies that participate in joint projects with COP, will provide a detailed annual budget and the level of detail required by the COP program staff to evaluate the effort to be invested by investigators and staff on a specific project. The COP budget form can be found on the COP home page under COP Grants Support, Part D, or may be requested from the COP Grants Administrator listed under **FURTHER INFORMATION**.

All applicants shall include a budget narrative/justification that supports all proposed budget object class categories. The program office will review the proposed budgets to determine the necessity and adequacy of proposed costs for accomplishing the objectives of the proposed grant. The SF–424A, Budget Information (Non-Construction) Form, shall be requested from only those recipients subsequently recommended for award to the NOAA Grants Management Division after the competitive review process has been completed.

(6) *Biographical sketch*: An abbreviated curriculum vitae, two pages per investigator, is sought with each proposal. Include a list of up to five publications most closely related to the proposed project and up to five other significant publications, not related to the project. Include a list of all persons (including their organizational affiliation), in alphabetical order, who have collaborated on a project, book, article, or paper within the last 48 months. If no collaborators exist, indicate their absence. Disclose students, post-doctoral associates, and graduate and postgraduate advisors of the PI because this information is used to help identify potential conflicts of interest or bias in the selection of reviewers.

(7) *Current and pending support*: Describe all current and pending support for all PIs, including subsequent funding in the case of continuing grants. List all current support from whatever source (e.g., Federal, state or local government agencies, private foundations, industrial or other commercial organizations). Include the proposed project and all other projects or activities requiring a portion of time of the PI and other senior personnel even if they receive no salary support from the project(s). Show the total award amount for the entire award period covered (including indirect costs) should be shown as well as the number of persons or months per year to be devoted to the project, regardless of source of support.

(8) *Proposal format and assembly*: Clamp the proposal in the upper left-hand corner, but leave it unbound. Use one inch (2.5 cm) margins at the top, bottom, left and right of each page. Use a clear and easily legible type face in standard 12 point size.

**Part II: Further Supplementary Information**

(1) *Program authorities*: For a list of all program authorities for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page. Specific authority cited for this Announcement is 33 U.S.C. 883(d) for Coastal Ocean Program.

(2) *Catalog of Federal Domestic Assistance Numbers*: 11.478 for the Coastal Ocean Program.

(3) *Program description*: For complete COP program descriptions, see the annual COP General Document (64 FR 49162, September 10, 1999).

(4) *Funding availability*: Funding is contingent upon receipt of fiscal years 2001–2002 Federal appropriations. The anticipated maximum annual funding for SEBSCC is $700,000 in FYs 2001 and $300,000 in FY 2002. It is anticipated that $450,000 in FYs 2001 and $200,000 in FY 2002 will be available to fund three or four modeling and index development projects addressing Phase III objective (1). Further, it is projected that approximately $150,000 will be available for monitoring in FY 2001 to address Phase III objective (2). In 2001, one month of ship time is expected during spring for monitoring work. Joint work with other research institutions on their vessels is a possibility. Approximately $40,000 will be available for synthesis/assessment of results of process studies. This component will begin when all submissions to the special journal issue are accepted, probably spring 2001.

It is recognized that resources are limited; therefore, potential investigators are encouraged to consider leveraging their proposals with support from other sources, although this is not a requirement. Investigators interested in the Bering Sea may also consider becoming no-cost collaborators; ship time and modest travel support would be available.

If an application is selected for funding, NOAA has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Renewal of an award to increase funding or extend the

period of performance is based on satisfactory performance and is at the total discretion of the funding agencies.

Publication of this document does not obligate any agency to any specific award or to any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations, and procedures applicable to Federal financial assistance awards.

(5) *Matching Requirements*: None.

(6) *Type of funding instrument*: Project Grants for non-Federal applicants; interagency transfer agreements or other appropriate mechanisms other than project grants or cooperative agreements for Federal applicants.

(7) *Eligibility criteria*: For complete eligibility criteria for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual notification in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page. Federal researchers in successful multi-investigator proposals will be funded through NOAA. Proposals deemed acceptable from Federal researchers will be funded through a mechanism other than a grant or cooperative agreement, where legal authority allows for such funding. Non-NOAA Federal applicants are required to submit certification or documentation which clearly shows that they can receive funds from the Department of Commerce (DoC) for research (i.e., legal authority exists allowing the transfer of funds from DoC to the non-NOAA Federal applicant's agency).

(8) *Award period*: Full Proposals should cover a project period of 1 or 2 years, FYs 2001–2002. Multi-year funding will be funded incrementally on an annual basis. Therefore, each annual award shall require a Statement of Work that is clearly severable and can be easily separated into annual increments of meaningful work which represent solid accomplishments if prospective funding is not made available.

(9) *Indirect costs*: If indirect costs are proposed, the following statement applies: The total dollar amount of the indirect costs proposed in an application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

(10) *Application forms*: For complete information on application forms for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999), Part (9) Application Forms and Kit; and at the COP home page, under Grants Support, Part D, Application Forms for Initial Proposal Submission; and the information given earlier in this document under *Required Elements*, paragraph (5) Budget.

With the exception of the Standard Form 424 (Rev July 1997) Application for Federal Assistance, the other standard NOAA forms required as part of a complete application package may be submitted at time of application, or at a later date if the applicant is subsequently notified of selection for funding.

(11) *Project funding priorities*: For description of project funding priorities, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page. Those priorities are in addition to the priorities listed in this document.

(12) *Evaluation criteria*: For complete information on evaluation criteria, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

(13) *Selection procedures*: For complete information on selection procedures, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

(14) *Other requirements*: Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs". For a complete description of all other requirements, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

(15) Pursuant to Executive Orders 12876, 12900 and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission and goals are to achieve full participation by Minority Serving Institutions (MSIs)in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

(16) Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

(17) This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF-LLL has been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

The COP Grants Application Package has been approved by OMB under control number 0648–0384 and includes the following information collections: a Summary Proposal Budget Form, a Project Summary Form, standardized formats for the Annual Performance Report and the Final Report, and the submission of up to 20 copies of proposals. Copies of these forms and formats can be found on the COP Home Page under Grants Support section, Part F.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: May 8, 2000.

**Ted I. Lillestolen,**

*Deputy Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 00–12033 Filed 5–11–00; 8:45 am]

BILLING CODE 3510–JS–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

May 9, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing a limit.

**EFFECTIVE DATE:** May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 622 is being increased for carryforward. The sublimit for Category 622–L remains unchanged.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 65 FR 15315, published on March 22, 2000.

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 9, 2000.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 16, 2000, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain man-made fiber textile products, produced or manufactured in Belarus and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 16, 2000, you are directed to increase the limit for the following category, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 622 | 12,190,000 square meters of which not more than 1,000,000 square meters shall be in Category 622–L [2]. |

[1] The limit has not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 622–L: only HTS numbers 7019.51.9010, 7019.52.4010, 7019.52.9010, 7019.59.4010, and 7019.59.9010.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–12025 Filed 5–11–00; 8:45 am]

**BILLING CODE 3510–DR–F**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

May 8, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The limits for all quota categories are being increased as a result of the Royal Government of Cambodia's progress in improving working conditions in the Cambodian textile and apparel industries through increased compliance with internationally recognized core labor standards through the application of Cambodian labor law.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70217, published on December 16, 1999.

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 8, 2000.

**Committee for the Implementation of Textile Agreements**

May 8, 2000.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Cambodia and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 12, 2000, you are directed to increase the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Cambodia:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 331/631 | 1,905,880 dozen pairs. |
| 334/634 | 189,822 dozen. |
| 335/635 | 79,924 dozen. |
| 338/339 | 2,691,500 dozen. |
| 340/640 | 922,200 dozen. |
| 345 | 115,582 dozen. |
| 347/348/647/648 | 3,109,800 dozen. |
| 352/652 | 737,760 dozen. |
| 438 | 99,613 dozen. |
| 445/446 | 128,876 dozen. |
| 638/639 | 1,004,940 dozen. |
| 645/646 | 307,400 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–12023 Filed 5–11–00; 8:45 am]

**BILLING CODE 3510–DR–F**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton Textile Products Produced or Manufactured in Nepal

May 9, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs reducing limits.

May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54871, published on October 8, 1999.

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

May 9, 2000.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 12, 2000, you are directed to reduce the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 340 | 457,399 dozen. |
| 347/348 | 859,041 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–12026 Filed 5–11–00; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Wool Textile Products Produced or Manufactured in Romania

May 9, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs increasing limits.

**EFFECTIVE DATE:** May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for special carryover which is being allowed in recognition of the disruption to Romania's exports in 1999 as a result of the crisis in Kosovo, and in accordance with the Memorandum of Understanding of April 20, 2000 regarding this special carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 71116, published on December 20, 1999.

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements; Committee for the Implementation of Textile Agreements.*

May 9, 2000.

Commissioner of Customs,
*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 14, 1999 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 12, 2000, you are directed to increase the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted limit [1] |
|---|---|
| 433/434 | 16,567 dozen. |
| 442 | 16,959 dozen. |
| 443 | 96,804 numbers. |
| 444 | 64,383 numbers. |
| 447/448 | 28,395 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–12024 Filed 5–11–00; 8:45 am]

BILLING CODE 3510–DR–F

## CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

### Notice of Change in Application Deadline for Digital Divide Notice of Funding Availability

**AGENCY:** Corporation for National and Community Service.

**ACTION:** Notice of change in application deadline.

**SUMMARY:** The Corporation for National and Community Service has extended the deadline for applications under our notice of availability of funds published in the **Federal Register** on April 28, 2000 (65 FR 24920). The funds will support grants under the AmeriCorps*State Competitive, AmeriCorps*National, and Learn and Serve America K–12 School-based programs, to eligible organizations to help overcome the digital divide. The new deadline for applications is July 25, 2000. In addition, if you intend to submit an application, please send us a notice of intent by June 26, 2000. A notice of intent to submit is not required, but is helpful to us for planning purposes.

**FOR FURTHER INFORMATION CONTACT:** For further information, or to obtain an application, contact Maria Diaz at (202) 606–5000, ext. 372.

Dated: May 8, 2000.

**Gary Kowalczyk,**

*Coordinator, National Service Programs, Corporation for National and Community Service.*

[FR Doc. 00–11962 Filed 5–11–00; 8:45 am]

BILLING CODE 6050–28–P

## DEPARTMENT OF DEFENSE

### Reciprocal Procurement Memoranda of Understanding—Implementation Reviews

**AGENCY:** Department of Defense.

**ACTION:** Request for public comments.

**SUMMARY:** The Office of Foreign Contracting, Defense Procurement, is seeking information that will assist it in reviewing the defense procurement practices of countries with which the Department of Defense (DoD) has a reciprocal procurement Memorandum of Understanding (MOU). These countries are: Australia, Austria, Belgium, Canada, Denmark, Egypt, Finland, France, Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. Interested parties are invited to submit written comments concerning the defense procurement practices of MOU countries that will assist the Office of Foreign Contracting in evaluating the manner in which these reciprocal MOUs are being implemented.

**DATES:** Comments must be received no later than June 26, 2000.

**ADDRESSES:** Send all comments to Domenico C. Cipicchio, Deputy Director, Defense Procurement, Foreign Contracting, OUSD (AT&L), 3060 Defense Pentagon, Washington, DC 20301–3060.

**FOR FURTHER INFORMATION CONTACT:** Susan M. Hildner, Procurement Analyst, Defense Procurement, Foreign Contracting, OUSD (AT&L), 3060 Defense Pentagon, Washington, DC 20301–3060, (703) 697–9352.

**SUPPLEMENTARY INFORMATION:** The DoD has a bilateral reciprocal defense procurement MOU with each of the countries identified above. These MOUs are designed to promote interoperability and standardization of defense equipment between the U.S. and its allies. The MOUs also seek to eliminate buy-national barriers and other discriminatory procurement practices so that the industries of each country receive fair and equal access to each other's defense procurements. The Office of Foreign Contracting will be performing reviews of the manner in which these MOUs are being implemented and is interested in obtaining information on any discriminatory practices that hinder the ability of U.S. suppliers to compete for defense-related procurements within any of these countries. Problem areas could include: Inability to locate publication notices on upcoming procurements, difficulty in obtaining solicitations in a timely manner, inadequate response time for offers, issues associated with application of customs duties, buy-national practices that favor other than U.S. industry, imposition of offset requirements, inability to obtain debriefing information, inability to protest source selection decisions, and protection of proprietary information as well as any other discriminatory practice that needs to be addressed.

All materials should be submitted with 3 copies. Material that is business confidential information will be exempted from public disclosure as provided for by 5 U.S.C. 552(b)(4) (Freedom of Information ACT (FOIA) rules). Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission, which can be placed in the public file. Comments not marked business confidential may be subject to disclosure under FOIA.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

[FR Doc. 00–11976 Filed 5–11–00; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF THE DEFENSE

### Department of the Army; Corps of Engineers

### Notice of Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for Proposed Changes to the Kentucky Lock Addition Project, Marshall and Livingston Counties, Kentucky

**AGENCY:** U. S. Army Corps of Engineers, DoD.

**ACTION:** Notice of Intent and Announcement of Meeting

**SUMMARY:** The Corps of Engineers, Nashville District, and the Tennessee Valley Authority (Cooperating Agency) will prepare a DSEIS to the 1992 EIS titled Lower Cumberland and Tennessee Rivers Navigation Feasibility Report Kentucky Lock Addition, Volume 1 Final EIS. This supplement is necessary to provide National Environmental Policy Act (NEPA) coverage for proposed changes to the design of the project from that described in previous NEPA documents, which includes the 1992 EIS and the March 2000 Environmental Assessment for the Proposed Relocation of the U.S. Highway 62 and 641 Crossing of the Tennessee River at Kentucky Lock and Dam. A Public Meeting is scheduled to scope for potential issues to be evaluated in the SEIS. Further information on the upcoming meeting is provided in the **SUPPLEMENTARY INFORMATION** paragraph indicated below.

**DATES:** Written comments must be received by the Corps of Engineers on or before June 12, 2000.

**ADDRESSES:** Written comments on issues to be considered in the SEIS shall be mailed to: Tim Higgs, Project Planning Branch, Nashville District Corps of Engineers, P.O. Box 1070 (PM–P), Nashville, Tennessee 37202–1070.

**FOR FURTHER INFORMATION CONTACT:** For additional information concerning the notice and meeting announcement, please contact Tim Higgs, Environmental Analysis Team, (615) 736–7192 or Don Getty, Project Manager, (615) 736–2346.

**SUPPLEMENTARY INFORMATION:**

1. The intent of the Supplemental EIS is to provide National Environmental Policy Act coverage for design features of the Kentucky Lock Addition project that were unspecified when the original EIS was prepared. At the time of the original EIS, it was recognized that decisions on several key features could not be made until additional hydraulic modeling studies and engineering evaluations were performed. This additional evaluation has progressed to the point that the SEIS can be completed.

2. The original EIS for Kentucky Lock Addition was completed in 1992 and a Record of Decision signed in 1998. An environmental assessment (EA) was completed in March 2000 for the relocation of the U.S. Highway 62/641 Crossing over the Tennessee River. This EA addressed changes to the project from moving the crossing off the Kentucky Lock and Dam (river mile 22.4) to a site just downstream of the dam (river mile 22.1). The SEIS now proposed will cover all known remaining changes to the project from that described in the earlier EIS and EA.

3. Key proposed project features to be evaluated in the SEIS include the following:

a. Training dike(s) on the west bank of the Powerhouse Island to improve navigation conditions for barge traffic entering the locks on the downstream side.

b. Fishing enhancement features added as mitigation for construction impacts (bank closures):

(1) three west bank rock jetties below the west bank boat basin;

(2) expanded west bank boat basin which will be used by contractors during construction and available to the public after construction;

(3) new boat ramp in the west bank boat basin;

(4) fishing piers on the west bank and off the Powerhouse Island.

c. Construction of a new Lock Visitor's Center as mitigation for loss of Taylor Park Campground.

d. Fill placement in lower level of now inactive Taylor Park Campground.

e. Mooring buoys at either Tennessee River Mile 19.4 (Left Bank) or TRM 20.6L.

f. Underwater rock excavations in upstream and downstream lock approaches.

g. Wastewater treatment systems for the Lock and Dam facilities.

h. Widening of Highway 282 at the railroad underpass on the west bank.

i. Guidewall construction in the tailwater.

4. This notice serves to solicit comments from the public; federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received by us will be considered to determine whether to perform this work. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, water supply and conservation, economics, aesthetics, wetlands, flood hazards, floodplain values, land use, navigation, shore erosion and accretion, recreation, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, general environmental effects, and in general, the needs and welfare of the people.

5. Activities proposed that require a review under the guidelines promulgated by the Administrator, Environmental Protection Agency (EPA), under authority of Section 404(b)(1) of the Clean Water Act (40 CFR Part 230) include fill placement for fishing enhancement features and riprap temporarily placed in the lower lock approach channel.

6. Other federal, state and local approvals required for the proposed work are as follows:

a. Water quality certification from the Kentucky Division of Water.

b. Coordination with the U.S. Fish and Wildlife Service, including a Biological Assessment/Opinion for Endangered Species Act and a Fish and Wildlife Coordination Act Report.

7. Significant issues to be analyzed in depth in the draft SEIS include impacts to tailwater mussel resources, tailwater fishing activities, and commercial and recreational boating activities. The Tennessee Valley Authority has agreed to be a Cooperating Agency on the SEIS and will be responsible for preparing much of the evaluations of significant resources. A draft SEIS should be available in February 2001.

8. *Public Meeting:* A public meeting is scheduled to scope for potential issues to be evaluated in the SEIS as follows:

*Date:* May 22, 2000.

*Time:* 6:30 p.m. to 9 p.m.

*Place:* Kentucky Dam Village State Park Convention Center, U.S. Highway 641, Gilbertsville, Kentucky.

**Peter F. Taylor, Jr.,**

*Lieutenant Colonel, Corps of Engineers, District Engineer.*

[FR Doc. 00–12034 Filed 5–11–00; 8:45 am]

BILLING CODE 3710–GF–P

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.258]**

### Even Start Family Literacy Program Grants for Indian Tribes and Tribal Organizations

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year (FY) 2000.

*Purpose of Program:* The Even Start Family Literacy Program for Indian tribes and tribal organizations is designed to help break the cycle of poverty and illiteracy by improving the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribes and tribal organizations.

*Eligible Applicants:* Federally recognized Indian tribes and tribal organizations. (The term "Indian tribe" and "tribal organization" have the meanings given those terms in section 4 of the Indian Self-Determination and Education Assistance Act.)

*Applications Available:* May 12, 2000.

*Deadline for Transmittal of Applications:* June 30, 2000.

*Available Funds:* The Secretary estimates that there will be approximately $1,500,000 in FY 2000 funds for new grants.

*Estimated Range of Awards:* $100,000–$200,000.

*Estimated Size of Average Award:* $175,000.

*Estimated Number of Awards:* 8–10.

*Note:* The Department is not bound by any estimates in this notice.

*Project Period:* Up to 48 months.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, 82, 85, 97, 98, and 99.

**SUPPLEMENTARY INFORMATION:**

**Description of Program**

Under the authority of section 1202(a)(1)(C) of the Elementary and Secondary Education Act (ESEA), the Assistant Secretary of Elementary and Secondary Education (Assistant Secretary) awards grants to eligible applicants for projects that—

- Improve the educational opportunities of low-income families by integrating early childhood education, adult literacy or adult basic education, and parenting education into a unified family literacy program for federally recognized Indian tribe and tribal organization projects;
- Are implemented through cooperative activities that build on

existing community resources to create a new range of services for federally recognized Indian tribe and tribal organization projects;

• Promote achievement of the National Education Goals one, three, five, and eight that address school readiness, student achievement, adult literacy, and parent involvement in the education of their children; and

• Assist children and adults to achieve to challenging State content standards and challenging State student performance standards.

Each project must use the grant funds to provide an intensive family-centered education program that involves parents and children, from birth through age seven, in a cooperative effort to help parents become full partners in the education of their children and to assist children in reaching their full potential as learners.

In accordance with section 1205 of the ESEA, each project must include ten specific program elements (listed in the application package). Those ten elements include *in part* the following activities: identifying, recruiting, and providing services to families that are the most in need of family literacy services, as indicated by a low level of adult literacy or English language proficiency of the eligible parent or parents, and other need-related indicators; providing (through collaboration with other entities when possible) high-quality, intensive instructional programs in adult basic or secondary education (or English language training), early childhood education, literacy-based parenting education training, and interactive literacy activities between parents and their children; and providing year-round services, including some instructional services in the home. For a specific description of all of the required program elements, applicants should refer to the application package.

**Eligible Participants**

Eligible participants are families with children and their parents who also meet the following conditions specified in section 1206(a) of the ESEA:

(1) The parent or parents must be eligible for participation in an adult education program under the Adult Education Act; or within the State's compulsory school attendance age range (in which case a local educational agency must provide (or ensure the availability of) the basic education component); and

(2) The child or children must be younger than eight years of age.

**Federal and Local Funding**

An Even Start Family Literacy project's funding is comprised of both a Federal portion of funds (Federal share) and a portion contributed by the eligible applicant (local project share). The local share of the project may be provided in cash or in kind and may be obtained from any source, including other Federal programs funded by the ESEA. The Federal share of the project may not exceed—

• 90 percent of the total cost of the project in the first year;
• 80 percent in the second year;
• 70 percent in the third year;
• 60 percent in the fourth year;
• 50 percent in the fifth through eight years; and
• 35 percent in any subsequent year.

The Federal share for any grantee receiving a grant for a second grant cycle may not exceed 50 percent, and for any cycle after that may not exceed 35 percent. Any grantee that wishes to reapply at the end of a project period (up to 48 months) must recompete for funding with new applicants.

**Indirect Costs**

Even Start Family Literacy Program funds may not be used for the indirect costs of a project. Recipients of an Even Start Indian tribe and tribal organization grant may request the Secretary to waive this requirement. To obtain a waiver, however, the recipient must demonstrate to the Secretary's satisfaction that the recipient otherwise would not be able to participate in the Even Start Family Literacy Program.

**National Evaluation**

The Department is conducting a national evaluation of Even Start Family Literacy projects. Grantees are required to participate in the Department's national evaluation and to conduct a separate independent local evaluation consistent with the grantee's responsibilities under 34 CFR 75.590. Specific information about budgeting for those evaluations are contained in the application package.

**FOR FURTHER INFORMATION CONTACT:** To obtain a copy of the application package or further information, contact Doris Sligh, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202–6132; telephone (202) 260–0999; or email doris_sligh@ed.gov.

The application package also is available on the Department's Web site at: www.ed.gov/GrantApps/#84.258.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting that person. However, the Department is not able to reproduce in an alternative format the standards forms included in the application package.

**Electronic Access to This Document**

Anyone may view this document, as well as all other Department of Education documents published in **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF, you must have Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498, or in the Washington DC area at (202) 512–1530.

The official version of this document is the document published in the **Federal Register**. Free Internet access to the official education of the **Federal Register** and Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

**Program Authority:** 20 U.S.C. 6362(c).

Dated: May 9, 2000.

**Michael Cohen,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 00–12162 Filed 5–11–00; 8:45 am]

BILLING CODE 4000–01–M

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## DEPARTMENT OF EDUCATION

### Arbitration Panel Decision Under the Randolph-Sheppard Act

**AGENCY:** Department of Education.

**ACTION:** Notice of Arbitration Panel Decision Under the Randolph-Sheppard Act.

**SUMMARY:** Notice is hereby given that on March 31, 1999, an arbitration panel rendered a decision in the matter of *West Virginia Department of Education and the Arts, Division of Rehabilitation Services* v. *U.S. Department of Labor, Mine Safety and Health Administration (Docket No. R-S/97–14)*. This panel was

convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d-1(b) upon receipt of a complaint filed by petitioner, the West Virginia Department of Education and the Arts, Division of Rehabilitation Services.

**FOR FURTHER INFORMATION:** A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 400 Maryland Avenue, SW., room 3230, Mary E. Switzer Building, Washington - DC 20202–2738. Telephone: (202) 205–9317. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

*Electronic Access to This Document*

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: http://ocfo.ed.gov/fedreg.htm http://www.ed.gov/news.html.

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)) (the Act), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

**Background**

This dispute concerns the alleged violation by the U.S. Department of Labor in the termination of the contract of the West Virginia Department of Education and the Arts, Division of Rehabilitation Services, the State licensing agency (SLA), to operate a facility at the National Mine Health and Safety Academy in Beckley, West Virginia. A summary of the facts is as follows: On July 13, 1997, Mr. David Naylor, Director of the West Virginia Society for the Blind (Society), received a letter dated July 2, 1997, from Mr. William Och, the Contracting Officer for the National Mine Health and Safety Academy in Beckley. In the letter, which was entitled "Notice of Partial Termination of Contract Number J2566023 for Food Service at the National Mine Health and Safety Academy, Beaver, WV," Mr. Och was informed that a substantial part of the Society's food service would be terminated effective July 7, 1997, for the remainder of the Federal fiscal year. The reason given for the termination was simply "the Government's convenience."

The SLA alleged that the contract was terminated with less than 1 business day's notice since the Fourth of July holiday in that year fell on Friday. The SLA further alleged that the actions taken by the U.S. Department of Labor, Mine Safety and Health Administration, in terminating the SLA's contract, violated the substantive and procedural provisions of the Act and implementing regulations.

The SLA filed a request for Federal arbitration dated July 15, 1997, which was received by the Department on July 24, 1997. While the complaint was under review by the Department, the parties were encouraged to meet and discuss the issues in an effort to reach an amicable settlement.

To that end, the parties successfully negotiated a resolution concerning two of the three issues in the SLA's original complaint. The two issues settled were: (1) That the SLA through its agent, the West Virginia Society for the Blind, and the Mine Safety and Health Administration would negotiate and enter into a contract providing for the operation of the cafeteria and vending facilities at the Academy. The contract would begin on or before November 1, 1997. The contract would provide for a term of 120 days with ongoing options for renewal on a 30-day basis. (2) For the duration of the previously-named contract, the Mine Safety and Health Administration would permit no other entity to provide food or vending services at the Academy unless the right to furnish those food or vending services would be first offered to the West Virginia Society for the Blind. If the Society was unable to provide those services, it would advise the Mine Safety and Health Administration.

The SLA filed a request to proceed with arbitration on the remaining issue in the complaint. A Federal arbitration hearing on this matter was held on September 18, 1998.

**Arbitration Panel Decision**

The central issue before the arbitration panel was whether the Mine Safety and Health Administration may seek bids for the operation of the food and vending facilities contract at the National Mine Health and Safety Academy while a contractor is already in place pursuant to the provisions of the Act (20 U.S.C. 107 *et seq.*) and the implementing regulations (34 CFR part 395).

The majority of the panel ruled that the sole purpose of the Act is to benefit blind persons through employment as entrepreneurs on all Federal property. Additionally, it is a requirement of the Act that a priority be given to blind vending facilities on all Federal property, and it is the obligation of every Federal department, agency, and instrumentality to ensure that one or more vending facilities is established on all Federal property.

In its complaint, the SLA argued that the Mine Safety and Health Administration, the respondent, was prohibited from seeking bids because of the priority provisions of the Act. Conversely, the Mine Safety and Health Administration responded that the Act and implementing regulations do not expressly prohibit it from soliciting bids.

After review of all evidence and arguments, the majority of the panel ruled that the Mine Safety and Health Administration was entitled to seek bids. The panel concluded that if the SLA submitted a bid to the Mine Safety and Health Administration, then the priority provisions of the Act and regulations would apply. The panel further ruled that the priority provisions of the Act do not affect the bidding process and are only pertinent after the bidding process has been completed. Specifically, the panel found that there is no requirement in the Act that precludes the contracting agency from soliciting for the food service operation merely because a blind vendor was previously operating the facility under a contract. Consequently, the Mine Safety and Health Administration is free to seek bids as long as it ultimately gives preferential treatment to a qualified blind vendor consistent with the Act.

Additionally, the panel ruled that if the SLA demonstrates that it can provide food service at comparable cost and of comparable high quality as that available from other providers, the Act's priority provisions would apply. Therefore, this would mean that at the end of the contract period with the SLA, if the SLA submits a new contract proposal that is within the competitive

range, the SLA is entitled to the contract. Further, the Mine Safety and Health Administration may negotiate directly with the SLA without opening the competitive bidding process.

One panel member dissented.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: May 8, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–11914 Filed 5–11–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### Secretary of Energy Advisory Board; Notice of Open Meeting

**AGENCY:** Department of Energy.

**SUMMARY:** This notice announces a meeting of the Secretary of Energy Advisory Board's Openness Advisory Panel. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

**NAME:** Secretary of Energy Advisory Board—Openness Advisory Panel.

**DATE:** Tuesday, May 16, 2000, 9 a.m.–3:30 p.m.

**ADDRESSES:** U.S. Department of Energy, Program Review Center (Room 8E–089), Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

**Note:** Members of the public are requested to contact the Office of the Secretary of Energy Advisory Board at (202) 586–7092 in advance of the meeting (if possible), to expedite their entry to the Forrestal Building on the day of the meeting. Public participation is welcomed.

**FOR FURTHER INFORMATION CONTACT:** Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–7092 or (202) 586–6279 (fax).

**SUPPLEMENTARY INFORMATION:** The purpose of the Openness Advisory Panel is to provide advice to the Secretary of Energy Advisory Board regarding the status and strategic direction of the Department's classification and declassification policies and programs, and other aspects of the Department's ongoing Openness Initiative. The Panel's work will help institutionalize the Department's Openness Initiative.

**Tentative Agenda**

The agenda for the May 16 meeting has not been finalized but will include detailed briefings and discussions on the history and accomplishments of DOE's Openness Initiative; the legal foundations and basis for openness; implementation status of the OAP Interim Report; and key issues and challenges in classification, declassification and records management. Members of the Public wishing to comment on issues before the Openness Advisory Panel will have an opportunity to address the Panel during the afternoon period for public comment.

*Tentative Agenda*

9–9:30 a.m. Opening Remarks & Introductions—Herbert Brown, Chairman Openness Advisory Panel
9:30–10:15 a.m. Briefing & Discussion: History and Accomplishments of DOE's Openness Initiative
10:15–10:30 a.m. Break
10:30–11:15 a.m. Briefing & Discussion: Legal Foundations and the Basis for Openness
11:15–12 p.m. Status Report: Implementation of OAP Interim Report Recommendations
12–1 p.m. Lunch Break
1–1:45 p.m. Briefing & Discussion: Issues and Challenges in Classification and Declassification
1:45–2:30 p.m. Briefing & Discussion: Issues and Challenges in Records Management
2:30–3:15 p.m. Working Session: Panel Organization, Scope, & Work Plans
3:15–3:30 p.m. Public Comment Period
3:30 p.m. Adjourn

This tentative agenda is subject to change. A final agenda will be available at the meeting.

**Public Participation**

In keeping with procedures, members of the public are welcome to observe the business of the Openness Advisory Panel and submit written comments or comment during the scheduled public comment periods. The Chairman of the Panel is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Washington, DC the Panel welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Panel will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

**Minutes**

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on May 9, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–12114 Filed 5–11–00; 8:45 am]

BILLING CODE 6450–01–U

## DEPARTMENT OF ENERGY

### Secretary of Energy Advisory Board; Notice of Open Meeting

**AGENCY:** Department of Energy.

**SUMMARY:** This notice announces a meeting of the Secretary of Energy Advisory Board's National Ignition Facility Laser System Task Force. The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770), requires that agencies publish these notices in the **Federal Register** to allow for public participation.

**NAME:** Secretary of Energy Advisory Board—National Ignition Facility Laser System Task Force.

**DATES:** Wednesday, May 17, 2000, 8:30 am–3 pm.

**ADDRESSES:** Lawrence Livermore National Laboratory (LLNL), Conference Room A, Building 123, 7000 East Avenue, Livermore, California 94551–0808.

**Note:** For their convenience, members of the public who plan to attend this open meeting are requested to contact Ms. Kathleen Moody of the LLNL Protocol Office in advance of the meeting in order to facilitate access to the meeting site. Ms. Moody may be reached at (925) 423–5948 or via e-mail at moody2@llnl.gov.

**FOR FURTHER INFORMATION CONTACT:** Betsy Mullins, Executive Director, or Richard Burrow, Deputy Director, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy,

1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 586–7092 or (202) 586–6279 (fax).

**SUPPLEMENTARY INFORMATION:** The purpose of the NIF Task Force is to provide independent external advice and recommendations to the Secretary of Energy Advisory Board on the options to complete the National Ignition Facility (NIF) Project; to recommend the best technical course of action; and to review and assess the risks of successfully completing the NIF Project. The NIF Task Force will focus on the engineering and management aspects of the proposed method for accomplishing the assembly and installation of the NIF laser system. The Task Force's review will cover the full scope of assembly and installation and the ability, within the proposed approach, to achieve the cleanliness requirements established for the operation of the laser. The review will also address: (1) The engineering viability of the proposed assembly and activation method; (2) the assembly and installation cleanliness protocols; (3) the management structure; and (4) the adequacy of the cost estimating methodology.

**Tentative Agenda**

The agenda for the May 17 meeting has not been finalized. However, the meeting will include a series of detailed briefings and discussions on the cost estimates conducted in support of the NIF Rebaseline Plan. Members of the Public wishing to comment on issues before the NIF Laser System Task Force will have an opportunity to address the Task Force during the afternoon period for public comment. The final agenda will be available at the meeting.

**Public Participation**

In keeping with procedures, members of the public are welcome to observe the business of the NIF Task Force and submit written comments or comment during the scheduled public comment periods. The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Livermore, California, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. You may submit written comments to Betsy Mullins, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, D.C. 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

**Minutes**

A copy of the minutes and a transcript of the meeting will be made available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between 9:00 A.M. and 4:00 P.M., Monday through Friday except Federal holidays. Further information on the Secretary of Energy Advisory Board and its subcommittees may be found at the Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, DC, on May 9, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–12115 Filed 5–11–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–507–000]**

### Amoco Energy Trading Corporation, Amoco Production Company, and Burlington Resources Oil & Gas Company v. El Paso Natural Gas Company; Notice of Informal Settlement Conference

May 8, 2000.

Pursuant to the Commission's order in *Amoco Energy Trading Corporation et al* v. *El Paso Natural Gas Company*, 89 FERC ¶ 61,165 (1999), Commission Staff held a Technical Conference on March 9, 2000, to discuss El Paso's February 9, 2000 proposal to change its current allocation methods and all issues related to the allocation of receipt and delivery points on El Paso's system.

At a subsequent technical conference, the participants reached consensus to attend an informal settlement conference. The participants also agreed that the Director of the Commission's Dispute Resolution Service (Director) attend the conference to facilitate the settlement negotiations. The parties also agreed that a party could provide to the Director, in advance of the informal settlement conference, a statement of the issues or business interests that they believed needed to be considered. Accordingly, the informal settlement conference will begin with a discussion regarding the settlement process, followed by a discussion of the statements provided to the Director.

The informal settlement conference will be held on May 16, 2000, at the Federal Energy Regulatory Commission located at 888 First Street, NE., Washington, DC. The conference will begin at 10 a.m. in Room 3M–2A/2B.

All interested parties in the above dockets are requested to attend the informal settlement conference. If a party has any questions with respect to the conference, please call Richard Miles, the Director of the Dispute Resolution Service. His telephone number is 1–877 FERC ADR (337–2237) or 202–208–0702 and his e-mail address is *richard.miles@ferc.fed.us.*

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11936 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–2117–000]**

### ANP Bellingham Energy Company; Notice of Issuance of Order

May 8, 2000.

ANP Bellingham Energy Company (ANP Bellingham) submitted for filling a rate schedule under which ANP Bellingham will engage in wholesale electric power and energy transactions as a marketer. ANP Bellingham also requested waiver of various Commission regulations. In particular, ANP Bellingham requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by ANP Bellingham.

On May 4, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ANP Bellingham should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, ANP Bellingham is authorized to issue securities and

assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonable necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ANP Bellingham's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 5, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11932 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–2118–000]**

### ANP Blackstone Energy Company; Notice of Issuance of Order

May 9, 2000.

ANP Blackstone Energy Company (ANP Blackstone) submitted for filing a rate schedule under which ANP Blackstone will engage in wholesale electric power and energy transactions as a marketer. ANP Blackstone also requested waiver of various Commission regulations. In particular, ANP Blackstone requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by ANP Blackstone.

On May 4, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by ANP Blackstone should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, ANP Blackstone is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of ANP Blackstone's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 5, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11957 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–1831–000, et al.]**

### CinCap VII, LLC and CinCap VIII, LLC; Notice of Issuance of Order

May 8, 2000.

CinCap VII, LLC (CinCap VII) and CinCap VIII, LLC (CinCap VIII) submitted for filing rate schedules under which CinCap VII and CinCap VIII will engage in wholesale electric power and energy transactions as a marketer. CinCap VII and CinCap VIII also requested waiver of various Commission regulations. In particular, CinCap VII and CinCap VIII requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by CinCap VII and CinCap VIII.

On May 4, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CinCap VII or Cincap VIII should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, CinCap VII and CinCap VIII are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicants, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CinCap VII's or CinCap VIII's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 5, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11927 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. Nos. ER00–1782–000 and ER00–1782–001]**

### Duke Energy Trenton, LLC; Notice of Issuance of Order

May 8, 2000.

Duke Energy Trenton, LLC (Duke Trenton) submitted for filing a rate

schedule under which Duke Trenton will engage in wholesale electric power and energy transactions as a marketer. Duke Trenton also requested waiver of various Commission regulations. In particular Duke Trenton requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Duke Trenton.

On May 5, 2000, pursuant to delegated authority, the Director, Division Of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Trenton should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Duke Trenton is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Trenton's issuances of securities or assumptions of liability.

Notice is hereby give that the deadline for filing motions to intervene or protests as set forth above, is June 5, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11925 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–1783–000, et al.]**

### Duke Energy Vermillion, LLC and Duke Energy Madison, LLC; Notice of Issuance of Order

May 8, 2000.

Duke Energy Vermillion, LLC (Duke Vermillion) and Duke Energy Madison, LLC (Duke Madison) submitted for filing rate schedules under which Duke Vermillion and Duke Madison will engage in wholesale electric power and energy transactions as marketers. Duke Vermillion and Duke Madison also requested waiver of various Commission regulations. In particular, Duke Vermillion and Duke Madison requested the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Duke Vermillion or Duke Madison.

On May 4, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Duke Vermillion or Duke Madison should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Duke Vermillion and Duke Madison are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicants, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Duke Vermillion's or Duke Madison's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 5, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11926 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–1952–000]**

### Indeck Colorado, LLC; Notice of Issuance of Order

May 8, 2000.

Indeck Colorado, LLC (Indeck Colorado) submitted for filing a rate schedule under which Indeck Colorado will engage in wholesale electric power and energy transactions as a marketer. Indeck Colorado also requested waiver of various Commission regulations. In particular, Indeck Colorado requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Indeck Colorado.

On May 5, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Indeck Colorado should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Indeck Colorado is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably

necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Indeck Colorado's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 5, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11928 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–2069–000]**

### Indeck-Rockford, L.L.C.; Notice of Issuance of Order

May 8, 2000.

Indeck-Rockford, L.L.C. (Indeck-Rockford) submitted for filing a rate schedule under which Indeck-Rockford will engage in wholesale electric power and energy transactions as a marketer. Indeck-Rockford also requested waiver of various Commission regulations. In particular, Indeck-Rockford requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Indeck-Rockford.

On May 3, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Indeck-Rockford should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Indeck-Rockford is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Indeck-Rockford's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 2, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11931 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–232–000]**

### Iroquois Gas Transmission System, L.P.; Notice of Application

May 8, 2000.

Take notice that on April 28, 2000, Iroquois Gas Transmission System, L.P. (Iroquois), One Corporate Drive, Suite 600, Shelton, Connecticut 06484, filed in Docket No. CP00–232–000 an application pursuant to the provisions of Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of pipeline and compression facilities for the transportation of natural gas, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Specifically, Iroquois seeks to construct and operate: (1) approximately 30.3 miles of 24-inch pipeline from Northport, New York to the Bronx, New York; (2) a new 20,000 horsepower (HP) compressor station at Boonville, New York; (3) a new 20,000 HP compressor station at Dover, New York; (4) a 3,300 HP increase at the existing Wright compressor station; (5) an 11,000 HP increase at the existing Croghan compressor station; (6) cooling units at the existing Wright and Athens compressor stations; (7) a new point of interconnection with the facilities of Consolidated Edison Company of New York, Inc. in the Bronx, New York; and (8) other appurtenant facilities. Iroquois states that the estimated cost of the proposed facilities is $170.8 million. Iroquois proposes to place the facilities in service in two phases. The first phase would transport up to 70,000 dekatherms per day beginning April 1, 2002 and the remaining facilities would be placed in service on November 1, 2002.

Iroquois proposes to utilize the proposed facilities to transport about 220,000 to 230,000 dekatherms per day. Iroquois conducted an open season between November 15 and December 17, 1999 and has executed precedent agreements totaling 561,470 dekatherms per day with five shippers.[1] Iroquois states that although this amount is greater that the capacity of the proposed facilities, it has the ability under the precedent agreements to pro rate the capacity to conform with the proposed facilities' capacity. According to Iroquois, a decision over the need to proration capacity will be made on or about October 15, 2000.

Iroquois proposes to provide transportation service under its Part 284, Subpart G blanket certificate pursuant to Rate Schedule RTS of its FERC Gas Tariff, First Revised Volume No. 1. Iroquois states that its proposal is consistent with the Commission's Certificate Policy Statement.[2] Iroquois proposes to roll in the costs of the proposed facilities, maintaining that its existing customers will not subsidize the proposed facilities. Further, Iroquois states that its proposal will not have any substantial adverse impacts. Finally, Iroquois asserts that its proposal provides numerous system-wide benefits that can be balanced against any adverse impacts.

Any questions regarding the application should be directed to Jeffrey A. Bruner, Vice President, General Counsel and Secretary for Iroquois, One Corporate Drive, Suite 600, Shelton, Connecticut 06484 at 203–925–7200, or

[1] Concurrent with the open season, Iroquois solicited its existing customers to permanently release capacity for use by the expansion shippers. This resulted in the release of 13,115 dekatherms per day of released capacity for use in this project

[2] *See*, 88 FERC, ¶ 61,227 (1999), clarification 90 FERC ¶ 61,128 (2000).

Beth L. Webb, attorney for Iroquois, Dickstein Shapiro Morin & Oshinsky, LLP, 2101 L Street NW, Washington, DC 20037 at 202–785–9700.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 30, 2000, file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the NGSA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters of those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that the proposal is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Iroquois to appear or to be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11924 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. ER00–1981–000 and ER00–1982–000]**

### Panda Gila River, L.P. and Panda Oneta Power, L.P.; Notice of Issuance of Order

May 8, 2000.

Panda Gila River, L.P. (Panda Gila) and Panda Oneta Power, L.P. (Panda Oneta) submitted for filing rate schedules under which Panda Gila and Panda Oneta will engage in wholesale electric power and energy transactions as marketers. Panda Gila and Panda Oneta also requested waiver of various Commission regulations. In particular, Panda Gila and Panda Oneta requested that the Commission grant blanket approval under 18 CFR Part 34 of all issuances of securities and assumptions of liability by Panda Gila or Panda Oneta.

On May 3, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Panda Gila or Panda Oneta should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Panda Gila and Panda Oneta are authorized to issue securities and assume obligations or liabilities as a guarantor, endorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Panda Gila's or Panda Oneta's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 2, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11930 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–2177–000]**

### Rainy River Energy Corporation; Notice of Issuance of Order

May 8, 2000.

Rainy River Energy Corporation (Rainy River) submitted for filing a rate schedule under which Rainy River will engage in wholesale electric power and energy transactions as a marketer. Rainy River also requested waiver of various Commission regulations. In particular, Rainy River requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by Rainy River.

On May 4, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Rainy River should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Rainy River is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance of assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Rainy River's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 5, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11933 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–1928–000]**

### Western New York Wind Corp; Notice of Issuance of Order

May 8, 2000.

Western New York Wind Corp. (WNYWC) submitted for filing a rate schedule under which WNYWC will engage in wholesale electric power and energy transactions as a marketer. WNYWC also requested waiver of various Commission regulations. In particular, WNYWC requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by WNYWC.

On May 4, 2000, pursuant to delegated authority, the Director, Division of Corporate Applications, Office of Markets, Tariffs and Rates, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by WNYWC should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, WNYWC is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purpose of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of WNYWC's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 5, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11929 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions to Intervene, and Protests

May 8, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2232–399.

c. *Date Filed:* October 20, 1999.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* On Lake Hickory at Anchors Landing Subdivision, in Caldwell County, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006 (704) 382–5778.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: brian.romanek@ferc.fed.us.

j. *Deadline for filing comments and or motions:* June 9, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the project number (2232–399) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease to Waterfront Properties 1.54 acres of project land for the construction of 65 boat slips. The boat slips would provide access to the reservoir for residents of the Anchors Landing Subdivision. No dredging is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission:

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to

intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST," OR "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11934 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

May 8, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11822–000.

c. *Date filed:* September 27, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Pishkun Dam Project.

f. *Location:* At the Bureau of Reclamation's Pishkun Dam, on Deep Creek, a tributary to the Sun River, near the Town of Choteau, Teton County, Montana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Gregory Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Michael Spencer, Michael.Spencer@FERC.fed.us, (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Bureau of Reclamation's Pishkun Dam and consist of the following: (1) A 72-inch-diameter, 80-foot-long steel penstock, constructed in the existing outlet works; (2) a powerhouse containing one generating unit with a capacity of 0.5 kW and an estimated average annual generation of 2.2 GWh; and (3) a 15-mile-long transmission line.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 291–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application of a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT

TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–11935 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6606–2]**

### Extension of Time to Comment on Agency Information Collection Activities: Proposed Collection; Comment Request; National Oil and Hazardous Substances Pollution Contingency Plan, Subpart J

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of extension of time to comment on Agency Information Collection Activities: proposed collection; comment request.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing an extension of time to comment on the National Oil and Hazardous Substances Pollution Contingency Plan-Subpart J Information Collection Request renewal.

**DATES:** Comments are due by June 12, 2000.

**ADDRESSES:** Send comments to EPA, 5203G, 1200 Pennsylvania Avenue NW, Washington DC 20460. Materials relevant to this ICR may be inspected from 9 a.m. to 4 p.m., Monday through Friday, by visiting the Public Docket, located at 1235 Jefferson-Davis Highway (ground floor), Arlington, Virginia 22202. The docket number for this notice is SPSUBJ. The telephone number for the Public Docket is (703) 603–9232.

**FOR FURTHER INFORMATION CONTACT:** William "Nick" Nichols, (703) 603–9918, Facsimile Number (703) 603–9116, e-mail:nichols.nick@epa.gov.

**SUPPLEMENTARY INFORMATION:** The EPA announces an extension of time to submit comments on the National Oil and Hazardous Substances Pollution Contingency Plan-subpart J Information Collection Request renewal from May 17, 2000 to June 12, 2000. Subpart J of the NCP allows and regulates the use of chemical and biological oil spill cleanup and control agents. The information collected is supplied by the manufacturer of such products. This information and data are then analyzed by EPA to determine the appropriateness, and under which category, the product may be listed on the NCP Product Schedule. This product data are critical for EPA to assure effectiveness and toxicity data for these products are available to the oil spill community for their use. The original document for comment was published in the **Federal Register** at 65 FR 20451 (April 17, 2000).

Dated: May 3, 2000.

**Stephen D. Luftig,**

*Director, Office of Emergency and Remedial Response.*

[FR Doc. 00–12020 Filed 5–11–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–0900657; FRL–6554–7]**

### EPA–USDA Committee to Advise on Reassessment and Transition; Request for Nominations for Appointment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA–USDA Committee to Advise on Reassessment and Transition (CARAT) is being established in accordance with the Federal Advisory Committee Act as a subcommittee under the auspices of the EPA National Advisory Council for Environmental Policy and Technology (NACEPT). The purpose of CARAT is to provide advice and counsel to the Administrator of EPA and the Secretary of Agriculture regarding strategic approaches for pest management planning and tolerance reassessment for pesticides as required by the Food Quality Protection Act of 1996 (FQPA). CARAT is preceded by the Tolerance Reassessment Advisory Committee and will be guided by the principles set forth by the Vice President for EPA and USDA to work together to ensure smooth implementation of FQPA through use of sound science, consultation with stakeholders, increased transparency and reasonable transition for agriculture. EPA and USDA are soliciting qualified candidates who want to be considered for appointment to CARAT.

**DATES:** Nominations will be accepted until 5:00 p.m. on May 26, 2000.

**ADDRESSES:** Nominations must be submitted in writing by mail, electronically or in person. Please follow the detailed instructions for each method as provided in Unit I. C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00657 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Margie Fehrenbach, Designated Federal Officer, CARAT, Office of Pesticide Programs (7501-C), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460; telephone number: (703) 305–7090; e-mail address: Fehrenbach.margie@epa.gov.

**SUPPLEMENTARY INFORMATION:**

#### I. General Information

*A. Does this Action Apply to Me?*

This action is directed to the public in general; however, it may be of interest to persons who are concerned about implementation of the FQPA (Public Law 104–170). Passed in 1996, this new law strengthens the nation's system for regulating pesticides on food. CARAT was preceded by the Tolerance Reassessment Advisory Committee which was established in 1998 in response to Vice President Gore's request for EPA and USDA to work together to ensure smooth implementation of FQPA.

*B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that

might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about the Committee to Advise on Reassessment and Transition (CARAT), go directly to the Home Page for EPA's Office of Pesticide Programs at http://www.epa.gov/pesticides/carat/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–00657. The official record is available in the Docket for inspection from 8:30 a.m. to 4:00 p.m., Monday - Friday, excluding Federal holidays, in the Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs, USEPA, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Highway, Rm. 119, Arlington, VA 22202, telephone number (703) 305–5805.

*C. How and to Whom do I Submit Nominations?*

You may submit nominations through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00657 in the subject line on the first page of your response.

1. *By mail.* Submit your nominations to: Public Information and Records Integrity Branch, 7502-C, Office of Pesticide Programs, Office of Prevention, Pesticides and Toxic Substances (OPPTS), US Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

2. *In person or by courier.* Deliver your nominations to: Public Information and Records Integrity Branch, Office of Pesticide Programs, OPPTS, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Highway, Rm. 119, Arlington, VA 22202. The Docket is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Docket is (703) 305–5805.

3. *Electronically.* You may submit your nominations electronically by e-mail to: fehrenbach.margie@epa.gov, or you can submit a computer disk by mail as described in this unit. Do not submit any information electronically that you consider to be Confidential Business Information. Electronic nominations must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Nominations will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All nominations in electronic form must be identified by docket control number OPP–00657.

**II. Background**

FQPA, Public Law 104–170 was passed in 1996 to strengthen the nation's system for regulating pesticides on food. CARAT is preceded by the Tolerance Reassessment Advisory Committee (TRAC), a previous joint advisory committee which existed from April 1998 through October 1999 in response to Vice President Gore's request for EPA and USDA to work together to ensure smooth implementation of the Food Quality Protection Act. Consistent with the important principles established by the Vice President in April 1998, EPA and USDA will work together and guide their implementation efforts by: applying sound science to all decisions; making our regulatory process transparent; providing appropriate reasonable transition mechanisms that will reduce risk but not jeopardize our nation's agriculture and its farm communities; and consulting with interested constituencies.

CARAT is co-chaired by EPA Acting Deputy Administrator Michael McCabe and USDA Deputy Secretary Richard Rominger. Among its objectives will be such issues as: Identifying opportunities for reasonable transition and strategic pest management planning for agriculture and public health uses of pesticides; providing advice to promote sound science and transparency in the scientific risk assessments necessary to implement the FQPA, including tolerance reassessment and pesticide reregistration; and assuring appropriate priority is given to risk management strategies for the pesticides that are most likely to lead to exposures to children.

**List of Subjects**

Environmental protection, Agriculture, Chemicals, Food, Pesticides, Tolerance Reassessment and Pests.

Dated: May 8, 2000.

**Susan H. Wayland,**

*Acting Assistant Administrator for Prevention, Pesticides, and Toxic Substances.*

[FR Doc. 00–12131 Filed 5–10–00; 12:07 pm]

BILLING CODE 6560–0950–F

**ENVIRONMENTAL PROTECTION AGENCY**

**[FRL–6602–8]**

**Montrose Superfund Site and Palos Verde Site, Notice of Disclosure of Contractor Information That May Contain Confidential Business Information**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of disclosure.

**SUMMARY:** Environmental Protection Agency (EPA) regulations provide that EPA may, in special circumstances, disclose business information, including confidential business information, "to the extent ordered by a Federal Court." 40 CFR 2.209(d). EPA is currently engaged in litigation with the Potentially Responsible Parties ("PRPs") in connection with the Montrose Superfund Site and the Palos Verdes Shelf Site in California. EPA intends to release to these parties documentation of EPA's past costs at the Montrose Superfund Site and the Palos Verdes Shelf Site. In accordance with EPA regulations, EPA has entered into a Stipulation and Protective Order with the PRPs in which the PRPs have stipulated that the documents released to them may contain CBI, and have agreed to specified procedures to maintain the confidentiality of such information. *See* 58 FR 460. EPA hereby gives notice to the following parties that EPA intends to disclose information in EPA's possession that may be confidential business information, under the protection of the above-mentioned Stipulation and Protective Order:

(1) Any subcontractor or temporary firm which has performed work for any the following contractors under the any of the following contracts or inter-agency agreements:

CH2M Hill (68–W9–0031); DynCorp/Viar & Company, Inc. (68–01–6702); ICF Technology, Inc. (68–D1–0135 & 68–01–7456); Lockheed Environmental Systems & Tech. (68–C0–0050); Ecology and Environment (68–W0–0037); Tech Law, Inc. (68–W0–001); Camp, Dresser & McKee (68–W9–6939); Roy F. Weston (68–01–6669); Alliance/GCA (68–01–6769); Jacobs Engineering (68–01–7351); Planning Research Corp./Tetra Tech EM Inc. (68–W9–0009); Armstrong Data Services, Inc.(68–W5–0024); Labat-Anderson Incorporated (68–W4–0028 & 68–W9–0052); Science Application International Corp. (68–W4–0021); U.S. Army Corps of Engineers (DW96955411, DW96955287 & DW96955258); U.S. Dept. of Commerce (NOAA); U.S. Dept.

of Agriculture (DW12955106); U.S. Coast Guard (DW69955202); and U.S. Dept. of Health and Human Services (ATSDR):

(2) Other business entities that have done business with the above-listed contractors and who may have been listed in conflict of interest disclosures:

(3) Unsuccessful offerors to any of the above-mentioned contracts, including, but not limited to: Tetra Tech, Inc.; ICF Kaiser Engineers, Inc.; Roy F. Weston, Inc.; Jaffe, Trutanich, Scatena & Blum; PRC-EMI (Planning Research Corporation—Environmental Management, Inc.); Dalston Consulting, Inc.; Resource Applications, Inc.; and URS Consultants; and Bechtel Environmental, Inc.

**AVAILABILITY:** A copy of the Stipulation and Protective Order will be provided to the public upon request.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth A. La Blanc, Assistant Regional Counsel, U.S. EPA, Region IX, 75 Hawthorne St., ORC–3 San Francisco, CA 94105; lablanc.elizabeth@epamail.epa.gov; phone (415) 744–1364.

Dated: April 19, 2000.

**Elizabeth La Blanc,**

*Assistant Regional Counsel, Region IX.*

[FR Doc. 00–12018 Filed 5–11–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6607–1]**

### Environmental Impact Statements; Notice of Availability

*Responsible Agency:* Office of Federal Activities, General Information, (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed May 1, 2000 through May 5, 2000 Pursuant to 40 CFR 1506.9.

EIS No. 000134, Draft EIS, NPS, NJ, Maurice National Scenic and Recreational River (NS&RR) Comprehensive Management Plan, Implementation, Atlantic and Cumberland Counties, NJ, Due: June 26, 2000, Contact: Mary Vaura (215) 597–9175.

EIS No. 000135, Draft Supplement, NPS, MS, Natchez Trace Parkway, Construction of Section 3X Southern Terminus, Adam Counties, MS, Due: July 12, 2000, Contact: Wendall Simpson (601) 680–4005.

EIS No. 000136, Final EIS, FHW, OH, Meigs–124–21.16 Transportation Corridor, Relocating existing OH–124 and US 33, Meigs County, OH, Due: June 12, 2000, Contact: Timothy M. Hill (614) 644–0377.

EIS No. 000137, Final Supplement, NOA, Fishery Management Plan (FMP), Regulatory Impact Review, .Snapper-Grouper Complex, South Atlantic Region , Due: June 12, 2000, Contact: Dr. William Hogarth (727) 570–5305.

EIS No. 000138, Final EIS, AFS, CA, Pendola Fire Restoration Project, Implementation, Tahoe National Forest, Downieville Ranger District, Yuba County, CA, Due: June 12, 2000, Contact: Dennis Stevens (530) 478–6253.

Dated: May 9, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–12015 Filed 5–11–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6607–2]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 24, 2000 through April 28, 2000 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

**Draft EISs**

ERP No. D–BOP–K80041–CA Rating EC2, Lassen County Federal Correctional Institution (FCI), Construction and Operation, To House Median-Security Inmates and Federal Prison Camp, Possible Site is Southwest Site, Lassen County, CA.

*Summary:* EPA expressed concern that potential air, water and waste impacts from prison industry were not fully disclosed. EPA requested that next document provide additional information on the above issues and building design.

**Final EISs**

ERP No. F–AFS–J65297–MT Bull Lake Estates Road Access Project, Implementation, Easement Grant Permit, Kootenai National Forest, Three Rivers Rangers District, Lincoln County, MT.

*Summary:* While EPA did not object to the statutorily mandated road access, it did express environmental concerns regarding potential secondary project impacts to water quality, fisheries, and wildlife.

ERP No. F–TPT–K61147–CA Presidio of San Francisco General Management Plan, Implementation, New Development and Uses within the Letterman Complex, Golden Gate National Recreation Area, City and County of San Francisco, CA.

*Summary:* No formal comment letter was sent to the preparing agency.

Dated: May 9, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–12016 Filed 5–11–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6605–9]**

### Notice of Intent To Prepare a Draft Supplemental Environmental Impact Statement for the Meramec River Enhancement and Wetlands Protection Project

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This document advises the public that the U.S. Environmental Protection Agency intends to develop a Draft Supplemental Environmental Impact Statement (DSEIS). The DSEIS will update a 1979 FEIS in order to re-evaluate the Federal actions relating to a proposed regionalization of wastewater treatment services within the Meramec River Basin in Missouri. The DSEIS will assist EPA in identifying and documenting the existing baseline environmental conditions in the project area, forecasting reasonably expected development within the basin, and analyzing alternatives with which to fulfill the wastewater treatment needs of the Meramec Basin. This assessment will be subsequently used to determine the environmental consequences of the proposed project and the significance of those consequences. The associated actions are: (1) Provision of grant funding to MSD for the construction of a Regional Wastewater Treatment Plant; (2) Identifying all required Federal permits, licences and entitlements.

This document is being furnished pursuant to the Council on

Environmental Quality Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act (NEPA) Regulations (40 CFR 1501.7 and 1508.22) to obtain suggestions and information from other agencies and the public on the scope of issues and alternatives to be considered in preparation of the DSEIS.

**DATES:** As an opportunity for interested persons to comment on the issues and alternatives of the DSEIS, a public scoping meeting is scheduled as follows: Wednesday, May 24, 2000, 5:30 to 8 P.M. at Rogers Elementary School, 7700 Fine Road, Mehlville, MO 63129.

**ADDRESSES:** Comments regarding the scope of the DSEIS should be addressed to Mr. Joseph E. Cothern, U.S. Environmental Protection Agency, 901 N. 5th Street, Kansas City, Kansas 66101. Comments should be received on or before June 15, 2000, at the above address. Written comments may also be sent by facsimile to 913/551–8752 or e-mail at *cothern.joe@epa.gov*. Comments received will be available for public inspection by appointment during normal business hours (7:30 a.m. to 4:30 p.m., Monday through Friday) at the above office; please call (913) 551–7148 for an appointment. All comments received will become part of the administrative record and may be released.

**FOR FURTHER INFORMATION CONTACT:** Contact Joseph E. Cothern at the above address and telephone number.

**SUPPLEMENTARY INFORMATION:** The Lower Meramec River Basin drainage area lies in the southern and southwestern portions of St. Louis County within the chartered jurisdiction of the Metropolitan St. Louis Sewer District (MSD). Areas in adjacent northern Jefferson County are also tributary. The MSD is empowered to enter into contractual agreements with other authorities, and has provided contract wastewater treatment for the City of Arnold (located in Jefferson County) since 1982 at the Lower Meramec Interim Treatment Lagoons at the site of the proposed regional plant, near (Meramec) river mile 1.5. This facility currently treats an average of 3.6 MGD.

Other MSD treatment facilities in the service area, (which are being considered for decommissioning in this regionalization project), include (proceeding upstream):

—Baumgartner Treatment Lagoons, near river mile 5.5, acquired in the purchase of a private sewer company in 1977, and upgraded by MSD, with average daily flows of 7.95 MGD.

—Fenton Wastewater Treatment Plant, near river mile 15.5, acquired from a private sewer company in 1979, and upgraded by MSD, presently providing secondary treatment for average daily flows of 4.0 MGD.

—Grand Glaize Wastewater Treatment Plant, near river mile 20, constructed by MSD in 1983 to provide secondary treatment for 20 MGD, and currently receiving average daily flows of 17.7 MGD.

Dated: May 2, 2000.

**William Rice,**

*Acting Regional Administrator, Region 7.*

[FR Doc. 00–12019 Filed 5–11–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6606–1]**

### Chesapeake Bay Program Activities Grants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The U.S. Environmental Protection Agency is issuing a request for proposals that will assist the Chesapeake Bay Program in meeting its goals and commitments. Approximately $2 million is available through the RFP. Subjects addressed in the RFP include air quality, nutrients, sediments, best management practices, chemical contaminants, communication, exotic species, fish, habitat restoration, oysters, student engagement, submerged aquatic vegetation, water quality, local government and community engagement, and sound land use. Functional categories that proposals should fall under include implementation and technical assistance: workshops, seminars, and training; monitoring and assessment; research and analysis; and education and outreach. Applicants must be a non-profit organization, local government, state agency, interstate agency, college, or university institution. Funding will be provided to an organization under the authority of the Clean Water Act, section 117.

The RFP is available starting May 5, 2000 at the following web-site: *http://www.epa.edu/r3chespk/* You may request a paper copy by calling Carol Cochran at 215–815–2986 or by e-mail *cochran.carol@epa.gov* or by calling Lori Mackey at 410–267–5715 or e-mail at *mackey.lori@epa.gov*. All proposals must be received by the Chesapeake Bay Program Office by close of business June 9, 2000. Any late, incomplete, or faxed proposals will not be considered.

**Peter J. Marx,**

*Acting Director, Chesapeake Bay Program.*

[FR Doc. 00–12000 Filed 5–11–00; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[WH–FRL–6605–4]**

### Public Stakeholder Meeting on the National Strategy To Develop Regional Nutrient Criteria

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public stakeholder meeting on the National Strategy to Develop Regional Nutrient Criteria.

**SUMMARY:** The Environmental Protection Agency (EPA) is holding a stakeholder meeting on May 25, 2000, to stimulate an information exchange with stakeholders on issues related to the National Strategy to Develop Regional Nutrient Criteria.

**DATES:** The public stakeholder meeting will start at 9 a.m. and adjourn at 5:30 p.m. on May 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert Cantilli (4304), U.S. EPA Headquarters, Ariel Rios Building, 1200 Pennsylvania Ave., NW (MC 4304), Washington, DC 20460 (Telephone: (202) 260–5546).

**SUPPLEMENTARY INFORMATION:** The public stakeholder meeting will be held at the Hilton—Crystal City, 2399 Jefferson Davis Highway, Arlington, VA for the purpose of conducting an information exchange with stakeholders on issues related to the National Strategy to Develop Regional Nutrient Criteria. The public stakeholder meeting will provide an opportunity for interested persons to discuss the issues and process for developing and implementing regional nutrient criteria. Specifically, EPA will discuss progress it has made in developing draft ecoregional nutrient criteria as well as recommended procedures for implementing these criteria. The stakeholder meeting will also be an opportunity for substantive input and dialogue with the primary authors of the Nutrient Waterbody Type Guidance Documents as well as EPA Regional Nutrient Coordinators who are supporting the development and adoption of regional nutrient criteria at the State and ecoregional level. Participants for the stakeholders meeting who wish to make comments or ask questions are strongly encouraged to

provide an advance written request due to potential time limitations. Requests to speak at the stakeholder meeting should be made to John Bachman, Great Lakes Environmental Center, Inc. at (231) 941–2230 or by e-mail at: jbachman@glec-tc.com.

EPA is inviting all interested members of the public to participate in the stakeholder meeting. Approximately 150 seats will be available for the public. Seats will be available on a first-come, first served basis. On-site registration for the meeting will begin at 8 a.m.

For additional information about the meeting, please contact Robert Cantilli of EPA's Office of Science and Technology at (202) 260–5546 or by e-mail at cantilli.robert@epa.gov.

**James Hanlon,**

*Acting Director, Office of Science and Technology.*

[FR Doc. 00–12001 Filed 5–11–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6700–1]**

### Science Advisory Board Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of three meetings of Committees of the US EPA Science Advisory Board on the dates and times noted below. All times noted are Eastern Daylight Time. All meetings are open to the public; however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

**1. SAB Executive Committee (EC) Teleconference—May 30, 2000**

The Executive Committee (EC) of US EPA's Science Advisory Board will conduct a public teleconference meeting on Tuesday, May 30, 2000, between the hours of 1 and 3 pm Eastern Daylight Time. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadsen no earlier than one week prior to the meeting (beginning on May 23) at (202) 564–4533, or via e-mail at tillery.priscilla@epa.gov.

*Purpose of the Meeting*—In this meeting, the Executive Committee plans to review reports from some of its Committees/Subcommittee, most likely including the following:

(a) Drinking Water Committee (DWC): "Science Advisory Board Report on EPA's Draft Proposal on a Groundwater Rule"

(b) Environmental Economics Advisory Committee (EEAC): "Benefits Adjustments for Long-Term Effects"

(c) Environmental Engineering Committee (EEC): "Review of the Agency's Environmental Technology Verification (ETV) Program"

*Availability of Review Materials:* Drafts of the reports that will be reviewed at the meeting should be available to the public at the SAB website (http://www.epa.gov/sab) by close-of-business on May 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments must contact Dr. Donald Barnes, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at *barnes.don@epa.gov*. Requests for oral comments must be in writing (e-mail preferred) and received by Dr. Barnes no later than noon Eastern Time on May 26, 2000.

**2. Drinking Water Committee (DWC) Meeting—June 5–7, 2000**

The Drinking Water Committee of the US EPA Science Advisory Board (SAB), will meet from June 5 through 7, 2000. Days one and two of the meeting, June 5 and 6, 2000, will be held at the Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007, phone: (202) 338–4600 . On day three, June 7, 2000, the Committee will meet in conference room 6013, USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC 20004; phone: (202) 564–4533. The meeting will begin by 9 a.m. on June 5 and adjourn no later than 3 p.m. on June 7, 2000.

*Purpose of the Meeting*—The Drinking Water Committee will conduct a review of EPA's proposed drinking water regulation for arsenic. The Committee will conduct this review in fulfillment of its responsibilities under Section 1412(e) of the Safe Drinking Water Act (SDWA as amended in August 1996) which states that:

The Administrator shall request comments from the Science Advisory Board (established under the Environmental Research, Development, and Demonstration Act of 1978) prior to proposal of a maximum contaminant level goal and national primary drinking water regulation. The Board shall respond, as it deems appropriate, within the time period applicable for promulgation of the national primary drinking water standard concerned. This subsection shall, under no circumstances, be used to delay final promulgation of any national primary drinking water standard.

*Background*—The current National Primary Drinking Water Regulation for arsenic is 50 µg/Liter (0.05 milligrams per liter—mg/L). This regulatory level has been in effect since 1976 and is based on a U.S. Public Health Service standard whose origins date back to 1942. The 1996 Amendments to the Safe Drinking Water Act required the Agency to proceed on two tracks to update the standard: on the one hand, the Agency was directed to develop an arsenic research strategy by February 1997 designed to serve as roadmap for filling gaps in our understanding of the scientific issues surrounding arsenic and, at the same time, to work toward proposing a new primary drinking water regulation by January 1, 2000 and to promulgate a final rule by January 1, 2001.

In response, the Agency met its deadline for developing the research plan and is currently implementing the plan, together with external partners. EPA has also been updating and assembling the various risk management components that will be needed to propose a revised regulation: risk characterization, analytical methods, occurrence, treatment technologies, costs, and benefits. The most challenging of these has been the risk characterization and the underlying risk assessment of the health effects of arsenic. To assist the Agency in its efforts, EPA asked the National Academy of Sciences' National Research Council (NRC) to evaluate all relevant national and international literature concerning the health effects of arsenic and to provide the Agency with its assessment of these data and information. The NRC published its report, Arsenic in Drinking Water in March, 1999. That report concluded that studies in Taiwan, Chile, and Argentina link arsenic to skin, bladder and lung

cancer and to noncancer effects. The NRC report recommended that EPA lower its MCL.

*Charge to the Committee—A. Arsenic Health Effects*

Charge Question 1: Concentration of inorganic arsenic as principal form causing health effects—Does the SAB have perspectives on this issue that it believes EPA should consider in developing its risk assessment?

EPA has identified inorganic arsenic as the principal form causing health effects, and the literature indicates that most arsenic in drinking water is inorganic. EPA's MCLG and MCL do not distinguish between arsenate and arsenite.

Charge Question 2: Implications of natural arsenic exposure through food—Does SAB agree with the implied NRC perspective that relative source contribution of food should be taken into consideration in the setting of the drinking water standard and how might we consider this and communicate it to the public?

The 1999 NRC report estimated the daily inorganic food intake by assuming that 10% of the arsenic in seafood is inorganic, and all other foods are 100% inorganic arsenic. NRC noted that these assumptions set an upper bound on the contribution from food, which is about 10 µg a day for adults. The NRC report stated that "The significance of the intake of inorganic arsenic from food increases as the concentration of arsenic in water decreases. If [drinking] water contains 50 µg/L of inorganic arsenic, arsenic in food might not be significant. However, if [drinking] water contains 5 µg/L of arsenic and 2 L per day is consumed, the contribution of inorganic arsenic from diet and water are comparable (NRC report)." Further, "The public health significance of daily ingestion of a given amount of arsenic in drinking water will be influenced by the background levels of arsenic consumed in food (NRC report)." "Consideration of arsenic in food might affect both the dose-response relationship for arsenic in drinking water in the study population and the implications for risk from arsenic in drinking water in the United States where dietary arsenic might differ from that in the study population in Taiwan (NRC report)".

Charge Question 3: Accounting for Cardiovascular Health End Point—Is precautionary advice on use of low-arsenic water in preparation of infant formula appropriate given the available information?

The NRC report was inconclusive about the health risks to the pregnant woman, developing fetus, infants, lactating women, and children. Given the potential for cardiovascular disease (as evidenced by EPA's Utah studies and extensive other data) and uncertainty about risks to infants, EPA plans to issue a health advisory to recommend use of low-arsenic water in preparation of infant formula.

*B. Arsenic Treatment Charge for the SAB*

Charge Question 4: Decision tree for waste disposal options for arsenic treatment brines and spent media—Based upon a review of the submitted materials, does the SAB believe that the EPA produced an accurate projection of the likely disposal options for arsenic residuals and the distribution of these options by treatment type? What are the SAB's views on the advantages and the limitations of the various waste disposal options? What effect, if any, would the SAB's analysis of these advantages and limitations have on the probabilities assigned? What are the SAB's views on which options will be more likely used by small systems (less than 10,000 people), and which will be more likely used by larger ones?

EPA identified waste disposal options that will likely be used for arsenic treatment residuals. EPA considered three types or residuals: brines or liquid wastes, sludges, and solid wastes. Ultimately, liquid wastes would be disposed at sanitary sewers, evaporation ponds, or be directly discharged. Chemical precipitation is assumed to be an intermediate step for the disposal of some brines. Sludges would be either mechanically, or non-mechanically dewatered prior to ultimate disposal at a landfill. Solid wastes would typically be disposed at non-hazardous landfills. EPA assigned national selection probabilities to each of these options in a decision tree. These probabilities are an estimation of the likelihood of a treatment plant opting for a particular disposal option given the size of the system, whether it is surface water or groundwater, and the type of arsenic removal treatment technology used.

The Toxicity Characteristic (TC) that identifies wastes as hazardous waste used 100 times the interim primary drinking water standards for eight metals. Although six of the drinking water standards have changed, the TC values have not. However, some people are concerned that after the drinking water MCL is lowered, the TC for arsenic will be lowered to 100 times the new MCL, and that many drinking water treatment residuals will be subject to costly hazardous waste management regulations even though the Office of Solid Waste has stated that the simple 100 times criterion will not be used when the TC regulatory levels are revised, but rather, more sophisticated modeling tools would be used. Consequently, the important questions relating to waste disposal do not relate to hazardous waste disposal. Rather, for brines, they relate to questions such as TDS (total dissolved solids) restrictions in waters receiving brine, and restrictions on sanitary sewer discharge due to TBLLs (technically based local limits). For sludge disposal, they relate to restrictions that may be placed on land application, which may result in more systems using landfills.

Charge Question 5: Decision tree for ground water treatment technologies—Does the SAB agree with the principal "branches" of EPA's decision tree described in the submitted documents and the likelihood that these options will be used for systems of various sizes with various source water characteristics? What views does the SAB have on EPA's description of the advantages and limitations of these treatment technologies? Would the SAB's views on the these advantages and limitations affect the probabilities assigned?

EPA has identified treatment technologies that will likely be used to treat arsenic in groundwater systems. These include ion exchange, activated alumina, reverse osmosis, coagulation-assisted microfiltration, greensand filtration, and point-of-use and point-of-entry devices. The EPA has also identified non-treatment options such as regionalization and alternate source. EPA consulted with small utilities and AWWA in order to identify issues which would affect selection of treatment technologies for small systems, which included cost, complexity of operation, chemical handling issues, and frequency of maintenance on point-of-use devices. EPA has assigned selection probabilities to each of these options in a decision tree that form the basis for the Agency's overall cost projections.

Availability of Review Materials—Additional information on the materials provided to the Committee for this review can be obtained by contacting Ms. Irene Dooley, US EPA Office of Water by telephone at (202) 260–9531 or by e-mail at *dooley.irene@epa.gov*.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments (10 minutes or less) must contact Thomas O. Miller, Designated Federal Officer, Science Advisory Board

(1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4558; FAX (202) 501–0582; or via e-mail at *miller.tom@epa.gov*. Requests for oral comments must be in *writing* (e-mail, fax or mail) and received by Mr. Miller no later than noon Eastern Time on May 30, 2000.

**3. SAB Executive Committee (EC) Teleconference—June 12, 2000**

The Executive Committee (EC) of US EPA's Science Advisory Board will conduct a public teleconference meeting on Monday, June 12, 2000 between the hours of 1 and 3 pm Eastern Daylight Time. The meeting will be coordinated through a conference call connection in Room 6013 in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, DC. The public is encouraged to attend the meeting in the conference room noted above. However, the public may also attend through a telephonic link, to the extent that lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadsen no earlier than one week prior to the meeting (beginning on May 29) at (202) 564–4533, or via e-mail at tillery.priscilla@epa.gov.

*Purpose of the Meeting*—In this meeting, the Executive Committee plans to review reports from some of its Committees/Subcommittee, most likely including the following:

(a) EC Subcommittee on Data from the Testing of Human Subjects: *"Report on Data from the Testing of Human Subjects"*

(b) EC Subcommittee on Review of Cancer Guidelines: *"Applicability of the Agency's Cancer Risk assessment Guidelines to Children"*

(c) Environmental Engineering Committee (EEC): *"Commentary on Measures of Environmental Technology Performance."*

*Availability of Review Materials*—Drafts of the reports that will be reviewed at the meeting should be available to the public at the SAB website (http://www.epa.gov/sab) by close-of-business on May 25, 2000.

**FOR FURTHER INFORMATION CONTACT:** Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments must contact Dr. Donald Barnes, Designated Federal Officer, Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4533; FAX (202) 501–0323; or via e-mail at *barnes.don@epa.gov*. Requests for oral comments must be in writing (e-mail preferred) and received by Dr. Barnes no later than noon Eastern Time on June 5, 2000.

**Providing Oral or Written Comments at SAB Meetings**

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments:* In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: One hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 25 copies of their comments for public distribution.

*General Information*—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

*Meeting Access*—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 5, 2000.

**Donald G. Barnes,**

*Staff Director, Science Advisory Board.*

[FR Doc. 00–12021 Filed 5–11–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–926; FRL–6497–1]**

## Notice of Filing Pesticide Petitions to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–914, must be received on or before June 12, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–926 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Tracy Keigwin, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6605; e-mail address: keigwin.tracy@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112 | Crop production<br>Animal production |

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| | 311<br>32532 | Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–926. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2 (CM #2), 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–926 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–926. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Make sure to submit your comments by the deadline in this notice.
7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 2, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

### Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition

was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Zeneca Ag Products**

*0F6092*

EPA has received a pesticide petition (0F6092) from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, DE, 19850–5458 proposing, pursuant to section 408(d) of FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180.438, by establishing a tolerance for residues of lambda-cyhalothrin, (*S*)-alpha-cyano-3-phenoxybenzyl- (*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2, 2-dimethylcyclopropanecarboxylate and (*R*)-alpha-cyano-3-phenoxybenzyl- (*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2, 2-dimethylcyclopropanecarboxylate and the epimer of lambda-cyhalothrin, (*S*)-alpha-cyano-3-phenoxybenzyl- (*Z*)-(1*S*,3*S*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2, 2-dimethylcyclopropanecarboxylate and (*R*)-alpha-cyano-3-phenoxybenzyl- (*Z*)-(1*R*,3*R*)-3-(2-chloro-3,3,3-trifluoroprop-1-enyl)-2, 2-dimethylcyclopropanecarboxylate in or on the raw agricultural commodities (RAC) canola seed, almond hulls, and the crop groupings pome fruit, stone fruit and tree nuts at 0.15, 1.5, 0.3, 0.5, 0.05 parts per million (ppm), respectively, and on the processed commodity apple pomace, wet at 2.5 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism*. The metabolism of lambda-cyhalothrin has been studied in cotton, soybean, cabbage and wheat plants. The studies show that the metabolism generally follows that of other pyrethroid insecticides. The ester linkage is cleaved to form cyclopropanecarboxylic acids and the corresponding phenoxybenzyl alcohol. Overall the studies show that unchanged lambda-cyhalothrin is the principal constituent of the residue on edible portions of these crops.

2. *Analytical method*. An adequate analytical method (gas liquid chromatography with an electron capture detector) is available for enforcement purposes.

3. *Magnitude of residues*. Crop field trial residue data from canola, pome fruit, stone fruit and tree nuts studies show that the proposed tolerances on these commodities will not be exceeded when lambda-cyhalothrin is used as directed. A market basket survey of residues of lambda-cyhalothrin in samples of whole milk collected across the contiguous United States over a period of 1 year was conducted during 1998–99. Nearly 80% of the 360 samples collected had non-detectable (<0.0003 µg/L) levels of lambda-cyhalothrin with the remaining 20% having trace levels (<0.001 µg/L). These levels are substantially less than the established tolerance for whole milk of 0.2 milligrams/kilograms (mg/kg).

No increase in the dietary burden of poultry and ruminants is expected from use on canola, pome fruit, stone fruit, or tree nuts. Therefore, any secondary residues that might result in milk, meat, poultry, and eggs would be covered by the existing tolerances on these commodities.

*B. Toxicological Profile*

1. *Acute toxicity*. Acute toxicity studies with the technical grade of the active ingredient lambda-cyahothrin: oral lethel dose $(LD)_{50}$ in the rat of 79 mg/kg (males) and 56 mg/kg (females), dermal $LD_{50}$ in the rat of 632 mg/kg (males) and 696 mg/kg females, primary eye irritation study showed mild irritation and primary dermal irritation study showed no irritation.

2. *Genotoxicty*. The following genotoxicity tests were all negative: a gene mutation assay (Ames), a mouse micronucleus assay, an *in vitro* cytogenetics assay, and a gene mutation study in mouse lymphoma cells.

3. *Reproductive and developmental toxicity*. A 3-generation reproduction study in rats fed diets containing 0, 10, 30, and 100 ppm with no developmental toxicity observed at 100 ppm, the highest dose tested. The maternal NOAEL (no observed adverse effect level) and LOAEL (lowest observed adverse effect level) for the study are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based upon decreased parental body weight gain. The reproductive NOAEL and LOAEL are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based on decreased pup weight gain during weaning.

A developmental toxicity study in rats given gavage doses of 0, 5, 10, and 15 mg/kg/day with no developmental toxicity observed under the conditions of the study. The developmental NOAEL is greater than 15 mg/kg/day, the highest dose tested. The maternal NOAEL and LOAEL are established at 10 and 15 mg/kg/day, respectively, based on reduced body weight gain.

A developmental toxicity study in rabbits given gavage doses of 0, 3, 10, and 30 mg/kg/day with no developmental toxicity observed under the conditions of the study. The maternal NOAEL and LOAEL are established at 10 and 30 mg/kg/day, respectively based on decreased body weight gain. The developmental NOAEL is greater than 30 mg/kg/day, the highest dose tested.

4. *Subchronic toxicity*. A 90-day feeding study in rats fed doses of 0, 10, 50 and 250 ppm with a NOAEL of 50 ppm and a LOAEL of 250 ppm based on body weight gain reduction.

A study where lambda-cyhalothrin in olive oil was applied to the skin of rats for 21 successive days at dose rates of 1, 10, or 100 (reduced to 50 after 2–3 applications) mg/kg/day. A NOAEL of 10 mg/kg/day is based on clinical signs of slight general toxicity at 50 mg/kg/day.

5. *Chronic toxicity*. A 12-month feeding study in dogs fed dose (by capsule) levels of 0, 0.1, 0.5, 3.5 mg/kg/day with a NOAEL of 0.1 mg/kg/day. The LOAEL for this study is established at 0.5 mg/kg/day based upon clinical signs of neurotoxicity.

A 24-month chronic feeding/carcinogenicity study with rats fed diets containing 0, 10, 50, and 250 ppm. The NOAEL was established at 50 ppm and LOAEL at 250 ppm based on reduced body weight gain. There were no carcinogenic effects observed under the conditions of the study.

A carcinogenicity study in mice fed dose levels of 0, 20, 100, or 500 ppm (0, 3, 15, or 75 mg/kg/day) in the diet for 2 years. A systemic NOAEL was established at 100 ppm and systemic LOAEL at 500 ppm based on decreased body weight gain in males throughout the study at 500 ppm. The Agency has classified lambda-cyhalothrin as a Group D carcinogen (not classifiable due to an equivocal finding in this study). It is Zeneca's position that no treatment-related carcinogenic effects were observed under the conditions of the study.

6. *Animal metabolism*. Metabolism studies in rats demonstrated that distribution patterns and excretion rates

in multiple oral dose studies are similar to single-dose studies. Accumulation of unchanged compound in fat upon chronic administration with slow elimination was observed. Otherwise, lambda-cyhalothrin was rapidly metabolized and excreted. The metabolism of lambda-cyhalothrin in livestock has been studied in the goat, chicken, and cow. Unchanged lambda-cyhalothrin is the major residue component of toxicological concern in meat and milk.

Human metabolism of lambda-cyhalothrin was assessed by administering 5 mg lambda-cyhalothrin orally to six male volunteers (average dose was 0.06 mg/kg) and dermally at 20 mg/800 centimeters$^2$ to five volunteers. No adverse effects were noted in the individuals given an oral dose, and only mild signs of parasthesia were noted in individuals receiving a dermal dose. Absorption by these two routes of exposure were determined by analysis of urinary metabolites. An average amount of 59% of the oral dose was absorbed. Dermal absorption was extremely low, and estimated to be 0.12% (range 0.04–0.19%).

7. *Metabolite toxicology*. The Agency has previously determined that the metabolites of lambda-cyhalothrin are not of toxicological concern and need not be included in the tolerance expression. Given this determination, it is concluded that there is no need to discuss metabolite toxicity.

8. *Endocrine disruption*. EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect * * *" The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

*C. Aggregate Exposure*

1. *Dietary exposure*. For the purposes of assessing the potential chronic dietary exposure for all existing and pending tolerances for lambda-cyhalothrin, Zeneca has utilized available information on anticipated residues (FDA monitoring data, average field trial residues and processing data) and percent crop treated. For the acute dietary assessment, a Monte Carlo method was used to estimate exposure.

i. *Food* —a. *Acute dietary exposure*. An acute dietary exposure assessment was made using the dietary exposure evaluation model (DEEM) computer software (Novigen Sciences Inc.) and the USDA Continuing Surveys of Individual Intakes (CSFII) 1994–96. Acute dietary exposure was based on all crops with tolerances for lambda-cyhalothrin established at 40 CFR 180.438 together with crops in this petition, canola, and the crop groupings pome fruit, stone fruit and tree nuts. Anticipated residues were estimated from field trial data and from the lambda-cyhalothrin national milk survey together with estimates of percent crop treated for each crop. The predicted acute exposure for the U.S. population was 0.001269 mg/kg/body weight/day (mg/kg/bwt/day). The population subgroup with the highest predicted level of acute exposure was non-nursing infants (<1 year old) with an exposure of 0.003599 mg/kg/bwt/day (99.9th percentile). Based on an acute NOAEL of 0.5 mg/kg/bwt/day from a 1-year dog feeding study, and a 100–fold safety factor, the acute reference dose (aRfD) is 0.005 mg/kg/bwt/day. For the U.S. population the predicted exposure is equivalent to 25% of the aRfD. For the population subgroup non-nursing infants (<1 year old) the exposure is equivalent to 72% of the aRfD. Because the predicted exposures, expressed as the percentages of the aRfD, are well below 100%, there is reasonable certainty that no acute effects would result from the dietary exposure to lambda-cyhalothrin.

b. *Chronic dietary exposure*. A chronic dietary exposure assessment was made using the DEEM computer software (Novigen Sciences Inc.). Chronic dietary exposure was based on all crops with tolerances for lambda-cyhalothrin established at 40 CFR 180.438 together with crops in this petition, canola, and the crop groupings pome fruit, stone fruit and tree nuts. Anticipated residues were estimated from field trial data and from the lambda-cyhalothrin national milk survey together with estimates of percent crop treated for each crop. The predicted chronic exposure for the U.S. population was 0.000062 mg/kg/bwt/day. The population subgroup with the highest predicted level of chronic exposure was non-nursing infants with an exposure of 0.000132 mg/kg/bwt/day. Based on a chronic NOAEL of 0.1 mg/kg/bwt/day from a 1-year dog feeding study, and a 100-fold safety factor, the chronic reference dose (cRfD) is 0.001 mg/kg/bwt/day. For the U.S. population the predicted exposure is equivalent to 6.2% of the cRfD. For the population subgroup non-nursing infants the exposure is equivalent to 13.2% of the cRfD. Because the predicted exposures, expressed as the percentages of the aRfD, are well below 100%, there is reasonable certainty that no chronic effects would result from the dietary exposure to lambda-cyhalothrin.

ii. *Drinking water*. Laboratory and field data have demonstrated that lambda-cyhalothrin and its degradates are immobile in soil and will not leach into ground water. Surface water estimates were made by EPA using the GENEEC model (Tier I). The predicted peak, average and annual values (56 days) are, respectively, 0.095 parts per billion (ppb), 0.003 ppb and <0.003 ppb. EPA uses drinking water levels of comparison (DWLOCs) as a surrogate measure to capture risk associated with exposure to pesticides in drinking water. A DWLOC is the concentration of a pesticide in drinking water that would be acceptable as an upper limit in light of total aggregate exposure to that pesticide from food, water, and residential uses. A DWLOC will vary depending on the residue level in foods, the toxicity endpoint and with drinking water consumption patterns and body weights for specific subpopulations. The acute DWLOC for lambda-cyhalothrin was calculated for the subpopulation of concern, non-nursing infants (<1 year old), to be 14 ppb. The chronic DWLOC was calculated for this subpopulation to be 9 ppb. The predicted maximum concentration of lambda-cyhalothrin in drinking water is 0.095 ppb which is much lower than the acute DWLOC. Therefore one can conclude with reasonable certainty that residues of lambda-cyhalothrin do not contribute significantly to the aggregate acute human health risk. The chronic DWLOC for the most sensitive subpopulation, non-nursing infants (<1 year old), is 9 ppb. This DWLOC is substantially higher than the predicted average concentration of lambda-cyhalothrin in surface water of 0.003 ppb. Therefore one can conclude with reasonable certainty that residues of lambda-cyhalothrin do not contribute significantly to the aggregate chronic human health risk.

2. *Non-dietary exposure*. Other potential sources of exposure are from non-occupational sources such as structural pest control and ornamental plant and lawn use of lambda-cyhalothrin. A risk assessment was performed by EPA published in the **Federal Register** January 29, 1999 (64 FR 4584) (FRL–6056–2), for post application activities on lawns treated

with lambda-cyhalothrin which is considered to be a worse case estimate of exposure from residential uses. Results from EPA's short-term exposure and risk assessments showed that the oral MOE (margin of exposure) for infants and children was 3,500, the dermal MOEs were 1.5 million for the U.S. population and 7,810 for infants and children, and the inhalation MOEs were 15,000 for the U.S. population and 4,800 for infants and children. For intermediate-term exposure and risk assessments, EPA concluded the oral MOEs for infants and children was 700, the dermal MOEs were 1.5 million for the U.S. population and 7,810 for infants and children, and the inhalation MOEs were 15,000 for the U.S. population and 4,800 for infants and children. EPA concludes that there is a reasonable certainty of no harm for MOEs of 100 or greater. Therefore, the non-dietary and overall aggregate risk assessments for lambda-cyhalothrin clearly indicates a reasonable certainty of no harm.

*D. Cumulative Effects*

Zeneca Ag Products will submit information for EPA to consider concerning potential cumulative effects of lambda-cyhalothrin consistent with the schedule established by EPA in the **Federal Register** of August 4, 1997 (62 FR 42020) (FRL–5734–6), and other EPA publications pursuant to the Food Quality Protection Act. At this time, Zeneca cannot make a determination based on available and reliable information that lambda-cyhalothrin and other substances that may have a common mechanism of toxicity would have cumulative effects. Therefore for purposes of this request it is appropriate only to consider the potential risks of lambda-cyhalothrin in an aggregate exposure assessment.

*E. Safety Determination*

1. *U.S. population.* Based on the completeness and reliability of the lambda-cyhalothrin toxicology data base and using the conservative aggregate exposure assumptions presented earlier, it is concluded that lambda-cyhalothrin products may be used with a reasonable certainty of no harm relative to exposures from food and drinking water. A chronic dietary exposure and risk assessment has been performed for lambda-cyhalothrin using EPA's cRfD of 0.001 mg/kg/bwt/day. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the Anticipated Residue Contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC from established tolerances and the current and pending actions are estimated to be 0.000062 mg/kg/bwt/day and utilize 6.2% of the cRfD. An acute dietary exposure and risk assessment has been performed for lambda-cyhalothrin using EPA's aRfD of 0.005 mg/kg/bwt/day. The ARC from established tolerances and the current and pending actions are estimated to be 0.001269 and utilize 25% of the aRfD. The acute and chonic DWLOC for lambda-cyhalothrin for the U.S. population are 131 ppb and 33 ppb, respectively. The maximum concentrations in drinking water predicted by EPA are substantially lower than either the acute or chronic DWLOC. Therefore, one can conclude with reasonable certainty that residues of lambda-cyhalothrin in drinking water would not contribute significantly to the aggregate acute or chronic human health risk. In conclusion, there is a reasonable certainty of no harm to the general population resulting from either acute or chronic aggregate exposure to lambda-cyhalothrin.

2. *Infants and children.* FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. EPA generally defines the level of appreciable risk as exposure that is greater than 1/100 of the NOAEL in the animal study appropriate to the particular risk assessment. This hundred-fold uncertainty (safety) factor/margin of exposure is designed to account for combined interspecies and intraspecies variability. EPA believes that reliable data support using the standard hundred-fold margin/factor and not the additional tenfold margin/factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants and children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard margin/factor.

In assessing the potential for additional sensitivity of infants and children to residues of lambda-cyhalothrin, EPA considered the data from oral developmental toxicity studies in the rat and rabbit, as well as data from a multi-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects in the developing organism resulting from pesticide exposure during prenatal development in the mothers. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

3. *Prenatal effects.* A developmental toxicity study in rats given gavage doses of 0, 5, 10, and 15 mg/kg/day with no developmental toxicity observed under the conditions of the study. The developmental NOAEL is greater than 15 mg/kg/day, the highest dose tested. The maternal NOAEL and LOAEL are established at 10 and 15 mg/kg/day, respectively, based on reduced body weight gain.

A developmental toxicity study in rabbits given gavage doses of 0, 3, 10, and 30 mg/kg/day with no developmental toxicity observed under the conditions of the study. The maternal NOAEL and LOAEL are established at 10 and 30 mg/kg/day, respectively based on decreased body weight gain. The developmental NOAEL is greater than 30 mg/kg/day, the highest dose tested.

4. *Postnatal effects.* A 3–generation reproduction study in rats fed diets containing 0, 10, 30, and 100 ppm with no developmental toxicity observed at 100 ppm, the highest dose tested. The maternal NOAEL and LOAEL for the study are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based upon decreased parental body weight gain. The reproductive NOAEL and LOAEL are established at 30 (1.5 mg/kg/day) and 100 ppm (5 mg/kg/day), respectively, based on decreased pup weight gain during weaning.

EPA have concluded in its 1997 review of lambda-cyhalothrin that the toxicity endpoints from the data on developmental and reproductive toxicity tests do not indicate any increased prenatal or postnatal sensitivity. Therefore, EPA concluded that reliable data support use of a hundred fold safety factor and that an additional tenfold safety factor is not needed.

Based on this information, the ARC for children aged 1 to 6 years old, and non-nursing infants (subgroups most highly exposed) utilizes 0.000127 mg/kg/bwt/day (12.7% of the cRfD) and 0.000132 mg/kg/bwt/day (13.2% of the cRfD), respectively. Generally speaking, the Agency has no cause for concern if the anticipated residues contribution for all published and proposed tolerances is less than the 100% of the cRfD.

For the acute dietary assessment the ARC for children aged 1 to 6 years old, and non-nursing infants (subgroups most highly exposed) utilizes 0.002363 mg/kg/bwt/day (47.3% of the aRfD) and

0.003599 mg/kg/bwt/day (72% of the aRfD), respectively. Generally speaking, the Agency has no cause for concern if the anticipated residues contribution for all published and proposed tolerances is less than the 100% of the aRfD. The acute and chonic DWLOC for lambda-cyhalothrin for non-nursing infants are 14 ppb and 9 ppb, respectively. The maximum concentrations in drinking water predicted by EPA are substantially lower than either the acute or chronic DWLOC. Based on these exposure estimates it may be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate exposures to lambda-cyhalothrin.

*F. International Tolerances*

There are Codex maximum residue levels (MRL) established or pending for residues of cyhalothrin, as the sum of all isomers, in or on the following crops and commoditites.

| Crop | MRL (mg/kg) |
|---|---|
| Apricots | 0.2 |
| Cabbage, head | 0.2 |
| Cherries | 0.2 |
| Cotton seed | 0.02 |
| Cotton seed, oil | 0.02 |
| Oil seed (including rapeseed oil). | 0.02 |
| Peaches | 0.2 |
| Plums | 0.1 |
| Pome fruit | 0.1 |
| Potatoes | 0.02 |
| Tree nuts (shelled and unshelled). | 0.05 |

Canadian MRLs of 0.1 ppm for pome fruit, stone fruit and canola are established in Canada for lambda-cyhalothrin based on the "negligble" residue clause of Canadian Food & Drug Act Regulations (B.15.002(1)).

[FR Doc. 00–11871 Filed 5–11–00; 8:45 am]

BILLING CODE 6560–50–F

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 3, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before July 11, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Approval Number:* 3060–0783.

*Title:* Section 90.176 Coordination notification requirements on frequencies below 512 MHz.

*Form Number:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 15.

*Estimated Time Per Response:* .25 hours.

*Total Annual Burden:* 975 hours.

*Total Annual Cost:* 0.

*Needs and Uses:* The reporting requirement in section 90.176 is a result of comments sought in the Report and Order and Further Notice of Proposed Rule Making in PR Dck No. 92–235 and requires each Private Land Mobile frequency coordinator provide, within one business day, a listing of their frequency recommendations to all other frequency coordinators in their respective pool, and, if requested, an engineering analyses. This requirement is necessary to avoid situations where harmful interference is created because two or more coordinators recommend the same frequency in the same area at approximately the same time to different applicants.

*OMB Approval Number:* 3060–0798.

*Title:* FCC Application for Wireless Telecommunications Bureau Radio Service Authorization.

*Form Number:* FCC 601.

*Type of Review:* Revision of an existing collection.

*Respondents:* Individuals or households; Business or other for-profit; Not-for-profit institutions; State, Local or Tribal Government.

*Number of Respondents:* 240,320.

*Estimated Time Per Response:* 1.25 hours.

*Total Annual Burden:* 210,280 hours.

*Needs and Uses:* FCC 601 is used as the general application (long form) for market based licensing and site-by-site licensing in the Wireless Telecommunications Radio Services. The purpose of this revision is to make the necessary changes for the 700 MHz Band and 700 MHz Guard Band Auctions and to convert the Land Mobile Services (Part 90) to ULS. We sought emergency clearance on these changes in order to allow form changes to be in place for the auctions scheduled for the beginning of June and are now seeking a 3 year clearance. The information is used by the Commission to determine whether the applicant is legally, technically and financially qualified to be licensed.

Respondent costs are estimated to be $48,364,000, which includes application filing fees.

*OMB Control Number:* 3060–0773.

*Title:* Marketing of RF Devices Prior to Equipment Authorization—Section 2.830.

*Form Number:* N/A.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Businesses or other for-profit entities.

*Number of Respondents:* 6,000.

*Estimated Time Per Response:* .5 hour.

*Total Annual Burden:* 3,000 hours.

*Total Annual Cost:* N.A.

*Needs and Uses:* FCC rules permit the display and advertising of radio frequency devices prior to equipment authorization or a determination of compliance with the rules, providing that the advertising or display contains a conspicuous notice as specified by the rules. The notice that must be displayed is defined in section 2.803©. A notice that applies specifically to prototype equipment is defined in section

2.803©(2) of any RF device that is offered for sale to specific entities defined in the rule part, prior to equipment authorization or a showing of compliance, must be accompanied by a written notice that the equipment is subject to the FCC rules and will comply with all FCC rules prior to delivery. The information is disclosed to third parties to ensure that they are fully aware of the FCC's requirement for the responsible party to fully comply with the Commission rules.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–11973 Filed 5–11–00; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

May 5, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission (202) 418–1379.

**Federal Communications Commission**

*OMB Control No.:* 3060–0737.

*Expiration Date:* 03/31/2003.

*Title:* Disclosure Requirements for Information Services Provided Under a Presubscription of Comparable Arrangement.

*Form No.:* N/A.

*Respondents:* Business or other for profit.

*Estimated Annual Burden:* 1,000 respondents; 5 hours per response (avg.); 5,000 total annual burden hours for this collection.

*Estimated Annual Reporting and Recordkeeping Cost Burden:* $0.

*Frequency of Response:* On occasion; Third Party Disclosure.

Description: Section 228 of the Communications Act of 1934, as amended, implements rules governing common carriers' transmission of and billing and collection for interstate pay-per-call and other information services. The statutory requirements are codified in Part 64 of the Commission's rules. Pursuant to Section 64.1501(b), presubscription is a contractual agreement between an informed consumer and an information provider for the purchase of information services. Under Section 64.1501(b), an information provider must disclose the following information to a consumer to establish a valid presubscription arrangement: "all material terms and conditions associated with the use of the service, including the service provider's name and address, a business telephone number which the consumer may use to obtain additional information or to register a complaint, and the rates for the service,* * * any future rate changes, * * * [and] an identification number or other means to prevent unauthorized access to the service by nonsubscribers * * * " 47 CFR 64.1501(b). All prescription arrangements must be executed in writing or, alternatively, through payment by direct remittance, prepaid account, or debit, credit, charge, or calling card. The purpose of the information collection is to ensure that consumers receive enough information to make an informed decision whether to subscribe to an information service.

The Commission believes that past acts of widespread deception and abuse involving provision of information services, warrant safeguards such as these to guard against future efforts to evade federal pay-per-call regulations.

Obligation to Respond: Mandatory

Public burden for the collection is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–11975 Filed 5–11–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 4, 2000.

**SUMMARY:** The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before June 12, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *lesmith@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *lesmith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0758.

*Title:* Amendment of part 5 of the Commission's Rules to Revise the Experimental Radio Service Regulations, ET Docket 96–256.

*Form Number:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; and Not-for-profit institutions.

*Number of Respondents: 425.*

*Estimate Time Per Response:* 0.10 to 0.25 hours.

*Frequency of Response:* On occasion reporting requirements; Third part disclosure.

*Total Annual Burden:* 681 hours.

*Total Annual Costs:* None.

*Needs and Uses:* The collection of information contained in part 5 is made necessary by sections 5.75, 5.85(d),

5.85(e), and 5.93(b) of the FCC's Rules governing the Experimental Radio Service. They are as follows: (1) Pursuant to section 5.75, if a blanket license is granted, licensees are required to notify the Commission of the specific details of each individual experiment, including location, number of base and mobile units, power emission designator, and any other pertinent technical information not specified by the blanket license; (2) pursuant to section 5.85(d), when applicants are using public safety frequencies to perform experiments of a public safety nature, the license may be conditioned to require coordination between the experimental licensee and appropriate frequency coordinator and/or all public safety licensees in its area of operation; (3) pursuant to section 5.85(e), the Commission may, at its discretion, condition any experimental license or special temporary authority (STA) on the requirement that before commencing operation, the new licensee coordinate its proposed facility with other licensees that may receive interference as a result of the new licensee's operations; and (4) pursuant to section 5.93(b), unless otherwise stated in the instrument of authorization, licenses granted for the purpose of limited market studies requires the licensee to inform anyone participating in the experiment that the service or device is granted under an experimental authorization and is strictly temporary. In all cases, it is the responsibility of the licensee to coordinate with other users.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–11972 Filed 5–11–00; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. AUC–00–33–D (Auction No. 33); DA 00–941]**

### Auction of Licenses for the 700 MHz Guard Bands Postponed Until September 6, 2000

**AGENCY:** Federal Communications Commission.

**SUMMARY:** This document postpones the upcoming auction of Guard Band Manager licenses originally scheduled to begin June 14, 2000, in order to provide additional time for bidder preparation and planning. The auction is rescheduled to begin September 6, 2000.

**DATES:** Auction No. 33 will begin September 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Howard Davenport, Auctions Legal Branch at (202) 418–0660, or Kathy Garland, Auctions Operations at (717) 338–2888.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released May 2, 2000. The complete text of the public notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

1. The upcoming auction of licenses in the 746–747/776–777 and 762–764/792–794 MHz bands, scheduled to begin on June 14, 2000, is postponed until September 6, 2000, in order to provide additional time for bidder preparation and planning. Therefore, the FCC Form 175 application filing window for Auction No. 33 is now closed. Any applications that were in the system will be deemed ineffective and purged from the system. Applicants wishing to participate must file in compliance with the deadlines listed. The new filing window for FCC Form 175 will open on July 18, 2000. The new schedule is as follows:

Filing Deadline for FCC Form 175—August 1, 2000; 6 pm ET.

Upfront Payment Deadline—August 18, 2000; 6 pm ET.

Orders For Remote Bidding Software—August 21, 2000; 6 pm ET.

Mock Auction—August 31, 2000.

Auction Start Date—September 6, 2000.

Federal Communications Commission.

**Louis J. Sigalos,**

*Deputy Chief, Auctions & Industry Analysis Division.*

[FR Doc. 00–11970 Filed 5–11–00; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. AUC–00–31–F (Auction No. 31); DA 00–942]**

### Auction of Licenses for the 747–762 and 777–792 MHz Bands Postponed Until September 6, 2000

**AGENCY:** Federal Communications Commission.

**SUMMARY:** This document postpones the upcoming auction of licenses in the 747–762 and 777–792 bands originally scheduled to begin June 7, 2000, in order to provide additional time for bidder preparation and planning. The auction is rescheduled to begin September 6, 2000.

**DATES:** Auction No. 31 will begin September 6, 2000.

**FOR FURTHER INFORMATION CONTACT:** Howard Davenport, Auctions Legal Branch at (202) 418–0660, or Kathy Garland, Auctions Operations at (717) 338–2888.

**SUPPLEMENTARY INFORMATION:** This is a summary of a Public Notice released May 2, 2000. The complete text of the public notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257), 445 12th Street, SW., Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

1. The upcoming auction of licenses in the 747–762 and 777–792 MHz band, scheduled to begin on June 7, 2000, is postponed until September 6, 2000, in order to provide additional time for bidder preparation and planning. Therefore, the FCC Form 175 application filing window for Auction No. 31 is now closed. Any applications that were in the system will be deemed ineffective and purged from the system. Applicants wishing to participate must file in compliance with the deadlines listed. The new filing window for FCC Form 175 will open on July 17, 2000. The new schedule is as follows:

Filing Deadline for FCC Form 175—August 1, 2000; 6 pm ET.

Upfront Payment Deadline—August 18, 2000; 6 pm ET.

Orders For Remote Bidding Software—August 21, 2000; 6 pm ET.

Mock Auction—August 31, 2000.

Auction Start Date—September 6, 2000.

Federal Communications Commission.

**Louis J. Sigalos,**

*Deputy Chief, Auctions & Industry Analysis Division.*

[FR Doc. 00–11971 Filed 5–11–00; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL COMMUNICATIONS COMMISSION

**[DA–00–1012, MM Docket No. 00–76, RM–9809]**

### Digital Television Broadcast Service; Urbana, IL

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission requests comments on a petition filed by the University of Illinois Board of Trustees, licensee of noncommercial educational station WILL–TV, NTSC Channel *12, Urbana, Illinois, requesting the substitution of DTV Channel *9 for DTV Channel *33. DTV Channel *9 can be allotted to Urbana, Illinois, in compliance with the principle community coverage requirements of section 73.625(a) at coordinates 40–02–18 N and 88–40–10 W with a power of 30 (kW) and a height above average terrain (HAAT) 302 meters.

**DATES:** Comments must be filed on or before July 3, 2000, and reply comments on or before July 19, 2000.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Wayne Coy, Jr., Cohn and Marks, Suite 300, 1920 N Street, NW, Washington, DC 20036–1622 (Counsel for The University of Illinois Board of Trustees).

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Mass Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–76, adopted May 9, 2000, and released May 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte contacts*.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Services Division, Mass Media Bureau.*

[FR Doc. 00–11974 Filed 5–11–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1326–DR]**

### Maine; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA–1326-DR), dated April 28, 2000, and related determinations.

**EFFECTIVE DATE:** April 28, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated April 28, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Maine, resulting from severe storms, flooding, and ice jams beginning on March 28, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Pub. L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance or Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint A. David Rodham of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster:

Androscoggin, Aroostook, Franklin, Kennebec, Oxford, and Somerset Counties for Public Assistance.

All counties within the State of Maine are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**James L. Witt,**

*Director.*

[FR Doc. 00–11990 Filed 5–11–00; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1324–DR]**

### Maryland; Amendment No. 2 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA–1324–DR), dated April 10, 2000, and related determinations.

**EFFECTIVE DATE:** May 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Maryland is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a

major disaster by the President in his declaration of April 10, 2000:

Caroline County for emergency protective measures (Category B) under Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–11989 Filed 5–11–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### National Flood Insurance Program Call for Issues Final Report

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** We (FEMA) announce when and how our final report on the National Flood Insurance Program (NFIP)'s Call for Issues will be available to the public.

**DATES:** On June 15, 2000, we will post the report on our web site and will begin accepting orders for copies of the final report.

By August 1, 2000, we will make an initial distribution of the final report to each of the 173 respondents. We will respond to orders from the public during the fourth quarter of this fiscal year.

**ADDRESSES:** To place orders for the final NFIP Call for Issues report please contact the FEMA Distribution Center, P.O. Box 2012, Jessup, MD 20794.

**FOR FURTHER INFORMATION CONTACT:**

H. Joseph Coughlin, Jr., Assistant to the Federal Insurance Administrator, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472; (202) 646–3449, (facsimile) (202) 646–7970, or (email) *joseph.coughlin@fema.gov;* or

Michael Robinson, Acting Chief, Policy Branch, Program Assessment and Outreach Division, the Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472; (202) 646–2716, (facsimile) (202) 646–2577, or (email) *mike.robinson@fema.gov.*

**SUPPLEMENTARY INFORMATION:** On September 9, 1998, we published at 63 FR 48222 a notice inviting the public to recommend how the National Flood Insurance Program (NFIP) may be even more effective than now. During the comment period, we received recommendations from 173 respondents. Those respondents submitted 796 recommendations spanning the insurance, mapping, and floodplain management components of the NFIP. We analyzed and evaluated extensively the public's comments and recommendations for the NFIP. In a number of cases, we adopted or will adopt the public's recommendation on how to improve a specific aspect of the program. In many other cases, we had anticipated the recommendation with initiatives planned or already underway when we received the recommendation. In other cases, we did not adopt the public's recommendation either because we do not believe it was in the best interests of the program or because we are addressing the recommendation in some other way. The final report contains:

- The public's recommendation to improve aspects of the NFIP,
- Our decision whether to adopt the public's recommendation, including our planned implementation or actual progress, and
- An explanation of our decision.

On June 15, 2000, we will post the final report on NFIP's Call for Issues on FEMA's web site, *http://www.fema.gov/,* and we will begin to accept orders for copies of the final report from members of the public who did not submit written comments during our call for issues. By August 1, 2000, we will send a copy of the final report to each of the 173 respondents who submitted written recommendations on how to improve the NFIP. We will respond to orders for the report from the public in the fourth quarter of this fiscal year.

A number of decisions contained in the report reflect a partial or future action that we will take and not the completed action to implement our decision. We will therefore publish an annual update to show our progress in implementing all recommendations that we have adopted—both the work completed since our last update and the current status of efforts underway but not yet finished. We will continue to publish these annual updates until we complete the final action on all adopted recommendations submitted during this call for issues on the NFIP.

We appreciate very much the comments and recommendations that we received and want to thank all those who participated for their time, effort and insights.

Dated: May 3, 2000.

**Jo Ann Howard,**

*Administrator, Federal Insurance Administration.*

**Michael Armstrong,**

*Associate Director, Mitigation Directorate.*

[FR Doc. 00–11987 Filed 5–11–00; 8:45 am]

BILLING CODE 6718–03–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

### Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicant

Pactrans Marine, Inc., 12801 S. Figueroa Street, Los Angeles, CA 90061.
Officers: Jesse Domingo, Director (Qualifying Individual), Chee Tao Tsui, President.

Dated: May 9, 2000.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–11991 Filed 5–11–00; 8:45 am]

BILLING CODE 6730–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary; Office of Public Health and Science

### Statement of Organization, Functions, and Delegations of Authority

Part A, (Office of the Secretary) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Chapter AC, Office of Public Health and Science (OPHS), paragraph ACA, Immediate Office, as last amended at 62 FR 5009–10, 2/3/97; and paragraph ACF, Office of Research Integrity (ORI), as last amended at 60 FR 56606–06,

dated November 9, 1995, are being amended to make policy changes approved by the Secretary. Specifically, the Notice is to reflect that the Assistant Secretary for Health (ASH) will make proposed findings of research misconduct and administrative actions in response to allegations of research misconduct involving research conducted or supported by components of the Public Health Service (PHS); that direct investigations, previously conducted by ORI, will be conducted by components of the PHS for intramural research and by the Office of Inspector General for extramural research; and that role and structure of ORI will be changed to focus more on preventing misconduct and promoting research integrity through expanded education programs. The changes are as follows:

I. Amend Chapter AC.20 Functions, paragraph A. "Office of Public Health and Science," paragraph titled, "The Immediate Office (ACA)" by adding the following new clause:

(1) Proposes findings of research misconduct and administrative actions in response to allegations of research misconduct involving research conducted or supported by the Public Health Service (PHS) OPDIVs, including reversal of an institution's no misconduct finding or opening of a new investigation.

II. Under Section AC.20 Function, delete, paragraph E. "Office of Research Integrity (ACF)" in its entirety, and replace with the following:

E. Office of Research Integrity (ACF)—The Director reports to the Secretary and will: (1) Oversee and direct Public Health Service (PHs) research integrity activities on behalf of the Secretary with the exception of the regulatory research integrity activities of the Food and Drug Administration; (2) recommend to the Assistant Secretary for Health for decision, findings of research misconduct and administrative actions in connection with research conducted or supported by the PHS; (3) coordinate the development of research integrity policies designed to ensure that subjects of investigations and whistleblowers are treated fairly, including clear specification of what constitutes misconduct, a fair hearing process, appropriate time limits on pursuing allegations, and specific whistleblower protections; (4) manage the financial resources and provide overall administrative guidance in carrying out the activities; and (5) oversee and direct the research misconduct and integrity activities of the office, including the oversight of research misconduct inquiries and investigations, education and training in the responsible conduct of research, activities designed to promote research integrity and prevent misconduct, and research and evaluation programs.

1. Division of Education and Integrity (ACF2)—The Director and staff: (1) develop and implement, in consultation with the PHS OPDIVs, activities and programs for PHS intramural and extramural research to teach the responsible conduct of research, promote research integrity, prevent research misconduct, and to enable the extramural institutions and PHS OPDIVs to respond effectively to allegations of research misconduct; (2) coordinate the dissemination of research integrity policies, procedures, and regulations; (3) conduct policy analyses, evaluations, and research to improve DHHS research integrity policies and procedures and build the knowledge base in research misconduct, research integrity, and prevention; (4) develop (in consultation with the PHS OPDIVs) policies, procedures, and regulations for review by the Director, Office of Research Integrity, and recommendations to the Secretary; (5) administer programs for: approval of institutional assurances; response to Freedom of Information Act and Privacy Act requests; review and approval of intramural and extramural policies and procedures; and response to allegations of whistleblower retaliation.

2. Division of Investigative Oversight (ACF3)—The Director and staff: (1) review and monitor investigations conducted by applicant and awardee institutions and intramural research programs; (2) evaluate investigations and investigatory findings of awardee and applicant institutions, intramural research programs, and the Office of Inspector General and develop and recommend to the ORI Director, findings of research misconduct and proposal administrative actions against those who committed misconduct; (3) assist the Office of the General Counsel (OGC) in preparing and presenting cases in hearings before the Research Integrity Adjudications Panel of the DHHS Department Appeals Board; (4) provide information on DHHS policies and procedures, as requested, to individuals who have made an allegation or have been accused of research misconduct; and (5) establish and implement a program of advice and technical assistance to entities that conduct inquiries and investigations, or otherwise respond to allegations of research misconduct.

III. Under Chapter AC, Section ACF–30, Delegations of Authority—All delegations and redelegations of authority to the Assistant Secretary for Health and officials of the Office of Research Integrity that were in effect prior to the effective date of this reorganization shall continue in effect pending further redelegation.

Dated: April 14, 2000.

**Betsy D'Jamos,**

*Acting Assistant Secretary for Management and Budget.*

[FR Doc. 00–11958 Filed 5–11–00; 8:45 am]

BILLING CODE 4150–04–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4562–N–05**

## Notice of Proposed Information Collection for Public Comment: Assessing the Effectiveness of HUD2020 Management Reforms—Public Knowledge of Fair Housing Issues

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** July 11, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 8226, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Paul B. Dornan, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; telephone (202) 708–0574, extension 4486 (this is not a toll-free number). Copies of the proposed data collection instruments and other available documents may be obtained from Mr. Dornan.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed

collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Assessing the Effectiveness of HUD2020 Management Reforms.

*Description of the need for the information and proposed use:* The Department is conducting under contract an assessment of the impact of the management reforms that the Department has implemented collectively under the name "HUD2020". As part of this analysis, the Department proposes to undertake biennial surveys of public knowledge of fair housing issues and law. These surveys will permit the Department to gauge HUD's performance against its goal of ensuring equal opportunity in housing for all Americans and, in particular, the objective of increasing the share of the American population with adequate awareness of fair housing law. The proposed information collection will include the baseline survey and the first follow-on administration of the survey two years thereafter.

*Members of affected public:* A sample generalizable to and representative of the nation's adult population.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The researchers will administer a baseline survey to 1500 randomly selected members of the American adult population; two years thereafter, the same survey will be administered to another sample of 1500 from the same universe; the surveys are expected to last 7 minutes each, for a total of 175 hours of response each time and, therefore, a total of 350 hours.

*Status of the proposed information collection:* Pending OMB approval.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 4, 2000.

**Lawrence L. Thompson,**

*Deputy Assistant Secretary for Policy Development.*

[FR Doc. 00–11895 Filed 5–11–00; 8:45 am]

BILLING CODE 4210–62–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4562–0901]**

### Notice of Proposed Information Collection for Public Comment: Assessing the Effectiveness of HUD2020 Management Reforms—Fair Housing Opinions

**AGENCY:** Office of the Assistant Secretary for Policy Development and Research, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* July 11, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Reports Liaison Officer, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8226, Washington, DC 20410.

**FOR FURTHER INFORMATION CONTACT:** Paul B. Dornan, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–0574, extension 4486 (this is not a toll-free number). Copies of the proposed data collection instruments and other available documents may be obtained from Mr. Dornan.

**SUPPLEMENTARY INFORMATION:** The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g*, permitting electronic submission of responses.

This Notice also lists the following information:

*Title of Proposal:* Assessing the Effectiveness of HUD 2020 Management Reforms.

*Description of the need for the information and proposed use:* The Department is conducting under contract an assessment of the impact of the management reforms that the Department has implemented collectively under the name "HUD2020". As part of that assessment, the Department proposes to survey the opinions of the people and organizations HUD works with to implement its programs, in particular, local elected officials, housing agency community development directors, Fair Housing Assistance Program agencies, owners of HUD-assisted multifamily projects and nonprofit organizations concerning the effect of the HUD2020 reforms.

*Members of affected public:* Members of the following groups selected by random assignment: Local chief elected officials; community development directors; housing authority directors; owners of HUD-assisted multifamily housing projects; representatives of nonprofit organizations; and fair housing assistance program agency directors.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The researchers will survey representatives of the partner groups once for the baseline survey. 4,000 participants will be surveyed in all; the surveys are expected to last 10 minutes. This constitutes a total burden hour estimate of 666⅔ burden hours.

*Status of the proposed information collection:* Pending OMB approval.

**Authority:** Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 4, 2000.

**Lawrence L. Thompson,**

*Deputy Assistant Secretary for Policy Development.*

[FR Doc. 00–11896 Filed 5–11–00; 8:45 am]

BILLING CODE 4210–62–M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–19]

### Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**EFFECTIVE DATE:** May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 4, 2000.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Special Needs Assistance Programs.*

[FR Doc. 00–11541 Filed 5–11–00; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**AGENCY:** Fish and Wildlife Service, DOI.

**ACTION:** Notice of intent to Prepare comprehensive conservation plans, conduct Wilderness/Wild and Scenic River Reviews, and develop compatibility determinations for Cedar Island and Pea Island National Wildlife Refuges in North Carolina.

**SUMMARY:** This notice advises the public that the Fish and Wildlife Service, Southeast Region, intends to gather information necessary to prepare Comprehensive Conservation Plans for the management of the above stated refuges, while at the same time conduct Wilderness/Wild and Scenic river Reviews, and develop Compatibility Determinations for each refuge. The notice is being furnished in compliance with the Service's Comprehensive Conservation Planning Policy and the National Environmental Policy Act and implementing regulations.

Public Scoping meetings will be held for these refuges as the planning processes are initiated. An announcement of the meeting dates will appear in the **Federal Register**.

**DATES:** Written comments should be received on or before July 11, 2000.

**ADDRESSES:** Comments and requests for information concerning these refuges may be addressed to: D.A. Brown, M.S., P.W.S., 1106 West Queen Street, P.O. Box 329, Edenton, North Carolina 27932, (252) 482–2364.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: D_A_Brown@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact D.A. Brown directly at the above address. Finally, you may hand-deliver comments to Mr. Brown at 1106 West Queen Street, Edenton, North Carolina. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondents identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**SUPPLEMENTARY INFORMATION:** It is the policy of the Fish and Wildlife Service to have all lands within the National Wildlife Refuge System managed in accordance with an approved Comprehensive Conservation Plan. The plan guides management decisions and identifies the goals, objectives, and strategies for achieving refuge purposes. Public input into this planning process is encouraged. The plan will provide other agencies and the public with a clear understanding of the desired conditions of the refuge and how the Service will implement the management strategies. Some of the issues to be addressed in these plans include the following:

(a) Public use management;

(b) Habitat management;

(c) Wildlife population management; and

(d) Cultural resource identification and protection.

Alternatives that address the issues and management strategies associated with these topics will be included in the environmental documents.

Pre-planning for both Cedar Island and Pea Island National Wildlife Refuges began in January 2000. Pea Island National Wildlife Refuge was established by Presidential Executive Order 7864 in April 1938, as a refuge and breeding ground for migratory birds and other wildlife; and Cedar Island National Wildlife Refuge was authorized by the Migratory Bird Conservation Act in August 1964, for use as an inviolate sanctuary, or for other management purposes, for migratory birds.

Dated: May 5, 2000.

**Judy L. Jones,**

*Acting Regional Director.*

[FR Doc. 00–11940 Filed 5–11–00; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**AGENCY:** Fish and Wildlife Service, DOI.

**ACTION:** Notice of intent to conduct public meetings to obtain suggestions and information on the scope of issues to include in the preparation of Comprehensive Conservation Plans for Pelican Island National Wildlife Refugee, Indian River County, Florida, and Archie Carr National Wildlife Refuge, Brevard and Indian River Counties, Florida.

**SUMMARY:** This notice advises the public that the U.S. Fish and Wildlife Service intends to gather information necessary to prepare comprehensive conservation plans and associated environmental documents pursuant to the National Environmental Policy Act and implementing regulations.

The Service will hold meetings as follows:

Thursday, May 25, 2000, 6:30–9 p.m., Environmental Learning Center, Wabasso Island, 255 Live Oak Drive, Vero Beach, Florida.

Thursday, June 1, 2000, 6:30–9 p.m., Chapel by the Sea South A1A, Melbourne Beach, Florida.

**DATES:** Written comments should be received by June 30, 2000.

**ADDRESSES:** Address comments and requests for more information to:

Natural Resource Planner, Merritt Island National Wildlife Refuge Complex, P.O. Box 6504, Titusville, Florida 32782–6504, (321) 861–0667.

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the above address. You may also comment via the Internet to the following address: Cheri_Ehrhardt@fws.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly at Merritt Island National Wildlife Refuge Complex at the above address. Finally, you may hand-deliver comments to the Refuge Complex at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**SUPPLEMENTARY INFORMATION:** It is the policy of the Fish and Wildlife Service to manage all lands within the National Wildlife Refugee System in accordance with an approved comprehensive conservation plan. These plans outline a vision for each refuge; guide management decisions; and outline goals, objectives and strategies to achieve the visions and purposes of each refugee unit. The plans will provide other agencies and the public with an understanding of the management strategies to be implemented.

The Service has initiated planning for Pelican Island National Wildlife Refuge for the conservation and enhancement of its natural resources. Encompassing approximately 5,000 acres and including designations as a National Historic Landmark, a National Wilderness Area, and a Wetland of International Importance, this refuge is located between the Indian River and the Atlantic Ocean in southeastern Florida, near the city of Sebastian.

Planning for Archie Carr National Wildlife Refugee has been initiated for the conservation and enhancement of its natural resources as well. This refugee is located along the Atlantic Ocean in southeastern Florida, between the cities of Melbourne Beach and Vero Beach. While the Service owns or leases approximately 165 acres, the State of Florida, Brevard County, and Indian River County account for the remainder of the publicly owned lands within the refuge. The refuge beaches support loggerhead and green turtle nesting. The Florida scrub jay, Eastern indigo snake, Southeastern beach mouse, and other threatened and endangered species also occur within the refuge.

Dated: May 5, 2000.

**Judy L. Jones,**

*Acting Regional Director.*

[FR Doc. 00–11939 Filed 5–11–00; 8:45 am]

**BILLING CODE 4310–55–M**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Application

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

**Permit Number TE 026515**

*Applicant:* Glen R. Gill, Central Michigan University, Mt. Pleasant, Michigan.

The applicant requests a permit to take (harass) the Karner Blue Butterfly (Lycaeides melissa samuelis) in southwestern Michigan within the Huron-Manistee National Forest. Activities are for in situ measurements of larvae to determine cohort survival rates to pupation. Results will aid in the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: May 4, 2000.

**Charles M. Wooley,**

*Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

[FR Doc. 00–11938 Filed 5–11–00; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of a Draft Recovery Plan for the California Red-legged Frog for Review and Comment

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of document availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) announces the availability of a draft recovery plan for the California red-legged frog for public review. This recovery plan includes the threatened California red-legged frog (*Rana aurora draytonii*). This subspecies of red-legged frog has been extirpated from 70 percent of its former range and is now found in coastal drainages of central California from Marin County, California, south to northern Baja California, Mexico. The Service solicits review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

**DATES:** Comments on the draft recovery plan must be received on or before August 10, 2000 to receive consideration by the Service.

**ADDRESSES:** The draft recovery plan is available for public inspection by appointment during normal business hours at the Service's Sacramento Fish

and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, California. Persons wishing to review the draft recovery plan may obtain a copy by contacting the Field Supervisor (attention Wayne S. White) at the above address or by calling (916) 414–6600. Comments and materials should be submitted to the above address, and are available on request for public inspection by appointment at the Sacramento Fish and Wildlife Office.

**FOR FURTHER INFORMATION CONTACT:** Diane Elam, Fish and Wildlife Biologist, at the above Sacramento address.

**SUPPLEMENTARY INFORMATION:**

**Background**

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

The California red-legged frog (*Rana aurora draytonii*) occurs from sea level to elevations of about 1,500 meters (5,000 feet) in its range. It has been extirpated from 70 percent of its former range. The California red-legged frog requires a variety of habitat elements with aquatic breeding areas embedded within a matrix of riparian and upland dispersal habitats. Breeding sites of the California red-legged frog are in aquatic habitats including pools and backwaters within streams and creeks, ponds, marshes, sag ponds, dune ponds, and lagoons. California red-legged frogs frequently breed in artificial impoundments such as stock ponds. Potential threats to the species include elimination or degradation of habitat from land development and land use activities, and habitat invasions by non-native aquatic species.

The objective of this recovery plan is to delist the California red-legged frog through implementation of a variety of recovery measures including (1) Protection of known populations and reestablishment of populations; (2) protection of suitable habitat, corridors, and core areas; (3) habitat management; (4) development of land use guidelines; (5) research; (6) surveying and monitoring; and (7) public participation, outreach, and education.

**Public Comments Solicited**

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

**Authority**

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

**Elizabeth H. Stevens,**

*Acting Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.*

[FR Doc. 00–11947 Filed 5–11–00; 8:45 am]

BILLING CODE 4310–55–P

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Final Programmatic Environmental Impact Statement for the Proposed Navajo Ten-Year Forest Management Plan, Navajo Nation, Arizona/New Mexico**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Correction to Notice.

**SUMMARY:** This notice corrects the closing date for the public comment period published in the **Federal Register** on April 14, 2000 (65 FR 20197), for the Final Programmatic Environmental Impact Statement for the Proposed Navajo Ten-Year Forest Management Plan, Navajo Nation, Arizona/New Mexico. The closing date is changed from June 15, 2000 to May 15, 2000. All other information published in the April 14, 2000 notice remains unchanged.

**DATES:** The correct date by which written comments must arrive is May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Harold D. Russell, 520–729–7228.

Dated: May 8, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–12087 Filed 5–11–00; 8:45 am]

BILLING CODE 4310–02–P

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Indian Gaming**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of amendment to approved Tribal-State Compact.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act (IGRA), (Pub. L. 100–497), 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendment to the Tribal State Off-Track Wagering Compact between the Choctaw Nation of Oklahoma and the State of Oklahoma, which was executed on April 6, 2000.

**DATES:** This action is effective May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: May 3, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–11942 Filed 5–11–00; 8:45 am]

BILLING CODE 4310–02–P

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Indian Gaming**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of amendment to approved Tribal-State Compact.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act (IGRA),

Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendment to the Interim Agreement with the State of Montana and the Confederated Salish and Kootenai Tribes, which was executed on March 21, 2000.

**DATES:** This action is effective May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240. (202) 219–4066.

Dated: May 3, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–11943 Filed 5–11–00; 8:45 am]

**BILLING CODE 4310–02–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approval of amendment to Tribal-State Compact.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. § 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved an Amendment, executed on May 2, 2000, to the Gaming Compact between the Tunica-Biloxi Indian Tribe of Louisiana and the State of Louisiana.

**DATES:** This action is effective May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 3, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–11941 Filed 5–11–00; 8:45 am]

**BILLING CODE 4310–02–P**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–160–1220–00]**

### Extension of Nomination Period for Central California Resource Advisory Council

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Resource Advisory Council Call for Nominations.

**SUMMARY:** The purpose of this notice is to extend the deadline for receiving nominations for membership on the Bureau of Land Management (BLM) Central California Resource Advisory Councils (RAC). The RAC provides advice and recommendations to BLM on land use planning and management of the public lands. Public nominations will be considered until May 21, 2000. The Federal Land Policy and Management Act (FLPMA) directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, members appointed to the RAC must be balanced and representative of the various interests concerned with the management of the public lands. These include three categories:

*Category One*—Holders of federal grazing permits and representatives of energy and mineral development, timber industry, transportation or rights-of-way, off-highway vehicle use, and commercial recreation;

*Category Two*—Representatives of nationally or regionally recognized environmental organizations, archaeological and historic interests, dispersed recreation, and wild horse and burro groups;

*Category Three*—Holders of State, county or local elected office, employees of a State agency responsible for management of natural resources, academicians involved in natural sciences, representatives of Indian tribes, and the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State of California. Nominees will be evaluated based on their education, training, and experience and their knowledge of the geographical area of the RAC. Nominees should have demonstrated a commitment to collaborative resource decision making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications.

There are four vacancies on the Central California RAC; one in Category One, one in Category Two, and two in Category Three. Nominations should be sent to: Larry Mercer, Bakersfield Field Office, BLM, 3801 Pegasus Avenue, Bakersfield, CA 93308, telephone: 661–391–6000.

Dated: May 2, 2000.

**Ron Fellows,**

*Field Manager.*

[FR Doc. 00–11966 Filed 5–11–00; 8:45 am]

**BILLING CODE 4310–40–M**

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–958–6333–ET; GPO–0159; OR–52939]**

### Public Land Order No. 7445; Withdrawal of Public Lands for the Row River Trail; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public land order.

**SUMMARY:** This order withdraws 189.31 acres of public lands from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect the Row River Trail. An additional 11.41 acres of non-Federal lands, if acquired by the United States, would also be withdrawn by this order. The public lands have been and will remain open to mineral leasing.

**EFFECTIVE DATE:** May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965; 503–952–6189.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Row River Trail:

**Willamette Meridian**

T. 21 S., R. 1 W.,

Sec. 31, lot 2 of Tract No. 38.

And portions of the lands as more particularly described in the Lane County Oregon Deed Records as the Donation Deed, Reception No. 9462054 dated August 25, 1994, and recorded on August 25, 1994, Reel 1986R; the Donation Deed, Reception No. 9858998 dated March 18, 1998, and recorded on July 27, 1998, Reel 2446R; the Correction Donation Deed, Reception No. 99019928 dated February 4, 1999, and recorded on March 4, 1999, Reel 2523R; and the Donation Deed, Reception No. 99020855 dated January 26, 1999, and recorded on March 8, 1999, Reel 2524R, which lands traverse the following:

**Willamette Meridian**

T. 21 S., R. 1 W.
T. 22 S., R. 1 W.
T. 20 S., R. 2 W.
T. 20 S., R. 3 W.
T. 21 S., R. 3 W.

The areas described aggregate approximately 189.31 acres in Lane County.

2. Portions of the following described non-Federal lands, if acquired by the United States, will be subject to the terms and conditions of this withdrawal as described in paragraph 1:

**Willamette Meridian**

T. 21 S., R. 1 W.,
Sec. 19, lot 1;
Sec. 31, lot 1 of Tract 38, and SE¼NE¼;
Sec. 32, W½NW¼.

The areas described aggregate approximately 11.41 acres in Lane County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: May 4, 2000.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

[FR Doc. 00–11995 Filed 5–11–00; 8:45 am]

BILLING CODE 4310–33–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–960–9820–BJ–ES03] ES–50670, Group 199, Florida**

### Notice of Filing of Plat of Survey; Florida

The plat of the dependent resurvey of a portion of the south boundary of the Moses E. Levy Grant, a portion of the south and north boundaries, the east boundary, a portion of the subdivisional lines and the corrective dependent resurvey of a portion of the subdivisional lines, Township 17 South, Range 27 East, Tallahassee Meridian, Florida, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on June 12, 2000.

The survey was requested by the U.S. Forest Service.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., June 12, 2000.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: April 27, 2000.

**Stephen G. Kopach,**

*Chief Cadastral Surveyor.*

[FR Doc. 00–11965 Filed 5–11–00; 8:45 am]

BILLING CODE 4310–GJ–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–952–00–1420–BJ]**

### Notice of Filing of Plats of Survey; New Mexico

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The plats of survey described below are scheduled to be officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, (30) thirty calendar days from the date of this publication.

**New Mexico Principal Meridian, New Mexico:**

T. 29 N., R. 15 W., approved April 20, 2000, for Group 955 NM;
T. 29 N., R. 14 W., approved April 25, 2000, for Group 955 NM;
T. 29 N., R. 16 W., approved May 1, 2000, for Group 955 NM;
T. 14 S., R. 10 E., approved April 27, 2000, for Group 962 NM;
T. 21 N., R. 6 E., approved April 27, 2000, for Group 73 OK;

Amended Protraction Diagrams for Tps. 7–12 S., R. 21 W., approved May 4, 2000;

If a protest against a survey, as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plats represent dependent resurveys, surveys, and subdivisions.

These plats will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: May 4, 2000.

**James D. Claflin.**

*Acting Chief Cadastral Surveyor for New Mexico.*

[FR Doc. 00–11916 Filed 5–11–00; 8:45 am]

BILLING CODE 4310–FB–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Draft Legislative Environmental Impact Statement Timbisha Shoshone Homeland Death Valley National Park; Notice of Availability

**SUMMARY:** Pursuant to § 102(2)c of the National Environmental Policy Act of 1969 (Public Law 91–190, as amended), and the Council on Environmental Quality regulations (40 CFR Part 1500–1508), at the request of the Department of the Interior, the National Park Service, in cooperation with the Bureau of Land Management, Fish and Wildlife Service, and the Bureau of Reclamation has prepared a Draft Legislative Environmental Impact Statement (LEIS) identifying and evaluating two alternatives for a Timbisha Shoshone Homeland within and around Death Valley National Park, California. Potential impacts and appropriate mitigation strategies are identified and

assessed for each alternative. Establishing the proposed Homeland would entail specific legislation. If approved, the plan will guide management actions in the transfer of lands and the development of cooperative agreements.

**PROPOSAL:** The proposed Timbisha Shoshone Homeland (Alternative A-Preferred) would transfer approximately 7,500 acres of federal lands (currently managed by Death Valley National Park and the Bureau of Land Management in California and Nevada) into trust with the Department of the Interior for the creation of a tribal homeland. Permission would be sought for acquisition of two parcels of approximately 120 acres of former Indian allotted lands in Saline Valley, California, and approximately 2,430 acres near Lida, Nevada, from private owners, as willing sellers.

**Alternatives**

Alternative B maintains the status quo, as described in Chapter 3, Description of Environment and Affected Resources. It provides a baseline from which to compare and evaluate the magnitude of proposed changes, and to measure the foreseeable environmental effects of those changes. This no-action concept follows the guidance of the Council on Environmental Quality, which describes the no-action alternative as no change from the current management direction or level of management intensity.

**Planning Background**

The draft Timbisha Shoshone Homeland LEIS was prepared pursuant to the National Environmental Policy Act. Although scoping is not required for the preparation of a LEIS, an understanding of public concerns was desired. Accordingly, a notice of availability was published in the National Register on April 19, 1999 announcing to the public the opportunity of commenting on the Draft Secretarial Report. The release of the report assisted the agencies in gathering public input, which aided in the analysis subsequently undertaken in preparing the LEIS. In addition, six public meetings were conducted and five informational meetings were held at the request of state congressional delegations and county commissioners and supervisors. Over 550 letters were received during the public review period providing details on a wide spectrum of regulatory, socioeconomic, and environmental issues. A Scoping Summary document was prepared to identify issues directly related to resource management and the regulatory process to be addressed in the LEIS. In October 1999, a copy of the 11-page Scoping Summary Document was mailed to everyone who attended the public meetings or commented during the process.

**Public Meetings**

At this time, it is anticipated that four public meetings will be held during June, 2000. Confirmed dates, times, and locations will be posted on the internet (see below), and published in local and regional newspapers several weeks in advance. Participants are encouraged to review the document prior to attending a meeting. Representatives from the Department of Interior, Timbisha Shoshone Tribe, Death Valley National Park, and the Bureau of Land Management will attend all sessions to present the draft Timbisha Shoshone Homeland LEIS, to receive oral and written comments, and to answer questions.

**Comments**

The draft Timbisha Shoshone Homeland LEIS will be sent directly to the project mailing list. Copies will be available at park headquarter at Furnace Creek, field offices of BLM Ridgecrest, California and Tonopah, Nevada, and at local and regional libraries. Also, volume 1 of the LEIS will be posted on the internet at http://www3.iwvisp.com/blm/report. Written comments must be postmarked or transmitted by e-mail not later than 60-days after EPA publishes its "Friday listing" of the filing of the LEIS (anticipated deadline being approximately July 22, 2000) and should be addressed to the Superintendent, Death Valley National Park, P.O. Box 579, Death Valley, California 92328.

All comments received will be available for public review in the parks library. If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently in the beginning of the comments. There may also be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses, and anonymous comments may not be considered.

**Decision Process**

Depending upon the degree of public interest and response from other agencies and organizations, at this time it is anticipated that the Final Timbisha Shoshone Homeland LEIS will be completed during the late summer-early fall of 2000. Availability of the document will be duly noticed in the **Federal Register**. Subsequently, notice of an approved Record of Decision would be published in the **Federal Register** not sooner than thirty (30) days after the final document is distributed. This is expected to occur by late fall 2000.

The Department officials responsible for approval are: the Assistant Secretary for Fish, Wildlife and Parks; the Assistant Secretary for Land and Minerals Management; and the Assistant Secretary for Indian Affairs. It is anticipated that the proposal would be submitted by the Secretary of the Interior to Congress for consideration. If enacted, the National Park Service officials responsible for implementation would be the Superintendent, Death Valley National Park and the Regional Director, Pacific West Region; as well as the State Directors, Bureau of Land Management, Nevada and California; the Assistant Secretary for Indian Affairs; and the Bureau of Indian Affairs, Central California Agency.

Dated: May 5, 2000.

**John J. Reynolds,**

*Regional Director, Pacific West Region.*

[FR Doc. 00–11954 Filed 5–11–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Adoption of Proposed Leasing Regulations/Guidelines for the El Portal Administrative Site, Yosemite National Park, Mariposa County, California; Notice of Extended Public Comment

**SUMMARY:** The National Park Service is responsible for management and administration of the El Portal Administrative Site. To facilitate such activities the Superintendent of Yosemite National Park, acting on behalf of the Secretary of the Interior, has been authorized to issue leases for Administrative Site lands, subject to terms, conditions, and guidelines appropriate for proper administration, protection, and development of the site. The proposed lease guidelines set forth eligibility qualifications for those seeking to acquire a lease, process to be

used to establish lease fees, and circumstances under which the Superintendent may acquire unexpired leases.

**Reference**

Public Law 85–922 of September 2, 1958, Public Law 90–409 of July 21, 1968 and Public Law 99–542 of October 27, 1986, as codified in Title 16 United States Code Sections 47–1 through 47–6.

**Comments**

The original comment period ended April 25, 2000. The extended comment period shall end June 30, 2000. Requests for a copy of the proposed leasing program, or written comments, should be addressed to: Superintendent, Yosemite National Park, c/o Office of Special Park Uses, P.O. Box 700, El Portal, California, 95318. If individuals submitting comments request that their name or/and address be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently at the beginning of the comments. There also may be circumstances wherein the NPS will withhold a respondent's identity as allowable by law. As always: NPS will make available to public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses; and, anonymous comments may not be considered.

Dated: May 3, 2000.

**Cynthina Ip,**

*Acting Regional Director, Pacific West Region.*

[FR Doc. 00–11953 Filed 5–11–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree, Under the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on April 28, 2000 a proposed Amendment Consent Decree in Civil Action No. 99–2673–Civ–T–24B was lodged with the United States District Court for the Middle District of Florida.

In this action the United States sought injunctive relief and recovery of response costs under Sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607, with respect to the Stauffer Chemical Superfund Site in Tarpon Springs, Florida ("the Site").

Under the proposed Amended Consent Decree, Atkemix Thirty-Seven, Inc., the present owner and operator of the Site, and Aventis CropScience USA, Inc., formerly Rhone-Poulenc Ag Company, Inc., the former owner and operator of the Site, have agreed to perform the remedy chosen by EPA to clean up the Site, pay the government's remaining past response costs, and pay future response costs, in settlement of the government's claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20044–7611, and should refer to *Untied States* v. *Atkemix Thirty-Seven, Inc., and Rhone-Poulenc Ag. Company, Inc.*, (M.D. Fl.) DOJ# 90–11–2–1227/1.

The proposed consent decree may be examined at the Office of the United States Attorney, 400 North Tampa Street, Suite 3200, Tampa, Florida 33602, the Region 4 Office of the Environmental Protection Agency, 61 Forsythe Street, Atlanta, Georgia 30303, and at the Consent Decree Libra, Post Office Box 7611, Washington, DC 20044–7611. A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, Post Office Box 7611, Washington, DC 20044–7611. In requesting a copy please refer to the referenced case and enclose a check and enclose a check in the amount of 25 cents per page for reproduction costs, payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–12036 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to The National Cooperative Research and Production Act of 1993—Application Service Provider Industry Consortium, Inc.

Notice is hereby given that, on October 21, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Application Service Provider Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Xevo, Sudbury, MA; New Millenium Games, Inc., Reno, NV; Applicant, Inc., Seattle, WA; Cable & Wireless, Vienna, VA; Mi8 Corporation, New York, NY; Panoptic Technology Services, Inc., Cambridge, MA; Northpoint Communications, Inc., San Francisco, CA; 3Com Corporation, Santa Clara, CA; MultiEmedia.com, Caulfield North Victoria, Australia; StorageNetworks, Inc., Waltham, Ma; Clarus Corporation, Suwanee, GA; Envive Corporation, Mountain View, CA; SalesLogix Corporation, Scottsdale, AZ; HotOffice Technologies, Inc., Boca Raton, FL; Geneer, Des Plaines, IL; Pilot Network Services, Inc., Alameda, CA; Logix Communications Corp., Oklahoma City, OK; Telcordia Technologies, Piscataway, NJ; Centillion Data Systems, Inc., Indianapolis, IN; IntraLinks, New York, NY; Enterprise Networking Systems, Inc., Redwood City, CA; Workscape, Inc., Natick, MA; Aegis Consulting, LLC, Bethesda, MD; Allaire Corporation, Cambridge, MA; COBRA Computing By Remote Access, Amsterdam, The Netherlands; ITNET, Birmingham, United Kingdom; Thin Client Organization, LLC, Woodinville, WA; Argus Systems Group, Inc., Savoy, IL; Jato Communications, Denver, CO; Sound Computer Services, Altoona, PA; Prefersoft Solutions, Inc., Scotts Valley, CA; Pivotal Corporation, Kirkland, WA; Organicnet, Inc., San Francisco, CA; United Messaging Inc., Malvern, PA; Ten North Software, San Francisco, CA; @ccelerate Software, Inc., San Jose, CA; NexBase, Inc., Sunnyvale, CA; SAGA SOFTWARE, Inc., Reston, VA; INTEGRATION Ltd., Middlesex, United Kingdom; Princeton Financial Systems, Princeton; NJ; Concentric Network, San Jose, CA; TeleVideo, Inc., San Jose CA; LightPC.com, New York, NY; OPTIKA Technologies, Kuala Lumpur, Malaysia, CyberTech Systems, Inc., Trevose, PA; QSP Inc., Raleigh, NC; Infointeractive Inc., Bedford, Nova Scotia, Canada, Evalis AG, Koln, Germany; Legato Systems, Inc., Palo Alto, CA; Neteos, Inc., Burlington, MA; Captura Software, Inc., Bothell, WA; NIS Compulink Groupe Bull, Le Pecq-France; Localog, Paris, FRANCE; @tlas e-Solutions, Inc.; San Francisco, CA; Equant, Shalford, Guildford Surrey, United Kingdom; Syntacom IT-Services Inc., Waltham, MA; Choice Logis Corporation,

Millburn, NJ; Hitachi Data Systems, Santa Clara, CA; Arqana Technologies, Mississauga, Ontario, Canada; InfoStream ASA, Oslo, Norway; NTT Communicationware Corp., Chiba-shi, Chiba, Japan; eALITY, Inc., Foster City, CA; Anacomp, Inc., Poway, CA; APC (American Power Conversion), West Kingston, RI; Solect Technology Group, Toronto, Ontario, Canada; AppNet, Inc., Bethesda, MD; Virtual Source, Inc., Ventura, CA; TabWare Software, Greenville, SC; KPMG, LLP, Malvern, PA; J.D. Edwards & Co., Denver CO; Cybersource Corporation, San Jose, CA; Technology Solutions Company, Chicago, IL; Elite Information Group, Inc., Los Angeles, CA; On the Go Software, Sunnyvale, CA; 2ndWave, Dallas, TX; ASP Global Ltd., Salford, Manchester, United Kingdom; onShore, Inc., Chicago, IL; WinStar, New York, NY; Exenet Technologies, Inc., New York, NY; Design Automation Systems, Inc., Houston, TX; The TriZetto® Group, Newport Beach, CA; CollegeNET, Inc., Portland, OR; Capstan Systems, Inc., San Francisco, CA; Epicor Software Corporation, Irvine, CA; Peachtree Software, Inc., Norcross, GA; Stratech Limited, Singapore, Republic of Singapore; NightFire Software, Inc., Berkeley, CA; Campio Communications, Inc., Santa Clara, CA; and SPG, Chicago, IL have been added as parties to this venture. Also, Xanthon, Inc., Salt Lake City, UT; and Sound Computer Services, Altoona, PA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Application Service Provider Industry Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On July 28, 1999, Application service Provider industry Consortium, Inc. filed its original notification pursuant to section 6(a) of the Act. A notice has not yet been published in the **Federal Register.**

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–12046 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Center for Waste Reduction Technologies ("CWRT"): Inherent Safety and Pollution Prevention Project

Notice is hereby given that, on October 8, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Center for Waste Reduction Technologies ("CWRT"): Inherent Safety and Pollution Prevention Project has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Center for Waste Reduction Technologies, New York, NY; Center for Chemical Process Safety, New York, NY; American Institute of Chemical Engineers, New York, NY; Bristol-Meyers Squibb Co, New York, NY; E.I. Du Pont de Nemours & Co., Wilmington, DE; General Electric Company, Schenectady, NY; Kellogg Brown & Root, Houston, TX; Merck & Company, Whitehouse Station, NJ; Minnesota Mining & Manufacturing Co., St. Paul, MN; Novartis Corp., Summit, NJ; Rohm & Haas Co., Philadelphia, PA; and SmithKline Beecham Corp., King of Prussia, PA. The nature and objectives of the venture are to increase awareness of practitioners in the chemical process industry of the benefits of inherent safety and pollution prevention and to maximize economic return by minimizing risk and environmental impact. The project will have two phrases: (1) To develop an integrated inherent safety and pollution prevention methodology that can be applied to drive continuous improvement in processes and achieve profitability and product performance objectives; (2) to accelerate inherent safety and pollution prevention methodologies into process industries by employing "best practices" as examples and to develop a relevant "training course".

Participation in this venture will remain open to all qualified persons and organizations. The Participants intend to file additional written notification disclosing all changes in membership.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–12042 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—IAP Research, Inc.: Electromagnetic Dynamic Compaction II

Notice is hereby given that, on October 1, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IAP Research, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are IAP Research, Inc., Dayton, OH; General Motors Powertrain, Pontiac, MI; Zenith Sintered Products, Germantown, WI; and Delphi, Anderson, IN. The nature and objectives of the venture are to conduct research on Electromagnetic Dynamic Compaction. The activities of this project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–12038 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Management of Accelerated Technology Insertion II (MATI II)

Notice is hereby given that, on October 15, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Management of Accelerated Technology

Insertion II (MATI II) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are The Coca-Cola Company, Atlanta, GA; Ford Motor Company, Redford, MI; IBD Inc., Winnetka, IL; Kellogg Company, Battle Creek, MI; Kraft Foods, Glenview, IL; Lucent Technologies, Murray Hill, NJ; McDonald's Corporation, Warrenville, IL; Redex Packaging Corporation, Schaumburg, IL; Rohm and Haas Company, Spring House, PA; and U.S.G. Corporation, Chicago, IL. Technologies Research Corporation of Ann Arbor, MI, has been engaged to administer the venture on behalf of the participants. The nature and objectives of the venture are to undertake research and development activities focusing on managing insertion 1f advanced technology.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–12047 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Multiservice Switching Forum ("MSF")

Notice is hereby given that, on October 12, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Multiservice Switching Forum ("MSF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, France Telecom, Lannion Cedex, FRANCE has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Multiservice Switching Forum ("MSF") intends to file additional written notification disclosing all changes in membership.

On January 22, 1999, Multiservice Switching Forum ("MSF") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28519).

The last notification was filed with the Department on July 1, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–12037 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum ("PERF")

Notice is hereby given that, on October 20, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petroleum Environmental Research Forum ("PERF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Canadian Petroleum Products Institute, Toronto, Ontario, Canada has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Petroleum Environmental Research Forum ("PERF") intends to file additional written notification disclosing all changes in membership.

On February 10, 1986, Petroleum Environmental Research Forum ("PERF") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 14, 1986 (51 FR 8903).

The last notification was filed with the Department on June 2, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on December 2, 1999 (64 FR 67590).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–12040 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum ("PERF") Project

Notice is hereby given that, on October 21, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Exxon Research & Engineering Company ("ER&E") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Exxon Research and Engineering Company, Florham Park, NJ; Phillips Petroleum Company, Bartlesville, OK; Sunoco, Inc., Philadelphia, PA; Mobil Technology Company, Paulsboro, NJ; Conoco, Inc., Ponca City, OK; CITGO, Corpus Christi, TX; and BP-Amoco Oil International, Ltd., Middlesex, United Kingdom. The nature an objectives of the venture are the development of guidelines for carbon steel metallurgy and welding procedures for HF alkylations plants. Participation in this project will remain open until issuance of the final project report. The participants intend to file additional written notifications disclosing all changes in membership.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–12043 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–11–M

**DEPARTMENT OF JUSTICE**

**Antitrust Division**

**Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corporation ("POSC")**

Notice is hereby given that, on October 25, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, PIDX Petroleum Industry Data Exchange, Findlay, OH has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Petrotechnical Open Software Corporation ("POSC") intends to file additional written notification disclosing all changes in membership.

On January 14, 1991, Petrotechnical Open Software Corporation ("POSC") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991 (56 FR 5021).

The last notification was filed with the Department on August 3, 1999. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–12045 Filed 5–11–00; 8:45 am]

**BILLING CODE 4410–11–M**

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**DEPARTMENT OF JUSTICE**

**Antitrust Division**

**Notice Pursuant to the National Cooperative Research and Reproduction Act of 1993—Rotorcraft Technology Association, Inc. ("RITA")**

Notice is hereby given that, on November 24, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Rotorcraft Technology Association, Inc. ("RITA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Arizona State University, Tempe, AZ; Ohio Aerospace Institute, Cleveland, OH; University of California, Los Angeles, CA; University of Texas at Arlington, Arlington, TX; and West Virginia University, Morgantown, WV have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Rotorcraft Technology Association, Inc. ("RITA") intends to file additional written notification disclosing all changes in membership.

On September 28, 1995, Rotorcraft Technology Association, Inc. ("RITA") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 3, 1996 (61 FR 14817).

The last notification was filed with the Department on January 7, 1999. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on March 19, 1999 (64 FR 13605).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–12041 Filed 5–11–00; 8:45 am]

**BILLING CODE 4410–11–M**

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**DEPARTMENT OF JUSTICE**

**Antitrust Division**

**Notice Pursuant to the National Cooperative Research and Production Act of 1993—Secure Digital Music Initiative ("SDMI")**

Notice is hereby given that, on October 4, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Secure Digital Music Initiative ("SDMI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Bose Corporation, Framingham, MA; Canadian Audiotrak, Toronto, Canada; Casio, Tokyo, Japan; Cinram International, Inc., Scarborough, Ontario, Canada; Digital River Inc., Eden Prairie, MN; Gemplus Corporation, Montgomeryville, PA; General Instrument, Horsham, PA; Intervu, Inc., San Diego, CA; Lexar Media, Inc., Fremont, CA; Media Fair, Inc., Monterey Park, CA; Micronas Semiconductors, Inc., San Jose, CA; Nokia UK Limited, London, England; Packard Bell NEC, Inc., Sacramento, CA; Philips, Briarcliff Manor, NY; Plug 'n Play Technologies, Inc., Hauppauge, NY; Portal Player, Inc., Saratoga, CA; Pricewaterhouse Coopers, Tampa, FL; Qdesign, Vancouver, B.C., Canada; Saehan Information Systems Co., LTD, Seoul, South Korea; Softlock Services, Rochester, NY; Sonic Foundry, Inc., Madison, WI; SpectraNet Communications, Inc.—ThrottleBox, Johnson City, NY; Sun Microsystems, Palo Alto, CA; Telian Corporation, Kyonggi, South Korea; WavePhore, Phoenix, AZ; and Xerox Corp., Rochester, NY have been added as parties to this venture. Also Emusic.com, Inc., Redwood City, CA has change its name to GoodNoise Corporation.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Secure Digital Music Initiative ("SDMI") intends to file additional written notification disclosing all changes in membership.

On June 28, 1999, Secure Digital Music Initiative ("SDMI") filed its original notification pursuant to section 6(a) of the Act. A notice has not yet been published in the **Federal Register**.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–12044 Filed 5–11–00; 8:45 am]

**BILLING CODE 4410–11–M**

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**DEPARTMENT OF JUSTICE**

**Antitrust Division**

**Notice Pursuant to the National Cooperative Research and Production Act of 1993—United Technologies Research Center ("UTRC"): Open Software Tools for Condition Based Maintenance**

Notice is hereby given that, on October 19, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), United Technologies Research Center ("UTRC") has filed written notifications simultaneously with the Attorney

General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are United Technologies Corporation ("UTC"), Hartford, CT; and i2 Federal, Inc., Irving, TX. The nature and objectives of the venture are to engage in cooperative research and development in the area of Open Software Tools for Condition Based Maintenance pursuant to an Advanced Technology Program with the National Institute of Standards and Technology.

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–12048 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Antitrust Division

### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Water Heater Industry Joint Research and Development Consortium

Notice is hereby given that, on December 3, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Water Heater Industry Joint Research and Development Consortium ("the Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, A. O. Smith Water Products Company, a division of A.O. Smith Corporation, Irving, TX has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Consortium intends to file additional written notification disclosing all changes in membership.

On February 28, 1995, the Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 27, 1995 (60 FR 15789).

The last notification was filed with the Department on March 17, 1999. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 1, 1999 (64 FR 53416).

**Constance K. Robinson,**

*Director of Operations, Antitrust Division.*

[FR Doc. 00–12039 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–11–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Danilo Abud-Sanchez, M.D.; Revocation of Registration

On August 5, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Danilo Abud-Sanchez, M.D., of Paramount, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BA3042657 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of his registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of California. The order also notified Dr. Abud-Sanchez that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

DEA first sent the Order to Show Cause to Dr. Abud-Sanchez at his registered location, and it was returned unclaimed. Next, the Order to Show Cause was sent to Dr. Abud-Sanchez at a residential address, and it too was returned unclaimed. DEA investigators then contacted Dr. Abud-Sanchez' legal counsel who indicated that he would accept service of the Order to Show Cause on behalf of Dr. Abud-Sanchez. The Order to Show Cause was sent to Dr. Abud-Sanchez' legal counsel and DEA received a signed receipt indicating that the Order to Show Cause was received on October 25, 1999.

No request for a hearing or any other reply was received by DEA from Dr. Abud-Sanchez or anyone purporting to represent him in this matter. Therefore, the Deputy Administrator, finding that (1) 30 days have passed since the receipt of the Order to Show Cause, and (2) no request for a hearing having been received, concludes that Dr. Abud-Sanchez is deemed to have waived his hearing right. After considering material from the investigative file in this matter, the Deputy Administrator now enters his final order without a hearing pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that Dr. Abud-Sanchez currently possesses DEA Certificate of Registration BA3042657 issued to him in California. The Deputy Administrator further finds that effective February 17, 1997, the Medical Board of California revoked Dr. Abud-Sanchez' license to practice medicine. Dr. Abud-Sanchez did not present any evidence that his medical license has since been reinstated in California and there is no such evidence in the investigative file. Therefore, the Deputy Administrator finds that Dr. Abud-Sanchez is not currently authorized to practice medicine in the State of California and as a result, it is reasonable to infer that he is also not authorized to handle controlled substances in that state.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See U.S.C. 802(21), 832(f) and 824(a)(3). This prerequisite had been consistencly upheld. See Romeo. J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 70,728 (1996); Domminick A. Ricci, M.D., 58 FR 51,104 (1993).

Here it is clear that Dr. Abud-Sanchez is not currently authorized to handle controlled substances in the State of California. As a result, he is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BA3042657, previously issued to Danilo Abud-Sanchez, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective June 12, 2000.

Dated: May 4, 2000.

**Donnie R. Marshall,**

*Deputy Administrator.*

[FR Doc. 00–11887 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

[Docket No. 99–24]

### Robert P. Doughton, M.D.; Denial of Application

On April 14, 1999, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Robert P. Doughton, M.D. (Respondent) of Portland, Oregon, notifying him of an opportunity to show cause as to why DEA should not deny his application for a DEA Certificate of Registration as a practitioner pursuant to 21 U.S.C. 823(f), for reason that his registration would be inconsistent with the public interest.

DEA received a request for a hearing from Respondent on May 28, 1999, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing commenced on November 3, 1999, in Portland, Oregon. Due to an emergency situation in the courtroom that occurred in the midst of the hearing, Judge Bittner indefinitely postponed the hearing.

On November 10, 1999, the Government filed a Motion for Summary Disposition, alleging that Respondent is not currently authorized to handle controlled substances in Oregon, the state where he seeks registration with DEA. Judge Bittner gave Respondent an opportunity to file a response to the Government's motion, however no such response was filed.

On December 22, 1999, Judge Bittner issued her Opinion and Recommended Decision finding that Respondent lacks authorization to handle controlled substances in the State of Oregon; granting the Government's Motion for Summary Disposition; and recommending that Respondent's application for a DEA Certificate of Registration be denied. Neither party filed exceptions to her Opinion and Recommended Decision, and on January 24, 2000, Judge Bittner transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Deputy Administrator finds that Respondent submitted an application for a DEA Certificate of Registration in Schedules IV and V at an address in Portland, Oregon. The Deputy Administrator further finds that the Oregon Board of Medical Examiners issued on Order on October 15, 1999, suspending Respondent's medical license. Respondent did not offer any evidence to dispute the suspension of his Oregon medical license. Therefore, the Deputy Administrator finds that Respondent is not currently authorized to practice medicine in the State of Oregon and as a result, it is reasonable to infer that he is also not authorized to handle controlled substances in that state.

DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. See 21 U.S.C. 802(21), 823(f), and 824(a)(3). This prerequisite has been consistently upheld. See Romeo J. Perez, M.D., 62 FR 16,193 (1997); Demetris A. Green, M.D., 61 FR 60,728 (1996); Dominick A. Ricci, M.D., 58 FR 51,104 (1993).

Respondent has not denied that he is not currently authorized to handle controlled substances in Oregon. Since Respondent lacks this state authority, he is not entitled to a DEA registration in that state.

In light of the above, Judge Bittner properly granted the Government's Motion for Summary Disposition. The parties did not dispute the fact that Respondent is currently unauthorized to handle controlled substances in Oregon. It is well-settled that when no question of material fact is involved, aplenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See Gilbert Ross, M.D., 61 FR 8664 (1996); Philip E. Kird, M.D., 48 FR 32,887 (1983), aff'd sub nom Kird v. Mullen, 749 F.2d 297 (6th Cir. 1984); NLRB v. International Association of Bridge, Structural and Ornamental Ironworkers, AFL–CIO, 549 F.2d 634 (9th Cir. 1977).

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for a DEA Certificate of Registration submitted by Robert P. Doughton, M.D., be, and it hereby is, denied. This order is effective June 12, 2000.

Dated: May 4, 2000.

**Donnie R. Marshall,**

*Deputy Administrator.*

[FR Doc. 00–11886 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 29, 2000, Dupont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application by renewal to the Drug Enforcement Administration (DEA) for registration as bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Oxycodone (9143) | II |
| Hydrocodone (9193) | II |
| Oxymorphone (9652) | II |

The firm plans to manufacture the listed controlled substances to make finished products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registered.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control. Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 11, 2000.

Dated: May 1, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug, Enforcement Administration.*

[FR Doc. 00–11891 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on December 21, 1999, Johnson Matthey, Inc., Custom Pharmaceuticals Department, 2003

Nolte Drive, West Deptford, New Jersey 08066, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I |
| Difenoxin (9168) | I |
| Propiram (9649) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Methylphenidate (1724) | II |
| Codeine (9050) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Hydrocodone (9193) | II |
| Meperidine (9230) | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Alfentanil (9737) | II |
| Sufentanil (9740) | II |
| Fentanyl (9801) | II |

The firm plans to manufacture the listed controlled substances in bulk to supply final dosage form manufacturers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 11, 2000.

Dated: May 1, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–11892 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 21, 2000, Lifepoint, Inc., 10410 Trademark Street, Rancho Cucamonga, California 91730, made application by renewal to the Drug Enforcement Administration (DEA) for the registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Phencyclidine (7471) | II |
| Benzoylecgonine (9180) | II |
| Morphine (9300) | II |

The firm plans to use gram quantities of the listed controlled substances to manufacture drug abuse test kits.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 11, 2000.

Dated: April 21, 2000.

**John H. King,**

*Deputy Assistant Administrator Office of Diversion Control Drug Enforcement Administration.*

[FR Doc. 00–11888 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Important of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substance Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the important of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on February 27, 2000, Lipomed, Inc., One Broadway, Cambridge, Massachusetts 02142, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cathinone (1235) | I |
| Methaqualone (2565) | I |
| Lysergic acid diethylamide (7315) | I |
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| 3,4,5-Trimethoxyamphetamine (7390). | I |
| 4-Bromo-2, 5-dimethoxyamphetamine (7391). | I |
| 4-Methy1-2, 5-dimethoxyamphetamine (7395). | I |
| 2,5-Dimethoxyamphetamine (7396). | I |
| 2,5-Dimethoxy-4-ethylamphetamine (7399). | I |
| 3,4-Methylenedioxyamphetamine (7400). | I |
| 3,4-Methylenedioxy-N-ethylamphetamine (7404). | I |
| 3,4-Methylenedioxymethamphetamine (7405). | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| Acetyldihydrocodeine (9051) | I |
| Dihydromorphine (9145) | I |
| Heroin (9200) | I |
| Tilidine (9750) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Amobarbital (2125) | II |
| Secobarbital (2315) | II |
| Phencyclidine (7471) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Dihydroccodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Benzoylecgonine (9180) | II |
| Hydrocodone (9193) | II |
| Levorphanol (9220) | II |
| Methadone (9250) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Oxymorphone (9652) | II |
| Alfentanil (9737) | II |
| Fentanyl (9801) | II |

The firm plans to import small reference standard quantities of finished commercial product from its sister company in Switzerland for sale to its customers for drug testing and pharmaceutical research and development.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion

Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 12, 2000.

This procedure is to be conducted simultaneously with an independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import the basic classes of any controlled substances in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 25, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–11885 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on January 25, 2000, Mallinckrodt, Inc., Mallinckrodt & Second Streets, St. Louis, Missouri 63147, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Tetrahydrocannabinols (7370) | I |
| Dihydromorphine (9145) | I |
| Amphetamine (1100) | II |
| Methylphenidate (1724) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Diprenorphine (9058) | II |
| Etorphine Hydrochloride (9059) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Diphenoxylate (9170) | II |
| Hydrocodone (9193) | II |
| Levorphanol (9220) | II |
| Meperidine (9230) | II |
| Methadone (9250) | II |
| Methadone-intermediate (9254) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Opium extracts (9610) | II |
| Opium fluid extract (9620) | II |
| Opium tincture (9630) | II |
| Opium powdered (9639) | II |
| Opium granulated (9640) | II |
| Levo-alphacetylmethadol (9648) | II |
| Oxymorphone (9652) | II |
| Noroxymorphone (9668) | II |
| Alfentanil (9737) | II |
| Sufentanil (9740) | II |
| Fentanyl (9801) | II |

The firm plans to manufacture the controlled substances for distribution as bulk products to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 11, 2000.

Dated: April 21, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–11889 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

**[Docket No. 98–34]**

### Edson W. Redard, M.D., Continuation of Registration With Restrictions

On June 12, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Edson W. Redard, M.D. (Respondent) of Sacramento, California, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BR1670012 and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f), 824(a)(2) and (a)(4).

By letter dated June 26, 1998, Respondent, through counsel, filed a request for a hearing, and following prehearing procedures, a hearing was held in Sacramento, California on April 27 and 28, 1999, before Administrative Law Judge Mary Ellen Bittner. At the hearing both parties called witnesses to testify and introduced documentary evidence. After the hearing both parties submitted proposed findings of fact, conclusions of law and argument. On December 20, 1999, Judge Bittner issued her Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's registration not be revoked subject to two restrictions. Neither party filed exceptions to Judge Bittner's Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision, and on January 24, 2000, the record was transmitted to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the Opinion and Recommended Ruling, Findings of Fact, Conclusions of Law and Decision of the Administrative Law Judge, but includes additional restrictions on Respondent's continued registration. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

The Deputy Administrator finds that Respondent graduated from medical school in 1987, and in 1991 he began working as a family practitioner at a large multi-specialty clinic in Sacramento, California.

On August 27, 1997, a pharmacist called the California Department of Justice, Bureau of Narcotic Enforcement (BNE) and told an investigator that on May 20, 1997, Respondent had presented a prescription in the name of Donald Gram, for Vicodin ES, a Schedule III controlled substance. At that time, Respondent filled out a patient information form using the name Donald Gram. The pharmacist had previously met Respondent when she worked at another pharmacy, so she knew that this was not Respondent's name. Further investigation revealed that the address given to the pharmacist on the patient information form was Respondent's address.

The pharmacist told the investigator that Respondent had presented another prescription for Vicodin on July 25, 1997, which another pharmacist filled. The pharmacist further told the investigator that a pharmacy technician advised her that Respondent had presented controlled substance prescriptions in the name Carol Jordan.

Subsequently, the investigator obtained prescriptions issued to Carol Jordan on Respondent's prescription forms from three different pharmacies. These prescriptions accounted for 1,510 dosage units of Vicodin ES for the period February 27, 1995 to August 26, 1997.

Thereafter on October 20, 1997, the pharmacist again contacted the investigator and advised him that Respondent had just presented two prescriptions, one for 80 dosage units of Vicodin ES and the other for a non-controlled substance, in the name of Donald Gram. The investigator also learned that on October 17, 1997, one of the other pharmacies had filled a prescription issued to Carol Jordan on Respondent's prescription form for 80 dosage units of Vicodin ES. A check of Department of Motor Vehicle records revealed no matches for the purported names and dates of birth of Donald Gram or Carol Jordan.

On November 24, 1997, a search warrant for Respondent's office, residence and car was executed. In Respondent's car, the investigators found prescription receipts and numerous empty prescription bottles in the names of Donald Gram and Carol Jordan. In the master bedroom of Respondent's residence, the investigators found empty prescription bottles and physician samples.

During the search an investigator with the Medical Board of California (Medical Board) interviewed a physician assistant whom Respondent supervised. The physician assistant admitted to calling in about four prescriptions for Vicodin for Respondent during the previous year using another physician's name.

Respondent cooperated with the investigators during the search, and admitted that he was addicted to Vicodin. Respondent told the Medical Board investigator that he was originally prescribed Vicodin for two or three months for a back problem. At some point he stopped taking the drug for approximately six months but resumed taking it sometime in 1995. Respondent told the Medical Board investigator that initially he took two or three tablets per day, but that as of the date of the search he was taking eight to twelve tablets per day. Respondent also admitted to taking Ionamin, Ambien, Doral, Brontex, and Xanax, all controlled substances. Further, Respondent admitted that he had issued prescriptions in the fictitious names Donald Gram and Carol Jordan; that he asked the physician assistant to call in prescriptions for him; and that he know that when the physician assistant called in those prescriptions the physician assistant indicated that they were authorized by another physician.

Following the execution of the search warrant, Respondent was arrested and charged with obtaining a controlled substance by fraud, prescribing for a non-patient, and possession of a controlled substance.

After Respondent's arrest, the Medical Board investigator continued her investigation of Respondent and discovered several additional prescriptions written prior to Respondent's arrest in the name of Donald Gram or Carol Jordan for a total of 720 dosage units of Vicodin or its generic equivalent. In addition the investigator found four prescriptions, each for 50 dosage units of Vicodin ES, that were called into a local pharmacy between July 23, 1996 and October 30, 1997. Three of these prescriptions were called in by the physician assistant and one was called in by a nurse practitioner at the clinic where Respondent was employed. All of these prescriptions indicated that they were authorized by a physician other than Respondent. The Medical Board investigator interviewed the physicians who allegedly authorized these prescriptions and they indicated that they had not authorized the prescriptions and were unaware that their names had been used.

On December 1, 1997, Respondent was arraigned in the Sacramento Superior/Municipal Court on three felony counts of obtaining and attempting to obtain hydrocodone by fraud. On March 9, 1998, Respondent pled nolo contendere to one count and the court ordered that he be diverted from further proceedings for an 18-month period. On March 18, 1998, the Sacramento County Probation Department ordered Respondent to obtain counseling from the Mexican-American Alcohol Program. Respondent testified that he successfully completed this program. On April 12, 1999, the court entered an order terminating Respondent's diversion, and ultimately dismissed the criminal proceedings.

On December 23, 1997, an interim suspension of Respondent's license to practice medicine was issued. Thereafter, on January 9, 1998, the Medical Board filed an Accusation against Respondent alleging that Respondent had written prescriptions for Vicodin for fictitious persons, asked a physician assistant to call in prescriptions for Vicodin purportedly on the authorization of another physician, admitted abusing Vicodin and other controlled substances, and tested positive for hydrocodone on November 24, 1997.

Effective March 19, 1998, Respondent and the Medical Board entered into an Agreement in Lieu of Discipline wherein Respondent agreed to enter and complete the Medical Board's Diversion Program and the Medical Board agreed to withdraw the Accusation upon Respondent's successful completion of that program. Respondent's authority to handle controlled substances was not limited.

On April 9, 1998, the Medical Board issued a Modification of Interim Suspension Order, permitting Respondent to return to the practice of medicine on condition that he be monitored by the Diversion Program, meet with the Diversion Evaluation Committee, and sign a Diversion Agreement after that meeting. In May 1998, Respondent formally entered the Medical Board's Diversion Program and on June 24, 1998, the Medical Board terminated the interim suspension of Respondent's medical license.

At the hearing in this matter, Respondent testified that he injured his back in 1991, and that after his physician stopped issuing him prescriptions for Vicodin, he took samples of the drug from his office. He also admitted that although Vicodin was his drug of choice, he also took samples of other drugs to avoid the symptoms of withdrawal. According to Respondent, his drug abuse intensified in 1995 during the breakup of his marriage. He became concerned that he was taking too many samples from his office, so he began issuing prescriptions using the fictitious names of Donald Gram and Carol Jordan. Respondent testified that he was relieved when he was arrested.

According to Respondent, upon his arrest he contacted that Medical Board's Diversion Program and began attending diversion group meetings. However, Respondent was concerned that it could take several months to be formally admitted to the Diversion Program, so on December 4, 1997, he voluntarily entered a hospital in Oregon that offered a treatment program for addicted physicians. Respondent was an inpatient at the hospital until March 13, 1998.

While Respondent was in treatment, the medical director of the clinic where he was employed sent Respondent a letter advising him that the clinic intended to terminate his employment, but because he was participating in a professional assistance program, the clinic would indefinitely suspend his termination if he entered into a Last Chance Agreement with the clinic. Respondent agreed to the terms of this Last Chance Agreement which requires Respondent, among other things, to (1)

Submit to a minimum of two random urine tests each month; (2) notify the medical director in writing of any prescriptions he has filled at any pharmacy; (3) abstain from consuming any controlled or mood-altering substances; (4) provide a certificate from both the court-ordered and Medical Board diversion programs stating that he has begun and, when applicable, completed a treatment program; and (5) participate in the diversion programs' recommended aftercare program. Respondent also agreed that he would not order or accept any controlled substance samples and that the agreement would be in effect for four years from February 26, 1998. There was testimony at the hearing that Respondent has complied with this Last Chance Agreement.

The Associate Medical Director for Quality Management at the clinic where Respondent is employed testified that the Credentialing Committee reviewed approximately 50 randomly selected records of patients that Respondent treated in the three months prior to his arrest, between 50 and 100 controlled substance prescriptions issued by Respondent between 1996 and 1999, and 50 patient records for the three months after Respondent returned to work following his suspension. This review did not disclose any problems with Respondent's practice of medicine. Further, none of the staff who worked with Respondent perceived that he engaged in any impaired behavior or inappropriate prescribing of medications.

As of the date of the hearing, Respondent was still participating in the Medical Board's Diversion Program. He regularly attends diversion meetings and undergoes random urine tests three to four times a month, which have all been negative. The staff of the Diversion Program believes that Respondent can safely practice medicine.

The Administrator of the Medical Board's Diversion Program testified that in order to successfully complete the program a physician must have a minimum of three years of continuous sobriety or abstinence, and must have implemented lifestyle changes that are sufficient to maintain the physician's abstinence and recovery. The Administrator testified that because Respondent has not been abstinent for three years he cannot be considered to have successfully completed the Diversion Program, but if he maintains the lifestyle changes he has made and continues to be abstinent, he will complete the program.

Respondent is also monitored by the Wellness Committee of the hospital where he sees patients. In addition, Respondent's physician manager and workplace monitor testified that he randomly reviews patient records after Respondent sees a patient and he has found no problem with the quality of care provided by Respondent. Several supervisors and/or colleagues testified that Respondent practices competently, he has never appeared to be under the influence of any substance, and his rehabilitation is progressing well.

Respondent testified that he has not abused drugs since November 24, 1997. Respondent further testified that although he is not proud of his addiction, he is proud that he was honest with investigators, he sought help, he admitted his shortcomings, and he has a support group that monitors his recovery and ability to practice on a daily basis.

According to Respondent, he needs a DEA registration in order to effectively treat his patients and in order to maintain his employment since the Last Chance Agreement with his current employer requires him to have an unrestricted ability to practice medicine.

Pursuant to 21 U.S.C. 824(a)(2), the Deputy Administrator may revoke a DEA Certificate of Registration upon a finding that the registrant has been convicted of a felony relating to controlled substances under state or Federal law. It is undisputed that on March 9, 1998, Respondent pled nolo contender in state court to one felony count of obtaining hydrocodone by fraud. The court granted a deferred entry of judgment and the criminal proceedings were dismissed after Respondent completed criminal diversion program.

Respondent contends that he was not convicted of a felony offense since no judgment was entered against him and the criminal proceedings were dismissed. The Deputy Administrator agrees with Judge Bittner that Respondent has been convicted of a controlled substance related felony offense for purposes of these proceedings.

DEA has consistently held that a plea of nolo contendere constitutes a "conviction" within the meaning of 21 U.S.C. 824(a)(2). See Clinton D. Nutt, D.O., 55 FR 30,992 (1990); Eric A. Baum, M.D., 53 FR 47,272 (1988). Further, DEA has held that there is still a "conviction" within the meaning of the Controlled Substances Act even if the proceedings are later dismissed. The Deputy Administrator agrees with Judge Bittner that any other interpretation would mean that "the conviction could only be considered between its date and the date of its subsequent dismissal * * * [which would be] inconsistent with holdings in other show cause cases that the passage of time since misconduct affects only the weight to be given the evidence" citing Mark Binette, M.D., 64 FR 42,977, 42,980 (1999); Thomas H. McCarthy, D.O., 54 FR 20,938 (1989), aff'd No. 89–3496 (6th Cir. Apr. 5, 1990).

Therefore, since Respondent has been convicted of a felony relating to controlled substances, the Deputy Administrator finds that grounds exist to revoke Respondent's DEA Certificate of Registration pursuant to 21 U.S.C. 824(a)(2).

Also, pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending applications, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable State, Federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration be denied. See Henry J. Schwarz, Jr., M.D., 54 FR 16,422 (1989).

Regarding factor one, it is undisputed that Respondent's license to practice medicine was suspended in December 1997. Subsequently the Medical Board filed an Accusation against Respondent and in March 1998, Respondent and the Medical Board entered into an Agreement in Lieu of Discipline wherein Respondent agreed to complete the Medical Board's Diversion Program. On April 9, 1998, the suspension order was modified to allow Respondent to return to the practice of medicine, but he was required to remain in the Diversion Program. No restrictions have been placed on Respondent's ability to handle controlled substances by the Medical Board. Therefore, Respondent

is authorized to practice medicine and handle controlled substances in California subject to his continued participation in the Medical Board's Diversion Program. But, as Judge Bittner stated, "inasmuch as State licensure is a necessary but not sufficient condition for a DEA registration, * * * this factor is not determinative."

As to factors two and four, Respondent's experience in handling controlled substances and his compliance with applicable laws, Respondent has admitted that he issued controlled substance prescriptions in fictitious names, took office samples of controlled substances, and used his authority over subordinates to obtain controlled substances. Clearly these actions violated 21 U.S.C. 843(a)(3) as well as California law. However, the Deputy Administrator finds that Respondents's behavior was motivated by his addiction to controlled substances for which he has since received extensive rehabilitative treatment.

As previously discussed, factor three is relevant since the Deputy Administrator finds that Respondent was convicted of a felony offense relating to controlled substances.

Regarding factor five, there is no question that Respondent abused controlled substances for several years prior to November 1997 when he was arrested. Particularly troubling to the Deputy Administrator is that Respondent abused these substances while performing his duties as a physician.

In light of Respondent's abuse of controlled substances, the methods he employed to obtain the drugs, and his felony conviction, the Deputy Administrator agrees with Judge Bittner that the Government has mad a prima facie case that Respondent's continued registration would be inconsistent with the public interest. Judge Bittner concluded however that while "Respondent's misconduct was obliviously egregious[,]" his testimony and that of his witnesses was credible "that Respondent now understands the gravity of his actions and is remorseful, that he had been conscientious in pursuing his recovery, and that he has a support network, including appropriate monitoring at his workplace, to assist him in those efforts."

Therefore, Judge Bittner recommended that Respondent be permitted to retain his DEA registration subject to the following restrictions:

1. For three years after issuance of a final order in this proceeding, Respondent shall not be employed as a physician with any entity that does not impose the same conditions on him that MedClinic imposed in the February 26, 1998, Last Chance Agreement.

2. Each calendar quarter, Respondent shall provide the Special Agent in Charge of the local DEA office (or that agent's designee) a list of all controlled substance prescriptions he has issued, including the patient's name and contact information, the name of the substance, the dosage form, strength, and quantity prescribed of the substance, and the number of refills authorized, if any.

The Deputy Administrator agrees with Judge Bittner that revocation of Respondent's DEA registration is not warranted. Respondent has accepted responsibility for his actions. He underwent extended inpatient treatment for his addiction, completed the court-ordered treatment program, and is still participating in the Medical Board's Diversion Program. His practice of medicine, as well as his continued recovery, is monitored by the Medical Board's Diversion Program, his employer through the Last Chance Agreement, and the hospital's Wellness Committee. However, the Deputy Administrator is troubled by the relatively short period of time that Respondent has been drug-free. Therefore, the Deputy Administrator concludes that additional restrictions should be imposed on Respondent's DEA Certificate of Registration in order to protect the public health and safety.

The Deputy Administrator concludes that Respondent's DEA Certificate of Registration should be continued subject to the following restrictions for three years from the effective date of this final order:

1. Respondent shall continue to participate in the Medical Board of California's Diversion Program regardless of whether the Medical Board authorizes the termination of his participation at an earlier date.

2. Respondent shall not practice medicine as a solo practitioner and he shall not be employed as a physician with any entity that does not impose the same conditions on him that MedClinic imposed in the February 26, 1998 Last Chance Agreement.

3. Upon request, Respondent shall submit copies of the results of his random urine screens to DEA.

4. Respondent shall not prescribe any controlled substances for himself or any immediate family member.

5. Each calendar quarter, Respondent shall provide to the Special Agent in Charge of the local DEA office, or his designee, a log of all controlled substances that he prescribes, dispenses or administers, including the patient's name and contact information, the name of the substance, the dosage form, strength and quantity prescribed, administered or dispensed, and the number of refills authorized on prescriptions, if any.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BR1670012, previously issued to Edson W. Redard, M.D., be and it hereby is continued, subject to the above described restrictions. This order is effective June 12, 2000.

Dated: May 4, 2000.

**Donnie R. Marshall,**

*Deputy Administrator.*

[FR Doc. 00–11890 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Solicitation for a Cooperative Agreement—Assessment of Institutional Culture

**AGENCY:** National Institute of Corrections, Department of Justice.

**ACTION:** Solicitation for a cooperative agreement.

**SUMMARY:** The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY–2000 for a cooperative agreement to develop and document a methodology and process to assess institutional culture within prison settings.

**Background**

Beginning in 1996 the Prisons Division initiated a special emphasis on addressing staff sexual misconduct. NIC's approach to assisting agencies has included on-site technical assistance, training programs and dissemination of information. Throughout the extensive work with institutions in addressing staff sexual misconduct, consistent themes from correctional staff and the offender population underscore the importance of the institutional environment. Additional work at NIC in the area of mission change of institutions and the identification of the challenges of keeping an effective workforce also provide background for NIC's interest in institutional culture. Staff and inmate relations, consistent and fair supervisors, well trained staff, and strong institutional and agency

leadership teams are some of the components critical to a healthy environment highlighted by these projects. NIC's expanded interest in assessing institutional culture will be enhanced by this project's development of practical and data based assessment tools. The tools developed in this project to effectively assess an institution's culture will contribute to the next phase of NIC's strategic plan on Institutional Culture. These assessment tools will be used to develop strategic management plans for institutions that might include use of change agents, training and intensive assistance to influence or change an organization's culture.

**Project Scope**

The project on "Assessment of Institutional Culture" will provide for the development of methodology and a refinement of assessment tools for continuing NIC's ability to respond to correctional agencies in the critical area of institutional culture. The outcome of an institution specific cultural assessment process will provide critical information to correctional decision makers on managing complex dynamics within a prison environment.

The project objectives of this cooperative agreement are as follows:

- Conduct a review of work currently being managed within the NIC Prisons Division on staff sexual misconduct, mission change and prison workforce to more fully understand the assessment activities currently being used to assist agencies.
- Prepare a summary review of approaches being used by NIC, as well as other government and private organizations to assess cultural components or "drivers" of organizational or institutional culture. The review should include case examples with potential application to prison culture. Assessment components may include instrumentation, focus groups, on-site assessments and other cultural assessment tools. The review should include current thinking in the understanding of organizational culture and should recognize the complexity of collecting information in a custodial environment.
- Design a range of assessment tools/activities with suggested criteria for determining selection of these assessment activities based on possible presenting problems (e.g. increased institutional violence, high turnover, staff sexual misconduct) that are effective on an institutional level.
- Conduct on-site work at two facilities using recommended assessment tools. Facilities will be selected in consultation with NIC program manager.
- Develop a final report that documents the range of assessment tools or approaches with selection criteria or guidance for their use, documentation of the on-site work, and recommendations to NIC for further development of work in the area of institutional culture.

**Specific Requirements**

The successful applicant will propose a project approach that will ensure accomplishment of each of the stated objectives of this project. The applicant will assure that the project team offers technical expertise in the area of organizational or cultural assessment. The project design will reflect a prison based approach in understanding the application of current thinking in cultural assessment. Additional requirements include the following:

1. The selected applicant will be required to attend a preliminary meeting for the purposes of: an overview of current NIC work in the area of institutional culture; an overview of critical issues identified by practitioners; and a refinement of the project work plan.
2. Coordinate with NIC project director at critical points in the project.

**Authority:** Public Law 93–415

**Funds Available**

The award will be limited to $75,000 (direct and indirect costs) and project activity must be completed within 9 months of the date of award. The use of these funds does include the on-site work at two institutions and travel and per diem should be considered to accomplish these aspects of the project. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Prisons Division.

**Application Requirements**

Applications must prepare a proposal that defines their plan for meeting the goals and requirements of this project. They are expected to define the conceptual framework most appropriate and relevant and the methodology to be used in pursuing the project goals. In addition, they will identify a project staff in which all of the requisite skills are represented and who have made a commitment of time to the project. The proposal will demonstrate a practical and data based approach to effective assessment of institutional culture in prison settings.

**Deadline for Receipt of Applications**

Applications must be received by 4 pm on Wednesday, 6/28/00. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

**ADDRESSES AND FURTHER INFORMATION:** Requests for the application kit, should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 159, 202–307–3106, ext. 159, or e-mail: *jevens@bop.gov*. A copy of this announcement, application and forms may also be obtained through the NIC web site: *http://www.nicic.org* (click on "What's New" and "Cooperative Agreements"). All technical and/or programmatic questions concerning this announcement should be directed to Andie Moss, Project Manager, at 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 140, 202–307–3106, ext. 140, or e-mail: amoss@bop.gov.

*Eligibility Applicants:* An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

*Review Considerations:* Applications received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process.

*Number of Awards:* One (1).

*NIC Application Number:* 00P07. This number should appear as a reference line in your cover letter and also in box 11 of Standard Form 424.

**Executive Order 12372**

This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application kit, along with further instructions on proposed projects serving more than one State.

(Catalog of Federal Domestic Assistance Number: 16.603)

Dated: May 8, 2000.

**Morris L. Thigpen,**

*Director, National Institute of Corrections.*

[FR Doc. 00–11897 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–36–M

## DEPARTMENT OF JUSTICE

### National Institute of Corrections

### Solicitation for a Cooperative Agreement—"Transition From Prison to the Community"

**AGENCY:** National Institute of Correction—Department of Justice.

**ACTION:** Solicitation for a cooperative agreement

**SUMMARY:** The Department of Justice (DOJ), National Institute of Corrections (NIC) announces the availability of funds in FY 2000 for a cooperative agreement to initiate the project "Transition from Prison to the Community." NIC will make a multi-year award based on funding being available in the subsequent years to develop a coordinated approach to effectively transition offenders from prison to the community.

A cooperative agreement is a form of assistance relationship where NIC is substantially involved during the performance of the award. An award is made to an organization who will, in concert with NIC, identify the method and approach in developing a transition program.

**Background**

Return to prison is the sanction of choice by releasing authorities for offenders who violate the conditions of their release. It is estimated that approximately 35 to 40% of new admissions to state correctional facilities are the results of violations while under parole supervision. Many violations are generally technical in nature and a significant number are attributable to incomplete and/or inadequate release planning, imposition of unrealistic rules and ineffective case management. It is believed that through a systematic approach to planning, the transition from prison to the community can be managed more effectively, resulting in a greater opportunity for successful community reintegration as measured by a reduction in the reincarceration of released offenders under community supervision.

It is essential to coordinate the activities of the three (3) principal entities involved in the custody, release and supervision of offenders. Those key organizations are the state correctional institutions, the states releasing authority and the community supervision agency. The proper identification of the released population participating in the transition process, must be established through clear articulated criteria. The use of a dynamic assessment tool(s) to assist in identifying the risks and needs of the targeted offender population will be required. The instrument should assist in the development of institutional programs, pre-release plans and community supervisions strategies, in-order to address the specific risk(s) and need(s) of the individual offender.

**Purpose**

The purpose of this initiative is to establish through organizational policy and procedure a model approach for the transitioning of offenders from prison to the community. The model will bring together the prison administration, the releasing authority for the jurisdiction and the community supervision component for joint development of policies and procedures affecting the custody, release and supervision of offenders targeted for the transition initiative. The model should include an assessment tool(s) that is dynamic in nature to address programming and supervision requirements.

Objectives:

- To utilize the research and relevant literature regarding best practices in effective intervention and what works.
- To utilize an assessment tool that is dynamic in nature.
- To formalize a model of operating policies, across multiple agencies, for the transition process.
- To increase the effectiveness and efficiency for each organization involved in the transition process.
- To develop a monograph upon completion of the project, providing an overview of the process.

**Application Requirement**

Applicants must prepare a proposal that describes their plan to meet the projects objectives which should include a schedule identifying benchmarks of significant tasks in chart form. Applicants must identify their key project staff and the relevant expertise of each.

The proposal should address the following areas:

- Targeting population for release
- Assessment tools
- Relapse prevention and intervention strategies
- Range of alternative sanctions
- Individual intervention plans
- Case management method
- Community aftercare

**Authority:** Public Law 93–415

**Funds Available**

The award will be limited to a maximum of $250,000 (direct and indirect costs). Funds may only be used for the activities that are linked to the desired outcome of the project. No funds are transferred to state or local governments. This project will be a collaborative venture with the NIC Community Corrections Division.

*Deadline For Receipt of Applications:* Applicant must be received by 4 P.M. Eastern Time on June 30, 2000.

**ADDRESSES AND FURTHER INFORMATION:** Request for the application kit should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, D.C. 20534 or by calling (800) 995–6423, extension 159 or (202) 307–3106, extension 159. She can also be contacted by E-mail via *jevens@bop.gov*. All technical and or programmatic questions concerning this announcement should be directed to Cranston J. Mitchell at the above address or by calling (800) 995–6423, extension 153 or (202) 307–3106, extension 153, or by E-mail via *cjmitchell&bop.gov*. Applicant forms may be also be obtained through the NIC web site: *http://www.nicic.org* (click on " What's New"and "Cooperative Agreements").

Mailed and express delivery applications should be sent to: National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, D.C. 20534. Hand delivery should be marked 500 First Street NW. The front desk will cal Bobbi Tinsley(307–3106 and press 0) to come to the desk for pickup.

*Eligible Applicants:* An eligible applicant is any State or general unit of local government, public or private agency, educational institution, organization, team or individual with the required skills to successfully meet the outcome objectives of the project.

*Review Considerations:* Applications received under this announcement will be subjected to an NIC three to five member Peer Review Process.

*Number of Awards:* One (1)

*NIC Application Number:* 00C06. This number should appear as a reference line in the cover letter and also in box 11 of Standard Form 424.

**Executive Order 12372**

This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain

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Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application Kit, along with further instructions on proposed projects serving more than one State.

The Catalog of Federal Domestic Assistance number is: 16.603

Dated: May 5, 2000.

**Morris L. Thigpen,**

*Director, National Institute of Corrections.*

[FR Doc. 00–11898 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–36–M

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### Notice of Cancellation of the Programmatic Environmental Impact Statement for Housing the Criminal Alien Population in Non-Federal Low-Security Correctional Facilities

**AGENCY:** U.S. Department of Justice Bureau of Prisons.

**ACTION:** Notice of cancellation of the programmatic environmental impact statement.

**SUMMARY:**

**Proposed Action**

The mission of the Federal Bureau of Prisons (Bureau) is to protect society by confining offenders in the controlled environments of prison and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. In addition, the Bureau supports the U.S. Marshals Service in its efforts to house the growing number of unsentenced Federal detainees, and the Immigration and Naturalization Service in the rapidly increasing requirements for the detention of sentenced and unsentenced aliens awaiting hearings and/or release or repatriation to their country of origination. The Bureau accomplishes its mission through the appropriate use of community correction, detention, and correctional facilities that are either: Federally-owned and operated; Federally-owned and non-Federally operated; and non-Federally owned and operated.

The Bureau is facing a period of unprecedented growth in its inmate population. Projections show the federal inmate population increasing from approximately 120,000 inmates to 205,000 inmates by 2007. As such, the demand for bed space within the federal prison system will continue to grow at a significant rate. A portion of this growth is the result of programs implemented by the Immigration and Naturalization Service regarding sentenced and unsentenced aliens. Correctional institutions at the low security level will be impacted immediately because sentenced and unsentenced aliens are typically housed at the low security level. Due to the current shortage of beds, especially at the low security level, the Bureau has been forced to manage its population by designating minimum and medium security level institutions as low security institutions which, in turn, creates a domino effect for all other security levels. The projected population of sentenced and unsentenced aliens will only exacerbate these population pressures.

Over the past several years, the Bureau has sought flexibility in managing the shortage of beds in the low security level as well as the anticipated sharp and/or short-term increases at this security level. Such management flexibility would have to meet population capacity needs in a timely fashion, comport with federal law, and maintain fiscal responsibility, all while successfully attaining the mission of the Bureau. Management flexibility includes the appropriate contracting of non-federal correctional facilities.

To ensure compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 (NEPA) as amended, the Bureau initiated preparation of a Draft Programmatic Environmental Impact Statement in April 1999. The Draft Programmatic Environmental Impact Statement was intended to identify and analyze potential impacts to the natural and manmade environments resulting from use of non-federal correctional facilities to house the criminal alien population. Topics to be studied as part of the Draft Programmatic Environmental Impact Statement include: topography, geology/soils, hydrology, biological resources, utility services, transportation services, cultural resources, land uses, social and economic factors, hazardous materials, air and noise quality, among others. As part of that effort, the Bureau hosted Scoping Meetings to afford the public, regulatory agency representatives, and elected officials an opportunity to learn about and voice their interests and concerns regarding the use of private contract correctional facilities and the Draft Programmatic EIS effort. The Scoping Meetings were held on April 29, 1999 Philadelphia, Pennsylvania; May 4, 1999 in Dallas, Texas; and May 6, 1999 in San Diego, California and were attended by interested members of the public.

While preparing the Draft Programmatic EIS, the Bureau reviewed its environmental compliance policies and procedures for the CAR program and has decided to pursue alternative arrangements for complying with NEPA. More specifically, the Bureau determined that evaluating the development of Federal and contract correctional facilities was best performed on a case-by-case basis. An individualized approach to project evaluation carries with it the advantages of site-specific evaluations, greater public participation, and tailored mitigation plans. As a result, the Bureau has decided to cancel the Programmatic EIS and instead concentrate its efforts and resources at preparing individual, site-specific Environmental Impact Statements for facilities proposed to house the criminal alien population.

**ADDRESSES:** Questions concerning this matter may be directed to: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, U.S. Department of Justice, Federal Bureau of Prisons, 320 First Street, N.W., Washington, D.C. 20534, Telephone: 202–514–6470, Facsimile: 202–616–6024, e-mail: siteselection@bop.gov.

Dated: May 5, 2000.

**David J. Dorworth,**

*Chief, Site Selection & Environmental Review Branch.*

[FR Doc. 00–11789 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–05–P

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Development of a Medium-Security Federal Correctional Institution in Pennsylvania

**AGENCY:** Bureau of Prisons, U.S. Department of Justice.

**ACTION:** Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

**SUMMARY:**

**Proposed Action**

The mission of the United States Department of Justice, Federal Bureau of Prisons is to protect society by confining offenders in the controlled environments of prison and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-

improvement opportunities to assist offenders in becoming law-abiding citizens. The Bureau accomplishes its mission through the appropriate use of community correction, detention, and correctional facilities that are either: Federally-owned and operated; Federally-owned and non-Federally operated; and non-Federally owned and operated.

The Bureau is facing a period of unprecedented growth in its inmate population. Projections show the federal inmate population increasing from approximately 120,000 inmates to 205,000 inmates by 2007. As such, the demand for bedspace within the federal prison system will continue to grow at a significant rate. To accommodate a portion of the growing inmate population, the Bureau of Prisons has determined that an additional medium-security Federal Correctional Institution (FCI) is needed in its system. Therefore, the Bureau of Prisons is proposes to build and operate a medium-security federal correctional facility, with an adjacent minimum-security satellite camp, in Pennsylvania. The main medium-security facility would provide habitation for approximately 1,200 inmates, with an additional 150–300 inmates to be housed at the minimum-security satellite camp.

Several sites in Northumberland County, Pennsylvania have been offered to the Bureau for consideration in developing the medium-security FCI and satellite camp. The Bureau of Prisons has preliminarily evaluated these sites and determined that the prospective sites appear to be of sufficient size to provide space for housing, programs, administrative services and other support facilities associated with the correctional facility. The DEIS to be prepared by the Bureau will analyzed the potential impacts of correctional facility construction and operation at these sites.

**The Process**

In the process of evaluating the sites, several aspects will receive detailed examination including, but are not limited to: topography, geology/soils, hydrology, biological resources, utility services, transportation services, cultural resources, land uses, socio-economics, hazardous materials, air and noise quality, among others.

**Alternatives**

In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facility will be fully and thoroughly examined.

**Scoping Process**

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. A public Scoping Meeting will be held at 7 P.M., May 31, 2000 at the Northumberland County Career & Arts Center located at 2 East Arch Street, Shamokin, Pennsylvania. The meeting location, date, and time will be well publicized and has been arranged to allow for the public as well as interested agencies and organizations to attend. The meeting is being held to allow interested persons to formally express their views on the scope and significant issues to be studied as part of the DEIS process. The Scoping Meeting is being held to provide for timely public comments and understanding of federal plans and programs with possible environmental consequences as required by the National Environmental Policy Act of 1969, as amended, and the National Historic Preservation Act of 1966, as amended. In addition, public information meetings have been held in Northumberland County by representatives of the Bureau of Prisons with interested citizens, elected officials, and community leaders.

**DEIS Preparation**

Public notice will be given concerning the availability of the DEIS for public review and comment.

*Addresses*

Questions concerning the proposed action and the DEIS may be directed to: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, D.C. 20534, Telephone (202) 514–6470, Telefacsimile (202) 616–6024, E-Mail: siteselection@bop.gov.

Dated: May 5, 2000.

**David J. Dorworth,**

*Chief, Site Selection and Environmental Review Branch.*

[FR Doc. 00–11788 Filed 5–11–00; 8:45 am]

BILLING CODE 4410–05–P

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Notice of Availability of Funds and Solicitation for Grant Applications (SGAs) for the Purpose of Training Child Care Providers

**SUMMARY:** *This notice contains all of the necessary information and forms needed to apply for grant funding.* The Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, invites proposals for approximately ten (10) awards for the implementation of the Quality Child Care Initiative. It will assist with the initiation of building a national system for the education and training of professional child care providers and expand the National Apprenticeship System by incorporating diversification of occupational entities through development of new and innovative strategies for increasing the participation among the child care industry.

**DATES:** Applications will be accepted commencing on the date of publication. The closing date for receipt of applications is July 12, 2000, at 4 P.M., (Eastern Time ) at the address below. *Telefacsimile (FAX),* Ttelegraphed, or Electronic Applications will not be honored.

**ADDRESSES:** Applications shall be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Reda Harrison, Reference: SGA/DFA 00–106, 200 Constitution Avenue, NW, Room S–4203, Washington, DC 20210.

**FOR FURTHER INFORMATION:** Questions should be faxed to Reda Harrison, Grants Management Specialist, Division of Federal Assistance, Fax 202–219–8739. This is not a toll-free number. All inquiries should include the SGA number (DFA 00–106) a contact name, fax and phone numbers. This solicitation will also be published on the Internet on the Employment and Training Administration's Home Page at http://www.doleta.gov. Award notifications will also be published on this Home Page.

**Quality Child Care Initiative Solicitation**

*I. Purpose*

To invite proposals for providing a credentialed career path for development of professional child care providers through the utilization of the National Registered Apprenticeship System; which will reduce turnover, increase wages for providers, provide a more stable environment for children and lower the concern of parents.

*II. Background*

The Child Care Industry is in trouble. A 1989 study by the National Center of Early Childhood Workforce found that the quality of services provided by most day care centers was rated as "barely

adequate," and a more recent four-State study by the University of Colorado, at Denver, found that only 14 percent of child care centers were rated as good quality. In addition, child care workers are faced with relatively low wages, inadequate benefit coverage and high job turnover.

On October 23, 1997, President and Mrs. Clinton hosted the White House Conference on Child Care to focus the Nation's attention on the importance of addressing the need for safe, affordable, available and quality child care. Integral to providing the "right" care is the quality of the child care worker.

Quality child care service goes hand in glove with having an adequate supply of competent, professional child care providers. This requires enhanced training opportunities and a redefinition of the basic concept of what constitutes a child care provider. A national focus on accreditation demands that practitioners have access to education and training that will promote professional development. As the field of early care and education becomes established as a profession, practitioners are required to master basic knowledge, skills and core competencies of early childhood development. As professionals, practitioners must develop practical knowledge that will enable them to apply new approaches and strategies for working effectively with young children.

*III. Statement of Work*

As our society continues to evolve and demands are placed on parents to secure full time job/careers, the need for safe, affordable, available and quality child care has been brought to the forefront. Utilization of the National Apprenticeship System can provide needed training for early care and education practitioners. High quality training has the potential to change the culture of the child care industry from one dominated by low pay and high turnover to one of respected professional service. No longer would child care be equated to baby-sitting.

The apprenticeship model validates the integral part that child care plays in the economy, as working families rely on dependable, accessible care for their children. As families move from welfare to work, additional sources of training child care providers are in demand.

**Note:** All applicants are expected to provide information relative to the projected number of participants (*i.e.*, employers, apprentices and the diverse make-up of the participants).

The major tasks of this project will be, but not limited, to the following:

- System and capacity-building by incorporating in a collaborative spirit organizations, agencies, employers, associations and higher education (*i.e.*, State Child Care Association, State Head Start Association, State Early Childhood Professional Associations , School Age Care, Black Child Development Institution, State Family Child Care Associations, State Head Start Collaboration Directors, Post Secondary Institutions, Child Care Resource and Referral Agencies, Registered Apprenticeship Representative), to develop a vision for implementation of an individual statewide sustainable infrastructure built upon successful registered apprenticeship and best practice models;
- From the above activity, establishment of an oversight body to provide direction and guidance to the vision, utilizing the services of an Apprenticeship and Training Representative.
- Utilization of an established curriculum or development of a curriculum based on developmentally appropriate inclusive practices for young children and an interactive adult education teaching approach that is effective for adult learners.
- Adoption of or establishment of a train-the-trainer system that will ensure the availability of knowledgeable, experienced, skilled instructors for the related instruction course work;
- Development of a process to promote career lattice for those graduates of the registered apprenticeship system (*i.e.*, articulation into an Associates Degree or higher);
- Ensuring the inclusion of those with other nationally recognized credentials such as the Child Development Associate (CDA) through previous credit for documented prior experience;
- Demonstration of in-kind support from institutions involved in the process (*i.e.*, time spent to facilitate and foster the process and/or free facilities to conduct related instruction);
- Development and implementation of a strategy or strategies to ensure inclusion of practitioners representing diversity of culture, ethnicity, gender and ability;
- Development of policies, procedures and formulas to ensure the consistency and integrity of system implementation and beyond. The system will be sustainable and ownership established, if the process is followed throughout the state.

**IV. Application Process**

*Eligible Applicants:* Those eligible to apply are as follows: States that have a State Apprenticeship Agency (SAA); State Agencies designated by the Governor; Governor's Early Childhood Initiative; and other State Agencies with responsibility for child care regulations or funding. *Only one proposal will be accepted per State; and for States without an SAA, a letter from the Governor designating the agency must accompany the proposal. Those awardees who received Child Care Initiative awards in 1999 are not eligible to compete for this procurement.*

**V. Application Submittal**

Applicants must submit four (4) copies of their proposal, with original signatures. The application shall be divided into two distinct parts: Part I—which contains Standard Form (SF) 424, "Application for Federal Assistance," (Appendix A) and "Budget Information Sheet," (Appendix B). All copies of the SF 424 MUST have original signatures of the legal entity applying for grant funding. Applicants shall indicate on the SF 424 the organization's IRS Status, if applicable. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in Section 501(c) 4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The Catalog of Federal Domestic Assistance (CFDA) number is 17.249. In addition, the budget shall include—on a separate page(s)—a detailed cost break-out of each line item on the Budget Information Sheet. Part II shall contain the program narrative that demonstrates the applicant's plan and capabilities in accordance with the evaluation criteria contained in this section. Applicants must describe their plan in light of each of the Evaluation Criteria. Applicants MUST limit the program narrative section to no more than 30 double-spaced pages, on one side only. *This includes any attachments.* Applications that fail to meet the page limitation requirement will not be considered.

**VI. Late Applications**

Any application received after the exact date and time specified for receipt at the office designated in this notice will not be considered, unless it is received before awards are made and it—(a) was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, an application submitted in response to a solicitation requiring receipt of applications by the 20th of the month must have been mailed/post marked by the 15th of that month); or

(b) was sent by the U.S. Postal Service Express Mail Next Day Service to addressee not later than 5 P.M. at the place of mailing two working days prior to the date specified for receipt of applications. The term "working days" excludes weekends and Federal holidays. "Post-marked" means a printed, stamped or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable, without further action, as having been supplied or affixed on the date of mailing by an employee of the U.S. Postal Service.

**VII. Withdrawal of Applications**

Applications may be withdrawn by written notice or telegram (including mail gram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, the representative's identity is made known and representative signs a receipt of the proposal.

**VIII. Hand Delivered Proposals**

It is preferred that applications be mailed at least five days prior to the closing date. To be considered for funding, hand-delivered applications must be received by 4 P.M., (Eastern Time), July 12, 2000, at the specified address. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness. Overnight express mail from carriers other than the U.S. Postal Service will be considered hand-delivered applications and *must be received* by the above specified date and time.

**IX. Funding Availability and Period of Performance**

The Department expects to make up to 10 awards with a maximum total investment for these projects of $3.5 million. The estimated range of awards is to be from $175,000 to $350,000. The period of performance will be for 18 months from the date of execution.

**X. Review Process**

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the SF 424, which constitutes a binding offer. Those awards made will be in the best interests of the Government.

**Evaluation Criteria**

A. System and Capacity Building—The extent to which the offeror has delineated collaboration strategies to develop a vision and implementation plan for a statewide infrastructure utilizing the registered apprenticeship system of training and forecast of implementation. (25 points)

B. Sustainability—Plan for long term viability of the system after this funding ends. (15 points)

C. Curriculum—Delineation of utilization or development of curriculum based on developmentally appropriate inclusive practices for young children and an interactive adult educational component for effective adult learners and a forecast of implementation. (15 points)

D. Career Lattice—Describe the process for inclusion of participants with documented prior experience linked with substantial increases in compensation and next steps for apprenticeship graduates in the process (awarding of college credit and articulation with higher education). (20 points)

E. Diversity—Outline the strategy or strategies developed to ensure inclusion of participants representing diversity of culture, ethnicity, gender and ability (*i.e.*, projected number of employers and apprentices) and a forecast of implementation. (15 points)

F. Consistency and Integrity—Delineation of the policies, procedures, and formulas developed to ensure consistency and integrity of the statewide system. (10 points)

**XI. Reporting Requirements**

- Attendance to a post award orientation briefing (*i.e.*, time and place to be announced), where BAT will reiterate and delineate the overall desired outcomes of the project;
- Detailed work plan, budget, and schedule within 30 days of grant award;
- Quarterly Status Reports within 30 days of quarters end;
- Monthly cost vouchers;
- Final report on completed tasks and specific recommendations for future grants for Child Care Initiatives, no later than 45 days following the end of the grant.

Signed in Washington, DC, the 5th of May, 2000.

**Laura A. Cesario,**

*Grant Officer, Division of Federal Assistance.*

BILLING CODE 4510–30–P

## APPENDIX A

**APPLICATION FOR FEDERAL ASSISTANCE**

OMB Approval No. 0348-0043

| | | | |
|---|---|---|---|
| 1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction | | 2. DATE SUBMITTED | Applicant Identifier |
| | | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address (give city, county, State and zip code): | Name and telephone number of the person to be contacted on matters involving this application (give area code): |

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipe
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

| 13. PROPOSED PROJECT: | | 14. CONGRESSIONAL DISTRICTS OF: | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |
| | | | |

| 15. ESTIMATED FUNDING: | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
|---|---|---|
| | | |

| d. Signature of Authorized Representative | e. Date Signed |
|---|---|
| | |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

**Authorized for Local Reproduction**

## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required face sheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable)

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities.

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

***APPENDIX B*** ***PART II - BUDGET INFORMATION***

*SECTION A - Budget Summary by Categories*

| | (A) | (B) | (C) |
|---|---|---|---|
| *1. Personnel* | | | |
| *2. Fringe Benefits (Rate )* | | | |
| *3. Travel* | | | |
| *4. Equipment* | | | |
| *5. Supplies* | | | |
| *6. Contractual* | | | |
| *7. Other* | | | |
| *8. Total, Direct Cost (Lines 1 through 7)* | | | |
| *9. Indirect Cost (Rate %)* | | | |
| *10. Training Cost/Stipends* | | | |
| *11. TOTAL Funds Requested (Lines 8 through 10)* | | | |

***SECTION B - Cost Sharing/ Match Summary (if appropriate)***

| | (A) | (B) | (C) |
|---|---|---|---|
| *1. Cash Contribution* | | | |
| *2. In-Kind Contribution* | | | |
| *3. TOTAL Cost Sharing / Match (Rate %)* | | | |

***NOTE:*** ***Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).***

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***SECTION A - Budget Summary by Categories***

1. ***Personnel:*** *Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. ***Fringe Benefits****: Indicate the rate and amount of fringe benefits.*

3. ***Travel****: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment****: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. ***Supplies****: Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual****: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other****: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs****: Add lines 1 through 7.*

9. ***Indirect Costs****: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested****: Show total of lines 8 through 10.*

***SECTION B - Cost Sharing/Matching Summary***

***Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.***

***NOTE:***

***PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.***

[FR Doc. 00–11977 Filed 5–11–00; 8:45 am]
BILLING CODE 4510–30–C

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Workforce Investment Act; Lower Living Standard Income Level

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of determination of lower living standard income level.

**SUMMARY:** Under Title I of the Workforce Investment Act (Pub. L. 105–220), the Secretary of Labor annually determines the Lower Living Standard Income Level (LLSIL) for uses defined in the Law. WIA defines the term "Low Income Individual" as one who qualifies under various criteria, including an individual who received income that does not exceed the higher of the poverty line or 70 percent of the lower living standard income level. This issuance provides the Secretary's annual LLSIL for 2000 and references the current 2000 Health and Human Services "Poverty Guidelines."

**EFFECTIVE DATE:** This notice is effective on May 12, 2000.

**ADDRESSES:** Send written comments to: Mr. Ron Putz, Office of Adult Services, Employment and Training Administration, Department of Labor, Room N–4671, 200 Constitution Avenue NW., Washington, DC 20210.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Putz, Telephone 202–219–7694 x134; Fax (202) 219–0376 (these are not toll free numbers).

**SUPPLEMENTARY INFORMATION:** The purpose of the Workforce Investment Act (WIA) is "to provide workforce investment activities, through statewide and local workforce investment systems, that increase the employment, retention, and earnings of participants, and increase occupational skill attainment by participants, and, as a result, improve the quality of the workforce, reduce welfare dependency, and enhance the productivity and competitiveness of the Nation."

The LLSIL is used for several purposes under WIA: specifically, WIA Section 101(25) defines the term "low income individual for eligibility purposes" Sections 127(b)(2)(C) and 132(b)(1)(iii)(IV) define the terms "disadvantaged adult," and "disadvantaged youth" in terms of the poverty line or LLSIL for purposes of State allotments. The Governor and State/local Workforce Investment Boards need the LLSIL for determining eligibility for youth, eligibility for employed adult/dislocated workers for certain services, and for the reauthorized Work Opportunity Tax Credit (WOTC). We encourage the Governors and State/local Workforce Investment Boards to consult WIA and its Regulations and Preamble for more specific guidance in applying the LLSIL to program requirements. The Department of Health and Human Services published the annual update of the poverty-level guidelines in the **Federal Register** at 65, FR 7555, (Feb. 15, 2000). The HHS poverty-level guidelines may also be found on the Internet at *http://aspe.hhs.gov/poverty/00.htm*. ETA plans to have the 2000 LLSIL available on its website at: http://www.wdsc.org/llsil/llsil00.htm.

WIA section 101(24) defines the LLSIL as "that income level (adjusted for regional, metropolitan, urban, and rural differences and family size) determined annually by the Secretary (of Labor) based on the most recent lower living family budget issued by the Secretary." The most recent lower living family budget was issued by the Secretary of Labor in the fall of 1981. The four-person urban family budget estimates, previously published by the Bureau of Labor Statistics (BLS), provided the basis for the Secretary to determine the LLSIL. BLS terminated the four-person family budget series in 1982, after publication of the Fall 1981 estimates. Currently BLS provides current data to ETA, from which it develops the LLSIL tables.

The Employment and Training Administration (ETA) published the 1999 updates to the LLSIL in the **Federal Register** on May 14, 1999, at 64 FR 26452. This notice again updates the LLSIL to reflect cost of living increases for 1999 by applying the BLS provided percentage change in the December 1999 Consumer Price Index for All Urban Consumers (CPI–U), compared with the December 1998 CPI–U, to each of the May 14, 1999 LLSIL figures. Those updated figures for a family of four are listed in Table 1 below by region for both metropolitan and nonmetropolitan areas. Figures in all of the accompanying tables are rounded up to the nearest ten. Since "low income individual," "disadvantaged adult, and "disadvantaged youth" may be determined by family income at 70 percent of the LLSIL, those figures are listed below as well.

Jurisdictions included in the various regions, based generally on Census Divisions of the U.S. Department of Commerce, are as follows:

*Northeast*

Connecticut
Maine
Massachusetts
New Hampshire
New Jersey
New York
Pennsylvania
Rhode Island
Vermont
Virgin Islands

*Midwest*

Illinois
Indiana
Iowa
Kansas
Michigan
Minnesota
Missouri
Nebraska
North Dakota
Ohio
South Dakota
Wisconsin

*South*

Alabama
American Samoa
Arkansas
Delaware
District of Columbia
Florida
Georgia
Northern Marianas
Oklahoma
Palau
Puerto Rico
South Carolina
Kentucky
Louisiana
Marshall Islands
Maryland
Mississippi
Micronesia
North Carolina
Tennessee
Texas
Virginia
West Virginia

*West*

Arizona
California
Colorado
Idaho
Montana
Nevada
New Mexico
Oregon
Utah
Washington
Wyoming

Additionally, separate figures have been provided for Alaska, Hawaii, and Guam as indicated in Table 2 below.

For Alaska, Hawaii, and Guam, the year 2000 figures were updated from the

May 14, 1999 "State Index" based on the ratio of the urban change in the State (using Anchorage for Alaska and Honolulu for Hawaii and Guam) compared to the West regional metropolitan change, and then applying that index to the West regional metropolitan change.

Data on 23 selected Metropolitan Statistical Areas (MSA's) are also available. These are based on semiannual CPI–U changes for a 12 month period ending in December 1999. The updated LLSIL figures for these MSA's and 70 percent of the LLSIL are reported in Table 3.

Table 4 is a listing of each of the various figures at 70 percent of the updated 2000 LLSIL for family sizes of one to six persons. For families larger than six persons, an amount equal to the difference between the six-person and the five-person family income levels should be added to the six-person family income level for each additional person in the family. Where the poverty level for a particular family size is greater than the corresponding LLSIL figure, the figure is indicated in parentheses. Table 5, 100 percent of LLSIL, is used to determine self-sufficiency as noted at § 663.230 of WIA Interim Final Regulations and WIA section 134(d)(3)(A)(ii).

**Use of Data**

Governors should designate the appropriate LLSIL's for use within the State from Tables 1 through 3. Tables 4 and 5 may be used with any of the levels designated. The Governor's designation may be provided by disseminating information on Metropolitan Statistical Areas (MSA's) and metropolitan and nonmetropolitan areas within the State, or it may involve further calculations. For example, the State of New Jersey may have four or more LLSIL figures: metropolitan, nonmetropolitan, for portions of the State in the New York City MSA, and for those in the Philadelphia MSA. If a Workforce Development Area includes areas that would be covered by more than one figure, the Governor may determine which is to be used. Under 20 CFR 661.120, a State's policies and measures for the workforce investment system will be accepted by the Secretary to the extent that they are not inconsistent with the WIA and the WIA regulations.

**Disclaimer on Statistical Uses**

It should be noted that the publication of these figures is only for the purpose of meeting the requirements specified by WIA as defined in the law and regulations. BLS has not revised the lower living family budget since 1981, and has no plans to do so. The four-person urban family budget estimates series has been terminated. The CPI–U adjustments used to update the LLSIL for this publication are not precisely comparable, most notably because certain tax items were included in the 1981 LLSIL, but are not in the CPI–U. Thus, these figures should not be used for any statistical purposes, and are valid only for those purposes under WIA as defined in the law and regulations.

Signed at Washington, DC, this 5th day of May 2000.

**Shirley M. Smith,**

*Administrator, Office of Adult Services.*

Attachments

BILLING CODE 4510–30–P

## Table 1: Lower Living Standard Income Level (for a family of four persons) by Region[1]

| Region[2] | 1999 Adjusted LLSIL | 2000 Factor | 2000 Adjusted LLSIL | 70 percent LLSIL |
|---|---|---|---|---|
| Northeast | | | | |
| Metro | $28,670 | 1.025 | $29,390 | $20,580 |
| Non-Metro[3] | $28,320 | 1.024 | $29,000 | $20,300 |
| Midwest | | | | |
| Metro | $26,580 | 1.029 | $27,360 | $19,150 |
| Non-Metro | $25,150 | 1.025 | $25,780 | $18,050 |
| South | | | | |
| Metro | $25,140 | 1.026 | $25,800 | $18,060 |
| Non-Metro | $24,050 | 1.019 | $24,510 | $17,160 |
| West | | | | |
| Metro | $28,270 | 1.029 | $29,090 | $20,370 |
| Non-Metro[4] | $27,770 | 1.025 | $28,470 | $19,930 |

[1]For ease of use, these figures have been rounded to the next highest ten dollars.

[2]Metropolitan area measures were calculated from the weighted average CPI-Us for city size classes A and B/C. Non-metropolitan area measures were calculated from the CPI-Us for city size class D.

[3]Nonmetropolitan area percent changes for the Northeast region are no longer available. The Non-metropolitan percent change was calculated using the U.S. average CPI-U for city size Class D.

[4]Non-metropolitan area percent changes for the West region are unpublished data.

## Table 2: Lower Living Standard Income Level (for a family of four persons) -- Alaska, Hawaii and Guam[1]

| Region | 1999 Adjusted LLSIL | 2000 Factor | 2000 Adjusted LLSIL | 70 percent LLSIL |
|---|---|---|---|---|
| Alaska | | | | |
| Metro | $35,820 | 1.009 | $36,150 | $25,300 |
| Non-Metro[2] | $34,860 | 1.025 | $35,740 | $25,020 |
| Hawaii, Guam | | | | |
| Metro | $37,290 | 1.016 | $37,890 | $26,530 |
| NonMetro[2] | $37,220 | 1.025 | $38,160 | $26,710 |

[1]Rounded to next highest ten dollars.

[2]Non-Metropolitan percent changes for Alaska, Hawaii and Guam were calculated from the CPI-Us for city size Class D in the Western Region.

## Table 3: Lower Living Standard Income Level (for a family of four persons) 23 MSAs[1]

| Metropolitan Statistical Areas (MSAs) | 1999 Adjusted LLSIL | 2000 Factor | 2000 Adjusted LLSIL | 70 percent LLSIL |
|---|---|---|---|---|
| Anchorage, AK | $35,820 | 1.009 | $36,150 | $25,300 |
| Atlanta, GA | $25,250 | 1.027 | $25,940 | $18,160 |
| Boston--Brockton--Nashua, MA/NH/ME/CT | $30,420 | 1.03 | $31,340 | $21,940 |
| Chicago--Gary--Kenosha, IL/IN/WI | $27,980 | 1.023 | $28,630 | $20,040 |
| Cincinnati--Hamilton, OH/KY/IN | $26,620 | 1.032 | $27,480 | $19,240 |
| Cleveland--Akron, OH | $27,730 | 1.018 | $28,240 | $19,770 |
| Dallas--Ft. Worth, TX | $23,920 | 1.034 | $24,740 | $17,320 |
| Denver--Boulder--Greeley, CO | $27,910 | 1.03 | $28,750 | $20,130 |
| Detroit--Ann Arbor--Flint, MI | $25,820 | 1.027 | $26,520 | $18,570 |
| Honolulu, HI | $37,290 | 1.016 | $37,890 | $26,530 |
| Houston--Galveston--Brazoria, TX | $23,340 | 1.018 | $23,770 | $16,640 |
| Kansas City, MO/KS | $25,800 | 1.024 | $26,420 | $18,500 |
| Los Angeles--Riverside--Orange County, CA | $28,630 | 1.024 | $29,320 | $20,530 |
| Milwaukee--Racine, WI | $26,890 | 1.023 | $27,510 | $19,260 |
| Minneapolis--St. Paul, MN/WI | $26,130 | 1.036 | $27,080 | $18,950 |
| New York--Northern NJ--Long Island, NY/NJ/CT/PA | $29,950 | 1.022 | $30,610 | $21,430 |
| Philadelphia--Wilmington--Atlantic City, PA/NJ/DE/MD | $27,890 | 1.025 | $28,590 | $20,020 |
| Pittsburgh, PA | $26,860 | 1.021 | $27,430 | $19,200 |
| St. Louis, MO/IL | $25,490 | 1.011 | $25,780 | $18,040 |
| San Diego, CA | $29,240 | 1.036 | $30,300 | $21,210 |
| San Francisco--Oakland--San Jose, CA | $29,690 | 1.043 | $30,970 | $21,680 |
| Seattle--Tacoma--Bremerton, WA | $31,010 | 1.03 | $31,950 | $22,360 |
| Washington--Baltimore, DC/MD/VA/WV[2] | $30,320 | 1.023 | $31,020 | $21,720 |

[1]Rounded to next highest ten dollars.

[2] Baltimore and Washington are now calculated as a single metropolitan statistical area.

## Table 5 - Updated 2000 LLSIL (100%), By Family Size

To use the LLSIL to determine the minimum level for establishing self-sufficiency criteria at the state or local level, begin by locating the metropolitan area or region from Table 1, 2 or 3. The individual must locate their region or metropolitan statistical area and then find the 2000 Adjusted LLSIL amount for that location. These figures apply to a family of four. Locate the corresponding number in the family of four column below. Move left or right across that row to the size that corresponds to the individual's family unit. That figure is the minimum figure States must set for determining whether employment leads to self-sufficiency under WIA programs.

| Family of One | Family of Two | Family of Three | Family of Four | Family of Five | Family of Six |
|---|---|---|---|---|---|
| $8,560 | $14,030 | $19,260 | $23,770 | $28,050 | $32,810 |
| $8,830 | $14,470 | $19,860 | $24,510 | $28,930 | $33,830 |
| $8,910 | $14,600 | $20,040 | $24,740 | $29,200 | $34,150 |
| $9,290 | $15,220 | $20,890 | $25,780 | $30,430 | $35,580 |
| $9,290 | $15,230 | $20,900 | $25,800 | $30,450 | $35,610 |
| $9,340 | $15,310 | $21,020 | $25,940 | $30,610 | $35,800 |
| $9,520 | $15,590 | $21,410 | $26,420 | $31,180 | $36,460 |
| $9,550 | $15,650 | $21,490 | $26,520 | $31,300 | $36,600 |
| $9,750 | $15,980 | $21,940 | $27,080 | $31,960 | $37,380 |
| $9,850 | $16,150 | $22,170 | $27,360 | $32,290 | $37,760 |
| $9,880 | $16,190 | $22,220 | $27,430 | $32,370 | $37,860 |
| $9,900 | $16,220 | $22,260 | $27,480 | $32,430 | $37,930 |
| $9,910 | $16,240 | $22,290 | $27,510 | $32,470 | $37,970 |
| $10,170 | $16,670 | $22,880 | $28,240 | $33,330 | $38,980 |
| $10,250 | $16,800 | $23,070 | $28,470 | $33,600 | $39,290 |
| $10,300 | $16,870 | $23,160 | $28,590 | $33,740 | $39,460 |
| $10,310 | $16,900 | $23,200 | $28,630 | $33,790 | $39,510 |
| $10,350 | $16,970 | $23,290 | $28,750 | $33,930 | $39,680 |
| $10,440 | $17,110 | $23,490 | $29,000 | $34,220 | $40,020 |
| $10,480 | $17,170 | $23,570 | $29,090 | $34,330 | $40,150 |
| $10,560 | $17,300 | $23,750 | $29,320 | $34,600 | $40,470 |
| $10,590 | $17,350 | $23,810 | $29,390 | $34,690 | $40,560 |
| $10,910 | $17,880 | $24,550 | $30,300 | $35,760 | $41,820 |
| $11,020 | $18,060 | $24,800 | $30,610 | $36,120 | $42,250 |
| $11,150 | $18,280 | $25,090 | $30,970 | $36,550 | $42,740 |
| $11,170 | $18,310 | $25,130 | $31,020 | $36,610 | $42,810 |
| $11,290 | $18,500 | $25,390 | $31,340 | $36,990 | $43,250 |
| $11,510 | $18,860 | $25,880 | $31,950 | $37,710 | $44,100 |
| $12,870 | $21,090 | $28,950 | $35,740 | $42,180 | $49,330 |
| $13,020 | $21,330 | $29,290 | $36,150 | $42,660 | $49,890 |
| $13,650 | $22,360 | $30,700 | $37,890 | $44,720 | $52,290 |
| $13,740 | $22,520 | $30,910 | $38,160 | $45,030 | $52,670 |

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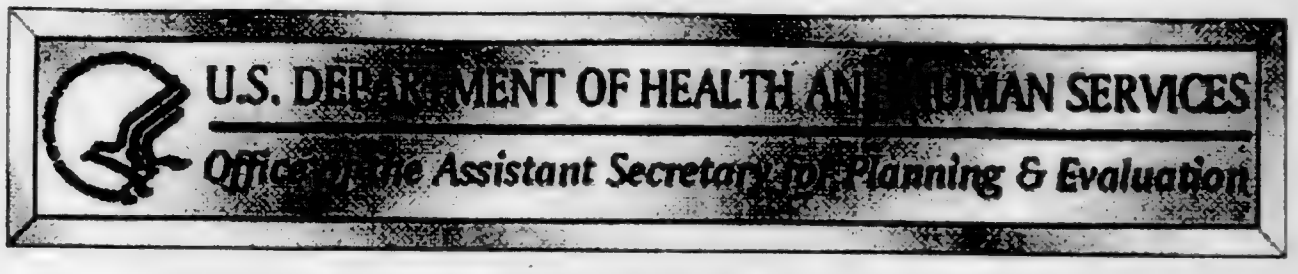


# THE 2000 HHS POVERTY GUIDELINES

## One Version of the [U.S.] Federal Poverty Measure

[ Summary Figures and *Federal Register* References – Poverty Guidelines Since 1982 ]
[ Information Contacts/References – Poverty Guidelines & Thresholds – History of U.S. Poverty Lines ]

There are two slightly different versions of the federal poverty measure:

- The poverty thresholds, and
- The poverty guidelines.

The **poverty thresholds** are the original version of the federal poverty measure. They are updated each year by the **Census Bureau** (although they were originally developed by Mollie Orshansky of the Social Security Administration). The thresholds are used mainly for **statistical** purposes — for instance, preparing estimates of the number of Americans in poverty each year. (In other words, all official poverty population figures are calculated using the poverty thresholds, not the guidelines.)

The **poverty guidelines** are the other version of the federal poverty measure. They are issued each year in the *Federal Register* by the **Department of Health and Human Services** (HHS). The guidelines are a simplification of the poverty thresholds for use for **administrative** purposes — for instance, determining financial eligibility for certain federal programs. (The full text of the *Federal Register* notice with the 2000 poverty guidelines is available here.)

The poverty guidelines are sometimes loosely referred to as the "federal poverty level" (FPL), but that term is ambiguous, and should be avoided in situations (e.g., legislative or administrative) where precision is important.

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### 2000 HHS Poverty Guidelines

| Size of Family Unit | 48 Contiguous States and D.C. | Alaska | Hawaii |
|---|---|---|---|
| 1 | $ 8,350 | $10,430 | $ 9,590 |
| 2 | 11,250 | 14,060 | 12,930 |
| 3 | 14,150 | 17,690 | 16,270 |
| 4 | 17,050 | 21,320 | 19,610 |
| 5 | 19,950 | 24,950 | 22,950 |
| 6 | 22,850 | 28,580 | 26,290 |
| 7 | 25,750 | 32,210 | 29,630 |
| 8 | 28,650 | 35,840 | 32,970 |
| For each additional person, add | 2,900 | 3,630 | 3,340 |

**SOURCE**: *Federal Register*, Vol. 65, No. 31, February 15, 2000, pp. 7555-7557.

(The separate poverty guidelines for Alaska and Hawaii reflect Office of Economic Opportunity

administrative practice beginning in the 1966-1970 period. Note that the poverty thresholds — the original version of the poverty measure — have never had separate figures for Alaska and Hawaii.)

Programs using the guidelines (or percentage multiples of the guidelines — for instance, 125 percent or 185 percent of the guidelines) in determining eligibility include Head Start, the Food Stamp Program, the National School Lunch Program, the Low-Income Home Energy Assistance Program, and the Child Health Insurance Program. Note that in general, public assistance programs (Aid to Families with Dependent Children and its block grant successor Temporary Assistance for Needy Families, and Supplemental Security Income) do NOT use the poverty guidelines in determining eligibility. The Earned Income Tax Credit program also does NOT use the poverty guidelines to determine eligibility.

The poverty guidelines (unlike the poverty thresholds) are designated by the year in which they are issued. For instance, the guidelines issued in February 2000 are designated the 2000 poverty guidelines. However, the 2000 HHS poverty guidelines only reflect price changes through calendar year 1999; accordingly, they are approximately equal to the Census Bureau poverty thresholds for calendar year 1999. (The 1999 thresholds are expected to be issued in final form in September or October 2000; a preliminary version of the 1999 thresholds is now available from the Census Bureau.)

The computations for the 2000 poverty guidelines are available.

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Go to the page of Information Contacts and References on the Poverty Guidelines, the Poverty Thresholds, and the Development and History of U.S. Poverty Lines.

Return to the main Poverty Guidelines, Research, and Measurement page.

[FR Doc. 00–11978 Filed 5–11–00; 8:45 am]
BILLING CODE 4530–30–C

VOL 65 ISS 93 MY 12 2000 UMI

## DEPARTMENT OF LABOR

### Employment Standards Administration; Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

### New General Wage Determination Decisions

The number of decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and States:

*Volume III*

Georgia
GA000095 (May 12, 2000)

### Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Connecticut
CT000001 (Feb. 11, 2000)
CT000002 (Feb. 11, 2000)
CT000003 (Feb. 11, 2000)
CT000004 (Feb. 11, 2000)
CT000005 (Feb. 11, 2000)
CT000006 (Feb. 11, 2000)
New Jersey
NJ000009 (Feb. 11, 2000)

*VOLUME II*

District of Columbia
DC000001 (Feb. 11, 2000)
DC000002 (Feb. 11, 2000)
DC000003 (Feb. 11, 2000)
Maryland
MD000001 (Feb. 11, 2000)
MD000002 (Feb. 11, 2000)
MD000006 (Feb. 11, 2000)
MD000009 (Feb. 11, 2000)
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MD000048 (Feb. 11, 2000)
MD000055 (Feb. 11, 2000)
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MD000058 (Feb. 11, 2000)
Pennsylvania
PA000021 (Feb. 11, 2000)
PA000023 (Feb. 11, 2000)
PA000029 (Feb. 11, 2000)
Virginia
VA000003 (Feb. 11, 2000)
VA000015 (Feb. 11, 2000)
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VA000085 (Feb. 11, 2000)
VA000092 (Feb. 11, 2000)
VA000099 (Feb. 11, 2000)
VA000103 (Feb. 11, 2000)

*Volume III*

Georgia
GA000002 (Feb. 11, 2000)
GA000005 (Feb. 11, 2000)
INDEX (Feb. 11, 2000)

*Volume IV*

Illinois
IL000001 (Feb. 11, 2000)
IL000012 (Feb. 11, 2000)
IL000014 (Feb. 11, 2000)
IL000015 (Feb. 11, 2000)
IL000039 (Feb. 11, 2000)
Michigan
MI000001 (Feb. 11, 2000)
MI000002 (Feb. 11, 2000)
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MI000084 (Feb. 11, 2000)
MI000085 (Feb. 11, 2000)
MI000087 (Feb. 11, 2000)

*Volume V*

Missouri
MO000001 (Feb. 11, 2000)
MO000002 (Feb. 11, 2000)
MO000003 (Feb. 11, 2000)
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MO000066 (Feb. 11, 2000)

*Volume VI*

Utah
UT000005 (Feb. 11, 2000)

*Volume VII*

None.

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 4th Day of May 2000.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 00–11670 Filed 5–11–00; 8:45 am]

BILLING CODE 4510–27–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

**[Docket No. NRTL–2–90]**

### SGS U.S. Testing Company, Inc.; Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** This notice announces the Agency's final decision on the application of SGS U.S. Testing Company, Inc. (SGSUS), for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

**EFFECTIVE DATE:** This recognition becomes effective on May 12, 2000 and, unless modified in accordance with 29 CFR 1910.7, continues in effect while SGSUS remains recognized by OSHA as an NRTL.

**FOR FURTHER INFORMATION CONTACT:** Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N3653, Washington, DC 20210, or phone (202) 693–2110.

**SUPPLEMENTARY INFORMATION:**

**Notice of Final Decision**

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the expansion of recognition of SGS U.S. Testing Company, Inc. (SGSUS), as a Nationally Recognized Testing Laboratory (NRTL). The SGSUS expansion covers the use of the additional test standards and the additional programs, listed below.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in § 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, OSHA can accept products "properly certified" by the NRTL. OSHA processes applications related to an NRTL's recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish this public notice of its final decision on an application.

SGSUS submitted an application, dated August 9, 1999 (see Exhibit 14), to expand its recognition as an NRTL for the four (4) additional test standards listed below. The NRTL also included a request for use of the two (2) additional supplemental programs listed below. In processing the application, OSHA performed an on-site review of the SGSUS facility in Fairfield, New Jersey, on June 7–8, 1999. In the final report of the on-site review report (see Exhibit 15), the assessor recommended the expansion for the additional test standards and additional programs.

OSHA published the required notice in the **Federal Register** (65 FR 2438, 01/14/2000) to announce the SGSUS expansion application. The notice included a preliminary finding that SGSUS could meet the requirements for expansion of its recognition, and OSHA invited public comment on the application by March 14, 2000. OSHA received no comments concerning this application.

The most recent prior notices published by OSHA for the SGSUS

recognition covered the renewal and expansion of its recognition, which OSHA announced on May 19, 1998 (63 FR 27598), and granted on August 28, 1998 (63 FR 46084). OSHA published a correction to this last notice on December 17, 1998 (63 FR 69683).

You may obtain or review copies of all public documents pertaining to the application by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N2625, Washington, DC 20210, telephone: (202) 693–2350. You should refer to Docket No. NRTL–2–90, the permanent records of public information on the SGSUS recognition.

The current addresses of the facilities (sites) that OSHA recognizes for SGSUS are:

SGS U.S. Testing Company Inc., 291 Fairfield Avenue, Fairfield, New Jersey 07004

SGS U.S. Testing Company Inc., 5555 Telegraph Road, Los Angeles, California 90040

**Final Decision and Order**

The NRTL Program staff has examined the application, the on-site review report, and other pertinent information. Based upon this examination and the staff's recommendation, OSHA finds that SGS U.S. Testing Company Inc., has met the requirements of 29 CFR 1910.7 for expansion of its recognition to include the additional test standards, listed below, subject to the limitations and conditions listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the recognition of SGSUS, subject to these limitations and conditions.

*Limitations*

OSHA hereby expands the recognition of SGSUS for testing and certification of products to demonstrate conformance to the four (4) additional test standards listed below. OSHA has determined that each test standard meets the requirements for an appropriate test standard, within the meaning of 29 CFR 1910.7(c).

The Agency's recognition of SGSUS, or any NRTL, for a particular test standard is always limited to equipment or materials (products) for which OSHA standards require third party testing and certification before use in the workplace. As a result, OSHA's recognition of an NRTL for a test standard excludes any product(s), falling within the scope of the test standard, for which OSHA has no such requirements. In addition, testing or certification to any of the standards listed below is limited to those sites that have the proper capability and programs. In fact, this limitation applies to all test standards for which SGSUS is currently recognized. This treatment is consistent with the recognition that OSHA has granted to other NRTLs that operate or utilize multiple sites.

ANSI/UL 696 Electric Toys
ANSI/UL 697 Toy Transformers
ANSI/UL 1310 Class 2 Power Units
ANSI/UL 6500 Audio/Visual and Musical Instrument Apparatus for Household, Commercial, and Similar General Use

The designations and titles of the above test standards were current at the time of the preparation of the preliminary notice, which announced the SGSUS application for expansion.

*Programs and Procedures*

OSHA is granting the request by SGSUS to use the two (2) supplemental programs, listed below, based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. The on-site review report indicates that SGSUS meets the criteria for use of the following additional supplemental programs:

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.
Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed the program descriptions to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, OSHA does treat these programs as one of the three elements that defines an NRTL's scope of recognition.

OSHA previously granted a request by SGSUS to use two other supplemental programs but included certain conditions on their use. Since these conditions are still in effect and apply to the use of Program 3, we have listed them below. These conditions apply solely to the SGSUS operations as an NRTL and solely to those products that it certifies for purposes of enabling employers to meet OSHA product approval requirements. The conditions are in addition to the requirements detailed in the previously cited March 9, 1995 **Federal Register**. Also, they are in addition to the other conditions listed below, which OSHA normally imposes in its recognition notices. The NRTL Program staff includes these type of additional conditions on OSHA's informational web page for the NRTL. When the staff determines that a particular condition is no longer in effect, the staff removes it from the web page and notifies the NRTL accordingly. OSHA has no requirement to give public notice when removing such a condition.

*Conditions*

SGS U.S. Testing Company, Inc., must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

SGS U.S. Testing Company, Inc., Fairfield, New Jersey, will review and approve the qualifications of all external organizations prior to SGS U.S. Testing Company, Inc., accepting test data from these organizations.

SGS U.S. Testing Company, Inc., Fairfield, New Jersey, will review and approve the qualifications of all external organizations prior to SGS U.S. Testing Company, Inc., using a site of any of these organizations for witnessed test data.

OSHA must be allowed access to the SGSUS facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If SGSUS has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

SGSUS must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, SGSUS agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

SGSUS must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

SGSUS will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition;

SGSUS will continue to meet the requirements for recognition in all areas where it has been recognized; and

SGSUS will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, DC this 2nd day of May 2000.

**Charles N. Jeffress,**

*Assistant Secretary.*

[FR Doc. 00–11979 Filed 5–11–00; 8:45 am]

BILLING CODE 4510–26–P

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### Office of Federal Procurement Policy; Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Pub. L. 105–85.

**AGENCY:** Office of Federal Procurement Policy, OMB.

**ACTION:** Notice.

**SUMMARY:** The Administrator of the Office of Federal Procurement Policy (OFPP) is hereby publishing the attached memorandum to heads of agencies concerning the determination of the maximum "benchmark" compensation that will be allowable under government contracts during contractors' FY 2000—$353,010. This determination is required to be made pursuant to Section 808 of Public Law 105–85. It applies equally to both defense and civilian procurement agencies.

**FOR FURTHER INFORMATION CONTACT:** Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, OFPP on (202) 395–3254.

**Deidre A. Lee,**

*Administrator.*

**To the Heads of Executive Departments and Agencies**

*Subject: Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Pub. L. 105–85*

This memorandum sets forth the "benchmark compensation amount" as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. Under Section 39, the "benchmark compensation amount" is "the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available." The "benchmark compensation amount" established as directed by Section 39 limits the allowability of compensation costs under government contracts. The "benchmark compensation amount" does not limit the compensation that an executive may otherwise receive.

Based on a review of commercially available surveys of executive compensation and after consultation with the Director of the Defense Contract Audit Agency, I have determined pursuant to the requirements of Section 39 that the benchmark compensation amount for contractor fiscal year 2000 is $353,010. This benchmark compensation amount is to be used for contractor fiscal year 2000, and subsequent contractor fiscal years, unless and until revised by OFPP. This benchmark compensation amount applies to contract costs incurred after January 1, 2000, under covered contracts of both the defense and civilian procurement agencies as specified in Section 808 of Pub. L. 105–85.

Questions concerning this memorandum may be addressed to Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, OFPP, on (202) 395–3254.

**Deidre A. Lee,**

*Administrator.*

[FR Doc. 00–12017 Filed 5–11–00; 8:45 am]

BILLING CODE 3110–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–046]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that Access, LLC, of Norfolk, VA, has applied for an exclusive license to practice the inventions described and claimed in U.S. Patent Number 5,377,100, entitled "A Method of Encouraging Attention by Correlating Video Game Difficulty With Attention Level," and NASA Case No. LAR 15817–1, entitled "A Method of Encouraging Physiological Self-Regulation Through Modulation of an Operator's Control Input to a Video Game or Training Simulator," both of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

**DATES:** Responses to this notice must be received by July 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Helen M. Galus, Patent Attorney, Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; telephone 757–864–3227; facsimile 757–864–9190.

Dated: May 1, 2000.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 00–11980 Filed 5–11–00; 8:45 am]

BILLING CODE 7510–01–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (00–050)]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that Cognitive Technologies, LLC, of Purcellville, VA, has applied for an exclusive license to practice the inventions described and claimed in U.S. Patent Number 5,377,100, entitled "A METHOD OF ENCOURAGING ATTENTION BY CORRELATING VIDEO GAME DIFFICULTY WITH ATTENTION LEVEL," and NASA Case

No. LAR 15817–1, entitled "A METHOD OF ENCOURAGING PHYSIOLOGICAL SELF-REGULATION THROUGH MODULATION OF AN OPERATOR'S CONTROL INPUT TO A VIDEO GAME OR TRAINING SIMULATOR," both of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

**DATES:** Responses to this notice must be received by July 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Helen M. Galus, Patent Attorney, Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; telephone 757–864–3227; facsimile 757–864–9190.

Dated: May 1, 2000.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 00–11984 Filed 5–11–00; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–049]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that CyberLearning Technologies, Inc., of Plymouth Meeting, PA, has applied for an exclusive license to practice the inventions described and claimed in U.S. Patent Number 5,377,100, entitled "A METHOD OF ENCOURAGING ATTENTION BY CORRELATING VIDEO GAME DIFFICULTY WITH ATTENTION LEVEL," and NASA Case No. LAR 15817–1, entitled "A METHOD OF ENCOURAGING PHYSIOLOGICAL SELF-REGULATION THROUGH MODULATION OF AN OPERATOR'S CONTROL INPUT TO A VIDEO GAME OR TRAINING SIMULATOR," both of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

**DATES:** Responses to this notice must be received by July 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Helen M. Galus, Patent Attorney, Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; telephone 757–864–3227; facsimile 757–864–9190.

Dated: May 1, 2000.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 00–11983 Filed 5–11–00; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–048]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that East3.com, LLC, of Richmond, VA, has applied for an exclusive license to practice the inventions described and claimed in U.S. Patent Number 5,377,100, entitled "A METHOD OF ENCOURAGING ATTENTION BY CORRELATING VIDEO GAME DIFFICULTY WITH ATTENTION LEVEL," and NASA Case No. LAR 15817–1, entitled "A METHOD OF ENCOURAGING PHYSIOLOGICAL SELF-REGULATION THROUGH MODULATION OF AN OPERATOR'S CONTROL INPUT TO A VIDEO GAME OR TRAINING SIMULATOR," both of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

**DATES:** Responses to this notice must be received by July 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Helen M. Galus, Patent Attorney, Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; telephone 757–864–3227; facsimile 757–864–9190.

Dated: May 1, 2000.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 00–11982 Filed 5–11–00; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–047]**

### Notice of Prospective Patent License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of prospective patent license.

**SUMMARY:** NASA hereby gives notice that Meridian Holdings, Inc., of Los Angeles, CA, has applied for a partially exclusive license to practice the inventions described and claimed in U.S. Patent Number 5,377,100, entitled "A METHOD OF ENCOURAGING ATTENTION BY CORRELATING VIDEO GAME DIFFICULTY WITH ATTENTION LEVEL," and NASA Case No. LAR 15817–1, entitled "A METHOD OF ENCOURAGING PHYSIOLOGICAL SELF-REGULATION THROUGH MODULATION OF AN OPERATOR'S CONTROL INPUT TO A VIDEO GAME OR TRAINING SIMULATOR," both of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

**DATES:** Responses to this notice must be received by July 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Helen M. Galus, Patent Attorney, Langley Research Center, Mail Code 212, Hampton, VA 23681–2199; telephone 757–864–3227; facsimile 757–864–9190.

Dated: May 1, 2000.

**Edward A. Frankle,**

*General Counsel.*

[FR Doc. 00–11981 Filed 5–11–00; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL SCIENCE FOUNDATION

### Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Public Law 95–541)

**AGENCY:** National Science Foundation.

**ACTION:** Notice of Permit Applications Received under the Antarctic Conservation Act of 1978, P.L. 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

**DATES:** Interested parties are invited to submit written data, comments, or views with respect to these permit applications by June 11, 2000. Permit applications may be inspected by

interested parties at the Permit Office, address below.

**ADDRESSES:** Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy at the above address or (703) 306–1030.

**SUPPLEMENTARY INFORMATION:** The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The applications received are as follows:

1. *Applicant:* Permit Application No. 2001–008, Norbert Wu, Norbert Wu Productions, 1065 Sinex Avenue, Pacific Grove, CA 93950.

*Activity for Which Permit is Requested:* Enter Antarctic Specially Protected Area. The applicant is part of the Artists and Writers Program of the U.S. Antarctic Program. He proposes to enter the outskirts of Cape Crozier (ASPA #124) to conclude filming that are initiated last season under his grant, "A Photographic Survey of Antarctic Marine Species" and to finish a PBS Nature documentary entitled "Under Antarctic Ice". The applicant plans to conduct general photography and filming of Adelie and Emperor penguins, leopard seals, Orcas and minke whales. Filming will be restricted to topside photography and cinematography. Visits to the site will be selected to target Adelie penguin events (nesting, egg tending and egg hatching) during peak population at the rookery. The applicant plans to skirt the Adelie and Emperor penguin rookeries and not enter into the midst of the colony. Scientific research has shown that Adelie penguins are most active between 4:00am and 10:00am. Therefore the applicant intends to camp near Cape Crozier to take advantage of these timeframes. Access to the area will be by helicopter which will land at the designated.landing site as outlined in the site's management plan.

*Location:* ASPA 124—Cape Crozier, Ross Island.

*Dates:* August 1, 2000 to February 28, 2001.

2. *Applicant:* Permit Application No. 2001–009, Terry J. Wilson, Department of Geological Sciences, Ohio State University, 125 South Oval Mall, Columbus, OH 43210.

*Activity for Which Permit is Requested:* Enter Antarctic Specially Protected Area. Cope Crozier is the largest ice-free volcanic area on Ross Island, with a large number of well exposed volcanic cones and fissures. It is a primary site for mapping volcanic alignments and stress directions in eastern Ross Island. The applicant plans to conduct aerial observations and photography of the volcanic vents using a helicopter. In addition, the applicant plans to conduct short-duration ground observations on selected cones. The objectives of the research can be achieved without flying over or entering the immediate proximity of the Adelie and Emperor penguin rookeries at Cape Crozier.

*Location:* ASPA 124—Cape Crozier, Ross Island.

*Dates:* December 4, 2000 to January 4, 2001.

3. *Applicant:* Permit Application No. 2001–010, Tom Yelvington, Raytheon Polar Service Company, 61 Inverness Drive East, Suite 300 Englewood, CO 80112.

*Activity for Which Permit is Requested:* Enter Antarctic Specially Protected Area. The applicant proposes to enter Byers Peninsula (ASPA #126) on Livingston Island for the purpose of reconnoitering landing sites and camp sites along the southern shores. Byers Peninsula is a key site of interest for a scientific project that will be conducted March 2001 through May 2001. Because of the uncertainties associated with zodiac-supported field camps, it is essential to ascertain in advance where the landings with the researchers and supplies might be made, and where the tent camp might be established. The reconnaissance of Byers Peninsula will be conducted during the next few months based on the schedule of the U.S. Antarctic Program's research vessel operating in the Peninsula. It is estimated that only 4–5 people will be needed to scout the southern shores for the appropriate sites.

*Location:* ASPA 126—Byers Peninsula, Livingston Island, South Shetland Islands.

*Dates:* June 1, 2000 to March 31, 2001.

**Nadene G. Kennedy,**

*Permit Officer, Office of Polar Programs.*

[FR Doc. 00–11963 Filed 5–11–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Vol. 65, No. 90/Tuesday, May 9, 2000.

**PREVIOUSLY ANNOUNCED TIME AND DATE:** 9:30 a.m., Tuesday, May 16, 2000.

**CHANGE IN MEETING:** A majority of the Board Members determined by recorded vote that the business of the Board required deleting the following item from the agenda at this time and that no earlier announcement was possible.

7256 Special Investigation Report: Actions to Reduce Fatalities, Injuries, and Crashes Involving the Hard Core Drinking Driver.

**FOR MORE INFORMATION CONTACT:** Rhonda Underwood, (202) 314–6065.

Dated: May 10, 2000.

**Rhonda Underwood,**

*Federal Register Liaison Officer.*

[FR Doc. 00–12178 Filed 5–10–00; 3:48 pm]

**BILLING CODE 7533–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–344]**

### Portland General Electric Company, et al.; Trojan Nuclear Plant; Notice of Consideration of Approval of Application Regarding Sierra Pacific Resources Purchase of Portland General Electric and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of an order under 10 CFR 50.80 and 10 CFR 72.50 approving the indirect transfer of Facility Operating License No. NFP–1 for the Trojan Nuclear Plant (TNP) and Materials License No. SNM–2509 for the TNP Independent Spent Fuel Storage Installation (ISFSI) located in Columbia County, Oregon, on the west bank of the Columbia River.

According to an application for approval filed by Portland General Electric Company (PGE, the licensee), Sierra Pacific Resources (SPR) is considering the purchase of all of the common stock of PGE from Enron Corporation. PGE, currently a wholly

owned subsidiary of Enron Corporation, would become a wholly-owned subsidiary of SPR, thereby effecting an indirect transfer of Enron's interest in the TNP and ISFSI licenses to SPR. No physical changes to the TNP or ISFSI or operational changes are being proposed in the application. No direct transfer of the licenses for the facility and the ISFSI would result from the ownership transfer.

Pursuant to 10 CFR 50.80 and 10 CFR 72.50, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a facility or ISFSI license, if the Commission determines that the proposed transfer of control will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By June 1, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Mary A. Murphy, Esq., counsel for, Leboeuf, Lamb, Green, and MacRae L.L.P., 1875 Connecticut Avenue, Washington, D.C. 20009–5728; George M. Galloway, Esq., counsel for, Stoel Rives L.L.P., Standard Insurance Center, 900 SW Fifth Avenue, Suite 2300, Portland, OR 97204-1268; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: OGCLT@NRC.GOV); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by June 12, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated January 13, 2000, and supplement dated January 20, 2000, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, N.W, Washington, D.C. 20037, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 8th day of May 2000.

For the Nuclear Regulatory Commission.

**Richard F. Dudley,**

*Acting Chief, Decommissioning Section, Project Directorate IV and Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–11956 Filed 5–11–00; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Privacy Act of 1974: New System of Records

**AGENCY:** Office of Personnel Management (OPM).

**ACTION:** Notice of a new system of records.

**SUMMARY:** OPM proposes to add a new system of records to its inventory of records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to publish in the **Federal Register** notice of the existence and character of records systems maintained by the agency (5 U.S.C. 552a(e)(4)).

**DATES:** The new system will be effective without further notice May 17, 2000, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send written comments to the Office of Personnel Management, ATTN: Mary Beth Smith-Toomey, Office of the Chief Information Officer, 1900 E Street, NW., Room 5415, Washington, DC 20415–7900.

**FOR FURTHER INFORMATION CONTACT:** Mary Beth Smith-Toomey, (202) 606–8358.

**SUPPLEMENTARY INFORMATION:** The Child Care Tuition Assistance Records system will collect family income data from OPM employees for the purpose of determining their eligibility for child care tuition assistance, and the amounts of the tuition assistance. It also will collect information from the employee's child care provider(s) for verification purposes, *e.g.*, that the provider is licensed. Collection of data will be by tuition assistance application forms submitted by employees.

U.S. Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

**OPM/Internal–15**

**SYSTEM NAME:**

OPM Child Care Tuition Assistance Records.

**SYSTEM LOCATION:**

U. S. Office of Personnel Management, Office of Human Resources and EEO, 1900 E Street, NW., Room 1469, Washington, DC 20415.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Employees of the Office of Personnel Management who voluntarily apply for child care tuition assistance.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Application forms for child care tuition assistance containing personal information, including employee (parent) name, Social Security Number, grade, home and work numbers, addresses, telephone numbers, total

family income, names of children on whose behalf the parent is applying for tuition assistance, child's date of birth; information on child care providers used, including name, address, provider license number and State where issued, tuition cost, and provider tax identification number; and copies of IRS Form 1040 and 1040A for verification purposes.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 106–58, section 643 and E.O. 9397.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Routine uses 1, and 3 through 11 of the Prefatory Statement at the beginning of OPM's system notices (60 FR 63075, effective January 17, 1996) applies to the records maintained within the system. There are no system unique routine uses.

**PURPOSE:**

To establish and verify OPM employees' eligibility for child care subsidies in order for OPM to provide monetary assistance to its employees.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

*Storage:*

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

**RETRIEVABILITY:**

By name; may also be cross-referenced to Social Security Number.

**SAFEGUARDS:**

When not in use by an authorized person, paper records are stored in lockable file cabinets or secured rooms. Electronic records are protected by the use of passwords.

**RETENTION AND DISPOSAL:**

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines.

**SYSTEM MANAGER AND ADDRESS:**

Director, Office of Human Resources and EEO, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

**NOTIFICATION PROCEDURE:**

Individuals may submit a request on whether a system contains records about them to the system manager indicated. Individuals must furnish the following for their records to be located and identified:

Full name.

Social Security Number.

**RECORD ACCESS PROCEDURE:**

Individuals wishing to request access to records about them should contact the system manager indicated. Individuals must provide the following information for their records to be located and identified:

Full name.

Social Security Number.

Individuals requesting access must also follow the OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

**CONTESTING RECORD PROCEDURE:**

Individuals wishing to request amendment of records about them should contact the system manager indicated. Individuals must furnish the following information for their records to be located and identified:

Full name.

Social Security Number.

Individuals requesting amendment must also follow the OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

**RECORD SOURCE CATEGORIES:**

Information is provided by OPM employees who apply for child care tuition assistance. Furnishing of the information is voluntary.

[FR Doc. 00–12054 Filed 5–11–00; 8:45 am]

**BILLING CODE 6325–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Existing Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extension: Rule 17g–1, SEC File No. 270–208, OMB Control No. 3235–0213.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520], the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17g–1 [17 CFR 270.17g–1] under the Investment Company Act of 1940 (the "Act") governs the fidelity bonding of officers and employees of registered management investment companies ("funds") and their advisers. Rule 17g–1 requires, in part, the following:

- Independent Directors' Approval Requirements. At least annually, the independent directors of a fund must approve the form and amount of the fund's fidelity bond. Rule 17g–1 provides a schedule of minimum amounts for fidelity bonds based on a fund's size. The independent directors also must approve the amount of any premium paid for any "joint bond" covering multiple funds or certain other affiliates of the fund.

- Fidelity Bond Content Requirements. The fidelity bond must provide that it shall not be canceled, terminated or modified except upon 60-days written notice to the affected party and to the Commission. In the case of a joint bond, this 60-day notice also must be given to each fund and to the Commission. In addition, a joint bond must provide that the fidelity insurance company will provide all funds covered by the bond with (i) A copy of the bond and any amendments to the bond; (ii) a copy of any formal filing of a claim on the bond; and (iii) notification of the terms of the settlement on any claim prior to execution of that settlement.

- Joint Bond Agreement Requirement. A fund that is insured by a joint bond must enter into an agreement with all other parties insured by the joint bond regarding recovery under the joint bond.

- Required Filings with the Commission. Upon execution of a fidelity bond or any amendment thereto, a fund must file with the Commission a copy of: (i) The executed fidelity bond; (ii) the resolution of the fund's independent directors approving the fidelity bond; and (iii) a statement as to the period for which the fidelity bond premiums have been paid. In the case of a joint bond, a fund also must file a copy of: (i) A statement showing the amount of a single insured bond the fund would have maintained under the rule had it not been named under a joint bond; and (ii) each agreement between the fund and all other insured parties. A fund also must notify the Commission in writing within 5 days of any claim and settlement on a claim made under a fidelity bond.

- Required Notices to Directors. A fund must notify by registered mail each member of its board of directors of (i) any cancellation, termination or modification of the fidelity bond at least 45 days prior to the effective date; and (ii) the filing or settlement of any claim under the fidelity bond when the notification is filed with the Commission.

Rule 17g–1's independent directors' annual requirements, fidelity bond content requirements, joint bond agreement requirement and the required notices to directors seek to ensure the safety of fund assets against losses due to the conduct of persons who may obtain access to those assets. These requirements also seek to facilitate oversight of a fund's fidelity bond. The rule's required filings with the Commission are designed to assist the Commission in monitoring funds' compliance with the fidelity bond requirements.

The Commission staff estimates that approximately 3500 funds are subject to the requirements of rule 17g–1, and that on average a fund spends approximately one hour per year complying with the rule's paperwork requirements. The Commission staff therefore estimates the total annual burden of the rule's paperwork requirements to be 3500 hours.

These estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act. These estimates are not derived from a comprehensive or even a representative survey or study of Commission rules. The collection of information required by rule 17g–1 is mandatory and will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are requested on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

Dated: May 4, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11917 Filed 5–11–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 17Ad–4(b) & (c), SEC File No. 270–264, OMB Control No. 3235–0341, Rule 17Ad–15, SEC File No. 270–360, OMB Control No. 3235–0409.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

**Rule 17Ad–4(b) & (c) Notices Regarding Exempt Transfer Agent Status**

Rule 17Ad–4(b) & (c) is used to document when transfer agents are exempt, or no longer exempt, from the minimum performance standards and certain recordkeeping provisions of the Commission's transfer agent rules. Rule 17Ad–4(c) sets forth the conditions under which a registered transfer agent loses its exempt status. Once the conditions for exemption no longer exist, the transfer agent, to keep the appropriate regulatory authority ("ARA") apprised of its current status, must prepare, and file if the ARA for the transfer agent is the Board of Governors of the Federal Reserve System ("BGFRS") or the Federal Deposit Insurance Corporation ("FDIC"), a notice of loss of exempt status under paragraph (c). The transfer agent then cannot claim exempt status under Rule 17Ad–4(b) again until it remains subject to the minimum performance standards for non-exempt transfer agents for six consecutive months. The ARAs use the information contained in the notice to determine whether a registered transfer agent qualifies for the exemption, to determine when a registered transfer agent no longer qualifies for the exemption, and to determine the extent to which that transfer agent is subject to regulation.

The BGFRS receives approximately twelve notices of exempt status and six notices of loss of exempt status annually. The FDIC receives approximately eighteen notices of exempt status and three notices of loss of exempt status annually. The Commission and the Office of the Comptroller of the Currency ("OCC") do not require transfer agents to file notice of exempt status or loss of exempt status. Instead, transfer agents whose ARA is the Commission or OCC need only to prepare and maintain these notices. The Commission estimates that approximately sixteen notices of exempt status and loss of exempt status are prepared annually by transfer agents whose ARA is the Commission. Similarly, the OCC estimates that the transfer agents for which it is the ARA, prepare and maintain approximately fifteen notices of exempt status and loss of exempt status annually. Thus, a total of approximately seventy notices of exempt status and loss of exempt status are prepared and maintained by transfer agents annually. Of these seventy notices, approximately forty are filed with an ARA. Any additional costs associated with filing such notices would be limited primarily to postage, which would be minimal. Since the Commission estimates that no more than one-half hour is required to prepare each notice, the total annual burden to transfer agents is approximately thirty-five hours. The average cost per hours is approximately $30. Therefore, the total cost of compliance to the transfer agent community is $1,050.

Transfer agents should prepare and maintain in its possession or file with its ARA notice of exempt status or loss of exempt status for the period of the exemption or loss of exemption. When the transfer agent's status changes, the transfer agent should file a notice of exempt status or loss of exempt status reflecting that change. The notice requirement is mandatory to determine when a registered transfer agent no longer qualifies for the exemption, and to determine the extent to which that transfer agent is subject to regulation. Notices submitted according to Rule 17Ad–4(b) & (c) will not be kept confidential.

**Rule 17Ad–15 Signature Guarantees**

Rule 17Ad–15 requires approximately 1,093 transfer agents to establish written standards for the acceptance or rejection of guarantees of securities transfers from eligible guarantor institutions. Transfer agents are required to establish procedures to ensure that those standards are used by the transfer agent to determine whether to accept or reject guarantees from eligible guarantor institutions. Transfer agents must maintain, for a period of three years following the date of a rejection of transfer, a record of all transfers rejected, along with the reason for the

rejection, identification of the guarantor, and whether the guarantor failed to meet the transfer agent's guarantee standard. These recordkeeping requirements assist the Commission and other regulatory agencies with monitoring transfer agents and ensuring compliance with the rule.

There are approximately 1,093 registered transfer agents. Of the 1,093 registered transfer agents, proximately 120 will receive fewer than 100 items for transfer. The staff expects that most small transfer agents will have few, if any, rejections. The staff estimates that every transfer agent will spend about 40 hours annually to comply with Rule 17Ad–15. The total annual burden for all transfer agents is 43,720 hours. The average cost per hour is approximately $30. Therefore, the total cost of compliance for all transfer agents is $1,311,600.

Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: May 1, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11918 Filed 5–11–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–24447; File No. 812–12006]**

## Allianz Life Insurance Company of North America, et al.; Notice of Application

May 8, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for an order under Section 6(c) of the Investment Company Act of 1940, as amended (the "1940 Act" or "Act") granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to permit the recapture of bonus amounts applied to purchase payments made under certain deferred variable annuity contracts.

*Summary of Application.* Applicants seek an order under Section 6(c) of the Act to the extent necessary to permit the issuance and, under specified circumstances, the subsequent recapture of unvested bonuses applied to purchase payment made under (i) certain deferred variable annuity contracts that Allianz Life Insurance Company of North America ("Allianz Life") will issue through Allianz Life Variable Account B ("Variable Account B") (the contracts, including certain contract data pages, endorsements and riders, are collectively referred to herein as the "Contracts"), and (ii) contracts that Allianz Life may issue in the future through Variable Account B or any Future Accounts that are substantially similar in all material respects to the Contracts (the "Future Contracts"). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, Allianz Life, whether existing or created in the future, that serves as a distributor or principal underwriter for the Contracts or Future Contracts (collectively "Allianz Life Broker-Dealers").

*Applicants:* Allianz Life Insurance Company of North America, Allianz Life Variable Account B, any other separate account established by Allianz Life in the future to support certain deferred variable annuity contracts issued by Allianz Life ("Future Accounts") and USAllianz Investor Services, LLC ("USAIS") (collectively, "Applicants").

*Filing Date:* The application was filed on February 29, 2000.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 2, 2000, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Lynn Stone, Esq., Blazzard, Grodd & Hasenauer, P.C., 943 Post Road East, Westport, CT 06880.

**FOR FURTHER INFORMATION CONTACT:** Keith A. O'Connell, Senior Counsel, or Keith E. Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch, 450 Fifth St., NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

### Applicant's Representations

1. Allianz Life was organized under the laws of the state of Minnesota in 1896. Allianz Life offers fixed and variable life insurance and annuities and group life, accident and health insurance. Allianz Life is licensed to do business in 49 states and the District of Columbia. Allianz Life is a wholly-owned subsidiary of Allianz Verischerungs-AG Holding. Allianz Life serves as depositor for Variable Account B. Allianz Life may in the future establish one or more Future Accounts for which it will serve as depositor.

Variable Account B is a segregated asset account of Allianz Life. Variable Account B is registered with the Commission as a unit investment trust under the Act. Variable Account B filed a Form N–8A Notification of Registration under the 1940 Act on July 13, 1988. Variable Account B will fund the variable benefits available under the Contracts funded through it. Units of interest in Variable Account B will be registered under the Securities Act of 1933 (the "1933 Act"). In that regard, Variable Account B filed a Form N–4 Registration Statement on January 31, 2000 under the 1933 Act relating to the Contracts. Allianz Life may in the future

issue Future Contracts through Variable Account B or through Future Accounts. That portion of the assets of Variable Account B that is equal to the reserves and other Contract liabilities with respect to Variable Account B is not chargeable with liabilities arising out of any other business of Allianz Life. Any income, gains or losses, realized or unrealized, from assets allocated to Variable Account B are, in accordance with Variable Account B's Contracts, credited to or charged against Variable Account B, without regard to other income, gains or losses of Allianz Life.

3. USAIS (formerly NALAC Financial Plans, LLC) is a wholly-owned subsidiary of Allianz Life and will act as the distributor of the Contracts funded through Variable Account B. USAIS is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the NASD. The Contracts will be offered through unaffiliated broker-dealers who have entered into agreements with USAIS. All such unaffiliated broker-dealers will be registered broker-dealers under the 1934 Act and NASD members. USAIS, or any successor entity, may act as principal underwriter for any Future Accounts and distributor for any Future Contracts issued by Allianz Life.

4. The Contract is a flexible purchase payment variable deferred annuity contract with a fixed account option. The Contract may be issued under a qualified plan, or as a non-qualified contract. The Contract is designed to provide for the accumulation of assets during the accumulation phase through investment in various investment choices, and income during the payout phase. Contract Owners may make purchase payments at any time during the accumulation phase. The minimum initial purchase payment is $15,000. The maximum amount of purchase payments that Allianz Life will accept from a Contract Owner without prior approval is $1,000,000. Additional purchase payments of at least $250 can be made ($100 under the automatic investment plan).

5. The Contract provides that a Contract Owner may cancel the Contract within 10 days after receipt (or for a longer period in states where required). This is referred to as the "Free Look Period." Allianz Life will refund the Contract Owner's Contract value (less any Bonus payments) as of the date it receives the request for cancellation. In certain states, or if the Contract is purchased as an Individual Retirement Annuity, Allianz Life will refund purchase payments made by the Contract Owner.

6. Contract owners can allocate purchase payments to sub-accounts of Variable Account B and to a fixed account ("Fix Account"), where available, offered by Allianz Life.

7. Contract owners can currently allocate money to 37 sub-accounts of Variable Account B. Each sub-account will invest in shares of a corresponding fund or portfolio of various underlying investment companies ("Funds"). The sub-accounts and the Fixed Account will comprise the initial investment options under the Contract.

8. The Variable Account B sub-accounts currently invest in shares of the following Funds: AIM Variable Insurance Funds, Inc., advised by A I M Advisors, Inc.; The Alger American Fund, advised by Fred Alger Management, Inc.; Davis Variable Account Fund, Inc., advised by Davis Selected Advisers, LP; Franklin Templeton Variable Insurance Products Trust, advised by Franklin Advisers Inc., Franklin Mutual Advisers, LLC, Franklin Advisory Services, LLC, Templeton Asset Management Ltd., and Templeton Global Advisors Limited (depending upon the portfolio); JP Morgan Series Trust II, advised by J.P. Morgan Investment Management Inc.; Oppenheimer Variable Account Funds, advised by Oppenheimer Funds, Inc.; PIMCO Variable Insurance Trust, advised by Pacific Investment Management Company; Seligman Portfolios, Inc., advised by J & W Seligman & Co. Incorporated; USAllianz Variable Insurance Products Trust, advised by Allianz of America, Inc.; and Van Kampen Life Investment Trust, advised by Van Kampen Asset Management Inc. The Funds are registered under the 1940 Act and the shares are registered under the 1933 Act. The Fixed Account is not registered with the Commission.

9. Allianz Life, at a later date, may determine to create additional sub-accounts of Variable Account B to invest in any additional underlying portfolios or other investments as may now or in the future be available. Similarly, sub-accounts of Variable Account B may be discontinued, combined or eliminated from time to time.

10. The Contract provides for transfer privileges among investment options, dollar cost averaging, flexible rebalancing, asset allocation and other features. The following charges are assessed under the Contract: (i) Annual asset-based charges as follows: 1.50% for mortality and expense risks if the Owner selects the traditional death benefit and 1.70% if the Owner selects the enhanced death benefit, plus .15% for administration expenses; (ii) a contingent deferred sales charge with starts at 8.5% in the first year, and declines thereafter to 0% after 10 years with a 10% of purchase payments free surrender option; (iii) a $40 contract maintenance charge; (iv) a transfer fee of $25 for each transfer in excess of 12 in a Contract year; and (v) a commutation fee assessed against liquidations when certain annuity options are selected which starts at 7% in the first year following the income date and declines to 1% after 6 years following the income date. The Funds also impose management fees and operating expenses that vary depending upon which portfolio is selected.

11. The Contract offers a selection of death benefits—a Contract Owner can select the traditional death benefit or the enhanced death benefit. The traditional death benefit is equal to the greater of: (1) The Contract value determined as of the end of the business day on which due proof of death and an election of payment method is received by Allianz Life; or (2) the guaranteed minimum death benefit which is equal to the total of all purchase payments made reduced proportionately by the percentage of Contract value surrendered, including any contingent deferred sales charge. If selected, the enhanced death benefit is equal to the greater of: (1) The Contract value determined as of the end of the business day on which due proof of death and an election of payment method is received by Allianz Life; or (2) the guaranteed minimum death benefit which is equal to the greater of: (a) The total of all purchase payments made reduced proportionately by the percentage of the Contract value surrendered, including any contingent deferred sales charge assessed; or (b) the greatest anniversary value which is equal to the Contract value on a Contract anniversary, increased by additional purchase payments and reduced proportionately by the percentage of the Contract value surrendered, including any contingent deferred sales charge assessed, since that Contract anniversary. Contract anniversaries occurring on or after the Contract Owner's 81st birthday of date of death will not be taken into consideration in determining the enhanced death benefit.

12. Prior to the Contract Owner's/joint owner's 81st birthday, Allianz Life will credit each purchase payment made with a bonus ("Bonus"). The amount of the Bonus rate is based on the total amount of purchase payments made at the time of the contribution, less any surrenders and applicable contingent

deferred sales charges. The Bonus rates are: 4% of the purchase payment with total purchase payments (less surrenders and related contingent deferred sales charges) of less than $25,000; 5% of the purchase payment with total purchase payments (less surrenders and related contingent deferred sales charges) of $25,000–$99,9999; 6% of the purchase payment with total purchase payments (less surrenders and related contingent deferred sales charges) of $100,000–$999,999; 7% of the purchase payment with total purchase payments (less surrenders and related contingent deferred sales charges) of $1,000,000–$4,999,999; 8% of the purchase payment with total purchase payments (less surrenders and related contingent deferred sales charges ) of $5,000,000 or greater. Allianz Life will fund the Bonus from its general account assets and will allocate the Bonus to the Fixed Account and/or the sub-accounts of Variable Account B in the same proportion as the purchase payment. Allianz Life reserves the right to increase the Bonus rights, up to 10% of the purchase payment. In addition, Allianz Life reserves the right to vary the break points amounts relating to the Bonus rates.

13. A Contract Owner has access to funds by making either a partial or complete surrender, or by electing to receive annuity payments. A beneficiary will have access to the money in the Contract when a death benefit is paid. Any partial surrender must be for at least $500 (except under the Minimum Distribution Program). A Contract Owner may elect to receive annuity payments under the six available annuity options. An Owner may not annuitize until three years after the issue date.

14. Bonus amounts are available for surrender, annuitization, payment of death benefits (which will never be less than the minimum guaranteed death benefit) only when such amounts become vested. Allianz Life will recapture any unvested Bonus upon surrender, annuitization or payment of a death benefit (if Contract value is the greater of the values). Bonuses vest as follows: 0%—up through 12 completed months from the date of purchase payment; 35%—at least 12 and through 24 completed months from date of purchase payment; 70%—at least 24 months and through 36 completed months from date of purchase payment; 100%—at least 36 completed months from date of purchase payment. Regardless of whether the Bonus is vested, all gains or losses attributable to such Bonus are part of the Owner's Contract value and are always 100% vested. All Bonuses, and any gains or losses attributable to a Bonus are treated as earnings under the Contract for tax purposes.

15. Applicants seek exemption pursuant to Section 6(c) from Sections 2(a)(32), 22(c) and 27(i)(2)(A) of the Act and Rule 22c–1 thereunder to the extent necessary to permit Allianz Life to issue Contracts and Future Contracts that provide for the recapture of any unvested Bonus in the following instances: (i) When the Contract that provide for the recapture of any unvested Bonus in the following instances: (i) when the Contract Owner makes either a partial or full surrender (including during the Free-Lock Period) within 36 complete months after a purchase payment is made, Allianz Life will recapture the unvested Bonus (according to the vesting schedule set forth above); (ii) if an Owner annutizes within 36 complete months after a purchase payment is made, Allianz Life will recapture the unvested Bonus (according to the vesting schedule set forth above) before the Contract value is applied to an annuity option; and (iii) when a death benefit becomes payable within 36 complete months of a purchase payment, Allianz Life will recapture the unvested Bonus (according to the vesting schedule set forth above) from the Contract value used in the death benefit calculation (in no event will the death benefit be less than the guaranteed minimum death benefit).

16. Partial surrenders in excess of the 10% of purchase payments free surrender option ("Partial Surrender Privilege") will reduce unvested Bonuses by such excess amount's percentage of the Contract value at the time of the surrender. This percentage is determined by dividing the amount of the partial surrender (including any contingent deferred sales charge) in excess of the Partial Surrender Privilege amount by the Contract value. If there are multiple bonuses applied to a Contract, Allianz Life will reduce the oldest unvested bonus first.

**Applicants' Legal Analysis**

1. Section 6(c) of the Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the Act and rules promulgated thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request that the Commission, pursuant to Section 6(c) of the Act grant the exemptions requested below with respect to the Contract, and any Future Contracts funded by Variable Account B that are issued by Allianz Life and underwritten or distributed by USAIS or Allianz Life Broker-Dealers. Applicants undertake the Future Contracts funded by Variable Account B or any Future Account will be substantially similar in all material respects to the Contract. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

2. Applicants represent that it is not administratively feasible to track the Bonus in Variable Account B after the Bonus is applied. Accordingly, the asset-based charges applicable to Variable Account B will be assessed against the entire amount held in Variable Account B, including the Bonus during the 36-month period following a purchase payment preceding certain events (*i.e.*, surrender, annuitization and payment of a death benefit). As a result, the aggregate asset-based charges assessed will be higher than those that would be charged if the Contract Owner's Contract value did not include the Bonus.

3. Subsection (i) of Section 27 provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless "(A) such contract is a redemable security." Section 2(a)(32) defines " "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Bonus recapture provisions described in this application would not deprive a Contract Owner of his or her proportionate share of the issuer's current net assets. A Contract Owner's interest in the Bonus allocated to his or her Contract value upon receipt of a purchase payment is not 100% vested until the completion of 36 months following a purchase payment. Until or unless the Bonus is vested, Allianz Life retains the right and interest in the

Bonus, although not in the earnings attributable to that amount. Thus, when Allianz Life recaptures any unvested Bonus it is simply retrieving its own assets, and because a Contract Owner's interest in the Bonus is not 100% vested until the completion of 36 months, the Contract Owner has not been deprived of a proportionate share of Variable Account B assets, *i.e.*, a share of Variable Account B's assets proportionate to the Contract Owner's Contract value (including the Bonus).

5. With respect to the recapture of the Bonus upon the exercise of the Free-Look privilege, it would be patently unfair to allow a Contract Owner exercising that privilege to retain the Bonus under a Contract that has been returned for a refund after a period of only a few days. If Allianz Life could not recapture the Bonus, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit. Furthermore, the recapture of the unvested Bonus relating to a surrender, annuitization or payment of a death benefit is designed to protect Allianz Life against Contract Owners making large purchase payments within 36 months of certain events. It would provide Allianz Life with insufficient time to recover the cost of the Bonus, to its financial detriment. Again, the amounts recaptured equal the unvested Bonus provided by Allianz Life from its own general account assets and any gain would remain part of the Contract value.

6. Applicants represent that the Bonus will be attractive to and in the interest of investors because it will permit Contract Owners to put between 104–108% of their purchase payments to work for them in the selected sub-accounts and the Fixed Account. Also, any earnings attributable to the Bonus will be retained by Contract Owners and the principal amount of the Bonus will be retained if the contingencies set forth in the application are satisfied.

7. Applicants state that Allianz Life's right to recapture unvested Bonus amounts applied to purchase payments made within 36 months of the payment of a surrender, annuitization or death benefit protects it against the risk that owners will contribute larger amounts as they approach certain events (if forseeable) to obtain the Bonus, while avoiding Contract charges over the long terms. With respect to refunds paid upon the return of Contract within the Free-Look Period, the amount payable by Allianz Life must be reduced by the allocated Bonus payment. Otherwise, Applicants state that purchasers could apply for contracts for the sole purpose of exercising the free-look provision and making a quick profit.

8. Applicants submit that the provisions for recapture of any applicable unvested Bonus under the Contracts do not, and any such Future Contract provisions will not, violate Section 2(a)(32) and 27(i)(2)(A) of the Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any unvested Bonus under the circumstances summarized herein with respect to the Contracts and any Future Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

9. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, whether or not members of any securities association, to the same extent, covering the same subject matter, and for the accomplishment of the same ends as prescribed in Section 22(a) in respect of the rules which may be made by a registered securities association governing its members. Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

10. Arguably, Allianz Life's recapture of the unvested Bonus might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of Variable Account B. Applicants contend, however, that recapture of the unvested Bonus is not violative of Section 22(c) and Rule 22c–1. Applicants argue that the recapture does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. See Adoption of Rule 22c–1 under the 1940 Act, Investment Company Release No. 5519 (Oct. 16, 1968). To effect a recapture of an unvested Bonus, Allianz Life will redeem interests in an Owner's Contract value at a price determined on the basis of current net asset value of Variable Account.

B. The amount captured will equal the amount of the unvested Bonus that Allianz Life paid out of its general account assets. Although Owners will be entitled to retain any investment gain attributable to the Bonus, the amount of such gain will be determined on the basis of the current net asset value of Variable Account B. Thus, no dilution will occur upon the recapture of the unvested Bonus. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the unvested Bonus. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the unvested Bonus under the Contracts and Future Contracts.

**Conclusion**

Applicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in their application described herein. Applicants submit that having them file additional applications would impair their ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if they were required repeatedly to seek exemptive relief with respect to the same issues addressed in the application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes

fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11959 Filed 5–11–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27174]**

## Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

May 5, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 30, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 30, 2000, the application(s) and/declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

**Conectiv, et al. (70–9655)**

Conectiv, a registered public utility holding company; Atlantic City Electric Company ("ACE"), and Delmarva Power & Light Company ("Delmarva"), each a public utility subsidiary of Conectiv; ACE–REIT, Inc. ("ACE–REIT"), Conectiv Atlantic Generation, LLC ("CAG"), nonutility subsidiaries of ACE; and Conectiv Delmarva Generation, Inc. ("CDG"), a nonutility subsidiary of Delmarva (collectively, "Applicants"), all located at 800 King Street, Wilmington, Delaware 19899, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(c), 12(d) and 32 of the Act and rules 43, 45, 46 and 54 under the Act.

Applicants state that Conectiv intends to convert Delmarva and ACE into subsidiaries that provide only regulated electric transmission and distribution services and, in the case of Delmarva, regulated gas distribution services. As part of this plan, Convectiv is implementing a strategy of divesting baseload generating facilities and retaining "mid-merit" facilities, *e.g.*, those facilities that can quickly increase or decrease their KW per hour output level on an economic basis. In connection with this strategy, Delmarva and ACE intend to transfer ownership of certain generating facilities to a special purpose holding company, Conectiv Energy Holding Company ("CEH"), that Conectiv proposes to establish and own, to hold these facilities. The Delmarva facilities have approximately 1,364 MW of net generating capacity, with an approximate value of $301.4 million net of deferred taxes ("Delmarva Generation Assets").[1] The ACE facilities have approximately 502 MW of net generating capacity valued at approximately $77.2 million net of deferred taxes ("ACE Generation Assets"). Applicants request several authorizations to accomplish this transfer and for other related matters.

*Transfer of ACE and Delmarva Generation Assets*

ACE proposes to acquire additional ownership interests in its subsidiary, CAG, which is currently inactive, and to transfer the ACE Generation Assets to CAG, in exchange for those interests. ACE also requests authority to acquire additional common stock of its subsidiary, ACE–REIT, which is also inactive, and to transfer to ACE–REIT its ownership interest in CAG in exchange for that common stock.[2] ACE proposes to issue a dividend to Conectiv of ACE–REIT's common stock.

Similarly, Delmarva proposes to acquire additional common stock of its subsidiary, CDG, which is currently inactive, and to transfer the Delmarva Generation Assets to CDG in exchange for that common stock. Delmarva proposes to issue a dividend to Conectiv of CDG's common stock. In accordance with generally accepted accounting principles; The dividends by ACE of ACE–REIT common stock and by Delamarva of CDG common stock will be treated as dividends out of capital surplus.[3]

In addition, Conectiv requests authority to establish and acquire all of the common shares of CEH[4] as an intermediate holding company that would hold the equity securities of CDG, ACE–REIT and indirectly, CAG.[5] Accordingly, Applicants request authority for Conectiv to contribute the equity securities of CDG and ACE–REIT and, indirectly, CAG to CEH. These transactions would make CDG and ACE–REIT direct subsidiaries and CAG and indirect subsidiary of CEH. Applicants also request that the Commission deem ACE–REIT not to be a utility holding company solely for purposes of section 11(b)(2) of the Act.

*Financings*

Applicants request authority for CEH, ACE–REIT, CAG and CDG to engage in certain financings until such time as CAG and CDG qualify as EWGs and the financing of the companies can be accomplished through rule 52 or until March 31, 2000, whichever first occurs ("Authorized Period"). Specifically, CEH requests authority to issue equity or long- or short-term debt securities to

[1] These assets include approximately 127 MW of net generating capacity (with book value of $26 million net of deferred taxes) to be transferred by Delmarva to CDG that may be transferred to a nonassociate exempt wholesale generator ("EWG") in exchange for like-kind assets under a like-kind exchange agreement. In addition, ACE and Delmarva intend to transfer certain other generating assets to EWGs and propose in another filing, S.E.C. File NO. 70–9607, to transfer certain generating assets to nonassociate non-EWGs.

[2] Applicants propose to use ACE–REIT as an intermediate holding company over the ACE Generation Assets in order to minimize the tax consequences of the transfer.

[3] Applicants note that the capital dividend by Delmarva of the CDG common stock will cause its common equity to total capitalization ratio to fall below 30% until the sale of other generation assets to third parties is completed. The closing of this sale is scheduled for September 1, 2000 subject to the prior receipt of certain state regulatory approvals. The capital dividend by ACE will also cause the common equity to total capitalization ratio for ACE to fall below 30%.

[4] CEH will not be an operating company, will have no employees and will function as an intermediary holding company that will be a utility holding company until such time as CDG and CAG are qualified as EWGs. Applicants state that following authorization by the Commission, CEH will issue a nominal number of shares of equity to Conectiv in exchange for a nominal amount of cash not to exceed $1000.

[5] Conectiv intends for CEH to invest in one or more EWGs and to consolidate or dispose of ownership interests in any such EWG so long as the aggregate limitation on such investments, imposed by rule 53 or other applicable order, is not exceeded. Separately, Conectiv intends to contribute to CEH the equity securities of a rule 58 company engaged in energy marketing, Conectiv Energy Supply, Inc.

Conectiv to finance its ongoing business needs through the Authorization Period. Any debt will bear interest at a rate designed to approximate Conectiv's cost of money and will mature in 30 years or less. Conectiv also requests authorization for CEH to participate in the Conectiv system money pool ("Money Pool"). The total debt and equity proposed to be issued by CEH, either directly to Conectiv or through the Money Pool, will not exceed $750 million, less the amount of any debt issued by a CEH subsidiary directly to Conectiv, as described below.

In addition, ACE–REIT, CAG and CDG request authority to issue equity or long- or short-term debt securities to CEH or Conectiv through the Authorization Period. Any debt issued will mature in 30 years or less and will bear interest at a rate designed to approximate the lender's cost of money. Also, Applicants request authority for CAG, CDG, and ACE–REIT to participate in the Money Pool. Applicants propose that the total amount of debt and equity securities issued, either directly to Conectiv or through the Money Pool, by CDG will not exceed $150 million and by ACE–REIT and CAG will not exceed $100 million each.

*Like Kind Exchange*

Applicants anticipate that facilities having approximately 127 MW of net generating capacity owned by Delmarva to be transferred to CDG, will be subject to an obligation to transfer these assets to a nonassociate in a like-kind exchange ("To Be Transferred Assets"). First, Conectiv Energy, Inc. ("CEI"), which owns certain generating assets currently under construction ("New Hay Road Facilities"), would be transferred to a third party intermediary. Then, the To Be Transferred Assets would be sold to the nonassociate in exchange for the acquisition by CDG of either: (a) the New Hay Road Facilities at a time when the investment in the New Hay Road Facilities equals or approximates the value of the To Be Transferred Assets; or (b) other suitable generation assets (either, "To Be Acquired Assets"). If CDG is not an EWG at the time of the acquisition of the To Be Acquired Assets, Applicants request authority to acquire those assets as utility assets.

**Western Resources, Inc. 70–9665**

Western Resources, Inc. ("WRI"), 818 Kansas Avenue, Topeka, Kansas 66612, a Kansas utility company and a public utility holding company claiming an exemption under section 3(a) by rule 2 from all provisions of the Act, except section 9(a)(2), has filed an application under sections 9(a)(2) and 10 of the Act in connection with the acquisition of a utility subsidiary.

WRI conducts utility operations through its KPL division and its subsidiary, Kansas Gas and Electric Company ("KGE"), which together provided approximately 628,000 customers in 471 communities in the state of Kansas with electricity. In addition, WRI has a 45% economic interest in ONEOK, Inc., an Oklahoma corporation that distributes natural gas to more than 1.4 million customers with natural gas.[6] Through various other subsidiaries, WRI is engaged in owning interests in power plants and projects and providing monitored security alarm and home paging services. For the year ending December 31, 1999, WRI reported consolidated revenues of approximately $2.0 million and net income of $12.5 million and had $8.0 billion in consolidated assets at the end of that period.

One nonutility subsidiary company, Westar Generating II Inc. ("WG"), is engaged in constructing two General Electric combustion turbine generators ("CTs"). The CTs are expected to be rated for a capacity of approximately 74 MW of net dependable capacity at peak conditions and are expected to become commercially operational at a KGE generating facility on June 1, 2000. Once the construction is complete and operation begins, WG will qualify as a public utility under section 2(a)(3) of the Act. Accordingly, WRI has requested authority to acquire WG as a public utility company.

WRI's costs associated with the acquisition of WG will be equal to that of the equipment and construction costs incurred by WG, which is expected to be approximately $63 million. The CTs will be connected to KGE at its generating facility directly through a new buss to be tied to a grid located at the facility. Initially, WG intends to sell all capacity and energy generated by the CTs to WRI at a cost-based rate under a power purchase agreement between WRI and WG.

In addition, WRI intends to claim an exemption as an intrastate holding company under section 3(a) of the Act and rule 2 with regards to the ownership of WR as a public utility company.

[6] The economic interest is derived solely from approximately 9.9% of the voting stock and shares of nonvoting convertible preferred stock of ONEOK. The staff of the Commission issued a no-action letter in 1997 on the proposition that ONEOK is not a subsidiary of WRI and that WRI does not control ONEOK. (See *Western Resources, Inc.*, SEC No-Action Letter (Nov. 24, 1997).

For the Commission by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11961 Filed 5–11–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–2443; File No. 812–11858]**

## Valley Forge Life Insurance Company, et al.

May 5, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of Application for an Order under Section 6(c) of the Investment Company Act of 1940 (the "1940 Act" or "Act"( granting exemptions from the provisions of Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder, to permit the recapture of immediate interest payments applied to purchase payments made under certain deferred variable annuity contracts.

**SUMMARY OF APPLICATION:** Applicants seek an order under Section 6(c) of the 1940 Act to the extent necessary to permit, under specified circumstances, the recapture of immediate interest payments applied to purchase payments made under deferred variable annuity contracts (the "Contracts") that Valley Forge Life Insurance Company ("Valley Forge") will issue through Valley Forge Life Insurance Company Variable Annuity Separate Account ("VFL Separate Account"); as well as other contracts that Valley Forge may issue in the future through VFL Separate Account or any other future separate accounts of Valley Forge "Future Accounts") that are substantially similar in all material respects to the Contracts (the "Future Contracts"). Applicants also request that the order being sought extend to any other National Association of Securities Dealers, Inc. ("NASD") member broker-dealer controlling or controlled by, or under common control with, Valley Forge, whether existing or created in the future, that serves as a distributor or principal underwriter of the Contracts or Future Contracts offered through VFL Separate Account or any Future Accounts ("Valley Forge Broker-Dealers(s)").

**APPLICANTS:** Valley Forge Life, VFL Separate Account, the Future Accounts and CNA Investor Services, Inc. (collectively, "Applicants").

**FILING DATE:** The application was filed on November 17, 1999 and amended on April 3, 2000.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on May 30, 2000, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Jonathan Kantor, Esq., Valley Forge Life Insurance Company, CNA Plaza, 43 South, Chicago, Illinois 60685.

**FOR FURTHER INFORMATION CONTACT:** Joyce M. Pickholz, Senior Counsel, or Keith E. Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a free from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

**Applicants' Representations**

1. Valley Forge is a wholly-owned subsidiary of Continental Assurance Company. Continental Assurance Company is a wholly-owned subsidiary for Continental Casualty Company, which is wholly-owned by CNA Financial Corporation. Loews Corporation owns approximately 86% of the outstanding common stock of CNA Financial Corporation. VFL Separate Account was established on February 12, 1996 by resolutions of the Board of Directors of Valley Forge. Valley Forge serves as depositor of VFL Separate Account. Valley Forge may in the future establish one or more Future Accounts for which it will serve as depositor.

2. VFL Separate Account is a segregated asset account of Valley Forge. VFL Separate Account is registered with the Commission as a unit investment trust under the 1940 Act. VFL Separate Account filed a Form N–8A Notification of Registration under the 1940 Act on February 20, 1996.

3. VFL Separate Account filed a Form N–4 Registration Statement on August 18, 1999 under the Securities Act of 1933 ("1993 Act") relating to the Contracts. Valley Forge may in the future issue Future Contracts through VFL Separate Account or through Future Accounts. That portion of the assets of VFL Separate Account that is equal to the reserves and other Contract liabilities with respect to VFL Separate Account is not chargeable with liabilities arising out of any other business of Valley Forge. Any income, gains or losses, realized or unrealized, from assets allocated to VFL Separate Account is, in accordance with VFL Separate Account's Contracts, credited to or charged against VFL Separate Account, without regard to other income, gains or losses of Valley Forge.

4. CNA Investor Services, Inc. ("CNAISI") is an affiliate of Valley Forge and will be the principal underwriter of VFL Separate Account and distributor of the Contracts funded through VFL Separate Account (the "VFL Separate Account Contracts"). CNAISI is registered with the Commission as a broker-dealer under the Securities Exchange Act of 1934 (the "1934 Act") and is a member of the NASD. The VFL Separate Account Contracts will be offered through unaffiliated broker-dealers who have entered into selling agreements with CNAISI. CNAISI, or any successor entity, may act as principal underwriter for any Future Accounts and distributor for any Future Contracts issued by Valley Forge.

5. The Contract is a part of Valley Forge's line of annuity products. The Contract is an individual deferred variable and fixed annuity contract. The Contract may be issued under a qualified plan, specially sponsored program or an individual retirement annuity or as a non-tax qualified contract. Purchase payments may be made at any time during the accumulation phase. The minimum initial purchase payment is $10,000 for non-tax qualified contracts and $2,000 for a qualified plan contract. Additional purchase payments of at least $1,000 can be made ($100 under the electronic fund transfer program). Unless Valley Forge agrees otherwise, the maximum total purchase payments it accepts is $1,000,000.

6. The Contracts permit purchase payments to be allocated to fixed accounts of Valley Forge ("Fixed Accounts"). The Fixed Accounts are not registered with the Commission.

7. VFL Separate Account currently is divided into 23 sub-accounts, each of which will be available under the VFL Separate Account Contracts. The sub-accounts are referred to as "Investment Options". Each Investment Option will invest in shares of a corresponding portfolio of certain underlying investment companies ("Funds"). The Investment Options and the Fixed Accounts will comprise the initial investment choices under the Contract. The Funds are open-end, management investment companies registered under the 1940 Act, whose shares are registered under the 1933 Act. Valley Forge, at a later date, may determine to create additional Investment Options of VFL Separate Account to invest additional underlying portfolios or other investments as may now or in the future be available. Similarly, Investment Option(s) of VFL Separate Account may be combined or eliminated from time to time.

8. The Contract provides for withdrawal options, annuity payment options, as well as transfer privileges among Investment Options, dollar cost averaging, automatic transfer option, death benefits and other features. The Contract has charges consisting of: (i) an annual asset-based product expense charge of 1.40% assessed against the net assets of each sub-account; (ii) a withdrawal charge as a percentage of purchase payments which starts at 7% in the first year, and declines to 0% after 8 years with a 10% free withdrawal amount permitted under certain circumstances; (iii) a $30 contract maintenance charge for Contracts with Contract value of less than $50,000 during the accumulation phase; and (iv) a transfer fee of $25 for each transfer in excess of 12 in a Contract year during the accumulation period. The Funds also incur management fees and operating expenses which vary depending upon with Funds are selected.

9. Each time Valley Forge receives a purchase payment from an owner during the first Contract year, Valley Forge will add an additional amount to the Contract ("Immediate Interest Payment"). The Immediate Interest Payment will equal 3% of the purchase payment. Valley Forge will fund the Immediate Interest Payment from its general account assets. Valley Forge will allocate the Immediate Interest Payment to the Fixed Accounts and/or Investment Options in the same proportion as the purchase payment. Valley Forge will recapture Immediate Interest Payments only under the following circumstance: if the Contract owner makes a withdrawal anytime

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before the first day of the second Contract year, including if the Owner returns the Contract for a refund during the free look period (except for withdrawals pursuant to the systematic withdrawal program not subject to the withdrawal charge).

10. Applicants seek exemption pursuant to Section 6(c) of the 1940 Act from Sections (2)(a)(32), 22(c) and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to the extent necessary to permit Valley Forge to recapture an amount equal to any Immediate Interest Payment in the event that a Contract owner makes a withdrawal of Contract value, including the exercise of the free-look right, before the first day of the second Contract year (except for withdrawals pursuant to the systematic withdrawal program not subject to the withdrawal charge). The dollar amount of Immediate Interest Payments will be deducted pro-rata from the amount withdrawn.[1] Any earnings that resulted from the Immediate Interest Payments will not be deducted. After the First Contract year, the Immediate Interest Payment will vest and can be withdrawn at any time. Valley Forge reserves the right to limit Immediate Interest Payments in the future.

**Applicants' Legal Analysis**

1. Section 6(c) of the 1940 Act authorizes the Commission to exempt any person, security or transaction, or any class or classes of persons, securities or transactions from the provisions of the 1940 Act and the rules promulgated thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act. Applicants request that the Commission, pursuant to Section 6(c) of the 1940 Act, grant the exemptions summarized above with respect to the Contracts and any Future Contracts funded by VFL Separate Account or Future Accounts, that are issued by Valley Force and underwritten or distributed by CNAISI or Valley Forge Broker-Dealers. Applicants undertake that Future Contracts funded by VFL Separate Account or any Future Accounts will be substantially similar in all material respects to the Contracts. Applicants believe that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

2. Applicants represent that it is not administratively feasible to track the Immediate Interest Payment amounts in VFL Separate Account after the Immediate Interest Payment is applied. Accordingly, the asset-based charges applicable to VFL Separate Account will be assessed against the entire amounts held in VFL Separate Account, including the Immediate Interest Payment amount, during the first Contract year. As a result, during such period, the aggregate asset-based charges assessed against a Contract owner's Contract value will be higher than those that would be charged if the Contract owner's Contract value did not include the Immediate Interest Payment.

3. Subsection (i) of Section 27 of the 1940 Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such account, except as provided in paragraph (2) of the subsection. Paragraph (2) provides that it shall be unlawful for any registered separate account funding variable insurance contracts or a sponsoring insurance company of such account to sell a contract funded by the registered separate account unless, among other things, such contract is a redeemable security. Section 2(a)(32) of the 1940 defines "redeemable security" as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof.

4. Applicants submit that the Immediate Interest Payment recapture provisions of the Contract would not deprive a Contract owner of his or her proportionate share of the issuer's current net assets. Applicants state that a Contract owner's interest in the amount of the Immediate Interest Payment allocated to his or her Contract value upon receipt of purchase payments in the first Contract year are not vested until the first day of the second Contract year. Until or unless the amount of any Immediate Interest Payment is vested, Applicants submit that Valley Forge retains the right and interest in the Immediate Interest Payment amount, although not in the earnings attributable to that moment. Applicants argue that when Valley Forge recaptures any Immediate Interest Payment it is simply retrieving its own assets, and because a Contract owner's interest in the Immediate Interest Payment is not vested, the Contract owner has not been deprived of a proportionate share of VFL Separate Account assets, *i.e.*, a share of VFL Separate Account's assets proportionate to the Contract owner's Contract value (including the Immediate Interest Payment).

5. In addition, with respect to Immediate Interest Payment recapture upon the exercise of the free-look privilege, Applicants state that it would be patently unfair to allow a Contract owner exercising that privilege to retain the Immediate Interest Payment amount under a Contract that has been returned for a refund after a period of only a few days. Applicants state that if Valley Forge could not recapture the Immediate Interest Payment, individuals could purchase a Contract with no intention of retaining it, and simply return it for a quick profit.

6. Furthermore, Applicants state that the recapture of the Immediate Interest Payment, in the event of a withdrawal before the first day of the second Contract year, is designed to protect Valley Forge against Contract owners making large purchase payments in the first Contract year without affording it sufficient time to recover the cost of the Immediate Interest Payment, to its financial detriment. Again, the amounts recaptured equal the Immediate Interest Payment provided by Valley Forge from its own general account assets and any gain would remain as part of the Contract owner's Contract value.

7. Applicants represent that the Immediate Interest Payment will be attractive to and in the interest of investors because it will permit Contract owners to put 103% of their purchase payments to work for them in the selected Investment Options and Fixed Accounts. Also, any earnings attributable to the Immediate Interest Payment will be retained by the Contract owner, and the principal

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[1] When an owner requests a withdrawal any time during the first contract year, Valley Forge will deduct the amount of the Immediate Interest Payment in proportion to the amount of the purchase payment withdrawn.

*Example:*

Purchase Payment: $100,000

Immediate Interest Payment: $3,000

Subsequent 1st Year Withdrawal: $10,000

Immediate Interest Payment Recaptured: $300

The withdrawal charge is assessed on the amount of the purchase payment withdrawn ($10,000). The resulting withdrawal charge is 7% of $10,000 which reduces the amount available to $9,300. VFL would then deduct the proportionate amount of the Immediate Interest Payment to be recaptured ($300) from the amount to be disbursed to the owner.

amount of the Immediate Interest Payment will be retained if a Contract owner does not make a withdrawal of Contract value (including the exercise of the free-look right) before the first day of the second Contract year.

8. Applicants state that Valley Forge's right to recapture Immediate Interest Payments applied to purchase payments in the event of a withdrawal before the first day of the second Contract year, is designed to protect Valley Forge against Contract owners making large purchase payments in the first Contract year without affording it sufficient time to cover the cost of the Immediate Interest Payment, to its financial detriment. With respect to funds paid upon the return of Contracts within the free-look period, the amount payable by Valley Forge must be reduced by the allocated Immediate Interest Payment. Otherwise, Applicants state that purchasers could apply for Contracts for the sole purpose of exercising the free-look provision and making a quick profit.

9. Applicants submit that the provisions for recapture of any applicable Immediate Interest Payment under the Contracts or any Future Contract as set forth in this Application will not violate Sections 2(a)(32) and 27(i)(2)(A) of the 1940 Act. Nevertheless, to avoid any uncertainties, Applicants request an exemption from those Sections, to the extent deemed necessary, to permit the recapture of any Immediate Interest Payment under the circumstances described herein with respect to the Contracts and any Future Contracts, without the loss of the relief from Section 27 provided by Section 27(i).

10. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company, to accomplish the same purposes as contemplated by Section 22(a). Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security, from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security.

11. Arguably, Valley Forge's recapture of the Immediate Interest Payment might be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of VFL Separate Account. Applicants contend, however, that the recapture of the Immediate Interest Payment is not violative of Section 22(c) and Rule 22c–1. Applicants argue that the recapture does not involve either of the evils that Rule 22c–1 was intended to eliminate or reduce, as far as reasonably practicable, namely: (1) the dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results including speculative trading practices. To effect a recapture of an Immediate Interest Payment, Valley Forge will redeem interests in a Contract owner's Contract value at a price determined on the basis of current net asset value of VFL Separate Account. The amount recaptured will equal the amount of the Immediate Interest Payment that Valley Forge paid out of its general account assets. Although Contract owners will be entitled to retain any investment gain attributable to the Immediate Interest Payment, the amount of such gain will be determined on the basis of the current net asset value of VFL Separate Account. Thus, no dilution will occur upon the recapture of the Immediate Interest Payment. Applicants also submit that the second harm that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Immediate Interest Payment. However, to avoid any uncertainty as to full compliance with the Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit them to recapture the Immediate Interest Payment under the Contracts and Future Contracts.

**Conclusion**

Applicants submit that their request for an order is appropriate in the public interest. Applicants state that such an order would promote competitiveness in the variable annuity market by eliminating the need to file redundant exemptive applications, thereby reducing administrative expenses and maximizing the efficient use of Applicants' resources. Applicants argue that investors would not receive any benefit or additional protection by requiring Applicants to repeatedly seek exemptive relief that would present no issue under the Act that has not already been addressed in the Application described herein. Applicants submit that having Applicants file additional applications would impair Applicants' ability effectively to take advantage of business opportunities as they arise. Further, Applicants state that if Applicants were required repeatedly to seek exemptive relief with respect to the same issues addressed in the application described herein, investors would not receive any benefit or additional protection thereby.

Applicants submit, based on the grounds summarized above, that their exemptive request meets the standards set out in Section 6(c) of the Act, namely, that the exemptions requested are necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act, and that, therefore, the Commission should grant the requested order.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11960 Filed 5–11–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42759; File No. SR–PCX–99–39]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 3, 4, 5, 6 and 7 to the Proposed Rule Change by the Pacific Exchange, Inc. Creating PCX Equities, Inc.

May 5, 2000.

### I. Introduction

On October 7, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to create PCX Equities, Inc. ("PCX Equities"). The proposed rule change was published for comment in the **Federal Register** on December 6, 1999.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42178 (Nov. 24, 1999), 64 FR 68136.

On November 24, 1999 and January 10, 2000, respectively, the PCX filed Amendment Nos. 1 [4] and 2 [5] to the proposal. On February 10, 2000, the PCX submitted Amendment No. 3 to the proposed rule change. [6] On February 23, 2000, Amendment Nos. 1 and 2 were published in the **Federal Register**.[7] On March 13, 2000, March 30, 2000, April 19, 2000, and May 1, 2000, the PCX submitted Amendment Nos. 4, 5, 6, and 7 respectively to the proposed rule change. [8] The Commission received 26 comments regarding the proposal; all of the commenters supported the proposed rule change.[9]

This order approves the proposed rule change, as amended, In addition, the Commission is approving on an accelerated basis, and soliciting comments on, Amendment No. 3, 4, 5, 6 and 7.

[4] *See* Letters from Brandon Becker, Wilmer, Cutler & Pickering, to Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), SEC, dated November 24, 1999 and from Kathryn Beck, Senior Vice President, General Counsel and Corporate Secretary, PCX, to Kelly Riley, Attorney, Division, SEC, dated January 7, 2000 ("Amendment No. 1"). The January 7, 2000 letter contained the Form 19b–4 for Amendment No. 1.

[5] *See* Letter from Brandon Becker, Wilmer, Cutler & Pickering, to Nancy J. Sanow, Senior Special Counsel, Division, SEC, dated January 7, 2000 ("Amendment No. 2").

[6] *See* Letter from Brandon Becker, Wilmer, Cutler & Pickering, to Nancy J. Sanow, Senior Special Counsel, Division, SEC, dated February 9, 2000 ("Amendment No. 3") In Amendment No. 3, the Exchange responded to comments and questions raised by the Division staff regarding the proposed rule change and amended certain proposed Rules of PCX Equities. In addition, the PCX submitted amendments to the prposed PCX Equities Certificate of Incorporation, the proposed PCX Equities Bylaws, the proposed PCX Equities Rules and the proposed PCX Rules. Finally, Amendment No. 3 contained a draft of the proposed shareholder's agreement.

[7] *See* Securities Exchange Act Release No. 42419 (Feb. 11, 2000), 65 FR 9027.

[8] *See* Letter from Cherie Macauley, Wilmer, Cutler & Pickering, to Nancy J. Sanow, Senior Special Counsel, Division, SEC, dated March 10, 2000 ("Amendment No. 4"); Letter from Brandon Becker, Wilmer, Cutler & Pickering, to Nancy J. Sanow, Senior Special Counsel, Division, SEC, dated March 29, 2000 ("Amendment No. 5"); Letter from Cherie Macauley, Wilmer, Cutler & Pickering, to Nancy J. Sanow, Senior Special Counsel, Division, SEC, dated April 18, 2000 ("Amendment No. 6"); and Letter from Cherie Macauley, Wilmer, Cutler & Pickering, to Nancy J. Sanow, Senior Special Counsel, Division, SEC, dated April 28, 2000 ("Amendment No. 7"). In Amendment No. 4, the Exchange amended the proposed PCX Constitution and selected proposed PCX Equities Rules. In Amendment No. 5, the Exchange amended selected proposed PCX Equities Rules and responded to comments raised by Division staff. In Amendment No. 6, the Exchange amended selected proposed PCX Equities Rules and proposed PCX Equities Equity Floor Procedure Advices. In Amendment No. 7, the Exchange amended selected proposed PCX Equities and PCX Rules, and incorporated into the proposed PCX rules the Plan of Delegation of Functions by the PCX to PCX Equities.

[9] *See infra* note 30.

## II. Description of the Proposal

The PCX proposes to create a Delaware stock corporation, to be called PCX Equities that will be a wholly-owned subsidiary of the PCX. PCX will transfer to PCX Equities all of the assets and liabilities that solely support the equities trading business and equities clearing business of the PCX. Upon restructuring, however, PCX will continue to be the self-regulatory organization ("SRO") for PCX Equities.[10] The PCX proposes to authorize PCX Equities to issue Equity Trading Permits ("ETPs") and Equity Automated Systems Access Permits ("Equity ASAPs") that will entitle holders of the permits ("ETP Holders" and "Equity ASAP Holders") to trade equity securities on the newly-created PCX Equities. The proposal submitted by the PCX to create PCX Equities represent a significant departure from the Exchange's current structure.

According to the PCX, there are two principal reasons why the Exchange proposes to create the new PCX Equities subsidiary and to institute a system of trading permits. First, the PCX intends to separate the Exchange's equities operation into a subsidiary of PCX that will continue to share certain corporate functions with the Exchange's options business. By restructuring the equities business as a private stock corporation with business control and management by the directors, officers, and regulatory staff of PCX Equities, the Exchange believes that the new entity will have greater flexibility to develop and execute strategies designed to improve its competitive position than it has under the current membership structure. Second, the PCX intends to increase the revenue of its equities business by conferring trading privileges on the basis of trading permits (ETPs and Equity ASAPs), rather than requiring equities trading participants to bear the costs of a seat ownership.

PCX Equities will be run by its management with limited policy direction by members. As a result, certain committees that now administer many of the PCX's equity trading programs no longer exist. As discussed in more detail below, PCX Equities will have only three member committees: the Business Conduct Committee, the Member Advisory Committee, and the Nominating Committee. The management of PCX Equities will make all other business decisions regarding the trading of equities on PCX Equities.[11]

In other ways, the PCX Equities' structure represents significant changes to the way U.S. stock exchanges currently operate. As discussed below, PCX Equities will issue ETPs and Equity ASAPs to persons or entities that wish to engage in equity transactions on PCX Equities. These trading permits merely provide access to the PCX Equities' trading facilities and do not confer ownership rights on those persons or entities who purchase them. Accordingly, with certain exceptions discussed below, PCX Equities members will have limited voting rights and limited input into the administration of the affairs of PCX Equities.

The proposed rule change for implementing the restructuring includes: (i) The proposed Certificate of Incorporation for PCX Equities; (ii) the proposed Bylaws for PCX Equities; (iii) the proposed Rules for PCX Equities; (iv) changes to the PCX Constitution; and (v) changes to the PCX Rules.

### *A. PCX Equities*

#### 1. Corporate Status

PCX Equities will be created operates as a Delaware stock corporation. At this time, all of the issued shares of stock of PCX Equities will be owned by the PCX. Current PCX members will retain their memberships, and thus, their ownership interests in the PCX.

#### 2. Regulation of PCX Equities

PCX Equities will operate as a subsidiary of PCX, which is a national securities exchange registered under Section 6 of the Act.[12] The PCX, as the SRO, retains ultimate responsibility for compliance by its members with the provisions of the Act and the rules and regulations thereunder. For this reason, ETP Holders and Equity ASAP Holders will be considered statutory "members" of PCX.

As a registered national securities exchange and the parent company of PCX Equities, the PCX will continue to carry out its statutory responsibilities to enforce compliance by ETP Holders and Equity ASAP Holders with the provisions of the federal securities laws and rules thereunder, as well as the Rules of PCX Equities, and to govern the administration of PCX Equities. In particular, to be effective any changes to the Rules and governing documents of

[10] The proposed rule change does not affect the PCX's options business, which will continue to operate as a membership organization through the PCX.

[11] For example, the management of PCX Equities will make decisions regarding the listing and delisting of equities listed on PCX Equities, although such decisions may be appealed to the PCX Equities Board Appeals Committee.

[12] 15 U.S.C. 78f.

PCX Equities must be approved by the PCX. Moreover, filing of changes to PCX Equities' Bylaws and Rules with the Commission pursuant to Section 19(b) of the Act [13] and Rule 19b–4 [14] thereunder must be submitted by the PCX.

While ultimately responsible, the PCX has proposed to delegate specific self-regulatory responsibilities to PCX Equities, pursuant to a Delegation Plan. [15] Specifically, PCX Equities will assume responsibility with respect to the equities business of the Exchange for, among other things: (1) Extablishing and interpreting rules governing the activities of ETP Holders and Equity ASAP Holders; (ii) determining regulatory and trading policies relating to the business activities of ETP Holders and Equity ASAP Holders; (iii) assuring compliance with PCX Equities Rules and the federal securities laws; (iv) administering surveillance programs and systems and enforcing rules governing the conduct and trading activities of ETP Holders, ETP Firms,[16] Equity ASAP Holders and their associated persons on PCX Equities; (v) examining and investigating ETP Holders, ETP Firms, Equity ASAP Holders and their associated persons to determine if they have violated the Rules of PCX Equities or the federal securities laws; (iv) administering the PCX Equities disciplinary program; (vii) conducting arbitrations, medications and other dispute resolution programs; (viii) determining whether applicants need the requirements for holding an ETP or Equity ASAP; (ix) reviewing qualifications of persons wishing to register as associated persons of ETP Holders, ETP Firms, or Equity ASAP Holders; (x) placing restrictions on the business activities of ETP Holders, ETP Firms, Equity ASAP Holders and their associated persons consistent with the public interest, the protection of investors and the federal securities laws; (xi) establishing fees and changes; (xii) overseeing the operation of the PCX Equities trading facilities; (xiii) maintaining a communications network infrastructure for processing quotes, orders, transaction reports and transaction comparisons; (xiv) collecting and consolidating information for the surveillance audit trail; (xi) developing and adoping rule changes for the collection, processing and dissemination of quote and transaction information; (xvi) developing and adopting rules, interpretations and policies to maintain and enhance the integrity, fairness, efficiency and competitiveness of PCX Equities; (xvii) administering the Exchange's involvement in the national market system ("NMS") plans; and (xviii) developing, administering and enforcing listing standards for securities traded on PCX Equities.

While PCX Equities has extensive delegated authority to administer and manage the equities trading business, the PCX retains the ultimate responsibility for the Rules and regulations of PCX Equities, as well as for its operation and administration. As part of its self-regulatory responsibilities, the PCX will review rulemaking and disciplinary decisions of PCX Equities and direct PCX Equities to take action that may be necessary to effectuate the purposes and functions of the Exchange Act. Thus, while PCX Equities will be a separate entity, it will still remain under the self-regulatory authority of the PCX.

3. Governing Documents and Rules

PCX Equities' Certificate of Incorporation, Bylaws and Ruels will govern its activities. Proposed PCX Equities Rules 1, 2, and 3, which relate to qualifications for ETPs and Equity ASAPs and corporate governance matters, and proposed PCX Equities Rule 10, which relates to displinary procedures, reflect significant departures from existing PCX rules. The remaining Rules, although modified to reflect the issuance of ETPs and Equity ASAPs and the revised management structure, are similar to current PCX Rules. The Rules and Bylaws will reflect the status of PCX Equities as a wholly-owned subsidiary of PCX, under management of the PCX Equities Board of Directors ("PCX Equities Board") and its designated officers, and ultimately subject to the self-regulatory authority of the PCX.

4. PCX Equities Board of Directors

The PCX Equities Board will consist of no fewer than 10 or more than 12 directors. Currently, the Exchange contemplates that there will be 10 directors. The composition of the PCX Equities Board will be as follows:

- The Chief Executive Officer ("CEO") of PCX;
- The President of PCX Equities;
- Five public directors, at least three of whom must also be members of the Board of Governors of the PCX ("PCX Board");
- One allied person [17] from an ETP Firm who is also a member of the PCX Board, and
- Two nominees of ETP Holders and Equity ASAP Holders (the "ETP/Equity ASAP Holder Directors").

The CEO of PCX, as the Incorporator, will appoint the initial PCX Equities Board. Subsequently, the PCX Equities Board will be nominated by the sitting PCX Equities Board, subject to the nominating procedures set forth below for the selection of two ETP/Equity ASAP Holder Directors. The PCX Equities Board will be elected by PCX, the sole shareholder. PCX will have the right to approve, remove, and replace any member of the PCX Equities Board by virtue of its status as sole shareholder, subject to the Bylaws. Any vacancy on the PCX Equities Board will be filled with a person who satisfies the classification associated with the vacant seat, *i.e.*, a member of the public or an ETP Holder or Equity ASAP Holder. To the extent that the number of PCX Equities Board seats is changed from the initially contemplated 10 members, at least 50 percent of the PCX Equities Board must be public directors, and at least 20 percent (but no fewer than two directors) must be directors who are ETP Holders or Equity ASAP Holders and are nominated by the Nominating Committee. The ETP/Equity ASAP Holder Directors will be nominated by the Nominating Committee or by petition of at least 10 percent of all ETP Holders and Equity ASAP Holders. If a petition is submitted, and a vote is held, the candidates selected by ETP Holders and Equity ASAP Holders must be supported by a plurality of all the ETP Holders and Equity ASAP Holders in the aggregate in order to be selected as a nominee to the PCX Equities Board. If no petition is filed, the nominees put forward the Nominating Committee will be deemed to be elected, and no separate vote of ETP Holders and Equity ASAP Holders will be held. Pursuant to a stockholders voting agreement, the PCX, as the sole stockholder, will agree to elect the ETP/Equity ASAP Holder Directors nominated by the PCX Equities Nominating Committee.[18]

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[13] 15 U.S.C. 78s(b).

[14] 17 CFR 240.19b-4.

[15] *See* Attachment No. 4 to Amendment No. 1, for the proposed Plan of Delegation of Functions by the PCX to PCX Equities ("Delegation Plan").

[16] An ETP may be issued to either and individual or an entity, both of which must be registered broker-dealers pursuant to Section 15 of the Act. If an ETP is issued to an entity ("ETP Firm"), the firm must nominate an individual, approved by PCX Equities, to conduct business on PCX Equities' facilities. Such individual is also referred to as an ETP Holder. *See* proposed PCX Equities Rules 1.1(l) and (m).

[17] An allied person is generally defined as a control person that is actively involved in the business of an ETP Firm or Equity ASAP Holder. *See* proposed PCX Equities Rule 1.1(b).

[18] *See* Attachment No. 5 to Amendment No. 3, for the proposed Shareholder's Agreement, which requires the PCX to elect the slate submitted by the PCX Equities Nominating Committee.

5. Representation on PCX Board of Governors

The PCX Board is currently composed of 22 governors. The composition of the PCX Board will be modified as part of the restructuring to include one governor representing PCX Equities to provide input on the PCX Board. This governor ("ETP/Equity ASAP Holder Governor") will be nominated by the PCX Equities Nominating Committee or by a petition of at least 10 percent of all ETP Holders and Equity ASAP Holders and must be either an ETP Holder, an Equity ASAP Holder or an allied person of an ETP Firm or Equity ASAP Holder. Pursuant to the agreement between PCX Equities and the PCX, the PCX Board will appoint the person who is so nominated by ETP Holders and Equity ASAP Holders to the PCX Board.[19]

6. Committees

As discussed above, the PCX has proposed to eliminate its current committee structure for its equities business. The proposed Bylaws and proposed Rules of PCX Equities envision only three equity committees—the Nominating Committee, the Member Advisory Committee,[20] and the Business Conduct Committee.[21] Except for the Nominating Committee, the CEO of PCX Equities will appoint the members of the equity committees for terms of one year. The CEO of PCX Equities also will appoint the Chair and Vice Chair of each equity committee. ETP Holders, Equity ASAP Holders, and public representatives may be appointed to serve on the equity committees.

a. *Nominating Committee*. The Nominating Committee will select two nominees for the ETP/Equity ASAP positions on the PCX Equities Board and one nominee for ETP/Equity ASAP position on the PCX Board. These nominees may be ETP Holders, allied persons[22] of ETP Firms, or Equity ASAP Holders. The nominee for the PCX Board may be the same person as one of the nominees for the PCX Equities Board. The Nominating Committee will have seven members, six of whom will represent ETP Holders or Equity ASAP Holders. The composition of the Nominating Committee will represent proportionally[23] all ETP Holders and Equity ASAP Holders with each member constituency having at least one representative. The seventh member will be a representative of the public. The Incorporator will appoint the initial Nominating Committee. Thereafter, the sitting Nominating Committee will nominate the six member representatives, and the PCX Equities CEO will appoint the public representative. Additional candidates for the Nominating Committee may be put forward by a petition of at least 10 percent of all ETP Holders and Equity ASAP Holders. If no petition is filed, the slate proposed by the sitting Nominating Committee will be deemed to be approved by ETP Holders and Equity ASAP Holders, and no separate vote of ETP Holders and Equity ASAP Holders will be held. If a petition is filed, the members will vote on the candidates for each position. A plurality will be needed for selection.[24]

b. *Business Conduct Committee*. The Business Conduct Committee will have authority over the disciplinary process of the PCX Equities. It will be responsible for examining the business conduct and financial condition of PCX Equities members. Further, it will conduct hearings and render decisions in summary disciplinary proceedings. The Business Conduct Committee will be responsible for imposing sanctions for violations within the disciplinary jurisdiction of the PCX Equities. Finally, the Business Conduct Committee will require members to produce financial and operational reports. The Business Conduct Committee will have a proportional[25] composition of ETP Holders and Equity ASAP Holders, with a minimum of one representative from each member constituency.

c. *Member Advisory Committee*. The Member Advisory Committee will be responsible for advising the management of PCX Equities regarding disciplinary matters and off-board trading rules. As an equity committee, it will be subject to the provisions of proposed Rule 3.2. Thus, the Incorporator will appoint the initial members and the CEO of PCX Equities will appoint all subsequent members.

d. *Board Appeals Committee*. In addition to the equity committee, PCX Equities is proposed to have one Board committee, the Board Appeals Committee. The Board Appeals Committee will be responsible for hearing appeals of Business Conduct Committee decisions, listing and delisting decisions made by the PCX Equities management, and sanctions imposed on members by the PCX Equities regulatory staff. The PCX Equities Board will appoint directors to serve on the Board Appeals Committee and may create any other Board committee it deems appropriate. Each Board Appeals Committee will consist of at least one public director and at least one ETP/Equity ASAP Holder Director.

7. Management

PCX equities will have a Chairman of the Board and a President, either of whom may be the CEO of PCX Equities. In addition, PCX Equities will have a Secretary and a Chief Regulatory Officer who will be appointed by, and serve at the pleasure of, the PCX Equities Board. The officers of PCX Equities will manage the business and affairs of PCX Equities, subject to the oversight of the PCX Equities Board, and, in some cases, subject to the approval of PCX as the sole stockholder and SRO.

8. Disciplinary Process

PCX Equities' disciplinary process will be similar to the existing PCX disciplinary process. The PCX Equities Chief Regulatory Officer, or his or her staff, will authorize the initiation of disciplinary actions and proceedings. The Business Conduct Committee will conduct hearings, render decisions, and impose sanctions. Decisions of the Business Conduct Committee may be appealed for review to the Board Appeals Committee. Decisions of the Board Appeals Committee may be appealed to the PCX Board. In addition, the PCX Board may on its own initiative order a review of any Board Appeals Committee decision. The decision of the PCX Board (or, if the PCX Board chooses not to hear an appeal, the decision of the Board Appeals Committee) shall be considered the final action of the Exchange. Thus, an aggrieved member may seek review of the Exchange's decision by the Commission.

9. Equity Listings and Delistings

The management of PCX Equities will list and delist securities in accordance with rules and standards comparable to those set forth in the PCX Rules and currently used by the Equity Listing Committee of the PCX. However, as described above, PCX Equities will not have the committee structure currently used by the PCX for decision-making, and, thus PCX Equities' management

[19] *See id.*

[20] *See* Amendment No. 6 *supra* note 8.

[21] However, the PCX Equities Board may appoint other committees as it deems appropriate.

[22] *See supra* note 17.

[23] For example, if Equity ASAPs represent 34 percent of the total number of trading permits issued by PCX Equities, then Equity ASAPs will be entitled to two positions.

[24] Only those persons that hold either an ETP or Equity ASAP will have voting privileges. Thus, ETP Firms do not have a vote separate from their ETP. An ETP Holder that is nominated by an ETP Firm will cast its firm's vote.

[25] *See supra* note 23. The proportional composition of the Business Conduct Committee will be determined in the same manner as the Nominating Committee.

will make all decisions regarding listings and delistings.[26]

10. Financial Information

PCX will transfer all of the assets and liabilities that solely support the equities business or equities clearing business to PCX Equities. Assets that support both the options and equities business will be retained as assets of PCX. Costs related to these shared assets will appear as inter-company charges to PCX Equities and will be defined in an agreement between PCX and PCX Equities.

Revenue generated by the equities activities, including ETP and Equity ASAP fees, specialist fees, tape fees and transaction fees, will accrue to PCX Equities. Direct expenses related to the equities activities, such as technology and personnel, will be charged to PCX Equities. Allocations of the cost of certain technology, regulatory and corporate functions will be charged to PCX Equities pursuant to an agreement between PCX Equities and PCX.

11. Agreement Between PCX and PCX Equities

Currently, the PCX's equities and options operations share certain infrastructure and personnel. After the completion of the restructuring, these shared assets will remain the property of PCX and the shared personnel will continue to be employed by PCX. In each case, however, PCX Equities will have access to those resources through inter-company contracts with PCX. In particular, PCX will contract to provide PCX Equities with certain management and support services and staff. The contract will include services for administration, membership, technology, finance and accounting, human resources and legal services. The agreement between PCX and PCX Equities will allocate charges for these services and staff between PCX and PCX Equities.

*B. Equity Trading Permits and Equity ASAPs*

1. Classes of Trading Permits and Privileges Conferred by ETPs and Equity ASAPs.

PCX Equities will be authorized to issue two types of equity trading permits: ETPs and Equity ASAPs. ETPs will authorize holders to trade equity securities on any facility of PCX Equities, including the trading floors, P/COAST, or Optimark, as a specialist, floor broker, or order flow firm. ETP Holders may engage in the trading of equities in the same manner as currently practiced by PCX members who trade on the equity floors. Equity ASAP Holders, like current ASAP members, will have electronic access to PCX Equities via P/COAST, Optimark, and any other system approved by the PCX Equities Board, and will be entitled to limited trading privileges on the equities floor, in accordance with rules comparable to those set forth in the PCX Rules today.[27]

An ETP or Equity ASAP does not grant its holder any right to trade options on the PCX. Any ETP Firm, ETP Holder or Equity ASAP Holder that wishes to trade options must be approved for and obtain a PCX membership pursuant to the PCX's standard application procedures.

ETP Holders and Equity ASAP Holders will have limited voting rights[28] and may nominate, through the Nominating Committee or by petition, two members to the PCX Equities Board and one member of the PCX Board. Unlike current ASAP members, Equity ASAP Holders will have these limited voting rights. ETPs and Equity ASAPs provide access to PCX Equities but do not confer ownership rights. Thus, neither ETP Holders nor Equity ASAP Holders will have any distribution or other ownership rights in PCX Equities or PCX by virtue of their status as an ETP Holder or Equity or ASAP Holder, or as a member of PCX.[29]

2. Qualification for ETPs and Equity ASAPs

There will be no limit on the number of ETPs and Equity ASAPs issued by PCX Equities. PCX Equities will commence issuing ETPs and Equity ASAPs once the subsidiary is created. Current PCX members, PCX ASAP members, and any other interested persons or entities that are registered broker-dealers, may be granted PCE Equities trading permits through an application process. ETP and Equity ASAP qualifications will be substantially the same as the existing requirements for PCX membership and PCX ASAP membership, respectively.

The application process for applicants who are not current PCX members or ASAP members will be the same as the PCX's current process. The decision to grant or deny an application for trading privileges will be made by officers of PCX Equities. The decision to deny an application may be reviewed by the Board Appeals Committee in accordance with the provisions of proposed PCX Equities Rule 10.

Current PCX members and ASAP members will be required to submit an application and pay the applicable fee, but less documentation will be required and the application processing time will be shorter.

3. ETP/Equity ASAP Rollout Process

The Exchange has proposed a nine-month rollout period during which equity specialists, floor brokers, their firms, and PCX seat owners may decide to convert to ETPs and current ASAP members can decide to convert to Equity ASAPs. The monthly fee be charged for ETPs during the rollout period will be closely correlated, but discounted, to the current prevailing monthly lease rate for PCX memberships and will decrease proportionately over that period until it reaches $2,000 per month in the tenth month following inception. Equity ASAP Holders will be charged an annual fee of $4,000.

During the rollout period, both PCX members and ETP Holders will be permitted to trade equities on the equity trading floors of the PCX. Similarly, both ASAP holders and Equity ASAP Holders will be provided automated system access as set forth in the proposed PCX Equities Rules.

At the end of the rollout period, all individuals executing equity trades through PCX Equities must hold either an ETP or an Equity ASAP. After the rollout period, PCX memberships will no longer confer rights to trade, to route orders, or to be a clearing give-up through the equity trading facilities of PCX Equities.

4. Cost of ETPs and Equity ASAPs

The fees for an ETP will be assessed on a monthly basis and the fee for an Equity ASAP will be assessed on a yearly basis. The fees will be set by PCX Equities at a fixed level but will be subject to change.

The management of PCX Equities will recommend changes to the initial rates and charges as deemed appropriate for the development of new business or in response to competitive changes. All such rate changes shall be subject to the approval of the PCX Board and filing with the Commission.

[26] Issuers will continue to have a right of appeal, as set forth in proposed PCX Equities Rules 5.5(m).

[27] Pursuant to proposed PCX Equities Rule 2.16, Equity ASAP Holders must execute 80 percent of their total trades and volume on PCX Equities through P/COAST, Optimark or other systems approved by PCX Equities. The balance of their total volume and trades on PCX Equities can be entered by telephone to a floor broker located in a firm booth on the trading floor.

[28] *See supra* note 24.

[29] As described further below, ETP Holders and Equity ASAP Holders are considered members of the PCX for statutory purposes. *See infra* Section IV.

5. Non-transferability of ETP and Equity ASAPS

ETPs and Equity ASAPs will not be transferable by sale or lease, but they may be transferred between individuals within the same firm in accordance with the proposed Rules of PCX Equities.

*C. PCX*

1. Options Trading

Current PCX members who made only equities or who trade equities and options of the PCX must obtain either an ETP or Equity ASAP by the end of the rollout period as described above. For those PCX members who currently trade only options on the PCX, the proposed restructing will not affected their access to or activities on the PCX's options trading facilities. PCX memberships will continue to be required to transact options business on PCX. After the rollout period, however, PCX memberships will no longer confer rights to trade on the equity floors or electronically through the equity trading facilities or to be a clearing give-up for the equity trading facilities. After the completion of the restructing, PCX memberships may be purchased, sold, or leased as they are today. The rights of PCX members upon the liquidation of PCX will remain unchanged.

2. National Market System Plans

The PCX currently is a participant in various NMS plans, including the Consolidated Tape Association ("CTA") Plan, the Consolidate Quotation System ("CQS") Plan, the Intermarket Trading System ("ITS") Plan and the Options Price Reporting Authority ("OPRA"). These plans are joint industry plans for SROs that address last sale reporting, quotation reporting, intermarket trading, and options last sale and quote reporting, respectively. Following the creation of PCX Equities, PCX, in its continuing role as the SRO, will continue to serve as the voting member of these NMS Plans. Nevertheless, PCX expects that, for those plans that relate to equity trading, *i.e.*, the CTA Plan, the CQS Plan and the ITS Plan, a PCX Equities representative will serve as the PCX's representative in dealing with these plans.

## III. Summary of Comments

The Commission received 26 comment letters on the proposal. All 26 commenters supported the proposal to create PCX Equities.[30] Many commenters believe that the proposed structure will allow PCX to better compete with alternative trading venues and that the restructuring is critical to restore the PCX's equities trading business to profitability.

## IV. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[31] In particular, the Commission believes that the proposal is consistent with the requirements of Sections 6(b)(1), 6(b)(2), 6(b)(3), 6(b)(4), 6(b)(5), 6(b)(6), 6(b)(7), and 6(b)(8).[32]

This proposal represents a significant departure from the traditional member-based exchange structure. The PCX proposes to institute a new framework by creating a separate corporation, PCX Equities, to house its equities trading and related clearing functions. In moving to a corporate structure for its equities business, PCX will not confer on its equity trading participants the exact same rights and benefits that otherwise accrue to existing Exchange members. In lieu of memberships, PCX Equities will issue trading permits, *i.e.*, ETPs and Equity ASAPs, to those persons and entities that wish to effect transactions in equity securities on the Exchange's trading floors or facilities. Instead of an ownership right in the Exchange that may be bought, sold, or leased, a trading permit will provide its holder solely with the ability to trade equity securities on PCX Equities or through its facilities.

Traditionally, national securities exchanges have been structured as membership organizations. While this type of organization has proved suitable for the exchanges over the years, the Commission clarified in the ATS Release[33] that other structures could also satisfy the requirements of the Act. The Commission has considered the issues raised under the Act by PCX Equities' proposed corporate structure and its issuance of trading permits and finds that the proposal is consistent with the requirements of the Act.

As discussed further below, while PCX is proposing to delegate some of its responsibilities and functions to PCX Equities, as the statutory SRO and registered exchange PCX will remain ultimately responsible for the activities of PCX Equities and its ETP and Equity ASAP Holders. Moreover, the structure and rules of PCX Equities assure fair representation of the ETP and Equity ASAP Holders, consistent with the Act.

*A. PCX Responsibilities and Delegation of Self-Regulatory Authority*

Although ETPs and Equity ASAPs are not like the traditional memberships of the Exchange, the holders of such permits are considered members of the PCX for purposes of the Act.[34] In proposed PCX Equities Rules 1.1(l) and (j), ETP Holders and Equity ASAP Holders have been specifically defined as members of the PCX consistent with Section 3(a)(3)(A) of the Act.[35] Section 3(a)(3)(A) defines a member with respect to a national securities exchange as a natural person who is permitted to effect transactions on the floor of an exchange without the services of another person acting as a broker, any

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[30] *See* Letters from Arnold Staloff, President and CEO, Bloom Staloff, to Jonathan G. Katz, Secretary, SEC, dated December 17, 1999; Leopold Korins, President and CEO, Securities Traders Association, to Jonathan G. Katz, Secretary, SEC, dated December 23, 1999; Douglas Rountree, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Scott Elisha, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Robert Pagnini, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Jeffrey C. Hauke, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Donald M. Abramson, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Kenneth Fong, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Ronald Chin, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Ray Crown, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Douglas J. Engmann, President and CEO, ABN–AMRO, to Jonathan G. Katz, Secretary, SEC, dated December 28, 1999; Robert G. Kirby, Capital Guardian Trust Co., to Jonathan G. Katz, Secretary, SEC, dated December 22, 1999; Craig A. Resnick, to Jonathan G. Katz, Secretary, SEC, dated December 30, 1999; Allan Leong, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; John W. Brown and L. Matthew Adams, Managing Members, M.J.T. Securities, LLC, to Jonathan G. Katz, Secretary, SEC, dated December 27, 1999; Douglas Gooding, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Edward Doherty, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Larry Colvin, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Richard and Vivian Chapnick, Members, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Mark Gattly, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Dr. Martin Jansen, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Sheldon Cohen, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Edward Hager, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Daniel A. Gooze, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Joseph Breger, Member, PCX, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999; Carol O'Neill, to Jonathan G. Katz, Secretary, SEC, dated December 21, 1999.

[31] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b)(1)–(8).

[33] *See Regulation of Exchanges and Alternative Trading Systems*, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998) ("ATS Release").

[34] In this order, the term "member" refers to an ETP Holder, ETP Firm or an Equity ASAP Holder, which are considered statutory members of the PCX for purposes of the Act.

[35] 15 U.S.C. 78c(a)(3)(A).

registered broker or dealer with which such natural person is associated, or any other registered broker-dealer that agrees to be regulated by the Exchange. Thus, as members of the PCX, ETP Holders and Equity ASAP Holders and their related firms and associated persons will be subject to the self-regulatory authority of the PCX.

As part of its restructuring proposal, PCX has filed with the Commission a Delegation Plan, pursuant to which the PCX proposes to delegate to PCX Equities certain self-regulatory functions and responsibilities.[36] PCX, however, retains ultimate self-regulatory authority over decisions made and policies implemented by PCX Equities pursuant to the Delegation Plan, and the PCX remains the SRO responsible for the statutory obligations under the Act.[37] The Exchange proposes that the Delegation Plan become part of the Rules of the PCX and, thus, may only be amended upon Commission approval.[38]

Upon approval of this proposal, PCX Equities will have the delegated authority to, among other things, determine regulatory and trading policies relating to the business conduct and trading activities of ETP Holders, Equity ASAP Holders, and associated persons, develop and adopt necessary and appropriate rule changes, monitor the qualifications of ETP Holders, ETP Firms and Equity ASAP Holders, initiate disciplinary actions to assure compliance with the Rules and procedures of PCX Equities and the federal securities laws, establish and assess fees, and oversee the operation of PCX Equities' trading facilities.

The Commission finds that the PCX's plan of delegation is consistent with the requirements of Section 6(b)(1) of the Act, which requires that an exchange be organized and have the capacity to carry out the purposes of the Act.[39] While the PCX has delegated many of its responsibilities to PCX Equities, it retains ultimate responsibility for ensuring that its equities business is conducted in a manner consistent with the requirements of the Act. Under the Delegation Plan and the Rules of the Exchange, PCX will continue to carry out its statutory responsibilities to enforce compliance by ETP Holders and Equity ASAP Holders, as members of the Exchange, with the Rules of PCX Equities and the federal securities laws and regulations, and will continue to have ultimate responsibility for the administration and enforcement of rules governing the operation of the equities trading business.

PCX also will continue to review and submit to the Commission any proposed changes to PCX Equities' Rules.[40] In addition, PCX will retain the authority to review disciplinary and other regulatory decisions of PCX Equities. These types of checks and balances should ensure that the PCX remains aware of the affairs of its equities business conducted through PCX Equities, and that its equities business is conducted in a manner consistent with the Act.

*B. Corporate Structure and Governance of PCX and PCX Equities*

1. PCX Equities Board of Directors

As a separate corporate entity, PCX Equities will have its own board of directors and officers that will administer its day-to-day operations. The Commission believes that the PCX Equities' proposed corporate structure is consistent with the Act.

Under Section 6(b)(3) of the Act,[41] the rules of an exchange must assure that its members are fairly represented in the selection of its directors and in the administration of its affairs. Section 6(b)(3)'s fair representation requirement allows statutory members to have a voice in an exchange's use of its self-regulatory authority. Moreover, this statutory requirement helps to ensure that members are protected from unfair, unfettered actions by an exchange pursuant to its rules, and that, in general, an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities.

In traditional exchanges, the fair representation requirement is easily satisfied because most members, as owners of the exchange, vote for the governing board, which, in turn, administers the activities of the exchange. Thus, the majority of members have a voice in all aspects of exchange governance and decision-making, including disciplinary rules, disciplinary appeals, and any exchange rules governing trading off the exchange.

In comparison, a demutualized exchange that is organized as a corporation (as in the case of PCX Equities), by definition, is characterized by the separation of the ownership interest in the exchange from the right to trade. Thus, such exchanges must find alternative ways to ensure that those persons or entities that trade on the exchange without owning an interest in the exchange have a voice in the selection of directors and the administration of the exchange. Otherwise, the governing body potentially could use its self-regulatory authority to act solely in its own commercial interest, to the detriment of members.

In addition, to make sure that the public interest is adequately represented in an exchange's decision-making process, Section 6(b)(3) of the Act[42] states that an exchange's rules must provide that one or more of its directors be representative of issuers and investors, and not associated with a member of the exchange, or with any broker-dealer.

The Commission finds that the PCX Equities' Board, as proposed by PCX, is structured in a manner that satisfies both the fair representation and public participation requirements of Section 6(b)(3) of the Act.[43] As noted above, the PCX proposes that the PCX Equities Board shall consist of no fewer than 10 and no more than 12 directors. The composition is currently contemplated to be: (i) The CEO of PCX; (ii) the President of PCX Equities;[44] (iii) five public directors, at least three of whom must also be members of the PCX Board; (iv) one allied person from an ETP Firm who is also a member of the PCX Board; and (v) two ETP/Equity ASAP Holder Directors.

Regardless of the size of the PCX Equities Board, at least 20 percent of the seats, but in no event fewer than two seats, must be nominated and held by PCX Equities members (*i.e.*, ETP or Equity ASAP Holders).[45] PCX also proposes to amend the composition of its Board of Governors to include a Governor position for an ETP Holder or Equity ASAP Holder.[46] PCX Equities members therefore will have input in

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[36] *See supra* note 15.

[37] The Commission notes that the PCX will be the sole shareholder of the PCX Equities. If the PCX's interest in PCX Equities is diluted in the future by, among other things, the sale of additional interests to other persons or entities, PCX Equities may be required to register as an exchange in its own right, pursuant to Section 6 of the Act. The Commission expects the PCX to notify the Commission before its interest in PCX Equities is in any way diminished.

[38] *See* Amendment No. 7, *supra* note 8.

[39] 15 U.S.C. 78f(b)(1).

[40] The PCX Board must review and ratify all PCX Equities proposed rule changes before they are submitted to the SEC. *See* Delegation Plan, *supra* note 15, and proposed PCX Equities Rule 3.4.

[41] 15 U.S.C. 78f(b)(3).

[42] *Id.*

[43] *Id.*

[44] Employees of PCX Equities and PCX are classified as industry members.

[45] *See* proposed PCX Equities Bylaws, Article III, Section 3.02(a).

[46] *See* proposed PCX Constitution, Article III, Section 2(b).

the administration of the affairs of PCX Equities and the Exchange.[47]

In addition, the PCX Equities Board, as proposed, contains 50 percent public representation. The PCX has proposed that a public director be defined as a person not affiliated with a broker or dealer. This definition is consistent with the definition currently found in the PCX Constitution.[48] While the Commission is satisfied that this definition is consistent with the Act, it encourages the PCX to consider amending this definition in the future to exclude those persons that may have a material business relationship with the Exchange or PCX Equities.[49]

The Commission has previously stated its belief that the inclusion of public, non-industry representatives on exchange oversight bodies is critical to make certain that an exchange actively works to protect the public interest in the exchange governance process.[50] Further, public representatives help to ensure that no single group of market participants has the ability to systemically disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of the PCX Equities Board to address issues in a non-discriminatory fashion and foster the integrity of PCX Equities. In this way, the public directors may help to prevent unfair discrimination between customers, issuers, brokers, or dealers in the administration of PCX Equities, and protect investors and the public interest, consistent with the provisions Section 6(b)(5) of the Act.[51]

2. PCX Equities' Committees[52]

In an effort to streamline its management, the PCX has proposed to eliminate many of the committees currently used in the administration of the affairs of PCX's equities activities. PCX Equities will have four committees, which will provide limited member involvement in the administration of the day-to-day operations of the Exchange.[53] Specifically, there will be a Nominating Committee, a Business Conduct Committee, and a Member Advisory Committee. In addition, PCX Equities will have one Board committee, the Board Appeals Committee.

a. *Nominating Committee.* The Nominating Committee of PCX Equities will be responsible for the selection of the ETP/Equity ASAP Holder Directors and the ETP/Equity ASAP Holder Governor. Under the PCX's proposal, the PCX Equities Nominating Committee will nominate two candidates for the PCX Equities Board and one candidate for the PCX Board.[54] These candidates will represent ETP Holders and Equity ASAP Holders on the respective Boards. The Nominating Committee will consist of seven members, six of whom will be ETP Holders or Equity ASAP Holders or allied persons of ETP Firms or Equity ASAP Holders and one of whom will be a member of the public. Each member constituency (*i.e.*, ETP Holders and Equity ASAP Holders) must have representation on the Nominating Committee that is equal to or greater than its percentage representation among all trading permit holders, with a minimum of one representative from each member constituency.[55]

Each year, the Nominating Committee will propose a slate of two eligible candidates for the PCX Equities Board and one eligible candidate for the PCX Board.[56] The slate put forth by the Nominating Committee will automatically be deemed to be selected by the members of PCX Equities without an actual vote. Members, however, will be able to submit additional candidates by way of petition. If 10 percent of all PCX Equities members counted as a single unit support an additional candidate, such candidate will be added to the slate and an actual member vote will be held to select the two nominees for the PCX Equities Board, or the one nominee for the PCX Board, or the nominees for both Boards, as the case may be.

The Commission finds that the composition of the Nominating Committee is consistent with the requirements of Section 6(b)(3) of the Act.[57] Because the Nominating Committee is responsible for selecting member representatives for the PCX Equities Board and the PCX Board, its composition should generally reflect the composition of the members (*i.e.*, the users) of the exchange. The Commission finds that the PCX Equities Nominating Committee's composition assures that both ETP Holders and Equity ASAP Holders will be represented in the selection of their PCX Equities Board and PCX Board representatives by providing that each constituency is proportionally represented, with a minimum of one person from each constituency.

Further, the Commission believes that the selection process provides members with an additional opportunity to select their directors, consistent with the requirements of Section 6(b)(3).[58] Although the slate of the Nominating Committee will be automatically deemed selected without a member vote, PCX Equities members are able to actively participate in the nomination process by way of petition. Thus, if a group of members is dissatisfied with the Nominating Committee's proposed slate, the PCX Equities members have the ability to force a member vote by petitioning to add a candidate. The Commission believes that the petition process is a fair and reasonable way for members to be involved in the selection of their representatives for the PCX Equities Board and PCX Board.

b. *Business Conduct Committee.* The Business Conduct Committee will have the following functions and authority: (i) To examine the business conduct and financial condition of ETP Holders, ETP Firms and Equity ASAP Holders and their associated persons; (ii) to conduct hearings and render decisions in summary disciplinary actions and proceedings; (iii) to impose appropriate sanctions of expulsion, suspension, fine, censure or any other fitting sanctions where the Committee finds that a violation within the disciplinary jurisdiction of PCX has been committed; and (iv) to require the production of detailed financial reports of an ETP Holder, ETP Firm, or Equity ASAP Holder.

The Business Conduct Committee will not have a fixed size. Rather, the PCX

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[47] PCX Equities members will also play a role in the process to nominate a Governor for the PCX Board. *See* Section IV.B.2.a, *infra*.

[48] *See* PCX Constitution Article II, Section 1(a).

[49] The Commission notes that the National Association of Securities Dealers, Inc. ("NASD") and the Chicago Stock Exchange, Inc. ("CHX") currently classify their board members as either industry/member, non-industry or public. The PCX Equities' definition of public is comparable to the NASD and CHX definition of non-industry. In contrast, the public member defined by the NASD and CHX as a person who has no material business relationship with a broker or dealer or the Association or the exchange, as the case may be. *See* NASD By-laws, Article I; CHX Constitution, Sections 2 and 10.

[50] *See* ATS Release, *supra* note 33.

[51] 15 U.S.C. 78f(b)(5).

[52] *See generally* proposed PCX Equities Rule 3.

[53] If PCX Equities decides to establish an executive committee, the Commission believes that its composition should reflect the composition of the PCX Equities Board.

[54] *But see* note 56, *infra*.

[55] For example, if Equity ASAP Holders constituted 10 percent of all trading permit holders on the PCX Equities, they would be entitled to at least one Equity ASAP representative on the Nominating Committee. If, however, the number of Equity ASAP Holders grew to 34 percent of all trading permit holders, then the Nominating Committee would have to include at least two Equity ASAP Holder representatives.

[56] A single person may be nominated for one of the ETP/Equity ASAP Holder Director positions and the ETP/Equity ASAP Holder Governor position. *See* proposed PCX Equities Rule 3.2(b)(2)(C)(1).

[57] 15 U.S.C. 78f(b)(3).

[58] *Id.*

Equities' management may determine the size of the Committee, as it deems appropriate. In addition to members of the public, the Business Conduct Committee will have proportional representation of ETP Holders and Equity ASAP Holders, with a minimum of one ETP Holder or allied person of an ETP Firm, and one Equity ASAP Holder or allied person of an Equity ASAP Holder, similar to that required for the Nominating Committee.[59] Therefore, all constituencies of the PCX Equities are guaranteed some input into the decisions of the Business Conduct Committee.

The Commission finds that the stated functions of the Business Conduct Committee, as set forth in the PCX Equities Rules, are consistent with the Act. The Rules relating to the Business Conduct Committee are consistent with Section 6(b)(6)[60] of the Act because they provide the committee with the authority to ensure that members are appropriately disciplined for violations of PCX Equities' Rules, as well as for violations of the rules and regulations of the of the Act.

In the Commission's view, the proposed composition of the Business Conduct Committee is consistent with the requirements of Sections 6(b)(3)[61] and 6(b)(7)[62] of the Act because it contains a member from each member constituency and thus provides both ETP Holders and Equity ASAP Holders with a fair and representative voice in the administration of PCX Equities' affairs, in particular, disciplinary proceedings. The Commission believes that there should be a level of actual member involvement in the disciplinary process of a demutualized exchange, similar to that practiced today on traditional member-owned exchanges. The Commission believes that exchange members should be permitted to participate in disciplinary proceedings by serving as members of the hearing panels that oversee the disciplinary process, and should also be included in the panels or committees that hear appeals in order to promote procedural fairness. The Commission finds that the proposed Business Conduct Committee adequately meets these goals.

c. *Member Advisory Committee.* The PCX has proposed to establish a Member Advisory Committee, which will act in an advisory capacity regarding rule changes that relate to disciplinary matters and off-board trading rules. The CEO of PCX Equities will appoint the members of this committee for one-year terms, and any member in good standing may be eligible to be appointed to the Committee.

The Commission believes that the Member Advisory Committee should provide members with the ability to provide input into the self-regulatory process. Members, by virtue of their positions, have first-hand knowledge about the workings of the markets. The Member Advisory Committee should help prevent potentially inappropriate or discriminatory disciplinary rules and off-board trading rules from being adopted by PCX Equities and help to ensure that the rules of PCX Equities are consistent with just and equitable principles of trade.

d. *Board Appeals Committee.* Decisions of PCX Equities made by the Business Conduct Committee and the staff of PCX Equities relating to, among other things, disciplinary matters, issuances of trading permits, and listings and delistings, may be appealed to the Board Appeals Committee. The Board Appeals Committee, which will be appointed by the PCX Equities Board, will include at least one public director of the PCX Equities Board and at least one ETP/Equity ASAP Holder Director.[63]

The Commission finds that the proposed composition and authority of the Board Appeals Committee are consistent with Section 6(b)(3)[64] and Section 6(b)(7)[65] of the Act, respectively.[66] The Board Appeals Committee will have of at least one ETP/Equity ASAP Holder Director that will represent the membership in helping assure that decisions of the Business Conduct Committee and the staff are made in a fair and impartial manner. In addition, the PCX's proposal is consistent with Section 6(b)(7)'s[67] requirement that an exchange establish fair procedures for disciplining members and persons associated with members, denying memberships, barring persons from seeking to become members, and prohibiting or limiting access to services. The Board Appeals Committee, as proposed, has appellate jurisdiction over various categories of disciplinary proceedings and other regulatory decisions, such as denials of ETP and Equity ASAP applications, issuances of floor citations and minor rule plan sanctions, delisting decisions, and sanctions for violations of PCX Equities' Bylaws, Rules, policies, regulations and procedures promulgated under the Act. Moreover, aggrieved PCX Equities members may appeal the decision of the Board Appeals Committee to the PCX Board of Governors and, ultimately, to the Commission.[68]

In sum, the Commission finds that the Board Appeals Committee's structure and jurisdiction appears to provide for a fair procedure for disciplining members and associated persons and overseeing the denial of access to PCX Equities or its services, in satisfaction of the standards set forth in Section 6(b)(7) of the Act.[69]

*C. Proposed PCX Equities Rules*

The majority of the rules proposed by PCX to govern PCX Equities' trading operations are closely patterned on PCX's existing rules.[70] The proposed rules contain changes to reflect the new structure whereby trading permits will be issued to persons or entities conducting business on PCX Equities. With the exception of proposed PCX Equities Rules 1, 2, 3, and 10, the proposed PCX Equities Rules are substantially similar and generally consistent with the PCX Rules that were previously filed with and approved by the Commission. In some cases, existing rules have been restated and clarified and obsolete references have been deleted to reflect the new equities subsidiary.

1. Proposed PCX Equities Rule 1

Proposed PCX Equities Rule 1 defines the terms and references (*e.g.*, ETP Holder) that are used throughout the proposed rules to ensure uniformity and to conform rule terminology to the demutualized entity. The Commission finds that proposed PCX Equities Rule 1 is consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of an exchange be designed to facilitate transactions in securities and to remove impediments to and perfect the mechanism of a free and open market and a national market system and not to permit unfair

[59] *See supra* note 55 for an example of how the proportional composition of the Nominating Committee will be determined. The Business Conduct Committee's composition will be determined using the same method.

[60] 15 U.S.C. 78f(b)(6).

[61] 15 U.S.C. 78f(b)(3).

[62] 15 U.S.C. 78f(b)(7).

[63] *See* Amendment No. 6, *supra* note 8, and proposed PCX Equities Rule 3.3(a)(1)(A).

[64] 15 U.S.C. 78f(b)(3).

[65] 15 U.S.C. 78f(b0(7).

[66] At a minimum, the Commission believes that any committee responsible for appeals of disciplinary matters should have an equal number of non-industry or public members as it has industry members.

[67] *Id.*

[68] *See* proposed PCX Equities Rule 10.8.

[69] 15 U.S.C. 78f(b)(7).

[70] As stated earlier, the PCX Equities' Rules remain the Rules of the PCX for purposes of the Act and any proposed changes to those Rules must be submitted by the PCX to the Commission for approval, under Section 19(b) of the Act.

discrimination between customers, issuers, brokers or dealers.[71] The Commission believes that these definitions are necessary and appropriate additions to the existing PCX Rules because they provide an important overview of the restructured PCX Equities entity and its members (*i.e.*, ETP Holders and Equity ASAPs Holders).

2. Proposed PCX Equities Rule 2

Proposed PCX Equities Rule 2 describes the application process, the qualification requirements and other requirements for holding an ETP or Equity ASAP. Although these provisions are similar to the requirements and procedures currently found in PCX Rule 1 and the PCX Constitution, the PCX made certain substantive changes to the application and qualification requirements to reflect the characteristics of the new ETPs and Equity ASAPs.

PCX Equities will issue these permits to persons that satisfy the respective qualification requirements.[72] The qualification requirements and the application process have been modeled after the current procedures and rules employed by the PCX for PCX memberships and PCX ASAPs. The PCX has stated that it will not limit the number of permits that it will issue. Current PCX members will need to submit an application and pay a fee to receive a trading permit, but because they have already satisfied the requirements for PCX membership, the process will be less time intensive. For new applicants, the process will be substantially similar to the current PCX process except that the approval and disapproval decisions will be made by the management of PCX Equities instead of a membership committee. The Commission finds that the PCX has satisfied the requirements of Section 6(b)(2) of the Act[73] because it has proposed rules that will enable any broker-dealer registered under Section 15 of the Act[74] that satisfies the qualification requirements to become a member of the Exchange.

3. Proposed PCX Equities Rule 3

Proposed PCX Equities Rules 3.1 through 3.3 discuss in detail the proposed committee structure. These proposed rules cover the functions and compositions of the Business Conduct Committee, Nominating Committee, Member Advisory Committee, and the Board Appeals Committee. For the reasons discussed in Section IV.B., above, the Commission finds that these Rules are consistent with the Act.

Proposed PCX Equities Rules 3.4 through 3.6 discuss the proposed delegation of authority from the PCX to PCX Equities. For the reasons discussed in Section IV.A., above, the Commission finds that the proposed delegation of self-regulatory authority from the PCX to PCX Equities is appropriate and consistent with the Act.

4. Proposed PCX Equities Rule 10

Proposed PCX Equities Rule 10 sets forth the disciplinary process for PCX Equities.[75] While proposed PCX Equities Rule 10 is substantially similar to the current PCX disciplinary procedures, the PCX has submitted some substantive changes relating to the independence of the PCX Equities regulatory staff and *ex parte* communications. The Commission finds that the disciplinary provisions contained in proposed PCX Equities Rule 10 are consistent with Sections 6(b)(5), 6(b)(6) and 6(b)(7) of the Act.[76] Section 6(b)(5) generally requires that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.[77] Section 6(b)(6) requires, among other things, that the rules of an exchange provide that its members shall be appropriately disciplined for violations of the Act, the rules and regulations thereunder, or the rules of an exchange.[78] Section 6(b)(7) requires that the rules of an exchange, among other things, should provide a fair procedure for disciplining members.[79]

Pursuant to proposed PCX Equities Rule 10.2, although any person, including PCX Equities Board members and PCX Equities committee members, will be permitted to bring potential violations to the attention of the PCX Equities' regulatory staff, the regulatory staff will have the exclusive authority to determine whether to investigate potential violations within the disciplinary jurisdiction of the PCX Equities. The Commission believes that this provision should prevent commercial interests of members from improperly influencing the disciplinary process, consistent with the requirements of Section 6(b)(7).[80] This aspect of the proposed Rule should help to ensure that the disciplinary process operates in a fair manner without potential improper, unrelated business influences.

The Commission believes that the Exchange has struck an appropriate balance by permitting PCX Equities' directors and committee members to submit complaints alleging possible violations of PCX Equities Rules and violations of the Act to the regulatory staff of PCX Equities for investigation, but then prohibiting them from further participation in the investigation or proceedings. In this way, the directors and committee members continue have the ability to bring potential violations to the attention of the regulatory staff, but are not given undue control and influence over the proceedings.

The Commission further finds that the explicit prohibition in the proposed Rule against interference by the PCX Equities Board and other non-regulatory staff persons with any pending investigation or disciplinary proceeding is appropriate. The proposed Rule ensures that persons responsible for investigations and disciplinary proceedings should enjoy autonomy and independence.

Proposed PCX Equities Rule 10.4 provides that only the regulatory staff of PCX Equities has the authority to determine whether there is probable cause to issue a formal complaint, *i.e.*, probable cause for finding that a violation within the disciplinary jurisdiction of PCX Equities has occurred and that further proceedings are warranted. The Commission believes that giving the regulatory staff independence will allow for a vigorous and evenhanded enforcement program.

Proposed PCX Equities Rule 10.3 defines and prohibits *ex parte* communications between various participants in the disciplinary process and members of the PCX Equities Board and PCX Board. In the Commission's view, it is appropriate to prohibit *ex parte* communications between the persons, committees and panels responsible for overseeing the disciplinary process, and the parties or their representatives during disciplinary proceedings. The Commission believes that the boundaries set out in the proposed rule defining the prohibited communications should help ensure that no party can unfairly advance his or her position in an investigation or disciplinary proceedings through discussion or other communication outside of the proceeding's forum.

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[71] 15 U.S.C. 78f(b)(5).

[72] *See generally* proposed PCX Equities Rule 2.

[73] 15 U.S.C. 78f(b)(2).

[74] 15 U.S.C. 78o.

[75] The Commission recently approved substantially similar proposed changes to the PCX disciplinary Rules. *See* Securities Exchange Act Release No. 42750 (May 4, 2000) (File No. SR–PCX–99–10).

[76] 15 U.S.C. 78f(b)(5)–(7).

[77] 15 U.S.C. 78f(b)(5).

[78] 15 U.S.C. 78f(b)(6).

[79] 15 U.S.C. 78f(b)(7).

[80] *Id.*

Therefore, the Commission finds that the proposed Rule regarding *ex parte* communications is consistent with the requirements of Sections 6(b)(7) by establishing procedures that provide a fair disciplinary forum.

The Commission finds therefore that proposed PCX Equities Rule 10 provides that ETP Holders, ETP Firms, Equity ASAP Holders and associated persons are to be appropriately disciplined, and provides a fair procedure for them for violations of the Act, the rules or regulations thereunder, or the rules of the exchange in accordance with Sections 6(b)(6)[81] and 6(b)(7).[82]

*D. Costs of ETPs and Equity ASAPs*

In connection with the new trading permits, the PCX has proposed a new fee structure for its members. ETP Holders will pay a fixed monthly amount to PCX Equities, while Equity ASAP Holders will pay a fixed annual amount. The PCX has proposed a graduate fee schedule for ETP's during the first nine months after PCX Equities has been established, which will be correlated to the current prevailing monthly lease rate for PCX memberships.

The Commission finds that the proposed trading permit fees to be consistent with the requirements of Section 6(b)(4) of the Act[83] that the Exchange allocate its fees fairly among its members. The Exchange has proposed fees based on the type of permit issued and, thus, the fees are based on the type of access and services provided to members. The Commission finds that establishing the fees in this manner to be consistent with Section 6(b)(4) of the Act.[84]

*E. Amendment Nos. 3–7*

For the reasons discussed below, the Commission finds good cause for approving Amendment Nos. 3 through 7 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**.

1. Amendment No. 3

Amendment No. 3 sets forth proposed changes to the proposed PCX Equities Certificate of Incorporation, proposed PCX Equities Bylaws, proposed PCX Equities Rules 1–7 and 10–12, as well as the proposed PCX Equities Equity Floor Procedure Advices. Amendment No. 3 also amends PCX Rules 2 and 3 to reflect changes made to the corresponding proposed PCX Equities Rules. With the exception of a change to the proposed disciplinary Rule governing *ex parte* communications, the proposed changes in Amendment No. 3 are technical, non-substantive amendments that serve to clarify the intent and application of the proposed rule or correct language or typographical errors.

Proposed PCX Equities Rule 10.3 prohibits certain *ex parte* communications, and contains procedures that require disclosure and a hearing to show cause why the claim or defense of a party that received, and benefited from, a prohibited communication should not be disposed of by an adverse summary decision. In Amendment No. 3, the Exchange added a provision to this proposed Rule that states that a member of the Business Conduct Committee or Conduct Panel must recuse himself or herself from participation in such a hearing if the member has a conflict of interest or bias, or if circumstances otherwise exist where his or her fairness might reasonably be questioned.

The Commission finds that the addition of this provision will increase the level of fairness and impartiality in disciplinary proceedings and will aid in the dispassionate application of the disciplinary rules. The Commission believes that the PCX has proposed a reasonable standard under which an adjudicator or participant in the disciplinary process must recuse himself or herself or face disqualification by the Chief Regulatory Officer, or in the event that the Chief Regulatory Officer has a conflict, by the CEO.

In addition, in Amendment No. 3, the Exchange submitted for the Commission's review a draft Shareholder Agreement. Under the terms of the Shareholder Agreement, the PCX agrees to vote all outstanding shares of the PCX Equities to elect to the PCX Equities Board the two representatives of ETP Holders and Equity ASAP Holders nominated by the Nominating Committee, pursuant to proposed PCX Equities Rule 3.[85]

The Commission believes that Amendment No. 3 does not significantly alter the original proposal, which was subject to a full notice and comment period. Moreover, the Commission believes that the changes made to the proposed rules, as well as to the Shareholder Agreement strengthen the proposal and further ensure the Exchange's compliance with the Act through its subsidiary, PCX Equities. Therefore, the Commission finds that granting accelerated approval to Amendment No. 3 is appropriate and consistent with Section 19(b)(2) of the Act.[86]

*2. Amendment No. 4*

In Amendment No. 4, the PCX proposes to change the number of floor members required to be on the PCX Board at all times from five to two, as is currently required in the PCX Constitution. This change is proposed to make the proposed PCX Constitution consistent with the current PCX Constitution.[87] Amendment No. 4 also sets forth changes to proposed PCX Equities Rule 4 and 10 to ensure that the language of the proposed rules appropriately reflects the new structure of PCX Equities by changing references to "members" and the "Exchange" to "ETO Holders," "ETP Firms," "Equity ASAP Holders," and the "Corporation."

The changes in proposed Amendment No. 4 merely reflect the proposed PCX Equities structure and make the filing consistent with current PCX Rules. Further, the Commission finds that Amendment No. 4 does not significantly alter the original proposal, which was subject to a full notice and comment period. Therefore, the Commission finds that granting accelerated approval to Amendment No. 4 is appropriate and consistent with Section 19(b)(2) of the Act.

*3. Amendment No. 5*

In Amendment No. 5, the PCX sets forth changes to proposed PCX Equities Rules 6 and 7. Specifically, Amendment No. 5 makes several technical, non-substantive changes to the proposal, such as identifying appropriate cross-references, accurately and fully transferring the PCX rules into the PCX Equities Rules, and correctly applying the proposed Rules to ETP Holders, ETP Firms and Equity ASAP Holders.

The Commission believes that Amendment No. 5 does not significantly alter the original proposal, which was subject to a full notice and comment period. Therefore, the Commission finds that granting accelerated approval to Amendment No. 5 is appropriate and consistent with Section 19(b)(2) of the Act.

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[81] 15 U.S.C. 78f(b)(6).
[82] 15 U.S.C. 78f(b)(7).
[83] 15 U.S.C. 78f(b)(4).
[84] *Id.*

[85] As noted earlier, the Commission believes that any modification to the equity ownership of PCX Equities may raise regulatory issues, and thus expects the PCX to notify the Commission in such an event.

[86] 15 U.S.C. 78s(b)(2).
[87] *See* PCX Constitution Article III, Section 2(b); *see also* Securities Exchange Act Release No. 42235 (December 14, 1999), 64 FR 71839 (December 22, 1999).

4. Amendment No. 6

Amendment No. 6 sets forth proposed changes to the proposed PCX Equities Rules 3, 8, 9, 10, 12, and 13, as well as the proposed PCX Equities Equity Floor Procedure Advices. The Amendment makes changes to the process by which PCX Equities members may submit petitions to nominate candidates for positions on the Nominating Committee, the PCX Equities Board, and the PCX Board. The composition requirements of the Nominating Committee, the Business Conduct Committee and the Board Appeal Committee were also further defined. Also, the Exchange created the Member Advisory Committee.

In addition, the Amendment contained minor revisions to the *ex parte* communication Rules. Finally, the Exchange submitted technical, non-substantive amendments to the proposed rule language that serve to clarify the intent of the proposed Rules or correct textual or typographical errors.

Proposed PCX Equities Rule 3.2(b)(1)(A) describes and sets forth the composition requirements of the Business Conduct Committee. In Amendment No. 6, the Exchange revised this proposed Rule to state that the Business Conduct Committee shall have proportional representation of all ETP Holders and Equity ASAP Holders, with a minimum of one ETP Holder or allied person of an ETP Firm and one Equity ASAP Holder or an allied person of an Equity ASAP Holder.[88] Similarly, in Amendment No. 6, the Exchange revised proposed PCX Equities Rule 3.2 (b)(2)(A), which sets forth the composition of the Nominating Committee, to provide that the six ETP Equity ASAP Holder representatives on the Nominating Committee shall represent proportionally all ETP Holders, ETP Firms, and Equity ASAP Holders, with a minimum of one ETP Holder or allied person of an ETP Firm and one Equity ASAP Holder or allied person of an Equity ASAP Holder.[89]

Proposed PCX Equities Rules 3.2(b)(2)(B)(i) and 3.2(b)(2)(C)(i) describe the process by which members are appointed to the Nominating Committee and, in turn, the process by which the Nominating Committee facilitates selection of the ETP Holders or Equity ASAP Holders for the PCX Equities Board and the PCX Board. These proposed Rules include a provision whereby ETP Holders and Equity ASAP Holders in good standing may submit a written petition to the Nominating Committee to nominate additional eligible candidates to fill ETP Holder and Equity ASAP Holder positions on the Nominating Committee[90] and on the PCX Board and PCX Equities Board[91] during the next term. In Amendment No. 6, the PCX reduced the aggregate percentage of ETP Holders and Equity ASAP Holders necessary to successfully petition to nominate such candidates from 20 percent to 10 percent.

In addition, in Amendment No. 6, the PCX proposed new PCX Equities Rule 3.2(b)(2)(C)(3), which establishes a Member Advisory Committee that shall act in an advisory capacity regarding proposed rule changes relating to disciplinary matters and off-board trading rules.

Proposed PCX Equities Rule 3.3(a) governs the composition of the Board Appeals Committee. In Amendment No. 6, the PCX revised this Rule to require that each Board Appeals Committee will contain at least one public director and at least one ETP/Equity ASAP Holder Director.

The Commission finds that the above revisions to the composition requirements for the PCX Board, PCX Equities Board and PCX Equities' committees represent reasonable standards intended to satisfy the fair representation and public participation standards required by Section 6(b)(3).[92] In addition, PCX's proposed reduction of the percentage of ETP Holders and Equity ASAPs Holders necessary to successfully petition the Nominating Committee for the addition of alternative candidates is a reasonable proposal designed to ensure fair representation of the PCX membership on the Nominating Committee and PCX Board and PCX Equities Board.

Finally, in Amendment No. 6, the PCX made revisions to several of PCX Equities' disciplinary rules relating to *ex parte* communications. In proposed PCX Equities Rule 10.3(a)(1)–(3), the PCX inserted language to prohibit any interested PCX Equities staff with knowledge of a pending investigation or disciplinary proceeding from making, or knowingly causing to be made, an *ex parte* communication. The PCX also amended proposed PCX Equities Rule 10.3(c) to allow for a disciplinary committee to issue to interested PCX Equities staff responsible for an *ex parte* communication, or who benefited from such a communication, an order to show cause why the claim, defense, or interest should not be adversely affected by reason of such *ex parte* communication.

The Commission finds that the addition of this provision will increase the level of fairness and impartiality in disciplinary proceedings and will aid in the even-handed application of the disciplinary rules. The Commission believes that the PCX has proposed reasonable standards intended to prevent *ex parte* communications involving PCX Equities staff, which satisfies the requirements of Section 6(b)(7) of the Act.[93]

Overall, the Commission finds that the PCX's proposed changes in Amendment No. 6 strengthen and clarify the proposed rule change. Therefore, the Commission finds that granting accelerated approval to Amendment No. 6 is appropriate and consistent with Section 19(b)(2) of the Act.

5. Amendment No. 7

In Amendment No. 7, the Exchange deleted PCX Rule 3 regarding listings and delistings because these provisions will now be part of the PCX Equities Rules. In addition, the PCX proposed to add the Delegation Plan to its Rules as proposed PCX Rule 14. In the Amendment, the Exchange also clarified that summary suspensions, permitted pursuant to PCX Equities Rule 11.2(a), will only be enforced for violations of the Rules of PCX Equities. Finally, the Exchange proposed non-substantive, technical amendments to the language of the proposed PCX Equities Rules.

The Commission finds that proposed changes in Amendment No. 7 further strengthen and clarify the proposed rule change. The Commission believes that Amendment No. 7 does not significantly alter the original proposal, which was subject to a full notice and comment period. Therefore, the Commission finds that granting accelerated approval to Amendment No. 7 is appropriate and consistent with Section 19(b)(2) of the Act.

*F. Summary of Commission's Findings*

In sum, as discussed above, the Commission believes the proposal to create PCX Equities is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with the requirements of Sections

[88] *See supra* note 55.

[89] *Id.*

[90] *See* proposed PCX Equities Rule 3.2(b)(2)(B)(i).

[91] *See* proposed PCX Equities Rule 3.2(b)(2)(C)(i).

[92] 15 U.S.C. 78f(b)(3).

[92] 15 U.S.C. 78f(b)(3).

6(b)(1), 6(b)(2), 6(b)(3), 6(b)(4), 6(b)(5), 6(b)(6), 6(b)(7), and 6(b)(8).[94]

In addition, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(1) of the Act.[95] Section 6(b)(1) requires that an exchange be so organized and have capacity to carry out the purposes of the Act. According to the PCX, all revenue generated by the equities business, including ETP and Equity ASAP fees, specialist fees, tape fees, and transaction fees will accrue to PCX Equities.

Further, the PCX has committed to provide PCX Equities with the resources necessary for it to carry out its delegated responsibilities. The Commission expects that the PCX, as the registered exchange ultimately responsible for compliance with the provisions of the Act, will continue to properly fund its subsidiary for such purposes. In addition, the PCX has committed to provide certain services and facilities to help support PCX Equities' trading operations. These services and facilities and their costs will be specifically defined in an agreement between PCX and PCX Equities. The Commission finds that these provisions should enable PCX Equities to fulfill the requirements imposed by the Act, consistent with the PCX's self-regulatory requirements.

Finally, the Commission finds that the proposal is consistent with Section 6(b)(8) of the Act,[96] which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance with the Act. The Commission does not believe that the proposed structure will impose any inappropriate burdens on competition.[97]

**V. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 3–7, including whether the proposed amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed amendment that are filed with the Commission, and all written communications relating to the amendment between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–99–39 and should be submitted by June 2, 2000.

**VI. Conclusion**

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,[98] that the proposed rule change (SR–PCX–99–39), as amended, be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[99]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11920 Filed 5–11–00; 8:45 am]

BILLING CODE 8010–01–M

[94] 15 U.S.C. 78f(b)(1) through (b)(8).

[95] 15 U.S.C. 78f(b)(1).

[96] 15 U.S.C. 78f(b)(8).

[97] The Commission notes that this Section 6(b)(8) finding does not extend to all of the Rules proposed to be PCX Equities Rules. As described above, the majority of the Rules intended to become the Rules of PCX Equities were incorporated from the PCX Rules in their entirety without substantive change and were previously subject to Commission review. Thus, the current finding is limited only to those PCX Equities Rules that have been specifically amended to reflect the restructuring.

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42762; File No. SR–PHLX–00–37]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Starting the Automatic Price Improvement Feature and the Mandatory Manual Double-up Double-down Price Protection Feature at (9:30 A.M.)

May 5, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on April 20, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to begin the Automatic Price Improvement feature ("API") of the Philadelphia Stock Exchange, Inc. Automatic Communication and Execution ("PACE") System at 9:30 A.M. instead of 9:45 A.M. In addition, the Exchange also proposes to begin the Mandatory Manual Double-up Double-down price protection at 9:30 A.M. instead of 9:45 A.M. The Text of the proposed rule change is available at the Office of the Secretary, the Phlx and at the Commission.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

PACE is the Exchange's automated order routing and execution system on the equity trading floor. The PACE System accepts orders for automatic or manual execution in accordance with the provisions of Phlx Rule 229, which governs the PACE System and defines its parameters. The API feature of the PACE System allows the specialist to voluntarily provide automatic price improvement to market and marketable limit orders to all customers in a security for orders which are 599 shares or less, and when the PACE quote[2] is 3/16 or 1/8 for greater.[3]

The specialist must provide Mandatory Manual Double-up Double-down price protection where the specialist does not agree to use the API

[98] 15 U.S.C. 78s(b)(2).

[99] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The PACE quote consists of the best bid/offer among the American, Boston, Cincinnati, Chicago, new York, Pacific and Philadelphia Stock Exchanges. *See* Phlx Rule 229.

[3] *See* Phlx Rule 229, Commentary .07(c)(i).

feature. Specifically, Mandatory Manual Double-up Double-down price protection is used to provide price improvement for those securities that the specialist has determined are not appropriate for the API feature because the security is less liquid or less volatile.[4]

Currently, both the API feature and the Mandatory Manual Double-up Double-down price protection begin at 9:45 A.M. The Exchange proposes to begin both features at 9:30 A.M., when the market generally opens. The PACE timer will be reset to start the API feature fifteen minutes earlier, which should in turn permit those orders that were excluded due to time constraint to receive the benefits of the price improvement through the API feature. The time change for the Mandatory Manual Double-up Double-down price protection will require the specialist to begin the same obligations fifteen minutes earlier. This will allow those stocks which are not subject to automatic price improvement to receive the benefits of Mandatory Manual Double-up Double-down price protection fifteen minutes earlier.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[5] of the Act, in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by enhancing efficiency through automation and providing automatic price improvement to more equity orders.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

[4] See Securities Exchange Act Release No. 39548 (January 13, 1998), 63 FR 3596 (January 23, 1998) (order approving API feature and Mandatory Manual Double-up Double-down price protection).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Pursuant to Section 19(b)(3)(A)[7] of the Act and Rule 19b–4(e)(6)[8] thereunder, the proposed rule change has become effective upon filing as it effects a change that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) by its terms, does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest. The Exchange has requested that the Commission accelerate the operative date of the proposal in order for the new 9:30 start time for both the API Feature and the Mandatory Manual Double-up Double-down price protection provision to become operative promptly.

The Commission finds good cause for accelerating the operative date of the proposal as of the date of this notice.[9] The Commission has previously found that both the API Feature and the Mandatory Manual Double-up Double-down price protection provision may enhance intermarket competition and order execution quality on the Exchange.[10] In addition, the Commission previously found that both features should contribute to the maintenance of orderly markets by Phlx specialists because they help to reduce the price variations occurring from trade to trade on low volume.[11] With the current proposal, investors could receive all of these potential benefits at 9:30 when the market opens. The Commission also notes that the original proposal was published for the full comment period, and the Commission received no comments.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–PHLX–00–37 and should be submitted by June 2, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–11919 Filed 5–11–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4.

[9] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] *See supra*, note 4.

[11] *Id.*

[12] 17 CFR 200.30–3(a)(12).

## TENNESSEE VALLEY AUTHORITY

**Paperwork Reduction Act of 1995, as amended by Pub. L. 104–13; Submission for Office of Management and Budget (OMB) Review; Comment Request**

**AGENCY:** Tennessee Valley Authority.

**ACTION:** Submission for Office of Management and Budget (OMB) Review; comment request.

**SUMMARY:** The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (EB 5B),

Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for Tennessee Valley Authority no later than June 12, 2000.

**SUPPLEMENTARY INFORMATION:**

*Type of Request:* Regular submission, proposal to reinstate, with change, a previously approved collection for which approval has expired.

*Title of Information Collection:* Farmer Questionnaire-Vicinity of Nuclear Power Plants.

*Frequency of Use:* On occasion.

*Type of Affected Public:* Individuals or households, and farms.

*Small Businesses or Organizations Affected:* No.

*Federal Budget Functional Category Code:* 271.

*Estimated Number of Annual Responses:* 150.

*Estimated Total Annual Burden Hours:* 40.

*Estimated Average Burden Hours Per Response:* 0.25.

*Need For and Use of Information:* This survey is used to locate, for monitoring purposes, rural residents, home gardens, and milk animals within a five mile radius of a nuclear power plant. The monitoring program is a mandatory requirement of the Nuclear Regulatory Commission set out in the technical specifications when the plants were licensed.

**Jacklyn J. Stephenson,**

*Senior Manager, Enterprise Operations, Information Services.*

[FR Doc. 00–11967 Filed 5–11–00; 8:45 am]

BILLING CODE 8120–08–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–6 (Sub–No. 387X)]**

### The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Stearns County, MN

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 4.89-mile line of its railroad between milepost 81.11 near St. Joseph and milepost 86.00 near Collegeville, in Stearns County, MN. The line traverses United States Postal Service Zip Codes 56321, 56374 and 56375.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 13, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 22, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by June 1, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Sarah Whitley Bailiff, Senior General Attorney, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, Fort Worth, TX 76131–2828.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 17, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by May 12, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 4, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–11840 Filed 5–11–00; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit For Importation of Firearms, Ammunition and Implements of War.

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Larry White, Chief, Firearms and Explosives Imports Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8320.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application and Permit For Importation of Firearms, Ammunition and Implements of War.

*OMB Number:* 1512–0018.

*Form Number:* ATF F 6, Part 2.

*Abstract:* This information collection is needed to determine whether firearms, ammunition and implements of war are eligible for importation into the United States. The information is used to secure authorization to import such articles. The form is used by persons who are members of the United States Armed Forces.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Affected Public:* Federal Government, State, Local or Tribal Government.

*Estimated Number of Respondents:* 9,000.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 4,500.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of the information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 2000.

**William J. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–12005 Filed 5–11–00; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Records of Things of Value to Retailers and Occasional Letter Reports From Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, etc., Under the Federal Alcohol Administration Act.

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Records of Things of Value to Retailers and Occasional Letter Reports From Industry Members Regarding Information on Sponsorships, Advertisements, Promotions, etc., Under the Federal Alcohol Administration Act.

*OMB Number:* 1512–0392.

*Recordkeeping Requirement ID Number:* ATF REC 5190/1.

*Abstract:* These records and occasional letter reports are used to show compliance with the provisions of the Federal Alcohol Administration Act which prevents wholesalers, producers, or importers from giving things of value to retail liquor dealers, and prohibits industry members from conducting certain types of sponsorships, advertising, promotions, etc. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 12,665

*Estimated Time Per Respondent:* 0.

*Estimated Total Annual Burden Hours:* 51.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–12006 Filed 5–11–00; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Applications and Notices, Manufacturers of Nonbeverage Products.

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESS:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Rich Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (301) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Applications and Notices, Manufacturers of Nonbeverage Products.

*OMB Number:* 1512–0378.

*Recordkeeping Requirement ID Number:* ATF REC 5530/1.

*Abstract:* These reports are used by ATF district personnel to ensure that the regulated individuals will conduct operations in compliance with the law and regulations. The applications and notices serve to protect the revenue by helping ATF personnel in determining if spirits on which drawback has been claimed have been diverted to beverage use. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 640.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 640.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–12007 Filed 5–11–00; 8:45 am]

**BILLING CODE 4810–31–P**

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Tobacco Export Warehouse, Record of Operations.

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESS:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Clifford Mullen, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Tobacco Export Warehouse, Record of Operations.

*OMB Number:* 1512–0367.

*Recordkeeping Requirement ID Number:* ATF REC 5220/1.

*Abstract:* These records are maintained at the premises of the regulated individual and are routinely used by ATF personnel during field tax compliance examinations to verify that untaxpaid tobacco products are not being diverted to domestic consumption. This ensures that tax revenues are protected. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 221.

*Estimated Time Per Respondent:* None.

*Estimated Total Annual Burden Hours:* 1.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–12008 Filed 5–11–00; 8:45 am]

**BILLING CODE 4810–31–P**

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Importer's Records and Reports.

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Richard Mascolo, Chief, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Importer's Records and Reports.

*OMB Number:* 1512–0352.

*Recordkeeping Requirement ID Number:* ATF REC 5170/1.

*Abstract:* This recordkeeping requirement concerns the records which must be maintained by the importer. The records are used by ATF to verify that operations are being conducted in compliance with the law and to ensure that all taxes and duties have been paid on imported spirits, thus protecting the revenue. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Federal Government.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours:* 251.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–12009 Filed 5–11–00; 8:45 am]

**BILLING CODE 4810–31–P**

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## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Alcohol Fuel Plants (AFP) Records, Reports and Notices.

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESS:** Direct all written comments to Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Mary Wood, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Alcohol Fuel Plants (AFP) Records, Reports and Notices.

*OMB Number:* 1512–0215.

*Form Number:* ATF F 5110.75.

*Recordkeeping Requirement ID Number:* ATF REC 5110/10.

*Abstract:* The data for this information collection is necessary to determine that persons are qualified to produce alcohol for fuel purposes and to identify such persons. It is also needed to account for distilled spirits produced, verify its proper disposition, keep registrations current and evaluate permissible variations from prescribed procedures. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 871.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 871.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–12010 Filed 5–11–00; 8:45 am]

**BILLING CODE 4810–31–P**

[FR Doc. 00–12010 Filed 5–11–00; 8:45 am]
BILLING CODE 4810–31–P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the National Tracing Center Trace Request and Obliterated Serial Number Trace Request.

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Shirley Blickenstaff, National Tracing Center, Falling Waters, West Virginia 25419, 1–800–788–7133.

**SUPPLEMENTARY INFORMATION:**

*Title:* National Tracing Center Trace Request and Obliterated Serial Number Trace Request.

*OMB Number:* 1512–0541

*Form Number:* ATF F 3312.1 and ATF F 3312.2.

*Abstract:* The tracing of crime guns is a principal mission of ATF and is conducted as a centralized operation at the National Tracing Center in Falling Waters, West Virginia. These forms are used by the Federal, State, Local, and International law enforcement community to request that ATF trace firearms used, or suspected to have been used, in crimes.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Federal Government, State, Local, or Tribal Government.

*Estimated Number of Respondents:* 99,255.

*Estimated Time Per Respondent:* 6 minutes per form.

*Estimated Total Annual Burden Hours:* 198,015.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–12011 Filed 5–11–00; 8:45 am]
BILLING CODE 4810–31–P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Supporting Data For Nonbeverage Drawback Claims.

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Steve Simon, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

*Title:* Supporting Data For Nonbeverage Drawback Claims

*OMB Number:* 1512–0514.

*Form Number:* ATF F 5154.2.

*Abstract:* The form substantiates nonbeverage drawback claims by showing the use of taxpaid distilled spirtis to manufacture nonbeverage products. The form is used in ATF district offices which verify that all distilled spirits can be accounted for and that drawback is paid only in the amount and for the purposes authorized by law.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 590.

*Estimated Time Per Respondent:* 1 hour.

*Estimated Total Annual Burden Hours:* 3,540.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–12012 Filed 5–11–00; 8:45 am]
BILLING CODE 4810–31–P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application For Extension of Time For Payment of Tax.

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of Alcohol, Tobacco and Firearms, Linda Barnes, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form(s) and instructions should be directed to Thomas Stewart, Chief, Revenue Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8200.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application For Extension of Time For Payment of Tax.

*OMB Number:* 1512–0506.

*Form Number:* ATF F 5600.38.

Abstract: ATF uses this information to determine if a taxpayer is qualified to extend payment of tax based on circumstances beyond the taxpayer's control. The record retention requirement for this information collection is 3 years.

*Current Actions:* There are no changes to this information collection and it is being submitted for extension purposes only.

*Type of Review:* Extension.

*Affected Public:* Business or other for-profit.

*Estimated Number of Respondents:* 12.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 3.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 2000.

**William T. Earle,**

*Assistant Director (Management) CFO.*

[FR Doc. 00–12013 Filed 5–11–00; 8:45 am]

BILLING CODE 4810–31–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Forms 6466 and 6467

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6466, Transmittal of Forms W–4 Reported Magnetically/Electronically, and Form 6467, Transmittal of Forms W–4 Reported Magnetically/Electronically (Continuation).

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Form 6466, Transmittal of Forms W–4 Reported Magnetically/Electronically, and Form 6467, Transmittal of Forms W–4 Reported Magnetically/Electronically (Continuation).

*OMB Number:* 1545–0314.

*Form Number:* Forms 6466 and 6467.

*Abstract:* Under regulation section 31.3402(f)(2)–1(g), employers are required to submit certain withholding certificates (Form W–4) to the Internal Revenue Service. Transmittal Form 6466 and the continuation sheet Form 6467 are submitted by an employer, or an authorized agent of the employer, who will be reporting submissions of Form W–4 on magnetic/electronic media.

*Current Actions:* A new section, Employer's Media Number, was added to Form 6466 and Form 6467 to help identify specific pieces of media. Some filers submit more than one tape or diskette. By identifying their media number, IRS can better match paperwork to media and expedite processing.

*Type of Review:* Revision of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, farms and Federal, state, local or tribal governments.

*Estimated Number of Respondents:* 100.

*Estimated Time Per Respondent:* 1 hour, 20 minutes.

*Estimated Total Annual Burden Hours:* 133.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11903 Filed 5–11–00; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Notice 1027

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 1027, How to Prepare Media Label for Form W–4.

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the notice should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* How to Prepare Media Label for Form W–4.

*OMB Number:* 1545–0410.

*Notice Number:* Notice 1027.

*Abstract:* Internal Revenue Code section 3402 requires all employers making payment of wages to withhold tax on such payments. Employers are further required under regulation section 31.3402(f)(2)–1(g) to submit certain withholding certificates (Form W–4) to the Internal Revenue Service. Notice 1027 is sent to employers who prefer to file this information on magnetic tape.

*Current Actions:* There are no changes being made to the notice at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, not-for-profit institutions, farms, and Federal, state, local or tribal governments.

*Estimated Number of Responses:* 400.

*Estimated Time Per Respondent:* 5 minutes.

*Estimated Total Annual Burden Hours:* 33.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11904 Filed 5–11–00; 8:45 am]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 97–29

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 97–29, Model Amendments and Prototype Program for SIMPLE IRAs.

**DATES:** Written comments should be received on or before July 11, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Model Amendments and Prototype Program for SIMPLE IRAs.

*OMB Number:* 1545–1543.

*Revenue Procedure Number:* Revenue Procedure 97–29.

*Abstract:* Revenue Procedure 97–29 provides guidance to drafters of prototype SIMPLE IRAs on obtaining opinion letters and provides permissive amendments to sponsors of nonSIMPLE IRAs.

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations, and not-for-profit institutions.

*Estimated Number of Respondents:* 3,205.

*Estimated Time Per Respondent:* 8 hours, 4 minutes.

*Estimated Total Annual Burden Hours:* 25,870.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11905 Filed 5–11–00; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 6252

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 6252, Installment Sale Income.

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Installment Sale Income.

*OMB Number:* 1545–0228.

*Form Number:* 6252.

*Abstract:* Internal Revenue Code section 453 provides that if real or personal property is disposed of at a gain and at least one payment is to be received in a tax year after the year of sale, the income is to be reported in installments, as payment is received. Form 6252 provides for the computation of income to be reported in the year of sale and in years after the year of sale. It also provides for the computation of installment sales between certain related parties required by Code section 453(e).

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business of other for-profit organizations, individuals or households, and farms.

*Estimated Number of Respondents:* 782,848

*Estimated Time Per Respondent:* 3 hr., 22 min.

*Estimated Total Annual Burden Hours:* 2,630,369

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 4, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11906 Filed 5–11–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 1040EZ

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1040EZ, Income Tax Return for Single and Joint Filers With No Dependents.

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue

Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Income Tax Return for Single and Joint Filers With No Dependents.

*OMB Number:* 1545–0675.

*Form Number:* 1040EZ

*Abstract:* This form is used by certain individuals to report their income subject to income tax and to figure their correct tax liability. The data are used by the IRS to verify that the items reported on the form are correct and are also for general statistical use.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 15,159,869.

*Estimated Time Per Response:* 3 hr., 48 min.

*Estimated Total Annual Burden Hours:* 42,418,697

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11907 Filed 5–11–00; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 2438.

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2438, Undistributed Capital Gains Tax Return.

**DATES:** Written comments should be received on or before July 11, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Undistributed Capital Gains Tax Return.

*OMB Number:* 1545–0144.

*Form Number:* 2438.

*Abstract:* Form 2438 is used by regulated investment companies to compute capital gains tax on undistributed capital gains designated under Internal Revenue Code section 852(b)(3)(D). The IRS uses this information to determine the correct tax.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 100.

*Estimated Time Per Respondent:* 6 hrs., 59 mins.

*Estimated Total Annual Burden Hours:* 899.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11908 Filed 5–11–00; 8:45 am]

**BILLING CODE 4830–01–U**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[LR–185–84]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, LR–185–84 (TD 8086), Election of $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements (§ 1.103–10(b)(2)(vi)).

**DATES:** Written comments should be received on or before July 11, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Election of $10 Million Limitation on Exempt Small Issues of Industrial Development Bonds; Supplemental Capital Expenditure Statements.

*OMB Number:* 1545–0940.

*Regulation Project Number:* LR–185–84.

*Abstract:* This regulation liberalizes the procedure by which a state or local government issuer of an exempt small issue of tax-exempt bonds elects the $10 million limitation upon the size of such issue and deletes the requirement to file certain supplemental capital expenditure statements.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* State, local or tribal governments.

*Estimated Number of Respondents:* 10,000.

*Estimated Time Per Respondent:* 6 minutes.

*Estimated Total Annual Burden Hours:* 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–11909 Filed 5–11–00; 8:45 am]

BILLING CODE 4830–01–P

# Corrections

Federal Register
Vol. 65, No. 93
Friday, May 12, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Intent to Prepare a Comprehensive Conservation Plan for St. Marks National Wildlife Refuge in Wakulla, Jefferson, and Taylor Counties, Florida

*Correction*

In notice document 00–10683, beginning on page 24976, in the issue of Friday, April 28, 2000, make the following correction:

On page 24976, in the third column, under the heading **ADDRESSES**, in the sixth line, "32372" should read "32327".

[FR Doc. C0–10683 Filed 5–11–00; 8:45 am]
BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00-AGL-15]**

### Proposed Modification of Class D Airspace; Chicago, Aurora Municipal Airport, IL; and Modification of Class E Airspace; Chicago, Aurora Municipal Airport, IL

*Correction*

In proposed rule document 00–10913 beginning on page 25455 in the issue of Tuesday, May 2, 2000, make the following correction:

**§71.1 [Corrected]**

On page 25456, in the first column, in §71.1, under **AGL IL D Chicago, Aurora Municipal Airport, IL [Revised]**, in the second line, "(Lat. 41° 46′ 19″N., long. 88° 29′ 32″W." should read "(Lat. 41° 46′ 19″N., long. 88° 28′ 32″W."

[FR Doc. C0–10913 Filed 5–11–00; 8:45 am]
BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

### Proposed Establishment of Class E Airspace; Minneapolis, Flying Cloud Airport, MN

*Correction*

In proposed rule document 00–8969 beginning on page 19700 in the issue of Wednesday, April 12, 2000, make the following correction:

**§71.1 [Corrected]**

On page 19701, in the first column, in §71.1, in "**AGL MN E2 Minneapolis, Flying Cloud Airport, NM [New]**", "**NM [New]**" should read "**MN [New]**".

[FR Doc. C0–8969 Filed 5–11–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
May 12, 2000

Part II

# Department of Transportation

**National Highway Traffic Safety Administration**

**49 CFR Part 552 et al.**

**Federal Motor Vehicle Safety Standards; Occupant Crash Protection; Final Rule**

VOL 65 ISS 93 MY 12 2000 UMI

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**49 CFR Parts 552, 571, 585 and 595**

**[Docket No. NHTSA 00–7013; Notice 1]**

**RIN 2127–AG70**

# Federal Motor Vehicle Safety Standards; Occupant Crash Protection

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule; interim final rule.

**SUMMARY:** This rule amends our occupant crash protection standard to require that future air bags be designed to create less risk of serious air bag-induced injuries than current air bags, particularly for small women and young children; and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology. To achieve these goals, it adds a wide variety of new requirements, test procedures, and injury criteria, using an assortment of new dummies. It replaces the sled test with a rigid barrier crash test for assessing the protection of unbelted occupants.

The issuance of this rule completes the implementation of our 1996 comprehensive plan for reducing air bag risks. It is also required by the Transportation Equity Act for the 21st Century (TEA 21), which was enacted in 1998.

This rule will ensure that advanced air bag technologies are installed across the full spectrum of future fleets of motor vehicles. As a result, the air bags in those vehicles will be even more effective than the current redesigned air bags in saving lives. At the same time, those air bags will be much less likely than those redesigned air bags to cause deaths or serious injuries.

The provisions of this rule, particularly the maximum test speed for the unbelted rigid barrier test, reflect the uncertainty associated with simultaneously achieving the twin goals of TEA 21. This uncertainty leads us to take an approach that best assures improved air bag protection for occupants of all sizes, without compromising efforts to reduce the risks of injury to vulnerable occupants, including children and short women seated very close to air bags and out-of-position occupants. Such an approach is one that involves the least uncertainty for the occupants who have been most at risk. As long as the manufacturers improve the already substantial overall level of real world protection provided by current redesigned air bags, the uncertainty associated with the challenge of simultaneously achieving the twin goals of TEA 21 is best resolved at this point in favor of minimizing risk. This is especially true in the early stages of the introduction of advanced air bag technologies.

In light of that uncertainty, we are selecting the lower of two proposed speeds as the maximum test speed for the unbelted rigid barrier crash test and issuing that part of this rule as an interim final rule. To resolve that uncertainty, we are planning a multi-year effort to obtain additional data. We will issue a final decision regarding the maximum test speed after giving notice and seeking public comment. If we were to increase the speed, we would provide leadtime commensurate with the extent of that increase.

**DATES:** *Effective Date:* The amendments made in this rule are effective June 12, 2000.

The incorporation by reference of the publications listed in the rule is approved by the Director of the Federal Register as of June 12, 2000.

*Petitions:* Petitions for reconsideration must be received by June 26, 2000.

**ADDRESSES:** Petitions for reconsideration should refer to the docket and notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

In light of our decision to issue the maximum test speed for the unbelted rigid barrier test as an interim final rule, we are keeping the docket for this document open to receive public input. Persons making submissions to the docket should refer to the docket and notice number of this document. As we obtain and analyze data, we will place the results in that docket.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Clarke Harper, Chief, Light Duty Vehicle Division, NPS–11. Telephone: (202) 366–2264. Fax: (202) 366–4329. E-mail: Charper@NHTSA.dot.gov.

For legal issues, you may contact Edward Glancy or Rebecca MacPherson, Office of Chief Counsel, NCC–20. Telephone: (202) 366–2992. Fax: (202) 366–3820.

You may send mail to these officials at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

**SUPPLEMENTARY INFORMATION:** *For information about air bags and related rulemakings:* Visit the home page of the NHTSA web site at http://www.nhtsa.dot.gov and select "Air Bags" under "Popular Information" on the left hand side of the screen. On the next screen, select "Advanced Air Bags."

You may also view the materials in the docket for this rulemaking on the Internet. To do this, do the following:

(1) Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/).

(2) On that page, click on "search."

(3) On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: The docket number for the Supplemental Proposal in this rulemaking is "NHTSA 99–6407." If you want to view the materials filed for that notice, you would type "6407." (For this rule, you would type "7013.") After typing the docket number, click on "search."

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments and other materials.

**Note to readers:** As an aid to readers who are outside the engineering community, we have provided a glossary that briefly explains the key technical terms used in this preamble. In the case of the term, "fixed barrier crash test," we have supplemented the explanation with illustrations. That glossary appears in Appendix A at the end of the preamble, before the regulatory text. Readers may find it helpful to review that glossary before reading the rest of this document.

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## I. Safety Problems

### *A. Frontal Crashes and the "Second Collision"—The Leading Cause of Occupant Deaths*

Frontal crashes are the most significant cause of motor vehicle fatalities. More than ⅔'s of the people killed in frontal crashes are unbelted. Young people, *i.e.*, those in their teens and twenties, account for about 40 percent of the unbelted deaths.

The frontal crash of a vehicle involves two collisions. The first collision occurs when the vehicle strikes another vehicle or an object such as a tree. The second collision is the human collision with the vehicle interior.

When a vehicle collides with an object, a front seat occupant who is not wearing a seat belt becomes a projectile and keeps moving forward at speeds up to the vehicle's pre-crash speed. If that unbelted occupant is not protected by an air bag, the head or chest of the occupant usually slams into the steering wheel, dashboard, roof pillars or windshield. In the absence of an air bag, even belted occupants, particularly belted drivers, are likely to strike the vehicle interior with their head and neck or chest in a serious crash.

### *B. Preventing or Mitigating the Effects of the Second Collision Using Seat Belts and Air Bags*

To prevent or mitigate the effects of the second collision, Standard No. 208 requires that vehicles be equipped with seat belts and frontal air bags.[1] Seats belts are estimated to save 9,500 lives in America each year. Research has found that lap/shoulder belts, when used properly, reduce the risk of fatal injury to front seat passenger car occupants by 45 percent and the risk of moderate-to-critical injury by 50 percent. For light truck occupants, seat belts reduce the risk of fatal injury by 60 percent and moderate-to-critical injury by 65 percent.

Air bags are also highly effective in reducing fatalities from frontal crashes. Between 1986 and March 1, 2000, air bags have saved an estimated 5,303 front seat occupants (4,496 drivers (85 percent) and 807 right front passengers (15 percent)).[2] Of the 5,303 people, 72 percent were unbelted and 28 percent belted. If observed seat belt use rates were to increase to 85 percent, the goal for 2000 set by DOT in 1997, the distribution of lives saved would change from 72 percent unbelted/28 percent belted to 60 percent unbelted and 40 percent belted.

The number of lives saved annually by air bags is continuing to increase as the percentage of air bag-equipped vehicles on the road increases. We estimate that air bags will save more than 3,200 lives annually in passenger cars and light trucks when all light vehicles on the road are equipped with driver and passenger air bags. This estimate is based on an anticipated fleet of vehicles meeting all of the requirements in this rule and on 1997 seat belt use rates (66.9 percent, according to State-reported surveys). However, if observed seat belt use rates were to reach 85 percent, the annual savings of lives due to air bags would be reduced to approximately 2,400.

### *C. Air Bag Risks and Fatalities*

As the numbers above indicate, the attempt through seat belts and air bags to substitute a survivable event for an unsurvivable one or to substitute a less injurious event for a more injurious one is not always successful. While air bags are saving an increasing number of people in moderate and high speed crashes, they have occasionally caused fatalities, especially to unrestrained, out-of-position children, in relatively low speed crashes. As of April 1, 2000, NHTSA's Special Crash Investigation (SCI) program had confirmed a total of 158 fatalities induced by the deployment of an air bag. Of that total, 92 were children, 60 were drivers, and 6 were adult passengers. An additional 38 fatalities were under investigation by SCI on that date, but they had not been confirmed as having been induced by air bags.

[1] For a history of NHTSA's rulemaking concerning air bags, see Appendix B, "Evolution of the Air Bag Provisions in Standard No. 208."

[2] These estimates are based on comparisons of the frequency of front seat occupant deaths in vehicles without air bags and in vehicles with air bags. These life savings occurred predominantly in moderate and high speed crashes; i.e., those with a velocity change (delta V) above 20 mph.

Changes have already occurred that are reducing the number of persons killed by air bags. Some changes are behavioral. As a result of public education programs, improved labeling and media coverage, the public is much more aware of the dangers air bags pose to children in the front seat and to drivers sitting too close to the air bag and is taking steps to reduce those dangers. For example, more children are being put in the back seat. More short-statured drivers are moving back from the steering wheel.

Other changes are technological. First, as NHTSA noted in its report, "Air Bag Technology in Light Passenger Vehicles" (December 1999), the air bag outputs (*i.e.*, pressure rise rate and the peak pressure) were reduced significantly in many MY 1998 and later motor vehicles in comparison to the earlier vehicles.[3] Hence, the sled test option successfully expedited the depowering of existing air bags. While there are many means by which air bag aggressiveness can be reduced, reducing air bag outputs is a quick means of accomplishing this goal. The agency's analyses also show that, between MY 1997 and MY 1998, 50 to 60 percent of the vehicles in the fleet covered by the 1997 IR lowered the output of the driver-side air bag, while about 40 to 50 percent of the vehicles in that fleet lowered the output for the passenger side. Comparison of the data for MY 1997 and MY 1998 vehicles shows that, on average, the pressure rise rate in MY 1998 vehicles decreased about 22 percent for the driver air bag and 14 percent for the passenger air bags.

The data provided by the manufacturers also show that they have made significant changes in the design of their air bag systems other than the air bag pressure rise rate and peak pressure in their air bag designs, some over a period of many years.[4] Thus, depowering is not the only technological option for reducing risk. One change is the recessing of driver air bags so that the module is located farther away from the plane of the steering wheel, and thus farther from the driver. Although this feature was not common in the early 1990s, it is found in almost half of the MY 1997 and MY 1998 vehicles in the responses to the 1997 IR. Similarly, the air bag mounting location on the passenger side has also shown significant changes. Other features, such as cover tear patterns, tear pressure, fold patterns and the number and type of tethers, have changed in recent years, all of which may have collectively contributed to the reduced aggressiveness of air bags.

To assess the impact of the redesigned air bags on the numbers of air bag-induced fatalities, we used the available SCI data. We compared the rate per million registered vehicles of air bag-induced fatalities for the first 27 months that MY 1998 redesigned vehicles were on the road with the rate of air bag-induced fatalities for the first 27 months that MY 1996–97 vehicles were on the road. We took this approach in an effort to ensure that the amount of exposure was comparable for both groups of vehicles. We found that the air bag-induced fatality rate for all MY 1998 vehicles is 66 percent less than the fatality rate for MY 1996–97 vehicles (0.48 for MY 1998 versus an average of 1.43 for MY 1996–97).

Part of this reduction is the result of changes in vehicle design and part is the result of changes in behavior; *i.e.*, using seat belts more frequently, moving children into the back seat, and moving the driver's seat further back. We found evidence of behavioral changes by examining the front seat and rear seat distributions of all child passengers (age 0 to 12) in passenger cars, survivors plus fatalities, in the Fatal Analysis Reporting System (FARS) from 1995 through mid-1999. In cars with passenger air bags, the percentage of toddlers and infants riding in the back seat increased from about 70 percent in 1995 to about 90 percent in 1999.

*D. Causes of Air Bag Fatalities*

Several factors are common to air bag-induced fatalities. First, they involve air bags that do not meet the suppression or low risk deployment requirements of this rule. Second, the occupants are generally very close to an air bag module when the air bag begins to deploy during a crash.[5] The one fact that is common to all persons who died is *not* their height, weight, gender, or age. Instead, it is the fact that they were very close to an air bag when it started to deploy. For some people, *e.g.*, infants in rear-facing infant seats, this occurred because they were initially sitting very close to the air bag. For the other occupants, this typically occurred because they were not restrained by seat belts or child safety seats and moved forward during pre-crash braking.

Closeness is a problem because, in order for an air bag to cushion an occupant's head, neck, chest and abdomen and keep the occupant from hitting the steering wheel, windshield or instrument panel, the air bag must move into place quickly. The force of a deploying air bag is greatest as the air bag begins to inflate. If occupants are very close to or in contact with the cover of an air bag that does not meet the low risk deployment requirements of this rule, they can be hit with enough force to cause serious injury or death when the air bag begins to inflate. This can be caused either by the cover as the air bag breaks out of the module (known as the "punch-out" effect) or by the unfolding and inflating air bag as it first conforms to the contours of the occupant and then moves rapidly into its fully-inflated shape (known as the "membrane" effect).[6]

In all of the 92 SCI confirmed fatalities involving children, the children were very close to the instrument panel when the air bag deployed. Because of their proximity, the children sustained fatal head or neck injuries from the deploying passenger air bag.

Eighteen fatally-injured infants were close to the air bag because they were in rear-facing infant seats installed directly in front of a passenger air bag. A rear-facing infant seat which is installed in the front seat of a vehicle with a passenger air bag will almost always position the infant's head very close to the passenger air bag. Several other infants were being held in the lap of a passenger.

All but a few of the 74 fatally-injured older children were not using any type of restraint.[7] Of those who were restrained, most were not correctly restrained. The non-use or improper use of occupant restraints allowed the vast majority of these children to move forward during pre-impact braking[8] before the actual crash. As a result, they

[3] The report indicates that some vehicle manufacturers had already depowered some air bags prior to the March 1997 rule.

[4] Again, these changes began before the March 1997 rule, but have accelerated since then.

[5] Vehicle speed is not a causative factor. Most of the crashes involving fatalities that have been confirmed as air bag-induced occurred at relatively low speeds. If the passenger air bag had not deployed in those low speed crashes, the people would probably not have been killed or seriously injured.

[6] In general, a driver can avoid any serious air bag risks by sitting at least 10 inches away from the air bag (measured from the breastbone to the center of the air bag cover) and by wearing a lap/shoulder seat belt. Teenage and adult passengers can avoid this risk by moving their seat as rearward as possible and wearing their seat belts. Even in a vehicle that does not have any air bags, children should ride in the rear seat whenever possible, since that is a significantly safer location.

[7] NHTSA notes that almost all of the 68 fatally-injured children were 1–7 years old.

[8] Pre-impact braking was a factor in a very high percentage of crashes resulting in the deaths of the older children.

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were very close to the air bag when it deployed.

As in the case of the children fatally injured by air bags, the key factor regarding the confirmed deaths of adults has been their closeness to the air bag when it deployed. The most common factor that allowed them to become very close to the air bag was the failure to use seat belts. Only 18 of the 60 drivers are known to have been properly restrained by lap and shoulder belts at the time of the crash.

## II. The Rule, Its Rationale, and Its Implementation

### *A. Key Provisions of the Rule*

#### Early Agency Efforts to Reduce Air Bag Risks

Since the early 1990s, NHTSA has been taking steps to induce changes in behavior and technology to reduce the risk of such deaths and serious injuries to children and small adult drivers, especially when they are out-of-position.[9] We focused our initial efforts to reduce air bag risks on a public education campaign to alert the public about the dangers of air bags to children in general and to infants in particular. We urged parents to place their children always in the back seat and to ensure that they were always properly restrained. We required informative, text-only, warning labels to be placed in new motor vehicles and on child restraints.

#### 1996 Comprehensive Plan for Addressing Air Bag Risks

To address the problems that arose with the air bags installed in many motor vehicles, the agency announced a comprehensive plan in November 1996. The plan set forth an array of immediate, interim and long-term measures. The immediate and interim measures focused on behavioral changes and relatively modest technological changes. The long-term measures focused on more significant technological changes, *i.e.*, advanced air bag technologies. The immediate steps included expanding efforts to persuade parents to place their children in the rear seat; requiring new labels with eye-catching graphics and colors and strong, clear warning messages; extending the period of time for permitting the installation of original equipment on-off switches in new vehicles which either lacked a rear seat or had a rear seat too small to permit the installation of a child restraint system; and permitting the installation of retrofit on-off switches in vehicles-in-use to protect people in at-risk groups. Because of the lead time needed to develop and install advanced air bag technologies, NHTSA announced plans to propose an interim measure to accelerate manufacturer efforts to redesign their air bags. In the long term, the agency said that it would conduct rulemaking to require the installation of advanced air bags.

#### Contribution of Behavioral Changes and the Current, Redesigned Air Bags to Reducing Air Bag Risks

To implement the interim phase of the comprehensive plan and speed the redesigning and recertifying of air bags to reduce the risks to out-of-position occupants, we amended Standard No. 208, Occupant Crash Protection, 49 CFR 571.208, to establish a temporary option under which vehicle manufacturers could certify their vehicles based on a 48 km/h (30 mph) unbelted sled test using a 50th percentile adult male dummy, instead of the 48 km/h (30 mph) unbelted rigid barrier crash test using that dummy. 62 F.R. 12960; March 19, 1997.

Available data indicate that the redesigned air bags, together with behavioral changes, such as placing more children in the back seat, have reduced the risks from air bags for the at-risk populations. Although these real-world data reflect only about two years of field experience with redesigned air bags, they preliminarily indicate that the redesigned air bags in model year (MY) 1998 and 1999 vehicles provide the same level of frontal crash protection as that provided by earlier air bags.

While the redesigned air bags in current motor vehicles have contributed to the reduction in the risk of air bag-induced injuries, they can still cause death or serious injury to unrestrained occupants. We selected the provisions adopted in this rule to ensure that future air bags provide more frontal crash protection, and reduce risk further, than either the current redesigned air bags or air bags that would have been minimally compliant with the sled test.

#### Transportation Equity Act for the 21st Century

The Transportation Equity Act for the 21st Century (TEA 21), enacted by Congress in June 1998, requires us to issue a rule amending Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection:

> * * * to *improve occupant protection* for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, *while minimizing the risk* to infants, children, and other occupants from injuries and deaths caused by air bags, *by means that include advanced air bags.*

(Emphasis added.)

TEA 21 specifies that its twin goals are to be accomplished by means that include advanced air bag technologies. Although these technologies are beginning to be incorporated in some new vehicles, many aspects of those technologies are still undergoing development and refinement today.

The rule is required to be consistent with section 30111 of Title 49. Section 30111 requires that, among other things, Federal motor vehicle safety standards be practicable, meet the need for motor vehicle safety, and be stated in objective terms.

Under TEA 21, we were to issue the rule by September 1, 1999, unless we determined that the rule could not be issued by that date. The many issues in this rulemaking led us to make such a determination. We notified Congress of this determination in a letter dated August 3, 1999. Therefore, under TEA 21, we were required to issue the rule by March 1, 2000.

TEA 21 addresses various other issues, including the effective date and phase-in for the requirements adopted in this rule, as well as the opportunity to earn phase-in credits through early compliance. A complete discussion of TEA 21's provisions is included in the 1998 notice of proposed rulemaking (NPRM). See 63 F.R. 49958 at 49961; September 18, 1998.

#### The Gathering of Information and Soliciting of Comments for This Rulemaking To Reduce Air Bag Risks Further

Since 1996, the agency has been carefully laying the groundwork for completing the implementation of its comprehensive plan by issuing this rule. We have made extensive efforts to gather information and solicit public comments that would help us identify and adopt a sensible, effective array of requirements for increasing protection and minimizing risk. In February 1997, we held a public technical workshop on advanced air bag technologies. In December 1997, we sent an Information Request (IR) to the vehicle manufacturers to obtain detailed information concerning their changes in air bag design during the 1990s. In April 1998, Jet Propulsion Laboratories completed, at NHTSA's request, a report titled "Advanced Air Bag Technology Assessment." In mid-1998, Congress made the judgment that advanced air bags should be required. It enacted TEA

[9] Even before the 1990's, the issue of air bag-induced risks to out-of-position occupants was addressed by the agency in its rulemaking and research related to air bags. For a history of those earlier activities, see Appendix B at the end of this preamble.

21 mandating that we amend our occupant protection standard to require vehicle manufacturers to improve the protection provided by air bags and to reduce the risks associated with them by means that include advanced air bag technologies. Although TEA 21 required only that we seek public comment once on our proposals before taking final action, we asked for public comment twice. We issued a notice of proposed rulemaking (NPRM) in September 1998, and a supplemental notice of proposed rulemaking (SNPRM) in November 1999. To help us thoroughly explore the issues, we proposed or discussed in those two notices a variety of alternatives and posed a wide-ranging array of questions. Based on the information we received in response to the 1997 IR, we completed a report titled "Air Bag Technology in Light Passenger Vehicles" in December 1999.

Changes to Our Initial Proposals in Response to Information and Comments

We carefully considered the information we gathered and the comments we received on the 1998 NPRM and appropriately adjusted our proposals in the 1999 SNPRM to respond to those materials. For example, based on the public comments on the NPRM regarding the type and number of tests needed to meet the risk minimization goals of TEA 21, we significantly reduced the number of those tests when we issued the SNPRM.

Further, there was a substantial shift between the NPRM and SNPRM in the issues that needed to be resolved in determining which test should be specified to promote the improvements required by TEA 21 in the ability of vehicles to protect unbelted people in moderate to high speed crashes, *i.e.*, those that are potentially fatal. In the NPRM, the primary issue was whether we should (1) retain the unbelted sled testing option, or (2) delete that option, leaving the existing 48 km/h (30 mph) unbelted rigid barrier crash testing provision as the sole basis for certification compliance with Standard No. 208's requirements regarding the protection of unbelted occupants.[10]

In the SNPRM, the primary issue regarding unbelted testing was what type of unbelted crash test should be specified, and at what top speed. We proposed several alternatives. One alternative was to test unbelted protection in an improved unbelted rigid barrier crash test with a top speed within the range of 40 to 48 km/h (25 to 30 mph). We said that if we issued a rule setting the maximum speed at 40 km/h (25 mph), we might also increase the maximum speed of the belted rigid barrier test from the current 48 km/h to 56 km/h (30 to 35 mph). Another alternative was to test unbelted protection in an unbelted offset deformable barrier test with a maximum speed to be established in the rule within the range of 48 to 56 km/h (30 to 35 mph).

In addition, we sought comment on other possibilities. One was to issue "a final rule temporarily reducing the maximum speed for the unbelted rigid barrier test to 40 km/h (25 mph) (or some other speed, *e.g.*, 44 km/h (27.5 mph))" and then returning "it to 48 km/h (30 mph) after an appropriate period of time, *e.g.*, after the TEA 21 phase-in." Another was "to temporarily permit relaxed injury criteria performance limits (e.g., 72 g chest acceleration limit instead of 60 g chest acceleration limit) in unbelted rigid barrier tests between 25 mph and 30 mph."

Finally, we proposed in the SNPRM that the agency would not test at a speed of less than 29 km/h (18 mph) under the unbelted rigid barrier test alternative, and that the agency would not test at a speed of less than 35 km/h (22 mph) under the unbelted offset deformable barrier test alternative. This was not only a departure from the proposal in the NPRM, but also from prior agency practice. In the NPRM, we had proposed to test at any speed up to the maximum test speed. One reason for this change was that we wanted to be sure that the standard did not push deployment thresholds downward, *i.e.*, cause air bags to be deployed at lower speeds than are appropriate for maximum occupant protection.

Public Comments on the SNPRM

The commenters on the SNPRM, including vehicle manufacturers, air bag manufacturers, insurance companies, public interest groups, academia, and the National Transportation Safety Board (NTSB), generally agreed with most aspects of that document. For example, the commenters agreed with the agency's proposals to reduce air bag-induced risks by specifying that driver air bags deploy in a low-risk manner in low speed crashes and the passenger air bags either deploy in that manner or turn off in the presence of young children.

With respect to our proposals for improving occupant protection, most commenters supported replacing the unbelted sled test with an unbelted rigid barrier crash test. The vehicle manufacturers, which had opposed a rigid barrier test in their comments on the NPRM, agreed to a return to such a test.

However, while there was a convergence of opinion as to the type of unbelted test, there was a sharp difference of opinion among the commenters on the SNPRM regarding the maximum speed for the unbelted rigid barrier crash test. Several safety advocacy and consumer groups urged that the maximum speed be kept at 48 km/h (30 mph). The vehicle manufacturers, air bag suppliers, an insurance industry safety organization, and several other organizations, believing that a maximum test speed of 48 km/h (30 mph) could make significant repowering necessary, urged that the maximum speed be set at 40 km/h (25 mph). They urged further that the speed be maintained at that level pending analysis of field experience with the air bags installed in motor vehicles during that period. For similar reasons, the NTSB also urged a maximum test speed of 40 km/h (25 mph).

There were also significant differences of opinion regarding our proposals about the provision providing a due care defense against findings of noncompliance with the air bag requirements of Standard No. 208 and about the wording of the statements regarding air bag-induced risks on the proposed vehicle labels.

We note that a substantial number of comments were submitted to the docket for the SNPRM after the comment closing date. In preparing this rule, we have considered all comments placed in the docket on or before April 28, 2000.

The Development of a Data-Driven Rule

Before we made decisions on which provisions should be included in this rule to improve air bag performance as required by TEA 21, we carefully considered the available information and the public comments, the underlying safety problems, the performance of air bag systems in current motor vehicles, the ability (including lead time needs) of vehicle manufacturers to achieve better performance in future motor vehicles, the air bag technology (including advanced air bag technology) currently available or being developed, the cost of compliance, and other factors. Because

[10] As explained in greater detail below, this rule transforms unbelted rigid barrier testing under Standard No. 208 through the adoption of new and more stringent injury criteria, a new small adult female dummy seated far forward of where the existing mid-sized adult male dummy is placed in compliance testing, a new belted offset test to ensure that sensors work properly in crashes that are not similar to a crash into a rigid barrier and the establishment of complementary risk reduction tests that will affect how manufacturers comply with the unbelted rigid barrier test in the future.

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the comments on the SNPRM focused on the alternatives for improving the protection provided by air bags, we were particularly careful in considering the comments concerning the costs, benefits and risks associated with each of those alternatives.

The requirements in today's rule for improving protection and minimizing risk are challenging and will push the vehicle manufacturers to make needed safety improvements in air bag performance. Our decisions regarding the selection of those requirements was based on available test data and analysis, and our informed judgment about the best way of implementing the requirements of TEA 21.

The Principal Provisions of the Rule

The rule will improve protection and minimize risk by requiring new tests and injury criteria and specifying the use of an entire family of test dummies: the existing dummy representing 50th percentile adult males, and new dummies representing 5th percentile adult females, six-year old children, three-year old children, and one-year old infants. With the addition of those dummies, our occupant crash protection standard will more fully reflect the range in sizes of vehicle occupants. As noted above, most aspects of this rule are supported by most commenters on this rulemaking, including vehicle manufacturers, air bag manufacturers, insurance companies, public interest groups, academia, and the NTSB.

The rule will be phased in during two stages. The first stage phase-in requires vehicles to be certified as passing the unbelted test requirements for both the 5th percentile adult female and 50th percentile adult male dummies in a 40 km/h (25 mph) rigid barrier crash, and belted test requirements for the same two dummies in a rigid barrier crash with a maximum test speed of 48 km/h (30 mph). In addition, the first stage requires vehicles to include technologies that will minimize risk for young children and small adults.

The second stage phase-in requires vehicles to be certified as passing the belted test requirements for the 50th percentile adult male dummy at 56 km/h (35 mph). This requirement will ensure improved protection for belted occupants.

Risk Minimization Provisions Implemented During First Stage Phase-in

During the first stage phase-in, from September 1, 2003 to August 31, 2006, increasing percentages of motor vehicles will be required to meet requirements for minimizing air bag risks, primarily by either automatically turning off the air bag in the presence of young children or deploying the air bag in a manner much less likely to cause serious or fatal injury to out-of-position occupants. If they so wish, manufacturers may choose to use a combination of those two approaches.

Manufacturers that decide to turn off the passenger air bag will use weight sensors and/or other means of detecting the presence of young children. To test the ability of those means to detect the presence of children, the rule specifies that child dummies be placed in child seats that are, in turn, placed on the passenger seat. It also specifies tests that are conducted with unrestrained child dummies sitting, kneeling, standing, or lying on the passenger seat.

The ability of air bags to deploy in a low risk manner will be tested using child dummies on the passenger side and the small adult female dummy on the driver side. For manufacturers that decide to design their passenger air bags to deploy in a low risk manner, the rule specifies that unbelted child dummies be placed against the instrument panel. This location was selected because pre-crash braking can cause unrestrained children to move forward into or near that position before the air bag deploys. The air bag is then deployed. The ability of driver air bags to deploy in a low risk manner will be tested by placing the 5th percentile adult female dummy against the steering wheel and then deploying the air bag.

Protection Improvement Provisions Implemented During First Stage Phase-in

In addition, the vehicle manufacturers will be required to meet a rigid barrier crash test with both unbelted 5th percentile adult female dummies and unbelted 50th percentile adult male dummies. The unbelted rigid barrier test replicates what happens to motor vehicles and their occupants in real world crashes better than the current sled test does. The maximum test speed for unbelted dummy testing will be 40 km/h (25 mph).

Our decision to set the maximum test speed for unbelted dummy testing at 40 km/h (25 mph) is being issued as an interim final rule. We conclude that is the appropriate test speed for at least the TEA 21 implementation period (MY2004–2007). That speed will provide vehicle manufacturers with the flexibility they need during that period to meet the technological challenges involved in simultaneously improving protection and minimizing risk. To achieve those twin goals, the manufacturers will have to comply with the wide variety of new requirements using an array of new dummies during this near-term time frame.

However, we draw no final conclusion about the appropriateness of that test speed in the longer run. At this time, we cannot assess whether the uncertainty about the manufacturers' ability to improve protection further and minimize risk simultaneously will persist beyond the TEA 21 implementation period. In addition, while we believe that it is unlikely that a 40 km/h (25 mph) maximum test speed will lead to a reduction in high speed protection, we cannot rule out that possibility. If manufacturers were to engage in significant depowering, it could result in lesser crash performance for teenage and adult occupants. On the other hand, even if current levels of real world protection were only maintained, rather than improved, the marginal benefits of a 48 km/h (30 mph) unbelted maximum test speed would be significantly diminished or eliminated.

To help resolve these issues and concerns, we are planning a multi-year effort to obtain additional data. The activities comprising that effort are described in the section below entitled, "Monitoring of Implementation and Field Experience; Research and Technology Assessment." Based on the results of those information gathering and analysis efforts, we will make a final decision regarding the maximum test speed for unbelted dummy testing in the long run, after providing opportunity for informed public comment.

There are still other additions to Standard No. 208. To ensure that vehicle manufacturers upgrade their crash sensing and software systems as necessary to prevent late air bag deployments in crashes with soft pulses, vehicles will be required to meet an up-to-40 km/h (25 mph) offset deformable barrier test using belted 5th percentile adult female dummies. A late air bag deployment would allow enough time for an unrestrained occupant to move forward into the steering wheel or instrument panel during a crash before the air bag deploys. Thus, the occupant would be in contact with or very close to the air bag module when the air bag deploys, creating a risk of severe or fatal injury. In addition, the 5th percentile female dummy is added to the 48 km/h (30 mph) belted rigid barrier test.

Provision Implemented During Second Stage Phase-in

During the second stage phase-in, from September 1, 2007 to August 31, 2010, the maximum test speed for the belted rigid barrier test will increase

from 48 km/h (30 mph) to 56 km/h (35 mph) in tests with the 50th percentile adult male dummy only. As in the case of the first-stage requirements, this second-stage requirement will be phased in for increasing percentages of motor vehicles. We did not include the 5th percentile adult female dummy in this requirement because we have sparse information on the practicability of such a requirement. As noted below, we will initiate testing to examine this issue and anticipate proposing increasing the test speed for belted tests using the 5th percentile adult female dummy to 56 km/h (35 mph), beginning at the same time that the belted test must be met at that speed using the 50th percentile adult male.

Schedule for Implementation

We have changed the date on which the implementation of this rule begins from September 1, 2002, as proposed in the SNPRM, to September 1, 2003. This gives vehicle manufacturers as much lead time as TEA 21 allows for the first stage phase-in. TEA 21 does not permit a later starting date. This change will give the manufacturers a lead time of more than 3 years for vehicles produced during the first year (Model Year (MY) 2004) of that phase-in and more than 6 years for vehicles produced during MY 2007, the first MY in which vehicle manufacturers will be required to manufacture all of their vehicles in compliance with the first stage requirements without the aid of credits.

We changed the starting date for the first stage in part because of the breadth of the challenges that the vehicle manufacturers will be required to meet during that stage. They will need to certify their vehicles to an unbelted barrier test instead of a sled test. Moreover, they will need to meet this test for the new 5th percentile adult female dummy seated all the way forward as well as for the existing 50th percentile adult male dummy seated in the mid-track position. They will also need to meet a new belted offset deformable barrier test using the 5th percentile adult female dummy and a belted rigid barrier test for both 50th percentile adult male dummies and 5th percentile female dummies. For all of these tests, they will need to meet new injury criteria performance limits. Finally, the vehicle manufacturers will need to certify their vehicles to an array of test requirements to minimize the risk to infants, children, and other occupants from injuries and deaths caused by air bags using the 5th percentile adult female dummy and the child dummies. The starting date of September 1, 2003 will give the manufacturers additional time to gain experience with the new dummies, final specifications for which have only recently been established.

Further, the longer lead time for the first stage phase-in will also promote technological innovation regarding ways of minimizing risks. It will give vehicle manufacturers more time to complete development and testing of the advanced technologies they plan to use. Further, we are aware that suppliers are continuing work on additional technologies. The additional time will enable the manufacturers to explore further using some of these additional technologies.

Rationales for Risk Minimization Requirements

The agency drafted the risk minimization requirements to give vehicle manufacturers a broad choice among those advanced air bag technologies that can be used either to turn air bags off in appropriate circumstances or cause air bags to deploy in a low risk manner.[11] Thus, the vehicle manufacturers will have the freedom to choose from a variety of available technological solutions or to innovate by developing new ones if they so desire.

We estimate that if advanced air bag technologies (suppression and low risk deployment) are 100 percent reliable, they could have eliminated 95 percent of the known air bag fatalities that have occurred to date in low speed crashes. For example, weight sensors can be installed in the passenger seat so that the passenger air bag is turned off when children, from infants up to the typical 6-year-old, are present. The use of weight sensors for that purpose should essentially eliminate the risk of air bag-induced fatal injuries for children in that size and age range. Based on available data, it does not appear that turning air bags off for those young children would result in the loss of any benefits. There is an element of uncertainty about the level of reliability and effectiveness of the suppression for children from 0 to 6 years old and low risk deployment designs that will be actually installed in vehicles. We also note that we do not currently have a dummy suitable for assessing the effectiveness of suppression and low risk deployment for children ages 7–12. (See the section below entitled, "Future Rulemaking Plans.") Our decision concerning the maximum test speed for the unbelted rigid barrier test reflects, in part, these uncertainties and limitations.

The availability of advanced air bag technologies for minimizing risks is not just a theoretical possibility. Vehicle manufacturers are very actively working on completing their development and testing of weight sensor systems so that they will be ready for installation for the passenger air bags in their motor vehicles. Installation could begin as early as the next model year.[12] Means of reducing risk for drivers, including dual-stage air bags coupled with sensors for driver seat belt use and driver seat position, are already being installed in some vehicles. For a description of advanced technologies and a partial listing of current models equipped with one or more types of those technologies, see Appendix D, "Advanced Technologies for Improving Air Bags."

Rationales for Protection Improvement Requirements

Replacing the Unbelted Sled Test With the Unbelted Rigid Barrier Crash Test

The agency has decided to delete the sled test option and retain the unbelted rigid barrier crash test provision for the reasons explained in the NPRM and SNPRM. Among those reasons is that a crash test replicates how vehicle structures and air bag systems work together in real world crashes. A sled test cannot do that because while the vehicle is quickly decelerated in such a test, it never crashes into anything. As a result, the sled test cannot take into account the ability of a motor vehicle's structure to manage crash energy. Further, the sled test uses a generic crash pulse instead of the individual crash pulse of the particular vehicle being tested, and deploys all air bags at a fixed time during the event rather than having that decision made by the crash sensing system of the vehicle.

Selection of 40 km/h (25 mph) as Top Speed for Unbelted Rigid Barrier Test

In developing today's rule, we gave serious consideration to specifying 40 km/h (25 mph) as the maximum speed for the unbelted rigid barrier test for an initial period (so that vehicle manufacturers could focus during that period on risk minimization) and then phasing-in a 48 km/h (30 mph) unbelted test speed in the 2008 through 2010 model years. Our initial inclination to

[11] The rule also establishes very general performance requirements for dynamic automatic suppression systems (DASS) and a special expedited petitioning and rulemaking process for considering procedures for testing advanced air bag systems incorporating a DASS. In response to comments, modifications have been made to address concerns about confidentiality and timing.

[12] The MY 2001 Ford Windstar will, according to a report in the April 24, 2000 edition of Automotive News, be equipped with an advanced air bag system "designed to prevent the deployment of the front passenger airbag when sensors determine the passenger's weight is less than 45 pounds."

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increase the maximum test speed to 48 km/h (30 mph) during the second of two phase-ins reflected several considerations. First, our testing of vehicles with redesigned air bags indicated that the vast majority of current vehicles can meet that test using 50th percentile adult male dummies. Those test results were not rebutted by any significant test data provided by the motor vehicle manufacturers or others. Therefore, the record did not support the argument by the motor vehicle manufacturers and others that a 48 km/h (30 mph) test using a 50th percentile adult male dummy would require any kind of general "repowering" of air bags.[13] Second, we concluded that air bags could be designed to meet a 48 km/h (30 mph) test with both 5th percentile adult female dummies and 50th percentile adult male dummies without increasing risks to out-of-position occupants.[14] Third, we believed that a specific requirement to return eventually to a 48 km/h (30 mph) test should be adopted to ensure that vehicle manufacturers did not engage in significant additional depowering of air bags, or make them substantially smaller, which would reduce their protectiveness to occupants in high speed crashes.[15] We believed then that there could be an economic incentive to install air bags that were minimally compliant with a 40 km/h (25 mph) test.

After further examination of the issues and the information before us, and an assessment of the areas of uncertainty about simultaneously improving protection and minimizing risk, we have concluded that the adoption of a 48 km/h (30 mph) unbelted requirement would not be in the best overall interest of safety. We have decided instead to set the maximum test speed for the unbelted rigid barrier crash tests at 40 km/h (25 mph) as an interim final rule. We selected that test speed based on several factors.

First, particularly given the risks that the first generation of air bags posed to out-of-position children and small adult females, and the reaction of the public to those risks, it is very important that advanced air bags be properly designed from the very beginning. We note that air bags, by their nature, present a potential for safety trade-offs not presented by other safety features. That is, while air bags dissipate crash energy for most occupants when they interact with them when fully inflated, the energy released during deployment could be injurious to out-of-position occupants in their interaction with an inflating air bag. This interaction of an occupant and a deploying air bag can be a source of serious injury or death. In contrast, other safety features typically just dissipate energy when occupants interact with components in the vehicle interior in crashes; they do not add energy. Because of this potential for death and injury, we want to be cautious in how far and how fast vehicle manufacturers are required to advance the state of advanced air bag technologies in their vehicles.

Since a significant percentage of current vehicles can already satisfy the new unbelted barrier crash test at 40 km/h (25 mph) with both the 5th percentile adult female dummy and the 50th percentile adult male dummy, we conclude that setting the maximum speed at that level will help vehicle manufacturers to focus their resources and compliance efforts during the first stage on meeting the risk reduction requirements. We want to continue the progress already made in using technological means for reducing air bag-induced risks.

While the manufacturers' resources for dealing with air bags, as well as all the other engineering issues associated with future motor vehicles, are extensive, there are limits to how much can be done at any one time. We need to consider the variety and complexity of changes in air bag testing and technology that will be required by this rule. As we noted above in the discussion of the implementation schedule, the array of new requirements that the manufacturers will have to meet in the first stage is challenging. We are requiring the use of a new test dummy (the 5th percentile adult female) in high speed tests, adding a new test (offset belted), adding new neck injury criteria, and making existing injury criteria more stringent (chest deflection). We are also adding an entire new series of risk minimization tests, which will require manufacturers to install air bag suppression systems or low-risk deployment systems, or both.

We are particularly concerned about the difficulties of trying to meet the unbelted rigid barrier test at 48 km/h (30 mph) with both adult dummies while simultaneously trying to reduce the risks of air bag-induced injuries and deaths. As noted above, the unbelted rigid barrier crash test specified by this rule for the future is an improved test that differs fundamentally from the unbelted rigid barrier test that Standard No. 208 has specified in the past. In the past, the Standard specified only that test and the belted rigid barrier test, and used only one dummy, the 50th percentile adult male dummy. The injury criteria for the unbelted rigid barrier crash test did not evaluate the potential for neck injuries and allowed even greater chest deflection. The Standard specified no other requirement (such as one for out-of-position testing) that had the effect of making it more difficult to achieve compliance with the unbelted rigid barrier test.

[13] Based on NHTSA crash tests (including tests of some vehicles with stiff crash pulses) of a variety of types and sizes of vehicles in the current new vehicle fleet, we concluded that the air bags in the vast majority of current vehicles would pass a 48 km/h (30 mph) crash test using a 50th percentile adult male dummy with much the same compliance margins as before. Thus, we concluded that more power was not needed for those vehicles to pass that test with that dummy. Further, the fact that some current vehicles with stiff pulses meet the injury criteria suggested that vehicle manufacturers might not have to repower air bag systems in other stiff pulse vehicles in order to meet the criteria.

More fundamentally, we reasoned that air bags that currently have enough power to meet the injury criteria using the 78 kg (172 lb.) 50th percentile adult male dummy would not need more power to meet the criteria using the much lighter 50 kg (110 lb.) 5th percentile adult female dummy. Our tests indicate that the primary problem for the small female dummy in those current vehicles that do not satisfy the injury criteria in a 48 km/h (30 mph) test with the 5th percentile adult female dummy is that the dummy experiences too much force in the neck or chest area. We said further that the solution for the smaller, lighter female dummy would not be to put additional power into the bag. Not only would that step be unnecessary to protect the 50th percentile adult male dummy, but also it would be likely to exacerbate the problems with the small female dummy. We concluded that the solution would be to redesign the air bag system—using recessed air bags and new sensors, multiple inflation levels, fold patterns, bias flaps, etc.—to assure compliance for both the 5th percentile adult female dummy and 50th adult male dummy.

[14] We noted that tests of some current production vehicles demonstrate that they incorporate the designs and technologies necessary to enable them to comply at 48 km/h (30 mph) on both the driver and passenger sides with both dummies. These technologies include improved air bag folding, bias flaps, and internal baffles/tethers. We believed that manufacturers could add other measures such as dual-stage inflators, seat position sensors, recessed air bag modules, and better energy-absorbing steering columns. If any vehicle manufacturer wished to do so, it could also develop and provide chambered, dual-stage air bags that are designed to fill fully only an inner chamber of the air bag, instead of the entire air bag, when the driver seat is near the full forward adjustment position on the seat track.

[15] We noted that the difference between a 40 km/h (25 mph) and a 48 km/h (30 mph) crash is significant. The significance does not lie in the 20 percent increase in speed, but in the 44 percent increase in crash energy. It is because of that increase in crash energy that the risk of serious or fatal injury is significantly higher at 48 km/h (30 mph) than at 40 km/h (25 mph). Further, a maximum test speed of 48 km/h (30 mph) represents a higher percentage of the crashes that produce serious or fatal occupant injuries. As a result, if air bags were designed only to minimally meet a 40 km/h (25 mph) crash test, many occupants, particularly larger occupants, would not be adequately protected in higher speed crashes. We estimated that 248 to 413 lives could be lost annually if manufacturers did only the minimum required of them by a 40 km/h (25 mph) crash test requirement.

In the future, however, greater efforts will be needed to comply with that test because manufacturers will be required to meet a greater variety of requirements.

The unbelted rigid barrier test will have to be met using new or more stringent injury criteria with the new 5th percentile adult female dummy as well as the existing 50th percentile adult male dummy. The necessity of meeting those criteria with the 5th percentile adult female dummy placed in vehicle seats that have been moved all the way forward will add considerably to the challenge of meeting that test. For both belted and unbelted tests, we are adopting improved injury criteria to assure greater protection by air bags in high speed crashes. More specifically, we are changing the way in which the risk of head injuries is measured, adding a new neck injury measure that accounts for the combination of flexion, extension, tension, and compression, and reducing the amount of allowable chest deflection.

Further, efforts to comply with the unbelted rigid barrier test will be affected by the simultaneous need to comply with the risk reduction requirements. In the future, air bags will be explicitly required to be tested for their potential to harm vulnerable occupants as well as offer protection in high-speed crashes.

While advanced air bag technologies will facilitate simultaneously achieving the goals of improving protection and minimizing risk, we cannot forecast the pace of development of those technologies. Setting the maximum speed at 40 km/h (25 mph) will give vehicle manufacturers greater flexibility to choose among and gain experience with advanced air bag technologies. It will also give NHTSA a chance to gather data about the performance of vehicles using advanced air bag technologies. We want the installation of advanced air bag technologies by the vehicle manufacturers across the full spectrum of their fleets to be done correctly—the first time.

Accordingly, we believe that it is preferable to take an approach that best assures improved air bag performance for occupants of all sizes, without compromising efforts to minimize the risks of injury to vulnerable occupants, including children and short women seated very close to air bags, and out-of-position occupants. Such an approach is one that involves the least uncertainty for the occupants who have been most at risk. In other words, as long as the manufacturers improve the already substantial overall level of air bag protection provided by current redesigned air bags, the uncertainty involved in meeting the challenge to improve high-speed protection and minimize risk simultaneously is best resolved at this point in favor of minimizing risk. This is especially true in the early stages of the introduction of advanced air bag technologies. Compared with a 48 km/h (30 mph) unbelted rigid barrier test, a 40 km/h (25 mph) unbelted rigid barrier test presents less chance of inadvertently increasing risks to out-of-position occupants.

Second, while we believe that it should eventually be possible for vehicles to provide protection for both small females and mid-sized males in a 48 km/h (30 mph) unbelted test without compromising efforts to minimize the risks of serious air bag-induced injuries, there are unresolved issues. Our laboratory tests and knowledge of advanced technologies do not tell us how or when developments might reach that point. They also do not provide us with a full picture of the real world consequences of adopting that test speed. Thus, this type of information, by itself, is not necessarily sufficient to enable us to determine whether adopting that speed is worthwhile, much less needed, from a safety standpoint.

We assessed the relative merits of maximum test speeds of 40 km/h (25 mph) and 48 km/h (30 mph) in light of the initial advanced air bag systems that manufacturers will introduce over the next several years. Based on that assessment, we are concerned that the need for vehicle manufacturers to take steps to enable them to certify to a 48 km/h (30 mph) unbelted test could create difficulties in improving protection and minimizing risks for the wide range of occupants and crashes in the real world. A good example of how these potential problems might occur relates to how a vehicle manufacturer might use a dual-stage air bag to meet the goals of this rulemaking.

One strategy for meeting an unbelted 48 km/h (30 mph) barrier requirement for both 5th percentile adult females and 50th percentile adult males would be to use the first stage inflation level for the 5th percentile adult female and the second stage inflation level for the 50th percentile adult male. However, under that strategy, the need to certify to the 48 km/h (30 mph) barrier test for the 5th percentile adult female dummy would require a relatively faster inflation in the first stage. Because that dummy will be placed in a vehicle seat moved all the way forward, the air bag will have to deploy especially quickly to provide protection. The use of a relatively faster first stage would conflict with the strategy of using as benign a first stage inflation level as possible in lower speed crashes to reduce risks to out-of-position occupants. Alternatively, the vehicle manufacturer could use the second stage inflation level for both the 5th percentile adult female and 50th percentile adult male dummies. While this strategy might be a good one for passing a rigid barrier test, in which the dummy does not move forward much before deployment, it might not be a good strategy for high speed real world crashes in which small adult females, who already sit close to the air bag, and unrestrained children move considerably closer as a result of pre-crash braking.

While we believe that dual-stage inflators represent a significant improvement over single level inflators, it is important to recognize that they have limitations. Some of these limitations could be overcome by inflators with more than two stages. However, this would add greater complexity, including additional gray zones. While these and other more advanced technologies, such as chambering and real time occupant position sensing, may become available in the future, we want to be cautious about the possibility of inducing manufacturers to install more advanced technologies before those technologies are fully ready. For example, vehicle manufacturers should gain real world experience with dual-stage inflators before they adopt inflators with additional stages. Also, in areas in which there is uncertainty as to what strategies might be best for safety, such as the specific performance characteristics for dual-level inflators, we want to be careful about adopting requirements that might be inappropriately design restrictive in making it difficult for vehicle manufacturers to design their air bags so that they perform well both in rigid barrier tests and in the wide range of real world crashes.

Third, we are also aware that the vehicle manufacturers need design flexibility to address issues regarding performance in real world crashes not directly replicated by Standard No. 208's tests.

As we have discussed on many occasions, one of the greatest limitations of non-advanced air bags is that they typically deploy in the same manner regardless of such factors as crash severity or occupant size, weight or position. In other words, they are non-adjusting, one-size-fits-all air bags. One of the principal strategies for improving

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air bag performance is to provide different levels of deployment for different situations.

The most basic redesigned advanced air bags would allow different types of deployment to suit different crash situations. These air bags would have a dual-level inflator instead of a single-level inflator. Some vehicles already have such inflators. With two levels of inflation, the vehicle manufacturer can design the air bag system so that the level of inflation is dependent on such factors as crash severity, size and weight of the occupant, and position of the occupant. For example, the high level of inflation might be selected for high speed crashes and the low level of inflation for low speed crashes. Of course, the ability to select an inflation level based on these various factors would depend on the existence of sensors that provide relevant information about the above factors.

Successful implementation of air bags designed to vary their performance in response to sensed differences in crash severity or other conditions presents a challenge to the manufacturers in that these air bags have "gray" or transition zones, *i.e.*, ranges of conditions in which the air bag changes from one level of performance to another. At very low speeds, there will be uncertainty within a gray zone about whether the air bag will deploy or not deploy and at higher speeds, there will be uncertainty about which level of performance will be triggered. For example, there will be a gray zone of crash severity in which there is uncertainty whether a dual-stage air bag will deploy only its lowest powered stage or both stages.

Particularly given the importance we place on vehicle manufacturers "getting it right" the first time with advanced air bags, we believe it is appropriate for them to initially introduce relatively simple advanced systems, such as ones incorporating dual-level inflators and sensors that provide basic information about one or more of the factors identified above. While we believe that more complex systems, incorporating such features as several levels of inflation, chambering (e.g., creating, in effect, a small bag inside a larger bag) and real time occupant position sensing, offer promise of even greater benefits, there are significant uncertainties regarding the feasibility and thus availability of such systems, particularly the dynamic position sensing systems.

Fourth, a 40 km/h (25 mph) maximum test speed gives vehicle manufacturers more flexibility to address the greater compliance problems associated with vehicles, e.g., SUVs, with particularly stiff crash pulses. Since unbelted occupants moving forward in frontal crashes of these vehicles will have to be engaged more quickly than in vehicles with softer crash pulses, the task of designing air bag systems in stiff pulse vehicles is significantly more challenging. Our test experience with LTVs using the 5th percentile adult female dummy is very limited. We have conducted only three 48 km/h (30 mph) unbelted rigid barrier tests and only one 40 km/h (25 mph) unbelted rigid barrier test of LTVs with that dummy. Particularly given this limited test experience, we believe there are uncertainties with respect to the ability of manufacturers to meet a 48 km/h (30 mph) rigid barrier test requirement for both 50th percentile adult male dummies and 5th percentile adult female dummies.

Fifth, we believe that it is unlikely that vehicle manufacturers will significantly depower their air bags and minimally comply with the 40 km/h (25 mph) test. Our Final Economic Analysis concludes that there would not be any significant cost savings in installing air bags that were minimally compliant with a 40 km/h (25 mph) test. Vehicle manufacturers have not depowered their air bags so much that they minimally comply with the sled test. In fact, their current redesigned air bags significantly exceed the level of performance needed to meet not only the sled test, but also a 40 km/h (25 mph) rigid barrier crash test with the 50th percentile adult male dummy. As discussed above, the real world data to date for vehicles certified to the sled test, while preliminary, indicates that there has not been a loss of frontal crash protection compared to pre-MY 1998 vehicles.[16] If this result continues, future bags will greatly exceed the minimum performance requirements of the 40 km/h (25 mph) unbelted barrier test. Indeed, the vehicle manufacturers have indicated that they would not engage in significant, widespread additional depowering if a 40 km/h (25 mph) test were adopted. They argue that their need to perform well in NHTSA's 56 km/h (35 mph) belted NCAP tests limits, as a practical matter, any inclination that might theoretically otherwise exist to depower their air bags further. NHTSA notes that this rule increases the influence of 56 km/h (35 mph) belted testing by making passing such testing with 50th percentile adult male dummies mandatory. Thus, NHTSA believes that it is not risking a substantial loss of benefits by establishing an unbelted barrier test of 40 km/h (25 mph).

Sixth, our decision to replace the 48 km/h (30 mph) generic sled test with the 40 km/h (25 mph) unbelted rigid barrier test requires a significantly higher level of safety. The agency estimates that the sled test is roughly equivalent to a 35.5 km/h (22 mph) rigid barrier perpendicular (0 degree) crash. During the 1997 rulemaking, we looked at the relative safety consequences of an air bag designed to just meet the performance requirements associated with a 48 km/h (30 mph) generic sled test. The agency estimated the fatality impacts of designing a vehicle to minimally meet the performance requirements imposed by the current 48 km/h (30 mph) generic sled test and compared these to the fatality impacts of designing a vehicle to just meet the 40 km/h (25 mph) unbelted rigid barrier test. If these different design tasks did not have any impact on air bag size, air bags designed to the 40 km/h (25 mph) unbelted rigid barrier test could save 64 to 144 more lives than air bags designed to the generic sled test (assumed to be 35.5 km/h (22 mph)). If, on the other hand, air bags designed to the generic sled test would be smaller and provide no benefit in partial frontal impacts, because the 40 km/h (25 mph) unbelted rigid barrier test includes an up to 30

[16] To obtain a fuller understanding of these results, and the role played by the sled test and other provisions of Standard No. 208 in obtaining them, the agency conducted tests and examined information obtained from the vehicle manufacturers. The vehicle manufacturers did not depower all models. There was a wide range in the power of pre-MY 1998 air bags. As to those models that they did depower, they did not depower their air bags as much as they said they could or as much as we anticipated they might when we prepared the economic analysis accompanying our 1997 final rule that adopted the sled test option. Instead, as NHTSA tests have shown, the manufacturers typically chose levels of power that still enabled them to pass the pre-existing 48 km/h (30 mph) unbelted crash test with a 50th percentile adult male dummy. Further, these tests have revealed that vehicles with redesigned air bags pass that test with that dummy by roughly the same margin of compliance as earlier vehicles did. (It should be emphasized, as we note below in the section entitled, "Selection of 40 km/h (25 mph) as Top Speed for Unbelted Rigid Barrier Test," that meeting the unbelted rigid barrier crash test at 48km/h (30 mph) with that dummy and a 5th percentile adult female dummy is significantly more challenging than meeting it with 50th percentile adult male dummy alone. It is still more challenging to meet that test with both dummies and minimize risk simultaneously. Thus, the ability to meet the 48 km/h (30 mph) unbelted crash test with a 50th percentile adult male dummy isn't, by itself, predictive of a vehicle manufacturer's ability to meet that test with both dummies, and the other requirements added by this rule.)

As to the differences between the anticipated amount of depowering and the amount of depowering actually performed and as to the performance of the current redesigned air bags, we also note that, as discussed below, depowering is not the only way of reducing the aggressiveness of air bags. There are other design changes that were made by some manufacturers.

degree oblique test while the generic sled test has no angular component, 282 to 308 more lives (this range includes the 64 to 144 estimates mentioned earlier) could be saved by air bags designed to the 40 km/h (25 mph) unbelted rigid barrier test with the oblique test than lives saved by air bags designed to just comply with the generic sled test.

*Increasing Belted Test Speed to 56 km/h (35 mph) for 50th Percentile Male Dummy.* In the SNPRM, we asked for comment on whether we should increase the speed for the belted test using the 50th percentile adult male dummy from 48 km/h to 56 km/h (30 mph to 35 mph) if we adopted 40 km/h (25 mph) as the maximum test speed for the unbelted rigid barrier test. This rule adopts that provision. It will be phased-in for increasing percentages of each manufacturer's fleet beginning in the 2008 model year. We did not propose including the 5th percentile adult female dummy in this requirement because we had sparse information on the practicability of such a requirement. NHTSA will initiate testing to examine this issue and anticipates proposing increasing the test speed for belted tests using the 5th percentile adult female dummy to 56 km/h (35 mph), beginning at the same time that the 50th percentile adult male is required to be used in belted testing at that speed.

NHTSA notes that Standard No. 208 previously specified the same maximum test speed for both belted and unbelted rigid barrier testing. The practical consequence of specifying the same test speed for both types of testing was to make unbelted testing the primary determinant of air bag designs. The reason for this is that, at the same test speed, the unbelted test is more difficult to pass than the belted test. Consequently, air bag designers typically focused their attention on performance in the 48 km/h (30 mph) unbelted test. After they optimized performance attributes for that test, they conducted belted tests to ensure that there were not any anomalies. Nothing in the Standard required, or had the effect of requiring, designers to optimize air bag performance for belted occupants.

Today's rule changes that. By specifying a maximum test speed for belted testing that is significantly higher that the maximum test speed for unbelted testing, Standard No. 208 will oblige occupant protection designers to focus separately on evaluating protection in both belted and unbelted testing as significant design factors, instead of having one type of testing serve simply as a check on the other. This is a major step forward for improving occupant protection for belted occupants. This step is in keeping with the agency's ongoing efforts in its Buckle Up America campaigns. It assures enhanced protection, especially for those 70 percent of occupants who currently wear their belts, and may help persuade those who do not wear their belts to do so.

*B. Other Provisions of the Rule*

*Facilitation of low risk deployment technologies.* In the Supplemental Notice of Proposed Rulemaking (SNPRM), we proposed that the low risk deployment requirements would have to be met for inflation levels at which air bags would deploy in rigid barrier crash tests at speeds up to 29 km/h (18 mph). 64 FR 60556; November 5, 1999. We also proposed that the injury criteria for the unbelted rigid barrier crash test would have to be met within the range between a minimum speed of 29 km/h (18 mph) and the maximum speed, inclusive. Some vehicle manufacturers responded that being required to test under the low risk deployment option for the inflation level (or levels) at which their air bags would deploy in crashes below 29 km/h (18 mph), combined with being required to protect unbelted dummies in crashes at 29 km/h (18 mph) and above, would limit design flexibility and discourage development of low risk deployment air bag systems. The manufacturers claimed that it is difficult with current sensors to design dual-stage air bags that could both meet the low risk deployment requirements *and* the barrier crash test injury criteria, particularly given the gray zone in which either a low level or high level deployment may occur.

To avoid inadvertently discouraging the development of low risk deployment technologies, we have decided that air bags with multiple inflation levels must meet the injury criteria for the low risk deployment tests for the inflation levels at which the air bags would be deployed in crashes of 26 km/h (16 mph) or below (with unbelted 5th percentile adult female dummies at both seating positions), instead of crashes of 29 km/h (18 mph) or below. However, if these air bags do not deploy at all in crashes of 26 km/h (16 mph) or below, the injury criteria must be met using the lowest level of inflation. We have also decided to raise the lower end of the range of speeds at which the unbelted rigid barrier crash test is conducted from 29 km/h (18 mph) to 32 km/h (20 mph). Together, these two changes are intended to facilitate use of the low risk deployment option by providing flexibility for the transition of dual-stage air bag systems from low level deployments designed to protect occupants in low speed crashes and not to injure out-of-position occupants in high level deployments designed to protect occupants from injuries in severe crashes.

*Elimination of unneeded tests.* In developing this rule, as in developing the SNPRM, we looked for opportunities to reduce the number and types of test configurations necessary to assure that future air bags minimize the risk of air bag-induced injuries.[17] We have made several further reductions.

We have dropped several test conditions for testing features (*e.g.*, weight or size sensor) that suppress the air bag when an infant or young child is present. We eliminated some test conditions because we concluded that they were inappropriate for testing this type of feature. The test conditions we dropped for this reason included an unrestrained RFCSS tipped forward onto the dashboard and the 3 year old and 6 year old dummies placed in the low risk deployment positions, *i.e.*, against the instrument panel.

The basic concept behind weight sensors or other features that suppress the air bag when an infant or young child is present is to automatically suppress the air bag unless weight or some other factor indicates that an older child or adult is present. In testing such a device, we believe it is appropriate to test for a variety of positions an infant or young child might likely be placed in by a parent or caregiver or that might likely be assumed by the child. The conditions we are dropping do not fall within this category, but are instead ones that might occur dynamically as a

[17] As noted above, when we issued the SNPRM, we reduced the number of proposed dynamic and static tests, especially those relating to the proposed requirements for reducing the risks of air bags. We reduced, from 14 to nine, N the number of proposed dynamic crash tests that would be applicable to all vehicles. We originally proposed that vehicles equipped with static air bag suppression systems (*e.g.*, weight sensors and pattern sensors) be subject to being tested with any child restraint manufactured over a ten-year period. This would have created the possibility of testing with any one of several hundred different models of child restraints. Recognizing that, we solicited comments to aid us in identifying a much more limited number of specific models that would be representative of the array of available child restraints. Based on the public comments, we proposed to require that vehicles be able to meet the applicable requirements when tested with any one of a far more limited number of child restraints representing a cross-section of the restraints currently on the market. We also significantly reduced the number of positions in which test dummies or child restraints could be placed for testing a static suppression system. This was accomplished largely by eliminating positions that were substantially similar to other positions.

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result of pre-crash braking. However, since the air bag would already be automatically suppressed by this type of device in such a situation, we do not believe it necessary to test for these conditions.

We also proposed testing unrestrained rear-facing child seating systems (RFCSS) at any angle plus or minus 45 degrees from the vehicle seat's longitudinal plane. Because of difficulties in setting up the test and the unlikelihood that parents would place a RFCSS in an angled position, we have revised this test procedure to specify placement only at zero degrees of the longitudinal plane.

As proposed in the SNPRM, we have dropped the requirement for conducting oblique angle tests on vehicles using belted 5th percentile adult female dummies. We have adopted the proposal because we believe that if a vehicle can pass the perpendicular test with 5th percentile adult female dummies and the oblique tests with unbelted 50th percentile adult male dummies, it will also pass the oblique test using 5th percentile adult female dummies. Additionally, we have dropped the belted oblique angled tests for the belted 50th percentile adult male dummy. Given the unbelted oblique tests, we believe that the belted oblique angled tests are unnecessary.

*New, more stringent injury criteria.* In the rule, we have added a neck injury criterion and adopted a more stringent limit on chest deflection. The injury criteria are very similar to the ones we proposed in the SNPRM. The Nij approach to the risk of neck injury was generally accepted by the vehicle manufacturers, although they requested some modifications. We have made those modifications.

*Due care provision.* In the SNPRM, we proposed to maintain the "due care" provision for the existing crash test requirements and apply it to the new ones as well. However, we did not propose to apply the provision to test requirements that do not involve crashes, based on our belief that these tests are not affected by the variability associated with dynamically-induced dummy movement and/or vehicle deformation.

In this rule, we have decided against extending the due care provision to new crash tests, although it will still be available for vehicles that are not certified to the advanced air bag requirements. Our testing has indicated that manufacturers can easily meet the new injury criteria with 50th percentile adult male dummies in a 40 km/h (25 mph) unbelted test with existing air bag systems and should be able to make what ever improvements are needed to do so with 5th percentile adult female dummies without major uncertainties before they are required to certify any vehicle as meeting the advanced air bag requirements of this rule. Based on our experience with Standard No. 208 compliance activities, we do not believe there is an intrinsic need for a "due care provision." Further, as we explained in the earlier notices in this rulemaking proceeding, the inclusion of such a provision in a safety standard does not fit very well with the overall statutory scheme.

*Extended availability of air bag on-off switches.* As proposed, we have decided to sunset the provisions which allow original equipment (OE) and retrofit on-off switches under specified circumstances. However, instead of sunsetting those provisions at the end of the TEA 21 phase-in period, as we proposed in the SNPRM, we are sunsetting them on September 1, 2012, two years after the end of the second phase-in. In response to a wide consensus among commenters, we have concluded that extending their availability to that date is desirable to ensure that consumers have had a chance to gain substantial experience with advanced air bag systems. This should ensure that confidence in those systems is strong enough by the sunset date to remove any desire for a manual on-off switch in vehicles produced with an advanced air bag.

*Labels with strong warning messages.* We have decided to adopt a new permanent sun visor label for vehicles certified as meeting the requirements of this rule. We proposed to alter the wording of the label to reflect the lower risk that will be associated with advanced air bags. However, all commenters, including the safety groups which supported a higher maximum test speed for the unbelted rigid barrier test, objected. They noted that while advanced air bags will significantly reduce the risk of death or serious injury, they will not eliminate all risk. Accordingly, we have decided that the new label should have warnings similar to those on the current label. The label will also have new graphics. In addition, we have adopted a new temporary label that states that the vehicle meets the new requirements for advanced air bags. Like the new permanent label, the new temporary label will have warnings similar to those on the current temporary one.

### C. Future Rulemaking Plans

*Final decision on maximum test speed for unbelted rigid barrier test.* As noted above, we are planning a multi-year effort to obtain additional data to help resolve the issues and concerns relating to the maximum test speed for the unbelted rigid barrier test in the long run. Those activities are described in the section below entitled, "Monitoring of Implementation and Field Experience; Research and Technology Assessment." Based on the results of those information gathering and analysis efforts, we will make a final decision regarding the maximum test speed for unbelted dummy testing in the long run, after providing an opportunity for informed public comment.

*New rulemaking proposals.* NHTSA plans to issue several proposals for further improvements in frontal occupant crash protection. One proposal would be to increase the maximum speed for the belted rigid barrier test using the 5th percentile adult female from 48 km/h to 56 km/h (30 to 35 mph). That proposal would bring the top speed for belted testing with the 5th percentile adult female dummies into line with the top speed for belted testing with the 50th percentile adult male dummies adopted in this rule. To provide data to support that proposal, we plan to initiate testing with the 5th percentile adult female in 56 km/h (35 mph) belted tests. We anticipate that if this proposal were adopted as a final rule, implementation would begin during the second stage phase-in established by today's rule. Because 56 km/h (35 mph) is the same speed at which we currently conduct our New Car Assessment Program (NCAP) frontal crash tests using belted 50th percentile adult male dummies, we will ask also for public comments on what adjustments, if any, we should make to the frontal NCAP test program.

Another proposal would be to adopt a high speed belted offset deformable barrier test. The addition of this test to Standard No. 208 would lead to improved vehicle structure, improved occupant compartment integrity and thus reduced injuries due to intrusion. This would benefit both belted and unbelted occupants. We submitted a first status report on this initiative to Congress in April 1997, and will submit a second one this spring. We expect to issue the proposal later this year.

NHTSA is also developing proposals for adding additional test dummies to Part 572 of Title 49 CFR. The two dummies that are furthest along in their development are a dummy representing a 10-year-old child and a dummy representing a 95th percentile adult male.

*D. Monitoring of Implementation and Field Experience; Research and Technology Assessment*

To promote the achievement of the goals of this rule and to obtain additional data that will aid us in making a final decision about the maximum test speed that should be specified for the unbelted rigid barrier test, we are planning a multi-year effort to obtain additional data.[18] This effort will include a variety of activities. We will continue to gather and evaluate real-world crash data to monitor the effectiveness of redesigned and advanced air bags in protecting various groups and subgroups of occupants and in preventing air bag-induced deaths and injuries. We are going to continue our research program, including conducting unbelted barrier tests of current vehicles at various speeds, including 48 km/h (30 mph), and analyzing those test results. In that way, we can assess how well the manufacturers simultaneously preserve and improve protection for all occupants, belted and unbelted, and minimize risk. Further, we need to continue our research and testing regarding advanced air bag technologies to gain an understanding of the safety performance implications of various features of air bag design. In addition, we will prepare an annual "compliance margins" report to assess the extent to which vehicle manufacturers exceed the 40 km/h (25 mph) test requirement.

## III. Our Proposals for Advanced Air Bags

*A. Our Initial Proposal (September 1998)*

Pursuant to TEA 21, on September 18, 1998, we published in the **Federal Register** (63 FR 49958) a notice of proposed rulemaking (NPRM) to upgrade Standard No. 208 to require vehicles to be equipped with advanced air bags that meet new, more rigorous performance requirements. The NPRM proposed to require advanced air bags in some new passenger cars and light trucks beginning September 1, 2002, and in all new cars and light trucks beginning September 1, 2005.

We proposed several new performance requirements to ensure that the advanced air bags do not pose unreasonable risks to out-of-position occupants. The NPRM gave options for complying with those requirements so that vehicle manufacturers would be free to choose from a variety of effective technological solutions and to develop new ones if they so desire. With this flexibility, they could use either technologies that modulate or otherwise control air bag deployment so deploying air bags do not cause serious injuries or technologies that prevent air bag deployment if children or out-of-position occupants are present, or both.

To ensure that the new air bags are designed to avoid causing injury to a broad array of occupants, we proposed test requirements using a family of dummies, including ones representing 12-month-old, 3-year-old and 6-year-old children, and 5th percentile adult females, as well as tests representing 50th percentile adult males. We noted that many of the proposed test procedures were new, and specifically requested comments about their suitability for measuring the performance of the various advanced systems under development.

We also proposed requirements to ensure that the new air bags are designed to protect an array of belted and unbelted occupants, including teenagers and small adults. The standard's current crash test requirements specify the use of 50th percentile adult male dummies only. We proposed also to specify the use of 5th percentile adult female dummies in crash tests. The weight and size of these dummies are representative of not only small women, but also many teenagers. By testing with both the 50th percentile adult male dummy and the 5th percentile adult female dummy, we can address the risks faced by most of the entire adult female population and much of the adult male population.[19]

In addition to the existing rigid barrier test, representing a relatively "stiff" or "hard" pulse crash when conducted perpendicularly, and a more moderate pulse crash when conducted obliquely, we proposed to add a deformable barrier crash test, representing a relatively "soft" pulse crash. This proposed new soft pulse crash test requirement was intended to ensure that air bag systems are designed so that they do not deploy too late. Some current air bags deploy relatively late in certain types of crashes, such as pole impacts. If an air bag deploys too late, normally seated occupants may move too close to the air bag before it starts to inflate. In such a situation, the air bag is less likely to protect the occupant and more likely to pose a risk to the occupant. We proposed to use belted 5th percentile adult female dummies in this test because small adults sit farther forward than larger adults and thus represent a greater challenge for restraint system design.

We also proposed to phase out the unbelted sled test option as we phased in requirements for advanced air bags. We acknowledged that the sled test option has been an expedient and useful temporary measure that enabled the manufacturers to speed up the redesigning all of their air bags to reduce risks. The sled test also helped to ensure that protection would continue to be provided by air bags in high-speed crashes. Nevertheless, we stated that sled testing was not a fully satisfactory means of assessing the extent of occupant protection that a vehicle and its air bag together will afford occupants in the real world and thus was not suitable in the long run.

Finally, we proposed new and/or upgraded injury criteria for each of the proposed new test requirements, and also proposed to upgrade some of the injury criteria for the standard's existing test requirements.

*B. Our Supplemental Proposal (November 1999)*

We received comments on the September 1998 NPRM from a wide range of interested persons including vehicle manufacturers, air bag manufacturers, insurance companies, public interest groups, academia, and government agencies. Commenters expressed widely differing views as to how to accomplish the goals mandated by TEA 21— improving the benefits of air bags, while minimizing risks from air bags.

On November 5, 1999, in response to the public comments on our 1998 NPRM and to other new information we obtained after issuing that proposal, we published the SNPRM (64 FR 60556), which updated and refined the amendments under consideration in this rulemaking.

In the SNPRM, we reiterated the goals set for us by Congress in TEA 21, *i.e.*, to improve occupant protection for occupants of different sizes, belted and unbelted, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags. Further, we emphasized the need to ensure that the needed improvements in occupant protection were made in accordance with the statutory implementation schedule.

In developing the SNPRM, we sought to reduce the number of proposed tests to the extent possible without

[18] NHTSA would welcome the help of interested persons in gathering data useful in achieving these purposes. The agency notes that the Alliance of Automobile Manufacturers has offered to gather information on how people die in high speed crashes.

[19] A 95th percentile adult female, on average, weighs 199 lb and stands 5'7" tall. The 50th percentile adult male dummy weighs 171 lb and stands 5'9" tall.

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significantly affecting the benefits of the NPRM. We were persuaded by the commenters that reducing the amount of testing was important, given the costs to manufacturers (and ultimately consumers) associated with certifying vehicles to such a large number of new test requirements. At the same time, we wanted to be sure that the final rule would include sufficient tests to ensure that air bags would meet the goals of TEA 21. Given the continued debate over what requirements should be relied upon to ensure protection to unbelted occupants, we also wanted to be sure that we received and considered public comments on the various alternative approaches reflecting the more recent views and information available to us.

The most significant differences between the NPRM and the SNPRM can be summarized as follows:

• *Two alternative unbelted test procedures.* While we proposed one unbelted test procedure in the NPRM, an up-to-48 km/h (30 mph) rigid barrier test using the 50th percentile adult male dummy and the 5th percentile adult female dummy, we proposed and sought comments on two alternative unbelted test procedures in the SNPRM.

The first alternative was an unbelted rigid barrier test whose injury criteria would have to be met within the range of a minimum speed of 29 km/h (18 mph) and a maximum speed to be established between 40 to 48 km/h (25 to 30 mph), inclusive. Within this alternative was the potential for a phase-in sequence in which the maximum speed would initially be set at 40 km/h (25 mph) to provide vehicle manufacturers additional flexibility when they are introducing advanced air bags during the phase-in. Under this phase-in sequence, the final rule could provide that the maximum speed would return to 48 km/h (30 mph) after some period of time. We also sought comment on setting the maximum speed at 48 km/h (30 mph) but temporarily permitting relaxed injury criteria performance limits (*e.g.* 72 g chest acceleration limit instead of 60 g chest acceleration limit) in rigid barrier crashes between 40 km/h (25 mph) and 48 km/h (30 mph).

The second alternative was an unbelted offset deformable barrier test within the range of a minimum speed of 35 km/h (22 mph) and a maximum speed to be established within the range of 48 to 56 km/h (30 to 35 mph). The latter alternative was developed in response to a recommendation made by IIHS in its comment on the NPRM.[20]

We proposed the 29 and 35 km/h (18 and 22 mph) lower ends of the ranges of test speeds for the two alternatives because we wanted to be sure that the standard would not inadvertently create incentives to push deployment thresholds downward; *i.e.*, cause air bags to be deployed at lower speeds.

• *Possible higher speed belted rigid barrier test.* We stated that if we reduced the maximum speed of the unbelted rigid barrier test to 40 km/h (25 mph), we might also increase the maximum speed of the belted rigid barrier test from the current 48 km/h to 56 km/h (30 to 35 mph) and use both 5th percentile adult female and 50th percentile adult male dummies.

• *Reduced number of tests.* In the SNPRM, we significantly reduced the total number of proposed tests as compared to the NPRM. In a number of situations, we tentatively concluded that a proposed test could be deleted because the performance we sought to secure by means of that test would largely be assured by one or more of the other tests.

• *Reduced offset testing.* The proposed up-to-40 km/h (25 mph) offset crash test using belted 5th percentile adult female dummies would be conducted only with the driver side of the vehicle engaged, instead of both testing with the driver side engaged and separately testing with the passenger side engaged.

• *Ensuring that certain static suppression systems can detect real children and adults.* For our proposed static test requirements for systems which suppress air bags in the presence of infants and children (*e.g.*, weight sensors), we proposed a new option which would permit manufacturers to certify to requirements referencing actual children, instead of 3-year-old and 6-year-old child dummies, in a stationary vehicle to test the suppression systems. (This option would not apply to systems designed to suppress the air bags only when an infant is present.) Adult human beings could also be used in the place of 5th percentile adult female dummies for the portions of those static test requirements which make sure that the air bag is activated for adults. Steps would be taken to ensure the safety of all subjects used for these tests, *e.g.*, by turning off the air bags.

• *Reduced number of child restraints used for testing suppression systems.* Instead of requiring manufacturers to assure compliance of a vehicle in tests using any child restraint which was manufactured for sale in the United States any time during a specified period prior to the manufacture of the vehicle, we proposed to require them only to assure compliance using each child restraint on a relatively short list of specified child restraint models. Those models would be chosen to be representative of the array of available child restraints. The list would be updated from time to time to reflect changes in the types of available child restraints.

• *Modified requirements for systems that suppress the air bag for out-of-position occupants.* We significantly modified the proposed requirements for systems that suppress the air bag when an occupant is out of position during a crash. In the NPRM, we proposed a single test procedure for all types of such suppression systems. However, we were persuaded by the commenters that the proposed test procedure was not appropriate for many of the systems that are currently under development. Because we did not have sufficient information or prototype hardware to develop a new test procedure, and because no single test procedure may be appropriate for the broad spectrum of suppression technologies currently being developed, we proposed a provision that would permit manufacturers or others to petition the agency to establish technology-specific test procedures under an expedited rulemaking process.

• *No full scale dynamic out-of-position test requirements.* We eliminated from this rulemaking the proposed option for full scale dynamic out-of-position test requirements (the option which included pre-impact braking as part of the test procedure). We were persuaded by the commenters that the proposed test procedure was not workable at this time. Moreover, we concluded that this option was unnecessary at this time, since other options were available for the range of effective technologies we understand to be currently under development.

In developing the SNPRM, we carefully considered all of the comments we received in response to the NPRM. Moreover, because the SNPRM differed significantly in many aspects from the NPRM, we explained that we did not contemplate any further consideration of the comments on the NPRM in developing the final rule. We stated that if any persons believe that we did not adequately consider particular issues raised in comments on the NPRM, they should raise those

[20] We noted that IIHS's views had changed since making that recommendation. Its changed views were discussed in the SNPRM.

issues again in commenting on the SNPRM.

Accordingly, in developing today's final rule, we have focused our consideration on the comments submitted in response to the SNPRM.

*IV. Public Comments on the Supplemental Proposal*

As in the case of the NPRM, we received comments on the November 1999 SNPRM from a wide range of interested persons including vehicle manufacturers, air bag manufacturers, insurance companies, public interest groups, and government agencies. In this section, we provide a general summary of those comments. A more detailed description of the comments is provided below in the sections which address the issues raised by commenters, and in the Final Economic Assessment and three separate technical papers which are being placed in the public docket.

*Improving the Protection of Unbelted Occupants in Serious Crashes*

Nearly all commenters supported the unbelted rigid barrier test over the unbelted offset deformable barrier test.

Vehicle manufacturers stated that the rigid barrier test is practicable and repeatable and does not entail the variability associated with deformable barriers and the kinematics of an offset test. They also stated that the European barrier used in the offset test is not appropriate for testing larger SUVs and light trucks.

The Center for Auto Safety (CAS) stated that the unbelted offset test holds promise as a supplemental test, but is not yet suitable for inclusion in Standard No. 208. That organization stated that there are currently insufficient data to allow for a comprehensive analysis of the consequences that would accompany the adoption of the offset test.

Some other commenters also argued that an unbelted offset test offers promise for the future, either as a replacement for the rigid barrier test or as a supplemental test.

While a near-consensus of commenters supported adoption of an unbelted rigid barrier test, there was sharp disagreement over the maximum speed for that test. The vast majority of commenters, including all auto companies and all air bag suppliers, the Insurance Institute for Highway Safety (IIHS), and the National Transportation Safety Board (NTSB) supported a maximum speed of 40 km/h (25 mph). Safety groups including Public Citizen, CAS, Consumers Union, and Parents for Safer Air Bags (Parents) supported returning to 48 km/h (30 mph).

The primary arguments made by those commenters supporting a maximum speed of 40 km/h (25 mph) can be summarized as follows:

- Current redesigned air bags work well.
- There has been no loss in benefits.
- There is no reason to believe that manufacturers would reduce air bag effectiveness in the future under a 40 km/h (25 mph) maximum test speed.
- A 40 km/h (25 mph) test speed allows flexibility to design air bags for all occupants.
- A return to a 48 km/h (30 mph) test speed would require a return to overly aggressive air bags.
- Aggressive air bags cause deaths in high speed crashes as well as low speed crashes.
- A 48 km/h (30 mph) test speed could result in disbenefits in low speed crashes.
- There are significant technological challenges in meeting a 48 km/h (30 mph) requirement for both the 50th percentile adult male dummy and the 5th percentile adult female dummy.
- Advanced technologies are not currently available that address aggressivity and practicability problems.

The primary arguments made by those commenters supporting a maximum test speed of 48 km/h (30 mph) can be summarized as follows:

- A maximum test speed of 48 km/h (30 mph) will result in higher benefits than a test speed of 40 km/h (25 mph).
- Half of all fatalities in frontal crashes occur at a delta V above 48 km/h (30 mph); a maximum test speed of 48 km/h (30 mph) represents significantly more potentially fatal crashes than a test speed of 40 km/h (25 mph).
- In NHTSA tests, almost all vehicles with redesigned air bags passed the 48 km/h (30 mph) rigid barrier test with the 50th percentile adult male dummy, implying that a return to a 48 km/h (30 mph) test speed would not require a return to overly aggressive air bags.
- Advanced technologies can be used to enable all vehicles to meet requirements for high speed protection and risk reduction.
- There is no justification to reduce the test speed to 40 km/h (25 mph).
- A 40 km/h (25 mph) test speed would not encourage use of advanced technologies.
- A 40 km/h (25 mph) test speed would be inconsistent with the TEA 21 requirement to improve protection for unbelted occupants.
- The increase of the belted test speed to 56 km/h (35 mph) would not recover lives lost as a result of reducing the unbelted test speed to 40 km/h (25 mph).

While maximum speed was the most controversial issue concerning the unbelted test, commenters raised other issues as well. Some vehicle manufacturers objected to the proposal to test over a range of speeds from 29 km/h (18 mph) to the highest speed. They argued that being required to meet test requirements to ensure protection beginning at 29 km/h (18 mph), combined with the proposal to test under the low risk deployment option for inflation level (or levels) that would be deployed in crashes below 29 km/h (18 mph), would limit design flexibility and discourage development of low risk deployment air bag systems.

Another significant issue addressed by commenters concerned the seating procedure for the 5th percentile adult female dummy. Vehicle manufacturers objected to the proposal to test with the seat in the full forward position. They argued that occupants, including small females, rarely if ever sit in that position. They also argued that adoption of this position could result in consequences such as smaller, less protective air bags, and reduced ingress/egress space for rear passengers.

Several safety advocacy groups argued in favor of testing with the seat in the full forward position. They argued that some occupants sit in that position and that it is necessary to test in the "worst case" condition.

*Improving the Protection of Belted Occupants in Serious Crashes*

Commenters supported our proposal to add the 5th percentile adult female dummy to the existing 48 km/h (30 mph) belted rigid barrier test.

Most supporters of a 40 km/h (25 mph) unbelted rigid barrier test, including most vehicle manufacturers, also supported increasing the maximum speed of the belted rigid barrier test to 56 km/h (35 mph). However, these commenters urged that the 56 km/h (35 mph) belted rigid barrier test be phased in after the TEA 21 phase-in period. They also urged that the higher speed test initially be conducted only with the 50th percentile adult male dummy, and that a separate rulemaking be initiated to consider whether the 5th percentile adult female dummy should be tested at that speed.

Most commenters also supported our proposal to add the up-to-40 km/h (25 mph) offset deformable barrier test using belted 5th percentile adult female dummies. Some of these commenters, however, urged that an out-of-position test for the passenger side be developed as an alternative to the test.

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DaimlerChrysler opposed adoption of this test, arguing that the European barrier used in the test is not appropriate for testing heavier vehicles such as SUVs and light trucks.

Some commenters expressed concerns that our proposal would result in there being too many crash tests in Standard No. 208, and requested that we reconsider whether all of the proposed tests are needed.

*Minimizing the Risk of Injuries and Deaths Caused by Air Bags*

Commenters supported the basic approach of our proposed requirements to minimizing the risk of injuries and deaths caused by air bags, including providing a variety of testing options that account for the kinds of effective technological solutions that are under development.

Vehicle manufacturers argued that some of the test conditions specified for the proposed static suppression tests, including the range of seat back angles and seat track positions, would make the tests impracticable.

Some commenters emphasized that we need to allow manufacturers to use both suppression and low risk technologies. As noted earlier, some commenters argued that adjustments need to be made in both the unbelted rigid barrier test requirements and in the requirements for the low risk deployment option to avoid limiting use of the low risk deployment option.

Commenters were generally supportive of our proposal to permit manufacturers to certify to requirements referencing human beings in a stationary vehicle to test suppression systems, so long as steps are taken to ensure the safety of all subjects used for testing.

*Other Issues*

Commenters generally supported the proposed injury criteria and associated performance limits, although vehicle manufacturers recommended some changes.

We received numerous comments raising specific technical issues concerning how dummies are to be positioned for the various tests.

Commenters generally argued that current provisions allowing manual on-off switches for air bags under certain circumstances should remain in effect for a longer period of time, and a number of commenters argued that existing warning labels should not be weakened or eliminated at this time.

There was also significant differences of opinion regarding our proposals about the provision providing a due care defense against findings of noncompliance with the air bag requirements of Standard No. 208.

Several commenters raised concerns about possible unforeseen consequences resulting from the use of advanced air bag technologies.

We received several comments expressing concern about the potential impacts of this rulemaking on small businesses.

## V. Diagrams of the Final Rule Requirements

After carefully considering the comments, we have decided to issue a final rule along the lines of the SNPRM. The key differences between the SNPRM and the final rule are discussed earlier and will not be repeated here. The test requirements to improve occupant protection for different size occupants, belted and unbelted, and to minimize risks to infants, children, and other occupants from injuries and deaths caused by air bags, are shown in Figures 1 and 2 below.

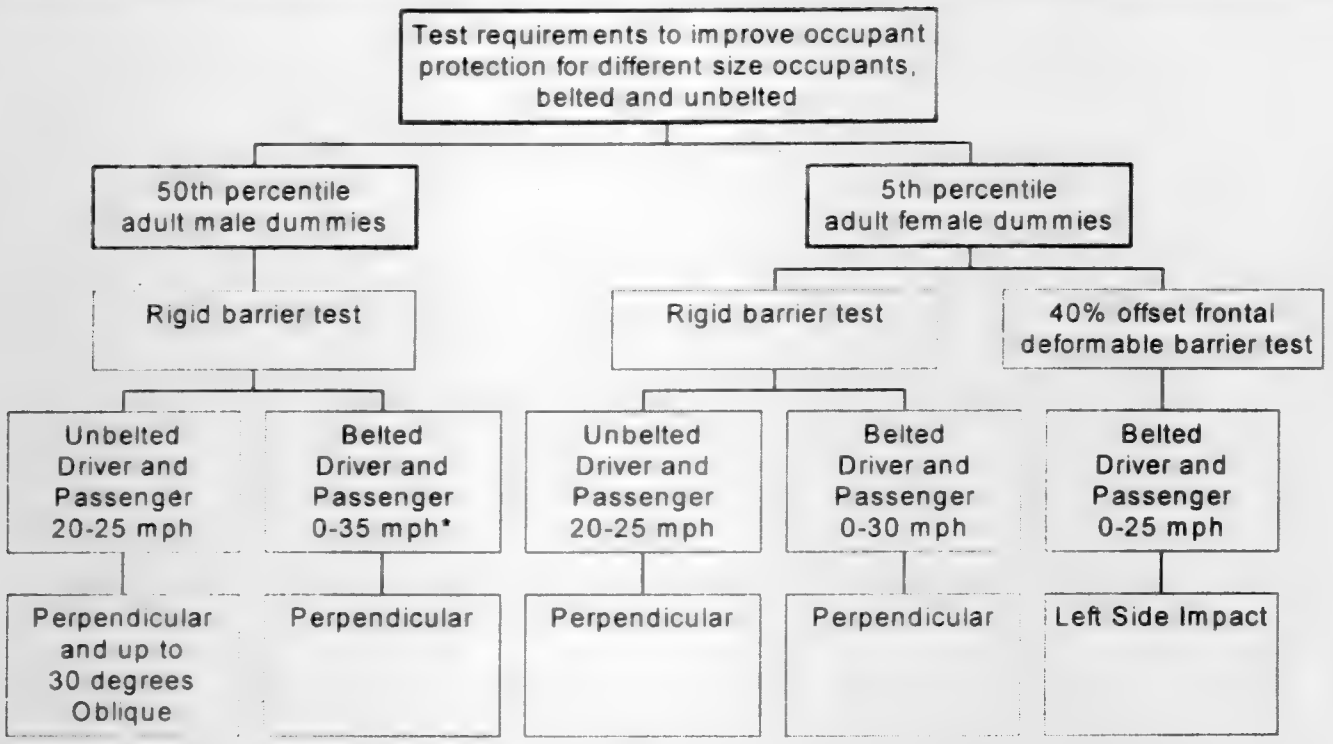


*Range is 0-30 mph during first stage of the phase-in of the final rule

Figure 1

Test Requirements to Improve Occupant Protection for Different Size Occupants, Belted and Unbelted

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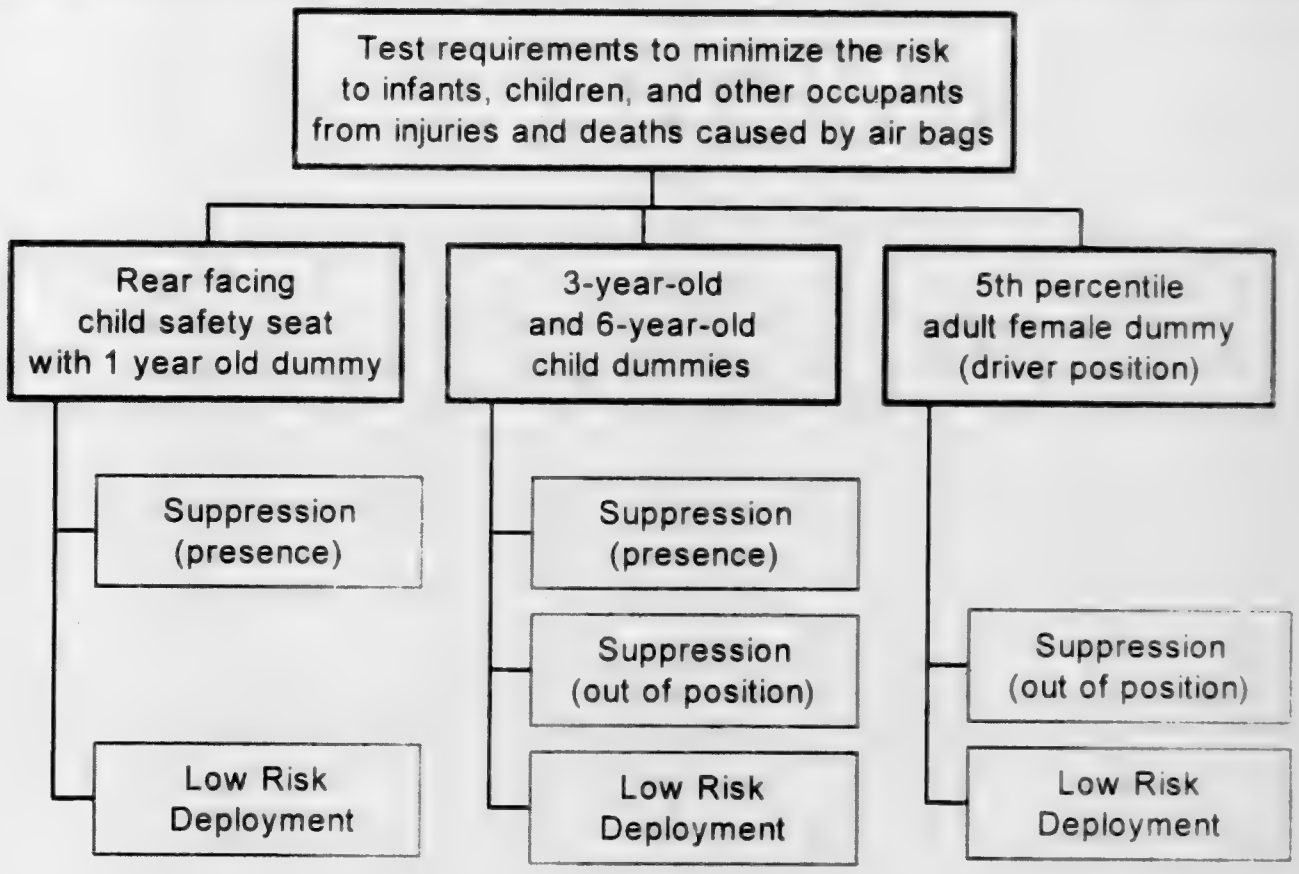


Figure 2

Test Requirements to Minimize the Risk to Infants
Children and Other Occupants from Injuries
And Deaths Caused by Air Bags

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## VI. Improving the Protection of Unbelted Occupants in Serious Crashes

### *A. Summary of Proposed Requirements*

In the SNPRM, we proposed to phase out the unbelted sled test option as the requirements for advanced air bags are phased in. As explained below, sled tests have inherent limitations as compared to crash tests in measuring occupant protection.

We explained that, unlike a full scale vehicle crash test, a sled test cannot measure the actual protection an occupant will receive in a crash. We noted that while the current sled test measures some performance attributes of the air bag, it cannot measure the performance provided by the vehicle structure in combination with the air bags or even the full air bag system by itself. We also noted that the sled test does not evaluate the actual timing of air bag deployment (*e.g.*, crash sensors), does not replicate the actual crash pulse of a particular vehicle model, does not measure the potential for harm from vehicle components that are pushed back into the occupant compartment during a crash, and does not measure how a vehicle performs in angle crashes.

The purpose of the sled test option was to make it easier for vehicle manufacturers to make quick changes to their air bags to reduce risks to out-of-position occupants. Vehicle manufacturers could not immediately incorporate advanced technologies in their vehicles, and the sled test facilitated the process of quickly certifying large numbers of vehicles with redesigned air bags to Standard No. 208. We believe the sled test has been useful as a short-term measure. Over the longer time frame, however, we believe that a better test is needed to ensure the protection of unbelted occupants.

To replace the sled test, we proposed two alternative unbelted crash test procedures: an unbelted rigid barrier test and an unbelted offset deformable barrier test. We proposed that the unbelted rigid barrier test be conducted perpendicular and up to ± 30 degrees oblique to perpendicular with 50th percentile adult male dummies, but perpendicular only in tests with 5th percentile adult female dummies. The injury criteria would have to be met within the range of a minimum speed of 29 km/h (18 mph) and a maximum speed to be established within the range of 40 to 48 km/h (25 to 30 mph). This alternative was based on the unbelted crash test that has been part of Standard No. 208 for many years but which has, as a practical matter, been temporarily superseded by the sled test option since March 1997. The barrier test represents a vehicle striking a vehicle of the same size, weight and structure head on at the same speed.

We indicated that within this first alternative, the potential existed for a phase-in sequence in which the maximum speed would temporarily be set at 40 km/h (25 mph) to provide vehicle manufacturers additional flexibility when they are introducing advanced air bags during the TEA 21 phase-in. Under this approach, the final rule could provide that a maximum speed of 48 km/h (30 mph) would apply after that period. We also indicated that if we were to reduce the maximum speed to 40 km/h (25 mph), we might also increase the maximum speed of the belted rigid barrier test from the current 48 km/h to 56 km/h (30 to 35 mph).

We proposed that the second alternative procedure, the unbelted offset deformable barrier test, would be conducted using both 50th percentile adult male dummies and 5th percentile adult female dummies, with a minimum speed of 35 km/h (22 mph) and a maximum speed to be established within the range of 48 to 56 km/h (30 to 35 mph). This alternative was based on a type of crash test used by IIHS and by Europe, except that unbelted dummies would be used.

For both alternatives, we proposed to conduct the crash tests with 50th percentile adult male dummies with the seat in the middle seat track position. However, we proposed in the SNPRM to conduct tests using 5th percentile adult female dummies with both the driver and passenger seats in the full forward position. We tentatively selected this position because some small adults sit there and because we believe that air bags should protect those people.

We noted, however, that placement of the 5th percentile adult female dummy in the full forward position tests the occupant restraint system under a condition that may not generally occur in the real world. The University of Michigan Transportation Research Institute (UMTRI) conducted a study in which it concluded that even drivers who are approximately the same size as the 5th percentile adult female dummy generally do not sit in the full forward seat track position (Docket No. NHTSA–1998–4405–69). Also, while some short-statured drivers might need to move the driver's seat all the way forward to reach the controls, a passenger in the front passenger seat would be less likely to have a similar need. Another concern was whether, in order to meet tests for conditions that rarely occur in the real world, manufacturers might select air bag designs that offer reduced protection for conditions that are more common in the real world. Accordingly, we requested comments on whether testing the 5th percentile adult female dummy with the seat in something other than the full forward seat track position would adequately protect properly-seated individuals of all sizes while potentially allowing more design freedom.

### *B. Type of Test*

Commenters that previously advocated retention of the sled test indicated a willingness to accept the unbelted rigid barrier test. No commenters disputed the inherent limitations of sled tests as compared to crash tests. Nearly all commenters supported the unbelted rigid barrier test over the unbelted offset deformable barrier test. However, as discussed in the next section, the commenters that had previously supported the sled test wanted the maximum speed of the unbelted barrier test reduced to 40 km/h (25 mph).

Vehicle manufacturers stated that the rigid barrier test is practicable and repeatable and does not entail the variability associated with deformable barriers and the kinematics of an offset test. They also stated that the European barrier used in the offset test is not appropriate for testing larger SUVs and light trucks. Several vehicle manufacturers, including GM, Honda and DaimlerChrysler, stated that a high speed unbelted offset test would pose problems for vehicle sensor systems.

CAS stated that the unbelted offset test holds promise as a supplemental test, but is not yet suitable for inclusion in Standard No. 208. That organization stated that there are currently insufficient data to allow for a comprehensive analysis of the consequences that would accompany the adoption of the offset test.

Several other commenters also argued that an unbelted offset test offers promise for the future, either as a replacement for the rigid barrier test or as a supplemental test. Ford stated that although not practicable during the TEA 21 phase-in period, it believes that a 48 km/h (30 mph) offset test potentially represents a better long-term approach for enhancing unbelted protection.

Parents stated that the final rule should include both the unbelted rigid barrier test and the unbelted offset test. That organization argued that the two tests provide distinct means of ensuring protection in very different circumstances, and that inclusion of both tests is necessary in order to ensure adequate protection for unbelted occupants.

After considering the comments, we have decided to adopt the unbelted rigid barrier test to ensure protection for unbelted occupants in serious crashes. This is the unbelted crash test included in Standard No. 208 for the past 30 years. We also use a belted rigid barrier test for Standard No. 208 and our New Car Assessment Program (NCAP). Detailed information about this type of test is presented in a paper prepared by our Office of Research and Development titled "Updated Review of Potential Test Procedures for FMVSS No. 208." That paper was prepared to accompany our SNPRM.[21]

We note that we sought comment in the SNPRM on the unbelted offset test principally to ensure that we received the benefit of public comments on all of the various alternative approaches that are available at this time. In the NPRM, we indicated that while we believed the unbelted rigid barrier test was a good approach, we were also willing to consider alternative unbelted crash tests. The only alternative unbelted crash test advocated by a commenter that could realistically be implemented within the time frame of this rulemaking was the offset deformable barrier test.

However, the commenter that originally suggested consideration of the unbelted offset test, IIHS, withdrew its support before the SNPRM was published. No commenter on the SNPRM supported adopting the unbelted offset test instead of the unbelted rigid barrier test.

As to Parents' recommendation that we adopt both unbelted tests, we believe that adoption of the proposed unbelted high speed offset test would be inappropriate at this time. We have scant data on the repeatability of this test. Nearly all the offset testing to date has used belted dummies. As noted above and also discussed in the SNPRM, several manufacturers have raised concerns that the proposed high speed unbelted offset test would pose problems for vehicle sensor systems. See 64 FR 60579.

We also note that while we agree with Parents that the two high speed tests provide distinct means of ensuring protection in different circumstances, this does not mean that adoption of those particular two tests would be needed to ensure protection in those different circumstances. We believe that the combination of an unbelted rigid barrier test and *belted* offset tests can accomplish the same purpose.

[21] One commenter, DaimlerChrysler, submitted a critique of that paper as part of its comments. We are placing in the docket an addendum to the paper which responds to that critique.

As discussed in the SNPRM, the high speed unbelted rigid barrier test and the high speed unbelted offset test are significantly different, and each has potential advantages as compared to the other. The two principal advantages of an offset test are that it provides a more challenging test of vehicle crash sensors and of vehicle structure. However, these areas of performance are addressed by belted offset tests as well as unbelted offset tests.

As discussed later in this document, we are adopting an up to 40 km/h (25 mph) belted offset deformable barrier test as part of today's final rule. This test will help ensure improved sensing systems, which will benefit both belted and unbelted occupants. We are also separately pursuing our previously-announced plans to consider adding a high speed belted offset test to Standard No. 208. This test would help ensure improved vehicle structure and reduced intrusion injuries, again benefitting both belted and unbelted occupants. Because the combination of an unbelted rigid barrier test and belted offset tests (either being adopted today or currently being considered by the agency for rulemaking) can accomplish the same purpose as an unbelted offset test, we do not currently plan to consider further adopting an unbelted offset test.

*C. Agency Decision to Establish Maximum Speed at 40 km/h (25 mph)*

1. The Supplemental Proposal

In the SNPRM, we proposed that the maximum speed for the unbelted rigid barrier test be established within the range of 40 to 48 km/h (25 to 30 mph).

We stated that it was our intent to maximize, to the extent consistent with TEA 21, the protection that air bags offer in crashes potentially resulting in fatal injuries. Thus, we stated that it was our preference to establish such a test requirement at as high a severity as practicable. We stated that the 40 km/h (25 mph) lower end of the maximum test speed range was set forth for comment to ensure that commenters addressed a crash test recommended by AAM in late August 1999.

We also stated that the potential existed for a phase-in sequence in which the maximum speed would initially be set at 40 km/h (25 mph) to provide vehicle manufacturers additional flexibility when they are introducing advanced air bags during the phase-in. We explained that under this phase-in sequence, the final rule could provide that a maximum speed of 48 km/h (30 mph) would apply after a reasonable period of time.

We noted that, in commenting on the NPRM, the commenters opposing the 48 km/h (30 mph) unbelted barrier test had raised two primary issues. First, they argued that the test is not representative of typical crashes. Second, they argued that returning to this test would prevent continued use of "depowered" air bags and would require a return to "overly aggressive" air bags.

We addressed each of these issues in the SNPRM. As to whether the test is representative of typical crashes, we stated that because the purpose of Standard No. 208 is primarily to reduce serious and fatal injuries, we believed that the relevant question is how representative the test is of the crashes that produce those injuries. We presented data from the National Automotive Sampling System (NASS) for years 1993–1997 showing, among other things, that about 50 percent of fatalities in frontal crashes occur at delta Vs below 48 km/h (30 mph), and about 50 percent occur at delta Vs above 48 km/h (30 mph). Looking separately at unbelted and belted occupants, we noted that 51 percent of the fatalities involving unbelted occupants and 47 percent of the fatalities involving belted occupants occur in frontal crashes at delta Vs below 48 km/h (30 mph). We noted that the delta V in NASS represents the speed at which the vehicle would strike a rigid barrier to duplicate the amount of energy absorbed in the crash. Thus, about half of fatalities in frontal crashes occur in crashes that are more severe than a 48 km/h (30 mph) rigid barrier crash, and half of all frontal crash fatalities occur in crashes that are less severe than a 48 km/h (30 mph) rigid barrier crash.

Given that Standard No. 208's unbelted crash test requirements are intended to save lives, we stated that we disagree that 48 km/h (30 mph) rigid barrier crashes are unrepresentative of the kinds of crashes in which we are seeking to ensure protection. We also noted that because we were proposing to require vehicles to meet the unbelted test requirements for a range of speeds up to and including 48 km/h (30 mph), we were addressing protection for lower severity crashes as well as higher severity crashes.

As to the argument that returning to the unbelted 48 km/h (30 mph) rigid barrier test would prevent continued use of "depowered" air bags and require use of "overly aggressive" air bags, we stated that a key way of assessing the validity of the argument that a return to the 48 km/h (30 mph) barrier test would—at least in the absence of additional technological improvements—prevent continued use

of redesigned air bags was to test vehicles with those air bags in 48 km/h (30 mph) barrier tests and see how they perform. We noted that we had tested a total of 13 MY 1998–99 vehicles with redesigned air bags in a perpendicular rigid barrier crash test at 48 km/h (30 mph) with unbelted 50th percentile adult male driver and passenger dummies. The vehicles represented a wide range of vehicle types, sizes, and crash pulses.[22]

We stated that 11 of the 13 vehicles passed the injury criteria performance limits proposed in the SNPRM. For the driver position, 12 of the 13 vehicles passed all the relevant injury criteria performance limits. In the one vehicle with a failure, the MY 1999 Acura RL, the driver dummy exceeded the femur load criteria. For the passenger position, 12 of the 13 vehicles also passed all of the relevant injury criteria performance limits. The MY 1998 Dodge Neon slightly exceeded the 60 g chest acceleration limit (with a value of 61.4 g). The other proposed injury criteria performance limits (*i.e.*, for HIC, chest deflection, and Nij) were easily met in all the tests; for most vehicles, there was a greater than 20 percent margin of compliance for both the driver and passenger seating positions.

Based on these test results, we stated that the tested vehicles with redesigned air bags, ranging widely in vehicle type and size, appeared to continue to meet Standard No. 208's 48 km/h (30 mph) unbelted rigid barrier test requirements for 50th percentile adult male dummies, many of them by wide margins.

We also noted that the relevant issue for this rulemaking is not whether some MY 1998–99 vehicles with redesigned, single-inflation level air bags would not meet a 48 km/h (30 mph) unbelted barrier test requirement. The more relevant issue is whether vehicles to be manufactured in MY 2003 and later would be able to comply with such a requirement, perhaps by means of currently available technologies not in many air bag systems as well as technologies still being or yet to be developed.

We explained that today's air bag systems are not advanced air bags and thus do not respond to factors such as crash severity, occupant weight and occupant location. By contrast, the incorporation of advanced technologies would make air bag systems responsive to those factors.

We also noted:

> If a manufacturer decided to use a somewhat more powerful air bag to meet a 48 km/h (30 mph) unbelted rigid barrier test, or to provide protection in more severe crashes, the manufacturer could use advanced air bag technologies to provide less powerful levels of inflation in lower severity crashes, for smaller occupants, for belted occupants, and for occupants sitting with the seat in the full-forward position. Manufacturers could also reduce aggressivity of air bags by various means such as optimizing fold patterns, different cover designs, lighter fabrics, etc. Advanced technologies would also enable the manufacturer to suppress air bag deployment in appropriate circumstances, such as when children are present.

In our Preliminary Economic Assessment (PEA) accompanying the SNPRM, we estimated the benefits of an unbelted rigid barrier test with a maximum speed of 40 km/h (25 mph) vs. 48 km/h (30 mph). The PEA concluded that if the full fleet of vehicles' air bags were designed in the context of unbelted 40 km/h (25 mph) rigid barrier and oblique tests, an estimated 214 to 397 lives saved annually by pre-MY 1998 air bags might not be saved.

2. Summary of Comments

Commenters on the SNPRM nearly unanimously supported adoption of an unbelted rigid barrier test, but sharply disagreed over the maximum speed for that test. Safety advocacy groups, supported returning to 48 km/h (30 mph). Most commenters, however, including all auto companies and all air bag suppliers, IIHS, and NTSB supported a maximum speed of 40 km/h (25 mph).

*Commenters supporting 40 km/h (25 mph).* Commenters supporting a maximum test speed of 40 km/h (25 mph) argued that there would not be a loss of benefits associated with a test at this speed, as compared to a 48 km/h (30 mph) standard.

AAM stated that the benefits of redesigned air bags will be maintained with a 40 km/h (25 mph) test. It argued that there is no reason to believe air bags designed to the sled test requirements have compromised protection, and that a 40 km/h (25 mph) barrier test is more severe than the sled test.

AAM also stated that a new 40 km/h (25 mph) test cannot simply be compared to the old 48 km/h (30 mph) test because the new test would include additional injury criteria and an additional dummy. It stated that the benefits of the other tests included in the final rule, such as the new belted offset test and the low speed risk reduction tests, should also be considered.

AAM argued that the analyses of benefits presented in the PEA are based on dummy readings from one dummy at one position in a single type of crash test in a single direction at a single speed. It stated that this approach is not comprehensive enough. AAM also argued that the strongest evidence that there are analytical limitations inherent in the agency's benefit analyses (past and present) is that past analyses predicting 1,250 lives lost from the adoption of the sled test that simply have not come true.

AAM stated that it had considered the level-of-benefit question from two different perspectives. The first involved the generation of benefit estimates using a MADYMO math model to develop a theoretical "optimum" design for both the 40 km/h (25 mph) and 48 km/h (30 mph) suite of tests. The performance of those designs was then modeled over a broad spectrum of real world crash configurations. Based upon an injury/fatality risk analysis of the model's output injury measures, relative benefits were calculated. The second perspective utilized an "opportunities matrix" approach to examine relative benefits by generating effectiveness estimates and applying these estimates to the spectrum of real world crash conditions.

According to AAM, both of these approaches yield the same conclusion—when considering air bag designs constrained by testing unbelted occupants at 40 km/h (25 mph) or 48 km/h (30 mph), the desired goal of reducing serious-to-fatal injuries in real world crashes is best served by requiring testing at 40 km/h (25 mph).

GM submitted an analysis which it said explains why a 25 mph rigid barrier test drives air bag designs that protect unbelted occupants in severe frontal crashes. Among other things, it said that ride down analysis shows that a 25 mph rigid barrier test requires more air bag restraint capacity than an unbelted offset deformable barrier impact at 40 mph.

Vehicle manufacturers stressed the argument that the agency should focus on the experience of redesigned air bags in MY 1998 and MY 1999 models. They argued that these redesigned air bags have provided real world benefits and that there is no evidence that more power is needed.

[22] In particular, the 13 vehicles included one subcompact car, one compact car, four mid-size cars (representing high sales volume vehicles), one full-size car, two mid-size sport utility vehicles, one full-size sport utility vehicle, one pickup truck, one minivan, and one full-size van. The specific vehicles and their classes included a Saturn (subcompact car), a Neon (compact car), an Intrepid, Camry, Taurus, and Accord (mid-size cars), an Acura RL (full-size car), an Explorer and Cherokee (mid-size SUVs), an Expedition (large SUV), a Tacoma (pickup truck), a Voyager (minivan), and an Econoline (full-size van).

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Toyota stated that NHTSA's concern that manufacturers will substantially decrease power in future air bags compared to current systems is unfounded. It presented data comparing velocity vs. time traces for the sled test and the 40 km/h (25 mph) test for both an SUV and a sedan, and noted that the 40 km/h (25 mph) test pulses were more severe. Toyota argued that, in order to manage this level of energy, the air bags for these vehicles cannot be depowered further than the current levels, and that there is no reason to believe that air bags designed to the 40 km/h (25 mph) rigid barrier test will perform worse in high speed collisions than those designed to the sled pulse.

IIHS stated that it does not agree that a high-speed barrier test using unbelted dummies will necessarily lead to improved protection for any occupants, belted or unbelted. That organization stated that it disagreed with what it characterized as the agency's claim that, unless it returns to the 48 km/h (30 mph) barrier test, air bags will offer inadequate protection to many unbelted occupants, especially large people in more severe frontal crashes. That organization stated that in a number of studies of air bag performance in moderate to severe frontal crashes, it has shown that drivers are not dying because air bags offer too little protection; rather, drivers are dying because of overwhelming intrusion that no air bag design can overcome, ejection of occupants, or because of injury from the air bag itself.

IIHS argued that these observations call attention to what it believes are two errors in the agency's logic for returning to a 48 km/h (30 mph) test. First, that commenter argued that if air bags are not powerful enough, there should be some real world cases in which the energy of the deploying bags was inadequate to protect individuals in otherwise survivable frontal crashes. IIHS stated that it is not aware of any such case. It also stated that the agency's concern that air bags certified to the unbelted generic sled pulse would be less effective in frontal crashes has no foundation in real world crash data.

Second, IIHS argued that the agency has failed to appreciate that serious and fatal injuries from deploying air bags are happening not only in low speed crashes, but also in the high speed crashes in which air bags are supposed to be most effective. That commenter stated that a recent update (including 1996 data) of its analyses of driver fatalities in air bag-equipped cars indicates air bags were the most likely source of the fatal injuries in about 15 percent of frontal crash deaths. IIHS argued that the agency must account for these deaths, as well as those more easily documented in low speed crashes, before it can justify a return to the 48 km/h (30 mph) unbelted barrier test.

IIHS also addressed the agency's concern that, without a "severe crash test" for unbelted occupants, manufacturers may reduce air bag inflation energy, or the size of air bags, thereby compromising their effectiveness. IIHS argued that such changes are constrained by other non-regulatory crash tests to which the manufacturers are subject. That organization stated that NCAP requires that air bags be reasonably deep in order to prevent dummies' heads from striking through the bags, and that offset crash testing by it and others worldwide means manufacturers will continue to install air bags with sufficient radial size to keep occupants squarely behind their air bags, even under conditions of sharp vehicle rotation.

NADA argued that the agency's proposed advanced air bag performance criteria fail to account for reasonably projected increases in safety belt and child restraint usage or for the real-life incremental benefits attributable to "depowered" air bags. NADA stated that it is reasonable to assume that by MY 2003, proper driver and passenger (including children) seat belt usage and child restraint usage rates will exceed 80 percent, and that by MY 2006, these rates should exceed 90 percent.

Vehicle manufacturers also argued that it is difficult or impossible to comply with the 48 km/h (30 mph) rigid barrier test for both the 50th percentile adult male dummies and the 5th percentile adult female dummies. They also argued that it may not be possible to satisfy both the 48 km/h (30 mph) unbelted rigid barrier test for both dummies and the low risk deployment tests.

AAM stated that while the agency has claimed that most vehicles with redesigned air bags continue to meet the unbelted 48 km/h (30 mph) barrier test, very little testing has been done with these same vehicles at 48 km/h (30 mph) with 5th percentile adult female dummies. AAM stated that the little testing that has been done produced a 50 percent failure rate. That organization stated that this testing illustrates the design tensions that the industry has been emphasizing. According to that organization, these tensions result from technology constraints which presently discern limited information about occupant size and location, crash sensors with limited predictive capability and air bags with only two power levels.

According to AAM, it is especially challenging to balance occupant protection for both the 5th percentile adult female and the 50th percentile adult male dummies and assure compliance with the barrier test. As an example, AAM cited the agency's test of the Toyota Tacoma, which resulted in an Nij of 2.65 for the 5th female passenger dummy, nearly three times the allowable injury reference value. According to AAM, the air bag size and fill needed to assure compliance with the chest injury limits with 50th percentile adult male dummies at 48 km/h (30 mph) results in noncompliant neck and thorax injury reference values for 5th percentile adult female dummies seated closer to the air bag. Conversely, according to AAM, if the air bag is sized for the unbelted 5th percentile female dummy at 48 km/h (30 mph), there is insufficient restraint of the unbelted 50th male dummy. AAM argued that testing at 40 km/h (25 mph) allows the restraint engineer to design the air bag to provide reasonable occupant protection for a broader range of occupant sizes.

GM made arguments similar to those of AAM. It argued that the unbelted 48 km/h (30 mph) barrier test using the 50th percentile adult male dummy determines the restraint energy, drives the depth of the air bag, and requires a deeper air bag that has more potential to injure a 5th percentile adult female. It argued that the unbelted 48 km/h (30 mph) barrier test using the 5th percentile adult female would require a shallower air bag that would not assure compliance for an unbelted 50th percentile adult male. According to GM, a 40 km/h (25 mph) test would permit air bag depth to be optimized for both the 5th percentile adult female and 50th percentile adult male dummies.

Ford stated that testing of the MY 2000 Taurus using 5th percentile adult female and 50th percentile adult male dummies demonstrates the difficulties of balancing requirements with a 48 km/h (30 mph) test even for vehicles equipped with advanced technologies. That company noted that the MY 2000 Taurus has dual-level inflators and other advanced technologies.

GM argued that there is no technology or combination of technologies existing today that could satisfy both the 48 km/h (30 mph) unbelted rigid barrier test and the low risk deployment tests. Honda stated that it had concerns about being able to meet the rigid barrier test for the 50th percentile adult male dummy and also meet the low risk

deployment test for out-of-position occupants.

Commenters supporting a maximum speed of 40 km/h (25 mph) also argued that a 48 km/h (30 mph) maximum speed would require a return to overly aggressive air bags.

AAM stated that field evidence suggests that the current depowered air bags offer a high level of occupant protection in the real world while enhancing protection for at-risk groups. That organization stated that a return to 48 km/h (30 mph) unbelted testing would require increasing air bag inflator outputs in some vehicles, serving to increase the risk of harm to certain groups.

GM stated that it strongly recommends that "depowered" air bags continue to be the highest force level inflation boundary necessary to comply with Standard No. 208. It argued that given the positive indications from the field on the effects of depowering, and the continued positive indications in engineering laboratory testing, it would be a serious setback to motor vehicle safety should the agency send Standard No. 208 backwards by mandating a 48 km/h (30 mph) unbelted rigid barrier test.

Toyota stated that it believes a return to 48 km/h (30 mph) unbelted barrier testing would require an increase in air bag power in many models. That company stated that, given the lack of evidence that higher powered air bags are necessary, it strongly believes that reinstating this requirement would serve only to increase risk to at-risk groups, including out-of-position children and small statured adults.

DaimlerChrysler argued that a return to the unbelted 48 km/h (30 mph) barrier test would necessitate an increase in air bag inflator power, all things being equal. That commenter stated that staged inflators can reduce, but not eliminate, the risk to smaller and out-of-position occupants in lower speed deployments. DaimlerChrysler asserted that to assure compliance, it would expect the power level of the staged deployment necessary to meet the requirements of an unbelted 48 km/h (30 mph) impact to be comparable to the pre-depowering level.

IIHS stated that while NHTSA crash tests indicate that some vehicles may meet the unbelted 48 km/h (30 mph) test without adding more energy, it believes the agency must recognize that this may not be possible in all, or even most, cases. That organization stated that when compliance becomes difficult, it will be far too easy for manufacturers to meet the 48 km/h (30 mph) test by increasing air bag inflation energy (or the second stage of the air bag).

NTSB stated that it is concerned that the 48 km/h (30 mph) unbelted barrier test could result in a return to higher energy air bags.

Recognizing the significant disagreement among commenters concerning whether there should be a return to the 48 km/h (30 mph) test, a broad range of commenters supporting a 40 km/h (25 mph) test argued that the solution should be for the agency to adopt a 40 km/h (25 mph) test in the current rulemaking, and defer any future consideration of a 48 km/h (30 mph) test. As part of this process, they recommended that NHTSA expedite a focused examination of frontal crashes with fatalities to determine, for vehicles with depowered air bags and the latest generation of advanced air bags, how people are dying in these crashes. A 48 km/h (30 mph) test would be considered further if scientific evidence indicated that the 40 km/h (25 mph) test resulted in inadequate protection. Supporters of this approach included NTSB, IIHS, AAM, the National Safety Council, the American Trauma Society, and the National Association of Governors' Highway Safety Representatives. AAM stated that it was committing to provide additional resources for a major real-world data gathering program to provide a greater factual basis for future air bag rulemakings.

*Commenters supporting 48 km/h (30 mph).* Safety advocacy groups supporting a maximum test speed of 48 km/h (30 mph) argued that it would result in higher life-saving benefits than a 40 km/h (25 mph) speed.

These commenters emphasized that half of all fatalities in frontal crashes occur at delta Vs above 48 km/h (30 mph). Parents argued that a 48 km/h (30 mph) test speed is very typical of potentially fatal crashes since it is in the middle of the crash speeds that cause fatalities. That commenter also argued that air bag systems certified as meeting the injury criteria at the higher speeds proposed in the rule will have greater efficacy in severe frontal collisions than would air bags certified as complying at some lesser speed.

CAS stated that the 5 mph difference between 40 km/h (25 mph) and 48 km/h (30 mph) is substantial. It stated that a 48 km/h (30 mph) barrier crash is 40 percent more severe than a 40 km/h (25 mph) crash. It also stated that NHTSA data show that almost 20 percent of occupant fatalities in frontal crashes occur between 40 km/h (25 mph) and 48 km/h (30 mph) delta V.

Public Citizen stated that real world driving conditions require the return to a 48 km/h (30 mph) test. That organization stated that these conditions include higher speed limits, as well as the prevalence of vastly increased numbers of SUVs and LTVs designed with stiff front ends. Public Citizen stated that the stiffness of these vehicles, as well as other factors including higher mass, transmit increased forces to passenger cars in crashes.

Public Citizen also argued that over the past 30 years, Americans have used the 48 km/h (30 mph) rigid barrier test as the litmus test for a vehicle's crashworthiness. It noted that other motor vehicle safety standards are based on a 48 km/h (30 mph) test. Public Citizen stated that if the 48 km/h (30 mph) test were dropped, the public would view the decision as a step backward.

Public Citizen stated that one indicator of the inadequacy of a 40 km/h (25 mph) test is a statement by GM in the 1980's that it could pass an unbelted 40 km/h (25 mph) test with "friendly interiors" and no air bag at all.

CAS also stated that a 40 km/h (25 mph) unbelted test, even if coupled with a 56 km/h (35 mph) belted test, is but a slight variation of GM's proposal to Secretary Dole in 1984 for a 40 km/h (25 mph) unbelted and 48 km/h (30 mph) belted standard. CAS argued that if a car with friendly interiors could meet a 40 km/h (25 mph) barrier test in 1984 without an air bag, as GM suggested then that it could, then the addition of a cosmetic air bag would enable a vehicle to meet Standard No. 208 today, even with its revised injury criteria.

These commenters also cited the agency's estimates in the PEA that a 40 km/h (25 mph) test speed could result in 214 to 397 fewer lives saved each year.

These safety advocacy groups also argued that there is no justification to reduce the longstanding 48 km/h (30 mph) test speed and that such a reduction would be inconsistent with the TEA 21 requirement to improve protection of occupants of different sizes, belted and unbelted.

CAS argued that reducing the unbelted test speed to 40 km/h (25 mph) would decrease the level of protection for unbelted occupants who are involved in moderate to high speed collisions. According to that commenter, Congress cannot possibly have envisioned a backward step as an improvement to safety when it mandated that the advanced air bag rulemaking take place.

Public Citizen stated that the whole point of upgrading Standard No. 208 is

to ensure that automakers make better air bag restraint systems and that the standard should reflect as much as possible the protection needed in real world crashes.

According to Public Citizen, a 48 km/h (30 mph) unbelted barrier test would force manufacturers to incorporate more advanced technology. Public Citizen argued that without the additional challenge of the 48 km/h (30 mph) unbelted test, the automakers would have little motivation to move forward technologically in the future.

These commenters strongly disagreed with the arguments of the industry and some others that a 48 km/h (30 mph) standard would require overly aggressive air bags or not be possible to meet for both 50th percentile adult male dummies and 5th percentile adult female dummies.

Parents stated that the industry's rationale for a 40 km/h (25 mph) maximum speed is that the traditional 48 km/h (30 mph) speed compels production of air bag systems that are necessarily and unavoidably dangerous for small occupants in lower speed collisions. That organization stated that it strongly disagrees with this position. According to Parents, this position ignores the outstanding safety record of many well designed air bag systems that have complied with the 48 km/h (30 mph) requirement over the years. Parents also stated that this argument does not take into account advanced air bag technologies, the technologies that the advanced air bag rule is supposed to foster.

Parents also argued that the SNPRM rebutted the industry's argument that adoption of a 48 km/h (30 mph) test speed would necessarily require vehicle manufacturers to revert to excessive deployment forces found in many systems prior to sled testing. Parents stated that the agency pointed out that virtually all of the depowered air bag systems it tested still passed the 48 km/h (30 mph) test. That organization also stated that compliance margins were fairly wide and typically as wide as margins used by industry in complying with the 48 km/h (30 mph) test. Parents stated that for systems that don't meet the 48 km/h (30 mph) test, development of advanced technologies would allow these vehicles to also meet the test.

Consumers Union argued that the agency's testing of 13 vehicles with redesigned air bags leads it to conclude that even before the comprehensive redesign in air bag systems contemplated in this rulemaking, a wide variety of vehicles with depowered air bags already can pass the 48 km/h (30 mph) unbelted test. That organization stated that, contrary to the industry argument, air bags in many varieties of vehicles apparently do not need to be repowered or made "overly aggressive" in order to pass the 48 km/h (30 mph) test.

Consumers Union also stated that in NHTSA tests, two of four vehicles tested, the MY 1999 Saturn and MY 1998 Taurus, passed all the injury criteria for the driver and passenger using unbelted 5th percentile adult female and 50th percentile adult male dummies in 48 km/h (30 mph) rigid barrier tests. That organization argued that if these vehicles can pass these tests even before they have been redesigned to meet a revised Standard No. 208, other vehicles can be engineered to do so as well. These tests were also cited by other commenters supporting a 48 km/h (30 mph) standard.

Public Citizen argued that any trade-offs between meeting requirements for the 5th percentile adult female and 50th percentile adult male dummies can be overcome with the right combination of new technologies. Public Citizen cited dual or multi-level inflators, innovative folding patterns and bag shapes, lighter weight fabrics, tethers, pedal extenders, moving modules, deep dish steering wheels, collapsible steering columns, knee bolsters, stitching that keeps bags narrow to protect in low-level inflation and separates to protect occupants in higher impact crashes, top mounted vertically deploying air bags, chambered air bags (in effect, a smaller bag inside a larger one), and occupant position sensors that adjust deployment level or suppress deployment altogether.

Public Citizen also stated that the new test requirements, including static and dynamic tests using infant, child and small adult size dummies, already address the manufacturers' concerns regarding the "excessive" power of air bags in low severity crashes.

Public Citizen expressed concern about the suggestion of some commenters that more data be collected before any decision is made to return to a 48 km/h (30 mph) test. It argued that this was an excuse to delay a safety standard and that there is plenty of real world experience with the 48 km/h (30 mph) test because it was in effect from 1987 to 1997 and because most 1998 and 1999 models continued to comply with that test. Public Citizen argued further that there is a lack of data about a 40 km/h (25 mph) test since there never has been such a test requirement. It stated that the risky decision on this rulemaking would be to lower the test speed to 40 km/h (25 mph).

Public Citizen stated that it believes the driving force behind the auto industry's support for a 40 km/h (25 mph) test is that they want to avoid the expense of designing energy absorbing structures for their SUV and light truck vehicles. It also argued that if the agency finds that the 48 km/h (30 mph) test is too forceful, it has the obligation to require vehicle manufacturers to inform all current owners of 48 km/h (30 mph) air bag compliant vehicles of this fact and require the companies to recall and correct them.

Syson-Hille and Associates presented an analysis of the history of air bags which it argued shows that the fatalities that have been caused by air bags are the result of poor air bag designs and not the 48 km/h (30 mph) barrier test.

3. Response to Comments on Maximum Test Speed

Because the selection of the maximum test speed for the unbelted barrier test represented the primary issue in the SNPRM on which there was significant disagreement among the commenters and drew a significant amount of public interest, we presented a full discussion of the rationale for selecting 40 km/h (25 mph) early in this document. In this section, we provide a specific response to the public comments on that issue, especially those comments which supported a 48 km/h (30 mph) test speed.

As indicated by the discussion we presented earlier in this document, we agree with a number of the arguments made by commenters supporting a 48 km/h (30 mph) test. We agree that a 48 km/h (30 mph) test would not require any kind of general "repowering" of air bags. We also agree that there are potential disadvantages associated with adopting a 40 km/h (25 mph) test, the most significant being that there could be significantly reduced safety benefits if manufacturers engaged in significant and widespread further depowering.

However, there are important areas where we differ with the commenters supporting a 48 km/h (30 mph) test speed.

First, we believe that setting the maximum speed at 48 km/h (30 mph) during the TEA 21 phase-in period, as advocated by these commenters, would not allow manufacturers to focus initially on risk reduction, would not give the manufacturers as much flexibility in simultaneously improving high speed protection and risk reduction, and would not allow advanced air bag technologies to mature and manufacturers to gain experience with them before requiring the extensive use of these technologies.

While these disadvantages would be partially mitigated by setting the

maximum speed at 40 km/h (25 mph) for an initial period and at 48 km/h (30 mph) thereafter, this approach would place a premium on our being able to project accurately the pace of development and the effectiveness of advanced air bag technologies. Depending on how advanced air bag technologies developed, this approach would still give the manufacturers less flexibility in simultaneously improving high speed protection and risk reduction.

We believe that these uncertainties associated with advanced technologies, particularly the more complex ones, must be considered in selecting the maximum test speed. While we agree that many of the limitations associated with dual level inflators can be overcome by such features as multi-level inflation, chambering, and real time occupant position sensing, we believe there are significant uncertainties as to how quickly these more complex technologies can be implemented. There are advantages to vehicle manufacturers initially implementing simpler advanced technologies and learning from that experience before moving on to the more complex technologies.

As discussed earlier, particularly given the risks that the first generation of air bags posed to out-of-position children and small adult females, and the reaction of the public to those risks, it is very important that advanced air bags be properly designed from the very beginning. Air bags have proven to be highly effective in saving lives. However, if advanced air bags proved to be unreliable, or to pose significant risks to out-of position children and small adult females, the public acceptability of air bags would be put at risk. For these reasons, we believe that, in selecting a maximum test speed, the uncertainty associated with meeting the challenge of simultaneously minimizing risk and improving protection is best resolved in favor of minimizing risk, as long as there is good reason to believe that it is unlikely that vehicle manufacturers would reduce the overall level of high speed protection being provided today.

A second key area where we disagree with the commenters supporting a 48 km/h (30 mph) standard concerns the type of air bag system that would be produced under a 40 km/h (25 mph) standard. It is our view that the air bags most likely to be produced under a 40 km/h (25 mph) standard would offer at least as much overall high speed protection as the current redesign air bags. While manufacturers might make some adjustments in providing high speed protection for different size occupants, we believe it is unlikely that they would reduce the overall level of protection, much less switch to some kind of new, hypothetical air bag design that might minimally pass the 40 km/h (25 mph) test, but provide little or no protection to unbelted occupants in higher severity crashes.

There are several reasons for this belief. First, the record shows that vehicle manufacturers did not respond to the flexibility provided by the sled test by providing air bags that minimally complied with the sled test. They did not depower their air bags as much as they could have, and, for the vast majority of their vehicles, they continued to provide air bags that passed the 48 km/h (30 mph) test with the 50th percentile adult male dummy.

Second, the vehicle manufacturers have specifically committed to not reducing high speed protection of air bag systems through significant and widespread depowering. See letter from AAM and AIAM dated April 4, 2000 (Docket NHTSA–99–6407, item 126).

Third, a 40 km/h (25 mph) maximum test speed does not create any significant cost incentive for vehicle manufacturers to provide reduced protection compared to a 48 km/h (30 mph) maximum test speed. As discussed in the FEA, we believe that costs are essentially the same for both test speeds. We also note that the vehicle manufacturers have stated that regardless of whether the maximum test speed is set at 40 km/h (25 mph) or 48 km/h (30 mph), they will employ the same technology on vehicles.

Fourth, there are other constraints that discourage significant further depowering. AAM and AIAM stated that air bag power cannot be significantly reduced and still permit air bags to perform well in the 56 km/h (35 mph) belted NCAP tests. Those tests are the same as the 56 km/h (35 mph) belted tests that will be added to Standard No. 208 during the second phase-in established by this rule. We note that the need to perform well in angle tests in the 40 km/h (25 mph) unbelted rigid barrier test will help ensure that vehicle manufacturers do not inappropriately shrink the size of current air bags.

Fifth, as discussed earlier in this document, the vehicle manufacturers are already introducing new technologies that enhance protection and/or reduce risk, even though these technologies are not needed to meet current requirements.

Public Citizen, CAS and the Consumer Federation of America argued that we should not rely on manufacturer representations that they will not further depower their vehicles. These commenters stated that there can be no enforcement of a promise, that what is in the rule is what the companies will comply with, and that anything else is illusory.

Although our conclusion that vehicle manufacturers are unlikely to reduce the overall level of high speed protection provided by MY 1998 and MY 1999 redesigned air bags rests in part on the representations of manufacturers, it is primarily based on factors other than promises. For all of the reasons discussed above, we believe that the manufacturers are, in fact, in a situation where prudent judgment dictates retaining the current overall level of protection in high speed crashes.

We also plan to monitor how vehicle manufacturers respond to the advanced air bag mandate. If they should change their current plans and take actions that reduce the overall level of protection, we will respond appropriately. The possibility of rulemaking, including the reduced flexibility that could accompany a 48 km/h (30 mph) maximum test speed, is another incentive for vehicle manufacturers not to take such actions as they design their advanced air bags.

As to Public Citizen's argument that vehicle manufacturers support a 40 km/h (25 mph) maximum test speed because they want to avoid the expense of designing energy absorbing structures for SUVs and light trucks, we note that while such design changes would make it easier to pass a 48 km/h (30 mph) test, it is by no means clear that the higher test speed would require such changes. Moreover, we note that IIHS said in its comments that adding the 56 km/h (35 mph) belted NCAP test to Standard No. 208 could encourage vehicle manufacturers to soften the crash pulses of SUVs and light trucks.

We also disagree with the suggestion of some commenters that TEA 21 precludes us from establishing a maximum test speed below 48 km/h (30 mph). This view is based on the argument that any speed below the old 48 km/h (30 mph) level cannot be considered to "improve occupant protection," as required by TEA 21.

This argument fails to consider the major differences between the older unbelted rigid barrier tests and the unbelted rigid barrier tests required by this new rule. The older unbelted rigid barrier test used a single test dummy, representing a 50th percentile adult male, positioned well back from the air bag. The only measure of the effectiveness of the air bag was its effectiveness in a high speed crash into a rigid barrier. There was no assessment

of risks for occupants who might be positioned near the air bag. The injury criteria included assessments of injury likelihood to the test dummy's head, chest, and upper legs.

Today's rule mandates a much more comprehensive assessment of air bag protection. It adds an entirely new series of tests to assess low speed risk to occupants of many different sizes. For the first time in the history of Standard No. 208, the agency will use dummies representing a 12-month-old, a 3-year-old, a 6-year-old, and a 5th percentile adult female. All of these new dummies will be used in assessing risk of air bags. For the high speed test, performance will be evaluated using both the mid-sized male dummy positioned well back from the air bag *and* the new 5th percentile female dummy positioned as far forward as the seat allows. For both dummies in the high speed unbelted test, the limit on permissible chest responses has been made more stringent and an injury criteria has been added to assess the likelihood of neck injuries. Because of all these additional complexities and increased stringency, it is not correct to claim that setting the unbelted rigid barrier test speed below 48 km/h (30 mph) necessarily reduces protection to unbelted occupants.

In addition, we note that the purpose of the new belted offset test is to help ensure that vehicle manufacturers upgrade their crash sensing and software systems, as necessary, to better address soft crash pulses. These improved crash sensing and software systems will benefit both belted and unbelted occupants.

We also note that the suggestion that TEA 21 somehow requires an unbelted barrier test with a test speed not lower than 48 km/h (30 mph) is inconsistent with the language of that statute. In fact, TEA 21 expressly left open the possibility of our retaining the sled test. That test has a severity level significantly below that of a 48 km/h (30 mph) barrier test and a 40 km/h (25 mph) barrier test.

We also disagree with the argument of some commenters that if we decide that the 48 km/h (30 mph) test requires overly powerful air bags, we must require vehicle manufacturers to notify all current owners of vehicles with 48 km/h (30 mph) air bags of this fact and to recall and correct the vehicles. In the first place, while we are setting the maximum test speed at 40 km/h (25 mph), we have not determined that a 48 km/h (30 mph) test requires overly powerful air bags. Second, the fact that we are requiring manufacturers to provide improved air bags in new vehicles does not mean that earlier vehicles that do not meet the new requirements have a safety-related defect. If we were to accept that argument, every rulemaking we conduct to improve motor vehicle safety would result in earlier vehicles that did not satisfy the new requirements being considered to contain safety-related defects. This would be completely inconsistent with the statutory scheme set up by Congress. When the agency mandated automatic restraints, we did not require the recall of earlier vehicles without automatic restraints. Likewise, when Congress mandated air bags, we did not require the recall of earlier vehicles without air bags.

A more detailed discussion of a number of the comments concerning the unbelted test is provided in separate agency documents which are being placed in the docket. Of particular note are the Final Economic Assessment, prepared by our Office of Plans and Policy, and a paper prepared by our Office of Research and Development titled "High Speed Unbelted Test Requirements of FMVSS No. 208; Analysis of Issues Raised by Public Comments."

*D. Other Issues*

1. Location of 5th Percentile Adult Female Dummy

In both the NPRM and the SNPRM we proposed conducting the barrier tests with the 5th percentile adult female dummy in the full-forward seat track position. We stated that we believe the full-forward position to be the worst case position for an individual exposed to a deploying air bag and the most demanding of air bag systems. We also acknowledged in the SNPRM that this position would rarely need to be used, particularly on the passenger-side. We requested comment on whether testing in a seat track position other than full-forward would adequately protect occupants of all sizes while allowing sufficient design freedom.

Consumers Union, CAS, and Advocates all supported our proposed seat track position. They cited the disproportionately high number of women 160 cm (5′2″) and under who have died as a result of a deploying air bag and argued that testing under this rule should be required under the most extreme conditions. CAS stated that the only condition under which the agency might consider an exception to this procedure is if adjustable pedals are present in the vehicle that would enable a typical small female to move away from the steering wheel hub. Public Citizen agreed with the agency's position in the SNPRM that if manufacturers can't provide protection in the full-forward position, they have option of moving that position back and making other adjustments, such as adjustable pedals, on the driver side.

The NTSB stated that it believed the full-forward position could be inadequate if an individual could not reach the pedals while sitting against the seat back. It argued that we should position the dummy relative to the accelerator pedal rather than the seat track.

Vehicle manufacturers, including AAM, DaimlerChrysler, Toyota and Honda, averred that the full-forward seating position was too extreme and unrepresentative of driving patterns in the real world. The manufacturers stated that a full-forward seat track could force manufacturers to move the seat track back, which could lead to less storage space, reduced ingress and egress space for rear passengers, and, in smaller vehicles, an inability to install properly rear facing safety restraints in the back seat. Manufacturers also contended that testing in the full-forward position could force them to design smaller air bags since there would be less room for inflation.

The primary argument driving the manufacturers' comments is their assertion that few people ever drive in the full-forward position, as evidenced by the UMTRI study, as well as informal studies of their own. DaimlerChrysler and Honda recommended that the seat track position for the 5th percentile female be in accordance with the vehicle manufacturer's 5th percentile female seating reference position.

We have decided to retain the requirement that the 5th percentile adult female dummy be tested in the full-forward position. As an initial matter, we ran 11 tests of production vehicles at 40 km/h (25 mph) or greater using an unbelted 5th percentile adult female driver and passenger in the full-forward seat track position in a perpendicular rigid barrier test. Of these 11 tests, nine vehicles passed all of the applicable injury criteria on the driver side (5 at 48 km/h (30 mph), 2 at 44 km/h (27.5 mph), and 2 at 40 km/h (25 mph)). On the passenger side, seven out of 11 passed all applicable injury criteria. We tested two vehicles in the same 48 km/h (30 mph) test, but with the seat moved back 7.6 cm (3 inches) from the full-forward position. We found that this was roughly consistent with the UMTRI seating procedure in one vehicle and significantly further back than the UMTRI positioning would have been for the other. Moving the seat 7.6 cm (three inches) back also placed the dummy's chest approximately 25 cm

(ten inches) back from the steering hub. While both dummies on the driver's side passed the applicable injury criteria, one dummy on the passenger side exceeded the maximum allowable values for failed chest g's and femur loads. We also found that during these tests, the dummy on the driver side could not always reach the accelerator pedal. This fact, along with the numerous phone calls the agency has received over the past few years, indicates to us that at least some individuals are driving with the seat in the full-forward seat track position. If a vehicle is designed to be used in a particular position, we believe it is reasonable to assume that the position will be used at least some of the time.

We are cognizant of the manufacturers' concern that today's rule may require them to limit the extent of seat track travel. To the extent this increases occupant protection, this would appear to be a positive move. We note that in some vehicles the seat will slide forward in order to ease access to the back seat, but will then lock into place somewhere further back on the seat track. Since today's rule would not require testing in a seat position that is not fixed in place when the vehicle is driven, we believe this type of design could continue to be used. Of greater concern is the claim that some smaller vehicles will no longer be able to accommodate rear facing child restraints in the rear seat. We strongly believe that in most instances manufacturers can and should design their vehicles to allow adult occupants to ride safely in the front seat and infants to ride safely in the back seat. However, we note that the need to place rear facing child restraints in the back seat may force the front seat passenger to pull the front seat full forward. In such a circumstance, the passenger will need the protection of a deploying air bag without being exposed to undue risk. This also applies to a passenger who moves the seat full forward because the rear seat is loaded with cargo. These two circumstances argue for, rather than against, the need to test the front seat in the full-forward position.

We have decided against adopting the NTSB's recommendation that the seating procedure be based on distance from the accelerator pedal rather than seat track position. Our test requirements must be objective. We believe linking the position to distance from the pedal could introduce too many ambiguities into the seating procedure for it to remain sufficiently objective.

2. Minimum Test Speed

In the SNPRM, we proposed that manufacturers would need to meet the unbelted rigid barrier test at any speed between 29 km/h (18 mph) and 40 to 48 km/h (25 to 30 mph). This range represents a significant change from the belted barrier test and previous unbelted barrier tests, which have required injury criteria to be met at any speed up to 48 km/h (30 mph).

GM and Ford supported the proposed lower test parameter 29 km/h (18 mph). AAM, DaimlerChrysler and Toyota supported a higher minimum test speed. VW and Honda supported a lower minimum test speed. Delphi urged the agency to return to its traditional "any speed between zero and" the maximum test speed, arguing that the minimum test speed will result in an unacceptable safety trade-off for individuals who could be aided by a deploying air bag in lower speed crashes.

The concerns of the vehicle manufacturers opposed to the 29 km/h (18 mph) lower limit revolve around their ability to meet both the low risk deployment tests at any speed up to 29 km/h (18 mph) and the high speed tests at any speed between 29 km/h (18 mph) and 40 to 48 km/h (25 to 30 mph). These manufacturers argued that the basic premise for dual-stage inflation systems is that the first stage can be tailored to reduce risk for children while offering protection for 5th percentile adult while the second stage protects the 50th percentile male occupant. According to the manufacturers, in many cases the first stage air bag will not be sufficient to satisfy the injury criteria in a test at 29 km/h (18 mph). In order to assure compliance with both the unbelted crash test requirement and a low risk deployment option utilizing a dual-stage air bag system, a manufacturer arguably would either have to drop the threshold for the second stage air bag close to 29 km/h (18 mph) to ensure compliance for the 50th percentile adult male or provide a higher-energy first stage inflator. The commenters asserted that if NHTSA were to impose the proposed speed range for the unbelted tests, we would create a situation that would make compliance with a low risk deployment option impossible, since it would not be possible to assure that only the first stage air bag deploys at 29 km/h (18 mph) for the out-of-position test. Since the reliability of dynamic suppression systems is still unproven, the application of a test requirement that precludes low risk deployment systems would create a problem at the driver position.

On the other end of the spectrum, Delphi has argued that allowing a minimum test speed for the unbelted barrier test may result in serious injuries that could otherwise be avoided. Delphi stated that while it recognized that the proposed minimum test speed was intended to discourage lower air bag threshold speeds, unbelted occupants without an air bag may exceed the neck injury criterion in typical vehicle impacts between 16 and 22.4 km/h (10 and 14 mph). Delphi believes that NHTSA's objective in encouraging higher air bag threshold speeds is the reduction of injury risk to out-of-position occupants, the same objective addressed by the proposed advanced air bag systems. If the proposed advanced air bag systems are truly effective, Delphi asserts, lower thresholds should mitigate the injury risk that current systems pose. Accordingly, Delphi recommended that vehicle speed ranges be changed to 0 to 40 km/h (0 to 25 mph) for unbelted occupants in all rigid barrier and oblique barrier tests.

We have decided to raise the minimum test speed for the unbelted test from 29 km/h (18 mph) to 32 km/h (20 mph) while decreasing the maximum threshold for the various out-of-position tests from 29 km/h (18 mph) to 26 km/h (16 mph). We believe that this difference in speed between the two tests will be sufficient to resolve manufacturers' concerns with the potential overlap of the low risk deployment and barrier tests. Today's requirement builds in a 6 km/h (4 mph) "grey zone" that will allow manufacturers to deploy both inflator stages, if needed, in all high speed tests, while preserving their ability to deploy only the first stage (or allow for deployment of a combination of benign stages) of the air bag in the low risk deployment tests. We are rejecting DaimlerChrysler's and Toyota's request that we test unbelted dummies only at 48 km/h (25 mph) because we continue to believe a range of speeds is necessary to adequately protect drivers and adult passengers.

As to Delphi's concern that vehicle occupants will be afforded inadequate protection in the real world because of a lower parameter on the unbelted barrier tests, we note that vehicle manufacturers must still certify compliance to the belted test at all test speeds from zero to 48 km/h (30 mph), and must satisfy the low risk deployment criteria for the 5th percentile adult female on the driver's side.

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**VII. Improving the Protection of Belted Occupants in Serious Crashes**

In the SNPRM, we proposed two crash test requirements, both of which would have to be satisfied, to improve the protection of belted occupants in serious crashes. The first was a belted rigid barrier test; the second was a belted offset deformable barrier test.

*A. Belted Rigid Barrier Test*

Standard No. 208 currently includes an up-to-48 km/h (30 mph) belted rigid barrier test (perpendicular and up to ± 30 degrees oblique to perpendicular) using 50th percentile adult male dummies. As indicated earlier, this test represents a vehicle striking a like vehicle moving at the same rate of speed.

In the SNPRM, we proposed to add use of the 5th percentile adult female dummy to this test, but only in the perpendicular mode. We proposed to limit use of this dummy to the perpendicular mode in light of our desire to avoid unnecessary test requirements and because we believed that if a vehicle can pass the perpendicular test with 5th percentile adult female dummies and the oblique tests with 50th percentile adult male dummies, it would also pass the oblique test using 5th percentile adult female dummies.

As noted above, we also indicated that if we reduced the maximum speed of the unbelted test to 40 km/h (25 mph), we might increase the maximum speed of the belted rigid barrier test from the current 48 km/h to 56 km/h (30 to 35 mph). This is the same speed at which vehicles with belted dummies are tested in existing NCAP tests.

The commenters on the SNPRM supported adding the 5th percentile adult female dummy to the existing belted rigid barrier requirements. Some commenters requested that we consider deletion of the existing belted oblique crash tests using 50th percentile adult male dummies. Honda stated that it believes that the unbelted oblique tests are sufficient to confirm that air bags offer sufficient protection for belted occupants in oblique crashes.

Most commenters that supported a 40 km/h (25 mph) unbelted rigid barrier test, including AAM, also supported increasing the maximum speed of the belted rigid barrier test from the current 48 km/h (30 mph) to 56 km/h (35 mph). However, these commenters urged that the 56 km/h (35 mph) belted rigid barrier test be phased in after the TEA 21 phase-in period. They also urged that the higher speed test initially be limited to use of the 50th percentile adult male dummy, for which there is a large amount of test data because of NCAP. They urged further that a separate rulemaking be conducted to determine whether it is practicable to meet this test requirement using 5th percentile adult female dummies.

IIHS stated that increasing the speed of the belted rigid barrier test to 56 km/h (35 mph) would accelerate the improvement of frontal crash protection afforded by light trucks. That organization stated that while many vehicles already perform well in the 56 km/h (35 mph) NCAP test, light trucks have been an exception. IIHS stated that their stiff frames and short front ends (relative to their mass) have led to short crash pulses that make it difficult to design effective, nonaggressive air bag systems. IIHS stated that it expects one result of subjecting all passenger vehicles to a 56 km/h (35 mph) belted requirement would be the softening of the front ends of light trucks. According to that organization, this would benefit not only the occupants of light trucks, but also the occupants of other vehicles with which the trucks collide. IIHS stated that to maximize the likelihood that structural changes, rather than more aggressive air bag systems, would be incorporated to meet the new requirements, a long phase-in period should be considered for light trucks.

While most vehicle manufacturers supported increasing the belted rigid barrier test speed to 56 km/h (35 mph), as long as long lead time is provided, there were exceptions. Volkswagen stated that it believes there is no safety justification for such an increase and that, on the contrary, there could be potentially significant disadvantages to motor vehicle safety. That company stated that the higher crash speed imposes significantly increased energy absorption requirements on vehicle structures and air bag designs, which would lead to more aggressive designs. Volkswagen stated that this would be counterproductive to the concern of vehicle aggressivity/compatibility in the vehicle fleet and protection for the small driver and out-of-position children.

After carefully considering the comments, we are adopting as final our proposal to use the existing 48 km/h (30 mph) belted rigid barrier test with some modifications. As an initial matter, we are requiring tests with the 5th percentile adult female dummy in the perpendicular mode. This will help ensure that vehicle manufacturers design air bags so as to improve protection to belted persons who sit in the full forward position, including short-statured adult female drivers.

We have also decided to accept the recommendation of some commenters to eliminate the existing belted oblique tests using 50th percentile adult male dummies. The primary purpose of the oblique tests is to ensure that air bags are sufficiently wide to provide protection if an oblique crash results in the occupant moving forward at an angle. We agree that the unbelted oblique tests are more stringent than the belted oblique tests in this respect, since the belts limit occupant movement, and that the unbelted oblique tests, which are being retained, will ensure that air bags are sufficiently wide to provide protection to both belted and unbelted occupants in oblique crashes.

We will require vehicle manufacturers to begin certifying compliance with the belted 50th percentile adult male dummy at 56 km/h (35 mph) starting in 2007. Compliance will be required under a phase-in schedule that is fully discussed later in this document. We also plan to initiate rulemaking in the near future proposing to increase the upper limit for the belted rigid barrier test from 48 km/h (30 mph) to 56 km/h (35 mph) with the 5th percentile adult female dummy.

We are unconvinced that a 56 km/h (35 mph) belted rigid barrier test will require more aggressive air bag systems and vehicle frames, as VW has contended. The 56 km/h (35 mph) belted barrier test has been used in NHTSA's New Car Assessment Program (NCAP) since 1979, and most vehicles today meet the injury criteria in today's rule at that speed. NHTSA's NCAP test experience with vehicles certified to the sled test has demonstrated that when manufacturers "depowered" their air bags, the vehicles performed as well in NCAP tests as they did previously. In an era when the government, the industry, and other groups are working hard to increase seat belt use among the general public, raising the belted test speed to 56 km/h (35 mph) for the 50th percentile test dummy is consistent with TEA–21s requirements to improve occupant protection for belted occupants. Testing at 56 km/h (35 mph) will result in manufacturers improving the combined performance of seat belts and air bags. Improving performance in this area can involve relatively simple changes in seat belt design, such as adding pretensioners or load limiters or modifying the belt system's elongation characteristics to interact more favorably with the air bag. As we are not requiring manufacturers to begin certifying any vehicles to this test speed before September 1, 2006, they have ample time to make changes to their

vehicles that do not involve increasing vehicle or air bag aggressivity.

*B. Belted Offset Deformable Barrier Test*

In the SNPRM, we proposed to add a new crash test requirement to Standard No. 208, an up to 40 km/h (25 mph) offset deformable barrier test using belted 5th percentile adult female dummies (belted offset test). We proposed this test in an attempt to ensure that vehicle manufacturers upgrade their crash sensing and software systems, as necessary, to better address soft crash pulses. Research conducted by Transport Canada has shown that one of the causes of adverse effects of air bags is late deployment of some air bags in crashes with soft pulses, and the proposed test was one that Transport Canada has been using in its research program. We proposed that the test be conducted with the driver's side of the vehicle engaged with the barrier.

Most commenters supported adding the belted offset test, although some urged that an out-of-position test for the passenger side be developed as an alternative to this test.

AAM stated that it supports the proposed test, but claimed that its added safety benefit is questionable. That commenter stated that the test offers no added safety benefit in a rulemaking which also includes requirements for belted and unbelted 5th percentile adult female dummy rigid barrier crash testing and protection against air bag-induced injuries with suppression or low risk deployment performance. AAM noted, however, that if a vehicle manufacturer selected the suppression presence option for all of the child dummies, there would be no requirement to address minimizing risks to out-of-position passengers larger than six-year-olds. AAM recommended that an out-of-position test for the passenger side using 5th percentile adult female dummies be developed and proposed in a future rulemaking as an alternative to this test.

AAM also argued that if a sensor system must detect and respond to a soft pulse in an offset deformable barrier regulatory test, it can result in designs with either low thresholds for deployment or in designs which have late deployments in the field. That organization also stated that offset testing with the proposed barrier is not ready for use for the full vehicle fleet in the United States. According to that organization, the European barrier used in the test was never designed for heavier SUVs and light trucks.

General Motors and Ford each supported adding the proposed belted offset test to Standard No. 208 at this time, but urged that a passenger side out-of-position test be developed to either replace it or be provided as an optional alternative to it.

Toyota stated that it generally accepts the proposed offset test as a means to assess sensor timing and out-of-position issues, but expressed concern about the appropriateness of the test for heavier vehicles like SUVs and light trucks. According to that company, these vehicles tend to either override the barrier or deform the face so badly that it essentially becomes an offset rigid barrier test, which does not represent actual car-to-car collisions in the real world.

CAS stated that the proposed test should be included in the final rule. That organization stated that because of the problems air bag crash sensors have encountered in being able to discriminate between low speed and high speed crashes, this test is necessary to adequately assess sensor performance.

CAS argued, however, that the test should be performed on both the driver and passenger side in order to prevent manufacturers from optimizing their vehicles solely on one side. That organization stated that if NHTSA adopts the test for the driver side only, a manufacturer might choose to add satellite crash sensors to the frontal crush zones of a vehicle only on the driver side. Advocates also expressed concern about requiring the test only with the driver side of the vehicle being struck.

Parents stated that the test should be conducted with unbelted as well as belted occupants, and that this part of the SNPRM improperly favored belted occupants over unbelted ones.

Delphi recommended increasing the speed range specified for the test to 0 to 48 km/h (30 mph) instead of 0 to 40 km/h (25 mph). That commenter noted that, for many vehicles, an air bag might not be required to satisfy the injury criteria at test speeds up to 40 km/h (25 mph). Thus, air bag systems might be designed with sufficiently high thresholds that they do not deploy in this test. Delphi stated that one of the objectives of the test is to evaluate performance in sensing threshold events, since there is a potential for occupants to be out-of-position when the air bag deploys in such situations. Delphi stated that it would be necessary to increase the maximum speed to 48 km/h (30 mph) to cover the sensing threshold for many vehicles and that the significance of the test would be greatly diminished if this is not done.

Consumers Union supported the addition of the proposed test, but urged that the test be conducted at 64 km/h (40 mph), instead of 40 km/h (25 mph). CU questioned how much this test will contribute when it is run at what it views as a low and unchallenging speed. Public Citizen also supported the addition of the test while stating that a higher speed test, as a supplementary test of structure, intrusion, and sensitivity, would be welcome.

NTSB expressed concern that inclusion of the offset deformable barrier test at the same time as advanced air bag technology is being developed might result in unforeseen problems. While that agency did not identify what those potential problems could be, it stated that it may be desirable to establish a separate schedule or a later phase-in.

DaimlerChrysler stated that it opposes inclusion of the proposed belted offset deformable barrier test in Standard No. 208. That company cited concerns about the European barrier not being appropriate for testing heavier vehicles such as SUVs and light trucks. DaimlerChrysler recommended that the test be removed since advanced air bags, by definition, will be designed to pose less risk to out-of-position occupants. As an alternative, that company recommended replacing the belted offset deformable barrier test with a low risk deployment test for the passenger side.

After carefully considering the comments, we have decided to adopt the belted offset test as proposed. We agree with the suggestion of several commenters that an out-of-position test using 5th percentile adult female dummies should be developed for the passenger side, and will conduct research on that issue. We note, however, that such a test would not necessarily serve as a replacement for a test that is intended to ensure improved crash sensing systems. We also agree with the suggestion of several commenters about the desirability of a high speed offset test to address intrusion and vehicle structure. We will continue to pursue our previously-announced plans to conduct separate rulemaking on the issue of whether to add a high speed offset test to Standard No. 208.

We would like to note again that the main purpose of the belted offset test, at the proposed range of speeds, is to help ensure that vehicle manufacturers upgrade their crash sensing and software systems, as necessary, to better address soft crash pulses. Improved sensing technology will be particularly important if manufacturers design

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vehicles with softer front ends to meet the 56 km/h (35 mph) belted rigid barrier test discussed earlier. As discussed in the September 1998 NPRM, research conducted by Transport Canada has shown that one of the causes of adverse effects of air bags is late deployment of some air bags in crashes with a "soft crash pulse." In order to reproduce the softer, longer duration crash pulse, it selected the 40 percent offset barrier. It conducted crash tests into the barrier at 8 km/h (5 mph) increments up to 40 km/h (25 mph).

Transport Canada found that at 40 km/h (25 mph), the air bag typically deployed and was sometimes so late that the test dummy would be right on the steering wheel at that time, a "worst case" condition. We noted in the NPRM that the problem of late deployment appeared to exist for only some vehicles. We noted further that it could be addressed by such means as improving computer algorithms and adding crash sensors to a vehicle's crush zone to provide additional and earlier information to use in the decision-making algorithm.

A test that is intended to encourage improved sensing systems does not serve the same purpose as the low risk deployment test suggested by some commenters as an alternative or substitute. If, as a result of an improved sensing system, an air bag that previously would deploy after an occupant moves out-of-position now deploys in a timely manner, it can provide protection. However, if an air bag deploys so late that the occupant has already moved onto the steering wheel, it cannot provide protection. We encourage vehicle manufacturers to respond to this new test requirement by improving sensing systems and not just providing low risk deployment.

As to Delphi's recommendation that we increase the speed range to 48 km/h (30 mph), we note that such a speed is outside the scope of our proposal. To the extent that Delphi is suggesting that our test may not pick up a late deployment problem for vehicles that are designed with sufficiently high thresholds that the air bag does not deploy in this test, we acknowledge that in some instances a vehicle's air bag system may not deploy in this test. However, our experience has been that the vast majority of air bags deploy in offset barrier crash tests slightly below 40 km/h (25 mph). Additionally, when there is a deployment, we believe crash sensors are more rigorously tested in a 40 km/h (25 mph) test than in a higher speed test. We ran offset tests at both 40 km/h (25 mph) and 56 km/h (35 mph) prior to publication of the SNPRM. In reviewing the test results, we observed that the air bags in the 56 km/h (35 mph) tests deployed significantly more quickly than in the 40 km/h (25 mph) tests. Based on these observations, we believe that increasing the range of the offset deformable barrier test up to 48 km/h (30 mph) will not test the sensor technology any more stringently than an up to 40 km/h (25 mph) offset deformable barrier test since the 40 km/h (25 mph) test better replicates late deployments in the real world.

In response to Parents, we note that the improved sensing systems required by this test will benefit both belted and unbelted occupants. The fact that this test is conducted in the belted condition only is not intended to favor belted occupants over unbelted occupants. The belted offset test may represent the worst case scenario since the belt allows the dummy's head and neck to rotate into the path of the deploying air bag. This condition may better test for potential neck injuries than an unbelted test. Additionally, some tests, such as the oblique tests, will be conducted only with unbelted occupants. We have designed the overall matrix of tests to meet the need for safety for all occupants, belted and unbelted, while avoiding unnecessary tests and compliance costs.

We are not adopting the suggestion made by some commenters that the test be conducted both with the driver side of the vehicle engaged with the barrier and with the passenger side of the vehicle engaged with the barrier. We believe that testing with the driver side of the vehicle engaged with the barrier will be sufficient to help ensure that vehicle manufacturers improve their sensing systems.

We recognize that this test, like any other, has limitations. For example, the test represents only one of many types of soft pulses, and one specific offset configuration. While it would always be possible to identify additional tests that represent potential real world situations, we must strike a balance between ensuring that there are sufficient tests to meet the need for safety and avoiding unwarranted compliance burdens. We believe that the addition of this test with only the driver side of the vehicle engaged with the barrier strikes this balance. However, we will monitor future air bag system designs and will consider changing this decision if we find that manufacturers are implementing sensor systems that optimize performance only for impacts into the driver's side of the vehicle.

We believe that the concerns expressed by commenters about the appropriateness of the test barrier for heavier SUVs and light trucks are not significant with respect to a test conducted at speeds up to 40 km/h (25 mph). Even if bottoming out occurs, the test still represents a relatively mild crash, and air bags should be designed to provide appropriate performance under a wide range of conditions.

Similarly, we believe that AAM's concerns that an offset test can result in designs with either low thresholds for deployment or in designs which have late deployments in the field are not relevant to a test conducted at speeds up to 40 km/h (25 mph). As noted earlier, the vast majority of existing air bag systems deploy in offset deformable barrier tests below 40 km/h (25 mph). We will consider these concerns further if we separately propose to use the European barrier in a high speed offset test.

As to NTSB's concern that adding this test at the same time as requiring advanced air bags may cause unforeseen problems of an unspecified nature, we note that vehicle manufacturers have been working to address the problem identified by Transport Canada for several years. Moreover, we believe that advanced air bag systems should easily be able to meet this requirement.

## VIII. Minimizing the Risk of Injuries and Deaths Caused by Air Bags

The one fact that is common to all persons who are at risk from air bags is that they are extremely close to the air bag at time of deployment. Behavioral changes, such as ensuring that children ride in the back seat and that all occupants are properly restrained, can sharply reduce the number of persons who are in such positions.

However, to minimize air bag risks for the remaining persons who are most likely to be close to the air bag at time of deployment, one of two things must be done: either air bag deployment must be suppressed, or the air bag must be designed to deploy in such a manner that it does not cause a significant risk of injury to persons in such positions. Each of the technologies to minimize air bag risks follows one of these approaches.

As we developed test requirements to minimize air bag risks, we needed to account for the fact that the persons who are potentially at risk vary from infants to adults, and have different potentials for injury. We therefore found it necessary to develop requirements using a variety of test dummy sizes. Moreover, since we wished to avoid requirements that are unnecessarily design-restrictive, it was necessary to develop a variety of testing options that

account for the kinds of effective technological solutions that are under development.

We note that it was never our intention to limit manufacturers to using systems that provide only suppression, where appropriate, or low risk deployment, as opposed to systems that may combine suppression and low risk deployment. Moreover, we recognize that there may be safety benefits to using a combination of approaches and technologies.

Even looking at suppression systems alone, the use of multiple technologies may provide benefits. For example, manufacturers might combine weight and pattern sensing to achieve greater reliability.

Similarly, the combination of suppression and low risk deployment may better achieve the goal of minimizing air bag risks. For example, as Toyota noted, a system designed to suppress the passenger air bag for children below a specified weight would not suppress the air bag for a young child seated on an adult's lap. However, low risk deployment might prevent serious injury in such a situation.

Because it is necessary to test the various types of suppression systems and low risk deployment systems differently, we proposed a variety of testing options that account for the kinds of effective technological solutions that are under development. Where more than one option is specified, a manufacturer must meet at least one option; nothing precludes the manufacturer from meeting more than one. The issue of certifying compliance to more than one option is discussed later in this document.

Each of the test requirements we proposed in the SNPRM is discussed below.

*A. Safety of Infants*

Infants in rear-facing child safety seats (RFCSS) and in convertible child restraints in the rear-facing mode are at significant risk from deploying air bags, since the rear-facing orientation of the child seat places their heads extremely close to the air bag cover. This is why we emphasize that infants in these restraints must never be placed in the front seat unless the air bag is turned off. While the current warning labels and educational campaigns have dramatically reduced the number of fatalities to infants over the past two years, we recognize that there are still some parents who ignore this advice and place their children at grave risk from a deploying air bag. SCI data shows that some infant fatalities have occurred because parents did not place their child in a RFCSS properly.

In the SNPRM, in order to address the risks air bags pose to infants in child restraints designed to be used by them, we proposed two alternative test requirements, the selection of which would be at the option of the manufacturer. The two manufacturer options were: (1) Test requirements for an automatic air bag suppression feature or (2) test requirements for low risk deployment involving deployment of the air bag in the presence of a 12-month-old Child Restraint Air Bag Interaction (CRABI) dummy in a RFCSS or convertible child restraint in the rear-facing mode.

1. Option 1: Feature (*e.g.*, Weight or Size Sensor) That Suppresses the Air Bag When an Infant Is Present

We proposed that if the automatic suppression feature option were selected, the air bag would need to be suppressed during several static tests using, in the right front passenger seat, a 12-month-old child dummy in child restraints designed to be used for infants. The restraints would be placed in several specified positions during the static tests. Manufacturers would be required to assure compliance using any of the child restraints included in sections B and C of the list of representative child restraints that we proposed to add as an appendix to Standard No. 208, as well as the car bed listed in section A. The list would be periodically updated to reflect changes in the types and designs of available child restraints.

In order to ensure that the suppression feature did not inappropriately suppress the air bag for small-statured adults, the air bag system would need to be activated during several static tests using a 5th percentile adult female dummy in the right front passenger seat. At the option of the manufacturer, human beings could be used in the place of the 5th percentile adult female dummy. We proposed to permit manufacturers to use human beings in light of concerns that current dummies may not be sufficiently human-like to be recognized by some of the advanced technologies under development. The issue of permitting manufacturers to certify to suppression requirements using human beings is discussed in greater detail later in this notice.

AAM, GM, Toyota, Isuzu and DaimlerChrysler all argued in their comments that the static suppression tests to protect infants were too burdensome, notwithstanding our reduction of the number of child restraints that the agency would use in compliance testing. Concerns were raised in particular about the range of seat back angles and seat track positions, as well as the placement of a blanket on the restraints and testing with the handle and sunshield in a full-up and full-down position. The commenters also recommended that they only be required to assure compliance using a limited number of restraints in each section of the appendix (between one and three). Isuzu further argued that tests should only be conducted with belted restraints. Most of these arguments were repeated in comments on suppression testing for the 3-year-old and 6-year-old children.

David Breed and IEE offered comments on the technology available for the static suppression systems. David Breed argued that the testing of convertible infant seats in a forward-facing mode would effectively eliminate the low risk deployment option for older children because manufacturers would be forced to rely on a weight-sensing system. According to that commenter, such a restriction could lead to safety trade-offs for older children who could benefit from a benignly deploying air bag.

IEE argued that by testing suppression systems with a variety of child restraints, we are encouraging the use of discriminating systems rather than a non-discriminating system like a universal tag. IEE asserted that the non-discriminating systems are significantly more reliable than any discriminating systems currently available. The possibility that a non-discriminating system, like the Mercedes Baby-Smart, could easily resolve problems with suppression technology was echoed by DaimlerChrysler.

We note that testing performed by NHTSA at VRTC subsequent to publication of the SNPRM demonstrated that it is difficult to place some child restraints usable by infants in several of the proposed positions in some circumstances.

The first such position is testing the unrestrained child restraint at any angle plus or minus 45 degrees from the vehicle seat's longitudinal plane. While achieving this position may be possible in vehicles that do not have contoured seats, in several of the vehicles we examined, the RFCSS flipped toward the center of the seat. As a practical matter, we do not believe parents or caregivers are likely to place a child restraint on the seat at a 45 degree angle. We believe the restraint would be placed roughly along the longitudinal plane, facing either the seat back or the

windshield. Accordingly, we have revised this test procedure to specify placement only at zero degrees of the longitudinal plane.

The proposed position which specified that the restraint be tipped to rest on the dashboard was also difficult to achieve. The intent behind the test was to mimic a situation where, through pre-crash braking, a child restraint slides forward and flips onto the dashboard. Our SCI investigations have reported several instances where this type of movement has occurred, with devastating consequences for the child in the child restraint.

However, this position does not test a condition for which static suppression systems are designed. Rather, such a position is one that would be appropriate as the final position in a test of a dynamic suppression system. We believe static suppression systems should be designed to classify occupants and to address positions where parents or caregivers place infants under normal driving conditions. It is exceptionally unlikely someone would drive with an infant's head wedged between the dashboard and the child restraint. We note, however, that the likelihood of a static suppression system failing to protect an occupant who slides into the proposed position during a crash is extremely remote since static suppression systems will either be set once the engine is turned on and not change regardless of the circumstances of the crash, or will have a cycling function in which the presence of the child seat will be read periodically, allowing a time history of the child seat position. Additionally, the presence of a child seat that is precariously placed on the edge of the vehicle seat would likely be construed as an empty seat. Most manufacturers have indicated that their systems will default to a no-fire condition if the sensing system perceives that the vehicle seat is unoccupied. Finally, this position would not test a static suppression system in an objective manner, as evidenced by the difficulties we experienced in placing the infant seat in the proposed position. Accordingly, we have eliminated this test requirement.

The third condition which proved problematic in some instances was placement of the restraint with the vehicle seat in its full forward position. In smaller vehicles, the restraints often could not be placed in the front seat with the seat full forward. This was a particular problem with convertible restraints, which can be considerably larger RFCSSs. In some instances, the restraint hung suspended between the dashboard and the seat back. In other cases, the restraint had to be positioned at a severe angle in order to achieve contact with the seat cushion. Again, we do not believe parents or caregivers are likely to place a child restraint in a position where the restraint either tips forward onto the seat or where the restraint does not make any contact with the seat. Changes to the test procedures to account for this situation are discussed below.

Toyota and GM argued that the proposed requirements specifying testing of the restraints at any seat track position and at any seat back angle between the nominal design position and 25 degrees rearward would require up to 40,000 different tests to assure compliance. We believe this argument severely overstates the situation. As long as the restraint fits in the vehicle interior, a suppression system that is entirely seat-based will be able to discriminate the presence of the restraint, regardless of the seat track position. Likewise a seat-based system will be able to detect the restraint regardless of whether the sunshield or handle is in an upright or stowed position or whether the restraint has a blanket on it.[23] Systems that could have difficulty detecting these different conditions are those which have sensors that are not completely incorporated into the seat. Such systems will need to be able to detect where the restraint is located in the vehicle and whether there are any potential impediments to accurately sensing the presence of an infant, like a sunshield, handle or blanket. However, these systems' ability to detect a sunshield, handle, or blanket should not be affected by the belted, or unbelted, condition of the child restraint.

In view of the fact that parents or caregivers who continue to place infants in the front seat may position the vehicle seat in a variety of seat track positions, we continue to believe that there is a need to test suppression systems in a variety of seat track positions. However, we have also concluded that testing the systems at discrete points along the seat track should be sufficient to ensure adequate performance throughout the entire range of seat track positions. Therefore, we have decided to specify test requirements for suppression technology at the vehicle seat's full-rear position, mid-track position and full-forward position. If the child restraint strikes the instrument panel or another portion of the vehicle interior when the seat is in the full-forward position, the vehicle seat will be moved back to the next detent that allows for clearance, or, in the case of automatic seats, until a maximum of 5mm (0.2) of clearance is achieved. A more complete discussion of this issue is provided later in this document.

Finally, we determined that conducting tests using a belted child restraint with the vehicle seat back 25 degrees rearward of the seat back's nominal design position for the 50th percentile adult male was not always possible. As discussed later in this document, we have decided to limit the vehicle seat back angle for the infant suppression tests to the nominal seat back design position for the 50th percentile male.

We have decided against allowing manufacturers to certify to only a limited number of the seats listed in the appendix. The number of applicable seats has already been honed down considerably from what was proposed in the NPRM. A further reduction could effectively allow manufacturers to design suppression systems that would not protect infants in child restraints representing a reasonable range of such restraints on the market.

We have also decided to retain those test conditions involving unbelted restraints. Unfortunately, not everyone always installs child restraints (including RFCSSs) properly, as indicated by several fatalities in our SCI database. If we failed to test in unbelted conditions, suppression systems could be designed so that they only worked when the seat belt was fastened. Such a system could not protect these infants.

While we understand David Breed's concern about testing convertible restraints in a forward-facing position, this test requirement is necessary and need not preclude low risk deployment for older children. As an initial matter, current air bag designs pose a risk to infants seated in forward-facing convertible child restraints, as indicated by the SCI data. However, advanced designs which eliminate that risk could still be used, even if a manufacturer chose to suppress the air bag for infants in these restraints. For example, we believe manufacturers could design a system that suppressed the air bag based on weight and pattern recognition that is limited to the expected weights of very young children and child restraints designed for use by infants. It is possible

[23] We note that seat-based systems may, however, need to "read" the presence of a rear-facing infant restraint that has been stabilized with a rolled up towel or blanket in accordance with the restraint manufacturer's instructions. While we will not use such objects in conducting our compliance tests, the presence of a towel or blanket under the most rearward portion of the child restraint is a real world scenario which some seat-based systems may need to accommodate.

that in some instances this technology could also suppress for a slightly older child in a convertible child seat. However, the manufacturer could also design the air bag system to deploy at a level that is non-injurious to a small child. Certification could be based on the low risk deployment test, and the potential suppression for the older child would provide supplemental protection.

IEE and DaimlerChrysler may be correct that non-discriminating, tag-like systems could offer greater reliability than discriminating systems, assuming that the correct tagged child restraint is also used. However, such systems would not ensure safety for the numerous different child restraint designs and potential restraint positions that are used by the general public. Even making tags widely available, as DaimlerChrysler suggests, would not account for those individuals who do not have a tag on their particular child restraint, either because the restraint is not generally used in a given vehicle, or because they are unaware that the tags are available. Additionally, simply providing the tags would not assure that they were installed on the restraint properly or that the tag was properly aligned when the restraint was set in the vehicle seat.

Technology like the Mercedes BabySmart appears to provide a reliable method of preventing air bag deployments when used properly. While we do not believe that these types of suppression systems alone will adequately meet the needs of motor vehicle safety, we do believe that they remain an excellent supplement to other systems.

Further, belted tests conducted with child restraints that have the lower anchor attachments will need to be conducted both with the vehicle safety belt and, in vehicles with the corresponding anchors, with the attachments secured in the anchors with the safety belt unfastened. Such a requirement is necessary for various reasons. First, the anchors may fail to place sufficient weight on a seat to adequately test a suppression system. Second, a parent may fail to use the anchor system and use the belt system instead. Third, using a belt with the anchor system could result in damage to the system when the safety belt is cinched to 134 N (30 lb). Finally, the anchor attachments may prevent alignment of the child restraint along the defined vertical planes in low risk deployment tests. We note that Standard No. 213 does not contemplate seating systems where both the safety belt and the lower anchor attachments are used.

2. Option 2: Low-Risk Deployment for Infants in Rear-Facing Child Safety Seats

We proposed to require that, if the low risk deployment option were selected, a vehicle would be required to meet specified injury criteria performance limits when the passenger air bag is deployed in the presence of a 12-month-old CRABI dummy placed in a belted rear-facing child restraint, either a RFCSS or a convertible restraint. As with the proposed test requirements for the suppression option, manufacturers would be required to assure compliance using each child restraint included in sections B and C of the proposed list of representative child restraints, although not with the car bed identified in section A.

In the case of air bags with multiple inflation levels, the injury criteria performance limits would need to be met for any stage or combination of stages which may deploy in the presence of an infant in a rear-facing position in one of the listed restraints in a rigid barrier crash test at speeds up to 64 km/h (40 mph). Our intent was to cover all stages of inflation that could deploy in the presence of an infant in such a restraint.

TRW stated that the requirement that the air bag deploy at the highest output is inconsistent with low risk deployment. That company stated that this will force manufacturers to employ automatic suppression technologies. TRW stated that NHTSA's analysis shows little incremental benefit to children from the addition of suppression technologies. That company stated that NHTSA's analysis also ignores potential for reduction in protection for adult occupants. TRW argued that we should revisit the low risk option.

TRW also stated that if we do not revisit the low risk option, the final rule should be changed to accommodate unresolved technical issues with suppression technologies. That company stated that it has tested various suppression technologies with respect to their ability to classify accurately the proposed range of seating positions and seat belt cinching loads on the specified lists of car seats with pure weight and/or pattern sensing and found problematic issues with each technology.

DaimlerChrysler stated that it does not see any justification for running the threshold compliance test for low risk deployment at 64 km/h (40 mph). That commenter stated that since other test requirements are proposed at a maximum of 48 km/h (30 mph), this test should be run at 48 km/h (30 mph) also. DaimlerChrysler also argued that the proposed threshold compliance test was impracticable because it specified that testing could be conducted with child seats in any of the possible positions used for the suppression tests. That company stated that this would mean that five crashes would have to be performed for each child restraint on the list.

After considering the comments, we continue to believe that it is appropriate to require vehicles that are certified to the low risk deployment option for infants to satisfy the injury criteria for all stages of inflation that could deploy in the presence of an infant in a rear facing restraint. As we discussed in the September 1998 NPRM, a child in such a restraint would be extremely close to the passenger air bag in any crash, regardless of crash severity. This is not the case with persons in any other risk group. Moreover, manufacturers have been working on suppression devices for this risk group for the longest time, since this was the first risk group that was identified. Since suppression is available for this risk group and since there are no known benefits from deploying an air bag for this group, it is appropriate to expect advanced air bags to essentially eliminate risk of serious injury or fatality resulting from air bag deployment to infants in RFCSS. There is no reason to permit continued use of systems that place infants at significant risk of serious injury or death from the air bag in crashes of any severity level.

We do not believe that any reduction in safety to adults will occur from suppressing the passenger air bag for infants in RFCSS. While suppression of the passenger air bag for older children may raise the issue of a "gray zone" that could affect some adults, we do not believe that will be relevant to infant suppression technology.

We originally proposed to require low risk deployment for all stages of the air bag that may deploy in a crash. The modified proposal to which DaimlerChrysler objects was an effort to accommodate systems which might be designed to always provide a lower level of deployment in the presence of a rear facing restraint, regardless of crash severity.

We disagree with the argument that the proposed test procedure is impracticable. Because the low risk deployment test is only conducted in the presence of a belted child restraint, a manufacturer that designed a system that always provided a lower level of deployment in the presence of a rear facing restraint could determine what

level would deploy in a barrier crash test by means other than conducting barrier tests, *e.g.*, by testing the sensor system that determined whether such a restraint was present.

We note that we specified a barrier crash test at a speed up to 64 km/h (40 mph) because some manufacturers may adopt a threshold higher than 48 km/h (30 mph) for deploying the highest level of inflation for the belted condition. Since these restraints are ordinarily belted, a speed higher than 48 km/h (30 mph) is needed to ensure that we cover all stages of inflation that could deploy in the presence of an infant in such a restraint.

*B. Safety of Young Children*

Young children are at special risk from air bags because, when unbelted, they are easily propelled close to the air bag as a result of pre-crash braking. Their small size, weight and strength also makes them more vulnerable to injury when interacting with a deploying air bag. We strongly recommend that children through age 12 ride in the back seat, because the back seat is safer, whether or not a vehicle has air bags.

In the SNPRM, in order to address the risks air bags pose to young children who do ride in the front seat, we proposed requirements using both 3-year-old and 6-year-old child dummies. We proposed three alternative test requirements, the selection of which would be at the option of the manufacturer. Manufacturers could select different options for the 3-year-old and 6-year-old child dummies.

The three manufacturer options were: (1) Test requirements for a feature that suppresses the air bag when a child is present, *e.g.*, a weight or size sensor; (2) test requirements for low risk deployment involving deployment of the air bag in the presence of out-of-position 3-year-old and 6-year-old child dummies, and (3) test requirements for a feature that suppresses the air bag when an occupant is out of position.

1. Option 1: Feature (*e.g.*, Weight or Size Sensor) That Suppresses the Air Bag When a Child Is Present

Our proposed requirements for an air bag suppression feature (*e.g.*, weight or size sensor) that suppresses the air bag when a child is present were similar to the ones we proposed with respect to a suppression feature for infants. We proposed that if this option were selected, the air bag would need to be suppressed during several static tests using, in the right front passenger seat, a 3-year-old or 6-year-old child dummy. The child dummy would be placed in several specified positions during the static tests. Manufacturers would be required to assure compliance using every child restraint appropriate for a given dummy size included in the proposed list of representative child restraints. The air bag system would be required to be activated during specified tests using a 5th percentile adult female dummy.

We proposed to allow manufacturers to comply with and certify to these suppression requirements using children, instead of 3-year-old and 6-year-old child dummies. Adult females could also be used in the place of 5th percentile adult female dummies for the portions of those test requirements which make sure that the air bag system is activated for adults.

We proposed to permit manufacturers to use human beings to check suppression features in light of concerns that current dummies may not be sufficiently human-like to be recognized by some of the advanced technologies under development. For example, suppression devices that work by sensing the distributed weight pattern of a human being may not recognize the pattern of a test dummy. If a manufacturer selected this option, the suppression requirements would need to be met at each of the relevant positions for any human being within a specified weight/height range for 3-year-old and 6-year-old children, and the air bag system could not be suppressed for any human being within a specified weight/height range for 5th percentile adult females.

In the SNPRM, we emphasized that these tests simply involve a child or adult assuming specified positions in the vehicle, with a technician checking (typically by looking at a light) whether the air bag would be suppressed or not; these tests do not involve deploying the air bag or moving the vehicle. To ensure absolute safety, we proposed to require manufacturers selecting this option provide a method to assure that the air bag would not deploy during testing; such assurance could be made by removal of the air bag. The manufacturer would also be required to provide a method to assure that the same test results would be obtained as if the air bag had not been deactivated or removed.

By and large, the comments in response to this proposed requirement mirrored those already discussed under static suppression features for infants; *i.e.*, there are too many child restraints, too many angles and too many seat track positions. Additional concerns were voiced about the requirement that child restraints be cinched at a force up to 134 N (30 pounds). Additionally, TRW stated that the task of discriminating between a child weighing up to 66 pounds and a 110-pound adult, while seemingly trivial, becomes more difficult when one takes into account the addition of child seats and seat belt cinching loads.

For the reasons set forth in the prior discussion of the suppression tests for infants, we have decided to conduct tests with the vehicle seat in the full-rear, mid-track and full-forward positions. If the dummy, the child restraint, or the child's legs interfere with the instrument panel or other portion of the vehicle interior in the full-forward position, the vehicle seat will be moved back to the next detent that allows for clearance, or, in the case of automatic seats, until a maximum of 5mm (0.2 in) of clearance is achieved.

Likewise, the seat back angle will be the manufacturer's nominal design position for the 50th percentile male for all tests, including the test with the 5th percentile adult female, except the tests where the child is sitting on the seat and leaning against the seat back (S22.2.2.2 and S24.2.1). A fuller discussion of seat back angle is provided later in this document.

One test position for the 3-year-old child that we have modified is the position where the child is lying on the seat. While conducting tests at VRTC, we discovered that this position was problematic in vehicles with no middle seating position. The 3-year-old test dummy cannot assume a full fetal position in these vehicles. Accordingly, in our tests the dummy's legs and feet were not in contact with the passenger seat. We do not believe that the position needs to be included in the test matrix for a vehicle without a middle seating position because a child would not lie in this position for any length of time. However, in vehicles with a bench seat or with convertible bench seats, where the console can be converted into a middle seat, this position is a likely real world position. Accordingly, we have specified tests for this position only in vehicles with three designated seating positions in the front seat.

We have also dropped the static suppression tests with the 3-year-old and 6-year-old child dummies in the positions specified for the low risk deployment tests. Like the infant test where the child seat was flipped on to the instrument panel, we believe that these positions do not test a condition for which static suppression systems are designed; they are more appropriate as part of a dynamic suppression system that follows the trajectory of an occupant during a crash. Additionally,

we believe that any system that suppresses when the dummy is sitting on the edge of the seat with its spine vertical, a condition that is still required for both the 3-year-old and the 6-year-old, will respond no differently from when the dummy is placed in either of the low risk deployment options. Thus, even if the dropped tests did represent a position for which static suppression systems are designed, they would likely be redundant.

Numerous comments were received regarding the cinching procedures for safety belts on child restraints. We have decided to keep the up-to-134 N (30 lb) requirement. Belt systems that cannot be cinched up to this level of force will be cinched at as high a level as possible. In our testing at VRTC, we found that a 134 N (30 lb) tension can be easily achieved. While we continue to caution adults to place their children in the back seat whenever possible, a parent or caregiver who places a child in the front seat should be able to do so as safely as possible without shutting off any available suppression technology. We regularly encourage people to have their child restraints installed by individuals who have been trained to install these restraints properly. We also encourage parents to secure a child seat in a manner that eliminates slack between the restraint and the vehicle seat. We believe that it is appropriate to use a cinching level that can be achieved by an individual who knows how to properly install child restraints. However, we do agree with the commenters that the up-to-134 N (30 lb) tension range is inappropriate for belt-positioning booster seats, since a child could not sustain that amount of belt tension, even if it were possible to achieve with a test dummy. We are specifying that these restraints be installed, and that belts be used, in accordance with the restraint manufacturer's instructions.

Since the 6-year-old child dummy is not tested in child restraints other than booster seats, we believe that the majority of the manufacturers' concerns about the suppression-activation "gray zone" are largely resolved. The 6-year-old child dummy weighs only 23.4 kg (51.6 lb). Likewise, the weight range for the six-year-old child who can be used for compliance testing has an upper parameter of 25.6 kg (56.5 lb). Because of constraints in Standard No. 213, booster seats generally do not weigh more than 4.5 kg (9.9 lb). Accordingly, the combined weight of the child or dummy and the booster seat should still be significantly below the weight at which suppression systems will assure that air bags are activated to protect adult occupants. As discussed earlier, vehicles with child restraint anchors will need to be tested both with and without any available child restraint anchor attachments secured to the passenger seat.

2. Option 2: Low-Risk Deployment for Young Children

We proposed to require that, if the low risk deployment option were selected, a vehicle would be required to meet specified injury criteria performance limits when the passenger air bag is deployed in the presence of out-of-position 3-year-old and 6-year-old child dummies. We proposed that the test be conducted at two positions which tend to be "worst case" positions in terms of injury risk. In one of these positions, the dummy's chest is on the instrument panel; in the other, the dummy's head is on the instrument panel. We proposed more detailed positioning procedures for these two tests than for many of those proposed for the static suppression tests, since injury measures may vary considerably with position. Under our proposal, in the case of air bags with multiple inflation levels, the injury criteria would need to be met only for the levels that would be deployed in lower severity crashes; *i.e.*, the levels that would be deployed in crashes of 29 km/h (18 mph) or below.

As discussed earlier in this document, some commenters, including AAM and Toyota, argued that the combination of testing for low risk deployment for inflation levels that would be deployed in crashes of 29 km/h (18 mph) or below and testing to ensure protection in unbelted rigid barrier tests beginning at that same speed would limit design flexibility and discourage manufacturers from selecting the low risk deployment option. The reason for this is that the manufacturers claim it is difficult to design dual stage air bags that could both meet the low risk deployment requirements *and* the barrier crash test injury criteria, particularly given the gray zone in which either a low level or high level deployment may occur.

On a separate but related issue, AAM recommended that the crash test to determine the air bag deployment level to be used for the low risk deployment test be conducted with a belted dummy matching the size for which the low risk option is certified. AAM stated that this would allow manufacturers to utilize an occupant detection system to govern the deployment that would be used for the low risk deployment test.

TRW stated that the proposed injury criteria performance limits will make it very difficult to employ the low risk deployment option except in vehicles with unique geometry. That commenter stated that this would force the automobile manufacturers to employ suppression technologies.

After considering the comments, we are adopting the proposed low risk deployment tests using 3-year-old and 6-year-old child dummies, with two modifications. First, the positioning procedures for one of the out-of-position tests has been significantly simplified. A fuller discussion of the reason for this change is provided later in the document. Secondly, in order to avoid inadvertently discouraging the development of low risk deployment technologies, the injury criteria will need to be met, in the case of air bags with multiple inflation levels, for the levels that would be deployed in crashes of 26 km/h (16 mph) or below, as well as the relative timing of the multiple inflations, instead of crashes of 29 km/h (18 mph) or below. However, if the air bag did not deploy at all in crashes of 26 km/h (16 mph) or below, the injury criteria will need to be met using the lowest level of inflation.

We believe that this change, coupled with the one discussed earlier in this document to increase the lower end of the range of speeds for which the unbelted rigid barrier test is conducted from 29 km/h (18 mph) to 32 km/h (20 mph), will facilitate use of the low risk deployment option. As discussed earlier in this document, low risk deployment offers potential benefits over suppression, especially for children older than six years, and we wish to facilitate that option to the extent consistent with safety need. We also note that if manufacturers certify compliance for all levels of inflation that occur in crashes of 26 km/h (16 mph) or below, the same low risk levels of inflation are likely to occur in crashes slightly above that speed.

We are not adopting AAM's recommendation to specify that the crash test to determine the air bag deployment level to be used for the low risk deployment test be conducted with a belted dummy matching the size for which the low risk option is certified. The final rule specifies that this crash test be conducted with an unbelted 50th percentile adult male dummy in the mid-track seat position. An out of position occupant, by definition, would always be unbelted. Determining the level of inflation with belted occupants would allow manufacturers to place technology in a vehicle that would meet the low risk deployment test requirements, but would not adequately protect for the condition that is experienced in the real world.

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Additionally, while we are only testing the low risk deployment technology on the passenger side with three-year-old and six-year-old child dummies, a benign deployment in low speed crashes could provide ancillary benefits to larger occupants. We are concerned that using the child dummies to determine which stage or combination of stages of the air bag to deploy could unnecessarily limit the benefits of low risk deployment air bags.

As to TRW's concern that the injury criteria performance limits make it difficult to comply with the low risk deployment option, we wish to ensure that low risk deployment air bags truly are low risk. Thus, the injury criteria limits must be set at a stringent level.

3. Option 3: Feature that Suppresses the Air Bag When a Child Is Out-of-Position

As discussed in previous notices, we believe that a feature that suppresses the air bag when an occupant is out of position, either initially or because of moving into such a location during pre-crash braking, needs to be tested very differently from one that suppresses the air bag whenever a child is present. While various static tests can be used to determine whether the latter type of suppression device is effective, they would be of limited utility in testing a feature that suppresses the air bag when an occupant moves into an out-of-position location. This is because one of the key criteria in determining whether the dynamic out-of-position suppression feature is effective is timing; *i.e.*, whether the feature works quickly enough in a situation where an occupant is propelled out of position as a result of pre-crash braking (or other pre-crash maneuvers). We accordingly developed separate requirements for such dynamic suppression devices.

The development of requirements for dynamic suppression devices posed special problems, however. While much work is currently being done on the development of dynamic automatic suppression systems (DASS), the technology is still not mature. In addition, a number of different technologies are currently being considered. Each of these technologies has particular attributes which affect the appropriateness of the means used to evaluate its performance. Given these factors, we were unable to develop a complete set of performance requirements and test procedures that would be appropriate for the range of potential DASS designs.

Accordingly, we proposed to establish very general performance requirements for DASS and a special expedited petitioning and rulemaking process for considering procedures for testing advanced air bag systems incorporating a DASS. Target time limits for each phase of such a rulemaking were proposed. Anyone wishing to utilize such advanced air bags could develop test procedures for demonstrating the compliance of their particular DASS with the performance requirements and submit those test procedures to the agency for our consideration. If we deemed it appropriate to do so after evaluating the petition, we would publish a notice proposing to adopt the test procedure. After considering those comments, we would then decide whether the procedure should be added to Standard No. 208. If we decided to do so, and if the procedure were suitable for the DASS of any other vehicles, then the procedure could be used by the manufacturers of those vehicles as well as by the petitioner. We noted that we intended to minimize the number of different test procedures that are adopted for DASS and to ensure ultimately that similar DASS are tested in the same way.

Comments regarding DASS indicated general support for our proposal. Commenters addressing issues related to the DASS proposal included two manufacturers, DaimlerChrysler and GM, five suppliers, ASCI, Autoliv, Breed Technologies (Breed), Delphi and TRW, two trade groups, AORC and AAM, a public interest group, the Center for Regulatory Effectiveness (CRE) and one private individual (JCW). With one exception, JCW, all commenters agreed that the DASS requirements and test procedure proposed in the NPRM were unworkable and must be abandoned. Two commenters, Breed and ASCI, propounded the use of a sled test and disagreed with our judgment that development of a practical test procedure for evaluating DASS-equipped vehicles is not presently feasible.

Several commenters voiced strong reservations regarding the DASS proposal we put forth in the SNPRM. JCW objected to the elimination of the DASS out-of-position requirements. JCW argued that without some form of suppression to protect people who are in the immediate vicinity of an air bag because of pre-crash braking, the safety potential of advanced air bags will be lost. Breed and ASCI stated that sled tests which accurately reproduce the movements of unrestrained occupants in pre-crash braking are currently available and should be used as a compliance test for DASS systems.

One matter mentioned by a number of commenters concerned the confidentiality of information provided by petitioners seeking adoption and approval of a DASS compliance test procedure. AORC and AAM urged us to consider that manufacturers would be deterred from investing in DASS systems if the specifics of their proprietary technologies were published and made available to the public and to competitors. AAM suggested that this issue might be addressed by not requiring that the identity of the petitioner and the particular automobiles where a DASS system is to be installed be revealed to the public during the course of the petition and review process. Delphi and Autoliv contended that the proposed DASS petition procedures required the submission of too much proprietary information. In particular, Autoliv objected to the proposed requirements that petitioners must furnish a complete description and explanation of a DASS system and a complete description of the logic used by that system. CRE suggested that the only materials that need to be made public during the petition process are those that would allow for comment on the proposed test procedure and not on the specifics of the DASS system at issue. The organization strongly recommended that our final rule emphasize that the "proposed rule" that is being offered for public comment would consist only of a proposed test procedure that would not include the details of the technology used or the data submitted in support of the proposed test procedure.

In addition to concerns about confidentiality, a number of commenters offered remarks about the expedited rulemaking procedure we proposed for DASS systems. Several commenters requested that the expedited procedures proposed for DASS systems be expanded to include all advanced air bag technologies. Autoliv, DaimlerChrysler, Breed, AORC and Delphi also suggested that the expedited rulemaking procedure be expanded to allow the use of new technologies in areas other than dynamic suppression systems. In regard to the timing of the proposed procedure, AAM suggested that we adopt a procedural timetable similar to that already used for evaluating the adequacy of anti-theft devices under 49 CFR Part 543. AORC and CRE urged us to expedite the regulatory approval process to the maximum extent possible. CRE also suggested that notice and comment could be eliminated altogether. If, CRE contends, initial DASS rulemakings do not stimulate any substantive comments by the public, we

would then be in a position to dispense with traditional notice and comment as the procedure would be superfluous.

One commenter, GM, voiced substantial concerns about the effect that initial DASS rulemakings would have on subsequent petitions. In GM's view, the first successful DASS petitioner will define a large number of important conditions for DASS testing and test procedures. GM believes that there will be a very strong incentive for others in the industry to conform to the existing test procedure rather than develop a new or different technology, particularly because subsequent petitioners will face additional burdens in demonstrating that an existing DASS test cannot be used. GM urged us to use the traditional rulemaking process for the initial DASS petitions and provide adequate time for comment on any DASS proposal.

After review of the comments received in response to the SNPRM, we are adopting the proposal with few modifications. We have not been presented with, and are not aware of, any information indicating that any feasible test procedure now exists for a DASS system. We are also declining to expand the scope of the expedited petition process to other areas of Standard No. 208. Unlike other air bag technologies, DASS technology is still in the early stages of development. Other technologies are more mature, and developments within these areas may be adequately addressed through traditional rulemaking procedures.

The final rule makes several modifications to address confidentiality concerns. As the identity of the supplier or manufacturer would not be relevant to the evaluation of a test procedure and performance standard, we have modified section 552.13(e) to clarify that if a petitioner desires to have its identifying information withheld from public disclosure, it may request that the agency do so pursuant to 49 CFR Part 512. We have determined that the requirements outlined in section 552.14(b)(1) could be construed as demanding that all details of any algorithms and/or system logic be provided to the agency. Accordingly, the final rule provides that the description of the system logic may be limited to a flow chart or similar materials outlining the function of the system. We also wish to emphasize that pursuant to Part 512, petitioners may submit both confidential and non-confidential versions of their petitions and accompanying materials. These materials may include test films, printouts and similar data.

The final rule also makes slight modifications to the procedural timetable for the petition process. In order to alleviate the concerns raised by the precedential effect of the initial DASS petition, we have specified an extended comment period for such a petition. Section 552.15(c) of the final rule provides that we expect to employ a 30-day comment period in a DASS test procedure rulemaking. However, in the case of an initial petition or a petition raising particularly novel issues, we may provide 60 days for comments. Offering an extended comment period will provide interested parties with additional time to evaluate the proposed test procedure and its implications, particularly in regard to suitability for other DASS concepts or designs under development.

We disagree with the argument that without some form of suppression to protect people who are in the immediate vicinity of an air bag because of pre-crash braking, the safety potential of advanced air bags will be lost. DASS systems represent one approach to minimizing air bag risks. As discussed elsewhere in this document, other approaches include deploying the air bag in a manner that does not cause harm and other types of suppression systems; *e.g.*, suppressing the air bag when children are present.

*C. Safety of Teenage and Adult Drivers*

Out-of-position drivers are at risk from air bags if they are extremely close to the air bag at the time of deployment. While any driver could potentially become out of position, small-statured drivers are more likely to be positioned on top of the air bag because they generally sit closer to the steering wheel than larger drivers.

In the SNPRM, in order to address the risks air bags pose to out-of-position drivers, we proposed requirements using 5th percentile adult female dummies. We proposed two alternative test requirements, the selection of which would be at the option of the manufacturer.

The manufacturer options proposed in the SNPRM were similar to those using 3-year-old and 6-year-old child dummies, with one significant exception. Since air bags provide safety benefits to small-statured drivers, it would not be appropriate to permit manufacturers to suppress air bag deployment under all conditions in the presence of such occupants. Therefore, this type of suppression feature would not be permitted.

The two manufacturer options proposed in the SNPRM were: (1) test requirements for low risk deployment involving deployment of the air bag in the presence of out-of-position 5th percentile adult female dummies, and (2) test requirements for a feature that suppresses the driver air bag when the driver is out of position.

1. Option 1: Low-Risk Deployment for Drivers

We proposed to require that, if the low risk deployment option were selected, a vehicle would be required to meet specified injury criteria performance limits when the driver air bag is deployed in the presence of an out-of-position 5th percentile adult female dummy. We proposed that the test be conducted at two positions which tend to be "worst case" positions in terms of injury risk. In one of these positions, the dummy's chin is on the air bag module; in the other, the dummy's chin is on the upper rim of the steering wheel. We proposed detailed positioning procedures for these two tests, since injury measures may vary considerably with position.

Under our proposal, in the case of air bags with multiple inflation levels, the injury criteria would need to be met only for the levels that would be deployed in lower severity crashes; *i.e.*, the levels that would be deployed in crashes of 29 km/h (18 mph) or below. A driver would most likely be extremely close to the air bag in lower severity crashes, following pre-crash braking.

The comments on the low risk deployment requirements for small drivers were similar to those on the requirements for young children. Our response is also similar.

We are adopting the proposed low risk deployment tests using the 5th percentile adult female dummy, with the same modifications we made for the tests using child dummies; *i.e.*, simplified positioning procedures will be used, and injury criteria will need to be met, in the case of air bags with multiple inflation levels, for the levels and timing that will be deployed in crashes of 26 km/h (16 mph) or below, instead of crashes of 29 km/h (18 mph) or below, using unbelted 5th percentile adult female dummies. However, if the air bag did not deploy at all in crashes of 26 km/h (16 mph) or below, the injury criteria will need to be met at the lowest level of inflation. This modification will help facilitate low risk designs. Likewise, we are requiring the use of an unbelted 50th percentile adult male dummy seated in the mid-track seat position in the crash test used to determine which stage or combination of stages to fire for the low risk deployment tests. Our rationale for this requirement is the same as for the

passenger side: larger occupants should not be deprived of ancillary benefits from more benign air bags in low speed crashes.

2. Option 2: Feature that Suppresses the Air Bag When a Driver Is Out-Of-Position

The testing of DASS devices for the driver air bag raises the same issues as testing ones for passenger air bags. In the SNPRM, we proposed the same type of requirements for both systems.

The comments on the SNPRM were essentially the same for both types of DASS devices. The issues raised by the commenters are fully discussed under our discussion of DASS devices for passenger air bags, presented earlier in this document.

## IX. Injury Criteria

In the SNPRM, we proposed injury criteria and performance limits for each size dummy. We placed in the public docket a technical paper which explained the basis for each of the proposed injury criteria, and for the proposed performance limits. The title of the paper was: "Development of Improved Injury Criteria for the Assessment of Advanced Automotive Restraints Systems—II."

Standard No. 208 currently specifies five performance requirements for the Hybrid III 50th percentile adult male dummy in barrier crash tests: (1) dummy containment—all portions of the dummy must be contained in the vehicle passenger compartment throughout the test, (2) Head Injury Criterion (HIC) must not exceed 1,000, evaluated over a 36 millisecond (msec) duration (3) chest acceleration must not exceed 60 g's, (4) chest deflection must not exceed 76 mm (3 inches), and (5) forces transmitted axially through the upper legs must not exceed 10 kilonewtons (kN) (2,250 lb).

In the SNPRM, we generally proposed to apply these or similar injury criteria, and a new one addressing neck injury, to all of the dummies and tests, other than static suppression tests, covered by the proposal. However, the criteria and performance limits would be adjusted to maintain consistency with respect to the injury risks faced by different size occupants.

A general discussion of the proposed injury criteria and performance limits, and the comments, is provided below. A more detailed discussion is provided in a supplemental technical paper titled "Supplement: Development of Improved Injury Criteria for the Assessment of Advanced Automotive Restraint Systems—II" which is being placed in the public docket.

### *A. Head Injury Criteria*

In the SNPRM, to address the risk of head injury, we proposed limits for the head injury criterion (HIC) for the 50th percentile adult male, 5th percentile adult female, 6-year-old child, 3-year-old child and 12-month-old infant dummies.

The proposed HIC differed from that currently included in Standard No. 208 in that it would be evaluated over a 15 msec duration instead of 36 msec. This change was based on a recommendation by AAMA. That organization had recommended that the duration for the HIC computations be limited to 15 milliseconds with a limit of 700 for the 50th percentile adult male dummy. This proposed value is consistent with Canadian Motor Vehicle Safety Standard No. 208.

We noted in the SNPRM that the stringency of HIC 15/700 and HIC 36/1000 appears to be equivalent for long duration pulses. This is because while HIC 15 produces a lower numerical value for long duration events, its lower failure threshold, 700, compensates for this reduction. We also noted that for pulse durations shorter than approximately 25 milliseconds, the HIC 15/700 requirement is more stringent than the HIC 36/1000 requirement. We stated that we believed this increased stringency would provide a desirable added measure of safety for the highly scaled, short duration HIC limits proposed for evaluating those impact events where children and small-statured adults are involved.

In the SNPRM we accordingly proposed to employ a 15 millisecond time interval whenever calculating the HIC function and to limit the maximum response of the adult male to 700 and limit the response of the smaller dummies to suitably scaled maximums.

Commenters generally supported our proposal concerning HIC 15. However, AAM recommended that we adopt somewhat higher limits than we proposed for the 5th percentile adult female dummy (779 rather than 700) and the 6-year-old child dummy (723 rather than 700). That organization argued that we were not consistent in applying scaling relationships from the 50th percentile adult male dummy to the other dummies.

After considering the comments, we have decided to adopt the limits we proposed. We note that the data from which the HIC relationship was developed represented an elderly adult population.[24] There is no basis to assume that the population had the dimensions of 50th percentile adult males. We believe it is reasonable to apply the same 700 HIC limit to all persons who may be represented by the original data set, including 5th percentile adult females and 50th percentile adult males.

As to child dummies, in the absence of biomechanics data on the skull fracture and brain injury tolerances for children, we began by utilizing a scaling process to account for differences in both geometric size and material strength. However, after applying the scaling process, judgment must be used to determine if the scaled values are reasonable.

For the 6-year-old child dummy, geometric and material scaling led to a limit of 723, which is higher than the 700 limit for adult dummies. However, in the absence of biomechanical data that substantiate a higher head injury tolerance for young children than for adults, we believe it is prudent and reasonable to limit the HIC value to 700 for the 6-year-old dummy.

### *B. Neck Injury Criteria*

In the SNPRM, to address the risk of neck injury, we proposed limits for the Nij neck injury criterion for the 50th percentile adult male, 5th percentile adult female, 6-year-old child, 3-year-old child and 12-month-old infant dummies. Nij is a new injury formula that accounts for the combination of flexion, extension, tension, and compression.

The sled test option in Standard No. 208 currently addresses the risk of neck injury by means of separate limits on these four measurements as well as shear. We proposed Nij as an improvement over separate limits because it accounts for the superposition of loads and moments, and the additive effects on injury risk.

The most significant comment on this issue came from AAM, which endorsed the Nij concept but recommended the inclusion of additional, more stringent tension/compression limits to independently control these potentially injurious loading modes. AAM also recommended further, minor adjustments to the proposed critical limits depending on whether they are being utilized for in-or out-of-position situations. AAM, IIHS, and NTSB stated that they were concerned that the peak tension and peak compression allowed by the Nij criteria when the moment value is zero are too great.

[24] Hodgson, V.R., Thomas, L.M., "Comparison of Head Acceleration Injury Indices in Cadaver Skull Fracture," SAE Paper No. 710854, Proceedings of the Fifteenth Stapp Car Crash Conference, 1971.

We believe that there is merit in incorporating AAM's recommended additional tension/compression limits and adjustments to our original Nij proposals because they either mimic our originally proposed requirements very closely or add additional requirements that more stringently control potentially injurious loading modes. In addition, we accept an argument made by AAM that tensed neck muscles mitigate the effects of measured neck loads and will adopt that organization's recommendation for slightly higher neck limits for in-position testing for the adult dummies. However, because one would not expect muscle tensing in a situation simulated by the 5th percentile female out-of-position low risk deployment tests, we are requiring manufacturers to meet more stringent criteria for Nij in those tests.

DaimlerChrysler argued that tension should be the only neck injury criterion with the current Hybrid III dummy neck because it believes the neck may be inadequate for accurately assessing the potential for flexion/extension neck injury due to air bag loading. Toyota also recommended delaying the use of any neck injury criteria that contains extension. As discussed later in this document, we believe the current Hybrid III neck is adequate for the purposes of this rulemaking. Moreover, we are adopting Nij as the best available neck injury criterion.

*C. Thoracic Criteria*

In the SNPRM, to address the risk of thoracic injury, we proposed individual limits on chest acceleration and chest deflection. This is the same approach as is currently used in Standard No. 208. However, we proposed to reduce the current deflection limit for the 50th percentile male dummy from 76 mm to 63 mm (from 3 in to 2.5 in).

To obtain equivalent performance limits for the other size dummies, the mid-size male dummy limits were scaled, taking into account both geometric and material differences. We also considered other factors. We did not propose a chest deflection limit for the 12-month-old CRABI dummy because that dummy does not measure chest deflection.

AAM supported individual limits on chest acceleration and chest deflection but argued that the chest acceleration limit for the 5th percentile adult female dummy should be 73 g's rather than the 60 g's proposed in the SNPRM. This was reiterated by some other commenters as well.

AAM also requested slight adjustments in deflection limits for the 3-year old and 5th percentile adult female dummies. In addition, AAM recommended the use of an additional criterion, rate of sternal deflection, to assess the risk of serious thoracic organ injuries in out-of-position tests. Toyota recommended using the rate of sternal deflection in place of chest acceleration for assessing thoracic injury risk. DaimlerChrysler presented a method using Kalman filters which it argued would result in a more reliable rate of deflection measures using chest deflection and acceleration measurements.

After considering the comments, we are adopting the proposed 60 g's chest acceleration limit for the 5th percentile adult female dummy. AAM's recommended chest acceleration limit of 73 g's for this dummy was obtained using scaling procedures that only considered the effects of the geometric differences between 50th percentile adult males and 5th percentile adult females. However, we believe the additional effect of decrease in bone strength for the more elderly female population at risk in out-of-position situations should also be taken into account.

The differences between our proposed deflection limits and those recommended by AAM are negligible. AAM recommended a chest deflection limit of 64 mm for the 50th percentile adult male dummy. In order to harmonize with the chest deflection limits used by Transport Canada, we proposed a 63 mm for chest deflection limit for the 50th percentile male. While we used the same scaling factors as the industry, this difference in the limit for the 50th percentile adult dummy accounts for the small differences (<2mm) between the industry's recommendations and our proposals for some of the other dummies. Because these differences are negligible and because the proposed limit for the 50th percentile adult male dummy is consistent with international harmonization, we are adopting the limits proposed in the SNPRM.

As to AAM's recommendation to use the rate of sternal deflection to assess the risk of serious thoracic organ injuries in out-of-position tests, we believe further analysis and research would be needed before such a new injury criterion could be added to Standard No. 208. We note that vehicle manufacturers are free to voluntarily consider rate of sternal deflection as they design their vehicles.

*D. Other Criteria*

In the SNPRM, we proposed to apply a dummy containment requirement to all of the dummies except the 12-month-old infant dummy, and limits on upper leg forces to the 50th percentile adult male and 5th percentile adult female dummies. We believed the dummy containment requirement would not be relevant to the proposed low risk deployment test using the 12-month-old infant dummy, and that limits on upper leg forces would not be relevant to the proposed low risk deployment tests using the 12-month-old infant and 3- and 6-year-old child dummies.

More specifically, with respect to limits on upper leg forces, we proposed to limit the axial loads in the femur for the adult dummies (10 kN for the 50th percentile male and 6.8 kN for the 5th percentile female). AAM and DaimlerChrysler stated that they support slightly more stringent femur limits of 9.1 kN for the 50th percentile male and 6.2 kN for the 5th percentile female.

After considering the comments, we are adopting the axial femur limits for the adult dummies as proposed. The current limit of 10 kN specified for the 50th percentile male has been used in Standard No. 208 for many years. AAM has not presented information demonstrating that this value does not adequately ensure protection. Furthermore, AAM has not provided data or an explanation of the method it used to arrive at its recommended femur force limit for the 50th percentile male.

The differences between the limits proposed in the SNPRM and those recommended by AAM are small, and adopting the slightly lower value recommended by AAM will have no effect on the overall safety benefits. We also believe that the slightly higher axial force limits we are adopting today may provide design flexibility for manufacturers to optimize head, neck and chest protection for the 50th percentile male and the 5th percentile female. Of course, vehicle manufacturers are free to voluntarily meet more stringent limits than those included in Standard No. 208.

**X. Lead Time and Effective Date**

TEA 21 specifies that the final rule on advanced air bags must become effective in phases as rapidly as practicable beginning not earlier than September 1, 2002, and not sooner than 30 months after the issuance of the final rule, but not later than September 1, 2003. Except as noted below, the phase-in of the required amendments must be completed by September 1, 2005. If the phase-in of the rule does not begin until September 1, 2003, we are authorized to delay the completion of the phase-in until September 1, 2006. As also noted

below, other amendments may be phased in later.

*A. Large Manufacturers*

In the SNPRM, we proposed the following phase-in schedule, which would apply to all large manufacturers; *i.e.*, those producing more than 5,000 vehicles per year worldwide:

25 percent of each manufacturer's light vehicles manufactured during the production year beginning September 1, 2002;

40 percent of each manufacturer's light vehicles manufactured during the production year beginning September 1, 2003;

70 percent of each manufacturer's light vehicles manufactured during the production year beginning September 1, 2004;

All vehicles manufactured on or after September 1, 2005.

We noted that the proposed date for the start of the phase-in, September 1, 2002, would be 30 months after a final rule that was issued on March 1, 2000. We stated that this proposed date reflected the seriousness of the safety problem being addressed and the statutory requirement that the final rule become effective as rapidly as possible.

We also requested comments on phase-in schedules and percentages other than the proposed 25%–40%–70%–100% schedule. We cited the example of a 40%–70%–100% schedule beginning one year later than the proposed schedule, but ending at the same time. This alternative was like the primary proposal, except that the first year of the proposed phase-in would be eliminated. We noted that this alternative schedule would offer additional leadtime at the beginning of the phase-in, while not compromising the final effective date for all new vehicles. We also noted that with the availability of credits for early compliance, a manufacturer also would have additional time to develop and produce early-complying vehicles to meet the initial phase-in percentages.

We noted that while we had limited discretion in deciding when to make the final rule effective, we also have some discretion to make temporary adjustments in requirements if, in our judgment, such adjustments are necessary or prudent to promote the smooth and effective implementation of the goals of TEA 21 through the introduction of advanced air bags. We noted that the final rule could temporarily reduce the injury criteria or test speeds during the TEA 21 phase-in and then terminate those reductions at the end or after the end of that phase-in.

AAM, GM, DaimlerChrysler and Honda all supported a phase-in that would not begin until September 1, 2003 and that was not fully effective until September 1, 2006. The primary arguments offered for delaying the phase-in were the pending new test dummy regulations and the remaining uncertainty of the advanced air bag technologies. Honda also asserted that the barrier tests using the 5th percentile adult female test dummy should be delayed until after final dummy specifications and revised seating procedures are issued, perhaps until September 1, 2005.

CEI/CA argued that NHTSA's existing air bag experience should lead it to reject any mandate requiring technology and designs that are still under development. At a minimum, according to CEI/CA, the agency should establish requirements will not take effect until real-world data on such systems exists and has been analyzed. To the extent that it is statutorily constrained on this matter, it should set lead times at the absolute statutory maximum. These concerns are addressed in the section of this document dealing with unintended consequences.

Public Citizen, CU, and CAS stated that manufacturers should not be given undue latitude in meeting the advanced air bag requirements. These groups said that the manufacturers had repeatedly stated during the drafting of TEA 21 that they would need not more than 30 months in which to implement the new designs. The groups also noted that some manufacturers are already introducing some types of advanced air bag technologies. Public Citizen argued that the agency should give greater weight to the command in TEA 21 that the final rule shall take effect as rapidly as possible, the history of manufacturers' assertions of the "impossibility" of complying with new regulatory requirements, the test results of MY1999 vehicles, and the absence of data from manufacturers to substantiate their claim that the technology is not yet available.

The NTSB expressed disappointment that it would be MY 2006 before all new vehicles would be equipped with advanced air bag systems. It suggested that NHTSA encourage manufacturers to install advanced air bags prior to the established phase-in schedule, perhaps through an incentive program.

We have decided to implement a two-stage phase-in for advanced air bags. In the first phase-in, all portions of the final rule will be implemented, except the 56 km/h (35 mph) belted rigid barrier test. The first phase-in will be implemented as follows:

- 35 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2003 with an allowance of advance credits for vehicles built after the effective date of the final rule;
- 65 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2004 with an allowance of carryover credits from prior years;
- 100 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2005 with an allowance of carryover credits from prior years; and,
- All light vehicles manufactured on or after September 1, 2006.

In the second phase-in, the belted rigid barrier test at 56 km/h (35 mph) using the 50th percentile adult male dummy will be implemented. It will be phased in as follows:

- 35 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2007 with an allowance of advance credits for vehicles built after September 1, 2006;
- 65 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2008 with an allowance of carryover credits from prior years in the second phase-in;
- 100 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2009 with an allowance of carryover credits from prior years in the second phase-in; and,
- All light vehicles manufactured on or after September 1, 2010.

We have decided to delay the start of the first phase-in until September 1, 2003 because of the number of new measures that manufacturers will have to take in order to certify a vehicle as complying with the advanced air bag requirements (*i.e.*, meet new injury criteria, meet various test requirements with four new dummies, and meet the suppression and low risk deployment tests associated with air bag risk reduction). We note that the manufacturers' concerns over the pending dummy rulemakings and the seating procedure for the 5th percentile adult female dummy have been largely resolved by now. As an initial matter, all applicable dummies have now been incorporated into 49 CFR Part 572, although petitions for reconsideration are currently pending.[25] Additionally, the seating procedure for the 5th

[25] Likewise, the final rule incorporating the offset deformable barrier into 49 CFR Part 587 was issued in March, 2000.

percentile adult female is established in today's rule. We are confident that large vehicle manufacturers can meet the phase-in. As required by TEA 21, we are including provisions under which manufacturers to earn credits towards meeting the applicable phase-in percentages if they meet the new requirements ahead of schedule.

*B. Limited Line, Small, Multi-Stage Manufacturers and Alterers*

1. Limited Line Manufacturers

A phase-in generally permits vehicle manufacturers flexibility with respect to which vehicles they choose to initially redesign to comply with new requirements. However, if a manufacturer produces a very limited number of lines, *e.g.*, one or two, a phase-in would not provide such flexibility. Accordingly, we proposed to permit manufacturers that sell two or fewer carlines in the United States the option of omitting the first year of the phase-in if they achieved full compliance for the second year of the phase-in. We proposed to limit this alternative to manufacturers that produce two or fewer carlines in light of the statutory requirement concerning when the phase-in is to begin. We explained that absent such a limitation, it would technically be possible for the industry as a whole to delay introducing any advanced air bags for a year.

Porsche supported permitting manufacturers that produce two or fewer carlines the option of omitting the first year of the phase-in if they achieve full compliance during the second. In addition, Porsche recommended specifying that the alternative phase-in for limited line manufacturers is available to manufacturers who meet the "two carline or fewer" criteria at any time between publication of the final rule and the start of the phase-in. Porsche argued that such a specification would resolve any possible confusion over whether the provision applies to manufacturers who, during the phase-in, evolve from a two carline manufacturer into a three or more carline manufacturer.

We have decided to permit manufacturers that sell two or fewer carlines in the United States at the beginning of the first year of each phase-in (September 1, 2003 and September 1, 2006) the option of omitting the first year of each phase-in if they achieve full compliance by September 1, 2004, the beginning of the second year of the first phase-in and September 1, 2008, the beginning of the second year of the subsequent phase-in. This option is available only for limited line manufacturers since it would otherwise be possible for the industry as a whole to delay introducing any advanced air bags for a year.

We decline to adopt Porsche's suggestion that this option be available for manufacturers which meet the "two carline or fewer" criterion at any time between publication of the final rule and the start of the phase-in. As manufacturers produce more lines, the rationale for this option diminishes. Therefore, any manufacturer that evolves from a two carline manufacturer into a three or more carline manufacturer during each phase-in will not qualify for the applicable limited line alternative phase-in. We believe that manufacturers will know in advance if they plan to evolve from a two carline manufacturer into a three or more car line manufacturer well before the phase-in and can plan their compliance accordingly.

2. Small Manufacturers

To accommodate the needs of small volume manufacturers (SVMs), we proposed giving those manufacturers the option of waiting until the end of the phase-in to meet the new requirements. We explained that we were proposing to treat SVMs differently because of the complexity of the new requirements and the relatively short lead time before the phase-in begins. We explained that even the more streamlined set of requirements proposed in the SNPRM would require significant design changes and significant new testing. However, since the SVM provision would effectively allow SVMs to avoid the phase-in entirely, we also proposed to limit this option to manufacturers that produce fewer than 5,000 vehicles per year worldwide.

The Coalition of Small Volume Automobile Manufacturers (COSVAM) supported permitting SVMs to wait until the end of the phase-in to meet the new requirements. COSVAM stated that SVMs need until the end of the phase-in because they cannot obtain new technology at the same time it is made available to large manufacturers, because they have difficulty getting suppliers to sell to them at all, and because some SVMs source from large manufacturers and may source parts from a model which will not comply until the end of the phase-in. COSVAM also asked that the definition of small manufacturer for purposes of exclusion from the phase-in requirements be changed to include manufacturers that produce not more than 10,000 vehicles. COSVAM argued that the definition of small volume manufacturer should be based on the agency's overall statutory scheme and not on current production volumes.[26]

We recognize the technical challenges SVMs will face as a result of the requirements included in today's rule. In addition, while we recognize the importance of providing SVMs with sufficient lead time to comply with the new requirements, we note that we do not have unlimited discretion as to how much leadtime we can provide. TEA 21 provides that if the phase-in begins on September 1, 2003, the final rule must become fully effective by September 1, 2006. No exceptions are given for small volume manufacturers. We have decided, therefore, to exercise the discretion we do have and not require SVMs to comply before the end of each phase-in period (September 1, 2006 and September 1, 2010, respectively). However, we are continuing to limit this provision to manufacturers that produce fewer than 5,000 vehicles per year worldwide. We note that COSVAM did not provide any analysis demonstrating a need to increase the number beyond 5,000.

3. Multi-Stage Manufacturers and Alterers

Although we received comments in response to the original NPRM requesting that we provide an additional extension for multi-stage manufacturers and alterers beyond the end of the phase-in for large manufacturers, we did not propose such an extension in the SNPRM. We explained that we have limited discretion as to how much lead time we can provide, since TEA 21 provides no exceptions for multi-stage manufacturers or alterers. TEA 21 provides that if the phase-in begins on September 1, 2003, the final rule must become fully effective by September 1, 2006.

We stated in the SNPRM that final stage manufacturers are accustomed to completing vehicles within limitations identified by chassis manufacturers so that they can certify their vehicles with limited or no additional testing. Therefore, we stated that the industry should be able to address the issues raised by the advanced air bag rulemaking. We also urged chassis manufacturers to communicate with their multi-stage manufacturer customers as soon as possible concerning any new limitations that

[26] Under 49 U.S.C. 30113(d) and 49 U.S.C. 30113(b)(3)(B)(i), manufacturers whose total motor vehicle production in the most recent year of production is not more than 10,000 may, on the basis of economic hardship, apply for a temporary exemption from the requirements of any of the Federal motor vehicle safety standards.

may be imposed as a result of the advanced air bag requirements. We stated that the chassis manufacturers should be able to identify the type and likely scope of any such new limitations well before the end of the phase-in.

The Recreation Vehicle Industry Association (RVIA) (a trade association representing more than 95% of the van conversion industry) contended that its members need at least one year of lead time following full implementation of the new requirements for the large manufacturers. RVIA stated that this additional time is needed so that its members can obtain timely information from the chassis manufacturers, since guidance from incomplete vehicle manufacturers is generally not available until at or very near the startup of new or updated model production.

RVIA supported allowing small volume final stage manufacturers and alterers to certify compliance with a generic sled test pulse, arguing that if final stage manufacturers install seating systems within the guidelines established by the chassis manufacturers, further full scale barrier crash testing is no longer necessary and should not be the only method available for determining compliance. RVIA stated that the potential technical and financial burden of the proposed full scale barrier dynamic testing requirements jeopardized the continued viability of small volume multi-stage manufacturers.

The National Truck Equipment Association (NTEA) supported the proposal to allow manufacturers of multi-stage vehicles to defer compliance until the end of the phase-in period. NTEA explained that given the level of research and testing likely to be required by the final rule, manufacturers of multi-stage vehicles need as much time as possible to generate the compliance information needed to certify these vehicles.

We estimate that several hundred intermediate or final-stage vehicle manufacturers and alterers will be affected by today's rule. Multi-stage manufacturers modify incomplete vehicles (chassis), while alterers modify completed new vehicles that have been certified by their manufacturer as being in compliance with all applicable safety standards. With respect to Standard No. 208, most of the difficulties for multi-stage manufacturers and alterers involve changes to the vehicles' seats. If the advanced air bag system installed by the original vehicle or chassis manufacturer employs the seat as part of the system, by using such features as weight or position sensing components in the seat, any change to the vehicle's seat could affect the manufacturer's original certification. If the original manufacturer uses a weight or pressure system in the seat to turn the air bag off in appropriate circumstance, these manufacturers face a choice of using the original seat as is, relying on a supplier to provide the same sensing technology for their seats, or else certifying in some other way.

We recognize that the set of requirements contained in today's rule will require significant design changes and significant new testing for all cars and light trucks. We also recognize the importance of providing all manufacturers, including multi-stage manufacturers and alterers, with sufficient lead time to comply with the new requirements. We note, however, that we do not have unlimited discretion as to how much lead time we can provide. According to TEA 21, if the phase-in begins on September 1, 2003, the final rule must become fully effective by September 1, 2006. There are no exceptions for multi-stage manufacturers and alterers.

We appreciate the technical challenges multi-stage manufacturers and alterers will face as a result of the requirements included in today's rule. In an effort to address the needs of these small businesses, we have decided to allow multi-stage manufacturers and alterers to defer compliance until the end of each phase-in period (September 1, 2006 and September 1, 2010, respectively).

We believe that delaying the implementation schedule for multi-stage manufacturers and alterers strikes the appropriate balance between improving air bag safety, particularly for infants, children, and small-statured adults, while accommodating the needs of these manufacturers. We believe that this approach will increase the likelihood that multi-stage manufacturers and alterers will know what type of advanced air bag technology chassis and vehicle manufacturers are using well before they need to comply. This should provide them sufficient time to address any technical issues associated with advanced air bag technology and to generate whatever compliance information may be needed.

## XI. Availability of Original Equipment and Retrofit Manual On-Off Switches

Standard No. 208 currently includes a temporary provision permitting manufacturers to provide as original equipment (OE) manual on-off switches for air bags in vehicles without rear seats or with rear seats too small to accommodate a RFCSS. This provision is scheduled to expire on September 1, 2000.

Also, on November 11, 1997, we published in the **Federal Register** (62 FR 62406) a final rule exempting, under certain conditions, motor vehicle dealers and repair businesses from the "make inoperative" prohibition in 49 U.S.C. 30122 by allowing them to install retrofit manual on-off switches for air bags in vehicles owned by people whose request for a switch is authorized by NHTSA. The final rule is set forth as 49 CFR Part 595, *Retrofit On-Off Switches for Air Bags*.

The purpose of the exemption was to preserve the benefits of air bags while reducing the risk of serious or fatal injury that current air bags pose to identifiable groups of people. In issuing that final rule, we explained that although vehicle manufacturers were beginning to replace current air bags with new air bags having some advanced attributes, *i.e.*, attributes that will automatically minimize or avoid the risks created by current air bags, an interim solution was needed for those groups of people at risk from current air bags in existing vehicles.

In the SNPRM, we proposed to allow both OE on-off switches and retrofit on-off switches to be installed under the same conditions that currently govern such installation in all vehicles produced prior to September 1, 2005, the date we proposed to require all vehicles to have an advanced air bag system. We proposed to prohibit both OE switches in, and retrofit switches for, vehicles manufactured after the end of the phase-in. We noted that while we believed that reliable and safe air bag systems could be developed in a timely manner, thus removing the need for an on-off switch, we were concerned that those individuals who are currently at risk from air bags might lack confidence in the new systems, particularly when they are first introduced. However, we believed this problem would diminish during the course of the phase-in, as consumers heard about, and became familiar with, advanced air bags.

Comments were submitted by AAM, DaimlerChrysler, Ford, Toyota, AORC, Autoliv, Advocates, NADA, and Parents for Safer Air Bags. Except for NADA, all commenters supported allowing manual on off-switches, both retrofit and OE, after the end of the phase-in. Some of the commenters supported an indefinite allowance, while others supported the agency revisiting the issue at the end of the phase-in. Additionally, Ford urged that we allow shunts, which would permanently deactivate an air bag, rather than retrofit on-off switches for vehicles with advanced air bag systems,

stating that the market incentive to continue to produce retrofit switches is too small. NADA supported eliminating retrofit on-off switches for vehicles with advanced air bags, but allowing OE switches as a method of suppression compliance in vehicles where OE switches are currently allowed.

We believe that by the end of the initial phase-in, manufacturers will have developed advanced air bag systems for most vehicles that are sufficiently reliable to obviate the need for manual air bag on-off switches. However, public acceptance of those advanced air bag systems may not be assured. Allowing on-off switches for some period after all vehicles are equipped with advanced air bag systems will provide parents with additional confidence until the reliability of all such systems has been verified based on real-world experience.

We continue to believe, however, that allowing manufacturers to install switches indefinitely would be counter-productive. The switches provide an opportunity for misuse. Adults could turn off their passenger air bag systems even though those systems pose virtually no risk to an adult occupant, particularly one who is belted. In such circumstances, the occupant would not receive the benefit of the air bag in a high-speed crash. The same possibility for misuse would exist for children in vehicles certified to the low risk deployment option.

Accordingly, we have decided to allow both OE and retrofit air bag on-off switches until September 1, 2012, two years after the end of the second phase-in. This additional time will allow manufacturers to perfect the suppression and low risk deployment systems in all their vehicles. Additionally, it will provide parents with additional time to satisfy themselves that the advanced systems work. Should we decide there is a continuing need for manual on-off switches beyond 2012, we can initiate rulemaking to extend the date at that time.

We note that there will be some need for deactivation of some sort (via on-off switch or permanently) for at-risk individuals who cannot be accommodated through sensors or other suppression technology (such as handicapped individuals or individuals with certain medical conditions). At this point in time, we believe such needs can be best accommodated through the permanent deactivation authorization system currently used by NHTSA. This system allows the use of shunts as suggested by Ford in its comments.[27]

## XII. Warning Labels, Consumer Information, and Telltale Devices

### *A. Warning Labels and Consumer Information*

On November 27, 1996, we published in the **Federal Register** (61 FR 60206) a final rule which, among other things, amended Standard No. 208 to require improved labeling on new vehicles to better ensure that drivers and other occupants were aware of the dangers posed by passenger air bags to children.

After reviewing the comments on the NPRM, we proposed in the SNPRM a replacement for the permanent sun visor label which contained statements taken from the 1996 labels regarding belt use and seating children in the rear seat. We also proposed substituting the word "CAUTION" for the word "WARNING" in the heading of the label. Finally, we proposed a new graphic which showed a cut-away side view of a vehicle with a belted driver and a child in a child seat in the rear. In addition, NHTSA proposed a new temporary label that states that the vehicle meets the new requirements for advanced air bags. These proposals were in response to commenters concerns that some types of warnings should be retained for advanced air bags.

Consistent with our proposal to require labels for vehicles with advanced air bags, we proposed to drop the current definition of "smart passenger air bags" contained in S4.5.5 and an existing option to remove warning labels in vehicles with air bags that meet that definition (S4.5.1).

In order to provide consumers with adequate information about their occupant restraint system, we proposed to require manufacturers to provide a written explanation of the vehicle's advanced passenger air bag system. We indicated that this explanation would probably be included in the vehicle owner's manual, although we requested comments on whether it would be desirable to have this information located elsewhere. Under our proposal, the explanation would need to include a discussion of the proper functioning of the advanced passenger air bag system and provide a summary of the actions that may affect the proper functioning of the system.

Fifteen commenters addressed the proposed changes to the air bag warning labels. Of these, five said little more than an expression of support for the proposal without much elaboration. On the other hand, four commenters representing consumer groups expressed strong concerns about any changes that "weakened" the warnings concerning air bags until the air bags meeting these new requirements are demonstrated to be effective in eliminating the risks associated with current air bags. One commenter also stated that research should be conducted before the air bag warning labels are changed. Additionally, very few commenters addressed our request for comments on the new graphic described above versus the previous graphic, which shows a rear-facing child seat being struck by an air bag.

After reviewing the comments, we have decided to change the proposed label to reduce the perceived "weakening." First, we have decided to continue to use "WARNING" in the heading rather than "CAUTION" as we proposed in the SNPRM. Since no one objected to the proposed graphic, we are adopting the new graphic to help consumers distinguish between vehicles with various generations of air bags.

One commenter asked us to allow the new labels in any vehicle certified to the new requirements, rather than limiting their usage to vehicles manufactured after September 1, 2002. Because manufacturers will be allowed to certify vehicles to the new requirement prior to this date, we are removing this restriction.

One commenter also stated that the labels should be available in languages other than English. While we are not requiring this, as with the current labels, manufacturers may provide translations of the required English language message as long as all the requirements for the English label are met, including size.

A few commenters wanted additional information added to the label related to specific issues with advanced air bags. GM wanted the option of adding instructions to inform users how to properly behave depending on whether the air bag was active or inactive. NTSB wanted to require information on what actions to take if the telltale is not illuminated. CAS suggested that information should be added explaining how belt use affects air bag performance. Because these types of information are very design specific, we are not changing the warning label to address these comments. However, we are modifying the existing prohibition against other information on the sun

[27] Ford had also suggested that shunts be allowed in lieu of on-off switches. These shunts would permanently deactivate the air bag. We believe that allowing permanent deactivation for anyone other than individuals with special needs would not serve a safety need. Accordingly, we are rejecting this option.

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visor to allow manufacturers the option of adding information, on a separate label, if they believe it is desirable to supplement the owner's manual information.

With respect to the proposal requiring manufacturers to provide additional information on the performance and design of advanced air bags in the owner's manual, the few commenters who addressed this issue supported the proposal. Therefore, we are requiring the owner's manual to include accurate information on each of the topics proposed in the SNPRM, specifically:

- A presentation and explanation of the main components of the advanced passenger air bag system.
- An explanation of how the components function together as part of the advanced passenger air bag system.
- The basic requirements for proper operation, including an explanation of the occupant actions that may affect the proper functioning of the system.
- A complete description of any passenger air bag suppression system installed in the vehicle, including a discussion of the suppression zone.
- A discussion of the telltale light on the instrument panel, explaining that the light is only illuminated when the advanced passenger air bag system is suppressed, is not illuminated when the advanced passenger air bag system is activated, and informing the vehicle owner of the method used to indicate that the air bag suppression system is not operating properly.
- An explanation of the interaction of the advanced passenger air bag system with other vehicle components, such as seat belts, seats or other components.
- A summary of the expected outcomes when child restraint systems, children and small teenagers or adults are both properly and improperly positioned in the vehicle, including cautionary advice against improper placement of child restraint systems.
- Information on how to contact the vehicle manufacturer concerning modifications for persons with disabilities that may affect the advanced air bag system.

*B. Telltale Devices*

In the SNPRM, we proposed that vehicles with static suppression systems would be required to have a telltale, located on the dashboard, that indicated when the passenger air bag was off. We also stated that the telltale need not illuminate when the passenger seat was empty, even if the air bag was suppressed under such a circumstance, but that each system needed to be equipped with a mechanism that indicated every circumstance when the air bag was suppressed.

Comments on the telltale were primarily from manufacturers and followed two basic themes. Some commenters argued that the requirement that the telltale be on the dashboard was overly stringent and inconsistent with the telltale location requirements for air bag on-off switches. Others commented that requiring a mechanism to determine all circumstances under which the air bag was suppressed did not make sense in the context of the telltale requirement. Ford also requested that we specifically allow more than one level of illumination to allow for changing light conditions.

We have expanded the possible locations for the telltale in the final rule. However, we have decided against simply adopting the existing on-off switch location provisions. In response to a petition for rulemaking from a manufacturer, we have allowed on-off switch telltales to be located anywhere within the vehicle interior as long as they are clearly visible to all front seat occupants. We decided to allow such a broad location for these telltales because on-off switches are only in a limited number of vehicles and because the air bags can only be suppressed when the driver or passenger consciously turns the air bag off. With static suppression systems, an individual will have no way of knowing whether the air bag is suppressed other than the telltale. Accordingly, we believe that the telltales should not be placed in a location that is arguably "clearly visible," but may not be easily seen while driving or is susceptible to being covered up. We agree, however, that restricting the telltale to the dashboard may be overly restrictive. We have changed the regulatory text to state that the telltale must be located inside the vehicle in a zone above and forward of the H-point of the driver seat, when that seat is in its forward most position. Additionally, the telltale cannot be placed in or immediately adjacent to a storage compartment if use of the compartment could block the telltale from either the driver's or passenger's view. Thus, for example, the telltale could be located on the cover to the glove compartment, or by the rearview mirror, but could not be located behind a cup-holder.

The SNPRM did not require a single level of illumination for telltales. However, it also was not clear that multiple levels of illumination were allowed. We believe there may be a benefit to having multiple levels of illumination based on changes in the ambient light conditions. Accordingly, we have changed the regulatory text to specifically allow multiple levels of illumination as long as all levels are visible to individuals of all ages.

We are allowing the telltale to be turned off when the passenger seat is empty because we believe many manufacturers may choose to have the default setting for their suppression systems be a suppressed air bag. In such an instance, the air bag would usually be suppressed. We are concerned that the near constant illumination of the telltale could lead people to ignore the telltale. Alternatively, people could attempt to disconnect the telltale so that they did not have to look at it all the time.

In order to accommodate a design where the telltale was not illuminated when the seat was empty, but still allow for compliance testing of all of the proposed child seating positions, some of which could look to a suppression system like the seat was empty, we added a requirement that the vehicle come equipped with a mechanism that would indicate under all circumstances whether the passenger air bag was suppressed. The mechanism need not be contained within the interior of the vehicle, but could be a simple plug-in system where a piece of equipment is plugged into an outlet and provides the needed information. Alternatively, the mechanism could be the telltale that is required for all suppression situations other than an empty seat. In that instance, the telltale would need to illuminate in any of the test positions NHTSA used for compliance purposes.

**XIII. Miscellaneous Issues**

*A. Child Restraints Used for Testing Suppression and Low-Risk Deployment Features*

As discussed earlier in this notice, we proposed in the SNPRM to require manufacturers to assure compliance with tests to minimize the risks from air bags to infants and young children using any child restraint on a specified list of representative child restraints that was appropriate for a child the size of the applicable dummy. In developing the proposed list of representative child restraints, we attempted to select seats that are produced by various manufacturers while limiting the overall number of restraints. We proposed to add the list of child restraints as an appendix to Standard No. 208, and indicated that we planned to update the list from time to time (with appropriate lead time).

Comments can be broken down into four separate areas: NHTSA should develop a common "footprint" for

testing, the proposed list contains too many restraints, the proposed list does not contain enough restraints, and the list is either outdated or insufficiently detailed.

AAM, GM, Volkswagen, DaimlerChrysler and AORC all urged NHTSA to develop a standard "footprint" that could be used to certify compliance with our suppression tests. Takata did not believe a single footprint was necessary, but urged that the number of potential footprints on child restraint systems be severely limited. These same commenters, along with Isuzu, stated that the list of child seats was still too long and should either be reduced or manufacturers should be allowed to certify to no more than three seats in each category, at the manufacturer's option. The CAS argued that the list should be longer, and the American Academy of Pediatrics (AAP) urged us to add an oversized child seat designed for special needs children. Takata noted that the list did not include specific model numbers, and Evenflo noted that some of its seats on the list were no longer available or had been replaced by a different model.

We agree with manufacturers that a common footprint test device would considerably ease their ability to meet the static suppression performance requirements for infants and for three-year-olds and six-year-olds in child restraints. We also agree that our initial proposal to test with any seat produced over a ten-year period was overly expansive. However, the proposed number of seats in the SNPRM was dramatically reduced from the NPRM. These seats are real designs that are actually in use, not a test device which would never be used by a child. The only way we could guarantee that child restraints matched the footprint of this hypothetical test device would be to require the footprint to be incorporated into all child restraints. Even if we did not require that restraint manufacturers use the specific footprint, we would effectively limit their ability to produce any other type of restraint, since they could not assure parents that their seats would work with a vehicle's suppression system. Accordingly, we believe adopting a uniform test device with a specific footprint is inappropriate and overly design restrictive. Given the relatively small number of restraints on our list, we see no need to develop a specific test device.

Likewise, we do not believe that manufacturers should have the option of certifying to only a limited number of the restraints on the list. We do not believe that requiring compliance with 24 seats is excessive, given the importance of reliability in a suppression system and the fact that the suppression tests are nondestructive. Children sitting in the front seat will not receive the benefit of a suppression system that does not recognize their presence in the seat. If manufacturers believe their planned suppression technology is insufficient to detect a wide variety of child restraints, they will need to either improve or supplement that technology.[28]

We do believe, however, that the seats on the list are adequately representative of both child restraint designs and manufacturers.[29] Accordingly, we do not agree with the CAS that the list should be expanded. Nor do we believe it is necessary to add an oversized seat, as recommended by the AAP. These larger seats are not representative of seats that are typically found in vehicles and may be used by children who are considerably heavier than an average six-year-old. While these children should receive as much assurance of safety from a deploying air bag as all other children, we believe their needs can be accommodated by other means. Permanent air bag deactivation will continue to be available for individuals with unique medical or physical needs.

Based on Evenflo and Takata's concerns that the proposed list was insufficiently detailed and out-of-date, we have amended the list by replacing restraints that are no longer available and providing model numbers. We have also tightened up the language of Appendix A so that the designated restraints are limited by a production date closer in time to the effective date of the final rule. As stated in the SNPRM, the list will be updated periodically to subtract restraints that are no longer in production and to add new restraints, particularly those that are manufactured in accordance with recent amendments to Standard No. 213, Child Restraint Systems, (64 FR 10786, March 5, 1999), that require child restraints manufactured on or after September 1, 2002, to have components that attach to the lower anchors of a vehicle's child restraint anchorage system. (The March 1999 rule requires the anchorage systems to be installed on a phased-in basis in new vehicles beginning September 1, 2000.) At this time we do not contemplate increasing the overall size of the list. Some period of lead time will be provided so that manufacturers have adequate time to incorporate any needed design changes into their air bag systems.

*B. Dummy Positioning for Static Suppression and Low-Risk Deployment Tests*

AAM, GM, Toyota, Isuzu and DaimlerChrysler all argued in their comments that the static suppression tests were too burdensome, largely because of the range of seat back angles (from the nominal design position up to 25 degrees rearward of that position) and seat track positions (any position on the seat track or any height for adjustable seats). Breed Technologies stated that it did not believe the low risk test procedures adequately accounted for differences in vehicle geometry and that they were sufficiently ambiguous to lead to variations in procedure by different testing laboratories.

As discussed earlier in this document, in view of the fact that parents or caregivers who place children or child restraints in the front seat will not all use a single seat track position, we have determined that there is a need to test in different seat track positions. However, we have also concluded that there is no need to conduct suppression tests at every possible seat track position. Accordingly, we have decided that for vehicles certified to the suppression option, we will test only at the vehicle seat's full-rear position, mid-track position and full-forward position. In instances in which the infant restraint contacts the dashboard in the full-forward position, the vehicle seat will be moved back to the next detent that allows for clearance, or, in the case of automatic seats, until a maximum of 5mm (0.2 in) of clearance is achieved. Likewise, in tests involving suppression systems for 3-year-old and 6-year-old children, if the dummy or child would interfere with the dashboard, the vehicle seat will be moved back in a similar manner.

We have also determined that in many of the tests, testing with the seat back positioned 25 degrees rearward of

[28] We recognize that a manufacturer choosing the low risk deployment option for infants would be required to assure compliance with the applicable injury criteria with a 12-month-old dummy in each of the restraints listed in sections B and C of Appendix A, making the restraint unusable in subsequent tests. However, we believe the low risk deployment for properly restrained infants to be the most important low risk test in this rulemaking, as an infant's head would always be in close proximity to a deploying air bag.

[29] In no way does the inclusion of a particular restraint on the list represent an endorsement of that restraint by the agency. Restraints have been placed on the list because we believe they are representative of many products on the market, not because they offer a unique design that we believe is somehow superior to other designs. Likewise, the choice of restraint manufacturer is not based on any belief by the agency that a particular manufacturer produces restraints that are superior to those of other manufacturers. Restraints were chosen from a variety of manufacturers so as to adequately survey the design decisions of the entire population of restraint manufacturers.

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the vehicle seat's nominal design position for the 50th percentile male was problematic. We believe that in many vehicles it may be impossible to properly install a child restraint with the seat back reclined this far back. We also do not believe that there would be any reason to recline a seat that is occupied by a child restraint. Since all of the infant tests involve the use of some type of restraint, we have decided to limit the seat back angle for these tests to the nominal design position for the 50th percentile male. Tests involving the 3-year-old and 6-year-old children or dummies in child restraints present the same concerns and will be addressed in the same way. Likewise, many of the test procedures involving children who are not in any type of restraint are unrealistic if tested with the seat 25 degrees back from the nominal design position. For example, a kneeling child with his chest resting against the seat back would find it difficult to hold his or her position.

The one position where we will recline the seat back is the test where the child is sitting on the seat and is leaning against the seat back (S22.2.2.2, S24.2.1). This test position will be conducted with the seat back at the manufacturer's nominal design position for the 50th percentile male and at 25 degrees rearward of that position so as to test for children who have reclined their seat backs to take a nap. If the vehicle seat does not recline that far, we will test with the seat reclined as far as possible. We agree with manufacturers that parents should not drive with their children in such a position. However, as long as manufacturers design the passenger seat to recline, we believe some parents will allow their children to lie on a reclined seat.

We have also decided to test whether the air bag system is active when the seat is occupied by a 5th percentile adult female at the seat back position achieved when positioning the fifth percentile adult female dummy in the passenger seat for dynamic tests. This should roughly approximate the nominal design position. Some commenters argued that the reclined position (*i.e.*, 25 degrees rearward of the nominal design position) distributes an adult's weight in such a manner that a suppression system that relied heavily on weight distributed to the seat cushion may be unable to determine whether the occupant is an adult or a child. Other commenters have argued that their suppression systems can adequately detect the total weight of a reclined 5th percentile adult female. We believe that the ability to detect the total weight of the dummy in a reclined position may vary depending on the type of suppression technology used. We also believe that a reclining adult has less need for a deploying air bag than an adult who is upright, and therefor closer to the air bag at the time of deployment.

We have changed the test that determines which stage or combination of stages of the air bag to deploy in the low risk deployment tests. As discussed earlier, the low risk deployment tests will only be conducted at speeds up to 26 km/h (16 mph). Accordingly, this test will be run at 26 km/h (16 mph). If there is no air bag deployment in the test, we will deploy the first stage of the vehicle's air bag when conducting our compliance tests.

Finally, we believe Breed's comments about the low risk deployment positions have merit. We have reduced the number of steps involved in placing the dummies because small adjustments to the procedure at each step, as well as the unique characteristics of the vehicle, could result in a final position that differed significantly from what we want, *i.e.*, the head on the instrument panel or the chest on the instrument panel. By reducing the number of steps needed to achieve that position, we have reduced the amount of potential variability. The one exception is the low risk deployment test for both child dummies where the head is placed on the instrument panel. We have retained a specific step-by-step procedure for this test, because the location of the air bag module on the instrument panel is so variable that we are currently unable to define a position on the instrument panel that we believe with any confidence represents the worst case scenario. We do, however, have considerable experience with a step-by-step procedure. While we agree that variations in vehicle design may make it difficult to follow the test procedure, we believe that we have modified the procedure in a way that will yield appropriate and consistent results.

*C. Due Care Provision*

Since March 1986, Standard No. 208 has included as part of its various crash test requirements a provision stating that:

> a vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

In adding this provision, we cited the complexity of the rigid barrier crash test of Standard No. 208. We stated that, because of this complexity, we believed that manufacturers needed assurance from the agency that, if they had made a good faith effort in designing their vehicles and had instituted adequate quality control measures, the vehicles would not be deemed to be in noncompliance because of an isolated failure to meet the injury criteria.

In the SNPRM, we noted that, among the Federal motor vehicle safety standards, the "due care provision" is unique to Standard No. 208. We noted further that, for a variety of reasons, we disfavor including a "due care provision" in any Federal motor vehicle safety standard. We explained that the inclusion of such a provision in a safety standard does not fit very well with the overall statutory scheme, because it introduces a measure of subjectivity into the issue of whether a vehicle complies with a standard. We also explained that, based on our experience with Standard No. 208 compliance activities, we do not believe there is an intrinsic need for a "due care provision." However, recognizing that this rulemaking for advanced air bags would require manufacturers to certify their vehicles to a significantly greater number of complex test requirements in a limited amount of time, including a 48 km/h (30 mph) unbelted test with a new dummy, we stated that we did not believe that it would be appropriate to delete the provision at this time.

Accordingly, in the SNPRM, we proposed to retain the "due care provision" and extend it to the new crash test requirements. We stated that we were not proposing to extend the provision to test requirements that do not involve crashes because these tests are not affected by the variability associated with dynamically-induced dummy movement and/or vehicle deformation.

Commenters on the SNPRM presented sharply contrasting views concerning the due care provision. Vehicle manufacturers, air bag manufacturers and the Center for Regulatory Effectiveness urged that the due care provision be extended to the new static out-of-position tests as well as the new crash tests. They argued that there is as much variability associated with the static out-of-position tests as with crash tests, and argued that the due care provision will help resolve some practicability concerns.

Other commenters, however, argued that the due care provision is not in the public interest. Parents stated that if a vehicle's air bag system fails to meet Standard No. 208, the adverse effects on the public are the same whether or not due care was exercised by the manufacturer. That organization stated that the due care provision works

against the public interest by providing vehicle manufacturers with a means of avoiding the recall of vehicles that fail to comply with Standard No. 208. Parents and Advocates also argued that the due care provision in Standard No. 208 is inconsistent with its statutory counterpart, which only relieves vehicle manufacturers of civil penalty liability if the agency concludes that the manufacturer exercised due care.

Advocates stated that if the due care provision were retained and extended to other crash tests, the provision should be completely sunsetted at the end of the TEA–21 phase-in. Other commenters opposing the due care provision included Consumers Union, Public Citizen, and CAS.

After considering the comments, we continue to disfavor including a due care provision in the Federal motor vehicle safety standards and do not believe there is a need for the due care provision in Standard No. 208. Accordingly, while we will retain the existing due care provisions for the sled test and the 48 km/h (30 mph) unbelted barrier test (both of which will expire on September 1, 2006), we have decided against including a due care provision in for vehicles certified to the advanced air bag requirements.

As an initial matter, the static suppression tests are relatively simple pass-fail tests which do not involve deployment of an air bag or measurement of injury criteria on test dummies. Accordingly, we do not believe they raise the same compliance concerns as crash tests. The conditions under which either suppression or activation is required are specific and straightforward. Further, there are substantial differences between the conditions requiring suppression and those requiring activation. While there will undoubtedly be gray zones associated with suppression devices, those gray zones should be well outside the conditions for which either suppression or activation is required by the Standard.

Additionally, there is no reason to extend the existing due care requirements for vehicles certified to the advanced air bag high speed requirements. The 48 km/h (30 mph) belted rigid barrier test has been a part of Standard No. 208 for several years and has not proven problematic for manufacturers. The 56 km/h (35 mph) belted test will not begin to be phased-in as a requirement for eight years, which should provide ample leadtime. The unbelted tests will be less stringent than the 48 km/h (30 mph) unbelted rigid barrier test that was required prior to the 1997 final rule allowing the sled test option. Our testing has indicated that manufacturers can easily meet the new injury criteria with 50th percentile adult male dummies in a 40 km/h (25 mph) unbelted test with existing air bag systems and should be able to make what ever improvements are needed to do so with 5th percentile adult female dummies without major uncertainties before they are required to certify any vehicle as meeting the advanced air bag requirements of this rule.

We do not believe that not extending the due care provision will create any significant difficulties for manufacturers, given our practices and policies with respect to the enforcement of crash test requirements. Generally, we do not determine that a noncompliance exists merely because of an isolated test failure, if there is evidence that other tested similar units have met the Standard's performance requirements and there is no indication of the inadequate quality control procedures. Since the adoption of the provision in 1986, the agency has never found that a vehicle that failed to meet the performance requirements of the Standard should be deemed to be in compliance on the basis of the due care provision.

*D. Selection of Compliance Options*

In the SNPRM, we proposed to require that where manufacturer options are specified, the manufacturer would be required to select the option by the time it certifies the vehicle and would not thereafter be permitted to select a different option for the vehicle. This would mean that failure to comply with the selected option would constitute a noncompliance with the standard (as well as a violation of the certification requirement of 49 U.S.C. 30115), regardless of whether a vehicle complies with another option. We also proposed to specify that, upon request, manufacturers would be required to advise NHTSA of the compliance options selected for a given vehicle or vehicle model. On behalf of its members, AAM and AIAM argued in its joint comments that the proposed requirement does not meet the need for motor vehicle safety.

We have decided to adopt the provision proposed in the SNPRM, which is consistent with the approach we have taken in other recent rulemakings in which compliance options have been allowed. Our rationale for this approach was recently set out in some detail in our denial of a petition for reconsideration of an amendment that added a compliance option to Standard No. 201, "Occupant Protection in Interior Impact." 64 FR 69665 (December 14, 1999). We adopt that rationale for purposes of this final rule, but we are adding a short discussion to address a few additional matters.

The final rule adopted by this notice provides numerous compliance options for manufacturers, far more than in any other standard we have previously adopted. For example, in order to reduce the risk of injury to various sizes of children, manufacturers may suppress the passenger air bag, either statically or dynamically, or assure that the air bag deploys in a benign manner. Likewise, manufacturers may use a benignly deploying air bag or a dynamic suppression system to reduce the risk of air bag injury to teenagers and small adult drivers. The existence of phase-ins provides manufacturers with additional options. While they must meet the applicable advanced air bag requirements for a specified percentage of vehicles during each phase-in, they have the option of certifying additional vehicles to those requirements in order to earn credits that can be applied to the percentages that need to be achieved in later years. Moreover, until September 1, 2006 (the end of the first phase-in), manufacturers may choose to certify compliance for at least a portion of their fleet with one of three different unbelted high-speed test requirements: The sled test of S13,[30] the long-standing 48 km/h (30 mph) unbelted rigid barrier test of S5.1.2(a), or the 40 km/h (25 mph) rigid barrier test of S5.1.2(b). Each of these three options has different injury criteria.

We have provided manufacturers with myriad options to allow and encourage them to develop and implement technologically innovative advanced air bag systems. However, this does not mean that we believe that each option provides exactly the same safety benefits. Rather, we believe that the standard as a whole, including its requirement of an irrevocable choice among compliance options, strikes the proper balance between assuring an appropriate level of safety and allowing an appropriate degree of manufacturer flexibility.

We have found that when some manufacturers are confronted with a compliance test failure indicating an apparent noncompliance with the option that they originally chose at the time they certified the vehicle, they have responded by asserting that their product complies with a different option. As explained in our earlier denial of reconsideration on this

[30] The text of S13 has been slightly revised to indicate which set of injury criteria must be met.

subject, such shifting in the asserted basis for compliance creates obvious difficulties for us, both in managing our resources available for compliance testing and in ultimately assessing a vehicle or equipment's compliance. We believe that a system that allows us to effectively allocate our scarce enforcement resources to ensure that our safety standards are being met clearly meets the overall need for motor vehicle safety.

In addition to preventing the unnecessary expenditure of resources, we also believe it is important for manufacturers to honor their certification commitments. The Safety Act does not allow for "recertification" after the certification label has been applied. Nor does it contemplate allowing manufacturers "two bites at the apple." Moreover, there is ample evidence that consumers often choose to purchase a particular vehicle because its manufacturer has advertised that it has certain safety features. In light of consumer interest in and concerns about air bag safety, this consumer practice is likely to continue or even increase in the context of this rule. We believe that consumers should be entitled to expect that manufacturers will produce vehicles that comply with the requirements to which they are certified.

We note that a manufacturer that chooses to install multiple safety features that would independently comply with two or more of the specified compliance options in the standard is not prohibited from doing so. For example, a manufacturer may build a vehicle that meets both the static suppression and the low risk deployment requirements of today's rule. In such a case, it may be that a failure to comply with the option to which the vehicle was certified would be inconsequential to motor vehicle safety, such that a notification and remedy (*i.e.*, recall) campaign would not be necessary. However, in view of the fact that not all compliance options provide precisely the same level of safety benefits, such an inconsequentiality determination would not be automatic.

Although it is implicit from the foregoing discussion, we want to explicitly note that S4.8 applies to the decision by a manufacturer as to whether to certify a vehicle as complying with the advanced air bag requirements during each of the two phase-ins. If a manufacturer advises NHTSA (either in response to a request for compliance information or in a report submitted pursuant to 49 CFR Part 585) that it intends a particular vehicle or model to count as meeting the requirements of S14.1, S14.2, S14.3, or S14.4 during the applicable phase-in, a vehicle that failed to comply with the applicable performance requirements would be deemed to be in noncompliance with the standard, even if other vehicles produced by the manufacturer in the production year in question would have been sufficient to satisfy the specified percentage requirement for that year.

We believe that such a regulatory approach is particularly critical in the context of this rule, since consumers will know whether a vehicle is represented as complying with the advanced air bag requirements from a variety of sources (*e.g.*, the warning label in the vehicle, the owner's manual, manufacturer advertising, dealer sales staff, etc.) and may modify their behavior in reliance upon that representation (*e.g.*, by allowing the smallest child to sit in the front seat to suppress the air bag). If in fact the vehicle does not provide the promised performance ( e.g., the suppression system does not function properly), the manufacturer would be required to notify NHTSA of the noncompliance and, unless the noncompliance were found to be inconsequential to motor vehicle safety, to remedy the problem.

*E. Credits for Early Compliance*

To encourage early compliance with the advanced air bag final rule, we were directed by TEA 21 to include means by which manufacturers may earn credits toward future compliance. Credits, on a one-vehicle for one-vehicle basis, may be earned for vehicles that are certified as being in full compliance with the final rule before the beginning of each of the applicable phase-in periods. They may also be earned during the phase-ins if a manufacturer's production of complying vehicles for a model year exceeds the percentage of vehicles required to comply in that year. We are amending 49 CFR Part 585 to specify reporting requirements that will allow us to administer this provision. Credits for the first phase-in may be earned immediately after this final rule becomes effective, but credits for the second phase-in may only be earned starting on September 1, 2006. We are only allowing credits to be earned for vehicles manufactured one year prior to the initiation of the second phase-in because we believe manufacturers should first direct their efforts towards full implementation of the first phase-in, particularly the risk reduction requirements. Consistent with the prior discussion of compliance options, a manufacturer's decision to certify a vehicle to the advanced air bag requirements before or during the phase-ins will be irrevocable, even if the manufacturer would have been able to satisfy the percentage requirements for a given model year with other vehicles in its fleet.

*F. Choice Between Complying With Existing and/or New Injury Criteria and Test Requirements*

In the SNPRM, we addressed, for vehicles not certified as being in full compliance with the final rule, the relationship of the proposed new injury criteria and performance limits to the existing test requirements of Standard No. 208. We stated that while some of the new and/or modified injury criteria and performance limits would apply to existing tests that are being retained in Standard No. 208, we were not proposing to change the injury criteria and performance limits for vehicles not certified to all of the requirements applicable to vehicles with advanced air bags.

We stated that, as a general matter, vehicles produced between the time the final rule becomes effective and the time the phase-in is complete would be required to comply with and be certified to all the current requirements and current injury criteria or to all the requirements for advanced air bags and new injury criteria; there would be no opportunity to mix and match.

However, as a possible exception to this, we requested comments on whether we should permit manufacturers to immediately certify their vehicles to whatever set of unbelted crash test requirements applicable to 50th percentile adult male dummies was adopted for the final rule, as an alternative to the currently available sled test or unbelted up-to-48 km/h (30 mph) rigid barrier test. In light of the limitations of the sled test, we stated that, to the extent vehicle manufacturers wished to immediately design and certify vehicles to whatever set of unbelted crash test requirements was included in the final rule, there could be safety benefits.

Several commenters, including AAM, DaimlerChrysler and Toyota, supported permitting manufacturers to begin immediately certifying to the new unbelted test in lieu of the sled test at the manufacturer's option, for vehicles without advanced air bags. In light of the comments and the discussion we presented in the SNPRM, we are including this option in the final rule. We have also decided to retain a manufacturer's option to certify to the existing 48 km/h (30 mph) unbelted barrier test to September 1, 2006. This

option will expire at the end of the phase-in because we believe that ultimately only a single set of injury criteria should apply to each test dummy.

*G. Time Periods for Measuring Injury Criteria During Tests*

In the SNPRM, we proposed specific points for the end of the period for measuring injury criteria in both crash tests and low-risk deployment tests. We noted that, for dynamic crash tests, we historically have not measured injury criteria more than 300 milliseconds after the vehicle impacts the barrier, and we proposed a 300 millisecond time duration for the dynamic crash tests. For the low risk deployment tests, which do not involve a complete vehicle crash and are intended only to address the potential adverse effects of an air bag, we proposed to measure injury criteria for up to 100 milliseconds after the air bag deploys.

We indicated that these time parameters would not apply to the dummy containment requirement. Regardless of the time frame used to measure other injury criteria, all dummies would continue to be required to remain fully contained within the test vehicle until both the vehicle and the dummies have ceased moving.

Comments were received from DaimlerChrysler, Toyota, Nissan, and Autoliv. Other than DaimlerChrysler, the commenters all supported truncating the test data at the point the dummy interacts with the vehicle interior and after the dummy's head had cleared the air bag. In the alternative, Nissan supported truncating the data in both the barrier tests and the low-risk deployment tests at 100ms. DaimlerChrysler, who commented only on the time-frame related to low-risk deployment tests, noted that it was possible for peak injury criteria to be reached after 100 ms because of low output initiator delay times. Accordingly, it suggested that the data for all deployments be truncated at 300 ms or when the dummy ceases to be in contact with the air bag, whichever occurs first.

Traditionally, we have not counted data that is recorded as the result of the dummy's head neck or torso striking the vehicle interior when the dummy is no longer engaged in the air bag. We continue to believe, as apparently do commenters, that the air bag is neither responsible for these injury values nor could the air bag have prevented these interactions with the vehicle compartment. However, we are concerned that truncating the data to the point at which the occupant is no longer engaged in the air bag is insufficiently objective for compliance purposes. While we intend to retain our existing policy on considering the location of the dummy relative to the vehicle interior and the air bag at the time peak injury measurements are recorded, we have decided to keep the time parameters for measuring data at specific level. Accordingly, data will be collected until 300 ms after the vehicle strikes the barrier in a dynamic crash.

Based on DaimlerChrysler's observation and our knowledge of low risk deployment technologies, we agree that a 100 ms time-frame for the low risk deployment test may be too small. Consequently, the parameters for truncating data for the low risk deployment tests have been changed to the same parameters used for the barrier tests, *i.e.*, 300 ms after the air bag deploys.

*H. Cruise Controls*

In the SNPRM, we proposed to require that cruise controls be deactivated when any stage of an air bag system is deployed, and included a brief procedure to test whether this requirement was met. We noted that if the cruise control were not deactivated, it would continue to provide power to the vehicle, which could lead to a runaway condition.

Only Consumers Union supported our proposal, stating a deactivated cruise control is a basic safety measure. AAM and DaimlerChrysler stated that we had not demonstrated a safety need for such a requirement and the proposed test procedure could make cruise control systems less reliable than they are currently. According to AAM, none of its members is aware of a single report of a cruise control remaining operational after an air bag deployment following a crash. DaimlerChrysler also noted that under most crash conditions, the cruise control is usually already deactivated by the time the air bag deploys, either because the vehicle's speed has fallen below a certain threshold or because the brakes have been applied. Additionally, cruise control systems generally requires a certain level of speed to operate, making compliance testing exceptionally difficult.

We agree with AAM and DaimlerChrysler that there is no need to regulate cruise control interaction with air bags at this time. We also are unaware of any instances where the cruise control remained on after an air bag deployed. It appears that manufacturers have already resolved this potential scenario. Finally, the addition of a test procedure could add additional complexity and potential unreliability to an already complex system. Accordingly, while we believe that the cruise control should deactivate when an air bag deploys, we do not believe this is an area currently in need of regulation.

*I. Rescue Operations*

In the SNPRM, we proposed to require that all air bags become deactivated after a maximum one-minute "keep alive" period has elapsed after the vehicle battery power is disconnected. We proposed a brief procedure to test whether this requirement was met. The purpose of this requirement was to ensure that rescue workers have a standardized method and time for deactivating air bags, to neutralize any potential danger they may face. We noted that the air bags in most vehicles are deactivated within a minute or less after battery power is disconnected.

Commenters generally supported the concept of having air bags automatically deactivate one to two minutes after a vehicle's battery power is shut off, although the NTSB argued that the deactivation time should be closer to ten seconds. AAM, Toyota, and DaimlerChrysler questioned the need for a requirement at all, since most manufacturers already deactivate the air bag within one to two minutes after the power is cut off. These commenters, along with AORC, Nissan, Delphi and TRW, all raised concerns over the proposed test procedure. Specifically, the commenters were concerned that the addition of an air bag firing voltage terminal to measure voltage changes within the air bag electrical system may actually cause unknown air bag deployment problems adversely affecting the system's overall safety effectiveness.

We continue to believe that a short air bag deactivation time would eliminate confusion and unnecessary delays in rescue work. We also believe that a period of one minute or less is appropriate. It is sufficiently short to assist in rescue operations but not so brief as to create design problems for manufacturers. We are concerned, however, that any test procedure that would allow us to objectively measure when the air bag has been deactivated could cause unnecessary complexity in the air bag system and potentially reduce system reliability. As noted in the preamble and cited by commenters, the air bags in most vehicles are deactivated within one minute or less after battery power is disconnected. Since most vehicles already meet the proposed timing, we are not convinced

that there is a sufficient need to regulate this issue at this time.

However, we urge manufacturers who do not design their air bag systems to shut off within one minute of power being cut off to work on reducing the time before such deactivation. Given the ability of most manufacturers to meet this time frame in existing vehicles, we do not believe this would pose a significant design challenge. Rescue personnel do not have the time or the resources to determine at a crash scene when an undeployed air bag will deactivate once power is cut off. A measure of uniformity in this area is desirable.

*J. Hybrid III Dummy Neck*

In the SNPRM, we requested comments on two issues related to the Hybrid III dummy neck.

First, we noted that there have been crash test situations where the agency has observed high neck moments being generated at the upper load cell of the Hybrid III dummy neck within 20 milliseconds of the initiation of large neck shear loads without observing substantial angular deformation of the dummy neck. We stated that while we believe that these are true loads being generated by the restraint system and not artifacts of an inappropriately designed neck transducer, we were uncertain whether this loading condition is biomechanically realistic. We requested commenters' views on this issue.

Second, we sought comments on the appropriate channel frequency class (CFC) for evaluating data from neck load cells for injury assessment purposes and whether that CFC should depend on the impact environment (*e.g.*, vehicle crash tests, out-of-position tests, etc.).

Several commenters noted that they did observe the high moment/low rotation loading condition and one, DaimlerChrysler, offered test data to suggest that the dummy's neck design does not follow established biomechanical response corridors. However, none of the commenters, including DaimlerChrysler, provided the agency with any additional data to justify or develop alternative dummy neck response requirements that either verify the responses of the current Hybrid III design or provide the basis for improving it.

Because of the need to minimize the likelihood of neck injuries and lack of testing alternatives, we will use the current Hybrid III neck designs in the final rule. However, we will immediately establish new and accelerate existing research and development efforts to further address this issue.

As to filtering, AAM and DaimlerChrysler stated that they believe that the filters specified by SAE J211 are appropriate for evaluating neck injury and that sources of the spikes/noise need to be identified and eliminated.

We agree with the commenters' suggestion that the SAE filter specifications for the individual neck loads are sufficient for evaluating neck injury potential. The sources of noise do not appear to be inherent in the dummy neck design, but rather are caused by incorrect assembly/maintenance of a specific dummy or by procedural variances which need to be corrected at the testing laboratories.

However, because Nij combines the neck bending moment and the neck axial force which have different channel frequency classes (CFC 600 for moment, CFC 1000 for axial force), we believe it is more appropriate to have a pure channel class frequency of 600 for Nij. Thus, we are specifying that a CFC 600 be used for computing the axial force component of Nij, and CFC 1000 for computing the peak axial neck forces. Because J211 does not require phaseless filters for frequency channel classes above 200, we have specified that all measurements be conducted with phaseless filters.

*K. Seating Procedure for 5th Percentile Adult Female Dummy*

Earlier in this notice, we discussed the issue of where the 5th percentile adult female dummy should be located during crash tests; *i.e.*, with the seat full forward or in some other position. A related issue is what seating procedure to use for positioning that dummy.

In the SNPRM, we proposed a seating procedure that was developed considering the work performed by the SAE Hybrid III 5th Seating Procedure Task Group and by NHTSA's Vehicle Research and Test Center (VRTC). The 50th percentile Hybrid III adult male dummy is the only dummy currently used for Standard No. 208 compliance crash testing. For that testing, the dummy is positioned according to S10 of the standard. As part of that procedure, the H-point of the dummy is located using the manikin and procedures in SAE Standard J826.

For the 5th percentile adult female dummy, we proposed a different seating procedure which does not use a manikin. In tests we conducted for positioning the 5th percentile adult female dummy, it made little difference whether a manikin was used or not. The proposed non-manikin procedure also made it easier to repeatedly position the 5th percentile adult female dummy.

We are adopting the seating procedure we proposed in the SNPRM. Although we have reviewed the proposed SAE seating procedure for the 5th percentile adult female in a dynamic crash test, we have decided against adopting this procedure because it has not yet been adopted by the SAE and may not be adopted, in any form, for some time. If the SAE does ultimately adopt a seating procedure that is different from the one we are adopting today, we will review that procedure and consider replacing our procedure.

*L. Deletion of Tests Between the Initial and Supplemental Proposals*

Several commenters raised concerns about the deletion of several tests in the SNPRM that were proposed in the NPRM.

Public Citizen, CAS and the American Academy of Pediatrics (AAP) expressed concern about deletion of rough road tests. AAP stated that the agency's rationale that this is an area that vehicle manufacturers will consider and address in the absence of Federal requirements could be used to justify elimination of all test requirements. AAP stated it does not think it is appropriate to eliminate safety tests related to obvious potential performance problems, particularly in cases where the consequences of performance failure could easily be the death of infants, children and adolescents.

Commenters also raised concerns about deletion of the proposed vehicle integrity requirements and the option for a full scale dynamic out-of-position test.

We note that we dropped each of these requirements in part because of problems with the proposed test procedures. A specific explanation for dropping each of the requirements is set forth in the SNPRM.

While rough road performance is certainly important, we do not believe there is any evidence that this is likely to be a real world problem. It would also be difficult to develop a test procedure that would assure that a dummy responded like a human to the forces imparted by a rough road. Indeed, the procedure we had proposed in the NPRM turned out to be impractical and did not accomplish its objective. Given our limited resources, we do not believe there is a need at this time to develop test procedures in this area.

As to the option for a full scale dynamic out-of-position test, we believe that other options included in today's final rule accommodate the various

advanced air bag technologies under development.

While vehicle integrity is important, this is an area that is not directly related to advanced air bags, and we believe it is best addressed outside of that context.

*M. Consideration of Unintended Consequences*

Some commenters raised concerns about the possibility of unintended consequences resulting from use of advanced air bag technologies.

In a joint comment, CEI/CA stated that they were concerned that we had not required extensive real world testing of the complex air bag systems that would be necessary to meet an advanced air bag standard. Those organizations argued that the absence of such data at the time of the original air bag mandate unexpectedly resulted in scores of air bag-induced deaths to children and other occupants.

CEI/CA also expressed concern that there have been large numbers of air bag-related recalls to remedy problems that testing alone failed to anticipate, such as weather-induced deterioration, and production and technological problems. They argued that the fact that these problems arose for the current generation of air bags indicates that the more complex systems envisioned by NHTSA will be even more prone to trouble.

CEI/CA argued that we should give consideration to the possibility of merely approving, rather than mandating, advanced air bags.

As noted above, CEI/CA argued also that NHTSA's existing air bag experience should lead it to reject any mandate requiring technology and designs that are still under development. At a minimum, according to CEI/CA, the agency should establish requirements will not take effect until real-world data on such systems exists and has been analyzed. To the extent that it is statutorily constrained on this matter, it should set lead times at the absolute statutory maximum.

Congressman David M. McIntosh similarly expressed concern that this rulemaking is being conducted too quickly, without real world data on how advanced air bags operate. He characterized the original mandating of air bags as rushing into uncharted territory and said that before repeating that mistake, we should perform extensive real world trials on advanced air bags.

As noted earlier in this final rule, the history of this agency's consideration of air bags is actually a very long one, having begun with a public meeting in 1969. Air bags were not mandated until 1991, when Congress enacted a law mandating that NHTSA amend its occupant protection standard to require the installation of air bags, thus eliminating the option of installing other types of automatic restraint systems such as automatic belts. Between those two events, there were more than 20 years of public proceedings, research projects and analyses conducted by NHTSA on the issue of air bags, research conducted by the vehicle manufacturers, the installation of air bags in 10s of 1,000s of vehicles, and the announcement by vehicle manufacturers of plans for installing them in many more.

To solve the problems that arose in the mid-1990s with many of the air bags installed in motor vehicles, the agency announced a comprehensive plan in November 1996. The plan set forth an array of immediate, interim and long term measures. The immediate and interim measures focused on behavioral changes and relatively modest technological changes. The long term measures focused on more significant technological changes, *i.e.*, advanced air bag technologies. The immediate steps included urging parents to place their children in the rear seat and giving motorists at risk the chance to turn off their air bags, requiring new labels with eye-catching graphics and colors and strong, clear warning messages, permitting the installation of original equipment on-off switches in new vehicles in which young children could not be placed in a child restraint system in a rear seating position, and permitting the installation of retrofit on-off switches to protect people in at-risk groups. Because of the lead time needed for advanced air bag technologies, NHTSA adopted an interim measure to accelerate manufacturer efforts to depower their air bags and make other short term design changes. The agency did this by permitting manufacturers to certify their vehicles using a sled test instead of a crash test more closely simulating a real world crash. In the long term, the agency said that it would conduct rulemaking to require the installation of advanced air bags.

Since 1996, the agency has been carefully laying the groundwork for completing the implementation of its comprehensive plan by issuing this final rule. As noted above, we have made extensive efforts to gather information and solicit public comments that would help us identify and select a sensible, effective array of requirements for increasing protection and minimizing risk. In February 1997, we held a public technical workshop on advanced air bag technologies. In December 1997, we sent an Information Request (IR) to the vehicle manufacturers to obtain detailed information concerning their changes in air bag design during the 1990s. In April 1998, Jet Propulsion Laboratories completed, at NHTSA's request, a report titled "Advanced Air Bag Technology Assessment." In mid-1998, Congress made the judgment that advanced air bags should be required. It enacted TEA 21 mandating that we amend our occupant protection standard again, this time to require vehicle manufacturers to improve the protection provided by air bags and to reduce the risks associated with them by means that include advanced air bag technologies. Although TEA 21 required only that we seek public comment once on our proposals before taking final action, we asked for public comment twice. We issued a notice of proposed rulemaking (NPRM) in September 1998, and a supplemental notice of proposed rulemaking (SNPRM) in November 1999. To help us thoroughly explore the issues, we proposed or discussed a variety of alternatives and posed a wide-ranging array of questions.

Further, before we decided on what to include in this final rule, we carefully considered the available information and the public comments, the underlying safety problems, the performance of current motor vehicles, the ability (including lead time needs) of vehicle manufacturers to achieve better performance in future motor vehicles, the air bag technology (including advanced air bag technology) currently available or being developed, the cost of compliance, and other factors. We also carefully considered the comments concerning the costs, benefits and risks associated with each alternative proposal.

As required by the mandate to us in TEA 21, our final rule requires vehicle manufacturers to improve the protection provided by air bags and reduce the risks associated with air bags by means that include advanced air bag technologies. Thus, the final rule is very different from the one issued in 1984. That final rule mentioned advanced air bag technologies as a way of addressing concerns about air bags risks, but did not mandate their use to prevent unintended consequences. This final rule mandates their use.

This final rule does not, however, mandate the use of particular advanced air bag technologies. The requirements in the final rule are performance-based requirements that give vehicle manufacturers the flexibility they requested to choose which type of advanced air bag technology they include in the vehicles.

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This final rule establishes requirements and procedures for testing the ability of advanced air bag systems to protect people in moderate to high speed crashes and to avoid creating risks in low speed crashes. There are new detailed test procedures for manufacturers to use in developing and testing their advanced passenger air bag systems to ensure that they either do not deploy at all in the presence of a young child or deploy in a low risk manner. Driver air bags are required to deploy in a low risk manner.

The final rule contains additional complementary measures for reducing the likelihood of unintended consequences for front seat occupants. It retains the existing, strongly worded and brightly colored warning labels urging motorists to place children in the back seat and urging everyone to buckle up. We recognize that some motorists will nevertheless place a child in the front seat. Our final rule requires that if vehicle is equipped with a passenger air bag system that turns the air bag off in the presence of a young child, the vehicle must also have a telltale to inform motorists whether the air bag has been turned off. Further, we have extended the availability of OE air bag switches in vehicles in which child restraints cannot be placed in a rear seat and of retrofit switches for at-risk people.

Finally, we have provided as much lead time as TEA 21 allows for vehicle manufacturers to comply with the advanced air bag requirements mandated by that law.

*N. Reporting Requirements*

Also as with previous phase-ins, we proposed amendments to 49 CFR Part 585 to establish reporting requirements to allow us to administer the phase-in and the use of advanced credits. We received no comments on this proposal and have adopted the changes to Part 585, with several modifications to clarify the requirements and to account for the addition of a second phase-in.

*O. Use of Children and Adults for Testing Static Suppression Systems*

In the SNPRM we proposed to permit manufacturers to use human beings to check suppression features in light of concerns that current dummies may not be sufficiently human-like to be recognized by some of the advanced technologies under development. If a manufacturer selected this option, the suppression requirements would need to be met at each of the relevant positions for any human being within a specified weight/height range for 3-year-old and 6-year-old children, and the air bag system could not be suppressed when the seat was occupied by a female within a height/weight range similar to that of a 5th percentile adult female.

In the SNPRM, we emphasized that these tests simply involve a child or adult assuming specified positions in the vehicle, with a technician checking (typically by looking at a light) whether the air bag system would be activated or deactivated; these tests do not involve deploying the air bag or moving the vehicle. To ensure absolute safety, we proposed to require manufacturers selecting this option to provide a method to assure that the air bag would not deploy during testing; such assurance could be made by removal of the air bag.

In general, commenters supported the use of humans under the conditions outlined in the SNPRM at least as a short-term measure. Manufacturers were generally concerned that the use of humans would present objectivity and reliability concerns. All of the manufacturers of vehicles and air bag systems who commented on this option addressed the industry efforts to develop a new test dummy that better replicates the human form than the current anthropomorphic test dummies. AORC, Consumers Union and AAP urged that the air bags be removed during tests with humans, arguing that removal is the only sure way to eliminate risk. GM and BMW were concerned that systems designed to recognize humans might not recognize the anthropomorphic test dummies in the vehicle crash tests.

GM and IEE stated that the ranges of weight and size provided in the SNPRM should be tightened, claiming the given range would create too much variability for a system to accurately detect presence with sufficient reliability. At the same time, the NTSB, AAP, and Trauma Link at the Philadelphia Children's Hospital have suggested that we further expand the height and weight ranges specified in the SNPRM.

We support the initiative industry has taken in developing a new, more human-like dummy. The prototype for a 5th percentile adult female dummy has already been developed by FTSS with support from various vehicle manufacturers. Based on presentations made to the agency, we believe a prototype for the 6-year-old child dummy will soon follow. Since we have not yet had an opportunity to study these new dummies, we are unable to comment on their suitability for suppression technologies. However, we can note that the dummies currently used in compliance tests were all designed for use in crash tests, and while their overall size and weight is representative of the humans they were designed to replicate, they do not demonstrate the same flexibility, muscle tone or weight distribution as humans. Once the new dummies have been fully developed, we will evaluate their suitability for testing suppression systems. It is our hope that we will soon be able to eliminate the use of humans as a compliance option for suppression systems.

As long as humans can be used to meet the suppression test criteria, it is imperative that the risk to these individuals be eliminated. This may require manufacturers to physically remove the air bag. However, manufacturers may be able to eliminate risk without removing the air bags. If they can do this, we see no need to require that the air bags be removed.

As for GM's and BMW's concerns that systems designed to recognize humans may not recognize dummies for crash tests, we note that we believe vehicles should be designed to protect people rather than test dummies. However, in order to meaningfully test for compliance to our standard, the air bag must fire in a crash test. Accordingly, manufacturers will need to design their systems in such a way that they can meet the crash test requirements with dummies located in the front seats.

In order to accommodate designs geared to recognition of people rather than inanimate objects, we have provided in S4.12 that manufacturers of vehicles with human recognition systems must provide NHTSA with information and equipment necessary to circumvent the suppression system for vehicle crash tests.

We have decided to keep the height and weight ranges proposed in the SNPRM. As noted above, the use of humans is intended as a temporary measure and will likely only be used until more human-like dummies can be developed. Accordingly, we believe it would be inappropriate to expand the height and weight ranges significantly beyond the height and weight of the applicable dummies. At the same time, we have decided against narrowing the height and weight ranges proposed in the SNPRM. Since suppression systems will ultimately have to work with people, a system that can only detect the presence of an individual within a tightly prescribed range would not perform adequately in the real world.

*P. Small Business Concerns*

As discussed later in the Regulatory Flexibility Analysis section, the requirements contained in this final rule may have a significant impact on a

number of small businesses, including small volume manufacturers, multi-stage manufacturers, alterers, seating system suppliers, air bag sensor and component manufacturers, and dummy manufacturers. Because today's rule will increase the demand for advanced air bag system technology as well as dummies and dummy parts (*e.g.*, accelerometers), we believe that today's rule will have a positive effect on the manufacturers of these products. We expect that today's rule will have a more significant impact on small volume manufacturers, multi-stage manufacturers, alterers, and seating system suppliers.

In the preliminary regulatory flexibility analysis accompanying the SNPRM, we estimated that the final rule would affect approximately 11 seating systems suppliers which are small businesses. We explained that these suppliers serve a niche market and estimated that they provide seats for less than two percent of the vehicles. We explained that depending on the technology chosen to meet the proposed advanced air bag rule, these suppliers would need to keep up with emerging technology.

Bornemann Products Incorporated, a seating component manufacturer, stated that 98 percent of its sales are to multi-stage vehicle manufacturers who primarily manufacture individual, custom vehicles. Bornemann stated that this rule could completely eliminate the "niche" market of individual custom vehicles. Bornemann stated that since original vehicle manufacturers will be reluctant to allow any changes to their chassis that could affect the air bag system, this rule would have a significant impact on seating system vendors and their suppliers (*e.g.*, fabric and trim suppliers, polyurethane producers, etc.), multi-stage vehicle manufacturers, vendors who supply these manufacturers with items such as carpet, steel and wood, and their employees.

Bornemann stated that NHTSA's estimate of 11 seating companies was incorrect, that the number is closer to 30 and that these 30 businesses have close to $80,000,000 in sales and employ around 2,500 people. Bornemann also estimated that the rule would have an impact on the following small businesses: direct seating system vendors (130 firms and around 5,000 employees); multi-stage manufacturers (around 250 with approximately 14,000 employees); and vendors who supply material for vehicles and seats (around 550 vendors and around 18,000 employees). Bornemann also stated that a temporary exemption from the rule would not lead to a permanent resolution of the problem due to the technical issues involved. Bornemann did not explain what those technical issues were nor did they explain to what extent they could not be addressed. Bornemann also did not discuss what specific differences between existing and future air bag requirements would create technical problems for them nor did they discuss what specific advanced air bag technologies would pose the greatest problems for them.

The Coalition of Small Volume Automobile Manufacturers (COSVAM), RVIA, and NTEA addressed the potential impact the new advanced air bag requirements would have on small volume manufacturers, multi-stage manufacturers, and alterers. A discussion of their specific comments as well as our response to them is included earlier in the section addressing the rule's phase-in requirements.

We appreciate the technical challenges small volume manufacturers, multi-stage manufacturers, alterers, and seating system suppliers will face as a result of the requirements included in today's rule. Therefore, we have considered whether there were any alternatives available that could simplify compliance for small businesses without adversely affecting safety.

RVIA asked that we allow small volume final stage manufacturers and alterers to certify compliance with a generic sled test pulse. As explained earlier in today's rule as well as in both the NPRM and SNPRM, we do not consider sled testing to be an adequate long-term means of assessing the extent of occupant protection that a vehicle and its air bag will provide occupants in the real world. Unlike a full scale vehicle crash test, a sled test does not, and cannot, measure the actual protection that an occupant will receive in a crash. The test can measure the limited performance attributes of the air bag, but not the performance provided by the full air bag system, much less the combination of the vehicle and its occupant crash protection system. It is that combination that determines the amount of protection actually received in a crash. We also note that it would be inconsistent with the Safety Act to allow multi-stage manufacturers and alterers to certify compliance with a generic sled test pulse. Under the Safety Act, we cannot base the applicability of our safety standards on the circumstances of the manufacturer, such as whether a vehicle is manufactured in one or more stages. Differences in the applicability of standards must be based instead on differences between vehicles, such as the differences between convertibles and sedans.

We note that sled testing is an accepted engineering practice and nothing precludes manufacturers from using sled tests as a basis for their certification. We note, however, that sled testing does not test all of the attributes (such as weight sensing or presence sensing) of the countermeasures that may be used to comply with the requirements of today's rule.

In light of the statutory mandates contained in TEA 21, the only alternative available to address the concerns of small businesses is to increase the lead time for small volume manufacturers, multi-stage manufacturers, and alterers. We note that COSVAM, RVIA, and NTEA all supported such an extension. Further, while we recognize and are sympathetic to the technical challenges small volume manufacturers, multi-stage manufacturers, and alterers will face as a result of the requirements included in today's rule, we emphasize that we have limited discretion as to how much lead time we can provide. TEA 21 provides that if the phase-in begins on September 1, 2003, the final rule must become fully effective by September 1, 2006. No exceptions are given for multi-stage manufacturers, alterers, or small volume manufacturers.

We acknowledge that there is no guarantee that this solution will ultimately solve all the technical problems of small businesses. We have no control over when manufacturers bring into compliance the vehicles they supply to multi-stage manufacturers during the phase-in period. In addition, we have no control over the particular advanced air bag technology vehicle manufacturers will use to comply with the new requirements (*e.g.*, whether the system will incorporate the seat).

Further, while we recognize that adapting to this technology may not be easy, it is necessary. Keeping pace with technology is not a new problem for these manufacturers. Manufacturers regularly incorporate new technology that improves the safety of their vehicles (*e.g.*, antilock brakes). However, to help minimize the economic impact of this final rule on small businesses, we urge air bag suppliers, chassis manufacturers, and OEMs to provide these manufacturers with as much engineering expertise as possible to help them meet the new requirements, and to keep the overall impacts small.

We note that we are undertaking efforts to address the needs of multi-stage manufacturers, alterers, and the businesses, such as Bornemann, that

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supply them. We have established a Negotiated Rulemaking Committee to develop recommended amendments to the existing NHTSA regulations (49 CFR Parts 567 and 568) governing the certification of vehicles built in two or more stages to the Federal motor vehicle safety standards. The purpose of the amendments would be to assign certification responsibilities more equitably among the various participants in the multi-stage vehicle manufacturing process. The Committee will develop its recommendations through a negotiation process. It consists of persons who represent the interests that would be affected by any such amendments, such as first-stage, intermediate and final-stage manufacturers of motor vehicles, equipment manufacturers, vehicle converters, testing facilities, trade associations that represent various manufacturing groups, and consumers. The Committee is addressing several issues that should, when resolved, assist multi-stage manufacturers and alterers in complying with today's requirements. Such issues include, for example: the feasibility and cost effectiveness of alternate methods (*e.g.*, testing, computer modeling, or other as-yet-unspecified methods) to ensure compliance of completed vehicles with requirements of applicable FMVSSs; mechanisms for incorporating alternate methods of ensuring compliance into these regulations; mechanisms for sharing costs of testing; and requirements tailored to the capabilities and circumstances of each class of vehicles.

*Q. Other Issues*

1. Ability to Comment Effectively on the Supplemental Proposal

The Center for Auto Safety (CAS) has asserted in section I of its unpaginated, electronically-filed December 30, 1999 comments that the agency has engaged in an "information blackout" that has hampered the ability of CAS and others to understand and comment effectively on the SNPRM. In support of this assertion, CAS has cited both NHTSA's refusal to disclose materials submitted with claims of confidentiality by the motor vehicle manufacturers in response to the agency's December 17, 1997 requests for information concerning air bag technology in MY 1990–1998 light passenger vehicles (information requests) [31] and alleged inadequacies in the agency's October 26, 1999 report summarizing those materials. *Air Bag Technology in Light Passenger Vehicles* (R&D Report).[32]

NHTSA disagrees with CAS' general assertion that public commenters lack sufficient information to participate adequately in this rulemaking. The R&D Report is a lengthy document, consisting of a four-page Executive Summary, 37 pages of text and five appendices, that incorporates six tables and 31 figures. It describes and analyzes in some detail, but in general terms that do not disclose the identities of manufacturers or vehicle makes/models, the technology (Section 2.0) and trends (Section 3.0) in air bag technology during the 1990s. In addition, the R&D Report describes out-of-position testing conducted by NHTSA on MY 1996, 1998, and 1999 production vehicles (Section 4.1) and rigid barrier testing of 13 MY 1998 and 1999 vehicles with redesigned air bags (Section 4.2), and discusses evolving air bag fatality trends using data from NHTSA's Special Crash Investigations (SCI) program (Section 5.0). The agency's conclusion that the R&D Report provides commenters with ample information on which to base their comments is borne out by the specificity and sophistication of the comments submitted by CAS.

NHTSA also disagrees with CAS' more specific assertion that the absence of a discussion of air bag deployment thresholds in the R&D Report has inhibited comments on the SNPRM (CAS Comment, Section IA). Neither the SNPRM nor the NPRM on advanced air bags proposed to set a minimum deployment threshold limit. Furthermore, we did not receive information indicating that the vehicle manufacturers changed their deployment thresholds in response to the agency's March, 1997 sled test rule. Thus, commenters do not require specific information about deployment thresholds in order to present arguments in response to the SNPRM, and the deployment threshold issue is not directly relevant to this rulemaking action. Moreover, assuming that commenters wish to discuss deployment thresholds, data on this subject are readily available to commenters from other accessible sources. Data from NHTSA's National Accident Sampling System (NASS) that provides information about the "delta Vs" in actual crashes in which air bags have deployed is publicly available over NHTSA's Website and is widely used. In addition, information in publicly-available reports prepared by SCI provides delta-V information for crashes that have resulted in fatalities. These reports are publicly available and CAS has discussed these materials with specificity in Section IA and Attachment A of its comments.

CAS' charges in sections IB and IC of its comments with respect to alleged absence from the R&D Report of detailed air bag design information, such as information with respect to the location and mounting of air bags, folding pattern details, and information about inflation stages is similarly flawed. Because NHTSA's standards are performance standards rather than design standards, the agency has not proposed specific designs in either the NPRM or SNPRM. Thus, air bag design information at the level of detail desired by CAS is not necessary in order to comment intelligently on the SNPRM. Moreover, contrary to CAS' description, the R&D Report does contain considerable design information. See, e.g., section 3.1 (Trend Analysis) and Appendix A, which includes 45 pages of detailed charts and graphs.

CAS also has objected to the withholding of the manufacturers' crash test performance data (other than data concerning testing performed pursuant to the requirements of Standard No. 208). Again, this data has been subject to litigation between CAS and the agency. But, in the R&D Report, at section 4 and Appendix D, NHTSA has provided the public with data from agency testing on a variety of vehicles using 5th percentile adult female dummies. CAS is obviously aware of these data; it has cited and discussed them in its comments.

2. Resubmittal of Petition for Rulemaking by Donald Friedman and Carl Nash

In a joint comment, Carl Nash and Donald Friedman stated that they believe that attempting to regulate all aspects of air bags may be counterproductive. They also argued that setting a minimum threshold of approximately 29 km/h (18 mph) and prohibiting late deployments would most protect vehicle occupants. We did not propose to set a minimum threshold as part of this rulemaking. Accordingly, adding such a requirement to the final rule would be outside of the scope of

[31] The withheld information is currently the subject of litigation between CAS (represented by Public Citizen Litigation Group) and NHTSA. All of the vehicle manufacturers that received and responded to the information requests , as well as several air bag suppliers, have intervened as defendants. *CAS* v. *NHTSA, D.D.C.*, No. 99–1759 (GK). The district court issued a decision denying the CAS' motion for summary judgement and granting NHTSA's and the intervenors' cross-motion for summary judgement on February 28, 2000.

[32] On December 16, 1999, the agency published a revised version of the R&D Report (Revision 1) that contains minor technical corrections to the October 26, 1999 Report. Revision 1 has been docketed at NHTSA-1997–2814–62.

the rulemaking. However, we are requiring that manufacturers meet a low risk deployment test for drivers and for small children if the air bag does not suppress. We believe that these requirements will adequately protect most individuals who could be seriously injured or killed with current air bags. Likewise, we are requiring manufacturers to meet the applicable injury criteria in a 40 km/h (25 mph) offset deformable barrier crash test. As explained earlier in this document, that test is designed to prevent the late deployments to which Friedman and Nash object.

In the SNPRM, we denied a petition by Mr. Friedman and Mr. Nash that would have required manufacturers to develop systems that would further encourage vehicle occupants to use their safety belts. In denying the petition, the agency stated that it does not have the legal authority to require such technology, although we are not discouraging manufacturers from voluntarily using such technology. The basis for our rationale is an amendment made to the Motor Vehicle Safety Act in 1974 after NHTSA had amended its occupant protection standard to require vehicle manufacturers of vehicles equipped with manual seat belts, instead of automatic protection, to install inducements for belt use. These inducements were either interlocks that prevented one from driving the vehicle unless the safety belt was used or buzzers that sounded continuously until the safety belts were attached.

Friedman and Nash have resubmitted their petition in response to the SNPRM. As noted in the SNPRM, we do not believe we currently have the statutory authority to require such devices. Nor do we believe that requiring any device that is not a buzzer or an interlock is within our authority, given the 1974 amendment. Accordingly, we are denying their resubmission. Nevertheless, we agree with Mr. Friedman and Mr. Nash that in the twenty-five years since that amendment was enacted, patterns of safety belt usage have changed considerably. We are planning to monitor the level of public acceptance and effectiveness of systems that manufacturers are placing in their vehicles to encourage seat belt use. If it appears that these systems are working, it may be appropriate to seek to have the 1974 amendment either changed or repealed.

**XIV. Benefits and Costs**

The Final Economic Assessment (FEA) provides analyses of the safety benefits from tests that reduce the risk of injury from air bags in low-speed crashes, as well as from tests that improve the overall effectiveness of air bags in high speed crashes. The intent of this rulemaking is to minimize risks caused by air bags to out-of-position occupants, especially infants and children, and to improve occupant protection provided by air bags for belted and unbelted occupants of all sizes. To achieve these goals, we are requiring vehicles to meet test procedures that broaden the scope of the current standard to ensure that occupants are properly protected under a wider variety of crash circumstances.

The risk of injury from air bags arises when occupants are too close to the air bag when it inflates. Generally, those most at risk from injury are infants, young children, and out-of-position drivers. We estimate that in a fleet fully equipped with pre-model year (MY) 1998 air bags, there would be 46 drivers, 18 infants, 105 children, and 18 adult passengers at risk of being killed by air bags annually because they were out of position when the air bag deployed in low speed (<25mph delta-v) crashes. We also estimate that if all vehicles had air bags, 38 drivers, 9 infants, 200 children, and 15 adult passengers would sustain serious to critical (MAIS 3–5) nonfatal injury because they were out of position in low severity crashes. A variety of technologies could be used to prevent these deaths and serious injuries, including weight or presence sensors to suppress the air bag, multi-stage inflators, and low risk deployment air bags.

To address these concerns, the new suppression and low risk deployment tests employ crash dummies representing infants, 3-year-old children, 6-year-old children, and 5th percentile female drivers. These tests generally require either that the air bag be suppressed if certain risk conditions exist or that deployments occur at levels that produce a low probability of injury risk.

Of the 187 potential at-risk fatalities, NHTSA estimates that suppression technologies could prevent up to 93 fatalities, low-risk air bags could prevent up to 154 fatalities, and multi-stage inflation systems could prevent up to 179 fatalities when combined with weight sensors used to suppress the air bag. Thus, more than 95 percent of the at-risk population in low speed deployments could be protected by technologies used to meet the test requirements. Of the 262 serious but nonfatal injuries, suppression technologies could prevent 151 injuries, low-risk air bags could prevent 191 injuries, and multi-stage inflation systems could prevent up to 252 injuries when combined with a weight sensor.

There is some question about the reliability of suppression and low risk deployment countermeasures and further development of these countermeasures is necessary. To the extent that these systems are not as reliable as assumed, children and small adults would continue to be at risk. Even if suppression and low risk deployment technologies are completely reliable, there will remain some out-of-position individuals subject to the full force of the air bag under certain circumstances. The risks to out-of-position individuals could be greater with an air bag designed to provide a 48 km/h (30 mph) unbelted performance compared to an air bag designed to provide 40 km/h (25 mph) unbelted performance.

The FEA also analyzes three alternative sets of high speed tests instituted to preserve and enhance air bag protection. Each test includes belted and unbelted frontal rigid barrier tests using 5th percentile adult female and 50th percentile adult male crash dummies, 30 degree oblique tests into a rigid barrier using unbelted 50th percentile adult male dummies, and 40 percent offset frontal deformable barrier tests using 5th percentile adult female dummies. Alternative 1 would require an unbelted 32 to 40 km/h (20 to 25 mph) frontal rigid barrier test, while Alternative 2 would require an unbelted 32 to 48 km/h (20 to 30 mph) frontal rigid barrier test. Both alternatives would require a belted 0 to 48 km/h (0 to 30 mph) frontal rigid barrier test. Alternative 3 would require an unbelted 32 to 40 km/h (20 to 25 mph) frontal rigid barrier test, but would require a belted 0 to 56 km/h (0 to 35 mph) frontal rigid barrier test for the 50th percentile adult male dummies and a belted 0 to 48 km/h (0 to 30 mph) frontal rigid barrier test for the 5th percentile adult female dummies. Chapter I of the FEA provides the detail of the alternative sets of high speed tests.

A variety of technologies could be used to comply with these tests including modified air bag fold patterns, improved inflators, added sensors, multi-stage inflators, and pretensioners. Air bag systems designed to comply with the 40 km/h (25 mph) offset test would, over the lifetime of one model year's production, save 20–28 more lives and prevent 134–262 more nonfatal injuries than the pre-MY 1998 baseline vehicles. Systems designed to the 48 km/h (30 mph) tests with the 5th percentile female dummy would save 23 more lives (4 belted and 19 unbelted)

and prevent 184 more nonfatal injuries (43 belted and 141 unbelted). Systems that meet the 56 km/h (35 mph) rigid barrier test with the belted 50th percentile male dummies would save from 0–4 more lives and prevent 256 to 486 more nonfatal injuries.

Estimates of the relative impact of the unbelted high speed tests are subject to a degree of uncertainty for several reasons, not the least of which is the fact that no vehicles were ever subject to a 40 km/h (25 mph) unbelted standard. We cannot estimate the most likely difference between setting the unbelted tests at the two different levels, because it depends on how the manufacturers would meet the alternative performance requirements.

We have discussed in detail our reasons for believing that it is unlikely that vehicle manufacturers will significantly depower their air bags compared to the MY 1998–2000 fleet. Vehicle manufacturers have not depowered their air bags so much that they minimally comply with the sled test. Crash tests and field experience to date with vehicles certified to the sled test have indicated that there has not been a loss of frontal crash protection compared to pre-MY 1998 vehicles. If, as we expect, the manufacturers keep the same level of power as they currently have in MY 1998–2000, even with a 40 km/h (25 mph) unbelted test requirement, then the difference in actual benefits between the two test speeds would be small or even eliminated.

At the same time, we cannot rule out the possibility that air bags will be significantly depowered. To account for this possibility, we calculated a "worst case" scenario comparing the benefits at the minimum performance requirements of each speed. We derived point estimates using two different methods and different sets of assumptions. We estimate that vehicles designed with 48 km/h (30 mph) air bags could provide 229 or 394 more lives saved than vehicles designed with minimally compliant 40 km/h (25 mph) air bags. However, we also estimate that 48 km/h (30 mph) air bags could result in an additional 1,345 serious injuries [33] compared to vehicles designed with 40 km/h (25 mph) air bags. These point estimates do not necessarily define the full range of possible outcomes due to uncertainty regarding both data and assumptions under each method.

Even assuming a worst case scenario, each of the three alternatives provide more potential benefits than the existing 48 km/h (30 mph) generic sled test. We estimate that the generic sled test is roughly equivalent to a 35 km/h (22 mph) rigid barrier perpendicular crash. During the 1997 rulemaking, we looked at the relative safety consequences of an air bag designed to just meet the performance requirements associated with a 48 km/h (30 mph) generic sled test. We estimated the fatality impacts of designing a vehicle to minimally meet the performance requirements imposed by the 48 km/h (30 mph) generic sled test and have compared these to the fatality impacts of designing a vehicle to just meet the 40 km/h (25 mph) unbelted rigid barrier test. Assuming there is no impact on air bag size, air bags designed to the 40 km/h (25 mph) unbelted rigid barrier test would save 64 to 144 more lives than air bags designed to the generic sled test. Assuming air bags designed to the generic sled test would be reduced in size and therefore provide no benefit in partial frontal impacts, 282 to 308 more lives could be saved by air bags designed to the 40 km/h (25 mph) unbelted rigid barrier test because that test requirement includes testing vehicles at a 30 degree oblique angle, thus providing benefits in partial frontal impacts.

Potential compliance costs for the final rule vary considerably and are dependent upon the method chosen by manufacturers to comply. Methods such as modified fold patterns and inflator adjustments can be accomplished for little or no cost. More sophisticated solutions such as proximity sensors can increase costs significantly. Dynamic presence sensors are not available at this point in time. They have not been refined to the point that they are in use in vehicles and are not required by tests in any Alternative. However, they have the potential to provide more benefits on the passenger side than weight sensors or low risk air bags. Dynamic presence sensors could be used by manufacturers to meet the test requirements in the future. As such, the cost and benefits of these systems have been estimated. The range of potential costs for the compliance scenarios examined in this analysis is $21–$128 per vehicle (1997 dollars). This amounts to a total potential annual cost of up to $2 billion, based on 15.5 million vehicle sales per year.

Compliance methods that involve the use of suppression technology have the potential to produce significant property damage cost savings because they prevent air bags from deploying unnecessarily. This saves repair costs to replace the passenger side air bag, and frequently to replace windshields damaged by the air bag deployment. Property damage savings from these requirements could total up to $85 over the lifetime of an average vehicle. This amounts to a potential cost savings of $1.3 billion.

## XV. Rulemaking Analyses and Notices

### *A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

NHTSA has considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document is economically significant and was reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action has also been determined to be significant under the Department's regulatory policies and procedures. NHTSA is placing in the public docket a Final Economic Assessment (FEA) describing the costs and benefits of this rulemaking action. The costs and benefits are summarized earlier in this document.

### *B. Regulatory Flexibility Act*

We have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) We have prepared a Regulatory Flexibility Analysis (RFA), which is part of the FEA. The RFA concludes that the final rule could have a significant, short-term economic impact on a substantial number of small businesses, but the economic impact on a substantial number of small businesses need not be significant in the long run. Small organizations and small governmental units will not be significantly affected since the potential cost impacts associated with this rule should only slightly affect the price of new motor vehicles.

The rule will directly affect motor vehicle manufacturers, second-stage or final-stage manufacturers, and alterers; and indirectly affect air bag manufacturers, seating system manufacturers, and dummy manufacturers.

There are approximately five main suppliers of air bag systems. The agency does not believe that any are small businesses. In addition, we believe that there may be some second and third tier

[33] The less aggressive single-stage air bag that can be designed to a 40 km/h (25 mph) unbelted test can result in fewer air bag caused injuries at low speeds than an air bag designed to a 48 km/h (30 mph) unbelted test. Thus, single-stage air bags designed to a 48 km/h (30 mph) unbelted test can prevent more fatalities, while single-stage air bags designed to a 40 km/h (25 mph) unbelted test can prevent more injuries. Multi-stage air bags are assumed to provide the same level of benefits during the first stage, whether the second stage is designed for a 40 km/h (25 mph) unbelted test or a 48 km/h (30 mph) unbelted test.

manufacturers of components of air bags or air bag sensors that are small businesses. We do not believe, however, that there is a substantial number of them. Since today's rule will increase the demand for air bag systems and advanced air bag system technology, we believe that today's rule will have a positive effect on air bag manufacturers and on second and third tier manufacturers of air bag components.

There are several manufacturers of dummies and/or dummy parts. All of them are considered small businesses. While the rule will not impose any requirements on these manufacturers, we expect it will have a positive impact on these types of small businesses by increasing demand for dummies and/or dummy parts (*e.g.*, accelerometers).

For passenger car and light truck manufacturers, we estimate that there are only about four small manufacturers (SVMs) in the United States. We believe that these manufacturers, which serve a niche market, do not manufacture even 0.1 percent of total U.S. passenger car and light truck production per year. We note that these manufacturers are already required to certify compliance to Standard No. 208's air bag requirements under ISTEA. In the past, many of these manufacturers have petitioned for temporary relief from the air bag requirements on the basis of economic hardship. We anticipate that these manufacturers will encounter difficulty certifying compliance with the requirements being added to Standard No. 208 by today's rule.

In an effort to address the needs of these SVMs, we have decided to allow them to wait until the end of the phase-in to meet the requirements of today's rule. This will give SVMs more time to perform the engineering analysis and generate the compliance data needed to comply with today's rule. Since the requirements in today's rule will enhance the safety of vehicles and air bags for infants, children, small-statured adults and both belted and unbelted occupants, we believe any delays in compliance should be granted in the narrowest of circumstances only. We are, therefore, limiting this option to manufacturers which produce fewer than 5,000 vehicles per year worldwide.

RVIA asked that final-stage manufacturers be given a one-year extension after the end of the phase-in for large manufacturers. RVIA stated that guidance from incomplete vehicle manufacturers is generally not available until at or very near the startup of new or updated model production and that, therefore, final stage manufacturers will need at least one additional year to meet the new requirements.

NTEA supported the proposal to allow multi-stage produced vehicles to be phased in at the end of the phase-in period. NTEA requested that the phase-in period run from September 1, 2003 to September 1, 2006.

In the initial regulatory flexibility analysis, we stated that we knew of 11 businesses that supply seating systems to van converters and others and that are small businesses. In addition, there are about 10 suppliers of seating systems that are not small businesses. The small businesses serve a niche market and provide seats for less than two percent of vehicles. Depending on the technology manufacturers choose to meet the advanced air bag final rule, these suppliers will have to keep up with the technology.

Bornemann Products Incorporated is a small business that provides seating components to second- and final-stage manufacturers and alterers. Bornemann argued that the cost per vehicle and the impact on small businesses could be significant. Bornemann stated that this rule could have a significant impact on the industry that supplies the "niche" market of individual custom vehicles. Bornemann's concerns have been addressed extensively earlier in this document. We refer the reader to that discussion. Additional information concerning the projected impacts of today's rule on small entities is presented in the FEA.

We believe that second- and final-stage manufacturers and alterers will choose to certify compliance in one of two ways. They will either (1) rely on suppliers to provide them with the same technology (weight sensing, seat track sensing, etc.) provided to the OEM manufacturers or (2) purchase the full seat from the OEM and, leaving the technology in place, re-upholster the seat. If they rely on manufacturers to supply them with the same technology, there will be a cost associated with installing the technology in the seat and assuring compliance (*e.g.*, static testing) if they cannot pass through the supplier's certification. There will also be costs associated with certifying compliance with the rigid barrier test.

*C. National Environmental Policy Act*

NHTSA has analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

*D. Executive Order 13132 (Federalism)*

The agency has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132 and has determined that it does not have sufficient federalism implications to warrant consultation with State and local officials or the preparation of a federalism summary impact statement. The final rule has no substantial effects on the States, or on the current Federal-State relationship, or on the current distribution of power and responsibilities among the various local officials.

*E. Unfunded Mandate Reform Act*

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with base year of 1995). This rule will not have a significant expenditure of funds by State, local and tribal governments. However, the cost of the Rule will exceed the expenditure of over $100 million by the private sector. Rather than requiring a specific technology, this rule allows manufacturers to certify compliance with the advanced air bag requirements through a combination of several different technologies. Some of theses technologies, such as a dynamic suppression system, may be quite expensive. Other technologies, such as a weight sensor, are relatively cheap. The decision as to which technology to place in a particular vehicle rests with the manufacturer of that vehicle. A full assessment of the Rule's costs and benefits is provided in the FRA.

*F. Executive Order 12778 (Civil Justice Reform)*

This final rule does not have any retroactive effect. Under section 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

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*G. Paperwork Reduction Act*

In its November 5, 1999 supplemental notice of proposed rulemaking, NHTSA sought public comment on its estimates of the additional collection of information burden imposed on the public as a result of this rulemaking. NHTSA received no comments on the collection of information issues.

This final rule includes the following "collections of information," as that term is defined in 5 CFR Part 1320 *Controlling Paperwork Burdens on the Public:*

*Air Bag Phase-In Reporting Requirements*—For the six production years ending on August 31, 2003, August 31, 2004, August 31, 2005, August 31, 2007, August 31, 2008, and August 31, 2009, each manufacturer will be required to report once a year to NHTSA, its annual production of vehicles with advanced air bags. As previously explained, the reporting for the initial phase-in period will end with the information for the production year ending on August 31, 2005 and the reporting for the second phase-in will end with the information for the production year ending on August 31, 2009. The Office of Management and Budget has approved NHTSA's collection of this information, assigning the collection OMB clearance no. 2127–0599. NHTSA estimates that 1,260 burden hours a year (on all vehicle manufacturers) would be imposed as a result of this collection.

Since today's rule specifies a second phase-in period, we will ask OMB to extend clearance no. 2127–0599 for the additional period of time that the second phase-in period will last. OMB grants extensions of collections for no more than three years at a time. We do not believe that future phase-in report collections will result in burdens on the public of more than 1,260 burden hours (on all vehicle manufacturers) a year.

*Air Bag Warning Labels*—New air bag warning labels are specified in this final rule. At present, OMB has approved NHTSA's collection of labeling requirements under OMB clearance no. 2127–0512, *Consolidated Labeling Requirements for Motor Vehicles (Except the Vehicle Identification Number).* This clearance will expire on 6/30/2001, and is cleared for 71,095 burden hours on the public.

For the following reasons, NHTSA estimates that the new air bag warning labels would have no net increase in the information collection burden on the public. There are 24 motor vehicle manufacturers that will be affected by the air bag warning label requirement, and the labels will be placed on approximately 15,500,000 vehicles per year. The label will be placed on each vehicle once. Since, in this final rule, NHTSA specifies the exact content of the labels, the manufacturers will spend 0 hours developing the labels. NHTSA estimates the technical burden time (time required for affixing labels) to be .0002 hours per label. NHTSA estimates that the total annual burden imposed on the public as a result of the air bag warning labels will be 3,100 hours (15.5 million vehicles multiplied by .0002 hours per label). Since the labels specified in this final rule replace existing labels, no additional burden is imposed on manufacturers.

*Advanced Air Bag Information in the Owner's Manual*—This final rule requires advanced air bag information in the owner's manual that is in addition to the information already required under Standard No. 208. At present, OMB has approved NHTSA's collection of owner's manual requirements under OMB clearance no. 2127–0541 *Consolidated Justification of Owner's Manual Requirements for Motor Vehicles and Motor Vehicle Equipment.* This collection includes the burdens that would be imposed as a result of owners' manual information about air bags. This clearance will expire on 10/31/2001 and is cleared for 1,371 burden hours a year on all vehicle manufacturers.

*H. Regulation Identifier Number (RIN)*

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

*I. Plain Language*

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Standard No. 208 is extremely difficult to read as it contains multiple cross-references and has retained all of the requirements applicable to vehicle of different classes at different times. Because portions of today's rule amend existing text, much of that complexity remains. Additionally, the availability of multiple compliance options, differing injury criteria and a dual phase-in have added to the complexity of the regulation, particularly as the various requirements and options are accommodated throughout the initial phase-in. Once the initial phase-in is complete, much of the complexity will disappear. At that time, it would be appropriate to completely revise Standard No. 208 to remove any options, requirements, and differentiations as to vehicle class that are no longer applicable.

*J. Executive Order 13045*

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking directly involves decisions based on health risks that disproportionately affect children, namely, the risk of deploying air bags to children. However, this rulemaking serves to reduce, rather than increase, that risk.

*K. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [34] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

[34] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specifications and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

We have incorporated the out-of-position tests one and two developed by the International Standards Organization (ISO) as part of the proposed low-risk deployment tests for the out-of-position 5th percentile adult female on the driver-side air bag and for the 6-year-old child on the passenger-side air bag. We have reviewed the proposed SAE seating procedure for the 5th percentile adult female in a dynamic crash test. We have decided against adopting this procedure because it has not yet been adopted by SAE and may not be adopted, in any form, for some time. No other voluntary consensus standards are addressed by this rulemaking.

**Appendix A—Glossary**

**Air Bags—In General**

Air bags are inflatable restraints. Enough gas must be pumped into them to cushion occupants. Otherwise, occupants, especially large ones, could "bottom out" the air bag and hit the vehicle interior in a crash. Thus, the amount of pressure within air bags must be carefully controlled. This is done by controlling both the rate at which gas is pumped into the air bag and the rate at which the gas is released from the air bag through vents or microscopic holes in the fabric itself.

**Categories of Frontal Air Bags**

*Advanced air bags.* Advanced air bags are air bags that minimize the risk of serious injury to out-of-position occupants and provide improved protection to occupants in high speed crashes. They accomplish this either by incorporating various technologies that enable the air bags to adapt their performance to a wider range of occupant sizes and crash conditions and/or by being designed to both inflate in a manner that does not pose such risk as well as to provide improved protection. Some of these technologies are multi-stage inflators, occupant position sensors, occupant weight and pattern sensors, and new air bag fold patterns. (The inflators and sensors are explained below.)

*Redesigned air bags.*[35] Redesigned air bags are bag systems used in vehicles that have been certified to the unbelted sled test option instead of the unbelted crash test option in Standard No. 208. Many of the redesigned air bags in MY 1998 and 1999 vehicles have less power than the air bags in earlier model years of that vehicle model. However, the power levels of current air bags vary widely. For example, the redesigned air bags in some current vehicles are more powerful than the unredesigned air bags in some earlier vehicles.

**Inflators**

Inflators are the devices which pump the gas into air bags to inflate them in a crash.

[35] These air bags are also sometimes called depowered air bags, second generation air bags or next generation air bags.

*Single stage inflators.* Single stage inflators fill air bags with the same level of power in all crashes, regardless of whether the crash is a relatively low or high speed crash.

*Multi-stage inflators.* Multi-stage inflators (also known as multi-level inflators) operate at different levels of power, depending on which stage is activated. The activation of the different stages can be linked to crash severity sensors. In a vehicle with dual-stage inflators, only the first stage (lowest level of power) will be activated in relatively low speed crashes, while the first and second stages (highest level of power) will be activated in higher speed crashes. As crash severity increases, so must the pressure inside the air bag in order to cushion the occupants.

**Sensors**

Many advanced air bag systems utilize various sensors to obtain information about crashes, vehicles and their occupants. This information is used to adapt the performance of the air bag to the particular circumstances of the crash. It is used in determining whether an air bag should deploy and, if it should, and if the air bag has multiple inflation levels, at what level. Examples of these sensors include the following:

*Crash severity sensors.* Crash severity sensors measure the severity of a crash, *i.e.*, the rate of reduction in velocity when a vehicle strikes another object. If a relatively low severity crash is sensed, only the lowest stage of a dual-stage inflator will fill the air bag; if a more severe crash is sensed, both stages will fill the air bag, inflating it at a higher level.

*Belt use sensors.* Belt use sensors determine whether an occupant is belted or not. An advanced air bag system in vehicles with crash severity sensors and dual-stage inflators might use belt use information to adjust deployment thresholds for unbelted and belted occupants. Since an unbelted occupant needs the protection of an air bag at lower speeds than a belted occupant does, the air bag would deploy at a lower threshold for an unbelted occupant. (Deployment thresholds are explained below.)

*Seat position sensors.* Seat position sensors determine how far forward or back a seat is adjusted on its seat track. An advanced air bag system could be designed so a dual-stage air bag deploys at a lower level when the seat is all the way forward than it does when the seat is farther back. This would benefit those short-statured drivers who move their seats all the way forward.

*Occupant weight sensors.* Occupant weight sensors measure the weight of an occupant. An advanced air bag system might use this information to prevent the air bag from deploying at all in the presence of children.

*Pattern sensors.* Pattern sensors evaluate the impression made by an occupant or object on the seat cushion to make determinations about occupant presence and the overall size and position of the occupant. They could also sense the presence of a particular object like a child seat. An advanced air bag system might use this information to prevent the air bag from deploying in the presence of children. An advanced air bag system might utilize both an occupant weight sensor and an occupant pattern sensor.

**Deployment Thresholds**

The term deployment threshold is typically used to refer to the lowest range of rate of reduction in vehicle velocity in a crash at which a particular air bag is designed to deploy.

*No-fire threshold.* The no-fire threshold is the crash speed below which the air bag is designed to never deploy.

*All-fire threshold.* The all-fire threshold is the crash speed at or above which the air bag is designed to always deploy.

*Gray zone.* The gray zone is the range of speeds between the no-fire and all-fire thresholds in which the air bag may or may not deploy.

Vehicles with advanced air bags may have different deployment thresholds for belted and unbelted occupants, *e.g.*, the deployment threshold may be higher if an occupant is belted. (See belt use sensors above.)

**Crash Tests vs. Sled Tests**

In crash tests, instrumented test dummies are placed in a vehicle which is then crashed into a barrier. Measurements from the test dummies are used to determine the forces, and estimate the risk of serious injury, that people would have experienced in the crash.

In sled tests, no crash takes place. The vehicle is placed on a sled-on-rails, and instrumented test dummies are placed in the vehicle. The sled and vehicle are accelerated very rapidly backward by means of a generic acceleration pulse. As the vehicle moves backward, the dummies move forward inside the vehicle in much the same way that people would in a frontal crash. The air bags are manually deployed at a pre-selected time during the sled test. Measurements from the dummies are used to determine the forces, and estimate the risk of serious injury, that people would have experienced if the vehicle experienced that level of deceleration.

**Fixed Barrier Crash Tests**

All of the crash tests adopted in this final rule are fixed barrier crash tests, *i.e.*, the test vehicle is crashed into a barrier that is fixed in place (as opposed to moving). The types of fixed barrier crash tests are shown in Figure 3.

*Rigid barrier test, perpendicular impact.* In a rigid barrier, perpendicular impact test, the vehicle is crashed straight into a rigid barrier that does not absorb any crash energy. The full width of the vehicle's front end hits the barrier.

*Rigid barrier, oblique impact test.* In a rigid barrier, oblique impact test, the vehicle is crashed at an angle into a rigid barrier.

*Offset deformable barrier test.* In an offset deformable barrier test, one side of a vehicle's front end, not the full width, is crashed into a barrier with a deformable face that absorbs some of the crash energy.

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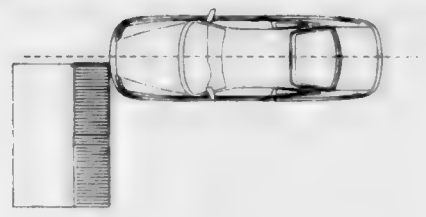

Deformable Barrier, 40% Overlap
Driver Side Engaged

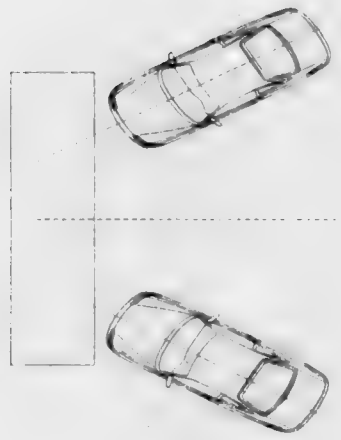

Rigid Barrier, Oblique Impact
Right 30 Deg Impact
Left Deg30 Impact

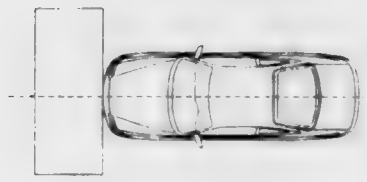

Rigid Barrier Perpendicular Impact

**Figure 3.**
Types of Fixed Barrier Crash Tests

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**Crash Pulses**

A crash pulse is the graph or picture of how quickly the vehicle occupant compartment is decelerating at different times during a crash.

*Stiff crash pulses.* In crashes with stiff pulses, the occupant compartment decelerates very abruptly. An example of a crash with a stiff pulse would be a full head-on crash of a vehicle into a like vehicle. The perpendicular rigid barrier crash test produces a stiff crash pulse.

*Soft crash pulses.* In crashes with soft pulses, the occupant compartment decelerates less abruptly, compared to crashes with hard pulses. An example of a crash with a soft pulse would be the crash of a vehicle into sand-filled barrels such as those seen at toll booths or at the leading edge of a concrete median barrier. The offset deformable barrier crash test and the 30 degree oblique rigid barrier crash test produce soft crash pulses.

In crashes involving comparable reductions in velocity, an unrestrained occupant would hit the vehicle interior ( i.e., steering wheel, instrument panel and windshield) at a much higher speed in a crash with a stiff pulse than in a crash with a soft pulse.

**Belted and Unbelted Tests**

Belted tests use belted dummies, while unbelted tests use unbelted dummies. Despite increases in seat belt use, nearly 50 percent of all occupants in fatal crashes are unbelted. Unbelted tests are intended to evaluate the protection provided these persons, many of whom are teenagers and young adults.

**Static Low Risk Deployment Tests**

Static out-of-position tests are called "static" because the vehicle does not move during the test. These tests are used to measure the risk that an air bag poses to out-of-position occupants. Test dummies are placed in specified positions that are extremely close to the air bag, typically with some portion of the dummy touching the steering wheel or instrument panel. The air bag is deployed. Measurements from the test dummy are used to determine the forces, and estimate the risk of serious injury, that people would have experienced in the crash.

**Injury Criteria and Performance Limits—In general**

In a crash test, sled test, or static out-of-position test, measurements are taken from the test dummy instruments that indicate the forces that a person would have experienced under the same conditions. Standard No. 208 specifies several injury criteria. For each criterion, the Standard also specifies a performance limit, based on the level of forces that create a significant risk of producing serious injury.

**Injury Criteria**

This final rule adopts performance limits for various injury criteria to address the risk of several types of injuries. Among these injury criteria are:

*Head Injury Criterion or HIC.* Head Injury Criterion or HIC addresses the risk of head injury;

*Nij.* Nij addresses the risk of neck injury; and *Chest Acceleration and Chest Deflection.* Chest Acceleration and Chest Deflection address the risk of chest injury.

**Test Dummies**

This final rule specifies the use of several test dummies to represent children and adults of different sizes. These dummies are:

12-month old Crash Restraints Air Bag Interaction (CRABI) dummy, representing an infant;

Hybrid III 3-year-old and 6-year-old child dummies, representing young children;

Hybrid III 5th percentile adult female dummy, representing a small woman;

Hybrid III 50th percentile adult male dummy, representing an average-size man.

**Appendix B—Evolution of the Air Bag Provisions in Standard No. 208**

The occupant protection requirements in Standard No. 208 have been evolving for more than 30 years. It is only relatively recently, however, that vehicle manufacturers have actually been required to install any air bags. Although vehicle manufacturers first installed air bags in a small number of vehicles in the mid-1970s and began installing air bags in a significant number of vehicles in the mid-1980s, it was not until the mid to late 1990s (MY 1997) that manufacturers were first required to install any air bags in any motor vehicle.

We issued our first notice concerning air bags in 1969. 34 FR 11148; July 2, 1969. In response to the low rate of seat belt use, we amended Standard No. 208 in 1971 to require automatic restraints (*i.e.*, devices like air bags and automatic belts that protect in frontal crashes without requiring any action by the occupant) in all passenger cars in 48 km/h (30 mph) crash tests beginning with MY 1976. 37 FR 3911; February 24, 1972.[36] In *Chrysler Corp. v. DOT*, the Sixth Circuit Court of Appeals upheld the basic validity of that requirement, finding it reasonable and practicable, but directed NHTSA to issue more precise test dummy specifications in order to achieve greater objectivity. After complying with that directive, NHTSA proposed automatic restraint requirements in 1974. We did not take final action on that proposal.

Instead, after issuing a new notice in 1976 (41 FR 24070; June 14, 1976) seeking comment on a variety of alternative actions including promoting seat belt use laws, requiring automatic restraints, and initiating a field test of automatic restraints, the Department decided in early 1977 to initiate a field test of automatic restraints. Pursuant to that decision, contracts were negotiated with vehicle manufacturers for the voluntary offering for sale of 500,000 automatic restraint passenger cars. It was anticipated that those passenger cars would be equipped with air bags.

However, this field test was never completed. Instead, in mid-1977, the Department decided to go ahead and once again mandate automatic restraints in passenger cars. 42 FR 34289; July 5, 1977. The requirements were to be phased in, beginning in MY1983. However, in 1981, NHTSA rescinded the requirements because it said that it was unable to find that more than minimal safety benefits would result from the vehicle manufacturers' plan to comply with the requirements by installing detachable automatic belts instead of air bags. 46 FR 53419; October 29, 1981.

In June 1983, the Supreme Court held that NHTSA's rescission of the automatic restraint requirements was arbitrary and capricious. *Motor Vehicle Manufacturers' Association* v. *State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983). In particular, the Court found the agency had failed to present an adequate basis and explanation for rescinding the requirement.

The Court unanimously found that, even if the agency was correct that detachable automatic belts would yield few benefits, that fact alone would not justify rescission. Instead, it would justify only a modification of the requirement to prohibit compliance by means of that type of automatic restraint. The Court also unanimously held that having concluded that detachable automatic belts would not result in significantly increased usage, NHTSA should have considered requiring that automatic belts be continuous (*i.e.*, nondetachable) instead of detachable, or that Standard No. 208 be modified to require the installation of air bags.

In response to the Supreme Court's decision, the Department issued a proposal in late 1983 seeking public comment on an array of alternatives similar to those in the Department's 1976 notice. 48 FR 48622; October 19, 1983. Among those alternatives was mandating air bags.

However, when the Department issued a rule in 1984, it did not establish such a mandate. Instead, it required that some type of automatic restraint be installed in passenger cars. Thus, the manufacturers had a choice of a variety of methods of providing automatic protection, including automatic seat belts and air bags, as long as certain specified performance requirements were met in a 48 km/h (30 mph) crash test into a rigid barrier using 50th percentile adult male dummies. Further, the requirements gave vehicle manufacturers broad flexibility in selecting the design and performance characteristics of their automatic restraints as long as they met the performance requirements.

The Department expressly recognized in its 1984 rule that the vehicle manufacturers had raised concerns about potential adverse effects of air bags to out-of-position occupants. In response to those concerns, the Department identified a variety of technological concepts for addressing those risks. See the July 11, 1984 Final Regulatory

[36] Passenger cars manufactured between August 1973 and August 1975, could meet the requirements of FMVSS No. 208 through any of three options, two of which were for automatic restraints. One of the automatic restraint options required automatic protection in frontal crashes and required manual seat belts at each designated seating position. The other automatic restraint option required automatic protection in frontal, side and rollover crashes and did not require any seat belts in the vehicle. The other option was for manual seat belts. *Cf.* 49 CFR 571.208 S4.1.2. These options were later extended in several rulemakings to August 31, 1986.

Impact Analysis, pp. III–8 to 10.[37] The flexibility provided by the 1984 rule included the opportunity for vehicle manufacturers to develop and incorporate those technologies, now known as advanced air bag technologies. However, that rule (unlike the one being adopted today) did not adopt any regulatory provisions requiring or encouraging the use of those technologies.

The automatic protection requirements were phased in, beginning with MY 1987. Later, the requirements were extended to light trucks, beginning with MY 1995.

A number of vehicle manufacturers initially chose to comply with those requirements by installing automatic belts in many of their vehicles. However, ultimately, the early decisions of some manufacturers to install air bags as standard equipment and the positive response of the market to those decisions led to a general move within the industry toward installing air bags in many passenger cars and light trucks by the early 1990's.

In 1991, Congress included a provision in the Intermodal Surface Transportation Efficiency Act (ISTEA) directing us to amend Standard No. 208 to require that all passenger cars and light trucks provide automatic protection by means of air bags.[38] ISTEA required air bags in all passenger cars beginning with MY 1998, and in all light trucks beginning with MY 1999. We published the rule implementing this mandate on September 2, 1993 (58 FR 46551).

Like the automatic restraint requirements issued in 1984, the air bag requirements issued in 1993 were performance requirements that did not specify the design of an air bag system. Instead, they gave vehicle manufacturers substantial design flexibility. They permitted, but did not require, vehicle manufacturers to develop and use advanced air bag technologies in designing their air bags to minimize the risks from air bags, in particular, the risk of serious injury to unbelted, out-of-position occupants, including children and small drivers.

Thus, the manufacturers had significant freedom under Standard No. 208 to develop and install means of protecting the wide variety of occupants under a broad range of crash conditions, such as the types of crashes, the crash speeds at which the air bags deploy, the initial direction in which they deploy, the force with which they deploy, the time of deployment during the crash, air bag tethering and venting to control inflation force when a deploying air bag encounters an occupant close to the steering wheel or dashboard, the use of sensors to suppress air bag inflation in the presence of rear-facing child restraints or the presence of small children, the use of sensors to detect occupant position to prevent air bag inflation if appropriate, and the use of multi-stage inflators to adjust air bag force to the crash situation. Multi-stage inflators allow tailoring of air bag performance to match the circumstances of a crash. For example, air bag deployment can be tailored in response to crash severity so that force levels are lower in less severe crashes than they are in more severe crashes. The less severe crashes are the type of crashes in which full force is not needed and in which air bag-induced fatalities to out-of-position occupants have occurred.

Until March 1997, the injury criteria limits in Standard No. 208 had to be met for air bag-equipped vehicles in barrier crashes at speeds up to 48 km/h (30 mph), with the 50th percentile adult male dummies wearing seat belts, and in separate barrier crashes at those speeds with dummies unbelted. Then, however, concerns about the rising number of air bag-induced fatalities led us to publish a rule (62 FR 12960; March 19, 1997) providing manufacturers with the option of certifying the air bag performance of their vehicles with an unbelted dummy in a sled test incorporating a 125 millisecond standardized crash pulse instead of in a vehicle-to-barrier crash test. We adopted this amendment for two principal reasons. First, the lead time for reducing a significant portion of the risk of air bag-induced fatalities through reducing the force of air bags as they deploy (*i.e.*, depowering) was shorter than the lead time for addressing those risks through developing and installing advanced air bag technologies. Second, allowing manufacturers to use the less stringent, less expensive and easier to conduct sled test made it easier to maintain compliance with Standard No. 208 while depowering their air bags and making other design changes. This shortened the lead time for depowering, compared to the time it would have taken to recertify vehicles with depowered air bags using a barrier crash test.

In the March 1997 rule, we specified that the sled test option would terminate on September 1, 2001. We concluded that there was no need to reduce Standard No. 208's performance requirements permanently, based on our belief in 1997 that advanced air bag technologies could be incorporated into new vehicles by 2001 and thus enable manufacturers to reduce air bag risks while continuing to meet the 48 km/h (30 mph) unbelted barrier crash test.

The September 1, 2001 sunset date for the sled test option was superseded by a provision in TEA 21. In a paragraph titled "Coordination of Effective Dates," TEA 21 provides that the unbelted sled test option "shall remain in effect unless and until changed by [the final rule for advanced air bags]."

**Appendix C—Chronology of DOT and NHTSA Responses to Air Bag Risks and Fatalities**

**A. Introduction**

As the following chronology demonstrates, DOT/NHTSA have repeatedly and publicly addressed the issue of risk to out-of-position occupants from air bags in regulatory decisions about automatic restraints and air bags for more than 20 years. More important, concerns about that issue helped to shape the DOT/NHTSA regulatory decisions during 1980s and 1990s.

**B. Chronology**

In its 1977 rule requiring automatic restraints, the Department discussed the possibility of "side effects of air bag installation" at length. That discussion included the issue of risks for out-of-position occupants. 42 FR 34289; July 5, 1977.

In 1981, Minicars, Inc., a NHTSA research contractor, issued reports on the successful efforts to build and test devices, including dual-stage inflators, for controlling passenger air bag inflation so as to avoid harming out-of-position children.[39]

In deciding in 1984 to issue rule requiring automatic restraints, the Department considered vehicle manufacturer comments that air bags would pose risks to out-of-position occupants, particularly in small cars. The lack of experience with the technical means for addressing those risks was one of the reasons expressly cited by the Department for rejecting the alternative of mandating air bags. 49 FR 28962, at 29001; July 17, 1984.

While the Department noted in the 1984 rule that use of technical solutions such as sensors to adjust deployment could lessen the problem, it said that it could not "state for certain that air bags will never cause injury or death to a child." As discussed above, other technical solutions were identified in the Final Regulatory Impact Analysis for that rule, including dual-stage inflation systems and other technological measures such as bag shape and size, instrument panel contour, aspiration, and inflation technique. It also noted that a variety of different sensors could be used to trigger dual-stage inflation systems.

In 1985, NHTSA denied petitions for reconsideration of the 1984 rule. NHTSA noted that the 1984 "final rule acknowledged concerns about the effects of air bag systems on out-of-position occupants; however, it also explained that technical solutions are available to address the out-of-position occupant problem." NHTSA said that

[37] The July 11, 1984 Final Regulatory Impact Analysis (FRIA) listed a variety of potential technological means for addressing the problem of injuries associated with air bag deployments including dual level inflation systems and other technological measures such as bag shape and size, instrument panel contour, aspiration, and inflation technique. It also noted that a variety of different sensors could be used to trigger dual level inflation systems, *e.g.*, a sensor that measures impact speed, a sensor that measures occupant size or weight and senses whether an occupant is out of position; and an electronic proximity sensor.

For the most part, the introduction of these technologies in new motor vehicles did not begin until the late 1990's. A number of the vehicle manufacturers are known to be working now very actively on an array of advanced air bag technologies.

[38] TEA 21 is thus the second Congressional act narrowing the discretion provided by the Department's 1984 rule regarding automatic protection. That rule mandated automatic protection, but explicitly provided discretion with respect to the type of automatic protection (*e.g.*, automatic seat belts and air bags), and implicitly allowed the use of advanced air bag technologies.

ISTEA mandated the installation of air bags. TEA 21 mandates the use of advanced air bag technologies or other means to reduce air bag-induced risks.

[39] "Small Car Front Seat Passenger Inflatable Restraint System (Vol. I—Chevette and Omni)." "Small Car Front Seat Passenger Inflatable Restraint System (Vol. II—Citation)." "Upgrade Volvo Production Restraint System."

concerns about air bag risks and a variety of other factors led to the Department's decision not to mandate air bags for all cars. 50 FR 35233, at 35234; August 30, 1985.

Two years later, in 1987, NHTSA amended Standard No. 208 to delay the requirement for any type of automatic restraint for the passenger seating position in a passenger car if the car had a driver air bag. This action was taken in response to a petition by Ford. The agency said that the length of the delay was based on the time that the vehicle manufacturers said was necessary to complete the development and installation of passenger air bags. Ford said in its petition that there were a number of uncertainties, including technical problems, concerning the development of those air bags. Ford said that it was concerned that passenger air bags could pose risks for standing children and other occupants who are out of position due, for example, to pre-crash braking. It said, however, that it expected to solve these problems if its petition were granted so that it could proceed in an orderly, controlled manner to gain experience with passenger-side applications. 52 FR 10096; March 30, 1987.

In 1991, NHTSA issued a rule amending Standard No. 201, Occupant Protection in Interior Impact, 49 CFR 571.201, to facilitate installation of top-mounted, vertically deploying passenger air bags. This rulemaking was conducted in response to a petition by Chrysler, which said that this type of air bag would reduce the risks for standing children and out-of-position occupants. Ford and GM supported the petition and concurred that these air bags had the potential for reducing risks to out-of-position children and adults. 56 FR 26036; June 6, 1991.

Also in 1991, NHTSA issued a Consumer Advisory warning owners of rear-facing child seats not to use such a restraint in the front seat of a vehicle equipped with a passenger air bag. This warning was based on preliminary results of testing regarding this problem. At that time, no casualties to infants had occurred.

In the 1993 rule implementing the air bag mandate in ISTEA, NHTSA required vehicles equipped with air bags to bear labels on the sun visors providing four specific cautions, including a statement not to install rearward-facing child seats in front passenger positions, and advising the occupant to see the owner's manual for further information and explanations. 58 FR 46551; September 2, 1993.

In 1994, NHTSA issued a rule amending Standard No. 213, Child Restraint Systems, to require rear-facing child seats to bear a warning against using the restraint in any vehicle seating position equipped with an air bag. 59 FR 7643; February 16, 1994.

In 1995, NHTSA issued a rule allowing manufacturers to install a manual device that motorists could use to deactivate the front passenger-side air bag in vehicles in which rear-facing child seats can only fit in the front seat. 60 FR 27233; May 23, 1995. On October 27, 1995, in response to several fatalities to improperly-restrained children in air bag-equipped positions, NHTSA issued a strong warning in a press release. This release broadened the previous agency warnings about young children to apply to older children and even adults who may ride unrestrained.

In 1996, the agency issued a rule requiring improved labeling on new vehicles and child restraints to provide greater assurance that drivers and other occupants are aware of the dangers posed by passenger air bags to children, particularly to children in rear-facing infant restraints in vehicles with operational passenger air bags. 61 FR 60206; November 27, 1996.

In 1997, the agency took three important steps to address air bag risks through vehicle safety rulemaking. First, we issued a rule extending until September 1, 2000, the existing provision permitting vehicle manufacturers to offer manual on-off switches for the passenger air bag for new vehicles without rear seats or with rear seats that are too small to accommodate rear-facing infant restraints. 62 FR 798; January 6, 1997. Second, we issued a rule temporarily amending Standard No. 208 to facilitate efforts of vehicle manufacturers to redesign their air bags quickly so that they inflate less aggressively. This change, coupled with the broad flexibility already provided by the standard's existing performance requirements, provided the vehicle manufacturers maximum flexibility to reduce the adverse effects of current air bags quickly. 62 FR 12960; March 19, 1997. Third, we issued a rule exempting, under certain conditions, motor vehicle dealers and repair businesses from the "make inoperative" prohibition of 49 U.S.C. 30122 by allowing them to install retrofit manual on-off switches for air bags in vehicles owned by people whose request for a switch had been authorized by NHTSA. 62 FR 62406; November 21, 1997.

## Appendix D—Installation of Advanced Technologies in Current Production Motor Vehicles

### A. Introduction

The level of risk of air bag-induced fatalities depends to a significant extent on air bag system design. There are various advanced air bag technologies that have been or are being developed and that, if incorporated in air bag systems, can improve protection of occupants of different sizes, belted and unbelted, and minimize the risks from air bags.[40] For example, an air bag need not be designed so that it inflates with full force under all circumstances. Dual-stage inflators can be used in combination with various types of sensors (*e.g.*, crash severity, seat position, and belt use) and improved algorithms to adjust the deployment threshold or air bag inflation pressure and pressure rise rate and thereby reduce risk. Different folding patterns and aspiration designs, as well as systems that suppress air bag deployment altogether in appropriate circumstances, also could reduce risk. For example, higher speed deployment thresholds could prevent deployment in low speed crashes, and weight sensors could be used to prevent deployment when children are present. In addition, recessed air bag modules, compartmentalized and internally-tethered air bags, bias flaps, and low break-out force covers could make deploying air bags more benign for out-of-position occupants.

### B. Key Parts of Air Bag Systems

In analyzing potential improvements in air bag system performance, it is useful to divide the system into 3 discrete parts:

1. *Information:* Acquiring information about crashes and occupants,

2. *Analysis/Decision:* Analyzing that information to determine the nature of the crash and the circumstances of the front seat occupants, and deciding how to adjust the response of the air bag system accordingly, and

3. *Response:* Adjusting the performance of the air bag in response to the decisions regarding the acquired information.

Air bag systems acquire information through the use of sensors. All air bag systems have some kind of crash sensor indicating the occurrence of a crash and its severity. The systems process information from the sensors and use an algorithm to make decisions on the desired air bag deployment and performance based on predictions about the crash event. The systems may also have sensors which provide information about such things as belt use, child seat use, occupant weight and size, seat adjustment position, and occupant location. The information from the sensors is used by the electronic control unit in making decisions as to whether and when the air bag is to be deployed. Air bags using advanced technologies could use the information to tailor the inflation levels of multi-stage air bags.

The information, analysis/decision, and response aspects of air bag systems each offer opportunities for improving occupant protection. With more and better information, improved decision-making algorithms, and greater adjustment capability to tailor the inflation, an air bag system can be designed to provide an improved response.

For example, with improved information about crash severity, the deploy/don't deploy decision can be made earlier in a crash. By deploying earlier during a crash, before the occupant has moved very far forward, the air bag can better protect the occupant and is less likely to pose risks to the occupant. If an air bag system includes sensors which provide information about occupant weight and/or size or location, it can be designed to suppress deployment in the presence of a young child or to deploy differently for small adults and large adults (*e.g.*, a lower level of inflation for a smaller adult than that for a larger one).

While some aspects of improved performance are dependent on more or better

[40] Air bag systems are only one of many automotive applications of increasingly sophisticated technology. Equally sophisticated technology is being used in many other existing vehicle systems as well as in entirely new ones. Examples include backup obstacle detection warning systems, adaptive cruise controls, rollover sensors, rain-activated windshield wiper systems, global positioning systems, head-up displays of information on the windshield, night vision systems, antilock braking systems, and tire pressure monitoring systems.

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sensor information, others are not. For example, while a suppression device requires information about occupant category or location, other approaches that could reduce air bag aggressiveness, such as improved fold patterns, lighter weight air bag fabrics, air bag cover design, low break-out force openings, tethering and bias flaps are not information-dependent.

**C. Specific Advanced Technologies**

*Sensors—General.* Advanced air bag systems can use various types of sensors to obtain information about crashes, vehicles and their occupants. This information can be used to adapt the performance of the air bag to the particular circumstances of the crash. As noted above, it can be used in determining whether an air bag should deploy, when it should deploy, and (if it has multiple inflation levels) at what level of inflation (pressure rise) and inflation rate (pressure rise rate).

*Sensors—Crash severity.* Crash severity sensors measure the severity of a crash; *i.e.*, the rate of reduction in velocity when a vehicle strikes another object. If a relatively low severity crash is sensed, only the lowest stage of a dual-stage inflator will fill the air bag; if a moderate severity crash is sensed, both stages will fill the air bag with a specific time delay between the two stages; and if a more severe crash is sensed, both stages will fill the air bag either simultaneously or with a 5–10 msec interval in between the stages.

Improvements are being made in crash sensing hardware to provide earlier crash detection and more accurate estimates of crash severity and proper decision for timely deployment. Current trends in crash sensor hardware involve the use of either a single-point electronic sensor or a combination of electromechanical and electronic sensors.[41] Electronic sensors use microprocessor technology to compute the deceleration time history of the vehicle along with the integration of various other input factors to determine whether air bag deployment is appropriate.

*Sensors—Passenger weight and seat pattern.* Passenger air bag systems may incorporate advanced technologies to suppress the air bag in the presence of children to prevent undesirable deployments. To accomplish this, manufacturers are refining seat weight or seat pattern recognition systems for detecting passenger occupant size and/or position.

For example, some occupant detection systems will use an array of sensors in the seat cushion to measure either the pressure distribution or deflection pattern resulting from the occupant in the seat to make a determination on whether to deploy or suppress the air bag system. Child safety seats, for example, are more readily identifiable by these systems, since they have a distinct "footprint" when compared to the human buttocks.

Weight sensing systems estimate the weight of the occupant through various load cell technologies located in the seat cushion or at the base of the seat. The latter approach has the potential for avoiding the possible difficulties that can be created for seat-cushion weight sensors when the seat back is tilted back enough to transfer a significant portion of the occupant's weight from the seat cushion to the seat back. The algorithms associated with these devices can be designed to take into consideration and minimize the effects of belt cinch forces (for example, from child safety seats) by using belt tension-measuring hardware to make an adjusted assessment of weight.

*Sensors—Occupant size and/or location.* Other advanced occupant detection systems under development use technologies, such as capacitive, ultrasonic, and infrared, for sensing occupant size and/or location with respect to the air bag module. These are used in the development of dynamic and static suppression strategies.

Strategies for static occupant detection systems[42] include the ability to make a determination of whether air bag deployment is warranted (or what level of inflation is appropriate) for the size and/or position of the occupant (*e.g.*, whether the occupant is a small child or a full-sized adult, or whether the occupant is against the seat back or is sitting on the edge of the seat, closer to the air bag). These technologies may be used in conjunction with seat weight sensing/pattern recognition systems (or seat belt use and crash severity sensing) to improve the reliability of the occupant classification and location estimates.

Dynamic suppression strategies using advanced technologies, such as capacitive, ultrasonic, and infrared, will be able to make dynamic assessments of when an occupant is out of position by determining the location of the occupant during the course of a crash. These technologies must have rapid sensing capabilities and algorithms to make the air bag deployment or suppression decision, for example, in the event of pre-impact braking. These systems would have the added benefit of protecting not only children, but also out-of-position adults. (Note: This is another advanced technology still under development.)

*Sensors—Belt use or forward/aft seat adjustment position.* Air bag systems may be linked to sensors that determine whether the occupant is using his or her seat belt and whether the occupant has positioned the vehicle seat along the seat track (*i.e.*, all or nearly all the way forward or farther back). An advanced air bag system in vehicles with crash severity sensors and dual-stage inflators could use seat belt use information to adjust deployment thresholds or inflation levels depending on whether the occupant is belted or unbelted. Since an unbelted occupant is more susceptible than a belted occupant to injury in less severe crashes, the unbelted occupant needs the protection of an air bag at lower crash severities than a belted occupant does. Accordingly, the air bag would deploy at a lower threshold for an unbelted occupant.

Seat position sensors determine how far forward or back a seat is adjusted on its seat track. An advanced air bag system could be designed so a dual-stage air bag deploys at a lower level when the seat is all the way forward than it does when the seat is farther back. This would benefit those short-statured drivers who move their seats all the way forward, or mid-to-tall-statured drivers who move their seats farther back.

In the MY 2000 Ford Taurus/Mercury Sable, the air bag system will fire the low energy strategy for the driver air bag when the seat is positioned in or near the full forward position. This provides a more benign deployment for small-statured occupants who sit closer to the air bag. Ford also provides the option of installing adjustable pedals on some of its vehicle platforms to assist driver occupants in positioning themselves further away from the air bag. Both seat position sensors and adjustable pedals can be used in conjunction with the previously mentioned seat belt use and crash severity information to affect air bag performance.

*Multiple crash severity thresholds.* Some current production motor vehicles are using information from crash severity sensors in conjunction with seat belt use sensors to select the appropriate crash severity threshold levels for belted and unbelted occupants. For instance, dual speed thresholds for deploying air bags have been used in Mercedes-Benz vehicles produced for the U.S. market for several years. In these vehicles, the lower threshold for air bag deployment is approximately 19 km/h (12 mph) when occupant is unbelted and a higher threshold of approximately 29 km/h (18 mph) is utilized when the an occupant is belted. A belt buckle switch provides the information to allow the selection between these two thresholds. Other vehicle manufacturers also have implemented similar strategies.

*Multiple levels of inflation.* In addition to using crash severity and seat belt use information for dual threshold strategies, this information also can be utilized to employ different inflation levels for belted and unbelted occupants through the use of a multi-stage air bag inflator. For instance, a belted occupant may only need a low powered inflation level, since the seat belts also provide restraint, while an unbelted occupant may require a full-powered air bag to provide a timely inflation and full protection by the air bag. Similarly, the crash severity information may be used with a multi-stage inflator to employ a low level of air bag inflation in a low severity crash or a full power inflation in a high severity crash, in which additional restraint is needed for occupant protection.

*Improved seat belt systems.* Many advances have also been made in seat belt systems to improve their performance when used in conjunction with air bag systems. These systems can reduce the risk of air bag-induced injury to a belted occupant. Many production vehicles (approximately 180

[41] Based on information from the responses to the December 1997 IR, 44 percent of the MY 1998 vehicles in the IR fleet had only one crash sensor and 73 percent had either a single electronic or a combination electronic and electromechanical.

[42] Static detection systems monitor steady state conditions such as occupant weight. In contrast, dynamic detection systems continuously monitor an occupant's position in relation to the air bag module.

vehicle models)[43] are providing seat belt energy management features and/or pretensioners in MY 2000 vehicles. Pretensioners are devices that retract the seat belt to remove excess slack during a crash event. Energy management features, such as load limiting retractors or webbing tear stitching, allow yielding of the seat belt system in order to prevent too much force from being imposed on the occupant's upper chest or lap during a severe crash. This rule's adoption of a higher belted test speed is intended to encourage vehicle manufacturers to consider the use of such advanced technologies. Additional seat belt enhancements include adjustable anchorages, which allow the positioning of the shoulder strap to accommodate a person's size, and integrated seat belt systems, which mount the entire seat belt system directly into the seat to allow better belt fit and restraint performance. Development work also is being done on seat belt webbing spool-out sensors, which could provide additional information about an occupant's size and movement in relation to the air bag module.

*Improved air bag hardware.* Manufacturers also have made advances in integrating countermeasures into the air bag hardware to mitigate injuries without compromising high speed occupant protection. For example, the driver air bag system of the MY 1999 Saturn SL1 has been designed with a number of injury-mitigating countermeasures. These include a patented I-tear seam cover, a unique air bag fold, recessed air bag module, 4 internal tether straps, and an air bag whose depth and volume are relatively small. The MY 1999 Saturn SL1 passenger air bag also includes an internal bias flap, which redirects the flow of gas laterally instead of toward the occupant.

Other available air bag hardware countermeasures which minimize the risks to out-of-position occupants include:

Low break-out force covers—By reducing the amount of force needed for an air bag to break out of the module housing in the steering wheel or instrument panel, these covers help make it possible to reduce the "punch out" effect of deploying air bags.

Radial deployment paths—For an air bag with a radial deployment path, the initial primary thrust of the deploying air bag is radial instead of toward the person sitting in front of the air bag.

Compartmented air bags—These air bags can function as an air bag within an air bag. If coupled with a dual-stage inflator, the first stage can inflate the smaller, inner air bag for small adults seated near the steering wheel and both stages can inflate the full air bag.

Pyrotechnic venting—One means of reducing the aggressiveness of a deploying air bag is to provide an alternative inflation path for venting air bag gases. If an out-of-position occupant is putting pressure on the air bag, the pressure can be vented in a different direction. This can be achieved through vent holes in the inflator canisters or pyrotechnically actuating vents which close holes in the reaction surface of the inflator canister.

[43] NHTSA brochure DOT HS 808 988: "Buying a Safer Car 2000," September 1999.

Air bag aspiration—Another means of reducing the aggressiveness of a deploying air bag is to use an aspirated inflation system to draw in outside air into the gas stream as the air bag is being filled. If an out-of-position occupant interferes with the deployment of the air bag, the pressure within the bag will increase, and the aspirating system would cease operating as soon as that increased pressure within the air bag reaches a predetermined design level.

**D. Installation of Advanced Technologies in Current Production Motor Vehicles**

A steadily increasing number of passenger car models are now being equipped with some types of advanced air bag technologies. Many of these models are foreign luxury vehicles. However, both the MY2000 versions of the second best selling (Honda Accord) and third best selling (Ford Taurus) non-luxury passenger car models in calendar year 1999 are equipped with dual-stage air bags and various advanced technology sensors. While these air bag technologies are not sufficient by themselves to enable these vehicles to comply with this rule, their introduction is indicative of future possibilities.

A partial list of MY 2000 models equipped with advanced air bag technologies appears below:

Acura 3.5 RL and 3.2 TL are equipped with:
- Dual-stage passenger air bag[44]
- Advanced crash severity sensor
- Passenger belt use sensor

BMW 3- and 5-models are equipped with:
- Advanced crash severity sensor
- Dual-threshold deployment for driver and passenger air bag
- Sensor to help prevent unnecessary deployment of passenger air bag

BMW 7-series models are equipped with:
- Advanced crash severity sensor
- Dual-threshold deployment for driver and passenger air bags
- Dual-stage passenger air bag
- Sensor to help prevent unnecessary deployment of passenger air bag

BMW X5 is equipped with:
- Dual-stage driver and passenger air bags
- Advanced crash severity sensor
- Driver and passenger belt use sensor
- Dual-threshold deployment for driver and passenger air bags

BMW Z3 and BMW M coupe/roadster are equipped with:
- Dual-threshold deployment for driver and passenger air bags
- Sensor to help prevent unnecessary passenger air bag deployment

Ford Taurus and Mercury Sable are equipped with:
- Dual-stage driver and passenger air bags
- Advanced crash severity sensor
- Driver seat position sensor
- Driver belt use sensor
- Power adjustable accelerator and brake pedals

Honda Accord is equipped with:
- Dual-stage passenger air bag
- Advanced crash severity sensor
- Passenger belt use sensor

Mercedes S-class and CL coupe are equipped with:
- Passenger air bag features dual inflation rates based on impact severity.
- Advanced crash severity sensor

Volvo S80 is equipped with:
- Passenger belt use sensor
- Dual deployment threshold for driver and passenger air bags

[44] According to the Acura website, the air bag system: automatically adjusts the deployment of the front passenger's air bag SRS based on the severity of the crash and whether or not the passenger is wearing the seat belt. During a slow speed collision, the dual-stage inflator system for the dash-mounted air bag is triggered in sequence, resulting in slower overall air bag deployment with less initial force. During a higher speed-collision, both inflators operate simultaneously for full immediate inflation in order to correspond with the greater impact force.

**List of Subjects**

*49 CFR Part 552*

Administrative practice and procedure, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 571*

Imports, Incorporation by reference, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

*49 CFR Part 585*

Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 595*

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR Chapter V as follows:

## PART 552—PETITIONS FOR RULEMAKING, DEFECT, AND NON-COMPLIANCE ORDERS

1. The authority citation for Part 552 of Title 49 continues to read as follows:

**Authority:** 49 U.S.C. 30111, 30118, and 30162; delegation of authority at 49 CFR 1.50.

2. Sections 552.1 through 552.10 are designated as Subpart A and a new subpart heading is added to read as follows:

### Subpart A—General

3. A new subpart B is added to Part 552 to read as follows:

### Subpart B—Petitions for Expedited Rulemaking to Establish Dynamic Automatic Suppression System Test Procedures for Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection

Sec.

552.11 Application.
552.12 Definitions.
552.13 Form of petition.
552.14 Content of petition.
552.15 Processing of petition.

## Subpart B—Petitions for Expedited Rulemaking to Establish Dynamic Automatic Suppression System Test Procedures for Federal Motor Vehicle Safety Standard No. 208, Occupant Crash Protection

### § 552.11 Application.

This subpart establishes procedures for the submission and disposition of petitions filed by interested parties to initiate rulemaking to add a test procedure to 49 CFR 571.208, S28.

### § 552.12 Definitions.

For purposes of this subpart, the following definitions apply:

(a) *Dynamic automatic suppression system (DASS)* means a portion of an air bag system that automatically controls whether or not the air bag deploys during a crash by:

(1) Sensing the location of an occupant, moving or still, in relation to the air bag;

(2) Interpreting the occupant characteristics and location information to determine whether or not the air bag should deploy; and

(3) Activating or suppressing the air bag system based on the interpretation of characteristics and occupant location information.

(b) *Automatic suppression zone (ASZ)* means a three-dimensional zone adjacent to the air bag cover, specified by the vehicle manufacturer, where air bag deployment will be suppressed by the DASS if a vehicle occupant enters the zone under specified conditions.

(c) *Standard No. 208* means 49 CFR 571.208.

### § 552.13 Form of petition.

Each petition filed under this subpart shall—

(a) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590.

(b) Be written in the English language.

(c) State the name and address of the petitioner.

(d) Set forth in full the data, views and arguments of the petitioner supporting the requested test procedure, including all of the content information specified by § 552.14. Any documents incorporated by reference in the procedure shall be submitted with the petition.

(e) Specify and segregate any part of the information and data submitted that the petitioner wishes to have withheld from public disclosure in accordance with Part 512 of this chapter including, if requested, the name and address of the petitioner.

(f) Not request confidential treatment for the requested test procedure and, to the extent confidential treatment is requested concerning a particular DASS or data and analysis submitted in support of the petition, provide a general non-confidential description of the operation of the DASS and of the data and analysis supporting the petition.

(g) Set forth a requested effective date and be submitted at least nine months before that date.

### § 552.14 Content of petition.

The petitioner shall provide the following information:

(a) A set of proposed test procedures for S28.1, S28.2, S28.3, and S28.4 of Standard No. 208 which the petitioner believes are appropriate for assessing a particular DASS.

(1) For S28.1 of Standard No. 208, the petitioner shall specify at least one specific position for the Part 572, subpart O 5th percentile female dummy that is:

(i) Outside but adjacent to the ASZ, and

(ii) Representative of an unbelted occupant position that is likely to occur during a frontal crash.

(2) For S28.2 of Standard No. 208, the petitioner shall specify at least one specific position for the Part 572 Subpart P 3-year-old child dummy and at least one specific position for the Part 572 Subpart N 6-year-old child dummy that are:

(i) Outside but adjacent to the ASZ, and

(ii) Representative of unbelted occupant positions that are likely to occur during a frontal crash where pre-crash braking occurs.

(3) For S28.3 of Standard No. 208, the petitioner shall specify a procedure which tests the operation of the DASS by moving a test device toward the driver air bag in a manner that simulates the motion of an unbelted occupant during pre-crash braking or other pre-crash maneuver. The petitioner shall include a complete description, including drawings and instrumentation, of the test device employed in the proposed test. The petitioner shall include in the procedure a means for determining whether the driver air bag was suppressed before any portion of the specified test device entered the ASZ during the test. The procedure shall also include a means of determining when the specified test device occupies the ASZ.

(4) For S28.4 of Standard No. 208, the petitioner shall specify a procedure which tests the operation of the DASS by moving a test device toward the passenger air bag in a manner that simulates the motion of an unbelted occupant during pre-crash braking or other pre-crash maneuver. The petitioner shall include a complete description, including drawings and instrumentation, of the test device employed in the proposed test. The petitioner shall include in the procedure a means for determining whether the passenger air bag was suppressed before any portion of the specified test device entered the ASZ during the test. The procedure shall also include a means of determining when the specified test device occupies the ASZ.

(b) A complete description and explanation of the particular DASS that the petitioner believes will be appropriately assessed by the recommended test procedures. This shall include:

(1) A description of the logic used by the DASS in determining whether to suppress the air bag or allow it to deploy. Such description shall include flow charts or similar materials outlining the operation of the system logic, the system reaction time, the time duration used to evaluate whether the air bag should be suppressed or deployed, changes, if any, in system performance based on the size of an occupant and vehicle speed, and a description of the size and shape of the zone where under similar circumstances and conditions the DASS may either allow or suppress deployment. Such description shall also address whether and how the DASS discriminates between an occupant's torso or head entering the ASZ as compared to an occupant's hand or arm, and whether and how the DASS discriminates between an occupant entering the ASZ and an inanimate object such as a newspaper or ball entering the ASZ.

(2) Detailed specifications for the size and shape of the ASZ, including whether the suppression zone is designed to change size or shape depending on the vehicle speed, occupant size, or other factors.

(c) Analysis and data supporting the appropriateness, repeatability, reproducibility and practicability of each of the proposed test procedures.

(1) For the procedures proposed for inclusion in S28.1 and S28.2 of Standard No. 208, the petitioner shall provide the basis for the proposed dummy positions, including but not limited to, why the positions are representative of what is likely to occur in real world crashes.

(2) For the procedures proposed for inclusion in S28.3 and S28.4 of Standard No. 208, the petitioner shall provide:

(i) A complete explanation of the means used in the proposed test to

ascertain whether the air bag is suppressed or activated during the test.

(ii) A complete description of the means used to evaluate the ability of the DASS to detect and respond to an occupant moving toward an air bag, including the method used to move a test device toward an air bag at speeds representative of occupant movement during pre-crash braking or other pre-crash maneuver.

(iii) The procedure used for locating the test device inside a test vehicle in preparation for testing, including an accounting of the reference points used to specify such location.

(iv) An explanation of the methods used to measure the amount of time needed by a suppression system to suppress an air bag once a suppression triggering event occurs.

(v) High speed film or video of at least two tests of the DASS using the proposed test procedure.

(vi) Data generated from not less than two tests of the DASS using the proposed test procedure, including an account of the data streams monitored during testing and complete samples of these data streams from not less than two tests performed under the proposed procedure.

(d) Analysis concerning the variety of potential DASS designs for which the requested test procedure is appropriate; e.g., whether the test procedures are appropriate only for the specific DASS design contemplated by the petitioner, for all DASS designs incorporating the same technologies, or for all DASS designs.

**§ 552.15 Processing of petition.**

(a) NHTSA will process any petition that contains the information specified by this subpart. If a petition fails to provide any of the information, NHTSA will not process the petition but will advise the petitioner of the information that shall be provided if the agency is to process the petition. The agency will seek to notify the petitioner of any such deficiency within 30 days after receipt of the petition.

(b) At any time during the agency's consideration of a petition submitted under this Part, the Administrator may request the petitioner to provide additional supporting information and data and/or provide a demonstration of any of the requested test procedures. The agency will seek to make any such request within 60 days after receipt of the petition. Such demonstration may be at either an agency designated facility or one chosen by the petitioner, provided that, in either case, the facility shall be located in North America. If such a request is not honored to the satisfaction of the agency, the petition will not receive further consideration until the requested information is submitted.

(c) The agency will publish in the **Federal Register** either a Notice of Proposed Rulemaking proposing adoption of the requested test procedures, possibly with changes and/or additions, or a notice denying the petition. The agency will seek to issue either notice within 120 days after receipt of a complete petition. However, this time period may be extended by any time period during which the agency is awaiting additional information it requests from the petitioner or is awaiting a requested demonstration. The agency contemplates a 30 to 60 day comment period for any Notice of Proposed Rulemaking, and will endeavor to issue a final rule within 60 days thereafter.

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

4. The authority citation for Part 571 of Title 49 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

5. Section 571.208 is amended as follows:

A. By revising S3, S4.5.1 heading, S4.5.1(b)(1), S4.5.1(b)(2), S4.5.1(e), S4.5.1(f), S4.5.4, S5, S5.1, S6.1, S6.2, 6.4, S8.1.5, S10.6.1.1, S13 and S13.1;

B. By removing S4.5.5;

C. By adding S4.1.5.4, S4.2.6.3, S4.7, S4.8, S4.9, S4.10, S4.11, S4.12, S4.13, S5.1.1, S5.1.2, S6.6, S6.7, S14 through S29.3(b);

D. By adding the heading "Figures to § 571.208" at the end of the section and moving figures 2 through 7 to follow this heading (figure 1 is reserved); and

E. By adding new figures 8, 9 and 10 in numerical order, and Appendix A after the figures, to read as follows:

**§ 571.208 Standard No. 208; Occupant crash protection.**

* * * * *

S3. *Application.*

(a) This standard applies to passenger cars, multipurpose passenger vehicles, trucks, and buses. In addition, S9, *Pressure vessels and explosive devices,* applies to vessels designed to contain a pressurized fluid or gas, and to explosive devices, for use in the above types of motor vehicles as part of a system designed to provide protection to occupants in the event of a crash.

(b) Notwithstanding any language to the contrary, any vehicle manufactured after March 19, 1997, and before September 1, 2006, that is subject to a dynamic crash test requirement conducted with unbelted dummies may meet the requirements specified in S5.1.2(a)(1), S5.1.2(a)(2), or S13 instead of the applicable unbelted requirement, unless the vehicle is certified to meet the requirements specified in S14.5, S15, S17, S19, S21, S23, and S25.

(c) For vehicles which are certified to meet the requirements specified in S13 instead of the otherwise applicable dynamic crash test requirement conducted with unbelted dummies, compliance with S13 shall, for purposes of Standards No. 201, 203 and 209, be deemed as compliance with the unbelted frontal barrier requirements of S5.1.2.

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S4.1.5.4 *Passenger cars certified to S14.* Each passenger car certified to S14 shall, at each front outboard designated seating position, meet the applicable frontal crash protection requirements of S5.1.2(b) by means of an inflatable restraint system that requires no action by vehicle occupants.

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S4.2.6.3 *Trucks, buses, and multipurpose passenger vehicles certified to S14.* Each truck, bus, or multipurpose passenger vehicle with a GVWR of 3,855 kg (8,500 lb) or less and an unloaded vehicle weight of 2,495 kg (5,500 lb) or less certified to S14 shall, at each front outboard designated seating position, meet the applicable frontal crash protection requirements of S5.1.2(b) by means of an inflatable restraint system that requires no action by vehicle occupants.

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S4.5.1 *Labeling and owner's manual information.*

* * * * *

(b) * * *

(1) Except as provided in S4.5.1(b)(2), each vehicle shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in either Figure 6a or 6b of this standard, as appropriate, and shall comply with the requirements of S4.5.1(b)(1)(i) through S4.5.1(b)(1)(iv).

(i) The heading area shall be yellow with the word "WARNING" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 $cm^2$ (4.7 $in^2$).

(iii) The pictogram shall be black with a red circle and slash on a white background. The pictogram shall be no less than 30 mm (1.2 in) in diameter.

(iv) If the vehicle does not have a back seat, the label shown in Figure 6a or 6b may be modified by omitting the statement: "The BACK SEAT is the SAFEST place for children."

(2) Vehicles certified to meet the requirements specified in S19, S21, and S23, shall have a label permanently affixed to either side of the sun visor, at the manufacturer's option, at each front outboard seating position that is equipped with an inflatable restraint. The label shall conform in content to the label shown in Figure 8 of this standard and shall comply with the requirements of S4.5.1(b)(2)(i) through S4.5.1(b)(2)(iv).

(i) The heading area shall be yellow with the word "WARNING" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 $cm^2$ (4.7 $in^2$).

(iii) The pictogram shall be black on a white background. The pictogram shall be no less than 30 mm (1.2 in) in length.

(iv) If the vehicle does not have a back seat, the label shown in Figure 8 may be modified by omitting the statement: "The BACK SEAT is the SAFEST place for CHILDREN."

* * * * *

(e) *Label on the dashboard.*

(1) Except as provided in S4.5.1(e)(2), each vehicle that is equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in Figure 7 of this standard, and shall comply with the requirements of S4.5.1(e)(1)(i) through S4.5.1(e)(1)(iii).

(i) The heading area shall be yellow with the word "WARNING" and the alert symbol in black.

(ii) The message area shall be white with black text. The message area shall be no less than 30 $cm^2$ (4.7 $in^2$).

(iii) If the vehicle does not have a back seat, the label shown in Figure 7 may be modified by omitting the statement: "The back seat is the safest place for children 12 and under."

(2) Vehicles certified to meet the requirements specified in S19, S21, and S23, that are equipped with an inflatable restraint for the passenger position shall have a label attached to a location on the dashboard or the steering wheel hub that is clearly visible from all front seating positions. The label need not be permanently affixed to the vehicle. This label shall conform in content to the label shown in Figure 9 of this standard, and shall comply with the requirements of S4.5.1(e)(2)(i) through S4.5.1(e)(2)(iii).

(i) The heading area shall be yellow with black text.

(ii) The message area shall be white with black text. The message area shall be no less than 30 $cm^2$ (4.7 $in^2$).

(iii) If the vehicle does not have a back seat, the label shown in Figure 9 may be modified by omitting the statement: "The back seat is the safest place for children."

(f) *Information to appear in owner's manual.*

(1) The owner's manual for any vehicle equipped with an inflatable restraint system shall include an accurate description of the vehicle's air bag system in an easily understandable format. The owner's manual shall include a statement to the effect that the vehicle is equipped with an air bag and lap/shoulder belt at both front outboard seating positions, and that the air bag is a supplemental restraint at those seating positions. The information shall emphasize that all occupants, including the driver, should always wear their seat belts whether or not an air bag is also provided at their seating position to minimize the risk of severe injury or death in the event of a crash. The owner's manual shall also provide any necessary precautions regarding the proper positioning of occupants, including children, at seating positions equipped with air bags to ensure maximum safety protection for those occupants. The owner's manual shall also explain that no objects should be placed over or near the air bag on the instrument panel, because any such objects could cause harm if the vehicle is in a crash severe enough to cause the air bag to inflate.

(2) For any vehicle certified to meet the requirements specified in S14.5, S15, S17, S19, S21, S23, and S25, the manufacturer shall also include in the vehicle's owner's manual a discussion of the advanced passenger air bag system installed in the vehicle. The discussion shall explain the proper functioning of the advanced air bag system and shall provide a summary of the actions that may affect the proper functioning of the system. The discussion shall include, at a minimum, accurate information on the following topics:

(i) a presentation and explanation of the main components of the advanced passenger air bag system.

(ii) an explanation of how the components function together as part of the advanced passenger air bag system.

(iii) the basic requirements for proper operation, including an explanation of the actions that may affect the proper functioning of the system.

(iv) a complete description of the passenger air bag suppression system installed in the vehicle, including a discussion of any suppression zone.

(v) an explanation of the interaction of the advanced passenger air bag system with other vehicle components, such as seat belts, seats or other components.

(vi) a summary of the expected outcomes when child restraint systems, children and small teenagers or adults are both properly and improperly positioned in the passenger seat, including cautionary advice against improper placement of child restraint systems.

(vii) a discussion of the telltale light, specifying its location in the vehicle and explaining when the light is illuminated.

(viii) information on how to contact the vehicle manufacturer concerning modifications for persons with disabilities that may affect the advanced air bag system.

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S4.5.4 *Passenger air bag manual cut-off device.* Passenger cars, trucks, buses, and multipurpose passenger vehicles manufactured before September 1, 2012 may be equipped with a device that deactivates the air bag installed at the right front outboard seating position in the vehicle, if all the conditions in S4.5.4.1 through S4.5.4.4 are satisfied.

* * * * *

S4.7 *Incorporation by reference.* Society of Automotive Engineers (SAE) Recommended Practice J211/1 rev. Mar 95, "Instrumentation for Impact Test—Part 1—Electronic Instrumentation," (SAE J211/1 rev. Mar 95) is incorporated by reference in sections S4.13, S6.6, S13.1, S15.3.6, S19.4.4, S21.5.5, S23.5.5, and S25.4, Department of Defense MIL–S–13192P, 1988, "Military Specification, Shoes, Men's, Dress, Oxford", Amendment 1, October 14, 1994 (MIL–S–13192P) is incorporated by reference in section S8.1.8, and Department of Defense MIL–S–21711E, 1982, "Military Specification, Shoes, Women's", Amendment 2, October 14, 1994 (MIL–S–21711E) is incorporated by reference in section S16.2.5, and are thereby made part of this standard. The Director of the Federal Register approved the material incorporated by reference in accordance with 5 U.S.C. 552 (a) and 1 CFR Part 51. A copy of SAE J211/1 rev. Mar 95 may be obtained from SAE at the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. A copy of

SAE J211/1 rev. Mar 95 and copies of MIL–S–13192P and MIL–S–21711E may be inspected at NHTSA's technical reference library, 400 Seventh Street, S.W., Room 5109, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC.

S4.8 *Selection of compliance options.* Where manufacturer options are specified, the manufacturer shall select the option by the time it certifies the vehicle and may not thereafter select a different option for the vehicle. Each manufacturer shall, upon request from the National Highway Traffic Safety Administration, provide information regarding which of the compliance options it has selected for a particular vehicle or make/model.

S4.9 *Values and tolerances.* Wherever a range of values or tolerances are specified, requirements shall be met at all values within the range of values or tolerances. With respect to the positioning of anthropomorphic dummies, torso and spine angle tolerances shall be ± 2 degrees unless otherwise stated, and leg, thigh, foot, and arm angle tolerances shall be ± 5 degrees unless otherwise stated.

S4.10 *Metric values.* Specifications and requirements are given in metric units with English units provided for reference. The metric values are controlling.

S4.11 *Test duration for purpose of measuring injury criteria.*

(a) For all barrier crashes, the injury criteria specified in this standard shall be met when calculated based on data recorded for 300 milliseconds after the vehicle strikes the barrier. For low risk deployment tests, the injury criteria shall be met when calculated based on data recorded for 300 milliseconds after the air bag is signaled to deploy.

(b) The requirements for dummy containment shall continue until both the vehicle and the dummies have ceased moving.

S4.12 *Suppression systems that do not detect dummies.* For vehicles with occupant sensing systems that recognize humans and not dummies, such that the air bag or bags would not function in crash tests, the manufacturer shall provide NHTSA with information and equipment necessary to circumvent the suppression system for the crash test such that the restraint system operates as if 5th percentile adult female humans and 50th percentile adult male humans are seated in the vehicle.

S4.13 *Data channels.* All data channels used in injury criteria calculations shall be filtered using a phaseless digital filter, such as the Butterworth four-pole phaseless digital filter specified in Appendix C of SAE J211/1, rev. Mar 95, incorporated by reference in S4.7.

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S5 *Occupant crash protection requirements for the 50th percentile adult male dummy.*

S5.1 *Frontal barrier crash test.*

S5.1.1 *Belted test.*

(a) *Vehicles not certified to S14.* Impact a vehicle traveling longitudinally forward at any speed, up to and including 48 km/h (30 mph), into a fixed rigid barrier that is perpendicular to the line of travel of the vehicle, and at any angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle, under the applicable conditions of S8 and S10. The test dummy specified in S8.1.8 placed in each front outboard designated seating position shall meet the injury criteria of S6.1, S6.2(a), S6.3, S6.4(a), and S6.5 of this standard.

(b) *Vehicles certified to S14.*

(1) *Vehicles certified to S14.1 or S14.2.* Impact a vehicle traveling longitudinally forward at any speed, up to and including 48 km/h (30 mph), into a fixed rigid barrier that is perpendicular to the line of travel of the vehicle under the applicable conditions of S8 and S10. The test dummy specified in S8.1.8 placed in each front outboard designated seating position shall meet the injury criteria of S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 of this standard.

(2) *Vehicles certified to S14.3 or S14.4.* Impact a vehicle traveling longitudinally forward at any speed, up to and including 56 km/h (35 mph), into a fixed rigid barrier that is perpendicular to the line of travel of the vehicle under the applicable conditions of S8 and S10. The test dummy specified in S8.1.8 placed in each front outboard designated seating position shall meet the injury criteria of S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 of this standard.

S5.1.2 *Unbelted test.*

(a) *Vehicles not certified to the requirements of S13 or S14.* At the manufacturer's option, either one of the following unbelted tests shall be met:

(1) Impact a vehicle traveling longitudinally forward at any speed up to and including 48 km/h (30 mph), into a fixed rigid barrier that is perpendicular to the line of travel of the vehicle, and at any angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle, under the applicable conditions of S8 and S10, excluding S10.7, S10.8, and S10.9. The test dummy specified in S8.1.8 placed in each front outboard designated seating position shall meet the injury criteria of S6.1, S6.2(a), S6.3, S6.4(a), and S6.5 of this standard.

(2) Impact a vehicle traveling longitudinally forward at any speed between 32 km/h (20 mph) and 40 km/h (25 mph), inclusive, into a fixed rigid barrier that is perpendicular to the line of travel of the vehicle, and at any angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle, under the applicable conditions of S8 and S10, excluding S10.7, S10.8, and S10.9. The test dummy specified in S8.1.8 placed in each front outboard designated seating position shall meet the injury criteria of S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 of this standard.

(b) *Vehicles certified to the requirements of S14.* Impact a vehicle traveling longitudinally forward at any speed between 32 km/h (20 mph) and 40 km/h (25 mph), inclusive, into a fixed rigid barrier that is perpendicular to the line of travel of the vehicle, and at any angle up to 30 degrees in either direction from the perpendicular to the line of travel of the vehicle, under the applicable conditions of S8 and S10, excluding S10.7, S10.8, and S10.9. The test dummy specified in S8.1.8 placed in each front outboard designated seating position shall meet the injury criteria of S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 of this standard.

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S6.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment.

S6.2 *Head injury criteria.*

(a)(1) For any two points in time, $t_1$ and $t_2$, during the event which are separated by not more than a 36 millisecond time interval and where $t_1$ is less than $t_2$, the head injury criterion ($HIC_{36}$) shall be determined using the resultant head acceleration at the center of gravity of the dummy head, $a_r$, expressed as a multiple of g (the acceleration of gravity) and shall be calculated using the expression:

$$\left[\frac{1}{(t_2 - t_1)}\int_{t_1}^{t_2} a_r dt\right]^{2.5}(t_2 - t_1)$$

(2) The maximum calculated $HIC_{36}$ value shall not exceed 1,000.

(b)(1) For any two points in time, $t_1$ and $t_2$, during the event which are separated by not more than a 15 millisecond time interval and where $t_1$ is less than $t_2$, the head injury criterion ($HIC_{15}$) shall be determined using the resultant head acceleration at the center of gravity of the dummy head, $a_r$,

expressed as a multiple of g (the acceleration of gravity) and shall be calculated using the expression:

$$\left[\frac{1}{(t_2 - t_1)}\int_{t_1}^{t_2} a_r dt\right]^{2.5}(t_2 - t_1)$$

(2) The maximum calculated $HIC_{15}$ value shall not exceed 700.

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S6.4 *Chest deflection.*

(a) Compressive deflection of the sternum relative to the spine shall not exceed 76 mm (3.0 in).

(b) Compressive deflection of the sternum relative to the spine shall not exceed 63 mm (2.5 in).

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S6.6 *Neck injury.* When measuring neck injury, each of the following injury criteria shall be met.

(a) *Nij.*

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.10. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE J211/1 rev. Mar 95 Channel Frequency Class 600 (see S4.7).

(2) During the event, the axial force (Fz) can be either in tension or compression while the occipital condyle bending moment (Mocy) can be in either flexion or extension. This results in four possible loading conditions for Nij: tension-extension (Nte), tension-flexion (Ntf), compression-extension (Nce), or compression-flexion (Ncf).

(3) When calculating Nij using the equation in S6.6(a)(4), the critical values, Fzc and Myc, are:

(i) Fzc=6806 N (1530 lbf) when Fz is in tension
(ii) Fzc=6160 N (1385 lbf) when Fz is in compression
(iii) Myc=310 Nm (229 lbf-ft) when a flexion moment exists at the occipital condyle
(iv) Myc=135 Nm (100 lbf-ft) when an extension moment exists at the occipital condyle.

(4) At each point in time, only one of the four loading conditions occurs and the Nij value corresponding to that loading condition is computed and the three remaining loading modes shall be considered a value of zero. The expression for calculating each Nij loading condition is given by:

Nij=(Fz/Fzc)+(Mocy/Myc)

(5) None of the four Nij values shall exceed 1.0 at any time during the event.

(b) *Peak tension.* Tension force (Fz), measured at the upper neck load cell, shall not exceed 4170 N (937 lbf) at any time.

(c) *Peak compression.* Compression force (Fz), measured at the upper neck load cell, shall not exceed 4000 N (899 lbf) at any time.

S6.7 Unless otherwise indicated, instrumentation for data acquisition, data channel frequency class, and moment calculations are the same as given for the 49 CFR Part 572, Subpart E Hybrid III test dummy.

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S8.1.5 Movable vehicle windows and vents are placed in the fully closed position, unless the vehicle manufacturer chooses to specify a different adjustment position prior to the time it certifies the vehicle.

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S10.6.1.1 If the vehicle has an adjustable accelerator pedal, adjust it to the full forward position. Rest the right foot of the test dummy on the undepressed accelerator pedal with the rearmost point of the heel on the floor pan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, set it initially perpendicular to the lower leg and then place it as far forward as possible in the direction of the pedal centerline with the rearmost point of the heel resting on the floor pan. If the vehicle has an adjustable accelerator pedal and the right foot is not touching the accelerator pedal when positioned as above, move the pedal rearward until it touches the right foot. If the accelerator pedal still does not touch the foot in the full rearward position, leave the pedal in that position.

S13 *Alternative unbelted test available, under S3(b) of this standard, for certain vehicles manufactured before September 1, 2006.*

S13.1 *Instrumentation for Impact Test—Part 1—Electronic Instrumentation.* Under the applicable conditions of S8, mount the vehicle on a dynamic test platform at the vehicle attitude set forth in S13.3, so that the longitudinal center line of the vehicle is parallel to the direction of the test platform travel and so that movement between the base of the vehicle and the test platform is prevented. The test platform is instrumented with an accelerometer and data processing system having a frequency response of 60 channel class as specified in SAE J211/1 rev. Mar 95 (see S4.7). The accelerometer sensitive axis is parallel to the direction of test platform travel. The test is conducted at a velocity change approximating 48 km/h (30 mph) with acceleration of the test platform such that all points on the crash pulse curve within the corridor identified in Figure 6 are covered. An inflatable restraint is to be activated at 20 ms +/−2 ms from the time that 0.5 g is measured on the dynamic test platform. The test dummy specified in S8.1.8, placed in each front outboard designated seating position as specified in S10, excluding S10.7, S10.8, and S10.9, shall meet the injury criteria of S6.1, S6.2(a), S6.3, S6.4(a), S6.5, and S13.2 of this standard.

* * * * *

S14 *Advanced air bag requirements for passenger cars and for trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 pounds) or less and an unloaded vehicle weight of 2,495 kg (5500 pounds) or less, except for walk-in van-type trucks or vehicles designed to be sold exclusively to the U.S. Postal Service.*

S14.1 *Vehicles manufactured on or after September 1, 2003, and before September 1, 2006.*

(a) For vehicles manufactured for sale in the United States on or after September 1, 2003, and before September 1, 2006, a percentage of the manufacturer's production, as specified in S14.1.1, shall meet the requirements specified in S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 (in addition to the other requirements specified in this standard).

(b) Manufacturers that sell two or fewer carlines, as that term is defined at 49 CFR 583.4, in the United States may, at the option of the manufacturer, meet the requirements of this paragraph instead of paragraph (a) of this section. Each vehicle manufactured on or after September 1, 2004, and before September 1, 2006, shall meet the requirements specified in S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 (in addition to the other requirements specified in this standard).

(c) Vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having previously been certified in accordance with Part 567 of this chapter are not subject to the requirements of S14.1.

(d) Vehicles that are manufactured by a manufacturer that produces fewer than 5,000 vehicles worldwide annually are not subject to the requirements of S14.1.

S14.1.1 *Phase-in schedule.*

S14.1.1.1 *Vehicles manufactured on or after September 1, 2003, and before September 1, 2004.* Subject to S14.1.2(a), for vehicles manufactured by a manufacturer on or after September 1, 2003, and before September 1, 2004, the amount of vehicles complying with S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25, shall be not less than 35 percent of:

(a) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years prior to September 1, 2003, the manufacturer's average annual production of vehicles manufactured on or after September 1, 2001, and before September 1, 2004, or

(b) The manufacturer's production on or after September 1, 2003, and before September 1, 2004.

S14.1.1.2 *Vehicles manufactured on or after September 1, 2004, and before September 1, 2005.* Subject to S14.1.2(b), for vehicles manufactured by a manufacturer on or after September 1, 2004, and before September 1, 2005, the amount of vehicles complying with S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 shall be not less than 65 percent of:

(a) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years prior to September 1, 2004, the manufacturer's average annual production of vehicles manufactured on or after September 1, 2002, and before September 1, 2005, or

(b) The manufacturer's production on or after September 1, 2004, and before September 1, 2005.

S14.1.1.3 *Vehicles manufactured on or after September 1, 2005, and before September 1, 2006.* Subject to S14.1.2(c), for vehicles manufactured by a manufacturer on or after September 1, 2005, and before September 1, 2006, the amount of vehicles complying with S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 shall be 100 percent of the manufacturer's production during that period.

S14.1.2 Calculation of complying vehicles.

(a) For the purposes of complying with S14.1.1.1, a manufacturer may count a vehicle if it is manufactured on or after June 12, 2000, but before September 1, 2004.

(b) For purposes of complying with S14.1.1.2, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after June 12, 2000, but before September 1, 2005, and

(2) Is not counted toward compliance with S14.1.1.1.

(c) For purposes of complying with S14.1.1.3, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after June 12, 2000, but before September 1, 2006, and (2) Is not counted toward compliance with S14.1.1.1 or S14.1.1.2.

S14.1.3 *Vehicles produced by more than one manufacturer.*

S14.1.3.1 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S14.1.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S14.1.3.2.

(a) A vehicle that is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S14.1.3.2 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S14.1.3.1.

S14.2 *Vehicles manufactured on or after September 1, 2006.* Each vehicle shall meet the requirements specified in S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 (in addition to the other requirements specified in this standard).

S14.3 *Vehicles manufactured on or after September 1, 2007, and before September 1, 2010.*

(a) For vehicles manufactured for sale in the United States on or after September 1, 2007, and before September 1, 2010, a percentage of the manufacturer's production, as specified in S14.3.1, shall meet the requirements specified in S14.5.1(b), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 (in addition to the other requirements specified in this standard).

(b) Manufacturers that sell two or fewer carlines, as that term is defined at 49 CFR 583.4, in the United States may, at the option of the manufacturer, meet the requirements of this paragraph instead of paragraph (a) of this section. Each vehicle manufactured on or after September 1, 2007, and before September 1, 2010, shall meet the requirements specified in S14.5.1(b), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 (in addition to the other requirements specified in this standard).

(c) Vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having previously been certified in accordance with Part 567 of this chapter are not subject to the requirements of S14.3.

(d) Vehicles that are manufactured by a manufacturer that produces fewer than 5,000 vehicles worldwide annually are not subject to the requirements of S14.3.

S14.3.1 *Phase-in schedule.*

S14.3.1.1 *Vehicles manufactured on or after September 1, 2007, and before September 1, 2008.* Subject to S14.3.2(a), for vehicles manufactured by a manufacturer on or after September 1, 2007, and before September 1, 2008, the amount of vehicles complying with S14.5.1(b), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25, shall be not less than 35 percent of:

(a) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years prior to September 1, 2007, the manufacturer's average annual production of vehicles manufactured on or after September 1, 2005, and before September 1, 2008, or

(b) The manufacturer's production on or after September 1, 2007, and before September 1, 2008.

S14.3.1.2 *Vehicles manufactured on or after September 1, 2008, and before September 1, 2009.* Subject to S14.3.2(b), for vehicles manufactured by a manufacturer on or after September 1, 2008, and before September 1, 2009, the amount of vehicles complying with S14.5.1(b), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 shall be not less than 65 percent of:

(a) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years prior to September 1, 2008, the manufacturer's average annual production of vehicles manufactured on or after September 1, 2006 and before September 1, 2009, or

(b) The manufacturer's production on or after September 1, 2008, and before September 1, 2009.

S14.3.1.3 *Vehicles manufactured on or after September 1, 2009, and before September 1, 2010.* Subject to S14.3.2(c), for vehicles manufactured by a manufacturer on or after September 1, 2009, and before September 1, 2010, the amount of vehicles complying with S14.5.1(b), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 shall be 100 percent of the manufacturer's production during that period.

S14.3.2 *Calculation of complying vehicles.*

(a) For the purposes of complying with S14.3.1.1, a manufacturer may count a vehicle if it is manufactured on or after September 1, 2006, but before September 1, 2008.

(b) For purposes of complying with S14.3.1.2, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after September 1, 2006, but before September 1, 2009, and

(2) Is not counted toward compliance with S14.3.1.1.

(c) For purposes of complying with S14.3.1.3, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after September 1, 2006, but before September 1, 2010, and

(2) Is not counted toward compliance with S14.3.1.1 or S14.3.1.2.

S14.3.3 *Vehicles produced by more than one manufacturer.*

S14.3.3.1 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S14.3.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S14.3.3.2.

(a) A vehicle that is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S14.3.3.2 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the vehicle would otherwise be attributed under S14.3.3.1.

S14.4 *Vehicles manufactured on or after September 1, 2010.* Each vehicle shall meet the requirements specified in S14.5.1(b), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 (in addition to the other requirements specified in this standard).

S14.5 *Barrier test requirements using 50th percentile adult male dummies.*

S14.5.1 *Rigid barrier belted test.*

(a) Each vehicle that is certified as complying with S14.1 or S14.2 shall, at each front outboard designated seating position, meet the injury criteria specified in S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 when tested under S5.1.1(b)(1).

(b) Each vehicle that is certified as complying with S14.3 or S14.4 shall, at each front outboard designated seating position, meet the injury criteria specified in S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 when tested under S5.1.1(b)(2).

S14.5.2 *Rigid barrier unbelted test.* Each vehicle that is certified as complying with S14 shall, at each front outboard designated seating position, meet the injury criteria specified in S6.1, S6.2(b), S6.3, S6.4(b), S6.5, and S6.6 when tested under S5.1.2(b).

S15 *Rigid barrier test requirements using 5th percentile adult female dummies.*

S15.1 *Belted test.* Each vehicle that is certified as complying with S14 shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 of this standard when the vehicle is crash tested in accordance with the procedures specified in S16.1(a) of this standard with the anthropomorphic test devices restrained by a Type 2 seat belt assembly.

S15.2 *Unbelted test.* Each vehicle that is certified as complying with S14 shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 of this standard when the vehicle is crash tested in accordance with the procedures specified in S16.1(b) of this standard with the anthropomorphic test devices unbelted.

S15.3 *Injury criteria for the 49 CFR Part 572, Subpart O Hybrid III 5th percentile female test dummy.*

S15.3.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment.

S15.3.2 *Head injury criteria.*

(a) For any two points in time, $t_1$ and $t_2$, during the event which are separated by not more than a 15 millisecond time interval and where $t_1$ is less than $t_2$, the head injury criterion ($HIC_{15}$) shall be determined using the resultant head acceleration at the center of gravity of the dummy head, $a_r$, expressed as a multiple of g (the acceleration of gravity) and shall be calculated using the expression:

[illegible]

(b) The maximum calculated $HIC_{15}$ value shall not exceed 700.

S15.3.3 The resultant acceleration calculated from the output of the thoracic instrumentation shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S15.3.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation, shown shall not exceed 52 mm (2.0 in).

S15.3.5 The force transmitted axially through each femur shall not exceed 6805 N (1530 lb).

S15.3.6 *Neck injury.* When measuring neck injury, each of the following injury criteria shall be met.

(a) *Nij.*

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.10. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE J211/1 rev. Mar95 Channel Frequency Class 600 (see S4.7).

(2) During the event, the axial force (Fz) can be either in tension or compression while the occipital condyle bending moment (Mocy) can be in either flexion or extension. This results in four possible loading conditions for Nij: tension-extension (Nte), tension-flexion (Ntf), compression-extension (Nce), or compression-flexion (Ncf).

(3) When calculating Nij using equation S15.3.6(a)(4), the critical values, Fzc and Myc, are:

(i) Fzc = 4287 N (964 lbf) when Fz is in tension

(ii) Fzc = 3880 N (872 lbf) when Fz is in compression

(iii) Myc = 155 Nm (114 lbf-ft) when a flexion moment exists at the occipital condyle

(iv) Myc = 67 Nm (49 lbf-ft) when an extension moment exists at the occipital condyle.

(4) At each point in time, only one of the four loading conditions occurs and the Nij value corresponding to that loading condition is computed and the three remaining loading modes shall be considered a value of zero. The expression for calculating each Nij loading condition is given by:

Nij = (Fz / Fzc) + (Mocy / Myc)

(5) None of the four Nij values shall exceed 1.0 at any time during the event.

(b) *Peak tension.* Tension force (Fz), measured at the upper neck load cell, shall not exceed 2620 N (589 lbf) at any time.

(c) *Peak compression.* Compression force (Fz), measured at the upper neck load cell, shall not exceed 2520 N (566 lbf) at any time.

S15.3.7 Unless otherwise indicated, instrumentation for data acquisition, data channel frequency class, and moment calculations are the same as given for the 49 CFR Part 572, Subpart O Hybrid III 5th percentile female test dummy.

S16. *Test procedures for rigid barrier test requirements using 5th percentile adult female dummies.*

S16.1 *General provisions.* Crash testing to determine compliance with the requirements of S15 of this standard is conducted as specified in the following paragraphs (a) and (b).

(a) *Belted test.* Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard. Impact the vehicle traveling longitudinally forward at any speed, up

to and including 48 km/h (30 mph), into a fixed rigid barrier that is perpendicular within a tolerance of ± 5 degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard.

(b) *Unbelted test.* Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard, except S16.3.5. Impact the vehicle traveling longitudinally forward at any speed, from 32 km/h (20 mph) to 40 km/h (25 mph), inclusive, into a fixed rigid barrier that is perpendicular within a tolerance of ± 5 degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard.

S16.2 *Test conditions.*

S16.2.1 The vehicle, including test devices and instrumentation, is loaded as in S8.1.1.

S16.2.2 Movable vehicle windows and vents are placed in the fully closed position, unless the vehicle manufacturer chooses to specify a different adjustment position prior to the time the vehicle is certified.

S16.2.3 Convertibles and open-body type vehicles have the top, if any, in place in the closed passenger compartment configuration.

S16.2.4 Doors are fully closed and latched but not locked.

S16.2.5 The dummy is clothed in form fitting cotton stretch garments with short sleeves and above the knee length pants. A size 7 1/2W shoe which meets the configuration and size specifications of MIL–S–21711E (see S4.7) or its equivalent is placed on each foot of the test dummy.

S16.2.6 Limb joints are set at one g, barely restraining the weight of the limb when extended horizontally. Leg joints are adjusted with the torso in the supine position.

S16.2.7 Instrumentation shall not affect the motion of dummies during impact.

S16.2.8 The stabilized temperature of the dummy is at any level between 20.6° C and 22.2° C ( 69° F to 72° F).

S16.2.9 *Steering wheel adjustment.*

S16.2.9.1 Adjust a tiltable steering wheel, if possible, so that the steering wheel hub is at the geometric center of its full range of driving positions.

S16.2.9.2 If there is no setting detent at the mid position, lower the steering wheel to the detent just below the mid position.

S16.2.9.3 If the steering column is telescoping, place the steering column in the mid position. If there is no mid position, move the steering wheel rearward one position from the mid position.

S16.2.10 *Driver and passenger seat set-up.*

S16.2.10.1 *Seat position adjustment.*

S16.2.10.1.1 If a seat is adjustable in the fore and aft and/or vertical directions, move the seat to the fowardmost seating position and mid-height position.

S16.2.10.1.2 Establish a reference line on the outboard side of the seat cushion in a horizontal plane.

S16.2.10.1.3 Measure and record the seat cushion angle with respect to the reference line established in S16.2.10.1.2.

S16.2.10.1.4 Adjust the seat vertically as close to the mid-height position as possible. If possible, maintain the seat cushion reference angle measured in the middle and full forward condition in S16.2.10.1.3.

S16.2.10.2 *Lumbar support adjustment.* Position adjustable lumbar supports so that the lumbar support is in its lowest, retracted or deflated adjustment position.

S16.2.10.3 *Cushion and side bolster adjustment.* Position adjustable seat cushion and seat back side bolsters so that they are in the lowest or most open adjustment position.

S16.3 *Dummy seating positioning procedures.* The 49 CFR Part 572 Subpart O 5th percentile adult female test dummy is positioned as follows.

S16.3.1 *General provisions and definitions.*

S16.3.1.1 All angles are measured with respect to the horizontal plane.

S16.3.1.2 The dummy's neck bracket is adjusted to align the zero degree index marks.

S16.3.1.3 The term "midsagittal plane" refers to the vertical plane that separates the dummy into equal left and right halves.

S16.3.1.4 The term "vertical longitudinal plane" refers to a vertical plane parallel to the vehicle's longitudinal centerline.

S16.3.1.5 The term "vertical plane" refers to a vertical plane, not necessarily parallel to the vehicle's longitudinal centerline.

S16.3.1.6 The term "transverse instrumentation platform" refers to the transverse instrumentation surface inside the dummy's skull casting to which the neck load cell mounts. This surface is perpendicular to the skull cap's machined inferior-superior mounting surface.

S16.3.1.7. The term "thigh" refers to the femur between, but not including, the knee and the pelvis.

S16.3.1.8 The term "leg" refers to the lower part of the entire leg including the knee.

S16.3.1.9 The term "foot" refers to the foot including the ankle.

S16.3.2 *Driver dummy positioning.*

S16.3.2.1 *Driver torso/head/seat back angle positioning.*

S16.3.2.1.1 Fully recline the seat back, if adjustable.

S16.3.2.1.2 Install the dummy into the driver's seat. If necessary, move the seat rearward to facilitate dummy installation. If the seat cushion angle automatically changes as the seat is moved from the full forward position, restore the correct seat cushion angle when measuring the pelvic angle as specified in S16.3.2.1.11.

S16.3.2.1.3 *Bucket seats.* Center the dummy on the seat cushion so that its midsagittal plane is vertical and coincides with the vertical longitudinal plane through the center of the seat cushion.

S16.3.2.1.4 *Bench seats.* Position the midsagittal plane of the dummy vertical and parallel to the vehicle's longitudinal centerline and aligned with the center of the steering wheel rim.

S16.3.2.1.5 Hold the dummy's thighs down and push rearward on the upper torso to maximize the dummy's pelvic angle.

S16.3.2.1.6 Place the legs at 90 degrees to the thighs. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion such that the angle between the dummy's thighs and legs begins to change.

S16.3.2.1.7 Gently rock the upper torso relative to the lower torso laterally in a side to side motion three times through a ± 5 degree arc (approximately 51 mm (2 in) side to side) to reduce friction between the dummy and the seat.

S16.3.2.1.8 Before proceeding, attempt to return the seat to the full forward position if it has been moved from that location as specified in S16.3.2.1.2. If, at any step during the seating procedure, a dummy leg contacts the vehicle interior, position the seat at the next detent where there is no contact. If the seat is a power seat, position the seat to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior.

S16.3.2.1.9 While holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ± 0.5 degrees, making sure that the pelvis does not interfere with the seat

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bight. Inspect the abdomen to ensure that it is properly installed.

S16.3.2.1.10 If it is not possible to achieve the head level within ± 0.5 degrees, minimize the angle.

S16.3.2.1.11 Measure and set the dummy's pelvic angle using the pelvic angle gage (drawing TE–2504, incorporated by reference in 49 CFR Part 572, Subpart O, of this chapter). The angle shall be set to 20.0 degrees ± 2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible as specified in S16.3.2.1.9 and S16.3.2.1.10.

S16.3.2.1.12. If the transverse instrumentation platform of the head is still not level, adjust the seat back angle to minimize the angle as much as possible.

S16.3.2.1.13 In vehicles with a fixed seat back, adjust the lower neck bracket to level the head as much as possible.

S16.3.2.2 *Driver thigh/knee/leg positioning.*

S16.3.2.2.1 Rest the dummy's thighs against the seat cushion to the extent permitted by the placement of the feet in S16.3.2.3.

S16.3.2.2.2 Set the initial transverse distance between the longitudinal centerline of the dummy's knees at 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical planes.

S16.3.2.2.3. If either knee of the dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward, while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the dummy knee closest to the vehicle interior.

S16.3.2.3 *Driver foot positioning.*

S16.3.2.3.1 If the vehicle has an adjustable accelerator pedal, adjust it to the full forward position. Rest the right foot of the test dummy on the undepressed accelerator pedal with the rearmost point of the heel on the floor pan in the plane of the pedal. If the foot cannot be placed on the accelerator pedal, set it initially perpendicular to the lower leg and then place it as far forward as possible in the direction of the pedal centerline with the rearmost point of the heel resting on the floor pan. If the vehicle has an adjustable accelerator pedal and the right foot is not touching the accelerator pedal when positioned as above, move the pedal rearward until it touches the right foot. If the accelerator pedal still does not touch the foot in the full rearward position, leave the pedal in that position.

S16.3.2.3.2 If the ball of the foot does not contact the pedal, change the angle of the foot relative to the leg such that the toe of the foot contacts the undepressed accelerator pedal.

S16.3.2.3.3 Place the left foot on the toe board with the rearmost point of the heel resting on the floor pan as close as possible to the point of intersection of the toe board and the floor pan.

S16.3.2.3.4 If the left foot cannot be positioned on the toe board, place the foot flat on the floor pan as far forward as possible.

S16.3.2.3.5 If the left foot does not contact the floor pan, place the foot parallel to the floor and place the leg as perpendicular to the thigh as possible.

S16.3.2.4 *Driver arm/hand positioning.*

S16.3.2.4.1 Place the dummy's upper arms adjacent to the torso with the arm centerlines as close to vertical as possible.

S16.3.2.4.2 Place the palms of the dummy in contact with the outer part of the steering wheel rim at its horizontal centerline with the thumbs inside the steering wheel rim.

S16.3.2.4.3 If it is not possible to position the thumbs inside the steering wheel rim at its horizontal centerline, then position them above and as close to the horizontal centerline of the steering wheel rim as possible.

S16.3.2.4.4 Lightly tape the hands to the steering wheel rim so that if the hand of the test dummy is pushed upward by a force of not less than 9 N (2 lb) and not more than 22 N (5 lb), the tape releases the hand from the steering wheel rim.

S16.3.3 *Passenger dummy positioning.*

S16.3.3.1 *Passenger torso/head/seat back angle positioning.*

S16.3.3.1.1 Fully recline the seat back, if adjustable.

S16.3.3.1.2 Place the dummy in the passenger's seat. If necessary, move the seat rearward to facilitate dummy installation. If the seat cushion angle automatically changes as the seat is moved from the full forward position, restore the correct seat cushion angle when measuring the pelvic angle in S16.3.3.1.11.

S16.3.3.1.3 *Bucket seats.* Center the dummy on the seat cushion so that its midsagittal plane is vertical and coincides with the vertical longitudinal plane through the center of the seat cushion.

S16.3.3.1.4 Bench seats. The midsagittal plane of the dummy shall be vertical and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the midsagittal plane of the driver dummy.

S16.3.3.1.5 Hold the dummy's thighs down and push rearward on the upper torso to maximize the dummy's pelvic angle.

S16.3.3.1.6 Place the legs at 90 degrees to the thighs. Push rearward on the dummy's knees to force the pelvis into the seat so there is no gap between the pelvis and the seat back or until contact occurs between the back of the dummy's calves and the front of the seat cushion such that the angle between the dummy's thighs and legs begins to change.

S16.3.3.1.7 Gently rock the upper torso relative to the lower torso laterally side to side three times through a ± 5 degree arc (approximately 51 mm (2 in) side to side).

S16.3.3.1.8 Before proceeding, attempt to return the seat to the full forward position if it has been moved from that location as specified in S16.3.3.1.2. If, at any step during the seating procedure, a dummy leg contacts the vehicle interior, position the seat at the detent where there is no contact. If the seats are power seats, position the seat to avoid contact while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior.

S16.3.3.1.9 While holding the thighs in place, rotate the seat back forward until the transverse instrumentation platform of the head is level to within ± 0.5 degrees, making sure that the pelvis does not interfere with the seat bight. In addition, inspect the abdomen to insure that it is properly installed.

S16.3.3.1.10 If it is not possible to orient the head level within ± 0.5 degrees, minimize the angle.

S16.3.3.1.11 Measure and set the dummy's pelvic angle using the pelvic angle gage (drawing TE–2504, incorporated by reference in 49 CFR Part 572, Subpart O, of this chapter). The angle shall be set to 20.0 degrees ± 2.5 degrees. If this is not possible, adjust the pelvic angle as close to 20.0 degrees as possible while keeping the transverse instrumentation platform of the head as level as possible as specified in S16.3.3.1.9 and S16.3.3.1.10.

S16.3.3.1.12 If the transverse instrumentation platform of the head is still not level, adjust the seat back angle to minimize the angle as much as possible.

S16.3.3.1.13 In vehicles with a fixed seat back, adjust the lower neck bracket to level the head as much as possible.

S16.3.3.2 *Passenger thigh/knee/leg positioning.*

S16.3.3.2.1 Rest the dummy's thighs against the seat cushion to the extent permitted by the placement of the feet in S16.3.3.3.

S16.3.3.2.2 Set the initial transverse distance between the longitudinal centerline of the dummy's knees at 160 to 170 mm (6.3 to 6.7 in), with the thighs and legs of the dummy in vertical longitudinal planes.

S16.3.3.2.3 If either knee of the dummy is in contact with the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seats are power seats, move the seat rearward for a maximum distance of 5 mm (0.2 in) between the vehicle interior and the dummy knee closest to the vehicle interior.

S16.3.3.3 *Passenger foot positioning.*

S16.3.3.3.1 Place the passenger's feet flat on the floor pan as far forward as possible.

S16.3.3.3.2 If either foot does not entirely contact the floor pan, place the foot parallel to the floor and place the legs as perpendicular to the thighs as possible.

S16.3.3.4 *Passenger arm/hand positioning.*

S16.3.3.4.1 Place the dummy's upper arms in contact with the upper seat back and adjacent to the torso.

S16.3.3.4.2 Place the palms of the dummy in contact with the outside of the thighs.

S16.3.3.4.3 Place the little fingers in contact with the seat cushion.

S16.3.4 *Driver and passenger head restraint adjustment.*

S16.3.4.1. Place each adjustable head restraint so that the vertical center of the head restraint is horizontally aligned with the center of gravity (CG) of the dummy head.

S16.3.4.2 If the above position is not attainable, move the vertical center of the head restraint to the closest detent below the center of the head CG.

S16.3.4.3 If the head restraint has a fore and aft adjustment, place the restraint in the forwardmost position or until contact with the head is made, whichever occurs first.

S16.3.4.4 If the head restraint has an automatic adjustment, leave it where the system positions the restraint after the dummy is placed in the seat.

S16.3.5 *Driver and passenger manual belt adjustment (for tests conducted with a belted dummy)*

S16.3.5.1 If an adjustable seat belt D-ring anchorage exists, place it in the manufacturer's design position for a 5th percentile adult female with the seat in the position specified in S16.2.11.1.

S16.3.5.2 Place the Type 2 manual belt around the test dummy and fasten the latch.

S16.3.5.3 Ensure that the dummy's head remains as level as possible, as specified in S16.3.2.1.9, S16.3.2.1.10, S16.3.3.1.9, and S16.3.3.1.10.

S16.3.5.4 Remove all slack from the lap belt. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this operation four times. Apply a 9 N (2 lbf) to 18 N (4 lbf) tension load to the lap belt. If the belt system is equipped with a tension-relieving device, introduce the maximum amount of slack into the upper torso belt that is recommended by the manufacturer. If the belt system is not equipped with a tension-relieving device, allow the excess webbing in the shoulder belt to be retracted by the retractive force of the retractor.

S17 *Offset frontal deformable barrier requirements using 5th percentile adult female test dummies.*

Each vehicle that is certified as complying with S14 shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 of this standard when the vehicle is crash tested in accordance with the procedures specified in S18 of this standard with the anthropomorphic test devices restrained by a Type 2 seat belt assembly.

S18 *Test procedure for offset frontal deformable barrier requirements using 5th percentile adult female dummies.*

S18.1 *General provisions.* Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard. Impact the vehicle traveling longitudinally forward at any speed, up to and including 40 km/h (25 mph), into a fixed offset deformable barrier under the conditions and procedures specified in S18.2 of this standard, impacting only the driver side of the vehicle.

S18.2 *Test conditions.*

S18.2.1 *Offset frontal deformable barrier.* The offset frontal deformable barrier shall conform to the specifications set forth in Subpart C of Part 587 of this chapter.

S18.2.2 *General test conditions.* All of the test conditions specified in S16.2 of this standard apply.

S18.2.3 *Dummy seating procedures.* Position the anthropomorphic test dummies as specified in S16.3 of this standard.

S18.2.4 *Impact configuration.* The test vehicle shall impact the barrier with the longitudinal centerline of the vehicle parallel to the line of travel and perpendicular to the barrier face within a tolerance of ± 5 degrees. The test vehicle shall be aligned so that the vehicle strikes the barrier with 40 percent overlap on the left side of the vehicle, with the vehicle's front engaging the barrier face such that the vehicle's longitudinal centerline is offset outboard of the edge of the barrier face by 10 percent of the vehicle's width ± 50 mm (2.0 in) as illustrated in Figure 10. The vehicle width is defined as the maximum dimension measured across the widest part of the vehicle, including bumpers and molding but excluding such components as exterior mirrors, flexible mud flaps, marker lamps, and dual rear wheel configurations.

S19 *Requirements to provide protection for infants in rear facing and convertible child restraints and car beds.*

S19.1 Each vehicle certified as complying with S14 shall, at the option of the manufacturer, meet the requirements specified in S19.2 or S19.3, under the test procedures specified in S20.

S19.2 *Option 1—Automatic suppression feature.* Each vehicle shall meet the requirements specified in S19.2.1 through S19.2.3.

S19.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which results in deactivation of the air bag during each of the static tests specified in S20.2 (using the 49 CFR Part 572 Subpart R 12-month-old CRABI child dummy in any of the child restraints identified in sections B and C of Appendix A of this standard and the 49 CFR Part 572 Subpart K Newborn Infant dummy in any of the car beds identified in section A of Appendix A, as appropriate), and activation of the air bag system during each of the static tests specified in S20.3 (using the 49 CFR Part 572 Subpart O 5th percentile adult female dummy).

S19.2.2 The vehicle shall be equipped with at least one telltale which emits light whenever the passenger air bag system is deactivated and does not emit light whenever the passenger air bag system is activated, except that the telltale(s) need not illuminate when the passenger seat is unoccupied. Each telltale:

(a) Shall emit yellow light;

(b) Shall have the identifying words "PASSENGER AIR BAG OFF" on the telltale or within 25 mm (1.0 in) of the telltale; and

(c) Shall not be combined with the readiness indicator required by S4.5.2 of this standard.

(d) Shall be located within the interior of the vehicle and forward of and above the design H-point of both the driver's and the right front passenger's seat in

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their forwardmost seating positions and shall not be located on or adjacent to a surface that can be used for temporary or permanent storage where use of the storage space could obscure the telltale from either the driver's or right front passenger's view.

(e) Shall be visible to the driver and right front passenger under all driving conditions. The means for providing the required visibility may be adjustable to provide two or more levels of brightness, one of which is substantially discernable to a person, of any age, who has adapted to ambient daytime driving conditions, the other of which is substantially discernable to a driver, of any age, who has adapted to ambient nighttime driving conditions. The means for providing the required visibility may be adjustable manually or automatically, except that the telltale(s) may not be adjusted under any conditions to a level that is not visible, e.g., to the nighttime intensity during daytime driving conditions.

S19.2.3 The vehicle shall be equipped with a mechanism that indicates whether the air bag system is suppressed, regardless of whether the passenger seat is occupied. The mechanism need not be located in the occupant compartment unless it is the telltale described in S19.2.2.

S19.3 *Option 2—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S19.4 of this standard when the passenger air bag is deployed in accordance with the procedures specified in S20.4.

S19.4 *Injury criteria for the 49 CFR Part 572, Subpart R 12-month-old CRABI test dummy.*

S19.4.1 All portions of the test dummy and child restraint shall be contained within the outer surfaces of the vehicle passenger compartment.

S19.4.2 *Head injury criteria.*

(a) For any two points in time, $t_1$ and $t_2$, during the event which are separated by not more than a 15 millisecond time interval and where $t_1$ is less than $t_2$, the head injury criterion ($HIC_{15}$) shall be determined using the resultant head acceleration at the center of gravity of the dummy head, $a_r$, expressed as a multiple of g (the acceleration of gravity) and shall be calculated using the expression:

$$\left[\frac{1}{(t_2 - t_1)}\int_{t_1}^{t_2} a_r dt\right]^{2.5}(t_2 - t_1)$$

(b) The maximum calculated $HIC_{15}$ value shall not exceed 390.

S19.4.3 The resultant acceleration calculated from the output of the thoracic instrumentation shall not exceed 50 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S19.4.4 *Neck injury.* When measuring neck injury, each of the following injury criteria shall be met.

(a) *Nij.*

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.10. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE J211/1 rev. Mar95 Channel Frequency Class 600 (see S4.7).

(2) During the event, the axial force (Fz) can be either in tension or extension while the occipital condyle bending moment (Mocy) can be in either flexion or extension. This results in four possible loading conditions for Nij: tension-extension (Nte), tension-flexion (Ntf), compression-extension (Nce), or compression-flexion (Ncf).

(3) When calculating Nij using equation S19.4.4(a)(4), the critical values, Fzc and Myc, are:

(i) Fzc = 1460 N (328 lbf) when Fz is in tension

(ii) Fzc = 1460 N (328 lbf) when Fz is in compression

(iii) Myc = 43 Nm (32 lbf-ft) when a flexion moment exists at the occipital condyle

(iv) Myc = 17 Nm (13 lbf-ft) when an extension moment exists at the occipital condyle.

(4) At each point in time, only one of the four loading conditions occurs and the Nij value corresponding to that loading condition is computed and the three remaining loading modes shall be considered a value of zero. The expression for calculating each Nij loading condition is given by:

Nij = (Fz / Fzc) + (Mocy / Myc)

(5) None of the four Nij values shall exceed 1.0 at any time during the event.

(b) *Peak tension.* Tension force (Fz), measured at the upper neck load cell, shall not exceed 780 N (175 lbf) at any time.

(c) *Peak compression.* Compression force (Fz), measured at the upper neck load cell, shall not exceed 960 N (216 lbf) at any time.

S19.4.5 Unless otherwise indicated, instrumentation for data acquisition, data channel frequency class, and moment calculations are the same as given for the 49 CFR Part 572 Subpart R 12-month-old CRABI test dummy.

S20 *Test procedure for S19.*

S20.1 *General provisions.*

S20.1.1 Tests specifying the use of a car bed, a rear facing child restraint, or a convertible child restraint may be conducted using any such restraint listed in sections A, B, and C of Appendix A of this standard respectively. The car bed, rear facing child restraint, or convertible child restraint may be unused or have been previously used for static suppression tests only; if it has been used, there shall not be any visible damage prior to the test.

S20.1.2 Each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward seat track position, the middle seat track position, and the full forward seat track position. If the child restraint or dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance. All tests are conducted with the seat height, if adjustable, in the mid-height position and with the seat back angle, if adjustable, at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3.

S20.1.3 If the car bed, rear facing child restraint, or convertible child restraint is equipped with a handle, the vehicle shall comply in tests conducted with the handle at both the child restraint manufacturer's recommended position for use in vehicles and in the upright position.

S20.1.4 If the car bed, rear facing child restraint, or convertible child restraint is equipped with a sunshield, the vehicle shall comply in tests conducted with the sunshield both fully open and fully closed.

S20.1.5 The vehicle shall comply in tests with the car bed, rear facing child restraint, or convertible child restraint uncovered and in tests with a towel or blanket weighing up to 1.0 kg (2.2 lb) placed on or over the restraint in any of the following positions:

(a) with the blanket covering the top and sides of the restraint, and

(b) with the blanket placed from the top of the vehicle's seat back to the forwardmost edge of the restraint.

S20.1.6 Except as otherwise specified, if the car bed, rear facing child restraint, or convertible child restraint has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with a right front outboard vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions both with the restraint anchorage system attached and unattached to the vehicle seat anchorage system and with the unbelted test

conditions with the restraint anchorage system unattached to the vehicle seat anchorage system.

S20.1.7 Do not attach any tethers.

S20.2 *Static tests of automatic suppression feature which shall result in deactivation of the passenger air bag.* Each vehicle that is certified as complying with S19.2 shall meet the following test requirements.

S20.2.1 *Belted rear facing and convertible child restraints.*

S20.2.1.1 The vehicle shall comply in tests using any child restraint specified in section B and section C of Appendix A of this standard.

S20.2.1.2 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as "Plane A".

S20.2.1.3 For bucket seats, "Plane B" refers to a vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the right front outboard vehicle seat. For bench seats, "Plane B" refers to a vertical plane through the right front outboard vehicle seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

S20.2.1.4 *Facing rear.*

(a) The vehicle shall comply in both of the following positions, if applicable:

(1) Without attaching the child restraint anchorage system as specified in S5.9 of FMVSS No. 213 to a vehicle seat anchorage system specified in FMVSS No. 225, align the child restraint system facing rearward such that Plane A is aligned with Plane B.

(2) If the child restraint is certified to S5.9 of FMVSS No. 213, and the vehicle seat has an anchorage system as specified in FMVSS No. 225, attach the child restraint to the vehicle seat anchorage instead of aligning the planes. Do not attach the vehicle safety belt.

(b) While maintaining the child restraint positions achieved in S20.2.1.4(a), secure the child restraint by following, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the restraint in the rear facing mode.

(c) Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the child restraint. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

(d) Position the 49 CFR Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions for seating infants provided with the child restraint.

(e) Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.2.1.5 *Facing forward (convertible restraints only).*

(a) The vehicle shall comply in both of the following positions, if applicable:

(1) Without attaching the child restraint anchorage system as specified in S5.9 of FMVSS No. 213 to a vehicle seat anchorage system specified in FMVSS No. 225, align the child restraint system facing forward such that Plane A is aligned with Plane B.

(2) If the child restraint is certified to S5.9 of FMVSS No. 213, and the vehicle seat has an anchorage system as specified in FMVSS No. 225, attach the child restraint to the vehicle seat anchorage instead of aligning the planes. Do not attach the vehicle safety belt.

(b) While maintaining the child restraint positions achieved in S20.2.1.5(a), secure the child restraint by following, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the restraint in the forward facing mode.

(c) Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the child restraint. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

(d) Position the 49 CFR Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions provided with the child restraint.

(e) Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.2.2 *Unbelted rear facing and convertible child restraints.*

S20.2.2.1 The vehicle shall comply in tests using any child restraint specified in section B and section C of Appendix A of this standard.

S20.2.2.2 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as "Plane A".

S20.2.2.3 For bucket seats, "Plane B" refers to a vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the right front outboard vehicle seat. For bench seats, "Plane B" refers to a vertical plane through the right front outboard seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

S20.2.2.4 *Facing rear.*

(a) Align the child restraint system facing rearward such that Plane A is aligned with Plane B and the child restraint is in contact with the seat back.

(b) Position the 49 CFR Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions provided with the child restraint.

(c) Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.2.2.5 *Facing forward.*

(a) Align the child restraint system facing forward such that Plane A is aligned with Plane B and the child restraint is in contact with the seat back.

(b) Position the 49 CFR Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions provided with the child restraint.

(c) Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.2.3 *Tests with a belted car bed.*

S20.2.3.1 The vehicle shall comply in tests using any car bed specified in section A of Appendix A of this standard.

S20.2.3.2 (a) Install the car bed by following, to the extent possible, the car bed manufacturer's directions regarding proper installation of the car bed.

(b) Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the car bed. Measure belt tension in a flat, straight section of the lap belt between the car bed belt path and the contact point with the belt anchor or vehicle seat, on the side away from the

buckle (to avoid interference from the shoulder portion of the belt).

(c) Position the 49 CFR Part 572 Subpart K Newborn Infant dummy in the car bed by following, to the extent possible, the car bed manufacturer's instructions for positioning infants provided with the car bed.

(d) Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and close all vehicle doors. Wait 10 seconds, then check whether the air bag is deactivated.

S20.3 *Static tests of automatic suppression feature which shall result in activation of the passenger air bag system.*

S20.3.1 Each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward seat track position, the middle seat track position, and, subject to S16.3.3.1.8, the full forward seat track position. All tests are conducted with the seat height, if adjustable, in the mid-height position.

S20.3.2 Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at the right front outboard seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S20.3.1, subject to the fore-aft seat positions in S20.3.1. Do not fasten the seat belt.

S20.3.3 Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and then close all vehicle doors.

S20.3.4 Wait 10 seconds, then check whether the air bag system is activated.

S20.4 *Low risk deployment test.* Each vehicle that is certified as complying with S19.3 shall meet the following test requirements.

S20.4.1 Position the right front outboard vehicle seat in the full forward seat track position, adjust the seat height (if adjustable) to the mid-height position, and adjust the seat back (if adjustable) to the nominal design position for a 50th percentile adult male as specified in S8.1.3. If the child restraint or dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance.

S20.4.2 The vehicle shall comply in tests using any child restraint specified in section B and section C of Appendix A to this standard.

S20.4.3 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as "Plane A".

S20.4.4 For bucket seats, "Plane B" refers to a vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the right front outboard seat. For bench seats, "Plane B" refers to a vertical plane through the right front outboard seat parallel to the vehicle longitudinal centerline that is the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

S20.4.5 Align the child restraint system facing rearward such that Plane A is aligned with Plane B.

S20.4.6 If the child restraint is certified to S5.9 of FMVSS No. 213, and the vehicle seat has an anchorage system as specified in FMVSS No. 225, attach the child restraint to the vehicle seat anchorage instead of aligning the planes. Do not attach the vehicle safety belt.

S20.4.7 While maintaining the child restraint position achieved in S20.4.5, secure the child restraint by following, to the extent possible, the child restraint manufacturer's directions regarding proper installation of the restraint in the rear facing mode. Place any adjustable seat belt anchorages at the manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the child restraint. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

S20.4.8 Position the 49 CFR Part 572 Subpart R 12-month-old CRABI dummy in the child restraint by following, to the extent possible, the manufacturer's instructions for seating infants provided with the child restraint.

S20.4.9 Deploy the right front outboard frontal air bag system. If the air bag system contains a multistage inflator, the vehicle shall be able to comply at any stage or combination of stages or time delay between successive stages that could occur in the presence of an infant in a rear facing child restraint positioned according to S20.2.1 in a rigid barrier crash test at speeds up to 64 km/h (40 mph).

S21 *Requirements using 3-year-old child dummies.*

S21.1 Each vehicle that is certified as complying with S14 shall, at the option of the manufacturer, meet the requirements specified in S21.2, S21.3, or S21.4, under the test procedures specified in S22 or S28, as applicable.

S21.2 *Option 1—Automatic suppression feature.* Each vehicle shall meet the requirements specified in S21.2.1 through S21.2.3.

S21.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger air bag which results in deactivation of the air bag during each of the static tests specified in S22.2 (using a 49 CFR Part 572 Subpart P 3-year-old child dummy and, as applicable, any child restraint specified in section C and section D of Appendix A to this standard), and activation of the air bag system during each of the static tests specified in S22.3 (using a 49 CFR Part 572 Subpart O 5th percentile adult female dummy).

S21.2.2 The vehicle shall be equipped with a telltale light meeting the requirements specified in S19.2.2.

S21.2.3 The vehicle shall be equipped with a mechanism that indicates whether the air bag is suppressed, regardless of whether the passenger seat is occupied. The mechanism need not be located in the occupant compartment unless it is the telltale described in S21.2.2.

S21.3 *Option 2—Dynamic automatic suppression system that suppresses the air bag when an occupant is out of position.* (This option is available under the conditions set forth in S27.1.) The vehicle shall be equipped with a dynamic automatic suppression system for the passenger air bag system which meets the requirements specified in S27.

S21.4 *Option 3—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S21.5 of this standard when the passenger air bag is deployed in accordance with both of the low risk deployment test procedures specified in S22.4.

S21.5 *Injury criteria for the 49 CFR Part 572, Subpart P 3-year-old child test dummy.*

S21.5.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment.

S21.5.2 *Head injury criteria.*

(a) For any two points in time, $t_1$ and $t_2$, during the event which are separated by not more than a 15 millisecond time interval and where $t_1$ is less than $t_2$, the head injury criterion ($HIC_{15}$) shall be determined using the resultant head acceleration at the center of gravity of the dummy head, $a_r$, expressed as a multiple of g (the acceleration of gravity) and shall be calculated using the expression:

$$\left[\frac{1}{(t_2 - t_1)}\int_{t_1}^{t_2} a_r dt\right]^{2.5}(t_2 - t_1)$$

(b) The maximum calculated $HIC_{15}$ value shall not exceed 570.

S21.5.3 The resultant acceleration calculated from the output of the thoracic instrumentation shall not exceed 55 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S21.5.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation, shall not exceed 34 millimeters (1.3 in).

S21.5.5 *Neck injury.* When measuring neck injury, each of the following injury criteria shall be met.

(a) *Nij.*

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.10. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE J211/1 rev. Mar95 Channel Frequency Class 600 (see S4.7).

(2) During the event, the axial force (Fz) can be either in tension or compression while the occipital condyle bending moment (Mocy) can be in either flexion or extension. This results in four possible loading conditions for Nij: tension-extension (Nte), tension-flexion (Ntf),compression-extension (Nce), or compression-flexion (Ncf).

(3) When calculating Nij using equation S21.5.5(a)(4), the critical values, Fzc and Myc, are:

(i) Fzc = 2120 N (477 lbf) when Fz is in tension

(ii) Fzc = 2120 N (477 lbf) when Fz is in compression

(iii) Myc = 68 Nm (50 lbf-ft) when a flexion moment exists at the occipital condyle

(iv) Myc = 27 Nm (20 lbf-ft) when an extension moment exists at the occipital condyle.

(4) At each point in time, only one of the four loading conditions occurs and the Nij value corresponding to that loading condition is computed and the three remaining loading modes shall be considered a value of zero. The expression for calculating each Nij loading condition is given by:

Nij = (Fz/Fzc) + (Mocy/Myc)

(5) None of the four Nij values shall exceed 1.0 at any time during the event.

(b) *Peak tension.* Tension force (Fz), measured at the upper neck load cell, shall not exceed 1130 N (254 lbf) at any time.

(c) *Peak compression.* Compression force (Fz), measured at the upper neck load cell, shall not exceed 1380 N (310 lbf) at any time.

S21.5.6 Unless otherwise indicated, instrumentation for data acquisition, data channel frequency class, and moment calculations are the same as given in 49 CFR Part 572 Subpart P 3-year-old child test dummy.

S22 *Test procedure for S21.*

S22.1 *General provisions and definitions.*

S22.1.1 Tests specifying the use of a forward facing child restraint, including a booster seat where applicable, may be conducted using any such restraint listed in section C and section D of Appendix A of this standard, respectively. The child restraint may be unused or have been previously used for static suppression tests only; if it has been used, there shall not be any visible damage prior to the test. Booster seats are to be used in the manner appropriate for a three-year-old child of the same height and weight as the three-year-old child dummy.

S22.1.2 Unless otherwise specified, each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward seat track position, the middle seat track position, and the full forward seat track position. If the dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) clearance. All tests are conducted with the seat height, if adjustable, in the mid-height position, and with the seat back angle, if adjustable, at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3.

S22.1.3 Except as otherwise specified, if the child restraint has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with a right front outboard vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions both with the restraint anchorage system attached and unattached to the vehicle seat anchorage system and with the unbelted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system.

S22.1.4 Do not attach any tethers.

S22.1.5 The definitions provided in S16.3.1 apply to the tests specified in S22.

S22.2 *Static tests of automatic suppression feature which shall result in deactivation of the passenger air bag.* Each vehicle that is certified as complying with S21.2 shall meet the following test requirements:

S22.2.1 *Belted test with forward facing child restraints or booster seats.*

S22.2.1.1 Install the restraint in the right front outboard seat in accordance, to the extent possible, with the child restraint manufacturer's instructions provided with the seat for use by children with the same height and weight as the three-year-old child dummy.

S22.2.1.2 Locate a vertical plane through the longitudinal centerline of the child restraint. This will be referred to as "Plane A'.

S22.2.1.3 For bucket seats, "Plane B" refers to a vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the right front outboard vehicle seat. For bench seats, "Plane B" refers to a vertical plane through the right front outboard vehicle seat parallel to the vehicle longitudinal centerline the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

22.2.1.4 The vehicle shall comply in both of the following positions, if applicable:

(a) Without attaching the child restraint anchorage system as specified in S5.9 of FMVSS No. 213 to a vehicle seat anchorage system specified in FMVSS No. 225 and without attaching any tethers, align the child restraint system facing forward such that Plane A is aligned with Plane B.

(b) If the child restraint is certified to S5.9 of FMVSS No. 213, and the vehicle seat has an anchorage system as specified in FMVSS No. 225, attach the child restraint to the vehicle seat anchorage instead of aligning the planes. Do not attach the vehicle safety belt.

S22.2.1.5 *Forward facing child restraint*

S22.2.1.5.1 Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. Cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the child restraint. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

S22.2.1.5.2 Position the 49 CFR Part 572 Subpart P 3-year-old child dummy in the child restraint such that the dummy's lower torso is centered on the child restraint and the dummy's spine is against the seat back of the child restraint. Place the arms at the dummy's sides.

S22.2.1.5.3 Attach all belts that come with the child restraint that are appropriate for a child of the same height and weight as the three-year-old child dummy, if any, by following, to the extent possible, the manufacturer's

instructions for seating children provided with the child restraint.

S22.2.1.6 *Booster seat*

S22.2.1.6.1 Place any adjustable seat belt anchorages at the vehicle manufacturer's nominal design position for a 50th percentile adult male occupant. For booster seats designed to be secured to the vehicle seat even when empty, cinch the vehicle belts to any tension from zero up to 134 N (30 lb) to secure the booster seat. Measure belt tension in a flat, straight section of the lap belt between the child restraint belt path and the contact point with the belt anchor or vehicle seat, on the side away from the buckle (to avoid interference from the shoulder portion of the belt).

S22.2.1.6.2 Position the 49 CFR Part 572 Subpart P 3-year-old child dummy in the booster seat such that the dummy's lower torso is centered on the booster seat cushion and the dummy's spine is parallel to the booster seat back or, if there is no booster seat back, the vehicle seat back. Place the arms at the dummy's sides.

S22.2.1.6.3 If applicable, attach all belts that come with the child restraint that are appropriate for a child of the same height and weight as the three-year-old child dummy, if any, by following, to the extent possible, the manufacturer's instructions for seating children provided with the child restraint.

S22.2.1.6.4 If applicable, place the Type 2 manual belt around the test dummy and fasten the latch. Remove all slack from the lap belt portion. Pull the upper torso webbing out of the retractor and allow it to retract; repeat this four times. Apply a 9 to 18 N (2 to 4 lb) tension load to the lap belt. Allow the excess webbing in the upper torso belt to be retracted by the retractive force of the retractor.

S22.2.1.7 Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and then close all vehicle doors.

S22.2.1.8 Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2 *Unbelted tests with dummies.* Place the 49 CFR Part 572 Subpart P 3-year-old child dummy on the right front outboard seat in any of the following positions (without using a child restraint or booster seat or the vehicle's seat belts):

S22.2.2.1 *Sitting on seat with back against seat back*

(a) Position the dummy in the seated position and place it on the right front outboard seat.

(b) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the bucket seat. Position the torso of the dummy against the seat back. Position the dummy's thighs against the seat cushion.

(c) Allow the legs of the dummy to extend off the surface of the seat.

(d) Rotate the dummy's upper arms down until they contact the seat back.

(e) Rotate the dummy's lower arms until the dummy's hands contact the seat cushion.

(f) Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and then close all vehicle doors.

(g) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.2 *Sitting on seat with back against reclined seat back.* Repeat the test sequence in S22.2.2.1 with the seat back angle 25 degrees rearward of the manufacturer's nominal design position for the 50th percentile adult male. If the seat will not recline 25 degrees rearward of the nominal design position, use the closest position that does not exceed 25 degrees.

S22.2.2.3 *Sitting on seat with back not against seat back.*

(a) Position the dummy in the seated position and place it on the right front outboard seat.

(b) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the bucket seat. Position the dummy with the spine vertical so that the horizontal distance from the dummy's back to the seat back is no less than 25 mm (1 in) and no more than 150 mm (6 in), as measured along the dummy's midsagittal plane at the mid-sternum level. To keep the dummy in position, a thread with a maximum breaking strength of 311 N (70 lb) that does not interfere with the air bag may be used to hold the dummy.

(c) Position the dummy's thighs against the seat cushion.

(d) Allow the legs of the dummy to extend off the surface of the seat.

(e) Position the upper arms parallel to the spine and rotate the dummy's lower arms until the dummy's hands contact the seat cushion.

(f) Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and then close all vehicle doors.

(g) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.4 *Sitting on seat edge, spine vertical, hands by the dummy's sides.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the bucket seat.

(b) Position the dummy in the seated position forward in the seat such that the legs are vertical and rest against the front of the seat with the spine vertical. If the dummy's feet contact the floorboard, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floorboard and the dummy spine vertical. To keep the dummy in position, a thread with a maximum breaking strength of 311 N (70 lb) that does not interfere with the air bag may be used to hold the dummy.

(c) Place the upper arms parallel to the spine.

(d) Lower the dummy's lower arms such that they contact the seat cushion.

(e) Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and then close all vehicle doors.

(f) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.5 *Standing on seat, facing forward.*

(a) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel rim. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the bucket seat. Position the dummy in a standing position on the right front outboard seat cushion facing the front of the vehicle while placing the heels of the dummy's feet in contact with the seat back.

(b) Rest the dummy against the seat back, with the arms parallel to the spine.

(c) If the head contacts the vehicle roof, recline the seat so that the head is no longer in contact with the vehicle roof, but allow no more than 5 mm (0.2 in) distance between the head and the roof. If the seat does not sufficiently recline to allow clearance, omit the test.

(d) If necessary use a thread with a maximum breaking strength of 311 N (70 lb) that does not interfere with the air bag or spacer blocks to keep the dummy in position.

(e) Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and then close all vehicle doors.

(f) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.6 *Kneeling on seat, facing forward.*

(a) Position the dummy in a kneeling position by rotating the dummy's legs 90 degrees behind the dummy (from the standing position) with the toes pointed rearward as much as possible and with the arms parallel to the spine.

(b) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the bucket seat.

(c) Position the kneeling dummy in the right front outboard seat with the dummy facing the front of the vehicle with its toes at the intersection of the seat back and seat cushion. Position the dummy so that the spine is vertical. Push down on the legs so that they contact the seat as much as possible and then release.

(d) If necessary use a thread with a maximum breaking strength of 311 N (70 lb) that does not interfere with the air bag or spacer blocks to keep the dummy in position.

(e) Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and then close all vehicle doors.

(f) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.7 *Kneeling on seat, facing rearward.*

(a) Position the dummy in a kneeling position by rotating the dummy's legs 90 degrees behind the dummy (from the standing position) with the toes pointed rearward as much as possible and the arms parallel to the spine.

(b) In the case of vehicles equipped with bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the vehicle's longitudinal centerline as the center of the steering wheel. In the case of vehicles equipped with bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the longitudinal centerline of the bucket seat.

(c) Position the kneeling dummy in the right front outboard seat with the dummy facing the rear of the vehicle. Position the dummy such that the dummy's head and torso are in contact with the seat back. Push down on the legs so that they contact the seat as much as possible and then release.

(d) Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and then close all vehicle doors.

(e) Wait 10 seconds, then check whether the air bag is deactivated.

S22.2.2.8 *Lying on seat.* This test is performed only in vehicles with 3 designated front seating positions.

(a) Lay the dummy on the right front outboard seat such that the following criteria are met:

(1) The midsagittal plane of the dummy is horizontal,

(2) The dummy's spine is perpendicular to the vehicle's longitudinal axis,

(3) The dummy's arms are parallel to its spine,

(4) A plane passing through the two shoulder joints of the dummy is vertical,

(5) The anterior of the dummy is facing the vehicle front,

(6) The head of the dummy is positioned towards the passenger door, and

(7) The horizontal distance from the topmost point of the dummy's head to the vehicle door is 50 to 100 mm (2–4 in).

(b) Rotate the thighs as much as possible toward the chest of the dummy and rotate the legs as much as possible against the thighs.

(c) Move the dummy's upper left arm parallel to the vehicle's transverse plane and the lower left arm 90 degrees to the upper arm. Rotate the lower left arm about the elbow joint and toward the dummy's head until movement is obstructed.

(d) Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and then close all vehicle doors.

(e) Wait 10 seconds, then check whether the air bag is deactivated.

S22.3 *Static tests of automatic suppression feature which shall result in activation of the passenger air bag system.*

S22.3.1 Each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward seat track position, the middle seat track position, and, subject to S16.3.3.1.8, the full forward seat track position. All tests are conducted with the seat height, if adjustable, in the mid-height position.

S22.3.2 Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at the right front outboard seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S22.3.1. Do not fasten the seat belt.

S22.3.3 Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and then close all vehicle doors.

S22.3.4 Wait 10 seconds, then check whether the air bag system is activated.

S22.4 *Low risk deployment tests.*

S22.4.1 Each vehicle that is certified as complying with S21.4 shall meet the following test requirements with the 49 CFR Part 572, Subpart P 3-year-old child dummy in both of the following positions: Position 1 (S22.4.2) and Position 2 (S22.4.3).

S22.4.1.1 Locate and mark the center point of the dummy's chest/rib plate (the vertical mid-point of the frontal chest plate of the dummy on the midsagittal plane). This is referred to as "Point 1."

S22.4.1.2 Locate the vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the right front air bag tear seam. This is referred to as "Plane D."

S22.4.1.3 Locate the horizontal plane through the geometric center of the right front air bag tear seam. This is referred to as "Plane C."

S22.4.2 *Position 1 (chest on instrument panel).*

S22.4.2.1 There are no seat track, seat height, or seat back angle requirements.

S22.4.2.2 Place the dummy's midsagittal plane coincident with Plane D.

S22.4.2.3 Initially position the thighs at a right angle to the spine and the legs at a right angle to the thighs. These angles may be adjusted to the extent necessary for the head and torso to attain their final positions.

S22.4.2.4 With the dummy's thorax instrument cavity rear face vertical and Point 1 in Plane C, move the dummy forward until Point 1 contacts the instrument panel. If the dummy's head contacts the windshield and keeps Point

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1 from contacting the instrument panel, lower the dummy until there is no more than 5 mm (0.2 in) clearance between the head and the windshield.

S22.4.2.5 Position the upper arms parallel to the spine and rotate the lower arms forward (at the elbow joint) sufficiently to prevent contact with or support from the seat.

S22.4.2.6 Position the legs of the dummy so that the legs are vertical and the feet rest flat on the floorboard (or the feet are positioned parallel to the floorboard) of the vehicle.

S22.4.2.7 Use the seat adjustments (fore-aft, height) to keep the dummy in position. If necessary, thread with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The thread should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the thread does not interfere with the air bag.

S22.4.3 *Position 2 (head on instrument panel).*

S22.4.3.1 Place the passenger seat in the full rearward seating position. Place the seat back in the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3. If adjustable in the vertical direction, place the seat in the mid-height position.

S22.4.3.2 Place the dummy in the front passenger seat such that:

S22.4.3.2.1 The dummy's midsagittal plane is coincident with Plane D. With the thighs on the seat, initially set the thighs perpendicular to the torso and the legs perpendicular to the thighs. Position the upper arms parallel to the torso and rotate the lower arms forward (at the elbow) sufficiently to prevent contact with or support from the seat.

S22.4.3.2.2 The dummy is positioned in the seat such that the legs rest against the front of the seat and such that the dummy's thorax instrument cavity rear face is vertical. If it is not possible to position the dummy with the legs in the prescribed position, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floorboard.

S22.4.3.3 Move the seat forward, while maintaining the thorax instrument cavity rear face orientation until any part of the dummy contacts the vehicle's instrument panel.

S22.4.3.4 If contact has not been made with the vehicle's instrument panel at the full forward seating position of the seat, slide the dummy forward on the seat 190 mm (7.5 in) or until contact is made, whichever is first. Maintain the thorax instrument cavity rear face vertical orientation.

S22.4.3.5 If contact has not been made, apply a force towards the front of the vehicle on the spine of the dummy between the shoulder joints until the head or torso comes into contact with the vehicle's instrument panel.

S22.4.3.6 If necessary, rotate the thighs and rotate the legs and feet so as not to impede the motion of the head/torso into the vehicle's instrument panel.

S22.4.3.7 Rotate the lower arms forward if necessary to prevent contact with or support from the seat.

S22.4.3.8 If necessary, thread with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The thread should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the thread does not interfere with the air bag.

S22.4.4 Deploy the right front outboard frontal air bag system. If the frontal air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages or time delay between successive stages that could occur in a rigid barrier crash test at or below 26 km/h (16 mph), under the test procedure specified in S22.5.

S22.5 *Test procedure for determining stages of air bag systems subject to low risk deployment test requirement.*

S22.5.1 Impact the vehicle traveling longitudinally forward at any speed, up to and including 26 km/h (16 mph) into a fixed rigid barrier that is perpendicular ±5 degrees to the line of travel of the vehicle under the applicable conditions of S8 and S10, excluding S10.7, S10.8, and S10.9.

S22.5.2 Determine which inflation stage or combination of stages are fired and determine the time delay between successive stages. That stage or combination of stages, with time delay between successive stages, shall be used in deploying the air bag when conducting the low risk deployment tests described in S22.4, S24.4, and S26.

S22.5.3 If the air bag does not deploy in the impact described in S22.5.1, the low risk deployment tests described in S22.4, S24.4, and S26 will be conducted with the first inflation stage of the air bag system.

S23 *Requirements using 6-year-old child dummies.*

S23.1 Each vehicle that is certified as complying with S14 shall, at the option of the manufacturer, meet the requirements specified in S23.2, S23.3, or S23.4, under the test procedures specified in S24 or S28, as applicable.

S23.2 *Option 1—Automatic suppression feature.* Each vehicle shall meet the requirements specified in S23.2.1 through S23.2.3.

S23.2.1 The vehicle shall be equipped with an automatic suppression feature for the passenger frontal air bag system which results in deactivation of the air bag during each of the static tests specified in S24.2 (using a 49 CFR Part 572 Subpart N 6-year-old child dummy in any of the child restraints specified in section D of Appendix A of this standard), and activation of the air bag system during each of the static tests specified in S24.3 (using a 49 CFR Part 572 Subpart O 5th percentile adult female dummy).

S23.2.2 The vehicle shall be equipped with a telltale light meeting the requirements specified in S19.2.2.

S23.2.3 The vehicle shall be equipped with a mechanism that indicates whether the air bag is suppressed, regardless of whether the passenger seat is occupied. The mechanism need not be located in the occupant compartment unless it is the telltale described in S23.2.2.

S23.3 *Option 2—Dynamic automatic suppression system that suppresses the air bag when an occupant is out of position.* (This option is available under the conditions set forth in S27.1.) The vehicle shall be equipped with a dynamic automatic suppression system for the passenger frontal air bag system which meets the requirements specified in S27.

S23.4 *Option 3—Low risk deployment.* Each vehicle shall meet the injury criteria specified in S23.5 of this standard when the passenger air bag is statically deployed in accordance with both of the low risk deployment test procedures specified in S24.4.

S23.5 *Injury criteria for the 49 CFR Part 572 Subpart N 6-year-old child dummy.*

S23.5.1 All portions of the test dummy shall be contained within the outer surfaces of the vehicle passenger compartment.

S23.5.2 *Head injury criteria.*

(a) For any two points in time, $t_1$ and $t_2$, during the event which are separated by not more than a 15 millisecond time interval and where $t_1$ is less than $t_2$, the head injury criterion ($HIC_{15}$) shall be determined using the resultant head acceleration at the center of gravity of the dummy head, $a_r$, expressed as a multiple of g (the acceleration of gravity) and shall be calculated using the expression:

$$\left[\frac{1}{(t_2 - t_1)}\int_{t_1}^{t_2} a_r dt\right]^{2.5}(t_2 - t_1)$$

(b) The maximum calculated $HIC_{15}$ value shall not exceed 700.

S23.5.3 The resultant acceleration calculated from the output of the thoracic instrumentation shall not exceed 60 g's, except for intervals whose cumulative duration is not more than 3 milliseconds.

S23.5.4 Compression deflection of the sternum relative to the spine, as determined by instrumentation, shall not exceed 40 mm (1.6 in).

S23.5.5 *Neck injury.* When measuring neck injury, each of the following injury criteria shall be met.

(a) *Nij.*

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.10. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE J211/1 rev. Mar95 Channel Frequency Class 600 (see S4.7).

(2) During the event, the axial force (Fz) can be either in tension or compression while the occipital condyle bending moment (Mocy) can be in either flexion or extension. This results in four possible loading conditions for Nij: tension-extension (Nte), tension-flexion (Ntf), compression-extension (Nce), or compression-flexion (Ncf).

(3) When calculating Nij using equation S23.5.5(a)(4), the critical values, Fzc and Myc, are:

(i) Fzc = 2800 N (629 lbf) when Fz is in tension

(ii) Fzc = 2800 N (629 lbf) when Fz is in compression

(iii) Myc = 93 Nm (69 lbf-ft) when a flexion moment exists at the occipital condyle

(iv) Myc = 37 Nm (27 lbf-ft) when an extension moment exists at the occipital condyle.

(4) At each point in time, only one of the four loading conditions occurs and the Nij value corresponding to that loading condition is computed and the three remaining loading modes shall be considered a value of zero. The expression for calculating each Nij loading condition is given by:

Nij = (Fz / Fzc) + (Mocy / Myc)

(5) None of the four Nij values shall exceed 1.0 at any time during the event.

(b) *Peak tension.* Tension force (Fz), measured at the upper neck load cell, shall not exceed 1490 N (335 lbf) at any time.

(c) *Peak compression.* Compression force (Fz), measured at the upper neck load cell, shall not exceed 1820 N (409 lbf) at any time.

S23.5.6 Unless otherwise indicated, instrumentation for data acquisition, data channel frequency class, and moment calculations are the same as given for the 49 CFR Part 572 Subpart N 6-year-old child test dummy.

S24 *Test procedure for S23.*

S24.1 *General provisions and definitions.*

S24.1.1 Tests specifying the use of a booster seat may be conducted using any such restraint listed in section D of Appendix A of this standard. The booster seat may be unused or have been previously used for static suppression tests only; if it has been used, there shall not be any visible damage prior to the test. Booster seats are to be used in the manner appropriate for a six-year-old child of the same height and weight as the six-year-old child dummy.

S24.1.2 Unless otherwise specified, each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward seat track position, the middle seat track position, and the full forward seat track position. If the dummy contacts the vehicle interior, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward while assuring that there is a maximum of 5 mm (0.2 in) distance between the vehicle interior and the point on the dummy that would first contact the vehicle interior. All tests are conducted with the seat height, if adjustable, in the mid-height position, and with the seat back angle, if adjustable, at the manufacturer's nominal design seat back angle for a 50th percentile adult male as specified in S8.1.3.

S24.1.3 Except as otherwise specified, if the booster seat has an anchorage system as specified in S5.9 of FMVSS No. 213 and is tested in a vehicle with a right front outboard vehicle seat that has an anchorage system as specified in FMVSS No. 225, the vehicle shall comply with the belted test conditions both with the restraint anchorage system attached and unattached to the vehicle seat anchorage system and with the unbelted test conditions with the restraint anchorage system unattached to the vehicle seat anchorage system.

S24.1.4 Do not attach any tethers.

S24.1.5 The definitions provided in S16.3.1 apply to the tests specified in S24.

S24.2 *Static tests of automatic suppression feature which shall result in deactivation of the passenger air bag.* Each vehicle that is certified as complying with S23.2 shall meet the following test requirements.

S24.2.1 Except as provided in S24.2.2, conduct all tests as specified in S22.2, except that the 49 CFR Part 572 Subpart N 6-year-old child dummy shall be used.

S24.2.2. *Exceptions.* The tests specified in the following paragraphs of S22.2 need not be conducted: S22.2.1.5, S22.2.2.3, S22.2.2.5, S22.2.2.6, S22.2.2.7, and S22.2.2.8.

S24.2.3. *Sitting back in the seat and leaning on the right front passenger door*

(a) Position the dummy in the seated position and place the dummy in the right front outboard seat. For bucket seats, position the midsagittal plane of the dummy vertically such that it coincides with the vertical longitudinal plane through the longitudinal center line of the seat cushion. For bench seats, position the midsagittal plane of the dummy vertically and parallel to the vehicle's longitudinal centerline and the same distance from the longitudinal centerline of the vehicle as the center of the steering wheel.

(b) Place the dummy's back against the seat back and rest the dummy's thighs on the seat cushion.

(c) Allow the legs and feet of the dummy to extend off the surface of the seat. If this positioning of the dummy's legs is prevented by contact with the instrument panel, move the seat rearward to the next detent that provides clearance. If the seat is a power seat, move the seat rearward, while assuring that there is a minimum of 5 mm (0.2 in) distance between the vehicle interior and the part of the dummy that was in contact with the vehicle interior.

(d) Rotate the dummy's upper arms toward the seat back until they make contact.

(e) Rotate the dummy's lower arms down until they contact the seat.

(f) Close the vehicle's passenger-side door and then start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system.

(g) Push against the dummy's left shoulder to lean the dummy against the door; close all remaining doors.

(h) Wait 10 seconds, then check whether the air bag is deactivated.

S24.3 *Static tests of automatic suppression feature which shall result in activation of the passenger air bag system.*

S24.3.1 Each vehicle certified to this option shall comply in tests conducted with the right front outboard seating position at the full rearward seat track position, the middle seat track position,

and, subject to S16.3.3.1.8, the full forward seat track position. All tests are conducted with the seat height, if adjustable, in the mid-height position.

S24.3.2 Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at the right front outboard seating position of the vehicle, in accordance with procedures specified in S16.3.3 of this standard, except as specified in S24.3.1. Do not fasten the seat belt.

S24.3.3 Start the vehicle engine or place the ignition in the "on" position, whichever will turn on the suppression system, and then close all vehicle doors.

S24.3.4 Wait 10 seconds, then check whether the air bag system is activated.

S24.4 *Low risk deployment tests.*

S24.4.1 Each vehicle that is certified as complying with S23.4 shall meet the following test requirements with the 49 CFR Part 572 Subpart N 6-year-old child dummy in both of the following positions: Position 1 (S24.4.2) or Position 2 (S24.4.3).

S24.4.1.1 Locate and mark the center point of the dummy's rib cage or sternum plate (the vertical mid-point of the frontal chest plate of the dummy on the midsagittal plane). This is referred to as "Point 1."

S24.4.1.2 Locate the vertical plane parallel to the vehicle longitudinal centerline through the geometric center of the right front air bag tear seam. This is referred to as "Plane D."

S24.4.1.3 Locate the horizontal plane through the geometric center of the right front air bag tear seam. This is referred to as "Plane C."

S24.4.2 *Position 1 (chest on instrument panel).*

S24.4.2.1 There are no seat track, seat height, or seat back angle requirements.

S24.4.2.2 Remove the legs of the dummy at the pelvic interface.

S24.4.2.3 Place the dummy's midsagittal plane coincident with Plane D.

S24.4.2.4 With the dummy's thorax instrument cavity rear face 6 degrees forward of the vertical and Point 1 in Plane C, move the dummy forward until Point 1 contacts the instrument panel. If the dummy's head contacts the windshield and keeps Point 1 from contacting the instrument panel, lower the dummy until there is no more than 5 mm (0.2 in) clearance between the head and the windshield.

S24.4.2.5 Position the upper arms parallel to the spine and rotate the lower arms forward (at the elbow joint) sufficiently to prevent contact with or support from the seat.

S24.4.2.6 Use the seat adjustments (fore-aft, height) to keep the dummy in position. If necessary, thread with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The thread should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the thread does not interfere with the air bag.

S24.4.3 *Position 2 (head on instrument panel).*

S24.4.3.1 Place the passenger seat in the full rearward seating position. Place the seat back in the nominal design position for a 50th percentile adult male (S8.1.3) as specified by the vehicle manufacturer. If adjustable in the vertical direction, place the seat in the mid-height position.

S24.4.3.2 Place the dummy in the front passenger seat such that:

S24.4.3.2.1 The dummy's midsagittal plane is coincident with Plane D. With the thighs on the seat, initially set the thighs perpendicular to the torso and the legs perpendicular to the thighs. Position the upper arms parallel to the torso and rotate the lower arms forward (at the elbow) sufficiently to prevent contact with or support from the seat.

S24.4.3.2.2 The dummy is positioned in the seat such that the legs rest against the front of the seat and such that the dummy's thorax instrument cavity rear face is 6 degrees forward of vertical. If it is not possible to position the dummy with the legs in the prescribed position, rotate the legs forward until the dummy is resting on the seat with the feet positioned flat on the floorboard.

S24.4.3.3 Move the seat forward, while maintaining the thorax instrument cavity rear face orientation until any part of the dummy contacts the vehicle's instrument panel.

S24.4.3.4 If contact has not been made with the vehicle's instrument panel at the full forward seating position of the seat, slide the dummy forward on the seat 190 mm (7.5 in) or until contact is made, whichever is first. Maintain the thorax instrument cavity rear face orientation.

S24.4.3.5 If contact has not been made, apply a force towards the front of the vehicle on the spine of the dummy between the shoulder joints until the head or torso comes into contact with the vehicle's instrument panel.

S24.4.3.6 If necessary, rotate the thighs and rotate the legs and feet so as not to impede the motion of the head/torso into the vehicle's instrument panel.

S24.4.3.7 Rotate the lower arms forward if necessary to prevent contact with or support from the seat.

S24.4.3.8 If necessary, thread with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. Thread should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the thread does not interfere with the air bag.

S24.4.4 Deploy the right front outboard frontal air bag system. If the frontal air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages and at any time delay between successive stages that could occur in a rigid barrier crash at speeds up to 26 km/h (16 mph) under the test procedure specified in S22.5.

S25 *Requirements using an out-of-position 5th percentile adult female dummy at the driver position.*

S25.1 Each vehicle certified as complying with S14 shall, at the option of the manufacturer, meet the requirements specified in S25.2 or S25.3 under the test procedures specified in S26 or S28, as appropriate.

S25.2 *Option 1—Dynamic automatic suppression system that suppresses the air bag when the driver is out of position.* (This option is available under the conditions set forth in S27.1.) The vehicle shall be equipped with a dynamic automatic suppression system for the driver air bag which meets the requirements specified in S27.

S25.3 *Option 2—Low risk deployment.* Each vehicle shall meet the injury criteria specified by S15.3 of this standard, except as modified in S25.4, when the driver air bag is statically deployed in accordance with both of the low risk deployment test procedures specified in S26.

S25.4 *Neck injury criteria driver low risk deployment tests.* When measuring neck injury in low risk deployment tests for the driver position, each of the following neck injury criteria shall be met.

(a) *Nij.*

(1) The shear force (Fx), axial force (Fz), and bending moment (My) shall be measured by the dummy upper neck load cell for the duration of the crash event as specified in S4.10. Shear force, axial force, and bending moment shall be filtered for Nij purposes at SAE J211/1 rev. Mar 95 Channel Frequency Class 600 (see S4.7).

(2) During the event, the axial force (Fz) can be either in tension or compression while the occipital condyle bending moment (Mocy) can be in either flexion or extension. This results in four

possible loading conditions for Nij: tension-extension (Nte), tension-flexion (Ntf), compression-extension (Nce), or compression-flexion (Ncf).

(3) When calculating Nij using equation S25.4(a)(4), the critical values, Fzc and Myc, are:

(i) Fzc = 3880 N (872 lbf) when Fz is in tension

(ii) Fzc = 3880 N (872 lbf) when Fz is in compression

(iii) Myc = 155 Nm (114 lbf-ft) when a flexion moment exists at the occipital condyle

(iv) Myc = 61 Nm (45 lbf-ft) when an extension moment exists at the occipital condyle.

(4) At each point in time, only one of the four loading conditions occurs and the Nij value corresponding to that loading condition is computed and the three remaining loading modes shall be considered a value of zero. The expression for calculating each Nij loading condition is given by:

Nij = (Fz/Fzc) + (Mocy/Myc)

(5) None of the four Nij values shall exceed 1.0 at any time during the event.

(b) *Peak tension.* Tension force (Fz), measured at the upper neck load cell, shall not exceed 2070 N (465 lbf) at any time.

(c) *Peak compression.* Compression force (Fz), measured at the upper neck load cell, shall not exceed 2520 N (566 lbf) at any time.

(d) Unless otherwise indicated, instrumentation for data acquisition, data channel frequency class, and moment calculations are the same as given in 49 CFR Part 572 Subpart O 5th percentile female test dummy.

S26 *Procedure for low risk deployment tests of driver air bag.*

S26.1 Each vehicle that is certified as complying with S25.3 shall meet the requirements of S25.3 and S25.4 with the 49 CFR Part 572 Subpart O 5th percentile adult female dummy in both of the following positions: Driver position 1 (S26.2) and Driver position 2 (S26.3).

S26.2 *Driver position 1 (chin on module).*

S26.2.1 Adjust the steering controls so that the steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting at the geometric center, position it one setting lower than the geometric center. Set the rotation of the steering wheel so that the vehicle wheels are pointed straight ahead.

S26.2.2 Locate the vertical plane parallel to the vehicle longitudinal axis which passes through the geometric center of the driver air bag tear seam. This is referred to as "Plane E."

S26.2.3 Place the seat in the full rearward seating position. If adjustable in the vertical direction, place the seat in the mid-height position.

S26.2.4 Place the dummy in a seated position with its midsagittal plane coincident with Plane E.

S26.2.5 Initially position the legs at a 90-degree angle to the thighs. The legs may be adjusted if necessary to achieve the final head position.

S26.2.6 Position the dummy's thorax instrument cavity rear face 6 degrees forward (toward the front of the vehicle) of the steering wheel angle (*i.e.*, if the steering wheel angle is 25 degrees from vertical, the thorax instrument cavity rear face angle is 31 degrees).

S26.2.7 Move the seat forward, while retaining the thorax instrument cavity rear face orientation, to the forwardmost seat track position or until any portion of the dummy contacts the steering wheel, whichever occurs first.

S26.2.8 Adjust the height of the dummy so that the bottom of the chin is in the same horizontal plane as the highest point of the air bag module cover (dummy height can be adjusted using the seat height adjustments and/or spacer blocks). If the seat prevents the bottom of the chin from being in the same horizontal plane as the module cover, adjust the dummy height to as close to the prescribed position as possible.

S26.2.9 Slide the dummy forward on the seat until either the head or the torso contacts the steering wheel.

S26.2.10 Use the seat adjustments (fore-aft, height) to keep the dummy in position. If necessary, thread with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The thread should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the thread does not interfere with the air bag.

S26.3 *Driver position 2 (chin on rim).*

S26.3.1 There are no seat track, seat height, or seat back angle requirements.

S26.3.2 Adjust the steering controls so that the steering wheel hub is at the geometric center of the locus it describes when it is moved through its full range of driving positions. If there is no setting at the geometric center, position it one setting lower than the geometric center. Set the rotation of the steering wheel so that the vehicle wheels are pointed straight ahead.

S26.3.3 Locate the vertical plane parallel to the vehicle longitudinal axis which passes through the geometric center of the driver air bag tear seam. This is referred to as "Plane E."

S26.3.4 Place the dummy in a seated position with its midsagittal plane coincident with Plane E.

S26.3.5 Initially position the legs at a 90-degree angle to the thighs. The legs may be adjusted if necessary to achieve the final head position.

S26.3.6 Position the dummy's thorax instrument cavity rear face 6 degrees forward (toward the front of the vehicle) of the steering wheel angle (i.e., if the steering wheel angle is 25 degrees from vertical, the thorax instrument cavity rear face angle is 31 degrees).

S26.3.7 Position the dummy so that the center of the chin is in contact with the uppermost portion of the rim of the steering wheel. Do not hook the chin over the top of the rim of the steering wheel. Position the chin to rest on the upper edge of the rim, without loading the neck. If the dummy's head contacts the vehicle windshield or upper interior before the prescribed position can be obtained, lower the dummy until there is no more than 5 mm (0.2 in) clearance between the vehicle's windshield or upper interior, as applicable.

S26.3.8 Use the seat adjustments (fore-aft, height) to keep the dummy in position. If necessary, thread with a maximum breaking strength of 311 N (70 lb) and spacer blocks may be used to support the dummy in position. The thread should support the torso rather than the head. Support the dummy so that there is minimum interference with the full rotational and translational freedom for the upper torso of the dummy and the thread does not interfere with the air bag.

S26.4 Deploy the left front outboard frontal air bag system. If the air bag system contains a multistage inflator, the vehicle shall be able to comply with the injury criteria at any stage or combination of stages or time delay between successive stages that could occur in a rigid barrier crash at speeds up to 26 km/h (16 mph) under the test procedure specified in S22.5.

S27 *Option for dynamic automatic suppression system that suppresses the air bag when an occupant is out-of-position.*

S27.1 *Availability of option.* This option is available for either air bag, singly or in conjunction, subject to the requirements of S27, if:

(a) A petition for rulemaking to establish dynamic automatic suppression system test procedures is submitted pursuant to Subpart B of Part 552 and a test procedure applicable to the vehicle is added to S28 pursuant to the procedures specified by that subpart, or

(b) A test procedure applicable to the vehicle is otherwise added to S28.

S27.2 *Definitions.* For purposes of S27 and S28, the following definitions apply:

*Automatic suppression zone or ASZ* means a three-dimensional zone adjacent to the air bag cover, specified by the vehicle manufacturer, where the deployment of the air bag will be suppressed by the DASS if a vehicle occupant enters the zone under specified conditions.

*Dynamic automatic suppression system or DASS* means a portion of an air bag system that automatically controls whether or not the air bag deploys during a crash by:

(1) Sensing the location of an occupant, moving or still, in relation to the air bag;

(2) Interpreting the occupant characteristics and location information to determine whether or not the air bag should deploy; and

(3) Activating or suppressing the air bag system based on the interpretation of occupant characteristics and location information.

S27.3 *Requirements.* Each vehicle shall, at each applicable front outboard designated seating position, when tested under the conditions of S28 of this standard, comply with the requirements specified in S27.4 through S27.6.

S27.4 Each vehicle shall be equipped with a DASS.

S27.5 *Static test requirement (low risk deployment for occupants outside the ASZ).*

S27.5.1 *Driver (49 CFR Part 572 Subpart O 5th percentile female dummy).* Each vehicle shall meet the injury criteria specified in S15.3 of this standard when the driver air bag is deployed in accordance with the procedures specified in S28.1.

S27.5.2 *Passenger (49 CFR Part 572 Subpart P 3-year-old child dummy and 49 CFR Part 572 Subpart N 6-year-old child dummy).* Each vehicle shall meet the injury criteria specified in S21.5 and S23.5, as appropriate, when the passenger air bag is deployed in accordance with the procedures specified in S28.2.

S27.6 *Dynamic test requirement (suppression of air bag for occupants inside the ASZ).*

S27.6.1 *Driver.* The DASS shall suppress the driver air bag before the head, neck, or torso of the specified test device enters the ASZ when the vehicle is tested under the procedures specified in S28.3.

S27.6.2 *Passenger.* The DASS shall suppress the passenger air bag before head, neck, or torso of the specified test device enters the ASZ when the vehicle is tested under the procedures specified in S28.4.

S28 *Test procedure for S27 of this standard.* [Reserved]

S28.1 *Driver suppression zone verification test (49 CFR Part 572 Subpart O 5th percentile female dummy).* [Reserved]

S28.2 *Passenger suppression zone verification test (49 CFR Part 572 Subpart P 3-year-old child dummy and 49 CFR Part 572 Subpart N 6-year-old child dummies).* [Reserved]

S28.3 *Driver dynamic test procedure for DASS requirements.* [Reserved]

S28.4 *Passenger dynamic test procedure for DASS requirements.* [Reserved]

S29 *Manufacturer option to certify vehicles to certain static suppression test requirements using human beings rather than test dummies.*

S29.1 At the option of the manufacturer, instead of using test dummies in conducting the tests for the following static test requirements, human beings may be used as specified. If human beings are used, they shall assume, to the extent possible, the final physical position specified for the corresponding dummies for each test.

(a) If a manufacturer decides to certify a vehicle using a human being for a static test, it shall use humans for the entire series of tests, e.g., 3-year-old children for each static test involving 3-year-old test dummies. If a manufacturer decides to certify a vehicle using a test dummy for a static test, it shall use test dummies for the entire series of tests, e.g., a Hybrid III 3-year-old child dummy for each static test involving 3-year-old test dummies.

(b) For S21.2, instead of using the 49 CFR Part 572 Subpart P 3-year-old child dummy, a human child who weighs between 13.4 and 18 kg (29.5 and 39.5 lb), and who is between 89 and 99 cm (35 and 39 in) tall may be used.

(c) For S23.2, instead of using the 49 CFR Part 572 Subpart N 6-year-old child dummy, a human child who weighs between 21 and 25.6 kg (46.5 and 56.5 lb), and who is between 114 and 124.5 cm (45 and 49 in) tall may be used.

(d) For S19.2, S21.2, and S23.2, instead of using the 49 CFR Part 572 Subpart O 5th percentile adult female test dummy, a female who weighs between 46.7 and 51.25 kg (103 lb and 113 lb), and who is between 139.7 and 150 cm (55 and 59 in) tall may be used.

S29.2 Human beings shall be dressed in a cotton T-shirt, full length cotton trousers, and sneakers. Specified weights and heights include clothing.

S29.3 A manufacturer exercising this option shall upon request—

(a) Provide NHTSA with a method to deactivate the air bag during compliance testing under S20.3, S22.2, S22.3, S24.2, and S24.3, and identify any parts or equipment necessary for deactivation; such assurance may be made by removing the air bag; and

(b) Provide NHTSA with a method to assure that the same test results would be obtained if the air bag were not deactivated.

**Figures to § 571.208**

* * * * *

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**Figure 8.** Sun Visor Label Visible when Visor is in Down Position.

Label Outline, Vertical and Horizontal Lines Black

Bottom Text Black with White Background

Top Text Black with Yellow Background

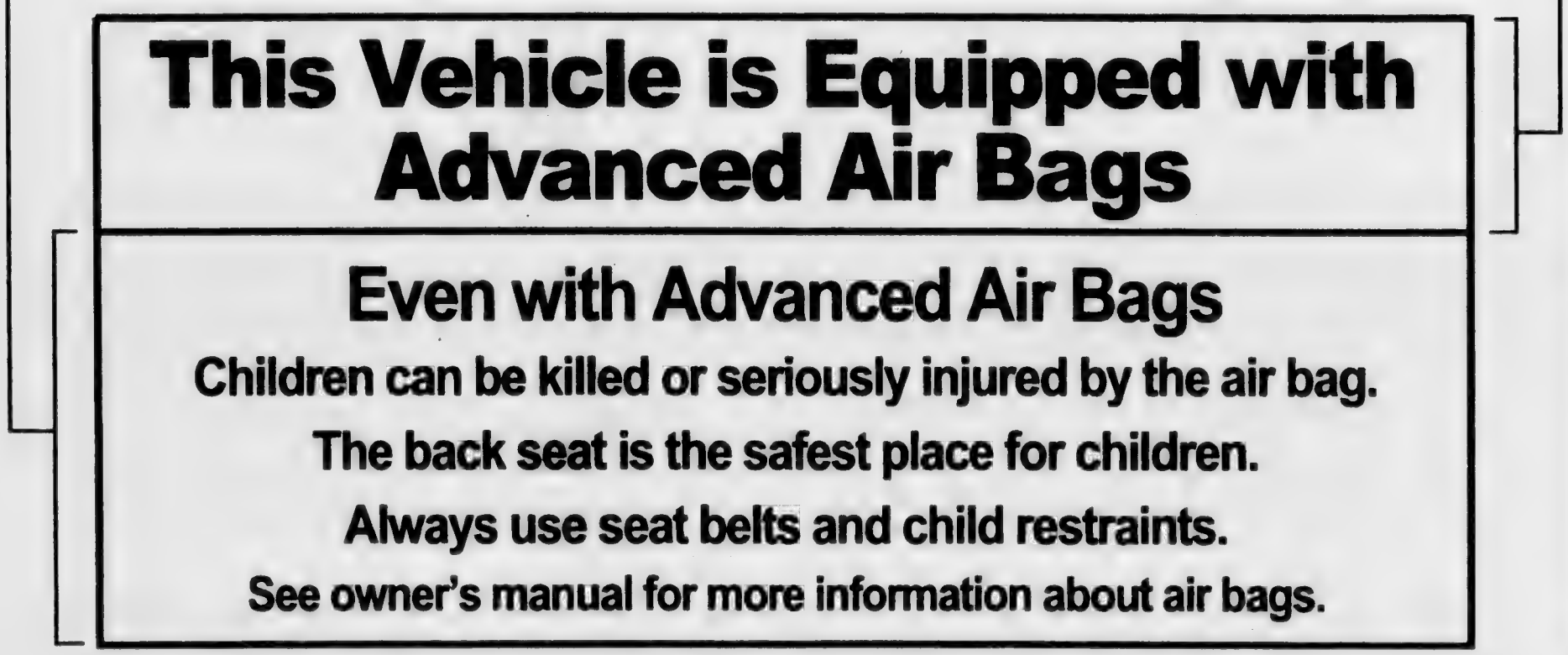


**Figure 9.** Removable Label on Dash.

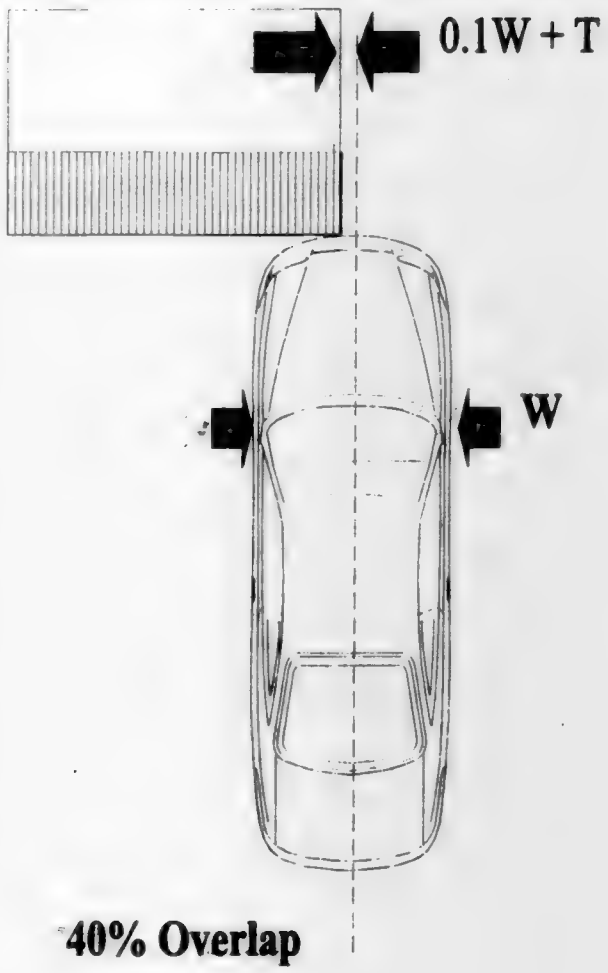


Legend

---- Longitudinal Centerline of Vehicle

W Vehicle Width

T Tolerance

Figure 10 Configuration for Frontal Offset Deformable Barrier Test

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**Appendix A to § 571.208—Selection of Child Restraint Systems**

A. The following car bed, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR Part 571.208 S19:

Cosco Dream Ride 02–719

B. Any of the following rear facing child restraint systems, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR Part 571.208 S19. When the restraint system comes equipped with a removable base, the test may be run either with the base attached or without the base.

Britax Handle with Care 191
Century 560 Institutional 4590
Century Smart Fit 4541
Cosco Arriva 02–750
Cosco Turnabout 02–772
Evenflo Discovery 209
Evenflo First Choice 204
Evenflo On My Way 207
Evenflo Position Right 200
Graco Infant 8457
Kolcraft Secura 43924

C. Any of the following forward-facing convertible child restraint systems, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR Part 571.208 S19, or S21:

Britax Roundabout 161
Century Encore 4612
Cosco Touriva 02–584
Evenflo Champion 249
Evenflo Medallion 254
Fisher Price Safe-Embrace 79701
Kolcraft Performa 23308

D. Any of the following forward-facing toddler/belt positioning booster systems, manufactured on or after December 1, 1999, may be used by the National Highway Traffic Safety Administration as test devices to test the suppression system of a vehicle that has been certified as being in compliance with 49 CFR Part 571.208 S21 or S23:

Britax Cruiser 121
Century Next Step 4920
Cosco High Back Booster 02–442
Evenflo Right Fit 245

6. Part 585 is revised to read as follows:

## PART 585—ADVANCED AIR BAG PHASE-IN REPORTING REQUIREMENTS

Sec.
585.1 Scope.
585.2 Purpose.
585.3 Applicability.
585.4 Definitions.
585.5 Reporting requirements.
585.6 Records.
585.7 Petitions to extend period to file report.

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

**§ 585.1 Scope.**

This part establishes requirements for manufacturers of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 lb) or less and an unloaded vehicle weight of 2,495 kg (5500 lb) or less to submit reports, and maintain records related to the reports, concerning the number and identification of such vehicles that are certified as complying with the advanced air bag requirements of Standard No. 208, "Occupant crash protection" (49 CFR 571.208).

**§ 585.2 Purpose.**

The purpose of these reporting requirements is to aid the National Highway Traffic Safety Administration in determining whether a manufacturer has complied with the advanced air bag requirements of Standard No. 208 during the phase-ins of those requirements.

**§ 585.3 Applicability.**

This part applies to manufacturers of passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 lb) or less and an unloaded vehicle weight of 2,495 kg (5500 lb) or less. However, this part does not apply to any manufacturers whose production consists exclusively of walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter. In addition, this part does not apply to manufacturers whose worldwide production of motor vehicles is less than 5000 vehicles in a production year.

**§ 585.4 Definitions.**

(a) All terms defined in 49 U.S.C. 30102 are used in accordance with their statutory meaning.

(b) The terms *bus, gross vehicle weight rating or GVWR, multipurpose passenger vehicle, passenger car,* and *truck* are used as defined in section 571.3 of this chapter.

(c) For the purposes of this part, *vehicles* means passenger cars and trucks, buses, and multipurpose passenger vehicles with a GVWR of 3,855 kg (8500 lb) or less and an unloaded vehicle weight of 2,495 kg (5500 lb) or less manufactured for sale in the United States by manufacturers whose worldwide production of motor vehicles is equal to or greater than 5000 vehicles in a production year, and does not mean walk-in vans, vehicles designed to be sold exclusively to the U.S. Postal Service, vehicles manufactured in two or more stages, and vehicles that are altered after previously having been certified in accordance with part 567 of this chapter.

(d) *Phase one of the advanced air bag requirements of Standard No. 208* refers to the requirements set forth in S14.1, S14.2, S14.5.1(a), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 of Federal Motor Vehicle Safety Standard No. 208, 49 CFR 571.208.

(e) *Phase two of the advanced air bag requirements of Standard No. 208* refers to the requirements set forth in S14.3, S14.4, S14.5.1(b), S14.5.2, S15.1, S15.2, S17, S19, S21, S23, and S25 of Federal Motor Vehicle Safety Standard No. 208, 49 CFR 571.208.

(f) *Production year* means the 12-month period between September 1 of one year and August 31 of the following year, inclusive.

(g) *Limited line manufacturer* means a manufacturer that sells two or fewer carlines, as that term is defined in 49 CFR 583.4, in the United States during a production year.

**§ 585.5 Reporting requirements.**

(a) *Advanced credit phase-in reporting requirements.*

(1) Within 60 days after the end of the production years ending August 31, 2000, August 31, 2001, August 31, 2002, and August 31, 2003, each manufacturer choosing to certify vehicles manufactured during any of those production years as complying with phase one of the advanced air bag requirements of Standard No. 208 shall submit a report to the National Highway Traffic Safety Administration as specified in this section.

(2) Within 60 days after the end of the production year ending August 31, 2007, each manufacturer choosing to certify vehicles manufactured during that production year as complying with phase two of the advanced air bag requirements of Standard No. 208 shall submit a report to the National Highway Traffic Safety Administration as specified in this section.

(3) Each report shall—

(i) Identify the manufacturer;

(ii) State the full name, title, and address of the official responsible for preparing the report;

(iii) Identify the production year being reported on;

(iv) Provide the information specified in paragraph (c) of this section;

(v) Be written in the English language; and

(vi) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

(b) *Phase-in reporting requirements.*

(1) Within 60 days after the end of the production years ending August 31, 2004, August 31, 2005, and August 31, 2006, each manufacturer shall submit a report to the National Highway Traffic Safety Administration regarding its compliance with phase one of the advanced air bag requirements of Standard No. 208 for its vehicles produced in that production year. Each report shall also specify the number of advance credit vehicles, if any, that are being applied to the production year being reported on.

(2) Within 60 days after the end of the production years ending August 31, 2008, August 31, 2009, and August 31, 2010, each manufacturer shall submit a report to the National Highway Traffic Safety Administration regarding its compliance with phase two of the advanced air bag requirements of Standard No. 208 for its vehicles produced in that production year. Each report shall also specify the number of advance credit vehicles, if any, that are being applied to the production year being reported on.

(3) Each report shall—

(i) Identify the manufacturer;

(ii) State the full name, title, and address of the official responsible for preparing the report;

(iii) For limited line manufacturers, specify whether the manufacturer has elected to comply with S14.1(a) or S14.1(b), or S14.3(a) or S14.3(b) of 49 CFR 571.208, as applicable;

(iv) Identify the production year being reported on;

(v) Contain a statement regarding whether or not the manufacturer complied with phase one of the advanced air bag requirements of Standard No. 208 or phase two of the advanced air bag requirements of Standard No. 208, as applicable to the period covered by the report, and the basis for that statement;

(vi) Provide the information specified in paragraph (d) of this section;

(vii) Be written in the English language; and

(viii) Be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

(c) *Advanced credit phase-in report content.*

(1) *Production of complying vehicles.*

(i) With respect to the reports identified in section 585.5(a)(1), each manufacturer shall report for the production year for which the report is filed the number of vehicles, by make and model year, that meet the applicable advanced air bag requirements of Standard No. 208, and to which advanced air bag requirements the vehicles are certified.

(ii) With respect to the report identified in section 585.5(a)(2), each manufacturer shall report the number of vehicles, by make and model year, that meet the applicable advanced air bag requirements of Standard No. 208, and to which advanced air bag requirements the vehicles are certified.

(2) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S14.1.3.2 or S14.3.3.2 of Standard No. 208 shall:

(i) Report the existence of each contract, including the names of all parties to the contract and explain how the contract affects the report being submitted.

(ii) Report the number of vehicles covered by each contract in each production year.

(d) *Phase-in report content.*

(1) *Basis for phase-in production requirements.* For production years ending August 31, 2003, August 31, 2004, August 31, 2005, August 31, 2007, August 31, 2008, and August 31, 2009, each manufacturer shall provide the number of vehicles manufactured in the current production year, or, at the manufacturer's option, for the current production year and each of the prior two production years if the manufacturer has manufactured vehicles during both of the two production years prior to the year for which the report is being submitted.

(2) *Production of complying vehicles.* Each manufacturer shall report for the production year for which the report is filed the number of vehicles, by make and model year, that meet the applicable advanced air bag requirements of Standard No. 208, and to which advanced air bag requirements the vehicles are certified.

(3) *Vehicles produced by more than one manufacturer.* Each manufacturer whose reporting of information is affected by one or more of the express written contracts permitted by S14.1.3.2 or S14.3.3.2 of Standard No. 208 shall:

(i) Report the existence of each contract, including the names of all parties to the contract and explain how the contract affects the report being submitted.

(ii) Report the number of vehicles covered by each contract in each production year.

**§ 585.6 Records.**

Each manufacturer shall maintain records of the Vehicle Identification Number of each vehicle for which information is reported under § 585.5(c)(1) and (d)(2) until December 31, 2011.

**§ 585.7 Petitions to extend period to file report.**

A petition for extension of the time to submit a report required under this part shall be received not later than 15 days before the report is due. The petition shall be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. The filing of a petition does not automatically extend the time for filing a report. A petition will be granted only if the petitioner shows good cause for the extension, and if the extension is consistent with the public interest.

## PART 595—RETROFIT ON-OFF SWITCHES FOR AIR BAGS

7. The authority citation for part 595 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, 30122 and 30166; delegation of authority at 49 CFR 1.50.

8. Section 595.5 is amended by revising paragraph (a) to read as follows:

**§ 595.5 Requirements.**

(a) Beginning January 19, 1998, a dealer or motor vehicle repair business may modify a motor vehicle manufactured before September 1, 2012 by installing an on-off switch that allows an occupant of the vehicle to turn off an air bag in that vehicle, subject to the conditions in paragraphs (b)(1) through (5) of this section.

* * * * *

Issued on: May 4, 2000.

**Rosalyn G. Millman,**

*Acting Administrator.*

[FR Doc. 00–11577 Filed 5–5–00; 10:30 am]

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Friday,
May 12, 2000

Part III

# Department of the Interior

**Fish and Wildlife Service**

**50 CFR Part 32**
**1999–2000 Refuge-Specific Hunting and Sport Fishing Regulations; Final Rule**

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 32**

**RIN 1018–AF52**

## 1999–2000 Refuge-Specific Hunting and Sport Fishing Regulations

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We are adding certain national wildlife refuges (refuges) to the list of areas open for hunting and/or sport fishing, along with pertinent refuge-specific regulations for such activities; and amend certain regulations on other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 1999–2000 season.

**DATES:** This rule is effective May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Leslie A. Marler, (703) 358–2397; Fax (703) 358–2248.

**SUPPLEMENTARY INFORMATION:** The National Wildlife Refuge System Administration Act of 1966 (NWRSAA) closes national wildlife refuges to hunting and sport fishing until we open them by rulemaking. The Secretary of the Interior (Secretary) may open refuge areas to hunting and/or fishing upon a determination that such uses are compatible with the purposes of the refuge. The action also must be in accordance with provisions of all laws applicable to the areas, must be consistent with the principles of sound fish and wildlife management and administration, and otherwise must be in the public interest. These requirements ensure that we maintain the biological integrity, diversity, and environmental health of the National Wildlife Refuge System (System) for the benefit of present and future generations of Americans.

We review refuge hunting and fishing programs annually to determine whether to add additional refuges or whether individual refuge regulations governing existing programs need modifications, deletions, or additions made to them. Changing environmental conditions, State and Federal regulations, and other factors affecting wildlife populations and habitat may warrant modifications ensuring the continued compatibility of hunting and fishing programs and that these programs will not materially interfere with or detract from the fulfillment of the mission of the System or the purposes of the refuge.

You may find provisions governing hunting and fishing on national wildlife refuges in 50 CFR part 32. We regulate hunting and fishing on refuges to:

- Ensure compatibility;
- Properly manage the fish and wildlife resource;
- Protect other refuge values; and
- ensure refuge user safety.

On many refuges, our general policy of adopting regulations identical to State hunting and fishing regulations is adequate in meeting these objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined under the section entitled "Statutory Authority." We issue refuge-specific hunting and fishing regulations when we open wildlife refuges to either migratory game bird hunting, upland game hunting, big game hunting, or sport fishing. These regulations list the wildlife species that you may hunt or those species subject to sport fishing, seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. You may find previously issued, refuge-specific regulations for hunting and fishing in 50 CFR part 32. We are promulgating many of the amendments to these sections to standardize and clarify the existing language of these regulations.

Some refuges may make seasonal information available in brochures or leaflets to supplement these refuge-specific regulations, which we provide for in 50 CFR 25.31.

We are making several corrections to 50 CFR:

- In 50 CFR 32.71 Pacific Islands Territory, we are changing the section heading to read "United States unincorporated Pacific insular possessions" with two refuges: Johnston Atoll National Wildlife Refuge and Midway Atoll National Wildlife Refuge. We moved Kilauea Point National Wildlife Refuge to Hawaii (§ 32.30), and we moved Guam National Wildlife Refuge to a new section § 32.72 Guam.
- We are eliminating redundant refuge-specific regulations for Ohio River National Wildlife Refuge that we currently list in the States of Pennsylvania, West Virginia and Kentucky. We will list Ohio River National Wildlife Refuge in West Virginia, Pennsylvania and Kentucky will refer the reader to West Virginia for refuge-specific regulations.

### Plain Language Mandate

In this rule the vast majority of the revisions to the individual refuge units are to comply with a Presidential mandate to use plain language in regulations and do not modify the substance of the previous restrictions. These types of changes include using "you" to refer to the reader and "we" to refer to the Service and using the word "allow" instead of "permit" when we do not require the use of a permit for an activity. Only a handful of refuge-specific regulations contain the substantive changes discussed below.

### Use of Only Approved Nontoxic Shot

In 50 CFR part 32, we provide for the prohibition of the possession of toxic shot in the field on Waterfowl Production Areas (WPAs) and certain other areas (refuges or areas within refuges) of the System. We delineated these areas on maps, leaflets, and/or signs (available at each refuge headquarters or posted at each refuge) or as stated in refuge-specific regulations. Where we allow turkey and deer hunting, you may use slugs and shot containing lead to hunt these species unless prohibited by refuge-specific regulations and/or State law.

We specifically identify the shot allowed in areas of the System by reference to the shot identified in 50 CFR 20.21(j). We sometimes grant new shot types conditional approvals until we complete all necessary studies. These conditional approvals change yearly, and we add new shot types to our approved list as they meet our criteria. To avoid any confusion, we amend *§ 32.2 What are the general provisions regarding hunting on areas of the National Wildlife Refuge System?* to state that you may possess only "approved" nontoxic shot in the field which we identify in 50 CFR 20.21(j), while on Waterfowl Production Areas or on certain other areas of the National Wildlife Refuge System. We also amend affected refuges listed in *Subpart B.—" Refuge-Specific Regulations for Hunting and Fishing* to reflect that hunters may possess only approved nontoxic shot while in the field. We removed any reference to "use" of nontoxic shot to be consistent with 50 CFR 20.21(j).

### Establishment of Lead-Free Fishing Areas

We will not be making a decision on the establishment of lead-free fishing areas in this final rule. We will address this issue in a separate final rule at a later date.

**Response to Comments Received**

In the August 11, 1999, issue of the **Federal Register** (64 FR 43834) we published a proposed rulemaking identifying the refuges and their proposed hunting and/or fishing programs and invited public comments. We reviewed and considered all substantive comments following a 30-day public comment period.

In all we received 37 comments from the proposed rule: 1 State conservation agency; 4 non-government organizations; and 32 individuals. Nearly all the comments were concerning refuges allowing hunting. We addressed multiple comments from some commenters individually.

*Comment:* 32 commenters expressed their opposition to the proposal to open additional refuges to hunting and/or fishing or to the existing refuges open to hunting and/or fishing.

*Response:* The National Wildlife Refuge System Administration Act authorizes permitting any compatible uses on refuges and specifically includes hunting. The principal focus of the National Wildlife Refuge System Improvement Act of 1997 (NWRSIA), which amended the NWRSAA, was to clearly establish a wildlife conservation mission for the System and provide managers clear direction and procedures for making determinations regarding wildlife conservation and public uses within the areas of the System. When Congress passed the NWRSIA, it reaffirmed that the System was created to conserve fish, wildlife, and plants and their habitats; and that this had been facilitated by providing Americans opportunities to participate in compatible wildlife-dependent recreation, including hunting and/or fishing on System areas. The NWRSIA establishes six wildlife-dependent recreational uses as the priority general public uses of the Refuge System where compatible. Those priority uses are: hunting, fishing, wildlife observation, wildlife photography, environmental education, and interpretation. The Act directs the Secretary to facilitate those uses.

*Comment:* We received a comment suggesting that we more fully describe in our **SUPPLEMENTARY INFORMATION** section that "the opening of these new areas is beneficial in terms of offering valuable additional recreational opportunities to sportsmen .....[and] consistent with the purposes of the National Wildlife Refuge System and the National Wildlife Refuge System Improvement Act of 1997 ..."

*Response:* We have described the ramifications of the NWRSIA in the Statutory Authority section of the **SUPPLEMENTARY INFORMATION** section.

*Comment:* One commenter questioned the opening of Bayou Teche National Wildlife Refuge in Louisiana to migratory bird, upland game, and big game hunting as the Refuge "has not yet been created."

*Response:* We proposed the opening of Bayou Teche National Wildlife Refuge in anticipation of the completion of the acquisition process by the time we would publish the final rule. We are still finalizing this process and will remove the refuge opening from this rule.

*Comment:* We received one comment from a State fish and game authority requesting that we coordinate closely with them on proposing any limitations to our hunting and fishing programs.

*Response:* We will do so. Our refuge managers and regional staffs will be in close contact with those State officials that are in or supervise State programs in the areas listed in this rule.

*Comment:* One commenter expressed concern that we are expanding hunting programs in the absence of adequate scientific data on the wildlife populations affected. Another commenter questioned if adequate funding levels are available to initiate the proposed hunts.

*Response:* The quote the commenter cited was from the Fulfilling the Promise: Serving Wildlife, Habtat and People through Effective Leadership (2nd draft, September 18, 1998) document, and the "absence of adequate scientific data" statement refers to wildlife disturbance issues, *i.e.*, non-consumptive uses such as developing new trails, etc. We do not expand our hunting programs without examining the ramifications on the affected wildlife populations. For example, in the case of migratory bird hunting, our primary responsibility in the annual promulgation of hunting regulations is to ensure the continued health of migratory game bird populations. This process involves consideration of extensive national and international survey results, technical advice from our staff and States in all major migration routes, and other public input in the development of reasonable and appropriate regulatory recommendations, such as seasons and bag limits, each year. More recently, we have used an adaptive approach to develop harvest regulations. This approach fosters a regulatory process in the United States that improves our ability to predict the impact regulations have on bird populations, maximizes harvest, and at the same time, conserves the migratory bird resource over the long term.

Funding is just one of the factors that we consider when applying sound professional judgment as part of determining compatibility for hunting programs.

*Comment:* A commenter felt that "Because state regulations will govern all aspects of the hunting programs not covered by the Refuge-specific regulations, the rule will clearly transfer authority for managing federal lands to the states."

*Response:* We disagree. We do not transfer authority to the States, but rather make a decision as to whether State regulations are sufficient for our management needs.

State regulations do not govern all aspects of our hunting programs, rather we work in partnership with the States. For example, with migratory bird hunting, the States step down Federal harvest and implementation regulations for establishing hunting seasons and bag limits. In turn, we evaluate State regulations based on local population surveys and adjust our hunting seasons and bag limits accordingly. When evaluating the State regulations, if we need provide no further restrictions, then we adopt regulations identical to the State regulations. On some refuges it may be necessary to supplement the State regulations with more restrictive Federal regulations to ensure that we meet our management responsibilities as outlined under the section entitled "Statutory Authority" in the rule.

*Comment:* A commenter offered some changes to the language in 50 CFR 32.24, California (affecting Colusa, Delevan, Sacramento, and Sutter National Wildlife Refuges) regarding the use of portable gas stoves. They suggest that we modify the language to say: "No person will build or maintain fires, except in refuge parking lots and in portable gas stoves or other portable metal devices made specifically for burning." In the same section, they feel the public could interpret our prohibition of use of " * * * bicycles and other conveyances" to include wheelchairs and other devices necessary for the mobility impaired.

*Response:* The use of fires is largely inconsistent with the operation of public waterfowl hunting programs at national wildlife refuges and also in their associated confined parking lots. We believe that open fires in the parking lots are a camping-related activity. Overnight camping has been a major issue in the past at all four refuges, and we do not allow it. Authorizing the use of other portable metal devices made for burning (like barbeques or wood-

burning burn barrels) is not, in our opinion, consistent with the operation of this refuge waterfowl hunt program. The proposed regulation is simple, to the point, and consistent with the plain language mandate and the intent of the NWRSIA. We agree with the suggestion for clarification of the language dealing with improving access for the mobility impaired on System lands. The Service and the California Department of Fish and Game have developed and implemented "Reasonable Accommodation Procedures for Mobility Impaired Hunters—Sacramento National Wildlife Refuge Complex," which allows access for mobility-impaired hunters. We will modify 50 CFR 32.24 for Colusa, Delevan, Sacramento, and Sutter National Wildlife Refuges in California to read as follows: "We do not allow bicycles and other conveyances. Mobility-impaired hunters should consult with the Refuge Manager for allowed conveyances."

*Comment:* A commenter asked if it is possible to open surf/bay fishing at Laguna Atascosa National Wildlife Refuge in Texas.

*Response:* At present, we prohibit fishing and/or fishing access on the existing refuge to avoid wildlife disturbance. Migratory ducks, shorebirds, and wading birds are the species targeted for protection by this closure. The threatened piping plover is one species of particular interest protected by this fishing closure. This closure includes all bank fishing access along the refuge's Laguna Madre shoreline. However, we do allow boat access for boat fishing and wade fishing. Other wetlands affected by this closure include the Laguna Atascosa Lake, the Cayo Atascoso (a stream that flows into and out of the lake), and the Arroyo Colorado (a public stream that flows through the refuge). Dolph Thomae Jr. County Park on the Arroyo Colorado allows pier fishing, boat launching, etc., for the public. We manage this county park as part of refuge lands under a written Memorandum of Understanding.

*Comment:* One commenter felt we did not afford the public a meaningful opportunity to comment on the proposal.

*Response:* We provided the public a 30-day period to comment on the August 11, 1999 proposed rule. The Refuge-Specific Hunting and Sport Fishing Regulations are an annual process with the proposed rule published each summer with 30-day comment period. There is nothing contained in this annual regulation outside of the scope of the annual review process where we add refuges or determine whether individual refuge regulations need modifications, deletions, or additions made to them. As we stated in the proposed rule, by allowing a 30-day comment period, we are trying to avoid jeopardizing the establishment of hunting and fishing programs this year (two of the six priority uses established by the NWRSIA) or shortening their duration. Many of these rules also relieve restrictions and allow the public to participate in recreational activities on a number of refuges. Even after issuance of a final rule we accept comments, suggestions and concerns for consideration for any appropriate subsequent rulemaking.

*Effective Date*

This rule is effective upon publication. We have determined that any further delay in implementing these refuge-specific hunting and sport fishing regulations would not be in the public interest in that a delay would hinder the effective planning and administration of the hunting and fishing programs. We provided a 30-day comment period for the August 11, 1999 proposed rule. An additional 30-day delay would jeopardize holding the hunting and/or fishing programs this year or shorten their duration and thereby lessen the management effectiveness of this regulation. Therefore, we find good cause under 5 U.S.C. 553(d) to make this rule effective upon publication.

**Statutory Authority**

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966 as amended by the National Wildlife Refuge System Improvement Act of 1997 (16 U.S.C. 668dd–668ee) and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k–460k–4), govern the administration and public use of national wildlife refuges.

The National Wildlife Refuge System Improvement Act (NWRSIA) is the latest amendment to the NWRSAA. It amends and builds upon the NWRSAA in a manner that provides an improved "Organic Act" for the Refuge System similar to those that exist for other public lands. It serves to ensure that we effectively manage the System as a national system of lands, waters, and interests for the protection and conservation of our nation's wildlife resources. The NWRSAA states first and foremost that we focus the mission of the System on conservation of fish, wildlife, and plant resources and their habitat. This Act requires the Secretary, before initiating or permitting a new use of a refuge, or before expanding, renewing, or extending an existing use of a refuge, to determine that the use is a compatible use and not inconsistent with public safety. The NWRSIA establishes as the policy of the United States that wildlife-dependent recreation, when it is compatible, is a legitimate and appropriate public use of the Refuge System, through which the American public can develop an appreciation for fish and wildlife. The NWRSIA establishes six compatible wildlife-dependent recreational uses as the priority general public uses of the Refuge System. Those priority uses are: hunting, fishing, wildlife observation, wildlife photography, environmental education, and interpretation.

The RRA authorizes the Secretary to administer areas within the System for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary purpose(s) for which we established the areas. This Act requires that any recreational use of refuge lands be compatible with the primary purposes for which we established the refuge and not inconsistent with other previously authorized operations.

The NWRSAA and RRA also authorize the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

We develop hunting and sport fishing plans for each existing refuge prior to opening it to hunting or fishing. In many cases, we develop refuge-specific regulations to ensure the compatibility of the programs with the purposes for which we established the refuge. We have ensured initial compliance with the NWRSAA and the RRA for hunting and sport fishing on newly acquired refuges through an interim determination of compatibility made at the time of acquisition. This policy ensures that we make the determinations required by these acts prior to adding refuges to the lists of areas open to hunting and fishing in 50 CFR part 32. We ensure continued compliance by the development of Comprehensive Conservation Plans, long-term hunting and sport fishing plans, and by annual review of hunting and sport fishing programs and regulations.

In preparation for new openings, we include the following documents in the refuges' "openings package" for Regional review and approval from the Washington Office: an interim hunting and fishing management plan; a Section 7 determination pursuant to the Endangered Species Act that these openings will have no effect, or are not likely to have an adverse effect, on listed species or critical habitats; a letter

of concurrence from the affected State; interim compatibility determinations; and refuge-specific regulations to administer the hunting and/or fishing programs. Upon review of these documents, we have determined that the opening of these national wildlife refuges to hunting and fishing is compatible with the principles of sound fish and wildlife management and administration and otherwise will be in the public interest.

We allow the following wildlife-dependent recreational activities for the first time:

Hunting of migratory game birds:

- Currituck National Wildlife Refuge, North Carolina
- Julia Butler Hansen Refuge for the Columbian White-Tailed Deer, Oregon
- Plum Tree Island National Wildlife Refuge, Virginia

St. Croix Wetland Management District, Wisconsin

Big game hunting on:

- Bond Swamp National Wildlife Refuge, Georgia
- St. Croix Wetland Management District, Wisconsin

Upland game hunting on:

- St. Croix Wetland Management District, Wisconsin

Sport fishing on:

- Bond Swamp National Wildlife Refuge, Georgia
- J. Clark Salyer National Wildlife Refuge, North Dakota
- Tewaukon National Wildlife Refuge, North Dakota
- Stewart Lake National Wildlife Refuge, North Dakota
- Upper Souris National Wildlife Refuge, North Dakota
- Julia Butler Hansen Refuge for the Columbian White-Tailed Deer, Oregon
- Willapa National Wildlife Refuge, Oregon
- ACE Basin National Wildlife Refuge, South Carolina

In accordance with NWRSAA and the RRA, we have determined that these openings are compatible and consistent with the primary purposes for which we established the refuge.

**Need for This Regulation**

We are adding refuges to the list of areas open for hunting and/or sport fishing, along with pertinent refuge-specific regulations for such activities. We amend certain regulations for other refuges that pertain to migratory game bird hunting, upland game hunting, big game hunting, and sport fishing for the 1999–2000 season. On many refuges, our policy of adopting regulations identical to State regulations is adequate in meeting National Wildlife Refuge System objectives. On other refuges, it is necessary to supplement State regulations with more restrictive Federal regulations to ensure that we meet our management responsibilities, as outlined under the section entitled "Statutory Authority" in the rule. We issue refuge-specific regulations when opening a national wildlife refuge or modifying the various uses of a refuge, and for all hunting or sport fishing. These regulations list the prohibited uses, limited uses, and those activities that are available without restriction. They also list those wildlife species that you may hunt or fish for along with the respective seasons, bag limits, methods of hunting or fishing, descriptions of open areas, and other provisions as appropriate. We promulgate many of the amendments here to provide greater restriction and clarify the existing regulation language, which should result in fewer violations of refuge regulations.

**Regulatory Planning and Review**

This document is not a significant rule subject to Office of Management and Budget review under Executive Order 12866. See explanation under Regulatory Flexibility Act.

a. This rule will not have an annual economic effect of $100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule is administrative, legal, technical, and procedural in nature and makes minor modification to existing refuge public use programs. The rule will allow hunting on five refuges where we had prohibited hunting and allow fishing on eight refuges where we had prohibited that activity. We estimate that these changes will result in 11,900 additional visitor-hunting-days and 165,300 visitor-fishing-days. The appropriate measure for the net benefits of these changes is the additional net economic value experienced by the participants. The 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation measured net economic values by activity and region. Applying these estimates to the number of additional activity-days permitted by this rule yields an estimate of the national benefits from increased hunting of $160,000 and from increased fishing of $2.6 million. These estimates are below the threshold for a significant rule.

The addition of the term "approved" to the nontoxic shot regulations is for clarification purposes, and we do not expect it to affect hunters' behavior. It has no economic effects.

b. This rule will not create inconsistencies with other agencies' actions. We coordinate recreational use on national wildlife refuges with State governments as well as other Federal agencies having adjoining or overlapping jurisdiction before proposing regulations. The regulation is consistent with, and not less restrictive than, other agencies' rules.

c. This rule will not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. The provisions of this rule only apply to persons involved in wildlife-dependent public use including regulated hunting and sport fishing on national wildlife refuges, which is a privilege and not a right. User fees will not change as a result of this rule.

d. This rule will not raise novel legal or policy issues. This rule continues the practice of requiring public use of refuges to be compatible with the primary purpose of the refuge.

**Regulatory Flexibility Act**

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities such as businesses, organizations, and governmental jurisdictions in the area as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A final Regulatory Flexibility Analysis is not attached, and a Small Entity Compliance Guide is not required.

This rulemaking will not have a significant economic impact on a substantial number of small entities. Congress created the National Wildlife Refuge System to conserve fish, wildlife, and plants and their habitats. They facilitated this conservation mission by providing Americans opportunities to visit and participate in compatible wildlife-dependent recreation, including hunting, fishing, wildlife observation and photography, and environmental education and interpretation as priority public uses on national wildlife refuges and to better appreciate the value of, and need for, fish and wildlife conservation.

For most units within the National Wildlife Refuge System, this rule is administrative, legal, technical, and procedural in nature and provides for minor changes to the methods of hunting and fishing permitted but does not stop the overall use permitted. For most units, this rule will not change the number of visitors using refuges or their spending and, therefore, will have no impact on the local economies in their vicinity.

We open five units to hunting and eight units to fishing for the first time. Data from the 1996 National Survey of Fishing, Hunting, and Wildlife-Associated Recreation provides estimates of spending per day for each activity in each of our regions. Multiplying spending per activity day by the number of activity days expected at each unit yields an estimate of the total spending related to the regulation. As much of this spending would have occurred at other sites in the local region absent the regulation, this estimate does not represent increased economic activity but economic activity related to the new recreational opportunities. We estimate the additional hunting opportunities will result in 11,900 visitor-hunting-days on the newly opened units. This hunting will entail $302,000 in trip-related expenditures by hunters. We estimate the additional fishing opportunities will result in 165,300 visitor-fishing-days and $9.3 million in spending. Upper Souris National Wildlife Refuge and J. Clark Salyer National Wildlife Refuge account for 90,000 of the increased fishing days so we expect $5.4 million of the related spending in the Minot, North Dakota area. As small businesses are a significant portion of the sporting goods industry, much of this economic activity will flow to small entities. However, the rule will not have a significant economic effect on a substantial number of small entities as defined in the Act.

**Small Business Regulatory Enforcement Fairness Act**

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act, as discussed in the Regulatory Planning and Review section above. This rule:

a. Does not have an annual effect on the economy of $100 million or more;

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

**Unfunded Mandates Reform Act**

Since this rule applies to public use of federally owned and managed refuges, it does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

**Takings (Executive Order 12630)**

In accordance with Executive Order 12630, the rule does not have significant takings implications. This regulation will affect only visitors at national wildlife refuges and limit what they can do while they are on a refuge.

**Federalism (Executive Order 13152)**

As discussed in the Regulatory Planning and Review and Unfunded Mandates Act sections above, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 13152.

**Civil Justice Reform (Executive Order 12988)**

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. The regulation will clarify established regulations and result in better understanding of the regulations by refuge visitors.

**Paperwork Reduction Act**

This regulation does not contain any information collection requirements other than that already approved by the Office of Management and Budget under the Paperwork Reduction Act. See 50 CFR 25.23 for information concerning that approval.

**Section 7 Consultation**

In preparation for new openings, we include Section 7 consultation documents in the refuge's "openings package" for Regional review and approval from the Washington Office. We reviewed the changes in hunting and fishing herein with regard to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and find the actions are not likely to adversely affect the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species within the System since the rule is primarily administrative, legal, technical, or procedural in nature and/or makes minor modifications to existing public use programs. We comply with Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) when developing Comprehensive Conservation Plans, management plans for public use of refuges, and prior to implementing any new or revised public recreation program on a refuge as identified in 50 CFR 26.32. We also make determinations required by the Endangered Species Act on a case-by-case basis before the addition of a refuge to the lists of areas open to hunting or fishing as contained in 50 CFR 32.7.

**National Environmental Policy Act**

We analyzed this rule in accordance with the criteria of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(C)) and 318 DM 2.2(g) and 6.3(D). This rule does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental impact statement/assessment is not required.

A categorical exclusion from NEPA documentation covers this amendment of refuge-specific hunting and fishing regulations since it is technical and procedural in nature, and the environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis (516 DM 2, Appendix 1.10).

Prior to the addition of a refuge to the list of areas open to hunting and fishing in 50 CFR part 32, we develop hunting and fishing plans for the affected refuges. We incorporate these proposed refuge hunting and fishing activities in the refuge Comprehensive Conservation Plans and/or step-down management plans, pursuant to our refuge planning guidance in 602 FW 1–3. We prepare these plans in compliance with section 102(2)(C) of NEPA, and the Council on Environmental Quality's regulations for implementing NEPA in 40 CFR parts 1500–1508. We invite the affected public to participate in the review, development, and implementation of these plans.

We have also prepared several related environmental analyses, such as lead shot vs. nontoxic shot as it relates to waterfowl and other wildlife with the most recent Environmental Assessment (EA) in May, 1998.

**Available Information for Specific Refuges**

Individual refuge headquarters retain information regarding public use programs and the conditions that apply to their specific programs and maps of their respective areas. You may also obtain information from the regional offices at the addresses listed below:

Region 1—California, Hawaii, Idaho, Nevada, Oregon, and Washington. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Eastside Federal Complex,

Suite 1692, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Telephone (503) 231–6214.

Region 2—Arizona, New Mexico, Oklahoma, and Texas. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 1306, Albuquerque, New Mexico 87103; Telephone (505) 766–1829.

Region 3—Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111; Telephone (612)–713–5300.

Region 4—Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Tennessee, South Carolina, Puerto Rico, and the Virgin Islands. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; Telephone (404) 679–7152.

Region 5—Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; Telephone (413) 253–8550.

Region 6—Colorado, Kansas, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, Box 25486, Denver Federal Center, Denver, Colorado 80225; Telephone (303) 236–8145.

Region 7—Alaska. Assistant Regional Director—Refuges and Wildlife, U.S. Fish and Wildlife Service, 1011 E. Tudor Rd., Anchorage, Alaska 99503; Telephone (907) 786–3545.

Primary Author. Leslie A. Marler, Management Analyst, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC 20240, is the primary author of this rulemaking document.

**List of Subjects in 50 CFR Part 32**

Fishing, Hunting, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

For the reasons set forth in the preamble, we amend title 50, chapter I, subchapter C of the Code of Federal Regulations as follows:

## PART 32—[AMENDED]

1. By revising the authority citation for part 32 to read as follows:

**Authority:** 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd–668ee, and 715i.

2. In § 32.2, by revising the section heading and paragraph (k) to read as follows:

**§ 32.2 What are the general provisions regarding hunting on areas of the National Wildlife Refuge System?**

* * * * *

(k) You may possess only approved nontoxic shot while in the field, which we identify in 50 CFR 20.21(j), while on Waterfowl Production Areas, or on certain other areas of the National Wildlife Refuge System as delineated on maps, leaflets and/or signs, available at each refuge headquarters or posted at each refuge, or as stated in refuge-specific regulations. Where we allow turkey and deer hunting, you may use slugs and shot containing lead to hunt these species unless prohibited by refuge-specific regulations and/or State law.

3. In § 32.7 by:

a. Revising the section heading and removing the listing of "Cossatot National Wildlife Refuge" and by alphabetically adding "Pond Creek National Wildlife Refuge" in the State of Arkansas;

b. Alphabetically adding the listing "Bond Swamp National Wildlife Refuge" in the State of Georgia;

c. Alphabetically adding the listing of "Kilauea Point National Wildlife Refuge" in the State of Hawaii;

d. Alphabetically adding the listing of "Currituck National Wildlife Refuge" in the State of North Carolina;

e. Alphabetically adding the listing of "Stewart Lake National Wildlife Refuge" in the State of North Dakota;

f. Removing the listing of "Baskett Slough National Wildlife Refuge" and by alphabetically adding the listing "Julia Butler Hansen Refuge for the Columbian White-Tailed Deer" in the State of Oregon;

g. Alphabetically adding the listing "Plum Tree Island National Wildlife Refuge" in the State of Virginia;

h. Alphabetically adding the listing "St. Croix Wetland Management District" in the State of Wisconsin;

i. Revising "Pacific Island Territories" to read "United States Unincorporated Pacific Insular Possessions" and removing the listing "Guam National Wildlife Refuge;" and

j. By alphabetically adding a new listing for "Guam" The revisions read as follows:

**§ 32.7 What refuge units are open to hunting and/or fishing?**

* * * * *

**Guam**

Guam National Wildlife Refuge.

* * * * *

4. In § 32.20 Alabama by revising Wheeler National Wildlife Refuge to read as follows:

**§ 32.20 Alabama.**

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**Wheeler National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following condition: We require permits.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require permits.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. We do not allow bank fishing around the shoreline of the refuge headquarters.

2. All other refuge waters are open to fishing year-round unless otherwise posted.

3. We prohibit entry and use of airboats and hovercraft on all waters within the refuge boundaries.

4. We prohibit entry and use of inboard waterthrust boats, such as but not limited to personal watercraft, watercycles, and waterbikes on all waters of the refuge except that portion of the Tennessee River and Flint Creek from its mouth to mile-marker three.

5. You may not leave boats on the refuge overnight.

5. In § 32.22 Arizona by:

a. Revising Bill Williams River National Wildlife Refuge and Cibola National Wildlife Refuge;

b. Revising paragraphs A.3. and B.4. of Havasu National Wildlife Refuge; and

c. Revising paragraphs A.3. and B.2. of Imperial National Wildlife Refuge to read as follows:

**§ 32.22 Arizona.**

* * * * *

**Bill Williams River National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of mourning and white-winged doves on designated areas of the refuge subject to the following condition: We allow only shotguns.

*B. Upland Game Hunting.* We allow hunting of quail and cottontail rabbit on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.
2. We allow only shotguns.
3. We allow hunting of cottontail rabbits from September 1 to the close of the State quail season.

*C. Big Game Hunting.* We allow hunting of desert bighorn sheep on designated areas of the refuge.

*D. Sport Fishing.* We allow sport fishing in designated areas.

* * * * *

**Cibola National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, moorhens, common snipe, mourning and white-winged dove on designated areas of the refuge subject to the following conditions:

1. We allow only shotguns.
2. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.
3. You must pay a hunt fee in portions of the refuge. Consult refuge hunting leaflet for locations.
4. We do not allow pit or permanent blinds.
5. Hunting in Farm Unit 2 closes at 12:00 p.m. each day. Consult refuge hunting leaflet for refuge-specific regulations and location.
6. We close Farm Unit 2 to all hunting except waterfowl hunting during the Arizona waterfowl season.
7. You must remove all temporary blinds, boats, and decoys from the refuge following each day's hunt.
8. We do not allow hunting within 50 yards (45 m) of any public road.
9. The Hart Mine Marsh area is open to hunting from 10:00 a.m. to 3:00 p.m. daily during goose season.
10. The area known as Pretty Water is open to waterfowl hunting from ½ hour before sunrise to 3:00 p.m. during the Arizona and California waterfowl hunting seasons.

*B. Upland Game Hunting.* We allow hunting of quail and cottontail rabbit on designated areas of the refuge subject to the following conditions:

1. We allow only shotguns and bows and arrows.
2. You may possess only approved nontoxic shot while in the field.
3. You may hunt cottontail rabbit from September 1 through the last day of the respective State's quail season.
4. During the Arizona waterfowl season, you may not hunt quail and rabbit in Farm Unit 2.
5. You may not hunt within 50 yards (45 m) of any public road.

*C. Big Game Hunting.* We allow hunting of mule deer on designated areas of the refuge subject to the following conditions:

1. During the Arizona waterfowl season, you may not hunt mule deer in Farm Unit 2.
2. You may not hunt within 50 yards (45 m) of any public road.

*D. Sport Fishing.* We allow sport fishing and frogging subject to the following condition: Cibola Lake is open to fishing and frogging from March 15 through Labor Day.

**Havasu National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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3. You may possess only approved nontoxic shot while in the field.

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*B. Upland Game Hunting.* * * *

* * * * *

4. You may possess only approved nontoxic shot while in the field.

* * * * *

**Imperial National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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3. You may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* * * *

* * * * *

2. We require approved nontoxic shot for hunting quail and cottontail rabbit.

* * * * *

**§ 32.23 [Amended]**

6. In § 32.23 Arkansas by revising the name of "Cossatot National Wildlife Refuge" to read "Pond Creek National Wildlife Refuge" and by placing it in alphabetical order.

7. In § 32.24 California by:

a. Revising paragraph A.2. of Clear Lake National Wildlife Refuge;

b. Revising the introductory text of paragraphs A. and B., revising paragraph A.1., adding paragraph A.4., redesignating paragraphs B.2. and B.3. as B.3. and B.4. and designating the undesignated paragraph following paragraph B.1. as B.2., revising paragraphs B.2., and B.3., and adding paragraph B.5. of Colusa National Wildlife Refuge;

c. Revising Delevan National Wildlife Refuge;

d. Revising paragraph D. of Humboldt Bay National Wildlife Refuge;

e. Revising paragraph B.2. of Kern National Wildlife Refuge;

f. Revising Lower Klamath National Wildlife Refuge;

g. Revising paragraph A. of Merced National Wildlife Refuge;

h. Revising paragraph A.4. and paragraph B. of Modoc National Wildlife Refuge;

i. Revising paragraphs A. and B. of Sacramento National Wildlife Refuge;

j. Revising paragraph A., the introductory text of paragraph B, and paragraphs B.1. and D. of San Luis National Wildlife Refuge;

k. Revising paragraphs A. and B. of Sutter National Wildlife Refuge; and

l. Revising paragraphs A. and B. of Tule Lake National Wildlife Refuge to read as follows:

**§ 32.24 California.**

* * * * *

**Clear Lake National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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2. You may possess only approved nontoxic shot while in the field.

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**Colusa National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuges subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

* * * * *

4. No person may build or maintain fires, except in portable gas stoves.

*B. Upland Game Hunting.* We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

* * * * *

2. We do not allow bicycles and other conveyances. Mobility-impaired hunters should consult with the Refuge Manager for allowed conveyances.

3. You may possess only approved nontoxic shot while in the field.

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5. No person may build or maintain fires, except in portable gas stoves.

* * * * *

**Delevan National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuge subject to the following conditions:

1. You must unload firearms while transporting them between parking areas and spaced blind areas.
2. We do not allow snipe hunting in the spaced blind areas.
3. We restrict hunters assigned to the spaced blind area to within 100 feet (30

m) of their assigned hunt site except for retrieving downed birds, placing decoys, or traveling to and from the area.

4. Access to the hunt area is by foot traffic only. We do not allow bicycles and other conveyances. Mobility-impaired hunters should consult with the Refuge Manager for allowed conveyances.

5. You may possess no more than 25 shells while in the field.

6. You may possess only approved nontoxic shot while in the field.

7. No person may build or maintain fires, except in portable gas stoves.

*B. Upland Game Hunting.* We allow hunting of pheasant only in the free-roam areas on the refuge subject to the following conditions:

1. We do not allow pheasant hunting in the spaced blind area except during a special 1-day-only pheasant hunt on the first Monday after the opening of the State pheasant hunting season.

2. You may possess only approved nontoxic shot while in the field.

3. Access to the hunt area is by foot traffic only. We do not allow bicycles and other conveyances. Mobility-impaired hunters should consult with the Refuge Manager for allowed conveyances.

4. You may possess no more than 25 shells while in the field.

5. No person may build or maintain fires, except in portable gas stoves.

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow fishing during daylight hours only from February 15 through October 1.

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**Humboldt Bay National Wildlife Refuge**

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*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing from the designated shoreline train along Hookton Slough during daylight hours only.

2. We allow fishermen to use only pole and line or rod and reel from the Hookton Slough Shoreline trail fishing area.

3. We do not allow either motorized boats or motors on the refuge dock on Humboldt Bay. We close the dock on Humboldt Bay to launching of all boats from November 1 through January 15.

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**Kern National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

2. You may possess only approved nontoxic shot while in the field.

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**Lower Klamath National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuge subject to the following conditions:

1. In the controlled waterfowl hunting area, we require entry permits for the first 2 days of the waterfowl season for all hunters 16 years of age or older. An adult with a permit must accompany hunters under the age of 16 hunting in the controlled area. We require advance reservations for the first 2 days of the hunt.

2. Shooting hours end at 1:00 p.m. daily on the California portion of the refuge except that the refuge manager may designate up to six 1-day special youth or disabled hunter hunts per season and up to 3 days per week of general waterfowl hunting starting December 1 after 1:00 p.m.

3. You may carry only unloaded firearms on hunter access routes open to motor vehicles or when taking them through posted retrieving zones when traveling to and from the hunting areas.

4. You may not set decoys in retrieving zones.

5. We do not allow air-thrust and inboard waterthrust boats.

6. You may possess only approved nontoxic shot while in the field.

7. You may use only nonmotorized boats and boats with electric motors on units 4b and 4c from the start of the hunting season through November 30. You may use motorized boats on units 4b and 4c from December 1 through the end of hunting season.

*B. Upland Game Hunting.* We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. You may carry only unloaded firearms on hunter access routes open to motor vehicles or when taking them through posted retrieving zones when traveling to and from the hunting areas.

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* [Reserved]

**Merced National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, and moorhens on designated areas of the refuge subject to the following conditions and as we may otherwise post in the refuge regulations:

1. You must unload firearms while transporting them between parking areas and blind sites.

2. You may not possess more than 25 shells when leaving your assigned parking lot.

3. You may possess only approved nontoxic shot while in the field.

4. We restrict hunters assigned to the spaced blind unit to their assigned blind except for retrieving downed birds, placing decoys, or traveling to and from the parking area.

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**Modoc National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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4. You may possess only approved nontoxic shot while in the field.

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*B. Upland Game Hunting.* We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

1. We limit hunting to junior hunters possessing a valid Junior Hunting License and refuge permit.

2. You may possess only approved nontoxic shot while in the field.

* * * * *

**Sacramento National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuge subject to the following conditions:

1. You must unload firearms while transporting them between parking areas and spaced blind areas.

2. We do not allow snipe hunting in the spaced blind area.

3. We restrict hunters assigned to the spaced blind unit to within 100 feet (30 m) of their assigned hunt site except for retrieving downed birds, placing decoys, or traveling to and from the parking area.

4. You may possess only approved nontoxic shot while in the field.

5. You may possess no more than 25 shells while in the field.

6. Access to the hunt area is by foot traffic only. We do not allow bicycles and other conveyances. Mobility-impaired hunters should consult with the Refuge Manager for allowed conveyances.

7. No person may build or maintain fires, except in portable gas stoves.

*B. Upland Game Hunting.* We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

1. We do not allow pheasant hunting in the spaced blind area except during a special 1-day-only pheasant hunt on the first Monday after the opening of the State pheasant hunting season.

2. You may possess only approved nontoxic shot while in the field.

3. Access to the hunt area is by foot traffic only. We do not allow bicycles

and other conveyances. Mobility-impaired hunters should consult with the Refuge Manager for allowed conveyances.

4. You may not possess more than 25 shells while in the field.

5. No person may build or maintain fires, except in portable gas stoves.

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**San Luis National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuge subject to the following conditions and as we may otherwise post in the refuge regulations:

1. In the free-roam hunting areas, you may use only portable blinds, temporary blinds constructed of natural materials, and on the San Luis Unit, existing concrete barrel blinds. We prohibit the cutting of woody vegetation.

2. You must remove all portable blinds, decoys, and other personal equipment from the refuge following each day's hunt.

3. You may snipe hunt only within the free-roam portion of the San Luis unit's waterfowl hunting areas.

4. You may possess only approved nontoxic shot while in the field.

5. You may possess no more than 25 shells after leaving your assigned parking lot or boat launch.

6. Vehicles may stop only at designated, assigned parking areas. We prohibit dropping of passengers or equipment or stopping between designated parking areas. You must return your permits to the check stations immediately upon completion of your hunt, and prior to using any tour routes or leaving the refuge vicinity.

7. You may not transport loaded firearms while walking or bicycling between parking areas in spaced blind units, or while traveling in a boat under power.

8. We restrict hunters in the spaced blind area to their assigned blind except when they are placing decoys, traveling to and from the parking area, retrieving downed birds, or when shooting to retrieve cripples.

9. Access to the Frietas Unit free-roam hunting area is by boat only with a maximum of 5 mph. Prohibited boats include air-thrust and/or inboard water-thrust types.

10. We prohibit the use of motorized boats in the free-roam units with the exception of the Frietas Unit.

*B. Upland Game Hunting.* We allow hunting of pheasants on designated areas of the refuge subject to the following conditions or as we otherwise may post in refuge regulations available at visitor information centers and refuge headquarters:

1. You may possess only approved nontoxic shot while in the field.

* * * * *

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions and as we may otherwise post in the refuge regulations:

1. We allow fishing from sunrise to sunset only, except on that portion of the San Joaquin River's south (left descending) bank within the West Bear Creek Unit designated as open for fishing 24 hours per day, or as otherwise posted in refuge regulations.

2. We allow the use of one pole and line or one rod and reel per person. Fishermen must attend at all times any pole and line or rod and reel they are using for fishing.

3. We prohibit the use of any boat, float tube, or other floating aid/device.

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**Sutter National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. You may possess no more than 25 shells while in the field.

3. Access to the hunt area is by foot traffic only. We do not allow bicycles and other conveyances. Mobility-impaired hunters should consult with the Refuge Manager for allowed conveyances.

4. No person may build or maintain fires, except in portable gas stoves.

*B. Upland Game Hunting.* We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. Access is by foot traffic only. We do not allow bicycles and other conveyances. Mobility-impaired hunters should consult with the Refuge Manager for allowed conveyances.

3. You may possess no more than 25 shells while in the field.

4. No person may build or maintain fires, except in portable gas stoves.

* * * * *

**Tule Lake National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuge subject to the following conditions:

1. We require entry permits in the controlled waterfowl hunting area for the first 2 days of the waterfowl season for all hunters 16 years of age or older. An adult with a permit must accompany hunters under the age of 16 hunting in the controlled area. We require advance reservation for the first 2 days of the hunt.

2. Shooting hours end at 1:00 p.m. daily on the California portion of the refuge except that the refuge manager may designate up to six 1-day special youth or disabled hunter hunts per season and up to 3 days per week of general waterfowl hunting after 1:00 p.m. starting December 1.

3. We do not allow possession of any loaded firearms more than 200 feet (60 m) from the established blind stakes. You select blind sites by lottery at the beginning of each hunt day. You may shoot only from within your assigned blind site.

4. You may carry only unloaded firearms on hunter access routes open to motor vehicles or when taking them through posted retrieving zones when traveling to and from the hunting areas.

5. We do not allow you to set decoys in retrieving zones.

6. We do not allow air-thrust and inboard waterthrust boats.

7. You may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* We allow hunting of pheasant on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. You may carry only unloaded firearms on hunter access routes open to motor vehicles or when taking them through posted retrieving zones when traveling to and from the hunting areas.

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8. In § 32.25 Colorado by revising paragraph B. of Arapaho National Wildlife Refuge to read as follows:

**§ 32.25 Colorado.**

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**Arapaho National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow upland game hunting on designated areas of the refuge pursuant to State law and subject to the following condition: You may possess only approved nontoxic shot while in the field.

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9. In § 32.27 Delaware by:

a. Revising paragraph B. of Bombay Hook National Wildlife Refuge; and

b. Revising paragraph B.4. of Prime Hook National Wildlife Refuge to read as follows:

**§ 32.27 Delaware.**

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**Bombay Hook National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

1. We allow hunting only on the South Upland Hunting Area.

2. We allow hunting from ½ hour before sunrise to ½ hour after sunset.

3. We do not allow hunting from March 1 through August 31.

4. Shotgun hunters may possess only approved nontoxic shot while in the field.

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**Prime Hook National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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4. Shotgun hunters may possess only approved nontoxic shot while in the field.

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10. In § 32.28 Florida by:

a. Revising Chassahowitzka National Wildlife Refuge;

b. Revising paragraphs C. and D. of Lake Woodruff National Wildlife Refuge;

c. Revising paragraphs A., B., C., and D.9. and adding paragraph D.10. of St. Marks National Wildlife Refuge; and

d. Revising paragraphs B., C., and D. of St. Vincent National Wildlife Refuge to read as follows:

**§ 32.28 Florida.**

* * * * *

**Chassahowitzka National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of ducks and coots on designated areas of the refuge subject to the following condition: We require permits.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, and armadillo on designated areas of the refuge subject to the following condition: We require permits.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

*D. Sport Fishing.* We allow sport fishing on the refuge year round. Creel limits/seasons are in accordance with State regulations.

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**Lake Woodruff National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

*D. Sport Fishing.* Sport fishing will be in accordance with State regulations and is subject to the following conditions:

1. We allow fishing only from sunrise to sunset.

2. We do not allow use of airboats in the refuge.

3. We do not allow commercial fishing or the taking of frogs or turtles.

4. We do not allow the use of snatch hooks in the refuge impoundments.

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**St. Marks National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of ducks and coots in designated areas of the refuge subject to the following condition: We require permits.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, and raccoon on designated areas of the refuge subject to the following condition: We require permits.

C. *Big Game Hunting.* We allow hunting of white-tailed deer, turkeys, and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

*D. Sport Fishing.* * * *

* * * * *

9. We prohibit crabbing in refuge pools and impoundments along Lighthouse Road.

10. We do not allow launching of airboats or inboard waterthrust boats (personal watercraft) from refuge saltwater boat ramps at Wakulla Beach or the Lighthouse Road area.

**St. Vincent National Wildlife Refuge**

* * * * *

B. *Upland Game Hunting.* [Reserved]

C. *Big Game Hunting.* We allow hunting of white-tailed deer, sambar deer, and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

D. *Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing only from sunrise to sunset.

2. We allow only nonmotorized boats and boats with electric motors.

3. We do not allow the use of live minnows as bait.

4. We allow fishing in Lakes 1 and 2 and Oyster Pond from April 1 through September 30.

5. We allow fishing in Lakes 3, 4, and 5 from May 15 through September 30.

* * * * *

11. In § 32.29 Georgia by:

a. Alphabetically adding Bond Swamp National Wildlife Refuge;

b. Revising paragraphs C. and D. of Okefenokee National Wildlife Refuge; and

c. Revising paragraphs B. and C., the introductory text of paragraph D., and paragraph D.3. of Savannah National Wildlife Refuge to read as follows:

**§ 32.29 Georgia.**

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**Bond Swamp National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing from March 15 to October 15 except on the Ocmulgee River, which is open to fishing year-round.

2. We allow fishing only from sunrise to sunset.

3. We allow fishing only with pole and line or rod and reel.

4. We prohibit the taking of sturgeon, frogs, turtles, and mollusks.

5. We allow only nonmotorized boats or boats with electric motors on refuge waters except the Ocmulgee River.

6. You may not leave boats or other personal equipment on the refuge overnight.

7. The minimum size limit for largemouth bass is 14 inches (35 cm)

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**Okefenokee National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: We require permits except for on Cowhouse Island. We open Cowhouse Island to white-tailed deer and feral hog hunting per Dixon Memorial State Forest Regulations.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. We do not allow the use of boats with motors larger than 10 horsepower.

2. We do not allow the use of live minnows as bait.

3. We allow only the use of pole and line or rod and reel.

4. The daily creel limit is 5 largemouth bass, 5 channel catfish, and 25 of any one, or combination, of bream or sunfish. We do not allow the possession of more than the daily creel limit.

5. We do not allow the taking of largemouth bass smaller than 14 inches (35 cm).

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**Savannah National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of squirrels and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

*C. Big Game Hunting.* We allow hunting of white-tailed deer, turkey, and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

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3. We allow fishing from sunrise to sunset.

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12. In § 32.30 Hawaii by:

a. Revising paragraph C.1. of Hakalau Forest National Wildlife Refuge; and

b. Alphabetically adding Kilauea Point National Wildlife Refuge to read as follows:

**§ 32.30 Hawaii.**

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**Hakalau Forest National Wildlife Refuge**

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*C. Big Game Hunting.* * * *

1. You must have reservations or permits to access the refuge.

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**Kilauea Point National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* Anglers may salt water fish in designated areas of the refuge.

13. In § 32.31 Idaho by:

a. Revising paragraph A.2. of Bear Lake National Wildlife Refuge;

b. Revising paragraphs A. and B. of Camas National Wildlife Refuge;

c. Revising paragraphs A.3. and B.4. of Deer Flat National Wildlife Refuge; and

d. Revising paragraph B.2. of Minidoka National Wildlife Refuge to read as follows:

**§ 32.31 Idaho.**

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**Bear Lake National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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2. You may possess only approved nontoxic shot while in the field.

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**Camas National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, and snipe on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* We allow hunting of pheasant and grouse on designated areas of the refuge subject to the following condition: Pheasant hunters may possess only approved nontoxic shot while in the field.

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**Deer Flat National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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3. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.

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*B. Upland Game Hunting.* * * *

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4. Pheasant, quail, and partridge hunters may possess only approved nontoxic shot while in the field.

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**Minidoka National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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2. Pheasant hunters may possess only approved nontoxic shot while in the field.

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14. In § 32.32 Illinois by:

a. Revising paragraphs A.3., A.4., B.3., C.2., C.3., C.4., D.1., and D.7. and removing paragraph D.8. of Crab Orchard National Wildlife Refuge;

b. Revising paragraph B. and the introductory text of paragraph C. of Cypress Creek National Wildlife Refuge;

c. Revising paragraph B.1. of Mark Twain National Wildlife Refuge; and

d. Revising paragraph A., the introductory text of paragraph B., and paragraphs B.3. and B.4., adding paragraph B.5., and revising the introductory text of paragraph C., and paragraphs C.3., C.4., C.5. and D. of Upper Mississippi National Wildlife and Fish Refuge to read as follows:

**§ 32.32 Illinois.**

* * * * *

**Crab Orchard National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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3. Goose hunters outside the controlled goose hunting area on Crab Orchard Lake must hunt from a blind that is on shore or anchored a minimum of 200 yards (180 m) away from any shoreline. Waterfowl hunters may also hunt on the east shoreline in Grassy Bay.

4. You may possess only approved nontoxic shot while hunting migratory game bird species.

*B. Upland Game Hunting.* * * *

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3. You may possess only approved nontoxic shot while hunting all permitted species except wild turkey. You may possess and use lead shot for hunting wild turkey.

*C. Big Game Hunting.* * * *

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2. We require hunters using the closed area to check in at the refuge visitor contact station prior to hunting and to comply with the special rules provided to them.

3. You may not hunt deer with a firearm in the controlled goose hunting areas. You may hunt deer in the controlled goose hunting areas with archery equipment in accordance with State seasons and regulations.

4. You must remove hunting stands at the end of each day's hunt.

* * * * *

*D. Sport Fishing.* * * *

1. Crab Orchard Lake—west of Wolf Creek Road—Anglers may fish from boats all year. Anglers must remove trotlines/jugs from sunrise until sunset from Memorial Day through Labor Day; east of Wolf Creek Road, anglers may fish from boats March 15 through September 30. Anglers may fish all year at the Wolf Creek and Route 148 causeway areas. Anglers must check and remove fish from all jugs and trotlines daily. It is illegal to use stakes to anchor any trotlines; anglers must tag them with their name and address. Anglers may use all noncommercial fishing methods except they may not use any underwater breathing apparatus. Anglers may not use jugs or trotlines with any flotation device that has previously contained any petroleum-

based materials or toxic substances. Anglers must attach a buoyed device that is visible on the water's surface to all trotlines.

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7. We restrict motorboats to slow speeds leaving no wakes in Cambria Neck, and within 150 feet (45 m) of any shoreline, swimming area, marina entrance, boat ramp, or causeway tunnel on Crab Orchard, Little Grassy, or Devils Kitchen Lakes.

**Cypress Creek National Wildlife Refuge**

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*B. Upland Game Hunting.* You may hunt bob-white quail, rabbit, squirrel, raccoon, opossum, coyote, red fox, grey fox, and turkey (spring) on designated areas of the refuge in accordance with posted regulations and subject to the following conditions:

1. If we provide hunter check-in/check-out post, you must present daily harvests.

2. We do not allow hunting after sunset.

3. You may possess only approved nontoxic shot while hunting for any permitted birds except wild turkey. You may use lead shot while hunting wild turkey.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge in accordance with posted regulations and subject to the following conditions:

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**Mark Twain National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

1. You may possess only approved nontoxic shot while hunting all permitted birds, except wild turkeys. You may possess and use lead shot for hunting wild turkey.

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**Upper Mississippi National Wildlife and Fish Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

1. You may not hunt migratory birds on refuge-closed areas posted "Area Closed," on the Goose Island "No Hunting" zone in Pool 8, on the Upper Halfway Creek Marsh "No Hunting" zone in Pool 7, or on the Frog Pond area "No Hunting" zone in Pool 13.

2. We require permits for Potters Marsh in Pool 13 except during the early teal season.

3. You may possess only approved nontoxic shot while in the field.

4. On Pools 4 through 11 you must remove all decoys from the refuge at the end of each day's hunt.

*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following conditions:

* * * * *

3. You may not hunt at any time on the Goose Island "No Hunting" zone in Pool 8, on the Upper Halfway Creek Marsh "No Hunting" zone in Pool 7, or on the Frog Pond "No Hunting" zone in Pool 13.

4. Shotgun hunters may possess only approved nontoxic shot when hunting for any permitted birds or other small game, except wild turkey. We still allow possession of lead shot for hunting wild turkey.

5. You may use lights and dogs to hunt raccoons, and other specifically authorized small mammals, in accordance with State regulations. We allow such use of lights on the refuge at the point of kill only. We prohibit all other uses of lights for hunting on the refuge.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

* * * * *

3. You may not hunt at any time on the Goose Island "No Hunting" zone in Pool 8, on the Upper Halfway Creek Marsh "No Hunting" zone in Pool 7, or on the Frog Pond "No Hunting" zone in Pool 13.

4. We do not allow construction or use of permanent blinds, platforms, or ladders.

5. You must remove all stands from the refuge at the end of each day's hunt.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. We do not allow fishing on the Spring Lake Closed Area, Carroll County, Illinois from October 1 through the last day of the Illinois waterfowl season.

2. We allow only hand-powered boats or boats with electric motors on Mertes' Slough in Buffalo County, Wisconsin.

15. In § 32.34 Iowa by revising paragraph B. of Union Slough National Wildlife Refuge to read as follows:

**§ 32.34 Iowa.**

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**Union Slough National Wildlife Refuge**

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*B. Upland Game Hunting.* You may hunt upland game in designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while hunting upland game, except wild turkey. You may possess and use lead shot for wild turkey hunting.

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16. In § 32.35 Kansas by:

a. Revising paragraph B.2. of Flint Hills National Wildlife Refuge;

b. Revising paragraph A. of Kirwin National Wildlife Refuge; and

c. Revising paragraph A. of Quivira National Wildlife Refuge to read as follows:

**§ 32.35 Kansas.**

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**Flint Hills National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

2. You may possess only approved nontoxic shot or rimfire firearms while in the field.

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**Kirwin National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, mourning doves, and snipe on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters may possess only approved nontoxic shot while in the field.

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**Quivira National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, rails (Virginia and Sora only), mourning doves, and common snipe on designated areas of the refuge subject to the following condition: We require approved nontoxic shot when hunting any game on the refuge. We prohibit the possession of lead shot in the field.

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17. In § 32.36 Kentucky by revising Ohio River Islands National Wildlife Refuge to read as follows:

**§ 32.36 Kentucky.**

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**Ohio River Islands National Wildlife Refuge**

Refer to § 32.68 West Virginia for regulations.

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18. In § 32.37 Louisiana by:

a. Revising paragraphs B. and C., the introductory text of paragraph D., and paragraphs D.1. and D.2. of Catahoula National Wildlife Refuge;

b. Revising D'Arbonne National Wildlife Refuge;

c. Revising paragraph D.2. and removing paragraphs D.3. and D.4. of Grand Cote National Wildlife Refuge;

d. Revising Lake Ophelia National Wildlife Refuge;

e. Revising the introductory text of paragraph A., paragraph A.1., and paragraph D. of Sabine National Wildlife Refuge; and

f. Revising Upper Ouachita National Wildlife Refuge to read as follows:

**§ 32.37 Louisiana.**

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**Catahoula National Wildlife Refuge**

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B. *Upland Game Hunting.* We allow hunting of raccoon, squirrel, rabbit, and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

C. *Big Game Hunting.* We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

D. *Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing from 1 hour before sunrise until ½ hour after sunset. We allow only pole and line or rod and reel fishing. We prohibit snagging.

2. We allow boat launching on all refuge waters as designated in the refuge brochure. We allow only nonmotorized boats or boats with motors of 10 horsepower or less. You may not leave boats on the refuge overnight.

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**D'Arbonne National Wildlife Refuge**

A. *Hunting of Migratory Game Birds.* We allow hunting of ducks, geese, coots, and woodcock on designated areas of the refuge subject to the following condition: We require permits.

B. *Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, and opossum on designated areas of the refuge subject to the following condition: We require permits.

C. *Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require permits.

D. *Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

2. We allow only cotton limb lines.

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**Grand Cote National Wildlife Refuge**

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D. *Sport Fishing.* * * *

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2. Any person entering, using, or occupying the refuge for fishing or crawfishing must abide by all terms and conditions in the refuge fishing brochure.

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**Lake Ophelia National Wildlife Refuge**

A. *Hunting of Migratory Game Birds.* You may hunt duck, coots, woodcock, and snipe on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

B. *Upland Game Hunting.* We allow hunting of squirrel, rabbit, and raccoon on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

C. *Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Any person entering, using, or occupying the refuge for hunting must abide by all terms and conditions in the refuge hunting brochure.

D. *Sport Fishing.* We allow fishing in designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Any person entering, using, or occupying the refuge for fishing must abide by all terms and conditions in the refuge fishing brochure.

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**Sabine National Wildlife Refuge**

A. *Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following conditions:

1. We require refuge hunting permits.

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D. *Sport Fishing.* We allow fishing, crabbing, and shrimp cast netting on designated areas of the refuge subject to the following condition: Any person entering, using, or occupying the refuge must abide by all terms and conditions set forth in the refuge fishing brochure.

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**Upper Ouachita National Wildlife Refuge**

A. *Hunting of Migratory Game Birds.* We allow hunting of ducks, geese, coots, and woodcock on designated areas of the refuge subject to the following condition: We require permits.

B. *Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, raccoon, opossum, beaver, and coyotes on designated areas of the refuge subject to the following condition: We require permits.

C. *Big Game Hunting.* We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

D. *Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. The ends of trotlines must consist of a length of cotton line that extends from the points of attachment into the water.

2. We allow only cotton limb lines.

19. In § 32.38 Maine by:

a. Revising paragraph B.3. and adding paragraph C.5. of Rachel Carson National Wildlife Refuge; and

b. Revising paragraph B. of Sunkhaze Meadows National Wildlife Refuge to read as follows:

**§ 32.38 Maine.**

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**Rachel Carson National Wildlife Refuge**

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B. *Upland Game Hunting.* * * *

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3. You may possess only approved nontoxic shot while in the field.

C. *Big Game Hunting.* * * *

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5. We allow only archery and shotgun hunting with appropriate buckshot or slug loads.

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**Sunkhaze Meadows National Wildlife Refuge**

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B. *Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following condition: Shotgun hunters may possess only approved nontoxic shot while in the field.

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20. In § 32.39 Maryland by:

a. Revising paragraph D. of Eastern Neck National Wildlife Refuge; and

b. Revising paragraph B.6. of Patuxent Research Refuge to read as follows:

**§ 32.39 Maryland.**

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**Eastern Neck National Wildlife Refuge**

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D. *Sport Fishing.* We allow fishing and crabbing in designated areas of the

refuge in accordance with State regulations and subject to the following conditions:

1. We allow fishing and crabbing from Eastern Neck Island bridge.

2. We allow fishing and crabbing from April 1—September 30 during daylight hours only at the Ingleside Recreation Area.

3. We allow fishing from the Boxes Point and Duck Inn Trails during daylight hours only.

**Patuxent Research Refuge**

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*B. Upland Game Hunting.* * * *

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6. Shotgun hunters may possess only approved nontoxic shot while in the field.

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21. In § 32.40 Massachusetts by revising paragraph B.3. of Oxbow National Wildlife Refuge to read as follows:

**§ 32.40 Massachusetts.**

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**Oxbow National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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3. You may possess only approved nontoxic shot while in the field.

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22. In § 32.42 Minnesota by:

a. Revising paragraph B.1. of Big Stone National Wildlife Refuge;

b. Revising paragraph B.2. of Minnesota Valley National Wildlife Refuge;

c. Revising paragraphs A.1. and B.1. of Rice Lake National Wildlife Refuge;

d. Revising paragraphs A.5. and B.1. of Sherburne National Wildlife Refuge; and

e. Revising paragraph B.3. of Tamarac National Wildlife Refuge to read as follows:

**§ 32.42 Minnesota.**

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**Big Stone National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

1. You may possess only approved nontoxic shot while hunting for partridge or ring-necked pheasant.

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**Minnesota Valley National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

* * * * *

2. You may possess only approved nontoxic shot while in the field.

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**Rice Lake National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

1. Shotgun hunters may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* * * *

1. Shotgun hunters may possess only approved nontoxic shot while hunting upland game species.

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**Sherburne National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

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5. Shotgun hunters may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* * * *

1. Shotgun hunters may possess only approved nontoxic shot while hunting for all upland game species.

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**Tamarac National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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3. Shotgun hunters may possess only approved nontoxic shot while hunting for all upland game species.

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23. In § 32.43 Mississippi by:

a. Revising Dahomey National Wildlife Refuge;

b. Revising St. Catherine Creek National Wildlife Refuge; and

c. Revising Tallahatchie National Wildlife Refuge to read as follows:

**§ 32.43 Mississippi.**

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**Dahomey National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of mourning doves, migratory waterfowl, coots, snipe, and woodcock on designated areas of the refuge subject to the following condition: We require permits.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, beaver, raccoon, coyotes, and opossum on designated areas of the refuge subject to the following condition: We require permits.

*C. Big Game Hunting.* We allow hunting of deer, turkey, and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We require permits.

* * * * *

**St. Catherine Creek National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of ducks, geese, and coots on designated areas of the refuge subject to the following condition: We require permits.

*B. Upland Game Hunting.* We allow hunting of squirrel, rabbit, beaver, nutria, muskrat, feral hogs, raccoon, coyotes, and opossum on designated areas of the refuge subject to the following condition: We require permits.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following condition: We require permits.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We require permits.

**Tallahatchie National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of mourning doves, migratory waterfowl, coots, snipe, and woodcock on designated areas of the refuge subject to the following condition: We require permits.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, rabbit, beaver, raccoon, coyotes, and opossum on designated areas of the refuge subject to the following condition: We require permits.

*C. Big Game Hunting.* We allow hunting of deer, turkey, and feral hogs on designated areas of the refuge subject to the following condition: We require permits.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge subject to the following condition: We require permits.

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24. In § 32.44 Missouri by revising paragraph A.2. of Swan Lake National Wildlife Refuge to read as follows:

**§ 32.44 Missouri.**

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**Swan Lake National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* * * *

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2. You may possess only approved nontoxic shot while in the field.

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25. In § 32.45 Montana by:

a. Revising paragraph B. of Black Coulee National Wildlife Refuge;

b. Revising paragraph B.3. of Bowdoin National Wildlife Refuge;

c. Revising paragraph B.1. of Hailstone National Wildlife Refuge;

d. Revising paragraph B. of Lake Mason National Wildlife Refuge;

e. Revising paragraph A. of Red Rock Lakes National Wildlife Refuge;

f. Revising paragraph A. of Swan River National Wildlife Refuge; and

g. Revising paragraph B. of War Horse National Wildlife Refuge to read as follows:

**§ 32.45 Montana.**

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**Black Coulee National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

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**Bowdoin National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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3. You may possess only approved nontoxic shot while in the field.

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**Hailstone National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

1. You may possess only approved nontoxic shot while in the field.

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**Lake Mason National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of upland game on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

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**Red Rock Lakes National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters may possess only approved nontoxic shot while in the field.

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**Swan River National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, and coots on designated areas of the refuge subject to the following condition: Waterfowl and coot hunters may possess only approved nontoxic shot while in the field.

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**War Horse National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of upland game birds on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

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26. In § 32.47 Nevada by:

a. Revising paragraphs A. and D. of Ruby Lake National Wildlife Refuge; and

b. Revising paragraphs A.1., B., C., and D. of Sheldon National Wildlife Refuge to read as follows:

**§ 32.47 Nevada.**

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**Ruby Lake National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, moorhens, and snipe on designated areas of the refuge in accordance with State law and subject to the following conditions:

1. We do not allow off-road vehicles on the refuge.

2. We do not allow permanent and pit blinds. You must remove all blind materials and decoys at the end of each hunting day.

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*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to State law and the following conditions:

1. We allow fishing from 1 hour before sunrise until 2 hours after sunset.

2. We allow fishing only on the dikes in the areas north of the Brown Dike and east of the Collection Ditch with the exception that you may fish by wading and from personal flotation devices (float tubes) on Unit 21.

3. We prohibit fishing from the bank on the South Marsh except at Brown Dike, the Main Boat Landing, and Narciss Boat Landing.

4. You may use only artificial lures in the Collection Ditch and spring ponds adjoining the ditch.

5. We do not allow boats on the refuge from January 1 through June 14.

6. During the boating season, we allow only boats on the South Marsh. Beginning June 15 through July 31, we allow only motorless boats or boats with battery-powered electric motors. Beginning August 1 through December 31, we allow only motorless boats and boats propelled with motors with a total of 10 horsepower or less.

7. Launch boats only from designated landings.

8. Do not store boats of any kind on the refuge from January 1 through May 31.

9. We do not allow off-road vehicles on the refuge.

**Sheldon National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

* * *

1. Waterfowl and coot hunters may possess only approved nontoxic shot while in the field.

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*B. Upland Game Hunting.* We allow hunting of quail, grouse, and partridge on designated areas of the refuge.

*C. Big Game Hunting.* We allow hunting of deer, pronghorn, and bighorn sheep on designated areas of the refuge.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. Anglers may only bank fish, fish by wading, or use boats with electric motors, float tubes or similar flotation devices in Big Springs Reservoir, Duferrena Ponds, and Catnip Reservoir. Anglers may not fish from other types of motorized boats.

2. We allow only individuals 12 years of age or under, or 65 years of age or older, or disabled individuals to fish in McGee Pond.

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27. In § 32.48 by revising New Hampshire to read as follows:

**§ 32.48 New Hampshire.**

We have opened the following refuge unit to hunting and/or fishing with applicable refuge-specific regulations:

**Great Bay National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of migratory game birds on designated areas of the refuge subject to the following conditions:

1. Waterfowl hunting will not require a permit. We will allow hunting only from the immediate shoreline of the Bay.

2. We allow only portable blinds. You must remove all decoys, blinds, and boats after each day's hunt.

3. Waterfowl hunters may access shorelines by boat only.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions:

1. We require refuge permits for the deer hunt.

2. We require big game hunters to wear in a conspicuous manner on the head, chest, and back, a minimum of

400 square inches (2600 cm²) of solid-colored blaze-orange clothing or material.

3. We allow only shotguns and bows.

*D. Sport Fishing.* [Reserved]

28. In § 32.49 New Jersey by:

a. Revising paragraph A.4. of Cape May National Wildlife Refuge;

b. Revising paragraph A.7. of Edwin B. Forsythe National Wildlife Refuge;

c. Revising paragraph C. of Great Swamp National Wildlife Refuge;

d. Revising paragraph A.5. of Supawna Meadows National Wildlife Refuge; and

e. Revising paragraph A.3. of Wallkill River National Wildlife Refuge to read as follows:

**§ 32.49 New Jersey.**

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**Cape May National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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4. You may possess only approved nontoxic shot while in the field.

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**Edwin B. Forsythe National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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7. Shotgun hunters may possess only approved nontoxic shot while in the field.

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**Great Swamp National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge subject to the following conditions: Hunters must comply with State laws governing special deer permit hunts.

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**Supawna Meadows National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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5. You may possess only approved nontoxic shot while in the field.

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**Wallkill River National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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3. Shotgun hunters may possess only approved nontoxic shot while in the field.

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29. In § 32.50 New Mexico by:

a. Revising paragraphs A.2. and B.1. of Bitter Lake National Wildlife Refuge;

b. Revising paragraphs A. and B.2. of Bosque Del Apache National Wildlife Refuge; and

c. Revising paragraph A.2. of Las Vegas National Wildlife Refuge to read as follows:

**§ 32.50 New Mexico.**

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**Bitter Lake National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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2. You may possess only approved nontoxic shot while in the field.

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*B. Upland Game Hunting.* * * *

1. You may possess only approved nontoxic shot while in the field.

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**Bosque Del Apache National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of mourning and white-winged doves on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* * * *

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2. You may possess only approved nontoxic shot while in the field.

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**Las Vegas National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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2. You may possess only approved nontoxic shot while in the field.

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30. In § 32.51 New York by revising paragraphs A.4. and B.4. and adding paragraph A.8. of Iroquois National Wildlife Refuge to read as follows:

**§ 32.51 New York.**

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**Iroquois National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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4. Waterfowl hunters may not possess more than 20 shells per day.

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8. You may possess only approved nontoxic shot while in the field.

*B. Hunting of Upland Game.* * * *

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4. Shotgun hunters may possess only approved nontoxic shot while in the field.

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31. In § 32.52 North Carolina by:

a. Revising paragraph A.1. of Cedar Island National Wildlife Refuge;

b. Alphabetically adding Currituck National Wildlife Refuge;

c. Revising paragraph A., adding paragraph C.2., and revising paragraph D. of Mattamuskeet National Wildlife Refuge;

d. Revising paragraphs A., B., and C. of Pocosin Lakes National Wildlife Refuge;

e. Revising paragraph A.2. of Roanoke River National Wildlife Refuge; and

f. Revising paragraph A.1. of Swanquarter National Wildlife Refuge to read as follows:

**§ 32.52 North Carolina.**

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**Cedar Island National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

* * *

1. You may possess only approved nontoxic shot while in the field..

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**Currituck National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of swans, geese, ducks, and coots on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Hunting must be from assigned blind location.

3. We allow hunting on Wednesdays and Saturdays during the North Carolina waterfowl season.

4. We allow hunting from ½ hour before sunrise to 1 p.m.

5. We allow access 1½ hours before legal shooting time, and all parties must be off the refuge by 3 p.m.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* [Reserved]

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**Mattamuskeet National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of swans, geese, ducks, and coots on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. We allow taking of Canada geese only during the special September season for resident Canada geese.

3. Any person entering, using, or occupying the refuge for hunting must abide by all the terms and conditions in the refuge hunting brochure.

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*C. Big Game Hunting.* * * *

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2. Any person entering, using, or occupying the refuge for hunting must abide by all the terms and conditions in the refuge hunting brochure.

*D. Sport Fishing.* We allow fishing and crabbing on designated areas of the refuge subject to the following conditions:

1. We allow fishing and crabbing from March 1 through November 1 from ½ hour before sunrise to ½ hour after sunset or as posted.

2. We allow bank fishing and crabbing year-round along Highway 94 Causeway and in the immediate vicinity of the Lake Landing water control structure, the Rose Bay water control structure, and the Outfall Canal water control structure. Other areas open to this activity are the Central Canal and East and West Main Canal as signed. We allow bank fishing and crabbing from ½ hour before sunrise to ½ hour after sunset except that the Highway 94 Causeway is open to fishing and crabbing 24 hours per day.

3. You may not dip herring (alewife).

4. You must attend all fish lines and crabbing equipment. We restrict crabbing equipment to 5 handlines and/or hand-activated traps per person. The catch/possession limit is 12 blue crabs per day per person.

5. We do not permit airboats, sailboats, wind surfers, and personal watercraft.

6. We prohibit bank fishing along the entrance road from Highway 94 to the Refuge Headquarters.

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**Pocosin Lakes National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of ducks, snow geese, swans, doves, woodcock, rails, and snipe on designated areas of the refuge subject to the following conditions:

1. We allow access 1½ hours before and after legal shooting time.

2. You must unload and encase firearms while transporting them by vehicle or boat under power.

3. We allow only portable blinds and temporary blinds constructed of natural materials. We require removal of portable blinds following each day's hunt.

4. We allow hunting during the State season.

*B. Upland Game Hunting.* We allow hunting of quail, squirrel, raccoon, opossum, rabbit, and fox on designated areas of the refuge subject to the following conditions:

1. We require permits for any night hunting.

2. We allow access 1½ hours before and after legal shooting time.

3. You must unload and encase firearms while transporting them by a vehicle or boat under power.

4. We allow hunting during the State season except we will close opossum and raccoon hunting during the State bear season including 5 days before and after that season.

5. You must wear 500 square inches (3250 $cm^2$) of fluorescent orange material above the waist, visible from all directions.

6. We prohibit possession of buckshot or slugs while hunting with dogs.

7. You may use only shotguns and/or .22 caliber rim-fire rifles for upland game hunts.

8. You may possess only approved nontoxic shot while in the field on designated areas of the refuge.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. You must wear 500 square inches (3250 $cm^2$) of fluorescent orange material above the waist visible from all directions during the muzzle loading and gun seasons.

2. We allow only shotguns, muzzle-loaders, and bow and arrow for big game hunts.

3. You must unload and encase firearms while transporting them by a vehicle or boat under power.

4. We allow access 1½ hours before and after legal shooting time.

5. We allow hunting during the State season.

6. We do not allow dogs.

7. You must remove all stands from the refuge following each day's hunt. We prohibit the construction or use of permanent stands, blinds, platforms, or ladders.

8. We allow archery hunting on the Pungo Unit during the regular State archery season and from November 1 through 30. State bag limits apply.

9. We allow shotgun and muzzle-loaders on the Pungo Unit subject to the following conditions:

We require permits and allow access 1 hour before and after legal shooting time.

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**Roanoke River National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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2. You may possess only approved nontoxic shot while in the field.

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**Swanquarter National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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1. You may possess only approved nontoxic shot while in the field.

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32. In § 32.53 North Dakota by:

a. Revising paragraph B.2. of Arrowwood National Wildlife Refuge;

b. Revising paragraphs B., C., and D. of Audubon National Wildlife Refuge;

c. Revising paragraph B.1., redesignating paragraphs B.2. and B.3. as paragraphs B.3. and B.4., and adding a new paragraph B.2. of Des Lacs National Wildlife Refuge;

d. Revising J. Clark Salyer National Wildlife Refuge;

e. Revising paragraphs A.2. and B. of Lake Alice National Wildlife Refuge;

f. Revising paragraph D. of Lake Ilo National Wildlife Refuge;

g. Revising paragraph C. of Lake Nettie National Wildlife Refuge;

h. Revising paragraph B.1. of Lake Zahl National Wildlife Refuge;

i. Revising paragraph B.1. of Long Lake National Wildlife Refuge;

j. Revising paragraph B.3. of Lostwood National Wildlife Refuge;

k. Alphabetically adding Stewart Lake National Wildlife Refuge;

l. Revising paragraphs B., C., and D. of Tewaukon National Wildlife Refuge; and

m. Revising paragraphs B., C., and D. of Upper Souris National Wildlife Refuge to read as follows:

**§ 32.53 North Dakota.**

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**Arrowwood National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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2. You may possess only approved nontoxic shot while in the field.

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**Audubon National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of ring-necked pheasant, gray partridge, and sharp-tailed grouse on designated areas of the refuge subject to State regulations with refuge restrictions as posted.

*C. Big Game Hunting.* We allow hunting of white-tailed and mule deer on designated areas of the refuge subject to State regulations with refuge restrictions as posted.

*D. Sport Fishing.* We allow ice fishing on designated areas of the refuge subject to State regulations with refuge restrictions as posted.

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**Des Lacs National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

1. You may possess only approved nontoxic shot while in the field.

2. You may use falconry for upland game hunting.

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**J. Clark Salyer National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, and coots on designated areas of the refuge.

*B. Upland Game Hunting.* We allow hunting of pheasant, partridge, grouse, turkey, and fox on designated areas of the refuge subject to the following conditions:

1. Fox hunting opens annually on the day following the close of the regular firearm deer season and closes on March 31.

2. We close fox hunting from ½ hour after sunset until ½ hour before sunrise.

3. You may possess only approved nontoxic shot while in the field.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require permits.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge as per State law with certain restrictions as posted.

**Lake Alice National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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2. Waterfowl and coot hunters may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* We allow hunting of upland game and fox on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

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**Lake Ilo National Wildlife Refuge**

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*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge subject to State regulations with refuge restrictions as posted.

**Lake Nettie National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed and mule deer on designated areas of the refuge subject to State regulations with refuge restrictions as posted.

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**Lake Zahl National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

1. You may possess only approved nontoxic shot while in the field.

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**Long Lake National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

1. You may possess only approved nontoxic shot while in the field.

* * * * *

**Lostwood National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

* * * * *

3. You may possess only approved nontoxic shot while in the field.

* * * * *

**Stewart Lake National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow fishing on the designated area subject to all State regulations.

**Tewaukon National Wildlife Refuge**

* * * * *

*B. Updland Game Hunting.* We allow hunting of ring-necked pheasants on designated areas of the refuge as per State law with certain restrictions as posted.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge as per State law with certain restrictions as posted.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge as per State law with certain restrictions as posted.

**Upper Souris National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* We allow hunting of upland game birds with approved nontoxic shot on designated areas of the refuge as per State law with certain restrictions as posted.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge as per State law with certain restrictions as posted.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge as per State law with certain restrictions as posted.

33. In § 32.54 Ohio by revising Ottawa National Wildlife Refuge to read as follows:

**§ 32.54 Ohio.**

* * * * *

**Ottawa National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese and ducks on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. You may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. You must check in and out of the refuge each day that you hunt.

3. You may not shoot from refuge roads.

*D. Sport Fishing.* We allow sport fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing during daylight hours only and during designated dates.

2. We do not allow boats or flotation devices.

34. In § 32.55 Oklahoma by:

a. Revising paragraph B.3. of Deep Fork National Wildlife Refuge;

b. Revising paragraph B.4. of Little River National Wildlife Refuge;

c. Revising paragraphs A.1. and B.1. of Salt Plains National Wildlife Refuge;

d. Revising paragraphs A.2. and B.2. of Sequoyah National Wildlife Refuge;

e. Revising paragraph A.3. of Tishomingo National Wildlife Refuge; and

f. Revising paragraphs A., B.1., D.1., and D.3. of Washita National Wildlife Refuge to read as follows:

**§ 32.55 Oklahoma.**

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**Deep Fork National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

* * * * *

3. You may use only shotguns with #4 or smaller shot. You may possess only approved nontoxic shot while in the field.

* * * * *

**Little River National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

* * * * *

4. You may possess only approved nontoxic shot while in the field.

* * * * *

**Salt Plains National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

* * *

1. You may possess only approved nontoxic shot while in the field.

* * * * *

*B. Upland Game Hunting.* * * *

1. You may possess only approved nontoxic shot while in the field.

* * * * *

**Sequoyah National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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* * * * *

2. You may possess only approved nontoxic shot while in the field.

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*B. Upland Game Hunting.* * * *

* * * * *

2. You may possess only approved nontoxic shot while in the field.

* * * * *

**Tishomingo National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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* * * * *

3. You may possess only approved nontoxic shot while in the field.

* * * * *

**Washita National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese and sandhill cranes on designated areas of the refuge subject to the following conditions: We require permits and payment of a fee.

*B. Upland Game Hunting.* * * *

1. We only allow shotguns.

* * * * *

*D. Sport Fishing.* * * *

1. Anglers may fish from March 15 through October 14 in the Washita River and Foss Reservoir. Anglers may bank fish year round in the Washita River and Foss Reservoir from open areas.

* * * * *

3. We do not allow boats and other flotation devices on refuge waters from October 15 through March 14.

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35. In § 32.56 Oregon by:

a. Revising paragraph A. of Bandon Marsh National Wildlife Refuge;

b. Removing Baskett Slough National Wildlife Refuge;

c. Revising paragraphs A.6. and B.3. of Cold Springs National Wildlife Refuge;

d. Revising paragraphs A.2. and B.2. of Deer Flat National Wildlife Refuge;

e. Alphabetically adding Julia Butler Hansen Refuge for the Columbian White-Tailed Deer;

f. Revising paragraph A.2. of Klamath Forest National Wildlife Refuge;

g. Revising paragraphs A. and D. of Lewis and Clark National Wildlife Refuge;

h. Revising paragraphs A.4. and B.2. of Lower Klamath National Wildlife Refuge;

i. Revising paragraphs A.2. and B.3. of Malheur National Wildlife Refuge;

j. Revising paragraphs A.7. and B.3. of McKay Creek National Wildlife Refuge;

k. Revising Umatilla National Wildlife Refuge; and

l. Revising paragraph A.2. of Upper Klamath National Wildlife Refuge to read as follows:

**§ 32.56 Oregon.**

* * * * *

**Bandon Marsh National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, snipe, doves, and pigeons on designated areas of the refuge subject to the following condition: Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.

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**Cold Springs National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

* * *

* * * * *

6. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

3. You may possess only approved nontoxic shot while in the field.

* * * * *

**Deer Flat National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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* * * * *

2. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

2. Pheasant, quail, and partridge hunters may possess only approved nontoxic shot while in the field.

* * * * *

**Julia Butler Hansen Refuge for the Columbian White-Tailed Deer**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, and common snipe on the Wallace Island Unit subject to the following condition: You may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow sport fishing along the shoreline of the Wallace Island Unit in accordance with State regulations.

**Klamath Forest National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

* * *

* * * * *

2. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.

* * * * *

**Lewis and Clark National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, and common snipe on designated areas of the refuge subject to the following conditions:

1. You may possess only approved nontoxic shot while in the field.

2. We do not allow hunting on all exposed lands on Miller Sands Island and its partially enclosed lagoon, as posted. We do not allow hunting inside the diked portion of Karlson Island, as posted.

* * * * *

*D. Sport Fishing.* We allow sport fishing along the shoreline of the refuge islands in accordance with State regulations.

**Lower Klamath National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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4. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* * * *

* * * * *

2. You may possess only approved nontoxic shot while in the field.

* * * * *

**Malheur National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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* * * * *

2. You may possess only approved nontoxic shot while in the field.

* * * * *

*B. Upland Game Hunting.* * * *

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3. You may possess only approved nontoxic shot while in the field on designated areas east of Highway 205.

* * * * *

**McKay Creek National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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* * * * *

7. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* * * *

* * * * *

3. You may possess only approved nontoxic shot while in the field.

* * * * *

**Umatilla National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, and common snipe on designated areas of the refuge subject to the following conditions:

1. The refuge is open from 4:00 a.m. to 1½ hours after sunset except for the Hunter Check Station parking lot at the McCormack Unit, which is open each morning 2 hours prior to State shooting hours for waterfowl. We do not allow decoys, boats, and other personal property on the refuge following each day's hunt.

2. In the McCormack Unit, we allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day.

3. We require waterfowl hunting parties in the Boardman Unit to space themselves a minimum of 200 yards (180 m) apart.

4. You may possess no more than 25 shells while in the field.

5. We require permits for hunting on the McCormack Unit.

6. You may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* We allow hunting of pheasant, chukar, Hungarian partridge, and quail on designated areas of the refuge subject to the following conditions:

1. We do not allow hunting of upland game birds until noon of each hunt day.

2. In the McCormack Unit, we allow hunting only on Wednesdays, Saturdays, Sundays, Thanksgiving Day, and New Year's Day.

3. You may possess only approved nontoxic shot while in the field.

4. You may possess no more than 25 shells while in the field.

5. We require permits for hunting on the McCormack Unit.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge subject to the following condition: Hunting is by permit only.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. The refuge is open from 5 a.m. to 1½ hours after sunset.

2. We allow fishing on refuge impoundments and ponds from February 1 through September 30. We open other refuge waters (Columbia River and its backwaters) in accordance with State regulations.

3. We allow only nonmotorized boats and boats with electric motors on refuge impoundments and ponds.

4. We only allow fishing with hook and line.

**Upper Klamath National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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* * * * *

2. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.

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36. In § 32.57 Pennsylvania by revising Ohio River Islands National Wildlife Refuge to read as follows:

**§ 32.57 Pennsylvania.**

* * * * *

**Ohio River Islands National Wildlife Refuge**

Refer to § 32.68 West Virginia for regulations.

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37. In § 32.60 South Carolina by revising paragraphs C. and D. of ACE Basin National Wildlife Refuge to read as follows:

**§ 32.60 South Carolina.**

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**ACE Basin National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following condition: We require permits.

*D. Sport Fishing.* Anglers may fish on the refuge in accordance with State law and as specifically designated in refuge publications.

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38. In § 32.61 South Dakota by revising paragraph B. of Pocasse National Wildlife Refuge to read as follows:

**§ 32.61 South Dakota.**

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**Pocasse National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of pheasant on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

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39. In § 32.62 Tennessee by:

a. Revising paragraphs B., C., and D. of Cross Creeks National Wildlife Refuge;

b. Revising paragraph A.4. of Hatchie National Wildlife Refuge; and

c. Revising Tennessee National Wildlife Refuge to read as follows:

**§ 32.62 Tennessee.**

* * * * *

**Cross Creeks National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of squirrels on designated areas of the refuge subject to the following condition: We require permits.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following condition: We require permits.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing on refuge pools and reservoirs from March 15 through October 31 from sunrise to sunset.

2. We do not allow bows and arrows, trotlines, limblines, jugs, and slat baskets in refuge pools and reservoirs.

3. We do not allow taking of frogs.

4. The length limit for largemouth bass taken from Elk and South Cross Creeks' reservoirs is less than 12 inches (30 cm) and more than 15 inches (37.5 cm). Anglers must immediately release unharmed largemouth bass from 12 inches (30 cm) to 15 inches (37.5 cm). We prohibit possession of largemouth bass between 12 inches (30 cm) and 15 inches (37.5 cm).

**Hatchie National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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* * * * *

4. You may possess only approved nontoxic shot while in the field.

* * * * *

**Tennessee National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* [Reserved]

*B. Upland Game Hunting.* We allow hunting of squirrels and raccoons on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. You must unload and encase or dismantle firearms transported in motor vehicles.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and turkey on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. You must unload and encase or dismantle firearms transported in motor vehicles.

*D. Sport Fishing.* We allow fishing on designated portions of the refuge subject to the following conditions:

1. We close impounded waters to fishing from November 1 through March 14.

2. We close Swamp Creek, Britton Ford, and Bennett's Creek embayments to fishing and boating from November 1 through March 14.

3. Anglers must launch boats from designated access points only. We restrict boats to "slow speed/minimum wake" on all refuge impoundments open to fishing.

4. Anglers may not leave boats on the refuge overnight.

40. In § 32.63 Texas by:

a. Revising paragraph B.3. of Buffalo Lake National Wildlife Refuge; and

b. Revising Hagerman National Wildlife Refuge to read as follows:

**§ 32.63 Texas.**

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**Buffalo Lake National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

* * * * *

3. You may possess only approved nontoxic shot while in the field.

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**Hagerman National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of mourning doves in the month of September on designated areas of the refuge, subject to the following conditions:

1. We require you to check in and out of the hunt area.

2. We allow only shotguns.

3. You may possess no shot larger than #4 on the hunting area.

*B. Upland Game Hunting.* We allow hunting of quail in the month of February and squirrel and rabbit in the months of February and September on designated areas of the refuge subject to the following conditions:

1. We require you to check in and out of the hunt area.

2. We allow only shotguns.

3. You may possess no shot larger than #4 on the hunting area.

4. You must plug shotguns to hold no more than three shells during the September dove season.

*C. Big Game Hunting.* We allow hunting of white-tailed deer and feral hogs on designated areas of the refuge subject to the following conditions:

1. You may archery hunt as listed in the refuge hunt information sheet. You must obtain a refuge permit and pay a hunt fee.

2. We allow hunting with firearms including shotguns, 20 gauge or larger, loaded with rifled slug during a special youth hunt as listed in the refuge hunt information sheet. We require permits.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. Lake Texoma and connected streams are open to fishing year round.

2. We allow fishing in ponds and stock tanks from April 1 through September 30.

3. Fishermen may string trotlines between anchored floats only. We do not allow lines attached to rubber bands, sticks, poles, trees, or other fixed objects in refuge ponds or impoundments.

4. We do not allow fishing from bridges or roadways.

5. We do not allow boats and other flotation devices on the waters of Lake Texoma from October 1 through March 31, or at any time on refuge ponds and impoundments.

* * * * *

41. In § 32.64 Utah by:

a. Revising paragraphs A.2. and B.1. of Bear River Migratory Bird Refuge; and

b. Revising paragraph B. of Ouray National Wildlife Refuge to read as follows:

**§ 32.64 Utah.**

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**Bear River Migratory Bird Refuge**

*A. Hunting of Migratory Game Birds.* * * *

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2. You may possess only approved nontoxic shot while in the field.

* * * * *

*B. Upland Game Hunting.* * * *

1. You may possess only approved nontoxic shot while in the field.

* * * * *

**Ouray National Wildlife Refuge**

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*B. Upland Game Hunting.* We allow hunting of pheasant on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

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42. In § 32.65 Vermont by revising paragraph B.4. of Missisquoi National Wildlife Refuge to read as follows:

**§ 32.65 Vermont.**

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**Missisquoi National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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4. Shotgun hunters may possess only approved nontoxic shot while in the field.

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43. In § 32.66 Virginia by:

a. Revising Chincoteague National Wildlife Refuge; and

b. Alphabetically adding Plum Tree Island National Wildlife Refuge to read as follows:

**§ 32.66 Virginia.**

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**Chincoteague National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of waterfowl and rails on designated areas of the refuge subject to the following conditions:

1. You must possess written permission to hunt in the nonguided public hunting areas.

2. On Wildcat Marsh we reserve compartments 1–4 for guided hunting only with refuge-designated commercial guides.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* We allow hunting of white-tailed and sika deer in designated areas of the refuge subject to the following condition: We require a refuge permit.

*D. Sport Fishing.* We allow fishing, crabbing, and clamming on designated areas of the refuge subject to the following conditions:

1. We allow sport fishing, crabbing, and clamming in salt water areas and in that portion of Swan Cove adjacent to Beach Road. We close all other refuge ponds, impoundments, and channels to these activities.

2. You must attend traps and crab pots.

3. You must obtain a permit to remain on the refuge after normal closing hours.

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**Plum Tree Island National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of waterfowl on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. Waterfowl hunters may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* [Reserved]

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44. In § 32.67 Washington by:

a. Revising Columbia National Wildlife Refuge, Julia Butler Hansen Refuge for the Columbian White-Tailed Deer, and Willapa National Wildlife Refuge;

b. Revising paragraph A. of Conboy Lake National Wildlife Refuge;

c. Deleting paragraphs A.6. and B.6., revising the introductory text of paragraph B., and revising paragraphs A.3. and B.3. of McNary National Wildlife Refuge;

d. Revising paragraphs A.5. and B.2. of Toppenish National Wildlife Refuge; and

e. Removing paragraphs A.6. and B.4. of Umatilla National Wildlife Refuge to read as follows:

**§ 32.67 Washington.**

* * * * *

**Columbia National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, and common snipe on designated areas of the refuge subject to the following conditions:

1. In Marsh Unit 1, we allow hunting only on Wednesdays, Saturdays, and Sundays.

2. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.

3. In Marsh Unit 1, concurrent with the State's designated Youth Day prior to the opening of the waterfowl hunt, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

*B. Upland Game Hunting.* We allow hunting of pheasant, quail, and partridge on designated areas of the refuge subject to the following conditions:

1. We allow hunting of upland game birds only during State seasons that run concurrently with the State waterfowl season.

2. We allow only shotguns and bows and arrows.

3. Upland game bird hunters may possess only approved nontoxic shot while in the field.

4. In Marsh Unit 1, concurrent with the State's designated Youth Day prior to the opening of the waterfowl hunt, only youth aged 10–17 and an accompanying adult aged 18 or over may hunt.

*C. Big Game Hunting.* We allow hunting of deer on designated areas of the refuge subject to the following condition: We allow only shotgun and archery hunting.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow nonmotorized boats and boats with electric motors on Upper and Lower Hampton, Hutchinson, Royal, and Shiner Lakes.

2. We allow motorized boats and nonmotorized boats on all other refuge waters open to fishing.

3. We prohibit the taking of bullfrogs.

**Conboy Lake National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of doves, geese, ducks, coots, and common snipe on designated areas of the refuge subject to the following condition: Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.

* * * * *

**Julia Butler Hansen Refuge for the Columbian White-Tailed Deer**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, coots, and common snipe on the Hunting Island Unit subject to the following condition: You may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* We allow bank fishing from the Mainland Unit shoreline adjoining the Elochoman and Columbia Rivers as well as Steamboat and Brooks Sloughs, in accordance with State fishing regulations. We also allow bank fishing in the pond adjacent to the diking district pumping station by Brooks Slough. We close all other interior water of the Mainland Unit to fishing.

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**McNary National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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* * * * *

3. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.

* * * * *

*B. Upland Game Hunting.* We allow hunting of pheasant, quail, chukar, and Hungarian partridge on designated areas of the refuge subject to the following conditions:

* * * * *

3. You may possess only approved nontoxic shot while in the field.

* * * * *

**Toppenish National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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* * * * *

5. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.

* * * * *

*B. Upland Game Hunting.* * * *

* * * * *

2. You may possess only approved nontoxic shot while in the field.

* * * * *

**Umatilla National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.*

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6. Waterfowl and snipe hunters may possess only approved nontoxic shot while in the field.

*B. Upland Game Hunting.* * * *

* * * * *

4. Upland game bird hunters may possess only approved nontoxic shot while in the field.

* * * * *

**Willapa National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of geese, ducks, and coots on designated areas of the Riekkola and Lewis Units, in accordance with State hunting regulations and subject to the following conditions:

1. At the Riekkola Unit, prior to entering the hunt area, we require you to obtain a permit, pay a recreation user fee, and obtain a blind assignment.

2. At the Riekkola Unit you may take ducks and coots only coincidental to hunting geese. We do not allow exclusive hunting of ducks in the Riekkola Unit.

3. We allow hunting in the Riekkola Unit only from established blinds on Wednesdays and Saturdays.

4. At the Riekkola Unit you may possess and use no more than 24 shells per day while in the field.

5. You may possess only approved nontoxic shotgun shells.

*B. Upland Game Hunting.* We allow hunting of blue and ruffed grouse on Long Island, subject to the following conditions:

1. We require you to obtain and carry a refuge permit and report game taken, as specified with the permit.

2. We allow only archery hunting.

3. We do not allow firearms on Long Island at any time.

4. We do not allow dogs on Long Island.

*C. Big Game Hunting.* We allow hunting for deer, elk, and bear on Long Island, subject to the following conditions:

1. We require you to obtain and carry a refuge permit and report game taken, as specified with the permit.

2. We allow only archery hunting.

3. We do not allow firearms on Long Island at any time.

4. We do not allow dogs on Long Island.

*D. Sport Fishing.* We allow fishing along the shoreline of the refuge in accordance with State regulations.

45. In § 32.68 West Virginia by:

a. Revising paragraph B.2. of Canaan Valley National Wildlife Refuge; and

b. Revising paragraph B.4. of Ohio River Islands National Wildlife Refuge to read as follows:

**§ 32.68 West Virginia.**

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**Canaan Valley National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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2. Shotgun hunters may possess only approved nontoxic shot while hunting on the refuge.

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**Ohio River Islands National Wildlife Refuge**

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*B. Upland Game Hunting.* * * *

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4. You may possess only approved nontoxic shot while in the field.

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46. In § 32.69 Wisconsin by:

a. Revising paragraph C. of Fox River National Wildlife Refuge;

b. Revising Horicon National Wildlife Refuge and Necedah National Wildlife Refuge; and

c. Alphabetically adding St. Croix Wetland Management District to read as follows:

**§ 32.69 Wisconsin.**

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**Fox River National Wildlife Refuge**

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*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. We do not allow the construction or use of blinds, platforms, or ladders.

3. We allow hunting only during the State firearms season and during a designated time period of the archery season.

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**Horicon National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of ducks and coots on designated areas of the refuge subject to the following conditions:

1. We require permits.

2. We allow only participants in the Young Wildfowlers and Special Programs to hunt.

*B. Upland Game Hunting.* We allow hunting of ring-necked pheasant, gray partridge, squirrel, and cottontail rabbit on designated areas of the refuge from the opening of the respective State seasons through the State deer firearms season, and subject to the following conditions:

1. Shotgun hunters may possess only approved nontoxic shot while hunting upland game species.

2. Hunting in the youth/novice pheasant hunt area (Area F) is for youth who are 12–15 years of age, and by permit.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. We allow hunting only during the early archery and State firearms season.

2. We do not allow the construction and use of permanent blinds, platforms, or ladders.

3. You must remove all stands from the refuge following each day's hunt.

4. Hunting in the area surrounding the office/visitor center (Area E) is by permit only.

5. Hunting in the auto tour/hiking trail complex (Area D) is open only during the State firearms deer season.

*D. Sport Fishing.* We allow fishing on designated areas of the refuge subject to the following conditions:

1. We allow fishing from April 15 through September 15.

2. We allow only bank fishing.

* * * * *

**Necedah National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* We allow hunting of migratory game birds only on designated areas of the refuge.

*B. Upland Game Hunting.* We allow hunting of wild turkey, ruffed grouse, gray squirrel, fox squirrel, cottontail rabbit, snowshoe hare, and raccoon only on designated areas of the refuge subject to the following conditions:

1. You may possess only unloaded guns in the retrieval zone of Refuge Area 7 during the State waterfowl hunting season, except while hunting deer during the gun deer season.

2. During the spring turkey hunting season only, persons possessing a valid State spring turkey permit may enter and hunt wild turkeys in all open refuge areas.

3. Refuge Area 3 is open to hunting after the State deer gun season through the end of the respective State seasons or until February 28, whichever occurs first.

4. You may use dogs only when hunting small game and waterfowl.

*C. Big Game Hunting.* We allow hunting of white-tailed deer on designated areas of the refuge subject to the following conditions:

1. We prohibit the possession of a loaded rifle or shotgun within 50 feet (15 m) of the centerline of all paved or graveled roads and designated trails, or discharging these weapons from, across, down, or alongside these roads and trails within the refuge.

2. We do not allow the construction of permanent blinds, platforms, or ladders.

3. You may use portable elevated devices but must lower them to ground level at the close of shooting hours each day. You must remove all blinds, stands, platforms, and ladders from the refuge at the end of the hunting season.

4. Refuge Areas 1, 2, 4, 5, 6, and 7 are open to deer hunting.

5. Refuge Area 3 is open to deer hunting during the State gun, muzzleloader, and late archery seasons. Unarmed deer hunters may enter Area 3 to scout beginning the Saturday prior to the gun deer season.

6. We do not allow target or practice shooting.

7. We prohibit the use of flagging, paint, blazes, tacks, or other types of markers.

*D. Sport Fishing.* We allow fishing in designated waters of the refuge at designated times subject to the following conditions: We allow use of nonmotorized boats in Sprague-Goose Pools only when these pools are open to fishing. We allow motorized boats in Suk Cerney Pool.

**St. Croix Wetland Management District**

*A. Hunting of Migratory Game Birds.* We allow hunting of migratory game birds throughout the district except that you may not hunt on designated portions of the St. Croix Prairie Waterfowl Production Area in St. Croix County or on the Oakridge Waterfowl Production Area in St. Croix County.

*B. Upland Game Hunting.* We allow hunting of upland game throughout the district except that you may not hunt on designated portions of the St. Croix Prairie Waterfowl Production Area in St. Croix County or on the Oakridge Waterfowl Production Area in St. Croix County.

*C. Big Game Hunting.* We allow hunting of big game throughout the district except that you may not hunt on designated portions of the St. Croix Prairie Waterfowl Production Area in St. Croix County.

*D. Sport Fishing.* [Reserved]

* * * * *

47. In § 32.70 Wyoming by:

a. Revising paragraph B. of Pathfinder National Wildlife Refuge; and

b. Revising paragraph B. of Seedskadee National Wildlife Refuge to read as follows:

**§ 32.70 Wyoming.**

* * * * *

**Pathfinder National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* We allow hunting of sage grouse and cottontail rabbit on designated areas of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

* * * * *

**Seedskadee National Wildlife Refuge**

* * * * *

*B. Upland Game Hunting.* We allow hunting of sage grouse and cottontail rabbit on designated are as of the refuge subject to the following condition: You may possess only approved nontoxic shot while in the field.

* * * * *

48. In § 32.71 by revising the section heading and removing the listings of Guam National Wildlife Refuge and Kilauea Point National Wildlife Refuge to read as follows:

**§ 32.71 United States Unincorporated Pacific Insular Possessions.**

* * * * *

49. By adding § 32.72 to Subpart B to read as follows:

**§ 32.72 Guam.**

We have opened the following refuge unit to hunting and/or fishing with applicable refuge-specific regulations.

**Guam National Wildlife Refuge**

*A. Hunting of Migratory Game Birds.* [Reserved]

*B. Upland Game Hunting.* [Reserved]

*C. Big Game Hunting.* [Reserved]

*D. Sport Fishing.* Anglers may fish and collect marine life on designated areas of the Refuge only in accordance with the Refuge Fishing Regulations leaflet available at Refuge Headquarters. We prohibit the use of gill nets for catching reef fish.

Dated: April 11, 2000.

**Stephen C. Saunders,**

*Assistant Secretary for Fish and Wildlife and Parks*

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Part IV

# Department of Education

**Career Resource Network State Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000**

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## DEPARTMENT OF EDUCATION

**[CFDA No: 84.346]**

### Career Resource Network State Grants; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

*Notice to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

*Purpose of Program:* To promote improved career and education decision-making by individuals.

*Eligible Applicants:* State entities designated jointly by the Governor and the State Board for Vocational and Technical Education of any of the 50 States, the Virgin Islands, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau are eligible for an award under this process. However, the Marshall Islands, Federated States of Micronesia, and the Republic of Palau are eligible to receive funds only in Fiscal Years 2000 and 2001. A State may designate an entity other than a State agency to perform the grant functions under this program. However, if a designated entity is not a part of the State government, the eligible agency for the State under section 112 of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III) must apply for the grant. In that event the eligible agency under Perkins III will be the grant recipient and must either directly administer the grant or supervise the administration of the project, as required by 34 CFR 75.701.

Not more than one grant will be awarded to serve the residents of a single State or outlying area in this competition.

To receive funding, each applicant must submit evidence that the designated entity, whether it is part of the State government or another entity that will perform the grant function for the eligible agency under Perkins III, has been designated jointly by the Governor and the State Board for Vocational and Technical Education. In any case, if the designated entity is not a State agency, the eligible agency under Perkins III and the Governor are accountable for the proper expenditure of funds.

*Deadline for Transmittal of Applications:* June 12, 2000.

*Deadline for Intergovernmental Review:* June 26, 2000.

*Available Funds:* $7,650,000 for the first 12 months of the 24-month project period. Funding for the second 12-month period of the 24-month project period is subject to the availability of funds and to a grantee meeting the requirements of 34 CFR 75.253.

*Estimated Range of Awards:* The actual amount of each award made under this competition will depend on such factors as the scope and quality of the application and will be determined during pre-award clarification discussions with the Department's Office Vocational and Adult Education, Division of Vocational-Technical Education. However, the Department strongly encourages all applicants to consider these factors and the estimated grant amounts provided below, in deciding the amount of funds to request.

The estimated grant amounts were determined by allocating to every State and outlying area a minimum amount that the Department believes is necessary to carry out an effective program and distributing the remaining funds on the basis of each State's or outlying area's respective share of the funds allocated by formula under section 111 of Perkins III. The formula set out in section 111 takes into account State population and per capita income, among other factors. These grant estimates assume that all 59 eligible applicants will submit applications which meet the requirements established by the statute and this notice and are determined by the Department to merit funding, based on the criteria described in this notice.

| Eligible applicant | Estimated grant amount |
|---|---|
| ALABAMA | $135,784 |
| ALASKA | 107,805 |
| ARIZONA | 135,592 |
| ARKANSAS | 121,442 |
| CALIFORNIA | 308,427 |
| COLORADO | 125,341 |
| CONNECTICUT | 115,719 |
| DELAWARE | 107,887 |
| FLORIDA | 192,076 |
| GEORGIA | 155,340 |
| HAWAII | 109,555 |
| IDAHO | 111,645 |
| ILLINOIS | 173,013 |
| INDIANA | 144,210 |
| IOWA | 122,170 |
| KANSAS | 119,933 |
| KENTUCKY | 133,158 |
| LOUISIANA | 139,401 |
| MAINE | 109,555 |
| MARYLAND | 127,940 |
| MASSACHUSETTS | 132,081 |
| MICHIGAN | 167,939 |
| MINNESOTA | 131,603 |
| MISSISSIPPI | 124,948 |
| MISSOURI | 140,010 |
| MONTANA | 109,309 |
| NEBRASKA | 112,836 |
| NEVADA | 110,416 |
| NEW HAMPSHIRE | 109,555 |
| NEW JERSEY | 139,790 |
| NEW MEXICO | 115,237 |
| NEW YORK | 195,114 |
| NORTH CAROLINA | 153,627 |
| NORTH DAKOTA | 107,805 |
| OHIO | 179,969 |
| OKLAHOMA | 128,991 |
| OREGON | 123,549 |
| PENNSYLVANIA | 175,751 |
| RHODE ISLAND | 109,555 |
| SOUTH CAROLINA | 131,604 |
| SOUTH DAKOTA | 107,805 |
| TENNESSEE | 140,160 |
| TEXAS | 251,418 |
| UTAH | 122,369 |
| VERMONT | 107,805 |
| VIRGINIA | 143,609 |
| WASHINGTON | 137,193 |
| WEST VIRGINIA | 115,608 |
| WISCONSIN | 138,598 |
| WYOMING | 107,805 |
| DISTRICT OF COLUMBIA | 107,805 |
| PUERTO RICO | 134,182 |
| AMERICAN SAMOA | 85,732 |
| NORTHERN MARIANAS | 85,732 |
| GUAM | 86,306 |
| VIRGIN ISLANDS | 86,051 |
| MARSHALL ISLANDS | 65,380 |
| MICRONESIA | 65,380 |
| PALAU | 65,380 |
| Total | 7,650,000 |

*Estimated Average Size of Awards:* $129,661 for 12 months.

*Estimated Number of Awards:* 59.

**Note:** The Department is not bound by any estimates in this notice.

*Project Period:* 24 months.

*Applicable Statute and Regulations:* (a) The relevant provisions of the Carl D. Perkins Vocational and Technical Education Act of 1998 (Perkins III), 20 U.S.C.A. 2301 *et seq.*, in particular, section 118(b).

(b) The Education Department General Administrative Regulations (EDGAR) as follows:

(1) 34 CFR Part 75 (Direct Grant Programs).

(2) 34 CFR Part 77 (Definitions that Apply to Department Regulations).

(3) 34 CFR Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(4) 34 CFR Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(5) 34 CFR Part 81 (General Education Provisions Act—Enforcement).

(6) 34 CFR Part 82 (New Restrictions on Lobbying).

(7) 34 CFR Part 85 (Government-wide Debarment and Suspension

(Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)).

(8) 34 CFR Part 86 (Drug and Alcohol Abuse Prevention).

(9) 34 CFR Part 97 (Protection of Human Subjects).

(10) 34 CFR Part 98 (Student Rights In Research, Experimental Programs and Testing).

(11) 34 CFR Part 99 (Family Educational Rights and Privacy).

**SUPPLEMENTARY INFORMATION:**

**Background**

Supporting the career development of young people and helping them to make informed choices about their educational and career options have become important components of State and local efforts to reform schools and improve student achievement. Understanding the connection between what is taught in the classroom and how that knowledge will be used in a future career can make learning more meaningful to students, increase their motivation to learn, and improve student results. Reform-driven innovations such as charter schools, magnet schools, and career academies, include models that use broad career areas as the context for teaching challenging academic content and technical skills. These and other models incorporate early exposure to career possibilities, and the educational requirements needed to pursue them, as strategies to help students and parents make decisions that best meet each student's individual interests, needs, and aspirations.

Research also indicates that many young people, particularly those from low-income families, do not enroll in postsecondary education because they lack sufficient information about career opportunities and the education and training required for entry into and success in their chosen field. Students who do not develop a career and education plan prior to entering secondary school are less likely to enroll in school courses required for college entry and do not plan adequately for college education financing. Effective career guidance and academic counseling can help ensure that students and their parents set their sights high, plan for, and are prepared for postsecondary education.

While career development is particularly important for young people, individuals of all ages need access to information and guidance on careers. New technologies, heightened global competition, and the information revolution are transforming the nature of work and careers. Individuals can no longer assume that they will work for the same organization, remain within the same industry, or even require the same technical skills during their entire working lives. They must have access to career and educational information so that they may become active in making decisions regarding their occupation. To succeed in our dynamic, rapidly-changing economy, all individuals need up-to-date academic and technical skills, as well as access to career and education information, so that they may become active and effective managers of their own careers.

Growing recognition of the important role that career guidance and academic counseling services play in supporting student success is evidenced by the variety of Federal, State, and local programs which promote and support these services. Several Department of Education programs, including Perkins III State grants, Tech-Prep, GEAR-UP, and TRIO programs, provide funding for career guidance and academic counseling services for students. In addition, the School-to-Work Opportunities Program, jointly-administered by the Department of Education and the Department of Labor, has provided "venture capital" to State and local partnerships, to initiate or expand a wide range of career development activities for young people. Many States, local educational agencies, and institutions of higher education also support career guidance and academic counseling services for students. In addition, with assistance under Title I of the Workforce Investment Act (WIA), States and localities are building One-Stop Career Center systems that offer all individuals information and assistance in obtaining employment, training, and education.

**Career Resource Network Grants**

Career Resource Network grants provided under section 118 of Perkins III support the implementation of Statewide, systemic strategies for providing young people and adults with these critical career information resources and the skills they need to make effective educational and career decisions throughout their lives.

To achieve this goal, State entities may engage in a variety of activities such as research and innovative product development, professional development activities, development of career information delivery systems, and the development and dissemination of curricula and other learning resources.

**Coordination With Related Program Activities**

To assist States in improving student performance and outcomes, all programmatic and technical assistance activities need to be coordinated within a continuous improvement framework. The identification of the major strategies that positively impact student performance and integration of those strategies within a State's performance measurement system is critical to achieving results. As a result, the Department has begun to align all of its major grant resources, initiatives, and technical assistance activities, to assist States in their efforts to improve student performance. These include: Efforts to achieve education reform through the development of career pathway models, funding of professional development and training projects, and development of performance measurement systems. The Department views coordination and alignment of the activities required under section 118 to its major initiatives, as critical in supporting States' efforts to improve student performance.

In response to the changing economy and education reform initiatives in States, the Department identified sixteen industry-based career areas. These career areas represent all sectors of the economy and include all occupations front line through professional/technical managers. The career areas as they are defined in Appendix A of this notice provide the basis for creation of career pathway models that can be used for the development of both career and academic guidance tools and resources and curriculum development. The U.S. Secretary of Education recently announced the "Building Linkages" initiative which is designed to help students more effectively develop and realize career goals. The Secretary was joined by the U.S. Secretary of Transportation in unveiling this initiative which uses the Department's 16 career clusters as the basis for career mapping and curriculum development to prepare a student to succeed in a particular field of endeavor. The Department has funded the Building Linkages projects in five of the sixteen career areas to bring together States, in partnership with colleges, universities and employers, to develop curriculum frameworks. The sixteen areas replace the traditional areas once used by vocational education for reporting student enrollment. The new sixteen areas better reflect career opportunities in the new economy and can be aligned to existing career areas identified by

States. These sixteen career areas are (See Appendix A for definitions):

(a) Agriculture and Natural Resources
(b) Construction
(c) Manufacturing
(d) Logistics, Transportation And Distribution Services
(e) Information Technology Services
(f) Wholesale/Retail Sales And Service
(g) Financial Services
(h) Hospitality And Tourism
(i) Business And Services
(j) Health Services
(k) Human Services
(l) Arts And Communications Services
(m) Legal And Protective Services
(n) Scientific Research And Technical Services
(o) Education And Training Services
(p) Public Administration/Government Services

Career information products organized by the sixteen career cluster areas are used by career guidance and academic counseling programs, schools, teachers, students and parents to understand and explore broad career pathways within and among these career areas. Career areas provide the structure for converting labor market information into useable career information resources and tools for a variety of users. Organizing education by broad career areas and pathways represents a new direction in education and will require training and technical assistance to teachers, school administrators, and counselors to effectively assist students and parents in using this information.

In addition, Perkins III shares a number of common performance goals with WIA titles I and II, including academic and skill attainment, program completion, and placement and retention in employment and postsecondary education. The Department encourages State entities to align their products and services with performance measurement systems under development by Federal and State education, vocational education, workforce development programs, and labor market information organizations in order to support State and local efforts to meet performance targets in their performance measurement systems.

Since 1976, most States and outlying areas have received grants from the National Occupational Information Coordinating Committee (NOICC) to support interagency State Occupational Information Coordinating Committees (SOICCs) under the Carl D. Perkins Vocational and Applied Technology Education Act of 1990 (P.L. 101–392) and its predecessors. Since 1982, States and outlying areas have also received such grants under the Job Training Partnership Act of 1982 (JTPA) (PL 102–367). Funding for these grants ends on June 30, 2000, with the expiration of JTPA. While some of the activities authorized under section 118 of Perkins III are similar to those which could have been carried out under the SOICC grant program, there are some significant differences which should be noted by applicants.

Unlike the previous SOICC grant program, the development, implementation, and maintenance of occupational information systems and labor market information products are not authorized uses of funds under section 118 of Perkins III. Section 15 of the Wagner-Peyser Act as amended by the Workforce Investment Act (WIA) authorizes States and outlying areas to collect, analyze, and disseminate occupational and labor market information. In contrast, section 118 of Perkins III funds may be used by States and outlying areas for the development and delivery of career counseling and educational guidance resources and services, which utilize the occupational and labor market information.

Further, none of the functions and activities assisted under section 118 may duplicate functions and activities carried out under the WIA or section 15 of the Wagner-Peyser Act. To assist job-seekers as well as employers, the Department of Labor has created America's Career Kit, an array of online information resources on job openings, persons looking for employment and their qualifications, and education and training opportunities. With assistance under Title I of the WIA, States and localities are building One-Stop Career Center systems that offer all individuals information and assistance in obtaining employment, training, and education. Section 15 of the Wagner-Peyser Act also provides States and outlying areas with assistance in collecting, analyzing, and disseminating occupational and labor market information. Section 118 funds may not be used to duplicate any of these or other activities assisted under WIA, but may be used to supplement and enhance them. For example, professional development activities or other resources developed to support academic counseling and career guidance for young people may be made available to youth-serving programs that receive assistance under WIA Title I, provided that they do not duplicate functions or activities that are assisted by WIA. The Secretary encourages applicants to collaborate with State and local recipients of WIA funds in deciding how they will implement the activities required by section 118(b) both to ensure that funds are used most effectively and that the non-duplication requirements of section 118(c)(2) are fulfilled.

Finally, applicants should note that States and outlying areas are not required to establish or maintain interagency State Occupational Information Coordinating Committees in order to receive funds under section 118. Support for these bodies, however, is an eligible use of funds. States and outlying areas may find these bodies to be an effective means of coordinating their section 118 activities with related State and Federal initiatives.

*Required Activities*

(a) Under this competition, grantees must carry out projects that—

(1) Provide support for a career guidance and academic counseling program designed to promote improved career and education decision-making by individuals, especially in areas of career information delivery and use;

(2) Make available to students, parents, teachers, administrators, and counselors, and to improve accessibility with respect to, information and planning resources that relate educational preparation to career goals and expectations;

(3) Equip teachers, administrators, and counselors with the knowledge and skills needed to assist students and parents with career exploration, educational opportunities, and education financing;

(4) Assist appropriate State entities in tailoring career-related educational resources and training for use by such entities;

(5) Improve coordination and communication among administrators and planners of programs authorized by Perkins III and by section 15 of the Wagner-Peyser Act at Federal, State, and local levels to ensure non-duplication of efforts and the appropriate use of shared information and data; and

(6) Provide ongoing means for customers, such as students and parents, to provide comments and feedback on products and services and to update resources, as appropriate, to better meet customer requirements.

(b) Grants may be used to supplement, but not to duplicate, activities under section 15 of the Wagner-Peyser Act.

(c) Functions and activities assisted under a grant may not duplicate the functions and activities carried out under Public Law 105–220; Workforce Investment Act of 1998.

*Priorities*

Invitational Priorities

We are particularly interested in applications that meet the following priorities.

*Invitational Priority 1.* Applications that propose to align products and services to be provided with the sixteen industry-based career areas identified in this notice and required as the reporting framework for the new student enrollment form which is part of the Consolidated Annual Report (CAR) required for basic grants under Perkins III. These career areas are set forth fully in the supplementary information section of this notice and are defined in Appendix A to this notice.

*Invitational Priority 2.* Applications that propose to develop products and services that assist State and local users to achieve student outcomes established by performance measurement and accountability systems under development by Federal and State education, vocational education, and workforce development programs.

Under 34 CFR 75.105(c)(1), we do not give an application that meets these invitational priorities a competitive or absolute preference over other applications.

*Selection Criteria*

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The Secretary awards a total possible score of 100 points. The maximum possible score for each criterion is indicated in parentheses.

(a) *Required Activities.* (65 points) The Secretary reviews each application to determine the extent to which it will—

(1) Provide support for a career guidance and academic counseling program designed to promote improved career and education decision-making by individuals, especially in areas of career information delivery and use;

(2) Make availabale to students, parents, teachers, administrators, and counselors, and to improve accessibility with respect to, information and planning resources that relate educational preparation to career goals and expectations;

(3) Equip teachers, administrators, and counselors with the knowledge and skills needed to assist students and parents with career exploration, educational opportunities, and education financing;

(4) Assist appropriate State entities in tailoring career-related educational resources and training for use by such entities;

(5) Improve coordination and communication among administrators and planners of programs authorized by the Act and by section 15 of the Wagner-Peyser Act at Federal, State, and local levels to ensure non-duplication of efforts and the appropriate use of shared information and data; and

(6) Provide ongoing means for customers, such as students and parents to provide comments and feedback on products and services and to update resources, as appropriate, to better meet customer requirments.

(b) *Quality of the project design.* (10 points)

(1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(iii) The extent to which performance feedback and continuous improvement are integral to the design of the proposed project.

(c) *Adequacy of resources.* (5 points)

(1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(d) *Quality of the management plan.* (10 points)

(1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(iii) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of parents, teachers, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate.

(e) *Quality of the project evaluation.* (10 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(ii) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

**Intergovernmental Review of Federal Progarms**

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

One of the objectives of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedures established in each State under the executive order. If you want to know the name and address of any State Single Point of Contact (SPOC), see the list published in the **Federal Register** on April 28, 1999 (64 FR 22963), or you may view the latest SPOC list on the OMB web site at the following address: http://www.whitehouse.gov/omb/grants.

In States that have not established a process or chosen a program for review,

State, area-wide, regional, and local entities, may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, area-wide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA# 84.346, U.S. Department of Education, Room 7E200, Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Eastern time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

**Instructions for Transmittal of Applications**

Applicants are required to submit one original signed application and two copies of the grant application. All forms and assurances must have ink signatures. Please mark applications as "original" or "copy." To aid with the review of applications, the Department encourages applicants to submit four additional copies of the grant application. The Department will not penalize applicants who do not provide additional copies.

(a) If an applicant wants to apply for a grant under this process, the applicant must either—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.346), Washington, D.C. 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.346), Room #3633, Regional Office Building #3, 7th and D Streets, S.W., Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the process under which the application is being submitted.

**Application Instructions and Forms**

All forms and instructions are included at the end of this notice. Questions and answers pertaining to this program are included, as Appendix B, to assist potential applicants.

To apply for an award under this program, your application must be organized in the following order and include the following five parts. The parts and additional materials are as follows (See application forms and instructions at the end of this notice):

(1) Application for Federal Education Assistance (ED 424 (Rev. 1/12/99)) and instructions.

(2) Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

(3) Budget Narrative.

(4) Program Narrative.

(5) Additional Assurances and Certifications:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certification regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

c. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014, 9/90) and instructions.

**Note:** ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published by the Office of Management and Budget at 61 FR 1413 (January 19, 1996).

No grant may be awarded unless a completed application form has been received.

**FOR FURTHER INFORMATION CONTACT:** Dr. Marcel R. DuVall, Division of Vocational-Technical Education, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 4317, Mary E. Switzer Building), Washington, D.C. 20202–7241. Telephone (202) 260–4982. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday. Individuals with disabilities may obtain this notice in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact persons listed at the beginning of this paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

**Electronic Access to This Department**

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Additionally, this notice, as well as other documents concerning the implementation of the Carl D. Perkins Vocational and Technical Education Act of 1998, is available on the World Wide Web at the following site: http://www.ed.gov/offices/OVAE/VocEd/InfoBoard/legis.html.

**Note:** The official version of this document is the document published in the **Federal Register**.

**Program Authority:** 20 U.S.C. 2328.

Dated: May 9, 2000.

**Robert Muller,**

*Acting Assistant Secretary for Vocational and Adult Education.*

**Appendix A—Sixteen Career Areas Definitions**

(a) *Agriculture and Natural Resources,* comprised of courses and/or programs

related to planning, managing and performing agricultural production and horticulture and landscaping services and related professional and technical services, mining and extraction operations, and managing and conserving natural resources and related environmental services;

(b) *Construction*, comprised of courses and/or programs relating to designing, planning, managing, building, and maintaining physical structures and the larger building environment including roadways and bridges and industrial, commercial and residential facilities and buildings;

(c) *Manufacturing*, comprised of courses and/or programs related to planning, managing and performing the processing of materials into intermediate or final products and related professional and technical support activities such as production planning and control, maintenance and manufacturing/process engineering;

(d) *Logistics, Transportation and Distribution Services*, comprised of courses and/or programs related to planning, management, and movement of people, materials, and goods by road, pipeline, air, rail and water and related professional and technical support services such as transportation infrastructure planning and management, logistics services, mobile equipment and facility maintenance;

(e) *Information Technology Services*, comprised of courses and/or programs related to designing, developing, managing and operating communication and information technology networks and related hardware and software for the recording, storage, transformation, transmission and distribution of voice, video, images, and data including both telecommunications and computing services;

(f) *Wholesale/Retail Sales and Services*, comprised of courses and/or programs related to planning, managing and performing wholesaling and retailing services and related marketing and distribution support services including merchandise/product management and promotion;

(g) *Financial Services*, comprised of courses and/or programs related to planning, managing and providing banking, investment, financial planning, and insurance services;

(h) *Hospitality and Tourism*, comprised of courses and/or programs related to hospitality and tourism and to planning, managing and providing lodging, food, recreation, convention and tourism, and related planning and support services such as travel-related services;

(i) *Business and Services*, comprised of courses and/or programs related to planning, managing, and providing administrative support, information processing, accounting, and human resource management services and related management support services;

(j) *Health Services*, comprised of courses and/or programs related to planning, managing, and providing diagnostic, therapeutic, and information and environmental services in health care; exhibiting, performing, writing, and publishing multimedia content, including visual and performing arts and design, journalism, and entertainment services;

(k) *Human Services*, comprised of courses and/or programs related to planning, managing, and providing human services including social and related community services;

(l) *Arts And Communications Services*, comprised of courses and/or programs related to designing, producing, exhibiting, performing, writing, and publishing multimedia content, including visual and performing arts and design, journalism, and entertainment services;

(m) *Legal And Protective Services*, comprised of courses and/or programs related to planning, managing and providing judicial, legal, and protective services, including professional and technical support services in the fire protection and criminal justice systems;

(n) *Scientific Research And Technical Services*, comprised of courses and/or programs related to planning, managing, and providing scientific research and professional and technical services (e.g., physical science, social science, engineering), including laboratory and testing services, and research and development services;

(o) *Education And Training Services*, comprised of courses and/or programs related to planning, managing and providing education and training services, and related learning support services, including assessment and library and information services; and

(p) *Public Administration/Government Services*, comprised of courses and/or programs related to planning, managing and providing government, legislative, administrative and regulatory services and related general purpose government services at the Federal, State and local levels.

**Appendix B—Questions and Answers**

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants, the Department has assembled the following most commonly asked questions followed by the Department's answers.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and must apply to all applications. Waivers for individual applications cannot be granted regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Applicants are required to submit one original and two copies of the grant application. To aid with the review of applications, the Department encourages applicants to submit four additional copies of the grant application. The Department will not penalize applicants who do not provide additional copies. Sending applications in notebooks, binders, folders, or other coverings is strongly discouraged.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any such questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand, however, that prior contact with the Department is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification as soon as possible after the application closing date, depending on the number of applications received and the number of Department competitions with similar closing dates.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have a legitimate reason for needing to know the outcome of the panel review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the results of panel review with anyone.

Q. Will my application be returned if I am not funded?

A. No. We no longer return unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed. Because we may

request the project director of funded projects to attend an annual project directors' meeting, you may also wish to include a trip or two to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when the purpose of the conference will be of benefit and relates to the project.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications reviewed and other relevant factors, determines the applications that can be funded.

Q. What happens during pre-award clarification discussions?

A. During pre-award clarification discussions, technical and budget issues may be raised. These are issues that have been identified during the panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because an application contains inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all issues under discussion have been resolved.

Q. How do I provide an assurance?

A. Except for SF–424B, "Assurances—Non-Construction Programs," you may provide an assurance simply by stating in writing that you are meeting a prescribed requirement.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 708–8228. When requesting copies of regulations or statutes, it is helpful to use the specific name or public law, number of a statute, or part number of a regulation. The material referenced in this notice should be referred to as follows:

(a) The Carl D. Perkins Vocational Technical Education Act of 1998 (Pub. L. 105–332) may be obtained (1) from the Government Printing Office by writing to Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954 or telephoning (202) 512–1800, or (2) online from the Library of Congress at Http://thomas.loc.gov.

(b) A copy of the Code of Federal Regulations that contains the Education Department General Administrative Regulations, 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99, may be obtained from the Government Printing Office Government Printing Office by writing to Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954 or telephoning (202) 512–1800, or (2) on the internet at: http://www.access.gpo.gov/su_docs or *http://www.access.gpo.gov/nara/cfr.*

(c) **Federal Register** notices can also be accessed on the internet at: *http://www.access.gpo.gov/nara/index.html.*

*Estimated Burden Statement*

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1830–0541. (Expiration date: 05/31/2003). The time required to complete this information collection is estimated to average 36 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection.

*If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this grant application, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651.

*If you have comments or concerns regarding the status of your individual submission of this grant application, write directly to:* Dr. Marcel R. DuVall, Division of Vocational and Technical Education, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 4325, Mary E. Switzer Building), Washington D.C. 20202–7242.

*Instructions for Budget Information*

Sections A and B—Budget Summary by Categories

1. *Personnel:* Show salaries to be paid to personnel for each budget year.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits for each budget year.

3. *Travel:* Indicate the amount requested for both local and out of State travel of Project Staff for each budget year. Include funds for at least two trips per year for two people to attend the Project Directors' Workshop.

4. *Equipment:* Indicate the cost of non-expendable personal property that has a cost of $5,000 or more per unit for each budget year.

5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project period for each budget year.

6. *Contractual:* Show the amount to be used for: (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) subcontracts for each budget year.

7. *Construction:* Not Applicable.

8. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants and capital expenditures for each budget year.

9. *Total Direct Cost:* Show the total for Lines 1 through 8 for each budget year.

10. *Indirect Costs:* Indicate the rate and amount of indirect costs for each budget year.

11. *Training/stipend Cost:* Not applicable. This item pertains only to student and institutional allowances.

12. *Total Costs: S*how total for lines 9 through 11 for each budget year.

*Instructions for Budget Narrative*

The budget narrative should explain, justify, and, if needed, clarify your budget summary. For each line item (personnel, fringe benefits, travel, etc.) in your budget, explain why it is there and how you computed the costs.

Please limit this section to no more than five pages. Be sure that each page of your application is numbered consecutively.

*Instructions for Program Narrative*

The program narrative will comprise the largest portion of your application. This part is where you spell out the who, what, when, why, and how, of your proposed project.

Although you will not have a form to fill out for your narrative, there is a format. This format is based on the selection criteria. Because your application will be reviewed and rated by a review panel on the basis of the

selection criteria, your narrative should follow the order and format of the criteria.

Before preparing your application, you should carefully read the legislation and EDGAR regulations governing this program, eligibility requirements, priorities, and the selection criteria for this process.

Your program narrative should be clear, concise, and to the point. Begin the narrative with a one page abstract or summary of your project. Then describe the project in detail, addressing each selection criterion in order.

The Secretary strongly suggests that you limit the program narrative to no more than 30 double-spaced, typed pages (on one side only), although the Secretary will consider your application if it is longer. Be sure to number consecutively ALL pages in your application.

You may include supporting documentation as appendices to the program narrative. Be sure that this material is concise and pertinent to this program.

You are advised that—

(a) The Secretary considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels. (34 CFR 75.217)

(b) The technical review panel evaluates each application solely on the basis of the selection criteria contained in this notice.

(c) Letters of support included as appendices to an application, that are of direct relevance to or contain commitments that pertain to the established selection criteria, such as commitment of resources, will be reviewed by the panel. As noted above in paragraph (a), letters of support sent separately from the formal application package are not considered in the review by the technical review panel. (34 CFR 75.217)

*Performance Measures*

The Government Performance and Results Act of 1993 (GPRA) places new management expectations and requirements on Federal departments and agencies by creating a framework for more effective planning, budgeting, program evaluation, and fiscal accountability for Federal programs. The intent of GPRA is to improve public confidence by holding departments and agencies accountable for achieving program results. Under GPRA, Departments and agencies must clearly describe the goals and objectives of their programs.

As required by GPRA, the Department of Education has prepared a strategic plan for 1998–2002. This plan reflects the Department's priorities and integrates them with its mission and program authorities and describes how the Department will work to improve education for all children and adults in the United States.

standards so that they are prepared for responsible citizenship, further learning, and productive employment. Among the objectives for Goal 1 is that schools help all students make successful transitions to college and careers.

Factors that may be considered in evaluating the success of the program may include:

(1) Number of people trained by the career resource grant recipient;

(2) Improved and expanded use of career development products and services; and

(3) Number of students who had access to career development products and services.

An evaluation plan must be included in each Career Resource Network grant. The application should describe the plan in detail including the following information: (1) What types of data will be collected; (2) what instruments will be used; (3) when reports of results and outcomes will become available; and (4) how information will be used by the project to monitor progress and to provide accountability information to stakeholders.

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OMB Control No. 1801-0004 (Exp. 8/31/2001)

## NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

### To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

### What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

### What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

### Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

# Application for Federal Education Assistance

**Note: If available, please provide application package on diskette and specify the file format.**

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

## Applicant Information

1. Name and Address

Legal Name: _____ Organizational Unit: _____

Address: _____

_____ City _____ State _____ County _____ ZIP Code + 4 _____

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐

3. Applicant's T-I-N ☐☐-☐☐☐☐☐☐☐

4. Catalog of Federal Domestic Assistance #: 8 4 ☐☐☐☐ → Title: _____

5. Project Director: _____

Address: _____

_____ City _____ State _____ ZIP Code + 4 _____

Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address: _____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
*(If "Yes," attach an explanation.)*

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

| | |
|---|---|
| A State | H Independent School District |
| B County | I Public College or University |
| C Municipal | J Private, Non-Profit College or University |
| D Township | K Indian Tribe |
| E Interstate | L Individual |
| F Intermunicipal | M Private, Profit-Making Organization |
| G Special District | N Other *(Specify)*: _____ |

8. Novice Applicant ☐ Yes ☐ No

## Application Information

9. Type of Submission:

| *—PreApplication* | *—Application* |
|---|---|
| ☐ Construction | ☐ Construction |
| ☐ Non-Construction | ☐ Non-Construction |

10. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review)*: ___/___/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

11. Proposed Project Dates:

| Start Date: | End Date: |
|---|---|
| ___/___/_____ | ___/___/_____ |

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

## Estimated Funding

| | | |
|---|---|---|
| 14a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

## Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address:

e. Signature of Authorized Representative — Date: ___/___/_____

REV. 11/12/99

ED 424

## Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructionsin **"Protectionof Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    **If the applicant organization has an approved Multiple Project Assurance of Compliance** on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

### Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106.** The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

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# PROTECTION OF HUMAN SUBJECTS IN RESEARCH
## (Attachment to ED 424)

### I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

### II. Information on Research Activities Involving Human Subjects

**A. Definitions.**

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

**—Is it a research activity?**

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

**—Is it a human subject?**

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

**B. Exemptions.**

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

***Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.***

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**U.S. DEPARTMENT OF EDUCATION**

**BUDGET INFORMATION**

**NON-CONSTRUCTION PROGRAMS**

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

**SECTION A - BUDGET SUMMARY**
**U.S. DEPARTMENT OF EDUCATION FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

ED Form No. 524

| Name of Institution/Organization | Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form. |
|---|---|

**SECTION B - BUDGET SUMMARY**
**NON-FEDERAL FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

**SECTION C - OTHER BUDGET INFORMATION** (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

# INSTRUCTIONS FOR ED FORM 524

## General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

## Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

## Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

## Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

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OMB Approval No. 0348-0040

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

Standard Form 424B (Rev. 7-97) Back

**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE**
**(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

_____

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND / OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013 12/98

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

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**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

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## DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>**For Material Change Only:**<br>year _____ quarter _____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier _____, *if known*:<br><br>**Congressional District**, *if known*: | **Congressional District**, *if known*: |
| **6. Federal Department/Agency:** | **7. Federal Program Name/Description:**<br><br>CFDA Number, *if applicable*: _____ |
| **8. Federal Action Number**, *if known*: | **9. Award Amount**, *if known*:<br>$ |
| **10. a. Name and Address of Lobbying Registrant** (*if individual, last name, first name, MI*): | **b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*): |
| **11.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure. | Signature: _____<br>Print Name: _____<br>Title: _____<br>Telephone No.: _____ Date: _____ |
| **Federal Use Only:** | Authorized for Local Reproduction<br>Standard Form LLL (Rev. 7-97) |

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

[FR Doc. 00–11992 Filed 5–11–00; 8:45 am]
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Federal Register

Friday,
May 12, 2000

Part V

# Department of Housing and Urban Development

24 CFR Part 583
Supportive Housing Program—Increasing Operating Cost Percentage; Interim Rule

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 583**

**[Docket No. FR–4576–I–01]**

**RIN 2506–AC05**

## Supportive Housing Program—Increasing Operating Cost Percentage

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Interim rule.

**SUMMARY:** This document amends the Supportive Housing Program regulations by changing the number of years for which the grant can cover 75 percent of operating costs from the first two years to all years of the grant term. This amendment will provide the full statutory flexibility allowed for this activity. Providing greater assurance of a funding source for operating housing under the program will promote more use of the program for housing.

**DATES:** *Effective date:* June 12, 2000.

*Comments Due Date:* July 11, 2000.

**ADDRESSES:** Submit written comments regarding this interim rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410–0500. Comments should refer to the interim rule by title and docket number, as shown above. Facsimile (FAX) comments will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** John Garrity, Office of Special Needs Assistance Programs, Room 7262, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; telephone (202) 708–4300 (this is not a toll-free number). Persons with hearing or speech impairments may access the above telephone number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### Background

The Department's Supportive Housing Program provides assistance for housing and supportive services for homeless persons, as authorized by Title IV, subtitle C of the Stewart B. McKinney Homeless Assistance Act of 1987, as amended (the McKinney Act) (42 U.S.C. 11381–11389). Grants are available for acquisition, rehabilitation, new construction, and leasing of supportive housing, operating costs in connection with supportive housing, and supportive services provided to homeless persons. The regulations that implement the program are found at 24 CFR part 583.

Among the types of housing funded under the Supportive Housing Program (SHP) are transitional housing, permanent housing for homeless persons with disabilities, innovative housing projects (or part of project) for, or alternative methods of, meeting the immediate and long-term needs of homeless individuals and families in the transition to permanent housing. Also funded under the program are supportive services.

The authorizing statute permits the grant recipient's match for operating costs for housing to be no more than 25 percent in any year. However, when the program was developed, the rule (§ 583.125(c)) required a 25 percent match of HUD funds with local funds for the first two years, and a 50 percent match thereafter. The authorizing statute contains no comparable match requirement for use of the program to provide services. As a result, the program has favored the use of services, to a large degree.

The HUD Appropriations Acts for Fiscal Years 1999 (112 Stat. 2479) and 2000 (113 Stat. 1063) included two provisions to encourage the use of homeless assistance program funds for supportive housing as opposed to services for homeless persons. These provisions were the requirements that at least 30 percent of the funds be used for permanent housing and that funding for services be required to have at least a 25 percent match.

### This Rule

To encourage production of housing with SHP funds, in accordance with the Congressional intent expressed in the Appropriations Acts, this amendment is being made to give applicants the full McKinney Act flexibility allowed for this activity. This interim rule revises § 583.125 so that SHP funds may be used to pay for up to 75 percent of the operating costs in all years of the grant term, making the recipient provide 25 percent of the operating costs of supportive housing for homeless persons for each year of the grant term. Operating costs include actual expenses for supportive housing, such as maintenance, repair, security, utilities, furnishings, and equipment.

### Findings and Certifications

*Justification for Interim Rule*

HUD generally publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking in 24 CFR part 10. Part 10, however, provides that prior notice and public comment may be omitted "if the Department determines in a particular case . . . that notice and public procedure are impracticable, unnecessary or contrary to the public interest." (24 CFR 10.1). This interim rule implements a change in the provisions for a match by the grantee, consistent with the statute and Congressional intent, that will have an impact on the applications for the next round of funding under the Supportive Housing Program. That round of funding will take place shortly, in accordance with the Notice of Funding Availability for Fiscal Year 2000 funds. As a result, to make this change in policy effective for Fiscal Year 2000 funding applications, it is necessary to make the change quickly. There is not time to solicit public comments on the change before making it effective if it is to affect this fiscal year. Accordingly, HUD determines that it is unnecessary to solicit public comments before making the policy effective, and it is issuing this interim rule for effect without prior notice and comment. Nevertheless, the Department solicits comments from the public on the rule and will consider comments received before issuing a final rule.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule will provide greater flexibility to local governments in the way they administer their Supportive Housing Programs. It will have no measurable economic impact on small businesses.

*Environmental Impact*

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That Finding is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Regulations Division, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

*Executive Order 13132, Federalism*

This interim rule does not have federalism implications. It does not impose substantial direct costs on States and local governments or preempt State

law within the meaning of Executive Order 13132.

*Catalog of Federal Domestic Assistance*

The Catalog of Federal Domestic Assistance number for the program affected by this interim rule is 14.235.

**List of Subjects in 24 CFR Part 583**

Homeless, Rent subsidies, Reporting and recordkeeping requirements, Supportive housing programs—housing and community development, Supportive services.

Accordingly, for reasons stated in the preamble, HUD amends part 583 of title 24 of the Code of Federal Regulations as follows:

## PART 583—SUPPORTIVE HOUSING PROGRAM

1. The authority citation for part 583 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 11389.

2. Revise paragraph (c) of § 583.125 to read as follows:

**§ 583.125 Grants for operating costs.**

* * * * *

(c) *Recipient match requirement for operating costs.* Assistance for operating costs will be available for up to 75 percent of the total cost in each year of the grant term. The recipient must pay the percentage of the actual operating costs not funded by HUD. At the end of each operating year, the recipient must demonstrate that it has met its match requirement of the costs for that year.

Dated: April 21, 2000.

**Cardell Cooper,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 00–11894 Filed 5–11–00; 8:45 am]

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Part VI

# The President

## Proclamation 7305—Mother's Day, 2000

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# Presidential Documents

Title 3—

## The President

**Proclamation 7305 of May 10, 2000**

## Mother's Day, 2000

**By the President of the United States of America**

**A Proclamation**

We are living in a new century and a new age, where the revolution in communications technology is changing almost every aspect of human experience. But even in this new era of global connections, there is perhaps no more powerful link than the love between mother and child.

That bond is a child's first experience of the world, and that love is often the deepest source of the self-esteem, courage, and character that children need to thrive. Mothers are their children's first teachers; they are their inspiring role models whose generosity, compassion, and unconditional acceptance give children the strength and encouragement to reach their fullest potential and to make their own contributions to their families, communities, and country.

Even in this age of spectacular technological advances, mothers still face the daunting challenges of balancing the responsibilities of home and work and meeting the changing emotional, educational, and physical needs of their children. Mothers strive to provide a safe and nurturing environment. They help their children navigate the often stormy waters of an increasingly complicated world. They teach their children to approach conflict with words, not violence; to cherish the richness of our diversity and reject prejudice in any form; and to believe in themselves.

Each year we set aside this special day to acknowledge all that our mothers—whether biological or foster, adoptive or stepmothers—have given us. It is a time to reflect on all we have gained from their unwavering care, guidance, and sacrifice, and a time to express openly our deep gratitude and abiding love. The Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May of each year as "Mother's Day" and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 14, 2000, as Mother's Day. Whether we are able to share this special day with our mothers in person or are blessed only with our memories of their love, in our hearts they remain with us always. I urge all Americans to express their love and respect for their mothers on this day, to speak the words of appreciation we too often neglect to say, and to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J Clinton

[FR Doc. 00–12259
Filed 5–11–00; 11:29 am]
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**REMINDERS**
The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

## RULES GOING INTO EFFECT MAY 12, 2000

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Spearmint oil produced in Far West; published 5-11-00
**ENVIRONMENTAL PROTECTION AGENCY**
Air quality implementation plans; approval and promulgation; various States:
Georgia; published 3-13-00
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Dicamba; published 5-12-00
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Common carrier services:
Local competition and broadband reporting program; published 4-12-00
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**Fish and Wildlife Service**
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**RAILROAD RETIREMENT BOARD**
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Pork promotion; research and consumer information order; comments due by 5-18-00; published 4-18-00
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**Forest Service**
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## LIST OF PUBLIC LAWS

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The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**S.J. Res. 40/P.L. 106–198**

Providing for the appointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 249)

**S.J. Res. 42/P.L. 106–199**

Providing for the reappointment of Manuel L. Ibanez as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 250)

**Last List May 5, 2000**

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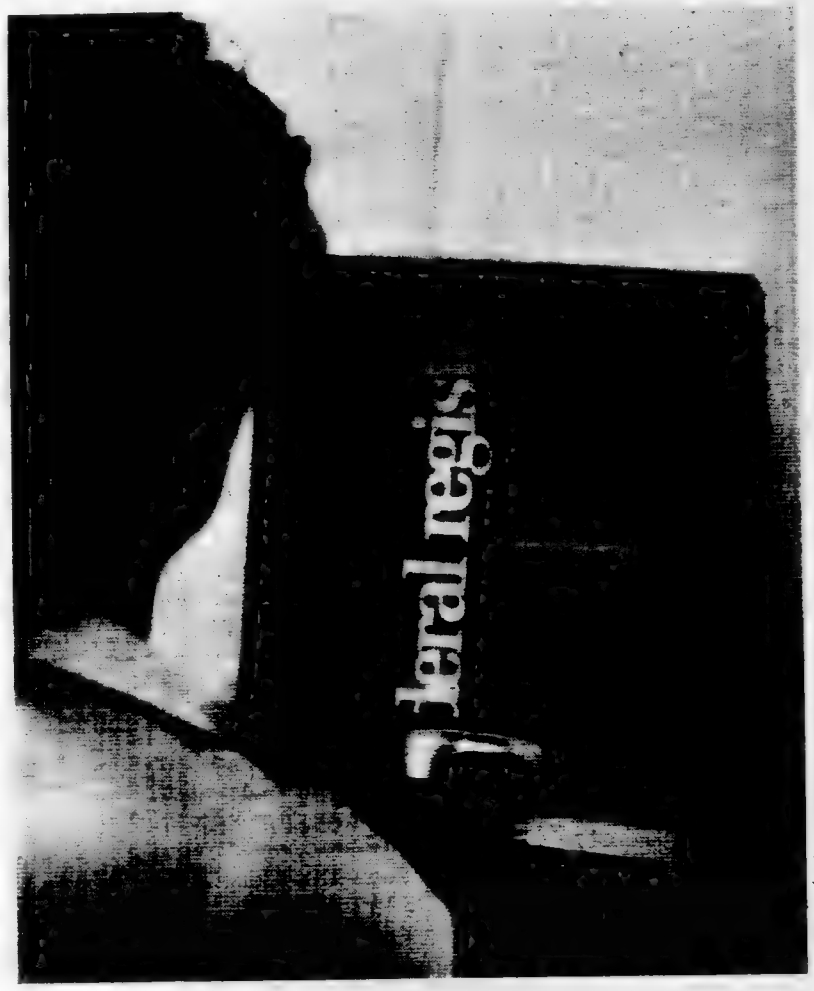


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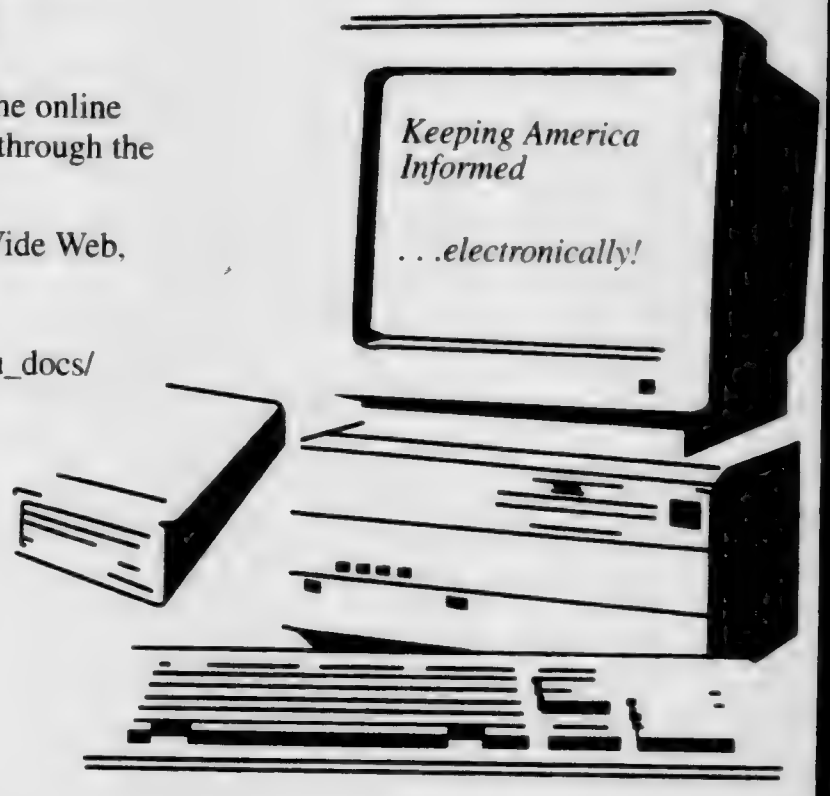


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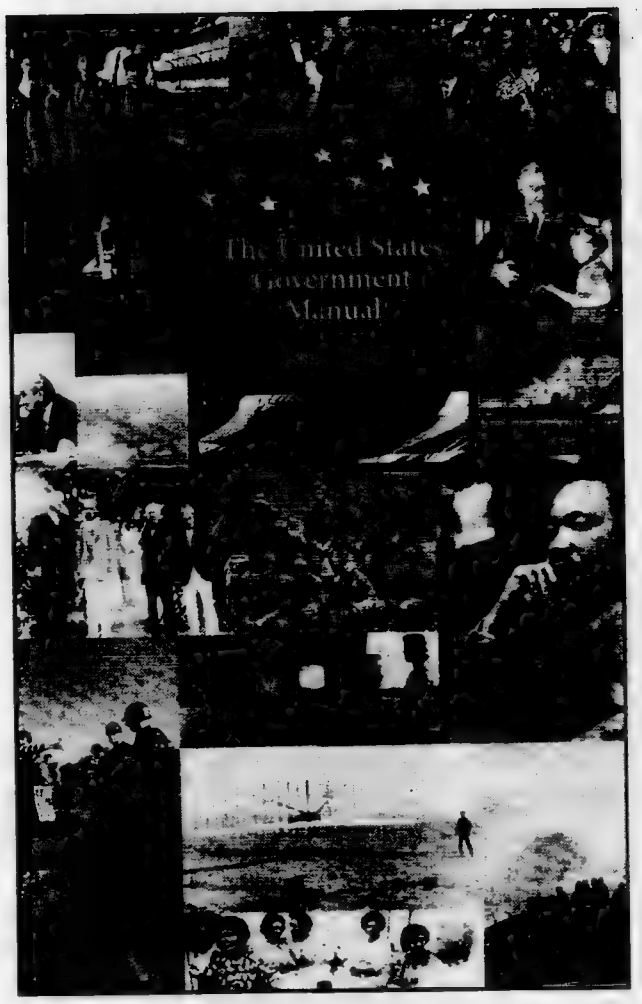


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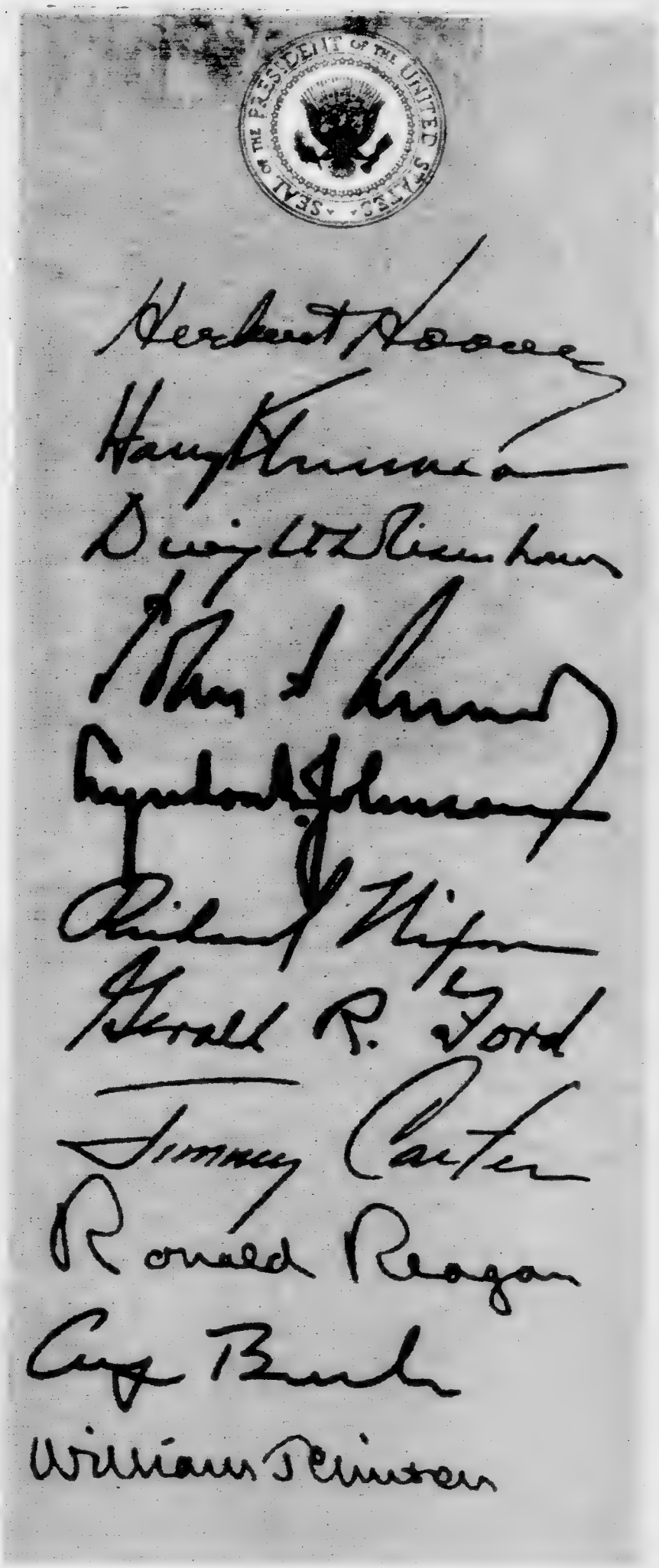


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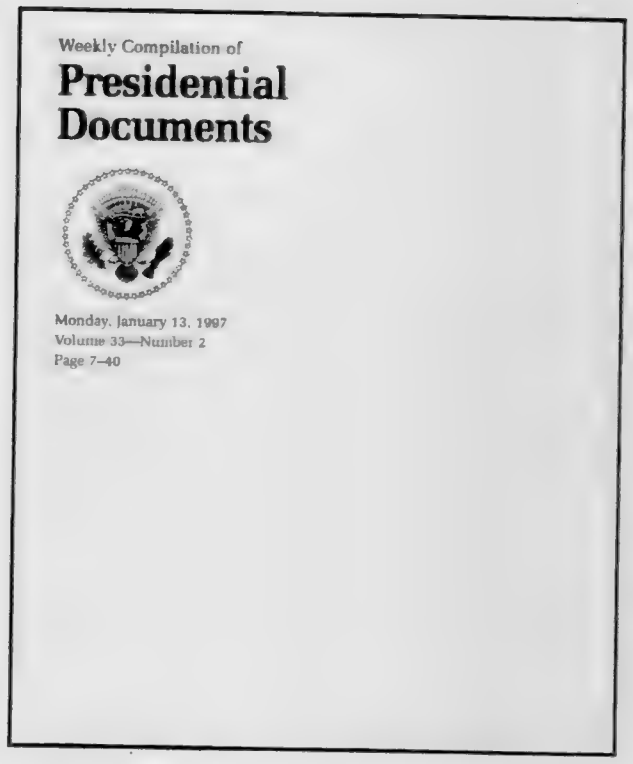


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# Presidential Documents

Title 3—

## The President

**Proclamation 7306 of May 11, 2000**

## National Equal Pay Day, 2000

**By the President of the United States of America**

**A Proclamation**

Long before President Kennedy signed into law the Equal Pay Act of 1963, women had proved their ability to contribute to America's labor market. During World War II, when labor shortages offered women an unprecedented opportunity to work outside the home, women excelled at jobs traditionally reserved for men. Yet, despite their enormous contribution to maintaining American production lines, women in the workforce were paid less than their male counterparts.

For most of our Nation's history, in fact, women have served within a sharply segregated workforce, enjoying fewer educational and training opportunities than men and struggling all too often to disprove confining stereotypes about their roles and capabilities. But throughout the decades, women of courage, energy, and determination have continued to enter the workforce and open doors of opportunity for succeeding generations. Today, more women are in the labor force than ever before; the female unemployment rate is at its lowest in more than 40 years; the poverty rate for households headed by women is the lowest ever recorded; and the pay gap has narrowed substantially since 1963.

Despite these gains, the battle for equal pay for women is far from over. Although 37 years have passed since the passage of the Equal Pay Act, the average woman today must still work an additional 17 weeks a year to earn what the average man earns. That pay gap grows wider as women grow older, and it is widest for women of color. African American women earn 64 cents for every dollar earned by white men, and Hispanic women earn just 55 cents. While some of these disparities can be attributed to differences in education, experience, and occupation—which themselves often reflect troubling inequities—several studies confirm that a significant pay gap persists even after we account for these factors.

My Administration has worked hard to ensure that every American is treated with fairness and dignity in the workplace, and this year I proposed a $27 million equal pay initiative in my fiscal year 2001 budget to combat unfair pay practices against women. This initiative includes $10 million in funding for the Equal Employment Opportunity Commission (EEOC) to identify more quickly and respond more effectively to wage discrimination. The initiative would also enable the EEOC to launch a public service campaign to educate employees and employers about their rights and responsibilities under equal pay laws. In addition, the initiative includes funding for the Department of Labor to train women for jobs they have not traditionally held, such as those in the high-paying technology sector, and to help employers recruit and train qualified women for nontraditional occupations.

I have also urged the Congress to strengthen existing wage discrimination laws by promptly passing the Paycheck Fairness Act. This proposed legislation would provide increased penalties for equal pay violations; prohibit employers from punishing employees who share salary information with coworkers; and provide funding for research on wage discrimination and for increased training for EEOC employees who work on wage discrimination cases.

Throughout the decades, working women have persevered in their struggle for equal pay, buoyed by an unshakable faith in their own skills and self-worth and a firm commitment to the ideals of our democracy. On National Equal Pay Day, I urge all Americans to join the crusade to secure equal pay for women and to create a just and honorable work environment in which all our citizens are rewarded fairly for their talents, experience, and contributions.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States of America, do hereby proclaim May 11, 2000, as National Equal Pay Day. I call upon government officials, law enforcement agencies, business leaders, educators, and the American people to recognize the full value of the skills and contributions of women in the labor force. I urge all employers to review their wage practices and ensure that all their employees are paid equitably for their work.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–12287
Filed 5–12–00; 8:45 am]
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# Rules and Regulations

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## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AI97**

### Prevailing Rate Systems; Abolishment of the Washington, MD, Nonappropriated Fund Wage Area

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing a final rule to abolish the Washington, Maryland, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and establish a new Frederick, MD, NAF FWS wage area. This change is necessary because the Washington wage area's host installation, Fort Ritchie, is closing. This leaves the Department of Defense without an installation in the survey area capable of hosting annual local wage surveys.

**DATES:** The interim rule became effective on December 31, 1999. The interim rule is confirmed as final on May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hopkins by phone at (202) 606–2848, by FAX at (202) 606–0824, or by email at jdhopkin@opm.gov.

**SUPPLEMENTARY INFORMATION:** On December 27, 1999, the Office of Personnel Management (OPM) published an interim rule (64 FR 72249) to abolish the Washington, Maryland, nonappropriated fund (NAF) Federal Wage System (FWS) wage area and establish a new Frederick, MD, NAF FWS wage area. Under section 5343 of title 5, United States Code, OPM is responsible for defining FWS wage areas. For this purpose, we follow the regulatory criteria in section 532.219(b) of title 5, Code of Federal Regulations.

The Washington wage area is presently composed of one survey county, Washington County, and two area of application counties, Frederick County, MD, and Berkeley County, WV. The closure of the Washington wage area's host activity, Fort Ritchie, left the Department of Defense (DOD) without an activity in the survey area capable of conducting annual local NAF wage surveys. Fort Ritchie ceased operations on October 1, 1998, and NAF FWS employees no longer work in Washington County. However, the area of application counties, Frederick and Berkeley, continue to have NAF FWS employment. Under section 5343(a)(1)(B)(i) of title 5, United States Code, NAF wage areas "shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed." Therefore, Washington County cannot be defined as part of an NAF wage area.

Frederick County, MD, has approximately 36 NAF FWS employees and a local Federal installation, Fort Detrick, has the capability to host annual local NAF wage surveys. Furthermore, Frederick County has more than the required minimum number of private enterprise employees in establishments within survey specifications. Approximately 10 NAF FWS employees work in Berkeley County, WV, which does not meet the criteria to be a separate NAF wage area. Therefore, the county must be an area of application. The new Frederick, MD, NAF wage area will have one survey county, Frederick County, MD, and one area of application county, Berkeley County, WV. DOD will order annual wage surveys in January of each even fiscal year. DOD ordered the first full-scale wage survey for the Frederick wage area in January 2000.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with this change. The interim rule had a 30-day public comment period, during which OPM did not receive any comments.

**Regulatory Flexibility Act**

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (64 FR 72249) amending 5 CFR part 532 published on December 27, 1999, is adopted as final with no changes.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00–12055 Filed 5–12–00; 8:45 am]
BILLING CODE 6325–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 532

**RIN 3206–AI90**

### Prevailing Rate Systems; Abolishment of the Dubuque, IA, Appropriated Fund Wage Area

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** The Office of Personnel Management is issuing a final rule to remove the requirement to conduct a full-scale wage survey in the Dubuque, Iowa, Federal Wage System (FWS) wage area. The final rule also abolishes the Dubuque, IA, FWS wage area and redefines the counties of Clinton, Dubuque, and Jackson, IA, and Carroll, Jo Daviess, and Whiteside, Illinois, to the area of application of the Davenport-Rock Island-Moline, IA, FWS wage area. This change is necessary because the Dubuque wage area's host installation, the Savannah Army Depot, is closing and will no longer be capable of hosting annual wage surveys.

**DATES:** The interim rule became effective on October 31, 1999. The interim rule is confirmed as final on May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Hopkins, (202) 606–2848, FAX: (202) 606–0824, or email jdhopkin@opm.gov.

**SUPPLEMENTARY INFORMATION:** On November 4, 1999, the Office of Personnel Management (OPM) published an interim rule (64 FR 60087) to remove the requirement to conduct a

full-scale wage survey in the Dubuque, Iowa, appropriated fund Federal Wage System (FWS) wage area and to abolish the wage area. FWS employees in the Dubuque wage area moved to the Davenport, IA, wage schedule on the first day of the first applicable pay period beginning on or after December 19, 1999.

Under section 5343 of title 5, United States Code, OPM is responsible for defining FWS wage areas. For this purpose, we follow the regulatory criteria in section 532.211 of title 5, Code of Federal Regulations. The Dubuque wage area is presently composed of six survey counties, Clinton, Dubuque, and Jackson, IA, and Carroll, Jo Daviess, and Whiteside, IL. The Department of Defense (DOD) asked OPM to abolish the requirement to conduct a full-scale wage survey in the Dubuque wage area because of the planned closure of the wage area's host installation, the Savannah Army Depot. This closure leaves DOD without an installation in the survey area that is capable of hosting annual local wage surveys. DOD also asked OPM to abolish the Dubuque wage area and redefine its counties to the area of application of the Davenport, IA, FWS wage area.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, reviewed these recommendations and by consensus recommended approval of these changes. The interim rule had a 30-day public comment period, during which OPM did not receive any comments.

**Regulatory Flexibility Act**

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

**List of Subjects in 5 CFR Part 532**

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Accordingly, under the authority of 5 U.S.C. 5343, the interim rule (64 FR 60087) amending 5 CFR part 532 published on November 4, 1999, is adopted as final with no changes.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00–12056 Filed 5–12–00; 8:45 am]

BILLING CODE 6325–01–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1220

**[No. LS–00–01]**

## Results of Soybean Request for Referendum

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice of referendum results.

**SUMMARY:** The Agricultural Marketing Service's (AMS) Request for Referendum shows that too few soybean producers want a referendum on the Soybean Promotion and Research Order (Order) for one to be conducted. The Request for Referendum was held from October 20, 1999, through November 16, 1999, at the Department of Agriculture's (USDA) county Farm Service Agency (FSA) offices. To trigger a referendum 60,082 soybean producers must complete a Request for Referendum. The number of soybean producers requesting a referendum was 17,970.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Program, AMS, USDA; STOP–0251; 14th and Independence Avenue, SW.; Washington, D.C. 20250–0251. Telephone number 202/720–1115.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Soybean Promotion, Research, and Consumer Information Act (Act)(7 U.S.C. 6301 *et seq.*), every 5 years the Secretary of Agriculture (Secretary) will give soybean producers the opportunity to request a referendum on the Order. If the Secretary determines that at least 10 percent of U.S. producers engaged in growing soybeans (not in excess of one-fifth of which may be producers in any one State) support the conduct of a referendum, the Secretary must conduct a referendum within 1 year of that determination. If these requirements are not met, a referendum would not be conducted.

A notice of opportunity to Request a Soybean Referendum was publicized in the **Federal Register** on September 13, 1999, at 64 FR 49349. Soybean producers who produced soybeans during the representative period between January 1, 1997, and November 16, 1999, were eligible to participate in the Request for Referendum.

According to USDA's soybean producer survey, there are 600,813 soybean producers in the United States (see 64 FR 45413).

A total of 17,970 valid Requests for Referendum were completed by eligible soybean producers. This number does not meet the requisite number of 60,082. Therefore, based on the Request for Referendum results, a referendum will not be conducted. In accordance with the provisions of the Act, soybean producers would be provided another opportunity to request a referendum in 5 years.

The following is the State-by-State results of the Request for Referendum:

| State | Number of valid requests for referendum |
|---|---|
| Alabama | 9 |
| Alaska | 0 |
| Arizona | 2 |
| Arkansas | 90 |
| California | 0 |
| Colorado | 1 |
| Connecticut | 0 |
| Delaware | 0 |
| Florida | 13 |
| Georgia | 9 |
| Hawaii | 0 |
| Idaho | 0 |
| Illinois | 5,851 |
| Indiana | 1,926 |
| Iowa | 3,932 |
| Kansas | 438 |
| Kentucky | 177 |
| Louisiana | 44 |
| Maine | 0 |
| Maryland | 119 |
| Massachusetts | 0 |
| Michigan | 408 |
| Minnesota | 991 |
| Mississippi | 66 |
| Missouri | 1,019 |
| Montana | 0 |
| Nebraska | 500 |
| Nevada | 0 |
| New Hampshire | 0 |
| New Jersey | 11 |
| New Mexico | 0 |
| New York | 35 |
| North Carolina | 28 |
| North Dakota | 41 |
| Ohio | 1,449 |
| Oklahoma | 17 |
| Oregon | 1 |
| Pennsylvania | 61 |
| Puerto Rico | 0 |
| Rhode Island | 0 |
| South Carolina | 17 |
| South Dakota | 409 |
| Tennessee | 102 |
| Texas | 51 |
| Utah | 0 |
| Vermont | 1 |
| Virginia | 30 |
| Washington | 0 |
| West Virginia | 3 |
| Wisconsin | 119 |
| Wyoming | 0 |
| Total | 17,970. |

**Authority:** 7 U.S.C. 6301–6311.

Dated: May 9, 2000.

**Barry L. Carpenter,**

*Deputy Administrator, Livestock and Seed Program.*

[FR Doc. 00–12155 Filed 5–12–00; 8:45 am]

BILLING CODE 3410–02–P

## NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION

### 10 CFR Chapter XVIII

### Northeast Interstate Low-Level Radioactive Waste Compact Final Rule for Declaration of Party State Eligibility

**AGENCY:** Northeast Interstate Low-Level Radioactive Waste Commission.

**ACTION:** Final rule.

**SUMMARY:** The Northeast Interstate Low-level Radioactive Waste Commission (the "Commission") is adopting these rules to establish the conditions under which a state not a party to the Northeast Interstate Low-Level Radioactive Waste Management Compact (the "Compact") may be declared eligible to become a party state. The Commission must declare a state eligible before it may become a party state to the Compact. The procedures and conditions established by the Commission through this rule are intended to protect the integrity of the Compact and the interests of both the existing party states and any state petitioning for a declaration of eligibility.

**DATES:** This rule becomes effective May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kevin McCarthy, Chairman, Northeast Interstate Low-Level Radioactive Waste Commission, 703 Hebron Avenue, Glastonbury, Connecticut 06033, (860) 633–2060.

**SUPPLEMENTARY INFORMATION:**

### Background

The Compact was established by "The Omnibus Low-Level Radioactive Waste Compact Consent Act of 1985," Public Law 99–240, Title II (the "Act"). The Act gave Congress" consent to agreements between and among states that were designed to facilitate the regional disposal of low-level radioactive waste ("waste"), thereby promoting the health and safety of the region. Connecticut and New Jersey are current members of the Compact. The Act also established the Commission and gave it authority, inter alia, to promulgate rules, conduct hearings, receive and act on applications to become eligible states, develop regional plans to ensure safe and effective management of waste within the region, designate a host state for siting of a regional disposal facility, enter agreements for the importation of waste into the region and export of waste from the region, impose sanctions, and establish criteria for disposal fees. The Commission consists of one voting member from Connecticut and one voting member from New Jersey.

Since the establishment of the Compact, there has been no regional disposal facility to receive waste generated within the Compact states. Nevertheless, at various times, regional generators have been able to dispose of their waste at other facilities (e.g., at facilities located in Clive, Utah, and Barnwell, South Carolina). Those facilities have not always been available for disposal of all of the waste generated within the region, however, and the Commission has sought to make available more reliable access to waste disposal facilities. Current regional generators anticipate that they will need assured access to waste disposal facilities for the next 50 years until all of the currently licensed nuclear power stations are fully decommissioned and all spent nuclear fuel has been removed from the sites. With these needs in mind, the Commission seeks to ensure the long-term availability of approximately 800,000 cubic feet of disposal space to accommodate all classes of low-level waste. The Commission also seeks to stabilize fees for waste disposal.

The Commission has determined that it is in the interests of the Compact states to declare another state eligible for membership in the Compact if (a) that state is willing to become the voluntary host state and (b) membership in the Compact would achieve important objectives for both the current member states and any petitioning state. Article VII.e. of the Compact permits the Commission to "establish such conditions as it deems necessary and appropriate to be met by a state requesting eligibility as a party state to this compact." The Commission has further determined that the identification and implementation of reasonable conditions to be applied when evaluating a petition for new party state eligibility are essential to the long-term health and safety of the region.

These rules establish the conditions for party state eligibility contemplated by Article VII.e. of the Compact and the criteria for fee and surcharge systems contemplated by Article IV.i.(15) of the Compact. The rules specify the procedures that the Commission will follow for receiving petitions for party state eligibility. They then describe the essential conditions for declaring a state eligible for membership in the Compact. Those conditions include agreements (a) to be the sole host state until all currently licensed nuclear power stations in the region have been decommissioned, (b) to warrant the availability of 800,000 cubic feet of disposal capacity for Connecticut and New Jersey generators, (c) to assure stable, predictable disposal fees that are no greater than generators in Connecticut and New Jersey paid at the end of 1999, (d) to give flexibility for generators to dispose of waste elsewhere at their discretion, (e) to indemnify the existing party states for any potential environmental liability caused by their membership in the Compact and by operation of the regional disposal facility, and (f) to ensure an equitable schedule for return of a portion of any incentive payment made by the existing party states if the regional disposal facility ceases to be available for any reason.

### Summary of Public Comments on the Proposed Rule

The Commission received written comments on the proposed rule (65 FR 13700, March 14, 2000) from the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board, Northeast Nuclear Energy Company, GPU Nuclear, the State of Connecticut Office of Policy Management, Public Service Electric & Gas Company, and Connecticut Yankee Atomic Power Company. These organizations (except Connecticut Yankee), as well as the New Jersey Chamber of Commerce and the New Jersey Business and Industry Association, offered oral comments at public hearings held in Trenton, NJ on April 17, 2000, and in Bridgeport, CT on April 18, 2000. All of the commenters supported the proposed rule and urged its adoption. Copies of the public comments are available for review at the Commission's office, 703 Hebron Avenue, Glastonbury, Connecticut 06033.

### Public Comments on the Rule To Establish Criteria for Declaration of Eligible State

None of the public commenters objected to the Commission's proposed procedures and criteria for declaring a state eligible to become a party to the Compact. Some of the comments raise issues that should be addressed during the evaluation of a specific petition for declaration as a party state. Other comments raise issues that are

appropriately addressed separately from this rulemaking. The Commission is grateful for all of the thoughtful comments that have been offered. The following discussion describes the Commission's evaluation of the comments received.

*General Comments:* Several commenters commended the rulemaking process and the criteria that the Commission established for declaring an eligible state. Various commenters stated that the rule appropriately: (1) Ensures that any new eligible state will be the voluntary host state until all current nuclear power plants within the region are fully decommissioned, (2) guarantees 800,000 cubic feet of disposal capacity for New Jersey and Connecticut generators, (3) permits imports and exports of waste into and out of the region, (4) caps disposal fees at predictable, reasonable levels, (5) requires the return of incentive payments if the regional disposal facility becomes unavailable for any reason, and (6) indemnifies Connecticut and New Jersey for any damages liability. The Commission appreciates the commenters' affirmation of these essential components of the rule.

*Specific Comment No. 1:* Several commenters raised questions about the methodology that would be employed under § 1800.13(d) to determine the average fees that generators within the existing party states paid for disposal at the Barnwell, South Carolina, facility at the end of calendar year 1999. One commenter suggested that the Commission should establish explicit criteria under Compact Article V.f. to be used in determining these baseline fees. The commenter proposed the following criteria: (a) Fees should be fair and equitable among various classes of generators and should bear some reasonable relationship to the cost of disposal; (b) fees should be simple and easy to calculate; (c) fees should be competitive and should reflect market-based conditions; and (d) fees should generate adequate revenues to assure an economically viable disposal facility.

The Commission agrees with the commenters on the importance of determining the maximum disposal fee and generally agrees with the principles suggested as guidelines for determining those fees under the rule. The Commission does not believe it is necessary at this time, however, to establish any further explicit criteria for setting the maximum disposal fee to which a petitioning state must agree. The rule establishes the fees paid in the later part of calendar year 1999 as the basis for the prospective uniform maximum fee schedule. That rate presumptively represents a market-based rate because it is the rate that generators were willing to pay in 1999 for disposal of waste at the Barnwell facility. Any more specific criteria for determining the fees may unnecessarily limit a new party state's ability to devise an acceptable maximum waste disposal fee schedule.

The Commission will apply this rule to evaluate any petition by a state seeking to be declared eligible for Compact membership. It will be up to the petitioning state to demonstrate that the maximum disposal rate schedule will be determined fairly and equitably based on the rates that Connecticut and New Jersey generators paid in 1999. The Commission will consider the petitioning state's actual determination of disposal rates before acting on the petition to ensure that the process used was acceptable, and, before accepting the petition, the Commission may impose conditions specifying disposal rates. In light of these procedures, the Commission sees no need to modify the rule.

*Specific Comment No. 2:* Several commenters asked the Commission to identify which index will be used to determine the inflation factor or the process that will be used to select the appropriate index. The rule in § 1800.13(d) deliberately did not specify a specific inflation index, but stated that it must be acceptable to the Commission. With input from generators and the existing states, the Commission has considered use of a variety of indices, including the Producer Price Index, the Employment Cost Index, the Consumer Price Index, and the Gross Domestic Product deflator. The Commission believes that an appropriate index within the Producer Price indices will probably be acceptable, but the Commission will evaluate the proposed index in any petition to determine whether it is finally acceptable. No change in the rule is necessary.

*Specific Comment No. 3:* Two commenters suggested that the rule in § 1800.13(h) was not clear because it did not specify what would happen if the regional disposal facility ceases to be available on December 31 in the years 2001, 2003, 2005, or 2008. The commenters suggested that § 1800.13(h) be changed so that the end of each period is "prior to January 1" in the appropriate year. The Commission accepts this change and has incorporated it in the final rule.

*Specific Comment No. 4:* One commenter asked whether, under the rule in § 1800.13(e), the Commission will continue to obtain all necessary approvals for regional generators to dispose of waste outside the region, whether regional generators will be permitted to ship waste outside the region for purposes of treatment, volume reduction, repackaging, storage, processing or any other reason, and whether repackaged waste or its residue can be shipped directly to the regional disposal facility as regional waste. The Commission affirms that, as it interprets § 1800.13(e), the Commission will continue to obtain appropriate approvals for regional generators to dispose of waste outside the region, regional generators will be permitted to ship waste outside the region for purposes of treatment, volume reduction, repackaging, storage, processing or any other reason, and repackaged waste or its residue will be permitted to be shipped directly to the regional disposal facility as regional waste. No change to the rule is required.

*Specific Comment No. 5:* One commenter asked the Commission to specify how the 800,000 cubic feet of disposal capacity that will be allotted to generators in the existing party states would be divided between Connecticut and New Jersey. As the commenter noted, it currently appears that 800,000 cubic feet of disposal capacity will be sufficient to accommodate both states' projected waste volumes. At this time, the Commission expects that the total disposal capacity available for Connecticut and New Jersey will be divided evenly, with 400,000 cubic feet allotted to each state's generators. Nevertheless, circumstances may change over the next 50 years. Thus, the Commission (or the Commissioners representing Connecticut and New Jersey) may modify this presumptive allocation to meet the needs of the generators in the two states. Any modification to the even division of available disposal capacity between the two states should consider the needs of generators and any comments that the generators in those states may have on the appropriate allocation.

*Conclusions:* After considering all of the comments, the Commission concludes that this final rule, as modified, will further promote health and safety within the region. It will provide a mechanism for the Commission to consider a long-term resolution for disposal of low-level radioactive waste generated within the region. It will establish the essential conditions that must be satisfied before declaring a state eligible for membership in the Compact. The rules are consistent with and will further the purposes of the Compact and the Low-Level

Radioactive Waste Policy Act, as amended (Pub. L. 96–573; Pub. L. 99–240, Title I).

**Statutory Authority**

The Commission has authority to issue this rule under The Omnibus Low-level Radioactive Waste Compact Consent Act of 1985, Public Law 99–240, section 227, Art. IV(i)(7), Art. VII(e), 99 Stat. 1842, 1914, 1921–22.

**List of Subjects in 10 CFR Part 1800**

Administrative practice and procedure, Hazardous waste, Radioactive materials.

**Kevin McCarthy,**

*Chairman, Northeast Interstate Low-Level Radioactive Waste Commission.*

For the reasons set out in the preamble, the Commission establishes chapter XVIII, consisting of part 1800, in title 10 of the Code of Federal Regulations to read as follows:

**CHAPTER XVIII—NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION**

**PART 1800—DECLARATION OF PARTY STATE ELIGIBILITY FOR NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMPACT**

Sec.

1800.10 Purpose and scope.
1800.11 Definitions.
1800.12 Procedures for declaring a state eligible for membership in the Compact.
1800.13 Conditions for becoming an eligible party state.
1800.14 Modification to and enforcement of the rules in this part.

**Authority:** Sec. 227, Art. IV(i)(7), Art. VII(e), Pub. L. 99–240, 99 Stat. 1842, 1914, 1921–1922.

**§ 1800.10 Purpose and scope.**

Pursuant to Articles IV.i.(1), (7), (15), and VII.e. of the Northeast Interstate Low-Level Radioactive Waste Compact (enacted by the "Omnibus Low-Level Radioactive Waste Compact Consent Act of 1985," Public Law 99–240, 99 Stat. 1842, Title I) (the "Compact"), the Northeast Interstate Low-Level Radioactive Waste Commission (the "Commission") establishes through this part the conditions that it deems necessary and appropriate to be met by a state requesting eligibility to become a party state to this Compact. The Commission shall apply these conditions to evaluate the petition of any state seeking to be eligible to become a party state pursuant to Article VII of the Compact.

**§ 1800.11 Definitions.**

The definitions contained in Article II of the Compact and Article I.B. of the Commission's By Laws shall apply throughout this part. For the purposes of this part, additional terms are defined as follows:

(a) *By Laws* refers to the Commission's By Laws as adopted and amended by the Commission pursuant to Article IV.c. and Article IV.i.(7) of the Compact, most recently amended on December 10, 1998, and dated July 1999;

(b) *Person* means an individual, corporation, business enterprise or other legal entity, either public or private, and expressly includes states;

(c) *Nuclear power station* means any facility holding a license from the U.S. Nuclear Regulatory Commission under 10 CFR Part 50.

(d) *Existing party states* means Connecticut and New Jersey collectively.

**§ 1800.12 Procedures for declaring a state eligible for membership in the Compact.**

(a) Any state seeking to become an eligible state under the Compact shall submit to the Chairman of the Commission six copies of a petition to become an eligible state. The petition shall discuss each of the conditions specified in § 1800.13 and shall:

(1) Affirm that the petitioning state fully satisfies each condition; or

(2) Explain why the petitioning state does not or cannot fully satisfy any particular condition.

(b) Upon receipt of a petition from any state seeking to become an eligible state under the Compact, the Commission shall publish a notice in accordance with Article I.F.1. of the By Laws and shall initiate an adjudicatory proceeding to act on the petition. Any person may submit written comments on a petition, and all such comments must be received by the Commission within 30 days of notice that a petition has been submitted.

(c) The Commission shall evaluate the petition against the conditions for declaration of an eligible state specified in § 1800.13. As part of the proceeding to evaluate a petition to become an eligible state, the Commission may, in its discretion, conduct a hearing pursuant to Article IV.i.(6) of the Compact and Article V.F.1. of the Commission's By-Laws. For good cause shown, the Commission may issue an order shortening the notice period for hearings provided in Article I.F.1. of the By Laws to a period of not less than ten days.

(d) After review of the petition and after any hearing, if held, the Commission shall issue an order accepting or rejecting the petition or accepting the petition with conditions. If the Commission accepts the petition without conditions, the petitioning state shall be declared an eligible state and shall become a new party state upon passage of the Compact by its state legislature, repeal of all statutes or statutory provisions that pose unreasonable impediments to the capability of the state to satisfy the conditions for eligibility (as determined by the Commission) and payment of (or arrangement to pay) the fee specified in Article IV.j.(1). If the Commission accepts the petition with conditions, the petitioning state may become an eligible state by satisfying all of the conditions in the Commission's order and providing an amended petition incorporating its compliance with all of the conditions in this subpart and in the Commission's order. The Commission will consider the amended petition as part of the original adjudicatory proceeding and will issue a new order accepting or rejecting the amended petition.

(e) A state that submits a petition for declaration as an eligible state that is rejected by the Commission may submit a new petition at any time. The Commission will consider the new petition without reference to the prior petition but may use evidence obtained in any prior proceeding to evaluate the new petition.

(f) The Commission's consideration of a petition for declaration of an eligible state shall be governed by the Compact, the Commission's By Laws, and this part.

**§ 1800.13 Conditions for becoming an eligible party state.**

The Commission shall evaluate a petition to become an eligible party state on the basis of the following conditions and criteria:

(a) To be eligible for Compact membership, a state must agree that it will be the voluntary host state upon admission to the Compact and will continue to be the voluntary host state for a least that period of time until all currently licensed nuclear power stations within the region have been fully decommissioned and their licenses (including any licenses for storage of spent nuclear fuel under 10 CFR Part 72) have been terminated.

(b) To be eligible for Compact membership, a state must agree that, so long as the petitioning state remains within the Compact, it will be the sole host state.

(c) To be eligible for Compact membership, a state must warrant the availability of a regional disposal

facility that will accommodate 800,000 cubic feet of waste from generators located within the borders of the existing party states.

(d) To be eligible for Compact membership, a state must agree to establish a uniform fee schedule for waste disposal at the regional disposal facility that shall apply to all generators within the region. That uniform fee schedule, including all surcharges (except new surcharges imposed pursuant to Article V.f.3. of the Compact), shall not exceed the average fees that generators within the existing party states paid for disposal at the Barnwell, South Carolina, facility at the end of calendar year 1999, adjusted annually based on an acceptable inflation index.

(e) To be eligible for Compact membership, a state must agree with the existing states that regional generators shall be permitted to process or dispose of waste at sites outside the Compact boundaries based solely on the judgment and discretion of each regional generator.

(f) To be eligible for Compact membership, a state must agree with the existing states that the Commission may authorize importation of waste from non-regional generators for the purpose of disposal only if the host state approves and such importation does not jeopardize the warranted availability of 800,000 cubic feet of disposal capacity for waste produced by generators within the existing party states. A new party state must agree that regional generators shall not pay higher fees than non-regional generators and that all books and records related to the establishment or collection of fees shall be available for Commission review.

(g) To be eligible for Compact membership, in addition to the express limitations on non-host state and Commission liability provided in the Compact, a state must agree to indemnify the Commission or the existing party states for any damages incurred solely because of the new state's membership in the Compact and for any damages associated with any injury to persons or property during the institutional control period as a result of the radioactive waste and waste management operations of any regional facility. The petitioning state must agree that this indemnification obligation will survive the termination of the petitioning state's membership in the Compact.

(h) To be eligible for Compact membership, a state must agree that any incentive payments made by the existing party states as an inducement for a state to join the Compact will be returned to the existing party states, with interest, on a pro rata basis if, for any reason, the regional disposal facility ceases to be available to generators in the existing party states for a period of more than six months (other than periods that have been expressly approved and authorized by the Commission) or is unavailable for disposal of 800,000 cubic feet of waste from generators within the borders of the existing states. In the event of such unavailability, the new party state must agree to return the incentive payments based on the following schedule:

(1) 75% of the incentive payment if the regional facility becomes unavailable prior to January 1, 2002;

(2) 50% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2002, and prior to January 1, 2004;

(3) 30% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2004, and prior to January 1, 2006;

(4) 20% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2006, and prior to January 1, 2009;

(5) 10% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2009, and prior to the time when all currently licensed nuclear power stations within the region have been fully decommissioned and their licenses (including any licenses for storage of spent nuclear fuel under 10 CFR Part 72) have been terminated.

(i) To be eligible for Compact membership, a state must agree with the existing states that once a new party state has been admitted to membership in the Compact pursuant to the rules in this part, declaration of any other state as an eligible party state will require the unanimous consent of all members of the Commission.

**§ 1800.14 Modification to and enforcement of the rules in this part.**

(a) Because of the importance of the conditions for declaration of an eligible state under the Compact, the rules in this part may only be modified, amended, or rescinded after a public hearing held pursuant to Article IV.i.(6) of the Compact and Article V.F.1. of the Commission's By Laws and by a unanimous vote of all members of the Commission.

(b) Any party state may enforce the rules in this part by bringing an action against or on behalf of the Commission in the United States District Court for the District of Columbia pursuant to Article IV.n. of the Compact.

(c) If, for any reason, any portion of the rules in this part shall be declared invalid or unenforceable, the remainder of the rules in this part shall remain in full force and effect.

[FR Doc. 00–12158 Filed 5–12–00; 8:45 am]
BILLING CODE 7595–01–P

## SMALL BUSINESS ADMINISTRATION

### 13 CFR Part 121

### Small Business Size Regulations; Size Standards and the North American Industry Classification System

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration (SBA) is amending its size regulations by establishing a new table of small business size standards for industries as the North American Industry Classification System (NAICS) defines them. These new size standards are effective beginning with Fiscal Year 2001, which starts on October 1, 2000. Small business size standards currently exist for most industries under the Standard Industrial Classification (SIC) system. SBA has determined that NAICS is a better description of industries in the U.S. economy than the SIC system for purposes of establishing size standards.

**DATES:** This rule is effective October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Carl Jordan, Office of Size Standards, at (202) 205–6618.

**SUPPLEMENTARY INFORMATION:**

#### Introduction

Under section 3(a)(2) of the Small Business Act, SBA establishes small business definitions, or size standards, by industry category and varies size standards as necessary to reflect industry differences to determine small business eligibility for Federal programs. The current table of size standards uses SIC industry descriptions as the basis for the size standards. Because NAICS replaced the SIC system for use by Federal agencies in collecting economic data, we reviewed NAICS to determine whether we should also use the NAICS industry descriptions to establish small business size standards. Based on that review, we proposed in the October 22, 1999, **Federal Register** (64 FR 57187–57286) to adopt a new table of small business size standards for industries as they are described in NAICS, effective October 1, 2000.

The new table would replace the existing table of size standards for industries as they are described in the SIC system. We invited comments from interested parties on our proposal to adopt NAICS-based size standards. Specifically, we requested comments on at least the following: (1) Is FY 2001 an appropriate effective date? (2) Are the guidelines that we used in proposing the new size standards appropriate? (3) Will there be a significant impact on firms in an industry where some firms will lose size eligibility or formerly large firms will now become small? (4) If the answer to (3) is yes, how can we eliminate or minimize that potential impact?

NAICS was designed, as was the SIC system, solely for statistical purposes. The Office of Management and Budget (OMB) published a "Notice of final decision" in the **Federal Register** on April 9, 1997 (62 FR 17288–17478), announcing its decision to adopt NAICS. OMB's notice stated that "NAICS shall not be used in any administrative, regulatory, or tax program unless the head of the agency administering that program has first determined that the use of such industry definitions is appropriate for implementation of the program's objectives." As the Administrator of SBA I have determined that NAICS industry descriptions are more appropriate than SIC industry descriptions to use in SBA programs and to accomplish our Agency's mission. Further, all Federal Agencies, in accordance with section 3(a)(2) of the Small Business Act, must use SBA's established size standards to categorize a business as a small business concern, unless the agencies: (1) Are authorized by statute to do otherwise; or (2) have obtained the SBA Administrator's approval for an alternative. NAICS is an improvement over the SIC system in identifying and describing industries in the U.S. economy, and size standards established for NAICS industries will better define small business. This final rule adopts the proposed size standards and specifies an effective date of October 1, 2000.

**Summary of Comments**

We received three comments to the proposed rule, each of which supported it. Two comments were from industry associations, and the third is from an SBA office. Besides supporting the proposed rule, the comments included some other observations and suggestions. We will summarize and address their comments here.

1. An association representing moving and storage companies supports our proposal to issue the new table of size standards based on NAICS using our proposed methodology, and also supports October 1, 2000, as the implementation date if an earlier one is not practicable. We stated in the October 22, 1999, proposed rule why we believe October 1, 2000, is the appropriate date. Our three reasons concerned consistency in government recordkeeping and statistics, development of historical data for comparison purposes, and the need for time to convert and update data bases and tracking systems (see 64 FR 57190). The association also commented on its understanding of certain specific NAICS codes and how those NAICS codes will apply to future Federal government and military contracts. The association indicates that it "does not believe that any firms in the moving and storage industry will be affected by this change, as the same $18.5 million size standard will apply as is currently in place." We believe this supports our conclusions that because we applied the guidelines consistently, the size standards we proposed are appropriate and that this change will cause little loss of small business eligibility, if any, to businesses currently eligible to participate in Federal small business programs.

2. A coalition of environmental contractors supported SBA's methodology and the FY 2001 implementation date as well. They raised, however, questions about two NAICS codes for which we established a $5.0 million size standard. Specifically, the coalition questioned whether $5 million is appropriate for NAICS codes 514199, "All Other Information Services," and 541620, "Environmental Consulting Services." NAICS codes 514199 and 541620 are two activities related to SIC 8999, "Services, NEC" (specifically, Miscellaneous Information Providers and Environmental Consultants), both of which are new NAICS industries. The current size standard for SIC 8999 is $5 million.

Concerning NAICS 514199, it is one of five industries within Subsector 514, "Information Services and Data Processing Services." Four of those NAICS industries are related to and the same as four SIC industries. Two of them, namely NAICS 514191 (On-Line Information Services) and NAICS 514210 (Data Processing Services) are Computer Services. All industry activities described within SIC codes 7371 through 7379 have the same $18.0 million size standard. We applied the first proposed guideline, and therefore, $18.0 million is the correct size standard for NAICS 514191 and NAICS 514210. The other two NAICS codes, namely NAICS 514110 (News Syndicates) and NAICS 514120 (Libraries and Archives) are related to and the same as SIC 7383 (News Syndicates) and SIC 8231 (Libraries) respectively. The size standards for SIC 7383 and 8231 are $5.0 million. We applied the first proposed guideline, and therefore, $5.0 million is the correct size standard for NAICS 514110 and NAICS 514120. While all of these industries are parts of Subsector 514 (Information Services and Data Processing Services), NAICS 514199 specifically excludes news syndicates, libraries, archives and on-line information access. Further, NAICS 514199 is only related to part of SIC 8999, "Services, NEC," and it is limited to "miscellaneous information providers." Therefore, consistent with the first guideline, and the other industries in this Subsector, $5.0 million is the correct size standard for NAICS 514199.

Concerning NAICS 541620, "Environmental Consulting Services," the coalition further suggested that the size standard should be 500 employees, the same as we established for "Environmental Remediation Services," a segment of SIC 8744, "Facilities Support Management Services." Consistent with the fourth proposed guideline, we retained this activity and its corresponding size standard of 500 employees as a segment within NAICS 562910 "Remediation Services." NAICS 562910 is an industry related to part of SIC 1799, "Special Trade Contractors, NEC." Because the size standard for SIC 1799 is $7 million, we are retaining $7 million as the size standard for NAICS 562910. This is consistent with the first proposed guideline.

The distinction between "Remediation Services" and "Environmental Remediation Services" lies in the extent and complexity of work to be performed on a specific Federal government contract. "Environmental Consulting Services" is one activity, and, as the coalition notes, often conducted in conjunction with an environmental remediation contract. However, "Environmental Remediation Services" requires that (1) the purpose of the procurement be the restoration of a contaminated environment, *i.e.*, environmental remediation, *and* (2) the procurement be composed of activities in three or more separate industries, none of which constitutes 50% or more of the contract value, and each of which would, if it were a separate contract, be a different NAICS (formerly SIC) code. Footnote 14 more fully details when 500 employees is the appropriate size

standard for an Environmental Remediation Services contract.

Therefore, the size standards for NAICS 541620 and NAICS 562910 will be $5 million and $7 million respectively. The contracting officer will assign the NAICS code together with its small business size standard that best describes the principal purpose of the contract to be performed. If Environmental Consulting Services is the principal purpose of a Federal government procurement, the appropriate NAICS code is 541620 and the size standard is $5 million. If the principal purpose of the Federal government procurement is Environmental Remediation Services *and* it meets the conditions stated in Footnote 14, the contracting officer will assign NAICS 562910 with the 500 employee size standard. We recognize that these three industries are closely related. As industry data become available for these industries, we will reconsider their size standard(s).

Lastly, the coalition suggests we review the $5 million "anchor" size standard for industries generally classified as Services. In 1994 we increased nearly all receipts based size standards because inflation had reduced the number of small businesses eligible to participate in Federal programs reserved for small business. We are reviewing all receipts based small business size standards to determine the extent of inflation since the 1994 increase, and whether we should adjust the size standards to reflect inflation's effects since then. Once we determine the need for an increase, we will publish a proposed rule in the **Federal Register** concerning the change.

While we are open to requests to change one or more size standards, this rule is limited to replacing the existing table of small business size standards with a new one based on more current and accurate industry definitions. This rule does not reevaluate existing small business size standards nor does it intend to change any. We modify size standards occasionally, but only after we have separately evaluated individual industries and their size standards. Such modifications are separate SBA actions. Following the requirements set forth in the Administrative Procedure Act, we fully explain our methodology and reasons for a contemplated change, and do not make changes without having provided an opportunity for public comment.

For example, we have proposed increasing size standards for the Help Supply Services (SIC 7363), 11 of the 19 Health Services (Major Group 80), the General and Special Construction Industries (Major Groups 15, 16 and 17), Garbage and Refuse Collection (part of SIC 4212) and Refuse Systems (SIC 4953). The comment period is closed on those proposed rules, and we will publish our decision on them as Final Rules in the **Federal Register** in the near future. However, those size standards, once published as final, will apply to industries in the current table of size standards based on the SIC system, until October 1, 2000. From that date forward they will apply to the related industries as they are described in NAICS. The table that is the subject of this rule is based only on existing size standards.

3. The SBA comment noted that in Table IV of the proposed rule we did not affix Footnote 10 to NAICS codes 531311, 531312, 531390 and 561920, but had listed those NAICS codes in the text of Footnote 10 as if the footnote applied to those codes. Footnote 10 allows firms in those industries to exclude certain amounts when calculating average annual receipts under 13 CFR 121.104(a)(1). Footnote 10 to this table is the same as Footnote 6 to the table based on SIC industry descriptions.

Footnote 10 does not apply to firms in NAICS codes 531311 (Residential Property Managers), 531312 (Nonresidential Property Managers) and 531390 (Other Activities Related to Real Estate), since they do not work on commission. Including them in the list of NAICS codes to which Footnote 10 applied was inadvertent on our part. Therefore, we modify Footnote 10 to apply only to NAICS 531210 (Offices of Real Estate Agents and Brokers), NAICS 541810 (Advertising Agencies), NAICS 561510 (Travel Agencies) and NAICS 561920 (Convention and Trade Show Organizers).

The SBA comment also noted that the proposed rule did not reflect the change of the acronym SIC to NAICS in §§ 121.103(f)(3)(i), 121.103(f)(3)(i)(A), and 121.103(f)(3)(iii). We overlooked those changes in the proposed rule, but have included them in this final rule. The changes are not substantive. Rather, "NAICS" replaces "SIC" there as it does in the other sections of this part. They are the logical outgrowth of this overall change. There were no other comments in this regard.

**Reasons for This Change**

We explained in our October 22, 1999, proposed rule why we believed a new table of size standards based on NAICS should replace the existing table based on SIC. NAICS is a significant improvement over the SIC system and provides a better structure on which to establish size standards by industry category. NAICS was developed to describe the structure of today's economy. We have determined that the new table of small business size standards reflecting NAICS industries is in the interests of small business. We stated in our October 22, 1999, proposed rule why we believe we should use NAICS for small business size standards, namely because (1) the SIC system has not kept up with the economy; (2) NAICS recognizes the growth and expansion of the services and technological industries; (3) the Census Bureau will no longer organize and make data available for SIC industries after the 1997 Economic Census; and (4) we believe that all other Federal agencies will switch to NAICS for their program and administrative purposes. Having a single industry classification system within the Federal government will avoid confusion and inconsistency that would likely result if we delay issuing a new table of size standards based on NAICS.

**Implementation Date of NAICS Size Standards**

NAICS-based size standards are effective for all Federal small business programs beginning with FY 2001, which starts October 1, 2000. We have selected this date to implement NAICS-based size standards because (1) Federal government recordkeeping and statistics will be more consistent and comparable with past data and for analyzing future small business activity if implementation of the new table of size standards is at the beginning of a fiscal year; (2) we and other users of size standards will need to collect data on small business programs on the NAICS format to be able to compare those data with the future Federal statistics; and (3) small business size standards apply to most Federal agencies and their programs involving small businesses, and they will need time to determine how to implement the new size standards and to develop training tools necessary to do so.

**Present Status of NAICS**

OMB adopted NAICS to replace the 1987 SIC system. NAICS is based on concepts developed by the U.S. Economic Classification Policy Committee (ECPC), an interagency committee established by OMB, with Statistics Canada and Mexico's Instituto Nacional de Estadística Geografía e Informatíca. We did not in our proposed rule, nor do we here, include the entire texts of OMB's or ECPC's documents. We suggest that interested parties review the April 9, 1997, **Federal Register** (62 FR 17288–17478) notice,

together with earlier **Federal Register** notices, proposed rules and other papers and documents that preceded and followed that final notice. We believe that this will help interested parties understand NAICS better and increase their awareness of the changes that may affect them and their industry. Copies of all **Federal Register** notices, including SBA's October 22, 1999, proposed rule, are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling 1 (202) 512–1800. Those with access to the Internet can obtain all **Federal Register** notices for 1995 and forward via GPO Access at *http://www.access.gpo.gov/su_docs*. In addition, the U.S. Department of Commerce, Bureau of Census (Census Bureau) at *http://www.census.gov/epcd/www/naics.html* has the April 9, 1997, **Federal Register** notice and other NAICS related documents.

**How We Converted the Size Standards From SIC-Based to NAICS-Based**

The October 22, 1999, proposed rule contains a full description of our methodology in determining the correct size standards to use for the NAICS industry descriptions. We included a table (Table III in the proposed rule) that summarized guidelines for the conversions. Comments supported our methodology and this rule is the result of our applying them consistently. Therefore, we have made no changes to the size standards we proposed in that notice. We repeat those guidelines below in Table I, which is the same as Table III in the proposed rule.

TABLE I

| If the NAICS industry is composed of: | The size standard for the NAICS industry is: |
|---|---|
| 1. One SIC industry or part of one SIC industry ..... | The same size standard as for the SIC industry or part. |
| *e.g.*, NAICS 331221, NAICS 513111, NAICS 513112, NAICS 513120 | |
| 2. More than one SIC industry; parts of more than one SIC industry; or one or more SIC industry and part(s) of one or more SIC industry,<br>*And*<br>they all have the same size standard. | The same size standard as for those SIC industries or parts of SIC industries. |
| *e.g.*, NAICS 315234, NAICS 513330, NAICS 561599 | |
| 3. More than one SIC industry; parts of more than one SIC industry; or one or more SIC industry and part(s) of one or more SIC industry,<br>*And*<br>they do *not* all have the same size standard. | The same size standard as for the SIC industry or SIC industry part(s) that most closely matches the economic activity described by the NAICS industry. |
| *e.g.*, NAICS 332999, NAICS 334119, NAICS 334612, NAICS 442110, NAICS 487210, NAICS 487990, NAICS 488310, NAICS 532120, NAICS 532220, NAICS 561621, NAICS 711510, NAICS 812220, NAICS 813990 | |
| 4. One or more parts of an SIC industry for which SBA has established specific size standards (*i.e.*, further segmented). | The same size standard as for that specific SIC industry part. |
| *e.g.*, NAICS 234990, NAICS 441229, NAICS 531190, NAICS 541330, NAICS 611512 | |
| 5. One or more SIC industries and/or parts of SIC industries that were categorized broadly under the SIC system as Services, Retail Trade, Wholesale Trade or Manufacturing, but are now categorized differently under NAICS. | SBA applied (a) a size standard measure (*e.g.*, number of employees, annual receipts) typical of the NAICS Sector; and (b) the corresponding "anchor" size standard. The "anchor" size standards are $5 million for Services and Retail Trade, 500 employees for Manufacturing and 100 employees for Wholesale Trade (except for Federal procurement programs, where the standard is 500 employees under the non-manufacturer rule). |
| *e.g.*, NAICS 311811, NAICS 326212, NAICS 334611, NAICS 339116, NAICS 421990, NAICS 441310 | |

Following these guidelines we produced a table of small business size standards that accomplished our objectives. There are approximately 1,175 NAICS industries, and small business size standards for virtually all economic activities within the SIC codes remain the same in NAICS. Most of the NAICS small business size standards resulted from applying the first two guidelines. There were no comments suggesting that SBA should consider modifying the guidelines.

Besides the guidelines, SBA included in the October 22, 1999, proposed rule a complete table that showed each NAICS industry with the SIC industry or industries that are related to it. That table (Table IV in the proposed rule) provided the existing size standard(s) for the associated SIC code(s) and the proposed size standard for each NAICS code, as they result from applying the guidelines. Because we applied these guidelines consistently, and the only comments on them that we received were favorable, we are not repeating that table in this rule. Interested parties may refer to the October 22, 1999, proposed rule (64 FR 57187–57286), as cited above, or visit SBA's Web site on size standards site at http://www.sba.gov/size/, and select "What's New."

**Compliance With Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), the Paperwork Reduction Act (44 U.S.C. 3501 Ch. 35), and Executive Orders and 12988 and 13132**

SBA has determined that this rule is not a significant rule within the meaning of Executive Order 12866. For purposes of the Regulatory Flexibility Act, SBA certifies that the rule will affect a significant number of small businesses, but that the impact of the

rule on each business will not be substantial.

This rule applies to all small entities and Federal programs reserved for small entities, except those specifically excluded by Federal legislation or elsewhere under 13 CFR part 121. SBA estimates that relatively few firms will gain or lose small business status because of this rule. Though SBA is establishing a new table of size standards, firms that are now eligible for Federal small business programs will remain eligible to the maximum extent practicable.

There are three significant benefits to this rule. (a) Size standards are based on the most current industry descriptions. (b) Since SBA uses Census data to establish, review, change and/or otherwise modify small business size standards, data SBA obtains from the Census Bureau will be the most recent and accurate economic data available. (c) Collecting and analyzing statistical data on small business participation in the Federal procurement process will be more accurate, particularly in the technological and services industries.

SBA believes that this rule will impose no additional costs on the public. Further, the new NAICS-based table of small business size standards does not add any significant costs to Federal Government programs reserved for small businesses. Federal agencies and other users bear the administrative costs associated with converting from the SIC system to NAICS.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, SBA has determined that this rule does not impose new reporting or record keeping requirements. For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent possible under standards in section 3 of the order. For purposes of Executive Order 13132, SBA has determined that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment.

**List of Subjects in 13 CFR Part 121**

Government procurement, Government property, Grant programs-business, Loan programs-business, Small business.

For the reasons stated in the preamble, SBA is amending 13 CFR PART 121 as follows:

## PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

**Authority:** Pub. L. 105–135 sec. 601 *et seq.*, 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a), and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Revise § 121.101 to read as follows:

**§ 121.101 What are SBA size standards?**

(a) SBA's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for "small business" concerns. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS).

(b) NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161; by calling 1(800) 553–6847 or 1(703) 605–6000; or via the Internet at http://www.ntis.gov/yellowbk/1nty205.htm. The manual includes definitions for each industry, tables showing relationships between 1997 NAICS and 1987 SICs, and a comprehensive index. NAICS assigns codes to all economic activity within twenty broad sectors. Section 121.201 provides a full table of small business size standards matched to the U.S. NAICS industry codes. A full table matching a size standard with each NAICS Industry or U.S. Industry code is also published annually by SBA in the **Federal Register**.

**§ 121.103 [Amended]**

3. Amend § 121.103 as follows:

a. In paragraph (f)(3)(i) introductory text, replace the acronym "SIC" with the acronym "NAICS."

b. In paragraph (f)(3)(i)(B)(*1*) replace the acronym "SIC" with the acronym "NAICS."

c. In paragraph (f)(3)(iii) replace the acronym "SIC" with the acronym "NAICS."

4. Revise § 121.201 to read as follows:

**§ 121.201 What size standards has SBA identified by North American Industry Classification System codes?**

The size standards described in this section apply to all SBA programs unless otherwise specified in this part. The size standards themselves are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small.

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| | **Sector 11—Agriculture, Forestry and Fishing** | |
| | **Subsector 111—Crop Production** | |
| 111110 | Soybean Farming | $0.5 |
| 111120 | Oilseed (except Soybean) Farming | $0.5 |
| 111130 | Dry Pea and Bean Farming | $0.5 |
| 111140 | Wheat Farming | $0.5 |
| 111150 | Corn Farming | $0.5 |
| 111160 | Rice Farming | $0.5 |
| 111191 | Oilseed and Grain Combination Farming | $0.5 |
| 111199 | All Other Grain Farming | $0.5 |
| 111211 | Potato Farming | $0.5 |
| 111219 | Other Vegetable (except Potato) and Melon Farming | $0.5 |
| 111310 | Orange Groves | $0.5 |
| 111320 | Citrus (except Orange) Groves | $0.5 |
| 111331 | Apple Orchards | $0.5 |
| 111332 | Grape Vineyards | $0.5 |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 111333 | Strawberry Farming | $0.5 |
| 111334 | Berry (except Strawberry) Farming | $0.5 |
| 111335 | Tree Nut Farming | $0.5 |
| 111336 | Fruit and Tree Nut Combination Farming | $0.5 |
| 111339 | Other Noncitrus Fruit Farming | $0.5 |
| 111411 | Mushroom Production | $0.5 |
| 111419 | Other Food Crops Grown Under Cover | $0.5 |
| 111421 | Nursery and Tree Production | $0.5 |
| 111422 | Floriculture Production | $0.5 |
| 111910 | Tobacco Farming | $0.5 |
| 111920 | Cotton Farming | $0.5 |
| 111930 | Sugarcane Farming | $0.5 |
| 111940 | Hay Farming | $0.5 |
| 111991 | Sugar Beet Farming | $0.5 |
| 111992 | Peanut Farming | $0.5 |
| 111998 | All Other Miscellaneous Crop Farming | $0.5 |
| | **Subsector 112—Animal Production** | |
| 112111 | Beef Cattle Ranching and Farming | $0.5 |
| 112112 | Cattle Feedlots | $1.5 |
| 112120 | Dairy Cattle and Milk Production | $0.5 |
| 112210 | Hog and Pig Farming | $0.5 |
| 112310 | Chicken Egg Production | $9.0 |
| 112320 | Broilers and Other Meat Type Chicken Production | $0.5 |
| 112330 | Turkey Production | $0.5 |
| 112340 | Poultry Hatcheries | $0.5 |
| 112390 | Other Poultry Production | $0.5 |
| 112410 | Sheep Farming | $0.5 |
| 112420 | Goat Farming | $0.5 |
| 112511 | Finfish Farming and Fish Hatcheries | $0.5 |
| 112512 | Shellfish Farming | $0.5 |
| 112519 | Other Animal Aquaculture | $0.5 |
| 112910 | Apiculture | $0.5 |
| 112920 | Horse and Other Equine Production | $0.5 |
| 112930 | Fur-Bearing Animal and Rabbit Production | $0.5 |
| 112990 | All Other Animal Production | $0.5 |
| | **Subsector 113—Forestry and Logging** | |
| 113110 | Timber Tract Operations | $5.0 |
| 113210 | Forest Nurseries and Gathering of Forest Products | $5.0 |
| 113310 | Logging | 500 |
| | **Subsector 114—Fishing, Hunting and Trapping** | |
| 114111 | Finfish Fishing | $3.0 |
| 114112 | Shellfish Fishing | $3.0 |
| 114119 | Other Marine Fishing | $3.0 |
| 114210 | Hunting and Trapping | $3.0 |
| | **Subsector 115—Support Activities for Agriculture and Forestry** | |
| 115111 | Cotton Ginning | $5.0 |
| 115112 | Soil Preparation, Planting, and Cultivating | $5.0 |
| 115113 | Crop Harvesting, Primarily by Machine | $5.0 |
| 115114 | Postharvest Crop Activities (except Cotton Ginning) | $5.0 |
| 115115 | Farm Labor Contractors and Crew Leaders | $5.0 |
| 115116 | Farm Management Services | $5.0 |
| 115210 | Support Activities for Animal Production | $5.0 |
| 115310 | Support Activities for Forestry | $5.0 |
| 211112 | Natural Gas Liquid Extraction | 500 |
| | **Sector 21—Mining** | |
| | **Subsector 211—Oil and Gas Extraction** | |
| 211111 | Crude Petroleum and Natural Gas Extraction | 500 |
| 211112 | Natural Gas Liquid Extraction | 500 |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| | **Subsector 212—Mining (except Oil and Gas)** | |
| 212111 | Bituminous Coal and Lignite Surface Mining | 500 |
| 212112 | Bituminous Coal Underground Mining | 500 |
| 212113 | Anthracite Mining | 500 |
| 212210 | Iron Ore Mining | 500 |
| 212221 | Gold Ore Mining | 500 |
| 212222 | Silver Ore Mining | 500 |
| 212231 | Lead Ore and Zinc Ore Mining | 500 |
| 212234 | Copper Ore and Nickel Ore Mining | 500 |
| 212291 | Uranium-Radium-Vanadium Ore Mining | 500 |
| 212299 | All Other Metal Ore Mining | 500 |
| 212311 | Dimension Stone Mining and Quarrying | 500 |
| 212312 | Crushed and Broken Limestone Mining and Quarrying | 500 |
| 212313 | Crushed and Broken Granite Mining and Quarrying | 500 |
| 212319 | Other Crushed and Broken Stone Mining and Quarrying | 500 |
| 212321 | Construction Sand and Gravel Mining | 500 |
| 212322 | Industrial Sand Mining | 500 |
| 212324 | Kaolin and Ball Clay Mining | 500 |
| 212325 | Clay and Ceramic and Refractory Minerals Mining | 500 |
| 212391 | Potash, Soda, and Borate Mineral Mining | 500 |
| 212392 | Phosphate Rock Mining | 500 |
| 212393 | Other Chemical and Fertilizer Mineral Mining | 500 |
| 212399 | All Other Nonmetallic Mineral Mining | 500 |
| 213111 | Drilling Oil and Gas Wells | 500 |
| 213112 | Support Activities for Oil and Gas Operations | $5.0 |
| 213113 | Support Activities for Coal Mining | $5.0 |
| 213114 | Support Activities for Metal Mining | $5.0 |
| 213115 | Support Activities for Nonmetallic Minerals (except Fuels) | $5.0 |
| | **Sector 22—Utilities** | |
| | **Subsector 221—Utilities** | |
| 221111 | Hydroelectric Power Generation | 4 mil megawatt hours[1] |
| 221112 | Fossil Fuel Electric Power Generation | 4 mil megawatt hours[1] |
| 221113 | Nuclear Electric Power Generation | 4 mil megawatt hours[1] |
| 221119 | Other Electric Power Generation | 4 mil megawatt hours[1] |
| 221121 | Electric Bulk Power Transmission and Control | 4 mil megawatt hours[1] |
| 221122 | Electric Power Distribution | 4 mil megawatt hours[1] |
| 221210 | Natural Gas Distribution | 500 |
| 221310 | Water Supply and Irrigation Systems | $5.0 |
| 221320 | Sewage Treatment Facilities | $5.0 |
| 221330 | Steam and Air-Conditioning Supply | 9.0 |
| | **Sector 23—Construction** | |
| | **Subsector 233—Building, Developing and General Contracting** | |
| 233110 | 1Land Subdivision and Land Development | $5.0 |
| 233210 | Single Family Housing Construction | 17.0 |
| 233220 | Multifamily Housing Construction | $17.0 |
| 233310 | Manufacturing and Industrial Building Construction | $17.0 |
| 233320 | Commercial and Institutional Building Construction | $17.0 |

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| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| | **Subsection 234—Heavy Construction** | |
| 234110 | Highway and Street Construction | $17.0 |
| 234120 | Bridge and Tunnel Construction | $17.0 |
| 234910 | Water, Sewer, and Pipeline Construction | $17.0 |
| 234920 | Power and Communication Transmission Line Construction | $17.0 |
| 234930 | Industrial Nonbuilding Structure Construction | $17.0 |
| 234990 | All Other Heavy Construction | $17.0 |
| EXCEPT | Except dredging and Surface Cleanup Activities | [2]$13.5 |
| | **Subsector 235—Special Trade Contractors** | |
| 235110 | Plumbing, Heating and Air-Conditioning Contractors | $7.0 |
| 235210 | Painting and Wall Covering Contractors | $7.0 |
| 235310 | Electrical Contractors | $7.0 |
| 235410 | Masonry and Stone Contractors | $7.0 |
| 235420 | Drywall, Plastering, Acoustical and Insulation Contractors | $7.0 |
| 235430 | Tile, Marble, Terrazzo and Mosaic Contractors | $7.0 |
| 235510 | Carpentry Contractors | $7.0 |
| 235520 | Floor Laying and Other Floor Contractors | $7.0 |
| 235610 | Roofing, Siding and Sheet Metal Contractors | $7.0 |
| 235710 | Concrete Contractors | $7.0 |
| 235810 | Water Well Drilling Contractors | $7.0 |
| 235910 | Structural Steel Erection Contractors | $7.0 |
| 235920 | Glass and Glazing Contractors | $7.0 |
| 235930 | Excavation Contractors | $7.0 |
| 235940 | Wrecking and Demolition Contractors | $7.0 |
| 235950 | Building Equipment and Other Machinery Installation Contractors | $7.0 |
| 235990 | All Other Special Trade Contractors | $7.0 |
| EXCEPT | Base Housing Maintenance[13] | [13]$7.0 |
| | **Sectors 31–33—Manufacturing** | |
| | **Subsector 311—Food Manufacturing** | |
| 311111 | Dog and Cat Food Manufacturing | 500 |
| 311119 | Other Animal Food Manufacturing | 500 |
| 311211 | Flour Milling | 500 |
| 311212 | Rice Milling | 500 |
| 311213 | Malt Manufacturing | 500 |
| 311221 | Wet Corn Milling | 750 |
| 311222 | Soybean Processing | 500 |
| 311223 | Other Oilseed Processing | 1,000 |
| 311225 | Fats and Oils Refining and Blending | 1,000 |
| 311230 | Breakfast Cereal Manufacturing | 1,000 |
| 311311 | Sugarcane Mills | 500 |
| 311312 | Cane Sugar Refining | 750 |
| 311313 | Beet Sugar Manufacturing | 750 |
| 311320 | Chocolate and Confectionery Manufacturing from Cacao Beans | 500 |
| 311330 | Confectionery Manufacturing from Purchased Chocolate | 500 |
| 311340 | Non-Chocolate Confectionery Manufacturing | 500 |
| 311411 | Frozen Fruit, Juice and Vegetable Manufacturing | 500 |
| 311412 | Frozen Specialty Food Manufacturing | 500 |
| 311421 | Fruit and Vegetable Canning | [14]500 |
| 311422 | Specialty Canning | 1,000 |
| 311423 | Dried and Dehydrated Food Manufacturing | 500 |
| 311511 | Fluid Milk Manufacturing | 500 |
| 311512 | Creamery Butter Manufacturing | 500 |
| 311513 | Cheese Manufacturing | 500 |
| 311514 | Dry, Condensed, and Evaporated Dairy Product Manufacturing | 500 |
| 311520 | Ice Cream and Frozen Dessert Manufacturing | 500 |
| 311611 | Animal (except Poultry) Slaughtering | 500 |
| 311612 | Meat Processed from Carcasses | 500 |
| 311613 | Rendering and Meat By-product Processing | 500 |
| 311615 | Poultry Processing | 500 |
| 311711 | Seafood Canning | 500 |
| 311712 | Fresh and Frozen Seafood Processing | 500 |
| 311811 | Retail Bakeries | 500 |
| 311812 | Commercial Bakeries | 500 |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 311813 | Frozen Cakes, Pies, and Other Pastries Manufacturing | 500 |
| 311821 | Cookie and Cracker Manufacturing | 750 |
| 311822 | Flour Mixes and Dough Manufacturing from Purchased Flour | 500 |
| 311823 | Dry Pasta Manufacturing | 500 |
| 311830 | Tortilla Manufacturing | 500 |
| 311911 | Roasted Nuts and Peanut Butter Manufacturing | 500 |
| 311919 | Other Snack Food Manufacturing | 500 |
| 311920 | Coffee and Tea Manufacturing | 500 |
| 311930 | Flavoring Syrup and Concentrate Manufacturing | 500 |
| 311941 | Mayonnaise, Dressing and Other Prepared Sauce Manufacturing | 500 |
| 311942 | Spice and Extract Manufacturing | 500 |
| 311991 | Perishable Prepared Food Manufacturing | 500 |
| 311999 | All Other Miscellaneous Food Manufacturing | 500 |
| | **Subsector 312—Beverage and Tobacco Product Manufacturing** | |
| 312111 | Soft Drink Manufacturing | 500 |
| 312112 | Bottled Water Manufacturing | 500 |
| 312113 | Ice Manufacturing | 500 |
| 312120 | Breweries | 500 |
| 312130 | Wineries | 500 |
| 312140 | Distilleries | 750 |
| 312210 | Tobacco Stemming and Redrying | 500 |
| 312221 | Cigarette Manufacturing | 1,000 |
| 312229 | Other Tobacco Product Manufacturing | 500 |
| | **Subsector 313—Textile Mills** | |
| 313111 | Yarn Spinning Mills | 500 |
| 313112 | Yarn Texturing, Throwing and Twisting Mills | 500 |
| 313113 | Thread Mills | 500 |
| 313210 | Broadwoven Fabric Mills | 1,000 |
| 313221 | Narrow Fabric Mills | 500 |
| 313222 | Schiffli Machine Embroidery | 500 |
| 313230 | Nonwoven Fabric Mills | 500 |
| 313241 | Weft Knit Fabric Mills | 500 |
| 313249 | Other Knit Fabric and Lace Mills | 500 |
| 313311 | Broadwoven Fabric Finishing Mills | 1,000 |
| 313312 | Textile and Fabric Finishing (except Broadwoven Fabric) Mills | 500 |
| 313320 | Fabric Coating Mills | 1,000 |
| | **Subsector 314—Textile Product Mills** | |
| 314110 | Carpet and Rug Mills | 500 |
| 314121 | Curtain and Drapery Mills | 500 |
| 314129 | Other Household Textile Product Mills | 500 |
| 314911 | Textile Bag Mills | 500 |
| 314912 | Canvas and Related Product Mills | 500 |
| 314991 | Rope, Cordage and Twine Mills | 500 |
| 314992 | Tire Cord and Tire Fabric Mills | 1,000 |
| 314999 | All Other Miscellaneous Textile Product Mills | 500 |
| | **315—Apparel Manufacturing** | |
| 315111 | Sheer Hosiery Mills | 500 |
| 315119 | Other Hosiery and Sock Mills | 500 |
| 315191 | Outerwear Knitting Mills | 500 |
| 315192 | Underwear and Nightwear Knitting Mills | 500 |
| 315211 | Men's and Boys' Cut and Sew Apparel Contractors | 500 |
| 315212 | Women's, Girls', and Infants' Cut and Sew Apparel Contractors | 500 |
| 315221 | Men's and Boys' Cut and Sew Underwear and Nightwear Manufacturing | 500 |
| 315222 | Men's and Boys' Cut and Sew Suit, Coat and Overcoat Manufacturing | 500 |
| 315223 | Men's and Boys' Cut and Sew Shirt (except Work Shirt) Manufacturing | 500 |
| 315224 | Men's and Boys' Cut and Sew Trouser, Slack and Jean Manufacturing | 500 |
| 315225 | Men's and Boys' Cut and Sew Work Clothing Manufacturing | 500 |
| 315228 | Men's and Boys' Cut and Sew Other Outerwear Manufacturing | 500 |
| 315231 | Women's and Girls' Cut and Sew Lingerie, Loungewear and Nightwear Manufacturing | 500 |
| 315232 | Women's and Girls' Cut and Sew Blouse and Shirt Manufacturing | 500 |
| 315233 | Women's and Girls' Cut and Sew Dress Manufacturing | 500 |

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| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 315234 | Women's and Girls' Cut and Sew Suit, Coat, Tailored Jacket and Skirt Manufacturing | 500 |
| 315239 | Women's and Girls' Cut and Sew Other Outerwear Manufacturing | 500 |
| 315291 | Infants' Cut and Sew Apparel Manufacturing | 500 |
| 315292 | Fur and Leather Apparel Manufacturing | 500 |
| 315299 | All Other Cut and Sew Apparel Manufacturing | 500 |
| 315991 | Hat, Cap and Millinery Manufacturing | 500 |
| 315992 | Glove and Mitten Manufacturing | 500 |
| 315993 | Men's and Boys' Neckwear Manufacturing | 500 |
| 315999 | Other Apparel Accessories and Other Apparel Manufacturing | 500 |
| | **Subsector 316—Leather and Allied Product Manufacturing** | |
| 316110 | Leather and Hide Tanning and Finishing | 500 |
| 316211 | Rubber and Plastics Footwear Manufacturing | 1,000 |
| 316212 | House Slipper Manufacturing | 500 |
| 316213 | Men's Footwear (except Athletic) Manufacturing | 500 |
| 316214 | Women's Footwear (except Athletic) Manufacturing | 500 |
| 316219 | Other Footwear Manufacturing | 500 |
| 316991 | Luggage Manufacturing | 500 |
| 316992 | Women's Handbag and Purse Manufacturing | 500 |
| 316993 | Personal Leather Good (except Women's Handbag and Purse) Manufacturing | 500 |
| 316999 | All Other Leather Good Manufacturing | 500 |
| | **Subsector 321—Wood Product Manufacturing** | |
| 321113 | Sawmills | 500 |
| 321114 | Wood Preservation | 500 |
| 321211 | Hardwood Veneer and Plywood Manufacturing | 500 |
| 321212 | Softwood Veneer and Plywood Manufacturing | 500 |
| 321213 | Engineered Wood Member (except Truss) Manufacturing | 500 |
| 321214 | Truss Manufacturing | 500 |
| 321219 | Reconstituted Wood Product Manufacturing | 500 |
| 321911 | Wood Window and Door Manufacturing | 500 |
| 321912 | Cut Stock, Resawing Lumber, and Planing | 500 |
| 321918 | Other Millwork (including Flooring) | 500 |
| 321920 | Wood Container and Pallet Manufacturing | 500 |
| 321991 | Manufactured Home (Mobile Home) Manufacturing | 500 |
| 321992 | Prefabricated Wood Building Manufacturing | 500 |
| 321999 | All Other Miscellaneous Wood Product Manufacturing | 500 |
| | **Subsector 322—Paper Manufacturing** | |
| 322110 | Pulp Mills | 750 |
| 322121 | Paper (except Newsprint) Mills | 750 |
| 322122 | Newsprint Mills | 750 |
| 322130 | Paperboard Mills | 750 |
| 322211 | Corrugated and Solid Fiber Box Manufacturing | 500 |
| 322212 | Folding Paperboard Box Manufacturing | 750 |
| 322213 | Setup Paperboard Box Manufacturing | 500 |
| 322214 | Fiber Can, Tube, Drum, and Similar Products Manufacturing | 500 |
| 322215 | Non-Folding Sanitary Food Container Manufacturing | 750 |
| 322221 | Coated and Laminated Packaging Paper and Plastics Film Manufacturing | 500 |
| 322222 | Coated and Laminated Paper Manufacturing | 500 |
| 322223 | Plastics, Foil, and Coated Paper Bag Manufacturing | 500 |
| 322224 | Uncoated Paper and Multiwall Bag Manufacturing | 500 |
| 322225 | Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses | 500 |
| 322226 | Surface-Coated Paperboard Manufacturing | 500 |
| 322231 | Die-Cut Paper and Paperboard Office Supplies Manufacturing | 500 |
| 322232 | Envelope Manufacturing | 500 |
| 322233 | Stationery, Tablet, and Related Product Manufacturing | 500 |
| 322291 | Sanitary Paper Product Manufacturing | 500 |
| 322299 | All Other Converted Paper Product Manufacturing | 500 |
| | **Subsector 323—Printing and Related Support Activities** | |
| 323110 | Commercial Lithographic Printing | 500 |
| 323111 | Commercial Gravure Printing | 500 |
| 323112 | Commercial Flexographic Printing | 500 |
| 323113 | Commercial Screen Printing | 500 |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 323114 | Quick Printing | 500 |
| 323115 | Digital Printing | 500 |
| 323116 | Manifold Business Form Printing | 500 |
| 323117 | Book Printing | 500 |
| 323118 | Blankbook, Loose-leaf Binder and Device Manufacturing | 500 |
| 323119 | Other Commercial Printing | 500 |
| 323121 | Tradebinding and Related Work | 500 |
| 323122 | Prepress Services | 500 |
| | **Subsector 324—Petroleum and Coal Products Manufacturing** | |
| 324110 | Petroleum Refineries | [4] 1,500 |
| 324121 | Asphalt Paving Mixture and Block Manufacturing | 500 |
| 324122 | Asphalt Shingle and Coating Materials Manufacturing | 750 |
| 324191 | Petroleum Lubricating Oil and Grease Manufacturing | 500 |
| 324199 | All Other Petroleum and Coal Products Manufacturing | 500 |
| | **Subsector 325—Chemical Manufacturing** | |
| 325110 | Petrochemical Manufacturing | 1,000 |
| 325120 | Industrial Gas Manufacturing | 1,000 |
| 325131 | Inorganic Dye and Pigment Manufacturing | 1,000 |
| 325132 | Synthetic Organic Dye and Pigment Manufacturing | 750 |
| 325181 | Alkalies and Chlorine Manufacturing | 1,000 |
| 325182 | Carbon Black Manufacturing | 500 |
| 325188 | All Other Basic Inorganic Chemical Manufacturing | 1,000 |
| 325191 | Gum and Wood Chemical Manufacturing | 500 |
| 325192 | Cyclic Crude and Intermediate Manufacturing | 750 |
| 325193 | Ethyl Alcohol Manufacturing | 1,000 |
| 325199 | All Other Basic Organic Chemical Manufacturing | 1,000 |
| 325211 | Plastics Material and Resin Manufacturing | 750 |
| 325212 | Synthetic Rubber Manufacturing | 1,000 |
| 325221 | Cellulosic Organic Fiber Manufacturing | 1,000 |
| 325222 | Noncellulosic Organic Fiber Manufacturing | 1,000 |
| 325311 | Nitrogenous Fertilizer Manufacturing | 1,000 |
| 325312 | Phosphatic Fertilizer Manufacturing | 500 |
| 325314 | Fertilizer (Mixing Only) Manufacturing | 500 |
| 325320 | Pesticide and Other Agricultural Chemical Manufacturing | 500 |
| 325411 | Medicinal and Botanical Manufacturing | 750 |
| 325412 | Pharmaceutical Preparation Manufacturing | 750 |
| 325413 | In-Vitro Diagnostic Substance Manufacturing | 500 |
| 325414 | Biological Product (except Diagnostic) Manufacturing | 500 |
| 325510 | Paint and Coating Manufacturing | 500 |
| 325520 | Adhesive Manufacturing | 500 |
| 325611 | Soap and Other Detergent Manufacturing | 750 |
| 325612 | Polish and Other Sanitation Good Manufacturing | 500 |
| 325613 | Surface Active Agent Manufacturing | 500 |
| 325620 | Toilet Preparation Manufacturing | 500 |
| 325910 | Printing Ink Manufacturing | 500 |
| 325920 | Explosives Manufacturing | 750 |
| 325991 | Custom Compounding of Purchased Resin | 500 |
| 325992 | Photographic Film, Paper, Plate and Chemical Manufacturing | 500 |
| 325998 | All Other Chemical Product and Preparation Manufacturing | 500 |
| | **Subsector 326—Plastics and Rubber Products Manufacturing** | |
| 326111 | Unsupported Plastics Bag Manufacturing | 500 |
| 326112 | Unsupported Plastics Packaging Film and Sheet Manufacturing | 500 |
| 326113 | Unsupported Plastics Film and Sheet (except Packaging) Manufacturing | 500 |
| 326121 | Unsupported Plastics Profile Shape Manufacturing | 500 |
| 326122 | Plastics Pipe and Pipe Fitting Manufacturing | 500 |
| 326130 | Laminated Plastics Plate, Sheet and Shape Manufacturing | 500 |
| 326140 | Polystyrene Foam Product Manufacturing | 500 |
| 326150 | Urethane and Other Foam Product (except Polystyrene) Manufacturing | 500 |
| 326160 | Plastics Bottle Manufacturing | 500 |
| 326191 | Plastics Plumbing Fixture Manufacturing | 500 |
| 326192 | Resilient Floor Covering Manufacturing | 750 |
| 326199 | All Other Plastics Product Manufacturing | 500 |
| 326211 | Tire Manufacturing (except Retreading) | [5] 1,000 |

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| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 326212 | Tire Retreading | 500 |
| 326220 | Rubber and Plastics Hoses and Belting Manufacturing | 500 |
| 326291 | Rubber Product Manufacturing for Mechanical Use | 500 |
| 326299 | All Other Rubber Product Manufacturing | 500 |
| | **Subsector 327—Nonmetallic Mineral Product Manufacturing** | |
| 327111 | Vitreous China Plumbing Fixtures and China and Earthenware Bathroom Accessories Manufacturing | 750 |
| 327112 | Vitreous China, Fine Earthenware and Other Pottery Product Manufacturing | 500 |
| 327113 | Porcelain Electrical Supply Manufacturing | 500 |
| 327121 | Brick and Structural Clay Tile Manufacturing | 500 |
| 327122 | Ceramic Wall and Floor Tile Manufacturing | 500 |
| 327123 | Other Structural Clay Product Manufacturing | 500 |
| 327124 | Clay Refractory Manufacturing | 500 |
| 327125 | Nonclay Refractory Manufacturing | 750 |
| 327211 | Flat Glass Manufacturing | 1,000 |
| 327212 | Other Pressed and Blown Glass and Glassware Manufacturing | 750 |
| 327213 | Glass Container Manufacturing | 750 |
| 327215 | Glass Product Manufacturing Made of Purchased Glass | 500 |
| 327310 | Cement Manufacturing | 750 |
| 327320 | Ready-Mix Concrete Manufacturing | 500 |
| 327331 | Concrete Block and Brick Manufacturing | 500 |
| 327332 | Concrete Pipe Manufacturing | 500 |
| 327390 | Other Concrete Product Manufacturing | 500 |
| 327410 | Lime Manufacturing | 500 |
| 327420 | Gypsum Product Manufacturing | 1,000 |
| 327910 | Abrasive Product Manufacturing | 500 |
| 327991 | Cut Stone and Stone Product Manufacturing | 500 |
| 327992 | Ground or Treated Mineral and Earth Manufacturing | 500 |
| 327993 | Mineral Wool Manufacturing | 750 |
| 327999 | All Other Miscellaneous Nonmetallic Mineral Product Manufacturing | 500 |
| | **Subsector 331—Primary Metal Manufacturing** | |
| 331111 | Iron and Steel Mills | 1,000 |
| 331112 | Electrometallurgical Ferroalloy Product Manufacturing | 750 |
| 331210 | Iron and Steel Pipe and Tube Manufacturing from Purchased Steel | 1,000 |
| 331221 | Cold-Rolled Steel Shape Manufacturing | 1,000 |
| 331222 | Steel Wire Drawing | 1,000 |
| 331311 | Alumina Refining | 1,000 |
| 331312 | Primary Aluminum Production | 1,000 |
| 331314 | Secondary Smelting and Alloying of Aluminum | 750 |
| 331315 | Aluminum Sheet, Plate and Foil Manufacturing | 750 |
| 331316 | Aluminum Extruded Product Manufacturing | 750 |
| 331319 | Other Aluminum Rolling and Drawing | 750 |
| 331411 | Primary Smelting and Refining of Copper | 1,000 |
| 331419 | Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum) | 750 |
| 331421 | Copper Rolling, Drawing and Extruding | 750 |
| 331422 | Copper Wire (except Mechanical) Drawing | 1,000 |
| 331423 | Secondary Smelting, Refining, and Alloying of Copper | 750 |
| 331491 | Nonferrous Metal (except Copper and Aluminum) Rolling, Drawing and Extruding | 750 |
| 331492 | Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum) | 750 |
| 331511 | Iron Foundries | 500 |
| 331512 | Steel Investment Foundries | 500 |
| 331513 | Steel Foundries, (except Investment) | 500 |
| 331521 | Aluminum Die-Casting Foundries | 500 |
| 331522 | Nonferrous (except Aluminum) Die-Casting Foundries | 500 |
| 331524 | Aluminum Foundries (except Die-Casting) | 500 |
| 331525 | Copper Foundries (except Die-Casting) | 500 |
| 331528 | Other Nonferrous Foundries (except Die-Casting) | 500 |
| | **Subsector 332—Fabricated Metal Product Manufacturing** | |
| 332111 | Iron and Steel Forging | 500 |
| 332112 | Nonferrous Forging | 500 |
| 332114 | Custom Roll Forming | 500 |
| 332115 | Crown and Closure Manufacturing | 500 |
| 332116 | Metal Stamping | 500 |
| 332117 | Powder Metallurgy Part Manufacturing | 500 |

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| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 332211 | Cutlery and Flatware (except Precious) Manufacturing | 500 |
| 332212 | Hand and Edge Tool Manufacturing | 500 |
| 332213 | Saw Blade and Handsaw Manufacturing | 500 |
| 332214 | Kitchen Utensil, Pot and Pan Manufacturing | 500 |
| 332311 | Prefabricated Metal Building and Component Manufacturing | 500 |
| 332312 | Fabricated Structural Metal Manufacturing | 500 |
| 332313 | Plate Work Manufacturing | 500 |
| 332321 | Metal Window and Door Manufacturing | 500 |
| 332322 | Sheet Metal Work Manufacturing | 500 |
| 332323 | Ornamental and Architectural Metal Work Manufacturing | 500 |
| 332410 | Power Boiler and Heat Exchanger Manufacturing | 500 |
| 332420 | Metal Tank (Heavy Gauge) Manufacturing | 500 |
| 332431 | Metal Can Manufacturing | 1,000 |
| 332439 | Other Metal Container Manufacturing | 500 |
| 332510 | Hardware Manufacturing | 500 |
| 332611 | Spring (Heavy Gauge) Manufacturing | 500 |
| 332612 | Spring (Light Gauge) Manufacturing | 500 |
| 332618 | Other Fabricated Wire Product Manufacturing | 500 |
| 332710 | Machine Shops | 500 |
| 332721 | Precision Turned Product Manufacturing | 500 |
| 332722 | Bolt, Nut, Screw, Rivet and Washer Manufacturing | 500 |
| 332811 | Metal Heat Treating | 750 |
| 332812 | Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers | 500 |
| 332813 | Electroplating, Plating, Polishing, Anodizing and Coloring | 500 |
| 332911 | Industrial Valve Manufacturing | 500 |
| 332912 | Fluid Power Valve and Hose Fitting Manufacturing | 500 |
| 332913 | Plumbing Fixture Fitting and Trim Manufacturing | 500 |
| 332919 | Other Metal Valve and Pipe Fitting Manufacturing | 500 |
| 332991 | Ball and Roller Bearing Manufacturing | 750 |
| 332992 | Small Arms Ammunition Manufacturing | 1,000 |
| 332993 | Ammunition (except Small Arms) Manufacturing | 1,500 |
| 332994 | Small Arms Manufacturing | 1,000 |
| 332995 | Other Ordnance and Accessories Manufacturing | 500 |
| 332996 | Fabricated Pipe and Pipe Fitting Manufacturing | 500 |
| 332997 | Industrial Pattern Manufacturing | 500 |
| 332998 | Enameled Iron and Metal Sanitary Ware Manufacturing | 750 |
| 332999 | All Other Miscellaneous Fabricated Metal Product Manufacturing | 500 |
| | **Subsector 333—Machinery Manufacturing[6]** | |
| 333111 | Farm Machinery and Equipment Manufacturing | 500 |
| 333112 | Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing | 500 |
| 333120 | Construction Machinery Manufacturing | 750 |
| 333131 | Mining Machinery and Equipment Manufacturing | 500 |
| 333132 | Oil and Gas Field Machinery and Equipment Manufacturing | 500 |
| 333210 | Sawmill and Woodworking Machinery Manufacturing | 500 |
| 333220 | Plastics and Rubber Industry Machinery Manufacturing | 500 |
| 333291 | Paper Industry Machinery Manufacturing | 500 |
| 333292 | Textile Machinery Manufacturing | 500 |
| 333293 | Printing Machinery and Equipment Manufacturing | 500 |
| 333294 | Food Product Machinery Manufacturing | 500 |
| 333295 | Semiconductor Machinery Manufacturing | 500 |
| 333298 | All Other Industrial Machinery Manufacturing | 500 |
| 333311 | Automatic Vending Machine Manufacturing | 500 |
| 333312 | Commercial Laundry, Drycleaning and Pressing Machine Manufacturing | 500 |
| 333313 | Office Machinery Manufacturing | 1,000 |
| 333314 | Optical Instrument and Lens Manufacturing | 500 |
| 333315 | Photographic and Photocopying Equipment Manufacturing | 500 |
| 333319 | Other Commercial and Service Industry Machinery Manufacturing | 500 |
| 333411 | Air Purification Equipment Manufacturing | 500 |
| 333412 | Industrial and Commercial Fan and Blower Manufacturing | 500 |
| 333414 | Heating Equipment (except Warm Air Furnaces) Manufacturing | 500 |
| 333415 | Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing. | 750 |
| 333511 | Industrial Mold Manufacturing | 500 |
| 333512 | Machine Tool (Metal Cutting Types) Manufacturing | 500 |
| 333513 | Machine Tool (Metal Forming Types) Manufacturing | 500 |
| 333514 | Special Die and Tool, Die Set, Jig and Fixture Manufacturing | 500 |
| 333515 | Cutting Tool and Machine Tool Accessory Manufacturing | 500 |

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| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 333516 | Rolling Mill Machinery and Equipment Manufacturing | 500 |
| 333518 | Other Metalworking Machinery Manufacturing | 500 |
| 333611 | Turbine and Turbine Generator Set Unit Manufacturing | 1,000 |
| 333612 | Speed Changer, Industrial High-Speed Drive and Gear Manufacturing | 500 |
| 333613 | Mechanical Power Transmission Equipment Manufacturing | 500 |
| 333618 | Other Engine Equipment Manufacturing | 1,000 |
| 333911 | Pump and Pumping Equipment Manufacturing | 500 |
| 333912 | Air and Gas Compressor Manufacturing | 500 |
| 333913 | Measuring and Dispensing Pump Manufacturing | 500 |
| 333921 | Elevator and Moving Stairway Manufacturing | 500 |
| 333922 | Conveyor and Conveying Equipment Manufacturing | 500 |
| 333923 | Overhead Traveling Crane, Hoist and Monorail System Manufacturing | 500 |
| 333924 | Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing | 750 |
| 333991 | Power-Driven Hand Tool Manufacturing | 500 |
| 333992 | Welding and Soldering Equipment Manufacturing | 500 |
| 333993 | Packaging Machinery Manufacturing | 500 |
| 333994 | Industrial Process Furnace and Oven Manufacturing | 500 |
| 333995 | Fluid Power Cylinder and Actuator Manufacturing | 500 |
| 333996 | Fluid Power Pump and Motor Manufacturing | 500 |
| 333997 | Scale and Balance (except Laboratory) Manufacturing | 500 |
| 333999 | All Other Miscellaneous General Purpose Machinery Manufacturing | 500 |
| | **Subsector 334—Computer and Electronic Product Manufacturing[6]** | |
| 334111 | Electronic Computer Manufacturing | 1,000 |
| 334112 | Computer Storage Device Manufacturing | 1,000 |
| 334113 | Computer Terminal Manufacturing | 1,000 |
| 334119 | Other Computer Peripheral Equipment Manufacturing | 1,000 |
| 334210 | Telephone Apparatus Manufacturing | 1,000 |
| 334220 | Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing | 750 |
| 334290 | Other Communications Equipment Manufacturing | 750 |
| 334310 | Audio and Video Equipment Manufacturing | 750 |
| 334411 | Electron Tube Manufacturing | 750 |
| 334412 | Bare Printed Circuit Board Manufacturing | 500 |
| 334413 | Semiconductor and Related Device Manufacturing | 500 |
| 334414 | Electronic Capacitor Manufacturing | 500 |
| 334415 | Electronic Resistor Manufacturing | 500 |
| 334416 | Electronic Coil, Transformer, and Other Inductor Manufacturing | 500 |
| 334417 | Electronic Connector Manufacturing | 500 |
| 334418 | Printed Circuit Assembly (Electronic Assembly) Manufacturing | 500 |
| 334419 | Other Electronic Component Manufacturing | 500 |
| 334510 | Electromedical and Electrotherapeutic Apparatus Manufacturing | 500 |
| 334511 | Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing | 750 |
| 334512 | Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use | 500 |
| 334513 | Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables. | 500 |
| 334514 | Totalizing Fluid Meter and Counting Device Manufacturing | 500 |
| 334515 | Instrument Manufacturing for Measuring and Testing Electricity and Electrical Signals | 500 |
| 334516 | Analytical Laboratory Instrument Manufacturing | 500 |
| 334517 | Irradiation Apparatus Manufacturing | 500 |
| 334518 | Watch, Clock, and Part Manufacturing | 500 |
| 334519 | Other Measuring and Controlling Device Manufacturing | 500 |
| 334611 | Software Reproducing | 500 |
| 334612 | Prerecorded Compact Disc (except Software), Tape, and Record Reproducing | 750 |
| 334613 | Magnetic and Optical Recording Media Manufacturing | 1,000 |
| | **Subsector 335—Electrical Equipment, Appliance and Component Manufacturing[6]** | |
| 335110 | Electric Lamp Bulb and Part Manufacturing | 1,000 |
| 335121 | Residential Electric Lighting Fixture Manufacturing | 500 |
| 335122 | Commercial, Industrial and Institutional Electric Lighting Fixture Manufacturing | 500 |
| 335129 | Other Lighting Equipment Manufacturing | 500 |
| 335211 | Electric Housewares and Household Fan Manufacturing | 750 |
| 335212 | Household Vacuum Cleaner Manufacturing | 750 |
| 335221 | Household Cooking Appliance Manufacturing | 750 |
| 335222 | Household Refrigerator and Home Freezer Manufacturing | 1,000 |
| 335224 | Household Laundry Equipment Manufacturing | 1,000 |
| 335228 | Other Major Household Appliance Manufacturing | 500 |
| 335311 | Power, Distribution and Specialty Transformer Manufacturing | 750 |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 335312 | Motor and Generator Manufacturing | 1,000 |
| 335313 | Switchgear and Switchboard Apparatus Manufacturing | 750 |
| 335314 | Relay and Industrial Control Manufacturing | 750 |
| 335911 | Storage Battery Manufacturing | 500 |
| 335912 | Primary Battery Manufacturing | 1,000 |
| 335921 | Fiber Optic Cable Manufacturing | 1,000 |
| 335929 | Other Communication and Energy Wire Manufacturing | 1,000 |
| 335931 | Current-Carrying Wiring Device Manufacturing | 500 |
| 335932 | Noncurrent-Carrying Wiring Device Manufacturing | 500 |
| 335991 | Carbon and Graphite Product Manufacturing | 750 |
| 335999 | All Other Miscellaneous Electrical Equipment and Component Manufacturing | 500 |
| | **Subsector 336—Transportation Equipment Manufacturing [6]** | |
| 336111 | Automobile Manufacturing | 1,000 |
| 336112 | Light Truck and Utility Vehicle Manufacturing | 1,000 |
| 336120 | Heavy Duty Truck Manufacturing | 1,000 |
| 336211 | Motor Vehicle Body Manufacturing | 1,000 |
| 336212 | Truck Trailer Manufacturing | 500 |
| 336213 | Motor Home Manufacturing | 1,000 |
| 336214 | Travel Trailer and Camper Manufacturing | 500 |
| 336311 | Carburetor, Piston, Piston Ring and Valve Manufacturing | 500 |
| 336312 | Gasoline Engine and Engine Parts Manufacturing | 750 |
| 336321 | Vehicular Lighting Equipment Manufacturing | 500 |
| 336322 | Other Motor Vehicle Electrical and Electronic Equipment Manufacturing | 750 |
| 336330 | Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing | 750 |
| 336340 | Motor Vehicle Brake System Manufacturing | 750 |
| 336350 | Motor Vehicle Transmission and Power Train Parts Manufacturing | 750 |
| 336360 | Motor Vehicle Seating and Interior Trim Manufacturing | 500 |
| 336370 | Motor Vehicle Metal Stamping | 500 |
| 336391 | Motor Vehicle Air-Conditioning Manufacturing | 750 |
| 336399 | All Other Motor Vehicle Parts Manufacturing | 750 |
| 336411 | Aircraft Manufacturing | 1,500 |
| 336412 | Aircraft Engine and Engine Parts Manufacturing | 1,000 |
| 336413 | Other Aircraft Part and Auxiliary Equipment Manufacturing | 1,000 |
| 336414 | Guided Missile and Space Vehicle Manufacturing | 1,000 |
| 336415 | Guided Missile and Space Vehicle Propulsion Unit and Propulsion Unit Parts Manufacturing | 1,000 |
| 336419 | Other Guided Missile and Space Vehicle Parts and Auxiliary Equipment Manufacturing | 1,000 |
| 336510 | Railroad Rolling Stock Manufacturing | 1,000 |
| 336611 | Ship Building and Repairing | 1,000 |
| 336612 | Boat Building | 500 |
| 336991 | Motorcycle, Bicycle and Parts Manufacturing | 500 |
| 336992 | Military Armored Vehicle, Tank and Tank Component Manufacturing | 1,000 |
| 336999 | All Other Transportation Equipment Manufacturing | 500 |
| | **Subsector 337—Furniture and Related Product Manufacturing** | |
| 337110 | Wood Kitchen Cabinet and Counter Top Manufacturing | 500 |
| 337121 | Upholstered Household Furniture Manufacturing | 500 |
| 337122 | Nonupholstered Wood Household Furniture Manufacturing | 500 |
| 337124 | Metal Household Furniture Manufacturing | 500 |
| 337125 | Household Furniture (except Wood and Metal) Manufacturing | 500 |
| 337127 | Institutional Furniture Manufacturing | 500 |
| 337129 | Wood Television, Radio, and Sewing Machine Cabinet Manufacturing | 500 |
| 337211 | Wood Office Furniture Manufacturing | 500 |
| 337212 | Custom Architectural Woodwork and Millwork Manufacturing | 500 |
| 337214 | Office Furniture (Except Wood) Manufacturing | 500 |
| 337215 | Showcase, Partition, Shelving, and Locker Manufacturing | 500 |
| 337910 | Mattress Manufacturing | 500 |
| 337920 | Blind and Shade Manufacturing | 500 |
| | **Subsector 339—Miscellaneous Manufacturing** | |
| 339111 | Laboratory Apparatus and Furniture Manufacturing | 500 |
| 339112 | Surgical and Medical Instrument Manufacturing | 500 |
| 339113 | Surgical Appliance and Supplies Manufacturing | 500 |
| 339114 | Dental Equipment and Supplies Manufacturing | 500 |
| 339115 | Ophthalmic Goods Manufacturing | 500 |
| 339116 | Dental Laboratories | 500 |

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SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 339911 | Jewelry (except Costume) Manufacturing | 500 |
| 339912 | Silverware and Plated Ware Manufacturing | 500 |
| 339913 | Jewelers' Material and Lapidary Work Manufacturing | 500 |
| 339914 | Costume Jewelry and Novelty Manufacturing | 500 |
| 339920 | Sporting and Athletic Goods Manufacturing | 500 |
| 339931 | Doll and Stuffed Toy Manufacturing | 500 |
| 339932 | Game, Toy, and Children's Vehicle Manufacturing | 500 |
| 339941 | Pen and Mechanical Pencil Manufacturing | 500 |
| 339942 | Lead Pencil and Art Good Manufacturing | 500 |
| 339943 | Marking Device Manufacturing | 500 |
| 339944 | Carbon Paper and Inked Ribbon Manufacturing | 500 |
| 339950 | Sign Manufacturing | 500 |
| 339991 | Gasket, Packing, and Sealing Device Manufacturing | 500 |
| 339992 | Musical Instrument Manufacturing | 500 |
| 339993 | Fastener, Button, Needle and Pin Manufacturing | 500 |
| 339994 | Broom, Brush and Mop Manufacturing | 500 |
| 339995 | Burial Casket Manufacturing | 500 |
| 339999 | All Other Miscellaneous Manufacturing | 500 |
| | **Sector 42—Wholesale Trade** | |
| | (Not applicable to Government procurement of supplies. The nonmanufacturer size standard of 500 employees shall be used for purposes of Government procurement of supplies.) | |
| | **Subsector 421—Wholesale Trade—Durable Goods** | |
| 421110 | Automobile and Other Motor Vehicle Wholesalers | 100 |
| 421120 | Motor Vehicle Supplies and New Part Wholesalers | 100 |
| 421130 | Tire and Tube Wholesalers | 100 |
| 421140 | Motor Vehicle Part (Used) Wholesalers | 100 |
| 421210 | Furniture Wholesalers | 100 |
| 421220 | Home Furnishing Wholesalers | 100 |
| 421310 | Lumber, Plywood, Millwork and Wood Panel Wholesalers | 100 |
| 421320 | Brick, Stone and Related Construction Material Wholesalers | 100 |
| 421330 | Roofing, Siding and Insulation Material Wholesalers | 100 |
| 421390 | Other Construction Material Wholesalers | 100 |
| 421410 | Photographic Equipment and Supplies Wholesalers | 100 |
| 421420 | Office Equipment Wholesalers | 100 |
| 421430 | Computer and Computer Peripheral Equipment and Software Wholesalers | 100 |
| 421440 | Other Commercial Equipment Wholesalers | 100 |
| 421450 | Medical, Dental and Hospital Equipment and Supplies Wholesalers | 100 |
| 421460 | Ophthalmic Goods Wholesalers | 100 |
| 421490 | Other Professional Equipment and Supplies Wholesalers | 100 |
| 421510 | Metal Service Centers and Offices | 100 |
| 421520 | Coal and Other Mineral and Ore Wholesalers | 100 |
| 421610 | Electrical Apparatus and Equipment, Wiring Supplies and Construction Material Wholesalers | 100 |
| 421620 | Electrical Appliance, Television and Radio Set Wholesalers | 100 |
| 421690 | Other Electronic Parts and Equipment Wholesalers | 100 |
| 421710 | Hardware Wholesalers | 100 |
| 421720 | Plumbing and Heating Equipment and Supplies (Hydronics) Wholesalers | 100 |
| 421730 | Warm Air Heating and Air-Conditioning Equipment and Supplies Wholesalers | 100 |
| 421740 | Refrigeration Equipment and Supplies Wholesalers | 100 |
| 421810 | Construction and Mining (except Petroleum) Machinery and Equipment Wholesalers | 100 |
| 421820 | Farm and Garden Machinery and Equipment Wholesalers | 100 |
| 421830 | Industrial Machinery and Equipment Wholesalers | 100 |
| 421840 | Industrial Supplies Wholesalers | 100 |
| 421850 | Service Establishment Equipment and Supplies Wholesalers | 100 |
| 421860 | Transportation Equipment and Supplies (except Motor Vehicle) Wholesalers | 100 |
| 421910 | Sporting and Recreational Goods and Supplies Wholesalers | 100 |
| 421920 | Toy and Hobby Goods and Supplies Wholesalers | 100 |
| 421930 | Recyclable Material Wholesalers | 100 |
| 421940 | Jewelry, Watch, Precious Stone and Precious Metal Wholesalers | 100 |
| 421990 | Other Miscellaneous Durable Goods Wholesalers | 100 |
| | **Subsector 422—Wholesale Trade—Nondurable Goods** | |
| 422110 | Printing and Writing Paper Wholesalers | 100 |
| 422120 | Stationary and Office Supplies Wholesalers | 100 |
| 422130 | Industrial and Personal Service Paper Wholesalers | 100 |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 422210 | Drugs and Druggists' Sundries Wholesalers | 100 |
| 422310 | Piece Goods, Notions and Other Dry Goods Wholesalers | 100 |
| 422320 | Men's and Boys' Clothing and Furnishings Wholesalers | 100 |
| 422330 | Women's, Children's, and Infants' Clothing and Accessories Wholesalers | 100 |
| 422340 | Footwear Wholesalers | 100 |
| 422410 | General Line Grocery Wholesalers | 100 |
| 422420 | Packaged Frozen Food Wholesalers | 100 |
| 422430 | Dairy Product (except Dried or Canned) Wholesalers | 100 |
| 422440 | Poultry and Poultry Product Wholesalers | 100 |
| 422450 | Confectionery Wholesalers | 100 |
| 422460 | Fish and Seafood Wholesalers | 100 |
| 422470 | Meat and Meat Product Wholesalers | 100 |
| 422480 | Fresh Fruit and Vegetable Wholesalers | 100 |
| 422490 | Other Grocery and Related Products Wholesalers | 100 |
| 422510 | Grain and Field Bean Wholesalers | 100 |
| 422520 | Livestock Wholesalers | 100 |
| 422590 | Other Farm Product Raw Material Wholesalers | 100 |
| 422610 | Plastics Materials and Basic Forms and Shapes Wholesalers | 100 |
| 422690 | Other Chemical and Allied Products Wholesalers | 100 |
| 422710 | Petroleum Bulk Stations and Terminals | 100 |
| 422720 | Petroleum and Petroleum Products Wholesalers (except Bulk Stations and Terminals) | 100 |
| 422810 | Beer and Ale Wholesalers | 100 |
| 422820 | Wine and Distilled Alcoholic Beverage Wholesalers | 100 |
| 422910 | Farm Supplies Wholesalers | 100 |
| 422920 | Book, Periodical and Newspaper Wholesalers | 100 |
| 422930 | Flower, Nursery Stock and Florists' Supplies Wholesalers | 100 |
| 422940 | Tobacco and Tobacco Product Wholesalers | 100 |
| 422950 | Paint, Varnish and Supplies Wholesalers | 100 |
| 422990 | Other Miscellaneous Nondurable Goods Wholesalers | 100 |
| | **Sectors 44–45—Retail Trade** | |
| | **Subsector 441—Motor Vehicle and Parts Dealers** | |
| 441110 | New Car Dealers | $21.0 |
| 441120 | Used Car Dealers | $17.0 |
| 441210 | Recreational Vehicle Dealers | $5.0 |
| 441221 | Motorcycle Dealers | $5.0 |
| 441222 | Boat Dealers | $5.0 |
| 441229 | All Other Motor Vehicle Dealers | $5.0 |
| EXCEPT | Aircraft Dealers, Retail | $7.5 |
| 441310 | Automotive Parts and Accessories Stores | $5.0 |
| 441320 | Tire Dealers | $5.0 |
| | **Subsector 442—Furniture and Home Furnishings Stores** | |
| 442110 | Furniture Stores | $5.0 |
| 442210 | Floor Covering Stores | $5.0 |
| 442291 | Window Treatment Stores | $5.0 |
| 442299 | All Other Home Furnishings Stores | $5.0 |
| | **Subsector 443—Electronics and Appliance Stores** | |
| 443111 | Household Appliance Stores | $6.5 |
| 443112 | Radio, Television and Other Electronics Stores | $6.5 |
| 443120 | Computer and Software Stores | $6.5 |
| 443130 | Camera and Photographic Supplies Stores | $5.0 |
| | **Subsector 444—Building Material and Garden Equipment and Supplies Dealers** | |
| 444110 | Home Centers | $5.0 |
| 444120 | Paint and Wallpaper Stores | $5.0 |
| 444130 | Hardware Stores | $5.0 |
| 444190 | Other Building Material Dealers | $5.0 |
| 444210 | Outdoor Power Equipment Stores | $5.0 |
| 444220 | Nursery and Garden Centers | $5.0 |

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SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| | **Subsector 445—Food and Beverage Stores** | |
| 445110 | Supermarkets and Other Grocery (except Convenience) Stores | $20.0 |
| 445120 | Convenience Stores | $20.0 |
| 445210 | Meat Markets | $5.0 |
| 445220 | Fish and Seafood Markets | $5.0 |
| 445230 | Fruit and Vegetable Markets | $5.0 |
| 445291 | Baked Goods Stores | $5.0 |
| 445292 | Confectionery and Nut Stores | $5.0 |
| 445299 | All Other Specialty Food Stores | $5.0 |
| 445310 | Beer, Wine and Liquor Stores | $5.0 |
| | **Subsector 446—Health and Personal Care Stores** | |
| 446110 | Pharmacies and Drug Stores | $5.0 |
| 446120 | Cosmetics, Beauty Supplies and Perfume Stores | $5.0 |
| 446130 | Optical Goods Stores | $5.0 |
| 446191 | Food (Health) Supplement Stores | $5.0 |
| 446199 | All Other Health and Personal Care Stores | $5.0 |
| | **Subsector 447—Gasoline Stations** | |
| 447110 | Gasoline Stations with Convenience Stores | $20.0 |
| 447190 | Other Gasoline Stations | $6.5 |
| | **Subsector 448—Clothing and Clothing Accessories Stores** | |
| 448110 | Men's Clothing Stores | $6.5 |
| 448120 | Women's Clothing Stores | $6.5 |
| 448130 | Children's and Infants' Clothing Stores | $6.5 |
| 448140 | Family Clothing Stores | $6.5 |
| 448150 | Clothing Accessories Stores | $6.5 |
| 448190 | Other Clothing Stores | $5.0 |
| 448210 | Shoe Stores | $6.5 |
| 448310 | Jewelry Stores | $5.0 |
| 448320 | Luggage and Leather Goods Stores | $5.0 |
| | **Subsector 451—Sporting Good, Hobby, Book and Music Stores** | |
| 451110 | Sporting Goods Stores | $5.0 |
| 451120 | Hobby, Toy and Game Stores | $5.0 |
| 451130 | Sewing, Needlework and Piece Goods Stores | $5.0 |
| 451140 | Musical Instrument and Supplies Stores | $5.0 |
| 451211 | Book Stores | $5.0 |
| 451212 | News Dealers and Newsstands | $5.0 |
| 451220 | Prerecorded Tape, Compact Disc and Record Stores | $5.0 |
| | **Subsector 452—General Merchandise Stores** | |
| 452110 | Department Stores | $20.0 |
| 452910 | Warehouse Clubs and Superstores | $20.0 |
| 452990 | All Other General Merchandise Stores | $$8.0 |
| | **Subsector 453—Miscellaneous Store Retailers** | |
| 453110 | Florists | $5.0 |
| 453210 | Office Supplies and Stationery Stores | $5.0 |
| 453220 | Gift, Novelty and Souvenir Stores | $5.0 |
| 453310 | Used Merchandise Stores | $5.0 |
| 453910 | Pet and Pet Supplies Stores | $5.0 |
| 453920 | Art Dealers | $5.0 |
| 453930 | Manufactured (Mobile) Home Dealers | $9.5 |
| 453991 | Tobacco Stores | $5.0 |
| 453998 | All Other Miscellaneous Store Retailers (except Tobacco Stores) | $5.0 |
| 454110 | Electronic Shopping and Mail-Order Houses | $8.5 |
| 454210 | Vending Machine Operators | $5.0 |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 454311 | Heating Oil Dealers | $9.0 |
| 454312 | Liquefied Petroleum Gas (Bottled Gas) Dealers | $5.0 |
| 454319 | Other Fuel Dealers | $5.0 |
| 454390 | Other Direct Selling Establishments | $5.0 |
| | **Sectors 48—49—Transportation** | |
| | **Subsector 481—Air Transportation** | |
| 481111 | Scheduled Passenger Air Transportation | $1,500 |
| 481112 | Scheduled Freight Air Transportation | $1,500 |
| 481211 | Nonscheduled Chartered Passenger Air Transportation | $1,500 |
| Except | Offshore Marine Air Transportation Services | $20.0 |
| 481212 | Nonscheduled Chartered Freight Air Transportation 1,500 EXCEPT Except Offshore Marine Air Transportation Services $20.0 481219 Other Nonscheduled Air Transportation $5.0. | |
| | **Subsector 482—Rail Transportation** | |
| 482111 | Line-Haul Railroads | $500 |
| 482112 | Short Line Railroads | $500 |
| | **Subsector 483—Water Transportation** | |
| 483111 | Deep Sea Freight Transportation | $500 |
| 483112 | Deep Sea Passenger Transportation | $500 |
| 483113 | Coastal and Great Lakes Freight Transportation | $500 |
| 483114 | Coastal and Great Lakes Passenger Transportation | $500 |
| 483211 | Inland Water Freight Transportation | $500 |
| 483212 | Inland Water Passenger Transportation | $500 |
| | **Subsector 484—Truck Transportation** | |
| 484110 | General Freight Trucking, Local | $18.5 |
| 484121 | General Freight Trucking, Long-Distance, Truckload | $18.5 |
| 484122 | General Freight Trucking, Long-Distance, Less Than Truckload | $18.5 |
| 484210 | Used Household and Office Goods Moving | $18.5 |
| 484220 | Specialized Freight (except Used Goods) Trucking, Local | $18.5 |
| 484230 | Specialized Freight (except Used Goods) Trucking, Long-Distance | $18.5 |
| | **Subsector 485—Transit and Ground Passenger Transportation** | |
| 485110 | Mixed Mode Transit Systems | $5.0 |
| 485112 | Commuter Rail Systems | $5.0 |
| 485113 | Bus and Motor Vehicle Transit Systems | $5.0 |
| 485119 | Other Urban Transit Systems | $5.0 |
| 485210 | Interurban and Rural Bus Transportation | $5.0 |
| 485310 | Taxi Service | $5.0 |
| 485320 | Limousine Service | $5.0 |
| 485410 | School and Employee Bus Transportation | $5.0 |
| 485510 | Charter Bus Industry | $5.0 |
| 485991 | Special Needs Transportation | $5.0 |
| 485999 | All Other Transit and Ground Passenger Transportation | $5.0 |
| | **Subsector 486—Pipeline Transportation** | |
| 486110 | Pipeline Transportation of Crude Oil | 1,500 |
| 486210 | Pipeline Transportation of Natural Gas | $5.0 |
| 486910 | Pipeline Transportation of Refined Petroleum Products | 1,500 |
| 486990 | All Other Pipeline Transportation | $25.0 |
| | **Subsector 487—Scenic and Sightseeing Transportation** | |
| 487110 | Scenic and Sightseeing Transportation, Land | $5.0 |
| 487210 | Scenic and Sightseeing Transportation, Water | $5.0 |
| 487990 | Scenic and Sightseeing Transportation, Other | $5.0 |
| | **Subsector 488—Support Activities for Transportation** | |
| 488111 | Air Traffic Control | $5.0 |
| 488119 | Other Airport Operations | $5.0 |
| 488190 | Other Support Activities for Air Transportation | $5.0 |

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| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 488210 | Support Activities for Rail Transportation | $5.0 |
| 488310 | Port and Harbor Operations | $18.5 |
| 488320 | Marine Cargo Handling | $18.5 |
| 488330 | Navigational Services to Shipping | $5.0 |
| 488390 | Other Support Activities for Water Transportation | $5.0 |
| 488410 | Motor Vehicle Towing | $5.0 |
| 488490 | Other Support Activities for Road Transportation | $5.0 |
| 488510 | Freight Transportation Arrangement | $18.5 |
| 488991 | Packing and Crating | $18.5 |
| 488999 | All Other Support Activities for Transportation | $5.0 |
| | **Subsector 491—Postal Service** | |
| 491110 | Postal Service | $5.0 |
| | **Subsector 492—Couriers and Messengers** | |
| 492110 | Couriers | 1,500 |
| 492210 | Local Messengers and Local Delivery | $18.5 |
| | **Subsector 493—Warehousing and Storage** | |
| 493110 | General Warehousing and Storage | $18.5 |
| 493120 | Refrigerated Warehousing and Storage | $18.5 |
| 493130 | Farm Product Warehousing and Storage | $18.5 |
| 493190 | Other Warehousing and Storage | $18.5 |
| | **Sector 51—Information** | |
| | **Subsector 511—Publishing Industries** | |
| 511110 | Newspaper Publishers | 500 |
| 511120 | Periodical Publishers | 500 |
| 511130 | Book Publishers | 500 |
| 511140 | Database and Directory Publishers | 500 |
| 511191 | Greeting Card Publishers | 500 |
| 511199 | All Other Publishers | 500 |
| 511210 | Software Publishers $18.0. | |
| | **Subsector 512—Motion Picture and Sound Recording Industries** | |
| 512110 | Motion Picture and Video Production | $21.5 |
| 512120 | Motion Picture and Video Distribution | $21.5 |
| 512131 | Motion Picture Theaters (except Drive-Ins) | $5.0 |
| 512132 | Drive-In Motion Picture Theaters | $5.0 |
| 512191 | Teleproduction and Other Post-Production Services | $21.5 |
| 512199 | Other Motion Picture and Video Industries | $5.0 |
| 512210 | Record Production | $5.0 |
| 512220 | Integrated Record Production/Distribution | 750 |
| 512230 | Music Publishers | 500 |
| 512240 | Sound Recording Studios | $5.0 |
| 512290 | Other Sound Recording Industries | $5.0 |
| | **Subsector 513—Broadcasting and Telecommunications** | |
| 513111 | Radio Networks | $5.0 |
| 513112 | Radio Stations | $5.0 |
| 513120 | Television Broadcasting | $10.5 |
| 513210 | Cable Networks | $11.0 |
| 513220 | Cable and Other Program Distribution | $11.0 |
| 513310 | Wired Telecommunications Carriers | 1,500 |
| 513321 | Paging | 1,500 |
| 513322 | Cellular and Other Wireless Telecommunications | 1,500 |
| 513330 | Telecommunications Resellers | 1,500 |
| 513340 | Satellite Telecommunications | $11.0 |
| 513390 | Other Telecommunications | $11.0 |
| | **Subsector 514—Information Services and Data Processing Services** | |
| 514110 | News Syndicates | $5.0 |
| 514120 | Libraries and Archives | $5.0 |
| 514191 | On-Line Information Services | $18.0 |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 514199 | All Other Information Services | $5.0 |
| 514210 | Data Processing Services | $18.0 |
| | **Sector 52—Finance and Insurance** | |
| | **Subsector 522—Credit Intermediation and Related Activities** | |
| 522110 | Commercial Banking | $100 mil in assets[8] |
| 522120 | Savings Institutions | $100 mil in assets |
| 522130 | Credit Unions | $100 mil in assets |
| 522190 | Other Depository Credit Intermediation | $100 mil in assets |
| 522210 | Credit Card Issuing | $100 mil in assets |
| 522220 | Sales Financing | $5.0 |
| 522291 | Consumer Lending | $5.0 |
| 522292 | Real Estate Credit | $5.0 |
| 522293 | International Trade Financing | $100 mil in assets |
| 522294 | Secondary Market Financing | $5.0 |
| 522298 | All Other Non-Depository Credit Intermediation | $5.0 |
| 522310 | Mortgage and Nonmortgage Loan Brokers | $5.0 |
| 522320 | Financial Transactions Processing, Reserve, and Clearing House Activities | $5.0 |
| 522390 | Other Activities Related to Credit Intermediation | $5.0 |
| | **Subsector 523—Financial Investments and Related Activities** | |
| 523110 | Investment Banking and Securities Dealing | $5.0 |
| 523120 | Securities Brokerage | $5.0 |
| 523130 | Commodity Contracts Dealing | $5.0 |
| 523140 | Commodity Contracts Brokerage | $5.0 |
| 523210 | Securities and Commodity Exchanges | $5.0 |
| 523910 | Miscellaneous Intermediation | $5.0 |
| 523920 | Portfolio Management | $5.0 |
| 523930 | Investment Advice | $5.0 |
| 523991 | Trust, Fiduciary and Custody Activities | $5.0 |
| 523999 | Miscellaneous Financial Investment Activities | $5.0 |
| | **Subsector 524—Insurance Carriers and Related Activities** | |
| 524113 | Direct Life Insurance Carriers | $5.0 |
| 524114 | Direct Health and Medical Insurance Carriers | $5.0 |
| 524126 | Direct Property and Casualty Insurance Carriers | 1,500 |
| 524127 | Direct Title Insurance Carriers | $5.0 |
| 524128 | Other Direct Insurance (except Life, Health and Medical) Carriers | $5.0 |
| 524130 | Reinsurance Carriers | $5.0 |
| 524210 | Insurance Agencies and Brokerages | $5.0 |
| 524291 | Claims Adjusting | $5.0 |
| 524292 | Third Party Administration of Insurance and Pension Funds | $5.0 |
| 524298 | All Other Insurance Related Activities | $5.0 |
| | **Subsector 525—Funds, Trusts and Other Financial Vehicles** | |
| 525110 | Pension Funds | $5.0 |
| 525120 | Health and Welfare Funds | $5.0 |
| 525190 | Other Insurance Funds | $5.0 |
| 525910 | Open-End Investment Funds | $5.0 |
| 525920 | Trusts, Estates, and Agency Accounts | $5.0 |

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| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 525930 | Real Estate Investment Trusts | $5.0 |
| 525990 | Other Financial Vehicles | $5.0 |
| | **Sector 53—Real Estate and Rental and Leasing** | |
| | **Subsector 531—Real Estate 531110** | |
| 53110 | Lessors of Residential Buildings and Dwellings | $5.0 |
| 531120 | Lessors of Nonresidential Buildings (except Miniwarehouses) | $5.0 |
| 531130 | Lessors of Miniwarehouses and Self Storage Units | $18.5 |
| 531190 | Lessors of Other Real Estate Property | $5.0 |
| EXCEPT | Leasing of Building Space to Federal Government by Owners | [9] $15.0 |
| 531210 | Offices of Real Estate Agents and Brokers | [10] $1.5 |
| 531311 | Residential Property Managers | $1.5 |
| 531312 | Nonresidential Property Managers | $1.5 |
| | **Subsector 532—Rental and Leasing Services** | |
| 532111 | Passenger Car Rental | $18.5 |
| 532112 | Passenger Car Leasing | $18.5 |
| 53212 | Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing | $18.5 |
| 532210 | Consumer Electronics and Appliances Rental | $5.0 |
| 532220 | Formal Wear and Costume Rental | $5.0 |
| 532230 | Video Tape and Disc Rental | $5.0 |
| 532291 | Home Health Equipment Rental | $5.0 |
| 532292 | Recreational Goods Rental | $5.0 |
| 532299 | All Other Consumer Goods Rental | $5.0 |
| 532310 | General Rental Centers | $5.0 |
| 532411 | Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing | $5.0 |
| 532412 | Construction, Mining and Forestry Machinery and Equipment Rental and Leasing | $5.0 |
| 532420 | Office Machinery and Equipment Rental and Leasing | $18.0 |
| 532490 | Other Commercial and Industrial Machinery and Equipment Rental and Leasing | $5.0 |
| | **Subsector 533—Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)** | |
| 533110 | Lessors of Nonfinancial Intangible Assets (except Copyrighted Works) | $5.0 |
| | **Sector 54—Professional, Scientific and Technical Services** | |
| | **Subsector 541—Professional, Scientific and Technical Services** | |
| 541110 | Offices of Lawyers | $5.0 |
| 541191 | Title Abstract and Settlement Offices | $5.0 |
| 541199 | All Other Legal Services | $5.0 |
| 541211 | Offices of Certified Public Accountants | $6.0 |
| 541213 | Tax Preparation Services | $5.0 |
| 541214 | Payroll Services | $6.0 |
| 541219 | Other Accounting Services | $6.0 |
| 541310 | Architectural Services | $4.0 |
| 541320 | Landscape Architectural Services | $5.0 |
| 541330 | Engineering Services | $4.0 |
| EXCEPT | Military and Aerospace Equipment and Military Weapons | $20.0 |
| EXCEPT | Contracts and Subcontracts for Engineering Services Awarded Under the National Energy Policy Act of 1992 | $20.0 |
| EXCEPT | Marine Engineering and Naval Architecture | $13.5 |
| 541340 | Drafting Services | $5.0 |
| EXCEPT | Map Drafting | $4.0 |
| 541350 | Building Inspection Services | $5.0 |
| 541360 | Geophysical Surveying and Mapping Services | $4.0 |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 541370 | Surveying and Mapping (except Geophysical) Services | $4.0 |
| EXCEPT | Mapmaking | $4.0 |
| 541380 | Testing Laboratories | $5.0 |
| 541410 | Interior Design Services | $5.0 |
| 541420 | Industrial Design Services | $5.0 |
| 541430 | Graphic Design Services | $5.0 |
| 541490 | Other Specialized Design Services | $5.0 |
| 541511 | Custom Computer Programming Services | $18.0 |
| 541512 | Computer Systems Design Services | $18.0 |
| 541513 | Computer Facilities Management Services | $18.0 |
| 541519 | Other Computer Related Services | $18.0 |
| 541611 | Administrative Management and General Management Consulting Services | $5.0 |
| 541612 | Human Resources and Executive Search Consulting Services | $5.0 |
| 541613 | Marketing Consulting Services | $5.0 |
| 541614 | Process, Physical Distribution and Logistics Consulting Services | $5.0 |
| 541618 | Other Management Consulting Services | $5.0 |
| 541620 | Environmental Consulting Services | $5.0 |
| 541690 | Other Scientific and Technical Consulting Services | $5.0 |
| 541710 | Research and Development in the Physical, Engineering, and Life Sciences | [11]500 |
| EXCEPT | Aircraft | 1,500 |
| EXCEPT | Aircraft Parts, and Auxiliary Equipment, and Aircraft Engine Parts | 1,000 |
| EXCEPT | Space Vehicles and Guided Missiles, their Propulsion Units, their Propulsion Units Parts, and their Auxiliary Equipment and Parts. | 1,000 |
| 541720 | Research and Development in the Social Sciences and Humanities | $5.0 |
| 541810 | Advertising Agencies | [10]$5.0 |
| 541820 | Public Relations Agencies | $5.0 |
| 541830 | Media Buying Agencies | $5.0 |
| 541840 | Media Representatives | $5.0 |
| 541850 | Display Advertising | $5.0 |
| 541860 | Direct Mail Advertising | $5.0 |
| 541870 | Advertising Material Distribution Services | $5.0 |
| 541890 | Other Services Related to Advertising | $5.0 |
| 541910 | Marketing Research and Public Opinion Polling | $5.0 |
| 541921 | Photography Studios, Portrait | $5.0 |
| 541922 | Commercial Photography | $5.0 |
| 541930 | Translation and Interpretation Services | $5.0 |
| 541940 | Veterinary Services | $5.0 |
| 541990 | All Other Professional, Scientific and Technical Services | $5.0 |
| | **Sector 55—Management of Companies and Enterprises** | |
| | **Subsector 551—Management of Companies and Enterprises** | |
| 551111 | Offices of Bank Holding Companies | $5.0 |
| 551112 | Offices of Other Holding Companies | $5.0 |
| | **Sector 56—Administrative and Support, Waste Management and Remediation Services** | |
| | **Subsector 561—Administrative and Support Services** | |
| 561110 | Office Administrative Services | $5.0 |
| 561210 | Facilities Support Services[12] | [12]$5.0 |
| EXCEPT | Base Maintenance [13] | [13]$20.0 |
| 561310 | Employment Placement Agencies | $5.0 |
| 561320 | Temporary Help Services | $5.0 |
| 561330 | Employee Leasing Services | $5.0 |
| 561410 | Document Preparation Services | $5.0 |
| 561421 | Telephone Answering Services | $5.0 |
| 561422 | Telemarketing Bureaus | $5.0 |
| 561431 | Private Mail Centers | $5.0 |
| 561439 | Other Business Service Centers (including Copy Shops) | $5.0 |
| 561440 | Collection Agencies | $5.0 |
| 561450 | Credit Bureaus | $5.0 |
| 561491 | Repossession Services | $5.0 |
| 561492 | Court Reporting and Stenotype Services | $5.0 |
| 561499 | All Other Business Support Services | $5.0 |
| 561510 | Travel Agencies | [10]$1.0 |
| 561520 | Tour Operators | $5.0 |
| 561591 | Convention and Visitors Bureaus | $5.0 |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 561599 | All Other Travel Arrangement and Reservation Services | $5.0 |
| 561611 | Investigation Services | $9.0 |
| 561612 | Security Guards and Patrol Services | $9.0 |
| 561613 | Armored Car Services | $9.0 |
| 561621 | Security Systems Services (except Locksmiths) | $9.0 |
| 561622 | Locksmiths | $5.0 |
| 561710 | Exterminating and Pest Control Services | $5.0 |
| 561720 | Janitorial Services | $12.0 |
| 561730 | Landscaping Services | $5.0 |
| 561740 | Carpet and Upholstery Cleaning Services | $3.5 |
| 561790 | Other Services to Buildings and Dwellings | $5.0 |
| 561910 | Packaging and Labeling Services | $5.0 |
| 561920 | Convention and Trade Show Organizers | [10] $5.0 |
| 561990 | All Other Support Services | $5.0 |
| 562111 | Solid Waste Collection | $6.0 |
| | **Subsector 562—Waste Management and Remediation Services** | |
| 562112 | Hazardous Waste Collection | $6.0 |
| 562119 | Other Waste Collection | $6.0 |
| 562211 | Hazardous Waste Treatment and Disposal | $6.0 |
| 562212 | Solid Waste Landfill | $6.0 |
| 562213 | Solid Waste Combustors and Incinerators | $6.0 |
| 562219 | Other Nonhazardous Waste Treatment and Disposal | $6.0 |
| 562910 | Remediation Services | $7.0 |
| EXCEPT | Environmental Remediation Services | [14] 500 |
| 562920 | Materials Recovery Facilities | $6.0 |
| 562991 | Septic Tank and Related Services | $5.0 |
| 562998 | All Other Miscellaneous Waste Management Services | $5.0 |
| | **Sector 61—Educational Services** | |
| | **Subsector 611—Educational Services** | |
| 611110 | Elementary and Secondary Schools | $5.0 |
| 611210 | Junior Colleges | $5.0 |
| 611310 | Colleges, Universities and Professional Schools | $5.0 |
| 611410 | Business and Secretarial Schools | $5.0 |
| 611420 | Computer Training | $5.0 |
| 611430 | Professional and Management Development Training | $5.0 |
| 611511 | Cosmetology and Barber Schools | $5.0 |
| 611512 | Flight Training | $18.5 |
| 611513 | Apprenticeship Training | $5.0 |
| 611519 | Other Technical and Trade Schools | $5.0 |
| 611610 | Fine Art Schools | $5.0 |
| 611620 | Sports and Recreation Instruction | $5.0 |
| 611630 | Language Schools | $5.0 |
| 611691 | Exam Preparation and Tutoring | $5.0 |
| 611692 | Automobile Driving Schools | $5.0 |
| 611699 | All Other Miscellaneous Schools and Instruction | $5.0 |
| 611710 | Educational Support Services | $5.0 |
| | **Sector 62—Health Care and Social Assistance** | |
| | **Subsector 621—Ambulatory Health Care Services** | |
| 621111 | Offices of Physicians (except Mental Health Specialists) | $5.0 |
| 621112 | Offices of Physicians, Mental Health Specialists | $5.0 |
| 621210 | Offices of Dentists | $5.0 |
| 621310 | Offices of Chiropractors | $5.0 |
| 621320 | Offices of Optometrists | $5.0 |
| 621330 | Offices of Mental Health Practitioners (except Physicians) | $5.0 |
| 621340 | Offices of Physical, Occupational and Speech Therapists and Audiologists | $5.0 |
| 621391 | Offices of Podiatrists | $5.0 |
| 621399 | Offices of All Other Miscellaneous Health Practitioners | $5.0 |
| 621410 | Family Planning Centers | $5.0 |
| 621420 | Outpatient Mental Health and Substance Abuse Centers | $5.0 |
| 621491 | HMO Medical Centers | $5.0 |
| 621492 | Kidney Dialysis Centers | $5.0 |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 621493 | Freestanding Ambulatory Surgical and Emergency Centers | $5.0 |
| 621498 | All Other Outpatient Care Centers | $5.0 |
| 621511 | Medical Laboratories | $5.0 |
| 621512 | Diagnostic Imaging Centers | $5.0 |
| 621610 | Home Health Care Services | $5.0 |
| 621910 | Ambulance Services | $5.0 |
| 621991 | Blood and Organ Banks | $5.0 |
| 621999 | All Other Miscellaneous Ambulatory Health Care Services | $5.0 |
| | **Subsector 622—Hospitals** | |
| 622110 | General Medical and Surgical Hospitals | $5.0 |
| 622210 | Psychiatric and Substance Abuse Hospitals | $5.0 |
| 622310 | Specialty (except Psychiatric and Substance Abuse) Hospitals | $5.0 |
| | **Subsector 623—Nursing and Residential Care Facilities** | |
| 623110 | Nursing Care Facilities | $5.0 |
| 623210 | Residential Mental Retardation Facilities | $5.0 |
| 623220 | Residential Mental Health and Substance Abuse Facilities | $5.0 |
| 623311 | Continuing Care Retirement Communities | $5.0 |
| 623312 | Homes for the Elderly | $5.0 |
| 623990 | Other Residential Care Facilities | $5.0 |
| | **Subsector 624—Social Assistance** | |
| 624110 | Child and Youth Services | $5.0 |
| 624120 | Services for the Elderly and Persons with Disabilities | $5.0 |
| 624190 | Other Individual and Family Services | $5.0 |
| 624210 | Community Food Services | $5.0 |
| 624221 | Temporary Shelters | $5.0 |
| 624229 | Other Community Housing Services | $5.0 |
| 624230 | Emergency and Other Relief Services | $5.0 |
| 624310 | Vocational Rehabilitation Services | $5.0 |
| 624410 | Child Day Care Services | $5.0 |
| | **Sector 71—Arts, Entertainment and Recreation** | |
| | **Subsector 711—Performing Arts, Spectator Sports and Related Industries** | |
| 711110 | Theater Companies and Dinner Theaters | $5.0 |
| 711120 | Dance Companies | $5.0 |
| 711130 | Musical Groups and Artists | $5.0 |
| 711190 | Other Performing Arts Companies | $5.0 |
| 711211 | Sports Teams and Clubs | $5.0 |
| 711212 | Race Tracks | $5.0 |
| 711219 | Other Spectator Sports | $5.0 |
| 711310 | Promoters of Performing Arts, Sports and Similar Events with Facilities | $5.0 |
| 711320 | Promoters of Performing Arts, Sports and Similar Events without Facilities | $5.0 |
| 711410 | Agents and Managers for Artists, Athletes, Entertainers and Other Public Figures | $5.0 |
| 711510 | Independent Artists, Writers, and Performers | $5.0 |
| | **Subsector 712—Museums, Historical Sites and Similar Institutions** | |
| 712110 | Museums | $5.0 |
| 712120 | Historical Sites | $5.0 |
| 712130 | Zoos and Botanical Gardens | $5.0 |
| 712190 | Nature Parks and Other Similar Institutions | $5.0 |
| | **Subsector 713—Amusement, Gambling and Recreation Industries** | |
| 713110 | Amusement and Theme Parks | $5.0 |
| 713120 | Amusement Arcades | $5.0 |
| 713210 | Casinos (except Casino Hotels) | $5.0 |
| 713290 | Other Gambling Industries | $5.0 |
| 713910 | Golf Courses and Country Clubs | $5.0 |
| 713920 | Skiing Facilities | $5.0 |
| 713930 | Marinas | $5.0 |
| 713940 | Fitness and Recreational Sports Centers | $5.0 |

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SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 713950 | Bowling Centers | $5.0 |
| 713990 | All Other Amusement and Recreation Industries | $5.0 |
| | **Sector 72—Accommodation and Food Services** | |
| | **Subsector 721—Accommodation** | |
| 721110 | Hotels (except Casino Hotels) and Motels | $5.0 |
| 721120 | Casino Hotels | $5.0 |
| 721191 | Bed and Breakfast Inns | $5.0 |
| 721199 | All Other Traveler Accommodation | $5.0 |
| 721211 | RV (Recreational Vehicle) Parks and Campgrounds | $5.0 |
| 721214 | Recreational and Vacation Camps (except Campgrounds) | $5.0 |
| 721310 | Rooming and Boarding Houses | $5.0 |
| | **Subsector 722—Food Services and Drinking Places** | |
| 722110 | Full-Service Restaurants | $5.0 |
| 722211 | Limited-Service Restaurants | $5.0 |
| 722212 | Cafeterias | $5.0 |
| 722213 | Snack and Nonalcoholic Beverage Bars | $5.0 |
| 722310 | Food Service Contractors | $15.0 |
| 722320 | Caterers | $5.0 |
| 722330 | Mobile Food Services | $5.0 |
| 722410 | Drinking Places (Alcoholic Beverages) | $5.0 |
| | **Sector 81—Other Services** | |
| | **Subsector 811—Repair and Maintenance** | |
| 811111 | General Automotive Repair | $5.0 |
| 811112 | Automotive Exhaust System Repair | $5.0 |
| 811113 | Automotive Transmission Repair | $5.0 |
| 811118 | Other Automotive Mechanical and Electrical Repair and Maintenance | $5.0 |
| 811121 | Automotive Body, Paint and Interior Repair and Maintenance | $5.0 |
| 811122 | Automotive Glass Replacement Shops | $5.0 |
| 811191 | Automotive Oil Change and Lubrication Shops | $5.0 |
| 811192 | Car Washes | $5.0 |
| 811198 | All Other Automotive Repair and Maintenance | $5.0 |
| 811211 | Consumer Electronics Repair and Maintenance | $5.0 |
| 811212 | Computer and Office Machine Repair and Maintenance | $18.0 |
| 811213 | Communication Equipment Repair and Maintenance | $5.0 |
| 811219 | Other Electronic and Precision Equipment Repair and Maintenance | $5.0 |
| 811310 | Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance. | $5.0 |
| 811411 | Home and Garden Equipment Repair and Maintenance | $5.0 |
| 811412 | Appliance Repair and Maintenance | $5.0 |
| 811420 | Reupholstery and Furniture Repair | $5.0 |
| 811430 | Footwear and Leather Goods Repair | $5.0 |
| 811490 | Other Personal and Household Goods Repair and Maintenance | $5.0 |
| | **Subsector 812—Personal and Laundry Services** | |
| 812111 | Barber Shops | $5.0 |
| 812112 | Beauty Salons | $5.0 |
| 812113 | Nail Salons | $5.0 |
| 812191 | Diet and Weight Reducing Centers | $5.0 |
| 812199 | Other Personal Care Services | $5.0 |
| 812210 | Funeral Homes and Funeral Services | $5.0 |
| 812220 | Cemeteries and Crematories | $5.0 |
| 812310 | Coin-Operated Laundries and Drycleaners | $5.0 |
| 812320 | Drycleaning and Laundry Services (except Coin-Operated) | $3.5 |
| 812331 | Linen Supply | $10.5 |
| 812332 | Industrial Launderers | $10.5 |
| 812391 | Garment Pressing, and Agents for Laundries | $5.0 |
| 812399 | All Other Laundry Services | $5.0 |
| 812910 | Pet Care (except Veterinary) Services | $5.0 |
| 812921 | Photo Finishing Laboratories (except One-Hour) | $5.0 |
| 812922 | One-Hour Photo Finishing | $5.0 |

SMALL BUSINESS SIZE STANDARDS BY NAICS INDUSTRY—Continued

| NAICS codes | Description (N.E.C. = Not Elsewhere Classified) | Size standard in number of employees or millions of dollars |
|---|---|---|
| 812930 | Parking Lots and Garages | $5.0 |
| 812990 | All Other Personal Services | $5.0 |
| | **Subsector 813—Religious, Grantmaking, Civic, Professional and Similar Organizations** | |
| 813110 | Religious Organizations | $5.0 |
| 813211 | Grantmaking Foundations | $5.0 |
| 813212 | Voluntary Health Organizations | $5.0 |
| 813219 | Other Grantmaking and Giving Services | $5.0 |
| 813311 | Human Rights Organizations | $5.0 |
| 813312 | Environment, Conservation and Wildlife Organizations | $5.0 |
| 813319 | Other Social Advocacy Organizations | $5.0 |
| 813410 | Civic and Social Organizations | $5.0 |
| 813910 | Business Associations | $5.0 |
| 813920 | Professional Organizations | $5.0 |
| 813930 | Labor Unions and Similar Labor Organizations | $5.0 |
| 813940 | Political Organizations | $5.0 |
| 813990 | Other Similar Organizations (except Business, Professional, Labor, and Political Organizations) | $5.0 |

**Footnotes**

**[As noted at the head of the table in the Supplementary Information above, the following footnotes relate only to SBA's proposed size standards. Footnotes to existing size standards follow the table of size standards in the Supplementary Information above.]**

1. *NAICS codes 221111, 221112, 221113, 221119, 221121, 221122*—A firm is small if, including its affiliates, it is primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and its total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.

2. *NAICS code 234990*—Dredging: To be considered small for purposes of Government procurement, a firm must perform at least 40 percent of the volume dredged with its own equipment or equipment owned by another small dredging concern.

3. *NAICS code 311421*—For purposes of Government procurement for food canning and preserving, the standard of 500 employees excludes agricultural labor as defined in 3306(k) of the Internal Revenue Code, 26 U.S.C. § 3306(k).

4. *NAICS code 324110*—For purposes of Government procurement, the firm may not have more than 1,500 employees nor more than 75,000 barrels per day capacity of petroleum-based inputs, including crude oil or bona fide feedstocks. Capacity includes owned or leased facilities as well as facilities under a processing agreement or an arrangement such as an exchange agreement or a throughput. The total product to be delivered under the contract must be at least 90 percent refined by the successful bidder from either crude oil or bona fide feedstocks.

5. *NAICS code 326211*—For Government procurement, a firm is small for bidding on a contract for pneumatic tires within Census Classification codes 30111 and 30112, provided that:

(a) The value of tires within Census Classification codes 30111 and 30112 which it manufactured in the United States during the previous calendar year is more than 50 percent of the value of its total worldwide manufacture,

(b) the value of pneumatic tires within Census Classification codes 30111 and 30112 comprising its total worldwide manufacture during the preceding calendar year was less than 5 percent of the value of all such tires manufactured in the United States during that period, and

(c) the value of the principal product which it manufactured or otherwise produced, or sold worldwide during the preceding calendar year is less than 10 percent of the total value of such products manufactured or otherwise produced or sold in the United States during that period.

6. *NAICS Subsectors 333, 334, 335 and 336*—For rebuilding machinery or equipment on a factory basis, or equivalent, use the NAICS code for a newly manufactured product. Concerns performing major rebuilding or overhaul activities do not necessarily have to meet the criteria for being a "manufacturer" although the activities may be classified under a manufacturing NAICS code. Ordinary repair services or preservation are not considered rebuilding.

7. *NAICS code 336413*—Contracts for the rebuilding or overhaul of aircraft ground support equipment on a contract basis are classified under NAICS code 336413.

8. *NAICS Codes 522110, 522120, 522130, 522190, 522210* and *522930*—A financial institution's assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year. "Assets" for the purposes of this size standard means the assets defined according to the Federal Financial Institutions Examination Council 034 call report form.

9. *NAICS code 531190*—Leasing of building space to the Federal Government by Owners: For Government procurement, a size standard of $15.0 million in gross receipts applies to the owners of building space leased to the Federal Government. The standard does not apply to an agent.

10. *NAICS codes 531210, 541810, 561510 and 561920*—As measured by total revenues, but excluding funds received in trust for an unaffiliated third party, such as bookings or sales subject to commissions. The commissions received are included as revenue.

11. *NAICS code 541710*—For research and development contracts requiring the delivery of a manufactured product, the appropriate size standard is that of the manufacturing industry.

(a) "Research and Development" means laboratory or other physical research and development. It does not include economic, educational, engineering, operations, systems, or other nonphysical research; or computer programming, data processing, commercial and/or medical laboratory testing.

(b) For purposes of the Small Business Innovation Research (SBIR) program only, a different definition has been established by law. See § 121.701 of these regulations.

(c) "Research and Development" for guided missiles and space vehicles includes evaluations and simulation, and other services requiring thorough knowledge of complete missiles and spacecraft.

12. *NAICS code 561210*—Facilities Management, a component of NAICS 561210, includes establishments, not classified elsewhere, which provide overall management and personnel to perform a variety of related support services in operating a complete facility in or around a specific building, or within another business or Government establishment. Facilities management means furnishing three or more personnel supply services which may include, but are not limited to secretarial services, typists, word processing, maintaining files and/or libraries, telephone answering, switchboard operation, reproduction or mimeograph service, mailing service, writers, bookkeeping, financial or

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business management, public relations, conference planning, minor office equipment maintenance and repair, use of information systems (not programming), word processing, travel arrangements, maintaining files and/or libraries.

13. *NAICS code 235990 (All Other Special Trade Contractors)* and *NAICS code 561210 (Facilities Support Services)*—Base Maintenance:

(a) If one of the activities of base maintenance, as defined in paragraph (b) (below in this endnote) can be identified with a separate industry and that activity (or industry) accounts for 50 percent or more of the value of an entire contract, then the proper size standard is that of the particular industry, and not the base maintenance size standard.

(b) "Base Maintenance" requires the performance of three or more separate activities in the areas of service or special trade construction industries. If services are performed, these activities must each be in a separate NAICS code including, but not limited to, Janitorial and Custodial Service, Fire Prevention Service, Messenger Service, Commissary Service, Protective Guard Service, and Grounds Maintenance and Landscaping Service. If the contract requires the use of special trade contractors (plumbing, painting, plastering, carpentry, etc.), all such special trade construction activities are considered a single activity and classified as Base Housing Maintenance. Since Base Housing Maintenance is only one activity, two additional activities are required for a contract to be classified as "Base Maintenance."

14. NAICS 562910—Environmental Remediation Services:

(a) For SBA assistance as a small business concern in the industry of Environmental Remediation Services, other than for Government procurement, a concern must be engaged primarily in furnishing a range of services for the remediation of a contaminated environment to an acceptable condition including, but not limited to, preliminary assessment, site inspection, testing, remedial investigation, feasibility studies, remedial design, containment, remedial action, removal of contaminated materials, storage of contaminated materials and security and site closeouts. If one of such activities accounts for 50 percent or more of a concern's total revenues, employees, or other related factors, the concern's primary industry is that of the particular industry and not the Environmental Remediation Services Industry.

(b) For purposes of classifying a Government procurement as Environmental Remediation Services, the general purpose of the procurement must be to restore a contaminated environment and also the procurement must be composed of activities in three or more separate industries with separate NAICS codes or, in some instances (*e.g.*, engineering), smaller sub-components of NAICS codes with separate, distinct size standards. These activities may include, but are not limited to, separate activities in industries such as: Heavy Construction; Special Trade Construction; Engineering Services; Architectural Services; Management Services; Refuse Systems; Sanitary Services, Not Elsewhere Classified; Local Trucking Without Storage; Testing Laboratories; and Commercial, Physical and Biological Research. If any activity in the procurement can be identified with a separate NAICS code, or component of a code with a separate distinct size standard, and that industry accounts for 50 percent or more of the value of the entire procurement, then the proper size standard is the one for that particular industry, and not the Environmental Remediation Service size standard.

**§ 121.402 [Amended]**

5. Amend § 121.402 as follows:

a. In paragraph (a) and (d) replace the acronym "SIC" with the acronym "NAICS."

b. In paragraph (b) replace all "SIC" acronyms with "NAICS" and in the second sentence, add "United States" after the first NAICS acronym.

c. In paragraph (c) replace all "SIC" acronyms with the acronym "NAICS" and replace the word "a" before the second NAICS acronym with the word "an."

d. In paragraph (e) replace the words "a SIC" with "an NAICS."

**§ 121.403 [Amended]**

6. In § 121.403, replace the acronym "SIC" in the heading and the first sentence with the acronym "NAICS."

**§ 121.406 [Amended]**

7. In paragraph (c)(1) of § 121.406, replace the acronym "SIC" with the acronym "NAICS."

**§ 121.409 [Amended]**

8. In § 121.409, replace the acronym "SIC" with the acronym "NAICS."

**§ 121.410 [Amended]**

9. In the last sentence of paragraph (a) of § 121.410, remove the phrase "SIC code 8711" and replace it with "NAICS code 541330."

**§ 121.603 [Amended]**

10. In paragraph (a) of § 121.603, replace the acronym "SIC" with the acronym "NAICS."

**§ 121.1102 [Amended]**

11. In § 121.1102, replace the acronym "SIC" in the heading and the text with the acronym "NAICS."

**§ 121.1103 [Amended]**

12. Amend § 121.1103 as follows:

a. In the heading and the first sentence of paragraph (a), replace the phrase "a SIC" with "an NAICS."

b. In paragraph (b), replace the acronym "SIC" with the acronym "NAICS."

**§ 121.1202 [Amended]**

13. In paragraph (d) of § 121.1202, replace the phrase "a four-digit" with "an NAICS" and replace the acronym "SIC" with "NAICS."

**§ 121.1204 [Amended]**

14. In paragraphs (a)(3) and (b)(1)(ii) of § 121.1204, replace the acronym "SIC" with the acronym "NAICS."

Dated: April 3, 2000.

**Fred P. Hochberg,**

*Acting Administrator.*

[FR Doc. 00–11874 Filed 5–12–00; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–CE–72–AD; Amendment 39–11722; AD 2000–09–13]**

**RIN 2120–AA64**

## Airworthiness Directives; British Aerospace Jetstream Model 3201 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to British Aerospace Jetstream Model 3201 airplanes. This AD requires you to inspect the fuel quantity indication system for damage to the insulation of the wiring within the fuel tanks, and repair or replace damaged wiring. Damage is defined as corrosion (indicated by a dark stain), cuts, or nicks. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. The actions specified by this AD are intended to detect damage to the insulation of the wiring within the fuel tanks of the fuel quantity indication system, which could result in a malfunction in the cockpit indicators and/or electrical sparking inside the fuel tank with consequent fire or explosion.

**DATES:** This AD becomes effective on June 23, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of June 23, 2000.

**ADDRESSES:** You may get the service information referenced in this AD from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland;

telephone: (01292) 672345; facsimile: (01292) 671625. You may examine this information at Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–72–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 506, Kansas City, Missouri 64106; telephone: (816) 329–4145; facsimile: (816) 329–3091.

**SUPPLEMENTARY INFORMATION:**

**Events Leading to the Issuance of This AD**

*What caused this AD?* This AD is the result of damage to the insulation of the wiring within the wing fuel tanks of the fuel quantity indication system on two British Aerospace Jetstream Model 3201 airplanes. Further investigation shows that the damage to the insulation occurred during factory installation.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all British Aerospace Jetstream Model 3201 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on January 6, 2000 (65 FR 729). The NPRM proposed to require you to inspect the fuel quantity indication system for damage to the insulation of the wiring within the fuel tanks, with necessary repair or replacement of damaged wiring. Damage is defined as corrosion (indicated by a dark stain), cuts, or nicks.

The NPRM would require you to accomplish the proposed actions in accordance with British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; or British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; Revision No. 1: November 12, 1999.

*Was the public invited to comment?* The FAA offered interested persons the opportunity to participate in the making of this amendment. We have given due consideration to the one comment received.

**Comment Disposition**

*What is the Commenter's Concern?* The commenter requests that FAA extend the compliance time to 3 months instead of 100 hours time-in-service (TIS) or 60 calendar days, whichever occurs first. The commenter states that high usage Jetstream Model 3201 airplanes can accumulate 100 hours TIS in well under 30 days. The commenter's concern is that entities with large fleets of the affected airplanes may not be able to accomplish the proposed AD if not given at least a 30-day period.

*What is FAA's Response to the Concern?* We concur with extending the compliance time, but not to 3 months. We will maintain the 60 calendar days, and will increase the 100-hour TIS time to 200 hours TIS. This will give the high usage airplanes more than 30 days to accomplish the action and the low usage airplanes 60 days. British Aerospace issued the service information in September 1999 and specified compliance in October 1999. The change in the compliance time coincides with the service bulletin.

**The FAA's Determination**

*What is FAA's final determination on this issue?* After reviewing all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the change in the compliance time and minor editorial corrections.

*How do these changes and corrections affect the AD?* We have determined that the change and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

**Compliance Time of This AD**

*What is the compliance time of this AD?* The compliance time of this AD is within the next 200 hours TIS or 60 calendar days, whichever occurs first.

*Why is the compliance in both calendar time and hours TIS?* The compliance time of this AD is presented in both calendar time and hours TIS. Damage to the insulation of the wires in the fuel quantity indicator system could result in corrosion in the core conductor. Corrosion damage can then develop regardless of whether the airplane is in flight, and may not develop until a later time. Therefore, in order to assure that any damage does not go undetected, we are utilizing a compliance time of both hours TIS and calendar time (the prevalent one being that which occurs first).

**Cost Impact**

*How many airplanes does this AD impact?* The FAA estimates that this AD affects 115 airplanes in the U.S. registry.

*What is the cost impact of this action on owners/operators of the affected airplanes?* We estimate that it would take approximately 60 workhours per airplane to accomplish this action, at an average labor rate of $60 an hour. Based on these figures, FAA estimates the cost impact of this AD on U.S. operators at $414,000, or $3,600 per airplane.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this action:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

A copy of the final evaluation prepared for this action is contained in the Rules. We have placed a copy of the final regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it at the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

2000–09–13 British Aerospace: Amendment 39–11722; Docket No. 99–CE–72–AD.

(a) What airplanes are affected by this AD? This AD applies to Jetstream Model 3201 airplanes, all serial numbers, certificated in any category.

(b) Who must comply with this AD? Anyone who wishes to operate any of the

above airplanes on the U.S. Register must comply with this AD.

(c) What problem and safety aspects does this AD address? The actions specified by this AD are intended to detect damage to the insulation of the wiring within the fuel tanks of the fuel quantity indication system. If not detected and corrected, this damage could result in a malfunction in the cockpit indicators and/or electrical sparking inside the fuel tank with consequent fire or explosion.

(d) What actions must I accomplish to address this problem? To address this problem, you must accomplish the following:

| Action | Compliance time | Procedures |
|---|---|---|
| Inspect the fuel quantity indication system for damage to the insulation of the wiring within the fuel tanks. Damage is defined as corrosion (indicated by a dark stain), cuts, or nicks. | At whichever of the following that occurs first:<br>—Within the next 200 hours time-in-service (TIS) after June 23, 2000 (the effective date of this AD); or.<br>—On or before August 21, 2000 (60 days after the effective date of this AD). | Accomplish these actions in accordance with one of the following:<br>—British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; or<br>—British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; Revision No. 1: November 12, 1999. |
| Replace or repair any damaged wiring ..... | Prior to further flight after the inspection required by this AD. | Accomplish in accordance with one of the previously referenced service bulletins. |

(e) Can I comply with this AD in any other way?

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to any airplane referenced in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For those airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) Where can I get information about any already-approved alternative methods of compliance? Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4140; facsimile: (816) 329–4090.

(g) What if I need to fly the airplane to another location to comply with this AD? The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) Who should I contact if I have questions regarding the service information? Direct all questions or technical information related to this AD to British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 672345; facsimile: (01292) 671625.

(i) Are any service bulletins incorporated into this AD by reference? You must accomplish the actions required by this AD in accordance with British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; or British Aerospace Jetstream Alert Service Bulletin 28–A–JA990841, Original Issue: September 8, 1999; Revision No. 1: November 12, 1999. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(j) Has another airworthiness authority addressed this action? The subject of this AD is addressed in British AD 003–09–99, dated September 13, 1999.

(k) When does this amendment become effective? This amendment becomes effective on June 23, 2000.

Issued in Kansas City, Missouri, on May 4, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11718 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 97–CE–21–AD; Amendment 39–11724; AD 2000–09–15]

RIN 2120–AA64

## Airworthiness Directives; Mitsubishi Heavy Industries, Ltd. MU–2B Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to all Mitsubishi Heavy Industries, Ltd. (Mitsubishi) MU–2B series airplanes. This AD requires modifying the airplanes' operating systems. This AD results from several icing-related incidents and accidents of MU–2B series airplanes, and the Federal Aviation Administration's investigation of the airplane design and pilot's ability to operate in icing conditions. The actions specified by this AD are intended to assist in preventing departure from controlled flight while operating in icing conditions.

**DATES:** This AD becomes effective on July 24, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of July 24, 2000.

**ADDRESSES:** You may get the service information referenced in this AD from Mitsubishi Heavy Industries America, Inc., 15303 Dallas Parkway, suite 685, LB-77, Dallas, Texas 75248; telephone: (972) 980–5001; facsimile: (972) 980–5091. You may examine this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–21–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Contact one of the following for questions or more information related to this subject: Mr. John Dow, Aerospace Engineer, Small Airplane Directorate, FAA, 901 Locust, Room 301, Kansas City, Missouri 64106, telephone: (816) 329–4121; facsimile: (816) 426–4090; Mr. Carl Fountain, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone:

(562) 627–5222; facsimile: (562) 627–5228; or Ms. Alma Ramirez-Hodge, Aerospace Engineer, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5147; facsimile: (817) 222–5960.

**SUPPLEMENTARY INFORMATION:**

**Events Leading to the Issuance of This AD**

*What caused this AD?*

This AD is the result of several icing-related incidents and accidents of MU–2B series airplanes, and FAA's investigation of both the airplane design and pilot's ability to operate in icing conditions.

*Has FAA taken any action to this point?*

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Mitsubishi MU–2B series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on May 21, 1998 (63 FR 27872). The NPRM proposed to require you to incorporate the following modifications on the airplane's operating systems:

(1) An ice detection system;

(2) A deice monitoring system;

(3) An automatic autopilot disconnect system and a trim-in-motion alert system;

(4) An engine continuous-duty ignition replacement system; and

(5) An auto-ignition (re-light) system.

The NPRM also proposed to require you to fabricate a placard (using ⅛-inch letters) with the following words and proposed to require you to install this placard within the pilot's clear view:

"Prior to the first flight of each day, a negative torque sensing (NTS) check and a Propeller Feather Valve check must be performed in accordance with the Normal Checklist Procedures."

Accomplishment of the proposed actions as specified in the NPRM would be required in accordance with:

• Mitsubishi MU–2 Service Bulletin (SB) No. 217, Revision B, dated November 7, 1996;

• Mitsubishi MU–2 SB No. 226, which incorporates the following pages:

| Pages | Revision level | Date |
|---|---|---|
| 2 through 11, 13 through 24, 27 through 57, and 59 through 93 | A | January 13, 1997. |
| 1, 12, 24, 25, 26, and 58 | B | February 27, 1997. |

• Mitsubishi MU–2 SB No. 231, dated July 2, 1997, Mitsubishi MU–2 SB No. 232, dated July 2, 1997;

• Mitsubishi MU–2B SB No. 074/74–001, dated October 9, 1991;

• Test Instrumentation, Inc. Document No. MU2–1001, Rev. C, dated June 15, 1997;

• Test Instrumentation, Inc. Document No. MU2–4001, Rev. C, dated June 30, 1997;

• Test Instrumentation, Inc. Document No. MU2–5001, Rev. E., dated May 21, 1997; and

• Test Instrumentation, Inc. Document No. MU2–6005, dated September 28, 1997.

*Was the Public Invited To Comment?*

Interested persons were afforded an opportunity to participate in the making of this amendment through the following avenues:

• Comments to the Docket file in accordance with the procedures specified in the NPRM; and

• Communications with FAA at a public meeting held in December 1998. Announcement of this public meeting was published in the **Federal Register** on September, 29, 1998 (63 FR 51865).

**Summary of This AD Action**

Several icing-related incidents and accidents of Mitsubishi MU–2B series airplanes caused FAA to investigate the airplane design and pilot's ability to operate in icing conditions. The FAA conducted a special certification review, which focused on factual information related to Mitsubishi MU–2B series airplanes involved in icing incidents/accidents. This review was named a Focused Fact Finding Special Certification Review (FFFSCR). This review shows that several accidents and incidents have occurred, and that modifications to the airplane design and additional pilot training may prevent future accidents/incidents. The training issues were addressed in AD 97–20–14, Amendment 39–10150 (62 FR 51594, October 2, 1997).

The following presents whether FAA has included in or excluded from this final rule each action that was proposed in the NPRM:

| Modification | Included in or excluded from AD |
|---|---|
| Ice Detection System | Excluded from AD. |
| Deice Monitoring System | Included in AD. |
| Automatic Autopilot Disconnect System and Trim-in-motion Alert System | Included in AD. |
| Engine Continuous-duty Ignition Replacement System | Excluded from AD. |
| Auto-ignition (Re-light System) | Included in AD. |
| Placard to require negative torque sensing (NTS) check and Propeller Feather Valve check as part of the Normal Checklist Procedures. | Excluded from AD. |

The following presents the actions we proposed in the NPRM, but are excluding from the final rule AD. Also included is a brief description of why we are excluding each one:

1. *Ice detection system:* The Aviation Rulemaking Advisory Committee (ARAC) recently established an Ice Protection Harmonization Working Group (IPHWG). We are waiting for this group to conclude its study before deciding whether to require an ice detection system on the affected airplanes;

2. *Engine continuous-duty ignition system:* We determined that the safety aspect of this AD only required the incorporation of the auto-ignition (re-light) system or the engine continuous-duty ignition system. We chose the auto-ignition (re-light system) because it is independent of other pilot actions; and

3. *Placard to require negative torque sensing (NTS) check and propeller feather valve check as part of the Normal Checklist Procedures:* We determined that the safety aspects of including this information did not outweigh the confusion that could be

generated through the installation of such a large placard on the instrument panel. If our analysis of the continued airworthiness of the affected airplanes shows that this information is necessary, we may initiate further rulemaking to require this information to become part of the Limitations Section of the Airplane Flight Manual (AFM).

The FAA has determined that the modifications required in this AD will correct the unsafe condition identified in the NPRM. We considered all comments received.

The following paragraphs present the comments received on the NPRM and at the public meeting. Also included is FAA's response to each comment, including any changes incorporated into the final rule based on the comments.

**Comment Issue No. 1: Pilot Training**

*What Is the Commenters' Concern?*

Many commenters state that inadequate pilot training is the cause of the referenced incidents and accidents of the Mitsubishi MU–2B series airplanes.

*What Is FAA's Response to the Concern?*

The FAA partially concurs. The FAA has determined that both systems modifications and pilot training are needed to prevent future icing accidents and incidents on the Mitsubishi MU–2B series airplanes. Training issues were addressed in AD 97–20–14, Amendment 39–10150 (62 FR 51594, October 2, 1997). The FAA will continue to monitor the need for future training and will take any appropriate action. This AD addresses the systems modifications.

We are not changing the AD as a result of these comments.

**Comment Issue No. 2: Ice Detection System**

*What Are the Commenters' Concerns?*

Numerous commenters object to the incorporation of an ice detection system because:

1. Pilot training is the issue and FAA should focus on providing the appropriate training.

2. The ice detection system will not solve the problem because the Aerospatiale Model ATR–72 airplane involved in the Roselawn accident had an ice detection system installed and a problem still existed.

3. The Roselawn accident with the Aerospatiale Model ATR–72 airplane would not have occurred if the autopilot had remained connected; therefore, the problem with the Mitsubishi MU–2B series airplanes is the autopilot disconnect.

4. The ice detection system is a bad idea because of the excellent visual icing cues of the MU–2B series airplanes and the potential for unrecognized mechanical failure.

5. Based on a commenter's experience in another type of airplane, the ice detection system could provide false positive warnings.

6. Install BF Goodrich Company SMART BOOTS on the affected airplanes. These boots incorporate electronic sensors imbedded into the surface of the vertical stabilizer deicing system; and detect the presence of ice on the surface of the boots, the proper functioning of the boots, and the presence of residual ice. The commenter believes that this system would allow FAA to learn more about the icing environment as it relates to the affected airplanes.

7. An ice detection system is unnecessary because the pilot would use the visual cues to detect ice and could then activate the deicing system. This would make the need for an ice detection system unnecessary.

8. Since the pilot is aware of the ice prior to the ice detection alert, the system is unnecessary, expensive, and a waste of money.

*What Is FAA's Response to the Concerns?*

The Aviation Rulemaking Advisory Committee (ARAC) has established an Ice Protection Harmonization Working Group (IPHWG). One of the areas this group is currently studying is the safety impact of having ice protection systems incorporated on aircraft. Because this study is ongoing and the IPHWG has not made any recommendations, we have determined not to require the ice detection system in this AD. We will evaluate the information that the IPHWG provides at the conclusion of the study to determine whether we should initiate rulemaking regarding this subject. The Mitsubishi MU–2B series airplanes would be among many aircraft evaluated to determine whether an ice detection system should be incorporated. The AD requirements for the automatic autopilot disconnect system and trim-in-motion alert system provide protection in the event of undetected, dangerous ice accretions. We determined that the modifications required by this AD, including the automatic autopilot disconnect system and trim-in-motion alert system, will provide the operators the necessary warning and equipment to safely operate their airplanes.

We excluded the ice detection system requirement from the AD.

**Comment Issue No. 3: Stall Recovery**

*What Is the Commenter's Concern?*

One commenter questions why FAA did not give the option (as a method of accomplishing the AD) of advancing the power (engine torque) to as high as possible (*i.e.*, in excess of 150 percent, which occurred in another type design airplane). This idea is based on the commenter's operating experience in recovering from a stall during an icing-related incident.

*What Is FAA's Response to the Concern?*

We do not concur. When the engine torque is advanced over 100 percent, the thrust of the propeller may be reduced because of the flow separation of portions of the blade. Instead of an increase in thrust, a reduction in overall thrust is likely. Airflow over the wing in the propwash can be degraded. FAA analysis of the incident that the commenter refers to shows that the airplane recovery occurred when the flaps were extended from the cruise configuration to 15 degrees and when the angle of attack was decreased. The flow over the wing returned, control of the airplane was regained, and the roll attitude stabilized.

We are not changing the AD as a result of this comment.

**Comment Issue No. 4: Misuse of the AD Process**

*What Are the Commenter's Concerns?*

One commenter states that (1) AD's are only for defects in design or potential equipment failures; and (2) proceeding with the AD would be a misuse of the AD process.

*What Is FAA's Response to the Concerns?*

We do not concur. An AD is the vehicle that FAA uses to mandate modifications, inspections, etc., in order to correct an unsafe condition on products (airplanes). That condition could be caused by airplane usage (fatigue), quality control, design, maintenance problems (where the procedures to accomplish such maintenance are not available to the field or the current maintenance procedures are not meeting the necessary safety level), or any other problem. The FAA has determined that an unsafe condition exists in the Mitsubishi MU–2B series airplanes when utilized in icing conditions, and that the airplane modifications specified in the AD are necessary to correct this unsafe condition. We are not using this

AD to improve the level of safety or upgrade the certification level of the Mitsubishi MU–2B airplanes.

We are not changing the AD as a result of these comments.

**Comment Issue No. 5: Other Airplane Designs Are More Susceptible to Icing Problems Than the Mitusbishi MU–2B Series Airplanes**

*What Is the Commenters' Concern?*

Several commenters suggest that other airplane models (specifically Raytheon models) are more susceptible to problems while operating in icing conditions than the Mitsubishi MU–2B series airplanes. The commenters believe FAA should withdraw the NPRM for this reason.

*What Is FAA's Response to the Concern?*

The FAA does not concur that the NPRM should be withdrawn because of the statement that other airplanes are more susceptible to problems while operating in icing conditions. The FAA analyzes the service history and design of each specific airplane make and model type design before taking AD action. Based on the service history and design of the Mitsubishi MU–2B series airplanes, FAA has determined that AD action is necessary. This does not mean that FAA will not take AD action on any other type design airplanes or that the Mitsubishi MU–2B series airplanes are being singled out from other type design airplanes. The FAA will continue to analyze the service history and design of each specific airplane make and model type design, and initiate and implement any appropriate rulemaking action.

We are not changing the AD as a result of these comments.

**Comment Issue No. 6: No Evidence That the Affected Airplanes Are Susceptible to Undetectable Ice Accumulation**

*What Is the Commenter's Concern?*

One commenter objects to the stated purpose and provisions specified in the NPRM. In particular, the commenter states that there is no evidence that the Mitsubishi MU–2B series airplanes are susceptible to undetectable ice accumulation.

*What Is FAA's Response to the Concern?*

The FAA does not concur. In one reported incident of undetectable ice accumulation on one of the affected airplanes, a pilot in 14 CFR part 135 operations experienced a 20-knot decrease in airspeed and a change of positive climb rate to a descent. After examining the airplane surfaces, the crew saw no evidence of ice and instead only saw a shiny appearance on the leading edge of the wing. At this time, the crew operated the deicing boots and witnessed approximately 1-inch of ice shedding from the leading edge of the wing. Airplane performance was restored to the level that existed before the airplane entered the icing condition and before operation of the deicing boots. The bulk of the ice was on the surface of the boots and not the unprotected areas of the fuselage or the propellers. Transparent (clear) ice can result from high liquid water conditions, high airspeed, static air temperatures just below freezing, large droplets, or a combination of any of these conditions. The Mitsubishi MU–2B series airplanes have shown flight characteristics in icing conditions with clear ice formation that are hazardous. These hazards may be attributed to a decreased stall angle, suddenness and the degree of roll upset, a subsequent rapid increase in airspeed, the consequent loss of control after ice accumulation, and difficulty in recovering from any of the above problems. We determined that the modifications required by this AD, including the automatic autopilot disconnect system and trim-in-motion alert system, will provide the operators the necessary warning and equipment to safely operate their airplanes.

We are not changing the AD as a result of this comment.

**Comment Issue No. 7: High Incident/ Accident Rate for the Mitsubishi MU–2B Series Airplanes**

*What Is the Commenter's Concern?*

One commenter states that, of the 700 Mitsubishi MU–2B series airplanes in service, over 100 have been involved in incidents/accidents.

*What Is FAA's Response to the Concern?*

The FAA infers from this that the commenter agrees with and supports the AD.

We are not changing the AD as a result of this comment.

**Comment Issue No. 8: No AD Justification Based on the FFFSCR**

*What Is the Commenters' Concern?*

Several commenters state that, since the Mitsubishi MU–2B series airplanes "passed all the tests" in the FFFSCR, issuing an AD requiring modifications would be contrary to the FFRSCR. The commenters do not believe FAA should issue the AD because the airplane meets the appropriate certification regulations.

*What Is FAA's Response to the Concern?*

We do not concur. The FFFSCR specifically addressed flight into icing conditions. The tests were not pass/fail situations. The FFFSCR specifies that several accidents have occurred, and that future accidents/incidents may be prevented by modifications to the airplane design and by additional training to enhance the pilot's ability to manage the airplane in adverse operating conditions.

As discussed previously, an AD is the vehicle that FAA uses to correct unsafe conditions in type design products. A product that meets all certification requirements can still be found to have an unsafe condition that could exist or develop; also, an unsafe condition does not necessarily exist for products that do not meet certification requirements. Whether a product is in compliance with other regulations is unrelated to whether AD action should be taken on that product.

We are not changing the AD as a result of these comments.

**Comment Issue No. 9: Unsafe Condition Already Covered by Existing AD's**

*What Is the Commenter's Concern?*

One commenter states that the unsafe condition referenced in this AD is already addressed by current AD's that apply to Mitsubishi MU–2B series airplanes:

- One that requires training for the pilots of the affected airplanes;
- One that requires incorporating a minimum speed limitation; and
- One that addresses actions to take when flying into severe icing.

For this reason, the commenter requests that FAA withdraw the NPRM.

*What Is FAA's Response to the Concern?*

We do not concur. The current AD's that address severe icing and a minimum speed limitation contain information that applies to many type design airplanes, not just the Mitsubishi MU–2B series airplanes. Pilot training and system modifications are specific to the type design of the Mitsubishi MU–2B series airplanes. The FFFSCR specifies that several accidents have occurred, and that future accidents/incidents may be prevented by modifications to the airplane design and by additional training to enhance the pilot's ability to manage the airplane in adverse operating conditions. We have determined that both systems modifications and pilot training are needed to prevent future icing incidents on the Mitsubishi MU–2B series airplanes. Training issues were addressed in AD 97–20–14, Amendment 39–10150 (62 FR 51594, October 2, 1997). The FAA will continue to monitor the need for future training and

will take appropriate action. This AD addresses the systems modifications.

We are not changing the AD as a result of this comment.

**Comment Issue No. 10: Trim-in-Motion**

*What Is the Commenters' Concern?*

Several commenters oppose the incorporation of a trim-in-motion system. The commenters state that the trim-in-motion system will annunciate during normal trim activation and the pilot will hear the trim-in-motion alert continuously and "tune it out." The commenters would like FAA to eliminate the trim-in-motion system requirement.

*What Is FAA's Response to the Concern?*

We do not concur. The trim-in-motion system for the MU–2B series airplanes annunciates only after the trim wheel has rotated more than 30 degrees in the nose-up direction when the flaps are retracted. This should eliminate "nuisance alerts".

We are not changing the AD as a result of these comments.

**Comment No. 11: Automatic Autopilot Disconnect**

*What Are the Commenters' Concerns?*

Several commenters oppose the incorporation of an automatic autopilot disconnect. The commenters express the following concerns:

1. The automatic autopilot disconnect is dangerous in that the autopilot could become disconnected in high workload conditions.

2. The Mitsubishi MU–2B series airplane is a one-pilot airplane and the autopilot provides a useful function as a workload reliever.

3. The automatic autopilot disconnect is unnecessary because no accidents have occurred since the AD was issued that required a minimum 180 knot indicated airspeed (KIAS). The commenters would like FAA to eliminate the automatic autopilot disconnect requirement.

4. The autopilot would disconnect at a speed slightly faster than the best rate of climb speed for certain weight and altitude combinations. The commenters state that icing rarely occurs above 25,000 feet. This is the desired altitude in certain weather conditions where the slowest airspeeds are required for the best rate of climb. The commenters believe that a hazardous situation would exist if the pilot were to hand fly the airplane to achieve the best rate of climb instead of utilizing the autopilot.

*What Are FAA's Responses to the Concerns?*

The following presents FAA's response to each of the concerns regarding the automatic autopilot disconnect:

1. We concur that high workload conditions exist. However, the objective of the automatic autopilot disconnect is to prevent the autopilot from applying nose-up elevator control with pitch trim until the airplane stalls. When implemented, the pilot will be forced to take control of the airplane before the autopilot applies pitch control in the full trimmed nose-up direction. If the autopilot controls the airplane into a stall, then the chance of a recovery is unlikely. The automatic autopilot disconnect would, prior to a stall condition, give control to the pilot and allow detection and prevention of a stall. The automatic autopilot disconnects well below the cruise speed and just above the stall speed.

2. We concur that the Mitsubishi MU–2B series airplane is a single-pilot airplane and the autopilot provides a useful function as a workload reliever. The airplane was certificated without the autopilot and is considered optional equipment. Any pilot of this aircraft should be able to handle situations without the use of the autopilot the same as with the autopilot. As discussed above, the automatic disconnect function activates at a speed that provides increased margin to contaminated stall. This places the pilot in situations where the continued reliance on the autopilot may mask natural stall warnings prior to stall and upset.

3. We do not concur with the commenter that no accidents have occurred since the AD was issued to require a minimum 180 KIAS in icing conditions, and therefore the automatic autopilot disconnect is unnecessary: Since 1993 when the 180 KIAS minimum speed was established, an airplane upset occurred in an accident in Malad City, Utah. Speeds were lower than 180 KIAS.

4. We do not concur that a hazardous situation would exist if the pilot would hand fly the airplane at altitudes above 25,000 feet. Cumulonimbus clouds account for the icing above 25,000 feet. These clouds contain some of the most severe forms of icing conditions. Icing accrued at lower altitudes may easily remain on the airfoil and then the airplane could carry this ice to higher altitudes. As discussed earlier, these airplanes were certificated without the autopilot and the autopilot is considered optional equipment. Any pilot of this aircraft should be able to handle situations without the use of the autopilot the same as with the autopilot.

We are not changing the AD as a result of these comments.

**Comment Issue No. 12: Require Either an Auto-ignition (Re-light) System or an Engine Continuous-Duty Ignition Replacement System**

*What Is the Commenters' Concern?*

The commenters believe that requiring either the engine continuous-duty ignition replacement system or the auto-ignition (re-light) system is acceptable. The commenters state that requiring both is redundant and FAA has not provided justification for requiring both.

*What Is FAA's Response to the Concern?*

We concur that both of these systems should not be required. Based upon the operating record of other airplanes equipped with the auto-ignition (re-light) system, FAA believes that this system is the best for restoring engine power because:

- Manual selection of the ignition after ice detection depends on the pilot seeing the ice and knowing when the airplane is no longer in a condition conducive to flameout; and

- Use of the engine continuous-duty ignition replacement system for extended periods of time incurs repetitive igniter replacement costs. The use of the auto-ignition (re-light) system is independent of pilot ice detection. This system is also energized for a short period of time so it incurs less operating cost.

We excluded the requirement of incorporating an engine continuous-duty ignition replacement system.

**Comment Issue No. 13: Experienced MU–2B Series Airplanes Operators Were Not Contacted**

*What Is the Commenters' Concern?*

Several commenters question why FAA never contacted "experienced" MU–2B series airplane operators.

*What Is FAA's Response to the Concern?*

We contacted several MU–2B series airplane operators to seek information on possible upsets or near upsets in icing conditions. Among these were pilots in 14 CFR part 91 and part 135 operations.

We are not changing the AD as a result of these comments.

**Comment Issue No. 14: Specific Accidents Are Unrelated to This AD**

*What Are the Commenters' Concerns?*

Several commenters believe that most of the MU–2B series airplane accidents are unrelated to the subject matter of this AD. The commenters state that FAA should not take AD action because the accidents were related to pilot error or judgement. Some of the commenters state that, when you take the pilot error or judgement issues away, there are not enough accidents to warrant AD action.

*What Is FAA's Response to the Concerns?*

We do not concur. We determined that human error has not accounted for all accidents and incidents involving MU–2B series airplanes. The type and severity of the icing conditions in these accidents has resulted in fatalities to the occupants of these MU–2B series airplanes. This is because they were in uncontrolled flight into terrain from altitudes of 16,000 feet to 22,000 feet. Accidents are not a prerequisite for issuing an AD. The only prerequisite is an unsafe condition that is likely to exist or develop in other airplanes of the same type design.

We are not changing the AD as a result of these comments.

**Comment Issue No. 15: Operation Outside the Design Envelope**

*What Is the Commenter's Concern?*

One commenter states that the AD is not justified because the pilots of the Mitsubishi MU–2B series airplanes are flying outside the design limits of the airplane.

*What Is FAA's Response to the Concern?*

We do not concur. The FAA does not have evidence of the affected airplanes being flown outside of the design limits up to the moment of loss of control.

We are not changing the AD as a result of this comment.

**Comment Issue No. 16: The MU–2B Passed All Tests**

*What Are the Commenters' Concerns?*

One commenter states that AD action is unnecessary because the MU–2B series airplanes passed all the tests during the FFFSCR. Another commenter states that the MU–2B airplanes passed all the tests during the special certification review (SCR) that FAA performed in 1984.

*What Is FAA's Response to the Concerns?*

We do not concur. The purpose of the 1984 SCR was for the overall aspects of the airplane, and was not specific to icing-related problems. The 1996 FFFSCR specifically addressed flight into icing conditions. The tests during this FFFSCR were not pass/fail situations. The final report of the FFFSCR includes all the findings and conclusions and makes 14 different recommendations, including equipment and training recommendations.

We are not changing the AD as a result of these comments.

**Comment Issue No. 17: Power is the Key to Exiting Icing Conditions**

*What Is the Commenter's Concern?*

One commenter states that the one key to exiting icing conditions is power. The commenter requests that FAA focus on increasing power instead of system modifications.

*What Is FAA's Response to the Concern?*

We do not concur. While power is a key when a pilot immediately exits icing conditions, airfoil lift and stall aerodynamics are most significant in icing conditions. The significant aerodynamic characteristics for the MU-2B series airplanes are the stall angle of attack and lift coefficient with ice accretion. These could lead to increased drag, which may result in an insufficient amount of engine power (thrust) available to exit the icing conditions. The level of thrust necessary to overcome all icing conditions could be more than the MU–2B series airplanes can provide. Nominal changes in propeller effectiveness with ice accretion decrease propeller performance.

We are not changing the AD as a result of this comment.

**Comment Issue No. 18: Similar Action Necessary for Other Aircraft**

*What Is the Commenter's Concern?*

One commenter states that the icing accident statistics of other airplanes are higher than the Mitsubishi MU–2B series airplanes. The commenter specifically calls out the statistics for the Cessna Model 421 airplanes. Another commenter states that FAA should require similar actions on the Commander Model 114 airplanes.

*What Is FAA's Response to the Concern?*

The Cessna Model 421 airplanes and the Commander Model 114 airplanes are a different type design to that of the Mitsubishi MU–2B series airplanes. The FAA looks at the service history and design of each particular aircraft to determine whether an unsafe condition exists or is likely to develop, and AD action is necessary. The FAA will issue an AD if it determines that similar action needs to be taken on any other type design aircraft.

We are not changing the AD as a result of these comments.

**Comment Issue No. 19: MU–2B Attracts Financially Weak Operators**

*What Is the Commenter's Concern?*

One commenter states that the MU–2B series airplanes attract operators who do not have the financial strength to properly maintain their aircraft and train their crews. The commenter indicates that this is due to the affected airplanes being market bargains because of factors such as the issuance of the NPRM and the mandatory training AD against the MU–2B series airplanes. The FAA infers that the commenter believes the AD is only necessary to those operators without proper financial resources.

*What Is FAA's Response to the Commenter's Concern?*

The FAA does not concur. The unsafe condition exists when the airplane is flying in icing conditions. The FAA initiates AD action based only on whether an unsafe condition exists or could develop on type design aircraft. The market value of the affected airplanes or the financial status of the owners/operators of those airplanes does not enter into FAA's decision.

We are not changing the AD as a result of this comment.

**Comment Issue No. 20: Severity of Ice Testing**

*What Is the Commenters' Concern?*

Several commenters question the severity of the icing problems found during the tanker testing conducted with the FFFSCR. The commenters state that the AD is not necessary because they believe this testing is the primary justification for the AD.

*What Is FAA's Response to the Concern?*

We do not concur. The tanker testing was intended to examine only the ice accretion aft of the active portion of the deicing boots. This was where the ice accretion was found on the ATR airplane in the Roselawn accident. During this testing, only small portions of the airplane were exposed to the icing cloud at any particular time because the icing effect could not be accomplished simultaneously on all airplane surfaces located behind the tanker.

The entire natural icing environment cannot be replicated using computational fluid dynamics (CFD). This environment also cannot be sampled during flight testing in natural

icing conditions. Each condition is unique and variable. If you then account for airplane design, the chances for developing the most severe ice shape for any one aerodynamic characteristic is difficult.

This information reveals that neither the testing nor other tools are able to address all possible hazardous conditions on the Mitsubishi MU–2B series airplanes. The FAA has determined that the systems modifications required by this AD will give the pilot the best chance of maintaining control of the airplane in icing conditions.

We are not changing the AD as a result of these comments.

**Comment Issue No. 21: Congressional Pressure**

*What Is the Commenters' Concern?*

Several commenters believe that FAA yielded to congressional pressures in conducting the FFFSCR and issuing the NPRM. These commenters state that the FFFSCR was precipitated by a letter from a U.S. congressman relating to an accident in Zwingle, Iowa. The MU–2B series airplane in this accident experienced an uncontained propeller blade failure and then struck a silo. The commenters believe the AD is unnecessary and FAA is taking action because of politics.

*What Is FAA's Response to the Concern?*

Although it was part of the information we reviewed when deciding to conduct the FFFSCR, the congressional letter was not the determining factor. The FAA was already analyzing the service history of the Mitsubishi MU–2B series airplanes. The decision to issue the NPRM was based on:

- The conclusions made from the FFFSCR;
- The review of the affected airplanes' service history; and
- The testing and approval of the system modifications included in the NPRM.

Our analysis of the situation does not link the Iowa accident referenced in the congressman's letter to the icing problems of the MU–2B series airplanes.

We are not changing the AD as a result of these comments.

**Comment Issue No. 22: AD is an Economic Burden**

*What Are the Commenters' Concerns?*

Several commenters addresss the economic impact caused by this AD and recent AD's against the MU–2B airplanes, including:

1. The AD's are senseless and have gone beyond reason;
2. The apparent bending of the regulatory rules against the MU–2B series airplanes has resulted in higher insurance premiums, higher parts costs, and decreased aircraft values; and
3. The NPRM, if adopted as a final rule, will cost each owner/operator about $27,000.

*What Are FAA's Responses to the Concerns?*

Our response to each concern follows:

1. We do not concur. The FAA presumes that the commenters are referring to the NPRM and other AD's written against the MU–2B series airplanes. Each AD, including the NPRM, must be justified through the identification of an unsafe condition. The FAA followed all regulatory processes for the AD's, including the NPRM, against the affected airplanes;
2. The FAA does not concur. As stated above, FAA followed all regulatory processes for the AD's, including the NPRM, against the affected airplanes; and
3. The FAA concurs that the NPRM as written would cost approximately $27,000 per airplane. The final rule will actually cost less than that proposed in the NPRM since the requirement for the ice detection system modification and the engine continuous-duty ignition replacement system modification are excluded. The FAA completed a Regulatory Flexibility Analysis on the NPRM. This analysis included the above modifications. The FAA has determined that the safety problems that would exist if this AD was not required outweigh the negative cost impact of this AD upon the public.

We Are not changing the AD as a result of these comments.

**Comment Issue No. 23: Product Improvement Modifications**

*What Are the Commenters' Concerns?*

Several commenters state that the installations specified in the NPRM are product improvements and do not address a true unsafe condition. The commenters indicate that Mitsubishi developed the modifications and issued the service bulletins before the FFFSCR.

Another commenter believes that FAA will use this AD as an example in mandating other product improvements in equipment such as global positioning systems (GPS) and stormscopes.

*What Is FAA's Response to the Concerns?*

We concur that a few of the modifications were developed prior to the FFFSCR. Since FAA had not mandated these modifications through an AD, they could have been considered product improvements at that time. Since that time, FAA performed the FFFSCR; determined that an unsafe condition exists and an AD should be issued; and analyzed the modifications that Mitsubishi developed. Part of addressing the unsafe condition is incorporating the modifications that were developed prior to the FFFSCR. The FAA can only mandate modifications that exist through an AD. An unsafe condition must be demonstrated for any AD action.

We are not changing the AD as a result of these comments.

**Comment Issue No. 24: Require a Type Rating and Copilot for Certain Operations**

*What Are the Commenter's Concerns?*

One commenter states that the following should be required when operating MU–2B series airplanes under 14 CFR part 135:

1. The pilot-in-charge should have a type rating; and
2. All Mitsubishi MU–2B series airplanes should have a copilot.

*What Are FAA's Responses to the Concerns?*

We do not concur with these concerns for the following reasons:

1. During the special certification review performed in 1984, FAA determined that a type rating was not necessary. Nothing has changed to warrant the need for a type rating.
2. Mandating a copilot in 14 CFR part 135 operations is beyond the scope of AD action. The FAA would need to make a rulemaking change to the specific regulation.

We are not changing the AD as a result of these comments.

**Comment Issue No. 25: Delete the Requirement for Installing a Placard on the Instrument Panel**

*What Is the Commenters' Concern?*

Several commenters request that the FAA delete the requirement to install a placard to require a negative torque sensing (NTS) check and propeller feather valve check as part of the Normal Checklist Procedures. The commenters state that confusion could be generated through the installation of such a large placard on the instrument panel.

*What Is FAA's Response to the Concern?*

We concur that a placard is not the best way of accomplishing this action. These checks are currently part of the

Normal Checklist Procedures Section of the AFM. The FAA encourages accomplishment of all actions specified in this section. However, the only mandatory actions in the AFM are those included in the Limitations Section.

Mandating these checks as part of an addition to the Limitations Section of the AFM would impose actions that go beyond the scope of what was already proposed in the NPRM. If our analysis of the continued airworthiness of the affected airplanes shows that it is necessary to mandate these actions, we may initiate further rulemaking to require this information to become part of the Limitations Section of the AFM.

We excluded the placard requirement from the AD.

**The FAA's Determination**

*What Is FAA's Final Determination on This Issue?*

After reviewing all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the changes described above and minor editorial corrections.

*How Do These Changes and Corrections Affect the AD?*

We have determined that the addition and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

**Compliance Time of This AD**

*What Is the Compliance Time of This AD?*

The compliance time of this AD is within the next 12 calendar months after the effective date.

*Why Is the Compliance in Calendar Time Instead of Hours Time-in-Service?*

We have determined that the compliance time of this AD should be specified in calendar time instead of hours time-in-service. Although the condition addressed by this AD is unsafe while the airplane is in flight, the condition is not a result of repetitive airplane operation. The potential for the unsafe condition occurring is the same on the first flight as it is for subsequent flights. The compliance time of "12 calendar months after the effective date of this AD" will not inadvertently ground airplanes and will assure that all owners/operators of the affected airplanes accomplish this action in a reasonable time period.

**Regulatory Flexibility Determination and Analysis**

The Regulatory Flexibility Act of 1980 was enacted by Congress to assure that small entities are not unnecessarily or disproportionately burdened by government regulations. This Act establishes "as principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." To achieve this principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a "significant economic impact on a substantial number of small entities." If the determination is that it will, the agency must prepare a Regulatory Flexibility Analysis as described in the Act. However, if after a review for a proposed or final rule, an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and a Regulatory Flexibility Analysis is not required. A statement providing the factual basis for this determination must be included in the Docket file, and the reasoning should be clear.

The FAA has determined that this AD will have a significant economic impact on a substantial number of small entities. After a review of alternatives, as required by section 603(c) of the Act, this AD is the least costly alternative to reduce the possibility of an unsafe condition on Mitsubishi MU–2B series airplanes when operating in icing conditions.

The entities affected by this AD are believed to be mostly in Standard Industrial Classification (SIC) 4522, "Air Transportation, Nonscheduled." Under the Small Business Administration (SBA), Table of Size Standards, March 1, 1996, an entity in SIC 4522 would be a small business if it has fewer than 1,500 employees.

The U.S. Registered Aircraft Database shows approximately 200 operators of Mitsubishi MU–2B series airplanes in the United States, but that only 13 entities operate 2 or more of these airplanes. Ownership of more than 1 MU–2B series airplane is believed to be limited to 5 percent of the affected aircraft owners. Only one of these operators had 10 or more of these airplanes. The total number of owners operating MU–2B series airplanes is in the range of 320 to 340, and the names of the owners suggest that the majority of these airplanes are operated by small entities. Consequently, this AD is likely to affect a substantial number of small entities.

The initial cost for each owner/operator of an MU–2B series airplane is estimated to be approximately $25,728. Reported usage rates of 32 to 33 hours per month (almost 400 hours per year) indicate that an airplane will be subject to a total of four inspections per year. At a nominal inspection time of 1 workhour per inspection and labor cost of $60 per workhour, the annual inspection costs will be approximately $240 per airplane. These estimates include costs for the associated record keeping. A reasonable range of costs arising from this AD is suggested in the following table:

| Cost of capital | Remaining life of aircraft (in years) | Annualized cost | | Present value of total cost |
|---|---|---|---|---|
| | | Initial | Total | |
| 10%/year | 20 | $3,022 | $3,262 | $27,771 |
| 15%/year | 20 | 4,110 | 4,350 | 27,230 |
| 10%/year | 10 | 4,187 | 4,427 | 27,203 |
| 15%/year | 10 | 5,126 | 5,366 | 26,933 |

The remaining life for an affected airplane will depend on the demand for the types of service provided (such as cargo delivery and medical evacuation), as well as the difference in cost between providing this service with the MU–2B series airplanes and the cost of using alternative aircraft or modes of transportation. According to the

manufacturer, detailed inspections show that deterioration of the airframes has been quite small, so that a 20-year life expectancy may be a reasonable presumption. In addition, the manufacturer acknowledged recent instances of retired MU–2B series airplanes being returned to service. These considerations suggest that it is reasonable to presume a relatively long expected life for many of the MU–2B series airplanes, so that the annualized cost per affected aircraft may average less than $5,000.

With an average annual cost per airplane in the range of $3,200 to $5,400 (consistent with 10 to 20 years of remaining life and capital costs of 10 to 15 percent per year), the present value of the total cost will be approximately $27,000 per airplane. The total annualized cost of this AD for the U.S. fleet will be in the range of $1 million (320 × $3,200 = $1,024,000) to $1.8 million (340 × $5,400 = $1,836,000). The present discounted value of total costs imposed by this AD are in the range of $8.6 million to $9.4 million. Market values for the affected airplanes are believed to be in the range of $300,000 to $800,000, depending on the airplane's age, condition, and installed equipment. Therefore, the AD costs will be about 3.5 percent to 9 percent (($27,000 / $800,000) × 100% = 3.5% to ($27,000 / $300,000) × 100% = 9%) of the market value of the airplane. Because the costs imposed by this AD will be proportionately higher for less expensive airplanes, it is likely that they will also be proportionately higher for smaller, less financially strong operators than for larger operators.

In developing the Regulatory Flexibility Analysis, several alternatives to this AD were considered. The alternatives included:

*Option No. 1*

Take no action, including not issuing this AD.

*The FAA's Position on Option No. 1:* Taking no action will permit the continuation of current conditions that could result in a repeat of icing-related accidents similar to those that have occurred over the past 10 years.

*Option No. 2*

Require additional training.

*The FAA's Position on Option No. 2:* The FAA addressed the training issue in AD 97–20–14, Amendment 39–39–10150 (62 FR 51594). This AD requires periodic training for the pilots and crew flying any Mitsubishi MU–2 series airplane. The training provides information relative to flight into possible or forecast icing conditions. This training should assist in reducing future ice-related accidents for the affected airplanes.

*Option No. 3*

Issue AD action to restrict the MU–2B series airplanes operators from flight into known or suspected icing conditions.

*The FAA's Position on Option No. 3:* The FAA has determined that restricting flight into known or suspected icing conditions will not eliminate inadvertent encounters with icing conditions. Such restrictions may have little effect on flying into unforecast icing conditions with inoperable anti-ice equipment and insufficient flight planning. Unknown forecast conditions and insufficient flight planning contributed to two of the accidents (and 13 of the 14 fatalities) cited. In addition, such a restriction will impose costs on owners/operators because the airplanes will be prevented from making flights, despite being outfitted with anti-ice equipment.

*Option No. 4*

Require the actions in this AD.

*The FAA's Position on Option No. 4:* The FAA has determined that requiring the modifications in this AD will help prevent undetected failure conditions and provide a timely warning prior to upset. This warning will enable the pilot to manually control the airplane before an unsafe condition develops.

The FAA has determined that this AD is likely to have benefits in excess of costs and is not aware of a less costly alternative that will be likely to address the unsafe condition addressed in this AD.

A copy of the complete Regulatory Flexibility Analysis may be obtained from FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri .

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA determines that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this action:

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Could have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. We have placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may obtain a copy of it at the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2000–09–15 Mitsubishi Heavy Industries, LTD.: Amendment 39–11724; Docket No. 97–CE–21–AD.

(a) *What airplanes are affected by this AD?* This AD applies to all serial numbers of the following Mitsubishi airplane models, certificated in any category:

MU–2B
MU–2B–10
MU–2B–15
MU–2B–20
MU–2B–25
MU–2B–26
MU–2B–26A
MU–2B–30
MU–2B–35
MU–2B–36
MU–2B–36A
MU–2B–40
MU–2B–60

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to assist in preventing departure from controlled flight while operating in icing conditions.

(d) *What actions must I accomplish to address this problem?* Within the next 12 calendar months after July 24, 2000 (the effective date of this AD), you must incorporate the following modifications:

(1) Install a pneumatic deice monitoring system. You must use the procedures contained in Test Instrumentation, Inc. Document No. MU2–5001, Rev. E., dated

May 21, 1997; and Mitsubishi MU–2 Service Bulletin (SB) No. 232, dated July 2, 1997.

(2) Install a trim-in-motion alerting system and automatic autopilot disconnect system. Use the procedures contained in Test Instrumentation, Inc. Document No. MU2–1001, Rev. C, dated June 15, 1997; Test Instrumentation, Inc. Document No. MU2–4001, Rev. C, dated June 30, 1997; and Mitsubishi MU–2 SB No. 231, dated July 2, 1997.

(3) Install an auto-ignition (re-light) system. Use the procedures contained in Mitsubishi MU–2 SB No. 226, which incorporates the following pages:

| Pages | Revision level | Date |
|---|---|---|
| 2 through 11, 13 through 23, 27 through 57, and 59 through 93. | A | January 13, 1997. |
| 1, 12, 24, 25, 26, and 58. | B | October 27, 1997. |

(e) *Can I comply with this AD in any other way?*

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager of one of the following approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(A) Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, California 90712; or

(B) Fort Worth Airplane Certification Office, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact one of the following:

(1) Small Airplane Directorate, FAA, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 426–4090;

(2) Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, California 90712; telephone: (562) 627–5222; facsimile: (562) 627–5228; or

(3) Fort Worth Airplane Certification Office, FAA, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5147; facsimile: (817) 222–5960.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?*

(1) You must accomplish the actions required by this AD in accordance with the following:

(i) Mitsubishi MU–2 SB No. 226, which incorporates the following pages:

| Pages | Revision level | Date |
|---|---|---|
| 2 through 11, 13 through 23, 27 through 57, and 59 through 93. | A | January 13, 1997. |
| 1, 12, 24, 25, 26, and 58. | B | October 27, 1997. |

(ii) Mitsubishi MU–2 SB No. 231, dated July 2, 1997;

(iii) Mitsubishi MU–2 SB No. 232, dated July 2, 1997;

(iv) Test Instrumentation, Inc. Document No. MU2–1001, Rev. C, dated June 15, 1997, and attachments;

(v) Test Instrumentation, Inc. Document No. MU2–4001, Rev. C, dated June 30, 1997, and attachments; and

(vi) Test Instrumentation, Inc. Document No. MU2–5001, Rev. E., dated May 21, 1997, and attachments.

(2) The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51.

(3) You can get copies from Mitsubishi Heavy Industries America, Inc., 15303 Dallas Parkway, suite 685, LB–77, Dallas, Texas. You can look at copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on July 24, 2000.

Issued in Kansas City, Missouri, on May 5, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11863 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–NM–103–AD; Amendment 39–11726; AD 2000–10–02]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A319, A320, A321, A330, and A340 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Airbus Model A319, A320, A321, A330, and A340 series airplanes, that requires repetitive inspections to detect missing and incorrectly installed parts of the footrest actuator assembly, and replacement of discrepant parts with new parts. This AD also provides for optional terminating action for the repetitive inspections. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent detachment of the footrest assembly actuator, which could result in partial blockage of the rudder pedals and reduced controllability of the airplane.

**DATES:** Effective June 19, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 19, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to all Airbus Model A319, A320, A321, A330, and A340 series airplanes was published in the **Federal Register** on July 14, 1999 (64 FR 37915). That action proposed to require repetitive inspections to detect missing and incorrectly installed parts of the footrest actuator assembly, and replacement of discrepant parts with new parts. That AD also would provide for optional terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

**Explanation of Changes Made to This Final Rule**

1. The notice of proposed rulemaking (NPRM) references All Operator Telex (AOT) 25–14 (for Model A319, A320, and A321 series airplanes) and AOT 25–13 (for Model A330 and A340 series airplanes); both dated December 17, 1998, as the appropriate sources of service information for accomplishment of the actions specified by paragraph (a) of the NPRM. Instead, this amendment requires that the actions specified by that paragraph be accomplished in accordance with Airbus Service Bulletin A320–25–1220 and A320–25–1225, both dated November 19, 1999 (for Model A319, A320, and A321 series airplanes); A330–25–3105, dated October 22, 1999, and A330–25–3110, dated December 23, 1999 (for Model A330 series airplanes); and A340–25–4131, dated October 22, 1999, and A340–25–4136, dated December 23, 1999 (for Model A340 series airplanes); as applicable. The inspection procedures specified by those service bulletins are similar to the procedures specified by AOT 25–13 and 25–14; however, the service bulletins also include graphics to show the areas of inspection and replacement (repair). **Note 2** has been added to this AD to give credit to operators for accomplishment of the actions specified in the AOT's prior to the effective date of this AD.

2. **Note 4** of the proposed rule has been renumbered as NOTE 6 in the final rule, and two references to French airworthiness directives have been changed to reflect later revision numbers.

**Support for the Proposed Rule**

The Air Transport Association (ATA) of America states that one of its members concurs with the proposal and offers no further comments.

**Requests To Include Terminating Action**

• One commenter states that Airbus Service Bulletin A320–25–1225 includes procedures for the installation of a new footrest actuator, Modification 28472, and that such a modification should be considered terminating action for the repetitive inspections.

The FAA acknowledges the commenter's request and has determined that the installation of Modification 28472 during production or the accomplishment of Airbus Service Bulletin A320–25–1225, or the installation of Modification 47376 during production or the accomplishment of Airbus Service Bulletin A330–25–3110 or A340–25–4136, constitutes optional terminating action for the repetitive inspections required by this AD. In light of this, the FAA has added a new paragraph (c) to the final rule to include this new option.

• Another commenter states that it is in the process of issuing a request for funding to remove the footrest from the seat, and that "it is our expectation that this will be terminating action."

The FAA acknowledges the commenter's statement and points out that paragraph (b) of the proposed rule provides for optional terminating action for the repetitive inspection requirements of this AD. Therefore, no change to the final rule is necessary in this regard.

**Request to Credit Operators With Prior Accomplishment of Inspections**

One commenter states that operators were notified of a proposed rule mandating repetitive inspections of the cockpit footrest actuator assembly. The first inspection (detailed visual) was required at 500 flight hours after the effective date of the proposed AD, followed by a repeat inspection at intervals not to exceed 15 months. The commenter also states that AOT 25–14, dated December 17, 1998, specifies a production quality control check and that the manufacturer issued two messages to specify that all airplanes undergoing production quality checks may take credit for accomplishing the inspections specified at 500 flight hours. For this reason, the commenter requests that all airplanes that have accomplished such a check be excluded from the detailed visual inspection within 500 flight hours after the effective date of this AD, and only be required to accomplish that inspection at intervals not to exceed 15 months. The commenter considers that such a policy will not impair the safety of the airplanes.

The FAA concurs and considers that such a check during production would detect any discrepancy, such as a missing or broken retaining clip, and preclude the necessity for the initial inspection at 500 flight hours. For that reason, **Note 3**, preceding paragraph (a) of this AD, has been added to provide credit for prior accomplishment of the initial detailed visual inspection required by that paragraph.

**Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

**Cost Impact**

The FAA estimates that 208 Model A319, A320, A321, A330, and A340 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $37,440, or $180 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy

of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–10–02 Airbus:** Amendment 39–11726. Docket 99–NM–103–AD.

*Applicability:* All Model A319, A320, A321, A330, and A340 series airplanes; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

**Note 2:** Inspections and replacement actions accomplished prior to the effective date of this amendment, in accordance with Airbus All Operator Telex (AOT) 25–14 (for Model A319, A320, and A321 series airplanes), and AOT 25–13 (for Model A330 and A340 series airplanes), both dated December 17, 1998, are considered acceptable for compliance with the initial inspection and replacement actions specified by paragraph (a) of this AD.

**Note 3:** An initial detailed visual inspection accomplished during production prior to the effective date of this amendment is considered acceptable for compliance with the initial inspection required by paragraph (a) of this AD.

To prevent detachment of the footrest assembly actuator, which could result in partial blockage of the rudder pedals and reduced controllability of the airplane, accomplish the following:

**Detailed Visual Inspections**

(a) Within 500 flight hours after the effective date of this AD, perform a detailed visual inspection of the footrest actuator assembly for discrepancies (including bent pins and missing or incorrectly installed retaining rings and pins), in accordance with Airbus Service Bulletin A320–25–1220, dated November 19, 1999 (for Model A319, A320, and A321 series airplanes); A330–25–3105, dated October 22, 1999 (for Model A330 series airplanes); or A340–25–4131, dated October 22, 1999 (for Model A340 series airplanes); as applicable.

(1) *If no discrepancy is detected:* Repeat the inspection thereafter at intervals not to exceed 15 months.

(2) *If any discrepancy is detected:* Accomplish the actions of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to further flight, remove the actuator system from the footrest assembly and conduct a detailed visual inspection of the pins for damage, distortion, or wear in accordance with the applicable service bulletin. If any damage, distortion, or wear of the pin, or any discrepancy of the pin or the ring is detected, prior to further flight, replace that pin or ring with a new part in accordance with the applicable service bulletin. And

(ii) Repeat the detailed visual inspection of the footrest actuator assembly thereafter at intervals not to exceed 15 months.

**Note 4:** For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

**Optional Terminating Actions**

(b) Removal of the footrest assembly constitutes terminating action for the repetitive inspection requirements of this AD.

(c) Accomplishment of Modification 28472 during production, or Airbus Service Bulletin A320–25–1225, dated November 19, 1999 (for Model A319, A320, and A321 series airplanes); or accomplishment of Modification 47376 during production, or Airbus Service Bulletin A330–25–3110 or A340–25–4136, both dated December 23, 1999 (for Model A330 and A340 series airplanes); as applicable; constitutes terminating action for the inspection requirements of this AD.

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(f) The actions shall be done in accordance with Airbus Service Bulletin A320–25–1220, dated November 19, 1999 (for Model A319, A320, and A321 series airplanes); Airbus Service Bulletin A320–25–1225, dated November 19, 1999 (for Model A319, A320, and A321 series airplanes); Airbus Service Bulletin A330–25–3105, dated October 22, 1999 (for Model A330 series airplanes); Airbus Service Bulletin A330–25–3110, dated December 23, 1999 (for Model A330 series airplanes); Airbus Service Bulletin A340–25–4131, dated October 22, 1999 (for Model A340 series airplanes); and Airbus Service Bulletin A340–25–4136, dated December 23, 1999 (for Model A340 series airplanes); as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 6:** The subject of this AD is addressed in French airworthiness directives 1999–047–110(B) R1 (for Model A340 series airplanes) and 1999–048–090(B) R1 (for Model A330 series airplanes), both dated December 15, 1999; and 1999–074–127(B), R1, dated January 26, 2000 (for Model A319, A320, and A321 series airplanes).

(g) This amendment becomes effective on June 19, 2000.

Issued in Renton, Washington, on May 8, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11949 Filed 5–12–00; 8:45 am]

**BILLING CODE 4910–13–U**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–AGL–01]**

## Modification of Class D Airspace; Establishment of Class E Airspace; and Modification of Class E Airspace; Belleville, IL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class D airspace, modifies Class E airspace and establishes Class E airspace at Belleville, IL. An Instrument Landing System (ILS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 32L, a Tactical Air Navigation (TACAN) SIAP to Rwy 32L, and a TACAN SIAP to Rwy 14R, have been developed for Scott AFB/MidAmerica Airport. Controlled airspace extending upward from the surface is needed to contain aircraft executing these approaches. This action increases the radius of the existing Class D airspace, creates a new Class E airspace extension to the Class D airspace, and modifies the existing Class E airspace by increasing the radius and modifying the extensions, for Scott AFB/MidAmerica Airport.

**EFFECTIVE DATE:** 0901 UTC, August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### History

On Friday, February 18, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace and Class E airspace and create Class E airspace at Belleville, IL (65 FR 8322). The proposal was to modify controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, Class E airspace areas designated as extensions to a Class D airspace area are published in paragraph 6004, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation and Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This amendment to 14 CFR part 71 modifies Class D airspace and Class E airspace and creates Class E airspace at Belleville, IL, to accommodate aircraft executing instrument flight procedures into and out of Scott AFB/MidAmerican Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federation Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

*Paragraph 5000 Class D airspace.*

* * * * *

**AGL IL D Belleville, IL [Revised]**

Belleville, Scott AFB/MidAmerica Airport, IL
(Lat. 38°32′43″ N., long. 89°50′07″ W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within an 4.9-mile radius of the Scott AFB/MidAmerica Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6004 Class E airspace areas designated as an extension to a Class D airspace area.*

* * * * *

**AGL IL E4 Belleville, IL [New]**

Belleville, Scott AFB/MidAmerica Airport, IL
(Lat. 38°32′43″ N., long. 89°50′07″ W.)
Scott TACAN
(Lat. 38°32′43″ N., long. 89°51′06″ W.)

That airspace extending upward from the surface within 1.5 miles each side of the Scott TACAN 312° radial extending from the 4.9-mile radius of the Scott AFB/MidAmerica Airport to 10.0 miles northwest of the Scott TACAN. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.*

* * * * *

**AGL IL E5 Belleville, IL [Revised]**

Belleville, Scott AFB/MidAmerica Airport, IL
(Lat. 38°32′43″ N., long. 89°50′07″ W.)
Scott TACAN
(Lat. 38°32′43″ N., long. 89°51′06″ W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of Scott AFB/MidAmerica Airport and within 1.5 miles each side of the Scott TACAN 312° radial extending from the 7.4-mile radius to 10.0 miles northwest of the Scott TACAN and within 1.7 miles each side of the Scott TACAN 140° radial extending from the 7.4-mile radius to 14.0 miles southeast of the Scott TACAN, excluding that airspace within the St. Jacob, IL, and Cahokia, IL, Class E airspace areas.

* * * * *

Issued in Des Plaines, Illinois on April 26, 2000.

**Christopher R. Blum,**

*Manager, Air Traffic Division.*

[FR Doc. 00–12166 Filed 5–12–00; 8:45 am]

**BILLING CODE 4910–13–M**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–AGL–03]**

## Modification of Class D Airspace; Rapid City, SD; Modification of Class D Airspace; Rapid City Ellsworth AFB, SD; and Modification of Class E Airspace; Rapid City, SD

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class D airspace at Rapid City, SD, modifies Class D airspace at Ellsworth AFB, SD, and modifies Class E airspace at Rapid City, SD. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 32 has been developed for Rapid City Regional Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing this approach. This action increases the radius of the existing Class D and Class E airspace for Rapid City Regional Airport, and modifies the legal description of the Class D airspace for Ellsworth AFB to include the formentioned modification.

**EFFECTIVE DATE:** 0901 UTC, August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### History

On Friday, February 18, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace and Class E airspace at Rapid City, SD, and modify Class D airspace at Rapid City, Ellsworth AFB, SD (65 FR 8321). The proposal was to modify controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, Class E airspace areas designated as extensions to a Class D airspace area are published in paragraph 6004, and Class E airspace designated as surface areas are published in paragraph 6002, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designations and Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This amendment to 14 CFR part 71 modifies Class D airspace and Class E airspace at Rapid City, SD, and Modifies Class D airspace at Rapid City, Ellsworth AFB, SD, to accommodate aircraft executing instrument flight procedures into and out Rapid City Regional Airport and Ellsworth AFB. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; is not a significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Pints, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

*Paragraph 5000 Class D Airspace.*

* * * * *

**AGL SD D Rapid City, SD [Revised]**

Rapid City Regional Airport, SD
(Lat. 44°02′43″ N., long. 103°03′27″ W.)
Ellsworth AFB, SD
(Lat. 44°08′42″ N., long. 103°06′13″ W.)

That airspace extending upward from the surface to an including 5,7000 feet MSL within an 4.4-mile radius of the Rapid City Regional Airport, excluding the portion north of a line between the intersection of the Rapid City Regional Airport 4.4-mile radius and the Ellsworth AFB, SC, 4.7-mile radius. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

**AGL SD D Rapid City Ellsworth AFB, SC [Revised]**

Rapid City Ellsworth AFB, SD
(Lat. 44°08′42″ N., long. 103°06′13″ W.)
Rapid City Regional Airport, SD
(Lat. 44°02′43″ N., long. 103°03′27″ W.)
Ellsworth AFB TACAN
(Lat. 44°08′20″ N., long. 103°06′06″ W.)

That airspace extending upward from the surface to and including 5,800 feet MSL within an 4.7-mile radius of Ellsworth AFB, and within 2.2 miles each side of the Ellsworth AFB TACAN 322° radial, extending from the 4.7-mile radius to 6.1 miles northwest of the TACAN, excluding that airspace south of a line between the intersection of the Ellsworth AFB 4.7-mile radius and the Rapid City Regional Airport 4.4-mile radius.

* * * * *

*Paragraph 6003 Class E airspace areas desigatned as an extension to a Class D airspace area.*

* * * * *

**AGL SD E4 Rapid City, SD [Revised]**

Rapid City Regional Airport, SD
(Lat. 44°02′43″ N., long. 103°03′27″ W.)
Rapid City VORTAC
(Lat. 43°58′34″ N., long. 103°00′44″ W.)

That airspace extending upward from the surface within 2.6 miles each side of the Rapid City VORTAC 155°/335° radials extending from the 4.4-mile radius of the Rapid City Regional Airport to 7.0 miles southeast of the VORTAC, excluding that airspace within the Rapid City, SD, Class D airspace area. This Class E airspace area is effective during the specific dates and

times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6002 Class E airspace designated as a surface area.*

* * * * *

**AGL SD E2 Rapid City, SD [Revised]**

Rapid City Regional Airport, SD
(Lat. 44°02′43″ N., long. 103°03′27″ W.)
Ellsworth AFB, SD
(Lat. 44°08′42″ N., long. 103°06′13″ W.)
Rapid City VORTAC
(Lat. 43°58′34″ N., long. 103°00′44″ W.)

Within a 4.4-mile radius of the Rapid City Regional Airport, excluding the portion north of a line between the intersection of the Rapid City Regional Airport 4.4-mile radius and the Ellsworth AFB 4.7-mile radius, and that airspace extending upward from the surface within 2.6 miles each side of the Rapid City VORTAC 155°/335° radials extending from the 4.4-mile radius of the Rapid City Regional Airport to 7.0 miles southeast of the VORTAC, excluding that airspace within the Rapid City, SD, Class D airspace area. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois, on April 26, 2000.

**Christopher R. Blum,**

*Manager, Air Traffic Division.*

[FR Doc. 00–12164 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 98–AGL–78]**

## Modification of Class E Airspace; Yankton, SD

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace at Yankton, SD. This action amends the effective hours of the Class E surface area from one (1) hour per day to twenty-four (24) hours per day to accommodate regular air carrier operations that occur outside the current times of operation of the surface area. The purpose of this action is to afford an increased level of safety during instrument flight operations for the commercial air carrier operations at the Chan Gurney Municipal Airport.

**EFFECTIVE DATE:** 0901 UTC, August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### History

On Tuesday, January 19, 1999, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Yankton, SD (64 FR 2864). The proposal was to increase the effective hours of operation from one (1) hour per day to twenty-four (24) hours per day to accommodate air carrier operations for Chan Gurney Municipal Airport. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace areas designated as a surface area for an airport published in paragraph 6002 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This amendment to 14 CFR part 71 modified Class E airspace at Yankton, SD, by amending the hours of operation of the Class E airspace for Chan Gurney Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority**: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

*Paragraph 6002 Class E airspace areas designated as a surface area for an airport.*

**AGL SD E2 Yankton, SD [Revised]**

Yankton, Chan Gurney Municipal Airport, SD
(Lat. 42° 55′ 00″ N., long. 97° 23′ 09″ W.)
Yankon VOR/DME
(Lat. 42° 55′ 06″ N., long. 97° 23′ 06″ W.)

Within an 4.1-mile radius of the Chan Gurney Municipal Airport, and within 2.4 miles each side of the Yankton VOR/DME 319° radial extending from the 4.1-mile radius to 7.4 miles northwest of the VOR/DME and within 2.4 miles southwest of the Yankton VOR/DME 145° radial and 2.8 miles northeast of the Yankton VOR/DME 145° radial extending from the 4.1-mile radius to 7.4 miles southeast of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on April 26, 2000.

**Christopher R. Blum,**

*Manager, Air Traffic Division.*

[FR Doc. 00–12165 Filed 5–12–00; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–AGL–04]**

## Modification of Class E Airspace; Ely, MN

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action modifies Class E airspace Ely, MN. A VHF Omnidirectional Range-A (VOR–A) Standard Instrument Approach Procedure (SIAP) has been developed for Ely Municipal Airport, MN. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing this approach. This action increases the radius and adds an additional extension to the existing Class E airspace for Ely Municipal Airport.

**EFFECTIVE DATE:** 0901 U.T.C., August 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

**SUPPLEMENTARY INFORMATION:**

### History

On Friday, February 18, 2000, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Ely, MN (65 FR 8324). The proposal was to modify controlled airspace extending upward from the surface to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designated as surface areas are published in paragraph 6002, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by references in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

### The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Ely, MN, to accommodate aircraft executing instrument flight procedures into and out Ely Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

* * * * *

*Paragraph 6002 Class E airspace designated as a surface area.*

* * * * *

**AGL MN E2 Ely, MN [Revised]**

Ely Municipal, MN
(Lat. 47° 49′ 28″ N., long. 91° 49′ 51″ W.)
Ely VOR/DME
(Lat. 47° 49′ 19″ N., long. 91° 49′ 49″ W.)

Within an 4.0-mile radius of the Ely Municipal Airport, and within 2.4 miles each side of the VOR/DME 108° radial extending from the 4.0-mile radius to 7.0 miles southeast of the VOR/DME, and within 2.4 miles each side of the VOR/DME 302° radial extending from the 4.0-mile radius to 7.0 miles northwest of the VOR/DME, and within 2.4 miles each side of the VOR/DME 172° radial extending from the 4.0-mile radius to 7.0 miles south of the VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter the continuously published in the Airport/Facility Directory.

* * * * *

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**AGL MN E5 Ely, MN [Revised]**

Ely Municipal Airport, MN
(Lat. 47° 49′ 28″ N., long. 91° 49′ 51″ W.)

That airspace extending upward from 700 feet above the surface within an 7.7-mile radius of the Ely Municipal Airport, excluding that airspace within Prohibited Area P–204.

* * * * *

Issued in Des Plaines, Illinois on April 26, 2000.

**Christopher R. Blum,**

*Manager, Air Traffic Division.*

[FR Doc. 00–12163 Filed 5–12–00; 8:45 am]

**BILLING CODE 4910–13–M**

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**PENSION BENEFIT GUARANTY CORPORATION**

**29 CFR Parts 4022 and 4044**

## Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in June 2000. Interest assumptions are also published on the PBGC's web site (http://www.pbgc.gov).

**EFFECTIVE DATE:** June 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General

Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:** The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) a set for the valuation of benefits for allocation purposes under section 4044 (found in Appendix B to Part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in Appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022). (See the PBGC's two final rules published March 17, 2000, in the **Federal Register** (at 65 FR 14752 and 14753). Effective May 1, 2000, these rules changed how the interest assumptions are used and where they are set forth in the PBGC's regulations.)

Accordingly, this amendment (1) adds to Appendix B to Part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during June 2000, (2) adds to Appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during June 2000, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during June 2000.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in Appendix B to part 4044) will be 7.10 percent for the first 25 years following the valuation date and 6.25 percent thereafter. These interest assumptions represent an increase (from those in effect for May 2000) of 0.10 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in Appendix B to part 4022) will be 5.25 percent for the period during which a benefit is in pay status, 4.50 percent during the seven-year period directly preceding the benefit's placement in pay status, and 4.00 percent during any other years preceding the benefit's placement in pay status. These interest assumptions are unchanged from those in effect for May 2000.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in Appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during June 2000, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

**List of Subjects**

*29 CFR Part 4022*

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

*29 CFR Part 4044*

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

## PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

**Authority:** 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 80, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments**

* * * * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | * | * | * | * | * | * | * |
| 80 | 6–1–00 | 7–1–00 | 5.25 | 4.50 | 4.00 | 4.00 | 7 | 8 |

3. In appendix C to part 4022, Rate Set 80, as set forth below, is added to the table. (The introductory text of the table is omitted.)

**Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments**

* * * * * * *

| Rate set | For plans with a valuation date | | Immediate annuity rate (percent) | Deferred annuities (percent) | | | | |
|---|---|---|---|---|---|---|---|---|
| | On or after | Before | | $i_1$ | $i_2$ | $i_3$ | $n_1$ | $n_2$ |
| * | * | * | * | * | * | * | * | * |
| 80 | 6–1–00 | 7–1–00 | 5.25 | 4.50 | 4.00 | 4.00 | 7 | 8 |

## PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

**Authority:** 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

### Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

| For valuation dates occurring in the month— | The values of $i_t$ are: | | | | | |
|---|---|---|---|---|---|---|
| | $i_t$ | for t = | $i_t$ | for t = | $i_t$ | for t = |
| * | * | * | * | * | * | * |
| June 2000 | .0710 | 1–25 | .0625 | >25 | N/A | N/A |

Issued in Washington, DC, on this 8th day of May 2000.

**John Seal,**

*Acting Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 00–12089 Filed 5–12–00; 8:45 am]

BILLING CODE 7708–01–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

[CGD 08–00–009]

RIN 2115–AE47

## Drawbridge Operation Regulation; Upper Mississippi River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Commander, Eighth Coast Guard District is temporarily changing the regulation governing the Rock Island Railroad & Highway Drawbridge, across the Upper Mississippi River at Mile 482.9, at Rock Island, Illinois. The Drawbridge need not open for river traffic and may remain in the closed-to-navigation position from 8 a.m. to 10 a.m. on May 14, 2000. This temporary rule is issued to allow the scheduled running of a foot race as part of a local community event.

**DATES:** This rule is effective from 8 a.m. Central Standard Time on May 14, 2000 to 10 a.m. Central Standard Time on May 14, 2000.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket CGD 08–00–009 and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103–2832, at (314) 539–3900, extension 378.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. This rule is being promulgated without an NPRM due to the short time frame allowed between the submission of the request by the U.S. Army and the date of the event.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. This rule should be made effective in less than 30 days due to the short time frame allowed between the submission of the request by the U.S. Army and the date of the event.

### Background and Purpose

On March 6, 2000, the Department of Army Rock Island Arsenal requested a temporary change to the operation of the Rock Island Railroad & Highway Drawbridge across the Upper Mississippi River, Mile 482.9 at Rock Island, Illinois. The Rock Island Railroad Drawbridge navigation span has a vertical clearance of 23.8 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. Presently, the draw opens on signal for passage of river traffic. The Rock Island Arsenal requested the drawbridge be permitted to remain closed-to-navigation from 8 a.m. until 10 a.m. on May 14, 2000. During this time, a foot race will cross the bridge. This temporary drawbridge operation regulation has been coordinated with the commercial waterway operators. No objections to the proposed temporary rule were raised.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of

Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because river traffic is not likely to be delayed more than 2 hours.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

This rule will be in effect for only 2 hours early in the day and the Coast Guard expects the impact of this action to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or, believes he or she qualifies as a small entity and requires assistance with the provisions of this rule, may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 378.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (32), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. Promulgation of changes to drawbridge regulations has been found not to have significant effect on the human environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation of part 117 continues to read as follows:

**Authority:** 33 U.S.C. Sec. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 8 a.m. to 10 a.m. on May 14, 2000, § 117.T394 is temporarily added to read as follows:

**§ 117.T394 Upper Mississippi River.**

*Rock Island Railroad and Highway Drawbridge, Mile 482.9, Upper Mississippi River.* From 8 a.m. to 10 a.m. on May 14, 2000 the drawspan need not open for river traffic and may be maintained in the closed-to-navigation position.

Dated: April 24, 2000.

**Paul J. Pluta,**

*Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.*

[FR Doc. 00–12074 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–15–U

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[CGD1–00–123]**

**RIN 2115–AA97**

## Safety Zone: Chelsea Street Bridge, Chelsea River, Chelsea, MA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the Chelsea River surrounding the Chelsea Street Bridge. The safety zone temporarily closes all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the Chelsea Street Bridge. The safety zone is needed to protect vessels from the hazards posed during repairs to the bridge fender system.

**EFFECTIVE DATES:** This rule is effective from Tuesday, May 30, 2000, through Saturday, June 3, 2000, between 9 p.m. and 7:30 a.m. and from Monday, June 5, 2000 through Saturday, June 10, 2000 between 6 p.m. and 5 a.m.

**ADDRESSES:** Comments and material received from the public, as well as

documents indicated in this preamble as being available in the docket, are part of docket CGD1–00–123 and are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Brian Downey, Waterways Management Division, Coast Guard Marine Safety Office Boston, (617) 223–3000.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

As authorized by 5 U.S.C. 553, the Coast Guard did not publish a Notice of Proposed Rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM and for making this rule effective less than 30 days after publication in the **Federal Register**. Any delay in implementing this rule would be contrary to the public interest since immediate action is needed to close a portion of the Chelsea River and protect the maritime public from the hazards associated with bridge repair activities.

**Background and Purpose**

The Chelsea Street Bridge over the Chelsea River, Chelsea, MA, requires repairs. During the repair evolution, barges will be moored in the center of the channel. Barge placement requires the closure of the waterway to ensure vessel safety during repairs to the bridge fender system.

This regulation establishes a safety zone in all waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the Chelsea Street Bridge. This safety zone prohibits entry into or movement within this portion of the Chelsea River. In an effort to maximize commerce during the channel closures, waterway user input was solicited at a March 9, 2000 meeting hosted by Marine Safety Office Boston. The meeting was attended by 13 stakeholders. The nature of the repair work to be conducted requires low tide conditions. The Coast Guard was able to balance this need with community demands through the aforementioned open forum, which arrived at a group consensus between marine operators, the bridge owner, construction contractor, and harbor pilots. A current safety zone under 33 CFR 165.120 closes this same channel portion to vessels over 630.5 feet between sunset and sunrise. Therefore, the group, based on the contractor's recommendation, agreed upon the nightly closures. The duration of the safety zone will be from Tuesday, May 30, 2000 through Saturday, June 3, 2000, between 9 p.m. and 7:30 a.m. and from Monday, June 5, 2000 through Saturday, June 10, 2000 between 6 p.m. and 5 a.m. The Coast Guard will make Marine Safety Information Broadcasts informing mariners of this safety zone.

**Regulatory Evaluation**

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited duration of the safety zone and limited commercial traffic expected in the area during the effective periods. Moreover, commercial operators will receive advance channel closure notification through Port Operators' Group meetings, Safety Marine Information Broadcasts and industry dissemination. The early notification will permit mariners ample time to alter voyage plans.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Chelsea River from May 30, 2000 through June 3, 2000 between 9 p.m. and 7:30 a.m. and from June 5 through 10, 2000 between 6 p.m. and 5 a.m.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The Coast Guard will issue maritime advisories before the effective period that will be widely available to users of the river; and the closures are based on waterway user input.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard offered to assist small entities in understanding this final rule so that they could better evaluate its effects on them and participate in the rulemaking process. The Coast Guard coordinated a March 9, 2000 meeting of Chelsea River users to gain input and feedback about the channel closures. The group agreed upon the schedule provided.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards.

The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This proposal calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

The Coast Guard has analyzed this rule under Executive Order 13132 and has determined that this rule does not have federalism implications under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference

with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

## PART 165— REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T00–123 to read as follows:

**§ 165.T00–123 Safety Zone: Chelsea Street Bridge, Chelsea River, Chelsea, MA**

(a) *Location.* The following area is a safety zone: All waters of the Chelsea River 100 yards upstream and 100 yards downstream from the centerline of the Chelsea Street Bridge.

(b) *Effective Dates.* This rule is effective from Tuesday, May 30, 2000 through Saturday, June 3, 2000 between 9 p.m. and 7:30 a.m. and Monday, June 5, 2000 through Saturday, June 10, 2000 between 6 p.m. and 5 a.m.

(c) *Regulations.* (1) Entry into or movement within this zone is prohibited unless authorized by the Captain of the Port, (COTP) Boston.

(2) All persons and vessels shall comply with the instructions of the COTP or the designated on-scene U.S. Coast Guard patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(3) The general regulations covering safety zones in § 165.23 apply.

Dated: May 5, 2000.

**J.R. Whitehead,**

*Captain, Coast Guard. Captain of the Port, Boston, Massachusetts.*

[FR Doc. 00–12148 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–15–P

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 165**

**[COTP Western Alaska 00–002]**

**RIN 2115–AA97**

## Safety Zone; Port Graham, Cook Inlet, AK

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary 600-yard radius safety zone Port Graham, Cook Inlet, Alaska. The Heavy-lift vessel SWAN will anchor in this position and off-load equipment for the Exploratory Drilling Structure 'OSPREY'. This safety zone is implemented to ensure the safe and timely anchoring, loading, and departure of vessels and a barge operating in Port Graham, Cook Inlet, Alaska.

**DATES:** This temporary final rule is effective from 12:01 a.m. on June 12, 2000, until 11:59 p.m. on June 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Rick Rodriguez, Chief of Port Operations, USCG Marine Safety Office, Anchorage, at (907) 271–6724.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (b) (B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying the effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public. The OSPREY platform is a large structure that is difficult to maneuver, and will be towed in the strong currents of Cook Inlet, Alaska. Publishing an NPRM and delaying the effective date of the regulation would be contrary to the public interest, because immediate action is necessary to protect participants and other vessel traffic from the potential hazards associated with the operation.

**Background and Purpose**

The Coast Guard is establishing a temporary 600-yard radius safety zone on the navigable waters of the United States around latitude 59°21′36″ N, longitude 151°50′40″ W (NAD 1983). The Heavy-lift vessel SWAN will anchor in this position and off-load the tower, tower legs, and associated equipment for the Exploratory Drilling Structure 'OSPREY' in Port Graham, Cook Inlet, Alaska. The safety zone is designed to permit the safe and timely anchoring, off-loading, and departure of this vessel in the narrow timeframe in which this can be safely done. The safety zone's 600-yard standoff also aids the safety of these evolutions by minimizing conflicts and hazards that might otherwise occur with other transiting vessels. The limited size of the zone is designed to minimize impact on other mariners transiting through the area.

**Regulatory Evaluation**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule will have significant economic impacts on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Because this safety zone is very small, will only be in effect for five days, and does not impede access to other

maritime facilities in the area, the Coast Guard believes there will be no impact to small entities. Therefore, the Coast Guard certifies under 5 U.S.C. § 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because it establishes a safety zone.

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

**Temporary Final Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. From 12:01 a.m. on June 12, 2000, until 11:59 p.m. on June 16, 2000, § 165.T17–002 is temporarily added to read as follows:

**§ 165.T17–002 Safety Zone; Port Graham, Cook Inlet, Alaska.**

(a) *Description.* The following area is a Safety Zone: All navigable waters within a 600-yard radius of the Heavy-lift vessel SWAN, located in Port Graham, Cook Inlet, Alaska.

(b) *Effective dates.* This section is effective from 12:01 a.m. on June 12, 2000, until 11:59 p.m. on June 16, 2000.

(c) *Regulations.* (1) The Captain of the Port means the Captain of the Port, Western Alaska. The Captain of the Port may authorize or designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf as his representative.

(2) The general regulations governing safety zones contained in Title 33 Code of Federal Regulations § 165.23 apply. No person or vessel may enter, transit through, anchor or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port, Western Alaska, or his representative. The Captain of the Port or his representative may be contacted in the vicinity of the SWAN via marine VHF channel 16. The Captain of the Port's representative can also be contacted by telephone at (907) 271–6700.

Dated: April 14, 2000.

**W.J. Hutmacher,**

*Captain, U.S. Coast Guard, Captain of the Port, Western Alaska.*

[FR Doc. 00–12151 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Parts 22, 117, 122, 123, 124, 125, 144, 270, and 271**

[FRL–6561–5]

RIN 2040–AC70

## Amendments to Streamline the National Pollutant Discharge Elimination System Program Regulations: Round Two

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is today revising the National Pollutant Discharge Elimination System (NPDES) regulations. This revision is part of an Agency-wide effort to respond to a directive issued by the President on February 21, 1995, which directed Federal agencies to review their regulatory programs to eliminate any obsolete, ineffective, or unduly burdensome regulations. In response to that directive, EPA initiated a detailed review of its regulations to determine which provisions were obsolete, duplicative, or unduly burdensome. On June 29, 1995, EPA issued a rule (60 FR 33926) which removed some regulatory provisions in the Office of Water program regulations (including certain NPDES provisions) that were clearly obsolete. Today's revision is intended to further streamline NPDES, Resource Conservation and Recovery Act (RCRA), Prevention of Significant Deterioration (PSD), and Underground Injection Control (UIC) permitting procedures, and CWA 301(h) variance request procedures, by revising requirements to eliminate redundant regulatory language, provide clarification, and remove or streamline unnecessary procedures which do not provide any environmental benefits. Conforming changes to other requirements are also made in today's rule. These revisions are identified and discussed in the Supplementary Information section below.

**DATES:** This rule becomes effective June 14, 2000. For judicial review purposes, this final rule is promulgated as of 1:00 P.M. (eastern standard time) on May 30, 2000 as provided in.

**ADDRESSES:** The complete administrative record for the final rule have been established and includes supporting documentation as well as printed, paper versions of electronic comments. Copies of information in the record are available upon request. A reasonable fee may be charged for copying. The record is available for inspection and copying from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EPA, East Tower Basement, 401 M Street, SW, Washington, DC. For access to docket materials, please call (202) 260–3027.

**FOR FURTHER INFORMATION CONTACT:** Howard Rubin, Water Permits Division(4203), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202) 260–2051 or Thomas Charlton, Water Permits Division(4203), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, (202) 260–6960.

**SUPPLEMENTARY INFORMATION:**

**Regulated Entities**

Entities potentially regulated by this action are facilities that discharge pollutants to waters of the United States that are required to have National Pollutant Discharge Elimination System (NPDES) permits.

| Category | Examples of regulated entities |
|---|---|
| Federal, State, Local, and Tribal Governments. | Facilities which discharge pollutants to waters of the U.S. under the NPDES program. Facilities which discharge pollutants under the RCRA, PSD, and UIC program. Facilities requesting a CWA 301(h) variance request. |
| Private Industry ..... | Facilities which discharge pollutants to waters of the U.S. under the NPDES program. Facilities which discharge pollutants under the RCRA, PSD, and UIC program. Facilities requesting a CWA 301(h) variance request. |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is likely to be regulated by this action, you should carefully read the applicability criteria of 122.1 and 124.1 of Title 40 of the Code of Federal Regulations. If you have any questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**Organization**

Information in this preamble is organized as follows:


I. Background
II. Revisions
A. Revisions to Part 122
1. Purpose and Scope (40 CFR 122.1)
2. NPDES Program Definitions (40 CFR 122.2, 124.2)
3. New Sources/New Dischargers (40 CFR 122.4, 124.56)
4. EPA Application Forms (40 CFR 122.1(d)(1), 122.21(a), 122.21(d), 122.26(c)(1))
5. Effluent Characteristics (40 CFR 122.21(g)(7))
6. Signatories (40 CFR 122.22)
7. Group Permit Applications (40 CFR 122.26(c)(2))
8. General Permits (40 CFR 122.28)
9. Monitoring (40 CFR 122.41(j), 122.41(l)(4), 122.44(i)(1)(iv), 122.48)
10. Effluent Guideline Limits in Permits (40 CFR 122.44(a))
11. Reopener Clauses (40 CFR 122.44(c))
12. Best Management Practices (40 CFR 122.44(k))
13. Termination of Permits (40 CFR 122.64)
B. Revisions to Part 123
1. Requirements for Permitting (40 CFR 123.25)
2. Transmission of Information to EPA (40 CFR 123.44)
C. Revisions to Public Hearing Requirements for NPDES Permit Actions and RCRA Permit Terminations
1. Summary of Proposed Rule
2. Comment and EPA Responses
3. Final Rule
D. Removal and Reservation of Part 125, Subpart K—Criteria and Standards for Best Management Practices Authorized under Section 304(e) of the Act
E. Provisions Without Comments
F. Miscellaneous Corrections
III. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13132
C. Executive Order 13045
D. Executive Order 13084
E. The Unfunded Mandates Reform Act
F. Regulatory Flexibility Act
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Congressional Review Act


## I. Background

On February 21, 1995, the President directed all Federal agencies and departments to conduct a comprehensive review of the regulations they administer and by June 1, 1995, identify those rules that are obsolete or unduly burdensome. EPA conducted a review of its rules, including those issued under the Federal Water Pollution Control Act, as amended (FWPCA) (33 U.S.C. 1251 *et seq.*) (also cited below, as the Clean Water Act or CWA), the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f *et seq.*), and the Marine Protection, Research, and Sanctuaries Act (also known as the Ocean Dumping Act) (33 U.S.C. 1401 *et seq.*). In March and April of 1995, EPA solicited informal comments from the public, regulated entities, States, and municipalities on ways to identify rules that are obsolete, redundant, or unduly burdensome. Toward that end, a number of meetings were held with the public by the EPA Regional Offices. On April 3, 1995, EPA issued a preliminary report which identified those regulatory provisions that were amenable to streamlining. On December 11, 1996, EPA proposed the Amendments to Streamline the National Pollutant Discharge Elimination System Program Regulations: Round Two in the **Federal Register** (61 FR 65268).

Today EPA is issuing the final version of the Round II NPDES Streamlining Rule. This final rule revises the NPDES program regulations in parts 122, 123, 124 and 125 to eliminate redundant requirements, remove superfluous language, provide clarification, and remove or streamline unnecessary procedures which do not provide any environmental benefits. Included in today's final rule are revisions which revise the permit appeals process for EPA-issued NPDES permits by replacing the evidentiary hearing procedures found at part 124, subpart E with a direct appeal to the Environmental Appeals Board. This is not intended to affect the permit appeal procedures for State-authorized NPDES programs.

Today's notice does not represent the end of EPA's efforts to reinvent and streamline its regulations. Further reinvention efforts are under way with respect to the pretreatment program and the core NPDES regulations. There is also a continuing dialogue between EPA and the public on permit reinvention in the context of the National Advisory Council for Environmental Policy and Technology (NACEPT).

## II. Revisions

### *A. Revisions to Part 122*

#### 1. Purpose and Scope (40 CFR 122.1)

*a. Summary of Proposed Rule.* Section 122.1 provides a general description of the purpose and scope of the NPDES program regulations. In the December 1996 proposal, EPA proposed several non-substantive changes to remove superfluous language and to provide for more clarity. EPA did not intend to change any existing substantive requirements. To provide better service to its customers, EPA also proposed providing a note in this provision to assist readers in contacting EPA if they have questions regarding the NPDES program or its rules. EPA also explored the possibility of providing for the electronic submission of queries to the NPDES program.

*b. Significant Comments and EPA Response.* Some comments were made on the issue of providing a note or responding to electronic queries. Some commenters requested assurance that any contacts listed in the note and responses made to electronic queries be from people who are authorized to speak on the Agency's behalf. Another commenter requested that EPA develop a location on the Office of Water's Internet web site that lists most frequent queries and EPA's responses. All other comments regarding this section were to express general support for the proposed revision.

Today's final rule provides the address and phone number for the

Water Permits Division (formerly known as the Permits Division) which provides national oversight for the NPDES, Sewage Sludge, and Pretreatment programs, and the website address of that office's homepage on the Internet. EPA believes that EPA's phone receptionists are able to route callers to the appropriate EPA staff who are knowledgeable about a particular issue or program area. At this time, EPA declines to provide a system for handling electronic queries that is specific to the Water Permits Division since agency-wide procedures are being examined as part of the Agency's effort to respond to such queries. The Office of Water already maintains a web site containing frequently asked questions regarding the NPDES program. This is located at http://www.epa.gov/owm/.

*c. Final Rule.* EPA is adopting the proposed rule and adding the appropriate home page reference.

2. NPDES Program Definitions (40 CFR 122.2, 124.2)

*a. Summary of Proposed Rule.* In the December 1996 notice, EPA proposed to streamline the NPDES program definitions found at parts 122 and 124 by removing redundant or superfluous language. EPA also proposed amending § 122.2 to add references to definitions that are found elsewhere in parts 122, 123, and 403. The inclusion of such references in a single location was intended to assist readers in finding specific provisions in the NPDES regulations and was not intended to expand the application of those definitions if they are restricted to a particular section.

*b. Significant Comments and EPA Response.* One commenter requested that EPA define the term "nonprocess wastewater". Currently there is no such definition. Another commenter suggested that EPA change the definition of point source to exclude "domestic users" in a future rulemaking as a way to focus resources away from *de minimis* discharges. A commenter noted that the definitions for "publicly owned treatment works" (POTWs) differ between § 122.2 and § 403.3 and recommended that these definitions be standardized.

EPA declines at this time to add a definition for "nonprocess wastewater" since such definition was not in the proposed rule. EPA will consider recommendation in the next rulemaking to streamline the NPDES regulations. At that time, EPA will also solicit comment on modifying the definition of point source to exclude "domestic users". EPA will adopt the POTW definition that is found in § 403.3 for § 122.2 to achieve better consistency.

*c. Final Rule.* EPA is adopting the proposed rule and adopting the POTW definition found in § 403.3 for § 122.2.

3. New Sources/New Dischargers (40 CFR 122.4, 124.56)

*a. Summary of Proposed Rule.* Section 122.4(i) prohibits the issuance of a permit to a new source or new discharger if the discharge would cause or contribute to a violation of water quality standards. A new source or new discharger may, however, obtain a permit for discharge into a water segment which does not meet applicable water quality standards by submitting information demonstrating that there is sufficient loading capacity remaining in waste load allocations (WLAs) for the stream segment to accommodate the new discharge and that existing dischargers to that segment are subject to compliance schedules designed to bring the segment into compliance with the applicable water quality standards.

EPA proposed revising these information submission requirements to allow the Director to waive the present submittal of information requirements under § 122.4(i) where the permitting authority determines that it already has the required information. In many instances the information required to be submitted by the applicant (such as waste load allocations available or compliance schedules for existing discharges) may already be in the Director's files. Where the information is not available or current, the Director may not waive the requirement for the applicant to generate all supporting documentation. EPA notes that this information (as with any information which details how permit limits are derived) should be included in the fact sheet or statement of basis for the permit. See 40 CFR 124.7, 124.8, and 124.56. To underscore the importance of such information and to clarify an existing requirement, EPA has also included an express requirement in §§ 122.4(i) and 122.56(b)(1) that information which demonstrates how the criteria for permit issuance in § 122.4(i) are met is included in the fact sheet for the permit. EPA notes that this revision merely clarifies existing requirements found at §§ 124.7, 124.8, and 124.56 and does not result in an increased burden to the regulated community or permit issuing authorities.

All of the comments received supported this effort. In addition to comments providing generalized support, there were two specific comments. A commenter asked if new sources/dischargers should be obligated to provide all of the information where the Director already has some. The EPA feels that applicants must provide only that information which the Director does not have. Additionally, a commenter asked that EPA provide additional clarification as to what constitutes "adequate information?" The EPA feels that what constitutes "adequate information" is the information that is normally and properly submitted during the permit application process for the imposition of water quality based effluent limitations (WQBELs), the development of WLAs, and § 122.4(i) permit situations.

*b. Final Rule.* EPA is adopting the rule as proposed

4. EPA Application Forms (40 CFR 122.1(d)(1), 122.21(a), 122.21(d), 122.26(c)(1))

In the December 1996 notice, EPA proposed to consolidate §§ 122.1(d)(1) and 122.22(d) and move them to a new location, § 122.21(a), because most of the requirements in these two paragraphs are duplicative. EPA also proposed to add language in proposed § 122.21(a)(2) to clarify which EPA forms may be required for a particular discharger. The proposal also included new language to allow for the possibility of electronic submittal of application information in the event that the Agency approves the electronic application submittal process. At that time, authorized States would have the option of using electronic submission of application information. Finally, the December 1996 notice stated there were other ongoing efforts to update EPA's forms which may result in nonsubstantive revisions to paragraph (a)(2).

In December 1995, EPA proposed revisions to streamline and update the municipal (Form 2A) and sewage sludge permit (Form 2S) application regulations. See 60 FR 62546 (Dec. 6, 1995). Because the Form 2A/Form 2S and Round II Streamlining rules would have affected the same portions of the NPDES regulations, EPA has decided in the interest of better efficiency to merge the Round II application revisions into the Form 2A/Form 2S rulemaking. All comments concerning that proposed revision have been addressed in the Form 2A/Form 2S final rulemaking. *See* 64 FR 42434 (Aug. 4, 1999).

5. Effluent Characteristics (40 CFR 122.21(g)(7))

*a. Summary of Proposed Rule.* Section 122.21(g)(7) requires that applicants for permits for existing manufacturing, commercial, mining, and silvicultural

discharges must submit information on effluent characteristics. On November 16, 1990 (55 FR 48062), EPA revised § 122.21(g)(7) to add language which specifically addresses storm water application requirements. However, the addition of this language has made paragraph (g)(7) more difficult to read because there is a large amount of uninterrupted text and it is difficult to separate out requirements that are specific to storm water discharges. The December 1996 proposal proposed to provide greater clarity to paragraph (g)(7) through the insertion of additional paragraph headings. No substantive changes to 40 CFR 122.21(g)(7) were proposed by this revision. EPA also proposed to revise references to provisions in paragraph (g)(7) that are found elsewhere in the NPDES regulations (40 CFR 122.21(g)(8); 122.21, notes 1, 2, and 3; 122.26(c)(1)(i); and 122.26(d)(2)(iv)(C)(2)) to ensure those references reflect § 122.21(g)(7)'s new structure.

*b. Significant Comments and Response.* In response to the proposed insertion of additional paragraph headings, the EPA received a comment recommending that the last two sentences in 40 CFR 122.21(g)(7)(ii) be moved to 40 CFR 122.21(g)(7)(i). EPA declines to follow that suggestion since it believes those two sentences provide needed clarification to the storm water sampling procedures in paragraph (ii). Additionally, paragraph (i) already addresses sampling.

EPA also received a comment that the proposed paragraph headings were insufficient and additional clarification was needed. In response to this comment, the EPA has added paragraph titles to the new paragraphs to make them easier to read.

*c. Final Rule.* EPA has adopted these revisions as proposed but with the addition of paragraph headings. These paragraph headings are intended to aid in the reading of this section and do not, in any way, modify the substantive content of the section.

6. Signatories (40 CFR 122.22)

*a. Summary of Proposed Rule.* The December 1996 proposed revision to 40 CFR 122.22 called for the elimination of the numeric criteria for designating responsible corporate officers who manage one or more manufacturing, production, or operating facilities. The numeric criteria, which specified that the signer "* * * may be the manager of * * * facilities employing more than 250 persons or having gross sales or expenditures exceeding $25 million (in second quarter 1980 dollars) * * *", were developed to ensure that facility managers who sign permit applications had high-level corporate knowledge of a corporation's pollution control operations and are authorized to make management decisions which govern the operation of the regulated facility. However, those criteria have become less valuable in the face of the changing management organization of many facilities. The December 1996 proposal proposed replacing the numeric criteria with more flexible narrative criteria, which specified the authority and responsibilities of the appropriate signer without specifying the resource levels that the signer manages. Under the proposed criteria, signatories include a manager of one or more manufacturing, production, or operating facilities, provided: (1) The manager was authorized to make management decisions which govern the operation of the regulated facility including the ability to allocate resources, make major capital investments, or initiate and direct other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; (2) the manager could ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and (3) where authority to sign documents had been assigned or delegated to the manager in accordance with corporate procedures.

*b. Significant Comments and EPA Response.* In response to this revision, commenters requested that EPA allow those who are eligible under the current criteria to remain eligible signatories. EPA notes that an ability to meet the old, numeric criteria would constitute sufficient evidence that an individual understands the need to comply with permits and has the authority to allocate resources toward permit compliance sufficient to meet the requirements of today's rule. Today's rule should not be interpreted as excluding signatories who were eligible under the previous criteria.

Some commenters responded that the wording of the proposed revision, which called for signers to have the ability to allocate resources and make major capital investments, excluded many facility managers, who they believe are the appropriate signers, and who do not have unilateral authority over allocation of resources. In response to these concerns, EPA will change the proposed language "* * * allocate resources, make major capital investments" into "* * * having, as an explicit or implicit, position-related duty of capital investment recommendations * * *". This will increase the flexibility in designating a signer, without eliminating the requirement that the signer have a role in allocating resources for environmental compliance.

A commenter asked EPA to expand requirements to address partnerships managed like corporations. EPA declines to take this action because it is beyond the scope of the proposal and because partnerships face different liability issues than do corporations. In a partnership, liability is not limited as it is in a corporation and general partners are held directly accountable for the organization's actions. It is therefore, important that a general partner be the signer of the permit as required in the NPDES regulations at 40 CFR 122.22(a)(2).

Additionally, a commenter asked that EPA broaden and clarify signatory eligibility by changing language in § 122.22(a)(1) to allow for a signature by any employee who (1) has the authority to gather and verify accurately and complete information necessary to the filings and (2) is duly authorized by management. EPA declines to incorporate that suggested revision because those two criteria by themselves are not sufficient to ensure that signatories have high level corporate knowledge of a corporation's pollution control operations and are authorized to make management decisions which govern the operation of the regulated facility. The commenter also asked that EPA better define "major" and use the term "funding" in lieu of "capital investment". EPA declines to adopt those changes because it believes that developing a stringent definition of the term "major" would only generate problems similar to those of the existing, numeric criteria. Lastly, EPA believes the term "capital investment" has a stronger association with infrastructure development, such as that needed for compliance, than the term "funding".

*c. Final Rule.* As stated above, EPA is adopting the rule as proposed with the exception of changing the language "* * * allocate resources, make major capital investments * * *." to "having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations * * *".

7. Group Permit Applications (40 CFR 122.26(c)(2))

*a. Summary of Proposed Rule.* In the proposal for today's rule, EPA proposed to remove the storm water group permit

application provisions which are no longer necessary in light of the wide availability of general permits. The group application process was designed to accommodate the initial influx of first-time permit applications from Phase I industrial activities and was based, in part, on the limited availability of storm water general permits in States. However, the deadlines for submitting group applications for storm water Phase I facilities expired on October 1, 1992, and coverage under storm water general permits is now widely available. At present, forty three States are authorized to issue general permits (with EPA issuing storm water general permits for those States and jurisdictions that are without EPA authorization).

General permits provide a more flexible approach to storm water coverage and can accomplish the goals of the group permit application process (i.e., more efficient monitoring, reduced application burdens) without requiring that applicants form into groups prior to applying for permit coverage. EPA also believes that storm water pollution prevention plans (a principal requirement of most storm water general permits) will ensure that general permit conditions are appropriate and applicable for the industrial activities covered. Consequently, EPA believes the group application option is no longer needed. Today's rule eliminates the group application option at § 122.26(c)(2), and makes conforming changes to paragraph (c)(1). EPA notes that the removal of the group application provisions will not impact EPA's ability to reissue the Multi-Sector General Permit, which was developed based on group applications, because it is a general permit and any revisions to it will be based on information collected during the life of the permit.

*b. Significant Comments and EPA Response.* In response to the proposed revisions, some commenters thought EPA should retain the group application language until such time as it can be confirmed that there are no programs at the State level which are relying on the provisions of § 122.26(c)(2) in developing and administering storm water programs. Commenters are concerned that this will reduce flexibility for States who rely on the group application process for information development. At present, all State programs except the Virgin Islands have general permit authority and no State has elected to issue a group permit rather than a general permit. Therefore, EPA believes that removing the group permit provisions will not reduce the States' flexibility to regulate storm water discharges.

Commenters also believe this removal represents a significant policy decision, not appropriately made in regulations designed to eliminate "obsolete, ineffective, or unduly burdensome regulations". EPA disagrees and believes that eliminating the group application provisions is appropriate for this rulemaking since those provisions are clearly obsolete and redundant in light of general permits. Furthermore, EPA believes that retaining group applications may confuse permit applicants as to whether EPA or States will issue group permits. Since both EPA and States are using general permits and not group permits, EPA believes it is important to eliminate this potential confusion.

Some commenters noted that EPA's decision to remove the group permit application provisions would foreclose the possibility of groups not included in the 29 sectors identified in the multi-sector permit seeking and obtaining coverage under a group storm water permit. EPA disagrees with the commenters and notes that groups not included in the 29 sectors can obtain coverage under a general permit for their storm water discharges. EPA also notes that the multi-sector permit is a general permit which will not be affected by the removal of the group permit application provisions.

Commenters also feel that the group permit application provisions may be of value in future Phase II storm water permitting implementation. EPA believes, based on discussions during the phase II FACA meetings, that the scope and nature of the Phase II storm water rule is more compatible with the use of general permits and that the group application rules would require that applicants submit more information than needed. Given the widespread availability of general permits, EPA believes that general permits are a better permitting mechanism.

*c. Final Rule.* EPA has adopted the final rule as proposed.

8. General Permits (40 CFR 122.28)

*a. Summary of Proposed Rule.* In the proposal to today's rule, EPA proposed to revise the NPDES regulations to allow non-storm water general permits to cover more than one point source category or subcategory.[1] This revision was expected to increase the effectiveness of general permits that are issued on a geographic basis since it would be easier to use a single general permit to provide comprehensive controls on number of different discharges (as separate categories) within a geographic area such as a watershed. This revision was also expected to result in cost savings to permitting authorities since a single multi-category general permit could take the place of multiple single category general permits.

EPA noted, however, that the types of operations conducted or wastes discharged within each category or subcategory authorized by the general permit (except for general permits for storm water discharges) would still have to be substantially the same. Within each identified category or subcategory, limitations would have to be identical for all covered dischargers or treatment works treating domestic sewage.

EPA also proposed to revise the general permit regulations to clarify that where dischargers are subject to water quality-based limitations (WQBELs), discharges within a specific category or subcategory shall be subject to the same WQBELs.

*b. Significant Comments and EPA response.* In response to the proposal, several commenters expressed concern regarding WQBELs in general permits, stating that they are more appropriate for site-specific permits. They recommended that only technology-based limits and best management practices be used. EPA notes these concerns but declines to limit general permits to imposing only technology based limits. EPA believes there are situations where general permits can effectively impose WQBELS such as where a general permit is developed in close coordination with a total maximum daily load (TMDL) and/or a wasteload allocation. There are already cases in which general permits are being used to impose WQBELs on facilities with the same water quality requirements. One example of this is in the Commonwealth of Puerto Rico. Puerto Rico does not allow for mixing zones and thus discharges must meet water quality standards at the point of discharge making it possible to establish WQBEL in general permits which apply to all discharges without variation.

[1] Before this amendment, EPA's general permits regulations at 40 CFR 122.28(a)(2) provided that the "general permit may be written to regulate * * * either: (i) Storm water point sources, or *a category* of point sources other than storm water that * * * (A) involve the same or substantially similar types of operations; (B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices; (C) require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal; (D) Require the same or similar monitoring; and (E) in the opinion of the Director, are more appropriately controlled under a general permit than under individual permits." (Italics added.)

Therefore, EPA believes that there are enough situations in which WQBELs are appropriate in general permits for this modification to be useful.

A commenter has requested an explanation of how general permits can be used to impose WQBELs. As mentioned above, general permits could impose WQBELS in areas where there are no mixing zones. A general permit containing WQBELs, for example, could also be developed in close coordination with a total maximum daily load (TMDL) and/or a wasteload allocation, or to cover a category of dischargers at a certain discharge level for an entire watershed.

A commenter expressed concerns over allowing general permits to cover multiple categories of dischargers. The commenter is concerned that development of overly broad general permits covering similar, but distinct, practices would result in unnecessary limits and conditions for some covered facilities. The commenter requested language in the preamble stating that coverage of general permits must not be so expansive that unnecessary requirements are placed on any of the categories that are regulated. Although EPA believes that such a scenario is possible, it is more likely that general permits will be developed to minimize imposing undue requirements on facilities. Also, applicants can always request coverage under an individual permit if they believe a general permit's requirements to be unnecessarily onerous. Thus, EPA declines to include such language.

Additionally, a commenter has suggested that general permits covering multiple categories are inappropriate for sludge disposal because of differing methods of disposal. EPA disagrees because general permits can be developed with categories that are based on differing methods of disposal.

A further comment has been made to request that general permits be expanded to cover cooling water discharges and discharges from remedial technologies for removing Volatile Organic Compounds. EPA believes that the creation of those categories is best left to the permitting authority who is familiar with the circumstances surrounding each general permit (subject to the requirements of 40 CFR 122.28(a)(2)), and declines to create a specified general permit category in this regulation. However, EPA does not by this decision mean to imply that general permits for such categories are prohibited if the permitting authority believes them to be appropriate.

Lastly, a commenter has stressed the importance of proposed paragraph 40 CFR 122.28(a)(4) and requested that it be retained in the final rule. EPA agrees with the commenter and has retained this provision in the final rule.

*c. Final Rule.* EPA has adopted the final rule as proposed.

9. Monitoring (40 CFR 122.41(j), 122.41(l)(4), 122.44(i)(1)(iv), 122.48)

*a. Summary of the proposed rule.* In the proposal to today's rule, EPA proposed to consolidate the monitoring provisions found at §§ 122.41 (j), (l)(4), and 122.44(i) and place them in § 122.48. In addition, EPA proposed to add a cross reference to the new consolidated monitoring requirements at § 122.41(j) to ensure that monitoring remains a standard condition for all NPDES permits. This revision was not intended to result in any substantive changes to the NPDES monitoring requirements. On the basis of comments received which raise the possibility that the proposed revisions might result in a substantive change to the monitoring requirements, EPA has decided to not finalize this portion of the proposed rule at this time. EPA expects to finalize this consolidation in a future rulemaking

10. Effluent Guideline Limits in Permits (40 CFR 122.44(a))

*a. Summary of Proposed Rule.* EPA proposed to revise § 122.44(a) by providing minor clarification changes in existing paragraph (a) and redesignating it as paragraph (a)(1), and by adding a new paragraph, (a)(2), to allow Directors on a case-by-case basis to not require effluent limits and monitoring for certain guideline-listed pollutants if a discharger could certify that those pollutants would not be in the discharge.

To receive this waiver from monitoring requirements, permittees would have to submit a certification (along with supporting information) with each permit application or application for permit renewal. The waiver would have to be included as an express condition in the permit. This revision was not intended to waive monitoring for any pollutants that should be limited on the basis of water quality standards. For those pollutants whose monitoring requirements had been waived (known hereafter as "waived pollutants"), the proposal would not have allowed for discharge of those pollutants in any amount. Thus, applicants were cautioned to not pursue this approach if there was any possibility that waived pollutants might be discharged.

*b. Significant Comments and EPA Response*—(1) *Proposed § 122.44(a)(1).* One commenter stated that the phrase "as appropriate" in proposed § 122.44(a)(1) is misplaced, because it modifies "effluent limitations and standards promulgated under section 301(b)(1) or 301(b)(2)", but not "new source performance standards promulgated under section 306 of the CWA". The commenter suggested that the phrase be deleted because an existing phrase "when applicable" in the introductory text of § 122.44 already ensures that all of the requirements in § 122.44 will be applied when appropriate. EPA agrees and is removing the term "as appropriate" from the final rule. EPA is also replacing the citations to sections 301(b)(1) and 301(b)(2) with a single citation to section 301 of the CWA.

(2) *Proposed § 122.44(a)(2)—Generalized Support for the Waiver Concept.* A large number of commenters expressed support for the concept of providing a waiver from monitoring requirements for guideline-listed pollutants as a way to reduce unnecessary burdens on the regulated community. Some commenters indicated that the current requirements caused significant burdens. One commenter noted that facilities in the organic chemicals, plastics, and synthetic fiber (OCPSF) point source category must have limits and monitoring requirements for 63 organic chemicals even though some facilities only have the potential to discharge one or two chemicals. Another commenter noted the current regulatory requirements have led to endless questioning of departmental staff by permittees which resulted in an unwarranted diversion of staff time and resources.

EPA agrees with the above comments and is providing for a waiver from monitoring requirements, but not a waiver from the limit, in today's rule as described below.

(3) *Applicability of the Waiver to First Term Permits.* Some of the commenters expressed concerns with the availability of this waiver for new sources. They believed that the Agency would not have enough data or enough familiarity with a "new source" to be able to safely apply this waiver. The commenters recommended that the waiver be made available to a discharger only after the first permit term.

EPA agrees with these concerns and believes that they apply to all new permittees (not just "new sources"). Consequently, EPA is making this waiver available only after the first term of the permit. The Agency believes that this restriction will greatly simplify the waiver process since the information generated during the first permit term

will: (1) Assist permittees in determining whether to seek a waiver, (2) assist Directors in determining whether to grant such waivers, and (3) reduce the risk of a permittee discharging a waived pollutant.

(4) *No Discharge Limit in the Waiver.* A number of comments were received relating to the proposed no-discharge limit on pollutants subject to the waiver ("waived pollutants"). Those comments generally opined that the no-discharge requirement would be impossible to meet and so onerous as to discourage use of the waiver. Some commenters believed that it would not be possible for a discharger to certify that a pollutant is not present in any amount because it might be present in amounts below detectable levels. Some commenters also noted that guideline-listed pollutants may be present in trace amounts from sources other than manufacturing processes such as intake water; the use of cleaners, corrosion of equipment, pipes and fittings; or from research operations. One commenter noted that the no-discharge requirement might require facilities to pretreat intake water.

Some commenters also suggested alternatives to the no discharge requirement. One commenter recommended that the waiver be allowed for pollutants that are present in trace amounts from sources that are unrelated to the manufacturing process. A commenter recommended that the waiver be allowed where a facility is not further adding pollutants to those already in its intake water. Another commenter recommended that the waiver be allowed if the pollutant is not regulated in the manufacturing process as a raw material, is not present in raw materials, is not generated as a product or by-product, and is not present in wastes from the manufacturing processes in analytical quantifiable concentrations. Some commenters recommended that the final rule be changed to allow permittees to certify that the pollutant is not detectable. Other commenters also recommended that EPA apply the waiver in situations where a pollutant is repeatedly found in amounts well below the guideline-based limit or below what are believed to be "levels of concern". Some commenters suggested that EPA consider just allowing guideline-listed pollutants to be monitored without limits. One commenter requested that EPA consider retaining permit limits for guideline-listed pollutants while removing the minimum yearly monitoring requirements for pollutants with permit limits.

In response to these comments and other considerations, EPA is issuing the final rule to allow for the waiver from monitoring requirements if the facility can certify that the pollutant is not present in its discharge or is present only at background levels from intake water with no increase in the pollutant due to activities of the discharger.

EPA declines to allow monitoring waivers for pollutants that are added by dischargers in minute amounts (*e.g.*, use of common cleaners or from research operations) because human activity might lead to substantial increases in those pollutant discharges which may threaten the aquatic environment. Consequently, there is a continuing need to monitor those pollutants. EPA also notes that at least one national effluent guideline addresses the introduction of incidental amounts of pollutants from cleaning, maintenance, or research operations and EPA does not believe it is appropriate to apply the waiver to a pollutant that is added to the waste stream and subject to an effluent guideline. *See* 40 CFR 414.11(o) (applying the Organic Chemicals, Plastics, and Synthetic Fibers Effluent Guidelines to wastewater discharges from research and development operations). Metals or other pollutants which can leach from pipes may also pose a threat to the environment and EPA believes monitoring should be retained for such discharges. With respect to pollutants which occur in amounts below "levels of concern", the discharge of such pollutants can also increase from human activity and EPA believes that monitoring is necessary to ensure that an appropriate level of treatment continues to be provided. EPA does share the belief that excellent treatment performance should be encouraged. Therefore, EPA has provided via guidance, a method to reduce, but not eliminate, monitoring in recognition of excellent performance. See "Interim Guidance for Performance—Based Reductions of NPDES Permit Monitoring Frequencies' dated April 19, 1996.

With respect to determining whether a pollutant is not present or is present at only background levels from intake water without any increase of the pollutant due to activities of the discharger, EPA believes that this determination can be accomplished in a number of ways depending on the situation. In some cases, knowledge about a facility's process and infrastructure is enough to determine that an addition will occur. For example, a pollutant may be a known by-product of certain processes used in a facility and it would be reasonable for a permitting authority to find that the pollutant is added even if the addition is difficult to detect in the effluent. Similarly, knowledge that certain industrial processes do not use or generate a particular pollutant and that the pollutant would not be added in other ways may also be a sufficient basis for concluding that a pollutant is not added. To provide flexibility to deal with a variety of situations, today's rule does not establish the minimum data needed to make this determination. Rather, the Director should determine the most appropriate approach using his or her best professional judgment. This issue is discussed in more detail below under the heading (5).

Today's rule retains limits for waived pollutants since removing those limits may be interpreted under the Federal permit shield provisions to allow the discharge of those pollutants in unlimited quantities. *See* 40 CFR 122.5.

(5) *Process of Granting the Waiver.* A number of commenters asked what information is required for a waiver to be granted while noting that the proposed rule did not state what specific information was necessary. One commenter asked whether a one time analysis of the outfall would be sufficient. Another commenter expressed the belief that the permit application provides sufficient information to determine if the waiver is appropriate. Another commenter requested that the certification language be revised to recognize the availability of source information (*e.g.*, SARA Toxics Release Inventory or pollutant analyses submitted with permit application) when determining whether to grant a waiver.

EPA believes that the amount of information needed to grant the waiver will vary with each permit applicant. However, in many cases, information sufficient to grant or deny a waiver will be found in the permit application and from information generated from any prior permits issued to the facility. Inspection reports, sampling data submitted by the applicant, and the SARA Toxics Release Inventory all contain information which may be considered when a permit is being developed and may also assist Directors in determining whether to grant the waiver. Directors are also free to request any additional information they believe they need under section 308 of the Clean Water Act in order to make a waiver determination. EPA wishes to reiterate that the monitoring waiver is good only for the term of the permit and that permittees must reapply for it when applying for a reissued permit.

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(6) *Enforcement Issues Associated with the Waiver.* Some commenters expressed concerns that the proposed revision to § 122.44(a) could be interpreted to mean that a Director would only have enforcement authority for waived pollutants and not for pollutants not listed in the permit or that the revision would abrogate the protection provided by EPA's permit shield provisions.

One commenter asked how the program will take into consideration cases where the detection limit of a trace pollutant may decrease as a result of improved analytical methodologies. Another commenter asked how EPA would respond to the detection of an unauthorized pollutant in a discharge, even if the permittee had a system in place to prevent its introduction.

EPA notes that today's revision to § 122.44(a) retains limits for all guideline-listed pollutants and is not intended to alter EPA's enforcement authority. Any exceedance of the effluent limit found in the permit would be a permit violation regardless of whether a waiver is in place. Today's rule is also not intended to change EPA's requirements and policies regarding the permit shield provisions at 40 CFR 122.5. Permittees are also liable for any discharge of a pollutant beyond that which serves as the basis of the waiver. Two pertinent examples of this include: (1) Where a waiver is based on a discharger's certification that the waived pollutant is not present in the discharge and the pollutant is subsequently found to be present, or (2) where a waiver is based on a certification that the pollutant is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger and the pollutant is subsequently found to be added to the discharge by the discharger. Permittees are liable for any violation of a permit requirement and are subject to the full range of enforcement responses. Factors such as the nature, severity, and frequency of violation, human health and environmental impacts, and compliance history of the permittee are considered by the Director when determining an appropriate enforcement response. For example, in situations where a waived pollutant thought to be absent is discovered through improved detection techniques or as the unintended consequence of a change in the facility's operation, the Director may issue an administrative compliance order to require monitoring for that pollutant, or the permit could be modified (as a minor modification under 40 CFR 122.63(b)(2)) to require such monitoring. These responses may be particularly appropriate in situations where a pollutant is discharged in an amount which exceeds that which serves as the basis of the waiver but below the guideline-listed limit.

Permittees should be aware that if they change their facility's operations in a way that may result in pollutant discharges beyond what serves as the basis for the waiver, they are obligated under 40 CFR 122.41(l)(2) to report that change to the Director. If permittees discover in their discharge, pollutant levels which exceed what is authorized by the waiver, they must also report that presence to the Director in accordance with § 122.41(l).

(7) *Suspending the Waiver if Facility Operations Change.* Some commenters requested that permittees be required to resume monitoring for all guideline-listed pollutants for at least one year after a process change or change in materials use, regardless of waiver.

EPA declines to make these suggested changes because there are already provisions in the NPDES regulations to alert permit issuing authorities to situations where it may be necessary to reinstate monitoring. Sections 122.41(l)(1) and 122.42(a)(1) impose reporting requirements for planned physical alterations or additions to a permitted facility. Section 122.44(l)(2) requires that permittees provide advance notice to the Director of any planned changes to the permitted facility or activity which may result in non-compliance with permit requirements, including those contained in a monitoring waiver. Additionally, § 122.62(a)(1) provides for permit modification if "[t]here are material and substantial alterations or additions to the permitted facility . . . which occurred after permit issuance which would justify the application of permit conditions that are different or absent in the existing permit." These provisions can inform Directors about the potential need to reinstate sampling and grant them sufficient authority to reinstate it. Thus, there is no need to add a new provision to 40 CFR 122.44.

(8) *Indicator Pollutants.* A commenter noted that certain guideline-listed pollutants are indicator pollutants and that by waiving monitoring for an indicator pollutant it would make sense to waive the secondary pollutant as well. EPA believes it is rare to encounter a permitting situation where monitoring is required for both indicator and secondary pollutants. However, EPA agrees as a general matter that if a pollutant is regulated under an effluent guideline as an indicator for other pollutants, then monitoring can be waived to the same extent of other pollutants at the permit-issuing authority's discretion, if that indicator pollutant and the secondary pollutant are not present.

(9) *Antibacksliding.* A commenter raised a concern that the proposed revision constitutes "backsliding". (Backsliding is a term of art used to describe an impermissible relaxation of permit limits or conditions upon permit reissuance, see CWA § 402(o) and 40 CFR 122.44(l)). EPA notes that a reduction in monitoring might in some cases, constitute backsliding of a permit "condition" as countenanced under 40 CFR 122.44(l)(1). However, § 122.44(l)(1) would operate to allow such backsliding on the basis that the circumstances upon which the previous permit was based have materially and substantially changed since the time the permit was issued and would constitute a cause for permit modification under § 122.62(a)(2) (new information) or § 122.62(a)(3) (new regulations).

Another commenter noted that the antibacksliding provisions could apply if a discharger wished to modify or renew their permit to allow for the discharge of a guideline-listed pollutant which had been subject to a no-discharge limit under a waiver. As noted above, EPA is retaining the requirement that limits be placed in permits for all guideline-listed pollutants and the backsliding situation envisioned by the commenter should not occur as a result of this rulemaking.

(10) *Section 122.4(a)(2) Does not Supersede any Monitoring Waivers in the Effluent Guidelines.* EPA notes that there are at least two guidelines with certification processes relating the waiving or reducing monitoring.[2] This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards because such processes may be better tailored to situations that are specific to the guideline and pollutant.

c. *Final Rule.* In response to comments on the proposed rule, EPA has adopted a modified version of the proposed regulation which retains the requirement that permits have limits for all applicable guideline-listed pollutants but allows for the waiver of sampling requirements for guideline-listed pollutants on a case-by-case basis if the discharger can certify that the pollutant is not present in the discharge or

[2] *See* 40 CFR 413.03 (Monitoring Requirements for Total Toxic Organics under the Electroplating Point Source Category) and 40 CFR 421.3(b) (Periodic Monitoring for Cyanide under the Primary Beryllium Subcategory of the Nonferrous Metals Manufacturing Point Source Category).

present only at background levels from intake water with no increase due the activities of the discharger. The waiver must be applied for each permit reissuance and is not available for the first permit issued to the discharger.

(11) Reopener Clauses (40 CFR 122.44(c))

a. *Summary of the Proposed Rule.* Section 122.44(c) provided for reopener clauses in permits. For reasons described in more detail in the proposal (see 61 FR 65273–74), EPA proposed removing paragraphs (c)(1), (c)(2), and (c)(3) of § 122.44. Paragraphs (c)(1) and (c)(3) apply only to permits issued on or before June 30, 1981, and are obsolete. EPA also proposed removing paragraph (c)(2) which is redundant with the requirements of § 122.44(a). EPA proposed consolidating the §§ 122.14(a) and 122.44(c)(2) requirements in a new paragraph at § 122.44(a)(1). EPA proposed retaining the provision for reopeners of sludge conditions in NPDES permits (originally found in 40 CFR 122.44(c)(4)) and redesignating it, § 122.44(c). By proposing to remove these provisions, EPA did not intend to limit the ability of permitting authorities to place reopener clauses in permits on a case-by-case basis, particularly where reopeners may result in more environmentally protective permit limits, standards, or conditions.

b. *Significant Comments and EPA Response.* In response to EPA's proposal, a commenter noted that, with paragraphs (c)(1), (c)(2) and (c)(3) gone, the only reopener left, (c)(4), would apply to treatment works treating domestic sewage. The commenter thought that this was too narrow an application of reopeners. EPA disagrees and notes that § 122.62 provides EPA with broad authority to modify permits regardless of the presence of a reopener clause and the removal of paragraphs (c)(1), (c)(2), and (c)(3) will not impinge on EPA's or a permittee's ability to revise permits.

Another commenter disagreed with the preamble language which implied that permit writers could insert reopeners other than those enumerated at § 122.44(c). They noted that section 122.62 establishes appropriate scope of permit modifications. As noted in its response to the preceding comment, EPA agrees that the authority provided to it under § 122.62 is adequate to allow for any necessary revisions of permits.

c. *Final Rule.* EPA has adopted the final rule as proposed.

(12) Best Management Practices (40 CFR 122.44(k))

a. *Summary of Proposed Rule.* Section 40 CFR 122.44(k), authorizes EPA to require BMPs in NPDES permits to control or abate the discharge of pollutants where: (1) authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances, (2) authorized under section 402(p) of the CWA for the control of storm water discharges; (3) numeric effluent limitations are infeasible, or (4) the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

To assist the regulated community in developing and implementing BMPs, EPA proposed to provide a note to § 122.44(k) which would provide references to available agency guidance on developing and implementing BMPs. The inclusion of these references was not intended to change the substantive requirements of § 122.44(k). BMPs are often best tailored for specific industries and the EPA guidance furthers that goal. Therefore, EPA believes it is important that regulated community know about the existence of these documents.

b. *Significant Comments and EPA Response.* One commenter objected to EPA's assertion that there is any authority under the CWA for the imposition of BMPs that have not been promulgated under section 304(e). Since EPA did not propose any revisions to the regulatory requirements of § 122.44(k), this comment is beyond the scope of the proposal, and EPA therefore declines to respond.

One commenter suggested EPA clarify whether or not the proposed note in 40 CFR 122.44(k) is a regulation published under section 304(e) of the Clean Water Act, insofar as information in that note pertains to control of toxic or hazardous pollutants from activities within the scope of section 304(e). EPA intends for the note to be informational and does not intend for it to impose regulatory requirements. The Office of the Federal Register does not allow notes to impose regulatory requirements.

One commenter stated that it is inappropriate to include references to specific guidance documents in a regulation, because such guidance is frequently updated and has no regulatory force. The commenter recommends that the regulation discuss that EPA BMP guidance documents are available and identify the EPA office or offices, including addresses and phone numbers, from which current lists of BMP guidance documents can be obtained. EPA could also put the current BMP guidance reference list on its Internet web site and identify the web site as a source of the BMP guidance reference list. The regulations should state that the BMP documents identified in the rule are for guidance only, and have no regulatory force. EPA declines to remove references to specific guidances in the "note" to § 122.44(k) since such references will assist readers in complying with regulatory requirements. However, EPA will also include a list of BMP guidance on the Office of Wastewater Management (OWM) Internet web site and include a reference to the web site in the "note". EPA has also added language to the note to clarify that the EPA guidance documents are listed only for informational purposes, and they are not binding.

One commenter recommended that the note to § 122.44(k) should state that additional BMP documents may also be available from the States. EPA will include this statement.

c. *Final Rule.* EPA has adopted the regulation as proposed except that the Agency will also provide a statement in the note to § 122.44(k) to indicate that additional BMP documents may also be available from the States and to provide a reference to the Office of Wastewater Management's Internet home page.

(13) Termination of NPDES Permits (40 CFR 122.64) and RCRA Permits

a. *Summary of Proposed Rule.* In the proposal to today's rule, EPA proposed to revise § 122.64 to allow the Director to terminate a NPDES permit by giving notice to the permittee, without following part 22 or 124 procedures where the permittee has permanently terminated its entire discharge by elimination of its process flow or other discharge components or by redirecting its discharge into a POTW. Currently, the NPDES regulations require that part 124 public participation procedures be followed for terminating permits.

These expedited permit termination procedures would not be available when a permittee is subject to pending State and/or Federal enforcement actions, including citizen suits brought under State or Federal law. In such situations, the public has a strong interest in participating in any permit termination proceeding and permittees should not use expedited permit termination procedures as a way to avoid enforcement liability. EPA would also require that permittees who request expedited permit termination procedures must certify that they are not subject to any pending State and/or Federal enforcement actions. This exclusion includes citizen suits brought under State or Federal law.

EPA did not propose to eliminate the requirement to follow part 124 termination procedures if the pollutants were to be disposed in wells or by land

application of effluent, even if the permittee requests termination. In such cases, it is important that the public be notified and able to pursue any concerns about such disposal methods under other appropriate Federal, State or local regulatory programs. EPA noted that there were situations where permits are appropriate for no discharge facilities, particularly where there is the possibility of an inadvertent discharge into waters of the United States. Additionally, EPA noted that a permittee terminating its discharge due to connection to a POTW would be subject to applicable pretreatment requirements, including those in parts 403 and 405–471, along with any local requirements. An existing categorical industrial user initiating a discharge to a POTW must notify the POTW in accord with § 403.12.

Finally, EPA noted that permittees should be very sure that they have, in fact, eliminated their discharge when requesting expedited permit termination procedures. This is because any pollutants discharged by the facility subsequent to permit termination could violate section 301 of the CWA (prohibition against unpermitted discharges). EPA also proposed conforming changes to § 124.5 procedures to reflect these proposed expedited permit termination procedures.

To effectuate these changes and do away with administrative hearings, EPA proposed to eliminate Subpart E of 40 CFR Part 124, as described above. The Subpart E procedures also applied to certain RCRA permit terminations, but EPA found it was appropriate to eliminate Subpart E as to RCRA permit terminations as well, for the reasons described in the proposal.

*b. Response to Comments.* Some commenters were concerned about loss of standing to sue where a violator's permit is terminated before the 60 day notice of intent to sue period has ended. Because they may commence an action only after the 60 day notice period has ended, they requested that this procedure be prohibited at the point where a permittee, State or the Administrator has received a notice of intent to sue. However, EPA notes that in most cases, citizens lose the authority under CWA § 505 to file suit for past violations when a permittee has permanently terminated its discharge, not at the point when the permit is terminated. (*See, Gwaltney of Smithfield Ltd.* v. *Chesapeake Bay Foundation, Inc.*, 484 U.S. 49 (1987)) Under *Gwaltney*, citizens may not file suit under the CWA solely to enforce against alleged violations which occurred in the past. They may, however, file suit to enforce against violations which are alleged to be continuous or intermittent. In other words, if the violation is not on-going, there must at least be the potential for a violation to occur in the future. At the point the permittee permanently ceases to discharge or has redirected its flow, there is no longer a potential for a violation to occur and suits filed after that time would be barred under *Gwaltney*, but not suits filed before the discharge terminates. In addition, *Gwaltney* states that "the purpose of notice to the alleged violator is to give it an opportunity to bring itself into complete compliance with the Act and thus likewise render unnecessary a citizen suit." *Id.* Hence, if the permittee receives notice and then terminates its discharge, the permittee is now essentially in complete compliance with the Act.

Furthermore, under non-expedited permit termination procedures, it is possible that the notice and comment period could be completed and the permit thereafter terminated within the 60 day notice-of-intent-to-sue period. As a result, citizens would be barred from bringing a suit under *Gwaltney* under the existing regulations. Thus, the availability of expedited permit terminations is likely to make little difference with respect to the ability of citizens to enforce against permit violations under section 505. It is also important to note that under the expedited system, citizens could still appeal EPA's decision to terminate a permit, which if the challenge were successful, would result in the permit remaining in place.

Considering the foregoing, it is also necessary to discuss the cost involved in the non-expedited termination procedure. The transaction cost for the government to undergo notice and comment is high. This high cost seems unjustified where a permittee has terminated its discharge and, thereafter, its permit thus eliminating any future threat to the environment. Given that there would be no direct discharge and the given rarity of a situation that would meaningfully affect citizens' ability to bring suit under section 505, EPA believes it can use its resources better elsewhere. EPA also notes that under section 505 of the Act, an enforcement action is not pending during a 60 day notice-of intent-to-sue period. It is also important to note that the revised rule would still allow the Director to deny expedited permit terminations in cases where a notice of intent to bring a citizen suit has been filed.

Some commenters questioned why the expedited permit termination procedures would not be available for permittees subject to a pending enforcement proceeding. EPA notes that the public has a strong interest in participating in permit termination proceedings where there is a pending enforcement action and, therefore, expedited procedures should not be used in those situations. This is particularly true in situations where third parties may want to intervene in enforcement actions. Moreover, EPA regulations require that the public be allowed to participate in State or Federal Enforcement actions (see, 40 CFR 123.27(d)), and expedited permit termination procedures could hamper such intervention.

There were two comments questioning why this procedure would not be available if pollutants will be disposed of either in wells or by land application of effluent. Both comments raised the issue that public notice and comment under Federal law is not necessary in this situation because there are State and Federal laws which regulate land application of effluent and discharges into wells which will provide for public notice and comment and there is no need for repetition. In EPA's view, however, these notice and comment provisions may not be wholly redundant because every existing applicable State law and all other Federal laws which would regulate these actions may not have a public notice and comment requirement. This, together with the fact that it is extremely important for the public to be notified that pollutants will be disposed of either in wells or by land application of effluent, created a need to prohibit this expedited permit termination procedure in such situations. Preventing the use of this procedure in such situations and therefore, requiring public notice and comment at this level, will best protect the public's interest in this area.

*c. Final Rule.* The final rule adopts the same approach that EPA proposed, although the language of 124.5(d) has been modified from the proposal in order to more accurately reflect this approach as it affects RCRA permit terminations.

The preamble to the proposal stated that RCRA permit terminations are first subject to an informal process (notice and opportunity for comment and an informal hearing), after which a party may request an evidentiary hearing under Subpart E and subsequently may appeal a permit to the Environmental Appeals Board. The proposal failed to distinguish, however, between permit terminations that EPA initiates for cause under 40 CFR 270.43 and permit termination proceedings that occur in

conjunction with RCRA § 3008 enforcement orders. Only the latter types of permit terminations were subject to the formal hearing procedures in Subpart E. EPA's intent in the proposal was to make only those types of RCRA permit terminations subject to Part 22 instead of Subpart E. EPA did not intend to affect the procedures for initiating a permit termination for cause under 270.43. Those types of permit terminations have always been subject to the same process that applies to issuing RCRA permits, i.e, notice and opportunity for comment and an informal hearing before a final decision. An evidentiary hearing to review the final decision is not available. Instead, these types of RCRA permit terminations, like permit issuances, are appealed directly to the EAB.

Accordingly, EPA has revised the final rule to reflect that, for RCRA permits, the elimination of Subpart E in favor of Part 22 procedures applies only to permit termination proceedings that occur in conjunction with section 3008 enforcement orders.

Similarly, EPA did not intend to change, and the final rule does not affect, the procedures for RCRA permit terminations that are at the request of the permittee. (For example, the permittee may have ceased operations and have no remaining closure or corrective action concerns.) EPA processes this type of RCRA permit termination under 40 CFR 270.42 as a "Class 1" modification (allowing a change in the expiration date to cause early permit termination, with prior approval of the Director—see Appendix 1 to § 270.42, item A.6).

*B. Revisions to Part 123*

1. Requirements for Permitting (40 CFR 123.25)

*a. Summary of Proposed Rule.* EPA had proposed revisions to 40 CFR 123.25(a) to clarify that certain provisions which detail penalty amounts in 40 CFR 122.41(a)(2), (a)(3), and (j)(5) are not required of State NPDES programs. Instead, the applicable penalty provisions for State NPDES programs are found at 40 CFR 123.27. This is consistent with EPA's long standing interpretation of the Clean Water Act and its regulations. See EPA's Office of General Counsel Opinion, dated May 31, 1973.

*b. Significant Comments and EPA Response.* EPA received no comments regarding this section.

*c. Final Rule.* EPA is adopting this section as proposed.

2. Transmission of Information to EPA (40 CFR 123.44)

*a. Summary of Proposed Rule.* In an effort to streamline Federal oversight of State NPDES permit programs, EPA proposed to revise 40 CFR 123.44 to remove references to the Office of Water Enforcement and Permits (OWEP) and its role in commenting on and objecting to State-issued general permits. At one time, OWEP (now known as the Office of Wastewater Management) was expected to play an active role in reviewing, commenting, and objecting to State-issued general permits. Section 123.44(i) made the role of the Director of OWEP coextensive with that of the Regional Administrator for the purposes of objecting to proposed State-issued general permits (other than those for separate storm sewers).

Specifically, EPA proposed to revise § 123.44 (a)(2) and (b)(2) to remove those references to OWEP and its role in reviewing State-issued general permits. EPA would also remove and reserve 40 CFR 123.44(i).

*b. Significant Comments and EPA Response.* In response to this revision, a commenter replied that § 123.44 provides 90 days of comments on general permits, which eliminates the potential flexibility of negotiating such time frames in State/EPA Region Memoranda of Agreement (MOAs). EPA believes that the comment is beyond the scope of this rule since it does not change, or hamper the flexibility of, the review period of § 123.44(a)(2), which can be up to 90 days.

*c. Final Rule.* EPA has decided to promulgate the proposal without change

*C. Revisions to Public Hearing Requirements for NPDES Permit Actions and RCRA Permit Terminations*

1. Summary of Proposed Rule

EPA proposed to eliminate as unnecessary the existing procedures for conducting formal evidentiary hearing on NPDES permit conditions contained in 40 CFR part 124, subpart E, and further proposed to eliminate the alternative "Non-Adversary Panel Procedures" in part 124, subpart F. EPA has also proposed to eliminate appendix A to part 124 (Guide to Decision making under Part 124) because its role in explaining subpart E and subpart F procedures would no longer be meaningful in the absence of those subparts. EPA also proposed to modify the procedures for terminating NPDES and RCRA permits. These revisions do not apply to authorized State NPDES programs.

2. Comments and EPA Responses

EPA received comments on the proposal to eliminate evidentiary hearings from ten commenters. All of these comments came from members of industry and none of them supported the proposal to eliminate evidentiary hearings. One commenter supported the elimination of the subpart F procedures. No comments were received on the elimination of appendix A.

*(i). Legal Basis.* In the proposal, EPA explained its tentative conclusion that, due to the progress of the law in the Courts of Appeals, the *Seacoast* v. *Anti-Pollution League* v. *Costle,* 572 F.2d 872 (1st Cir. 1978)("Seacoast"), and *Marathon Oil Co.* v. *EPA,* 564 F.2d 1253 (9th Cir. 1977) ("Marathon") decisions are no longer good law. To briefly restate its position, EPA has revisited the hearing requirements of section 402(a), employing the two-step analysis of *Chevron, U.S.A.* v. *NRDC,* 467 U.S. 837 (1984), which provides that, where Congress has failed to express a clear intent to the contrary, an agency charged with administering the statute may adopt an interpretation which is reasonable in light of the goals and purposes of the statute. In the first step of its Chevron analysis, the Agency has examined the text, legislative history, and judicial interpretations of the Act, finding no evidence that Congress intended to require formal evidentiary hearings or that the text precludes informal adjudication of permit review petitions. Using modern due process analysis, the Agency, in the second step of its Chevron analysis, carefully weighed the risks and benefits of informal hearing procedures for NPDES permit review, determining that these procedures would not violate the Due Process Clause of the Constitution. Accordingly, the Agency has concluded that informal hearing procedures satisfy the hearing requirement of section 402(a).

*(ii) Chevron Step One.* (a) Text and Legislative History. As EPA noted in the proposal, section 402(a) does not explicitly state that public hearings on NPDES permits must be conducted "on the record," the phrase normally associated with a requirement that hearings be conducted under section 554 of the APA. 61 FR 65268, 65276 (Dec. 11, 1996). One commenter asserted that EPA placed undue emphasis in its due process analysis on the fact that section 402 of the Clean Water Act does not expressly require that the public hearings for the review of NPDES permits be "on the record". EPA acknowledges that the absence of a record requirement in section 402 does

not necessarily mean that Congress intended to supply only informal adjudication of NPDES permit review petitions. Still, as explained in the proposal, the absence of an explicit requirement in section 402(a) that formal APA procedures be used is significant in light of certain judicial decisions that followed the promulgation of the part 124 regulations and which have abandoned the presumption that trial-type hearings are required by the APA where a statute calls for an adjudicatory hearing without explicitly requiring formal procedures. The Agency argues nothing more than that the absence of the phrase "on the record" requires a more involved analysis of due process requirements.

Furthermore, while EPA agrees that the absence of a record requirement does not automatically permit the Agency to conclude that Congress intended informal hearing procedures for NPDES permit review, had Congress intended to foreclose Agency discretion on the matter, it would likely have included the "on the record" language that unmistakably triggers section 554 of the Administrative Procedure Act. Though it is possible that failure to include a record requirement in section 402 resulted from drafting oversight, it is clear from *Buttrey* v. *United States*, 690 F.2d 1170 (5th Cir. 1982)("Buttrey"), that, at least with respect to section 404, the absence of a record requirement was deliberate. In Buttrey, the court, analyzing identical hearing language in section 404 of the Act, concluded that Congress had not intended to preclude informal hearing procedures for permit review proceedings. In the Agency's opinion, it is not reasonable to believe that the same words that permit informal hearings in section 404 preclude informal hearings when used in section 402. Instead, the Agency believes that Congress wrote these provisions without specifying the type of hearing required in order to allow the Agency as much discretion in defining the required hearing procedures as the Due Process Clause allows.

EPA also believes that section 509 of the Act further demonstrates that Congress intended to reserve for the Agency the discretion to determine what type of hearing to hold, and also to ensure that the statute satisfied due process. Subsection 509(b) provides for judicial review of determinations that are made under the sections of the Act listed in subsection (b)(1). Subsection (c) provides that the court may order that additional evidence be taken before the Administrator for judicial proceedings brought under subsection (b) "in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing * * *." Thus, taken together, subsections 509(b) and (c) suggest that some of the proceedings under 509(b) must be "on the record", without specifying which ones. Of those sections of the Act listed in subsection (b), only section 307 contains an express record requirement. As noted by a few of the commenters, however, the absence of an express record requirement does not end our analysis.

Congress apparently preferred, for purposes of mandating judicial procedures under section 509(c), that EPA would determine in most cases whether formal hearings would be required. Section 509(c) also demonstrates that, as if there was any doubt, Congress knew how to draft a provision that expressly referred to formal adjudicatory procedure by using the exact language of section 554 of the APA. More importantly, however, this drafting leaves the statute flexible enough to accommodate the exercise of Agency discretion and judicial review thereof. The very structure of the provision strongly suggests that Congress intended the language of sections 402, 404, and others to permit the Agency as much discretion as Constitutionally permissible in deciding whether or not informal hearing procedures would meet the requirements of the Due Process Clause for each of the listed sections in section 509(b).

Despite the absence of legislative history to suggest that Congress intended to require formal hearing procedures, one commenter suggests that Congress ratified Seacoast and Marathon when it later amended section 402 without changing the language of the hearing requirement in subsection (a). The theory of "reenactment" upon which the commenter relies has long been a matter of controversy and confusion in the courts. Indeed, the Supreme Court has observed that the reenactment rule "has been stated in various and not entirely consistent terms." *Helvering* v.*Griffiths*, 318 U.S. 371, 396 (1943). Despite this inconsistency, it is clear that mere reenactment does not necessarily constitute ratification "because the committees or subcommittees of Congress may or may not know of outstanding interpretations when they are considering reenactment; they do not in fact approve what they know nothing about." K. Davis, Administrative Law, § 7.14, at 67 (2d ed.). Even where the Congress has knowledge of an existing interpretation at the time of reenactment, its silence on the interpretation "is as likely an indication of lack of interest or preoccupation with more pressing matters, or a belief that the matter would be better left to the courts or agencies for resolution." John C. Grabow, Congressional Silence and the Search for Legislative Intent: A Venture Into "Speculative Unrealities", 64 B.U.L. Rev. 737, 759.

EPA believes that, although Congress might have been aware that EPA had construed section 402(a) of the Clean Water Act to require formal adjudication of petitions for NPDES permit review, the Agency has no direct evidence that Congress was aware, and certainly no evidence to suggest that Congress recognized that Seacoast compelled this construction. Moreover, even had Congress been aware of Seacoast when section 402 of the Act was subsequently amended, its silence only reinforces our contention that Congress intended to leave the form of NPDES hearing procedures to the discretion of the Agency.

As already noted, the legislative history of the Clean Water Act is devoid of language that would explain whether or not to employ formal hearing procedures in the review of NPDES permits. The failure of Congress to expressly require formal hearing procedures, combined with the structure of section 509 of the Act, suggests that Congress intended EPA to exercise its judgment in deciding whether or not to require formal administrative hearings for NPDES permit review.

(b) Judicial Interpretations. EPA understands the decisions in *Chemical Waste Management* v. *EPA*, 873 F.2d 1477 (D.C. Cir. 1989) ("CWM"), and Buttrey, to have seriously questioned the continuing validity of Seacoast, Marathon, and *United States Steel Corp.* v. *Train*, 556 F.2d 822 (7th Cir. 1977) ("United States Steel"). Both CWM and Buttrey, interpreting language similar or identical to that in section 402(a), have concluded that Congress had not intended to require formal hearing procedures. In addition, CWM expressly rejected the presumption that trial-type hearings are required by the APA where a statute calls for an adjudicatory hearing. Instead, the court employs Chevron's two-step analysis, concluding that it must properly defer to the Agency's permissible interpretation of the statute.

One commenter suggested that the advent of Chevron does not undermine the decisions of Seacoast, Marathon,

and United States Steel because these early decisions were based on an interpretation of the Administrative Procedure Act, not the Clean Water Act. This argument is flawed in two respects. First, the decisions in Seacoast, Marathon, and United States Steel were all based almost exclusively upon interpretations of the Clean Water Act, not the Administrative Procedure Act. Second, to the extent that Seacoast interpreted the Administrative Procedure Act, its interpretation has now been expressly rejected by CWM. CWM, 873 F.2d at 1481.

In determining whether or not EPA had to provide formal adjudicatory procedures for review of NPDES permits, the Seacoast court expressly stated that "the resolution of this issue turns on the substantive nature of the hearing Congress intended to provide." Seacoast, 572 F.2d at 876. See also Marathon, 564 F.2d at 1264 ("The focus of our inquiry should be on the nature of the administrative determination before us.") In attempting to discern Congressional intent, the Court looked first to the text and legislative history of the Federal Water Pollution Control Act, not the Administrative Procedure Act. Id., at 876, n.6. Finding no guiding text or legislative history in the Federal Water Pollution Control Act, the court had no choice but to rely on a presumption of formality that the court inferred from legislative history of the Administrative Procedure Act and its treatment in the courts. It is precisely this presumption of formality that CWM expressly rejects. CWM, 873 F.2d at 1481. With the advent of Chevron and CWM EPA believes that it has not only an opportunity, but an obligation, to update its regulations to reflect the jurisprudence of modern courts and the needs of the environment.

Still, a commenter has suggested that, in distinguishing section 404 from 402, the Buttrey court endorsed the conclusion reached by the Seacoast, Marathon, and United States Steel courts. Buttrey predates both Chevron and CWM, so there is some reason to doubt that, if Buttrey were decided today, the court would have found need to distinguish it from the earlier cases. Moreover, Buttrey does not endorse the decision reached in these cases; instead, Buttrey merely notes that there exists legislative history regarding section 404 to overcome the, now-defunct, presumption of formality that led the Seacoast, Marathon, and United States Steel courts to require formal hearings. Buttrey, 690 F.2d at 1175. As a matter of logic, now that the presumption of formality has been dissolved, the mere absence of legislative history similar to that of section 404 does not require or support a finding that section 402(a) requires formal hearings.

The same commenter also suggested that *Consolidated Coal* v. *EPA*, 537 F.2d 1236 (4th Cir. 1976), compels the same result as reached in Seacoast. In Consolidated Coal, the court concluded that, before final agency action on an NPDES permit, the Administrator must provide the permittee with an opportunity for a hearing. The Administrator had denied petitioner's request for a hearing on the faulty assumption that the petitioner was entitled to a hearing before the State agency that had issued the permit or a State court. The court concluded that, "[s]ince a hearing at the state level is presently foreclosed, due process requires that the Administrator grant a hearing in this case." Id., at 1239.

In reaching this conclusion, the court never squarely addressed the issue of what type of hearing due process requires for review of NPDES permits. Although the court quotes language from *Appalachian Power Co.* v. *EPA*, 477 F.2d 495, 501 (4th Cir. 1973), that would require that a hearing be granted where the issues cannot be resolved "on the basis of pleadings and argument," it is not clear whether the court quotes this language for the proposition that the Administrator must hold a hearing before taking final agency action on an NPDES permit, or that hearings on NPDES permits must allow the submission of evidence, or both. Consolidated Coal, 537 F.2d at 1239. Even if one were to assume that the court quotes this language for both propositions, the proposed procedures meet both requirements. Moreover, it is doubtful that this case purports to resolve the question of what type of hearing due process requires for NPDES permits while addressing the matter, if at all, only in passing.

Furthermore, Consolidated Coal, predates both Chevron and CWM, and, more importantly, *Mathews* v. *Eldridge*, 424 U.S. 319 (1976) ("Mathews"), which sets forth the rubric for modern due process analysis. The case has been cited only twice, only once favorably, and on neither occasion for the proposition for which the commenter claims that the decisions stands. See *Shoreline Associates* v. *Marsh*, 555 F.Supp. 169, 177 (D. Md. 1983), United States Steel, 556 F.2d 822, 836 (7th Cir. 1977). Accordingly, EPA concludes that, for whatever proposition Consolidated Coal may stand, there is much more recent and reliable due process jurisprudence upon which to base the Agency's analysis.

*(iii) Chevron Step Two.* Reasonableness of Interpretation. EPA believes that providing for informal hearings prior to issuance of NPDES permits is a reasonable interpretation of section 402(a) because formal hearings are not necessary to protect the due process rights of permittees or other interested parties. The leading Supreme Court case discussing due process requirements is Mathews. Mathews establishes a three-element balancing test by which the decision-maker must consider: (1) The private interests at stake, (2) the risk of erroneous decision-making, and (3) the nature of the government interest, before deciding what procedures are required by the Due Process Clause.

(a) Private Interest. In an NPDES permit proceeding, the private interests at stake are generally those of a potential discharger in obtaining a permit to conduct its economic activities in a lawful manner. One commenter contended, however, that EPA's due process analysis fails to adequately assess the private interests at stake because EPA has refused to recognize a private property interest in NPDES permits. EPA disagrees. Although the NPDES regulations expressly disavow any property interest that might accrue in an NPDES permit, the due process analysis discussed herein proceeds as if a sufficient economic interest exists to warrant a due process analysis under the Mathews rubric. See 40 CFR 122.5(b).

Three commenters asserted that EPA has failed to adequately assess the magnitude of the potential impact of erroneous permit provisions. These commenters argued that an erroneous permit provision could have a catastrophic effect on the affordability of sewer service or financial well-being of a municipality (for issuance of NPDES permits to POTWs). None of these commenters has offered any evidence to suggest that, in the typical case, erroneous permit provisions have had or would have such catastrophic effects. Moreover, even if the magnitude of error were as great as these commenters suggest, it would be the same under both the existing and proposed hearing procedures. As discussed below, EPA's analysis suggests that the risk of error is actually less under the proposed hearing procedures; accordingly, the overall risk to the private interests at stake would be less under the procedures proposed.

(b) Risk of Error. EPA believes that transition to informal adjudicatory procedures will not significantly affect the risk of error in NPDES permit review determinations. As explained in the proposal, NPDES permit review

determinations, unlike penalty hearings, are less apt to raise the kind of factual issues regarding the conduct of the discharger, which case law identifies as being uniquely susceptible to resolution in a formal evidentiary hearing. 61 FR 65268, 65277 (Dec. 11, 1996). Nonetheless, one commenter asserts that the risk of an erroneous decision on a petition for review of an NPDES permit would be greatly increased in the absence of a right to oral testimony and cross-examination. EPA believes these concerns to be unwarranted. Even under the existing subpart E regulations, parties have no right to oral presentation of direct or rebuttal evidence except as allowed by the Presiding Officer upon motion and good cause shown. 40 CFR 124.85(c). Any incremental risk of error associated with the use of informal hearing procedures would, thus, be attributable only to the absence of a right to oral cross-examination.

EPA does not believe that the absence of a right to oral cross-examination under the proposed hearing procedures will significantly increase the risk of an erroneous decision on a petition for review. The issues that typically arise in the review of a draft NPDES permit do not call for the type of credibility determinations for which cross-examination is justified. Instead, the typical issues that arise are: (1) Has EPA set effluent limits appropriately (e.g., will a discharge cause, have the reasonable potential to cause, or contribute to an excursion above applicable water quality criteria such that EPA may set a water quality-based effluent limitation?), and (2) has EPA correctly calculated the effluent limitations that it has set? These questions of fact hinge on technical considerations for which cross-examination is not particularly useful. Under the hearing procedures that EPA proposes to adopt, should a party wish to challenge the testimony of an opposing expert witness, it may present written evidence to contradict the assumptions, data, and analysis of the opposing expert. This sort of challenge would more efficiently and reliably reveal any error or bias in the expert's analysis or conclusion than would an analysis of the expert's courtroom demeanor. Accordingly, EPA perceives little or no increase in the risk of error under the hearing procedures that EPA is adopting.

EPA also received two comments arguing that the hearing procedures EPA proposed to adopt would substantially increase the risk of error by affording the parties inadequate opportunity to develop the evidence necessary to support a petition for review to be filed with the Environmental Appeals Board. Because EPA today employs the same hearing procedures for NPDES permit review as those currently used for RCRA and UIC permits, the Agency believes that the success of the existing RCRA/UIC hearing procedures demonstrates that these concerns lack foundation. RCRA and UIC permits raise questions of fact no less complicated than those that arise in the review of NPDES permits, yet the Agency has no suggestion from its experience or from the courts that the time allowed to develop supporting evidence under RCRA/UIC procedures is so short as to violate the Due Process Clause or adversely affect the accuracy of review.

(c) Public Interest. There is significant public interest in an expedited process for issuing NPDES permits. EPA's experience since 1979 has been that the opportunity to request a formal evidentiary hearing has led to significant delays in permit issuance. EPA's statistics suggest that the procedures proposed to resolve administrative petitions are at least twice as fast as the formal hearing procedures now in place. The procedures will, thus, allow needed permit improvements to take effect sooner, make public participation more affordable, and reduce the burden on government resources.

One commenter suggests, however, that EPA incorrectly estimates the public interest in adopting informal hearing procedures as the reduction of time during which unpermitted discharges continue while a permit is reviewed. EPA acknowledges that new dischargers may not begin to discharge until the process of review is complete. 40 CFR 124.16(a)(1). EPA also acknowledges that the expired permit of an existing discharger will be administratively continued during the process of review if the discharger makes a timely application for renewal. 40 CFR 124.16(a)(2). The public interest in expediting the process of permit review, thus, lies, in part, in minimizing the time during which inadequate expired permits remain in effect. This interest is especially significant because, under current procedures, permit renewal often takes in excess of five years.

Other commenters suggest that EPA overestimates the public interest in adopting the proposed hearing procedures by failing to account for the delay that the backlog of NPDES permit review petitions would cause at the EAB. Again, the Agency disagrees. The Agency has polled the Regions for an approximate number of review petitions pending before the Regional Administrators. These cases, plus the petitions for which an evidentiary hearing has been granted but not yet held, constitute the backlog of cases that the EAB would assume under the proposed hearing procedures. 61 FR 65268, 65281 (Dec. 11, 1996). Although the number of cases backlogged is not insignificant in terms of the EAB's total annual caseload, the comment fails to consider that the total time it will take to process an individual NPDES case will no longer be encumbered by the decisional process associated with the evidentiary hearing procedures. Those procedures included the right to appeal a denial of an evidentiary hearing request to the EAB, the possibility of a reversal of the denial, a remand by the EAB to hold an evidentiary hearing, and at the conclusion of the hearing, an opportunity to again file an appeal on the merits with the EAB. Accordingly, although the number of cases under the new procedures that will make their way to the EAB will initially result in a backlog at the EAB, there is no basis for concluding that delays in processing cases will result compared to the old procedures. In addition, we expect that, once the EAB has cleared the backlog of cases, the long-term benefits of the informal adjudicatory procedures will become more apparent.

One commenter suggested that the success with which public citizen groups have challenged NPDES permits demonstrates that the existing hearing procedures provide adequate opportunity for public participation. Of course, the fact that citizens groups successfully challenge NPDES permits on occasion does not somehow diminish their interest in more affordable participation. Instead, their success highlights the importance of public participation in the permit review process. Indeed, the Senate observed, in reporting the Water Pollution Control Act Amendments of 1972, that the implementation of water pollution control measures would depend considerably "upon the pressures and persistence which an interested public can exert upon the governmental process." S. Rep. 414, 92d Cong., 2d Sess. 12 (1972), reprinted in A Legislative History of the Water Pollution Control Act Amendments of 1972, Cong. Research Service, Comm. Print No.1, 93d Cong., 1st Sess. (1973) at 1430 (emphasis added). EPA believes that a transition to informal adjudicatory procedures for review of NPDES permits will promote sustainable public participation by, amongst other things, minimizing the activities for which legal counsel is

required and expediting the permit review process such that citizens groups need commit fewer resources for shorter duration.

Another commenter challenged the assertion that the proposed hearing procedures would reduce the need for legal representation. EPA stands by its conclusion. Even if it were true that parties would avail themselves of counsel under the proposed hearing procedures with frequency equal to that with which they avail themselves of counsel under the existing procedures, EPA believes that the shorter period of review and the higher rate of settlement expected under the proposed procedures will minimize the quantity of legal services required.

Three commenters contend that, however they might otherwise reduce the burden on citizens group participation, the proposed hearing procedures would more than offset those reductions by compelling public citizens groups to maintain a presence in Washington, DC or bear the expense of frequent travel. EPA disagrees. Unlike the existing NPDES permit review procedures, the proposed procedures do not provide for oral presentation of direct testimony, rebuttal, or cross-examination, and oral argument before the Environmental Appeals Board occurs very infrequently; thus, parties need not maintain a Washington, DC presence and would gain no advantage by doing so.

The government also has an interest in minimizing Agency resources consumed in NPDES permit review. Several commenters argued that, for various reasons, EPA will not realize the resource savings that EPA expects under the proposed permit review procedures. These commenters contend that the number of petitions for administrative review will increase while the rate of settlement and the EAB's rate of review will decline. EPA believes these concerns generally unfounded.

One of these commenters argued that switching to informal hearing procedures will result in an increased number of requests for permit review because the permit review process would no longer prove sufficiently onerous to discourage frivolous objections to NPDES permits. Although EPA anticipates that informal hearing procedures will reduce the resource burden upon all parties to the administrative review, the commenter has provided no factual basis to conclude that less onerous process will correlate to more "frivolous" petitions for review. While one might speculate that such a correlation exists, there is no basis to believe that this dynamic would have any discernible impact on the number of review petitions at the levels of resource commitment required under either the existing NPDES permit review procedures or those proposed. To the extent that any such dynamic might be observable, one would expect a significantly higher rate of petitions denied by the EAB under the RCRA/UIC procedures than under the existing procedures for NPDES review. No such effect is observable, however. Moreover, even if the Agency observes such an effect under the proposed hearing procedures, the Agency would properly respond by initiating rulemaking to sanction frivolous permit review petitions, not by maintaining unnecessarily burdensome hearing procedures.

This same commenter argued that EPA overestimates the need for informal hearing procedures by failing to account for a projected reduction in the rate of petitions as the number of unpermitted facilities declines. Even if it were true that petitions for review of new permits would decline appreciably in the reasonably near future, EPA would expect a countervailing increase in the rate of petition for review of permit renewals. EPA has no basis to believe that the net effect of these hypothesized trends will yield a significantly lower overall rate of petition; accordingly, EPA cannot at this time discount the need for informal hearing procedures.

Other commenters asserted, by contrast, that the number of petitions for review requiring resolution by the Agency will increase because the number of settlements will decrease under the proposed hearing procedures which will overburden the Environmental Appeals Board. Again, were it true that the proposed hearing procedures would somehow remove the incentive for parties to reach settlement, EPA would expect a much lower settlement rate for cases currently reviewed under the RCRA/UIC procedures than for cases reviewed under the existing NPDES procedures. No such difference appears in EPA's post-petition statistics. While EPA does not track pre-petition resolution of permit disputes, EPA has no basis to believe that fewer disputes are resolved before petition for review of Regional permit decisions are filed in the RCRA/UIC program than in the NPDES program.

Finally, one commenter warns that a switch to informal hearing procedures will result in more frequent requests for public hearings on draft NPDES permits. Even if it were true that EPA should expect more frequent public hearing requests, EPA believes that the net conservation of resources under informal hearing procedures would still justify the transition. Public hearings on NPDES permits are more in the nature of a legislative hearing because they do not require representation by counsel or formal written submissions (unless required by the Presiding Officer) and the Presiding Officer may set reasonable limits on the time allowed for oral statements. 40 CFR 124.12. These hearings must be requested in a timely fashion, are required only where there is a significant degree of public interest in the draft permit, and occur within the comment period. *Id.* All of these limiting factors render the public hearing process substantially less burdensome to all parties involved than the evidentiary hearings that they would replace.

3. Final Rule

None of the comments received suggest that retaining formal adjudicatory proceedings is required under section 402(a) or due process or consistent with the public interest. Therefore, EPA is today adopting the proposed rule, eliminating evidentiary hearing procedures, subpart F procedures, and appendix A to part 124.

*D. Removal and Reservation of Part 125, Subpart K—Criteria and Standards for Best Management Authorized Under Section 304(e) of the Act*

a. *Summary of Proposed Rule.* EPA proposed to remove and reserve part 125, subpart K (40 CFR 125.100–125.104) titled "Criteria and Standards for Best Management Practices Authorized Under Section 304(e) of the Act" along with its reference at 40 CFR 123.25(a)(36). This provision was originally promulgated on June 7, 1979 (44 FR 32954) and would have established criteria and standards for imposing best management practices (BMPs) in NPDES permits under the authority provided in sections 304(e) and 402(a)(1) of the CWA. However, for reasons set forth in more detail in the proposed rule (see 61 FR 65282–65283), Subpart K was never activated and its original purpose is now better served by EPA's existing BMP provisions at 40 CFR 122.44(k) and accompanying guidance for developing and implementing BMPs.

b. *Significant Comment and EPA Response.* Two commenters believed the subpart K regulation should not be removed, stating that the regulatory framework provided by subpart K was needed to guide the imposition of BMPs and that § 122.44(k) was overly broad. The commenter believed there should be some basis in the regulations for

guiding permit writers and applicants as to when BMPs are appropriate and how they are to be implemented. EPA does not believe that § 122.44(k) is overly broad. BMPs and BMP plans are intended to be flexible so that they can be tailored to particular industries and sites. EPA believes this flexibility is better served by § 122.44(k) and guidance documents which can be tailored to specific industries or activities.

A commenter stated that the proposal represents a significant policy decision that is not appropriate for inclusion in a rulemaking designed simply to streamline permit issuance, and that if Subpart K is removed, there are absolutely no limits on EPA's discretion in imposing the BMPs based on 40 CFR 122.44. EPA disagrees and notes that removing subpart K is not a significant policy decision because subpart K has never been activated. Because subpart K has no regulatory effect, its removal does not affect EPA's ability to impose BMPs in permits. Finally, EPA notes that the Clean Water Act and § 122.44(k) place limits on EPA's discretion to include BMPs and other conditions in NPDES permits.

c. *Final Rule.* Today's final rule adopts this revision as proposed.

*E. Provisions Without Comments*

Provisions in parts 22, 122, 124, and 125 in the proposed rule which were not commented upon and not discussed above are adopted for the reasons set forth in the proposal.

*F. Miscellaneous Corrections*

a. Summary of Proposed Rule

EPA proposed a number of minor non-substantive revisions to its regulations that would correct typographical or drafting errors, and misplaced or obsolete references. EPA wishes to be clear that these are corrections and are not intended in anyway to result in substantive changes to its programs. In proposing these corrections, EPA did not solicit, and has not responded to, comments on the existing regulatory provisions which underlie those corrections. Furthermore, by including these corrections in the proposed and final rule, EPA is not conceding that any or all such changes required notice and comment. However, these errors were discovered while developing this proposed rule and EPA believes it is more cost effective to correct them in this rulemaking than in a separate **Federal Register** notice. In today's final rulemaking, EPA is incorporating those corrections as proposed.

b. Significant Comments and EPA Response

EPA received a number of comments recommending other typographical or drafting errors, and misplaced or obsolete references. EPA has made these suggested changes and some of its own where the EPA believes it made additional unintended errors. These changes are:

(1) A commenter has recommended that 40 CFR 122.26(b)(7)(iii) should refer to (b)(7)(i) or (b)(7)(ii). EPA agrees and has made this change.

(2) A commenter has pointed out that 40 CFR 122.26(d)(2)(iii) make an incorrect reference to (d)(a)(iii)(A)(3) and should read (d)(2)(iii)(A)(3). EPA agrees and has made this change.

(3) A commenter has pointed out that 40 CFR 123.44(d) makes an incorrect reference to § 123.44(b) and should read as § 123.44(c). EPA agrees and has made this change.

(4) A commenter has pointed out that 40 CFR 124.10(d)(1)(vii) has a repeated sentence that should be removed. EPA agrees and has made this change.

(5) A commenter has pointed out the proposed 40 CFR 122.21(a)(2)(i)(G)has a misplaced "that" in the second line which should be deleted. EPA agrees and has made this change.

(6) A commenter has pointed out that proposed 40 CFR 122.21(g)(7)(i) should have reference to (g)(7)(iii) and (iv) changed to (g)(7)(vi) and (vii). EPA agrees and has made this change.

(7) A commenter has pointed out that 40 CFR 122.2's definition of sludge only facility should refer to section 122.2(b)(2) and (3) instead of section 122.1(b)(3) as it currently does. EPA disagrees with this correction and has not made this change.

(8) A commenter has pointed out that 40 CFR 122.21(g)(7)(v)(B) and (vi)(B) use the term "is discharged", when "are discharged is" more appropriate. EPA agrees with the commenter for (vi)(B) in the proposed rule but does not find this applicable in (v)(B) of the proposed rule.

(9) In eliminating Subparts E and F, EPA did not propose and does not intend to create a right to seek administrative review before the EAB for NPDES general permits. Accordingly, EPA has revised proposed section 124.19(a) to include language from the removed section 124.71(a) that clarifies that there exists no right to seek review of NPDES general permits before the EAB. The addition of this NPDES-specific language should not be interpreted to create or limit a right to seek review of general permits under any other program for which appeal to the EAB is provided in section 124.19. Conforming changes have also been made to the proposed sections 124.19(b) and 124.6(e). Finally, a reference to the petition process in section 122.28(b)(3) has been added to section 124.19(a) for completeness and clarity.

## III. Regulatory Requirements

*A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*B. Executive Order 13132*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct

compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Today's rule is basically deregulatory in nature and is expected to reduce administrative and resource burdens on affected State, local, and tribal governments and the private sector. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with representatives of State and local government in developing this rule. The concerns of these entities have been addressed in the final rule.

*C. Executive Order 13045*

Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks," (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not an economically significant rule as defined under Executive Order 12866 and, therefore, is not subject to Executive Order 13045.

*D. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments, nor does it impose substantial direct compliance costs on them. This rule will eliminate redundant requirements, remove superfluous language, provide clarification, and remove or streamline unnecessary procedures which do not provide any environmental benefits, and thus reduce the administrative burden of the NPDES program on permit issuing authorities, and the regulated community. Accordingly, the requirements of section 3 (b) of Executive Order 13084 do not apply to this rule.

*E. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule is basically "deregulatory" in nature and is expected to reduce administrative and resource burdens on affected State, local, and tribal governments and the private sector. It does not contain any Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local, and tribal governments in the aggregate or by the private sector in any one year. As previously discussed, this rule reduces the administrative burden of the NPDES program on issuing authorities and the regulated community. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has also determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, this rule is not subject to the requirements of section 203 of UMRA.

*F. Regulatory Flexibility Act*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that meets RFA default definitions

based on SBA size standards found in 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives "which minimize any significant economic impact of the proposed rule on small entities." 5 U.S.C. Sections 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. Today's final adds no increased burden to permittees.

Most of the changes in today's rule are purely technical and will have no effect on compliance costs for NPDES permittees. Also, to the extent these technical changes clarify and simplify the regulations, they will make them easier to understand and comply with, reducing the burden on small entities. The other changes will reduce the costs of obtaining and complying with NPDES permits. For instances, the rule will make it easier for facilities to obtain coverage under general permits, rather than go through the more complicated and expensive individual permit procedure. It will also reduce monitoring and record keeping for permitees subject to effluent limitation guidelines, and streamline permit application requirements for storm water dischargers and new source/ new dischargers. Today's rule will also streamline the permit appeals and permit termination processes, which should further reduce the costs of obtaining (or modifying) or terminating an individual permit. None of these changes are expected to increase, and most of the changes will actually decrease, the costs of compliance for NPDES discharges, including small entities (if any). We have therefore concluded that today's final rule will relieve regulatory burden for all entities.

*G. Paperwork Reduction Act*

This rule will streamline the regulatory process and will not impose any additional information collection, reporting, or record keeping requirements on either the regulated community or permit issuing authorities. Therefore, EPA did not prepare an Information Request document for approval by the Office of Management and Budget. There were no comments on the proposal to this rule regarding information collection requests or other aspects of the Paperwork Reduction Act. This rule streamlines existing information collection requirements previously approved by OMB under ICR #2040–0004, by reducing the burden hours associated with that ICR by 9000 hours. An Information Correction Worksheet will be submitted to OMB to reduce the burden hours associated with ICR 2040–0004.

*H. National Technology Transfer and Advancement Act—Voluntary Standards*

Section 12(d) of the National Technology Transfer and Advancement Act ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards. This rule does not involve any technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*I. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 14, 2000.

**List of Subjects**

*40 CFR Part 22*

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Hazardous waste, Penalties, Pesticides and pests, Poison prevention, Water pollution control.

*40 CFR Part 117*

Environmental Protection Agency, Hazardous substances, Penalties, Reporting and recordkeeping requirements, Water pollution control.

*40 CFR Part 122*

Administrative practice and procedure, Confidential business information, Hazardous substances, Reporting and recordkeeping requirements, Water pollution control.

*40 CFR Part 123*

Administrative practice and procedure, Confidential business information, Hazardous substances, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control.

*40 CFR Part 124*

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Water pollution control, Water supply.

*40 CFR Part 125*

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

*40 CFR Part 144*

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Indians—lands, Reporting and recordkeeping requirements, Surety bonds, Water supply.

*40 CFR Part 270*

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

*40 CFR Part 271*

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 10, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, EPA amends 40 CFR parts 22, 117, 122, 123, 124, and 125, 144, 270, and 271 as follows:

## PART 22—[AMENDED]

1. The title of part 22 is revised to read as follows:

## PART 22—CONSOLIDATED RULES OF PRACTICE GOVERNING THE ADMINISTRATIVE ASSESSMENT OF CIVIL PENALTIES AND THE REVOCATION/TERMINATION OR SUSPENSION OF PERMITS

2. The authority citation for part 22 is revised to read as follows:

**Authority:** 7 U.S.C. 136(l); 15 U.S.C. 2615; 33 U.S.C. 1319, 1342, 1361, 1415 and 1418; 42 U.S.C. 300g–3(g), 6912, 6925, 6928, 6991e and 6992d; 42 U.S.C. 7413(d), 7524(c), 7545(d), 7547, 7601 and 7607(a), 9609, and 11045.

3. Section 22.1 is amended by revising paragraphs (a)(4) and (a)(6) to read as follows:

**§ 22.1 Scope of this part.**

(a) * * *

(4) The issuance of a compliance order or the issuance of a corrective action order, the termination of a permit pursuant to section 3008(a)(3), the suspension or revocation of authority to operate pursuant to section 3005(e), or the assessment of any civil penalty under sections 3008, 9006, and 11005 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6925(d), 6925(e), 6928, 6991e, and 6992d)), except as provided in part 24 of this chapter;

* * * * *

(6) The assessment of any Class II penalty under sections 309(g) and 311(b)(6), or termination of any permit issued pursuant to section 402(a) of the Clean Water Act, as amended (33 U.S.C. 1319(g), 1321(b)(6), and 1342(a));

* * * * *

4. Section 22.3 is amended in paragraph (a) by revising the definition for "Permit action" in alphabetical order to read as follows:

**§ 22.3 Definitions.**

(a) * * *

*Permit action* means the revocation, suspension or termination of all or part of a permit issued under section 102 of the Marine Protection, Research, and Sanctuaries Act (33 U.S.C. 1412) or termination under section 402(a) of the Clean Water Act (33 U.S.C. 1342(a)) or section 3005(d) of the Solid Waste Disposal Act (42 U.S.C. 6925(d)).

* * * * *

5. Section 22.44 is added to read as follows:

**§ 22.44 Supplemental rules of practice governing the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act.**

(a) *Scope of this subpart.* The supplemental rules of practice in this subpart shall also apply in conjunction with the Consolidated Rules of Practice in this part and with the administrative proceedings for the termination of permits under section 402(a) of the Clean Water Act or under section 3008(a)(3) of the Resource Conservation and Recovery Act. Notwithstanding the Consolidated Rules of Practice, these supplemental rules shall govern with respect to the termination of such permits.

(b) In any proceeding to terminate a permit for cause under § 122.64 or § 270.43 of this chapter during the term of the permit:

(1) The complaint shall, in addition to the requirements of § 22.14(b), contain any additional information specified in § 124.8 of this chapter:

(2) The Director (as defined in § 124.2 of this chapter) shall provide public notice of the complaint in accordance with § 124.10 of this chapter, and allow for public comment in accordance with § 124.11 of this chapter; and

(3) The Presiding Officer shall admit into evidence the contents of the Administrative Record described in § 124.9 of this chapter, and any public comments received.

## PART 117—DETERMINATION OF REPORTABLE QUANTITIES FOR HAZARDOUS SUBSTANCES

1. The authority citation for part 117 continues to read as follows:

**Authority:** Secs. 311 and 501(a), Federal Water Pollution Control Act (33 U.S.C. 1251 et. seq.), ("the Act") and Executive Order 11735, superseded by Executive Order 12777, 56 FR 54757.

2. Section 117.1(d) is revised to read as follows:

**§ 117.1 Definitions.**

* * * * *

(d) *Public record* means the NPDES permit application or the NPDES permit itself and the materials comprising the administrative record for the permit decision specified in § 124.18 of this chapter.

* * * * *

## PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 122 continues to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.1 is revised to read as follows:

**§ 122.1 Purpose and scope.**

(a) *Coverage.* (1) The regulatory provisions contained in this part and parts 123, and 124 of this chapter implement the National Pollutant Discharge Elimination System (NPDES) Program under sections 318, 402, and 405 of the Clean Water Act (CWA) (Public Law 92–500, as amended, 33 U.S.C. 1251 *et seq.*)

(2) These provisions cover basic EPA permitting requirements (this part 122), what a State must do to obtain approval to operate its program in lieu of a Federal program and minimum requirements for administering the approved State program (part 123 of this chapter), and procedures for EPA processing of permit applications and appeals (part 124 of this chapter).

(3) These provisions also establish the requirements for public participation in EPA and State permit issuance and enforcement and related variance proceedings, and in the approval of State NPDES programs. These provisions carry out the purposes of the public participation requirements of part 25 of this chapter, and supersede the requirements of that part as they apply to actions covered under this part and parts 123, and 124 of this chapter.

(4) The NPDES permit program has separate additional provisions that are used by permit issuing authorities to determine what requirements must be placed in permits if issued. These provisions are located at parts 125, 129, 133, 136 of this chapter and 40 CFR subchapter N (parts 400 through 471), and part 503 of this chapter.

(5) Certain requirements set forth in parts 122 and 124 of this chapter are made applicable to approved State programs by reference in part 123 of this chapter. These references are set forth in

§ 123.25 of this chapter. If a section or paragraph of part 122 or 124 of this chapter is applicable to States, through reference in § 123.25 of this chapter, that fact is signaled by the following words at the end of the section or paragraph heading: (Applicable to State programs, see § 123.25 of this chapter). If these words are absent, the section (or paragraph) applies only to EPA administered permits. Nothing in this part and parts 123, or 124 of this chapter precludes more stringent State regulation of any activity covered by the regulations in 40 CFR parts 122, 123, and 124, whether or not under an approved State program.

(b) *Scope of the NPDES permit requirement.* (1) The NPDES program requires permits for the discharge of "pollutants" from any "point source" into "waters of the United States." The terms "pollutant", "point source" and "waters of the United States" are defined at § 122.2.

(2) The permit program established under this part also applies to owners or operators of any treatment works treating domestic sewage, whether or not the treatment works is otherwise required to obtain an NPDES permit, unless all requirements implementing section 405(d) of the CWA applicable to the treatment works treating domestic sewage are included in a permit issued under the appropriate provisions of subtitle C of the Solid Waste Disposal Act, Part C of the Safe Drinking Water Act, the Marine Protection, Research, and Sanctuaries Act of 1972, or the Clean Air Act, or under State permit programs approved by the Administrator as adequate to assure compliance with section 405 of the CWA.

(3) The Regional Administrator may designate any person subject to the standards for sewage sludge use and disposal as a "treatment works treating domestic sewage" as defined in § 122.2, where the Regional Administrator finds that a permit is necessary to protect public health and the environment from the adverse effects of sewage sludge or to ensure compliance with the technical standards for sludge use and disposal developed under CWA section 405(d). Any person designated as a "treatment works treating domestic sewage" shall submit an application for a permit under § 122.21 within 180 days of being notified by the Regional Administrator that a permit is required. The Regional Administrator's decision to designate a person as a "treatment works treating domestic sewage" under this paragraph shall be stated in the fact sheet or statement of basis for the permit.

[**Note to § 122.1:** Information concerning the NPDES program and its regulations can be obtained by contacting the Water Permits Division(4203), Office of Wastewater Management, U.S.E.P.A., Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460 at (202) 260–9545 and by visiting the homepage at http://www.epa.gov/owm/]

3. Section 122.2 is amended by adding new definitions in alphabetical order, and by revising the definitions of "POTW," "Publicly owned treatment works" and "Sludge-only facility" to read as follows:

**§ 122.2 Definitions.**

* * * * *

*Animal feeding operation* is defined at § 122.23.

* * * * *

*Aquaculture project* is defined at § 122.25.

* * * * *

*Bypass* is defined at § 122.41(m).

* * * * *

*Concentrated animal feeding operation* is defined at § 122.23.

*Concentrated aquatic animal feeding operation* is defined at § 122.24.

* * * * *

*Individual control strategy* is defined at 40 CFR 123.46(c).

* * * * *

*Municipal separate storm sewer system* is defined at § 122.26 (b)(4) and (b)(7).

* * * * *

*POTW* is defined at § 403.3 of this chapter.

* * * * *

*Publicly owned treatment works* is defined at 40 CFR 403.3.

* * * * *

*Silvicultural point source* is defined at § 122.27.

* * * * *

*Sludge-only facility* means any "treatment works treating domestic sewage" whose methods of sewage sludge use or disposal are subject to regulations promulgated pursuant to section 405(d) of the CWA and is required to obtain a permit under § 122.1(b)(2).

* * * * *

*Storm water* is defined at § 122.26(b)(13).

*Storm water discharge associated with industrial activity* is defined at § 122.26(b)(14).

* * * * *

*Upset* is defined at § 122.41(n).

* * * * *

4. Section 122.4 is amended by revising paragraph (i)(2) to read as follows:

**§ 122.4 Prohibitions (applicable to State NPDES programs, see § 123.25).**

* * * * *

(i) * * *

(2) The existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards. The Director may waive the submission of information by the new source or new discharger required by paragraph (i) of this section if the Director determines that the Director already has adequate information to evaluate the request. An explanation of the development of limitations to meet the criteria of this paragraph (i)(2) is to be included in the fact sheet to the permit under § 124.56(b)(1) of this chapter.

5. Section 122.21 is amended by revising paragraphs (g)(7), (g)(8), (l)(1), (l)(2)(ii), (l)(3), (l)(4), and revising Notes 1, 2 introductory text, and 3 introductory text to read as follows:

**§ 122.21 Application for a permit (applicable to State programs, see § 123.25).**

* * * * *

(g) * * *

(7) *Effluent characteristics.* (i) Information on the discharge of pollutants specified in this paragraph (g)(7) (except information on storm water discharges which is to be provided as specified in § 122.26). When "quantitative data" for a pollutant are required, the applicant must collect a sample of effluent and analyze it for the pollutant in accordance with analytical methods approved under part 136 of this chapter. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the Director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfall. The requirements in paragraphs (g)(7) (vi) and (vii) of this section that an applicant must provide quantitative data for certain pollutants known or believed to be present do not apply to pollutants present in a discharge solely as the result of their presence in intake water; however, an applicant must report such pollutants as present. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform and fecal streptococcus. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention

period greater than 24 hours. In addition, for discharges other than storm water discharges, the Director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that the minimum of four (4) grab samples will be a representative sample of the effluent being discharged.

(ii) *Storm water discharges.* For storm water discharges, all samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch and at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where feasible, the variance in the duration of the event and the total rainfall of the event should not exceed 50 percent from the average or median rainfall event in that area. For all applicants, a flow-weighted composite shall be taken for either the entire discharge or for the first three hours of the discharge. The flow-weighted composite sample for a storm water discharge may be taken with a continuous sampler or as a combination of a minimum of three sample aliquots taken in each hour of discharge for the entire discharge or for the first three hours of the discharge, with each aliquot being separated by a minimum period of fifteen minutes (applicants submitting permit applications for storm water discharges under § 122.26(d) may collect flow-weighted composite samples using different protocols with respect to the time duration between the collection of sample aliquots, subject to the approval of the Director). However, a minimum of one grab sample may be taken for storm water discharges from holding ponds or other impoundments with a retention period greater than 24 hours. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. For storm water discharge samples taken from discharges associated with industrial activities, quantitative data must be reported for the grab sample taken during the first thirty minutes (or as soon thereafter as practicable) of the discharge for all pollutants specified in § 122.26(c)(1). For all storm water permit applicants taking flow-weighted composites, quantitative data must be reported for all pollutants specified in § 122.26 except pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, and fecal streptococcus. The Director may allow or establish appropriate site-specific sampling procedures or requirements, including sampling locations, the season in which the sampling takes place, the minimum duration between the previous measurable storm event and the storm event sampled, the minimum or maximum level of precipitation required for an appropriate storm event, the form of precipitation sampled (snow melt or rain fall), protocols for collecting samples under part 136 of this chapter, and additional time for submitting data on a case-by-case basis. An applicant is expected to "know or have reason to believe" that a pollutant is present in an effluent based on an evaluation of the expected use, production, or storage of the pollutant, or on any previous analyses for the pollutant. (For example, any pesticide manufactured by a facility may be expected to be present in contaminated storm water runoff from the facility.)

(iii) *Reporting requirements.* Every applicant must report quantitative data for every outfall for the following pollutants:

Biochemical Oxygen Demand (BOD5)
Chemical Oxygen Demand
Total Organic Carbon
Total Suspended Solids
Ammonia (as N)
Temperature (both winter and summer)
pH

(iv) The Director may waive the reporting requirements for individual point sources or for a particular industry category for one or more of the pollutants listed in paragraph (g)(7)(iii) of this section if the applicant has demonstrated that such a waiver is appropriate because information adequate to support issuance of a permit can be obtained with less stringent requirements.

(v) Each applicant with processes in one or more primary industry category (see appendix A of this part) contributing to a discharge must report quantitative data for the following pollutants in each outfall containing process wastewater:

(A) The organic toxic pollutants in the fractions designated in table I of appendix D of this part for the applicant's industrial category or categories unless the applicant qualifies as a small business under paragraph (g)(8) of this section. Table II of appendix D of this part lists the organic toxic pollutants in each fraction. The fractions result from the sample preparation required by the analytical procedure which uses gas chromatography/mass spectrometry. A determination that an applicant falls within a particular industrial category for the purposes of selecting fractions for testing is not conclusive as to the applicant's inclusion in that category for any other purposes. See Notes 2, 3, and 4 of this section.

(B) The pollutants listed in table III of appendix D of this part (the toxic metals, cyanide, and total phenols).

(vi)(A) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in table IV of appendix D of this part (certain conventional and nonconventional pollutants) is discharged from each outfall. If an applicable effluent limitations guideline either directly limits the pollutant or, by its express terms, indirectly limits the pollutant through limitations on an indicator, the applicant must report quantitative data. For every pollutant discharged which is not so limited in an effluent limitations guideline, the applicant must either report quantitative data or briefly describe the reasons the pollutant is expected to be discharged.

(B) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in table II or table III of appendix D of this part (the toxic pollutants and total phenols) for which quantitative data are not otherwise required under paragraph (g)(7)(v) of this section are discharged from each outfall. For every pollutant expected to be discharged in concentrations of 10 ppb or greater the applicant must report quantitative data. For acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, where any of these four pollutants are expected to be discharged in concentrations of 100 ppb or greater the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, or in the case of acrolein, acrylonitrile, 2,4 dinitrophenol, and 2-methyl-4, 6 dinitrophenol, in concentrations less than 100 ppb, the applicant must either submit quantitative data or briefly describe the reasons the pollutant is expected to be discharged. An applicant qualifying as a small business under paragraph (g)(8) of this section is not required to analyze for pollutants listed in table II of appendix D of this part (the organic toxic pollutants).

(vii) Each applicant must indicate whether it knows or has reason to believe that any of the pollutants in table V of appendix D of this part (certain hazardous substances and asbestos) are discharged from each outfall. For every pollutant expected to be discharged, the applicant must briefly describe the reasons the pollutant is expected to be discharged, and report any quantitative data it has for any pollutant.

(viii) Each applicant must report qualitative data, generated using a screening procedure not calibrated with analytical standards, for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) if it:

(A) Uses or manufactures 2,4,5-trichlorophenoxy acetic acid (2,4,5,-T); 2-(2,4,5-trichlorophenoxy) propanoic acid (Silvex, 2,4,5,-TP); 2-(2,4,5-trichlorophenoxy) ethyl, 2,2-dichloropropionate (Erbon); O,O-dimethyl O-(2,4,5-trichlorophenyl) phosphorothioate (Ronnel); 2,4,5-trichlorophenol (TCP); or hexachlorophene (HCP); or

(B) Knows or has reason to believe that TCDD is or may be present in an effluent.

(8) *Small business exemption.* An application which qualifies as a small business under one of the following criteria is exempt from the requirements in paragraph (g)(7)(v)(A) or (g)(7)(vi)(A) of this section to submit quantitative data for the pollutants listed in table II of appendix D of this part (the organic toxic pollutants):

(i) For coal mines, a probable total annual production of less than 100,000 tons per year.

(ii) For all other applicants, gross total annual sales averaging less than $100,000 per year (in second quarter 1980 dollars).

* * * * *

(l) * * * (1) The owner or operator of any facility which may be a new source (as defined in § 122.2 ) and which is located in a State without an approved NPDES program must comply with the provisions of this paragraph (l)(1).

(2) * * *

(ii) The Regional Administrator shall make an initial determination whether the facility is a new source within 30 days of receiving all necessary information under paragraph (l)(2)(i) of this section.

(3) The Regional Administrator shall issue a public notice in accordance with § 124.10 of this chapter of the new source determination under paragraph (l)(2) of this section. If the Regional Administrator has determined that the facility is a new source, the notice shall state that the applicant must comply with the environmental review requirements of 40 CFR 6.600 through 6.607.

(4) Any interested party may challenge the Regional Administrator's initial new source determination by requesting review of the determination under § 124.19 of this chapter within 30 days of the public notice of the initial determination. If all interested parties agree, the Environmental Appeals Board may defer review until after a final permit decision is made, and consolidate review of the determination with any review of the permit decision.

* * * * *

[**Note 1:** At 46 FR 2046, Jan. 8, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(v)(A) and the corresponding portions of Item V–C of the NPDES application Form 2C as they apply to coal mines. This suspension continues in effect.]

[**Note 2:** At 46 FR 22585, Apr. 20, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(v)(A) and the corresponding portions of Item V–C of the NPDES application Form 2C as they apply to:

* * * * *

[**Note 3:** At 46 FR 35090, July 1, 1981, the Environmental Protection Agency suspended until further notice § 122.21(g)(7)(v)(A) and the corresponding portions of Item V–C of the NPDES application Form 2C as they apply to:

* * * * *

6. Section 122.22 is amended by revising paragraph (a)(1)(ii) (the note remains unchanged) to read as follows:

**§ 122.22 Signatories to permit applications and reports (applicable to State programs, see § 123.25).**

(a) * * *

(1) * * *

(ii) The manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

* * * * *

**§ 122.24 [Amended]**

7. The paragraph heading for § 122.24(b), "Defintion" is revised to read "Definition".

8. Section 122.26 is amended by revising paragraphs (b)(7)(iii) introductory text, (b)(20), (c)(1) introductory text, (c)(1)(i)(E)(*4*), (c)(1)(i)(F), (d)(1)(iii)(D)(*1*), (d)(2)(iii) introductory text, and (d)(2)(iv)(C)(*2*), and by removing and reserving paragraph (c)(2), to read as follows:

**§ 122.26 Storm water discharges (applicable to State NPDES programs, see § 123.25).**

* * * * *

(b) * * *

(7) * * *

(iii) Owned or operated by a municipality other than those described in paragraph (b)(7)(i) or (ii) of this section and that are designated by the Director as part of the large or medium municipal separate storm sewer system due to the interrelationship between the discharges of the designated storm sewer and the discharges from municipal separate storm sewers described under paragraph (b)(7)(i) or (ii) of this section. In making this determination the Director may consider the following factors:

* * * * *

(20) *Uncontrolled sanitary landfill* means a landfill or open dump, whether in operation or closed, that does not meet the requirements for runon or runoff controls established pursuant to subtitle D of the Solid Waste Disposal Act.

* * * * *

(c) * * *

(1) *Individual application.* Dischargers of storm water associated with industrial activity and with small construction activity are required to apply for an individual permit or seek coverage under a promulgated storm water general permit. Facilities that are required to obtain an individual permit, or any discharge of storm water which the Director is evaluating for designation (see 124.52(c) of this chapter) under paragraph (a)(1)(v) of this section and is not a municipal storm sewer, shall submit an NPDES application in accordance with the requirements of § 122.21 as modified and supplemented by the provisions of this paragraph.

(i) * * *

(E) * * *

(*4*) Any information on the discharge required under § 122.21(g)(7) (vi) and (vii);

* * * * *

(F) Operators of a discharge which is composed entirely of storm water are exempt from the requirements of § 122.21 (g)(2), (g)(3), (g)(4), (g)(5), (g)(7)(iii), (g)(7)(iv), (g)(7)(v), and (g)(7)(viii); and * * *

* * * * *

(d) * * *

(1) * * *

(iii) * * *

(D) * * *

(*1*) A grid system consisting of perpendicular north-south and east-west lines spaced ¼ mile apart shall be

overlaid on a map of the municipal storm sewer system, creating a series of cells;

* * * * *

(2) * * *

(iii) *Characterization data.* When "quantitative data" for a pollutant are required under paragraph (d)(2)(iii)(A)(*3*) of this section, the applicant must collect a sample of effluent in accordance with § 122.21(g)(7) and analyze it for the pollutant in accordance with analytical methods approved under part 136 of this chapter. When no analytical method is approved the applicant may use any suitable method but must provide a description of the method. The applicant must provide information characterizing the quality and quantity of discharges covered in the permit application, including:

* * * * *

(iv) * * *

(C) * * *

(*2*) Describe a monitoring program for storm water discharges associated with the industrial facilities identified in paragraph (d)(2)(iv)(C) of this section, to be implemented during the term of the permit, including the submission of quantitative data on the following constituents: Any pollutants limited in effluent guidelines subcategories, where applicable; any pollutant listed in an existing NPDES permit for a facility; oil and grease, COD, pH, BOD5, TSS, total phosphorus, total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and any information on discharges required under § 122.21(g)(7) (vi) and (vii).

* * * * *

9. Section 122.28 is amended by revising paragraphs (a)(1) introductory text and (a)(2), adding paragraphs (a)(3) and (a)(4), and revising paragraph (b)(1) to read as follows:

**§ 122.28 General permits (applicable to State NPDES programs, see § 123.25).**

(a) * * *

(1) *Area.* The general permit shall be written to cover one or more categories or subcategories of discharges or sludge use or disposal practices or facilities described in the permit under paragraph (a)(2)(ii) of this section, except those covered by individual permits, within a geographic area. The area should correspond to existing geographic or political boundaries such as:

* * * * *

(2) *Sources.* The general permit may be written to regulate one or more categories or subcategories of discharges or sludge use or disposal practices or facilities, within the area described in paragraph (a)(1) of this section, where the sources within a covered subcategory of discharges are either:

(i) Storm water point sources; or (ii) One or more categories or subcategories of point sources other than storm water point sources, or one or more categories or subcategories of "treatment works treating domestic sewage", if the sources or "treatment works treating domestic sewage" within each category or subcategory all:

(A) Involve the same or substantially similar types of operations;

(B) Discharge the same types of wastes or engage in the same types of sludge use or disposal practices;

(C) Require the same effluent limitations, operating conditions, or standards for sewage sludge use or disposal;

(D) Require the same or similar monitoring; and (E) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

(3) *Water quality-based limits.* Where sources within a specific category or subcategory of dischargers are subject to water quality-based limits imposed pursuant to § 122.44, the sources in that specific category or subcategory shall be subject to the same water quality-based effluent limitations.

(4) *Other requirements.* (i) The general permit must clearly identify the applicable conditions for each category or subcategory of dischargers or treatment works treating domestic sewage covered by the permit.

(ii) The general permit may exclude specified sources or areas from coverage.

(b) * * *(1) *In general.* General permits may be issued, modified, revoked and reissued, or terminated in accordance with applicable requirements of part 124 of this chapter or corresponding State regulations. Special procedures for issuance are found at § 123.44 of this chapter for States.

* * * * *

10. Section 122.29(c)(1)(i) is amended by revising the reference "§ 122.21(k)" to read "§ 122.21(l)".

11. Section 122.41 is amended by revising the second sentence in paragraph (l)(6)(i) to read as follows:

**§ 122.41 Conditions applicable to all permits (applicable to State programs, see § 123.25).**

* * * * *

(l) * * *

(6) * * * (i) * * * Any information shall be provided orally within 24 hours from the time the permittee becomes aware of the circumstances. * * *

* * * * *

12. Section 122.43(b)(1) is amended by removing from the second sentence the words "(except as provided in § 124.86(c) for NPDES permits being processed under subpart E or F of part 124 of this chapter)" and by revising the word "additonal" in the third sentence to read "additional".

13. Section 122.44 is amended by revising paragraphs (a), (c), (e)(1), (k) and (q) to read as follows:

**§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).**

* * * * *

(a)(1) *Technology-based effluent limitations and standards* based on: effluent limitations and standards promulgated under section 301 of the CWA, or new source performance standards promulgated under section 306 of CWA, on case-by-case effluent limitations determined under section 402(a)(1) of CWA, or a combination of the three, in accordance with § 125.3 of this chapter. For new sources or new dischargers, these technology based limitations and standards are subject to the provisions of § 122.29(d) (protection period).

(2) *Monitoring waivers for certain guideline-listed pollutants.*

(i) The Director may authorize a discharger subject to technology-based effluent limitations guidelines and standards in an NPDES permit to forego sampling of a pollutant found at 40 CFR Subchapter N of this chapter if the discharger has demonstrated through sampling and other technical factors that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(ii) This waiver is good only for the term of the permit and is not available during the term of the first permit issued to a discharger.

(iii) Any request for this waiver must be submitted when applying for a reissued permit or modification of a reissued permit. The request must demonstrate through sampling or other technical information, including information generated during an earlier permit term that the pollutant is not present in the discharge or is present only at background levels from intake water and without any increase in the pollutant due to activities of the discharger.

(iv) Any grant of the monitoring waiver must be included in the permit as an express permit condition and the reasons supporting the grant must be

documented in the permit's fact sheet or statement of basis.

(v) This provision does not supersede certification processes and requirements already established in existing effluent limitations guidelines and standards.

* * * * *

(c) *Reopener clause:* For any permit issued to a treatment works treating domestic sewage (including "sludge-only facilities"), the Director shall include a reopener clause to incorporate any applicable standard for sewage sludge use or disposal promulgated under section 405(d) of the CWA. The Director may promptly modify or revoke and reissue any permit containing the reopener clause required by this paragraph if the standard for sewage sludge use or disposal is more stringent than any requirements for sludge use or disposal in the permit, or controls a pollutant or practice not limited in the permit.

* * * * *

(e) * * *

(1) Limitations must control all toxic pollutants which the Director determines (based on information reported in a permit application under § 122.21(g)(7) or in a notification under § 122.42(a)(1) or on other information) are or may be discharged at a level greater than the level which can be achieved by the technology-based treatment requirements appropriate to the permittee under § 125.3(c) of this chapter; or

* * * * *

(k) *Best management practices (BMPs)* to control or abate the discharge of pollutants when:

(1) Authorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities;

(2) Authorized under section 402(p) of the CWA for the control of storm water discharges;

(3) Numeric effluent limitations are infeasible; or

(4) The practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

**Note to paragraph (k)(4):** Additional technical information on BMPs and the elements of BMPs is contained in the following documents: Guidance Manual for Developing Best Management Practices (BMPs), October 1993, EPA No. 833/B–93–004, NTIS No. PB 94–178324, ERIC No. W498); Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices, September 1992, EPA No. 832/R–92–005, NTIS No. PB 92–235951, ERIC No. N482); Storm Water Management for Construction Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA No. 833/R–92–001, NTIS No. PB 93–223550; ERIC No. W139; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices, September 1992; EPA 832/R–92–006, NTIS No. PB 92–235969, ERIC No. N477; Storm Water Management for Industrial Activities, Developing Pollution Prevention Plans and Best Management Practices: Summary Guidance, EPA 833/R–92–002, NTIS No. PB 94–133782; ERIC No. W492. Copies of those documents (or directions on how to obtain them) can be obtained by contacting either the Office of Water Resource Center (using the EPA document number as a reference) at (202) 260–7786; or the Educational Resources Information Center (ERIC) (using the ERIC number as a reference) at (800) 276–0462. Updates of these documents or additional BMP documents may also be available. A list of EPA BMP guidance documents is available on the OWM Home Page at http://www.epa.gov/owm. In addition, States may have BMP guidance documents.

These EPA guidance documents are listed here only for informational purposes; they are not binding and EPA does not intend that these guidance documents have any mandatory, regulatory effect by virtue of their listing in this note.

* * * * *

(q) *Navigation.* Any conditions that the Secretary of the Army considers necessary to ensure that navigation and anchorage will not be substantially impaired, in accordance with § 124.59 of this chapter.

* * * * *

14. Section 122.45 is amended by revising paragraph (h)(1) to read as follows:

**§ 122.45 Calculating NPDES permit conditions (applicable to State NPDES programs, see § 123.25)**

* * * * *

(h) *Internal waste streams.* (1) When permit effluent limitations or standards imposed at the point of discharge are impractical or infeasible, effluent limitations or standards for discharges of pollutants may be imposed on internal waste streams before mixing with other waste streams or cooling water streams. In those instances, the monitoring required by § 122.48 shall also be applied to the internal waste streams.

* * * * *

**§ 122.47 Schedules of Compliance**

15. Section 122.47(b) introductory text is amended by revising the word "requriements" to read "requirements".

16. Section 122.62 is amended by revising paragraph (a)(8) to read as follows:

**§ 122.62 Modification or revocation and reissuance of permits (applicable to State programs, see § 123.25).**

* * * * *

(a) * * *

(8)(i) *Net limits.* Upon request of a permittee who qualifies for effluent limitations on a net basis under § 122.45(g).

(ii) When a discharger is no longer eligible for net limitations, as provided in § 122.45(g)(1)(ii).

* * * * *

17. Section 122.64 is amended by revising paragraph (b) to read as follows:

**§ 122.64 Termination of permits (applicable to State programs, see § 123.25).**

* * * * *

(b) The Director shall follow the applicable procedures in part 124 or part 22 of this chapter, as appropriate (or State procedures equivalent to part 124) in terminating any NPDES permit under this section, except that if the entire discharge is permanently terminated by elimination of the flow or by connection to a POTW (but not by land application or disposal into a well), the Director may terminate the permit by notice to the permittee. Termination by notice shall be effective 30 days after notice is sent, unless the permittee objects within that time. If the permittee objects during that period, the Director shall follow part 124 of this chapter or applicable State procedures for termination. Expedited permit termination procedures are not available to permittees that are subject to pending State and/or Federal enforcement actions including citizen suits brought under State or Federal law. If requesting expedited permit termination procedures, a permittee must certify that it is not subject to any pending State or Federal enforcement actions including citizen suits brought under State or Federal law. State-authorized NPDES programs are not required to use part 22 of this chapter procedures for NPDES permit terminations.

## PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for part 123 continues to read as follows:

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 123.25 is amended by revising paragraphs (a)(12), (a)(36) and paragraph (b) to read as follows:

**§ 123.25 Requirements for permitting.**

(a) * * *

(12) Section 122.41 (a)(1) and (b) through (n)—(Applicable permit conditions) (Indian Tribes can satisfy

enforcement authority requirements under § 123.34);

* * * * *

(36) Subparts A, B, D, and H of part 125 of this chapter;

* * * * *

(b) State NPDES programs shall have an approved continuing planning process under 40 CFR 130.5 and shall assure that the approved planning process is at all times consistent with the CWA.

* * * * *

3. Section 123.44 is amended by revising paragraph (a)(2), introductory text of paragraph (b)(2), the introductory text of paragraph (d), and by removing and reserving paragraph (i) to read as follows:

**§ 123.44 EPA review of and objections to State permits.**

(a) * * *

(2) In the case of general permits, EPA shall have 90 days from the date of receipt of the proposed general permit to comment upon, object to or make recommendations with respect to the proposed general permit, and is not bound by any shorter time limits set by the Memorandum of Agreement for general comments, objections or recommendations.

(b) * * *

(2) Within 90 days following receipt of a proposed permit to which he or she has objected under paragraph (b)(1) of this section, or in the case of general permits within 90 days after receipt of the proposed general permit, the Regional Administrator shall set forth in writing and transmit to the State Director:

* * * * *

(d) Prior to notifying the State Director of an objection based upon any of the grounds set forth in paragraph (c) of this section, the Regional Administrator:

* * * * *

## PART 124—PROCEDURES FOR DECISION MAKING

1. The authority citation for part 124 is revised to read as follows:

**Authority:** Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*; Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Clean Water Act, 33 U.S.C. 1251 *et seq.*; Clean Air Act, 42 U.S.C. 7401 *et seq.*

2. Section 124.1 is amended by revising the first sentence of paragraph (a) and revising paragraphs (b) and (c), by removing the table entitled "Hearings Available Under This Part" following paragraph (c), and by revising the fourth sentence of paragraph (d) to read as follows:

**§ 124.1 Purpose and scope.**

(a) This part contains EPA procedures for issuing, modifying, revoking and reissuing, or terminating all RCRA, UIC, PSD and NPDES "permits" (including "sludge-only" permits issued pursuant to § 122.1(b)(2) of this chapter. * * *

(b) Part 124 is organized into four subparts. Subpart A contains general procedural requirements applicable to all permit programs covered by these provisions. Subparts B through D supplement these general provisions with requirements that apply to only one or more of the programs. Subpart A describes the steps EPA will follow in receiving permit applications, preparing draft permits, issuing public notices, inviting public comment and holding public hearings on draft permits. Subpart A also covers assembling an administrative record, responding to comments, issuing a final permit decision, and allowing for administrative appeal of final permit decisions. Subpart B contains specific procedural requirements for RCRA permits. Subpart C contains definitions and specific procedural requirements for PSD permits. Subpart D contains specific procedural requirements for NPDES permits.

(c) Part 124 offers an opportunity for public hearings (see § 124.12).

(d) * * * This part also allows consolidated permits to be subject to a single public hearing under § 124.12.

* * *

* * * * *

**§ 124.2 [Amended]**

3. Section 124.2 is amended by:

a. Removing the following definitions in paragraph (a): "Applicable standards and limitations", "Consultation with the Regional Administrator", "NPDES", and "Variance"; and

b. Removing paragraph (c).

**§ 124.3 [Amended]**

4. Section 124.3 is amended by adding the word "and" at the end of paragraph (g)(3), by removing "; and" and inserting in its place a period in paragraph (g)(4) and by removing paragraph (g)(5).

**§ 124.4 [Amended]**

5. Section 124.4 is amended by removing and reserving paragraph (d) and by removing the phrase "or process a PSD permit under subpart F as provided in paragraph (d) of this section" in paragraph (e).

6. Section 124.5 is amended by revising paragraph (d) to read as follows:

**§ 124.5 Modification, revocation and reissuance, or termination of permits.**

* * * * *

(d) *(Applicable to State programs, see §§ 123.25 (NPDES) of this chapter, 145.11 (UIC) of this chapter, and 271.14 (RCRA) of this chapter).* (1) If the Director tentatively decides to terminate: A permit under § 144.40 (UIC) of this chapter, a permit under §§ 122.64(a) (NPDES) of this chapter or 270.43 (RCRA) of this chapter (for EPA-issued NPDES permits, only at the request of the permittee), or a permit under § 122.64(b) (NPDES) of this chapter where the permittee objects, he or she shall issue a notice of intent to terminate. A notice of intent to terminate is a type of draft permit which follows the same procedures as any draft permit prepared under § 124.6 of this chapter.

(2) For EPA-issued NPDES or RCRA permits, if the Director tentatively decides to terminate a permit under § 122.64(a) (NPDES) of this chapter, other than at the request of the permittee, or decides to conduct a hearing under section 3008 of RCRA in connection with the termination of a RCRA permit, he or she shall prepare a complaint under 40 CFR 22.13 and 22.44 of this chapter. Such termination of NPDES and RCRA permits shall be subject to the procedures of part 22 of this chapter.

(3) In the case of EPA-issued permits, a notice of intent to terminate or a complaint shall not be issued if the Regional Administrator and the permittee agree to termination in the course of transferring permit responsibility to an approved State under §§ 123.24(b)(1) (NPDES) of this chapter, 145.25(b)(1) (UIC) of this chapter, 271.8(b)(6) (RCRA) of this chapter, or 501.14(b)(1) (sludge) of this chapter. In addition, termination of an NPDES permit for cause pursuant to § 122.64 of this chapter may be accomplished by providing written notice to the permittee, unless the permittee objects.

* * * * *

7. Section 124.6 is amended by revising the third sentence of paragraph (e) to read as follows:

**§ 124.6 Draft permits.**

* * * * *

(e) * * * The Regional Administrator shall give notice of opportunity for a public hearing (§ 124.12), issue a final decision (§ 124.15) and respond to comments (§ 124.17). * * *

8. Section 124.10 is amended by removing the words ", subpart E or subpart F" in paragraphs (a)(1)(iii) and (d)(2) introductory text, and by removing the second sentence in paragraph (d)(1)(vii).

**§ 124.12 [Amended]**

9. Section 124.12(e) is removed.

**§ 124.14 [Amended]**

10. Section 124.14(d) is removed and reserved.

11. Section 124.15 is amended by revising the third sentence of paragraph (a) and by revising paragraph (b)(2) to read as follows:

**§ 124.15 Issuance and effective date of permit.**

(a) * * * This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, PSD, or NPDES permit under § 124.19 of this part. * * *

(b) * * *

(2) Review is requested on the permit under § 124.19

* * * * *

12. Section 124.16 is amended by revising paragraph (a) to read as follows:

**§ 124.16 Stays of contested permit conditions.**

(a) *Stays.* (1) If a request for review of a RCRA, UIC, or NPDES permit under § 124.19 of this part is filed, the effect of the contested permit conditions shall be stayed and shall not be subject to judicial review pending final agency action. Uncontested permit conditions shall be stayed only until the date specified in paragraph (a)(2)(i) of this section. (No stay of a PSD permit is available under this section.) If the permit involves a new facility or new injection well, new source, new discharger or a recommencing discharger, the applicant shall be without a permit for the proposed new facility, injection well, source or discharger pending final agency action. See also § 124.60.

(2)(i) Uncontested conditions which are not severable from those contested shall be stayed together with the contested conditions. The Regional Administrator shall identify the stayed provisions of permits for existing facilities, injection wells, and sources. All other provisions of the permit for the existing facility, injection well, or source become fully effective and enforceable 30 days after the date of the notification required in paragraph (a)(2)(ii) of this section.

(ii) The Regional Administrator shall, as soon as possible after receiving notification from the EAB of the filing of a petition for review, notify the EAB, the applicant, and all other interested parties of the uncontested (and severable) conditions of the final permit that will become fully effective enforceable obligations of the permit as of the date specified in paragraph (a)(2)(i) of this section . For NPDES permits only, the notice shall comply with the requirements of § 124.60(b).

* * * * *

13. Section 124.19 is amended by revising the section heading, removing the first sentence of paragraph (a) introductory text and adding in its place 4 sentences, revising the first sentence of paragraph (b), revising paragraph (d), and revising the first sentence of paragraph (f)(1) introductory text to read as follows:

**§ 124.19 Appeal of RCRA, UIC, NPDES, and PSD Permits.**

(a) Within 30 days after a RCRA, UIC, NPDES, or PSD final permit decision (or a decision under 270.29 of this chapter to deny a permit for the active life of a RCRA hazardous waste management facility or unit) has been issued under § 124.15 of this part, any person who filed comments on that draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Persons affected by an NPDES general permit may not file a petition under this section or otherwise challenge the conditions of the general permit in further Agency proceedings. They may, instead, either challenge the general permit in court, or apply for an individual NPDES permit under § 122.21 as authorized in § 122.28 and then petition the Board for review as provided by this section. As provided in § 122.28(b)(3), any interested person may also petition the Director to require an individual NPDES permit for any discharger eligible for authorization to discharge under an NPDES general permit. * * *

* * * * *

(b) The Environmental Appeals Board may also decide on its own initiative to review any condition of any RCRA, UIC, NPDES, or PSD permit decision issued under this part for which review is available under paragraph (a) of this section. * * *

* * * * *

(d) The Regional Administrator, at any time prior to the rendering of a decision under paragraph (c) of this section to grant or deny review of a permit decision, may, upon notification to the Board and any interested parties, withdraw the permit and prepare a new draft permit under § 124.6 addressing the portions so withdrawn. The new draft permit shall proceed through the same process of public comment and opportunity for a public hearing as would apply to any other draft permit subject to this part. Any portions of the permit which are not withdrawn and which are not stayed under § 124.16(a) continue to apply.

* * * * *

(f)(1) For purposes of judicial review under the appropriate Act, final agency action occurs when a final RCRA, UIC, NPDES, or PSD permit decision is issued by EPA and agency review procedures under this section are exhausted. * * *

* * * * *

14. Section 124.21 is revised to read as follows:

**§ 124.21 Effective date of part 124.**

(a) Part 124 of this chapter became effective for all permits except for RCRA permits on July 18, 1980. Part 124 of this chapter became effective for RCRA permits on November 19, 1980.

(b) EPA eliminated the previous requirement for NPDES permits to undergo an evidentiary hearing after permit issuance, and modified the procedures for termination of NPDES and RCRA permits, on June 14, 2000.

(c)(1) For any NPDES permit decision for which a request for evidentiary hearing was granted on or prior to June 13, 2000, the hearing and any subsequent proceedings (including any appeal to the Environmental Appeals Board) shall proceed pursuant to the procedures of this part as in effect on June 13, 2000.

(2) For any NPDES permit decision for which a request for evidentiary hearing was denied on or prior to June 13, 2000, but for which the Board has not yet completed proceedings under § 124.91, the appeal, and any hearing or other proceedings on remand if the Board so orders, shall proceed pursuant to the procedures of this part as in effect on June 13, 2000.

(3) For any NPDES permit decision for which a request for evidentiary hearing was filed on or prior to June 13, 2000 but was neither granted nor denied prior to that date, the Regional Administrator shall, no later than July 14, 2000, notify the requester that the request for evidentiary hearing is being returned without prejudice. Notwithstanding the time limit in § 124.19(a), the requester may file an appeal with the Board, in accordance with the other requirements of § 124.19(a), no later than August 13, 2000.

(4) A party to a proceeding otherwise subject to paragraph (c) (1) or (2) of this

section may, no later than June 14, 2000, request that the evidentiary hearing process be suspended. The Regional Administrator shall inquire of all other parties whether they desire the evidentiary hearing to continue. If no party desires the hearing to continue, the Regional Administrator shall return the request for evidentiary hearing in the manner specified in paragraph (c)(3) of this section.

(d) For any proceeding to terminate an NPDES or RCRA permit commenced on or prior to June 13, 2000, the Regional Administrator shall follow the procedures of § 124.5(d) as in effect on June 13, 2000, and any formal hearing shall follow the procedures of subpart E of this part as in effect on the same date.

**§ 124.52 [Amended]**

15. Section 124.52 is amended by removing the words "or § 124.118" in paragraphs (b) and (c).

**§ 124.55 [Amended]**

16. Section 124.55 is amended by revising the reference "§ 124.53(d) (1) and (2)" in paragraph (a)(2) to read "§ 124.53(e)" and by revising the reference "§ 124.53(d)" in paragraph (d) to read "§ 124.53(e)".

17. Section 124.56 is amended by revising (b)(1) to read as follows:

**§ 124.56 Fact sheets (applicable to State programs, see § 123.25 (NPDES).).**

* * * * *

(b)(1) When the draft permit contains any of the following conditions, an explanation of the reasons that such conditions are applicable:

(i) Limitations to control toxic pollutants under § 122.44(e) of this chapter;

(ii) Limitations on internal waste streams under § 122.45(i) of this chapter;

(iii) Limitations on indicator pollutants under § 125.3(g) of this chapter;

(iv) Limitations set on a case-by-case basis under § 125.3 (c)(2) or (c)(3) of this chapter, or pursuant to Section 405(d)(4) of the CWA;

(v) Limitations to meet the criteria for permit issuance under § 122.4(i) of this chapter, or

(vi) Waivers from monitoring requirements granted under § 122.44(a) of this chapter.

* * * * *

**§ 124.57 [Amended]**

18. Section 124.57 is amended by removing and reserving paragraph (b) and by removing paragraph (c).

19. Section 124.60 is revised to read as follows:

**§ 124.60 Issuance and effective date and stays of NPDES permits.**

In addition to the requirements of §§ 124.15, 124.16, and 124.19, the following provisions apply to NPDES permits:

(a) Notwithstanding the provisions of § 124.16(a)(1), if, for any offshore or coastal mobile exploratory drilling rig or coastal mobile developmental drilling rig which has never received a final effective permit to discharge at a "site," but which is not a "new discharger" or a "new source," the Regional Administrator finds that compliance with certain permit conditions may be necessary to avoid irreparable environmental harm during the administrative review, he or she may specify in the statement of basis or fact sheet that those conditions, even if contested, shall remain enforceable obligations of the discharger during administrative review.

(b)(1) As provided in § 124.16(a), if an appeal of an initial permit decision is filed under § 124.19, the force and effect of the contested conditions of the final permit shall be stayed until final agency action under § 124.19(f). The Regional Administrator shall notify, in accordance with § 124.16(a)(2)(ii), the discharger and all interested parties of the uncontested conditions of the final permit that are enforceable obligations of the discharger.

(2) When effluent limitations are contested, but the underlying control technology is not, the notice shall identify the installation of the technology in accordance with the permit compliance schedules (if uncontested) as an uncontested, enforceable obligation of the permit.

(3) When a combination of technologies is contested, but a portion of the combination is not contested, that portion shall be identified as uncontested if compatible with the combination of technologies proposed by the requester.

(4) Uncontested conditions, if inseverable from a contested condition, shall be considered contested.

(5) Uncontested conditions shall become enforceable 30 days after the date of notice under paragraph (b)(1) of this section.

(6) Uncontested conditions shall include:

(i) Preliminary design and engineering studies or other requirements necessary to achieve the final permit conditions which do not entail substantial expenditures;

(ii) Permit conditions which will have to be met regardless of the outcome of the appeal under § 124.19;

(iii) When the discharger proposed a less stringent level of treatment than that contained in the final permit, any permit conditions appropriate to meet the levels proposed by the discharger, if the measures required to attain that less stringent level of treatment are consistent with the measures required to attain the limits proposed by any other party; and

(iv) Construction activities, such as segregation of waste streams or installation of equipment, which would partially meet the final permit conditions and could also be used to achieve the discharger's proposed alternative conditions.

(c) In addition to the requirements of § 124.16(c)(2), when an appeal is filed under § 124.19 on an application for a renewal of an existing permit and upon written request from the applicant, the Regional Administrator may delete requirements from the existing permit which unnecessarily duplicate uncontested provisions of the new permit.

20. Section 124.64 is amended by revising paragraph (b), paragraph (c) introductory text, and paragraph (d) to read as follows:

**§ 124.64 Appeals of variances.**

* * * * *

(b) Variance decisions made by EPA may be appealed under the provisions of § 124.19.

(c) *Stays for section 301(g) variances.* If an appeal is filed under § 124.19 of a variance requested under CWA section 301(g), any otherwise applicable standards and limitations under CWA section 301 shall not be stayed unless:

* * * * *

(d) Stays for variances other than section 301(g) variances are governed by §§ 124.16 and 124.60.

**§ 124.66 [Amended]**

21. Section 124.66(a) is amended by removing the words "Except as provided in § 124.65," from the first sentence, and by revising the words "evidentiary or panel hearing under subpart E or F." in the fourth sentence to read "appeal under § 124.19."

**Subpart E to Part 124 [Removed]**

22. Subpart E is removed.

**Subpart F to Part 124 [Removed]**

23. Subpart F is removed.

**Appendix A to Part 124 [Removed]**

24. Appendix A to Part 124 is removed.

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## PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for part 125 is revised to read as follows:

**Authority:** The Clean Water Act, 33 U.S.C. 1251 *et seq.*, unless otherwise noted.

2. Section 125.32(a) is revised to read as follows:

**§ 125.32 Method of application.**

(a) A written request for a variance under this subpart D shall be submitted in duplicate to the Director in accordance with §§ 122.21(m)(1) and 124.3 of this chapter.

* * * * *

**§ 125.72 [Amended]**

3. Section 125.72(c) is amended by removing the words "and § 124.73(c)(1)".

**Subpart K to Part 125 [Removed and Reserved]**

4. Subpart K is removed and reserved.

## PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

1. The authority citation for part 144 continues to read as follows:

**Authority:** Safe Drinking Water Act, 42 U.S.C. 300f *et seq.*; Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

**§ 144.52 [Amended]**

2. Section 144.52(b)(2) is amended by removing from the second sentence the parenthetical phrase "(except as provided in § 124.86(c) for UIC permits being processed under subpart E or F of part 124)".

## PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

1. The authority citation for part 270 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

**§ 270.32 [Amended]**

2. Section 270.32(c) is amended by removing from the second sentence the parenthetical phrase "(except as provided in § 124.86(c) for RCRA permits being processed under subpart E or F of part 124)".

**§ 270.43 [Amended]**

3. Section 270.43(b) is amended by revising the words "part 124" to read "part 124 or part 22, as appropriate".

## PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

1. The authority citation for part 271 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912, and 6926.

**§ 271.19 [Amended]**

2. Section 271.19(e) introductory text is amended by removing the words "in accordance with the procedures of part 124, subpart E,".

[FR Doc. 00–10764 Filed 5–12–00; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 721**

**[OPPTS–50637A; FRL–6555–8]**

**RIN 2070–AB27**

## Revocation of Significant New Use Rules for Certain Chemical Substances

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is revoking significant new use rules (SNURs) for 2 substances promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) based on new data. Based on the new data the Agency no longer finds that activities not described in the corresponding TSCA section 5(e) consent order or premanufacture notice (PMN) for these chemical substances may result in significant changes in human or environmental exposure.

**DATES:** This rule is effective June 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

*For technical information contact:* James Alwood, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–1857; e-mail address: alwood.jim@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you manufacture, import, process, or use the chemical substances contained in this rule. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of Potentially Affected Entities |
|---|---|---|
| Chemical manufacturers | 325 | Manufacturers, importers, processors, and users of chemicals |
| Petroleum and coal product industries | 324 | Manufacturers, importers, processors, and users of chemicals |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under "FOR FURTHER INFORMATION CONTACT."

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–50637A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information

related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

## II. Background

*A. What Action is the Agency Taking?*

In the **Federal Register** referenced for each substance, OPPTS–50591C, July 22, 1992 (57 FR 32441) and OPPTS–50615, May 27, 1994 (59 FR 27474) establishing significant new uses for the substances, EPA issued a SNUR. The Agency proposed the revocation of these SNURs in the **Federal Register** of November 19, 1999 (64 FR 63275) (FRL–6385–8). The comment period closed on December 20, 1999. The Agency received no comments concerning the proposed revocations. Therefore, EPA is revoking these rules.

*B. What is the Agency's Authority for Taking this Action?*

During review of the PMNs submitted for the chemical substances that are the subject of this revocation, EPA concluded that regulation was warranted based on available information that indicated activities not described in the TSCA section 5(e) consent order or the PMN might result in significant changes in human or environmental exposure as described in section 5(a)(2) of TSCA. Based on these findings, SNURs were promulgated.

EPA has revoked the TSCA section 5(e) consent order that is the basis for one of the SNURs and no longer finds that activities other than those described in the TSCA section 5(e) consent order or the PMN may result in significant changes in human or environmental exposure. The revocation of SNUR provisions for these substances is consistent with the findings set forth in the preamble to the proposed revocation of each individual SNUR.

Therefore, EPA is revoking the SNUR provisions for these chemical substances. When this revocation is effective, EPA will no longer require notice of intent to manufacture, import, or process these substances. In addition, export notification under section 12(b) of TSCA will no longer be required.

## III. Regulatory Assessment Requirements

This rule revokes or eliminates an existing regulatory requirement and does not contain any new or amended requirements. As such, the Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled "Regulatory Planning and Review" (58 FR 51735, October 4, 1993).

Since this rule does not impose any requirements, it does not contain any information collections subject to approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or require any other action under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4).

Nor does it require any prior consultation as specified by Executive Order 12875, entitled "Enhancing the Intergovernmental Partnership" (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997).

On August 4, 1999, President Clinton issued a new executive order on Federalism, Executive Order 13132 (64 FR 43255, August 10, 1999), which will take effect on November 2, 1999. In the interim, the current Executive Order 12612 (52 FR 41685, October 30, 1987) on Federalism still applies. This rule will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 12612.

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency has determined that SNUR revocations, which eliminate requirements without imposing any new ones, have no adverse economic impacts. The Agency's generic certification for SNUR revocations appears on June 2, 1997 (62 FR 29684) (FRL–5597–1) and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

## IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

### List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: May 2, 2000.

**Charles M. Auer,**

*Director, Chemical Control Division, Office of Pollution Prevention and Toxics.*

Therefore, 40 CFR part 721 is amended as follows:

### PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

### §§ 721.3180, 721.8654 [Removed]

2. By removing §§ 721.3180 and 721.8654.

[FR Doc. 00–12137 Filed 5–12–00; 8:45 am]
BILLING CODE 6560–50–F

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### 49 CFR Parts 173 and 178

**[Docket No. RSPA–97–2718 (HM–225A)]**

**RIN 2137–AD07**

### Hazardous Materials Safety: Technology Sharing Meeting

**AGENCY:** Research and Special Programs Administration (RSPA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** RSPA is hosting a meeting to promote the exchange of information concerning emergency shutdown equipment on cargo tank motor vehicles used to transport liquefied compressed gases.

**DATES:** The meeting will be held on Tuesday, June 27, 2000, from 10:00 am to 5:00 pm (registration from 8:30 am to 10:00 am), and Wednesday, June 28, 2000, from 8:30 am to 12:30 pm.

**ADDRESSES:** The meeting will be held in the Michigan and Minnesota Rooms of the Federal Aviation Administration Building, 2300 East Devon Avenue, Des Plaines, Illinois. For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact Eloy Martinez at the address or phone number listed under **FOR FURTHER INFORMATION CONTACT** as soon as possible.

**FOR FURTHER INFORMATION CONTACT:** Herbert Gould, Volpe Center, Research and Special Programs Administration, 617–494–2134; or Eloy Martinez, Volpe Center, Research and Special Programs Administration, 617–494–2599.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On May 24, 1999, the Research and Special Programs Administration (RSPA; "we") published a final rule under Docket No. RSPA–97–2718 (HM–225A) (64 FR 28030). The final rule revised regulations applicable to the transportation and unloading of liquefied compressed gases, including liquefied petroleum gases, anhydrous ammonia, and chlorine. The revisions included new inspection, maintenance, and testing requirements for cargo tank discharge systems and revised attendance requirements applicable to liquefied petroleum gas and anhydrous ammonia. The final rule was developed through a negotiated rulemaking. In addition to the Department of Transportation, the negotiated rulemaking committee consisted of persons representing businesses that transport and deliver liquefied petroleum gases, anhydrous ammonia and other liquefied compressed gases; manufacturers and operators of cargo tanks and vehicle components; and state and local public safety and emergency response agencies.

Among other requirements, the final rule revised requirements for cargo tank emergency discharge control equipment to provide a clear performance standard for passive emergency discharge control equipment that shuts down unloading operations without human intervention. The revised requirements also provided for a remote capability for certain cargo tanks to enable a person attending the unloading operation to shut off the flow of product when unloading duties require the person to be away from the motor vehicle during delivery.

The final rule allowed two years for development and testing of emergency discharge control technology. After July 1, 2001, newly manufactured MC 331 cargo tank motor vehicles must be equipped with emergency discharge control equipment that conforms to the performance standards. MC 330, MC 331, and certain nonspecification cargo tank motor vehicles already in service must be retrofitted over a five-year period beginning after July 1, 2001, on a schedule that coincides with the cargo tank's scheduled pressure test in accordance with 49 CFR part 180.407(c).

## II. Public Meeting

In developing the HM–225A final rule, the negotiated rulemaking committee anticipated that periodic progress reviews would be needed during the two-year development and testing cycle for emergency discharge control technology. Such reviews help promote communication between industry and government and function as a catalyst for critical development and testing needs that may occur. Committee members planned to work in partnership to assure widespread dissemination of information related to development and testing of emergency discharge control technology.

Accordingly, we are hosting a public meeting to foster the exchange of information among interested parties concerned with the safe transportation of liquefied compressed gases in cargo tank motor vehicles. The meeting will focus specifically on emergency discharge control system technology, including both passive and off-truck remote shutdown equipment.

The meeting will be held in the Chicago, Illinois, area on June 27 and 28, 2000. To pre-register, please contact Eloy Martinez, telephone 617–494–2599, fax 617–494–3616, e-mail *martinez@volpe.dot.gov*.

A simple, flexible agenda is being prepared by industry representatives who participated in the development of the final rule. Any demonstrations of discharge control equipment or systems should be planned for the morning of June 27. Prospective demonstrators should contact Eloy Martinez as soon as possible.

This is an informal meeting to promote the free exchange of information concerning emergency discharge control systems on cargo tank motor vehicles, including recent technology developments, test results, operating experience, and the like. There will be no transcript of the meeting; however, we will prepare minutes of the meeting and written questions and answers developed in response to issues raised. This information will be made available on the HazMat Safety Website (http://hazmat.dot.gov).

Issued in Washington, DC on May 9, 2000.

**Robert A. McGuire,**

*Acting Associate Administrator for Hazardous Materials Safety.*

[FR Doc. 00–12073 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–60–P

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. NHTSA–00–7144]**

**RIN 2127–AG55**

## Federal Motor Vehicle Safety Standards; FMVSS 101—Technical Correction—Speedometer Display

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This technical amendment corrects an error in Table 2 of Federal Motor Vehicle Safety Standard 101 as a result of a final rule published September 24, 1998. In that notice the agency adopted language for the speedometer display as "MPH and/or km/h". The effect of this language is to allow speedometers labeled in miles per hour (MPH) alone, kilometers per hour (km/h) alone, or both miles and kilometers per hour. The intent was to require speedometer display in miles per hour, and to allow the addition of kilometers per hour at the option of the manufacturer. This amendment changes the language of Table 2 to "MPH, or MPH and km/h".

**DATES:** This final rule is effective February 15, 2001. Optional early compliance with the change made in this final rule is permitted beginning May 15, 2000.

**ADDRESSES:** Petitions for reconsideration of this final rule should refer to the docket number cited in the heading of this final rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St, SW, Washington, DC 20590. It is requested, but not required, that ten copies be submitted.

**FOR FURTHER INFORMATION CONTACT:** Gayle Dalrymple, NPS–23, Office of Safety Performance Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Ms. Dalrymple can be

reached by phone at (202) 366–5559 or by facsimile at (202) 366–4329.

**SUPPLEMENTARY INFORMATION:** On May 27, 1998, NHTSA published a final rule amending selected Federal Motor Vehicle Safety Standards (FMVSS) by converting English measurements specified in those standards to metric measurements. On September 24, 1998, the agency published a technical amendment and response to petition for reconsideration stemming from the May notice. In the September notice, the agency responded to a comment from Ford Motor Company stating that, in Ford's view, the label "MPH km/h" in Column 3 of Table 2 under "Speedometer" in FMVSS 101 required both English and metric units to be displayed on the speedometer. The intent of the standard is to require speedometer display in miles per hour (MPH), and to allow the addition of kilometers per hour (km/h) to MPH at the option of the manufacturer. Ford recommended that "MPH km/h" be changed to "MPH and/or km/h". The agency adopted this text for the Speedometer display in Table 2 of FMVSS 101 with the September 24, 1998, notice. We have become aware that the new language, "MPH and/or km/h", could be interpreted to mean that speedometers labeled in kilometers per hour alone are acceptable. It was obviously not our intent to allow speedometers graduated in km/h only, which would be useless for drivers in the U.S., where speed limits are communicated in MPH alone. We do not believe that Ford intended such an outcome either. Therefore, today's technical amendment changes the language of the Speedometer display required by FMVSS 101 to "MPH, or MPH and km/h". This provision is consistent with the requirements of FMVSS 101 which were in effect from 1982 to 1998.

**Regulatory Impacts**

*A. Executive Order 12866 and DOT Regulatory Policies and Procedures*

NHTSA has examined the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, "Regulatory Planning and Review." This action has been determined to be not "significant" under DOT's regulatory policies and procedures.

In converting the Federal Motor Vehicle Safety Standards from the English to the metric measurement system, the agency has made conversions in a way that does not substantively change the performance requirements of the FMVSSs. In this final rule, NHTSA makes corrections to an error that appeared in the September 24,1998, final rule. NHTSA does not believe motor vehicle manufacturers will incur any additional costs as a result of the final rule. The impacts of this action are so minor that a full regulatory evaluation has not been prepared.

*B. Regulatory Flexibility Act*

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this final rule will not have a significant economic impact on a substantial number of small entities. The rationale for this certification is that this final rule makes no substantive changes to any Federal Motor Vehicle Safety Standards, and is limited to correcting a typographical error in the September 24, 1998, final rule that amended the Federal Motor Vehicle Safety Standards.

*C. Environmental Impacts*

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rulemaking action and determined that as a final rule, it would not have a significant impact on the quality of the human environment.

*D. Federalism*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

*E. Civil Justice Reform*

This rule will not have a retroactive effect. Under Section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

*F. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. Because this final rule does not have a $100 million effect, no Unfunded Mandates assessment has been prepared.

**List of Subjects in 49 CFR Part 571**

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, the Federal Motor Vehicle Safety Standards (49 CFR Part 571), are amended as set forth below.

## PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

**Authority:** 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.101 is amended by revising S5 to read as follows:

**§ 571.101 Standard No. 101, Controls and displays.**

* * * * *

S5 Requirements. Each passenger car, multipurpose passenger vehicle, truck and bus manufactured with any control listed in S5.1 or in column 1 of Table 1, and each passenger car, multipurpose passenger vehicle and truck or bus less than 4,536 kg. GVWR with any display listed in S5.1 or in column 1 of Table 2, shall meet the requirements of this standard for the location, identification, and illumination of such control or display.

* * * * *

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3. Section 571.101 is amended by revising Table 2 following S6. to read as follows:

**Table 2**
**Identification and Illustration of Displays**

| Column 1 | Column 2 | Column 3 | Column 4 | Column 5 |
|---|---|---|---|---|
| *Display* | *Telltale Color* | *Identifying Words or Abbreviation* | *Identifying Symbol* | *Illumination* |
| Turn Signal Telltale | Green | Also see FMVSS 108 | 1 6 | — |
| Hazard Warning Telltale | | Also see FMVSS 108 | 2 6 | — |
| Seat Belt Telltale | 7 — | Fasten Belts or Fasten Seat Belts Also see FMVSS 208 | or | — |
| Fuel Level Telltale | | Fuel | or | — |
| Gauge | — | | | Yes |
| Oil Pressure Telltale | | Oil | | — |
| Gauge | — | | | Yes |
| Coolant Temperature Telltale | | Temp | | — |
| Gauge | — | | | Yes |
| Electrical Charge Telltale | | Volts, Charge or Amp | | — |
| Gauge | — | | | Yes |
| Highbeam Telltale | Blue or Green 4 | Also see FMVSS 108 | 6 | — |
| Brake System 8 | Red 4 | Brake, Also see FMVSS 105 and 135 | — | — |
| Malfunction in Anti-Lock or | Yellow | Antilock, Anti-lock, or ABS. Also see FMVSS 105 and 135 | — | — |
| Variable Brake Proportioning System 8 | Yellow | Brake Proportioning, Also see FMVSS 135 | — | — |
| Parking Brake Applied 8 | Red 4 | Park or Parking Brake, Also see FMVSS 105 and 135 | — | — |
| Malfunction in Anti-Lock | Yellow | ABS, or Antilock; Trailer ABS, or Trailer Antilock, Also see FMVSS 121 | — | — |
| Brake Air Pressure Position Telltale | — | Brake Air, Also see FMVSS 121 | — | — |
| Speedometer | — | MPH, or MPH and km/h 5 | — | Yes |
| Odometer | — | — 3 | — | — |
| Automatic Gear Position | — | Also see FMVSS 102 | — | Yes |

1 The pair of arrows is a single symbol. When the indicator for left and right turn operate independently, however, the two arrows will be considered separate symbols and may be spaced accordingly.

2 Not required when arrows of turn signal tell-tales that otherwise operate independently flash simultaneously as hazard warning tell-tale.

3 If the odometer indicates kilometers, then "KILOMETERS" or "km" shall appear, otherwise, no identification is required.

4 Red can be red-orange. Blue can be blue-green.

5 If the speedometer is graduated in miles per hour and in kilometers per hour, the identifying words or abbreviations shall be "MPH and km/h" in any combination of upper or lower case letters.

6 Framed areas may be filled.

7 The color of the telltale required by S4.5.3.3 of Standard No 208 is red; the color of the telltale required by S7.3 of Standard No. 208 is not specified.

8 In the case where a single telltale indicates more than one brake system condition, the word for Brake System shall be used.

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Issued on: May 2, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Performance Safety Standards.*

[FR Doc. 00–11493 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 21

### Migratory Bird Permits; Notice of Amendment of Falconry, Raptor Propagation, and Certain Scientific Collecting Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of permit amendment.

**SUMMARY:** Just prior to removing the American peregrine falcon from the U.S. List of Endangered and Threatened Wildlife, we amended all Migratory Bird Treaty Act (MBTA) permits that authorized the take of wild raptors for falconry and raptor propagation purposes and scientific collecting permits that were not species-specific. The permit amendment continued the prohibition on removing peregrines from the wild until we can issue biological criteria to manage such take. We were unable to locate several permit holders. Therefore, this document serves as official notice to those holders of Federal falconry or raptor propagation permits, or scientific collecting permits that are not species-specific, who did not receive our amendment letter. This notice amends your permit.

**EFFECTIVE DATE:** May 15, 2000.

**ADDRESSES:** Comments or questions concerning this notice may be addressed to Jon Andrew, Chief, Migratory Bird Management Office, 4401 North Fairfax Drive, ARLSQ 634, Arlington, Virginia 22203 (703–358–1714). Questions or information concerning individual permits should be addressed to the Regional Migratory Bird Permit Office responsible for your State, as follows: (1) *Region 1* (CA, HI, ID, NV, OR, WA, Pacific Island Territories) 911 N.E. 11th Avenue, Portland, OR 97232–4181 (503/872–2715); (2) *Region 2* (AZ, NM, OK, TX) P.O. Box 709, Albuquerque, NM 87103 (505/248–7882); (3) *Region 3* (IL, IN, IA, MI, MN, MO, OH, WI) One Federal Drive, Ft. Snelling, MN 55111–0045 ((612) 713–5436); (4) *Region 4* (AL, AR, FL, GA, KY, LA, MS, NC, SC, TN, PR, VI) P.O. Box 49208, Atlanta, GA 30359 (404/679–7070); (5) *Region 5* (CT, DE, D.C., ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV) P.O. Box 779, Hadley, MA 01035–0779 (413/253–8641); (6) *Region 6* (CO, KS, MT, NE, ND, SD, UT, WY) P.O. Box 25486, DFC(60130), Denver, CO 80225–0486 (303/236–8171); (7) *Region 7* (AK) 1011 East Tudor Road, Anchorage, AK 99503 (907/786–3693).

**FOR FURTHER INFORMATION CONTACT:** Susan Lawrence, National Migratory Bird Permit Coordinator, Migratory Bird Management Office, at the Arlington, Virginia address above.

### Background

On August 25, 1999, we published a final rule in the **Federal Register** removing the American peregrine falcon (*Falco peregrinus anatum*) from the U.S. Endangered Species List (64 FR 46542). The rule also removed the "similarity of appearance" provision for all free-flying peregrine falcons (*F. peregrinus*) in the conterminous States. The arctic peregrine (*F. p. tundrius*) was removed from the list in 1994. As a result of these rules, native peregrine falcons no longer receive the protection of the U.S. Endangered Species Act (ESA). Conservation of native peregrine falcons now falls primarily to the MBTA and State regulations.

The MBTA regulations in 50 CFR part 21 allow for the issuance of permits to take migratory birds for certain purposes. Prior to the delisting, American peregrine falcons could not be taken from the wild under migratory bird permits because of their endangered status under the ESA, and no free-flying peregrines of any subspecies in the 48 contiguous States could be taken from the wild due to the similarity of appearance provision under the ESA. Other than the general prohibition on taking ESA-listed species, most MBTA falconry and raptor propagation permits and some scientific collecting permits were not species-specific.

In July and August of 1999, in anticipation of the delisting, we sent a letter to all falconry and raptor propagation permit holders and all non-species-specific scientific collecting permit holders amending their permits to prohibit take of wild peregrines once the ESA restrictions no longer apply. Because take of Peales (*Falco peregrinus pealei*) and arctic peregrine subspecies by residents of Alaska was legal, and because Alaska currently prohibits take of wild birds by nonresidents, permits for Alaska residents were amended to prohibit take of only the American peregrine falcon subspecies (*F. p. anatum*) in Alaska and all peregrine falcons (*F. peregrinus*) in the conterminous United States. The amendments do not affect activities with captive-bred peregrines.

The general permit regulations in 50 CFR 13.23(b) authorize us to amend a permit if we determine that it is necessary to do so. The removal of ESA protection for the species and the need to complete biological criteria for take of peregrines constitute our finding of necessity for modification of these permits. These amendments are necessary to protect this newly recovered species from potential unregulated take while we reach agreement with other government entities on managing take, both of nestlings born in the United States as well as migrants, many of which originate outside the United States.

We were unable to locate several permit holders through the U.S. mail. Therefore, this document serves as notice to any holder of a Federal falconry permit, Federal raptor propagation permit, or Federal scientific collecting permit that is not species-specific for raptors, who did not receive our amendment letter. In accordance with 50 CFR 13.23(b), this notice amends your permit as follows:

*For permittees residing in the conterminous United States:*

You may not take a peregrine falcon (*Falco peregrinus*) from the wild in the United States.

*For Alaska residents:*

You may not take an American peregrine falcon (*Falco peregrinus anatum*) from the wild anywhere in the United States. You may not take any peregrine falcon (*Falco peregrinus*) from the wild in the conterminous United States.

Please attach this notice to your current permit. We may amend your permit again when management plans for peregrines are complete.

We attempted to notify all permittees individually of this amendment by letter sent to the address listed in existing permits. Permittees we were unable to locate by the address listed in their permits are identified below. However, this amendment notice applies to any holder of a Federal falconry permit, Federal raptor propagation permit, or Federal scientific collecting permit that is not species-specific for raptors, who did not receive our amendment letter.

*Region 1*

Timothy Jason Walker, Las Vegas, NV (PRT# 005114)

*Region 2*

Ken Diehl, Boerne, TX (PRT# 003091)
John Manley Griffith, Tyler, TX (PRT# 834718)

Calvin E. Knock, Prescott, AZ (PRT# 679316)
Kimberly Lykins, Abilene, TX (PRT# 822616)
Kathryn McCallum, Richmond, TX (PRT# 834725)
Pamala J. Nichols, Dallas, TX (PRT# 744189)
Amenda D. Riddle, Seguin, TX (PRT# 797580)
Frank Sickles, Las Cruces, NM (PRT# 712647)
Rockwell Trent Summers, Glenrose, TX (PRT# 837019)
David R. Williamson, Ft. Worth, TX (PRT# 679707)
John A. Yezeguielian, Pryor, OK (PRT# 704425)

*Region 4*

John Thomas Williams, Clinton, MS (PRT# 784042)
Dennis Lee Hinojos, Alpharetta, GA (PRT3# 752597)

*Region 5*

Santos Rodriguez, Columbia, MD (PRT# 001157)
Paul R. Getzel, Baltimore, MD (PRT# 801992)

*Region 6*

Jonathan Albrand, Salt Lake City, UT (PRT# 001157)
Steven Buckner, Lake Point, UT (PRT# 708924)
Brent Grasmick, Torrington, WY (PRT# 005714)
Pat Hnilicka, Cheyenne, WY (PRT# 794982)
Forrest Moore, Casper, WY (PRT# 698983)
Kristine Newbold, Lake Point, UT (PRT# 813936)
Kent Reisdorph, Aberdeen, SD (PRT# 770103)
Rip Ripley, Salt Lake City, UT (PRT# 764383)
Ronald Rollins, Roy, UT (PRT# 792790; 802055)
Weston Winegar, Salt Lake City, UT (PRT# 785325)

If you are among the permittees named above, or if you are a falconry, raptor propagation, or nonspecific scientific collecting permit holder not named above but you did not receive our amendment letter, you should contact your regional migratory bird permit office (see **ADDRESSES** section) within 10 days of the date of this notice to clarify your address. Service regulations require that permittees notify the permit issuing office within 10 calendar days of an address change (50 CFR 13.23(c)).

If you have concerns about the amendment that you wish to address through the formal administrative process, please refer to the review procedures in 50 CFR 13.29, a subsection of the general permit regulations, which you received with your permit application.

**Authority:** The authority for this action is the Migratory Bird Treaty Act (16 U.S.C. 703–711).

Dated: May 1, 2000.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 00–12091 Filed 5–12–00; 8:45 am]

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# Proposed Rules

Federal Register
Vol. 65, No. 94
Monday, May 15, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 958

**[Docket No. FV00–958–1 PR]**

### Onions Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Decreased Assessment Rate

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would decrease the assessment rate established for the Idaho-Eastern Oregon Onion Committee (Committee) under Marketing Order No. 958 for the 2000–2001 and subsequent fiscal periods from $0.09 to $0.08 per hundredweight of onions handled. The Committee is responsible for local administration of the marketing order which regulates the handling of onions grown in designated counties in Idaho, and Malheur County, Oregon. Authorization to assess Idaho-Eastern Oregon onion handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by June 14, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement No. 130 and Marketing Order No. 958, both as amended (7 CFR part 958), regulating the handling of onions grown in certain designated counties in Idaho, and Malheur County, Oregon, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the order now in effect, Idaho-Eastern Oregon onion handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate proposed herein would be applicable to all assessable onions beginning on July 1, 2000, and continue until amended, suspended, or terminated. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would decrease the assessment rate established for the Committee for the 2000–2001 and subsequent fiscal periods from $0.09 per hundredweight to $0.08 per hundredweight of onions handled.

The order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The Committee consists of six producer members, four handler members and one public member, each of whom is familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The budget and assessment rate were discussed at a public meeting and all directly affected persons had an opportunity to participate and provide input.

For the 1998–99 and subsequent fiscal periods, the Committee recommended, and the Department approved, an assessment rate of $0.09 per hundredweight that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on April 6, 2000, and unanimously recommended 2000–2001 expenditures of $1,047,637 and an assessment rate of $0.08 per hundredweight of onions handled during the 2000–2001 and subsequent fiscal periods. The Committee estimated that the 2000–2001 onion crop will approximate 9,600,000 hundredweight of onions. In comparison, the 1999–

2000 fiscal period budget was established at $1,133,785 on an estimated assessable onion harvest of 9,200,000 hundredweight of onions. The Committee recommended the decreased assessment rate to help offset the negative effects of the currently depressed onion market.

The Committee anticipates that assessment income during the 2000–2001 fiscal period will be approximately $768,000, which is $60,000 less than the $828,000 assessment income estimated for its 1999–2000 budget. The Committee now projects a total income of approximately $944,372 and expenditures of about $1,025,098 by June 30, 2000. At the time the 1999–2000 fiscal period budget was recommended, the Committee had estimated that it would draw up to $260,785 from its operating reserve. However, since current assessment income is greater than anticipated and expenditures are less than budgeted, the operating reserve may actually be depleted by about $80,726. Thus, the Committee has estimated that its operating reserve will be approximately $859,793 on July 1, 2000, and, if it requires an estimated $234,637 from its monetary reserve as budgeted during the 2000–2001 fiscal period, approximately $625,156 on July 1, 2001. Lower assessment rates were considered, but not recommended because they would not generate the income necessary to administer the program with an adequate operating reserve.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include $235,105 for marketing order administration, which includes salary, office, travel and Committee expenses, $58,532 for production research, $675,000 for market promotion including paid advertising, $54,000 for export market development, and $25,000 for marketing order contingencies. Budgeted expenses for these items in the 1999–2000 fiscal period were $224,685, $69,100, $750,000, $60,000, and $30,000, respectively.

The Committee has based its recommended assessment rate decrease on the 2000–2001 crop estimate and fiscal period expenditures estimate, the current condition of the onion market, and the current and projected size of its monetary reserve. The decreased assessment rate should provide $768,000 in income, which, when combined with interest income of $45,000 and operating reserve funds of $234,637, would be adequate to cover budgeted expenses. As noted above, the Committee estimates it will have approximately $859,793 in its operating reserve at the end of the 1999–2000 fiscal period, which should be adequate to cover any income shortages. This amount is within the maximum permitted by the order of approximately one fiscal period's expenditures (§ 958.44).

The proposed assessment rate would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate would be in effect for an indefinite period, the Committee would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department and are locally published. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact this rule would have on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 34 handlers of Idaho-Eastern Oregon onions who are subject to regulation under the order and approximately 270 onion producers in the regulated production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of Idaho-Eastern Oregon onion handlers and producers may be classified as small entities.

This rule would decrease the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent fiscal periods from $0.09 per hundredweight to $0.08 per hundredweight of onions handled. Both the $0.08 assessment rate and the 2000–2001 budget of $1,047,637 were unanimously recommended by the Committee at its April 6, 2000, meeting. The proposed assessment rate is $0.01 lower than the rate currently in effect. The Committee recommended a decreased assessment rate to help offset the negative effects of the currently depressed onion market. The anticipated crop of 9,600,000 hundredweight is approximately 400,000 hundredweight larger than the crop estimate used to establish the 1999–2000 budget. The $0.08 rate should provide $768,000 in assessment income, which, when combined with interest income of $45,000 and $234,637 from the operating reserve, would be adequate to meet the 2000–2001 fiscal period's budgeted expenses.

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $1,047,637 which include increases in administrative expenses, salaries, and committee expenses, and decreases in production research, market promotion, export market development, and contingency fund expenses. Prior to recommending this budget, the Committee considered information from various sources, including the Idaho-Eastern Oregon Onion Executive, Research, Promotion and Export Market Development Committees. Alternative expenditure levels were discussed and rejected by these subcommittees, and ultimately by the full Committee, based upon the relative value of various research and promotion projects to the Idaho-Eastern Oregon onion industry.

The major expenditures recommended by the Committee for the 2000–2001 fiscal period include $235,105 for marketing order administration, which includes salary, office, travel and Committee expenses, $58,532 for production research, $675,000 for market promotion including paid advertising, $54,000 for export market development, and $25,000 for marketing order contingencies. Budgeted expenses for these items in the 1999–2000 fiscal period were $224,685, $69,100, $750,000, $60,000, and $30,000, respectively.

A review of historical information and preliminary information pertaining to the upcoming season indicates that the F.O.B. price for the 2000–2001 onion season could average $5.50 per

hundredweight of onions. Therefore, the estimated assessment revenue for the 2000–2001 fiscal period ($768,000) as a percentage of the projected total F.O.B. revenue ($52,800,000) would be 0.0145 percent. This figure indicates that the $0.08 assessment rate recommended by the Committee would have a relatively insignificant impact on the Idaho-Eastern Oregon onion industry.

This action would decrease the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Idaho-Eastern Oregon onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the April 6, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons the opportunity to respond to this request for information and comments. Thirty days is deemed appropriate because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the 2000–2001 fiscal period begins on July 1, 2000, and the order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (3) this action decreases the assessment rate for assessable onions beginning with the 2000–2001 fiscal period; and (4) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

**List of Subjects in 7 CFR Part 958**

Onions, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is proposed to be amended as follows:

## PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 958 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 958.240 is revised to read as follows:

**§ 958.240 Assessment rate.**

On and after July 1, 2000, an assessment rate of $0.08 per hundredweight is established for Idaho-Eastern Oregon onions.

Dated: May 9, 2000.

**Eric M. Forman,**

*Acting Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–12153 Filed 5–12–00; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1220

**[No. LS–00–04]**

## Soybean Promotion and Research: Amend the Order to Adjust Representation on the United Soybean Board

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed Rule.

**SUMMARY:** This proposed rule would adjust the number of members for certain States on the United Soybean Board (Board) to reflect changes in production levels that have occurred since the last time the Board was reapportioned in 1997. These adjustments are required by the Soybean Promotion and Research Order (Order). The results of the adjustments would be an additional member for Kansas and one less member for Maryland. As a result of these changes, the total Board membership will remain at 62 members. These changes to the Board would be effective with the Secretary's 2001 appointments.

**DATES:** Written comments must be received by July 14, 2000.

**ADDRESSES:** Send two copies of comments to Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Program; Agricultural Marketing Service (AMS), USDA, Room 2627–S; STOP 0251; 1400 Independence Avenue, SW., Washington, DC 20250–0251. Comments may also be sent by e-mail to Ralph.Tapp@usda.gov or by fax to 202/720–1125. State that your comment refers to Docket No. LS–00–04. Comments received may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Ralph L. Tapp, Chief, Marketing Programs Branch, 202/720–1115, fax 202/270–1125, or e-mail Ralph.Tapp@usda.gov.

**SUPPLEMENTARY INFORMATION:**

**Executive Orders 12866 and 12988, and Regulatory Flexibility Act and the Paperwork Reduction Act**

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule was reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Soybean Promotion, Research, and Consumer Information Act (Act) provides that administrative proceedings must be exhausted before parties may file suit in court. Under § 1971 of the Act, a person subject to the Order may file a petition with the Secretary stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order, is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district courts of the United States in any district in which such person is an inhabitant, or has their principal place of business, has jurisdiction to review the Secretary's ruling on the petition, if a complaint for this purpose is filed

within 20 days after the date of the entry of the ruling.

**Effect on Small Entities**

AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because it only adjusts representation on the Board to reflect changes in production levels that have occurred since the Board was reapportioned in 1997. As such, these changes will not impact on persons subject to the program. There are an estimated 600,813 soybean producers who pay assessments and an estimated 10,000 first purchasers who collect assessments, most of whom would be considered small entities under the criteria established by the Small Business Administration (13 CFR 121.201).

**Background and Proposed Changes**

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace, and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991. The Order established a Board of 60 members. For purposes of establishing the Board, the United States was divided into 31 geographic units. Representation on the Board from each unit was determined by the level of production in each unit. The Secretary appointed the initial Board on July 11, 1991. The Board is composed of soybean producers.

Section 1220.201(c) of the Order provides that at the end of each 3-year period, the Board shall review soybean production levels in the geographic units throughout the United States. The Board may recommend to the Secretary modification in the levels of production necessary for Board membership for each unit. At its March 2000 meeting the Board voted to recommend to the Secretary that no modification be made.

Section 1220.201(d) of the Order provides that at the end of each 3-year period, the Secretary must review the volume of production of each unit and adjust the boundaries of any unit and the number of Board members from each such unit as necessary to conform with the criteria set forth in § 1220.201(e): (1) To the extent practicable, States with annual average soybean production of less than 3,000,000 bushels shall be grouped into geographically contiguous units, each of which has a combined production level equal to or greater than 3,000,000 bushels, and each such group shall be entitled to at least one member on the Board; (2) units with at least 3,000,000 bushels, but fewer than 15,000,000 bushels shall be entitled to one Board member; (3) units with 15,000,000 bushels or more but fewer than 70,000,000 bushels shall be entitled to two Board members; (4) units with 70,000,000 bushels or more but fewer than 200,000,000 bushels shall be entitled to three Board members; and (5) units with 200,000,000 bushels or more shall be entitled to four Board members.

Current representation on the Board (62), and the number of geographical units (30), have been based on average production levels for the years 1992–1996 (excluding crops in years that production was the highest and that production was the lowest) as reported by the National Agricultural Statistics Service (NASS) of the Department.

Proposed representation on the Board (62) is based on average production levels for the years 1995–1999 (excluding crops in years that production was the highest and that production was the lowest) as reported by NASS.

The number of geographical units would remain at 30. This proposed rule would adjust representation on the Board as follows:

| State | 1995–1999 Average production level (bushels) | Current representation | Proposed representation |
|---|---|---|---|
| Kansas | 75,800,000 | 2 | 3 |
| Maryland | 14,753,000 | 2 | 1 |

There are no adjustments to the other States or regions.

Board adjustment as proposed by this rulemaking would be effective, if adopted, with the 2001 nominations and appointments.

**List of Subjects in 7 CFR Part 1220**

Administrative practice and procedure, Advertising, Agricultural research, Marketing agreements, Soybeans and soybean products, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that Title 7, part 1220 be amended as follows:

## PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for 7 CFR Part 1220 continues to read as follows:

**Authority:** 7 U.S.C. 6301–6311.

2. In § 1220.201, the table immediately following paragraph (a) is revised to read as follows:

**§ 1220.201 Membership of board.**

(a) * * *

| Unit | Number of members |
|---|---|
| Illinois | 4 |
| Iowa | 4 |
| Minnesota | 4 |
| Indiana | 4 |
| Missouri | 3 |
| Ohio | 3 |
| Arkansas | 3 |
| Nebraska | 3 |
| South Dakota | 3 |
| Kansas | 3 |
| Mississippi | 2 |
| Louisiana | 2 |
| Tennessee | 2 |
| North Carolina | 2 |
| Kentucky | 2 |
| Michigan | 2 |
| North Dakota | 2 |
| Wisconsin | 2 |
| Maryland | 1 |
| Virginia | 1 |
| Georgia | 1 |
| South Carolina | 1 |
| Alabama | 1 |
| Delaware | 1 |
| Texas | 1 |
| Pennsylvania | 1 |
| Oklahoma | 1 |
| New Jersey | 1 |
| Eastern Region (New York, Massachusetts, Connecticut, Florida, Rhode Island, Vermont, New Hampshire, Maine, West Virginia, District of Columbia, and Puerto Rico) | 1 |

| Unit | Number of members |
|---|---|
| Western Region (Montana, Wyoming, Colorado, New Mexico, Idaho, Utah, Arizona, Washington, Oregon, Nevada, California, Hawaii, and Alaska) ..... | 1 |

* * * * *

Dated: May 9, 2000.

**Barry L. Carpenter,**

*Deputy Administrator, Livestock and Seed Program.*

[FR Doc. 00–12154 Filed 5–12–00; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 1240

**[FV–00–702 PR]**

## Honey Research, Promotion, and Consumer Information Order; Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The purpose of this proposed rule is to amend the procedures which the U.S. Department of Agriculture (USDA or the Department) would use in conducting a referendum to determine whether honey producers, producer-packers, importers, and handlers subject to the Honey Research, Promotion, and Consumer Information Act (Act) favor implementation of changes to the Honey Research, Promotion, and Consumer Information Order (Order) based on the 1998 amendments to the Act. These procedures, as amended, would also be used in any subsequent referenda under the Act.

**DATES:** Comments must be received by June 14, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning the proposed rule to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours, or on the internet at www.ams.usda.gov/fv/rpdocketlist.htm. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this rule may be found at the above internet address. Pursuant to the Paperwork Reduction Act of 1995 (PRA), also send comments regarding the accuracy of the burden estimate, ways to minimize the burden, including through the use of automated collection techniques or other forms of information technology, or any other aspect of this collection of information, to the above address. Comments concerning the information collection under the PRA should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Karen T. Comfort, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, SW, Room 2535 South Building, Washington, DC 20250–0244; telephone (202) 720–9915; facsimile (202) 205–2800.

**SUPPLEMENTARY INFORMATION:** The Honey Research, Promotion, and Consumer Information Act (Act) (Pub. L. 98–590; enacted October 30, 1984; 7 U.S.C. 4601-4613, as amended) was amended by Congress on June 23, 1998. The amendments to the Act were made by the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185, enacted June 23, 1998).

A proposed rule on amending the Honey Research, Promotion, and Consumer Information Order (Order) (7 CFR Part 1240) in conformance with the 1998 amendments to the Act was published in the **Federal Register** on February 28, 2000 (65 FR 10600). Before the amendments to the Order can be implemented, a referendum must be conducted among producers, producer-packers, importers, and handlers as provided in section 4613(d) of the Act.

### Question and Answer Overview

*Why Are Rules Being Proposed for a Referendum on the Amendments to the Honey Research, Promotion, and Consumer Information Order?*

On June 23, 1998, the Act was amended by the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185, enacted June 23, 1998). The amendments to the Act authorize amendments to the Order. Before the Order can be amended, producers, producer-packers, handlers, and importers must be allowed to vote in a national referendum on whether they wish the amendments to become effective. This proposed rule would amend existing referendum procedures to allow handlers to vote in the referendum and make other changes related to the amendments to the Act. Under the current referendum procedures, only producers, producer-packers in their capacity as producers, and importers are eligible to vote. Publishing this proposed rule provides the opportunity for public input on the revised procedures before they are implemented.

*How Long Do I Have To Comment on the Proposed Rule?*

You have 30 days to comment on this proposed rule. Your written comments must be received by June 14, 2000. You can mail, fax, or e-mail your comments. Additionally, you have 60 days to provide written comments to OMB on the paperwork burden associated with this proposal. Those comments must be received by July 14, 2000.

*Who Is Eligible To Vote in the Referendum?*

Most honey producers, producer-packers, importers, and handlers who produced, handled, or imported honey or honey products during calendar years 1998 and 1999 would be eligible to vote in the referendum. However, certain producers, producer-packers, handlers, and importers would not be eligible to vote. If you produced, produced and handled, or imported less than 6,000 pounds of honey or honey products per year and you distributed that honey directly through local retail outlets such as roadside stands, farmers markets, or groceries, you would be ineligible to vote in the referendum unless you voluntarily paid assessments.

*How Will the Vote in the Referendum Be Tabulated?*

In order for the amendments to become effective, they must be approved by a majority of the voters in the referendum and those voters must represent 50 percent or more of the honey produced, handled, and imported by the voters in the referendum.

*If I Am a Producer, How Will My Vote Be Counted?*

If you are a producer, you will be entitled to one vote which includes the number of pounds of honey you produced in 1998 and 1999.

*If I Am a Producer-Packer, How Will My Vote Be Counted?*

One of the proposed amendments to the Order would implement a new assessments on handlers. Therefore, as a producer-packer, you would be entitled to one vote as a producer and one vote as a handler. Each vote would include the number of pounds of honey you produced or handled during 1998 and 1999.

*If I Am a Handler, How Will My Vote Be Counted?*

Since handlers were not covered under the program during 1998 and 1999, you would be entitled to one vote as a handler based on the number of pounds of honey you handled during 1998 and 1999, even though you did not pay assessments during 1998 and 1999.

*If I Am an Importer, How Will My Vote Be Counted?*

Under the proposed amendments, half of an importer's assessment would be considered the producer portion of the assessment and half of an importer's assessment would be considered the handler portion of the assessment. Therefore, importers would be entitled to cast two ballots, one for the handler portion of the assessment and one for the producer portion of the assessment. Each ballot would include the number of pounds of honey or honey products you imported during 1998 and 1999.

*When Will the Referendum Be Held?*

After we have analyzed the comments on this rule and the comments on the proposed rule on the amendments to the Order, we will issue final referendum rules and a second proposed rule on amendments to the Order. The second proposed rule on amendments to the Order will include a Referendum Order, which will announce the voting period for the referendum. The voting period will last 30 days and be announced 30 days in advance.

*How Can I Vote in the Referendum?*

Voting will take place by mail. All known eligible producers, producer-packers, importers, and handlers will receive a ballot and voting instructions in the mail from USDA. Producers, producer-packers, importers, and handlers who believe they are eligible to vote and who do not receive a ballot in the mail may request a ballot by calling a toll-free telephone number. The ballot must be received by USDA by close of business on the last day of the voting period.

*How Will USDA Make Certain That Only Eligible Persons Vote in the Referendum?*

USDA will use records from the National Honey Board on persons who have paid assessments or requested an exemption from assessments.

*How Will USDA Make Certain That Every Eligible Person has the Opportunity to Vote?*

USDA will have a toll-free telephone number for persons to call to request a ballot if they do not receive a ballot and they believe they are eligible to vote. These persons will be required to provide documentation of their eligibility to vote. Executive Orders 12866 and 12988 and the Regulatory Flexibility Act.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

Under Section 10 of the Act, a person subject to the Order may file, within a period prescribed by the Secretary of Agriculture (Secretary), a written petition with the Secretary stating that the Order, or any provision of the Order, or any obligation imposed in connection with the Order, is not established in accordance with the law, and request a modification of the Order or an exemption from the Order. Any petition filed challenging the Order, any provision of the Order, or any obligation imposed in connection with the Order, shall be filed not later than two years after: (1) The effective date of the Order, provision, or obligation challenged in the petition; or (2) the date on which the petitioner became subject to the Order, provision, or obligation challenged in the petition. The petitioner will have the opportunity for a hearing on the petition. Thereafter, the Secretary will issue a ruling on a petition, which will be final if the petition is in accordance with the law.

The Act provides that the district court of the United States for any district in which the petitioner resides or conducts business shall have jurisdiction to review a final ruling on the petition, if the petitioner files a complaint for that purpose not later than 20 days after the date of the entry of the Secretary's final ruling.

In accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency is required to examine the impact of this proposed rule on small entities. The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

There are approximately 3,285 producers, 400 producer-packers, and 348 importers who pay assessments under the Order. In addition, there are 121 handlers who would be subject to assessments if the amendments to the Order are implemented. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5 million and small agricultural producers are defined as those having annual receipts of not more than $500,000. The majority of honey producers, producer-packers, importers, and handlers may be classified as small entities.

This proposed rule would amend the procedures for the conduct of referenda (7 CFR 1240.200–1240.207) under the Order in accordance with 1998 changes to sections 4611 and 4613 of the Act. The procedures, as amended, would be used in conducting a referendum among producers, producer-packers, importers, and handlers to determine whether they favor implementation of the proposed amendments to the Order which are subject to prior approval in a referendum. The authority to conduct this referendum is provided in section 4613 of the Act, as amended. Other amendments to the Order based on the 1998 changes to the Act are not subject to referendum approval and will become part of the Order regardless of the outcome of the referendum. The procedures contained in this proposal would also be used for any subsequent referenda involving the continuation, suspension, termination, or amendment of the Order.

Section 4611(b) of the Act provides that those changes to the Order subject to a referendum vote must be approved by a majority of eligible voters who vote. The majority voting in the affirmative must also represent a majority of the quantity of honey and honey products produced, imported, and handled among all those voting. Section 4613(d)(1)(B) also directs that no individual provision of the proposed amendments to the Order shall be subject to a separate vote in the referendum.

Under section 4613(d)(2) of the Act, producers, producer-packers, importers, and handlers owing assessments on honey produced, or honey or honey

products imported or handled during the 2-calendar-year period preceding the referendum, which period shall be considered to be the representative period, would be eligible to vote. Although currently not subject to assessment, those persons who handled honey or honey products during the representative period would also be able to participate in the referendum since one of the proposed changes would assess handlers for the first time. Section 4613(d)(3)(A) of the Act directs that producer-packers, importers, and handlers will be allowed to vote as if the proposed amendments to the Order had been in place during the representative period, and they would have owed assessments as provided by the proposed amendments to the Order.

Each producer and producer-packer owing assessments as producers on honey produced during the representative period will be entitled to cast one ballot in the referendum as a producer. Each importer will be entitled to cast two ballots, one ballot for the producer portion of the importer assessment and one ballot for the handler portion of the importer assessment. Each handler will also be entitled to cast one ballot in the referendum if the handler would have been subject to assessment on honey or honey products handled during the representative period had the proposed amendments to the Order been in effect. Each producer-packer will be entitled to cast an additional ballot as a handler if they handled honey or honey products during the representative period and would have owed assessments as provided by the proposed amendments to the Order.

The amount of honey linked to a person's vote as an eligible producer shall be the quantity of honey produced during the representative period. The quantity of honey or honey products attributable to a person's vote as an importer shall be the amount of honey or honey products imported during the representative period. The quantity of honey attributable to a person's vote as a handler shall be the amount of honey or honey products handled during the representative period.

USDA will keep the honey industry informed throughout the referendum process to ensure that they are aware of and are able to participate in the referendum. USDA will also publicize information regarding the referendum process, so that trade associations and related industry media can be kept informed.

Voting in the referendum is optional. However, if producers, producer-packers, handlers, and importers choose to vote, the burden of casting a ballot would be offset by the benefits of having the opportunity to vote on whether they wish to have the Order amended.

The information collection requirements contained in this proposed rule (as described below) are designed to minimize the burden on producers, producer-packers, importers, and handlers voting in referenda.

The Secretary considered requiring eligible voters vote in person at various USDA offices across the country. The Secretary also considered electronic voting, but the use of computers is not universal. Conducting the referendum from one central location by mail ballot would be more cost-effective and reliable. The Department would provide easy access to information for potential voters through a toll-free telephone line.

There are no federal rules that duplicate, overlap, or conflict with this rule.

USDA's Agricultural Marketing Service has performed this initial Regulatory Flexibility Analysis regarding the impact of this proposed rule on small entities. However, in order to have additional data that may be helpful in evaluating the effects of this rule on small entities, we are inviting comments concerning potential effects. In particular, we are interested in determining the number and kind of small entities that may incur benefits or costs from implementation of this proposed rule and information on the expected benefits and costs.

**Paperwork Reduction Act**

In accordance with the Office of Management and Budget (OMB) regulation (5 CFR part 1320) which implements the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the referendum ballot represents the information collection and recordkeeping requirements that may be imposed by this rule.

Approximately 3,285 producers and 400 producer-packers would be eligible to vote as producers, and 348 importers of record would be eligible to vote as importers. In addition, approximately 121 handlers, 400 producer-packers, and 20 importers of record who would be eligible to vote as handlers.

The basic referendum ballot has been previously approved by OMB. However, the ballot would be modified slightly to allow handlers to vote for the first time. The revised referendum ballot, which represents the information collection and recordkeeping requirements that may be imposed by this rule, has been submitted to OMB for approval.

The information collection burden associated with producers, producer-packers, and importers is already reflected in the information collection approved for use under OMB Number 0581–0093.

This proposed rule would add a new burden involving those eligible to vote as handlers. The following persons will be eligible to vote as handlers in the referendum: (1) Persons who handle honey or honey products without producing or importing honey or honey products that would have owed assessments as provided by the proposed amendments to the Order; (2) persons who both produce and handle honey or honey products (*i.e.*, producer-packers) that would have owed assessments as provided by the proposed amendments to the Order; and (3) persons who handle honey or honey products and also are importers of record (*i.e.*, handler-importers) that would have owed assessments as provided by the proposed amendments to the Order. If the proposed amendments to the Order are approved, handlers will also be able to vote in subsequent referenda.

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number:* 0581–0093.

*Expiration Date of Approval:* November 30, 2000.

*Type of Request:* Revision of a currently approved information collection for advisory committees and boards and for research and promotion programs.

*Abstract:* The information collection requirements in this request are essential to carry out the intent of the Act. The increase in burden associated with the ballot is as follows:

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

*Respondents:* Handlers, producer-packers, and importers voting as eligible handlers.

*Estimated Number of Respondents:* 550.

*Estimated Number of Responses per Respondent:* 1 every 5 years (0.2).

*Estimated Total Annual Burden on Respondents:* 28 hours (328 hours (requested)—300 hours (currently approved) = 28 hours (increase)).

The estimated additional annual cost of providing the information by 550 persons eligible to vote as handlers (based on approximately 121 handlers, 400 producer-packers, and 20 importers who are also handlers) would be $275.00 or $0.50 per voter. The increase of 28 total burden hours would be added to the previous burden total of 300 hours under OMB No. 0581–0093.

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Comments are invited on: (a) Whether the proposed additional collection of information is necessary and whether it will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed increase in the collection of information, including the validity of the methodology and assumption used; ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments concerning the information collection requirements contained in this action should reference OMB No. 0581–0093, the docket number, and the date and page number of this issue of the **Federal Register**. Comments should be sent to the USDA Docket Clerk and OMB Desk Officer for Agriculture at the addresses and within the time frames specified above. All comments received will be available for public inspection during regular business hours at the same address. All responses to this notice will be summarized and included in the request for OMB approval.

OMB is required to make a decision concerning the increase in the collection of information contained in this rule between 30 and 60 days after publication. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

**Background**

On June 23, 1998, the Act was amended by the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185, enacted June 23, 1998). The 1998 amendments to section 4613 of the Act authorize the Secretary to make conforming changes to the Order after conducting a referendum among producers, producer-packers, handlers, and importers.

The following amendments to the Order must be approved by the voters in a referendum before becoming effective: (1) A requirement for the Board to reserve 8 percent of its funds annually for beekeeping and production research; (2) authority for the Board to develop recommendations for purity standards and an inspection and monitoring system in order to enhance the image of honey and honey products; (3) the addition of two handler members who are also importers to the Board; (4) a decrease in the producer assessment from 1 cent per pound to 0.75 cents per pound; (5) the addition of an assessment of 0.75 cents per pound on handlers; and (6) an increase in the assessment rate on imports from 1 cent per pound to 1.5 cents per pound.

Other proposed amendments to the Order are not subject to voter approval in a referendum and would be added to the Order regardless of the outcome of the referendum. These amendments include: (1) Changing the two importer/exporter positions to two importer positions on the Board; (2) eliminating the public member position; (3) revising nomination and eligibility requirements; (4) requiring that at least 50 percent of the Board members be honey producers; (5) providing authority for the Board to develop a voluntary quality assurance program with enforcement by USDA; (6) eliminating the requirement to file for an exemption under the program; and (7) removing obsolete language.

If the proposed amendments to the Order regarding assessments on handlers are approved, handlers would vote in subsequent referenda. If the proposed amendments to the Order regarding assessments on handlers are not approved in the referendum, handlers would not vote in future referenda.

Following the 1998 amendments to the Act, USDA issued a news release on July 31, 1998, inviting persons to submit proposals for implementing the amendments by September 30, 1998. Subsequently, on September 21, 1998, USDA extended the deadline to December 31, 1998, to provide the various segments of the honey industry ample opportunity to develop proposals. One proposal and eight comments were received. A complete proposal was submitted by the Board.

The proposed changes to referenda procedures would provide handlers, if subject to assessment under an order, the opportunity to vote in a referendum along with eligible producers, producer-packers, and importers. In addition, producers-packers would be entitled to cast an additional ballot as handlers if they handled honey or honey products during the representative period and would have owed assessments as provided by the proposed amendments to the Order. Importers would cast two ballots, one ballot for the producer portion of the importer assessment and one ballot for the handler portion of the importer assessment. Under the current referenda procedures, only producers, producer-packers in their capacity as producers, and importers are eligible to vote.

The amended referendum procedures in this proposed rule would replace Subpart—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order (7 CFR 1240.200–1240.207). The revised subpart, to be redesignated as subpart C, would include sections covering definitions, voting, instructions, subagents, ballots, referendum report, and confidential information. While the definitions for producer, producer-packer, and handler in the existing Order would not change as a result of the February 28, 2000, proposed rule on the Order, the definition of importer would change. Therefore, the same proposed definition of importer would be added to these regulations.

In addition, this rule would redesignate Subpart—General Rules and Regulations (7 CFR 1240.100–1240.125) as subpart B.

All written comments received in response to this proposal by the date specified will be considered prior to finalizing this action. The industry is asked to pay particular attention to the definitions to be sure that they are appropriate for purposes of determining voter eligibility. The industry is also encouraged to comment on any other practical considerations with regard to conducting the referendum within the parameters set forth in this proposed rule and the Act, as amended.

The proposed amendments to the Order, which have been published separately and which would be the subject of the referendum conducted under these proposed procedures, have not received the approval of the Secretary.

**List of Subjects in 7 CFR Part 1240**

Administrative practice and procedure, Advertising, Consumer information, Marketing agreements, Honey promotion, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, it is proposed that part 1240 of Title 7, Chapter XI of the Code of Federal Regulations, be amended as follows:

## PART 1240—HONEY RESEARCH, PROMOTION, AND CONSUMER INFORMATION

1. Revise the authority citation for 7 CFR part 1240 to read as follows:

**Authority:** 7 U.S.C. 4601–4613 and 7 U.S.C. 7401.

2. In part 1240, the heading for subpart B is revised to read "Subpart B—Rules and Regulations".

3. Revise subpart C to read as follows:

**Subpart C—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order**

Sec.
1240.200 General.
1240.201 Definitions.
1240.202 Voting.
1240.203 Instructions.
1240.204 Subagents.
1240.205 Ballots.
1240.206 Referendum report.
1240.207 Confidential information.

## Subpart C—Procedure for the Conduct of Referenda in Connection With the Honey Research, Promotion, and Consumer Information Order

### § 1240.200 General.

Referenda to determine whether eligible producers, importers, and, in the case of an order assessing handlers, handlers favor the continuation, suspension, termination, or amendment of the Honey Research, Promotion, and Consumer Information Order shall be conducted in accordance with this subpart.

### § 1240.201 Definitions.

(a) *Act* means the Honey Research, Promotion, and Consumer Information Act (Pub. L. 98–590; 98 Stat. 3115; enacted October 30, 1984; 7 U.S.C. 4601–4613, as amended) and any amendments thereto.

(b) *Administrator* means the Administrator of the Agricultural Marketing Service, with power to redelegate, or any officer or employee of the Department to whom authority has been delegated or may hereafter be delegated to act in the Administrator's stead.

(c) *Board* or *National Honey Board* means the Honey Board, the administrative body provided for under section 7(c) of the Act and established under § 1240.30.

(d) *Department* means the United States Department of Agriculture.

(e) *Eligible handler* means any person defined as a handler or producer-packer in this part, or importer in this subpart, who handles honey or honey products, and is covered by an order and subject to assessment on honey handled during the representative period.

(f) *Eligible importer* means any person defined as an importer in this subpart, who is engaged in the importation of honey or honey products, and is subject to pay assessments to the Board on honey or honey products imported during the representative period.

(g) *Eligible producer* means any person defined as a producer or producer-packer in the Order who produces honey and is subject to pay assessments to the Board on such honey produced during the representative period and who:

(1) Owns or shares in the ownership of honey bee colonies or beekeeping equipment resulting in the ownership of the honey produced;

(2) Rents honey bee colonies or beekeeping equipment resulting in the ownership of all or a portion of the honey produced;

(3) Owns honey bee colonies or beekeeping equipment but does not manage them and, as compensation, obtains the ownership of a portion of the honey produced; or

(4) Is a party in a lessor-lessee relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey who share the risk of loss and receive a share of the honey produced. No other acquisition of legal title to honey shall be deemed to result in persons becoming eligible producers.

(h) *Importer* means any person who imports honey or honey products into the United States as principal or as an agent, broker, or consignee for any person who produces honey or honey products outside of the United States for sale in the United States, and who is listed as the importer of record for such honey or honey products.

(i) *Order* means the Honey Research, Promotion, and Consumer Information Order.

(j) *Person* means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity. For the purpose of this definition, the term partnership includes, but is not limited to:

(1) A husband and wife who have title to, or leasehold interest in, honey bee colonies or beekeeping equipment as tenants in common, joint tenants, tenants by the entirety, or, under community property laws, as community property, and

(2) So-called *joint ventures* wherein one or more parties to the agreement, informal or otherwise, contributed land and others contributed capital, labor, management, equipment, or other services, or any variation of such contributions by two or more parties, so that it results in the production, handling, or importation of honey or honey products for market and the authority to transfer title to the honey or honey products so produced, handled or imported.

(k) *Referendum agent* or *agent* means the individual or individuals designated by the Secretary to conduct the referendum.

(l) *Representative period* means the period designated by the Secretary pursuant to the Act.

(m) *Secretary* means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

### § 1240.202 Voting.

(a) *Eligibility.* (1) Each person who is, as defined in this subpart, an eligible producer; an eligible importer; or, in the case of an order assessing handlers, an eligible handler shall be entitled to vote in the referendum.

(2) In conducting a referendum for the sole purpose of determining whether persons favor the implementation of amendments to the Order in accordance with changes to the Act made by the Agricultural Research, Extension, and Education Reform Act of 1998 (Pub. L. 105–185, enacted June 23, 1998), producer-packers, importers, and handlers shall be allowed to vote as if:

(i) The proposed amendments to the Order were in place during the representative period; and

(ii) They were subject to assessment based on the quantity of honey or honey products handled during the representative period.

(b) *Number of ballots cast.* (1) Each person who is an eligible producer, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one ballot in the referendum: *Provided*, That each producer in a landlord-tenant relationship or a divided ownership arrangement involving totally independent entities cooperating only to produce honey and/or honey products, in which more than one of the parties is a producer, shall be entitled to cast one ballot covering only such producer's share of the ownership.

(2) In the case of an order assessing handlers, each person who is an eligible handler, as defined in this subpart, at the time of the referendum and during the representative period, shall be entitled to cast one ballot in the referendum.

(3) Each person who is a producer-packer, as defined in the Order, at the time of the referendum and during the representative period, shall be entitled to cast one ballot as an eligible producer and, in the case of an order assessing handlers, one ballot as an eligible handler.

(4) Each importer, as defined in the Order, at the time of the referendum and during the representative period, shall be entitled to cast in the referendum one

ballot as an importer and, in the case of an order assessing handlers, one ballot as an eligible handler.

(c) *Proxy voting.* Proxy voting is not authorized, but an officer or employee of an eligible corporate producer; importer; and, in the case of an order assessing handlers, handler; or an administrator, executor, or trustee of an eligible entity may cast a ballot on behalf of such entity. Any individual so voting in a referendum shall certify that they are an officer or employee of the eligible entity, or an administrator, executor, or trustee of an eligible entity and that such individual has the authority to take such action. Upon request of the referendum agent, the individual shall submit adequate evidence of such authority.

(d) *Casting of ballots.* All ballots are to be cast by mail as instructed by the Secretary.

**§ 1240.203 Instructions.**

The referendum agent shall conduct the referendum, in the manner herein provided, under the supervision of the Administrator. The Administrator may prescribe additional instructions, not inconsistent with the provisions hereof, to govern the procedure to be followed by the referendum agent. Such agent shall:

(a) Determine the period during which ballots may be cast.

(b) Provide ballots and related material to be used in the referendum. The ballot shall provide for recording essential information, including that needed for ascertaining:

(1) Whether the person voting, or on whose behalf the vote is cast, is an eligible voter; and

(2) The quantity of honey or honey products produced; imported; and, in the case of an order assessing handlers, handled.

(c) Give reasonable public notice of the referendum:

(1) By utilizing available media or public information sources, without incurring advertising expense, to publicize the voting period, method of voting, eligibility requirements, and other pertinent information. Such sources of publicity may include, but are not limited to, print and radio; and

(2) By such other means as said agent may deem advisable.

(d) Mail to eligible producers; importers; and in the case of an order assessing handlers, handlers whose names and addresses are known to the referendum agent; the instructions on voting; a ballot; and a summary of the terms and conditions to be voted upon. No person who claims to be eligible to vote shall be refused a ballot.

(e) At the end of the voting period, collect, open, number, and review the ballots and tabulate the results in the presence of an agent of a third party authorized to monitor the referendum process.

(f) Prepare a report on the referendum.

(g) Announce the results to the public.

**§ 1240.204 Subagents.**

The referendum agent may appoint any individual or individuals necessary to assist the agent in performing such agent's functions hereunder. Each individual so appointed may be authorized by the agent to perform any or all of the functions which, in the absence of such appointment, shall be performed by the agent.

**§ 1240.205 Ballots.**

The referendum agent and subagents shall accept all ballots cast. However, if an agent or subagent deems that a ballot should be questioned for any reason, the agent or subagent shall endorse above their signature, on the ballot, a statement to the effect that such ballot was questioned, by whom questioned, why the ballot was questioned, the results of any investigation made with respect to the questionable ballot, and the disposition of the questionable ballot. Ballots invalid under this subpart shall not be counted.

**§ 1240.206 Referendum report.**

Except as otherwise directed, the referendum agent shall prepare and submit to the Administrator a report on the results of the referendum, the manner in which it was conducted, the extent and kind of public notice given, and other information pertinent to analysis of the referendum and its results.

**§ 1240.207 Confidential information.**

All ballots cast and their contents and all other information or reports furnished to, compiled by, or in possession of, the referendum agent or subagents that reveal, or tend to reveal, the identity or vote of any producer, handler, or importer of honey or honey products shall be held strictly confidential and shall not be disclosed.

Dated: May 9, 2000.

**Eric M. Forman,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–12152 Filed 5–12–00; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### 10 CFR Part 431

**[Docket No. EE–RM/STD–00–100]**

**RIN 1904–AB06**

## Energy Efficiency Program for Commercial and Industrial Equipment: Efficiency Standards for Commercial Heating, Air Conditioning and Water Heating Equipment

**AGENCY:** Office of Energy Efficiency and Renewable Energy, Department of Energy.

**ACTION:** Notice of document availability and public workshop.

**SUMMARY:** The Energy Policy and Conservation Act, as amended, establishes energy efficiency standards for certain commercial heating, air conditioning and water heating equipment and requires the Department (DOE, Department or we) to administer an energy conservation program for these products. On October 29, 1999, the American Society of Heating, Refrigerating and Air-Conditioning Engineers, Inc. (ASHRAE) and Illuminating Engineering Society of North America (IES) revised ASHRAE/IES Standard 90.1, which contains efficiency standards for these products. This notice announces availability of the report of the Screening Analysis the Department has undertaken to assess what action it should take with respect to the efficiency levels now contained in ASHRAE/IES Standard 90.1. The Department invites comments and is convening a public workshop on its preliminary conclusions, on the analysis, and on any additional considerations that might affect the Department's decisions on which standards to adopt or reject without further analysis, and which to consider further.

**DATES:** The Department must receive written comments on or before July 31, 2000. The Department requests ten (10) copies of the written comments and, if possible, an electronic copy (3½" diskette) in a form accessible to WordPerfect™ 8. Oral views, data and arguments may be presented at the public workshop to be held in Washington, DC, beginning at 9:30 a.m. on July 11, 2000.

The Department must receive (1) requests to speak at the workshop no later than 4:00 p.m., June 23, 2000, and (2) copies of statements to be given at the public workshop no later than 4:00

p.m., June 30, 2000. The length of each oral presentation is limited to 15 minutes.

**ADDRESSES:** The workshop will be held at the U.S. Department of Energy, Forrestal Building, Room 1E–245, 1000 Independence Avenue, SW, Washington, DC. Written comments, statements, and requests to speak at the workshop are to be submitted to Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585. You should identify all such documents both on the envelope and on the documents as "Energy Conservation Program for Commercial Equipment: Screening Analysis for Commercial HVAC Standards, Docket No. EE–RM/STD–00–100."

You can read the Screening Analysis report and public comments received in the Freedom of Information Reading Room (Room No. 1E–190) at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. You can also obtain the Screening Analysis report electronically from the Office of Building Research and Standards world wide web site at the following URL address: [http://www.eren.doe.gov/buildings/codes_standards/index.htm].

The Screening Analysis report and this notice both refer to certain industry standards established by ASHRAE and IES. These industry standards are referenced hereafter by the single comprehensive title "ASHRAE/IES Standard 90.1–1999." You can view this standard at the Department of Energy's Freedom of Information Reading Room at the address stated above. You can also obtain copies from the American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc., 1971 Tullie Circle, NE, Atlanta, GA 30329, and you can obtain them electronically at ASHRAE's web site, [http://www.ashrae.org/book/bookshop.htm].

**FOR FURTHER INFORMATION CONTACT:** Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station, EE–41, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9138, FAX (202) 586–4617, e-mail: Cyrus.Nasseri@ee.doe.gov, or Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station, GC–72, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9507, e-mail: Edward.Levy@hq.doe.gov.

**SUPPLEMENTARY INFORMATION:**

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## I. Introduction

### *A. Authority*

Part B of Title III of the Energy Policy and Conservation Act (EPCA) of 1975, Public Law 94–163, as amended, by the National Energy Conservation Policy Act of 1978 (NECPA), Pub. L. 95–619, the National Appliance Energy Conservation Act of 1987 (NAECA), Pub. L. 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Pub. L. 100–357, and the Energy Policy Act of 1992 (EPACT), Pub. L. 102–486, established the Energy Conservation Program for Consumer Products other than Automobiles. Part 3 of Title IV of NECPA amended EPCA to add "Energy Efficiency of Industrial Equipment," which included air conditioners, furnaces, and other types of equipment.

EPACT also amended EPCA with respect to industrial equipment, providing definitions, test procedures, labeling provisions, energy conservation standards, and authority to require information and reports from manufacturers. 42 U.S.C. 6311–6316. For example, EPCA specifies explicit minimum energy efficiency levels for certain commercial packaged air conditioning and heating equipment, packaged terminal air conditioners and heat pumps, warm air furnaces, packaged boilers, water heaters and unfired hot water storage tanks. 42 U.S.C. 6313(a)(1)–(5). The efficiency requirements in the statute correspond to the levels in ASHRAE/IES Standard 90.1 as in effect on October 24, 1992. The statute further provides that if the efficiency levels in ASHRAE/IES Standard 90.1 are amended after that date for any of the covered equipment, the Secretary of Energy must establish an amended uniform national standard at the new minimum level for each effective date specified in ASHRAE/IES Standard 90.1, unless (s)he determines, through a rulemaking supported by clear and convincing evidence, that a more stringent standard is technologically feasible and economically justified and would result in significant additional energy conservation. 42 U.S.C. 6313(a)(6)(A).

If the Secretary elects to publish such a rule, it must contain the amended standard, and the determination must consider, to the greatest extent practicable: the economic impact on the manufacturers and consumers of the affected products; savings in operating cost throughout the life of the product, compared to any increases in initial cost or maintenance expense; the total projected amount of energy savings likely to result directly from the imposition of the standard; any lessening of the utility or performance of the affected products; the impact of any lessening of competition; the need for national energy conservation; and other factors the Secretary considers relevant. The Secretary may not prescribe such an amended standard if (s)he finds (and publishes the finding) that interested persons have established by a preponderance of evidence that the amended standard is likely to result in unavailability in the United States of products with performance characteristics (including reliability), features, sizes, capacities and volumes that are substantially the same as those generally available in the United States at the time of the Secretary's finding. 42 U.S.C. 6313(a)(6)(B).

Finally, the Secretary may not prescribe any amended standard which increases maximum allowable energy use or decreases minimum required energy efficiency. 42 U.S.C. 6313(a)(6)(B)(ii).

### *B. Background*

#### 1. General

As directed by Part B of Title III of EPCA, the Department of Energy has established an energy conservation program for consumer products, and certain commercial lighting products. 42 U.S.C. 6291–6309. This program consists of four principal parts: test procedures, Federal energy conservation standards, labeling, and certification and enforcement procedures. The Federal Trade Commission (FTC) is responsible for labeling, and the Department implements the remainder of the program as codified in Title 10 of the Code of Federal Regulations (CFR), Part 430—Energy Conservation Program for Consumer Products.

Pursuant to the EPACT amendments to EPCA in 1992, DOE extended its program to cover commercial and industrial equipment and created a new Part 431 in Title 10 of the Code of Federal Regulations, entitled, "Energy Conservation Program for Commercial and Industrial Equipment." This part includes commercial heating, air conditioning and water heating equipment. The new program consists of: test procedures, Federal energy conservation standards, labeling, certification and enforcement procedures. EPCA directs the Department, rather than the FTC, to administer the statute's efficiency labeling provisions under the new program.

2. ASHRAE Action

On June 24, 1999, ASHRAE's Board of Directors provisionally approved revisions to ASHRAE/IES Standard 90.1, subject to a formal appeal process. Four appeals were filed, and an Appeals Hearing was held on October 9, 1999. The Appeals Panel recommended that the appeals be dismissed, and the ASHRAE Board approved the Appeals Panel report in a special meeting on October 29, 1999, thus concluding ASHRAE's process for amending the Standard. The Standard indicates that its commercial HVAC and water heater equipment efficiencies will become effective as part of the Standard two years after final ASHRAE approval (*i.e.*, on October 29, 2001).

ASHRAE changed the efficiency standards for some products but not for all. Of those products for which standards did not change, some levels were considered by ASHRAE in the course of revising ASHRAE/IES Standard 90.1 but left at their preexisting values, while consideration of other products was deferred. The deferred products include standards for commercial (3-phase) small air conditioners and heat pumps (under 65 thousand Btu per hour), which are closely related to consumer products for which the Department is developing standards under NAECA. The standard levels in EPCA and ASHRAE/IES Standard 90.1–1999 appear in Tables 1 and 2.

TABLE 1.—EPCA AND ASHRAE 90.1–1999 STANDARD LEVELS FOR AIR CONDITIONERS AND HEAT PUMPS

| Equipment category | Equipment subcategory | EPCA section | Efficiency levels | |
|---|---|---|---|---|
| | | | EPCA | ASHRAE 90.1–1999 |
| Small Commercial Packaged Air Conditioning and Heating Equipment. | AC/HP <65 kBtu/h Air Cooled 3 Phase, Central Split System. | Cooling Eff. 342(a)(1)(A)<br>Heating Eff. 342(a)(1)(D) | SEER 10.0<br>HSPF 6.8 | SEER 10.0<br>HSPF 6.8 |
| | AC/HP <65 kBtu/h Air Cooled 3 Phase, Central Single Package. | Cooling Eff. 342(a)(1)(B)<br>Heating Eff. 342(a)(1)(E) | SEER 9.7<br>HSPF 6.6 | SEER 9.7<br>HSPF 6.6 |
| | AC/HP 65–135 kBtu/h Air Cooled Central. | Cooling Eff. 342(a)(1)(C)<br>Heating Eff. 342(a)(1)(F) | EER 8.9<br>COP 3.0 | EER 10.3<br>COP 3.2 |
| | AC/HP <65 kBtu/h Water Cooled Evap. Cooled Water-Source Central. | Cooling Eff. 342(a)(1)(G)<br>Heating Eff. Water-Source *only* 342(a)(1)(I). | EER 9.3<br>COP 3.8 | EER 12.1<br>COP 4.2 |
| | AC/HP 65–135 kBtu/h Water Cooled Evap. Cooled Water-Source Central. | Cooling Eff. 342(a)(1)(H)<br>Heating Eff. Water-Source *only* 342(a)(1)(I). | EER 10.5<br>COP 3.8 | EER 11.5<br>COP 4.2 |
| Large Commercial Packaged Air Conditioning and Heating Equipment. | AC/HP 135–240 kBtu/h Air Cooled Central. | Cooling Eff. 342(a)(2)(A)<br>Heating Eff. 342(a)(2)(B) | EER 8.5<br>COP 2.9 | EER 9.7<br>COP 3.1 |
| | AC/HP 135–240 kBtu/h Water Cooled Evap. Cooled Central. | Cooling Eff. 342(a)(2)(A)<br>*No Heating Eff. Requirement* | EER 9.6 | EER 11.0 |
| Packaged Terminal Air Conditioners and Heat Pumps. | PTAC/PTHP (Air Cooled) | Cooling Eff. 342(a)(3)(A)<br>Heating Eff. 342(a)(3)(B) | EER varies by capacity<br>COP varies by capacity | EER and COP vary by capacity (different formulas) |

Notes: SEER—Seasonal Energy Efficiency Ratio
HSPF—Heating Seasonal Performance Factor
EER—Energy Efficiency Ratio
COP—Coefficient Of Performance
AC—Air Conditioner
HP—Heat Pump

PTAC—Package Terminal Air Conditioner
PTHP—Package Terminal Heat Pump

TABLE 2.—EPCA AND ASHRAE 90.1–1999 STANDARD LEVELS FOR FURNACES, BOILERS, AND STORAGE WATER HEATERS

| Equipment category | Equipment subcategory | EPCA section | Efficiency levels | |
|---|---|---|---|---|
| | | | EPCA | ASHRAE 90.1–1999 |
| Warm Air Furnaces | ≥225,000 Btu/h | 342(a)(4)(A) | Thermal Efficiency 80% Gas 81% Oil | Thermal Efficiency 80% Gas 81% Oil. |
| Package Boilers | ≥300,000 Btu/h<br>Gas Fired<br>Oil Fired | Gas-fired Eff. 342(a)(4)(C)<br>Oil Fired Eff. 342(a)(4)(D) | Combustion Efficiency<br>80% Gas<br>83% Oil | Combustion Efficiency.<br>80% Gas<br>83% Oil. |
| Storage Water Heaters | Electric<br>≤155,000 Btu/h and V≤ 40 gal.<br>>155,000 Btu/h and V>140 gal. | Standby Loss 342(a)(5)(A)<br>Thermal Eff. and Standby Loss 342(a)(5)(B).<br>Thermal Eff. and Standby Loss 342(a)(5)(C). | 0.3 + 27/Va<br>Thermal Eff. 78% Standby Loss Varies by Volume.<br>Thermal Eff. 78% Standby Loss Varies by Volume. | 20 + 35 √V.<br>Thermal Eff. 80% Standby Loss Varies by Volume.<br>Thermal Eff. 80% Standby Loss Varies by Volume. |
| Instantaneous Water Heaters | V<10 gal Instantaneous<br>10 gal < V < 140 gal Instantaneous. | Thermal Eff. 342(a)(5)(D)<br>Thermal Eff. and Standby Loss 342(a)(5)(E). | Thermal Eff. 80%.<br>Thermal Eff. 77% Standby Loss Varies by Volume. | Thermal Eff. 80%.<br>Thermal Eff. 80% Standby Loss Varies by Volume. |
| Storage Tanks | V ≤140 gal Unfired<br>Storage Water Heaters and Storage Tanks >140 gal. | Heat Loss 342(a)(5)(F)<br>Prescriptive 342(a)(5)(G) | Heat Loss 6.5 Btu/hr/ft²<br>R–12.5, IID | Heat Loss 6.5 Btu/hr/ft².<br>R–12.5, IID. |

3. Department of Energy Response

In response to ASHRAE's action, the Department initiated a Screening Analysis to aid the Department in deciding what action it should take at this point with respect to the efficiency levels in ASHRAE/IES Standard 90.1–1999. The Screening Analysis report is available as discussed above. See "Addresses."

After receiving comments in response to this Announcement, the Department expects to pursue, for each product category, one of four courses of action:

- Adopt the ASHRAE/IES Standard 90.1–1999 efficiency level as a uniform national standard;
- Reject the ASHRAE/IES Standard 90.1–1999 efficiency level if it increases maximum allowable energy use or decreases minimum required efficiency;
- Propose consideration of an addendum to ASHRAE/IES Standard 90.1–1999 if ASHRAE did not consider a more efficient level, and a more efficient level appears warranted; or
- Propose consideration of an addendum to ASHRAE/IES Standard 90.1–1999 and undertake a more thorough evaluation to determine whether a rulemaking is justified, if ASHRAE considered amending or amended the standard, and a more efficient level appears warranted than is contained in ASHRAE/IES Standard 90.1–1999.

After consideration of comments received on the notice and analysis, we expect to issue a final rule adopting as minimum national standards the updated ASHRAE 90.1–1999 standards for some or all of the commercial product categories listed in Sections II–B and C of this notice as candidates for immediate adoption. We intend to issue another notice for comment if, based on the comments received or further analysis, we conclude that ASHRAE 90.1–1999 standards should be adopted for any additional products.

## II. Discussion

*A. Screening Analysis Results*

In conducting the Screening Analysis, the Department used existing data from industry and other sources, including, among others, analysis performed for ASHRAE in support of its deliberations over the new ASHRAE/IES Standard 90.1–1999 efficiency levels. For each product category, the Department estimated the likely cost of achieving several higher technologically feasible efficiency levels and then calculated for each such level the corresponding rate of energy consumption required to fulfill the product's function. Applying appropriate climate data, typical building design characteristics, inventories of buildings in different regions of the country, equipment sales volumes, and economic discount rates and energy prices, DOE computed cost/benefit measures corresponding to the hypothetical efficiency levels and also estimated the nationwide energy and net cost savings, if any, that would result from more stringent standards than the levels in ASHRAE/IES Standard 90.1–1999.

For the products analyzed, the Department examined the range of efficiency levels specified in EPCA and ASHRAE/IES Standard 90.1–1999, as well as more efficient levels, including those associated with the most efficient product now available in the market and with the lowest life-cycle cost. For each level above the EPCA standard, DOE estimated: (1) The incremental national energy and carbon emission savings that would result from a standard set at that level, and (2) the net nationwide direct economic benefit, represented by the net present value (NPV), that would result from a standard set at that level, as compared to the corresponding ASHRAE/IES Standard 90.1–1999 and EPCA standards.

Table 3 lists the products studied in the Screening Analysis, and shows for each the efficiency level that corresponds to the product's lowest average life-cycle cost, taking into account both the costs of efficiency improvements and the savings from reduced energy consumption. In addition, where that efficiency level is

above the level specified for the product in ASHRAE/IES Standard 90.1–1999, Table 3 shows the following potential benefits that would result over the period from 2004 to 2030 from setting a standard at the higher level:

- The estimated nationwide energy savings, measured in trillions of Btu (TBtu);
- The estimated net nationwide direct economic benefit, represented by the net present value (NPV); and
- The estimated reductions in atmospheric carbon emissions, in millions of tons.

TABLE 3.—ENERGY SAVINGS, NET PRESENT VALUE AND CARBON EMISSIONS REDUCTIONS AT THE ENERGY EFFICIENCY LEVELS WITH THE LOWEST LIFE-CYCLE-COST

| Product category | Efficiency level at minimum life-cycle cost | Relative to ASHRAE 90.1–1999 | | |
|---|---|---|---|---|
| | | National energy savings (TBtu) | National total NPV (millions of 1998 $'s) | National carbon emission reductions (million tons) |
| 3-Phase Single Package Air Source AC <65 kBtu/h | 12.0 | 1,412.7 | 897.7 | 21 |
| Central Air Source AC 135–240 kBtu/h | 10.4 | 428.8 | 417.9 | 6 |
| Packaged Terminal Air Conditioners | 10.5 | 311.7 | 274.7 | 5 |
| 3-Phase Split Air Source AC <65 kBtu/h | 11.0 | 278.6 | 109.1 | 4 |
| Packaged Terminal Heat Pumps | 9.9 | 249.0 | 241.9 | 4 |
| Small Gas-Fired Boilers ≤2.5 mmBtu | 78.7% | 200.0 | 146.0 | 3 |
| 3-Phase Single Package Air Source HP <65 kBtu/h | 12.0 | 183.6 | 91.3 | 3 |
| Tankless Gas Instantaneous Water Heaters | 81.5% | 102.0 | 45.3 | 2 |
| Large Gas-Fired Boilers 2.5 mmBtu | *85.3% | 79.0 | 86.6 | 1 |
| 3-Phase Split Air Source HP <65 kBtu/h | 12.0 | 66.4 | 47.0 | 1 |
| Central, Water Source HP 17–65 kBtu/h | 12.5 | 65.0 | 23.0 | 1 |
| Central Air Source HP 135–240 kBtu/h | 10.4 | 31.4 | 3.2 | 1 |
| Electric Water Heater (120 gal) | 1.0 | 6.6 | 1.1 | 0 |
| Central Water Cooled AC 65–135 kBtu/h | 12.4 | 2.7 | 0.8 | 0 |
| Central Water Cooled AC 135–240 kBtu/h | 11.5 | 2.5 | 3.0 | 0 |
| Central Air Source AC 65–135 kBtu/h | 10.3 | 0.0 | 0.0 | 0 |
| Central Air Source HP 65–135 kBtu/h | 10.1 | 0.0 | 0.0 | 0 |
| Central Water Cooled AC <65 kBtu/h | 12.1 | 0.0 | 0.0 | 0 |
| Central Water Source HP <17 kBtu/h | 11.2 | 0.0 | 0.0 | 0 |
| Central Water Source HP 65–135 kBtu/h | 12.0 | 0.0 | 0.0 | 0 |
| Gas-Fired Warm Air Furnaces ≥225 kBtu/h | 77.5% | 0.0 | 0.0 | 0 |
| Gas Storage Water Heaters ≤155 kBtu/h | 80.0% | 0.0 | 0.0 | 0 |
| Gas Storage Water Heaters >155 kBtu/h | 80.4% | 0.0 | 0.0 | 0 |
| Instantaneous Gas Water Heaters with Tanks | 80.0% | 0.0 | 0.0 | 0 |

*Efficiency shown is shipment-averaged value of Large Steam Boilers (76%–81%), and Large Hot Water Boilers (78%–88%)

When Table 3 shows a zero for a product in all three of these categories, the efficiency level that corresponds with the product's lowest average life cycle cost is the same as the level specified in ASHRAE/IES Standard 90.1–1999.

*B. DOE Interpretation*

Of the products included in the Screening Analysis, DOE believes the following appear not to warrant standards that are more stringent than those in ASHRAE/IES Standard 90.1–1999. DOE considers the ASHRAE/IES Standard 90.1–1999 efficiency levels for these products to be appropriate candidates for immediate adoption as uniform national standards.

- Central Water Source Heat Pumps, 17 kBtu/h—65 kBtu/h
- Central Water Cooled Air Conditioners, 65 kBtu/h—135 kBtu/h
- Central Water Cooled Air Conditioners, 135 kBtu/h—240 kBtu/h
- Central Air Source Air Conditioners, 65 kBtu/h—135 kBtu/h
- Central Air Source Heat Pumps, 65 kBtu/h—135 kBtu/h
- Central Water Cooled Air Conditioners, <65 kBtu/h
- Central Water Source Heat Pumps, <17 kBtu/h
- Central Water Source Heat Pumps, 65 kBtu/h—135 kBtu/h
- Gas-Fired Warm Air Furnaces, ≥225 kBtu/h
- Gas Storage Water Heaters, ≤155 kBtu/h
- Gas Storage Water Heaters, >155 kBtu/h
- Gas Instantaneous Water Heaters with Tanks

In all except the first three of the above product categories, the ASHRAE/IES Standard 90.1–1999 efficiency levels are the same as the levels identified in the Screening Analysis as achieving the lowest life-cycle costs. For the central water-source heat pumps between 17 and 65 thousand Btu/hour, and the two sizes of central water-cooled air conditioners between 65 and 240 thousand Btu/hour, the efficiency levels corresponding to minimum life-cycle cost are slightly higher than ASHRAE's, but the total estimated cumulative energy savings that would be achieved cost-effectively by adopting the three higher levels would amount to only 70 trillion Btu between 2004 and 2030. This compares with 2.4 quadrillion Btu in nationwide savings over that period that DOE expects as a result of the changes from the standards embodied in EPACT for the twelve product categories listed above to those contained in ASHRAE/IES Standard 90.1–1999.

Of the remainder, for four categories of 3-phase air conditioners and heat pumps with capacities under 65,000 Btu per hour, the Screening Analysis indicates that efficiency standards higher than those in ASHRAE/IES Standard 90.1–1999 might well have significant energy savings potential and economic benefits. Adopting the

efficiency levels corresponding to the lowest average life-cycle cost for all four of these product categories would result in estimated cost-effective nationwide cumulative energy savings of 1.9 quadrillion Btu between 2004 and 2030. However, these products were not addressed by ASHRAE in revising Standard 90.1, and DOE has tentatively decided not to take action to adopt a standard at this time with respect to these products. Based on the Screening Analysis, DOE is inclined to encourage ASHRAE to consider adoption of an addendum to ASHRAE Standard 90.1–1999 and will support ASHRAE in its future deliberations concerning these products in conjunction with ongoing development of NAECA standards for similar, but single phase, residential equipment. Should ASHRAE amend the efficiency standards for these air conditioners or heat pumps in the future, DOE will then act on such amendments as required by EPCA. The four categories of 3-phase air conditioners and heat pumps with capacities under 65,000 Btu per hour are:

- 3-phase Single Package Air Source Air Conditioners, <65 kBtu/h;
- 3-phase Split Air Source Air Conditioners, <65 kBtu/h;
- 3-phase Single Package Air Source Heat Pumps, <65 kBtu/h; and
- 3-phase Split System Air Source Heat Pumps, <65 kBtu/h.

For seven of the eight remaining product categories analyzed in the Screening Analysis, ASHRAE amended the efficiency standards contained in ASHRAE/IES Standard 90.1, but there appear to be significant, cost-effective energy savings that might result from standards that are even more stringent. Adopting efficiency levels corresponding to minimum average product life-cycle cost for all seven of these categories would cost-effectively produce estimated cumulative energy savings amounting to 1.4 quadrillion Btu over the period from 2004 to 2030. These savings would more than double the 1.1 quadrillion Btu over the same period that DOE anticipates as a result of the corresponding amendments already contained in ASHRAE/IES Standard 90.1–1999. For each of these products, DOE is inclined to propose consideration of an addendum to ASHRAE/IES Standard 90.1–1999, based on the Screening Analysis, and to undertake a more thorough evaluation to determine whether a rulemaking is justified under the terms of EPCA. These products are the following:

- Central air-source air conditioners, 135 kBtu/h—240 kBtu/h;
- Central air-source heat pumps, 135 kBtu/h—240 kBtu/h;
- Packaged terminal air conditioners;
- Packaged terminal heat pumps;
- Small gas-fired steam and hot water boilers, 0.3 MMBtu/h—2.5 MMBtu/h; and
- Large gas-fired steam and hot water boilers, > 2.5 MMBtu/h.
- Tankless Gas Instantaneous Water Heaters

For one product category, electric water heaters, the new efficiency level in ASHRAE/IES Standard 90.1–1999 appears to increase energy consumption relative to the standard in EPCA. If this is true, the original standard should remain in force, since EPCA stipulates that the standards it contains cannot be relaxed. Therefore, DOE is inclined not to adopt the requirement in ASHRAE/IES Standard 90.1–1999 for this product.

*C. Products Not Included in the Screening Analysis*

Several commercial products were not analyzed in the Screening Analysis:

- Central Air Source Heat Pumps, 135 kBtu/h—240 kBtu/h (heating performance)
- Central Air Source Heat Pumps, 65 kBtu/h—135 kBtu/h (heating performance)
- 3-Phase Single Package Air Source Heat Pumps, <65 kBtu/h (heating performance)
- 3-Phase Split Air Source Heat Pumps, <65 kBtu/h (heating performance)
- Packaged Terminal Heat Pumps (heating performance)
- Central Water Source Heat Pumps, <135 kBtu/h (heating performance)
- Water Source Heat Pumps, 135 kBtu/h—240 kBtu/h
- Evaporatively Cooled Air Conditioning Products
- Oil-Fired Warm Air Furnaces, ≥225 kBtu/h
- Oil-Fired Storage Water Heaters, ≤155 kBtu/h
- Oil-Fired Storage Water Heaters, >155 kBtu/h
- Tankless Oil-Fired Instantaneous Water Heaters
- Oil-Fired Instantaneous Water Heaters with Tanks
- Small Oil-Fired Steam and Hot Water Boilers, 0.3 MMBtu/h–2.5 MMBtu/h
- Large Oil-Fired Steam and Hot Water Boilers, >2.5 MMBtu/h
- Unfired hot water storage tanks

DOE did not include these products in the Screening Analysis because of insufficient data describing baseline energy consumption and cost-efficiency relationships, small markets for the products in question or lack of product shipment data, or in the case of the heating performance of heat pumps, the absence of a suitable methodology to discriminate their heating function from that of supplemental heat sources with which they are often used.

The products and performance characteristics that were not analyzed in detail fall into groups as follows:

- Heating coefficients of performance (COP) and heating seasonal performance factors (HSPF) for all heat pump product categories;
- Efficiencies of water-cooled air conditioners and heat pumps with capacities between 65 kBtu/h and 135 kBtu/h;
- Evaporatively cooled air-conditioning products;
- Oil-fired warm air furnaces, storage and instantaneous water heaters, and packaged boilers; and
- Unfired hot water storage tanks

DOE believes that the water-cooled and evaporatively cooled air conditioning products, oil-fired warm air furnaces and water heaters, and unfired hot water storage tanks have small markets and are unlikely to represent significant potential energy savings, so the Department plans to adopt ASHRAE/IES Standard 90.1–1999 standards for these products. Since the heating COP is closely related to cooling efficiency for heat pumps, DOE does not plan to adopt yet the heating COP levels contained in ASHRAE/IES Standard 90.1–1999 for: (1) three-phase heat pumps with capacities under 65 thousand Btu per hour, which ASHRAE did not address in formulating Standard 90.1–1999; (2) central air-source heat pumps with capacities between 135 thousand and 240 thousand Btu per hour, which would be the subject of further analysis with respect to cooling as a result of the Screening Analysis; and (3) packaged terminal heat pumps, which also would be the subject of further analysis of their cooling performance. For all other heat pumps covered by EPCA, DOE considers the amended ASHRAE/IES Standard 90.1–1999 COP levels to be appropriate candidates for immediate adoption as uniform national standards. Finally, DOE recognizes that ASHRAE did not evaluate the efficiency levels for packaged oil-fired boilers explicitly, and the published values in ASHRAE/IES Standard 90.1–1999 were tied to the corresponding efficiencies for gas-fired boilers. Since DOE is inclined to evaluate the gas-fired boilers as a result of the Screening Analysis, the Department also anticipates waiting for that evaluation to be complete before

adopting efficiency standards for the equivalent oil-fired products.

*D. Summary*

Table 4 summarizes the actions DOE is inclined to take for all of the product categories in light of the Screening Analysis.

TABLE 4.—PLANNED DOE ACTIONS

| Product category | Action |
|---|---|
| 3-Phase Single Package Air Source AC <65 kBtu/h | Encourage ASHRAE/IES Addendum |
| Central Air Source AC 135–240 kBtu/h | Evaluate Further/Encourage ASHRAE/IES Addendum |
| Packaged Terminal Air Conditioners | Evaluate Further/Encourage ASHRAE/IES Addendum |
| 3-Phase Split Air Source AC <65 kBtu/h | Encourage ASHRAE/IES Addendum |
| Packaged Terminal Heat Pumps | Evaluate Further/Encourage ASHRAE/IES Addendum |
| Small Gas-Fired Boilers 0.3–2.5 MMBtu/h | Evaluate Further/Encourage ASHRAE/IES Addendum |
| 3-Phase Single Package Air Source HP <65 kBtu/h | Encourage ASHRAE/IES Addendum |
| Tankless Gas-Fired Instantaneous Water Heaters | Evaluate Further/Encourage ASHRAE/IES Addendum |
| Large Gas-Fired Boilers >2.5MMBtu | Evaluate Further/Encourage ASHRAE/IES Addendum |
| 3-Phase Split Air Source HP <65 kBtu/h | Encourage ASHRAE/IES Addendum |
| Central, Water Source HP 17–65 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Central Air Source HP 135–240 kBtu/h | Evaluate Further/Encourage ASHRAE/IES Addendum |
| Electric Water Heater | Leave EPCA Standard in Force |
| Central Water Cooled AC 65–135 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Central Water Cooled AC 135–240 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Central Air Source AC 65–135 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Central Air Source HP 65–135 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Central Water Cooled AC <65 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Central Water Source HP <17 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Central Water Source HP 65–135 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Gas-Fired Warm Air Furnaces ≥225 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Gas Storage Water Heaters ≤155 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Gas Storage Water Heaters >155 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Gas-Fired Instantaneous Water Heaters with Tank | Adopt ASHRAE/IES Standard 90.1–1999 |
| Water Source HP, 135–240 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Evaporatively Cooled AC Products | Adopt ASHRAE/IES Standard 90.1–1999 |
| Oil-Fired Warm Air Furnaces, ≥225 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Oil-Fired Storage Water Heaters, ≤155 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Oil-Fired Storage Water Heaters, >155 kBtu/h | Adopt ASHRAE/IES Standard 90.1–1999 |
| Tankless Oil-Fired Instantaneous Water Heaters | Adopt ASHRAE/IES Standard 90.1–1999 |
| Oil-Fired Instantaneous Water Heaters with Tanks | Adopt ASHRAE/IES Standard 90.1–1999 |
| Small Oil-Fired Boilers, 0.3–2.5 MMBtu/h | Evaluate Further (with Gas-Fired Boilers) |
| Large Oil-Fired Boilers, >2.5 MMBtu/h | Evaluate Further (with Gas-Fired Boilers) |
| Unfired Hot Water Storage Tanks | Adopt ASHRAE/IES Standard 90.1–1999 |

Nationwide, the effect of replacing EPCA efficiency levels for the product categories included in the Screening Analysis with those contained in ASHRAE/IES Standard 90.1–1999 would be to save an estimated 3.5 quadrillion Btu between 2004 and 2030 and to reduce carbon emissions into the atmosphere by approximately 51 million tons over the same period. DOE plans not to adopt the ASHRAE/IES Standard 90.1–1999 efficiency levels for twelve of these product categories. If DOE were to adopt standards corresponding to minimum life-cycle costs for the twelve categories, the additional energy savings would amount to 3.4 quadrillion Btu, and carbon emissions would further decrease by 49 million tons. The present value of the associated net cost savings would be $2.4 billion.

## III. Public Comment

*A. Written Comment Procedures*

The Department invites interested persons to submit data, comments, or information with respect to the subjects addressed in this notice to Ms. Brenda Edwards-Jones, at the address indicated at the beginning of the notice. The Department will consider all submissions received by the date specified at the beginning of this notice in deciding on the disposition of amended standards.

Under the provisions of 10 CFR 1004.11, any person submitting information which he or she believes to be confidential and exempt by law from public disclosure should submit one complete copy of the document and ten (10) copies, if possible, from which the information believed to be confidential has been deleted. The Department of Energy will make its own determination with regard to the confidential status of the information and treat it according to its determination.

Factors of interest to the Department when evaluating requests to treat as confidential information that has been submitted include: (1) A description of the items; (2) an indication as to whether and why such items are customarily treated as confidential within the industry; (3) whether the information is generally known by or available from other sources; (4) whether the information has previously been made available to others without obligation concerning its confidentiality; (5) an explanation of the competitive injury to the submitting person which would result from public disclosure; (6) an indication as to when such information might lose its confidential character due to the passage of time; and (7) why disclosure of the information would be contrary to the public interest.

*B. Issues on Which Comments Are Requested*

The Department is particularly interested in receiving comments and views of interested parties concerning: (1) The analysis contained in the Screening Analysis report announced in this notice, (2) DOE's interpretation of the results, (3) DOE's planned treatment

of product categories not included in the Analysis, and (4) information or evidence that bears on the adoption of ASHRAE/IES Standard 90.1–1999 efficiency levels as uniform national standards under the terms of EPCA. The Department encourages those who wish to offer comments to obtain the Screening Analysis report and to address its contents. However, respondents need not limit their statements to the topics covered in the study, as the Department is interested in receiving views concerning any other issues that participants believe would affect the suitability of ASHRAE/IES Standard 90.1–1999 efficiency standards for commercial water heaters, boilers, furnaces, air conditioners and heat pumps. For example, comments might include additional evidence, not uncovered in the Screening Analysis, bearing on the technological feasibility and economic justification of more stringent uniform national standards than those in ASHRAE/IES Standard 90.1–1999 and on the significance of the energy conservation that would result from adopting them. Comments might also include evidence as to whether any standards more stringent than the ones specified in ASHRAE/IES Standard 90.1–1999 are likely to result in unavailability in the United States of products with performance characteristics (including reliability), features, sizes, capacities and volumes that are substantially the same as those generally available in the United States now.

After the period for written comments, the Department will consider the views submitted in formulating rules regarding uniform energy efficiency standards for commercial water heaters, boilers, furnaces, air conditioners and heat pumps.

*C. Public Workshop*

1. Procedure for Submitting Requests To Speak

You will find the time and place of the public workshop listed at the beginning of this notice. We invite any person who has an interest in today's notice, or who is a representative of a group or class of persons that has an interest in these issues, to request an opportunity to make an oral presentation. If you would like to attend the public workshop, please notify Ms. Brenda Edwards-Jones at (202) 586–2945. You may hand deliver requests to speak to the address indicated at the beginning of this notice between the hours of 8:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays, or you may send them by mail.

The person making the request should state why he or she, either individually or as a representative of a group or class of persons, is an appropriate spokesperson; briefly describe the nature of the interest in the proceeding; and provide a telephone number for contact. We request each person selected to be heard to submit an advance copy of his or her statement at least one week prior to the date of this workshop as indicated at the beginning of this notice. We, at our discretion, may permit any person wishing to speak who cannot meet this requirement to participate if that person has made alternative arrangements with the Office of Building Research and Standards in advance. The letter making a request to give an oral presentation must ask for such alternative arrangements.

2. Conduct of Workshop

We will conduct the workshop in an informal, conference style. We may use a professional facilitator to facilitate discussion, and a court reporter will record the transcript of the meeting. We will present summaries of comments received before the workshop, allow time for presentations by workshop participants, and encourage all interested parties to share their views on issues affecting this proceeding. The comment period closes on July 31, 2000 in order to allow interested parties an opportunity to comment on the matters raised at the workshop, as well as on any other aspect of the proceeding. The public workshop agenda is expected to cover the topics listed in the preceding Section III. B., Issues on Which Comments Are Requested.

We will arrange for a transcript of the workshop and will make the entire record of this proceeding, including the transcript, available for inspection in the Department's Freedom of Information Reading Room. Any person may purchase a copy of the transcript from the transcribing reporter.

Issued in Washington, DC, on May 8, 2000.

**Dan W. Reicher,**

*Assistant Secretary, Energy Efficiency and Renewable Energy.*

[FR Doc. 00–12112 Filed 5–12–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 23

**[Docket No. CE161; Notice No. 23–00–02–SC]**

### Special Conditions: Installation of Full Authority Digital Engine Control (FADEC) System on Morrow Aircraft Corporation Model MB–300 Airplane

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed special conditions.

**SUMMARY:** This notice proposes special conditions for the Morrow Aircraft Corporation Model MB–300, which will use a FADEC System. This airplane will have a novel or unusual design feature associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** Comments must be received on or before June 14, 2000.

**ADDRESSES:** Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE161, DOT Building, 901 Locust, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE161. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Randy Griffith, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri, 816–329–4126, fax 816–329–4090.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the

regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. CE161." The postcard will be date stamped and returned to the commenter.

**Background**

On March 5, 1999, Morrow Aircraft Corporation applied for a type certificate for the Model MB–300 airplane. The Model MB–300 is a small, normal category airplane. The airplane is powered by two reciprocating engines equipped with an electronic engine control system with full authority capability in place of the hydromechanical control system.

**Type Certification Basis**

Under the provisions of 14 CFR 21.17, Morrow Aircraft Corporation must show that the Model MB–300 meets the applicable provisions of 14 CFR part 23, as amended by Amendments 23–1 through 23–53 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 23) do not contain adequate or appropriate safety standards for the Model MB–300 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model MB–300 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to section 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

**Novel or Unusual Design Features**

The Morrow Model MB–300 will incorporate the following novel or unusual design features:

The Morrow Model MB–300 airplane will use engines that include an electronic control system with full engine authority capability.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system used on the Morrow Model MB–300 will perform critical functions, provisions for protection from the effects of HIRF fields should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the ARAC Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a full authority digital engine control is an example of a system that should address the HIRF environments.

Even though the control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (*e.g.*, radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (*e.g.*, automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Morrow Model MB–300 to provide HIRF protection and to evaluate the installation of the electronic engine control system for compliance with the requirements of § 23.1309(a) through (e) at Amendment 23–53.

**Applicability**

As discussed above, these special conditions are applicable to the Morrow Model MB–300. Should Morrow Aircraft Corporation apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

**Conclusion**

This action affects only certain novel or unusual design features on one model, the Morrow Model MB–300 airplane. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

**List of Subjects in 14 CFR Part 23**

Aircraft, Aviation safety, Signs and symbols.

**Authority:** The authority citation for these special conditions in part 23 is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.17, and 14 CFR 11.28 and 11.29(b).

**The Proposed Special Conditions**

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Morrow Model MB–300 airplane.

1. High Intensity Radiated Fields (HIRF) Protection. In showing

compliance with 14 CFR part 21 and the airworthiness requirements of 14 CFR part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system which performs critical functions, must be considered. To prevent this occurrence, the electronic engine control system must be designed and installed to ensure that the operation and operational capabilities of this critical system are not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform critical functions.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

| Frequency | Field strength (volts per meter) | |
|---|---|---|
| | Peak | Average |
| 10 kHz–100 kHz | 50 | 50 |
| 100 kHz–500 kHz | 50 | 50 |
| 500 kHz–2 MHz | 50 | 50 |
| 2 MHz–30 MHz | 100 | 100 |
| 30 MHz–70 MHz | 50 | 50 |
| 70 MHz–100 MHz | 50 | 50 |
| 100 MHz–200 MHz | 100 | 100 |
| 200 MHz–400 MHz | 100 | 100 |
| 400 MHz–700 MHz | 700 | 50 |
| 700 MHz–1 GHz | 700 | 100 |
| 1 GHz–2 GHz | 2000 | 200 |
| 2 GHz–4 GHz | 3000 | 200 |
| 4 GHz–6 GHz | 3000 | 200 |
| 6 GHz–8 GHz | 1000 | 200 |
| 8 GHz–12 GHz | 3000 | 300 |
| 12 GHz–18 GHz | 2000 | 200 |
| 18 GHz–40 GHz | 600 | 200 |

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation. Data used for engine certification may be used, when appropriate, for airplane certification.

2. Electronic Engine Control System. The installation items that affect the electronic engine control system must comply with the requirements of § 23.1309(a) through (e) including applicable amendments through Amendment 23–53. Data used for engine certification may be used, when appropriate, for airplane certification.

Issued in Kansas City, Missouri on April 28, 2000.

**Michael Gallagher,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–12142 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 117

**[CGD05–98–090]**

**RIN 2115–AE47**

## Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard has revised its proposal to change the regulations governing the operation of the Norfolk and Western Railroad drawbridge across the Eastern Branch of the Elizabeth River, mile 2.7, at Norfolk, Virginia. The revised proposal would require on-signal openings from 6 a.m. to 10 p.m. using a half-cycle draw operation and would reduce the advance notice required at other times from 3 hours to 2 hours. This change would provide for the reasonable needs of navigation.

**DATES:** Comments and related material must reach the Coast Guard on or before July 14, 2000.

**ADDRESSES:** You may mail comments and related material to the Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Commander (Aowb), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection and copying at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ann Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–98–090), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 81/2 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (Aowb), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Regulatory History

On November 2, 1998, the Coast Guard published a Notice of Proposed Rulemaking (NRPM) entitled "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, Virginia" in the **Federal Register** (63 FR 58676). We also distributed local notice of the **Federal Register** publication. We received 652 comments on the proposed rule. Most of the comments included a request for a public hearing, but based on the number of comments and the issues addressed by the comments, we determined that a public hearing would not provide additional information to aid the rulemaking process.

### Background and Purpose

The Norfolk and Western Railroad drawbridge is owned and operated by Norfolk Southern Corporation (NSC). The regulations at 33 CFR 117.1007(a)

require the bridge to open on signal from 6 a.m. to 10 p.m. and require a three-hour advance notice for openings from 10 p.m. to 6 a.m. all year.

NSC initially requested a change to the regulations that would have reduced the hours during the day and times of the year when on-signal openings are required. Specifically, they requested that the drawbridge only be required to open on signal from April 15 to September 30, Monday through Thursday from 10 a.m. to 6 p.m. and Friday through Sunday from 6 a.m. to 11 p.m. At all other times, the drawbridge would open only after a three-hour advance notice.

NSC based their request on data from the 1996 and 1997 drawlogs. The logs show that from April to October during the weekdays (Monday through Thursday) from 10 a.m. to 6 p.m., and during the weekends (Friday through Sunday) from 6 a.m. to 11 p.m., the waterway traffic was at its peak. From 6 p.m. to 10 a.m. weekdays, and from 11 p.m. to 6 a.m. weekends during these same months, NSC suggested that waterway traffic decreased sufficiently to justify placing the bridge in advance-notice status. NSC also claimed that reduced maritime traffic from October to April justified a three-hour advance notice requirement for bridge openings during that period.

We reviewed all of the drawlogs and found that waterway traffic, particularly recreational, remained active through October and November. From December to mid-April, recreational waterway traffic decreased by 80% while commercial waterway traffic remained steady. The information provided by NSC showed that during October and November 1996, the number of draw openings were 86 and 73, respectively. During October and November 1997, the number of openings were 88 and 59, respectively. During the months of June, July and August of 1996, the number of openings were 180, 106, and 137. In 1997 during the same months, the number of openings were 155, 107, and 148. Even though draw openings decreased from October through November when compared to the peak summer months, we decided that the needs of maritime traffic required that the months of October and November be included in the on-signal season to more fairly balance the competing needs of the railroad and vessel traffic. The NPRM proposed on-signal openings from April 15 to November 30, Monday through Thursday, from 10 a.m. to 6 p.m., and Friday through Sunday from 6 a.m. to 11 p.m. At all other times the bridge would only have to open for vessel traffic after three hours advance notice.

After publication of the proposal, we received 652 comments from the public. All objected to the proposed changes. We notified NSC of the overwhelming public opposition to our proposed changes and asked them for additional input in a letter dated January 22, 1999. NSC responded in a letter dated February 11, 1999. We facilitated a meeting on April 20,1999, during which NSC, local government representatives, and other interested attendees discussed the proposed rule and their respective needs and concerns. Representatives from the Norfolk Police and Fire Departments and the Virginia Marine Patrol voiced concerns about bridge openings in case of emergencies. Representatives of the Lower Chesapeake Waterman's Association voiced concerns that the proposed 10 a.m. start time for on-signal openings would interfere with commercial fishing and crabbing enterprises which require early morning transits. The validity of the number of openings logged by NSC was also questioned. All other issues raised at the meeting relevant to this rulemaking were the same as those contained in the written comments to the docket. A written summary of that meeting is available for review in the public docket.

In July 1999, NSC informed the Coast Guard that the bridge had at times used a half-cycle operation and inquired about the possibility of incorporating half-cycle operation as part of a revised proposal. (A "full cycle" involves changing a bridge from its current position to the opposite position and then returning it to the position from which it began. In a "half-cycle" operation, a bridge's position is changed from its current position to the opposite position and then remains there until it is necessary to return the bridge to its original position. That is, the bridge goes from the closed position to the open position or vice versa, but does not complete the "cycle" to it's original position, hence the term "half-cycle" operation.) This type of operation is permitted and offers some benefits to both bridge operators and waterway users. Bridge operators reduce the wear and tear on the bridge and waterway users enjoy increased ease of navigation and reduced delay in transiting through the bridge.

**Discussion of Comments and Changes**

We received 652 comments objecting to the proposed rule change to reduce the on-signal opening requirements of the Norfolk and Western Railroad Bridge. The vast majority of those comments (over 630) were "form letters," signatures on a petition, and letters that although individually drafted contained the same or similar language. These and other comments opposed the proposed changes and favored maintaining the current regulations or slightly increasing the hours of on-signal openings on weekend and holiday nights. Other suggestions included requiring the bridge to remain in the open position unless actually being used for train traffic, automating the operation of the bridge, and requiring the bridge to open on-signal at all times.

Reasons cited in support of the above suggestions included the effect on property values and future development, concern about the ability of waterborne emergency personnel to transit the waterway, inconvenience and interference with the commercial enterprise of fisherman, inconvenience and interference with the recreational pursuits of other waterway users, and safety concerns of those who wished to return to port due to deteriorating weather conditions and who were hampered in that endeavor by the advance notice requirements.

The comments concerning future development, property values, and transit of emergency personnel were not accompanied by any supporting data. Having evaluated the comments, the Coast Guard is satisfied that the existing federal regulations found at 33 CFR 117.31 regarding operation of the draw for emergency situations are sufficient based on the information provided by the emergency service agencies involved.

The comments submitted concerning actual usage of the waterway were considered and balanced against the comments made by the bridge operator. The revelation that half-cycle operations had been used in the past casts doubt on the reliability of using the drawlogs as a valid indicator of vessel traffic; it is impossible to tell how many vessels actually transited through the bridge during periods when it remained in the open to navigation position.

Based on all the information received since the publication of the NPRM, we are revising our original proposal which would have reduced the hours during the day and times of the year when on-signal openings are required. The proposal to have months of the year during which no on-signal opening hours were required has been dropped. Rather than limiting the times during which the drawbridge will open on signal, we propose to keep the same on-signal hours as in the current regulations using a "half-cycle

operation" that will reduce the number of openings during the on-signal hours. Beginning at 6 a.m. when the draw first opens for vessel passage, it will stay in the open position, rather than completing the draw cycle back to the closed position. It will remain in the open to navigation position until a train crossing requires that it be lowered to the closed position. It will then stay in the closed position until a vessel passage requires it to be opened again. Between 6 a.m. and 10 p.m. this half-cycle operation will reduce the number of complete cycles normally caused by vessel passages through the draw and should effectively keep the draw in the open to navigation position during most of the on-signal period. This will reduce the waiting time for vessels and reduce the wear and tear of normal operations on the drawbridge and will meet both the needs of navigation and train traffic.

In addition, we are reducing the current advance notice requirement from three hours to two hours during the 10 p.m. to 6 a.m. period. The reduction in the amount of advance notice required will allow waterway users greater flexibility in planning their transits of the bridge while not burdening the bridge operator with extended hours of on-signal operation unnecessarily. It is also responsive to the comments from vessel operators who expressed safety concerns over being unnecessarily delayed in returning to their moorings, especially under adverse weather conditions.

**Regulatory Evaluation**

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

We reached this conclusion based on the fact that the proposed change will not impede maritime traffic but will actually serve to increase the ease of use by waterway users, while still providing for the needs of the bridge owner.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners and operators of vessels that desire to transit the waterway and homeowners associations representing property owners upstream of the drawbridge. This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reasons. The proposed rule will increase the amount of time the drawbridge is open during peak waterway usage and decreases the notification requirement for off-peak opening of the drawbridge.

If you think that your business, organization, or governmental jurisdiction qualifies as small entitiy and that his rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this rule would economically affect it.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

We have analyzed this proposed rule under E.O. 12612 and have determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

**Unfunded Mandates and Enhancing the Intergovernmental Partnership**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093, October 28, 1993) govern the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. This proposed rule only deals with the operating schedule of an existing drawbridge and will have no impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–4587, 106 Stat. 5039.

2. Section 117.1007(a) is revised to read as follows:

**§ 117.1007 Elizabeth River—Eastern Branch.**

(a) The draw of the Norfolk and Western Railroad bridge, mile 2.7 in Norfolk shall operate as follows:

(1) From 6 a.m. to 10 p.m., the draw shall open on signal if it is in the closed to navigation position and remain open until a train crossing requires that it be returned to the closed to navigation position.

(2) From 10 p.m. to 6 a.m., the draw shall open on signal if at least two hours notice is given.

* * * * *

Dated: May 3, 2000.

**Thomas E. Bernard,**

*Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 00–12147 Filed 5–12–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

### RIN 1018–AF84

## Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plants Lomatium cookii (Cook's lomatium) and Limnanthes floccosa ssp. grandiflora (Large-Flowered Wooly Meadowfoam) in Oregon

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to list two plants, *Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered wooly meadowfoam) as endangered species pursuant to the Endangered Species Act of 1973, as amended (Act). Both of these plants inhabit seasonally wet habitats known as vernal pools in the Agate Desert, an area north of Medford (Jackson County), Oregon. Researchers know of only 13 occurrences of *L. cookii* and 10 occurrences of *L. f.* ssp. *grandiflora* in the Agate Desert. An additional 10 occurrences of *L. cookii* are known in French Flat, Josephine County. The continued existence of *L. cookii* and *L. f.* ssp. *grandiflora* is threatened primarily by destruction of their habitat by industrial and residential development, including road and powerline construction and maintenance. Agricultural conversion, certain grazing practices, off-road vehicle use, and competition with nonnative plants also contribute to population declines. *Lomatium cookii* sites in Josephine County are additionally threatened by habitat alteration associated with gold mining, certain proposed timber projects, and woody species encroachment resulting from fire suppression. This proposal, if made final, would extend the Act's protection to these plants.

**DATES:** Comments from all interested parties must be received by July 14, 2000. Public hearing requests must be received by June 29, 2000.

**ADDRESSES:** You may submit comments and materials on this proposal in person or by mail to: Field Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Avenue, Portland, Oregon 97266. Alternatively, you may send comments via the Internet to *loli@r1.fws.gov*. For further information please see section entitled "Public Comments Solicited."

**FOR FURTHER INFORMATION CONTACT:** Judy Jacobs, U.S. Fish and Wildlife Service, Oregon State Office (see **ADDRESSES** section) (telephone 503/231–6179; facsimile 503/231–6195).

**SUPPLEMENTARY INFORMATION:**

### Background

Vernal pools are seasonal wetlands that form only in regions where certain soil and climatic conditions exist. During fall and winter rains typical of Mediterranean climates, water collects in shallow depressions in areas where downward percolation of water is prevented by the presence of an impervious hard pan or clay pan layer below the soil surface (Keeley and Zedler 1998). Later in the spring, when rains decrease and the weather warms, the water evaporates, and the pools generally disappear by May. Vernal pools thus provide unusual "flood and drought" habitat conditions to which certain plants and animals have specifically adapted. *Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* (large-flowered wooly meadowfoam) are two such plant taxa that occur in vernal pool habitats in a small area of Jackson County, southwestern Oregon. *Lomatium cookii* also occurs in seasonally wet habitats at a few locations in Josephine County, the adjacent county to the west. The *L. f.* ssp. *grandiflora* is believed to be extant in only 10 locations in Jackson County, while *L. cookii* is believed to occur at 13 sites in Jackson and 10 in Josephine County (Oregon Natural Heritage Program (ONHP) Database 1998).

*Lomatium cookii* is a perennial forb in the carrot family (Apiaceae) that grows 1.5 to 5 decimeters (6 to 20 inches (in)) tall from a slender, twisted taproot. Leaves are smooth, finely dissected, and strictly basal (growing directly above the taproot on the ground, not along the stems). One to four groups of clustered, pale-yellow flowers produce boat-shaped fruits 8 to 13 millimeters (mm) (0.3 to 0.5 in) long with thickened margins. The taproot can often branch at ground level to produce multiple stems. The branching taproot distinguishes *L. cookii* from *L. bradshawii* (indigenous to wet prairies from southern Willamette Valley, Oregon, to southwest Washington) and *L. humile* (found in vernal pools in northern California) (Kagan 1986). *Lomatium utriculatum*, found on mounds adjacent to pools in the Agate Desert, is distinguished from *L. cookii* by its more intense yellow flowers, the different shape of its involucel bracklets (leaflike structures below the flowers), and thin-winged fruits (Kagan 1986). *Lomatium tracyi*, occurring in California and the Illinois Valley, Oregon, has a similar appearance to *L. cookii*, but *L. tracyi* has slender-margined fruits and can grow on dry sites. *Lomatium cookii* has boat or pumpkin-shaped fruits and grows on seasonally wet sites (Lincoln Constance, Prof. Emeritus, University of California, Berkeley, pers. comm. 1992).

James Kagan first collected *Lomatium cookii* in 1981 from vernal pools in the Agate Desert, Jackson County, Oregon, and subsequently described the species (Kagan 1986). Additional populations were found at French Flat in the Illinois Valley, Josephine County, Oregon in 1988 (ONHP Database 1998). Plants in the French Flat populations grow on seasonally wet soils. Slight morphological differences exist between *L. cookii* populations in the Agate Desert and French Flat, but these differences are not considered significant enough to separate the species into subspecies (L. Constance, *in litt.* 1992). Preliminary genetic work has not revealed any differences between the Agate Desert and French Flat *L. cookii* populations (Matt Gitzendanner, Washington State University, pers. comm. February 1998).

*Limnanthes floccosa* spp. *grandiflora* is a delicate annual in the meadowfoam, or false mermaid, family (Limnanthaceae). *Limnanthes floccosa* ssp. *grandiflora* grows 5 to 15 centimeters (cm) (2 to 6 in) tall, with 5 cm (2 in) leaves divided into 5 to 9 segments. The stems and leaves are sparsely covered with short, fuzzy hairs. The flowers, and especially the calyx (outer whorl of floral parts), are densely covered with wooly hairs. Each of the 5 yellowish to white petals is relatively long for the genus, 6 to 13 mm (0.2 to 0.5 in.), and has 2 rows of hairs near its base.

In his monograph of the genus *Limnanthes*, Mason (1952) described three varieties of *Limnanthes floccosa* but did not recognize grandiflora as distinct. Based on her study of specimens grown under controlled conditions from field-collected seed, Arroyo (1973) elevated Mason's varieties to subspecies and described

two additional subspecies, including ssp. *grandiflora*. This subspecies is distinguished from other subspecies of *L. floccosa* by its larger flower size, sparsely hairy stems and leaves, and two lines of hairs at the petal base (Arroyo 1973). Over much of its range, *L. f.* ssp. *grandiflora* overlaps with *L. f.* ssp. *floccosa*. However, *L. f.* ssp. *floccosa* grows on the slightly drier, outer fringes of the pools, whereas *L. f.* ssp. *grandiflora* grows on the relatively wetter, inner fringe of the pools (Arroyo 1973; Darren Borgias, The Nature Conservancy, pers. comm. 1998).

*Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* both occur in and around vernal pools within an 83 square kilometer (km2) (32 square mile ($mi^2$)) landform in southwestern Oregon known as the Agate Desert in Jackson County. Located on the floor of the Rogue River basin north of Medford, the Agate Desert is characterized by shallow, Agate-Winlow complex soils, a relative lack of trees, sparse prairie vegetation, and agates (fine-grained sands that have striped, cloudy, and rounded spots or patches of a color or shade different from their background) commonly found on the soil surface (ONHP 1997). *Lomatium cookii* also occurs in another area encompassing some 10 km2 (4 $mi^2$) in adjacent Josephine County. This area, referred to as French Flat, is located within the Illinois Valley near the Siskiyou Mountains.

In the Agate Desert, researchers know of only 13 occurrences of *Lomatium cookii* and 10 occurrences of *Limnanthes floccosa* ssp. *grandiflora*. Mapped habitat for these species in the Agate Desert totals some 54 hectares (ha) (133 acres (ac)) for *L. cookii* and 80 ha (198 ac) for *L. f.* ssp. *grandiflora* (ONHP Database 1998). However, due to recent alteration and destruction of vernal pools in the Agate Desert (ONHP 1997), habitat currently occupied by these plants is considerably less, an estimated 28 ha (69 ac) and 47 ha (116 ac) for *L. cookii* and *L. f.* ssp. *grandiflora*, respectively (ONHP Database 1998). These two taxa occur in five of the same vernal pool systems, constituting three "occurrences" as defined by ONHP. In French Flat, Josephine County, there are 10 known occurrences of *L. cookii*, occupying up to 61 ha (150 ac) of habitat, but many of these sites are very small (50 individuals or less), and current status is not well known.

Two occurrences each of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* occur partially or entirely within the Agate Desert Preserve (Preserve), owned by The Nature Conservancy (TNC). The Preserve contains the only large populations on private land managed for protection of these species.

Two occurrences of each taxon are on State land, mainly in the Ken Penman Wildlife Area, where much of the habitat has been altered and planted to grasses. Portions of two *Lomatium cookii* and three *Limnanthes floccosa* ssp. *grandiflora* occurrences are on lands owned by the City of Medford, within an area designated as the Whetstone Industrial Park. Portions of two *L. f.* ssp. *grandiflora* and four *L. cookii* occurrences are located in highway or powerline rights-of-way (ONHP Database 1998), where they are subject to herbicide spraying and other maintenance activities conducted by the State or counties. In French Flat, there are 10 known occurrences of *L. cookii*. Three occurrences of *L. cookii* occur on private land. Two of these occurrences are located on land managed by Jackson County; one of these has been largely extirpated by construction of a baseball sports complex. The remaining seven populations of *L. cookii* in Josephine County are located partially or entirely on land managed by the Bureau of Land Management (BLM).

The Agate Desert landscape consists of a gentle mound-swale topography with a characteristic appearance in aerial photographs that is sometimes referred to as patterned ground. During the fall and winter rainy season, a striking pattern of shallow pools develops in the swales. These vary in size from 1 to 30 meters (m) (3 to 100 feet (ft)) across, and attain a maximum depth of about 30 cm (12 in) (ONHP 1997). Plants native to these pools, including *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii*, are adapted to grow, flower, and set seed during the relatively short time that water is available in the spring. Special assemblages of plants blooming in concentric rings toward the deepest part of the pools can be seen as soil moisture recedes throughout the spring (ONHP 1997). Native plants that occur with *Lomatium cookii* and *Limananthes floccosa* ssp. *grandiflora* in these vernal pools include *Plagiobothrys bracteatus* (popcorn flower), *Juncus uncialis* (a rush), *Navarretia* spp. (Navarretia), and *L. f.* spp. *floccosa* (common wooly meadowfoam) (Kagan 1987).

The historical range for *Limnanthes floccosa* ssp. *grandiflora* and *Lomatium cookii* in the Agate Desert may have originally encompassed over 130 $km^2$ (50 $mi^2$), within a 17-km (11-mi) radius of White City (ONHP 1997). Vernal pool habitat, formerly widespread south of the Rogue River, is now almost completely eliminated (Brock 1987; ONHP 1997).

During January and February of 1998, we conducted a preliminary study of vernal pool invertebrates at a number of vernal pools in the Agate Desert. This study revealed the presence of a federally threatened species, the vernal pool fairy shrimp (*Branchinecta lynchi*), at six of the pools sampled (May Consulting Services 1998). Two of these pools are on property managed by BLM, and the remainder are on TNC land. This fairy shrimp, previously believed to be endemic to vernal pools in California, was listed as a federally threatened species in 1994 (59 FR 48136). The presence of this threatened species underscores the need to conserve and restore remaining vernal pool habitat in the Agate Desert area.

In French Flat, *Lomatium cookii* grows in wet meadow areas underlain with floodplain bench deposits that contain sufficient clay to form a clay pan at 60 to 90 cm (24 to 35 in) below the soil surface (U.S. Department of Agriculture 1983). The clay pan creates seasonally wet areas similar to the vernal pools of the Agate Desert, but mostly lacking the latter area's distinctive mound-swale topography. Common plants associated with *L. cookii* in French Flat include *Danthonia californica* (oatgrass), *Plagiobothrys bracteatus*, *Horkelia congesta* (horkelia), *Calochortus uniflorus* (mariposa lily), and *Erythronium howellii* (trout lily). The surrounding forest contains *Pseudotsuga menziesii* (Douglas fir) and *Pinus jeffreyi* (Jeffrey pine). Shrub species that grow on serpentine (rocky mineral consisting mostly of magnesium that gives it a green mottled color) soils, such as *Ceanothus cuneatus* (buckbrush) and *Arctostaphylos viscida* (manzanita), are found within the area of *L. cookii* sites (Linda Knight, BLM, *in litt.* 1992).

The historical range of *Lomatium cookii* in French Flat may have included seasonally wet meadows along the East Fork of the Illinois River. Fire suppression, grazing, residential development, and extensive gold mine dredging (Shenon 1933) altered *L. cookii* habitat in this area. However, some native perennial communities remain in wet meadows that were not affected by mining. Gold mining imminently threatens *L. cookii* habitat in French Flat (Joan Seevers, BLM, pers. comm. 1998).

**Previous Federal Action**

Federal action on *Limnanthes floccosa* ssp. *grandiflora* began with section 12 of the Act (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a

report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included *L. f.* ssp. *grandiflora* as endangered. We published a notice on July 1, 1975, (40 FR 27823) of our acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and our intention to review the status of the identified plant species. On June 16, 1976, we published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species, including *L. f.* ssp. *grandiflora*, to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and us in response to House Document No. 94–51 and our July 1, 1975, **Federal Register** publication.

General comments received regarding the 1976 proposal were summarized in an April 26, 1978, notice (43 FR 17909). The Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already more than 2 years old. On December 10, 1979, we published a notice of withdrawal (44 FR 70796) of the June 6, 1976, proposal, along with four other proposals that had expired.

We published a Notice of Review for plants on December 15, 1980 (45 FR 82480). This notice included *Limnanthes floccosa* ssp. *grandiflora* as a category 1 candidate for Federal listing. Category 1 candidates were those taxa for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. On November 28, 1983, we published a supplement to the Notice of Review (48 FR 53640). However, in the September 27, 1985, Notice of Review (50 FR 39526), the status of this taxon was changed to category 2. Category 2 candidates were those taxa for which data in our possession indicated listing was possibly appropriate, but for which substantial data on biological vulnerability and threats were not currently known or on file to support proposed rules.

Category 2 status was maintained for *Limnanthes floccosa* ssp. *grandiflora* in the Notice of Review published on February 21, 1990 (55 FR 6184). *Lomatium cookii* was first included in that 1990 Notice of Review as a category 1 candidate species. We made no changes to the status of the two species in the plant notice published on September 30, 1993 (58 FR 51144). In our February 28, 1996, Notice of Review (61 FR 7596), we discontinued the use of multiple candidate categories, and now only those taxa meeting the definition of the former category 1 are considered candidates for listing purposes. *Lomatium cookii* was maintained as a candidate species, but *L. f.* ssp. *grandiflora* was not. Our September 18, 1997, Notice of Review (62 FR 49397) included both *L. f.* ssp. *grandiflora* and *L. cookii* as candidates. The most recent Notice of Review (64 FR 57534), published on October 25, 1999, included both *L. f.* ssp. *grandiflora* and *L. cookii* as candidates.

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This provision applied to *Limnanthes floccosa* ssp. *grandiflora* because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, we found that the petitioned listing of this species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be reviewed annually pursuant to section 4(b)(3)(C)(i) of the Act. For the purpose of making these annual petition findings, we made an administrative decision to treat all candidate plants as if their listings had been petitioned prior to 1982. Therefore, the "warranted but precluded" finding also applies to *Lomatium cookii*, which first appeared in the February 21, 1990, Notice of Review. The warranted but precluded finding for both species has been reviewed annually through 1999. Publication of this proposal constitutes the final finding for the petitioned action.

The processing of this proposed rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Processing of this proposed rule is a Priority 3 action and is being completed in accordance with the current Listing Priority Guidance.

**Peer Review**

In accordance with interagency policy published on July 1, 1994 (59 FR 34270), upon publication of this proposed rule in the **Federal Register** we will solicit expert reviews by at least three specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomic, biological, and ecological information for *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*. The purpose of such a review is to ensure that listing decisions are based on scientifically sound data, assumptions, and analyses, including the input of appropriate experts.

**Summary of Factors Affecting the Species**

Section 4 of the Endangered Species Act and regulations (50 CFR part 424) that implement the listing provisions of the Act established the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Lomatium cookii* (Cook's lomatium) and *Limnanthes floccosa* ssp. *grandiflora* Arroyo (large-flowered wooly meadowfoam) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The vernal pools and other seasonally wet soils where *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* grow are susceptible to various land use disturbances. The primary threats to the vernal pool habitat of *L. cookii* and *L. f.* ssp. *grandiflora* in the Agate Desert are industrial, commercial, and residential development and related road and utilities construction and maintenance, including mowing and herbicide spraying; firebreak construction; and hydrologic alteration, particularly the conversion of nonirrigated land to irrigated agricultural use (D. Borgias, pers. comm. 1999). Competition, particularly from introduced annual grass species (see Factor E of this

section), and grazing, especially during the fall and winter months, can also reduce or eliminate populations of both species (Kagan 1987; James Kagan, Oregon Natural Heritage Program (ONHP), pers. comm. 1998). Josephine County populations of *L. cookii* are additionally threatened by proposed gold mining operations, the uncontrolled use of off-road vehicles (ORVs) in the areas occupied by this species, certain timber harvesting activities, and tree encroachment into open areas associated with fire suppression.

Human-related impacts to vernal pool habitat in the Agate Desert began in the mid-1800's, when the area was grazed by cattle and sheep (ONHP 1997). In 1905, a land speculation company acquired a large part of the area and attempted to establish pear orchards by constructing an extensive system of shallow irrigation ditches and, in some cases, blasting through the hardpan layer. This effort failed, and grazing continued as the dominant land use until 1942, when the U.S. military purchased a large segment of the Agate Desert for a training center. When this center was decommissioned in 1946, a 158–ha (390–ac) portion of the area west of Highway 62 was purchased by a timber industry consortium, and a timber mill industrial center began to grow (ONHP 1997). Other industries were drawn to the area, and around 1980 the City of Medford established the 290–ha (720–ac) Whetstone Industrial Park. Much of this area has been leveled and compacted, destroying any vernal pools, although some potential vernal pool habitat remains in the area (ONHP 1997). Another area west of Highway 62, encompassing some 728 ha (1,800 ac), is State land managed as the Ken Denman Wildlife Area (ONHP 1997). Devoted to waterfowl production, much of this area has been covered with log deck debris, plowed in strips, and planted with nonnative wildlife food plants (Brock 1987; J. Kagan, pers. comm. 1997).

East of Highway 62, much of the Agate Desert landform was subdivided into 2–ha (5–ac) homesites in the 1950's, many of which were leveled. Because grazing was removed from some of these sites when they were offered for sale, this area has recovered somewhat and harbors some intact vernal pool habitat (Brock 1987; ONHP 1997).

The southernmost section of the historical Agate Desert has been largely modified by cultivation for pasture. The Medford-Jackson County Airport occupies some 374 ha (925 ac) at the southern limit of the landform. A new building that will house a Foreign Trade Zone at the airport is currently under development (Bern Case, Director, Medford-Jackson County Airport, pers. comm. 1998), and construction associated with this facility could impact *Lomatium cookii* plants at the site.

Jackson County is experiencing rapid population increase. It is the ninth fastest growing county in Oregon, and the majority of this growth is centered in the Medford area (Oregon Center for Population Research and Census, pers. comm. 1998). Much of this development has occurred in and around *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* habitat near Medford and White City.

A recent habitat assessment map and report (ONHP 1997) indicates that residential, commercial, and industrial development, along with land leveling, have claimed nearly 60 percent of the historic Agate Desert vernal pool landscape. According to this assessment, no pristine vernal pool habitat remains due to the presence of introduced plants throughout the Agate Desert. The highest quality remaining vernal pool habitat occurs on 23 percent of the landform. By overlaying ONHP plant occurrence polygons on the habitat assessment base map, one can determine that over 50 percent of *Lomatium cookii* sites and nearly 50 percent of *Limnanthes floccosa* ssp. *grandiflora* sites originally mapped in the Agate Desert during the 1980's have been severely altered. While most of these sites were altered prior to the 1980's (D. Borgias, pers. comm. 1999), habitat alterations in the Agate Desert are continuing at a rapid rate, as indicated by numerous examples below.

In 1992, a sewage line was built by the City of Medford across the southwest corner of the Cardinal Avenue site in the Agate Desert. A large department store was built on land adjacent to this site. The Cardinal Avenue site is proposed for inclusion in the Foreign Trade Zone at the Medford-Jackson County Airport, and development on the 1.2–ha (3–ac) site is very likely (Gerald Anderson, Medford City Manager, pers. comm. 1998). The Cardinal Avenue site, with a population of approximately 140 *Lomatium cookii* individuals, was graded in January 1993 (J. Kagan, pers. comm. 1998). The landowner was contacted by TNC to request permission to remove some plants for experimental transplantation. The landowner agreed to allow removal of the plants, but TNC was able to obtain only one individual prior to completion of grading and was unable to successfully transplant the individual (D. Borgias, pers. comm. 1999).

In 1986, private lands with 4 ha (10 ac) of *Lomatium cookii* habitat and some 500 individual plants were developed into a sports park complex by Jackson County with Federal Land and Water Conservation Funds. The area was leveled, and playing fields and parking lots were constructed. Approximately 80 percent of the available habitat was removed at this site. Inventory of this population in 1992 documented 150 plants at this site (Kagan 1987). Based on preliminary surveys in 1997, these plants may have been extirpated (J. Kagan, pers. comm. 1998).

Another project related to increased development of the Agate Desert area and that resulted in adverse affects to *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* habitat is a 500-kilovolt powerline that Pacific Power and Light constructed in June 1992 (Gerald Nielsen, Pacific Power Co., pers. comm. 1992). The powerline directly affected 7.5 ha (18.5 ac) out of a total of 80 ha (198 ac), or 9.3 percent of the existing *L. f.* ssp. *grandiflora* habitat in the Agate Desert. About 2.6 ha (6.4 ac), or 4.8 percent of the existing *L. cookii* habitat, was affected in the Agate Desert. Maintenance activities along the powerline corridor may continue to adversely impact *L. cookii* and *L. f.* ssp. *grandiflora* habitat.

Two sites where *Limnanthes floccosa* ssp. *grandiflora* was collected in 1969 have been destroyed, one by construction of a mill, and another by construction of a large industrial plant (J. Kagan, pers. comm. 1997). Additional sites of *L. f.* ssp. *grandiflora* occurrences (50 percent of the total extant) have been severely degraded as follows (J. Kagan, pers. comm. 1998): (1) One site, at the intersection of three major roads, has been reduced to a few fragmented patches. The site is now bordered by two fast-food restaurants, a powerline, and residential development, leaving virtually no opportunity for conservation. (2) Another site occurs at the corner of a building adjacent to railroad tracks and has been reduced to approximately 5 square meters (54 square feet), leaving no avenue for site conservation. (3) A sewer plant for the City of Medford has reduced the type locality for this taxon to two small pools. (4) In 1985, *L. f.* ssp. *grandiflora* was estimated to cover some 16 ha (40 ac) at one of two occurrences of *L. f.* ssp. *grandiflora* on Denman Wildlife Area, since then the site has been leveled and scraped for planting tall wheatgrass as wildlife food, as a result by 1993, coverage had been reduced to 1.2 ha (3 ac), a 92 percent reduction. (5) More recently, over two-thirds of the second site found on Denman Wildlife Area

(29.5 ha (73 ac) in size) has been leveled, grazed, and piped for irrigation.

In the early 1990's, a proposed highway connector between Interstate 5 and Highway 140 across the Agate Desert would have impacted a number of occurrences of both *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*. Although that specific project is no longer under consideration, the Oregon Department of Transportation (ODOT) is currently considering a number of alternatives for moving traffic through the area, some of which could impact vernal pools. The vernal pools that are not directly impacted by the highway project are often impacted by projects that result from increased access to the area, such as industrial and residential development.

The only *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* habitat protected from industrial, residential, or commercial development in the Agate Desert area is the habitat located on the Preserve managed by TNC for the protection of these species. Approximately 7 ha (17 ac) of *L. cookii* habitat and 16.7 ha (41.2 ac) of *L. f.* ssp. *grandiflora* habitat exist on the Preserve.

The Preserve, supporting the largest populations of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*, is located in an area that may soon be surrounded by commercial and industrial developed land. Although the Preserve land is protected, the alteration of land adjacent to the Preserve could disrupt the hydrologic processes within the Preserve. For example, a road was built along the southern edge of the Preserve in 1988. Water runs off the road into a ditch after rainstorms, where it would have normally remained in pools in the Preserve. This ditch drained several of the vernal pools on the southern portion of the Preserve, further reducing approximately 0.2 ha (0.5 ac) of vernal pools available to *L. cookii* and *L. f.* ssp. *grandiflora* in the Preserve (J. Kagan, pers. comm. 1998). In addition, potential habitat that borders the west side of the Preserve was partitioned and developed into industrial property in January 1993 (J. Kagan, pers. comm. 1998). Hydrology and available management (e.g., prescribed burning) were also altered by the development. During development of land west of the Preserve, land-moving equipment trespassed onto a portion of the Preserve. At the time, vernal pools on the Preserve had no fences or physical barriers to prevent trespass by ORVs or land-moving equipment (D. Borgias, pers. comm. 1998).

To summarize these plants' status in the Agate Desert, *Limnanthes floccosa* ssp. *grandiflora* is presently declining at seven of its ten known occurrences, and its status is unknown at two additional sites and is known to be stable at only one site. Populations of *Lomatium cookii* are declining at 11 of the 13 known occurrences in the Agate Desert. Habitat originally mapped for these species in the Agate Desert totals some 54 ha (133 ac) for *L. cookii* and 80 ha (198 ac) for *L. f.* ssp. *grandiflora* (ONHP Database 1998). However, habitat currently occupied by these plants is considerably less, an estimated 28 ha (69 ac) and 47 ha (116 ac) for *L. cookii* and *L. f.* ssp. *grandiflora*, respectively (ONHP Database 1998). Thus, the current ranges of both species are roughly 50 percent less than the area of historical habitat in the Agate Desert.

Occurrences of *Lomatium cookii* in Josephine County are also subject to numerous threats. The only habitat for this plant on federally owned land is located near French Flat, which is managed by BLM. Gold mining operations threaten approximately 10 percent of the federally owned portion of this habitat. Approximately 600 plants occur in the area threatened by mining. Mining activities could result in direct habitat loss for the species and limit recovery at this site.

Indirect effects from mining operations in French Flat could also occur due to off-site activities, such as road construction, which are likely to alter hydrologic cycles at *Lomatium cookii* habitat sites. These changes could cause seasonally saturated soils to drain and could impede seed germination or lead to death of seedlings and mature plants. Currently, no safeguards exist to protect habitat in the French Flat area from mining operations.

Habitat for *Lomatium cookii* on BLM-managed land at French Flat continues to experience damage from ORV use. In 1992, ORV use damaged a large wet meadow in this area, creating ruts that punctured the clay pan layer and allowed soil moisture to drain from the wet meadow habitat. Heavy ORV use of *L. cookii* habitat in the area is continuing. To date, ORV use has caused puncturing and draining of 6 ha (15 ac) of meadow habitat in the French Flat population. As a result, 20 percent of the remaining *L. cookii* habitat on federally managed land has been destroyed. The BLM intends to gate part of the area to discourage ORV trespass, but restricting access to this large, open area is difficult (Linda Mazzu, BLM, pers. comm. 1998; J. Seevers, pers. comm. 1998). If recently proposed mining actions on BLM lands are implemented, habitat destruction would be substantially increased beyond 20 percent.

*Lomatium cookii* occurrences in French Flat are also threatened by a timber sale presently under consideration by BLM. Additionally, one recently discovered occurrence at Indian Hill, which is in a long, narrow meadow, is threatened by encroachment of woody species from the surrounding forest. Fire suppression activities have caused an increase in the invasion of trees and shrubs that shade out *L. cookii* plants and decrease available water (L. Mazzu, pers. comm. 1998).

Residential development and road building in the Illinois Valley also threaten populations of *Lomatium cookii*. For example, construction of a residential driveway and roto-tilling on private ground extirpated a Josephine County population of this species in 1991 (J. Kagan, pers. comm. 1998).

*B. Overutilization for commercial, recreational, scientific, or educational purposes. Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* have no known commercial, recreational, or scientific use at this time. No evidence exists of overcollection by botanists and/or horticulturists at this time. However, *Limnanthes floccosa* ssp. *grandiflora* may be of interest to collectors and researchers; some members of the genus have the potential to become important new crop plants because they possess a seed oil that exhibits stability at high temperature and pressure. This oil could be used as a lubricant for various industrial uses (University of California-Davis 1998). *Limnanthes alba*, a wildflower found in California, is now poised to become a multimillion dollar crop in the Willamette Valley of Oregon for its oil (Savonen 1997). To domesticate the species and improve strains, seeds were, and still are, collected from wild *L. alba*, as well as other *Limnanthes* species to cross with the domesticated plants. *Limnanthes floccosa* ssp. *grandiflora* could have this potential, though no known research has been conducted on this subject. This species may be sought for collection if its rarity and population locations become well known. Vandalism or intentional destruction also could occur. Most of the remaining populations of the species are so small, and their distribution so limited, that even limited collecting pressure could have significant adverse impacts.

Eighty-three percent of *Lomatium cookii* occurrences and 40 percent of *Limnanthes floccosa* ssp. *grandiflora* occurrences are concentrated on 2 ha (5 ac) of land or less. Easy access exists to

occurrences of these plants in the Agate Desert, and to *L. cookii* sites near Cave Junction, since they occur near heavily traveled roads. Most sites for these species lack fences or appropriate signs to discourage collectors or others from accessing the sites.

C. *Disease or predation.* No data exist to substantiate whether disease threatens *Lomatium cookii* or *Limnanthes floccosa* ssp. *grandiflora*. An unidentified *Ascomycete* fungus was responsible for the mortality of four *L. cookii* plants in a single population (Kagan 1987). Since this fungus has not been observed at other sites, no conclusions can be drawn regarding the threaf of the fungus to the species as a whole. Predation has been observed on *L. cookii* from gophers, other rodents, and black-tailed jackrabbits feeding on vegetative portions; wireworms and other insect larvae eat the roots of plants, and insects prey on *L. cookii* seeds (Kagan 1987).

Cattle grazing causes substantial impacts to *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*. Tracts heavily grazed from October to April are less likely to support these taxa. The majority of the seasonal growth occurs during the winter. If the plants are grazed during fall and winter, they are less likely to survive to produce seed in the spring or early summer (Brock 1987).

The effects of cattle grazing on *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* are exemplified by the history of land use on what is now TNC's Agate Desert Preserve. Prior to TNC's acquisition of this tract, the area was grazed for a number of years. An estimated 480 individuals of *L. f.* ssp. *grandiflora* were noted at this site between 1984 and 1987. Cattle were removed in 1987, and in 1988, the *L. f.* ssp. *grandiflora* population had soared to over 7,000 individuals. By 1991, the population had grown to an estimated 17,600 plants, and it is now stable or increasing (D. Borgias, pers. comm. 1998). Despite the potential negative effects of fall to spring cattle grazing, carefully managed and timed grazing may actually reduce competition with introduced grass species (see Factor E of this section).

D. *The inadequacy of existing regulatory mechanisms.* The majority of *Lomatium cookii* and all *Limnanthes floccosa* ssp. *grandiflora* plants grow in association with vernal pools, which are classified as wetlands. Under section 404 of the Clean Water Act, the U.S. Army Corps of Engineers (Corps) regulates the discharge of dredged or fill material into waters of the United States, including wetlands (33 CFR parts 320–330). To be in compliance with the Clean Water Act, parties are generally required to notify the Corps prior to undertaking any activity that would result in the discharge of fill, including soil, into wetlands under the Corps' jurisdiction. An individual permit is required in many cases. The Nationwide Permit Program (33 CFR part 330) was designed to eliminate the need for individual permits for some activities. Nationwide Permit Number 26, as conditioned by the Portland District of the Corps for application within the State of Oregon, allows the discharge of fill affecting up to only 0.8 ha (2 ac) of wetlands, if the wetlands are isolated or above the headwater point of a stream (average annual flow of less than 0.14 cubic meters per second (5 cubic feet per second). Also, the permittee must notify the Corps prior to discharge and comply with the terms and conditions of the nationwide permit. Fills affecting less than 0.13 ha (0.32 ac) do not require Corps notification. However, the Corps is aware of the sensitivity of the Agate Desert vernal pools and may require individual permits on a case-by-case basis. The Clean Water Act does not regulate drainage of wetlands unless that action results in the discharge of dredged or fill material into a wetland.

Most *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* sites occupy wetlands less than 2 ha (5 ac) in size, often in wetlands with no surface drainage to streams (*i.e.*, isolated). Therefore, activities resulting in the filling of vernal pools often fall under Nationwide Permit Number 26. Currently, the Corps is not required to request consultation under section 7 of the Act on fill activities that may affect *L. cookii*, *L. f.* ssp. *grandiflora*, or other unlisted species. If *L. cookii* and *L. f.* ssp. *grandiflora* are listed, consultation with us would be required by the Nationwide Permit conditions prior to the Corps authorization of an activity that would adversely affect the species. The Portland District has issued General Regulatory Conditions that accompany all nationwide permits. One of these conditions indicates that if at any time the permittee becomes aware of the presence of a listed species within the authorized project area, all work activity must cease immediately, the Corps must be notified, and work must not resume until approved by the Corps. If *L. cookii* and *L. f.* ssp. *grandiflora* are listed, these regulatory conditions would apply to the seasonal wetlands these species occupy.

State of Oregon wetland laws do not protect many *Lomatium cookii* or *Limnanthes floccosa* ssp. *grandiflora* sites due to their small size. The Removal-Fill Law of 1989 (ORS 196.800–196.990), administered by the Oregon Division of State Lands, does not regulate activities that involve less than 38 cubic meters ($m^3$) (50 cubic yards ($yd^3$)) of fill. Such an amount of fill could seriously impact many smaller vernal pool wetlands in which *L. cookii* and *L. f.* ssp. *grandiflora* occur.

*Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* are listed as endangered species under the State of Oregon threatened or endangered plant law (OAR 603–73–070). In general, State-listed plant populations on private lands are not subject to this law. The law prohibits the "take" of State-listed plants only on State, county, and city-owned or leased lands. And on these lands, the State law does not guarantee the protection of State-listed plants because it allows for the loss of populations if a proposed project or activity is considered to be a public benefit (Tom Kaye, Oregon State University, pers. comm. 1999). Because *Lomatium cookii* is listed as a Federal candidate, lands owned by the BLM will seek to provide a protection buffer when a plant population may be impacted by a proposed project (e.g., mining permit) (L. Mazzu, pers. comm. 1999).

E. *Other natural or manmade factors affecting its continued existence.* Herbicide spraying, mowing, grading, and other road maintenance activities threaten small *Lomatium cookii* sites adjacent to roads on private lands near Cave Junction in the Illinois Valley. In the Agate Desert, *L. cookii* and *Limnanthes floccosa* ssp. *grandiflora* individuals in road or powerline rights-of-way could be accidentally destroyed by local public works departments, highway districts, fire departments, or private citizens when carrying out maintenance activities (Rose Hayden-Owens, ODOT, pers. comm. 1998).

Invasion of nonnative annual plants in the Agate Desert altered native perennial plant communities (Brock 1987) where *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* grow. Native bunch grasses on mounds between vernal pools have been replaced by introduced European grasses such as *Bromus mollis* (brome grass), *Taeniatherum caput-medusae* (medusahead), *Cynosurus echinatus* (dogtail), and *Poa bulbosa* (bluegrass). *Taeniatherum caput-medusae* competes with *L. cookii* and *L. f.* ssp. *grandiflora* on seasonally wet mounds between the pools. Seeds of both the native taxa are not able to germinate under the dense thatch produced by introduced annual species. Competition with introduced plant species is exacerbated on the Denman Wildlife Area, where game bird

food plots are seeded with nonnative plant species. Brock (1987) supports the contention that the main cause of the reduction of *L. cookii* populations has been intensive cattle grazing accompanied by the negative competitive effects of introduced grasses, specifically *T. caput-medusae*.

Mowing, burning, light grazing, or even raking of vernal pool habitat after *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* seeds have matured, but before the fall growth period, may help reduce plant cover from exotic annual plants (Brock 1987). In a small experiment conducted on the Preserve, germination and seedling survivorship of the rare plants was increased on plots that were raked, as compared with untreated, or raked and scarified plots (D. Borgias, pers. comm. 1998).

Catastrophic events, such as fire, could eliminate the large occurrences of *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* located on the Preserve (J. Kagan, pers. comm. 1998). Demographic extinction is possible for nine other occurrences of *L. cookii*, mostly in the French Flat area, because of their small size (fewer than 100 plants). Many of the known French Flat sites are found directly adjacent to roads, increasing the possibility of extirpation.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* in determining to propose this rule. These species occupy an extremely restricted geographic range, with roughly 80 ha (200 ac) and 47 ha (116 ac) of known occupied habitat for *L. cookii* and *L. f.* ssp. *grandiflora*, respectively. The majority of these plants' remaining occupied habitat is threatened by commercial, industrial, and residential development; road and utilities construction and maintenance, including herbicide spraying; leveling for agriculture or pasture; ill-timed grazing or mowing; competition with introduced plants; mining; ORV use; certain timber sale activities; encroachment of trees and shrubs associated with fire suppression; and random natural events. Based on this evaluation, the preferred action is therefore to propose the listing of *L. cookii* and *L. f.* ssp. *grandiflora* as endangered species. Other alternatives to this action were considered but not preferred because not listing or listing as threatened would not be consistent with the Act.

**Critical Habitat**

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and which may require special management considerations or protection; and specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Final Listing Priority Guidance for FY 1999/2000 (64 FR 57114) states that the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act.

We propose that critical habitats designations are prudent for both *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat would be prudent for both *L. cookii* and *L. f.* ssp. *grandiflora*.

Due to the small number of populations both, *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* are vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence for either *Lomatium cookii* or *Limnanthes floccosa* ssp. *grandiflora* of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if

critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we propose that critical habitat is prudent for both *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*. However, the deferral of the critical habitat designation for these species will allow us to concentrate our limited resources on higher priority critical habitat (including court ordered designations) and other listing actions, while allowing us to put in place protections needed for the conservation of both *L. cookii* and *L. f.* ssp. *grandiflora* without further delay. However, because we have successfully reduced, although not eliminated, the backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for these species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will make the final critical habitat determination with the final listing determination for both *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora*. If this final critical habitat determination is that critical habitat is prudent, we will develop a proposal to designate critical habitat for both *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with us.

Seven occurrences of *Lomatium cookii* exist on Federal land managed by the BLM. Should this species be listed, BLM actions that may affect the species (including permits governing mining activities) would be subject to section 7 of the Act. BLM has conducted some conservation actions for *L. cookii*, including regular surveys of certain sites and attempts to exclude ORVs from vulnerable populations (L. Mazzu, pers. comm. 1998). The Federal Aviation Administration could be involved in section 7 consultation on the Medford Airport project. In areas that presently support *L. cookii* or *Limnanthes floccosa* ssp. *grandiflora*, housing loans insured by the Department of Housing and Urban Development could be subject to consultation.

The Corps has been involved with vernal pool protection through its permitting authority under section 404 of the Clean Water Act. By regulation, Corps permits may not be issued where a federally listed endangered or threatened species may be affected by the proposed project without first completing consultation pursuant to section 7 of the Act. Due to the recent discovery of the threatened vernal pool fairy shrimp in the Agate Desert, consultation will now be required for wetland fills in the area. Consultation would also be required for the two plants that are the subject of this rulemaking, should they be listed.

In 1997, the Oregon Department of Corrections was considering placing a new prison facility in the Agate Desert area (D. Borgias, pers. comm. 1999). One of the potential locations for this facility would have impacted a number of extant *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* sites. This location was not chosen. However, any further developments of this nature requiring Federal involvement would require consultation pursuant to section 7 of the Act for the vernal pool fairy shrimp, and for the two plants that are the subject of this proposed rulemaking, should they be listed.

With regard to recovery, *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* plants in the Agate Desert may be able to repopulate a site that was disturbed, if the hard pan soil layer and the historical or otherwise appropriate hydrologic patterns remain intact. These plants may also be able to repopulate historical habitat naturally, if a sufficient amount of seed remains in the soil and young plants are not grazed or sprayed (J. Kagan, pers. comm. 1998). For example, *L. cookii* appears to have repopulated the Antelope Road site after the area was leveled in the 1940's. Plant numbers at this site, however, decreased from 1,000 in 1987 to 500 in 1992. The reason for this decline is unknown. The Avenue H site was leveled in 1954 but the site was repopulated because the hard pan layer was not disturbed, thus allowing soil moisture to remain sufficiently high. Plant counts at this site also decreased from approximately 14,000 in 1987 to 6,000 in 1992, again for unknown reasons (J. Kagan, pers. comm. 1998). Any proposed habitat creation or restoration work for these plants would require careful planning prior to implementation, and close monitoring thereafter.

The Oregon Department of State Parks has undertaken protective measures for the *Lomatium cookii* site that occurs on park property. The Department recently fenced the entrance road to exclude ORV use from areas near the road where this rare plant occurs. The Departments proposed plans for a campground in the area will be designed to protect this rare plant (M. Stenberg, pers. comm. 1998).

Listing these two plants would provide for development of a recovery plan (or plans). Such plan(s) would bring together both State and Federal efforts for conservation of the plants. The plan(s) would establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan(s)

would set recovery priorities and estimate costs of various tasks necessary to accomplish them. The plan(s) also would describe site-specific management actions necessary to achieve conservation and survival of the two plants. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to the State of Oregon for management actions promoting the protection and recovery of these species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, for endangered plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession from areas under Federal jurisdiction any such plant. In addition, the Act prohibits malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, or in the course of violation of State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would ever be sought or issued because these plants are not in cultivation or common in the wild.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), it is our policy to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. *Limnanthes floccosa* ssp. *grandiflora* is not presently known to occur on Federal land, although two occurrences are known from the vicinity of Table Rock, where BLM manages some land. *Lomatium cookii* is known to occur on lands under the jurisdiction of the BLM.

We believe that, based upon the best available information, the following actions affecting these plants on Federal property would not likely result in a violation of section 9, provided these activities are carried out in accordance with existing regulations and permit requirements:

(1) Activities authorized, funded, or carried out by Federal agencies (*e.g.*, livestock grazing, agricultural conversions, wetland and riparian habitat modification, flood and erosion control, residential development, recreational trail development, road construction, hazardous material containment and cleanup activities, prescribed burns, pesticide/herbicide application, pipelines or utility lines crossing suitable habitat) when such activity is conducted in accordance with any reasonable and prudent measures given by us in a consultation conducted under section 7 of the Act;

(2) Casual, dispersed human activities on foot or horseback (*e.g.*, bird watching, sightseeing, photography, camping, hiking);

(3) Activities on private lands that do not require or involve Federal funding, permits, or authorization, such as livestock grazing, agricultural conversions, flood and erosion control, residential development, road construction, and pesticide/herbicide application when consistent with label restrictions; and

(4) Residential landscape maintenance (including irrigation) and the clearing of vegetation around one's personal residence as a firebreak.

We believe that the following actions could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands; and

(2) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the State Supervisor of our Oregon State Office (see **ADDRESSES** section).

Requests for copies of the regulations regarding listed plants and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon, 97232–4181 (telephone 503/231–2063; facsimile 503/231–6243).

**Public Comments Solicited**

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Lomatium cookii* or *Limnanthes floccosa* ssp. *grandiflora;*

(2) The location of any additional occurrences of *L. cookii* or *L. f.* ssp. *grandiflora* and the reasons why any habitat of these species should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of these species; and

(4) Current or planned activities in the subject areas, including possible mining operations on federally managed land, and their possible impacts on *L. cookii* or *L. f.* ssp. *grandiflora*.

A final determination on *Lomatium cookii* and *Limnanthes floccosa* ssp. *grandiflora* will take into consideration the comments and any additional information received by us, and such communications may lead to a final determination that differs from this proposal.

You may submit comments and materials on this proposal should in person or by mail to: Field Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 S.E. 98th Avenue, Portland, Oregon 97266. Alternatively, you may send comments via the Internet to *loli@r1.fws.gov*. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AF84" and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, please contact us directly by calling our Oregon State Office at phone number 503–231–6179. Please note that the Internet address *"loli@r1.fws.gov"* will be closed out at the termination of the public comment period.

Comments and materials received, will be available for public inspection, by appointment, during normal business hours at the above address. Our practice is to make comments, including names and home addresses of respondents, available for public review. We will make all submissions from

organizations or businesses, and from individuals representing organizations or businesses, available for public inspection in their entirety. We will not consider anonymous comments. However, individual respondents may request that we withhold their home address, and under certain circumstances, their identity, from the rulemaking record. We will honor such requests to the extent allowable by law. If you wish us to withhold your name and/or address, please state this prominently at the beginning of your comment.

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the State Supervisor, U.S. Fish and Wildlife Service, Oregon State Office (see **ADDRESSES** section).

**National Environmental Policy Act**

We have determined that environmental assessments, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

**Executive Order 12866**

Executive Order 12866 requires each agency to write regulations/notices that are easy to understand. We invite your comments on how to make this regulation easier to understand, including answers to questions such as the following—(1) Are the requirements in the regulation clearly stated? (2) Does the regulation contain technical jargon that interferes with the clarity? (3) Does the format of the regulation (grouping and order of the sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the regulation in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the regulation? What else could we do to make this regulation easier to understand?

**Required Determinations**

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is required. Any information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for endangered plants, see 50 CFR 17.62 and 17.63.

**References Cited**

A complete list of all references cited in this document is available upon request from the State Supervisor, Oregon State Office (see **ADDRESSES** section).

The authors of the proposed rule to list *Lomatium cookii* are Marilyn Hemker, U.S. Fish and Wildlife Service, Boise Field Office, 1387 South Vinnell Way, Room 368, Boise, Idaho 83709 (telephone 208/378–5243), and Judy Jacobs, U.S. Fish and Wildlife Service, Oregon State Office (see **ADDRESSES** section). The author of the proposal to list *Limnanthes floccosa* ssp. *grandiflora* is Judy Jacobs.

**List of Subjects in 50 CFR Part 17**

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

**Proposed Regulation Promulgation**

For the reasons given in the preamble, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

**PART 17—[AMENDED]**

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.12(h) is amended by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

**§ 17.12 Endangered and threatened plants.**

* * * * *

(h) * * *

| Species | | Historic range | Family | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Scientific name | Common name | | | | | | |
| FLOWERING PLANTS | | | | | | | |
| * | * | * | * | * | * | * | |
| *Limnanthes floccosa* ssp. *grandiflora* | Large-flowered wooly meadowfoam | U.S.A. (OR) | Limnanthaceae | E | | NA | NA |
| * | * | * | * | * | * | * | |
| Lomatium cookii | Cook's lomatium | U.S.A. (OR) | Apiaceae | E | | NA | NA |
| * | * | * | * | * | * | * | |

Dated: April 12, 2000.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 00–12123 Filed 5–12–00; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AF98**

## Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Determination of Critical Habitat for the Alameda Whipsnake (Masticophis lateralis euryxanthus)

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; reopening of comment period and notice of public hearing.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) gives notice of a public hearing on the proposed rule to designate critical habitat for the threatened Alameda whipsnake (*Masticophis lateralis euryxanthus*). In addition, the comment period which originally closed on May 8, 2000, will be reopened. The new comment period and hearing will allow all interested parties to submit oral or written comments on the proposal. We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

**DATES:** The comment period for this proposal now closes on June 12, 2000. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held from 1:00 p.m. to 3:00 p.m. and from 6:00 p.m. to 8:00 p.m. on June 1, 2000, in San Ramon, California.

**ADDRESSES:** The public hearing will be held at the San Ramon Marriott, 2600 Bishop Drive, Salon E, San Ramon, California. Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Jason Davis or Heather Bell, at the above address, phone 916–414–6600, facsimile 916–414–6710.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 8, 2000, the Service published a proposed rule to designate critical habitat for the threatened Alameda whipsnake in the **Federal Register** (65 FR 12155). The original comment period closed on May 8, 2000. The comment period now closes on June 12, 2000. Written comments should be submitted to the Service (see **ADDRESSES** section).

A total of approximately 164,663 hectares (406,708 acres) of land fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Contra Costa, Alameda, San Joaquin, and Santa Clara counties, California. If this proposal is made final, section 7 of the Act prohibits destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Section 4 of the Act requires us to consider economic and other impacts of specifying any particular area as critical habitat.

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to three such requests, the Service will hold a public hearing on the date and at address described in the **DATES** and **ADDRESSES** sections above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to the Service at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to the Service. Legal notices announcing the date, time, and location of the hearing will be published in newspapers concurrently with the **Federal Register** notice.

Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) The location of any additional populations of Alameda whipsnakes and the reasons why any habitat should or should not be determined to be critical habitat;

(2) Additional information regarding the validity of the primary constituent elements described in the proposed rule; and (3) Additional information regarding areas that may be essential as travel corridors for connecting individual Alameda whipsnake populations.

Reopening of the comment period will enable the Service to respond to the request for a public hearing on the proposed action. The comment period on this proposal now closes on June 12, 2000. Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

### Author

The primary authors of this notice are Jason Davis and Heather Bell (see **ADDRESSES** section).

### Authority

The authority for this action are the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 2, 2000.

**John Engbring,**

*Manager.*

[FR Doc. 00–11450 Filed 5–12–00; 8:45 am]

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# Notices

Federal Register
Vol. 65, No. 94
Monday, May 15, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Food Safety and Inspection Service

[Docket No. 00–014N]

### Announcement of and Request for Comment Regarding Industry Petition on Hazard Analysis and Critical Control Point (HACCP) Inspection

**AGENCY:** Food Safety and Inspection Service, USDA.

**ACTION:** Notice; opportunity to comment.

**SUMMARY:** The Food Safety and Inspection Service (FSIS) is requesting comment on a petition that asks FSIS to amend sections of the Hazard Analysis and Critical Control Point (HACCP) regulations "to increase the effectiveness" of the HACCP system and to make the regulations more consistent with the HACCP principles published in 1997 by the National Advisory Committee on Microbiological Criteria for Food (NACMCF). The petition is set out in this **Federal Register** notice. The petition was submitted by a group of trade associations. It contains no data or examples to support the requests it makes. In addition to comments from the public, FSIS will solicit comment from the members of the National Advisory Committee on Meat and Poultry Inspection (NACMPI) at its May 16–17, 2000, meeting.

**DATES:** Comments are due July 14, 2000.

**ADDRESSES:** Send comments in triplicate to USDA, FSIS Docket Room, Docket No. 00–014N, Room 102 Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700.

**FOR FURTHER INFORMATION CONTACT:** Philip Derfler, Deputy Administrator, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture (202) 720–2709.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 25, 1996, FSIS published a final rule in the **Federal Register**, entitled "Pathogen Reduction; Hazard Analysis and Critical Control Point Systems" (61 FR 38806), requiring that federally inspected meat and poultry establishments implement HACCP systems to address hazards that are reasonably likely to occur in their operations. This rule requires that all federally inspected meat and poultry plants develop and implement written sanitation standard operating procedures (sanitation SOPs); mandates that meat and poultry slaughter plants conduct microbial testing for generic *E. coli* to verify the adequacy of their process controls; requires that all meat and poultry plants develop and implement a system of preventive controls known as HACCP to improve the safety of their products; and sets pathogen reduction performance standards for *Salmonella* that slaughter plants and plants producing raw ground products must meet.

When FSIS issued this final rule, it was aware that the rule would bring about major changes in the way plants operate and in how FSIS conducts its inspections. To account for this impact, the implementation of the rule was phased in over a three-year period that concluded January 25, 2000. Also, to assist the industry in preparing for the implementation of HACCP, FSIS provided extensive technical assistance and guidance and held numerous public meetings to receive input from all stakeholders.

*Petition*

FSIS received a petition dated December 30, 1999, signed by the following organizations: The American Meat Institute, American Association of Meat Processors, National Chicken Council, National Food Processors Association, National Meat Association, National Turkey Federation, and the North American Meat Processors. The petition requests that FSIS amend sections of the HACCP regulations in order, according to the petition, to increase the effectiveness of the HACCP system and to make the regulations more consistent with the HACCP principles published in 1997, by the National Advisory Committee on Microbiological Criteria for Food (NACMCF).

The petitioners contend that FSIS has too narrowly interpreted its rulemaking and ignores the "* * * commonsense approach needed to make HACCP successful." In particular, they point out that there are other components of a HACCP system that the Agency should recognize, such as good manufacturing practice (GMP) programs (referred to as prerequisite programs), and that FSIS does not permit prerequisite programs to address food safety concerns. In 61 FR 38805, FSIS stated that it expected the HACCP plan to be a stand-alone document addressing food safety.

The petitioners also suggest that FSIS change some of the definitions contained in the HACCP regulations. Specifically, they suggest the following definition changes:

1. Delete the term and definition for "food safety hazard" and replace it with the term "hazard." A "hazard" would be defined as "a biological, chemical or physical agent that is reasonably likely to cause illness or injury in the absence of its control."

2. Change the definition of "hazard analysis" to "the process of collecting and evaluating information on hazards associated with the food under consideration to decide which are significant and must be addressed in the HACCP plan."

3. Define "severity" as "the seriousness of the effect(s) of a hazard."

4. Define "shipped" as "a product has been shipped if it has been sold to a third party and is not under the direct or effective control of the inspected establishment. Products have not been shipped in circumstances such as when the product is still owned by the inspected establishment, whether stored at the inspected establishment or at another storage location, as well as when the product is moving from one facility to another that is owned by the same person or company." The petitioners also suggest that throughout the regulations the word "shipped" should replace the phrase "enters commerce."

5. Lastly, the petitioners request that FSIS amend 9 CFR 417.6(e) to provide that a HACCP system may be found to be inadequate only when adulterated product has been shipped. Currently, the regulations state that the system may be found inadequate when adulterated product is produced or shipped.

As part of the Agency's continued efforts to involve all stakeholders in

issues related to the HACCP regulation and its implementation, FSIS is publishing the petition in this **Federal Register** notice. FSIS is also publishing this petition as part of its on-going efforts to keep stakeholders updated and informed about the Agency's activities. The Agency is working on a separate rulemaking related to the petition process, to more clearly define the requirements to be contained in a petition for changing the FSIS regulations.

*Questions*

FSIS is seeking public comment on the following questions about the petition:

1. The industry petition relies mainly on the NACMCF document and does not provide any data or examples to support its request. Is there any information that would support taking any of the actions requested in the petition?

2. Would amending 9 CFR 417.2(a) in the manner suggested in the petition result in regulations that provide the level of public health protection required by the Federal Meat Inspection Act and the Poultry Products Inspection Act?

3. Should FSIS consider regulatory modifications that would acknowledge the prerequisite programs concept of NACMCF?

4. Do FDA regulations, such as the GMP regulations, offer an approach that FSIS should consider? How would such an approach fit within the HACCP concept? How would FSIS implement such an approach?

5. What will be the effects of making FSIS and FDA HACCP regulatory requirements dissimilar?

6. Should the changes suggested in the industry petition be considered in light of the views expressed on HACCP by Codex and by other countries?

*The Text of the Petition*

Petition for Rulemaking Amendments to Pathogen Reduction; Hazard Analysis Critical Control Point (HACCP); Final Rule

The member companies of the trade associations (the associations) identified below support the adoption of Hazard Analysis Critical Control Point (HACCP) as the best system available for enhancing the safety of meat and poultry products. Through this petition, the associations seek amendments that will contribute to the evolution and effectiveness of HACCP. Although some adjustments can be made to the inspection system administratively, certain amendments to the Pathogen Reduction; Hazard Analysis Critical Control Point Systems final rule (the Rule) published by the Food Safety and Inspection Service (FSIS or the agency) on July 25, 1996 (61 FR 38806) will be required to accomplish these objectives.

Although HACCP implementation to date has been largely successful, disputes over "technical" non-conformances with certain elements of the Rule have arisen that have adversely affected the overall success of HACCP, without contributing to protection of consumers.[1] In that regard, amending the rule would reduce the occurrence of these unproductive instances and help focus future activities of the industry and the agency on issues that are vital to consumer protection.

Background

HACCP is a preventive system of hazard control, the inherent value of which is widely acknowledged. In that regard, the HACCP system has provided a framework for establishing more effective food safety measures. Nearly 15 years ago, the National Academy of Sciences (NAS) recognized the importance of incorporating HACCP into the meat and poultry inspection system and encouraged FSIS to move quickly to apply the HACCP system.[2]

The seven principles of HACCP, as revised by the National Advisory Committee on Microbiological Criteria for Foods (NACMCF) in 1997, provide the basis for contemporary interpretations of the HACCP system. Those principles are:

1. Conduct a hazard analysis.
2. Determine the critical control points.
3. Establish critical limits.
4. Establish monitoring procedures.
5. Establish corrective actions.
6. Establish verification procedures.
7. Establish recordkeeping and documentation procedures.[3]

Through the application of these principles, simple production processes can be accommodated. Similarly, highly sophisticated procedures, even those that may pose some degree of risk can also be accommodated, assuming that the appropriate critical control points are identified and measurement criteria are established.

These principles purportedly provide the basis for the agency's Rule. The Rule as written, however, deviates from the intended application of these principles in several important ways. It is because the Rule as implemented by the agency does not adhere in its entirety to the principles of HACCP that this petition is submitted.

The Rule and industry's adoption of HACCP have fundamentally changed many aspects of food safety practices and inspection. HACCP requires acceptance by industry that it is responsible for ensuring the safety of products it produces. That concept, and the challenges it presents, has been accepted by industry.

The Rule also has required adjustments within the agency's inspection program. Companies' HACCP control activities occur in establishments under some form of continuous inspection and a wide range of enforcement sanctions remains available to FSIS. Indeed, the Rule has, in effect, expanded that capability through provisions permitting withholding actions in the event an establishment's HACCP plan is deemed to be inadequate. Under HACCP, however, inspection emphasis was to have shifted away from the application of subjective criteria and toward monitoring of specific, quantitative benchmarks.

HACCP should result in a food inspection system with a much higher level of private and public cooperation. Ideally, under HACCP government and industry would find themselves working together to monitory food safety compliance, with the goal of providing the safest possible meat and poultry supply.

Discussion

*The Rule Is Written and Interpreted Too Narrowly*

An important component of HACCP is the requirement that a written HACCP plan be developed for all products in accordance with HACCP principles. That plan should identify the hazards associated with the product, identify the critical control points in the process, establish quantitative monitoring procedures to assure compliance and corrective actions, and provide effective documentation of compliance. A HACCP plan is, however, only one part of a plant's overall food safety system. Other integral components of that system include Sanitation Standard

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[1] Although HACCP implementation will not be completed throughout the meat and poultry industry until next January, nearly 80 percent of meat and poultry production already occurs under HACCP systems. This experience suggests strongly, that the time is now to discuss ways to improve an HACCP-based inspection system.

[2] *Meat and Poultry Inspection—The Scientific Basis of the Nation's Program*, National Academy Press, 1985 (pp. 134–135).

[3] The NACMCF streamlined the principles in a report adopted August 14, 1997. That report reversed principles six and seven from the original order established by NACMCF to the order presented above. See Hazard Analysis and Critical Control Point Principles and Application Guidelines (hereinafter the Guidelines), J. of Food Protection, Vol. 61, No. 6, at 762–775, 1998.

Operating Procedures (SSOPs), and various good manufacturing practices and other prerequisite programs (hereinafter collectively prerequisite programs) that are needed to form the foundation for the HACCP system.[4]

Unfortunately, the agency has elected only to recognize the sanitation part of these other components of establishments' food safety systems. For example, a beef plant typically controls temperature according to prerequisite programs to preserve product quality. Although this is a necessary program for meeting quality criteria, FSIS has apparently taken the posisiton that establishments must also incorporate product temperature controls into their HACCP plans. This position has resulted essentially in government mandated critical control points (CCPS)—contrary to the agencys often repeated statement that companies develop and operate their own HACCP plans and are responsible for the same. The role of prerequisite programs is a central question that needs to be addressed through a dialogue with the agency to determine the appropriate role for prerequisite programs as a component of a plant's operating system.

This mandate arises out of the agency's refusal to acknowledge prerequisite programs and other important food safety systems as very important, integral components of an establishment's food safety system. The agency specifically points to the "in the absence of those controls" language it incorporated into section 417.2(a)(1) of the Rule. The agency's interpretation of the Rule's language is unduly narrow and ignores the commonsense approach needed to make HACCP successful.

Notwithstanding the problems encountered to date, the Rule can be amended to enable the agency to consider the other important aspects of an establishment's food safety system, such as prerequisite programs. Rather than continue to implement a regulation that the agency interprets as forcing FSIS to ignore certain elements of a plant's program, the Rule should be amended to permit the agency to consider those other components when determining whether an establishment's HACCP plan is adequate. As discussed below, prerequisite programs will influence the likelihood that a food safety hazard will occur and, therefore, should be acknowledged by the Agency.

Such an amendment will benefit the agency, the regulated industry, and most significantly will enhance food safety. In that regard, the agency will be better able to determine whether a company's HACCP plan is adequate, enabling the agency to apply its limited resources to situations in which the integrity of the food inspection system may be compromised. Similarly, regulated companies will be better able to direct their resources to address circumstances that involve legitimate food safety issues, rather than including additional and often unnecessary provisions in their HACCP plans in order to accommodate the current interpretation of HACCP contained in the rule. Making the system operate more efficiently benefits all interested parties, including consumers who benefit from lower prices and also benefit from the fact that a less complicated, less duplicative system contributes to a more effective system from a food safety standpoint.

*The Definition and Interpretation of a Food Safety Hazard Should Be Amended*

The Rule's definition of "food safety hazard" is inconsistent with the definition of hazard provided by the NACMCF. Currently, the Rule defines a "food safety hazard" as any "biological, chemical, or physical property that may cause a food to be unsafe for human consumption."[5] The NACMCF, however, developed a tighter, more appropriate defintion of "hazard" in its 1997 report.[6] Specifically, NACMCF defines a "hazard" as a "biological, chemical, or physical agent that is reasonably likely to cause illness or injury in the absence of its control."[7] This definition will facilitate development of HACCP plans that focus on food safety, while encouraging firms to utilize prerequisite programs.

The Guidelines include a thorough discussion of that definition and, in that regard, provide that the purpose of a hazard analysis "is to develop a list of hazards which are of such significance that they are reasonably likely to cause injury or illness if not effectively controlled."[8] The Guidelines provide that each identified potential hazard should be evaluated, giving consideration to its severity and likely occurrence. That consideration should also include the food, its method of preparation, transportation, storage, and the persons likely to consume the product.[9] Also included in these considerations would be the influence of prerequisite programs on the likely occurrence of the hazard under consideration. In short, the Guidelines make clear that significance, based on a variety of factors, is an integral part of determining whether a potential hazard is, in fact, a hazard that should be addressed in a HACCP plan.[10]

The Rule, however, is not written, nor interpreted, in a manner consistent with the NACMCF Guidelines. The Rule provides a much broader definition of "hazard" because it identifies as a "hazard" those properties that may cause a food to be unsafe, regardless of whether the hazard is "significant" in terms of actually presenting a risk to human health. This interpretation has led to confusion regarding what should be covered in HACCP plans and how to make this determination. This problem could be addressed by changing the Rule's definition of "hazard." The NACMCF definition and interpretation of a "hazard," is more precise and consistent with the principles of HACCP because it provides useful guidance for identifying those properties that, when all factors are considered, present a significant risk of illness or injury.

Prior to the implementation date for HACCP in the very large plants, the agency published the first of several notices that, in effect, dictate the adoption or establishment of hazards, without engaging in the necessary hazard analysis with respect to the significance and severity of those hazards. For example, in November 1997 FSIS published a notice telling establishments that zero tolerance for visible fecal material was a food safety standard and that FSIS would be determining compliance before the application of interventions. FSIS stated in the notice that visible fecal was a vehicle for microbial contamination. However, an establishment employing microbial interventions would typically set the critical control point at the intervention, not prior to it. In a situation such as this the visible contamination would need to be minimized but would not be the most critical point in the system. This notice, in effect, dictated the presence of CCPs in the production process, as well as its positioning.

[4] Prerequisite programs have been identified as the foundation upon which a HACCP plan is built. See "The Role of Prerequisite Programs in Managing a HACCP System," *Dairy, Food and Environmental Sanitation*, Vol. 18, No. 7 at 418–423, July 1998.

[5] 9 CFR sec. 417.1.

[6] FSIS cross-references hazard and food safety hazard in the Rule. See 9 CFR sec. 417.1.

[7] See Hazard Analysis and Critical Control Point Principles and Application Guidelines, National Advisory Committee on Microbiological Criteria for Foods, at 6 (August 14, 1997).

[8] *Id.* at 12–13.

[9] *Id.* at 12.

[10] Indeed, the Guidelines provide that hazards identified in one facility may not be significant in another plant for the same or similar product. *Id.* at 14.

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Immediately following large plant implementation the agency published a notice that effectively abandoned the concepts underlying HACCP in favor of a command and control regulatory system. Ultimately, the agency issued letters to numerous federally inspected facilities effectively dictating CCPs when a hazard analysis conducted by those plants, consistent with the NACMCF model for conducting such an analysis, indicated that the hazard was not of sufficient significance and severity to warrant its control through the HACCP plan. Finally, more recently, the agency has again insisted on dictating the presence and positioning of CCPs in plants that manufacture raw ground and not ground products.

Implementing the change recommended by this petition would address this problem and would benefit the agency, consumers, and the regulated industry. As previously discussed, such a change would enable the agency to focus its resources in a more efficient and effective manner and would enhance food safety by doing so. Accordingly, the Rule should be amended to adopt the definition of "hazard" as set forth by the NACMCF and abide by the NACMCF's intent with regard to conducting a hazard analysis.

*The Rule Does Not Adequately Address When a Product Is Within an Establishment's Control*

The Rule does not provide adequate guidance as to when a product has left the producing facility's control. The agency's interpretation of the Rule fails to acknowledge that products can be within an establishment's control even when the product is outside the physical boundaries of an establishment. For example, product on a company-owned or contracted truck is still under that company's control, as is product still owned by the establishment but held in a cold storage warehouse away from the production facility. FSIS has, on several occasions, contended that product was no longer within the establishment's control once it left the production facility's loading dock. Indeed, the agency has taken that position even when the product was stored on tractor-trailers still on the physical plant compound.

The Rule should be amended to define, for purposes of compliance with the HACCP regulations, when a product is shipped. In that regard, product should be deemed to have been shipped for purposes of HACCP compliance when it has been sold to another entity and is no longer in the direct or effective control of the producing establishment. For example, when product owned by the establishment is stored at a cold storage warehouse and is still subject to movement at the direction of the establishment it should be deemed to be in the establishment's control.

*The Provision Regarding Inadequate Plans Should Be Amended*

The Rule provides that a plant's HACCP plan may be deemed to be inadequate when "adulterated product is produced or shipped." That provision however, is too draconian and should be amended to delete the reference to "produced."

The checks built into a HACCP plan are intended to identify not only when the production process is working as intended, but also to alert an establishment when the process has not met the critical limits relevant to the identified CCPs. A HACCP plan operating, as intended, will alert a company when a critical limit has not been met for one of many reasons that can, over the course of time, be expected to occur. In some cases, that will result in the production of "adulterated" product as that term is defined in the Federal Meat Inspection Act and the Poultry Products Inspection Act. What is relevant for purposes of compliance with the Rule is whether administration of the HACCP plan resulted in the company being able to detect the problem, as well as enabling the company to take corrective action.

A plant's operation should not be in jeopardy when it identifies a problem, as its plan is designed to do—even though adulterated product has been produced. The Rule, however, puts the agency in the position of taking action and deciding that an establishment's HACCP plan is inadequate when adulterated product is produced, even if the company caught the problem before any product left the plant's control. If the system is working a company should not be penalized. At a minimum, no plan should be deemed to be inadequate for deviations detected by the company in pre-shipment review. Numerous examples of such technical non-conformances can be cited and such instances have encumbered the agency and industry in resource intensive discussions that do not enhance public health protection. By modifying the Rule the squandering of valuable inspection resources can be avoided.

Specific Action Requested

The undersigned organizations request that the FSIS HACCP regulations be amended as set forth below.

Amend section 417.2(a)(1) to read as follows: "Every official establishment shall conduct, or have conducted for it, a hazard analysis to develop a list of hazards that are of such severity and significance that they are reasonably likely to cause injury or illness if not effectively controlled. Hazards that are not reasonably likely to cause injury or illness do not require further consideration within a HACCP plan. The hazard analysis shall consider the ingredients and raw materials, each step in the process, product storage and distribution, and final preparation and use by the consumer."

Amend section 417.1 to include several necessary definitions to ensure consistency with the recommendations of the NACMCF. In that regard the following amendments should be promulgated.

- Delete the term food safety hazard and provide the following definition of hazard: "A biological, chemical, or physical agent that is reasonably likely to cause illness or injury in the absence of its control."
- Provide the following definition of hazard analysis: "The process of collecting and evaluating information on hazards associated with the food under consideration to decide which are significant and must be addressed in the HACCP plan."
- Provide the following definition of severity: "The seriousness of the effect(s) of a hazard."
- Provide the following definition of shipped: "A product has been shipped if it has been sold to a third party and is not under the direct or effective control of the inspected establishment. Products have not been shipped in circumstances such as when the product is still owned by the inspected establishment, whether stored at the inspected establishment or at another storage location, as well as when the product is moving from one facility to another that is owned by the same person or company."

Amend section 417.3 to provide when product produced pursuant to a HACCP plan has been shipped for purposes of compliance with the rule. Specifically, section 417.3(b)(3) should be amended by striking the words "enters commerce" and inserting in lieu thereof "is shipped."

Amend section 417.6(e) to provide that a HACCP system may be found to be inadequate when adulterated product has been shipped. Specifically, section 417.6(e) should be amended by striking "produced or."

Conclusion

Amendments to the Rule as suggested by this Petition will advance the interests of government, industry, and the consuming public. The Food Safety and Inspection Service should proceed without further delay toward adoption of these amendments. With regard specifically to prerequisite programs, the undersigned organizations intend to engage the agency in discussions to develop the appropriate consideration of these programs within a comprehensive system for managing food safety, quality, and wholesomeness.

Certification

The undersigned certifies that, to the best of his knowledge and belief, the Petition includes all information and views on which the Petition relies, and that it includes representative data and information known to the Petitioners that are unfavorable to the Petitioners.

Respectfully submitted,

American Meat Institute
American Association of Meat Processors
National Chicken Council
National Food Processors Association
National Meat Association
National Turkey Federation
North American Meat Processors

*Additional Public Notification*

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC, on: May 8, 2000.

**Thomas J. Billy,**

*Administrator.*

[FR Doc. 00–12156 Filed 5–12–00; 8:45 am]

BILLING CODE 3410–DM–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** The Department of Commerce invites U.S. companies to participate in the following overseas trade missions that they also explain at the following website: *http://www.its.doc.gov/doctm.* For a comprehensive description of the trade mission, obtain a copy of the mission statement from the project officer listed below. The recruitment and selection of private sector participants will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997.

**The Aerospace Executive Service at the Farnborough International Air Show 2000**

United Kingdom
July 24–30, 2000

*For Further Information Contact:*
Roderick A. Hirsch at the Department of Commerce in Long Beach, CA; Telephone number: (562) 980–4566 or Fax: (562) 980–4561.

**Housing Business Development Mission to China**

Hong Kong, Shanghai, Chendu & Beijing
June 5–14, 2000

*For Further Information Contact:*
Chris Twarok at the Department of Commerce in Washington, DC; Telephone number: (202) 482–0377 or Fax: (202) 482–0382.

**Anita Blackman,**

*Director of Operations, Office of Domestic Operations.*

[FR Doc. 00–12077 Filed 5–12–00; 8:45 am]

BILLING CODE 3510–FP–P

## DEPARTMENT OF COMMERCE

### National Telecommunications and Information Administration

### Public Telecommunications Facilities Program Application Form

**ACTION:** Proposed collection; comments requested.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A).

**DATES:** Written comments must be submitted on or before July 14, 2000.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet lengelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Clifton Beck, NTIA, Room H–4888, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The purpose of the Public Telecommunications Facilities Program is to assist, through matching funds, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

- Extend delivery of public telecommunications services to as many citizens in the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;
- Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and
- Strengthen the capability of existing public radio and television stations to provide public telecommunications services to the public.

**II. Method of Collection**

The information collection instrument to be used is in written form.

- Application form distributed to all potential applicants who have notified PTFP that they wish to be placed on the mailing list for applications.

**III. Data**

*OMB Number:* 0660–0003.
*Form Number:* None.
*Type of Review:* Regular submission.
*Affected Public:* Public Telecommunications Facilities Program applicants (who may be non-profit corporations, public and private

universities and colleges, state and local government agencies).

**Burden Hours Calculations/Reporting**

| Requirement | Hours/applicant | No. of applicants | Burden hours |
|---|---|---|---|
| Application for PTFP Funds | 86 | 450 | 38,700 |
| Resubmission of applications | 9 | 179 | *1,550 |
| Total | | | 40,250 |

*In every grant cycle, PTFP requires revised information to be submitted by applicants under serious consideration. We estimate this information requires 9 hours of work by about 170 of the 450 total applicants. (9×170 = 1,530). This number has been rounded to 1,550.

*Estimated Total Annual Cost to the Public:* Cost to respondents is consistent with their normal administrative overhead. Respondents will not have to purchase equipment or material to provide information.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to the notice will be summarized and/or included in the request for OMB approval of the information collection; they also will become a matter of public record.

Dated: May 9, 2000.

**Madeleine Clayton,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–12092 Filed 5–12–00; 8:45 am]

BILLING CODE 3510–60–P

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

May 9, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift and carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 60796, published on November 8, 1999.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements*

Committee for the Implementation of Textile Agreements.

May 9, 2000.

Commissioner of Customs,
*Department of the Treasury,*
*Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 2, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 17, 2000, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Group I<br>200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [2], 369–S [3], 369–O [4], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P [5], 669–T [6], 669–O [7], 670–H [8] and 670–O [9], as a group. | 613,796,901 square meters equivalent. |
| Sublevels in Group I | |
| 218 | 23,756,391 square meters. |
| 225/317/326 | 42,167,530 square meters. |
| 300/301/607 | 1,862,669 kilograms of which not more than 1,552,224 kilograms shall be in Category 300; not more than 1,552,224 kilograms shall be in Category 301; and not more than 1,552,224 kilograms shall be in Category 607. |
| 619/620 | 15,609,313 square meters. |
| Within Group I subgroup | |
| 604 | 246,241 kilograms. |

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Group II | |
| 237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C [10], 359–H/659–H [11], 359–O [12], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S [13], 659–O [14], 831–844 and 846–859, as a group. | 725,771,576 square meters equivalent. |
| Sublevels in Group II | |
| 336 | 142,675 dozen. |
| 338/339 | 1,016,690 dozen. |
| 340 | 1,289,323 dozen. |
| 347/348 | 1,514,317 dozen of which not more than 1,288,567 dozen shall be in Categories 347–W/348–W [15]. |
| 352/652 | 3,389,959 dozen. |
| 359–H/659–H | 5,085,672 kilograms. |
| 435 | 26,902 dozen. |
| 436 | 5,306 dozen. |
| 438 | 29,948 dozen. |
| 443 | 45,250 numbers. |
| 445/446 | 143,617 dozen. |
| 638/639 | 6,476,467 dozen. |
| 640 | 946,794 dozen of which not more than 281,710 dozen shall be in Category 640–Y [16]. |
| 642 | 805,462 dozen. |
| 647/648 | 5,339,618 dozen of which not more than 5,088,804 dozen shall be in Categories 647–W/648–W [17]. |
| 659–S | 1,713,821 kilograms. |
| Within Group II Subgroup | |
| 342 | 254,420 dozen. |
| 351 | 379,899 dozen. |
| 447/448 | 22,084 dozen. |
| 636 | 399,564 dozen. |
| 651 | 476,420 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[3] Category 369–S: only HTS number 6307.10.2005.

[4] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S).

[5] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[6] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[7] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[8] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[9] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[10] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[11] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[12] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[13] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[14] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 6 59–S).

[15] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

[16] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[17] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–12109 Filed 5–12–00; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF DEFENSE

### Office of the Secretary

**[Transmittal No. 00–38]**

### 36(b)(1) Arms Sales Notification

**AGENCY:** Department of Defense, Defense Security Cooperation Agency.

**ACTION:** Notice.

**SUMMARY:** The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

**FOR FURTHER INFORMATION CONTACT:** Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives,

Transmittal 00–38, with attached transmittal and policy justification.

Dated: May 8, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

**27 April 2000**

**In reply refer to:**
**I-00/004804**

**Honorable J. Dennis Hastert**
**Speaker of the House of**
**Representatives**
**Washington, D.C. 20515-6501**

**Dear Mr. Speaker:**

**Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00-38, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to the United Arab Emirates for defense articles and services estimated to cost $20 million. Soon after this letter is delivered to your office, we plan to notify the news media.**

**We notified transmittal number 98-45 to Congress on 16 September 1998 in support of a commercial sale of 80 F-16 Block 60 aircraft for weapons, munitions, and services for an estimated value of $2 billion.**

**Sincerely,**

**A. R. Keltz**
**Deputy Director**

**Attachments**

**Same ltr to:** **House Committee on International Relations**
**Senate Committee on Appropriations**
**Senate Committee on Foreign Relations**
**House Committee on National Security**
**Senate Committee on Armed Services**
**House Committee on Appropriations**

**Transmittal No. 00-38**

**Notice of Proposed Issuance of Letter of Offer**
**Pursuant to Section 36(b)(1)**
**of the Arms Export Control Act**

(i) Prospective Purchaser: United Arab Emirates

(ii) Total Estimated Value:

| | |
|---|---|
| Major Defense Equipment* | $ 17 million |
| Other | $ 3 million |
| TOTAL | $ 20 million |

(iii) Description of Articles or Services Offered: In support of a commercial sale of 80 F-16 Block 60 aircraft, the Government of the United Arab Emirates (UAE) has requested a possible sale of 80 M61A 20mm Vulcan cannons with 80 Ammunition Handling Systems and 80 barrel sets. Also included are 20 spare barrel sets, maintenance and pilot training, software support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support.

(iv) Military Department: Air Force (SAA, Amendment 1)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: none

(vii) Date Report Delivered to Congress: 27 April 2000

* as defined in Section 47(6) of the Arms Export Control Act.

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## POLICY JUSTIFICATION

United Arab Emirates - M61A 20mm Vulcan Cannons

**In support of a commercial sale of 80 F-16 Block 60 aircraft, the Government of the United Arab Emirates (UAE) has requested a possible sale of 80 M61A 20mm Vulcan cannons with 80 Ammunition Handling Systems and 80 barrel sets. Also included are 20 spare barrel sets, maintenance and pilot training, software support, publications and technical documentation, U.S. Government and contractor technical assistance and other related elements of logistics and program support. The estimated cost is $20 million.**

**This proposed sale, in support of a commercial purchase of 80 F-16 Block 60 aircraft, will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.**

**The proposed sale of the weapons will strengthen the effectiveness and interoperability of a potential coalition partner, reducing the dependence on U.S. forces in the region while enhancing any coalition operations the U.S. undertake. The cannons will be installed on the commercially-supplied fighters and will improve its fighter fleet. UAE will have no difficulty absorbing these weapons into its armed forces.**

**The proposed sale of these weapons support will not affect the basic military balance in the region.**

**The prime contractor will be Lockheed Martin of Fort Worth, Texas. Offset arrangements were negotiated between contractor and the UAE in conjunction with the 36(b) commercial sale.**

**The number of U.S. Government and contractor representatives required in UAE to support the program will be determined in joint negotiations as the program proceeds through the development, production and equipment installation phases.**

**There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.**

[FR Doc. 00–12068 Filed 5–12–00; 8:45 am]
BILLING CODE 5001–10–M

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**DEPARTMENT OF DEFENSE**

**Office of the Secretary**

**Renewal of 20 Department of Defense Federal Advisory Committees**

**ACTION:** Notice.

**SUMMARY:** Under the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act," notice is hereby given that the following 20 advisory committees have been determined to be in the public interest and have been renewed:

A. Board of Visitors, National Defense University.

B. Strategic Advisory Group for the U.S. Strategic Command.

C. Advisory Group on Electron Devices.

D. Defense Science Board.

E. Defense Advisory Committee on Military Personnel Testing.

F. Defense Advisory Committee on Women in the Services.

G. DoD Wage Committee.

H. National Security Agency Advisory Board.

I. Armed Forces Epidemiological Board.

J. Army Science Board.

K. Army Education Advisory Committee.

L. Chief of Engineers Environmental Advisory Board.

M. Scientific Advisory Board of the Armed Forces Institute of Pathology.

N. Board of Advisors to the President, Naval War College.

O. Board of Advisors to the Superintendent, Naval Postgraduate School.

P. Chief of Naval Operations Executive Panel Advisory Committee.

Q. Naval Research Advisory Committee.

R. Air University Board of Visitors.

S. Community College of the Air Force Board of Visitors.

T. U.S. Air Force Scientific Advisory Board.

These committees provide necessary and valuable advice to the Secretary of Defense and other senior officials in the DoD in their respective areas of expertise. They make important contributions to DoD efforts in research and development, education and training, and various technical program areas. Some of them are authorized by statute.

It is a continuing DoD policy to make every effort to achieve a balanced membership on all DoD advisory committees. Each committee is evaluated in terms of the functional disciplines, levels of experience, professional diversity, public and private association, and similar characteristics required to ensure a high degree of balance is obtained.

**FOR FURTHER INFORMATION CONTACT:** Contact Jennifer Spaeth, DoD Committee Management Officer, 703–695–4281.

Dated: May 9, 2000.

**L.M. Bynum,**

*OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–12064 Filed 5–12–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Manual for Courts-Martial

**AGENCY:** Joint Service Committee on Military Justice (JSC).

**ACTION:** Notice of proposed amendments to the Manual for Courts-Martial, United States, (1998 ed.)

**SUMMARY:** The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, (1998 ed.) (MCM). The proposed changes are the 2000 draft annual review required by the MCM and DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996. The proposed changes concern the rules of procedure applicable in trials by court-martial. More specifically, the proposed changes would: (1) Add references to Military Rule of Evidence 513, *Psychotherapist-patient privilege,* in Rule for Courts-Martial (R.C.M.) 701, *Discovery;* (2) clarity the analysis accompanying R.C.M. 707, *Speedy trial,* in light of current case law; and (3) clarify R.C.M. 1003 and R.C.M. 1107, governing the authority of a court-martial to adjudge, and the convening authority to approve, the combination of both a fine and forfeitures at summary and special courts-martial.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

In accordance with paragraph III B 4 of the Internal Organization and Operating Procedures of the Joint Service Committee on Military Justice (2 March 2000), the JSC invites members of the public to suggest changes to the Manual for Courts-Martial in accordance with the herein described format.

This notice is provided in accordance with DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

**DATES:** Comments on the proposed changes must be received no later than July 31, 2000, for consideration by the JSC.

**ADDRESSES:** Comments on the proposed changes should be sent to Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000.

**FOR FURTHER INFORMATION CONTACT:** Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000, (202) 767–1539; FAX (202) 404–8755.

**SUPPLEMENTARY INFORMATION:** The proposed amendments to the Manual for Courts-Martial are as follows:

*Amend the Discussion following R.C.M. 701(a)(2)(B) to read as follows:*

"For specific rules concerning certain mental examinations of the accused or third party patients, *see* R.C.M. 701(f), R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513."

*Amend R.C.M. 701(b)(4) to read as follows:*

"*Reports of examination and tests.* If the defense requests disclosure under subsection (a)(2)(B) of this rule, upon compliance with such request by the Government, the defense, on request of trial counsel, shall (except as provided in R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513) permit the trial counsel to inspect any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, which are within the possession, custody, or control of the defense which the defense intends to introduce as evidence in the defense case-in-chief at trial or which were prepared by a witness whom the defense intends to call at trial when the results or reports relate to that witness' testimony."

*Amend the Analysis accompanying R.C.M. 701(b) by inserting the following prior to the current paragraph:*

"*2000 Amendment:* Subsection (b)(4) was amended in light of Mil. R. Evid. 513."

*Amend the analysis accompanying R.C.M. 707(A) by inserting the following paragraph after the second full paragraph:*

"*2000 Analysis Amendment: Burton* and its progeny were re-examined in 1993 when the Court of Military Appeals specifically overruled *Burton* and reinstated the earlier rule from *United States* v. *Tibbs,* 15 C.M.A. 350, 35 C.M.R. 322 (1965). *United States* v. *Kossman,* 38 M.J. 258 (C.M.A. 1993). In *Kossman,* the Court reinstated the "reasonable diligence" standard in determining whether the prosecution's progress toward trial for a confined accused was sufficient to satisfy the speedy trial requirement of Article 10, UCMJ."

*Amend R.C.M. 1003(b)(3) to read as follows:*

"Fine. Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. Special and summary courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In order to enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in additional to any period of confinement adjudged, be further confined until a fixed period considered an equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court-martial;"

*Amend the Discussion accompanying R.C.M. 1003(b)(3) by adding the following after the second paragraph:*

"Where the sentence adjudged at a special court-martial includes a fine, *see* R.C.M. 1107(d)(5) for limitations on convening authority action on the sentence."

*Amend the Analysis accompanying R.C.M. 1003(b)(3) by inserting the following before the discussion of subsection (b)(4):*

"*2000 Amendment:* The amendment clearly defines the authority of special and summary courts-martial to adjudge both fines and forfeitures. *See generally, United States* v. *Tualla,* 52 M.J. 228 (2000)."

*Add R.C.M. 1107(d)(5) as follows:*

"*Limitations on sentence of a special court-martial where a fine has been adjudged.* A convening authority may not approve in its entirety a sentence adjudged at a special court-martial where, when approved, the cumulative impact of the fine and forfeitures, whether adjudged or by operation of Article 58b, UCMJ, would exceed the jurisdictional maximum dollar amount of forfeitures that may be adjudged at that court-martial."

*Amend the Analysis accompanying R.C.M. 1107(d) by inserting the following before the discussion of subsection (e):*

"*2000 Amendment:* Subparagraph (d)(5). This subparagraph is new. The amendment addresses the impact of Article 58b, UCMJ. In special courts-martial, where the cumulative impact of a fine and forfeitures, whether adjudged or by operation of Article 58b, would otherwise exceed the total dollar amount of forfeitures that could be adjudged at the special court-martial, the fine and/or adjudged forfeitures should be disapproved or decreased accordingly. *See generally, United States* v. *Tualla,* 52 M.J. 228, 231–32 (2000)."

Members of the public are hereby invited to submit proposals for changes to the Manual for Courts-Martial for consideration by the JSC. All submissions should be received by the close of the public comment period in order to be considered in the next annual review cycle. Proposals should include reference to the specific provision you wish changed, a rationale for the proposed change, and specific and detailed proposed language to replace the current language. Incomplete submissions will not be considered. The individual or agency submitting each proposal will be notified in writing whether the JSC voted to decline the proposal as not within the JSC's cognizance, reject it, table, or accept it.

Dated: May 9, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–12063 Filed 5–12–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Manual for Courts-Martial

**AGENCY:** Joint Service Committee on Military Justice (JSC).

**ACTION:** Notice of proposed amendments to the Manual for Courts-Martial, United States, (1998 ed.)

**SUMMARY:** The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, (1998 ed.) (MCM). The proposed changes are the 2000 draft annual review required by the MCM and DoD Directive 5500.17. "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996. The proposed changes concern the rules of procedure applicable in trials by court-martial. More specifically, the proposed changes would: (1) Add references to Military Rule of Evidence 513, *Psychotherapist-patient privilege*, in Rule for Courts-Martial (R.C.M.) 701, *Discovery:* (2) clarify the analysis accompanying R.C.M. 707, *Speedy trial*, in light of current case law; and (3) clarify R.C.M. 1003 and R.C.M. 1107, governing the authority of a court-martial to adjudge, and the convening authority to approve, the combination of both a fine and forfeitures at summary and special courts-martial.

The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

In accordance with paragraph III B 4 of the Internal Organization and Operating Procedures of the Joint Service Committee on Military Justice (2 March 2000), the JSC invites members of the public to suggest changes to the Manual for Courts-Martial in accordance with the herein described format.

This notice is provided in accordance with DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996. This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

**DATES:** Comments on the proposed changes must be received no later than July 31, 2000 for consideration by the JSC.

**ADDRESSES:** Comments on the proposed changes should be sent to Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000.

**FOR FURTHER INFORMATION CONTACT:** Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000, (202) 767–1539; FAX (202) 404–8755.

**SUPPLEMENTARY INFORMATION:** The proposed amendments to the Manual for Courts-Martial are as follows:

*Amend the Discussion following R.C.M. 701(a)(2)(B) to read as follows:*

"For specific rules concerning certain mental examinations of the accused or third party patients, *see* R.C.M. 701(f), R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513."

*Amend R.C.M. 701(b)(4) to read as follows:*

"*Reports of examination and tests.* If the defense requests disclosure under subsection (a)(2)(B) of this rule, upon compliance with such request by he Government, the defense, on request of trail counsel, shall (except as provided in R.C.M. 706, Mil. R. Evid. 302 and Mil. R. Evid. 513) permit the trial counsel to inspect any results or reports of physical or mental examinations and of scientific tests or experiments made in connection with the particular case, or copies thereof, which are within the possession, custody, or control of the defense which the defense intends to introduce as evidence in the defense case-in-chief at trial or which were prepared by a witness whom the defense intends to call at trial when the results or reports relate to that witness' testimony."

*Amend the Analysis accompanying R.C.M. 701(b) by inserting the following prior to the current paragraph:*

"*2000 Amendment:* Subsection (b)(4)was amended in light of Mil. R. Evid. 513."

*Amend the analysis accompanying R.CM. 707(a) by inserting the following paragraph after the second full paragraph:*

"*2000 Analysis Amendment: Burton* and its progeny were re-examined in 1993 when the Court of Military Appeals specifically overruled *Burton* and reinstated the earlier rule from *United States v. Tibbs*, 15 C.M.A. 350, 35 C.M.R. 322 (1965). *United States v. Kossman*, 38 M.J. 258 (C.M.A. 1993). In *Kossman*, the Court reinstated the 'reasonable diligence' standard in determining whether the prosecution's progress toward trial for a confined accused was sufficient to satisfy the speedy trial requirement of Article 10, UCMJ."

*Amend R.C.M. 1003(b)(3) to read as follows:*

"Fine. Any court-martial may adjudge a fine in lieu of or in addition to forfeitures. Special and summary courts-martial may not adjudge any fine or combination of fine and forfeitures in excess of the total amount of forfeitures that may be adjudged in that case. In order to enforce collection, a fine may be accompanied by a provision in the sentence that, in the event the fine is not paid, the person fined shall, in addition to any period of confinement adjudged, be further confined until a fixed period considered and equivalent punishment to the fine has expired. The total period of confinement so adjudged shall not exceed the jurisdictional limitations of the court-martial;"

*Amend the Discussion accompanying R.C.M. 1003(b)(3) by adding the following after the second paragraph:*

"Where the sentence adjudged at a special court-martial includes a fine, *see* R.C.M. 1107(d)(5) for limitations on convening authority action on the sentence."

*Amend the Analysis accompanying R.C.M. 1003(b)(3) by inserting the following before the discussion of subsection (b)(4):*

"*2000 Amendment:* The amendment clearly defines the authority of special and summary courts-martial to adjudge both fines and forfeitures. *See generally, United States v. Tualla*, 52 M.J. 228 (2000)."

*Add R.C.M. 1107(d)(5) as follows:*

"*Limitations on sentence of a special court-martial where a fine has been adjudged.* A convening authority may not approve in its entirety a sentence adjudged at a special court-martial where, when approved, the cumulative impact of the fine and forfeitures, whether adjudged or by operation of Article 58b, UCMJ, would exceed the jurisdictional maximum dollar amount of forfeitures that may be adjudged at that court-martial."

*Amend the Analysis accompanying R.C.M. 1107(d) by inserting the following before the discussion of subsection (e):*

"*2000 Amendment:* Subparagraph (d)(5). This subparagraph is new. The amendment addresses the impact of Article 58b, UCMJ. In special courts-martial, where the cumulative impact of a fine and forfeitures, whether adjudged or by operation of Article 58b, would otherwise exceed the total dollar amount of forfeitures that could be adjudged at the special court-martial, the fine and/or adjudged forfeitures should be disapproved or decreased accordingly. *See generally,*

*United States v. Tualla*, 52 M.J. 228, 231–32 (2000)."

Members of the public are hereby invited to submit proposals for changes to the Manual for Courts-Martial for consideration by the JSC. All submissions should be received by the close of the public comment period in order to be considered in the next annual review cycle. Proposals should include reference to the specific provision you wish changed, a rationale for the proposed change, and specific and detailed proposed language to replace the current language. Incomplete submissions will not be considered. The individual or agency submitting each proposal will be notified in writing whether the JSC voted to decline the proposal as not within the JSC's cognizance, reject it, table it, or accept it.

Dated: May 9, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–12069 Filed 5–12–00; 8:45 am]

BILLING CODE 5001–10–M

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0076]**

### Submission for OMB Review; Comment Request Entitled Novation/ Change of Name Requirements

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for an extension to an existing OMB clearance.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Novation/Change of Name Requirements. A request for public comments concerning this burden estimate was published at 65 FR 12219, March 8, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Comments may be submitted on or before June 14, 2000.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Linda Klein, Federal Acquisition Policy Division, GSA (202) 501–3775.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts or (2) a name change, it must submit certain documentation to the Government.

**B. Annual Reporting Burden**

*Respondents:* 1,000.

*Responses Per Respondent:* 1.

*Total Annual Responses:* 1,000.

*Preparation Hours Per Response:* .458.

*Total Response Burden Hours:* 458.

**Obtaining Copies of Proposals**

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

Dated: May 9, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 00–12057 Filed 5–12–00; 8:45 am]

BILLING CODE 6820–34–P

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## DEPARTMENT OF DEFENSE

## GENERAL SERVICES ADMINISTRATION

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[OMB Control No. 9000–0147]**

### Submission for OMB Review; Comment Request Entitled Pollution Prevention and Right-To-Know Information

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0147).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Pollution Prevention and Right-to-Know Information. A request for public comments concerning this burden estimate was published at 65 FR 12219, March 8, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Comments may be submitted on or before June 14, 2000.

**ADDRESSES:** Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Paul Linfield, Federal Acquisition Policy Division, GSA, 501–1757.

**SUPPLEMENTARY INFORMATION:**

**A. Purpose**

Executive Order 12856 of August 3, 1993, "Federal Compliance With Right-to-Know Laws and Pollution Prevention Requirements," requires that Federal facilities comply with the planning and reporting requirements of the Pollution Prevention Act of 1990 and the Emergency Planning Community Right-to-Know Act of 1986. The Executive Order requires that contracts to be performed on a Federal facility provide for the contractor to supply to the Federal agency all information the Federal agency deems necessary to comply with these reporting requirements.

**B. Annual Reporting Burden**

*Number of Respondents:* 2,550.
*Responses Per Respondent:* 7.6.
*Total Responses:* 19,380.
*Average Burden Per Response:* 45 minutes.
*Total Burden Hours:* 14,535.

**Obtaining Copies of Proposals**

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No.

9000–0147, Pollution Prevention and Right-to-Know Information in all correspondence.

Dated: May 9, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 00–12058 Filed 5–12–00; 8:45 am]

**BILLING CODE 6820–34–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Notice of closed meeting

**AGENCY:** Defense Intelligence Agency, Joint Military Intelligence College.

**ACTION:** Notice of Closed Meeting.

**SUMMARY:** Pursuant to the provisions of subsection (d) of section 10 of Public Law 92–463, as amended by section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Joint Military Intelligence College Board of Visitors has been scheduled as follows:

**DATES:** Monday, 12 June 2000, 0800 to 1700; and Tuesday, 13 June 2000, 0800 to 1200.

**ADDRESSES:** Joint Military Intelligence College, Washington, DC 20340–5100

**FOR FURTHER INFORMATION CONTACT:** Mr. A. Denis Clift, President, DIA Joint Military Intelligence College, Washington, DC 20340–5100 (202/231–3344).

**SUPPLEMENTARY INFORMATION:** The entire meeting is devoted to the discussion of classified information as defined in section 552b(c)(1), title 5 of U.S. Code and therefore will be closed. The Board will discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Joint Military Intelligence College.

Dated: May 8, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 00–12066 Filed 5–12–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting to Review the Mitre Report

**AGENCY:** Special Oversight Board for Department of Defense Investigations of Gulf War Chemical and Biological Incidents, Department of Defense.

**ACTION:** Notice.

**SUMMARY:** The Board will conduct a two-day closed meeting to review the Mitre Report, a classified report dealing with how and when the intelligence community determined the type, number and location of Iraqi weapons of mass destruction during operations Desert Shield and Desert Storm. OSAGWI will also present a short classified briefing on the revised Khamisiyah plume.

**DATES:** May 22–23, 2000.

**ADDRESSES:** 1401 Wilson Boulevard, suite 401, Arlington, VA 22209 (Day 1); Old Executive Office Building, 17th Street and Pennsylvania Avenue, NW., Washington, DC 20504 (Day 2).

**FOR FURTHER INFORMATION CONTACT:** Contact Mr. David Edman, Special Oversight Board, 1401 Wilson Blvd, Suite 401, Arlington, VA 22209, phone (703) 696–9468, fax (703) 696–4062, or via Email at *Gulfsyn@osd.pentagon.mil.* Copies of the draft meeting agenda can be obtained by contacting Ms. Sandra Simpson at (703) 696–9464 or at the above fax number of above email.

**SUPPLEMENTARY INFORMATION:** Classified information will be discussed and reviewed throughout the two-day meeting. Therefore, the meeting is not open to the public. No government personnel other than the two briefing teams will be permitted to attend the meeting.

Dated: May 1, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, DoD.*

[FR Doc. 00–12065 Filed 5–12–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on June 6, 2000, June 13, 2000, June 20, 2000, and June 27, 2000, at 10 a.m. in Room A105, the Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings maybe obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: May 8, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–12067 Filed 5–12–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to alter systems of records.

**SUMMARY:** The Office of the Secretary of Defense proposes to alter systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

**DATES:** The changes will be effective on June 14, 2000 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to OSD Privacy Act Coordinator, Records Management Division, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301-1155.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Bosworth at (703) 588-0159.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 24, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 9, 2000.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**DOCHA 01**

**SYSTEM NAME:**

Health Benefits Authorization Files *(March 24, 1994, 59 FR 13934).*

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'DTMA 01'.

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with 'Original correspondence to and from individuals; medical/dental statements; medical/dental histories; Health Care Advise Nurse records; Congressional inquiries; medical/dental treatment records; authorization and pre-authorization requests for care; case status sheets; memoranda for the record; follow-up reports justifying extended care; correspondence with contractors; and work-up sheets maintained by case workers.'

* * * * *

**PURPOSE(S):**

Add a new paragraph 'To determine eligibility of an individual, authorize payment, control and review health care management plans, health care demonstration programs, control accomplishment of reviews, and coordinate subject matter clearance for internal and external audits and reviews of the program.'

**ROUTINE USE(S) OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

Delete paragraph two, and add a new paragraph 'Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.'

* * * * *

**DTMA 01**

**SYSTEM NAME:**

Health Benefits Authorization Files.

**SYSTEM LOCATION:**

TRICARE Management Activity, Department of Defense, 16401 East CentreTech Parkway, Aurora, CO 80011–9043, and Managed Care Contractors under contract to TRICARE. A listing of TRICARE Managed Care Contractors is available from the system manager.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All individuals who seek authorization or pre-authorization for medical and dental health care under TRICARE/CHAMPUS and CHAMPVA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Original correspondence to and from individuals; medical/dental statements; medical/dental histories; Health Care Advise Nurse records; Congressional inquiries; medical/dental treatment records; authorization and pre-authorization requests for care; case status sheets; memoranda for the record; follow-up reports justifying extended care; correspondence with contractors; and work-up sheets maintained by case workers.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

41 CFR part 101-11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397 (SSN).

**PURPOSE(S):**

To maintain and control records pertaining to requests for authorization or pre-authorization of health and dental care under TRICARE/CHAMPUS.

To determine eligibility of an individual, authorize payment, control and review health care management plans, health care demonstration programs, control accomplishment of reviews, and coordinate subject matter clearance for internal and external audits and reviews of the program.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

**RETRIEVABILITY:**

Information is retrieved by sponsor's Social Security Number and sponsor's or beneficiary's name.

**SAFEGUARDS:**

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Decentralized automated segments within contractor's operations are accessible on-line only to authorized persons possessing user identification codes. Security systems and/or security guards protect buildings where records are maintained.

**RETENTION AND DISPOSAL:**

Automated indexes are maintained for six years. Hard copy records are closed out at the end of the calendar year in which finalized and held six additional years. Where hard copy records have been converted to electronic, microfilm, imaging, or optical formats, the hard copy is destroyed and the electronic, microfilm, imaging, or optical format is kept by the contractor for six years after claim is processed to completion.

**SYSTEM MANAGER(S) AND ADDRESS:**

TRICARE Management Activity, Department of Defense, Administration and Evaluation Directorate, 16401 East CentreTech Parkway, Aurora, CO 80011-9043.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 CentreTech Parkway, Aurora, CO 80011-9043.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 CentreTech Parkway, Aurora, CO 80011-9043.

Written requests for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Contractors, Health Benefits Advisors, all branches of the Uniformed Services, congressional offices, providers of care, consultants and individuals.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**DOCHA 02**

**SYSTEM NAME:**

Medical Care Inquiry Files *(March 24, 1994, 59 FR 13936).*

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'DTMA 02'.

**SYSTEM NAME:**

Delete entry and replace with 'Medical/Dental Care and Claims Inquiry Files'.

* * * * *

**PURPOSE(S):**

Delete entry and replace with 'To maintain and control records pertaining to requests for information concerning an individual's TRICARE/CHAMPUS eligibility status, the benefits provided under programs of TRICARE/CHAMPUS and CHAMPVA and the processing of individual TRICARE/CHAMPUS and CHAMPVA claims.'

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete paragraph two, and add a new paragraph 'Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.'

* * * * *

**RECORD SOURCE CATEGORIES:**

Delete entry and replace with 'Contractors, congressional offices, Health Benefits Advisors, all branches of the Uniformed Service, congressional offices, providers of care, consultants and individuals.'

* * * * *

**DTMA 02**

**SYSTEM NAME:**

Medical/Dental Care and Claims Inquiry Files.

**SYSTEM LOCATION:**

TRICARE Management Activity, Department of Defense, 16401 East CentreTech Parkway, Aurora, CO 80011-9043, and Managed Care Contractors under contract to TRICARE. A listing of TRICARE Managed Care Contractors is available from the system manager.

**CATEGORIES OF INDIVIDUAL COVERED BY THE SYSTEM:**

All individuals who seek information concerning health care (medical and dental) under TRICARE/CHAMPUS and CHAMPVA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Documents reflecting inquiries received from private individuals for information on TRICARE/CHAMPUS and CHAMPVA and replies thereto; congressional inquiries on behalf of constituents and replies thereto; and files notifying personnel of eligibility or termination of benefits.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

41 CFR 101-11.000; chapter 55, 10 U.S.C.; section 613, chapter 17, 38 U.S.C.; and E.O. 9397 (SSN).

**PURPOSE(S):**

To maintain and control records pertaining to requests for information concerning an individual's TRICARE/CHAMPUS eligibility status, the benefits provided under programs of TRICARE/CHAMPUS and CHAMPVA and the processing of individual TRICARE/CHAMPUS and CHAMPVA claims.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their

statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

**RETRIEVABILITY:**

Information is retrieved by case number, sponsor name and/or Social Security Number, and inquirer name.

**SAFEGUARDS:**

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Automated segments are accessible only by authorized persons possessing user identification codes. Security systems and/or security guards protect buildings where records are maintained.

**RETENTION AND DISPOSAL:**

Paper records are retained in active file until end of calendar year in which closed, held two additional years, and then destroyed. Where hard copy records have been converted to electronic, microfilm, imaging or optical formats, the hard copy record is destroyed and the electronic, microfilm, imaging, or optical format is kept by the contractor for six years after claim is processed to completion.

**SYSTEM MANAGER(S) AND ADDRESS:**

TRICARE Management Activity, Department of Defense, Administration and Evaluation Directorate, 16401 East CentreTech Parkway, Aurora, CO 80011-9043.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 CentreTech Parkway, Aurora, CO 80011-9043.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 CentreTech Parkway, Aurora, CO 80011-9043.

Written request for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Contractors, congressional offices, Health Benefits Advisors, all branches of the Uniformed Service, congressional offices, providers of care, consultants and individuals.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**DOCHA 04**

**SYSTEM NAME:**

Legal Opinion Files *(February 22, 1993, 58 FR 10227).*

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'DTMA 03'.

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**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Delete entry and replace with 'Individuals who have contacted or corresponded with TRICARE Management Activity regarding any matter requiring legal clarification or resolution.'

* * * * *

**PURPOSE(S):**

Delete entry and replace with 'TRICARE Management Activity uses these records to address and resolve legal issues and for research, precedent, historical, and record purposes.'

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete entry and replace with 'In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys

in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.'

* * * * *

**DTMA 03**

**SYSTEM NAME:**

Legal Opinion Files.

**SYSTEM LOCATION:**

TRICARE Management Activity, Department of Defense, Office of General Counsel, 16401 East CentreTech Parkway, Aurora, CO 80011-9043.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who have contacted or corresponded with TRICARE Management Activity regarding any matter requiring legal clarification or resolution.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Inquiries received from individuals, attorneys, fiscal administrators, hospital contractors, other government agencies, Health Care Advise Nurse records, and congressional offices. Files contain legal opinions, correspondence, memoranda for the record, and similar documents. Medical/dental treatment records, authorizations and pre-authorizations, care and claims inquiry documents, and medical/dental history files may be included in these records, as appropriated to document TRICARE legal determinations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

41 CFR 101-11.000; Chapter 55, 10 U.S.C. 613, Chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397 (SSN).

**PURPOSE(S):**

TRICARE Management Activity uses these records to address and resolve legal issues and for research, precedent, historical, and record purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

**RETRIEVABILITY:**

Information is retrieved by subject matter with cross-reference by individual name and/or Social Security Number.

**SAFEGUARDS:**

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Security systems and/or security guards protect buildings where records are maintained.

**RETENTION AND DISPOSAL:**

Records are permanent. Paper records are retired to the Denver Regional Records Center when ten years old or when no longer needed for current business. Records are transferred to the NARA when thirty years old. Electronic and other non-paper media records are maintained until no longer needed for current business and are then deleted or destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

TRICARE Management Activity, Department of Defense, Office of General Counsel, 16401 East CentreTech Parkway, Aurora, CO 80011-9043.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 CentreTech Parkway, Aurora, CO 80011-9043.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 CentreTech Parkway, Aurora, CO 80011-9043.

Written requests for information should include the full name of the beneficiary, the full name of the sponsor, and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should be able to provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individuals (TRICARE/CHAMPUS and CHAMPVA beneficiaries, sponsors; or others), attorneys, fiscal administrators, hospital contractors, managed care support contractors, providers of care, medical records, other government agencies (Federal, state, local and foreign), and Congressional offices.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**DOCHA 07**

**SYSTEM NAME:**

Medical Claim History Files *(March 24, 1994, 59 FR 13937).*

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'DTMA 04'.

**SYSTEM NAME:**

Add '/Dental' after 'Medical.

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Delete entry and replace with 'File contains claims, billings for services, applications or approval forms, enrollment files, recoupment files, third-party liability files, fraud and abuse files, case management files, resource sharing files, utilization management/quality assurance files, payment files, medical/dental records, family history files, records of grievances with a medical/dental provider, appeals, hearings, or any other correspondence, memoranda, or reports which are acquired or utilized in the development and processing of TRICARE/CHAMPUS or CHAMPVA claims. Records are also maintained on health care demonstration projects, including enrollment and authorization agreements, correspondence, memoranda, forms and reports, which are acquired or utilized during the projects.'

* * * * *

**PURPOSE(S):**

Delete entry and replace with 'TRICARE Management Activity and its contractors, DoD staff (including Military Treatment Facilities, clinics and Lead Agent Staff) use the information to control and process health care benefits available under TRICARE/CHAMPUS and CHAMPVA including the processing of medical/dental claims, the control and approval of medical/dental treatments, issuance of deductible certificates, and necessary interface with providers of health care. The system also supports audits of contractor-processed claims to determine payment and occurrence accuracy of the contractor's adjudication process.'

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

Delete entry and replace with 'In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.'

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**DTMA 04**

**SYSTEM NAME:**

Medical/Dental Claim History Files.

**SYSTEM LOCATION:**

TRICARE Management Activity, Department of Defense, 16401 East CentreTech Parkway, Aurora, CO 80011-9043, and Managed Care Contractors under contract to TRICARE. A listing of TRICARE Managed Care Contractors is available from the system manager.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Eligible beneficiaries and all individuals who seek health care (medical and dental) under TRICARE/CHAMPUS and CHAMPVA.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File contains claims, billings for services, applications or approval forms, enrollment files, recoupment files, third-party liability files, fraud and abuse files, case management files, resource sharing files, utilization management/quality assurance files, payment files, medical/dental records, family history files, records of grievances with a medical/dental provider, appeals, hearings, or any other correspondence, memoranda, or reports which are acquired or utilized in the development and processing of TRICARE/CHAMPUS or CHAMPVA claims. Records are also maintained on health care demonstration projects, including enrollment and authorization agreements, correspondence, memoranda, forms and reports, which are acquired or utilized during the projects.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

41 CFR 101-11.000; chapter 55, 10 U.S.C. 613, chapter 17, 38 U.S.C.; 32 CFR part 199; and E.O. 9397 (SSN).

**PURPOSE(S):**

TRICARE Management Activity and its contractors, DoD staff (including Military Treatment Facilities, clinics and Lead Agent Staff) use the information to control and process health care benefits available under TRICARE/CHAMPUS and CHAMPVA including the processing of medical/dental claims, the control and approval of medical/dental treatments, issuance of deductible certificates, and necessary interface with providers of health care. The system also supports audits of contractor-processed claims to determine payment and occurrence accuracy of the contractor's adjudication process.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services and/or the Department

of Veterans Affairs consistent with their statutory administrative responsibilities under TRICARE/CHAMPUS and CHAMPVA pursuant to chapter 55, 10 U.S.C. and section 613, chapter 17, 38 U.S.C.

Referral to Federal, state, local, or foreign governmental agencies, and to private business entities, including individual providers of care (participating and non-participating), on matters relating to eligibility, claims pricing and payment, fraud, program abuse, utilization review, quality assurance, peer review, program integrity, third-party liability, coordination of benefits, and civil or criminal litigation related to the operation of TRICARE/CHAMPUS.

Disclosure to the Department of Justice and the United States Attorneys in situations where the United States is an interested party.

Disclosure to third-party contacts in situations where the party to be contacted has, or is expected to have, information necessary to establish the validity of evidence or to verify the accuracy of information presented by the individual concerning his or her entitlement, the amount of benefit payments, any review of suspected abuse or fraud, or any concern for program integrity or quality appraisal.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to consumer reporting agencies as defined in the Fair Credit Reporting act of 1966 (15 U.S.C. 1681a(f)) or the Federal Claims Collections Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of the disclosure is to aid in the collection of outstanding debts owed to the Federal Government; typically, to provide an incentive for debtors to repay delinquent Federal Government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on paper, electronic, microfilm, imaging, or optical formats.

**RETRIEVABILITY:**

Information is retrieved by sponsor's name; sponsor's Social Security Number; beneficiary's name; beneficiary's Social Security Number; provider's name; provider's number (Tax Identification Number or Social Security Number); internal control number; classification of medical diagnosis; procedure code; geographical location of care provided; and selected utilization limits.

**SAFEGUARDS:**

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared and trained. Decentralized automated segments within contractor's operations are accessible on-line only to authorized persons possessing user identification codes. The automated portion of the Primary System is accessible only through TRICARE Management Activity on-line data systems. Security systems and/or security guards protect buildings where records are maintained.

**RETENTION AND DISPOSAL:**

Paper records are closed out at the end of the calendar year in which finalized and held six additional years and then destroyed. Where hard copy records (except Claims History Files) have been converted to electronic, microfilm, imaging, or optical formats, the hard copy record is destroyed and the electronic, microfilm, imaging, or optical format is kept by the contractor for six years after claim is processed to completion and then destroyed. Claims History Files maintained in electronic format are kept for ten years and are then destroyed or deleted.

**SYSTEM MANAGER(S) AND ADDRESS:**

TRICARE Management Activity, Department of Defense, Administration and Evaluation Directorate, 16401 East CentreTech Parkway, Aurora, CO 80011-9043.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 CentreTech Parkway, Aurora, CO 80011-9043.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 CentreTech Parkway, Aurora, CO 80011-9043.

Written request for information should include the full name of the beneficiary, the full name of the sponsor and sponsor's Social Security Number, current address and telephone number.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

If it is determined that the release of medical information to the requester could have an adverse effect upon the individual's physical or mental health, the requester should be prepared to provide the name and address of a physician who would be willing to receive the medical record, and at the physician's discretion, inform the individual covered by the system of the contents of that record. In the event the physician does not agree to convey the information contained within the record to the individual, TRICARE Management Activity will take positive measures to ensure the individual is provided the requested information.'

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Contractors, Health Benefit Advisors; other Components of the Department of Defense; all branches of the Uniformed Services; Congressional offices; providers of care; consultants; and individuals.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

**DOCHA 09**

**SYSTEM NAME:**

Grievance Records *(August 9, 1993, 58 FR 42303).*

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'DTMA 05'.

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**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete entry and replace with 'In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

To disclose information to officials of the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties.

To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to the performance of their exclusive representation duties concerning personnel policies, practices, and matters affecting working conditions.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.'

* * * * *

**DTMA 05**

**SYSTEM NAME:**

Grievance Records.

**SYSTEM LOCATION:**

TRICARE Management Activity, Department of Defense, Personnel Office, 16401 CentreTech Parkway, Aurora, CO 80011-9043.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Current or former Federal employees of TRICARE Management Activity or its predecessor, Office of Civilian Health and Medical Program of the Uniformed Services who have submitted grievances in accordance with 5 U.S.C. 2302 and 5 U.S.C. 7121 or a negotiated procedure.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Documents related to grievances including statements of witnesses, reports of interviews and hearings, examiner's findings and recommendations, copy of the original and final decision, and related correspondence and exhibits. This system includes files and records of internal grievance and arbitration systems that TRICARE Management Activity may establish through negotiations with recognized labor organizations.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 2302; 5 U.S.C. 7121; and E.O. 11491.

**PURPOSE(S):**

To control and process grievances of Federal employees of TRICARE Management Activity or its predecessor, Office of Civilian Health and Medical Program of the Uniformed Services.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To disclose information to any source from which additional information is requested in the course of processing a grievance, to the extent necessary to identify the individual, inform the source of the purpose(s) of the request, and identify the type of information requested.

To disclose information to another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

To disclose information to officials of the Federal Labor Relations Authority and its General Counsel; or the Equal Employment Opportunity Commission, when requested in performance of their authorized duties.

To disclose in response to a request for discovery or for appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

To provide information to officials of labor organizations recognized under the Civil Service Reform Act when relevant and necessary to the performance of their exclusive representation duties concerning personnel policies, practices, and matters affecting working conditions.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records maintained in file folders.

**RETRIEVABILITY:**

Information is retrieved by individual name.

**SAFEGUARDS:**

Security systems and/or security guards protect buildings where records are maintained.

**RETENTION AND DISPOSAL:**

Records are closed at the end of the calendar year in which they are closed, held an additional four years, and then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

TRICARE Management Activity, Department of Defense, Personnel Office, 16401 East CentreTech Parkway, Aurora, CO 80011-9043.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 CentreTech Parkway, Aurora, CO 80011-9043.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the TRICARE Management Activity, Department of Defense, ATTN: Privacy Act Officer, 16401 CentreTech Parkway, Aurora, CO 80011-9043.

Written requests for information should include the full name of the individual.

For personal visits to examine records, the individual should provide some acceptable identification such as a driver's license or other form of picture identification.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Individuals, witnesses, agency officials, and organizations.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–12072 Filed 5–12–00; 8:45 am]

BILLING CODE 5001–10–F

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on June 14, 2000, unless comments are received which result in a contrary determination.

**ADDRESSES:** Privacy Act System Notice Manager, Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop 5603, Ft. Belvoir, VA 22060-5603.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 24, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 9, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**A0195-2b USACIDC**

**SYSTEM NAME:**

Criminal Investigation and Crime Laboratory Files *(July 7, 1997, 62 FR 36267).*

**CHANGES:**

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**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Add to entry 'Army Regulation 195-2, Criminal Investigation Activities.'

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**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Add a new paragraph 'To the Department of Veterans Affairs to verify veterans claims. Criminal investigative files may be used to adjudicate veteran claims for disability benefits, post traumatic stress disorder, and other veteran entitlements.'

**STORAGE:**

Delete from entry 'card files and indices;'

**RETENTION AND DISPOSAL:**

Delete from entry 'Destruction is by shredding.'

* * * * *

**A0195-2b USACIDC**

**SYSTEM NAME:**

Criminal Investigation and Crime Laboratory Files *(July 7, 1997, 62 FR 36267).*

**SYSTEM LOCATION:**

Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060-5506.

Segments exist at subordinate U.S. Army Criminal Investigation Command elements. Addresses may be obtained from the Commander, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060-5506.

An automated index of cases is maintained at the U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060-5585 and at the Defense Security Service, Army Liaison Office, P.O. Box 46060, Baltimore, MD 21240-6060.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Any individual, civilian or military, involved in or suspected of being involved in or reporting possible criminal activity affecting the interests, property, and/or personnel of the U.S. Army.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, Social Security Number, rank, date and place of birth, chronology of events; reports of investigation containing statements of witnesses, subject and agents; laboratory reports, documentary evidence, physical evidence, summary and administrative data pertaining to preparation and distribution of the report; basis for allegations; Serious or Sensitive Incident Reports, modus operandi and other investigative information from Federal, State, and local investigative agencies and departments; similar relevant documents. Indices contain codes for the type of crime, location of investigation, year and date of offense, names and personal identifiers of persons who have been subjects of electronic surveillance, suspects, subjects and victims of crimes, report number which allows access to records noted above; agencies, firms, Army and Defense Department organizations which were the subjects or victims of criminal investigations; and disposition and suspense of offenders listed in criminal investigative case files, witness identification data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; Army Regulation 195-2, Criminal Investigation Activities; and E.O. 9397 (SSN).

**PURPOSE(S):**

To conduct criminal investigations and crime prevention activities; to accomplish management studies involving the analysis, compilation of statistics, quality control, etc., to ensure that completed investigations are legally sufficient and result in overall improvement in techniques, training and professionalism.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information concerning criminal or possible criminal activity is disclosed to Federal, State, local and/or foreign law enforcement agencies in accomplishing and enforcing criminal laws; analyzing modus operandi, detecting organized criminal activity, or criminal justice employment. Information may also be disclosed to foreign countries under the provisions of the Status of Forces Agreements, or Treaties.

To the Department of Veterans Affairs to verify veterans claims. Criminal investigative files may be used to adjudicate veteran claims for disability benefits, post traumatic stress disorder, and other veteran entitlements.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders; automated indices; computer magnetic tapes, disks, and printouts.

**RETRIEVABILITY:**

By name or other identifier of individual.

**SAFEGUARDS:**

Access is limited to designated authorized individuals having official need for the information in the performance of their duties. Buildings housing records are protected by security guards.

**RETENTION AND DISPOSAL:**

At Headquarters, U.S. Army Criminal Investigation Command (USACIDC), criminal investigative case files are retained for 40 years after final action, except that at USACIDC subordinate elements, such files are retained from 1 to 5 years depending on the level of such unit and the data involved. Laboratory reports at the USACIDC laboratory are destroyed after 5 years.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, Headquarters, U.S. Army Criminal Investigation Command, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060-5506.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR-FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060-5585.

For verification purposes, individual should provide the full name, date and place of birth, current address, telephone numbers, and signature.

**RECORD ACCESS PROCEDURES:**

Individual seeking access to information about themselves contained in this system should address written inquiries to the Director, U.S. Army Crime Records Center, U.S. Army Criminal Investigation Command, ATTN: CICR-FP, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060-5585.

For verification purposes, individual should provide the full name, date and place of birth, current address, telephone numbers, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Suspects, witnesses, victims, USACIDC special agents and other personnel, informants; various Department of Defense, federal, state, and local investigative agencies; departments or agencies of foreign governments; and any other individual or organization which may supply pertinent information.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 00–12071 Filed 5–12–00; 8:45 am]

BILLING CODE 5001–10–F

## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### Privacy Act of 1974; Defense Logistics Agency

**AGENCY:** Defense Logistics Agency.

**ACTION:** Notice to delete a record system.

**SUMMARY:** The Defense Logistics Agency is proposing to delete a system of records from its inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on June 14, 2000 unless comments are received which result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Salus at (703) 767-6183.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 9, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**S322.53 DMDC**

**SYSTEM NAME:**

Defense Debt Collection Data Base *(May 11, 1999, 64 FR 25310).*

Reason: These records have been transferred to the Defense Finance and Accounting Service and are now being maintained under Privacy Act system of records T7332, Defense Debt Management System.

[FR Doc. 00–12070 Filed 5–12–00; 8:45 am]

BILLING CODE 5001–10–F

## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### Membership of the Defense Logistics Agency (DLA) Senior Executive Service (SES) Performance Review Board (PRB)

**AGENCY:** Defense Logistics Agency, Department of Defense.

**ACTION:** Notice of membership—2000 DLA PRB.

**SUMMARY:** This notice announces the appointment of members to the Defense Logistics Agency Senior Executive Service (SES) Performance Review Board (PRB). The publication of PRB composition is required by 5 U.S.C. 4314(c)(4). The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations to the Director, Defense Logistics Agency, with respect to pay level adjustments and performance awards, and other actions related to management of the SES cadre.

**EFFECTIVE DATES:** July 1, 2000.

**ADDRESSES:** Defense Logistics Agency, 8725 John J. Kingman Road. STE 2533, Fort Belvoir, Virginia, 22060–6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Donna Coward, Workforce Effectiveness and Development Group, Human Resources, Defense Logistics Agency, Department of Defense, (703) 767–6427.

**SUPPLEMENTARY INFORMATION:** In accordance with 5 U.S.C. 4314(c)(4), the following are the names and titles of DLA career executives appointed to serve as members of the SES PRB. Members will serve a 2-year term, effective July 1, 2000.

PRB Chair: Mr. Frank Lotts, Deputy Director, Logistics Operations.

Members: Ms. Phyllis Campbell, Deputy Commander, Defense Distribution Center, Mr. Michael Miller, Executive Director, Program/Budget Office, Ms. Claudia S. Knott, Executive Director, Electronic Business Office.

**Gary S. Thurber,**

*Executive Director, Defense Logistics Agency.*

[FR Doc. 00–12105 Filed 5–12–00; 8:45 am]

BILLING CODE 3620–01–M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Notice of Intent To Grant Exclusive Patent License; Richard Scheps

**SUMMARY:** The Department of the Navy hereby gives notice of a prospective license to Richard Scheps to the Government-owned invention described as "INTERNALLY FOLDED SCALABLE LASER".

**DATES:** Anyone wishing to object to the grant of this license must file written objections along with supporting evidence, if any, not later than July 14, 2000.

**ADDRESSES:** Written objections are to be filed with the Office of Patent Counsel, Space and Naval Warfare Systems Center, D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765. Kindly reference N.C. 73421 in all correspondence directed to this matter.

**FOR FURTHER INFORMATION CONTACT:** Mr. Harvey Fendelman, Patent Counsel, Space and Naval Warfare Systems Center, Code D0012, 53510 Silvergate Ave., Rm 103, San Diego, CA 92152–5765, telephone (619) 553–3001.

**Authority:** 35 U.S.C. 207, 37 CFR part 404.

Dated: April 26, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–12075 Filed 5–12–00; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF ENERGY

**[FE Docket Nos. 00–18–NG, 00–12–NG, 99–110–LNG, 00–20–NG, 00–17–NG, 00–22–NG, 99–88–NG, 00–21–NG, 00–24–NG, 00–23–NG, 00–25–NG]**

### Office of Fossil Energy; Ductos de Nogales, USA, LLC., Et Al.; Orders Granting or Amending Authority To Import and Export Natural Gas, Including Liquefied Natural Gas

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of Orders.

**SUMMARY:** The Office of Fossil Energy (FE) of the Department of Energy gives notice that during April 2000, it issued Orders granting or amending authority to import and export natural gas, including liquefied natural gas. These Orders are summarized in the attached appendix and may be found on the FE web site at http://www.fe.doe.gov, or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on May 9, 2000.

**John W. Glynn,**

*Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum Import & Export Activities, Office of Fossil Energy.*

### Appendix—Orders Granting and Amending Import/Export Authorizations

| Order No. | Date issued | Importer/Exporter FE Docket No. | Import volume | Export volume | Comments |
|---|---|---|---|---|---|
| 1578 ..... | 04/07/00 | Ductos de Nogales, USA, LLC.— 00– 18–NG>. | 6.2 Bcf | | Export to Mexico over a two-year term beginning on the date of first delivery. |
| 1579 ..... | 04/10/00 | C&L Petroleum Services Company— 00–12–NG. | 400 Bcf | | Import and export a combined total from and to Canada and Mexico over a two-year term beginning on the date of first import or export delivery. |
| 1580 ..... | 04/10/00 | Phillips Alaska Natural Gas Corporation and Marathon Oil Company—99–110–LNG. | | 10 Bcf | Export LNG from Alaska to international markets over a two-year term beginning on the date of first delivery. |
| 1581 ..... | 04/14/00 | Anadarko Energy Services Company—00–20–NG. | 50 Bcf | | Import and export a combined total from and to Canada beginning on May 1, 2000, and extending through April 30, 2000. |
| 1582 ..... | 04/14/00 | Entergy Power Marketing Corp.—00–17–NG. | 800 Bf | | Import and export a combined total from and to Canada and Mexico beginning on May 1, 2000, and extending through April 30, 2000. |
| 1583 ..... | 04/14/00 | Kimball Energy Corporation—00–22–NG. | 75 Bcf | | Import from Canada beginning on April 1, 2000, and extending through March 31, 2000. |
| 1536–A | 04/19/00 | PanCanadian Energy Services, Inc.—99–88–NG. | | | Amend current authority to: (1) increase the volumes; (2) include import of LNG from international sources; and (3) import and export from and to Mexico. |
| 1584 ..... | 04/17/00 | St. Clair Pipelines (1996) LTD.—00–21–NG 200. | 200 Bcf | | Import and export from and to Canada beginning on April 17, 2000, and extending through April 16, 2002. |
| 1585 ..... | 04/21/00 | Alcoa, Inc.—00–24–NG ..... | 13.4 Bcf | | Import from Canada beginning on May 1, 2000, and extending through April 30, 2001. |
| 1586 ..... | 04/24/00 | ARCO Products Company—00–23–NG. | 25 Bcf | | Import from Canada beginning on September 19, 2000, and extending through September 18, 2002. |
| 1587 ..... | 04/27/00 | Agave Energy Company—00–25–NG. | 40 Bcf | | Import and export a combined total from and to Mexico, over a two-year term beginning on the date of first import or export delivery. |

[FR Doc. 00–12113 Filed 5–12–00 8:45 am]
BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2035]**

### City and County of Denver, CO; Notice of Authorization for Continued Project Operation

May 9, 2000.

On April 29, 1998, the City and County of Denver, Colorado, licensee for the Gross Reservoir Project No. 2035, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2035 is located on South Boulder Creek in Boulder County, Colorado.

The license for Project No. 2035 was issued for a period ending April 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 of any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, base don section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2035 is issued to the City and County of Denver, Colorado for a period effective May 1, 2000, through April 30, 2001, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 30, 2001, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that the City and County of Denver, Colorado is authorized to continue operation of the Gross Reservoir Project No. 2035 until such time as the Commission acts on its application for subsequent license.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12083 Filed 5–12–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–269–000]**

### Discovery Gas Transmission LLC; Notice of Cash-Out Report

May 9, 2000.

Take notice that on May 2, 2000, Discovery Gas Transmission LLC (Discovery) filed with the commission its annual cash-out report for the calendar year ended December 31, 1999.

Discovery states that the cash-out report reflects a net loss for this period of $277,063.64. The cumulative loss from cash-out transactions is $295,680.35. This loss will be carried forward to the subsequent reporting period.

Discovery states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protect with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 16, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12086 Filed 5–12–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2634]**

### Great Northern Paper, Inc.; Notice of Authorization for Continued Project Operation

May 9, 2000.

On April 28, 1998, Great Northern Paper, Inc., licensee for the Storage Project No. 2634, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2634 is located on the West and South Branches of the Penobscot River in Somerset and Piscataquis Counties, Maine.

The license for Project No. 2634 was issued for a period ending April 30, 2000. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of section 15 of the FPA, then, based on section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 1621(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to section 15 of the FPA, notice is hereby given that an annual license for Project No. 2634 is issued to Great Northern Paper, Inc. for a period effective May 1, 2000, through April 30, 2001, or until the issuance of a new license for the project

or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before April 30, 2001; notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to section 15 of the FPA, notice is hereby given that Great Northern Paper, Inc. is authorized to continue operation of the storage Project No. 3634 until such time as the Commission acts on its application for subsequent license.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12084 Filed 5–12–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–220–000]**

### Town of Neligh, Nebraska v. Kinder Morgan Interstate Gas Transmission, LLC and KN Energy, a division of Kinder-Morgan, Inc.; Notice on Procedures

May 9, 2000.

On March 23, 2000, the Town of Neligh, Nebraska (Neligh) filed a complaint against Kinder Morgan Interstate Gas Transmission, LLC (KMI) [1] and KN Energy, a division of Kinder-Morgan, Inc. (KN Energy) pursuant to Section 5 of the Natural Gas Act (NGA) [2] and Rule 206 of the Commission's regulations.[3] Neligh requests that its complaint be considered under the Commission's Fast Track complaint procedures set forth in section 206(h) of the Commission's regulations.[4] On April 12, 2000, we issued and order directing the Commission Staff to convening a technical conference at which the parties and Commission staff could explore the issues raised in this proceeding, including whether Fast Track treatment is appropriate.[5] The technical conference was held on April 18, 2000.

While we recognize Neligh's desire to own and operate its distribution system, the facts provided at the technical conference and in subsequent pleadings indicate that KMI and KN Energy will continue to provide transmission service to the town of Neligh until the time that this complaint can be processed.

*The Commission orders:*

Neligh's complaint will be processed pursuant to the Commission's standard complaint procedures.

By direction of the Commission.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12121 Filed 5–12–00; 8:45 am]

BILLING CODE 6717–01–M

[1] Neligh filed its complaint against KN Interstate Gas Transmission Company. However, on December 28, 1999, that company changed its name to Kinder Morgan Interstate Gas Transmission LLC.

[2] 15 U.S.C. 717(d).

[3] 18 CFR 385.206.

[4] 18 CFR 206(h).

[5] 91 FERC ¶ 61,034(2000).

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–233–000]**

### Southern Natural Gas Company; Notice of Application

May 9, 2000.

Take notice that on May 1, 2000, Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563, filed an application in Docket No. CP00–233–000 pursuant to Section 7(c) of the Natural Gas Act (NGA), for a certificate of public convenience and necessity authorizing the construction and operation of natural gas pipeline, compression, measuring and other related facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at *http://www.ferc.us/online/rims.htm* (call 202–208–2222).

Southern states that during November 1999, it announced an open season to obtain requests for additional firm service. It is stated that Southern Company Services, Inc. (SCS), South Carolina Pipeline Corporation (SCPC), and the City of LaGrange, Georgia (LaGrange) have subscribed for a total of 335,800 Mcf per day of firm transportation (FT) service on Southern's system, with shipper signing a service agreement with a 15-year term. To provide this FT service, Southern requests authorization to construct, install, and operate certain pipeline loops, compression, measurement, and appurtenant facilities in two phases. Southern indicates that Phase I will consist of the facilities necessary to provide 139,900 Mcf per day of transportation demand, with an in-service date of June 1, 2002. It is further stated that Phase II will consist of the facilities to provide the remaining transportation demand with an in-service date of June 1, 2003. Specifically, Southern requests authorization to construct, install, and operate the following:

*Phase I:* (1) approximately 5.67 miles of 30-inch South Main 3rd Loop Line extending in Clarke County, Mississippi; (2) approximately 5.0 miles of 30-inch South Main 3rd Loop Line in Sumter County, Alabama; (3) approximately 7.82 miles of 30-inch South Main 3rd Loop Line in Perry and Dallas Counties, Alabama; (4) approximately 7.97 miles of 30-inch South Main 3rd Loop Line in Dallas and Autauga Counties, Alabama; (5) approximately 5.96 miles of 30-inch South Main 4th Loop Line in Macon County, Alabama; (6) approximately 5.08 miles of 24-inch South Main 2nd Loop Line in Jefferson County, Georgia; (7) approximately 1.50 miles of 8-inch LaGrange Extension Loop Line in Lee County, Alabama; (8) install a Caterpillar 3616 high-speed reciprocating compression rated at 4,445 horsepower, replace existing primary pulsation bottles and make piping modifications at Enterprise Compressor Station in Clarke County, Mississippi; (9) reconfigure existing station piping for parallel operation (currently in series configuration), re-wheel existing Dresser-Rand compressors on the GE turbines, and install a Solar Centaur 40 (ISO rated at 4,700 horsepower) turbine-driven centrifugal compressor at York Compressor Station in Sumter County, Alabama; (10) reconfigure existing station piping for parallel operation (currently in series configuration) and re-wheel existing Dresser-Rand compressors on the GE turbines at Selma Compressor Station in Dallas County, Alabama; (11) reconfigure existing station piping for parallel operation (currently in series configuration), re-wheel existing Dresser-Rand compressors on the GE turbines, and install a Solar Taurus 70 (ISO rated at 10,310 horsepower) turbine-driven centrifugal compressor at Auburn Compressor Station in Lee County, Alabama; (12) install a Caterpillar 3616 high-speed reciprocating compressor, rated at 4,445 horsepower, at Thomaston Compressor Station in Upson County, Georgia; (13) interconnection facilities to provide SCS's Phase I transportation demand to the Goat Rock Plant located in Lee County, Alabama; and (14)

measurement facilities to provide SCPC with its transportation demand in Aiken County, South Carolina.

Southern states that there are also non-jurisdictional facilities related to the Phase I Facilities. It is stated that Southern will construct facilities to enable delivery of gas to the Goat Rock Plant located in Lee County, Alabama. It is indicated that the Goat Rock Plant is a non-jurisdictional power plant to be constructed, owned and operated by one of the electric utility affiliates of SCS. Southern states that an affiliate of SCS also will construct and own a new meter station and approximately 5.07 miles of 20-inch connecting pipeline located between the Goat Rock Tap and the new meter station, with Southern operating the connecting pipe and meter station. Southern also states that SCPC will construct, own, and operate approximately 2.5 miles of 16-inch connecting pipeline.

*Phase II:* (1) approximately 10.39 miles of 30-inch South Main 3rd Loop Line extending Loop in Clarke and Lauderdale Counties, Mississippi; (2) approximately 10.54 miles of 30-inch South Main 3rd Loop Line extending Loop 2 in Sumter County, Alabama; (3) approximately 8.06 miles of 30-inch South Main 3rd Loop Line in Autauga County, Alabama; (4) approximately 5.0 miles of 30-inch South Main 4th Loop Line extending Loop 5 in Tallapoosa and Macon Counties, Alabama; (5) install a Solar Taurus 70 (ISO-rated at 10,310 horsepower) turbine-driven centrifugal compressor at Selma Compressor Station in Dallas County, Alabama; and (6) interconnection facilities to deliver 98 Mmcfd at the Autaugaville Plant in Autauga County, Alabama.

Southern indicates that there are also certain non-jurisdictional facilities related to the Phase II Facilities. Southern states that it will construct facilities to enable delivery of gas to the Autaugaville Plant located in Autauga County, Alabama. It is stated that the Autaugaville Plant is a non-jurisdictional power plant to be constructed, owned and operated by one of the electric utility affiliates of SCS. It is also stated that an affiliate of SCS also will construct and own a new meter station and approximately 11.2 miles of 20-inch pipeline located between the Autaugaville Tap and the new meter station. Southern states that it will operate the connecting pipe and meter station.

Southern states that the total cost of the facilities (Phases I and II) is estimated to be $147.3 million, to be financed initially through short term financing, available cash from operations or a combination of both, and ultimately through permanent financing. Southern requests that the Commission approve a predetermination of roll-in for the expansion in its next rate proceeding, citing both financial benefits to existing customers and system-wide operational benefits.

Southern is requesting that the Commission issue a Preliminary Determination on Non-environmental issues by December 1, 2000, with final approval on all issues by May 1, 2001.

Any person desiring to be heard or to make protest with reference to said application should on or before May 30, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervenor status will be placed on the service list maintained by the Commission and will receive copies of all documents filed by the Applicant and by every one of the intervenors. Any intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Southern to appear or be represented at the hearing.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12080 Filed 5–12–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–226–000]**

### Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

May 9, 2000.

Take notice that on April 27, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP00–226–000 a request pursuant to sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205 and 157.211) under the Natural Gas Act (NGA) for authorization to construct and operate delivery point facilities for service to MI Drilling Fluids, LLC (MI Drilling) an industrial end-user in Big Horn County, Wyoming under blanket certificate issued in Docket Nos. CP82–487–000, *et al* pursuant to section 7 of the NGA, all as more fully set forth in the application which is on file with the Commission

and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

Williston Basin requests authorization to construct and operate delivery point facilities to serve MI Drilling Fluids. LLC (MI Drilling). It is stated that Williston Basin will use the facilities to transport gas daily on a firm basis pursuant to the terms of Williston Basin's FTS rate schedule for delivery to MI Drilling. Williston Basin estimates the cost of the facilities at $32,100. Williston Basin states that the proposed facility will have no significant effect on peak day and there is sufficient capacity to render the proposed service without disadvantage to its other existing customers.

Any questions regarding the application may be directed to Keith A. Tiggelaar, Manager of Regulatory Affairs, at Williston Basin Interstate Pipeline Company, P.O. Box 5601, Bismarck, North Dakota 58506–5601.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12081 Filed 5–12–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EC00–67–000, et al.]**

## Louisville Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

May 5, 2000.

Take notice that the following filings have been made with the Commission:

### 1. Louisville Gas and Electric Company and Kentucky Utilities Company

[Docket No. EC00–67–000]

Take notice that on April 28, 2000, Louisville Gas and Electric Company submitted Form U–1 filed on April 26, 2000 with the Securities and Exchange Commission, pursuant to the commitment made in the Section 203 application previously filed in the above docket.

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 2. Midwest Generation, LLC

[Docket No. EC00–81–000]

Take notice that on May 4, 2000, Midwest Generation, LLC (Applicant), filed an amendment to its application that was filed in this docket on April 20, 2000. The application sought Commission approval for the transfer of transformers and interconnection facilities associated with 71 peaking generators being financed pursuant to a sale/leaseback arrangement.

In its application, Applicant advised the Commission that, after Applicant transfers certain jurisdictional facilities to a proposed Lessor, the Lessor will simultaneously lease the facilities to Applicant's parent company, Edison Mission Energy, or to another subsidiary of Edison Mission Energy, which will then sublease the facilities back to Applicant. The parties no longer intend to include a lessee/sublessor in the arrangements. Instead, the Lessor will lease back the facilities directly to Applicant.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 3. Wisconsin Public Service Corporation and Upper Peninsula Power Company

[Docket No. EC00–84–000]

Take notice that on April 28, 2000, Wisconsin Public Service Corporation (WPSC) and Upper Peninsula Power Corporation (UPPCo) (collectively, the Applicants) on April 28, 2000, tendered for filing an application pursuant to Section 203 of the Federal Power Act, 16 U.S.C. 824b, to transfer operational control over substantial portions of their transmission facilities to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). The Applicants intend to become members of the Midwest ISO on June 30, 2000 and have asked for an order authorizing this transfer prior to the date.

Copies of the filing were served upon the Applicants' transmission service customers, the members of the Midwest ISO and the state regulatory commissions of Indiana, Illinois, Kentucky, Michigan, Ohio and Wisconsin.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 4. Atlantic City Electric Company

[Docket No. ER97–3189–027]

Take notice that on May 1, 2000, Atlantic City Electric Company tendered for filing with the Federal Energy Regulatory Commission (Commission), a letter in compliance with the Commission's order in Allegheny Power Service Co., *et al.*, 90 FERC ¶ 61,224 (2000).

*Comment date:* June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 5. Pacific Gas and Electric Company

[Docket Nos. OA96–28–004, and OA97–619–001]

Take notice that on May 1, 2000, Pacific Gas and Electric Company tendered for filing with the Federal Energy Regulatory Commission (Commission), a letter in compliance with the Commission's order in Allegheny Power Service Co., *et al.*, 90 FERC ¶ 61,224 (2000).

*Comment date:* June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 6. Central Maine Power Company

[Docket Nos. OA96–124–001 and OA97–266–001]

Take notice that on May 1, 2000 Central Maine Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission), a report in compliance with the Commission's order in Allegheny Power Service Co., *et al.*, 90 FERC ¶ 61,224 (2000).

*Comment date:* June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

### 7. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, d/b/a Allegheny Power

[Docket Nos. OA97–122–001 and OA97–712–001]

Take notice that on April 27, 2000, Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company, d/b/a Allegheny Power tendered for filing with the Federal Energy Regulatory Commission (Commission), a report in compliance with the Commission's order in

Allegheny Power Service Co., *et al.*, 90 FERC ¶ 61,224 (2000).

*Comment date:* June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Consumers Energy Company**

[Docket No. OA97–259–001]

Take notice that on May 1, 2000, Consumers Energy Company (CECo) tendered for filing with the Federal Energy Regulatory Commission (Commission), a letter in compliance with the Commission's order in Allegheny Power Service Co., *et al.*, 90 FERC ¶ 61,224 (2000).

Copies of the filing have been served on the Michigan Public Service Commission and counsel for intervenors in this docket.

*Comment date:* June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Florida Power Corporation**

[Docket No. OA97–677–001]

Take notice that on April 28, 2000, Florida Power Corporation tendered for filing with the Federal Energy Regulatory Commission (Commission), a letter in compliance with the Commission's order in Allegheny Power Service Co., *et al.*, 90 FERC ¶ 61,224 (2000).

*Comment date:* June 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. The FirstEnergy Operating Companies**

[Docket No. ER00–2334–000]

Take notice that on April 28, 2000, The FirstEnergy Operating Companies (FirstEnergy) tendered for filing proposed Amendments to service agreements for Firm Point-to-Point Transmission Service and Non-Firm Point-to-Point Transmission Service between FirstEnergy and the Borough of Zelienople, Pa. (Zelienople). FirstEnergy states that the proposed Amendments established a distribution adder and a customer charge for transmission service to Zelienople. FirstEnergy has proposed to make each of the Amendments effective on April 1, 2000.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Great Bay Power Corporation**

[Docket No. ER00–2335–000]

Take notice that on April 28, 2000, Great Bay Power Corporation (Great Bay) tendered for filing a Master Energy Purchase and Sale Agreement (Master Agreement) with Enron Power Marketing, Inc. (EPMI). Through the Master Agreement, Great Bay and EPMI set forth the terms and conditions upon which Great Bay will sell at wholesale and EPMI will buy, and upon which EPMI will sell at wholesale and Great Bay will buy, energy and/or capacity. The rates to be charged under the Master Agreement will be market-based rates. Great Bay has market-based rate authority under Docket No. ER96–726–000. Great Bay seeks to have the Master Agreement accepted for filing as a stand-alone rate schedule for Great Bay.

Great Bay requests an effective date of 30 days after this filing, May 28, 2000.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. New England Power Pool**

[Docket No. ER00–2336–000]

Take notice that on April 28, 2000, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Maine Skiing, Inc. (Maine Skiing). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Maine Skiing's signature page would permit NEPOOL to expand its membership to include Maine Skiing. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Maine Skiing a member in NEPOOL. The Participants Committee requests an effective date of May 1, 2000, for commencement of participation in NEPOOL by Maine Skiing.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. New England Power Pool**

[Docket No. ER00–2338–000]

Take notice that on April 28, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by TransAlta Energy Marketing (U.S.) Inc. (TransAlta). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of TransAlta's signature page would permit NEPOOL to expand its membership to include TransAlta. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make TransAlta a member in NEPOOL. The Participants Committee requests an effective date of July 1, 2000, for commencement of participation in NEPOOL by TransAlta.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. New England Power Pool**

[Docket No. ER00–2339–000]

Take notice that on April 28, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Smart Energy.com, Inc. (SmartEnergy.com). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of SmartEnergy.com's signature page would permit NEPOOL to expand its membership to include SmartEnergy.com. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make SmartEnergy.com a member in NEPOOL. The Participants Committee requests an effective date of June 1, 2000, for commencement of participation in NEPOOL by SmartEnergy.com.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. New England Power Pool**

[Docket No. ER00–2340–000]

Take notice that on April 28, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by WPS Energy Services, Inc. (WPS). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of WPS's signature page would permit NEPOOL to expand its membership to include WPS. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make WPS a member in NEPOOL. The Participants Committee requests an effective date of July 1, 2000, for commencement of participation in NEPOOL by WPS.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

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**16. American Electric Power Service Corporation**

[Docket No. ER00–2341–000]

Take notice that on April 28, 2000, the American Electric Power Service Corporation (AEPSC), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements for Amerada Hess Corporation, Cinergy Capital & Trading, Inc., MIECO Inc., and Orion Power MidWest. The agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff (OATT). The OATT has been designated as FERC Electric Tariff Original Volume No. 4, effective July 9, 1996. AEPSC requests waiver of notice to permit the Service Agreements to be made effective for service billed on and after April 1, 2000.

AEPSC also requests termination on April 30, 2000, of firm and non-firm service agreements executed January 1, 1997, by Illinova Power Marketing, Inc. under AEP Companies' FERC Electric Tariff Original Volume No. 4. Dynegy Power Marketing, Inc., merger partner to Illinova Corporation, requested the termination of the service agreements.

A copy of the filing was served upon the Parties and the state utility regulatory commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. Duquesne Light Company**

[Docket No. ER00–2342–000]

Take notice that on April 28, 2000, Duquesne Light Company tendered for filing proposed changes to the retail transmission rates in its Open Access Transmission Tariff. Duquesne has requested that the changes become effective as of the closing of its divestiture, expected to occur April 28, 2000.

A copy of this filing was served on the Pennsylvania Public Utility Commission and customers presently taking service under Duquesne's OATT.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. Potomac Electric Power Company**

[Docket No. ER00–2343–000]

Take notice that on April 28, 2000, Potomac Electric Power Company (Pepco), tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 5, entered into between Pepco and: Sempra Energy Trading Corp. An effective date of April 18, 2000 for this service agreement, with waiver of notice, is requested.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. Kansas Gas and Electric Company**

[Docket No. ER00–2344–000]

Take notice that on April 28, 2000, Kansas Gas and Electric Company (KGE) tendered for filing an Interconnection Agreement between KGE and Westar Generating II, Inc. KGE requests an effective date of June 1, 2000 or the date that Westar's facilities become commercially operational, whichever occurs later.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**20. West Texas Utilities Company**

[Docket No. ER00–2345–000]

Take notice that on April 28, 2000, West Texas Utilities Company (WTU), tendered for filing First Revised Exhibit A to Amendment No.1 to the Service Agreement between WTU and Tex-La Electric Cooperative of Texas, Inc. (Tex-La), under WTU's TR–1 Tariff. First Revised Exhibit A reflects a recent increase in Tex-La's purchases of power and energy from Southwestern Electric Power Company for certain Tex-La load in WTU's control area in the Electric Reliability Council of Texas.

WTU seeks an effective date of January 1, 2000 and, accordingly, seeks waiver of the Commission's notice requirements. Copies of the filing have been served on Tex-La and on the Public Utility Commission of Texas.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**21. Niagara Mohawk**

[Docket No. ER00–2346–000]

Take notice that on April 28, 2000, Niagara Mohawk tendered for filing with the Federal Energy Regulatory Commission an executed letter agreement as a supplement to a Transmission Service Agreement between Niagara Mohawk and PG&E Energy Trading—Power, L.P (PGET), designated as Rate Schedule No. 174. This letter agreement extends the termination date of Rate Schedule No. 174.

Niagara Mohawk has served copies of the filing upon New York Public Service Commission and PGET.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**22. New England Power Pool**

[Docket No.ER00–2347–000]

Take notice that on April 28, 2000, the New England Power Pool (NEPOOL) Participants Committee filed a Service Agreement for Through or Out Service or In Service pursuant to Section 205 of the Federal Power Act and 18 CFR 35.13 of the Commission's regulations.

Acceptance of this Service Agreement will recognize the provision of Firm In Service transmission to PG&E Energy Trading—Power LP, in conjunction with Regional Network Service, in accordance with the provisions of the NEPOOL Open Access Transmission Tariff filed with the Commission on December 31, 1996, as amended and supplemented. An effective date of May 1, 2000 for commencement of transmission service has been requested. Copies of this filing were sent to all NEPOOL members, the New England public utility commissioners and all parties to the transaction.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**23. Westar Generating II, Inc.**

[Docket No. ER00–2348–000]

Take notice that on April 28, 2000, in accordance with the provisions of Section 205(c) of the Federal Power Act and Section 35.12 of the Commission's Regulations, Westar Generating II, Inc. (Westar), tendered for filing Westar's FERC Electric Rate Schedule No. 1 governing sales of energy and capacity from its two combustive turbine generating facilities located near Colwich, Kansas to its affiliate Western Resources, Inc.

Westar seeks waiver of the Commission's sixty-day prior notice requirement and requests that the Rate Schedule be permitted to become effective on June 1, 2000, or on the date Westar's generating facilities become commercially operational, whichever occurs later.

Copies of the filing were served upon Western Resources, Inc. and the Kansas Corporation Commission.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**24. West Texas Utilities Company and Central and South West Services, Inc.**

[Docket No. ER00–1404–001]

Take notice that on April 28, 2000, West Texas Utilities Company (WTU) and Central and South West Services, Inc. (CSWS), tendered for filing revised unexecuted Interconnection Agreements between WTU and nine of WTU's cooperative customers under WTU's

Wholesale Power Choice Tariff. This filing is made to comply with the Commission's March 30, 2000 order in which it directed WTU to revise the indemnification provisions of these Interconnection Agreements.

Copies of the filing have been served on the affected customers and the Public Utility Commission of Texas.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**25. Allied Companies, LLC (AC)**

[Docket No. ER00–2363–000]

Take notice that on April 28, 2000, Allied Companies, LLC (AC), petitioned the Commission for acceptance of AC Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

AC intends to engage in wholesale electric power and energy purchases and sales as a marketer. AC is not in the business of generating or transmitting electric power.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**26. Pacific Gas and Electric Company**

[Docket No. ER00–2360–000]

Take notice that on April 28, 2000, Pacific Gas and Electric Company (PG&E) tendered for filing a new Reliability Services Tariff (RS Tariff) and corresponding amendments to PG&E's Transmission Owner Tariff on file with the Commission. This filing establishes wholesale and retail rates for the recovery of reliability charges that the California Independent System Operator Corporation (ISO) imposes on PG&E. PG&E requests an effective date of June 28, 2000. However, PG&E states that it hereby provides notice that it may be necessary to recover such costs for an earlier period depending on subsequent rulings of the Public Utilities Commission of the State of California.

Copies of this filing have been served upon the California Public Utilities Commission, all affected customers and parties designated on the Restricted Service List compiled by the Federal Energy Regulatory Commission in FERC Docket Nos. ER99–4323–000 and ER00–2075–000 and the CAISO.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**27. New England Power Pool**

[Docket No. ER00–2337–000]

Take notice that on April 28, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by MHI Inc. (MHI). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of MHI's signature page would permit NEPOOL to expand its membership to include MHI. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make MHI a member in NEPOOL. The Participants Committee requests an effective date of May 1, 2000, for commencement of participation in NEPOOL by MHI.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12078 Filed 5–12–00; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Intent to File an Application for a New License

May 8, 2000.

*Type of Filing:* Notice of intent to File An Application for a New License.

b. *Project:* 2586.

c. *Date Filed:* April 24, 2000.

d. *Submitted By:* Alabama Electric Cooperative, Inc.—current licensee.

e. *Name of Project:* Conecuh River Hydroelectric Project.

f. *Location:* On the Conecuh River near the towns of Gantt and River Falls, in Covington County, Alabama.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Mike Noel, Alabama Electric Cooperative, Inc., 2027 East Three Notch Street, Andalusia, AL 36420 (334) 427–3248.

i. *FERC Contact:* Ron McKitrick, ronald.mckitrick@ferc.fed.us, (770) 452–3778.

j. *Effective date of current license:* May 1, 1965.

k. *Expiration date of current license:* April 30, 2005.

l. *Description of the Project:* The project consists of the following two developments:

The Point "A" Development consists of the following existing facilities: (1) A 2,800-foot-long earthen dam comprised of a gated concrete spillway section; (2) a 700-acre reservoir at a normal water surface elevation of 170 feet msl; (3) a powerhouse, integral with the dam, containing three generating units with a total installed capacity of 5,200 kW, (4) a 0.39-mile-long, 46–kV transmission line; and (5) other appurtenances.

The Gantt Development consists of the following existing facilities: (1) A 1,562-foot-long earthen dam comprised of a gated concrete spillway section; (2) a 2,767-acre reservoir at a normal water surface elevation of 198 feet msl; (3) a powerhouse, integral with the dam, containing two generating units with a total installed capacity of 3,050 kW, and (4) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2003.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12079 Filed 5–12–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Settlement, Transfer, and Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

May 9, 2000.

Take notice that the following application has been filed with the

Commission and is available for public inspection:

a. *Application Type:* Request for Approval of Settlement, Partial Transfer of License, and Amendment of License.

b. *Project No:* 2030–032.

c. *Date Filed:* April 20, 2000.

d. *Applicants:* Portland General Electric Company (PGE) and the Confederated Tribes of the Warm Springs Reservation of Oregon (Tribes).

e. *Name and Location of Project:* The Pelton—Round Butte Hydroelectric Project is on the Deschutes River in Jefferson County, Oregon, The project occupies Tribal lands within the Warm Springs Indian Reservation.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Mr. A.W. Turner, Assistant General Counsel, Portland General Electric Company, One World Trade Center, 121 SW Salmon Street, Suite 1301, Portland, OR 97304, (503) 464–8926 and Mr. James D. Noteboom, Karnopp, Petersen, Noteboom, Hansen, Arnet & Sayeg, L.L.P., 1201 NW Wall Street, Suite 300, Bend, OR 97701, (541) 382–3011.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839.

i. *Deadline for filing comments and or motions:* July 17, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the project number (P–2030–032) on any comments or motions filed.

j. *Description of Proposal:* The application is aimed at resolving long-standing issues between PGE and the Tribes, including establishing compensation to the Tribes pursuant to Section 10(e) of the Federal Power Act (FPA), and obviating their filing of competing relicensing applications for the project. The application requests that the Commission approve the parties' "Global Agreement," which includes compensation to be paid to the Tribes under the parties' "Compensation Agreement." Specifically, the application requests that the Commission:

- Approve the compensation to be paid to the Tribes pursuant to the Compensation Agreement;
- Determine that this compensation shall be the exclusive means of satisfying PGE's obligations to the Tribes pursuant to FPA section 10(e) for the full term of any new license for Project No. 2030;
- Waive the Commission's authority to re-establish compensation at ten (10) year intervals pursuant to FPA section 10(e);
- Approve the future transfer to PGE interests in Project No. 2030 to the Tribes pursuant to the Compensation Agreement;
- Amend paragraph (iii) of Article 25 of the Project license, effective upon the transfer of a 33.33 percent interest in the Project from PGE to the Tribes, to provide that all compensation for use of Tribal lands shall be governed by the Global Agreement; and
- Approve, pursuant to FPA section 8, the partial transfer of the license for Project No. 2030 by deleting paragraph (A) of the license, which made PGE and the Tribes co-licensees "to the extent of their interests" in project property, and replace it with a statement that PGE and the Tribes are "co-licensees without limitations."

PGE filed a companion Application for Authority to Sell Jurisdictional Facilities pursuant to FPA section 203. Public notice of that application, assigned Docket No. EC00–80–000, was issued on April 27, 2000.

The transfer application was filed within five years of expiration of the license, which is the subject of competing pending relicense applications for Project Nos. 2030–031 and 11832–000. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 Fed. Reg. 23,756; FERC Stats. and Regs., Regs. Preambles 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318).

k. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (20) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

*Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*Filing and Service of Responsive Documents*—Any filings must bear in all capital letters and title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

*Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12082 Filed 5–12–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 9, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11837–000.

c. *Date filed:* April 11, 2000.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Allegheny L&D#3 Project.

f. *Location:* On the Allegheny River in Allegheny County, Pennsylvania. Would utilize the U.S. Army Corps of Engineer's Allegheny L&D#3.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregory S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, OH 44302, (330) 535–7115.

i. *FERC Contact:* Robert Bell, 202–219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource egency.

k. The proposed project utilizing the existing U.S. Army Corps of Engineers' Allegheny L&D#3 would consist of: (1) A proposed intake; (2) ten proposed 60-foot-long, 72-inch diameter steel penstocks; (3) a proposed powerhouse containing generating units having a total installed capacity of 10 MW; (4) a proposed Tailrace; (5) a proposed 1-mile long, 14.7 kV transmission line; and (6) appurtenant facilities.

The project would have an annual generation of 61 GWh and project power would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

*Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

*Preliminary Permit*—Any qualified development application desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

*Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

*Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

*Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

*Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12085 Filed 5–12–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting

May 10, 2000.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**DATE AND TIME:** May 17, 2000, 10:00 a.m.

**PLACE:** Room 2C, 888 First Street, NW, Washington, DC 20426.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Agenda.

**Note:** Items listed on the agenda may be deleted without further notice.

**CONTACT PERSON FOR MORE INFORMATION:** David P. Boergers, Secretary, telephone (202) 208-0400. for a recording listing items, stricken from or added to the, meeting, call (202) 208–1627.

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This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

**Consent Agenda—Hydro 741st—Meeting May 17, 2000, Regular Meeting (10:00 a.m.)**

CAH–1.
Docket# P–4632,026, Clifton Power Corporation
CAH–2.
Docket# P–10615,016, Tower Kleber Limited Partnership
CAH–3.
Docket# P–9100,011, James M. Knott
CAH–4.
Docket# P–2426,148, California Department of Water Resources and City of Los Angeles Department of Water and Power

**Consent Agenda—Electric**

CAE–1.
Docket# ER00–1743, 000, Entergy Services, Inc.
CAE–2.
Docket# ER99–4226,000, Ameren Operating Companies
Others# ER99–4226,001, Ameren Operating Companies
EL00–16,000, Ameren Operating Companies
CAE–3.
Docket# ER00–1933,000, Entergy Services, Inc.
CAE–4.
Docket# ER00–1947,000, Entergy Services, Inc.
CAE–5.
Docket# ER00–1969,000, New York Independent System Operator, Inc.
Other EL00–57, 000, Niagara Mohawk Power Corporation v. New York Independent System Operator, Inc.
EL00–60,000, Orion Power New York GP, Inc. v. New York Independent System Operator, Inc.
EL00–63,000, New York State Electric & Gas Corporation v. New York Independent System Operator, Inc.
EL00–64,000, Rochester Gas and Electric Corporation v. New York Independent System Operator, Inc.
CAE–6.
Docket# ER00–1849,000, PJM Interconnection L.L.C.
CAE–7.
Docket# ER00–2064,000, Illinois Power Company
CAE–8.
Docket# ER00–2074,000, Elkem Metals Company
Other ER00–2093,000, Elkem Metals Company-Alloy LP
CAE–9.
Docket# ER00–1816,000, DTE River Rouge No. 1, LLC
Other#s EL00–61,000, Nordic Electric, L.L.C. v. the Detroit Edison Company, DTE Energy Company, DTE River Rouge No. 1, LLC and DTE Energy Trading, Inc.
ER00–1816, 001, DTE River Rouge No. 1, LLC
CAE–10.
Docket# EF00–2011,000, United States Department of Energy—Bonneville Power Administration
CAE–11.
Docket# ER00–1920,000, Sun River Electric Cooperative, Inc.
Other#s EL00–55,000, Sun River Electric Cooperative, Inc.
CAE–12.
Docket# OA97–25,000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
Other#s OA97–25,005, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
OA97–606,000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
OA97–606,005 Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
EL98–40,000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
EL98–40,005, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
ER98–1890,000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
ER98–1890,006 Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
ER98–2060,000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
ER98–2060,006, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)
CAE–13.
Docket# EC99–81,001, Dominion Resources, Inc. and Consolidated Natural Gas Company
CAE–14.
Docket# ER00–771,001, Tucson Electric Power Company
Other#s ER00–771,002, Tucson Electric Power Company
ER00–771,003, Tucson Electric Power Company
CAE–15.
Docket# ER98–2382,000, Montana Power Company
Other#s OA96–199,006, Montana Power Company
OA97–679,002, Montana Power Company
ER98–2382,002, Montana Power Company
CAE–16.
Docket# ER97–1523,025, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
Other#s OA97–470,023, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
ER97–4234,021, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
CAE–17.
Docket# ER97–1523,030, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
Other#s OA97–470,028, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
OA97–470, 030, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State

Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
ER97–1523,032, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
ER97–4234,026, Central Hudson & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
ER97–4234,028, Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., Long Island Lighting Company, New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool

CAE–18.
Docket# EC00–60,000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)

CAE–19.
Docket# EL98–77,001, Edison Sault Electric Company
Other#s EL98–77,002, Edison Sault Electric Company
ER00–1966,000, Edison Sault Electric Company
ER00–1966,001, Edison Sault Electric Company

CAE–20.
Docket# ER95–112,009, Entergy Services, Inc.
Other#s EL95–17,005, Entergy Services, Inc. and Entergy Power, Inc.
ER95–1001,002, Entergy Services, Inc.
ER95–1615,014, Entergy Power Marketing Corporation
ER96–586,004, Entergy Services, Inc.
ER96–2709,002, Entergy Services, Inc.

CAE–21.
Omitted

CAE–22.
Docket# ER99–3144,001, Alliance Companies
Other#s EC99–80,001, American Electric Power Service Corporation, Consumers Energy Company, Detroit Edison Company, First Energy Corporation and Virginia Electric and Power Company
EC99–80,002, American Electric Power Service Corporation, Consumers Energy Company, Detroit Edison Company, First Energy Corporation and Virginia Electric and Power Company
ER99–3144,002, Alliance Companies

CAE–23.
Docket# ER00–936,001, Southern Energy Delta, L.L.C.
Other#s ER00–937,001, Southern Energy Potrero, L.L.C.

CAE–24.
Docket# EL00–25,002, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., IES Utilities, Inc., Interstate Power Company and MidAmerican Energy Company

CAE–25.
Docket# EC98–40,005, American Electric Power Company and Central and Southwest Corporation
Other#s ER98–2770,005, American Electric Power Company and Central and Southwest Corporation
ER98–2786, 006, American Electric Power Company and Central and Southwest Corporation

CAE–26.
Docket# OA97–163,009, Mid-Continent Area Power Pool
Other#s OA97–658,009, Mid-Continent Area Power Pool
ER97–1162,008, Mid-Continent Area Power Pool

CAE–27.
Docket# ER97–1523,041, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
Other#s OA97–470,039, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool
ER97–4234,037, New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation, Consolidated Edison Company of New York, Inc., New York State Electric and Gas Corporation, Niagara Mohawk Power Corporation, Orange and Rockland Utilities, Inc., Rochester Gas and Electric Corporation and New York Power Pool

CAE–28.
Docket # RM95–9,011, Open Access Same-Time Information System and Standards of Conduct

CAE–29.
Docket # EL00–48,000, Black River Limited Partnership

CAE–30.
Docket # EL00–39,000, Southwest Power Pool, Inc.

CAE–31.
Docket # EL00–40,000, Dighton Power Associates Limited Partnership, FPL Energy, L.L.C., Southern Energy New England, L.L.C. and Southern Energy Kendall, L.L.C.

CAE–32.
Docket # EL99–24,000, Central Montana Electric Power Cooperative, Inc. V. Montana Power Company

CAE–33.
Docket # EL98–65,000, Allegheny Electric Cooperative, Inc. v. Pennsylvania Electric Company

**Consent Agenda—Miscellaneous**

CAM–1.
Docket # RM00–8,000, Revision of Public Reference Room Procedures for Records Requests

**Consent Agenda—Gas and Oil**

CAG–1.
Docket # RP00–252,000, Florida Gas Transmission Company

CAG–2.
Docket # PR00–7,000, Duke Energy Texas Intrastate Pipeline, LLC

CAG–3.
Docket # RP00–164,001, Northern Natural Gas Company

CAG–4.
Docket # OR99–5,000, Colonial Pipeline Company

CAG–5.
Docket # OR99–6,000, TE Products Pipeline Company, L.P.

CAG–6.
Docket # PR00–9,001, PG&E Texas Pipeline, L.P.

CAG–7.
Docket # RP00–162,001, Panhandle Eastern Pipe Line Company
Other #s RP00–162,002, Panhandle Eastern Pipe Line Company

CAG–8.
Docket # PR99–19,001, Oneok Gas Storage, L.L.C. and Oneok Sayre Storage Company

CAG–9.
Docket # OR92–8,009, SFPP, L.P.
Other #s OR92–8,000, SFPP, L.P.

OR93–5, 000, SFPP, L.P.
OR93–5, 006, SFPP, L.P.
OR94–3, 000, SFPP, L.P.
OR94–4, 000, SFPP, L.P.
OR94–4, 006, SFPP, L.P.
OR95–5, 000, Mobil Oil Corporation V. SFPP, L.P.
OR95–5,004, Mobil Oil Corporation V. SFPP, L.P.
OR95–34,000, Tosco Corporation V. SFPP, L.P.
IS99–144,000, SFPP, L.P.
IS99–144,001, SFPP, L.P.
CAG–10.
Docket # OR96–2, 000, Arco Products Company, a Division of Atlantic Richfield Company, Texaco Refining and Marketing, Inc. and Mobil Oil Corporation V. SFPP, L.P.
Other #s OR96–2,001, Arco Products Company, a Division of Atlantic Richfield Company, Texaco Refining and Marketing, Inc. and Mobil Oil Corporation V. SFPP, L.P.
OR96–2,002, Arco Products Company, a Division of Atlantic Richfield Company, Texaco Refining and Marketing, Inc. and Mobil Oil Corporation V. SFPP, L.P.
OR96–10,000, Arco Products Company, a Division of Atlantic Richfield Company, Texaco Refining and Marketing, Inc. and Mobil Oil Corporation V. SFPP, L.P.
OR98–1,000, Arco Products Company, a Division of Atlantic Richfield Company, Texaco Refining and Marketing, Inc. and Mobil Oil Corporation V. SFPP, L.P.
OR98–1,001, Arco Products Company, a Division of Atlantic Richfield Company, Texaco Refining and Marketing, Inc. and Mobil Oil Corporation V. SFPP, L.P.
OR98–1,002, Arco Products Company, a Division of Atlantic Richfield Company, Texaco Refining and Marketing, Inc. and Mobil Oil Corporation V. SFPP, L.P.
OR00–4,000, Arco Products Company, a Division of Atlantic Richfield Company, Texaco Refining and Marketing, Inc. and Mobil Oil Corporation V. SFPP, L.P.
OR96–2,002, Ultramar Inc. V. SFPP, L.P.
OR96–15,000, Ultramar Inc. V. SFPP, L.P.
OR96–15,001, Ultramar Inc. V. SFPP, L.P.
OR96–15,002, Ultramar Inc. V. SFPP, L.P.
OR96–17,000, Ultramar Inc. V. SFPP, L.P.
OR97–2,000, Ultramar Inc. V. SFPP, L.P.
OR98–2,000, Ultramar Inc. V. SFPP, L.P.
OR98–1,001, Tosco Corporation v. SFPP Inc.
OR98–1,002, Tosco Corporation v. SFPP Inc.
OR98–13,000, Tosco Corporation v. SFPP Inc.
OR98–13,001, Tosco Corporation v. SFPP Inc.
CAG–11.
Docket# MG00–2, 000, Transwestern Pipeline Company
Other#s MG00–2,001, Transwestern Pipeline Company
CAG–12.
Docket# MG99–25,000, Kinder Morgan Interstate Gas Transmission L.L.C. (Formerly K N Interstate Gas Transmission Company)
Other#s MG98–6,002, Natural Gas Pipeline Company of America
MG98–6,003, Natural Gas Pipeline Company of America
MG99–24,000, KN Wattenberg Transmission, L.L.C.
CAG–13.
Omitted
CAG–14.
Docket# CP99–392,000, Transcontinental Gas Pipe Line Corporation
Other#s CP00–17,000, South Carolina Public Service Authority
CP00–19, 000, South Carolina Public Service Authority
CAG–15.
Docket# CP87–203,008, CNG Transmission Corporation
Other#s CP99–106,001, NE HUB Partners, L.P. V. CNG Transmission Corporation
CAG–16.
Docket# MG00–6,000, Consolidated Natural Gas Company
CAG–17.
Docket# PR00–9,000, PG&E Texas Pipeline, L.P.
CAG–18.
Docket# PR00–8,000, PG&E Texas Pipeline, L.P.
CAG–19.
Docket# RP00–250,000, Kinder Morgan Interstate Gas Transmission LLC

**Hydro Agenda**

H–1.
Reserved

**Electric Agenda**

E–1.
Reserved

**Oil and Gas Agenda**

I. Pipeline Rate Matters
PR–1.
Docket# RM98–10,001, Regulation of Short-Term Natural Gas Transportation Services
Other's RM98–10,004, Regulation of Short-Term Natural Gas Transportation Services
RM98–12,001, Regulation of Interstate Natural Gas Transportation Services
RM98–12,004, Regulation of Interstate Natural Gas Transportation Services
Order No. 637–A, Order on Rehearing.
II. Pipeline Certificate Matters
PC–1.
Reserved

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12243 Filed 5–11–00; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6700–2]**

### Good Neighbor Environmental Board Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of meeting.

**SUMMARY:** The Good Neighbor Environmental Board will meet from May 25–26, 2000, in Las Cruces, New Mexico in its role as advisor to Congress and the President on creating and maintaining an environmentally sustainable U.S.–Mexico border region. The entire meeting is open to the public; a distinct public comment session scheduled for 11:30–12 noon on May 25.

**DATES AND TIME:** The Board will meet from 9 a.m. to 5:30 p.m. on Thursday, May 25, and from 9 a.m. to 12 noon on Friday, May 26 Mountain Time.

**LOCATION:** The meeting will take place at the Best Western Mesilla Valley Inn and Conference Center in Las Cruces, New Mexico. The address is: 901 Avenida de Mesilla, Las Cruces, New Mexico 88005. The phone number is (505) 524–8603. The Inn is located south of Las Cruces on Highway 28 across the railroad tracks right after Highway 185 and before Interstate 185.

**AGENDA:** The Board will be briefed on numerous topics related to its advisory role. In addition, it will discuss topics including the following: The value of specific border activities, the role of governmental and nongovernmental initiatives, upcoming recommendations to Congress and the President, the Board's relationship with its Mexican counterpart federal advisory committee, and ongoing business including distribution of the Annual Report and plans for the next meeting.

**PUBLIC ATTENDANCE:** Seating in the meeting room is available on a first-come, first-served basis. Members of the

public who plan to file written statements and/or make brief oral statements should contact the Designated Federal Officer for the Board (see details below) by May 20.

**Background**

The Good Neighbor Environmental Board was created by the Enterprise for the Americans Initiative Act of 1992. An Executive Order delegates implementing authority to the Administrator of EPA. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the governments of the States of Arizona, California, New Mexico and Texas; and private organizations with expertise on environmental and infrastructure problems along the southwest border. The Board meets three times annually. The U.S. Environmental Protection Agency gives notice of this meeting of the Good Neighbor Environmental Board pursuant to the Federal Advisory Committee Act (Pub. L. 92–463).

**FOR FURTHER INFORMATION CONTACT:** Please contact the Designated Federal Officer for the Good Neighbor Environmental Board: Elaine M. Koerner, Office of Cooperative Environmental Management, Office of the Administrator, USEPA, MC1601A, 1200 Pennsylvania Ave. NW, Washington, DC 20004, (202) 564–1484, *koerner.elaine@epa.gov*.

Dated: May 4, 2000.

**Gordon Schisler,**

*Deputy Director, Office of Cooperative Environmental Management.*

[FR Doc. 00–12136 Filed 5–12–00; 8:45 am]

**BILLING CODE 6560–50–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–00274C; FRL–6559–8]**

## Voluntary Children's Chemical Evaluation Program, Stakeholder Involvement Process; Extension of Comment Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; extension of comment period.

**SUMMARY:** EPA is extending the comment period, announced in the March 29, 2000, **Federal Register**, for the Voluntary Children's Chemical Evaluation Program (VCCEP), from May 12 to May 30, 2000. The VCCEP, formerly known as the Voluntary Children's Health Chemical Testing Program, is a voluntary program to ensure that health effects data are publicly available for industrial chemicals to which children and prospective parents may have a high likelihood of exposure. The comment period is being extended to allow stakeholders additional time to comment on the VCEEP subsequent to the last public meeting of the stakeholder involvement process.

**DATES:** Comments, identified by docket control number OPPTS–00274B, must be received on or before May 30, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the instructions for each method as directed in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00274B in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

*For technical information contact:* Ward Penberthy, Office of Pollution Prevention and Toxics, Chemical Control Division (7405), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–0508; e-mail address: chem.rtk@epamail.epa.gov. Electronic messages must contain the docket control number OPPTS–00274B and the heading, "Voluntary Children's Chemical Evaluation Program, Stakeholder Involvement Process," in the subject line on the first page of your message.

**SUPPLEMENTARY INFORMATION:**

### I. Does This Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those chemical manufacturers and processors who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA) section 4, individuals or groups concerned with chemical testing and children's health, animal welfare groups, or other members of the general public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

### II. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

*A. Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about the stakeholder meetings or the April 10, 2000, revision of the document entitled "Framework for a Voluntary Children's Chemical Evaluation Program," you may go directly to the website at http://www.epa.gov/chemrtk/childhlt.htm.

*B. In Person.* The Agency has established an official record for this action under docket control number OPPTS–00274C. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the Voluntary Children's Chemical Evaluation Program, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

*C. By Phone.* If you need additional information about this action, you may also contact the persons listed under "FOR FURTHER INFORMATION CONTACT."

A copy of the April 10, 2000, revision of the document entitled "Framework for a Voluntary Children's Chemical

Evaluation Program" may be obtained by calling the TSCA Hotline at (202) 554–1404.

**III. How and to Whom Do I Submit Comments?**

As described in Units I.D. and I.E. of the notice published in the **Federal Register** of March 29, 2000 (65 FR 16590) (FRL–6552–6), you may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided in that notice. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket control number OPPTS–00274B in the subject line on the first page of your response.

**IV. What Action is EPA taking?**

EPA is extending the comment period on the VCCEP from May 12 to May 30, 2000. The VCCEP is described in the April 10, 2000, revision of the document entitled "Framework for a Voluntary Children's Chemical Evaluation Program" which EPA made available to the public on April 12, 2000. The VCCEP was developed using a stakeholder involvement process which was announced in the **Federal Register** of August 26, 1999 (64 FR 46673) (FRL–6089–1).

**List of Subjects**

Environmental protection, Chemicals, Children, Hazardous substances, Health and safety.

Dated: May 10, 2000.

**William H. Sanders III,**

*Director, Office of Pollution Prevention and Toxics.*

[FR Doc. 00–12278 Filed 5–11–00; 2:34 pm]

BILLING CODE 6560–50–F

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 9:09 a.m. on Wednesday, May 10, 2000, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's resolution, corporate, and supervisory activities.

In calling the meeting, the Board determined, on motion of Director Ellen S. Seidman (Director, Office of Thrift Supervision), seconded by vice Chairman Andrew C. Hove, Jr., concurred in by Director John D. Hawke, Jr. (Comptroller of the Currency), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no notice earlier than May 5, 2000, of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: May 10, 2000.

Federal Deposit Insurance Corporation.

**James D. LaPierre,**

*Deputy Executive Secretary.*

[FR Doc. 00–12238 Filed 5–11–00; 10:23 am]

BILLING CODE 6714–01–M

## FEDERAL HOUSING FINANCE BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 2:30 p.m., Wednesday, May 17, 2000.

**PLACE:** Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

**STATUS:** The entire meeting will be open to the public.

**MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:**

- Final Rule: Election of Federal Home Loan Bank Directors.
- Designation of Federal Home Loan Bank Directors.
- Discussion of Issues Pertaining to the Federal Home Loan Bank Capital Reform.

**CONTACT PERSON FOR MORE INFORMATION:** Elaine L. Baker, Secretary to the Board, (202) 408–2837.

**William W. Ginsberg,**

*Managing Director.*

[FR Doc. 00–12273 Filed 5–11–00; 2:12 pm]

BILLING CODE 6725–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 8, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

*1. JDOB, Inc.*, Sandstone, Minnesota; to acquire at least 80 percent of the voting shares of First National Bank of Hinckley, Hinckley, Minnesota, a *de novo* bank.

Board of Governors of the Federal Reserve System, May 9, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–12062 Filed 5–12–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage *de novo,* or to acquire or control voting securities or assets of a company, including the companies listed below, that engages

either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

*1. First State Bancshares, Inc.*, Middlesboro, Kentucky; to acquire LexBanc Corporation, Lexington, Kentucky, and thereby indirectly acquire Lexington Bank, FSB, Lexington, Kentucky, and thereby engage in permissible savings association activities, pursuant to § 225.28(b)(4) of Regulation Y. Comments regarding this application must be received not later than June 8, 2000.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. Area Bancshares Corporation*, Owensboro, Kentucky; to acquire Area Trust Company, and thereby engage in the operation of a trust company, pursuant to § 225.28(b)(5) of Regulation Y.

*2. Lima Bancshares, Inc.*, Lima, Illinois; to retain voting shares of East Dubuque Bancshares, Inc., East Dubuque, Illinois, and its subsidiary, East Dubuque Savings Bank, East Dubuque, Illinois, and thereby engage in operating a savings association, pursuant to § 225.28(b)(4) of Regulation Y. Comments regarding this application must be received not later than June 8, 2000.

*3. Summit Bancorp, Inc.*, Arkadelphia, Arkansas; to engage *de novo* through its subsidiary, Summit Residential Services, Inc., Arkadelphia, Arkansas, in community development activities, pursuant to § 225.28(b)(12) of Regulation Y.

Board of Governors of the Federal Reserve System, May 9, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–12060 Filed 5–12–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Irwin Union Bank & Trust Company, Columbus, Indiana; a De Novo Corporation To Do Business Under Section 25A of the Federal Reserve Act

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25A of the Federal Reserve Act (Edge Corporation) 12 U.S.C. 611 *et seq.* The factors that are to be considered in acting on the application are set forth in the Board's Regulation K (12 CFR 211.4).

The application may by inspected at the Federal Reserve Bank of Chicago or at the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing.

Comments regarding the application must be received by the Reserve Bank indicated or at the offices of the Board of Governors not later than June 13, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Irwin Union Bank & Trust Company, Columbus, Indiana; to establish Irwin International Corporation, Columbus, Indiana, which will acquire 78 percent of the outstanding voting securities of Onset Capital Corporation, Vancouver, Canada, and thereby engage in leasing real or personal property, pursuant to § 25A of the Federal Reserve Act.

Board of Governors of the Federal Reserve System, May 9, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–12061 Filed 5–12–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10 a.m., Thursday, May 18, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 11, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–12239 Filed 5–11–00; 10:24 am]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting

period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| | **Transactions Granted Early Termination—03/27/2000** | | |
| 20002112 | Calsonic Corporation | Kansei Corporation | Kansei Corporation. |
| 20002118 | AECOM Technology Corporation | Vivendi S.A | Metcalf & Eddy, Inc. |
| 20002163 | Grotech Partners, IV, L.P | Pathnet Telecommunications, Inc | Pathnet Telecommunications, Inc. |
| 20002246 | Northwestern Corporation | Lucent Technologies Inc | Lucent Technologies Inc. |
| 20002254 | Thomas H. Lee Equity Fund IV, L.P | Richard T. Aab | US LEC Corp. |
| 20002279 | Fred Hassan | Monsanto Company | Monsanto Company. |
| 20002281 | Internet Capital Group, Inc | Breakaway Solutions, Inc | Breakaway Solutions, Inc. |
| 20002284 | Quantum Industrial Holdings Ltd | Integra Life Sciences Holdings Corporation. | Integra Life Sciences Holdings Corporation. |
| 20002295 | Time Warner Inc | The Welk Group, Inc | Heartland Music, LP. |
| 20002304 | North Castle Partners II, L.P | Elizabeth Arden Salon-Holdings, Inc | Elizabeth Arden Salon-Holdings, Inc. |
| 20002308 | UICI | HealthAxis, Inc | HealthAxis, Inc. |
| 20002311 | GTCR Fund VII, L.P | MidAmerican Energy Holdings Company | MidAmerican Security Company. |
| 20002315 | Wind River Systems, Inc | Embedded Support Tools Corporation | Embedded Support Tools Corporation. |
| 20002325 | Canon Inc | Energy Conversion Devices, Inc | Emergy Conversion Devices, Inc. |
| 20002328 | The Reader's Digest Association, Inc | World's Finest Chocolate, Inc | World's Finest Chocolate, Inc. |
| 20002333 | The Bank of New York Company, Inc | Societe Generale | SG Cowen Securities Corporation. |
| 20002336 | William Blair Capital Partners VI, L.P | Pawnee Rotational Molding Partners VI, L.P. | Borse Industries, L.P.<br>Fremont Plastics Products, Inc.<br>Wedco Moulded Products Company. |
| 20002337 | Fyffes plc | C.I. Union de Bananeros de Uraba, S.A. | Turbana Corporation. |
| 20002346 | Odwalla, Inc | Bain Capital Fund VI, L.P | Samantha Investors, LLC. |
| 20002347 | Bain Capital Fund VI, L.P | Odwalla, Inc | Odwalla, Inc. |
| 20002351 | Penn National Gaming, Inc | Pinnacle Entertainment, Inc | Casino Magic Corp., Boomtown, Inc. |
| 20002354 | United Rentals, Inc | National Equipment Services, Inc | Safety Lights Sales and Leasing, Inc. of Texas. |
| 20002355 | National Equipment Services, Inc | United Rentals (North America), Inc | NES Texoma Acquisition Corp. |
| 20002357 | Stuart P. Olsten | Adecco SA | Adecco SA. |
| 20002369 | Vincent L. Martin | Calender Holdings, Inc | Calender Holdings, Inc. |
| 20002392 | Westbrand, Inc. | Robert W. Amis, Jr | Advance Acceptance Corporation. |
| 20002393 | TPG Partners II, L.P | The Cherry Corporation | Cherry Semiconductor Corporation. |
| 20002399 | Castle Harlan Partners III, L.P | Financiere Saint Luc | Financiere Saint Luc. |
| 20002402 | C–MAC Industries Inc | Charterhouse Equity Partners II, L.P | A-Plus Manufacturing Corp. |
| 20002403 | Berkshire Fund IV, Limited Partnership | Marconi plc | GEC International Limited.<br>Maatschappij Van Berkel's Patent BV. |
| 20002413 | Golder, Thoma, Cressey, Ruaner Fund V, L.P. | Douglas T. Mergenthaler | Kwikee Products Company, Inc. |
| 20002414 | Lowes Corporation | Continental National Corporation | Continental National Corporation. |
| 20002416 | Richard A. Bernstein | Miller Buckeye Biscuit Company | Miller Buckeye Biscuit Company. |
| 20002419 | Swifty Serve, LLC | Martin Resource Management Corporation, a Texas corporation. | Midstream Fuel Service, Inc., an Alabama corporation. |
| 20002440 | Elan Corporation plc | The Liposome Company, Inc | The Liposome Company, Inc. |
| 20002441 | Safeguard Scientifics, Inc | MS Farm International, L.P | AgWeb.Com. |
| 20002444 | Motorola, Inc | C-Port Corporation | C-Port Corporation. |
| 20002454 | Stonington Capital Appreciation 1994 Fund, L.P. | Lernout & Hauspie Speech Products N.V. | Lernout & Hauspie Speech Products N.V. |
| 20002455 | Lernout & Hauspie Speech Products N.V. | Stonington Capital Appreciation 1994 Fund, L.P. | Dictaphone Corporation. |
| | **Transactions Granted Early Termination—03/28/2000** | | |
| 20002155 | Pro Mach Holdings, L.L.C | Jack G. Swope | Rennco, Inc. |
| 20002156 | Pro Mach Holdings, L.L.C | Stanley J. Swope | Rennco, Inc. |
| | **Transactions Granted Early Termination—03/29/2000** | | |
| 20001439 | Thomas W. Bedell Separate Share Trust | Johnson Worldwide Associates, Inc | Century Divestiture Co. |
| 20002256 | Calpine Corporation | Duke Energy Corporation | Duke Energy Hidalgo Holding, Inc. |
| 20002264 | Country Mutual Insurance Company | Mutual Service Casualty Insurance Company. | Mutual Service Casualty Insurance Company. |
| 20002301 | AT&T Corp | ICG Communications, Inc | ICG Communications, Inc. |
| 20002302 | HMTF Bridge Partners, L.P | ICG Communications, Inc | ICG Communications, Inc. |
| 20002303 | HMTF Equity Fund IV (1999), L.P | ICG Communications, Inc | ICG Communications, Inc. |
| 20002307 | HealthAxis, Inc | HealthAxis.com, Inc | HealthAxis.com, Inc. |
| 20002329 | C.H. Boehringer Sohn | Pharmacia & Upjohn Company | Pharmacia & Upjohn Company. |
| 20002349 | Chase Manhattan Corporation (The) | Viatel, Inc | Viatel, Inc. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20002350 | Durr Aktiengesellschaft | Harald Quandt Beteiliguangen GmbH & Co. | Carl Schenck AG. |
| 20002373 | Harvest Partners III, L.P | Kevin D. Kalagher | The Finlay Brothers Company. |
| 20002445 | LifeMinders.com, Inc | University Corporation for Atmospheric Research. | WITI Corporation. |
| 20002470 | E*Trade Group, Inc | Card Capture Services, Inc | Card Capture Services, Inc. |
| 20002472 | Nemetschek Aktiengesellshaft | Richard Diehl | Diel Grapshsopt, Inc. |
| **Transactions Granted Early Termination—03/30/2000** | | | |
| 20001342 | Duke Energy Corporation | Phillips Petroleum Company | Phillips Gas Company. |
| 20001351 | Duke Energy Corporation | Conoco Inc | Conoco Inc. |
| 20001353 | Duke Energy Corporation | George P. Mitchell | Mitchell Gas Services, L.P. |
| 20001354 | George P. Mitchell | Duke Energy Corporation | Duke Energy Field Services, Inc. |
| 20001892 | Computer Associates International, Inc | Sterling Software, Inc | Sterling Software, Inc. |
| 20002167 | Winsloew Furniture, Inc | Wabash Valley Manufacturing, Inc | Wabash Valley Manufacturing, Inc. |
| 20002263 | Christopher Redlich, Jr | Michael J. Browning | MGM Co., Inc.<br>MGM Transportation Services, Inc.<br>O'Toole Transportation Works, Inc.<br>XMGM Co., Inc.<br>XMGM of California, Inc.<br>XMGM of Florida, Inc. |
| 20002285 | Century Aluminum Company | Xstrata AG | Xstrata Aluminum Corporation. |
| 20002339 | Unicom Corporation | Thomas F. Nelson | Metropolitan Mechanical Contractors, Inc. |
| **Transactions Granted Early Termination—03/31/2000** | | | |
| 20002210 | Pittsburgh Tube Company | J.H. Roberts Industries, Inc | J.H. Roberts Industries, Inc. |
| 20002320 | Bank of Montreal | Pittsburgh Tube Company | Pittsburgh Tube Company. |
| 20002433 | Ensign Resources Service Group Inc | Gary Drilling Company | Gary Drilling Company. |
| **Transactions Granted Early Termination—04/03/2000** | | | |
| 20002251 | Smurfit-Stone Container Corporation | St. Laurent Paperboard Inc | St. Laurent Paperboard Inc. |
| 20002272 | M. & G. Finanziaria Industriale S.p.A | N. V. Koninklijke Nederlandsche Petroleum Maatschappij. | Crystal Polymer Ltd.<br>Pecten Group S.A. de C.V.<br>Shell Oil Company.<br>Shell Polyesters LLC.<br>SIPET S.p.A. |
| 20002316 | Windward Capital Partners II, L.P | Mobile Storage Group, Inc | Mobile Storage Group, Inc. |
| 20002323 | UbiquiTel Holdings, Inc | Sprint Corporation | Sprint Corporation. |
| 20002348 | Fosters Brewing Group Limited | Klein Foods, Inc | Windsor Vineyards. |
| 20002356 | Pequot Private Equity Fund II, L.P | Netlab L.L.C | Online Retail Partners, Inc. |
| 20002364 | Wei Yen | ATI Technologies, Inc | ATI Technologies, Inc. |
| 20002368 | BTG, Inc | TV Guide, Inc | SSDS, Inc. |
| 20002371 | SOFTBANK Corp | Naviant, Inc | Naviant, Inc. |
| 20002372 | Naviant, Inc | SOFTBANK Corp | SOFTBANK Capital Advisors Fund LP. |
| 20002375 | Citigroup Inc | Reliance Group Holdings, Inc | Reliance Insurance Company. |
| 20002387 | Quintus Corporation | Mustang.com, Inc | Mustang.com, Inc. |
| 20002411 | Diamond Products Company | The Gillette Company | The Gillette Company. |
| 20002452 | Robotic Technology Systems PLC | Bailey P. Robinson, III and Laura Sue Robinson, (spouses). | Wright Industries, Inc. |
| 20002471 | Aarque GPC, Inc | John M. Fayad | Alkar Steel Corporation. |
| 20002508 | The Interpublic Group of Companies, Inc | Caribiner International, Inc | Caribiner International, Inc. |
| **Transactons Granted Early Termination—04/04/2000** | | | |
| 20002376 | CMGI, Inc | uBid, Inc | uBid, Inc. |
| 20002381 | Software.com, Inc | At Mobile.com, Inc | At Mobile.com, Inc. |
| 20002383 | Windward Capital Partners II, L.P | Richard Samuels | Water Country Corporation & Bellwood Assoc., L.P. |
| 20002384 | Windward Capital Partners II, L.P | Joseph O'Donnell | Water Country Corporation & Bellwood Assoc., L.P. |
| 20002385 | Hanover Compressor Company | Applied Process Solutions, Incorporated | Applied Process Solutions, Incorporated. |
| 20002386 | Russell Corporation | Toxey D. Haas | Hass Outdoors, Inc. |
| 20002389 | John J. Fauth | TSI Incorporated | TSI Incorporated. |
| 20002394 | Morgan Stanley Dean Witter Capital Partners IV, L.P. | Texas Utilities Company d/b/a TXU Corp | TXU Processing Company. |
| 20002395 | Berkshire Fund V, Limited Partnership | Thomas A. Ellison | TVI, Inc. |
| 20002397 | DTE Energy Company | Covol Technologies, Inc | Mountaineer Fuel, LLC.<br>Synfuel Investments, Inc. |
| 20002407 | Pathology consultants of America, Inc | Questor Partners Fund, L.P | PathSOURCE, Inc. |
| 20002408 | Questor Partners Fund, L.P | Pathology Consultants of America, Inc | Pathology Consultants of America, Inc. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20002412 | Gateway, Inc | OfficeMax, Inc | OfficeMax, Inc. |
| 20002418 | Peter J. Callahan | Gerald Durnell and Kaye Durnell (spouses). | Pizza Expo, Inc.<br>ProTech Publishing and Communications, Inc. |
| 20002422 | Bain Capital Fund VI, L.P | Trustee of the Harold Brode Revocable Living Trust. | Broder Bros., Co. |
| 20002423 | Tyco International Ltd | Westlock Controls Corporation | Westlock Controls Corporation, a Delaware corporation. |
| 20002424 | AT&T Corp | Alloy Online, Inc | Alloy Online, Inc. |
| 20002425 | Ford Motor Company | Budget Group, Inc | Warren Wooten Ford, Inc., Paul West Ford, Inc. |
| 20002426 | Equant N.V | NEWCO | NEWCO. |
| 20002427 | Reuters Group PLC | NEWCO | NEWCO. |
| 20002428 | Exact Holding N.V | Macola Technologies, Inc | Macola Technologies, Inc. |
| 20002430 | CRH plc | Northern Ohio Paving Company | Northern Ohio Paving Company. |
| 20002432 | Solectron Corporation | Zhone Technologies, Inc | Premisys Communications, Inc. |
| 20002434 | Morgan Stanley Dean Witter & Co | TNT Post Group N.V | Ansett Worldwide Aviation Services. |
| 20002436 | David E. Harvey | Connectivity Technologies, Inc | Connectivity Products Incorporated. |
| 20002439 | Telapex, Inc | ALLTEL Corporation | ALLTEL Communications, Inc. |
| 20002442 | Nera ASA | World Access, Inc | Cellular Infrastructure Supply, Inc.<br>WA Telcom Products Co., Inc. |
| 20002443 | Siemens AG | ENTEX Associates, L.P | ENTEX Information Services, Inc. |
| 20002447 | William H. Joyce | The Dow Chemical Company | The Dow Chemical Company. |
| 20002449 | Morgan Stanley Dean Witter & Co | The News Corporation Limited | Ansett Worldwide Aviation Services. |
| 20002483 | United Technologies Corporation | E.C. Hunt | Thermo-Industries, Inc. |
| 20002601 | Bayer AG | ALZA Corporation | ALZA Corporation. |
| **Transactions Granted Early Termination—04/05/2000** | | | |
| 20002446 | BP Amoco p.l.c | Burmah Castrol p.l.c | Burmah Castrol p.l.c. |
| 20002517 | VS&A Communications Partners III, L.P | Data Transmission Network Corporation | Data Transmission Network Corporation. |
| **Transactions Granted Early Termination—04/06/2000** | | | |
| 20002367 | Warburg, Pincus, Equity Partners, L.P | Hilltopper Holding Corp | Hilltopper Holding Corp. |
| 20002391 | Richard D. Rehm, M.D | MedicaLogic, Inc | MedicaLogic, Inc. |
| 20002453 | Cumulus Media, Inc | William White McDonald Family GST Exempt Perpetual Trust. | McDonald Media Group, Inc. |
| 20002456 | The Hain Food Group, Inc | Celestial Seasonings, Inc | Celestial Seasonings, Inc. |
| 20002457 | World Access, Inc | Communication TeleSystems International d/b/a WORLDxCHANGE. | Communication TeleSystems International d/b/a WORLDxCHANGE. |
| 20002458 | Iceberg Transport, S.A | World Access, Inc | World Access, Inc. |
| 20002459 | Roger Abbott | World Access, Inc | World Access, Inc. |
| 20002462 | UAL Corporation | Air Canada | Air Canada. |
| 20002463 | Sonepar, S.A | Capital Lighting & Supply, Inc | Capital Lighting & Supply, Inc. |
| 20002464 | Uni-Marts, Inc | Frank R. and Adeline Orloski | Orloski Service Station, Inc. |
| 20002466 | VA Linux Systems, Inc | Andover.Net, Inc | Andover.Net., Inc. |
| 20002467 | The Clayton & Dubilier Private Equity Fund IV L.P. | The Drescher Corporation | The Drescher Corporation. |
| 20002474 | Allianz Aktiengellschaft | Sol Edelstein | World Access, Inc. |
| 20002475 | TPG Partners III, L.P | Quantum Bridge Communications, Inc | Quantum Bridge Communications, Inc. |
| 20002481 | Montana Power Company | Qwest Communications International Inc | TeleDistance Holdings, Inc. |
| 20002485 | CRH plc | Thomas H. Maddux, III | American Stone-Mix, Inc. |
| 20002486 | Arena Capital Investment Fund, L.P | UniDial Holdings, Inc | UniDial Holdings, Inc. |
| 20002495 | Chase Manhattan Corporation, (The) | Gabriel Communications, Inc | Gabriel Communications, Inc. |
| 20002505 | Mohr, Davidow Ventures IV, L.P | Netcentives, Inc | Netcentives, Inc. |
| 20002509 | Communications Ventures III, L.P | Flashcom, Inc | Flashcom, Inc. |
| 20002511 | Mayfield IX | Flashcom, Inc | Flashcom, Inc. |
| 20002513 | Pfingsten Executive Fund, L.P | Katherine C. Kennedy | Four Wheel Drive Hardware, Inc. |
| 20002515 | HNC Software, Inc | The Frank Gates Companies, Inc | Celerity Technologies, Inc. |
| 20002518 | Thames Water Plc | E'town Corporation | E'town Corporation. |
| 20002528 | Lee R. Anderson, Sr | Gregg R. Huennekens | Alliance Fire Protection, Inc.<br>United States Fire Protection/Illinois, Inc.<br>United States Fire Protection/Wisconsin, Inc. |
| 20002532 | American Securities Partners II, L.P | Metapoint Partners Fund-III, L.P | Vutek, Inc. |
| 20002539 | ELIFIN, S.A | Carl-F. Bardusch | Bardusch Corporation. |
| 20002540 | Securtiy Capital U.S. Realty | Equity Office Properties Trust | Allegheny Tower Limited Partnership.<br>Boston Harbor Garage, L.L.C.<br>Forbes/Allies Limited Partnership.<br>Indianapolis Convention Ctr. Parking Ltd. Partnership. |
| 20002541 | Thomas T. Gores | Philip C. Denzer | Process Software Corporation. |

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| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20002546 | General Electric Company | Trade Out.com, Inc | Trade Out.com, Inc. |
| 20002547 | Horizon Capital Partners IA Limited Partnership. | ED&F Man Group plc | PERT Laboratories, Inc.<br>Seabrook Enterprises, Inc. |
| 20002555 | NBTY, Inc | Rexall Sundown, Inc | Rexall Sundown, Inc. |
| 20002566 | Tribune Company | The Times Mirror Company | The Times Mirror Company. |
| 20002400 | U.S. Bancorp | John F. Allen | Oliver-Allen Corporation, Inc. |
| 20002506 | Nashua Corporation | Andrew B. Albert | Rittenhouse Paper Company. |
| | **Transactions Granted Early Termination—04/10/2000** | | |
| 20002243 | Cummins Engine Company, Inc | Ben J. Strafuss | Cummins Mid-South, Inc. |
| 20002390 | John H. Dayani, PhD | MedicaLogic, Inc | MedicaLogic, Inc. |
| 20002437 | Matrix Partners IV, L.P | OnDisplay, Inc | OnDisplay, Inc. |
| 20002473 | Charles E. Hurwitz | Plymouth Tube Company | Plymouth Tube Company. |
| 20002510 | Behrmman Capital II, L.P | Flashcom, Inc | Flashcom, Inc. |
| 20002521 | Medical Manager Corporation | Medical Mutual of Ohio | Medical Mutual of Ohio. |
| 20002524 | URM Stores, Inc | Rosauers Employee Stock Ownership Trust. | Rosauers Supermarkets, Inc. |
| 20002550 | CGW Southeast Partners III, L.P | Printmasters, Inc | Printmasters, Inc. |
| 20002551 | David Bing | Lear Corporation | Lear Corporation. |
| 20002552 | Radio One, Inc | William G. Mays | IBL L.L.C. |
| 20002556 | Z-Tel Technologies, Inc | Touch 1, Inc | Touch 1, Inc. |
| 20002562 | Avnet, Inc | Savior Technology Group, Inc | Savior Technology Group, Inc. |
| 20002563 | Arbella Mutual Insurance Company | Hellman & Friedman Capital Partners III, L.P. | The Covenant Group, Inc. |
| 20002565 | 24/7 Media, Inc | Exactis.com, Inc | Exactis.com, Inc. |
| 20002569 | Softbank Technology Ventures V, L.P | TeraBeam Corporation | TeraBeam Corporation. |
| 20002570 | Corman Foundation, Inc | Z-Tel Technologies, Inc | Z-Tel Technologies, Inc. |
| 20002630 | Marmon Holdings, Inc | Hampshire Equity Partners II, L.P | Streater, Inc. |
| 20002647 | Royal Bank of Canada | Prism Financial Corporation | Prism Financial Corporation. |
| 20002679 | John F. Allen | U.S. Bancorp | U.S. Bancorp. |

For Further Information Contact: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–12125 Filed 5–12–00; 8:45 am]

**BILLING CODE 6750–01–M**

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| | **Transactions Granted Early Termination—04/10/2000** | | |
| 20002243 | Cummins Engine Company, Inc | Ben J. Strafuss | Cummins Mid-South, Inc. |
| 20002390 | John H. Dayani, PhD | MedicaLogic, Inc | MedicaLogic, Inc. |
| 20002437 | Matrix Partners IV, L.P | OnDisplay, Inc | OnDisplay, Inc. |
| 20002473 | Charles E. Hurwitz | Plymouth Tube Company | Plymouth Tube Company. |
| 20002510 | Behrman Capital II, L.P | Flashcom, Inc | Flashcom, Inc. |
| 20002521 | Medical Manager Corporation | Medical Mutual of Ohio | Medical Mutal of Ohio. |
| 20002524 | URM Stores, Inc | Rosauers Employee Stock Ownership Trust. | Rosauers Supermarkets, Inc. |
| 20002550 | CGW Southeast Partners III, L.P | Printmasters, Inc | Printmasters, Inc. |
| 20002551 | David Bing | Lear Corporation | Lear Corporation. |
| 20002552 | Radio One, Inc | William G. Mays | IBL L.L.C. |
| 20002556 | Z-Tel Technologies, Inc. | Touch 1, Inc | Touch 1, Inc. |
| 20002562 | Avnet, Inc | Savior Technology Group, Inc | Savior Technology Group, Inc. |
| 20002563 | Arbella Mutual Insurance Company | Hellman & Friedman Capital Partners III, L.P. | The Covenant Group, Inc. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20002565 | 24/7 Media, Inc | Exactis.com, Inc | Exactis.com, Inc. |
| 20002569 | Softbank Technology Ventures V, L.P | TeraBeam Corporation | TeraBeam Corporation. |
| 20002570 | Corman Foundation, Inc. | Z-Tel Technologies, Inc | Z-Tel Technologies, Inc. |
| 20002630 | Marmon Holdings, Inc | Hampshire Equity Partners II, L.P | Streater, Inc. |
| 20002647 | Royal Bank of Canada | Prism Financial Corporation | Prism Financial Corporation. |
| 20002679 | John F. Allen | U.S. Bancorp | U.S. Bancorp. |
| | **Transactions Granted Early Termination—04/11/2000** | | |
| 20002522 | Brentwood Associates Private Equity III, L.P. | Thomas Melk | Outer Circle Products, Ltd. |
| 20002534 | Westgage International Limited | Illinois Superconductor Corporation | Illinois Superconductor Corporation. |
| 20002537 | Elliott Associates, L.P | Illinois Superconductor Corporation | Illinois Superconductor Corporation. |
| 20002571 | Cendant Corporation | FundsXpress, Inc | FundsXpress, Inc. |
| 20002573 | Gulftech International, Inc | Luthi Machinery & Engineering Co., Inc | Luthi Machinery & Engineering Co., Inc. |
| 20002577 | TPG Partners III, L.P | Convergent Communications, Inc | Convergent Communications, Inc. |
| 20002580 | Cox Enterprises, Inc | Marlin Broadcasting, Inc | Marlin Broadcasting, Inc. |
| 20002581 | Wells Fargo & Company | Gabriel Communications, Inc | Gabriel Communications, Inc. |
| 20002586 | Paul G. Allen | National Discount Brokers Group, Inc | National Discount Brokers Group, Inc. |
| 20002589 | Apostolos Allamanis | Ogden Corporation | Ogden Park Management, Inc., Jazzland, Inc. |
| 20002590 | Gateway, Inc | eSoft, Inc | eSoft, Inc. |
| 20002592 | Paul G. Allen | Rosetta Inpharmatics, Inc | rosetta Inphamatics, Inc. |
| 20002593 | Stephen Adams | The Trident Partnership, L.P | Affinity Group Plans, Inc. |
| 20002594 | Clayton, Dubilier & Rice Fund VI Limited Partnership. | Complete Business Solutions, Inc | Complete Business Solutions, Inc. |
| 20002596 | The SKM Equity Fund II, L.P | Murray Nadel | Nadel LLC. |
| 20002602 | Amkor Technology, Inc | Anam Semiconductor, Inc | Anam Semiconductor, Inc. |
| 20002603 | Trinity Industries, Inc | YSD Industries, Inc | YSD Industries, Inc. |
| 20002606 | Thomas H. Lee Equity Fund IV, L.P | Digital Broadband Communications, Inc | Digital Broadband Communications, Inc. |
| 20002608 | Solectron Corporation | American Wireless Services, Inc | American Wireless Services, Inc. |
| 20002610 | Bell Microproducts, Inc | Herbert F. Rorke | Rorke Data Incorporated. |
| 20002613 | California Almond Growers Exchange | Campbell Soup Company | MacFarms of Hawaii, Inc. |
| 20002624 | Jemison Investment Co., Inc | Braselle Corp. d/b/a Demsey and Associates. | Brasell Corp. d/b/a Demsey and Associates. |
| 20002625 | ACT Manufacturing, Inc | GSS Array Technology Public Company Limited. | GSS Array Technology Public Company Limited. |
| 20002639 | Vector Industries Inc | Wolseley plc | Diemold Service Co. Inc. and Riverside Tractor Co. Inc.<br>GOS Investments Limited and Calumet International, Inc |
| 20002640 | Koninklijke Ahold NV | E. Philip Saunders | Tops Markets, Inc. |
| 20002641 | Peco Energy Company | Dashiell Corporation | Dashiell Corporation. |
| 20002643 | Leggett & Platt, Incorporated | Carmine E. and Rosina Guastafeste | Edron Fixture Corp., Royal Store Fixtures Corp.<br>Florida Plating & Finishing Corp. |
| 20002645 | TCV III (Q), L.P | Emerald-Delaware, Inc | Emerald-Delaware, Inc. |
| | **Transactions Granted Early Termination—04/13/2000** | | |
| 19992774 | BP Amoco p.l.c | Atlantic Richfield Company | Atlantic Richfield Company. |
| 20001242 | Deere & Company | Metso Corporation | Timberjack Corporation.<br>Timberjack Group Oyj, Timberjack Oy, Timberjack Sales Oy.<br>Timberjack Holding AB, Timberjack AB, *et al.* |
| 20002377 | ColArt Investments Ltd | Voting Trust dated December 4, 1968 of v/s of Hallmark Cards. | Binney & Smith Inc. |
| 20002489 | American Home Products Corporation | Aviron | Aviron. |
| 20002507 | Orbital Sciences Corporation | Acxiom Comporation | DataQuick Information Systems. |
| 20002527 | GS Capital Partners III, L.P | Gabriel Communications, Inc | Gabriel Communications, Inc. |
| 20002535 | GS Capital Partners III Offshore, L.P | Gabriel Communications, Inc | Gabriel Communications, Inc. |
| 20002584 | Aruthur T. Shorin | The Topps Company, Inc | The Topps Company, Inc. |
| 20002621 | Microsoft Corporation | Roy Watterstrom | Plural Inc. |
| | **Transactions Granted Early termination—04/14/2000** | | |
| 20002500 | El Paso Energy Corporation | VeloCom Inc | VeloCom Inc. |
| 20002519 | Texas Utilities Company, doing Business as TXU Corp. | Fort Bend Communication Companies, Inc. | Fort Bend Communication Companies, Inc. |
| 20002530 | Heritage Fund II, L.P | Will Holdings, Inc | Will Holdings, Inc. |
| 20002533 | Softbank Corporation | America West Holdings Corporation | National Leisure Group, Inc. |
| 20002582 | Rieter Holding Ltd | Bernard Terrat | ICBT Groupe S.A. |

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| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20002607 | Cooper Industries, Inc | Sigma-Aldrich Corporation | B-Line Systems Manufacturing, Inc.<br>B-Line Systems, Inc.<br>Sigma-Aldrich Corporation. |
| 20002609 | James H. Clark | The Kiva Genetics Partnership, Inc | The Kiva Genetics Partnership, Inc. |
| 20002623 | Linc.net, LLC | Irvin L. Gunter | Utility Consultants, Inc. |
| 20002628 | Bernard Arnault | Paul G. Allen | Mercata, Inc. |
| 20002632 | Linc.net, LLC | Thomas E. Murrell | George M. Construction, Inc. |
| 20002637 | MCT of Russia, L.P | MediaOne Group, Inc | RTDC Holdings, Inc. |
| 20002648 | Enron Corp | Quanta Services, Inc | Quanta Services, Inc. |
| 20002652 | Gerald R. Forsythe | Black Hills Corporation | Black Hills Corporation. |
| 20002653 | Black Hills Corporation | Gerald R. Forsythe | Indeck Capital, Inc. |
| 20002656 | Mestek, Inc | Met-Coil Systems Corporation | Met-Coil Systems Corporation. |
| 20002658 | ITC^DeltaCom, Inc | James V. Martin | Bay Data Consultants, Inc. |
| 20002659 | James V. Martin | ITC^DeltaCom, Inc | ITC^DeltaCom, Inc. |
| 20002662 | Duke Energy Corporation | Exxon Mobil Corporation | Mobile Europe Gas Inc. |
| 20002663 | Quad-C Partners V, L.P | Pulaski Furniture Corporation | Pulaski Furniture Corporation. |
| 20002666 | Wolseley plc | Anderson Lumber Company | Anderson Lumber Company. |
| 20002669 | Comverse Technology, Inc | Loronix Information Systems, Inc | Loronix Information Systems, Inc. |
| 20002670 | Dofasco, Inc | Stronach Trust | Cosma Powerlasers Corporation.<br>Cosma Powerlasers Limited. |
| 20002671 | J.W. Childs Equity Partners II, L.P | Pharmacia Corporation | Pharmacia Corporation. |
| 20002674 | AT&T Corp | Ledcor Inc | 380networks, Inc. |
| 20002675 | ConAgra, Inc | Elizabeth L. and William H. Kapavik | Associated Beef City, Inc. |
| 20002676 | Edward Eskandarian | Havas Advertising S.A | Havas Advertising S.A. |
| 20002678 | Havas Advertising S.A | Synder Communications, Inc | Synder Communications, Inc. |
| 20002682 | HealthCentral.com | Robert M. Haft | Vitamins.com, Inc. |
| 20002683 | Robert M. Haft | Health Central.com | HealthCentral.com. |
| 20002689 | Forvaltnings AB Ratos | Farr Company | Farr Company. |
| 20002691 | Credence Systems Corporation | TMT, Inc | TMT, Inc. |
| 20002692 | Sandler Capital Partners IV, L.P | Convergent Communications, Inc | Convergent Communications, Inc. |
| 20002699 | CHB Capital Partners II, L.P | Harding Lawson Associates Group, Inc | Harding Lawson Associates Group, Inc. |
| 20002701 | Oak Investment Partners VIII, L.P | Campus Pipeline, Inc | Campus Pipeline, Inc. |
| 20002703 | Safeguard Scientifics, Inc | eMerge Interactive, Inc | eMerge Interactive, Inc. |
| 20002704 | Meggitt PLC | S-TEC Corporation | S-TEC Corporation. |
| 20002705 | Britax International, plc | Hexcel Corporation | Hexcel Corporation. |
| 20002708 | Take-Two Interactive Software, Inc | Gathering of Developers, Inc | Gathering of Developers, Inc. |
| 20002710 | Charles W. Ergen | iSky, Inc | iSky, Inc. |
| 20002711 | Deutsche Bank AG | Saturn Acquisition Corporation | Saturn Acquisition Corporation. |
| 20002717 | DEL 1995 Trust | James H. Long | Allstar Systems, Inc. |
| 20002725 | GS Capital Partners II Offshore, L.P | GS Capital Partners II, L.P | MCG Credit Corporation. |
| 20002733 | Welsh, Carson, Anderson & Stowe VIII, | James Martin Worldwide, plc | James Martin Worldwide, plc. |

**Transactions Granted Early Termination—04/18/2000**

| | | | |
|---|---|---|---|
| 20001478 | Metso Oyl | Harnischfeger Industries, Inc., Debtor-in-Possession. | Beloit Corporation. |
| 20002042 | Phillips Petroleum Company | Chevron Corporation | Chevron Corporation. |
| 20002043 | Chevron Corporation | Phillips Petroleum Company | Phillips Petroleum Company. |
| 20002587 | HomeGold Financial, Inc | Ronald J. Sheppard | HomeSense Financial Corp. |
| 20002588 | Ronald J. Sheppard | HomeGold Financial, Inc | HomeGold Financial, Inc. |
| 20002595 | Lafarge S.A | Tod F. Kingsland | La Habra Products, Inc. |
| 20002620 | MedicaLogic, Inc | Medscape, Inc | Medscape, Inc. |
| 20002651 | CBS Corporation | MedicaLogic, Inc | MedicaLogic, Inc. |
| 20002655 | Brooks Automation, Inc. | Irvine Optical Company, LLC | Irvine Optical Company, LLC. |
| 20002673 | Exodus Communications, Inc | VBI Corporation | Mirror Image Internet, Inc. |
| 20002695 | Sema Group plc | LHS Group, Inc | LHS Group, Inc. |
| 20002706 | TALK.com Inc | Access One Communications Corp | Access One Communications Corp |
| 20002713 | Ralcorp Holdings, Inc | Edward A. Smith | James P. Linette, Inc. |
| 20002734 | James T. Martin, a natural person | Welsh, Carson, Anderson & Stowe VIII, L.P. | Newco. |

**Transactions Granted Early Termination—04/20/2000**

| | | | |
|---|---|---|---|
| 20002604 | The News Corporation Limited | The News Corporation Limited | FIT TV Partnership. |
| 20002633 | S.C.R.-Sibelco S.A | Sud-Chemie AG | Sud-Chemie AG. |
| 20002719 | Odyessey Investment Partners Fund, L.P. | Dayton Superior Corporation | Dayton Superior Corporation. |
| 20002721 | Wellspring Capital Partners, II, L.P | William S. Everitt | Brook Mays Music Company. |
| 20002723 | CBS Corporation | Bernard Waterman | Waterman Broadcasting Corporation of Texas. |
| 20002727 | Robert L. Johnson | Vanguarde Holdings, Inc | Vanguarde Holdings, Inc. |
| 20002731 | Consolidated Engineering Services Partnership. | Richard Mooney | Hayes Mechanical, Inc. |

| Trans No. | Acquiring | Acquired | Entities |
|---|---|---|---|
| 20002732 | Consolidated Engineering Services Partnership. | John D. Mooney | Hayes Mechanical, Inc. |
| 20002745 | Tele Atlas B.V | Sony Corporation | Etak, Inc. |
| 20002748 | The Hearst Trust | Women.com Networks, Inc | Women.com Networks, Inc. |
| 20002754 | Toyoda Automatic Loom Works, LTD | BT Industries AB | BT Industries AB. |
| **Transactions Granted Early Termination—04/21/2000** | | | |
| 20002171 | Therma-Tru-Corp | General Products Company, Inc | General Products Company, Inc. |
| 20002554 | Randall L. Moffat | Leonard Miller | Strategic Technologies, Inc. |
| 20002635 | Partners HealthCare System, Inc | Brigham Surgical Group Foundation, Inc | Brigham Surgical Group Foundation, Inc. |
| 20002646 | North Castle Partners II, L.P | Mario and Cherly Tricoci | Tricoci, Inc. |
| 20002654 | Amsung Corp | Physicians Resource Group, Inc | Physicians Resource Group, Inc. |
| 20002718 | Heritage Fund II, L.P | Jerry Seligsohn | FADA Industries, Inc. |
| 20002722 | Motorola, Inc | GMP Companies, Inc | GMP Companies, Inc |

For Further Information Contact: Sandra M. Peay or Parcellena P. Fielding, Contract Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–12126 Filed 5–12–00; 8:45 am]

BILLING CODE 6750–01–M

## FEDERAL TRADE COMMISSION

### Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General of the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION, 04/24/2000–05/05/2000

| Transaction No. | Acquiring person | Acquired person | Acquired entities |
|---|---|---|---|
| **Transactions Granted Early Termination—04/24/2000** | | | |
| 20002234 | Fleet Boston Corporation | Choice One Communications, Inc | Choice One Communications, Inc. |
| 20002514 | United Microelectronics Corporation | PixTech, Inc | PixTech, Inc. |
| 20002726 | Leggett & Platt, Incorporated | TransPro, Incorporated | Crown North America Division.<br>Crown-VMS Canada Ltd. |
| 20002736 | Warner W. Henry | The Gibson-Homans Company | The Gibson-Homans Company. |
| 20002741 | Dollar Tree Stores, Inc | Dollar Express, Inc | Dollar Express, Inc. |
| 20002742 | Stora Enso Oyj | Consolidated Papers, Inc | Consolidated Papers, Inc. |
| 20002744 | Jack in the Box, Inc | Harshad D. Dharod | DFG Restaurants, Inc.<br>Harshad & Nasir Corp.<br>Sun Gir, Inc. |
| 20002751 | Urban Brands, Inc | TSG Capital Fund III, L.P | Urban Children's Stores, Inc. |
| 20002752 | TSG Capital Fund III, L.P | Urban Brands, Inc | Urban Brands, Inc. |
| 20002789 | Marathon Fund Limited Partnership IV. | Wayne T. Hamilton Trust u/a/d 2/27/85. | Manchester Stamping Corporation. |
| 20002828 | William L. Walker | Floyd Roger Hardesty | BizJet International Sales and Support, Inc. |
| **Transactions Granted Early Termination—04/25/2000** | | | |
| 20002758 | Allegheny Technologies Incorporated. | Baker Hughes Incorporated | Hughes Metallurgical Products Division. |
| 20002760 | GTE Corporation | GTE Corporation | Illinois RSA 1 Limited Partnership. |
| 20002791 | GTCR Fund VII, L.P | First Tennessee National Corporation. | First Horizon Home Loan Corporation. |
| 20002807 | Anthony Gartland | Modern Metal Products Co | Modern Metal Products Co. |
| **Transactions Granted Early Termination—04/26/2000** | | | |
| 20002548 | InterParking Incorporated | Security Capital U.S. Realty | Urban Growth Property Trust. |
| 20002549 | Security Capital U.S. Realty | InterParking Incorporated | InterParking Incorporated. |

TRANSACTIONS GRANTED EARLY TERMINATION, 04/24/2000–05/05/2000—Continued

| Transaction No. | Acquiring person | Acquired person | Acquired entities |
|---|---|---|---|
| 20002564 | VeriSign, Inc | Network Solutions, Inc | Network Solutions, Inc. |
| 20002618 | Orion Power Holdings, Inc | Constellation Energy Group, Inc | COSI Astoria, Inc.<br>COSI Carr Street, Inc.<br>COSI Coldwater, Inc.<br>COSI Great Lakes, Inc. |
| 20002619 | Constellation Energy Group, Inc | Orion Power Holdings, Inc | Orion Power Holdings, Inc. |
| 20002681 | Premier, Inc | medibuy.com, Inc | medibuy.com, Inc. |
| 20002684 | GS Capital partners II Offshore, L.P | Orion Power Holdings, Inc | Orion Power Holdings, Inc. |
| 20002685 | GS Capital Partners II, L.P | Orion Power Holdings, Inc | Orion Power Holdings, Inc. |
| 20002686 | GS Capital Partners III, L.P | Orion Power Holdings, Inc | Orion Power Holdings, Inc. |
| 20002730 | PSINet, Inc | Metamor Worldwide, Inc | Metamor Worldwide, Inc. |
| 20002743 | George W. Mead | Stora Enso Oyj | Stora Enso Oyj. |
| 20002761 | Siemens AG | Siemens AG | White Oak Semiconductor Limited Partnership. |
| 20002776 | The Estee Lauder Companies Inc | Gloss.com, Inc | Gloss.com, Inc. |
| 20002778 | i2 Technologies, Inc | Aspect Development, Inc | Aspect Development, Inc. |
| 20002798 | VIAG AG | Sidney Tracy | Traco Labs, Incorporated. |
| 20002872 | Thoma Cressey Equity Partners Fund VI, L.P | SCIENTECH, Inc | SCIENTECH, Inc. |
| **Transactions Granted Early Termination—04/27/2000** | | | |
| 20001061 | BASF Aktiengesellschaft | AMCOL International Corporation ("AMCOL"). | AMCOL.<br>Chemdal Asia Ltd.<br>Chemdal Corporation.<br>Chemdal Limited. |
| 20002762 | Sprout Capital VIII, L.P | GroceryWorks.com, Inc | GroceryWorks.com, Inc. |
| **Transactions Granted Early Termination—04/28/2000** | | | |
| 19994662 | Sumner M. Redstone | CBS Corporation | CBS Corporation. |
| 20002622 | The Southern Company | Participating Producers' Trust | Pan Alberta Gas Ltd. |
| 20002642 | Cendant Corporation | Apollo Investment Fund III, L.P | WMC Finance Co., NRT Incorporated. |
| 20002700 | LifePoint Hospitals, Inc | Columbia/HCA Healthcare Corporation. | Putnam Hospital, Inc. |
| 20002712 | Ralcorp Holdings, Inc | Russell S. McNeil | James P. Linette, Inc. |
| 20002753 | Joseph Sitt | Urban Brands, Inc | Urban Brands, Inc. |
| 20002765 | Plexus Corp | Eloy S. Vallina-Languera | Elamex, S.A. de C.V.<br>Electronic las Torres, S.A. de C.V.<br>Servicios Administrativos. |
| 20002771 | Allied Waste Industries, Inc | Waste Management, Inc | Cocopah Landfill, Inc.<br>Copper Mountain Landfill, Inc.<br>Peerless Landfill Company.<br>USA Waste of Kentucky, LLC.<br>Waste Management of Kentucky, LLC.<br>Waste Management of South Carolina, Inc. |
| 20002792 | Siebel Systems, Inc | OpenSite Technologies, Inc | OpenSite Technologies, Inc. |
| 20002808 | Flint Inc Corporation | Mr. Carlos Peralta | Alper Ink Group, LLC. |
| 20002826 | Carlton Communications Plc | Fred B. Tarter | Cinema Bilboard Network, LLC.<br>Screenvision Cinema Network, LLC. |
| 20002827 | Carlton Communications Plc | Terry Laughren | Screenvision Cinema Network, LLC.. |
| 20002830 | The Chase Manhattan Corporation | Christena Karen H. Durham Trust | Huntsman Packaging Corporation. |
| 20002837 | North Castle Partners, II, L.P | M.H. Zeigler & Sons, Inc | M.H. Zeigler & Sons, Inc. |
| 20002861 | Ernest L. Samuel | World Class Processing, Inc | World Class Processing, Inc. |
| **Transactions Granted Early Termination—05–01–2000** | | | |
| 20002750 | Bill Gross' Idealab! | Cooking.com, Inc | Cooking.com, Inc. |
| 20002757 | DLJ Merchant Banking Partners II, L.P. | Carl F. Booth and Katharine S. Booth. | Carl F. Booth & Co., Inc. |
| 20002770 | Tosco Corporation | N.V. Koninklijke Nederlandsche Petroleum Maatschappij. | Equilon Enterprises LLC.<br>Shell Oil Company. |
| 20002784 | Citigroup, Inc | ITOCHU Corporation | Copelco Capital, Inc. |
| 20002824 | JT. Walker Industries, Inc | General Aluminum Corporation | General Aluminum Corporation. |
| 20002871 | Irvine Laidlaw | Neil Rackham | Huthwaite, Inc. |
| 20002877 | Global Private Equity III Limited Partnership. | Veeco Instruments, Inc | Veeco Instruments, Inc. |
| **Transactions Granted Early Termination—05–02–2000** | | | |
| 20002772 | Quilvest S.A | Pameco Corporation | Pameco Corporation. |
| 20002773 | Giant Eagle, Inc | Buckeye Village Market, Inc | Buckeye Village Market, Inc. |

TRANSACTIONS GRANTED EARLY TERMINATION, 04/24/2000–05/05/2000—Continued

| Transaction No. | Acquiring person | Acquired person | Acquired entities |
|---|---|---|---|
| 20002775 | Ronald M. Cameron | P. Coleman Townsend, Jr | Central Grain, Inc.<br>Townsend Farms, Inc.<br>Townsends, Inc. |
| 20002777 | Fairchild Semiconductor International, Inc. | Recovery Equity Investors, L.P | QT Optoelectronics, Inc. |
| 20002779 | Dr. Romesh Wadhwani | i2 Technolgies, Inc | i2 Technolgies, Inc. |
| 20002782 | Electronic Data Systems Corporation. | Software Technologies Corporation | Software Technologies Corporation. |
| 20002788 | Sanmina Corporation | InterWorks Computer Products | InterWorks Computer Products. |
| 20002790 | Quantum Industrial Holdings Ltd | Talk.com Inc | Talk.com Inc. |
| 20002813 | Aggregate Industries plc | James A. Klett and Andrea Klett, Husband and Wife. | Klett Construction Company. |
| 20002948 | Pfingsten Executive Fund II, L.P | William W. Winspear | The UltraCraft Company. |
| 20002949 | Eni SpA | Britsh-Borneo Oil & Gas plc | British-Borneo Oil & Gas plc. |
| **Transactions Granted Early Termination—05/03/2000** | | | |
| 20002804 | CBS Corporation | MarketWatch.com, Inc | MarketWatch.com, Inc. |
| 20002809 | Johnson & Johnson | Mitsubishi Chemical Corporation | Mitsubishi-TokyoPharmaceuticals, Inc. |
| 20002822 | FCP Investors V, L.P | Spectrum Acquisitions, Inc | Spectrum Acquisitions, Inc. |
| **Transactions Granted Early Termination—05/04/2000** | | | |
| 20002688 | Clear Channel Communications, Inc | SFX Entertainment, Inc | SFX Entertainment, Inc. |
| 20002737 | General Electric Company | John Ellison, Jr | Ellison Windows and Doors Division.<br>VES, Inc., d/b/a Ellison Extrusion Systems. |
| 20002738 | John Ellison, Jr | General Electric Company | D and W Holdings, Inc. |
| 20002739 | Vodafone AirTouch Plc | Central Iowa Cellular, Inc | Central Iowa Cellular, Inc. |
| 20002780 | Spectrum Equity Associates III, L.P | NT Corporation | NT Corporation. |
| 20002797 | General Atlantic Partners 52, L.P | Prime Response, Inc | Prime Response, Inc. |
| 20002823 | TPG Partners III, L.P | Yazam.com Inc | Yazam.com Inc. |
| 20002829 | Internet Capital Group, Inc | International Business Machines Corporation. | International Business Machines Corporation. |
| 20002831 | International Business Machines Corporation. | Internet Capital Group, Inc | ICG Patent, Inc. |
| 20002836 | Technology Crossover Ventures II, L.P. | Inventa Corporation | Inventa Corporation. |
| 20002838 | TCV II(Q), L.P | Inventa Corporation | Inventa Corporation. |
| 20002840 | Bradford Equities Fund, L.P | Manuel Teixeira | Teixeira Brothers Bakery and Restaurant, Inc. |
| 20002845 | Summit Ventures V, L.P | John and Susan Ocampo | Stanford Microdevices, Inc. |
| 20002848 | Nelvana Limited | Klutz, Inc | Klutz, Inc. |
| 20002849 | Lindberg Corporation | Thermo Electron Corporation | Thermo Terra Tech, Inc. |
| 20002852 | Sumner M. Redstone | MedicaLogic, Inc | MedicalLogic, Inc. |
| 20002853 | Deutsche Bank AG | Computer Outsourcing Services, Inc | Computer Outsourcing Services, Inc. |
| 20002854 | Sandler Capital Partners IV, L.P | Computer Outsourcing Services, Inc | Computer Outsourcing Services, Inc. |
| 20002859 | Carl C. Icahn | Seagate Technology, Inc | Seagate Technology, Inc. |
| 20002860 | Carl C. Icahn | J.C. Penney Company, Inc | J.C. Penney Company, Inc. |
| 20002863 | Michael W. Lynch | Thyssen-Bornemisza Continuity Trust. | Extruded Metals, Inc. |
| 20002873 | First Security Bancorp | Crews & Associates, Inc | Crews & Associates, Inc. |
| 20002874 | Paul M. Montrone | Janice R. Smith, Executrix of the Estate of Johnny F. Smith. | Fini Enterprises, Inc. |
| 20002883 | Gerald W. Schwartz | Donald C. Hayden | E. and L. Transport Company L.L.C.<br>Florida Leasco Company L.L.C.<br>Transportation Releasing L.L.C. |
| 20002897 | Reed International P.L.C | Susan P. Hall | Lawyers Weekly, Inc. |
| 20002898 | Elsevier N.V | Susan P. Hall | Lawyers Weekly, Inc. |
| 20002919 | Tootsie Roll Industries, Inc | Klaus J. Jacobs | Andes Candies, Inc. |
| 20002921 | Madison Dearborn Capital Partners III, L.P. | X.com Corporation | X.com Corporation. |
| 20002922 | The Reynolds and Reynolds Company. | J. Eustace Wolfington | HAC Group, LLC. |
| 20002923 | The Reynolds and Reynolds Company. | Eustace Mita | HAC Group, LLC. |
| 20002924 | Eustace Mita | The Reynolds and Reynolds Company. | The Reynolds and Reynolds Company. |
| 20002930 | Deutsche Bank AG | Pedestal Inc | Pedestal Inc. |
| **Transaction Granted Early Termination—05/05/2000** | | | |
| 20002857 | Peter A. & Joanne Leedom-Ackerman. | Equity Marketing, Inc | Equity Marketing, Inc. |

TRANSACTIONS GRANTED EARLY TERMINATION, 04/24/2000–05/05/2000—Continued

| Transaction No. | Acquiring person | Acquired person | Acquired entities |
|---|---|---|---|
| 20002858 | Q-Media Services Corporation | Estate of Pierre Peladeau | Print Northwest L.P. |
| 20002862 | IT Group, Inc | W&H Pacific, Inc | W&H Pacific, Inc. |
| 20002864 | Welsh, Carson, Anderson & Stowe VIII, L.P. | Politic Acquisition Corp | Politic Acquisition Corp. |
| 20002865 | WCAS Capital Partners III, L.P | Politic Acquisition Corp | Politic Acquisition Corp. |
| 20002866 | Science Applications International Corporation. | VeriSign, Inc | VeriSign, Inc. |
| 20002892 | National Bank of Egypt | Arab American Bank | Arab American Bank |
| 20002895 | Berkshire Fund V, Limited Partnership. | USA Jet Airlines, Inc | USA Jet Airlines, Inc. |
| 20002902 | Einhorn Verwaltungsgesellschaft | Gerald L. Lennard | PGP Industries, Inc. |
| 20002908 | International Business Machines Corporation. | Scott A. Blum Separate Property Trust U/D/T 8/2/95. | eDevelopments.com Inc. |
| 20002916 | Prime 66 Partners, L.P | The Warnaco Group, Inc | The Warnaco Group, Inc. |
| 20002917 | Centennial Fund IV, L.P | 24/7 Media, Inc | 24/7 Media, Inc. |
| 20002918 | Great Plains Software, Inc | Solomon Software, Inc | Solomon Software, Inc. |
| 20002925 | Activated Communications Limited Partnership. | Mr. Arthur Liu | Way Broadcasting, Inc. |
| 20002926 | Mr. Arthur Liu | Activated Communications Limited Partnership. | Activated Communications Limited Partnership. |
| 20002929 | Agfa-Gevaert N.V | Emerson Electric, Co | Krautkramer-Branson. |
| 20002935 | HNC Software, Inc | Simon B. Ruddick | High Touch Technologies. |
| 20002939 | eGain Communications Corporation | Inference Corporation | Inference Corporation. |
| 20002944 | GS Capital Partners III, L.P | SiPix Group Limited | SiPix Group Limited. |
| 20002955 | Dial Corporation (The) | Procter & Gamble Company, (The) | Procter & Gamble Company, (The). |

**FOR FURTHER INFORMATION CONTACT:** Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–12127 Filed 5–12–00; 8:45 am]

BILLING CODE 6750–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00083]**

### National Trauma Information and Exchange Program; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of funds in Fiscal Year (FY) 2000 for a grant to develop a National Trauma Information and Exchange Program (TIEP).

The purpose of TIEP is to make data and information on trauma care in the United States more accessible to a broad spectrum of individuals and organizations, including trauma care professionals and professional associations, trauma centers and other acute care hospitals, trauma care systems, emergency medical services (EMS) systems, injury researchers and research organizations, public health agencies, health care payers, and the general public. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010."

This announcement is related to Injury and Violence Prevention focus areas.

**B. Eligible Applicants**

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and Federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

**C. Availability of Funds**

Approximately $387,500 is available in FY 2000 to fund one new award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

**D. Program Requirements**

In conducting the activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

1. Provide a full-time director/coordinator with authority and responsibility to carry-out the requirements of the program.

2. Provide qualified staff, other resources, and knowledge to implement the components of the program.

3. Develop and implement a comprehensive plan to periodically update a detailed description of trauma centers in the United States, including key personnel, as well as their capabilities.

4. Develop and implement a plan that enables an exchange of information among trauma centers and trauma organizations nationwide.

5. Develop and implement a plan for a uniform surveillance system for trauma centers that will enable researchers and research organizations to conduct research on quality of trauma care and trauma center and trauma system effectiveness.

6. Develop and implement a plan for the dissemination of available information on trauma, trauma centers, and trauma care systems to the public, researchers and healthcare practitioners.

**E. Application Content**

Use the information in the Program Requirement, Other Requirements, and Evaluation Criteria sections to develop the application content. Your

application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 pages double-spaced, printed on one side, with one inch margins, and unreduced font. The application must include a one-page abstract and summary of the proposed effort.

**F. Submission and Deadline**

*Application*

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189).

Forms are in the application kit. On or before July 14, 2000, submit the application to the Grants Management Specialist identified in the "Where To Obtain Additional Information" section of this announcement.

*Deadline*

Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or (b) Sent on or before the deadline date and received in time for an independent review. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

*Late Applications*

Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

*1. Background and Need (40 percent)*

The extent to which the applicant describes the background and need for a comprehensive trauma information program including; development, current challenges in organizing and delivering trauma care, challenges of developing and maintaining trauma systems, implementation and evaluation of a plan to periodically update a detailed description of trauma centers in the United States, development of a plan to exchange information and link resources of trauma centers and a plan for a uniform surveillance program.

*2. Methods (30 percent)*

The extent to which the applicant provides a detailed description of all proposed activities required to implement a comprehensive trauma information and exchange program including letters of support and collaboration needed to achieve each objective and the overall program goal(s). The extent to which the applicant provides a reasonable, logically sequenced and complete schedule for implementing all activities. The extent to which position descriptions, lines of command, and collaborations are appropriate to accomplishing the program goal(s) and objectives. The extent to which the applicant describes a plan and implementation dissemination of available trauma information.

*3. Evaluation (10 percent)*

The extent to which the proposed evaluation plan is detailed and capable of documenting program process and outcome measures. The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, and capacity to perform the evaluation.

*4. Staff and Resources (20 percent)*

The extent to which the applicant can provide adequate facilities, staff and/or collaborators, including a full-time coordinator and resources to accomplish the proposed goal(s)and objectives during the project period. The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, previous experience, and capacity to perform the undertaking successfully.

*5. Budget and Justification (not scored)*

The extent to which the applicant provides a detailed budget and narrative justification consistent with the stated objectives and planned program activities. CDC may not approve or fund all proposed activities. The applicant should be precise about the program purpose of each budget item. Proposed contracts should identify the name of the contractor, if known; describe the services to be performed; provide an itemized budget and justification for the estimated costs of the contract; specify the period of performance, and method of selection.

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Semi-annual progress reports;
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where To Obtain Additional Information" Section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment

I. (List all applicable requirements by number and title. The Grants Management Branch will include the applicable descriptions in the application kit.)

AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under section 301(a), 317(k)(2), 391, 392, 394, and 394A (42 U.S.C. 241(a), 247b(k)(2), 280b, 280b–1, 280b–2, 280b–3) of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.136.

**J. Where to Obtain Additional Information**

See the CDC home page on the Internet: http://www.cdc.gov for this and other program announcements, click on funding.

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the announcement number of interest. Please refer to Program Announcement 00083 when you request information. After reviewing the Program Announcement for business management assistance contact: Sheryl Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00083, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA, 30341–4146, Telephone (770) 488–2723, Email address: Sheard@cdc.gov

For program technical assistance contact: Paul Burlack Centers for Disease Control and Prevention (CDC), National Center for Injury Prevention and Control, 4770 Buford Highway NE, Mailstop F–41, Atlanta, GA, 30341–3724, Telephone (770) 488–4031, Email address: pburlack@cdc.gov.

Dated: May 9, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–12107 Filed 5–12–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1219]**

## Biological Products; Bacterial Vaccines and Related Biological Products; Implementation of Efficacy Review; Proposed Order

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing a proposed order to accept the conclusions and recommendations of advisory review panels concerning the safety, effectiveness, and labeling of certain bacterial vaccines and related biological products that were previously classified into Category IIIA (remaining on the market pending further studies in support of effectiveness). On the basis of the advisory review panel findings, FDA is proposing to reclassify the relevant Category IIIA products into Category I (safe, effective, and not misbranded) or Category II (unsafe, ineffective, or misbranded). This action is being taken under the reclassification procedures.

**DATES:** Submit written comments on this proposed order and the reclassification of products should be submitted by August 13, 2000. Data and information submitted to FDA in connection with these reclassified products will be made publicly available after June 14, 2000. Comments concerning confidentiality should be received by FDA before June 14, 2000.

**ADDRESSES:** Submit written comments on the proposed order to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments may also be submitted electronically at www.fda.gov/ohrms/dockets. Copies of the reports from the Vaccines and Related Biological Products Advisory Committee (April 1984) and the Panel on Review of Allergenic Extracts (December 1983) can be obtained from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Requests for copies that are accompanied by a self-addressed adhesive label will assist that office in processing your requests. The documents may also be obtained by mail either by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800 or by submitting a request electronically at www.CBER_INFO@CBER.FDA.GOV, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844.

**FOR FURTHER INFORMATION CONTACT:** Steven Falter, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6343.

**SUPPLEMENTARY INFORMATION:**

### I. Background

*A. The Review Procedures (21 CFR 601.25)*

On July 1, 1972, responsibility for regulating biological products under section 351 of the Public Health Service Act (PHS Act) (42 U.S.C. 262) was transferred from the National Institutes of Health to FDA (37 FR 12865, June 29, 1972). Section 351 of the PHS Act provides statutory authority to license biological products. In 1973, FDA established a procedure to review the safety, effectiveness, and labeling of all biological products licensed prior to July 1, 1972 (38 FR 4319, February 13, 1973). This process was eventually codified in § 601.25 (21 CFR 601.25) (38 FR 32048 at 32052, November 20, 1973). Under § 601.25, the Commissioner of Food and Drugs assigned responsibility for the initial review of all biological products licensed prior to 1972 to nine independent advisory review panels. These panels consisted of qualified nonFDA experts in order to ensure public confidence in, and objectivity of the reviews. Each of the advisory review panels was assigned to review a specific category of biological products.

In the **Federal Register** of June 19, 1974 (39 FR 21176), FDA eliminated three previously planned panels (The Panel on Review of In Vitro Diagnostic Reagents; The Panel on Review of Immune Serums, Antitoxins, and Antivenins; and the Panel on Review of Miscellaneous Biological Products) and reassigned the review of the biological products originally intended for review by these three panels to the remaining six advisory review panels: The Panel on Review of Bacterial Vaccines and Toxoids with Standards of Potency, The Panel on Review of Bacterial Vaccines and Bacterial Antigens with "no U.S. Standards of Potency," the Panel on Review of Skin Test Antigens, The Panel on Review of Allergenic Extracts, The Panel on Review of Viral and Rickettsial Vaccines, and the Panel on Review of Blood and Blood Derivatives. The advisory review panels for bacterial vaccines and bacterial antigens with "no U.S. standard of potency," bacterial vaccines and toxoids with standards of potency, and skin test antigens reviewed the products that are the subject of this notice.

Under the review and classification procedures specified in § 601.25, each advisory review panel was charged with preparing a report to the agency that: (1) Evaluated the safety and effectiveness of the biological product; (2) reviewed the labeling of the biological product; and (3) advised FDA on which biological products under review were safe, effective, and not misbranded. Each advisory review panel report was to include a statement classifying the products into Category I, Category II, or Category III. Category I designated those biological products determined to be safe, effective, and not misbranded. Category II designated those biological products determined to be unsafe, ineffective or misbranded. Category III designated those biological products that did not fall within either Category I or Category II because of insufficient data and for which further testing was therefore required. Category III products were assigned to one of two subcategories. Category IIIA products were those that would be permitted to remain on the market pending the completion of further studies. Category IIIB products were those for which the panel report recommended license revocation on the basis of the panel's assessment of potential risks and benefits.

After reviewing the conclusions and recommendations of the panels, FDA would publish in the **Federal Register** a proposed order containing: (1) A statement designating the biological products reviewed into Categories I, II, IIIA or IIIB; (2) a description of the testing necessary for Category IIIA biological products; and (3) the complete panel report. Under the proposed order, FDA would revoke the licenses of those products designated into Category II and Category IIIB. After reviewing public comments, FDA would publish a final order on the matters covered in the proposed order.

*B. Section 601.25 and Products Subject to This Proposed Order*

1. The Panels on Review of Skin Test Antigens and Bacterial Vaccines and Bacterial Antigens with "No U.S. Standard of Potency"

In the **Federal Registers** of September 30, 1977 (42 FR 52674), and November 8, 1977 (42 FR 58266), FDA published proposals for the implementation of the efficacy reviews for skin test antigens and bacterial vaccines and antigens with "no U.S. standard of potency," respectively. These proposals were in response to the reports of The Panel on Review of Skin Test Antigens, and the Panel on Review of Bacterial Vaccines and Antigens with "no U.S. standard of potency," and contained each Panel's findings and recommendations to designate each of the products reviewed into Categories I, II, IIIA or IIIB. In these proposed orders, FDA agreed with each Panel's findings and recommendations, and in accordance with §§ 601.5(b) (21 CFR 601.5(b)) and 601.25(f)(3), notified manufacturers of those products identified for classification into Category II or Category IIIB of the agency's intent to publish a notice of an opportunity for hearing to revoke the licenses for these products. Additionally, in accordance with § 601.25(f)(3), FDA proposed that those products identified for classification into Category IIIA remain on the market and that their licenses remain in effect on an interim basis pending completion of scientifically sound studies to demonstrate efficacy in humans. In the **Federal Registers** of October 28, 1977 (42 FR 56800), and December 9, 1977 (42 FR 62162), under 21 CFR 12.21(b), FDA published notices of opportunity to request hearings, submit additional data, and comment on the proposed revocation of licenses for certain skin test antigens and bacterial vaccines and antigens with "no U.S. standard of potency," respectively. Through these FR notices, manufacturers of skin test antigens and bacterial vaccines and antigens with "no U.S. standard of potency" previously identified for classification into Category II or Category IIIB were offered an opportunity for a hearing on the proposed revocation of existing licenses for products placed in Category II or IIIB.

The manufacturers of skin test antigens and bacterial vaccines and antigens with "no U.S. standard of potency," whose products were identified as Category II or Category IIIB either: (1) Did not request a hearing, (2) requested a hearing but submitted no data, (3) requested a hearing and submitted additional data that justified reclassification of products without the need for the requested hearing, or (4) requested that their product licenses be revoked. Therefore, FDA published in the **Federal Register** of October 27, 1978 (43 FR 50247), a notice reclassifying one bacterial vaccine with "no U.S. standard of potency" from Category IIIB into Category IIIA, and revoking the product licenses for the remaining bacterial vaccines and bacterial antigens with "no U.S. standard of potency" classified in Category II or Category IIIB. In the **Federal Register** of October 27, 1978, FDA also published a notice reclassifying certain skin test antigens from Category IIIB into Category IIIA, and revoking the product licenses for the remaining skin test antigens classified as Category IIIB (43 FR 50250).

2. The Panel on Review of Bacterial Vaccines and Toxoids with Standards of Potency

In the **Federal Register** of December 13, 1985 (50 FR 51002), FDA published a proposed rule containing the implementation of the efficacy review for bacterial vaccines and toxoids with standards of potency (hereinafter referred to as the December 1985 proposal). The December 1985 proposal was in response to the report of The Panel on Review of Bacterial Vaccines and Toxoids with Standards of Potency, and contained the Panel's findings and recommendations to designate each of the products reviewed into Categories I, II, IIIA or IIIB. In the December 1985 proposal, FDA: (1) Disagreed with the Panel's findings and recommendations to classify some products as Category IIIB, and reclassified these products into Category I, (2) agreed with the Panel's recommendations to classify the remaining products into Category II or Category IIIB, and (3) provided notice that licenses for several products recommended by the Panel for classification into Category IIIB and the license for the single product recommended for classification into Category II were voluntarily revoked at the request of the manufacturers prior to publication of the proposed order.

Subsequent to the Panel's review but prior to the publication of the December 1985 proposal, the regulations were revised and reclassification review procedures were established under § 601.26 (21 CFR 601.26) (47 FR 44062 at 44071, October 5, 1982). Therefore, the classification process for bacterial vaccines and toxoids with standards of potency will be completed in accordance with § 601.26 as described below.

**II. Reclassification Procedures (Section 601.26)**

*A. The Reclassification Process*

In 1982, FDA issued a regulation that established procedures to reclassify those products in Category IIIA into either Category I or Category II (47 FR 44062, October 5, 1982). This regulation was codified in § 601.26. According to § 601.26, Category IIIA products that would be reclassified included: (1) Products that an advisory panel had recommended be assigned to Category IIIA, (2) products that FDA had proposed to place in Category IIIA, or (3) products for which FDA had issued a final order reclassifying the products into Category IIIA. Under § 601.26, advisory review panels would review all Category IIIA products and make recommendations concerning each product's reclassification. During the advisory panel reclassification review process, interested persons were permitted to attend meetings, appear before the advisory review panels, and submit data to the panels for review. The advisory review panels would then submit a report to FDA that recommended the reclassification of each Category IIIA product into either Category I or II. After reviewing the conclusions and recommendations of the advisory panels, FDA would publish in the **Federal Register** a proposed order containing the following: (1) A statement designating the products as Category I or Category II, (2) a notice of availability of the full panel report, (3) a proposal to accept or reject the findings of the advisory review panels, and (4) a statement identifying those products that FDA proposes should be permitted to remain on the market because of a compelling medical need and no suitable alternative exists as described in § 601.26(d)(4).

*B. Section 601.26 and the Products Subject to this Proposed Order*

FDA assigned the reclassification review of bacterial vaccines and related biological products previously classified into Category IIIA by FDA based on the recommendations of the Panel on Review of Bacterial Vaccines and Antigens with "no U.S. Standard of Potency" and the Panel on Review of Skin Test Antigens to the Vaccines and Related Biological Products Advisory Committee (VRBPAC). FDA also assigned the reclassification review of vaccines and related biological products previously recommended for classification into Category IIIA by the Panel on Review of Bacterial Vaccines and Toxoids with Standards of Potency to the VRBPAC. In accordance with the

procedures specified above, FDA is notifying the public through this **Federal Register** notice of the agency's proposed reclassification of the Category IIIA products reviewed by the VRBPAC.

This proposed order contains notice of FDA's intent to revoke the licenses of certain vaccines and related biological products, listed below, that FDA proposes, based on VRBPAC recommendations, to reclassify from Category IIIA to Category II. The public may submit comments to FDA concerning this proposed order. After the end of the comment period, if FDA determines to go forward with the license revocation proceedings, the agency will publish a notice of opportunity for hearing (NOOH) on the revocation of the license of each product in Category II. After reviewing the comments on the proposed order, FDA will issue a final order on the matters covered in the proposed order. Depending upon whether a manufacturer requests a hearing on the revocation of its biologics license, FDA may consolidate the final order with license revocations.

## III. Identification of Category IIIA Products Subject to Reclassification

*A. Review and Reclassification Procedures, Bacterial Vaccines and Toxoids With Standards of Potency. (Bacterial Vaccines and Toxoids with Standards of Potency, Antitoxins, and Immune Globulins)*

In the December 1985 proposal, FDA identified those products that were originally recommended for classification into Category IIIA and that were now subject to review by the VRBPAC under § 601.26.

Several bacterial vaccines and toxoids with standards of potency were classified into two categories based upon their use as a primary immunogen or as a booster. For example, a vaccine product could be assigned a Category IIIA designation for use as a primary immunogen but could be designated as Category I for booster use. The classifications were different because the potency tests for diphtheria and tetanus toxoids were found suitable for determining the acceptability of the toxoids for booster use, but not for determining the acceptability of the toxoids for use in primary immunization. Products listed in Table 1 were those recommended by the Panel on Review of Bacterial Vaccines and Toxoids With Standards of Potency for classification into Category I when used for booster immunization, and classification into Category IIIA when used for primary immunization. In addition, two immune globulins were recommended by the Panel for classification into Category IIIA (Table 2).

TABLE 1.—BACTERIAL VACCINES AND TOXOIDS RECOMMENDED FOR CLASSIFICATION IN CATEGORY I FOR BOOSTER IMMUNIZATION AND CATEGORY IIIA FOR PRIMARY IMMUNIZATION BY THE PANEL ON REVIEW OF BACTERIAL VACCINES AND TOXOIDS WITH STANDARDS OF POTENCY

| Manufacturer/License Number | Product(s) |
|---|---|
| Istituto Sieroterapico Vaccinogeno Toscano (Sclavo), No. 238 | Tetanus Toxoid |
| Lederle Laboratories, Division, American Cyanamid Co., No 17 | Diphtheria and Tetanus Toxoids Adsorbed |
| | Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed |
| | Tetanus and Diphtheria Toxoids Adsorbed (Adult Use) |
| | Tetanus Toxoid |
| | Tetanus Toxoid Adsorbed |
| Merck Sharp & Dohme, Division of Merck & Co., Inc., No. 2 | Tetanus Toxoid Adsorbed |
| Connaught Laboratories, Inc., No. 711. | Tetanus and Diphtheria Toxoids Adsorbed (Adult Use) |
| | Tetanus Toxoid |
| | Tetanus Toxoid Adsorbed |
| Michigan Department of Public Health, No. 99 | Diphtheria and Tetanus Toxoids Adsorbed |
| | Tetanus Toxoid Adsorbed |
| Swiss Serum and Vaccine Institute Berne, No. 21 | Tetanus Toxoid Adsorbed |
| Wyeth Laboratories, Inc., No. 3 | Diphtheria and Tetanus Toxoids Adsorbed |
| | Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed |
| | Tetanus and Diphtheria Toxoids Adsorbed (Adult Use) |
| | Tetanus Toxoid |
| | Tetanus Toxoid Adsorbed |

TABLE 2.—IMMUNE GLOBULINS RECOMMENDED FOR CLASSIFICATION IN CATEGORY IIIA FOR PASSIVE IMMUNIZATION BY THE PANEL ON REVIEW OF BACTERIAL VACCINES AND TOXOIDS WITH STANDARDS OF POTENCY

| Manufacturer/License Number | Product(s) |
|---|---|
| Hollister-Stier, a Division of Cutter Laboratories, No. 8 | Pertussis Immune Globulin (Human) |
| Travenol Laboratories Inc., Hyland Therapeutics Division, No. 140 | Pertussis Immune Globulin (Human) |

*B. Review and Reclassification Procedures, Bacterial Vaccines and Bacterial Antigens with "No U.S. Standard of Potency"*

In the **Federal Register** of January 5, 1979 (44 FR 1544), FDA issued a final rule classifying Bacterial Vaccines and Bacterial Antigens with "no U.S. standard of potency" based on the review and recommendation of the Panel on Review of Bacterial Vaccines and Bacterial Antigens with "no U.S. Standard of Potency." In the January 1979 final rule, FDA classified the products listed in Table 3 into Category IIIA.

TABLE 3.—BACTERIAL VACCINES AND BACTERIAL ANTIGENS WITH "NO U.S. STANDARD OF POTENCY" CLASSIFIED INTO CATEGORY IIIA

| Manufacturer/License Number | Product(s) |
|---|---|
| Eli Lilly and Co., No. 56 | Respiratory UBA (UBA–32) [1] |
| Hollister-Stier, a Division of Cutter Laboratories, No. 8 | Bacterial Vaccines Mixed Respiratory (MRV or MRVI; licensed as Polyvalent Bacterial Vaccines with No U.S. Standard of Potency) |
| | Bacterial Vaccines for Treatment, Special Mixtures containing only the following organisms—*Staphylococcus* (*aureus* and *albus*), *Streptococcus* (*viridans* and *nonhemolytic*), *Di plococcus pneumoniae*, *Neisseria catarrhalis*, *Klebsiella pneumoniae*, *Haemophilus influenzae* (licensed as Polyvalent Bacterial Vaccines with No U.S. Standard of Potency) |
| Sclavo Istituto Sieroteraico Vaccinogeno Toscano (Sclavo), No. 238 | Staphylococcus Toxoid [2] |
| Lederle Laboratories Division, No. 17 | Staphylococcus Toxoid; Formalinized: Dilution No. 1, Dilution No. 2; Digest-Modified [3] |
| Delmont Laboratories, Inc., No. 299 | Polyvalent Bacterial Antigens with "No U.S. Standard of Potency" Staphage Lysate (SPL) Types I and III [4] |

[1] Respiratory UBA, Lilly, was not reviewed by the Reclassification Committee. However, the license to manufacture this product was revoked at the request of the manufacturer on December 2, 1985. Therefore, no further regulatory action was required.
[2] The license for Staphylococcus Toxoid, Sclavo, was revoked on May 9, 1979, at the request of the manufacturer and was not, therefore, subject to reclassification.
[3] The licenses for Staphylococcus Toxoid, Lederle Laboratories, were revoked on April 3, 1979, and May 21, 1980, at the request of the manufacturer and were not, therefore, subject to reclassification.
[4] This product was originally placed in Category IIIB. However, additional data submitted by the firm were found to be adequate to reclassify the product from Category IIIB to IIIA (43 FR 50247, October 27, 1978).

*C. Review and Reclassification Procedures, Skin Test Antigens*

In the **Federal Register** of July 10, 1979 (44 FR 40284), FDA issued a final rule classifying skin test antigens into category IIIA based on the review and recommendations of the Panel on Review of Skin Test Antigens (hereinafter referred to as the July 1979 final rule. The July 1979 final rule placed the products listed in Table 4 into Category IIIA.

TABLE 4.—SKIN TEST ANTIGENS CLASSIFIED INTO CATEGORY IIIA

| Manufacturer/License Number | Product |
|---|---|
| Michigan Department of Public Health, No. 99 | Histoplasmin [1] |
| Hollistier-Stier, a Division of Cutter Laboratories, No. 8 | Coccidioidin [2] |
| Iatric Corp., No. 416 | Coccidioidin [3] |
| Massachusetts Public Health Biologic Laboratories, No. 64 | Diphtheria Toxin for Schick Test [4] |
| Eli Lilly & Co., No. 56 | Mumps Skin Test Antigen |

[1] The license for Histoplasmin, Michigan Department of Public Health was revoked at the request of the manufacturer on July 30, 1979. Therefore, the product was not subject to reclassification.
[2] The license for Coccidiodin, Hollistier-Stier, was revoked at the request of the manufacturer on November 1, 1979. Therefore, the product was not subject to reclassification.
[3] Coccidiodin, Iatric, was not reviewed by the Reclassification Panel. However, the license for Coccidiodin was revoked on June 25, 1997, at the request of the manufacturer. Therefore no further regulatory action on this product is required.
[4] Diphtheria Toxin for Schick Test manufactured by Massachusetts Public Health Biologic Laboratories was reclassified from Category IIIA into Category I by FDA in a FEDERAL REGISTER publication of October 16, 1981 (46 FR 51036). This action was based on the manufacturer's completion of studies and submission of data to FDA supporting the effectiveness of the product. Accordingly, the product was not subject to reclassification.

**IV. Proposed Reclassification of Category IIIA Products**

In the December 1985 proposal, FDA assigned the VRBPAC, as an advisory review panel, to review all bacterial vaccines and related biological products previously classified into Category IIIA or recommended for classification into Category IIIA, and to reclassify such products into either Category I (safe, effective, and not misbranded) or Category II (unsafe, ineffective, or misbranded).

The VRBPAC reviewed bacterial vaccines and related biological products in Category IIIA, including those products in Category IIIA for a particular use and in Category I for another use. For example, the Committee reviewed the use of vaccines for primary immunization, but did not review their use for booster immunization in cases where they were classified in Category IIIA and Category I, respectively. The VRBPAC reviewed all Category IIIA products, that FDA assigned to it, for effectiveness only; all such products were previously found to be safe.

The VRBPAC held reclassification meetings on January 20 and 21, 1983, June 9 and 10, 1983, and September 19, 1983, and submitted a final report, dated April 1984, to FDA.

The VRBPAC's recommendations for product classifications and FDA's responses to the recommendations are discussed below.

*A. Category I. (Biological Products Determined to be Safe and Effective and Not Misbranded)*

Products recommended by the VRBPAC for classification into Category I for both primary and booster immunization are listed in Table 5.

TABLE 5.—PRODUCTS RECOMMENDED BY THE VRBPAC FOR CATEGORY I CLASSIFICATION FOR BOTH PRIMARY AND BOOSTER IMMUNIZATION

| Manufacturer/License Number | Product(s) |
|---|---|
| Aventis Pasteur, Inc., No. 1277 | Tetanus and Diphtheria Toxoids Adsorbed (Adult Use)<br>Tetanus Toxoid Adsorbed[1] |
| Lederle Laboratories Division, American Cyanamid Co., No. 17 | Diphtheria and Tetanus Toxoids Adsorbed<br>Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed<br>Tetanus and Diphtheria Toxoids Adsorbed (Adult Use) Tetanus Toxoid<br>Tetanus Toxoid Adsorbed |
| Wyeth Laboratories, Inc., No. 3 | Diphtheria and Tetanus Toxoids and Pertussis Vaccine Adsorbed<br>Tetanus Toxoid Adsorbed |

[1] The licenses for these products were transferred from Connaught Laboratories, Inc., No. 711, to Aventis Pasteur Inc., No. 1277 on December 9, 1999.

After reviewing previously submitted data and additionally submitted data for the products listed in Table 5, the VRBPAC concluded that these products are effective for primary immunization and for booster immunization. The Committee recommended that these products be classified as Category I.

FDA agrees with the VRBPAC's conclusions and recommendations concerning the Category I classifications of the products listed in Table 5. FDA therefore proposes to designate these products as safe, effective, and not misbranded, and to accept the VRBPAC's findings.

In its final report to FDA, the VRBPAC recommended that three products be classified into Category II for primary immunization, and Category I for booster immunization. This recommendation was based on the fact that the manufacturers of these products did not submit data demonstrating the efficacy of the products for use in primary immunization. However, subsequent to the completion of the VRBPAC's review and submission of the final report to FDA, additional data were submitted to the agency in support of the efficacy of the use of these products for primary immunization. Therefore, FDA proposes to reclassify these products as safe, effective, and not misbranded for both primary and booster immunization. These products are listed in Table 6 followed by a detailed discussion.

TABLE 6.—PRODUCTS RECOMMENDED BY THE VRBPAC FOR CATEGORY II CLASSIFICATION FOR PRIMARY IMMUNIZATION AND CATEGORY I FOR BOOSTER IMMUNIZATION, WHICH FDA PROPOSES TO CLASSIFY INTO CATEGORY I FOR BOTH PRIMARY AND BOOSTER IMMUNIZATION

| Manufacturer/License Number | Product(s) |
|---|---|
| Wyeth Laboratories, Inc., No. 3 | Tetanus Toxoid<br>Diphtheria and Tetanus Toxoids Absorbed |
| Swiss Serum and Vaccine Institute Berne, No. 21 | Tetanus Toxoid Adsorbed |

The VRBPAC in its initial reclassification report placed Tetanus Toxoid and Diphtheria and Tetanus Toxoids Adsorbed, manufactured by Wyeth Laboratories, Inc. (Wyeth), in Category II for primary immunization because no additional data had been submitted. However, on April 4, 1986, Wyeth submitted clinical study reports to FDA regarding the use of both Tetanus Toxoid and Diphtheria and Tetanus Toxoids Adsorbed for primary immunization. These data were reviewed by FDA and medical consultants from the VRBPAC. Both FDA and the VRBPAC consultants agreed that the clinical study data submitted by Wyeth supported reclassification of Wyeth's Tetanus Toxoid and Diphtheria and Tetanus Toxoids Adsorbed into Category I for both primary and booster immunization. Therefore, FDA proposes to designate these products as safe, effective, and not misbranded.

The VRBPAC in its initial reclassification report also placed Tetanus Toxoid Adsorbed, manufactured by Swiss Serum and Vaccine Institute Berne in Category II because no efficacy data had been submitted. However, on June 18, 1991, FDA approved a license supplement from Swiss Serum and Vaccine Institute Berne to update the firm's product license application for Tetanus Toxoid Adsorbed. The supplement included serologic data in support of primary immunization.

*B. Category I for Booster Immunization and Category II for Primary Immunization. (Biological Products Determined to be Safe and Effective and Not Misbranded When Indicated for Booster Use Only)*

Products recommended by the VRBPAC for classification in Category I for booster immunization and Category II for primary immunization are listed in Table 7.

TABLE 7.—PRODUCTS RECOMMENDED BY THE VRBPAC FOR CLASSIFICATION IN CATEGORY I FOR BOOSTER IMMUNIZATION AND CATEGORY II FOR PRIMARY IMMUNIZATION

| Manufacturer/License Number | Product(s) |
|---|---|
| Aventis Pasteur, Inc., No. 1277 | Tetanus Toxoid[1] |
| Merck Sharp & Dohme, Division of Merck & Co., No. 2 | Tetanus Toxoid Adsorbed[2] |
| BioPort Corp., No. 1260 | Diphtheria and Tetanus Toxoids Adsorbed[3]<br>Tetanus Toxoid Adsorbed |
| Istituto Sieroterapico Vaccinogeno Toscano (Sclavo), No. 238 | Tetanus Toxoid[4] |

TABLE 7.—PRODUCTS RECOMMENDED BY THE VRBPAC FOR CLASSIFICATION IN CATEGORY I FOR BOOSTER IMMUNIZATION AND CATEGORY II FOR PRIMARY IMMUNIZATION—Continued

| Manufacturer/License Number | Product(s) |
|---|---|
| Wyeth Laboratories, Inc., No. 3 | Tetanus and Diphtheria Toxoids Adsorbed (Adult Use) |

[1] The license for this product was transferred from Connaught Laboratories, Inc., No. 711, to Aventis Pasteur, Inc., No. 1277 on December 9, 1999.
[2] The license for Tetanus Toxoid Adsorbed, Merck, was revoked at the request of the manufacturer on January 31, 1986. Therefore, no further regulatory action on this product was required.
[3] The licenses for these products were transferred from Michigan Department of Public Health, No. 99, to BioPort Corp., License No. 1260 on November 12, 1998.
[4] The license for Tetanus Toxoid Vaccine, Sclavo, was revoked at the request of the manufacturer on July 27, 1993. Therefore, no further regulatory action on this product was required.

After reviewing available data, the VRBPAC recommended that the products in Table 7 be reclassified from Category IIIA to Category II for primary immunization until additional information to support effectiveness becomes available. For each of these products, either no additional information was submitted by the manufacturer or the VRBPAC found the additional information submitted was inadequate to support the effectiveness of the vaccine for primary immunization (Final Report: Addendum to Previous Panel Reports for the Reclassification of Category IIIA Biologics, April 1984).

FDA agrees with the VRBPAC's conclusions and recommendations concerning the Category II classification for primary immunization. FDA therefore proposes to designate these products as ineffective and misbranded for primary immunization and accept the VRPBAC's findings. If FDA classifies these products, under a final order, as Category II for primary immunization, it will be necessary for the agency to remove the primary immunization use from the license for each product. FDA can accomplish this if a manufacturer submits a supplement to its license that deletes the primary immunization use while maintaining the booster immunization use in the license. In order to change the license of each product in a timely manner given the required procedures of this § 601.26 reclassification process, FDA recommends that a manufacturer submit a license supplement to the agency prior to FDA publishing an NOOH on the proposed revocation of the products in Category II, which could publish as early as 30 days after the close of the comment period of this proposed order. If a manufacturer does not wish to remove the primary immunization use from its license at this time, FDA will publish an NOOH on the revocation of that use from the license after the comment period ends. In this proposed order FDA hereby offers notice of its intent to revoke the primary immunization use from the licenses of those products that have been classified as Category II for that use.

Furthermore, if a manufacturer wishes to market its product, listed in Table 7 above, for booster immunization after FDA issues a final order that classifies the product in Category II for primary immunization, the manufacturer must change its product labeling to reflect only the approved booster immunization use. Therefore, FDA is proposing that the container and package labels and the package insert include the statement "For Booster Use Only". This statement should be placed immediately following the proper name of the product and in the same size type print as the proper name. Also, any labeling references for use as a primary immunogen should be deleted. To make such a labeling revision, a manufacturer should submit a Changes Being Effected (CBE) supplement to their license in accordance with 21 CFR 601.12(c)(5) and (f)(2). FDA suggests that a manufacturer submit its labeling supplement in a timely manner so that the manufacturer may be able to market its product with appropriate labeling after a final order classifying the product in Category II for primary immunization.

*C. Category II. (Biological Products Determined to be Unsafe, Ineffective or Misbranded)*

The VRBPAC and the Panel on Review of Allergenic Extracts recommended that the following products listed in Table 8 be reclassified into Category II.

TABLE 8.—PRODUCTS RECOMMENDED BY THE VRBPAC AND THE PANEL ON REVIEW OF ALLERGENIC EXTRACTS FOR CATEGORY II CLASSIFICATION

| Manufacturer/License Number | Product(s) |
|---|---|
| Hollister-Stier Laboratories LLC, No. 1272 | Polyvalent Bacterial Vaccines with "No U.S. Standard of Potency" (Bacterial Vaccines Mixed Respiratory (MRV or MRVI, Bacterial Vaccines for Treatment, Special Mixtures) [1] |
| Delmont Laboratories, Inc., No. 299 | Polyvalent Bacterial Antigens with "No U.S. Standard of Potency" (Staphage Lysate) |
| Eli Lilly and Company, No. 56 | Mumps Skin Test Antigen [2] |
| Hollister-Stier, a Division of Cutter Laboratories, No. 8 | Pertussis Immune Globulin (Human) [3] |
| Travenol Laboratories, Inc., Hyland Therapeutics Division, No. 140 | Pertussis Immune Globulin (Human) [4] |

[1] The licenses for these products were transferred from Bayer, Inc. No. 8 (formerly Hollister-Stier, a Division of Cutter Laboratories, No. 8), to Hollister-Stier, LLC, No. 1272 on June 2, 1999. These products were reviewed by the Panel on Review of Allergenic Extracts.
[2] The license for Mumps Skin Test Antigen, Lilly, was revoked on December 2, 1985, at the request of the manufacturer. Therefore no further regulatory action on this product was required.
[3] The license for Pertussis Immune Globulin, Hollistier-Stier, was revoked on August 18, 1988, at the request of the manufacturer. Therefore no further regulatory action on this product was required.
[4] The licenses for Pertussis Immune Globulin, Travenol, were revoked on April 9, 1982, and July 27, 1995, at the request of the manufacturer. Therefore no further regulatory action on this product was required.

1. Staphage Lysate

The original Panel on Review of Bacterial Vaccines and Bacterial Antigens with "no U.S. Standard of Potency," reviewed SPL manufactured by Delmont Laboratories, Inc. (Delmont). This Panel recommended that SPL be placed in Category IIIB, and that the license be revoked because: (1) There was no evidence of efficacy; and (2) if SPL was to be recommended for use as a stimulator of cell mediated immunity, either specific or general, this new "function" would require evaluation as a new biological product.

In 1978, Delmont requested a hearing in response to initiation of revocation proceedings and submitted information resulting in reclassification of SPL from Category IIIB to Category IIIA (43 FR 50247). Following this reclassification and prior to the meeting of the VRBPAC in January 1983, Delmont submitted additional information concerning SPL to the VRBPAC. This information consisted of a series of letters from physicians and patients of a testimonial nature supporting the effectiveness of SPL. These letters were accompanied by several reprints and exhibits of uncontrolled case reports and papers regarding the effectiveness and use of SPL in a variety of clinical conditions ranging from warts to hidradenitis suppurativa (HS), to chronic and progressive disorders such as multiple sclerosis (MS) and Crohn's disease.

The VRBPAC reviewed the information that Delmont submitted for the use of SPL in the treatment of the conditions described above. In addition, the VRBPAC reviewed data regarding the nonspecific stimulation of the immune response in animals. The VRBPAC noted that the information from the completed studies that were submitted indicated that the studies were insufficiently designed to support claims of SPL's effectiveness for treatment of warts, MS, Crohn's disease or nonspecific stimulation of the immune response. At the time of the VRBPAC meeting in 1983, the committee noted that two controlled trials for the use of SPL in treatment of recurrent furunculosis and HS were either in the recruitment phase or in progress. The VRBPAC noted that it would likely take additional time for the sponsors to complete these trials. However, the VRBPAC concluded that "it could not reasonably continue to defer recommendations on the classification of SPL owing to uncertainty when the two existing controlled trials would be completed, and uncertainty as to whether the results, when finally presented, would be clearly interpretable, owing to lack of comparability among patient groups" (VRPBAC Final Report: Addendum to Previous Reports for the Reclassification of Category IIIA Biologics, April 1984).

As a result of its review, the VRBPAC found that it was not able to determine that there was substantial evidence of efficacy for SPL. In its final report to the agency submitted in April of 1984, the VRBPAC recommended that SPL be placed in Category II and that"licensure be revoked until additional data to support its reclassification became available."

2. Polyvalent Bacterial Vaccines with "no U.S. Standard of Potency"

Product licenses for Polyvalent Bacterial Vaccines with "no U.S. Standard of Potency," (MRV, MRVI, and Bacterial Vaccines for Treatment, Special Mixtures) manufactured by Hollister-Stier, Division of Cutter Laboratories, were transferred to Miles Laboratories, Inc., on February 18, 1983, were transferred to Bayer, Inc. on May 24, 1995, and were again transferred to Hollister-Stier LLC on June 2. 1999. The original Panel on Review of Bacterial Vaccines and Antigens recommended that these products (MRV, MRVI, and Bacterial Vaccines for Treatment, Special Mixtures) be classified as Category IIIA and could remain on the market, and their license remain in effect on an interim basis provided that: (1) Group A streptococcal organisms and their derivatives, where present, were removed, and (2) satisfactory potency standards were developed and acceptable data based on scientifically sound studies which demonstrated efficacy in humans be submitted to FDA. At the time the agency established the § 601.26 reclassification panels, FDA, based on a recommendation of the VRBPAC, referred these three products to the Panel on Review of Allergenic Extracts for reclassification based on the products' attributed mode of action.

The Panel on Review of Allergenic Extracts (the Allergenics Panel) held reclassification meetings on November 19 and 20, 1982, February 18 and 19, 1983, and June 3 and 4, 1983, and a final report was submitted to FDA in December of 1983. In this report, the Allergenics Panel noted that the manufacturer had removed group A streptococcal organisms from MRV, MRVI, and Bacterial Vaccines, Special Mixtures, and had initiated preliminary studies as recommended by the original Panel. However, the Allergenics Panel found that "there has been no better definition of indications for the use of this product. Neither are there recognizable criteria for selection of patients or dosage. No double-blinded controlled studies have been performed or started since the original Panel made its recommendations in 1977" (Food and Drug Administration Panel on Review of Allergenic Extracts Category IIIA Reclassification, Final Report, December 1983). Based on the lack of efficacy studies submitted in support of these products, the Allergenics Panel recommended that these products be reclassified into Category II for both diagnosis and immunotherapy.

FDA agrees with the conclusions and recommendations of the VRBPAC to reclassify SPL into Category II. FDA therefore proposes to designate SPL as ineffective and misbranded and to accept the findings of the VRBPAC concerning SPL. FDA also agrees with the conclusions and recommendations of the Panel on Review of Allergenic Extracts to reclassify Hollister-Stier LLC's Polyvalent Bacterial Vaccines with "no U.S. Standard of Potency" (MRV, MRVI, and Bacterial Vaccines for treatment, Special Mixtures) into Category II. FDA proposes to designate Polyvalent Bacterial Vaccines with "no U.S. Standard of Potency" (MRV, MRVI, and Bacterial Vaccines for treatment, Special Mixtures) as ineffective and misbranded, and FDA proposes to accept the findings of the Panel on Review of Allergenic Extracts.

In this proposed order FDA hereby offers notice of its intent to revoke the licenses of SPL and Polyvalent Bacterial Vaccines with "no U.S. Standard of Potency" (MRV, MRVI, and Bacterial Vaccines for treatment, Special Mixtures) as Category II products. After the end of the comment period for this proposed order, FDA will subsequently issue a notice of opportunity for a hearing on the revocation of the license of both SPL and Polyvalent Bacterial Vaccines with "no U.S. Standard of Potency" (MRV, MRVI, and Bacterial Vaccines for treatment, Special Mixtures).

Section 601.26(d)(4) requires FDA to publish in a proposed order, concerning Category IIIA reclassification, a statement identifying those products that the agency proposes should be permitted to remain on the market pending further testing because there is a compelling medical need and no suitable alternative. No such products were identified by the VRBPAC for the purposes of this proposed order.

**V. Availability of Reports and Public Comments**

In accordance with § 601.26(d)(2), FDA is announcing the availability of the final reports of the Vaccines and Related Biological Products Advisory

Committee, dated April 1984, and the Panel on Review of Allergenic Extracts, dated December 1983, that are the subject of this proposed order. Copies of these reports can be obtained from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. By sending a self-addressed adhesive label, you will assist that office in processing your requests more quickly. The documents may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844, or by mail by contacting CBER electronically at www.CBER__INFO@CBER.FDA.GOV.

Interested persons may, on or before August 13, 2000 submit written comments regarding this proposal to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments should be submitted, except that individuals should submit one copy. Comments may also be submitted electronically at www.fda.gov/ohrms/dockets. Comments should be identified with the docket number found in brackets in the heading of this document. Data and information submitted to FDA that fall within the confidentiality provisions of 18 U.S.C. 1905, 5 U.S.C. 552(b), or 21 U.S.C. 331(j) are not available for public disclosure. Consistent with the provisions of § 601.25(b), when FDA publishes this proposed order and the Reclassification Committee's reclassification findings, data and information submitted to FDA in connection with these reclassified products will be made publicly available after June 14, 2000, and may be viewed at the Dockets Management Branch (address above). Data and information submitted and shown to fall within the confidentiality provisions of one or more of the above statutes will not be disclosed. Comments concerning confidentiality should be received by FDA by June 14, 2000. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

After review of the public comments received in response to this proposed order and in consideration of the results of hearings, if any, FDA intends to issue in the **Federal Register** a final order announcing its final conclusions and revoking those licenses which are placed in Category II by the final order.

Dated: May 3, 2000.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 00–12116 Filed 5–12–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 98E–0228]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; Neuro Cybernetic Prosthesis (NCP®) System; Amendment

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice; amendment.

**SUMMARY:** The Food and Drug Administration (FDA) is amending a previous determination regarding the regulatory review period for the Neuro Cybernetic Prosthesis (NCP®) System that appeared in the **Federal Register** of November 10, 1998 (63 FR 63066). FDA is amending the notice because the agency agrees with the information provided in a request from the applicant for revision of the regulatory review period (Request) (Docket No. 98E–022 8/PRC 1, dated and received on January 8, 1999).

**ADDRESSES:** Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Claudia V. Grillo, Regulatory Policy Staff (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5645.

**SUPPLEMENTARY INFORMATION:** In its original application for patent term extension, the applicant claimed December 16, 1991, as the date the premarket approval application (PMA) for the Neuro Cybernetic Prosthesis (NCP®) System (PMA 910070) was initially submitted. FDA first determined that the PMA was initially submitted on January 27, 1997, because FDA records indicated that the PMA submitted on December 16, 1991, had not been filed, but an amended PMA, renumbered as PMA 970003, was the PMA for the approved product.

The applicant later claimed in its request that FDA's determination of the regulatory review period failed to take into account an approved amendment to the applicant's originally submitted PMA. Therefore, the applicant requested that the agency correct the date the PMA was initially submitted to June 1, 1993, the date the approved amendment to the PMA was received by FDA.

FDA reviewed its records and confirmed that the amended PMA, received on June 1, 1993, was filed by the agency based on a threshold determination that the amended PMA was sufficiently complete to permit a substantive review. FDA later determined that additional studies were required and issued a major deficiency letter dated September 30, 1994, requesting that additional clinical studies be performed. The applicant submitted a second amendment to the PMA, which the agency received on January 27, 1997. FDA reviewed the amendment and determined that the second amendment sufficiently responded to the September 30, 1994, deficiency letter, and filed the newly amended PMA on the date of the receipt of the completed PMA, January 27, 1997. For administrative reasons, the second amendment to the PMA was considered a resubmission of the PMA, and it was assigned a new PMA number, P970003, which is the PMA number of the approved PMA for the product.

In the past, FDA has determined that the start of the approval phase began with the submission of the first filed PMA for an approved product, even if the original filed PMA was later withdrawn and filed under a new number. For this reason, FDA now accepts the date of June 1, 1993, submitted by the applicant in its request, as the date the first PMA was filed for the product and the date that the PMA was initially submitted.

Therefore, the applicable regulatory review period for the Neuro Cybernetic Prosthesis (NCP®) System is 3,237 days. Of this time, 1,730 days occurred during the testing phase of the regulatory review period, while 1,507 days occurred during the approval phase.

These periods of time were derived from the following dates, summarized from the November 10, 1998, notice and modified by this technical amendment:

1. *The date a clinical investigation involving this device was begun:* September 6, 1988.

2. *The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e):* June 1, 1993.

3. *The date the application was approved:* July 16, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several

statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,761 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 14, 2000, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 13, 2000, for a determination on whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch. Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 6, 2000.

**Jane A. Axelrad,**

*Associate Director for Policy, Center for Drug Evaluation and Research.*

[FR Doc. 00–12117 Filed 5–12–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: Children's Hospital Graduate Medical Education Program—New**

Public Law Number 106–129 amended the Public Health Service Act to establish a new program to support graduate medical education (GME) in children's hospitals. The provision authorizes payments in FY 2000 and FY 2001 for direct and indirect expenses associated with operating approved GME programs. Section 340E(c)(1) states that the amount determined under this subsection for payments for direct medical expenses for a fiscal year is equal to the product of (A) the updated per resident amount as determined, and (B) the average number of FTE residents in the hospital's approved graduate medical residency training programs as determined under section 1886(h)(4) of the Social Security Act during the fiscal year. The statute directs the Secretary to take into account factors identified in section 340E(b)(1)(B) and 340E(d)(2) " case mix, number of FTE residents, treatment of more severely ill patients and the additional costs related to teaching residents.

Administration of the Children's Hospital Graduate Medical Education Program relies on the reporting of the number of full-time equivalent residents in applicant children's hospital training programs to determine the amount of direct and indirect expense payments to participating children's hospitals. Indirect expense payments will also be derived from a formula that requires the reporting of case mix index information from participating children's hospitals.

Hospitals will be requested to submit such information in an annual application. The statute also requires reconciliation of the estimated numbers of residents with the actual number determined after the close of the fiscal year. Participating children's hospitals would be required to complete an adjusted report to correct such information on an annual basis.

ESTIMATES OF ANNUALIZED HOUR BURDEN

| Form name | Number of respondents | Responses per respondent | Total responses | Hrs. per response | Total hour burden |
|---|---|---|---|---|---|
| Form E (Short) | 42 | 1 | 42 | *99.9 | 4,194 |
| Form E (Long) | 12 | 1 | 12 | *46.7 | 560 |
| Form F (Short) | 42 | 1 | 42 | 8 | 336 |
| Form F (Long) | 12 | 1 | 12 | 8 | 96 |
| IME Data* | 54 | 1 | 54 | 14 | 756 |
| Required GPRA Tables | 54 | 1 | 54 | 28 | 1,512 |
| Total | 54 | | | | 7,454 |

*The hours per response are paradoxically greater for the short form because of the relatively large number of hospitals which have been reporting residency counts to Medicare but expect considerable work in translating resident counts based on hospital cost-reporting years to counts, in part prospective, based on Federal fiscal years, including obtaining interim counts from other hospitals of incoming rotations.

HRSA is requesting from OMB an emergency review and approval of this data collection within 40 days from the date of publication of this notice, with a 180-day approval period. During this 180-day approval period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day review and public comment period on the data collection activity.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: John Morrall, Human Resources and Housing Branch, Office of Management and Budget, 725 17th St., NM, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 8, 2000.

**Claude Earl Fox,**

*Administrator.*

[FR Doc. 00–11893 Filed 5–12–00; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Notice of a Cooperative Agreement With the National Association of County and City Health Officials

In anticipation of Fiscal Year (FY) 2001 funding, the Health Resources and Services Administration (HRSA) announces its intention to award a cooperative agreement with the National Association of County and City Health Officials (NACCHO) to increase access and eliminate disparities in health care for the underserved/uninsured by strengthening the local public health systems and supporting programs that assist local communities.

The purpose of this project is to: (1) Address the health care needs of the underserved and vulnerable populations, the needs of health care providers who serve vulnerable populations, and related public health issues; and (2) assist NACCHO in developing and convening national and regional policy forums and provide educational and resource materials emanating from these forums for county and city policymakers on the above areas.

There is no other ongoing group that can convene the high-ranking decision-makers representing county and city health officials' interests around an issue of importance to HRSA. This group will facilitate communication on current and emerging strategies addressing common priorities, and will enable HRSA to better leverage limited resources by improving planning and program design to complement other public and private sector initiatives serving the needs of the same populations.

**Authorizing Legislation**

This program is authorized under section 301 of the Public Health Service Act [42 U.S.C. 241], as amended.

**Eligible Applicants**

Assistance will be provided only to the National Association of County and City Health Officials (NACCHO). No other applications are solicited.

The NACCHO is the only nonprofit membership organization serving all of the nearly 3,000 local health departments nationwide—in cities, counties, townships, and districts.

**Availability of Funds**

Approximately $100,000 is available in FY 2001 to fund this award. It is expected the award will begin on or after October 1, 2000, and will be for a 12-month budget period with a project period of 5 years. Funding estimates may vary and are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

**Program Requirements**

This project will provide an Agency-level cooperative agreement with NACCHO to address cross-cutting publicly-funded public health program integration and health care access issues identified by county and city public health officials. Through this project, NACCHO will provide assistance to HRSA and HRSA grantees, such as states and local governments, health centers, Maternal and Child Health programs, and rural health offices, to evaluate the effectiveness of their programs and initiatives to address the needs of the underserved and targeted populations. It will include activities that are mutually agreed to by HRSA and NACCHO, including addressing HRSA priority issues.

Specifically, HRSA's role in the cooperative agreement will include participating in the planning of the forums conducted during the period of the cooperative agreement, including developing the agendas and identifying participants who should be invited to address issues of importance from the Federal perspective at these forums, providing consultation and technical assistance in planning, operating, and evaluating program activities, facilitating collaboration with NACCHO staff and other county and city health agencies to reach the target population, facilitating efforts in the provision of technical assistance and training to specified individuals and organizations, and maintaining an ongoing dialogue with the applicant concerning program plans, policies, and other issues which may have major implications for any activities undertaken by the applicant under the cooperative agreement.

The recipient shall be responsible for carrying out activities to support the following:

(1) Developing, printing, and distributing articles, reports, or other documents relating to health care access, unmet population needs, provider capacity, the uses of existing data systems within counties and cities to address health care needs of the population, and the complexity of private sector initiatives for use by county and city health officials.

(2) Convening regional or national meetings of county and city health officials and others, as appropriate, for discussion of public and private sector strategies and best practices in HRSA priority issues to include appropriate topics and audiences to exchange information. Some of these priority issues include: (a) Infrastructure building; (b) capacity to assure provision of essential public health services; (c) providing an opportunity for HRSA stakeholders to comment on HRSA's performance; (d) building upon integrated public health infrastructures which use data to address public health issues of the counties and cities; (e) improving the health status of vulnerable populations; (f) assisting in the development of work force information systems; and (g) advising on the development of a Legislative Handbook on Public Health (review, solicit input from NACCHO members, summarize comments, and work closely with National Conference for State Legislatures' staff as the Handbook is drafted).

(3) Participating in HRSA-sponsored meetings and events, as appropriate.

(4) Coordinating activities with county and city health department contacts, including public health experts, to ensure that NACCHO members are aware of public health programs and activities in their local area.

**Where To Obtain Additional Information**

Diane Rodill, Ph.D., Project Officer, Center for Public Health Practice, Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Room14–15 Parklawn Building, Rockville, MD 20857, Telephone: (301) 443–4034, E-mail: *drodill@hrsa.gov*

Dated: May 9, 2000.

**Claude Earl Fox,**

*Administrator.*

[FR Doc. 00–12059 Filed 5–12–00; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NM–910–00–1020–PB]**

### New Mexico Resource Advisory Council Meeting

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of council meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory

Committee Act of 1972 (FACA), 5 U.S.C. appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on June 14–16, 2000, at the Quality Inn, 1043 Camino del Pueblo Sur, Taos, NM.

There will be an optional all day field trip on Wednesday, June 14, 2000, to the Wild Rivers area to look at vegetation and on the ground events. The optional tour will start at the Quality Inn, in Taos, NW, at 8 am and end back in Taos, NM, about 5 pm. Transportation will be provided for RAC members.

The meeting on Thursday, June 15, 2000, starts at 8 a.m. and will end about 5 pm. The three established RAC Subcommittees may have late afternoon or evening meetings on this day. The exact time and location of the Subcommittee meeting will be established by the Chairperson of each Subcommittee earlier in the day during the RAC meeting. The meeting on Friday, June 16, 2000, starts at 8 a.m. and will end about 3 pm. The ending time of 3 p.m., for the meeting, may be changed depending on the work remaining for the RAC. The draft agenda for the RAC meeting includes an agreement on the meeting agenda, any RAC comments on the draft minutes of the last RAC meeting on April 26 through 28, 2000, in Lordsburg, NM, a check in from the RAC members (the following are planned presentations that also include discussions) a Standards and Guidelines update presentation, an update on the Lesser Prairie Chicken, Threatened and Endangered Species comprehensive approach on border issues, elk management on BLM, Forest Service, and private land, a Vermijo Park wildlife presentation, a Willow Flycatcher presentation, BLM Field Office Managers State of the Field Office presentations with emphasis on wildlife and the Willow Flycatcher, RAC Subcommittee reports from the Urban/Lands Subcommittee, the Oil and Gas Subcommittee, and the Roads and Trails Subcommittee, a public comment period to the RAC, RAC discussions and any RAC recommendations, develop draft agenda items and select a location for the next RAC meeting, and a RAC assessment on the current meeting. The time for the public to address the RAC is on Friday, June 16, 2000, from 10 a.m. to 12 noon. The RAC may reduce or extend the end time of 12:00 noon depending on the number of people wishing to address the RAC. Anyone wishing to address the RAC should be present at the 10:00 starting time. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its agenda items.

**FOR FURTHER INFORMATION CONTACT:** Mary White, New Mexico State Office, Office of External Affairs, Bureau of Land Management, 1474 Rodeo Road, PO Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7404.

**SUPPLEMENTARY INFORMATION:** The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: May 9, 2000.

**Michelle J. Chavez,**

*State Director.*

[FR Doc. 00–12104 Filed 5–12–00; 8:45 am]

**BILLING CODE 4310–FB–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZA—31116 (supercedes AZA 28350)]**

### Notice of Availability for the Ray Land Exchange/Plan Amendment Record of Decision

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Ray Plan Amendment Record of Decision and Notice of Decision for the Ray Land Exchange.

**SUMMARY:** The Bureau of Land Management (BLM) is amending the Phoenix and Safford District Resource Management Plans (RMPs) to allow the transfer of certain federal lands and mineral estate in Pinal and Gila counties (Arizona) for privately owned lands in Mohave and Pinal counties. BLM examined the lands and interests described below under the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716) (FLPMA) and through the planning process described in BLM regulations (43 CFR 1600). BLM determined the lands and interests therein as suitable for disposal by land exchange pursuant to Section 206 of FLPMA, as amended. The Record of Decision approving the plan amendment is now available.

Notice is hereby given that on April 27, 2000, Jesse Juen, Tucson Field Office Manager, Bureau of Land Management, issued a decision to approve a proposed land exchange with ASARCO, Incorporated, a New York Corporation. This Notice of Decision initiates a 45-day comment period on the decision to approve the land exchange.

Federal lands and mineral estate determined suitable for land exchange (total approximately 10, 976 acres) are described as:

*Mineral Estate Only*

Gila and Salt River Base and Meridian, Pinal County, Arizona

T.2 S., R.13 E., Section 35 (80 acres)
T.2 S., R.14 E., Section 31 (71 acres)
T.3 S., R.12 E., Section 24 (160 acres)
T.3 S., R.13 E., Sections 9, 10, 11, 12, 30 (1337 acres)
T.3 S., R.14 E., Sections 6, 7, 17, 18 (495 acres)
T.6 S., R.4 E., Sections 12, 23, 24 ( 637acres)

Comprising approximately 2,780 acres.

*Full Fee Estate*

Gila and Salt River Base and Meridian, Pinal and Gila Counties, Arizona

T.2 S., R.13 E., Section 34 (428 acres)
T.3 S., R.12 E., Sections 25, 26 (1,120 acres)
T.3 S., R.13 E., Sections 1, 2, 8, 10, 11, 13, 17, 19,20, 22, 23, 26, 27, 34, 35 (3,121 acres)
T.3 S., R.14 E., Sections 7, 18, 19, 20, 33, 34 (1,253 acres)
T.4 S., R.14 E., Sections 3, 4, 5, 8 (1,442 acres)
T.4 S., R.15 E., Sections 22, 27 (272 acres)
T.5 S., R.15 E., Sections 11, 28 (560 acres)

Comprising approximately 8,196 acres.

Non-federal lands (private land now owned by Asarco Incorporated) to be acquired (total approximately 7,300 acres) described as:

Gila and Salt River Base and Meridian, Mohave County, Arizona

Knisely Ranch, T.25 N., R.18 W., Sections 4, 17, 20 (160 acres)
McCracken Mtn.
T.14 N., R.14 W., Sections 19, 31 (1,266 acres)
T.14 N., R.15 W., Sections 3, 9, 11, 15, 23, 25, 27, 35 (5,118 acres)
Sacramento Valley, T.19 N., R.19 W., Section 23 (120 acres)
Tomlin Parcels, T.15 N., R.13 W., Sections 19, 35 (313 acres)

Comprising approximately 6,980 acres.

Gila and Salt River Base and Meridian, Pinal County, Arizona

Gila River/Cochran, T.4 S., R.12 E., Sections 6, 7 (320 acres)

Comprising approximately 320 acres.

The purpose of the Ray Land Exchange is to acquire the non-federal land parcels which have high public values for: wilderness inholdings in the Mt. Tipton Wilderness and parcels

adjacent to the Warm Springs Wilderness; checkerboard inholdings in the McCracken Mountains Area of Critical Environmental Concern; riparian zones along the Big Sandy and Gila Rivers; other habitat supporting threatened and endangered or special species; and cultural and recreation values. The public interest will be served by making the exchange.

The values of the lands to be exchanged are equal. Lands transferred from the United States to ASARCO will be subject to the following reservations, terms and conditions:

A right-of-way thereon for ditches or canals.

Three rights-of-way for the Arizona Highway Department, AZAR 04524, AZAR 04525, AZAR 024241.

Two rights-of-way for the Salt River Project, AZA 2146, AZPHX 086749.

A right-of-way for Southwest Gas Corporation, AZAR 02148.

Two rights-of-way for Arizona Public Service Company, AZA 8778, AZAR 033336.

Two rights-of-way for US West Communications Inc., AZA 6541, AZA 24678.

And a right-of-way for Pinal County Board of Supervisors, AZA 21389.

**DATES:** The publication of this Notice of Decision initiates a 45-day protest period on the Ray land exchange. Interested parties may submit comments or objections regarding the land exchange to the Tucson Field Office Manager, BLM, 12661 East Broadway, Tucson, AZ 85748–7208. Objections will be reviewed by the Arizona State Director who may sustain, vacate or modify this Notice of Decision. A copy of the Record of Decision may be obtained from the person/address that follows.

**FOR FURTHER INFORMATION CONTACT:** Shela McFarlin, Project Manager, BLM, Arizona State Office, 222 N. Central, Phoenix, AZ 85004, or by telephone (602) 417–9568.

Dated: April 27, 2000.

**Jesse Juen,**

*Field Manager, Tucson.*

[FR Doc. 00–12088 Filed 5–12–00; 8:45 am]

BILLING CODE 4310–32–P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Preparation of an Environmental Assessment for Proposed Lease Sale 178 in the Central Gulf of Mexico (2001)

**AGENCY:** Minerals Management Service.

**ACTION:** Preparation of an Environmental Assessment.

**SUMMARY:** The Minerals Management Service (MMS) is beginning preparation of an environmental assessment (EA) for proposed lease Sale 178 (scheduled for March 2001) in the Central Gulf of Mexico Planning Area. In August 1996, MMS issued a Call for Information and Nominations/Notice of Intent to Prepare an EIS (Call/NOI) for the five proposed Central Gulf of Mexico sales in the current 5-year leasing program. In 1997, MMS prepared a single environmental impact statement (EIS) for all five sales. The multisale Final EIS, filed in November 1997, included an analysis of a single, "typical" sale, and a cumulative analysis that included the effects of holding all five sales, as well as the cumulative effects of the long-term development of the planning area. The MMS stated in the EIS that an EA would be prepared for each lease sale after the first sale covered in the EIS (Sale 169).

The preparation of this EA is the first step in the prelease decision process for Sale 178. The proposal and alternatives for Sale 178 were identified by the Director of MMS in November 1996 following the Call/NOI and were analyzed in the Central Gulf multisale EIS, which is available from the Gulf of Mexico OCS Region's Public Information Office at 1–800–200-GULF. The proposed action analyzed in the multisale EIS was the offering of all available unleased acreage in the Central Gulf of Mexico Planning Area. The EA will also analyze alternatives to defer blocks south and within 15 miles of Baldwin County, Alabama, and to defer blocks containing topographic features with sensitive biological resources, as well as the no action alternative. The analysis in the EA will reexamine the potential environmental effects of the proposal and alternatives based on any new information regarding potential impacts and issues that was not available at the time the Final EIS was prepared.

The MMS requests interested parties to submit comments regarding any such new information or issues that should be addressed in the EA to Minerals Management Service, Gulf of Mexico OCS Region, Office of Leasing and Environment, Attention: Regional Supervisor (MS 5410), 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394 by June 15, 2000. After completion of the EA, MMS will determine whether to prepare a Finding of No New Significant Impact (FONNSI) or a supplemental EIS. The MMS will then prepare and send consistency determinations to the affected States to determine whether the proposed sale is consistent with federally-approved State coastal zone management programs, and will send a proposed Notice of Sale to the Governors for their comments on the size, timing, and location of the proposed sale. The tentative schedule for the steps in the prelease decision process for Sale 178 is listed below:

Comments due to MMS, June 15, 2000;

EA/FONNSI or Supplemental EIS, October 2000;

Consistency Determinations sent to States, October 2000;

Proposed Notice of Sale sent to Governors, November 2000;

Final Notice of Sale in **Federal Register**, January 2001;

Sale, March 2001.

**FOR FURTHER INFORMATION CONTACT:** Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394, Mr. George Hampton, telephone (504) 736–2465.

Dated: May 9, 2000.

**Charles J. Schoennagel,**

*Acting Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 00–12108 Filed 5–12–00; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Comments Request

**ACTION:** Notice of Information Collection Under Review; Visa Waiver Pilot Program Carrier Agreement.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The Proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until [Insert date of the 60th day from the date that this notice is published in the **Federal Register**].

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Visa Waiver Pilot Program Carrier Agreement.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–775. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. The agreement between a transportation company and the United States is needed to assure the United States that the transportation company will remain responsible for the aliens that it transports to the United States under the Visa Waiver Pilot Program (8 U.S.C. 1187).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 50 responses at one (1) hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 50 annual burden hours.

If you have additional comment, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 9, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 00–12118 Filed 5–12–00; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Comment Request

**ACTION:** Notice of Information Collection Under Review; Application-Checkpoint Pre-enrolled Access Lane

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 14, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3)Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application-Checkpoint Pre-enrolled Access Lane.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–866. Border Patrol Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collection will be used by the Service to determine eligibility for participation in the Checkpoint Pre-enrolled Access Lane (PAL) program for person and vehicles at immigration checkpoints within the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,500 responses at 32 minutes (.53 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,625 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 9, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 00–12119 Filed 5–12–00; 8:45 am]

BILLING CODE 4410–10–M

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## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

### Agency Information Collection Activities: Comment Request

**ACTION:** Notice of Information Collection Under Review; Application for Transmission of Citizenship Through a Grandparent.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 14, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Transmission of Citizenship through a Grandparent.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–600/N–643. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The collection of this information is required by Section 322 of the Immigration and Nationality Technical Corrections Act of 1994 which allows for a United States citizen parent to use the citizen grandparents residence for transmission of citizenship onto his or her natural or adopted child.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 9,641 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 4,820 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 5, 2000.

**Richard A. Sloan,**

*Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.*

[FR Doc. 00–12120 Filed 5–12–00; 8:45 am]

**BILLING CODE 4410–10–M**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–052]**

### NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Biomedical and Behavioral Research Meeting

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Life and Microgravity Sciences and Applications Advisory Committee, NASA–NIH Advisory Subcommittee on Biomedical and Behavioral Research.

**DATES:** Thursday, June 8, 2000, 8:00 a.m. to 4:00 p.m.

**ADDRESSES:** National Aeronautics and Space Administration Headquarters, 300 E Street, SW, MIC–3, Room 3H46, Washington, DC 20546.

**FOR FURTHER INFORMATION CONTACT:** Dr. Joan Vernikos, Code UL, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0220.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Action Status
—NASA Update
—NASA Life Sciences Division Update
—LSAS and LMSAAC Reports
—NIH/NASA Program Announcement
—Joint Workshops Update
—NASA/NIH Three-Dimensional Tissue Culture Center
—Discussions and Review of Findings and Recommendations

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Visitors will be requested to sign a visitor's register.

Dated: May 9, 2000.

**Matthew M. Crouch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00–12051 Filed 5–12–00; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 00–051]**

### Centennial of Flight Commission

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Centennial of Flight Commission.

**DATES:** Monday, June 19, 2000, 1:00 p.m. to 4:00 p.m.

**ADDRESSES:** Smithsonian National Air and Space Museum, 7th and Independence Avenue, SW, Director's Conference Room, 3rd Floor, Washington, DC 20560. Attendees must

check in at the Information Desk to be cleared to the 3rd floor.

**FOR FURTHER INFORMATION CONTACT:** Ms. Beverly Farmarco, Code ZC, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1903.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—First Flight Centennial Foundation of North Carolina
—Inventing Flight of Dayton, Ohio
—Logo Use Policy

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Visitors will be requested to sign a visitor's register.

Dated: May 9, 2000.

**Matthew M. Crouch,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 00–12050 Filed 5–12–00; 8:45 am]

**BILLING CODE 7510–01–P**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of: Jazz Musician Questionnaire. A copy of the current information collection request can be obtained by contacting the office listed below in the address section of this notice.

**DATES:** Written comments must be submitted to the office listed in the address section below on or before July 18, 2000. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**ADDRESSES:** Tom Bradshaw, Research Division, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Room 617, Washington, DC 20506–0001, telephone (202) 682–5432 (this is not a toll-free number), fax (202) 682–5677.

**Murray Welsh,**

*Director, Administrative Services, National Endowment for the Arts.*

[FR Doc. 00–12052 Filed 5–12–00; 8:45 am]

**BILLING CODE 7536–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–346]**

### FirstEnergy Nuclear Operating Company, (Davis-Besse Nuclear Power Station); Exemption

I

FirstEnergy (the licensee) is the holder of Facility Operating License No. NPF–3, which authorizes the operation of the Davis-Besse Nuclear Power Station (DBNPS). The license states that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The Commission is taking an action to approve this request prior to publication in the **Federal Register** of its Environmental Assessment and Finding of No Significant Impact. In accordance with 10 CFR 51.13, the Commission has determined that emergency circumstances are present to support the issuance of this exemption prior to publication in the **Federal Register** in that failure to act in a timely way would result in prevention of resumption of plant operation.

The facility consists of a pressurized-water reactor at the licensee's site located in Ottawa County, Ohio.

II

The DBNPS is planning to implement a plant modification during the twelfth refueling outage, which is scheduled to end in May 2000. The modification will change the equipment used to prevent boric acid precipitation following certain loss-of-coolant accidents (LOCAs) to enhance the flow of water through the core, thus controlling the accumulation of boric acid in the core and preventing boric acid precipitation.

The Code of Federal Regulations at 10 CFR 50.46 provides acceptance criteria for the ECCS, including long-term cooling requirements in 50.46(b)(5) and an option to develop the ECCS evaluation model (EM) in conformance with appendix K requirements (10 CFR 50.46(a)(1)(ii)). 10 CFR part 50, appendix K, Section 1.D.1, in turn, requires that accident evaluations use the combination of ECCS subsystems assumed to be operative "after the most damaging single failure of ECCS equipment has taken place." In addition, Appendix K Section I.A.4. specifies a requirement to assume decay heat generation rate is equal to 1.2 times the values for infinite operating time in a specified ANS standard.

The proposed action would exempt the Licensee from the single-failure requirement for very low probability scenarios under certain conditions. The exemption is limited to the systems required for preventing boron precipitation during the long-term cooling phase of a LOCA. In addition, the action would exempt the Licensee from the decay heat generation rate assumption specified in Appendix K, Section I.A.4.

Specifically, DBNPS requested the following exemption by its letters dated March 15, and April 3, 2000: [1], [2]

FirstEnergy, with respect to the Davis-Besse Nuclear Power Station, is exempt from the single failure criterion requirement of 10 CFR part 50, appendix K, Section I.D.1, with

[1] Campbell, Guy G., "Request for Exemption from 10 CFR 50, Appendix K, for Boric Acid Precipitation Control Methodology (TAC No. MA7831)," Letter to NRC from Vice President, Nuclear, FirstEnergy, Davis-Besse Nuclear Power Station, March 15, 2000.

[2] Campbell, Guy G., "Supplemental Information Regarding the Request for Exemption from 10 CFR 50, Appendix K, for Boric Acid Precipitation Control Methodology (TAC No. MA7831)," Letter to NRC from Vice President Nuclear, FirstEnergy, Davis-Besse Nuclear Power Station, April 3, 2000.

respect to (1) Simultaneous failure of both the primary auxiliary spray method and the backup decay heat removal drop line method of controlling boron concentration due to failure of an emergency core cooling component that results in inability to initiate, or continue to operate, an active means of controlling core boron concentration, and (2) Not establishing that the backup decay heat removal drop line method of controlling boron concentration is otherwise in compliance with appendix K and 10 CFR 50.46(b)(5) requirements. Specifically, when establishing that boron precipitation will not occur in the decay heat removal system cooler, the Davis-Besse Nuclear Power Station credited flow through hot leg nozzle gaps and did not include all of the specific conservatisms required by appendix K.

The staff considers that the modifications would also require an exemption from the decay heat generation rate requirement contained in 10 CFR part 50, appendix K, Section I.A.4.

## III

Certain LOCAs can result in a reactor coolant system (RCS) configuration in which the core is covered with boiling water and decay heat is transported from the core by steam while makeup water is provided to keep the core covered. This condition can result in accumulation of boric acid in the core since boric acid continues to be added via the makeup water, but little boric acid is removed by the steam. If too much boric acid accumulates, some might precipitate and prevent water from reaching the core to keep it cooled.

The DBNPS reactor vessel (RV) is equipped with reactor vessel vent valves (RVVVs). The RVVVs will cause water to flow through the core to control buildup of boric acid when needed for all LOCA conditions except for (1) some LOCAs between the reactor coolant pumps (RCPs) and the RV and (2) decay heat generation rate comparable to approximately a month following extended operation at full power for some LOCAs. Active means of controlling boric acid concentration are provided to address the case when the RVVVs are not effective.

In licensee event report (LER) 98–008 (October 1, 1998), DBNPS reported that for some small-break LOCAs, initiation of its active method of boron precipitation control (BPC) could cause steam binding in the suction piping of both decay heat removal (DHR) pumps. As part of the corrective action for LER 98–008, DBNPS committed to address all issues related to long-term LOCA BPC and to complete a related plant modification to improve the active methods by the end of the twelfth refueling outage. Improved active methods of BPC and the associated exemption request are in response to that commitment.

With the improved active methods, if the RVVVs are not effective, then (1) the primary active method of BPC is a new means of supplying water to the pressurizer via the auxiliary spray line and (2) a new backup method will take water from an RCS hot leg via the DHR system drop line and return water to the RV via the core flood nozzles. DBNPS has stated that either method will provide sufficient flow of water through the core to provide BPC.

The DBNPS identified the following single failure vulnerabilities for situations where the RVVVs cannot be established as being effective:

(1) The primary BPC method is only connected to one train of high-pressure safety injection (HPSI) and is subject to any single active component failure in the flow path. Thus, a backup method is needed.

(2) The backup BPC method is potentially vulnerable to boron precipitation in the DHR cooler and to certain failure modes that are common to both the primary and backup BPC methods.

In its March 15, and April 3, 2000, submittals, the DBNPS requested an exemption from certain requirements of the criteria. DBNPS justified its request on the basis of improvements over the existing methodology, conservatisms in calculations that result in over-prediction of the BPC problem, and a risk evaluation.

## IV

Two new active methods are planned for BPC: (1) A primary method using an improved auxiliary spray path into the pressurizer and (2) a backup method using flow into the DHR suction pipe from an RCS hot-leg pipe. A new pipe and new valves are being installed to accommodate the primary method. This path will supply about 250 gpm to the pressurizer, sufficient to fill the pressurizer in approximately an hour, after which BPC will be achieved by flow from the pressurizer into the reactor vessel via an RCS hot-leg. High-pressure injection (HPI) Pump 2 will be used with "piggyback" suction from DHR/low-pressure injection (LPI) Pump 2. A failure anywhere in the flow path could result in failure of this method to provide water to the pressurizer.

A backup method is provided in case the primary method fails. This method will use one of the two operating DHR/LPI pumps to take suction from the DHR drop line and to discharge a low flow rate into the reactor vessel via the core flood nozzles. The second DHR/LPI pump will be unthrottled and will continue to take suction from the emergency sump. The first pump will ensure a net flow of water through the core by withdrawing water from an RCS hot-leg while the second pump will ensure that makeup water is supplied to the RCS so that core cooling is ensured.

If only one ECCS train is available, the backup method is not available since the available ECCS train must be used to ensure the water makeup function. Thus, failure of ECCS Train 2 will disable both the primary and the backup method for BPC. DBNPS reported the results of a common-mode failure evaluation of this condition that identified several areas where a single-failure could disable both the primary and backup BPC methods. We briefly audited this evaluation.

The DBNPS assumed an initial RCS boric acid concentration of 1900 ppm for the small break LOCAs for analysis of DHR cooler performance on the basis that, after the first few days of operation, the actual RCS concentration prior to the LOCA would be 1700 to 1800 ppm. Injection water was included from the borated water storage tanks at about 2800 ppm and from the core flood tanks at about 4000 ppm. For the large and medium LOCAs, the 1900 ppm assumption was not used because much of the original water is lost from the RCS prior to injection, and the core flood tanks and borated water storage tank were assumed to inject into the RCS consistent with the LOCA RCS pressure calculations. This approach is acceptable because the amount of boron predicted to be in the core will be consistent with the sources of boron.

The DBNPS assumed 1.0 times the American Nuclear Society (ANS) standard infinite operation decay heat generation rate for calculation of the DHR cooler aspects of the backup method, whereas Appendix K specifies 1.2. Although using 1.0 is more realistic and is suitable for probabilistic risk calculations, the calculation does not include the conservatism required by Appendix K. The DBNPS exemption request therefore encompasses not complying with the Appendix K calculational requirement. Realistically, when considered in conjunction with a likely hot leg nozzle gap that provides a boron dilution path, DBNPS has shown that BPC will be maintained through the cooler. This, in conjunction with the low probability of encountering the condition (as discussed below), demonstrates that use of an assumed 1.0 decay heat generation rate does not constitute an undue risk and is therefore, acceptable.

Traditionally, core boric acid concentration evaluations use a solubility limit of the actual solubility reduced by four weight percent, an approach the staff has accepted in past Appendix K reviews to account for such items as solubility uncertainty and the non-uniform temperatures that may result in the RV. The DBNPS stated it used 4 percent for its core analyses, but that it used a 90 percent of the solubility limit for the DHR cooler analysis. This reduced margin approach is reasonable and is acceptable for the DHR cooler analysis because the complex flow patterns and potential temperature non-uniformities associated with the RV will not be present in the DHR cooler.

The DBNPS found that, when the backup method is first initiated, core boric acid concentration in water initially entering the DHR cooler could exceed solubility limits due to the low DHR cooler temperature. In its March 15, 2000, submittal, DBNPS addressed this for the break conditions of concern by assuming there would be water flow from above the core into the downcomer via the hot leg nozzle gaps. The licensee calculated that this flow would maintain the core boric acid concentration below a value where the DHR cooler problem would occur until the backup method was performing its core dilution function. In its April 3, 2000, submittal, DBNPS requested that the exemption cover the calculated initial DHR cooler response since there was insufficient evidence to substantiate the claimed gap flow under the requirements of 10 CFR 50.46 and Appendix K. The staff examined the licensee's evaluation using more realistic assumptions with respect to initial boron concentration, DHR cooler flow, decay heat rate, and DHR cooler temperatures. The staff concurs with the licensee that boric acid precipitation in the DHR cooler will not occur due to the conservative nature of their assumptions.

The DBNPS did not attempt to address the change in core damage frequency (CDF) due to the planned modifications since BPC was not previously addressed in its plant risk assessment. Instead, it addressed the total risk associated with BPC. This assessment was based on several conservative assumptions. The DBNPS assumed that, for certain break size and location combinations, active BPC failure would cause core damage. This is consistent with the past regulatory approach to prevent conditions where boric acid precipitation could occur and the assumed failure to do so would be a failure to prevent core damage. Realistically, a significant quantity of boric acid would have to precipitate to lead to a loss of heat transfer that could cause core damage. This is an unquantified conservatism.

The CDF is directly affected by the initiation rate of accidents of concern to BPC failure. For the bounding calculations, the DBNPS stated that it used generic LOCA rates of $5\times10^{-6}$ and $4\times10^{-5}$ events/reactor-year for large and medium LOCAs, respectively, from NUREG/CR–5-5750. DBNPS then assumed that an active control method was needed for breaks lower than the 573-foot elevation in the cold-leg RCP discharge piping for medium and large-break LOCAs, and that the break rate of concern was 25 percent of the large and medium LOCA frequency, leading to an initiation rate of $1.1\times10^{-5}$/reactor-year for active BPC. DBNPS then calculated the CDF due to boron precipitation to be approximately $1.1\times10^{-7}$/reactor-year[3] (*i.e.*, the frequency of an accident occurring in combination with a failure that renders both active BPC methods inoperable). DBNPS also reported the large early release frequency (LERF) associated with boron precipitation to be $1.1\times10^{-11}$/reactor-year. DBNPS concluded that the proposed plant modification would not be a significant contributor to the total CDF or LERF of the plant (approximately $1.63\times10^{-5}$ and $7.3\times10^{-8}$/reactor-year, respectively). Regulatory Guide 1.174, "An approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis," July 1998, considers an increase in risk to be very small if CDF and LERF are less than $10^{-6}$ and $10^{-7}$, respectively. It further considers decreases in CDF and LERF to be satisfactory. The DBNPS predictions meet the guidance and are acceptable.

The LOCAs where the RVVVs are initially ineffective are those involving roughly the lower half of the cold-leg piping between the RCPs and the RV. Considering symmetry and working with one side of the RCS that consists of one hot leg, a SG, and two cold legs, the actual fraction of concern was evaluated. Each cold leg has a segment between the RCP and the RV and between the SG and the RCP. Assuming each segment has about the same likelihood of breaking, and a hot leg section is about 3 times as long as a cold leg segment, and since the breaks of concern are in the cold leg between an RCP and the RV, and only a break in the lower half of a cold leg at that location is of concern, then the fraction of big pipe breaks of concern is (½)(2)/(2+2+3) = 0.14. DBNPS assumed 0.25, a conservatism of a factor of 1.8 with respect to this example.

The DBNPS identified several other conservatisms in its risk assessment calculations. For example, with the exception of the backup method DHR cooler calculation where DBNPS used 1.0 times the decay heat, it used 1.2 times the decay heat for an infinitely irradiated core, thus predicting a faster boric acid concentration increase rate than would be expected, it took no credit for operator recovery actions, and, with the exception of the original DHR cooler analysis, it took no credit for hot-leg nozzle gaps. We agree that the above mentioned assumptions introduced conservatisms in the BPC related risk estimates assessed by DBNPS.

The DBNPS addressed a potential increase in scope to include both HPI trains in the primary BPC method as opposed to only having HPI Train 2, thus eliminating part of the failure concern. It reported a CDF of $1.3\times10^{-8}$/reactor-year for two trains, which it compared to the CDF of $1.1\times10^{-7}$/reactor-year for only having HPI Train 2. DBNPS concluded that an increase in scope would not achieve a significant benefit in terms of risk reduction. NUREG–1.174 considers an increase in CDF to be very small if it is less than $10^{-6}$. In effect, the risk in moving from two trains to one would increase by $10^{-7}$, well within the $10^{-6}$ criterion. We therefore agree with the DBNPS conclusion and we find the decision to remain with one HPI train to be acceptable because a significant benefit would not be achieved by the increased scope.

As discussed above, the backup BPC method was not shown to be functional using assumptions consistent with appendix K, nor was it shown to be functional using more realistic assumptions unless hot-leg nozzle gap flow was credited. Consequently, the DBNPS assumed a nozzle gap failure probability of 0.1, and predicted a CDF of $1.3\times10^{-7}$/reactor-year. We believe that a 0.1 failure probability is a reasonable bound and the actual failure probability would most likely be smaller. This, in conjunction with other potential bypass paths, such as associated with the core former-downcomer-thermal shield region and other applicable conservatisms is sufficient for us to accept the 0.1 probability used in this risk assessment. The increase from the previously calculated $1.1\times10^{-7}$/reactor-year is small enough that risk-associated

[3] This calculation assumes the hot-leg nozzle gaps pass water with respect to calculating DHR cooler response. The effect of excluding hot-leg nozzle gap flow is addressed below. The values discussed here are only changed by a small amount.

conclusions from the original analysis remain unchanged.

The new connection between the Train 2 HPI and LPI systems introduces a potential for overpressurization of the Train 2 LPI system if valves are misaligned. The DBNPS evaluated this potential and the measures it will put in place to prevent valve misalignment, and reported an increase in CDF of less than $10^{-8}$/reactor-year due to valve misalignment. This is a negligible impact on the overall CDF of $1.63\times10^{-5}$/reactor-year.

The equipment modification addresses recognized weaknesses in the previous response to BPC and improves the defense-in-depth and safety margins should such conditions be encountered. DBNPS did not provide the calculated CDF and LERF that existed prior to the modification, but we judge the modification would reduce CDF and LERF because it addresses recognized weaknesses. DBNPS calculated that the CDF and LERF due to boron precipitation with the modification would be approximately $1.1\times10^{-7}$/reactor-year and $1.1\times10^{-11}$/reactor-year, respectively. These are small when compared to the total CDF and LERF from all causes of $1.63\times10^{-5}$/reactor-year and $7.3\times10^{-8}$/reactor-year, respectively. Further, Regulatory Guide 1.174 indicates that increases in CDF and LERF are very small if less than $10^{-6}$/reactor-year and $10^{-7}$/reactor-year, respectively, and that decreases satisfy the relevant principles of risk-informed regulation. Here, the total contribution is smaller than what RG 1.174 considers to be small as an increase. These comparisons establish that the proposed exemption does not present an undue risk to public health and safety.

V

Pursuant to 10 CFR 50.12, "* * * The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements * * * which are * * * authorized by law, will not present an undue risk to the public health and safety, * * * are consistent with the common defense and security (and) * * * special circumstances are present * * *." Special circumstances are present whenever, according to 10 CFR 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *."

The requested exemption is authorized by law and does not affect the systems and processes associated with common defense and security.

As identified above, the requirements of 10 CFR Part 50 apply to BPC and the DBNPS exemption request. With respect to the single-failure aspect of this evaluation, the underlying purpose of the single-failure criterion requirement is to assure long-term cooling performance of the ECCS in the event of the most damaging single-failure of ECCS equipment.

As a licensing review tool, the single-failure criterion helps assure reliable systems as an element of defense in depth. As a design and analysis tool, it promotes reliability through enforced redundancy. Since historically, only those systems or components that were judged to have a credible chance of failure were assumed to fail, the criterion has been applied to such responses as valve movement on demand, emergency diesel generator start, short circuit in an electrical bus, and fluid leakage caused by gross failure of a pump or valve seal during long-term cooling. Reactor vessels or certain types of structural elements within systems, when combined with other unlikely events, were not assumed to fail because the probabilities of the resulting scenarios were deemed sufficiently small that they need not be considered. Certain passive failures 24 hours or more after initiation of a LOCA, such as pipe breaks, were not addressed as single failures because the compounded probabilities were judged sufficiently small that they could be discounted without affecting overall systems reliability.

The single-failure criterion was developed without the benefit of numerical failure assessments. Regulatory requirements and guidance consequently were based upon categories of equipment and examples that must be covered or that are exempt, and do not allow a probabilistic consideration during routine implementation. Hence, a single failure that was not judged to be incredible (exempt) during development of the regulations, whether or not there is a substantial impact upon overall system reliability, will not meet the regulatory requirements. A non-beneficial result is inconsistent with the objective of the single-failure criterion, which was not intended to force changes if essentially no benefit would accrue. This is the case with potential failure of the active means of BPC.

No US plants have encountered LOCA conditions where BPC was of concern. BPC measures are not needed for hot-leg breaks because water will flow through the core, thus preventing significant boric acid buildup, they are not needed if excore thermocouples indicate an adequate subcooling margin because there is no boiling to cause concentration of boric acid, and they are not needed for many of the remaining breaks until decay heat is low because water will flow from the core to the upper downcomer via the RVVVs, thus providing a mechanism to control accumulation of boric acid in the core. Active means for BPC are needed in case one of the above conditions is not satisfied.

The DBNPS will provide two active methods of BPC. The first does not meet the single-failure criterion. The second does not meet regulatory requirements for analyses applicable to an acceptable system and is susceptible to some of the same failures that cause failure of the first. Further, the second has a small likelihood of failing to function when first initiated because core bypass flow is necessary for a short time to prevent conditions where boron precipitation may occur. However, DBNPS has predicted via a conservative assessment that the total BPC-related CDF and LERF are about $10^{-7}$/reactor-year and $10^{-11}$/reactor-year, respectively. The DBNPS has further described in-depth, proceduralized actions that will be applied to restore an active BPC method should it fail to initiate when called upon. These actions, in combination with the predicted failure rate without the actions, establish that a satisfactory defense-in-depth is provided such that long term cooling performance of the ECCS will continue to be met. Therefore, the requested exemption meets the special circumstances requirement of 10 CFR 50.12(a)(2)(ii) with respect to the single failure criterion requirements.

With respect to the decay heat generation rate specified in appendix K, section I.A.4, the underlying purpose of the heat generation rate is to provide an appropriate value for the ECCS evaluation model. The DBNPS assumed 1.0 times the American Nuclear Society standard infinite operation decay heat generation rate for calculation of the DHR cooler aspects of the backup method whereas appendix K specifies 1.2. The staff considers the use of 1.0 to be more realistic and suitable for probabilistic risk calculations. Therefore, the requested exemption meets the special circumstances requirement of 10 CFR 50.12(a)(2)(ii) with respect to the decay heat generation rate in that use of the 1.2 value is not necessary to achieve the underlying purpose of the rule.

VI

For the foregoing reasons, the NRC staff has concluded that an exemption is acceptable to the requirements of appendix K, section I.D.1, 10 CFR 50.46(b)(5), and 10 CFR 50.46(a)(1)(ii) with respect to the DBNPS active methods for BPC. The NRC staff has determined that there are special circumstances present, as specified in 10 CFR 50.12.(a)(2)(ii), in that application of the specific regulations is not necessary in order to achieve the underlying purpose of these regulations, which is to assure long term cooling performance of the ECCS in the event of the most damaging single failure of ECCS equipment. In addition, the staff has determined that an exemption to appendix K, section I.A.4 is acceptable with respect to the decay heat generation rate. Special circumstances exist in that use of the 1.2 value specified in appendix K, section I.A.4, is not necessary in order to achieve the underlying purpose of the rule.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the requested exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants the requested exemption. This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 5th day of May 2000.

For the Nuclear Regulatory Commission.

**Suzanne C. Black,**

*Acting Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–12129 Filed 5–12–00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–146]**

### GPU Nuclear Corp., Saxton Nuclear Experimental Facility; Notice of Receipt, Availability for Comment, and Meeting To Discuss License Termination Plan

The Nuclear Regulatory Commission (NRC) is in receipt of and is making available for public inspection and comment the License Termination Plan (LTP) for the Saxton Nuclear Experimental Facility (SNEF) located in Saxton, Bedford County, Pennsylvania.

Reactor operations at the SNEF were ended in May 1972. The reactor was defueled and all fuel was removed from the site in 1972. In accordance with NRC regulations in effect at that time, the Saxton Nuclear Experimental Corporation (SNEC) submitted a decommissioning plan for the SNEF to the NRC in February 1996 (GPU Nuclear Corporation (GPUN) became a co-licensee for the SNEF on May 10, 1996). When proposed amendments to the NRC's decommissioning regulations were published in the **Federal Register** on July 29, 1996 (61 FR 39278), the licensee requested that the review of the decommissioning plan be suspended. When the amended regulations became effective on August 28, 1996, the submitted decommissioning plan, as supplemented, became the SNEF Post Shutdown Decommissioning Activities Report (PSDAR) pursuant to 10 CFR 50.82 as amended. A public meeting was held in Saxton, Pennsylvania on January 28, 1997, to provide information and gather pubic comment on the PSDAR. Because of restrictions in the license for the SNEF, a license amendment was needed before decommissioning activities could commence. License Amendment No. 15 to Amended Facility License No. DPR–4 approving decommissioning was issued on April 20, 1998. The facility is undergoing active decontamination and dismantlement.

In accordance with 10 CFR 50.82(a)(9), all power reactor licensees must submit an application for termination of their license. The application for termination of license must be accompanied or preceded by an LTP to be submitted for NRC approval. If found acceptable by the NRC staff, the LTP is approved by license amendment, subject to such conditions and limitations as the NRC staff deems appropriate and necessary. SNEC and GPUN (the licensees) submitted the proposed LTP for the SNEF by application dated February 2, 2000. In accordance with 10 CFR 20.1405 and 10 CFR 50.82(a)(9)(iii), the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of the SNEF LTP, and will accept comments from affected parties. In accordance with 10 CFR 50.82(a)(9)(iii), the NRC is also providing notice that the NRC staff will conduct a meeting to discuss the SNEC LTP on Thursday, May 25, 2000, at 7:00 p.m. at the Saxton Fire Hall located at 8th and Norris Street, Saxton, Pennsylvania 16678.

The SNEF LTP and associated environmental report are available for public inspection at the Commission's Public Document Room, the Gelman Building, at 2120 L Street NW., Washington, DC 20037. They are also available through *http://www.nrc.gov/OPA/reports* under "What's New on This Page," "Decommissioning," or "Other Documents."

Dated at Rockville, Maryland, this 2nd day of May 2000.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Chief, Events Assessment, Generic Communications and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–12128 Filed 5–12–00; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–346]**

### FirstEnergy Nuclear Operating Co., Davis-Besse Nuclear Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption, under certain specified conditions, from the provisions of (1) 10 CFR part 50, appendix K, section I.D.1 which requires that accident evaluations use the combination of emergency core cooling system (ECCS) subsystems assumed to be operative "after the most damaging single-failure of ECCS equipment has taken place;" (2) 10 CFR part 50, appendix K, Section I.A.4, which specifies that 1.2 times the American Nuclear Standard ANS–5 decay heat generation rate for an infinite operating time shall be used; and (3) requirements of 10 CFR 50.46(b)(5) and 50.46(a)(1)(ii), be applied for Facility Operating License No. NPF–3, issued to the FirstEnergy Nuclear Operating Company (the licensee), for operation of the Davis-Besse Nuclear Power Station, Unit 1, located in Ottawa County, Ohio.

The Commission is taking an action to approve this request prior to publication in the **Federal Register** of its Environmental Assessment and Finding of No Significant Impact. In accordance with 10 CFR 51.13, the Commission has determined that emergency circumstances are present to support the issuance of this exemption prior to publication in the **Federal Register** in that failure to act in a timely way would result in prevention of resumption of plant operation.

**Environmental Assessment**

*Identification of the Proposed Action*

The licensee has requested an exemption from 10 CFR 50.46 and 10 CFR part 50 Appendix K regarding

proposed modifications to the equipment and procedures for boron precipitation control (BPC) during long-term operation following loss of coolant accidents (LOCAs). These modifications would be effective prior to returning to power following the April 2000 refueling outage. The proposed action is in accordance with the licensees' application for exemption dated March 15, 2000, as supplemented by submittal dated April 3, 2000.

*The Need for Proposed Action*

The Code of Federal Regulations at 10 CFR 50.46 provides acceptance criteria for the ECCS, including long-term cooling requirements in 50.46(b)(5) and an option to develop the ECCS evaluation model in accordance with appendix K requirements (50.46(a)(1)(ii)). Appendix K requires that the ECCS remain operable following the most damaging single failure, and it also specifies the decay heat generation rate that shall be used.

In licensee event report (LER) 98–008 (October 1, 1998), Davis-Besse Nuclear Power Station (DBNPS) reported that for some small-break LOCAs, initiation of its active method of BPC could cause steam binding in the suction piping of both decay heat removal (DHR) pumps. As part of the corrective action for LER 98–008, DBNPS committed to address all issues related to long-term LOCA BPC, and to complete a related plant modification by the end of the 12th refueling outage that began in April, 2000. In response to that commitment, in its March 15, 2000 and April 3, 2000 submittals, the licensee described a new active primary method for BPC—an improved auxiliary spray path into the pressurizer. The licensee also described that a failure anywhere in the flow path could result in failure of this method to provide water to the pressurizer. Consequently, a backup method was provided that uses flow into the decay heat removal suction pipe from a reactor coolant system hot leg pipe. The licensee conducted a common mode failure evaluation of the two methods and identified several areas where a single failure could disable both the primary and backup BPC methods. The licensee further, when establishing that boron precipitation will not occur in the decay heat removal system cooler, credited flow through hot leg nozzle gaps while not establishing that the gaps would always be effective, and it did not include all of the specific conservatisms required by appendix K. The licensee recognized that its changes did not meet all aspects of the single-failure requirement and did not include all of the specific required conservatisms. Consequently, it requested an exemption since it believed it met the intent of the regulations, and it justified its request on the basis of a risk evaluation and conservatisms in calculations that result in over-prediction of the BPC problem. The staff considers that the licensee would also need to be exempted from the specific decay heat generation rate contained in 10 CFR part 50, appendix K, section I.A.4. Approval of this exemption request is needed to permit the licensee to implement its plans to ensure BPC.

**Environmental Impacts of the Proposed Action**

With regard to potential radiological impacts to the general public, the exemption under consideration involves features located entirely within the restricted area as defined in 10 CFR part 20. The new active methods of BPC are an improvement when compared to the existing methods and the entire issue of BPC has been shown to have little effect on overall risk. The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed actions.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. However, the licensee's exemption request covers improvements in response to a licensee commitment to address an existing deficiency, improvements that will decrease the risk of BPC failure and hence decrease the risk of core damage.

The licensee addressed further hardware improvements to reduce the likelihood of single-failure and established there was little risk benefit in doing so, an assessment the staff determined to be acceptable. There is no significant benefit in this alternative.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of DBNPS Unit 1," October 1975.

*Agencies and Persons Consulted*

In accordance with its stated policy, on April 18, 2000, the staff consulted with the Ohio State official, Carol O'Claire, of the Ohio Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated March 15 and April 3, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

Dated at Rockville, Maryland, this 5th day of May 2000.

For the Nuclear Regulatory Commission.

**Singh S. Bajwa,**

*Director, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–12130 Filed 5–12–00; 8:45 am]

BILLING CODE 7590–01–P

## PENSION BENEFIT GUARANTY CORPORATION

### Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit

Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

**DATES:** The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in May 2000. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in June 2000.

**FOR FURTHER INFORMATION CONTACT:** Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

**SUPPLEMENTARY INFORMATION:**

### Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the "applicable percentage" (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in May 2000 is 4.97 percent (*i.e.*, 85 percent of the 5.85 percent yield figure for April 2000).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between June 1999 and May 2000.

| For premium payment years beginning in: | The assumed interest rate is: |
|---|---|
| June 1999 | 4.94 |
| July 1999 | 5.13 |
| August 1999 | 5.08 |
| September 1999 | 5.16 |
| October 1999 | 5.16 |
| November 1999 | 5.32 |
| December 1999 | 5.23 |
| January 2000 | 5.40 |
| February 2000 | 5.64 |
| March 2000 | 5.30 |
| April 2000 | 5.14 |
| May 2000 | 4.97 |

### Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in June 2000 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 8th day of May 2000.

**John Seal,**

*Acting Executive Director, Pension Benefit Guaranty Corporation.*

[FR Doc. 00–12090 Filed 5–12–00; 8:45 am]

**BILLING CODE 7708–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel No. IC–24449; 812–12078]**

### BISYS Fund Services Limited Partnership, et al.; Notice of Application

May 9, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for exemption under sections 6(c) and 17(b) of the Investment Company Act of 1940 (the "Act") from section 17(a) of the Act and under section 17(d) of the Act and rule 17d–1 under the Act to permit certain joint transactions.

**SUMMARY OF APPLICATION:** Applicants seek an order to permit certain registered investment companies (a) to pay BISYS Fund Services Limited Partnership ("BISYS") and certain of its affiliated persons fees for acting as lending agent with respect to a securities lending program ("Program"); (b) to lend portfolio securities to affiliated broker-dealers; (c) to deposit cash collateral received in connection with the Program and other uninvested cash in one or more joint trading accounts; and (d) to use cash collateral received in connection with the Program to purchase shares of an affiliated private investment company, BISYS Securities Lending Management LC (the "Trust").

**APPLICANTS:** BISYS, BISYS Fund Services Ohio, Inc. ("BISYS ohio"), the Trust, Fifth Third Funds, Fifth Third Bank, BB&T Funds, Branch Banking & Trust Company ("BB&T"), Pacific Capital Funds, Pacific Century Trust ("Pacific Century"), AmSouth Funds, AmSouth Bank ("AmSouth"), Nationwide Mutual Funds, Nationwide Separate Account Trust (collectively, Nationwide Mutual Funds and Nationwide Separate Account Trust are the "Nationwide Funds"), Union Bond & Trust Company ("Union"), and Villanova Mutual Fund Capital Trust ("Villanova") (collectively, the Fifth Third Funds, BB&T Funds, Pacific Capital Funds, AmSouth Funds, and the Nationwide Funds are the "Funds").

**FILING DATES:** The application was filed on April 21, 2000. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 5, 2000, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. The Trust, AmSouth Funds, BB&T Funds, Pacific Capital Funds, BISYS Ohio, and BISYS, 3435 Stelzer Road, Columbus, Ohio 43219–3035; AmSouth Bank, 1901 Sixth Avenue-North, Birmingham, Alabama 35203; BB&T, 435 Fayetteville Street Mall, Raleigh, North Carolina 27601; Fifth Third Funds and Fifth Third, 38 Fountain Square Plaza, Cincinnati, Ohio 45263; Pacific Century, Financial Plaza of the Pacific, 111 S. King Street, Honolulu, Hawaii 96813; Nationwide Funds and Villanova, Three Nationwide Plaza, Columbus, Ohio 43216; and Union, 5665 SW Meadows Road, Lake Oswego, Oregon 97035.

**FOR FURTHER INFORMATION CONTACT:** Elaine M. Boggs, Senior Counsel, at

(202) 942–0572, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549 (telephone (202) 942–8090).

**Applicant's Representations**

1. The Funds, with the exception of Nationwide Mutual Fund which is an Ohio trust, are Massachusetts business trusts. Each Fund is an open-end management investment company registered under the Act. Each Fund consists of multiple portfolios ("Portfolios"). The investment adviser for BB&T Fund is BB&T, for AmSouth Funds is AmSouth, for Fifth Third Funds is Fifth Third or Heartland Capital Management, Inc., for Pacific Capital Funds is Pacific Century, and for Nationwide Separate Account Trust is Villanova. Villanova and Union serve as investment advisers to the Portfolios of the Nationwide Mutual Fund, except for certain Portfolios which are "feeder" funds with a "master" fund advised by Fund Asset Management, L.P. The BB&T Fund, AmSouth Funds, and Pacific Capital Funds are in the BB&T, AmSouth, and Pacific Capital group of investment companies, respectively, within the meaning of section 12(d)(1)(G) of the Act.

2. BISYS is the administrator and distributor for each of the Fifth Third Fund's Portfolios and the distributor for the Portfolios of AmSouth Fund, BB&T Funds, and the Pacific Capital Funds. BISYS Ohio serves as: (a) The transfer and dividend disbursing agent and fund accountant for the Portfolios of the BB&T; (b) the transfer agent for the Portfolios of the AmSouth Portfolios; and (c) the fund accountant for the Portfolios of Pacific Capital Fund. BISYS serves as the sub-administrator to the Nationwide Funds. BISYS and BISYS Ohio are wholly-owned subsidiaries of the BISYS Group, Inc.

3. BB&T is the principal bank affiliate of BB&T Corporation, a bank holding corporation. AmSouth is a bank affiliate of AmSouth Bancorporation, a banking institution. Fifth Third is a bank subsidiary of Fifth Third Bancorp. Pacific Century is a trust firm and a division of Bank of Hawaii. Villanova is an investment adviser and is under the indirect control of Nationwide Mutual Insurance Company. Union is a state bank and trust company. Villanova is registered as an investment adviser under the Investment Advisers Act of 1940 ("Advisers Act"). BB&T, AmSouth, Fifth Third, Pacific Century, and Union are exempt from registration under the Advisers Act.

4. The Trust is a Delaware limited liability company and currently consists of two portfolios (together with any future portfolios, each an "Investment Fund"). Currently, it is intended that AmSouth serve as investment adviser to the Trust ("Trust Adviser") but one or more of the other Advisers (defined below) may also serve as investment adviser to the Trust. Each Investment Fund will value its securities based on the amortized cost method and comply with rule 2a–7 under the Act.

5. Trust shares will be offered to the Lending Funds (defined below) and other participants in the Program in reliance on the exemption provided by Regulation D under the Securities Act of 1933. The Trust will operate as a private investment company excluded from the definition of "investment company" pursuant to section 3(c)(1) or (7) of the Act. Trust shares will have no voting rights and may not be transferred without the consent of the trustee. BISYS will be the sole trustee ("Trustee"), will oversee the Trust's operations, and will provide accounting and administrative services to the Trust. BISYS and the Trust Adviser will be compensated by the Trust for their services. Trust share will not be subject to any sales load, redemption fee, asset-based sales charge, or service fee.

6. Applicants request that relief be extended to: (a) Any registered management investment company or series of a registered management investment company for which BISYS, or any person controlling, controlled by, or under common control with BISYS, now or in the future, serves as principal underwriter, administrator, or distributor and for which AmSouth, BB&T, Fifth Third, Pacific Century, Villanova, or Union or any person controlling, controlled by, or under common control with AmSouth, BB&T, Fifth Third, Pacific Century, Villanova, or Union (each, an "Adviser") [1] now or in the future serves as investment adviser (collectively with the Funds, each a "Fund"); (b) BISYS and any person controlling, controlled by, or under common control with BISYS, including registered broker-dealers that are controlling, controlled by or under common control with BISYS (the "Affiliated Broker-Dealers"); and (c) the Trust and any other private investment company organized by BISYS or any person controlling, controlled by, or under common control with BISYS and advised by an Adviser (any future private investment companies are also the "Trust" and their series the "Investment Funds").[2]

7. Several of the Portfolios currently participate in the program administered by BISYS Ohio. Each Fund that participates in the Program ("Lending Fund") will be permitted to lend its portfolio securities, and its prospectus will disclose that it may engage in portfolio securities lending. Currently, BISYS Ohio provides administrative services in connection with the Program and engages an independent third-party to act as securities lending agent for the Lending Funds. In the future, BISYS Ohio may act as securities lending agent (collectively with the third-party lending agents, the "Lending Agent")

8. Under the Program, the Lending Agent enters into agreements with borrowers ("Borrowers") to lend them portfolio securities of the Lending Fund ("Securities Loan Agreements"). Pursuant to the Securities Loan Agreements, the Lending Agent delivers the Lending Fund's portfolio securities to Borrowers in exchange for cash collateral or other types of collateral, such as U.S. Government securities. Cash collateral is delivered in connection with most loans. The Lending Agent invests the cash collateral on behalf of the Lending Fund in accordance with specific parameters set forth in the Securities Loan Agreement. These guidelines include permissible investment of the cash collateral as well as a list of eligible types of investments.

9. With respect to securities loans that are collateralized by cash, the Borrower is entitled to receive a fixed fee based on the amount of cash held as collateral. The Lending Fund in this case is compensated on the spread between the net amount earned on the investment of the cash collateral and the Borrower's cash collateral fee. In the case of collateral that is other than cash, the Lending Fund receives a loan fee paid by the Borrower equal to a percentage of the market value of the loaned securities as specified in the Securities Loan Agreement.

10. The applicants request relief to permit: (a) The Funds for which BISYS serves as distributor to pay and BISYS Ohio or any person controlling, controlled by, or under common control

[1] Each Adviser will be registered under the Advisers Act or exempt from registration.

[2] All existing entities that currently intend to rely on the requested relief have been named as applicants. Any existing and future entity may reply on the order in the future only in accordance with the terms and conditions in the application.

with BISYS, to accept fees based on a share of the proceeds derived by the Funds from their securities lending transactions, for services as Lending Agent; (b) the Funds to deposit cash collateral received in connection with their securities lending activities and other uninvested cash [3] ("Uninvested Cash") in one or more joint trading accounts or subaccounts (the "Joint Accounts"); (c) the Funds to use some or all of the cash collateral received in connection with their securities lending activities to purchase shares of the Trust and the Trust to redeem shares from the Funds; and (d) the Funds for which BISYS serves as distributors to lend portfolio securities to Affiliated Broker-Dealers.

**Applicants' Legal Analysis**

*A. Payment of Fees by Lending Funds to BISYS Ohio*

1. Section 17(d) of the Act and rule 17d–1 under the Act prohibit any affiliated person of or principal underwriter for a registered investment company or any affiliated person of such person or principal underwriter, acting as principal, from effecting any transaction in connection with any joint enterprise or other joint arrangement or profit sharing plan, in which the investment company participates. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly controlling, controlled by, or under common control with, the other person. Because BISYS Ohio and BISYS (the principal underwriter for the Funds except the Nationwide Funds) are each wholly-owned subsidiaries of the The BISYS Group, Inc., they may be deemed to be under "common control" and therefore affiliated persons, and BISYS Ohio may be deemed an affiliated person of the principal underwriter for each lending Fund. Accordingly, applicants request an order under section 17(d) of the Act and rule 17d–1 under the Act to the extent necessary to permit each lending Fund (except the Nationwide Funds for which no relief is requested) to pay and BISYS Ohio, or any other person controlling, controlled by, or under common control with BISYS, to accept fees that are based on a share of the proceeds derived by the Lending Funds in connection with services provided as Lending Agent.

2. Rule 17d–1 permits the SEC to approve a proposed joint transaction covered by the terms of section 17(d). In determining whether to approve a transaction, the SEC is to consider whether the proposed transaction is consistent with the provisions, policies, and purposes of the Act, and the extent to which the participation of the investment companies is on a basis different from or less advantageous than that of the other participants.

3. Applicants propose that each lending Fund adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with BISYS Ohio, as Lending Agent, will meet the standards of rule 17d–1:

(a) In connection with the approval of BISYS Ohio as lending agent for a Lending Fund and implementation of the proposed fee arrangement, a majority of the board of directors or trustees (the "Board") (including a majority of the directors or trustees who are not "interested persons" within the meaning of the Act (the "Disinterested directors") of the lending Fund swill determine that (i) the contract with BISYS Ohio is in the best interests of the Lending Fund and its shareholders; (ii) the services to be performed by BISYS Ohio are appropriate for the Lending Fund; (iii) the nature and quality of the services provided by BISYS Ohio are at least equal to those offered and provided by other; and (iv) the fees for BISYS Ohio's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality.

(b) Each Lending Fund's contract with BISYS Ohio for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board (including a majority of the Disinterested directors) makes the finding referred to in paragraph (a) above.

(c) In connection with the initial implementation of the proposed fee arrangement whereby BISYS Ohio will be compensated as lending Agent based on a percentage of the revenue generated by a Lending Fund's participation in the Program, the Board will obtain competing quotes with respect to lending agent fees from at least three independent lending agents to assist the Board in making the findings referred to in paragraph (a) above.

(d) The Board, including a majority of the Disinterested directors, will (i) determine at each regular quarterly meeting that the loan transactions during the prior quarter were effected in compliance with the conditions and procedures set forth in the application and (ii) review no less frequently than annually the conditions and procedures for continuing appropriateness.

(e) Each Lending Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and any modifications) described in the application or otherwise followed in connection with lending securities pursuant to the Program and (ii) maintain and preserve for a period not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identity of the person on the other side of the loan transaction, the term of the loan transaction, and the information or materials upon which the determination was made that each loan was made in accordance with the procedures set forth above and the conditions to the application.

*B. Investment of Uninvested Cash and Cash Collateral in the Joint Accounts*

1. The Funds propose to deposit some or all of their cash collateral and Uninvested Cash in the Joint Accounts established at the Fund's custodian for the purpose of investing in one or more of the following: (a) Repurchase agreements "collateralized fully" as defined in rule 2a–7 under the Act,[4] (b) U.S. dollar denominated commercial paper and (c) any other short-term money market instruments that constitute "Eligible Securities" (as defined in rule 2a–7 under the Act) that are not subject to contractual or other restrictions on resale (collectively, "Short-Term Investments"). Each Fund may deposit its Uninvested Cash or cash collateral only in a Joint Account that is advised by that Fund's Adviser. Each Fund (the Funds that are eligible to participate and elect to participate in the Joint Accounts are the "Participants") will have the option to participate in any joint Account on the same basis as every other Fund, subject to and in conformity with its own investment objectives, policies, and restrictions. The Adviser to a Joint Account will be responsible for investing funds held by the Joint Accounts BISYS, under the supervision of the Adviser, will be responsible for establishing accounting and control

[3] Uninvested cash may occur in connection with a Fund maintaining cash reserves to meet redemption requests or as a result of late day purchases by shareholders.

[4] The Funds will enter into "hold-in-custody" repurchase agreements (*i.e.*, repurchase agreements where the counterparty or one of its affiliated person may have possession of, or control over, the collateral subject to the agreement) only where cash is received late in the business day and otherwise would be unavailable for investment.

procedures, operating the Joint Accounts in accordance with the procedures described in the application, and ensuring fair treatment of the Participants.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the SEC has approved the transaction. Applicants state that the Participants, by participating in the proposed Joint Accounts, and the Adviser (as the investment adviser to the Participants) and BISYS, (as the principal underwriter for each Participant except the Nationwide Funds) by administering the proposed Joint Accounts, could be deemed to be "joint participants" in a transaction within the meaning of section 17(d) of the Act. In addition, the proposed Joint Accounts could be deemed to be a "joint enterprise or other joint arrangement" within the meaning of rule 17d–1 under the Act. Accordingly, applicants request an order under section 17(d) and rule 17d–1 under the Act to permit them to engage in the proposed Joint Accounts. Applicants believe that the requested relief meets the standards of rule 17d–1 for the reasons discussed below.

3. Applicants state that any repurchase agreement entered into through the Joint Accounts will comply with the terms of Investment Company Act Release No. 13005 (Feb. 2, 1983). Applicants acknowledge that they have a continuing obligation to monitor the SEC's published statements on repurchase agreements, and represent that repurchase agreement transactions will comply with future positions of the SEC to the extent that such positions set forth different or additional requirements regarding repurchase agreements. In the event that the SEC sets forth guidelines with respect to the other Short-Term Investments made through the Joint Accounts, the investments will comply with those guidelines.

4. The Joint Accounts may comprise multiple joint subaccounts, if BISYS or the Adviser determines that multiple joint subaccounts are necessary or advisable to provide the Funds with additional flexibility and choice in the Short-Term Investments in which they choose to invest. Joint subaccounts may also be established for other reasons, such as to facilitate monitoring of individual Funds' interests in different Short-Term Investments, consistent with the variations in investment restrictions and policies among the various Funds.

5. Each Fund's decision to invest in a Joint Account will be solely at the options of its Adviser within the standards and procedures established by that Fund's Board, and no Fund will be required to maintain any minimum balance. To eliminate any possibility of one Fund using any part of the balance of a Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in any Joint Account for any reason. Each Fund will retain sole rights to all of the assets invested by it in the Joint Accounts, including interest payable on the assets.

6. Applicants believe that each Participant's investment in a Joint Account would not be subject to the claims of creditors, whether brought in bankruptcy, insolvency or other legal proceeding, of any other Participant. Each Fund's liability on any Short-Term Investment through the Joint Account will be limited to its own interest in the Short-Term Investment.

7. Applicants believe that the proposed method of operating the Joint Accounts will not result in any conflicts of interest between any of the Funds or between any Funds and BISYS or the Fund's Adviser. Applicants state that although BISYS will likely gain some benefit through the administrative convenience of the Funds investing in Short-Term Investments on a joint basis, and may experience some reduction in clerical costs, the Funds will be the primary beneficiaries because of the increased efficiencies realized through use of the Joint Accounts, the possible increase in rates of return available, and, for some Funds, the opportunity to invest in Short-Term Investments. Neither the Adviser nor BISYS will receive any additional fees from the Funds for the administration of the Joint Accounts.

*C. Investment of Cash Collateral in Shares of the Trust*

1. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the SEC has approved the transaction. Applicants state that the Funds (by purchasing and redeeming Trust shares), BISYS as principal underwriter of the Funds at the same time that the Fund's cash collateral is invested in Trust shares, and as Trustee and service provider to the Trust at the same time that the Trust sells Trust shares to and redeems them from the Funds, BYSIS Ohio (by acting as Lending Agent), and the Trust (by selling shares to and redeeming them for the Funds) could be deemed to be participants in a joint enterprise or arrangement within the meaning of section 17(d) of the Act and rule 17d–1 under the Act.

2. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such affiliated person ("Second-Tier Affiliate"), acting as principal, to sell or purchase any security to or from such investment company. BISYS is the principal underwriter for the Lending Funds (except the Nationwide Funds). The Trust may be considered an affiliated person of BISYS under section 2(a)(3) of the Act because of BISYS' role as Trustee. In addition, since the Trust Adviser will be an investment adviser to the Trust as well as to a Lending Fund, the Trust Adviser would be an affiliated person of any Lending Fund it advises and the Trust would be a Second-Tier Affiliate of the Lending Funds. Accordingly, the sale of shares of the Trust to the Fund, and the redemption of such shares from the Fund, would be prohibited under section 17(a).

3. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general policy of the Act. Section 6(c) under the Act permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act.

4. Applicants request an order under sections 6(c), 17(b), and 17(d) of the Act and rule 17d–1 under the Act to permit the Lending Funds to purchase and redeem Trust shares from the Trust and the Trust to sell and redeem Trust shares to and from the Lending Funds. Applicants state that a Fund's cash collateral will be invested in a particular Investment Fund only if the Investment Fund invests in the types of instruments that the Lending Fund has authorized for the investment of its cash collateral. Each Investment Fund will comply with rule 2a–7 under the Act.

5. Applicants state that the Lending Funds will purchase, hold and redeem Trust shares on the same basis as any other holder of Trust shares. Applicants assert that by investing cash collateral in Trust shares as proposed, the Lending

Funds will be able to achieve liquidity, diversification and quality of investments at a cost that is expected to be lower than the cost typically incurred when investing in a registered investment company. Further, each Investment Fund will comply with sections 17(a), (d), (e), and 18 of the Act as if the Trust were a registered open-end investment company. With respect to all redemption requests made by a lending Fund, the Trust will comply with section 22(e) of the Act.

*D. Lending of Portfolio Securities to Affiliated Broker-Dealers*

1. Section 17(a)93) of the Act makes it unlawful for any affiliated person for principal underwriter for a registered investment company or their Second-Tier Affiliates, acting as principal, to borrow money or other property from the registered investment company. Section 2(a)(3) of the Act defines the term affiliated person of an other person to include any person under common control with that other person. Under section 2(a)(3) of the Act, BISYS and the Affiliated Broker-Dealers may be deemed to be persons under common control and thus affiliated persons of each other. Accordingly, for purposes of section 17(a)(3) of the Act, the Affiliated Broker-Dealers may be affiliated persons of the Funds' (except the Nationwide Funds) principal underwriter, BISYS, and thus prohibited form borrowing portfolio securities from the Funds.

2. As noted above, section 17(d) and rule 17d–1 generally prohibit joint transactions involving registered investment companies and certain of their affiliates unless the SEC has approved the transaction. The Funds request relief under sections 6(c) and 17(b) of the Act exempting them from section 17(a)(3) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act to permit the Funds to lend portfolio securities to Affiliated Broker-Dealers. Relief is not being requested with respect to the Nationwide Funds. Applicants state that the Funds seek to diversify the Borrower to when they lend in order to ensure the stability and efficiency of the Program. Applicants submit that because only a few Borrowers may seek to borrow a particular security at a given time, a prohibition on lending to Affiliated Broker-Dealers could disadvantage a Fund.

3. Applicants state that each loan to an Affiliated Broker-Dealer by a Fund will be made with a spread that is no lower than that applied to comparable loans to unaffiliated broker-dealers.[5] In this regard, applicants state that at least 50% of the loans made by the Funds, on an aggregate basis (by each "group of investment companies," as defined in section 12(d)(1)(G) of the Act), will be made to unaffiliated Borrowers. Moreover, all loans will be made with spreads that are no lower than those set forth in a schedule of spreads established by the Board of each Fund, including a majority of the Disinterested Directors. All transactions with the Affiliated Broker-Dealers will be reviewed periodically by the officers of the Funds. Quarterly, officers of the Funds will be reviewed periodically by the officers of the Funds. Quarterly, officers of the Funds and the Lending Agent will present reports on the lending transactions to the Board, including a majority of the Disinterested Directors, for their review.

**Applicants' Conditions**

Applicants agree that any order of the SEC granting the requested relief will be subject to the following conditions.

*A. General*

1. Any Fund or Investment Fund that relies on the requested order will be advised by the Adviser and distributed or administered by BISYS, or any entity controlling, controlled by, or under common control with BISYS.

2. The securities lending program of each Fund will comply with all present and future applicable SEC and staff positions regarding securities lending arrangements.

*B. Joint Accounts*

1. Joint Accounts will be established as one or more separate cash accounts on behalf of the Funds at a custodian. Each Fund may deposit, daily, all or a portion of its Uninvested Cash and cash collateral into the Joint Accounts. Each Fund may deposit its Uninvested Cash or cash collateral only in a Joint Account that is advised by that Fund's Adviser.

2. Cash in the Joint Accounts will be invested in one or more Short-Term Investments, as directed by the Adviser. Short-Term Investments that are repurchase agreements will have a remaining maturity of 60 days or less and other Short-Term Investments will have a remaining maturity of 90 days or less, each as calculated in accordance with rule 2a–7 under the Act. Cash collateral in a Joint Account would be invested in Short-Term Investments which have a remaining maturity of 397 days or less, as calculated in accordance with rule 2a–7 under the Act.

3. All Short-Term Investments invested in through the Joint Accounts will be valued on an amortized cost basis. Each Fund that relies upon rule 2a–7 under the Act will use the dollar-weighted average maturity of a Joint Account's Short-Term Investments for the purpose of computing that Fund's average portfolio maturity with respect to the portion of the cash held by it in that Joint Account.

4. The Fund's Adviser, fund accountant, pricing agent, and custodian will maintain records (in conformity with section 31 of the Act and the rules and regulations under the Act) documenting, for any given day, the Fund's aggregate investment in the Joint Account and the Fund's *pro rata* share of each Short-Term Investment made through the Joint Account.

5. Short-Term Investments held in a Joint Account generally will not be sold prior to maturity except if: (a) the Adviser believes the investment no longer presents minimal credit risks; (b) the investment no longer satisfies the investment criteria of all Participants in the investment because of downgrading or otherwise; or (c) in the case of a repurchase agreement, the counterparty defaults. Any Short-Term Investment (or any fractional portion thereof), however, may be sold on behalf of some or all Participants prior to the maturity of the investment if the cost of such transactions will be borne solely by the selling Participants and the transaction will not adversely affect other Participants participating in that Joint Account. In no case would an early termination by less than all Participants be permitted if it would reduce the principal amount or yield received by other Participants in a particular Joint Account or otherwise adversely affect the other Participants. Each Participant in a Joint Account will be deemed to have consented to such sale and partition of the investment in the Joint Account.

6. Short-Term Investments held through a Joint Account with a remaining maturity of more than seven days, as calculated pursuant to rule 2a–7 under the Act, will be considered illiquid and will be subject to the restriction that a Fund may not invest more than 15% or, in the case of a money market fund, more than 10% (or, in either such case, such other percentage as set forth by the SEC from

[5] A "spread" is the compensation earned by a Fund, as lender, from a securities loan. The compensation is in the form either of a lending fee payable by the borrower to the Fund (where non-cash collateral is posed) or of the excess—retained by the Fund—over a rebate rate payable by the Fund to the borrower (where cash collateral is posted and then invested by the Fund).

time to time) of its net assets in illiquid securities, if the instrument, or the Fund's fractional interest in such instrument, cannot be sold pursuant to the preceding condition.

7. To assure that there will be no opportunity for one Fund to use any part of a balance of any Joint Account credited to another Fund, no Fund will be allowed to create a negative balance in any Joint Account for any reason, although each Fund will be permitted to draw down its *pro rata* share of the entire balance at any time. Each Fund's decision to invest through the Joint Accounts shall be solely at the option of that Fund and the Adviser (within the standards and procedures established by the Fund's Board), and no Fund will be obligated, in any way, to invest through, or to maintain any minimum balance in, the Joint Accounts. In addition, each Fund will retain the sole rights to any of the cash, including interest payable on the cash, invested by that Fund through the Joint Accounts.

8. Each Fund will participate in the income earned or accrued in the Joint Account through which it is invested on the basis of its percentage share of the total balance of the Joint Account on that day.

9. The Adviser will be responsible for investing funds held by the Joint Accounts. BISYS will administer the Joint Accounts in accordance with the standards and procedures established by the Board of the Funds as part of its duties under the existing or any future administrative contract with the Funds. Neither BISYS nor the Adviser will receive additional or separate fees for advising or administering the Joint Accounts.

10. The administration of the Joint Accounts will be within the fidelity bond coverage required by section 17(g) of the Act and rule 17g–1 under the Act.

11. The Board of each Fund investing in Short-Term Investments through the Joint Accounts will adopt procedures pursuant to which the Joint Accounts will operate, which procedures will be reasonably designed to provide that requirements of the requested order will be met. In addition, not less frequently than annually, the Board will evaluate the Joint Account arrangements, will determine whether the Joint Accounts have been operated in accordance with the adopted procedures, and will authorize a Fund's continued participation in the Joint Accounts only if the Board determines that there is a reasonable likelihood that such continued participation would benefit that Fund and its shareholders.

12. The Joint Accounts will not be distinguishable from any other accounts maintained by a Fund with a custodian except that cash from various Funds will be deposited in the Joint Accounts on a commingled basis. The Joint Accounts will not have a separate existence and will not have indicia of a separate entity. the sole function of the Joint Accounts will be to provide a convenient way of aggregating individual transactions that would otherwise require daily management and investment by each Fund of its cash.

13. All transactions in Short-Term Investments that are repurchase agreements will be effected in accordance with Investment Company Act Release No. 13005 (February 2, 1983) and with future positions taken by the Commission or the staff by rule, release, or no-action letter.

*C. The Trust*

1. A majority of the Board of the Lending (including a majority of the Disinterested Directors), will initially and at least annually thereafter determine that the investment of cash collateral in Trust shares is in the best interests of the Lending Fund and its shareholders.

2. Investment in Trust shares by a particular Lending Fund will be consistent with that Lending Fund's investment objectives and policies.

3. Each Investment Fund will comply with rule 2a–7 under the Act. Each Investment Fund will value its shares, as of the close of business on each business day, using the "amortized cost method," as defined in rule 2a–7 under the Act, to determine the net asset value per share of the Investment Fund. The Trust will, subject to approval of the Trustee, adopt the monitoring procedures described in rule 2a–7(c)(7) under the Act and the Adviser will comply with these procedures and take any other actions as are required to be taken pursuant to these procedures.

4. The Trust will comply as to each Investment Fund with the requirements of sections 17(a), (d) and (e), and 18 of the Act as if the Trust were a registered open-end investment company. With respect to all redemption requests made by a Lending Funding, the Trust will comply with section 22(e) of the Act. The Adviser shall, subject to approval by the Trustee, adopt procedures designed to ensure that the Trust complies with sections 17(a), (d) and (e), 18, and 22(e) of the Act. The Adviser also will periodically review and periodically update as appropriate such procedures and will maintain books and records describing such procedures, and maintain the records required by rules 31a–1(b)(1), 31a–1(b)(2)(ii), and 31a–1(b)(9) under the Act. All books and records required to be kept pursuant to this condition will be maintained and preserved for a period of not less than six years from the end of the fiscal year in which any transaction occurred, the first two years in an easily accessible place, and will be subject to examination by the SEC and the staff.

5. The net asset value per share with respect to Trust shares will be determined separately for each Investment Fund by dividing the value of the assets belonging to that Investment Fund, less the liabilities of that Investment Fund, by the number of Trust shares outstanding with respect to that Investment Fund.

6. The Trust shares will not be subject to a sales load, redemption fee, any asset-based sales charge or service (as defined in rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers, Inc.).

7. Each Lending fund will purchase and redeem Trust shares as of the same time and at the same price, and will receive dividends and bear its proportionate share of expenses on the same basis, as other shareholders of the Trust. A separate account will be established in the shareholder records of the Trust for the account of each Lending fund.

8. The Investment fund will not acquire any securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

*D. Lending to Affiliated Broker-Dealers*

1. The Funds, on an aggregate basis (by each "group of investment companies," as defined in section 12(d)(1)(G) of the Act), will make at least 50% of their portfolio securities loans to unaffiliated Borrowers.

2. The total value of securities loaned to any one broker-dealer on the approved list will be in accordance with a schedule to be approved by the Fund's Board, but in no event will the total value of securities lent to any one Affiliated Broker-Dealer exceed 10% of the net assets of the Fund, computed at market.

3. A Fund will not make any loan to an Affiliated Broker-Dealer unless the income attributable to such loan fully covers the transaction costs incurred in making such loan.

4. (a) All loans will be made with spreads no lower than those set forth in the schedule of spreads which will be established and may be modified from time to time by each Fund's full Board and by a majority of the Disinterested Directors ("Schedule of Spreads").

(b) The Schedule of Spreads will set forth rates of compensation to the Fund that are reasonable and fair and that are determined in light of those considerations set forth in the application.

(c) The Schedule of Spreads will be uniformly applied to all Borrowers of the Fund's portfolios securities, and will specify the lowest allowable spread with respect to a loan of securities to any Borrower.

(d) If a security is loaned to an unaffiliated Borrower with a spread higher than the minimum set forth in the Schedule of Spreads, all comparable loans to an Affiliated Broker-Dealer will be made at no less than the higher spread.

(e) The Fund's Program will be monitored on a daily basis by an officer of the Fund who is subject to section 36(a) of the Act. This officer will review the terms of each loan to an Affiliated Broker-Dealer for comparability with loans to unaffiliated Borrowers and conformity with the Schedule of Spreads, and will periodically, and at least quarterly, report his or her findings to the Fund's Board, including a majority of the Disinterested Directors.

5. The Fund's Board, including a majority of the Disinterested Directors, (a) will determine no less frequently than quarterly that all transaction with Affiliated Broker-Dealers effected during the preceding quarter were effected in compliance with the requirements of the procedures adopted by the Board and the conditions of the requested order and that such transactions were conducted on terms which were reasonable and fair; and (b) will review no less frequently than annually such requirements and conditions for their continuing appropriateness.

6. The Funds will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) which are followed in lending securities and shall maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan occurs, the first two years in an easily accessible place, a written record of each loan setting forth the number of shares loaned, the face amount of the securities loaned, the fee received (or the rebate rate remitted), the identity of the Borrower, the terms of the loan and any other information or materials upon which the finding was made that each loan made to an Affiliated Broker-Dealer was fair and reasonable and that the procedures followed in making such loan were in accordance with the other undertakings set forth in the application.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12133 Filed 5–12–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### First Allmerica Financial Life Insurance Company, et al.

May 5, 2000.

**AGENCY:** Securities and Exchange Commission ("SEC" or "Commission").

**ACTION:** Notice of application for an order of approval pursuant to Section 26(b) of the Investment Company Act of 1940 (the "Act") and an order granting exemptive relief pursuant to Section 17(b) of the Act.

*Summary of Application:* Applicants seek an order under Section 26(b) of the Act approving the proposed substitution of shares of the Investment Grade Income Fund of AIT for shares of the Select Income Fund of AIT and for shares of Strategic Income Portfolio of Fulcrum held by the First Allmerica Separate Accounts and the Allmerica Financial Life Separate Accounts to support certain variable life insurance contracts or variable annuity contracts (collectively, the "Variable Contracts") issued by First Allmerica or Allmerica Financial Life. Applicants also seek an order under Section 17(b) of the Act exempting them from Section 17(a) to the extent necessary to permit the Applicants, by means of in-kind redemptions and purchases, to carry out the above-referenced substitutions of securities.

*Applicants:* First Allmerica Financial Life Insurance Company ("First Allmerica"); Allmerica Select Separate Account, Allmerica Select Separate Account II, Fulcrum Separate Account, Group VEL Account, Inheritage Account, Separate Account VA–K and VEL II Account (collectively, the "First Allmerica Separate Accounts"); Allmerica Financial Life Insurance and Annuity Company ("Allmerica Financial Life"); Allmerica Select Separate Account, Allmerica Select Separate Account II, Fulcrum Separate Account, Fulcrum Variable Life Separate Account, Group VEL Account, Inheritage Account, Select Account III, Separate Account IMO, Separate Account VA–K, VEL Account, VEL II Account and VEL Account III (collectively, the "Allmerica Financial Life Separate Accounts"); Allmerica Investment Trust ("AIT") and the Fulcrum Trust ("Fulcrum") (collectively, the "Applicants").

*Filing Date:* The application was filed on January 31, 2000, and amended and restated on May 3, 2000.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing on this application by writing to the SEC's Secretary and serving Applicants with a copy of the request, in person or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on May 30, 2000 and must be accompanied by proof of service on the Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, Richard M. Reilly, President, Allmerica Financial Life Insurance and Annuity Company, 440 Lincoln Street, Worcester, MA 01653, and copy to George M. Boyd, Esq., First Allmerica Financial Life Insurance Company, N–440, 440 Lincoln Street, Worcester, MA 01653.

**FOR FURTHER INFORMATION CONTACT:** Ann L. Vlcek, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, DC 20549–0102.

**Applicants' Representations**

1. First Allmerica was organized under the laws of Massachusetts in 1844. Effective October 16, 1995, the company converted from a mutual life insurance company known as State Mutual Life Assurance Company of America to a stock life insurance company and adopted its present name. The company is a wholly-owned subsidiary of Allmerica Financial Corporation ("AFC").

2. Allmerica Financial Life is a life insurance company organized under the laws of Delaware in July 1974. Allmerica Financial Life is an indirect, wholly-owned subsidiary of First Allmerica, which in turn is a wholly-owned subsidiary of AFC.

3. Each Applicant separate account is a "separate account" as defined by Rule 0–1(e) under the Act, and is registered under the Act as a investment trust. Each of the 19 Applicant separate accounts is a segregated asset account of the indicated Applicant insurance company. Each of the respective Applicant separate accounts is used by the Applicant insurance company of which it is a part to fund certain variable annuity or variable life contracts. Applicant insurance companies may issue additional variable contracts funded by Applicant separate accounts in the future. Certain sub-accounts of the respective Applicant separate accounts are dedicated to owning shares of one of the investment portfolios of AIT or one of the investment portfolios of Fulcrum (AIT and Fulcrum are sometimes referred to collectively herein as the "Underlying Funds"). Accordingly, each AIT or Fulcrum sub-account reflects the investment performance of that portfolio of AIT or Fulcrum in which the sub-account invests.

4. Each Applicant separate account is administered and accounted for as part of the general business of the Applicant insurance company of which it is a part. The income, gains or losses (realized or unrealized) of each Applicant separate account are credited to or charged against the assets of that separate account, without regard to income, gains or losses of such Applicant insurance company.

5. As noted above, each of the Applicant separate accounts serves as a funding vehicle for certain Variable Contracts. The terms and conditions, including charges and expenses, applicable to the respective Variable Contracts are described in separate registration statements relating to each Variable Contracts. As the Variable Contracts are currently structured, holders of any of the Variable Contracts ("Contractholders") may select one or more of the investment options available under the Variable Contract held by the allocating premiums payable under such contracts to that sub-account of the relevant Applicant separate account that corresponds to the investment option desired. Thereafter, Contractholders accumulate funds, on a tax-deferred basis, based on the investment experience of the selected sub-account(s). Contractholders may, during the life of the contract, make unlimited transfers of accumulation values among the sub-accounts available under the Variable Contract held. Depending on the type of Variable Contract, the first six or twelve transfers in a contract year are guaranteed to be free of any transfer charge. The Applicant insurance companies do not currently charge for additional transfers but reserve the right to do so. Applicants represent that the relief requested here will not affect any charge to which any Contractholder would otherwise be subject, or affect any right or privilege to which any Contractholder would otherwise be entitled (except for the substitution in the underlying investment options, as described herein).

6. AIT is a Massachusetts business trust that was established on October 11, 1984 and is registered under the Act as an open-end diversified investment company. AIT currently consists of 14 different Funds: Select Emerging Markets Fund, Select Aggressive Growth Fund, Select Capital Appreciation Fund, Select Value Opportunity Fund, Select International Equity Fund, Select Growth Fund, Select Strategic Growth Fund, Growth Fund, Equity Index Fund, Select Growth and Income Fund, Select Income Fund, Investment Grade Income Fund, Government Bond Fund and Money Market Fund (collectively, the "Funds," and each, a "Fund"). Currently, shares of each Fund are purchased only by the separate accounts established by First Allmerica or Allmerica Financial Life for the purpose of funding variable annuity contracts and variable life insurance contracts. Two AIT Funds are involved in the proposed substitutions discussed in this application.

7. The fist AIT Fund involved in the proposed substitution is AIT's Investment Grade Income Fund ("IGIF").[1] IGIF seeks as high a level of total return, which includes capital appreciation as well as income, as is consistent with prudent investment management. To achieve its goal, the Fund invests in investments grade debt securities such as bonds and other corporate debt obligations; obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities; and market instruments, including commercial paper, bankers acceptances, and negotiable certificates of deposit. The Fund also may make investments in mortgage-backed and asset-backed securities. The Fund may invest up to 25% of its assets in foreign securities (not including its investments in American Depository Receipts or ADRs) and up to 25% of its assets in debt obligations of supranational entities. Investment techniques the Fund may employ include: entering into financial futures contracts and related options, forward commitments, purchasing options, repurchase agreements and stand-by commitments; investing in restricted securities, stripped mortgage-backed securities and when-issued securities; lending portfolio securities; and writing covered options.

8. The second AIT Fund involved in the proposed substitution is AIT's Select Income Fund ("SIF"), which seeks a high level of current income. SIF invests primarily in investment grade, fixed-income securities. Examples of the types of securities in which the Fund invests are corporate debt obligations such as bonds, notes and debentures, and obligations convertible into common stock; commercial paper; obligations issued or guaranteed by the U.S. Government, its agencies or instrumentalities; and debt securities backed by various types of financial assets. The Fund may also invest in mortgage-backed and asset-backed securities. The Fund's investments in corporate debt securities are not limited to any particular type of company or industry. The Fund may invest up to 25% of its assets in foreign securities (not including its investments in ADRs), up to 35% of its assets in money market instruments, and up to 25% of its assets in debt obligations of supranational entities. The Fund invests primarily (and in practice invests exclusively) in investment grade securities rated in the four highest grades by Moody's Investors Services or Standard & Poor's Rating Services or similar rating organizations, and in unrated securities. Investment techniques the Fund may employ include: entering into financial futures contracts and related options, forward commitments, forward contracts on foreign currencies, purchasing options, repurchase agreements and stand-by commitments; investing in high yield securities, restricted securities, stripped mortgage-backed securities and when-issued securities; lending portfolio securities; and writing covered options.

9. Overall management services are provided to AIT by Allmerica Financial Investment Management Services, Inc. ("AFIMS" and/or the "Manager"), an indirect, wholly-owned, subsidiary of AFC. AFIMS is an investment adviser registered under the Investment Advisers Act of 1940, as amended. Under the terms of a management agreement between AIT and AFIMS (the "Management Agreement"), AFIMS manages AIT's business affairs and has general responsibility for the management of the investments of the

[1] Subject to the completion of the proposed substitutions, the name of this Fund will be changed to the Select Investment Grade Income Fund.

Funds, subject to the control of the Board of Trustees of AIT.

10. AFIMS, at its expense, has contracted with investment sub-advisers to manage the investments of the Funds. Each sub-adviser has been selected on the basis of various factors including management experience, investment techniques and staffing, and is authorized to engage in portfolio transactions on behalf of the applicable Fund subject to such general or specific instructions as may be given by the trustees and/or AFIMS. Allmerica Asset Management, Inc. ("AAM") serves as sub-adviser for IGIF. Incorporated in 1993, AAM has approximately $13 billion under management as of December 31, 1999. AAM serves as investment adviser to investment companies and affiliated insurance company accounts. Standish, Ayer & Wood, Inc. ("SAW") serves as sub-adviser for SIF. Founded in 1993, the firm had approximately $44 billion in assets under management as of December 31, 1999. SAW manages portfolios for pension plans, financial institutions and endowment and foundation funds.

11. AFIMS is responsible for the payment of all fees to the sub-advisers. Other than the expenses specifically assumed by AFIMS under the Management Agreement, all expenses incurred in the operation of AIT are borne by AIT, including fees and expenses associated with the registration and qualification of AIT's shares under the Securities Act of 1933; other fees payable to the SEC; independent accountant, legal and custodian fees; association membership dues; taxes; interest; insurance premiums; brokerage commissions; fees and expenses of the trustees who are not affiliated with AFIMS; expenses for proxies, prospectuses and reports to shareholders; and Fund recordkeeping expenses and other expenses. A prospectus for AIT accompanies the prospectus of each of the Variable Contracts that offers one or more of the Funds as an investment option.

12. For its services, AFIMS is entitled to receive a fee from each Fund at AIT, based on the average daily net asset value of each Fund. In addition, AFIMS has voluntarily undertaken to reimburse each Fund for its fees and expenses that exceed the applicable expense limitation set for that Fund. The expenses which are subject to the voluntary expense limitations include management fees; independent accountant, legal and custodian fees; recordkeeping expenses; fees and expenses of the trustees who are not affiliated with AFIMS; association membership dues and insurance; expenses for proxies, prospectuses and reports to shareholders; and fees associated with the registration of Fund shares. AFIMS has declared voluntary expense limitations for IGIF and SIF of 1.00% of each Fund's average daily assets. The expense limitations may be removed at any time after a Fund's first fiscal year of operations with notice to existing shareholders. Actual expenses have been well below such expense limitations for both Funds.

13. Fulcrum is a Massachusetts business trust that was established on September 8, 1993 and commenced operations on February 1, 1996. Prior to September 1, 1998, the Trust's name was "The Palladian Trust." Fulcrum is registered under the Act as an open-end diversified investment company and currently consists of five different portfolios; Global Interactive/Telecomm Portfolio, the International Growth Portfolio, the Growth Portfolio, the Value Portfolio and the Strategic Income Portfolio (collectively, the "Portfolios," and each, a "Portfolio").

14. The Fulcrum Strategic Income Portfolio ("SIP") is the only Fulcrum Portfolio involved in the proposed substitution discussed in this application. SIP seeks to make money for investors by investing for high current income and capital appreciation in a variety of fixed-income securities. SIP invests primarily in investment grade corporate debt securities and securities issued or guaranteed as to principal or interest by the U.S. Government or its agencies or instrumentalities; below investment-grade corporate debt securities; and foreign securities which include government debt of developed and emerging markets, corporate obligations of foreign companies, and debt obligations of supranational entities. Debt securities in which SIP may invest include bonds, notes, debentures, mortgage-backed and asset-backed securities, and other similar instruments. Although SIP may invest up to 50% of its assets in below investment grade securities, or junk bonds, SIP has generally invested most of its assets in investment grade securities. Investment techniques the Fund may employ include: commercial paper, indexed securities, securities of other investment companies, restricted securities, variable and floating rate securities and warrants; foreign currency transactions, futures contracts, repurchase agreements, reverse repurchase agreements, short sales against the box, and short sales; leveraging; purchasing options; and lending portfolio securities.

15. AFIMS serves as overall manager of Fulcrum, and is responsible for managing Fulcrum's daily business and has general responsibility for the management of the investments of the Portfolios. Portfolio managers (the "Portfolio Managers") have been hired to handle the day-to-day investment management of the Portfolios. The Portfolio Managers' activities are subject to general oversight by the trustees and AFIMS. AAM serves as Portfolio Manager of SIP. For these services, each Portfolio pays an overall management fee, computed and accrued daily and paid monthly, based on its average daily net assets. The overall fee varies based on the performance of that Portfolio (after expenses) compared to that of an appropriate benchmark. The Portfolio Manager receives 80% of the fee, and AFIMS receives the remaining 20%. For the period beginning on the effective date of a Portfolio manager agreement with a new Portfolio Manager and ending with the last day of the twelfth full calendar month thereafter, each Portfolio pays a monthly advisory fee calculated at an annual rate of 0.80% of the Portfolio's average daily net assets. After the first 12 full calendar months with a new Portfolio Manager, as described above, each Portfolio pays a monthly advisory fee equal to a basic fee, plus or minus an incentive fee. The fee might be reduced if absolute performance is negative. The monthly basic fee equals one-twelfth of the annual basic fee rate of 2.0% multiplied by average daily net assets over the previous 12 months. The incentive fee ranges from −2.0% to +2.0% on an annual basis, depending on a comparison of the Portfolio's performance (reflecting a deduction of portfolio expenses) and the performance of a selected benchmark index over the past 12 months. The monthly incentive fee, like the monthly basic fee, is calculated by multiplying one-twelfth of the incentive fee rate on an annual basis by the average daily net assets over the previous 12 months. Accordingly, the total fee could range from 0.0% to an annual rate of 4.0%, depending on performance.

16. AFIMS has agreed to limit operating expenses and reimburse those expenses to the extent that each Portfolio's "other expenses" (*i.e.*, expenses other than management fees) exceed the expense limitations set for the Portfolios. AFIMS has guaranteed these expense limitations through June 30, 2000. For the two years following the date that the expense limitations end and subject to certain conditions, each Portfolio will reimburse AFIMS for

any Portfolio expenses it reimbursed pursuant to the expense limitations. The limitation on "other expenses" for SIP is an annual rate of 1.50% of average daily net assets.

17. In accordance with its authority under the Variable Contracts,[2] and subject to the approval of the Commission under Section 26(b) of the Act, Applicant insurance companies have approved a proposal to make certain substitutions of shares held in sub-accounts of the Applicant separate accounts. Applicants propose to substitute shares of IGIF for shares of SIF and for shares of SIP.

18. Applicants maintain that IGIF and SIF have similar investment objectives and seek to achieve these objectives by investing in similar types of fixed-income securities and utilizing comparable investment strategies. Applicants have concluded that the investment objectives and policies of IGIF are sufficiently similar to those of SIF that the essential objectives and risk expectations of Contractholders can continue to be met. Applicants believe that the proposed substitution of IGIF for SIF will benefit Contractholders in that (1) IGIF has a lower investment advisory fee schedule than SIF, (2) IGIF has a better one- and five-year performance record than SIF, and (3) IGIF has a larger asset base than SIF which may provide certain economies of scale and lower expenses.

19. Applicants assert that, as a result of the proposed substitution, the Contractholders who currently invest in SIF will benefit from the lower investment advisory fee of IGIF. The current investment advisory fees paid by each Fund are listed in the following chart.

Investment Adviser and Sub-Adviser Fees

The Manager receives fees computed daily at an annual rate based on the average daily net asset value of each Fund as set forth below.

| | Investment grade income fund (percent) | Select income fund (percent) |
|---|---|---|
| First $50 million | 0.50 | 0.60 |
| Next $50 million | 0.45 | 0.55 |
| Over $100 million | 0.40 | 0.45 |

The Manager pays each sub-adviser fee computed at an annual rate based on the average daily net asset value of each Fund as set forth below.

Investment Grade Income Fund: 0.20%.

Select Income Fund: 0.20%.

20. Applicants state that IGIF has a better performance record than SIF for the one- and five-year periods ended December 31, 1998.

21. Applicants maintain that, as shown in the table below, IGIF has a larger asset base than SIF which may provide certain economies of scale, resulting in lower expenses, compared to SIF. The net assets of each Fund as of September 30, 1999 were as follows:

| | Net assets (in millions) |
|---|---|
| Investment grade income fund | $250.2 |
| Select income fund | $176.9 |

22. Applicants state that the expense ratio for IGIF is significantly lower in comparison to SIF, which is due primarily to the difference in the level of investment advisory fees between the two Funds. The fees and expenses incurred for the fiscal year ended December 31, 1998 by each Fund are as follows:

ANNUAL FUND OPERATING EXPENSES

[Expenses deducted from fund assets—as of 12/31/98]

| | Investment grade income fund (percent) | Select income fund (percent) |
|---|---|---|
| Investment advisory fees | .43 | .54 |
| Other expenses | .09 | .10 |
| Total operating expenses [1] | .52 | .64 |

[1] Until further notice, the Manager has declared a voluntary expense limitation of 1.00% for the Select Income Fund and Investment Grade Income Fund.

23. For the foregoing reasons, Applicants submit that the proposed substitution of the shares of IGIF for shares of SIF is in the best interest of Contractholders.

24. Applicants maintain that IGIF and SIP have similar investment objectives and seek to achieve these objectives by investing in similar types of fixed-income securities and utilizing comparable investment strategies. Applicants have concluded that the investment objectives and policies of IGIF are sufficiently similar to those of SIP that the essential objectives and risk expectations of Contractholders can continue to be met. Applicants believe that the proposed substitution of IGIF for SIP will benefit Contractholders in that (1) IGIF has a larger asset base than SIP which should provide certain economies of scale and lower expenses, and (2) IGIF has a better performance record than SIP.

25. Applicants believe that SIP has not grown to a size to allow it to operate efficiently. As shown in the table below, IGIF has a larger asset base than SIP, which should provide certain economies of scale, resulting in lower expenses, compared to SIP. After the proposed substitution, SIP would be dissolved. The net assets of SIP and IGIF as of September 30, 1999 are as follows:

| | Net assets (in millions) |
|---|---|
| Fulcrum strategic income portfolio | $2.4 |
| AIT investment grade income fund | 250.2 |

26. Applicants state that the expense ratio for IGIF is significantly lower in comparison to SIP. The fees and expenses incurred for the fiscal year ended December 31, 1998 by each Fund are as follows:

[2] Each of the Variable Contracts reserves to the issuing Applicant insurance company the right, subject to Commission approval, to substitute shares of another management investment company held by a sub-account of the separate account issuer of the contract. This reservation of right is disclosed in the registration statement relating to each Variable Contract.

ANNUAL FUND OPERATING EXPENSES

[Expenses deducted from fund assets *before* fee limitations—as of 12/31/98]

| | Investment grade income fund (percent) | Strategic income portfolio (percent) |
|---|---|---|
| Investment advisory fees | .43 | [2] .67 |
| Other expenses | .09 | [3] 6.49 |
| Total operating expenses | [1] .52 | 7.16 |

[1] Until further notice. the investment adviser has declared a voluntary expense limitation of 1.00% for the Investment Grade Income Fund.
[2] The Investment advisory fee for the Strategic Income Portfolio listed above was based on the performance of the portfolio during 1998 and can vary from 0% to 4.00%.
[3] The Manager has agreed to a voluntary expense limitation on the "other expenses" at an annual rate of 1.50% of the average daily net assets of the Strategic Income Portfolio. The expense limitation is guaranteed through June 30, 2000. Subject to certain conditions, the Strategic Income Portfolio will reimburse the Manager for any portfolio expenses it reimbursed pursuant to the expense limitation for the two years following the date that the expense limitation ends.

27. Set forth below are charts showing gross and net operating expenses, including investment advisory fees, for IGIF, SIP and SIF for the years ended December 31, 1996—December 31, 1999.

| | Year ended 12/31/99 (percent) | | Year ended 12/31/98 (percent) | | Year ended 12/31/97 (percent) | | Year ended 12/31/96 (percent) | |
|---|---|---|---|---|---|---|---|---|
| | Gross | Net | Gross | Net | Gross | Net | Gross | Net |
| **Investment Grade Income Fund** | | | | | | | | |
| Management fees | 0.43 | 0.43 | 0.43 | 0.43 | 0.41 | 0.41 | 0.40 | 0.40 |
| Other expenses | 0.07 | 0.07 | 0.09 | 0.09 | 0.10 | 0.10 | 0.12 | 0.12 |
| Total operating expenses | 0.50 | 0.50 | 0.52 | 0.52 | 0.51 | 0.51 | 0.52 | 0.52 |
| **Strategic Income Portfolio** | | | | | | | | |
| Management fees | 0.35 | 0.23 | 0.67 | 0.47 | 0.41 | 0.41 | 0.80 | 0.80 |
| Other expenses | 3.26 | 1.27 | 6.49 | 1.71 | 6.27 | 1.20 | 11.5 | 6.57 |
| Total operating expenses | 3.61 | 1.50 | 7.16 | 2.18 | 6.68 | 1.61 | 12.3 | 7.37 |
| **Select Income Fund** | | | | | | | | |
| Management fees | 0.52 | 0.52 | 0.54 | 0.54 | 0.59 | 0.59 | 0.60 | 0.60 |
| Other expenses | 0.09 | 0.09 | 0.10 | 0.10 | 0.13 | 0.13 | 0.14 | 0.15 |
| Total operating expenses | 0.61 | 0.61 | 0.64 | 0.64 | 0.72 | 0.72 | 0.74 | 0.74 |

28. Applicants state that IGIF has a better performance record than SIP. Applicants have no reason to believe that, in the near term, the performance of SIP will match or exceed that of IGIF.

29. Applicants also believe that the substitution would provide Contractholders a more predictable advisory fee. IGIF's investment advisory fee is an annual rate of 0.50% of average daily net assets on the first $50 million of assets, 0.45% on the next $50 million of assets, and 0.40% on assets over $100 million. SIP's advisory fee can vary from 0% to 4.00% depending on performance.

30. For the foregoing reasons, Applicants submit that the proposed substitution of the shares of IGIF for shares of SIP is in the best interest of Contractholders.

31. Applicant insurance companies will effect the substitutions as soon as practicable following the issuance of the requested order, as follows. As of the effective date of the substitutions ("Effective Date"), shares of SIF and SIP held by the various Applicant separate accounts will be redeemed by the Applicant insurance companies. The proceeds of such redemptions, which may be effected in-kind, will then be used to purchase the appropriate number of shares of IGIF. Since it is anticipated that the proposed substitution will be effected by in-kind transfer of assets, Contractholders will be fully invested at all times. The proposed substitutions will take place at relative net asset value with no charge in the amount of any Contractholder's account value, cash value or death benefit or in the dollar value of his or her investment in any of the Applicant separate accounts. Contractholders will not incur any fees or charges as a result of the proposed substitutions, nor will their rights nor the Applicant insurance companies' obligations under the Variable Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by the Applicant insurance companies. In addition, the proposed substitutions will not impose any tax liability on Contractholders. The proposed substitutions will not cause the Variable Contract fees and charges currently being paid by existing Contractholders to be greater after the proposed substitutions than before the

proposed substitutions. The proposed substitutions (and any transfer in advance of the substitution) will not be subject to a transfer charge and will not be counted toward any limit on transfers guaranteed not to be subject to a transfer charge.

32. Two of the Applicant separate accounts, the First Allmerica Inheritage Account and Allmerica Financial Life VEL Account III, currently have sub-accounts that invest in SIF and IGIF. Applicant insurance companies may in the future cause the First Allmerica Inheritage Account and Allmerica Financial Life VEL Account III to combine those sub-accounts that hold shares of IGIF. The combination of those subaccounts that hold shares of IGIF would not have any impact on the value of the Variable Contracts involved, the fees or rights of the Contractholders, or diminish in any way the obligations of the Applicant insurance companies under any Variable Contract. The Applicant insurance companies would bear the costs of any such combination, including any legal and/or accounting fees relating to them, and the Contractholders would not incur any fees or charges as a result of such combination. in addition, any such sub-account combination would not result in any adverse tax consequences to the Contractholders, or any change in the economic interest or contract values of any Contractholders.

33. By supplements to the various prospectuses for the Variable Contracts and Applicant separate accounts, all owners of the Variable Contracts will be notified of the Applicant insurance companies' intention to take the necessary actions, including seeking the order requested by this application, to substitute shares of the Underlying Funds as described herein. The supplements for the Applicant separate accounts will advise Contractholders that from the date of the supplement until the date of the proposed substitution, each owner may make one transfer of all amounts allocated to the SIF or SIP sub-account to another sub-account without that transfer being counted toward the limit on transfers guaranteed not to be subject to a transfer charge. The supplements also will inform Contractholders that the Applicant insurance companies will not exercise any rights reserved under any of the Variable Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. With these supplements, Contractholders will also receive a current prospectus relating to IGIF (unless the Contractholders has already received that prospectus).

34. In addition to the prospectus supplements distributed to owners of Variable Contracts, within five days after the proposed substitutions, and Contractholders who were affected by the substitutions will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all account value under a Variable Contract invested in any one of the affected sub-accounts on the date of the notice to another sub-account available under their Variable Contract without that transfer counting as one of the number of transfers per year guaranteed to be free of charge. The notice will also reiterate the fact that the Applicant insurance companies will not exercise any rights reserved by either under any of the Variable Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states, Contractholders who are affected by the substitutions may exchange their Variable Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by the Applicant insurance companies (or one of their affiliates) during the 60 days following the proposed substitutions.

35. The Applicant insurance companies are also seeking approval of the proposed substitutions from any state insurance regulators whose approval may be necessary or appropriate.

**Applicants' Legal Analysis**

1. Section 26(b) states that it "shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title." The purpose of Section 26(b) is to protect the expectation of investors in a unit investment trust that the unit investment trust will accumulate the shares of a particular issuer and to prevent unscrutinized substitutions which might, in effect, force shareholders dissatisfied with the substituted security to redeem their shares, thereby possibly incurring either a loss of the sales load deducted from initial purchase payments, an additional sales load upon reinvestment of the redemption proceeds, or both. Section 26(b) affords this protection to investors by preventing a depositor or trustee of a unit investment trust holding the shares of one issuer from substituting for those shares the shares of another issuer, unless the Commission approves that substitution.

2. Applicants request that the Commission issue an order pursuant to Section 26(b) of the Act approving the substitutions by the Applicant insurance companies of shares held by the Applicant separate accounts as follows: (1) shares of IGIF for shares of SIF; and (2) shares of IGIF for shares of SIP.

3. Applicants state that the Variable Contracts expressly reserve for the Applicant insurance companies the right, subject to compliance with applicable law, to substitute shares of another investment company for shares of an investment company held by a separate account or a sub-account of a separate account. Applicants maintain that the prospectuses for the Variable Contracts and the separate accounts contain appropriate disclosure of this right. Applicants note that the Applicant insurance companies each reserved this right of substitution both to protect themselves and their Contractholders in situations where either might be harmed or disadvantaged by circumstances surrounding the issuer of the shares held by one or more of their separate accounts and to afford the opportunity to replace such shares where to do so could benefit itself and Contractholders.

4. Applicants state that, in the case of the proposed substitution of shares of IGIF for shares of SIF, SIF would be replaced by a Fund with a similar investment objective but which has a lower investment advisory fee, a better long-term performance record, and a larger asset base, potentially resulting in lower expenses. Applicants maintain that, in the case of the proposed substitution of shares of IGIF for shares of SIP, the interests of Contractholders will be better served primarily because SIP would be replaced by a Fund with similar investment objectives but which has a larger asset base, potentially resulting in lower expenses, and a better performance record.

5. Applicants generally submit that the proposed substitutions meet the standards that the Commission and its staff have applied to similar substitutions that have been approved in the past.

6. Applicants anticipate that Contractholders will be at least as well off with the proposed array of separate accounts and sub-accounts after the proposed substitutions as they have

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been with the array of separate accounts and sub-accounts offered prior to the substitutions. Applicants maintain that the proposed substitutions retain for Contractholders the investment flexibility which is a central feature of the Variable Contracts. Applicants represent that, if the proposed substitutions are carried out, all Contractholders will be permitted to allocate purchase payments and transfer account values between and among the same number of separate accounts or sub-accounts as they could before the proposed substitutions.[3]

7. Applicants submit that neither of the proposed substitutions is of the type that Section 26(b) was designed to prevent and that, unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Variable Contracts provide each Contractholder with the right to exercise his or her own judgment and transfer account values into other sub-accounts. Applicants state that, moreover, the Variable Contracts will offer Contractholders the opportunity to transfer amounts out of the affected sub-accounts into any of the remaining sub-accounts without cost or other disadvantage. Applicants contend, therefore, that the proposed substitutions will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

8. Applicants state that the proposed substitutions also are unlike the type of substitution which Section 26(b) was designed to prevent in that, by purchasing a Variable Contract, Contractholders select much more than a particular investment company in which to invest their account values. Applicants explain that Contractholders may also select the specific type of insurance coverage offered by either or both of the Applicant insurance companies under their Variable Contract as well as numerous other rights and privileges set forth in the Variable Contract. Applicants also believe that Contractholders may have considered each or both Applicant insurance companies' size, financial condition, type and reputation for service in selecting their Variable Contract. Applicants represent that these factors will not change as a result of the proposed substitutions.

9. Applicants request an order of the Commission pursuant to Section 26(b) of the Act approving the proposed substitutions by the Applicant insurance companies. Applicants submit that, for all of the reasons stated above, the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

10. Applicants request an order pursuant to Section 17(b) of the Act exempting them from the provisions of Section 17(a) of the Act to the extent necessary to permit them to effect (i) the substitutions proposed in this application by means of in-kind redemptions and purchases of shares and (ii) any subsequent consolidation of sub-accounts of the Applicant separate accounts as discussed in this application.

11. Sections 17(a)(1) and (2) of the Act, in relevant part, prohibit any affiliated person of a registered investment company, or any affiliated person of such a person, or any principal underwriter for such company (collectively, "Transaction Affiliates"), acting as principal, from knowingly selling to or purchasing from that registered investment company any security or other property.

12. Section 2(a)(3) of the Act defines the term "affiliated person of another person" in relevant part as: (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more the outstanding voting securities of such other person; (B) any person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; and (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person.

13. Applicants submit that they may be deemed to be Transaction Affiliates of one another based upon this definition. Applicants state that, because the proposed substitutions may be affected by means of an in-kind redemption and a subsequent purchase of shares, also in an in-kind transaction, the substitutions may be deemed to involve on or more purchases or sales of securities or property between Transaction Affiliates. Applicants state that, because the Applicant separate accounts (as well as other separate accounts of the Applicant insurance companies) are registered collectively with the Commission as a single unit investment trust of which the Applicant insurance companies are the depositors, the Applicant separate accounts are affiliates persons of each other. Applicants further state that, because all of the Applicant separate accounts are under the common control of the Applicant insurance companies, they are all affiliated persons of each other.

14. Applicant assert that, while they do not concede that Section 17(a) applies to the proposed substitutions, the combining of sub-accounts under the Applicants separate accounts, because it could be deemed to involve the transfer of assets from one entity to another, arguably would involve these entities, acting as principal, in buying and selling securities or other property from one to another in contravention of Section 17(a).

15. Section 17(b) of the Act provides that the Commission may, upon application, grant an order exempting any proposed transaction from the provisions of Section 17(a) if the evidence establishes that (1) the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (2) the proposed transaction is consistent with the policy of each registered investment company concerned, as recited in its registration statement and reports filed under the Act; and (3) the proposed transaction is consistent with the general purposes of the Act.

16. Applicants submit that, to the extent that the substitutions and any subsequent combination of sub-accounts that hold identical securities are deemed to involve principal transactions among Transaction Affiliates, the manner in which such substitutions and any combinations are to be implemented is sufficient to assure that such transactions do not involve overreaching on the part of any Applicant or other person, and are fair and reasonable and consistent with the policies and purposes underlying the Act. Applicants further submit that the facts and procedures recited in their application demonstrate that neither the Underlying Funds nor any of the Applicant separate accounts will be participating in the substitutions or any subsequent combination on a basis less advantageous than that of any other participant. Finally, Applicants state that, but for the fact that the substitutions may be effected by means of in-kind redemption and purchase transactions, rather than in cash, the procedures described in their application would comply with all of the conditions of Rule 17a–7 under the Act.[7]

[3] No sub-accounts will be combined at the time the proposed substitution is effected. The number of underlying investment options for each of the 19 Applicant separate accounts currently varies from six to 24.

[7] Applicants note that Rule 17a–7 under the Act is not available to them in connection with the

Continued

17. Accordingly, Applicants request an order of the Commission pursuant to Section 17(b) of the Act to permit the substitutions and related transactions described in this application. Applicants submit the proposed substitutions are consistent with the policies of each of the Applicant separate accounts and the Underlying Funds and with the general purposes of the Act.

18. Applicants assert that the Commission, in recent years, has issued several orders pursuant to Sections 17(b) and 26(b) of the Act under circumstances similar to those presented in their application, each of which provides substantial precedent for the relief requested by this application. Applicants submit that these orders involved transactions in which registered separate accounts that serve as funding vehicles for variable contract were permitted to substitute, by means of in-kind redemptions and subsequent purchases, shares of one mutual fund for shares and another affiliated mutual fund. Applicants state that certain of the transactions also were followed by a consolidation of the underlying sub-accounts. Applicants maintain that these orders were conditioned on certain representations by the respective applicants, which they believe appear to fall into five categories:

(i) The funds to be substituted have objectives, policies and restrictions sufficiently similar to the objective of the replaced funds so that the policy owners objectives can continue to be met;

(ii) Variable contract owners would be given sufficient notice of information about the substitutions and an opportunity to "opt out" of the substitution and transfer their policy values, without charge, to any other investment option available under the policy held;

(iii) Substitutions would take place at relative net asset value and without the imposition of any additional expense or charge, such that no change in the amount of any variable contract owners's investment or expenses would result;

(iv) Neither the rights of variable contract owners, nor the obligations of applicant insurance companies under the variable contract would be altered as a result of the substitutions; and

(v) All necessary regulatory requirements would be satisfied prior to the effective date of the substitutions, including compliance with applicable insurance law and the issuance of the Commission's order approving the substitution.

Applicants represent that the facts and circumstances underlying their application meet each of the conditions listed in (i) through (v) above and are sufficient to assure that the substitutions and any subsequent account combination will be carried out in a manner that is consistent with Sections 17(b) and 26(a) of the Act.

19. Applicants request that the Commission issue an order pursuant to Section 17(b) of the Act exempting them from the provisions of Section 17(a) of the Act to the extent necessary to permit the Applicant insurance companies to carry out the substitution transactions described herein. The Applicants represent that, for all the reasons stated above, the terms of the proposed substitutions as set forth herein, including any consideration to be paid and received, are reasonable and fair and do not involve overreaching on the part of any person concerned. Furthermore, the Applicants represent that the proposed substitutions will be consistent with the policies of the Applicant insurance companies and the Underlying Funds as stated in the current registration statement and reports filed under the Act by each and with the general purposes of the Act.

**Conclusion**

Applicants submit that for the reasons and upon the facts set forth above, the requested order of approval pursuant to Section 26(b) and the requested order granting exemptive relief pursuant to Section 17(b) should be granted.

**Margaret H. McFarland,**

*Deputy Secretary.*

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substitutions because: (i) affiliations among the Applicants do not rise solely by reason of having common investment advisers, director and/officers; and (ii) the contemplated redemptions and subsequent purchases of shares of IGIF may be effected in-kind and not for cash.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42769; File No. SR–OCC–00–01]**

## Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change Relating to Exercise Settlement Values for Expiring Index Options

May 9, 2000.

On January 19, 2000, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–OCC–00–01) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and on March 14, 2000, amended the proposed rule change.[1] Notice of the proposal was published in the **Federal Register** on March 31, 2000.[2] No comments letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

**I. Description**

The proposed rule change adds new subparagraph (3) to Article XVII, Section 4 of OCC's By-Laws[3] to allow OCC to establish the exercise settlement value for expiring index options in conformity with the establishment of the final settlement value for related index futures and options on index futures when the primary market(s) for one or more component securities of the index is closed on the last trading day before expiration.[4] OCC's current method for setting the exercise settlement amount for an underlying index when the primary market(s) for securities representing a substantial portion of the value of the index are closed on the last trading day before expiration is to use the reported level of the underlying index at the close of trading on the last preceding day for which a closing index level was reported.[5]

However, the valuation method that would be used by the Chicago Mercantile Exchange ("CME") is to set the settlement value for index futures whenever the primary market for a single component stock of the index is closed the last trading day before expiration. In such a situation, CME would determine the settlement value of the index by using the reported opening values for index stocks affected by the closing when the primary market(s) for such stocks reports.[6] The use of

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 42575 (March 24, 2000), 65 FR 17328.

[3] Section 4 sets forth OCC's procedures for establishing the exercise settlement value for an index option when the current value for the index is unavailable or inaccurate.

[4] The rule change will only apply to series of index options introduced after the later of: (1) The date of the Commission's approval of this rule filing or (2) the date specified in a new Options Disclosure document or supplement thereto that discloses the substance of this rule change.

[5] OCC By-laws, Article XVII, Section 4(a)(2).

[6] For example, CME Rule 4003 states. "[I]f the New York Stock Exchange (NYSE) does not open on the day scheduled for the determination of the Final Settlement Price [of S&P 500 index futures], then the NYSE-stock component of the Final Settlement Price shall be based on the next opening prices of NYSE stocks."

different dates and hence potentially different index values for fixing the final settlement values for options and futures on the same index creates uncertainty and risk.[7] Therefore, OCC is amending its By-Laws so that if the primary market(s) for one or more component securities of an index does not open for trading on the last trading day before expiration of a series of options on the index, an adjustment panel acting pursuant to Article XVII may fix the exercise settlement amount for such options by using the opening prices of the affected security or securities when the primary market reopens.

OCC also is amending Article XVII to make clear that (1) OCC has the discretion to determine which market is a security's primary market and (2) when OCC fixes a settlement price based on an index level at the close of trading, the price will be fixed based on the index level at the close of regular trading hours, as determined by OCC.

**II. Discussion**

In Section 17A, Congress stated its finding that the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors. Congress then directed the Commission to facilitate the establishment of coordinated facilities for the clearance and settlement of transactions in securities, securities options, futures, and options on futures.[8] The Commission believes that the approval of OCC's rule change is in line with this finding and directive of Congress. The current practice of using different dates and hence potentially different index values for fixing the final settlement values for options and futures on the same index has the potential to create uncertainty and risks for many market participants. This risk should be minimized by OCC's new procedure which will allow OCC to conform its method of establishing the expiration settlement value for index options with that used for establishing the final settlement price for related index futures and options on index futures.

**III. Conclusion**

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–00–01) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[7] For example, many market participants use trading strategies whereby they trade index options and index futures based on the expectation that the settlement values will have a predictable relationship.

[8] 15 U.S.C. 78q–1(a)(1)(D).

[9] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42764; File No. SR–PHLX–00–06]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Giving Preference to Options Specialist Units Which Resign From Option Trading Privileges in the Best Interest of the Exchange in Future Allocation Decisions Regarding Such Options

May 8, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 1, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. For the reasons discussed below, the Commission is granting accelerated approval of the proposed rule change.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Phlx proposes new Rule 513, Voluntary Resignation of Options Privileges, which provides that when an option specialist unit voluntarily resigns from trading privileges in an option in the best interest of the Exchange, the option specialist unit which last traded that option will be given preference in any future allocation decision regarding that option, barring any performance or disciplinary issues. The text of the proposed rule is as follows:

**Voluntary Resignation of Options Privileges**

Rule 513. (a) If an option specialist unit voluntarily resigns from registration in a particular option and the Committee determines such resignation to be in the best interest of the Exchange, and that option is subsequently delisted, barring any specialist performance or disciplinary issues, the option specialist unit which last traded that option will be given preference in any future allocation decision regarding that option.

(b) The preference set forth in Section (a) of this rule shall be in effect for a period of one year from the date of resignation from trading privileges by the specialist unit.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

Currently, the Exchange and the Options Price Reporting Authority ("OPRA") have serious concerns regarding mitigation of quote traffic and maximizing computer capacity. To address those concerns, proposed Rule 513 is intended to provide incentive for options specialists to create more computer capacity by resigning from relatively low volume/high quote traffic options. To provide that incentive, proposed Rule 513 states that the specialist unit which last traded that option will be given preference in any future allocation decision regarding that option.

Mitigation of excessive quote traffic and concomitant preservation of computer capacity is currently an industry-wide concern, and the Exchange believes that a preference provision such as the one contemplated

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

in the proposed rule addresses this concern. In this context, the "best interest of the Exchange" is served by specialist units that voluntarily resign from trading privileges in options that trade at a relatively low volume, but which generate a high number of quotes to be disseminated from, and received by, the Exchange.

The rule does not provide an absolute guarantee that the specialist unit that last traded the option will be allocated the option in the event that it is certified and resolicited to the Exchange's options specialist units. All options specialist units will be allowed to apply for trading privileges in relisted options, and all applications will be considered by the Exchange's Allocation, Evaluation and Securities Committee ("Committee").[3] The proposed rule contemplates that the Committee may review the performance of a specialist unit that applies for an option from which it had previously resigned ("applicant"). In order to qualify for preferential treatment in the allocation of a relisted option, the performance of the applicant must be consistent with the standards set forth in the Exchange's rules.[4] The Committee will also take into account the disciplinary record of the applicant when considering the application, and preferential treatment of the specialist unit applicant will not be given if the applicant demonstrates the inability to adhere to the Exchange's disciplinary rules and those of the Commission.

In approving Rule 513 for filing with the Commission, the Exchange's Board of Governors has determined that specialist units would be more willing to resign from trading privileges in options in order to mitigate quote traffic and to conserve computer capacity on the Exchange, if they are given some form of preference in the event that the options from which they have resigned in the best interest of the Exchange are to be relisted on the Exchange in the future.

Over time, material changes in the composition, personnel, capitalization, and other aspects of specialist units which resign from option trading privileges may occur, which would affect the Committee's decisions regarding future allocations to those specialist units. For this reason, the proposed rule limits the Committee's preference in such future allocations to one year.

[1] *See* Phlx Rule 506. This rule provides that the Committee will solicit applications from all eligible specialist units.

[4] *See* Phlx Rules 511 and 515.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[5] in general, and Section 6(b)(5) of the Act,[6] in particular, in that it is designed to perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest. By giving Exchange option specialists incentive to resign from trading privileges in certain high quote/low volume options, the Exchange will continue to serve the investing public and its markets by mitigating quote traffic and, thus, providing the most current quote and execution information possible.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Phlx does not believe that the proposed rule change will result in any burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Phlx has neither solicited nor received written comments on the proposed rule change.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–06 and should be submitted by June 5, 2000.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

**IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[7] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[8] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and to perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.[9]

The Commission has previously note that the aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit of OPRA's systems capacity.[10] OPRA's processor has informed the Commission that current plans to enhance OPRA's systems are not expected to be completed before the end of the second quarter of this year, at the earliest. Accordingly, proposals that may mitigate quote traffic and conserve computer capacity, such as proposed Phlx Rule 513, should benefit investors and other participants in the options markets.

Pursuant to Section 19(b)(2),[11] the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing in the **Federal Register**. The Commission believes that granting accelerated approval of the proposal will allow Phlx to expeditiously implement the incentive program without any unnecessary delay.

It Is Therefore Ordered, pursuant to Section 19(b)(2)[12] of the Act, that the proposed rule change (SR–Phlx–00–06) is approved on an accelerated basis.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] *See* Securities Exchange Act Release No. 42493 (March 3, 2000), 65 FR 12597 (March 9, 2000).

[11] 15 U.S.C. 78s(b)(2).

[12] *Id.*

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12135 Filed 5–12–00; 8:45 am]

BILLING CODE 8010–01–M

## SOCIAL SECURITY ADMINISTRATION

### Social Security Ruling, SSR 00–3p. Titles II and XVI: Evaluation of Obesity

**AGENCY:** Social Security Administration.

**ACTION:** Notice of Social Security Ruling.

**SUMMARY:** In accordance with 20 CFR 402.35(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling, SSR 00–3p. This Ruling provides guidance on the evaluation of disability claims involving obesity following our deletion of listing 9.09, Obesity, from the Listing of Impairments. The final rule deleting listing 9.09 was effective on October 25, 1999 (64 FR 46122 (1999)).

**EFFECTIVE DATE:** May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bonnie Davis, Office of Disability, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–4172.

**SUPPLEMENTARY INFORMATION:** Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 402.35(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and policy interpretations of the law and regulations.

Although Social Security Rulings do not have the same force and effect as the statute or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 402.35(b)(1), and are to be relied upon as precedents in adjudicating cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance, Programs 96.001 Social Security—Disability Insurance; 96.006 Supplemental Security Income)

Dated: May 3, 2000.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

### Policy Interpretation Ruling Titles II and XVI: Evaluation of Obesity

#### Purpose

To provide guidance on SSA policy concerning the evaluation of obesity in disability claims filed under titles II and XVI of the Social Security Act (the Act).

#### Citations

Sections 216(i), 223(d), 223(f), 1614(a), and 1614(c) of the Act, as amended; Regulations No. 4, subpart P, sections 404.1502, 404.1508, 404.1509, 404.1512, 404.1520, 404.1521, 404.1523, 404.1525, 404.1526, 404.1528, 404.1529, 404.1530, 404.1545, 404.1546, 404.1561, 404.1594, and appendix 1; and Regulations No. 16, subpart I, sections 416.902, 416.908, 416.909, 416.912, 416.920, 416.921, 416.923, 416.924, 416.925, 416.926, 416.926a, 416.928, 416.929, 416.930, 416.933, 416.945, 416.946, 416.961, 416.994, and 416.994a.

#### Introduction

On August 24, 1999, we[1] published a final rule in the **Federal Register** deleting listing 9.09, *Obesity*, from the Listing of Impairments in 20 CFR, subpart P, appendix 1 (the listings). The final rule was effective on October 25, 1999. 64 FR 46122 (1999).

We stated in the preamble to the final rule that we deleted listing 9.09 because our experience adjudicating cases under this listing indicated that the criteria in the listing were not appropriate indicators of listing-level severity. In our experience, the criteria in listing 9.09 did not represent a degree of functional limitation that would prevent an individual from engaging in any gainful activity.

However, even though we deleted listing 9.09, we made some changes to the listings to ensure that obesity is still addressed in our listings. In the final rule, we added paragraphs to the prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings that provide guidance about the potential effects obesity has in causing or contributing to impairments in those body systems. *See* listings sections 1.00F, 3.00I, and 4.00F. The paragraphs state that we consider obesity to be a medically determinable impairment and remind adjudicators to consider its effects when evaluating disability. The provisions also remind adjudicators that the combined effects of obesity with other impairments can be greater than the effects of each of the impairments considered separately. They also instruct adjudicators to consider the effects of obesity not only under the listings but also when assessing a claim at other steps of the sequential evaluation process, including when assessing an individual's residual functional capacity.

In response to public comments, we stated that we would provide additional guidance in a Social Security Ruling (SSR). (64 FR at 46126) This SSR provides that additional guidance by discussing how we evaluate obesity in disability claims filed by adults and children under titles II and XVI of the Act.

#### Policy Interpretation

*General*

1. What Is Obesity?

Obesity is a complex, chronic disease characterized by excessive accumulation of body fat. Obesity is generally the result of a combination of factors (*e.g.*, genetic, environmental, and behavioral).

In one sense, the cause of obesity is simply that the energy (food) taken in exceeds the energy expended by the individual's body. However, the influences on intake, the influences on expenditure, the metabolic processes in between, and the overall genetic controls are complex and not well understood.

The National Institutes of Health (NIH) established medical criteria for the diagnosis of obesity in its *Clinical Guidelines on the Identification, Evaluation, and Treatment of Overweight and Obesity in Adults* (NIH Publication No. 98–4083, September 1998). These guidelines classify overweight and obesity in adults according to Body Mass Index (BMI). BMI is the ratio of an individual's weight in kilograms to the square of his or her height in meters ($kg/m^2$). For adults, both men and women, the *Clinical Guidelines* describe a BMI of 25–29.9 as "overweight" and a BMI of 30.0 or above as "obesity."

The *Clinical Guidelines* recognize three levels of obesity. Level I includes BMIs of 30.0–34.9. Level II includes BMIs of 35.0–39.9. Level III, termed "extreme" obesity and representing the greatest risk for developing obesity-

[13] 17 CFR 200.30–3(a)(12).

[1] The terms *we* and *us* in this Social Security Ruling have the same meaning as in 20 CFR 404.1502 and 416.902. *We* or *us* refers to either the Social Security Administration or the State agency making the disability or blindness determination; *i.e.*, our adjudicators at all levels of the administrative review process and our quality reviewers.

related impairments, includes BMIs greater than or equal to 40. These levels describe the extent of obesity, but they do not correlate with any specific degree of functional loss.

In addition, although there is often a significant correlation between BMI and excess body fat, this is not always the case. The *Clinical Guidelines* also provide for considering whether an individual of a given height and weight has excess body fat when determining whether he or she has obesity. Thus, it is possible for someone whose BMI is below 30 to have obesity if too large a percentage of the weight is from fat. Likewise, someone with a BMI above 30 may not have obesity if a large percentage of the weight is from muscle. However, in most cases, the BMI will show whether the individual has obesity. It also will usually be evident from the information in the case record whether the individual should not be found to have obesity, despite a BMI of 30.0 or above. See question 4, below.

The *Clinical Guidelines* do not provide criteria for diagnosing obesity in children. However, a BMI greater than or equal to the 95th percentile for a child's age is generally considered sufficient to establish the diagnosis of obesity. (BMIs in the 95th percentile vary by age and sex of the child.) BMI-for-age-and-gender charts are published in medical textbooks or professional journals and by the National Center for Health Statistics. As with adults, the amount of body fat is considered in making the diagnosis of obesity in children.

Treatment for obesity is often unsuccessful. Even if treatment results in weight loss at first, weight lost is often regained, despite the efforts of the individual to maintain the loss. See question 13, below, for additional discussion of obesity treatment.

2. How Does Obesity Affect Physical and Mental Health?

Obesity is a risk factor that increases an individual's chances of developing impairments in most body systems. It commonly leads to, and often complicates, chronic diseases of the cardiovascular, pulmonary, and musculoskeletal body systems. Obesity increases the risk of developing impairments such as type II (so-called adult onset) diabetes mellitus-even in children; gall bladder disease; hypertension; heart disease; peripheral vascular disease; dyslipidemia (abnormal levels of fatty substances in the blood); stroke; osteoarthritis; and sleep apnea. It is associated with endometrial, breast, prostate, and colon cancers, and other physical impairments. Obesity may also cause or contribute to mental impairments such as depression. The effects of obesity may be subtle, such as the loss of mental clarity and slowed reactions that may result from obesity-related sleep apnea.

The fact that obesity is a risk factor for other impairments does not mean that individuals with obesity necessarily have any of these impairments. It means that they are at greater than average risk for developing the other impairments.

3. How Do We Consider Obesity in the Sequential Evaluation Process [2]

We will consider obesity in determining whether:

- The individual has a medically determinable impairment. See question 4.
- The individual's impairment(s) is severe. See question 6.
- The individual's impairment(s) meets or equals the requirements of a listed impairment in the listings. See question 7. (We use special rules for some continuing disability reviews. See question 11.)
- The individual's impairment(s) prevents him or her from doing past relevant work and other work that exists in significant numbers in the national economy. However, these steps apply only in title II and adult title XVI cases. See questions 8 and 9.

4. How Is Obesity Identified as a Medically Determinable Impairment?

When establishing the existence of obesity, we will generally rely on the judgment of a physician who has examined the claimant and reported his or her appearance and build, as well as weight and height. Thus, in the absence of evidence to the contrary in the case record, we will accept a diagnosis of obesity given by a treating source or by a consultative examiner. However, if there is evidence that indicates that the diagnosis is questionable and the evidence is inadequate to determine whether or not the individual is disabled, we will contact the source for clarification, using the guidelines in 20 CFR 404.1512(e) and 416.912(e).

When the evidence in a case does not include a diagnosis of obesity, but does include clinical notes or other medical records showing consistently high body weight or BMI, we may ask a medical source to clarify whether the individual has obesity. However, in most such cases we will use our judgment to establish the presence of obesity based on the medical findings and other evidence in the case record, even if a treating or examining source has not indicated a diagnosis of obesity. Generally, we will not purchase a consultative examination just to establish the diagnosis of obesity.

When deciding whether an individual has obesity, we will also consider the individual's weight over time. [3] We will not count minor, short-term weight loss. We will consider the individual to have obesity as long as his or her weight or BMI shows essentially a consistent pattern of obesity. (See question 13 for a discussion of weight loss and medical improvement.)

Finally, there are a number of methods for measuring body fat and, if such information is in a case record, we will consider it. However, we will not purchase such testing. In most cases, the medical and other evidence in the case record will establish whether the individual has obesity.

5. Can We Find an Individual Disabled Based on Obesity Alone?

If an individual has the medically determinable impairment obesity that is "severe" as described in question 6, we may find that the obesity medically equals a listing. (In the case of a child seeking benefits under title XVI, we may also find that it functionally equals a listing.) We may also find in a title II claim, or an adult claim under title XVI, that the obesity results in a finding that the individual is disabled based on his or her residual functional capacity (RFC), age, education, and past work experience. However, we will also consider the possibility of coexisting or related conditions, especially as the level of obesity increases. We provide an example of when we may find obesity to medically equal a listing in question 7.

[2] For ease of reading, we refer in this Ruling only to the steps of the sequential evaluation processes for initial adult and childhood claims. 20 CFR 404.1520, 416.920, and 416.924. We use separate sequential evaluation processes when we do continuing disability reviews; *i.e.* reviews to determine whether individuals who are receiving disability benefits are still disabled or when we determine whether an individual has a "closed period of disability." These rules are set out in 20 CFR 404.1594, 416.994, and 416.994a, and the guidance in this Ruling applies to all of the appropriate steps in those regulations as well. However, in some continuing disability review cases, we will still consider the provisions of former listings 9.09 and 10.10. See question 11.

[3] As with all impairments, to establish a finding of disability based on obsesity, in whole or in part, the statutory duration requirement must be satified. See 20 CFR 404.1509 or 416.909, and SSR 82–52, "Titles II and XVI: Duration of the Impairment" (superseded in part by SSR 91–7c).

*Sequential Evaluation: Step 2, Severe Impairment*

6. When Is Obesity a "Severe" Impairment?

As with any other medical condition, we will find that obesity is a "severe" impairment when, alone or in combination with another medically determinable physical or mental impairment(s), it significantly limits an individual's physical or mental ability to do basic work activities. (For children applying for disability under title XVI, we will find that obesity is a "severe" impairment when it causes more than a minimal functional limitation.) We will also consider the effects of any symptoms (such as pain or fatigue) that could limit functioning. (See SSR 85–28, "Titles II and XVI: Medical Impairments That Are Not Severe" and SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms In Determining Whether a Medically Determinable Impairment Is Severe.") Therefore, we will find that an impairment(s) is "not severe" only if it is a slight abnormality (or a combination of slight abnormalities) that has no more than a minimal effect on the individual's ability to do basic work activities (or, for a child applying under title XVI, if it causes no more than minimal functional limitations).

There is no specific level of weight or BMI that equates with a "severe" or a "not severe" impairment. Neither do descriptive terms for levels of obesity (*e.g.*, "severe," "extreme," or "morbid" obesity) establish whether obesity is or is not a "severe" impairment for disability program purposes. Rather, we will do an individualized assessment of the impact of obesity on an individual's functioning when deciding whether the impairment is severe.

*Sequential Evaluation Step 3, The Listings*

7. How Do We Evaluate Obesity at Step 3 of Sequential Evaluation, The Listings?

Obesity may be a factor in both "meets" and "equals" determinations.

Because there is no listing for obesity, we will find that an individual with obesity "meets" the requirements of a listing if he or she has another impairment that, by itself, meets the requirements of a listing. We will also find that a listing is met if there is an impairment that, in combination with obesity, meets the requirements of a listing. For example, obesity may increase the severity of coexisting or related impairments to the extent that the combination of impairments meets the requirements of a listing. This is especially true of musculoskeletal, respiratory, and cardiovascular impairments. It may also be true for other coexisting or related impairments, including mental disorders.

For example, when evaluating impairments under mental disorder listings 12.05C, 112.05D, or 112.05F, obesity that is "severe," as explained in question 6, satisfies the criteria in listing 12.05C for a physical impairment imposing an additional and significant work-related limitation of function and in listings 112.05D and 112.05F for a physical impairment imposing an additional and significant limitation[s] of function. We will find the requirements of those listings are met if an individual meets all of the other requirements of the listings, including the capsule definition of mental retardation contained in the listings. (See SSR 98–1p, "Title XVI: Determining Medical Equivalency in Childhood Disability Claims When a Child Has Marked Limitations in Cognition and Speech.")

We may also find that obesity, by itself, is medically equivalent to a listed impairment (or, in the case of a child applying under title XVI, also functionally equivalent to a listed impairment). For example, if the obesity is of such a level that it markedly limits the individual's ability to walk and stand, it may substitute for arthritis (and its associated criteria) of a weight-bearing joint with "gross anatomical deformity of a hip or knee" in listing 1.03A, and we will then make a finding of equivalence. (See question 8 for further discussion of evaluating the functional effects of obesity, including functional equivalence determinations for children applying for benefits under title XVI.)

We will also find equivalence if an individual has multiple impairments, including obesity, no one of which meets or equals the requirements of a listing, but the combination of impairments is equivalent in severity to a listed impairment. For example, obesity affects the cardiovascular and respiratory systems because of the increased workload the additional body mass places on these systems. Obesity makes it harder for the chest and lungs to expand. This means that the respiratory system must work harder to provide needed oxygen. This in turn makes the heart work harder to pump blood to carry oxygen to the body. Because the body is working harder at rest, its ability to perform additional work is less than would otherwise be expected. Thus, we may find that the combination of a pulmonary or cardiovascular impairment and obesity has signs, symptoms, and laboratory findings that are of equal medical significance to one of the respiratory or cardiovascular listings.[4]

However, we will not make assumptions about the severity or functional effects of obesity combined with other impairments. Obesity in combination with another impairment may or may not increase the severity or functional limitations of the other impairment. We will evaluate each case based on the information in the case record.

*Sequential Evaluation: Steps 4 and 5, Assessing Functioning in Adults Step 3, Assessing Functional Equivalence in Children*

8. How Do We Evaluate Obesity in Assessing Residual Functional Capacity in Adults and Functional Equivalence in Children?

Obesity can cause limitation of function. The functions likely to be limited depend on many factors, including where the excess weight is carried. An individual may have limitations in any of the exertional functions such as sitting, standing, walking, lifting, carrying, pushing, and pulling. It may also affect ability to do postural functions, such as climbing, balance, stooping, and crouching. The ability to manipulate may be affected by the presence of adipose (fatty) tissue in the hands and fingers. The ability to tolerate extreme heat, humidity, or hazards may also be affected.

The effects of obesity may not be obvious. For example, some people with obesity also have sleep apnea. This can lead to drowsiness and lack of mental clarity during the day. Obesity may also affect an individual's social functioning.

An assessment should also be made of the effect obesity has upon the individual's ability to perform routine movement and necessary physical activity within the work environment. Individuals with obesity may have problems with the ability to sustain a function over time. As explained in SSR 96–8p ("Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims"), our RFC assessments must

[4] For our regualtions and rulings on the consideration of medical or psychological consultant opinions in determining medical equivalence, see 20 CFR 404.1526(c) and 416.926(c), and SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review: Medical Equivalence."

consider an individual's *maximum* remaining ability to do sustained work activities in an ordinary work setting on a regular and continuing basis. A "regular and continuing basis" means 8 hours a day, for 5 days a week, or an equivalent work schedule.[5] In cases involving obesity, fatigue may affect the individual's physical and mental ability to sustain work activity. This may be particularly true in cases involving sleep apnea.

The combined effects of obesity with other impairments may be greater than might be expected without obesity. For example, someone with obesity and arthritis affecting a weight-bearing joint may have more pain and limitation than might be expected from the arthritis alone.

For a child applying for benefits under title XVI, we will evaluate the functional consequences of obesity (either alone or in combination with other impairments) to decide if the child's impairment(s) functionally equals the severity of a listed impairment that includes disabling functional limitations among its criteria. For example, the functional limitations imposed by obesity, by itself or in combination with another impairment(s), may establish an extreme limitation in one broad area of functioning (*e.g.*, motor) or marked limitations in two broad areas of functioning (*e.g.*, motor and social). We may also find that the functional limitations imposed by obesity establish functional equivalence based on one of the other methods set out in 20 CFR 416.926a.

As with any other impairment, we will explain how we reached our conclusions on whether obesity caused any physical or mental limitations.

9. How Can We Consider Obesity in the Assessment of RFC When SSR 96–8p Says, "Age and Body Habitus Are Not Factors in Assessing RFC"?

The SSR goes on to say that "[i]t is incorrect to find that an individual has limitations beyond those *caused by his or her medically determinable impairment(s) and any related symptoms*, due to such factors as age and natural body build, and the activities the individual was accustomed to doing in his or her previous work." (Emphasis added.) We included the italicized statement in the SSR to distinguish between individuals who have a medically determinable impairment of obesity and individuals who do not. When we identify obesity as a medically determinable impairment (see question 4, above), we will consider any functional limitations resulting from the obesity in the RFC assessment, in addition to any limitations resulting from any other physical or mental impairments that we identify.

*Effect of the Rules Change: Claims in Which Prior Listings Apply and Do Not Apply*

10. How Does the Deletion of Listing 9.09 Affect Claims Pending on October 25, 1999?

The final rules that deleted the listing became effective on October 25, 1999. The final rules deleting listing 9.09 apply to claims that were filed before October 25, 1999, and that were awaiting an initial determination or that were pending appeal at any level of the administrative review process or that had been appealed to court. The change affected the entire claim, including the period before October 25, 1999. This is our usual policy with respect to any change in our listings.

However, different rules apply to individuals who were already found eligible to receive benefits prior to October 25, 1999. For an explanation of how we apply listing 9.09 in continuing disability reviews, see question 11.

11. How Does Deletion of Listing 9.09 Affect Claims Already Allowed?

Deletion of listing 9.09 does not affect the entitlement or eligibility of individuals receiving benefits because their impairment(s) met or equaled that listing. We will not find that their disabilities have ended just because we deleted listing 9.09.

We must periodically review all claims to determine whether the individual's disability continues. When we conduct a periodic continuing disability review (CDR), we will not find that an individual's disability has ended based on a change in a listing. For individuals receiving disability benefits under title II and adults receiving payments under title XVI, we apply the medical improvement review standard described in 20 CFR 404.1594 and 416.994.

We will first evaluate whether the individual's impairment(s) has medically improved and, if so, whether any medical improvement is related to the ability to work. If the individual's impairment(s) has not medically improved, we will find that he or she is still disabled, unless we find that an exception to the medical improvement standard applies. Even if the impairment(s) has medically improved, we will find that the improvement is not related to the ability to work if the impairment(s) continues to meet or equal the same listing section used to make our most recent favorable decision. This is true even if we have since deleted the listing section that we used to make the most recent favorable decision. See 20 CFR 404.1594(c)(3)(i) and 416.994(b)(2)(iv)(A). We apply a similar provision when we do CDRs for individuals who have not attained age 18 and who are eligible for title XVI benefits based on disability (20 CFR 416.994a(b)(2)).

Even if the individual's impairment(s) has medically improved and no longer meets or equals prior listing 9.09, we must still determine whether he or she is currently disabled, considering all of the impairments.

12. What Amount of Weight Loss Would Represent "Medical Improvement"?

Because an individual's weight may fluctuate over time and minor weight changes are of little significance to an individual's ability to function, it is not appropriate to conclude that an individual with obesity has medically improved because of a minor weight loss. A loss of less than 10 percent of initial body weight is too minor to result in a finding that there has been medical improvement in the obesity. However, we will consider that obesity has medically improved if an individual maintains a consistent loss of at least 10 percent of body weight for at least 12 months. We will not count minor, short-term changes in weight when we decide whether an individual has maintained the loss consistently.

If there is a coexisting or related condition(s) and the obesity has not improved, we will still consider whether the coexisting or related condition(s) has medically improved.

If we find that there has been medical improvement in obesity or in any coexisting or related condition(s), we must also decide whether the medical improvement is related to the ability to work. If necessary, we will also decide whether any exceptions to the medical improvement review standard apply and, if appropriate, whether the individual is currently disabled.

13. What Are the Goals and Methods of Treatment for Obesity?

Obesity is a disease that requires treatment, although in most people the

[5] However, see footnote 2 of SSR 96–8p. That footnote explains that the ability to work 8 hours a day for 5 days a week is not always required for a finding at step 4 of the sequential evaluation process for adults when an individual can do past relevant work that was part-time work, if that work was substantial gainful activity, performed within the applicable period, and lasted long enough for the person to learn to do it.

effect of treatment is limited. However, if untreated, it tends to progress.

A common misconception is that the goal of treatment is to reduce weight to a "normal" level. Actually, the goal of realistic medical treatment for obesity is only to reduce weight by a reasonable amount that will improve health and quality of life. People with extreme obesity, even with treatment, will generally continue to have obesity. Despite short-term progress, most treatments for obesity do not have a high success rate.

Recommended treatment for obesity depends upon the level of obesity. At levels I and II (BMI 30.0–39.9), treatment usually consists of behavior modification (diet and exercise) with the option of medication, usually either in the form of a fat-blocking drug or an appetite suppressant. Some people do not respond to medication, while others experience negative side effects. (In making our decision, we will also consider any side effects of medication the individual experiences.) Individuals with coexisting or related conditions may not be able to take medication because of its effects on their other conditions.

Generally, physicians recommend surgery when obesity has reached level III (BMI 40 or greater). However, surgery may also be an option at level II (BMI 35–39.9) if there is a serious coexisting or related condition. Obesity surgery modifies the stomach, the intestines, or both in order to reduce the amount of food that the individual can eat at one meal or the time food is available for digestion and absorption. Surgery is generally a last resort with individuals for whom other forms of treatment have failed. Some individuals also experience significant negative side effects from surgery (*e.g.*, "dumping syndrome"—that is, rapid emptying of the stomach's contents marked by various signs and symptoms).

Obesity is a life-long disease. Even when treatment has been successful, individuals with obesity generally need to stay in treatment or they will gain weight again, just as individuals with other impairments may need to stay in treatment. Individuals who have had surgery should receive continuing follow-up care because of health risks related to the surgery. As with other chronic disorders, effective treatment of obesity requires regular medical follow-up.

14. How Do We Evaluate Failure To Follow Prescribed Treatment in Obesity Cases?

Before failure to follow prescribed treatment for obesity can become an issue in a case, we must first find that the individual is disabled because of obesity or a combination of obesity and another impairment(s). Our regulations at 20 CFR 404.1530 and 416.930 provide that, in order to get benefits, an individual must follow treatment prescribed by his or her physician if the treatment can restore the ability to work, unless the individual has an acceptable reason for failing to follow the prescribed treatment. We will rarely use "failure to follow prescribed treatment" for obesity to deny or cease benefits.

SSR 82–59, "Titles II and XVI: Failure To Follow Prescribed Treatment," explains that we will find failure to follow prescribed treatment only when all of the following conditions exist:

- The individual has an impairment(s) that meets the definition of disability, including the duration requirement, and
- A treating source has prescribed treatment that is clearly expected to restore the ability to engage in substantial gainful activity, and
- The evidence shows that the individual has failed to follow prescribed treatment without a good reason.

If an individual who is disabled because of obesity (alone or in combination with another impairment(s)) does not have a treating source who has prescribed treatment for the obesity, there is no issue of failure to follow prescribed treatment.

The treatment must be prescribed by a treating source, as defined in our regulations at 20 CFR 404.1502 and 416.902, not simply recommended. A treating source's statement that an individual "should" lose weight or has "been advised" to get more exercise is not prescribed treatment.

When a treating source has prescribed treatment for obesity, the treatment must clearly be expected to improve the impairment to the extent that the person will not be disabled. As noted in question 13, the goals of treatment for obesity are generally modest, and treatment is often ineffective. Therefore, we will not find failure to follow prescribed treatment unless there is clear evidence that treatment would be successful. The obesity must be expected to improve to the point at which the individual would not meet our definition of disability, considering not only the obesity, but any other impairment(s).

Finally, even if we find that a treating source has prescribed treatment for obesity, that the treatment is clearly expected to restore the ability to engage in SGA, and that the individual is not following the prescribed treatment, we must still consider whether the individual has a good reason for doing so. In making this finding, we will follow the guidance in our regulations and SSR 82–59, which provide that acceptable justifications for failing to follow prescribed treatment include, but are not limited to, the following:

- The specific medical treatment is contrary to the teaching and tenets of the individual's religion.
- The individual is unable to afford prescribed treatment that he or she is willing to accept, but for which free community resources are unavailable.
- The treatment carries a high degree of risk because of the enormity or unusual nature of the procedure.

In this regard, most health insurance plans and Medicare do not defray the expense of treatment for obesity. Thus, an individual who might benefit from behavioral or drug therapy might not be able to afford it. Also, because not enough is known about the long-term effects of medications used to treat obesity, some people may be reluctant to use them due to the potential risk.

Because of the risks and potential side effects of surgery for obesity, we will not find that an individual has failed to follow prescribed treatment for obesity when the prescribed treatment is surgery.

*Effective Date:* This Ruling is effective May 15, 2000.

*Cross-References:* SSR 82–52, "Titles II and XVI: Duration of the Impairment;" SSR 82–59, "Titles II and XVI: Failure To Follow Prescribed Treatment;" SSR 85–28, "Titles II and XVI: Medical Impairments That Are Not Severe;" SSR 96–3p, "Titles II and XVI: Considering Allegations of Pain and Other Symptoms In Determining Whether a Medically Determinable Impairment Is Severe;" SSR 96–6p, "Titles II and XVI: Consideration of Administrative Findings of Fact by State Agency Medical and Psychological Consultants and Other Program Physicians and Psychologists at the Administrative Law Judge and Appeals Council Levels of Administrative Review; Medical Equivalence;" SSR 96–8p, "Titles II and XVI: Assessing Residual Functional Capacity in Initial Claims;" SSR 98–1p, "Title XVI: Determining Medical Equivalency in Childhood Disability Claims When a Child Has Marked Limitations in Cognition and Speech;" and Program Operations Manual System sections DI 23010.005 ff., DI 24510.006, DI 24570.001, DI 34001.010, DI 34001.014, and DI 34001.016.

[FR Doc. 00–12053 Filed 5–12–00; 8:45 am]
BILLING CODE 4191–02–U

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**DEPARTMENT OF STATE**

**[Public Notice 3314]**

**Bureau of Educational and Cultural Affairs**

**PROGRAM TITLE:** Great Lakes Reconciliation Project: Justice and Journalism.

**NOTICE:** Request for Proposals.

**SUMMARY:** The Near East/South Asia/Africa Division of the Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs (ECA), announces an open competition to promote a justice and journalism program for the Great Lakes region of Africa. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to develop an exchange and training program for media and legal professionals from the Democratic Republic of the Congo (DRC), Rwanda, Burundi, Uganda and Zimbabwe. One grant award is anticipated for a maximum of $274,500.

**PROGRAM INFORMATION:** *Overview:* The Office of Citizen Exchanges works with U.S. non-profit organizations on cooperative international group projects that introduce American and foreign participants to each others' social, economic, and political structures, and international interests, as well as provide for professional development. In coordination with the Public Affairs Section of the U.S. Embassy, Kinshasa, the Office will support a coordinated set of public diplomacy activities to meet the goals of President Clinton's Great Lakes Justice Initiative and regional reconciliation objectives.

*Great Lakes Justice Initiative (GLJI):* GLJI supports efforts in the Democratic Republic of the Congo, Rwanda and Burundi to bring an end to the culture of impunity. GLJI goals include supporting effective, nondiscriminatory justice systems, assisting reconciliation processes, and promoting inter-group cooperation. U.S. policy concerning the conflict in the Democratic Republic of the Congo (DRC) focuses strongly on promoting a successful outcome of the Lusaka cease-fire agreement. The parties to the agreement have re-iterated their commitment to the peace process; however, regional reconciliation will be contingent in large part on the role of opinion leaders, particularly those in the media and civil society, in promoting peace. The role of the media is particularly important in countries whose governments and militaries are involved in the DRC conflict, but where domestic policy debate and public discourse may marginalize the issue. Media and legal professionals and NGOs can work together to strengthen support for the rule of law, as well as increase public information on justice issues that affect regional peace building efforts.

*Justice and Journalism:* The media, in Africa and elsewhere, often appear to operate from the premise that conflict is more newsworthy than compromise. Conflict typically gets more airtime and column-inches than positive cross-border interactions and efforts at problem solving. If solutions are to be found to the problems that confront the Great Lakes region, media and civil society opinion leaders should call for solutions which reduce polarization and inflammatory rhetoric and which are inclusive rather than exclusive.

Professionalism in the media—*i.e.*, gaining an appreciation of and skill for objective reporting; developing subject specialization (*e.g.* justice/legal issues); giving fair coverage to positive as well as negative news; separating comment from news coverage; avoiding inflammatory presentations; maintaining independence from special interests; etc.—remains an area in which serious efforts must be expended if the fourth estate is to fulfill its potential as a pillar of democratic society. Concomitantly, attention must be given to laws, which constrain freedom of information, and to forces, which urge journalists, editors, producers and publishers to censor themselves, lest governments punish the media for having conveyed the message. Exchange programs can be designed to improve professionalism generally in the media and to strengthen specific efforts of individuals and organizations that report on issues of importance to regional development.

*Guidelines:* This Great Lakes Reconciliation Project should bring together, in a structured format, a minimum of 16 media and legal professionals from the DRC, Rwanda, Burundi, Uganda, and Zimbabwe who are concerned with conflict resolution and regional reconciliation and development. Project activities should explore how participants from these four countries with different perspectives and interests on conflict in the DRC can cooperate to decrease misunderstandings and hostility, increase meaningful communication among individuals and groups, and promote the rule of law and respect for human rights through the media. Programming emphasis should be on the development of the media, but legal practitioners may also be included to the extent that they can assist in improving the working environment for the media and in clarifying the terms of conflict for resolution and reconciliation.

Competitive proposals should include a multi-phase, integrated approach to program activities, which build sequentially from exploratory work to cooperative action plans. Suggested activities include:

1. *A U.S.-based program* that includes: orientation to program purposes and to U.S. society; study tour/site visits/mini-internships; interaction and dialogue; hands-on training in conflict resolution methods; professional development; and action plan development.

2. *Capacity-building workshops* in the DRC and one other country in the Great Lakes region to help participants to identify priorities, create work plans, strengthen conflict resolution skills, share their experience to committed people within each country, and become active in a practical and valuable way.

3. *Seed grants/sub-grants* to participants to support "Justice and Journalism" projects (e.g. radio programs, newspaper articles, televised town meetings, etc.) that address issues of local and regional reconciliation.

4. *Site visits* by U.S. facilitators/experts to monitor projects in the Great Lakes region and to provide additional training and consultations as needed.

The Office of Citizen Exchanges encourages applicants to be creative in planning project activities. Activities should include practical, hands-on, community-based initiatives, designed to achieve concrete objectives in the field. The proposal should not focus on theoretical/academic workshops, seminars or studies.

Applicants should identify any partner organizations and/or individuals in the United States or the Great Lakes region with whom they are proposing to collaborate and describe in detail previous cooperative programming and contacts. Specific information about the partners' activities and accomplishments is required and should be included in the section on "Institutional Capacity."

**Selection of Participants**

Successful applications should include a description of an open, merit-based selection process, including advertising, recruitment and selection. A sample application should be submitted with the proposal. Applicants should expect to work closely with the U.S. Embassies abroad to carry out the selection process, but ECA and U.S. Embassies retain the right to nominate participants and to approve or reject participants recommended by the

grantee institution. Priority should be given to foreign participants who have not traveled to the United States. ECA encourages applicants to design programs for non-English speakers, as appropriate.

**Note:** The grant award covers only assistance through non-governmental organizations. No direct assistance to the DRC or Burundi governments is permitted with funds available through this agreement. Potential applicants should therefore be advised that support cannot be provided for university professors, magistrates, government officials, and others who are on the government payrolls of the DRC or Burundi. Cooperation with U.S. Embassies in the selection of participants will be essential to this project.

**Public Affairs Section (PAS) Involment**

The Public Affairs Sections of the U.S. Embassies (formerly known as USIS posts) play a key role throughout every phase of project development. Posts evaluate project proposals; coordinate planning with the grantee organization and in-country partners; facilitate in-country activities; nominate participants and vet grantee nominations; observe in-country activities; debrief participants; and evaluate project impact. Posts are responsible for issuing IAP–66 forms in order for overseas participants to obtain necessary J–1 visas for entry to the United States. They also serve as a link to in-country partners and participants.

Project administration and implementation are the responsibility of grantee. The grantee must inform the PAS in participating countries of its operations and procedures and coordinate with and involve PAS officers in the development of project activities. The PAS should be consulted regarding country priorities, current security issues, and related logistical and programmatic issues.

**Evalution**

Short-and long-term evaluation is critical to the success of any professional development program. In accordance with the Government Performance and Results Act of 1993, Federal Agencies must create strategic plans, set performance goals, and develop methods for measuring how well the goals of this program are realized. The grantee would be required to work closely with the Bureau to fulfill this responsibility.

Applicants are asked to submit an evaluation plan that would address the Result Act's requirements and assess the long-term impact and effectiveness of this program. The evaluation plan should include a summation of goals and results desired, and an indication of what types of information would be used to determine if these goals were met or results achieved, as well as a description of how the applicant would gather and evaluate this information. Please include with the proposal any evaluation tools (survey/focus group questions) that would be used as part of the overall plan.

**Visa Regulations**

Foreign participants on programs sponsored by ECA are granted J–1 Exchange Visitor visas by the U.S. Embassy in the sending country. All programs must comply with J–1 visa regulations. Please refer to the Proposal Submission Instructions (PSI) for further information.

**Budget Guidelines**

Applicants must submit a comprehensive line item budget based on specific guidance provided in the Proposal Submission Instructions (PSI) of the Solicitation Package. A maximum grant award of $274,500 is available. Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

While a comprehensive line item budget based on the model of the Solicitation Package must be submitted, separate component budgets are optional. The following program costs are eligible for funding consideration:

1. International and domestic airfares; visas (for entry to African countries); transit costs; ground transportation costs. (Note: There is no charge for J–1 visas for participants in ECA-sponsored programs.)

2. Per Diem. For both U.S.-based and Africa-based programming, organizations should be guided in budgeting by the published U.S. Federal per diem rates for individual cities. Applicants should budget realistic costs that reflect the local economy, but per diem costs must not exceed the published U.S. Federal rates. Per Diem rates may be accessed at *http://www.policyworks.gov/*.

3. Interpreters. If needed, interpreters for the U.S. program are available through the U.S. Department of State Language Services Division. Typically, a pair of simultaneous interpreters is provided for every four visitors who require interpreting. ECA grants do not pay for foreign interpreters to accompany delegations from their home country. When U.S. Department of State interpreters are to be employed, grant proposal budgets should contain a flat $160/day per diem for each U.S. Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget. Locally-arranged interpreters with adequate skills and experience may be used by the grantee in lieu of State Department interpreters, with the same 1:4 interpreter: participant ratio. Costs associated with using their services may not exceed rates for U.S. Department of State interpreters.

4. Book and cultural allowance. Foreign participants are entitled to a one-time cultural allowance of $150 per person, plus a book allowance of $50. Interpreters should be reimbursed up to $150 for expenses when they escort participants to cultural events. U.S. program staff are not eligible to receive these benefits.

5. Consultants. Consultants may be used to provide specialized expertise or to make presentations. Honoraria should not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.

6. Room rental. Room rental may not exceed $250 per day.

7. Materials development. Proposals may contain costs to purchase, develop and translate materials for participants.

8. Equipment. Proposals may contain limited costs to purchase equipment crucial to the success of the program, such as computers, fax machines and copy machines. However, equipment costs must be kept to a minimum, and costs for furniture are not allowed.

9. Working meal. The grant budget may provide for only one working meal during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

10. Return travel allowance. A return travel allowance of $70 for each foreign participant may be included in the budget. This may be used for incidental expenses incurred during international travel.

11. Health Insurance. Foreign participants will be covered under the terms of a U.S. Department of State-sponsored health insurance policy. The premium is paid by the U.S. Department of State directly to the insurance company. Applicants are permitted to include costs for travel insurance for U.S. participants in the budget.

12. Seed Grants/Sub-Grants: Applicants should allocate funding to

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eligible African NGOs/participants to support media-based reconciliation activities in their communities.

13. Administrative Costs. Costs necessary for the effective administration of the program may include salaries for grant organization employees, benefits, and other direct and indirect costs per detailed instructions in the Application Package. While this announcement does not prescribe a rigid ratio of administrative to program costs, priority will be given to proposals whose administrative costs are less than twenty-five (25) per cent of the total requested from ECA.

14. Cost Sharing: Proposals should show cost-sharing contributions from the applicant, U.S. and African partners and other sources. While no rigid percentage for cost sharing is stipulated in this RFP, ECA sees cost sharing as an important way to demonstrate program commitment and to increase impact, and it will be a criterion for evaluating grant proposals.

Please note that all air travel must be in compliance with the Fly America Act.

Please refer to the Proposal Submission Instructions (PSI) for complete budget guidelines and formatting instructions.

**Announcement Title and Number**

All correspondence with the Bureau concerning this RFP should reference the above title and number *ECA/PE/C–00–62.*

**FOR FURTHER INFORMATION, CONTACT:** The Office of Citizen Exchanges, ECA/PE/C, Room 220, U.S. Department of State, 301 4th Street, S.W., Washington, D.C. 20547, attention: Orna Blum, telephone: (202) 260–2754 and fax number: (202) 619–4350, Internet address: oblum@pd.state.gov, to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer Orna Blum on all other programmatic inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

**To Download a Solicitation Package VIA Internet**

The entire Solicitation Package may be downloaded from the Bureau's website at *http: //e.usia.gov/education/rfps* or *http: //exchanges.state.gov/education/rfps.* Please read all information before downloading.

*Deadline for Proposals:* All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, June 16, 2000. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and *10* copies of the application should be sent to: U.S. Department of State SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C–00–62, Program Management, ECA/EX/PM, Room 336, 301 4th Street, S.W., Washington, D.C. 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the US Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

**Diversity, Freedom and Democracy Guidelines**

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

**Year 2000 Compliance Requirement (Y2K Requirement)**

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with the Bureau. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

The Bureau therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at *http://www.itpolicy.gsa.gov.*

**Review Process**

The Bureau will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be forwarded to panels of Bureau officers for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Under Secretary for Public Diplomacy and Public Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the Bureau's Grants Officer.

**Review Criteria**

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered, and all are important in the proposal evaluation:

*1. Program Planning and Ability to Achieve Objectives:* Program objectives should be stated clearly and precisely and should reflect the applicant's expertise in the subject area and the region. Objectives should respond to the

priority topics in this announcement and should relate to the current conditions in the Great Lakes region. Objectives should be reasonable and attainable. A detailed work plan should explain step-by-step how objectives would be achieved and should include a timetable for completion of major tasks. The substance of workshops, presentations, consultations, site visits and seed grant projects should be included as attachments. Responsibilities of U.S. participants and in-country partners should be clearly described.

*2. Institutional Capacity:* The proposal should include: (1) The U.S. institution's mission and date of establishment; (2) detailed information about the capacity of any partner institutions, and the history of the partnership(s); (3) an outline of prior awards—U.S. government and private support received for the target theme/region; and (4) descriptions of experienced staff members and other resource persons who would implement the program. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program's goals. The narrative should demonstrate proven ability to handle logistics. The proposal should reflect the institution's expertise in the subject area and knowledge of the conditions in the target country/region(s).

*3. Cost Effectiveness and Cost Sharing:* Overhead and administrative costs for the proposal, including salaries, honoraria and subcontracts for services, should be kept to a minimum. Applicants are encouraged to cost share a portion of overhead and administrative expenses. Cost sharing, including contributions from the applicant, U.S. or African partners, and other sources, should be included in the budget.

*4. Program Evaluation:* The proposal must include a plan and methodology to evaluate the program's successes, both as activities unfold and at the program's conclusion. ECA recommends that the proposal include a draft survey questionnaire or other technique (such as a series of questions for a focus group) to link outcomes to original program objectives.

*5. Multiplier Effect/Impact:* The proposal should show how the program would strengthen long-term mutual understanding and institutionalization of program objectives. Applicants should describe how responsibility and ownership of the program would be transferred to the African participants to ensure continued activity and impact. ECA places a priority on programs that include convincing plans for sustainability.

*6. Follow-on Activities:* The proposal should provide a plan for continued follow-on activity (beyond the ECA grant period), ensuring that ECA-supported programs are not isolated events. Follow-on activities sponsored by the applicant should be clearly outlined.

*7. Support of Diversity:* The proposed project should demonstrate substantive support of the Bureau's policy on diversity. Program content (training sessions, resource materials, follow-on activities) and program administration (participant selection process, orientation, evaluation, resource/staff persons) should address diversity in a comprehensive and innovative manner. Applicants should refer to ECA's Diversity, Freedom and Democracy Guidelines on page four of the Proposal Submission Instructions (PSI).

*8. Value to U.S.-Partner Country Relations:* The proposed project should receive positive assessments by the Bureau's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country. The project should meet the priorities of the Great Lakes Justice Initiative (GLJI), as outlined above.

**Authority**

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through Economic Support Funds under the Great Lakes Justice Initiative. Use of these funds in the conflict resolution, reconciliation, and democratic initiatives process will support USG efforts to uphold and further the Lusaka Accords.

**Notice**

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding.

Issuance of the RFP does not constitute an award commitment on the part of the Government. An award for this project is subject to the availability of funds anticipated through an inter-agency transfer. The Bureau reserves the right to cancel the competition in the event the transfer does not take place in a timely manner. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

**Notification**

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: May 8, 2000.

**Evelyn S. Lieberman,**

*Under Secretary for Public Diplomacy And Public Affairs, Department of State*

[FR Doc. 00–12138 Filed 5–12–00; 8:45 am]

BILLING CODE 4710–11–P

## DEPARTMENT OF STATE

**[Public Notice Number 3308]**

### Overseas Schools Advisory Council; Notice of Meeting

The Overseas Schools Advisory Council, Department of State, will hold its Annual Meeting on Tuesday, June 27, 2000, at 9:30 a.m. in Conference Room 1107, Department of State Building, 2201 C Street, NW., Washington, DC. The meeting is open to the public.

The Overseas Schools Advisory Council works closely with the U.S. business community in improving those American-sponsored schools overseas, which are assisted by the Department of State and which are attended by dependents of U.S. Government families and children of employees of U.S. corporations and foundations abroad.

This meeting will deal with issues related to the work and the support provided by the Overseas Schools Advisory Council to the American-sponsored overseas schools. The agenda includes progress reports on the 1999 and 2000 Programs of Educational Assistance and efforts to secure financial support from U.S. firms for the 2000 program and presentations on the impact of the U.S. Standards of Learning Movement on overseas schools and the outlook for international education.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. Access to the State Department is controlled, and individual building passes are required for all attendees. Persons who plan to attend should so advise the office of Dr. Keith D. Miller, Department of State, Office of Overseas Schools, Room H328, SA–1, Washington, D.C. 20522–0132, telephone 202–261–8200, prior to June 17, 2000. Each visitor will be asked to provide a date of birth and Social Security number at the time of registration and attendance and must carry a valid photo ID to the meeting. All attendees must use the C Street entrance to the building.

Dated: May 8, 2000.

**Keith D. Miller,**

*Executive Secretary, Overseas Schools Advisory Council, Department of State.*

[FR Doc. 00–12140 Filed 5–12–00; 8:45 am]

BILLING CODE 4710–24–P

## DEPARTMENT OF STATE

**[Public Notice #: 3309]**

### U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The U.S. Advisory Commission on Public Diplomacy, reauthorized pursuant to Public Law 106–113 (H.R. 3194, consolidated Appropriations Act, 2000), will meet on Thursday, May 18, 2000, in Room 600, 301 4th St., SW, Washington, DC from 2:00 pm to 3:00 pm.

The Commission will discuss its plans for assessing the consolidation of USIA into the State Department and the effectiveness of U.S. public diplomacy in the former Soviet Union.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees. Persons who plan to attend should contact David J. Kramer, Executive Director, at (202) 619–4463.

Dated: May 10, 2000.

**David J. Kramer,**

*Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.*

[FR Doc. 00–12279 Filed 5–11–00; 3:10 pm]

BILLING CODE 4710–11–P

## DEPARTMENT OF STATE

**[Delegation of Authority No. 236–2]**

### Functions Delegated to the Assistant Secretary of State for Educational and Cultural Affairs

By virtue of the authority vested in me as the Under Secretary of State for Public Diplomacy and Public Affairs by law, including by Delegation of Authority No. 234 of October 1, 1999, and the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), and to the extent permitted by law, Delegation of Authority No. 236–1 is hereby amended to read as follows:

1. By virtue of the authority vested in me as the Under Secretary of State for Public Diplomacy and Public Affairs by law, including by Delegation of Authority No. 234 of October 1, 1999, and the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681 *et seq.*), and to the extent permitted by law, I hereby delegate to the Assistant Secretary for Educational and Cultural Affairs and, in his absence, to his Principal Deputy Assistant Secretary and Deputy Assistant Secretary for Policy and Resources:

a. The functions in P.L. 89–259 (79 Stat. 985) (22 U.S.C. 2459) (providing for immunity from judicial seizure for cultural objects imported into the U.S. for temporary exhibits).

b. The functions in sections 101(1)(15)(J) and 212(j) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J) and 1182(J)), and section 641 of P.L. 104–208 (8 U.S.C. 1372(h)(2)(A)) (relating to the designation of exchange visitor programs and related functions).

c. The functions in the North/South Center Act of 1991 (22 U.S.C. 2075) (relating to the operation of the Center for Cultural and Technical Interchange Between North and South).

d. The functions in the Center for Cultural and Technical Interchange Between East and West Act of 1960 (22 U.S.C. 2054) (relating to the operation of the Center for Cultural and Technical Interchange Between East and West).

e. The functions in Executive Order 12555 of March 10, 1986 (delegating functions under the Convention on Cultural Property Implementation Act (19 U.S.C. 2601)).

f. The functions in the Arts and Artifacts Indemnity Act (20 U.S.C. 971) (relating to the certification of national interest for exhibits to provide indemnification).

g. Representation of the Secretary of State on the Federal Council on the Arts and Humanities (pursuant to 20 U.S.C. 958).

h. Representation of the Secretary of State on the United States Panel of the Joint Committee on United States-Japan Cultural and Educational Cooperation/ Japan-United States Friendship Commission (pursuant to 22 U.S.C. 2901; one of two Department of State members).

2. Notwithstanding any other provision of this order, the Under Secretary of State for Public Diplomacy and Public Affairs may at any time exercise any function or authority delegated or reserved by this delegation of authority.

3. Functions delegated by this delegation of authority may be redelegated, to the extent consistent with law.

4. Any reference in this delegation of authority to any statute or delegation of authority shall be deemed to be a reference to such statute or delegation of authority as amended from time to time.

5. This delegation shall be published in the **Federal Register**.

Dated: May 8, 2000.

**Evelyn S. Lieberman,**

*Under Secretary for Public Diplomacy and Public Affairs, Department of State.*

[FR Doc. 00–12139 Filed 5–12–00; 8:45 am]

BILLING CODE 4710–08–P

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary Office of Aviation Analysis; Notice of request for renewal of a previously approved collection.

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended), this notice announces the Department of Transportation's, DOT intention to request renewal of a previously approved collection.

**DATES:** Comments on this notice must be received by July 14, 2000.

**ADDRESSES:** Comments should be directed to the Air Carrier Fitness Division, X–56, Office of Aviation Analysis, Office of the Secretary, US Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Delores King, Air Carrier Fitness Division, X–56, Office of Aviation Analysis, Office of the Secretary, US Department of Transportation, 400

Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

**SUPPLEMENTARY INFORMATION:**

*Title:* Use and Change of Names of Air Carriers, Foreign Air Charters, and Commuter Air Carriers, 14 CFR Part 215.

*OMB Control Number:* 2106–0043.

*Type of Request:* Renewal without change, of a previously approved collection.

*Abstract:* In accordance with the procedures set forth in 14 CFR Part 215, before a holder of certificated, foreign, or commuter air carrier authority may hold itself out to the public in any particular name or trade name, it must register that name or trade name with the Department, and notify all other certificated, foreign, and commuter air carriers that have registered the same or similar name(s) of the intended name registration.

*Respondents:* Persons seeking to use or change the name or trade name in which they hold themselves out to the public as an air carrier or foreign air carrier.

*Estimated Number of Respondents:* 19.

*Average Annual Burden per Respondent:* 4.6 hours.

*Estimated Total Burden on Respondents:* 87.4 hours.

This information collection is available for inspection at the Air Carrier Fitness Division, X–56, Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR Part 215 can be obtained from Ms. Delores King at the address and telephone number shown above.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC on May 5, 2000.

**Randall D. Bennett,**

*Acting Director, Office of Aviation Analysis.*

[FR Doc. 00–12035 Filed 5–12–00; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary, Office of Aviation Analysis; Procedures and Evidence Rules for Air Carrier Authority Notice of Request for Renewal of a Previously Approved Collection

**AGENCY:** Office of the Secretary, DOT.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for renewal.

**DATES:** Comments on this notice must be received on or before July 14, 2000.

**ADDRESSES:** Comments should be directed to the Air Carrier Fitness Division, (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Delores King, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, Office of the Secretary, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2343.

**SUPPLEMENTARY INFORMATION:**

*Title:* Procedures and Evidence Rules for Air Carrier Authority Applications:

14 CFR Part 201—Air Carrier Authority under Subtitle VII of title 49 of the United States Code—(Amended);

14 CFR Part 204—Data to Support Fitness Determinations;

14 CFR Part 291—Cargo Operations in Interstate Air Transportation.

*OMB Control Number:* 2106–0023.

*Type of Request:* Renewal without change, of previously approved collection.

*Abstract:* In order to determine the fitness of persons seeking authority to engage in air transportation, the Department collects information from them about their ownership, citizenship, managerial competence, operating proposal, financial condition, and compliance history. The specific information to be filed by respondents is set forth in 14 CFR Parts 201 and 204.

*Respondents:* Persons seeking initial or continuing authority to engage in air transportation of persons, property, and/or mail.

*Estimated Number of Respondents:* 139.

*Average Annual Burden per Respondent:* 35.25 hours.

*Estimated Total Burden on Respondents:* 4,900 hours.

This information collection is available for inspection at the Air Carrier Fitness Division (X–56), Office of Aviation Analysis, DOT, at the address above. Copies of 14 CFR Parts 201 and 204 can be obtained from Ms. Delores King at the address and telephone number shown above.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection, (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Issued in Washington, DC. on May 5, 2000.

**Randall D. Bennett,**

*Acting Director, Office of Aviation Analysis.*

[FR Doc. 00–12146 Filed 5–12–00; 8:45 am]

**BILLING CODE 4910–62–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Proposed Change to Appendix 3 of Advisory Circular 150/5345–53B, Airport Lighting Equipment Certification Program

**AGENCY:** Federal Aviation Administration (FAA), US DOT.

**ACTION:** Request for comments.

**SUMMARY:** The FAA proposes to expand the list of equipment types that may be certified under the Airport Lighting Equipment Certification Program to include Underground Electrical Cable for Airport Lighting Circuits (L–824) and Power and Control Units for Land and Hold Short Lighting Systems (L–884). The Secretary of Transportation is providing notice and opportunity for public comment on the addition of Underground Electrical Airport Cable for Airport Lighting Circuits (L–824) and Power and Control Unit for Land and Hold Short Lighting Systems (L–884) to the Airport Lighting Equipment Certification Program.

**DATES:** Comments must be submitted at or before June 14, 2000.

**ADDRESSES:** Send all comments on the proposed change to the Federal Aviation Administration, Attn: Engineering and Specifications Division, AAS–200, 800 Independence Avenue SW, Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Rice, Manager, Engineering Specifications Division, AAS–200, Room 619, FAA, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8745.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Since 1990 the FAA has issued a list of airfield lighting equipment that has been certified as meeting FAA specifications by independent third party testing laboratories. The certified equipment list provides a readily available means for airport sponsors, or their representatives to use when specifying airfield lighting equipment that is required to meet FAA specifications.

Underground electrical cable for airport lighting circuits is considered to be an integral part of airport lighting systems and should be certified as meeting FAA specifications to enhance system reliability in the same way that other components of airfield lighting systems are certified. Power and control units for land and hold short lighting systems are new pieces of equipment, which have never been certified through the Airport Lighting Equipment Certification Program. Advisory Circular 150/5345–53B, Airport Lighting Equipment Certification Program, the latest certified equipment list, and the address list of certified airport lighting equipment manufacturers are available on the Internet at the FAA Office of the Associate Administrator for Airports (ARP) home page on the Internet's World Wide Web (www). The direct Internet address is: *www.faa.gov/arp/arphome.htm.*

A copy of the subject change may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT** or by downloading the draft change from the following Internet website: *http://www.faa.gov/arp/draftacs.htm.* Interested parties are invited to comment on the proposed change and to submit written data, views, or arguments, as they desire. Commentors must identify the subject of the change and submit comments in duplicate to the address specified above. The Engineering and Specifications Division will consider all communications received on or before the closing date for comments before issuance to the final change.

**Proposed Change to Appendix 3**

The complete text of Appendix 3 with the proposed changes appears below.

**Appendix 3—Certified Airport Lighting Equipment**

*Notice to Users*

This appendix provides a list of the current equipment under the certification program. The specification for each type of equipment listed below in this document is contained in the AC given. The equipment specification defines the type, class, and style classifications used in the listing. Not all combinations of type, class, and style are permissible. The equipment specification should be consulted for approved equipment configurations.

An addendum to this appendix listing all current certified equipment with the manufacturer is updated monthly. It is available on the Internet at FAA Office of the Associate Administrator for Airports (ARP) home page (www.faa.gov/arp/arphome.htm) under "Advisory Circulars" in the file titled "150/5345–53 Addendum." This addendum can also be obtained from the Office of Airport Safety and Standards, Attention: AAS–200, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591, or from those FAA offices as listed in AC 150/5000–3, current edition.

For the sake of brevity in the addendum, manufacturers who have qualified an entire equipment series or product line have the equipment listed under a single general catalog number. These general numbers are not intended for use in ordering equipment, and users should consult equipment manufacturers' catalogs or literature for complete ordering information, especially for equipment having optional features. For each fixture, the number in parentheses ( ) after the manufacturer's catalog number indicates the specific lamp type used in testing the equipment. A description of each lamp use is provided in the addendum.

L–801 Beacons, Medium Intensity (AC 150/5345–12)
L–802 Beacons, High Intensity (AC 150/5345–12)
L–804 Light, Holding Position Edge (AC 150/5345–46)
L–806 Wind Cones, Frangible (AC 150/5345–27)
L–807 Wind Cones, Rigid (AC 150/5345–27)
L–810 Lights, Obstruction (AC 150/5345–43)
L–821 Panel, Airport Lighting Control (AC 150/5345–3)
L–823 Connectors, Cable (AC 150/5345–26)
L–824 Underground Electrical Cable for Airport Lighting Circuits (AC 150/5345–7D)
L–827 Monitors, Regulator (AC 150/5345–10)
L–8281 Regulators, Constant Current (AC 150/5345–10)
L–829 Regulators, Monitored Constant Current (AC 150/5345–10)
L–830 Isolation Transformers, 60Hz (AC 150/5345–47)
L–831 Isolation Transformers, 50Hz (AC 150/5345–47)
L–841 Cabinet, Auxiliary Relay (AC 150/5345–13)
L–847 Switch, Circuit Selector (AC 150/5345–5)
L–849 Lights, Runway End Identification (AC 150/5345–51)
L–850 Lights, Runway, Inpavement (AC 150/5345–46)
L–852 Lights, Taxiway, Inpavement (AC 150/5345–46)
L–853 Markers, Retroreflective (AC 150/5345–39)
L–854 Radio Controls (AC 150/5345–49)
L–856 Lights, Obstruction, High Intensity, White, 40 FMP (AC 150/5345–43)
L–857 Lights, Obstruction, High Intensity, White, 60 FPM (AC 150/5345–43)
L–858 Signs, Runway and Taxiway (AC 150/5345–44)
L–859 Lights, Flashing, Omnidirectional (AC 150/5345–51)
L–860 Lights, Runway Edge, Low Intensity (AC 150/5345–46)
L–861 Lights, Runway & Taxiway Edge, Medium Intensity (AC 150/5345–46)
L–862 Lights, Runway Edge, High Intensity (AC 150/5345–46)
L–863 Lights, Portable Runway (AC 150/5345–50)
L–864 Lights, Obstruction, Red, 20–40 FPM (AC 150/5345–43)
L–865 Lights, Obstruction, Medium Intensity, White, 40 FMP (AC 150/5345–43)
L–866 Lights, Obstruction, Medium Intensity, White, 60 FPM (AC 150/5345–43)
L–867 Light Base, Non-Load Bearing (AC 150/5345–42)
L–868 Light Base, Load Bearing (150/5345–42)
L–869 Junction Box (AC 150/5345–42)
L–880 Precision Approach Path Indicator (AC 150/5345–28)
L–881 Abbreviated Precision Approach Path Indicator (AC 150/5345–28)
L–882 Generic Visual Approach Descent Indicator (AC 150/5345–52)
L–883 Generic Visual Approach Descent Indicator (AC 150/5345–52)
Light Structure, Lightweight (AC 150/5345–45)
L–884 Power and Control Unit for Land and Hold Short Lighting Systems (AC 150/5345–54)
L–885 Lights, Obstruction (AC 150/5345–43)

Issued in Washington, DC on May 5, 2000.

**David L. Bennett,**

*Director, Office of Airport Safety and Standards.*

[FR Doc. 00–12172 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Proposed Advisory Circular; Continued Airworthiness Assessments of Powerplant and Auxiliary Power Unit Installations on Transport Category Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability of proposed advisory circular and request for comments.

**SUMMARY:** This notice announces the availability of proposed Advisory Circular (AC) No. 39XX, Continued Airworthiness Assessments of Powerplant and Auxiliary Power Unit Installations on Transport Category Airplanes.

**DATES:** Comments must be received on or before July 14, 2000.

**ADDRESSES:** Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA, 01803–5299.

**FOR FURTHER INFORMATION CONTACT:** Ann Azevedo, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (781) 238–7117, fax (781) 238–7199. A copy of the subject AC may also be obtained electronically by writing to the following Internet address: "ann.azevedo@faa.gov". Additionally, you may obtain a copy of the AC directly from the internet at the following address: http://www.faa.gov/avr/air/acs/draftach.htm.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. Interested persons are invited to comment on the proposed AC, and to submit such written data, views, or arguments as they desire. Commenters must identify the subject of the AC, and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

#### Background

This Advisory Circular (AC) describes the Continued Airworthiness Assessment Methodologies (CAAM). The Federal Aviation Administration (FAA) Engine & Propeller Directorate (E&PD) and the Transport Airplane Directorate (TAD) may use CAAM, supplemented to meet each Directorate's needs, to identify those unsafe conditions in products that deserve priority attention. The FAA may issue an Airworthiness Directive (AD) under Part 39 of Title 14 of the Code of Federal Regulations (14 CFR part 39) to prescribe corrective actions that must be taken to address an unsafe condition in a product when "the unsafe condition is likely to exist or develop in other products of the same type design." CAAM, as described in this proposed AC, is intended to be used for products associated with the Powerplant or Auxiliary Power Unit (APU) Installations on Transport Category Airplanes.

Continued airworthiness requires that safety concerns within the existing fleet be addressed, and the knowledge gained applied for the benefit of future fleets as well. This AC provides CAAM guidance for estimating the risks associated with identified unsafe conditions; defining, prioritizing, and selecting suitable corrective actions for all identified unsafe conditions; and verifying that the corrective actions were effective. This AC is intended to present a tangible means of logically assessing and responding to the safety risks posed by unsafe conditions.

This AC does not establish any requirement that the FAA must perform a risk assessment before issuing an AD, or that the FAA must wait to issue an AD until the design approval holder performs a risk assessment, or that the FAA must accept the findings of a risk assessment performed by the design approval holder. CAAM, as described in this proposed AC, assists the FAA in making decisions concerning the priority in which unsafe conditions should be addressed. The FAA may issue an AD for a particular unsafe condition before a risk assessment is performed, or without having an assessment performed at all.

In this regard, CAAM does not define "unsafe condition" in a powerplant or APU installation. Rather, CAAM is a tool that the FAA usually will use to make the kinds of decisions described above.

It is recognized that the proposed AC represents a significant change from the specific CAAM process detailed in draft AC39.XX that was published for public comment several years ago. Therefore, it is anticipated that comments will be received on the newly-proposed AC. The FAA does not intend to issue a final document until those comments have been appropriately reviewed and resolved.

The FAA recognizes that many manufacturers use risk assessment practices to evaluate continued airworthiness. The FAA considers these current practices to be acceptable, and no reassessment will take place until all comments with the proposed are properly dispositioned.

This proposed advisory circular, published under the authority granted to the Administrator by 49 U.S.C. 106(g), 40113, 44701–44702, 44704, provides guidance for the use of CAAM.

Issued in Burlington, Massachusetts, on May 4, 2000.

**David A. Downey,**

*Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 00–12145 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Acceptance of Noise Exposure Maps for Williams Gateway Airport, Mesa, Arizona

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Federal Aviation Administration (FAA) announces its determination that the Noise Exposure Maps submitted by the Williams Gateway Airport Authority for the Williams Gateway Airport, Mesa, Arizona under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150, are in compliance with applicable requirements.

**EFFECTIVE DATE:** The effective date of the FAA's acceptance of the Noise Exposure Maps for Williams Gateway Airport, Mesa, Arizona is May 2, 2000.

**FOR FURTHER INFORMATION CONTACT:** Brian Armstrong, Airport Planner, Airports Division, AWP–611.1, Federal Aviation Administration, Western-Pacific Region. Mailing address: P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009–2007. Telephone (310) 725–3614. Street address: 15000 Aviation Boulevard, Hawthorne, California 90261. Documents reflecting this FAA action may be reviewed at this same location.

**SUPPLEMENTARY INFORMATION:** This notice announces that the FAA finds that the Noise Exposure Maps submitted for Williams Gateway Airport, Mesa, Arizona are in compliance with applicable requirements of Federal

Aviation Regulations (FAR) Part 150, effective May 2, 2000.

Under Section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA Noise Exposure Maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of FAR Part 150, promulgated pursuant to Title I of the Act, may submit a Noise Compatibility Program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the Noise Exposure Maps and supporting documentation submitted by the Williams Gateway Airport Authority. The specific maps under consideration are Exhibit 1, "1999 Noise Exposure Map" and Exhibit 2, "2004 Noise Exposure Map" in the submission. The FAA has determined that these maps for Williams Gateway Airport are in compliance with applicable requirements. This determination is effective on May 2, 2000. FAA's acceptance of an airport operator's Noise Exposure Maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix (A) of FAR Part 150. Such acceptance does not constitute approval of the applicant's data, information or plans, or a commitment to approve a Noise Compatibility Program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a Noise Exposure Map, submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the Noise Exposure Maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under FAR part 150 or through FAA's review of the Noise Exposure Maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of Part 150, that the statutorily required consultation has been accomplished.

Copies of the Noise Exposure Maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, S.W., Room 617, Washington, DC 20591.

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Boulevard, Hawthorne, CA 90261.

Williams Gateway Airport Authority, 5835 S. Sossaman Road, Mesa, AZ 85212–0919.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on May 2, 2000.

**Herman C. Bliss,**

*Manager, Airports Division, AWP–600, Western-Pacific Region.*

[FR Doc. 00–12170 Filed 5–12–00; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Birmingham International Airport, Birmingham, Alabama

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Birmingham International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before June 14, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airport District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Mr. Loyce Clark, Director of Planning and Development, of the Birmingham Airport Authority at the following address: Birmingham Airport Authority, 5900 Airport Highway, Birmingham, AL 35212.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Birmingham Airport Authority under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Keafur Grimes, Program Manager, Jackson Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, Phone 601–664–9886. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Birmingham International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 5, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Birmingham Airport Authority was substantially complete within the requirements of § 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 25, 2000.

The following is a brief overview of the application.

*PFC Application No.:* 00–03–C–00–BHM.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* October 1, 2000.

*Proposed charge expiration date:* November 30, 2002.

*Total estimated PFC revenue:* $8,000,000.

*Brief description of proposed project(s):* Rehabilitate aircarrier apron.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:* Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Birmingham Airport Authority.

Issued in Jackson, Mississippi on May 5, 2000.

**Wayne Atkinson,**

*Manager, Jackson Airports District Office Southern Region.*

[FR Doc. 00–12171 Filed 5–12–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine and Emergency Evacuation Issues

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) to discuss transport airplane and engine (TAE) and emergency evacuation (EE) issues.

**DATES:** The meeting is scheduled for May 30, 2000, from 10 am to 1 pm e.d.t.

**ADDRESSES:** Federal Aviation Administration, 800 Independence Avenue, Room 810, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Effie M. Upshaw, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–7626, FAX (202) 267–5075.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held May 30, 2000, at the Federal Aviation Administration, 800 Independence Ave., Room 810, Washington, DC. The meeting is being held to approve technical reports prepared under the accelerated process for reaching harmonization (66522 FR November 26, 1999). ARAC members agreed in March to hold a meeting/teleconference for the expressed purpose of voting on some of the remaining items identified under the accelerated process.

The agenda will include report presentations by the:

- Mechanical Systems Harmonization Working Group
- Loads and Dynamics Harmonization Working Group,
- Powerplant Installation Harmonization Working Group, and
- Cabin Safety Harmonization Working Group.

Attendance is open to the public, but will be limited to the availability of meeting room space and telephone lines. The public may participate by teleconference by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT** after May 24. The public must make arrangements by May 26 to present oral statements at the meeting. Written statements may be presented to the committee at any time by providing 25 copies to the Assistance Executive Director for Transport Airplane and Engine issues or by providing copies at the meeting. Copies of the documents to be voted upon may be made available by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

If you are in need of assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC on May 8, 2000.

**Anthony F. Fazio,**

*Executive Director, Aviation Rulemaking Advisory Committee.*

[FR Doc. 00–12143 Filed 5–12–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Meeting

**SUMMARY:** Notice is hereby given of a meeting of the Aviation Security Advisory Committee.

**DATES:** The meeting will be held June 1, 2000, from 10:00 a.m. to 1:00 p.m.

**ADDRESSES:** The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., 10th floor, MacCracken Room, Washington, DC. 20591, telephone 202–267–7622.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 11), notice is hereby given of a meeting of the Aviation Security Advisory Committee to be held June 1, at the Federal Aviation Administration, 800 Independence Avenue, SW., 10th floor, MacCracken Room, Washington, DC. The agenda for the meeting will include: State Fire Codes and the Impact in the Implementation of 14 CFR 107.14 Nationwide, Airport Construction Guidelines, Expansion of the List of Disqualifying Crimes in 14 CFR 108.33 and 107.31, Current Access Control Practices and Procedures, Screening of Persons with Disabilities, Status of Work Groups, and Security Initiatives. The June 1 meeting is open to the public but attendance is limited to space available. Members of the public may address the committee only with the written permission of the chair, which should be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the committee at any time. Persons wishing to present statements or obtain information should contact the Office of the Associate Administrator for Civil Aviation Security, 800 Independence Avenue, SW., Washington, DC 20591, telephone 202–267–7622.

Issued in Washington, DC, on May 9, 2000.

**William S. Davis,**

*Deputy Associate Administrator for Civil Aviation Security.*

[FR Doc. 00–12173 Filed 5–12–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 192; National Airspace Review Planning and Analysis

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 192 meeting to be held June 6, 2000, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will be as follows: (1) Welcome and Introductory Remarks; (2) Overview and Coordination with Free Flight Select Committee; (3) Resolve Ballot Comments and Approve Working Group 1 Document (User Priorities for the National Airspace Redesign); (4) Review Working Group 2 Status; (5) Review Working Group 3 Status and Plenary Approval; (6) Review High-altitude Concept; (7) Date and Location of Next Meeting; (8) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman,

members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Washington, DC, 20036; (202) 833–9339 (phone), (202) 833–9434 (fax), or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 8, 2000.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 00–12167 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA Special Committee 193/ EUROCAE Working Group 44; Terrain and Airport Databases

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 193/EUROCAE Working Group 44 meeting to be held June 5–9, 2000, starting at 9 a.m. The meeting will be held at The Sweetbrier Inn, 7125 SW Nyberg Road, Tualatin, Oregon 97062 (South of Portland).

The agenda will be as follows:

*June 5 Opening Plenary Session*

(1) Welcome and Introductions
(2) Review/Approval of Meeting Agenda
(3) Review Summary of the Previous Meeting
(4) Discussion of Interface Issues between Subgroups 2 and 3;
1 p.m. (5) Subgroup 2—Terrain and Obstacle Databases;
(a) Review of Summary of the Previous Meeting
(b) Review of Actions Items
(c) Review of the Draft Document
(d) Other Subgroup 2 Activities
(6) Subgroup 3—Airport Databases:
(a) Review of Previous Meeting Minutes
(b) Review of Actions Items
(c) Presentations
(d) Review of the Draft Document

*June 6–8*

(7) Subgroup 2—Continuation of Discussions
(8) Subgroup 3—Continuation of Discussions.

*June 9 Closing Plenary Session*

(9) Summary of Subgroups 2 and 3 Meetings
(10) Assign Tasks
(11) Other business
(12) Dates and Locations of Next Meeting
(13) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW, Washington, DC 20036; (202) 833–9339 (phone), (202) 833–9434 (fax), or http://www.rtca.org (web site) or the on-site contact, Mr. Walter Johnson, at (503) 443–3321 or email walt_johnson@fltdyn.com. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 5, 2000.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 00–12168 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### RTCA; Special Committee 195; Flight Information Services Communications (FISC)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee (SC)–195 meeting to be held June 6–8, 2000, starting at 8:30 a.m. each day. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue NW, Suite 1020, Washington, DC 20036.

The agenda will include:

*June 6*

Plenary convenes for 30 minutes:
(1) Welcome and Introductions;
(2) Agenda Overview
(3) Working Group (WG) 1, Aircraft Cockpit Weather Display
1 p.m. Plenary Reconvenes
(4) Review of Previous Meeting Minutes
(5) Report from WG–1 on Activities;
(6) Review of FIS–B Minimum Aviation System Performance Standards (MASPS) section 4.0, Procedures for Performance Requirement Verification, Development

*June 7*

(7) Review of FIS–B MASPS section 3.2.1, FIS Broadcast Network Interface and Appendix D, APDU Header Format
Detailed Review of FIS–B MASPS.

*June 8*

(8) Continue Detailed Review of FIS–B MASPS
(9) Address Future Work
(10) Review Issues (Action Items)
(11) Date and Location of Next Meeting
(12) Other Business
(13) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW, Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 5, 2000.

**Janice L. Peters,**

*Designated Official.*

[FR Doc. 00–12169 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Monthly Notice of PFC Approvals and Disapprovals. In April 2000, there were five applications approved. Additionally, nine approved amendments to previously approved applications are listed.

**SUMMARY:** The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

**PFC Applications Approved**

PUBLIC AGENCY: City of Des Moines, Iowa.

APPLICATION NUMBER: 00–05–C–00–DSM.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $1,150,000.

EARLIEST CHARGE EFFECTIVE DATE: May 1, 2006.

ESTIMATED CHARGE EXPIRATION DATE: November 1, 2006.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S:

Part 135 air taxi/commercial operators.

DETERMINATION: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Des Moines International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

South passenger apron expansion and rehabilitation.

Terminal elevator—C concourse.

DECISION DATE: April 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lorna Sandridge, Central region Airports Division, (816) 329–2641.

PUBLIC AGENCY: Melbourne Airport Authority, Melbourne, Florida.

APPLICATION NUMBER: 00–04–C–00–MLB.

APPLICATION TYPE: Impose and use a PFC.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $592,944.

EARLIEST CHARGE EFFECTIVE DATE: July 1, 2000.

ESTIMATED CHARGE EXPIRATION DATE: September 1, 2001.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S:

Air taxi/commercial operators.

DETERMINATION: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Melbourne International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Improve and renovate terminal building, phase 1—reroofing.

Acquire security improvements and police vehicle.

Runway 9L safety area wetland mitigation phase 2.

Improve and renovate terminal building, phase 2—wall and skylight repair.

Acquire Airport News and Training Network system.

Acquire aircraft rescue and firefighting vehicle and three proximity suits.

Improve and renovate terminal building, phase 3—restroom renovation.

Acquire aircraft loading bridge.

DECISION DATE: April 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Armondo L. Rovira, Orlando Airports District Office, (407) 812–6331, ext. 31.

PUBLIC AGENCY: Greater Orlando Aviation Authority, Orlando, Florida.

APPLICATION NUMBER: 00–07–C–00–MCO.

APPLICATION TYPE: Impose and use a PFC.

PCF LEVEL: $3.00.

TOTAL PCF REVENUE APPROVED IN THIS DECISION: $174,364,294.

EARLIEST CHARGE EFFECTIVE DATE: June 1, 2003.

ESTIMATED CHARGE EXPIRATION DATE: April 1, 2008.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S:

None.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AT ORLANDO INTERNATIONAL AIRPORT (MCO) AND USE AT MCO:

Mid crossfield taxiway bridges expansion—construction.

Heintzelman Boulevard construction.

South access road widening—construction.

South terminal complex, phase I: site grading and drainage—design and construction.

South terminal complex, design.

Fourth runway.

Taxiway system for the fourth runway.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AT MCO AND USE AT ORLANDO EXECUTIVE AIRPORT:

Drainage improvements, design and construction.

Runway 7/25 high speed exit taxiways and holding bay 7 construction.

Runway 7/25 taxiway stubouts and holding bays 31 and 25, design.

DECISION DATE: April 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Pablo G. Auffant, Orlando Airports District Office, (407) 812–6331, ext. 30.

PUBLIC AGENCY: International Falls-Koochiching County Airport Commission, International Falls, Minnesota.

APPLICATION NUMBER: 00–03–C–00–INL.

APPLICATION TYPE: Impose and use a PFC.

PCF LEVEL: $3.00.

TOTAL PFC REVENUE APPROVED IN THIS DECISION: $316,992.

EARLIEST CHARGE EFFECTIVE DATE: July 1, 2000.

ESTIMATED CHARGE EXPIRATION DATE: August 1, 2006.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S:

Part 135 air taxi.

DETERMINATION: Approved. Based on information submitted in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Falls International Airport.

BRIEF DESCRIPTION OF PROJECTS APPROVED FOR COLLECTION AND USE:

Terminal building modifications.

Acquire snow removal equipment.

Acquire aircraft rescue and firefighting vehicle.

Install high intensity runway lights.

Runway 13/31 shoulder paving.

Replace rotating beacon with tower and runway end identifier lights.

Acquire snow removal equipment.

Segmented circle design.

Engineering for rehabilitation of heating, ventilation, and air conditioning and baggage claim entrance canopy.

Safety fencing engineering study.

Environmental assessment.

Construct baggage claim entrance canopy.

PFC administration.

DECISION DATE: April 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sandra E. DePottey, Minneapolis Airports District Office, (612) 713–4363.

PUBLIC AGENCY: City of Minot, North Dakota.

APPLICATION NUMBER: 00–05–U–00–MOT.

APPLICATION TYPE: Use PFC revenue.

PFC LEVEL: $3.00.

TOTAL PFC REVENUE TO BE USED IN THIS DECISION: $203,841.

CHARGE EFFECTIVE DATE: March 1, 1999.

ESTIMATED CHARGE EXPIRATION DATE: February 1, 2004.

CLASS OF AIR CARRIERS NOT REQUIRED TO COLLECT PFC'S: No change from previous decision.

BRIEF DESCRIPTION OF PROJECT APPROVED FOR USE: Runway 8/26 restoration and extension.

DECISION DATE: April 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Irene R. Porter, Bismarck Airports District Office, (701) 250-4385.

AMENDMENTS TO PFC APPROVALS

| Amendment No. City, State | Amendment approved date | Original approved net PFC revenue | Amended approved net PFC revenue | Original estimated charge exp. date | Amended estimated charge exp. date |
|---|---|---|---|---|---|
| 92–01–C–03–GJT, Grand Junction, CO | 03/17/00 | $1,812,000 | $1,794,117 | 03/01/04 | 04/01/03 |
| 96–02–U–02–GJT, Grand Junction, CO | 03/17/00 | NA | NA | 03/01/04 | 04/01/03 |
| 97–03–C–01–GJT, Grand Junction, CO | 03/17/00 | $2,157,000 | $1,932,000 | 03/01/04 | 04/01/03 |
| 92–01–C–07–SJC, San Jose, CA | 03/30/00 | NA | NA | 09/01/03 | 09/01/03 |
| 96–01–I–02–BTV, Burlington, VT | 04/14/00 | $12,476,233 | $22,966,283 | 03/01/06 | 12/01/10 |
| 96–02–C–01–BTV, Burlington, VT | 04/14/00 | $40,000 | $40,000 | 03/01/06 | 12/01/10 |
| 98–04–C–01–CLM, Port Angeles, WA | 04/17/00 | $118,572 | $122,650 | 11/01/01 | 11/01/00 |
| 98–02–C–02–IAD, London, VA | 04/25/00 | $34,919,777 | $52,324,581 | 05/01/10 | 04/01/11 |
| 98–03–C–01–DCA, Arlington, VA | 04/25/00 | $23,563,086 | $46,823,287 | 02/01/02 | 05/01/03 |

Issued in Washington, DC on May 4, 2000.

**Eric Gabler,**

*Manager, Passenger Facility Charge Branch.*

[FR Doc. 00–12144 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. FRA 2000–7325]**

### Remote Control Locomotives; Establishing Guidelines

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of technical conference.

**SUMMARY:** FRA is initiating a technical conference to examine the use of remote control locomotive operations in the railroad industry. FRA plans to hold a technical conference on July 19, 2000, to discuss the current status of remote operation and possible development of guidelines for remote operations with all interested parties. FRA is exploring the use of guidelines to provide consistent, safe, industry-wide remote control locomotive use.

**DATES:** 1. A technical conference will be held on July 19, 2000, beginning at 10 am.

2. The deadline to register for participation in the technical conference is close of business on July 12, 2000. Please see Public Participation Procedures in **SUPPLEMENTARY INFORMATION** section of this document for registration details.

**ADDRESSES:** 1.Technical conference: FRA Headquarters, 7th floor, conference rooms 1 and 2, 1120 Vermont Ave. NW, Washington DC.

2. FRA Docket Clerk: Federal Railroad Administration Docket Clerk, Office of Chief Counsel, Mail Stop 10, 1120 Vermont Ave. NW, Washington DC, 20590. E-mail address for the FRA Docket Clerk is renee.bridgers@fra.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** S. Joseph Gallant, Operating Practices Specialist, FRA Office of Safety, Mail Stop 25, 1120 Vermont Ave. NW, Washington DC, 20590 (telephone: 202–493–6324), or Alan H. Nagler, Trial Attorney, FRA Office of Chief Counsel, Mail Stop 10, 1120 Vermont Ave. NW, Washington DC, 20590 (telephone: 202–493–6055).

**SUPPLEMENTARY INFORMATION:**

#### Background

Locomotives operated by use of remote control devices have been in use for a number of years. The term "remotely controlled locomotives" or "remote control locomotives" refers to a locomotive which, through use of a radio transmitter and receiver system, can be operated by a person while not physically within the confines of the locomotive cab. (As used in this notice, the term "remote control locomotive" (RCL) does not refer to use of distributive power, in which a locomotive or group of locomotives entrained or at the rear of a train is controlled by an engineer located in another locomotive within the same consist.) Although RCL operations are common place in steel mills, plant railroads and Canadian railroad systems, RCL operations have not been widely used by American railroads that are part of the general system of transportation.

Arguably, the RCL technology is still relatively new. In 1994, FRA proposed a nation-wide test of rail operations involving remotely controlled locomotives. 59 FR 59826 (Nov. 18, 1994). FRA published proposed interim guidelines for what was intended to be a two-year test period. 59 FR 59826, 59828–29 (Nov. 18, 1994). FRA stated that guidelines were necessary

to assure that continued use of this new technology does not create a safety risk to railroad employees or the public. FRA also does not want to hinder the development of new technologies which may be of benefit to the rail industry. * * * All railroads using such remote-control systems will be permitted to continue using such systems only if they participate in the long-term test, so that FRA can evaluate remote control operations in light of the regulatory and statutory obligations imposed upon all railroads.

59 FR at 59827 (Nov. 18, 1994). On February 23, 1995, FRA held a public hearing to gather testimony on remote control operating procedures. Several manufacturers, labor organizations, railroads and their associations participated in the hearing. The testimony provided by these organizations revealed a broad spectrum of opinion concerning the merits of the program, the substance of the program requirements, the risks associated with railroad employees and the safety of the technology. While information and opinions gathered at this meeting were helpful, FRA never took final agency action to implement guidelines and the test program never occurred. Instead, FRA has continued to review RCL operations on a case-by-case basis.

Recently, FRA has become aware of renewed interest in RCL operations. This interest has led to an increased number of questions concerning FRA's position with respect to those operations and particular types of RCL devices. Additionally, RCL technology and operating procedures continue to evolve. FRA believes that it would be prudent to re-examine the safety issues surrounding RCL operations at this time and consider whether to issue guidelines.

#### Technical Conference

The purpose of this technical conference is to determine the extent of RCL operations, the various purposes for which RCL technology is used, and the safety of these operations. FRA will examine all the pertinent safety aspects of RCL operations, including: (1) design

standards, e.g., weight, size and ergonomic considerations; (2) employee training, e.g., hands-on training considerations; (3) operating practices and procedures, including but not limited to standard operating procedures, safety rule modifications, and railroad operating plans; (4) test and inspection procedures, including but not limited to electric and magnetic field emissions; (5) security and reporting issues, including but not limited to recordkeeping and notification to FRA concerning all RCL accidents and incidents. FRA requests that interested parties share their views regarding the use of consistent and safe RCL operations. FRA encourages comments on all aspects of RCL use. A transcript of the technical conference will be taken and placed in the public docket of this proceeding.

**Public Participation Procedures**

Any person wishing to participate in the technical conference should notify the FRA Docket Clerk by mail or by e-mail by close of business on July 12, 2000. The notification of intent to participate should identify the organization, the person represents (if any), the names of all participants from that organization planning to participate, and a phone number at which the registrant can be reached. FRA reserves the right to limit active conference participation to those persons who have registered in advance.

(Authority: 49 U.S.C. 103, 20103–04, 20106–08, 20135 and 20701–03)

Issued in Washington, DC on May 9, 2000.

**George Gavalla,**

*Associate Administrator for Safety.*

[FR Doc. 00–12110 Filed 5–12–00; 8:45 am]

**BILLING CODE 4910–06–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

**[Docket No. RSAC–96–1, Notice No. 20]**

### Railroad Safety Advisory Committee ("RSAC"); Working Group Activity Update

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

**SUMMARY:** FRA is updating its announcement of RSAC's working group activities to reflect the current status of working group activities.

**FOR FURTHER INFORMATION CONTACT:** Trish Paolella, RSAC Coordinator, FRA, 1120 Vermont Ave, N.W., Mailstop 25, Washington, D.C. 20590, (202) 493–6212 or Grady Cothen, Deputy Associate Administrator for Safety Standards Program Development, FRA, 1120 Vermont Ave, N.W., Mailstop 25, Washington, D.C. 20590, (202) 493–6302.

**SUPPLEMENTARY INFORMATION:** This notice serves to update FRA's last announcement of working group activities and status reports on December 17, 1999 (64 FR 70756). The thirteenth full Committee meeting was held January 28, 2000. The next meeting of the full Committee is scheduled for May 19, 2000 at the Madison Hotel in Washington, D.C.

Since its first meeting in April of 1996, the RSAC has accepted sixteen tasks. Status for each of the tasks is provided below:

*Task 96–1*—Revising the Freight Power Brake Regulations. This Task was formally withdrawn from the RSAC on June 24, 1997. FRA published an NPRM on September 9, 1998, reflective of what FRA had learned through the collaborative process. Two public hearings were conducted and a technical conference was held. The date for submission of written comments was extended to March 1, 1999. FRA is preparing a final rule. Contact: Thomas Hermann (202) 493–6036.

*Task 96–2*—Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213). This task was accepted April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on July 3, 1997, (62 FR 36138). The final rule was published in the **Federal Register** on June 22, 1998 (63 FR 33991). The effective date of the rule was September 21, 1998. A task force was established to address Gage Restraint Measurement System (GRMS) technology applicability to the Track Safety Standards. A GRMS amendment to the Track Safety Standards is being prepared for presentation to the RSAC. Contact: Al MacDowell (202) 493–6236.

*Task 96–3*—Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220). This Task was accepted on April 2, 1996, and a Working Group was established. Consensus was reached on recommended revisions and an NPRM incorporating these recommendations was published in the **Federal Register** on June 26, 1997 ( 62 FR 34544). The final rule was published on September 4, 1998 (63 FR 47182), and was effective on January 2, 1999. Contact: Gene Cox (202) 493–6319.

*Task 96–4*—Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulations task. Contact: Grady Cothen (202) 493–6302.

*Task 96–5*—Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230). This Task was assigned to the Tourist and Historic Working Group on July 24, 1996. Consensus was reached and an NPRM was published on September 25, 1998 (63 FR 51404). A public hearing was held on February 4, 1999, and recommendations were developed in response to comments received. The final rule was published on November 17, 1999 (64 FR 62828). Contact: George Scerbo (202) 493–6349.

*Task 96–6*—Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240). This Task was accepted on October 31, 1996, and a Working Group was established. Consensus was reached and an NPRM was published on September 22, 1998. The Working Group met to resolve issues presented in public comments. The RSAC recommended issuance of a final rule with the Working Group modifications. The final rule was published November 8, 1999 (64 FR 60966). Contact: John Conklin (202) 493–6318.

*Task 96–7*—Developing On-Track Equipment Safety Standards. This task was assigned to the existing Track Standards Working Group on October 31, 1996, and a Task Force was established. The Task Force is finalizing a proposed rule to present to the RSAC for consideration. Contact: Al MacDowell (202) 493–6236.

*Task 96–8*—This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, Locomotive Crashworthiness & Working Conditions. This Planning Task was accepted on October 31, 1996. A Planning Group was formed and reviewed the report, grouping issues into categories.

*Task 97–1*—Developing crashworthiness specifications to promote the integrity of the locomotive cab in accidents resulting from collisions. This Task was accepted on

June 24, 1997. A Task Force on engineering issues was established by the Working Group on Locomotive Crashworthiness to review collision history and design options and additional research was commissioned. The Working Group reviewed results of the research and is drafting standards for freight and passenger locomotives to present to the RSAC for consideration. Contact: Sean Mehrvazi (202) 493–6237.

*Task 97–2*—Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate. This Task was accepted June 24, 1997. A draft sanitation NPRM is under review by the Working Group on Cab Working Conditions. Task forces on noise and temperature were formed to identify and address issues. The Noise Task Force is preparing draft recommendations for noise exposure requirements. Contact: Brenda Hattery (202) 493–6326.

*Task 97–3*—Developing event recorder data survivability standards. This Task was accepted on June 24, 1997. An Event Recorder Working Group and Task Force have been established and are actively meeting. A draft proposed rule is being reviewed. Contact: Edward English (202) 493–6321.

*Task 97–4 and Task 97–5*—Defining Positive Train Control (PTC) functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

*Task 97–6*—Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems. These three tasks were accepted on September 30, 1997, and assigned to a single Working Group. A Data and Implementation Task Force, formed to address issues such as assessment of costs and benefits and technical readiness, completed a report on the future of PTC systems. The report was accepted as RSAC's Report to the Administrator at the September 8, 1999, meeting. The Standards Task Force, formed to develop PTC standards, is developing draft recommendations for performance-based standards for processor-based signal and train control standards for presentation to the RSAC. Contact: Grady Cothen (202) 493–6302.

*Task 97–7*—Determining damages qualifying an event as a reportable train accident. This Task was accepted on September 30, 1997. A working group was formed to address this task and conducted their initial meeting February 8, 1999. Contact: Robert Finkelstein (202) 493–6280.

*Task 00–1*—Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing or inspecting rear end marking devices. A working group is being formed. Contact: Tom Keane (202) 493–6234.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740) for more information about the RSAC.

Issued in Washington, D.C. on May 9, 2000.

**George Gavalla,**

*Associate Administrator for Safety.*

[FR Doc. 00–12111 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[FTA Docket No. FTA 00–7347]**

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of a currently approved collection. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 11, 2000 [FR 65 pages 7096 and 7097].

**DATES:** Comments must be submitted before June 14, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

**FOR FURTHER INFORMATION CONTACT:** Sylvia L. Barney, Office of Administration, Office of Management Planning (202) 366–6680.

**SUPPLEMENTARY INFORMATION:**

*Title:* 49 U.S.C. 5312(a) Research, Development, Demonstration and Training Projects.

*Type of Request:* Extension of a currently approved collection.

*OMB Control Number:* 2132–0546.

*Abstract:* 49 U.S.C. Section 5312(a) authorizes the Secretary of Transportation to make grants or contracts for research, development, and demonstration projects that will reduce urban transportation needs, improve mass transportation service, or help transportation service meet the total urban transportation needs at a minimum cost. In carrying out the provisions of this section, the Secretary is also authorized to request and receive appropriate information from any source.

The information collected is submitted as part of the application for grants and cooperative agreements and is used to determine eligibility of applicants. Collection of this information also provides documentation that the applicants and recipients are meeting program objectives and are complying with FTA Circular 6100.1B and other Federal requirements.

*Estimated Annual Burden Hours:* 13,940 hours.

**ADDRESSES:** Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW, Washington, DC 20503, Attention: FTA Desk Officer.

*Comments Are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: May 10, 2000.

**Dorrie Y. Aldrich,**

*Associate Administrator for Administration.*

[FR Doc. 00–12161 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–57–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33872]**

### Alabama & Gulf Coast Railway LLC—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company has agreed to grant overhead trackage rights to Alabama & Gulf Coast Railway LLC (AGR) of Monroeville, AL, between the end of

AGR's line at milepost 776.10 near Kimbrough, AL, and a point of connection with the Norfolk Southern Railway Company (NS) at milepost 774.10 near Kimbrough, AL, a distance of approximately 2 miles in Wilcox County, AL.

The transaction was scheduled to be consummated on or shortly after May 4, 2000.

The purpose of the trackage rights is to permit AGR to directly interchange traffic with NS for the handling of traffic to and from MacMillan, AL.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33872, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Fritz R. Kahn, 1920 N Street, NW., 8th Floor, Washington, DC 20036–1601.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: May 5, 2000.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–11841 Filed 5–12–00; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Renewal of Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service and solicitation of applications for committee membership.

**SUMMARY:** It is in the public interest to renew the Advisory Committee for another two-year term. This notice also establishes criteria and procedures for the selection of members.

*Title:* The Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

*Purpose:* The purpose of the Committee is to present advice and recommendations to the Secretary of the Treasury regarding commercial operations of the U.S. Customs Service and to submit a report to Congress containing a summary of its operations and its views and recommendations.

*Statement of Public Interest:* It is in the public interest to continue the existence of the Committee upon expiration, under the provisions of the Federal Advisory Committee Act, of its current two-year term. The Committee provides a critical forum for distinguished representatives of diverse industry sectors to present their views on major issues involving commercial operations of the Customs Service. These views are offered directly to senior Treasury and Customs officials on a regular basis in a candid atmosphere. There exists no other single body that serves a comparable function.

**SUPPLEMENTARY INFORMATION:**

**Background**

In the Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203), Congress repealed the statutory mandate for a Customs User Fee Advisory Committee and directed the Secretary of the Treasury to create a new Advisory Committee on Commercial Operations of the U.S. Customs Service. The original Committee consisted of 20 members drawn from industry sectors affected by Customs commercial operations. The Committee's charter was filed on October 17, 1988 and expired two years later. Charters were subsequently filed for second, third, fourth, fifth, and sixth two-year terms. The current charter will expire on October 15, 2000. The Treasury Department plans to file a new charter by that date renewing the Committee for a seventh two-year term.

**Objective, Scope and Description of the Committee**

The Committee's objectives are to advise the Secretary of the Treasury on issues relating to the commercial operations of the Customs Service. It is expected that, during its seventh two-year term, the Committee will consider such issues as the Customs Entry Revision Project (ERP), the Merchandise Processing Fee, the budget for commercial operations, carrier issues, the administration of staff and resources for commercial operations, informed compliance and compliance assessment, automated systems, commercial enforcement, international efforts to harmonize customs practices and procedures, strategic planning, and northern border and southern border issues and the relationships with Canadian Customs and Mexican Customs.

The Committee will be chaired by the Assistant Secretary of the Treasury for Enforcement. The Committee will function for a two-year period before renewal or termination and will meet approximately eight times (quarterly) during the period. Additional special meetings of the full Committee or a subcommittee thereof may be convened if necessary.

The meetings will generally be held in the Treasury Department, Washington, D.C. However, typically one or two meetings per year may be held outside of Washington at a Customs port. In recent years, meetings have been held in Memphis, Portland, Boston, New Orleans, Nogales, Los Angeles and Seattle, among other locations.

The meetings are open to public observers, including the press, unless special procedures have been followed to close a meeting. During the first six terms of the Committee, only a portion of one meeting was closed.

The members shall be selected by the Secretary of the Treasury from representatives of the trade or transportation community serviced by Customs, the general public, or others who are directly affected by Customs commercial operations. In addition, members shall represent major regions of the country, and not more than ten members may be affiliated with the same political party. No person who is required to register under the Foreign Agents Registration Act as an agent or representative of a foreign principal may serve on an advisory committee. Members shall not be paid compensation nor shall they be considered Federal Government employees for any purpose. No per diem, transportation, or other expenses are reimbursed for the cost of attending Committee meetings at any location.

Members who are serving on the Committee during its expiring two-year term are eligible to reapply for membership. A new application letter and updated resume are required. It is expected that approximately half of the current membership of the Committee will be replaced with new appointees.

Membership on the Committee is personal to the appointee. Under the Charter, a member may not send an alternate to represent him or her at a Committee meeting. However, since Committee meetings are open to the

public, another person from a member's organization may attend and observe the proceedings in a nonparticipating capacity. Regular attendance is essential; the Charter provides that a member who is absent for two consecutive meetings or two meetings in a calendar year shall lose his or her seat on the Committee.

**Application for Advisory Committee Appointment**

Any interested person wishing to serve on the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service must provide the following:

- Statement of interest and reasons for application;
- Complete professional biography or resume;
- Political affiliation, in order to ensure balanced representation. (Mandatory. If no party registration or allegiance, indicate "independent" or "unaffiliated").

In addition, applicants must state in their applications that they agree to submit to preappointment security and tax checks (Mandatory). However, a security clearance is not required for the position.

There is no prescribed format for the application. Applicants may send a cover letter describing their interest and qualifications and enclosing a resume.

The application period for interested candidates will extend to July 3, 2000. Applications should be submitted in sufficient time to be received by the close of business on the closing date by John P. Simpson, Office of Regulatory, Tariff and Trade Enforcement, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220, ATT: COAC 2000.

Dated: May 10, 2000.

**Dennis M. O'Connell,**

*Acting Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).*

[FR Doc. 00–12157 Filed 5–12–00; 8:45 am]

BILLING CODE 4810–25–M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 8615

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8615, Tax for Children Under Age 14 Who Have Investment Income of More Than $1,400.

**DATES:** Written comments should be received on or before July 14, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Tax for Children Under Age 14 Who Have Investment Income of More Than $1,400.

*OMB Number:* 1545–0998.

*Form Number:* 8615.

*Abstract:* Under Internal Revenue Code section 1(g), children under age 14 who have unearned income may be taxed on part of that income at their parent's tax rate. Form 8615 is used to see if any of the child's unearned income is taxed at the parent's rate and, if so, to compute the child's tax on his or her unearned income and earned income, if any.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 331,128.

*Estimated Time Per Respondent:* 1 hr., 28 min.

*Estimated Total Annual Burden Hours:* 486,758.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 9, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–12175 Filed 5–12–00; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Form 2555–EZ

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2555–EZ, Foreign Earned Income Exclusion.

**DATES:** Written comments should be received on or before July 14, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or

copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Foreign Earned Income Exclusion.

*OMB Number:* 1545–1326.

*Form Number:* 2555–EZ.

*Abstract:* U.S. citizens and resident aliens who qualify may use Form 2555–EZ instead of Form 2555, Foreign Earned Income, to exclude a limited amount of their foreign earned income. Form 2555–EZ is a simpler form that can be used by taxpayers whose foreign earned income is $76,000 or less and who satisfy certain other conditions. The information on the form is used by the IRS to determine if a taxpayer qualifies for, and has properly computed, the foreign earned income exclusion.

*Current Actions:* There are no changes being made to the form at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

*Estimated Number of Responses:* 43,478.

*Estimated Time Per Respondent:* 2 hours, 5 minutes.

*Estimated Total Annual Burden Hours:* 90,434.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 9, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–12176 Filed 5–12–00; 8:45 am]

**BILLING CODE 4830–01–U**

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## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**AGENCY:** Bureau of the Public Debt, Department of the Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Special Form of Request For Payment of United States Savings and Retirement Securities Where Use of a Detached Request is Authorized.

**DATES:** Written comments should be received on or before July 17, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Special Form of Request for Payment of United States Savings and Retirement Securities Where Use of A Detached Request is Authorized.

*OMB Number:* 1535–0004.

*Form Number:* PD F 1522.

*Abstract:* The information is requested to establish ownership and request for payment of United States Savings Bonds/Retirement Securities.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 56,000.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 14,000.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 9, 2000.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 00–12094 Filed 5–12–00; 8:45 am]

**BILLING CODE 4810–39–P**

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## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Exchange Application For U.S. Savings Bonds of Series HH.

**DATES:** Written comments should be received on or before July 17, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Exchange Application For U.S. Savings Bonds of Series HH.

*OMB Number:* 1535–0005.

*Form Number:* PD F 3253.

*Abstract:* The information is used to support a request to exchange Series EE/E bonds or notes for Series HH Savings Bonds.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 60,000.

*Estimated Time Per Respondent:* 40 minutes.

*Estimated Total Annual Burden Hours:* 39,960.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 9, 2000.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 00–12095 Filed 5–12–00; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection; Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate of Entitlement United States Savings and Retirement Securities and Checks After Administration of Decedent's Estate.

**DATES:** Written comments should be received on or before July 17, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Certificate of Entitlement United States Savings and Retirement Securities and Checks After Administration of Decedent's Estate.

*OMB Number:* 1535–0006.

*Form Number:* PD F 2458.

*Abstract:* The information is requested to establish entitlement of United States Savings and Retirement Securities and Checks After Administration of a Decedent's Estate.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 7,000.

*Estimated Time Per Respondent:* 8 minutes.

*Estimated Total Annual Burden Hours:* 938.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 9, 2000.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 00–12096 Filed 5–12–00; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**AGENCY:** Bureau of the Public Debt, Department of the Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request for Reissue of United States Savings Bonds/Notes During the Lives of Both Coowners.

**DATES:** Written comments should be received on or before July 17, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Request For Reissue of United States Savings Bonds/Notes During The Lives of Both Coowners.

*OMB Number:* 1535–0008.

*Form Number:* PD F 1938.

*Abstract:* The information is requested to establish ownership and request reissue of United States Savings Bonds/Notes.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 37,000.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 6,179.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 9, 2000.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 00–12097 Filed 5–12–00; 8:45 am]

BILLING CODE 4810–39–P

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**AGENCY:** Bureau of the Public Debt, Department of the Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Relief on Account of Loss, Theft, or Destruction of United States Registered Securities.

**DATES:** Written comments should be received on or before July 17, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Application For Relief on Account of Loss, Theft, or Destruction of United States Registered Securities.

*OMB Number:* 1535–0014.

*Form Number:* PD F 1025.

*Abstract:* The information is requested to establish ownership and support a request for relief because of the loss, theft, or destruction of United States Registered Securities.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals or businesses.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 55 minutes.

*Estimated Total Annual Burden Hours:* 460.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 9, 2000.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 00–12098 Filed 5–12–00; 8:45 am]

BILLING CODE 4810–39–P

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**AGENCY:** Bureau of the Public Debt, Department of the Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Report/Application For Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Organizations).

**DATES:** Written comments should be received on or before July 17, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Report/Application For Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Organizations).

*OMB Number:* 1535–0015.

*Form Number:* PD F 1022.

*Abstract:* The information is requested to establish ownership and support a request for relief because of the loss, theft, or destruction of United States Bearer Securities.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Organizations.

*Estimated Number of Respondents:* 100.

*Estimated Time Per Respondent:* 55 minutes.

*Estimated Total Annual Burden Hours:* 92.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 9, 2000.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 00–12099 Filed 5–12–00; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**AGENCY:** Bureau of the Public Debt, Department of the Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Report/Application For Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Individuals)

**DATES:** Written comments should be received on or before July 17, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Report/Application For Relief on Account of Loss, Theft, or Destruction of United States Bearer Securities (Individuals).

*OMB Number:* 1535–0016.

*Form Number:* PD F 1022–1.

*Abstract:* The information is requested to establish ownership and support a request for relief because of the loss, theft, or destruction of United States Bearer Securities owned by individuals.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 100.

*Estimated Time Per Respondent:* 55 minutes.

*Estimated Total Annual Burden Hours:* 92.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 9, 2000.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 00–12100 Filed 5–12–00; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate by owner of United States Registered Securities Concerning Forged Requests for Payment or Assignments.

**DATES:** Written comments should be received on or before July 17, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Certificate by Owner of United States Registered Securities Concerning Forged Requests for Payment or Assignments.

*OMB Number:* 1535–0067.

*Form Number:* PD F 0974.

*Abstract:* The information is requested to establish whether the registered owner signed the request for payment or if the signature was a forgery.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 3,000.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 750.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a

matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 9, 2000.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing, and Records Branch.*

[FR Doc. 00–12101 Filed 5–12–00; 8:45 am]

BILLING CODE 4810–39–P

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**AGENCY:** Bureau of the Public Debt, Department of the Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Claim For Relief on Account of the Nonreceipt of United States Savings Bonds.

**DATES:** Written comments should be received on or before July 17, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Claim For Relief on Account of the Nonreceipt of United States Savings Bonds.

*OMB Number:* 1535–0098.

*Form Number:* PD F 3062–4.

*Abstract:* The information is used to support a request for substitute savings bonds in lieu of savings bonds not received.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 30,000.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 5,010.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 9, 2000.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 00–12102 Filed 5–12–00; 8:45 am]

BILLING CODE 4810–39–P

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**AGENCY:** Bureau of the Public Debt, Department of the Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Description of Registered Securities.

**DATES:** Written comments should be received on or before July 17, 2000, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Description Of Registered Securities.

*OMB Number:* 1535–0101.

*Form Number:* PD F 0345.

Abstract: The information is requested to identify an owners Registered Securities.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals or households.

*Estimated Number of Respondents:* 5,000.

*Estimated Time Per Respondent:* 15 minutes.

*Estimated Total Annual Burden Hours:* 1,250.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 9, 2000.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing, and Records Branch.*

[FR Doc. 00–12103 Filed 5–12–00; 8:45 am]

BILLING CODE 4810–39–P

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# Corrections

Federal Register
Vol. 65, No. 94
Monday, May 15, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

### Notice of Availability of Draft Environmental Impact Statement and Notice of Public Meetings for the El Paso-Las Cruces Regional Sustainable Water Project, Sierra and Dona Ana Counties, NM and El Paso County, TX

*Correction*

In notice document 00–8207 beginning on page 17679 in the issue of Tuesday, April 4, 2000, make the following correction:

On page 17680, in the first column, the fourth full paragraph should not be preceded with a bullet "•". The text should be an indented paragraph.

[FR Doc. C0–8207 Filed 5–12–00; 8:45 am]
BILLING CODE 1505–01–D

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Part II

# The President

**Proclamation 7307—Peace Officers Memorial Day and Police Week, 2000**

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# Presidential Documents

Title 3—

## The President

**Proclamation 7307 of May 11, 2000**

## Peace Officers Memorial Day and Police Week, 2000

**By the President of the United States of America**

**A Proclamation**

From our earliest days as a Nation, America has been blessed with citizens of courage and character who have dedicated their lives to keeping the peace in our communities. Five years after the creation of the U.S. Marshals Service in 1789, U.S. Marshal Robert Forsyth was shot and killed in the line of duty. He was the first of more than 14,000 law enforcement personnel since that time to give his life to uphold the law and protect the people he was sworn to serve.

Our Nation owes a lasting debt of gratitude to the men and women of our law enforcement community who, each day, put their lives at risk to protect us and ensure the safety of our families and homes. Because of their skill, valor, and commitment, we have begun to turn the tide on crime in America. The murder rate is at its lowest level in more than 30 years, and the overall crime rate is at its lowest point in 25 years. There are many reasons for this progress, but police chiefs, policymakers, and citizens alike agree that the dedication of our law enforcement officers and the spread of community policing have been critical factors. Today, in cities and communities across America, residents and police officers are working in partnership, forming neighborhood watch organizations, banding together against drug dealers and gangs, and building connections that are the core of community life and the foundation of a civil society.

Unfortunately, we need look no further than the tragic losses suffered by law enforcement officers to recognize the risks that these brave men and women face every day. Last year, 50 police officers were struck down in the line of duty, and another 84 lost their lives in accidents. For these heroes, the safety of their fellow citizens was their purpose and passion, and they made the ultimate sacrifice to fulfill their duty.

We can never repay these gallant men and women for their service or adequately comfort their families. We can only honor their memory—not only in words and ceremony, but in our determination to promote justice, uphold the law, and preserve the peace and safety they helped purchase with their lives.

By a joint resolution approved October 1, 1962 (76 Stat. 676), the Congress has authorized and requested the President to designate May 15 of each year as "Peace Officers Memorial Day" and the week in which it falls as "Police Week," and, by Public Law 103–322 (36 U.S.C. 136), has directed that the flag be flown at half-staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 15, 2000, as Peace Officers Memorial Day and May 14 through May 20, 2000, as Police Week. I call upon the people of the United States to observe these occasions with appropriate ceremonies, programs, and activities. I also request the Governors of the United States and of the Commonwealth of Puerto Rico, as well as the appropriate officials of all units of government, to direct that the flag of the United States be flown at half-staff on Peace Officers Memorial Day on all buildings, grounds, and naval vessels throughout the United States

and all areas under its jurisdiction and control. I also invite all Americans to display the flag at half-staff from their homes on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–12355
Filed 5–12–00; 11:05 am]
Billing code 3195–01–P

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# Reader Aids

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- Regulatory flexibility and exemption program; comments due by 5-22-00; published 3-22-00

**PERSONNEL MANAGEMENT OFFICE**
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- Locality-based comparability payments; comments due by 5-23-00; published 3-24-00

**SECURITIES AND EXCHANGE COMMISSION**
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- International accounting standards; globally accepted, high quality financial reporting framework; comments due by 5-23-00; published 2-23-00

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- Ground tackle on recreational vessels; Federal requirements for carrying; comments due by 5-22-00; published 11-22-99

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- Michigan; comments due by 5-22-00; published 3-22-00

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- New York annual fireworks displays; comments due by 5-26-00; published 4-26-00

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Boeing; comments due by 5-22-00; published 4-5-00

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**S.J. Res. 40/P.L. 106–198**
Providing for the appointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 249)

**S.J. Res. 42/P.L. 106–199**
Providing for the reappointment of Manuel L. Ibanez as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 250)

**Last List May 5, 2000**

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## CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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| **1, 2 (2 Reserved)** | (869–038–00001–6) | 5.00 | [5] Jan. 1, 1999 |
| **3** (1997 Compilation and Parts 100 and 101) | (869–042–00002–1) | 22.00 | [1] Jan. 1, 2000 |
| **4** | (869–042–00003–0) | 8.50 | Jan. 1, 2000 |
| **5 Parts:** | | | |
| 1–699 | (869–042–00004–8) | 43.00 | Jan. 1, 2000 |
| 700–1199 | (869–042–00005–6) | 31.00 | Jan. 1, 2000 |
| 1200–End, 6 (6 Reserved) | (869–042–00006–4) | 48.00 | Jan. 1, 2000 |
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| 1–26 | (869–042–00007–2) | 28.00 | Jan. 1, 2000 |
| 27–52 | (869–042–00008–1) | 35.00 | Jan. 1, 2000 |
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| 210–299 | (869–042–00010–2) | 54.00 | Jan. 1, 2000 |
| 300–399 | (869–042–00011–1) | 29.00 | Jan. 1, 2000 |
| 400–699 | (869–042–00012–9) | 41.00 | Jan. 1, 2000 |
| 700–899 | (869–042–00013–7) | 37.00 | Jan. 1, 2000 |
| 900–999 | (869–042–00014–5) | 46.00 | Jan. 1, 2000 |
| 1000–1199 | (869–042–00015–3) | 18.00 | Jan. 1, 2000 |
| 1200–1599 | (869–042–00016–1) | 44.00 | Jan. 1, 2000 |
| 1600–1899 | (869–042–00017–0) | 61.00 | Jan. 1, 2000 |
| 1900–1939 | (869–042–00018–8) | 21.00 | Jan. 1, 2000 |
| 1940–1949 | (869–042–00019–6) | 37.00 | Jan. 1, 2000 |
| 1950–1999 | (869–042–00020–0) | 38.00 | Jan. 1, 2000 |
| 2000–End | (869–042–00021–8) | 31.00 | Jan. 1, 2000 |
| **8** | (869–042–00022–6) | 41.00 | Jan. 1, 2000 |
| **9 Parts:** | | | |
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| **10 Parts:** | | | |
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| 51–199 | (869–042–00026–9) | 38.00 | Jan. 1, 2000 |
| 200–499 | (869–042–00027–7) | 38.00 | Jan. 1, 2000 |
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| **11** | (869–042–00029–3) | 23.00 | Jan. 1, 2000 |
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| 300–499 | (869–042–00033–1) | 29.00 | Jan. 1, 2000 |
| 500–599 | (869–042–00034–0) | 26.00 | Jan. 1, 2000 |
| 600–End | (869–042–00035–8) | 53.00 | Jan. 1, 2000 |
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| **14 Parts:** | | | |
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| 200–1199 | (869–042–00040–4) | 29.00 | Jan. 1, 2000 |
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| 300–799 | (869–042–00043–9) | 45.00 | Jan. 1, 2000 |
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| 200–239 | (869–038–00049–1) | 34.00 | Apr. 1, 1999 |
| 240–End | (869–038–00050–4) | 44.00 | Apr. 1, 1999 |
| **18 Parts:** | | | |
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| 200–End | (869–038–00055–5) | 18.00 | Apr. 1, 1999 |
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| 400–499 | (869–038–00057–1) | 51.00 | Apr. 1, 1999 |
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| 100–169 | (869–038–00060–1) | 28.00 | Apr. 1, 1999 |
| 170–199 | (869–038–00061–0) | 29.00 | Apr. 1, 1999 |
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| 300–499 | (869–038–00063–6) | 18.00 | Apr. 1, 1999 |
| 500–599 | (869–038–00064–4) | 28.00 | Apr. 1, 1999 |
| 600–799 | (869–038–00065–2) | 9.00 | Apr. 1, 1999 |
| 800–1299 | (869–038–00066–1) | 35.00 | Apr. 1, 1999 |
| 1300–End | (869–038–00067–9) | 14.00 | Apr. 1, 1999 |
| **22 Parts:** | | | |
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| 300–End | (869–038–00069–5) | 32.00 | Apr. 1, 1999 |
| **23** | (869–038–00070–9) | 27.00 | Apr. 1, 1999 |
| **24 Parts:** | | | |
| 0–199 | (869–038–00071–7) | 34.00 | Apr. 1, 1999 |
| 200–499 | (869–038–00072–5) | 32.00 | Apr. 1, 1999 |
| 500–699 | (869–038–00073–3) | 18.00 | Apr. 1, 1999 |
| 700–1699 | (869–038–00074–1) | 40.00 | Apr. 1, 1999 |
| 1700–End | (869–038–00075–0) | 18.00 | Apr. 1, 1999 |
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| *50–299 | (869–042–00092–7) | 23.00 | Apr. 1, 2000 |
| 300–499 | (869–038–00093–8) | 37.00 | Apr. 1, 1999 |
| 500–599 | (869–038–00094–6) | 11.00 | Apr. 1, 1999 |
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| Title | Stock Number | Price | Revision Date |
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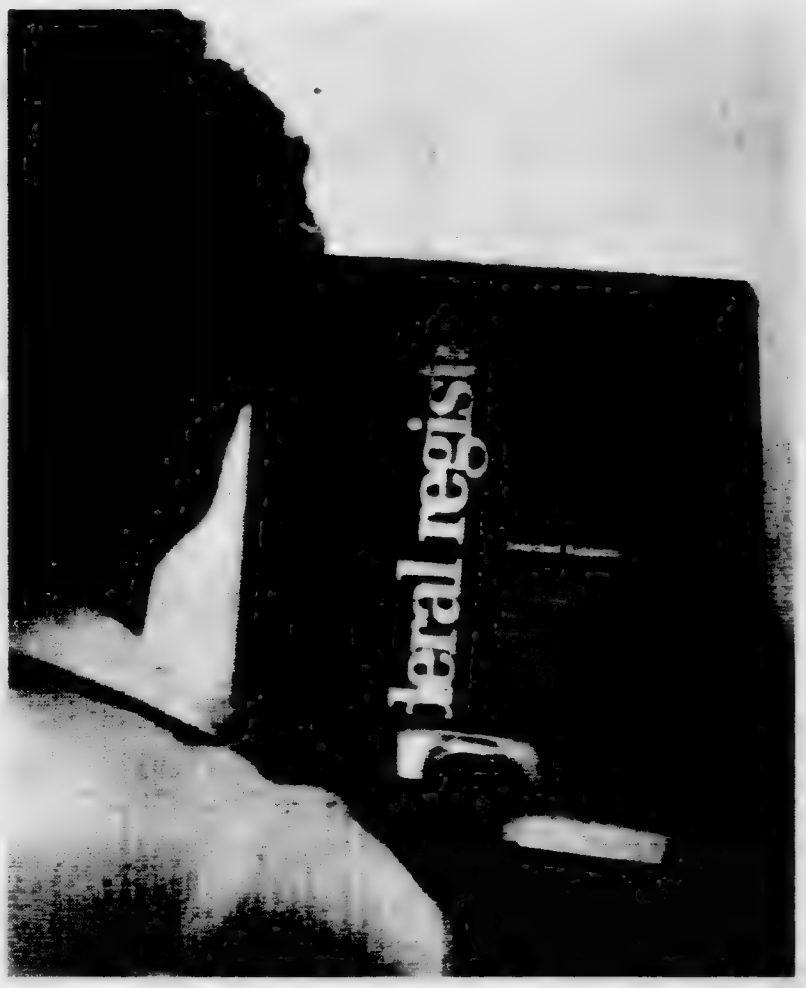


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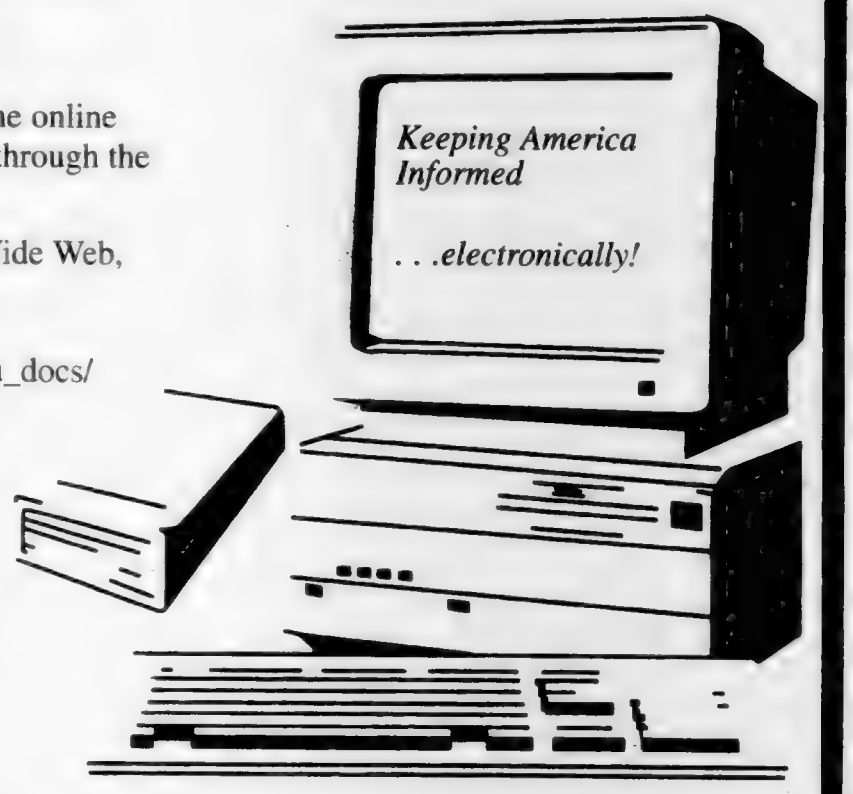


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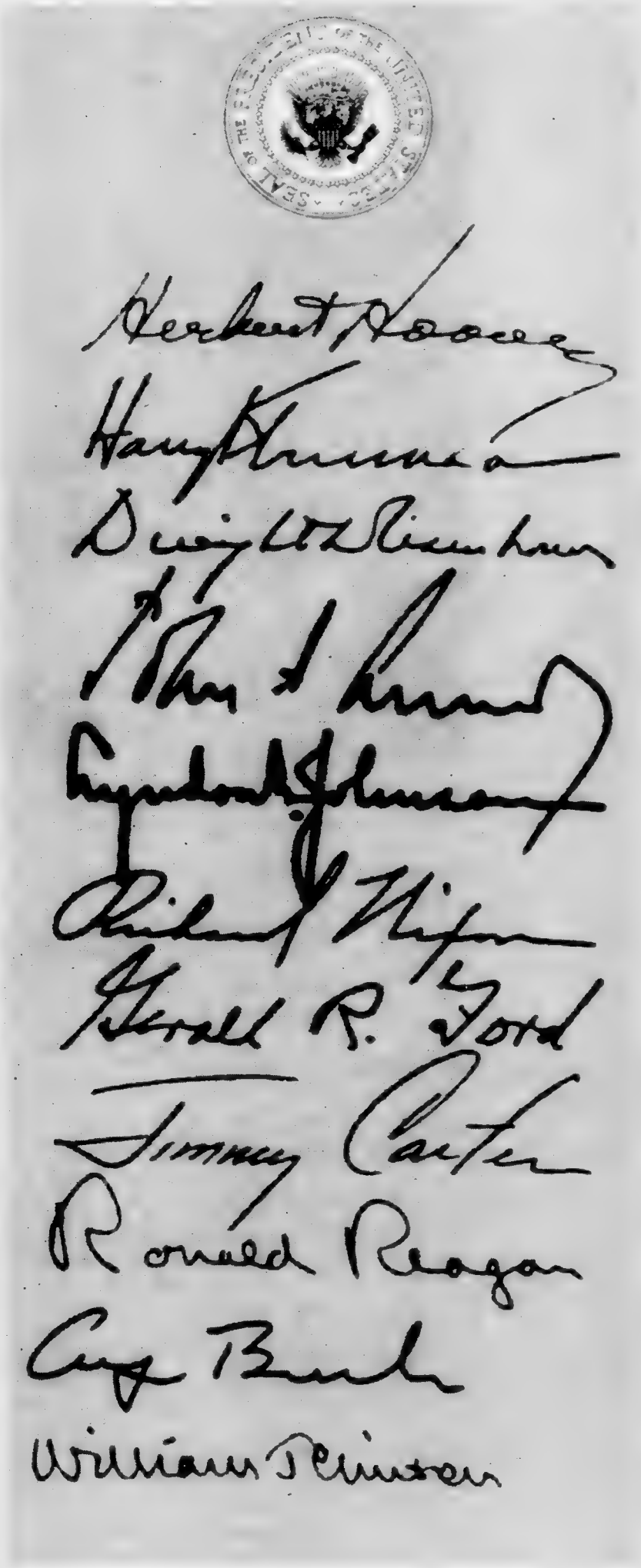


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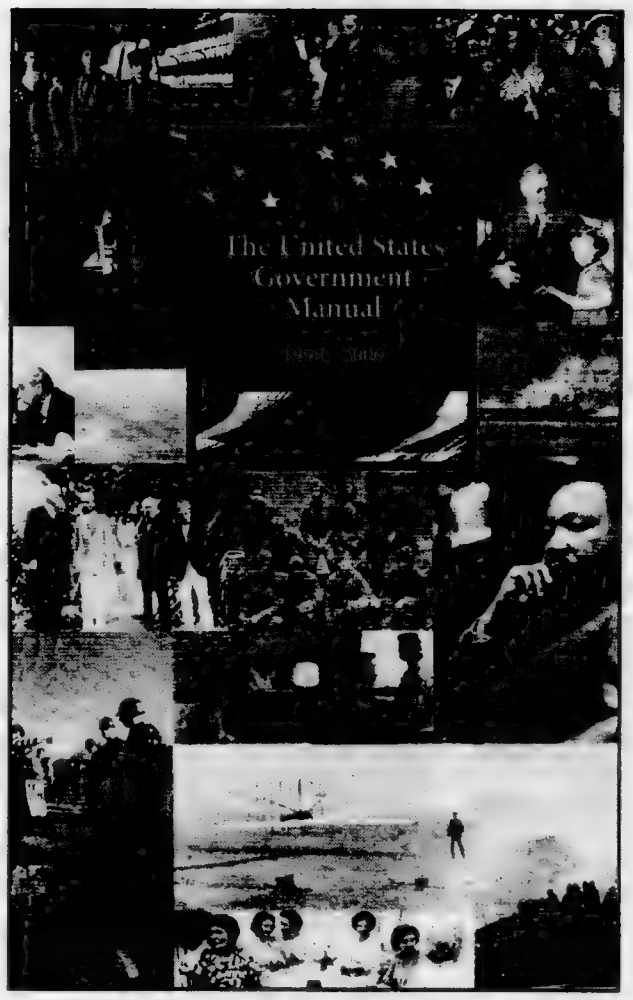


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# Rules and Regulations

Federal Register
Vol. 65, No. 95
Tuesday, May 16, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[TD 8883]**

**RIN 1545–AW53**

## Guidance Under Section 1032 Relating to the Treatment of a Disposition by An Acquiring Entity of the Stock of a Corporation in a Taxable Transaction

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the treatment of a disposition by a corporation or partnership (the acquiring entity) of the stock of a corporation (the issuing corporation) in a taxable transaction. The final regulations interpret section 1032 of the internal Revenue Code. They affect persons engaging in certain taxable transactions, as described in the final regulations, occurring after May 16, 2000.

**EFFECTIVE DATE:** These regulations are effective May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Filiz Serbes, (202) 622–7550 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

On September 23, 1998, the Treasury and the IRS issued a notice of proposed rulemaking in the **Federal Register** (63 FR 50816), setting forth rules relating to the treatment of a disposition by a corporation (the acquiring corporation) of the stock of another corporation (the issuing corporation) in a taxable transaction. A public hearing regarding these proposed regulations was held on January 7, 1999. Written comments responding to the notice were received. After consideration of all of the comments, the proposed regulations are adopted as revised by this Treasury decision.

### *Explanation of Revisions and Summary of Comments*

#### The Immediacy Requirement

The proposed regulations adopted a cash purchase model in which certain transactions involving a contribution of issuing corporation stock by an issuing corporation to an acquiring corporation are recast as a contribution of cash by the issuing corporation to the acquiring corporation, which is used by the acquiring corporation to purchase issuing corporation stock from the issuing corporation. As a condition for application of the cash purchase model of the proposed regulations, the proposed regulations adopted the requirement of § 1.1502–13(f)(6)(ii)(B) that the issuing corporation stock received by the acquiring corporation be immediately transferred to acquire money or other property.

A number of commentators requested that the term "immediately" be explicitly defined. Some suggested replacing the temporal requirement with a transactional approach, requiring only that the stock be disposed of "pursuant to a plan of acquisition." Others suggested that the immediacy requirement be waived in certain circumstances, such as with respect to a nonqualified deferred compensation arrangement involving a grantor trust (commonly referred to as a "Rabbi Trust") that is established to provide future benefits to the employees of an acquiring corporation and that is funded with issuing corporation stock.

After considering the purposes of section 1032 and issues of administrative burden and technical complexity, the Treasury and the IRS believe that the immediacy requirement should neither be waived nor construed to permit the acquiring corporation to hold issuing corporation stock for a period of time during which the value of the stock could fluctuate.

The Treasury and the IRS believe that, in a case where the issuing corporation contributes its stock to the acquiring corporation and the acquiring corporation does not immediately dispose of that stock, it is not appropriate to increase the basis of either the issuing corporation stock transferred to the acquiring corporation or the stock of the acquiring corporation held by the issuing corporation. In the cases addressed by the proposed regulations, in which the acquiring corporation exchanges the stock immediately for property owned by a third party, the transaction is indistinguishable from one in which the issuing corporation directly exchanges its stock for the property of the third party (an exchange to which section 1032 would apply) and contributes that property to the acquiring corporation, a transaction whose tax result would be the same as the cash purchase model set forth in the proposed regulations. However, in cases where the acquiring corporation's ownership of the issuing corporation stock is more than transitory, there appears to be no comparable transaction which would generate the same tax consequences as the cash purchase model.

Implementation of an approach that waives the immediacy requirement would raise administrative and policy concerns. If the acquiring corporation were to be permitted to hold the issuing corporation stock for a period of time, the regulations would have to adopt one of two alternative approaches. Under the first alternative, the regulations would provide that the cash purchase model would be deemed to apply at the time that the stock is contributed to the acquiring corporation, giving the acquiring corporation a fair market value basis in the stock. However, such an approach would raise at least two concerns. First, in the case that the issuing corporation stock is not publicly traded, such an approach would impose administrative burdens requiring a valuation of the stock at a time when there is no related transaction to assist in such valuation. Thus, there is a potential for the stock to be overvalued, with a result of inflating the basis in both the contributed issuing corporation stock and the acquiring corporation stock held by the issuing corporation.

Second, even if the valuation were accurate, providing for the cash purchase model on the date of the contribution would facilitate selective loss recognition. If the acquiring corporation could receive the stock at a fair market value basis and hold on to it, then if the value of the stock decreased, the subsidiary could sell the stock and recognize a loss. The Treasury and the IRS believe that it is

inappropriate to issue regulations facilitating selective loss recognition.

Under the second alternative, the regulations would suspend the operation of the cash purchase model until such time as the acquiring corporation actually disposes of the issuing corporation stock. However, such an approach also would give rise to inappropriate tax results. In addition to precluding gain recognition attributable to the zero basis result, this alternative would allow a subsidiary to avoid recognition of gain attributable to real appreciation in this asset.

Assume, for example, a case where the issuing corporation contributes issuing corporation stock worth $100 to the acquiring corporation, the acquiring corporation retains that stock while it appreciates to $300, and then sells the stock for $300 in cash. Absent an immediacy requirement, under the second alternative, the acquiring corporation would be deemed to have purchased the stock for $300 in cash contributed by the issuing corporation immediately before the sale of the stock to the third party. As a result, the acquiring corporation would not recognize any gain or loss, and the issuing corporation would increase its basis in the stock of the acquiring corporation by $300. More than merely avoiding a zero basis result (*i.e.*, taxation on the $100 value in the stock when contributed to the acquiring corporation), neither the acquiring corporation nor the issuing corporation would ever be taxed on the further $200 in appreciation of the issuing corporation stock which occurred while such stock was held by the acquiring corporation. Such a result, which effectively would provide full section 1032 protection for a subsidiary's gain in certain parent stock, would go well beyond addressing the zero basis result, the scope of these regulations.

Because each of those alternatives would be unsatisfactory for the reasons discussed above, the final regulations retain the immediacy requirement without further exception.

Consistent with that determination, and as in the case of any other transaction, the cash purchase model of these regulations applies to arrangements involving Rabbi Trusts only if the immediacy requirement is satisfied. Thus, these regulations do not apply to Rabbi Trust arrangements in which the stock of an issuing corporation is treated for federal tax purposes as owned for a period of time by its subsidiary. However, the Treasury and the IRS have reconsidered certain aspects of Rabbi Trust arrangements and have determined that the fact that trust assets are subject to the claims of creditors of the subsidiary corporation does not necessarily establish that the subsidiary should be treated as a grantor of the trust at the time the trust is funded. Guidance regarding the effects of this reconsideration on existing Rabbi Trusts will be forthcoming. In addition, the final regulations contain a new example describing an arrangement in which the issuing corporation (and not the subsidiary) is treated as the grantor and owner of the Rabbi Trust, with the result that the immediacy requirement is satisfied upon the transfer of issuing corporation stock by the trust to the subsidiary's employees.

Taxpayers could have reasonably anticipated that Rabbi Trust arrangements could not be structured without causing subsidiaries to be treated as grantors and owners of the trust. For that reason and because of the potential ambiguities in interpreting Rev. Rul. 80–76 (1980–1 C.B. 15), the IRS will not challenge a taxpayer's position that no gain is recognized by an acquiring corporation upon the disposition by a Rabbi Trust, established on or before June 15, 2000, of issuing corporation stock if that stock was contributed by the issuing corporation to the Rabbi Trust on or before May 16, 2001.

### Exchanges by the Acquiring Corporation of Stock of the Issuing Corporation for Other Issuing Corporation Stock

Commentators noted that, unlike § 1.1502–13(f)(6)(ii), the recast of the proposed regulations applies even where the acquiring corporation exchanges stock of the issuing corporation for other issuing corporation stock. Allowing a subsidiary to receive parent stock it immediately swaps for other parent stock, which it could hold long term with a cost basis, would facilitate selective loss recognition with respect to parent stock by a subsidiary. Accordingly, the final regulations adopt, as a precondition for the recast, a requirement that the issuing corporation stock not be exchanged for other issuing corporation stock.

### Exchanges by the Acquiring Corporation of Stock of the Issuing Corporation for Acquiring Corporation Debt

Commentators contended that it is unclear whether the proposed regulations are applicable when the acquiring corporation uses issuing corporation stock to satisfy acquiring corporation debt. The Treasury and the IRS believe that the regulations do apply to an exchange of issuing corporation stock for acquiring corporation debt. Although section 1032 refers to an exchange for money or other property and does not expressly refer to exchanges of stock for debt, it is generally acknowledged that section 1032 applies to an exchange of a corporation's stock for its debt, subject to sections 61(a)(12) and 108, which provide that a corporation may have income from a cancellation of indebtedness on an exchange of its stock for its own debt (that is, cancellation of indebtedness income can be realized and recognized when debt is satisfied with stock of the debtor corporation, even though no gain is recognized on the issuance of the stock). Similarly, therefore, the requirement set forth in these regulations that the acquiring corporation transfer issuing corporation stock to acquire money or other property is satisfied where the stock is used to satisfy acquiring corporation debt (although the acquiring corporation may be subject to sections 61(a)(12) and 108). No modifications to the language of the final regulations are needed to achieve this result.

Similarly, a commentator expressed concern that the proposed regulations do not expressly apply to an acquiring corporation's exchange of issuing corporation stock for the acquiring corporation's own outstanding acquiring corporation stock held by a shareholder other than the issuing corporation. The Treasury and the IRS believe that the regulations do apply to such an exchange.

### Acquiring Corporation's Use of Issuing Corporation's Debt

Commentators also requested that the regulations be extended to issuing corporation debt instruments used by the acquiring corporation to acquire money or other property from unrelated third parties. Because section 1032 only refers to corporate stock, debt instruments are beyond the scope of these final regulations.

### Reorganizations Coupled With Taxable Transactions

The proposed regulations do not apply if any party to the exchange receives a substituted basis in the issuing corporation stock. Commentators suggested that the final regulations provide that the above rule does not preclude application of the final regulations if a taxable exchange of issuing corporation stock for property accompanies a reorganization.

The Treasury and the IRS believe that a taxable transaction to which the regulations apply can accompany a reorganization, provided that the exchanges are separate and that the assets acquired in the taxable

transaction and the assets acquired as part of the reorganization can be identified. If these elements can be established, the substituted basis prohibition should not preclude application of the final regulations to the taxable portion of the exchange. Accordingly, clarifying language has been added to § 1.1032–3(c)(3).

Options Without a Readily Ascertainable Fair Market Value

Several commentators asked how the proposed regulations apply to a compensatory stock option without a readily ascertainable fair market value. Pursuant to section 83(e)(3) and § 1.83–7(a), the grant of such options is effectively treated as an open transaction. Section § 1.83–7(a) provides that section 83(a) and (b) applies at the time the option is exercised or is otherwise disposed of. An example has been added to confirm that the final regulations do not apply to such options.

When the option is exercised, section 83(a) and (b) applies to the transfer of stock pursuant to the exercise. If all of the requirements of § 1.1032–3 are met, those regulations apply to determine the treatment accorded the issuing corporation and the acquiring corporation upon transfer of the issuing corporation stock to the employee.

Reversionary Interest in Issuing Corporation Stock

*Examples 4* and *5* of the proposed regulations set forth situations in which either the issuing corporation (*X*) or the acquiring corporation (*Y*) retains a reversionary interest in the issuing corporation stock. One commentator pointed out that the preamble of the proposed regulations does not articulate reasons for concern with reversionary interests.

These facts were included in the examples in the proposed regulations to indicate ownership of the stock for tax purposes.

*Example 6* of the final regulations has been modified to state that *X* retains the only reversionary interest in the *X* stock in the event that *A* forfeits the right to the stock.

Actual Payment for Issuing Corporation Stock

Under the cash purchase model of the proposed regulations, the acquiring corporation is deemed to have purchased the issuing corporation stock from the issuing corporation for fair market value with cash contributed to the acquiring corporation by the issuing corporation. Commentators requested clarification of the tax consequences in cases where the acquiring corporation or another party makes an actual payment to the issuing corporation for issuing corporation stock. Specifically, concern was expressed as to whether any or all of the amounts actually paid to the issuing corporation are treated as a distribution by the acquiring corporation to the issuing corporation. Assume, for example, that the issuing corporation, which owns all the stock of the acquiring corporation, transfers an option for issuing corporation stock to an employee of the acquiring corporation. At a time when one share of issuing corporation stock has a fair market value of $100, that employee exercises the option to acquire one share of issuing corporation stock and pays a strike price of $80 to the issuing corporation. The acquiring corporation pays some or all of the "spread" of $20 to the issuing corporation.

The Treasury and the IRS do not believe that an actual payment to the issuing corporation for issuing corporation stock should be taxed as a distribution with respect to acquiring corporation stock. Accordingly, the final regulations have been modified to provide that the amount of cash deemed contributed by the issuing corporation to the acquiring corporation in the cash purchase model is equal to the difference between the fair market value of the issuing corporation stock and the fair market value of the money or other property received by the issuing corporation as payment from the employee or the acquiring corporation. An example to such effect has been added to the final regulations.

Although in other contexts partial payments received by a shareholder of an acquiring corporation should be characterized as boot under section 351(b), these final regulations integrate such payments into the cash purchase model described above. Because the property transferred by the issuing corporation to the acquiring corporation in this context is the issuing corporation's stock (or is deemed to be cash under the recast of these regulations), characterization of the payment as boot in this context would have no effect. No inference should be drawn from the recast in the final regulations to transactions in which a shareholder receives money or other property in exchange for property other than its own stock.

Section 1.83–6 is currently under study. A cross-reference in § 1.83–6(d) to these final regulations has been added to indicate that the mechanics of § 1.1032–3, rather than the mechanics of § 1.83–6(d), apply to a corporate shareholder's transfer of its own stock to any person in consideration of services performed for another entity where the conditions of the final regulations are satisfied.

Applicability of the Final Regulations in the Partnership Context

Consistent with a suggestion by commentators that the regulations be expanded to apply to transactions involving partnerships, the final regulations treat an acquiring partnership's disposition of the stock of the issuing corporation in the same manner as an acquiring corporation's disposition of such stock. The regulations also have been expanded to apply to transactions in which the stock of the issuing corporation is obtained indirectly by the acquiring entity in any combination of exchanges under sections 721 and 351.

In certain situations where the recast of the final regulations does not apply to the disposition by a partnership of a corporate partner's stock (for example, because the immediacy requirement is not satisfied), realized gain or loss that is allocated to that corporate partner may nonetheless not be recognized pursuant to section 1032. See Rev. Rul. 99–57 (1999–51 I.R.B. 678).

Status of § 1.1502–13(f)(6)(ii)

The Treasury and the IRS believe that the finalization of these § 1.1032–3 regulations renders § 1.1502–13(f)(6)(ii) superfluous because there should be no cases which would be subject to recast under § 1.1502–13(f)(6)(ii), but in which a member would "otherwise recognize gain" as required for § 1.1502–13(f)(6)(ii) to apply. Accordingly, the effective date paragraph in the § 1.1502–13(f)(6) regulations has been modified to limit the applicability of § 1.1502–13(f)(6)(ii) and the last sentence of § 1.1502–13(f)(6)(iv)(A) to periods before the effective date of these regulations.

Status of Rev. Rul. 80–76

The preamble to the proposed regulations states that Rev. Rul. 80–76 (1980–1 C.B. 15) addresses the same issues as the proposed regulations and that, when finalized, the regulations will render Rev. Rul. 80–76 obsolete. In Rev. Rul. 80–76, a majority shareholder of parent transfers parent stock to an employee of its subsidiary corporation as compensation. The holding of the revenue ruling that the subsidiary does not recognize gain or loss on the transfer of the parent stock is now governed by these regulations. An example has been added to the final regulations to clarify how general tax principles (see *Commissioner* v. *Fink*, 483 U.S. 89 (1987)) and these final regulations interact when a shareholder of the parent/issuing corporation compensates

an employee of the subsidiary/acquiring corporation. With the finalization of these regulations, Rev. Rul. 80–76 is obsolete.

Additional Issues and Future Guidance

Since issuance of the proposed regulations, commentators have raised questions regarding the tax treatment of restricted stock and options granted to employees before or in connection with a transaction in which an issuing corporation distributes the stock of the acquiring corporation under section 355 (commonly referred to as a "spin off"). For example, assume that employees of both *X* corporation and its subsidiary *Y* corporation have outstanding options to acquire stock in *X* corporation. In connection with a spin off of the *Y* stock by *X*, the employees of both corporations have their outstanding options converted into options to acquire stock of both *X* and *Y*, with option terms preserving the overall values of the original options. Commentators have requested guidance on the tax consequences to *X* when, after the spin off, employees of *X* exercise options to acquire *Y* stock and, likewise, the tax consequences to *Y* when, after the spin off, employees of *Y* exercise options to acquire *X* stock. Guidance addressing these issues will be forthcoming.

**Effective Date**

Commentators suggested that taxpayers who engaged in transactions described in these final regulations prior to the effective date should be eligible for the tax treatment prescribed by the regulations. While the final regulations are applicable only prospectively, the IRS will not challenge a taxpayer's position taken in a prior period that is consistent with the requirements set forth in the final regulations.

For a discussion of transitional relief concerning certain Rabbi Trust arrangements, see the discussion of the immediacy requirement above.

**Effect on Other Documents**

Rev. Rul. 80–76 (1980–1 C.B. 15) is obsolete.

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information: The principal author of these final regulations is Filiz Serbes of the Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and the Treasury Department participated in its development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.83–6 is amended by adding two sentences to the end of paragraph (d)(1) to read as follows:

**§ 1.83–6 Deduction by employer.**

* * * * *

(d) * * * (1) * * * For special rules that may apply to a corporation's transfer of its own stock to any person in consideration of services performed for another corporation or partnership, see § 1.1032–3. The preceding sentence applies to transfers of stock and amounts paid for such stock occurring on or after May 16, 2000.

* * * * *

**Par. 3.** Section 1.1032–2 is amended by:

1. Revising paragraph (e).
2. Adding paragraph (f).

The addition and revision read as follows:

**§ 1.1032–2 Disposition by a corporation of stock of a controlling corporation in certain triangular reorganizations.**

* * * * *

(e) *Stock options.* The rules of this section shall apply to an option to buy or sell P stock issued by P in the same manner as the rules of this section apply to P stock.

(f) *Effective dates.* This section applies to triangular reorganizations occurring on or after December 23, 1994, except for paragraph (e) of this section, which applies to transfers of stock options occurring on or after May 16, 2000.

**Par. 4.** Section 1.1032–3 is added to read as follows:

**§ 1.1032–3 Disposition of stock or stock options in certain transactions not qualifying under any other nonrecognition provision.**

(a) *Scope.* This section provides rules for certain transactions in which a corporation or a partnership (the acquiring entity) acquires money or other property (as defined in § 1.1032–1) in exchange, in whole or in part, for stock of a corporation (the issuing corporation).

(b) *Nonrecognition of gain or loss*—(1) *General rule.* In a transaction to which this section applies, no gain or loss is recognized on the disposition of the issuing corporation's stock by the acquiring entity. The transaction is treated as if, immediately before the acquiring entity disposes of the stock of the issuing corporation, the acquiring entity purchased the issuing corporation's stock from the issuing corporation for fair market value with cash contributed to the acquiring entity by the issuing corporation (or, if necessary, through intermediate corporations or partnerships). For rules that may apply in determining the issuing corporation's adjustment to basis in the acquiring entity (or, if necessary, in determining the adjustment to basis in intermediate entities), see sections 358, 722, and the regulations thereunder.

(2) *Special rule for actual payment for stock of the issuing corporation.* If the issuing corporation receives money or other property in payment for its stock, the amount of cash deemed contributed under paragraph (b)(1) of this section is the difference between the fair market value of the issuing corporation stock and the amount of money or the fair market value of other property that the issuing corporation receives as payment.

(c) *Applicability.* The rules of this section apply only if, pursuant to a plan to acquire money or other property—

(1) The acquiring entity acquires stock of the issuing corporation directly or indirectly from the issuing corporation in a transaction in which, but for this section, the basis of the stock of the issuing corporation in the hands of the acquiring entity would be determined, in whole or in part, with respect to the issuing corporation's basis in the issuing corporation's stock under section 362(a) or 723;

(2) The acquiring entity immediately transfers the stock of the issuing corporation to acquire money or other property (from a person other than an

entity from which the stock was directly or indirectly acquired);

(3) The party receiving stock of the issuing corporation in the exchange specified in paragraph (c)(2) of this section from the acquiring entity does not receive a substituted basis in the stock of the issuing corporation within the meaning of section 7701(a)(42); and

(4) The issuing corporation stock is not exchanged for stock of the issuing corporation.

(d) *Stock options.* The rules of this section shall apply to an option issued by a corporation to buy or sell its own stock in the same manner as the rules of this section apply to the stock of an issuing corporation.

(e) *Examples.* The following examples illustrate the application of this section:

*Example 1.* (i) *X*, a corporation, owns all of the stock of *Y* corporation. *Y* reaches an agreement with *C*, an individual, to acquire a truck from *C* in exchange for 10 shares of *X* stock with a fair market value of $100. To effectuate *Y*'s agreement with *C*, *X* transfers to *Y* the *X* stock in a transaction in which, but for this section, the basis of the *X* stock in the hands of *Y* would be determined with respect to *X*'s basis in the *X* stock under section 362(a). *Y* immediately transfers the *X* stock to *C* to acquire the truck.

(ii) In this *Example 1*, no gain or loss is recognized on the disposition of the *X* stock by *Y*. Immediately before *Y*'s disposition of the *X* stock, *Y* is treated as purchasing the *X* stock from *X* for $100 of cash contributed to *Y* by *X*. Under section 358, *X*'s basis in its *Y* stock is increased by $100.

*Example 2.* (i) Assume the same facts as *Example 1*, except that, rather than *X* stock, *X* transfers an option with a fair market value of $100 to purchase *X* stock.

(ii) In this *Example 2*, no gain or loss is recognized on the disposition of the *X* stock option by *Y*. Immediately before *Y*'s disposition of the *X* stock option, *Y* is treated as purchasing the *X* stock option from *X* for $100 of cash contributed to *Y* by *X*. Under section 358, *X*'s basis in its *Y* stock is increased by $100.

*Example 3.* (i) *X*, a corporation, owns all of the outstanding stock of *Y* corporation. *Y* is a partner in partnership *Z*. *Z* reaches an agreement with *C*, an individual, to acquire a truck from *C* in exchange for 10 shares of *X* stock with a fair market value of $100. To effectuate *Z*'s agreement with *C*, *X* transfers to *Y* the *X* stock in a transaction in which, but for this section, the basis of the *X* stock in the hands of *Y* would be determined with respect to *X*'s basis in the *X* stock under section 362(a). *Y* immediately transfers the *X* stock to *Z* in a transaction in which, but for this section, the basis of the *X* stock in the hands of *Z* would be determined under section 723. *Z* immediately transfers the *X* stock to *C* to acquire the truck.

(ii) In this *Example 3*, no gain or loss is recognized on the disposition of the *X* stock by *Z*. Immediately before *Z*'s disposition of the *X* stock, *Z* is treated as purchasing the *X* stock from *X* for $100 of cash indirectly contributed to *Z* by *X* through an intermediate corporation, *Y*. Under section 722, *Y*'s basis in its *Z* partnership interest is increased by $100, and, under section 358, *X*'s basis in its *Y* stock is increased by $100.

*Example 4.* (i) *X*, a corporation, owns all of the outstanding stock of *Y* corporation. *B*, an individual, is an employee of *Y*. Pursuant to an agreement between *X* and *Y* to compensate *B* for services provided to *Y*, *X* transfers to *B* 10 shares of *X* stock with a fair market value of $100. Under § 1.83-6(d), but for this section, the transfer of *X* stock by *X* to *B* would be treated as a contribution of the *X* stock by *X* to the capital of *Y*, and immediately thereafter, a transfer of the *X* stock by *Y* to *B*. But for this section, the basis of the *X* stock in the hands of *Y* would be determined with respect to *X*'s basis in the *X* stock under section 362(a).

(ii) In this *Example 4*, no gain or loss is recognized on the deemed disposition of the *X* stock by *Y*. Immediately before *Y*'s deemed disposition of the *X* stock, *Y* is treated as purchasing the *X* stock from *X* for $100 of cash contributed to *Y* by *X*. Under section 358, *X*'s basis in its *Y* stock is increased by $100.

*Example 5.* (i) *X*, a corporation, owns all of the outstanding stock of *Y* corporation. *B*, an individual, is an employee of *Y*. To compensate *B* for services provided to *Y*, *B* is offered the opportunity to purchase 10 shares of *X* stock with a fair market value of $100 at a reduced price of $80. *B* transfers $80 and *Y* transfers $10 to *X* as partial payment for the *X* stock.

(ii) In this *Example 5*, no gain or loss is recognized on the deemed disposition of the *X* stock by *Y*. Immediately before *Y*'s deemed disposition of the *X* stock, *Y* is treated as purchasing the *X* stock from *X* for $100, $80 of which *Y* is deemed to have received from *B*, $10 of which originated with *Y*, and $10 of which is deemed to have been contributed to *Y* by *X*. Under section 358, *X*'s basis in its *Y* stock is increased by $10.

*Example 6.* (i) *X*, a corporation, owns stock of *Y*. To compensate *Y*'s employee, *B*, for services provided to *Y*, *X* issues 10 shares of *X* stock to *B*, subject to a substantial risk of forfeiture. *B* does not have an election under section 83(b) in effect with respect to the *X* stock. *X* retains the only reversionary interest in the *X* stock in the event that *B* forfeits the right to the stock. Several years after *X*'s transfer of the *X* shares, the stock vests. At the time the stock vests, the 10 shares of *X* stock have a fair market value of $100. Under § 1.83-6(d), but for this section, the transfer of the *X* stock by *X* to *B* would be treated, at the time the stock vests, as a contribution of the *X* stock by *X* to the capital of *Y*, and immediately thereafter, a disposition of the *X* stock by *Y* to *B*. The basis of the *X* stock in the hands of *Y*, but for this section, would be determined with respect to *X*'s basis in the *X* stock under section 362(a).

(ii) In this *Example 6*, no gain or loss is recognized on the deemed disposition of *X* stock by *Y* when the stock vests. Immediately before *Y*'s deemed disposition of the *X* stock, *Y* is treated as purchasing *X*'s stock from *X* for $100 of cash contributed to *Y* by *X*. Under section 358, *X*'s basis in its *Y* stock is increased by $100.

*Example 7.* (i) Assume the same facts as in *Example 6*, except that *Y* (rather than *X*) retains a reversionary interest in the *X* stock in the event that *B* forfeits the right to the stock. Several years after *X*'s transfer of the *X* shares, the stock vests.

(ii) In this *Example 7*, this section does not apply to *Y*'s deemed disposition of the *X* shares because *Y* is not deemed to have transferred the *X* stock to *B* immediately after receiving the stock from *X*. For the tax consequences to *Y* on the deemed disposition of the *X* stock, see § 1.83–6(b).

*Example 8.* (i) *X*, a corporation, owns all of the outstanding stock of *Y* corporation. In Year 1, *X* issues to *Y*'s employee, *B*, a nonstatutory stock option to purchase 10 shares of *X* stock as compensation for services provided to *Y*. The option is exercisable against *X* and does not have a readily ascertainable fair market value (determined under § 1.83–7(b)) at the time the option is granted. In Year 2, *B* exercises the option by paying *X* the strike price of $80 for the *X* stock, which then has a fair market value of $100.

(ii) In this *Example 8*, because, under section 83(e)(3), section 83(a) does not apply to the grant of the option, paragraph (d) of this section also does not apply to the grant of the option. Section 83 and § 1.1032–3 apply in Year 2 when the option is exercised; thus, no gain or loss is recognized on the deemed disposition of *X* stock by *Y* in Year 2. Immediately before *Y*'s deemed disposition of the *X* stock in Year 2, *Y* is treated as purchasing the *X* stock from *X* for $100, $80 of which *Y* is deemed to have received from B and the remaining $20 of which is deemed to have been contributed to *Y* by *X*. Under section 358, *X*'s basis in its *Y* stock is increased by $20.

*Example 9.* (i) *A*, an individual, owns a majority of the stock of *X*. *X* owns stock of *Y* constituting control of *Y* within the meaning of section 368(c). *A* transfers 10 shares of its *X* stock to B, a key employee of *Y*. The fair market value of the 10 shares on the date of transfer was $100.

(ii) In this *Example 9*, *A* is treated as making a nondeductible contribution of the 10 shares of *X* to the capital of *X*, and no gain or loss is recognized by *A* as a result of this transfer. See *Commissioner v. Fink*, 483 U.S. 89 (1987). *A* must allocate his basis in the transferred shares to his remaining shares of *X* stock. No gain or loss is recognized on the deemed disposition of the *X* stock by *Y*. Immediately before *Y*'s disposition of the *X* stock, *Y* is treated as purchasing the *X* stock from *X* for $100 of cash contributed to *Y* by *X*. Under section 358, *X*'s basis in its *Y* stock is increased by $100.

*Example 10.* (i) In Year 1, *X*, a corporation, forms a trust which will be used to satisfy deferred compensation obligations owed by *Y*. *X*'s wholly owned subsidiary, to *Y*'s employees. *X* funds the trust with *X* stock, which would revert to *X* upon termination of the trust, subject to the employees' rights to be paid the deferred compensation due to them. The creditors of *X* can reach all the trust assets upon the insolvency of *X*. Similarly, *Y*'s creditors can reach all the trust assets upon the insolvency of *Y*. In Year 5, the trust transfers *X* stock to the employees

of *Y* in satisfaction of the deferred compensation obligation.

(ii) In this *Example 10*, *X* is considered to be the grantor of the trust, and, under section 677, *X* is also the owner of the trust. Any income earned by the trust would be reflected on *X*'s income tax return. *Y* is not considered a grantor or owner of the trust corpus at the time *X* transfers *X* stock to the trust. In Year 5, when employees of *Y* receive X stock in satisfaction of the deferred compensation obligation, no gain or loss is recognized on the deemed disposition of the *X* stock by *Y*. Immediately before *Y*'s deemed disposition of the *X* stock, *Y* is treated as purchasing the *X* stock from *X* for fair market value using cash contributed to *Y* by *X*. Under section 358, *X*'s basis in its *Y* stock increases by the amount of cash deemed contributed.

(f) *Effective date.* This section applies to transfers of stock or stock options of the issuing corporation occurring on or after May 16, 2000.

**Par. 5.** In § 1.1502–13, paragraph (f)(6)(v) is amended by adding a sentence after the first sentence to read as follows:

**§ 1.1502–13 Intercompany transactions.**

* * * * *

(f) * * *

(6) * * *

(v) *Effective date.* * * * However, paragraph (f)(6)(ii) of this section and the last sentence of paragraph (f)(6)(iv)(A) of this section do not apply to dispositions of P stock or options occurring on or after May 16, 2000.

* * * * *

Approved: May 5, 2000.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

**Jonathan Talisman;**

*Assistant Secretary of the Treasury.*

[FR Doc. 00–11900 Filed 5–11–00; 2:30 pm]

BILLING CODE 4830–01–P

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[TD 8882]**

**RIN 1545–AV86**

## Reorganizations; Nonqualified Preferred Stock

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to nonqualified preferred stock and rights to acquire nonqualified preferred stock. The regulations are necessary to reflect changes to the law concerning these instruments that were made by the Taxpayer Relief Act of 1997. The regulations affect shareholders who receive nonqualified preferred stock, or rights to acquire such stock, in certain corporate reorganizations and divisions.

**EFFECTIVE DATE:** These regulations are effective May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michael J. Danbury, (202) 622–7750 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background and Explanation of Provisions

On January 6, 1998, a temporary regulation (TD 8753) was published in the **Federal Register** (63 FR 411). A notice of proposed rulemaking (REG–121755–97) cross-referencing the temporary regulation was published in the **Federal Register** (63 FR 453) on the same day.

The temporary regulation provided that, notwithstanding contemporaneously issued final regulations treating certain rights to acquire stock as securities that can be received tax-free in corporate reorganizations and divisions, nonqualified preferred stock (as defined in section 351(g)(2) of the Internal Revenue Code) (NQPS), or a right to acquire NQPS, will in some circumstances not be treated as stock or securities for purposes of sections 354, 355, and 356. The temporary regulation added § 1.356–6T, and applied to NQPS received in connection with a transaction occurring on or after March 9, 1998 (other than certain recapitalizations of family-owned corporations and transactions described in section 1014(f)(2) of the Taxpayer Relief Act of 1997, Public Law 105–34, 111 Stat. 788, 921). No written comments responding to the notice of proposed rulemaking were received, and no public hearing was requested or held.

The regulation proposed by REG–121755–97 is adopted by this Treasury decision, and the corresponding temporary regulation is removed. Cross-references to the temporary regulation in §§ 1.354–1(e), 1.355–1(c), and 1.356–3(b) have been removed and replaced with cross-references to the final regulation at § 1.356–6.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these regulations is Michael J. Danbury of the Office of Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.356–6 also issued under 26 U.S.C. 351(g)(4). * * *

**§ 1.354–1 [Amended]**

**Par. 2.** In § 1.354–1, paragraph (e), first sentence, the language "§ 1.356–6T" is removed and "§ 1.356–6" is added in its place.

**§ 1.355–1 [Amended]**

**Par. 3.** In § 1.355–1, paragraph (c), first sentence, the language "§ 1.356–6T" is removed and "§ 1.356–6" is added in its place.

**§ 1.356–3 [Amended]**

**Par. 4.** In § 1.356–3, paragraph (b), first sentence, the language "§ 1.356–6T" is removed and "§ 1.356–6" is added in its place.

**Par. 5.** Section 1.356–6T is redesignated as § 1.356–6 and the section heading is revised to read as follows:

**§ 1.356–6 Rules for treatment of nonqualified preferred stock as other property.**

* * * * *

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: May 5, 2000.

**Jonathan Talisman,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–11899 Filed 5–15–00; 8:45 am]

**BILLING CODE 4830–01–U**

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 275

**[T.D. ATF–424a]**

**RIN 1512–AB92**

### Implementation of Public Law 105–33, Section 9302, Relating to the Imposition of Permit Requirements on the Manufacturer of Roll-Your-Own Tobacco (98R–370P)

**ACTION:** Temporary rule; correction.

**SUMMARY:** This document corrects a section of regulations that was erroneously revised in a temporary rule (T.D. ATF–424) published in the **Federal Register** of December 22, 1999, regarding the imposition of permit requirements on manufacturers of roll-your-own tobacco.

**DATES:** This rule is effective May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226 (202–927–8210).

**SUPPLEMENTARY INFORMATION:** The Bureau of Alcohol, Tobacco and Firearms (ATF) published a document in the **Federal Register** of December 22, 1999 (64 FR 71929). We erroneously revised § 275.117(e). This document corrects that error.

In rule FR Doc. 99–32602 published on December 22, 1999, on page 71932, in the third column, remove the instruction and amendatory text in paragraph 25.

Signed: May 9, 2000.

**Bradley A. Buckles,**

*Director.*

[FR Doc. 00–12160 Filed 5–15–00; 8:45 am]

**BILLING CODE 4810–31–P**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 767

**RIN 0703–AA57**

### Application Guidelines for Archeological Research Permits on Ship and Aircraft Wrecks Under the Jurisdiction of the Department of the Navy

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Final rule.

**SUMMARY:** This final rule adds guidelines for obtaining Department of the Navy (DON) archeological research permits for those applying for permission to conduct research on, and/or recover, ship or aircraft wrecks under the jurisdiction of the DON. This permit process will assist the DON in managing and protecting its historic ship and aircraft wrecks. This rule will provide clear guidance on the permit application requirements to conduct research on, and/or recover, DON ship and aircraft wrecks.

**DATES:** Effective May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Dr. Robert S. Neyland, Underwater Archeologist, or Barbara A. Voulgaris, 202–433–2210.

**SUPPLEMENTARY INFORMATION:** On November 19, 1999 (64 FR 63263), the Department of the Navy (DON) published a notice of proposed rulemaking on the application guidelines for archeological research permits on Submerged Cultural Resources under the jurisdiction of DON. The comment period closed on January 18, 2000. Interested persons have been afforded the opportunity to participate in the making of this rule. Seven comments were submitted in response to the notice of proposed rulemaking. The comments from cultural resource professionals focused on the meaning of several definitions. In particular, there was a concern that the term "submerged cultural resources" would include more than ship and aircraft wrecks and the term would exclude ship and aircraft wrecks on land. As a result, a change was made to replace the terms "submerged cultural resources" and "underwater cultural resources" with "ship and aircraft wrecks". Also adopted were suggestions that provide additional time in the permit review process, to increase the permit duration, and to clarify guidance on state participation when a DON resource is on a State bottomland. Comments from those representing salvage interests were generally against restrictions. These comments and suggestions were carefully considered, but most were not adopted since they were in opposition to our goal of protecting DON cultural resources.

As background, in 1993, DON initiated an archeological management program for its historic ship and aircraft wreck sites. This was aided in part by the U.S. Department of Defense (DoD) Legacy Resource Management Program that was established by Congress in 1991, 10 U.S.C. 114, to provide DoD with an opportunity to enhance the management of DoD stewardship resources. The U.S. Naval Historical Center's (NHC) Office of Underwater Archeology is the DON command responsible for managing the DON's ship and aircraft wrecks under the guidelines of the Federal Archeological Program. Under the National Historic Preservation Act of 1966 as amended (NHPA), 16 U.S.C. 470 (1999), DON is obligated to protect historic properties, including ship and aircraft wrecks, for which it has custodial responsibilities. The NHPA directs federal agencies to manage their cultural resource properties in a way that emphasizes preservation and minimizes the impact of undertakings that might adversely affect such properties. Management of DON cultural resources such as ship and aircraft wrecks is not only a matter of preservation. The issues of gravesites, unexploded ordnance, and potential military usage of recovered weapons systems must also be addressed in wrecksite management.

**Custody and Management of DON Ship and Aircraft Wrecksites**

a. DON ship and aircraft wrecks are government property in the custody of DON. These seemingly abandoned wrecks remain government property until specific formal action is taken to dispose of them. DON custody of its wrecks is based on the property clause of the U.S. Constitution and international maritime law, and is consistent with Articles 95 and 96 of the Law of the Sea Convention. These laws establish that right, title, or ownership of Federal property is not lost to the government due to the passage of time. Department of the Navy ships and aircraft cannot be abandoned without formal action as authorized by Congress. Aircraft and ships stricken from the active inventory list are not considered formally disposed of or abandoned. Through the sovereign immunity provisions of admiralty law, DON retains custody of all its naval vessels and aircraft, whether lost in U.S., foreign, or international boundaries.

b. Divers may dive on DON wrecks at their own risk; however, Federal property law dictates that no portion of a government wreck may be disturbed or removed. The DON strongly encourages cooperation with other agencies and individuals interested in preserving our maritime and aviation heritage. Diving on sunken DON ships and aircraft located in units of the national park system or the national marine sanctuary system may be prohibited unless authorized by a Federal land manager.

c. The diving public is encouraged to report the location of underwater ship and aircraft wrecksites to the NHC. Documentation of these wreck locations allows the DON to evaluate and preserve important sites for the future. Under no circumstances will salvage of DON aircraft or shipwrecks be undertaken without prior and specific written approval by the NHC.

d. Wrecksites that are not entire aircraft or ships, but are parts strewn in a debris field, are considered potential archeological sites. Such sites still contain DON property and must be managed by the DON in accordance with the NHPA, the Secretary of the Interior's Standards and Guidelines on Archeology and Historic Preservation, 48 FR 44716 (1983), and departmental regulations. Permits for recovery of DON ship or aircraft wrecks will be considered only for educational or scientific reasons. It is unlikely DON will recommend the disposal and sale of a DON ship or aircraft wreck that is eligible for listing on the National Register of Historic Places. The DON maintains a policy of not disposing of wrecked ships and aircraft for the following reasons:

1. Congress has mandated through the NHPA that DON make every effort to preserve its historic cultural resources;

2. The remains of crewmembers, if any, deserve respect and should remain undisturbed unless proper retrieval and burial become necessary;

3. There is a possibility that live explosives or ordnance may still be associated with the vessel or aircraft;

4. The arbitrary disposal and sale of wrecks may foster commercial exploitation of cultural resources and;

5. The abandonment of wrecks could deplete a finite inventory of significant cultural resources.

**Matters of Regulatory Procedure**

*Executive Order 12866, Regulatory Planning and Review.* This rule does not meet the definition of "significant regulatory action" for purposes of E.O. 12866.

*Executive Order 13132, Federalism.* It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will have little or no direct effect on States or local governments.

*Regulatory Flexibility Act.* This rule will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

*Paperwork Reduction Act.* This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR part 1320).

**List of Subjects in 32 CFR Part 767**

Aircraft, Archeology, Educational research, Government property, Government property management, Historic preservation, Research, Vessels.

For the reasons stated in the preamble, the Department of the Navy adds 32 CFR part 767 to read as follows:

## PART 767—APPLICATION GUIDELINES FOR ARCHEOLOGICAL RESEARCH PERMITS ON SHIP AND AIRCRAFT WRECKS UNDER THE JURISDICATION OF THE DEPARTMENT OF THE NAVY

**Subpart A—Regulations and Obligations**

Sec.
767.1 Purpose.
767.2 Definitions.
767.3 Policy.

**Subpart B—Permit Guidelines**

Sec.
767.4 Application for permit.
767.5 Evaluation of permit application.
767.6 Credentials of principal investigator.
767.7 Conditions of permits.
767.8 Requests for amendments or extensions of active permits.
767.9 Content of permit holder's final report.
767.10 Monitoring of performance.
767.11 Violations of permit conditions.
767.12 References for submission of permit application to conduct archeological research.

**Authority:** 5 U.S.C. 301; 16 U.S.C. 470.

### Subpart A—Regulations and Obligations

**§ 767.1 Purpose.**

(a) The purpose of this part is to establish the requirement and procedural guidelines for permits to conduct research on and/or recover Department of the Navy (DON) ship and aircraft wrecks.

(b) The U.S. Naval Historical Center's (NHC) Office of Underwater Archeology is the DON command responsible for managing DON ship and aircraft wrecks under the guidelines of the Federal Archeological Program. In order for the NHC's management policy to be consistent with the Federal Archeology Program, and the goals of the NHPA, DON has implemented a permitting process applicable to DON property consistent with and applying the Archeological Resources Protection Act of 1979 as amended (ARPA), 16 U.S.C. 470aa–mm, permitting criteria. Department of the Navy policies regarding its ship and aircraft wrecks are consistent with ARPA permitting requirements. Department of the Navy application of ARPA permitting criteria promotes consistency among federal agencies and meets DON's responsibilities under the NHPA while allowing qualified non-federal and private individuals and entities access to DON historic ship and aircraft wrecks.

(c) To assist NHC in managing, protecting, and preserving DON ship and aircraft wrecks.

**§ 767.2 Definitions.**

*Aircraft wreck* means the physical remains of an aircraft, intact or otherwise, its cargo, and other contents. Aircraft wrecks are classified as either historic structures or archeological sites.

*Archeological site* means the location of an event, a prehistoric or historic occupation or activity, or a building or structure, whether standing, ruined, or vanished, where the location itself maintains historical or archeological value regardless of the value of any existing structure. A ship or aircraft wreck, along with its debris field, is an archaeological site when it lacks the structural integrity of an intact aircraft or vessel and when it and its location retain archeological or historical value regardless of the value of any existing remains.

*Artifact means* any object or assemblage of objects, regardless of age, whether in situ or not, that may carry archeological or historical information that yields or is likely to yield information to the scientific study of culture or human history.

*Cultural resource* means any prehistoric or historic district, site, building, structure, or object, including artifacts, records, and material remains related to such a property or resource. Historic aircraft wrecks or shipwrecks are classified as either archeological sites or historic structures.

*Gravesite* means any natural or prepared physical location, whether

originally below, on, or above the surface of the earth, where individual human remains are deposited.

*Historic structure* means a structure made up of interdependent and interrelated parts in a definite pattern or organization. Constructed by humans, it is often an engineering project large in scale. An aircraft wreck or shipwreck is a historic structure when it is relatively intact and when it and its location retain historical, architectural, or associative value.

*Permit holder* means any person authorized and given the exclusive right by the NHC to conduct any activity under these regulations.

*Permitted activity* means any activity that is authorized by the NHC under the regulations in this part.

*Research vessel* means any vessel employed for scientific purposes under the regulations in this part.

*Ship wreck* means the physical remains of a vessel, intact or otherwise, its cargo, and other contents. Shipwrecks are classified as either historic structures or archeological sites.

*Wrecksite* means the location of a ship or aircraft that has been sunk, crashed, ditched, damaged, or stranded. The wreck may be intact or scattered, may be on land or in water, and may be a structure or a site. The site includes the physical remains of the wreck and all other associated artifacts.

**§ 767.3 Policy.**

(a) The Naval Historical Center's policy has been to evaluate each DON ship and aircraft wreck on an individual basis. In some cases, the removal of DON ship and aircraft wrecks may be necessary or appropriate to protect the cultural resource and/or to fulfill other NHC goals, such as those encompassing research, education, public access, and appreciation. Recovery of DON ship and aircraft wrecks may be justified in specific cases where the existence of a cultural resource may be threatened. Therefore, recovery of some or all of a cultural resource may be permitted for identification and/or investigation to answer specific questions; or the recovery presents an opportunity for public research or education.

(b) Generally, DON ship and aircraft wrecks will be left in place unless artifact removal or site disturbance is justified and necessary to protect DON ship and aircraft wrecks, to conduct research, or provide public education and information that is otherwise inaccessible. While NHC prefers non-destructive, in situ research on DON ship and aircraft wrecks, it recognizes that site disturbance and/or artifact recovery is sometimes necessary. At such times, site disturbance and/or archeological recovery may be permitted, subject to conditions specified by NHC.

## Subpart B—Permit Guidelines

**§ 767.4 Application for permit.**

(a) To request a permit application form, please write to: Department of the Navy, U.S. Naval Historical Center, Office of the Underwater Archeologist, 805 Kidder Breese St. SE, Washington Navy Yard, DC 20374–5060. Telefax number: 202–433–2729.

(b) Applicants must submit three copies of their completed application at least 120 days in advance of the requested effective date to allow sufficient time for evaluation and processing. Requests should be sent to the Department of the Navy, U.S. Naval Historical Center, Office of the Underwater Archeologist, 805 Kidder Breese St. SE, Washington Navy Yard, DC 20374–5060.

(c) If the applicant believes that compliance with one or more of the factors, criteria, or procedures in the guidelines contained in this part is not practicable, the applicant should set forth why and explain how the purposes of NHC are better served without compliance with the specified requirements. Permits are valid for one year from the issue date.

**§ 767.5 Evaluation of permit application.**

(a) Permit applications for archeological research are reviewed for completeness, compliance with program policies, and adherence to the guidelines of this subpart. Incomplete applications will be returned to the applicant for clarification. Complete applications are reviewed by NHC personnel and, when necessary, outside experts. In addition to the criteria set forth in § 767.6, applications are also judged on the basis of: relevance or importance; archeological merits; appropriateness and environmental consequences of technical approach; and qualifications of the applicants.

(b) Under certain circumstances, it may be necessary to consult with the State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP) about the need to comply with section 106 of the NHPA. A section 106 review may require the NHC to consult with the appropriate SHPO and the ACHP. The ACHP review can take up to 60 days beyond the NHC's required 120-day review. Therefore, the entire review process may take up to 180 days.

(c) The NHC shall send applications for research at sites located in units of the national park system, national wildlife refuge system, and national marine sanctuary system to the appropriate Federal land manager for review. The Federal land manager is responsible for ensuring that the proposed work is consistent with any management plan or established policy, objectives or requirements applicable to the management of the public lands concerned. NHC shall send applications for research at sites located on state bottomlands to the appropriate state agency for review. The burden of obtaining any and all additional permits or authorizations, such as from a state or foreign government or agency, private individual or organization, or from another federal agency, is on the applicant.

(d) Based on the findings of the NHC evaluation, the NHC Underwater Archeologist will recommend an appropriate action to the NHC Director. If approved, NHC will issue the permit; if denied, applicants are notified of the reason for denial and may appeal within 30 days of receipt of the denial. Appeals must be submitted in writing to: Director of Naval History, Naval Historical Center, 805 Kidder Breese St. SE, Washington Navy Yard, DC 20374–5060.

**§ 767.6 Credentials of principal investigator.**

A resume or curriculum vitae detailing the professional qualifications and professional publications and papers of the principal investigator (PI) must be submitted with the permit application. The PI must have: a graduate degree in archeology, anthropology, maritime history, or a closely related field; at least one year of professional experience or equivalent specialized training in archeological research, administration or management; at least four months of supervised field and analytic experience in general North American historic archaeology and maritime history; the demonstrated ability to carry research to completion; and at least one year of full-time professional experience at a supervisory level in the study of historic marine archeological resources. This person shall be able to demonstrate ability in comprehensive analysis and interpretation through authorship of reports and monographs.

**§ 767.7 Conditions of permits.**

(a) Upon receipt of a permit, permit holders must counter-sign the permit and return copies to the NHC and the applicable SHPO, Federal or State land manager, or foreign government official prior to conducting permitted activities

on the site. Copies of countersigned permits should also be provided to the applicable federal land manager when the sunken vessel or aircraft is located within a unit of the national park system, the national wildlife refuge system, or the national marine sanctuary system.

(b) Permits must be carried aboard research vessels and made available upon request for inspection to regional preservation personnel or law enforcement officials. Permits are non-transferable. Permit holders must abide by all provisions set forth in the permit as well as applicable state or Federal regulations. Permit holders should abide by applicable regulations of a foreign government when the sunken vessel or aircraft is located in foreign waters. To the extent reasonably possible, the environment must be returned to the condition that existed before the activity occurred.

(c) Upon completion of permitted activities, the permit holder is required to submit to NHC a working and diving log listing days spent in field research, activities pursued, and working area positions.

(d) The permit holder must prepare and submit a final report as detailed in § 767.9, summarizing the results of the permitted activity.

(e) The permit holder must agree to protect all sensitive information regarding the location and character of the wreck site that could potentially expose it to non-professional recovery techniques, looters, or treasure hunters. Sensitive information includes specific location data such as latitude and longitude, and information about a wreck's cargo, the existence of armaments, or the knowledge of gravesites.

(f) All recovered DON cultural resources remain the property of the United States. These resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution and must meet the standards set forth in 36 CFR part 79, Curation of Federally Owned and Administered Archeological Collections, at the expense of the applicant. The repository shall be specified in the permit application.

**§ 767.8 Requests for amendments or extensions of active permits.**

(a) Requests for amendments to active permits (*e.g.*, a change in study design or other form of amendment) must conform to the regulations in this part. All necessary information to make an objective evaluation of the amendment should be included as well as reference to the original application.

(b) Permit holders desiring to continue research activities must reapply for an extension of their current permit before it expires. A pending extension or amendment request does not guarantee extension or amendment of the original permit. Therefore, you must submit an extension request to NHC at least 30 days prior to the original permit's expiration date. Reference to the original application may be given in lieu of a new application, provided the scope of work does not change significantly. Applicants may apply for one-year extensions subject to annual review.

(c) Permit holders may appeal denied requests for amendments or extensions to the appeal authority listed in § 767.5.

**§ 767.9 Content of permit holder's final report.**

The permit holder's final report shall include the following:

(a) A site history and a contextual history relating the site to the general history of the region;

(b) A master site map;

(c) Feature map(s) of the location of any recovered artifacts in relation to their position within the wrecksite;

(d) Photographs of significant site features and significant artifacts both in situ and after removal;

(e) If applicable, a description of the conserved artifacts, laboratory conservation records, and before and after photographs of the artifacts at the conservation laboratory;

(f) A written report describing the site's historical background, environment, archeological field work, results, and analysis;

(g) A summary of the survey and/or excavation process; and

(h) An evaluation of the completed permitted activity that includes an assessment of the permit holder's success of his/her specified goals.

**§ 767.10 Monitoring of performance.**

Permitted activities will be monitored to ensure compliance with the conditions of the permit. NHC on-site personnel, or other designated authorities, may periodically assess work in progress by visiting the study location and observing any activity allowed by the permit or by reviewing any required reports. The discovery of any potential irregularities in performance under the permit will be promptly reported and appropriate action will be taken. Permitted activities will be evaluated and the findings will be used to evaluate future applications.

**§ 767.11 Violations of permit conditions.**

The Director of Naval History, the Underwater Archeologist for DON, or his/her designee may, amend, suspend, or revoke a permit in whole or in part, temporarily or indefinitely, if in his/her view the permit holder has acted in violation of the terms of the permit or of other applicable regulations, or for other good cause shown. Any such action will be communicated in writing to the permit holder and will set forth the reason for the action taken. The permit holder may appeal the action to the appeal authority listed in § 767.5.

**§ 767.12 References for submission of permit application to conduct archeological research.**

(a) National Historic Preservation Act of 1966, as amended (NHPA), 16 U.S.C. 470 *et seq.* (1999), and Protection of Historic Properties, 36 CFR part 800. These regulations govern the Section 106 Review Process established by the NHPA.

(b) Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation published on September 29, 1983 (48 FR 44716). These guidelines establish standards for the preservation planning process with guidelines on implementation.

(c) Archeological Resources Protection Act of 1979, as amended (ARPA), 16 U.S.C. 470aa-mm, and the Uniform Regulations, 43 CFR part 7, subpart A. These regulations establish basic government-wide standards for the issuance of permits for archeological research, including the authorized excavation and/or removal of archeological resources on public lands or Indian lands.

(d) Secretary of the Interior's regulations, Curation of Federally-Owned and Administered Archeological Collections, 36 CFR part 79. These regulations establish standards for the curation and display of federally-owned artifact collections.

(e) Antiquities Act of 1906, Public Law 59–209, 34 Stat. 225 (codified at 16 U.S.C. 431 *et seq.* (1999)).

(f) Executive Order 11593, 36 FR 8291, 3 CFR, 1971–1975 Comp., p. 559 (Protection and Enhancement of the Cultural Environment).

(g) Department of Defense Instruction 4140.21M (DoDI 4120.21M, August 1998). Subject: Defense Disposal Manual.

(h) Secretary of the Navy Instruction 4000.35 (SECNAVINST 4000.35, 17 August 1992). Subject: Department of the Navy Cultural Resources Program.

(i) Naval Historical Center Instruction 5510.4. (NAVHISTCENINST 5510.4, 14

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December 1995). Subject: Disclosure of Information from the Naval Shipwreck Database.

Dated: April 26, 2000.

**J. L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corp, Federal Register Liaison Officer.*

[FR Doc. 00–12076 Filed 5–15–00; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Parts 100, 110

**[CGD07–00–014]**

**RIN 2115–AE46, AA98**

## OPSAIL 2000, Port of San Juan, PR

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary regulations in the Port of San Juan, Puerto Rico for OPSAIL 2000 activities from 17 May through 29 May 2000. The Coast Guard is establishing temporary limited access areas and Special Local Regulations to control vessel traffic within the Port of San Juan during this event. This action is necessary to provide for the safety of life on navigable waters during OPSAIL 2000. This action will restrict vessel traffic in portions of the Port of San Juan during specific time periods.

**DATES:** This rule becomes effective at 9 p.m. Atlantic Standard Time (AST) on May 17, 2000, and terminates at 6 p.m. AST on May 29, 2000.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of the docket CGD707–00–014 and are available for inspection or copying at the U.S. Coast Guard Marine Safety Office San Juan, Puerto Rico, between the hours of 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. Marine Safety Office San Juan Puerto Rico is located in the Rodriguez & Del Valle Building, 4th Floor, Calle San Martin, Carr #2 km 4.9, Guaynabo, Puerto Rico 00968.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Robert Le Fevers, U.S. Coast Guard Marine Safety Office, San Juan at (787) 706–2440, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On January 13, 2000, we published an advanced notice of proposed rulemaking (ANRPM) (65 FR 2095), and on March 29, 2000 we published a notice of proposed rulemaking (NPRM) in the **Federal Register** (65 FR 16554) titled OPSAIL 2000, Port of San Juan, PR. We received no comments during the comment period for the ANPRM and two comments during the comment period for the NPRM. No public hearing was requested and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard certifies that good cause exists from making these regulations effective less than 30 days after **Federal Register** publication. There was not sufficient time remaining for a full 30-day delayed effective date after the comment period for the ANPRM and NPRM. Furthermore, the event is very highly publicized.

### Background and Purpose

These temporary regulations are for OPSAIL 2000 events in the Port of San Juan, in San Juan Puerto Rico. These events will be held from May 17 through May 29, 2000, and the Coast Guard estimates many spectator craft and commercial vessels will be in the area during that period. This rule is proposed to provide for the safety of life on navigable waters and to promote maritime safety and protect participants and the Port of San Juan during this event. The restrictions stated for the regulated areas will be enforced at various times throughout the official Opsail 2000 event from May 17–29, 2000.

### Discussion of Rule

These regulations create temporary anchorage regulations and vessel movement controls. Special local regulations will be in effect for San Juan Bay including the waterways and adjacent piers along the Bar Channel, Anegado Channel, San Antonio Channel, Graving Dock Channel, Army Terminal Channel and Puerto Nuevo Channel for the period beginning at 9 p.m. on Friday, May 17 and ending at 6 p.m. on Monday, May 29. The safety of parade participants and spectators will require that spectator craft including, but not limited to, jet skis and sail boards be kept at a safe distance from participating tall ships while the vessels are in the harbor, whether moving, anchored, or tied up at their respective piers. The Bar Channel will be closed to inbound and outbound traffic to San Juan Harbor from 7 a.m. to 6 p.m. on Monday, May 29 during the Parade of Sail. No vessel will be permitted to transit the entrance channel during that time without permission from the Captain of the Port. This is required to ensure the safety of Tall Ships during the Parade of Sail event. Vessel movements inside the Port of San Juan will be prohibited from 7 a.m. to 12 p.m. on May 29, 2000, except Tall Ships departing for the Parade of Sail, Law Enforcement Patrol vessels, and the Puerto Rico Ports Authority ferries. This is required to ensure the safety of participating Tall Ships as they queue up to depart San Juan Bay during the Parade of Sail. The San Juan Harbor entrance must be kept clear to ensure safety of participant vessels. Normal commercial vessel operations will resume within the harbor from noon to 6 p.m., and through the harbor entrance after all participant vessels have cleared the harbor.

These regulations establish multiple limited access areas and temporarily modify existing anchorage areas within the port area to provide for maximum spectator viewing areas and traffic patterns for deep draft and barge traffic.

The Parade of Sail route will extend from the EL MORRO Fortress, coastwise to Boca de Cangrejos Inlet where participants will turn to the west, set sail, and return to EL MORRO. The safety of parade participants and spectators will require that spectator craft including jet skis and sail boards be kept at a minimum of 300 yards from parade vessels while the vessels are in the parade route.

The vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life. This rulemaking is necessary to ensure the safety of life on the navigable waters of the United States.

### Discussion of Comments and Changes

The Coast Guard received two comments during the comment period. Both comments requested that the beginning of the enforcement periods on May 29, 2000, be changed from 7 a.m. to 9 a.m. and 10 a.m. respectively, so commercial vessels can be moved through the harbor prior to the regulations taking effect. The Coast Guard decided not to change the time of the regulations but advised that the regulations as written permit vessels to move through the regulated areas with the permission of the Patrol Commander. Moreover, the Coast Guard plans to meet again with commercial maritime interests to coordinate requested harbor transits prior to and during the early stages of the port closure.

**Regulated Areas**

Three regulated areas will be established in the Port of San Juan. These three regulated areas are needed to protect the maritime public and participating vessels from possible hazards to navigation associated with the large number of participant and spectator craft transiting the waters of the Port of San Juan, Puerto Rico.

Regulated Area A is in the proximity of the fireworks launch area at the point of Isla Grande. This regulated area will be in effect from 9 p.m. to 9:30 p.m. daily from 17 May to 29 May 2000. An area within a 300 yard radius around the point of Isla Grande will be kept clear for the duration of the fireworks display. Vessel traffic movements through the regulated area will be coordinated by the Patrol Commander to avoid conflict with the daily fireworks.

Regulated Area B covers all navigable channels within San Juan Bay and their adjacent piers from 7 a.m. until 12 noon on Monday, May 29, 2000. No vessels other than OPSAIL 2000 vessels, their assisting tugs, and enforcement vessels, may enter or navigate within the boundaries of the Port of San Juan unless specifically authorized by the Coast Guard Captain of the Port, San Juan, or his on-scene representative. The operation of seaplanes, including taxiing, landing, and taking off, is prohibited without prior written authorization from the Captain of the Port. The Cataño Ferry will continue to operate on its established route during this time. This regulated area is necessary to ensure maritime safety and protect the boating public and the participating Tall Ships as the Tall Ships form up in order during the Outbound Parade of Sail.

Regulated Area C comprises the Parade of Sail route. No vessel will be permitted to transit the Bar Channel to enter or depart San Juan Bay from 7 a.m. to 6 p.m. on Monday, May 29, 2000 without the consent of the Captain of the Port or his on-scene representative. The Parade of Sail route will encompass an area starting at the Northeast point of Isla Las Cabras extending north to the Three Nautical Mile line then east to a point north of Boca de Congrejos then south to the twenty fathom line just north of Boca de Congrejos, then west to the Northeast point of Isla Las Cabras. A line of anchored official yachts will mark the southern portion of this parade of sail route. The safety of parade participants and spectators will require that spectator craft including jet skis and sail boards be kept at a minimum of 300 yards from parade vessels while the vessels are in the parade route.

Regulated Area D comprises Bar Channel, the entrance to San Juan Harbor. No vessel will be permitted to transit the Bar Channel to enter or depart san Juan harbor from 7 a.m. to 6 p.m. on Monday, May 29, 2000, without the consent of the Captain of the Port or his on-scene representative.

**Anchorage Regulations**

These regulations also establish temporary Anchorage Regulations for participating OPSAIL 2000 vessels and spectator craft. The Anchorage Grounds are needed to provide viewing areas for spectator vessels while maintaining a clear parade route for the participating OPSAIL vessels and to protect boaters and spectator vessels. Rule 9 of the International Navigation Rules will be enforced. No vessel may anchor in any channel or otherwise impede the passage of a vessel, which can safely navigate only within a narrow channel or fairway. The Cataño Ferry will continue to operate on its established route at all times. Spectator vessels will not anchor within 100 yards of the Cataño Ferry route. The Cataño Ferry route is defined by a line from the Cataño Ferry pier at Punta Cataño to pier two.

The following temporary anchorage regulations will be enforced, in addition to the existing anchorage regulations at 33 CFR 110.240, between 19 May and 29 May, 2000:

Anchorage "El Morro" (M)—Official Vessel Anchorage—Anchorage Permit Required. Temporary Anchorage M is a triangular area bounded by a line starting at 18–28.0N, 066–07.5W then southeast to 18–27.92N; 066–07.21w, then south to 18–27.65N, 066–07.15W, then to the starting point.

Anchorage "Cataño" (C)—Spectator Anchorage—No Permit Required. Temporary anchorage area C is rectangular area near Cataño bounded by a line starting at 18–27N, 066–07W, then south to 18–26.7N, 066–07W, then west to 18–26.7N, 066–07.55W, then north to 18–27N, 066–07.55W, then east to the starting point.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although the Coast Guard anticipates restricting traffic in San Juan Harbor on Monday, May 29, 2000 during the events, the effect of this regulation will not be significant for the following reasons: the limited duration that the regulated areas will be in effect and the extensive advance notifications that will be made to the maritime community via the **Federal Register**, the Local Notice to Mariners, facsimile, the internet, marine information broadcasts, maritime association meetings, and San Juan area newspapers, so mariners can adjust their plans accordingly. Based upon the Coast Guard's experiences learned from previous events of a similar magnitude, these regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we must consider whether this rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in portions of San Juan Harbor during May 29, 2000. These regulations would not have a significant economic impact on a substantial number of small entities for the following reasons. Before the effective period, the Coast Guard would make notifications to the public via mailings, facsimiles, the Local Notice to Mariners and use of the sponsors Internet site. In addition, the sponsoring organization, OPSAIL Inc., is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and

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participate in the rulemaking. If you are a small entity and believe the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Coast Guard point of contact designated in the **FOR FURTHER INFORMATION CONTACT** section.

**Collection of Information**

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

**Federalism**

The Coast Guard has analyzed this rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

**Taking of Private Property**

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this action and have determined under figure 2–1, paragraph 34 (f and h), of Commandant Instruction M16475.lC; that this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket where indicated under **ADDRESSES**. By controlling vessel traffic during the event, this rule is intended to minimize environmental impacts from increased vessel traffic during the parade of sail.

**List of Subjects**

*33 CFR Part 100*

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

*33 CFR Part 110*

Anchorage grounds.

In consideration of the foregoing, the Coast Guard amends 33 CFR Parts 100, and 110 as follows:

## PART 100—[AMENDED]

1. The authority for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. Temporary § 100.35T–07–014 is added as follows:

**§ 100.35T–07–014; OPSAIL 2000, Port of San Juan, Puerto Rico.**

(a) *Regulated Areas:*

(1) Area A, fireworks exclusion area.

(i) Location. All waters within a 300 yard radius around the point of Isla Grande in position 18–27.58N, 066–06.33W.

(ii) Enforcement Period. Paragraph (a)(1)(i) of this section is enforced from 9 p.m. to 9:30 p.m. daily from May 17, 2000 until May 29, 2000.

(2) Regulated Area B, San Juan Harbor.

(i) Location. All waters within San Juan Harbor.

(ii) Enforcement Period. Paragraph (a)(2)(i) of this section is enforced from 7 a.m. May 29, 2000 until 12 noon on May 29, 2000.

(3) Regulated Area C, parade area.

(i) Location. The Parade of Sail route will encompass an area starting at the Northeast point of Isla Las Cabras at 18–28.5N, 066–08.4W; then north to the Three Nautical Mile line at 18–31.5N, 066–08.4W; then east to a point north of Boca de Congrejos at 18–31.5N, 066–00.0W, then south to the twenty fathom line just north of Boca de Congrejos at 18–28.5N, 066–00.0W, then west to the starting point. All coordinates reference Datum NAD:83.

(ii) Enforcement Period. Paragraph (a)(3)(i) of this section is enforced from 7 a.m. May 29, 2000 until 6 p.m. May 29, 2000.

(4) Regulated Area D, Bar Channel.

(i) Location. Bar Channel, San Juan Harbor.

(ii) Paragraph (a)(4)(i) of this section is enforced from 7 a.m. to 6 p.m. on May 29, 2000.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Greater Antilles Section.

(c) *Special Local Regulations.*

(1) Entry into the regulated areas described in paragraph (a)(1), (a)(3) and (a)(4) of this section during enforcement periods is prohibited, unless otherwise authorized by the Patrol Commander.

(2) Entry into and movement by vessels already within the regulated area described in paragraph (a)(2) of this section will be prohibited from 7 a.m. to 12 p.m. on May 29, 2000, except for Tall Ships departing for the Parade of Sail, Law Enforcement Patrol vessels, and the Puerto Rico Ports Authority ferries.

(d) *Effective period.* This section becomes effective at 9 p.m. on May 17, 2000 and terminates at 6 p.m. on May 29, 2000.

## PART 110—[AMENDED]

3. The authority for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 49 CFR 1.46, and 33 CFR 1.05–1(g).

4. In § 110.240, from 9 p.m. on May 17, 2000 through 6 p.m. on May 29, 2000, temporary new paragraphs (a)(3) and (a)(4) and (b)(3) and (b)(4) are added to read as follows:

**§ 110.240 San Juan Harbor, P.R.**

(a) * * *

(3) Temporary Anchorage (M). A triangular area bounded by a line starting at 18–28.0N, 066–07.5W then southeast to 18–27.92N, 066–07.21w, then south to 18–27.65N, 066–07.15W, then to the starting point.

(4) Temporary Anchorage (C). is rectangular area near Catano bounded by a line starting at 18–27N, 066–07W, then south to 18–26.7N, 066–07W, then west to 18–26.7N, 066–07.55W, then north to 18–27N, 066–07.55W, then east to the starting point.

(b) * * *

(3)(i) Anchorage M is for Official Vessels and an Anchorage Permit from the Opsail 2000 organizers is required.

(ii) No vessel other than OPSAIL 2000 vessels and enforcement vessels may anchor, loiter, or approach any OPSAIL vessel when it is navigating or at anchor in this area.

(iii) Mariners are cautioned that anchorage area M has not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. Vessels must display anchor lights, as required by the navigation rules.

(4)(i) Anchorage C is a Spectator Anchorage and no permit is required.

(ii) Mariners are cautioned that anchorage area C has not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. Vessels must display anchor lights, as required by the navigation rules.

Dated: May 8, 2000.

**T.W. Allen,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 00–12274 Filed 5–12–00; 8:45 am]

BILLING CODE 4910–15–U

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Parts 100, 110, and 165

**[CGD05–99–068]**

**RIN 2115–AA97, AA98, AE46, AE84**

## OPSAIL 2000, Port of Hampton Roads, VA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; Notice of Implementation.

**SUMMARY:** The Coast Guard is establishing temporary regulations in the Port of Hampton Roads, Virginia and adjacent areas on the James and Elizabeth Rivers for OPSAIL 2000 activities. This action is necessary to provide for the safety of life on navigable waters before, during, and after OPSAIL 2000 events. This action will restrict vessel traffic in portions of Chesapeake Bay, Hampton Roads, and the James and Elizabeth Rivers.

**DATES:** This rule is effective from June 15, 2000 through June 20, 2000, except for the amendments to § 100.501 which are effective from 9:15 p.m. to 10:15 p.m. on June 17, 2000, the amendments to § 110.168 which are effective from 7 a.m. June 15, 2000 until 8 p.m. June 16, 2000, and the amendments to § 165.501 which are effective from June 15, 2000 through June 16, 2000.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–99–068 and are available for inspection or copying at Coast Guard Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia 23510 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander S. Moody or Lieutenant K. Sniffen, Port Operations Department, Coast Guard Marine Safety Office Hampton Roads, (757) 441–6442.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On September 30, 1999, we published an advanced notice of proposed rulemaking; request for comments (ANPRM) entitled OPSAIL 2000, Port of Hampton Roads, VA in the **Federal Register** (64 FR 52723). We received no letters commenting on our anticipated rulemaking. No public hearing was requested and none was held.

On February 29, 2000, we published a notice of proposed rulemaking (NPRM) entitled OPSAIL 2000, Port of Hampton Roads, VA in the **Federal Register** (65 FR 10731). We received three letters commenting on the proposed rule. No public hearing was requested and none was held.

### Background and Purpose

OPSAIL 2000® Norfolk is sponsoring OPSAIL 2000 in the Port of Hampton Roads. Planned events in the Port of Hampton Roads include: the arrival of more than 200 Tall Ships and other vessels at Lynnhaven Anchorage on June 15 and 16, 2000; a Parade of Sail of approximately 200 Tall Ships and other vessels from that anchorage to Town Point Park, downtown Norfolk, on June 16, 2000; a firework display adjacent to the Norfolk and Portsmouth seawalls on June 17, 2000. This event will substitute for the annual Harborfest, normally held on the first Friday, Saturday, and Sunday of June.

The Coast Guard anticipates 10,000 spectator craft for these events. Operators should expect significant vessel congestion along the parade route and viewing areas for the fireworks displays.

The purpose of these regulations is to promote maritime safety and protect participants and the boating public in the Port of Hampton Roads immediately prior to, during, and after the scheduled events. The regulations will establish a clear parade route for the participating vessels, establish no wake zones along the parade route and in certain anchorage areas, modify existing anchorage regulations for the benefit of participants and spectators, and provide a safety buffer around the planned fireworks displays. The regulations will impact the movement of all vessels operating in the specified areas of the Port.

It may be necessary for the Coast Guard to establish safety or security zones in addition to these regulations to safeguard dignitaries and certain vessels participating in the event. If the Coast Guard deems it necessary to establish such zones at a later date, the details of those zones will be announced separately via the **Federal Register**, Local Notice to Mariners, Safety Voice Broadcasts, and any other means available.

All vessel operators and passengers are reminded that vessels carrying passengers for hire or that have been chartered and are carrying passengers may have to comply with certain additional rules and regulations beyond the safety equipment requirements for all pleasure craft. When a vessel is not being used exclusively for pleasure, but rather is engaged in carrying passengers for hire or has been chartered and is carrying the requisite number of passengers, the vessel operator must possess an appropriate license and the vessel may be subject to inspection. The definition of the term "passenger for hire" is found in 46 U.S.C. 2101(21a). In general, it means any passenger who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage onboard the vessel. The definition of the term "passenger" is found in 46 U.S.C. 2101(21). It varies depending on the type of vessel, but generally means individuals carried aboard vessels except for certain specified individuals engaged in the operation of the vessel or the business of the owner/charterer. The law provides for substantial penalties for any violation of applicable license and inspection requirements. If you have any questions concerning the application of the above law to your particular case, you should contact the Coast Guard at the address listed in **ADDRESSES** for additional information.

Vessel operators are reminded they must have sufficient facilities on board their vessels to retain all garbage and untreated sewage. Discharge of either into any waters of the United States is strictly forbidden. Violators may be assessed civil penalties up to $25,000 or face criminal prosecution.

Vessel operators are also reminded that Norfolk Naval Base will be strictly enforcing the existing restricted area defined at 33 CFR 334.300 during all of the OPSAIL 2000 events.

We recommend that vessel operators visiting the Port of Hampton Roads for this event obtain up to date editions of the following charts of the area: Nos. 12222, 12245, 12253, and 12254 to

avoid anchoring within a charted cable or pipeline area.

With the arrival of OPSAIL 2000 and spectator vessels in the Port of Hampton Roads for this event, it will be necessary to curtail normal port operations to some extent. Interference will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled events.

**Discussion of the Rule**

The vessels involved in the Parade of Sail are scheduled to enter Thimble Shoal Channel at 7:30 a.m. on June 16, 2000. The lead vessel is scheduled to be abreast of Old Point Comfort Light at 9:30 a.m. The parade route includes Norfolk Harbor Entrance Reach, Norfolk Harbor Reach, Craney Island Reach, Lambert Bend, Port Norfolk Reach and Town Point Reach. The larger OPSAIL 2000 vessels will be berthed in the vicinity of the respective downtown Norfolk and Portsmouth waterfronts as they complete the parade route. The smaller OPSAIL 2000 vessels will proceed past Town Point Park to the vicinity of the Norfolk Naval Shipyard to avoid interfering with the docking of the larger vessels. Once all the larger vessels have been docked, the smaller vessels will proceed to their assigned berths.

The safety of parade participants and spectators will require that spectator craft be kept at a safe distance from the parade route during these vessel movements. The Coast Guard is closing the parade route to all vessels not involved in the Parade of Sail for the duration of the Parade of Sail on June 16, 2000. The parade route has been segmented in this rulemaking to facilitate the earliest possible reopening of the waterway once all OPSAIL 2000 vessels have cleared a particular segment of the route, but portions of the Elizabeth River will remain closed to all traffic until all of the OPSAIL 2000 vessels are safely moored at their assigned berths.

In addition to closing the parade route, we are establishing Vessel Traffic Control Points to control the flow of spectator vessel traffic immediately prior to and during the parade. Vessel Traffic Control Points will be established at: the *Elizabeth River, Western Branch* along a line drawn across the Elizabeth River, Western Branch, at the West Norfolk Bridge; the *Elizabeth River, Eastern Branch* along a line drawn across the Elizabeth River, Eastern Branch, at the Berkley Bridge; the *Elizabeth River, Southern Branch* along a line drawn across the Elizabeth River, Southern Branch, at the Jordan Bridge; the *James River* along a line drawn across the James River at the Monitor-Merrimac Bridge/Tunnel; at *Old Point Comfort* along a line drawn from Old Point Comfort Light (37°00′10″ N, 076°18′40″ W) to Fort Wool Light (36°59′20″ N, 076°18′20″ W); at *Craney Island* along a line drawn from Elizabeth River Channel Buoy 20 to a point of land at 36°53′32″ N, 076°20′19″ W; at *Lamberts Point* along a line drawn from Elizabeth River Channel Lighted Buoy 29 to a point of land at 36°52′20″ N, 076°19′32″ W; at *Hospital Point* along a line drawn from the Southeast corner of Hospital Point (36°50′44″ N, 076°18′14″ W) to Elizabeth River Channel Lighted Buoy 36; and at the *Portsmouth Seawall* along a line drawn due East across the Elizabeth River, from the Northeast corner of the Portsmouth Seawall (36°50′26″ N, 076°17′45″ W). The Captain of the Port will restrict vessel traffic flow and maintain safe ingress and egress to areas adjacent to the parade route.

The Coast Guard is also temporarily modifying the existing anchorage regulations found at 33 CFR 110.168 to accommodate OPSAIL 2000 and spectator vessels. Vessels will not be allowed to anchor in Anchorage E, or Anchorage P without permission of the Captain of the Port, and Berth K–1 of Anchorage K will be closed to all vessels except large spectator vessels.

The regulations for the Regulated Navigation Area defined in 33 CFR 165.501 will also be temporarily modified for the OPSAIL 2000 event. Non-commercial vessels, regardless of length, will be allowed to anchor outside the defined anchorage areas; the draft limitation for vessels using Thimble Shoal Channel will be waived for OPSAIL 2000 vessels; and no wake zones will be placed in effect in the areas where OPSAIL 2000 vessels are anchored prior to the start of the parade and along the parade route.

In order to provide for the safety of vessels transiting the area or observing the firework display, the Coast Guard is implementing the regulations found at 33 CFR 100.501 from 9:15 p.m. to 10:15 p.m. on June 17, 2000.

**Discussion of Comments and Changes**

We received three letters commenting on the proposed rule. All three letters were from locally based tour boat operators. One letter, while referencing the proposal and declaring the desire of the author to participate in the rulemaking process, merely contained a request to anchor in a specific anchorage. Such requests are allowed by the existing anchorage regulations and the proposed rule. No changes were made based on this comment.

The remaining two letters offered the same specific recommendation. In the NPRM, a "High Capacity Passenger Vessel" was defined as "any vessel greater than 65′ in length with a passenger capacity of 150 persons or greater." Two letters requested that we change that definition to "any vessel 60′ or greater in length with a passenger capacity of 100 or greater" in order for their vessels to use the designated anchorage. After considering the comments, we decided that reducing the size and passenger limits is a reasonable accommodation to small business and will still provide for the safety of persons and vessels during the OPSAIL 2000 events. Therefore, we have responded to the concerns raised in the comments by replacing the term "High Capacity Passenger Vessel" with the term "Large Spectator Vessel" defined as "any vessel 60′ or greater in length carrying 50 or more passengers."

We have also dropped the anchorage restrictions for Anchorage F and have made Anchorage F a safety zone. In our initial proposal we proposed closing berths F–1 and F–2 of Anchorage F. An additional portion of Anchorage F would have been closed because it was part of a safety zone established for the route of the Parade of Sail. Since publication of the NPRM we have received additional information which necessitates making all of Anchorage F a safety zone. Some of the vessels participating in the Parade of Sail will veer off from the main parade and proceed up the Hampton River. Making Anchorage F a safety zone will provide them with room to safely execute their turning maneuvers and a clear path to the Hampton River channel entrance. Additionally, we have been notified of the expected presence of high-ranking dignitaries aboard the U.S.S. *Nassau*. As stated in our NPRM, the presence of certain vessels and dignitaries could result in the creation of additional safety or security zones. Closing Anchorage F and allowing the U.S.S. *Nassau* to anchor in that anchorage will provide for the safety and security of that vessel and the dignitaries onboard while at the same time creating a safe turning and maneuvering area and a clear path to the Hampton River channel entrance for those OPSAIL vessels following that alternate route.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that

Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the Parade of Sail. Although these regulations prevent traffic from transiting a portion of the Chesapeake Bay and Elizabeth River during this event, that restriction is limited to under twelve hours in duration, affects only a limited area that is totally contained within an already established regulated navigation area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. In addition, we changed the anchorage portion of this rule in response to comments received in order to avoid any negative economic effect on the commentor's businesses. Finally, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of Chesapeake Bay and the Elizabeth River from 7 a.m. June 15, 2000 until 8 p.m. June 16, 2000. The regulations will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions are limited in duration, affect only limited areas that are totally contained within an already established regulated navigation area, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas. In addition, we modified the anchorage portion of this rule to accommodate the concerns raised by the three small businesses that commented on the rulemaking. Finally, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. No requests for assistance in understanding this rule were received, but all three comments received were from tour boat operators qualifying as small businesses. Two of those small businesses requested changes in the proposed rule to facilitate the operation of their small businesses and the small businesses of other similarly situated tour boat operators. We responded by changing the rule to alleviate their concerns.

Small businesses may send comments on the actions of the Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(f, g, and h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.** By controlling vessel traffic during these events, this rule is intended to minimize environmental impacts of increased vessel traffic during the transits of event vessels and fireworks displays.

**List of Subjects**

*33 CFR Part 100*

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

*33 CFR Part 110*

Anchorage grounds.

*33 CFR Part 165*

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Parts 100, 110, and 165 as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add temporary § 100.35T–05–068 to read as follows:

**§ 100.35T–05–068 Special Local Regulations; OPSAIL 2000, Port of Hampton Roads, VA.**

(a) *Definitions.* (1) *Captain of the Port* means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Large Spectator Vessel* includes any vessel 60′ or greater in length carrying 50 or more passengers.

(3) *OPSAIL 2000 Vessels* includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Hampton Roads and approved by Commander, Fifth Coast Guard District.

(4) *Parade of Sail* is the inbound procession of OPSAIL 2000 vessels as they navigate designated routes in the port of Hampton Roads on June 16, 2000.

(5) *Spectator vessel* includes any vessel, commercial or recreational, being used for pleasure or carrying passengers, that is in the Port of Hampton Roads to observe part or all of the events attendant to OPSAIL 2000.

(6) *Vessel Traffic Control Point* is a designated point which vessel traffic may not proceed past in either inbound or outbound direction without permission of the Captain of the Port.

(b) *Vessel traffic Control Points.* The following Vessel Traffic Control Points are established (all coordinates use datum NAD 1983):

(1) *Elizabeth River, Western Branch* Along a line drawn across the Elizabeth River, Western Branch, at the West Norfolk Bridge.

(2) *Elizabeth River, Eastern Branch* Along a line drawn across the Elizabeth River, Eastern Branch, at the Berkley Bridge.

(3) *Elizabeth River, Southern Branch* Along a line drawn across the Elizabeth River, Southern Branch, at the Jordan Bridge.

(4) *James River* Along a line drawn across the James River at the Monitor-Merrimac Bridge/Tunnel.

(5) *Old Point Comfort* Along a line drawn from Old Point Comfort Light (37°00′10″ N, 076°18′40″ W) to Fort Wool Light (36°59′20″ N, 076°18′20″ W).

(6) *Craney Island* Along a line drawn from Elizabeth River Channel Buoy 20 to a point of land at 36°53′33″ N, 076°22′32″ W.

(7) *Lamberts Point* Along a line drawn from Elizabeth River Channel Lighted Buoy 29 to a point of land at 36°52′20″ N, 076°19′32″ W.

(8) *Hospital Point* Along a line drawn from the Southeast corner of Hospital Point (36°50′44″ N, 076°18′14″ W) to Elizabeth River Channel Lighted Buoy 36.

(9) *Portsmouth Seawall* Along a line drawn due East across the Elizabeth River, from the Northeast corner of the Portsmouth Seawall (36°50′26″ N, 076°17′45″ W).

(c) *Special Local Regulations.* (1) No vessel may proceed past a Vessel Traffic Control Point unless authorized to do so by the Captain of the Port.

(2) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (757) 484–8192.

(3) The Captain of the Port will notify the public of changes in the status of these Vessel Traffic Control Points by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(d) *Effective date.* This section is applicable from 9 a.m. to 5 p.m. on June 16, 2000.

3. From 9:15 p.m. to 10:15 p.m., June 17, 2000, temporarily suspend § 100.501(c) and Table 1 of § 100.501 and temporarily add § 100.501(d) and Table 1 of 100.501(d) to read as follows:

**§ 100.501 Norfolk Harbor, Elizabeth River, Norfolk, Virginia and Portsmouth Virginia.**

* * * * *

(d) Effective period. This section is effective from 9:15 p.m. to 10:15 p.m. on June 17, 2000.

*Table 1 of § 100.501(d)*

*OPSAIL 2000, Port of Hampton Roads*
*Sponsor: OPSAIL 2000® Norfolk*

**PART 110—[AMENDED]**

4. The authority citation for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

5. From 7 a.m., June 15, 2000 until 8 p.m., June 16, 2000 temporarily suspend § 110.168 (f)(4), (f)(8), and (f)(9) and temporarily add § 110.168 (f)(12) through (f)(15) to read as follows:

**§ 110.168 Hampton Roads, Virginia, and adjacent waters**

* * * * *

(f) * * *

(12) *Definitions as used in paragraphs (f)(13) through (15) of this section.* (i) *Captain of the Port* means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(ii) *Large Spectator Vessel* includes any vessel 60′ or greater in length carrying 50 or more passengers.

(iii) *OPSAIL 2000 Vessels* includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Hampton Roads and approved by Commander, Fifth Coast Guard District.

(iv) *Parade of Sail* is the inbound procession of OPSAIL 2000 vessels as they navigate designated routes in the port of Hampton Roads on June 16, 2000.

(v) *Spectator vessel* includes any vessel, commercial or recreational, being used for pleasure or carrying passengers, that is in the Port of Hampton Roads to observe part or all of the events attendant to OPSAIL 2000.

(vi) *Vessel Traffic Control Point* is a designated point which vessel traffic may not proceed past in either inbound or outbound direction without permission of the Captain of the Port

(13) *Anchorage E.* No vessel may anchor in Anchorage E without permission of the Captain of the Port.

(14) *Anchorage K.* (i) Berth K–1 of Anchorage K is closed to all vessels except as noted in paragraph (f)(14)(ii) of this section.

(ii) Anchorage Berth K–1. Only large spectator vessels may anchor in Anchorage Berth K–1.

(15) *Anchorage P.* No vessel may anchor in Anchorage P without permission of the Captain of the Port.

**PART 165—[AMENDED]**

6. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

7. From June 15, 2000 through June 16, 2000, § 165.501 is temporarily amended by adding new paragraph (d)(1)(i)(C); adding a sentence at the end of paragraph (d) (4); and adding paragraph (d)(14) to read as follows:

**§ 165.501 Chesapeake Bay entrance and Hampton Roads, Va. and adjacent waters—regulated navigation area.**

* * * * *

(d) * * *

(1) * * *

(i) * * *

(C) Notwithstanding § 165.501(d)(1), any non-commercial vessel, regardless of length, may anchor outside of the anchorages designated in § 110.168 of

this chapter from 7 a.m. June 15, 2000 until 8 p.m. June 16, 2000.

* * * * *

(4)* * * The limitation in the first sentence of this paragraph (d)(4) is waived for OPSAIL 2000 vessels from 7 a.m. until 1 p.m. on June 16, 2000.

* * * * *

(14) *No-Wake Zones for OPSAIL 2000.* (i) From 7 a.m. June 15, 2000 until 8 p.m. June 16, 2000, vessels shall operate at the minimum speed required to maintain steerage and shall avoid creating a wake when operating in an area bounded by the northwestern limit of Anchorage A, thence along the western border of Anchorage A to the Virginia Beach shoreline, thence to the southern terminus of Trestle A, Chesapeake Bay Bridge Tunnel, thence to the northern terminus of Trestle A, Chesapeake Bay Bridge Tunnel, thence to the beginning.

(ii) From 7 a.m. June 15, 2000 until 8 p.m. June 16, 2000, vessels shall operate at the minimum speed required to maintain steerage and shall avoid creating a wake when operating in Anchorage E.

(iii) Spectator vessels observing the Parade of Sail shall operate at the minimum speed required to maintain steerage and shall avoid creating a wake from 9 a.m. June 16, 2000 until 5 p.m. June 16, 2000.

* * * * *

8. Add temporary § 165.T05–068 to read as follows:

**§ 165.T05–068 Safety Zone; OPSAIL 2000, Port of Hampton Roads, VA.**

(a) *Location.* The following areas are Safety Zones (all coordinates use datum NAD1983):

(1) *Parade of Sail Route—First Segment—Thimble Shoal Channel.* All waters bounded by a line connecting Thimble Shoal Channel Lighted Bell Buoy 1TS, thence to Thimble Shoal Channel Lighted Gong Buoy 17, thence to Thimble Shoal Channel Lighted Bell Buoy 21, thence to Thimble Shoal Channel Lighted Buoy 22, thence to Thimble Shoal Channel Lighted Buoy 18, thence to Thimble Shoal Channel Lighted Buoy 2, thence to the beginning.

(2) *Parade of Sail Route-Second Segment.* All waters bounded by a line connecting Thimble Shoal Channel Lighted Bell Buoy 21, thence to Elizabeth River Channel Lighted Buoy 1ER, thence to Elizabeth River Channel Lighted Bell Buoy 3, thence to Elizabeth River Channel Lighted Gong Buoy 5, thence to Elizabeth River Channel Lighted Buoy 7, thence to Elizabeth River Channel Lighted Buoy 9, thence to Elizabeth River Channel Lighted Buoy 11, thence to Elizabeth River Channel Lighted Buoy 13, thence to Elizabeth River Channel Lighted Buoy 15, thence to Elizabeth River Channel Lighted Buoy 17, thence to Elizabeth River Channel Lighted Buoy 19, thence to Elizabeth River Channel Lighted Buoy 21, thence to Elizabeth River Channel Lighted Buoy 23, thence to Norfolk and Western Coal Pier Light (36°52′48″ N, 076° 19′54″ W), thence to Elizabeth River Channel Lighted Buoy 25, thence to Elizabeth River Channel Lighted Buoy 29, thence to Elizabeth River Channel Buoy 31, thence to Elizabeth River Channel Lighted Buoy 33, thence to Elizabeth River Channel Lighted Buoy 32, thence to Elizabeth River Channel Lighted Buoy 30, thence to Elizabeth River Obstruction Light (36°52′ 06″ N, 076°20′00″ W) thence to Elizabeth River Channel Lighted Buoy 20, thence to Elizabeth River Channel Lighted Buoy 18, thence to Elizabeth River Channel Lighted Buoy 14, thence to Elizabeth River Channel Lighted Buoy 12, thence to Elizabeth River Channel Lighted Bell Buoy 10, thence to Elizabeth River Articulated Light 8, thence to Newport News Channel Lighted Buoy 2, thence to Old Point Comfort Light (37°00′10″ N, 076°18′40″ W), thence to Thimble Shoal Channel Lighted Buoy 22, thence to the beginning.

(3) *Parade of Sail Route-Third Segment.* All waters bounded by a line connecting Elizabeth River Channel Lighted Buoy 33, thence to a point of land Northwest of Fort Norfolk, marked by a large pile of oyster shells at (36°51′31″ N, 076°18′37″ W), thence following the shoreline to the northern terminus of the Berkley Bridge, thence to the southern terminus of the Berkley Bridge, thence following the shoreline to the eastern terminus of the Jordan Bridge, thence to the western terminus of the Jordan Bridge, thence following the shoreline to the Northeast corner of the Portsmouth Seawall (36°50′26″ N, 076°17′45″ W), thence to Elizabeth River Channel Lighted Buoy 36, thence to Elizabeth River Channel Buoy 34, thence to Elizabeth River Channel Lighted Buoy 32, thence to the beginning.

(4) *Anchorage F.* Anchorage F, as defined in 33 CFR 110.168(a)(3)(i).

(b) *Effective Dates.*

(1) Paragraph (a)(1) is effective from 7:30 a.m. until 1 p.m. on June 16, 2000.

(2) Paragraph (a)(2) is effective from 9 a.m. until 3 p.m. on June 16, 2000.

(3) Paragraph (a)(3) is effective from 9 a.m. to 5 p.m. on June 16, 2000.

(4) Paragraph (a)(4) is effective from 7:30 a.m. until 5 p.m. on June 16, 2000.

(c) *Definitions.*

(1) *Captain of the Port* means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf

(2) *Large Spectator Vessel* includes any vessel 60′ or greater in length carrying 50 or more passengers.

(3) *OPSAIL 2000 Vessels* includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Hampton Roads and approved by Commander, Fifth Coast Guard District.

(4) *Parade of Sail* is the inbound procession of OPSAIL 2000 vessels as they navigate designated routes in the port of Hampton Roads on June 16, 2000.

(5) *Spectator vessel* includes any vessel, commercial or recreational, being used for pleasure or carrying passengers, that is in the Port of Hampton Roads to observe part or all of the events attendant to OPSAIL 2000.

(6) *Vessel Traffic Control Point* is a designated point which vessel traffic may not proceed past in either inbound or outbound direction without permission of the Captain of the Port

(d) *Regulations.*

(1) All persons are required to comply with the general regulations governing safety zones in § 165.23.

(2) No person or vessel may enter or navigate within these regulated areas unless authorized to do so by the Captain of the Port. Any person or vessel authorized to enter the regulated area must operate in strict conformance with any directions given by the Captain of the Port and leave the regulated area immediately if the Captain of the Port so orders.

(3) The Coast Guard vessels enforcing these regulations can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (757) 484–8192.

(4) The Captain of the Port will notify the public of changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

Dated: May 8, 2000.

**Thomas E. Bernard,**

*Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 00–12149 Filed 5–11–00; 4:55 pm]

BILLING CODE 4910–15–U

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Parts 110 and 165**

**[CGD05–00–008]**

**RIN 2115–AA97, AA98**

## Tall Ships Delaware, Delaware River, Wilmington, DE

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary regulations in the Delaware River, Wilmington, Delaware, for Tall Ships Delaware activities. This action is necessary to provide for the safety of life on navigable waters before, during, and after Tall Ships Delaware events. This action will restrict vessel traffic in the Delaware River between the mouth of the Christina River and New Castle, Delaware.

**DATES:** This rule is effective from 12 p.m. to 4 p.m. on June 23, 2000.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–00–008 and are available for inspection or copying at Coast Guard Marine Safety Office/Group Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade K. Codel, Coast Guard Marine Safety Office/Group Philadelphia, (215) 271–4991.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On April 7, 2000, we published a notice of proposed rulemaking (NPRM) entitled Tall Ships Delaware, Delaware River, Wilmington, DE in the **Federal Register** (65 FR 18261). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

### Background and Purpose

The Diamond State Port Corporation (Port of Wilmington) is sponsoring Tall Ships Delaware activities in the Delaware River, Wilmington, Delaware. The planned event includes a Parade of Sail from the confluence of the Christina River and the Delaware River, down river to New Castle, Delaware, and back to the mouth of the Christina River on June 23, 2000.

The Coast Guard anticipates a large spectator fleet for this event. Operators should expect significant vessel congestion along the parade route.

The purpose of these regulations is to promote maritime safety and protect participants and the boating public immediately prior to, during, and after the scheduled event. The regulations provide a safety buffer around the participating vessels during the parade of sail and modify existing anchorage regulations for the benefit of participants and spectators. The regulations will affect the movement of all vessels operating in the specified areas of the Delaware River.

It may be necessary for the Coast Guard to establish safety or security zones in addition to these regulations to safeguard dignitaries and certain vessels participating in the event. If the Coast Guard deems it necessary to establish such zones at a later date, the details of those zones will be announced separately via the **Federal Register**, Local Notice to Mariners, Safety Voice Broadcasts, and any other means available.

All vessel operators and passengers are reminded that vessels carrying passengers for hire or that have been chartered and are carrying passengers may have to comply with certain additional rules and regulations beyond the safety equipment requirements for all pleasure craft. When a vessel is not being used exclusively for pleasure, but rather is engaged in carrying passengers for hire or has been chartered and is carrying the requisite number of passengers, the vessel operator must possess an appropriate license and the vessel may be subject to inspection. The definition of the term "passenger for hire" is found in 46 U.S.C. 2101(21a). In general, it means any passenger who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage onboard the vessel. The definition of the term "passenger" is found in 46 U.S.C. 2101(21). It varies depending on the type of vessel, but generally means individuals carried aboard vessels except for certain specified individuals engaged in the operation of the vessel or the business of the owner/charterer. The law provides for substantial penalties for any violation of applicable license and inspection requirements. If you have any questions concerning the application of the above law to your particular case, you should contact the Coast Guard at the address listed in **ADDRESSES** for additional information.

Vessel operators are reminded they must have sufficient facilities on board their vessels to retain all garbage and untreated sewage. Discharge of either into any waters of the United States is strictly forbidden. Violators may be assessed civil penalties up to $25,000 or face criminal prosecution.

We recommend that vessel operators visiting the Wilmington area for this event obtain an up to date edition of National Ocean Service Chart 12311 to avoid anchoring within a charted cable or pipeline area.

With the arrival of Tall Ships Delaware and spectator vessels in the Wilmington area for this event, it will be necessary to curtail normal port operations to some extent. Interference will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled events.

### Discussion of the Rule

The Tall Ships Delaware vessels are scheduled to arrive and moor at various locations along the Christina River by June 23, 2000. The lead vessel is scheduled to begin the Parade of Sail at 12 p.m. on June 23, 2000, and will follow a parade route of approximately 4 nautical miles on the Delaware River from the mouth of the Christina River, outbound to New Castle, Delaware, sailing outside the western side of the channel. The parade vessels will then cross the federal navigation channel of the Delaware River and return to the eastern side of the channel adjacent to the mouth of the Christina River sailing outside the eastern side of the channel. The parade vessels will then cross the navigable channel and enter the Christina River. After the parade, the larger Tall Ships Delaware vessels will moor at the Port of Wilmington on the Christina River. The remainder of the vessels will proceed up the Christina River to various mooring locations.

The safety of parade participants and spectators will require that spectator craft be kept at a safe distance from the parade route during these vessel movements. The Coast Guard will be using a moving safety zone around the Parade of Sail to keep all vessels not involved in the Parade of Sail a safe distance from the Tall Ships Delaware vessels. The Parade of Sail route is outside the federal navigation channel of the Delaware River, allowing the channel to remain open, except when the Parade of Sail is crossing the navigable channel. However, the Coast Guard expects that there will be increased vessel congestion in the vicinity of the federal navigation channel.

The Coast Guard is temporarily modifying the existing anchorage regulations found in 33 CFR 110.157 to accommodate Tall Ships Delaware

vessels. A leg of the parade route runs through General Anchorage 6 (Deepwater Point Anchorage). Therefore, General Anchorage 6 will be closed to all vessels except Tall Ships Delaware vessels from 12 p.m. to 4 p.m. on June 23, 2000. (A notice of proposed rulemaking affecting 33 CFR 110.157 has been published in the **Federal Register** at 65 FR 16361. Those proposed temporary regulations affect Anchorages 9–13 and would be temporarily added at § 110.157(d). Accordingly, this rule will be temporarily added at § 110.157(e).)

**Discussion of Comments and Changes**

We did not receive any comments on the proposed rule. No changes were made to the proposed rule.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the Parade of Sail on June 23, 2000. Although these regulations prevent traffic from transiting portions of the Delaware River during the event, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. Moreover, the parade route will be outside the federal navigational channel allowing the channel to remain open with the exception of when the Parade of Sail actually crosses the channel. This should minimize the effect on non-participant and spectator vessels intending to transit the federal navigation channel.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to operate or anchor in portions of the Delaware River in the vicinity of Wilmington, Delaware. The regulations will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas. Moreover, the parade route will be outside the federal navigational channel allowing the channel to remain open with the exception of when the Parade of Sail actually crosses the channel.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. No requests for assistance in understanding this rule were received.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**Federalism**

We have analyzed this rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.** By controlling vessel traffic during these events, this rule is intended to minimize environmental impacts of increased vessel traffic during the transits of event vessels.

**List of Subjects**

*33 CFR Part 110*

Anchorage grounds.

*33 CFR Part 165*

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 110, and 165 as follows:

**PART 110—[AMENDED]**

1. The authority citation for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. From 12 p.m. until 4 p.m. on June 23, 2000 temporarily add § 110.157(e) to read as follows:

**§ 110.157 Delaware Bay and River.**

* * * * *

(e) Not withstanding the above, the following temporary regulations will be in effect from 12 p.m. through 4 p.m. on June 23, 2000 for Tall Ships Delaware: Anchorage 6 will be closed to all vessels except Tall Ships Delaware vessels. "Tall Ships Delaware vessels" includes all vessels participating in Tall Ships Delaware under the auspices of the Marine Event Permit submitted for the Port of Wilmington, Delaware, and approved by the Commander, Fifth Coast Guard District.

**PART 165—[AMENDED]**

3. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

4. Add temporary § 165.T05–008 to read as follows:

**§ 165.T05–008 Safety Zone; Tall Ships Delaware, Delaware River, Wilmington, DE.**

(a) *Definitions:*

(1) *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Coast Guard Patrol Commander* is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commanding Officer, Coast Guard Marine Safety Office/Group Philadelphia.

(3) *Tall Ships Delaware Vessels* includes all vessels participating in the Tall Ships Delaware under the auspices of the Marine Event Permit submitted for the Port of Wilmington, Delaware, and approved by Commander, Fifth Coast Guard District.

(b) *Location.* The following area is a moving safety zone: All waters from 500 yards forward of the lead Tall Ships Delaware vessel to 100 yards aft of the last Tall Ships Delaware vessel, and extending 50 yards outboard of each Tall Ships Delaware vessel participating in the Parade of Sail. This safety zone will move with the Parade of Sail as it transits the Delaware River from the mouth of the Christina River outbound to New Castle, Delaware, returns to the mouth of the Christina River, and as each Tall Ships Delaware vessel moors in Wilmington, Delaware.

(c) *Regulations.*

(1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within this safety zone unless authorized to do so by the Coast Guard Patrol Commander. Any person or vessel authorized to enter the safety zone must operate in strict conformance with any directions given by the Coast Guard Patrol Commander and leave the safety zone immediately if the Coast Guard Patrol Commander so orders.

(3) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (215) 271–4940.

(4) The Coast Guard Patrol Commander will notify the public of changes in the status of this safety zone by Marine Safety Radio Broadcast on VHF-FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective dates:* These regulations are effective from 12 p.m. to 4 p.m. on June 23, 2000.

Dated: May 9, 2000.

**Thomas E. Bernard,**

*Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 00–12283 Filed 5–15–00; 8:45 am]

BILLING CODE 4910–15–U

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[CA 240–0237a; FRL–6602–2]**

## Approval and Promulgation of Implementation Plans; Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving a local rule that concerns definitions and rescinding one rule that addresses standard conditions.

**DATES:** This rule is effective on July 17, 2000 without further notice, unless EPA receives adverse comments by June 15, 2000. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1189.

**SUPPLEMENTARY INFORMATION:** Throughout this document, "we," "us" and "our" refer to EPA.

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### I. The State's Submittal

*A. What Rules Did the State Submit?*

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

| Local agency | Rule No. | Rule title | Adopted | Submitted |
|---|---|---|---|---|
| MBUAPCD | 101 | Definitions | 36508 | 36578 |
| MBUAPCD | 102 | Standard Conditions (Rescission) | 36508 | 36578 |

On March 7, 2000, these rule submittals were found to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

*B. Are There Other Versions of These Rules?*

There are previous versions of Rules 101 and 102 in the SIP. We approved a version of Rules 101 and 102 into the SIP on February 6, 1998 and July 13, 1987, respectively. The MBUAPCD adopted revisions to the SIP-approved version of Rules 101 and 102 on December 15, 1999 and CARB submitted them to us on February 23, 2000.

*C. What Is the Purpose of the Submitted Revisions?*

Rule 101 revises Section 2.10 to add methyl acetate as an exempt compound to be consistent with the federal definition of volatile organic compounds and to correct the scientific names for HFC–245ca, HFC–245eb, and HFC–245fa.

Rule 102 is being rescinded because it is included in Rule 101 as Section 2.29.

**II. EPA's Evaluation and Action**

*A. How Is EPA Evaluating the Rules?*

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). EPA policy that we used to define specific enforceability requirements includes, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

*B. Do the Rules Meet the Evaluation Criteria?*

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSD has more information on our evaluation.

*C. Public Comment and Final Action*

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule revisions because we believe they fulfill all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule revisions. If we receive adverse comments by June 15, 2000, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 17, 2000. This will incorporate these rules into the federally enforceable SIP.

**III. Background Information**

*Why Were These Rules Submitted?*

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants. Table 2 lists some of the national milestones leading to the submittal of these rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

| Date | Event |
|---|---|
| March 3, 1978 | EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305. |
| May 26, 1988 | EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act. |
| November 15, 1990 | Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. |

**IV. Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

*B. Executive Order 13045*

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*C. Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the

communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*D. Executive Order 13132*

Executive Order 13121, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

*H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*I. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 17, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 18, 2000.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart F—California**

2. Section 52.220 is amended by adding paragraphs (c)(275) and (c)(276) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(275) Reserved.

(276) New and amended regulations for the following APCDs were submitted on February 23, 2000, by the Governor's designee.

(i) Incorporation by reference.

(A) Monterey Bay Unified Air Pollution Control District.

(*1*) Rules 101 and 102, adopted on December 15, 1999.

* * * * *

[FR Doc. 00–11998 Filed 5–15–00; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

**[SW–FRL–6606–5]**

## Hazardous Waste Management System; Identification and Listing of Hazardous Waste Final Exclusion

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA (also, "the Agency" or "we" in this preamble) is granting a petition submitted by General Motors Corporation, Lansing Car Assembly—Body Plant (GM) in Lansing, Michigan, to exclude (or "delist") certain solid wastes generated by its wastewater treatment plant (WWTP) from the lists of hazardous wastes contained in subpart D of part 261.

After careful analysis, the EPA has concluded that the petitioned waste is not hazardous waste when disposed of in a Subtitle D landfill. This exclusion applies to wastewater treatment sludge generated at GM's Lansing, Michigan facility. Accordingly, this final rule excludes the petitioned waste from the requirements of hazardous waste regulations under the Resource Conservation and Recovery Act (RCRA) when disposed of in a Subtitle D landfill but imposes testing conditions to ensure that future-generated wastes remain qualified for delisting.

**EFFECTIVE DATE:** This rule is effective on May 16, 2000.

**ADDRESSES:** The RCRA regulatory docket for this proposed rule is located at the U.S. EPA Region 5, 77 W. Jackson Blvd., Chicago, IL 60604, and is available for viewing from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call Peter Ramanauskas at (312) 886–7890 for appointments. The public may copy material from the regulatory docket at $0.15 per page.

**FOR FURTHER INFORMATION CONTACT:** For technical information concerning this document, contact Peter Ramanauskas at the address above or at (312) 886–7890.

**SUPPLEMENTARY INFORMATION:** The information in this section is organized as follows:

I. Background
A. What Is a Delisting Petition?
B. What Regulations Allow a Waste To Be Delisted?
II. GM's Petition to Delist Wastewater Treatment Sludge
A. What Waste Did GM Petition EPA to Delist?
B. What Information Must the Generator Supply?
C. What Information Did GM Submit to Support This Petition?
III. EPA's Evaluation and Final Rule
A. What Decision Is EPA Finalizing and Why?
B. What Are the Terms of This Exclusion?
C. When Is the Delisting Effective?
D. How Does This Action Affect the States?
IV. Public Comments Received on the Proposed Exclusion
A. Who Submitted Comments on the Proposed Rule?
B. Comments and Responses From EPA
V. Regulatory Impact
VI. Congressional Review Act
VII. Executive Order 12875

## I. Background

*A. What Is a Delisting Petition?*

A delisting petition is a request from a generator to exclude waste from the list of hazardous wastes under RCRA regulations. In a delisting petition, the petitioner must show that waste generated at a particular facility does not meet any of the criteria for which EPA listed the waste as set forth in 40 Code of Federal Regulations (CFR) § 261.11 and the background document for the waste. In addition, a petitioner must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (that is, ignitability, reactivity, corrosivity, and toxicity) and must present sufficient information for us to decide whether factors other than those for which the waste was listed warrant retaining it as a hazardous waste.

Generators remain obligated under RCRA to confirm that their waste remains nonhazardous based on the hazardous waste characteristics even if EPA has "delisted" the wastes.

*B. What Regulations Allow a Waste To Be Delisted?*

Under 40 CFR 260.20 and 260.22, facilities may petition the EPA to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained in §§ 261.31 and 261.32. Specifically, § 260.20 allows any person to petition the Administrator to modify or revoke any provision of parts 260 through 266, 268, and 273 of Title 40 of the Code of Federal Regulations. Section 260.22 provides generators the opportunity to petition the Administrator to exclude a waste on a "generator specific" basis from the hazardous waste lists.

## II. GM's Petition to Delist Wastewater Treatment Sludge

*A. What Waste Did GM Petition EPA to Delist?*

In November 1998, GM petitioned EPA to exclude an annual volume of 1,250 cubic yards of F019 wastewater treatment sludges from the chemical conversion coating of aluminum generated at its Lansing Car Assembly—Body Plant located in Lansing, Michigan from the list of hazardous wastes contained in 40 CFR 261.31.

*B. What Information Must the Generator Supply?*

Petitioners must provide sufficient information to allow the EPA to determine that the waste does not meet any of the criteria for which it was listed as a hazardous waste. In addition, where there is a reasonable basis to believe that factors other than those for which the waste was listed (including additional constituents) could cause the waste to be hazardous, the Administrator must determine that such factors do not warrant retaining the waste as hazardous.

*C. What Information Did GM Submit to Support This Petition?*

To support its petition, GM submitted (1) Descriptions and schematic diagrams of its manufacturing and wastewater treatment processes; (2) results of analyses for the characteristics of ignitability, corrosivity, and reactivity; (3) total constituent analyses and Extraction Procedure for Oily Wastes (OWEP, SW–846 Method 1330A) analyses for the eight toxicity characteristic metals listed in 40 CFR 261.24, plus antimony, beryllium, cobalt, copper, hexavalent chromium, nickel, tin, thallium, vanadium, and zinc; (4) total constituent and Toxicity Characteristic Leaching Procedure (TCLP), SW–846 Method 1311 analyses for 56 volatile and 117 semi-volatile organic compounds and formaldehyde; (5) total constituent and TCLP analyses for sulfide, cyanide, and fluoride; (6) total constituent and TCLP analyses for organochlorine pesticides and chlorinated herbicides; and (7) analysis for oil and grease, and percent solids.

## III. EPA's Evaluation and Final Rule

*A. What Decision Is EPA Finalizing and Why?*

Today the EPA is finalizing an exclusion to GM for its wastewater treatment plant sludge generated at the GM facility in Lansing, Michigan. GM petitioned EPA to exclude, or delist, the wastewater treatment sludge because GM believes that the petitioned waste does not meet the RCRA criteria for which it was listed and that there are no additional constituents or factors which could cause the waste to be hazardous. Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984 (HSWA). See § 222 of HSWA, 42 United States Code (U.S.C.) 6921(f), and 40 CFR 260.22 (d)(2)–(4). On October 13, 1999, EPA proposed to exclude or delist GM's wastewater treatment sludge from the list of hazardous wastes in 40 CFR 261.31 and accepted public comment on the proposed rule (64 FR 55443). EPA considered all comments received, and for reasons stated in both the proposal and this document, we believe that GM's waste should be excluded from hazardous waste control.

*C. What Are the Terms of This Exclusion?*

GM must dispose of the waste in a Subtitle D landfill which is permitted, licensed, or registered by a state to manage industrial waste. GM must verify on an annual basis that the concentrations of the constituents of concern do not exceed the allowable levels set forth in this exclusion. This exclusion applies to a maximum annual volume of 1,250 cubic yards of waste water treatment sludge and is effective only if all conditions contained in today's rule are satisfied.

*D. When Is the Delisting Effective?*

This rule is effective May 16, 2000. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. This rule reduces rather than increases the existing requirements and, therefore, is effective immediately upon publication under the Administrative Procedure Act, pursuant to 5 U.S.C. 553(d).

*E. How Does This Action Affect the States?*

Because EPA is issuing today's exclusion under the federal RCRA delisting program, only states subject to federal RCRA delisting provisions would be affected. This exclusion may not be effective in states having a dual system that includes federal RCRA requirements and their own requirements, or in states which have received our authorization to make their own delisting decisions.

EPA allows states to impose their own non-RCRA regulatory requirements that are more stringent than EPA's, under section 3009 of RCRA. These more stringent requirements may include a provision that prohibits a federally issued exclusion from taking effect in the state. Because a dual system (that is, both federal (RCRA) and state (non-RCRA) programs) may regulate a petitioner's waste, we urge petitioners to contact the state regulatory authority to establish the status of their wastes under the state law.

EPA has also authorized some states to administer a delisting program in place of the federal program, that is, to make state delisting decisions. Therefore, this exclusion does not apply in those authorized states. If GM transports the petitioned waste to or manages the waste in any state with delisting authorization, GM must obtain a delisting from that state before it can manage the waste as nonhazardous in the state.

## IV. Public Comments Received on the Proposed Exclusion

*A. Who Submitted Comments on the Proposed Rule?*

The EPA received public comments on the proposed notice published on October 13, 1999 from General Motors Corporation, Ford Motor Company, DaimlerChrysler Corporation, The American Zinc Association, Mr. John S. Olczak, Michigan Department of Environmental Quality, Alcoa Inc., Michigan Manufacturers Association, Reynolds Metals Company, Alcan Aluminum Corporation, The Aluminum Association, and Heritage Environmental Services, LLC.

*B. Comments and Responses From EPA*

*Comment:* Land Disposal Restrictions (LDRs) are not applicable to waste which is not hazardous.

*Response:* LDRs will not apply to GM's petitioned waste because the waste meets the delisting levels at the point of generation. However, the Agency believes that in some circumstances wastes which meet exemption levels may also have to meet LDR requirements. The Proposed Hazardous Waste Identification Rule (HWIR) in the November 19, 1999 **Federal Register** states that "Wastes that have met the HWIR exemption levels after the point of generation, however, would still be subject to LDRs even after they become exempt from the definition of hazardous, because LDRs apply to wastes that are hazardous or have ever been hazardous."

*Comment:* LDRs for nickel and lead should not apply to the petitioned waste

because LDRs do not apply to these constituents in F019 waste.

*Response:* In the proposed rule, the agency interpreted the requirement to consider all factors which could cause the waste to be hazardous to include consideration of LDRs for all hazardous constituents. However, since the universal treatment standards for nickel and lead are based on technology rather than on risk, there is no risk basis for applying them to this waste. These LDRs will not apply to GM's petitioned waste.

*Comment:* The frequency of verification testing is unnecessarily burdensome.

*Response:* The levels set forth in condition 1 of this rule must be verified on an annual basis. The monthly verification of the treatment standards in the proposed rule has been eliminated in today's final rule. The agency believes that verification on an annual basis is appropriate.

*Comment:* Verification testing for the pesticides Beta-BHC and DDT is inappropriate. These constituents were reported in only the extract from one sample and the data were rejected due to laboratory contamination. These chemicals are not used at this facility and were not detected in any total analysis.

*Response:* The constituents in question are pesticides which are not likely to be in the facility's waste. The Agency accepts the facility's statement that these substances are not used at the facility and the single TCLP analysis which indicates their presence should be rejected on the basis of laboratory contamination.

*Comment:* Verification testing should be limited to Appendix IX metals & other constituents that were present in the TCLP extract at greater than 1/100 of the delisting level. Testing for constituents which do not exceed 1/100th of the delisting level is unnecessary and overly burdensome.

*Response:* The Agency believes that continued testing for all constituents in condition 1 is appropriate.

*Comment:* The test for reactivity (if one becomes available) should be required only when there is a process change that could cause the waste to be reactive.

*Response:* Delisting policy requires demonstration that the wastes are not characteristic. The analysis for total cyanide in Table 1 of the proposed rule demonstrates that the waste will not be reactive for hydrogen cyanide. However, the concentration of sulfide in this waste is substantially greater and could cause the waste to be reactive. Condition 1(c) has been modified to specify reactivity for sulfide.

*Comment:* Zinc is not included in the list of hazardous constituents in Appendix VIII to 40 CFR Part 261 and is not included in the definition of "underlying hazardous constituent" in § 268.2(i). Commenter requested that zinc be eliminated as a hazardous constituent in GM's waste.

*Response:* Zinc is not referred to as a hazardous constituent in this rule, but it is a constituent of concern and it can reasonably be expected to be present at the point of generation. Table 3 of the proposed rule, which includes zinc, sets forth allowable concentration levels for constituents of concern.

*Comment:* Chromium VI is one of the constituents that caused the F019 waste to be listed and it is not clear that chromium VI concerns have been addressed.

*Response:* The allowable level for chromium is presented as total chromium but the allowable level for total chromium was calculated based on the conservative assumption that all chromium in the waste is chromium VI.

*Comment:* In Condition 5(a) and (c), 10 days is not sufficient time to review the data and prepare an adequate response.

*Response:* The Agency agrees that more time may be necessary to initially validate the data, but believes the allotted time in Condition 5(c) for a preliminary response is adequate. In the final rule, the last two lines in Condition 5(a) have been changed to read "* * * then GM must notify the Regional Administrator in writing within 10 days and must report the data within 45 days of first possessing or being made aware of that data." Condition 5(c) is unchanged.

*Comment:* GM will be using high performance liquid chromatography (HPLC) method for future analysis of formaldehyde.

*Response:* We agree that HPLC is an appropriate method for this constituent.

*Comment:* The conditions would set a new and unjustified precedent for all generators considering delisting.

*Response:* The conditions in this delisting are limited to a specific waste at a specific facility. This rule does not set standards for other generators.

*Comment:* Application of different testing protocols or inconsistency by the USEPA between petitioners introduces uncertainty to the exclusion process and may pose a barrier to interstate commerce.

*Response:* The conditions in this delisting are limited to a specific waste at a specific facility. The delisting process excludes waste on a "generator specific" basis. Due to the variety of waste types that may be the subject of a delisting petition, there will always be the potential that different testing protocols will be utilized to adequately characterize the petitioned waste.

*Comment:* Commenter supports EPA's consistent application of the published TCLP procedure to guide waste management decisions along with the published guidance used to exclude petitioned hazardous waste from regulation.

*Response:* As wastes and disposal environments may vary, the factors influencing the leachability of wastes will also vary. For a more complete assessment of leachability, it may be necessary to supplement the TCLP with a modified TCLP as discussed in the most recent version of the *Region 6 Guidance Manual for the Petitioner.* The Region 6 guidance manual is endorsed and recommended by Region 5.

*Comment:* The requirement to compile an annual report and submit the data to the EPA is an additional burden on the regulated community as the facility is already required to maintain the data for a period of five years.

*Response:* Condition 4 of the proposed rule requires that the data be compiled, summarized and maintained on site. Only a summary of the data is to be submitted to the EPA. Today's rule does not require the preparation of an annual report to the EPA.

## V. Regulatory Impact

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a rule of general applicability and therefore is not a "regulatory action" subject to review by the Office of Management and Budget. Because this action is a rule of particular applicability relating to a facility, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204, and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Because the rule will affect only one facility, it will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13084 (63 FR 27655, May 10, 1998). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule

also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**VI. Congressional Review Act**

The Congressional Review Act (5 U.S.C. 801 *et seq.*) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, the Comptroller General of the United States prior to publication of the final rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will become effective on the date of publication in the **Federal Register**.

**VII. Executive Order 12875**

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

**List of Subjects in 40 CFR Part 261**

Hazardous waste, Recycling, Reporting and recordkeeping requirements.

**Authority:** Sec. 3001(f) RCRA, 42 U.S.C. 6921(f).

Dated: May 3, 2000.

**Robert Springer,**

*Director, Waste, Pesticides and Toxics Division.*

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

**PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE**

1. The authority citation for Part 261 continues to read as follows:

**Authority:** 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

2. In Table 1 of Appendix IX of Part 261 add the following waste stream in alphabetical order by facility to read as follows:

**Appendix IX to Part 261—Wastes Excluded Under §§ 260.20 and 260.22.**

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

| Facility | Address | Waste description |
|---|---|---|
| • | • | • |
| General Motors Corporation. Lansing Car Assembly—Body Plant. | Lansing, Michigan ..... | Wastewater treatment plant (WWTP) sludge from the chemical conversion coating (phosphate coating) of aluminum (EPA Hazardous Waste No. F019) generated at a maximum annual rate of 1,250 cubic yards per year and disposed of in a Subtitle D landfill, after May 16, 2000.<br>1. Delisting Levels:<br>(A) The constituent concentrations measured in the TCLP extract may not exceed the following levels (mg/L): Antimony—0.576; Arsenic—4.8; Barium—100; Beryllium—0.384; Cadmium—0.48; Chromium (total)—5; Cobalt—201.6; Copper—124.8; Lead—1.44; Mercury—0.192; Nickel—67.2; Selenium—1; Silver—5; Thallium—0.192; Tin—2016; Vanadium—28.8; Zinc—960; Cyanide—19.2; Fluoride—384; Acetone—336; m,p—Cresol—19.2; 1,1—Dichloroethane—0.0864; Ethylbenzene—67.2; Formaldehyde—672; Phenol—1920; Toluene—96; 1,1,1—Trichloroethane—19.2; Xylene—960.<br>(B) The total concentration of formaldehyde in the waste may not exceed 2100 mg/kg.<br>(C) Analysis for determining reactivity from sulfide must be added to verification testing when an EPA-approved method becomes available.<br>2. Verification Testing: GM must implement an annual testing program to demonstrate that the constituent concentrations measured in the TCLP extract (or OWEP, where appropriate) of the waste do not exceed the delisting levels established in Condition (1). |

TABLE 1.—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

| Facility | Address | Waste description |
|---|---|---|
| | | 3. Changes in Operating Conditions: If GM significantly changes the manufacturing or treatment process or the chemicals used in the manufacturing or treatment process, GM must notify the EPA of the changes in writing. GM must handle wastes generated after the process change as hazardous until GM has demonstrated that the wastes meet the delisting levels set forth in Condition (1), that no new hazardous constituents listed in Appendix VIII of Part 261 have been introduced, and GM has received written approval from EPA.<br>4. Data Submittals: GM must submit the data obtained through annual verification testing or as required by other conditions of this rule to U.S. EPA Region 5, 77 W. Jackson Blvd. (DW–8J), Chicago, IL 60604, within 60 days of sampling. GM must compile, summarize, and maintain on site for a minimum of five years records of operating conditions and analytical data. GM must make these records available for inspection. All data must be accompanied by a signed copy of the certification statement in 40 CFR 260.22(i)(12).<br>5. Reopener Language—(a) If, anytime after disposal of the delisted waste, GM possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified in Condition (1) is at a level in the leachate higher than the delisting level established in Condition (1), or is at a level in the ground water or soil higher than the level predicted by the CML model, then GM must notify the Regional Administrator in writing within 10 days and must report the data within 45 days of first possessing or being made aware of that data.<br>(b) Based on the information described in paragraph (a) and any other information received from any source, the Regional Administrator will make a preliminary determination as to whether the reported information requires Agency action to protect human health or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.<br>(c) If the Regional Administrator determines that the reported information does require Agency action, the Regional Administrator will notify GM in writing of the actions the Regional Administrator believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing GM with an opportunity to present information as to why the proposed Agency action is not necessary or to suggest an alternative action. GM shall have 10 days from the date of the Regional Administrator's notice to present the information.<br>(d) If after 10 days GM presents no further information, the Regional Administrator will issue a final written determination describing the Agency actions that are necessary to protect human health or the environment. Any required action described in the Regional Administrator's determination shall become effective immediately, unless the Regional Administrator provides otherwise. |

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[FR Doc. 00–12306 Filed 5–15–00; 8:45 am]
BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–865; MM Docket No. 97–106, RM–9044, RM–9741]**

### Radio Broadcasting Services; Cheyenne, Wyoming and Gering, Nebraska.

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Allocations Branch at the request of petitioner, TSB II, Inc. allots Channel 280C2 at Cheyenne as that community's 12th local aural service, substitutes Channel 239C3 for Channel 280C1 at Gering, Nebraska and modifies Station's KOLT–FM license accordingly. *See,* 62 FR 15870 (April 3, 1997) The Branch determined that a new allotment at Cheyenne was preferable to a counterproposal of two station upgrade and one downgrade. Each channel can be allotted to its respective community in compliance with the Commission's minimum distance separation requirements. The reference coordinates for a Channel 280C2 allotment at Cheyenne, Wyoming, are 41–08–17 North Latitude and 104–48–22 West Longitude. The reference coordinates for Channel 239C3 at Gering, Nebraska are 41–51–50 North Latitude and 103–42–20 West Longitude.

**DATES:** Effective May 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 97–106, adopted March 31, 2000, and released April 15, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Channel 280C2 at Cheyenne.

3. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by removing Channel 280C1 and adding Channel 239C3 at Gering.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–12254 Filed 5–15–00; 8:45 am]

BILLING CODE 6712–01–P

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA No. 00–917; MM Docket No. 99–134; RM–9543 and RM–9572]**

### Radio Broadcasting Services; Drummond and Victor, MT

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document allots Channel 268C to Drummond, Montana, in response to a petition filed by the Battani Corporation and allots Channel 250C3 to Victor, Montana, in response to a petition filed by Mountain West Broadcasting. *See* 64 FR 24996, May 10, 1999. The coordinates for Channel 268C at Drummond are 46–16–47 and 113–31–05. The coordinates for Channel 250C3 at Victor are 46–25–06 and 114–08–54. Canadian concurrence has been obtained for Channel 268C at Drummond. Allotment of Channel 250C3 at Victor is conditioned on concurrence of the Canadian Government in accordance with the 1991 Canada-USA FM Broadcast Agreement. With this action, this proceeding is terminated.

**DATES:** Effective June 9, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99–134, adopted April 12, 2000, and released April 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Montana, is amended by adding Drummund, Channel 268C and Victor, Channel 250C3.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–12255 Filed 5–15–00; 8:45 am]

BILLING CODE 6712–01–P

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1804, 1806, 1815, 1823, 1832, and 1845

### Contract Financing

**AGENCY:** Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the NASA FAR Supplement (NFS) to: provide guidance on administering progress payments on indefinite-delivery contracts; delete outdated performance-based payments guidance; and provide guidance on using performance-based payments in competitive negotiated acquisitions. These revisions result from the final FAR rule (FAR Case 98–400) on contract financing that was published in the March 27, 2000, **Federal Register**. This final rule also makes changes to conform the NFS with changes made by FAC 97–15; and makes editorial corrections and miscellaneous changes dealing with NASA internal and administrative matters.

**EFFECTIVE DATE:** May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Le Cren, NASA Headquarters, Code HK, Washington, DC 20546, telephone: (202) 358–0444, e-mail: *joseph.lecren@hq.nasa.gov*.

**SUPPLEMENTARY INFORMATION:**

### A. Background

A final FAR rule was published in the **Federal Register** that simplified and streamlined the administration of progress payments, and removed the prohibition against using performance-based payments in contracts for research and development and contracts awarded through competitive negotiation procedures.

The FAR revisions deleted previous language on the administration of progress payments under indefinite delivery contracts that allowed administration on an overall contract basis, or for the treatment of a group of orders as a single unit. However, the FAR rule also allows for agency procedures to specify other procedures. In order to provide contracting officers with the maximum flexibility for administering progress payments, NASA chooses to retain the deleted FAR language.

The FAR revisions incorporated language requiring that the amounts of performance-based payments not result in unreasonably low or negative level of contractor investment in the contract and provide guidance on how the contracting officer would assure this did not take place. As a result of this change, similar NFS language is unnecessary and is deleted. The FAR rule also deleted section 32.1006, Agency Approvals, and the NFS implementing guidance at 1832.1006 is no longer necessary and is likewise deleted.

FAR 32.1001(a) requires two conditions for the use of performance-based payments: "the contracting officer finds them practical, and the contractor agrees to their use." Although the FAR does not offer any guidance for determining practicality of use, the preamble to the final FAR rule indicates that, relative to the use of performance-based payments in competitive negotiations, contracting officers may consider the effect on the source selection process and the "potential impact on small business competitiveness" among the factors for determining practicality. In the last few years, NASA has adopted a number of source selection streamlining procedures (awarding without discussions and requiring no cost information on firm-fixed-price competitions) that could be

compromised by the use of performance-based payments, a financing option that would almost always require discussions and cost information. In addition, NASA has been a leader in encouraging small business participation in its competitions, and will not take any action that might deter continued high levels of small business competitiveness. Accordingly, NASA believes it important to specify in the NFS that contracting officers should consider the procedural and small business competitiveness factors when determining the practicality of the use of performance-based payments in competitive negotiations. As a management control to ensure that the source selection process and small business competitiveness are not adversely affected, HQ approval is required for use of performance-based payments in competitions under $50M. NASA will use its Master Buy Plan process to obtain visibility into acquisitions over that amount.

When performance-based payments are used in competitive negotiated acquisitions, FAR 32.1004(e) indicates that the solicitation should include a price adjustment "if the contracting officer anticipates that the cost of providing performance-based payments would have a significant impact on determining the best value offer." However, the FAR also allows agencies to establish other evaluation procedures. NASA believes that the use of the price adjustment evaluation has the potential to lengthen the source selection process, require the submission of proposal information otherwise not required, and adversely impact small and small disadvantaged businesses. Accordingly, the NFS advises contracting officers to consider qualitative evaluation methods when performance-based payments are used in competitive negotiations under $50M.

Finally, the NFS change also requires that when performance-based payments are planned to be used in competitive negotiated acquisitions, the draft RFP must request the potential offerors to suggest terms, including performance events or payment criteria. The information provided by the offerors will be used, when possible, to establish a common set of performance-based payment parameters in the formal solicitation.

FAC 97–15 changed the section heading at 4.804–5 and deleted subpart 23.1. This final rule conforms the NFS with these changes; makes other editorial changes to correct referenced FAR citations, office designations; and provides an example of "evidence of endorsement by another agency of the U.S. Government based on national security or foreign policy of the United States" at section 1845.405–70.

### B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577, and publication for public comments is not required. However, comments from small entities concerning the affected NFS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.*

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### List of Subjects in 48 CFR Parts 1804, 1806, 1815, 1823, 1832, and 1845

Government procurement.

**Tom Luedtke,**

*Associate Administrator for Procurement.*

Accordingly, 48 CFR parts 1804, 1806, 1815, 1823, 1832 and 1845 are amended as follows:

1. The authority citation for 48 CFR parts 1804, 1806,1815, 1823, 1832, and 1845 continues to read as follows:

**Authority:** 42 U.S.C. 2473 (c)(1).

## PART 1804—ADMINISTRATIVE MATTERS

2. In section 1804.804–5, revise the section heading and amend paragraphs (a) and (b) by removing the word "shall" and inserting the word "must" in its place. The revised section heading reads as follows:

**1804.804–5 Procedures for closing out contract files.**

* * * * *

## PART 1806—COMPETITION REQUIREMENTS

**1806.303–1 [Amended]**

3. Amend paragraph (d) of section 1806.303–1 by removing the reference "FAR 25.403" and adding "FAR 25.401" in its place.

## PART 1815—CONTRACTING BY NEGOTIATION

4. Amend section 1815.201 by redesignating paragraph (c)(6)(E) as 1815.201(c)(6)(F) and adding a new paragraph (c)(6)(E) to read as follows:

**1815.201 Exchanges with industry before receipt of proposals.**

* * * * *

(c)(6) * * *

(E) If performance-based payments are planned to be used in a competitive negotiated acquisition, the DRFP shall request potential offerors to suggest terms, including performance events or payment criteria. Contracting officers shall use that information to establish a common set of performance-based payments parameters in the formal RFP when practicable.

* * * * *

## PART 1823—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

**Subpart 1823.1 [Removed]**

5. Remove subpart 1823.1

## PART 1832—CONTRACT FINANCING

6. Add sections 1832.503 and 1832.503–5 to read as follows:

**1832.503 Postaward matters.**

**1832.503–5 Administration of progress payments. (NASA supplements paragraph (c).)**

(c)(i) If the contractor requests it and the contracting officer approving individual progress payments agrees, the administration of progress payments may be based on the overall contract agreement. Under this method, the contractor must include a supporting schedule with each request for a progress payment. The schedule should identify the costs applicable to each order.

(ii) The contracting officer may treat a group of orders as a single unit for administration of progress payments if each order in the group is subject to a uniform liquidation rate and under the jurisdiction of the same payment office.

7. Add section 1832.1001 to read as follows:

**1832.1001 Policy.**

(a)(i) In determining whether performance-based payments are practical in competitive negotiated acquisitions, the contracting officer should consider the procedural impacts (*e.g.*, proposal evaluation complications, longer evaluations, elimination of the potential for award without discussions, increased proposal information requirements) and the impact on small business competitiveness.

(ii) The contracting officer must obtain approval from the Director of the Headquarters Office of Procurement Contract Management Division (Code HK) to use performance-based payments in competitive negotiated solicitations under $50M. The request for approval must include an assessment of the practicality of using performance-based payments, as well as the proposed performance-based payments evaluation approach (see 1832.1004(e)(1)(ii)).

8. Revise section 1832.1004 to read as follows:

**1832.1004 Procedures.**

(a) See 1815.201(c)(6)(E) for establishing performance bases and payment terms in competitive negotiated acquisitions.

(e)(1)(ii) Use of the price adjustment evaluation technique may require obtaining and analyzing proposal information that is normally not required in NASA firm-fixed-price competitions (see 1815.403–3). When using performance-based payments in competitive negotiated acquisitions under $50 million, contracting officers should consider the use of alternative evaluation methods, *e.g.*, qualitative evaluation under Mission Suitability or another appropriate factor.

9. In section 1832.1005, add paragraph (b)(2) to read as follows:

**1832.1005 Contract clauses.**

* * * * *

(b)(2) Contracting officers shall not use Alternate I in competitive negotiated acquisitions under $50 million, unless approval has been obtained to use performance-based payments (see 1832.1001(a)(ii)).

**1832.1006 [Removed]**

10. Remove section 1832.1006.

## PART 1845—GOVERNMENT PROPERTY

11. In section 1845.405–70, revise paragraphs (b) and (c)(9) to read as follows:

**1845.405–70 NASA procedures.**

* * * * *

(b) The prior written approval of the Associate Administrator for Procurement (Code H) is required for the use of Government production and research property on work for foreign countries or for international organizations. The Logistics Management Office of the Headquarters Office of Management Systems (Code JG), the Office of General Counsel (Code G), and the Headquarters Office of External Relations (Code I) are required concurrences.

(c) * * *

(9) Any evidence of endorsement by another agency of the U.S. Government based on national security or foreign policy of the United States (*e.g.*, an approved license or agreement from the Department of State or Department of Commerce).

* * * * *

[FR Doc. 00–12141 Filed 5–15–00; 8:45 am]

BILLING CODE 7510–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 00424110–0110–01; I.D. 040600A]**

**RIN 0648–AO01**

## Fisheries of the Exclusive Economic Zone Off Alaska; License Limitation Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues a final rule to amend the regulations implementing the License Limitation Program (LLP) to include provisions inadvertently omitted that would have made area endorsements and area/species endorsements specified on a license non-severable from the license and that would have made a groundfish license and a crab species license issued based on the legal landings of the same vessel and initially issued to the same qualified person non-severable from each other. Thus, the endorsements in the first case must be transferred with the license and in the second case both licenses must be transferred together. This regulatory amendment is necessary to include in the regulations non-severability provisions proposed by the North Pacific Fishery Management Council (Council) and NMFS in the original proposed rule to implement the LLP. This action is necessary to promote the objectives of the Federal fishery management plans for the affected fisheries by further preventing increased harvesting capacity.

**DATES:** Effective May 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** James Hale, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the U.S. groundfish fisheries of the exclusive economic zone off Alaska pursuant to the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska and the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area. The commercial king crab and Tanner crab fisheries in the Bering Sea and Aleutian Islands Area are managed by the State of Alaska with Federal oversight, pursuant to the FMP for those fisheries. The Council prepared the FMPs pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.* Federal regulations implementing the FMPs appear at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

The proposed rule to implement Amendment 39 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area, Amendment 41 to the FMP for Groundfish of the Gulf of Alaska, and Amendment 5 to the FMP for the Commercial King and Tanner Crab Fisheries in the Bering Sea/Aleutian Islands (62 FR 43866, August 15, 1997) contained provisions which would have made (1) area endorsements or area/species endorsements specified on a license non-severable from the license and (2) a groundfish license and a crab license issued based on the legal landings of the same vessel and initially issued to the same qualified person non-severable. No comments were received on these provisions. These provisions were intended to prevent increased capacity in the groundfish and crab fisheries managed under the FMPs.

In the final rule implementing the LLP, the application provisions (§ 679.4(i)(6)) and the transfer provisions (§ 679.4(i)(7)), including the non-severability provisions, were removed and the appropriate paragraphs reserved to allow for further refinement of the application and transfer processes (63 FR 52642, October 1, 1998). The final rule gave notice that a proposed rulemaking regarding those processes was under development.

Subsequently, NMFS initiated a proposed rulemaking to implement the application and transfer provisions (64 FR 19113, April 19, 1999). On August 6, 1999, NMFS issued a final rule implementing the application and transfer processes (64 FR 42826). While NMFS intended that the regulatory text include the non-severability provisions, that language was inadvertently omitted.

This final rule amends the LLP regulations by restoring the omitted non-severability provisions without change from those published in the original proposed rule (62 FR 43866, August 15, 1997) and approved by

NMFS with the approval of Amendments 39, 41, and 5.

**Classification**

Pursuant to 5 U.S.C. 553(b)(B), a rule may be issued without prior notice and opportunity for public comment if providing such notice and comment period would be impractical, unnecessary, or contrary to the public interest. Additionally, a rule may be made effective prior to 30 days after its issuance if good cause is found and provided by the agency in the rule,pursuant to 5 U.S.C. 553(d)(3). This final rule implements the original intent of the Council and NMFS concerning severability of LLP licenses. The public was provided with prior notice and an opportunity to comment on these and other proposed regulations implementing the LLP by the proposed rule published at 62 FR 43866 (August 15, 1997). A delay in implementation of this action would unnecessarily encumber persons conducting business under the LLP transfer provisions. For these reasons, the Assistant Administrator, NMFS, finds good cause to make this rule effective immediately upon filing for public inspection with the Office of the Federal Register.

In connection with the proposed rule published at 62 FR 43866 (August 15, 1997), to implement the LLP, the Assistant General Counsel for Legislation and Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that the regulations implementing the LLP would not have a significant adverse economic impact on a substantial number of small entities. The regulations implemented by this action consist of the transfer provisions in that proposed rule and accordingly are covered by that certification.

This rule has been determined to be not significant for purposes of E.O. 12866.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: May 10, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For reasons set out in the preamble, 50 CFR part 679 is amended to read as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.4, paragraph (k)(7)(viii) is added to read as follows:

**§ 679.4 Permits.**

* * * * *

(k) * * *

(7) * * *

(viii) *Severability of licenses.* (A) Area endorsements or area/species endorsements specified on a license are not severable from the license and must be transferred together.

(B) A groundfish license and a crab species license issued based on the legal landings of the same vessel and initially issued to the same qualified person are not severable and must be transferred together.

* * * * *

[FR Doc. 00–12276 Filed 5–11–00; 3:16 pm]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 000211039–0039–01; I.D. 050800A]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish Fisheries by Vessels Using Hook-and-Line Gear in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for groundfish by vessels using hook-and-line gear in the Gulf of Alaska (GOA), except for sablefish or demersal shelf rockfish. This action is necessary because the second seasonal halibut bycatch mortality allowance apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), May 18, 2000, until 1200 hrs, A.l.t., September 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000) established the Pacific halibut bycatch mortality allowance for groundfish included in the other hook-and-line fishery, which is defined at § 679.21(d)(4)(iii)(C), for the second season, the period May 18, 2000, through August 31, 2000, as 15 metric tons. The other hook-and-line fishery includes all groundfish, except sablefish or demersal shelf rockfish.

In accordance with § 679.21(d)(7)(ii), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 2000 Pacific halibut bycatch mortality allowance specified for the hook-and-line groundfish fisheries other than sablefish or demersal shelf rockfish in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for groundfish other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

**Classification**

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the second seasonal apportionment of the 2000 Pacific halibut bycatch mortality allowance specified for the groundfish fisheries other than sablefish or demersal shelf rockfish by vessels using hook-and-line gear in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The second seasonal bycatch mortality allowance of Pacific halibut apportioned to hook-and-line gear targeting groundfish other than sablefish or demersal shelf rockfish in the GOA has been caught. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 10, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12297 Filed 5–15–00; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Part 679

**[Docket No. 991221345–0108–02; I.D. 113099B]**

**RIN 0648–AL30**

## Fisheries of the Exclusive Economic Zone Off Alaska; Prohibition of Nonpelagic Trawl Gear in the Bering Sea and Aleutian Islands Pollock Fishery

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues regulations to implement Amendment 57 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). This action consists of three regulatory changes. First, it prohibits the use of nonpelagic trawl gear in the directed non-community development quota (CDQ) pollock fisheries of the Bering Sea and Aleutian Islands (BSAI). Second, it makes the performance standard for pelagic trawl gear applicable at all times to vessels in the directed non-CDQ pollock fishery in the BSAI. Third, it reduces the crab and Pacific halibut (halibut) bycatch limits established for the BSAI groundfish trawl fisheries. This action is necessary to address bycatch reduction objectives in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), and is intended to further the goals and objectives of the FMP.

**DATES:** Effective June 15, 2000.

**ADDRESSES:** Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) and the Final Regulatory Flexibility Analysis (FRFA) prepared for this action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or by calling the Alaska Region, NMFS, at 907–586–7228.

**FOR FURTHER INFORMATION CONTACT:** Nina Mollett, (907) 586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the domestic groundfish fisheries of the BSAI under the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP, and NMFS approved it, under the Magnuson-Stevens Act. Regulations governing the groundfish fisheries of the BSAI appear at 50 CFR parts 600 and 679.

### Background and Need for Action

The objective of Amendment 57 is to reduce bycatch in the BSAI pollock fishery. The amendment and its implementing regulations are designed to comply with the Magnuson-Stevens Act, which emphasizes the importance of reducing bycatch to maintain sustainable fisheries. National standard 9 of the Magnuson-Stevens Act mandates that conservation and management measures minimize bycatch, to the extent practicable, and minimize mortality where bycatch cannot be avoided.

NMFS published the proposed rule to implement Amendment 57 in the **Federal Register** on December 29, 1999 (64 FR 73003). The public comment period ended on February 14, 2000. NMFS approved Amendment 57 on March 8, 2000.

The final action to implement the amendment has three parts.

*1. Prohibition on the Use of Nonpelagic Trawl Gear in the BSAI Directed Non-CDQ Pollock Fishery*

This rule prohibits nonpelagic trawling for non-CDQ pollock in the BSAI. Since January 1999, the entire BSAI pollock TAC, except for the CDQ fishery, has been allocated to pelagic trawl gear.

The prohibition is expected to reduce bycatch on a permanent basis (for the past 2 years the nonpelagic trawl ban has been in effect through allocation of zero TAC) while imposing a relatively low cost on the fishery. Pollock is the only fishery where both pelagic and nonpelagic trawl gear are used. Pelagic gear has a substantially lower bycatch rate for halibut and crab. Most fishing for pollock in the BSAI was conducted with pelagic gear even before 1999.

*2. Performance Standard*

The existing performance standard for pelagic trawl gear at § 679.7(a)(14) prohibits a vessel engaged in directed fishing for pollock, when directed fishing for pollock with nonpelagic trawl gear is closed, from having 20 or more crabs of any species, with a carapace width of more than 1.5 inches (38 mm) at the widest dimension, on board at any one time. Crabs were chosen for the standard because they inhabit the seabed and, if caught with trawl gear, indicate that the trawl has been in contact with the bottom. The standard is revised to make it applicable at all times to vessels engaged in a directed fishery for non-CDQ pollock in the BSAI because all vessels, except those fishing for CDQ pollock, are prohibited from using nonpelagic trawl gear.

*3. Prohibited Species Catch (PSC) Limits*

The final rule reduces the bycatch limit for halibut and crab caught using trawl gear in the BSAI. The CDQ program will continue to receive 7.5 percent of each PSC limit, in accordance with § 679.21(e)(1), which contains the existing limits for each PSC species in the BSAI. The current halibut PSC allowance is 3,775 metric tons (mt). Crab bycatch limits vary according to abundance and spawning biomass as determined by annual surveys.

This final rule reduces the halibut PSC limit by 100 mt to 3,675 mt. The rule reduces the PSC allowance for red king crabs by 3,000 animals, for *Chionoecetes* (*C.*) *bairdi* crabs by 50,000 animals, and for *C. opilio* crabs by 150,000 animals. The rule reduces the *C. bairdi* crabs allowance by 20,000 in Zone 1 and by 30,000 in Zone 2, reflecting the larger fishery there.

The Council recommended these reduced PSC limits after considering data on bycatch rates from vessels using pelagic gear while the performance standard was in effect. Two other options were considered: Option 1 would have reduced only the halibut bycatch limit, and Option 2 would have reduced bycatch by lesser amounts for halibut and the three PSC crab species. The Council chose Option 3 because it more realistically conforms to the amount of bycatch likely to be avoided as a result of the prohibition on nonpelagic trawl gear. The analysis of all options and alternatives is contained in the EA/RIR, the Initial Regulatory Flexibility Analysis, and the FRFA that were prepared for this action.

### Pollock CDQ Fisheries

Under this final rule, vessels fishing for CDQ pollock are not subject to the prohibition on the use of nonpelagic trawl gear. The structure of the CDQ program provides a strong incentive to the CDQ groups and their harvesting partners to use fishing gear and fishing techniques that minimize the bycatch of non-target groundfish and prohibited species. Under this final rule, the CDQ program will receive a reduced allocation of PSC, because it will continue to receive a 7.5 percent

allocation of what will be a reduced overall PSC allowance. Therefore, although the prohibition the use of on nonpelagic trawl gear will not apply to the CDQ fisheries, the collateral reduction in PSC allowance will increase the effect of the existing incentive for CDQ groups to minimize the bycatch of PSQ species.

**Fishing Trip Definition**

This final rule also changes the "fishing trip" definition contained in § 679.2. Under the new definition, when a vessel begins fishing with a new gear type, it must start recordkeeping for a new fishing trip. This change enables, for example, a vessel legitimately fishing with bottom trawl gear for yellowfin sole, and under a maximum retainable bycatch restriction for pollock (see § 679.20(e)), to keep clear records if it switches to directed fishing for pollock using pelagic gear.

**Changes From Proposed to Final Rule**

One technical change was made from the proposed rule to this final rule. This change clarifies that the performance standard applies at all times to non-CDQ trawl vessels in the directed fishery for pollock in the BSAI, but that the performance standard has not changed for vessels fishing in the GOA (§ 679.7((a)(14)).

**Response to Comments**

NMFS received one letter during the public comment period, from the Alaska Marine Conservation Council. The letter supported the amendment and rulemaking in general but expressed disappointment that the Council and NMFS did not set a separate halibut bycatch allowance for the directed pollock fishery in the BSAI that, when reached, would require closure of the directed fishery for pollock. The EA/RIR/IRFA for Amendment 57 considered a regulatory amendment that would have split out pollock from the pollock/Atka mackerel/other species category and accounted for PSC bycatch separately. The RIR/IRFA analysis indicated potential problems with this regulatory amendment. According to the analysis, the directed pollock fishery generates about $382 for the fishery per pound of halibut caught, as opposed to less than $50 per pound for other groundfish fisheries examined. If the pollock fishery were to meet its PSC limit in the BSAI, resulting in a closure of the fishery, major costs could be incurred, the magnitude of which would depend in part on the amount of remaining pollock TAC. In view of these potentially high costs, compared to the benefits of holding the pollock fishery more strictly accountable for its bycatch, managers might tend to apportion more halibut PSC to the pollock category than warranted by historical catch records. In that case, the halibut PSC limit for other groundfish fisheries would be correspondingly lower, and amount to a cost to those fisheries that would not occur if the fishery were not split. Finally, the bycatch of halibut and crab in the pollock fishery is very low; only about 3 percent of trawl halibut bycatch mortality and less than 0.4 percent of crab taken in the trawl fisheries. NMFS believes it would be more appropriate to work with the Council to develop measures that would result in meaningful reductions of overall bycatch in the fisheries that are responsible for taking greater proportions of bycatch.

In light of the high costs associated with a separate halibut bycatch allowance, and the relatively small gains in bycatch reduction that would result, NMFS believes that the proposed action is fully consistent with national standard 9's mandate to minimize bycatch "to the extent practicable."

**Classification**

This action has been determined to be not significant for purposes of E.O. 12866. This rule imposes no new reporting, recordkeeping, or compliance requirements.

NMFS has prepared an FRFA that describes the economic impact this rule is expected to have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**).

Analysis of catch data from 1997 to 2000 indicates that no vessels will be adversely affected by the Council's preferred alternative with respect to buying and using new gear because all vessels currently eligible to fish for pollock in the BSAI under the American Fisheries Act (AFA) fish with pelagic gear. In 1996, five small catcher vessels used bottom trawl gear only. This number dropped to two vessels in 1997. In 1999 and 2000, no vessels deployed bottom gear in the BSAI pollock fishery because bottom trawling for pollock was closed those years through the annual specifications process. This action only has the effect of making permanent a prohibition on the use of bottom trawl gear in the pollock fishery that has already been in place since January 1999.

Of the approximately 120 catcher vessels that are eligible to fish for pollock in the BSAI under the AFA, approximately 60 are small entities, and these vessels have fished for pollock exclusively with pelagic trawl gear for the past 2 years. None of the 21 catcher/processors eligible to fish for pollock under the AFA are small entities under the Regulatory Flexibility Act. The crab performance standard may pose some unquantifiable inconvenience to vessel operators fishing with pelagic gear, as it is intended to discourage them from trawling on the bottom. To the extent that they have chosen to fish on the bottom in the past, economic theory suggests that they were probably gaining some economic advantage the past 2 years.

The reductions in overall PSC limits for halibut, red king crab, Tanner crab, and snow crab are not expected to cause significant impacts to small entities, as the reductions are based on the expected improvement in bycatch rates and are not expected to constrain fishing activity. The actual improvement in bycatch from using the cleaner pelagic gear occurred in 1999 when the Council began eliminating bottom trawling for pollock on an annual basis. Many factors operate to influence bycatch in the fisheries, but to the extent that bycatch was reduced in the pollock fishery through the use of cleaner gear, the other trawl fisheries (e.g., rock sole, yellowfin sole, Pacific cod) may have received an unintended increase since 1999. This action constrains the other trawl fisheries by removing their unintended increase estimated as: halibut–100 mt; red king crabs–3,000 animals; *C. bairdi* crabs-50,000 animals; and *C. opilio* crabs–160,000 animals. The reductions in PSC limits turn the PSC savings in the pollock fishery into a conservation savings as intended rather than just a reallocation between target fisheries. The pollock fishermen will be no worse off than they were before the process of prohibiting nonpelagic trawls in the pollock fishery began.

Under this final rule, CDQ vessels are not subject to the prohibition on the use of nonpelagic trawl gear because they have a built-in incentive to minimize bycatch. Once a group has reached its allocation of any PSC species, all of its member vessels must stop fishing and forego any remaining CDQ allocations of groundfish species for the season.

The CDQ groups will not be affected very much by this exemption, as they primarily use pelagic gear to fish for pollock. In 1998, for example, only 2 percent of the approximately 85,000 mt of pollock harvested under the CDQ program was harvested using bottom trawl gear. Furthermore, the catcher vessels that have harvested pollock CDQ thus far are larger catcher vessels, owned by the shoreside processors, which are CDQ partners and; therefore, are not small entities under the RFA.

Under this final rule, CDQ groups will continue to receive 7.5 percent of all PSC limits, which, since the overall limits will be reduced, will result in reduced Prohibited Species Quota (PSQ) allocations to CDQ groups. These reductions constitute an added incentive to improve techniques for minimizing bycatch. The reductions are small in proportion to the total PSQ allocations, but it is possible that they could result in some loss of CDQ groundfish. This could happen if a group reached one of its PSQ allocations before it otherwise would have, and was required to stop fishing for CDQ groundfish species.

**List of Subjects in 50 CFR Part 679**

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: May 10, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons discussed in the preamble, 50 CFR part 679 is amended to read as follows:

## PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition of "*fishing trip*", paragraph (1) is amended by redesignating paragraph (1)(iv) as paragraph (1)(v), adding a new paragraph (1)(iv), and removing the final word, "or," from paragraph (1)(iii), to read as follows:

**§ 679.2 Definitions.**

* * * * *

*Fishing trip* means:

(1) * * *

(iv) The vessel begins fishing with different type of authorized fishing gear; or

* * * * *

3. In § 679.7, paragraph (a)(14) is revised to read as follows:

**§ 679.7 Prohibitions.**

* * * * *

(a) * * *

(14) *Trawl gear performance standard*—(i) *BSAI.* Use a vessel to participate in a non-CDQ directed fishery for pollock using trawl gear and have on board the vessel, at any particular time, 20 or more crabs of any species that have a carapace width of more than 1.5 inches (38 mm) at the widest dimension.

(ii) *GOA.* Use a vessel to participate in a directed fishery for pollock using trawl gear when directed fishing for pollock with nonpelagic trawl gear is closed and have on board the vessel, at any particular time, 20 or more crabs of any species that have a carapace width of more than 1.5 inches (38 mm) at the widest dimension.

* * * * *

4. In § 679.20, paragraph (a)(5)(i)(B) is removed and paragraph (a)(5)(i)(C) is redesignated as paragraph (a)(5)(i)(B).

5. In § 679.21, paragraphs (e)(1)(ii)(A) through (C), (e)(1)(iii)(A) through (B), (e)(1)(iv)(A) through (C), and (e)(1)(v) are revised to read as follows:

**§ 679.21 Prohibited species bycatch management.**

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(A) When the number of mature female red king crabs is at or below the threshold of 8.4 million mature crabs or the effective spawning biomass is less than or equal to 14.5 million lb (6,577 mt), the Zone 1 PSC limit will be 32,000 red king crabs.

(B) When the number of mature female red king crabs is above the threshold of 8.4 million mature crabs and the effective spawning biomass is greater than 14.5 million lb but less than 55 million lb (24,948 mt), the Zone 1 PSC limit will be 97,000 red king crabs.

(C) When the number of mature female red king crabs is above the threshold of 8.4 million mature crabs and the effective spawning biomass is equal to or greater than 55 million lb, the Zone 1 PSC limit will be 197,000 red king crabs.

(iii) * * *

(A) *Zone 1.* When the total abundance of *C. bairdi* crabs is:

(*1*) 150 million animals or less, the PSC limit will be 0.5 percent of the total abundance, minus 20,000 animals.

(*2*) Over 150 million to 270 million animals, the PSC limit will be 730,000 animals.

(*3*) Over 270 million to 400 million animals, the PSC limit will be 830,000 animals.

(*4*) Over 400 million animals, the PSC limit will be 980,000 animals.

(B) *Zone 2.* When the total abundance of *C. bairdi* crabs is:

(*1*) 175 million animals or less, the PSC limit will be 1.2 percent of the total abundance, minus 30,000 animals.

(*2*) Over 175 million to 290 million animals, the PSC limit will be 2,070,000 animals.

(*3*) Over 290 million to 400 million animals, the PSC limit will be 2,520,000 animals.

(*4*) Over 400 million animals, the PSC limit will be 2,970,000 animals.

(iv) * * *

(A) *PSC Limit.* The PSC limit will be 0.1133 percent of the total abundance, minus 150,000 *C. opilio* crabs, unless;

(B) *Minimum PSC Limit.* If 0.1133 percent multiplied by the total abundance is less than 4.5 million, then the minimum PSC limit will be 4.350 million animals; or

(C) *Maximum PSC Limit.* If 0.1133 percent multiplied by the total abundance is greater than 13 million, then the maximum PSC limit will be 12.850 million animals.

(v) *Halibut.* The PSC limit of halibut caught while conducting any trawl fishery for groundfish in the BSAI during any fishing year is an amount of halibut equivalent to 3,675 mt of halibut mortality.

* * * * *

6. In § 679.24, paragraph (b)(4) is added to read as follows:

**§ 679.24 Gear limitations.**

* * * * *

(b) * * *

(4) *BSAI pollock nonpelagic trawl prohibition.* No person may use nonpelagic trawl gear to engage in directed fishing for non-CDQ pollock in the BSAI.

* * * * *

[FR Doc. 00–12291 Filed 5–15–00; 8:45 am]

BILLING CODE 3510–22–F

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

[Docket No. 990720198–9307–02; I.D. 070799B]

RIN 0648–AM36

## Fisheries of the Exclusive Economic Zone Off Alaska; Maximum Retainable Bycatch Percentages, Gulf of Alaska; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; correction.

**SUMMARY:** This document contains a correction to the final rule for maximum retainable bycatch (MRB) percentages for the Gulf of Alaska (GOA), which was published in the **Federal Register** on December 6, 1999.

**DATES:** Effective January 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Patsy A. Bearden, 907–586–7008.

**SUPPLEMENTARY INFORMATION:**

**Background**

A final rule was published in the **Federal Register** on December 6, 1999 (64 FR 68054), to revise MRB percentages for the GOA. A new column added to Table 10 to 50 CFR part 679 and two of its footnotes were revised to clarify the intent of the North Pacific Fishery Management Council. But some of the data contained in the cells of the new column have been misinterpreted by management and enforcement officials, the State of Alaska Department of Fish and Game, and the fishing industry.

In Table 10 as published December 6, 1999, if a value appears in the "SR/RE ERA" column, it was intended to indicate that when calculating the retainable incidental catch for the basis species of interest, the SR/RE=7 percentage value would be added to the aggregated rockfish category percentage value and under that circumstance the SR/RE would not be included also in the aggregated rockfish value. If no value "na" appears in the SR/RE column, it was intended to indicate that SR/RE may not be calculated separately for the basis species but rather is included in the aggregated rockfish value. The "na" was also used in Table 10 to indicate that the combination of basis species and incidental catch species was not applicable since the same species appeared in both places.

Confusion from the two meanings of the term "na" in Table 10 eventually resulted in the interpretation that "na" in the "SR/RE ERA" column meant "zero." Zero retention means that no quantities of SR/RE could be retained when calculating incidental catch for a basis species. The result of this interpretation was that NMFS Enforcement and U.S. Coast Guard required that any incidental SR/RE brought in by fishermen with any basis species be discarded (and therefore wasted) and also issued a citation to the fisherman for retaining a species illegally. The fisherman in question suffered a possible fine plus loss of income from the SR/RE. In addition, the fisherman held the correct interpretation of SR/RE retention and suffered also the frustration and aggravation of doing the correct action supported by regulations and being penalized for it by NMFS.

Footnote "(2)" stated that "SR/RE rockfish is a separate category for the deep water complex only." Because deep water complex was not defined in Table 10, it was not clear that deep water complex meant those basis species that had values=7 in the column "SR/RE ERA."

**Need for Correction**

Because the abbreviated form of "not applicable" appearing in certain cells of the added column SE/RE, Table 10, has been misinterpreted and caused unnecessary industry costs and incorrect enforcement of SR/RE retention, it must be corrected.

**Correction**

1. In the final rule Revisions to Gulf of Alaska Retainable Bycatch Percentages published in 64 FR 68054, December 6, 1999, FR Doc. 99–31555, on page 68055, under TABLE 10 TO Part 679.–GULF OF ALASKA RETAINABLE PERCENTAGES, in the eleventh column under the heading Incidental Catch Species, under the column subheading "SR/RE ERA[3]" on the following lines: first, second, sixth, sixteenth, seventeenth, and eighteenth line, remove the abbreviation "na[6]" and in its place add (7)".

2. From Footnote "(2)", remove the text "Aggregated rockfish means rockfish defined at § 679.2 except: in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category and in the Eastern Regulatory Area where shortraker/rougheye is a separate category for the deep water complex only" and in its place add "Aggregated rockfish means rockfish defined at § 679.2 except: in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category and in the Eastern Regulatory Area where shortraker/rougheye (SR/RE) rockfish is a separate category for those species marked with a numerical percentage."

Add footnote "(7)" to read "(7)" where numerical percentage is not indicated, the retainable percentage of SR/RE is included under Aggregated Rockfish."

Dated: May 10, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12290 Filed 5–15–00; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 65, No. 95
Tuesday, May 16, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–100–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–8 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration. This proposal would require a revision to the Airplane Flight Manual Supplement to ensure that the main deck cargo door is closed, latched, and locked; inspection of the door wire bundle to detect discrepancies and repair or replacement of discrepant parts. This proposal also would require, among other actions, modification of the hydraulic and indication systems of the main deck cargo door, and modification of the existing means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked. This proposal is prompted by the FAA's determination that certain main deck cargo door systems and the existing means to prevent pressurization to an unsafe level if the main deck cargo door is not closed, latched, and locked do not provide an adequate level of safety. The actions specified by the proposed AD are intended to prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage.

**DATES:** Comments must be received by June 30, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–100–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: 9-anm-nprmcomment@faa.gov. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–100–AD" in the subject line and need not be submitted in triplicate.

**FOR FURTHER INFORMATION CONTACT:** Michael E. O'Neil, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5320; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–100–AD." The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000-NM–100–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

Supplemental Type Certificates (STC) SA1862SO and ST00309AT [originally issued to Agro Air Associates, Inc.] specify a design for installation of a main deck cargo door, associated door cutout in the fuselage, door hydraulic and indication systems, and Class "E" cargo interior with a cargo barrier on McDonnell Douglas Model DC–8 series airplanes. STC SA1862SO installs a main deck cargo door and associated hydraulic and indication systems. STC ST00309AT installs the Class "E" compartment, a cargo handling system, and a 9g crash barrier. The FAA has conducted a design review of Model DC–8 series airplanes modified in accordance with STC's SA1862SO and ST00309AT and has conducted discussions regarding the design with the STC holder. From the design review and these discussions, the FAA has identified several potential unsafe conditions. [Results of this design review are contained in "DC–8 Cargo Modification Review Team, Review of Agro Air Supplemental Type Certificate SA1862SO—Installation of a Cargo Door and ST00309AT—Installation of a Cargo Interior, Final Report, dated August 2, 1999," hereinafter referred to as "the Design Review Report," which is included in the Rules Docket for this NPRM.]

For airplanes modified in accordance with STC SA1862SO, this NPRM proposes corrective actions for those potential unsafe conditions that relate to the hydraulic and indication systems of the main deck cargo door and the means to prevent pressurization to an unsafe level if the main deck cargo door is not fully closed, latched, and locked. These conditions, if not corrected, could result in opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage.

**Other Related Rulemaking**

The FAA is considering further rulemaking to address the remaining potential unsafe conditions on Model DC–8 series airplanes modified in accordance with STC SA1862SO that relate to the main deck cargo door hinge, and fuselage structure in the area modified by installation of a main deck cargo door. In addition, the FAA is considering further rulemaking to address the potential unsafe conditions on Model DC–8 series airplanes modified in accordance with STC SA1377SO that relate to the unreinforced main deck floor, 9g crash barrier, and fire/smoke detection system.

**Main Deck Cargo Door Systems**

In early 1989, two transport airplane accidents were attributed to cargo doors coming open during flight. The first accident involved a Boeing Model 747 series airplane in which the cargo door separated from the airplane, and damaged the fuselage structure, engines, and passenger cabin. The second accident involved a McDonnell Douglas DC–9 series airplane in which the cargo door opened but did not separate from its hinge. The open door disturbed the airflow over the empennage, which resulted in loss of flight control and consequent loss of the airplane. Although cargo doors have opened occasionally without mishap shortly after the airplane was in flight, these two accidents served to highlight the extreme potential dangers associated with the opening of a cargo door while the airplane is in flight.

As a result of these cargo door opening accidents, the Air Transport Association (ATA) of America formed a task force, including representatives of the FAA, to review the design, manufacture, maintenance, and operation of airplanes fitted with outward opening cargo doors, and to make recommendations to prevent inadvertent cargo door openings while the airplane is in flight. A design working group was tasked with reviewing 14 CFR part 25.783 [and its accompanying Advisory Circular (AC) 25.783–1, dated December 10, 1986] with the intent of clarifying its contents and recommending revisions to enhance future cargo door designs. This design group also was tasked with providing specific recommendations regarding design criteria to be applied to existing outward opening cargo doors to ensure that inadvertent openings would not occur in the current transport category fleet of airplanes.

The ATA task force made its recommendations in the "ATA Cargo Door Task Force Final Report," dated May 15, 1991 (hereinafter referred to as "the ATA Final Report"). On March 20, 1992, the FAA issued a memorandum to the managers of the Transport Airplane Directorate (TAD) and Los Angeles, Seattle, and Atlanta Aircraft Certification Offices (hereinafter referred to as "the FAA Memorandum"), acknowledging ATA's recommendations and providing additional guidance for purposes of assessing the continuing airworthiness of existing designs of outward opening doors. The FAA Memorandum was not intended to upgrade the certification basis of the various airplanes, but rather to identify criteria to evaluate potential unsafe conditions identified on in-service airplanes. Appendix 1 of this AD contains the specific paragraphs from the FAA Memorandum that set forth the criteria to which the outward opening doors should be shown to comply.

Utilizing the applicable requirements of Civil Air Regulations (CAR) part 4b and the design criteria provided by the FAA Memorandum, the FAA has reviewed the original type design of major transport airplanes, including McDonnell Douglas Model DC–8 airplanes equipped with outward opening doors, for any design deficiency or service difficulty. Based on that review, the FAA identified unsafe conditions and issued, among others, the following AD's and NPRM's:

- For certain McDonnell Douglas Model DC–9 series airplanes: AD 89–11–02, amendment 39–6216 (54 FR 21416, May 18, 1989);
- For all Boeing Model 747 series airplanes: AD 90–09–06, amendment 39–6581 (55 FR 15217, April 23, 1990);
- For certain McDonnell Douglas Model DC–8 series airplanes: AD 89–17–01 R1, amendment 39–6521 (55 FR 8446, March 8, 1990);
- For certain Boeing Model 747–100 and –200 series airplanes: AD 96–01–51, amendment 39–9492 (61 FR 1703, January 23, 1996);
- For certain Boeing Model 727–100 and –200 series airplanes: AD 96–16–08, amendment 39–9708 (61 FR 41733, August 12, 1996);
- For certain McDonnell Douglas Model DC–8 series airplanes: NPRM Rules Docket No. 99–NM–338–AD (64 FR 245, December 22, 1999);
- For certain McDonnell Douglas Model DC–8 series airplanes: NPRM Rules Docket No. 2000–NM–01–AD (65 FR 7796, February 16, 2000); and
- For certain McDonnell Douglas Model DC–8 series airplanes: NPRM Rules Docket No. 2000–NM–49–AD (65 FR 20390, April 17, 2000).

In late 1997, the FAA informed the STC holders and operators of Model DC–8 series airplanes that it was embarking on a review of Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration by STC. The FAA proposed at a subsequent industry sponsored meeting in early 1998, that DC–8 operators and STC holders work together to identify and address potential safety concerns. This suggestion to the affected industry resulted in the creation of the DC–8 Cargo Conversion Joint Task Force (JTF) (hereinafter referred to as "the JTF").

The current composition of the JTF includes holders of each of the six STC's that addresses the installation of a main deck cargo door in Model DC–8 series airplanes and operators and lessors of those modified airplanes. At the JTF's request, the FAA participates in its meetings to offer counsel and guidance with respect to the FAA's regulatory processes. The JTF is a clearinghouse for the gathering and sharing of information among the parties affected by the FAA review of STC cargo conversions of Model DC–8 series airplanes. The JTF also is a liaison between the FAA, operators, and STC holders.

The JTF has been working with the FAA to provide data relating to the number of STC modified Model DC–8 series airplanes and operators of those airplanes, and identified which airplanes are modified by each STC. It also was instrumental in polling the operators and providing maintenance schedules and locations to the FAA, which helped the FAA arrange visits to operators of airplanes modified by each of the STC's. These visits allowed the FAA to review both the available data supporting each STC and modified airplanes and to identify potential safety concerns with each of the STC modifications. Additionally, the JTF has coordinated funding of the industry review of the data supporting the STC's and ongoing efforts to resolve safety issues identified by the FAA.

Using the applicable requirements of CAR part 4b and the criteria specified in the FAA Memorandum as evaluation guides, the FAA, in collaboration with the JTF, conducted an engineering design review and inspection of an airplane modified in accordance with STC SA1862SO. The actions in this proposed rulemaking address only the modification associated with this STC. The FAA identified a number of design features of the main deck cargo door systems of STC SA1862SO that are unsafe and do not meet the applicable

requirements of CAR part 4b or the criteria specified in the FAA Memorandum. These systems include the door indication and hydraulic systems. The FAA design review team also determined that the design data of this STC did not include an adequate safety analysis of the main deck cargo door systems.

For airplanes modified in accordance with STC SA1862SO, the FAA considers the following five specific design deficiencies of the main deck cargo door systems to be unsafe:

*1. Indication System*

The main deck cargo door indication system for STC SA1862SO utilizes door warning lights at the door operator's control panel and the flight engineer's panel. The warning lights do not adequately indicate either the door open or closed status, or latch or lock status. All three conditions (i.e., door closed, latched, and locked) must be monitored directly so that the door indication system cannot display either "latched" before the door is closed or "locked" before the door is latched. If a sequencing error caused the door to latch and lock without being fully closed, the subject indication system, as currently designed, would not alert the door operator or the flight engineer of this condition. As a result, the airplane could be dispatched with the main deck cargo door unsecured, which could lead to the cargo door opening while the airplane is in flight.

The light on the flight engineer's panel is labeled "Cargo Door" and is displayed in red since it indicates an event that requires immediate pilot action. However, if the flight engineer is temporarily away from his station, a door unsafe warning indication could be missed by the pilots. In addition, the flight engineer could miss such an indication by not scanning the panel. As a result, the pilots and flight engineer could be unaware of or misinterpret an unsafe condition and could fail to respond in the correct manner. Therefore, an indicator light must be located in front of and in plain view of both pilots since one of the pilot's stations is always occupied during flight operations.

The warning lights have a "Press-to-Test" feature that is adequate to check the light bulb functionality, but is not adequate to check the cargo door closed, latched, and locked functions.

During an FAA review of STC modified airplanes, instances of distress of the wire bundle between the fuselage and main deck cargo door. Additionally, instances of damaged, loose, or missing hardware mounting components were also noted. Therefore, a one-time general visual inspection of this area to detect crimped, frayed, or chafed wires is necessary to ensure the electrical continuity of the existing door indication system during the interim period.

*2. Means to Visually Inspect the Locking Mechanism*

The locking system of STC SA1862SO consists of a lock pin installed at one of the seven latches of the main deck cargo door. The single view port of the main deck cargo door installed in accordance with STC SA1862SO monitors the position of the torque tube that actuates the door latches, but it does not provide a means to ensure the position of the lock pin. Therefore, this view port is inadequate to ensure that the door is fully closed, latched, and locked.

As discussed in the ATA Final Report and the FAA Memorandum, there should be a means of directly inspecting each lock or, at a minimum, the locks at each end of the lock shaft of certain designs, such that a failure condition in the lock shaft would be detectable.

*3. Means to Prevent Pressurization to an Unsafe Level*

McDonnell Douglas Model DC–8 series airplanes modified in accordance with STC SA1862SO are equipped with a means to inhibit pressurization of the airplane in the event that the main deck cargo door is not closed and locked. In the event the door is not closed and locked, the air conditioning turbo-compressors normally cannot be turned on to pressurize the airplane. However, there may be failure modes in the system that would allow pressurization of the airplane to an unsafe level in the event that the main deck cargo door is not closed and locked. Therefore, a means must be installed to prevent pressurization of the airplane to an unsafe level if the door is not fully closed, latched, and locked.

*4. Powered Lock Systems*

STC SA1862SO utilizes a landing gear squat switch to remove power from the door control master switch (i.e., electrical and hydraulic) while the airplane is in flight. Latent failure of the squat switch together with other latent and/or single point failures could precipitate inadvertent door openings. Therefore, a means to remove power from the door controls must be installed to prevent inadvertent opening of the main deck cargo door in flight.

A systems safety analysis would normally evaluate and resolve the potential for these types of unsafe conditions. The design data for STC SA1862SSO do not include a system safety analysis to specifically identify these failure modes and do not show that an inadvertent main deck cargo door opening is extremely improbable. The need for a system safety analysis is identified in the ATA Final Report and the FAA Memorandum.

*5. Lock Strength*

Analysis of the existing latching and locking mechanism of the main deck cargo door indicates that in the event of a system jam, continued operation of the hydraulic cylinders could result in structural deformation of elements of the latching and locking mechanisms. Structural deformation of the locking mechanism could result in the single door latch equipped with a lock not being locked and consequent erroneous indication to the pilots that the latch is locked properly. Further, the FAA has determined that a lock on a single latch is inadequate to provide the level of safety envisioned by the applicable certification requirements. Therefore, the latching and locking systems for the main deck cargo door must be modified to prevent structural deformation, which could result in incorrect indication to the pilots that the door is not fully closed, latched, and locked.

**Explanation of Requirements of Proposed Rule**

Since unsafe conditions have been identified that are likely to exist or develop on other products of this same type design, the proposed AD would require, within 60 days after the effective date of this AD, the following actions:

- A general visual inspection of the wire bundle of the main deck cargo door between the exit point of the cargo liner and the attachment point on the main deck cargo door to detect crimped, frayed, or chafed wires;
- A general visual inspection for damaged, loose, or missing hardware mounting components; and repair, if necessary.

These actions would be required to be accomplished in accordance with FAA-approved maintenance procedures.

The proposed AD also would require, within 60 days after the effective date of the AD, a revision of the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) for STC SA1862SO by inserting therein procedures to ensure that the main deck cargo door is closed, latched, and locked prior to dispatch of the airplane; and installation of any associated placards. These actions would be required to be accomplished in accordance with a

method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

The proposed AD also would require, within 18 months after the effective date of this AD, the following actions:

- Modification of the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is fully closed, latched, and locked;
- Modification of the mechanical and hydraulic systems of the main deck cargo door to eliminate detrimental deformation of the elements of the door latching and locking mechanisms;
- Installation of a means to visually inspect the locking mechanism of the main deck cargo door;
- Installation of a means to remove power to the door while the airplane is in flight; and
- Modification of the existing means or installation of a new means to prevent pressurization to an unsafe level if the main deck cargo door is not fully closed, latched, and locked.

The modifications and installations would be required to be accomplished in accordance with a method approved by the Manager, Los Angeles ACO. Accomplishment of the modifications and installations would constitute terminating action for the general visual inspections, AFMS revision, and associated placards described previously.

**Cost Impact**

There are approximately 5 Model DC–8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 4 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the general visual inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the general visual inspections proposed by this AD on U.S. operators is estimated to be $240, or $60 per airplane, per inspection cycle.

It would take approximately 1 work hour per airplane to accomplish the AFMS revision and installation of associated placards, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFMS revision and installation of associated placards proposed by this AD on U.S. operators is estimated to be $240, or $60 per airplane.

The FAA estimates that it would take approximately 210 work hours per airplane to accomplish the modification required by paragraph (c) of the proposed AD, at an average labor rate of $60 per work hour. The FAA also estimates that required parts would cost approximately $45,000 per airplane. Based on these figures, the cost impact of this modification proposed by this AD on U.S. operators is estimated to be $230,400, or $57,600 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**McDonnell Douglas:** Docket 2000–NM–100–AD.

*Applicability:* Model DC–8 series airplanes that have been converted from a passenger to a cargo-carrying ("freighter") configuration in accordance with Supplemental Type Certificate (STC) SA1862SO; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent opening of the cargo door while the airplane is in flight, and consequent rapid decompression of the airplane including possible loss of flight control or severe structural damage, accomplish the following:

**Actions Addressing the Main Deck Cargo Door**

(a) Within 60 days after the effective date of this AD, accomplish a general visual inspection of the wire bundle of the main deck cargo door between the exit point of the cargo liner and the attachment point on the main deck cargo door to detect crimped, frayed, or chafed wires; and perform a general visual inspection for damaged, loose, or missing hardware mounting components. If any crimped, frayed, or chafed wire, or damaged, loose, or missing hardware mounting component is detected, prior to further flight, repair in accordance with FAA-approved maintenance procedures.

**Note 2:** For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(b) Within 60 days after the effective date of this AD, revise the Limitations Section of the appropriate FAA-approved Airplane Flight Manual Supplement (AFMS) for STC SA1862SO by inserting therein procedures to ensure that the main deck cargo door is fully closed, latched, and locked prior to dispatch of the airplane, and install any associated placards. The AFMS revision procedures and installation of any associated placards shall be accomplished in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

**Actions Addressing the Main Deck Cargo Door Systems**

(c) Within 18 months after the effective date of this AD, accomplish the actions specified in paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD in accordance with a method approved by the Manager, Los Angeles ACO.

(1) Modify the indication system of the main deck cargo door to indicate to the pilots whether the main deck cargo door is fully closed, latched, and locked;

(2) Modify the mechanical and hydraulic systems of the main deck cargo door to eliminate detrimental deformation of elements of the door latching and locking mechanism;

(3) Install a means to visually inspect the locking mechanism of the main deck cargo door;

(4) Install a means to remove power to the door while the airplane is in flight; and

(5) Install a means to prevent pressurization to an unsafe level if the main deck cargo door is not fully closed, latched, and locked.

(d) Compliance with paragraphs (c)(1), (c)(2), (c)(3), (c)(4), and (c)(5) of this AD constitutes terminating action for the requirements of paragraphs (a) and (b) of this AD, and the AFMS revision and placards may be removed.

**Alternative Methods of Compliance**

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permit**

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

## Appendix 1

Excerpt from an FAA Memorandum to Director—Airworthiness and Technical Standards of ATA, dated March 20, 1992

"(1) *Indication System:*

(a) The indication system must monitor the closed, latched, and locked positions, directly.

(b) The indicator should be *amber* unless it concerns an outward opening door whose opening during takeoff could present an immediate hazard to the airplane. In that case the indicator must be *red* and located in plain view in front of the pilots. An aural warning is also advisable. A display on the master caution/warning system is also acceptable as an indicator. For the purpose of complying with this paragraph, an immediate hazard is defined as significant reduction in controllability, structural damage, or impact with other structures, engines, or controls.

(c) Loss of indication or a false indication of a closed, latched, and locked condition must be improbable.

(d) A warning indication must be provided at the door operators station that monitors the door latched and locked conditions directly, unless the operator has a visual indication that the door is fully closed and locked. For example, a vent door that monitors the door locks and can be seen from the operators station would meet this requirement.

(2) *Means to Visually Inspect the Locking Mechanism:*

There must be a visual means of directly inspecting the locks. Where all locks are tied to a common lock shaft, a means of inspecting the locks at each end may be sufficient to meet this requirement provided no failure condition in the lock shaft would go undetected when viewing the end locks. Viewing latches may be used as an alternate to viewing locks on some installations where there are other compensating features.

(3) *Means to Prevent Pressurization:*

All doors must have provisions to prevent initiation of pressurization of the airplane to an unsafe level, if the door is not fully closed, latched and locked.

(4) *Lock Strength:*

Locks must be designed to withstand the maximum output power of the actuators and maximum expected manual operating forces treated as a limit load. Under these conditions, the door must remain closed, latched and locked.

(5) *Power Availability:*

All power to the door must be removed in flight and it must not be possible for the flight crew to restore power to the door while in flight.

(6) *Powered Lock Systems:*

For doors that have powered lock systems, it must be shown by safety analysis that inadvertent opening of the door after it is fully closed, latched and locked, is extremely improbable."

Issued in Renton, Washington, on May 10, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–12249 Filed 5–15–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–NM–105–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Airbus Model A300–600 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300–600 series airplanes. This proposal would require repetitive high frequency eddy current (HFEC) or rototest inspections to detect cracking in the area surrounding the frame feet attachment holes between fuselage frames (FR) 41 and FR46; installation of new fasteners for certain airplanes; and follow-on corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent cracking of the center section of the fuselage, which could result in rupture of the frame foot and reduced structural integrity of the airplane.

**DATES:** Comments must be received by June 15, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained

in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–105–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–105–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300–600 series airplanes. The DGAC advises that, during an inspection performed in accordance with Structure Significant Item (SSI) Task 53–15–54, cracking was detected in the area surrounding the frame feet attachment holes at fuselage frames (FR) 43 through FR46 between stringers 24 and 30 on the right-hand side, and at FR45 on the left-hand side. The cracking occurred on an airplane that had accumulated 26,100 total flight cycles and 32,160 total flight hours. Such cracking of the center section of the fuselage, if not detected and corrected, could result in rupture of the frame foot and reduced structural integrity of the airplane.

**Explanation of Relevant Service Information**

The manufacturer has issued Airbus Service Bulletin A300–53–6122, dated February 9, 2000, which describes procedures for repetitive high frequency eddy current (HFEC) or rototest inspections to detect cracking of the frame feet attachment holes between FR41 and FR46; installation of new fasteners for certain airplanes; and follow-on corrective actions, if necessary. The follow-on corrective actions involve subsequent performing rotating probe inspections and repairing certain cracking conditions. The repair involves reaming out cracks, cold working fastener holes, and installing oversized fasteners. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2000–060–303(B), dated February 9, 2000, in order to assure the continued airworthiness of these airplanes in France.

**FAA's Conclusions**

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive HFEC or rototest inspections to detect cracking in the area surrounding the frame feet attachment holes between FR41 and FR46; installation of new fasteners for certain airplanes; and follow-on corrective actions, if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously, except as discussed below.

**Differences Between Proposed Rule and Service Bulletin**

Operators should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for the proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

**Cost Impact**

The FAA estimates that 75 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 6 work hours per airplane to accomplish the proposed inspections, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $27,000, or $360 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Airbus Industrie:** Docket 2000–NM–105–AD.

*Applicability:* All Model A300–600 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent cracking of the center section of the fuselage, which could result in rupture of the frame foot and reduced structural integrity of the airplane, accomplish the following:

**High Frequency Eddy Current (HFEC) or Rototest Inspection**

(a) Perform a HFEC or rototest inspection to detect cracking in the area surrounding the frame feet attachment holes between fuselage frames (FR) 41 and FR46 from stringers 24 to 28, left- and right-hand sides, in accordance with Airbus Service Bulletin A300–53–6122, dated February 9, 2000, at the time specified in paragraph (a)(1) or (a)(2), as applicable.

(1) For airplanes on which Task 53–15–54 in Maintenance Review Board Document (MRBD), Revision 3, dated April 1998, has NOT been accomplished as of the effective date of this AD: Perform the inspection at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of the total flight-cycle or flight-hour threshold, whichever occurs first, specified in paragraph 1.E. ("Compliance") of the service bulletin; or

(ii) Within the applicable grace period specified in paragraph 1.E. ("Compliance") of the service bulletin.

(2) For airplanes on which Task 53–15–54 in Maintenance Review Board Document (MRBD), Revision 3, dated April 1998, has been accomplished as of the effective date of this AD: Perform the next repetitive inspection at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Within the flight-cycle or flight-hour interval, whichever occurs first, specified in paragraph 1.E. ("Compliance") of the service bulletin, following the latest inspection accomplished in accordance with the MRBD; or

(ii) Within the grace period specified in paragraph 1.E. ("Compliance") of the service bulletin.

(b) For airplanes on which no cracking is detected during the inspection required by paragraph (a) of this AD, prior to further flight, install new fasteners as applicable, in accordance with Airbus Service Bulletin A300–53–6122, dated February 9, 2000; and repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed the applicable intervals specified in paragraph 1.E. ("Compliance") of the service bulletin.

**Corrective Actions**

(c) For airplanes on which cracking is detected during any inspection required by this AD: Prior to further flight, except as required by paragraph (d) of this AD, accomplish corrective actions (e.g., performing rotating probe inspections, reaming out cracks, cold working fastener holes, and installing oversized fasteners) in accordance with Airbus Service Bulletin A300–53–6122, dated February 9, 2000. Repeat the inspection required by paragraph (a) of this AD thereafter at intervals not to exceed the applicable intervals specified in paragraph 1.E. ("Compliance") of the service bulletin.

(d) If cracking is detected during any inspection required by this AD, and the service bulletin specifies to contact the manufacturer for an appropriate corrective action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or it's delegated agent).

**Alternative Methods of Compliance**

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in French airworthiness directive 2000–060–303(B), dated February 9, 2000.

Issued in Renton, Washington, on May 10, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–12248 Filed 5–15–00; 8:45 am]

BILLING CODE 4910–13–U

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Part 1**

**[REG–106186–98]**

**RIN 1545–AW36**

## Certain Corporate Reorganizations Involving Disregarded Entities

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations that provide guidance to corporations and their shareholders about whether certain transactions qualify as corporate reorganizations. The proposed regulations apply to certain mergers under state or Federal law between two entities, one of which is a corporation and the other of which, for Federal tax purposes, is disregarded as an entity separate from its owner (for example, a qualified REIT subsidiary, a qualified subchapter S subsidiary, or a limited liability company with a single corporate owner that does not elect to be treated as a separate corporation). This document also provides a notice of public hearing on these proposed regulations.

**DATES:** Written or electronic comments must be received by August 14, 2000. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for August 8, 2000, must be received by July 18, 2000.

**ADDRESSES:** Send submissions to CC:DOM:CORP:R (REG–106186–98), room 5226, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 am and 5 pm to: CC:DOM:CORP:R (REG–106186–98), Courier's desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20044. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/reglist.html. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Reginald Mombrun, (202) 622–7750, concerning submissions of comments,

the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor, (202) 622–7180 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) that provide guidance as to whether certain mergers under state or Federal law between two entities, one of which is a corporation and the other of which, for Federal tax purposes, is disregarded as an entity separate from its owner can be statutory mergers qualifying as reorganizations under section 368(a)(1)(A) of the Internal Revenue Code of 1986 (Code). The Code provides general nonrecognition treatment for reorganizations specifically described in section 368(a). Section 368(a)(1)(A) provides that the term *reorganization means* "a statutory merger or consolidation." Section 1.368–2(b)(1) provides that a statutory merger must be accomplished under the "corporation laws of the United States or a State or territory or the District of Columbia." In addition to meeting the requirements of section 368(a), a merger transaction must meet other reorganization requirements such as the requirement that the persons engaged in the transaction each qualify as "a party to a reorganization" under section 368(b), the continuity of interest requirement of § 1.368–1(e), and the continuity of business enterprise requirement of § 1.368–1(d).

Certain entities that are respected under state law are disregarded for Federal tax purposes. These entities include a qualified REIT subsidiary, a qualified subchapter S subsidiary (QSub), and an entity that is disregarded under § 301.7701–3 as an entity separate from its owner. Section 856(i)(2) provides that a corporation that is wholly owned by a real estate investment trust (REIT) is a qualified REIT subsidiary. Section 1361(b)(3)(B) provides that a QSub is an eligible domestic corporation, wholly owned by an S corporation, for which the S corporation makes a QSub election. Under § 301.7701–3, a business entity that is not classified as a corporation per se (see § 301.7701–2(b)((1), (3), (4), (5), (6), (7) or (8); for example, a limited liability company) can elect to be treated as a corporation or, if it has a single owner, can choose to be disregarded. (These entities hereinafter are collectively referred to as Disregarded Entities, and the corporation that owns the Disregarded Entity is referred to as the Owner.) For Federal tax purposes, all of the assets, liabilities, and items of income, deduction, and credit of a Disregarded Entity are treated as those of its Owner.

Because qualified REIT subsidiaries and QSubs are corporations under state law, state merger laws generally permit them to merge with other corporations. In addition, many state merger laws permit mergers between limited liability companies and corporations.

Commentators have raised questions as to whether the merger under state or Federal law of a Disregarded Entity into an acquiring corporation or of a target corporation into a Disregarded Entity can qualify as a reorganization under section 368(a)(1)(A). These regulations address this issue.

**Explanation of Provisions**

The proposed regulations provide guidance on the tax treatment of the following two transactions: (1) the merger of a Disregarded Entity into an acquiring corporation, and (2) the merger of a target corporation into a Disregarded Entity. Under the Federal tax laws, the merger under state or Federal law of a Disregarded Entity into an acquiring corporation in which the Owner exchanges its interest in the Disregarded Entity for stock in the acquiring corporation and the Disregarded Entity ceases to exist as a result of the transaction by operation of the state or Federal merger law (hereinafter, the merger of a Disregarded Entity into an acquiring corporation) is treated as if the Owner transferred the assets of the Disregarded Entity to the acquiring corporation. Conversely, the merger under state or Federal law of a target corporation into a Disregarded Entity in which the shareholders of the target corporation exchange their target corporation stock for stock in the Owner and the Disregarded Entity does not lose its status as a Disregarded Entity as a result of the transaction (hereinafter, the merger of a target corporation into a Disregarded Entity) is treated as if the Owner acquired all of the assets of the target corporation.

The proposed regulations reflect Treasury's and the IRS' view that neither merger is a statutory merger qualifying as a reorganization under section 368(a)(1)(A). Compliance with a corporate law merger statute does not by itself qualify a transaction as a "statutory merger" for purposes of section 368(a)(1)(A). See *Roebling* v. *Commissioner*, 143 F.2d 810, 812 (3d Cir. 1944), *cert. denied*, 323 U.S. 773 (1944). The proposed regulations contain the requirements that must be satisfied for a state or Federal law merger or consolidation to qualify as a reorganization under section 368(a)(1)(A). In addition, the proposed regulations remove the word "corporation" from the requirement that, in order to qualify as a reorganization under section 368(a)(1)(A), a merger or consolidation must be effected pursuant to the corporation law of the relevant jurisdiction. This change is necessary to conform the regulations to the IRS' long-standing position that a merger or consolidation may qualify as a reorganization under section 368(a)(1)(A) even if it is undertaken pursuant to laws other than the corporation law of the relevant jurisdiction. See Rev. Rul. 84–104 (1984–2 C.B. 94) (a "consolidation" pursuant to the National Banking Act, 12 U.S.C. 215, is treated as a merger for Federal tax purposes).

*The Merger of a Disregarded Entity into an Acquiring Corporation*

Consistent with the views of all the commentators, Treasury and the IRS believe that the merger of a Disregarded Entity into an acquiring corporation is not a statutory merger qualifying as a reorganization under section 368(a)(1)(A) because the Owner's assets (other than those held in the Disregarded Entity) are not transferred to the acquiring corporation and the Owner does not cease to exist as a result of the state or Federal law merger transaction. "A merger ordinarily is an absorption by one corporation of the properties and franchises of another whose stock it has acquired. The merged corporation ceases to exist, and the merging corporation alone survives." *Cortland Specialty Co.* v. *Commissioner of Internal Revenue*, 60 F. 2d 937, 939 (2d Cir. 1932), *cert. denied*, 288 U.S. 599 (1933). The merger of a Disregarded Entity into an acquiring corporation, in which the Owner's assets and liabilities are divided between the Owner and the acquiring corporation after the transaction, is a divisive transaction, not a transaction in which the assets of the Owner and the acquiring corporation are combined. Congress intended that section 355 be the sole means under which divisive transactions will be afforded tax-free status and, thus, specifically required the liquidation of the acquired corporation in reorganizations under both sections 368(a)(1)(C) and 368(a)(1)(D) in order to prevent these reorganizations from being used in divisive transactions that did not satisfy section 355. See S. Rep. No. 1622, 83rd Cong., 2d Sess. 274 (1954); S. Rpt. No. 169, 98th Cong., 2d

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Sess. 204 (1984) and Rev. Rul. 2000–5 (2000–5 I.R.B. 436).

Accordingly, consistent with existing law, the proposed regulations provide that for a merger to qualify as a reorganization under section 368(a)(1)(A), it must, by operation of the merger statute of the relevant jurisdiction, result in one corporation acquiring the assets of the merging corporation and the merging corporation ceasing to exist. Thus, the merger of a Disregarded Entity into an acquiring corporation cannot qualify as a reorganization under section 368(a)(1)(A). However, the transaction may be treated as a reorganization under section 368(a)(1)(C), (D), or (F) if all applicable requirements are met (including the liquidation of the Owner). The transaction also may be described in section 351.

*The Merger of a Target Corporation into a Disregarded Entity*

There has been a split in views as to whether the merger of a target corporation into a Disregarded Entity is a statutory merger qualifying as a reorganization under section 368(a)(1)(A). Some commentators argue that, because the Disregarded Entity is disregarded for Federal tax purposes, the transaction should be treated for Federal tax purposes as a merger into the Owner. Thus, they argue, as long as the Owner is a corporation, all other relevant reorganization requirements are satisfied, and the target corporation could have merged into the Owner in a transaction that qualifies as a reorganization under section 368(a)(1)(A), the merger should qualify as a reorganization under section 368(a)(1)(A). According to these commentators, treating such a merger as a statutory merger into the Owner qualifying as a reorganization under section 368(a)(1)(A) does not inappropriately facilitate avoidance of any reorganization requirement under section 368. Accordingly, the commentators argue there is no sound policy for not permitting the merger of a target corporation into a Disregarded Entity to be treated as a statutory merger into the Owner qualifying as a reorganization under section 368(a)(1)(A).

Other commentators argue that, as a technical matter, the better interpretation of the applicable provisions of the Code and regulations is that the merger of a target corporation into a Disregarded Entity is not a statutory merger of the target corporation into the Owner qualifying as a reorganization under section 368(a)(1)(A). Congress added the word "statutory" in 1934 so that the definition "will conform more closely to the general requirements of [state or Federal] corporation law." See H.R. Rep. No. 704, 73rd Cong., 2nd Sess. 14 (1934). Treasury and the IRS believe that it is inappropriate to treat the state or Federal law merger of a target corporation into a Disregarded Entity instead as a statutory merger of the target corporation into the Owner, because the Owner, the only potential party to a reorganization under section 368(b), is not a party to the state or Federal law merger transaction. A reorganization under section 368(a)(1)(A) is a combination of the assets and liabilities of two corporations through a merger under state or Federal law. A merger of a target corporation into a Disregarded Entity differs from a merger of a target corporation into the Owner because the target corporation and the Owner have combined their assets and liabilities only under the Federal tax rules concerning Disregarded Entities, and not under state or Federal merger law, the law on which Congress relied in enacting section 368(a)(1)(A).

Accordingly, the proposed regulations provide that the merger of a target corporation into a Disregarded Entity is not a statutory merger of the target corporation into the Owner qualifying as a reorganization under section 368(a)(1)(A). Such a transaction may qualify as a reorganization under section 368(a)(1)(C), section 368(a)(1)(D), or section 368(a)(1)(F) if all relevant requirements are met. Such a transaction also may qualify for nonrecognition of gain under section 351.

**Proposed Effective Date**

These regulations as proposed apply to any transaction occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

**Comments Requested**

Several states permit the merger of a domestic corporation into a foreign corporation under state law. Treasury and the IRS are studying whether this transaction qualifies as a reorganization under section 368(a)(1)(A) and request comments on this issue.

**Special Analysis**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight copies) that are submitted timely to the IRS. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/reglist.html. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 8, 2000, beginning at 10:00 AM in Room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** portion of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by July 18, 2000. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for reviewing outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these regulations is Reginald

Mombrun of the office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR Part 1 is proposed to be amended as follows:

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *.

**Par. 2.** Section 1.368–2 is amended by revising paragraph (b)(1) to read as follows:

**§ 1.368–2 Definition of terms.**

* * * * *

(b)(1) In order to qualify as a reorganization under section 368(a)(1)(A), the transaction must be a merger or consolidation involving two corporations effected pursuant to the laws of the United States or a State or territory, or the District of Columbia. In addition, by operation of such a merger law, the transaction must result in one corporation acquiring the assets of the merging corporation and the merging corporation ceasing to exist. Similarly, by operation of such a consolidation law, the transaction must result in one newly formed corporation acquiring the assets of both consolidating corporations, and both consolidating corporations ceasing to exist. Thus, the merger under state or Federal law of an entity that is disregarded as an entity separate from its owner for Federal tax purposes into an acquiring corporation in which the owner exchanges its interest in the disregarded entity for stock in the acquiring corporation and the disregarded entity ceases to exist as a result of the transaction by operation of the state or Federal merger law is not a statutory merger qualifying as a reorganization under section 368(a)(1)(A). Moreover, the merger of a target corporation into an entity that is disregarded as an entity separate from its owner for Federal tax purposes that does not lose its status as a disregarded entity as a result of the transaction is not a statutory merger qualifying as a reorganization under section 368(a)(1)(A). Examples of entities that are disregarded as entities separate from their owners include a qualified REIT subsidiary (within the meaning of section 856(i)(2)), a qualified subchapter S subsidiary (within the meaning of section 1361(b)(3)(B)), and a business entity that is not classified as a corporation and that has a single owner (as provided in § 301.7701–2(c)(2) of this chapter). The preceding five sentences apply to any transaction occurring on or after [Date These Regulations Are Published As Final Regulations In The **Federal Register**].

* * * * *

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 00–11902 Filed 5–11–00; 2:30 pm]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–100163–00]**

**RIN 1545–AX73**

### Applying Section 197 to Partnerships; Hearing Cancellation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of cancellation of a public hearing on proposed regulations relating to the application of section 197 to partnerships.

**DATES:** The public hearing originally scheduled for Wednesday, May 24, 2000, at 10 a.m., is canceled.

**FOR FURTHER INFORMATION CONTACT:** Guy R. Traynor of the Regulations Unit, Assistant Chief Counsel (Corporate), at (202) 622–7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on January 25, 2000, (65 FR 3903), announced that a public hearing was scheduled for May 24, 2000, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. The subject of the public hearing is proposed regulations under section 197 of the Internal Revenue Code. The deadline for requests to speak and outlines of oral comments expired on May 3, 2000.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of May 9, 2000, no one has requested to speak. Therefore, the public hearing scheduled for May 24, 2000, is canceled.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 00–12201 Filed 5–15–00; 8:45 am]

BILLING CODE 4830–01–P

## POSTAL SERVICE

### 39 CFR Part 111

### Sack Preparation Changes for Periodicals Nonletter-Size Pieces and Periodicals Prepared on Pallets

**AGENCY:** Postal Service.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would revise the standards for the preparation of nonautomation nonletter-size carrier route Periodicals prepared in sacks and the preparation of Periodicals packages and bundles on pallets. For Periodicals carrier route mail in sacks, the proposed standards would require carrier route sacks to contain a minimum of 24 pieces and would make 5-digit scheme carrier route sacks a required sack sortation level. All other sack sortation criteria would remain unchanged. For Periodicals prepared in packages and bundles on pallets, the proposal would require preparation of 5-digit scheme pallets.

**DATES:** Comments on the proposed standards must be received on or before June 15, 2000.

**ADDRESSES:** Written comments should be mailed or delivered to the Manager, Mail Preparation and Standards, U.S. Postal Service, 475 L'Enfant Plaza SW, Room 6800, Washington, DC 20260–2405. Copies of all written comments will be available for inspection and photocopying at USPS Headquarters Library, 475 L'Enfant Plaza SW, 11th Floor N, Washington, DC between 9 a.m. and 4 p.m., Monday through Friday. Copies of comments also may be requested via fax or email.

**FOR FURTHER INFORMATION CONTACT:** Joel Walker, 202–268–3340; jwalke13@email.usps.gov.

**SUPPLEMENTARY INFORMATION:** The Postal Service and the Periodicals industry are concerned over recent upward trends in the costs associated with processing Periodicals mail and have been studying ways to reverse these trends. Several ideas have come out of mutual discussions that were based on joint representation from the Postal Service and the Periodicals industry. Cost models suggest that we can reduce

handling costs by preparing Periodicals mail in a manner to facilitate handling, such as optimizing presort levels and requiring the use of scheme sorts.

In order to reduce processing costs for the handling of Periodicals mail, the Postal Service is proposing mail preparation and sortation changes for nonautomation nonletter-size Periodicals prepared in sacks. Currently, postal standards provide an option for Periodicals mailers to prepare carrier route sacks with a minimum of one package. To reduce the number of sacks and the processing costs associated with the handling of these sacks, the Postal Service is proposing that all direct carrier route sacks must contain a minimum of 24 pieces and will require the use of 5-digit/scheme carrier routes sorts for nonautomation nonletter-size Periodicals prepared in sacks. Carrier route packages totaling less than 24 pieces to the same carrier route would be placed in 5-digit carrier routes or 5-digit scheme carrier routes sacks as appropriate. This proposed change should not have any negative impact on service because a direct carrier route sack is opened and its contents distributed in the same manner and location as 5-digit carrier routes and 5-digit scheme carrier routes sacks at the delivery unit.

To increase the number of pallets that can be cross-docked and reduce processing costs associated with the handling of pallets of Periodicals, the Postal Service proposes to require preparation of both 5-digit scheme and 5-digit pallets when there are 500 pounds of Periodicals packages and bundles for a scheme in DMM L001, or for a single 5-digit Zip Code not listed in DMM L001.

The proposed effective date of this change is October 15, 2000.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 410 (a)), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

**PART 111—[AMENDED]**

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual as follows:

*E200 Periodicals*

* * * * *

*E230 Nonautomation Rates*

* * * * *

**2.0 CARRIER ROUTE RATES**

* * * * *

**2.2 Eligibility**

Preparation to qualify eligible pieces for carrier route rates is optional and is subject to M200. * * *

[Amend 2.2a by replacing the last sentence to read as follows:]

* * * (Preparation of 5-digit/scheme carrier routes sacks is required must be done for all 5-digit/scheme destinations.)

* * * * *

**M Mail Preparation and Sortation**

*M000 General Preparation Standards*

*M010 Mailpieces*

*M011 Basic Standards*

**1.0 TERMS AND CONDITIONS**

* * * * *

**1.3 Preparation Instructions**

For purposes of preparing mail:

[Amend 1.3h and 1.3i by replacing the fourth sentence in each to read as follows:]

* * * * *

h. * * * The 5-digit/scheme sort is required for carrier route rate flat-size and irregular parcel Periodicals and optional for flat-size Enhanced Carrier Route rate Standard Mail (A) in sacks. * * *

i. * * * The 5-digit/scheme sort is required for carrier route rate flat-size and irregular parcel Periodicals and optional for flat-size Standard Mail (A) prepared as packages on pallets and may not be used for other mail prepared on pallets, except for packages of Standard Mail (A) irregular parcels that are part of a mailing job that is prepared in part as palletized flats at automation rates. * * *

* * * * *

*M030 Containers*

* * * * *

*M033 Sacks and Trays*

* * * * *

**1.0 BASIC STANDARDS**

* * * * *

**1.8 Periodicals Flats and Irregular Parcels Origin/Entry SCF Sacks**

[Amend 1.8 by replacing the first sentence to read as follows:]

For flat-size and irregular parcel-size Periodicals, after all carrier route, 5-digit/scheme carrier routes, 5-digit, 3-digit, and required SCF sacks are prepared, an SCF sack must be prepared to contain any remaining 5-digit and 3-digit packages for the 3-digit ZIP Code area(s) served by the SCF serving the post office where the mail is verified, and may be prepared for the area served by the SCF/plant where mail is entered (if that is different from the SCF/plant serving the post office where the mail is verified; *e.g.*, a PVDS deposit site).

* * *

* * * * *

*M040 Pallets*

*M041 General Standards*

* * * * *

**5.0 Preparation**

* * * * *

**5.2 Required Preparation**

These standards apply to:

[Amend 5.2a by replacing the third sentence and adding a new fourth sentence to read as follows:]

a. Periodicals, Standard Mail (A), and Parcel Post (other than BMC Presort, OBMC Presort, DSCF, and DDU rate mail). A pallet must be prepared to a required sortation level when there are 500 pounds of Periodicals or Standard Mail packages, sacks, or parcels or six layers of Periodicals or Standard Mail (A) letter trays. For packages of Periodicals flats and irregular parcels on pallets prepared under the standards for package reallocation (M045.5), not all mail for a required 5-digit/scheme destination is required to be on a 5-digit/scheme pallet. For packages of Standard Mail (A) flats on pallets, not all mail for a required 5-digit destination is required to be on a 5-digit pallet or optional 5-digit/scheme pallet.

* * *

*M045 Palletized Mailings*

* * * * *

**4.0 PALLET PRESORT AND LABELING**

**4.1 Packages, Bundles, Sacks, or Trays on Pallets**

[Amend 4.1a and b to read as follows:]

a. 5-digit (For Periodicals sacks or trays and all Standard Mail): required for sacks; required for packages and bundles of Standard Mail, except for packages and bundles prepared under b;

optional for trays; for Line 1, use 5-digit ZIP Code destination of contents.

b. 5-digit/scheme: required for Periodicals packages and bundles and optional for Standard Mail (A) packages and bundles; for Line 1 for 5-digit pallets, use 5-digit ZIP Code destination of contents; for Line 1 for 5-digit/scheme pallets, use L001, Column B.

* * * * *

*M200 Periodicals (Nonautomation)*

**1.0 BASIC STANDARDS**

* * * * *

**1.5 Low-Volume Packages and Sacks**

**[Amend 1.5 to read as follows:]**

As a general exception to 2.4b through 2.4d, and 3.1a through 3.1e, nonletter-size Periodicals may be prepared in carrier route, 5-digit, and 3-digit packages containing fewer than six pieces when the publisher determines that such preparation improves service, provided those packages are placed in carrier route (24 piece minimum), 5-digit carrier routes, 5-digit scheme carrier routes, 5-digit, 3-digit, and SCF sacks. These low-volume packages may be placed on 5-digit/scheme, 3-digit, and SCF pallets under M045.

* * * * *

**3.0 SACK PREPARATION (FLAT-SIZE PIECES AND IRREGULAR PARCELS)**

**3.1 Sack Preparation**

Sack size, preparation sequence, and Line 1 labeling:

[Amend 3.1 by deleting b, re-designating c through h as b through g, and rewording a and new b to read as follows:]

a. Carrier route: required for rate eligibility at 24 pieces, fewer pieces not permitted; for Line 1, use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031.

b. 5-digit/scheme carrier routes (carrier route packages only): required for rate eligibility (no minimum); for Line 1 for 5-digit carrier routes sacks, use 5-digit ZIP Code destination of packages, preceded for military mail by the prefixes under M031; for Line 1 for 5-digit scheme carrier routes sacks, use L001, Column B.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–12320 Filed 5–15–00; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[CA 240–0237b; FRL–6601–9]**

## Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Monterey Bay Unified Air Pollution Control District (MBUAPCD) portion of the California State Implementation Plan (SIP). These revisions concern amended volatile organic compound definitions and a rule rescission. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

**DATES:** Any comments on this proposal must arrive by June 15, 2000.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted rule revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Monterey Bay Unified Air Pollution Control District, 24850 Silver Cloud Court, Monterey, CA 93940

**FOR FURTHER INFORMATION CONTACT:** Cynthia G. Allen, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 744–1189.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the following local rules: MBUAPCD Rules 101 and 102. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 18, 2000.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

[FR Doc. 00–11999 Filed 5–15–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 430**

**[FRL–6700–7]**

## Project XL Proposed Site-Specific Rule for the International Paper Androscoggin Mill Facility in Jay, ME; Project XL Draft Final Project Agreement for Effluent Improvement Project at International Paper Androscoggin Mill Facility in Jay, ME

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; request for comment on proposed rule and draft final project agreement.

**SUMMARY:** The Environmental Protection Agency (EPA) today is proposing this rule to provide site-specific regulatory flexibility under the Clean Water Act (CWA) as part of an XL Project with International Paper's Androscoggin Mill pulp and paper manufacturing facility in Jay, Maine. The site-specific rule would exempt International Paper Androscoggin Mill from certain Best Management Practices (BMPs) required under CWA regulations. In exchange for this regulatory flexibility, International Paper Androscoggin Mill will implement a series of projects designed to improve the mill's effluent quality and will accept numeric permit limits corresponding to the expected improvements in effluent quality. The terms of the International Paper XL project are contained in the draft Final Project Agreement (FPA), on which EPA is also requesting comment.

**DATES:** *Public Comments:* Comments on the proposed rule and/or FPA must be received on or before June 15, 2000. All comments should be submitted in writing to the address listed.

**ADDRESSES:** *Comments:* Written comments should be mailed to Mr. Chris Rascher, U.S. Environmental Protection Agency, One Congress St., Suite 1100, Boston, MA 02114. Please send an original and two copies of all comments.

*Viewing Project Materials:* A docket containing the proposed rule, draft Final Project Agreement, and supporting

materials is available for public inspection and copying at the Water Docket, Room EB 57, U.S. Environmental Protection Agency, 401 M. St., SW, Washington, DC. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. Members of the public are encouraged to telephone the docket in advance at 202–260–3027 to schedule an appointment. Refer to docket number W–00–13. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost 15 cents per page.

A duplicate copy of project materials is available for inspection and copying at EPA Regional Library, U.S. EPA, Region I, Suite 1100 (LIB), One Congress Street, Boston, MA 02114–2023, as well as the Town Hall, 99 Main Street, Jay, ME 04239 during normal business hours. Persons wishing to view the materials at the Boston location are encouraged to contact Mr. Chris Rascher in advance. Persons wishing to view the materials at the Jay, Maine, location are encouraged to contact Ms. Shiloh Ring at (207) 897–6785 in advance.

Project materials on today's action are also available on the worldwide web at http://www.epa.gov/projectxl/.

**FOR FURTHER INFORMATION CONTACT:** Mr. Chris Rascher, U.S. Environmental Protection Agency, Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023. Mr. Rascher can also be reached at (617) 918–1834 or at *rascher.chris@epa.gov*. Further information on today's action is available on the worldwide web at http://www.epa.gov/projectxl.

**SUPPLEMENTARY INFORMATION:**

| Category | Examples of potentially affected parties |
|---|---|
| Industry ..... | International Paper, Androscoggin Mill, Jay, Maine. |

## Outline of Today's Proposal

This preamble presents the following information:

I. Authority
II. Overview of Project XL
III. Overview of the International Paper Effluent Improvements XL Project
A. To Which Facilities Would the Proposed Rule Apply?
B. From What Required Activities Would Today's Proposed Rule Provide an Exemption?
C. What Would the IP–Androscoggin Mill Do Differently Under The XL Project?
D. What Regulatory Changes Would Be Necessary to Implement this Project?
E. Why is EPA Supporting This Approach of Granting a Waiver From BMPs?
F. How Have Stakeholders Been Involved in This Project?
G. How Would This Project Result in Cost Savings and Paperwork Reduction?
H. What Are the Enforceable Provisions of the Project?
I. How Long Would This Project Last and When Would It Be Completed?
IV. Additional Information
A. How Does This Proposed Rule Comply With Executive Order 12866?
B. Is a Regulatory Flexibility Analysis Required?
C. Is an Information Collection Request Required for This Project Under the Paperwork Reduction Act?
D. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?
E. How Does This Proposed Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?
F. How Does This Proposed Rule Comply With Executive Order 13084: Consultation and Coordination With Indian Tribal Governments?
G. Does This Proposed Rule Comply With Executive Order 13132?
H. Does This Proposed Rule Comply With the National Technology Transfer and Advancement Act?

## I. Authority

EPA is publishing this proposed regulation under the authority of sections 402 and 501 of the Clean Water Act, as amended (33 U.S.C. 1342 and 1361).

## II. Overview of Project XL

Project XL—"eXcellence and Leadership"— was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection. See 60 FR 27282 (May 23, 1995). Project XL gives individual private and public regulated entities the opportunity to develop their own pilot projects wherein the Agency provides targeted regulatory flexibility in exchange for improved environmental performance. EPA intends to use Project XL and other related efforts to test innovative strategies for reducing the regulatory burden and promoting economic growth while achieving better environmental and public health protection.

To participate in XL, interested parties must develop a proposal that satisfies a number of criteria, including criteria for superior environmental performance, transferability, and stakeholder involvement. The definition of "environmental performance" under XL is broad, and EPA seeks superior performance under XL both in areas under existing EPA jurisdiction such as waste handling, air emissions, or effluent treatment, as well as through environmental innovations in fields as diverse as data monitoring and reporting or product stewardship.

The Final Project Agreement (FPA) that evolves out of the review and development of the proposal is a written agreement between the project sponsor and regulatory agencies regarding the details of the proposed project. The FPA outlines how the project will meet the XL review criteria and identifies performance goals and indicators to ensure that the project's anticipated benefits are realized. The FPA also discusses the administration of the agreement, including dispute resolution and termination. Today, EPA asks for comment specifically on the draft FPA for the International Paper Effluent Improvements XL Project. This document is available for review as indicated above under **ADDRESSES**.

For more information about the XL program, XL criteria, or about specific XL projects underway, please refer to *http://www.epa.gov/projectxl* or contact EPA as indicated above under **FOR FURTHER INFORMATION CONTACT**.

## III. Overview of the International Paper Effluent Improvements XL Project

EPA today is requesting comments on the proposed rule and draft FPA that will implement key provisions of the International Paper Effluent Improvements XL Project. Today's proposed site-specific rule is necessary for the project to proceed. The draft FPA outlines the intentions of EPA and other project participants on the XL project. The draft FPA was developed by representatives from EPA, the International Paper Androscoggin Mill in Jay, Maine (IP–Androscoggin), the Maine Department of Environmental Protection (MEDEP), the Town of Jay, and other stakeholders. After comments on the draft FPA have been considered, EPA, IP, MEDEP, and the Town of Jay expect to sign a final FPA.

### *A. To Which Facilities Would the Proposed Rule Apply?*

This proposed rule would apply only to the International Paper Androscoggin Mill in Jay, Maine.

### *B. From What Required Activities Would Today's Proposed Rule Provide an Exemption?*

The proposed rule would exempt the IP–Androscoggin Mill from existing federal regulations codified under the Clean Water Act at 40 CFR 430.03. Those regulations require pulp and paper facilities to implement specified BMPs, *e.g.*, installing and maintaining various operating procedures and infrastructure within the facility;

monitoring, data gathering, and reporting; and carrying out several other activities designed to prevent leaks and spills of spent pulping liquor, soap and turpentine that would otherwise lead to increased discharges of pollutants from the final effluent.

*C. What Would the IP–Androscoggin Mill do Differently Under the XL Project?*

International Paper's claim in its XL proposal was that existing practices at the Androscoggin Mill, including existing spill prevention procedures and process control technologies, are advanced enough to preclude any further improvements to the final effluent from implementation of the BMPs specified in 40 CFR 430.03. To support this claim, the IP–Androscoggin Mill detailed as part of project review discussions how, item-by-item, the mill's infrastructure, operations and procedures are equivalent to or achieve the same objectives as the BMP requirements under the CWA for pulp and paper facilities.

Under the XL project, the IP–Androscoggin Mill will maintain these practices in order to ensure that current environmental performance is sustained. In exchange for the exemption from the requirements of 40 CFR 430.03, the IP–Androscoggin Mill will in addition implement a number of projects designed to improve the mill's effluent quality for chemical oxygen demand (COD) and color beyond levels likely to be attained through implementation of the BMP requirements specified in 40 CFR 430.03. These steps all derive from the project's two most important components: Implementation of a series of effluent improvement projects under the guidance of a Collaborative Process Team with members from IP, EPA, MEDEP, the Town of Jay, and other stakeholders; Amendment or reissuance of the IP–Androscoggin Mill effluent discharge permit to include numeric limitations for color and chemical oxygen demand (COD) at levels that in Phase 1 of the project guarantee sustained environmental performance and in Phase 2 of the project capture in the permit any future performance improvements deriving from the XL project.

The draft Final Project Agreement upon which the Agency seeks comment today describes in greater detail the steps associated with the XL project.

*D. What Regulatory Changes Would Be Necessary To Implement This Project?*

To allow this XL project to be implemented, the Agency is proposing in today's notice to exempt the IP–Androscoggin Mill from the BMP requirements specified in 40 CFR 430.03. The proposed site-specific rule further provides that, in lieu of imposing the requirements specified in section 430.03, the permitting authority shall establish conditions for the discharge of COD and color for this mill on the basis of best professional judgment. Because both EPA and the Maine Department of Environmental Protection would be signatories to the FPA, EPA expects that the requirements for COD and color will be based on the values and procedures specified in the draft FPA. That is, once the site-specific rule is final, the appropriate permitting authority(ies) will amend or reissue the IP–Androscoggin effluent discharge permit to remove the requirements corresponding to 40 CFR 430.03 and to put in place instead numeric effluent limitations on COD and color that reflect, in the first phase, current effluent quality and, in the second phase, improved effluent quality resulting from the implementation by the IP–Androscoggin Mill of alternative effluent improvement projects called for by this project.

*E. Why Is EPA Supporting This Approach of Granting a Waiver From BMPs?*

The Agency expects that the exemption for the IP–Androscoggin Mill will result in environmental performance superior to that which would be attained by continued adherence to the BMPs specified in 40 CFR 430.03. As the draft Final Project Agreement explains in detail, the effluent improvement projects that the IP–Androscoggin Mill will put in place under the XL agreement are expected to reduce COD and color in the mill's effluent to approximately half of current levels.

Another important aspect of this project is that it offers EPA a chance to explore how to use a collaborative process to identify facility-specific process improvements that prompt companies to achieve continuous improvements to effluent quality and to memorialize those improvements in the form of evolving permit limits.

*F. How Have Stakeholders Been Involved in This Project?*

Representatives from several state and local offices have been involved with the development of this project including: The Commissioner of MEDEP, the MEDEP Bureau of Land and Water Quality, members of the Town of Jay Planning Board, Town of Jay Selectmen and the Town of Jay Code Enforcement Officer. The University of Maine has also participated actively in this project. The U.S. Fish and Wildlife Service has also been involved on several occasions.

Non-governmental stakeholders who were invited to participate include but are not limited to: Natural Resource Council of Maine, Environment Northeast, Appalachian Mountain Club, and Western Mountain Alliance. Industry associations who were invited to participate include the Maine Pulp and Paper Association and the National Council of Air and Stream Improvement.

Comments from all other organizations and individuals are welcomed throughout the stakeholder process. All stakeholders including the general public have been and will continue to be notified through local newspaper announcements of meetings and the availability of project documents for review, and there is a specific provision in this project to continue to involve stakeholders as the effluent improvement projects are designed and implemented.

*G. How Would This Project Result in Cost Savings and Paperwork Reduction?*

IP–Androscoggin proposed this XL project to EPA believing that they could achieve better environmental protection by implementing effluent improvement projects specially tailored to the mill rather than focusing on adhering to existing BMP requirements under the CWA. Since the mill has agreed to re-commit any savings from the exemption to the new projects, the mill will experience little or no net savings as a result of the XL project. Specifically, although IP estimates savings from the BMP exemption of approximately $780,000 in capital and operating costs, these savings will be offset by a corresponding increase in expenditures on the effluent improvement projects.

*H. What Are the Enforceable Provisions of the Project?*

The enforceable provisions of this project are numeric effluent limitations incorporated into the mill's effluent discharge permit. As noted above, the project contemplates two sets of limits. The first set of limits (known as Phase 1 limits in the draft FPA), reflects current effluent quality for COD and color and corresponds to effluent quality deriving from the BMPs presently in place at the mill (which EPA judged to be equivalent in terms of performance to the BMPs specified in 40 CFR 430.03). The second set of limits for COD and color (known as the Phase 2 limits in the FPA) will be established in

accordance with procedures specified in the FPA once the effluent improvement projects are fully implemented to include limits for COD and color that reflect actual performance improvements.

*I. How Long Would This Project Last and When Would It Be Completed?*

The Project Signatories intend that this project would be concluded at the end of four (4) years: One year to identify and select the list of effluent improvement projects; two years to design and construct the projects; and one year to collect monitoring data for the purposes of calculating the Phase 2 permit limits and to perform overall project evaluation. At the end of four years, if the project is judged to be a success under the terms described in the draft FPA, EPA would intend to allow the IP-Androscoggin Mill to continue operating under the site-specific rule promulgated at the time the FPA is finalized. However, the Administrator may promulgate a rule to withdraw the exemption at any time in the future if the terms and objectives of the FPA are not met or if the exemption becomes inconsistent with future statutory or regulatory requirements.

EPA notes that adoption of an exemption from the BMP regulations in the context of this XL project does not signal EPA's willingness to adopt that exemption as a general matter or as part of other XL projects. It would be inconsistent with the forward-looking nature of these pilot projects to adopt such innovative approaches prematurely on a widespread basis without first determining whether or not they are viable in practice and successful in the particular projects that embody them. Furthermore, as EPA indicated in announcing the XL program, EPA expects to adopt only a limited number of carefully selected projects. These pilot projects are not intended to be a means for piecemeal revision of entire programs. Depending on the results obtained from this project, EPA may or may not be willing to consider adopting BMP exemptions either generally or for other specific facilities.

## IV. Additional Information

*A. How Does This Rule Comply With Executive Order 12866?*

Because this proposed rule would apply only to one facility, it is not a rule of general applicability and therefore is not subject to OMB review under Executive Order 12866. In addition, OMB has agreed that review of site-specific rules under Project XL is unnecessary.

*B. Is a Regulatory Flexibility Analysis Required?*

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule would not have a significant impact on a substantial number of small entities because it only affects the International Paper facility in Jay, Maine, and it is not a small entity. Therefore, EPA certifies that this action would not have a significant economic impact on a substantial number of small entities.

*C. Is an Information Collection Request Required for This Project Under the Paperwork Reduction Act?*

This action applies only to one facility. Therefore any information collection activities it contains are not subject to the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* For this reason, EPA is not submitting an information collection request (ICR) to OMB for review under the Paperwork Reduction Act.

*D. Does This Project Trigger the Requirements of the Unfunded Mandates Reform Act?*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

As noted above, this proposed rule is applicable only to one facility in Maine. EPA has determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. EPA has also determined that this proposed rule does not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

*E. How Does This Proposed Rule Comply With Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks?*

The Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant," as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is not subject to Executive Order 13045 because it is not an economically significant rule, as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

*F. How Does This Proposed Rule Comply With Executive Order 13084: Consultation and Coordination With Indian Tribal Governments?*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's proposed rule will not significantly or uniquely affect the communities of Indian tribal governments, and it will not impose substantial direct compliance costs on such communities. Although Indian tribal communities live in areas near the Androscoggin River, their governments will not be subject to any compliance costs relating to the proposed site-specific rule since the rule is directed at the International Paper mill. Nearby Indian tribal communities are, in fact, expected to benefit directly from the anticipated improvement in water quality. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*G. Does This Proposed Rule Comply With Executive Order 13132?*

Executive Order 13132, entitled "Federalism" (64 FR 43255; August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It would apply only to a single facility, and it will therefore not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*H. Does This Proposed Rule Comply With the National Technology Transfer and Advancement Act?*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standard. This proposed rulemaking does not involve technical standards developed by any voluntary consensus standards bodies. Therefore, EPA is not considering the use of any voluntary consensus standards. EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

**List of Subjects in 40 CFR Part 430**

Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Dated: May 10, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons set forth in the preamble, title 40 chapter I of the Code of Federal Regulations is proposed to be amended as follows:

**PART 430—THE PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY**

1. The authority citation for part 430 continues to read as follows:

**Authority:** Sections 301, 304, 306, 307, 308, 402, and 501 of the Clean Water Act, as amended, (33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361), and section 112 of the Clean Air Act, as amended (42 U.S.C. 7412).

2. Section 430.03 is amended by adding paragraph (k) to read as follows:

**§ 430.03 Best management practices (BMPs) for spent pulping liquor, soap, and turpentine management, spill prevention, and control.**

* * * * *

(k) The provisions of paragraphs (c) through (j) of this section do not apply to the bleached papergrade kraft mill, commonly known as the Androscoggin Mill, that is owned by International Paper and located in Jay, Maine. In lieu of imposing the requirements specified in those paragraphs, the permitting authority shall establish conditions for the discharge of COD and color for this mill on the basis of best professional judgment.

[FR Doc. 00–12305 Filed 5–15–00; 8:45 am]

BILLING CODE 6560–50–P

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**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Care Financing Administration**

**42 CFR Part 405**

**[HCFA–3432–NOI]**

**RIN 0938–AJ31**

**Medicare Program; Criteria for Making Coverage Decisions**

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of intent to publish a proposed rule.

**SUMMARY:** On April 27, 1999, we published a notice in the **Federal Register** that announced the process we

use to make national coverage decisions under the Medicare program. We also announced that we would not be adopting, as final, a 1989 proposed rule that set forth the criteria we would have used to make coverage decisions under Medicare. This notice announces our intention to publish a proposed rule and solicits advance public comments on the criteria we would use to make certain national coverage decisions and our contractors would use to make local coverage decisions.

**DATES:** We will consider comments if we receive them at the appropriate address, as provided below, no later than 5 p.m. on June 15, 2000.

**ADDRESSES:** Mail written comments (one original and three copies) to the following address ONLY: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–3432–NOI, P.O. Box 8016, Baltimore, MD 21244–8016.

If you prefer, you may deliver, by courier, your written comments (one original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Comments mailed to those addresses may be delayed and received too late for us to consider them.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3432–NOI.

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone (202) 690–7890).

**FOR FURTHER INFORMATION CONTACT:** Susan Gleeson, (410) 786–0542.

**SUPPLEMENTARY INFORMATION:**

**Comments, Procedures, Availability of Copies, and Electronic Access**

Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–3432–NOI. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 443–G of the Department's office at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 to 5 p.m. (phone: (202) 690–7890).

*Copies:* To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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**Overview**

We are issuing this notice to announce our intention to publish a proposed rule and solicit public comments on the criteria we would use to make a national coverage decision (NCD) and our contractors would use to make a local coverage decision (LCD) under section 1862(a)(1) of the Social Security Act (the Act). These coverage decisions are prospective, population-based policies that apply to a clinical subset or class of Medicare beneficiaries and describe the clinical circumstances and setting under which an item or service is available (or not available). We are setting out in this notice the information and approaches we are considering at this time for making coverage decisions. We are interested in receiving public comments on this information and we will consider them when we develop the subsequent proposed rule.

This notice is narrower in scope than the January 30, 1989 proposed rule announcing the coverage criteria we would have used (54 FR 4302). We have already announced our process for making an NCD in an April 27, 1999 general notice (64 FR 22619). Also, rulemaking is not necessary for us to establish or modify the procedures our contractors will use to make LCDs. This notice only deals with the criteria for making national and local coverage decisions under the reasonable and necessary provisions of section 1862(a)(1) of the Act. This notice does not, and we do not anticipate that the proposed rule will, address individual medical necessity determinations and claims adjudication by our contractors and other adjudicators. Finally, this notice does not address Medicare payment policies and we do not anticipate that the proposed rule would include changes to our current rules on Medicare payment.

**I. Background**

*A. Need for Timely and Expanded Medicare Coverage of Items and Services*

Given the dynamic nature of the health care system, it is important that the Medicare program be responsive to the rapid advances in health care. Regulations describing our criteria for coverage under the Medicare program would facilitate timely and expanded access for Medicare beneficiaries to appropriate new technologies. Within the scope of the statutory benefit categories, these criteria would expand access for Medicare beneficiaries by covering the following:

1. A breakthrough technology without consideration of cost.
2. A medically beneficial item or service if no other medically beneficial alternative is available.
3. A medically beneficial item or service if it is a different clinical modality compared to an existing covered beneficial alternative, without consideration of cost or magnitude of benefit.
4. A medically beneficial item or service, even if a less expensive alternative, which is not a Medicare benefit, exists.

We anticipate that these criteria would also make the Medicare coverage process, both national and local, more transparent, timely, and predictable to manufacturers or other requestors seeking Medicare coverage of an item or service.

*B. Framework of the Medicare Program*

From the beginning of the Medicare program, one of the goals has been to

provide a health insurance system that would make "the best of modern medicine" available to Medicare beneficiaries. Over the last 35 years, there have been significant advances in medical science that have changed the Medicare program and improved the health of beneficiaries and others. Some of these changes have been mandated by the Congress in title XVIII of the Act, which authorizes coverage of, and payment for, items and services under the Medicare program. Other changes have occurred as a result of administrative actions. We have adapted the Medicare program to meet these changes.

While the Congress has demonstrated a strong interest in providing access to necessary medical care for Medicare beneficiaries, the Congress has been equally concerned with ensuring that the Medicare program operates on a sound financial basis. The Congress has established the specific scope of benefits that are included in the program and has defined many of the key terms in section 1861 of the Act. In addition, section 1862(a)(1)(A) of the Act requires that "no payment" may be made under Part A (hospital insurance) or Part B (supplementary medical insurance) for any expenses incurred for items or services that "are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member." If we do not cover the expenses incurred for a particular item or service under this provision, either the Medicare beneficiary or the health care provider or supplier may be financially liable for all of the incurred costs.

The main purpose of our proposed rule will be to explain how the term "reasonable and necessary" applies in making coverage decisions. A Medicare coverage decision, whether made nationally or locally, is a prospective, population-based, policy that applies to a clinical subset or class of Medicare beneficiaries and describes the clinical circumstances and setting under which an item or service is available (or is not available).

We have the authority to determine whether an item or service is reasonable and necessary by several distinct approaches. One approach is to make a national coverage decision (NCD). Under 42 CFR 405.732 and 405.860, an NCD either grants, limits, or excludes Medicare coverage for a specific medical service, procedure, or device. An NCD is binding on all carriers, fiscal intermediaries, Peer Review Organizations, and other contractors. Under § 422.256(b), an NCD that expands coverage is also binding on a Medicare + Choice Organization. Moreover, under §§ 405.732(b) and 405.860(b), an NCD made under section 1862(a)(1) of the Act is binding on an administrative law judge (ALJ) ("An ALJ may not disregard, set aside, or otherwise review an NCD."). While an NCD is subject to judicial review, there are limitations on judicial review. This framework ensures that an NCD is consistently applied throughout the nation and enables a beneficiary to make an informed decision about whether to receive an item or service based on the knowledge that an item or service will be covered (or not covered) by the program.

Due to regional, local, or institutional differences in the practice of medicine, it is not always prudent to issue a prescriptive NCD. Sometimes there is not sufficient information for us to determine whether an item or service is an effective treatment on a national basis. In other circumstances, there are legitimate regional differences in the practice of medicine that would make a preemptive national rule inappropriate.

In the absence of an NCD, a decision concerning Medicare coverage for an individual could be resolved on a case-by-case basis after a claim is submitted. Our regulations separately provide broad appeal rights for certain individuals to administratively challenge our decision to deny payment for a claim before a neutral ALJ and, in some cases, Federal court (42 CFR part 405, subparts G and H). This case-by-case approach ensures that a beneficiary can present all relevant information concerning a particular need for payment for an item or service. This review only applies to claims that have been denied and is not a mechanism for attaining prior authorization for a specific item or service for an individual.

In order to provide some guidance to beneficiaries and health care providers and suppliers regarding which items and services will (or will not) be covered in a particular area in the absence of an NCD, our contractors may make an LCD. An LCD would provide guidance, in the absence of, or as an adjunct to, an NCD by describing the clinical circumstances and settings under which an item or service is available (or is not available) to a beneficiary under section 1862(a)(1)(A) of the Act. This notice seeks only to define the criteria for how we would make an NCD and our contractors would make an LCD.

An LCD is not binding on a contractor in another area of the country or on an ALJ who decides cases at higher stages of the appeal process. Still, an LCD provides a service to the public by giving some advance notice about an item or service a contractor is likely to cover or not cover. If a local contractor makes an affirmative finding through a published LCD that an item or service is reasonable and necessary under the statute, beneficiaries and providers could reasonably expect that the service is available to the beneficiaries in that jurisdiction for the circumstances described in the LCD.

*C. Federal Register Publications*

1. 1989 Proposed Rule

On January 30, 1989, we published a proposed rule (54 FR 4302), that identified four generally applicable criteria that we would use to make coverage decisions as to whether, and under what circumstances, specific health care technologies could be considered reasonable and necessary (and thus, covered under Medicare). The four proposed criteria were: (1) Safety and effectiveness, (2) experimental or investigational, (3) appropriateness, and (4) cost-effectiveness. At the time, we explained that each of the four criteria would not necessarily apply in all instances because of the complexity and variety of issues involved in making coverage decisions under Medicare. As explained earlier, we withdrew this proposed rule.

2. 1999 General Notice

On April 27, 1999, we published a general notice that announced the process we use to make an NCD (64 FR 22619). This notice formally withdrew the 1989 proposed rule. This procedural notice has been well-received by Medicare beneficiaries, the health care industry, and others who wanted our process to be open, responsive, and understandable to the public.

**II. Intentions of This Notice**

We are issuing this notice to announce our intention to publish a proposed rule and solicit public comments on the criteria we would use to make an NCD and our contractors would use to make an LCD under section 1862(a)(1) of the Act. We are setting out in this notice the information and approaches we are considering at this time. We are interested in receiving public comments on this information and we will consider them when we develop the subsequent proposed rule.

Before we can make an NCD or LCD, the item or service must fall within a statutory Medicare benefit category and not be otherwise statutorily excluded. Moreover, if regulated by the Food and

Drug Administration, the item or service must be lawfully marketed.

We would apply an NCD or LCD prospectively to all items and services furnished under identical circumstances within the respective jurisdiction after the effective date of the NCD or LCD. We anticipate the number of criteria we would apply could be reduced and simplified based on our experience. We intend that the criteria would make the Medicare coverage process more open, responsive, and understandable to the public. Finally, as mentioned above, we anticipate that the criteria would result in covering more items and services under Medicare. The criteria could also result in us beginning a new NCD to withdraw coverage of a currently covered item or service. In particular, if a new item or service is equivalent in benefit, is in the same clinical modality, is thus substitutable for the existing service, and is lower in costs, we would consider withdrawing coverage for the more expensive currently covered alternative service.

*A. Criteria for Medicare Coverage Decisions*

We anticipate applying two criteria when we make an NCD or one of our contractors makes an LCD. First, the item or service must demonstrate medical benefit, and, second, the item or service must demonstrate added value to the Medicare population. In order to ensure that we and our contractors consistently interpret and apply these criteria, we would use the following sequential steps:

*Step 1—Medical Benefit:* Is there sufficient evidence that demonstrates that the item or service is medically beneficial for a defined population?

If no, the item or service is not covered under Medicare.

*If yes, proceed to Step 2.*

*Step 2—Added Value:* For the defined patient population, is there a medically beneficial alternative item or service(s) that is the same clinical modality and is currently covered by Medicare?

- If no, the item or service is covered under Medicare for the defined population.
- If yes, proceed to Step 3.

*Step 3—Added Value:* Is the item or service substantially more or substantially less beneficial than the Medicare-covered alternative?

- If the item or service is substantially more beneficial (that is, a breakthrough), it is covered under Medicare for the defined population.
- If the item or service is substantially less beneficial, it is not covered under Medicare for the defined population.
- If the item or service is neither substantially more nor substantially less beneficial (that is, it is equivalent in benefit), proceed to Step 4.

*Step 4—Added Value:* Will the item or service result in equivalent or lower total costs for the Medicare population than the Medicare-covered alternative?

- If yes, the item or service is covered under Medicare for the defined population.
- If no, the item or service is not covered under Medicare.

When we (or our contractors) compare the medical benefit of two or more items or services, we would ensure that the comparisons involve both the same patient population, the same clinical circumstances, and the same clinical modality. We believe that the sequential steps would be administratively feasible and would produce results that are consistent with the statute. We invite public comments on this approach and suggestions as to feasible alternatives.

A requestor may use the coverage reconsideration process to modify a request that resulted in a denial of coverage for an item or service. For example, a requestor could seek a more limited coverage decision targeting a narrower population for which there is no Medicare-covered alternative. Alternatively, a requestor could submit new evidence that demonstrates that the item or service is substantially more beneficial than the Medicare-covered alternative.

*B. Definitions, Discussion, and Questions*

1. Medical Benefit

We believe an item or service is medically beneficial if it produces a health outcome better than the natural course of illness or disease with customary medical management of symptoms. We would require the requestor to demonstrate that an item or service is medically beneficial by objective clinical scientific evidence.

Given the importance of Medicare coverage decisions for our 39 million current beneficiaries (as well as future beneficiaries), we do not believe we should cover an item or service without adequate information that shows the item or service improves the diagnosis or treatment of an injury or illness, or improves the functioning of a malformed body member. It would be unreasonable and unnecessary to pay for expenses incurred for an item or service that are not proven to be effective for a defined population.

Although mortality and life-expectancy are quantifiable and, thus, "hard" health outcomes, we believe we should move towards "quality of life" as an acceptable health outcome. To help us (and our contractors) make coverage decisions, however, especially assessing comparative benefits, an acceptable health outcome should be quantifiable along a standard scale or metric. We seek suggestions on a standard metric system for measuring quality of life outcomes. Examples of nationally recognized scales are: QALY—Quality Adjusted Life Years, DALY—Disability Adjusted Life Years, or self-described health status as measured by the SF–36 (Short Form 36).

We believe a beneficiary's preference, compliance, and well-being are also meaningful outcomes. Similarly, we invite comments on the standardized metric systems or methodologies we should employ so that we can quantify and compare medical benefits that recognize these outcomes.

Another important consideration is how we would measure the magnitude of the improved health outcome. Also, if the treatment includes risks of adverse side-effects, how should we determine that the benefits outweigh the risks?

2. Added Value

We believe that an item or service adds value to the existing mix of covered items or services if it substantially improves health outcomes; provides access to a medically beneficial, different clinical modality; or if it can "substitute" for an existing item or service and lower costs for the Medicare population. There are several situations when a new item or service would add value compared to the current mix of services.

One situation is when a new item or service that falls within a Medicare benefit category would be medically beneficial for a beneficiary with a given clinical circumstance and there is no Medicare-covered medically beneficial alternative. We believe this item or service would add value to the program and we should cover it without consideration of costs during the coverage process.

Another situation is when a new item or service would be medically beneficial and it is a different clinical modality than a Medicare-covered medically beneficial alternative(s) (for example, a covered medication versus surgery). Giving Medicare beneficiaries and providers access to competing items or services of different clinical modalities adds value to the program and we believe we should also cover the items or services without consideration of costs during the coverage process. In particular, this adds value to the program because we recognize that there

are legitimate differences between beneficiaries, medical practices by region, and delivery systems' capabilities. We believe access to different modalities for a similar medical benefit is warranted.

In making Medicare coverage decisions under these new criteria, we would not compare an item or service that falls within a statutory benefit category to an item or service that is outside the scope of the Medicare program. We do not believe we should compare the effectiveness of an item or service that falls within a statutory benefit category to the effectiveness of a medically, beneficial alternative that is not included in a Medicare benefit category. Due to financial circumstances, a beneficiary may not have meaningful access to that alternative. We believe that by only comparing two items or services that are included in a Medicare benefit category, we increase beneficiary access and add value to the program.

Value also would be added when the magnitude of the benefit of an item or service is substantially more than a Medicare-covered alternative of similar clinical modality. We refer to this item or service as a "breakthrough". Even if two services are of the same clinical modality, we believe we should cover the substantially superior service without any consideration of cost during the coverage process.

We believe value would also be added when a new item or service is equivalent in benefit, and is in the same clinical modality (that is, substitutable) for a Medicare-covered alternative, and has equal or lower total costs for the Medicare population. It is possible that a beneficiary would not notice any difference in health outcomes, when an item or service is substituted for a Medicare-covered alternative. We would cover a substitutable item or service only if the total costs are equal or lower than the total costs of the Medicare-covered alternative. For clinically substitutable services, it is not reasonable or necessary to pay for incurred costs that exceed the cost of a Medicare-covered alternative that produces the same health outcome. Thus, only by assuring equal or lower costs for the substitutable service could we assure adding value to the program. When a service (that is, it has equivalent health outcomes and the same clinical modality) is substantially more expensive than a Medicare-covered alternative would cost considerations lead us to deny coverage for the service. Since we anticipate limiting the application of costs to a narrow situation when two services have equivalent health outcomes and are of the same clinical modality, we need to do only a simple cost-analysis.

We would like to receive input on the proposed added value criteria before developing a proposed rule. In particular, we would like suggestions on how broadly or narrowly we should define "same clinical modality." Clearly surgery and prescription medications are not the same. But is an open surgical procedure the same clinical modality as a closed invasive procedure? What if they both require general anesthesia? What if they do not? Perhaps another way of defining "same clinical modality" would be to simply use the existing Medicare statutory benefit categories.

We would like the public's views on the scope of a "Medicare-covered alternative." Recognizing that most Medicare coverage decisions have been made locally, and not nationally, we would have to create a standard for determining which services are currently covered. One alternative for the purposes of an NCD or an LCD is to define "Medicare-covered alternative" when a threshold percentage of the Medicare population nationally, or in the contractor's jurisdiction, has access to an item or service. What threshold percentage should we use for either alternative? Are there other alternative definitions?

Similarly, we encourage suggestions on how to best define "substantially more beneficial." One way to define this term is that the benefit is so large that *most clinicians* would believe that the item or service should be the new standard of care and, thus, completely replace the Medicare-covered alternative. Another is that the benefit is so large that the clinical experts in the relevant clinical discipline believe that the item or service should be the new standard of care and, thus, we should cover the new item or service and withdraw coverage of the Medicare-covered alternative. A third way would be to try to establish a quantifiable statistical "effect-size" of the new item or service compared with the Medicare-covered alternative.

We are soliciting input on the definition of "equivalent benefit." We anticipate defining "equivalent benefit" as neither substantially more, nor substantially less, beneficial than the Medicare-covered alternative. This leaves a range of medical benefit between marginally less beneficial, to equally beneficial, to marginally more beneficial. Is there an alternative definition of "equivalent benefit?" Is there a common metric system that could be used to measure the medical benefit and capture other meaningful health outcomes including beneficiary preference, compliance, and well-being?

We are also specifically requesting comments on the alternative of covering a new item or service that is "substitutable" for a Medicare-covered alternative. At a minimum, a substitutable item or service would seem to be one that is the same clinical modality and produces an equivalent health outcome. If the substitutable item or service has greater total costs to the Medicare program, should we deny coverage for the item or service and allow the requestor through the reconsideration process to alter the request to seek a positive coverage decision? Should we simply cover the new item or service but reduce the Medicare payment rate for the incurred expenses to the same rate as the Medicare-covered alternative? This principle has been called the "least costly alternative" adjustment and has been used for many years primarily for coverage of durable medical equipment.

Coverage of new items and services under new regulatory requirements may lead to the reexamination of current coverage policies. For example, if the new item or service is "substitutable" for a Medicare-covered alternative and has lower costs for the Medicare program, should we deny coverage for the Medicare-covered alternative or lower the payment for the Medicare-covered alternative so that the total costs for the Medicare program are, at a minimum, equal?

We are interested in suggestions on the type and extent of information that parties seeking coverage decisions should be required to provide in relation to the associated costs or savings to the program in addition to the direct costs of the item or service.

We are soliciting comments on the implications for private sector insurers of the proposed approach.

3. Demonstration Through Scientific Evidence

As previously mentioned, we would measure both the medical benefit and the added value criteria by clinical scientific evidence. We are interested in comments on the proper evidentiary standard. Should there be one standard for all services or should there be different standards for different health care sectors (for example, surgical procedures, diagnostic tests, and biologics)? Finally, recognizing that clinical evidence and trials are frequently imperfect, what is the best way to deal with bias and external validity when we consider applying the findings of clinical trials to coverage

decisions in the real world. More specifically, under what circumstances can clinical trial findings be generalized from the study population to the Medicare population? In addition, under what circumstances can the controlled delivery setting of the clinical trial be generalized and reproduced in the current health care delivery setting or to a different health care delivery setting?

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits before issuing any rule that may result in an expenditure in any year by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million. The notice would not have any unfunded mandates.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a notice that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. The notice would not impose compliance costs on the governments mentioned.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

**Authority:** Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 5, 2000.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

Approved: April 20, 2000.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 00–12237 Filed 5–11–00; 12:00 pm]

BILLING CODE 4120–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 206

**RIN 3067–AD08**

### Disaster Assistance; Debris Removal

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** We (FEMA) propose to change the scope of activities that are determined to be in the public interest following a declared disaster. We propose to provide funding for the removal of debris and wreckage when communities convert property acquired through a FEMA program for hazard mitigation purposes to uses compatible with open space, recreational, or wetlands management practices.

**DATES:** We invite your comments and will accept them until June 30, 2000.

**ADDRESSES:** Please send any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, room 840, 500 C Street, SW., Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov*.

**FOR FURTHER INFORMATION CONTACT:** Melissa M. Howard, Federal Emergency Management Agency, room 713, 500 C Street SW., Washington, DC 20472, (202) 646–4240, or (email) *melissa.howard@fema.gov*.

**SUPPLEMENTARY INFORMATION:** We consider that it is in the public interest to remove substantially damaged structures and related slabs, driveways, fencing, garages, sheds, and similar appurtenances from properties that are part of a FEMA-funded hazard mitigation buyout and relocation project. When the principal structure has been substantially damaged by a major disaster, the removal of such items will help mitigate the risk to life and property by converting the property to uses that are compatible with open space, recreational and wetland management practices. Federal assistance used in this way supports the effort to break the cycle of repetitive damage and repair and is in the public interest because it is less costly to taxpayers than the cycle of repetitive damage and repair. Mitigation through buyout and relocation also substantially reduces the risk of future infrastructure damage and personal hardship, loss and suffering.

### National Environmental Policy Act

This rule is excluded from the preparation of an environmental assessment or environmental impact statement under 44 CFR 10.8(d)(2)(ii), where the rule is related to actions that qualify for categorical exclusion under 44 CFR 10.8(d)(2)(vii).

### Executive Order 12866, Regulatory Planning and Review

This proposed rule would not adversely affect the availability of disaster assistance funding to small entities, would not have significant secondary or incidental effects on a substantial number of small entities, and would not create any additional burden on small entities. It adds a category of property eligible to receive public assistance following a declared disaster, and will thus benefit those small entities that qualify for this assistance.

As Director I certify that this proposed rule is not a significant regulatory action within the meaning of section 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, and that it attempts to adhere to the regulatory principles set forth in E.O. 12866. The Office of Management and Budget has reviewed this rule under E.O. 12866.

### Paperwork Reduction Act

This proposed rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

### Executive Order 13132, Federalism

In publishing this proposed rule, we considered the President's Executive Order 13132 on Federalism. This proposed rule makes no changes in the division of governmental responsibilities between the Federal government and the States, but adds a category of property eligible to receive public assistance following a declared disaster. We have determined that Executive Order 13132 does not apply to this regulatory action, and we have not prepared a Federalism assessment.

### List of Subjects in 44 CFR Part 206

Disaster assistance.

Accordingly, we propose to amend 44 CFR part 206 as follows:

1. The authority citation for part 206 continues to read as follows:

**Authority:** The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

## PART 206—FEDERAL DISASTER ASSISTANCE FOR DISASTERS DECLARED ON OR AFTER NOVEMBER 23, 1988

2. Amend § 206.224 by revising paragraph (a)(3) and adding paragraph (a)(4) to read as follows:

**§ 206.224 Debris removal.**

(a) * * *

(3) Ensure economic recovery of the affected community to the benefit of the community-at-large; or

(4) Mitigate the risk to life and property by removing substantially damaged structures and associated

appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreational, or wetland management practices.

* * * * *

Dated: May 8, 2000.

**James L. Witt,**

*Director.*

[FR Doc. 00–12284 Filed 5–15–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL MARITIME COMMISSION

**46 CFR Part 520**

**[Docket No. 00–07]**

### Advance Notice of Proposed Rulemaking Concerning Public Access Charges to Carrier Automated Tariffs and Tariff Systems Under the Ocean Shipping Reform Act of 1998

**AGENCY:** Federal Maritime Commission.

**ACTION:** Advance Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Maritime Commission is concerned that certain tariff access charges and minimum monthly subscription requirements may limit the public's ability to access tariffs and tariff systems, contrary to the requirements of the Ocean Shipping Reform Act of 1998. The Commission, therefore, is seeking public comments to address the reasonableness of tariff access charges.

**DATES:** Comments on or before June 15, 2000.

**ADDRESSES:** Comments (original and 15 copies) are to be submitted to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5725.

**FOR FURTHER INFORMATION CONTACT:** Austin L. Schmitt, Director, Bureau of Trade Analysis, Federal Maritime Commission, Washington, DC 20573, (202) 523–5796.

**SUPPLEMENTARY INFORMATION:** Effective May 1, 1999, the Ocean Shipping Reform Act of 1998 ("OSRA"), Pub. L. 105–258, 112 Stat. 1902, modified the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1701 *et seq.* to require common carriers and conferences to publish their rates in private, automated tariff systems. OSRA requires these tariffs to be made available electronically to any person, without limits on time, quantity, or other such limitation, through appropriate access from remote locations, and authorizes that "a reasonable charge" may be assessed for access (except for access by Federal agencies). 46 U.S.C. app. 1707(a)(2)). In addition, the legislative history concerning public access to tariffs provides the following guidance:

> *The Act's requirement that common carrier tariffs be kept open to public inspection is retained.* . . . . . There should be no government constraints on the design of a private tariff publication system as long as that system assures the integrity of the common carrier's tariff and the tariff system as a whole, *and the system provides the appropriate level of public access to the common carrier's tariff information.* S. Rep. No. 61, 105th Cong., 1st Sess. at 23 (1997) (emphasis added).

The Commission believes that in passing OSRA, Congress intended to provide the general public access to tariff information at a nominal cost. Moreover, most businesses have now embraced the Internet as an important and user-friendly means of conveying information to potential customers at little or no cost to the customer. The Commission is concerned that certain access charges and minimum subscription requirements may limit the public's ability to access the carriers' tariff information that is now available on the Internet, contrary to the intentions of OSRA. Several informal complaints have been received by the Commission regarding carrier tariff systems [1] and the level of access charges, while others have questioned the propriety of time and quantity restrictions. A Commission staff review of tariff access charges indicates the existence of a wide range of charges and/or monthly minimums. For example, it has been brought to the Commission's attention that in some tariff systems, a public user desiring to check one term of a bill of lading or one rate, would have to subscribe to the system for a minimum of three months at a cost as high as $1,500.[2]

Because the charges of some carriers may limit public availability and access to tariffs contrary to the intentions of OSRA, the Commission is initiating this Advance Notice of Proposed Rulemaking to address the issue of a "reasonable charge" for tariff access. The Commission is seeking comments from interested parties on any aspect of this issue, and particularly on the following questions:

(1) Should the Commission promulgate any regulations or guidelines on the subject of "reasonable charges" for access to tariffs or tariff systems?

(2) Should a determination of the reasonableness of an access charge be based only on whatever additional costs may be incurred by carriers in making their tariffs accessible to the public and not include any costs for developing or maintaining tariffs that are the result of the carriers' responsibilities under OSRA?

(3) Should the public's cost to access carrier tariffs be similar to that encountered in accessing information made available on the Internet by other businesses?

(4) Should the public's cost to access carrier tariffs be comparable to that afforded to the public for the entire universe of carriers' tariffs under the Commission's former ATFI system?

(5) Should the number of tariffs accessible within any one system be considered in determining a "reasonable charge"?

In addition to soliciting the comments of regulated entities and tariff publishers, the Commission encourages any interested party to comment on these questions and on any experiences associated with the costs of accessing carrier tariffs.

By the Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–12191 Filed 5–15–00; 8:45 am]

BILLING CODE 6730–01–P

[1] Most common carriers and conferences have delegated the responsibility for public accessibility, and the authority to assess charges for such access, to their agents, the tariff publishers. Nevertheless, the Commission will continue to look to common carriers and conferences, as the regulated entities, to ensure compliance with applicable laws and regulations.

[2] On the other hand, our review indicates that of the top ten publishers, two tariff publishers have no access charges.

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 73**

**[DA 00–918; MM Docket No. 99–206; RM–9625]**

### Radio Broadcasting Services; Kimberly, ID

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; denial.

**SUMMARY:** This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 291C3 to Kimberly, Idaho, as that locality's first local aural transmission service. See 64 FR 31176, June 10, 1999. Evidence presented established that the proposed transmitter site at coordinates 42–30–22 NL and 114–21–45 WL to accommodate

Channel 291C3 at Kimberly, is located on private property and not available for commercial use. The petitioner did not present any engineering showings to establish the availability of an alternate site. With this action, the proceeding is terminated.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Nancy Joyner, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MM Docket No. 99–206, adopted April 12, 2000, and released April 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–12258 Filed 5–15–00; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA No. 00–921; MM Docket No. 99–338; RM–9746]**

### Radio Broadcasting Services; Shiner, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule making; withdrawal.

**SUMMARY:** This document dismisses a petition for rule making filed by Elgin FM Limited Partnership requesting the allotment of Channel 232C3 at Shiner, Texas. *See* 64 FR 68662, December 8, 1999. Elgin FM Limited Partnership withdrew its interest in the allotment of Channel 232C3 at Shiner, Texas. With this action, this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 99–338, adopted April 19, 2000, and released April 25, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–12257 Filed 5–15–00; 8:45 am]

**BILLING CODE 6712–01–U**

## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### 48 CFR Parts 5433 and 5452

### DLA Acquisition Directive: Alternative Dispute Resolution

**AGENCY:** Defense Logistics Agency (DLA), Defense.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would add a new provision to DLA solicitations concerning the use of alternative dispute resolution (ADR). The purpose is to establish ADR as the initial dispute resolution method, except for certain circumstances, to increase cooperative problem solving and reduce litigation. The provision would be optional for offerors; however, if they agreed to the provision, both the contractor and DLA would be committed to use ADR except in limited circumstances. Increased use of ADR is consistent with the Administrative Dispute Resolution Act, the Federal Acquisition Regulation (FAR), and Departmental policy.

**DATES:** Comments due on or before June 15, 2000.

**ADDRESSES:** Send written comments to Ms. Mary Massaro, Defense Logistics Agency, DLSC–PPP, Headquarters Center, 8725 John J. Kingman Road, Suite 3147, Fort Belvoir, VA 22060–6221, or via email to mary_massaro@hq.dla.mil.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Massaro, Procurement Analyst, Defense Logistics Agency, DLSC–PPP, at (703) 767–1366.

**SUPPLEMENTARY INFORMATION:**

*A. Background.* DLA is pursuing several initiatives to increase the use of ADR in resolving contract disputes. One way to increase use of ADR is for the parties to agree, as part of the contract, that they will use ADR before initiating litigation. This type of approach is used by DoD in partnering agreements and Agency-contractor ADR pacts.

The proposed provision provides a vehicle for both parties to agree to use ADR. Offeror can opt out of the provision by checking the box if they do not want it in their contract in the event of award. Offerors can also propose alternate wording to tailor the language while retaining the concept. Despite the fact that wording can be individually negotiated, DLA is seeking public comments to arrive at optimal language and to partner with industry in developing this provision.

*B. Regulatory Flexibility Act.* This proposed rule does not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 USC 601 *et seq.* An initial regulatory flexibility analysis was not performed.

*C. Paperwork Reduction Act.* This notice does not impose any new reporting or record keeping requirements that require the approval of OMB under 44 USC 3501 *et seq.*

**List of Subjects in 48 CFR Parts 5433 and 5452**

Government procurement.

For the reasons set forth above, the Defense Logistics Agency proposes to amend 48 CFR Chapter 54 as follows:

1. Part 5433 is added to read as follows:

## PART 5433—PROTESTS, DISPUTES AND APPEALS

**Authority:** 10 U.S.C. Chapter 137

**§ 5433.214. Contract Clause: Agreement to Use Alternative Dispute Resolution.**

The contracting officer shall insert the provision in 5452.233 in all solicitations unless the conditions at FAR 33.203(b) apply.

## PART 5452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. The authority citation for Part 5452 continues to read as follows:

**Authority:** 10 U.S.C. Chapter 137

3. Part 5452 is amended by adding contract clause 5452.233–9001 to read as follows:

5452.233–9001 Disputes: Agreement to Use Alternative Dispute Resolution (ADR).

As prescribed in 5433.214, insert the following clause:

DISPUTES: AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) xxx 2000)—DLAD

(a) The parties agree to use their best efforts to resolve any disputes that may arise without litigation. If unassisted negotiations are unsuccessful, the parties will use ADR techniques in an attempt to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute. If the ADR is not successful, the parties retain their existing rights.

(b) If you wish to opt out of this clause, check here [ ]. Alternate wording may be negotiated with the contracting officer.

**William J. Kenny,**

*Executive Director, Logistics Policy and Acquisition Management.*

[FR Doc. 00–12106 Filed 5–15–00; 8:45 am]

BILLING CODE 3620–01–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

[Docket No. 000503121–0121–01; I.D. 030600A]

RIN 0648–AN07

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Catch Specifications

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule, request for comments.

**SUMMARY:** In accordance with the framework procedure for adjusting management measures (framework procedure) of the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP), NMFS proposes the following: Increase the annual total allowable catch (TAC) and increase the commercial trip limit off the southeast coast of Florida for Atlantic group king mackerel; increase the TAC, modify the commercial trip limits applicable off Florida, and increase the recreational bag limit for Atlantic group Spanish mackerel; and incorporate into the FMP biomass-based values for maximum sustainable yield (MSY) and stock status determination criteria in compliance with the requirements of the Sustainable Fisheries Act of 1996, which amended the Magnuson-Stevens Fisheries Conservation and Management Act (Magnuson-Stevens Act). The intended effects of this rule are to maintain healthy stocks of king and Spanish mackerel while still allowing catches by important commercial and recreational fisheries.

**DATES:** Comments must be received no later than 5 p.m., eastern standard time, on May 31, 2000.

**ADDRESSES:** Written comments on the proposed rule must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments may also be sent via fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or the Internet.

Requests for copies of the South Atlantic Fishery Management Council's frame work recommendations for adjustment of harvest levels and related matters, which includes an environmental assessment, social impact assessment/fishery impact statement, and regulatory impact review, should be sent to the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366; fax: 843-769-4520; e-mail: safmc@noaa.gov.

**FOR FURTHER INFORMATION CONTACT:** Dr. Steve Branstetter; telephone: 727-570-5305; fax: 727–570–5583; e-mail: Steve.Branstetter@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The fisheries for coastal migratory pelagic resources are regulated under the FMP. The FMP was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils and was approved and implemented by NMFS through regulations at 50 CFR part 622. In accordance with the framework procedure, the South Atlantic Fishery Management Council (Council) recommended to the Regional Administrator, Southeast Region, NMFS (RA), management measure changes relating to Atlantic migratory groups of king and Spanish mackerel. The recommended changes are within the scope of the management measures that may be adjusted under the framework procedure, as specified in 50 CFR 622.48.

#### Proposed TACs, Allocations, and Quotas

The Council proposed an increase in annual TAC from 8.40 million lb (3.81 million kg) to 10.00 million lb (4.54 million kg) for Atlantic group king mackerel. The commercial quota would be 3.71 million lb (1.68 million kg) and the recreational allocation would be 6.29 million lb (2.85 million kg). The Council proposed an increase in annual TAC from 6.60 million lb (2.99 million kg) to 7.04 million lb (3.19 million kg) for Atlantic migratory group Spanish mackerel. The commercial quota would be 3.87 million lb (1.76 million kg) and the recreational allocation would be 3.17 million lb (1.44 million kg).

Consistent with the framework procedure, these proposed TACs are within the range of the acceptable biological catch established by the Council. The Council believes these TACs represent a conservative management approach, as supported by its Scientific and Statistical Committee and Mackerel Advisory Panel, and are consistent with the attainment of optimum yield (OY) for Atlantic group king and Spanish mackerel, as provided by the FMP. The resulting commercial quotas and recreational allocations would be higher than recent harvest levels; consequently, no early or unexpected fishery closures or quota/allocation overruns would be likely.

#### Commercial Vessel Trip Limits

The commercial sectors of the king and Spanish mackerel fisheries are managed under both quotas and trip limits. The Council proposed an increase in the trip limit applicable off the southeast coast of Florida (Brevard through Miami-Dade Counties) from 50 to 75 fish per day from April 1 though October 31 for Atlantic group king mackerel. Landings records for the southeast coast of Florida indicate that as many as 10 to 12 percent of all trips land 40 fish or more per trip, and a relatively small proportion of trips (3 to 10 percent) land fish in excess of the trip limit. An increase in landings per trip would be expected to increase the net benefits per trip. It is unlikely that this proposed increase in the trip limit would cause an earlier closure of the fishery given the increased TAC for Atlantic group king mackerel.

The Council proposed to change the commercial trip limits applicable to the fishery off Florida for Atlantic group Spanish mackerel. Currently, the trip limits south of the Georgia/Florida boundary are as follows: From April 1 through October 31 - 1,500 lb (680 kg); from November 1 until 75 percent of the adjusted quota is taken, no trip limit on Monday, Wednesday, and Friday, and 1,500 lb (680 kg) on other days; after 75 percent of the adjusted quota is taken until 100 percent is taken - 1,500 lb (680

kg); and after 100 percent of the adjusted quota is taken until the end of the fishing year - 500 lb (227 kg). The adjusted quota is 3.38 million lb (1.53 million kg), which is derived from the 3.87–million lb (1.76–million kg) quota for Atlantic group Spanish mackerel as reduced to allow continued harvests of Atlantic group Spanish mackerel at the rate of 500 lb (227 kg) per vessel per day for the remainder of the fishing year after the adjusted quota is reached.

As proposed by the Council for the Atlantic group Spanish mackerel commercial fishery off Florida, from April 1 through November 30 the trip limit would be 3,500 lb (1,588 kg); from December 1 until 75 percent of the adjusted quota is taken there would be no trip limit on Monday through Friday and on Saturday and Sunday the trip limit would be 1,500 lb (680 kg).

The proposed increase in the commercial trip limit off Florida for the April 1 - November 30 period would benefit those vessels that are currently constrained by the trip limit, since it would increase their net benefits per trip. While the commencement of unlimited trip limits, currently November 1, would be delayed for one month, vessels would be compensated by an increase of two days per week on which unlimited fishing would be allowed.

**Recreational Bag Limit**

The Council proposed to increase the recreational bag limit for Atlantic group Spanish mackerel from 10 to 15 fish per person per day. It is unlikely that this proposed increase in the recreational bag limit would cause the recreational allocation to be exceeded given the increased TAC for Atlantic group Spanish mackerel. The proposed increase in the bag limit would be expected to increase the economic and social benefits.

**Biomass-Based Parameters**

Section 303 of the Magnuson-Stevens Act requires that the regional fishery management councils (councils) (1) assess the condition of managed stocks, (2) specify within their fishery management plans objective and measurable criteria for identifying when the stocks are overfished and when overfishing is occurring (referred to by NMFS as stock status determination criteria), and (3) amend their fishery management plans to include measures to rebuild overfished stocks and maintain them at healthy levels capable of producing maximum sustainable yield (MSY). NMFS' national standard guidelines direct the councils to meet these statutory requirements by incorporating into each fishery management plan estimates of certain biomass-based parameters for each stock, including Bmsy (Bmsy is the weight (biomass) of the stock that will produce MSY) and the minimum stock size threshold (MSST) (MSST is a stock status determination criterion that indicates the minimum stock size that is required to produce MSY, below which the stock would be considered overfished). A maximum fishing mortality threshold (MFMT) for determining whether overfishing is occurring is also required for each stock (MFMT is the level or rate of fishing mortality, that if exceeded, will result in overfishing and jeopardize the capacity of a stock to produce MSY on a continuing basis). Heretofore, the Council used spawning potential ratios to indicate whether Atlantic group king and Spanish mackerel stocks were at the MSY level or overfished because it did not have the necessary information for generating the status determination criteria (Bmsy and MSST). However, based on stock assessment information provided recently by NMFS to the Council, the Council is proposing to incorporate into the FMP, through the framework procedure, the required biomass-based parameters. Accordingly, the Council's proposes the range estimates of MSY, BMSY, MSST, and MFMT shown below. NMFS invites public comment on these estimated parameters.

| Atlantic Group | MSY - million lb (million kg) | BMSY* | MSST* | MFMT - fishing mortality rate |
|---|---|---|---|---|
| King Mackerel | 9.4 - 14.5 (4.3 - 6.6) | 4.7 - 7.1 | 4.0 - 6.1 | 0.32 - 0.48 |
| Spanish Mackerel | 5.7 - 7.5 (2.6 - 3.4) | 12.2 - 15.8 | 8.5 - 11.1 | 0.38 - 0.48 |

* Biomass values are a unitless relative fecundity estimate in millions.

The FMP's determinations regarding "overfishing" and "overfished" would change with the adoption of these new stock status determination criteria. The Council proposes to define overfishing of a stock as occurring if $F_{current} / F_{msy} > 1.0$ (where Fcurrent is the current fishing mortality rate and Fmsy is the level of fishing mortality that results in MSY). A stock would then be overfished if $B_{current}$ / MSST is < 1.0, where MSST $=(1.0- M)B_{msy}$ (where Bcurrent is the current stock biomass and M is the natural mortality—a measurement of the rate of removal of fish from a population from natural causes).

The RA initially concurs that the Council's recommendations meet the goals and objectives of the FMP and that they are consistent with the FMP, the Magnuson-Stevens Act, and other applicable law. Accordingly, the Council's recommended changes are published for comment.

**Classification**

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities, as follows:

For Atlantic group king mackerel, the proposed rule would increase the TAC from 8.4 million lb (3.8 million kg) to 10.0 million lb (4.5 million kg) and would increase the trip limit in the southern zone from 50 to 75 fish. For Atlantic group Spanish mackerel, the proposed rule would increase the TAC from 6.6 million lb (3.0 million kg) to 7.04 million lb (3.19 million kg), would increase the recreational bag limit from 10 to 15 fish per day, and would modify the commercial trip limit system for the area south of the Florida-Georgia border. The action would also modify MSY, stock status determination criteria, and definitions of "overfishing" and "overfished" for Atlantic group king and Spanish mackerel.

All commercial fishing and for-hire businesses that have permits to harvest Atlantic group king and Spanish mackerel are considered to be small entities, and the Council concluded that a substantial number of these small entities (greater than 20 percent) operating in commercial and for-hire fisheries could be affected by the proposed changes. Although the exact

number of small businesses that actually exercise their permit rights is unknown, the approximate numbers of small businesses holding harvest permits are as follows: Commercial king and Spanish mackerel - 1,200 and for-hire - 600.

*Atlantic Group King Mackerel* The Council's proposal to increase TAC from 8.4 million lb (3.8 million kg) to 10.0 million lb (4.5 million kg) would provide for a commercial quota of 3.12 million lb (1.42 million kg) or a 590,000–lb (267,620–kg) increase. However, given the fact that commercial landings since 1990 have never exceeded 2.7 million lb (1.2 million kg), the increased TAC would not likely constrain catches. Also, present harvesting capacity may not be sufficient to take advantage of the increased TAC. The TAC increase will result in a recreational allocation of 6.29 million lb (2.85 million kg) or an increase of 1.0 million lb (0.45 million kg). Recreational catches for the 1997/98 and 1998/99 seasons were 5.39 and 3.62 million lb (2.45 and 1.64 million kg) respectively, so there is a small possibility that the increased recreational allocation could be exceeded. However, the recreational fishery is not subject to closure actions regardless of the size of the catch, i.e., recreational catches are not constrained by the recreational allocation. Noting that an increased allocation is based on the fact of increased stock size, catches may increase slightly because catch per unit effort may rise slightly. Nonetheless, any increase in catch will be related to stock size and not to the level of the official allocation.

The other proposed king mackerel measure would increase the daily trip limit from 50 to 75 fish from April 1 through October 31 in the EEZ off Brevard through Miami-Dade counties (Florida). Since this area accounts for about 50 percent of the commercial catches, there is a possibility that raising the trip limit could result in increased catches for the year. Recent data indicate that over 90 percent of commercial trips in this area catch 50 fish or less, and the other trips represent either violations of existing laws or the reporting of multiple trips as one trip. Also, over 80 percent of trips for the last two seasons resulted in catches averaging less than 30 fish. Nonetheless, to the extent that a small percentage of current trips are constrained by the status quo, there may be a small increase in the total catches and a concurrent small increase in associated commercial revenues. This increase is expected to be small enough that no measurable decrease in price would be expected.

*Atlantic Group Spanish Mackerel* The Council proposes an increase in TAC for Atlantic group Spanish mackerel from 6.6 million lb (3.0 million kg) to 7.04 million lb (3.19 million kg), or an increase of 440,000 lb (199,581 kg). This will result in a commercial quota of 3.87 million lb (1.76 million kg) or 240,000 lb (108,862 kg) above the current quota. Starting with the 1995/96 season, a ban on the use of nets in Florida waters has constrained commercial landings; the catches have ranged from 2.0 to 3.3 million lb (0.9 to 1.5 million kg) since the ban was instituted. Given these factors, the TAC increase is not expected to result in increased annual commercial landings, and no economic effects on the commercial harvesting sector are expected from the increase in TAC. The recreational allocation under the increased TAC would be 3.17 million lb (1.44 million kg). Since recreational landings have averaged less than 1.2 million lb (0.54 million kg) for the last 5 years, the increase in the recreational allocation is unlikely to have any economic impact on the recreational for-hire fishery.

Since the recreational allocations have not been reached in recent years, the Council also proposes an increase in the recreational daily bag limit from 10 to 15 Spanish mackerel per person. Since some of the for-hire small entities target Spanish mackerel seasonally, there is a possibility that the increase in the bag limit would lead to an increased number of for-hire trips. However, only about 2 percent of for-hire trips target Spanish mackerel and over 97 percent of recent recreational trips result in landing at the current bag limit or less. Consequently, the proposed increase in the bag limit is expected to have a positive, but very small, economic impact on the for-hire sector.

The other proposed Spanish mackerel measure would modify the commercial trip limit system governing commercial catches south of the Georgia/Florida border. Since the landings south of Georgia constitute about 80 percent of the total annual commercial landings of Spanish mackerel, these trip limit changes could possibly affect overall landings. These changes include an increase in the trip limit to 3,500 lb (1,588 kg) from April 1 through November 30, as opposed to the current 1,500 lb (680.4 kg) trip limit for the period April 1 through October 31. In addition, there is a proposal to allow unlimited fishing on all weekdays and to impose a 1,500 lb (680.4 kg) trip limit for Saturday and Sunday starting on December 1 until 75 percent of the quota is reached, at which point the trip limit would be 1,500 lb (680.4 kg) for all days of the week. The current system provides for unlimited fishing on Monday, Wednesday, and Friday and a 1,500–lb (680.4–kg) trip limit on Tuesday, Thursday, Friday, and Saturday starting on November 1 until 75 percent of the quota is reached at which point the trip limit is set at 1,500 lb (680.4 kg) for all days of the week. The most important parts of this rather complex set of changes concern the increase in the trip limit from 1,500 lb to 3,500 lb (680.4 to 1,588 kg), a shortening of the unlimited season, and an increase in the number of days of unlimited fishing for other parts of the year. Some of these trip limit changes would tend to result in larger annual commercial landings and revenues, while other changes would tend to reduce landings and revenues. The analysis of the expected overall impacts of the trip limit changes for Spanish mackerel is hampered because of limited seasonal, areal, and catch-per-trip data; also, logbooks have only recently been implemented and these data are not yet available. Despite these difficulties, and based on the way the fishery tends to operate seasonally, the tentative conclusion is that the change in the trip limit from 1,500 to 3,500 lb (680.4 to 1,588 kg) is not likely to have the large positive impact expected because this particular change will pertain at a time of the year when Spanish mackerel are not seasonally abundant, and catch-per-trip tends to be less than the current trip limit of 1,500 lb (680.4 kg). Any significant changes in landings would result from the combined effects of shortening the unlimited season and allowing more unlimited days during the unlimited season. Reducing the unlimited season by one month will, in effect, reduce the number of days of unlimited fishing by about 12 days; adding unlimited days during a given week within the shorter unlimited season will add about 16 days of unlimited fishing. Hence, the expectation is for a small increase in the annual commercial catch of Spanish mackerel for all the trip limit changes in aggregate.

The modification of MSY and the incorporation into the FMP of biomass-based stock status determination criteria includes: Setting the king mackerel MSY at 9.4–14.5 million lb (4.3–6.6 million kg); setting the Spanish mackerel MSY at 5.7– 7.5 million lb (2.6–3.4 million kg); setting the fishing mortality rate (MFMT) at 0.40 (=F30% Static SPR) consistent with MSY; establishing a Bmsy of 4.7–7.1 for king

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mackerel and a Bmsy of 12.2–15.8 for Spanish mackerel (the values represent relative fecundity and are unitless); and, setting the minimum stock size threshold (MSST) at 4.0–6.1 for king mackerel and at 8.5–11.1 for Spanish mackerel (the values represent relative fecundity and are unitless). The Council also proposed revised definitions of "overfished" and "overfishing" for Atlantic king and Spanish mackerel. The stocks of Atlantic king and Spanish mackerel are currently neither overfished nor are undergoing overfishing. This means that the proposed MSY modifications and the biomass-based status determination criteria that would be added should have no impact on the TACs proposed by the Council and, hence, no economic impact on small entities.

*Other Findings* None of the proposals described above would result in increased compliance costs of reporting or record keeping. Also, there would be no differential large business versus small business impacts because the entire population is composed of small businesses. Additionally, the proposals will not create new capital costs, and no businesses are expected to have to cease operations if the proposals are implemented.

The overall determination resulting from an examination of the proposed changes individually and in aggregate is that there is not expected to be a significant economic impact on a substantial number of the small entities engaged in the commercial harvest or for-hire sectors of the Atlantic group king and Spanish mackerel fisheries.

As a result, a regulatory flexibility analysis was not prepared.

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 10, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.39, paragraph (c)(1)(iii) is revised to read as follows:

**§ 622.39 Bag and possession limits.**

* * * * *

(c) * * *

(1) * * *

(iii) Atlantic migratory group Spanish mackerel—15.

* * * * *

3. In § 622.42, paragraphs (c)(1)(ii) and (c)(2)(ii) are revised to read as follows:

**§ 622.42 Quotas.**

* * * * *

(c) * * *

(1) * * *

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of king mackerel is 3.71 million lb (1.68 million kg). No more than 0.40 million lb (0.18 million kg) may be harvested by purse seines.

* * * * *

(2) * * *

(ii) *Atlantic migratory group.* The quota for the Atlantic migratory group of Spanish mackerel is 3.87 million lb (1.76 million kg).

* * * * *

4. In § 622.44, paragraph (a)(1)(iii) and paragraphs (b)(1)(ii)(A) and (B) are revised to read as follows:

**§ 622.44 Commercial trip limits.**

* * * * *

(a) * * *

(1) * * *

(iii) In the area between 28°47.8' N. lat. and 25°20.4' N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts exceeding 75 fish from April 1 through October 31.

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) From April 1 through November 30, in amounts exceeding 3,500 lb (1,588 kg).

(B) From December 1 until 75 percent of the adjusted quota is taken, in amounts as follows:

(*1*) Mondays through Fridays—unlimited.

(*2*) Saturdays and Sundays—not exceeding 1,500 lb (680 kg).

* * * * *

[FR Doc. 00–12295 Filed 5–15–00; 8:45 am]

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# Notices

Federal Register
Vol. 65, No. 95
Tuesday, May 16, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[No. LS–00–07]

### Market Promotion Funding—Lamb Meat Adjustment Assistance Measures Program

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice: Invitation to submit proposals.

**SUMMARY:** Interested parties are invited to submit proposals for the availability of approximately $4 million in competitive cooperative agreements to carry out "The Summary of Assistance Measures" of the Domestic Lamb Industry Adjustment Assistance proposal. The Agricultural Marketing Service (AMS) hereby request proposals for projects from eligible entities interested in applying for competitively awarded cooperative agreements for lamb meat marketing and promotion. Funds have been made available through a Memorandum of Understanding (MOU) between AMS and the National Sheep Industry Improvement Center (NSIIC) to be awarded in fiscal year (FY) 2000—with projects completed by FY 2002. The intent is to fund a variety of marketing proposals that will increase the sale of U.S. lamb.

**DATES:** Proposals must be received by June 30, 2000.

**ADDRESSES:** Proposals (original and six copies) should be mailed to: Barry L. Carpenter, Deputy Administrator, Livestock and Seed Program, Agricultural Marketing Service, USDA, Room 2092–S, Stop 0249, 1400 Independence Avenue, SW., Washington, DC 20250–0249; telephone (202) 720–5705.

**FOR FURTHER INFORMATION CONTACT:** Martin O'Connor, International Marketing Specialist, Standardization Branch on (202) 720–7046, E-mail: *Martin.OConnor@usda.gov*.

**SUPPLEMENTARY INFORMATION:**

#### General Information

This program resulted from the United States International Trade Commission (USITC) findings in Investigation Number TA–201–68 and the Presidential Proclamation of July 7, 1999, made subsequent to those findings, which initiates a 3-year assistance package for the domestic lamb industry. The Secretary of Agriculture outlined the assistance measures that were then incorporated by the Department of Agriculture (USDA) and the Office of Management and Budget into the Domestic Lamb Industry Adjustment Assistance proposal for the U.S. lamb industry. AMS is the lead agency implementing the assistance measures and will administer funds that have been made available through a MOU with the NSIIC for the Marketing and Promotion section of the Domestic Lamb Industry Adjustment Assistance proposal for the U.S. lamb industry. AMS is authorized under 7 U.S.C. 1622 of the Agricultural Marketing Act to administer programs of this nature.

The NSIIC is authorized to conduct marketing and promotion programs under section 375 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 2008j). A fund is established in the Treasury of the United States, without fiscal year limitation, to provide funds for the enhancement and marketing of sheep or goat products in the United States. Cooperative agreements for these purposes are authorized by section 375 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 2008j.

Under the terms of the MOU, a total of up to $4 million will be provided in competitive cooperative agreements beginning in FY 2000. Projects that are submitted in the proposals should be completed in a timely fashion as provided in the proposal, but under no circumstances later than July 21, 2002. The primary objective of the Domestic Lamb Industry Adjustment Assistance proposal is to fund a number of diverse projects that will increase the sale of U.S. lamb regionally, nationally or internationally. The program is administered through USDA, AMS, in accordance with the MOU with NSIIC.

#### Eligible Applicants

An eligible entity is an organization that promotes the betterment of the United States sheep industry and that is: (a) A public, private, or cooperative organization; (b) an association, including a corporation not operated for profit; (c) a federally recognized Indian Tribe; or (d) a public or quasi-public agency. Under the Lobbying Disclosure Act of 1995, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 (26 U.S.C. 501 (c)(4)) which engages in lobbying activities, is not eligible to apply.

#### Use of Funds

Use of funds should directly increase the sale of U.S. lamb through either proposed or existing lamb marketing programs by focusing on, but not limited to, marketing, promotion, merchandizing, value-added proposals, market feasibility analysis, or market identification. Funds may not be used to: (a) Pay costs of preparing the application package; (b) fund political activities; or (c) pay costs incurred prior to the effective date of the cooperative agreement.

#### Available Funds and Award Limitations

The total amount of funds available for cooperative agreements in FYs 2000, 2001, and 2002 is approximately $4.0 million. It is anticipated that all funds will be awarded in FY2000 for projects that will be completed by July 21, 2002. It is expected that there will be proposals submitted that propose to address a variety of needs in promoting U.S. lamb. Proposals may be fully or partially funded. Awards will be segregated so that a variety of marketing strategies and marketing situations will be addressed by the funded proposals. The actual number of cooperative agreements funded will depend on the quality of proposals received and the amount of funding requested. The maximum amount of Federal funds awarded for any one proposal will be $1.0 million. Eligible entities will have the option of withdrawing proposals that are partially funded, if in their opinion, the portion funded does not meet their needs.

#### Selection Criteria

Initially, the proposal will be reviewed to determine whether the

entity submitting the proposal meets the eligibility requirements and whether the proposal application contains the information required. After this initial evaluation, the following criteria will be used to rate and rank proposals received in response to this notice of funding availability. Failure to address any of the criteria will disqualify the proposal. Equal weight shall be given to each of the criteria listed below and points will be awarded to each criteria on a scale of 5, 4, 3, 2, 1. A score of 5 indicates that the proposal was judged to be highly relevant to the criteria and a score of 1 indicates that the proposal was judged not to sufficiently address the criteria. A proposal with an average score from the evaluation panel of AMS and NSIIC technical experts of less than 2 for any one criteria will disqualify the proposal.

Each proposal criteria area will be evaluated and judged on its own merits using the following criteria: (Helpful suggestions are given in the bullets following each question. They are not part of the criteria, but are provided to help the applicant better understand what the criteria means.)

(1) Demonstrates the potential to positively influence the U.S. lamb market.

Does the promotion place U.S. lamb on the center of the plate or position it well in the market? Does the proposal stress U.S. lamb?

(2) Demonstrates a merchandising strategy to create new sales or expand existing accounts.

Does the proposal address an improvement in product quality or a more consumer friendly product? Is this a new or better merchandising strategy?

(3) Demonstrates a strategy to create value-added linkages among various industry sectors.

Is there a value-added component to the plan? This could be coordination between any two or more sectors of the industry from producers through retailers. Is there a production-to-final consumer or "gate-to-plate" component to the proposal?

(4) Demonstrates how the marketing proposal will coincide with the product marketing cycles.

Does the marketing strategy identify and address the cyclical nature of some markets in the lamb industry? That is, in some markets there is a surplus autumn supply with increased demand in the spring.

(5) Identifies coordination throughout the marketing chain to insure supply of the product being marketed in the proposal.

What segment(s) of the marketing chain does the proposal hope to influence? Is there a supplier commitment to provide the product to be marketed?

(6) Provides a detailed analysis of the product, geographic area and target market that will be affected.

Does the proposal identify lamb in general, a specific cut of lamb meat, pelts or other lamb products or processes that will be marketed? Is the target market area well defined? This could be local, regional, national, or international. Are the demographics of the proposed market area well defined and understood? Does the demographic information make the target audience a good candidate for cost efficient marketing?

(7) Provides a timetable and objectives along with quantifiable benchmark and expected results.

Does the proposal include: (a) a clear objective; (b) well-defined tasks that will accomplish the objectives; (c) realistic benchmarks; and (d) a realistic timetable for the completion of the proposed tasks?

(8) Identifies how the proposal coordinates with existing or previous marketing programs.

Is there an existing marketing campaign through a cooperative, industry group, packer, breaker, or retailer that this proposal compliments? Are there any previous programs that this proposal will help continue? If there is a sheep industry checkoff, what is the likelihood that they would continue this proposed project?

(9) Identifies the resources needed and a management team with the ability to administer the proposed project.

Does the proposal identify the qualified personnel to complete the proposed project? What experience does the management team have in marketing this type of product? Does the management team have the experience needed to secure the supply of product to be promoted? Is there a good understanding of the marketing tools being proposed? For example, if the proposal calls for use of radio, show how this fits into the overall marketing strategy, cost, prior experience and expected result.

(10) Identifies other resources that will be used to leverage the funds requested in the proposal.

Does this proposal augment an existing program? Are there other sources of funding or personnel being used to complete the proposed project?

**Selection Process**

A panel of AMS and NSIIC technical experts will evaluate proposal applications. Applications will be evaluated competitively and points awarded as specified in the Selection Criteria section of this notice. Cooperative agreements will be awarded on a competitive basis to eligible entities. After assigning points upon those criteria, applications will be listed in rank order and presented, along with funding level recommendations, to the Administrator of AMS, who will make the final decision on awarding agreements. Applications will then be funded in rank order until all available funds have been expended. AMS reserves the right to make selections out of rank order to provide a diversity of projects targeting various marketing situations, geographic areas or subject matter distribution of funded projects. With respect to any approved proposal, the amount of funding and the project period during which the project may be funded and will be completed, are subject to negotiation prior to finalization of the cooperative agreement.

**Proposal Submission**

All proposals are to be submitted on standard 8½″×11″ paper with typing on one side of the page only. In addition, margins must be at least 1″, type must be 12 characters per inch (12 pitch or 10 point) or larger, no more than 6 lines per inch.

**Content of a Proposal**

A proposal must contain the following:

1. Form SF–424 "Application for Federal Assistance."

2. Form SF–424A "Budget Information-Non Construction Programs."

3. Form SF–424B "Assurances-Non Construction Programs."

4. Table of Contents-For ease of locating information, each proposal must contain a detailed Table of Contents immediately following the required forms. The Table of Contents should include page numbers for each component of the proposal. Pagination should begin immediately following the Table of Contents.

5. Project Summary: The proposal must contain a project summary of one page or less on a separate page. This page must include the title of the project and the names of the primary project contacts and the applicant organization, followed by the summary. The summary should be self-contained and should describe the overall goals and relevance of the project. The summary should also contain a listing of all organizations involved in the project. The Project Summary should immediately follow the Table of Contents.

6. Project Narrative: The narrative portion of the Project Proposal is limited to ten pages of text and should contain the following:

a. Introduction. A clear statement of the goals and objectives of the project. The problem should be set in context of the present-day situation. Summarize the body of knowledge which substantiates the need for the proposed project.

b. Rationale and Significance. Substantiate the need for the proposed project. Describe the impact of the project on the United States lamb market. Describe the project's specific relationship to the segment of lamb market being addressed.

c. Objectives and Approach. Discuss the specific objectives to be accomplished under the project. A detailed description of the approach must include:

(1) Techniques or procedures used to carry out the proposed activities and for accomplishing the objectives; and (2) the results expected.

d. Timetable. Tentative schedule for conducting the major steps of the project.

e. Evaluation. Provide a plan for assessing and evaluating the accomplishments of the stated objectives during the project and describe ways to determine the effectiveness (impact) of the end results upon conclusion of the project. Awardees will be required to submit written project performance reports on a quarterly basis.

f. Coordination and Management Plan. Describe how the project will be coordinated among various participants and the nature of the collaborations. Describe plans for management of the project to ensure its proper and efficient administration.

**What To Submit**

An original and 6 copies must be submitted. Each copy must be stapled in the upper left-hand corner. (DO NOT BIND). All copies of the proposal must be submitted in one package.

**Other Federal Statutes and Regulations That Apply**

Several other Federal, statutes and regulations apply to proposals considered for review and to cooperative agreements awarded under this program. These include but are not limited to:

7 CFR part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR part 15, subpart A—USDA implementation of title VI of the Civil Rights Act of 1964, as amended.

7 CFR part 3015—USDA Uniform Federal Assistance Regulations.

7 CFR part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreement to State and Local Governments.

7 CFR part 3019—Uniform Administrative Requirements for Grant Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR part 3051—Audits of Institutions of Higher Education and Other Nonprofit Institutions.

**Public Burden in This Notice**

*Form SF–424, "Application for Federal Assistance"*

This form is used by applicants as a required face sheet for applications for Federal assistance.

*Form SF–424A, "Budget Information-Non Construction Programs"*

This form must be completed by applicants to show the project's budget breakdown, both as to expense categories and the division between Federal and non-Federal sources.

*Form SF–424B, "Assurances-Non Construction Programs"*

This form must be completed by the applicant to give the Federal government certain assurances that the applicant has the legal authority to apply for Federal assistance and the financial capability to pay the non-Federal share of project costs. The applicant also gives assurance it will comply with various legal and regulatory requirements as described in the form.

**Reporting Requirements**

Awardees will be required to submit written project performance reports on a quarterly basis and a final report at the completion of the project. The project performance report and final report shall include, but need not be limited to: (1) A comparison of timeline, tasks and objectives outlined in the proposal as compared to the actual accomplishments; (2) If report varies from the stated objectives or they were not met, the reasons why established objectives were not met; (3) Problems, delays, or adverse conditions which will materially affect attainment of planned project objectives; (4) Objectives established for the next reporting period; and (5) Status of compliance with any special conditions on the use of awarded funds.

Dated: May 11, 2000.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Marketing Service.*

[FR Doc. 00–12277 Filed 5–11–00; 2:34 pm]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research, Education, and Extension Service

### Notice of Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Cooperative State Research, Education, and Extension Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and Office of Management and Budget (OMB) implementing regulations, this notice announces the Cooperative State Research, Education, and Extension Service's (CSREES) intention to revise and extend a currently approved information collection, Form CSREES–1232, "Project Summary," Form CSREES–1233, "Conflict of Interest List," and Form CSREES–1234, "National Environmental Policy Act Exclusions Form".

**DATES:** Comments on this notice must be received on or before July 20, 2000, to be assured of consideration.

**ADDRESSES:** Address all comments concerning this notice to Sally J. Rockey, Deputy Administrator, Competitive Research Grants and Awards Management, CSREES, USDA, STOP 2240, Washington, D.C. 20250–2240. E-mail: OEP@reeusda.gov.

**FOR FURTHER INFORMATION CONTACT:** Sally J. Rockey, (202) 401–1761.

**SUPPLEMENTARY INFORMATION:**

*Titles:* Project Summary; Conflict of Interest List; and National Environmental Policy Act Exclusions Form.

*OMB Number:* 0524–0033.

*Expiration Date of Approval:* May 31, 2000.

*Type of Request:* Revise and extend currently approved information collection.

*Abstract:* CSREES has primary responsibility for providing linkages between the Federal and State components of a broad-based, national agricultural research, extension, and education system. Focused on national issues, its purpose is to represent the Secretary of Agriculture and carry out the intent of Congress by administering

formula and grant funds appropriated for agricultural research, extension, and education. Before awards can be made, certain information is required from applicants as part of an overall proposal package. This information includes project summaries, descriptions of the research, literature reviews, curricula vitae of principal investigators, other relevant technical aspects of the proposed project, and supporting documentation of an administrative and budgetary nature.

Since several programs use these forms and some programs are peer reviewed and others are not, the number of copies requested by CSREES varies. The number required may be as few as three and as many as fifteen. If the proposals are not peer reviewed fewer copies are needed since copies are not needed for members of a peer review panel. If a program uses a peer review panel the number of copies may still vary since the size of the panels vary with each program. Multiple copies are requested as a result of a desire to minimize delays in beginning the review process that would be caused if CSREES were required to make the copies inhouse, and minimization of the risk of proposals becoming separated, incorrectly organized, or misplaced during a high volume, minimally-staffed, time-driven photocopying process.

CSREES developed a general "Application Kit" (OMB Approval 0525–0022) for most of its programs. This kit includes the necessary forms and instructions for applicants requesting support under various competitive and noncompetitive funding programs sponsored by CSREES. In 1994, CSREES sought and received approval of three additional forms. These forms include: Form CSREES–1232, "Project Summary," Form CSREES–1233, "Conflict of Interest List," and Form CSREES–1234, "National Environmental Policy Act Exclusions Form". These forms are primarily used for proposal evaluation and administration. While some of the information will be used to respond to inquiries from Congress and other government agencies, the forms are not designed to be statistical surveys or data collection instruments. Their completion by potential recipients is a normal part of an application to Federal agencies for support for basic and applied scientific research, education and extension activities.

The following information has been collected and will continue to be collected through these forms:

*CSREES–1232—Project Summary:* Lists the Principal Investigator(s) and their institution(s), the proposal type (distinguishes among funding mechanisms), project title, and key words, along with a project summary which allows for quick screening and assignment of proposals to peer reviewers.

*CSREES–1233—Conflict of Interest List:* Lists the person(s) in the field who by virtue of a current or prior relationship with the applicant may have a conflict of interest for purposes of selecting peer review panel members. This information aims to assure objective reviews, and the form has been revised to specifically cite potential conflicts of interest by category to assist applicants and CSREES in identifying such conflicts to better meet the standards in the various program administrative regulations.

*CSREES–1234—National Environmental Policy Act Exclusions Form:* Assists identification of whether a proposal fits within one of the exclusions listed for compliance with NEPA (as implemented by USDA in 7 CFR part 1b and supplemented by CSREES in 7 CFR part 3407). This information has been and will continue to be used in determinations as to whether further action is needed to meet the NEPA requirements.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 4.25 hours for Form CSREES–1232, 1.75 hours for Form CSREES–1233, and .25 hours for Form CSREES–1234. This average was based on a survey of grantees who had recently been approved for awards. They were asked to give an estimate of time it took them to complete each form. This estimate was to include such things as: (1) Reviewing the instructions; (2) Searching existing data sources; (3) Gathering and maintaining the data needed; and (4) Actual completion of the forms. The average time it took each respondent was calculated from their responses.

*Respondents:* Individuals or households, business or other for profit, non-profit institutions and small businesses or organizations.

*Estimated Number of Respondents:* 3,200 for the CSREES–1232 and CSREES–1233; 5,000 for the CSREES–1234.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Respondents:* 20,450 hours, broken down by: 13,600 hours for the CSREES–1232 (4.25 hours per 3,200 respondents); 5,600 hours for the CSREES–1233 (1.75 hours per 3,200 respondents); and 1,250 hours for the CSREES–1234 (one-quarter hour per 5,000 respondents).

Copies of this information collection can be obtained from Sally J. Rockey, Deputy Administrator, CSREES, (202) 401–1761. E-mail: OEP@reeusda.gov.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments should be sent to the address in the preamble.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Done at Washington, DC, on this 8th day of May, 2000.

**Charles W. Laughlin,**

*Administrator, Cooperative State Research, Education, and Extension Service.*

[FR Doc. 00–12232 Filed 5–16–00; 8:45 am]

BILLING CODE 3410–22–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 20–2000]**

### Foreign-Trade Zone 160—Anchorage, Alaska; Application for Subzone, Tesoro Petroleum Corporation (Oil Refinery Complex), Kenai, Alaska.

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Municipality of Anchorage, grantee of FTZ 160, requesting special-purpose subzone status for the oil refinery complex of Tesoro Petroleum Corporation, located in Kenai, Alaska. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 5, 2000.

The refinery complex (488 acres, 174 employees) is located at mile 22.5 Kenai Spur Hwy. in Kenai, Alaska, on the coast of the Cook Inlet. The refinery

(72,000 BPD) is used to produce fuels and liquid petroleum gases, including gasoline, jet fuel, distillates, residual fuels, naphthas, motor fuel blendstocks, liquefied natural gas, butane, isobutane, and propane. Refinery by-products include asphalt and sulfur. Some 36 percent of the crude oil, and some gas oil, distillates, and residual oils are sourced from abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign crude oil in non-privileged foreign status. The duty rates on inputs range from 5.25 cents/barrel to 10.5 cents/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 17, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 31, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 550 West 7th Ave. Suite 1770, Anchorage, AK 99501

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

Dated: May 7, 2000.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 00–12209 Filed 5–15–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1090]**

### Grant of Authority for Subzone Status; Firmenich, Inc. (Flavor and Fragrance Products), Plainsboro and Port Newark, New Jersey

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas,* the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas,* the Port Authority of New York and New Jersey, grantee of Foreign-Trade Zone 49, has made application to the Board for authority to establish special-purpose subzone status at the flavor and fragrance manufacturing facilities of Firmenich, Inc., located in Plainsboro and Port Newark, New Jersey (FTZ Docket 43–99, filed 9/1/99);

*Whereas,* notice inviting public comment has been given in the **Federal Register** (64 FR 49441, 9/13/99); and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore,* the Board hereby grants authority for subzone status at the flavor and fragrance manufacturing facilities of Firmenich, Inc., located in Plainsboro and Port Newark, New Jersey (Subzone 49H), at the locations described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 3rd day of May 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 00–12206 Filed 5–15–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 17–2000]**

### Foreign-Trade Zone 8—Toledo, Ohio; Application for Subzone, Sunoco Inc. (Oil Refinery Complex), Toledo, Ohio

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Toledo-Lucas County Port Authority, grantee of FTZ 8, requesting special-purpose subzone status for the oil refinery complex of Sunoco Inc., located in Toledo, Ohio. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 3, 2000.

The refinery complex (150,000 BPD capacity) is located on four sites near Toledo, Ohio: *Site 1* (174.96 acres)—main refinery complex, located at 1819 Woodville Rd., Oregon, Ohio; *Site 2* (138.31 acres, 30 storage tanks)—Number Two Tank Farm, located at Pickle Road and Wheeling Street, Oregon, Ohio; *Site 3* (64.588 acres)—marine terminal located at the Maumee River Marine Terminal, Front and Consul Streets, Toledo, Ohio; *Site 4* (32.8 acres)—35 underground right-of-way parcels, providing 5 miles of pipelines between the marine terminal in Toledo and the main refinery complex in Oregon, Ohio. The refinery (300 employees) is used to produce fuels and liquid petroleum gases, including gasoline, jet fuel, distillates, residual fuels, naphthas, and aromatics. Refinery by-products include petroleum coke, asphalt and sulfur. Some 10 percent of the crude oil (96 percent of inputs), and some naphthas, virgin gas oil and motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign crude oil in non-privileged foreign status. The duty rates

on inputs range from 5.25 cents/barrel to 10.5 cents/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 17, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 31, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 300 Madison Avenue, Toledo, Ohio 43604

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

Dated: May 7, 2000.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 00–12207 Filed 5–15–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Docket 18–2000]**

### Foreign-Trade Zone 106—Oklahoma City, Oklahoma; Application for Subzone, Conoco Inc. (Oil Refinery Complex), Ponca City, Oklahoma

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port Authority of the Greater Oklahoma City Area, grantee of FTZ 106, requesting special-purpose subzone status for the oil refinery complex of Conoco Inc., located in Ponca City, Oklahoma. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 3, 2000.

The refinery complex (185,000 BPD capacity, 119 storage tanks with over 14 million barrels of capacity) is located at 1000 South Pine Street, Ponca City, Oklahoma. The refinery (1,600 acres, 1,855 employees) is used to produce fuels and liquid petroleum gases, including gasoline, jet fuel, distillates, residual fuels, naphthas, motor fuel blendstocks, liquefied petroleum gas, butane, isobutane, and petroleum gases. Refinery by-products include petroleum coke, asphalt and sulfur. Some 10 percent of the crude oil (96 percent of inputs), and some naphthas, virgin gas oil and motor fuel blendstocks are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign crude oil in non-privileged foreign status. The duty rates on inputs range from 5.25 cents/barrel to 10.5 cents/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 17, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to July 31, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 301 Northwest 63rd Street, Suite 330, Oklahoma City, OK 73116

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

Dated: May 7, 2000.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 00–12208 Filed 5–15–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

### Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with section 351.213 (1999) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

### Opportunity To Request a Review

Not later than the last day of May 2000, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

| | Period |
|---|---|
| **Antidumping Duty Proceeding** | |
| Argentina: Light-walled Rectangular Carbon Steel Pipe and Tubing A–357–802 | 5/1/99–4/30/00 |
| Belgium: Stainless Steel Plate in Coils A–423–808 | 11/4/98–4/30/00 |
| Brazil: | |
| Certain Malleable Cast Iron Pipe Fittings [1] A–351–505 | 5/1/99–12/31/99 |
| Iron Construction Castings, A–351–503 | 5/1/99–4/30/00 |
| Frozen Concentrated Orange Juice, A–351–605 | 5/1/99–4/30/00 |
| Canada: Stainless Steel Plate in Coils, A–122–830 | 11/4/98–4/30/00 |
| France: Antifriction Bearings, A–427–801 | 5/1/99–4/30/00 |

| | Period |
|---|---|
| Germany: Antifriction Bearings, A–428–801 | 5/1/99–4/30/00 |
| India: Welded Carbon Steel Pipes and Tubes, A–533–502 | 5/1/99–4/30/00 |
| Indonesia: Extruded Rubber Thread, A–560–803 | 5/12/99–4/30/00 |
| Italy: | |
| Antifriction Bearings,. | |
| A–475–801 | 5/1/99–4/30/00 |
| Stainless Steel Plate in Coils, A–475–822 | 11/4/98–4/30/00 |
| Japan: | |
| Antifriction Bearings, A–588–804 | 5/1/99–4/30/00 |
| Gray Portland Cement and Clinker, A–588–815 | 5/1/99–4/30/00 |
| Impression Fabric,[1] A–588–066 | 5/1/99–12/31/99 |
| Polyvinyl Alcohol, A–588–836 | 5/1/99–4/30/00 |
| Republic of Korea: | |
| Malleable Cast Iron Pipe Fittings, Other than Grooved, A–580–507 | 5/1/99–4/30/00 |
| DRAMs, A–580–812 | 5/1/99–4/30/00 |
| Stainless Steel Plate in Coils, A–580–831 | 11/4/98–4/30/00 |
| Romania: Antifriction Bearings, A–485–801 | 5/1/99–4/30/00 |
| Russia: Pure Magnesium, A–821–805 | 5/1/99–4/30/00 |
| Singapore: Antifriction Bearings, A–559–801 | 5/1/99–4/30/00 |
| South Africa: Stainless Steel Plate in Coils, A–791–805 | 11/4/98–4/30/00 |
| Sweden: Antifriction Bearings, A–401–801 | 5/1/99–4/30/00 |
| Taiwan: | |
| Certain Circular Welded Carbon Steel Pipe & Tubes, A–583–008 | 5/1/99–4/30/00 |
| Malleable Cast Iron Pipe Fittings, Other Than Grooved,[1] A–583–507 | 5/1/99–12/31/99 |
| Polyvinyl Alcohol, A–583–824 | 5/1/99–4/30/00 |
| Stainless Steel Plate in Coils, A–583–830 | 11/4/98–4/30/00 |
| The People's Republic of China: | |
| Construction Castings, A–570–502 | 5/1/99–4/30/00 |
| Polyvinyl Alcohol, A–570–842 | 5/1/99–4/30/00 |
| Pure Magnesium, A–570–832 | 5/1/99–4/30/00 |
| The Ukraine: Pure Magnesium, A–823–806 | 5/1/99–4/30/00 |
| The United Kingdom: Antifriction Bearings, A–412–801 | 5/1/99–4/30/00 |
| Turkey: Welded Carbon Steel Pipe and Tube, A–489–501 | 5/1/99–4/30/00 |
| **Countervailing Duty Proceedings** | |
| Belgium: Stainless Steel Plate in Coils, C–423–809 | 1/1/99–12/31/99 |
| Brazil: Certain Iron Construction Castings, C–351–504 | 1/1/99–12/31/99 |
| Italy: Stainless Steel Plate in Coils, C–475–823 | 1/1/99–12/31/99 |
| South Africa: Stainless Steel Plate in Coils, C–791–806 | 1/1/99–12/31/99 |
| Sweden: Viscose Rayon Staple Fiber,[1] C–401–056 | 1/1/99–12/31/99 |
| **Suspension Agreements** | |
| None. | |

[1] Order revoked effective 01/01/2000 as a result of sunset review.

In accordance with section 351.213(b) the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/ Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of May 2000. If the Department does not receive, by the last day of May 2000, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and the Commission's web site.

Dated: May 8, 2000.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary, Group II for Import Administration.*

[FR Doc. 00–12210 Filed 5–15–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–822]**

### Certain Helical Spring Lock Washers From the People's Republic of China; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** The Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain helical spring lock washers from the People's Republic of China in the **Federal Register** on July 13, 1999. This review covers sales of this merchandise to the United States during the period October 1, 1997 through September 30, 1998. We gave interested parties an opportunity to comment on our preliminary results. Based upon our analysis of the comments received, we have made changes to the margin calculations presented in the preliminary results of the review. The final weighted-average dumping margins are listed below in the section entitled *Final Results of the Review.*

**EFFECTIVE DATE:** May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sally Hastings, Annika O'Hara or Craig Matney, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3464, (202) 482–3798 or (202) 482–1778, respectively.

**Applicable Statute and Regulations**

Unless otherwise stated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise stated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (April 1998).

**Background**

The Department published the preliminary results of this review of the antidumping duty order on certain helical spring lock washers (HSLWs) from the People's Republic of China (PRC) in the **Federal Register** on July 13, 1999 (*Notice of Preliminary Results of Antidumping Duty Administrative Review; Certain Helical Spring Lock Washers from the People's Republic of China*, 64 FR 37743 (*Preliminary Results*)). Supplemental information regarding surrogate values was submitted on August 4, 1999, by respondent Zhejiang Wanxin Group, Co., Ltd. (ZWG). The petitioner and the respondent submitted case briefs on August 17, 2000. The petitioner, respondent, and the American Fastener Importers Association filed rebuttal briefs on August 23, 2000. We published a notice of extension of time limit for the final results in the **Federal Register** on November 8, 1999 (64 FR 60771). The Department has now completed this review in accordance with section 751 of the Act.

**Scope of Review**

The products covered by this review are HSLWs of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non-heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over the larger area for screws or bolts; and, (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper.

HSLWs subject to this review are currently classifiable under subheading 7318.21.0030 of the Harmonized Tariff Schedule of the United States (HSTUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this proceeding is dispositive.

**Period of Review**

The period of review (POR) is from October 1, 1997 through September 30, 1998.

**Comparisons**

We calculated export price and normal value based on the same methodology used in the *Preliminary Results*, with the following exceptions:

1. We used a more contemporaneous surrogate value for truck freight based on information recently used in *Certain Non-frozen Apple Juice Concentrate from the People's Republic of China*. (*See* Memorandum to the File, dated April 18, 2000.)

2. Based on new information provided by the respondent, we used a value for hydrochloric acid that was more contemporaneous with the POR.

3. We corrected errors in our calculations including: steel yield losses; freight distances; the steel scrap offset; the caustic soda and water values; the price inflators for some factors; indirect labor; the calculation and application of the factory overhead, selling, general and administrative expenses, and profit rates; and the calculation of an assessment rate. (For further discussion of these changes, see the Valuation of Factors of Production Memorandum and the ZWG Calculation Memorandum, both dated May 8, 2000.)

4. For labor, we used the revised regression-based wage rate for the PRC, revised May 2000, in "Expected Wages of Selected NME Countries" located on the Internet at http://www.ita.doc.gov/import_admin/records/wages/.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this proceeding are addressed in the May 8, 2000, Issues and Decision Memorandum (Decision Memorandum) which is hereby adopted by this notice. Attached to this notice as an appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the Department. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

**Final Results of the Review**

As a result of our analysis of the comments received and the correction of clerical errors we discovered, we find that the following weighted-average margins exist:

| Manufacturer/exporter | Time period | Margin (percent) |
|---|---|---|
| Zhejiang Wanxin Group Co., Ltd | 10/01/97–09/30/98 | 0.00 |

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit rates will be effective upon publication of these final results for all shipments of HSLWs from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) For ZWG, which has a separate rate, the cash deposit rate will be the company-specific rate established in these final results of review; (2) for all other PRC exporters, the cash deposit rate will be the PRC rate, 128.63 percent, which is the All Other PRC Manufacturers, Producers and Exporters rate from the *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the PRC*, 58 FR 48833 (September 20, 1993); and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit rates shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 8, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

## Appendix

*List of Comments in the Issues and Decision Memorandum*

Comment 1: Use of Import Prices to Value All Steel Wire Rod Inputs
Comment 2: Use of Import Prices to Value Domestically-sourced Steel Wire Rod
Comment 3: Factory Overhead, SG&A Expenses and Profit in Plating Operations
Comment 4: Inland Freight Charges for Steel Wire Rod
Comment 5: Valuation of Truck Freight
Comment 6: Calculation of Factory Overhead and Profit Rates
Comment 7: Valuation of Hydrochloric Acid
Comment 8: Assessment Rate Calculation for Importer

[FR Doc. 00–12204 Filed 5–15–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A–570–506)**

### Porcelain-on-Steel Cooking Ware From China; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On January 7, 2000, the Department of Commerce published the preliminary results of administrative review of the antidumping duty order on porcelain-on-steel ("POS") cooking ware from the People's Republic of China ("PRC"). The merchandise covered by this order is shipments of POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. This review covers one manufacturer/exporter of the subject merchandise, Clover Enamelware Enterprise, Ltd. of China ("Clover"), and its Hong Kong reseller, Lucky Enamelware Factory Ltd. ("Lucky"), collectively referred to as Lucky/Clover. The period of review ("POR") is December 1, 1997 through November 30, 1998.

Based on our analysis of the comments received, we have made corrections to our calculations. However, these corrections did not change the margin which was calculated in the preliminary determination, which was zero. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

**EFFECTIVE DATE:** May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Russell Morris, AD/CVD Enforcement, Office 6, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–1775.

**SUPPLEMENTARY INFORMATION:**

### The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to 19 CFR Part 351 (1998).

### Background

On January 7, 2000, the Department published the preliminary results of its administrative review of the antidumping duty order on POS cooking ware from the PRC. *See Porcelain-on-Steel Cooking Ware From the People's Republic of China; Preliminary Results of Antidumping Duty Administrative Review*, 65 FR 1136 (January 7, 2000). The review covers one manufacturer/exporter of the subject merchandise, Lucky/Clover. The POR is December 1, 1997 through November 30, 1998. We invited parties to comment on our preliminary results of review. Only Lucky/Clover submitted comments. No requests were made for a public hearing. The Department has conducted this administrative review in accordance with section 751 of the Act.

### Scope of Review

Imports covered by this review are shipments of POS cooking ware, including tea kettles, which do not have self-contained electric heating elements.

All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. The merchandise is currently classifiable under the Harmonized Tariff Schedule ("HTS") item 7323.94.00.

Although the HTS subheading is provided for convenience and U.S. Customs ("Customs") purposes, our written description of the scope of this proceeding is dispositive.

**Analysis of Comments Received**

All issues raised in the case brief by the Respondent to this administrative review are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") from Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated concurrent with this notice, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit ("CRU") of the Main Commerce Building in Room B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the "Decision Memorandum," accessible in the CRU and also available at the Web address shown above.

**Final Results of Review**

We determine that the following percentage weighted-average margins exist for the period December 1, 1997 through November 30, 1998:

| Manufacturer/producer/exporter | Margin (percent) |
|---|---|
| Clover Enamelware Enterprise/ Lucky Enamelware Factory. | Zero. |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of the subject merchandise during the POR manufactured by Clover and subsequently exported by Lucky.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of POS cooking ware from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) For Clover/Lucky, which has a separate rate, the cash deposit rate will be zero; (2) for any previously reviewed PRC firm and non-PRC exporter with a separate rate, the cash deposit rate will be the company- and product-specific rate established for the most recent period; (3) the cash deposit rate for all other PRC exporters will continue to be 66.65 percent, the PRC-wide rate established in the LTFV investigation; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Troy H. Cribb,

*Acting Assistant Secretary for Import Administration.*

**APPENDIX—Issues in the Decision Memorandum**

*Comments*

1. Factor Valuation
   a. Steel
   b. Labor
2. Circumstances-of-Sale Adjustments
   a. Indirect Selling Expenses
3. Export Credit Insurance

[FR Doc. 00–12205 Filed 5–15–00; 8:45 am]

BILLING CODE 3510–DS–P

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 731–TA–718 (Review)]**

## Glycine From China

**AGENCY:** United States International Trade Commission.

**ACTION:** Scheduling of an expedited five-year review concerning the antidumping duty order on glycine from China.

**SUMMARY:** The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on glycine from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subpart A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

**EFFECTIVE DATE:** May 5, 2000.

**FOR FURTHER INFORMATION CONTACT:** Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usite.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 5, 2000, the Commission determined that the domestic interested party group response to its notice of institution (65 FR 5371, February 3, 2000) was adequate and the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

*Staff report.*—A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on June 2, 2000, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to § 207.62(d)(4) of the Commission's rules.

*Written submissions.*—As provided in § 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before June 7, 2000, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which should not contain any new factual information) pertinent to the review by June 7, 2000. Should Commerce, however, extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: May 10, 2000.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–12310 Filed 5–15–00; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and the Commission's web site.

[2] The Commission has found the response submitted by Chattem Chemicals, Inc. and Hampshire Chemical Corp. to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 050500C]**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Groundfish Stock Assessment Review (STAR) Panel will hold a work session which is open to the public.

**DATES:** The STAR Panel for lingcod and widow rockfish will meet beginning at 8 a.m., June 5, 2000 and continue through June 9, 2000. The STAR Panel will meet each day from 8 a.m. to 5 p.m.

**ADDRESSES:** The STAR Panel for lingcod and widow rockfish will be held in the GSA Conference Room, Federal Building, 777 Sonoma Avenue, Room 215, Santa Rosa, CA.

*Council address*: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Dan Waldeck, Fishery Management Analyst; telephone: (503) 326–6352.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to review draft stock assessment documents for lingcod and widow rockfish and any other pertinent information, work with stock assessment teams to make necessary revisions, and produce STAR Panel reports for use by the Council family and other interested persons.

Although nonemergency issues not contained in the STAR Panel agenda may come before the STAR Panel for discussion, those issues may not be the subject of formal panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the panel's intent to take final action to address the emergency.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 8, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12292 Filed 5–15–00; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 050500D]**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Highly Migratory Species Plan Development Team (HMSPDT) will hold a work session which is open to the public.

**DATES:** The work session will be held on Monday, June 5, 2000, from 1:00 p.m. to 5:00 p.m.; on Tuesday, June 6, 2000, from 8:00 a.m. to 5:00 p.m.; and on Wednesday, June 7, 2000, from 8:00 a.m. until business is completed.

**ADDRESSES:** The work session will be held at the Port of Astoria, 1 Port Way Street, Astoria, OR; telephone: 541–325–4521.

*Council address*: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Dan Waldeck, Pacific Fishery Management Council, 503–326–6352.

**SUPPLEMENTARY INFORMATION:** The primary purpose of the work session is to review the outline and draft sections of the fishery management plan (FMP)

for highly migratory species (HMS) and related documents for HMS fisheries off the West Coast.

Management measures that may be adopted in the FMP for HMS fisheries off the West Coast include permit and reporting requirements for commercial and recreational harvest of HMS resources, time and/or area closures to minimize gear conflicts or bycatch, adoption or confirmation of state regulations for HMS fisheries, and allocations of some species to non-commercial use. The FMP is likely to include a framework management process to add future new measures, including the potential for collaborative management efforts with other Regional Fishery Management Councils with interest in HMS resources. It would also include essential fish habitat and habitat areas of particular concern, including fishing and non-fishing threats, as well as other components of FMPs required under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

The proposed FMP and its associated regulatory analyses would be the Council's fourth FMP for the exclusive economic zone off the West Coast. Development of the FMP is timely, considering the new mandates under the Magnuson-Stevens Act, efforts by the United Nations to promote conservation and management of HMS resources through domestic and international programs, and the increased scope of activity of the Inter-American Tropical Tuna Commission in HMS fisheries in the eastern Pacific Ocean.

Although non-emergency issues not contained in the HSMPDT meeting agenda may come before the HMSPDT for discussion, those issues may not be the subject of formal HMSPDT action during these meetings. HMSPDT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the HMSPDT's intent to take final action to address the emergency.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at 503–326–6352 at least 5 days prior to the meeting date.

Dated: May 8, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12293 Filed 5–15–00; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 050400A]**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Ad-Hoc Marine Committee (MRC) to hold a work session that is open to the public.

**DATES:** The work session will be held Tuesday, May 30, 2000 and Wednesday, May 31, 2000. The meeting on Tuesday will start at 1 p.m. and end when business for the day has been finished. The Wednesday meeting will begin at 8 a.m. and will continue until 3 p.m.

**ADDRESSES:** The work session will be held at the Pacific Fishery Management Council office, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Jim Seger, Pacific Fishery Management Council, (503) 326–6352.

**SUPPLEMENTARY INFORMATION:** The primary purpose of this work session is to review a draft analysis developed to assist in determining whether or not marine reserves should be used by the Council as a management tool.

Although non-emergency issues not contained in the Ad-Hoc Marine Reserve Committee meeting agenda may come before the Ad-Hoc Marine Reserve Committee for discussion, those issues may not be the subject of formal Ad-Hoc Marine Reserve Committee action during this meetings. Ad-Hoc Marine Reserve Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 5, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12294 Filed 5–15–00; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D.050500B]**

### Endangered Species; Permits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of an application for a scientific research permit (1252) and an amended application for modification 5 to scientific research permit 994.

**SUMMARY:** Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received an application for an ESA section 10(a)(1)(A) scientific research permit (1252) from the Washington State Department of Transportation at Olympia, WA (WSDOT) and NMFS has received an amended modification request from the Idaho Cooperative Fish and Wildlife Research Unit at Moscow, ID (ICFWRU).

**DATES:** Comments or requests for a public hearing on either application must be received at the appropriate address or fax number no later than 5:00 pm eastern standard time on June 15, 2000.

**ADDRESSES:** Written comments on any of the new applications or modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (ph: 503–230–5400, fax: 503–230–5435).

Documents may also be reviewed by appointment in the Office of Protected

Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

**FOR FURTHER INFORMATION CONTACT:** Robert Koch, Portland, OR (ph: 503–230–5424, Fax: 503–230–5435, e-mail: robert.koch@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Authority**

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

**Species Covered in This Notice**

The following species and evolutionary significant units (ESU's) are covered in this notice:

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River (SnR), threatened Ozette Lake.

Chinook salmon (*O. tshawytscha*): endangered, naturally produced and artificially propagated, upper Columbia River (UCR) spring; threatened, naturally produced and artificially propagated, SnR spring/summer; threatened SnR fall; threatened lower Columbia River (LCR); threatened, naturally produced and artificially propagated, Puget Sound.

Chum salmon (*O. keta*): threatened Hood Canal summer, threatened Columbia River.

Steelhead (*O. mykiss*): endangered, naturally produced and artificially propagated, UCR; threatened SnR; threatened middle Columbia River (MCR); threatened LCR.

To date, protective regulations for threatened Ozette Lake sockeye salmon, threatened LCR chinook salmon, threatened Puget Sound chinook salmon, threatened Hood Canal summer chum salmon, threatened Columbia River chum salmon, threatened SnR steelhead, threatened MCR steelhead, and threatened LCR steelhead under section 4(d) of the ESA have not been promulgated by NMFS.

Protective regulations are currently proposed for threatened Ozette Lake sockeye salmon, threatened LCR chinook salmon, threatened Puget Sound chinook salmon, threatened Hood Canal summer chum salmon, threatened Columbia River chum salmon (65 FR 169, January 3, 2000) and threatened SnR, MCR, and LCR steelhead (64 FR 73479, December 30, 1999). This notice of receipt of an application requesting takes of these species is issued as a precaution in the event that NMFS issues protective regulations. The initiation of a 30-day public comment period on the application, including its proposed takes of Ozette Lake sockeye salmon, threatened LCR chinook salmon, threatened Puget Sound chinook salmon, threatened Hood Canal summer chum salmon, threatened Columbia River chum salmon, threatened SnR steelhead, threatened MCR steelhead, and threatened LCR steelhead, does not presuppose the contents of the eventual protective regulations.

**New Application Received**

WSDOT requests a five-year ESA section 10(a)(1)(A) scientific research permit (1252) that would authorize annual takes of juveniles of all of the ESA-listed salmonid species included in this notice, during presence/absence surveys in waterbodies crossed by or adjacent to state transportation systems (highways, railroads, or airports) in the State of WA. The surveys will be used to assess potential impacts of WSDOT projects on ESA-listed fish species. The survey work will benefit the species by providing information that will enable WSDOT to implement specific timing restrictions for in-water work windows, and to implement best management practices designed to protect ESA-listed species. The surveys will also add to the knowledge base of where ESA-listed species are located. ESA-listed juvenile fish are proposed to be observed/harassed during snorkel surveys or captured (using dip nets, stick seines, baited gee minnow traps, rod and reel, or electrofishing), handled, and released. ESA-listed juvenile fish indirect mortalities are also requested.

**Amended Modification Request Received**

On September 25, 1998, NMFS published a notice in the **Federal Register** (63 FR 51340) that an application was received from ICFWRU for modification 5 to ESA section 10(a)(1)(A) scientific research permit 994. On March 21, 2000, NMFS published a notice in the **Federal Register** (65 FR 15131) that an amendment of the application for modification 5 to ESA section 10(a)(1)(A) scientific research permit 994 was received from ICFWRU. Permit 994 authorizes ICFWRU annual takes of adult SnR sockeye salmon, adult SnR spring/summer and fall chinook salmon, and adult UCR steelhead associated with scientific research designed to assess the passage success and homing behavior of adult salmonids that migrate upriver past the eight dams and reservoirs in the lower Columbia and lower Snake Rivers, evaluate specific flow and spill conditions, and evaluate measures to improve adult anadromous fish passage. NMFS has received a second amendment of ICFWRU's application for modification 5 to permit 994. In the application amendment, ICFWRU requests an increase in the take of adult UCR steelhead associated with the scientific research. Based on recent information regarding expected ESA-listed adult steelhead escapement in 2000, and the probability of encountering adult UCR steelhead at the sampling location (Bonneville Dam on the lower Columbia River), ICFWRU has determined that an increase in take of adult UCR steelhead is necessary to maintain the sample size required to conduct a statistically valid study. ESA-listed adult steelhead are proposed to be captured at Bonneville Dam, tagged with radiotransmitters and identifier tags, released, and tracked electronically as they make their way upriver. Modification 5 as amended is requested to be valid for the duration of the permit which expires on December 31, 2000.

Dated: May 11, 2000.

**Wanda L. Cain,**

*Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–12296 Filed 5–15–00; 8:45 am]

**BILLING CODE 3510–22–F**

VOL 65 ISS 95 MY 16 2000 UMI

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**[I.D. 042500A]**

## Atlantic Highly Migratory Species; Exempted Fishing Permits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Issuance of EFPs; request for comments.

**SUMMARY:** NMFS requests comment on its intent to issue Exempted Fishing Permits (EFPs) to qualifying holders of Atlantic Swordfish and Shark limited access permits who held an Atlantic Tunas permit in a commercial category other than the Longline category at the time the Highly Migratory Species Fishery Management Plan (HMS FMP) was implemented on July 1, 1999. If issued, these EFPs would exempt eligible applicants from the requirement to have a valid Atlantic Tunas Longline category permit for authorization to retain swordfish and to fish for Atlantic tunas (other than Atlantic bluefin tuna) with pelagic longline gear.

**DATES:** Written comments on issuance of the subject EFPs must be received on or before May 26, 2000.

**ADDRESSES:** Send comments to Rebecca Lent, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Copies of the regulations pertaining to issuance of EFPs for Atlantic HMS as well as the application information may also be requested from the Highly Migratory Species Management Division. Comments will not be accepted if submitted via email or internet.

**FOR FURTHER INFORMATION CONTACT:** Margo Schulze-Haugen or Karyl Brewster-Geisz; phone: 301–713–2347; fax: 301–713–1917.

**SUPPLEMENTARY INFORMATION:** EFPs for the Atlantic HMS fisheries are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Implementing regulations concerning scientific research activity, exempted fishing, and exempted educational activity, pertaining to the Atlantic HMS fisheries appear at 50 CFR 600.745 and 50 CFR 635.32. NMFS may issue EFPs to authorize activities otherwise prohibited by the Atlantic HMS regulations at 50 CFR 635. Such EFPs are at times necessary to facilitate the conduct of scientific research or the acquisition of information and data, for the enhancement of safety at sea, for the purpose of collecting animals for public education or display, or for investigating means of reducing bycatch, economic discards or regulatory discards.

Among other things, the HMS FMP implemented a limited access program for the swordfish and shark fisheries. To reduce the potential for regulatory discards of sharks, swordfish and tunas in the pelagic longline fisheries, the HMS FMP also established limited access for the Atlantic Tunas Longline category. The regulations implementing the HMS FMP specify that only vessels issued an Atlantic Tunas Longline category permit as well as limited access permits for both Atlantic Sharks and Atlantic Swordfish are authorized to use pelagic longline gear to fish for Atlantic tunas other than Atlantic bluefin tuna [§ 635.21(d)(1)]. Further, the regulations stipulate that a limited access permit for swordfish is not valid unless the vessel has also been issued a limited access shark permit and an Atlantic Tunas Longline category permit [§ 635.4(f)(4)].

This new requirement to hold all three limited access permits presumed that vessels were specialized for the pelagic longline fisheries and was necessary to cap fishing effort and avoid regulatory discards. However, the joint permit requirement precludes certain vessel operators, who did not previously have an Atlantic Tunas Longline category permit, from using pelagic longline gear and from retaining Atlantic swordfish or BAYS tunas (bigeye, albacore, yellowfin, or skipjack tunas) taken by longline gear [§ 635.4(l)(2)(viii) and (ix)]. These vessel operators had maintained permits in other Atlantic Tunas commercial categories as needed to conduct their preferred directed fishing operations for bluefin tuna (e.g., Atlantic Tunas General category). When the bluefin tuna season was closed, these vessel operators conducted longline fisheries for sharks, swordfish and BAYS and, consequently, their catch histories qualified the vessels for limited access swordfish and/or shark permits. For these vessel operators, retaining the Atlantic Tunas permit in the preferred category for directed bluefin tuna fishing now causes a conflict with regulations on using pelagic longline gear.

At the time the HMS FMP was implemented, NMFS issued EFPs for the 1999 fishing year to those Atlantic Swordfish and Shark limited access permit holders who also held valid Atlantic Tunas permits in categories other than Longline. NMFS deemed this action appropriate because the new regulations inadvertently prohibited activities that had previously been authorized and because it was not clear what economic impacts would result if these vessel operators could no longer participate in multiple seasonal fisheries. The EFPs authorized the use of pelagic longline gear in the swordfish/BAYS fisheries and authorized the retention of Atlantic swordfish while allowing the vessel owner to retain the Atlantic Tunas permits in the preferred directed bluefin fishing commercial category. In this way, unintended adverse economic impacts were mitigated while NMFS collected information to assess the need for changes to the regulations.

NMFS intends to re-issue such EFPs for the 2000 fishing year, pending submission of an application, which includes economic information on the use of multiple gears during the 1999 and expected 2000 fishing years. NMFS is seeking public comment on its intention to re-issue these EFPs for the purpose of additional economic data collection prior to evaluating the need for regulatory changes.

NMFS is also seeking public comment on possible issuance of EFPs to vessel owners who currently have the required limited access permits for Atlantic Swordfish, Atlantic Sharks and the Atlantic Tunas Longline category, but who would elect to obtain an Atlantic Tunas commercial permit in another category in order to conduct other seasonal fisheries (e.g., handgear instead of longline). **Note that Atlantic bluefin tuna caught with longline gear could not be retained with such an EFP.** NMFS has received a request from a fisherman interested in obtaining an EFP so that he can fish in the Atlantic Tunas Charter/Headboat category on a seasonal basis and still retain Atlantic swordfish and BAYS taken with longline gear at other times. Issuing EFPs in such cases would broaden the eligibility to vessel owners who are not in conflict with the current regulations but who would now elect to participate in multiple seasonal fisheries. Issuing EFPs in such cases would broaden the means of collecting additional economic information from prospective multiple gear fishermen.

A final decision on issuance of EFPs will depend on the submission of all required information, NMFS' review of public comments received on the applications, conclusions of any environmental analyses conducted pursuant to the National Environmental Policy Act, and on any consultations with any appropriate Regional Fishery

Management Councils, states, or Federal agencies. For copies of the HMS fishing regulations, EFP application materials and information on special reporting requirements for those persons issued EFPs, contact Rebecca Lent (see **ADDRESSES**).

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 11, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12275 Filed 5–11–00; 3:16 pm]

BILLING CODE 3510–22–F

## COMMISSION OF FINE ARTS

### Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for May 18, 2000, at 10 am in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, NW., Washington, DC 20001–2728. Items of discussion will include designs for projects affecting the appearance of Washington, DC, including buildings and parks.

Inquires regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, April 30, 2000.

**Charles H. Atherton,**

*Secretary.*

[FR Doc. 00–12194 Filed 5–15–00; 8:45 am]

BILLING CODE 6330–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, June 2, 2000.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–12358 Filed 5–12–00; 11:31 am]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, June 9, 2000.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–12359 Filed 5–12–00; 11:31 am]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meetings

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, June 16, 2000.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–12360 Filed 5–12–00; 11:31 am]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, June 33, 2000.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–12361 Filed 5–12–00; 11:31 am]

BILLING CODE 6351–01–M

## COMMODITY FUTURES TRADING COMMISSION

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Commodity Futures Trading Commission.

**TIME AND DATE:** 11 a.m., Friday, June 30, 2000.

**PLACE:** 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 202–418–5100.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 00–12362 Filed 5–12–00; 11:31 am]

BILLING CODE 6351–01–M

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Proposed collection; comment request

**AGENCY:** Office of the Under Secretary of Defense (Personnel and Readiness).

**ACTION:** Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Consideration will be given to all comments received by July 17, 2000.

**ADDRESSES:** Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Program Integration) (Legal Policy), ATTN: Lt Col Karen, J. Kinlin, 4000 Defense Pentagon, Washington, DC 20301–4000.

**FOR FURTHER INFORMATION CONTACT:** To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call at (703) 697–3387; facsimile (703) 693–6708.

*Title, Associated Form, and OMB Control Number:* Application for Review of Discharge or Separation from the Armed Forces of the United States; DD Form 293; OMB Control Number 0704–0004.

*Needs and Uses:* Former members of the Armed Forces who received an administrative discharge have the right to appeal the characterization or reason for separation. Title 10 of the U.S.C.; Section 1553, and DoD Directive 1332.28 established a Board of Review consisting of five members to review appeals of former members of the Armed Forces. The DD Form 293, *Application for Review of Discharge or Separation from the Armed Forces of the United States,* provides the respondent a vehicle to present to the Board their reasons/justifications for a discharge upgrade as well as providing the Services the basic data needed to process the appeal.

*Afffected Public:* Individuals or households.

*Annual Burden Hours:* 6,000.

*Number of Respondents:* 8,000.

*Responses Per Respondent:* 1.

*Average Burden Per Response:* 45 minutes.

*Frequency:* One-time.

**SUPPLEMENTARY INFORMATION:**

**Summary of Information Collection**

Under Title 10 U.S.C., Section 1553, the Secretary of a Military Department established a Board of Review, consisting of five members, to review appeals of former members of the Armed Forces. This information collection allows an applicant to request a change in the type of military discharge issued. Applicants are former members of the Armed Forces who have been discharged or dismissed (other than a discharge or dismissal by sentence of a general court-martial), or if the former member is deceased or incompetent, the surviving spouse, next-of-kin, or legal representative who is acting on behalf of the former member. The DD Form 293, Application for Review of Discharge or Separation from the Armed Forces of the United States, provides the former member an avenue to present to their respective Service Discharge Review Board their reasons/justifications for a discharge upgrade as well as providing the Services the basic data needed to process the appeal.

Dated: May 9, 2000.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–12186 Filed 5–15–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

*Title, Form Number, and OMB Number:* Pharmacy Redesign Pilot Program; DD Form 2814; OMB Number 0720–0023.

*Type of Request:* Extension.

*Number of Respondents:* 2,000.

*Responses Per Respondent:* 1.

*Annual Responses:* 2,000.

*Average Burden Per Response:* 10 minutes.

*Annual Burden Hours:* 333.

*Needs and Uses:* The collection instrument serves as an application form for enrollment in the TRICARE Pharmacy Redesign Pilot Program. The information collected will be used to provide the Managed Care Support Contractors, contracted to supply administrative support, with data to determine beneficiary eligibility, other health insurance liability, and premium payment. An eligible beneficiary for the pharmacy redesign demonstration is a member or former member of the uniformed services as described in section 1074(b) of title 10; a dependent of the member described in section 1076(a)(2)(B) or 1076(b) of title 10; or a dependent of a member of the uniformed services who died while on active duty for a period of more than 30 days, who meets the following requirements: (a) 65 years of age or older; (b) entitled to Medicare Part A, (c) enrolled in Medicare Part B, and (d) resides in an implementation area. The Department of Defense component responsible for the conduct of the project is the TRICARE Management Activity.

*Affected Public:* Individuals or households.

*Frequency:* On occasion; annually.

*Respondent's Obligation:* Required to Obtain or Retain Benefits.

*OMB Desk Officer:* Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

**Patricia L. Toppings;**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–12187 Filed 5–15–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### Defense Partnership Council Meeting; Cancellation

### Office of the Secretary

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** On May 5, 2000 (65 FR 26190), the Department of Defense published a notice to announce a meeting of the Defense Partnership Council meeting to be held on May 23, 2000. This notice is to announce the cancellation of the meeting due to conflicts in members' schedules.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ben James, Chief, Labor Relations Branch, Field Advisory Services Division, Defense Civilian Personnel Management Service, 1400 Key Boulevard, Suite B–200, Arlington, VA 22209–5144, telephone 703–696–1450.

Dated: May 10, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–12189 Filed 5–15–00; 8:45 am]

**BILLING CODE 5001–10–M**

## DEPARTMENT OF DEFENSE

### The Joint Staff; National Defense University (NDU), Board of Visitors (BOV); Meeting

**AGENCY:** National Defense University, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** The President, National Defense University has scheduled a meeting of the Board of Visitors.

**DATES:** The meeting will be held between 1230–1530 on June 23, 2000.

**ADDRESSES:** The meeting will be held in Room 155B, Marshall Hall, Building 62, Fort Lesley J. McNair, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Director, University Operations, National Defense University Fort Lesley J. NcNair, Washington, D.C. 20319–6000. To reserve space, interested persons should phone (202) 685–3937.

**SUPPLEMENTARY INFORMATION:** The agenda will include present and future educational and research plans for the National Defense University and its components. The meeting is open to the public, but the limited space available for observers will be allocated on a first come, first served basis.

Dated: May 10, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–12188 Filed 5–15–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Notice of Intent to Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Killdeer Mountain Manufacturing, Inc., a company doing business in Killdeer, North Dakota an exclusive license in any right, title and interest the Air Force has in AF Invention No. RL10023. The inventors, Frank H. Born, Roy W. Stratton and Lamar R. Harris were all government employees at the time of the invention. The invention is entitled "Apparatus and Method for Detecting Conduit Chafing."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304, Arlington, VA 22209–2310. Mr. Heald can be reached at 703–588–5091 or by fax at 703–588–8037.

**Janet A. Long,**

*Air Force Federal Register Liaison Office.*

[FR Doc. 00–12195 Filed 5–15–00; 8:45 am]

BILLING CODE 5000–05–U

## DEFENSE NUCLEAR FACILITIES SAFETY BOARD

### Sunshine Act Meeting

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's ("Board") meeting described below.

**TIME AND DATE OF MEETING:** 9:00 a.m., May 31, 2000.

**PLACE:** The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 352, Washington, DC 20004.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The Defense Nuclear Facilities Safety Board will convene the thirteenth quarterly briefing regarding the status of progress of the activities associated with the Department of Energy's Implementation Plan for the Board's Recommendation 95–2, Safety Management. Specific matters will include recent and planned site verification reviews, actions needed to achieve full implementation by September 2000, and progress on developing and refining performance indicators. Presentations on site implementation status will be made by DOE Field Office representatives, and implementation status DOE headquarters offices will be discussed by DOE line managers. DOE will also present the status of implementing Recommendation 98–1, Integrated Safety Management and the Department of Energy (DOE) Facilities.

**CONTACT PERSON FOR MORE INFORMATION:** Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

**SUPPLEMENTARY INFORMATION:** The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: May 11, 2000.

**John T. Conway,**

*Chairman.*

[FR Doc. 00–12338 Filed 5–11–00; 5:08 pm]

BILLING CODE 3670–01–P

## DEPARTMENT OF EDUCATION

### National Educational Research Policy and Priorities Board; Quarterly Meeting

**AGENCY:** National Educational Research Policy and Priorities Board; Education.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice sets forth the schedule and proposed agenda of a forthcoming quarterly meeting of the National Educational Research Policy and Priorities Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend the meeting.

**DATES:** June 16, 2000.

**TIME:** 9 a.m. to 3 p.m.

**LOCATION:** Room 100, 80 F St., NW, Washington, D.C. 20208–7564.

**FOR FURTHER INFORMATION CONTACT:** Thelma Leenhouts, Designated Federal Official, National Educational Research Policy and Priorities Board, Washington, D.C. 20208–7564. Tel.: (202) 219–2065; fax: (202) 219–1528; e-mail: Thelma__Leenhouts@ed.gov, or nerpph@ed.gov. The main telephone number for the Board is (202) 208–0692.

**SUPPLEMENTARY INFORMATION:** The National Educational Research Policy and Priorities Board is authorized by Section 921 of the Educational Research, Development, Dissemination, and Improvement Act of 1994. The Board works collaboratively with the Assistant Secretary for the Office of Educational Research and Improvement (OERI) to forge a national consensus with respect to a long-term agenda for educational research, development, and dissemination, and to provide advice and assistance to the Assistant Secretary in administering the duties of the Office.

The meeting is open to the public. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, materials in alternative format) should notify Thelma Leenhouts at (202) 219–2065 by no later than June 9. We will

attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

The Board will hear reports from the Assistant Secretary for OERI and from the chair and executive director. The Board will review revised policy recommendations for a proposed report to Congress and review the progress of a commissioned study of the implementation of the standards for the designation of exemplary and promising programs.

A final agenda will be available from the Board office of June 9, and will be posted on the Board's web site, *http://www.ed.gov/offices/OERI/NERPPB/*.

Records are kept of all Board proceedings and are available for public inspection at the office of the National Educational Research Policy and Priorities Board, Suite 100, 80 F St., NW, Washington, D.C. 20208–7564.

Dated: May 10, 2000.

**Eve M. Bither,**

*Executive Director.*

[FR Doc. 00–12200 Filed 5–15–00; 8:45 am]

BILLING CODE 4000–01–M

## DEPARTMENT OF ENERGY

**[Docket No. EA–222]**

### Application To Export Electric Energy; Idaho Power Company

**AGENCY:** Office of Fossil Energy, DOE.

**ACTION:** Notice of application.

**SUMMARY:** Idaho Power Company (IPC) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

**DATES:** Comments, protests or requests to intervene must be submitted on or before June 15, 2000.

**ADDRESSES:** Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

**FOR FURTHER INFORMATION CONTACT:** Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

**SUPPLEMENTARY INFORMATION:** Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On May 4, 2000, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from IPC to transmit electric energy from the United States to Canada. IPC, an Idaho corporation authorized to operate in Idaho, Oregon and Nevada, owns seventeen hydroelectric plants in the United States. The electric energy that IPC intends to export will be purchased from other electric utilities in the United States, Federal power marketing agencies, cogeneration facilities or qualifying cogeneration facilities, and exempt wholesale generators as those terms are defined in the FPA.

IPC proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizens Utilities, Detroit Edison Company, Eastern Maine Electric Cooperative, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction of each of the international transmission facilities to be utilized by IPC, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

**Procedural Matters**

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the IPC application to export electric energy to Canada should be clearly marked with Docket EA–222. Additional copies are to be filed directly with Gary A. Morgans and Catherine M. Giovannoni, STEPTOE and JOHNSON, LLP, 1330 Connecticut Avenue, N.W., Washington, D.C. 20036.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on May 10, 2000.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.*

[FR Doc. 00–12281 Filed 5–15–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Defense Nuclear Nonproliferation

### Nonproliferation and National Security Advisory Committee

**AGENCY:** Department of Energy.

**ACTION:** Notice of Partially Closed Meeting.

**SUMMARY:** This notice announces a meeting of the Nonproliferation and National Security Advisory Committee. The Federal Advisory Committee Act, 5 U.S.C. App. 2 sec. 10(a)(2) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, May 31, 2000, 9 a.m. to 5 p.m.; Thursday, June 1, 2000, 9 a.m. to 5 p.m.; and Friday, June 2, 2000, 9 a.m. to 12 p.m.

**ADDRESSES:** Department of Energy, Room 4A–104, Forrestal Building, 1000 Independence Avenue, SW, Washington DC 20585.

**Note:** Members of the public are requested to contact Leslie Pitts at (202) 586–7994, in advance of the meeting (if possible), to expedite their entry to the Forrestal Building on the day of the public meeting.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Waldron (202–586–2400), Designated Federal Officer, Office of Nonproliferation Research and Engineering (NN–20), Office of Defense Nuclear Nonproliferation, 1000 Independence Avenue, SW, Washington, DC 20585.

**SUPPLEMENTARY INFORMATION:**

*The purpose of the Committee:* To provide the Secretary of Energy and the Deputy Administrator for Defense Nuclear Nonproliferation with advice,

information, and recommendations on national research needs and priorities.

*Purpose of the Meeting:* To discuss the nonproliferation and national security research, development, and policy programs.

**Tentative Agenda**

*Wednesday, May 31, 2000*

9:00 a.m.–12:00 p.m.
Open Meeting
9:00 a.m.–9:15 a.m.
Session Opening
9:15 a.m.–10:00 a.m.
NNAC Findings and Recommendations Concerning the NN–20 R&D Program
10:00 a.m.–10:45 a.m.
NN–20 Action Plan to Address NNAC Recommendations
10:45 a.m.–11:00 a.m.
Break
11:00 a.m.–12:00 p.m.
Public Comments
12:00 p.m.
Adjourn Open Meeting
1:00 p.m.–5:00 p.m.
Closed Meeting

*Thursday, June 1, 2000*

9:00 a.m.–5:00 p.m.
Closed Meeting

*Friday, June 2, 2000*

9:00 a.m.–12:00 p.m.
Closed Meeting

*Closed Meeting:* In the interest of national security, after the public meeting on the morning of May 31, 2000, Secretary Richardson has determined that the remainder of the meeting will be closed to the public. In this regard, governing authorities permit closure of meetings where restricted data or other classified matters are discussed (*see* Federal Advisory Committee Act, 5 U.S.C. App. 2 sec. 10(d); and the Federal Advisory Committee Management regulation, 41 CFR 101–6.1023, "Procedures for Closing an Advisory Committee Meeting", which incorporates by reference the Government in Sunshine Act, 5 U.S.C. 552b, sections 552b (c)(1) and (c)(3)).

*Minutes:* Minutes of the open portion of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, Room 1E–190, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC on May 10, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee, Management Officer.*

[FR Doc. 00–12280 Filed 5–15–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–21–003]**

## CNG Transmission Corporation; Notice of Compliance Filing

May 10, 2000.

Take notice that on April 17, 2000, CNG Transmission Corporation (CNG) submitted a compliance filing and a request for modification of the schedule for submission of tariff sheets.

CNG states that its filing was in compliance with the Commission's "Order on Technical Conference" issued March 31, 2000 in Docket No. RP00–21–000 related to CNG's Rate Schedules DPO (Delivery Point Operator) and CSC (City Gas Swing Customer) program. CNG explained certain specific provisions of its Rate Schedule FTNN as requested in the Commission's order. CNG did not file revised tariff sheets in compliance with the order because, it explains, it has not yet determined whether it can go forward with the program as modified by the order. CNG proposes that it will file the requisite tariff sheets at least ten days in advance of the date that it proposes to more the sheets into effect.

CNG states that copies of the filing have been mailed to all parties set out on the official service list in Docket No. RP00–21.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 17, 2000. Protests will be considered by Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12228 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. RP00–273–000]**

## Eastern Shore Natural Gas Company; Notice of Interruptible Sharing Report

May 11, 2000.

Take notice that on May 3, 2000, Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing its Interruptible Revenue Sharing Report pursuant to Section 37 of the General Terms and Conditions of its FERC Tariff.

Eastern Shore states that it intends to credit a total of $312,784, including interest of $13,248, to its firm transportation customers on July 1, 2000. Eastern Shore states that the credit amount represents 90 percent of the net revenues received by Eastern Shore under Rate Schedule IT (in excess of the cost of service allocated to such rate schedule), for the period April 1999 through March 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 18, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12266 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER–2356–000]**

### Entergy Services; Inc.; Notice of Filing

May 10, 2000.

Take notice that on April 28, 2000 Entergy Services, Inc., acting as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Network Integration Transmission Service Agreement and a Network Operating Agreement, both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Cleco Utility Group, Inc.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protets should be filed on or before May 19, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12216 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–2416–000]**

### Entergy Services, Inc.; Notice of Filing

May 10, 2000.

Take notice that on May 8, 2000, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d and 18 CFR Part 35, Entergy Services, Inc. (ESI), tendered for filing a three-month (June 1, 2000 through August 31, 2000) Transaction Agreement between Entergy Gulf States, Inc., (EGS), as seller, and ESI, as buyer, on behalf of those of the Entergy Operating Companies which have authority to enter into this Transaction Agreement (ESI and said Entergy Operating Companies collectively hereinafter referred to as "Entergy").

Entergy requests waiver of the 60-day notice requirement of section 35.3 of FERC's regulations, 18 CFR 35.3, to allow the Transaction Agreement to become effective June 1, 2000.

Entergy has served a copy of this filing on its state and local regulatory commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 19, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12217 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–272–000]**

### Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 10, 2000.

Take notice that on May 5, 2000, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed in Appendix A to the filing, to be effective May 1, 2000.

GBGP states that the purpose of this filing is to update GBGP's Original Volume No. 1 FERC Gas Tariff to reflect references of Interactive Inernet Website.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12231 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. MT00–6–000]**

### Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

May 10, 2000.

Take notice that on May 4, 2000, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing revisions to its FERC Gas Tariff, Fourth Revised Volume No 1–B, First Revised Sheet Nos 3, 55 and 56 and Second Revised Volume No. 1–D, First Revised Sheet Nos. 3, 48 and 49.

KMIGT states that on April 5, 2000, Kinder Morgan, Inc. (KMI) closed on a transaction with ONEOK, Inc. (ONEOK) whereby various assets and entities were transferred to ONEOK, including all entities that were then marketing affiliates of KMIGT. As a result of the transaction, KMI states that it no longer has a marketing affiliate and is revising the tariff accordingly.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12219 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. MT00–7–000]**

### K N Wattenberg Transmission Limited Liability Co.; Notice of Tariff Filing

May 10, 2000.

Take notice that on May 4, 2000 K N Wattenberg Transmission Limited Liability Co. (KNWT) tendered for filing revisions to its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 2, Second Revised Sheet No. 63, and First Revised Sheet No. 64.

KNWT states that on April 5, 2000 Kinder Morgan, Inc. (KMI) closed on a transaction with ONEOK, Inc. (ONEOK) whereby various assets and entities were transferred to ONEOK, including all entities that were then marketing affiliates of KMIGT. As a result of the transaction, KMI states that it no longer has a marketing affiliate and is revising the tariff accordingly.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at hppt://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12220 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL00–73–000]**

### Mansfield Municipal Electric Department and North Attleborough Electric Department, Complainants, v. New England Power Company, Respondent; Notice of Complaint

May 10, 2000.

Take notice that on May 5, 2000, the Mansfield Municipal Electric Department and North Attleborough Electric Department (Municipal Complainants) filed a complaint against New England Power Company (NEP). The complaint asserts that NEP's assessment of rolled-in network service charges for service provided to the Municipal Complainants entirely over limited high-voltage radial lines is unjust and unreasonable. The Complaint requests that the Commission summarily rule that NEP's charges to the Municipal Complainants under Tariff No. 9 must be limited to a level appropriately tied to the depreciated (i.e., net plant, not gross plant) value of the limited, high-voltage, non-integrated facilities the Municipals actually use to connect to the NEPOOL high-voltage pool transmission facilities. The Complaint further requests that the Municipal Complainants be refunded the difference between the unreasonable rolled-in charges and the appropriate, direct-assignment charges (plus applicable transition charges) for the 15-month refund window afforded by Section 206 of the Federal Power Act, and that the refund window be set to commence July 4, 2000, the earliest date allowed under FPA Section 206.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 30, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before May 30, 2000.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12215 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–271–000]**

### Mississippi Canyon Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 10, 2000.

Take notice that on May 5, 2000, Mississippi Canyon Gas Pipeline, LLC (MCGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed in Appendix A to the filing, to be effective June 1, 2000.

MCGP states that the purpose of this filing is to update MCGP's Original Volume No. 1 FERC Gas Tariff to reflect references of Interactive Internet Website.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/

online.rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12230 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–270–000]**

### Nautilus Pipeline Company, L.L.C.; Notice of proposed Changes in FERC Gas Tariff

May 10, 2000.

Take notice that on May 5, 2000, Nautilus Pipeline Company, L.L.C. (Nautilus) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, revised tariff sheets listed in Appendix A to the filing, to be effective June 1, 2000.

Nautilus states that the purpose of this filing is to update Nautilus' Original Volume No.1 FERC Gas Tariff to reflect references of Interactive Internet Website.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12229 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 137–002]**

### Pacific Gas & Electric Company; Notice of Meetings

May 10, 2000.

Take notice there will be a joint meeting of the Recreation and Ecological Resources subgroups of the Mokelumne Relicensing Collaborative on May 16, 2000. There will be meetings of the Ecological Resources subgroup on May 17–18, 2000, and a meeting of the Recreation subgroup on May 23, 2000. The Full Collaborative will meet on May 24–25, 2000. These meetings will be held from 9:00 a.m. to 4:00 p.m. at 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696.

For further information, please contact Diana Shannon at (202) 208–7774.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12270 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP91–229–029]**

### Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

May 11, 2000.

Take notice that on May 4, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to be effective June 1, 2000:

1st Rev Twenty-Third Rev Sheet No. 19

Panhandle states that the purpose of this filing is to comply with the Commission's Letter received onMay 3, 2000 in Docket No. RP91–229–028 to correct the pagination.

Panhandle states that copies of this filing are being servd on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12264 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP97–29–004]**

### Panhandle Eastern Pipe Line Company; Notice of Compliance Filing

May 11, 2000.

Take notice that on May 2, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Second Revised Sheet No. 273 and First Revised Sheet No. 273A, to be effective June 2, 2000.

Panhandle asserts that the purpose of this filing is to comply with the Commission's Order on Remand issued on April 12, 2000 in Docket No. RP97–29–003 (April 12 Order), 91 FERC ¶61,037, to reflect modifications to Section 13 of the General Terms and Conditions, Policy For Construction on New Receipt or Delivery Facilities. The April 12 Order affirms previous orders in the subject proceeding in which the Commission accepted Panhandle's interconnect policy as stated on tariff sheets filed on April 21, 1997. The April 12 Order also requires Panhandle to conform its interconnect policy as necessary to reflect the five conditions in the Commission's new interconnect policy as announced in the April 12 Order.

Panhandle states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of

the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12265 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP92–166–005]**

### Providence Gas Company; Notice of Filing

May 10, 2000.

Take notice that The Providence Gas Company (Providence Gas), on April 26, 2000, tendered for filing an application to amend the limited-jurisdiction blanket transportation certificate issued in the above-captioned docket by substituting the name of the holder of the certificate.

Upon the consummation of a merger agreement between Providence Energy Corporation and Southern Union Company, Providence Gas will cease to exist as a separate legal entity. Providence Gas requests that the Commission amend the blanket certificate to reflect the name of Southern Union Company as the holder of the certificate effective upon the consummation of the merger. Providence Gas states that there will be no material changes to the services provided under the blanket certificate.

Any person desiring to be heard or to protest the filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions must be filed on or before May 31, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12214 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–274–000]**

### Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 11, 2000.

Take notice that on May 8, 2000, Reliant Energy Gas Transmission Company (REGT), tendered for filing the following *pro forma* tariff sheets:

Pro Forma Second Revised Sheet No. 1
Pro Forma First Revised Sheet No. 59
Pro Forma Original Sheet No. 70
Pro Forma Original Sheet No. 71
Pro Forma Original Sheet No. 72
Pro Forma Original Sheet No. 73
Pro Forma Original Sheet No. 74
Pro Forma Original Sheet No. 75
Pro Forma First Revised Sheet No. 286
Pro Forma Second Revised Sheet No. 289
Pro Forma Revised Sheet No. 290

REGT states that these tariff sheets would institute Rate Schedule ANS to provide automatic nomination (AutoNom) service. REGT has requested that the Commission review this filing in a manner that will permit Rate Schedule ANS to become effective on July 1, 2000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers**

*Secretary.*

[FR Doc. 00–12267 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2016–044]**

### City of Tacoma; Notice of Extension of Time To File Motions To Intervene and Protests, and Comments, Final Terms and Conditions, Recommendations and Prescriptions

May 10, 2000.

By letter dated May 8, 2000, Martha Bean, mediator working with the City of Tacoma and other parties on the relicensing of the Cowlitz River Project, filed on behalf of eight federal, state, and local agencies and the City of Tacoma, a request for an extension of time until July 15, 2000, to file protests and motions to intervene, and comments, recommendations, terms and conditions, and prescriptions, as directed by the Commission's notice issued March 15, 2000, in the above-docketed project. The request for an extension of time included an Agreement in Principal (AIP) Regarding Passage, Production, Hatchery and Habitat, and Recreation for the Cowlitz Project that was supported by a majority of the agency participants in the relicensing process. In the motion, the parties request additional time for legal counsel to craft a final settlement document, based on the filed AIP.

Upon consideration, notice is hereby given that an extension of time for the filing of protests and motions to intervene, and final comments, recommendations, terms and conditions, and prescriptions is granted to and including July 15, 2000.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12221 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. MG00–7–000]**

### Texas Gas Transmission Corporation; Notice of Filing

May 10, 2000.

Take notice that on April 21, 2000, Texas Gas Transmission Corporation (Texas Gas) filed revised standards of conduct to reflect certain changes in office space shared with one of its marketing affiliates and to reflect certain changes in names and corporate organizational information since its previous standards of conduct filing in Docket No. MG98–5–000.

Texas Gas states that it has served copies of its revised standards of conduct upon each person designated on the official service list by the Secretary in the proceeding for Docket No. MG98–5–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 25, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.ud/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12218 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket Nos. RP88–68–042 and IN89–1–003]**

### Transcontinental Gas Pipe Line Corporation; Notice of Filing

May 10, 2000.

Take notice that on April 27, 2000, Transcontinental Gas Pipe Line Corporation (Transco) submitted a filing seeking a clarification of a May 29, 1991 Stipulation and Consent Agreement (Agreement) between the Enforcement section of the Office of the General Counsel and Transco. *Transcontinental Gas Pipe Line Corporation*, 55 FERC ¶61,318 (1991). Specifically, Transco asks clarification that employees of Transco's marketing affiliate, Williams Energy Marketing & Trading Company, who are not involved in natural gas related transactions may have offices in the same building in which Transco is headquartered.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 25, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12227 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ES00–27–000, et al.]**

### Consumers Energy Company, et al.; Electric Rate and Corporate Regulation Filings

May 8, 2000.

Take notice that the following filings have been made with the Commission:

**1. Consumers Energy Company**

[Docket No. ES00–27–000]

Take notice that on April 27, 2000, Consumers Energy Company submitted an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue and sell short-term securities in an amount not to exceed $900 million at any one time. The authorization requested would be for the period July 1, 2000, through June 30, 2002.

*Comment date:* May 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Consumers Energy Company**

[Docket No. ES00–28–000]

Take notice that on April 27, 2000, Consumers Energy Company (Consumers) filed an application pursuant to Section 204 of the Federal Power Act seeking authorization to issue and sell for the period beginning July 1, 2000, through June 30, 2002, not more than:

(1) $1.05 billion of long-term securities, of which up to $250 million would be for purposes of refinancing or refunding existing long-term securities and up to $800 million would be for general corporate purposes, and

(2) $500 million of first mortgage bonds to be issued solely as security for other long-term securities.

Consumers also requests a waiver of the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2 for certain securities to be issued pursuant to authorization requested in this docket.

*Comment date:* May 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Canal Electric Company**

[Docket No. ES00–29–000]

Take notice that on April 28, 2000, Canal Electric Company filed an application pursuant to Section 204 of the Federal Power Act, seeking authorization to issue short-term debt in an amount not to exceed $60 million during a two year period.

*Comment date:* May 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Commonwealth Electric Company**

[Docket No. ES00–30–000]

Take notice that on April 28, 2000, Commonwealth Electric Company filed an application under Section 204 of the Federal Power Act, seeking authorization to issue short-term debt in an amount not to exceed $100 million during a two-year period.

*Comment date:* May 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Cambridge Electric Light Company**

[Docket No. ES00–31–000]

Take notice that on April 28, 2000, Cambridge Electric Light Company filed an application pursuant to Section 204 of the Federal Power Act, seeking authorization to issue short-term debt in

an amount not to exceed $60 million during a two year period.

*Comment date:* May 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Boston Edison Company**

[Docket No. ES00–32–000]

Take notice that on April 28, 2000, Boston Edison Company filed an application pursuant to Section 204 of the Federal Power Act, seeking authorization to issue short-term debt in an amount not to exceed $350 million during a two year period.

*Comment date:* May 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12211 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC00–85–000, et al.]**

### Phibro Power LLC, et al.; Electric Rate and Corporate Regulation Filings

May 9, 2000.

Take notice that the following filings have been made with the Commission:

**1. Phibro Power LLC**

[Docket No. EC00–85–000]

Take notice that on May 1, 2000, as amended on May 3, 2000, Phibro Power LLC (Phibro Power) tendered for filing an application for authorization under Section 203 of the Federal Power Act to transfer its power marketing business, including its jurisdictional market-based rate schedule (Rate Schedule FERC No. 1) to its affiliate Phibro Inc. (Phibro). Both Phibro and Phibro Power are wholly-owned subsidiaries of Salomon Smith Barney Holdings Inc., which, in turn, is a wholly-owned subsidiary of Citigroup Inc.

*Comment date:* June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. EME/CDL Trust**

[Docket No. EG00–135–000]

Take notice that on May 4, 2000, EME/CDL Trust filed additional information regarding its application for a determination of exempt wholesale generator status in this docket. The applicant is a business trust created pursuant to the laws of the State of Delaware that will be engaged directly and exclusively in holding title to 71 combustion turbine units and associated generation and transmission equipment in Illinois, totaling approximately 934 MW (summer rated). The Facilities will be leased by applicant to Midwest Generation, LLC, which will operate the Facilities as an exempt wholesale generator.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**3. NRG Energy Paxton, Inc.**

[Docket No. EG00–136–000]

Take notice that on April 26, 2000, NRG Energy Center Paxton, Inc. filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 329a0(1) of the Public Utility Holding Company Act of 1935 (PUHCA0. The applicant is a corporation organized under the laws of the State of Delaware that will be engaged directly and exclusively in owning and operating a 12.6 MW dual-fired cogeneration facility, located on the property of the Harrisburg Steam Works in Harrisburg, Pennsylvania and selling electric energy at wholesale.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**4. Dearborn Industrial Generation, L.L.C.**

[Docket No. EG00–142–000]

Take notice that on May 2, 2000, Dearborn Industrial Generation, L.L.C., Fairlane Plaza South, 330 Town Center Town Drive, Suite 1000. Dearborn, Michigan 48126–2712, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Dearborn Industrial Generation, L.L.C. owns a facility that will have a nominal capacity of approximately 710 MW, with the possibility of the addition of another 100 MW in net capacity, located in Dearborn, Michigan and is a Michigan limited liability company that is a wholly-owned subsidiary of CMS Generation Co. a Michigan corporation that is itself a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Dearborn Generation Operating, L.L.C.**

[Docket No. EG00–143–000]

Take notice that on May 2, 2000, Dearborn Generation Operating, L.L.C., Fairlane Plaza South, 330 Town Center Town Drive, Suite 1000, Dearborn, Michigan 48126–2712, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Dearborn Generation Operating, L.L.C. operates a facility that will have a nominal capacity of approximately 710 MW, with the possibility of the addition of another 100 MW in net capacity, located in Dearborn, Michigan and is a Michigan limited liability company that is a wholly-owned subsidiary of CMS Generation Co. a Michigan corporation that is itself a wholly-owned indirect subsidiary of CMS Energy Corporation, also a Michigan corporation.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**6. Baconton Power LLC**

[Docket No. EG00–146–000]

Take notice that on May 8, 2000, Baconton Power LLC, 1499 38th Blvd. N.W., Cairo, Georgia 31728, filed with the Federal Energy Regulatory Commission an application for

determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Baconton Power LLC, a Georgia limited liability company, is managing the construction of and will own and operate four 50 MW (nominal summer rating) dual fuel combined cycle natural gas turbines located in Mitchell County, Georgia. The Facility includes the above described generating units as well as step-up transformers, leads, and 230 kV buses interconnecting the facility to the transmission system of the Georgia Transmission Corporation's 230 kV Mitchell to Cotton transmission line, as well as certain common natural gas pipeline, water, and water facilities located on the plant site. The Facility will be used exclusively for the generation of electric energy to be sold at wholesale, with the capacity and energy generation services to be sold to Coral Power, L.L.C. under a twenty year tolling agreement.

*Comment date:* May 26, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**7. SOWEGA Power LLC**

[Docket No. EG00–144–000]

Take notice that on May 8, 2000, SOWEGA Power LLC, 1499 38th Blvd. N.W., Cairo, Georgia 31728, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

SOWEGA Power LLC, a Georgia limited liability company, is the owner of two 50 MW (summer nominal rating), dual fuel combined cycle natural gas turbines located in Mitchell County, Georgia. The Facility includes the above described generating units as well as step-up transformers, leads, and commonly owned 230 kV buses interconnecting the facility to the transmission system of the Georgia Transmission Corporation's 230 kV Mitchell to Cotton transmission line. The Facility will be used exclusively for the generation of electric energy to be sold at wholesale, although a portion of the output will be sold to two affiliates of SOWEGA Power, Grady Electric Membership Cooperative and Three Notch Electric Membership Cooperative, neither of which will resell the power to an affiliate company or associate company and neither of which is subject to State commission retail rate regulation.

*Comment date:* May 26, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**8. SOWEGA Energy Resources LLC**

[Docket No. EG00–145–000]

Take notice that on May 8, 2000, SOWEGA Energy Resources, LLC (SER),1499 38th Blvd. N.W., Cairo, Georgia 31728, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

SER, a Georgia limited liability company, is the majority owner of Baconton Power LLC and is expected to become the sole owner of SOWEGA Power LLC, each of which has filed an application for EWG status relating to their ownership of dual fuel combined cycle natural gas turbines located in Mitchell County, Georgia. SER seeks EWG status relating to its ownership in these two affiliates.

*Comment date:* May 26, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**9. ISO New England Inc.**

[Docket No. ER00–2052–001]

Take notice that on May 1, 2000, ISO New England Inc. filed a correction to Appendix C to its March 31, 2000 filing in the referenced docket.

Copies of said filing have been served upon the parties to these proceedings, the Secretary of the NEPOOL Participants Committee, as well as upon the utility regulatory agencies of the six New England States and the New England Conference of Public Utilities Commissioners.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Avista Corporation, Vermont Electric Power Company and Central Power and Light Company, *et al.*; Southern Company Services, Inc. and Citizens Utilities Company; The Detroit Edison Company, Consolidated Edison Company of New York, Inc., The Washington Water Power Company and Florida Power & Light Co.; Western Resources, Inc.; Wisconsin Power and Light Company, Interstate Power Company, Seminole Electric Cooperative, Inc. and Cleco Utility Group, Inc.; Entergy Services, Inc.**

[Docket Nos. OA97–21–001; OA97–7–001; OA97–288–001 and OA97–263–001; OA97–215–001; OA96–184–003 and OA97–643–001; OA997–681–001; OA96–138–007; OA97–20–001; OA97–245–001 and OA97–699–001; OA97–626–001 and OA96–203–003; OA97–409–002; OA97–633–001; OA97–140–002; OA97–282–001, OA97–324–001, OA97–325–001 and OA97–326–001; OA96–158–004 and OA97–657–001]

Take notice that on May 1, 2000, the above-referenced companies filed a report in compliance with the Commission's February 29, 2000 order in Allegheny Power Service Co., et al., 90 FERC ¶ 61,224 (2000).

*Comment date:* June 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Cleveland Electric Illuminating Company**

[Docket Nos. OA97–141–001 and OA97–491–001]

Take notice that on April 28, 2000, Cleveland Electric Illuminating Company tendered for filing with the Federal Energy Regulatory Commission (Commission), a report in compliance with the Commission's order in Allegheny Power Service Co., et al., 90 FERC ¶ 61,224 (2000).

*Comment date:* June 8, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Florida Power Corporation**

[Docket No. ER00–2352–000 ]

Take notice that on April 28, 2000, Florida Power Corporation (Florida Power), tendered for filing revisions to the capacity charges, reservation fees and energy adders for various interchange services provided by Florida Power pursuant to interchange contracts as follows:

| Rate schedule | Customer |
|---|---|
| 65 ..... | Southeastern Power Administration |
| 80 ..... | Tampa Electric Company |
| 81 ..... | Florida Power & Light Company |
| 82 ..... | City of Homestead |
| 86 ..... | Orlando Utilities Commission |

| Rate schedule | Customer |
|---|---|
| 88 ..... | Gainesville Regional Utility |
| 91 ..... | Jacksonville Electric Authority |
| 92 ..... | City of Lakeland |
| 94 ..... | Kissimmee Utility Authority |
| 95 ..... | City of St. Cloud |
| 101 ... | City of Lake Worth |
| 102 ... | Florida Power & Light Company |
| 103 ... | City of Starke |
| 104 ... | City of New Smyrna Beach |
| 105 ... | Florida Municipal Power Agency |
| 108 ... | City of Key West |
| 119 ... | Reedy Creek Improvement District |
| 122 ... | City of Tallahassee |
| 128 ... | Seminole Electric Cooperative, Inc. |
| 139 ... | Oglethorpe Power Corp. |
| 141 ... | City of Vero Beach |
| 142 ... | Big Rivers Electric Corporation |
| 148 ... | Alabama Electric Cooperative, Inc. |
| 153 ... | Enron Power Marketing, Inc. |
| 154 ... | Catex Vitol Electric, L.L.C. |
| 155 ... | Louis Dreyfus Electric Power, Inc. |
| 156 ... | Electric Clearing House, Inc. |
| 157 ... | LG & E Power Marketing, Inc. |
| 158 ... | MidCon Power Service Corp. |
| 159 ... | Koch Power Services Company |
| 160 ... | Sonat Power Marketing, Inc. |
| 161 ... | Citizens Lehman Power Sales |
| 162 ... | AES Power, Inc. |
| 163 ... | Intercoast Power Marketing Company |
| 164 ... | Valero Power Service Company |
| 166 ... | Eastex Power Marketing, Inc. |
| 167 ... | NorAm Energy Services, Inc. |
| 168 ... | Western Power Services |
| 169 ... | CNG Power Services Corporation |
| 170 ... | Calpine Power Services Company |
| 171 ... | SCANA Energy Marketing, Inc. |
| 172 ... | PanEnergy Trading & Market Services |
| 173 ... | Coral Power, L.L.C. |
| 174 ... | Aquila Power Corporation |
| 175 ... | The Energy Authority, Inc. |
| 176 ... | NP Energy Inc. |
| 177 ... | Morgan Stanley Capital Group, Inc. |

The interchange services which are affected by these revisions are (1) Service Schedule A—Emergency Service; (2) Service Schedule B—Short Term Firm Service; (3) Service Schedule D—Firm Service; (4) Service Schedule F—Assured Capacity and Energy Service; (5) Service Schedule G—Backup Service; (6) Service Schedule H—Reserve Service; (7) Service Schedule I—Regulation Service; (8) Service Schedule OS -Opportunity Sales; (9) Service Schedule RE—Replacement Energy Service; (10) Contract for Assured Capacity And Energy With Florida Power & Light Company; (11) Contract for Scheduled Power and Energy with Florida Power & Light Company.

Florida Power requests that the amended revised capacity charges, reservation fees and energy adder be made effective on May 1, 2000. Florida Power requests waiver of the Commission's sixty-day notice requirement. If waiver is denied, Florida Power requests that the filing be made effective 60 days after the filing date.

Copies of this filing were served on the Orlando Utilities Commission, the Utilities Board of the City of Key West and the Utilities Commission of New Smyrna Beach.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Entergy Services, Inc.**

[Docket No. ER00–2353–000 ]

Take notice that on April 28, 2000, Entergy Services, Inc. (Entergy Services), as agent for System Energy Resources, Inc. (SERI), tendered for filing the annual informational update (Update) containing the 2000 redetermination of the Monthly Capacity Charges, prepared in accordance with the provisions of SERI's Power Charge Formula (PCF) Tariff. Entergy Services states that the Update redetermines the formula rate in accordance with the annual rate redetermination provisions of Section 2(B) of the PFC.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Tampa Electric Company**

[Docket No. ER00–2354–000]

Take notice that on April 28, 2000, Tampa Electric Company (Tampa Electric), tendered for filing an updated weekly capacity charge for short term power service provided under its interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies). Tampa Electric also tendered for filing updated caps on energy charges for emergency assistance and short term power service under the contract.

Tampa Electric requests that the updated capacity charge and caps on charges be made effective as of May 1, 2000, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon Southern Companies and the Florida Public Service Commission.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. Ameren Services Company**

[Docket No. ER00–2361–000]

Take notice that on May 1, 2000, Ameren Services Company (Ameren), tendered for filing a revised Network Integration Transmission Service Agreement (Network Transmission Agreement) and a revised Network Operating Agreement with Wayne-White Counties Electric Cooperative, Inc., (Wayne-White). The revised Network Transmission Agreement includes a Distribution Facilities Charge.

Ameren seeks an effective date of June 1, 2000, subject to conditions, or, in the alternative, an effective date of May 2, 2000 for the revised Network Transmission Agreement and a date sixty days from filing for the revised Network Operating Agreement. Accordingly, Ameren seeks waiver of the Commission's notice requirements with respect to the Network Transmission Agreement.

Copies of the filing have been served on Wayne-White and on the Illinois Commerce Commission.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. Entergy Services, Inc.**

[Docket No. ER00–2355–000]

Take notice that on April 28, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Skygen Energy Marketing, LLC.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. Carolina Power & Light Company**

[Docket No. ER00–2357–000]

Take notice that on April 28, 2000, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with MIECO INC., and a Service Agreement for Non-Firm Point-to-Point Transmission Service with MIECO INC. Service to this Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of April 10, 2000 for each Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. Tampa Electric Company**

[Docket No. ER00–2358–000]

Take notice that on April 28, 2000, Tampa Electric Company (Tampa Electric) tendered for filing updated transmission service rates under its agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry), Cargill Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric proposes that the updated transmission service rates be made effective as of May 1, 2000, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin)**

[Docket No. ER00–2359–000]

Take notice that on April 28, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing two Firm Point-to-Point Transmission Service Agreements between NSP and NSP Energy Marketing.

NSP requests that the Commission accept the Agreements effective May 1, 2000, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**20. Portland General Electric Company**

[Docket No. ER00–2374–000]

Take notice that on April 27, 2000, Portland General Electric Company (PGE), tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff First Revised Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Bonneville Power Administration.

Pursuant to 18 CFR Section 35.11, and the Commission's Order in Docket No. PL93–2–002 issued July 30, 1993, PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Service Agreement to become effective April 1, 2000.

A copy of this filing was caused to be served upon Bonneville Power Administration, as noted in the filing letter.

*Comment date:* May 18, 2000, in accordance with Standard Paragraph E at the end of this notice.

**21. The Montana Power Company**

[Docket No. ER00–2375–000]

Take notice that on May 1, 2000, The Montana Power Company (Montana Power), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a revised Schedule 4, Energy Imbalance Service, to Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

Montana Power requests that the Commission allow the schedule to become effective July 1, 2000.

A copy of the filing was served upon the list of parties included on the Certificate of Service provided with the filing.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**22. The Montana Power Company**

[Docket No. ER00–2376–000]

Take notice that on May 1, 2000, The Montana Power Company (Montana), tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 executed Firm and Non-Firm Point-To-Point Transmission Service Agreements with Southern Company Energy Marketing L.P., under Montana's FERC Electric Tariff, Fourth Revised Volume No. 5 (Open Access Transmission Tariff).

A copy of the filing was served upon Southern Company Energy Marketing L.P.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**23. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power)**

[Docket No. ER00–2377–000]

Take notice that on May 1, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Schedule 11, Retail Transmission Service—Maryland to its Pro Forma Open Access Transmission Tariff. Allegheny Power will provide retail transmission services to Maryland customers pursuant to the schedule as of July 1, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**24. FirstEnergy System**

[Docket No. ER00–2349–000]

Take notice that on April 28, 2000, FirstEnergy System tendered for filing a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Orion Power MidWest, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is April 26, 2000 for the above mentioned Service Agreement in this filing.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**25. California Independent System Operator Corporation**

[Docket No. ER00–1239–001]

Take notice that on April 28, 2000, the California Independent System Operator Corporation (ISO), tendered for filing changes to the ISO Tariff to comply with the Commission's order in California Independent System Operator Corp., 90 FERC ¶ 61,316 (2000). The ISO states that this filing has been served upon all parties in this proceeding.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**26. New York Independent System Operator, Inc.**

[Docket No. ER00–1483–001]

Take notice that on April 28, 2000 the New York Independent System Operator, Inc. (NYISO), tendered for filing a compliance filing in the above-referenced proceeding.

A copy of this filing was served upon all persons on the Commission's official service list.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**27. Tampa Electric Company**

[Docket No. ER00–2351–000]

Take notice that on April 28, 2000, Tampa Electric Company (Tampa Electric), tendered for filing cost support schedules showing an updated daily capacity charge for its scheduled/short-term firm interchange service provided under interchange contracts with each of 17 other utilities. Tampa Electric also tendered for filing updated caps on the charges for emergency and scheduled/short-term firm interchange transactions under the same contracts.

In addition, Tampa Electric tendered for filing a revised transmission loss factor, and revised open access transmission tariff sheets on which the transmission loss factor is stated.

Tampa Electric requests that the updated daily capacity charge and caps on charges, and the revised transmission loss factor and tariff sheets, be made effective as of May 1, 2000, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon each of the parties to the affected interchange contracts with Tampa Electric and each party to a service agreement under Tampa Electric's open access tariff, as well as the Florida and Georgia Public Service Commissions.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**28. Northern Maine Independent System Administrator, Inc.**

[Docket No. ER00–882–001

Take notice that on April 28, 2000, Northern Maine Independent System Administrator, Inc. (NMISA) made its compliance filing as required under Ordering Paragraph (B) of the Commission's April 14, 2000 order in the above-referenced docket.

Copies of the filing were served on all parties to the proceeding.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**29. FirstEnergy System**

[Docket No. ER00–2350–000]

Take notice that on April 28, 2000, FirstEnergy System tendered for filing Service Agreements to provide Firm Point-to-Point Transmission Service for Orion Power Midwest, the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date under this Service Agreement is April 26, 2000 for the above mentioned Service Agreement in this filing.

*Comment date:* May 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

**30. UNITIL Power Corp.**

[Docket No. ER86–559–003]

Take notice that on May 1, 2000, UNITIL Power Corp., tendered for filing pursuant to Schedule II Section H of Supplement No. 1 to Rate Schedule FERC No. 1, the UNITIL System Agreement, the following material:

1. Statement of all sales and billing transactions for the period January 1, 1999 through December 31, 1999 along with the actual costs incurred by UNITIL Power Corp. by FERC account.

2. UNITIL Power Corp. rates billed from January 1, 1999 to December 31, 1999 and supporting rate development.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**31. Praxair, Inc. (successor in interest to Union Carbide Corporation)**

[Docket No. EL00–72–000]

Take notice that, on May 2, 2000, Praxair, Inc. (Praxair), the successor in interest to Union Carbide Corporation, tendered for filing a Petition for Limited Contingent Waiver and Request for Expedited Approval. In its Petition, Praxair seeks a limited and contingent waiver of the Commission's operating and efficiency standards applicable to topping cycle cogeneration facilities. The waiver would be for the duration of a new service agreement Praxair has recently entered into with its local electric utility, pursuant to which the subject cogeneration facility is being temporarily removed from service.

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12212 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Notice of Petition for Declaratory Order, and Soliciting Comments, Motions to Intervene, and Protests

May 10, 2000.

Take notice that the following filing is available for public inspection.

a. *Type of Filing:* Petition for Declaratory Order to Find that the Clark Hill Transmission Line is no longer primary and thus no longer requires licensing.

b. *Project No:* 2167.

c. *Date Filed:* November 30, 1999.

d. *Applicant:* Duke Power.

e. *Name of Project:* Clark Hill Transmission Line Project.

f. *Location:* The project is located in McCormick and Greenwood Counties, South Carolina. The project occupies lands of the United States in the Sumter National Forest.

g. *Filed Pursuant to:* Federal Energy Regulatory Commission Regulation; 18 CFR 385.207.

h. *Applicant Contact:* E.M. Oakley, Hydro Licensing Manager, Duke Power, 526 S. Church Street, P.O. Box 1006, Mail code: EC12Y, Charlotte, NC 28201, (704) 382–5778.

i. *FERC Contact:* Mr. Jack Duckworth at (202) 219–2818 or by e-mail at jack.duckworth@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene or protests:* 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must

also serve a copy of the document on that resource agency.

k. *Description of Project:* The existing project consists of a 35.75-mile-long, 115 kV transmission line extending from the Clark Hill Substation at the Thurmond Hydroelectric Project to the Clark Hill Tie Station near Greenwood, South Carolina. Duke Power requests that the Commission declare that the Clark Hill Transmission Line is no longer a primary transmission line and thus will not be subject to the Commission's licensing jurisdiction once the current license expires on August 5, 2003. Approximately 126.35 acres of federal lands are used by the Project. Duke Power proposes to obtain appropriate land use authorization for the continued use of federal lands to operate and maintain the transmission line following the expiration of the license.

l. *Location of the Filing:* A copy of the filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 211, 214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comment—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12222 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Petition for Declaratory Order, and Soliciting Comments, Motions To Intervene, and Protests

May 10, 2000.

The following filing is available for public inspection.

a. *Type of Filing:* Petition for Declaratory Order to Find that the Glen Canyon-Paria Transmission Line Project is no longer jurisdictional and no longer requires licensing.

b. *Project No:* 2642.

c. *Date Filed:* December 3, 1999.

d. *Applicant:* Garkane Power Association, Inc.

e. *Name of Project:* Glen Canyon-Paria Transmission Line Project.

f. *Location:* The Project is located in Kane County, Utah, and Coconino County, Arizona. The project occupies lands of the United States managed by the Bureau of Land Management and the National Park Service.

g. *Filed Pursuant to:* Federal Energy Regulatory Commission Regulation, 18 CFR 385.207.

h. *Applicant Contact:* Michael Avant, Engineering Manager, Garkane Power Association, Inc., 1802 South 175 East, Kanab, Utah 84741, (435) 644–5026.

i. *FERC Contact:* Mr. Jack Duckworth at (202) 219–2818 or by e-mail at jack.duckworth@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene or protests:* 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The existing project consists of a 36.1-mile long, 138 kV transmission line extending from the Bureau of Reclamation's Glen Canyon Dam Switchyard, to Garkane's Paria Substation. Garkane Power Association, Inc. requests that the Commission find that the Glen Canyon-Paria Transmission Line Project is no longer jurisdictional and no longer requires licensing.

l. *Location of the Filing:* A copy of the filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection on reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named

documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12223 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Draft License Application and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

May 10, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 309–000.

c. *Applicant:* Sithe Pennsylvania Holdings LLP.

d. *Name of Project:* Piney.

e. *Location:* On the Clarion River, in Clarion County, Pennsylvania.

f. *Applicant Contact:* Thomas Teitt, Sithe Northeast, 1001 Broad St., Johnstown, PA 15907–1050.

g. *FERC Contact:* William Guey-Lee (202) 219–2808, Email: william.gueylee@ferc.fed.us.

h. Sithe Pennsylvania Holdings LLP mailed a copy of the PDEA to interested parties on April 28, 2000. The Commission received a copy of the PDEA on May 1, 2000. Copies of the documents are available from Sithe Pennsylvania Holdings LLP at the above address.

i. With this notice we are soliciting preliminary terms, conditions, recommendations, prescriptions, and comments on the PDEA and draft license application. All comments on the PDEA and draft license application should be sent to the address above in item (f) with one copy filed with the Commission at the following address: Federal Energy Regulatory Commission, David P. Boergers, Secretary, 888 First St. NE, Washington, DC 20426. All comments must include the project name and number, and bear the heading "Preliminary Comments," "Preliminary Recommendations," "Preliminary Terms and Conditions," or "Preliminary Prescriptions." Any party interested in commenting on the draft license application and the PDEA, must do so on or before July 26, 2000.

j. With this notice, we are initiating consultation with the STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12224 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

May 10, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment to License.

b. *Project No.:* 11243–020.

c. *Date Filed:* March 8, 2000.

d. *Applicant:* Cordova Electric Cooperative, Inc.

e. *Name of Project:* Power Creek.

f. *Location:* On Power Creek, near the town of Cordova, in southeast Alaska. The project is located entirely on Eyak River on Eyak Lands, a native corporation, and is adjacent to the Chugach National Forest.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Keneth J. Gates, General Manager, Cordova Electric Cooperative, Inc., P.O. Box 20, Cordova, Alaska 99574, (907) 424–5555.

i. *FERC Contact:* Any questions on this notice should be addressed to Anumzziatta Purchiaroni at (202) 219–3297, or e-mail address: anumzziatta.purchiaroni@ferc.fed.us.

j. *Deadline for filing comments and or motions:* June 16, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Please include the project number (11243–020) on any comments or motions filed.

k. *Description of Amendment:* The licensee proposes to construct the powerhouse at approximately 120 feet upstream from its licensed position, as a safety measure to increase its distance from a possible wet snow avalanche effect area. Consequently, due to the change in location of the powerhouse, the tailrace would be relocated to be contained in a longer channel approximately 12 feet deep and 120 feet long. The proposed amendment would involve a change in the authorized project boundary. The proposed changes are located on lands owned by the Eyak Corporation (a native corporation).

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http:*www.ferc.fed.us/online/rims.htm*. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies

provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12225 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Request To Surrender Exemption and Soliciting Comments, Motions to Intervene, and Protests

May 10, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of Exemption.

b. *Project No:* 11564–002.

c. *Date Filed:* April 26, 2000.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* West Hill Hydroelectric Project.

f. *Location:* The project would have been located on Cold Springs, a tributary of Cold Creek; in Siskiyou County, California. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Jamie Sims, Senior Contract Administrator, PacifiCorp 9951 SE Ankeny, Portland, Oregon, 97216–2315, (503) 251–5295.

i. *FERC Contact:* Any questions on this notice should be addressed to Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: *lynn.miles@ferc.fed.us.*

j. *Deadline for filing comments and or motions:* June 16, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the project number (11564–002) on any comments or motions filed.

k. *Description of Request:* The licensee requests to surrender the West Hill Hydroelectric Project, FERC No. 11564 because it no longer wishes to develop the project.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for asistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

*Comments, Protests, or Motions to Intervene*—Anyone may submit comments, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

*Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12226 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

May 11, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No:* 2232–400.

c. *Date Filed:* October 20, 1999.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* On Lake Norman in the Town of Davidson, in Mecklenburg County, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006 (704) 382–5778.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: brian.romanek@ferc.fed.us.

j. *Deadline for filing comments and or motions:* June 9, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426.

Please include the project number (2232–400) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease to Crosland Land Company (Crosland) 0.33 acres of project and for the construction of 10 boat slips. The boat slips would provide access to the reservoir for residents of the Lake Davidson Subdivision. No dredging is proposed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by

calling (202) 208–1371. This filing may be viewed on http:www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

*Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

*Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12262 Filed 5–15–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Motion for Declaratory Order, and Soliciting Comments, Motions to Intervene, and Protests

May 11, 2000.

a. *Type of Filing:* Motion for Declaratory Order to Determine that the New Melones Transmission Line Project is no longer primary and thus no longer requires licensing

b. *Project No.:* 2781.

c. *Date Filed:* December 1, 1999.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* New Melones Transmission Line Project.

f. *Location:* The Project is located in Calaveras and Stanislaus Counties, California. The project occupies lands of the United States Bureau of Land Management and the Army Corps of Engineers.

g. *Filed Pursuant to:* Federal Energy Regulatory Commission Regulation, 18 CFR 385.207.

h. *Applicant Contact:* Kermit R. Kubitz, Pacific Gas and Electric Company, 77 Beale Street, 30th Floor, P.O. Box 7442, San Francisco, CA 94120, (415) 973–2118.

i. *FERC Contact:* Mr. Jack Duckworth at (202) 219–2818 or by e-mail at jack.duckworth@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene or protests:* 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, it an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The existing project consists of a 23-mile-long, double circuit 230 kV transmission line extending from the Bureau of Reclamation's Melones Powerhouse, to PG&E's Bellota-Herndon 230 kV line (now called the Bellota-Melones 230 kV line and Melones-Wilson 230 kV line). PG&E requests that the Commission determine that its New Melones Transmission Line Project is no longer a primary transmission line and thus no longer requires licensing. Approximately 17.79 acres of federal lands are used by the transmission facilities.

l. *Location of the Filing:* A copy of the filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

*Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

*Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an

agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12263 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Petition for Declaratory Order, and Soliciting Comments, Motions To Intervene, and Protests

May 11, 2000.

a. *Type of Filing:* Petition for Declaratory Order to Find that the Walla-Walla Enterprise Transmission Line is not jurisdictional and no longer requires licensing.

b. *Project No.:* 2617.

c. *Date Filed:* March 14, 2000.

d. *Applicant:* PacifiCorp.

e. *Name of Project:* Walla-Walla Enterprise Transmission Line Project.

f. *Location:* The Project is located in Walla Walla County, Washington, and in Umatilla, Union, and Wallowa Counties, Orgeon. The project occupies lands of the United States in the Umatilla National Forest.

g. *Filed Pursuant to:* Federal Energy Regulatory Commission Regulation, 18 CFR 385.207.

h. *Applicant Contact:* Randy Landolt, Director, Hydro Resources, PacifiCorp, 825 N.E. Multnomah, Suite 1500, Portland, OR 97232, (503) 813–6650.

i. *FERC Contact:* Mr. Jack Duckworth at (202) 219–2818 or by e-mail at jack.duckworth@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene or protests:* 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list of the project. Further, if an intervene files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The existing project consists of a 79-mile-long, 230 kV transmission line extending from the Walla Walla Substation, in Walla Walla, Washington, to Enterprise, Oregon. PacifiCorp requests that the Commission issue a declaratory order finding that the Walla Walla Enterprise Transmission Line is no longer jurisdictional and no longer requires licensing. The Project crosses about six miles of federal lands.

l. *Location of the Filing:* A copy of the filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc./fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervenor in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motion to intervene must be received on or before the specified comments date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR THE TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12268 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Motion for Declaratory Order, and Soliciting Comments, Motions To Intervene, and Protests

May 11, 2000.

a. *Type of Filing:* Motion for Declaratory Order to Find that the Transmission Line Project is no longer jurisdictional and no longer requires licensing.

b. *Project No:* 2469.

c. *Date Filed:* February 3, 2000.

d. *Applicant:* Arizona Public Service Company.

e. *Name of Project:* Transmission Line Project.

f. *Location:* The Project is located in Coconino County, Arizona. The project occupies lands of the United States Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Energy Regulatory Commission Regulation, 18 CFR 385.207.

h. *Applicant Contact:* Joel R. Spitzkoff, Manager, Federal Regulation, Arizona Public Service Company, P.O. Box 53999, Station 9905, Phoenix, AZ 85072, (602) 250–2949.

i. *FERC Contact:* Mr. Jack Duckworth at (202) 219–2818 or by e-mail at jack.duckworth@ferc.fed.us.

j. *Deadline for filing comments, motions to intervene or protests:* 45 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The existing project consists of a 10.4-mile-long, 230 kV transmission line extending from the

Bureau of Reclamation's Glen Canyon Dam, to the Arizona-Utah State Line, where it interconnects with a Utah Power line. Arizona Public Service Company requests that the Commission find that the Transmission Line Project is no longer jurisdictional and no longer requires licensing.

l. *Location of the Filing:* A copy of the filing is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be field by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC, 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12269 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Technology Demonstration

May 10, 2000.

Take notice that, on May 24, 2000, Edward Cazalet, of Automated Power Exchange, Inc., will make a presentation before the Commission, interested members of the staff, and interested members of the public demonstrating the possible use of e-commerce technologies and the Internet to develop markets for various power products, including transmission rights.

The presentation will be held on May 24, 2000, at 10:00 a.m., in the Commission Meeting Room, 2nd Floor, 888 First Street, N.E., Washington, D.C. 20426.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12213 Filed 5–15–00; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6700–4]**

### Clear Air Act Advisory Committee Notice of Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency established the Clean Air Act Advisory Committee (CAAAC) on November 19, 1990, to provide independent advice and counsel to EPA on policy issues associated with implementation of the Clean Air Act of 1990. The Committee advises on economic, environmental, technical scientific, and enforcement policy issues.

**OPEN MEETING NOTICE:** Pursuant to 5 U.S.C. App. 2 section 10(a)(2), notice is hereby given that the Clean Air Act Advisory Committee will hold its next open meeting on Friday, June 16, 2000, from approximately 8:30 a.m. to 3:30 p.m. at the Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, Virginia. Seating will be available on a first come, first served basis. The Integrated Urban Air Toxics Program Structure Workgroup will hold two meetings: 8:30 a.m. to 5 p.m. on June 14 and from 8:30 a.m. to 11:30 a.m. on June 15. In addition, three of the CAAAC's Subcommittees (Linking Energy, Land Use, Transportation, and Air Quality Concerns Subcommittee; the Permits/NSR/Toxics Integration Subcommittee; and the Economic Incentives and Regulatory Innovations Subcommittee) will hold meetings on June 15, 2000. The Energy, Clean Air and Climate Change Subcommittee will not meet at this time. The Linking Transportation Land Use and Air Quality Subcommittee is scheduled to meet from 12 noon to 3 p.m.; the Permits/NSR/Toxics Subcommittee is scheduled to meet from 3:15 p.m. to 5:45 p.m.; and the Economic Incentives and Regulatory Innovations Subcommittee is scheduled to meet from 6 p.m. to 8:30 p.m. All workgroup and subcommittee meetings will be held at the Sheraton Crystal City Hotel, the same location as the full Committee.

**INSPECTION OF COMMITTEE DOCUMENTS:** The Committee agenda and any documents prepared for the meeting will be publicly available at the meeting. Thereafter, these documents, together with CAAAC meeting minutes, will be available by contacting the Office of Air and Radiation Docket and requesting information under docket item A–94–34 (CAAAC). The Docket office can be reached by telephoning 202–260–7548; FAX 202–260–4400.

**FOR FURTHER INFORMATION CONTACT:** Concerning this meeting of the full CAAAC, please contact Paul Rasmussen, Office of Air and Radiation, US EPA (202) 564–1306, FAX (202) 564–1352 or by mail at US EPA, Office of Air and Radiation (Mail code 6102 A), 1200 Pennsylvania Avenue, NW Washington, DC 20004. For information on the Workgroup or Subcommittee meetings, please contact the following individuals: (1) Integrated Urban Air Toxics Program Structure Workgroup—Chris Stollman, 919–541–0823; (2) Permits/NSR/Toxics Integration—Debbie Stackhouse, 919–541–5354; (3) Economic Incentives and Regulatory Innovations—Carey Fitzmaurice, 202–564–1667; and (4) Linking Transportation, Land Use and Air Quality Concerns—Gay MacGregor, 734–668–4438. Additional Information on these meetings and the CAAAC and its Subcommittees can be found on the CAAAC Web Site: *www.epa.gov/oar/caaac/.*

Dated: May 9, 2000.

**D. Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 00–12303 Filed 5–15–00; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6700–3]**

### Public Meetings on Electronic Submission of Environmental Reports

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of public meetings.

**SUMMARY:** EPA will hold approximately four public meetings to solicit comments on the Agency's proposed rule for the electronic submission of environmental reports and the Cross-Media Electronic Reporting and Record-keeping Rule (CROMERRR). The meeting will also obtain feedback on the design of the Central Receiving Facility (CRF), the system the Agency will use to receive reports electronically. In addition, the Agency's Integrated Error Correction Process (IECP) will be discussed. This notice announces two upcoming meetings. Additional meeting dates will be announced through **Federal Register** notices.

**DATES:** The meetings will take place:

1. Tuesday, June 6, 2000, 9 am to 4 pm (CST) at the Ralph H. Metcalfe Federal Building, 3rd Floor, 77 West Jackson Street, Chicago, IL.

2. Tuesday, July 11, 2000. 9 am to 4 pm (EST) at Resolve, Inc., 1255 23rd Street NW, Suite 275, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Magdalena Evi Huffer (Mail Stop 2823), Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone: (202) 260–8791; fax number (202) 401–0182; e-mail—*huffer.evi@epa.gov.*

**SUPPLEMENTARY INFORMATION:** CROMERRR will provide the legal framework for electronic reporting and record-keeping under EPA's environmental regulations. CROMERRR will apply to most, if not all, reporting and record-keeping activities currently required of companies covered by EPA regulations and will remove legal obstacles to electronic reporting and record-keeping under most EPA regulations. It will ensure that these electronic documents will have the same legal and evidentiary force as their paper counterparts.

The (CRF) will be the point of entry for all environmental data submitted to the Agency, electronic and paper. The CRF will enable automated computer-to-computer data transfer for companies with automated environmental systems. It will provide quicker access for industry and the public to higher quality data. It will offer timesaving efficiencies by offering a single point of entry and common procedures for all reporting transactions.

The IECP for environmental data will build upon existing error correction processed in EPA data systems. It will make error correction easier, more prominent and accountable. The IECP will improve EPA's accountability to individuals and entities that report data to the Agency while also improving the Agency's service to the public, which relies on the Agency for information about the state of our environment.

Dated: May 1, 2000.

**Joseph D. Retzer,**

*Director, Collection Services Division, Office of Information Collection, Office of Environmental Information.*

[FR Doc. 00–12304 Filed 5–15–00; 8:45 am]

BILLING CODE 6560–50–M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1327–DR]**

### Kansas; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1327-DR), dated May 3, 2000, and related determinations.

**EFFECTIVE DATE:** May 3, 2000

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 3, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Kansas, resulting from severe storms and tornadoes on April 19–20, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Kansas.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Louis H. Botta of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Kansas to have been affected adversely by this declared major disaster:

Crawford, Labette, and Neosho Counties for Individual Assistance.

All counties within the State of Kansas are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**James L. Witt,**

*Director.*

[FR Doc. 00–12285 Filed 5–15–00; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Office of Minority Health; Notice of a Cooperative Agreement with The National Alliance for Hispanic Health.

**AGENCY:** Office of the Secretary, Office of Minority Health.

**ACTION:** Notice of a Cooperative Agreement with The National Alliance for Hispanic Health.

The Office of Minority Health (OMH), Office of Public Health and Science, announces its intent to continue support of the umbrella cooperative agreement with The National Alliance for Hispanic Health (Alliance), formerly known as the National Coalition of Hispanic Health and Human Services Organizations. This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various governmental agencies during the project period.

The purpose of this cooperative agreement is to support the efforts of the Alliance in expanding and enhancing its activities relevant to education, health promotion, disease prevention, and family and youth violence prevention, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government agencies and non-government agencies.

**Authority**

This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

**Background**

Assistance will continue to be provided to the Alliance. During the last five years, the Alliance has successfully demonstrated the ability to work with health agencies on mutual education, service, and research endeavors. The Alliance is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

- It has developed, expanded, and managed an infrastructure to coordinate and implement various medical intervention programs within local communities and physician groups that deal extensively with Hispanic health issues. The Alliance has also established several oversight committees that provide a foundation upon which to develop, promote, and manage health intervention, education, and training programs which are aimed at preventing and reducing unnecessary morbidity and mortality among most minority population.
- It has established itself and its members as an organization with professionals who serve as leaders and experts in planning, developing, implementing, and evaluating health education, prevention, and promotion programs aimed at reducing excessive mortality and adverse health behaviors among Hispanic communities.
- It has developed databases and directories of health services, health care accessibility issues, and professional development initiatives that deal exclusively with Hispanic populations that are necessary for any intervention dealing with this minority population.
- It has assessed and evaluated the current education, research, and disease prevention and health promotion activities for its members, affiliated groups, and represented sub-populations.
- It has developed a coalition whose members are all predominately minority health care professionals and providers with excellent professional performance records.
- It has developed a base of critical knowledge, skills, and abilities related to serving Hispanic clients with a range of health and social problems. Through the collective efforts of its members, its affiliated community-based organizations, sponsored research, and sponsored health education and prevention programs, the Alliance has demonstrated (1) the ability to work with academic institutions and health agencies on mutual education, service, and research endeavors relating to the goal of disease prevention and health promotion of minorities and disadvantaged peoples, (2) the leadership necessary to attract minority students into public health careers, and (3) the leadership needed to assist health care professionals to work more effectively with Hispanic clients and communities, as well as other minority populations.

This cooperative agreement will be continued for an additional five-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will receive approximately $100,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

**Where To Obtain Additional Information**

If you are interested in obtaining additional information regarding this cooperative agreement, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

**OMB Catalog of Federal Domestic Assistance**

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Dated: May 8, 2000.

**Nathan Stinson, Jr.,**

*Deputy Assistant Secretary for Minority Health.*

[FR Doc. 00–12184 Filed 5–15–00; 8:45 am]

BILLING CODE 4160–17–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Healthy People 2010

**AGENCY:** DHHS/OS/Office of Public Health and Science, Office of Disease Prevention and Health Promotion (ODPHP).

**ACTION:** Notice of change in program announcements of the Department of Health and Human Services to reflect the advent of Healthy People 2010, the national health goals/targets for the first decade of the 21st century.

**SUMMARY:** Certain program announcements by the Department of Health and Human Services have included references to the principles and objectives of Healthy People 2000, the national health promotion and disease prevention initiative in effect during the decade of the 1990's. With the conclusion of that initiative at the turn of the century, the successor initiative, Healthy People 2010, supplants Healthy People 2000 in all such references.

**DATES:** This change is effective as of January 25, 2000, the date of public release of Healthy People 2010, except that it does not affect program announcements concerning grants, cooperative agreements, or contracts already in force from years prior to 2000 or currently in effect in fiscal year 2000.

**FOR FURTHER INFORMATION CONTACT:** Office of Disease Prevention and Health Promotion, Room 738–G Hubert H.

Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201, (202) 401–6295.

**SUPPLEMENTARY INFORMATION:**

**Background**

In 1979, the Department of Health and Human Services began an initiative to use health promotion and disease prevention objectives to improve the health of people living in the United States. The first set of national health targets was published that year in Healthy People: the Surgeon General's Report on Health Promotion and Disease Prevention, which included five goals to be achieved by 1990 to reduced mortality among four different age groups and increase independence among older adults. The goals were supported by objectives that were released in 1980, also with 1990 targets.

This national health agenda has since been reformulated in each succeeding decade. Healthy People 2000, the second national prevention initiative, reflected the progress and experience of ten years, as well as an expanded science base and surveillance system. With the collaboration of an extensive network of voluntary and professional organizations, businesses, and individuals, the framework of Healthy People 2000 was designed with three broad goals—increasing the span of healthy life, reducing health disparities, and achieving access to clinical preventive services. To help meet those goals, over 300 objectives with targets, organized into 22 priority areas, aimed to achieve improvements in health status, risk reduction, and service delivery. The most recent data available show that about 60 percent of the objectives had either met their target or were progressing toward the target.

The challenges and successes of the Healthy People 2000 initiative have served as the starting points for Healthy People 2010. While its framework is based on the initiatives of the previous two decades, Healthy People 2010 differs from previous efforts. The initiative has grown to 28 focus areas and 467 objectives. The two overarching goals are: (1) Increase quality and years of healthy life; and (2) eliminate health disparities. Healthy People 2010 acknowledges that the many national advances in health have not been enjoyed equally by all demographic groups in the United States. It calls for the elimination of these disparities over the next ten years.

**Citation in Announcements**

References to the national health promotion initiative appear in numerous program announcements of the Department of Health and Human Services. Examples of such citations, updated to reflect the transition to Healthy People 2010, include but are not limited to the following (superseded text in brackets):

"The (Agency name) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010 [2000], a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the Healthy People 2010 [2000] focus [priority] area(s) (one or more of 28 areas). . . ."

"The following additional requirements are applicable to this program. (Listed sequentially from AR–1 *et seq.* if applicable) AR–11 Healthy People 2010 [2000]"

"Potential applicants may obtain a copy of the Healthy People 2010 [2000] objectives from/by * * * (with ordering instructions as provided in the following paragraph)."

**Availability of Documents**

Volumes I and II of Healthy People 2010: Conference Edition (B0074) are for sale at $22 per set by the ODPHP Communication Support Center, P.O. Box 37366, Washington, D.C. 20013–7366. Each of the 28 chapters of Healthy People 2010 is priced at $2 per copy. Telephone orders can be placed to the Center on (301) 468–5690. The Center also sells the complete Conference edition in CD–ROM format (B0071) for $5.

This publication is available as well on the Internet at *www.health.gov/healthypeople*. Web site viewers should proceed to "Publications".

Dated: May 8, 2000.

**David Satcher,**

*Assistant Secretary for Health and Surgeon General.*

[FR Doc. 00–12183 Filed 5–15–00; 8:45 am]

BILLING CODE 4160–17–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

*Name:* National Committee on Vital and Health Statistics (NCVHS), *Joint Meeting*, Subcommittee on Standards and Security, and Workgroup on Computer-based Patient Records.

*Time and Date:* 9 a.m. to 5 p.m., June 1, 2000; 9 a.m. to 1 p.m., June 2, 2000.

*Place:* Room 505A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

*Status:* Open.

*Purpose:* The Subcommittee and Working Group will discuss its report to the HHS Secretary on standards for patient medical records information as required by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Subcommittee will finalize the report and approve it for transmission to the full NCVHS. The Subcommittee will also discuss plans for upcoming hearings.

*Notice:* In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

*Contact Person for More Information:* Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from J. Michael Fitzmaurice, Ph.D., Senior Science Advisor for Information Technology, Agency for Health Care Research and Quality, 2101 East Jefferson Street #600, Rockville, MD 20852, phone: (301) 594–3938; or Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the HCVHS home page of the HHS website: *http://www.ncvhs.hhs.gov/* where an agenda for the meeting will be posted when available.

Dated: May 9, 2000.

**James Scanlon,**

*Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.*

[FR Doc. 00–12182 Filed 5–5–00; 8:45 am]

BILLING CODE 4151–05–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00088]**

### Health Promotion and Disease Prevention for Rhode Island Senior Citizens; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a grant program entitled "Health Promotion and Disease Prevention for Rhode Island Senior Citizens". CDC is committed to achieving the health promotion and disease prevention objectives of

"Healthy People 2010," a national activity to reduce the morbidity and mortality and improve the quality of life. This announcement is related to the focus area of Educational and Community-Based Programs. For the conference copy of "Healthy People 2010", visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of the program is to create and evaluate a model for health outreach and health promotion for senior citizen communities that can be applied around the nation. This model will be created through a community partnership between the Roger Williams Medical Center and the New England Association of Labor Retirees.

**B. Eligible Applicants**

Assistance will be provided only to the Roger Williams Medical Center, Providence, RI. No other applications are solicited. This sole source solicitation is based on the Conference Report [H.R. Rep. 10–470, at 599 (1999)] to the Consolidated Appropriations Act, 2000, Public Law 106–113, which earmarks funding for the Roger Williams Medical Center in Providence, Rhode Island, to collaborate with the New England Association of Labor Retirees on a program emphasizing the early detection of diseases among seniors.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract loan, or any other form.

**C. Availability of Funds**

Approximately $607,411 is available in FY 2000 to fund the Roger Williams Medical Center in Providence, Rhode Island. It is expected that the award will begin on or about August 1, 2000, and will be made for a 12-month budget period within a project period of one year. Funding estimates may change.

**D. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following:

1. Create a health promotion model with objectives that illustrates a population screening strategy for Rhode Island seniors with follow-up strategies for health promotion and health maintenance.

2. Conduct and evaluate one or more demonstration projects in health promotion and disease prevention or preventive health services, or both, in defined communities or targeted populations. Revise the health promotion model based on outcomes of the demonstration project.

3. Establish an advisory committee to provide input on major program activities. The committee should be comprised of experts in health promotion/disease prevention and evaluation research arena. Committee members could include experts from health-care providers, local health departments, voluntary health organizations, senior citizens, and academic institutions.

4. Establish collaborative activities with appropriate organizations, individuals, State health, education, and mental health agencies such as the Rhode Island Department of Public Health, the American Cancer Society, Senior Citizens Associations and local media, *etc.*, to implement and evaluate the proposed activities.

5. Coordinate and collaborate with other Public Health Service (PHS) supported research programs to prevent duplication and enhance overall efforts.

**E. Application Content**

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow the criteria when creating your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

**F. Submission and Deadline**

Submit the original and five copies of the application PHS Form 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit. Submit the application on or before June 30, 2000, to the Grants Management Specialist identified in Section J., "Where to Obtain Additional Information".

*Deadline:* The application shall be considered as meeting the deadline above if it is either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date.

(Applicant must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

**G. Evaluation Criteria**

The application will be evaluated based on the following criteria by an independent review panel appointed by CDC.

*Background (10 Points)*

The extent to which the applicant demonstrates an understanding of the current scientific literature and theories relevant to the proposed activities.

*Program Plan (50 Points)*

1. The extent to which the overall program plan has clear objectives that are specific, measurable, and realistic. (8 points)

2. The extent to which the target population(s) are well-specified and consistent with the proposed objectives. (8 points)

3. The extent to which the proposed program activities are well-specified, achievable, time-phased, and consistent with the proposed objectives. (12 points)

4. The extent to which the proposed research methods (*e.g.*, participant recruitment, data collection, outcome measures, data analyses, etc.) are clear and appropriate, have scientific merit, and are consistent with proposed objectives and activities. (12 points)

5. The degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted. (10 points)

*Evaluation Plan (15 Points)*

The quality of the plan to evaluate the overall project as well as specific program activities in regard to progress, efficacy, and cost benefits.

*Collaboration (15 Points)*

1. The extent to which the applicant has described a plan for establishing and gathering input from an advisory committee with expertise critical to the success of the project.

2. The extent to which the applicant has described a plan for establishing collaborative relationships with appropriate organizations, individuals, State health, education and mental health agencies to implement and evaluate the proposed activities.

*Management and Staffing Plan (10 Points)*

The extent to which the applicant demonstrates the scientific expertise

and capacity to carry out the program objectives and specific project plan.

*Budget (Reviewed But Not Scored)*

The extent to which the budget and justification are consistent with program objectives and purpose.

*Human Subjects (Reviewed But Not Scored)*

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Progress reports (annual);
2. Financial status report, not more than 90 days after the end of the budget period; and
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in Section J., "Where to Obtain Additional Information'.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Robert Hancock, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 00088, Centers for Disease Control and Prevention (CDC), Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, telephone (770) 488–2746, E-mail address: RNH2@cdc.gov.

This and other CDC announcements can be found on the CDC home page internet address: http://www.cdc.gov.

For program technical assistance, contact: Lynda Doll, Ph.D., Program Director, Prevention Research Centers Office, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Atlanta, GA 30341–3724, telephone 404–488–5395, E-mail address: LSD1@cdc.gov.

Dated: May 10, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–12241 Filed 5–15–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00046]**

### Integration of Viral Hepatitis Prevention Services Into Existing Prevention Programs; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for integration of viral hepatitis prevention services into existing prevention programs. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Immunization and Infectious Diseases. For the conference copy of "Healthy People 2010", visit the internet site http://www.health.gov/healthypeople.

The purpose of the program is to develop strategies and guidance for integrating recommended viral hepatitis prevention and control services for persons at high risk for infection into existing settings that provide public health services and to improve public health service delivery by integrating viral hepatitis with existing prevention services to reach persons at high risk for disease. This announcement is intended to support implementation and evaluation of integrating currently recommended prevention activities for viral hepatitis (including hepatitis A and hepatitis B vaccination) into existing disease prevention programs, with the primary intent to improve delivery of established prevention services that may directly benefit clients served by these programs.

**B. Eligible Applicants**

*Limited Competition*

Because of the requirement that viral hepatitis services be integrated with existing state or local public health programs, assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia and the cities of Philadelphia, New York City, San Francisco, Los Angeles, Houston, Chicago, and Baltimore, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. In consultation with States, assistance may be provided to political subdivisions of States.

**C. Availability of Funds**

Approximately $800,000 is available in FY 2000 to fund approximately four awards. It is expected that the average award will be $200,000, ranging from $150,000 to $400,000. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to three years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

*Funding Preferences*

Preference will be given to programs that deliver or provide oversight for public health services to populations in which a high proportion (1000 to 3000 individuals with identifiable risk factors for viral hepatitis are likely to be infected with hepatitis C virus (HCV).

Such programs include STD Clinics, HIV/AIDS counseling/testing sites, correctional settings and providers of services to injection drug users. Also to ensure geographic diversity, additional consideration will be given to the location of the program based on the region of the U.S. (Northeast, southeast, northwest, southwest, north central, and south central states). Finally, to ensure

racial and ethnic diversity of the program populations served, consideration will be given to gender and ethnicity of the populations served.

**D. Program Requirements**

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

*1. Recipient Activities*

a. Develop and implement protocol(s) to integrate currently recommended viral hepatitis prevention services into existing public health programs and services, as appropriate for the particular setting(s) proposed. Viral hepatitis prevention services may include, but are not limited to:

(1) Assessing risk histories for viral hepatitis among clients;

(2) Providing client-centered prevention counseling to patients with risks for infection;

(3) Providing testing to appropriate risk groups for HCV infection (anti-HCV) and chronic hepatitis B virus (HBV) infection (hepatitis B surface antigen (HBsAg), when appropriate;

(4) Providing hepatitis B vaccine to persons in appropriate risk groups (*e.g.*, >1 sex partner in prior 6 months, history of other sexually transmitted diseases (STDs), men who have sex with men (MSM), incarcerated persons, injecting drug users);

(5) Providing hepatitis A vaccine to persons in appropriate risk groups (*e.g*, MSM, illegal drug users);

(6) Providing primary prevention services for anti-HCV positive and HBsAg-positive persons, including: (a) Counseling on how to prevent transmission to others, (b) Identification of partners (sex and/or needle-sharing) for counseling and referral services, if appropriate, and (c) Providing hepatitis B vaccination for at-risk (sex or needle-sharing) partners and household contacts of HBsAg-positive persons; and

(7) Providing, either directly or by referral, appropriate services to persons found to be HBsAg-positive or anti-HCV positive, including:

(a) Alcohol and drug counseling, and (b) appropriate medical referral and assistance in accessing medical care for evaluation of chronic liver disease and possible treatment.

b. Provide staff training regarding viral hepatitis prevention and control related to implementing this program.

c. Develop and implement a monitoring and evaluation system to assess the feasibility, impact, and effectiveness of integrating viral hepatitis prevention services into existing prevention programs, including measurement of the cost of services and the impact of integration on existing disease prevention services.

d. Conduct appropriate data analysis and interpretation.

e. Attend and participate in an annual meeting of project managers, to plan and present program activities and evaluate activities.

*2. CDC Activities*

a. Provide technical support for and training in the design, implementation, and evaluation of program activities, if requested.

b. Assist in data management, analysis, presentation, and publication of project findings.

c. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

**E. Application Content**

*Letter of Intent (LOI)*

In order to assist CDC in planning and executing the evaluation of applications submitted under this announcement, all parties intending to submit an application are requested to inform CDC of their intention to do so at least thirty (30) days prior to the application due date. Notification should include: (1) Name and address of institution, and (2) name, address, and telephone number of contact person. Notification should be provided by facsimile, postal mail, or E-mail, to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement".

*Applications*

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages (excluding appendices), printed on one side, with one inch margins, unreduced (12-point) font, unbound, and unstapled. A complete index to the application and its appendices should be provided, and a one-page executive summary included.

**F. Submission and Deadline**

*Letter of Intent (LOI)*

One original and two copies of the Letter of Intent (LOI) must be submitted on or before June 15, 2000. Submit the letter of intent to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Application*

Applications should include an original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. Submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement on or before July 14, 2000.

*Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received prior to submission to the review panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Applications:* Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

*1. Background and Need (10 Points)*

a. Extent to which the applicant demonstrates a clear understanding of the subject area and of the purpose and objectives of this cooperative agreement (5 points).

b. Extent to which the applicant demonstrates need based on disease burden of viral hepatitis (*i.e.*, prevalence, incidence data) among high risk populations, as well as prevalence of risk factors for viral hepatitis among populations accessible to the applicant programs and services (5 points).

*2. Capacity (40 Points)*

Extent to which the applicant provides evidence of ability to provide all recommended and appropriate viral hepatitis prevention and control activities and services annually to 1000

to 3000 individuals with identifiable risk factors for viral hepatitis. This should include:

a. Description of adequate resources, including personnel and facilities (both technical and administrative), either direct or through collaboration, for conducting the project (10 points);

b. Description of population served by existing program(s) and access to additional populations with identifiable risk factors for viral hepatitis (MSM, injection drug users (IDUs), sex partners of IDUs, heterosexuals at high risk) that may accept viral hepatitis prevention and control activities and services provided through an integrated program (10 points);

c. Extent to which applicant documents experience of proposed personnel, either direct or collaborating, in providing viral hepatitis prevention and control activities and services (*e.g.*, training, testing, counseling, vaccination, clinical services) (10 points);

d. Evidence of existing quality assurance mechanisms to insure appropriate counseling and other services as recommended for the proposed setting, as provided by published CDC guidelines in various settings (*e.g.* STD, HIV, Drug Treatment) and the extent the applicant demonstrates how the planned integration activities may improve existing prevention services. (10 points).

*3. Objectives and Technical Approach (50 Points)*

a. Extent to which the applicant describes objectives of the proposed project which are (1) consistent with the purpose and goals of this cooperative agreement program, (2) measurable and time-phased, and (3) consistent with published CDC guidelines on prevention and control of hepatitis C (MMWR 1998;47 [No. RR–19], hepatitis B (MMWR 1991;40 [No. RR–13] and hepatitis A (MMWR 1999;48 [No. RR–12]. (15 points)

b. Extent and quality of operational plan proposed for implementing the program, including maximizing the use of existing resources and staff to integrate viral hepatitis prevention services, which clearly and appropriately addresses all "Recipient Activities" in the application. (15 points)

c. Extent to which the applicant clearly identifies specific assigned responsibilities of all key professional personnel. (5 points)

d. Extent to which the applicant prioritizes resources for evaluation and determination of effectiveness of integrating services through a detailed and adequate plan for evaluating progress toward achieving program process and outcome objectives. This should include methods and instruments for evaluating progress in planning, implementation, and effectiveness of interventions through measurement of outcomes related to viral hepatitis and to impact of integrating these services on other prevention services offered (*e.g.*, HIV counseling and testing) (10 points).

e. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed program. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) The proposed justification when representation is limited or absent; (3) A statement as to whether the plans for recruitment and outreach for participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

*4. Budget (Not Scored)*

The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable.

a. Submit line-item descriptive justification for personnel, travel, supplies, laboratory testing, and other services related to the project;

b. For contracts, include the name of the person or firm to receive the contract, the method of selection, the period of performance, and a description of the contracted service requested, itemized budget with narrative justification and method of accountability.

c. Funding levels for years two and three should be estimated.

*5. Human Subjects (Not Scored)*

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Progress reports (semiannual);
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

For descriptions of the following Other Requirements, see Attachment I in the application kit.

AR–1–Human Subjects Requirements

AR–2–Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–7–Executive Order 12372 Review

AR–9–Paperwork Reduction Act Requirements

AR–10–Smoke-Free Workplace Requirements

AR–11–Healthy People 2010

AR–12–Lobbying Restrictions

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301(a), and 317(k)(1) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 241(a), and 247b(k)(1) and 247(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements".

To obtain additional information, contact: Gladys Gissentanna, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number (770) 488–2753, Facsimile number (770) 488–2777, E-mail address gcg4@cdc.gov.

For program technical assistance, contact: Dr. Joanna Buffington, Centers for Disease Control and Prevention, National Center for Infectious Diseases, Division of Rickettsial Diseases, Hepatitis Branch, 1600 Clifton Road, NE, M/S G–37, Atlanta, GA 30333, Telephone: (404) 371–5460, E-mail address: eem1@cdc.gov.

Dated: May 10, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–12240 Filed 5–15–00; 8:45 am]

BILLING CODE 4163–18–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Submission for OMB Review; Comment Request**

*Title:* Head Start Training and Technical Assistance Assessment.

*OMB No.:* New Collection.

*Description:* This data will be used to assess the Head Start Training and Technical Assistance (T/TA) delivery system. Data collected will provide information on the quality of services that Head Start Quality Improvement Centers (QICs) provide to Head Start grantees. Respondents will include QIC staff, collaborative partners of QIC organizations, and Head Start grantees. Specifically, site visit interviews will be conducted with QIC Directors and QIC Area Specialists, while telephone interviews will be conducted with QIC Directors, Grantee Directors, and Partner Agencies.

Training and technical assistance are critical in supporting the continuous improvement efforts of Head Start grantee and delegate agencies serving children birth to five and their families. The reports of the Advisory Committee on Head Start Quality and Expansion in December 1993 and the Advisory Committee on Services for Families with Infants and Toddlers reaffirmed the importance of T/TA to support program quality. The Head Start Act of 1994 (P.L. 103–252) also emphasized the importance of T/TA and stated that T/TA activities must ensure that needs of local Head Start agencies relating to improving program quality and expansion are addressed to the maximum extent feasible.

The assessment is designed to gather information for program management and planning purposes about the kind and quality of services provided by each QIC. Information collected will be used by the Bureau to: (1) identify the quality of approaches undertaken in each phase of the strategic planning cycle; (2) identify any patterns or changes over time in the delivery of T/TA; and (3) determine the feasibility of future initiatives and funding decisions. The data collected will provide a means for the Head Start Bureau to carry out the Federal role outlined in the Cooperative Agreement establishing the QICs. These data also may be used, in part, to fulfill the Department's requirement to report to Congress on the Head Start program under the Government Performance and Results Act (GPRA).

*Respondents:*

Head Start Quality Improvement Centers (QIC), Head Start Grantees, Head StartPartner Agencies.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| QIC Director Site Visit Interview | 28 | 30 | .1 | 84 |
| QIC Area Specialists Site Visit Interview | 116 | 19 | .16 | 353 |
| QIC Director Telephone Interview | 28 | 8 | .19 | 42 |
| HS Partner Agency Telephone Interview | 112 | 11 | .09 | 112 |
| Grantee Director Telephone Interview | 256 | 18 | .11 | 512 |
| Estimated Total Annual Burden Hours: | | | | 1,103 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: May 9, 2000.

**Bob Sargis,**

*Reports Clearance Officer.*

[FR Doc. 00–12250 Filed 5–15–00; 8:45 am]

BILLING CODE 4184–01–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

**[Docket No. 00N–1268]**

**Agency Information Collection Activities; Proposed Collection; Comment Request; Food Additives and Food Additive Petitions**

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to the approval and labeling of food additives.

**DATES:** Submit written comments on the collection of information by July 17, 2000.

**ADDRESSES:** Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests

or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

**Food Additives and Food Additive Petitions—21 CFR 171.1 and Parts 172, 173, 175 through 178, and 180—(OMB Control Number 0910–0016)—Extension**

Section 409(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(a)) provides that any particular use or intended use of a food additive shall be deemed to be unsafe, unless the additive and its use or intended use are in conformity with a regulation issued under Section 409 of the act that describes the condition(s) under which the additive may be safely used, or unless the additive and its use or intended use conform to the terms of an exemption for investigational use, or unless a food contact notification submitted under paragraph (h) is effective. Food additive petitions are submitted by individuals or companies to obtain approval of a new food additive or to amend the conditions of use permitted under an existing food additive regulation. Section 171.1 (21 CFR 171.1) specifies the information that a petitioner must submit in order to establish that the proposed use of a food additive is safe and to secure the publication of a food additive regulation describing the conditions under which the additive may be safely used. Parts 172, 173, 175 through 178, and 180 (21 CFR parts 172, 173, 175 through 178, and 180) contain labeling requirements for certain food additives to ensure their safe use.

FDA scientific personnel review food additive petitions to ensure the safety of the intended use of the food additive in or on food, or of a food additive that may be present in food as a result of its use in articles that contact food. FDA requires food additive petitions to contain the information specified in § 171.1 in order to determine whether a petitioned use for a food additive is safe, as required by the act. This regulation (§ 171.1) implements section 409(b)(2) of the act.

Respondents are businesses engaged in the manufacture or sale of food, food ingredients, or substances used in materials that come into contact with food.

FDA estimates the burden of this collection of information as follows:

TABLE1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

| 21 CFR Section/Part | No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|---|
| 171.1 | 13 | 1 | 13 | 5,332 | 69,316 |
| Part 172 | 13 | 1 | 13 | 0 | 0 |
| Part 173 | 13 | 1 | 13 | 0 | 0 |
| Parts 175 through 178 | 13 | 1 | 13 | 0 | 0 |
| Part 180 | 13 | 1 | 13 | 0 | 0 |
| Total | | | | | 69,316 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This estimate is based on the number of new food additive petitions received in fiscal year 1999 and the total hours expended by petitioners to prepare the petitions. A reduction was estimated based on expected eligibility of some substances previously submitted as food additive petitions for submission as food contact notices under new section 409(h) of the the act. The burden varies with the complexity of the petition submitted, because food additive petitions involve the analysis of scientific data and information, as well as the work of assembling the petition itself. Because labeling requirements under parts 172, 173, 175 through 178, and 180 for particular food additives involve information required as part of the food petition safety review process under § 171.1, the estimate for the number of respondents is the same and the burden hours for labeling are included in the estimate for § 171.1.

Dated: May 9, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–12181 Filed 5–15–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 99N–5325]**

### Agency Information Collection Activities; Announcement of OMB Approval; Irradiation in the Production, Processing, and Handling of Food

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Irradiation in the Production, Processing, and Handling of Food" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 22, 2000 (65 FR 15343), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and

a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0186. The approval expires on April 30, 2003. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 9, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–12179 Filed 5–15–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Science Advisory Board to the National Center for Toxicological Research Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

*Name of Committee:* Science Advisory Board (the Board) to the National Center for Toxicological Research (NCTR).

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on June 5, 2000, 1 p.m. to 4:30 p.m., and June 6, 2000, 8:30 a.m. to 1 p.m.

*Location:* NCTR, Bldg. #12, Conference Center, Jefferson, AR.

*Contact Person:* Ronald F. Coene, NCTR (HFT–10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6696, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12559. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The Board will be presented with draft reports on evaluations of NCTR's research programs in Endocrine Disrupter Knowledge Base, and Microbiology, for their review, discussion, and approval. The draft reports are the products of two site visit teams who conducted on site reviews over the last year. The staff from these programs will provide a preliminary response to the issues raised and recommendations made. Three progress reports will be presented to the Board on the recommendations it made at its last meeting, as a result of earlier site visits, on NCTR's programs in BioChem Toxicology, Genetic Toxicology and Molecular Epidemiology. The NCTR Acting Director will also provide a Center update and a discussion of future research directions.

*Procedure:* On June 5, 2000, from 1 p.m. to 4:30 p.m., and June 6, 2000, from 8:30 a.m. to 12 noon, the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 23, 2000. Oral presentations from the public will be scheduled between approximately 11 a.m. and 12 noon on June 6, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 23, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

*Closed Committee Deliberations:* On June 6, 2000, from 12 noon to 1 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). This portion of the meeting will be closed to permit discussion of information concerning individuals associated with the research programs at NCTR.

The Commissioner of Food and Drugs approves the scheduling of meetings at locations outside the Washington, DC area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 5, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–12180 Filed 5–15–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Fiscal Year (FY) 2000 Funding Opportunities

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice of Funding Availability.

**SUMMARY:** The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 3 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Program Announcement, including Part I, Programmatic Guidance for Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need, and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing an application.

| Activity | Application deadline | Est. funds | FY 2000 | Est. No. of awards |
|---|---|---|---|---|
| Cooperative Agreement for a National Center for Mentally Ill and Substance Abusing Youth and Adults Involved with the Justice System. | July 21, 2000 | Up to $1,200,000 | 1 | Up to 3 years. |

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA will publish additional notices of available funding opportunities for FY 2000 in subsequent issues of the **Federal Register**.

**GENERAL INSTRUCTIONS:** Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

**APPLICATION SUBMISSION:** Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, 5600 Fishers Lane, Room 17–89, Rockville, MD 20857.

Applications sent to an address other than the address specified above will be returned to the applicant without review.

**APPLICATION DEADLINES:** The deadlines for receipt of applications are listed in the table above. Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the deadline date will be returned to the applicant without review.

**FOR FURTHER INFORMATION CONTACT:** Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 3).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 3).

**PROGRAMMATIC INFORMATION:**

**1. Program Background and Objectives**

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

**2. Criteria for Review and Funding**

*2.1 General Review Criteria*

Competing applications requesting funding under the specific project activity in Section 3 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

*2.2 Award Criteria for Scored Applications*

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

**3. Special FY 2000 SAMHSA Activities**

Cooperative Agreements for a National Center for Mentally Ill and Substance Abusing Youth and Adults Involved with the Justice System(Short Title: Co-Occurring and Justice Center), number TI 00–007).

- Application Deadline: July 21, 2000.
- Purpose: The Center for Substance Abuse Treatment (CSAT) and the Center for Mental Health Services (CMHS), Substance Abuse and Mental Health Services Administration (SAMHSA), announce the availability of funds for a cooperative agreement for a Co-Occurring and Justice Center. This program will support knowledge application and systems change initiatives toward the implementation of effective integrated treatment interventions for youth with serious emotional disorders and substance abuse and adults diagnosed with mental illness and substance abuse disorders involved with the justice system. This cooperative agreement is a collaboration between several Federal agencies: the two Centers within SAMHSA: CSAT and CMHS; and components of the Department of Justice: the National Institute of Corrections, the Office of Justice Programs, and the Office of Juvenile Justice and Delinquency Prevention.

This program solicits applications for a cooperative agreement that will develop and implement a comprehensive program of knowledge application and technical assistance strategies in promoting organizational and systems change. The purpose of this program is to provide, at both the community and national levels, information and technical assistance that enable professionals and organizations to improve service delivery within systems, and to effect system change where needed. This program does not provide direct services to clients.

- Eligible Applicants: Applications may be submitted by public and private domestic nonprofit and for-profit entities such as professional associations, governmental units, universities, colleges, community-based organizations, and hospitals.
- Amount: It is estimated that up to $1.2 million will be available to support one award under this announcement in fiscal year 2000.

• Period of Support: Support should be requested for a period of up to three years. Annual awards will be made subject to continued availability of funds and progress achieved.

• *Catalog of Federal Domestic Assistance Number:* 93.230.

• Program Contact: For questions concerning program issues, contact: Bruce Fry, Project Officer, Division of Practice and Systems Development, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–0128.

For questions regarding grants management issues, contact: Christine Chen, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–8926.

• Application kits are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

**4. Public Health System Reporting Requirements**

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

**5. PHS Non-Use of Tobacco Policy Statement**

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

**6. Executive Order 12372**

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: April 24, 2000.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 00–12261 Filed 5–15–00; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4453–FA–02]**

### Announcement of Funding Awards for FY 1999 Public and Indian Housing Economic Development and Supportive Services Carryover

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Announcement for funding awards.

**SUMMARY:** In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding awards for Fiscal Year (FY) 1999 to housing agencies (HAs), Tribes and Tribally Designated Housing Entities (TDHEs) under the Economic Development and Supportive Services (EDSS) Carryover Program. The purpose of this Notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to enable these HAs, Tribes/TDHEs to establish and implement programs that increase resident self-sufficiency, and support continued independent living for elderly or disabled residents.

**FOR FURTHER INFORMATION CONTACT:** Michael Diggs, Director, Grants Management Center, Office of Public and Indian Housing, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, DC 20024, telephone (202) 358–0221. For the hearing or speech impaired, these numbers may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1 (800) 877–8339. (Other than the "800" TTY number, these telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The EDSS Carryover Program is designed to provide HAs, Tribes, or TDHEs with a range of resources that broaden the number of opportunities for families to overcome barriers to economic self-sufficiency, particularly those affected by welfare reform. EDSS funding also provides resources that address the needs of elderly or disabled persons so that they can continue independent living without institutionalization.

The 1999 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on March 10, 1999 (64 FR 12028). Applications were scored and selected for funding based on the selection criteria in that Notice.

A total of $8,051,660.00 was awarded to 49 EDSS Carryover grantees, who

submitted comprehensive implementation plans, to enable them to increase resident self-sufficiency and support continued independent living for elderly or disabled residents.

Approximately $23.5 million in funding was available for eligible HAs, Tribes and TDHES. This amount is comprised of $6,727,034 from the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1997 (Pub. L. 104–204, 110 Stat. 2874, approved September 26, 1996), and $16,772,966 from the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriation Act, 1998 (Pub. L. 105–65, 111 Stat. 1344, approved October 27, 1997). HUD set aside $1.4 million to fund applications from Tribes/TDHEs; the remaining funds were available to fund eligible applications from HAs.

The Catalog of Federal Domestic Assistance number for the EDSS program is 14.863.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 35445), the Department is publishing the names, addresses, and amounts of those awards as show in Appendix A.

Dated: May 10, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

APPENDIX A—PUBLIC AND INDIAN HOUSING ECONOMIC DEVELOPMENT AND SUPPORTIVE SERVICES CARRYOVER FUNDING AWARDS FOR FY 1999

| Applicant name | Applicant address | City | State | Zip Code | Funded |
|---|---|---|---|---|---|
| Huntsville Housing Authority | P.O. Box 486 | Huntsville | Alabama | 35804– | $500,000 |
| Evergreen Housing Authority | P.O. Box 187, 130 Rabb Dr | Evergreen | Alabama | 36401– | 22,500 |
| Tuscaloosa Housing Authority | P.O. Box 2281 | Tuscaloosa | Alabama | 35403– | 307,250 |
| Tingit-Haida Regional Housing Authority. | P.O. Box 32237 | Juneau | Alaska | 99803–223 | 150,000 |
| Tucson Housing Authority | P.O. Box 27210 | Tucson | Arizona | 85726– | 154,000 |
| Gila River Housing Authority | P.O. Box 528 | Sacaton | Arizona | 85247– | 263,750 |
| San Bernardino Housing Authority | 1053 North "D" Street | San Bernardino | California | 92410– | 432,750 |
| Ventura Housing Authority | 1400 West Hillcrest Dr | Newbury Park | California | 91320– | 47,912 |
| West Palm Beach Housing Authority | 3801 Georgia Avenue | West Palm Beach | Florida | 33405– | 150,000 |
| Clearwater Housing Authority | 210 S. Ewing Avenue | Clearwater | Florida | 33756– | 150,000 |
| Orlando Housing Authority | 300 Reeves Court | Orlando | Florida | 32801– | 401,750 |
| Lawrenceville Housing Authority | 502 Glenn Edge Drive | Lawrenceville | Georgia | 30045– | 32,500 |
| Dublin Housing Authority | 500 West Mary Street | Dublin | Georgia | 31040– | 136,750 |
| Milledgeville Housing Authority | 400 North Glenn Street | Milledgeville | Georgia | 31061– | 80,750 |
| Guam Housing & Urban Renewal | 117 Bien Venida Avenue | Sinajana | Guam | 96926– | 150,000 |
| Bloomington Housing Authority | 104 East Wood Street | Bloomington | Illinois | 61701– | 92,000 |
| New Albany Housing Authority | P.O. Box 11 | New Albany | Indiana | 47150– | 272,000 |
| Housing Authority of Hopkinsville | P.O. Box 437 | Hopkinsville | Kentucky | 42241–043 | 41,250 |
| Housing Authority of Glasgow | P.O. Box 1745 | Glasgow | Kentucky | 42142–174 | 91,750 |
| Housing Authority of Hickman | 50 Holly Court | Hickman | Kentucky | 42050– | 9,500 |
| Housing Authority of Pikeville | 327 Hellier Street | Pikeville | Kentucky | 41501– | 59,740 |
| Housing Authority of Cattlettsburg | 210 24th Street | Cattlettsburg | Kentucky | 41129– | 24,250 |
| Housing Authority of Fort Fairfield | P.O. Box 230, 255 Maine St | Fort Fairfield | Maine | 04742– | 492,700 |
| Allegany County Housing Authority | 701 Furnace St | Cumberland | Maryland | 21502– | 7,500 |
| Flint Housing Authority | 132 Franklin Blvd | Flint | Michigan | 48341– | 220,250 |
| MRHA V | 110 Broad St | Newton | Mississippi | 39345–041 | 68,000 |
| Pyramid Lake Paiute Tribe | P.O. Box 213 | Nixon | Nevada | 89424–021 | 43,346 |
| Atlantic City Housing Authority * | 227 N. Vermont Ave. 17th | Atlantic City | New Jersey | 08401– | 200,000 |
| Atlantic City Housing Authority | 227 N. Vermont Ave. 17th | Atlantic City | New Jersey | 08401– | 407,000 |
| Camden Housing Authority | 1300 Admiral Wilson | Camden | New Jersey | 18109– | 500,000 |
| Union City Housing Authority | 3911 Kennedy Blvd | Union City | New Jersey | 07087– | 114,000 |
| Secaucus Housing Authority | 700 County Avenue | Secaucus | New Jersey | 07094– | 100,000 |
| Rochester Housing Authority | 140 West Avenue | Rochester | New York | 14611–274 | 350,487 |
| Binghamton Housing Authority | 35 Exchange Street | Binghamton | New York | 13902– | 150,000 |
| Hickory Housing Authority | P.O. Brawer 2927 | Hickory | North Carolina | 28603– | 77,250 |
| Housing Authority of Raleigh | P.O. Box 28007 | Raleigh | North Carolina | 27611– | 397,250 |
| Housing Authority of Salisbury | 200 South Boundary Street | Salisbury | North Carolina | 28145– | 139,500 |
| Haliwa-Saponi Tribe | P.O. Box 2343 | Fayetteville | North Carolina | 28302– | 134,112 |
| Housing Authority of Clackamas County. | P.O. 1510 | Oregon City | Oregon | 97045– | 58,671 |
| North Bend City Housing Authority | 1700 Monroe Street | North Bend | Oregon | 97459– | 12,500 |
| Columbia Housing Authority (Elderly) | 1917 Harden Street | Columbia | South Carolina | 29204– | 144,842 |
| Columbia Housing Authority (Family) | 1917 Harden Street | Columbia | South Carolina | 57262– | 50,000 |
| Sisseton-Wahpeton | P.O. Box 687 | Sisseton | South Dakota | 57262– | 150,000 |
| Oak Ridge Housing Authority | 10 Van Hicks Lane | Oak Ridge | Tennessee | 37830– | 29,000 |
| Galveston Housing Authority | 4700 Broadway | Galveston | Texas | 77551– | 353,250 |
| Danville RHA | 651 Cardinal Place | Danville | Virginia | 24541– | 150,000 |
| KITSAP Co Consolidated Housing Authority. | 9265 Bayshore Drive, NW | Silverdale | Washington | 98383– | 34,000 |
| Cheyenne Housing Authority | 3304 Sheridan Street | Cheyenne | Wyoming | 82009– | 36,850 |

[FR Doc. 00–12298 Filed 5–15–00; 8:45 am]
BILLING CODE 4210–33–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (Bufo houstonensis) During Construction of One Single Family Residence on 0.5 Acres of the 1.02-Acre Lot 4, Section 3, in the Circle D Country Acres Subdivision, Bastrop County, Texas

**SUMMARY:** Elliot and Rebecca Manferd (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–025655–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of a single family residence on 0.5 acres of the 1.02-acre Lot 4, Section 3, in the Circle D Country Acres Subdivision in Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application and EA/HCP should be received on or before June 15, 2000.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Englehard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas, at the above address. Please refer to permit number TE–025655–0 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Tannika Englehard at the above Austin Ecological Services Field Office.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

#### Applicant

Elliot and Rebecca Manferd plan to construct a single family residence on 0.5 acres of the 1.02-acre Lot 4, Section 3, in the Circle D Country Acres Subdivision in Bastrop County, Texas. This action will eliminate less than 1 acre of habitat and result in indirect impacts within the lot. The applicants propose to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

**Frank S. Shoemaker, Jr.,**
*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 00–12242 Filed 5–15–00; 8:45 am]
BILLING CODE 4510–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (Bufo houstonensis) During Construction of One Single Family Residence on 0.5 Acres of the 2.0-Acre Lot 102, Section 1, in the Circle D Country Acres Subdivision, Bastrop County, Texas

**SUMMARY:** Brandon and Letty Pettit (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–025656–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of a single family residence on 0.5 acres of the 2.0-acre Lot 102, Section 1, in the Circle D Country Acres Subdivision in Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application and EA/HCP should be received on or before June 15, 2000.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Englehard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas, at the above address. Please refer to permit number TE–025656–0 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Tannika Englehard at the above Austin Ecological Services Field Office.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

#### Applicant

Brandon and Letty Pettit plan to construct a single family residence on 0.5 acres of the 2.0-acre Lot 102, Section 1, in the Circle D Country Acres Subdivision in Bastrop County, Texas. This action will eliminate less than 1 acre of habitat and result in indirect

impacts within the lot. The applicants propose to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

**Frank S. Shoemaker, Jr.,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 00–12244 Filed 5–15–00; 8:45 am]

BILLING CODE 4510–55–P

## DEPARTMENT OF INTERIOR

### Fish and Wildlife Service

### Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of Application for an Incidental Take Permit for the Construction and Operation of a Mixed-Use Development on a Portion of the 201.7-Acre Crossings Property, Travis County, Texas

**SUMMARY:** Kenneth Beck (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–024619–0. The requested permit, which is for a period of 30 years, would authorize the incidental take of the endangered golden-cheeked warbler (*Dendroica chrysoparia*). The proposed take would occur as a result of the construction and operation of a conference and retreat complex on a portion of the 201.7-acre Crossings property, Travis County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environment Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application and the EA/HCP should be received on or before June 15, 2000.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Scott Rowin, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service Office, Austin, Texas at the above address. Please refer to permit number TE–024619–0 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Scott Rowin, at the above U.S. Fish and Wildlife Service Office, Austin, TX.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the "taking" of endangered species such as the golden-cheeked warbler. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

### Applicant

Kenneth Beck plans to construct and operate a private conference and retreat complex on 26.05 acres of the 201.7-acre Crossings property, Travis County, Texas. This action will eliminate approximately 26.05 acres of habitat and indirectly impact 36.65 additional acres of golden-cheeked warbler habitat. The Applicant proposes to compensate for this incidental take of golden-cheeked warbler habitat by donating through fee simple or conservation easement to Travis County the remaining 175.7 acres of the Crossings property, which includes approximately 128 acres of golden-cheeked warbler habitat. This land is adjacent to existing Balconies Canyonlands Preserve land and will be managed by Travis County as such.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible, no mitigation or preservation of habitat in perpetuity would take place, and alteration of the project design would increase the level of impacts to the warbler.

**Frank S. Shoemaker, Jr.,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 00–12245 Filed 5–15–00; 8:45 am]

BILLING CODE 4510–55–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of an Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(B) Permit for the Incidental Take of the Houston Toad (Bufo houstonensis) During Construction of One Single Family Residence on 0.5 Acres of Each of 3 Lots in the Circle D Country Acres Subdivision, Bastrop County, Texas

**SUMMARY:** Cornerstone Construction Company (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–26687–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on 0.5 acres of each of three lots (Lot 20, Section 5; Lot 49, Section 7; Lot 38, Section 8 in the Circle D Country Acres Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application and the EA/HCP should be received on or before June 15, 2000.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Engelhard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas, at the above

address. Please refer to permit number TE–26687–0. when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Tannika Engelhard at the above Austin Ecological Services Field Office.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

### Applicant

Cornerstone Construction Company plans to construct a single family residence on 0.5 acres of each of three lots (Lot 20, Section 5; Lot 49, Section 7; Lot 38, Section 8) in the Circle D Country Acres Subdivision, Bastrop County, Texas. This action will eliminate 1.5 acres or less (0.5 acres or less per homesite) and result in indirect impacts within the lot. The applicant proposes to compensate for this incidental take of the Houston toad by providing $4,500.00 ($1,500 per homesite )to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

**Frank S. Shoemaker, Jr.,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 00–12246 Filed 5–15–00; 8:45 am]

BILLING CODE 4510–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of an Environmental Assessment/Habitat Conservation Plan for Issuance of an Endangered Species Act Section 10(a)(1)(A) Permit for the Incidental Take Permit of the Houston Toad (Bufo houstonensis) During Construction of One Single Family Residence on Lots 247–248, Unit 2, Block 3 in the Tahitian Village Subdivision in Bastrop County, Texas

**SUMMARY:** Richard Hyatt (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicant has been assigned permit number TE–025653–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston Toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of one single family residence on Lots 247–248, Unit 2, Block 3, of the Tahitian Village Subdivision, Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application and the EA/HCP should be received on or before June 15, 2000.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by written or telephone request to Tannika Engelhard, U.S. Fish and Wildlife Service, Ecological Services Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0057). Documents will be available for public inspection by written request or by appointment only during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service Office, Austin, Texas. Data or comments concerning the application and EA/HCP should be submitted in writing to the Field Supervisor, U.S. Fish and Wildlife Service Office, Austin, Texas at the above address. Please refer to permit number TE–025653–0 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Tannika Engelhard at the above U.S. Fish and Wildlife Service Office, Austin, TX.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

### Applicant

Richard Hyatt plans to construct one single family residence on 0.5 acres of the 0.5-acres Lots 247–248, Unit 2, Block 3, Tahitian Village Subdivision, Bastrop County, Texas. This action will eliminate less than 0.5 acres of habitat and result in an unquantifiable amount of indirect impact. The applicants propose to compensate for this incidental take of the Houston Toad by providing $1,000.00 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

Alternatives to this action were rejected because not developing the subject property with federally listed species present was not economically feasible and alteration of the project design would not alter the level of impacts.

**Frank S. Shoemaker, Jr.,**

*Acting Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 00–12247 Filed 5–15–00; 8:45 am]

BILLING CODE 4510–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice announces that the Information Collection Request for the Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts requires renewal. Before submitting a request for extension of this collection to the Office of Management and Budget (OMB), the Department of the Interior is soliciting public comments on this information collection as required by the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

**DATES:** Written comments must be submitted on or before July 17, 2000.

**ADDRESSES:** Direct all written comments to Chester J. Eagleman, Sr., Bureau of Indian Affairs, 1849 C Street, NW, MS–4660–MIB, Washington, D.C. 20240.

All written comments will be available for public inspection in Room 4651 of the Main Interior Building, 1849 C Street, NW, Washington, DC from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Chester J. Eagleman, 202–208–2721 (This is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**Abstract**

A state court that appoints counsel for an indigent Indian parent or Indian custodian in an involuntary Indian child custody proceeding in a State court may send written notice to the Bureau of Indian Affairs (Bureau) when appointment of counsel is not authorized by State law. The cognizant Bureau Regional Director uses this information to decide whether to certify that the client in the notice is eligible to have his counsel compensated by the Bureau in accordance with the Indian Child Welfare Act, Public Law 95–608.

**II. Method of Collection**

The following information is collected in a notice from State courts in order to certify payment of appointed counsel in involuntary Indian child custody proceedings. The information collected and the reasons for the collection are listed below:

| Information collected | Reason for collection |
|---|---|
| (a) Name, address and telephone number of attorney appointed | (a) To identify attorney appointed as counsel and method of contact. |
| (b) Name and address of client for whom counsel is appointed | (b) To identify indigent party in an Indian child custody proceeding for whom counsel is appointed. |
| (c) Applicant's relationship to child | (c) To determine if the person is eligible for payment of attorney fees as specified in Public Law 95–608. |
| (d) Name of Indian child's tribe | (d) To determine if the child is a member of a federally recognized tribe and is covered by the Indian Child Welfare Act (ICWA). |
| (e) Copy of petition or complaint | (e) To determine if this custody proceeding is covered by the ICWA. |
| (f) Certification by the court that State law does not provide for appointment of counsel in such proceedings. | (f) To determine if other State laws provide for such appointment of counsel and to prevent duplication of effort. |
| (g) Certification by the court that the Indian client is indigent | (g) To determine if the client has resources to pay for counsel. |
| (h) The amount of payments due counsel utilizing the same procedures used to determine expenses in juvenile delinquency proceedings. | (h) To determine if the amount of payment due appointed counsel is based on State court standards in juvenile delinquency proceedings. |
| (i) Approved vouchers with court certification that the amount requested is reasonable considering the work and the criteria used for determining fees and expenses for juvenile delinquency proceedings. | (i) To determine the amount of payment considered reasonable in accordance with State standards for a particular case. |

*Proposed use of the information:* The information collected will be used by the respective Bureau Regional Director to determine:

(a) If an individual Indian involved in an Indian child custody proceeding is eligible for payment of appointed counsel's attorney fees;

(b) If any State statutes provide for coverage of attorney fees under these circumstances;

(c) The State standards for payment of attorney fees in juvenile delinquency proceedings; and,

(d) The name of the attorney, and his actual voucher certified by the court for the work completed on a preapproved case. This information is required for payment of appointed counsel as authorized by Public Law 95–608.

**III. Data**

(1) *Title of the Collection of Information:* Department of the Interior, Bureau of Indian Affairs, Payment for Appointed Counsel in Involuntary Indian Child Custody Proceedings in State Courts.

*OMB Number:* 1076–0111.

*Expiration Date:* August 31, 2000.

*Type of Review:* Extension of a currently approved collection.

*Affected Entities:* State courts and individual Indians eligible for payment of attorney fees pursuant to 25 CFR 23.13.

*Estimated number of respondents:* 4.

*Proposed frequency of response:* 1.

(2) *Estimate of total annual reporting and record keeping burden that will result from the collection of this information:* 12 hours.

Reporting: 2 hours per response × 4 respondents = 8 hours.

Recordkeeping: 1 hour per response × 4 respondents = 4 hours.

Estimated Total Annual Burden Hours: 12 hours.

*Estimated Annual Costs:* $540.00 (12 hours × $45.00 per hour).

(3) Description of the need for the information and proposed use of the information: Submission of this information is required in order to receive payment for appointed counsel under 25 CFR 23.13. The information is collected to determine applicant eligibility for services.

**IV. Request for Comments**

The Department of the Interior invites comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agencies' estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

The comments, names and addresses of commenters will be available for public view during regular business hours. If you wish us to withhold this information, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget control number.

Dated: May 5, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–12192 Filed 5–15–00; 8:45 am]

BILLING CODE 4310–02–P

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**Notice of Near-Reservation Designations for California Tribes**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. Pursuant to 25 CFR 20.1(r), notice is hereby given of the near-reservation designations for certain Indian tribal entities within the States of California and Oregon recognized as eligible to receive services from the United States Bureau of Indian Affairs (BIA).

**DATES:** These near-reservation designations become effective on June 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Larry Blair, Chief, Human Services Branch, Bureau of Indian Affairs, 1849 C Street, NW., MS–4660–MIB, Washington, D.C. 20240, Telephone No. (202) 208–2479.

**SUPPLEMENTARY INFORMATION:** In accordance with 25 CFR part 20—Financial Assistance and Social Services Program, the Assistant Secretary—Indian Affairs designates the following locales as "near-reservation" areas appropriate for the extension of BIA financial assistance and/or social services. 25 CFR part 20—Financial Assistance and Social Services Program regulations have full force and effect when extending BIA financial assistance and/or social services into these designated "near-reservation" locations. In the absence of officially designated "near-reservation" areas, such services are provided only to Indian people who live within reservation boundaries. The tribes identified below are now authorized to extend financial assistance and social services to their eligible tribal members (and their family members who are Indian) who reside outside the boundaries of a federally recognized tribe's reservation, but within the areas designated below.

The locales listed below are those designated for this purpose.

Tribe: Big Sandy Rancheria

"Near-reservation" locations: The counties of Madera, Fresno and Kings in the State of California.

Tribe: Big Valley Rancheria

"Near-reservation" locations: The counties of Lake and Sonoma in the State of California.

Tribe: Bishop Reservation

"Near-reservation" locations: The counties of Mono and Inyo in the State of California.

Tribe: Cedarville Rancheria

"Near-reservation" location: The county of Modoc in the State of California.

Tribe: Cortina Rancheria

"Near-reservation" locations: The counties of Glenn, Colusa, Yolo and Sacramento in the State of California.

Tribe: Dry Creek Rancheria

"Near-reservation" location: The county of Sonoma in the State of California.

Tribe: Fort Bidwell Reservation

"Near-reservation" locations: The county of Modoc in the State of California. The counties of Lake and Klamath in the State of Oregon.

Tribe: Greenville Rancheria

"Near-reservation" locations: The counties of Plumas, Lassen, Shasta, Tehama, Butte, Yuba and Sutter in the State of California.

Tribe: Hopland Reservation

"Near-reservation" locations: The counties of Mendocino and Sonoma in the State of California.

Tribe: Karuk Tribe of California

"Near-reservation" locations: The counties of Siskiyou, northeastern Humboldt from State Highway 96 milepost HUM 28.61 north to the Siskiyou County Line in the State of California.

Tribe: Laytonville Rancheria

"Near-reservation" locations: The counties of Mendocino, Lake and Humboldt in the State of California.

Tribe: Mechoopda Indian Tribe of the Chico Rancheria

"Near-reservation" location: The county of Butte in the State of California.

Tribe: Mooretown Rancheria

"Near-reservation" location: The county of Butte in the State of California.

Tribe: North Fork Rancheria

"Near-reservation" locations: The counties of Madera, Mariposa and Fresno in the State of California.

Tribe: Picayune Rancheria of the Chukchansi Indians

"Near-reservation" locations: The counties of Fresno, Madera and Mariposa in the State of California.

Tribe: Pinoleville Reservation

"Near-reservation" locations: The counties of Mendocino, Sonoma, Lake and Napa in the State of California.

Tribe: Redding Rancheria

"Near-reservation" locations: The county of Trinity and the western two-thirds of Shasta in the State of California.

Tribe: Redwood Valley Rancheria

"Near-reservation" locations: The counties of Mendocino and Sonoma in the State of California.

Tribe: Coast Indian Community of the Resighini Rancheria

"Near-reservation" location: The county of Del Norte in the State of California.

Tribe: Bear River Band of Rohnerville Rancheria

"Near-reservation" locations: The counties of Humboldt and Del Norte in the State of California.

Tribe: Round Valley Reservation

"Near-reservation" locations: The counties of Trinity, Mendocino, Lake and Sonoma in the State of California.

Tribe: Scotts Valley Rancheria

"Near-reservation" locations: The counties of Mendocino, Lake, Sonoma and Contra Costa in the State of California.

Tribe: Sherwood Valley Rancheria

"Near-reservation" locations: The counties of Mendocino, Lake and Sonoma in the State of California.

Tribe: Shingle Springs Rancheria

"Near-reservation" locations: The counties of El Dorado, Sacramento, Placer and Yolo in the State of California.

Tribe: Smith River Rancheria

"Near-reservation" locations: The counties of Del Norte and Humboldt in the State of California. The counties of Curry, Josephine and Coos in the State of Oregon.

Tribe: Susanville Indian Rancheria

"Near-reservation" location: The county of Lassen in the State of California.

Tribe: Tule River Reservation

"Near-reservation" location: The county of Tulare in the State of California.

Tribe: Tuolumne Rancheria

"Near-reservation" location: The county of Tuolumne in the State of California.

Tribe: Yurok Tribe

"Near-reservation" locations: The counties of Humboldt and Del Norte in the State of California.

Dated: May 5, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–12193 Filed 5–15–00; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approved Tribal-State Compacts.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority on May 5, 2000, has approved the following Tribal-State Compacts between the State of California and California Indian Tribes:

Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation,
Alturas Indian Rancheria,
Berry Creek Rancheria of Maidu Indians of California,
Blue Lake Rancheria,
Buena Vista Rancheria of Me-Wuk Indians of California,
Bear River Band of Rohnerville Rancheria,
Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation,
Big Sandy Rancheria of Mono Indians of California,
Big Valley Band of Pomo Indians of the Big Valley Rancheria,
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony,
Cabazon Band of Cahuilla Mission Indians of the Cabazon Reservation,
Cahto Indian Tribe of Laytonville Rancheria,
Cahuilla Band of Mission Indians of the Cahuilla Reservation,
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation,
Chemehuevi Indian Tribe of the Chemehuevi Reservation,
Chicken Ranch Rancheria of the Me-Wuk Indians of California,
Resighini Rancheria (formerly known as the Coast Indian Community of
Yurok Indians of the Resighini Rancheria),
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria,
Cuyapaipe Community of Diegueno Mission Indians of the Cuyapaipe Reservation,
Dry Creek Rancheria of Pomo Indians of California,
Elk Valley Rancheria,
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria,
Hoopa Valley Tribe,
Hopland Band of Pomo Indians of the Hopland Rancheria,
Jackson Rancheria of Me-Wuk Indians of California,
Jamul Indian Village of California,
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation,
Manchester Band of Pomo Indians of the Manchester-Point Area Rancheria,
Manzanita Band of the Diegueno Mission Indians of the Manzanita Reservation,
Middletown Rancheria of Pomo Indians of California,
Mooretown Rancheria of Maidu Indians of California,
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation,
Pala Band of the Luiseno Mission Indians of the Pala Reservation,
Paskenta Band of Nomlaki Indians of California,
Pechenga Band of Luiseno Mission Indians of the Pechenga Reservation,
Picayune Rancheria of Chukchansi Indians of California,
Pit River Tribe, California,
Quechan Tribe of the Fort Yuma Indian Reservation,
Redding Rancheria,
Rincon Band of Luiseno Mission Indians of the Rincon Reservation,
Robinson Rancheria of Pomo Indians of California,
Rumsey Indian Rancheria of Wintun Indians of California,
San Manual Band of Serrano Mission Indians of the San Manual Reservation,
San Pasqual Band of Diegueno Mission Indians of California,
Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation,
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation,
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract),
Sherwood Valley Rancheria of Pomo Indians of California,
Smith River Rancheria,
Soboba Band of Luiseno Mission Indians of the Soboba Reservation,
Susanville Indian Rancheria,
Sycuan Band of Diegueno Mission Indians of California,
Table Mountain Rancheria of California,
Cher-Ae Heights Indian Community of the Trinidad Rancheria,
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California,
Twenty-Nine Palms Band of Luiseno Mission Indians of California,
Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation,
Tule River Indian Tribe of the Tule River Reservation,
United Auburn Indian Community of the Auburn Rancheria of California.

**DATES:** This action is effective May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 11, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–12322 Filed 5–15–00; 8:45 am]

BILLING CODE 4310–02–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of approval of amendment to Tribal-State Compact.

**SUMMARY:** Pursuant to Section 11 of the Indian Gaming Regulatory Act (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved an Amendment, executed on May 2, 2000, to the Gaming Compact between the Coushatta Tribe of Louisiana and the State of Louisiana.

**DATES:** This action is effective May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: May 4, 2000.

**Levin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–12321 Filed 5–15–00; 8:45 am]

BILLING CODE 4310–02–P

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## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–030–5700–10; Closure Notice No. NV–030–00–002]**

### Temporary Closure of Public Lands; Washoe County, Nevada

**AGENCY:** Bureau of Land Management, Nevada, Interior.

**SUMMARY:** The Carson City Field Office Manager announces the temporary closure of selected public lands under his administration. This action is being taken to provide for public safety during the 2000 Pylon Racing Seminar and 2000 Reno National Championship Air RAces.

**EFFECTIVE DATES:** June 22 through June 25, 2000, and September 10 through September 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Richard Conrad, Assistant Manager, Nonrenewable Resources, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (775) 885–6100.

**SUPPLEMENTARY INFORMATION:** This closure applies to all the public, on foot or in vehicles. The public lands affected by this closure are described as follows:

**Mt. Diablo Meridian**

T. 21 N., R. 19 E.,
Sec. 8, N½¼, SE¼NE¼ and E½SE¼;
Sec. 16, N½ and SW¼.

Aggregating approximately 680 acres.

The above restrictions do not apply to emergency or law enforcement personnel or event officials. The authority for this closure is 43 CFR 8364.1. Persons who violate this closure order are subject to arrest and, upon conviction, may be fined not more than $1,000 and/or imprisoned for not more than 12 months.

A map of the closed area is posted in the Carson City District Office of the Bureau of Land Management.

Dated: April 19, 2000.

**Richard Conrad,**

*Assistant Manager, Nonrenewable Resources, Carson City Field Office.*

[FR Doc. 00–12198 Filed 5–15–00; 8:45 am]

**BILLING CODE 4310–HC–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[NV–050–1020–001]**

### Mojave-Southern Great Basin Resource Advisory Council; Notice of Meeting Locations and Times

May 5, 2000.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Resource Advisory Council meeting locations and times.

**DATES:** May 18 and 19, 2000.

**TIMES:** 8 a.m. to 4:30 p.m. each day.

**ADDRESSES:** Beatty, Nevada Community Center, Knight Ave. and Watson St.

**FOR FURTHER INFORMATION CONTACT:** Phillip L. Guerrero, Las Vegas Field Office, Public Affairs Officer, telephone: (702) 647–5046.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council (RAC) will be held as indicated above. The agenda includes a public comment period, and discussion of public land issues.

The Resource Advisory Council develops recommendations for BLM regarding the preparation, amendment, and implementation of land use plans for the public lands and resources within the jurisdiction of the council. For the Mojave-Great Basin RAC this jurisdiction is Clark, Esmeralda, Lincoln and Nye counties in Nevada. Except for the purposes of long-range planning and the establishment of resource management priorities, the RAC shall not provide advice on the allocation and expenditure of Federal funds, or on personnel issues.

The RAC may develop recommendation for implementation of ecosystem management concepts, principles and programs, and assist the BLM to establish landscape goals and objectives.

All meetings are open to the public. The public may present written comments to the council. Public comments should be limited to issues for which the RAC may make recommendations within its area of jurisdiction. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need further information about the meetings, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Phillip L. Guerrero at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NY 89108, telephone, (702) 647–5000.

Dated: May 5, 2000.

**Phillip L. Guerrero,**

*Public Affairs Officer.*

[FR Doc. 00–12197 Filed 5–15–00; 8:45 am]

**BILLING CODE 4310–HC–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CO–170–1430–ES: COC 62308]**

### Notice of Realty Action; Recreation and Public Purposes Act Classification and Application; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following lands in LaPlata County, Colorado have been examined and found suitable for classification for lease and conveyance under the provisions of the Recreation and Public Purposes Act (R&PP), as amended (43 U.S.C. 869 *et seq.*). The purpose of the classification and application for R&PP lease and potential conveyance is to allow construction and operation of a fire station by the Animas Fire Protection District, Durango, Colorado.

**New Mexico Principal Meridian**

T. 34 N., R. 10 W.,
Sec. 7: Lot 5: SW¼SE¼, more particularly described as:
Beginning at a point on the east line of said Lot 5 from which the center 1/16 monument bears N 0°11′00″ W a distance of 816.78 feet;
Thence S 0°11′00″ E along the east line of said Lot 5 a distance of 399.83 feet to the east 1/16 monument and the Ute Line;
Thence S 89°18′08″ W along said Ute Line a distance of 18.18 feet to BLM MP–49;
Thence S 89°50′02″ W along said Ute Line a distance of 577.50 feet;
Thence N 0°11′00″ W a distance of 400.00 feet;
Thence N 89°50′02″ E a distance of 595.68 feet to the point of beginning.
Less a 60 feet wide easement for County Road 141, less an access and utility easement, 60 feet wide, reserved to the United States, containing 4.33 acres more or less.

Lease and conveyance is consistent with current BLM land use planning and would be in the public interest. The lease/patent, if issued, would be subject to valid existing rights and the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. A right-of-way for ditches and canals constructed by the authority of the United States.

3. All minerals should be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease and conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit written comments regarding the classification and proposed lease and conveyance of the lands to the Field Manager, San Juan Field Office, 15 Burnett Court, Durango, Colorado, 81301.

**Classification Comments**

Interested parties may submit comments involving the suitability of the land for a fire station. Comments on the classification are restricted to whether the land is suited for the proposal, whether the use will maximize the further use or uses of the land, whether the use is consistent with local planning and zoning, or if the use if consistent with State and Federal programs.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Clyde Johnson, San Juan Field Office, phone (970) 385–1352. Documents pertinent to this proposal may be reviewed at the San Juan Field Office, 15 Burnett Court, Durango, Colorado.

**Kent Hoffman,**

*Associate Field Manager.*

[FR Doc. 00–12196 Filed 5–15–00; 8:45 am]

BILLING CODE 4310–JB–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Availability of Maurice National Scenic and Recreational River Draft Comprehensive Management Plan and Environmental Impact Statement

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of availability of Maurice National Scenic and Recreational River Draft Comprehensive Management Plan and Environmental Impact Statement.

**SUMMARY:** The National Park Service, in cooperation with its partners, has prepared and released a draft Comprehensive Management Plan and Environmental Impact Statement for the management, protection, and use of the Maurice National Scenic and Recreational River in New Jersey. The public is invited to review and comment on the draft plan. Comments will be accepted for 45 days from the date of this notice. Please be advised that, if requested, the National Park Service is required to supply the names and addresses of individuals providing comments. For more information about this document: contact Mary Vavra, National Park Service Program Manager by letter or telephone.

**FOR FURTHER INFORMATION CONTACT:** Mary Vavra, Program Manager, National Park Service, Philadelphia Support Office, 200 Chestnut Street, 3rd Floor, Philadelphia, PA 19106, (215) 597–9175.

Dated: May 1, 2000.

**Len Emerson,**

*Assistant Regional Director, Human Resources, Acting Regional Director; Northeast Region, National Park Service.*

[FR Doc. 00–12315 Filed 3–15–00; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Advisory Commission for the San Francisco Maritime National Historical Park Public Meeting

Department of Interior agenda for the June 21, 2000 public meeting of the Advisory Commission for the San Francisco Maritime National Historical Park, Golden Gate Club in the Presidio 10:00 AM–12:15 PM.

10 AM Welcome—Neil Chaitin, Chairman,
Opening Remarks—Neil Chaitin, Chairman,
Approval of Minutes from Previous Meeting
10:15 AM Report of the Superintendent— William Thomas, Superintendent
10:30 AM New Collection Storage Space Initiatives—Tom Mulhern, Collections Manager
10:45 AM Staff Reports
11:45 AM Public Comments and Questions
12 PM Election of Officers
12:15 PM Agenda Items/Date for Next Meeting.

**William G. Thomas,**

*Superintendent.*

[FR Doc. 00–12316 Filed 5–15–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Meeting: Committee for the Preservation of the White House

In compliance with the Federal Advisory Committee Act, notice is hereby given of a meeting of the Committee for the Preservation of the White House. The meeting will be held at the Old Executive Office Building, Washington, DC at 1:30 p.m., Monday, May 22, 2000. It is expected that the agenda will include policies, goals and long range plans. The meeting will be open, but subject to appointment and security clearance requirements. Clearance information must be received by May 18, 2000.

Inquiries may be made by calling the committee for the Preservation of the White House between 9 a.m. and 4 p.m., weekdays at (202) 619–6344. Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House, 1100 Ohio Drive, SW., Washington, DC 20242.

Dated: May 11, 2000.

**James I. McDaniel,**

*Executive Secretary, Committee for the Preservation of the White House.*

[FR Doc. 00–12339 Filed 5–15–00; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Bostwick Division, Frenchman-Cambridge Division, and Kanaska Division, Almena Unit Pick-Sloan Missouri Basin Program

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of availability of draft repayment and long-term water service contracts.

**SUMMARY:** Pursuant to the Act of July 2, 1956 (Administration of Contracts under Section 9, Reclamation Project Act of 1939), contractors of federally developed irrigation water hold a first right to renew long-term water service contracts and/or to convert water service contracts to repayment

contracts. Reclamation has entered into negotiations for contract renewal with irrigation districts in the Republican River basin in Nebraska and Kansas. A draft long-term water service contract has been developed for the Frenchman Valley Irrigation District. Draft repayment contracts have been developed for Bostwick Irrigation District in Nebraska, Kansas Bostwick Irrigation District No. 2, Frenchman-Cambridge Irrigation District, and Almena Irrigation District. The draft contracts are now available for public review and comment.

**DATES:** A 60-day public review and comment period commences with the publication of this notice. Written comments on the draft contracts should be submitted by July 17, 2000.

**ADDRESSES:** Written comments from interested parties should be submitted to Kent Heidt, GP–2100, Bureau of Reclamation, Great Plains Regional Office, Post Office Box 36900, Billings, MT 59107–6900 for consideration in the contract renewal process.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

You may request copies of the draft contracts from Jim Beadnell, GP–2100, Bureau of Reclamation, Great Plains Region, P.O. Box 36900, Billings, MT 59107–6900; telephone (406) 247–7731. See Supplementary Information section for additional addresses where the draft contracts are available for public inspection and review.

**FOR FURTHER INFORMATION CONTACT:** Kent Heidt, GP–2100, Bureau of Reclamation, Great Plains Region, P.O. Box 36900, Billings, MT 59107–6900; telephone (406) 247–7730.

**SUPPLEMENTARY INFORMATION:**

**Draft Contract Public Inspection and Review Locations**

*Offices*

- Bureau of Reclamation, Nebraska-Kansas Area Office, 203 West Second Street, Grand Island NE 68801—telephone (308) 389–4622
- Bureau of Reclamation, Great Plains Regional Office, 316 North 26th Street, Billings MT 59101—telephone (406) 247–7731
- Bostwick Irrigation District in Nebraska, Red Cloud NE
- Kansas Bostwick Irrigation District No. 2, Courtland KS
- Frenchman-Cambridge Irrigation District, Cambridge NE
- Frenchman Valley and H&RW Irrigation District, Culbertson NE
- Almena Irrigation District, Almena KS

*Libraries*

- Alma Public Library, West Second Street, Alma NE 68920–3378
- Blue Hill Public Library, 317 West Gage Street, Blue Hill NE 68930–2068
- Butler Memorial Library, 621 Pennsylvania, Cambridge NE 69022
- Franklin Public Library, 1502 P Street, Franklin NE 68939–1200
- Hastings Public Library, 517 West Fourth Street, Hastings NE 68901–7560
- Imperial Public Library, 703 Broadway Street, Imperial NE 69033–4017
- Kearney Public Library, 2020 First Avenue, Kearney NE 68847–5306
- McCook Library, 802 Norris Avenue, McCook NE 69001–3143
- Nelson Public Library, 10 West Third Street, Nelson NE 68961–1246
- Red Cloud Public Library, 537 North Webster Street, Red Cloud NE 68970–2421
- Carnegie Public Library, 449 North Kansas Street, Superior NE 68978–1852
- Trenton Village Library, 406 East First Street, Trenton NE 69044
- Wauneta City Library, 319 North Tecumseh, Wauneta NE 69045–2011
- Almena Public Library, 415 Main, Almena KS 67622
- Belleville Public Library, 1327 Nineteenth Street, Belleville KS 66935
- Courtland City Library, 403 Main Street, Courtland KS 66939
- Northwest Kansas Library System, 2 Washington Square, Norton KS 67654

Dated: May 2, 2000.

**Maryanne C. Bach,**

*Regional Director.*

[FR Doc. 00–11520 Filed 5–15–00; 8:45 am]

BILLING CODE 4310–94–P

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; extension of a currently approved collection: Collection of Laboratory Analysis Data on Drug Samples Tested by Non-Federal (State and Local Government) Crime Laboratories.

This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 17, 2000. Written comments and suggestions are requested from the public and affected agencies concerning the proposed collection of information.

Your comments should address one or more of the following four points:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

3. Enhance the quality, utility, and clarity of the information to be collected; and

4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, if applicable, or additional information, please contact Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307–7183.

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Collection of Laboratory Analysis Data on Drug Samples Tested by Non-Federal (State and Local Government) Crime Laboratories.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*
*Form No.:* None.
*Applicable component of the Department sponsoring the collection:* Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.
(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Regulatory or Compliance.
*Other:* Research.
*Abstract:* Information is needed from state and local laboratories to provide DEA with additional analyzed drug information for the National Forensic Laboratory Information System.
(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 100 respondents; 1200 responses per year × .25 hours per response = 300 hrs.
(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 annual burden hours; 100 respondents × 3 hours per respondent per year.
*If additional information is required contact:* Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1221, National Place Building, 1331 Pennsylvania Ave., NW., Washington, DC 20530.

Dated: May 9, 2000.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 00–12251 Filed 5–15–00; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; extension of a currently approved collection; Annual Reporting Requirement for Manufacturers of Listed Chemicals.

This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 17, 2000. Written comments and suggestions are requested from the public and affected agencies concerning the proposed collection of information.

Your comments should address one or more of the following four points:
1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, if applicable, or additional information, please contact Frank L. Sapienza, Chief, Drug & Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7183.

Overview of this information:
(1) *Type of information collection:* Extension of a currently approved collection.
(2) *The title of the form/collection:* Annual Reporting Requirement for Manufacturers of Listed Chemicals.
(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*
*Form No.:* None.
*Applicable component of the Department sponsoring the collection:* Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.
(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit.
*Other:* None.
*Abstract:* This information collection permits the Drug Enforcement Administration to monitor the volume and availability of domestically manufactured listed chemicals. These listed chemicals may be subject to diversion for the illicit production of controlled substances. This information collection is authorized by the Domestic Chemical Diversion Control Act of 1993 (P.L. 103–200; 21 U.S.C. 830(b)). This information is collected from businesses and other for-profit entities which manufacture listed chemicals domestically.
(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 100 respondents; 100 responses per year × 4 hours per response = 400 hrs.
(6) *An estimate of the total public burden (in hours) associated with the collection:* 400 annual burden hours; 100 respondents × 4 hours per respondent per year.
*If additional information is required contact:* Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1221, National Place Building, 1331 Pennsylvania Ave., NW, Washington, DC 20530.

Dated: May 9, 2000.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 00–12252 Filed 5–15–00; 8:45 am]

**BILLING CODE 4410–09–M**

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Agency Information Collection Activities: Proposed Collection; Comment Request

**ACTION:** Notice of information collection under review; Extension of a currently approved collection; Report of Mail Order Transactions.

This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 17, 2000. Written comments and suggestions are requested from the public and affected agencies concerning the proposed collection of information.

Your comments should address one or more of the following four points:
1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who

are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

If you have comments, suggestions, or need a copy of the proposed information collection instrument with instructions, if applicable, or additional information, please contact Marc B. Golubock, Chief, Chemical Control Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, (202) 307–7204.

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved collection

(2) *The title of form/collection:* Report of Mail Order Transactions.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:*

*Form No.:* None.

*Applicable components of the Department sponsoring the collection:* Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit.

*Abstract:* The Comprehensive Methamphetamine Control Act of 1996 (Public Law 104–237) (MCA) amended the Controlled Substances Act to require that each regulated person who engages in a transaction with a non-regulated person which involves ephedrine, pseudoephedrine, or phenylpropanolamine (including drug products containing these chemicals) and uses or attempts to use the Postal Service or any private or commercial carrier shall, on a monthly basis, submit a report of each such transaction conducted during the previous month of the Attorney General.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 100 respondents; 1200 responses per year × 1 hour per response = 1200 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1200 annual burden hours; 100 respondents × 12 hours per respondent per year.

*If additional information is required contact:* Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1221, National Place Building, 1331 Pennsylvania Ave., NW, Washington, DC 20530.

Dated: May 9, 2000.

**Robert B. Briggs,**

*Department Clearance Officer, United States Department of Justice.*

[FR Doc. 00–12253 Filed 5–15–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Labor Research Advisory Council; Notice of Meetings and Agenda

The Spring meetings of committees of the Labor Research Advisory Council will be held on June 12, 13, and 14. All of the meetings will be held in the Conference Center of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

**Monday, June 12, 2000**

*9:30 a.m.—Committee on Compensation and Working Conditions—Meeting Room 9, PSB*

1. Stock Options Incidence Test—preliminary results
2. Technology interactions with BLS: suggestions, recommendations
3. Other business
4. Topics for next meeting

*1:30 p.m.—Committee on Productivity, Technology and Growth—Meeting Room 9, PSB*

1. E-commerce and productivity measurement
2. Effects of recent methodological changes on productivity data
3. Overview of current Office of Employment Projections projects
4. Research on the employment impacts of e-commerce
5. Topics for next meeting

*Committee on Foreign Labor Statistics*

1. International comparisons of Gross Domestic Product (GDP) and productivity
2. Topics for next meeting

**Tuesday, June 13, 2000**

*9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 7, PSB*

1. The household survey-establishment survey employment gap
2. An examination of flexible (alternative) staffing arrangements
3. The Current Employment Statistics probability redesign (initial implementation scheduled for June 2000)
4. Current and planned local area unemployment statistics tabulations on the BLS web site
5. Topics for next meeting

**Wednesday, June 14, 2000**

*9:30 a.m.—Committee on Prices and Living Conditions—Meeting Room 9, PSB*

1. Update on program developments
   a. Consumer Price Index
   b. International Prices
   c. Producer Price Indexes
2. Topics for next meeting

*1:30 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 9, PSB*

1. Review of the industry summary data from the 1998 Survey of Occupational Injuries and Illnesses
2. Review of the worker demographics and case circumstances data from the 1998 Survey of Occupational Injuries and Illness
3. Discussion of the analysis of detailed worker and case information from the Survey of Occupational Injuries and Illnesses
4. Impact of revision of the Occupational Safety and Health Administration work injury and illness record keeping requirements on the BLS occupational safety and health statistics program
5. Discussion of study of toxicology data for workers fatally injured during 1998
6. Topics for next meeting

The meetings are open to the public. Persons planning to attend these meetings as observers are requested to contact Wilhelmina Abner on (Area Code 202) 691–5970.

Signed at Washington, DC this 9th day of May 2000.

**Katherine G. Abraham,**

*Commissioner.*

[FR Doc. 00–12286 Filed 5–15–00; 8:45 am]

BILLING CODE 4510–24–M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

### National Advisory Committee on Occupational Safety and Health; Notice of Meeting

Notice is hereby given of the date and location of the next meeting of the National Advisory Committee on Occupational Safety and Health (NACOSH), established under section 7(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the Act. NACOSH will hold a meeting on June 6, 2000, in Room N 5437 A–D of the Department of Labor Building

located at 200 Constitution Avenue NW., Washington, DC. The meeting is open to the public and will begin at 9:00 a.m. lasting until approximately 4 p.m. However, if work is completed earlier on the draft report the committee will be working on, the meeting may end sooner.

During this November 1998 meeting, NACOSH decided that one of its areas of activity over the next two years would be to study OSHA's standards development process. The Committee has now completed its study after holding panel discussions during the last four meetings involving internal staff and members of the public who were involved with the OSHA standards setting process. This included people who had been involved with the development of the methylene chloride standard; those who had served on two types of advisory committees; representatives of consensus standards setting organizations and other professional associations; and representatives of other Federal regulatory agencies. During its June 6 meeting, the committee will be going over the final draft report and recommendations in full detail. It is difficult to estimate how long this will take.

The only other agenda item will be an overview of current activities of the Occupational Safety and Health Administration (OSHA) and the National Institute for Occupational Safety and Health (NIOSH) which will be the first agenda item.

Written data, views or comments for consideration by the committee may be submitted, preferably with 20 copies, to Joanne Goodell at the address provided below. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Because of the need to cover a wide variety of subjects in a short period of time, there is usually insufficient time on the agenda for members of the public to address the committee orally. However, any such requests will be considered by the Chair who will determine whether or not time permits. Any request to make an oral presentation should state the amount of time desired, the capacity in which the person would appear, and a brief outline of the content of the presentation. Individuals with disabilities who need special accommodations should contact Veneta Chatmon (phone: 202–693–1912; FAX: 202–693–1634) one week before the meeting.

An official record of the meeting will be available for public inspection in the OSHA Technical Data Center (TDC) located in Room N2625 of the Department of Labor Building (202–693–2350). For additional information contact: Joanne Goodell, Occupational Safety and Health Administration (OSHA); Room N–3641, 200 Constitution Avenue NW., Washington, DC 20210 (phone: 202–693–2400; FAX: 202–693–1641; e-mail: joanne.goodell@osha.gov; or at www.osha.gov).

Signed at Washington, DC, this 10th day of May 2000.

**Charles N. Jeffress,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 00–12289 Filed 5–15–00; 8:45 am]

BILLING CODE 4510–26–M

## DEPARTMENT OF LABOR

### Office of the Assistant Secretary for Veterans' Employment and Training

### Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Notice of Open Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Tuesday, June 6, 2000, at the U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2508, Washington, DC 20210, from 9 a.m. to 4 p.m.

Written comments are welcome and may be submitted by addressing them to: Ms. Polin Cohanne, Designated Federal Official, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–1313, Washington, DC 20210.

The agenda is open.

The meeting will be open to the public.

Persons with disabilities needing special accommodations should contact Ms. Polin Cohanne at telephone number 202–693–4741 no later than May 24, 2000.

Signed at Washington, DC this May 10, 2000.

**Espiridion (Al) Borrego,**

*Assistant Secretary of Labor for Veterans' Employment and Training.*

[FR Doc. 00–12288 Filed 5–15–00; 8:45 am]

BILLING CODE 4510–79–M

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Institute of Museum and Library Services, Office of Museum Services; Proposed Collection, Comment Request; Technology and Digitization Surveys

**AGENCY:** Institute of Museum and Library Services

**ACTION:** Notice.

**SUMMARY:** The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3508(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed Technology and Digitization Surveys.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before July 17, 2000.

- IMLS is particularly interested in comments that help the agency to:
- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

**ADDRESSES:** Send comments to: Dr. Rebecca Danvers, Director of the Office of Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Dr. Danvers can be reached on Telephone: 202–606–2478 Fax: 202–606–1077 or at rdanvers@imls.fed.us.

**SUPPLEMENTARY INFORMATION:** The Institute of Museum and Library Services is an independent Federal grant-making agency. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs. The Museum and Library Services Act of 1996 includes a strong emphasis on supporting library services through the use of technology and on assisting museums in their educational role and in modernizing their methods and facilities. This solicitation is to develop plans to collect information to assist IMLS in understanding the current status and capacity of museums and libraries to participate in national networks to deliver educational resources to students, life-long learners, underserved populations, and the general public.

**II. Current Actions**

The core duties of the Institute of Museum and Library Services, as stated in its strategic plan, are to promote excellence in library services and to promote access to museum and library services for a diverse public. This goal will be accomplished in part by promoting access to learning and information resources held by museums and libraries through electronic linkages. IMLS is seeking assistance in developing specific plans to collect information from the US library and museum communities to assess the digitization readiness and capacity of libraries and the technological readiness and capacity of museums. These information collections will be developed based on the varying characteristics of each community. A great deal of information has been collected on the internet access of libraries for internal and public access. The information IMLS collects should build on but not duplicate existing or ongoing collections.

*Agency:* Institute of Museum and Library Services.

*Title:* Museum Technology Survey.

*OMB Number:* Agency Number: 3137.

*Frequency:* Once.

*Affected Public:* museums and museum organizations.

*Number of Respondents:* 650.

*Estimated Time Per Respondent:* ½ hour.

*Total Burden Hours:* 325.

*Total Annualized Capital/Startup Costs:* 0.

*Total Annual Costs:* 0.

*Agency:* Institute of Museum and Library Services.

*Title:* Library Digitization Survey.

*OMB Number:* Agency Number: 3137.

*Frequency:* Once.

*Affected Public:* Libraries and library organizations.

*Number of Respondents:* 1000.

*Estimated Time Per Respondent:* 1 hour.

*Total Burden Hours:* 1000.

*Total Annualized Capital/Startup Costs:* 0.

**FOR FURTHER INFORMATION CONTACT:** Mamie Bittner, Director of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–4648.

Dated: May 8, 2000.

**Mamie Bittner,**

*Director of Public and Legislative Affairs.*

[FR Doc. 00–12282 Filed 5–15–00; 8:45 am]

BILLING CODE 7036–01–M

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### Submission for OMB Review; Comment Request

**AGENCY:** National Endowment for the Humanities, NFAH.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Humanities (NEH) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval as required by the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13,44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling Susan G. Daisey, Deputy Director, Grants Office, the National Endowment for the Humanities (202–606–8494) or may be requested by e-mail to sdaisey@neh.gov. Comments should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the National Endowment for the Humanities, Office of Management and Budget, Room 10235, Washington, DC 20503 (202–3995–7316), within 30 days from the date of this publication in the **Federal Register**.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) is particularly interested in comments which:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

*Agency:* National Endowment for the Humanities.

*Title of Proposal:* Generic Clearance Authority for the National Endowment for the Humanities.

*OMB Number:* 3136–0134.

*Frequency of Collection:* On occasion.

*Affected Public:* Applicants to NEH grant programs, reviewers of NEH grant applications, and NEH grantees.

*Number of Respondents:* 20,569.

*Estimated Time Per Respondent:* Varied according to type of information collection.

*Estimated Total Burden Hours:* 91,301 hours.

*Total Annualized Capital/Startup Cost:* 0.

*Total Annual Costs (operating/maintaining systems or purchasing services):* 0.

*Description:* This submission requests approval from OMB for a three year extension of NEH's currently approved generic clearance authority for all NEH information collections other than one-time evaluations, questionnaires and surveys. Generic clearance authority would include approval of forms and instructions for application to NEH grant programs, reporting forms for NEH grantees, panelists and reviewers and for program evaluation purposes.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan G. Daisey, Deputy Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW, Room 311, Washington, DC 20506, or by email to: sdaisey@neh.gov. Telephone: 202–606–8494.

**John W. Roberts,**

*Deputy Chairman.*

[FR Doc. 00–12314 Filed 5–15–00; 8:45 am]

BILLING CODE 7536–01–M

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Reliability and Probabilistic Risk Assessment; Revised

The meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment scheduled for May 19, 2000 has been *rescheduled for Wednesday, June 28 and Thursday, June 29, 2000 at 8:30 a.m. until the conclusion of business, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.* On June 28, 2000, the Subcommittee will discuss the proposed final ASME Standard for PRA quality. On June 29, 2000, the Subcommittee will discuss the status of risk-informed revisions to 10 CFR Part 50, including proposed revision to 10 CFR 50.44 concerning combustible gas control systems, issues in the Nuclear Energy Institute letter dated January 19, 2000 (Option 3), and the public comments related to the Advance Notice of Public Rulemaking on 10 CFR 50.69 and Appendix T (Option 2) and associated plans and schedules. All other items pertaining to this meeting remain the same as published in the **Federal Register** on Monday, May 8, 2000 (65 FR 26644).

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael T. Markley, cognizant ACRS staff engineer (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: May 10, 2000.

**Howard J. Larson,**

*Acting Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 00–12301 Filed 5–15–00; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Memorandum of Understanding Between the Federal Bureau of Investigation and the Nuclear Regulatory Commission Regarding Nuclear Threat Incidents Involving NRC Licensed Facilities, Materials, or Activities

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Memorandum of Understanding Between the Federal Bureau of Investigation and the Nuclear Regulatory Commission.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) entered into a Memorandum of Understanding (MOU) with the Federal Bureau of Investigation (FBI) in 1979. The MOU delineated the responsibilities of each agency regarding nuclear threat incidents involving NRC-licensed facilities, materials, or activities. In 1991, the NRC and FBI revised the MOU to reflect new legal authorities and operating experience. In 1999, the agencies reviewed the MOU and determined additional revisions were not required. We are currently publishing the MOU to inform the public of this review and staff conclusion regarding the continuing adequacy of the document. The text of the MOU between the NRC and the FBI follows.

**FOR FURTHER INFORMATION CONTACT:** John Davidson, Office of Nuclear Material Safety and Safeguards, telephone 301–415–8130, e-mail *jjd@nrc.gov.*

Dated at Rockville, Maryland, this 9th day of May 2000.

For the Nuclear Regulatory Commission

**Michael F. Weber,**

*Director, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.*

### Memorandum of Understanding Between the Federal Bureau of Investigation and the Nuclear Regulatory Commission Regarding Nuclear Threat Incidents Involving NRC Licensed Facilities, Materials, or Activities

*I. Purpose*

In recognition of the responsibilities and functions of the Federal Bureau of Investigation (FBI) and the Nuclear Regulatory Commission (NRC) under the Atomic Energy Act of 1954, as amended, this Memorandum of Understanding (MOU) delineates the responsibilities of each agency regarding nuclear threat incidents involving NRC-licensed facilities, materials, or activities. (This agreement does not affect the procedures and responsibilities set forth in the November 23, 1988, Memorandum of Understanding between the NRC and the Department of Justice (DOJ) regarding cooperation concerning NRC enforcement actions, criminal prosecution by DOJ, and the exchange of pertinent information.)

Having closely related statutory responsibilities with regard to nuclear materials, facilities, and activities in the United States, the FBI and NRC must cooperate fully in carrying out their respective responsibilities in the interest of achieving:

1. Effective communication and exchange of relevant information, and
2. A timely, reliable, and effective response to a nuclear threat incident.

*II. Definitions*

For the purpose of this agreement, nuclear threat incidents are defined as threats, or acts of theft or sabotage in the U.S. nuclear industry, including the following:

- Theft or attempted theft of NRC-licensed special nuclear material.
- Sabotage or attempted sabotage of NRC-licensed nuclear facilities or NRC-licensed transportation activities.
- Attacks on NRC-licensed nuclear facilities or activities.
- Credible threats involving NRC licensed facilities, materials, or activities.

*III. Responsibilities*

A. The FBI

The FBI derives the authority to investigate criminal matters related to NRC licensed facilities, materials, or activities from the Atomic Energy Act of 1954, as amended; Title 18, Section 831 "Prohibited transactions involving nuclear materials," and other Federal statutes as may be applicable. The FBI has been designated as the lead agency for coordinating the Federal Response to acts of terrorism within the United States by National Security Decision Directive (NSDD) Number 207 and the National System for Emergency Coordination (NSEC).

It is therefore understood that the FBI shall:

1. Provide to NRC, intelligence information concerning possible criminal acts relative to the security of nuclear facilities, materials, activities.

2. Notify NRC when allegations of a serious nature arise, or derogatory information is developed involving licensee personnel occupying positions considered critical to the safety and security of nuclear facilities or activities.

3. Investigate ongoing nuclear-related threat situations; advise NRC regarding the credibility and danger of such threats.

4. Establish liaison and develop contingency response plans with pertinent local law enforcement agencies to ensure effective and coordinated law enforcement response operations.

5. In accordance with the Omnibus Diplomatic Security and Anti-Terrorism Act of 1986, conduct identification and criminal history records checks on individuals with unescorted access to NCR-licensed nuclear power plants or access to Unclassified Safeguards Information.

6. Establish liaison with pertinent NRC Headquarters staff, NRC regional offices, and licensed facilities to ensure effective information exchange, threat evaluation, and contingency response planning.

In the event of a nuclear threat incident the FBI shall:

7. Coordinate the Federal response to a nuclear threat incident involving NRC-licensed facilities, materials, or activities. The FBI will rely on the NRC on matters concerning public health and safety, as they relate to the nuclear facility, material, or activity.

8. Manage the law enforcement and intelligence aspects of the responded to a nuclear threat incident involving NRC-licensed facilities, materials, or activities.

9. Establish and maintain contacts and coordinate the incident response with other Federal and local law enforcement agencies and military authorities, as appropriate.

10. Ensure that all reasonable measures are provided to ensure the physical safety and security of all NRC personnel and equipment to be used in support of the incident.

11. Promptly provide NRC with all information applicable to an assessment of a perpetrator's operational capability to carry out a threat.

12. At the scene of a nuclear threat incident, provide the necessary support, as may be needed by NRC personnel, in carrying out assigned operations and actions to protect the public from radiological hazards.

13. Request Department of Defense (DOD)/Civil Explosive Ordnance Disposal (EOD) resources, as appropriate.

B. The NRC

NRC shall provide, to the extent compatible with its primary mission to protect the public's health and safety, as required by the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, and the Omnibus Diplomatic Security Act and Anti-Terrorism Act of 1986, scientific and technical support to the FBI upon notification of the existence of a nuclear threat incident.

It is therefore understood that NRC shall:

1. Review and correlate intelligence information on possible criminal acts received from the FBI; evaluate potential adversary capabilities and trends as a basis for rulemaking, evaluations, and systems design.

2. When informed of an FBI investigation involving an NRC-licensed nuclear facility or activity, will promptly provide to the FBI investigating office a list of all positions considered critical to the safety and security of that facility or activity.

3. Establish liaison with FBI Headquarters staff and field office personnel to ensure effective information exchange, threat evaluation, and contingency response planning.

4. Support joint operational readiness planning between licensees and associated local law enforcement agencies for prompt law enforcement response assistance when needed at licensed facilities or activities.

5. Notify the FBI of threats involving NRC-licensed nuclear facilities, materials, or activities; assist the FBI in evaluating the nuclear aspects and the credibility of such threats, as appropriate.

6. Disseminate, with the approval of the FBI, to the affected licensees, alert and warning information received from the FBI about specific nuclear-related threats.

In the event of a nuclear threat incident, NRC shall:

7. Plan for and manage the public health and safety aspects of the response to a nuclear threat incident involving NRC-licensed facilities, materials, or activities.

8. Provide NRC field liaison and technical assistance to the FBI at the scene of an incident.

9. Evaluate the radiological hazards of the particular incident and provide technical assessment of any potential or actual impact upon the public health and safety.

10. Ensure that all reasonable measures are provided for the health and safety of all FBI personnel and equipment involved in the support of the incident.

11. Provide for the health and safety of the public from radiological hazards.

C. Joint

The FBI and NRC shall:

1. Coordinate all proposed press releases related to nuclear threat incidents involving NRC-licensed facilities, materials, or activities.

2. Identify individuals assigned to fulfill the positions and responsibilities outlined in Section III of this agreement.

3. Handle all threat incident information with adequate security and confidentiality commensurate with national security guidelines and the standards for the preservation of criminal evidence.

4. Review and evaluate the events leading to and occurring during a nuclear threat incident for the purpose of improving upon future joint responses.

5. Exercise and test nuclear threat incident management procedures, equipment, and personnel.

*IV. Standard Procedures*

A. Initial Notification

1. Nuclear threat incidents involving NRC-licensed facilities, materials, or activities may be reported to either the FBI, NRC, or others. Upon receipt of a reported threat, the agency informed shall immediately notify the other concerned agencies about the situation and exact information known.

2. The FBI and NRC will notify appropriate individuals and offices of any nuclear emergency in accordance with current procedures and agreements.

B. Points of Contact

1. The FBI Special Agent in Charge of the responding FBI field office will take command of the field operations in a nuclear threat incident involving NRC-licensed facilities, materials, or activities. At the Headquarters level, a Special Agent may be designated to act as a liaison officer with the NRC Executive Team (ET).

2. The NRC Headquarters ET will convene and during the initial stage of the response will direct NRC activities. The Director may transfer authority for managing the NRC emergency response to the Director of Site Operations.

3. The FBI and NRC field representatives will coordinate and cooperate with each other in carrying out their respective responsibilities. The FBI and NRC representatives will report on the situation and make recommendations to their respective agencies regarding the need for additional assistance at the scene.

4. The FBI and NRC will maintain points of contact with the other Federal agencies involved in responding to a nuclear threat incident involving NRC-licensed facilities, materials, or activities.

*V. Threat Assessment*

1. NRC will provide scientific and technical advice for determining the credibility of specific nuclear threats and potential hazards associated with those threats.

2. NRC will endeavor to verify, with the cooperation of the Department of Energy and/or the Department of Defense, whether any source material, special nuclear material, or radioactive by-products, are missing or unaccounted for.

*VI. Funding Responsibilities*

Interested parties will each fund for the cost incurred in providing the necessary assistance required to meet the responsibilities defined in this MOU.

*VII. Terms of Agreement*

1. This Agreement will become effective immediately upon signature by all parties and shall continue in effect unless terminated by any party upon 120 days notice in writing to all other parties.

2. Amendments or modifications to this Agreement may be made upon written notice by all parties to the Agreement.

For the Federal Bureau of Investigation.

Dated: May 29, 1991.

William S. Sessions,

*Director.*

For the Nuclear Regulatory Commission.

Dated: March 13, 1991.

Kenneth M. Carr,

*Chairman.*

[FR Doc. 00–12300 Filed 5–15–00; 8:45 am]

BILLING CODE 7590–01–M

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Lag Service Reports; OMB 3220–005.

Under Section 9 of the Railroad Retirement Act (RRA), railroad employers are required to submit reports of employee service and compensation to the RRB as needed for administering the RRA. To pay benefits due on a deceased employee's earnings records or determine entitlements to, and amount of an annuity applied for, it is necessary at times to obtain from railroad employers current (lag) service

and compensation information not yet reported to the RRB through the annual reporting process. The reporting requirements are specified in 20 CFR 209.4 and 209.5.

The RRB currently utilizes Form G–88A, *Employer's Supplemental Report of Service and Compensation* and Form AA–12, *Notice of Death and Statement of Compensation,* to obtain the required lag service and compensation and related information from railroad employers.

The RRB proposes to obsolete Form G–88a. Form G–88a will be replaced by two forms, Form G–88a.1, Notice of Retirement and Request for Verification of Date Last Worked, and G–88a.2, Notice of Retirement and Request for Service Needed for Eligibility. Form G–88a.1 will be sent by the RRB to railroad employers and used for the specific purpose of verifying information previously provided to the RRB regarding the date last worked by the employee. If the information is correct, the employer need not reply. If the information is incorrect, the employer is asked to provide corrected information. Form G–88a.2 will be used by the RRB to secure lag service and compensation information when it is needed to determine benefit eligibility. Both proposed forms will direct the railroad employers to fax the information directly to the RRB. It is expected that the proposed new forms will be easier for railroad employers to complete and encourage a speedier reply, allowing the RRB to pay applicants in a more timely and accurate manner. A minor editorial change is proposed to Form AA–12.

The completion time for proposed forms G–88a.1 and G–88a.2 is estimated at 5 minutes per response. The estimated completion time for Form AA–12 is estimated at 6½ minutes per response. The RRB estimates that approximately 800 Form AA–12's, 2,300 Form G–88a.1's and 1,200 G–88.2's will be completed annually.

**ADDITIONAL INFORMATION OR COMMENTS:** To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 00–12199 Filed 5–15–00; 8:45 am]

**BILLING CODE 7905–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42770; File No. SR–NYSE–99–31]**

## Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending Exchange Rules 902, 903 and 906

May 10, 2000.

### I. Introduction

On June 30, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rules 902, 903 and 906.

The proposed rule change was published for comment in the **Federal Register** on September 1, 1999. No comments were received on the proposal. This order approves the proposal.

### II. Description of the Proposal

The Exchange proposes to amend NYSE Rules 902, 903 and 906 to permit coupled orders to be submitted after the official closing of the 9:30 a.m. to 4:00 p.m. trading session until 5:00 p.m. (the period after the 4:00 p.m. close until 5:00 p.m. hereafter referred to as "Crossing Session 1") where both sides represent member or member organization interest, in circumstances in which a specialist has included another member's or member organization's interest in offsetting the imbalance when setting a closing price.

In 1991, the Exchange established its "Off-Hours Trading Facility."[3] In connection with its implementation, the Exchange adopted its "900" series of rules to govern trading, order eligibility, order entry and record keeping requirements.[4]

At 4:00 p.m. each day, the Exchange completes its normal procedure for the close of trading of the 9:30 a.m.–4:00 p.m. trading session. After 4:00 p.m., a common message switch broadcast message is published announcing the commencement of Crossing Session 1, which runs until 5:00 p.m.

During Crossing Session 1, the Off-Hours Trading Facility permits members and member organizations to enter orders to be executed at the NYSE closing price, that is, the price established by the last regular way sale in a security at the official closing of the 9:30 a.m. to 4:00 p.m. trading session. Orders may be entered for any Exchange listed issue, other than a security that is subject to a trading halt at the close of the regular trading session (including a Rule 80B trading halt) or is halted after 4:00 p.m.

The Exchange proposes to modify certain rules pertaining to Crossing Session 1 in an effort to reduce volatility and price dislocations at the 4:00 p.m. close by enabling the specialist to reflect legitimate market interest that was willing to participate in the close, but could not enter a timely order.

In circumstances in which a stock has an imbalance of market-on-close or limit-on-close orders, or when the closing price will elect a significant volume of stop orders, there may be little time to attract offsetting orders. A member, member organization or a customer may be willing to offset the imbalance, but be unable to enter an order before 4:00 p.m. The specialist may then have to acquire a substantial position or halt trading.

Under NYSE Rule 902, coupled orders to buy and sell the same amount of the same security may be entered into Crossing Session 1. However, such coupled orders may not be entered if they are both for an account of a member or member organization, or for an account in which an "associated person" of a member or member organization has an interest.

Therefore, while a specialist member organization may enter an order coupled with a contra-side order from a non-member in Crossing Session 1, it may not enter an order coupled with an order for a member's or member organization's account.

The Exchange proposes to amend NYSE Rule 902 to permit coupled orders to be submitted to Crossing Session 1 where both sides represent member or member organization interest, in circumstances in which a specialist has included another member's or member organization's interest in offsetting the imbalance when setting a closing price. Thus, the specialist may increase his or her participation at the close in anticipation of trading with a member or member organization in Crossing Session 1 and the closing price should reflect less of an imbalance.

Under NYSE Rule 903, orders entered in Crossing Session 1, including coupled orders, are executed at the 5:00 p.m. close of the session. Under NYSE

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (Files No. SR–NYSE–90–52 and SR–NYSE–90–53).

[4] *See id.*

Rule 906, if the Exchange determines that material news is disclosed between 4:00 p.m. and 5:00 p.m., such as news about a corporate development, the Exchange will cancel orders received in Crossing Session 1 and will preclude the entry of any subsequent orders. However, in the circumstances outlined above, it is the Exchange's view that a good faith negotiation tied to establishing the closing price should not be affected by a subsequent event which "halts" trading.

Therefore, the Exchange proposes to amend NYSE Rules 903 and 906 to permit trades for the account of a specialist and a member, member organization or a non-member to be executed immediately when entered into Crossing Session 1, not at 5:00 p.m., regardless of whether the Exchange has determined that all other Crossing Session 1 orders be canceled and precluded from entry. In addition, the Exchange proposes to require a specialist to obtain Floor Official approval for the entry of his or her order into Crossing Session 1 if such order is not to be at the risk of the market, *i.e.*, it will be executed immediately and will not be precluded from entry because of a trading "halt." The Exchange believes this requirement will help to insure that orders which are intended to offset the specialist's participation at the close have been reflected when the closing price was established. Other coupled orders would continue to be executed at 5:00 p.m., subject to the stock not being withdrawn from Crossing Session 1. The Exchange believes that retaining this provision for other coupled orders is appropriate for the protection of investors who may not be aware of the corporate development.

Under the proposal, total executed volume for coupled orders which are executed either immediately upon entry or at 5:00 p.m. will be reported to the tape as a single print, and will continue to be reported as "sold."

**Discussion**

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] In particular, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act,[6] which requires that an Exchange promulgate rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange's proposed amendment to NYSE Rule 902 should allow a specialist to increase his or her participation at the close in anticipation of trading with a member or member organization in Crossing Session 1, thereby resulting in a more orderly close during periods of extraordinary volatility.

The Exchange also proposes to amend NYSE Rules 903 and 906 to permit trades for the account of a specialist and a member, member organization or a non-member to be executed immediately when entered into Crossing Session 1, rather than at 5:00 p.m. The amendment will allow such trades to be executed immediately when entered into Crossing Session 1, regardless of whether the Exchange has determined that all other Crossing Session 1 orders in a particular security be canceled and precluded from entry. The proposal also will require a specialist to obtain Floor Official approval for the entry of his or her order into Crossing Session 1 if such order is not to be executed immediately and will not be precluded from entry because of a trading "halt." The Exchange has represented that this amendment is based on the premise that a specialist involved in a good faith renegotiation tied to establishing the closing price should not have his or her trades remain unexecuted if a subsequent event "halts" trading in the security.

The Commission finds that the Exchange's proposed amendments to NYSE Rules 903 and 906 should help to insure that orders which are intended to offset a specialist's participation at the close have been reflected when the closing price was established, resulting in a more orderly close. Such provisions are consistent with Section 6(b)(5),[7] which requires the rules of an Exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission further finds that retaining the provision requiring other coupled orders to continue to be executed at 5:00 p.m., subject to the stock not being withdrawn from Crossing Session 1, as appropriate under Section 6(b)(5) of the Act,[8] which requires an Exchange's rules be designed to protect investors and the public interest. An investor, after having entered an order into Crossing Session 1, may be unaware of a corporate development which could have substantial impact on the price of a security.Retaining the provision which requires other coupled orders to be executed at the close of Crossing Session 1 will help to ensure that investors who are unaware of corporate news will be adequately protected, should the corporate news have an unfavorable impact on the price of the stock.[9]

**IV. Conclusion**

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–NYSE–99–31) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12271 Filed 5–15–00; 8:45 am]

BILLING CODE 8010–01–M

[5] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] *Id.*

[9] The Commission, in granting approval, notes that Floor Officials should carefully review specialist requests to enter these types of trades into Crossing Session 1. In particular, Floor Officials should consider the frequency with which particular specialists request to use this rule, and whether there have been any instances or prior problems associated with a particular specialist's use of this rule. For example, Floor Officials should consider whether there have been occasions in which there were significant discrepancies between the execution price contemplated by a member firm and the price actually received as a result of the Crossing Session 1 transaction.

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42767; File No. SR–PCX–99–07]**

## Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the Pacific Exchange, Inc. Relating to Its Competing Specialist Program

**I. Introduction**

On March 1, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to implement a competing specialist program. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Exchange amended the proposed rule on April 22, 1999.[3]

The Commission published notice of the proposed rule change in the **Federal Register** on April 30, 1999.[4] The Commission received nine comments. The Exchange filed a second amendment on May 8, 2000.[5] For the reasons discussed below, the Commission is approving the proposed rule change as amended.

## II. Description of the Proposal

The Exchange proposes to implement a competing specialist program to allow multiple specialists to make markets in equity securities traded on the Exchange. Currently, two specialists continuously make markets in most equity securities traded on the Exchange. The proposal would allow one or more competing specialists to make markets in a security, in addition to the existing "regular specialists."[6] Like regular specialists, competing specialists in a security will be required to make a two-sided market and will be subject to the rights and responsibilities of regular specialists, subject to certain exceptions discussed below. By allowing additional specialists to make markets in the most actively traded stocks, the Exchange expects that its competing specialist proposal will attract additional order flow to the Exchange. The Exchange also believes that a competing specialist program will result in greater competition, tighter bid-ask spreads, and greater depth and liquidity on the PCX.

### *A. PCX's Current Order Routing Procedures*

Currently, the P/COAST trading system[7] typically sends incoming orders to a particular specialist based on arrangements that the specialist has made with the firm that sent the order to the exchange. If a firm has not designated a particular specialist to receive the order, the Exchange sends the order to one of the two regular specialists on an alternating basis.[8] A specialist may execute market orders it receives against the specialist's own account, unless the Exchange's Consolidated Limit Order Book ("CLOB") contains a limit order that is priced at the National Best Bid or Offer ("NBBO").[9] If the CLOB contains a limit order priced at the NBBO, and a specialist receives a market or marketable limit order that would match against the order that has priority on the CLOB, the specialist typically must execute the incoming order against the CLOB order, unless the specialist retains the order by executing the order against its own account at a price better than the order that has priority on the CLOB.[10] Other than requiring a specialist to give priority to CLOB orders, the existing system permits a specialist to execute its designated order flow at the NBBO or better whether or not the specialist's quoted bid or offer was priced at the NBBO when it received the order.

### *B. Proposed Order Routing Procedures*

Under the Exchange's competing specialist proposal, if one specialist disseminates a bid or offer at the NBBO that has time priority on the Exchange, and another specialist (a "contra specialist") in that security receives a market or marketable limit order that would match against the first specialist's bid or offer, then the specialist with time priority at the NBBO would have the right to execute the incoming market or marketable limit order, unless the specialist that receives the order executes the entire order at a price better than the NBBO. If multiple specialists are quoting at the NBBO, then each of those specialists' quotes must be filled in time priority sequence before a specialist without time priority can execute an order against its own account at the NBBO, unless the specialist who receives the order provides price improvement. As today, a specialist could not execute an order against its own account at the NBBO until eligible orders in the CLOB priced at the NBBO are filled. The priority provisions would apply to trading in all securities that have more than one specialist on the PCX, including all securities in which two regular specialists make a market, whether or not one or more competing specialists also trades the security.

To implement these changes, PCX proposes to modify Rule 7.19(e)(1), which governs priority of bids and offers.[11] The rule currently provides, among other things, that bids and offers that are made first at a particular price are entitled to priority, and that a member may maintain priority by giving the order to a specialist. The existing language reflects a time when floor brokers played a more active role on the Exchange than is currently the case. The proposed rule change would add language stating that specialist bids and offers must always yield to agency orders represented at the same price, unless otherwise excepted by the rules of the "Corporation," meaning PCX Equities, Inc.[12] The Exchange states that the exception refers to odd lot orders, orders that provide for settlement other than in three days (non-regular way) and conditional orders (such as all-or-

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[3] *See* Letter from Michael Pierson, Director, Regulatory Policy, PCX, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation ("Division"), Commission, dated April 22, 1999 ("Amendment No. 1"). Amendment No. 1 made numerous technical and descriptive changes to the filing.

[4] Securities Exchange Act Release No. 41327 (April 22, 1999), 64 FR 23370 (April 30, 1999) ("Notice").

[5] *See* Letter from Michael Pierson, Director, Regulatory Policy, PCX, to Belinda Blaine, Associate Director, Division, Commission, dated May 8, 2000 ("Amendment No. 2"). Amendment No. 2 made technical changes to reflect PCX's recent restructuring of its equity trading system and rules, discussed recent technology upgrades relevant to this filing, and made clarifying changes to certain rules.

[6] Under the proposal, a "regular specialist" is a specialist registered with the PCX in a security, other than a competing specialist in that security. Although PCX rules do not specify a minimum number of regular specialists in a security, as a practical matter there must be at least one regular specialist in a security because regular specialists have certain duties not shared by competing specialists.

[7] P/COAST, the "Pacific Computerized Order Access System," is the Exchange's communication, order routing, and execution system for equity securities. *See* Rule 7.70.

[8] Firms may also send orders to floor brokers for representation on the exchange. Currently, floor brokers are not required to enter orders they receive into the P/COAST system, and they can direct orders they represent to either specialist post handling that security.

[9] The Exchange has proposed changing several rules to reflect its implementation of the CLOB. *See* Securities Exchange Act Release No. 41304 (April 16, 1999), 64 FR 22888 (April 28, 1999).

[10] Under certain limited circumstances, a specialist can execute an order against its own account even if a same-priced or better-priced order is on the CLOB. For example, because an all-or-none order in the CLOB that is priced at or better than the NBBO cannot execute against an incoming market order that is smaller than the all-or-none order, a specialist may execute the market order against its own account.

[11] In the Notice, Rule 7.19(c)(1) was identified as Rule 5.8(c). PCX renumbered its equity trading rules as part of a restructuring plan that the Commission recently approved. *See* Securities Exchange Act Release No. 42759 (May 5, 2000).

[12] Under the PCX equities trading restructuring plan, the Exchange is delegating the responsibility to operate PCX's equities trading system to PCX Equities, Inc. Rule 1.1(f) of the revised rules states that the term "Corporation" means PCX Equities, Inc.

Amendment No. 2 modified the language of several rules published in the Notice to replace references to the "Exchange" with references to the "Corporation."

Under the restructuring plan, firms that trade equities on PCX now may hold Equity Trading Privileges ("ETP)" or Automated System Access Privileges. Accordingly, Amendment No. 2 also replaced references to "member" or "firm" with references to "ETP Holder" or "ETP Firm."

none orders, stop orders and market-on-close orders).[13]

The Exchange also proposes to add new Rule 7.19(c)(2), governing priority among specialists. The rule would provide that if two or more specialists are quoting at the NBBO and there are no agency orders being represented at that price, the earliest specialist bid or offer at that price will have time priority and be eligible for an execution first up to its specified size.[14] If no specialists are quoting at the NBBO, a specialist representing an order may execute that order at the NBBO or better.[15]

In addition, the Exchange proposes to change other rules to describe how the P/COAST system will route orders in the competing specialist environment. An addition to Rule 7.70(a),[16] which generally describes P/COAST, states that the Corporation will route orders to a specialist in accordance with arrangements that the customer has made with that specialist. Absent such arrangements, the Corporation will alternate orders between the two regular specialists.[17] The Exchange also proposes to add new Rule 7.70(h)[18] to explain that the P/COAST system will provide that specialists who are quoting with time priority at the NBBO will have the right to execute incoming orders at the NBBO, up to the size of their quote. A specialist designated to receive an order, however, could retain the order even if the specialist's quote did not have priority at the NBBO, if the specialist improve the price.[19] The Exchange estimates that it will implement this change to P/COAST by September 29, 2000.[20]

*C. Other Provisions of the Competing Specialist Program*

The Exchange proposes to describe the competing specialist program by replacing the existing text of Rule 7.30(a)[21] with new language. Specifically, proposed Rule 7.30(a)(1) would provide that only registered specialists may act as competing specialists. Similarly, proposed Rule 7.30(a)(3) would provide that all applicant competing specialists must be registered as ETP Holders or ETP Firms with the Corporation, must meet capital requirements set forth in the Commission's and the Corporation's rules, must conform to all other performance requirements and standards set forth in the rules of the Corporation, and are subject to all the rules and policies applicable to a regular specialist, unless otherwise indicated. The Commission notes that applicable rules include, among other things, Rule 7.24(a), which makes a specialist responsible for the execution of all orders that he has accepted. Proposed Rule 7.30(a)(3) also would provide that applicants who control, are controlled by, or are under common control with another person engaged in a securities or related business must have and maintain appropriate information barriers as approved by a self-regulatory organization.

Proposed Rule 7.30(a)(2) would provide that applications for registration as a competing specialist must be directed to the Corporation in writing and must list in order of preference the issue(s) in which the applicant intends to compete.[22] The Corporation would consider several factors when reviewing an application: financial capability; adequacy of staffing; performance evaluations; whether the allocation would increase competition in the issue and/or increase order flow to the Corporation; and any objections of the regular specialists in the issue.[23]

Proposed Rule 7.30(a)(4) also states that applicant organizations must demonstrate to the Corporation that they have adequate staffing.

Proposed Rule 7.30(a)(5) would provide that order flow not specifically designated for a competing specialist must be routed to a regular specialist, but that an ETP Firm affiliated with a specialist in an issue must designate all PCX order flow in that issue to that specialist.[24] Commentary .01 to proposed Rule 7.30(a) explains that this is designated to prevent ETP Firms affiliated with a specialist from routing non-profitable orders to another (unaffiliated) specialist when market conditions are unfavorable.[25]

Proposed Rule 7.30(a)(6) would provide that if a firm wishes to withdraw from acting as a competing specialist in a security, it must notify the Corporation at least three business days prior to the desired effective date of such withdrawal, except when notice is not practicable. Also, proposed Rule 7.30(a)(7) would provide that any competing specialist that withdraws its registration in an issue will be barred from applying to compete in that same issue for a period of 90 days following the effective date of withdrawal.

Proposed Rule 7.30(a)(8) would provide that competing specialists must cooperate with the regular specialists regarding openings and reopenings to ensure that they are unitary.[26]

Proposed Rule 7.30(a)(9) would require that if a competing specialist receives a limit order that is not immediately executable, the competing specialist must enter the order into the CLOB and execute it according to the Corporation's rules on time priority.

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[13] The proposed rule change would also remove a reference to individual floors. The filing further proposes eliminating a reference to the "specialist's book" that is inconsistent with the Exchange's use of a CLOB.

[14] *But see* Rule 7.70, discussed below.

[15] Proposed Commentary .02 to these rules defines the term "NBBO" as the national best bid or offer made by an Intermarket Trading System ("ITS") participant. As set forth in the Notice, proposed Commentary .03 to these rule provided for specialists to manually intervene with orders to assure that the priority rules would be maintained, until the Exchange reprogrammed the P/COAST system to implement the priority rules. Amendment No. 2 eliminated proposed Commentary .03, which is now unnecessary.

[16] In the Notice, Rule 7.70(a) was identified as Rule 5.25(a).

[17] *But see* note 36.

[18] In the Notice, Rule 7.70(h) was identified as Rule 5.25(h).

[19] Amendment No. 2 clarified Rule 7.70(a) by stating that non-designated orders would alternate among the two regular specialists. The amendment also changed proposed Rule 7.70(h) to eliminate an outdated reference to specialists interacting with orders by using electronic orders or by vocalizing bids and offers, to eliminate the inference that a specialist who has time priority at the NBBO could retain priority when increasing the size of its quote, to make a clarifying change, and to eliminate language suggesting that the rule described a "future modification" of P/COAST.

[20] *See* Amemdment No. 2. The Exchange further states that it will not permit specialists to act as competing specialists until the Exchange has implemented this systems change.

[21] In the Notice, Rule 7.30(a) was identified as Rule 5.35(a).

[22] As proposed in the Notice, several portions of Rule 7.30(a) (identified as Rule 5.35(a) in the Notice) would have delegated certain responsibilities regarding competing specialists to the Exchange's Equity Floor Trading Committee ("EFTC"). Amendment 2 replaced reference to the EFTC with references to the "Corporation." Amendment No. 2 also replaced references to the Exchange's Board of Governors with references to the Corporation's Board of Directors.

[23] In Amendment No. 2, the Exchange added language to Rule 7.30(a)(2) stating that the denial of an application to register as a competing specialist may be appealed pursuant to Rule 10.14(a), which provides a right of appeal if the Corporation denies an application to serve as a specialist.

[24] As originally published in the Notice, proposed Rule 7.30(a)(5) (identified as Rule 5.35(a)(5) in the Notice) and Commentary .01 only applied to firms affiliated with competing specialists. Amendment No. 2 modified the proposal to also encompass firms affiliated with regular specialists.

[25] As discussed above, however, Rule 7.19(c)(2), would provide that if another specialist is quoting at the NBBO and clearly has established priority on the PCX, then that specialist would have priority to fill the order.

[26] Competing specialists who wish to use ITS to send preopening indications of interest to the primary market in a security must send those preopening indications through a regular specialist who is an ITS Coordinator. During trading hours, competing specialists at times will be able to send outbound ITS commitments and execute incoming ITS commitments independently and without the need for a regular specialist to clear the activity; at other times an ITS Coordinator will need to be involved. *See* Securities Exchange Act Release No. 42708 (April 20, 2000), 65 FR 25780 (May 3, 2000). The Exchange states that competing specialists will not be permitted to act as an ITS Coordinator.

This rule reiterates certain of the order routing principles discussed above, and clarifies that they apply to competing specialists as well as regular specialists. Commentary .02 to proposed Rule 7.30(a) further states that incoming orders are first executed against any matching limit orders on the Corporation, that all market and marketable limit orders are exposed to a specialist for possible price improvement before execution, and that specialists may execute their designated order flow unless there is a matching limit order eligible for execution on the Corporation, or another specialist has a bid or offer with time priority at the NBBO.

Proposed Rule 7.30(a)(10) would provide that all suspensions of trading must be coordinated through a regular specialist. The exchange is also codifying the role of competing specialists in trading halts in an amendment to Rule 7.46(b).[27] Rule 7.46(b)(1) currently provides, in part, that when the flow of orders in a security traded on both floors does not allow either specialist to maintain an orderly market in such security, either specialist may suspend trading, and the specialist who suspends trading must notify the specialist on the other floor who shall also suspend trading. Rule 7.46(b)(2) contains similar provisions for securities traded only on one floor. The Exchange is proposing to amend both rules to require notification of all specialists trading the security. The Exchange also is proposing to add a commentary to the rule stating that competing specialists in an issue may not suspend trading, and that all suspensions of trading must be coordinated through a regular specialist. Finally, the Exchange proposes to extend its rules on circuit breakers, codified in Rule 7.47(a)–(b), to competing specialists.

The Exchange is also proposing to add Rule 7.30(a)(11), which would provide that the registration of any competing specialist may be suspended or terminated by the Corporation upon a determination of any substantial or continued failure by that competing specialist to engage in dealing in accordance with the bylaws, rules and procedures of the Corporation.[28]

Under proposed Rule 7.30(a)(12), the Corporation will establish an effective date for competition to commence, but the Corporation will limit competition during the initial phase as follows: (a) any registered specialist may apply to become a competing specialist in a number of issues, not to exceed ten, that has been previously established for the program by the Board of Directors; (b) the Board of Directors will determine the total number of competing specialists permitted on the Corporation; and (c) the Corporation will conduct a quarterly review of each competing specialist, and in conducting such reviews, the Corporation may consider, among other things, the five factors that it considers when reviewing an application for registration as a competing specialist.[29]

Proposed Rule 7.30(a)(13) would provide that once the program has operated for one year, the Corporation will evaluate it and make a recommendation to the Board of Directors as to whether to continue the program or to modify its terms.[30]

## III. Summary of Comments

The Commission received nine comment letters, all of which were from individuals associated with PCX firms, and all of which were favorable.[31] The commenters stated that the proposal would encourage quote competition, improve execution speed and quality, improve customer service, and provide additional competition to the primary market.

## IV. Discussion

After having carefully reviewed the proposal, the Commission finds that the proposed rule change is consistent with the requirements of Sections 6(b)(5) and 11A of the Act.[32] Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to reflect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.[33] Section 11A of the Act promotes, among other things, the development of a national market system for securities to assure economically efficient execution of securities transactions, and fair competition among brokers and dealers, among exchange markets, and markets other than exchange markets.[34]

The Commission finds that the proposal is consistent with those sections of the Act. The proposal has the potential to enhance competition and increase liquidity by permitting multiple specialists to compete for order flow on the Exchange, which may lead to enhanced opportunities for price improvement and improved services for customers.

In 1996, the Commission granted permanent approval to the Boston Stock Exchange's ("BSE's") competing specialist program.[35] The BSE's program is similar to the PCX's proposal in that both programs permit multiple specialists to make markets in a security, and both programs restrict a specialist's ability to execute its designated order flow if customer orders have priority on the exchange's consolidated limit order book or if other specialists are quoting with time priority at the NBBO. The Commission approved the BSE competing specialist program on the grounds that the BSE's program was designed to improve market making and increase liquidity and competition on BSE's trading floor. The Commission also recognized that although the BSE program had the potential to increase internalization of orders, it was not necessarily inconsistent with a broker-dealer's duty to seek best execution of customer limit orders. The Commission emphasized, however, that broker-dealers could not

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[27] In the Notice, Rule 7.46(b) was identified as Rule 5.31(b).

[28] Amendment No. 2 revised a reference to the constitution and rules of the Exchange.

[29] The purpose of these reviews is to assure that the new program will be operated appropriately, particularly in its early phase, so that any problems can be identified and corrected.

[30] In the Notice, the Exchange proposed deleting older rules for competing specialists, which were codified as Rules 5.35(a)–(i). The Exchange had not applied those rules since approximately 1977. The Exchange recently deleted those rules as part of its equity trading rule restructuring.

[31] *See* Letters from: Harvey Cloyd, President, Harvey Cloyd & Co., dated April 27, 1999; Daniel Turner, President, Rubicon Securities, Inc., dated April 27, 1999; David Hultman, Vice President, D.A. Davidson & Co., dated May 6, 1999 ("Hultman/Davidson letter"); Thomas Stephenson, received May 14, 1999; Walter Reinsdorf, D.A. Davidson & Co., dated May 20, 1999 ("Reinsdorf/Davidson letter"); Arnold Staloff, President, Bloom Staloff, dated may 28, 1999; Ronald Melville, Ronald E. Melville, Inc., dated May 25, 1999; Dennis LoPresti, Senior Vice President, Wedbush Morgan Securities, dated May 26, 1999; and David Gale, President, Delta Dividend Group, Inc., dated June 16, 1999.

Four of the letters were virtually identical, stating that the proposal would encourage quote competition without interfering with specialists' efforts to achieve price improvement, would result in faster executions due to increased liquidity, and would allow the PCX to keep pressure on the primary market. *See* Wedbush Morgan letter, Melville letter, Bloom Staloff letter, Reinsdorf/Davidson letter. Other commenters emphasized that the proposal would promote the quality of executions. *See* Delta letter. Stephenson letter. Other commenters said that the proposal would allow specialists to provide improved service to customers and add depth to the national market system. *See* Hultman/Davidson letter, Rubicon letter, Cloyd letter.

[32] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[33] 15 U.S.C. 78f(b)(5).

[34] 15 U.S.C. 78k–1.

[35] Securities Exchange Act Release No. 37045 (March 29, 1996), 61 FR 15318 (April 5, 1996).

automatically route their order flow to an affiliated BSE specialist without engaging in a regular and rigorous evaluation of execution quality.

The Commission similarly finds that the PCX proposal has the potential to enhance competition consistent with Sections 6(b)(5) and 11A of the Act. Permitting additional specialists to make markets in each stock on the PCX could potentially bring increased liquidity to the Exchange and could allow additional customer limit orders to benefit from the protections provided by the CLOB. Moreover, the PCX proposal's order routing provisions should give specialists an incentive to improve their quotations by providing that a specialist quoting with time priority at the NBBO would execute incoming orders unless the designated specialist retains the order by providing price improvement.[36] Finally, allowing additional specialists to make markets on the PCX should also promote competition among PCX specialists in the rates of price improvement they provide, and in the quality of their limit order execution guarantees and other services.

The Commission reiterates that while an automated order routing environment is not necessarily inconsistent with the achievement of best execution, broker-dealers choosing where to automatically route orders must assess periodically the quality of competing markets to assure that order flow is directed to markets providing the most advantageous terms for their customers' orders. Thus, a broker-dealer may not simply employ default order routing to an affiliated PCX specialist without undertaking such an evaluation on an ongoing basis. A broker-dealer sending orders to the PCX must satisfy itself that its routing decision is consistent with its best execution obligations, irrespective of the firm's desire to internalize order flow through an affiliated PCX specialist. To reach this conclusion, the broker-dealer must rigorously and regularly examine the executions likely to be obtained for customer orders in the different markets trading the security, in addition to any other relevant considerations in routing customer orders.[37]

Several other proposed rule changes govern the operations and responsibilities of competing specialists. The Commission finds that those proposed rules would promote fair and orderly markets by providing that competing specialists meet all requirements applicable to specialists on the exchange, that competing specialists follow all rules applicable to regular specialists (with certain exceptions), that competing specialists maintain barriers against the disclosure of information to affiliates, and that they cooperate with regular specialists during openings, suspensions, and reopenings of trading.

The remaining proposed rule changes govern the qualifications and selection of competing specialists and the implementation of the competing specialist program. The Commission finds that those proposed rule changes set forth reasonable requirements that will permit the Exchange to implement the program in a fair and efficient manner. The proposed rule changes would permit the Exchange to evaluate applications to serve as competing specialist using factors that are relevant and appropriate (*e.g.*, financial capability, adequacy of staffing, and performance evaluations) to the question of whether an applicant is capable of making a market in a stock and whether adding specialists to a stock will benefit the public.[38] The proposed rules should also promote specialist continuity and minimize disruptions to the PCX market by restricting a firm's ability to repeatedly start and cease making markets as a competing specialist in a security. The proposed rules set forth a phase-in plan that should help the Exchange implement the competing specialist program with a minimum of disruption to existing operations.

The Commission believes it is consistent with the Act to allow the PCX to implement its competing specialist program on a permanent basis. Nevertheless, Commission approval of the PCX's competing specialist program is not a determination by the Commission that mere default routing by a firm to its affiliated competing specialist is consistent with a firm's best execution obligations. As noted above, a broker-dealer associated with a competing specialist must still ensure that its order routing decisions are consistent with its best execution obligations and assess periodically the quality of competing markets to assure that order flow is directed to markets providing the most advantageous terms for its customers' orders.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 renumbered several rules, made necessary technical changes to reflect the recent approved restructuring of PCX's equities trading, and clarified aspects of the proposed amendments to the Exchange's priority rules. The amendment eliminated a proposed commentary to the priority rules that provided for specialists to manually intervene with orders, because the commentary is unnecessary in light of P/COAST improvements that the Exchange is implementing. The amendment modified proposed competing specialist rules to state that all firms affiliated with specialists must send their PCX orders to that specialist (not just firms affiliated with competing specialists). The amendment also clarified that firms whose applications to serve as competing specialists are denied would have the right of appeal. Finally, Amendment No. 2 sets forth the Exchange's commitment to reprogram the P/COAST system within eighteen months of the competing specialist program's approval, so that the P/COAST system would route incoming orders directly to a specialist who is quoting at the NBBO with time priority. Those modifications were clarifying in nature and did not change the substance of the Exchange's proposal, as it was published in the Notice.

## V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written

[36] The Commission finds that it is generally appropriate for the Exchange to route non-designated orders to a regular specialist, given that regular specialists have market making responsibilities not shared by the competing specialists. That provision is subject to the requirement that a specialist quoting with time priority at the NBBO has a right to execute incoming orders, regardless of which specialist was designated to receive the order, absent price improvement.

The Commission notes that the Exchange has committed to implement systems changes, within eighteen months of the Commission's approval of this program, so that incoming orders will be automatically routed to the specialist with time priority at the NBBO.

[37] The Commission recognizes that the proposed competing specialist program has the potential to increase internalization. The Commission will monitor the impact of the competing specialist program as part of its ongoing review of market fragmentation. *See* Securities Exchange Act Release No. 42450 (February 23, 2000), 65 FR 10577 (February 28, 2000).

[38] The Commission expects that the Exchange will consider all permissible factors in assessing applicants and will not be unduly influenced by objections of the regular specialist in the issue. Indeed, the Exchange may not reject an application to be a competing specialist solely because of the objections of the regular specialist in the issue.

statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–99–07 and should be submitted by June 6, 2000.

**VI. Conclusion**

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–PCX–99–07, including Amendment No. 2, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12272 Filed 5–15–00; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

### Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that TD Origen Fund, L.P. ("TD Origen"), 150 Washington Avenue, Suite 201, Santa Fe, New Mexico 87501, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), TD Javelin Capital Fund, LP ("TD Javelin"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Act, TD Javelin Capital Fund II, LP ("TD Javelin II"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223, a Federal Licensee under the Act, and TD Lighthouse Capital Fund, LP ("TD Lighthouse", and together with TD Javelin, TD Javelin II, and TD Origen, the "Funds"), 303 Detroit Street, Suite 301, Ann Arbor, Michigan 48104, an applicant for a Federal license under the Act, in connection with the financing of a small concern, are seeking an exemption under section 312 of the Act and section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") rules and regulations (13 CFR 107.730 (2000)). The Funds propose to provide equity financing to TransMolecular, Inc. ("TMI"), 2850 Cahaba Road, Suite 240, Birmingham, Alabama 35223. The financing is contemplated for product development and working capital.

The financing is brought within the purview of Sec. 107.730(a)(1) of the Regulations because TD Javelin, an Associate of the Funds, currently owns greater than 10 percent of TMI and therefore TMI is considered an Associate of each of the Funds as defined in Sec. 107.50 of the regulations.

Notice is hereby given that any interested person may submit written comments on the transaction to the Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street, SW; Washington, DC 20416.

Dated: April 26, 2000.

**Don A. Christensen,**

*Associate Administrator for Investment.*

[FR Doc. 00–12185 Filed 5–15–00; 8:45 am]

BILLING CODE 8025–01–U

## SOCIAL SECURITY ADMINISTRATION

### Agency Information Collection Activities: Emergency Consideration Request

In compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, the Social Security Administration (SSA) is providing notice of its information collections that require submission to the Office of Management and Budget (OMB). SSA is requesting emergency consideration from OMB by 06/02/2000 of the information collection listed below.

*1. Annual Earning Test-Direct Mail Follow-up Program Notices–0960–0369.* In 1997, as part of the initiative to reinvent government, SSA began to use the information reported on W–2's and self-employment tax returns to adjust benefits under the earnings test rather than have beneficiaries make a separate report, which often showed the same information. As a result, beneficiaries under full retirement age (FRA) complete forms SSA–L9778–SM–SUP, SSA–L9779–SM–SUP and SSA–L9781–SM (the "Midyear Mailer" forms) under this information collection.

With the passage of the Senior Citizen Freedom to Work Act of 2000, the annual earnings test (AET) at FRA was eliminated. As a result, SSA designed 2 new Midyear Mailer forms, the SSA–L9784–SM and the SSA–L9785–SM, to request an earnings estimate in the year of FRA for the period prior to the month of FRA. Social Security benefits may be adjusted based on the information provided and this information is needed to comply with the recent change to the law. Consequently, the Midyear Mailer program has become an even more important tool in helping SSA to ensure that Social Security payments are correct. Respondents are beneficiaries who must update their current year estimate of earnings, give SSA an estimate of earnings for the following year and an earnings estimate (in the year of FRA) for the period prior to the month of FRA.

*Number of Respondents:* 315,000.

*Frequency of Response:* 1.

*Average Burden Per Response:* 10 minutes.

*Estimated Annual Burden:* 52,500 hours.

You can obtain a copy of the collection instruments and/or OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him. Written comments and recommendations regarding the information collection should be submitted to the SSA Reports Clearance Officer and to the OMB Desk Officer at the addresses at the end of this document. Comments and recommendations should be received before June 2, 2000.

**(OMB Address)**

Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, DC 20503.

**(SSA Address)**

Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

Dated: May 9, 2000.

**Frederick W. Brickenkamp,**

*Reports Clearance Officer.*

[FR Doc. 00–12323 Filed 5–15–00; 8:45 am]

BILLING CODE 4190–29–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Proposed Advisory Circular 25–XX, Sustained Engine Imbalance

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of availability of proposed advisory circular (AC) 25–XX and request for comments.

**SUMMARY:** This notice announces the availability of and requests comments on a proposed advisory circular (AC) which provides methods acceptable to

[39] *See* 17 CFR 200.30–3(a)(12).

the Administrator related to the aircraft design for sustained engine rotor imbalance conditions provisions of 14 CFR part 25 regarding the type certification requirements for transport airplane structure. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

**DATES:** Comments must be received on or before July 10, 2000.

**ADDRESSES:** Send all comments on the proposed AC to: Federal Aviation Administration, Attention: Jim Haynes, Airframe/Airworthiness Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056. Comments may also be submitted electronically to the following address: jim.haynes@faa.gov. Comments may be inspected at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jim Haynes, Airframe/Airworthiness Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW, Renton, WA 98055–4056; telephone (425) 227–2131; facsimile (425) 227–1320. Questions may also be submitted electronically to the following address: jim.haynes@faa.gov.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

You may obtain an electronic copy of the advisory circular identified in this notice at the following Internet address: www.faa.gov/avr/air/airhome.htm. If you do not have access to the Internet, you may request a copy by contacting Susan Boylon, Program Management Branch, ANM–114, FAA Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone (425) 227–1152. Interested persons are invited to comment on the proposed AC by submitting such written data, views, or arguments, as they may desire. Commenters should identify AC 25–XX, and submit comments, in duplicate, to the address specified above. All communications received on or before the closing date for comments will be considered by the Transport Standards Staff before issuing the final AC.

**Discussion**

This AC contains guidance for the latest amendment of the regulations and applies to all transport category airplanes for which a new, amended, or supplemental type certificate is required. This guidance should be applied to any portion of the airplane structure that has been modified. In the past, advisory and guidance information applicable to transport airplane structure has been published as AC's. Advisory circulars have not been developed for all of the regulatory requirements applicable to transport airplane structure, however. In many instances, certification of new technology airplanes resulted in the need to interpret the existing regulations and to apply new regulations. Issue papers and special conditions were generated to document the compliance method agreed upon between the applicant and the FAA. In other instances, applicants, FAA Aircraft Certification Office (ACO) managers, and foreign regulatory authorities have requested interpretation of the intent of specific regulations. This guidance was documented in the form of policy memorandums that were distributed to all ACO's, letters to applicants and foreign airworthiness authorities, and issue papers. In many instances, this information was not organized in a manner that allowed easy access, and applicants were not aware of revised policy. This AC formalizes existing policy so that the public and FAA personnel have access to this information. The methods and procedures described in this AC have evolved after many years and represent current certification practice.

Issued in Renton, Washington, on May 8, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.*

[FR Doc. 00–12311 Filed 5–15–00; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

**The Texas Mexican Railway Company**

[Waiver Petition Docket Number FRA–2000–7040]

The Texas Mexican Railway Company (TM) seeks a permanent waiver of compliance from certain provisions of the Safety Appliances Standards, 49 CFR part 231, and the Power Brakes and Drawbars regulations, 49 CFR part 232, concerning RoadRailer® train operations over their railroad system. Specifically, TM requests relief from the requirements of 49 CFR part 231, which specifies the number, location and dimensional specifications for handholds, ladders, sill steps, uncoupling levers, and handbrakes; and § 232.2, which regulates drawbar height.

TM would like to begin operations of RoadRailer® equipment over its system in connection with the Burlington Northern Santa Fe Railway (BNSF) and/or the Kansas City Southern Railroad to and from interchange with the Transportation Ferroviaria Mexicana at Laredo, Texas, with movement of the equipment between interchange points at Beaumont, Houston, or Corpus Christi, Texas. TM requests that FRA consider this waiver under the same conditions as granted to BNSF under Docket Number FRA 1999–5895.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 1999–5894) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590. Communications received within 15 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, DC, on May 9, 2000.

**Michael J. Logue,**

*Deputy Associate Administrator for Safety Compliance and Program Implementation.*

[FR Doc. 00–12313 Filed 5–15–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2000–7312; Notice 1]**

### General Motors North America, Notice of Application for Decision of Inconsequential Noncompliance

General Motors North America (GM) has determined that on some 1995–1999 model year GMC and Chevrolet trucks and on some 1997–1999 Pontiac Grand Prix cars, the center high-mounted stop lamp (CHMSL) could briefly illuminate if the hazard flasher switch is depressed to its limit of travel. This condition would not meet the lighting requirements of S5.5.4 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, reflective devices, and associated equipment." Pursuant to 49 U.S.C. 30118(d) and 30120 (h), GM has petitioned for a determination that this condition is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

We are publishing this notice of receipt of an application as required by 49 U.S.C. 30118 and 30120. This action does not represent any agency decision of other exercise of judgment concerning the merits of the application.

FMVSS No. 108 establishes the requirements for signaling to enable safe operation in darkness and other conditions of reduced visibility. Under S5.5.4 of FMVSS No. 108, the CHMSL on each vehicle shall be activated only upon application of the service brakes. During Model Year 1995–1999 GM produced 3,375,393 vehicles with a CHMSL that could briefly illuminate if the hazard flasher switch is depressed to its limit of travel. The vehicles that may have this condition are 1995–1999 model year GMC and Chevrolet trucks and some 1997–1999 Pontiac Grand Prix cars.

GM supports its application for inconsequential noncompliance by stating the following:

The possibility of unintended CHMSL illumination is very low, for several reasons. Hazard flashers are infrequently used in service. The condition can occur only when the hazard flasher switch is at the extreme bottom of travel. To turn the hazard flashers on or off, one need merely push the hazard flasher switch. It is not necessary to push the switch all the way to its limit of travel. Even when the switch is depressed all the way to its limit of travel, CHMSL illumination may not occur. In approximately 50% of the switches it would be moderately difficult to get a CHMSL activation. With these switches, it is also necessary to apply a side force to the hazard flasher switch (in addition to having the switch at its bottom of travel) before the CHMSL might illuminate.

Even if the condition does occur, the duration of unintended CHMSL illumination would be very brief. The hazard flasher switch requires less than a second in total to turn the flashers on or off, and only for a fraction of this total time would the switch be all the way to its limit of travel.

About one-third of the affected vehicles have incandescent CHMSLs. In these vehicles, visible illumination of the CHMSL would not occur unless the hazard switch were depressed to its full limit of travel and held there long enough for the incandescent bulb filaments to heat and become visible. Therefore, unless the hazard switch was deliberately held at its limit of travel, and possibly with a side force, any unintended CHMSL illumination would be momentary and as a practical matter virtually imperceptible.

Even if a visible CHMSL illumination occurs upon hazard flasher activation, it would almost certainly have no adverse effect on safety. Hazard flasher lights are typically used when the vehicle is off the road or out of traffic. However, if a CHMSL illuminated due to this condition when the vehicle was on the road, a following driver would likely see a brief single flash of the CHMSL. As a practical matter, the following driver might not notice this flash at all. Even if he or she did, there would seem to be no likelihood of driver confusion or inappropriate responses. In reaching this view, we have considered the following situations and would invite the agency's consideration of them as well:

A driver who turns on the hazard flasher switch does so in order to alert others to some situation that the driver judges to be a highway safety hazard. Indeed, the owner's manual in each of these vehicles states as much: Your hazard warning flashers let you warn others. They also let police know you have a problem.

When the driver turns them on, the hazard lamps on these vehicles commence flashing immediately after the driver releases the switch. In this situation, any momentarily illuminated CHMSL would augment the hazard alert to following drivers.

If the hazard flasher switch is being turned off, the CHMSL could be illuminated momentarily while the hazard lamps are flashing. A following driver is unlikely to react inappropriately to a momentary CHMSL illumination when two hazard lamps are already flashing.

In many situations, it seems likely that a driver suddenly approaching a hazard situation might want to slow down, and therefore the service brakes would be applied when the hazard switch is depressed. In this case, the CHMSL would remain illuminated by the service brakes as required by FMVSS 108. This situation would pose no safety or compliance issue because the CHMSL would already be on.

The CHMSL (and the remainder of the vehicle lighting) otherwise meets all of the requirements of FMVSS 108.

GM is not aware of any accidents, injuries, owner complaints or field reports for the subject vehicles related to this condition.

NHTSA has previously granted inconsequential treatment for a similar condition. In 1995, General Motors petitioned for inconsequential treatment for a noncompliance while the hazard switch was being used (reference Mr. Milford Bennett letter to Dr. Ricardo Martinez dated June 16, 1995). The agency subsequently granted inconsequential treatment for this condition (reference Docket 95–57, Notice 2 published in the **Federal Register**, 61 FR 2865, January 29, 1996). No one opposed the application. NHTSA found in that situation that "the transient activation of the CHMSL, a false signal, is highly unlikely to mislead a following driver," at 2865–2866.

The current situation would appear to be even less of a highway safety issue, because (a) the previous condition could occur at various positions within the normal operating travel of the hazard switch, while the current condition can only occur at the extreme bottom of travel of the hazard switch; and (b), the previous condition could involve up to three momentary flashes of the CHMSL, while the current condition only has the potential for a single momentary illumination of the CHMSL.

Interested persons are invited to submit written data, views, and arguments on the application described above. Comments should refer to the docket number and be submitted to : U.S. Department of Transportation, Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below. Comment closing date: June 15, 2000.

(49 U.S.C. 301118, 301120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: May 10, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 00–12312 Filed 5–15–00; 8:45 am]

BILLING CODE 4910–59–P

**DEPARTMENT OF TRANSPORTATION**

**National Highway Traffic Safety Administration**

**Petition for Exemption from the Federal Motor Vehicle Motor Theft Prevention Standard; Volkswagen**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Grant of petition for exemption.

**SUMMARY:** This document grants in full the petition of Volkswagen of America, Inc. (VW) for an exemption of a new high-theft line, the Audi allroad Quattro, from the parts-marking requirements of the Federal motor vehicle theft prevention standard. The petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

**DATES:** The exemption granted by this notice is effective beginning with the 2001 model year.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington D.C. 20590. Ms. Proctor's phone number is (202) 366–0846. Her fax number is (202) 493–2290.

**SUPPLEMENTARY INFORMATION:** In a petition dated January 4, 2000, VW requested an exemption from the parts-marking requirements of 49 CFR Part 541, *Federal Motor Vehicle Theft Prevention Standard*, for the Audi allroad Quattro, a new high-theft vehicle line beginning in MY 2001. The petition requested an exemption from parts-marking pursuant to 49 CFR 543, Exemption from Vehicle Theft Prevention Standard, based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Review of VW's petition disclosed that certain information was not provided in its original petition. Consequently, by telephone call on March 17, 2000, VW was informed of its omissions. Subsequently on March 22, 2000, VW submitted supplemental information providing the omitted information. VW's March 22, 2000 submission constitutes a complete petition, as required by 49 CFR Part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, VW provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. This antitheft device includes: (1) An alarm system that activates the vehicle's emergency flasher system and horn in the event unauthorized entry is attempted through any of the doors, the rear hatch, or the engine compartment; (2) an ultrasonic interior monitoring system to detect window breakage or movement inside the vehicle; and (3) an electronic engine immobilizer which utilizes a transponder in the ignition key.

In order to ensure the reliability and durability of the device, VW conducted tests based on its own specified standards. VW provided a detailed list of tests conducted. Because the device complied with these tests, VW believes that the device is reliable and durable.

Volkswagen believes the proposed device will be as effective in deterring motor vehicle theft as the devices used in lines for which NHTSA has already granted a parts-marking exemption. Specifically, Volkswagen based its belief on the theft rate experience of several lines with similar devices which have experienced significant theft rate reductions, such as the Mitsubishi Diamante, the Toyota Cressida, the Nissan Maxima, the Toyota Supra, the Nissan 300ZX, the Mazda RX–7, the Audi 5000, the Ford Taurus and some General Motors Chevrolet, Pontiac and Cadillac car lines.

Additionally, VW compared theft rate experiences of its 1992 Jetta and Golf/GTI vehicles (with no alarm system) to the theft rate experiences of its 1993, 1994 and 1997 model years Jetta and Golf/GTI vehicles (with a standard alarm system) to demonstrate the effects of a standard alarm systems installation. Based on data from the FBI's National Crime Information Center (NCIC), VW showed that the theft rates for the 1993, 1994 and 1997 Jetta and Golf/GTI vehicles that have been equipped with a standard alarm system resulted in a significant decrease in theft rates from its MY 1992 vehicles. The theft rates for the 1993, 1994 and 1997 Jetta vehicles were 0.7699, 2.4344 and 2.6010, respectively, down from the 1992 theft rate of 7.5005. The theft rates for the 1993, 1994 and 1997 Golf/GTI vehicles were 0.6789, 1.5329 and 2.6010, respectively, down from the 1992 theft rate of 20.2320.

VW stated that the Vehicle Information Center of Canada (VICC), which compiles insurance loss statistics in Canada, conducted a study comparing the frequency of theft claims per 100 vehicles for MY 1992 and 1993 Volkswagen Golf and Jetta lines. The standard alarm system had been installed on both lines for MY 1993. The results of the study showed a reduction in the frequency of theft claims per 100 vehicles for the Jetta and Golf vehicle lines in Canada. Specifically, the reductions ranged from 75% for the Jetta line to 90% for the Golf (4-door) vehicle line.

Further, VW stated that its Audi lines have historically demonstrated theft rates below the median theft rate (3.5826). VW cited the theft rankings of the 1995, 1996 and 1997 Audi A6 vehicle line equipped with an alarm system as standard equipment. The A6 was granted an exemption from the parts-marking standard beginning with MY 1995 (see 59 FR 55150, November 3, 1994). The theft rates for the 1995, 1996 and 1997 Audi A6 line were 0.5888, 0.3237 and 1.5512, respectively.

Based on the evidence submitted by VW, the agency believes that the antitheft device for the new vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR 541).

The agency believes that the device will provide the types of performance listed in 49 CFR Part 543.6(a)(3): Promoting activation; attracting attention to unauthorized entries; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR part 543.6(a) (4) and (5), the agency finds that VW has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information VW provided about its device, much of which the agency has determined to be confidential. This confidential information included a description of reliability and functional tests conducted by VW for the antitheft device and its components.

For the foregoing reasons, the agency hereby grants in full VW's petition for exemption for the MY 2001 Audi allroad Quattro vehicle line from the parts-marking requirements of 49 CFR part 541. VW requested confidential treatment for some of the information and attachments submitted in support of its petition. In a letter to VW dated February 4, 2000, the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

If VW decides not to use the exemption for this line, it should formally notify the agency. If such a

decision is made, the line must be fully marked according to the requirements under 49 CFR parts 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if VW wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Part 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, Part 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden that Part 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be de minimis. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as de minimis, it should consult the agency before preparing and submitting a petition to modify.

**Authority:** 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: May 10, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 00–12260 Filed 5–15–00; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of Citizen Advocacy Panel, Pacific-Northwest District

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Pacific-Northwest Citizen Advocacy Panel will be held in Juneau, Alaska.

**DATES:** The meeting will be held Friday, May 19, 2000 and Saturday, May 20, 2000.

**FOR FURTHER INFORMATION CONTACT:** Judi Nicholas at 1–888–912–1227 or 206–220–6096.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988), that an open meeting of the Citizen Advocacy Panel will be held Friday May 19, 2000, 9:00 a.m. to 4:30 p.m. at the Internal Revenue Service Federal Building located at 709 West 9th Avenue, Room 859, Juneau, AK 99801 and Saturday May 20, 2000, 9:00 a.m. to Noon at the Westmark Baranof Hotel, Gastineau Room, 127 N. Franklin Street, Juneau, AK 99801. The public is invited to make oral comments. Individual comments will be limited to 10 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Judi Nicholas, CAP Office, 915 2nd Avenue, Room 442, Seattle, WA 98174. Due to limited conference space, notification of intent to attend the meeting must be made with Judi Nicholas. Ms. Nicholas can be reached at 1–888–912–1227 or 206–220–6096.

The Agenda will include the following: various IRS issue updates and reports by the CAP sub-groups.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 28, 2000.

**M. Cathy VanHorn,**

*Director, CAP, Communications & Liaison.*

[FR Doc. 00–12202 Filed 5–15–00; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of Citizen Advocacy Panel, Brooklyn District

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Flushing, New York.

**DATES:** The meeting will be held Wednesday, June 7, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eileen Cain at 1–888–912–1227 or 718–488–3555.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. (1988), that an operational meeting of the Citizen Advocacy Panel will be held Wednesday, June 7, 2000, 7:30 p.m. to 9:30 p.m. at the Queens Borough Public Library at 41–17 Main Street, Flushing, N.Y. 11355. If you are in need of a hearing impaired or a language interpreter or for more information please contact Eileen Cain. Mrs. Cain can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 7:30 p.m. to 9:30 p.m. on Wednesday, June 7, 2000. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Eileen Cain, CAP Office, P.O. Box R, Brooklyn, NY 11202.

The Agenda will include the following: introductions of the panel and open discussions with the public.

**Note:** Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: April 28, 2000.

**M. Cathy VanHorn,**

*Director, CAP, Communications & Liaison.*

[FR Doc. 00–12203 Filed 5–15–00; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0376]**

### Proposed Information Collection Activity: Proposed Collection; Comment Request

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, with change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to maintain an up-to-date Agent Orange Registry.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before July 17, 2000.

**ADDRESSES:** Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (191A1), Department of Veterans Affairs, 810 Vermont Avenue, NW.,

Washington, DC 20420. Please refer to "OMB Control No. 2900–0376" in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Ann Bickoff at (202) 273–8310.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title and Form Number:* Agent Orange Registry Code Sheet, VA Form 10–9009.

*OMB Control Number:* 2900–0376.

*Type of Review:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Abstract:* The Agent Orange Registry Code Sheet is used to obtain information from veterans during an interview with the examining physician and Agent Orange coordinator or other designated personnel. The information obtained is encoded onto the code sheet and entered into a computerized Agent Orange Registry. The registry provides a mechanism to catalogue prominent symptoms, reproductive health, diagnoses and enables VA to communicate with Agent Orange veterans through newsletters. The newsletter informs veterans of any increased health risks resulting from exposure to dioxin or other toxic agents, research finding or new compensation policies.

*Affected Public:* Individuals or Households.

*Estimated Total Annual Burden:* 1,833 hours.

*Estimated Average Burden Per Respondent:* 20 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 5,500.

Dated: April 27, 2000.

By direction of the Secretary.

**Sandra McIntyre,**

*Management Analyst, Information Management Service.*

[FR Doc. 00–12233 Filed 5–15–00; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0013]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before June 15, 2000.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0013."

**SUPPLEMENTAL INFORMATION:**

*Title:* Application for United States Flag for Burial Purposes, VA Form 21–2008.

*OMB Control Number:* 2900–0013.

*Type of Review:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Abstract:* VA Form 21–2008 is used to gather the necessary information to determine eligibility for issuance of a burial flag to a family member or friend of a veteran.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 2, 1999 at pages 67629–67630.

*Affected Public:* Individuals or households, and State, Local or Tribal Government.

*Estimated Annual Burden:* 162,500 hours.

*Estimated Average Burden Per Respondent:* 15 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 650,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0013" in any correspondence.

Dated: April 27, 2000.

By direction of the Secretary.

**Sandra McIntyre,**

*Management Analyst, Information Management Service.*

[FR Doc. 00–12234 Filed 5–15–00; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0227]**

### Agency Information Collection Activities Under OMB Review

**AGENCY:** Veterans Health Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before June 15, 2000.

**FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT:** Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0227."

**SUPPLEMENTARY INFORMATION:**

*Title:* Nation-wide Customer Satisfaction Surveys.

*OMB Control Number:* 2900–0227.

*Type of Review:* Reinstatement, with change, of a previously approved collection for which approval has expired.

*Abstract:* Executive Order 12862, Setting Customer Service Standards, requires Federal agencies and Departments to identify and survey its customers to determine the kind and quality of services they want and their level of satisfaction with existing services. VHA uses customer satisfaction surveys to gauge customer perceptions of VA services as well as customer expectations and desires. The results of these information collections lead to improvements in the quality of VHA service delivery by helping to shape the direction and focus of specific programs and services.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 2, 1999 at pages 67627–67629.

*Affected Public:* Individuals or households.

*Prosthetic Patient Satisfaction Survey, VA Form 10–0142B*

| Year | Number of respondents | Estimated burden hour (minutes) | Estimated annual burden | Frequency of response |
|---|---|---|---|---|
| 2000 | 27,000 | 24 | 10,800 | Occasion |
| 2001 | 27,000 | 24 | 10,800 | Occasion |
| 2002 | 27,000 | 24 | 10,800 | Occasion |

*Prosthetics Blind Aid Phone Survey, VA Form 10–0142C*

| Year | Number of respondents | Estimated burden hour (minutes) | Estimated annual burden | Frequency of response |
|---|---|---|---|---|
| 2000 | 1,900 | 30 | 950 | Occasion |
| 2001 | 1,900 | 30 | 950 | Occasion |
| 2002 | 1,900 | 30 | 950 | Occasion |

*Inpatient Satisfaction Survey—Mental Health Insert Included, VA Form 10–1465–1*

| Year | Number of respondents | Estimated burden hour (minutes) | Estimated annual burden | Frequency of response |
|---|---|---|---|---|
| 2000 | 33,600 | 22.5 | 12,600 | Occasion |
| 2001 | 33,600 | 22.5 | 12,600 | Occasion |
| 2002 | 33,600 | 22.5 | 12,600 | Occasion |

*General Outpatient Satisfaction Survey, VA Form 10–1465–3*

| Year | Number of respondents | Estimated burden hour (minutes) | Estimated annual burden | Frequency of response |
|---|---|---|---|---|
| 2000 | 48,000 | 15 | 12,000 | Occasion |
| 2001 | 48,000 | 15 | 12,000 | Occasion |
| 2002 | 48,000 | 15 | 12,000 | Occasion |

*General Outpatient Satisfaction Survey, VA Form 10–1465–3.*

In addition to the above, VA Form 10–1465–3 will be sent to a selection of Gulf Era Outpatients.

| Year | Number of respondents | Estimated burden hour (minutes) | Estimated annual burden | Frequency of response |
|---|---|---|---|---|
| 2000 | 23,400 | 15 | 5,850 | Occasion |
| 2001 | 23,400 | 15 | 5,850 | Occasion |
| 2002 | 23,400 | 15 | 5,850 | Occasion |

*Spinal Cord Injury Satisfaction Survey, VA Form 10–1465–7*

| Year | Number of respondents | Estimated burden hour (minutes) | Estimated annual burden | Frequency of response |
|---|---|---|---|---|
| 2000 | 2,686 | 30 | 1,343 | Occasion |
| 2001 | 2,686 | 30 | 1,343 | Occasion |
| 2002 | 2,686 | 30 | 1,343 | Occasion |

*Home Based Primary Care Satisfaction Survey, VA Form 10–1465–9*

| Year | Number of respondents | Estimated burden hour (minutes) | Estimated annual burden (hours) | Frequency of response |
|---|---|---|---|---|
| 2000 | 3,876 | 15 | 969 | Occasion |
| 2001 | 3,876 | 15 | 969 | Occasion |
| 2002 | 3,876 | 15 | 969 | Occasion |

*Nutrition Analysis Satisfaction Survey, VA Form 10–5387*

| Year | Number of respondents | Estimated burden hour (minutes) | Estimated annual burden (hours) | Frequency of response |
|---|---|---|---|---|
| 2000 | 137,600 | 2 | 4,587 | Occasion |
| 2001 | 137,600 | 2 | 4,587 | Occasion |
| 2002 | 137,600 | 2 | 4,587 | Occasion |

Most customer satisfaction surveys will be recurring so that VHA can create ongoing measures of performance and to determine how well the agency meets customer service standards. Each collection of information will consist of the minimum amount of information necessary to determine customer needs and to evaluate VHA's performance. VHA expects a total annual burden of approximately 49,099 hours in 2000, 2001, and 2002.

The areas of concern to VHA and its customers may change over time, and it is important to have the ability to evaluate customer concerns quickly. OMB will be requested to grant generic clearance approval for a 3-year period to conduct customer satisfaction surveys and focus groups. Participation in the surveys will be voluntary and the generic clearance will not be used to collect information required to obtain or maintain eligibility for a VA program or benefit. In order to maximize the voluntary response rates, the information collection will be designed to make participation convenient, simple, and free of unnecessary barriers. Baseline data obtained through these information collections will be used to improve customer service standards. VHA will consult with OMB regarding each specific information collection during this approval period.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0227" in any correspondence.

Dated: April 25, 2000.

By direction of the Secretary.

**Sandra McIntyre,**

*Management Analyst, Information Management Service.*

[FR Doc. 00–12235 Filed 5–15–00; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Tuesday,
May 16, 2000

Part II

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 91**

**Prohibition Against Certain Flights Within the Territory and Airspace of Ethiopia; Final Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 91**

**[Docket No. FAA–2000–7360; SFAR No. 87]**

**RIN 2120–98**

## Prohibition Against Certain Flights Within the Territory and Airspace of Ethiopia

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This action prohibits certain flight operations within the territory and airspace of Ethiopia north of 12 degrees north latitude by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA unless that person is engaged in the operation of a U.S.-registered aircraft for a foreign air carrier, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is deemed necessary to prevent an undue hazard to persons and aircraft engaged in flight operations in the referenced airspace because of the threat posed by the outbreak of hostilities between Ethiopia and Eritrea.

**DATES:** This action is effective May 12, 2000 and shall remain in effect until further notice.

**FOR FURTHER INFORMATION CONTACT:** For a copy of this amendment contact the Office of Rulemaking at (202) 267–9680. For technical questions, contact David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591. Telephone: (202) 267–8166.

**SUPPLEMENTARY INFORMATION:**

### Availability of This Action

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service ((703) 321–3339) or the Government Printing Office's (GPO) electronic bulletin board service ((202) 512–1661). Internet users may reach the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the GPO web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave, SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this action.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

### Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within the FAA's jurisdiction. Therefore, any small entity that has a question regarding this document may contact its local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at *http://www.faa.gov/avr/arm/sbrefa.htm* and send electronic inquiries to the following Internet address: 9_AWA_SBREFA@faa.gov.

### Background

The FAA is responsible for the safety of flight in the United States and for the safety of U.S.-registered aircraft and operators throughout the world. Section 40101(d)(1) of Title 49, United States Code (U.S.C.), declares, as a matter of policy, that the regulation of air commerce to promote safety is in the public interest. Section 44701(a) of Title 49, U.S.C., provides the FAA with broad authority to carry out this policy by prescribing regulations governing the practices, methods, and procedures necessary to ensure safety in air commerce.

Since the failure of April 30, 2000, peace talks sponsored by the Organization of African Unity (OAU) in Algiers, a border dispute between Ethiopia and Eritrea that began in May 1998 has escalated again to the point where open hostilities have begun. Armed forces of both countries, which include modern surface-to-air missile systems and interceptor aircraft capable of engaging aircraft at cruising altitudes, are now engaged in hostilities near their common border. Since war has broken out, civil aircraft operating in the region could be threatened.

Even in the event of a cease-fire, the heightened state of readiness maintained by the military forces of Ethiopia poses an imminent threat to civil aircraft operations in the area. Prior to the most recent mobilization, Ethiopian air defense forces had maintained an already high state of readiness during the cease-fire that threatened civil aircraft operating in the northern portion of Ethiopia. The August 29, 1999, downing by Ethiopian military forces of a U.S.-registered Learjet operating in the area is evidence of the seriousness of the threat. Ethiopia has issued temporary Notices to Airmen (NOTAM) closing certain routes in the Addis Ababa Flight Information Region. However, neither the Ethiopian CAA nor the Ethiopian military has issued formal warnings by NOTAM, in the Ethiopian Aeronautical Information Publication (AIP), or in some other forum, of the potentially catastrophic consequences of flying on routes temporarily removed from service. Further, Addis Ababa has rejected the FAA's recommendation to establish a true "no fly" or "danger" zone. Also, the FAA cannot assure that an adequate level of coordination exists between civil air traffic authorities and air defense commanders for civil aircraft overflight, including military rules of engagement, in the event an aircraft strays from its assigned route of flight. Any lack of coordination could put aircraft operating over northern Ethiopia at risk of being misidentified by military forces as a threat. Finally, there is no assurance that Ethiopia will follow international standards and recommended practices for the interception and identification of unidentified aircraft in its airspace.

Given the circumstances noted above, the FAA has determined that the safe overflight of the territory of Ethiopia north of 12 degrees north latitude cannot be guaranteed.

### Prohibition Against Certain Flights Within the Territory and Airspace of Ethiopia

On the basis of the above information, and in furtherance of my responsibilities to promote the safety of flight of civil aircraft in air commerce, I have determined that action by the FAA is necessary to prevent the injury to U.S. operators or the loss of certain U.S.-registered aircraft and airmen conducting flights in portions of the territory and airspace of Ethiopia. I find that the continuing lack of adequate warnings to civil operators, the heightened state of military readiness by both Ethiopia and Eritrea, the renewal of hostilities, and the absence of proper civil aircraft identification procedures present an immediate hazard to civil aircraft operations in the referenced airspace. Accordingly, I am prohibiting all flight operations within the territory and airspace of Ethiopia north of 12

degrees north latitude by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA unless that person is engaged in the operation of a U.S.-registered aircraft for a foreign air carrier, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action will prevent an undue hazard to aircraft and would protect persons and property on board those aircraft. SFAR 87 will remain in effect until further notice.

Because the circumstances described herein warrant immediate action by the FAA to maintain the safety of flight by the aforementioned persons within portions of the territory and airspace of Ethiopia, I find that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. Further I find that good cause exists under 5 U.S.C. 553(d) for making this rule effective upon issuance. I also find that this action is fully consistent with the obligations under section 40105 of Title 49, United States Code, to ensure that I exercise my duties consistently with the obligations of the United States under international agreements.

**International Trade Impact Assessment**

There are currently no U.S. carriers that would be expected to conduct scheduled or codeshare operations in the airspace of Ethiopia north of 12 degrees north latitude. This amendment would not eliminate existing or create additional barriers to the sale of foreign aviation products in the United States or to the sale of U.S. aviation products and services in foreign countries.

**Regulatory Analyses**

This rulemaking action is taken under an emergency situation within the meaning of Section 6(a)(3)(d) of Executive Order 12866, Regulatory Planning and Review. It also is considered an emergency regulation under Paragraph 11g of the Department of Transportation (DOT) Regulatory Policies and Procedures. In addition, it is not a significant rule within the meaning of either the Executive Order or DOT's policies and procedures. Accordingly, no regulatory analysis or evaluation accompanies this amendment. The FAA certifies that this rule will not have a substantial impact on a substantial number of small entities as defined in the Regulatory Flexibility Act of 1980, as amended. It also will have no impact on international trade and creates no unfunded mandate on any entity.

**List of Subjects in 14 CFR Part 91**

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Ethiopia.

**The Amendment**

For the reasons set forth above, the Federal Aviation Administration amends 14 CFR Part 91 as follows:

## PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for Part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531; Articles 12 and 29 of the Convention on International Civil Aviation (61 Stat. 1180).

2. Special Federal Aviation Regulation (SFAR) No. 87 added to read as follows:

**Special Federal Aviation Regulation No. 87—Prohibition Against Certain Flights Within the Territory and Airspace of Ethiopia**

1. *Applicability.* This Special Federal Aviation Regulation (SFAR) No. 87 applies to all U.S. air carriers or commercial operators, all persons exercising the privileges of an airman certificate issued by the FAA unless that person is engaged in the operation of a U.S.-registered aircraft for a foreign air carrier, and all operators using aircraft registered in the United States except where the operator of such aircraft is a foreign air carrier.

2. *Flight prohibition.* Except as provided in paragraphs 3 and 4 of this SFAR, no person described in paragraph 1 may conduct flight operations within the territory and airspace of Ethiopia north of 12 degrees north latitude.

3. *Permitted operations.* This SFAR does not prohibit persons described in paragraph 1 from conducting flight operations within the territory and airspace of Ethiopia where such operations are authorized either by exemption issued by the Administrator or by an authorization issued by another agency of the United States Government with the approval of the FAA.

4. *Emergency situations.* In an emergency that requires immediate decision and action for the safety of the flight, the pilot in command of an aircraft may deviate from this SFAR to the extent required by that emergency. Except for U.S. air carriers and commercial operators that are subject to the requirements of 14 CFR 121.557, 121.559, or 135.19, each person who deviates from this rule shall, within ten (10) days of the deviation, excluding Saturdays, Sundays, and Federal holidays, submit to the nearest FAA Flight Standards District Office a complete report of the operations of the aircraft involved in the deviation, including a description of the deviation and the reasons therefor.

5. *Expiration.* This Special Federal Aviation Regulation shall remain in effect until further notice.

Issued in Washington, DC, on May 12, 2000.

**Jane F. Garvey,**

*Administrator.*

[FR Doc. 00–12369 Filed 5–12–00; 3:05 pm]

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Part III

# General Services Administration

41 CFR Parts 101–43 and 102–36
Disposition of Excess Personal Property; Final Rule

## GENERAL SERVICES ADMINISTRATION

**41 CFR Parts 101–43 and 102–36**

**[FPMR Amendment H–205]**

**RIN 3090–AF39**

## Disposition of Excess Personal Property

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Final rule.

**SUMMARY:** The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage on the disposition of excess personal property into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand.

**EFFECTIVE DATE:** May 30, 2000.

**FOR FURTHER INFORMATION CONTACT:** Martha Caswell, Director, Personal Property Management Policy Division (MTP), 202–501–3828.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The purpose of this final rule is to update, streamline, and clarify FPMR part 101–43 and move the part into the Federal Management Regulation (FMR). The proposed rule is written in a plain language question and answer format. This style uses an active voice, shorter sentences, and pronouns. Unless otherwise indicated in the text, the pronouns "we", "you", and their variants refer to the agency. A question and its answer combine to establish a rule. The employee and the agency must follow the language contained in both the question and its answer.

GSA has removed the term "Trust Territory of the Pacific Islands" from the definition of "foreign excess personal property" because there are no longer any entities in the Trust Territory of the Pacific Islands. As of October 1, 1994, Palau, the last remaining entity in the Trust Territory, became a self-governing sovereign state in free association with the United States.

A proposed rule was published in the **Federal Register** on November 16, 1999 (64 FR 62146). All public comments received were considered in the formulation of the final rule.

### B. Executive Order 12866

GSA has determined that this final rule is not a significant rule for the purposes of Executive Order 12866 of September 30, 1993.

### C. Regulatory Flexibility Act

This final rule is not required to be published in the **Federal Register** for notice and comment; therefore the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, does not apply.

### D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*

### E. Small Business Regulatory Enforcement Fairness Act

This final rule is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

### List of Subjects in 41 CFR Parts 101–43 and 102–36

Government property management, Surplus Government property.

For the reasons set forth in the preamble, GSA amends 41 CFR chapters 101 and 102 as follows:

**CHAPTER 101—[AMENDED]**

1. Part 101–43 is revised to read as follows:

## PART 101–43—UTILIZATION OF PERSONAL PROPERTY

**Authority:** 40 U.S.C. 486(c); Sec. 205(c), 63 Stat. 390.

**§ 101–43.000 Cross-reference to the Federal Management Regulation (FMR) (41 CFR chapter 102, parts 102–1 through 102–220).**

For information on the disposition of excess personal property previously contained in this part, see FMR part 36 (41 CFR part 102–36).

**CHAPTER 102—[AMENDED]**

2. Part 102–36 is added to subchapter B to read as follows:

## PART 102–36—DISPOSITION OF EXCESS PERSONAL PROPERTY

### Subpart A—General Provisions

Sec.

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102–36.10 What does this part cover?
102–36.15 Who must comply with the provisions of this part?
102–36.20 To whom do "we", "you", and their variants refer?
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**Authority:** 40 U.S.C. 486(c).

## Subpart A—General Provisions

### § 102–36.5 What is the governing authority for this part?

Section 205(c) of the Federal Property and Administrative Services Act of 1949, as amended (the Property Act) (40 U.S.C. 486), authorizes the Administrator of General Services to prescribe regulations as he deems necessary to carry out his functions under the Property Act. Section 202 of the Property Act (40 U.S.C. 483) authorizes the General Services Administration (GSA) to prescribe policies to promote the maximum use of excess Government personal property by executive agencies.

### § 102–36.10 What does this part cover?

This part covers the acquisition, transfer, and disposal, by executive agencies, of excess personal property located in the United States, the U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

### § 102–36.15 Who must comply with the provisions of this part?

All executive agencies must comply with the provisions of this part. The legislative and judicial branches are encouraged to report and transfer excess personal property and fill their personal property requirements from excess in accordance with these provisions.

### § 102–36.20 To whom do "we", "you", and their variants refer?

Use of pronouns "we", "you", and their variants throughout this part refer to the agency.

### § 102–36.25 How do we request a deviation from these requirements and who can approve it?

See §§ 102–2.60 through 102–2.110 of this chapter to request a deviation from the requirements of this part.

### § 102–36.30 When is personal property excess?

Personal property is excess when it is no longer needed by the activities within your agency to carry out the functions of official programs, as determined by the agency head or designee.

### § 102–36.35 What is the typical process for disposing of excess personal property?

(a) You must ensure personal property not needed by your activity is offered for use elsewhere within your agency. If the property is no longer needed by any activity within your agency, your agency declares the property excess and reports it to GSA for possible transfer to eligible recipients, including Federal agencies for direct use or for use by their contractors, project grantees, or cooperative agreement recipients. All executive agencies must, to the maximum extent practicable, fill requirements for personal property by using existing agency property or by obtaining excess property from other Federal agencies in lieu of new procurements.

(b) If GSA determines that there are no Federal requirements for your excess personal property, it becomes surplus property and is available for donation to State and local public agencies and other eligible non-Federal activities. The Property Act requires that surplus personal property be distributed to eligible recipients by an agency established by each State for this purpose, the State Agency for Surplus Property.

(c) Surplus personal property not selected for donation is offered for sale to the public by competitive offerings such as sealed bid sales, spot bid sales or auctions. You may conduct or contract for the sale of your surplus personal property, or have GSA or another executive agency conduct the sale on behalf of your agency in accordance with part 101–45 of this title. You must inform GSA at the time the property is reported as excess if you do not want GSA to conduct the sale for you.

(d) If a written determination is made that the property has no commercial value or the estimated cost of its continued care and handling would exceed the estimated proceeds from its sale, you may dispose of the property by abandonment or destruction, or donate it to public bodies.

## Definitions

### § 102–36.40 What definitions apply to this part?

The following definitions apply to this part:

*Commerce Control List Items (CCLIs)* are dual use (commercial/military) items that are subject to export control by the Bureau of Export Administration, Department of Commerce. These items have been identified in the U.S. Export Administration Regulations (15 CFR part 774) as export controlled for reasons of national security, crime control, technology transfer and scarcity of materials.

*Cooperative* means the organization or entity that has a cooperative agreement with a Federal agency.

*Cooperative agreement* means a legal instrument reflecting a relationship between a Federal agency and a non-Federal recipient, made in accordance with the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. 6301–6308), under any or all of the following circumstances:

(1) The purpose of the relationship is the transfer, between a Federal agency and a non-Federal entity, of money, property, services, or anything of value to accomplish a public purpose authorized by law, rather than by purchase, lease, or barter, for the direct benefit or use of the Federal Government.

(2) Substantial involvement is anticipated between the Federal agency and the cooperative during the performance of the agreed upon activity.

(3) The cooperative is a State or local government entity or any person or organization authorized to receive Federal assistance or procurement contracts.

*Demilitarization* means, as defined by the Department of Defense, the act of destroying the military capabilities inherent in certain types of equipment or material. Such destruction may include deep sea dumping, mutilation, cutting, crushing, scrapping, melting, burning, or alteration so as to prevent the further use of the item for its originally intended purpose.

*Excess personal property* means any personal property under the control of any Federal agency that is no longer required for that agency's needs, as determined by the agency head or designee.

*Exchange/sale property* means property not excess to the needs of the holding agency but eligible for replacement, which is exchanged or sold under the provisions of part 101–46 of this title in order to apply the exchange allowance or proceeds of sale in whole or part payment for replacement with a similar item.

*Executive agency* means any executive department or independent establishment in the executive branch of

the Government, including any wholly owned Government corporation.

*Fair market value* means the best estimate of the gross sales proceeds if the property were to be sold in a public sale.

*Federal agency* means any executive agency or any establishment in the legislative or judicial branch of the Government (except the Senate, the House of Representatives, and the Architect of the Capitol and any activities under his/her direction).

*Federal Disposal System (FEDS)* is GSA's automated excess personal property system. For additional information on using FEDS, access http://pub.fss.gsa.gov/property/.

*Flight Safety Critical Aircraft Part (FSCAP)* is any aircraft part, assembly, or installation containing a critical characteristic whose failure, malfunction, or absence could cause a catastrophic failure resulting in engine shut-down or loss or serious damage to the aircraft resulting in an unsafe condition.

*Foreign excess personal property* is any U.S. owned excess personal property located outside the United States (U.S.), the U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands.

*Grant* means a type of assistance award and a legal instrument which permits a Federal agency to transfer money, property, services or other things of value to a grantee when no substantial involvement is anticipated between the agency and the recipient during the performance of the contemplated activity.

*Hazardous personal property* means property that is deemed a hazardous material, chemical substance or mixture, or hazardous waste under the Hazardous Materials Transportation Act (HMTA) (49 U.S.C. 5101), the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901–6981), or the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601–2609).

*Holding agency* means the Federal agency having accountability for, and generally possession of, the property involved.

*Intangible personal property* means personal property in which the existence and value of the property is generally represented by a descriptive document rather than the property itself. Some examples are patents, patent rights, processes, techniques, inventions, copyrights, negotiable instruments, money orders, bonds, and shares of stock.

*Life-limited aircraft part* is an aircraft part that has a finite service life expressed in either total operating hours, total cycles, and/or calendar time.

*Line item* means a single line entry, on a reporting form or transfer order, for items of property of the same type having the same description, condition code, and unit cost.

*Munitions List Items (MLIs)* are commodities (usually defense articles/defense services) listed in the International Traffic in Arms Regulation (22 CFR part 121), published by the U.S. Department of State.

*Nonappropriated fund activity* means an activity or entity that is not funded by money appropriated from the general fund of the U.S. Treasury, such as post exchanges, ship stores, military officers' clubs, veterans' canteens, and similar activities. Such property is not Federal property.

*Personal property* means any property, except real property. For purposes of this part, the term excludes records of the Federal Government, and naval vessels of the following categories: battleships, cruisers, aircraft carriers, destroyers, and submarines.

*Project grant* means a grant made for a specific purpose and with a specific termination date.

*Property Act* means the Federal Property and Administrative Services Act of 1949 (63 Stat. 386), as amended.

*Public agency* means any State, political subdivision thereof, including any unit of local government or economic development district; any department, agency, or instrumentality thereof, including instrumentalities created by compact or other agreement between States or political subdivisions; multijurisdictional substate districts established by or pursuant to State law; or any Indian tribe, band, group, pueblo, or community located on a State reservation.

*Related personal property* means any personal property that is an integral part of real property. It is:

(1) Related to, designed for, or specifically adapted to the functional capacity of the real property and removal of this personal property would significantly diminish the economic value of the real property; or

(2) Determined by the Administrator of General Services to be related to the real property.

*Salvage* means property that has value greater than its basic material content but for which repair or rehabilitation is clearly impractical and/or uneconomical.

*Scrap* means property that has no value except for its basic material content.

*Screening period* means the period in which excess and surplus personal property are made available for excess transfer or surplus donation to eligible recipients.

*Shelf-life item* is any item that deteriorates over time or has unstable characteristics such that a storage period must be assigned to assure the item is issued within that period to provide satisfactory performance. Management of such items is governed by part 101–27, subpart 27.2, of this title and by DOD instructions, for executive agencies and DOD respectively.

*Surplus personal property (surplus)* means excess personal property no longer required by the Federal agencies as determined by GSA.

*Surplus release date* means the date when Federal screening has been completed and the excess property becomes surplus.

*Transfer with reimbursement* means a transfer of excess personal property between Federal agencies where the recipient is required to pay, i.e. reimburse the holding agency, for the property.

*Unit cost* means the original acquisition cost of a single item of property.

*United States* means all the 50 States and the District of Columbia.

*Vessels* means ships, boats and craft designed for navigation in and on the water, propelled by oars or paddles, sail, or power.

**Responsibility**

**§ 102–36.45 What are our responsibilities in the management of excess personal property?**

(a) Agency procurement policies should require consideration of excess personal property before authorizing procurement of new personal property.

(b) You are encouraged to designate national and regional property management officials to:

(1) Promote the use of available excess personal property to the maximum extent practicable by your agency.

(2) Review and approve the acquisition and disposal of excess personal property.

(3) Ensure that any agency implementing procedures comply with this part.

(c) When acquiring excess personal property, you must:

(1) Limit the quantity acquired to that which is needed to adequately perform the function necessary to support the mission of your agency.

(2) Establish controls over the processing of excess personal property transfer orders.

(3) Facilitate the timely pickup of acquired excess personal property from the holding agency.

(d) While excess personal property you have acquired is in your custody, or the custody of your non-Federal recipients and the Government retains title, you and/or the non-Federal recipient must do the following:

(1) Establish and maintain a system for property accountability.

(2) Protect the property against hazards including but not limited to fire, theft, vandalism, and weather.

(3) Perform the care and handling of personal property. "Care and handling" includes completing, repairing, converting, rehabilitating, operating, preserving, protecting, insuring, packing, storing, handling, conserving, and transporting excess and surplus personal property, and destroying or rendering innocuous property which is dangerous to public health or safety.

(4) Maintain appropriate inventory levels as set forth in part 101–27 of this title.

(5) Continuously monitor the personal property under your control to assure maximum use, and develop and maintain a system to prevent and detect nonuse, improper use, unauthorized disposal or destruction of personal property.

(e) When you no longer need personal property to carry out the mission of your program, you must:

(1) Offer the property for reassignment to other activities within your agency.

(2) Promptly report excess personal property to GSA when it is no longer needed by any activity within your agency for further reuse by eligible recipients.

(3) Continue the care and handling of excess personal property while it goes through the disposal process.

(4) Facilitate the timely transfer of excess personal property to other Federal agencies or authorized eligible recipients.

(5) Provide reasonable access to authorized personnel for inspection and removal of excess personal property.

(6) Ensure that final disposition complies with applicable environmental, health, safety and national security regulations.

**§ 102–36.50 May we use a contractor to perform the functions of excess personal property disposal?**

Yes, you may use service contracts to perform disposal functions that are not inherently Governmental, such as warehousing or custodial duties. You are responsible for ensuring that the contractor conforms with the requirements of the Property Act and the Federal Management Regulation (41 CFR chapter 102), and any other applicable statutes and regulations when performing these functions.

**§ 102–36.55 What is GSA's role in the disposition of excess personal property?**

In addition to developing and issuing regulations for the management of excess personal property, GSA:

(a) Screens and offers available excess personal property to Federal agencies and eligible non-Federal recipients.

(b) Approves and processes transfers of excess personal property to eligible activities.

(c) Determines the amount of reimbursement for transfers of excess personal property when appropriate.

(d) Conducts sales of surplus and exchange/sale personal property when requested by an agency.

(e) Maintains an automated system, FEDS, to facilitate the reporting and transferring of excess personal property.

## Subpart B—Acquiring Excess Personal Property For Our Agency

### Acquiring Excess

**§ 102–36.60 Who is eligible to acquire excess personal property as authorized by the Property Act?**

The following are eligible to acquire excess personal property:

(a) Federal agencies (for their own use or use by their authorized contractors, cooperatives, and project grantees).

(b) The Senate.

(c) The House of Representatives.

(d) The Architect of the Capitol and any activities under his direction.

(e) The DC Government.

(f) Mixed-ownership Government corporations as defined in 31 U.S.C. 9101.

**§ 102–36.65 Why must we use excess personal property instead of buying new property?**

Using excess personal property to the maximum extent practicable maximizes the return on Government dollars spent and minimizes expenditures for new procurement. Before purchasing new property, check with the appropriate regional GSA Personal Property Management office or access FEDS for any available excess personal property that may be suitable for your needs. You must use excess personal property unless it would cause serious hardship, be impractical, or impair your operations.

**§ 102–36.70 What must we consider when acquiring excess personal property?**

Consider the following when acquiring excess personal property:

(a) There must be an authorized requirement.

(b) The cost of acquiring and maintaining the excess personal property (including packing, shipping, pickup, and necessary repairs) does not exceed the cost of purchasing and maintaining new material.

(c) The sources of spare parts or repair/maintenance services to support the acquired item are readily accessible.

(d) The supply of excess parts acquired must not exceed the life expectancy of the equipment supported.

(e) The excess personal property will fulfill the required need with reasonable certainty without sacrificing mission or schedule.

(f) You must not acquire excess personal property with the intent to sell or trade for other assets.

**§ 102–36.75 Do we pay for excess personal property we acquire from another Federal agency under a transfer?**

(a) No, except for the situations listed in paragraph (b) of this section, you do not pay for the property. However, you are responsible for shipping and transportation costs. Where applicable, you may also be required to pay packing, loading, and any costs directly related to the dismantling of the property when required for the purpose of transporting the property.

(b) You may be required to reimburse the holding agency for excess personal property transferred to you (*i.e.*, transfer with reimbursement) when:

(1) Reimbursement is directed by GSA.

(2) The property was originally acquired with funds not appropriated from the general fund of the Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or other revenue and the holding agency requests reimbursement. It is executive branch policy that working capital fund property shall be transferred without reimbursement.

(3) The property was acquired with appropriated funds, but reimbursement is required or authorized by law.

(4) You or the holding agency is the U.S. Postal Service (USPS).

(5) You are acquiring excess personal property for use by a project grantee that is a public agency or a nonprofit organization and exempt from taxation under 26 U.S.C. 501.

(6) You or the holding agency is the DC Government.

(7) You or the holding agency is a wholly owned or mixed-ownership

Government corporation as defined in the Government Corporation Control Act (31 U.S.C. 9101–9110).

**§ 102–36.80 How much do we pay for excess personal property on a transfer with reimbursement?**

(a) You may be required to reimburse the holding agency the fair market value when the transfer involves any of the conditions in § 102–36.75(b)(1) through (b)(4).

(b) When acquiring excess personal property for your project grantees (§ 102–36.75(b)(5)), you are required to deposit into the miscellaneous receipts fund of the U.S. Treasury an amount equal to 25 percent of the original acquisition cost of the property, except for transfers under the conditions cited in § 102–36.190.

(c) When you or the holding agency is the DC Government or a wholly owned or mixed-ownership Government corporation (§ 102–36.75(b)(6) or (b)(7)), you are required to reimburse the holding agency using fair value reimbursement. Fair value reimbursement is 20 percent of the original acquisition cost for new or unused property (*i.e.*, condition code 1), and zero percent for other personal property. Where circumstances warrant, a higher fair value may be used if the agencies concerned agree. Due to special circumstances or the unusual nature of the property, the holding agency may use other criteria for establishing fair value if approved or directed by GSA. You must refer any disagreements to the appropriate regional GSA Personal Property Management office.

**§ 102–36.85 Do we pay for personal property we acquire when it is disposed of by another agency under the exchange/sale authority, and how much do we pay?**

Yes, you must pay for personal property disposed of under the exchange/sale authority, in the amount required by the holding agency. The amount of reimbursement is normally the fair market value.

## Screening of Excess

**§ 102–36.90 How do we find out what personal property is available as excess?**

You may use the following methods to find out what excess personal property is available:

(a) Check GSA's automated excess personal property system FEDS. For information on FEDS access http://pub.fss.gsa.gov/property/.

(b) Contact or submit want lists to regional GSA Personal Property Management offices.

(c) Check any available holding agency websites (see http://www.policyworks.gov/surplus for a list of Federal agency websites.).

(d) Conduct on-site screening at various Federal facilities.

**§ 102–36.95 How long is excess personal property available for screening?**

The screening period for excess personal property is normally 21 calendar days. GSA may extend or shorten the screening period in coordination with the holding agency. For screening timeframes for Government property in the possession of contractors see the Federal Acquisition Regulation (48 CFR part 45).

**§ 102–36.100 When does the screening period start for excess personal property?**

Screening starts when GSA receives the report of excess personal property (see § 102–36.230).

**§ 102–36.105 Who is authorized to screen and where do we go to screen excess personal property on-site?**

You may authorize your agency employees, contractors, or non-Federal recipients that you sponsor to screen excess personal property. You may visit Defense Reutilization and Marketing Offices (DRMOs) and DOD contractor facilities to screen excess personal property generated by the Department of Defense. You may also inspect excess personal property at various civilian agency facilities throughout the United States.

**§ 102–36.110 Do we need authorization to screen excess personal property?**

(a) Yes, when entering a Federal facility, Federal agency employees must present a valid Federal ID. Non-Federal individuals will need proof of authorization from their sponsoring Federal agency in addition to a valid picture identification.

(b) Entry on some Federal and contractor facilities may require special authorization from that facility. Persons wishing to screen excess personal property on such a facility must obtain approval from that agency. Contact your regional GSA Personal Property Management office for locations and accessibility.

**§ 102–36.115 What information must we include in the authorization form for non-Federal persons to screen excess personal property?**

(a) For non-Federal persons to screen excess personal property, you must provide on the authorization form:

(1) The individual's name and the organization he/she represents;

(2) The period of time and location(s) in which screening will be conducted; and

(3) The number and completion date of the applicable contract, cooperative agreement, or grant.

(b) An authorized official of your agency must sign the authorization form.

**§ 102–36.120 What are our responsibilities in authorizing a non-Federal individual to screen excess personal property?**

You must do the following:

(a) Ensure that the non-Federal screener certifies that any and all property requested will be used for authorized official purpose(s).

(b) Maintain a record of the authorized screeners under your authority, to include names, addresses and telephone numbers, and any additional identifying information such as driver's license or social security numbers.

(c) Retrieve any expired or invalid screener's authorization forms.

## Processing Transfers

**§ 102–36.125 How do we process a Standard Form 122 (SF 122), Transfer Order Excess Personal Property, through GSA?**

(a) You must first contact the appropriate regional GSA Personal Property Management office to assure the property is available to you. Submit your request on a SF 122, Transfer Order Excess Personal Property, to the region in which the property is located. For the types of property listed in the table in paragraph (b) of this section, submit the SF 122 to the corresponding GSA regions. You may submit the SF 122 manually or transmit the required information by electronic media (FEDS) or any other transfer form specified and approved by GSA.

(b) For the following types of property, you must submit the SF 122 to the corresponding GSA regions:

| Type of property | GSA region | Location |
|---|---|---|
| Aircraft | 9 FBP | San Francisco, CA 94102. |
| Firearms | 7 FP–8 | Denver, CO 80225. |
| Foreign Gifts | FBP | Washington, DC 20406. |
| Forfeited Property | 3 FP | Washington, DC 20407. |

| Type of property | GSA region | Location |
|---|---|---|
| Standard Forms | 7 FMP | Ft. Worth, TX 76102. |
| Vessels, civilian | 3 FPD | Philadelphia, PA 19107. |
| Vessels, DOD | 4 FD | Atlanta, GA 30365. |

**§ 102–36.130 What are our responsibilities in processing transfer orders of excess personal property?**

Whether the excess is for your use or for use by a non-Federal recipient that you sponsor, you must:

(a) Ensure that only authorized Federal officials of your agency sign the SF 122 prior to submission to GSA for approval.

(b) Ensure that excess personal property approved for transfer is used for authorized official purpose(s).

(c) Advise GSA of names of agency officials that are authorized to approve SF 122s, and notify GSA of any changes in signatory authority.

**§ 102–36.135 How much time do we have to pick up excess personal property that has been approved for transfer?**

When the holding agency notifies you that the property is ready for removal, you normally have 15 calendar days to pick up the property, unless otherwise coordinated with the holding agency.

**§ 102–36.140 May we arrange to have the excess personal property shipped to its final destination?**

Yes, when the holding agency agrees to provide assistance in preparing the property for shipping. You may be required to pay the holding agency any direct costs in preparing the property for shipment. You must provide shipping instructions and the appropriate fund code for billing purposes on the SF 122.

### Direct Transfers

**§ 102–36.145 May we obtain excess personal property directly from another Federal agency without GSA approval?**

Yes, but only under the following situations:

(a) You may obtain excess personal property that has not yet been reported to GSA, provided the total acquisition cost of the excess property does not exceed $10,000 per line item. You must ensure that a SF 122 is completed for the direct transfer and that an authorized official of your agency signs the SF 122. You must provide a copy of the SF 122 to the appropriate regional GSA office within 10 workdays from the date of the transaction.

(b) You may obtain excess personal property exceeding the $10,000 per line item limitation, provided you first contact the appropriate regional GSA Personal Property Management office for verbal approval of a prearranged transfer. You must annotate the SF 122 with the name of the GSA approving official and the date of the verbal approval, and provide a copy of the SF 122 to GSA within 10 workdays from the date of transaction.

(c) You are subject to the requirement to pay reimbursement for the excess personal property under a direct transfer when any of the conditions in § 102–36.75(b) applies.

(d) You may obtain excess personal property directly from another Federal agency without GSA approval when that Federal agency has statutory authority to dispose of such excess personal property and you are an eligible recipient.

## Subpart C—Acquiring Excess Personal Property for Non-Federal Recipients

**§ 102–36.150 For which non-Federal activities may we acquire excess personal property?**

Under the Property Act you may acquire and furnish excess personal property for use by your nonappropriated fund activities, contractors, cooperatives, and project grantees. You may acquire and furnish excess personal property for use by other eligible recipients only when you have specific statutory authority to do so.

**§ 102–36.155 What are our responsibilities when acquiring excess personal property for use by a non-Federal recipient?**

When acquiring excess personal property for use by a non-Federal recipient, your authorized agency official must:

(a) Ensure the use of excess personal property by the non-Federal recipient is authorized and complies with applicable Federal regulations and agency guidelines.

(b) Determine that the use of excess personal property will reduce the costs to the Government and/or that it is in the Government's best interest to furnish excess personal property.

(c) Review and approve transfer documents for excess personal property as the sponsoring Federal agency.

(d) Ensure the non-Federal recipient is aware of his obligations under the FMR and your agency regulations regarding the management of excess personal property.

(e) Ensure the non-Federal recipient does not stockpile the property but places the property into use within a reasonable period of time, and has a system to prevent nonuse, improper use, or unauthorized disposal or destruction of excess personal property furnished.

(f) Establish provisions and procedures for property accountability and disposition in situations when the Government retains title.

(g) Report annually to GSA excess personal property furnished to non-Federal recipients during the year (see § 102–36.295).

**§ 102–36.160 What additional information must we provide on the SF 122 when acquiring excess personal property for non-Federal recipients?**

Annotate on the SF 122, the name of the non-Federal recipient and the contract, grant or agreement number, when applicable, and the scheduled completion/expiration date of the contract, grant or agreement. If the remaining time prior to the expiration date is less than 60 calendar days, you must certify that the contract, grant or agreement will be extended or renewed or provide other written justification for the transfer.

### Nonappropriated Fund Activities

**§ 102–36.165 Do we retain title to excess personal property furnished to a nonappropriated fund activity within our agency?**

Yes, title to excess personal property furnished to a nonappropriated fund activity remains with the Federal Government and you are accountable for establishing controls over the use of such excess property in accordance with § 102–36.45(d). When such property is no longer required by the nonappropriated fund activity, you must reuse or dispose of the property in accordance with this part.

**§ 102–36.170 May we transfer personal property owned by one of our nonappropriated fund activities?**

Property purchased by a nonappropriated fund activity is not Federal property. A nonappropriated fund activity has the option of making its privately owned personal property available for transfer to a Federal agency, usually with reimbursement. If such reimbursable personal property is not transferred to another Federal

agency, it may be offered for sale. Such property in not available for donation.

**Contractors**

**§ 102–36.175 Are there restrictions to acquiring excess personal property for use by our contractors?**

Yes, you may acquire and furnish excess personal property for use by your contractors subject to the criteria and restrictions in the Federal Acquisition Regulation (48 CFR part 45). When such property is no longer needed by your contractors or your agency, you must dispose of the excess personal property in accordance with the provisions of this part.

**Cooperatives**

**§ 102–36.180 Is there any limitation/condition to acquiring excess personal property for use by cooperatives?**

Yes, you must limit the total dollar amount of property transfers (in terms of original acquisition cost) to the dollar value of the cooperative agreement. For any transfers in excess of such amount, you must ensure that an official of your agency at a level higher than the officer administering the agreement approves the transfer. The Federal Government retains title to such property, except when provided by specific statutory authority.

**Project Grantees**

**§ 102–36.185 What are the requirements for acquiring excess personal property for use by our grantees?**

You may furnish excess personal property for use by your grantees only when:

(a) The grantee holds a Federally sponsored project grant;

(b) The grantee is a public agency or a nonprofit tax-exempt organization under section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501);

(c) The property is for use in connection with the grant; and

(d) You pay 25 percent of the original acquisition cost of the excess personal property, such funds to be deposited into the miscellaneous receipts fund of the U.S. Treasury. Exceptions to paying this 25 percent are provided in § 102–36.190. Title to property vests in the grantee when your agency pays 25 percent of the original acquisition cost.

**§ 102–36.190 Must we always pay 25 percent of the original acquisition cost when furnishing excess personal property to project grantees?**

No, you may acquire excess personal property for use by a project grantee without paying the 25 percent fee when any of the following conditions apply:

(a) The personal property was originally acquired from excess sources by your agency and has been placed into official use by your agency for at least one year. The Federal Government retains title to such property.

(b) The property is furnished under section 203 of the Department of Agriculture Organic Act of 1944 (16 U.S.C. 580a) through the U.S. Forest Service in connection with cooperative State forest fire control programs. The Federal Government retains title to such property.

(c) The property is furnished by the U.S. Department of Agriculture to State or county extension services or agricultural research cooperatives under 40 U.S.C. 483(d)(2)(E). The Federal Government retains title to such property.

(d) The property is not needed for donation under part 101–44 of this title, and is transferred under section 608 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2358). Title to such property transfers to the grantee. (You need not wait until after the donation screening period when furnishing excess personal property to recipients under the Agency for International Development (AID) Development Loan Program.)

(e) The property is scientific equipment transferred under section 11(e) of the National Science Foundation (NSF) Act of 1950, as amended (42 U.S.C. 1870(e)). GSA will limit such transfers to property within Federal Supply Classification (FSC) groups 12, 14, 43, 48, 58, 59, 65, 66, 67, 68 and 70. GSA may approve transfers without reimbursement for property under other FSC groups when NSF certifies the item is a component of or related to a piece of scientific equipment or is a difficult-to-acquire item needed for scientific research. Regardless of FSC, GSA will not approve transfers of common-use or general-purpose items without reimbursement. Title to such property transfers to the grantee.

(f) The property is furnished in connection with grants to Indian tribes, as defined in section 3(c) of the Indian Financing Act (24 U.S.C. 1452(c)). Title passage is determined under the authorities of the administering agency.

**§ 102–36.195 What type of excess personal property may we furnish to our project grantees?**

You may furnish to your project grantees any property, except for consumable items, determined to be necessary and usable for the purpose of the grant. Consumable items are generally not transferable to project grantees. GSA may approve transfers of excess consumable items when adequate justification for the transfer accompanies such requests. For the purpose of this section "consumable items" are items which are intended for one-time use and are actually consumed in that one time; *e.g.*, drugs, medicines, surgical dressings, cleaning and preserving materials, and fuels.

**§ 102–36.200 May we acquire excess personal property for cannibalization purposes by the grantees?**

Yes, subject to GSA approval, you may acquire excess personal property for cannibalization purposes. You may be required to provide a supporting statement that indicates disassembly of the item for secondary use has greater benefit than utilization of the item in its existing form and cost savings to the Government will result.

**§ 102–36.205 Is there a limit to how much excess personal property we may furnish to our grantees?**

Yes, you must monitor transfers of excess personal property so the total dollar amount of property transferred (in original acquisition cost) does not exceed the dollar value of the grant. Any transfers above the grant amount must be approved by an official at an administrative level higher than the officer administering the grant.

## Subpart D—Disposition of Excess Personal Property

**§ 102–36.210 Why must we report excess personal property to GSA?**

You must report excess personal property to promote reuse by the Government to enable Federal agencies to benefit from the continued use of property already paid for with taxpayers' money, thus minimizing new procurement costs. Reporting excess personal property to GSA helps assure that the information on available excess personal property is accessible and disseminated to the widest range of reuse customers.

**Reporting Excess Personal Property**

**§ 102–36.215 How do we report excess personal property?**

Report excess personal property as follows:

(a) Electronically submit the data elements required on the Standard Form 120 (SF 120), Report of Excess Personal Property, in a format specified and approved by GSA; or

(b) Submit a paper SF 120 to the regional GSA Personal Property Management office.

**§ 102–36.220 Must we report all excess personal property to GSA?**

(a) Generally yes, regardless of the condition code, except as authorized in § 102–36.145 for direct transfers or as exempted in paragraph (b) of this section. Report all excess personal property, including excess personal property to which the Government holds title but is in the custody of your contractors, cooperatives, or project grantees.

(b) You are not required to report the following types of excess personal property to GSA for screening:

(1) Property determined appropriate for abandonment/destruction (see § 102–36.305).

(2) Nonappropriated fund property (see § 102–36.165).

(3) Foreign excess personal property (see § 102–36.380).

(4) Scrap, except aircraft in scrap condition.

(5) Perishables, defined for the purposes of this section as any personal property subject to spoilage or decay.

(6) Trading stamps and bonus goods.

(7) Hazardous waste.

(8) Controlled substances.

(9) Nuclear Regulatory Commission-controlled materials.

(10) Property dangerous to public health and safety.

(11) Classified items or property determined to be sensitive for reasons of national security.

(c) Refer to part 101–42 of this title for additional guidance on the disposition of classes of property under paragraphs (b)(7) through (b)(11) of this section.

**§ 102–36.225 Must we report excess related personal property?**

Yes, you must report excess related personal property to the Office of Real Property, GSA, in accordance with part 101–47 of this title.

**§ 102–36.230 Where do we send the reports of excess personal property?**

(a) You must direct electronic submissions of excess personal property to the Federal Disposal System (FEDS) maintained by the Property Management Division (FBP), GSA, Washington, DC 20406.

(b) For paper submissions, you must send the SF 120 to the regional GSA Personal Property Management office for the region in which the property is located. For the categories of property listed in § 102–36.125(b), forward the SF 120 to the corresponding regions.

**§ 102–36.235 What information do we provide when reporting excess personal property?**

(a) You must provide the following data on excess personal property:

(1) The reporting agency and the property location.

(2) A report number (6-digit activity address code and 4-digit Julian date).

(3) 4-digit Federal Supply Class (use National Stock Number whenever available).

(4) Description of item, in sufficient detail.

(5) Quantity and unit of issue.

(6) Disposal Condition Code (see § 102–36.240).

(7) Original acquisition cost per unit and total cost (use estimate if original cost not available).

(8) Manufacturer, date of manufacture, part and serial number, when required by GSA.

(b) In addition, provide the following information on your report of excess, when applicable:

(1) Major parts/components that are missing.

(2) If repairs are needed, the type of repairs.

(3) Special requirements for handling, storage, or transportation.

(4) The required date of removal due to moving or space restrictions.

(5) If reimbursement is required, the authority under which the reimbursement is requested, the amount of reimbursement and the appropriate fund code to which money is to be deposited.

(6) If you will conduct the sale of personal property that is not transferred or donated.

**§ 102–36.240 What are the disposal condition codes?**

The disposal condition codes are contained in the following table:

| Disposal condition code | Definition |
|---|---|
| 1 | New. Property which is in new condition or unused condition and can be used immediately without modifications or repairs. |
| 4 | Usable. Property which shows some wear, but can be used without significant repair. |
| 7 | Repairable. Property which is unusable in its current condition but can be economically repaired. |
| X | Salvage. Property which has value in excess of its basic material content, but repair or rehabilitation is impractical and/or uneconomical. |
| S | Scrap. Property which has no value except for its basic material content. |

**Disposing of Excess Personal Property**

**§ 102–36.245 Are we accountable for the personal property that has been reported excess, and who is responsible for the care and handling costs?**

Yes, you are accountable for the excess personal property until the time it is picked up by the designated recipient or its agent. You are responsible for all care and handling charges while the excess personal property is going through the screening and disposal process.

**§ 102–36.250 Does GSA ever take physical custody of excess personal property?**

Generally you retain physical custody of the excess personal property prior to its final disposition. Very rarely GSA may consider accepting physical custody of excess personal property. Under special circumstances, GSA may take custody or may direct the transfer of partial or total custody to other executive agencies, with their consent.

**§ 102–36.255 What options do we have when unusual circumstances do not allow adequate time for disposal through GSA?**

Contact your regional GSA Personal Property Management office for any existing interagency agreements that would allow you to turn in excess personal property to a Federal facility. You are responsible for any turn-in costs and all costs related to transporting the excess personal property to these facilities.

**§ 102–36.260 How do we promote the expeditious transfer of excess personal property?**

For expeditious transfer of excess personal property you should:

(a) Provide complete and accurate property descriptions and condition codes on the report of excess to facilitate

the selection of usable property by potential users.

(b) Ensure that any available operating manual, parts list, diagram, maintenance log, or other instructional publication is made available with the property at the time of transfer.

(c) Advise the designated recipient of any special requirements for dismantling, shipping/transportation.

(d) When the excess personal property is located at a facility due to be closed, provide advance notice of the scheduled date of closing, and ensure there is sufficient time for screening and removal of property.

**§ 102–36.265 What if there are competing requests for the same excess personal property?**

(a) GSA will generally approve transfers on a first-come, first-served basis. When more than one Federal agency requests the same item, and the quantity available is not sufficient to meet the demand of all interested agencies, GSA will consider factors such as national defense requirements, emergency needs, avoiding the necessity of a new procurement, energy conservation, transportation costs, and retention of title in the Government. GSA will normally give preference to the agency that will retain title in the Government.

(b) Requests for property for the purpose of cannibalization will normally be subordinate to requests for use of the property in its existing form.

**§ 102–36.270 What if a Federal agency requests personal property that is undergoing donation screening or in the sales process?**

Prior to final disposition, GSA will consider requests from authorized Federal activities for excess personal property undergoing donation screening or in the sales process. Federal transfers may be authorized prior to removal of the property under a donation or sales action.

**§ 102–36.275 May we dispose of excess personal property without GSA approval?**

No, you may not dispose of excess personal property without GSA approval except under the following limited situations:

(a) You may transfer to another Federal agency excess personal property that has not yet been reported to GSA, under direct transfer procedures contained in § 102–36.145.

(b) You may dispose of excess personal property that is not required to be reported to GSA (see § 102–36.220(b)).

(c) You may dispose of excess personal property without going through GSA when such disposal is authorized by law.

**§ 102–36.280 May we withdraw from the disposal process excess personal property that we have reported to GSA?**

Yes, you may withdraw excess personal property from the disposal process, but only with the approval of GSA and to satisfy an internal agency requirement. Property that has been approved for transfer or donation or offered for sale by GSA may be returned to your control with proper justification.

## Transfers With Reimbursement

**§ 102–36.285 May we charge for personal property transferred to another Federal agency?**

(a) When any one of the following conditions applies, you may require and retain reimbursement for the excess personal property from the recipient:

(1) Your agency has the statutory authority to require and retain reimbursement for the property.

(2) You are transferring the property under the exchange/sale authority.

(3) You had originally acquired the property with funds not appropriated from the general fund of the Treasury or appropriated therefrom but by law reimbursable from assessment, tax, or other revenue. It is current executive branch policy that working capital fund property shall be transferred without reimbursement.

(4) You or the recipient is the U.S. Postal Service.

(5) You or the recipient is the DC Government.

(6) You or the recipient is a wholly owned or mixed-ownership Government corporation.

(b) You may charge for direct costs you incurred incident to the transfer, such as packing, loading and shipping of the property. The recipient is responsible for such charges unless you waive the amount involved.

(c) You may not charge for overhead or administrative expenses or the costs for care and handling of the property pending disposition.

**§ 102–36.290 How much do we charge for excess personal property on a transfer with reimbursement?**

(a) You may require reimbursement in an amount up to the fair market value of the property when the transfer involves property meeting conditions in § 102–36.285(a)(1) through (a)(4).

(b) When you or the recipient is the DC Government or a wholly owned or mixed-ownership Government corporation (§ 102–36.285(a)(5) and (a)(6)), you may only require fair value reimbursement. Fair value reimbursement is 20 percent of the original acquisition cost for new or unused property (*i.e.*, condition code 1), and zero percent for other personal property. A higher fair value may be used if you and the recipient agency agree. Due to special circumstances or the nature of the property, you may use other criteria for establishing fair value if approved or directed by GSA. You must refer any disagreements to the appropriate regional GSA Personal Property Management office.

## Report of Disposal Activity

**§ 102–36.295 Is there any reporting requirement on the disposition of excess personal property?**

Yes, you must report annually to GSA personal property furnished in any manner in that year to any non-Federal recipients, with respect to property obtained as excess or as property determined to be no longer required for the purposes of the appropriation from which it was purchased. GSA will subsequently submit a summary of these Non-Federal Recipients Reports to Congress.

**§ 102–36.300 How do we report the furnishing of personal property to non-Federal recipients?**

(a) Submit your annual report of personal property furnished to non-Federal recipients, in letter form, to GSA, Personal Property Management Policy Division (MTP), 1800 F Street, NW, Washington, DC 20405, within 90 calendar days after the close of each fiscal year. The report must cover personal property disposed during the fiscal year in all areas within the United States, the U.S. Virgin Islands, American Samoa, Guam, the Commonwealth of Puerto Rico, and the Commonwealth of the Northern Mariana Islands. Negative reports are required.

(b) The report (interagency report control number 0154—GSA—AN) must reference this part and contain the following:

(1) Names of the non-Federal recipients.

(2) Status of the recipients (contractor, cooperative, project grantee, etc.).

(3) Total original acquisition cost of excess personal property furnished to each type of recipient, by type of property (two-digit FSC groups).

## Abandonment/Destruction

**§ 102–36.305 May we abandon or destroy excess personal property without reporting it to GSA?**

Yes, you may abandon or destroy excess personal property when you have made a written determination that the property has no commercial value or the

estimated cost of its continued care and handling would exceed the estimated proceeds from its sale. An item has no commercial value when it has neither utility nor monetary value (either as an item or as scrap).

**§ 102–36.310 Who makes the determination to abandon or destroy excess personal property?**

To abandon or destroy excess personal property, an authorized official of your agency makes a written finding that must be approved by a reviewing official who is not directly accountable for the property.

**§ 102–36.315 Are there any restrictions to the use of the abandonment/destruction authority?**

Yes, the following restrictions apply:

(a) You must not abandon or destroy property in a manner which is detrimental or dangerous to public health or safety. Additional guidelines for the abandonment/destruction of hazardous materials are prescribed in part 101–42 of this title.

(b) If you become aware of an interest from an entity in purchasing the property, you must implement sales procedures in lieu of abandonment/destruction.

**§ 102–36.320 May we transfer or donate excess personal property that has been determined appropriate for abandonment/destruction without GSA approval?**

In lieu of abandonment/destruction, you may donate such excess personal property only to a public body without going through GSA. A public body is any department, agency, special purpose district, or other instrumentality of a State or local government; any Indian tribe; or any agency of the Federal Government. If you become aware of an interest from an eligible non-profit organization (see part 101–44 of this title) that is not a public body in acquiring the property, you must contact the regional GSA Personal Property Management office and implement donation procedures in accordance with part 101–44 of this title.

**§ 102–36.325 What must be done before the abandonment/destruction of excess personal property?**

Except as provided in § 102–36.330, you must provide public notice of intent to abandon or destroy excess personal property, in a format and timeframe specified by your agency regulations (such as publishing a notice in a local newspaper, posting of signs in common use facilities available to the public, or providing bulletins on your website through the internet). You must also include in the notice an offer to sell in accordance with part 101–45 of this title.

**§ 102–36.330 Are there occasions when public notice is not needed regarding abandonment/destruction of excess personal property?**

Yes, you are not required to provide public notice when:

(1) The value of the property is so little or the cost of its care and handling, pending abandonment/destruction, is so great that its retention for advertising for sale, even as scrap, is clearly not economical;

(2) Abandonment or destruction is required because of health, safety, or security reasons; or

(3) When the original acquisition cost of the item (estimated if unknown) is less than $500.

## Subpart E—Personal Property Whose Disposal Requires Special Handling

**§ 102–36.335 Are there certain types of excess personal property that must be disposed of differently from normal disposal procedures?**

Yes, you must comply with the additional provisions in this subpart when disposing of the types of personal property listed in this subpart.

### Aircraft and Aircraft Parts

**§ 102–36.340 What must we do when disposing of excess aircraft?**

(a) You must report to GSA all excess aircraft, regardless of condition or dollar value, and provide the following information on the SF 120:

(1) Manufacturer, date of manufacture, model, serial number.

(2) Major components missing from the aircraft (such as engines, electronics).

(3) Whether or not the:

(i) Aircraft is operational;

(ii) Dataplate is available;

(iii) Historical and maintenance records are available;

(iv) Aircraft has been previously certificated by the Federal Aviation Administration (FAA) and/or has been maintained to FAA airworthiness standards;

(v) Aircraft was previously used for non-flight purposes (*i.e.*, ground training or static display), and has been subjected to extensive disassembly and re-assembly procedures for ground training, or repeated burning for fire-fighting training purposes.

(4) For military aircraft, indicate Category A, B, or C as designated by DOD, as follows:

| Category of aircraft | Description |
|---|---|
| A | Aircraft authorized for sale and exchange for commercial use. |
| B | Aircraft previously used for ground instruction and/or static display. |
| C | Aircraft that are combat configured as determined by DOD. |

**Note to § 102–36.340(a)(4):** For additional information on military aircraft see Defense Materiel Disposition Manual, DOD 4160.21-M, accessible at *www.drms.dla.mil* under Publications.

(b) When the designated transfer or donation recipient's intended use is for non-flight purposes, you must remove and return the dataplate to GSA Property Management Branch, San Francisco, California prior to releasing the aircraft to the authorized recipient. GSA will forward the dataplates to FAA.

(c) You must also submit a report of the final disposition of the aircraft to the Federal Aviation Interactive Reporting System (FAIRS) maintained by the Aircraft Management Policy Division (MTA), GSA, 1800 F Street, NW, Washington, DC 20405. For additional instructions on reporting to FAIRS see part 101–37 of this title.

**§ 102–36.345 May we dispose of excess Flight Safety Critical Aircraft Parts (FSCAP)?**

Yes, you may dispose of excess FSCAP, but first you must determine whether the documentation available is adequate to allow transfer, donation, or sale of the part in accordance with part 101–37, subpart 101–37.6, of this title. Otherwise, you must mutilate undocumented FSCAP that has no traceability to its original equipment manufacturer and dispose of it as scrap. When reporting excess FSCAP, annotate

the manufacturer, date of manufacture, part number, serial number, and the appropriate Criticality Code on the SF 120, and ensure that all available historical and maintenance records accompany the part at the time of issue.

**§ 102–36.350 How do we identify a FSCAP?**

Any aircraft part designated as FSCAP is assigned an alpha Criticality Code, and the code is annotated on the original transfer document when you acquire the part. You must perpetuate the appropriate FSCAP Criticality Code on all personal property records. You may contact the Federal agency or Military service that originally owned the part for assistance in making this determination, or query DOD's Federal Logistics Information System (FLIS) using the National Stock Number (NSN) for the part. For assistance in subscribing to the FLIS service contact the FedLog Consumer Support Office, 800–351–4381.

**§ 102–36.355 What are the FSCAP Criticality Codes?**

The FSCAP Criticality Codes are contained in the following table:

| FSCAP code | Description |
|---|---|
| E | FSCAP specially designed to be or selected as being nuclear hardened. |
| F | Flight Safety Critical Aircraft Part. |

**§ 102–36.360 How do we dispose of aircraft parts that are life-limited but have no FSCAP designation?**

When disposing of life-limited aircraft parts that have no FSCAP designation, you must ensure that tags and labels, historical data and maintenance records accompany the part on any transfers, donations or sales. For additional information regarding the disposal of life-limited parts with or without tags or documentation refer to part 101–37 of this title.

**Canines, Law Enforcement**

**§ 102–36.365 May we transfer or donate canines that have been used in the performance of law enforcement duties?**

Yes, under Public Law 105–27 (111 Stat. 244), when the canine is no longer needed for law enforcement duties, you may donate the canine to an individual who has experience handling canines in the performance of those official duties.

**Disaster Relief Property**

**§ 102–36.370 Are there special requirements concerning the use of excess personal property for disaster relief?**

Yes, upon declaration by the President of an emergency or a major disaster, you may loan excess personal property to State and local governments, with or without compensation and prior to reporting it as excess to GSA, to alleviate suffering and damage resulting from any emergency or major disaster (Disaster Relief Act of 1974 (Public Law 93–288 (42 U.S.C. 5121)) and Executive Orders 11795 (3 CFR, 1971–1975 Comp., p. 887) and 12148 (3 CFR, 1979 Comp., p. 412), as amended). If the loan involves property that has already been reported excess to GSA, you may withdraw the item from the disposal process subject to approval by GSA. You may also withdraw excess personal property for use by your agency in providing assistance in disaster relief. You are still accountable for this property and your agency is responsible for developing agencywide procedures for recovery of such property.

**Firearms**

**§ 102–36.375 May we dispose of excess firearms?**

Yes, unless you have specific statutory authority to do otherwise, excess firearms may be transferred only to those Federal agencies authorized to acquire firearms for official use. GSA may donate certain classes of surplus firearms to State and local government activities whose primary function is the enforcement of applicable Federal, State, and/or local laws and whose compensated law enforcement officers have the authority to apprehend and arrest. Firearms not transferred or donated must be destroyed and sold as scrap. For additional guidance on the disposition of firearms refer to part 101–42 of this title.

**Foreign Excess Personal Property**

**§ 102–36.380 Who is responsible for disposing of foreign excess personal property?**

Your agency is responsible for disposing of your foreign excess personal property, as provided by title IV of the Property Act.

**§ 102–36.385 What are our responsibilities in the disposal of foreign excess personal property?**

When disposing of foreign excess personal property you must:

(a) Determine whether it is in the interest of the U.S. Government to return foreign excess personal property to the U.S. for further re-use or to dispose of the property overseas.

(b) Ensure that any disposal of property overseas conforms to the foreign policy of the United States and the terms and conditions of any applicable Host Nation Agreement.

(c) Ensure that, when foreign excess personal property is donated or sold overseas, donation/sales conditions include a requirement for compliance with U.S. Department of Commerce and Department of Agriculture regulations when transporting any personal property back to the U.S.

(d) Inform the U.S. State Department of any disposal of property to any foreign governments or entities.

**§ 102–36.390 How may we dispose of foreign excess personal property?**

To dispose of foreign excess personal property, you may:

(a) Offer the property for re-use by U.S. Federal agencies overseas;

(b) Return the property to the U.S. for re-use by eligible recipients;

(c) Sell, exchange, lease, or transfer such property for cash, credit, or other property;

(d) Donate medical materials or supplies to nonprofit medical or health organizations, including those qualified under sections 214(b) and 607 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2174, 2357); or

(e) Abandon, destroy or donate such property when you determine that it has no commercial value or the estimated cost of care and handling would exceed the estimated proceeds from its sale, in accordance with sec. 402(a) of the Property Act. Abandonment, destruction or donation actions must also comply with the laws of the country in which the property is located.

**§ 102–36.395 How may GSA assist us in disposing of foreign excess personal property?**

You may request GSA's assistance in the screening of foreign excess personal property for possible re-use by eligible recipients within the U.S. GSA may, after consultation with you, designate property for return to the United States for transfer or donation purposes.

**§ 102–36.400 Who pays for the transportation costs when foreign excess personal property is returned to the United States?**

When foreign excess property is to be returned to the U.S. for the purpose of an approved transfer or donation under the provisions of Sections 202 and 203 of the Property Act, the receiving agency is responsible for all direct costs involved in the transfer, which include packing, handling, crating, and transportation.

### Gifts

**§ 102–36.405 May we keep gifts given to us from the public?**

If your agency has gift retention authority, you may retain gifts from the public. Otherwise, you must report gifts you receive on a SF 120 to GSA. You must report gifts received from a foreign government in accordance with part 101–49 of this title.

**§ 102–36.410 How do we dispose of a gift in the form of money or intangible personal property?**

Report intangible personal property to GSA, Personal Property Management Division (FBP), Washington, D.C. 20406. You must not transfer or dispose of this property without prior approval of GSA. The Secretary of the Treasury will dispose of money and negotiable instruments such as bonds, notes, or other securities under the authority of 31 U.S.C. 324.

**§ 102–36.415 How do we dispose of gifts other than intangible personal property?**

(a) When the gift is offered with the condition that the property be sold and the proceeds used to reduce the public debt, report the gift to the regional GSA Personal Property Management office in which the property is located. GSA will convert the gift to money upon acceptance and deposit the proceeds into a special account of the U.S. Treasury.

(b) When the gift is offered with no conditions or restrictions, and your agency has gift retention authority, you may use the gift for an authorized official purpose without reporting to GSA. The property will then lose its identity as a gift and you must account for it in the same manner as Federal personal property acquired from authorized sources. When the property is no longer needed, you must report it as excess personal property to GSA.

(c) When the gift is offered with no conditions or restrictions, but your agency does not have gift retention authority, you must report it to the regional GSA Personal Property Management office. GSA will offer the property for screening for possible transfer to a Federal agency or convert the gift to money and deposit the funds with U.S. Treasury. If your agency is interested in keeping the gift for an official purpose, you must annotate your interest on the SF 120 and also submit a SF 122.

**§ 102–36.420 How do we dispose of gifts from foreign governments or entities?**

Report foreign gifts on a SF 120 to GSA, Personal Property Management Division (FBP), Washington, DC 20406, for possible use by your agency, or for transfer, donation or sale in accordance with the provisions of part 101–49 of this title.

### Hazardous Personal Property

**§ 102–36.425 May we dispose of excess hazardous personal property?**

Yes, but only in accordance with part 101–42 of this title. When reporting excess hazardous property to GSA, certify on the SF 120 that the property has been packaged and labeled as required. Annotate any special requirements for handling, storage, or use, and provide a description of the actual or potential hazard.

### Munitions List Items/Commerce Control List Items (MLIs/CCLIs)

**§ 102–36.430 May we dispose of excess Munitions List Items (MLIs)/Commerce Control List Items (CCLIs)?**

You may dispose of excess MLIs/CCLIs only when you comply with the additional disposal and demilitarization (DEMIL) requirements contained in part 101–42 of this title. MLIs may require demilitarization when issued to any non-DoD entity, and will require appropriate licensing when exported from the U.S. CCLIs usually require export licensing when transported from the U.S.

**§ 102–36.435 How do we identify Munitions List Items (MLIs)/Commerce Control List Items (CCLIs) requiring demilitarization?**

You identify MLIs/CCLIs requiring demilitarization by the demilitarization code that is assigned to each MLI or CCLI. The code indicates the type and scope of demilitarization and/or export controls that must be accomplished, when required, before issue to any non-DOD activity. For a listing of the codes and additional guidance on DEMIL procedures see DOD Demilitarization and Trade Security Control Manual, DOD 4160.21–M–1.

### Printing Equipment and Supplies

**§ 102–36.440 Are there special procedures for reporting excess printing and binding equipment and supplies?**

Yes, in accordance with 44 U.S.C. 312, you must submit reports of excess printing and binding machinery, equipment, materials, and supplies to the Public Printer, Government Printing Office (GPO), Customer Service Manager, North Capitol and H Streets, NW, Washington, DC 20401. If GPO has no requirement for the property, you must then submit the report to GSA.

### Red Cross Property

**§ 102–36.445 Do we report excess personal property originally acquired from or through the American National Red Cross?**

Yes, when reporting excess personal property which was processed, produced, or donated by the American National Red Cross, note "RED CROSS PROPERTY" on the SF 120 or report document. GSA will offer to return this property to the Red Cross if no other Federal agency has a need for it. If the Red Cross has no requirement the property continues in the disposal process and is available for donation.

### Shelf-Life Items

**§ 102–36.450 Do we report excess shelf-life items?**

(a) When there are quantities on hand that would not be utilized by the expiration date and cannot be returned to the vendor for credit, you must report such expected overage as excess for possible transfer and disposal to ensure maximum use prior to deterioration.

(b) You need not report expired shelf-life items. You may dispose of property with expired shelf-life by abandonment/destruction in accordance with § 102–36.305 and in compliance with Federal, State, and local waste disposal and air and water pollution control standards.

**§ 102–36.455 How do we report excess shelf-life items?**

You must identify the property as shelf-life items by "SL", indicate the expiration date, whether the date is the original or an extended date, and if the date is further extendable. GSA may adjust the screening period based on re-use potential and the remaining useful shelf life.

**§ 102–36.460 Do we report excess medical shelf-life items held for national emergency purposes?**

When the remaining shelf life of any medical materials or supplies held for national emergency purposes is of too short a period to justify their continued retention, you should report such

property excess for possible transfer and disposal. You must make such excess determinations at such time as to ensure that sufficient time remains to permit their use before their shelf life expires and the items are unfit for human use. You must identify such items with "MSL" and the expiration date, and indicate any specialized storage requirements.

**§ 102–36.465 May we transfer or exchange excess medical shelf-life items with other Federal agencies?**

Yes, you may transfer or exchange excess medical shelf-life items held for national emergency purposes with any other Federal agency for other medical materials or supplies, without GSA approval and without regard to part 101–46 of this title. You and the transferee agency will agree to the terms and prices. You may credit any proceeds derived from such transactions to your agency's current applicable appropriation and use the funds only for the purchase of medical materials or supplies for national emergency purposes.

**Vessels**

**§ 102–36.470 What must we do when disposing of excess vessels?**

(a) When you dispose of excess vessels you must indicate on the SF 120 the following information:

(1) Whether the vessel has been inspected by the Coast Guard.

(2) Whether testing for hazardous materials has been done. And if so, the result of the testing, specifically the presence or absence of PCB's and asbestos and level of contamination.

(3) Whether hazardous materials clean-up is required, and when it will be accomplished by your agency.

(b) In accordance with section 203(i) of the Property Act, the Federal Maritime Administration (FMA), Department of Transportation, is responsible for disposing of surplus vessels determined to be merchant vessels or capable of conversion to merchant use and weighing 1,500 gross tons or more. The SF 120 for such vessels shall be forwarded to GSA for submission to FMA.

(c) Disposal instructions regarding vessels in this part do not apply to battleships, cruisers, aircraft carriers, destroyers, and submarines.

**Subpart F—Miscellaneous Disposition**

**§ 102–36.475 What is the authority for transfers under "Computers for Learning"?**

(a) The Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710(i)), authorizes Federal agencies to transfer excess education-related Federal equipment to educational institutions or nonprofit organizations for educational and research activities. Executive Order 12999 (3 CFR, 1996 Comp., p. 180) requires, to the extent permitted by law and where appropriate, the transfer of computer equipment for use by schools or non-profit organizations.

(b) Each Federal agency is required to identify a point of contact within the agency to assist eligible recipients, and to publicize the availability of such property to eligible communities. Excess education-related equipment may be transferred directly under established agency procedures, or reported to GSA as excess for subsequent transfer to potential eligible recipients as appropriate. You must include transfers under this authority in the annual Non-Federal Recipients Report (See § 102–36.295) to GSA.

(c) The "Computers for Learning" website has been developed to streamline the transfer of excess and surplus Federal computer equipment to schools and nonprofit educational organizations. For additional information about this program access the "Computers for Learning" website, http://www.computers.fed.gov.

Dated: April 28, 2000.

**David J. Barram,**

*Administrator of General Services.*

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Part IV

# Department of the Interior

**Bureau of Land Management**

**43 CFR Part 2930 et al.**

**Permits for Recreation on Public Lands; Proposed Rule**

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**DEPARTMENT OF THE INTERIOR**

**Bureau of Land Management**

**43 CFR Parts 2930, 3800, 8340, 8370, 8560 and 9260**

**[WO–250–1220–PA–24 1A]**

**RIN 1004–AD25**

## Permits for Recreation on Public Lands

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would update the regulations of the Bureau of Land Management (BLM) that tell how to obtain recreation permits for commercial recreational operations, competitive events and activities, organized group activities and events, and individual recreational use of special areas. It would establish a new system for determining costs for reimbursement to BLM, helping to ensure a fair return to the public for special uses of the public lands. It would add new regulations on how to obtain Recreation Use Permits for fee areas, such as campgrounds, certain day use areas, and recreation-related services.

The BLM also intends the rule to meet the policy goal of reorganizing the regulations in a more systematic way. The proposal would relocate the regulations to the subchapter dealing with other land use authorizations, reorganize them into an order that flows more logically, and simplify the language.

The proposed rule is needed for several reasons. First, it is needed to emphasize and highlight the cost recovery requirements for issuing recreation permits. Second, it is necessary to update BLM regulations to reflect changes over the last 15 years in recreational activities and large-scale events. Third, it is needed to provide guidance and standards for use of developed recreation sites.

**DATES:** You should submit your comments by July 17, 2000. BLM will not necessarily consider comments postmarked or received by messenger or electronic mail after the above date in the decisionmaking process on the proposed rule.

**ADDRESSES:** *Mail:* Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240.

*Personal or messenger delivery:* Room 401, 1620 L Street, NW, Washington, DC 20036.

*Internet e-mail:* WOComment@blm.gov. (Include "Attn: AD25".)

**FOR FURTHER INFORMATION CONTACT:** Lee Larson at (202) 452–5168 as to the substance of the proposed rule, or Ted Hudson at (202) 452–5042 as to procedural matters. Persons who use a telecommunications device for the deaf (TDD) may contact either individual by calling the Federal Information Relay Service (FIRS) at (800) 877–8339, 24 hours a day, 7 days a week.

**SUPPLEMENTARY INFORMATION:**

I. Public Comment Procedures
II. Background
III. Discussion of Proposed Rule
IV. Procedural Matters

### I. Public Comment Procedures

*A. How Do I Comment on the Proposed Rule?*

If you wish to comment, you may submit your comments by any one of several methods.

- You may mail comments to Director (630), Bureau of Land Management, Administrative Record, Room 401 LS, 1849 C Street, NW, Washington, DC 20240.
- You may deliver comments to Room 401, 1620 L Street, NW, Washington, DC 20036.
- You may also comment via the Internet to WOComment@blm.gov. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: AD25" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact us directly at (202) 452–5030.

Please make your comments on the proposed rule as specific as possible, confine them to issues pertinent to the proposed rule, and explain the reason for any changes you recommend. Where possible, your comments should reference the specific section or paragraph of the proposal that you are addressing.

BLM may not necessarily consider or include in the Administrative Record for the final rule comments that BLM receives after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

*B. May I Review Comments Submitted by Others?*

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES:** Personal or messenger delivery during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday, except holidays.

Individual respondents may request confidentiality, which we will honor to the extent allowable by law. If you wish to withhold your name or address, except for the city or town, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

### II. Background

BLM published the regulations at 43 CFR part 8370 on September 12, 1978 (43 FR 40738). These regulations covered only Special Recreation Permits for use of lands other than developed recreation sites. BLM has reserved a separate subpart 8371 on use of fee areas and developed sites at least since 1978. BLM amended subpart 8372 on August 29, 1984 (49 FR 34337), by defining "actual expenses," by revising the section on "Enforcement," by adding a section on exceptions to the Special Recreation Permit requirements, and by revising the section on "Fees." They were amended again on March 31, 1988 (53 FR 10394), by adding a section on "Appeals" that allows appeals but places decisions in full force and effect pending appeal unless the Secretary of the Interior decides otherwise.

The regulations are in need of updating to reflect changes over the last 15 years in recreational activities and large-scale events, and to strengthen and clarify the provisions on cost recovery. Finally, the public needs information in the CFR on use of developed recreation sites, for which BLM has reserved a subpart for many years.

### III. Discussion of Proposed Rule

The regulations in this proposed rule are divided into three subparts. The first of these contains general information pertaining to all kinds of recreational authorizations. The second describes the Special Recreation Permit process: what activities require permits, how to get them, what privileges they allow, and how BLM administers them. It also contains definitions of terms used in the subpart. The third subpart covers the Recreation Use Permit, its use, and how it is obtained.

This table should help the reader locate provisions from the current regulations in the proposed rule.

SECTION CONVERSION TABLE

| Old section | New section |
|---|---|
| Part 8370 | Part 2930 |
| Note | § 2931.9 |
| Subpart 8371 [Reserved]. | Subpart 2933 |
| Subpart 8372 | Subparts 2931 and 2932 |
| § 8372.0–1 | § 2931.1 |
| § 8372.0–2 | § 2931.2 |
| § 8372.0–3 | § 2931.3 |
| § 8372.0–5 | § 2932.5 |
| § 8372.0–7 | § § 2932.54(b) and 2933.32(b) |
| § 8372.1 | § 2932.10 |
| § 8372.1–1 | § 2932.11 |
| § 8372.1–2 | § 2932.11(b)(1) and (b)(3)(iii), and 2932.13 |
| § 8372.1–3 | § 2932.12 |
| § 8372.2 | § 2932.20 |
| § 8372.2(a) | § 2932.22(a), and (c)(1) and (2) |
| § 8372.2(b) | § 2932.24(c) |
| § 8372.2(c) | § 2932.22(b) and 2932.23 |
| § 8372.2(c)(2) | § 2932.25 |
| § 8372.3 | § 2932.26 |
| § 8372.4 | § 2932.30 |
| § 8372.4(a) | § 2932.31 |
| § 8372.4(b) | § 2932.32 |
| § 8372.4(b)(3) | § 2932.33 |
| § 8372.4(c)(1) | § 2932.14 |
| § 8372.4(c)(2)–(3) | § 2932.34 |
| § 8372.5(a)(1) | § 2932.54(a), 2933.32 |
| § 8372.5(a)(2) | § 2932.42 |
| § 8372.5(a)(3) (removed). | None |
| § 8372.5(a)(4) | § 2932.53 |
| § 8372.5(b) | § 2932.41 |
| § 8372.5(c) | § 2932.44 |
| § 8372.5(d) | § 2932.43 |
| § 8372.5(e) (removed). | None |
| § 8372.5(f) | § 2932.54(b)(2) |
| § 8372.6 | § 2931.8 |
| None | § 2932.50 through 2932.52 (new) |

The following discussion of the proposed rule concentrates on those portions of the regulations that this rule would amend other than by reorganization and renumbering.

*Subpart 2931—Recreation Use Authorizations; General*

This subpart would serve as a general introduction to the subject of authorizations for recreational use of the public lands, where they are needed. No permit is needed for most non-commercial recreational use of the public lands. The function of the subpart is to summarize the purposes of and authorities for the regulations. It would also reaffirm the provision in the existing regulations that all permit decisions that BLM makes would remain in full force and effect pending appeal, unless stayed in accordance with Department of the Interior hearings and appeals regulations.

*Subpart 2932—Special Recreation Permits for Commercial Use, Competitive Events, Organized Group Events, and Recreation Use in Special Areas*

This subpart includes the regulations covering BLM's issuance of permits for—

- Outfitters and guides (hunting, fishing, rafting, boating, vehicle touring, and other recreational companies),
- Persons engaged in commercial recreational use of the public lands,
- Persons providing services to recreational visitors to the public lands,
- Competitive events such as motorcycle races and time trials,
- Organized group activities or events on the public lands, and
- Noncommercial recreational use of special areas where access may be limited for environmental protection and other reasons.

Subpart 2932 would do the following:

- Contain specific conditions for when you need a Special Recreation Permit and when BLM may waive this requirement;
- Require you to submit applications for Special Recreation Permits 180 days before your intended use begins;
- Provide for cost reimbursement based on administrative time required to issue the permit;
- Specifically require most Special Recreation Permit holders to have and submit liability insurance;
- Allow transfers of Special Recreation Permit privileges, but only as a part of business transactions involving sales of all or part of the business itself; and
- Allow renewal of Special Recreation Permits.

The provisions for transfers and renewals are new in this proposed rule, but we are merely codifying existing policy. Also, the cost reimbursement calculation provisions and the lead time for submitting applications represent changes from the current regulations.

*Section 2932.5 Definitions*

The only terms defined in this rule pertain to Special Recreation Permits, as opposed to Recreation Use Permits for fee areas. Therefore, we have placed the definition section in the subpart on Special Recreation Permits rather than in the general subpart. We eliminated definitions for terms whose common meaning is clear, and definitions of terms that appear but once in the regulations: "event," "education," "off-road vehicle, "operator," and "user day." Where there is need, we explained the term in the context in which it appears. We also added definitions for "vending" and "organized group."

*Section 2932.10 When Special Recreation Permits Are Needed*

The first four sections would tell recreationists when they need a Special Recreation Permit to use public lands, when BLM may waive permit requirements, and what activities do not need a permit.

*Section 2932.11 When Do I Need a Special Recreation Permit?*

This section would explain that Special Recreation Permits are necessary for commercial recreational use and competitive events, and vending, and may be needed for recreational use of some special areas, organized group activities and events, and research under limited circumstances. The changes in this provision, adding permit requirements for vending and some research activities, recognize the growing use of the public lands for recreational and related purposes, and the need in some locations to monitor and control these uses.

*Section 2932.12 When May BLM Waive the Requirement To Obtain a Permit?*

This section, which is based on section 8372.1–3 of the current regulations, would explain that BLM has discretion to waive permit requirements if the event or activity affects less than a mile of public land or shoreline, and poses no threat of appreciable damage to public land or water resources. BLM may also waive the requirement if the activity or event is sponsored at least in part by BLM, or if it is a noncommercial competitive event that poses no appreciable risk of damage to natural resources, whose sponsor does not publicly advertise or offer cash prizes, and which requires no monitoring. These criteria are not substantively changed from the existing regulations. However, the rule does remove the 50 vehicle upper limit for events as to which BLM may waive permit and fee requirements. This number is unnecessarily arbitrary. We would eliminate this numerical limit because we believe that it is more useful to consider the effects of an activity or event on a particular parcel of land. Thus, we would determine whether an activity poses a threat of appreciable damage to the land or water resources present, a criterion carried over from the existing regulation.

*Section 2932.14 Do I Need a Special Recreation Permit To Hunt, Trap, or Fish?*

This section would make it clear that hunters, trappers, and fishermen do not need Special Recreation Permits to use public lands for these activities, unless they would require a permit under section 2932.11 because the activity is commercial or competitive or takes place in a special area. Likewise, the Special Recreation Permit does not in and of itself authorize you to hunt, trap, or fish. You must obtain the proper license from the State game and fish department with jurisdiction. The regulation would require outfitters and guides who serve hunters, fishermen, and trappers to have a Special Recreation Permit. Except for clarification, and being moved to a more visible location in the regulations with a separate heading, this provision is not substantively changed from the current regulations.

*Section 2932.20 Special Recreation Permit Applications*

This heading leads into a series of sections introducing you to the recreation permit process. These provisions are based on sections 8372.2 and 8372.3 of the existing regulations.

*Section 2932.21 Why Should I Contact BLM Before Submitting an Application?*

This section, which is new in the proposed rule, would urge you to contact BLM before you submit an application, especially in light of the requirement that applications be submitted 180 days in advance. Early consultation will familiarize you with the process, and the terms and conditions that may be required in a Special Recreation Permit.

*Section 2932.22 When Do I Apply for a Special Recreation Permit?*

This section would require persons seeking Special Recreation Permits for commercial and competitive recreational uses, organized group activities or events, or for vending on public lands, to apply 180 days before they expect the use to begin. This would be an increase of 60 days over the provision in the current regulations, reflecting increased demand for such use and more intensive review of applications required by law. The section would also allow local BLM management to provide for shorter review periods for certain applications, and for applications for individual use of special areas. BLM would then notify you (see section 2932.25) if we cannot reach a decision on issuing the Special Recreation Permit before your desired use date. This might happen, for example, if BLM cannot complete the environmental assessments or consultations with other agencies within 180 days. The proposed rule does not impose a time limit for BLM to notify applicants of such delays. This kind of requirement on BLM itself is more appropriate for internal guidance. However, we recognize our obligation to keep our customers informed, especially as to such time-sensitive matters as scheduling recreation events.

The next three sections—2932.23, 2932.24, and 2932.25—are self-explanatory in setting forth the application process in detail.

*Section 2932.26 How Will BLM Decide Whether To Issue a Special Recreation Permit?*

This section repeats the statement in the current regulations that permit issuance is discretionary with BLM. It expands on the current regulations, however, by stating the criteria that BLM would apply. We would base our decision on the public interest served, public safety, conflicts with other uses, resource protection, and conformance with laws and land use plans. We would also weigh the applicant's past performance with BLM and other agencies. You can use these criteria as indicators of whether your application is likely to be approved.

*Section 2932.30 Fees for Special Recreation Permits*

The next several sections would deal with the establishment and administration of a fee system for cost recovery in the administration of Special Recreation Permits.

*Section 2932.31 How Does BLM Establish Fees for Special Recreation Permits?*

This section would explain how BLM sets fees for Special Recreation Permits. The Director establishes fees for these permits for commercial, organized group activities or events, and competitive events. The Director may adjust the fees when necessary to reflect changes in costs and the market, considering the direct and indirect cost to the government; the types of services or facilities provided; and comparable recreation fees charged by other Federal agencies, non-Federal public agencies, and private industry. The fee schedule for competitive and organized group activities or events was published in the **Federal Register** on July 29, 1999 (64 FR 41133), effective October 1, 1999. BLM would adjust these fees periodically based on the Implicit Price Deflator Index. The fee schedule for commercial outfitters, guides, and vendors was published on October 19, 1989 (54 FR 42998). We expect to publish the next regular update of this schedule in March 2002. Local fees for other uses would be posted or published in local newspapers by BLM.

The State Director with jurisdiction establishes fees for other Special Recreation Permits. This information will generally be available in field offices, but may be made available in newspapers, Internet websites, or other appropriate public notice.

The proposed rule would change the threshold for charging actual costs (which may replace or be in addition to the scheduled fees discussed in the previous paragraph) from a fixed cost in dollars ($5,000)—which may become obsolete due to changes in currency values—to an amount of administrative work that would be required. The section would provide that if a permit requires more than 50 hours of BLM administrative or staff time to process and monitor, BLM may require the applicant to pay actual administrative costs, in addition to the fees set by the fee schedule. If the time to process your application exceeds the 50-hour threshold, BLM would require you to pay costs from the first hour of administrative work. This provision will most often apply to short-term, high intensity uses, such as a large one-day motorcycle race. The proposed rule would require BLM to notify you in the event you need to pay actual costs.

*Section 2932.32 When Must I Pay the Fees?*

This section would require payment of fees in advance of the authorized use by the deadline BLM establishes. It would allow payment in installments for commercial use. BLM will not process your application until you have paid cost recovery fees, if any, as they are required. This approach is somewhat different from that in the current section 8372.4(b), which merely provides for payment at the time of permit issuance. The proposed rule allows the applicant more flexibility in making payments, but provides BLM with more assurance that our costs will be covered as we incur them.

*Section 2932.33 When Are Fees Refundable?*

This section would describe what happens if your advance payment against BLM costs turns out to exceed those actual costs. For commercial multi-year permits, such as outfitter permits, when your actual fees due are

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less than the estimated fees you paid in advance, the rule would direct BLM to credit overpayments to the following year or season. For other permits, BLM would issue refunds or credit overpayments to future permits, whichever you prefer. However, if you have applied for recreational access to a limited use area and your trip is undersubscribed, and you do not give BLM sufficient opportunity to authorize use by others to make up for the use you forgo, BLM will not issue refunds or credits. BLM will determine whether you have given us sufficient opportunity. We will base our determination on the type of permit, the location, and the frequency of use.

We have tried in this section to simplify the explanation of how we handle refunds in cases of undersubscribed events or trips, and to provide more flexibility in how permittees may have their refunds paid.

*Section 2932.34 When May BLM Waive Special Recreation Permit Fees?*

This section would allow BLM to waive permit fees for Special Recreation Permits on a case-by-case basis. Waiver would be a possibility for scientific, research, therapeutic, or administrative use. However, the proposed rule would remove the waiver for educational/recreational trips found in section 8372.4(c)(2) of the existing regulations. This waiver has been prone to abuse by groups seeking to avoid fees by characterizing purely recreational outings as educational. However, the language in the rule would allow BLM sufficient discretion to waive fees for truly educational outings. The rule also would remove the disclaimer that the regulations do not pertain to commercial or other non-recreational activities. Such activities may be permitted under 43 CFR part 2920 or other regulations, but it is not necessary to state this in the text of the recreation regulations.

*Section 2932.40 Permit Stipulations and Terms*

The next several sections deal with permit terms, insurance requirements, and bonding requirements. These sections are all based on paragraphs in existing section 8372.5, and do not contain substantive changes. However, there are no equivalents of paragraphs 8372.5(a)(3) and (e) in the proposed rule. The first, limiting the size of the area for which a permit can be issued, is a matter for internal BLM guidance. The second, requiring indemnification of the United States by the permittee against liability for damage to persons or property occurring during or as a result of the authorized use, is unnecessary in light of the insurance requirements contained in section 2932.43.

*Section 2932.50 Administration of Special Recreation Permits*

This heading leads into a series of sections describing how BLM administers recreation permits, and the requirements that BLM imposes on permittees. These provisions are new in this proposed rule. We add them to codify existing policy or, in some cases, to simplify current procedures. For example, the proposed rule will allow Special Recreation Permits, such as those held by outfitters and guides, to be renewed. BLM currently renews outfitter and guide permits, although there is no regulatory provision that specifically addresses permit renewal. This rule fills this gap.

*Section 2932.54 When May I Transfer My Special Recreation Permit to Other Individuals, Companies, or Entities?*

The proposed rule also allows permit assignments and transfers, but only in very limited circumstances. The rule in general does not allow sale of permit privileges. However, we will allow a transfer in cases where the permittee is selling his business or a portion of it to the transferee, so long as both parties meet certain requirements. Thus, multi-year commercial Special Recreation Permits—generally held by outfitters, guides, and river-running concerns—would only be transferable in cases of actual sales of businesses or a substantial part of the business. You would be required to apply to BLM to transfer a permit to a prospective buyer of your business, and the buyer would have to pay the standard application fees and cost reimbursement, if any. BLM would evaluate the proposed business sale and transfer permit privileges to a qualified buyer, if—

(1) The transfer is consistent with planning decisions, and

(2) The proposed sale includes tangible property necessary to conduct the activities authorized.

BLM would not allow transfer of the permit privilege alone, without transfer of at least a substantial portion of the equipment or stock necessary to continue the activity. Again, in this case, the proposed rule would codify current policy. In the absence of BLM approval of your proposed transfer, the transferee would have to compete with other applicants for a Special Recreation Permit.

*Section 2932.56 When Will BLM Amend, Suspend, or Cancel My Permit?*

Paragraph (a) of this section would allow BLM to amend, suspend, or cancel a Special Recreation Permit if we find it necessary to protect public health, public safety, or the environment. In the case of a suspension, the terms of the permit would continue during the suspension. This paragraph is derived from paragraph 8372.5(a)(1) of the existing regulations, and is not substantively changed.

Paragraph (b) of this section would serve the same purpose as sections 8372.0–7 and 8372.5(f) of the existing regulations. It would allow BLM to suspend or cancel a Special Recreation Permit if the permittee violates permit stipulations, or is convicted of violating any Federal or State law or regulation on natural resources and environmental conservation and protection, endangered species or antiquities preservation while acting under a Special Recreation Permit.

Paragraph (c) would make it clear that, while a Special Recreation Permit is suspended, its holder's responsibilities and the permit's prohibitions continue in force.

*Section 2932.57 Prohibited Acts and Penalties*

The proposed rule makes no substantive changes in this section on prohibited acts and penalties. The penalties the rule provides for are taken from Section 303(a) and (b) of the Federal Land Policy and Management Act (FLPMA) (43 U.S.C. 1733).

*Subpart 2933—Recreation Use Permits for Fee Areas*

This subpart codifies a permit system pertaining to "fee areas" on public lands managed by BLM. Fee areas are sites that provide specialized facilities, equipment, or services related to outdoor recreation. These include areas that are developed by BLM, receive regular maintenance, may have on-site staffing, and are supported by Federal funding. Not all fee areas necessarily have all of these attributes. Examples of fee areas are campgrounds that include improvements such as picnic tables, toilet facilities, tent or trailer sites, and drinking water; and specialized sites such as swimming pools, boat launch facilities, guided tours, hunting blinds, and so forth. The provisions in these regulations are codifications of existing procedures and policies. They are designed to allow the most efficient administration possible of the permit system, and the easiest access by the public.

We believe that the regulations in this subpart are sufficiently self-explanatory and straightforward that we do not need to discuss them piecemeal or offer their rationale. If there are questions raised during the public comment period as to these provisions, we will discuss them in detail in the preamble of the final rule.

*Cross-references*

Finally, the proposed rule would change cross-references in other parts of Title 43 from subpart 8372 to part 2930.

**IV. Procedural Matters**

The principal author of this proposed rule is Lee Larson of the Recreation Group, Washington Office, BLM, assisted by Ted Hudson of the Regulatory Affairs Group, Washington Office, BLM.

*Regulatory Planning and Review (E.O. 12866)*

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

During fiscal year 1996, BLM issued over 116,000 Recreation Use Permits for use of fee sites, with revenues totaling about $600,000. During fiscal year 1997, BLM issued about 184,000 Recreation Use Permits for use of fee sites, with revenues totaling about $705,000. During fiscal year 1998, BLM issued about 280,000 Recreation Use Permits for use of fee sites, with revenues totaling about $1.3 million. The cost of such a permit averaged just over $5.00 for 1996, just under $5.50 for 1997, and a little over $4.60 for 1998. The proposed rule would allow BLM to charge fees based on the types of services or facilities provided at the fee site, the cost of providing them, and fees charged by public and private entities at similar sites nearby. Changes caused by this rule are not quantifiable in this document, but will not result in charges greater than fair market value. Any increase in prices for these users would have to have economic consequences of hundreds of dollars per permit for the effect on the economy to total $100 million, the threshold for a major rule in the Executive Order.

During fiscal year 1996, BLM issued just over 21,000 Special Recreation Permits, with revenues totaling a little over $1.5 million deposited into the Land and Water Conservation Fund (LWCF). During fiscal year 1997, BLM issued just over 32,000 Special Recreation Permits, with revenues totaling about $2.9 million, of which nearly $1.9 million was deposited into the LWCF with the balance attributed to the Fee Demonstration Project and other miscellaneous accounts. During fiscal year 1998, BLM issued just over 37,500 such permits, and collected just over $4.8 million in fees, of which nearly $1.6 million was deposited into the LWCF, with the balance attributed to the Fee Demonstration Project and other miscellaneous accounts. (These numbers are derived from the Public Land Statistics; the variety of laws directing the revenues to numerous funds accounts for different average fees from year to year. We give these numbers to illustrate that the revenues charged under BLM's recreation program are minuscule compared with those realized by the overall national recreation industry.) Special Recreation Permits are generally obtained by commercial outfitters and guides (about 2,500), river running companies (about 800), sponsors of competitive events (about 1,000), "snow bird" seasonal mobile home campers who use BLM's long term visitor areas (about 14,000), and private individuals and groups using certain special areas. Under current regulations, use fees are to be collected according to a schedule established by the Director, BLM, and published periodically in the **Federal Register**. BLM may charge actual costs if they exceed the fee on the schedule. The schedule is based on 3 percent of the gross annual receipts of the permittee or an $80 flat annual fee, whichever is greater. Snow birds pay a flat seasonal fee of $100. The flat annual fee for commercial outfitters and guides is adjusted periodically in line with the Implicit Price Deflator. The proposed rule would provide for use fees to equal fair market value, which can be determined through comparative market analysis, competitive bidding, or other means. The State of Colorado charges river outfitters 5 percent of gross receipts to run trips on the Arkansas River, which features the Royal Gorge. This might be an indication of the type of fee increase that might be phased in under the proposed rule. BLM will determine fair market values for outfitter permits on a local or regional level, based on comparative market analyses and considering public input.

*Regulatory Flexibility Act*

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). According to the president of the American Recreation Coalition, outdoor recreation is a $350 billion industry made up of small businesses. As stated in the previous section, BLM fees collected for Special Recreation Permits in fiscal year 1997 were about $2.9 million. BLM revenues collected thus amounted in that year to less than 1/1,000 of 1 percent of the gross industrial revenues, and not all of the BLM revenues were collected from commercial recreationists. The results in other years are similar. BLM considers that increases in these fees to fair market value could not create a significant impact on the outdoor recreation industry. However, BLM recognizes that most commercial recreation enterprises—outfitters, guides, river-running companies, local retail outlets—are small businesses, and that about 3,500 of them annually hold BLM commercial or competitive permits. For these reasons, any changes in fees to fair market value will be phased in, and fees will be set locally and only after opportunity for public participation leading to decisions on fair market value.

*Small Business Regulatory Enforcement Fairness Act (SBREFA)*

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act.

This rule—

Does not have an annual effect on the economy of $100 million or more. See the discussion under Regulatory Planning and Review, above.

Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule will have no effect on the 3 percent basic use fee required of outfitters (set by policy, not regulations). The rule imposes cost recovery requirements provided for in section 304 of FLPMA (43 U.S.C. 1734), and in the Land and Water Conservation Fund Act (16 U.S.C. 460*l et seq., 460l*–5), and Office of Management and Budget Circular No. A–25. The cost increases under this rule would be de

minimus in the context of the entire outdoor recreation industry, and even in the context of the small proportion of it that uses public lands managed by BLM. See the discussion above under Regulatory Flexibility Act.

Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. The adjustment of user fees to fair market value and the implementation of cost recovery should not affect the ability of mostly small businesses evenly treated to compete with one another. Recreationists are not likely to be driven to foreign recreation markets by finding an increase in user fees in the western part of this country, due to the insignificance of such increases compared to the costs of travel to comparable foreign recreation destinations. Much recreation equipment is manufactured in foreign countries, but it is sold by small business retailers in this country. The adjustment of user fees to fair market value should not affect buyers' choice of foreign versus domestic made equipment.

*Unfunded Mandates Reform Act*

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. The rule has no effect on governmental or tribal entities. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

*Takings (E.O. 12630)*

In accordance with Executive Order 12630, the rule does not have significant takings implications. While the proposed rule would provide for permits to be canceled under certain circumstances, including violations of law or regulations, or failure to comply with permit stipulations, and while for some commercial permittees a Special Recreation Permit may be essential to the exercise of property rights in a business, the rule would not allow such a forfeiture without due process of law. A takings implications assessment is not required.

*Federalism (E.O. 13132)*

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule does not preempt State law.

*Civil Justice Reform (E.O. 12988)*

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*Paperwork Reduction Act*

This regulation requires information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required by 44 U.S.C. 3501 *et seq.* An OMB form 83-I has been reviewed by the Department and sent to OMB for approval. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

*National Environmental Policy Act*

This proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

*Clarity of This Regulation*

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following:

(1) Are the requirements in the proposed rule clearly stated?

(2) Does the proposed rule contain technical language or jargon that interferes with its clarity?

(3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity?

(4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § 2932.22 When do I apply for a Special Recreation Permit?)

(5) Is the description of the proposed rule in the "supplementary information" section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

If you have any comments that concern how we could make this proposed rule easier to understand, in addition to sending the original to the address shown in **ADDRESSES**, above, please send a copy to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Execsec@ios.doi.gov.

**List of Subjects**

*43 CFR Part 2930*

Penalties; Public lands; Recreation and recreation areas; Reporting and recordkeeping requirements; Surety bonds.

*43 CFR Part 3800*

Administrative practice and procedure, Environmental protection, Intergovernmental relations, Mines, Public lands-mineral resources, Reporting and recordkeeping requirements, Surety bonds, Wilderness areas.

*43 CFR Part 8340*

Public lands, Recreation and recreation areas, Traffic regulations.

*43 CFR Part 8370*

Penalties; Public lands; Recreation and recreation areas; Reporting and recordkeeping requirements; Surety bonds.

*43 CFR Part 8560*

Penalties, Public lands, Reporting and recordkeeping requirements, Wilderness areas.

*43 CFR Part 9260*

Continental shelf, Forests and forest products, Law enforcement, Penalties, Public lands, Range management, Recreation and recreation areas, Wildlife.

For the reasons explained in the preamble, and under the authority of 43 U.S.C. 1740, chapter II, subtitle B of title 43 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 2930 is added to read as follows:

## PART 2930—PERMITS FOR RECREATION ON PUBLIC LANDS

### Subpart 2931—Permits for Recreation; General

Sec.

2931.1 What are the purposes of these regulations?
2931.2 What kinds of permits does BLM issue for recreation-related uses of public lands?

2931.3 What are the authorities for these regulations?
2931.8 Appeals.
2931.9 Information collection.

**Subpart 2932—Special Recreation Permits for Commercial Use, Competitive Events, Organized Groups, and Recreation Use in Special Areas**

2932.5 Definitions.
2932.10 When Special Recreation Permits are needed.
2932.11 When do I need a Special Recreation Permit?
2932.12 When may BLM waive the requirement to obtain a permit?
2932.13 How will I know if individual use of a special area requires a Special Recreation Permit?
2932.14 Do I need a Special Recreation Permit to hunt, trap, or fish?
2932.20 Special Recreation Permit applications.
2932.21 Why should I contact BLM before submitting an application?
2932.22 When do I apply for a Special Recreation Permit?
2932.23 Where do I apply for a Special Recreation Permit?
2932.24 What information must I submit with my application?
2932.25 What will BLM do when I apply for a Special Recreation Permit?
2932.26 How will BLM decide whether to issue a Special Recreation Permit?
2932.30 Fees for Special Recreation Permits.
2932.31 How does BLM establish fees for Special Recreation Permits?
2932.32 When must I pay the fees?
2932.33 When are fees refundable?
2932.34 When may BLM waive Special Recreation Permit fees?
2932.40 Permit stipulations and terms.
2932.41 What stipulations must I follow?
2932.42 How long is my Special Recreation Permit valid?
2932.43 What insurance requirements pertain to Special Recreation Permits?
2932.44 What bonds does BLM require for a Special Recreation Permit?
2932.50 Administration of Special Recreation Permits.
2932.51 When can I renew my Special Recreation Permit?
2932.52 How do I apply for a renewal?
2932.53 What will be the term of my renewal?
2932.54 When may I transfer my Special Recreation Permit to other individuals, companies, or entities?
2932.55 When must I allow BLM to examine my permit records?
2932.56 When will BLM amend, suspend, or cancel my permit?
2932.57 Prohibited acts and penalties.

**Subpart 2933—Recreation Use Permits for Fee Areas**

2933.10 Obtaining Recreation Use Permits.
2933.11 When must I obtain a Recreation Use Permit?
2933.12 Where can I obtain a Recreation Use Permit?
2933.13 When do I need a reservation to use a fee site?
2933.14 For what time may BLM issue a Recreation Use Permit?
2933.20 Fees for Recreation Use Permits.
2933.21 When are fees charged for Recreation Use Permits?
2933.22 How does BLM establish Recreation Use Permit fees?
2933.23 When must I pay the fees?
2933.24 When can I get a refund of Recreation Use Permit fees?
2933.30 Rules of conduct.
2933.31 What rules must I follow at fee areas?
2933.32 When will BLM suspend or revoke my permit?

**Authority:** 43 U.S.C. 1740; 16 U.S.C. 460l–6a.

## PART 2930—PERMITS FOR RECREATION ON PUBLIC LANDS

### Subpart 2931—Permits for Recreation; General

#### § 2931.1 What are the purposes of these regulations?

The regulations in this part—

(a) State when you need a permit to use public lands and waters for recreation, including recreation-related business;

(b) Tell you how to obtain the permit; and

(c) State the fees you must pay to obtain the permit.

#### § 2931.2 What kinds of permits does BLM issue for recreation-related uses of public lands?

The regulations in this part establish permit and fee systems for:

(a) Special Recreation Permits for commercial use, organized group activities or events, competitive use, and for use of special areas; and (b) Recreation use permits for use of fee areas such as campgrounds and day use areas.

#### § 2931.3 What are the authorities for these regulations?

(a) The statutory authorities underlying the regulations in this part are the Federal Land Policy and Management Act, 43 U.S.C. 1701 *et seq.*, and the Land and Water Conservation Fund Act, as amended, 16 U.S.C. 460*l*–6a.

(1) The Federal Land Policy and Management Act contains BLM's general land use management authority over the public lands, and establishes outdoor recreation as one of the principal uses of those lands (43 U.S.C. 1701(a)(8)).

(2) The Land and Water Conservation Fund (LWCF) Act, as amended, authorizes BLM to collect fees for recreational use (16 U.S.C. 460*l*–6a(a), (c)), and to issue special recreation permits for group activities and recreation events, and limits the services for which we may collect fees (16 U.S.C. 460*l*–6a(a), (b), (g)).

(b) The regulations at 36 CFR part 71 require all Department of the Interior agencies to use the criteria in that part in setting recreation fees. These criteria are based on the LWCF Act and stated in §§ 71.9 and 71.10 of that part.

#### § 2931.8 Appeals.

(a) If you are adversely affected by a decision under this part, you may appeal the decision under parts 4 and 1840 of this title.

(b) All decisions BLM makes under this part will go into effect immediately and will remain in effect while appeals are pending unless a stay is granted under § 4.21(b) of this title.

#### § 2931.9 Information collection.

The information collection requirements in this part have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0119. The information will be used to determine whether applicants for Special Recreation Permits on public lands should be granted such permits. A response to requests for information is required to obtain a benefit.

### Subpart 2932—Special Recreation Permits for Commercial Use, Competitive Events, Organized Groups, and Recreation Use in Special Areas

#### § 2932.5 Definitions.

*Actual expenses* means money spent directly on the permitted activity. These may include costs of such items as food, rentals of group equipment, transportation, and permit or use fees. Actual expenses do not include the rental or purchase of personal equipment, amortization of equipment, salaries or other payments to participants, insurance premiums, or profit.

*Commercial use* means recreational use of the public lands and related waters for business or financial gain.

(1) The activity, service, or use is commercial if—

(i) Any person, group, or organization makes or attempts to make a profit, receive money, amortize equipment, or obtain goods or services, as compensation from participants in recreational activities occurring on public lands;

(ii) Anyone collects a fee or receives other compensation that is not strictly a sharing of actual expenses, or exceeds actual expenses, incurred for the purposes of the activity, service, or use;

(iii) There is public advertising to seek participants; or

(iv) Participants pay for a duty of care or an expectation of safety.

(2) Profit-making organizations and organizations seeking to make a profit are automatically classified as commercial, even if that part of their activity covered by the permit is not profit-making or the business as a whole is not profitable.

(3) Use of the public lands by scientific, educational, and therapeutic institutions or non-profit organizations is commercial and subject to a permit requirement when it meets any of the threshold criteria in paragraphs (1) and (2) of this definition. The non-profit status of any group or organization does not alone determine that an event or activity arranged by such a group or organization is noncommercial.

*Competitive use* means—

(1) Any organized, sanctioned, or structured use, event, or activity on public land in which 2 or more contestants compete and either or both of the following elements apply:

(i) Participants register, enter, or complete an application for the event; or

(ii) A predetermined course or area is designated; or

(2) One or more individuals contesting an established record such as for speed or endurance.

*Organized group activity* means a structured, ordered, consolidated, or scheduled meeting on or occupation of the public lands for the purpose of recreational or other use that is not commercial or competitive.

*Special area* means:

(1) An area officially designated by statute or Secretarial order;

(2) An area for which BLM determines that the resources require special management and control measures for their protection; or

(3) An area covered by joint agreement between BLM and a State under Title II of the Sikes Act (16 U.S.C. 670a *et seq.*)

*Vending* means the sale of goods or services, not from a permanent structure, associated with recreation on the public lands or related waters, such as food, beverages, clothing, firewood, souvenirs, photographs or film (video or still), or equipment repairs.

**§ 2932.10 When Special Recreation Permits are needed.**

**§ 2932.11 When do I need a Special Recreation Permit?**

(a) Except as provided in § 2932.1, you must obtain a Special Recreation Permit for:

(1) Commercial use, including vending associated with recreational use; or

(2) Competitive use.

(b) BLM may require you to obtain a Special Recreation Permit for:

(1) Recreational use of special areas;

(2) Noncommercial, noncompetitive, organized group activities or events; or

(3) Academic, educational, scientific, or research uses that involve:

(i) Means of access or activities normally associated with recreation;

(ii) Use of areas where recreation use is allocated; or

(iii) Use of special areas.

**§ 2932.12 When may BLM waive the requirement to obtain a permit?**

We may waive the requirement to obtain a permit if:

(a) The use or event begins and ends on non-public lands or related waters, traverses less than 1 mile of public lands or 1 shoreline mile, and poses no threat of appreciable damage to public land or water resource values;

(b) The use is sponsored or co-sponsored by the Bureau of Land Management, that is, an activity or event that BLM is involved in organizing and hosting, or sharing responsibility for, arranged through authorizing letters or written agreements; or

(c) The use is a competitive event that—

(1) Is not commercial;

(2) Does not award cash prizes;

(3) Is not publicly advertised;

(4) Poses no appreciable risk for damage to public land or related water resource values; and

(5) Requires no monitoring.

**§ 2932.13 How will I know if individual use of a special area requires a Special Recreation Permit?**

BLM will publish notification of the requirement to obtain a Special Recreation Permit to enter a special area in the **Federal Register** and local and regional news media. We will post permit requirements at major access points for the special area and provide information at the local BLM office.

**§ 2932.14 Do I need a Special Recreation Permit to hunt, trap, or fish?**

(a) You do not need a Special Recreation Permit to hunt, trap, or fish, unless you are using a special area. You must comply with State license requirements for these activities. BLM Special Recreation Permits do not alone authorize you to hunt, trap, or fish.

(b) Outfitters and guides providing services to hunters, trappers, or anglers must obtain Special Recreation Permits from BLM.

**§ 2932.20 Special Recreation Permit applications.**

**§ 2932.21 Why should I contact BLM before submitting an application?**

If you wish to apply for a Special Recreation Permit, we strongly urge you to contact the appropriate BLM office before submitting your application. You may need early consultation to become familiar with BLM practices and responsibilities, and the terms and conditions that may be required in a Special Recreation Permit. Because of the lead time involved in processing Special Recreation Permit applications (see § 2932.22(a)), you should contact BLM in sufficient time to complete a permit application ahead of the 180 day requirement.

**§ 2932.22 When do I apply for a Special Recreation Permit?**

(a) For all uses that require a Special Recreation Permit (see § 2932.11) except individual use of special areas, you must apply to the local BLM office at least 180 days before you intend your use to begin. This enables BLM to conduct environmental analyses and meet other legal requirements. We may process and issue your permit in less time.

(b) BLM field offices will establish application procedures for individual use of special areas, including when to apply. You should call the field office with jurisdiction as you begin to plan your use.

**§ 2932.23 Where do I apply for a Special Recreation Permit?**

You must apply to the local BLM office with jurisdiction over the land you wish to use.

**§ 2932.24 What information must I submit with my application?**

(a) Your application for a Special Recreation Permit for all uses, except individual and noncommercial group use of special areas, must include:

(1) A completed BLM Special Recreation Application and Permit form;

(2) A map or maps of sufficient scale and detail to allow identification of the proposed use area, unless waived by BLM; and

(3) Other information requested by BLM in sufficient detail to allow us to evaluate the nature and impact of the proposed activity, including measures you would take to mitigate adverse impacts.

(b) If you are an individual or noncommercial group wishing to use a special area, contact the local office with jurisdiction to find out the requirements, if any.

**§ 2932.25 What will BLM do when I apply for a Special Recreation Permit?**

It is BLM's intent to notify you at least 30 days before your desired use date if a decision on issuing the Special Recreation Permit cannot be made in a timely manner. An example of when this could happen is if we cannot complete the environmental assessments or consultations with other agencies within 180 days.

**§ 2932.26 How will BLM decide whether to issue a Special Recreation Permit?**

BLM has discretion whether or not to issue a Special Recreation Permit. We will base our decision on the public interest served, public safety, conflicts with other uses, resource protection, conformance with laws and land use plans, and your past performance with BLM and other agencies.

**§ 2932.30 Fees for Special Recreation Permits.**

**§ 2932.31 How does BLM establish fees for Special Recreation Permits?**

(a) The Director establishes fees, including minimum annual fees, for commercial, organized group activity or event, and competitive Special Recreation Permits.

(b) The Director may adjust the fees as necessary, using a **Federal Register** notice, to reflect changes in costs and the market, using the following types of data:

(1) The direct and indirect cost to the government;

(2) The types of services or facilities provided; and

(3) The comparable recreation fees charged by other Federal agencies, non-Federal public agencies, and the private sector located within the service area.

(c) The State Director with jurisdiction—

(1) Will set fees for other Special Recreation Permits (such as for private use of special areas),

(2) May adjust the fees when he or she finds it necessary,

(3) May provide information in field offices, and

(4) May provide newspaper or other appropriate public notice.

(d) In addition to the fees listed in the schedule or set by the State Director, if BLM needs more than 50 hours of staff time to process a Special Recreation Permit, we may charge a fee for recovery of our administrative costs. Processing charges may include, but are not limited to, the cost of environmental analysis, consultation with other agencies, and conducting public participation. Processing costs may also include, but are not limited to, the costs of monitoring, use supervision, permit compliance, and post-use reports and close-out.

(e) We will notify you in writing if you need to pay actual costs.

**§ 2932.32 When must I pay the fees?**

You must pay the required fees in advance of your authorized use and by the deadline or deadlines that BLM will establish in each case. We may allow you to make periodic payments for commercial use. We will not process or continue processing your application until you have paid the required fees or installments.

**§ 2932.33 When are fees refundable?**

For multi-year commercial permits, if your actual fees due are less than the estimated fees you paid in advance, BLM will credit overpayments to the following year or season. For other permits, we will issue refunds or credit overpayments to future permits, less processing costs. We will generally not make refunds for use of the areas allocated to you in your permit if your actual use is less than your intended use. We may consider a refund if there is sufficient time to authorize use by others and we are able to award such use. Application fees and minimum annual commercial use fees (those on BLM's published fee schedule) are not refundable.

**§ 2932.34 When may BLM waive Special Recreation Permit fees?**

BLM may waive Special Recreation Permit fees on a case-by-case basis for approved academic, scientific, research, therapeutic, or administrative uses.

**§ 2932.40 Permit stipulations and terms.**

**§ 2932.41 What stipulations must I follow?**

You must follow all stipulations contained in your Special Recreation Permit. BLM may impose stipulations and conditions to meet management goals and objectives and protect lands and resources and the public interest.

**§ 2932.42 How long is my Special Recreation Permit valid?**

You may request a permit for a day, season of use, or other time period, up to a maximum of 5 years. BLM will determine the appropriate term in each case.

**§ 2932.43 What insurance requirements pertain to Special Recreation Permits?**

All commercial and competitive applicants for Special Recreation Permits, except vendors, must obtain a property damage, personal injury, and public liability insurance policy that BLM judges sufficient to protect the public and the United States. Your policy must name the U.S. Government as additionally insured or co-insured and stipulate that you or your insurer notify BLM 30 days in advance of termination or modification of the policy. We may also require vendors and other applicants, such as organized groups, to obtain and submit such a policy.

**§ 2932.44 What bonds does BLM require for a Special Recreation Permit?**

BLM may require you to submit a payment bond, a cash or surety deposit, or other financial guarantee in an amount sufficient to cover your fees or defray the costs of restoration and rehabilitation of the lands affected by the permitted use. We will return the bonds and financial guarantees when you have complied with all permit stipulations.

**§ 2932.50 Administration of Special Recreation Permits.**

**§ 2932.51 When can I renew my Special Recreation Permit?**

We will renew your Special Recreation Permit at the end of its term only if it is in good standing and consistent with BLM management plans and policies, and if you and all of your affiliates have a satisfactory record of performance.

**§ 2932.52 How do I apply for a renewal?**

(a) You must submit an application for renewal in the same form as for a new permit.

(b) BLM will establish and publish deadlines for submitting renewal applications.

**§ 2932.53 What will be the term of my renewal?**

Renewals will generally be for the same term as the previous permit.

**§ 2932.54 When may I transfer my Special Recreation Permit to other individuals, companies, or entities?**

(a) BLM may transfer a commercial Special Recreation Permit in the case of an actual sale of a business or a substantial part of the business. Only BLM can approve the transfer or assignment of permit privileges to another person or entity.

(b) The approved transferee must complete the standard permit application as provided in §§ 2932.20 through 2932.26. Once the transferee pays the required fees, BLM will issue a Special Recreation Permit.

**§ 2932.55 When must I allow BLM to examine my permit records?**

(a) BLM may examine any books, documents, papers, or records pertaining to your Special Recreation Permit or transactions relating to it,

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whether in your possession, or that of your employees, business affiliates, or agents.

(b) You must make these materials available upon request by BLM. BLM will not ask to inspect any of this material later than 3 years after your permit expires.

**§ 2932.56 When will BLM amend, suspend, or cancel my permit?**

(a) BLM may amend, suspend, or cancel your Special Recreation Permit if necessary to protect public health, public safety, or the environment.

(b) BLM may suspend or cancel your Special Recreation Permit if you—

(1) Violate permit stipulations, or

(2) Are convicted of violating any Federal or State law or regulation concerning the conservation or protection of natural resources, the environment, endangered species, or antiquities while exercising your privileges under your Special Recreation Permit.

(c) If we suspend your permit, your responsibilities under the permit will continue during the suspension.

**§ 2932.57 Prohibited acts and penalties.**

(a) *Prohibited acts.* You must not—

(1) Fail to obtain a Special Recreation Permit and pay the fees required by this subpart;

(2) Violate the stipulations or conditions of a permit issued under this subpart;

(3) Knowingly participate in an event or activity subject to the permit requirements of this subpart where BLM has not issued a permit;

(4) Fail to post a copy of any commercial or competitive permit where all participants may read it;

(5) Fail to show a copy of your Special Recreation Permit upon request by a BLM employee or a participant in your activity.

(b) *Penalties.* (1) Any person convicted of committing any prohibited act in paragraph (a) of this section, or of violating any regulation in this subpart or any condition or stipulation of a Special Recreation Permit, may be subject to a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

(2) You may also be subject to civil action for unauthorized use of the public lands or related waters and their resources, for violations of permit terms, conditions, or stipulations, or for uses beyond those allowed by the permit.

## Subpart 2933—Recreation Use Permits for Fee Areas

**§ 2933.10 Obtaining Recreation Use Permits.**

**§ 2933.11 When must I obtain a Recreation Use Permit?**

You must obtain a Recreation Use Permit for individual or group use of fee areas. These are sites where we provide or administer specialized facilities, equipment, or services related to outdoor recreation. You may visit these areas for uses and time periods BLM specifies. We will post these uses and limits at the entrance to the area or site, and provide this information in the local BLM office with jurisdiction over the area or site. You may contact this office for permit information when planning your visit.

**§ 2933.12 Where can I obtain a Recreation Use Permit?**

You may obtain a permit at self-service pay stations, from personnel at the site, or at other specified locations. Because these locations may vary from site to site, you should contact the local BLM office with jurisdiction over the area or site in advance for permit information.

**§ 2933.13 When do I need a reservation to use a fee site?**

Most sites are available on a first come/first serve basis. However, you may need a reservation to use some sites. You should contact the local BLM office with jurisdiction over the site or area to learn whether a reservation is required.

**§ 2933.14 For what time may BLM issue a Recreation Use Permit?**

You may obtain a permit for a day, season of use, year, or any other time period that we deem appropriate for the particular use. We will post this information on site or make it available at the local BLM office with jurisdiction over the area or site.

**§ 2933.20 Fees for Recreation Use Permits.**

**§ 2933.21 When are fees charged for Recreation Use Permits?**

You must pay a fee for individual or group recreational use if the area is posted to that effect. You may also find fee information at BLM field offices or BLM Internet websites.

**§ 2933.22 How does BLM establish Recreation Use Permit fees?**

BLM sets recreation use fees and adjusts them from time to time to reflect changes in costs and the market, using the following types of data:

(a) The direct and indirect cost to the government;

(b) The types of services or facilities provided; and

(c) The comparable recreation fees charged by other Federal agencies, non-Federal public agencies, and the private sector located within the service area.

**§ 2933.23 When must I pay the fees?**

You must pay the required fees upon occupying a designated recreation use facility, when you receive services, or as the BLM's reservation system may require. These practices vary from site to site. You may contact the local BLM office with jurisdiction over the area or site for fee information.

**§ 2933.24 When can I get a refund of Recreation Use Permit fees?**

If we close the fee site for administrative or emergency reasons, on your request, we will refund the unused portion of your permit fee.

**§ 2933.30 Rules of conduct.**

**§ 2933.31 What rules must I follow at fee areas?**

You must comply with all rules that BLM posts in the area. Any such site-specific rules supplement the general rules of conduct contained in subpart 8365 of this chapter relating to public safety, resource protection, and visitor comfort.

**§ 2933.32 When will BLM suspend or revoke my permit?**

(a) We may suspend your permit to protect public health, public safety, the environment, or you.

(b) We may revoke your permit if you commit any of the acts prohibited in subpart 8365 of this chapter, or violate any of the stipulations attached to your permit, or any site-specific rules posted in the area.

## PART 3800—[AMENDED]

2. The authority citation for part 3800 continues to read as follows:

**Authority:** 5 U.S.C. 552; 16 U.S.C. 1131–1136, 1271–1287, 1901; 25 U.S.C. 463; 30 U.S.C. 21 *et seq.*, 21a, 22 *et seq.*, 1601; 43 U.S.C. 2, 154, 299, 687b–687b–4, 1068 *et seq.*, 1201, 1701 *et seq.*; 62 Stat. 162.

**§ 3802.1–1 [Amended]**

3. Section 3802.1–1(d) is amended by removing the phrase "subpart 8372 of this title" and adding in its place the phrase "part 2930 of this chapter."

## PART 8340—[AMENDED]

4. The authority citation for part 8340 is corrected to read as follows:

**Authority:** 43 U.S.C. 1201, 43 U.S.C. 315a, 16 U.S.C. 1531 *et seq.*, 16 U.S.C. 1281c, 16 U.S.C. 670 *et seq.*, 16 U.S.C. 460*l*–6a, 16

U.S.C. 1241 *et seq.*, and 43 U.S.C. 1701 *et seq.*

**§ 8344.1 [Amended]**

5. Section 8344.1 is amended by revising the cross-reference "subpart 8372" to read "part 2930."

**PART 8370—[REMOVED]**

6. Part 8370 is removed.

7. The authority citation for part 8560 continues to read as follows:

**Authority:** 43 U.S.C. 1701 *et seq.*, 16 U.S.C. 1131 *et seq.*

**§ 8560.1–1 [Amended]**

8. Section 8560.1–1(e) is amended by removing the phrase "43 CFR part 8372" and adding in its place the phrase "part 2930 of this chapter."

**PART 9260—[AMENDED]**

9. The authority citation for part 9260 continues to read as follows:

**Authority:** 16 U.S.C. 433; 16 U.S.C. 460*l*-6a; 16 U.S.C. 670j; 16 U.S.C. 1246(i); 16 U.S.C. 1338; 18 U.S.C. 1851–1861; 18 U.S.C. 3551 *et seq.*; 43 U.S.C. 315(a); 43 U.S.C. 1061, 1063; 43 U.S.C. 1733.

**§ 9268.3 [Amended]**

10. Section 9268.3 is amended by removing from the first sentence of paragraph (e)(1) the phrase "subpart 8372 of this title" and adding in its place the phrase "part 2930 of this chapter."

Dated: April 28, 2000.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

[FR Doc. 00–12124 Filed 5–15–00; 8:45 am]

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**S.J. Res. 40/P.L. 106–198**
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**S.J. Res. 42/P.L. 106–199**

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# Rules and Regulations

Federal Register
Vol. 65, No. 96
Wednesday, May 17, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### 7 CFR Part 2

### Revision of Delegations of Authority; Correction

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** The Department of Agriculture published in the **Federal Register** of February 4, 2000, a document of revising 7 CFR Part 2, Revision of Delegations of Authority. This document corrects the amendatory instructions in that document. The revisions to the delegations of authority were made to reflect passage of the Agricultural Research, Extension, and Education Reform Act of 1998.

**EFFECTIVE DATE:** Effective February 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Philip Schwab, Science Advisor and Legislation Affairs, Cooperative State Research, Education, and Extension Service, USDA, Room 305–A, Jamie L. Whitten Federal Bldg., Washington, DC 20250, telephone 202–720–4423.

**SUPPLEMENTARY INFORMATION:** The Department of Agriculture published in the **Federal Register** of February 4, 2000, (65 FR 5414) a revision to the delegations of authority found at 7 CFR Part 2. Paragraph number (a)(1)(xx) was inadvertently omitted from amendatory instruction 2.d. This correction revises amendatory instruction 2.d. to include that paragraph number.

In FR Doc. 00–2396 published on February 4, 2000 (65 FR 5414) made the following correction. On page 5414, in the third column, amendatory instruction 2.d. to 2.21 is corrected to read as follows:

**§ 2.21 [Corrected]**

2. * * *

d. Revise paragraphs (a)(1)(x), (a)(1)(xx), (a)(1)(xliv), (a)(1)(l), (a)(1)(liii), (a)(1)(lvii), (a)(1)(lix), (a)(1)(lxxix), and (b)(1)(i) and add paragraphs (a)(1)(liv), (a)(1)(lxxx), (a)(1)(lxxxi), and (a)(1)(lxxxvii) to read as follows:

Done at Washington, DC on this 11th day of May, 2000.

**Dan Glickman,**

*Secretary of Agriculture.*

[FR Doc. 00–12439 Filed 5–16–00; 8:45 am]

BILLING CODE 3410–01–M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 301

**[Docket No. 00–004–2]**

### Asian Longhorned Beetle; Addition to Quarantined Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of interim rule as final rule.

**SUMMARY:** We are adopting as a final rule, without change, an interim rule that amended the Asian longhorned beetle regulations by expanding the quarantined area in the city of Chicago, IL, and adding two new areas in Cook County, IL. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary on an emergency basis to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

**EFFECTIVE DATE:** The interim rule became effective on January 27, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mr. Ron Milberg, Operations Officer, Program Support, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5255.

**SUPPLEMENTARY INFORMATION:**

#### Background

In an interim rule effective January 27, 2000, and published in the **Federal Register** on February 2, 2000 (65 FR 4865–4866, Docket No. 00–004–1), we amended the Asian longhorned beetle regulations contained in § 301.51–1 through § 301.51–9 by expanding the quarantined area in the city of Chicago, IL, and adding two new areas in Cook County, IL, in § 301.51–3. That action restricted the interstate movement of regulated articles from those areas.

Comments on the interim rule were required to be received on or before April 3, 2000. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Orders 12866, 12372, and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

#### Regulatory Flexibility Act

This rule affirms an interim rule that amended the Asian longhorned beetle regulations by expanding the quarantined area in the city of Chicago, IL, and adding two new areas in Cook County, IL. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary on an emergency basis to prevent the artificial spread of the Asian longhorned beetle to noninfested areas of the United States.

The following analysis addresses the economic effect of this rule on small entities, as required by the Regulatory Flexibility Act.

The quarantine and restrictions on the interstate movement of certain articles from the quarantined areas has been determined to be the most effective means of preventing the artificial spread of the pest outside the State of Illinois. Biological controls and pesticides do not currently appear to be effective alternatives.

Nonetheless, the interim rule will have no economic effect on businesses, large or small, since none are located in the newly quarantined 216 acres. The newly quarantined areas consist of a residential area, a cemetery, and a forest preserve.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**List of Subjects in 7 CFR Part 301**

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

**PART 301—DOMESTIC QUARANTINE NOTICES**

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 65 FR 4865–4866 on February 2, 2000.

**Authority:** 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 12th day of May 2000.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–12437 Filed 5–16–00; 8:45 am]

BILLING CODE 3410–34–U

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**DEPARTMENT OF AGRICULTURE**

**Rural Utilities Service**

**7 CFR Part 1710**

**RIN 0572–AB52**

**General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Loans**

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Direct final rule.

**SUMMARY:** The Rural Utilities Service (RUS) is amending its regulations to allow flexibility in determining whether a borrower needs to solicit bids from all sources for new or replacement generation. It is also deleting the requirement that borrowers seek bids if RUS financial assistance is requested from all sources for generation projects of 10 megawatts or more or for modifications to existing plants if it results in an increase in capacity of 10 percent. RUS will review each project on a case by case basis and determine whether there is a need for a borrower to seek bids from all sources for the project.

**DATES:** This rule will become effective July 3, 2000 unless we receive written adverse comments or written notice of intent to submit adverse comments on or before June 16, 2000. If we receive such comments or notice, we will publish a timely document in the **Federal Register** withdrawing the rule. Comments received will be considered under the proposed rule published in this edition of the **Federal Register** in the proposed rule section. A second public comment period will not be held. Parties interested in commenting on this action should do so at this time.

**ADDRESSES:** Submit adverse comments or notice of intent to submit adverse comments to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW, Washington, DC 20250–1522. Telephone: (202) 720–9550. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Wei M. Moy, Chief, Power Resources & Planning Branch, Power Supply Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1568, 1400 Independence Avenue, SW, Washington, DC 20250–1568. Telephone: (202) 720–1438. FAX (202) 720–1401. E-mail: wmoy@rus.usda.gov.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In addition, all state and local laws and regulations that are in conflict with this rule will be preempted. No retroactive effect will be given to this rule, and in accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 USC 6912(e)) administrative appeal procedures, if any, must be exhausted before an action against the Department or its agencies may be initiated.

**Regulatory Flexibility Act Certification**

RUS has determined that this rule will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The RUS electric program provides loan and loan guarantees to borrowers at interest rates and terms that are more favorable than those generally available from the private sector. Small entities are not subjected to any requirements which are not applied equally to large entities. RUS borrowers, as a result of obtaining federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

**Information Collection and Recordkeeping Requirements**

This rule contains no additional information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

**Catalog of Federal Domestic Assistance**

The program described by this rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the United States Government Printing Office, Washington, DC 20402–9325, telephone number (202) 512–1800.

**Executive Order 12372**

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State, local and tribal governments or the private sector. See the final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372" (50 FR 47034).

**Unfunded Mandates**

This rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act.

**National Environmental Policy Act Certification**

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

**Background**

Section 1710.254 provides that RUS will consider providing financial assistance to borrowers for the construction of generation facilities and the modification of existing generation facilities only if certain conditions are met. The requirements also apply to financial assistance for all new generation facilities of 10 megawatts or more and for modifications to existing

generation facilities that would result in an increase of generation capacity of 10 percent or more. This section provides that all loan requests for any type of addition of generation capacity, including replacement and modification of existing capacity, will be accepted by RUS only when the applicant has satisfactorily completed the investigation of possible alternative sources of power. The applicant is required to search out and attempt to utilize capacity available from RUS borrowers and other organizations before developing plans for additional generation capacity. The applicant must solicit power and energy purchase proposals from all reasonable potential sources of power by the issuance of a formal Request for Proposals (RFP) to all sources. The applicant is also required to evaluate all alternative proposals received on an economic, present value basis, giving consideration to cost-effectiveness, reliability of service, the short and long-term financial viability of the supplier, and the financial risk to the borrower and its creditors. After evaluating all proposals, the applicant is to negotiate final proposals with entities submitting the best acceptable offers. This entire process is required to determine if there are other entities that could supply the additional power and energy needs of the applicant without RUS financial assistance.

This process is very time consuming, costly and, in many cases, is not needed. The entire process can take more than a year in some cases. At the conclusion of the process, the business opportunities and the best approach to meet the applicant's specific need may no longer be available or no longer available at the projected cost.

The electric energy industry in the United States is experiencing ongoing deregulation. This has increased competition in the industry and the need for RUS borrowers to be able to meet the power needs of their members and the power needs of the rural consumers in a timely, cost effective manner. Presently, there is an abundance of public information and reports assessing market conditions of various regions of the country, utility market trends, market forecasts, and projected projects for various markets. As such, in certain cases, an RFP is not needed nor is the expense and time involved in the solicitation useful or justified.

The rapidly changing and increasingly competitive environment of the electric utility industry requires borrowers to make certain decisions regarding the need for generation facilities and the type of facilities needed in a very short time frame to enable them to meet their power supply needs in the most reliable and economical manner. The borrower's intended use of the generation facilities is critical to any determination as to need and cost. An example of this is the installation of peaking generation facilities to meet peak loads. Due to reliability problems, growing demand and the high cost of power and energy experienced by some electric utilities during peak demand periods in recent years, there is an increasing need for peaking generation units. The gas turbine manufacturers are unable to keep up with the demand. As a result, RUS borrowers must be able to take full advantage of any business opportunities in order to maintain their competitiveness and be able to obtain peaking units to meet their peak loads. Due to the time consuming process required by the existing requirements of § 1710.254, this can and has been an impediment to the borrowers obtaining capacity to meet peaking requirements in a reliable and economical manner.

Another concern of the borrowers and RUS is that the process required by § 1710.254 is expensive, especially when the sole reason to issue an RFP is to meet the requirements of this regulation. To meet these requirements, some borrowers have had to hire consultants to assist them in the RFP and evaluation process. This has added to the time necessary to complete the process and added to the cost. For projects such as upgrades or modifications to existing generation facilities, which result in an increase in generation capacity, the economics and the actual need are generally clear, hence, the RFP requirement contained in § 1710.254 and the associated costs are an unnecessary expense in most cases.

**List of Subjects in 7 CFR 1710**

Electric power, Electric utilities, Loan programs-energy, Reporting and recordkeeping requirements, Rural areas.

Accordingly, 7 CFR chapter XVII is amended as follows:

## PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

**Authority:** 7 U.S.C. 901 *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. Amend § 1710.254 by revising paragraphs (a)(2), (b), (c), (d), and (e) to read as follows:

**§ 1710.254 Alternative sources of power.**

(a) * * *

(2) If a borrower already owns and operates the types of facilities included in a loan request, then a loan for the purposes contained in paragraph (a)(1) of this section, as well as for the construction of transmission facilities by a distribution borrower, will be considered and evaluated by RUS in terms of whether the proposed facilities constitute an effective and economical means of meeting the power requirements of the consumers. A borrower shall contact RUS as soon as practicable in order for RUS to review information submitted by the borrower and advise the borrower, in writing, whether there is a need for the borrower to investigate and seek alternative sources of power. RUS will determine, based on information provided by the borrower or otherwise available, whether there is a need to investigate alternative sources of power or whether RUS will require information or other methods of determining the need for the generation capacity. RUS will base its determination on whether RUS is able to conclude that the project is needed, the borrower would incur delays and costs in pursuing an RFP, or that an RFP is not likely to produce new alternatives to the project.

(b) Loan requests for the addition of generation capacity, including replacement of existing capacity, will be accepted by RUS when the applicant has completed the requirements established by RUS, in a manner satisfactory to RUS. The investigations of alternative sources of power must be coordinated in advance with RUS. This section applies to RUS financed generation capacity whether owned solely by the borrower, owned on an undivided ownership basis with other utilities or substantially controlled by the borrower.

(c) The applicant may be required to seek and utilize capacity available from RUS borrowers and other organizations before developing plans for additional generation capacity. RUS may require, on a case by case basis, that the applicant, among other things:

(1) Solicit power and energy purchase proposals from all reasonable potential sources of power, such as other electric cooperatives, investor-owned utilities, municipal utility organizations, and Federal and state power authorities.

(2) Solicit proposals from independent power producers, including co-generators, to determine

the terms and conditions under which these producers can supply the additional power and energy needs of the applicant, without RUS financial assistance. Such solicitations should be placed in at least three national newspapers or trade publications, and they meet all planning, coordination or other requirements imposed by state authorities, as well as the environmental requirements of RUS.

(d) When solicitations are received in accordance with paragraph (c) of this section, the applicant will evaluate all alternative proposals on an economic, present-value basis, giving consideration to cost-effectiveness, reliability of service, the short-term and long-term financial viability of the supplier, and the financial risk to the borrower and its creditors. The applicant will keep RUS fully informed on these evaluations and provide supporting information and analysis as requested by RUS.

(e) After evaluation of all proposals received in accordance with paragraph (c) of this section, and having informed RUS of the results, the applicant may be required to negotiate final proposals with the entities submitting the best acceptable offers. Contracts requiring RUS approval will either be approved in advance by the Administrator or contain a provision that the contract is not valid until approved, in writing, by the Administrator. The Administrator will approve the contracts in a timely manner provided that the borrower has met all applicable requirements, including, among other matters, evidence that the alternative source of power selected is an economical and effective alternative.

* * * * *

Dated: May 5, 2000.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 00–11986 Filed 5–16–00; 8:45 am]

BILLING CODE 3410–15–P

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## DEPARTMENT OF AGRICULTURE

### Farm Service Agency

### 7 CFR Part 1951

RIN 0560–AF91

### Disaster Set-Aside Program—Second Installment Set-Aside

**AGENCY:** Farm Service Agency, USDA.

**ACTION:** Interim rule.

**SUMMARY:** The Farm Service Agency (FSA) is amending the disaster set-aside program requirement to allow FSA to set aside portions of loan installments that could not be made as scheduled due to a natural disaster, as declared by the President or Secretary of Agriculture, or because of low commodity prices received during the 1999 crop year. In addition, disaster set-aside eligibility requirements are amended to require borrowers to develop a positive cash flow projection which will at least permit the borrower to pay all operating and family living expenses and meet scheduled payments on all debts for the next business accounting year. These provisions will allow the agency to service the loans of farmers who have experienced losses due to a natural disaster or low commodity prices in an efficient and timely manner while ensuring the future viability of the operation.

**DATES:** The effective date for this rule is May 17, 2000. Comments on this rule must be submitted by July 17, 2000 to be assured consideration.

**ADDRESSES:** Submit written comments to Director, Farm Loan Programs, Loan Servicing and Property Management Division, United States Department of Agriculture, Farm Service Agency, STOP 0523, 1400 Independence Avenue, SW, Washington, DC 20250–0523.

**FOR FURTHER INFORMATION CONTACT:** Michael Cumpton, telephone (202) 690-4014; electronic mail: mike—cumpton@wdc.fsa.usda.gov.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866**

This rule has been determined to be significant and was reviewed by the Office of Management and Budget under Executive Order 12866.

**Regulatory Flexibility Act**

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. New provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Large entities are subject to these rules to the same extent as small entities. Therefore, a regulatory flexibility analysis was not performed.

**Environmental Impact Statement**

It is the determination of FSA that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

**Executive Order 13132**

The policies contained in this rule do not have any substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Nor does this rule impose substantial direct compliance costs on state and local governments. Therefore, consultation with the states is not required.

**Executive Order 12988**

This rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11, and 7 CFR part 780 if the decision is made by the FSA county committee or personnel subordinate to the county committee, must be exhausted before bringing suit in court challenging action taken under this rule.

**Executive Order 12372**

For reasons contained in the notice related to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), the programs to which this rule pertains are excluded from the scope of E.O. 12372, requiring intergovernmental consultation with State and local officials.

**The Unfunded Mandates Reform Act of 1995**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments or the private sector of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA requires FSA to prepare a written statement, including a cost benefit assessment, for proposed and final rules with "Federal mandates" that may result in such expenditures for State, local, or tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the most cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates, as defined under title II of the UMRA, for State, local, and tribal governments or the private sector. Thus,

this rule is not subject to the requirements of sections 202 and 205 of UMRA.

**Paperwork Reduction Act of 1995**

The amendments to 7 CFR part 1951 contained in this rule require no revisions to the information collection requirements (0560–0164) that were previously submitted to OMB on October 12, 1999.

**Federal Assistance Programs**

These changes affect the following FSA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans

**Discussion of the Interim Rule**

The Farm Service Agency (FSA) publishes these amendments to subpart T of part 1951 without prior notice and comment because of the emergency nature of the program and the eligibility requirements involved. Publication as a proposed rule for notice and comment is impractical and contrary to the public interest as discussed below.

The Disaster Set-Aside (DSA) program was first made available to FSA Farm Loan Programs (FLP) borrowers beginning October 21, 1994, because of the heavy flooding in the Midwest and extreme drought in the South. Since that time almost 20,000 borrowers have received DSA assistance. The overall success of the program can be attributed to the relatively small amount of paperwork required in applying for and processing DSA requests. DSA gives FLP borrowers a chance to recover from their losses without having to incur additional debt to pay creditors or liquidate essential assets.

Because many delinquent borrowers received a previous writedown of debt under subpart S of 7 CFR part 1951, they are ineligible for additional debt forgiveness and most farm loans under § 373 of the Consolidated Farm and Rural Development Act. As stated in the interim rule designed to assist borrowers for the 1998 crop year, published at 64 FR 392 (January 5, 1999), an estimated 11,424 borrowers would suffer to irreparable financial harm without the interim rule taking immediate effect. Since low commodity prices continued to exist for the 1999 crop year, as well as the occurrence of several natural disasters, the Agency estimates that a similar number of borrowers were affected in the 1999 crop year and became delinquent in repayment of their FSA, FLP loan installments due to these adverse effects. Therefore, this rule will take effect immediately without prior notice and comment. There is justification for the rule to become effective immediately after publication; nevertheless, FSA will accept public comments on this interim rule for 60 days after the rule becomes effective.

Section 7 CFR 1951.954 generally provides that each loan can only have one set-aside installment outstanding (7 CFR 1951.954(b)(2)(i)). A borrower could receive DSA again only if the existing set-aside installment were paid in full, or canceled through restructuring under subpart S of 7 CFR part 1951. This rule will allow borrowers who were affected by low commodity prices or by a natural disaster in a county declared a disaster by the President or Secretary to receive a second installment set aside without the first set-aside installment being paid in full or canceled. Because widespread disasters have occurred and low commodity prices continued to exist in the 1999 crop year, the Agency is offering second installment DSAs for the 1999 crop year to borrowers who have previously received DSA. Applications must be filed by August 31, 2000, for DSA due to low commodity prices. For DSAs due to natural disasters, borrowers in counties designated as disaster areas and borrowers farming in contiguous counties must file DSA applications within 8 months of the disaster designation.

FSA records show that 25 percent of borrowers who receive DSA become immediately become delinquent the year following the set-aside. This is a much higher percentage than borrowers who have their debt restructured under subpart S of 7 CFR part 1951. In order to ensure the future viability of the farming operation, save borrower equity and reduce government losses, eligibility requirements for DSA have been amended to require borrowers to develop a cash flow projection for the next business accounting year. The cash flow projection must show that the borrower will at least be able to pay all operating expenses and taxes, provide for essential family living expenses and meet scheduled payments on all debts. The positive cash flow projection must be prepared in accordance with 7 CFR 1924.56(b).

This rule will allow such borrowers to receive immediate financial relief from their FLP obligations in a more expedient manner than under subpart S of 7 CFR part 1951. When the borrower pays any portion of the set-aside installments in the future, the payment will be applied to the oldest installment set-aside.

**List of Subjects in 7 CFR Part 1951**

Accounting, Credit, Disaster assistance, Loan programs—agriculture, Loan programs—housing and community development, Low and moderate income housing.

Accordingly, 7 CFR part 1951 is amended as follows:

## PART 1951—SERVICING AND COLLECTIONS

1. The authority citation for part 1951 continues to read as follows:

**Authority:** 5 U.S.C. 301; 7 U.S.C. 1989; 31 U.S.C. 3716; 42 U.S.C. 1480.

### Subpart T—Disaster Set-Aside Program

2. Amend § 1951.951 by revising the second sentence to read as follows:

**§ 1951.951 Purpose**

* * * The DSA program is available to Farm Loan Program (FLP) borrowers, as defined in subpart S of this part, who suffered losses as a result of a natural disaster or low commodity prices in 1999. * * *

3. Amend § 1951.952 by revising the second sentence to read as follows:

**§ 1951.952 General**

* * * The intent of this program is to relieve some of the borrower's immediate financial stress caused by a disaster or low commodity prices and avoid foreclosure by the Government. * * *

4. Amend § 1951.953 by revising paragraph (b) to read as follows:

**§ 1951.953 Notification and request for DSA.**

(a) * * *

(b) *Deadline to apply.* All FLP borrowers liable for the debt must request DSA within 8 months from the date the disaster was designated, in accordance with 7 CFR part 1945, subpart A. Applications due to low commodity prices in 1999 must be received on or before August 31, 2000.

* * * * *

5. Amend § 1951.954 as follows:

a. Revise paragraphs (a)(1)(ii), (a)(1)(iii), (a)(5), and (b)(2)(i);

b. Redesignate paragraphs (a)(6) and (a)(7) as (a)(7) and (a)(8), respectively, and add new paragraph (a)(6).

The revisions and additions read as follows:

**§ 1951.954 Eligibility and loan limitation requirements.**

(a) * * *

(1) * * *

(ii) If the borrower is applying for a second installment to be set aside based

on a declared disaster, the borrower must have operated in a county declared a major disaster by the President or the Secretary, or in a county contiguous to such a county, and the Agency must have determined that second set-asides can be processed and approved for declared disasters in the specified year. The first set aside must have been provided for a previous crop year.

(iii) All FLP borrowers may apply for an installment to be set aside based on low commodity prices during 1999. If the borrower is applying for a second installment to be set aside based on low commodity prices, the first set-aside must have been provided for a previous crop year. County location, or proximity to a disaster declared county is not a consideration when the DSA is justified by low commodity prices.

* * * * *

(5) As a direct result of the declared disaster or the 1999 low commodity prices, both pursuant to paragraph (a)(1) of this section, the borrower does not have sufficient income available to pay all family living and operating expenses, other creditors, and FSA. This determination will be based on the borrower's actual production, income and expense records for the disaster or affected year and any other records required by the servicing official. Compensation received for losses shall be considered as well as increased expenses incurred because of a disaster. Consideration will also be given to insufficient income for the next production and marketing period following the affected year if the borrower establishes that production will be reduced or expenses increased as a result of the disaster or the 1999 low commodity prices.

(6) For the next business accounting year, the borrower must develop a positive cash flow projection showing that the borrower will at least be able to pay all operating expenses and taxes due during the year, essential family living expenses and meet scheduled payments on all debts. The cash flow projection must be prepared in accordance with 7 CFR 1924.56. The borrower will provide any documentation required to support the cash flow projection.

* * * * *

(b) * * *

(2) * * *

(i) Except as provided in paragraph (a) of this section, only one unpaid installment for each FLP loan may be set-aside.

* * * * *

6. In subpart T of part 1951, revise all references to "FC" to read "FLP".

Signed in Washington, DC, on May 8, 2000.

**August Schumacher, Jr.,**

*Under Secretary for Farm and Foreign Agricultural Services.*

[FR Doc. 00–12335 Filed 5–16–00; 8:45 am]

BILLING CODE 3410–05–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### 12 CFR Part 361

**RIN 3064–AB12**

## Minority and Women Outreach Program—Contracting

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) is amending its regulation establishing an outreach program for minority- and women-owned businesses and announcing its policy to utilize that portion of the Federal Affirmative Action Contracting Program, set forth in the Federal Acquisition Regulations, providing contracting benefits to Small Disadvantaged Businesses. The FDIC will no longer grant a price incentive based solely on race and gender criteria. The FDIC will, however, continue its outreach programs for minorities and women, and entities owned by them.

**EFFECTIVE DATE:** May 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Martin Blumenthal, Counsel, Legal Division, Corporate Operations Branch, Corporate Legal Issues Section, Contracting Law Unit (202) 736–0756; David McDermott, Chief, Policy and Compliance Unit, Acquisition and Corporate Services Branch, Division of Administration, (202) 942–3434; Rita Wiles Ross, Counsel, Legal Division, Corporate Operations Branch, Legal Operations Section, Legal Services Unit, (202) 736–3072; or Judith M. Wood, Chief, Diversity Branch, Office of Diversity and Economic Opportunity, (202) 416–2456.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In 1989, with enactment of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), Congress mandated that the FDIC augment its program for contracting activities by prescribing

"regulations to establish and oversee minority outreach program [s] * * * to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women * * * in all contracts entered into by the agency * * *" 12 U.S.C. 1833e(c).

In response, the FDIC adopted a regulation that obligates and requires the Corporation to engage in outreach efforts to identify and register minority- and women-owned businesses (MWOBs) that can provide the goods and services utilized by the FDIC. 12 CFR 361.6(b); Minority and Women Outreach Program—Contracting, 57 FR 15004 (April 24, 1992). In addition, to ensure that MWOBs are "being included in each solicitation, the solicitation process will include: * * * (3) Allowing qualified MWOBs a 3% price incentive and additional technical consideration for competitively bid services; * * *" 12 CFR 361.8(b)(3).

However, the Supreme Court has held that all such racial classifications, whether imposed by federal, state, or local governments, must be analyzed by a reviewing court under strict scrutiny. *Adarand Constructors, Inc.* v. *Peña*, 515 U.S. 200, 227; 115 S.Ct. 2097, 2113 (1995). Thereafter, in 1996, the Department of Justice invited public comments on a system designed to reform affirmative action in federal procurement in response to *Adarand*. 61 FR 26042, May 23, 1996. Continuing in that vein, in 1998, the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration published a revision to the Federal Acquisition Regulations (FAR) implementing a new program of affirmative action in federal procurement. 63 FR 52426, September 30, 1998.

In this program, each year, the Department of Commerce makes a determination as to which industries demonstrate the results of past discrimination and are thereby eligible for a benefit in federal contracting. The Department of Commerce also determines the size of a price evaluation adjustment, not to exceed 10%, to be available in those industries. In the first year of the program, eligible industries that are generally used by the FDIC include accounting firms, asset managers, information technology contractors, office services, and building services. The amount of the price evaluation adjustment for 1999 is 10%.

The price evaluation adjustment is available to firms certified as Small Disadvantaged Businesses (SDBs) by the Small Business Administration (SBA). An SDB is a small business firm that is at least 51% owned by individuals who are both socially and economically disadvantaged. Socially disadvantaged individuals include Black Americans,

Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, and Native Americans as a class, as well as other groups that the SBA may from time to time designate, and individuals that can prove by a preponderance of the evidence previous discrimination on a case-by-case basis. Economically disadvantaged individuals have an individual net worth of less than $750,000.[1] The standard for determining whether a firm qualifies as "small" varies between industry classifications and may be based on revenue or number of employees.

In lieu of a price incentive, an SDB may take advantage of an SDB participation factor, if the contracting agency includes such a factor in the procurement. A non-SDB may take advantage of the factor by proposing to partner with an SDB or to use SDB subcontractors. An SDB can also take advantage of this factor as the prime contractor. However, the SDB would only be eligible for the participation factor if it first waives the price evaluation adjustment. Utilization of SDBs as subcontractors may also be encouraged, at the discretion of the contracting agency, by offering prime contractors a financial incentive to exceed the proposed SDB subcontracting. An additional payment can be authorized where the prime contractor promises a particular monetary target of SDB subcontracting and its actual performance exceeds that promise. The monetary incentive can be up to 10% of the SDB subcontracting dollars in excess of the target amount.

## II. Utilization of SDB Program

The FDIC has determined that it was unlikely that the FDIC MWOB price incentive, as implemented, would pass the Constitutional tests enunciated by the Supreme Court in *Adarand*. Accordingly, although the FDIC is not subject to the FAR, it believes that the FAR's affirmative action contracting program provides a constitutionally sustainable means of enhancing the opportunities for SDBs in FDIC contracting. The FDIC will, therefore, voluntarily utilize that program in lieu of the constitutionally questionable price incentive based on race and gender that has been awarded in the past. 64 FR 42862 (August 6, 1999). No comments were filed in response to that Notice.

The program, to be included in the FDIC Acquisition Policy Manual (APM), will provide that, for goods and services acquired under Formal Contracting Procedures, as defined in the APM, generally involving expenditures of $100,000 or more, a price evaluation adjustment will be available to technically qualified SDB bidders in the following circumstances: (a) The bidder has been certified as an SDB by the SBA under procedures set forth in 13 CFR part 124; and (b) the Standard Industrial Classification (SIC) code for the prime contract is one in which the Department of Commerce has authorized the use of a preference. The eligible SICs and amount of the price evaluation adjustment is established annually by the Department of Commerce pursuant to 48 CFR 19.201(b).

Moreover, solicitations issued under the Formal Contracting Procedures involving awards of $500,000 or more ($1,000,000 for construction contracts) may also include an evaluation factor for SDB participation in the performance of the contract. The value to be assigned this factor, if any, is determined by the contracting officer on a contract-by-contract basis. The prime contract need not be in a SIC code identified as authorized by the Department of Commerce for the use of preferences, but only SDB participation in authorized SIC codes would be considered in the evaluation of the participation factor. SDB participation may be in the form of subcontracts, joint ventures or teaming partners.[2] Where the SDB is bidding as a prime contractor in response to a solicitation that includes an SDB participation factor, the SDB will not be eligible for the participation factor unless it first waives its price evaluation adjustment.[3]

Utilization of SDBs as subcontractors may also be encouraged, at the FDIC's discretion, by offering prime contractors a financial incentive to exceed the proposed SDB subcontracting. An additional payment can be authorized where the prime contractor promises a particular monetary target of SDB subcontracting and its actual performance exceeds that promise. The monetary incentive can be up to 10% of the SDB subcontracting dollars in excess of the target amount.

The FDIC will not certify SDBs. That process will be carried out by the SBA under procedures established in the SBA's regulations, 13 CFR part 124. SDBs responding to FDIC solicitations are responsible for identifying themselves and certifying their current status as an SDB. An SDB that has applied for, but not yet received, SBA certification may be entitled to treatment as an SDB where certification can be obtained before the contract is awarded. It is the intention of the FDIC to establish procedures whereby the SBA will treat FDIC contractors seeking SDB certification in the same manner as contractors with FAR agencies that are similarly situated. However, if certification cannot be obtained in a timely manner, the contract may be awarded to another bidder.[4]

## III. Final Rule

To facilitate the implementation of the policy enunciated above, we have repealed the provisions of part 361 that confer a price incentive, 12 CFR 361.8(b)(3), as well as made other conforming amendments to the regulations. The FDIC Office of Diversity and Economic Opportunity (ODEO) will continue to have overall responsibility for providing the FDIC with technical assistance and guidance to facilitate the identification, registration and solicitation of MWOBs. ODEO is also responsible for the Corporation's outreach efforts, such as:

(1) Identifying MWOBs that can provide legal or other services to FDIC;

(2) Conducting seminars, meetings, workshops and other various functions to promote the identification of MWOBs; and

(3) Participating in conventions, seminars, meetings, workshops and other functions to promote the identification and inclusion of MWOBs.

Moreover, ODEO has specific responsibility for the Outreach Program with respect to providers of non-legal services, and in addition to the functions noted above, it will distribute information concerning the FDIC program for outreach to MWOBs. Generally, ODEO will work with contracting officials to ensure that

[1] The $750,000 excludes individual equity in a primary residence and the value of the individual's ownership interest in the firm seeking SDB status.

[2] Any joint venture in which an SDB undertakes to perform a portion of the work could qualify for consideration under the SDB participation factor. The technical value assigned to such joint venture under the SDB participation factor would, of course, depend on the proportion of the work to be performed by the SDB joint venture. In other circumstances, a joint venture may itself qualify as an SDB under SBA regulations. Generally, for a joint venture to qualify, the SDB participant must have at least a 51% ownership share, perform 51% of the work, and the managing partner must be from the SDB participant.

[3] In evaluating this factor, the contracting officer may consider the specificity of the proposal, the enforceability of the commitments, the complexity and variety of the work to be performed by SDBs, the realism of the proposal, and the contractor's past performance in complying with SDB participation goals.

[4] The FDIC will communicate with the SBA to ensure that FDIC contractors seeking certificaiton as SDBs are given the same consideration as other contractors seeking similar certification.

MWOBs are included on FDIC solicitation lists. [5]

ODEO will also collect information from each FDIC office and division that performs contracting or outreach activities, on a quarterly basis or upon request, including statistical information on contract awards and solicitations by designated demographic categories and related outreach activities. The FDIC will request and maintain information on firms that have represented themselves as minority- or women-owned for purposes of outreach efforts and statistical reporting.

The Legal Division will perform outreach efforts targeted at providers of legal services. Generally, in addition to the functions listed above, the Legal Division's National Outreach Coordinator will require, at a minimum, quarterly submissions of statistical information on legal fees and expenses paid to outside counsel by designated demographic categories. FDIC will also encourage use of minority and women lawyers within other firms and partnering of firms with MWOBs. Moreover, specific procedures and activities will be detailed in the Legal Division's Outside Counsel Deskbook as well as the FDIC's web site at: *www.fdic.gov*.

*Final Rule Changes*

In addition to a general editorial updating and simplification of the rule, the FDIC has amended § 361.3 to remove unnecessary definitions and to conform the definition of a minority to the SBA definition. Section 361.4 remains essentially unchanged.

The FDIC has removed §§ 361.7–361.10 because the FDIC will no longer grant a price incentive based on race and gender criteria. Statistics based on self-certification of minorities and women and entities owned by them will be used in conjunction with survey efforts solely for monitoring the FDIC's outreach efforts.

The FDIC is presenting this final rule in a question-and-answer format in an effort to make the regulation easier to use. This change does not, however, affect the substance of the regulation.

## IV. Matters of Regulatory Procedure

*Paperwork Reduction Act*

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. Public comment and OMB approval has previously been obtained for an FDIC collection of information titled "Acquisition Services Information Requirements" which includes questions regarding contractors' minority status. This information collection, approved under OMB control number 3064–0072, will not be changed by this final rule.

*Regulatory Flexibility Act*

The FDIC has determined that this final rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 604, *et seq.*, because the amendment repeals the 3% incentive that FDIC rules had provided to MWOBs, including small businesses. We invited comments on the proposal and our initial regulatory flexibility analysis, but none were filed. Accordingly, this final regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604.

In *Adarand Constructors, Inc.* v. *Peña*, 115 S.Ct. 2097 (1995), the Supreme Court applied strict judicial scrutiny to federal affirmative action programs that use racial or ethnic criteria as a basis for decision making. The FDIC has determined that its price incentive for MWOBs may not pass the Constitutional tests enunciated by the Supreme Court in *Adarand*. Therefore, in this final rule, the FDIC is amending its regulation to repeal that part of the regulation which provides a 3% incentive to MWOBs that bid on FDIC contracts. The FDIC believes that this approach is the only readily apparent solution, because providing any price incentive without meeting the criteria of the Court would be constitutionally suspect.

The Federal Acquisition Regulations (FAR), 63 FR 52426 (September 30, 1998), Reform of Affirmative Action in Federal Procurement, provide a constitutionally sustainable means of enhancing opportunities for SDBs. The FDIC will voluntarily utilize the FAR's affirmative action program.

The objective of this final rule is to implement an outreach and affirmative action procurement program consistent the Supreme Court's decision in *Adarand*.

The 3% price incentive being repealed was available to MWOBs without regard to whether such firms were also "small" businesses. 12 CFR 361.8(b)(3). In 1999, the FDIC awarded 2,778 contracts, including 626 (22.5%) to MWOBs. However, the overwhelming majority of those contracts were awarded without reference to the price incentive because the contract was for less than the $50,000 threshold in the rule, or the purchase was made off the Federal Supply Schedule. Of the 278 awards that were subject to the price incentive, 54 (19.4%) went to MWOBs. Based on a self-certification, the majority of those firms (about 60%) identified themselves as small business concerns. The FDIC anticipates that there will be no significant change in its contracting activity for 2000. Thus, there may be some adverse effect on small entities that enjoyed the price incentive under the regulation, principally small, women-owned firms. However, given the FDIC's record of contract awards where the price incentive was not applicable as well as the benefits being conferred on SDBs under the federal affirmative action contracting program, it is anticipated that the economic impact on small businesses may be substantially attenuated.

Repeal of regulations establishing a 3% incentive will not impose any new paperwork burden. Public comment and Office of Management and Budget approval has previously been obtained for an FDIC collection of information titled "Acquisition Services Information Requirements" which includes questions regarding contractors' minority- and/or women-owned status. This information collection, approved under OMB control number 3064–0072, will not be changed by this final rule. This rule does not duplicate, overlap, or conflict with any other federal rules.

Because the 3% price incentive for MWOBs would likely fail the constitutionally mandated strict scrutiny test established in the *Adarand* case, the only readily apparent alternative is to repeal the regulation.

*Assessment of Impact of Federal Regulation on Families*

The FDIC has determined that this amendment will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999 (Public Law 105–277).

*Small Business Regulatory Enforcement and Fairness Act*

Pursuant to the congressional review provisions of the Contract with America Advancement Act of 1996, 5 U.S.C. 801 *et seq.*, the FDIC must report certain final rules to Congress. The Office of Management and Budget has determined that this rule is not a "major rule" within the meaning of the relevant

[5] In July 1999, the Board withdrew its proposal to amend 12 CFR part 361 that would have, *inter alia*, established an outreach program for individuals with disabilities. Nevertheless, the FDIC will continue its outreach program for individuals with disabilities and entities owned by them as a matter of policy.

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section of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 801, *et seq.* As required by SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office.

**List of Subjects in 12 CFR Part 361**

Government contracts, Lawyers, Legal services, Minority businesses, Reporting and recordkeeping requirements, Women businesses.

For the reasons set forth above, the Board of Directors of the Federal Deposit Insurance Corporation revises part 361 of chapter III of title 12 of the Code of Federal Regulations as follows:

## PART 361—MINORITY AND WOMEN OUTREACH PROGRAM CONTRACTING

Sec.

361.1 Why do minority- and women-owned businesses need this outreach regulation?
361.2 Why does the FDIC have this outreach program?
361.3 Who may participate in this outreach program?
361.4 What contracts are eligible for this outreach program?
361.5 What are the FDIC's oversight and monitoring responsibilities in administering this program?
361.6 What outreach efforts are included in this program?

**Authority:** 12 U.S.C. 1833e.

### § 361.1 Why do minority- and women-owned businesses need this outreach regulation?

The purpose of the FDIC Minority and Women Outreach Program (MWOP) is to ensure that minority- and women-owned businesses (MWOBs) are given the opportunity to participate fully in all contracts entered into by the FDIC.

### § 361.2 Why does the FDIC have this outreach program?

It is the policy of the FDIC that minorities and women, and businesses owned by them have the maximum practicable opportunity to participate in contracts awarded by the FDIC.

### § 361.3 Who may participate in this outreach program?

For purposes of this part:

(a) *Minority* has the same meaning as defined by the Small Business Administration at 13 CFR 124.103(b).

(b) *Legal Services* means all services provided by attorneys or law firms (including services of support staff).

### § 361.4 What contracts are eligible for this outreach program?

The FDIC outreach program applies to all contracts entered into by the FDIC. The outreach program is incorporated into FDIC policies and guidelines governing contracting and the retention of legal services.

### § 361.5 What are the FDIC's oversight and monitoring responsibilities in administering this program?

(a) The FDIC Office of Diversity and Economic Opportunity (ODEO) has overall responsibility for nationwide outreach oversight, which includes, but is not limited to, the monitoring, review and interpretation of relevant regulations. In addition, the ODEO is responsible for providing the FDIC with technical assistance and guidance to facilitate the identification, registration, and solicitation of MWOBs.

(b) Each FDIC office that performs contracting or outreach activities will submit information to the ODEO on a quarterly basis, or upon request. Quarterly submissions will include, at a minimum, statistical information on contract awards and solicitations by designated demographic categories.

### § 361.6 What outreach efforts are included in this program?

(a) Each office engaged in contracting with the private sector will designate one or more MWOP coordinators. The coordinators will perform outreach activities for MWOP and act as liaison between the FDIC and the public on MWOP issues. On a quarterly basis, or as requested by the ODEO, the coordinators will report to the ODEO on their implementation of the outreach program.

(b) Outreach includes the identification and registration of MWOBs who can provide goods and services utilized by the FDIC. This includes distributing information concerning the MWOP.

(c) The identification of MWOBs for the provision of legal and non-legal services will primarily be accomplished by:

(1) Obtaining various lists and directories of MWOBs maintained by other federal, state, and local governmental agencies;

(2) Participating in conventions, seminars and professional meetings comprised of, or attended predominately by, MWOBs;

(3) Conducting seminars, meetings, workshops and other various functions to promote the identification and registration of MWOBs;

(4) Placing MWOP promotional advertisements indicating opportunities with the FDIC in minority- and women-owned media; and

(5) Monitoring to assure that FDIC staff interfacing with the contracting community are knowledgeable of, and actively promoting, the MWOP.

By Order of the Board of Directors.

Dated at Washington, DC, this 10th day of May 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00–12408 Filed 5–16–00; 8:45 am]

BILLING CODE 6714–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–NM–213–AD; Amendment 39–11727; AD 2000–10–03]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes, that requires a one-time detailed visual inspection to determine if wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, and corrective actions, if necessary. This amendment is prompted by a report of smoke coming out of the flight engineer's upper right circuit breaker panel, which was followed by circuit breakers popping and the panel lights going out. The actions specified by this AD are intended to prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed through and consequent electrical arcing, which could result in smoke and fire in the cockpit.

**DATES:** Effective June 21, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 21, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the Federal Aviation Administration (FAA),

Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10 series airplanes was published in the **Federal Register** on January 26, 2000 (65 FR 4186). That action proposed to require a one-time detailed visual inspection to determine if wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, and corrective actions, if necessary.

## Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule. Another commenter supports the proposed rule and indicates that it is in the process of accomplishing the subject inspection. A third commenter supports the proposed rule and indicates that it has completed the subject inspection.

## Explanation of Change Made

Paragraph (a) of this AD has been changed to correct a typographical error that resulted in a reference to an incorrect alert service bulletin revision date. That paragraph references "McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated May 6, 1999," as the appropriate source of service information for accomplishment of the inspection required by paragraph (a) of the proposed AD. This AD references the appropriate alert service bulletin as "McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated July 28, 1999."

## Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

## Cost Impact

There are approximately 412 airplanes of the affected design in the worldwide fleet. The FAA estimates that 300 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $18,000, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

## Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–10–03 McDonnell Douglas:** Amendment 39–11727. Docket 99–NM–213–AD.

*Applicability:* All Model DC–10 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent chafing of the wire bundle located behind the flight engineer's panel caused by the wire bundle coming in contact with the lower edge of the feed through and consequent electrical arcing, which could result in smoke and fire in the cockpit, accomplish the following:

### Inspection

(a) Within 1 year after the effective date of this AD, perform a one-time detailed visual inspection to determine if the wire segments of the wire bundle routed through the feed through on the aft side of the flight engineer's station are damaged or chafed, in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated July 28, 1999.

**Note 2:** For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

**Corrective Actions**

(1) For airplanes identified as Group 1 in the alert service bulletin: Accomplish paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable.

(i) If no damaged or chafed wire is found, no further action is required by this AD.

(ii) If any damaged or chafed wire is found, prior to further flight, repair in accordance with the alert service bulletin.

(2) For airplanes identified as Group 2 in the alert service bulletin: Accomplish paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable.

(i) If no damaged or chafed wire is found, within 1 year after the effective date of this AD, revise the wire bundle support clamp installation at the flight engineer's station in accordance with the alert service bulletin.

(ii) If any damaged or chafed wire is found, prior to further flight, repair the wiring, and revise the wire bundle support clamp installation at the flight engineer's station, in accordance with the alert service bulletin.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin DC10–24A149, Revision 01, dated July 28, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on June 21, 2000.

Issued in Renton, Washington, on May 8, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11950 Filed 5–16–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–SW–05–AD; Amendment 39–11731; AD 2000–10–07]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter Deutschland GmbH (Eurocopter) Model EC 135 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to Eurocopter Model EC 135 helicopters. This AD requires replacing a certain oil cooler fan splined drive shaft (shaft) with a different airworthy shaft and re-identifying the part numbers on the oil cooler fans. This amendment is prompted by two incidents in which the shaft broke. The actions specified by this AD are intended to prevent failure of the shaft, loss of oil cooling, and a subsequent engine shutdown during flight.

**EFFECTIVE DATE:** June 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Paul Madej, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that applies to Eurocopter Model EC 135 helicopters was published in the **Federal Register** on February 11, 2000 (65 FR 6925). That action proposed to require replacing a certain shaft with a different airworthy shaft and re-identifying the part numbers on the oil cooler fans.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 9 helicopters of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per helicopter to replace and re-identify the affected parts and record these actions in the gearbox history card or equivalent record, and that the average labor rate is $60 per work hour. The manufacturer has stated in Alert Service Bulletin EC 135–79A–001, dated January 23, 1998, that required parts will be provided at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,160.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**AD 2000–10–07 Eurocopter Deutschland GMBH:** Amendment 39–11731. Docket No. 99–SW–05–AD.

*Applicability:* Model EC 135 helicopters, serial numbers 0005 through 0071, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required within 50 hours time-in-service, unless accomplished previously.

To prevent failure of an oil cooler fan splined drive shaft (shaft), loss of oil cooling, and a subsequent engine shutdown during flight, accomplish the following:

(a) Replace each shaft, part number (P/N) L 792M3004 225, with an airworthy shaft, P/N L 792M3004 235.

(b) Re-identify the P/N on each oil cooler fan (fan) using a rubber stamp or smudge-proof paint or equivalent as follows:

(1) On the left fan, change the P/N from L 792M3004 102 to L 792M3004 103.

(2) On the right fan, change the P/N from L 792M3005 102 to L 792M3005 103.

(c) Change the P/N on the gearbox component history card or equivalent record to reflect the revised part numbers.

**Note 2:** Eurocopter Alert Service Bulletin No. EC 135–79A–001, dated January 23, 1998, pertains to the subject of this AD.

(d) Replacing the shaft, re-identifying the fans, and recording this on the gearbox component history card or equivalent record constitute terminating actions for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) This amendment becomes effective on June 21, 2000.

**Note 4:** The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD No. 1998–109, dated February 26, 1998.

Issued in Fort Worth, Texas, on May 9, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–12356 Filed 5–16–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–SW–34–AD; Amendment 39–11732; AD 2000–10–08]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that applies to Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 helicopters and requires conducting inspections of each tail rotor blade for bonding separation, measuring the clearance between the tip of each tail rotor blade and the circumference of the air duct, and replacing the blade if necessary. This amendment is prompted by an inflight incident in which the tail rotor blades were significantly damaged due to bonding separation. The actions specified by this AD are intended to prevent damage to a tail rotor blade, loss of tail rotor control, and subsequent loss of control of the helicopter.

**EFFECTIVE DATE:** June 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD for Eurocopter France Model SA–365N1, AS–365N2, and SA–366G1 helicopters was published in the **Federal Register** on February 29, 2000 (65 FR 10724). That action proposed to require conducting inspections of each tail rotor blade for bonding separation, measuring the clearance between the tip of each tail rotor blade and the circumference of the air duct, and replacing the blade if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 136 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $144,160.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**AD 2000–10–08 Eurocopter France:** Amendment 39–11732. Docket No. 99–SW–34–AD.

*Applicability:* Model SA–365N1, AS–365N2, and SA–366G1 helicopters, with a tail rotor blade, part number (P/N) 365A33–2131, 365A12–0010, or 365A12–0020, all dash numbers, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent damage to a tail rotor blade (blade), loss of tail rotor control, and subsequent loss of control of the helicopter:

(a) Within 10 hours time-in-service (TIS) and thereafter prior to the first flight of each day, conduct the following visual inspection of each blade (see Figure 1):

(1) Zone A: If a blister is detected on the blade suction face, conduct a tapping test inspection on the whole blade for bonding separation. If bonding separation or a crack is found, replace the blade with an airworthy blade before further flight.

(2) Zone B: If a crack, wrinkling, or a blister is found, replace the blade with an airworthy blade before further flight.

(b) Within 10 hours TIS, conduct a tapping test inspection on each blade. If there is bonding separation, replace the blade with an airworthy blade before further flight.

**Note 2:** Revisions 5 of Eurocopter France Service Bulletins 05.09 and 05.00.17, both dated December 18, 1998, pertain to the subject of this AD.

(c) Thereafter, at intervals not to exceed 25 hours TIS or every 50 cycles (each takeoff and landing equals 1 cycle), whichever occurs first, conduct a tapping test inspection for bonding separation on all blades with a serial number (S/N) less than 18912, and blades, P/N 365A12–0020–00 or 365A12–0020–01, with a S/N equal to or greater than 18912. If bonding separation or a crack is found, replace the blade with an airworthy blade before further flight.

(d) Thereafter, at intervals not to exceed 100 hours TIS or 200 cycles, whichever occurs first, conduct a tapping test inspection for bonding separation on blades, P/N 365A12–0020–02 or 365A12–0020–03. If bonding separation or a crack is found, replace the blade with an airworthy blade before further flight.

(e) Within 10 hours TIS, and thereafter at intervals not to exceed 100 hours TIS or 200 cycles, whichever occurs first, measure the blade-to-air duct clearance. If the clearance is less than 3 mm, replace the blade with an airworthy blade before further flight.

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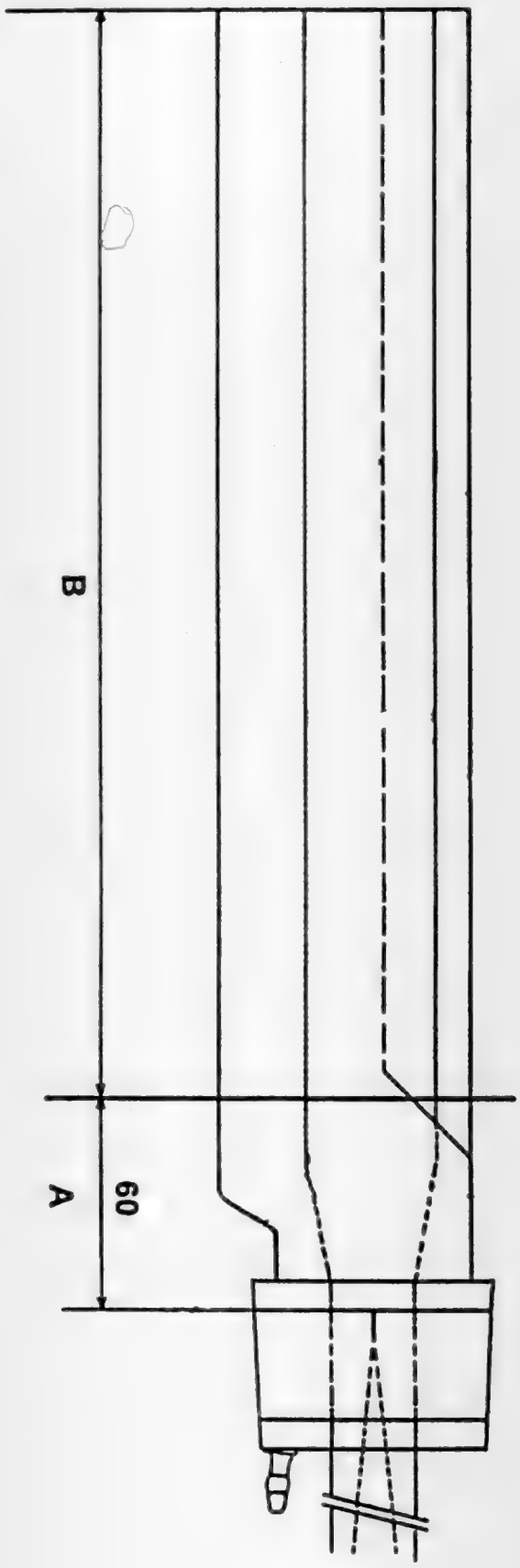


FIGURE 1

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(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(h) This amendment becomes effective on June 21, 2000.

**Note 4:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile AD's 88–152–010(A)R5 and 88–153–023(A)R5, both dated December 30, 1998.

Issued in Fort Worth, Texas, on May 9, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–12354 Filed 5–16–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2000–SW–04–AD; Amendment 39–11730; AD 2000–10–06]**

**RIN 2120–AA64**

## Airworthiness Directives; MD Helicopters Inc. Model MD900 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for MD Helicopters Inc. (MDHI) Model MD900 helicopters. This action requires visually inspecting the drive shaft to determine the assembly part number (P/N) and marking the drive shaft assembly P/N and serial number (S/N) on any unmarked drive shaft. This AD also requires creating a component history card or equivalent record for certain drive shaft assemblies and replacing any drive shaft assembly that has reached its life limit. This amendment is prompted by the discovery of several drive shafts with no assembly P/N marked on the part, which could result in a drive shaft remaining in service past its life limit. The actions specified in this AD are intended to prevent failure of the drive shaft due to fatigue, which could result in total loss of drive to the main rotor hub and subsequent loss of control of the helicopter.

**DATES:** Effective June 1, 2000.

Comments for inclusion in the Rules Docket must be received on or before July 17, 2000.

**ADDRESSES:** Submit comments by mail in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–04–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9–asw–adcomments@faa.gov.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Bumann, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Propulsion Branch, 3960 Paramount Blvd., Lakewood, California 90712–4137, telephone (562) 627–5265, fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** This amendment adopts a new AD for MDHI Model MD900 helicopters. On February 19, 1999, the FAA issued AD 99–05–08, Amendment 39–11056 (64 FR 10209, March 3, 1999), for MDHI Model MD900 helicopters to establish or reduce life limits for various parts, including the drive shaft assembly. That AD was prompted by analysis that indicated a need for establishing or reducing life limits to avoid fatigue failure of certain parts. Since issuance of that AD, several drive shaft assemblies were found without a P/N marked on the drive shafts. This could result in the drive shaft remaining in service past its life limit since operators may mistakenly use the subassembly P/N for determining whether the life limit listed in AD 99–05–08 applies. A drive shaft in operation past its life limit could fail due to fatigue. This condition, if not corrected, could result in total loss of drive to the main rotor hub and subsequent loss of control of the helicopter.

The FAA has reviewed MDHI Service Bulletin (SB) SB900–062 R1, dated December 16, 1999, which describes procedures for visually inspecting the drive shaft to determine the assembly P/N and marking the drive shaft assembly P/N and serial number (S/N) on any unmarked drive shaft. The SB also specifies creating component history cards for certain drive shaft assemblies, verifying the life limit, and replacing the drive shaft assembly, if necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other MDHI Model MD900 helicopters of the same type design, this AD is being issued to prevent failure of the drive shaft. This AD requires visually inspecting the drive shaft to determine the assembly P/N and marking the drive shaft assembly P/N and S/N on any unmarked drive shaft. This AD also requires creating component history cards for certain drive shaft assemblies and replacing the drive shaft assembly if the drive shaft assembly has reached its life limit. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect controllability of the helicopter. Therefore, the actions of this AD are required prior to accumulating 1,450 hours time-in-service (TIS) on the drive shaft or before further flight if TIS equals or exceeds 1,450 hours, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that this AD will affect 28 helicopters, that it will take approximately 2 work hours to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $3,360.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–04–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**AD 2000–10–06 MD Helicopters Inc.:** Amendment 39–11730. Docket No. 2000–SW–04–AD.

*Applicability:* Model MD900 helicopters, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the drive shaft due to fatigue, which could result in total loss of drive to the main rotor hub and subsequent loss of control of the helicopter; accomplish the following:

(a) Before accumulating 1,450 hours time-in-service (TIS), visually inspect the drive shaft assembly to determine which part number (P/N) is installed. If necessary, remove the drive plate cover to access the P/N located on the top edge of the drive shaft assembly. If the number of hours TIS on the drive shaft assembly is unknown, use the total hours TIS on the helicopter.

**Note 2:** Do not confuse the P/N of the drive shaft subassembly, P/N 900D2436028–101, 900D2436026–101, or 900D2436030–101 as the P/N of the drive shaft assembly.

(1) If a drive shaft assembly, P/N 900D2436530–101, is installed, no further action is required by this AD.

(2) If a drive shaft assembly other than P/N 900D2436530–101 is installed and is not marked with a P/N, before further flight, use an indelible ink fine tip marking pen to mark the following information on the edge of the drive shaft assembly in line with the engraved subassembly number:

(i) P/N 900D2436528–101 and the serial number (S/N) of the drive shaft subassembly if the subassembly is P/N 900D2436028–101. When the ink dries, apply a clear coat over the P/N and S/N, or

(ii) P/N 900D6400004–101 and the S/N of the drive shaft subassembly if the subassembly is P/N 900D2436026–101. When the ink drives, apply a clear coat over the P/N and S/N.

(b) For a drive shaft assembly with 1,450 or more hours TIS, before further flight, accomplish paragraph (a) of this AD.

**Note 3:** MD Helicopters Inc. Service Bulletin SB900–062 R1, dated December 16, 1999, applies to the subject of this AD.

(c) After accomplishing the requirements of paragraph (a) of this AD, before further flight, determine the hours TIS of the drive shaft assembly. Record the hours TIS on a current or newly created component history card or equivalent record. If the drive shaft assembly has reached or exceeded its life limit, replace the drive shaft assembly with an airworthy drive shaft assembly before further flight.

**Note 4:** The Airworthiness Limitations Section, section 04, of the MD–900 Rotorcraft Maintenance Manual (CSP–900RMM–2), Revision 6, dated December 23, 1999, pertains to the subject of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

**Note 5:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on June 1, 2000.

Issued in Fort Worth, Texas, on May 5, 2000.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–12353 Filed 5–16–00; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 19

**[T.D. 00–33]**

**RIN 1515–AC53**

### Location of Duty-Free Stores

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to conform with the provisions of the Miscellaneous Trade and Technical Corrections Act of 1999 regarding the permissible location of a duty-free store. In addition to the existing permissible locations, a duty-free store that is an airport store as defined in the law may also be located in, or within 25 statute miles of, any staffed port of entry, whether or not it is the same port through which a purchaser at the store will depart from

the Customs territory of the United States.

**EFFECTIVE DATE:** May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** William G. Rosoff, Duty and Refund Determination Branch, (202–927–2077).

**SUPPLEMENTARY INFORMATION:**

## Background

Duty-free sales enterprises, also known as duty-free stores, are Customs bonded class 9 warehouses that operate under special procedures that allow merchandise to be offered for sale to departing travelers without payment of Customs duties and taxes, on condition that the merchandise they purchase will be exported by and with them from the Customs territory of the United States. The statutory authority under which duty-free stores operate is found in 19 U.S.C. 1555(b). The regulations that implement procedures for the administration of these facilities are contained in §§ 19.35 through 19.39 of the Customs Regulations (19 CFR 19.35–19.39).

The Miscellaneous Trade and Technical Corrections Act of 1999, Pub. L. 106–36, 113 Stat. 127 (June 25, 1999) (MTTCA), amended a number of Customs laws, including the provision relating to duty-free stores (19 U.S.C. 1555(b)). Specifically, section 2417 of the MTTCA amended section 1555(b) to expand upon the places where a duty-free store could properly be located in the United States.

### Location of a Duty-Free Store; Prior Law

Section 1555(b) previously required that a duty-free store be located within the port of entry from which a purchaser of duty-free store merchandise departs from the Customs territory of the United States, or within 25 statute miles of the exit point from which the purchaser departs from the Customs territory. Section 19.35(b) repeats this requirement regarding the permissible location of a duty-free store.

### Location of a Duty-Free Store; Amended Law

Section 2417 of the MTTCA amended 19 U.S.C. 1555(b) to allow a duty-free store to be located anywhere within a staffed, Customs-defined port of entry, or within 25 statute miles of a staffed port of entry, whether or not it is the same port through which a purchaser of duty-free store merchandise will depart from the Customs territory of the United States, provided that the purchaser will depart through an international airport located in the Customs territory (19 U.S.C. 1555(b)(2)(C)). As such, the duty-free store that is the subject of the amendment must be an airport store as defined in 19 U.S.C. 1555(b)(8)(A).

As is already the case under the law, the Customs Service, before authorizing a duty-free store at such a location, must conclude that reasonable assurance has been provided that merchandise purchased at the store will be exported from the Customs territory. To this end, a duty-free store that is an airport store must establish procedures that provide reasonable assurance that merchandise sold by the store will be exported from the Customs territory through an international airport located within the Customs territory (19 U.S.C. 1555(b)(2)(C), (3)(A) and (8)(A); 19 CFR 19.36(b); see also 19 CFR 19.36(f) and 19.39(c)).

The statutory amendment was intended to create additional opportunities for duty-free stores to increase sales by increasing the locations where international travelers departing from the United States may make duty-free store purchases.

Accordingly, § 19.35(b), Customs Regulations, is amended to conform to the statutory amendment by providing that an airport store may also be located within any staffed port of entry, or within 25 statute miles of a staffed port.

### Regulatory Flexibility Act, Executive Order 12866 and Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements

Because the amendment in this final rule merely conforms the Customs Regulations to law, notice and public procedure are inapplicable and unnecessary pursuant to 5 U.S.C. 553(b)(B), and, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Because no notice of proposed rulemaking is required, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Nor does the amendment result in a "significant regulatory action" under E.O. 12866.

### List of Subjects in 19 CFR Part 19

Customs duties and inspection, Exports, Imports, Reporting and recordkeeping requirements, Warehouses.

### Amendment to the Regulations

Part 19, Customs Regulations (19 CFR part 19), is amended as set forth below.

## PART 19—CUSTOMS WAREHOUSES, CONTAINER STATIONS, AND CONTROL OF MERCHANDISE THEREIN

1. The general authority citation for part 19 and the relevant sectional authority citation continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1624.

* * * * *

Sections 19.35–19.39 also issued under 19 U.S.C. 1555;

* * * * *

2. Section 19.35 is amended by revising paragraph (b) to read as follows:

**§ 19.35 Establishment of duty-free stores (Class 9 warehouses).**

* * * * *

(b) *Location.* A duty-free store (class 9 warehouse) may be established or located only:

(1) Within the same port of entry from which a purchaser of duty-free store merchandise departs the Customs territory;

(2) Within 25 statute miles from the exit point through which a purchaser of duty-free store merchandise departs the Customs territory; or

(3) In the case of an airport store, within any staffed port of entry, or within 25 statute miles from any staffed port of entry.

* * * * *

**Raymond W. Kelly,**
*Commissioner of Customs.*

Approved: March 30, 2000.

**John P. Simpson,**
*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–12367 Filed 5–16–00; 8:45 am]

**BILLING CODE 4820–02–P**

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## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Parts 24, 159 and 174

**[T.D. 00–32]**

**RIN 1515–AB76**

### Interest on Underpayments and Overpayments of Customs Duties, Taxes, Fees and Interest

**AGENCY:** U.S. Customs Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document adopts as a final rule interim amendments to the Customs Regulations which conformed those regulations to existing statutory provisions and judicial precedent regarding the assessment of interest due to underpayments or overpayments to Customs of duties, taxes and fees pertaining to imported merchandise, including interest on those duties, taxes and fees. The majority of the conforming

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changes reflect the terms of section 505 of the Tariff Act of 1930, as amended by the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. The conforming amendments also reflect changes to 19 U.S.C. 1505 and to section 321 of the Tariff Act of 1930 (19 U.S.C. 1321) regarding interest that were made by the Miscellaneous Trade and Technical Corrections Act of 1996.

**DATES:** Final rule effective May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert Reiley, Financial Management Division (202–927–1504).

**SUPPLEMENTARY INFORMATION:**

**Background**

On October 20, 1999, Customs published T.D. 99–75 in the **Federal Register** (64 FR 56433) setting forth interim amendments to provisions within Parts 24, 159 and 174 of the Customs Regulations (19 CFR Parts 24, 159 and 174) to conform those regulations to existing statutory provisions and judicial precedent regarding the assessment of interest due to underpayments or overpayments to Customs of duties, taxes and fees pertaining to imported merchandise, including interest on those duties, taxes and fees.

The majority of the conforming changes reflected the terms of section 505 of the Tariff Act of 1930 (19 U.S.C. 1505), as amended by section 642(a) within the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act (Public Law 103–182, 107 Stat. 2057). Under that statute, interest accrues initially from the date the duties, taxes, fees and interest are deposited with Customs in the case of overpayments, or are required to be deposited with Customs in the case of underpayments, but in either case not beyond the date of liquidation or reliquidation of the applicable entry or reconciliation. Also under the statute and applicable judicial precedent, all bills issued by Customs for underpayments of duties, taxes, fees and interest are due within 15 or 30 days of issuance.

The conforming interim amendments also reflected other changes to 19 U.S.C. 1505 and to section 321 of the Tariff Act of 1930 (19 U.S.C. 1321) regarding interest that were made by sections 2(a) and 3(a)(12) of the Miscellaneous Trade and Technical Corrections Act of 1996 (Public Law 104–295, 110 Stat. 3514).

The interim regulatory amendments contained in T.D. 99–75 went into effect on October 20, 1999, and the notice prescribed a public comment period which closed on December 20, 1999. No comments were received during the prescribed public comment period. After further consideration, Customs has determined that the interim regulatory amendments should be adopted as a final rule without change.

**Executive Order 12866**

This document does not meet the criteria for a "significant regulatory action "as specified in E.O. 12866.

**Regulatory Flexibility Act**

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. The amendments conform the Customs Regulations to the terms of statutory provisions, and to the principles reflected in judicial decisions, that are currently in effect. In addition, in some cases, the amendments conform the regulatory provisions to longstanding Customs administrative procedures and practices that confer benefits on, or otherwise militate in favor of, the general public. Accordingly, the amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

**List of Subjects**

*19 CFR Part 24*

Accounting, Claims, Customs duties and inspection, Interest, Taxes, User fees, Wages.

*19 CFR Part 159*

Computer technology, Customs duties and inspection, Entry, Imports, Liquidation.

*19 CFR Part 174*

Administrative practice and procedure, Customs duties and inspection, Protests.

**Amendments to the Regulations**

For the reasons stated in the preamble, under the authority of 19 U.S.C. 66 and 1624 the interim rule amending 19 CFR Parts 24, 159 and 174 which was published at 64 FR 56433 on October 20, 1999, is adopted as a final rule without change.

**Raymond W. Kelly,**

*Commissioner of Customs.*

Approved: April 26, 2000.

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–12364 Filed 5–16–00; 8:45 am]

BILLING CODE 4820–02–P

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 101**

**[T.D. 00–35]**

## Extension of Port Limits of Puget Sound, WA

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations pertaining to the field organization of Customs by extending the geographical limits of the consolidated port of Puget Sound, Washington. This change is being made as part of Customs continuing program to obtain more efficient use of its personnel, facilities and resources and to provide better service to carriers, importers and the general public.

**EFFECTIVE DATE:** June 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Betsy Passuth, Office of Field Operations, Mission Support Service, 202–927–0795.

**SUPPLEMENTARY INFORMATION:**

**Background**

A Notice of Proposed Rulemaking was published in the **Federal Register** (64 FR 61232) of November 10, 1999, which proposed to extend the geographical limits of the consolidated port of Puget Sound by extending and redefining the boundaries of Tacoma.

The description of Tacoma within the description of the Puget Sound port was proposed to be extended to include two industrial parks which have new facilities for clearing, storing and forwarding imported merchandise and require the services of Customs personnel.

**Analysis of Comment**

One comment was received in response to the proposal. This comment strongly supported the proposal to extend and redefine the boundaries of the port of Puget Sound, Washington.

**Conclusion**

In light of the favorable comment received and after further consideration of the matter, Customs has decided to proceed with the extension of the geographical limits of the port of Puget Sound, Washington.

**New Port Limits**

As amended, the geographical area within the boundaries of the consolidated port of Puget Sound is as follows:

The ports of Seattle (Section 35, Township 27 North, Range 3 East, West Meridian, County of Snohomish, and the geographical area beginning at the intersection of N.W. 205th Street and the waters of Puget Sound, proceeding in an easterly direction along the King County line to its intersection with 100th Avenue N.E., thence southerly along 100th Avenue N.E. and its continuation to the intersection of 100th Avenue S.E. and S.E. 240th Street, thence westerly along S.E. 240th Street, to its intersection with North Central Avenue, thence southerly along North Central Avenue, its continuation as South Central Avenue and 83rd Avenue South and its connection to Auburn Way North, thence southerly along Auburn Way North and its continuation as Auburn Way South to its intersection with State Highway 18, thence westerly along Highway 18 to its intersection with A Street S.E., then southerly along A Street S.E. to its intersection with the King County Line, then westerly along the King County Line to its intersection with the waters of Puget Sound and then northerly along the shores of Puget Sound to its intersection with N.W. 205th Street, the point of beginning, all within the County of King, State of Washington), Anacortes, Bellingham, Everett, Friday Harbor, Neah Bay, Olympia, Port Angeles, Port Townsend, and the territory in Tacoma, beginning at the intersection of the westernmost city limits of Steilacoom and The Narrows and proceeding easterly along Main Street to the intersection of Stevens Street, then southerly along Stevens Street to the intersection of Washington Boulevard, then easterly along Washington Boulevard to the intersection of Gravely Lake Drive S.W., then southeasterly to the intersection of Nyanza Road, SW, then southerly to its intersection with Pacific Highway (U.S. Route 99), then proceeding in a northeasterly direction along Pacific Highway to its intersection with 112 Street East and continuing in an easterly direction along 112 Street East to its intersection with the northwest corner of McChord Air Force Base, then proceeding along the northern, then western, then southern boundary of McChord Air Force Base to its intersection, just west of Lake Mondress, with the northern boundary of the Fort Lewis Military Reservation, then proceeding in an easterly direction along the northern boundary of the Fort Lewis Military Reservation to its intersection with Pacific Avenue (SR–7), then proceeding in a southerly direction along Pacific Avenue (SR–7) to its intersection with SR–507, then proceeding in a southeasterly direction along SR–7 to its intersection with 224th Street East, then proceeding in an easterly direction along 224th Street East to its intersection with Meridian Street South (SR–161), then proceeding in a northerly direction along Meridian Street South (SR–161) to the intersection with 176 Street East, then easterly along 176 Street East extended to the intersection with Sunrise Parkway East, then northwesterly along Sunrise Parkway East to the intersection with 122nd Avenue East, then northerly to the intersection with Old Military Road East, then northeasterly to the intersection with SR–162, then northerly along SR–162 to the intersection with SR–410, then easterly along SR–410 to the intersection with 166th Avenue East, then northerly to the intersection with Sumner-Tapps Highway, continuing northeasterly along Sumner-Tapps Highway to 16th Street East, then easterly to 182 Avenue East, then northerly to the northern boundary of Pierce County, then proceeding in a westerly direction along the northern boundary of Pierce County to its intersection with Puget Sound, then proceeding in a generally southwesterly direction along the banks of the East Passage of Puget Sound, Commencement Bay, and The Narrows to the point of intersection with the westernmost city limits of Steilacoom, Washington, including all points and places on the southern boundary of the Juan de Fuca Strait from the eastern port limits of Neah Bay to the western port limits of Port Townsend, all points and places on the western boundary of Puget Sound, including Hood Canal, from the port limits of Port Townsend to the northern port limits of Olympia, all points and places on the southern boundary of Puget Sound from the port limits of Olympia to the western port limits of Tacoma, and all points and places on the eastern boundary of Puget Sound and contiguous waters from the port limits of Tacoma north to the southern port limits of Bellingham, all in the State of Washington.

**Authority**

This change is being made under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66 and 1624.

**Regulatory Flexibility Act and Executive Order 12866**

Customs establishes, expands and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although a notice was issued for public comment on this subject matter, because this document relates to agency management and organization, it is not subject to the notice and procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Agency organization matters such as this port extension are not subject to Executive Order 12866.

**Drafting Information**

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 101**

Customs duties and inspection, Exports, Imports, Organization and functions (Government agencies).

**Amendment to the Regulations**

For the reasons set forth above, part 101 of the Customs Regulations is amended as set forth below.

## PART 101—GENERAL PROVISIONS

1. The general authority citation for part 101 and the specific authority citation for § 101.3 continue to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 2, 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624, 1646a. Sections 101.3 and 101.4 also issued under 19 U.S.C. 1 and 58b.

* * * * *

**§ 101.3 [Amended]**

2. In the list of ports in § 101.3(b)(1), under the state of Washington, the "Limits of port" column adjacent to "Puget Sound" in the "Ports of entry" column is amended by removing the reference "T.D. 96–63" and adding in its place "T.D. 00–35".

**Raymond W. Kelly,**

*Commissioner of Customs.*

Approved: March 30, 2000.

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–12365 Filed 5–16–00; 8:45 am]

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## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 122

**[T.D. 00–34]**

### Revised List of User Fee Airports

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by revising the list of user fee airports. User fee airports are those which, while not qualifying for designation as international or landing rights airports because of insufficient volume or value of business, have been approved by the Commissioner of Customs to receive the services of Customs officers on a fee basis for the processing of aircraft entering the United States and their passengers and cargo.

**EFFECTIVE DATE:** May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Betsy Passuth, Office of Field Operations, 202–927–0795.

**SUPPLEMENTARY INFORMATION:**

**Background**

Part 122, Customs Regulations (19 CFR part 122), sets forth regulations relating to the entry and clearance of aircraft in international commerce and the transportation of persons and cargo by aircraft in international commerce.

Under § 1644a, Title 19, United States Code (19 U.S.C.1644a), the Secretary of the Treasury is authorized to designate places in the United States as ports of entry for civil aircraft arriving from any place outside of the United States, and for merchandise carried on the aircraft. These airports are referred to as international airports, and the location and name of each are listed in § 122.13, Customs Regulations (19 CFR 122.13). In accordance with § 122.33, Customs Regulations (19 CFR 122.33), the first landing of every civil aircraft entering the United States from a foreign area must be at one of these international airports, unless the aircraft has been specifically exempted from this requirement or permission to land elsewhere has been granted. Customs officers are assigned to all international airports to accept entries of merchandise, collect duties and enforce the customs laws and regulations.

Other than making an emergency or forced landing, if a civil aircraft desires to land at an airport not designated by Customs as an international airport, the pilot may request permission to land at a specific airport and, if granted, Customs assigns personnel to that airport for the aircraft. The airport where the aircraft is permitted to land is called a landing rights airport (19 CFR 122.24).

Section 236 of Pub. L. 98–573 (the Trade and Tariff Act of 1984), codified at 19 United States Code 58b (19 U.S.C. 58b), creates an option for civil aircraft desiring to land at an airport other than an international or landing rights airport. A civil aircraft arriving from a place outside the United States may ask Customs for permission to land at an airport designated by the Secretary of the Treasury as a user fee airport.

Pursuant to 19 U.S.C. 58b, an airport may be designated as a user fee airport if the Secretary of the Treasury determines that the volume of Customs business at the airport is insufficient to justify the availability of Customs services at the airport and the governor of the State in which the airport is located approves the designation. Generally, the type of airport that would seek designation as a user fee airport would be one at which a company, such as an air courier service, has a specialized interest in regularly landing.

Inasmuch as the volume of business anticipated at these airports is insufficient to justify their designation as an international or landing rights airport, the availability of Customs services is not paid for out of Customs appropriations from the general treasury of the United States. Instead, the services of Customs officers are provided on a fully reimbursable basis to be paid for by the user fee airports on behalf of the recipients of the services.

The fees which are to be charged at user fee airports, according to the statute, shall by paid by each person using Customs services at the airport and shall be in the amount equal to the expenses incurred by the Secretary of the Treasury in providing Customs services that are rendered to such persons at such airport, including the salary and expenses of those employed by the Secretary of the Treasury to provide the Customs services. To implement this provision, the airport seeking the designation as a user fee airport or that airport's authority agrees to pay Customs a flat fee annually and the users of the airport are to reimburse that airport/airport authority. The airport/airport authority agrees to set and periodically review its charges to ensure that they are in accord with the airport's expenses.

Pursuant to Treasury Department Order No. 165, Revised (Treasury Decision 53564), all the rights, privileges, powers, and duties vested in the Secretary of the Treasury by the Tariff Act of 1930, as amended, by the navigation laws, or by any other laws administered by Customs are transferred to the Commissioner of Customs. Accordingly, the authority granted to the Secretary of the Treasury to designate user fee airports and to determine appropriate fees is delegated to the Commissioner of Customs.

Under this authority, Customs has determined that certain conditions must be met before an airport can be designated as a user fee airport. At least one full-time Customs officer must be requested, and the airport must be responsible for providing Customs with satisfactory office space, equipment and supplies, at no cost to the Federal Government.

In § 122.15(b), Customs Regulations (19 CFR 122.15(b)), Customs sets forth a list of the user fee airports designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b. This document updates the list.

**Inapplicability of Public Notice and Delayed Effective Date Requirements**

Because this amendment merely lists those user fee airports designated by the Commissioner of Customs in accordance with 19 U.S.C. 58b and neither imposes additional burdens on, nor takes away any existing rights or privileges from, the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedure are unnecessary, and for the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

**Regulatory Flexibility Act and Executive Order 12866**

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. This amendment does not meet the criteria for a "significant regulatory action" as specified in Executive Order 12866.

**Drafting Information**

The principal author of this document was Janet L. Johnson, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

**List of Subjects in 19 CFR Part 122**

Air carriers, Aircraft, Airports, Customs duties and inspection, Freight.

**Amendments to the Regulations**

Part 122, Customs Regulations (19 CFR part 122) is amended as set forth below:

**PART 122—AIR COMMERCE REGULATIONS**

1. The authority citation for Part 122, Customs Regulations, continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. Section 122.15(b) is amended by revising the list of airports to read as follows:

**§ 122.15 User fee airports.**

* * * * *

(b)List of user fee airports. * * *

| Location | Name |
|---|---|
| Addison, Texas | Addison Airport. |
| Blountville, Tennessee. | Tri-City Regional Airport. |
| Blytheville, Arkansas | Arkansas Aeroplex. |
| Broomfield, Colorado | Jefferson County Airport. |
| Daytona Beach, Florida. | Daytona Beach International Airport. |
| Decatur, Indiana | Decatur Airport. |
| Dublin, Virginia | New River Valley Airport. |
| Egg Harbor Township, New Jersey. | Atlantic City International Airport. |
| Englewood, Colorado | Centennial Airport. |
| Fargo, North Dakota | Hector International Airport. |
| Fort Wayne, Indiana | Baer Field Airport. |
| Fort Worth, Texas | Fort Worth Alliance Airport. |
| Johnson City, New York. | Binghamton Regional Airport. |
| Lexington, Kentucky | Blue Grass Airport. |
| Manchester, New Hampshire. | Manchester Airport. |
| Medford, Oregon | Rogue Valley International Airport. |
| Melbourne, Florida | Melbourne Airport. |
| Midland, Texas | Midland International Airport. |
| Morristown, New Jersey. | Morristown Municipal Airport. |
| Moses Lake, Washington. | Port of Moses Lake. |
| Myrtle Beach, South Carolina. | Myrtle Beach International Airport. |
| Ocala, Florida | Ocala Regional Airport. |
| Palm Springs, California. | Palm Springs International Airport. |
| Rochester, Minnesota | Rochester Airport. |
| San Bernardino, California. | San Bernardino International Airport. |
| Sarasota, Florida | Sarasota/Bradenton International Airport. |
| Scottsdale, Arizona | Scottsdale Airport. |
| Terre Haute, Indiana | Hulman Regional Airport. |
| Victorville, California | Southern California Logistics Airport. |
| Waterford, Michigan | Oakland International Airport. |
| Waukegan, Illinois | Waukegan Regional Airport. |
| West Chicago, Illinois | Dupage County Airport. |
| West Trenton, New Jersey. | Trenton Mercer Airport. |
| Wheeling, Illinois | Palwaukee Airport. |
| Wilmington, Ohio | Wilmington Airport. |
| Ypsilanti, Michigan | Willow Run Airport. |

* * * * *

**Raymond W. Kelly,**

*Commissioner of Customs.*

Approved: March 30, 2000.

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–12366 Filed 5–16–00; 8:45 am]

BILLING CODE 4820–02–P

## POSTAL SERVICE

### 39 CFR Part 913

### Procedures for the Issuance of Administrative Subpoenas Under 39 U.S.C. 3016

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes procedures for the issuance of administrative subpoenas in investigations of false representations and lotteries under 39 U.S.C. 3005(a). It adopts with changes a proposed rule published for public comment on March 16, 2000 (65 FR 14229–30). For reasons stated below, this rule will become effective immediately.

**EFFECTIVE DATE:** May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth P. Martin, (202) 268–3022.

**SUPPLEMENTARY INFORMATION:** The Deceptive Mail Prevention and Enforcement Act, Public Law 106–168, 113 Stat. 1806 (December 12, 1999), generally amended chapter 30 of title 39, United States Code, to make nonmailable certain deceptive matter relating to sweepstakes, skill contests, and facsimile checks. It also amended provisions relating to administrative procedures and orders, and added civil penalties relating to such matters.

Under new 39 U.S.C. 3016, the Postmaster General has authority to issue administrative subpoenas requiring the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Postmaster General considers relevant or material in any investigation conducted under 39 U.S.C. 3005(a), dealing with false representations and lotteries.

On March 16, 2000, the Postal Service published in the **Federal Register** a proposed new Part 913 to title 39 of the Code of Federal Regulations to establish the procedures to be used for the issuance of the administrative subpoenas authorized under 39 U.S.C. 3016 (65 FR 14229–30). The proposed rules set forth the conditions under which subpoenas may be issued, the methods of service of subpoenas, the means by which subpoenas may be enforced, and the restrictions on the disclosure of subpoenaed information. Although exempt by 39 U.S.C. 410(a) from the notice and comment requirements of the Administrative Procedure Act, the Postal Service invited comments on the proposed new Part 913. The Postal Service received two comments, and has considered and incorporated several of the points raised therein.

Publishers Clearing House (PCH) suggested that § 913.1(a) should acknowledge that the authority to issue the subpoenas lies with the Postmaster General. The regulation has been changed to clarify that fact. Both PCH and the Postal Service Office of the Inspector General (OIG) expressed concern that the regulations should more closely track the language of the statute regarding conditions precedent to the issuance of a subpoena. A new § 913.1(c) has been added to address those concerns. Current subsections (c) and (d) are relettered as (d) and (e). New § 913.1(d)(3) similarly addresses the concern regarding conditions precedent.

New section 913(d)(1) is changed to clarify that only a specifically authorized Inspector may submit a request. At the suggestion of the OIG, new 913.1(d)(4) is changed to clarify that the General Counsel, at his or her discretion, may issue or deny a subpoena, require additional information, or honor requests to amend or supplement a request.

Both the OIG and PCH expressed concerns with respect to the clarity of § 913.4. We have considered their suggestions, however, we have not adopted their proposed language. The language published is that which is contained in the statute, and thus any lack of clarity is statutory. We interpret that language to state that anything turned over pursuant to a subpoena is exempt from release under the Freedom of Information Act.

Finally, the OIG suggested that certain new reporting requirements concerning the number of cases in which the authority under 39 U.S.C. 3016 is used should be addressed by these regulations. We have determined that the reporting requirements are not relevant to the process by which subpoenas are requested and issued, and have declined to make the suggested change.

With regard to the effective date, we have determined that there is good cause to make the new regulations effective upon publication. We believe that the public interest would not be served by providing persons who might

be subject to false representation or lottery investigations under 39 U.S.C. 3005(a) with a further "window of opportunity" until their records become subject to administrative subpoena requirements.

**List of Subjects in 39 CFR Part 913**

Administrative practice and procedure, False Representations, Lotteries.

Accordingly, for the reasons discussed above, the Postal Service hereby adds Part 913 to title 39, of the Code of Federal Regulations as set forth below.

## PART 913—PROCEDURES FOR THE ISSUANCE OF ADMINISTRATIVE SUBPOENAS UNDER 39 U.S.C. 3016

Sec.
913.1 Subpoena authority.
913.2 Service.
913.3 Enforcement.
913.4 Disclosure.

**Authority:** 39 U.S.C. 204, 401, 404, 3005, 3016.

### § 913.1 Subpoena authority.

(a) General. The General Counsel by delegation from the Postmaster General is responsible for the issuance of subpoenas in investigations conducted under 39 U.S.C. 3005(a), with authority to delegate that function to a Deputy General Counsel.

(b) Production of records. A subpoena issued by the General Counsel may require the production of any records (including computer records, books, papers, documents, and other tangible things which constitute or contain evidence) which the General Counsel considers relevant or material to an investigation.

(c) Requirements. No subpoena shall be issued until a specific case (identifying the individual or entity that is the subject) has been opened and an appropriate supervisory and legal review of a subpoena request have been performed.

(d) Requests for subpoenas. (1) A request for a subpoena shall be submitted to the Office of the General Counsel by a Postal Inspector, Inspector Attorney, or other Inspector specifically authorized by the Postal Inspection Service to submit such a request, after appropriate review by an Inspector In Charge or that person's designee.

(2) A request for a subpoena shall state the specific case, with an individual or entity identified as the subject, in which the subpoena is requested.

(3) A request for a subpoena shall contain a specific description of the records requested, and shall state how they are relevant or material to the investigation.

(4) The General Counsel, in his or her discretion, may issue or deny the requested subpoena, or require the requesting individual to provide additional information. The General Counsel, in his or her discretion, may also honor requests to amend or supplement a request for a subpoena.

(e) Form and issuance. Every subpoena shall cite 39 U.S.C. 3016 as the authority under which it is issued, and shall command each person to whom it is directed to produce specified records at a time and place therein specified. The General Counsel shall sign the subpoena and enter the name of the individual or entity to whom it is directed.

### § 913.2 Service.

(a) Service within the United States. A subpoena issued under this section may be served by a person designated under section 3061 of title 18 at any place within the territorial jurisdiction of any court of the United States.

(b) Foreign service. Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure describe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(c) Service on business persons. Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by—

(1) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(2) Delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(3) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership, corporation, association, or entity at its principal office or place of business.

(d) Service on natural persons. Service of any subpoena may be made upon any natural person by—

(1) Delivering a duly executed copy to the person to be served; or

(2) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(e) Verified return. A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of such service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

### § 913.3 Enforcement.

(a) In general. Whenever any person, partnership, corporation, association, or entity fails to comply with any subpoena duly served upon him, the General Counsel may request that the Attorney General seek enforcement of the subpoena in the district court of the United States for any judicial district in which such person resides, is found, or transacts business (or in the case of a person outside the territorial jurisdiction of any district court, the district court for the District of Columbia), and serve upon such person a petition for an order of such court for the enforcement of this part.

(b) Jurisdiction. Whenever any petition is filed in any district court of the United States under this section, such court shall have jurisdiction to hear and determine the matter so presented, and to enter such order or orders as may be required to carry into effect the provisions of this section. Any final order entered shall be subject to appeal under section 1291 of title 28, United States Code. Any disobedience of any final order entered under this section by any court may be punished as contempt.

### § 913.4 Disclosure.

Any documentary material provided pursuant to any subpoena issued under this section shall be exempt from disclosure under section 552 of title 5, United States Code.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–12319 Filed 5–16–00; 8:45 am]

BILLING CODE 7710–12–U

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[CA 226–0186a; FRL–6606–3]**

## Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on revisions to the California State Implementation Plan for the Antelope Valley Air Pollution Control District (AVAPCD). The six revisions consist of: three rule recissions with accompanying negative declarations for source categories that emit volatile organic compounds (VOC); two negative declarations for source categories that emit oxides of nitrogen ($NO_X$), and one rule recission for a source category that emits oxides of sulfur ($SO_X$). The intended effect of this action is to bring the AVAPCD SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of recissions from the California SIP and the approval of these negative declarations as additional information to the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

**DATES:** This rule is effective on July 17, 2000 without further notice, unless EPA receives adverse comments by June 16, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments must be submitted to Andrew Steckel, Chief, Rulemaking Office at the Region IX office listed below. Copies of the rule revisions and EPA's technical support document are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409

**FOR FURTHER INFORMATION CONTACT:** Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1184.

**SUPPLEMENTARY INFORMATION:**

### I. Applicability

The rules being approved for recission and the negative declarations being approved for the Antelope Valley Air Pollution Control District (AVAPCD) portion of the California SIP are listed in the following Table:

SUBMITTED RECISSIONS AND NEGATIVE DECLARATIONS

| Rule number and title | Adoption date | Submittal date | Type of revision |
|---|---|---|---|
| 1105, Fluid Catalytic Cracking Units—Oxides of Sulfur | 04–21–98 | 05–13–99 | Recission. |
| 1109, Emissions of Oxides of Nitrogen from Boilers and Process Heaters in Petroleum Refineries. | 04–21–98 | 05–13–99 | Negative Declaration. |
| 1112, Emissions of Oxides of Nitrogen from Cement Kilns | 03–16–99 | 07–23–99 | Negative Declaration. |
| 1115, Motor Vehicle Assembly Line Coating Operations | 11–18–97 | 01–12–99 | Recission/Negative Declaration. |
| 1117, Emissions of Oxides of Nitrogen from Glass Melting Furnaces | 03–16–99 | 07–23–99 | Recission/Negative Declaration. |
| 1123, Refinery Process Turnarounds | 11–08–97 | 02–16–99 | Recission/Negative Declaration. |

### II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Southeast Desert Modified Air Quality Maintenance Area and the Los Angeles-South Coast Air Basin Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above SCAQMD's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. Amended section 182(f) of the CAA contains the air quality planning requirements for the reduction of $NO_X$ emissions through RACT.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas.

Section 182(f) of the CAA requires States to apply the same requirements to major stationary sources of NOx ("major" as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of VOCs, in moderate or above ozone nonattainment areas.

The Southeast Desert Modified Air Quality Maintenance Area is classified as Severe–17, therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline. The Los Angeles-South Coast Air Basin Area is classified as Extreme and was also

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

subject to the RACT fix-up requirements and the May 15, 1991 deadline.

The Antelope Valley Air Pollution Control District (AVAPCD) was created pursuant to California Health and Safety Code (CHSC) section 40106 and assumed all air pollution control responsibilities of the South Coast Air Quality Management District (SCAQMD) in the Antelope Valley region of Los Angeles County,[2] effective July 1, 1997. AVAPCD is the successor agency to SCAQMD in the Antelope Valley portion of the Southeast Desert Modified Air Quality Maintenance Area. The AVAPCD remains subject to the RACT requirements.

The AVAPCD has rescinded Rules 1105, 1115, 1117, and 1123 and has submitted negative declarations to certify that there are no sources covered by these rules within the jurisdiction of the AVAPCD. One minor source in AVAPCD, previously regulated by Rule 1115, is now equivalently regulated under Rule 1151, which was recently approved by EPA into the SIP.

AVAPCD also submitted negative declarations for Rules 1109 and 1112 to certify that there are no sources covered by these rules within the jurisdiction of the AVAPCD. There is no action to rescind Rules 1109 and 1112 since they are not contained in the federally enforceable SIP for the SCAQMD.

The State of California submitted these rule revisions for incorporation into its SIP on January 12, 1999, February 16, 1999, May 13, 1999, and July 23, 1999. The revisions submitted on these dates were found complete on March 19, 1999, April 23, 1999, June 10, 1999, and August 24, 1999, respectively. The rules were reviewed pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V.[3]

This document addresses EPA's direct-final action for the recission of AVAPCD Rule 1105, Fluid Catalytic Cracking Units-Oxides of Sulfur, Rule 1115, Motor Vehicle Assembly Line Coating Operations, Rule 1117, Emissions of Oxides of Nitrogen from Glass Melting Furnaces, and Rule 1123, Refinery Process Turnarounds. AVAPCD Rule 1105 limits $SO_X$ emissions produced by Catalytic Cracking Units. AVAPCD Rule 1115 controls volatile organic compound (VOC) emissions from automobile assembly line surface coating operations. AVAPCD Rule 1117 limits oxides of nitrogen ($NO_X$) emissions produced by Glass Melting Furnaces. AVAPCD Rule 1123 controls VOC emissions from petroleum refineries.

This document also addresses EPA's direct-final action of two negative declarations for AVAPCD Rule 1109, Emissions of Oxides of Nitrogen from Boilers and Process Heaters in Petroleum Refineries and Rule 1112, Emissions of Oxides of Nitrogen from Cement Kilns. Rule 1109 controls $NO_X$ emissions from boilers and process heaters in petroleum refineries and Rule 1112 controls $NO_X$ emissions from cement kiln operations. Rules 1109 and 1112 are currently not part of the SCAQMD SIP.

The rules were originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rule recissions and negative declarations.

### III. EPA Evaluation and Action

EPA evaluated all the appropriate background and submittal documentation and has determined that the recission of AVAPCD Rules 1105, 1115, 1117, and 1123 is approvable. EPA also evaluated all the appropriate background and submittal documentation for the negative declarations for Rules 1109 and 1112, 1115, 1117, and 1123 and has determined that they are approvable. The AVAPCD has certified with Negative Declarations that the sources regulated by all of the rules listed in this action are not present in the AVAPCD. Further, the AVAPCD also stated that they do not anticipate these types of sources in the future.

The rule recissions and the negative declarations are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the recission of AVAPCD Rules 1105, 1115, 1117, and 1123 is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D. The negative declarations for Rules 1109, 1112, 1115, 1117, and 1123 are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

The source categories represented by AVAPCD Rules 1109, 1112, 1115, 1117, and 1123 will now be inserted into the listing of negative declarations in 40 CFR 52.222, Negative Declarations.

Three additional source categories for AVAPCD are being inserted into 40 CFR 52.222 in this action. The negative declarations are Marine Vessel Coating Operations, Marine Tank Vessel Operations, and Thermally Enhanced Oil Recovery Wells. These negative declarations were adopted on January 20, 1998, submitted on June 23, 1998, and approved in the **Federal Register** on January 13, 1999 (64 FR 2141).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 17, 2000 without further notice unless the Agency receives adverse comments by June 16, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 17, 2000 and no further action will be taken on the proposed rule.

### IV. Administrative Requirements

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

*B. Executive Order 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under

[2] The Antelope Valley region of Los Angeles County is contained within the Federal area known as the Southeast Desert Modified Air Quality Management Area and the region identified by the State of California as the Mojave Desert Air Basin.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*C. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*D. Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co., v. U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

*H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available

and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*I. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 17, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 24, 2000.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart F—California**

2. Section 52.220 is amended by adding paragraph (c)(159)(v)(E), revising paragraph (c)(184) introductory text, and adding paragraphs (c)(184)(i)(B)(9), and (c) (222)(i)(A)(2) to read as follows:

**§ 52.220 Identification of plan.**

* * * * *

(c) * * *

(159) * * *

(v) * * *

(E) Previously approved on July 12, 1990 and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rules 1105 and 1117.

* * * * *

(184) New and amended regulations for the following APCDs were submitted on May 13, 1991, by the Governor's designee.

(i) * * *

(B) * * *

(9) Previously approved on August 11, 1992 and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rule 1123.

* * * * *

(222) * * *

(i) * * *

(A) * * *

(*2*) Previously approved on July 14, 1995 and now deleted without replacement for implementation in the Antelope Valley Air Pollution Control District Rule 1115.

* * * * *

3. Section 52.222 is being amended by adding paragraphs (a)(6) and (b)(4) to read as follows:

**§ 52.222 Negative declarations.**

(a) * * *

(6) Antelope Valley Air Pollution Control District.

(i) Motor Vehicle Assembly Line Coating Operations submitted on January 12, 1999 and adopted on November 18, 1997.

(ii) Refinery Process Turnarounds submitted on February 16, 1999 and adopted on November 18, 1997.

(iii) Marine Vessel Coating Operations, Marine Tank Vessel Operations, and Thermal Enhanced Oil Recovery Wells submitted on June 23, 1998 and adopted on January 20, 1998.

* * * * *

(4) Antelope Valley Air Pollution Control District.

(i) Boilers and Process Heaters In Petroleum Refineries submitted on May 13, 1999 and adopted on April 21, 1998.

(ii) Cement Kilns and Glass Melting Furnaces submitted on July 23, 1999 and adopted on March 16, 1999.

* * * * *

[FR Doc. 00–11996 Filed 5–16–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 1**

**[CS Docket No. 97–98; FCC 00–116]**

## Rules and Policies Governing Pole Attachments

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document addresses issues raised in the Notice of Proposed Rulemaking relating to the formula used to calculate maximum just and reasonable rates utilities may charge for pole attachments made to a pole, duct, conduit or right-of-way pursuant. This document amends the formula so that it reflects the Commission's current accounting rules that apply to local exchange carriers; clarifies the treatment of accumulated depreciation attributable to removal costs to eliminate negative results; and adopts a conduit methodology for determining the maximum just and reasonable rates utilities may charge cable systems and telecommunications carriers for their use of conduit systems.

**DATES:** Effective June 16, 2000, except for §§ 1.1404 and 1.1409, which contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of these sections. Written comments by the public on any new and/or modified information collection requirements should be submitted on or before July 17, 2000.

**ADDRESSES:** A copy of any comments on the information collection requirements contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Costello at (202) 418–7200 or via the Internet at kcostell@fcc.gov, or Cheryl King at (202) 418–2284 or via the Internet at cking@fcc.gov. For additional information concerning the information collection requirements contained herein, contact Judy Boley at (202) 418–0214, or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, CS Dkt. No. 97–98, FCC 00–116, adopted March 29, 2000; released April 3, 2000. The full text of the Commission's Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257) at its headquarters, 445 12th Street, SW, Washington DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via Internet at http://www.fcc.gov/csb/.

**Paperwork Reduction Act**

The requirements adopted in the *Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995 ("1995 Act") and found to impose no new but some modified information collection requirements on utilities. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in the *Report and Order*, as required by the 1995 Act. Public comments are due July 17, 2000. Comments should address: (a) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

*OMB Approval Number:* 3060–0392.

*Title:* 47 CFR 1 Subpart J—Pole Attachment Complaint Procedures.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit; State, Local or Tribal Government.

*Number of Respondents:* 1,381.

*Estimated Time Per Response:* .5–35 hours.

*Frequency of Response:* On occasion.

*Total Annual Burden to Respondents:* 3,047 hours.

**Synopsis of the Report and Order**

**I. Introduction**

1. The *Report and Order* ("*Report and Order*") addresses issues raised *in Amendment of Rules and Policies Governing Pole Attachments, Notice of Proposed Rulemaking*, CS Docket No. 97–98, 62 FR 18074 ("NPRM") relating to the maximum just and reasonable rates utilities may charge for "pole attachments" made to a pole, duct, conduit or right-of-way. Generally, the commenters represent the interests of one of the following three categories: (1) Electric utilities; (2) cable operators; and (3) telecommunications carriers. In the *Report and Order*, we adopt amended rules.

**II. Background**

2. Section 224 of the Communications Act ("Pole Attachment Act") grants the Commission authority to regulate the rates, terms, and conditions governing pole attachments and requires that such rates, terms and conditions be just and reasonable. The Commission is also authorized to adopt procedures necessary to hear and to resolve complaints concerning such rates, terms, and conditions. Beginning in 1978, the Commission developed a methodology to determine the maximum allowable pole attachment rate under section 224(d)(1), (the "Cable Formula"), in Adoption of Rules for the Regulation of Cable Television Pole Attachments, First Report and Order, CC Docket No. 78–144 ("First Report and Order"); Second Report and Order ("Second Report and Order"); and Memorandum and Order ("Third Order"), implementing a cost methodology premised on historical or embedded costs. In 1987, the Commission amended and clarified the methodology for determining rates in Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, CC Docket No. 86–212, 52 FR 31769, August 24, 1987 ("Pole Attachment Order").

3. Revisions to the Cable Formula and the formula for pole attachment rates in conduit systems adopted in the *Report and Order* will apply to attachments made by cable systems and telecommunications carriers, until the new rules for attachments by telecommunications carriers providing telecommunications services established under the Telecommunications Report and Order, CS Docket No. 97–151, FCC 98–20, 63 FR 12013, March 12, 1998, become effective in 2001. After February 8, 2001, the Cable Formula for poles and the formula adopted for use of conduit systems adopted in the *Report and Order*, will continue to apply to pole attachments used by a cable television system, as long as the pole attachment is not also used to provide telecommunications services.

*III. Pricing Methodologies*

*1. Modification of the Cable Formula*

4. The Commission has employed historical costs in Cable Formula calculations since the passage of the Pole Attachment Act in 1978. Further, the United States Supreme Court has upheld the application of an historical cost methodology for determining pole attachment rates. The continued use of a clear rate formula by the Commission is essential to encourage parties to negotiate for pole attachment rates, terms and conditions. The continued use of historical costs accomplishes key objectives of assuring, to both the utility and the attaching parties, just and reasonable rates; establishes accountability for prior cost recoveries; and accords with generally accepted accounting principles.

*2. Gross Versus Net Book Costs*

5. The Cable Formula incorporates net figures for the calculation of maximum pole attachment rates. We compute the carrying charge elements for maintenance, depreciation and administrative expenses, as well as for return on investment and taxes, using net book costs. For example, the net cost of a bare pole component is derived from the gross investment in poles less accumulated depreciation and accumulated deferred income taxes. The important goal is to ensure that like figures are used, whether net or gross and if both parties to a pole attachment complaint agree, the pole attachment rates may be computed using gross book costs. We will continue to use net figures in the Cable Formula. However, as in the past, when all parties to a complaint agree, we will allow the use of gross book costs.

**IV. Armis Uniform System of Accounts**

6. Our Automated Reporting Management Information System ("ARMIS") Report 43–02 Uniform System of Accounts ("USOA") contains the financial operating results of a local exchange carrier's telecommunications operations for every Part 32 account. We affirm the use of Part 32 Uniform System of Accounts for local exchange carriers, as reported to ARMIS, in determining various components of the Cable Formula. These specific accounts are discussed in the *Report and Order* relating to various aspects of the Cable Formula.

**V. Formula for Determining Attachment Rates for Poles**

7. The Commission uses the following Cable Formula in disputed cases to set rates to be charged by utilities for attachments on poles:

$$\text{Maximum Rate} = \frac{\text{Space Occupied}}{\text{Total Usable Space}} \times \text{Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

*A. Percentage of Total Usable Space Occupied*

8. The presumptions used in the Cable Formula have been repeatedly affirmed since the enactment of the Pole Attachment Act. We again decline to modify the well established presumptions leading to 7.4% as the percentage of usable space occupied by a pole attachment.

1. Safety Space

9. Because the electric supply cable precludes other attachments from occupying the safety space, which would otherwise be usable space, the safety space is effectively usable space occupied by the supply cable. So long as their crews make the installation, the electric utilities are not limited by the National Electrical Safety Code in what equipment or cables they may attach in the safety space. Accordingly, we reject the electric utilities' arguments to reduce the presumptive usable space of 13.5 feet by 40 inches.

2. Minimum Ground Clearance

10. The Commission established that a presumptive average 18 feet of the pole space is reserved for ground clearance. The 18 foot presumption is not dictated by the National Electric Safety Code, but is an average to be used in the estimation of total usable space. In the Usable Space Order, we determined that the selection of the 18 foot figure reflected various elements such as differing pole heights, as well as National Electrical Safety Code standards that vary depending on the physical environment of the pole. Factors used to determine the National Electrical Safety Code standard of minimum ground clearance, include whether the wires or cables cross over railroad tracks, roads, or driveways and the amount of voltage transferred through the cables. The rebuttable nature of the usable space presumption allows for the use of a different minimum ground clearance when necessary to improve the accuracy of the calculations. Presumptions were adopted to encourage expeditious response to complaint information requests. We have not been persuaded that a departure from our well established presumption of an average minimum ground clearance of 18 feet is warranted.

3. 30 Foot Poles

11. The record confirms the prevalent use of 30 foot poles and reflects that exclusion of such poles from the Cable Formula calculations could distort the resulting rate by excluding a significant portion of local exchange carrier plant investment from the rate calculation. We conclude that a distorted inventory of poles would be reflected if utilities were allowed to "opt out" or exclude their poles of 30 feet or less when calculating their pole attachment rates.

4. Weight and Wind Load Factors

12. The current method for allotting space to a pole attachment accounts directly for the wind load factor. The weight load factor is considered when deciding whether a stronger pole is necessary as part of make-ready work. Many of these factors are included in accounts in the maintenance element of the carrying charge rate. For electric utility owned poles, which report data for regulatory purposes to the Federal Energy Regulatory Commission ("FERC"), FERC Account 593 includes pole related expenses for overhead lines and allows for the recovery of the cost of labor, materials used and expenses incurred in the maintenance of overhead distribution facilities. The Commission's ARMIS rules for local exchange carrier accounting provide for the recovery of damages and pole related expenses caused by storms or other casualties. The complete costs of the physical attachments of an attaching entity are normally paid to the pole line owner as a condition of attachment, addressing such factors as weight, wind load and safety space. These make-ready costs have been fully recovered.

*B. Cost of a Bare Pole*

1. Local Exchange Carrier Pole Owner Formula Methodology

13. We adopt the following formula to determine the net cost of a bare pole for local exchange carrier pole owners:

$$\text{Net Cost of a Bare Pole (LEC)} = 0.95 \times \frac{\text{Account 2411} - \frac{\text{Accumulated Depreciation (Account 3100)(Poles)}}{} - \frac{\text{Accumulated Deferred Income Taxes (Account 4100 + 4340)(Poles)}}{}}{\text{Number of Poles}}$$

14. In this formula Accumulated Depreciation (Poles) and Accumulated Deferred Income Taxes (Poles) are derived from composite Part 32 accounts attributable to poles. Specifically, Accumulated Depreciation (Poles) represents the share of Part 32 Account 3100 (Accumulated Depreciation) that corresponds to Account 2411, and Accumulated Deferred Income Taxes (Poles) represents the shares of Part 32 Accounts 4100 (Net Current Deferred Operating Income Taxes) and 4340 (Net Noncurrent Deferred Operating Income Taxes) that correspond to Account 2411.

2. Electric Utility Pole Owner Formula Methodology

15. We affirm the following formula to determine the net cost of a bare pole for electric utilities:

$$\text{Net Cost of a Bare Pole (Electric)} = 0.85 \times \frac{\text{Account 364} - \frac{\text{Accumulated Depreciation (Poles)(Account 108)}}{} - \frac{\text{Accumulated Deferred Income Taxes (Poles)(Account 109)}}{}}{\text{Number of Poles}}$$

16. Under this formula, Accumulated Depreciation (Poles) represents the share of FERC Account 108 (Accumulated provision for depreciation of electric utility plant (Major only) a composite account that is required to be maintained on a subsidiary basis, that corresponds to Account 364 (Poles, Towers, and Fixtures). Similarly, Accumulated Deferred Income Taxes represents the share of composite FERC Account 190 (Accumulated deferred income taxes) that corresponds to Account 364. An adjustment to a utilty's net pole investment (15% for electric utilities and 5% for local exchange carriers) is necessary to eliminate the investment in crossarms and other non-pole related items.

3. Total Number of Poles

17. We have previously concluded that poles of 30 feet or less should be included in calculations of the Cable Formula in our discussion about pole height and the usable space presumption. Based on our review of the record in this proceeding, we also conclude that poles of 30 feet or less should therefore be included in the inventory of the total number of poles owned or used, jointly-owned or solely-owned, by a utility. The exclusion of these poles would result in a distorted and inaccurate pole inventory resulting in an unjust and unreasonable pole attachment rate because they are being used by the utility for their business services and by cable operators and telecommunications carriers to provide their respective services.

*C. Carrying Charge Rate (Poles)*

18. The carrying charge rate reflects those costs incurred by the utility in owning and maintaining poles regardless of the presence of pole attachments. The elements of the carrying charge rate are: administrative, maintenance, depreciation, taxes and cost of capital (rate of return). The carrying charge rate factor of the Cable Formula is calculated as follows:

$$\text{Carrying Charge Rate} = \text{Administrative} + \text{Maintenance} + \text{Depreciation} + \text{Taxes} + \text{Return}$$

To calculate the carrying charge rate, the Commission developed a formula that relates each of these elements to a pole owner's net pole investment. Full Cable Formulas, with all components, elements and accounts used to determine a maximum just and reasonable rate for pole attachments to electric and local exchange carrier utility poles and conduit, are included in the appendices to the *Report and Order*.

1. The Administrative Element

19. The following formula is adopted to determine the administrative element of the carrying charge rate of the Cable Formula for local exchange carrier pole owners:

$$\text{Administrative Element} = \frac{\text{Administrative and General (Accounts 6710 + 6720)}}{\text{Gross Plant Investment (Account 2001)} - \text{Accumulated Depreciation (Account 3100)} - \text{Accumulated Deferred Taxes, Plant (Accounts 4100 \& 4340)}}$$

2. The Maintenance Element

a. LEC ARMIS Part 32 Account 6411

20. Account 6411 includes the rents paid by the local exchange carrier to electric utilities for the local exchange carrier's use of the electric utility's poles for the local exchange carrier's own core business. Inclusion of the local exchange carrier's rental fees paid to the electric utility in the Cable Formula would result in the electric utility being paid twice. These fees will be deducted from the total amount reported to Account 6411.

b. Electric Utility FERC Account 590

21. We reject our tentative conclusion that some portion of FERC Account 590 should be included in the maintenance element for electric utilities. We believe that any increased accuracy that would be derived from including the minute percentage of pole related expenses that may be included in Account 590, is outweighed by the complexity of arriving at an appropriate and equitable percentage of the expenses.

3. The Depreciation Element

22. We redefine Net Pole Investment for Local Exchange Carriers as:

$$\text{Net Pole Investment} = \text{Gross Pole Investment (Account 2411)} - \text{Accumulated Depreciation on (Poles) (Account 3100)} - \text{Accumulated Deferred Income Taxes (Poles) (Accounts 4100 \& 4340)}$$

where Accumulated Depreciation (Poles) includes only that portion of Account 3100 which arises from the depreciation of Account 2411. The portion of Accumulated Depreciation (Poles) attributable to removal costs shall be treated as an offset to gross removal costs when calculating future net salvage value. This allows a proper matching of depreciation and corresponding sources, and provides an accurate basis for calculating investment returns.

4. The Taxes Element

23. The taxes element of the carrying charge rate for local exchange carrier pole owners is calculated under the following formula:

$$\text{Tax Element} = \frac{\text{Operating Taxes (Accounts 7200)}}{\text{Gross Plant Investment (Account 2001)} - \text{Accumulated Depreciation (Account 3100)} - \text{Accumulated Deferred Taxes (Plant, Accounts 4100 \& 4340)}}$$

Although a one to one matching of tax elements from Part 31 to Part 32 may not be achievable in all instances, we believe the proposed tax element formula will provide reasonable results in an expeditious manner.

5. The Rate of Return Element

24. The rate of return element is currently taken from the rate of return authorized for the utilities' intrastate services, but many states are moving

away from this type of regulation. The Commission has adopted an annual rate of return for the interstate access services of local exchange carriers of 11.25%. We affirm the continued use of the rate of return authorized by the state for intrastate services of the utility, when available; however, we will use, as a default rate of return for utilities when a state authorized rate is not available, the rate of return set by the Commission for local exchange carriers as it is modified from time to time, covering the appropriate period in the rate dispute.

**VI. Formula for Determining Conduit Attachment Rates**

25. Conduits are structures that provide physical protection for cables and allow new cables to be added inexpensively along a route, without having to dig up the landscape, streets and other structures in the community each time a new cable is installed. A collection of conduits, together with their supporting infrastructure, constitutes a conduit system. A conduit consists of one or more ducts, which are the enclosures that carry the cables. Often, when cable system or telecommunications carriers' cables are placed in a duct, three or more inner ducts are inserted into the duct allowing "one duct to be treated more like conduit." Congress authorized the Commission to regulate rates, terms, and conditions for pole attachments in ducts and conduits under section 224 which states:

> * * * a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the * * * total duct or conduit capacity, which is occupied by the pole attachment, by the sum of the operating expenses and actual capital costs of the utility attributable to the entire * * * duct [or] conduit.

*1. Conduit Formula Methodology*

26. We believe it is appropriate to use system-wide data for establishing the maximum rate for use of a conduit. Necessary data is available in underlying records filed by electric utilities to support claims in sworn FERC submissions, and only in rare instances would a utility lack detailed information because it has no records. Where such records do not exist, other sources of information may be used. Electric utilities have demonstrated their ability to calculate a rate by applying the formula. Although the conduits which comprise a conduit system may vary widely from urban to suburban or rural locales, we will use the system-wide historical cost of the conduit in the formula.

*2. Factors of the Conduit Formula*

27. The first factor of the formula, Conduit Capacity, is determined using the following variables: The Number of Inner Ducts placed in the duct (if there are no inner ducts the value would be presumed to be two, reflecting the rebuttable presumption that not more than half of a duct is occupied); and the Number of Ducts in the conduit system (which does not include collapsed or otherwise damaged ducts that are not repairable). This is presumed to be the average number of ducts per conduit for the system.

28. The second factor of the formula, Net Linear Cost of Conduit, is determined using the following additional variables: Net Conduit Investment (gross conduit investment less the accumulated depreciation and accumulated deferred taxes); and System Duct Length, the length of all ducts in the system, minus the length of collapsed ducts and the length of ducts that for other reasons are physically unable to contain cable. The System Duct Length may be arrived at in one of three ways: First, it may be obtained from available records. Second, the length of the conduit in the system may be multiplied by an estimated average number of ducts per conduit. Third, the length of all ducts in the system is the sum of the products of the length of each conduit times the number of ducts in that conduit.

29. Calculation of the maximum rate may be simplified by using the presumptions and using the Net Linear Cost of a Conduit for the second term in the formula. The formula is:

$$\text{Maximum Rate (System - Wide)} = \underbrace{\frac{1/2\ \text{Duct}}{\text{Avg. No. of Ducts}}}_{\text{[Percentage of Conduit Capacity]}} \times \underbrace{\frac{\text{Net Conduit Investment}}{\text{System Conduit Length}}}_{\text{[Net Linear Cost of a Conduit]}} \times \text{Carrying Charge Rate}$$

a. Percentage of Total Capacity Occupied

i. Total Duct or Conduit Capacity

30. The total capacity of a duct or conduit is the entire volume of available capacity in the conduit system. All costs associated with the construction of the conduit system are considered in determining the cost of this total capacity. We will not allow capacity designated for maintenance, future business plans, or municipal set-asides to be subtracted from the total duct or conduit capacity. The record supports our finding that capacity in a duct or conduit that is usable for any of these purposes is part of the total duct or conduit capacity.

ii. Occupied Capacity, the Half-Duct Presumption

31. Presumptions are used in the Cable Formula to expedite the calculations of a just and reasonable rate so that complicated surveys, accounting and calculations may be avoided. We retain the half-duct rebuttable presumption that an attachment occupies a maximum of one half of a duct. Communications cables may, and often do, share a duct. The National Electrical Safety Code requires that, where electric supply cables share a duct with communications cables, the cables be maintained by the utility. The capacity is available to other communications cables and is, therefore, not occupied.

32. Some cable operators assert that even the application of the half duct methodology will result in rates that are unreasonably high in light of current iner duct technology. The term inner duct generally refers to small diameter (1″ or 1½″) pipe or tubing placed inside a conventional duct to allow the installation of multiple wires or cables, and use of inner duct is a common practice. The half duct presumption is rebuttable, and the presence of inner duct is adequate rebuttal, and we have made direct provision in the formula for that contingency. Where inner-duct is installed, either by the attacher or in a previous installation, the maximum rate will be reduced in proportion to the fraction of the duct occupied. That fraction will be one divided by the number of inner ducts in the duct, using

the default presumption of capacity occupied of one-half duct, or the actual percentage of capacity occupied.

*3. Net Linear Cost of Conduit*

33. To arrive at a system investment for use in the conduit formula we identify the net linear cost of the conduit system. To accomplish this, the utility must first establish the Net Conduit Investment as discussed below.

a. Net Conduit Investment

34. The conduit formula requires the determination of the utility's net linear cost of its conduit system ("Net Conduit Investment"), calculated as follows:

$$\text{Net Conduit Investment} = \text{Gross Conduit Investment (ARMIS Account 2441/ FERC Account 366)} - \text{Accumulated Depreciation (Conduit)} - \text{Accumulated Deferred Taxes (Conduit)}$$

35. Where Gross Conduit Investment for the local exchange carrier consists of Part 32 Account 2441. For the electric utility, Gross Conduit Investment is reflected in FERC Part 101 Account 366. For local exchange carriers, Accumulated Depreciation (Conduit) represents the share of ARMIS Account 3100 that corresponds to Account 2441. For electric utilities, Accumulated Depreciation (Conduit) represents the share of FERC Account 108 that corresponds to Gross Conduit Investment valuations included in Account 366.

36. The formula for calculation of the Accumulated Deferred Income Taxes (conduit) is:

$$\text{Accumulated Deferred Income Taxes (Conduit)} = \frac{\text{Gross Conduit Investment}}{\text{Total Gross Plant}} \times \text{Total Accumulated Deferred Income Taxes}$$

Total Accumulated Deferred Income Taxes for electric utilities are based on FERC Account 190. Because the local exchange carrier conduit owner keeps conduit specific data for its accumulated deferred income taxes, we will allow a local exchange carrier to use that data in the rate calculation, as long as it is readily available.

b. System Duct Length

37. The denominator for the Net Linear Cost of Conduit element within the formula is based on duct length. The net cost data is available from FERC reports and, although electric utilities are not required to report the linear footage of conduit deployed, they routinely produce linear footage data during state conduit rate proceedings. Electric utility corporate or engineering departments have records on installed plant. Moreover, when a utility is unable to obtain the requisite data, information from other sources may be used. A determination of the total length of duct and conduit in the system can be made with a precision comparable to that reached in determining the number of poles owned by the utility. The utility must, however, specify the method used for computing the duct length and must disclose this information to all attachers upon request.

*4. Carrying Charge Rate (Conduit)*

38. The elements of the carrying charge rate are: Administrative, maintenance, depreciation, taxes and rate of return. The Cable Formula and all components, elements and accounts used to calculate a maximum rate for use of electric and local exchange carrier utility conduit systems are discussed in the *Report and Order*. To calculate the carrying charge rate, the Commission developed a formula that relates each of these elements to a utility's net plant investment appropriate to the location of the pole attachment (*e.g.*, poles, conduit system, right-of-way). That formula is:

$$\text{Carrying Charge Rate} = \text{Administrative} + \text{Maintenance} + \text{Depreciation} + \text{Taxes} + \text{Rate of Return}$$

39. The administrative, taxes, and rate of return elements will be the same for use in a formula for pole attachments in conduits and rights-of-way as on poles. The maintenance and depreciation elements, with the accounts and methodologies specific to conduits, are delineated in the *Report and Order*.

a. Maintenance Element

40. For purposes of the calculation of the maintenance element, the denominator is the net conduit investment which equals the sum of gross investment, minus accumulated depreciation related to conduit systems, minus accumulated deferred income taxes related to conduit systems.

i. Conduit Owned by a Local Exchange Carrier

41. We use the following formula to determine the maintenance carrying charge rate element for underground conduit systems owned by a local exchange carrier.

$$\text{Maintenance Element} = \frac{\text{Account 6441}}{\text{Account 2441} - \text{Accumulated Depreciation, conduit} - \text{Accumulated Deferred Income Taxes [Net Conduit Investment]}}$$

ii. Electric Utility Owned Conduit

42. The formula and FERC accounts used for the maintenance element of the carrying charge rate for electric utility conduit owners is as follows:

$$\text{Maintenance Element} = \frac{\text{Account 594 (Maintenance of Underground Lines)}}{\left[\begin{array}{c}\text{Investment in} \\ \text{Accounts 366, 367, \& 369}\end{array}\right] - \left[\begin{array}{c}\text{Depreciation Related to} \\ \text{Accounts 366, 367, \& 369}\end{array}\right] - \left[\begin{array}{c}\text{Deferred Income Taxes Related to} \\ \text{Accounts 366, 367, \& 369}\end{array}\right]}$$

b. Depreciation Element

43. We adopt our proposed formula, as modified, using LEC ARMIS Account 2441 and electric utility FERC Account 366 for the Gross Conduit Investment in calculating the depreciation element, as follows:

$$\text{Depreciation Element} = \frac{\text{Gross Conduit Investment (ARMIS Account 2441/FERC Accounts 366)}}{\text{Net Conduit Investment}} \times \text{Depreciation Rate for Conduit}$$

**VII. Final Regulatory Flexibility Act Analysis**

44. As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Notice of Proposed Rulemaking, CS Docket No. 97–98, 62 FR 18074 ("NPRM"). The Commission sought written public comment on the proposals in the NPRM including comment on the IRFA. The comments received are discussed below. This present Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

*1. Need for, and Objectives of, the Report and Order*

45. In 1987, the Commission adopted its current pole attachment formula for calculating the maximum just and reasonable rates utilities may charge cable systems for pole attachments. Since then the Commission replaced its accounting system for telephone companies, creating Part 32. This created a need to advise telephone companies about how the new system should be used in the pole attachment formula. The Telecommunications Act of 1996 made pole attachment rules applicable to telecommunications providers. The existing pole attachment formula applies to them until February 8, 2001. This gave rise to a need to ensure that the pole attachments rules would appropriately accommodate these new attachers. The use of conduit by cable systems and had not yet been addressed in detail by the Commission. This needs to be done in light of the anticipated number of new attachers whose entry into the marketplace the Commission wishes to facilitate. We recognize that a significant number of new attachers might be small businesses.

46. The objectives of the rules adopted herein are consistent with Congressional intent to provide a clear methodology to determine just and reasonable pole attachment rates in a manner that uses publicly available and verifiable data whenever possible. The objectives of the rules adopted herein change the formula methodology used to determine a just and reasonable pole attachment rate to reflect the present Part 32 accounting system for telephone companies that replaced the former Part 31 rules in 1988. Finally, the objectives of the rules adopted herein are to identify a conduit methodology that will determine the maximum just and reasonable rates utilities may charge cable operators and telecommunications carriers for pole attachments to conduit systems. Although our rules do not differentiate between large and small businesses, our use of presumptions and publicly available data in our methodology ensures that small businesses will not be discouraged from seeking recourse with the Commission against the imposition of unreasonable pole attachment rates.

*2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA*

47. Small Cable Business Association ("SCBA") filed comments in response to the IRFA contained in the NPRM, and, to the extent they are relevant to the issues in this proceeding, we incorporate them herein by reference. SCBA claims in its IRFA comments that, because of the statutory exclusion of cooperatives from the definition of utility, section 224 does not minimize market entry barriers for small cable operators. According to SCBA, the IRFA in the NPRM fails to consider this issue. SCBA claims that small cable systems will be particularly hurt by the statutory exemption of cooperatives from the definition of utility because small cable systems often operate in rural areas and therefore necessarily attach their plant to rural telephone and electric cooperatives. In its Reply to the SCBA's comments, the National Telephone Cooperative Association responded that "* * * the exemption [of cooperatives from section] 224 does not deprive SCBA members of available legal remedies in connection with pole attachment agreements negotiated with exempt electric or telephone cooperatives." We note that the SCBA does not appear to be claiming that our rules will disproportionately burden small cable systems, but that where our rules do not apply, small cable system operators will be disproportionately harmed. Because the exemption for cooperatives was set forth by Congress clearly in section 224(a)(1), the Commission is left no discretion to address SCBA's concerns in this regard. In general comments, the National Cable Television Association ("NCTA") acknowledged that:

> The benefits [of the Commission's current pole attachment regulatory regime] are most vivid in the case of small cable operators. Small operators are peculiarly vulnerable to pole rent overcharges, because of the nature of their service areas. The Commission has recognized that small systems serve areas that are far less densely populated areas than the areas served by large operators. A small rural operator might serve half of the homes along a road with only 20 homes per mile, but might need 30 poles to reach those 10 subscribers. A pole rent increase creates an enormous push on [cable] rates, and frequently makes rural line extensions uneconomical. These same small operators are often the very parties without the budgets to litigate expensive document-intensive rate cases.

The NCTA's comments recognize that the Commission's chosen methodology does not excessively burden small businesses.

*3. Description and Estimate of the Number of Small Entities to Which Rules Will Apply*

48. The RFA generally defines a "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term small business concern under the Small Business Act. A "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). For many of the entities described below, the SBA has defined small business categories through Standard Industrial Classification ("SIC") codes.

a. Utilities

49. Many of the decisions and rules adopted herein may have a significant effect on a substantial number of utility companies. Section 224 defines a "utility" as "any person who is a local exchange carrier or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State." The SBA has provided the Commission with a list of utility firms which may be effected by this rulemaking. Based upon the SBA's list, the Commission concludes that all of the following types of utility firms may be affected by the Commission's implementation of section 224.

(1) Electric Utilities (SIC 4911, 4931 & 4939)

50. Electric Services (SIC 4911). The SBA has developed a definition for small electric utility firms. The Census Bureau reports that a total of 1379 electric utilities were in operation for at least one year at the end of 1992. According to SBA, a small electric utility is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reports that 447 of the 1379 firms listed had total revenues below five million dollars.

51. Electric and Other Services Combined (SIC 4931). The SBA has classified this entity as a utility whose business is less than 95% electric in combination with some other type of service. The Census Bureau reports that a total of 135 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small electric and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 45 of the 135 firms listed had total revenues below five million dollars.

52. Combination Utilities, Not Elsewhere Classified (SIC 4939). The SBA defines this utility as providing a combination of electric, gas, and other services which are not otherwise classified. The Census Bureau reports that a total of 79 such utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small combination utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 63 of the 79 firms listed had total revenues below five million dollars.

(2) Gas Production and Distribution (SIC 4922, 4923, 4924, 4925 & 4932)

53. Natural Gas Transmission (SIC 4922). The SBA's definition of a natural gas transmitter is an entity that is engaged in the transmission and storage of natural gas. The Census Bureau reports that a total of 144 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small natural gas transmitter is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 70 of the 144 firms listed had total revenues below five million dollars.

54. Natural Gas Transmission and Distribution (SIC 4923). The SBA has classified this entity as a utility that transmits and distributes natural gas for sale. The Census Bureau reports that a total of 126 such entities were in operation for at least one year at the end of 1992. The SBA's definition of a small natural gas transmitter and distributor is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 43 of the 126 firms listed had total revenues below five million dollars.

55. Natural Gas Distribution (SIC 4924). The SBA defines a natural gas distributor as an entity that distributes natural gas for sale. The Census Bureau reports that a total of 478 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small natural gas distributor is an entity whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 267 of the 478 firms listed had total revenues below five million dollars.

56. Mixed, Manufactured, or Liquefied Petroleum Gas Production and/or Distribution (SIC 4925). The SBA has classified this entity as a utility that engages in the manufacturing and/or distribution of the sale of gas. These mixtures may include natural gas. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. The SBA's definition of a small mixed, manufactured or liquefied petroleum gas producer or distributor is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 31 of the 43 firms listed had total revenues below five million dollars.

57. Gas and Other Services Combined (SIC 4932). The SBA has classified this entity as a gas company whose business is less than 95% gas, in combination with other services. The Census Bureau reports that a total of 43 such firms were in operation for at least one year at the end of 1992. According to the SBA, a small gas and other services combined utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 24 of the 43 firms listed had total revenues below five million dollars.

(3) Water Supply (SIC 4941)

58. The SBA defines a water utility as a firm who distributes and sells water for domestic, commercial and industrial use. The Census Bureau reports that a total of 3,169 water utilities were in operation for at least one year at the end of 1992. According to SBA's definition, a small water utility is a firm whose gross revenues did not exceed five million dollars in 1992. The Census Bureau reported that 3065 of the 3169 firms listed had total revenues below five million dollars.

(4) Sanitary Systems (SIC 4952, 4953 & 4959)

59. Sewerage Systems (SIC 4952). The SBA defines a sewage firm as a utility whose business is the collection and disposal of waste using sewage systems. The Census Bureau reports that a total of 410 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sewerage system is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 369 of the 410 firms listed had total revenues below five million dollars.

60. Refuse Systems (SIC 4953). The SBA defines a firm in the business of refuse as an establishment whose

business is the collection and disposal of refuse "by processing or destruction or in the operation of incinerators, waste treatment plants, landfills, or other sites for disposal of such materials." The Census Bureau reports that a total of 2287 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small refuse system is a firm whose gross revenues did not exceed six million dollars. The Census Bureau reported that 1908 of the 2287 firms listed had total revenues below six million dollars.

61. Sanitary Services, Not Elsewhere Classified (SIC 4959). The SBA defines these firms as engaged in sanitary services. The Census Bureau reports that a total of 1214 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small sanitary service firms gross revenues did not exceed five million dollars. The Census Bureau reported that 1173 of the 1214 firms listed had total revenues below five million dollars.

(5) Steam and Air Conditioning Supply (SIC 4961)

62. The SBA defines a steam and air conditioning supply utility as a firm who produces and/or sells steam and heated or cooled air. The Census Bureau reports that a total of 55 such firms were in operation for at least one year at the end of 1992. According to SBA's definition, a steam and air conditioning supply utility is a firm whose gross revenues did not exceed nine million dollars. The Census Bureau reported that 30 of the 55 firms listed had total revenues below nine million dollars.

(6) Irrigation Systems (SIC 4971)

63. The SBA defines irrigation systems as firms who operate water supply systems for the purpose of irrigation. The Census Bureau reports that a total of 297 firms were in operation for at least one year at the end of 1992. According to SBA's definition, a small irrigation service is a firm whose gross revenues did not exceed five million dollars. The Census Bureau reported that 286 of the 297 firms listed had total revenues below five million dollars.

b. Telephone Companies (SIC 4813)

64. Many of the decisions and rules adopted herein may have a significant effect on a substantial number of small telephone companies. The SBA has defined a small business for SIC code 4813 (Telephone Communications, except Radiotelephone) to be a small entity when it has no more than 1500 employees. The Census Bureau reports that, at the end of 1992, there were 3497 firms engaged in providing telephone services, as defined therein, for at least one year. This number contains a variety of different categories of carriers, including local exchange carriers ("LECs"), interexchange carriers ("IXCs"), competitive access providers ("CAPs"), cellular carriers, mobile service carriers, operator service providers, pay telephone operators, personal communications service ("PCS") providers, covered SMR providers and resellers. Some of those 3497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." We therefore conclude that fewer than 3497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by the *Report and Order*. Below, we estimate the potential number of small entity telephone service firms or small incumbent LEC's that may be affected by the rules adopted herein in this service category.

(1) Wireline Carriers and Service Providers

65. The SBA has developed a definition of small entities for telephone communications companies other than radiotelephone (wireless) companies. The Census Bureau reports that, there were 2321 such telephone companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business telephone company other than a radiotelephone company is one employing no more than 1500 persons. Of the 2321 non-radiotelephone companies listed by the Census Bureau, 2295 were reported to have fewer than 1000 employees. Thus, at least 2295 non-radiotelephone companies that might qualify as small entities or small incumbent LECs, or small entities based on these employment statistics. Although some of these carriers are likely not independently owned and operated, we are unable at this time to estimate with greater precision the number of wireline carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 2295 small entity telephone communications companies other than radiotelephone companies that may be affected by the decisions or rules adopted in the *Report and Order*.

(2) Local Exchange Carriers

66. Neither the Commission nor SBA has developed a definition of small providers of local exchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of LECs nationwide appears to be the data that the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service ("TRS"). According to "TRS Worksheet" data released in November 1997, there are 1371 companies reporting that they categorize themselves as LECs. Although some of these carriers are likely not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1371 small incumbent LECs that may be affected by the rules adopted herein.

(3) Interexchange Carriers

67. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of IXCs nationwide of which we are aware appears to be the data that we collect annually in connection with TRS. According to our most recent data, 143 companies reported that they were engaged in the provision of interexchange services. Although some of these carriers are likely not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 143 small entity IXCs that may be affected by the decisions and rules adopted in the *Report and Order*.

(4) Competitive Access Providers

68. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of competitive access services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of

CAPs nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 109 companies reported that they were engaged in the provision of competitive access services. Although some of these carriers are likely not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of CAPs that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 109 small entity CAPs that may be affected by the decisions and rules adopted herein.

(5) Cellular Service Carriers

69. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to providers of cellular services. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4812). The most reliable source of information regarding the number of cellular service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. The TRS Worksheet places cellular licensees and Personal Communications Service ("PCS") licensees in one group. According to the most recent data, there are 804 carriers reporting that they categorize themselves as either PCS or cellular carriers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of cellular service carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 804 small entity cellular service carriers that may be affected by the decisions and rules adopted in the *Report and Order*.

(6) Mobile Service Carriers

70. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to mobile service carriers, such as paging companies. The closest applicable definition under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies (SIC 4813). The most reliable source of information regarding the number of mobile service carriers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 172 companies reported that they were engaged in the provision of mobile services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of mobile service carriers that would qualify under SBA's definition. Consequently, we estimate that there are fewer than 172 small entity mobile service carriers that may be affected by the decisions and rules adopted in the *Report and Order*.

(7) Broadband Personal Communications Services ("PCS") Licensees

71. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission has defined "small entity" for Blocks C and F as an entity that has average gross revenues of less than $40 million in the three previous calendar years. For Block F, an additional classification for "very small business" was added and is defined as an entity that, together with their affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These regulations defining "small entity" in the context of broadband PCS auctions has been approved by the SBA. No small businesses within the SBA-approved definition bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auction. A total of 93 small and very small business bidders won approximately 40% of the 1479 licenses for Blocks D, E, and F. However, licenses for blocks C through F have not been awarded fully, therefore there are few, if any, small businesses currently providing PCS services. Based on this information, we conclude that the number of broadband PCS licensees will include the 90 winning C Block bidders and the 93 qualifying bidders in the D, E, and F blocks, for a total of 183 small PCS providers as defined by the SBA and the Commission's auction rules. We note that the TRS Worksheet data track PCS licensees in the reporting category "Cellular or Personal Communications Service Carrier." As noted supra in the paragraph regarding cellular carriers, according to the most recent data, there are 804 carriers reporting that they place themselves in this category.

(8) Specialized Mobile Radio ("SMR") Licensees

72. Pursuant to 47 CFR 90.814(b)(1) and 90.912(b)(1), the Commission has defined small entity in auctions for geographic area 800 MHz and 900 MHz SMR licenses as a firm that had average annual gross revenues of less than $15 million in the three previous calendar years. This definition of a small entity in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The rules adopted in the *Report and Order* may apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of less than $15 million. We assume, for purposes of this FRFA, that all of the extended implementation authorizations may be held by small entities which may be affected by the decisions and rules adopted in the *Report and Order*. We note that the TRS Worksheet data track SMR licensees in the reporting category "Paging and Other Mobile Carriers." According to the most recent data, there are 172 carriers, including SMR carriers, reporting that they place themselves in this category.

73. In April 1997, the Commission held auctions for geographic area licenses in the 900 MHz SMR band. There were 60 winning bidders that qualified as small entities in the 900 MHz auction. Based on this information, we conclude that the number of 900 MHz geographic area SMR licensees affected by the rules adopted in the *Report and Order* includes these 60 small entities. In December 1997, the Commission also held auctions for the 525 licenses for the upper 200 channels in the 800 MHz SMR band. There were 10 winning bidders that qualified as small entities in that auction. Based on this information, we conclude that the number of geographic area SMR licensees that may be affected by the rules adopted in the *Report and Order* also includes these 10 small entities. However, the Commission has not yet determined how many licenses will be awarded for the lower 230 channels in the 800 MHz geographic area SMR auction. There is no basis, moreover, on which to estimate how many small entities will win these licenses. Given that nearly all radiotelephone companies have fewer than 1000 employees and that no reliable estimate

of the number of prospective 800 MHz licensees for the lower 230 channels can be made, we conclude, for purposes of this FRFA, that some or all of the licenses could conceivably be awarded to small entities that may be affected by the decisions and rules adopted in the *Report and Order*.

(9) Resellers

74. Neither the Commission nor SBA has developed a definition of small entities specifically applicable to resellers. The closest applicable definition under SBA rules is for all telephone communications companies (SIC 4812 and 4813). The most reliable source of information regarding the number of resellers nationwide of which we are aware appears to be the data that we collect annually in connection with the TRS Worksheet. According to our most recent data, 339 companies reported that they were engaged in the resale of telephone services. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1500 employees, we are unable at this time to estimate with greater precision the number of resellers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 339 small entity resellers that may be affected by the decisions and rules adopted in the *Report and Order*.

c. Wireless (Radiotelephone) Carriers (SIC 4812)

75. Pursuant to the terms of the 1996 Act, wireless carriers are entitled to affix their equipment to utility poles with rates consistent with the Commission's rules discussed herein. SBA has developed a definition of small entities for radiotelephone (wireless) companies. The Census Bureau reports that there were 1176 such companies in operation for at least one year at the end of 1992. According to SBA's definition, a small business radiotelephone company is one employing no more than 1500 persons. The Census Bureau also reported that 1164 of those radiotelephone companies had fewer than 1000 employees. Thus, even if all of the remaining 12 companies had more than 1500 employees, there would still be 1164 radiotelephone companies that might qualify as small entities if they are independently owned and operated. Although some of these carriers are likely not independently owned and operated, we are unable at this time to estimate with greater precision the number of radiotelephone carriers and service providers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1164 small entity radiotelephone companies that may be affected by the rules adopted herein.

d. Cable System Operators (SIC 4841)

76. The SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating less than $11 million in revenue annually. This definition includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1423 such cable and other pay television services generating less than $11 million in revenue.

77. The Commission has developed its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company," is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable systems that qualified as small cable system operators at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable systems. Consequently, we estimate that there are fewer than 1439 small entity cable system operators that may be affected by the decisions and rules adopted in the *Report and Order*.

78. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission found that an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable systems serving 617,000 subscribers or less totals 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable systems under the definition in the Communications Act.

e. Municipalities

79. The term "small governmental jurisdiction" is defined as "governments of * * * districts, with a population of less than 50,000." There are 85,006 governmental entities in the United States. This number includes such entities as states, counties, cities, utility districts and school districts. We note that section 224 specifically excludes any utility which is cooperatively organized, or any person owned by the Federal Government or any State. For this reason, we believe that section 224 will have minimal if any affect upon small municipalities. Further, there are 18 states and the District of Columbia that regulate pole attachments pursuant to section 224(c)(1). Of the 85,006 governmental entities, 38,978 are counties, cities and towns. The remainder are primarily utility districts, school districts, and states. Of the 38,978 counties, cities and towns, 37,566 or 96%, have populations of fewer than 50,000.

*4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

80. The rules adopted in the *Report and Order* may require a change in certain recordkeeping requirements for conduit systems. A utility will now have to maintain specific records relating to the number of linear meters, or feet, of conduit for the purpose of determining the net cost of conduit and the amount of conduit linear measurement in which a pole attachment exists. Although this requirement affects both large and small businesses equally, we believe that through the use of presumptions, specific accounts and publicly available data in our methodology, we have avoided a more extensive regulatory scheme which might have burdened small entities. We conclude that our rules will not disproportionately burden small entities.

*5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

81. Section 703 of the 1996 Act amended section 224 in several important ways to provide access to and rate regulation for pole attachments by cable operators and telecommunications carriers in order that they might compete in the market place to provide their respective services. The 1996 Act established a pole attachment rate methodology for telecommunications carriers that would not become effective

until February 8, 2001. Until that time, pole attachments by telecommunications carriers will be regulated in the same manner as pole attachment rates for cable operators under section 224(d). Prior to the 1996 Act, access to pole attachments was available only to cable operators and only under their franchise pursuant to section 621. With the legislative expansion of access and rate regulation, small entities have greater opportunity to develop the infrastructure necessary to compete in the cable and telecommunications marketplaces. We have been mindful to maintain simplicity whenever possible, and to provide methodologies consistent with availability to publicly verifiable data. In the NPRM, we sought comment to re-evaluate the formula methodologies used or proposed, to update our rules for accounting used in the formulas, and to provide a methodology for determining just and reasonable rates for pole attachments in conduit.

82. In accordance with the RFA, the Commission has endeavored to minimize significant impact on small entities. To minimize the burden on utility pole owners, including those that qualify as small entities, and to promote certainty and efficiency in determining the pole attachment rate for cable operators and telecommunications carriers, we have maintained our formula presumptions, including our one-foot presumption of space occupied by a pole attachment, and the presumptive amount of usable space on a pole. We have adopted a conduit methodology based on publicly available data and a half-duct presumption of capacity occupied by a pole attachment in a conduit system, to simplify the process of determining a just and reasonable pole attachment rate and to provide certainty for small entities preparing to enter the competitive marketplace. We have formalized the use of part 32 accounting for LECs. We have consolidated all formula elements, and accounts specified for use in the formulas, in this one document in order to provide ease of application by all parties.

83. Report to Congress: The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, see 5 U.S.C. 801(a)(1)(A). A copy of the *Report and Order* and this FRFA (or summary thereof) will also be published in the **Federal Register**, see 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

## VIII. Paperwork Reduction Act of 1995 Analysis

84. The requirements adopted in the *Report and Order* have been analyzed with respect to the Paperwork Reduction Act of 1995 (the "1995 Act") and found to impose modified information collection requirements on the public. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to take this opportunity to comment on the information collection requirements contained in the *Report and Order*, as required by the 1995 Act. Public comments are due July 17, 2000. Comments should address: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

85. As stated above, written comments by the public on the modified information collection requirements are due July 17, 2000. Comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 12th Street, SW, Washington DC 20554, or via the Internet at jboley@fcc.gov. For additional information on the information collection requirements, contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

## IX. Ordering Clauses

86. Pursuant to sections 1, 4(i), 224 and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 224 and 303(r), the Commission's rules are hereby amended as set forth in the Rule Changes.

87. Section 1.1402 of the Commission's rules, as amended in the Rule Changes, will become effective June 16, 2000. Sections 1.1404 and 1.1409, as amended in the Rule Changes, contain information collection requirements that have not been approved by the Office of Management and Budget. The Commission will publish a document in the **Federal Register** announcing the effective date of these sections.

88. The Commission's Office of Media Relations, Reference Operations Division, SHALL SEND a copy of this Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

### List of Subjects in 47 CFR Part 1

Administrative practice and procedures, Cable television, Communications common carriers, Conduit, Pole attachments, Poles, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

### Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

## PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 is revised to read as follows:

**Authority:** 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Amend § 1.1402 to revise paragraphs (c), (i), (j) and (l) and add paragraph (n) to read as follows:

**§ 1.1402 Definitions.**

* * * * *

(c) With respect to poles, the term *usable space* means the space on a utility pole above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment, and which includes space occupied by the utility. With respect to conduit, the term *usable space* means capacity within a conduit system which is available, or which could, with reasonable effort and expense, be made available, for the purpose of installing wires, cable and associated equipment for telecommunications or cable services, and which includes capacity occupied by the utility.

* * * * *

(i) The term *conduit* means a structure containing one or more ducts, usually placed in the ground, in which cables or wires may be installed.

(j) The term *conduit* system means a collection of one or more conduits together with their supporting infrastructure.

* * * * *

(l) With respect to poles, the term *unusable space* means the space on a utility pole below the usable space, including the amount required to set the depth of the pole.

* * * * *

(n) The term *inner-duct* means a duct-like raceway smaller than a duct that is inserted into a duct so that the duct may carry multiple wires or cables.

3. Amend § 1.1404 to remove paragraph (k), and redesignate paragraphs (l), (m), and (n) as (k), (l), and (m), respectively; and revise paragraphs (g), (h), and the third sentence of paragraph (j) to read as follows:

**§ 1.1404 Complaint.**

* * * * *

(g) For attachments to poles, where it is claimed that either a rate is unjust or unreasonable, or a term or condition is unjust or unreasonable and examination of such term or condition requires review of the associated rate, the complaint shall provide data and information in support of said claim.

(1) The data and information shall include, where applicable:

(i) The gross investment by the utility for pole lines;

(ii) The investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

(iii) The depreciation reserve from the gross pole line investment;

(iv) The depreciation reserve from the investment in crossarms and other items which do not reflect the cost of owning and maintaining poles, if available;

(v) The total number of poles:

(A) Owned; and

(B) Controlled or used by the utility. If any of these poles are jointly owned, the complaint shall specify the number of such jointly owned poles and the percentage of each joint pole or the number of equivalent poles owned by the subject utility;

(vi) The total number of poles which are the subject of the complaint;

(vii) The number of poles included in paragraph (g)(i)(vi) of this section that are controlled or used by the utility through lease between the utility and other owner(s), and the annual amounts paid by the utility for such rental;

(viii) The number of poles included in paragraph (g)(i)(vi) of this section that are owned by the utility and that are leased to other users by the utility, and the annual amounts paid to the utility for such rental;

(ix) The annual carrying charges attributable to the cost of owning a pole. These charges may be expressed as a percentage of the net pole investment. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which determines the treatment of accumulated deferred taxes if it is at issue in the proceeding and shall note the section which specifically determines the treatment and amount of accumulated deferred taxes.

(x) The rate of return authorized for the utility for intrastate service. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which establishes this authorized rate of return if the rate of return is at issue in the proceeding and shall note the section which specifically establishes this authorized rate and whether the decision is subject to further proceedings before the state regulatory body or a court. In the absence of a state authorized rate of return, the rate of return set by the Commission for local exchange carriers shall be used as a default rate of return;

(xi) The average amount of usable space per pole for those poles used for pole attachments (13.5 feet may be in lieu of actual measurement, but may be rebutted);

(xii) The average amount of unusable space per pole for those poles used for pole attachments (a 24 foot presumption may be used in lieu of actual measurement, but the presumption may be rebutted); and

(xiii) Reimbursements received from CATV operators and telecommunications carriers for non-recurring costs.

(2) Data and information should be based upon historical or original cost methodology, insofar as possible. Data should be derived from ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies (identify source). Calculations made in connection with these figures should be provided to the complainant. The complainant shall also specify any other information and argument relied upon to attempt to establish that a rate, term, or condition is not just and reasonable.

(h) With respect to attachments within a duct or conduit system, where it is claimed that either a rate is unjust or unreasonable, or a term or condition is unjust or unreasonable and examination of such term or condition requires review of the associated rate, the complaint shall provide data and information in support of said claim.

(1) The data and information shall include, where applicable:

(i) The gross investment by the utility for conduit;

(ii) The accumulated depreciation from the gross conduit investment;

(iii) The system duct length or system conduit length and the method used to determine it;

(iv) The length of the conduit subject to the complaint;

(v) The number of ducts in the conduit subject to the complaint;

(vi) The number of inner-ducts in the duct occupied, if any. If there are no inner-ducts, the attachment is presumed to occupy one-half duct.

(vii) The annual carrying charges attributable to the cost of owning conduit. These charges may be expressed as a percentage of the net linear cost of a conduit. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which determines the treatment of accumulated deferred taxes if it is at issue in the proceeding and shall note the section which specifically determines the treatment and amount of accumulated deferred taxes.

(viii) The rate of return authorized for the utility for intrastate service. With its pleading, the utility shall file a copy of the latest decision of the state regulatory body or state court which establishes this authorized rate of return if the rate of return is at issue in the proceeding and shall note the section which specifically establishes this authorized rate and whether the decision is subject to further proceedings before the state regulatory body or a court. In the absence of a state authorized rate of return, the rate of return set by the Commission for local exchange carriers shall be used as a default rate of return; and

(ix) Reimbursements received by utilities from CATV operators and telecommunications carriers for non-recurring costs.

(2) Data and information should be based upon historical or original cost methodology, insofar as possible. Data should be derived from ARMIS, FERC 1, or other reports filed with state or federal regulatory agencies (identify source). Calculations made in connection with these figures should be provided to the complainant. The complainant shall also specify any other information and argument relied upon to attempt to establish that a rate, term, or condition is not just and reasonable.

* * * * *

(j) * * * A utility must supply a cable television operator or telecommunications carrier the information required in paragraph (g), (h) or (i) of this section, as applicable, along with the supporting pages from its ARMIS, FERC Form 1, or other report to a regulatory body, within 30 days of the request by the cable television operator or telecommunications carrier. * * *

* * * * *

4. Amend § 1.1409 by redesignating paragraph (e)(3) as paragraph (e)(4); and revise paragraphs (e)(1) and (f), and add new paragraph (e)(3) to read as follows:

**§ 1.1409 Commission consideration of the complaint.**

* * * * *

(e) * * *

(1) The following formula shall apply to attachments to poles by cable operators providing cable services. This formula shall also apply to attachments to poles by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services until February 8, 2001:

$$\text{Maximum Rate} = \frac{\text{Space Occupied by Attachment}}{\text{Total Usable Space}} \times \text{Net Cost of a Bare Pole} \times \text{Carrying Charge Rate}$$

* * * * *

(3) The following formula shall apply to attachments to conduit by cable operators providing cable services. This formula shall also apply to attachments to conduit by any telecommunications carrier (to the extent such carrier is not a party to a pole attachment agreement) or cable operator providing telecommunications services until February 8, 2001:

$$\text{Maximum Rate} = \underbrace{\left[\frac{1}{\text{Number of Ducts}} \times \frac{1 \text{ Duct}}{\text{No. of Inner Ducts}}\right]}_{\text{(Percentage of Conduit Capacity)}} \times \underbrace{\left[\text{No. of Ducts} \times \frac{\text{Net Conduit Investment}}{\text{System Duct Length}}\right]}_{\text{(Net Linear Cost of a Conduit)}} \times \text{Carrying Charge Rate}$$

If no inner-duct is installed the fraction, "1 Duct divided by the No. of Inner-Ducts" is presumed to be ½.

* * * * *

(f) Paragraphs (e)(2) and (e)(4) of this section shall become effective February 8, 2001 (*i.e.*, five years after the effective date of the Telecommunications Act of 1996). Any increase in the rates for pole attachments that results from the adoption of such regulations shall be phased in over a period of five years beginning on the effective date of such regulations in equal annual increments. The five-year phase-in is to apply to rate increases only. Rate reductions are to be implemented immediately. The determination of any rate increase shall be based on data currently available at the time of the calculation of the rate increase.

* * * * *

[FR Doc. 00–11911 Filed 5–16–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 600 and 660

[Docket No. 991223347–9347; I.D. 042600B]

### Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Fishing restrictions; request for comments.

**SUMMARY:** This document clarifies tables 2,3,4, and 5 for Pacific Coast groundfish species and trip limits that were published in the **Federal Register** on May 4, 2000.

**DATES:** Effective 0001 hours local time May 1, 2000 (May 16, 2000 for the "B" platoon), unless modified, superseded or rescinded, until the effective date of the 2001 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Katherine King or Yvonne deReynier, Northwest Region, NMFS, 206–526–6140.

**SUPPLEMENTARY INFORMATION:** On May 4, 2000, at 65 FR 25881, NMFS announced changes to trip limits in the Pacific Coast groundfish fishery. Tables 2, 3, 4, and 5 are being republished in a logical and readable format.

In Section IV, tables 2, 3, 4, and 5 are republished as follows:

BILLING CODE 3510–22–F

Table 2.--Minor Rockfish Species (excludes thornyheads)

| North of 40° 10' N. lat. | South of 40° 10' N. lat. |
|---|---|
| NEARSHORE | |
| black, Sebastes melanops | black, Sebastes melanops. |
| black and yellow, S. chrysolmelas | black and yellow, S. chrysolmelas. |
| blue, S. mystinus | blue, S. mystinus. |
| brown, S. auriculatus | brown, S. auriculatus. |
| calico, S. dalli | calico, S. dalli. |
| China, S. nebulosus | California scorpionfish, Scorpaena guttata. |
| copper, S. caurinus | China, Sebastes nebulosus. |
| gopher, S. carnatus | copper, S. caurinus. |
| grass, S. rastrelliger | gopher, S. carnatus. |
| kelp, S. atrovirens | grass, S. rastrelliger. |
| olive, S. serranoides | kelp, S. atrovirens. |
| quillback, S. maliger | olive, S. serranoides. |
| treefish, S. serriceps | quillback, S. maliger. |
| | treefish, S. serriceps. |
| SHELF | |
| bronzespotted, S. gilli | bronzespotted, S. gilli. |
| bocaccio, S. paucispinis | chameleon, S. phillipsi. |
| chameleon, S. phillipsi | dwarf-red, S. rufinanus. |
| chilipepper, S. goodei | flag, S. rubrivinctus. |
| cowcod, S. levis | freckled, S. lentiginosus. |
| dwarf-red, S. rufinanus | greenblotched, S. rosenblatti. |
| freckled, S. lentiginosus | greenspotted, S. chlorostictus. |
| greenblotched, S. rosenblatti | greenstriped, S. elongatus. |
| greenspotted, S. chlorostictus | halfbanded, S. semicinctus. |
| greenstriped, S. elongatus | honeycomb, S. umbrosus. |
| halfbanded, S. semicinctus | Mexican, S. macdonaldi. |
| honeycomb, S. umbrosus | pink, S. eos. |
| Mexican, S. macdonaldi | pinkrose, S. simulator. |
| pink, S. eos | pygmy, S. wilsoni. |
| pinkrose, S. simulator | redstriped, S. proriger. |
| pygmy, S. wilsoni | rosethorn, S. helvomaculatus. |
| redstriped, S. proriger | rosy, S. rosaceus. |
| rosethorn, S. helvomaculatus | silvergrey, S. brevispinis. |
| rosy, S. rosaceus | speckled, S. ovalis. |
| silvergrey, S. brevispinis | squarespot, S. hopkinsi. |
| speckled, S. ovalis | starry, S. constellatus. |
| squarespot, S. hopkinsi | stripetail, S. saxicola. |
| starry, S. constellatus | swordspine, S. ensifer. |
| stripetail, S. saxicola | tiger, S. nigrocinctus. |
| swordspine, S. ensifer | vermilion, S. miniatus. |
| tiger, S. nigorcinctus | yelloweye, S. ruberrimus. |
| vermilion, S. miniatus | yellowtail, S. flavidus. |
| yelloweye, S. ruberrimus | |
| SLOPE | |
| aurora, S. aurora | aurora, S. aurora. |
| bank, S. rufus | bank, S. rufus. |
| blackgill, S. melanostomus | blackgill, S. melanostomus. |
| darkblotched, S. crameri | darkblotched, S. crameri. |
| redbanded, S. babcocki | Pacific ocean perch (POP), S. alutus. |
| rougheye, S. aleutianus | redbanded, S. babcocki. |
| sharpchin, S. zacentrus | rougheye, S. aleutianus. |
| shortraker, S. borealis | sharpchin, S. zacentrus. |
| splitnóse, S. diploproa | shortraker, S. borealis. |
| yellowmouth, S. reedi | yellowmouth, S. reedi. |

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Table 3. 2000 Trip Limits 1/ and Gear Requirements 2/ for Limited Entry Trawl Gear
***Read Section IV. A. NMFS Actions before using this table.***

| line | Species/groups | JAN-FEB | MAR-APR | MAY-JUN | JUL-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| 1 | **Minor slope rockfish** | | | | | | |
| 2 | North | 3,000 lb / 2 months | | 5,000 lb / 2 months | | | 1,500 lb / month |
| 3 | South | 3,000 lb / 2 months | | 5,000 lb / 2 months | | | 1,500 lb / month |
| 4 | **Splitnose**-South | 8,500 lb / 2 months | | 14,000 lb / 2 months | | | 4,000 lb / month |
| 5 | **POP**-North | 500 / month | | 2,500 lb / month | | | 500 lb / month |
| 6 | **Sablefish** | 7,000 lb / 2 months; 22-inch size limit 3/ | | 10,000 lb / 2 months; 22-inch size limit 3/ | | | 3,500 lb / month ; 22-inch size limit 3/ |
| 7 | **Longspine thornyhead** | 12,000 lb / 2 months | | 4,000 lb / 2 months | | | 6,000 lb / month |
| 8 | **Shortspine thornyhead** | 3,000 lb / 2 months | | 1,000 lb / 2 months | | | 1,500 lb / month |
| 9 | **Dover sole** | 55,000 lb / 2 months | | 20,000 lb / 2 months | | | 20,000 lb/ month |
| 10 | **Arrowtooth flounder** | 10,000 lb / trip | | Small footrope--No pound limit; Large footrope--Included in "other flatfish" trip limit 2/ | | | 10,000 lb / trip |
| 11 | **Petrale sole** | No restriction | No limit but small footrope required | Small footrope--No pound limit; Large footrope--Included in "other flatfish" trip limit 2/ | | | No restriction |
| 12 | **Rex sole** | No limit | | | | | |
| 13 | **Other flatfish 4/** | Small footrope--No pound limit; Large footrope--400 lb per trip 2/ | | | | | |
| 14 | **Whiting shoreside 5/** | 20,000 lb / trip before primary season | | Primary season | | | 20,000 lb / trip after primary season |
| 15 | | | | | | | |
| 16 | **Use of small footrope bottom trawl or midwater trawl required for landing all the following species 6/:** | | | | | | |
| 17 | **Minor Shelf rockfish** | | | | | | |
| 18 | North | 300 lb / month | | 1,000 lb / month | | | 300 lb / month |
| 19 | South | 500 lb / month | | 1,000 lb / month | | | 500 lb / month |
| 20 | **Canary rockfish** | 100 lb / month | | 300 lb / month | | | 100 lb / month |
| 21 | **Widow rockfish** | | | | | | |
| 22 | mid-water trawl | 30,000 lb / 2 months | | 30,000 lb / 2 months | | | 30,000 lb / 2 months |
| 23 | small footrope trawl | 1,000 lb / month | | 1,000 lb / month | | | 1,000 lb / month |
| 24 | **Yellowtail**-North 7/ | | | | | | |
| 25 | mid-water trawl | 10,000 lb / 2 months | | 30,000 lb / 2 months | | | 10,000 lb / 2 months |
| 26 | small footrope trawl | 1,500 lb / month | | 1,500 lb / month | | | 1,500 lb / month |
| 27 | **Bocaccio**-South 7/ | 300 lb / month | | 500 lb / month | | | 300 lb / month |
| 28 | **Chilipepper**-South 7/ | | | | | | |
| 29 | mid-water trawl | 25,000 lb / 2 months | | 25,000 lb / 2 months | | | 25,000 lb / 2 months |
| 30 | small footrope trawl | 7,500 lb / 2 months | | 7,500 lb / 2 months | | | 7,500 lb / 2 months |
| 31 | **Cowcod** - South 7/ | 1 fish per landing | | 1 fish per landing | | | 1 fish per landing |
| 32 | **Minor Nearshore rockfish** | | | | | | |
| 33 | North | 200 lb / month | | 200 lb / month | | | 200 lb / month |
| 34 | South | 200 lb / month | | 200 lb / month | | | 200 lb / month |
| 35 | **Lingcod** | CLOSED | | 400 lb / month; 24-inch size limit 8/ | | | CLOSED |

1/ These trip limits apply coastwide unless otherwise specified. North means 40° 10' N. lat. to the US-Canada border. "South" means 40° 10' N. lat. to the US-Mexico border. 40° 10' N. lat. is about 20 nautical miles south of Cape Mendocino CA.

2/ Gear requirements and prohibitions are explained at paragraph IV.A.(14).

3/ No more than 500 lbs (227 kg) per trip may be sablefish smaller than 22 inches (56 cm) total length, which counts toward the cumulative limit.

4/ Other flatfish means all flatfish listed at 50 CFR 660.302 except those in this Table 3 with a trip limit (excludes rex sole).

5/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb / trip throughout the year (See IV.B.(3)(c)).

6/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter. Midwater gear also may be used; the footrope must be bare. See paragraph IV.A.(14).

7/ Yellowtail rockfish and POP in the south and bocaccio, chilipepper, and cowcod rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).

8/ Lingcod must be greater than or equal to 24 inches (61 cm) total length. See IV.A.(6).

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

Table 4. 2000 Trip Limits 1/ for Limited Entry Fixed Gear

***Read Section IV. A. NMFS Actions before using this table.***

| line | Species/groups | JAN-FEB | MAR-APR | MAY-JUN | JULY-AUG | SEP-OCT | NOV-DEC |
|---|---|---|---|---|---|---|---|
| 1 | **Minor slope rockfish** | | | | | | |
| 2 | North | 3,000 lb / 2 months | | 5,000 lb / 2 months | | | 1,500 lb / month |
| 3 | South | 3,000 lb / 2 months | | 5,000 lb / 2 months | | | 1,500 lb / month |
| 4 | **Splitnose-South** | 8,500 lb/2 mo. | | 14,000 lb / 2 months | | | 4,000 lb / month |
| 5 | **POP-North** | 500 lb / month | | 2,500 lb / month | | | 500 lb / month |
| 6 | **Sablefish** (daily trip limit fishery) 2/ | | | | | | |
| 7 | North of 36 ° N. lat. | 300 lb / day, 2,100 lb / 2 months | | 300 lb / day, 2,400 lb / 2 months | | | 300 lb / day, 2,400 lb / 2 months |
| 8 | | or 1 landing above 300 lb but less than | | (option to make one landing per week above | | | |
| 9 | | 600 lb/week, less than 1,800 lb / 2 mo | | 300 lb removed May 1; may be reinstated in July) | | | |
| 10 | South of 36 ° N. lat. | 350 lb / day | | 350 lb / day | | | 350 lb / day |
| 11 | | or 1 landing above 350 lb | | or 1 landing above 350 lb | | | or 1 landing above 350 lb |
| 12 | | per week, up to 1,050 lb | | per week, up to 1,050 lb | | | per week, up to 1,050 lb |
| 13 | **Longspine thornyhead** | 12,000 lb / 2 months | | 4,000 lb / 2 months | | | 6,000 lb / month |
| 14 | **Shortspine thornyhead** | 1,000 lb / month | | 1,000 lb / month | | | 1,000 lb / month |
| 15 | **Dover sole** | 55,000 lb / 2 months | | 20,000 lb / 2 months | | | 20,000 / month |
| 16 | **Arrowtooth flounder** | 10,000 lb / trip | | No restriction | | | 10,000 lb / trip |
| 17 | **Petrale sole** | No restriction | | No restriction | | | No restriction |
| 18 | **Rex sole** | No restriction | | No restriction | | | No restriction |
| 19 | **Other flatfish 3/** | No restriction | | No restriction | | | No restriction |
| 20 | **Shoreside whiting 4/** | 20,000 lb / trip | | Open | | | 20,000 lb / trip |
| 21 | **Minor shelf rockfish** | | | | | | |
| 22 | North | 300 lb / month | | 1,000 lb / month | | | 300 lb / month |
| 23 | South | | | | | | |
| 24 | 40°10'-36°00' N. lat. | 500 lb / month | CLOSED 5/ | 1,000 lb / month | | | 500 lb / month |
| 25 | South of 36°00' N. lat. | CLOSED | 500 lb / month | 1,000 lb / month | | | 500 lb / month |
| 26 | **Canary-Coastwide** | | | | | | |
| 27 | North | 100 lb / month | | 300 lb / month | | | 100 lb / month |
| 28 | South | | | | | | |
| 29 | 40°10'-36°00' N. lat. | 100 lb / month | CLOSED | 300 lb / month | | | 100 lb / month |
| 30 | South of 36°00' N. lat. | CLOSED | 100 lb / month | 300 lb / month | | | 100 lb / month |
| 31 | **Widow rockfish-Coastwide** | | | | | | |
| 32 | North | 3,000 lb / month | | 3,000 lb / month | | | 3,000 lb / month |
| 33 | South | | | | | | |
| 34 | 40°10'-36°00' N. lat. | 3,000 lb/month | CLOSED | 3,000 lb / month | | | 3,000 lb / month |
| 35 | South of 36°00' N. lat. | CLOSED | 3,000 lb/month | 3,000 lb / month | | | 3,000 lb / month |
| 36 | **Yellowtail-North 6/** | 1,500 lb / month | | 1,500 lb / month | | | 1,500 lb / month |
| 37 | **Bocaccio-South 6/** | | | | | | |
| 38 | 40°10'-36°00' N. lat. | 300 lb / month | CLOSED | 500 lb / month | | | 300 lb / month |
| 39 | South of 36°00' N. lat. | CLOSED | 300 lb / month | 500 lb / month | | | 300 lb / month |
| 40 | **Chilipepper-South 6/** | | | | | | |
| 41 | 40°10'-36°00' N. lat. | 2,000 lb /month | CLOSED | 2,000 lb / month | | | 2,000 lb / month |
| 42 | South of 36°00' N. lat. | CLOSED | 2,000 lb/month | 2,000 lb / month | | | 2,000 lb / month |
| 43 | **Cowcod - South 6/** | | | | | | |
| 44 | 40°10'-36°00' N. lat. | 1 fish per landing | CLOSED | 1 fish per landing | | | 1 fish per landing |
| 45 | South of 36°00' | CLOSED | 1 fish per landing | 1 fish per landing | | | 1 fish per landing |
| 46 | **Minor nearshore rockfish** | | | | | | |
| 47 | North | 2,400 lb/2 months, of which | | 3,000 lb/2 months, of which | | | 3,000 lb/2 months, of which no |
| 48 | | no more than 1,200 lb may be species | | no more than 1,400 lb may be species | | | more than 1,400 lb may be species |
| 49 | | other than black or blue rockfish 7/ | | other than black or blue rockfish 7/ | | | other than black or blue rockfish 7/ |
| 50 | South | | | | | | |
| 51 | 40°10'-36°00' N. lat. | 1,000 lb / 2 months | CLOSED | 1,300 lb / 2 months | | | 1,300 lb / 2 months |
| 52 | South of 36°00' N. lat. | CLOSED | 1,000 lb / 2 months | 1,300 lb / 2 months | | | 1,300 lb / 2 months |
| 53 | **Lingcod 8/** | CLOSED | | 400 lb / month, size limit 24 inches north, 26 inches south | | | CLOSED |

1/ Trip limits apply coastwide unless otherwise specified. North means 40° 10' N. lat. to the US-Canada border. "South" means 40 10' N. lat. to the US-Mexico border.

2/ The sablefish size limit does not apply during the daily trip limit fishery, but does apply during the "regular" and mop-up" seasons north of 36° N. lat. See IV.B.(2).

3/ Other flatfish means all flatfish listed at 50 CFR 660.302 except those in this Table 4 with a trip limit.

4/ The whiting "per trip" limit in the Eureka area for catch inside 100 fathoms is 10,000 lb / trip throughout the year.

5/ Closed means it is prohibited to take and retain, possess, or land the designated species in the time or area indicated (see IV.A.(7)).

6/ Yellowtail rockfish and POP in the south and bocaccio, chilipepper, and cowcod rockfishes in the north are included in trip limits for minor shelf rockfish (Table 2).

7/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV B.(4).

8/ The size limit for lingcod is 24 inches (61 cm) in the north and 26 inches (66 cm) in the south, total length.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

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Table 5. 2000 Trip Limits 1/ for All Open Access Gear except Exempted Trawl Gear Engaged in Fishing for Pink Shrimp *

***Read Section IV. A. NMFS Actions before using this table.***

| line | Species/groups | JAN-FEB | MAR-APR | MAY-JUN | JULY-AUG | SEP-OCT | NOV | DEC |
|---|---|---|---|---|---|---|---|---|
| 1 | **Minor slope rockfish** | | | | | | | |
| 2 | North | 500 lb / 2 months | | 500 lb / 2 months | | | 500 lb / 2 months | |
| 3 | South | 500 lb / 2 months | | 500 lb / 2 months | | | 500 lb / 2 months | |
| 4 | **Splitnose-South** | 200 lb / month | | 200 lb / month | | | 200 lb / month | |
| 5 | **POP--North** | 100 lb / month | | 100 lb / month | | | 100 lb / month | |
| 6 | **Sablefish 2/** | | | | | | | |
| 7 | North of 36 ° | 300 lb / day, but no more | | 300 lb / day, but no more | | | 300 lb / day, but no more | |
| 8 | | than 2,100 lb / 2 months | | than 2,400 lb / 2 months | | | than 2,400 lb / 2 months | |
| 9 | South of 36 ° | 350 lb / day | | 350 lb / day | | | 350 lb / day | |
| 10 | **Thornyheads (longspine and shortspine combined)** | | | | | | | |
| 11 | North of Pt. Conception | CLOSED 3/ | | CLOSED | | | CLOSED | |
| 12 | South of Pt. Conception | 50 lb / day | | 50 lb / day | | | 50 lb / day | |
| 13 | **Arrowtooth** | 200 lb / month | | 200 lb / month | | | 200 lb / month | |
| 14 | **Dover sole** | (included in "other" flatfish limit) | | | | | | |
| 15 | **Petrale sole** | (included in "other" flatfish limit) | | | | | | |
| 16 | **Nearshore flatfish** | (included in "other" flatfish limit) | | | | | | |
| 17 | **"Other" flatfish 4/** | 300 lb / month | | 300 lb / month | | | 300 lb / month | |
| 18 | **Shoreside whiting** | 300 lb / month | | 300 lb / month | | | 300 lb / month | |
| 19 | **Minor shelf rockfish** | | | | | | | |
| 20 | North | 100 lb / month | | 100 lb / month | | | 100 lb / month | |
| 21 | South | | | | | | | |
| 22 | 40°10'-36°00' N. lat. | 200 lb / month | CLOSED | 200 lb / month | | | 200 lb / month | |
| 23 | South of 36°00' N. lat. | CLOSED | 200 lb / month | 200 lb / month | | | 200 lb / month | |
| 24 | **Canary** | | | | | | | |
| 25 | North | 50 lb / month | | 50 lb / month | | | 50 lb / month | |
| 26 | South | | | | | | | |
| 27 | 40°10'-36°00' N. lat. | 50 lb / month | CLOSED | 50 lb / month | | | 50 lb / month | |
| 28 | South of 36°00' N. lat. | CLOSED | 50 lb / month | 50 lb / month | | | 50 lb / month | |
| 29 | **Widow** | | | | | | | |
| 30 | North | 3,000 lb / month | | 3,000 lb / month | | | 3,000 lb / month | |
| 31 | South | | | | | | | |
| 32 | 40°10'-36°00' N. lat. | 3,000 lb / month | CLOSED | 3,000 lb / month | | | 3,000 lb / month | |
| 33 | South of 36°00' N. lat. | CLOSED | 3,000 lb / month | 3,000 lb / month | | | 3,000 lb / month | |
| 34 | **Yellowtail-North 5/** | 100 lb / month | | 100 lb / month | | | 100 lb / month | |
| 35 | **Bocaccio - South 5/** | | | | | | | |
| 36 | 40°10'-36°00' N. lat. | 200 lb / month | CLOSED | 200 lb / month | | | 200 lb / month | |
| 37 | South of 36°00' N. lat. | CLOSED | 200 lb / month | 200 lb / month | | | 200 lb / month | |
| 38 | **Chilipepper-South 5/** | | | | | | | |
| 39 | 40°10'-36°00' N. lat. | 2,000 lb / month | CLOSED | 2,000 lb / month | | | 2,000 lb / month | |
| 40 | South of 36°00' N. lat. | CLOSED | 2,000 lb / month | 2,000 lb / month | | | 2,000 lb / month | |
| 41 | **Cowcod - South 5/** | | | | | | | |
| 42 | 40°10'-36°00' N. lat. | 1 fish per landing | CLOSED | 1 fish per landing | | | 1 fish per landing | |
| 43 | South of 36°00' N. lat. | CLOSED | 1 fish per landing | 1 fish per landing | | | 1 fish per landing | |
| 44 | **Minor nearshore rockfish** | | | | | | | |
| 45 | North | 1,000 lb / 2 months, of which no more | | 1,500 lb / 2 months, of which no | | | 1,500 lb / 2 months, of | |
| 46 | | than 500 lb may be species | | more than 700 lb may be species | | | which no more than 700 lb | |
| 47 | | other than black or blue rockfish 6/ | | other than black or blue rockfish 6/7/ | | | may be species other than black or blue rockfish 6/ 7/ | |
| 48 | South | | | | | | | |
| 49 | 40°10'-36°00' N. lat. | 550 lb / 2 months | CLOSED | 800 lb / 2 months | | | 800 lb / 2 months | |
| 50 | South of 36°00' N. lat. | CLOSED | 550 lb / 2 months | 800 lb / 2 months | | | 800 lb / 2 months | |
| 51 | **Lingcod 8/** | CLOSED | | 400 lb / month size limit 24 inches north, 26 inches south | | | CLOSED | |

1/ Trip limits apply coastwide unless otherwise specified. North means 40° 10' N. lat. to the US-Canada border. "South" means 40°10' N. lat. to the US-Mexico border.

2/ There is no size limit for sablefish taken and retained with nontrawl gear in the open access fishery. See IV.B.2.

3/ Closed means it is prohibited to take and retain, possess, or land the species in the time or area indicated (see IV.A.(7)).

4/ Other flatfish means all flatfish listed at 50 CFR 660.302 except those in this Table 5 with a trip limit.

5/ Yellowtail rockfish and POP in the south and bocaccio, chilipepper, and cowcod rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area (Table 2).

6/ The "per trip" limit for black rockfish off Washington also applies. See paragraph IV.B.(4).

7/ Provisions for landing groundfish in Pacific City, OR are found at paragraph IV.C.(4).

8/ The size limit for lingcod is 24 inches (61 cm) in the north and 26 inches (66 cm) in the south, total length.

**To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.**

Dated: May 11, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12425 Filed 5–16–00; 8:45 am]

BILLING CODE 3510–22–C

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 000211039–0039–01; I.D. 051200B]**

## Fisheries of the Exclusive Economic Zone Off Alaska; Deep-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Closure.

**SUMMARY:** NMFS is prohibiting directed fishing for species that comprise the deep-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the second seasonal apportionment of the 2000 Pacific halibut bycatch allowance specified for the deep-water species fishery in the GOA has been caught.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), May 13, 2000, until 1200 hrs, A.l.t., July 4, 2000.

**FOR FURTHER INFORMATION CONTACT:** Mary Furuness, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl deep-water species fishery, which is defined at § 679.21(d)(3)(iii)(B), was established by the Final 2000 Harvest Specifications for Groundfish for the GOA (65 FR 8298, February 18, 2000) for the second season, the period April 1, 2000, through July 3, 2000, as 300 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the second seasonal apportionment of the 2000 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA has been caught. Consequently, NMFS is prohibiting directed fishing for the deep-water species fishery by vessels using trawl gear in the GOA. The species and species groups that comprise the deep-water species fishery are: all rockfish of the genera *Sebastes* and *Sebastolobus*, deep water flatfish, rex sole, arrowtooth flounder, and sablefish.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

### Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the second seasonal apportionment of the 2000 Pacific halibut bycatch allowance specified for the trawl deep-water species fishery in the GOA. A delay in the effective date is impracticable and contrary to the public interest. The second seasonal apportionment of the Pacific halibut bycatch allowance has been caught. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.21 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 12, 2000.

**George H. Darcy,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12370 Filed 5–12–00; 4:44 pm]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 65, No. 96
Wednesday, May 17, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 7 CFR Part 360

**[Docket No. 98–064–2]**

**RIN 0579–AB07**

### Noxious Weed Regulations; Update of Current Provisions

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of extension of comment period.

**SUMMARY:** We are extending the comment period for an advance notice of proposed rulemaking that considers revising the noxious weed regulations issued under the Federal Noxious Weed Act. This action will allow interested persons additional time to prepare and submit comments.

**DATES:** We invite you to comment on Docket No. 98–064–1. We will consider all comments that we receive by June 19, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 98–064–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 98–064–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** Ms. Polly Lehtonen, Botanist, Permits and Risk Assessment, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8896.

**SUPPLEMENTARY INFORMATION:**

#### Background

On March 20, 2000, we published in the **Federal Register** (65 FR 14927–14931, Docket No. 98–064–1) an advance notice of proposed rulemaking that considers revising the noxious weed regulations issued under the Federal Noxious Weed Act.

Comments on the advance notice were required to be received on or before May 19, 2000. We are extending the comment period on Docket No. 98–064–1 for an additional 30 days. This action will allow interested persons additional time to prepare and submit comments.

**Authority:** 7 U.S.C. 2803 and 2809; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 12th day of May 2000.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–12436 Filed 5–16–00; 8:45 am]

**BILLING CODE 3410–34–U**

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### 7 CFR Part 1710

**RIN 0572–AB52**

### General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Loans

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Rural Utilities Service (RUS) is proposing to amending its regulations to modify the requirement that borrowers must seek bids from all sources if funding is requested for generation projects equal to or greater than 10 megawatt or for modifications to existing plants if it results in an increase in capacity of 10 percent or more. This proposed rule will allow RUS to determine when borrowers must seek bids from all sources on a case-by-case basis at the discretion of the Administrator.

In the final rule section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a timely document will be published withdrawing the direct final rule based on this action. Any parties interested in commenting on this proposed action should do so at this time.

**DATES:** Comments on this proposed action must be received on or before June 16, 2000.

**ADDRESSES:** Submit adverse comments or notice of intent to submit adverse comments to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, Stop 1522, 1400 Independence Avenue, SW, Washington, DC 20250–1522. Telephone (202) 720–9550. RUS requires a signed original and three copies of all comments (7 CFR 1700.4). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

**FOR FURTHER INFORMATION CONTACT:** Wei M. Moy, Chief, Power Resources & Planning Branch, Power Supply Division, Rural Utilities Service, U.S. Department of Agriculture, Stop 1568, 1400 Independence Avenue, SW, Washington, DC 20250–1568. Telephone: (202) 720–1438. FAX (202) 720–1401. E-mail: wmoy@rus.usda.gov.

**SUPPLEMENTARY INFORMATION:** See the Supplementary Information provided in the direct final rule located in the final rule section of this **Federal Register** for the applicable supplementary information on this section.

Dated: May 5, 2000.

**Jill Long Thompson,**

*Under Secretary, Rural Development.*

[FR Doc. 00–11985 Filed 5–16–00; 8:45 am]

**BILLING CODE 3410–15–P**

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 94

[Docket No. 00–030–1]

### Change in Disease Status of Denmark Because of BSE

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to amend the regulations by adding Denmark to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in a native born animal in that region. Denmark is currently listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States. Therefore, the effect of this action is a continued restriction on the importation of ruminants that have been in Denmark and meat, meat products, and certain other products of ruminants that have been in Denmark. This action is necessary in order to update Denmark's disease status regarding bovine spongiform encephalopathy.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by July 17, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 00–030–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–030–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** Dr. Donna Malloy, Senior Staff Veterinarian, National Center for Import and Export, Products Program, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

**SUPPLEMENTARY INFORMATION:**

#### Background

The regulations in 9 CFR parts 93, 94, 95, and 96 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, other animal products and byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of bovine animals and other ruminants and is not known to exist in the United States.

It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants in regions in which BSE exists or in which there is an undue risk of introducing BSE into the United States, are imported into the United States and are fed to ruminants in the United States. BSE could also become established in the United States if ruminants from regions in which BSE exists, or in which there is an undue risk of introducing BSE into the United States, are imported into the United States.

Sections 94.18, 95.4, and 96.2 of the regulations prohibit or restrict the importation of certain meat and other animal products and byproducts from ruminants that have been in regions in which BSE exists or in which there is an undue risk of introducing BSE into the United States.

In § 94.18, paragraph (a)(1) lists the regions in which BSE exists. Paragraph (a)(2) lists the regions that present an undue risk of introducing BSE into the United States because their import requirements are less restrictive than those that would be acceptable for import into the United States and/or because they have inadequate surveillance. In § 94.18, paragraph (b) prohibits the importation of fresh, frozen, and chilled meat, meat products, and most other edible products of ruminants that have been in any region listed in paragraphs (a)(1) or (a)(2). Paragraph (c) restricts the importation of gelatin derived from ruminants that have been in any of these regions. Section 95.4 prohibits or restricts the importation of certain byproducts from ruminants that have been in any of these regions, and § 96.2 prohibits the importation of casings, except stomach casings, from ruminants that have been in any of these regions. Furthermore, regulations in 9 CFR part 93 pertaining to the importation of live animals provide that APHIS may deny the importation of ruminants from regions where a communicable disease such as BSE exists and from regions that present risks of introducing communicable diseases into the United States (See § 93.404(a)(3)).

Currently, Denmark is among the regions listed in § 94.18(a)(2), which are regions that present an undue risk of introducing BSE into the United States. However, on February 25, 2000, a case of BSE was confirmed in a native-born animal by Denmark's Ministry of Agriculture. Therefore, in order to update Denmark's disease status regarding BSE, we are proposing to amend the regulations by removing Denmark from the list of regions in § 94.18(a)(2) that present an undue risk of introducing BSE into the United States and adding Denmark to the list of regions in § 94.18(a)(1) where BSE is known to exist. The effect of this proposed action is a continued restriction on the importation of ruminants that have been in Denmark and meat and meat products, and certain other products of ruminants that have been in Denmark.

#### Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are proposing to amend the regulations by adding Denmark to the list of regions where BSE exists because the disease has been detected in a native born animal in that region.

Denmark is currently listed among the regions that present an undue risk of introducing BSE into the United States. Regardless of which of the two lists a region is on, the same restrictions apply to the importation of ruminants and meat, meat products, and most other products of ruminants that have been in the region. Therefore, this proposed action will not result in any change in the rules that apply to the importation of ruminants or meat, meat products, and certain other products of ruminants that have been in Denmark.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not

have a significant economic impact on a substantial number of small entities.

**Executive Order 12988**

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subject in 9 CFR Part 94**

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR part 94 as follows:

**PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS**

1. The authority citation for part 94 would continue to read as follows:

**Authority:** 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

**§ 94.18 [Amended]**

2. Section 94.18 would be amended as follows:

a. In paragraph (a)(1), by adding the word "Denmark," immediately after "Belgium,".

b. In paragraph (a)(2) by removing the word "Denmark,".

Done in Washington, DC, this 12th day of May 2000.

**Craig A. Reed,**

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–12438 Filed 5–16–00; 8:45 am]

BILLING CODE 3410–34–U

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2000–SW–10–AD]**

## Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Bell Helicopter Textron Canada (BHTC) Model 407 helicopters, that currently requires installing a tail rotor pitch-limiting left-pedal stop (pedal stop), installing an airspeed limitation placard, marking a never-exceed velocity (Vne) placard on all airspeed indicators, and revising the Limitations section of the Rotorcraft Flight Manual (RFM). This action would require installing a redesigned tail rotor system and modifying the vertical fin and horizontal stabilizer to allow restoring the Vne to 140 knots indicated airspeed (IAS). This proposal is prompted by design changes to the tail rotor system and modification of the pedal stop for airspeed actuation to eliminate a tail rotor strike to the tailboom. The actions specified by the proposed AD are intended to prevent the tail rotor blades from striking the tailboom, separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter.

**DATES:** Comments must be received on or before June 16, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–10–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov. Comments may be inspected at the Office of the Regional Counsel between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from BHTC, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–10–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–10–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

**Discussion**

On March 30, 1999, the FAA issued AD 99–06–15, Amendment 39–11111 (64 FR 16801, April 7, 1999), to require installing a pedal stop and adjusting the rigging of the directional controls, installing an airspeed limitation placard, marking a new never-exceed velocity (Vne) limit on all airspeed indicators, and revising the Limitations section of the RFM. That action was

prompted by three accidents involving in-flight tail rotor blade strikes against the tailboom. The requirements of that AD are intended to prevent the tail rotor blades from striking the tailboom, separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter.

Since the issuance of that AD, the manufacturer has made a design change to the tail rotor system to eliminate tail rotor strikes to the tailboom, and also made design changes to the pedal stop.

BHTC has issued Bell Helicopter Textron Alert Service Bulletin (ASB) No. 407–99–27, Rev. A, dated June 9, 1999, and Bell Helicopter Textron Technical Bulletin No. 407–99–17, dated April 15, 1999, both of which concern replacing the tail rotor; ASB 407–99–33, Revision A, dated March 10, 2000, which concerns installing a pedal stop and restoring the Vne to 140 knots IAS; and Bell Helicopter Textron Technical Bulletin No. 407–96–2, Revision A, dated March 11, 1997, which concerns modifying the vertical fin and horizontal stabilizer. Transport Canada classified these service bulletins as mandatory and issued AD No. CF–1998–36R7, dated February 1, 2000, in order to assure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada, which is the airworthiness authority for Canada, has kept the FAA informed of the situation described above. The FAA has examined the findings of the Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 407 helicopters of the same type design, the proposed AD would supersede AD 99–06–15 to require installing a redesigned tail rotor system, modifying the vertical fin and horizontal stabilizer, and restoring the Vne to 140 knots IAS.

The FAA estimates that 200 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 80 work hours per helicopter to perform the modifications and installations, and that the average labor rate is $60 per work hour. Required parts would cost approximately $24,161 per helicopter; however, the manufacturer has stated they will provide these parts at no cost. Additionally, the manufacturer has stated they will reimburse the cost of labor up to $4,400. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $5,792,200 or $28,961 per helicopter, assuming no costs are reimbursed.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11111 (64 FR 16801, April 7, 1999), and by adding a new airworthiness directive (AD), to read as follows:

**Bell Helicopter Textron Canada:** Docket No. 2000–SW–10–AD. Supersedes AD 99–06–15, Amendment 39–11111, Docket No. 99–SW–16–AD.

*Applicability:* Model 407 helicopters, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the tail rotor blades from striking the tailboom, which could result in separation of the aft section of the tailboom with the tail rotor gearbox and vertical fin, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight:

(1) Install a stop that limits the maximum distance that the left pedal can travel in accordance with Part I of the Accomplishment Instructions in Bell Helicopter Textron Canada Technical Bulletin 407–98–13, dated December 12, 1998 (TB).

(2) Adjust the rigging of the directional controls in accordance with Part II of the Accomplishment Instructions in the TB.

(3) Install the airspeed limitation placard shown in Figure 1 of this AD so that it completely covers and obscures the airspeed limitation placard, P/N 407–070–201–103. Ensure that the replacement placard is at least 2 1/16-inches tall and 3 9/16-inches long.

FIGURE 1.—407 AIRSPEED LIMITATIONS—KNOTS—IAS

[AD 99–06–15]

| OAT | Pressure altitude FX × 1000 | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| C° | 0 | 2 | 4 | 6 | 8 | 10 | 12 | 16 | 16 | 18 | 20 |
| 52 | 98 | 93 | 88 | | | | | | | | |
| 40 | 100 | 95 | 91 | 86 | 81 | 76 | | | | | |
| 20 | 100 | 100 | 95 | 90 | 85 | 80 | 76 | 71 | 66 | 61 | |
| 0 | 100 | 100 | 100 | 95 | 90 | 85 | 80 | 75 | 70 | 65 | 60 |
| −20 | 100 | 100 | 100 | 100 | 95 | 90 | 85 | 80 | 75 | 70 | 65 |
| −40 | 97 | 93 | 88 | 83 | 79 | 74 | 70 | 65 | 61 | | |

**Maximum Autorotation VNE 100 KIAS**

(4) Install a redline at a Vne of 100 KIAS on all airspeed indicators. Remove or obscure any previously installed lines or arcs above 100 KIAS. If the redline is installed on the instrument glass, also install a slippage mark on the glass and on the instrument case.

(5) Add the following statement to the Limitations section of the Rotorcraft Flight Manual (RFM):

When operating at an airspeed of 60 to 100 KIAS, maintain yaw trim within one ball diameter of the centered position of the turn and bank (slip) indicator, and avoid sudden or large directional control inputs in flight.

(6) Mark the airspeed limitations placard in Figure 1–3 in the RFM to indicate that it has been superseded by this AD, and insert a copy of this AD into the RFM. Also, mark the airspeed indicator in Figure 1–5 of the RFM to indicate a Vne of 100 KIAS.

(7) This AD revises the limitations section of BHTC Model 407 RFM by replacing sheet 1 of Figure 1–3 in the RFM with Figure 1 of this AD, revising sheet 3 of Figure 1–5 of the RFM, and adding an operational limitation for allowable yaw trim and directional control input.

(8) Report any uncommanded right yaw, uncommanded movement of the pedals during flight, or tail rotor blade contact with the tailboom within 24 hours of the occurrence to the Manager, Regulations Group, telephone (817) 222–5111. Reporting requirements have been approved by the Office of Management and Budget and assigned OMB control number 2120–0056.

(b) Before further flight after January 31, 2001:

(1) Remove and replace the existing tail rotor with tail rotor installation, P/N 407–012–100–109, in accordance with Part II of Bell Helicopter Textron Technical Bulletin 407–99–17, dated April 15, 1999.

(2) Modify the vertical fin and horizontal stabilizer in accordance with Bell Helicopter Textron Technical Bulletin No. 407–96–2, Revision A, dated March 11, 1997.

(3) Install the tail rotor airspeed-actuated pedal stop kit, install the new airspeed limitation decals, and remove the temporary instrument markings and RFM changes in accordance with the Accomplishment Instructions in Parts I, II, and III of Bell Helicopter Textron Alert Service Bulletin 407–99–33, Revision A, dated March 10, 2000.

(c) Accomplishing the requirements of paragraph (b) of this AD is terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in Transport Canada (Canada) AD CF–98–36R7, dated February 1, 2000.

Issued in Fort Worth, Texas, on May 5, 2000.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate,, Aircraft Certification Service.*

[FR Doc. 00–12357 Filed 5–16–00; 8:45 am]

BILLING CODE 4910–13–U

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## DEPARTMENT OF TRANSPORTATION

## Coast Guard

## 33 CFR Part 165

**[CGD01–00–009]**

**RIN 2115–AA97**

## Safety Zone: OPSAIL 2000 Fireworks Displays and Search and Rescue Demonstrations, Port of New York/New Jersey

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish four temporary safety zones for fireworks displays located on New York Harbor, the East River, and Hudson River, and one temporary safety zone for Search and Rescue demonstrations on the Hudson River. This action is necessary to provide for the safety of life on navigable waters during the events. This action is intended to restrict vessel traffic in portions of New York Harbor, the East River, and the Hudson River.

**DATES:** Comments and related material must reach the Coast Guard on or before May 31, 2000.

**ADDRESSES:** You may mail comments and related material to Waterways Oversight Branch (CGD01–00–009), Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305. The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–00–009), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

The Coast Guard is limiting the comment period for this NPRM to 14 days because the Coast Guard did not know about the final event plans until May 1, 2000. Further, these proposed zones are in effect in New York Harbor only and they are for four or six hour events. Finally, there is not sufficient time to publish a Temporary final rule 30 days before the events and provide a longer comment period than 14 days.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Waterways Oversight Branch at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

The Coast Guard proposes to establish four temporary safety zones for fireworks displays, and one temporary safety zone for Search and Rescue demonstrations being held in conjunction with OPSAIL 2000.

**Macy's/OPSAIL 2000 Fireworks**

The Coast Guard proposes to establish four temporary safety zones for the Macy's/OPSAIL 2000 fireworks display in New York Harbor, the East River, and Hudson River, on July 4, 2000. The first proposed safety zone includes all waters of the East River east of a line drawn from the Fireboat Station Pier, Battery Park City, in approximate position 40°42′15.5″N 074°01′07″W (NAD 1983) to Governors Island Light (2) (LLNR 35010), in approximate position 40°41′34.5″N 074°01′11″W (NAD 1983); north of a line drawn from Governors Island, in approximate position 40°41′25.3″N 074°00′42.5″W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn through the southern point of Roosevelt Island from East 47th Street, Manhattan to 46 Road, Brooklyn, and all waters of Newtown Creek west of the Pulaski Bascule Bridge.

Vessels equal to or greater than 20 meters (65.6 feet) in length, carrying persons for the purpose of viewing the fireworks, may take position in an area inside the safety zone at least 200 yards off the bulkhead on the west bank and just off the pierhead faces on the east bank of the East River between the Williamsburg Bridge and a line drawn through the East River Main Channel Lighted Buoy 18 (LLNR 27335), to a point on the Brooklyn shore at North 9th Street. All vessels must be in this location by 6:30 p.m. (e.s.t.) on July 4, 2000.

Once in position within the zone, all vessels must remain in position until released by the Captain of the Port, New York. On-scene-patrol personnel will monitor the number of designated vessels taking position in the viewing area of the zone. If it becomes apparent that any additional spectator vessels in the viewing area will create a safety hazard, the patrol commander may prevent additional vessels from entering it. After the event has concluded and the fireworks barges have safely relocated outside of the main channel, vessels will be allowed to depart the viewing area as directed by the patrol commander.

We created the viewing area within this safety zone in order to reduce significant safety hazards in this area of the East River, due in great part, to the extremely strong currents. Based on experience from similar events in this area of the East River, we are concerned that smaller spectator craft located in between the two fireworks barge sites could drift into the fallout zone of either barge site. Additionally, experience from previous events has also shown that having large and small craft located in a confined area presents safety hazards for both sized vessels due to vessel wake, anchor swing radii, and restricted visibility of larger vessels in a confined area.

One safety zone is required for this large section of the East River because the Coast Guard has a limited amount of assets available to patrol this event of national significance. If we made this zone into two zones, we could not adequately enforce the boundaries of both zones, and the safety of the port and the mariners would be unacceptably compromised because of the two nearby fireworks barge locations in a confined waterway with significant currents.

The Staten Island Ferries may continue services to their ferry slip at Whitehall Street, The Battery, Manhattan, New York. Continuing ferry services in the southwestern portion of the safety zone will not create a hazard nor be threatened by the fireworks display because Vessel Traffic Services New York will monitor and control the transits of these ferries. Failure to allow these continued ferry services will have a negative impact on residents of Staten Island, New York, and those persons traveling to and from Manhattan at the end of the holiday weekend.

The second proposed safety zone includes all waters of the Hudson River north of a line drawn from the southwest corner of Pier 94, Manhattan, to 40°46′31.3″N, 074°00′37.9″W (NAD 1983) onshore in Weehawken, NJ, and south of a line drawn from the northeast corner of Pier D, Weehawken, NJ, to the northwest corner of the northern pier of the West 30th Street Heliport in Manhattan.

The third proposed safety zone includes all waters of Upper New York Bay, east of Liberty Island, bound by the following points: 40°41′33.2″N 074°02′24.4″W; 40°41′11.3″N 074°02′44.4″W; 40°41′02.1″N 074°02′25.1″W; 40°41′09.1″N 074°02′10.2″W; 40°41′25.6″N 074°02′09.6″W (NAD 1983); thence to the point of beginning.

The fourth proposed safety zone includes all waters of Anchorage Channel, Upper New York Bay, bound by the following points: 40°38′12.4″N 074°03′05.6″W; 40°38′01.5″N 074°03′00.7″W; 40°37′21.0″N 074°02′50.0″W; 40°37′15.6″N 074°03′16.6″W; 40°38′08.3″N 074°03′37.4″W (NAD 1983); thence to the point of beginning.

The proposed safety zones are effective from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on July 4, 2000. If the event is cancelled due to inclement weather, then this section is effective from 6:30 p.m. (e.s.t) until 11:30 p.m. (e.s.t.) on July 5, 2000. The proposed safety zones prevent vessels from transiting these portions of Upper New York Bay, the East River and the Hudson River, and is needed to protect boaters from the hazards associated with fireworks launched from 13 separate barges in the area. No vessel may enter the safety zones without permission of the Captain of the Port, New York.

These safety zones cover the minimum area needed and impose the minimum restrictions necessary to ensure the protection of all vessels and

the fireworks handlers aboard the barges.

Public notifications will be made prior to the event via Local Notice to Mariners, marine information broadcasts, facsimile, OPSAIL Inc.'s website, and Macy's waterways telephone "hotline" at 212–494–5247, which is scheduled to be activated approximately June 1, 2000.

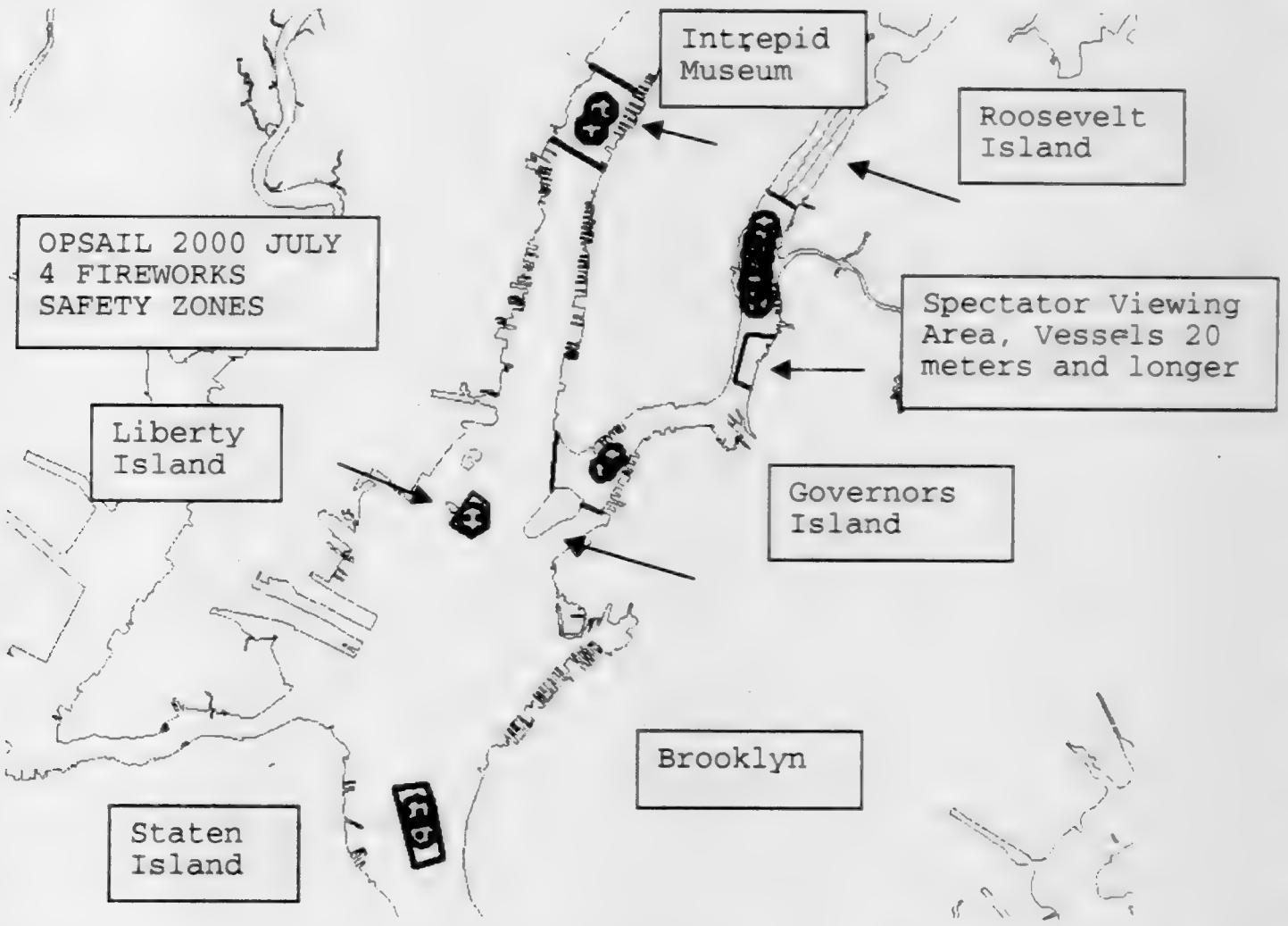


**Search and Rescue Demonstrations**

The Coast Guard also proposes to establish a temporary safety zone for the OPSAIL Search and Rescue demonstrations held on and over the Hudson River between Piers 83 and 90. This proposed safety zone includes all waters of the Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46′10″ N, 074°00′113″1 W (NAD 1983), south to approximate position 40°45′154″1 N, 074°00′125″1 W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall. This proposed safety zone is effective from 12 p.m. (e.s.t.) until 6 p.m. (e.s.t.), Thursday, July 6, through Saturday, July 8, 2000. It is needed to protect boaters and demonstration participants from the hazards associated with United States Military personnel demonstrating the capabilities of aircraft and watercraft in a confined area of the Hudson River. This safety zone prevents vessels from transiting only a portion of the Hudson River. Marine traffic will still be able to transit through the western 600 yards of the 950-yard wide Hudson River during the Search and Rescue demonstrations. Vessels moored at piers within the safety zone; however, will not be allowed to transit from their moorings without permission from the Captain of the Port, New York, during the effective periods of the safety zone. The Captain of the Port does not anticipate any negative impact on recreational or commercial vessel traffic due to this safety zone.

Public notifications will be made prior to the Search and Rescue Demonstrations via Local Notice to Mariners, marine information broadcasts, facsimile, and OPSAIL Inc.'s website.

**Discussion of Proposed Rule**

The proposed sizes of the fireworks safety zones were determined using National Fire Protection Association and New York City Fire Department standards for 10–12 inch mortars fired from a barge, combined with the Coast Guard's knowledge of tide and current conditions in these areas. These events are being held in conjunction with OPSAIL 2000. A NPRM was published for OPSAIL 2000 in the **Federal Register** on February 7, 2000 (65 FR 5833), a correction to this NPRM was published on February 14, 2000 (65 FR 7333). This proposed regulation would establish five safety zones. The regulations will be in effect at various times in the Port of New York/New Jersey during the period July 4—8, 2000. This proposed rulemaking is necessary to ensure the safety of life on the navigable waters of the United States and to give the marine community the opportunity to comment on these events.

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**Regulatory Evaluation**

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of New York Harbor, the Hudson River, and East River, the effect of this regulation will not be significant for the following reasons: the limited duration that the regulated areas will be in effect and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, facsimile, marine information broadcasts, the sponsor's website and phone hotline, New York Harbor Operations Committee meetings, public meetings for maritime groups, and New York area newspapers, so mariners can adjust their plans accordingly. At no time will commercial shipping access to Port Newark/Port Elizabeth facilities be prohibited. Access to those areas may be accomplished using Raritan Bay, Arthur Kill, Kill Van Kull, and Newark Bay as an alternate route. This will allow the majority of the maritime industrial activity in the Port of New York/New Jersey to continue, relatively unaffected. Similar regulated areas were established for the 1986 and 1992 OPSAIL events, the annual Macy's July 4th fireworks display, and the annual Fleet Week Sea and Air demonstrations. Based upon the Coast Guard's experiences learned from these previous events of a similar magnitude, these proposed regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in portions of Lower and Upper New York Bay, the Hudson River, and East River during various times from July 4–8, 2000. These regulations would not have a significant economic impact on a substantial number of small entities for the following reasons. Although these regulations would apply to a substantial portion of the Port of New York/New Jersey, designated areas for viewing the Fourth of July Fireworks are being established to allow for maximum use of the waterways by commercial tour boats that usually operate in the affected areas. Maritime traffic would also be able to transit around the areas where the Search and Rescue demonstrations are being held. Before the effective period, the Coast Guard would make notifications to the public via mailings, facsimiles, the Local Notice to Mariners and use of the sponsors Internet site. The Coast Guard is also holding public meetings with maritime groups to explain the schedule of events and approved spectator craft viewing areas. In addition, the sponsoring organization, OPSAIL Inc., is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant M. Day, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4012.

**Collection of Information**

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**Federalism**

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

**Taking of Private Property**

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule fits paragraph 34(g) as it establishes five safety zones. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–009 to read as follows:

**§ 165.T01–009 Safety Zones: OPSAIL 2000 Fireworks Displays, and Search and Rescue Demonstrations, Port of New York/New Jersey.**

(a) *Safety Zones Locations and Enforcement Periods.*

(1) *East River Fireworks Safety Zone:* All waters of the East River east of a line drawn from the Fireboat Station Pier, Battery Park City, in approximate position 40°42′15.5″N 074°01′07″ W (NAD 1983) to Governors Island Light (2) (LLNR 35010), in approximate position 40°41′34.5″N 074°01′11″ W (NAD 1983); north of a line drawn from Governors Island, in approximate position 40°41′25.3″N 074°00′42.5″W (NAD 1983) to the southwest corner of Pier 9A, Brooklyn; south of a line drawn through the southern point of Roosevelt Island from East 47th street, Manhattan to 46 Road, Brooklyn, and all waters of Newtown Creek west of the Pulaski Bascule Bridge.

(2) *Hudson River Fireworks Safety Zone.* All waters of the Hudson River north of a line drawn from the southwest corner of Pier 94, Manhattan, to 40°46′31.3″N, 074°00′37.9″W (NAD 1983) onshore in Weehawken, NJ, and south of a line drawn from the northeast corner of Pier D, Weehawken, NJ, to the northwest corner of the northern pier of the West 30th Street Heliport in Manhattan.

(3) *Liberty Island Fireworks Safety Zone.* All waters of Upper New York Bay, east of Liberty Island, bound by the following points: 40°41′33.2″N 074°02′24.4″W; 40°41′11.3″N 074°02′44.4″W; 40°41′02.1″N 074°02′25.1″W; 40°41′09.1″N 074°02′10.2″W; 40°41′25.6″N 074°02′09.6″W (NAD 1983); thence to the point of beginning.

(4) *Anchorage Channel Fireworks Safety Zone.* All waters of Anchorage Channel, Upper New York Bay, bound by the following points: 40°38′12.4″N 074°03′05.6″W; 40°38′01.5″N 074°03′00.7″W; 40°37′21.0″N 074°02′50.0″W; 40°37′15.6″N 074°03′16.6″W; 40°38′08.3″N 074°03′37.4″W (NAD 1983); thence to the point of beginning.

(5) *Search and Rescue Demonstrations Safety Zone:* All waters of Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46′10″ N, 074°00′13″ W (NAD 1983), south to approximate position 40°45′54″ N, 074°00′25″ W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall.

(6) *Enforcement period.* Paragraphs (a)(1) through (a)(4) are effective from 6:30 p.m. (e.s.t.) until 11:30 p.m. (e.s.t.) on Tuesday, July 4, 2000. If the event is cancelled due to inclement weather, then paragraphs (a)(1) through (a)(4) are effective from 6:30 p.m. (e.s.t.) to 11:30 p.m. (e.s.t.) on Wednesday, July 5, 2000.

(7) *Enforcement period.* Paragraph (a)(5) is effective daily from 12 p.m. (e.s.t.) until 6 p.m. (e.s.t.) from Thursday, July 6, through Saturday, July 8, 2000.

(b) *Effective period.* This section is effective from 6:30 p.m. (e.s.t.) on July 4, 2000, until 6 p.m. (e.s.t.) on July 8, 2000.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) No vessels will be allowed to transit the safety zone without the permission of the Captain of the Port, New York.

(3) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) Vessels may remain in the safety zone described in paragraph (a)(1) for the purpose of viewing the event in accordance with the following pre-established viewing area: Vessels equal to or greater than 20 meters (65.6 feet) in length, carrying persons for the purpose of viewing the fireworks, may take position in an area at least 200 yards off the bulkhead on the west bank and just off the pierhead faces on the east bank of the East River between the Williamsburg Bridge and a line drawn through the East River Main Channel Lighted Buoy 18 (LLNR 27335), to a point on the Brooklyn shore at North 9th Street. All vessels must be positioned in this viewing area within the safety zone by 6:30 p.m. (e.s.t.) on July 4, 2000.

Dated: May 11, 2000.

**R.E. Bennis,**

*Captain, U. S. Coast Guard., Captain of the Port, New York.*

[FR Doc. 00–12415 Filed 5–12–00; 5:05 pm]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[CA 226–0186b; FRL–6606–4]**

### Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Antelope Valley Air Pollution Control District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is approving revisions to the California State Implementation Plan (SIP) for the Antelope Valley Air Pollution Control District (AVAPCD). There are six revisions: three rule recissions with accompanying negative declarations for source categories that emit volatile organic compounds (VOC); two negative declarations for source categories that emit oxides of nitrogen ($NO_X$), and one rule recission for a source category that emits oxides of sulfur ($SO_X$). The intended effect of this action is to bring the AVAPCD SIP up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA is finalizing the approval of these recissions from the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas. EPA is approving these revisions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all

public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

**DATES:** Written comments must be received by June 16, 2000.

**ADDRESSES:** Comments should be addressed to: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's technical support document of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Antelope Valley Air Pollution Control District, 43301 Division Street, Suite 206, Lancaster, CA 93539–4409

**FOR FURTHER INFORMATION CONTACT:** Julie A. Rose, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1184).

**SUPPLEMENTARY INFORMATION:** The rules being approved for recission and the negative declarations being approved for the Antelope Valley Air Pollution Control District (AVAPCD) portion of the California SIP are listed in the following Table:

SUBMITTED RECISSIONS AND NEGATIVE DECLARATIONS

| Rule No. and title | Adoption date | Submittal date | Type of revision |
|---|---|---|---|
| 1105, Fluid Catalytic Cracking Units—Oxides of Sulfur | 04–21–98 | 05–13–99 | Recission. |
| 1109, Emissions of Oxides of Nitrogen from Boilers and Process Heaters in Petroleum Refineries. | 04–21–98 | 05–13–99 | Negative Declaration. |
| 1112, Emissions of Oxides of Nitrogen from Cement Kilns | 03–16–99 | 07–23–99 | Negative Declaration. |
| 1115, Motor Vehicle Assembly Line Coating Operations | 11–18–97 | 01–12–99 | Recission/Negative Declaration. |
| 1117, Emissions of Oxides of Nitrogen from Glass Melting Furnaces | 03–16–99 | 07–23–99 | Recission/Negative Declaration. |
| 1123, Refinery Process Turnarounds | 11–08–97 | 02–16–99 | Recission/Negative Declaration. |

The rule recissions and negative declarations listed above were submitted to EPA by the California Air Resources Board (CARB) on the dates indicated. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: May 3, 2000.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

[FR Doc. 00–11997 Filed 5–16–00; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AE87**

## Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Threatened Status for the Plant *Gaura neomexicana* ssp. *coloradensis*

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of reopening of comment period.

**SUMMARY:** We, the Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), reopen the comment period on the proposal to list the plant *Gaura neomexicana* ssp. *coloradensis* (Colorado butterfly plant) as a threatened species. The comment period is extended to accommodate the public notice requirement of the Act and to consider any new scientific information. In addition, reopening of the comment period will allow further opportunity for all interested parties to submit comments on the proposal, which was published on March 24, 1998 (63 FR 14060). We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

**DATES:** The reopened comment period closes June 16, 2000.

**ADDRESSES:** Copies of the proposed rule are available on the World Wide Web at <mountain-prairie.fws.gov/endspp/plants/>. You may also request copies from, and submit comments and materials concerning this proposed rule to, the Field Supervisor, U.S. Fish and Wildlife Service, 4000 Airport Parkway, Cheyenne, Wyoming 82001. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Mike Long, Field Supervisor, Wyoming Field Office (see **ADDRESSES** section), telephone 307/772–2374; facsimile 307/772–2358.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 24, 1998, we published a rule proposing threatened status for *Gaura neomexicana* ssp. *coloradensis* in the **Federal Register** (63 FR 14060). The original comment period closed on May 26, 1998. Section 4(b)(5)(D) of the Act (16 U.S.C. 1531 *et seq.*) requires us to "publish a summary of the proposed regulation in a newspaper of general circulation in each area of the United States in which the species is believed to occur." Due to an oversight, we failed to complete this requirement. To correct the oversight, we are reopening the comment period for this proposal to list *G.n.* ssp. *coloradensis* and publishing the required notices. The comment period now closes on June 16, 2000. Written comments should be submitted to the Service (see **ADDRESSES** section).

*Gaura neomexicana* ssp. *coloradensis* is a short-lived, perennial herb endemic to moist soils in mesic or wet meadows of floodplain areas in southeastern Wyoming, northcentral Colorado, and extreme western Nebraska. This early to mid-seral stage species occurs primarily in habitats created and maintained by streams active within their floodplains, with vegetation that is relatively open and not overly dense or overgrown. The disturbance of riparian areas that contain native grasses by agricultural conversion, water diversions, channelization, and urban development threaten *G.n.* ssp. *coloradensis* by

changing habitat significantly enough to preclude survival of viable populations.

Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size or trend of this species;

(4) Current or planned activities in the subject area and their possible impacts on this species;

(5) Biological or physical elements that best describe *Gaura neomexicana* ssp. *coloradensis* habitat that could be essential for the conservation of the species;

(6) Information regarding genetic differences and similarities within and between populations of *Gaura neomexicana* ssp. *coloradensis;*

(7) Possible alternative noxious weed control, grazing, farming, and water management practices that will reduce or eliminate impacts to *Gaura neomexicana* ssp. *coloradensis;* and

(8) Other management strategies that will conserve the species throughout its range.

Comments previously submitted during the first comment period need not be resubmitted, as they will be fully considered in the final determination.

Author. The primary author of this document is Mary Jennings of the Wyoming Field Office (see **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 2, 2000.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 00–12122 Filed 5–16–00; 8:45 am]

BILLING CODE 4310–55–U

# Notices

Federal Register
Vol. 65, No. 96
Wednesday, May 17, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Rural Business-Cooperative Service

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Proposed collection, comments requested.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's (RBS) intention to request an extension for a currently approved information collection in support of the program for Rural Cooperative Development Grants.

**DATES:** Comments on this notice must be received by July 17, 2000, to be assured of consideration.

**FOR FURTHER INFORMATION CONTACT:** James E. Haskell, Assistant Deputy Administrator, Cooperative Services, Rural Business-Cooperative Service, U.S. Department of Agriculture, Stop 3250, Room 4016, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3250. Telephone (202) 720–8460.

**SUPPLEMENTARY INFORMATION:**

*Title:* Rural Cooperative Development Grants.

*OMB Number:* 0570–0006.

*Expiration Date of Approval:* September 30, 2000.

*Type of Request:* Intent to extend the clearance for collection of information under RD Instruction 4282–F, Rural Cooperative Development Grants.

*Abstract:* The primary purpose of the Rural Business-Cooperative Service (RBS) is to promote understanding, use, and development of the cooperative form of business as a viable option for enhancing the income of agricultural producers and other rural residents. The primary objective of the Rural Cooperative Development Grant program is to improve the economic condition of rural areas through cooperative development. Grants will be awarded on a competitive basis to nonprofit corporations and institutions of higher education based on specific selection criteria.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 24 hours per grant application.

*Respondents:* Nonprofit corporations and institutions of higher education.

*Estimated Number of Respondents:* 50.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Number of Responses:* 50.

*Estimated Total Annual Burden on Respondents:* 1,848 hours.

Copies of this information collection can be obtained from Cheryl Thompson, Regulations and Paperwork Management Division, at (202) 692–0043.

**Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RBS, including whether the information will have practical utility; (b) the accuracy RBS estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Cheryl Thompson, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Ave. SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 10, 2000.

**Dayton J. Watkins,**

*Administrator, Rural Business-Cooperative Service.*

[FR Doc. 00–12334 Filed 5–16–00; 8:45 am]
BILLING CODE 3410–XY–U

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Arkansas Electric Cooperative Corporation; Notice of Intent

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of Intent to Prepare an Environmental Assessment.

**SUMMARY:** Notice is hereby given that the Rural Utilities Service (RUS), pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing NEPA (40 CFR Parts 1500–1508), and RUS Environmental Policies and Procedures (7 CFR Part 1794) proposes to prepare an Environmental Assessment related to possible financial assistance to Arkansas Electric Cooperative Corporation for the construction of a 153 megawatt (MW) combustion turbine electric generating plant in southwest Arkansas.

**FOR FURTHER INFORMATION CONTACT:** Bob Quigel, Engineering and Environmental Staff, Rural Utilities Service, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone (202) 720–0468. The E-mail address is bquigel@rus.usda.gov.

**SUPPLEMENTARY INFORMATION:** Arkansas Electric Cooperative Corporation proposes to construct the plant at a 159 acre site east of Fulton, Arkansas. Fulton is located in Hempstead County.

The project, as proposed, would consist of a 153 MW gas-fired, simple cycle combustion turbine and a water-cooled generator. The plant will have a 90-foot exhaust stack, step-up and auxiliary transformers, motor control centers, bus ductwork, an electric substation, and control, maintenance, and operations buildings. The project would require 4 miles of 115 kV transmission line to tie the plant to the existing transmission grid. (The transmission line will be built to 161 kV specifications in anticipation that additional transmission line capacity may be needed in the future.)

The facility will be designed to accommodate conversion of the plant to combined cycle operation, but will be initially operated as a simple cycle plant. The site will also be designed to accommodate the addition of one or more simple or combined cycle units. However, the Environmental

Assessment announced herein will cover only the initial 153 MW simple cycle plant and related electric transmission line as only the 153 MW unit is being considered for RUS financial assistance.

The alternative to be considered by RUS to providing financial assistance to Arkansas Electric Cooperative Corporation for the construction of the 153 MW plant would be to take no action and, therefore, not provide financial assistance.

Upon completion of the Environmental Assessment, the document will be made available for public review for 30 days. Should RUS determine that the overall impacts of the construction and operation of the plant will not have a significant impact on the quality of the human environment, it will prepare and publish a finding of no significant impact (FONSI).

Availability of the Environmental Assessment and notification of a FONSI will be published in the **Federal Register** and in newspapers with a general circulation in the project area.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with environmental review requirements prescribed by CEQ and RUS regulations.

Dated: May 11, 2000.

**Mark Plank,**

*Acting Director, Engineering and Environmental Staff.*

[FR Doc. 00–12440 Filed 5–16–00; 8:45 am]

BILLING CODE 3410–15–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zone Board

**[Docket 19–2000]**

### Foreign-Trade Zone 165—Midland, TX; Application for Subzone, Phillips Petroleum Company (Oil Refinery Complex), Borger, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Midland, grantee of FTZ 165, requesting special-purpose subzone status for the oil refinery complex of Phillips Petroleum Company, located in Borger, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 3, 2000.

The refinery complex (130,000 BPD capacity, 246 storage tanks with 10.3 million barrel capacity) is located at two sites in Borger, Texas: Site 1 (6,045 acres)—main refinery complex, located at Spur 119 North, Borger; Site 2 (585 acres)—crude oil tank farm, located on Highway 136, Borger, 5 miles north of the main refinery complex. The refinery is used to produce fuels, liquid petroleum gases, and refinery by-products including gasoline, jet fuel, aviation gas, distillates, residual fuels, naphthas, motor fuel blendstocks, butane, isobutane, butadiene, propane, benzene, toluene, xylene, acyclic and cyclic hydrocarbons, hydrogen sulfide, carbon black oil, petroleum coke, asphalt and sulfur. Some 10 percent of the crude oil (60 percent of inputs) is sourced from abroad. The application also indicates that the company may in the future import under FTZ procedures some naphthas, virgin gas oil, natural gas condensate and motor fuel blendstocks.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign crude in non-privileged foreign status. The duty rates on inputs range from 5.25 cents/barrel to 10.5 cents/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 17, 2000. Rebuttal comments in response to material submitted during the foregoing may be submitted during the subsequent 15-day period to July 31, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S. Customs Service, 10801 Airport Blvd., Amarillo, TX 79111

Office of the Executive Secretary, Foreign-Trade Zone Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Washington, DC 20230

Dated: May 7, 2000.

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 00–12327 Filed 5–16–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–506]**

### Porcelain-on-Steel Cooking Ware From the People's Republic of China: Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**SUMMARY:** On January 26, 2000, the Department of Commerce ("the Department") initiated an administrative review of the antidumping duty order on porcelain-on-steel cooking ware from the People's Republic of China ("PRC") for one manufacturer/exporter of the subject merchandise, Clover Enamelware Enterprise, Ltd. of China ("Clover"), and its Hong Kong affiliated reseller, Lucky Enamelware Factory Ltd. ("Lucky"), collectively referred to as Clover/Lucky, for the period December 1, 1998 through November 30, 1999. The Department is rescinding this review after receiving a timely withdrawal from the Petitioner, Columbian Home Products, of its request for review.

**EFFECTIVE DATE:** May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Russell Morris, Group II, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–1775.

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1999).

**Background**

On December 30, 1999, Petitioner requested that the Department conduct an administrative review of Clover/Lucky, manufacturer and/or reseller of the subject merchandise in the PRC for the period December 1, 1998 through November 30, 1999. On January 26, 2000, the Department published in the

**Federal Register** a notice of initiation of administrative review with respect to Clover/Lucky for the period December 1, 1998 through November 30, 1999. *See, Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 65 FR 4228 (January 26, 2000). On April 25, 2000, Petitioner requested that it be allowed to withdraw its request for a review and that the review be terminated.

**Rescission of Review**

Pursuant to 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. Because the Petitioner's request for termination was submitted within the 90-day time limit, and there were no requests for review from other interested parties, we are rescinding this review. We will issue appropriate appraisement instructions directly to the U.S. Customs Service. This notice is in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: May 8, 2000.

**Holly A. Kuga,**

*Acting Deputy Assistant Secretary, Import Administration, Group II.*

[FR Doc. 00–12326 Filed 5–16–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–533–808]**

### Stainless Steel Wire Rod From India; Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review of stainless steel wire rod from India.

**SUMMARY:** On January 11, 2000, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results and partial rescission of its administrative review of the antidumping duty order on stainless steel wire rod from India (65 FR 1597). This review covers Viraj Group Ltd., ("Viraj"), a manufacturer and exporter of subject merchandise to the United States. The period of review is December 1, 1997 through November 30, 1998.

Based on our analysis of the comments received, we have changed our results from the preliminary results of review. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

**EFFECTIVE DATE:** May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Stephen Bailey, Laurel LaCivita or Rick Johnson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0414, (202) 482–4243 or (202) 482–3818, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1998).

**Background**

On January 11, 2000, the Department published in the **Federal Register** (65 FR 1597) the preliminary results and partial rescission of its administrative review of the antidumping duty order on stainless steel wire rod from India ("*Preliminary Results*"). As we stated in that notice, this review was rescinded with respect to Mukand, Ltd. and Panchmahal Steel Ltd., pursuant to timely requests for withdrawal of their review requests. We invited parties to comment on our preliminary results of review.

We have now completed the administrative review in accordance with section 751 of the Act.

**Scope of the Review**

The product covered by this review is stainless steel wire rod from India. This merchandise is classifiable under Harmonized Tariff Schedule ("HTS") subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.045, 7221.00.0060, 7221.00.0075, and 7221.00.0080. Although the HTS subheadings are provided for convenience and for U.S. Customs purposes, the written description of the scope of this finding remains dispositive.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("*Decision Memorandum*") from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May, 10, 2000, which is hereby adopted in this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the *Decision Memorandum*, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, Room B–099 of the main Department building. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the Web at *www.ita.doc.gov/import—admin/records/frn*. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

**Changes Since the Preliminary Results**

Based on our analysis of comments received, we have changed our results from the preliminary results of review. For the final results of review, Viraj's duty drawback claims have not been allowed.

**Final Results of Review**

We determine that the following percentage margin exists for the period December 1, 1997, through November 30, 1998:

| Manufacturer/exporter/reseller | Margin (percent) |
|---|---|
| Viraj Impoexpo, Ltd | 11.88 |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for the reviewed sales by the entered quantity of those reviewed sales for Viraj. We will direct Customs to assess the resulting unit margins against the entered quantity for the subject merchandise on each of Viraj's entries during the review period.

**Cash Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of stainless steel wire rod from India entered, or withdrawn from warehouse, for consumption on or after the date of

publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Viraj will be the rate shown above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be the "all others" rate, which is 48.80 percent.

The cash deposit rate has been determined on the basis of the selling price to the first unaffiliated U.S. customer. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

**Notification of Interested Parties**

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 771(i) of the Act.

Dated: May 10, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

**Appendix 1—Issues in Decision Memorandum**

**Comments and Responses**

1. Valuation of Raw Material Inputs
2. Modvat Tax
3. Duty Drawback
4. Date of Currency Conversion
5. Interest Expense
6. Double-Counting of Profit
7. Clerical Error

[FR Doc. 00–12432 Filed 5–16–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 040400C]**

### Fisheries Off West Coast States and in the Western Pacific; Northern Anchovy Fishery; Correction

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Correction to announcement of receipt of an application for an exempted fishing permit (EFP).

**SUMMARY:** This document contains a correction to an announcement of receipt of an application for an EFP for northern anchovy in an area off San Francisco ordinarily closed to vessels fishing to reduce the catch into products such as fish meal and oil, that was published in the **Federal Register** on May 3, 2000.

**FOR FURTHER INFORMATION CONTACT:** James Morgan at 310–980–4036.

**SUPPLEMENTARY INFORMATION:** On May 3, 2000, at 65 FR 25709, NMFS announced receipt of an application for an EFP to harvest northern anchovy off the coast of California in a closed area off of Farallon Islands. That document contained incorrect dates for the Pacific Fishery Management Council meeting.

**Correction**

On page 25709, in the second column, in the second complete paragraph, in the second line, "June 23–26, 2000," should read "June 26–30, 2000".

Dated: May 12, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Fisheries Management, National Marine Fisheries Service.*

[FR Doc. 00–12426 Filed 5–16–00; 8:45 am]

BILLING CODE 3510–22–F

## CONSUMER PRODUCT SAFETY COMMISSION

### Sunshine Act Meeting

**AGENCY:** U.S. Consumer Product Safety Commission, Washington, DC 20207.

**TIME AND DATE:** Thursday, May 25, 2000, 2 p.m.

**LOCATION:** Room 410, East West Towers, 4330 East West Highway, Bethesda, MD.

**STATUS:** Part open to the public; part closed.

**MATTERS TO BE CONSIDERED:**

*Open to the Public*

1. CPSC Vice Chairman.

The Commission will elect a Vice Chairman.

*Closed to the Public*

2. Compliance Status Report.

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

**CONTACT PERSON FOR ADDITIONAL INFORMATION:** Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207; (301) 504–0800.

Dated: May 15, 2000.

**Sadye E. Dunn,**

*Secretary.*

[FR Doc. 00–12551 Filed 5–15–00; 2:52 pm]

BILLING CODE 6355–01–M

## DEPARTMENT OF EDUCATION

### Office of Special Education and Rehabilitative Services; Grant Applications Under Part D, Subpart 2 of the Individuals With Disabilities Education Act; Correction

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year (FY) 2000; correction.

**SUMMARY:** On April 28, 2000, a notice inviting applications for new awards under the Office of Special Education and Rehabilitative Services; Grant Applications under Part D, Subpart 2 of the Individuals with Disabilities Education Act was published in the **Federal Register** (65 FR 25156). The notice included an "Estimated Project Awards" section in the Parent Training and Information Centers priority that listed project award amounts for State awards, including Virgin Islands and American Samoa, and interim State awards (65 FR 25167). Information

stating that other awards may also be made to authorized entities in Guam, the Commonwealth of the Northern Mariana Islands, and the freely associated States, was inadvertently omitted from this section. In addition, the notice contained a "chart" that provided closing dates and other information regarding the transmittal of applications for the Fiscal Year 2000 competitions. This notice will correct the "Estimated Project Awards" section and the "chart" (65 FR 25170) by including the following information, "Awards may also be made under the Parent Training and Information Centers competition (CFDA 84.328M) to authorized entities in Guam, the Commonwealth of the Northern Mariana Islands, and the freely associated States. However, maximum funding levels have not been specified."

**Note to applicants:** Potential applicants should consult the statement of the final priority published on April 28, 2000 (65 FR 25156) to ascertain the substantive requirements for their applications.

**Correction**

1. In the **Federal Register** of April 28, 2000 (65 FR 25167), in the third column, after the listing "New York (Interim Awards)—$339,800" correct the "Estimated Project Awards" section by adding the following paragraph to read:

Awards may also be made under the Parent Training and Information Centers competition (CFDA 84.328M) to authorized entities in Guam, the Commonwealth of the Northern Mariana Islands, and the freely associated States. However, maximum funding levels have not been specified.

2. In the **Federal Register** of April 28, 2000 (65 FR 25170) correct footnote 1 of the chart to read as follows:

The Assistant Secretary rejects and does not consider an application that proposes a budget exceeding the amount listed for any single budget period of 12 months. Awards may also be made under the Parent Training and Information Centers competition (CFDA 84.328M) to authorized entities in Guam, the Commonwealth of the Northern Mariana Islands, and the freely associated States. However, maximum funding levels have not been specified.

**FOR FURTHER INFORMATION CONTACT:** For further information on this priority contact Debra Sturdivant, U.S. Department of Education, 400 Independence Avenue, SW, room 3317, Switzer Building, Washington, DC 20202–2641. FAX: (202) 205–8717 (FAX is the preferred method for requesting information). Telephone: (202) 205–8038. Internet: Debra_Sturdivant@ed.gov.

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC. area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Dated: May 11, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–12371 Filed 5–16–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

## DEPARTMENT OF LABOR

### Office of School-to-Work Opportunities; Advisory Council for School-to-Work Opportunities, Notice of Open Meeting

**SUMMARY:** The Advisory Council for School-to-Work Opportunities was established by the Departments of Education and Labor to advise the Departments on implementation of the School-to-Work Opportunities Act. The Council shall assess the progress of School-to-Work (STW) Opportunities systems development and program implementation; make recommendations regarding progress and implementation of the School-to-Work Opportunities initiative; advise on the effectiveness of the new Federal role in providing venture capital to States and localities to develop STW systems and act as advocates for implementing the STW on behalf of their stakeholders.

**TIME AND PLACE:** The Advisory Council for School-to-Work Opportunities will have an open meeting on Wednesday, May 31, 2000 from 8:30 am to 5 pm and on Thursday, June 1, 2000, from 8 am to 4 The meeting will be held at the Washington Court Hotel, Washington, DC.

**AGENDA:** The agenda for the meeting on Wednesday, May 31 begins with opening remarks by the Co-Chair of the Advisory Council Jacquelyn Belcher, President, Perimeter College of Decatur, Georgia. Following the opening, the Council will meet with senior representatives of the Departments of Education and Labor, the State Directors for School-to-Work and others involved in School-to-Work system-building to engage in a review of the STW initiative. On Thursday, June 1, Council Chair John McKernan, President of McKernan Enterprises, Portland, Maine will reconvene the Council to continue the discussion of issues related to sustainability of the School-to-Work initiative with the State Directors for STW, with Department of Education and Labor officials and other national, state and local policymakers.

**PUBLIC PARTICIPATION:** The meetings on Wednesday, May 31 and Thursday, June 1 will be open to the public. Seats will be reserved for the media. Individuals with disabilities in need of special accommodations should contact the Designated Federal Official (DFO), listed below, at least 7 days prior to the meeting.

**FOR FURTHER INFORMATION CONTACT:** Stephanie J. Powers, Designated Federal Officials (DFO), Advisory Council for School-to-Work Opportunities, Office of School-to-Work Opportunities, 400 Virginia Avenue, SW, Room 210, Washington, DC 202/401–6222. (This is not a toll free number.)

Signed at Washington, DC, this 12th day of May, 2000.

**Raymond L. Bramucci,**

*Assistant Secretary for Employment and Training.*

**Robert Muller,**

*Acting Assistant Secretary for Vocational and Adult Education.*

[FR Doc. 00–12401 Filed 5–16–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, June 7, 2000, 6:00–9:30 p.m.

**ADDRESSES:** Garden Plaza, 215 S. Illinois Avenue, Oak Ridge, TN.

**FOR FURTHER INFORMATION CONTACT:** Theresa Perry, Federal Coordinator, Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (865) 576–8956.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:* Overview of the Oak Ridge Reservation Watersheds, presented by DOE/ORO EM.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carol Davis at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

*Minutes:* Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Teresa Perry, Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831 or by calling her at (423) 576–8956.

Issued at Washington, DC on May 12, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–12397 Filed 5–16–00; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Hanford

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, June 1, 2000: 9:00 a.m.–5:00 p.m.; Friday, June 2, 2000: 8:30 a.m.–4:00 p.m.

**ADDRESSES:** Eastern Oregon State University Hoke College Center Multi-Purpose Room La Grande, Oregon

**FOR FURTHER INFORMATION CONTACT:** Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Ph: (509) 373–5647; Fax: (509) 376–1563.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

—Environment, Safety, and Health
—Environmental Restoration
—Area 100 Remedial Investigation/Feasibility Study
—Area 300 Remedial Investigation/Feasibility Study
—Update on Ground Water/Vadose Zone
—Tank Waste Remediation (DOE Office of River Protection)
—Interim Stabilization of Single Shell Tanks
—Tank Waste Treatment
—Plutonium Finishing Plant—Path Forward
—Committee Updates
—Draft Site Specific Advisory Board Statement of Principles

*Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC on May 12, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–12398 Filed 5–16–00; 8:45 am]

**BILLING CODE 6450–01–U**

## DEPARTMENT OF ENERGY

### Energy Information Administration

### Agency Information Collection Activities: Request for Emergency Review by the Office of Management and Budget

**AGENCY:** Energy Information Administration, Department of Energy.

**ACTION:** Agency information collection activities: Request for emergency review by the Office of Management and Budget.

**SUMMARY:** The Energy Information Administration (EIA) has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for emergency processing under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*) by Monday, May 22, 2000. The reason for this emergency clearance request is to obtain data from customers whose natural gas shipments may have been interrupted during December 1999, and January and February 2000. The data are needed for responding to requests from the Secretary of Energy and Congress by the end of July 2000, regarding the impact of interruptible natural gas contracts on home heating oil supplies in the Northeastern United States during December 1999, and January and February 2000.

The Supplementary Information contains the following: (1) The collection number and title; (2) a summary of the collection of information, which includes the sponsor (*i.e.*, the DOE component),

current OMB document number (where applicable), type of request (new, revision, extension, or reinstatement), response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (*i.e.*, the estimated number of likely respondents, times the proposed frequency of response per year, times the average hours per response).

**DATES:** Comments must be filed by Friday, May 19, 2000.

**ADDRESSES:** Address comments to the Mr. Erik Godwin, Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, DC 20503. (Mr. Godwin may be reached by telephone at (202) 395–3084. Comments should also be addressed to the Statistics and Methods Group at the address immediately below.)

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 426–1103, FAX at (202) 426–1081, or e-mail at Herbert.Miller@eia.doe.gov.

**SUPPLEMENTARY INFORMATION:** The energy information collection submitted to OMB for review is:

1. EIA–904, "Fuel Used to Replace Natural Gas During Natural Gas Service Interruptions in the Northeast."

2. The Energy Information Administration plans to collect information from up to 400 companies whose supply of natural gas may have been interrupted during December 1999, or January or February 2000. The form will request information on natural gas and liquid fuel purchases; natural gas and liquid fuels consumed in the period; and fuel storage capacity and inventories. This is a new survey and a new OMB number is being requested. The response obligation will be mandatory.

3. The data will be collected, then summarized and analyzed, and, thereafter, be used for responding to a request from the Secretary of Energy and Congress regarding the level and extent of natural gas interruptions in the Northeastern United States, during December 1999, and January and February 2000.

4. Respondents will be customers of local distribution companies and pipeline companies with interruptible service contracts. These customers may have had their supply of natural gas interrupted, during December 1999, or January or February 2000. The companies were identified by collecting information from natural gas local distribution companies and natural gas pipeline companies in the Northeastern United States.

5. The reporting burden is expected to be 2400 hours (400 respondents × 1 response × 6 hours).

**Statutory Authority:** Sections 3506(c) and 3507(j) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, DC May 12, 2000.

**Jay H. Casselberry,**

*Agency Clearance Officer, Statistics and Methods Group, Energy Information Administration.*

[FR Doc. 00–12499 Filed 5–16–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–1655–001]**

### Southern Company Services, Inc.; Notice of Filing

May 11, 2000.

Take notice that on May 8, 2000, Southern Company Services, Inc. (SCSI), acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Operating Companies), submitted for filing a response to the Staff's deficiency letter issued in this docket on April 14, 2000.

Copies of the filing were served on all intervenors in the proceeding and upon the affected State commissions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 285.214). All such motions and protests should be filed on or before May 22, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12330 Filed 5–16–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Intent To File Application for a New License

May 11, 2000.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No.:* 178.

c. *Date filed:* April 14, 2000.

d. *Submitted By:* Pacific Gas and Electric Company.

e. *Name of Project:* Kern Canyon.

f. *Location:* On the Kern River in Kern County, California.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the license at Pacific Gas and Electric Company, 77 Beal Street, San Francisco, California 94105. Interested parties can contact Cheryl Watkins on (415) 973–2189.

i. *FERC Contact:* Patricia W. Gillis, (202) 208–0735, *patricia.gillis@ferc.fed.us.*

j. *Expiration Date of Current License:* April 30, 2005.

k. The project consists of a dam, reservoir, tunnel, penstock, a powerhouse with one generator with a rated capacity of 10,600 kVA and transmission line.

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 178. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2003.

m. A copy of the notice of intent is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington,

D.C. 20426, or by calling (202) 208–1371. The notice may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12328 Filed 5–16–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Intent To File Application for a New License

May 11, 2000.

Take notice that the following notice of intent has been filed with the Commission and is available for public inspection:

a. *Type of filing:* Notice of Intent to File an Application for New License.

b. *Project No.:* 2174.

c. *Date filed:* March 29, 2000.

d. *Submitted By:* Southern California Edison Company.

e. *Name of Project:* Portal.

f. *Location:* Upper San Joaquin River Basin, Rancheria Creek and Big Creek in Fresno County, California.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act, 18 CFR 16.6.

h. Pursuant to Section 16.19 of the Commission's regulations, the licensee is required to make available the information described in Section 16.7 of the regulations. Such information is available from the licensee at Southern Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770. Interested parties can contact Stephen E. Pickett (818) 302–1564.

i. *FERC Contact:* Patricia W. Gillis, (202) 208–0735, *patricia.gillis@ferc.fed.us.*

j. *Expiration Date of Current License:* March 31, 2005.

k. The project consists of a dam having a 325 acre-feet storage capacity, 6-mile long water conveyance tunnel, steel penstock, powerhouse having an installed capacity of 10.8 MW, 33-kV transmission line and appurtenant facilities,

l. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2174. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by March 31, 2003.

m. A copy of the notice of intent is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The notice may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12329 Filed 5–16–00; 8:45 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6700–8]**

### Agency Information Collection Activities; Submission of EPA ICR No. 1911.01 to OMB for Review and Approval

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of submission to OMB.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) entitled: Data Acquisition for Anticipated Residue and Percent of Crop Treated (EPA ICR No. 1911.01), has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB approve this new ICR for a three year period. A **Federal Register** notice announcing the Agency's intent to seek OMB approval for this new ICR and a 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on August 4, 1999 (64 FR 42362). EPA did not receive any comments on this ICR during the comment period.

**DATES:** Additional comments may be submitted on or before June 16, 2000.

**FOR FURTHER INFORMATION OR A COPY CONTACT:** Sandy Farmer by phone at 202–260–2740, or via e-mail at "farmer.sandy@epa.gov", or download a copy of the ICR off the Internet at *http://www.epa.gov/icr.* Please refer to EPA ICR No. 1911.01.

**ADDRESSES:** Send comments, referencing EPA ICR No. 1911.01, to the following addresses:

Ms Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and to:

Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:**

*Title:* Data Acquisition for Anticipated Residue and Percent of Crop Treated.

*Abstract:* Under this ICR, EPA will issue a DCI to affected registrants under the authority of FIFRA section 3(c)(2)(B). Currently, there are two main categories of applications subject to this collection: those requiring submission of a full complement of supporting data, (*e.g.*, new chemicals, and biorationals); and those requiring submission of little or no data, (*e.g.*, "me-too" products) for previously registered chemicals and use patterns. Applicants for a "me-too" product (*i.e.*, a pesticide claimed to be substantially similar in composition and use to a product previously registered by the EPA) may be required only to use EPA Form 8570–34 ("Certification with Respect to Citation of Data") and EPA Form 8570–35 ("Data Matrix") to certify that the applicant intends to rely on data previously submitted to the EPA by another producer, the applicant has contacted the appropriate company (owning the data that the applicant is referencing), and the applicant has offered to pay reasonable compensation for the use of the data.

If EPA relies on ARs data when establishing or reassessing a tolerance, it must issue a DCI, and if the EPA used the percent of crop treated data estimates for a tolerance action, it may issue a DCI. A DCI is a letter sent to the registrant explaining the data submission requirement, requests specific data, sets out a time frame for a response to EPA, and provides applicable forms and guidelines to assist the registrant with the completion of the DCI request. A registrant must respond within 90 days of receipt of the DCI. The response must describe plans to submit the required data in accordance with time frame specified, and, if applicable, contain suggested protocols for monitoring studies. Failure to generate the requested data, or respond to the DCI in a timely manner could result in Agency action to modify or revoke the tolerance.

*Burden Statement:* The annual "respondent" burden for this ICR is estimated to range from 59 hours to 13,636 hours per response, depending on the type of DCI.

According to the Paperwork Reduction Act, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For this collection, it is the time reading the regulations, planning the necessary data collection activities, conducting tests, analyzing data, generating reports and completing other required paperwork, and storing, filing, and maintaining the data. The agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection appear at the beginning and the end of this document. In addition OMB control numbers for EPA's regulations, after initial display in the final rule, are listed in 40 CFR part 9 and 48 CFR Chapter 15.

*Respondents/Affected Entities:* Pesticide registrants.

*Estimated Number of Annual Respondents:* 31.

*Frequency of Response:* Once. Five years after tolerance decision.

*Estimated number of annual responses for each respondent:* 1.

*Estimated Total Annual Burden:* 29,807 hours.

*Estimated Total Annualized Burden Costs:* $2,773,866.

Dated: May 10, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–12392 Filed 5–16–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6700–9]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Emission Standards for Hazardous Air Pollutants (NESHAP) for Perchloroethylene (PCE) Dry Cleaning Facilities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP for Perchloroethylene (PCE) Dry Cleaning Facilities Subpart M, OMB Control Number 2060–0234 and expiration date of 6/30/00. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before June 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No.1415.04.

For technical questions about the ICR contact Joyce Chandler at (202) 564–7073, by email at chandler.joyce@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* National Emission Standards for Hazardous Air Pollutants for Perchloroethylene (PCE) Dry Cleaning Facilities Subpart M (OMB Control No. 2060–0234; EPA ICR No. 1415.04) expiring 6/30/00. This is a request for extension of a currently approved collection.

*Abstract:* These standards apply to owners or operators of dry cleaning facilities that use perchloroethylene (PCE). Owners or operators of such facilities must provide EPA, or the delegated State regulatory authority, with the one-time notifications and reports. The owners or operators must also perform weekly monitoring (or biweekly for the smallest facilities) and must keep records for 5 years. The notification and reports enable EPA or the delegated State regulatory authority to determine whether the appropriate control technology is installed and properly operated and maintained, and to schedule inspections and/or compliance assistance activities. The responses to this information collection are mandatory under Clean Air Act section 112 and 40 CFR part 63, subpart M. The responses are not anticipated to be kept confidential due to the nature of the information collected; however, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in 40 CFR part 2. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 10/29/99 (64 FR 58396); No comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for this collection of information is estimated to average 230 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Dry Cleaning Plants.

*Estimated Number of Respondents:* 25,090.

*Frequency of Response:* 2 per new facility.

*Estimated Total Annual Hour Burden:* 1,212,129.

*Estimated Total Annualized Capital and Operating & Maintenance Cost Burden:* 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1415.04 and OMB Control No. 2060–0234 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 10, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–12393 Filed 5–16–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6700–5]**

## Integrated Risk Information System (IRIS): Announcement of 2000 Program—Addendum; Request for Information

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; addendum to announcement of IRIS 2000 program and request for scientific information on health effects that may result from chronic exposure to chemical substances.

**SUMMARY:** The Integrated Risk Information System (IRIS) is an Environmental Protection Agency (EPA) data base that contains EPA scientific consensus positions on human health effects that may result from chronic exposure to chemical substances in the environment. On January 12, 2000, EPA announced the 2000 IRIS agenda and solicited scientific information from the public for consideration in assessing health effects from specific chemical substances. This notice adds the chemical substances hexachlorobenzene and hexahydro-1,3,5-trinitro-triazine ("RDX") to the IRIS agenda, and solicits scientific data and evaluations for consideration in EPA's assessments.

**DATES:** Please submit information in response to this notice by July 17, 2000.

**ADDRESSES:** Please send relevant scientific information to the IRIS Submission Desk in accordance with the instructions provided under "Submission of Information" in this notice.

**FOR FURTHER INFORMATION CONTACT:** For information on the IRIS program, contact Amy Mills, National Center for Environmental Assessment (mail code 8601D), U.S. Environmental Protection Agency, Washington, DC 20460, or call (202) 564–3204, or send electronic mail inquiries to mills.amy@epa.gov. For general questions about access to IRIS, or the content of IRIS, please call the Risk Information Hotline at (513) 569–7254.

**SUPPLEMENTARY INFORMATION:**

### Background

IRIS is an EPA data base containing Agency consensus scientific positions on potential adverse human health effects that may result from chronic (or lifetime) exposure to chemical substances found in the environment. IRIS currently provides health effects information on over 500 specific chemical substances.

IRIS contains chemical-specific summaries of qualitative and quantitative health information in support of the first two steps of the risk assessment process, i.e., hazard identification and dose-response evaluation. IRIS information includes the reference dose for noncancer health effects resulting from oral exposure, the reference concentration for noncancer health effects resulting from inhalation exposure, and the carcinogen assessment for both oral and inhalation exposure. Combined with specific situational exposure assessment information, the summary health hazard information in IRIS may be used as a source in evaluating potential public health risks from environmental contaminants.

### The IRIS Program

EPA's process for developing IRIS consists of: (1) An annual **Federal Register** announcement of EPA's IRIS agenda and call for scientific information from the public on the selected chemical substances, (2) a search of the current literature, (3) development of health assessments and draft IRIS summaries, (4) peer review within EPA, (5) peer review outside EPA, (6) EPA consensus review and management approval, (7) preparation of final IRIS summaries and supporting documents, and (8) entry of summaries and supporting documents into the IRIS data base.

### Purpose of This Notice

EPA is adding the chemical substances hexachlorobenzene (CAS No. 118–74–1) and hexahydro-1,3,5-trinitro-triazine or "RDX," (CAS No.121–82–4) to its assessment agenda for fiscal year 2000. EPA is hereby requesting scientific information from the public for consideration in these two assessments.

As described in the January 12, 2000, **Federal Register** document (63 FR 1863) announcing the IRIS agenda for fiscal year 2000, EPA is testing ways to cooperate with external parties, including other government agencies, in the development of supporting documentation for IRIS. The Agency is initiating these two assessments to build upon a common interest with other federal agencies. EPA's Superfund program has identified a strong need to update the existing IRIS entry for hexachlorobenzene. This substance is frequently found at Superfund sites and is critical to a number of human health risk assessments. Concurrently, the Agency for Toxic Substances and Disease Registry (ATSDR) has identified hexachlorobenzene as a priority substance for developing a revised Toxicological Profile. EPA and ATSDR will therefore coordinate their efforts in developing the IRIS Toxicological Review and the revised ATSDR Toxicological Profile for Hexachlorobenzene. Similarly, the U.S. Army has identified a strong need to update the existing IRIS entry for RDX, which frequently occurs at federal facilities operated by the U.S. Army and is critical to a number of human health risk assessments. EPA and the U.S. Army will coordinate their efforts in developing a Toxicological Review for RDX. New scientific information is available to evaluate and reassess the potential health effects of both substances.

These joint efforts with other federal agencies is a pilot effort to utilize federal resources more effectively and provide more consistent information to the public. Completion of the hexachlorobenzene and RDX assessments and addition to the IRIS data base is expected by fiscal year 2002.

### Submission of Information

As in previous **Federal Register** documents announcing the annual IRIS agenda, EPA is soliciting public information on hexachlorobenzene and RDX. While EPA conducts a thorough literature search for each chemical substance, there may be other articles or unpublished studies we are not aware of. We would greatly appreciate receiving scientific information from the public during the information gathering. Interested persons should provide scientific comments, analyses, studies, and other pertinent scientific information. The most useful documents for EPA are unpublished studies or other primary technical sources that we may not otherwise obtain through open literature searches. Also note that if you have submitted certain information previously, there is no need to resubmit that information. Information from the public is being solicited for 60 days via this notice.

### Procedures for Submission

As described in the January 12, 2000, **Federal Register** document, submissions will be handled in a three-step process:

1. Submission Inventory: First, you should simply provide a list within 60

days of this notice briefly identifying all the information (reports, papers, articles, etc.) you wish to submit. The list should specify by name and CASRN (Chemical Abstract Service Registry Number) the chemical substance(s) to which the information pertains, state the type of assessment that is being addressed (e.g., carcinogenicity), and describe briefly the information to be submitted for consideration. Where possible, documents should be listed in scientific citation format, that is, author(s), title, journal, and date. Your cover letter should: state that the correspondence is an IRIS submission, describe in general terms the purpose of the submission, and include names, addresses, and telephone numbers of persons to contact for additional information. Mail two copies of the submission to the IRIS Submission Desk, c/o Courtney R. Johnson, National Center for Environmental Assessment (8601D), U.S. Environmental Protection Agency, Washington, DC 20460.

Alternatively, you may submit the submission inventory and cover letter electronically to IRIS.desk@epa.gov. Electronic information must be submitted in WordPerfect or as an ASCII file. Information will also be accepted on 3.5" disks. All information in electronic form must be identified as an IRIS submission.

2. EPA Replies to Submission Inventory: In the second step, EPA will compare the submission inventory to existing files and identify the information that should be submitted. This step will help prevent an influx of duplicative information. You will receive notification requesting full submission of the selected material.

3. Full Submission of Selected Material: In the third step, you should send in the information indicated by EPA within 30 days of EPA's reply. Prompt response to EPA will ensure that your material can be considered in the assessment in a timely fashion. Submittals should include a cover letter addressing all of the points in item 1 above. In addition, when you submit results of new health effects studies concerning existing substances on IRIS, you should include a specific explanation of how and why the study results could change the information in IRIS.

Please send two copies, at least one of which should be unbound, to the IRIS Submission Desk, as described in Step 1. The IRIS Submission Desk will acknowledge receipt of your information.

Confidential Business Information (CBI) should not be submitted to the IRIS Submission Desk. CBI must be submitted to the appropriate EPA office via established procedures for submission of CBI (see 40 CFR, part 2, subpart B). If you believe that a CBI submission contains information with implications for IRIS, please note that in the cover letter accompanying the submission to the appropriate office.

You may also request to augment your submission with a scientific briefing to EPA staff. Such requests should be made directly to Amy Mills, IRIS Program Manager (see **FOR FURTHER INFORMATION CONTACT**).

Dated: May 4, 2000.

**William H. Farland,**

*Director, National Center for Environmental Assessment.*

[FR Doc. 00–12394 Filed 5–16–00; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–00660; FRL–6559–6]**

## FIFRA Scientific Advisory Panel; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** There will be a 2–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review the following set of scientific issues being considered by the Agency pertaining to Consultation: National Drinking Water Survey Design for Assessing Chronic Exposure and Mammalian Toxicity Assessment Guidelines for Protein Plant-Pesticides. The meeting is open to the public. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Larry Dorsey or Paul Lewis at the address listed under **FOR FURTHER INFORMATION CONTACT** at least 5 business days prior to the meeting so that appropriate arrangements can be made.

**DATES:** The meeting will be held on Tuesday, June 6 and Wednesday, June 7, 2000, from 8:30 a.m. to 4:30 p.m.

**ADDRESSES:** The meeting will be held at Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the Sheraton hotel is: (703) 486–1111.

Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your request must identify docket control number OPP–00660 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Larry Dorsey or Paul Lewis, Designated Federal Officials, FIFRA SAP (7101C), Office of Science Coordination and Policy, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5369; fax number: (703) 605–0656; e-mail address: dorsey.larry or lewis.paul@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to those persons who are or may be required to conduct testing of chemical substances under the Food Quality Protection Act (FQPA) or the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**. This 2-day meeting concerns several scientific issues undergoing consideration within the EPA Office of Pesticide Programs (OPP). The topics to be discussed are the following:

Session 1—Under the FQPA, drinking water is considered in aggregate exposure asssesements for pesticide tolerance reassessments. Since targeted monitoring data are needed for refined exposure assessments, OPP has proposed a design framework for assessing annual average pesticide concentrations in surface waters used as drinking water. Details of survey design issues and options will be presented on OPP's proposed design framework and on an independently proposed design framework.

Session 2—For this session, the Agency is soliciting guidance from the Panel on the assessment of the potential mammalian toxicity of proteins expressed as plant-pesticides. Questions will be presented on the use of animo acid homology with known toxins, *in-vitro* digestibility, dietary exposure, mechanisms of toxicity and other topics regarding the assessment of introduced proteins for potential mammalian toxicity.

Copies of the Panel's report of their recommendations will be available approximately 45 working days after the meeting and will be posted on the FIFRA SAP web site. Or, copies may be obtained by contacting the Public Information and Records Integrity Branch (PIRIB) at the address and telephone number listed below in Unit II–2.

**II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?**

1. *Electronically.* A meeting agenda is available at present and copies of EPA background documents for the meeting will be available by middle May, 2000. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA/SAP Internet Home Page at http://www.epa.gov/scipoly/sap/. To access this document, on the Home Page, select "**Federal Register** *Notice Announcing This Meeting.*" You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an administrative record for this meeting under docket control number OPP–00660. The administrative record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the session topics listed under Unit I of **SUPPLEMENTARY INFORMATION**, including any information claimed as Confidential Business Information (CBI). This administraive record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the administrative record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

**III. How Can I Request to Participate in this Meeting?**

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00660 in the subject line on the first page of your request. Members of the public wishing to submit comments should contact the persons listed above in **FOR FURTHER INFORMATION CONTACT** to confirm that the meeting date and the agenda have not been modified or changed.

Interested persons are permitted to file written statements before the meeting. To the extent that time permits, and upon advanced written request to the persons listed above in **FOR FURTHER INFORMATION CONTACT**, interested persons may be permitted by the Chair of the FIFRA SAP to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc.) There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral or written statements at the meeting should contact the persons listed above in **FOR FURTHER INFORMATION CONTACT** and submit 30 copies of their presentation and/or remarks to the Panel. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

1. *By mail.* You may submit a request to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your request electronically by e-mail to: "opp-docket@epa.gov." Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. Be sure to identify by docket control number OPP–00660. You may also file a request online at many Federal Depository Libraries.

**List of Subjects**

Environmental protection.

Dated: May 11, 2000.

**Martha Shimkin,**

*Acting Director, Office of Science Coordination and Policy.*

[FR Doc. 00–12378 Filed 5–16–00; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6701–9]**

## Meeting of the Ozone Transport Commission for the Northeast United States

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of meeting.

**SUMMARY:** The United States Environmental Protection Agency is announcing the 2000 Annual Meeting of the Ozone Transport Commission. This meeting is for the Ozone Transport Commission to deal with appropriate matters within the Ozone Transport Region in the Northeast and Mid-Atlantic States, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

**DATES:** The meeting will be held on June 1, 2000 from 8:30 a.m. to approximately 1 p.m.

**PLACE:** The meeting will be held at the Harraskeet Inn, 162 Main Street, Freeport, Maine 04032; (800) 342–6423.

**FOR FURTHER INFORMATION CONTACT:** Judith M. Katz, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2900.

**FOR DOCUMENTS AND PRESS INQUIRIES CONTACT:** Bruce S. Carhart, Ozone Transport Commission, 444 North Capitol Street N.W., Suite 638, Washington, DC 20001; (202) 508–3840; e-mail: ozone@sso.org; website: http://www.sso.org/otc

**SUPPLEMENTARY INFORMATION:** The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an "Ozone Transport Region" (OTR) comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New

Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Ozone Transport Commission is to deal with ground level ozone formation, transport, and control within the OTR.

The purpose of this notice is to announce that this Commission will meet on June 1, 2000. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of the Ozone Transport Commission are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

*Type of Meeting:* Open.

*Agenda:* Copies of the final agenda will be available from Lisa Sims of the OTC office (202) 508–3840 (by e-mail: ozone@sso.org or via our website at http://www.sso.org/otc) on Thursday, May 25, 2000. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, including reduction of motor vehicle and stationary source air pollution. The OTC is also expected to address issues related to the transport of ozone into its region, including actions by EPA under Sections 110 and 126 of the Clean Air Act, to evaluate the potential for additional emission reductions through new air pollution control measures, and to discuss market-based programs which could aid in the reduction of the pollutants that cause ozone.

Dated: May 10, 2000.

**Bradley M. Campbell,**

*Regional Administrator, EPA Region III.*

[FR Doc. 00–12386 Filed 5–16–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–181076; FRL–6557–6]**

## Buprofezin; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the California Department of Pesticide Regulation to use the pesticide buprofezin (CAS No. 95737–68–1) to treat up to 100,000 acres of cotton to control whiteflies. The Applicant proposes the use of a new chemical which has not been registered by the EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments, identified by docket control number OPP–181076, must be received on or before June 16, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181076 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9356; fax number: (703) 308–5433; e-mail address: beard.andrea@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | * Examples of potentially affected entities |
|---|---|---|
| State government | 9241 | State agencies that petition EPA for section 18 pesticide exemption. |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in this document. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–181076. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181076 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200

Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–181076. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action Is the Agency Taking?**

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. California Department of Pesticide Regulation has requested the Administrator to issue a specific exemption for the use of buprofezin on cotton to control silverleaf whitefly. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that a new strain, or possibly a new species, of whitefly, referred to as the strain B of sweet potato whitefly, or the silverleaf whitefly, has been a major pest of cotton since the early 1990s. Since that time, this pest has caused extensive damage to cotton and vegetable crops. The Applicant claims that adequate control will not be achieved with currently registered products and alternative cultural practices. The Applicant points out that large populations of silverleaf whiteflies have demonstrated resistance to available insecticidal control. The Applicant indicates that without adequate control of this pest in cotton, significant economic losses will occur.

The Applicant proposes to make no more than one application of buprofezin, formulated as Applaud 70WP (70% active ingredient (a.i.)), at a rate of 0.35 lb. a.i. per acre, on up to 100,000 acres of cotton, in California. The use season proposed is June 1 to October 15, 2000. If all 100,000 acres were treated, a total of 50,000 lbs. of product, or 35,000 lbs. of active ingredient, would be used.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient) which has not been registered by the EPA. The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the California Department of Pesticide Regulation.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: May 5, 2000.

**Peter Caulkins,**

*Acting Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 00–12307 Filed 5–16–00; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–00599B; FRL–6553–9]**

## Pesticides; Guidance for Pesticide Registrants on Mandatory and Advisory Labeling Statements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** The Agency has issued Pesticide Registration (PR) Notice 2000–5 entitled "Guidance for Mandatory and Advisory Labeling Statements." This PR notice provides guidance to the registrant for improving the clarity of labeling statements in order to avoid confusing directions and precautions and to prevent the misuse of pesticides.

**FOR FURTHER INFORMATION CONTACT:** Jeff Kempter, (7505C), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5448; fax number: (703) 305–6920; e-mail address: kempter.carlton@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this Action Apply to Me?*

This action is directed to the public in general. Although this action may be of particular interest to those persons who are required to register pesticides. Since other entities may also be

interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically*. You may obtain electronic copies of this document and the PR Notice from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides. You can also go directly to the listings from the EPA Internet Home Page at http://www.epa.gov. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the**Federal Register** listings at http://www.epa.gov/fedrgstr.

2. *Fax-on-demand*. You may request a faxed copy of the Pesticide Registration (PR) Notice entitled "Guidance for Mandatory and Advisory Labeling Statements," by using a faxphone to call (202) 401–0527 and selecting item 6128. Also, you may select item 6129 for the paper entitled "Responses to Public Comments on Draft PR Notice on Mandatory/Advisory Labeling." You may also follow the automated menu.

3. *In person*. The Agency has established an official record for this action under docket control number OPP–00599B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

## II. What Guidance Does this PR Notice Provide?

This notice provides guidance to the registrant for improving the clarity of labeling statements in order to avoid confusing directions and precautions, and to prevent the misuse of pesticides. The Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) section 2(ee) defines the term "to use any registered pesticide in a manner inconsistent with its labeling" (i.e., misuse) as use of ". . . any registered pesticide in a manner not permitted by the labeling . . . ." For purposes of this notice, the term "use" includes storage, transportation, handling, pre-application activities, mixing and loading, worker notification and worker protection, application, post-application activities and disposal. Registrants are not required to submit applications in response to this notice, however, EPA will review applications in light of the guidance presented here and seek to clarify labeling statements that are unclear or ambiguous. Finally, registrants may no longer add or change advisory labeling statements to existing products by notification as previously permitted by PR Notices 95–2 and 98–10. This PR Notice supersedes those PR Notices concerning the use of notification for adding or modifying advisory statements.

## III. Guidance on Mandatory and Advisory Labeling Statements

Statements on the pesticide labeling may be interpreted by users differently from what the registrant or EPA intended when the labeling was accepted. If EPA believes that misuse has occurred, an administrative law judge or a court may have to decide whether a product's labeling statements are clear enough for the user to understand how to lawfully use the product. Pesticide labeling needs to clearly identify what is required of the user to handle and apply a pesticide safely. The Agency is engaged in numerous efforts to improve pesticide product labels in general (e.g., the Consumer Labeling Initiative), as well as in specific areas of the labeling (e.g., bee precautionary labeling and pesticide drift labeling).

Mandatory statements, which commonly use imperative verbs such as "must" or "shall," either require action or prohibit the user from taking certain action. Advisory statements generally provide information, either in support of the mandatory statements or about the product in general. To ensure that the intent of each labeling statement is clear, mandatory statements need to be clearly distinguishable from advisory statements.

Currently, labeling provisions are enforced by taking into consideration all of the information presented on the label and by reading advisory statements in the context of the entire label. Problems can arise when advisory statements are either vague or ambiguous in meaning, or are inconsistent with mandatory labeling statements. In the past, advisory statements have commonly used suggestive verbs such as "should," "may," or "recommend" to encourage the user to achieve the directed behavior, but often these statements can be unclear as to whether they are mandatory or advisory. In a recent misuse enforcement action, for example, the person charged with the violation argued that advisory statements misled him into taking action which was inconsistent with the mandatory statements.

Advisory language using terms such as "should," "may," and "recommend" can create ambiguities as to the intent of the direction or precaution. Too often, common everyday speech using the word "should" creeps into mandatory label statements where the imperative tense is needed to communicate that certain action is required. Another problem is contradictory headings and statements. A set of mandatory directions preceded by an advisory heading such as "Use Recommendations" potentially conflicts as to the nature of the intended action. Lastly, the use of words such as "should" in advisory language can mistakenly imply that an unaccepted use is permissible. For example, the direction "you should remove all food articles prior to use" on a product that is not registered for any food uses could be mistakenly read to suggest that it is not mandatory to remove all food from the area to be treated.

The Agency seeks to improve mandatory and advisory labeling statements by providing guidance on how they can best be written. Mandatory statements are generally written in imperative or directive terms (such as "shall," "must," "do this," "do not") so that a typical user will understand that these statements direct the user to take or avoid certain actions, and that failure to follow these instructions is a misuse of the product. Advisory statements are generally best written in descriptive or nondirective terms to support the mandatory statements or provide information. Suggestive terms such as "should," "may," or "recommend" may be confusing or ambiguous, or potentially

conflict with mandatory labeling statements; thus, they are to be avoided. EPA realizes that the use of descriptive terms for advisory statements is not appropriate for every situation and that there are times where it may be necessary to use "should," "may," "recommend," or similar words. However, in most cases it is best to craft advisory labeling statements in straightforward, descriptive language.

The PR Notice was developed from a draft document by the same title that was released for public comment on June 2, 1999 (64 FR 29641) (FRL–6079–4). The Agency received comments from various organizations. Each of the commenters offered recommendations for improving the document. All comments were extensively evaluated and considered by the Agency. This revised version embodies some of the recommendations of the commenters. A summary of the public comments, as well as the Agency's response to the comments, is being made available as described in Units I.B.1. and I.B.2.

**IV. Why is a PR Notice Guidance and Not a Rule?**

The PR Notice discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, this policy is not binding on either EPA or any outside parties. Although this guidance document provides a starting point for EPA decisions, EPA will depart from this policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that this policy is not appropriate for a specific pesticide or that the specific circumstances demonstrate that this policy should be abandoned.

**List of Subjects**

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: May 10, 2000.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

[FR Doc. 00–12379 Filed 5–16–00; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6606–7]**

### North Penn Area 1 Superfund Site; Notice of Proposed Administrative Cost Recovery Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice, request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), notice is hereby given of a proposed administrative cost recovery settlement under Section 122(h)(1) of CERCLA concerning the North Penn Area 1 Superfund Site, Montgomery County, Pennsylvania, which was signed by the EPA Acting Regional Administrator, Region III, and the Assistant Attorney General for the Department of Justice, Environment and Natural Resources Division. The proposed settlement is intended to resolve an EPA claim under Section 107(a) of CERCLA against the Estate of Harry Maurer. The settlement requires the settling party to pay $20,000 to the Hazardous Substance Superfund.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency and the United States Department of Justice will consider all comments received and may modify or withdraw their consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. The agreement has been approved by the Attorney General, United States Department of Justice, or her designee.

**DATES:** Comments must be submitted on or before June 16, 2000.

**ADDRESSES:** The proposed settlement and additional background information relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed settlement may be obtained from Suzanne Canning, Regional Docket Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103, (215) 814–2476. Comments should reference the North Penn Area 1 Superfund Site and EPA Docket No. III–99–008–DC and should be forwarded to Ms. Canning at the above address.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Cinti, Senior Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103; (215) 814–2634.

Dated: May 3, 2000.

**Bradley M. Campbell,**

*Regional Administrator, U.S. Environmental Protection Agency, Region III.*

[FR Doc. 00–12391 Filed 5–16–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6701–7]**

### Proposed Administrative Cashout Deminimis Settlement Under Section 122(g) of the Comprehensive Environmental Response Compensation and Liability Act; in the Matter of Tri-County/Elgin Landfill Site, Kane County, Illinois

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622(i), notice is hereby given of a proposed administrative settlement for recovery of past and projected future response costs concerning the Tri-County/Elgin Landfill site in Kane County, Illinois, with the Precision Diamond Tool Company. The settlement requires Precision Diamond Tool Company to pay $20,000.00 to the Hazardous Substance Superfund.

On October 13, 1998, EPA sent out *deminimis* settlement offers to 386 *deminimis* generators and transporters (the "*deminimis* offerees"). The Administrative Order on Consent accompanying that *deminimis* offer was designated as EPA Docket No. V–W–99–C–507. Attached to the Administrative Order on Consent in EPA Docket No. V–W–99–C–507 is a volumetric ranking, in the form of a spread sheet, listing the *deminimis* offerees, the volume of waste containing hazardous substances contributed to the Site by each *deminimis* offeree, and the *deminimis*

settlement payment amount for each *deminimis* offeree (the "Volumetric Ranking"). The Volumetric Ranking is identified as Appendix A to the Administrative Order on Consent in EPA Docket No. V–W–99–C–507. The documented amount of hazardous substances contributed to the Site by each Respondent listed in Appendix A to the Administrative Order on Consent in EPA Docket No. V–W–99–C–507 does not exceed 0.5% of the "Adjusted Documented Volume" (as defined in Appendix B to the Administrative Order on Consent in EPA Docket No. V–W–99–C–507) of hazardous substances at the Site, and the hazardous substances contributed by each Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site.

Out of the 386 *deminimis* offerees that were extended offers as part of EPA Docket No. V–W–99–C–507, 125 executed signature pages, certifying their commitment to participate in that *deminimis* settlement. Public comment on the terms of the *deminimis* settlement was conducted from April 23, 1999, through May 24, 1999. Notice that the *deminimis* settlement was final and effective was mailed to all settling parties on June 11, 1999.

Precision Diamond Tool Company inadvertently was not included in Appendix A to the Administrative Order on Consent in EPA Docket No. V–W–99–C–507 and did not participate in that settlement. Precision Diamond Tool does, however, have a documented volume. For purposes of this *deminimis* settlement, Precision Diamond Tool's documented volume was calculated in the same way the volume was calculated for each *deminimis* generator listed in Appendix A to the Administrative Order on Consent in EPA Docket No. V–W–99–C–507. Precision Diamond Tool's documented volume is 862 cubic yards, thus making it eligible for a *deminimis* settlement offer. In Appendix A to the Administrative Order on Consent in EPA Docket No. V–W–99–C–507, Robin Construction is listed with a documented volume of 870 cubic yards and a *deminimis* settlement payment amount of $20,079.00, and Custom Packaging Company is listed with a documented volume of 860 cubic yards and a *deminimis* settlement payment amount of $19,849.00. Precision Diamond Tool's documented volume falls between the documented volume of these two generators. Accordingly, Precision Diamond Tool's *deminimis* settlement payment amount should also fall between the payment amount of these two *deminimis* generators. Therefore, Precision Diamond Tool's *deminimis* payment amount is determined to be $20,000.00.

Under the terms of the settlement, Precision Diamond Tool Company agrees to pay its settlement amount. In exchange for its payment, the United States covenants not to sue or take administrative action pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 and 9607(a), relating to the Site. In addition, Precision Diamond Tool Company is entitled to protection from contribution actions or claims as provided by Sections 113(f) and 122(g)(5) of CERCLA, 42 U.S.C. 9613(f) and 9622(g)(5), for all response costs incurred and to be incurred by any person at the Site.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. The Agency's response to any comments received will be available for public inspection at EPA's Region 5 Office at 77 West Jackson Boulevard, Chicago, Illinois 60604 and at the Gail Borden Public Library in Elgin.

**DATES:** Comments must be submitted on or before June 16, 2000.

**ADDRESSES:** The proposed settlement is available for public inspection at EPA's Record Center, 7th floor, 77 W. Jackson Blvd., Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6670. Comments should reference the Tri-County/Elgin Landfill site, Kane County, Illinois, and EPA Docket No. V–W–00–C–585, and should be addressed to Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey A. Cahn, Associate Regional Counsel, U.S. EPA, Mail Code C–14J, 77 W. Jackson Blvd., Chicago, Illinois 60604, telephone (312) 886–6670.

**Authority:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et. seq.*

Dated: May 8, 2000.

**William E. Muno,**

*Director, Superfund Division.*

[FR Doc. 00–12389 Filed 5–16–00; 8:45 am]

**BILLING CODE 6560–50–U**

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2409]**

### Petition for Clarification of Action in Rulemaking Proceeding

Dated: May 11, 2000.

Petition for Clarification has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by June 1, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules (WT Docket No. 99–168)

*Number of Petitions Filed:* 1.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–12363 Filed 5–16–00; 8:45 am]

**BILLING CODE 6712–01–M**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 011299–003.

*Title:* A.P. Moller-Maersk Sealand/P&O Nedlloyd Agreement.

Parties:

A.P. Moller-Maersk Sealand.

P&O Nedlloyd Limited.

*Synopsis:* The proposed modification restates the agreement to reflect the current understanding of the parties.

Dated: May 12, 2000.

By Order of the Federal Maritime Commission.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–12431 Filed 5–16–00; 8:45 am]

BILLING CODE 6730–01–P

## FEDERAL MARITIME COMMISSION

### Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR Part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

D & W Millennium Freight Systems, Inc., 156–15 146th Avenue, Suite 206, Jamaica, NY 11434, Officer: Donald K. Poon, President (Qualifying Individual)

Green Integrated Logistics, Inc., 19750 Magellan Drive, #W, Torrance, CA 90502, Officers: Sung Il Chung, Vice President, (Qualifying Individual), Won Kyung Kim, President

Independence Shipping Lines, Ltd., 1020 Christina Avenue, Building 23, Wilmington, DE 19801, Officers: Dulce B. McCauley, Sen. Vice President (Qualifying Individual), Daniel S. Cabellos, President

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants:

Chemo International Inc., 8100 N.W. 68th Street, Miami, FL 33166, Officers: Hugo Monterroso, Asst. Secretary (Qualifying Individual), Robert Sajet, President

Embassy Freight International L.L.C., 1590 Phoenix Blvd., Suite 240, Atlanta, GA 30349, Officers: Vince Landy, Joint Managing Partner (Qualifying Individual), Brett Reddall, Joint Managing Partner

Exim Forwarding, Inc., 440 Benmar, Suite 2100, Houston, TX, 77080–3171, Officer: Janice K. Rydlund, Vice President (Qualifying Individual)

Friendly Forwarders, Inc., 316 Miracle Mile, Suite 2, Coral Gables, FL 33134, Officers: Mariana Gonzalez, Vice President (Qualifying Individual), Francisco Tamargo, President

Dated: May 12, 2000.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 00–12430 Filed 5–16–00; 8:45 am]

BILLING CODE 6730–01–U

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 31, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Anthony & Suzanne Steele, Bentonville, Arkansas; to retain voting shares of BOR Bancshares, Inc., Rogers, Arkansas, and thereby indirectly retain voting shares of Bank of Rogers, Rogers, Arkansas.

Board of Governors of the Federal Reserve System, May 11, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–12411 Filed 5–16–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 9, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Bankoelwein, Inc., Oelwein, Iowa; to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Oelwein, Oelwein, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Franklin Bancorp, Inc., Washington, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Franklin County, Washington, Missouri.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Greater Bay Bancorp, Palo Alto, California; to acquire 100 percent of the voting shares of Bank of Santa Clara, Santa Clara, California.

Board of Governors of the Federal Reserve System, May 11, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–12412 Filed 5–16–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 2000.

**A. Federal Reserve Bank of Atlanta** (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

*1. Regions Financial Corporation*, Birmingham, Alabama; to merge with Heritage Bancorp, Inc., Hutto, Texas, and thereby indirectly acquire Texas Heritage Bank, Hutto, Texas.

**B. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Three Rivers Bankshares, Inc.*, Fort Gibson, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of Fort Gibson Bancshares, Inc., Fort Gibson, Oklahoma, and thereby indirectly acquire Fort Gibson State Bank, Fort Gibson, Oklahoma.

Board of Governors of the Federal Reserve System, May 12, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–12413 Filed 5–16–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 9, 2000.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. The PrivateBancorp, Inc.*, Chicago, Illinois; to acquire The PrivateBank (a federal savings bank in organization), St. Louis, Missouri, and thereby operate a nonbank depository institution (a federal savings bank) pursuant to Section 4(c)(8) of the BHC Act and section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, May 11, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–12409 Filed 5–16–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 2000.

**A. Federal Reserve Bank of San Francisco** (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

*1. Equitable PCI Bank, Inc.*, Makati City, Philippines; to acquire PCI Express Padala, Inc., Los Angeles, California, and thereby to engage in money remittance activities, previously approved by Board Order in *Norwest Corporation*, 81 Federal Reserve Bulletin 1130 (1995).

Board of Governors of the Federal Reserve System, May 11, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–12410 Filed 5–16–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11 a.m., Monday, May 22, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 12, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–12489 Filed 5–12–00; 5:06 pm]

**BILLING CODE 6210–01–P**

## FEDERAL TRADE COMMISSION

**[File No. 971 0070]**

## BMG Music; Capitol Records, Inc.; Sony Music Entertainment Inc.; Time Warner Inc.; and Universal Music & Video Distribution Corp., et al.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreements.

**SUMMARY:** The consent agreements in these five matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaints that accompany the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

**DATES:** Comments must be received on or before June 9, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

**FOR FURTHER INFORMATION CONTACT:** Richard Parker, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326–3300.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreements, and the allegations in the complaints. An electronic copy of the full text of the consent agreements package can be obtained from the FTC Home Page (for May 10, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis To Aid Public Comment on the Proposed Consent Order

The Federal Trade Commission ("Commission") has accepted agreements containing proposed consent orders from the corporate parents of the five largest distributors of prerecorded music in the United States. The five distributors, Sony Music Distribution ("Sony"), Universal Music & Video Distribution ("UNI"), BMG Distribution ("BMG"), Warner-Elektra-Atlantic Corporation ("WEA"), and EMI Music Distribution ("EMI"), account for approximately 85% of the industry's $13.7 billion in domestic sales. The agreements would settle charges by the Commission that these five companies violated Section 5 of the Federal Trade Commission Act by engaging in practices that restricted competition in the domestic market for prerecorded music.

The proposed consent orders have been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the agreements and the comments received and will decide whether it should withdraw from the agreements or make final the agreements' proposed orders.

The purpose of this analysis is to invite public comment concerning the consent order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify its terms in any way.

There are five separate complaints and proposed consent orders in this matter, one of each of the distributors, which are virtually identical with the exception of minor variations related to the corporate structure of each respondent.

*Analysis*

The complaints allege that all five distributors have engaged in acts and practices that have unreasonably restrained competition in the market for prerecorded music in the United States through their adoption, implementation and enforcement of Minimum Advertised Price ("MAP") provisions of their Cooperative Advertising Programs.

These five companies, which collectively dominate this market, adopted significantly stricter MAP programs between late 1995 and 1996. Under the new MAP provisions, retailers seeking any cooperative advertising funds were required to observe the distributors' minimum advertised prices in all media advertisements, even in advertisements funded solely by the retailers. Retailers seeking any cooperative funds were also required to adhere to distributors' minimum advertised prices on all in-store signs and displays, regardless of whether the distributor contributed to their cost.

Failure to adhere to the respondents' MAP provisions for any particular music title would subject the retailer to a suspension of all cooperative advertising funding offered by the distributor for an extended period, typically 60 to 90 days.[1] The severity of these penalties ensured that even the

[1] BMG's policy differed slightly. Under the BMG MAP provisions, the suspension of all cooperative advertising funding required a finding of two MAP violations. However, BMG MAP provisions also established a suspension of up to a year for repeated violations.

most aggressive retail competitors would stop advertising prices below MAP. The complaints further alleges that by defining advertising broadly enough to include all in-store displays and signs, the MAP policies effectively precluded many retailers from communicating prices below MAP to their customers.

The MAP provisions were implemented with the anticompetitive intent to limit retail price competition and to stabilize the retail prices in this industry. Prior to the adoption of these policies, new retail entrants, especially consumer electronic chains, has sparked a retail "price war" that had resulted in significantly lower compact discs prices to consumers and lower margins for retailers. Some retailers, who could not compete with the newcomers, asked the distributions for discounts or for more stringent MAP provisions to take pressure off their margins.

The complaints allege that the distributors were concerned that declining retail prices could cause a reduction in wholesale prices. Through these stricter MAP programs, the distributors hoped to stop retail price competition, take pressure off their own margins, and eventually increase their own prices. The distributors' actions were effective. Retail prices were stabilized by these MAP programs. Thereafter, each distributor raised its wholesale prices.

While some vertical restraints can benefit consumers (known as "effciencies") by enhancing interbrand competition and expanding market output, plausible efficiency justifications are absent in this case. Beneficial vertical restraints encourage retailers to provide better services to consumers than would have been provided to the absence of the restraint. However, in this case, the distributors' MAP policies provided no benefits to consumers. In particular, the new retailers that charged lower prices to consumers provided services that were as good as, and in some cases, superior to the services provided by the higher priced retailers they were moving to replace. These policies were plainly not motivated by "free-riding" concerns.

The substantial anticompetitive effects of these programs, balanced against the absence of plausible efficiency rationales for them, give us reason to believe that these programs constitute unreasonable vertical restraints in violation of Section 5 of the FTC Act under a rule of reason analysis. Although the Commission has concluded that compliance by retailers with these programs did not constitute per se unlawful minimum resale price maintenance agreements, it should be noted that the MAP provisions implemented here go well beyond typical cooperative advertising programs, where a manufacturer places restraints on the prices its dealers may advertise in a advertisements funded in whole or in part by the manufacturer. Such traditional cooperative advertising programs are judged under the rule of reason. American Cyanamid, 123 F.T.C. 1257, 1265 (1997); U.S. Pioneer Electronics Corp., 115 F.T.C. 446, 453 (1992); The Advertising Checking Bureau, Inc., 109 F.T.C. 146 (1987).

The market structure in which the distributors' MAP provisions have operated also gives us reason to believe that these programs violate Section 5 of the FTC Act as practices which materially facilitate interdependent conduct. The MAP programs were implemented with an anticompetitive intent and they had significant anticompetitive effects. In addition, there was no plausible business justification for these programs. *E.I. du Pont de Nemours & Co.* v. *FTC*, 729 F.2d 128 (2d Cir. 1984).

The wholesale market for prerecorded music is characterized by high entry barriers which limit the likelihood of effective new entry. In this industry, the respondents can easily monitor the pricing and policies of their competition.

The history of MAP policies in this industry also indicates a propensity for interdependent behavior among the distributors. All five distributors adopted MAP policies in 1992 and 1993 that generally required adherence to minimum advertised prices in advertisements paid for by the distributors. In 1995 and 1996, all five distributors expanded the restrictions in their MAP programs to require adherence to minimum advertised prices in advertisements regardless of the funding source. In one case, the new MAP provisions were announced four months prior to the effective date. During this four month hiatus, two other distributors adopted similar provisions. By the end of 1996, all five distributors had adopted MAP provisions that were virtually identical. Shortly thereafter, several distributors embarked on high profile enforcement actions against major discounters who were discounting prices; these enforcement actions were widely publicized by the trade press.

*The Proposed Consent Order*

There are five separate consent orders, one for each company.

Part I of the proposed orders establishes definitions. These definitions make clear that the provisions of the order apply to the directors, officers, employees, agents and representative of the five distributors. This section also makes clear that its provisions apply to cooperative funding efforts regardless of whether the retailer sells prerecorded music in traditional retail stores or over the Internet.

Part II of the orders requires all of the distributors to discontinue their MAP programs in their entirety for a period of seven years. The Commission believes this relief is necessary because some of the challenged MAP programs have been in place for more than four years. Quite simply, it will take several years without the MAP restrictions to restore retail price competition.

Part III of the orders contains several prohibitions to ensure that the distributors are unable to maintain the anticompetitive status quo in some other way. Subsection a prohibits the companies from conditioning the availability of any advertising funds on a retailer's actual selling price. Subsection B prohibits the distributors from restricting the availability of any advertising funds on the basis of an advertisement funded solely by its customers that do not adhere to the minimum advertised price. Subsection C prohibits the distributors from making payments that exceed the retailer's promotional costs to ensure compliance with any MAP program. Subsection D prohibits the distributors from controlling their customers' resales prices. Subsection E prohibits, for five years, the distribution from exercising their Colgate rights to unilaterally terminate dealers for failure to comply with any minimum advertised or resale price.

For EMI, BMG, and UNI, Parts IV, V, and VI are various notice provisions requiring the companies to notify their customers and senior management concerning the terms of this order. Part VII establishes that the distributors shall make annual compliance reports concerning their compliance with the terms of this order. Such reports may also be required by the Commission at any time. Part VIII establishes that the order shall terminate in twenty (20) years.

Part IV of the WMG and Sony orders specifically incorporates an exception to the prohibition against RPM that permits distributors to require their dealers to pass-through discounts. The notice and compliance requirements, and term of the order, are the same as for the other three respondents and are found at Parts V, VI, VII and VIII of the orders for WMG and Sony.

VOL 65 ISS 96 MY 17 2000 UMI

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

**Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony, Mozelle W. Thompson, Orson Swindle, and Thomas B. Leary**

**File No. 971–0070**

The Commission has unanimously found reason to believe that the arrangements entered into by the five distributors of prerecorded music violate the antitrust laws in two respects. First, when considered together, the arrangements constitute practices that facilitate horizontal collusion among the distributors, in violation of section 5 of the Federal Trade Commission Act. Second, when viewed individually, each distributor's arrangement constitutes and unreasonable vertical restraint of trade under the rule of reason. A discussion of these violations is spelled out in our Analysis to Aid Public Comments.

The Commission considered carefully whether the anticompetitive vertical restraint should be evaluated under a per se rule or rule of reason. In the past, the Commission has employed the rule of reason to examine cooperative advertising programs that restrict reimbursement of the advertising of discounts, because such programs may be procompetitive or competitively neutral. Statement of Policy Regarding Price Restrictions in Cooperative Advertising Programs—Rescission, 6 Trade Reg. Rep. (CCH) ¶ 39,057. The cooperative advertising programs that were the subject of previous Commission actions involved only advertising paid for in whole or in part by the manufacturer, but did not restrain the dealer from selling at a discount or from advertising discounts when the dealer itself paid for the advertisement. See, *e.g.*, The Advertising Checking Bureau, Inc., 109 F.T.C. 146, 147 (1987) ("the restraints* * * do not prohibit retailers from selling at discount prices or advertising discounts or sale prices with their own funds").

The Minimum Advertised Pricing ("MAP") policies of the five distributors in this matter go well beyond the cooperative advertising programs with which the Commission has previously dealt: The distributors' MAP policies prohibited retailers from advertising discounts in all advertising, including advertising paid for entirely by the retailer; the MAP policies applied to in-store advertising, excepting only the smallest price labels affixed to the product; and single violation of a distributor's MAP policy carried severe financial penalties, resulting in the loss of all MAP funds for all of the retailer's stores for 60 to 90 days (see Paragraph 7 of each Complaint).

Retailers were free to sell at any price, so long as they did not advertise a discounted price. In fact, there was evidence that some retailers on rare occasions did sell product at a discount without advertising the discounted price, instead advertising simply that the product was available at a "guaranteed low price." We are therefore reluctant to declare that compliance with the MAP policies by retailers constituted per se unlawful minimum resale price maintenance, because we cannot say that there is sufficient evidence of an agreement by retailers to charge a minimum price. As stated by a majority in In the Matter of American Cyanamid Co., "both the courts and the Commission have judged cooperative advertising cases under the rule of reason, as long as the arrangements do not limit the dealer's right: (1) To discount below the advertised price, and (2) to advertise at any price when the dealer itself pays for the advertisement." 123 F.T.C. 1257, 1265 (1997) (Statement of Chairman Robert Pitofsky and Commissioners Janet D. Steiger and Christine A.Varney).[1]

In *Business Electronics Corp.* v. *Sharp Electronics Corp.*, 485 U.S. 717, 735–36 (1988), the Supreme Court held that "a vertical restraint is not illegal per se unless sit includes some agreement on price or price levels." In our view, Sharp requires something more than a showing that an agreement has some influence on price. Restrictions on advertisements that include discounted prices in advertisements funded in whole or in part by the manufacturer are not per se illegal, notwithstanding the fact that they are likely to have an influence on resale prices. Indeed, the pervasive practice of publishing suggested retail prices is also likely to have some influence on actual prices, but it is well established that this practice is not per se illegal. See, *e.g.*, *Monsanto Co.* v. *Spray-Rite Serv. Corp.*, 465 U.S. 752, 761 (1984).

Nonetheless, we conclude that the distributors' MAP policies are unlawful under a rule of reason analysis. The five distributors together account for over 85 percent of the market (see Paragraph 2 of each Complaint), and each has market power in that no music retailer can realistically choose not to carry the music of any of the five major distributors. The MAP policies were adopted by each of the distributors for the purpose of stabilizing retail prices (see Paragraph 10 of each Complaint). The MAP policies achieved their purpose and effectively stabilized retail prices with consequential effects on wholesale prices, ending the price competition that previously existed in the retail marketplace and the resulting pressure on the distributors' margins (*id.*). Compliance with the MAP policies—which was secured through significant financial incentives—effectively eliminated the retailers' ability to communicate discounts to consumers (see Paragraph 8 of each Complaint). Even absent an actual agreements to refrain from discounting, this inability to effectively communicate discounts to consumers meant that retailers had little incentive to actually sell product at a discount.

In the future, the Commission will view with great skepticism cooperative advertising programs that effectively eliminate the ability of dealers to sell product at a discount. The Commission will, of course, consider per se unlawful [2] any arrangement between a manufacturer and its dealers that includes an explicit or implied agreement on minimum price or price levels,[3] and it will henceforth consider unlawful arrangements that have the same practical effect of such an agreement without a detailed market analysis, even if adopted by a manufacturer that lacks substantial market power.

[FR Doc. 00–12380 Filed 5–16–00; 8:45 am]

BILLING CODE 6750–01–M

[1] In American Cyanamid, the manufacturer conditioned financial payments on its dealers' charging a specified minimum price, which the Commission found to be per se unlawful minimum resale price maintenance. By contrast, financial payments under the distributors MAP policies here were conditioned on the price advertised, not on the price charged.

[2] Commissioners Swindle and Leary have previously stated that the Supreme Court should reassess the applicability of the per se rule to the practice when the appropriate case arises. Nine West Group Inc., Dkt. No. C–3937 (Statement of Commissioners Orson Swindle and Thomas B. Leary). However, they agree that, so long as this per se rule is the law, summary treatment is appropriate for resale price agreements and other agreements with the same practical effect.

[3] In addition, the Commission will continue to consider per se unlawful any cooperative advertising program that is part of a resale price maintenance scheme. Cf. The Magnavox Co., 113 F.T.C. 225,262 (1990) ("Of course, any cooperative advertising program implemented by Magnavox as part of a resale price maintenance scheme would be per se unlawful. * * *").

## FEDERAL TRADE COMMISSION

**[File No. 992 3027]**

### Efamol Nutraceuticals, Inc.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before June 12, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Matthew Gold or Linda Badger, Federal Trade Commission, Western Region, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 356–5276 or 356–5275.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 11, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

### Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a consent order from Efamol Nutraceuticals, Inc., ("Efamol"). Efamol is a marketer of dietary supplement products, all of which contain essential fatty acids.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter involves alleged misleading representations for Efalex and Efalex Focus, two of Efamol's dietary supplement products. The advertisements claimed that these products can mitigate or cure the effects of Attention Deficit Disorder or Attention Deficit Hyperactivity disorder ("ADD/ADHD").

The proposed complaint alleges that Efamol could not substantiate the following claims: (1) The Efalex and Efalex Focus can cure, prevent, treat or mitigate ADD/ADHD or its symptoms; and (2) that Efalex and Efalex Focus are effective in reducing attention and behavioral problems. Part I of the proposed order would address these misrepresentations by prohibiting Efamol from making the claims in the future unless it possesses and relies upon competent and reliable scientific evidence that substantiates the claim.

Part II of the proposed order requires Efamol to possess competent and reliable scientific evidence for any claim about the health benefits, efficacy or safety of any food, drug or dietary supplement that contains essential fatty acids. Because all of Efamol's products contain essential fatty acids, this provision would apply to the company's entire current product line.

Part III of the proposed order contains language permitting Efamol to make drug claims that have been approved by the FDA pursuant to either a new drug application or a tentative final or final standard. Part IV states that Efamol would be permitted to make claims that the FDA has approved pursuant to the Nutrition Labeling and Education Act of 1990.

Parts V–VII of the proposed order contain requirements that Efamol keep copies of relevant advertisements and materials substantiating claims made in the advertisements; provide copies of the order to certain of its current and future personnel; and notify the Commission of changes in the corporate structure that might affect compliance with the order. Part VIII requires Efamol to file one or more reports detailing compliance with the order. Part IX provides that the order will terminate after twenty (20) years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–12381 Filed 5–16–00; 8:45 am]

**BILLING CODE 6750–01–M**

## FEDERAL TRADE COMMISSION

**[File No. 972 3234]**

### J&R Research Corp., et al.; Analysis To Aid Public Comment

**AGENCY:** Federal Trade Commission.

**ACTION:** Proposed consent agreement.

**SUMMARY:** The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accomplishes the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

**DATES:** Comments must be received on or before July 12, 2000.

**ADDRESSES:** Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

**FOR FURTHER INFORMATION CONTACT:** Matthew Gold or Linda Badger, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 356–5276 or 356–5275.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice

is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 11, 2000), on the World Wide Web, at "http://www.ftc.gov /ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania, Ave., NW, Washington, DC 20680. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

**Analysis of Proposed Consent Order To Aid Public Comment**

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from J & R Research, Inc., and its principal, Gerald G. McCarthy ("respondents"). Respondents were general partners in a distributorship of Kaire International, Inc., a multi-level marketing company. Respondents also created and marketed to Kaire distributors audio tapes and other promotional materials touting a Kaire product containing pycnogenol, a substance derived from the bark of the maritime pine tree.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and any comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

Respondents' advertisements claimed that pycnogenal could mitigate or cure the effects of numerous diseases or disorders. The proposed complaint alleges that respondents could not substantiate claims that pycnogenol: (1) Alleviates rheumatoid arthritis, osteoarthritis and rheumatism; (2) reduces the amount of insulin needed to treat diabetes; (3) treats and/or improves health disorders associated with diabetes, including neuropathy, retinopathy, osteomyelitis, circulatory problems and heart problems; (4) helps treat lupus, Parkinson's Disease, multiple sclerosis and fibromyalgia; (5) treats or improves digestive disorders, including Crohnes Disease and irritable bowel syndrome; (6) helps prevent strokes and the reoccurrence of strokes; (7) dramatically improve physical disabilities caused by stroke; (8) dramatically helps prevent heart disease, inlcuding arterial sclerosis; (9) reduces blood pressure; (10) dramatically improves and helps prevent circulatory problems, including phlebitis, thrombophlebitis, blood clots, and varicose veins; (11) dramatically promotes the shrinkage of tumors and helps prevent tumor formation; (12) treats cancer and/or prolongs the life of cancer victims; (13) reduces or eliminates inflammation of the prostate; (14) eliminates or reduces the incidence of asthma attacks and symptoms caused by allergies; (15) improves eyesight and treats disorders of the retina; (16) helps rebuild joints and soft tissue; (17) greatly accelerates the healing time of injuries; (18) improves or cures skin conditions such as psoriasis and acne; (19) treats Attention Deficit Disorder and Attention Deficit Hyperactive Disorder; (20) reduces or eliminates the need for medication in individuals with Attention Deficit Disorder and Attention Deficit Hyperactive Disorder; and (21) is twenty times more protective as an antioxidant than Vitamin C, and fifty times more protective than Vitamin E.

The complaint further alleges that respondents falsely claimed that scientific research demonstrates that pycnogenol products can alleviate or cure many of these diseases or disorders. Finally, the complaint alleges that respondents could not substantiate its claim that testimonials from consumers appearing in the advertisements for pycnogenol products reflect the typical or ordinary experience of members of the public who use pycnogenol products.

Part I of the proposed consent order would require respondents, when advertising pycnogenol or any other food, drug, or dietary supplement, to possess competent and reliable scientific evidence before making any of the claims that were alleged as unsubstantiated in the complaint. Part II of the proposed order would require respondents to possess competent and reliable scientific evidence before making any claim regarding the benefits, performance, or efficacy of any food, drug, or dietary supplement. Part III of the proposed order would prevent respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, or research in an advertisement for any product.

Part IV of the proposed order addresses claims made through endorsements or testimonials. Under Part IV, respondents may make such representations if they possess and rely upon competent and reliable evidence that substantiates the representations; or the respondents must disclose either what the generally expected results would be for users of the advertised products, or the limited applicability of the endorser's experience to what consumers may generally expect to achieve. The proposed order's treatment of testimonial claims is in accordance with the Commission's "Guides Concerning Use of the Endorsements and Testimonials in Advertising," 16 CFR 255.2(a).

Part V of the proposed order contains language permitting respondents to make drug claims that have been approved by the FDA pursuant to either a new drug application or a tentative final or final standard. Part VI states that respondents would be permitted to make claims that the FDA has approved pursuant to the Nutrition Labeling and Education Act of 1990.

Part VII of the proposed order requires respondents to retain, and make available to the Commission upon request, all advertisements and promotional materials containing any representation covered by the order, as well as any material that it relied upon in disseminating the representation and any materials that contradict, qualify, or call into question the representation.

The remainder of the proposed order contains standard requirements that respondents distribute the order to relevant personnel, that the corporate respondent notify the Commission of any changes in corporate structure that might affect compliance with the order; that the individual respondent notify the Commission of changes in his employments status, and that respondents file one or more reports detailing their compliance with the order.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of

the agreement and proposed order, or to modify in any way their terms.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–12382 Filed 5–16–00; 8:45 am]

BILLING CODE 6705–01–M

## GENERAL ACCOUNTING OFFICE

### Federal Accounting Standards Advisory Board

**AGENCY:** General Accounting Office.

**ACTION:** Notice of new exposure draft on accounting for Direct Loans and Loan Guarantees.

*Board Action:* Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has released for public comment an exposure draft (ED) on accounting for Direct Loans and Loan Guarantees. Comments are solicited and should be submitted by August 10, 2000.

A summary of the proposed Statement follows:

**FASAB Published a New Exposure Draft on Accounting for Direct Loans and Loan Guarantees**

On May 10, 2000, the Federal Accounting Standards Advisory Board (FASAB) released for public comment an exposure draft (ED) on accounting for Direct Loans and Loan Guarantees. Contained in the ED is a proposed standard that would require that in a note to their financial statements, reporting entities display for each major program and for the entity as a whole reconciliations between the beginning and ending balances of: (a) The subsidy cost allowance for direct loans and (b) the liability for loan guarantees. Entity management would be responsible for identifying major programs on the basis of each reporting entity's specific circumstances. The proposed standard states that the major programs that are reconciled individually should constitute at least 75 percent of the face amount of the reporting entity's outstanding direct or guaranteed loans. The reconciliation of other programs should be displayed in aggregate.

The proposed requirement for program-by-program reconciliation for major credit programs follows the Board's adoption in SFFAS No. 18 a requirement that reporting entities display reconciliation for direct loan subsidy allowance and loan guarantee liability reported on the entity's balance sheet. The Board believed that while the entity-wide reconciliation will provide information on the aggregate operating results of all credit programs under the entity's management, the program-by-program reconciliation would provide information on the performance of specific programs. Since the entity-wide reconciliation has been adopted in SFFAS No. 18, it is not a subject of the ED. Comments are requested on the proposed requirement for program-by-program reconciliation for major programs.

Comments are also solicited on a number of proposed technical amendments to SFFAS No. 2, *Accounting for Direct Loans and Loan Guarantees.* Some of those technical amendments are proposed to clarify that the accounting standards are consistent with the cash flow discount method required by the amendment enacted in July 1997 to the Federal Credit Reform Act of 1990. Other technical amendments proposed in this ED would clarify: (a) The use of discount rates adjusted by interest rate reestimates, and (b) the measurement of default costs of direct loans and loan guarantees.

The exposure draft will soon be mailed to FASAB's mailing list subscribers. Additionally, it is available on FASAB's home page *http://www.financenet.gov/fasab.htm.* Copies can be obtained by contacting FASAB at (202) 512–7350, or *mayor.fasab@gao.gov.* The Board has posed specific questions for comment. Respondents are encouraged to address those questions and to comment on any part of the exposure draft.

Written comments are requested by August 10, 2000, and should be sent to: Wendy M. Comes, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street, NW, Suite 6814, Mail Stop 6K17V, Washington, DC 20548.

**FOR FURTHER INFORMATION, CONTACT:** Wendy Comes, Executive Director, 4412 G St. NW, Room 6814, Washington, DC 20548, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act. Pub. L. No. 92–463.

Dated: May 12, 2000.

**Wendy M. Comes,**

*Executive Director.*

[FR Doc. 00–12434 Filed 5–16–00; 8:45 am]

BILLING CODE 1610–01–M

## GENERAL ACCOUNTING OFFICE

### Federal Accounting Standards Advisory Board

**AGENCY:** General Accounting Office.

**ACTION:** Notice of meeting on June 8 and 9, 2000.

*Board Action:* Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October 1999, notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) will meet on Thursday, June 8 from 9 a.m. to 4 p.m., and Friday, June 9, 2000 from 9 a.m. to 4 p.m. in room 7C13, the Elmer Staats Briefing Room, 441 G St. NW, Washington, DC.

The purpose of the meeting is to:

Review a draft exposure draft on Stewardship Responsibilities,

Discuss Stewardship PP&E and review a draft exposure draft,

Discuss National Defense PP&E, and

Discuss other topics as necessary.

A Steering Committee meeting of the Board's Principal Board members will be held immediately after the Board meeting on Friday. Topics to be discussed include:

Action Plan for Transition Effort (Status report and review) and

Auditing and Accounting Policy Committee (AAPC) Charter and Operating Procedures (review and approval).

Any interested person may attend the meeting as an observer. Board discussion and reviews are open to the public.

**FOR FURTHER INFORMATION CONTACT:** Wendy Comes, Executive Director, 441 G St. NW, Room 6814, Washington, DC 20548, or call (202) 512–7350.

**Authority:** Federal Advisory Committee Act. Pub. L. 92–463.

Dated: May 12, 2000.

**Wendy M. Comes,**

*Executive Director.*

[FR Doc. 00–12433 Filed 5–16–00; 8:45 am]

BILLING CODE 1610–01–M

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Agency for Toxic Substances and Disease Registry**

**[Program Announcement 00114]**

## Determining the Prevalence of Multiple Sclerosis in Communities Living Around Hazardous Waste Sites, Applied Research and Development; Notice of the Availability of Funds

### A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program to conduct research on Determining the Prevalence of Multiple Sclerosis (MS) in Communities Living Around Hazardous Waste Sites. This addresses the "Healthy People 2010" focus area of Environmental Health.

The purpose of this program is to determine the prevalence of MS among individuals in specific communities near sources of hazardous substances.

### B. Eligible Applicants

Assistance will be provided to the health departments of States or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian Tribal governments. State organizations, including State universities, State colleges, and State research institutions, must establish that they meet their respective State's legislature definition of a State entity or political subdivision to be considered to be an eligible applicant. Local health jurisdictions may apply with the concurrence of the State Health Officer.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

### C. Availability of Funds

Approximately $140,000 is available in FY 2000 to fund up to two awards. It is expected that the average award will be $70,000, ranging from $50,000 to $90,000. It is expected the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

*Use of Funds*

Funds may be expended for reasonable program purposes, such as personnel, travel, supplies and services. Funds for contractual services may be requested; however, the primary recipient of ATSDR funds must perform a substantive role in carrying out project activities and not merely serve as a conduit for an award to another party or provide funds to an ineligible party. Equipment may be purchased with these funds, however, the equipment proposed should be appropriate and reasonable for the research activity to be conducted. Equipment may be acquired only when authorized, and the application should provide a justification of need to acquire equipment, the description, and the cost of purchase versus lease. At the completion of the project, the equipment must be returned to ATSDR.

*Funding Preference*

Preference will be given to the proposed projects that are conducted in more than one community where MS and hazardous substances have been identified as health concerns.

### D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for activities under 1. (Recipient Activities), and ATSDR will be responsible for the activities listed under 2. (ATSDR Activities).

*1. Recipient Activities*

Applicants addressing the same research issue should be willing to participate in collaborative studies with other ATSDR-sponsored researchers, including developing and using common data collection instruments and procedures, and data management procedures, as determined in post-awarding grantee planning conferences. A study group of all recipient Principal Investigators will be convened to develop a common protocol, interview instruments and data collection procedures.

a. Develop a research project which evaluates the prevalence of MS cases in communities living around hazardous waste sites. Provide scientific information concerning hazardous substances and MS and develop a model for others to determine the prevalence of MS in communities living around hazardous waste sites.

b. Develop the research study protocols and standardized data extraction forms across sites. Develop methods to verify MS diagnosis.

c. Collaborate and share data with other collaborators to answer specific research questions.

d. Conduct data analysis with all collaborators as well as present and publish research findings.

e. Disseminate research results to community members through collaborative relationships with state health and environmental agencies.

*2. ATSDR Activities*

a. Provide scientific, epidemiologic, and environmental assistance.

b. Work collaboratively with investigators to help facilitate research activities across sites. Provide assistance on the development of the protocol and evaluation of the data extraction instruments.

c. Preparation and submission of materials to the CDC Internal Review Board (IRB). The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

d. Provide assistance to awardee(s) in the design of a data management system, in the analysis of research information, and the presentation and publication of research findings.

e. Provide technical assistance to awardees (if more than one award is made) to ensure a sharing of information and methodologies, as appropriate.

f. Facilitate an annual meeting between awardee(s) and ATSDR to coordinate planned efforts and review progress.

### E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed so it is important to follow them in laying your program plan. The narrative should be no more than 30 pages, double-spaced, printed on one-side, with 1″ margins, and unreduced fonts (font size 12 point) on 8½″ by 11″ paper. Do not include any spiral or bound materials or pamphlets.

*1. Title Page*

The heading should include the title of the cooperative agreement announcement, project title, organization, name and address, project director's name address and telephone number.

*2. Abstract*

A one-page, singled-spaced, typed abstract must be submitted with the

application. The heading should include the title of cooperative agreement announcement, project title, organization, name and address, project director and telephone number. This abstract should include a work plan identifying activities to be developed, activities to be completed, and a time-line for completion of these activities.

*3. Application Narrative*

The narrative of each application must address the evaluation component, in addition to the following:

a. Briefly state the applicant's understanding of the need or problem to be addressed, the purpose, and goals over the 2 year period of the cooperative agreement.

b. Describe in detail the objectives and the methods to be used to achieve the objectives of the project. The objectives should be specific, time-phased, measurable, and achievable during each budget period. The objectives should directly relate to the program goals. Identify the steps to be taken in planning and implementing the objectives and the responsibilities of the applicant for carrying out the steps.

c. Provide the name, qualifications, and proposed time allocation of the Principal Investigator who will be responsible for administering the project. Describe staff, experience, facilities, equipment available for performance of this project, and other resources that define the applicant's capacity or potential to accomplish the requirements stated above. List the names (if known), qualifications, and time allocations of the existing professional staff to be assigned to (or recruited for) this project, the support staff available for performance of this project, and the available facilities including space.

d. Document the applicant's expertise, and extent of experience in the areas of multiple sclerosis, environmental health, and population-based epidemiologic studies.

e. Provide letters of support or other documentation demonstrating coordination with all other agencies or organizations described as participating in the project.

f. Describe how the affected communities will be involved in the proposed project.

g. Human Subjects: State whether or not Humans are subjects in this proposal. (See Human Subjects in the Evaluation Criteria and Other Requirements sections.)

h. Inclusion of women, ethnic, and racial groups: Describe how the CDC/ATSDR policy requirements will be met regarding the inclusion of women, ethnic, and racial groups in the proposed research. (See Women, Racial and Ethnic Minorities in the Evaluation Criteria and Other Requirements sections.)

*4. Budget*

Provide a detailed budget which indicates anticipated costs for personnel, equipment, travel, communications, supplies, postage, and the sources of funds to meet these needs. The applicant should be precise about the program purpose of each budget item. For contracts described within the application budget, applicants should name the contractor, if known; describe the services to be performed; and provide an itemized breakdown and justification for the estimated costs of the contract; the kinds of organizations or parties to be selected; the period of performance; and the method of selection. The budget narrative pages showing, in detail, how funds in each object class will be spent, should be placed directly behind form 424A and not in the body of the application.

**F. Submission and Deadline**

*Letter of Intent (LOI)*

In order to enable ATSDR to determine the level of interest in the program announcement, a non-binding letter-of-intent to apply is requested from potential applicants. The letter of intent should be submitted on or before June 15, 2000, to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Application*

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available on the Centers for Disease Control and Prevention Internet address, or in the application kit.

On or before July 14, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

*Late Applications:* Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an objective review group appointed by ATSDR.

*1. Understanding of the Problem (10 percent)*

a. The applicant's understanding of the problems related to community exposures to hazardous substances and concerns regarding MS, and

b. relevance of the proposed program to these and related problems.

*2. Program Personnel (10 percent)*

a. Applicant's technical experience and understanding (*e.g.* in the areas of MS, environmental health, and population-based epidemiologic studies).

b. List the names (if known), qualifications, and time allocation of the professional staff to be assigned to (or recruited for) this project and the support staff available for performance of this project.

c. Extent to which the management staff and their working partners are clearly described.

*3. Goals and Objectives (10 percent)*

The extent to which the proposed goals and objectives are clearly stated and measurable.

*4. Demonstrated Capacity (40 percent)*

a. The degree to which the applicant demonstrates prior work conducted in communities living near hazardous waste sites concerned with MS in their area.

b. Adequacy of plan to include at least one community where MS has already been identified as health concerns.

c. The extent to which the applicant's plans include accomplishing the activities listed under Recipient Activities in this announcement.

d. The extent to which the applicant's plans and schedule proposed for accomplishing the activities to be carried out in this project are clearly stated, are realistic given the length of the funding period, and can be achieved within the proposed budget.

e. The extent to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

*5. Community Involvement and Dissemination of Results (20 percent)*

a. A clear identification and description of the community(ies) to be involved in this project.

b. Adequacy of plan for recruitment and outreach for study participants including the process of establishing partnerships with community(ies) and recognition of the mutual benefits.

c. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

d. Adequacy of plans to address community concerns and create lines of communication, including letters of support.

e. Adequacy of methods to disseminate the study results to community residents, state and local public health officials, tribal governments, Indian Health Service, and to other concerned individuals and organizations.

*6. Facilities and Resources (10 percent)*

The adequacy of the applicant's facilities, equipment, and other resources available for performance of this project.

*7. Human Subjects (Not scored)*

Does the application adequately address the requirements of 45 CFR 46 for the protection of human subjects?

*8. Budget Justification (Not scored)*

The budget will be evaluated to the extent that it is reasonable, clearly justified, and consistent with the intended use of funds.

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with the original and two copies of:

1. Semi-annual progress report.
2. Financial Status Report (FSR) no more than 90 days after the end of the budget period.
3. Final financial status report and performance report, no more than 90 days after the end of the project.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements of Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–17 Peer Review and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized in Sections 104(i)(1)(E) and (15) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604 (i)(l)(E) and (15)]. The Catalog of Federal Domestic Assistance number is 93.161.

**J. Where To Obtain Additional Information**

Please refer to Program Announcement 00114 when you request information.

This and other ATSDR announcements can be found on the CDC home page Internet address: http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nelda Y. Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341–4146, Telephone (770) 488–2722, E-mail address: nag9@cdc.gov.

For program assistance, contact: Curtis Noonan, Epidemiologist, Health Investigations Branch, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mail Stop E–31, Atlanta, Georgia 30333, Telephone: (404) 639–5150, E-mail address: cen9@cdc.gov.

Dated: May 11, 2000.

**Georgi Jones,**

*Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.*

[FR Doc. 00–12347 Filed 5–16–00; 8:45 am]

BILLING CODE 4163–70–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[60Day–00–37]**

### Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Anne E. O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

**Proposed Projects**

Racial and Ethnic Approaches to Community Health—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). The REACH 2010 Demonstration Program is a part of the Department of Health and Human Services' response to the President's Race Initiative and to the Healthy People 2010 goal to eliminate disparities in the health status of racial and ethnic minorities. The purpose of REACH 2010

is to demonstrate that adequately funded community-based programs which are designed and led by the communities they serve can reduce health disparities in infant mortality, deficits in breast and cervical cancer screening and management, cardiovascular diseases, diabetes, HIV/AIDS, and deficits in childhood and adult immunizations. The communities served by REACH 2010 include: African American, American Indian, Hispanic American, Asian American, and Pacific Islander. Thirty-two communities were funded in Phase I to construct Community Action Plans (CAP). In Phase II, 17 of those communities will receive continued funding to implement their CAP.

As part of the President's Race Initiative, it is imperative that REACH 2010 demonstrate success in reducing health disparities among racial and ethnic minority populations. Toward that end, it is of critical importance that CDC collect uniform survey data from each of the 17 communities funded for the Phase II REACH 2010 Demonstration Program. The same survey will be conducted in each community; it will contain questions that are standard public health performance measures for each health priority area. Surveys will be administered by either telephone or household interview. These surveys will be administered annually for four years using a different sample from each community.

The total annualized burden hours for this project is 4080 hours.

| Respondents | Number of respondents | Number of responses/ respondent | Average burden of response (in hours) | Total burden (in hours) |
|---|---|---|---|---|
| Adults ages 18 and older who live in communities participating in the REACH 2010 Program | 16,320 | 1 | 15/60 | 4080 |
| Total | | | | 4080 |

Dated: May 11, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention.*

[FR Doc. 00–12344 Filed 5–16–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–32–00]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

**Proposed Project**

1. Emergency Epidemic Investigations—(0920–0008)—Extension—Epidemiology Program Office (EPO)—One of the objectives of CDC's epidemic services is to provide for the prevention and control of epidemics and protect the population from public health crises such as man made or natural biological disasters and chemical emergencies. This is carried out, in part, by training investigators, maintaining laboratory capabilities for identifying potential problems, collecting and analyzing data, and recommending appropriate actions to protect the public's health. When state, local, or foreign health authorities request help in controlling an epidemic or solving other health problems, CDC dispatches skilled epidemiologists from the Epidemic Intelligence Service (EIS) to investigate and resolve the problem. Resolving public health problems rapidly ensures costs effective health care and enhances health promotion and disease prevention. Annually, the EIS Program coordinates 400 Epidemic Assistance Investigations (Epi-Aids) and state-based field investigations. Epidemics are prevented and controlled by mobilizing and deploying CDC staff, primarily EIS officers to respond rapidly to disease outbreaks and disaster situations. At the request of public health officials—at the state, national, or international level—CDC provides assistance by participating in epidemiologic field investigations. The purpose of the Emergency Epidemic Investigation surveillance is to collect data on the conditions surrounding and preceding the onset of a problem. The data must be collected in a timely fashion so that information can be used to develop prevention and control techniques, to interrupt disease transmission and to help identify the cause of an outbreak. Since the events necessitating the collections of information are of an emergency nature, most data collection is done by direct interview or written questionnaire and are one-time efforts related to a specific outbreak or circumstance. If during the emergency investigation, the need for further study is recognized, a project is designed and separate OMB clearance is required. Interviews are conducted to be as unobtrusive as possible and only the minimal information necessary is collected. The Emergency Epidemic Investigations is the principal source of data on outbreaks of infectious and noninfectious diseases, injuries, nutrition, environmental health and occupational problems.

Each investigation does contribute to the general knowledge about a particular type of problem or emergency, so that data collections are designed taking into account similar situations in the past. Some questionnaires have been standardized, such as investigations of outbreaks aboard aircraft or cruise vessels.

The Emergency Epidemic Investigations provides a range of data on the characteristics of outbreaks and those affected by them. Data collected include demographic characteristics, exposure to the causative agent(s), transmission patterns and severity of the outbreak on the affected population. These data, together with trend data, may be used to monitor the effects of change in the health care system, planning of health services, improving the availability of medical services and assessing the health status of the population.

Users of the Emergency Epidemic Investigations data include, but are not limited to EIS Officers in investigating the patterns of disease or injury, investigating the level of risky

behaviors, identifying the causative agent and identifying the transmission of the condition and the impact of interventions.

It is difficult to predict the number of epidemic investigations which might occur in any given year. The annual burden hours are estimated to be 3,000.

| Respondents | Number of respondents | Number of responses/ respondent | Average burden per response (in hrs.) | Total burden (in hrs.) |
|---|---|---|---|---|
| Total Respondents | 12,000 | 1 | 15/60 | 3,000 |

Dated: May 11, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–12345 Filed 5–16–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement Number 00057]**

### Longitudinal Studies of Rodent Reservoirs of Hantaviruses in the Northwestern United States; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program with the Montana Tech University (MTU) for longitudinal studies of rodent reservoirs of hantaviruses in the northwestern United States (U.S.). CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Immunization and Infectious Diseases. For the conference copy of "Healthy People 2010" visit the internet site http://www.health.gov/healthypeople.

The purpose of this cooperative agreement is to continue studies of hantavirus reservoir populations at previously established sites in Cutbank, Polson, Cascade, Gold Creek, Wisdom, and CM Russell Reserve, Montana. The goal of the research is to conduct longitudinal mark-recapture studies to identify and determine the distribution and dynamics of populations of rodents that are confirmed or potential reservoirs of hantaviruses. Preliminary studies have documented the effects of weather fluctuation and other ecological variables on the rodent populations at the designated study sites. The major objective of this cooperative agreement is to support research that appropriately builds upon the ecological information developed at the established sites.

**B. Eligible Applicants**

Assistance will be provided only to MTU. No other applications are solicited.

MTU was the only applicant that applied under the original Program Announcement 96044 and was subsequently awarded. In previous studies, MTU developed an extensive database on population dynamics and hantavirus infection in rodents and associated environmental conditions at six trapping sites from 1994 to 2000. This unique dataset is the baseline data for the proposed longitudinal studies which will compare newly collected information with the 1994–2000 data. In order to provide for the continuity of long-term data, it is crucial that the proposed study be conducted at the identical sites using the same methodology as the previous studies.

**C. Availability of Funds**

Approximately $135,000 is available in FY 2000 to fund one award. It is expected that the award will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 5 years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress and availability of funds.

**D. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities) and CDC will be responsible for conducting activities under 2. (CDC Activities).

*1. Recipient Activities*

a. Design and conduct longitudinal mark recapture studies of rodents on existing established grids in the northwestern U.S., to identify and determine the distribution and dynamics of populations of rodents that are confirmed or potential reservoirs of hantaviruses.

b. Use ecological techniques that provide continuity of rodent sampling and processing so that data can be appropriately analyzed and correlated with previously collected ecological data from the established sites. Ecological techniques should include capture-mark-release and bleeding of captured animals.

c. Collect and submit blood samples on all captured animals to appropriate laboratories for further analysis and storage.

d. Identify captured rodents and perform morphological measurements and other observations necessary for characterization of rodents.

e. Analyze and publish study results from the individual study sites.

*2. CDC Activities*

a. Provide consultation and scientific and technical assistance in the design, conduct, and evaluation of the project.

b. Perform appropriate laboratory testing and analysis of blood samples from captured animals. upon request.

c. Analyze study results in collaboration with the recipient.

**E. Application Content**

*Application*

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 10 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

**F. Submission and Deadline**

*Application*

Submit the original and two copies of PHS 5161–1 (OMB Number 0348–0043). Forms are available at the following Internet Address: www.cdc.gov/...Forms, or in the application kit. On or before July 1, 2000, submit the application to the Grants Management Specialist identified in the "Where to

Obtain Additional Information" section of this announcement.

**G. Evaluation Criteria**

The application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. *Background and Need (33 Points):* Extent to which applicant demonstrates a clear understanding of the purpose and objectives of this proposed cooperative agreement and demonstrates a clear understanding of the requirements, responsibilities, interactions, problems, constraints, complexities, etc., that may be encountered in conducting the project and performing the studies.

2. *Capacity and Personnel (33 Points):* Extent to which applicant demonstrates past experience of professional personnel in conducting studies similar to those proposed in this cooperative agreement. Extent to which applicant demonstrates it has adequate administrative personnel and support. Extent to which applicant demonstrates it has adequate scientific resources and facilities (including certified BSL–3 laboratory) to successfully conduct the activities.

3. *Objectives and Technical Approach (34 Points):* Extent to which applicant describes objectives of the proposed project which are consistent with the purpose and goals of this grant/cooperative agreement program and which are measurable and time-phased. Extent to which applicant presents a detailed operational plan for initiating and conducting the project, which clearly and appropriately addresses all "Recipient Activities." Extent to which applicant clearly identifies specific assigned responsibilities of all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/methods for conducting the proposed studies and extent to which the plan is adequate to accomplish the objectives. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. Extent to which applicant describes adequate and appropriate collaboration with CDC and/or others during various phases of the project. Extent to which applicant provides a detailed and adequate plan for evaluating study results and for evaluating progress toward achieving project objectives.

4. *Budget (Not Scored):* Extent to which applicant presents a detailed, line-item budget with a detailed narrative justification (by line-item) that is consistent with the purpose and objectives of this cooperative agreement.

5. *Animal Subjects (Not Scored):* Does the application adequately address the requirements of PHS Policy on Humane Care and Use of Laboratory Animals?

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with the original plus two copies of:

1. Progress reports (semiannual);
2. Financial Status Report (FSR), no more than 90 days after the end of the budget period; and
3. Final FSR and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–3 Animal Subjects Requirements
AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

This and other CDC [ATSDR] announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "funding" then "Grants and Cooperative Agreements."

To obtain additional information, contact: Merlin Williams, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770)488–2765, E-mail address: mqw6@cdc.gov.

For program technical assistance, contact: Dr. James N. Mills, Special Pathogens Branch, Division of Viral and Rickettsial Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, N.E., M/S G–14, Atlanta, Georgia 30333, Telephone: (404)639–1396.

Dated. May 11, 2000.

**Henry S. Cassell, III,**

*Acting, Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–12341 Filed 5–16–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement Number 00111]**

### Development and Testing of New Medications for Treatment of Emerging Infectious Diseases; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for the development and testing of new medications for emerging infectious diseases. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Immunization and Infectious Diseases. For the conference copy of "Healthy People 2010", visit the internet site http://www.health.gov/healthypeople.

The purpose of this program is for the development and testing of new anti-infectious agents developed from natural products primarily for use in humans. Of particular, but not exclusive interest are anti-infective agents for parasitic diseases. Projects may include, but are not limited to a range of activities such as identifying promising agents, purifying or creating them, optimizing them for clinical use, and testing them.

**B. Eligible Applicants**

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying

activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

**C. Availability of Funds**

Approximately $1,500,000 is available in FY 2000 to fund one award. It is expected the award will begin on or about September 1, 2000, and will be made for a 12-month budget period within a project period of up to three years. The funding estimate may change.

A continuation award within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

**D. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities) and CDC will be responsible for conducting activities under 2. (CDC Activities):

*1. Recipient Activities*

a. Develop and implement strategies for selection of emerging infectious disease(s) that affect humans and or acquiring or developing new medications for treatment of those diseases using natural products. This includes studying the pharmacologic and biologic characteristics of natural product structures and analogs and designing molecules using computer methods for known biochemical targets.

b. Use combinatorial methods to optimize anti-infectives resulting from these approaches.

c. Develop strategies and capacity to produce adequate quantities of compound, for example, by using an automated organic synthesizer or other technology.

d. Develop and implement a systematic approach to in vitro testing of drug candidates.

e. Conduct in vivo testing of promising candidates if appropriate.

f. Develop a plan for enhancing commercial interest in promising drugs.

g. Publish or disseminate results of research.

*2. CDC Activities*

a. Provide technical assistance in the design and conduct of the research, as needed.

b. Perform selected laboratory tests, as requested.

c. Provide biological materials (*e.g.*, strains, reagents, etc.) as necessary or appropriate.

d. Assist in the development of assays for evaluating pharmacokinetics of new drugs as necessary or appropriate.

e. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

**E. Application Content**

Use the information in the Program Requirements, Other Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 10 double spaced pages printed on one side, with one inch margins and unreduced font.

**F. Submission and Deadline**

*Application*

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit.

On or before July 1, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" Section of this announcement.

*Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Applications:* Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

The application will be evaluated against the following criteria by an independent review group appointed by CDC.

*1. Background and Need (15 Points)*

Extent to which applicant demonstrates a clear understanding of the background, purpose, and objectives of the focus area being addressed and the relevance of disease(s) to be studied. Extent to which applicant demonstrates that the proposed project addresses the purpose. Extent to which the applicant demonstrates that the proposed program collaborates with and does not duplicate existing rational development efforts.

*2. Capacity (40 Points)*

Extent to which applicant describes adequate resources and facilities (both technical and administrative) to use natural products, computer-aided drug design, and development of analogs of known drugs to develop strategies for producing adequate quantities of compound, for example, by using automated organic synthesis or other technologies for conducting the project. Extent to which applicant documents that professional personnel involved in the project are qualified and have past experience and achievements in research related to that proposed as evidenced by curriculum vitae, publications, etc. If applicable, extent to which applicant includes letters of support from participating non-applicant organizations, individuals, etc., and the extent to which such letters clearly indicate the author's commitment to participate as described in the operational plan.

*3. Objectives and Technical Approach (45 Points Total)*

a. Extent to which applicant describes measurable and time-phased objectives of the proposed project which are consistent with the purpose of the focus area being addressed. (10 points)

b. Extent to which applicant presents a detailed operational plan for initiating and conducting the project which clearly and appropriately addresses all recipient activities for the specific programmatic focus area being addressed. Extent to which applicant clearly identifies specific assigned responsibilities of all key professional personnel. Extent to which the plan clearly describes applicant's technical approach/ methods for conducting the proposed studies and extent to which the approach/methods are feasible, appropriate, and adequate to accomplish the objectives. Extent to which applicant describes specific study protocols or plans for the development of study protocols that are appropriate for achieving project objectives. Extent to which applicant clearly describes collaboration with others during various phases of the project. (25 points)

c. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes (a) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (b) the proposed

justification when representation is limited or absent, (c) a statement as to whether the design of the study is adequate to measure differences when warranted and

(d) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

*4. Evaluation*

Extent to which applicant provides a detailed and adequate plan for evaluating progress toward achieving project process and outcome objectives. (5 points)

*5. Budget (Not Scored)*

Extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program.

*6. Human Subjects (Not Scored)*

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

*7. Animal Subjects (Not Scored)*

Does the application adequately address the requirements of PHS Policy on Humane Care and Use of Laboratory Animals?

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of

1. progress reports (semiannual);
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. Sections 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

To obtain additional information, contact: Andrea Wooddall, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone number 770–488–2749, Email address ayw3@cdc.gov

For program technical assistance, contact: Sue Binder, M.D., Division of Parasitic Diseases, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 4770 Buford Highway, N.E., Atlanta, GA 30333, Telephone number 770–488–7793, Email address scb1@cdc.gov

Dated: May 11, 2000.

**Henry S. Cassell, III,**

*Acting, Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–12343 Filed 5–16–00; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00118]**

### Mind/Body Research Program; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a grant to conduct mind/body research.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010" a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Disability and Secondary Conditions, and Physical Activity and Fitness. Other health objectives for the nation can ultimately be addressed through mind/body research because approaches that evoke the relaxation response may impact positively on a variety of chronic health conditions and disabilities targeted by the 2010 objectives.

For the conference copy of "Healthy People 2010", visit the internet site: <http://www.health.gov/healthypeople>.

The purpose of this program is to generate knowledge through basic and clinical research about the effectiveness of a relaxation or stress reduction approach such as meditation or progressive muscle relaxation that evokes changes in psychophysiology and can, consequently, impact positively on physical and mental health. These psychophysiology outcomes, collectively labeled the relaxation response, include decreased heart rate, blood pressure, muscle tension, metabolism, breathing rate, and brain wave activity. Project objectives and activities should add to the literature, and include those that articulate the acute (changes that occur as a result of a single session) and chronic (changes that occur as a result of numerous sessions repeated over time) benefits of an approach that evokes the relaxation response. Such efforts should be highlighted by identifying and advancing knowledge about the causal mechanisms underlying the neural and systemic adaptations that trigger the relaxation response (*e.g.*, acute transient change in systolic and diastolic blood pressure) and related chronic health outcomes (*e.g.*, reductions in resting systolic and diastolic blood pressure in patients with hypertension). In addition, a goal of this project should be to identify determinants or correlates that assist in predicting who will initiate, maintain, and benefit from an approach that evokes the relaxation response. In this regard, identifying and understanding how important sociodemographic variables, health status and belief systems, influence use and effectiveness of an approach that evokes the relaxation response are desired study outcomes.

Numerous medical conditions, including hypertension, pain, and stress related mood disturbance, have responded favorably to treatment using approaches that evoke the relaxation response. Little is known about the processes that account for the improvements in health. This project requires that multi-disciplinary and well controlled study(ies) with healthy or clinical populations be conducted to investigate the physiological basis for treatment of modality effectiveness, as well as psychosocial attributes influencing successful treatment response.

**B. Eligible Applicants**

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Applicants must provide proof of their non-profit status. See Attachment I for additional requirements.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

**C. Availability of Funds**

Approximately $862,000 will be available in FY 2000 to fund one award. It is expected that the awards will begin on or about September 30, 2000 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

**D. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following:

1. Identify a manager/coordinator with the authority and responsibility to conduct and manage all components of the project.

2. Create the capacity to attract and motivate persons to initiate and maintain research interventions/protocols.

3. Variables included in the program are dependent on the acute or chronic research questions. Study variables may include blood pressure measures, muscle tension/electromyographic activity (EMG), signaling molecules, biochemical markers and immunologic profiles characteristic of the relaxation response, electroencephalographic measures (EEG), functional magnetic resonance imaging (fMRI), measures of heart rate/heart rate fluctuations, and pain measures, as well as valid and reliable, state or trait psychometric measures (*e.g.*, measures of belief systems, spirituality, depression, anxiety).

4. Evaluate the causal mechanisms and effectiveness of a relaxation approach which evokes psychophysiological changes (collectively known as the relaxation response), that can, consequently, maintain or improve physical and/or mental health in one or more select populations (*e.g.*, healthy older adults [*e.g.*, 50 and above years of age], or persons with a chronic disease/disability or mood disturbance [*e.g.*, arthritis, cancer, diabetes, depression or anxiety disorders]).

a. Identify, and advance the knowledge related to, the acute psychophysiological response(s) and reliability of the response(s) that occur as a result of a single relaxation session (*i.e.*, to identify novel outcomes or new knowledge about already known outcomes).

b. Identify, and advance the knowledge related to, chronic psychophysiological responses (health promotion/disease prevention benefits) that occur as a result of involvement in multiple "relaxation" sessions repeated over a period of time (*i.e.*, to identify novel outcomes or new knowledge about already known outcomes).

c. Identify and describe the underlying processes, trigger, or causal mechanisms that mediate the relaxation approach, relaxation response and related health outcomes relationships.

5. Evaluate, and ultimately identify and describe characteristics (determinants/correlates) of those who initiate, adhere to, and benefit from, an approach which evokes the relaxation response; to include subject attributes such as belief systems, healthy versus chronic disease patients, gender, age, and race/ethnicity.

6. Publish the results of the research in journals and etc.

**E. Application Content**

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative addressing the scored criteria should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font. The application should be organized in the following sections.

*1. Executive Summary*

Provide a clear and concise written statement of the project's purpose and major objectives, an outline of the major activities, and a time line of key milestones.

*2. Problem Statement and Evidence of Need*

a. Describe the literature and demonstrate how mind (cognition) and body (physiology) interact.

b. Describe the impact on one or more health outcomes.

c. Synthesize state-of-the-art findings regarding the effectiveness of an approach that evokes the relaxation response that has been used with healthy persons and/or persons with chronic disease or disability, including documentation/referencing of the applicants own systematic and ongoing line of mind/body inquiry as evidenced by publications and/or presentations at professional scientific meetings.

d. Describe the unmet needs and information gaps as they relate to advancing a coordinated and comprehensive effort to promote health through the relaxation response, and how this project would move toward addressing these needs and gaps (*i.e.*, purpose of the project).

*3. Research Resources and Organizational Capacity*

a. Describe the applicant's capability to conduct the project, taking into account its institutional experience, evidence of leadership, and ability to successfully do multi-disciplinary research for those activities required.

b. Describe the applicant's ability to attract and retain subjects such as establishing collaborations with one or more community-based partner(s) (health maintenance organizations; health clinics; foundations, schools) that can serve as a subject/patient/client referral source.

c. Describe the applicant's capacity to provide evidence of effective collaborations and linkages with partners, to meet the requirements of the project, including, if warranted, documented letters of support and commitments from those collaborating entities.

d. Describe the capacity of the applicant to gather necessary confidential, demographic and health outcome information regarding the study participants' characteristics that predict engaging in, maintaining, and/or benefitting from a relaxation approach, including the kinds and sources of information to be obtained, analyzed, and publicized, the staff/organizations charged with its control, and how these data would be protected and used.

*4. Operational Approach*

a. Describe the research question(s) (that will advance the knowledge), scientific methods, and data analyses to

be employed to assess the acute psychophysiological responses/benefits (*e.g.*, immediate but transient blood pressure reductions), and reliability of responses, associated with a relaxation approach, including a theoretical or scientific rationale for the measures selected and, when appropriate, evidence of the validity and reliability of measures selected (*e.g.*, measures of state anxiety).

b. Describe the research question(s) (that will advance the knowledge), scientific methods, and data analyses to be employed to evaluate the chronic (*e.g.*, reduction in resting blood pressure in patients with hypertension) health outcomes associated with a relaxation approach, including a theoretical or scientific rationale for the outcomes or variables selected and, when appropriate, evidence of the validity and reliability of measures selected.

c. Describe the scientific methods to evaluate the hypothesized causal mechanisms that mediate the relaxation approach, relaxation response, and health outcomes relationship(s).

d. Describe the approach to (1) gather information on the determinants related to initiating, maintaining, and benefitting from a relaxation approach, including a brief review of currently available evidence, and/or plans to collect and analyze data that leads to an understanding of correlates which may predict who is attracted to initiating a relaxation approach, adherence rates to a relaxation approach, and the benefits gained (based on factors such as sociodemographic characteristics, health status, and one or more assessments related to belief systems, positive or negative affect, or other pertinent constructs); and (2) assess the perceptions, outcome expectancies, enjoyment, and/or actual response(s) or outcomes of persons based on their status as novice or experienced practitioners of a relaxation approach.

*5. Management Plan and Project Goals and Objectives*

a. Present a management work plan for conducting the project, including the process (approach and methods) by which the applicant will meet established goals and objectives.

b. Provide a description of specific goals, objectives and time lines.

c. Provide a description of the major tasks and responsibilities for key positions including the applicant organization (include an organization chart and denote the relationship of this project within the applicant organization).

d. Describe how the applicant will evaluate its work plan, all collaborations, and activities related to the scope of the project.

*6. Budget Justification*

Provide a line-item budget with a detail narrative justification that is consistent with the purpose and objectives of this grant.

*7. Human Subjects Research*

Adequately address the requirements of Title 45CFR Part 46 for the protection of human subjects.

**F. Submission and Deadline**

Submit the original and two copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS–398). Forms are in the application kit.

On or before July 14, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Applications:* Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

*1. Problem Statement and Evidence of Need—20 Points*

This includes the degree to which the applicant:

a. Describe (1) the literature demonstrating how mind (cognition) and body (physiology) interact, and (2) impact on one or more health outcomes.

b. Synthesizes state-of-the-art findings regarding the effectiveness of an approach that evokes the relaxation response that has been used with healthy persons and/or persons with chronic disease or disability, including documentation/referencing of the applicants own systematic and ongoing line of mind/body inquiry as evidenced by publications and/or presentations at professional scientific meetings.

c. Describes the unmet needs and information gaps as they relate to advancing a coordinated and comprehensive effort to promote health through the relaxation response, and how this project would move toward addressing these needs and gaps (*i.e.*, purpose of the project).

*2. Research Resources and Organizational Capacity—15 points*

a. The capability of the applicant to conduct the project, taking into account its institutional experience, evidence of leadership, and ability to successfully do multi-disciplinary research for those activities required.

b. The ability of the applicant to attract and retain subjects such as establishing collaborations with one or more community-based partner(s) (health maintenance organizations; health clinics; foundations, schools) that can serve as a subject/patient/client referral source.

c. The capacity of the applicant to provide evidence of effective collaborations and linkages with partners, to meet the requirements of the project, including, if warranted, documented letters of support and commitments from those collaborating entities.

d. The capacity of the applicant to gather necessary confidential, demographic and health outcome information regarding the study participants' characteristics that predict engaging in, maintaining, and/or benefitting from a relaxation approach, including the kinds and sources of information to be obtained, analyzed, and publicized, the staff/organizations charged with its control, and how these data would be protected and used.

*3. Operational Approach—(Total 50 Points)*

a. Describe the research question(s) (that will advance the knowledge), scientific methods, and data analyses to be employed to assess the acute psychophysiological responses/benefits (*e.g.*, immediate but transient blood pressure reductions), and reliability of responses, associated with a relaxation approach, including a theoretical or scientific rationale for the measures selected and, when appropriate, evidence of the validity and reliability of measures selected (*e.g.*, measures of state anxiety). (10 points)

b. The research question(s) (that will advance the knowledge), scientific methods, and data analyses to be employed to evaluate the chronic (*e.g.*, reduction in resting blood pressure in patients with hypertension) health outcomes associated with a relaxation approach, including a theoretical or scientific rationale for the outcomes or

variables selected and, when appropriate, evidence of the validity and reliability of measures selected. (10 points)

c. The scientific methods to evaluate the hypothesized causal mechanisms that mediate the relaxation approach, relaxation response, and health outcomes relationship(s). (20 points)

d. The approach to (1) gather information on the determinants related to initiating, maintaining, and benefitting from a relaxation approach, including a brief review of currently available evidence, and/or plans to collect and analyze data that leads to an understanding of correlates which may predict who is attracted to initiating a relaxation approach, adherence rates to a relaxation approach, and the benefits gained (based on factors such as sociodemographic characteristics, health status, and one or more assessments related to belief systems, positive or negative affect, or other pertinent constructs); and (2) assess the perceptions, outcome expectancies, enjoyment, and/or actual response(s) or outcomes of persons based on their status as novice or experienced practitioners of a relaxation approach. (10 points)

*4. Management Plan and Project Goals and Objectives—15 Points*

a. The management work plan for conducting the project, including the process (approach and methods) by which the applicant will meet established goals and objectives.

b. The presentation of those specific goals, objectives and time lines.

c. The description of the major tasks and responsibilities for key positions including the applicant organization (include an organization chart and denote the relationship of this project within the applicant organization).

d. The description of how the applicant will evaluate his/her work plan, all collaborations, and activities related to the scope of the project.

e. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

*5. Budget Justification—Not Scored*

This criteria includes the adequacy of the budget justification and its relationship to program operations and services. Each line item of the budget must be well justified in a detailed narrative with special attention given to contractual requests including the responsibilities of consultants, percentage time equivalents, hourly or daily rates, etc.

The relevance of this section to the other evaluation criteria will be measured on the extent to which the budget narrative is reasonable, clearly documented, accurate, and consistent with the purpose of this announcement.

*6. Human Subjects—Not Scored*

Does the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects?

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Annual progress reports;

2. Financial status report, due no more than 90 days after the end of each budget period; and

3. Final financial status and performance reports, due no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting Systems Requirements
AR–15 Proof of Non-Profit Status

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under the sections 301(a) and 317(k)(2) the Public Health Service Act, (42 U.S.C. 241(a) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where to Obtain Additional Information**

This announcement and other CDC program announcements can be found on the CDC home page Internet address: http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

To obtain additional information, contact: Cynthia Collins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 000118, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000 Atlanta, GA 30341–4146, telephone (770)-488–2757, E-mail: coc9@cdc.gov.

For program technical assistance, contact: Deborah Jones, Division of Nutrition and Physical Activity, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, Atlanta, GA 30341–3724, telephone (770) 488–5593, E-mail address: DAJones@cdc.gov.

Dated: May 11, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Center for Disease Control and Prevention (CDC).*

[FR Doc. 00–12342 Filed 5–16–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Notice of Appeal

**AGENCY:** Administration for Children and Families (ACF), DHHS.

**ACTION:** Notice of appeal.

**SUMMARY:** By designation of the Administration for Children and Families, a member of the Departmental Appeals Board will be the presiding officer for appeals concerning ACF's imposition of Adoption and Foster Care Analysis and Reporting System penalties for the States of California, Florida, Iowa, Kansas, Maryland, Minnesota, New York North Carolina,

Ohio, South Dakota, Texas, Virginia, and Wisconsin.

**REQUESTS TO PARTICIPATE:** Requests to participate as a party or as amicus curiae must be submitted to the Board in the form specified at 45 CFR 213.15 by June 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sara Anderson, Staff Attorney, Departmental Appeals Board, Department of Health and Human Services, Room 637–D, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, Telephone Number (202) 690–6044.

**SUPPLEMENTARY INFORMATION:** Notice of appeal is hereby given as set forth in the following letter, which has been sent to the following addressees:

Phyllis D. Thompson, Attorney for the States of California, Florida, Kansas, Maryland, Minnesota, New York, Ohio, South Dakota, Texas, Virginia, and Wisconsin, Covington & Burling, 1201 Pennsylvania Avenue, NW, Washington, DC 20004–2401

and

Belinda A. Smith, Assistant Attorney General, State of North Carolina, P.O. Box 629, Raleigh, North Carolina 27602–0629

and

Vern Armstrong, Iowa Department of Human Services, Hoover State Office Building, 5th Floor, Des Moine, Iowa 50319

and

Madeline Nesse, Llewellyn Woolford, Office of the General Counsel, Department of Health and Human Services, Room 411–D, 200 Independence Avenue, SW, Washington, DC 20201

**Counsel**

This letter constitutes notice of a proceeding pursuant to 45.CFR part 213 to review the imposition of penalties by the Administration for Children and Families (ACF) for noncompliance with the Adoption and Foster Care Analysis and Reporting System requirements.

Section 479 of the Social Security Act (42 U.S.C. 6779) required the Department of Health and Human Services to provide for the implementation of an Adoption and Foster Care Analysis and Reporting System (AFCARS) for the collection of data relating to adoption and foster care in the United States. The regulation implementing section 479, found at 45 CFR 1355.40, set forth standards for the collection and reporting of this data and penalties for failure to comply with those standards.

Beginning 1999, the Administration for Children and Families (ACF) imposed a series of penalties for State's failure to meet the requirements of 45 CFR 1355.40 for the report periods October 1, 1997 through March 31, 1998, April 1, 1998 through September 30, 1998; and October 1, 1998 through March 31, 1999.

The States of California, Florida, Iowa, Kansas, Maryland, Minnesota, New York, North Carolina, Ohio, South Dakota, Texas, Virginia, and Wisconsin (the Appellants) appealed the imposition of such penalties. Initially, the Appellants appealed the penalties pursuant to section 1123A(c) of the Act and 45 CFR part 16. Subsequently, the Appellants and ACF agreed that the penalties would be reviewed pursuant to 45 CFR part 213.

The issue to be addressed in this Part 213 hearing is whether Appellants are subject to penalties under the AFCARS regulations on the ground that their AFCARS submissions were noncompliant and thereby constituted substantial failures of title IV–E State plan compliance.

This hearing will be upon briefs and other written submissions in lieu of live testimony unless the presiding officer determines, either sua sponte or in response to a request by any party, that the presentation of live testimony is necessary to assist the presiding officer in arriving at a recommended decision in any case. If a hearing for testimony is found to be necessary, it will be held on June 29 and 30, 2000, in the Departmental Appeals Board Hearing Room, Room 644–G, Hubert Humphrey Building, 200 Independence Avenue, SW, Washington, DC, 20201.

Further, the parties have agreed as follows:

ACF will refund penalty payments made by Appellants and Appellants may retain all AFCARS penalty amounts without interest, pending a determination by the Assistant Secretary for ACF.

ACF will not require payment of additional penalties for noncomplaint AFCARS submissions, and no interest shall run on such unpaid penalties, until after a final determination in these Part 213 proceedings by the Assistant Secretary.

The merits of all AFCARS penalties appealed in these cases, as well as subsequent penalties issued against the Appellants prior to the Assistant Secretary's final determination will be incorporated into the Part 213 proceedings.

Discovery proceedings in the prior Board cases will be made part of the Part 213 proceeding.

The Assistant Secretary's decision will be the final decision of the Department.

I have designated Judith A. Ballard, a Departmental Appeals Board Member, as the presiding officer pursuant to 45 CFR 213.21. ACF and the Appellants are now parties in this matter. 45 CFR 213.15(a).

A copy of this letter will appear as a Notice in the **Federal Register** and any person wishing to request recognition as a party will entitled to file a petition pursuant to 45 CFR 213.15(b) with the Departmental Appeals Board within 15 days after that notice has been published. A copy of the petition should be served on each party of record at that time. The petition must explain how the issues to be considered have caused them injury and how their interest is within the zone of interests to be protected by the governing Federal statute. 45 CFR 213.15(b)(1). In addition, the petition must concisely state petitioner's interest in the proceeding, who will represent the petitioner, and the issues on which petitioner wishes to participate. 45 CFR 213.15(b)(2). Additionally, if the petitioner believes that there are disputed issues of fact which require an in-person evidentiary hearing, the petitioner should concisely specify the disputed issues of fact in the petition, and also state whether petitioner intends to present witnesses. Any party may, within 5 days of receipt of such petition, file comments thereon; the presiding officer will subsequently issue a ruling on whether and on what basis participation will be permitted.

Any interested person or organization wishing to participate as amicus curiae may also file a petition with the presiding officer, which shall conform to the requirements at 45 CFR 213.15(c)(2). This petition should be filed within 15 days after this notice, in time to permit the presiding officer an adequate opportunity to consider and rule upon it.

Any further inquiries, submissions, or correspondence regarding this matter should be filed in an original and two copies with Ms. Ballard at the Departmental Appeals Board, Room 637–D, Hubert H. Humphrey, Building, 200 Independence Avenue, SW, Washington, DC 20201, where the record in this matter will be kept. Each submission must include a statement that a copy of the material has been sent to the other party, identifying when and to whom the copy was sent. Please refer to Board Docket Nos. A–2000–59 (California, Florida, Kansas, Maryland, Minnesota, New York, Ohio, South Dakota, Texas, Virginia, and Wisconsin);

A–2000–60 (Iowa), A–2001–61 (North Carolina).

Dated: May 10, 2000.

**Olivia A. Golden,**

*Assistant Secretary for Children and Families.*

[FR Doc. 00–12374 Filed 5–16–00; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcement No. ACF/ACYF/HS 2000–07]**

### Fiscal Year 2000 Discretionary Announcement for Head Start—Higher Education Hispanic Service Partnerships Grants: Availability of Funds and Request for Proposals

**AGENCY:** Administration on Children, Youth and Families, ACF, DHHS.

**ACTION:** Notice.

**Statutory Authority:** The Head Start Act, as amended 42 U.S.C. 9801 *et seq.* CFDA: 93.600.

**SUMMARY:** The Administration for Children and Families, Administration on Children, Youth and Families, Head Start Bureau announces the availability of $1,000,000 in funds for one Priority Area: Head Start—Higher Education Hispanic Service Partnerships (HS–HEHSP). This priority area will support efforts to improve the quality and long-term effectiveness of Head Start and Early Head Start programs serving Hispanic children and their families by developing models of academic training and forming partnerships between the Higher Education Institutions and local Head Start and Early Head Start programs.

**DATES:** The closing date and time for receipt of application is July 12, 2000 at 5 p.m. (Eastern Time Zone).

**Note:** Applications should be submitted to the ACYF Operations Center at: HS–HEHSP, 1815 North Fort Myer Drive, Suite 300 Arlington, Virginia 22209. However, in order to satisfactorily compete under this announcement it will be necessary for potential applicants to read the full announcement with application guidelines, which is available through the addresses listed below.

**ADDRESSES:** Applications, including all necessary forms can be downloaded from the Head Start web site at *www.acf.dhhs.gov/programs/hsb*. The web site also contains a listing of all Head Start and Early Head Start programs. Hard copies of the application may be obtained by writing or calling the Operations Center or sending an e-mail to *hsr@lcgnet.com*.

**FOR FURTHER INFORMATION CONTACT:** ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, Virginia 22209 or (1–800) 351–2293.

**SUPPLEMENTARY INFORMATION:**

*Priority Area:* Head Start—Higher Education Hispanic Service Partnerships (HS–HEHSP).

*Eligible Applicants:* Institutions of Higher Education.

*Project Duration:* The Announcement for this Priority Area is soliciting applications for project periods of four years and with one-year budget period.

*Federal Share of Project Costs.* The maximum Federal share for each project is not to exceed $150,000 per year and is inclusive of indirect costs.

*Matching Requirements:* Although there are no matching requirements, applicants are encouraged to provide non-Federal contributions to the project.

*Anticipated Number of Projects To Be Funded:* It is anticipated that seven projects will be funded.

*Criteria for Priority Area:* Head Start Higher Education Hispanic Service Partnerships (HS–HEHSP).

Reviewers will consider the following factors when assigning points.

**Criterion 1. Objectives and Need for Assistance: (20 Points)**

The extent to which the application identifies relevant physical, economic, social, financial, institutional or other problems requiring a grant; demonstrates the need for assistance; and states the principal and subordinate objectives of the project.

**Criterion 2. Results or Benefits Expected: (10 Points)**

The extent to which the application identifies the results and benefits to be derived; describes the anticipated contribution to policy, practice, theory and/or research, specific benefits should be described for both the Higher Education Institution and Head Start/ Migrant Head Start/Early Head Start partners.

**Criterion 3. Approach: (40 Points)**

The extent to which the application outlines an acceptable plan of action pertaining to the scope of the project which details how the proposed work will be accomplished, including a timeline; list of each organization, consultants, including the evaluator, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution; and assures the adequacy of time devoted to the project by key staff. The key staff should be knowledgeable of Head Start, Migrant Head Start and Early Head Start. The applicant must fully describe the approach and/or methodology and delineate the relationship of each task to the accomplishment of the proposed objectives. There should be evidence that the planned approach reflects sufficient input from and partnership with Head Start/Migrant Head Start/ Early Head Start and the Higher Education Institution.

**Criterion 4. Staff and Position Data: (20 Points)**

The extent of the demonstrated capacity of the applicant organization, key leaders, managers and project personnel to:

(1) Provide high quality, relevant, and responsive training to Head Start staff;

(2) Assure participating project staff are competent to plan and deliver appropriate course material to Head Start trainees that is culturally relevant;

(3) Manage the implementation of the training grant in an effective and timely manner; and

(4) Manage successful partnership that involve sharing resources, staffing, and facilities.

**Criterion 5. Budget and Budget Justification (10 Points)**

The extent to which the project's costs are reasonable and appropriate in view of the activities to be carried out and the anticipated outcomes. Provide a line item detail for the costs of attendance of two representatives of the project (one from the Higher Education Institution and one from the participating Head Start partner) to attend a two-day meeting in Washington, DC. It is the expectation that applicants should limit budget projections to those costs necessary to build institutional capacity for and execute training and career development partnerships with participating Head Start grantees.

**Required Notification of the State Single Point of Contact**

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Program and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposal Federal assistance under covered programs.

* All States and Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnestoa, Montana, Nebraska, New Jersey, New

York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau have elected to participate in the Exchange Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-four jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additonally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the accommodation or explain rule.

When comments are submitted directly to ACF, they should be addressed to: William Wilson, Head Start Bureau, 330 C Street, SW, Washington, DC 20447, Attn: Head Start-Higher Education Hispanic Service Partnerships. A list of the Single Points of Contact (SPOCs) for each State and Territory can be found on the following web site: http://www.whitehouse.gov/omb/grants/spoc.html.

Dated: May 10, 2000.

**James A. Harrell,**

*Deputy Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 00–12375 Filed 5–16–00; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Notice No. ACF/ACYF/RHYP 2000–01]**

### Notice of Availability of Financial Assistance for the Runaway and Homeless Youth Programs

**AGENCY:** Family and Youth Services Bureau, Administration on Children, Youth and Families, ACF, HHS.

**ACTION:** This notice announces the availability of financial assistance for FY 2000 Basic Center Program for Runaway and Homeless Youth (BCP), FY 2001 Transitional Living Program (TLP), FY 2000 Street Outreach Program (SOP), and the FY 2000 Youth Development State Collaboration Demonstration Projects (SCDP).

This Notice announces the availability of the official FY 2000 Program Announcement. The official announcement must be used to apply for grant funding under the competitive grant areas and is available by calling or writing the ACYF Operations Center (address below) or by downloading the announcement from the FYSB website at *http://www.acf.dhhs.gov/programs/FYSB* under Policy and Funding Announcements.

**Legislative Authority:** Grants for Runaway and Homeless Youth programs are authorized by the Runaway and Homeless Youth Act (RHY Act) as amended by PL 106–71.

**Deadlines**

The deadlines for *receipt* of applications for new grants under this announcement are as follows:

| CFDA# | Programs | Deadline dates | Deadline times |
|---|---|---|---|
| 93.623 | Basic Center Program | July 3, 2000 | 4:30 p.m. (EDT). |
| 93.557 | Street Outreach Program | July 3, 2000 | 4:30 p.m. (EDT). |
| 93.550 | Transitional Living Program | July 7, 2000 | 4:30 p.m. (EDT). |
| 93.623 | State Collaboration. Demonstration Projects | August 3, 2000 | 4:30 p.m. (EDT). |

*Mailing and Delivery Instructions:* Applications must be in hard copy. Mailed applications and applications hand delivered by applicants, applicant couriers, overnight/express mail couriers or any other method of hand delivery shall be considered as meeting an announced deadline if they are received on or before the deadline, at the following address: ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arllington, VA 22209, telephone: 1–800–351–2293, email: FYSB@lcgnet.com.

Applications may be hand delivered to the above address between the hours of 8:00 a.m. and 4:30 p.m. (EDT), Monday through Friday (excluding Federal Holidays).

Applicants are responsible for mailing and delivering applications well in advance of deadlines to ensure that the applications are received on time. Applications received after 4:30 p.m. (EDT) on the deadline date will be classified as late. Postmarks and other similar documents do not establish receipt of an application.

ACF will not accept applications delivered by fax or e-mail regardless of date or time of submission and receipt.

*Late Applications:* Applications which do not meet the criteria stated above and are not received by the deadline date and time are considered late applications. The Administration for Children and Families (ACF) will notify each late applicant that its application will not be considered in the current competition.

*Extension of Deadline:* ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

**SUPPLEMENTARY INFORMATION:** Grant awards for FY 2000 funds will be made by September 30, 2000 for the Basic Center and Street Outreach Program. Transitional Living Program grant awards for FY 2001 will be made after September 30, 2000. Grant awards for the Youth Development State Collaboration Demonstration Projects will be made by September 30, 2000, based on the availability of funds. If funds are not available for the State Collaboration Projects on September 30, 2000, we anticipate that successful applicants will be awarded funding during the second quarter of FY 2001 (January, February, and March, 2001).

The estimated funds available for new starts and the approximate number of new grants that may be awarded under this program announcement are as follows:

| Competitive grant area | New start funds available | Estimated number of new grants |
|---|---|---|
| A. BCP | $14,500,000 | 126 |
| B. TLP | 5,500,000 | 32 |
| C SOP | 5,900,000 | 59 |
| D. *SCDP | 600,000 | 5 |

*Subject to availability of funds

In addition to the new start grants, the Administration for Children and Families has provided for noncompetitive continuation funds to current grantees in the following programs:

| Grant area | Funds available | Number of grants |
|---|---|---|
| A. BCP | $24,700,000 | 222 |
| B. TLP | 13,000,000 | 73 |
| C. SOP | 7,600,000 | 80 |
| D. SCDP | 1,000,000 | 9 |

**Part 1. Competitive Grant Areas and Summaries of Evaluation Criteria**

Applicants must refer to the specific evaluation criteria for each competitive area contained in the official Program Announcement in order to adequately prepare their applications.

*A. Basic Centers Program, CFDA# 93.623 (Competitive Grant Area A)*

*Eligible Applicants:* Any State, unit of local government, combination of units of local government, public or private nonprofit agency, organization or institution is eligible to apply for these funds. Federally recognized Indian Tribes are eligible to apply for Basic Center grants. Indian Tribes that are not federally recognized and urban Indian organizations are also eligible to apply for grants as private, nonprofit agencies.

Current Basic Center grantees with project periods ending on or before September 30, 2000, and all other eligible applicants not currently receiving Basic Center funds may apply for a new competitive Basic Center grant under this announcement.

Current Basic Center Program grantees (including subgrantees) with one or two years remaining on their current grant and the expectation of continuation funding in FY 2000 may not apply for a new Basic Center grant for the community they currently serve. These grantees will receive instructions from their respective ACF Regional Offices on the procedures for applying for noncompetitive continuation grants.

*Program Purpose, Goals and Objectives:* The purpose of this program is to establish or strengthen locally-controlled, community-based programs that address the immediate needs of runaway and homeless youth and their families. Services must be delivered outside of the law enforcement, child welfare, mental health and juvenile justice systems. The program goals and objectives of the Basic Center Program are to:

- Alleviate problems of runaway and homeless youth;
- Reunite youth with their families and encourage the resolution of intrafamily problems through counseling and other services;
- Strengthen family relationships and encourage stable living conditions for youth; and
- Help youth decide upon constructive courses of action.

*Federal Share of Project Costs:* Priority will be given to applicants that apply for less than $200,000 per year. The maximum Federal share for a 3-year project period $600,000.

*Applicant Share of Project Costs:* Basic Center grantees must provide a non-Federal share or match of at least ten percent of the Federal funds awarded. (There are certain exceptions for Tribes with "638" funding pursuant to Pub. L. 93–638, under which certain Federal grants may qualify as matching funds for other Federal grant programs, *e.g.*, those which contribute to the purposes for which grants under section 638 were made.) The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a three-year project costing $300,000 in Federal funds (based on an award of $100,000 per 12-month budget period) must include a match of at least $30,000 (10,000 per budget period).

*Duration of Project:* This announcement solicits applications for Basic Center programs of up to three years duration (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for non-competitive continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

*B. Transitional Living Program, CFDA #93.550 (Competitive Grant Area B)*

*Eligible Applicants:* Any State, unit of local government (or a combination of units of local government), public or private nonprofit agency, organization, institution or other nonprofit entity. Federally recognized Indian Tribes are eligible to apply for TLP grants. Indian Tribes that are not federally recognized and urban Indian organizations are also eligible to apply for grants as private, nonprofit agencies.

Current TLP grantees with project periods ending on or before September 30, 2001, and all other eligible applicant not currently receiving TLP funds may apply for a new competitive TLP grant under this announcement for awards in FY 2001.

Current TLP grantees (including subgrantees) with one or two years remaining on their current awards and the expectation of continuation funding in Fiscal Year 2001 may not apply for a new TLP grant under this announcement. These grantees will receive instructions from their respective ACF Region/Hub Offices on the procedures for applying for non-competitive continuation grants.

*Program Purpose, Goals and Objectives:* The overall purpose of TLP for homeless youth is to establish and operate transitional living projects for homeless youth. This program is structured to help older, homeless youth achieve self-sufficiency and avoid long-term dependency on social services. Transitional living projects provide shelter, skills training, and support services to homeless youth ages 16 through 21 for a continuous period not exceeding 18 months. Transitional Living Program funds are to be used for the purpose of enhancing the capacities of youth-serving agencies in local communities to effectively address the service needs of homeless, older adolescents and young adults.

*Federal Share of Project Costs:* Applicants may apply for up to $200,000 per year, which equals a maximum of $600,000 for a 3-year project period.

*Applicant Share of Project Cost:* Transitional Living grantees provide a non-Federal share or match of at least ten percent of the Federal funds awarded. (There are certain exceptions for Tribes with "638" funding pursuant to P.L. 93–638, under which certain Federal grants may qualify as matching funds for other Federal grant programs, *e.g.*, those which contribute to the purposes for which grants under section 638 were made.) the non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. Therefore, a three-year project costing $300,000 in Federal funds (based on an award of $100,000 per 12-month budget period) must include a match of at least $30,00 ($10,000 per budget period).

*Duration of Project:* This announcement solicits applications for Transitional Living projects of up to three years (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for non-competing continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be entertained in subsequent years, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

*C. Street Outreach Program, CFDA# 93.557 (Competitive Grant Area C)*

*Eligible Applicants:* Any private, nonprofit agency is eligible to apply for these funds. Non-Federally recognized Indian Tribes and urban Indian organizations are eligible to apply for grants as private, non-profit agencies. Please note that public agencies are not eligible to apply for these funds.

Current Street Outreach Program grantees with project periods ending on or before September 30, 2000, and all other eligible applicants not currently receiving SOP funds may apply for a new competitive SOP grant under this announcement.

Current Street Outreach Program grantees (including subgrantees) with one or two years remaining on their current grant and the expectation of continuation funding in FY 2000 may not apply for a new Street Outreach grant for the community they currently serve. These grantees will receive instructions from their respective ACF Regional Offices on the procedures for applying for continuation grants.

*Program Purpose, Goals and Objectives:* The overall purpose of SOP is to provide education and prevention services to runaway, homeless and street youth who have been subjected to or are at risk of sexual exploitation or abuse. The goal of the program is to establish and build relationships between street youth and program outreach staff in order to help youth leave the streets. The objective of the program is to provide support services that will assist the youth in moving an adjusting to a safe and appropriate alternative living arrangement. These services include, at a minimum, treatment, counseling, provision of information and referral services. Street outreach programs must have access to local emergency shelter space that is an appropriate placement for young people and that can be made available for youth willing to come in off the streets. In addition, street outreach staff must have access to the shelter in order to maintain interaction with the youth during the time they are in the shelter.

*Federal Share of Project Costs:* Applicants may apply for up to $100,000 in Federal support each year, a maximum of $300,00 for a 3-year project period. The maximum Federal share of project costs is $100,000 for 12 months.

*Applicants Share of Project Cost:* SOP grantees must provide a non-Federal share or match of at least ten percent of the Federal funds awarded. (There are certain exceptions for Tribes with "638" funding pursuant to P.L. 93–638, under which certain Federal grants may qualify as matching funds for other Federal grant programs, *e.g.*, those which contribute to the purposes for which grants under section 638 were made.) The non-Federal share may be met by cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. For example, a project requesting $100,000 in Federal funds must include a match of at least $10,000.

*Duration of Project:* This announcement solicits applications for Street Outreach Program projects of up to three years (36-month project periods). Initial grant awards, made on a competitive basis, will be for one-year (12-month) budget periods. Applications for non-competing continuation grants beyond the one-year budget periods, but within the 36-month project periods, will be considered subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government.

*Summary of Evaluation Criteria for Competitive Areas A, B, and C (BCP, TLP, and SOP)*

Criterion 1: Objectives and Need for Assistance (15 Points)

Applications will be judged on how clearly they identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated. Applications will need to specify the goals and objectives of the project and how implementation will fulfill the purposes of the program. Applications should describe the conditions of youth and families in the area to be served; the incidence and characteristics of runaway, homeless or street youth and their families; the existing support systems for at-risk youth and families in the area, including other agencies providing services to runaway and homeless youth in the area.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 2: Results or Benefits Excepted (20 Points)

Applications will be judged on how clearly they identify the results and benefits to be derived, specify services to be provided, who will receive services, where and how these services will be provided, and how the services will benefit the youth families and the community to be served. Applicants must refer to the specific evaluation criteria for each competitive area

contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 3: Approach (35 Points)

Applications will be judged on how clearly they outline a plan of action which: describes the scope and detail of how the proposed work will be accomplished; accounts for all functions or activities identified in the application; cites factors which might accelerate or decelerate the work and reasons for taking the proposed approached rather than others. Applications are encouraged to describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Applications will be expected to provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of youth to be served and the results of those services, including data required for annual reporting to the Secretary of HHS. Applicants must agree to cooperate with any research or evaluation efforts sponsored by the Administration for Children and Families and to submit the required Annual Report to the Secretary of HHS on program activities and accomplishments with statistical summaries and other required program and financial reports, as instructed by FYSB.

Applications will be judged on the extent to which they described the program's youth development approach or philosophy and indicate how it underlies and integrates all proposed activities. Applicants will be expected to list organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution; describe formal service linkages and plans for coordination with other agencies; describe plans for conducting outreach and encouraging awareness of and sensitivity to the diverse needs of runaway and homeless youth who represent particular ethnic and racial backgrounds and sexual orientations. Applicants are encouraged to describe the type, capacity and staff supervision of the shelter that will be available for youth.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 4: Staff and Position Data (10 Points)

Applicants will be judged on whether they provide a resume and biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed. Applicants will be expected to list organizations and consultants who will work on the program along with a short description of the nature of their effort or contribution.

Applicants will be expected to provide information on plans for training project staff as well as staff of cooperating organizations and individuals and state the expected or estimated ratio of staff to youth.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 5: Organization Profile (10 Points Plus 5 Possible Bonus Points)

Applicants will be expected to provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accounts. Any non-profit organization submitting an application must submit of its non-profit status in its application at the time of submission. Bonus points shall be awarded to applicant organizations who have demonstrated experience in providing services to runaway, homeless and street youth.

Applicants will be expected to provide a plan for project continuance beyond grant support, including a plan for securing resources and continuing project activities after Federal assistance has ceased and an annotated listing of applicant's funding sources. Such plans should include written agreements, if applicable, between grantees and subgrantees or subcontractors or other cooperating and letters of support and statements from community, public and commercial leaders that support the project proposed for funding.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 6: Budget and Budget Justification (10 Points)

Applicants will be expected to provide a detailed line item budget and a narrative budget justification that describes how the categorical costs are derived. Applicants will be judged on how clearly they discuss the necessity, reasonableness, and allocability of the proposed costs and how clearly they describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement and accurate accounting of funds received.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

*D. Youth Development State Collaboration Demonstration Projects, CFD #93.623 (Competitive Grant Area D)*

*Eligible Applicants:* Any State or Federally recognized Indian Tribe is eligible to apply for a Youth Development State Collaboration Demonstration Project grant. Only one application may be submitted by any State or Tribe. Preference will be given to State or Tribal applicants in regions IV, V, and VI, since there are no States or Tribes in these regions currently involved in the collaboration project. The States in these regions are: Region IV: Al, FL, GA, KY, MS, NC, SC, TN; Region V: IL, IN, MI, MN, OH, WI; Region VI: AR, LA, NM, OK, TX.

*Program Purpose, Goals and Objectives:* The objectives of the Youth Development State Collaboration Demonstration Projects are to facilitate the development of State or Tribal policies and initiatives that help communities support a youth development approach; to encourage collaboration among the State or Tribal agencies that address the needs and issues for adolescents; to promote and facilitate communication and coordination between the State or Tribe and youth serving agencies, including FYSB grantees; and to promote collaborative efforts among the State or Tribe, FYSB, and community-based, youth-serving organization.

*Federal Share of Project Costs:* Applicants may apply for up to $120,000 in Federal support each year which equals a maximum of $360,000 for a 3-year period.

*Applicant Share of Project Costs:* The applicant is required to provide a minimum of 25 percent of the total approved cost of the project. (There are certain exceptions for Tribes with "638" funding pursuant to P.L. 93–638, under which certain Federal grants may qualify as matching funds for other Federal grant programs, *e.g.*, those which contribute to the purposes for which grants under section 638 were made.) The total approved cost of the project is the sum of the Federal share

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and the applicant share of the project. For example, an applicant requesting $120,000 must match the federal funds with a non-Federal share of at least $40,000.

*Duration of Project:* This announcement solicits applications for Youth Development State Collaboration Demonstration Projects of up to three years (36-month project periods). Grant awards, made on a national competitive basis, will be for a one-year (12-month) budget period. Applications for continuation grants beyond the one-year budget period, but within the longer term project period, will be entertained in subsequent years on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the interest of the government.

*Summary of Evaluation Criteria for Competitive Area D (SCDP)*

Criterion 1: Objectives and Need for Assistance (15 Points)

Applications will be judged on how clearly they specify the goals and objectives to be addressed through the Youth Development State Collaboration Demonstration Project and how these objectives are relevant to youth-related needs within the State or Tribal jurisdiction. For the purpose of this project; youth are defined as individuals between the ages of 10–24.

Applicants are expected to discuss the State's or Tribe's current framework of philosophy for addressing youth issues, including how that framework is reflected in policies and existing youth services. Applicants are expected to describe any youth development activities that are currently in place at the State or Tribal level, how those activities affect local youth services and the need for further efforts in this area. Applicants should discuss the extent of current coordination among State or Tribal agencies and programs on youth issues and existing coordination with local youth service providers, as well as the need for additional collaboration.

Applicants should describe the ability to leverage strong commitment and support at the executive level for this project.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 2: Results or Benefits Expected (20 Points)

Applications will be judged on the extent to which they clearly describe interim and final results and benefits expected of this project, especially in regard to support of youth development and coordination around youth issues and services, including changes in policies, processes, programs and initiatives resulting from this grant, how these changes will be implemented, and the expected legislative, programmatic or administrative results.

Applicants are expected to describe planned results of efforts to strengthen and/or establish effective communication and collaboration and how these will enhance services to young people, providing concrete examples of desired changes in local services and State or Tribal policy making processes.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criteria 3: Approach (35 Points)

Applications will be judged on how clearly they outline a plan of action which describes the scope and detail of how the proposed work will be accomplished; accounts for all functions or activities identified in the application; includes information that clarifies the activities that will be undertaken to introduce and support a youth development approach at the State or Tribal and local levels; cites factors which might accelerate or decelerate the work and reasons for taking the proposed approach rather than others; describes any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Applicants are expected to discuss legislative, administrative and judicial factors that may be barriers to increased collaboration and the establishment and support of a youth development approach and should describe plans to address and overcome these barriers. Applicants are expected to clearly identify a State or Tribal Youth Development Coordinator who will be responsible for activities under this grant and must also identify where the project will be located organizationally.

Applications will be judged on how clearly they explain the methodology that will be used for interim and final evaluation of the project.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 4: Staff and Position Data (10 Points)

Applicants are expected to provide a resume and biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Applications should demonstrate sufficient personnel resources and staff competence to assure that project activities can be successfully carried out and list each consultant, or key individuals who will work on the project.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 5: Organization Profile (10 Points Plus 5 Possible Bonus Points)

Applicants are expected to provide information on the applicant organization(s) and cooperating partners, including information such as organization charts, along with a brief description of the nature of their contribution and knowledge of and experience with youth development, youth issues and youth and family services.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

Criterion 6: Budget and Budget Justification (10 Points)

Applicants are expected to provide a detailed line item budget and a narrative budget justification that described how the categorical costs are derived; discusses the necessity, reasonableness, and allocability of the proposed costs; and discusses and justifies the costs of the proposed project in terms of types and quantities of activities to be implemented and the anticipated results and benefits.

Applicants are expected to describe the fiscal control and accounting procedures that will be used to ensure the prudent use, proper disbursement and accurate accounting of funds received under this program announcement.

Applicants must refer to the specific evaluation criteria for each competitive area contained in the full Program Announcement in order to adequately prepare their applications.

**Part 2. Required Notification of the Single Point of Contact**

Most portions of this program are covered under Executive Order 12372,

Intergovernmental Review of Federal Programs, and 45 CFR part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States Territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, and American Samoa have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicant should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Application for Federal Assistance, Standard Form 424, item 16.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. A list of the Single Points of Contact for each State and Territory can be found on the web site *http://www.whitehouse.gov/omb/grants/spoc.html.* or by calling the ACYF Operations Center at 1–800–351–2293.

Dated: May 12, 2000.

**James A. Harrell,**

*Deputy Commissioner, Administration on Children, Youth, and Families.*

[FR Doc. 00–12376 Filed 5–16–00; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 2000.

*Name:* Advisory Committee on Infant Mortality (ACIM).

*Date and Time:* June 28, 2000; 9:00 a.m.–5:00 p.m.; June 29, 2000; 8:30 a.m.–3:00 p.m.

*Place:* DoubleTree Park Terrace Hotel, 1515 Rhode Island Avenue, NW, Washington, DC 20005, (202) 232–7000.

The meeting is open to the public.

*Purpose:* The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; factors determining the length of hospital stay following childbirth; strategies to coordinate the variety of Federal, State, and local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from *Healthy People 2010.*

*Agenda:* Topics that will be discussed include: Early Postpartum Discharge; Low-Birth Weight; Disparities in Infant Mortality; and the Healthy Start Program.

Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–2170.

Individuals who are interested in attending any portion of the meeting or who have questions regarding the meeting should contact Ms. Kerry Pi Nesseler, HRSA, Maternal and Child Health Bureau, Telephone (301) 443–2170.

Agenda items are subject to change as priorities are further determined.

Dated: May 9, 2000.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00–12324 Filed 5–16–00; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Application

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE 810834–5

*Applicant:* Francesca J. Cuthbert, Department of Fisheries and Wildlife, University of Minnesota, St. Paul, MI.

The applicant requests a permit to take (harass) piping plover (*Charadrius melodus*) in the states of Michigan and Wisconsin. Activities are proposed for studies to aid in the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, MI 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, MI 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: May 11, 2000.

**Charles M. Wooley,**

*Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, MI.*

[FR Doc. 00–12427 Filed 5–16–00; 8:45 am]

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## DEPARTMENT OF INTERIOR

### Geological Survey

### Federal Geographic Data Committee (FGDC); Public Review of the National Hydrographic Data Content Standard for Coastal and Inland Waterways

**ACTION:** Notice; request for comments.

**SUMMARY:** The FGDC is conducting a pubic review of the National Hydrographic Data Content Standard for Coastal and Inland Waterways (hereafter called the Hydrographic Standard). The purpose of this public review is to

provide software vendors and data users and producers an opportunity to comment on this standard in order to ensure that it meets their needs.

Participants in the public review are encouraged to provide comments that address specific issues/changes/additions that may result in revisions to the draft Hydrographic Standard. After formal endorsement of the standard by the FGDC, the standard and analysis of the comments will be made available to the public.

**DATES:** Comments must be received on or before August 31, 2000.

**ADDRESSES:** The draft standard may be downloaded via Internet address *http://www.fgdc.gov/standards/status/sub5_5.html.*

Request for printed copies of the standard should be addressed to "Hydrographic Data Content Standard," FGDC Secretariat, U.S. Geological Survey, 590 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192 or facsimile 703–648–5755 or Internet at gdc@usgs.gov.

Reviewer's comments may be sent to FGDC via Internet mail to gdc-hydro@*www.fgdc.gov*. Reviewer's comments may also be sent to the FGDC Secretariat at the above address. Please send one hardcopy version of the comments and a softcopy version on 3.5-inch diskette in WordPerfect, Microsoft Word, or Rich Text Format. Reviewers are strongly urged to use the template for sending comments that may be downloaded from Internet address *http://www.fgdc.gov/standards/directives/dir2d.html.*

**SUPPLEMENTARY INFORMATION:**

**Introduction**

Geospatial hydrographic data for waterways, shorelines, coastlines, etc. that supports transportation applications has been specified as one of the key framework information layers for the National Spatial Data Infrastructure (NSDI). The objective of the Hydrographic Standard project is to develop a nationally focused hydrographic data content standard for spatial data that supports safety of navigation. When complete, this standard will provide a consistent catalog of terms and definitions (semantics) to ensure uniform interpretation of information across a variety of organizations that develop and use hydrographic feature data and applications. This standard is based upon a well known logical data model for geospatial data of features, attributes, and domain values that is consistent with the spatial Data Transfer Standard/ Federal Information Processing Standard (SDTS/FIPS 173 part 2).

**Scope**

The scope of this Hydrographic Standard project first focused on developing a catalog of hydrographic feature terms and definitions pertaining to navigation of coastal and inland waterways. In that the guidance from the NSDI concentrated on transportation/navigation, the team limited the scope to information relating to charting and electronic chart display applications. This standard will *not* address data distribution formats, extraction criteria, or accuracy reporting methods.

**Justification/Benefits**

There has never been a national data content standard for hydrographic data that support navigation applications; yet there has been interest from federal agencies, private industry, and the public for a uniform presentation of this type information for some time. A data content standard that supports navigation applications will ensure effective use of geospatial data across different agencies, organizations, and other users.

**Standards Development Process**

This standard was developed under the guidance and procedures specified by the Federal Geographic Data Committee (FGDC) under the authority of the Bathymetric Subcommittee. The FGDC announced the initiation of this Hydrographic Standard project in the **Federal Register** approximately a year ago and issued a call for any interested party to participate on the project development team. Composed of experts from the National Oceanographic and Atmospheric Administration (NOAA), National Imagery and Mapping Agency (NIMA), the U.S. Army Corps of Engineers, the U.S. Coast Guard, several pilot associations, and private industry representatives, the project team has been working together for the past year to develop this Hydrographic Standard. In addition to the expertise brought to this project team from the various organizations represented, key documents were used in the development of this standard. These are cited as references below.

The first step after the formation of a Hydrographic Standard project team was to agree upon the scope of this Hydrographic Standard. The project team then reviewed key documents that consisted of adopted standards and systems that had developed and used hydrographic feature data. The next step for the project team was to develop a master list of candidate features extracted from the following standards documents:

- International Hydrographic Organization's S57 (IHO S–57) Appendix A, Object Catalog for Digital Hydrographic Data, an intergovernmental consultative and technical organization working to support the safety of navigation and the protection of the marine environment.
- North Atlantic Treaty Organization's (NATO) Digital Geographic Information Exchange Standard (DIGEST) Part 4, Feature Attribute Coding Catalog (FACC), a comprehensive coding scheme for features and their attributes. This allows for joint naval operations between sovereign countries and requires naval personnel to have familiarity amongst traditional S–57 and FACC.
- Tri-Service Spatial Data Standard (TSSDS Release 1.8), which is primarily used for civil and military installation mapping and facility management.
- U.S. Army Corps of Engineers (USACE) Regional Engineering and Environmental Geographic Information System (REEGIS) project's data dictionary for inland waterways and primarily used by the USACE for engineering, navigation and flood control structures along the Mississippi River.

Next, the project team reviewed the master feature list and eliminated those clearly outside of the agreed to scope. A detailed comparison of feature terms and definitions extracted from the aforementioned standards was conducted. From this effort, the team was able to derive a standard feature term and definition for each feature. As a byproduct of this activity, a matrix was developed, which provides a mapping to related terms, or features, contained in each or the source standards. These matrices are included as appendices.

The project team has extracted all the attributes derived from the aforementioned standards and culled this list of attributes down to a subset of core attributes to include in the hydrographic standard. The project team created a domain list for each "category" of feature to facilitate the cross-reference. Other attributes have been grouped into logical collections applicable to individual features to ease implementation. Finally, a draft Hydrographic Standard document was generated to include the features, attributes, and domain terms and definitions lists, and additional descriptive documentation as specified by the FGDC directives on creating an NSDI standard.

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**Target Authorization Body**

The Bathymetric Subcommittee originally proposed the development of this Hydrographic Standard as an FGDC standard. The Bathymetric Subcommittee and the Standards Working Group of the FGDC will pursue a joint FGDC and American National Standards Institute (ANSI) adoption of this standard. This joint approach will require the development of an ANSI standard proposal and potentially a joint ANSI and FGDC public review. The Bathymetric Subcommittee will consider (at a later date) promoting parts of this standard (e.g., inland waterways information) that are not currently part of the S–57 standard to International Hydrographic Organization for inclusion in their standard.

**Conclusion**

This Hydrographic Data Content Standard for Coastal and Inland Waterways will facilitate semantic consistency when capturing geospatial hydrographic information in a GIS or CADD database. This standard will support the exchange of spatial data between different GIS/CADD software packages. The standard will also facilitate effective exchange of geospatial data across multiple agencies, organizations and other users. This standard will provide for consistency of semantics contained in spatial hydrographic data that enable the development of consistent military and commercial navigation applications for that query, analyze this information and interpreted this information for display of electronic charts. Cost savings associated with reducing the translating geospatial hydrographic information and building navigation applications should also be realized.

**Maintenance**

The U.S. Department of Commerce, National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS), NOAA Coastal Services Center will maintain the National Hydrographic Data Content Standard for Coastal and Inland Waterways for the Federal Geographic Data Committee. Address general questions concerning the content of this standard to David Stein, Secretary, FGDC Bathymetric Subcommittee at NOAA Coastal Services Center; 2234 South Hobson Avenue, Charleston, SC 29405–2413 or by E-mail: Dave.Stein@noaa.gov.

Dated: May 8, 2000.

**Richard E. Witmer,**

*Chief, National Mapping Division.*

[FR Doc. 00–12333 Filed 5–16–00; 8:45 am]

BILLING CODE 4310–Y7–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–958–1430–01; GP0–0206; OR–55688]**

### Notice of Redesignation of Public Domain (PD) land to Oregon & California Railroad (O&C) and Coos Bay Wagon Road (CBWR) Status in Lane, Douglas, Coos, and Curry Counties; OR

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action informs the public of the transfer of PD lands into trust for the Coquille Tribe and designated as the Coquille Forest.

**FOR FURTHER INFORMATION CONTACT:** Gregg Nelson, BLM Coos Bay District, 1300 Airport Land, North Bend, Oregon 97459, 541–751–4473.

**SUPPLEMENTARY INFORMATION:** Title V, Sec. 501(a) of the Oregon Resource Conservation Act of 1996, contained in Division B of the Omnibus Consolidated Appropriation Act of 1997, Public Law 104–208, mandated the Bureau of Land Management (BLM) to transfer into trust certain federal lands in perpetuity for the Coquille Tribe. The legislation directed that the transferred land be designated as the Coquille Forest. That land transfer was completed on September 30, 1998. The legislation also required redesignation of sufficient land to revested O&C and reconveyed CBWR grant land status to maintain the current (pre-transfer) flow of revenue to the O&C counties. Other than the proposed change in status, redesignated lands will continue to be managed in accordance with the current Coos Bay District Resource Management Plan completed in May, 1995.

The following PD lands in Lane, Douglas, and Curry Counties, Oregon have been examined and found suitable for redesignation and conversion to O&C status for management under the provisions of the O&C Act of August 28, 1937 (50 Stat. 874):

**Willamette Meridian**

T. 26 S., R. 08 W.,
  Sec. 10, SE¼NE¼;
  Sec. 22, S½ and S½N½;
  Sec. 34, S½SW¼.
T. 27 S., R. 08 W.,
  Sec. 2, NW¼SW¼ and S½NW¼.
T. 22 S., R. 09 W.,
  Sec. 22, SW¼NE¼, SE¼NW¼, SW¼, NW¼SE¼ and S½SE¼;
  Sec. 28, lots 14 through 19, inclusive, and NE¼SW¼;
  Sec. 34, NE¼NE¼ and SE¼SW¼.
T. 20 S., R. 11 W.,
  Sec. 1, lots 1 and 2 and SE¼NE¼ and S½;
  Sec. 2, N½SW¼, SE¼SW¼ and SE¼;
  Sec. 3, N½SE¼.
T. 30 S., R. 13 W.,
  Sec. 32, NW¼SW¼.
T. 31 S., R. 13 W.,
  Sec. 6, NE¼NW¼.
T. 30 S., R. 14 W.,
  Sec. 23, lots 1 and 2.
T. 31 S., R. 14 W.,
  Sec. 1, S½NE¼ and NE¼SW¼;
  Sec. 9, lots 1 through 5, inclusive;
  Sec. 15, lots 5 through 9, inclusive;
  Sec. 17, N½N½ and S½NW¼;
  Sec. 18, lots 5, 6, and 7, and S½NE¼ and NW¼NE¼;
  Sec. 22, NE¼, NE¼SE¼ and SW¼NW¼;
  Sec. 23, N½N½, NW¼SW¼ and SW¼NW¼;
  Sec. 28, SW¼NW¼;
  Sec. 32, SE¼SE¼ and N½NW¼.
T. 34 S., R. 14 W.,
  Sec. 1, lots 1 through 4, inclusive, and SW¼NE¼, SW¼ and S½NW¼;
  Sec. 2, lots 1 through 4, inclusive, and S½N½ and S½.
T. 32 S., R. 15 W.,
  Sec. 4, lots 1 through 4, inclusive, and S½NE¼NE¼, N½SE¼NE¼ and SW¼SE¼NE¼;
  Sec. 24, lot 1;
  Sec. 25, NW¼SW¼ and SE¼NW¼;
  Sec. 26, SE¼NE¼ and NE¼SE¼.
T. 33 S., R. 15 W.,
  Sec. 12, SW¼SE¼.

The above mentioned lands total 5,451.16 acres, more or less.

The following PD lands in Coos County, Oregon has been examined and found suitable for redesignation and conversion to CBWR status for management under the provisions of the O&C Act of August 28, 1937 (50 Stat. 874):

**Willamette Meridian**

T. 29 S., R. 10 W.,
  Sec. 8, N½NE¼ and E½NW¼;
  Sec. 18, lot 7;
  Sec. 24, lot 4;
  Sec. 28, NE¼NE¼.
T. 27 S., R. 11 W.,
  Sec. 26, lots 11 and 14.
T. 28 S., R. 11 W.,
  Sec. 32, S½N½ and SE¼;
  Sec. 34, E½E½, NW¼NE¼, W½SW¼ and SW¼NW¼.
T. 29 S., R. 11 W.,
  Sec. 4, lots 5 through 8, inclusive;
  Sec. 6, SE¼NW¼;
  Sec. 8, lots 5 and 6;
  Sec. 18, S½NE¼ and E½W½;
  Sec. 22, NW¼SW¼ and SW¼NW¼.
T. 30 S., R. 11 W.,
  Sec. 4, lot 3 and SE¼NE¼;
  Sec. 6, lots 6 and 7, and E½SW¼;
  Sec. 8, N½NW¼ and SE¼NW¼ (does not include E½SE¼ );

Sec. 14, SE¼NW¼ and SE¼SE¼;
Sec. 26, NE¼, NW¼SE¼, NE¼SW¼ and E½NW¼.
T. 31 S., R. 11 W.,
Sec. 10, SE¼NW¼.
T. 28 S., R. 12 W.,
Sec. 36, E½SE¼.
T. 29 S., R. 12 W.,
Sec. 24, SW¼SW¼.
T. 30 S., R. 13 W.,
Sec. 7, lots 7 and 8;
Sec. 21, N½NE¼NW¼;
Sec. 23, NE¼NW¼.
T. 30 S., R. 14 W.,
Sec. 12, NE¼NE¼.
T. 30 S., R. 15 W.,
Sec. 12, NW¼SW¼.

The above mentioned lands total 2,730.47 acres, more or less.

Detailed information regarding this action is available for review at the office of the Coos Bay District, Bureau of Land Management, 1300 Airport Lane, North Bend, Oregon 97459.

For a period of 45 days from the publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed redesignation of the land to the Field Manager, Myrtlewood Resource Area, 1300 Airport Lane, North Bend, Oregon 97459.

**Comments**

Interested parties may submit comments involving the suitability of these PD lands for redesignation to O&C and CBWR status. Comments on the redesignation are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with state and federal programs.

Comments received on the redesignation will be answered by the State Director with the right to further comment to the Secretary. In the absence of any adverse comments, the redesignation will become effective 60 days from the date of publication of this notice in the **Federal Register**

Dated: May 8, 2000.

**Robert D. DeViney, Jr.,**

*Chief, Branch of Realty and Records Services.*

[FR Doc. 00–12331 Filed 5–16–00; 8:45 am]

BILLING CODE 1430–33–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–950–7130–EU–9766; WYW–139340]**

### Realty Action; Direct Sale of Public Lands; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action; direct sale of public lands in Sweetwater County.

**SUMMARY:** The Bureau of Land Management has determined that the lands described below are suitable for public sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713:

**Sixth Principal Meridian**

T. 18 N., R. 107 W., section 34, lot 1.

The above lands aggregate 0.06 acre.

**FOR FURTHER INFORMATION CONTACT:** Becky Heick, Realty Specialist, Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North, Rock Springs, Wyoming 82901, 307–352–0344.

**SUPPLEMENTARY INFORMATION:** The Bureau of Land Management proposes to sell the surface estate of the above land to Mr. David Palmer, an adjacent landowner, by direct sale, at fair market value. The disposal of this land will allow for the development of a subdivision lot, in which the 0.06 acre of land will provide the required set back distances for a dwelling.

The proposed sale is consistent with the Green River Resource Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The lands contain no other known public values. The planning document and environmental assessment covering the proposed sale are available for review at the Bureau of Land Management, Rock Springs Field Office Office, Rock Springs, Wyoming.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals pursuant to section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

There will be no decrease of federal acres or AUMs within the Rock Springs Grazing Allotment due to the small size of the subject parcel.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

For a period of 45 days after issuance of this notice, interested parties may submit comments to the Field Manager, Rock Springs Field Office, Bureau of Land Management, 280 Hwy. 191 North, Rock Springs, WY. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: May 3, 2000.

**Ted Murphy,**

*Acting Field Manager.*

[FR Doc. 00–12332 Filed 5–16–00; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 6, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by June 1, 2000.

**Carol D. Shull,**

*Keeper of the National Register.*

**Arkansas**

Clay County
Esso Station, (Arkansas Highway History and Architecture MPS), 287 W. Main, Piggott, 00000604.
Garland County
Humphreys—Ryan House, 137 Garland Ave., Hot Springs, 00000606
Jackson County
Phillips 66 Station, (Arkansas Highway History and Architecture MPS), N. corner of W. 1st and Main Sts., Swifton, 00000605.
Lincoln County
Parker House, HC 64 Box 5, Star City, 00000607.
Miller County
Clifton, John, House, 1803 Pecan St., Texarkana, 00000608.
Pike County
Jones General Store and Esso Station, (Arkansas Highway History and

Architecture MPS), AR 84 W., Langley, 00000609.
Pope County
Threlkeld House, 1301 N. Boston Ave., Russellville, 00000610.
Pulaski County
Wassell, Corydon, House, 2005 S. Scott St., Little Rock, 00000611.
Sebastian County
Harper, Robert Atlas, House, 201 N. Main St., Greenwood, 00000612.

**Connecticut**

New Haven County
Prospect Green Historic District, 2, 8, 10, 12, 17, 19, 21, 23, 25, 27, & 30 Center St., Prospect, 00000560.

**Florida**

Putnam County
Interlachen Hall, 215 Atlantic Ave., Interlachen, 00000561.

**Georgia**

Coweta County
Henderson—Orr House, Jct. of Thomas Powers Rd. and GA 34, Stallings Crossing, 00000562.
Fulton County.
Adair Park Historic District, Bounded by Metropolitan Pkwy., Lexington Ave., Norfolk Southern RR and Shelton Ave., Atlanta, 00000563.

**Illinois**

Adams County
Quincy Northwest Historic District, Roughly bounded by Broadway, N. 2nd, Locust, and N. 12th Sts., Quincy, 00000564.

**Iowa**

Crawford County
Park Motel, 803 4th Ave. S., Denison, 00000565.

**Louisiana**

Rapides Parish
McGill, Dr. Robert E., 2704 Hill St., Alexandria, 00000566.
Tensas Parish
Bank of Newellton, 207 N. Main St., Newellton, 00000613.

**Massachusetts**

Berkshire County
East Main Street Cemetery, E. Main St., Dalton, 00000567
Middlesex County
Andover Street Historic District, 245—834 Andover St., 569, 579 E. Merrimack St., Lowell, 00000568
Norfolk County
Caryl, Benjamin, 107 Dedham St., Dover, 00000569

**Michigan**

Wayne County
Bartlett, Thomas and Maria Blackman, House, (Canton Township MPS) 500 N. Ridge Rd. (Canton Township), Cherry Hill, 00000614.
Boldman, David and Elizabeth Bell, House, (Canton Township MPS) 3339 S. Canton Center Rd. (Canton Township), Sheldon, 00000615.
Dingledey, Phillip and Maria Hasselbach, House, (Canton Township MPS) 1638 N. Haggerty Rd. (Canton Township), Westland, 00000616.
Fischer, John and Edna Trusdell, Farmstead, (Canton Township MPS) 4896—5228 S. Sheldon Rd. (Canton Township), Sheldon, 00000617.
Sheldon Inn, (Canton Township MPS), 44134 Michigan Ave. (Canton Township), Sheldon, 00000618.
Smith, George and Mary Pine, House, (Canton Township MPS), 3704 S. Sheldon Rd. (Canton Township), Sheldon, 00000619.

**Minnesota**

Koochiching County
Oberholtzer, Ernest C., Rainy Lake Islands Historic District, Mallard, Hawk and Crow Islands in Rainy Lake, Ranier, 00000570.

**New York**

Cattaraugus County
North Lyndon Schoolhouse, 7617 North Center Rd., Lyndon, 00000571.
Chautauqua County
Partridge—Sheldon House, 70 Prospect St., Jamestown, 00000572.
Cortland County
Randall Farm, (Cobblestone Architecture of New York State MPS), 3713 Page Green Rd., Cortland, 00000573.
Delaware County
Bovina Center Historic District, Roughly Co. Rt. 6, Creamery Rd., Maple and Pink Sts., Bovina Center, 00000574.
Kings County
Hubbard House, 2138 McDonald Ave., Brooklyn, 00000575.
New York County
JOHN J. HARVEY (fireboat), Pier 63, North R., New York, 00000576.
Manhattan Company Building, 40 Wall St., New York, 00000577.
Saratoga County
Batchellerville Presbyterian Church, Co. Rt. 7, Batchellerville, 00000578.
Saratoga Gas, Electric Light and Power Company Complex, Excelsior Ave., Saratoga Springs, 00000579.
Suffolk County
Bayles Shipyard, 101 E. Broadway, Port Jefferson, 00000580.
East Hampton Railroad Station, Railroad Ave., between Race and Newtown Lns., East Hampton, 00000581.
Sagaponack Historic District, Roughly along Main St., Southampton, 00000582.
St. James Chapel, E. side of Main St., 250 ft. N. of Stony Brook Ln., Brookhaven, 00000583.
Sullivan County
Hessinger Store, Main St. (Co. Rd. 122), Callicoon Center, 00000584.
Silver Lake Dam, Silver Lake Rd., Woodridge, 00000585.

**Oklahoma**

Carter County
Ardmore Carnegie Library, 511 Stanley SW., Ardmore, 00000620.
Kingfisher County
Burrus Mills Elevator C, (Grain Storage and Processing Facilities in Western Oklahoma MPS), NE corner, Jct. of Admire Ave. and 4th St., Kingfisher, 00000621.
Pontotoc County
Barnard Elementary School, 315 E. Locust St., Tecumseh, 00000624.
Wintersmith Park Historic District, E. 18th St. and Scenic Dr., Ada, 00000623.
Pottawatomie County
Aldridge Hotel, 20—24 E. 9th St., Shawnee, 00000622.
Tulsa County
Dressler, Carl K., House, 235 W. 18th St., Tulsa, 00000625.

**South Carolina**

Charleston County
King Cemetery, 1.1 mi. NE. of Jct. US 17 and S–19–38, Adams Run, 00000586.
Cherokee County
Carnegie Free Library, 210 N. Limestone St., Gaffney, 00000587.
Chester County
Great Falls Downtown Historic District, Dearborn St. between Church and Republic St., Great Falls, 00000588.
Florence County
Hopewell Presbyterian Church and Hopewell Cemetery, 5314 Old River Rd., Florence, 00000589.
Kershaw County
Seaboard Air Line Railway Depot, 1100 W. DeKalb St. (US 1), Camden, 00000590.
Williamsburg County
Salters Plantation House, Gapway Rd. (Co. Rd. 197), Salters, 00000591.
York County
Nation Ford, (Nation Ford Road Area MPS), In Catawba R., approx. 2 mi. downstream from US 21 bridge, Fort Mill, 00000592.
Nation Ford Battery, (Nation Ford Road Area MPS), Address Restricted, Rock Hill, 00000594.
Nation Ford Fish Weir, (Nation Ford Road Area MPS), In Catawba R. approx. 1200 ft. upstream from Nation Ford RR trestle, Rock Hill, 00000595.
Nation Ford Railroad Trestle, (Nation Ford Road Area MPS), Over the Catawba R. 100 ft. NE of SC 46–50, Rock Hill, 00000596.
Nation Ford Road, (Nation Ford Road Area MPS), 5 noncontiguous sections of roadbed in Fort Mill township, Fort Mill, 00000593.
Spratt Cemetery, (Nation Ford Road Area MPS), Brickyard Rd., Fort Mill, 00000597.

**South Dakota**

Charles Mix County
Lake Andes Carnegie Library, 500 Main St., Lake Andes, 00000598.
Hughes County
Oahe Addition Historic District, Roughly bounded by N. Poplar, LaBarge Ct., and 3rd and 4th Sts., Pierre, 00000599.
Jerauld County
Municipal Field House, (Federal Relief Construction in South Dakota MPS), 418 2nd St. SW., Wessington Springs, 00000600.

**Wisconsin**

Columbia County
Portage Street Historic District, Roughly along Portage St. from Spring to Parr Sts., Lodi, 00000626.
Green County

Hefty—Blum Farmstead, W6303 Hefty Rd., Washington, 00000601.
Menominee County
Saint Joseph of the Lake Church and Cemetery, Address Restricted, Menominee Reservation, 00000602.
Racine County
Burlington Downtown Historic District, Roughly bounded by E. Jefferson, N. Pine, E. Washington, E. Chestnut, N., Dodge, Commerce, Mill, and W. Chestnut Sts., Burlington, 00000603.

[FR Doc. 00–12377 Filed 5–16–00; 8:45 am]
BILLING CODE 4310–70–P

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–839–840 (Final)]**

### Certain Cold-Rolled Steel Products From Turkey and Venezuela

**Determinations**

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of certain cold-rolled steel products from Turkey and Venezuela that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

**Background**

The Commission instituted these investigations effective June 2, 1999, following receipt of petitions filed with the Commission and the Department of Commerce by Bethlehem Steel Corporation (Bethlehem, PA); U.S. Steel Group (Pittsburgh, PA); Ispat Inland, Inc. (East Chicago, IL); LTV Steel Co., Inc. (Cleveland, OH); National Steel Corporation (Mishawaka, IN); Gulf States Steel, Inc. (Gadsden, AL); Steel Dynamics, Inc. (Butler, IN); Weirton Steel Corporation (Weirton, WV); and the United States Steelworkers of America, Pittsburgh, PA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of cold-rolled steel from Turkey and Venezuela were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. § 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 1, 1999 (64 FR 67307). The hearing was held in Washington, DC, on January 20, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 4, 2000. The views of the Commission are contained in USITC Publication 3297 (May 2000), entitled Certain Cold-Rolled Steel Products from Turkey and Venezuela: Investigations Nos. 731-TA–839–840 (Final).

Issued: May 11, 2000.
By order of the Commission.

**Donna R. Koehnke,**
*Secretary.*

[FR Doc. 00–12420 Filed 5–16–00; 8:45 am]
BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).
[2] Chairman Lynn M. Bragg dissenting.

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731–TA–406 & 408 (Review)]**

### Electrolytic Manganese Dioxide From Greece and Japan

**Determinations**

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act), that revocation of the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. [2]

**Background**

The Commission instituted these reviews on May 3, 1999 (64 FR 23675) and determined on August 25, 1999 that it would conduct full reviews (64 FR 46407, August 25, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 6, 1999 (64 FR 54353). The hearing was held in Washington, DC, on March 2, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on May 9, 2000. The views of the Commission are contained in USITC Publication 3296 (May 2000), entitled Electrolytic Manganese Dioxide from Greece and Japan: Investigations Nos. 731–TA 406 and 408 (Review).

Issued: May 12, 2000.
By order of the Commission.

**Donna R. Koehnke,**
*Secretary.*

[FR Doc. 00–12421 Filed 5–16–00; 8:45 am]
BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).
[2] Chairman Lynn M. Bragg dissenting.

## DEPARTMENT OF JUSTICE

### Office of Attorney Personnel Management, Justice Management Division; Agency Information Collection Activities: Proposed Collection: Extension of a Currently Approved Collection

**ACTION:** Application booklets—Attorney General's Honor program, Summer law intern program.

Office of Management and Budget (OMB) approval is sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted for 30 days until June 16, 2000. This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10. Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Clarisa Rodriguez-Coelho, Department of Justice Desk Officer, Washington, DC, 20530. Additionally, comments may be submitted to OMB via facsimile to 202–395–7285. Comments may also be

submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC, 20530. Additionally, comments may be submitted to DOJ via facsimile to 202–514–1534. Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Application Booklets—Attorney General's Honor Program, Summer Law Intern Program.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection. Form number: None. Office of Attorney Personnel Management, Justice Management Division, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. Primary: Individuals or households. Other: None. This data collected is the only vehicle for the Department of Justice (DOJ) to hire graduating law students. This application form submitted voluntarily, submitted only once a year by students/judicial law clerks who will be in this applicant pool only once; and the information sought by relates to the hiring criteria established as an internal matter by DOJ personnel.

(5) *An estimate of the total number of respondents and the amount of time estimate for an average respondent to respond:* 5,000 respondents at 1 hour response.

(6) *An estimated of the total public burden (in hours) associated with the collection:* 5,000 annual burden hours. Public comment on this proposed information collection is strongly encouraged.

**Robert B. Briggs,**

*Department Clearance Officer, Department of Justice.*

[FR Doc. 00–12429 Filed 5–16–00; 8:45 am]

BILLING CODE 4410–26–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Job Corps: Final Finding of No Significant Impact (FONSI) for the Proposed Job Corps Center in Carville, LA

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Final Finding of No Significant Impact (FONSI) for the proposed Job Corps Center to be located at the former Gillis W. Long Hansen's Disease Center, 5445 Point Clair Road, Carville, Iberville Parish, Louisiana.

**SUMMARY:** Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps gives final notice of the proposed construction of a new Job Corps Center at the former Gillis W. Long Hansen's Disease Center, 5445 Point Clair Road, Carville, Iberville Parish, Louisiana, and that this construction will not have a significant adverse impact on the environment. In accordance with 29 CFR 11.11(d) and 40 CFR 1501.4(e)(2), a preliminary FONSI for the new Job Corps Center was published in the March 27, 2000 **Federal Register** (65 FR 16224–16226). No comments were received regarding the preliminary FONSI.

ETA has reviewed the conclusion of the environmental assessment (EA), and agrees with the finding of no significant impact. This notice serves as the Final Finding of No Significant Impact for the new Job Corps Center at the former Gillis W. Long Hansen's Disease Center, 5445 Point Clair Road, Carville, Iberville Parish, Louisiana. The preliminary FONSI and the EA are adopted in final with no change.

**EFFECTIVE DATE:** May 17, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eric Luetkenhaus, Employment and Training Administration, Department of Labor, 200 Constitution Avenue NW, Room N–4659, Washington, DC, 20210; (202) 219–5468 ext 118 (this is not a toll-free number).

Dated at Washington, DC, this 9th day of May 2000.

**Richard C. Trigg,**

*Director of Job Corps.*

[FR Doc. 00–12399 Filed 5–16–00; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provide in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Labor Market Information (LMI) Cooperative Agreement. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

**DATES:** Written comments must be submitted to the office listed in the **ADDRESSES** section of this notice on or before July 17, 2000.

**ADDRESSES:** Send comments to Sytrina D. Toon, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue NE, Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

**FOR FURTHER INFORMATION CONTACT:** Sytrina D. Toon, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The BLS enters into Cooperative Agreements with State Employment Security Agencies (SESAs) annually to provide financial assistance to the SESAs for the production and operation of the following LMI statistical programs: Current Employment Statistics, Local Area Unemployment Statistics, Occupational Employment Statistics, Covered Employment and Wages Report, and Mass Layoff Statistics. The Cooperative Agreement provides the basis for managing the administrative and financial aspects of these programs.

**II. Desired Focus of Comments**

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

**III. Current Action**

The existing collection of information allows Federal staff to negotiate the Cooperative Agreement with the SESAs, and to monitor their financial and programmatic performance and adherence to administrative requirements imposed by regulations implementing OMB Circular A–102 and other grant-related regulations. The information collected also is used for planning and budgeting at the Federal level and in meeting Federal reporting requirements.

*Type of Review:* Revision.

*Agency:* Bureau of Labor Statistics.

*Title:* Labor Market Information (LMI) Cooperative Agreement.

*OMB Number:* 1220–0079.

*Affected Public:* State, local, or Tribal Government.

*Frequency:* Annually.

| Information collection | Respondents | Frequency | Responses | Time | Total hours |
|---|---|---|---|---|---|
| Work Statements | 55 | 1 | 55 | 1–2 hr. | 55–110 |
| BIF (LMI 1A, 1B) | 55 | 1 | 55 | 1–6 hr. | 55–330 |
| Quarterly Automated Financial Reports | 48 | 4 | 192 | 10–50 min. | 32–160 |
| Monthly Automated Financial Reports | 48 | 8* | 384 | 5–25 min. | 32–160 |
| BLS Cooperative Statistics Financial Report (LMI 2A). | 7 | 12 | 84 | 1–5 hr. | 84–420 |
| Quarterly Status Report (LMI 2B) | 1–30 | 4 | 4–120 | 1 hr. | 4–120 |
| Total | 1–55 | | 774–890 | | 264–1300 |
| Average Totals | 55 | | 832 | | 782 |

*Reports are not received for end-of-quarter months, i.e., December, March, June, and September.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC this 11th day of May 2000.

**W. Stuart Rust, Jr.,**

*Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 00–12400 Filed 5–16–00; 8:45 am]

BILLING CODE 4510–24–M

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**DEPARTMENT OF LABOR**

**Pension and Welfare Benefits Administration**

**Working Group on Phased Retirement, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting**

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the Working Group assigned by the Advisory Council on Employee Welfare and Pension Benefit Plans to study the issue of phased retirement will hold an open public meeting on Thursday, June 1, 2000 in Room N–5437 A–D, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, DC 20210.

The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for Working Group members to hear testimony concerning workforce demographic trends and current practices in phased retirement plans.

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before May 26, 200 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by May 26 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 26.

Signed at Washington, DC this 12th day of May 2000.

**Leslie Kramerich,**

*Acting Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 00–12402 Filed 5–16–00; 8:45 am]

BILLING CODE 4510–29–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration Working Group on Long-Term Care: Issues and Solutions, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Thursday, June 1, 2000 of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study Long-Term Care: Issues and Solutions

The session will take place in Room N–5437 A–D, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, DC 20210. The purpose of the open meeting, which will run from 1 p.m. to approximately 3:30 p.m., is for working group members to take testimony focusing on long-term care indemnification in the marketplace today. Subtopics will be: Who purchases long-term policies? What services are typically included: What do they cost? What factors influences cost? How can policies be made more affordable to the consumer?

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before May 26, 2000 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, room N–54677, 200 Constitution Avenue NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by May 26 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 26.

Dated: Signed at Washington, DC this 12th day of May 2000.

**Leslie Kramerich,**

*Acting Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 00–12403 Filed 5–16–00; 8:45 am]

BILLING CODE 4510–29–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### 110th Full Meeting of the Advisory Council on Employee Welfare and Pension Benefits Plan; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, the 110th open meeting of the full Advisory Council on Employee Welfare and Pension Benefit Plans will be held Friday, June 2, 2000 in Room N–5437 A–D, U.S. Department of Labor Building, Third and Constitution Avenue NW, Washington, DC 20210.

The purpose of the meeting, which will begin at 1:30 p.m. and end at approximately 3 p.m., is for the three working groups to provide progress reports on their topics of study and for the Pension and Welfare Benefits Administration to update members on current employee benefit activities.

Members of the public are encouraged to file a written statement pertaining to any topics the Council elected to study for the year by submitting 20 copies on or before May 26, 2000 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Suite N–5677, 200 Constitution Avenue NW, Washington, DC 20210.

Individuals or representatives of organizations wishing to address the Advisory Council should forward their requests to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to ten minutes, time permitting, but an extended statement may be submitted for the record. Individuals with disabilities, who need special accommodations, should contact Sharon Morrissey by May 26 at the address indicated.

Organizations or individuals may also submit statements for the record without testifying. Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 26, 2000.

Signed at Washington, DC this 12th day of May 2000.

**Leslie Kramerich,**

*Acting Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 00–12404 Filed 5–16–00; 8:45 am]

BILLING CODE 4510–29–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Working Group on Benefit Continuity After Organizational Restructuring, Advisory Council on Employee Welfare and Pension Benefits Plans; Notice of Meeting

Pursuant to the authority contained in Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. 1142, a public meeting will be held Friday, June 2, 2000 of the Advisory Council on Employee Welfare and Pension Benefit Plans Working Group assigned to study benefit continuity after organizational restructuring.

The session will take place in Room N–5437 A–D, U.S. Department of Labor Building, Second and Constitution Avenue NW, Washington, DC 20210. The purpose of the open meeting, which will run from 9:30 a.m. to approximately noon, is for working group members to continue taking testimony on the legal framework governing employee benefit plan continuity during organizational restructuring and ramifications for these plans under Title I and II of the Employee Retirement Income Security Act (ERISA).

Members of the public are encouraged to file a written statement pertaining to the topic by submitting 20 copies on or before May 26, 2000 to Sharon Morrissey, Executive Secretary, ERISA Advisory Council, U.S. Department of Labor, Room N–5677, 200 Constitution Avenue NW, Washington, DC 20210. Individuals or representatives of organizations wishing to address the Working Group should forward their request to the Executive Secretary or telephone (202) 219–8753. Oral presentations will be limited to 10 minutes, but an extended statement may be submitted for the record. Individuals with disabilities who need special accommodations should contact Sharon Morrissey by May 26 at the address indicated in this notice.

Organizations or individuals may also submit statements for the record without testifying Twenty (20) copies of such statements should be sent to the Executive Secretary of the Advisory Council at the above address. Papers will be accepted and included in the record of the meeting if received on or before May 26.

Signed at Washington, DC this 12th day of May 2000.

**Leslie Kramerich,**

*Acting Assistant Secretary, Pension and Welfare Benefits Administration.*

[FR Doc. 00–12405 Filed 5–16–00; 8:45 am]

BILLING CODE 4510–29–M

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting of the Board of Directors,

**TIME AND DATE:** The Board of Directors of the Legal Services Corporation will meet on May 25, 2000, via conference call. The meeting will begin at 4:00 p.m. and continue until conclusion of the Board's agenda.

**LOCATION:** 750 First Street, NE, 11th Floor, Washington, DC 20002, in Room 11026.

**STATUS OF MEETING:** Open.

**MATTERS TO BE CONSIDERED:** 1. Approval of the agenda.

2. Consider and act on the Board of Director's comments on the Inspector General's Semiannual Report to Congress for the Period October 1, 1999 to March 31, 2000.

3. Consider and act on other business.

**CONTACT PERSON FOR INFORMATION:** Victor M. Fortuno, Vice President for Legal Affairs, (202) 336–8800.

**SPECIAL NEEDS:** Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments. Individuals who have a disability and need an accommodation to attend the meeting may notify Shannon Nicko Adaway, at (202) 336–8800.

Dated: May 12, 2000

**Victor M. Fortuno,**

*Vice President for Legal Affairs.*

[FR Doc. 00–12558 Filed 5–15–00; 3:11 pm]

BILLING CODE 7050–01–P

## NUCLEAR REGULATORY COMMISSION

### Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

**AGENCY:** Nuclear Regulatory Commission (NRC).

**ACTION:** Notice of the OMB review of information collection and solicitation of public comment.

**SUMMARY:** The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: New

2. The title of the information collection: Generic Customer Satisfaction Survey

3. The form number if applicable: NRC Form 671, Request for Review of a Customer Satisfaction Survey Under Generic Clearance

4. How often the collection is required: Occasionally

5. Who will be required or asked to report: Voluntary reporting by the public and NRC licensees

6. An estimate of the number of responses: 1250 (250 responses/survey x 5 surveys)

7. The estimated number of annual respondents: 1250

8. An estimate of the total number of hours needed annually to complete the requirement or request: 313 (1250 responses x 0.25 hrs/response)

9. An indication of whether section 3507(d), Pub. L. 104–13 applies: N/A

10. Abstract: Voluntary customer satisfaction surveys will be used to contact users of NRC services and products to determine their needs, and how the Commission can improve its services and products to better meet those needs. In addition, focus groups will be contacted to discuss questions concerning those services and products. Results from the surveys will give insight into how NRC can make its services and products cost effective, efficient, and responsive to its customer needs. Each survey will be submitted to OMB for its review.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 16, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 11th day of May 2000.

For the Nuclear Regulatory Commission.

**Brenda Jo. Shelton,**

*NRC Clearance Officer, Office of the Chief Information Officer.*

[FR Doc. 00–12423 Filed 5–16–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**Docket No. 50–255.**

### Consumers Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–20, issued to Consumers Energy Company (the licensee) for operation of the Palisades Plant located in Van Buren County, Michigan.

The proposed amendment would change the expiration date of the operating license to 40 years from the date of issuance of the license rather than the date of the construction permit. Specifically, the proposed amendment would change the expiration date of Palisades Plant Facility Operating License No. DPR–20, as stated in License Condition 2.H of the Amended Facility Operating License from "midnight on March 14, 2007" to "midnight on March 24, 2011."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 16, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10

CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Arunas T. Udrys, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, MI 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 27, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 11th day of May 2000.

For the Nuclear Regulatory Commission.

**Darl S. Hood,**

*Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–12424 Filed 5–16–00; 8:45 am]

BILLING CODE 7590–01–P

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## NUCLEAR REGULATORY COMMISSION

### Sunshine Act Meeting Notice

**AGENCY HOLDING THE MEETING:** Nuclear Regulatory Commission.

**DATES:** Weeks of May 15, 22, 29, June 5, 12, and 19, 2000.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, MD.

**STATUS:** Public and closed.

**MATTERS TO BE CONSIDERED:**

**Week of May 15**

*Tuesday, May 16*

9:25 a.m. Affirmation Session (public meeting) (if needed)

**Week of May 22—Tentative**

*Thursday, May 25*

8:30 a.m. Briefing on Operating Reactors and Fuel Facilities (public meeting) (Contact: Joe Shea, 301–415–1727)

10:15 a.m. Briefing on Status of Regional Programs, Performance and Plans (public meeting) (Contact: Joe Shea, 301–415–1727)

1:30 p.m. Briefing on Improvements to 2.206 Process (public meeting) (Contact: Andrew Kugler, 301–415–2828)

**Week of May 29—Tentative**

*Tuesday, May 30*

9:25 a.m. Affirmation Session (public meeting) (if needed)

**Week of June 5**

There are no meetings scheduled for the Week of June 5.

**Week of June 12—Tentative**

*Tuesday, June 13*

9:25 a.m. Affirmation Session (public meeting) (if needed)

9:30 a.m. Meeting with Organization of Agreement States (OAS) and

Conference of Radiation Control Program Directors (CRCPD) (public meeting) (Contact: Paul Lohaus, 301–415–3340)

1 p.m. Meeting with Korean Peninsula Energy Development Organization (KEDO) and State Department (public meeting) (Contact: Donna Chaney, 301–415–2644)

**Week of June 19—Tentative**

*Tuesday, June 20, 2000*

9:25 a.m. Affirmation Session (public meeting) (if needed)

9:30 a.m. Briefing on Final Rule—Part 70, Regulating Fuel Cycle Facilities (public meeting)

1:30 p.m. Briefing on Risk-Informed Part 50, Option 3 (public meeting)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording) (301) 415–1292.

**CONTACT PERSON FOR MORE INFORMATION:** Bill Hill, (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: May 12, 2000.

**William M. Hill, Jr.,**

*SECY Tracking Officer, Office of the Secretary.*

[FR Doc. 00–12505 Filed 5–15–00; 8:45 am]

BILLING CODE 7590–01–M

## NUCLEAR REGULATORY COMMISSION

### Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

#### I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 22, 2000, through May 5, 2000. The last biweekly notice was published on May 3, 2000 (65 FR 25761).

#### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 16, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be

made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

*Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona*

*Date of amendments request*: May 26, 1999, as supplemented March 31, 2000.

*Description of amendments request*: The licensee proposes to change the allowable values in Technical Specification Section 3.3.1, Table 3.3.1–1, Item 12, "Reactor Coolant Flow, Steam Generator No. 1-Low" and Item 13, "Reactor Coolant Flow, Steam Generator No. 2-Low," to reduce the demonstrated spurious trip hazard associated with this setpoint. This application was originally noticed in the **Federal Register** on June 30, 1999 (64 FR 35201).

*Basis for proposed no significant hazards consideration determination*: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Standard 1—Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change will change the Reactor Protection System (RPS) reactor coolant flow trip setpoints. The RPS functions to mitigate the consequences of an accident. The changes to the low reactor coolant flow trip setpoints will reduce or eliminate unnecessary challenges to the RPS. Therefore, the proposed change will not involve a significant increase in the probability of an accident previously evaluated.

These changes will result in an increased time delay for the RPS low reactor coolant flow trip. The reanalysis of the affected Updated Final Safety Analysis Report (UFSAR) Chapter 15 event (UFSAR 15.3.4, Reactor Coolant Pump Shaft Break with Loss of Offsite Power), with the increased time delay, shows that the dose consequences for this event remains bounded by the UFSAR analysis. Therefore, this change does not involve a significant increase in the consequences of an accident previously evaluated.

Standard 2—Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change will change the RPS reactor coolant flow trip setpoints. The RPS functions to mitigate the consequences of an accident. The changes to the low reactor coolant flow trip setpoints will reduce or eliminate unnecessary challenges to the RPS. The proposed change only changes the mitigating actions of the RPS, without changing the required function of the RPS. Therefore, the change to the low reactor coolant flow trip setpoints does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3—Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed change will change the RPS reactor coolant flow trip setpoints. The reanalysis of the affected UFSAR Chapter 15 event (UFSAR 15.3.4, Reactor Coolant Pump Shaft Break with Loss of Offsite Power), with the revised reactor coolant flow trip setpoints, shows that the minimum departure from nucleate boiling ratio (DNBR) and specified acceptable fuel design limits (SAFDLs) for this event remains bounded by the UFSAR analysis. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on that review, it appears that the three standards of 10 CFR 50.92(c) are

satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

*Attorney for licensee:* Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999 *NRC Section Chief:* Stephen Dembek

*Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant (BSEP), Units 1 and 2, Brunswick County, North Carolina*

*Date of amendments request:* April 26, 2000.

*Description of amendments request:* The proposed amendments would increase the maximum average ultimate heat sink (UHS) temperature allowed by Technical Specification (TS) 3.7.2, "Service Water System and Ultimate Heat Sink."

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation with the maximum 24 hour average UHS water temperature as high as 90.5°F does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The BSEP SW [Service Water] system is designed to provide cooling water for the removal of heat from equipment required for a safe reactor shutdown following a Design Basis Accident (DBA) or transient. This equipment includes the Diesel Generators (DGs), Residual Heat Removal (RHR) pump seal coolers, room cooling units for Emergency Core Cooling System (ECCS) equipment, and Residual Heat Removal Service Water (RHRSW) heat exchangers. The SW system also provides cooling to other components, as required, during normal operation. The SW system is not an initiator of any previously evaluated accident. The safety related components associated with SW cooling have been analyzed for a maximum UHS temperature of 92°F. The proposed change maintains this maximum UHS temperature. As such, the qualification of safety related components is not affected. Therefore, the probability of occurrence of a previously evaluated accident is not increased.

The new maximum 24 hour average UHS water temperature limit of 90.5° F has been evaluated and it was determined that the SW system will maintain sufficient heat removal capability. Existing TS operability requirements for the UHS ensure that conservatively bounding assumptions used in the analysis of the SW system's heat removal capability will be met, or the UHS will be declared inoperable. As such, the consequences of previously analyzed accidents are not affected[.]

2. Operation with the maximum 24 hour average UHS water temperature as high as 90.5°F will not create the possibility of a new or different kind of accident from any accident previously evaluated.

Increasing the maximum 24 hour average UHS water temperature does not create the possibility of an accident of a different type than any evaluated previously in the safety analysis report. UHS water temperature does not represent an accident initiator. There is no physical change to any plant structure, system, or components. Therefore, there is no possibility of an accident of a different type.

Increasing the maximum 24 hour average UHS water temperature does not create the possibility of a malfunction of a different type than any evaluated previously. The safety related components associated with SW cooling have been analyzed for a maximum UHS temperature of 92°F. This maximum UHS temperature is maintained by the proposed change. As such, this condition does not introduce the possibility of a malfunction of a different type than any evaluated.

3. Operation with the maximum 24 hour average UHS water temperature as high as 90.5°F does not involve a significant reduction in a margin of safety.

UHS temperature limits are established to ensure that the SW system is able to provide sufficient cooling water for the removal of heat from equipment, such as the DGs, RHR pump seal coolers, ECCS room cooling units, and RHRSW heat exchangers, required for a safe reactor shutdown following a DBA or transient. CP&L has performed an analysis which demonstrates that this capability is not reduced with the increased maximum 24 hour average UHS water temperature limit. Existing TS operability requirements for the UHS ensure that conservatively bounding assumptions used in the analysis of the SW system's heat removal capability will be met, or the UHS will be declared inoperable. As such, the ability of the SW system to perform its intended safety function is not affected and the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Richard P. Correia.

*Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina*

*Date of amendment request:* April 13, 2000

*Description of amendment request:* The proposed amendments would revise the Technical Specifications to accommodate the use of Framatome Cogema Fuels Mark-B11 fuel with M5 cladding.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated?

No. The proposed change to the technical specifications and bases incorporate the use of Mark-B11 fuel assemblies with M5 cladding. The analyzed events are initiated by the failure of specific plant structures, systems, or components. The change in fuel assembly design or cladding material does not impact the condition or performance of those structures, system, or components. Therefore, the proposed changes will not increase the probability of an accident previously evaluated.

The accident analyses have been evaluated to address the changes in the fuel design and cladding material. The results of this evaluation demonstrate that the applicable acceptance criteria are met. Thus, the proposed changes will not increase the consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No. The proposed changes to the technical specifications are to support implementation of Mark-B11 fuel assemblies with M5 cladding. The changes in fuel design and cladding material do not alter the operating characteristics of the plant. In addition, the fuel handling equipment is compatible with the Mark-B11 fuel assembly design. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety?

No. The margin of safety is established through the design of the plant systems, structures, components, and the parameters within which the plant is operated. The proposed change does not involve any significant physical change to the plant. The primary design changes, which enhance nuclear, thermal-hydraulic and mechanical performance, include the following:

1. Reduced diameter fuel rod,
2. Flow mixing vanes on five of the six intermediate spacer grids,
3. Improved grid restraint system, and
4. M5 fuel rod cladding.

The changes in fuel design and cladding material have been evaluated which demonstrates that all of the applicable acceptance criteria are met. Based on this, the proposed changes do not involve a significant reduction in a margin of safety.

Duke has concluded based on the above that there are no significant hazards considerations involved in this request.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

*NRC Section Chief:* Richard L. Emch, Jr.

*GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey*

*Date of amendment request:* December 1, 1999.

*Description of amendment request:* The proposed amendment would revise the standard by which GPU Nuclear tests charcoal used in engineered safeguards features (ESF) systems to American Society for Testing and Materials D3803–1989. These proposed changes are made in accordance with Generic Letter (GL) 99–02.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is in accordance with NRC guidance in GL 99–02 which states that new testing protocol is more accurate and demanding than older tests. The acceptance criteria for charcoal efficiency has been made more stringent and there is no change to an operating parameter of any system, component or structure. Therefore, the probability of occurrence of the consequences of an accident previously evaluated in the SAR [Safety Analysis Report] will not increase as a result of this change.

2. The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the testing standard for activated charcoal efficiency to a more conservative methodology while increasing the acceptance criteria through the application of a safety factor. There is no change to an operating parameter of any system, component, or structure. Therefore, the proposed activity does not create the possibility for an accident or malfunction of a different type than any previously identified in the SAR.

3. The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed change does not involve a reduction in the margin of safety. The change is primarily administrative, adheres to NRC guidance, and is more conservative than the previously employed standard. The change does not modify an operating parameter of any system, or component structure. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Acting Section Chief:* M. Gamberoni.

*Maine Yankee Atomic Power Company, Docket No. 50–309, Maine Yankee Atomic Power Station, Lincoln County, Maine*

*Date of amendment request:* January 13, 2000.

*Description of amendment request:* The amendment would add a license condition that requires Maine Yankee Atomic Power Company (MYAPC) to implement and maintain in effect all provisions of the License Termination Plan (LTP). MYAPC submitted the LTP in accordance with 10 CFR 50.82(a)(9) to demonstrate that the remainder of decommissioning activities will be performed in accordance with Title 10 of the Code of Federal Regulations, will not be inimical to the common defense or security or to the health and safety of the public, and will not have a significant effect on the quality of the environment.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The requested license amendment does not authorize any plant activities beyond that allowed by 10 CFR Chapter I or beyond that considered in the DSAR [Defueled Safety Analysis Report]. The bounding accident described in the DSAR for potential airborne activity is the postulated resin cask drop accident in the Low Level Radioactive Waste Storage Building. This accident is expected to contain more potential airborne activity than can be released from other decommissioning events. The radionuclide distribution assumed for the spent resin cask has more transuranics (the major dose contributor) than the distribution in the components involved in other decommissioning accidents. The accidents considered in the DSAR include: 1) Explosion of Liquid Petroleum Gas (LPG) Leaked from a Front End Loader or Forklift, 2) Explosion of Oxyacetylene During Segmenting of the Reactor Vessel Shelf, 3) Release of Radioactivity from the RCS Decontamination Ion Exchange Resins, 4) Gross Leak During In-Situ Decontamination, 5) Segmentation of RCS Piping with Unremoved Contamination, 6) Fire Involving Contaminated Clothing or Combustible Waste, 7) Loss of Local Airborne Contamination Control During Blasting or Jackhammer Operations, 8) Temporary Loss of Services, 9) Dropping of Contaminated Concrete Rubble, 10) Natural Phenomena and 11) Transportation Accidents. The probabilities and consequences for these accidents are estimated in the basis documentation for DSAR Section 7. No systems, structures, or components that could initiate or be required to mitigate the consequences of an accident are affected by the proposed change in any way not previously evaluated in the DSAR. Since Maine Yankee does not exceed the salient parameters associated with the plant referenced in the basis documentation in any material respects, it is concluded that these probabilities and consequences are not increased. Therefore, the proposed change to the Maine Yankee License does not involve any increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The requested license amendment does not authorize any plant activities which could precipitate or result in any accidents beyond that considered in the DSAR. The accidents previously evaluated in the DSAR are described above. These accidents are described in the basis documentation for DSAR Section 7. The proposed change does not affect plant systems, structures, or components in any way not previously evaluated in the DSAR. Since Maine Yankee does not exceed the salient parameters associated with the plant referenced in the basis documentation in any material respects, it is concluded that these accidents appropriately bound the kinds of accidents possible during decommissioning. Therefore, the proposed change to the Maine Yankee License would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety defined in Maine Yankee's license basis for the consequences of decommissioning accidents has been established as the margin between the bounding decommissioning accident and the dose limits associated with the need for emergency plan offsite protection, namely the Environmental Protection Agency Protective Action Guidelines EPA-PAGs. As described above, the bounding decommissioning accident is the postulated resin cask drop accident in the Low Level

Radioactive Waste Storage Building. Since the bounding decommissioning accident is expected to contain more potential airborne activity than can be released from other decommissioning events and since the radionuclide distribution assumed for the spent resin cask has more transuranics (the major dose contributor) than the distribution in the components involved in other decommissioning accidents, the margin of safety associated with the consequences of decommissioning accidents cannot be reduced. The margin of safety defined in the statements of consideration for the final rule on the Radiological Criteria for License Termination is described as the margin between the 100 mrem/yr public dose limit established in 10 CFR 20.1301 for licensed operation and the 25 mrem/yr dose limit to the average member of the critical group at a site considered acceptable for unrestricted use. This margin of safety accounts for the potential effect of multiple sources of radiation exposure to the critical group. Since the license termination plan was designed to comply with the radiological criteria for license termination for unrestricted use, the margin of safety cannot be reduced. Therefore, the proposed changes to the Maine Yankee License would not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

*Attorney for licensee:* Mary Ann Lynch, Esquire, Maine Yankee Atomic Power Company, 321 Old Ferry Road, Wiscasset, Maine 04578.

*NRC Section Chief:* Michael T. Masnik.

*North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:* November 30, 1999, as supplemented on April 28, 2000.

*Description of amendment request:* The licensee proposes to change the technical specifications (TSs) relating to the emergency diesel generator fuel sampling/testing surveillance requirements (SRs). The changes would provide a new administrative control to establish, implement, and maintain a diesel fuel oil testing program, relocate fuel oil sampling/testing surveillance requirements and fuel oil storage tank cleaning frequency requirement to a new diesel fuel oil testing program which will reside in the Seabrook Station Technical Requirements (SSTR) Manual. The change will also add references to the A.C. Sources—Shutdown surveillance requirement to perform additional activities while in modes 5 and 6.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR).

The proposed changes do not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station UFSAR. Further, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. The proposed change to SR 4.8.1.2 provides additional requirements for operation of the facility. These additional requirements are not initiators of analyzed events and will not alter assumptions relative to mitigation of accident or transient events. The proposed change does not adversely affect previously evaluated accidents.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve physical alteration of plant SSCs or changes in parameters governing the manner in which the plant is operated and maintained in a state of readiness. The changes do not introduce a new mode of plant operation.

As discussed in the above narrative, the proposed change to SR 4.8.1.2 provides additional requirements for operation of the facility. These additional requirements are not initiators of analyzed events and will not alter assumptions relative to mitigation of accident or transient events. The proposed change does not adversely affect previously evaluated accidents.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not involve a reduction in a margin of safety because they do not adversely affect assumptions used in transient or safety analyses. The details associated with the involved specifications are not required to be in the TS to provide adequate protection of the public health and safety, since the TS still retains the requirement for compliance with the applicable standards. The level of safety of facility operation is unaffected by the changes since there is no change in the intent of the TS requirements of ensuring fuel oil is of the appropriate quality for diesel generator use.

The proposed change to the A.C. Sources—Shutdown SR imposes an additional level of requirements that are more restrictive than the current TS requirements for operation of the facility in Modes 5 and 6. The additional requirements being proposed enhance assurance that the same fuel oil quality requirements are met, and visual inspection activities conducted, whenever a diesel generator is required to be OPERABLE.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

*NRC Section Chief:* James W. Clifford.

*North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:* April 14, 2000.

*Description of amendment request:* The licensee proposes to relocate Technical Specification (TS) Sections TS 3/4.9.5, "Communications", TS 3/4.9.6, "Refueling Machine", and TS 3/4.9.6, "Crane Travel—Spent Fuel Storage Area" to the Seabrook Station Technical Requirements Manual.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to relocate Technical Specifications 3/4.9.5, 3/4.9.6 and 3/4.9.7 to the Technical Requirements Manual (TRM) are administrative in nature and do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, configuration of the

facility or the manner in which it is operated. The proposed changes do not alter or prevent the ability o[f] structures, systems, or components to perform their intended function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report [UFSAR].

The subject specifications relocated to the Technical Requirements Manual will continue to be administratively controlled. The TRM is a licensee-controlled document, which contains certain technical requirements and is the implementing manual for the Technical Specification Improvement Program. Changes to these requirements are reviewed and approved in accordance with Seabrook Station Technical Specification, Section 6.7.1.i, and as outlined in the TRM.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated. There are no changes to the source term or radiological release assumptions used in evaluating the radiological consequences in the Seabrook Station UFSAR. The proposed change has no adverse impact on component or system interactions. The proposed change will not adversely degrade the ability of systems, structures and components important to safety to perform their safety function nor change the response of any system, structure or component important to safety as described in the Seabrook Station Updated Final Safety Analysis Report (UFSAR). The proposed changes are administrative in nature and do not change the level of programmatic and procedural details of assuring operation of the facility in a safe manner. Since there are no changes to the design assumptions, conditions, configuration of the facility, or the manner in which the plant is operated and surveilled, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

There is no adverse impact on equipment design or operation and there are no changes being made to the Technical Specification required safety limits or safety system settings that would adversely affect plant safety. The proposed change is administrative in nature and does not reduce the level of programmatic or procedural controls associated with the activities presently performed via Technical Specifications 3/4.9.5, 3/4.9.6 and 3/4.9.7.

Future changes to the subject technical requirements will be reviewed and approved in accordance with Seabrook Station Technical Specification, Section 6.7, and as outlined in the Technical Requirements Manual. Specifically, all changes to the Technical Requirements Manual require a 10 CFR 50.59 safety evaluation and will be reviewed and approved by the Station Operations Review Committee (SORC) prior to implementation.

Therefore, relocation of the requirements contained in Technical Specifications 3/4.9.5, 3/4.9.6 and 3/4.9.7 to the Technical Requirements Manual does not involve a significant reduction in the margin of safety provided in the existing specifications.

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

*NRC Section Chief:* James W. Clifford.

*Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey*

*Date of amendment request:* November 24, 1999, as supplemented by letter dated February 10, 2000.

*Description of amendment request:* The amendment will establish charcoal filter testing requirements in the technical specifications (TSs) for the Auxiliary Building Ventilation (ABV) System, the Control Room Envelope Air Conditioning System (CREACS), and the Fuel Handling Building Ventilation (FHV) System that are consistent with Generic Letter 99–02, Laboratory Testing of Nuclear-Grade Activated Charcoal," dated June 3, 1999.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

The operation of the Salem units in accordance with the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed TS changes do not involve any physical changes to plant structures, systems, or components (SSC). The FHV, CREACS, and ABV systems will continue to function as designed. The FHV, CREACS, and ABV systems are designed to mitigate the consequences of an accident. The proposed changes also will not affect the sequence of any accidents previously analyzed. The proposed TS surveillance requirement changes implement testing methods that demonstrate charcoal filter capability and establish acceptance criteria, which ensure that Salem's design basis assumptions continue to be met. The proposed surveillance requirement acceptance criteria ensure that the FHV, CREACS, and ABV safety functions will be accomplished. Therefore, the proposed TS changes would not result in a significant increase of the consequences of an accident previously evaluated, nor do they involve an increase in the probability of an accident previously evaluated.

The operation of the Salem units in accordance with the proposed changes does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed TS changes do not involve any physical changes to the design of any plant SSC. The design and operation of the FHV, CREACS, and ABV systems are not changed from those currently described in Salem's licensing basis. The FHV, CREACS, and ABV systems will continue to function as designed to mitigate the consequences of an accident. Implementing the proposed charcoal filter testing methods and acceptance criteria does not change the operation of the FHV, CREACS, and ABV systems that would create a different type of accident previously evaluated. In addition, the proposed TS changes do not alter the conclusions described in Salem's licensing basis regarding the safety-related functions of these systems. Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The operation of the Salem units in accordance with the proposed license amendment will not be changed nor result in a significant reduction to margins of safety. The licensee is not proposing any modifications to FHV, CREACS, and ABV systems design or operation, and there are no changes being made to the TS-required safety limits or safety system settings that would adversely affect plant safety. The proposed changes modify the TSs to reference appropriate test parameters for performing laboratory testing of nuclear-grade charcoal in engineered safety feature filtration systems in accordance with ASTM D3803–1989. The imposition of the more conservative charcoal filter testing requirements associated with ASTM D3803–1989 will not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

*NRC Section Chief:* James W. Clifford.

*Southern California Edison Company, et al., Docket Nos. 50–361 and 50 362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California*

*Date of amendment requests:* April 20, 2000 (PCN–503).

*Description of amendment requests:* The amendment application proposes to revise the San Onofre Nuclear Generating Station, Units 2 and 3, Technical Specification (TS) 5.5.2.5, "Reactor Coolant Pump Flywheel Inspection Program." The proposed change would revise the required volumetric examination frequency of the upper flywheel on each of the primary reactor coolant pump motors from a 3-year to a 10-year cycle.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Missile generation from a Reactor Coolant Pump (RCP) flywheel could damage the reactor coolant system, the containment, or other equipment or systems important to safety. The fracture mechanics analysis performed to support the change shows that a preexisting flaw of an initial size at the detection threshold level will not grow to a flaw size necessary to create flywheel missiles within the life of the plant. The fracture mechanics analysis conservatively assumes minimum material toughness properties, maximum flywheel speed, location of flaw in the highest stress region of the flywheel, and a number of start/stop cycles eight times greater than the design basis. Therefore, an existing flaw in the flywheel will not grow to a size that exceeds the allowable flaw size for either normal operating or accident conditions over the plant life. On this basis, the extension of the 3-year interval inspection to a 10-year interval will not involve a significant increase in the probability of an accident previously considered. The proposed changes do not increase the amount of radioactive material available for release or modify any systems used for preventing or mitigating such releases during accident conditions. Therefore, these changes do not involve a significant increase in the consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes will not change the design configuration, or method of operation of the plant. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety?

Response: No.

Significant conservatisms have been used in the calculation of allowable flaw size (critical flaw size) and flaw growth for each RCP flywheel design. These include minimum fracture toughness properties, code reference crack growth rate curves, maximum flywheel accident speed, postulated flaw location at the highest stress region of the flywheel, and a number of start/stop cycles that is eight times the number expected in a plant life. The final flaw size has been determined to remain smaller than the allowable flaw size for the flywheel under the relevant design conditions, including postulated accident conditions. Therefore, the extension of the 3-year interval inspection to a 10-year interval will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

*NRC Section Chief:* Stephen Dembek.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendments:* February 4, 2000 (TS 99–14).

*Brief description of amendments:* The proposed amendments would change the Sequoyah Nuclear Plant (SQN) Technical Specification Limiting Conditions for Operations for the reactor coolant system cold leg accumulators (CLAs). The upper CLA water limit and required pressure range would both be decreased to more appropriately account for instrument uncertainties and instrument line tap locations.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), Tennessee Valley Authority (TVA), the licensee, has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The capability of the accumulators to perform their safety function is not affected by this change. All components and system functional requirements remain the same. There are no new sequences of events which would increase the probability of an accident analyzed in the Final Safety Analysis Report (FSAR). Therefore, the proposed activity does not increase the probability of an accident previously evaluated in the FSAR. The fuel cladding peak temperature established by the ECCS [Emergency Core Cooling System] evaluation model remains below 2200 degrees Fahrenheit for a loss-of-coolant accident (LOCA). As such, the assumptions on fuel failure and isotope release post-LOCA do not change from the information presented in the FSAR.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The primary function of the CLAs is in the event of a large break LOCA to support accident mitigation. CLAs are not a contributor to events that could generate accidents. The CLA system volume capability bounds this change in operational limits and the system is not physically changing. Therefore, the proposed activity does not create a possibility for an accident of a different type than any evaluated previously.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The safety function provided by the CLAs is to inject core cooling water into the reactor coolant system when system pressure decreases below a predetermined value during a LOCA. The timing (function of pressure) and amount (function of volume) of cooling water is modeled in the ECCS evaluation model. The proposed changes to the accumulator operational limits have been evaluated using the Sequoyah plant specific ECCS model. The evaluation shows an increase in the peak fuel cladding temperature from 2162 degrees Fahrenheit to 2185 degrees Fahrenheit. The results confirm that existing LOCA safety analysis acceptance criteria (established by 10 CFR 50.46) continue to be met for the revised accumulator limits. The safety analysis acceptance criteria continues to be met with the revised limits. The 23 degree increase in the peak fuel cladding temperature associated with accumulator operation is not a significant reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

*NRC Section Chief:* Richard P. Correia.

*Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee*

*Date of amendment request:* March 6, 2000 (TS 99–09).

*Description of amendment request:* The proposed amendment would revise the Watts Bar Nuclear Plant (WBN) Unit 1 Technical Specifications (TS) and associated TS Bases for Limiting Condition for Operation (LCO) 3.9.4 Containment Penetrations. The revision would permit both doors of the containment personnel airlocks to be open during refueling operations to facilitate personnel and equipment access to containment. It would also allow containment penetration flow paths to be open under administrative controls to facilitate maintenance activities during refueling operations.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to WBN Technical Specification LCO 3.9.4, Refueling Operations—Containment Penetrations, would allow both doors of the containment personnel airlocks and certain containment penetration flow paths to be open during core alterations and movement of irradiated fuel within containment under specific administrative controls. The proposed change is consistent with NRC approved TS travelers TSTF–68, R2 and TSTF–312, R1, and proposes controls similar to the administrative controls currently allowed by WBN TS (LCO 3.6.3) for containment penetrations during more restrictive, higher operational modes. The administrative controls will ensure appropriate personnel are aware of the open personnel airlocks and penetration flow paths and ensure designated individual(s) are assigned to promptly close the airlock doors and penetration flow paths in the event of a fuel handling accident (FHA) inside containment. Timely closure of penetration flow paths and closure of the airlock doors following containment evacuation will ensure that the unlikely transmission of radioactive material from the reactor building to the auxiliary building is minimized.

In order to minimize the consequences of any leakage of radionuclides past these open penetrations during the period of time before their closure, additional procedural controls will be provided to ensure the integrity of the WBN auxiliary building secondary containment enclosure (ABSCE) boundary and proper auxiliary building gas treatment system (ABGTS) operation. These controls will ensure that in the event of a fuel handling accident (FHA) inside containment, the following will be promptly accomplished: shutdown and isolation of the reactor building purge air ventilation system, auxiliary building isolation, and initiation of ABGTS. Therefore, through the use of these controls for the proposed license amendment, the offsite dose consequences of a FHA inside containment with open airlock doors and/or open penetration flow paths remain well within the 10 CFR 100 limits and within the limits of 10 CFR 50, Appendix A, General Design Criteria 19 for control room operator dose.

[The licensee's application also states that "The results for the fuel handling analysis inside containment with open airlock doors and/or open penetration flow paths are bounded by the current analysis."]

The containment personnel airlock doors and containment penetration flow paths are not initiators to any previously evaluated accident for WBN. In addition, the position of the airlock doors and penetration flow paths during refueling operations has no affect on the probability of the occurrence of any accident previously evaluated. The proposed revision does not alter any plant equipment or operating practices in such a manner that the probability of an accident is increased. Since the probability of a accident is not affected by the positions of the containment personnel airlock doors, and because the doses remain within acceptable limits, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The open containment personnel airlock doors and containment penetration flow paths are not accident initiators and do not represent a significant change in the configuration of the plant. The proposed allowance to open the containment personnel airlock doors and penetrations during refueling operations will not adversely affect plant safety functions or equipment operating practices such that a new or different accident could be created. Therefore, since plant safety functions are not adversely affected and the isolation status of containment personnel airlock doors and penetration flow paths do not contribute to the initiation of postulated accidents, the proposed revision will not create a new or different kind of accident from any accident previously evaluated.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

WBN Technical Specification LCO 3.9.4 closure requirements for containment penetrations ensure that the consequences of a postulated FHA inside containment during core alterations or fuel handling activities remain within acceptable limits. The LCO establishes containment closure requirements, which limit the potential escape paths for fission products by ensuring that there is at least one integral barrier to the release of radioactive material. The proposed change to allow the containment personnel airlock doors and containment penetration flow paths to be open during refueling operations under administrative controls does not significantly affect the expected dose consequences of a FHA because of the absence of containment pressurization during refueling. Without this motive force, the potential for additional offsite dose consequence is unlikely. The proposed administrative controls provide assurance that prompt closure of the airlock doors and penetration flow paths will be accomplished in the event of a FHA inside containment thus minimizing the transmission of radioactive material from the reactor building to the auxiliary building. Under the proposed TS change, the provisions to ensure shutdown and isolation of the reactor building purge air ventilation system, auxiliary building isolation, and initiation of ABGTS and to promptly isolate open penetration flow paths and close the airlock doors following containment evacuation, provide assurance that the offsite dose consequences of a FHA inside containment will remain well within the 10 CFR 100 limits and within the limits of 10 CFR 50, Appendix A, General Design Criteria 19 for control room operator dose. Therefore, the proposed change to the WBN Technical Specifications does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee*: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

*NRC Section Chief*: Richard P. Correia.

**Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing**

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

*Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida*

*Date of application for amendment:* September 16, 1999.

*Brief description of amendment:* The proposed amendment would increase the licensed capacity for spent fuel assembly storage in the Spent Fuel Pool and revise the configuration for storage of fresh fuel.

*Date of publication of individual notice in the **Federal Register***: December 8, 1999 (64 FR 68702).

*Expiration date of individual notice:* January 7, 2000.

*PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania*

*Date of amendment request:* February 29, 2000, as supplemented on March 31, 2000.

*Brief description of amendment request:* The amendments would add a note to the completion time of Condition A for Technical Specification 3.7.2, "Emergency Service Water (ESW) System and Normal Heat Sink." This note would provide a one-time extension to the completion time for one ESW subsystem inoperable from 7 to 14 days. This note would allow the replacement of one ESW pump currently scheduled to occur in May 2000 and will expire on May 31, 2000.

*Date of publication of individual notice in **Federal Register***: March 9, 2000 (65 FR 12589).

*Expiration date of individual notice:* April 10, 2000.

*PP&L, Inc., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania*

*Date of amendment request: March 14, 2000, as supplemented March 27, 2000.*

*Brief description of amendment request:* The proposed amendment would amend the licenses to change the required implementation date for previously issued license Amendment No. 184 to Facility Operating License NPF–14 and Amendment No. 158 to Facility Operating License NPF–22. The proposed amendment would not alter any of the requirements of the SSES Unit 1 and 2 Technical Specifications (TSs).

*Date of publication of individual notice in **Federal Register***: April 27, 2000 (65 FR 24718).

*Expiration date of individual notice:* May 30, 2000.

*PP&L, Inc., Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania*

*Date of amendment request:* April 10, 2000.

*Brief description of amendment request:* Permits deferral of testing of primary containment penetration flange o-rings on spectacle flanges 2S299A and 2S299B until the Unit 2 10th refueling outage, scheduled for spring 2001 or a prior Unit 2 outage requiring entry into Mode 4.

*Date of publication of individual notice in **Federal Register***: April 21, 2000 (65 FR 21487).

*Expiration date of individual notice:* May 22, 2000.

**Notice of Issuance of Amendments to Facility Operating Licenses**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see: (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

*AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of application for amendment:* October 25, 1999 (U–603281).

*Brief description of amendment:* The amendment revised the Technical Specification definitions for channel calibrations, channel functional tests, and logic system functional tests.

*Date of issuance:* April 25, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment No.:* 128.

*Facility Operating License No. NPF–62:* The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register***: January 12, 2000 (65 FR 1920).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 2000.

No significant hazards consideration comments received: No.

*Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina*

*Date of application for amendment:* November 19, 1999, as supplemented on March 16, 2000.

*Brief description of amendment:* This amendment revises the Technical Specifications (TS) to incorporate the American Society for Testing and Materials (ASTM) D3803–1989, Standard Test Method for Nuclear-Grade Activated Carbon," in accordance with NRC Generic Letter (GL) 99–02, "Laboratory Testing Of Nuclear-Grade Activated Charcoal," dated June 3, 1999. Specifically, TS 4.7.6 has been revised for the Control Room Emergency Filtration System, TS 4.7.7 has been revised for the Reactor Auxiliary Building Emergency Exhaust System, and TS 4.9.12 has been revised for the Fuel Handling Building Emergency Exhaust System.

*Date of issuance:* May 2, 2000.

*Effective date:* May 2, 2000.

*Amendment No.* 98.

*Facility Operating License No. NPF–63.* Amendment revises the Technical Specifications.

*Date of initial notice in **Federal Register***: December 15, 1999 (64 FR 70081).

The March 16, 2000, submittal contained clarifying information only,

and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 2, 2000. No significant hazards consideration comments received: Yes. One comment was received, and is addressed in the above-referenced Safety Evaluation.

*Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York*

*Date of application for amendment:* March 17, 2000.

*Brief description of amendment:* The amendment revises Technical Specifications (TSs) associated with probes used in steam generator tube inspections, specifically TS Section 4.13.A.3.f. The proposed change would provide more flexibility in the type of probe used and would reflect current technological advances in inspection equipment, while still maintaining the current 610-mil diameter probe restriction. ]

*Date of issuance:* April 28, 2000.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment No.:* 209.

*Facility Operating License No. DPR–26:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register***: March 27, 2000 (65 FR 16230).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 2000.

No significant hazards consideration comments received: No.

*Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas*

*Date of amendment request:* November 16, 1999.

*Brief description of amendments:* The proposed changes to the Arkansas Nuclear One, Units 1 and 2, Technical Specifications (TSs) and associated Bases provided a 30-day allowed outage time (AOT) for startup transformer No. 2, which is an offsite power source shared by both units. This 30-day AOT will be used infrequently for the purpose of performing preventative maintenance to increase the reliability of the transformer. In addition, changes have been made to the requirements associated with demonstrating the operability of the emergency diesel generators (EDGs), in the event a required power source is inoperable, to increase the reliability of the EDGs.

*Date of issuance:* April 28, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment Nos.:* 206 and 215.

*Facility Operating License Nos. DPR–51 and NPF–6:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register***: January 26, 2000 (65 FR 4271).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 28, 2000.

No significant hazards consideration comments received: No.

*Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas*

*Date of application for amendment:* February 24, 2000.

*Brief description of amendment:* The amendment revised Technical Specification (TS) 4.4.11 on reactor coolant system vent flow verification. TS 4.6.1.1.a on containment penetration closure verification (non-automatic), and TS 4.6.3.1.2 on containment isolation valve actuation verification. The changes eliminated unnecessary mode restrictions on these surveillance requirements.

*Date of issuance:* April 26, 2000.

*Effective date:* As of the date of issuance to be implemented within 30 days from the date of issuance.

*Amendment No.:* 214.

*Facility Operating License No. NPF–6:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register***: March 22, 2000 (65 FR 15379).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 26, 2000.

No significant hazards consideration comments received: No.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* October 6, 1998, as supplemented by letter dated March 3, 2000. Moderator Temperature Coefficient test near the end of each cycle.

*Brief description of amendment:* The proposed change modifies the requirement to perform a Moderator Temperature Coefficient test near the end of each cycle.

*Date of issuance:* April 21, 2000.

*Effective date:* As of the date of issuance and shall be implemented 60 days from the date of issuance.

*Amendment No.:* 159.

*Facility Operating License No. NPF–38:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register***: August 25, 1999 (64 FR 46435). The March 3, 2000, letter did not change the scope of the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 2000.

No significant hazards consideration comments received: No.

*Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana*

*Date of amendment request:* July 15, 1999, as supplemented by letter dated January 6, 2000.

*Brief description of amendment:* The proposed change modifies plant technical specifications to extend the Reactor Coolant System Pressure Temperature Curve Limit to 16 Effective Full Power Years.

*Date of issuance:* April 24, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 60 days from the date of issuance.

*Amendment No.:* 160.

*Facility Operating License No. NPF–38:* The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: January 26, 2000 (65 FR 4276).

The January 6, 2000, letter reduced EFPY from 20 years, requested in the July 15, 1999, letter, to 16 years. This change is bounded by, and did not change the scope of, the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 24, 2000.

No significant hazards consideration comments received: No.

*FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania*

*Date of application for amendments:* November 23, 1999, as supplemented February 22, 2000.

*Brief description of amendments:* The amendments make the following changes to the Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and BVPS–2) Technical Specifications (TSs): (1) For BVPS–1, surveillance requirement (SR) 4.8.1.1.2.b.3.b is revised to reflect a narrower required diesel generator (DG) frequency band; an associated footnote is deleted; associated Bases are revised to reflect these TS changes. (2) For BVPS–2, SR 4.8.1.1.2.f is revised to clarify that the

DGs are only required to achieve a minimum frequency and voltage within the first 10 seconds of the related test, and that the stated voltage and frequency bands are requirements for steady state operation of the DGs; a footnote is also added to this SR. (3) Page formats are revised as needed to permit the addition or deletion of text.

*Date of issuance:* April 25, 2000.

*Effective date:* As of date of issuance and shall be implemented within 60 days.

*Amendment Nos.:* 230 and 109.

*Facility Operating License Nos. DPR–66 and NPF–73:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register***: March 8, 2000 (65 FR 12292). The February 22, 2000, letter provided supplemental information and did not change the initial proposed no significant hazards consideration determination or expand the amendments beyond the scope of the initial notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 25, 2000.

No significant hazards consideration comments received: No.

*FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania*

*Date of application for amendment:* September 22, 1999, as supplemented April 27, 2000.

*Brief description of amendment:* The amendment allowed a one-time only extension to the surveillance interval of the Technical Specification Surveillance 4.7.12.d for functional testing of snubbers. The extension is limited to the first re-entry into MODE 6 following the defueled condition during the 8th refueling outage or November 30, 2000, whichever occurs sooner.

*Date of issuance:* May 3, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 60 days.

*Amendment No.:* 110.

*Facility Operating License No. NPF–73:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register***: November 17, 1999, (64 FR 62711).

The April 27, 2000, letter did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 3, 2000.

No significant hazards consideration comments received: No.

*FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio*

*Date of application for amendment:* November 2, 1999.

*Brief description of amendment:* This amendment revised the Technical Specifications (TSs) to modify 1) TS Table 3.3–4, "Safety Features Actuation System Instrumentation Trip Setpoints," to remove the "Trip Setpoint" values for Instrument String Functional Unit "f", Borated Water Storage Tank (BWST) Level, 2) the "Allowable Values" entry for this same Functional Unit, consistent with updated calculations using current setpoint methodology, 3) TS 3/4.3.2.1, "Safety Features Actuation System Instrumentation," and Bases to reflect the removal of "Trip Setpoints" described above, and 4) TS 3/4.5.4, "Emergency Core Cooling Systems—Borated Water Storage Tank," and Bases to increase the minimum volume of water in the BWST.

*Date of issuance:* May 4, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 120 days.

*Amendment No.:* 241.

*Facility Operating License No. NPF–3:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register***: December 15, 1999 (64 FR 70087).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 4, 2000.

No significant hazards consideration comments received: No.

*Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois*

*Date of application for amendment:* October 23, 1998, as supplemented February 22 and June 24, 1999, and March 31, 2000.

*Brief description of amendment:* The amendment would allow implementation of a feedwater leakage control system to address leakage through the primary containment feedwater penetration valve.

*Date of issuance:* April 25, 2000.

*Effective date:* April 25, 2000.

*Amendment No.:* 127.

*Facility Operating License No. NPF–62:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register***: November 18, 1998 (63 FR 64118).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 2000.

No significant hazards consideration comments received: No.

*Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of application for amendments:* February 18, 2000, as supplemented March 31, 2000.

*Brief description of amendments:* The proposed license amendments would approve a change to the facility involving an unreviewed safety question discovered by the licensee during a 10 CFR 50.59 evaluation of modifications to the auxiliary feedwater (AFW) pump rooms to protect the equipment in the rooms from the environmental effects of a postulated high-energy line break. This will be accomplished by sealing the AFW pump rooms to ensure that the rooms do not communicate with the turbine buildings or each other.

*Date of issuance:* April 25, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days.

*Amendment Nos.:* 244.

*Facility Operating License Nos. DPR–58 and DPR–74:* Amendments revised the Operating License.

*Date of initial notice in* ***Federal Register***: February 25, 2000 (65 FR 10116).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 25, 2000.

No significant hazards consideration comments received: No.

*North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:* December 13, 1999.

*Description of amendment request:* The amendment changes the license to delete expired license conditions and to make editorial and administrative changes to correct or clarify the license.

*Date of issuance:* April 27, 2000.

*Effective date:* As of its date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 68.

*Facility Operating License No. NPF–86:* Amendment revised the License.

Date of initial notice in ***Federal Register***: February 9, 2000 (65 FR 6408).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 27, 2000.

No significant hazards consideration comment received: No.

*North Atlantic Energy Service Corporation, et al., Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire*

*Date of amendment request:* February 18, 2000.

*Description of amendment request:* The amendment revises Technical Specifications (TSs) Surveillance Requirements 4.0.5.a, 4.0.5.b, 4.0.5.e, and 4.4.6.2.2.e. These changes are required to ensure consistency between the TSs and the second 10-year inservice test program by approval to use the 1995 Edition and 1996 Addenda of the American Society of Mechanical Engineers (ASME) Code for Operation and Maintenance of Nuclear Power Plants (OM Code). The revision to TSs Surveillance Requirement 4.0.5.a also incorporates semi-quarterly and biennial intervals to the list of required frequencies for performing inservice test and inspection activities.

*Date of issuance:* May 8, 2000.

*Effective date:* As of its date of issuance, and shall be implemented by August 18, 2000.

*Amendment No.:* 69.

*Facility Operating License No. NPF–86:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register***: April 5, 2000 (65 FR 17917).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 8, 2000.

No significant hazards consideration comments received: No.

*Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut*

*Date of application for amendment:* December 14, 1999, as supplemented February 11, March 30, and April 26, 2000.

*Brief description of amendment:* This amendment will revise Technical Specifications (TSs) Sections: 3.3.2.1, "Instrumentation—Engineered Safety Feature Actuation System Instrumentation;" 3.3.3.1, "Instrumentation—Monitoring Instrumentation—Radiation Monitoring;" 3.7.6.1, "Plant Systems—Control Room Emergency Ventilation System;" 3.9.3.1, "Refueling Operations—Decay Time;" 3.9.4, "Refueling Operations—Containment Penetrations;" 3.9.9, "Refueling Operations—Containment Radiation Monitoring;" 3.9.10 "Refueling Operations—Containment Purge Valve Isolation System;" 3.9.13, "Refueling Operations—Storage Pool Radiation Monitoring;" 3.9.14, "Refueling Operations—Storage Pool Area Ventilation System—Fuel Movement;" 3.9.15, "Refueling Operations—Storage Pool Area Ventilation System—Fuel Storage;" 3.9.16.1, "Refueling Operations—Shielded Cask;" 3.9.16.2, "Refueling Operations—Shielded Cask;" 3.9.17, "Refueling Operations—Movement of Fuel in Spent Fuel Pool;" and 3.9.19.2, "Refueling Operations—Spent Fuel Pool—Storage Pattern"; and add new TS 3.3.4, "Containment Purge Valve Isolation Signal." The requested changes would make the TSs and the Final Safety Analysis Report (FSAR) consistent with the new analyses of the fuel handling and cask drop accidents. The Index Pages and the Bases for these TSs will be modified to reflect these proposed changes.

*Date of issuance:* April 28, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment No.:* 245.

*Facility Operating License No. DPR–65:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register***: March 17, 2000 (65 FR 14632).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 28, 2000.

No significant hazards consideration comments received: No.

*Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut*

*Date of application for amendment:* June 15, 1999, as supplemented July 20, September 3, and November 29, 1999, and January 18, 2000.

*Brief description of amendment:* The amendment modifies the license to change the number of owners from 14 to 13 and to remove Montaup Electric Company as an owner as a result of the transfer of its interest in Millstone Nuclear Power Station, Unit No. 3 to New England Power Company, an existing owner.

*Date of issuance:* May 1, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment No.:* 180.

*Facility Operating License No. NPF–49:* Amendment revised the License.

*Date of initial notice in* ***Federal Register***: January 19, 2000 (65 FR 2990).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 24, 2000, issued with the February 24, 2000, Order approving the transfer as noticed in the **Federal Register** on March 1, 2000 (65 FR 11091).

No significant hazards consideration comments received: No.

*PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania*

*Date of application for amendments:* February 29, 2000, as supplemented on March 31, 2000.

*Brief description of amendments:* The amendments will add a note to the completion time of Condition A for Technical Specification 3.7.2, "Emergency Service Water (ESW) System and Normal Heat Sink." This note will provide a one-time extension to the completion time for one ESW subsystem inoperable from 7 to 14 days. This note will allow the replacement of one ESW pump currently scheduled to occur in May 2000 and will expire on May 31, 2000.

*Date of issuance:* April 25, 2000.

*Effective date:* Both units, as of the date of issuance and shall be implemented no later than May 31, 2000.

*Amendments Nos.:* 231 and 236.

*Facility Operating License Nos. DPR–44 and DPR–56:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** March 9, 2000 (65 FR 12589).

The March 31, 2000, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 25, 2000.

*No significant hazards consideration comments received:* No.

*PP&L, Inc., Docket No. 50–388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania*

*Date of application for amendment:* April 10, 2000.

*Brief description of amendment:* The amendment adds a note to Technical Specification Surveillance Requirement 3.6.1.1.1 to defer performance of this test on a one-time basis for spectacle flanges 2S299A and 2S299B o-rings until the Unit 2 10th Refueling Outage (Spring 2001) or a prior Unit 2 outage requiring entry into Mode 4. The change allowed Unit 2 operation to continue until an outage occurs where leak rate surveillance testing on spectacle flanges 2S299A and 2S299B can be performed.

*Date of issuance:* May 8, 2000.

*Effective date:* As of date of issuance and shall be implemented within 30 days.

*Amendment No.:* 160.

*Facility Operating License No. NPF–22.* This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: April 21, 2000 (65 FR 21487).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 8, 2000.

No significant hazards consideration comments received: No.

*Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of application for amendment:* March 15, 2000.

*Brief description of amendment:* This amendment changes Technical Specification (TS) Definition 1.7, CORE ALTERATION. The definition has been revised to be similar to the definition of CORE ALTERATION that is documented in NUREG–1433, Revision 1, "Standard Technical Specifications, General Electric Plants, BWR/4."

*Date of issuance:* April 25, 2000.

*Effective date:* As of the date of issuance, and shall be implemented within 3 days.

*Amendment No.:* 125.

*Facility Operating License No. NPF–57:* This amendment revised the TSs.

*Date of initial notice in* ***Federal Register***: March 23, 2000 (65 FR 15657).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 2000.

No significant hazards consideration comments received: No.

*Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey*

*Date of application for amendment:* September 30, 1999, as supplemented March 27, 2000.

*Brief description of amendment:* This amendment revised the Technical Specifications (TSs) associated with the Safety Limit Minimum Critical Power Ratios in order to support the operation of Hope Creek Generating Station in the upcoming Cycle 10 with a mixed core of General Electric (GE) and Asea Brown Bovieri/Combustion Engineering (ABB/CE) fuel. In addition, administrative changes have been made to the TSs to reflect the change in fuel vendor from GE to ABB/CE.

*Date of issuance:* May 1, 2000.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days after completion of Cycle 9.

*Amendment No.:* 126.

*Facility Operating License No. NPF–57:* This amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register***: November 3, 1999 (64 FR 59805).

The March 27, 2000 letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 2000.

No significant hazards consideration comments received: No.

*Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont*

*Date of application for amendment:* July 20, 1999, as supplemented on October 25, 1999.

*Brief description of amendment:* The amendment revises Technical Specifications to reflect the implementation of increased core flow.

*Date of Issuance:* April 25, 2000.

*Effective date:* As of the date of issuance, and shall be implemented within 60 days.

*Amendment No.:* 187.

*Facility Operating License No. DPR–28:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register***: August 25, 1999 (64 FR 46450).

The October 25, 1999, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 25, 2000.

No significant hazards consideration comments received: No.

*Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin*

*Date of application for amendment:* March 2, 2000.

*Brief description of amendment:* The amendment increases the minimum refueling boron concentration to 2200 parts per million (ppm) from 2100 ppm as specified in the Technical Specification 3.8.a.5.

*Date of issuance:* May 1, 2000.

*Effective date:* Immediately upon its date of issuance and is to be implemented within 30 days of the date of issuance.

*Amendment No.:* 147.

*Facility Operating License No. DPR–43:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** *March 30, 2000 (65 FR 16969).*

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 2000.

No significant hazards consideration comments received: No.

**Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of no Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of

increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov (the Electronic Reading Room).

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By June 16, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

*Duke Energy Corporation, et al., Docket No. 50–414, Catawba Nuclear Station, Unit 2, York County, South Carolina*

*Date of application for amendments:* May 3, 2000.

*Brief description of amendments:* The amendment revised the Technical Specifications (TS) and associated Bases Section 3.6.9 for the Hydrogen Ignition System. Specifically, the proposed amendment modifies Surveillance Requirements (SRs) 3.6.9.1, 3.6.9.2, and 3.6.9.3 to exclude the two hydrogen ignitors located beneath the reactor vessel missile shield from the applicability of the SRs. These two ignitors are presently considered to be inoperable at Unit 2 and cannot be accessed for replacement with the unit in its current operating mode (Mode 1). This change is effective for Unit 2 Cycle 11 only, or until such time that the unit enters Mode 5 (cold shutdown) such that the inoperable ignitors can be accessed for replacement.

*Date of issuance:* May 5, 2000.

*Effective date:* As of the date of issuance and shall be implemented within 30 days from the date of issuance.

*Amendment No.:* 178.

*Facility Operating License No. NPF–52:* Amendment revised the Technical Specifications and associated Bases.

Public Comments requested as to proposed no significant hazards consideration: No.

The Commission's related evaluation of the amendment, finding of emergency circumstances, consultation with the State of South Carolina, and final no significant hazards consideration determination are contained in a Safety Evaluation dated May 5, 2000.

*Attorney for licensee:* Ms. Lisa F. Vaughn , Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

*NRC Section Chief:* Richard L. Emch, Jr.

Dated at Rockville, Maryland, this 10th day of May 2000.

For the Nuclear Regulatory Commission.

**John A. Zwolinski,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–12302 Filed 5–16–00; 8:45 am]

BILLING CODE 7590–01–P

## POSTAL RATE COMMISSION

**[Docket No. A2000–1; Order No. 1292]**

### Appeal of Post Office Closing

**AGENCY:** Postal Rate Commission.

**ACTION:** Notice of Docket No. A2000–1.

**SUMMARY:** The Commission has established a docket to consider an objection to the closing of the Roanoke, WV post office. It also has issued a procedural schedule.

**DATES:** See **SUPPLEMENTARY INFORMATION** section for dates.

**ADDRESSES:** Correspondence should be addressed to Margaret P. Crenshaw, Secretary, Postal Rate Commission, 1333 H Street NW., Suite 300, Washington, DC 20268–0001.

**FOR MORE INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, (202) 789–6820.

**SUPPLEMENTARY INFORMATION:** On May 10, 2000, the Postal Rate Commission (PRC) issued a notice and order (No. 1292) accepting an appeal of the closing of the Roanoke, West Virginia post office, ZIP Code 26423. The appeal was filed by Robert J. Conley, president of the Lewis County Commission, on behalf of the Commission and post office customers, pursuant to 39 U.S.C. 404(b)(5). The appeal has been assigned Docket No. A2000–1 and a procedural schedule has been established.

The appeal was filed April 21, 2000. The categories of issues apparently raised are the effect on the community (39 U.S.C. 404(b)(2)(A)) and effect on postal services (39 U.S.C. 404(b)(2)(C)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

*Scheduling matters.* The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the date this appeal was filed (39 U.S.C. 404(b)(5)). The procedural schedule has been developed to accommodate the delay in publication of this notice and order. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 14 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Postal Service may incorporate by reference in its briefs or motions any arguments presented in memoranda it previously filed in this docket. If necessary, the Commission also may ask petitioners or the Postal Service for more information.

*Ordering paragraphs.* Ordering paragraph (a) directs the Postal Service shall file the record in this appeal by May 25, 2000. Ordering paragraph (b) directs the Secretary of the Postal Rate Commission to publish this notice and order and procedural schedule in the **Federal Register**.

*Procedural schedule.* Key dates in this docket include: April 21, 2000, filing of appeal letter; May 10, 2000, issuance of Commission notice and order on filing of appeal; June 5, 2000, last day of filing of petitions to intervene (see 39 CFR 3001.111(b)); June 15, 2000, deadline for petitioner's participant statement or initial brief (see 39 CFR 3001.115(a) and (b)); July 5, 2000, deadline for Postal Service's answering brief (see 39 CFR 3001.115(c)); July 20, 2000, deadline for petitioner's reply brief, should petitioner choose to file one (see 39 CFR 3001.115(d)); July 27, 2000, deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116); August 21, 2000, expiration of the Commission's 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

Dated: May 11, 2000.

**Margaret P. Crenshaw,**

*Secretary.*

[FR Doc. 00–12309 Filed 5–16–00; 8:45 am]

BILLING CODE 7710–FW–P

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon written request, copies available from:
Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Form 8–A, OMB Control No. 3235–0056, SEC File No. 270–54
Form 18–K, OMB Control No. 3235–0120, SEC File No. 270–108

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of management and Budget for extension and approval.

Form 8–A (OMB Control No. 3235–0056, SEC File No. 270–54) is a registration statement for certain classes of securities pursuant to Section 12(b)

and 12(g) of the Securities Exchange Act of 1934. The information required on Form 8–A provides investors with the necessary information to make investment decisions regarding securities offered to the public. The likely respondents will be companies. The information collected must be filed with the Commission on occasion. Form 8–A is a public document. Form 8–A takes approximately 3 hours to prepare and is filed by 1,540 respondents for a total of 4,620 burden hours.

Form 18–K (OMB Control No. 3235–0120; SEC File No. 270–108) is used as an annual report for foreign governments and political subdivisions with securities listed on a United States exchange. Form 18–K permits verification of compliance with securities law requirements and assures the public availability and dissemination of such information. The information collected on Form 18–K must be filed with the Commission annually. Form 18–K is a public document Form 18–K takes approximately 8 hours to prepare and is filed by 20 respondents for a total of 160 burden hours.

Written Comments are invited on (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549.

Dated: May 9, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12407 Filed 5–16–00; 8:45 am]

**BILLING CODE 8010–01–M**

## STATE DEPARTMENT

**[Public Notice #3279]**

### Overseas Security Advisory Council (OSAC) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the U.S. State Department—Overseas Security Advisory Council on June 28 and 29, at the Drake Hotel, Chicago, Illinois. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b[c] [1] and [4], it has been determined the meeting will be closed to the public. Matters relative to classified national security information as well as privileged commercial information will be discussed. The agenda will include updated committee reports, a world threat overview and a round table discussion that calls for the discussion of classified and corporate proprietary/security information as well as private sector physical and procedural security policies and protective programs at sensitive U.S. Government and private sector locations overseas.

For more information contact Marsha Thurman, Overseas Security Advisory Council, Department of State, Washington, D.C. 20522–1003, phone: 202–663–0533.

Dated: May 8, 2000.

**Peter E. Bergin,**

*Director of the Diplomatic Security Service, Department of State.*

[FR Doc. 00–12428 Filed 5–16–00; 8:45 am]

**BILLING CODE 4710–24–U**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Mid Delta Regional Airport, Greenville, MS

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Mid Delta Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990) (Title IX of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before June 16, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Airport District Office, Federal Aviation Administration, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Clifton E. Nash, Airport Director of the City of Greenville at the following address: 166 Fifth Avenue, Suite 300, Greenville, MS 38703–9737.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Greenville under section 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Patrick Vaught, Program Manager, FAA/Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307, 601–664–9885. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Mid Delta Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation At of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulation (14 CFR Part 258).

On May 10, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Greenville was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 32, 000.

The following is a brief overview of the application.

*PFC Application No.:* 00–02–C–00–GLH.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* October 1, 2000.

*Proposed charge expiration date:* February 1, 2003.

*Total estimated net PFC revenue:* $82,743.

*Brief description of proposed project(s):* Acquire Airfield Sweeper. Develop New DBE Plan, Conduct Airport Master Plan Study Phase I, Develop Plans & Specifications for Airport Access Road Rehabilitation. Purchase 4KW Regulator for Taxiway Lights, Conduct Airport Master Plan Study Phase II, Rehabilitate Airport

Access Road, Rehabilitate Taxiway B, Construct & Rehabilitative Security Fence.

*Class or classes of air carriers which the public agency has requested not be required to collect PFCs:*

Air Taxi/Commercial Operators filing Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Greenville, Mid Delta Regional Airport.

Issued in Jackson, Mississippi on May 10, 2000.

**Keafur Grimes,**

*Acting Manager, Jackson Airports District Office, Southern Region.*

[FR Doc. 00–12422 Filed 5–16–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF VETERANS AFFAIRS

### Privacy Act of 1974; Amendment of System of Records

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Veterans Affairs published a document in the **Federal Register** on April 18, 2000, to revise an existing routine use to the system of records entitled "Personnel and Accounting Pay System—VA" (27VA047) as set forth in the **Federal Register** 40 FR 38095 (8/26/75) and amended in 48 FR 16372 (4/15/83), 50 FR 23009 (5/30/85), 51 FR 6858 (2/26/86), 51 FR 25968 (7/17/86), 55 FR 42534 (10/19/90), 56 FR 23952 (5/24/91), 58 FR 39088 (7/21/93), 58 FR 40852 (7/30/93), 60 FR 35448 (7/7/95), 62 FR 41483 (8/1/97), and 62 FR 68362 (12/31/97). This system of records contains information on current and former salaried VA employees. Inadvertently, the proposed routine use statement was omitted. This document makes a correction by adding the proposed routine use statement. Further, the submission of written comments, suggestions, or objections to the proposed routine use statement, and the effective date of the new routine use statement are corrected.

**FOR FURTHER INFORMATION CONTACT:** Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420, at (202) 273–8605.

**Correction**

In the **Federal Register** of April 18, 2000, in FR Doc. 00–9606, the following corrections are made:

1. On page 20851, in the second column, the first full paragraph is corrected to read:

"Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use of the system of records to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW., Room 1154, Washington, DC 20420. All relevant material received before June 16, 2000 will be considered."

2. On page 20851, in the third column, the first full paragraph is corrected to read:

"If no public comment is received during the 30-day review period allowed for public comment, or unless otherwise published in the **Federal Register** by VA, the new routine use statement is effective June 16, 2000."

3. On page 20851, in the third column, following the conclusion of the preamble, add the following:

**Notice of Amendment to System of Records**

In the system of records identified as 27VA047, "Personnel and Accounting Pay System—VA," as set forth in the **Federal Register** 40 FR 38095 (8/26/75) and amended in 48 FR 16372 (4/15/83), 50 FR 23009 (5/30/85), 51 FR 6858 (2/26/86), 51 FR 25968 (7/17/86), 55 FR 42534 (10/19/90), 56 FR 23952 (5/24/91), 58 FR 39088 (7/21/93), 58 FR 40852 (7/30/93), 60 FR 35448 (7/7/95), 62 FR 41483 (8/1/97), and 62 FR 68362 (12/31/97) the system is revised as follows:

* * * * *

Routine uses of records maintained in the system, including categories of users and the purpose of such uses:

* * * * *

28. Information from this system of records may be disclosed in response to legal processes, including interrogatories, served on the Agency in connection with garnishment proceedings against current or former VA employees under 5 U.S.C. 5520a.

* * * * *

Dated: May 10, 2000.

**Thomas O. Gessel,**

*Director, Office of Regulations Management.*

[FR Doc. 00–12325 Filed 5–16–00; 8:45 am]

**BILLING CODE 8320–01–M**

# Corrections

Federal Register
Vol. 65, No. 96
Wednesday, May 17, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Part 210**

**RIN 0584-AC38**

## National School Lunch Program and School Breakfast Program: Additional Menu Planning Approaches

*Correction*

In rule document 00–11259, beginning on page 26904, in the issue of Tuesday, May 9, 2000, make the following corrections:

**§210.2 [Corrected]**

1. On page 26912, in the third column, in §210.2, five stars should be added after the definition of "*Food item*".

2. On page 26915, the first table should read as follows:

MINIMUM NUTRIENT AND CALORIE LEVELS FOR SCHOOL LUNCHES
TRADITIONAL FOOD-BASED MENU PLANNING APPROACH (SCHOOL WEEK AVERAGES)

| | MINIMUM REQUIREMENTS | | | RECOMMENDED |
|---|---|---|---|---|
| NUTRIENTS AND ENERGY ALLOWANCES | GROUP II PRESCHOOL AGES 3-4 | GROUP III GRADES K-3 AGES 5-8 | GROUP IV GRADES 4-12 AGES 9 AND OLDER | GROUP V GRADES 7-12 AGES 12 AND OLDER |
| Energy allowances (calories) | 517 | 633 | 785 | 825 |
| Total fat (as a percentage of actual total food energy) | [1] | [1, 2] | [2] | [2] |
| Saturated fat (as a percentage of actual total food energy) | [1] | [1, 3] | [3] | [3] |
| RDA for protein (g) | 7 | 9 | 15 | 16 |
| RDA for calcium (mg) | 267 | 267 | 370 | 400 |
| RDA for iron (mg) | 3.3 | 3.3 | 4.2 | 4.5 |
| RDA for Vitamin A (RE) | 150 | 200 | 285 | 300 |
| RDA for Vitamin C (mg) | 14 | 15 | 17 | 18 |

[1] The Dietary Guidelines recommend that after 2 years of age "...children should gradually adopt a diet that, by about 5 years of age, contains no more than 30 percent of calories from fat."

[2] Not to exceed 30 percent over a school week

[3] Less than 10 percent over a school week

[FR Doc. C0–11259 Filed 5–16–00; 8:45 am]
BILLING CODE 1505–01–D

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May 17, 2000

Part II

# Department of Agriculture

**Cooperative State Research, Education, and Extension Service**

**Request for Proposals (RFP): Community Food Projects Competitive Grants Program, Fiscal Year 2000; Notice**

VOL 65 ISS 96 MY 17 2000 UMI

## DEPARTMENT OF AGRICULTURE

### Cooperative State Research, Education, and Extension Service Request for Proposals (RFP): Community Food Projects Competitive Grants Program, Fiscal Year 2000

**AGENCY:** Cooperative State Research, Education, and Extension Service (CSREES), USDA.

**ACTION:** Notice of request for proposals and request for input.

**SUMMARY:** The Federal Agriculture Improvement and Reform Act of 1996 established new authority for a program of Federal grants to support the development of community food projects designed to meet the food needs of low-income people; increase the self-reliance of communities in providing for their own food needs; and promote comprehensive responses to local food, farm, and nutrition issues.

This RFP sets out the objectives for these projects, the eligibility criteria for projects and applicants, and the application procedures. Proposals are requested for (1) projects designed to increase food security in a community (termed Community Food Projects), and (2) projects that provide Training and Technical Assistance on a nationwide basis to entities interested in developing Community Food Projects (termed T&TA Projects).

This RFP contains the entire set of instructions needed to apply for a Fiscal Year (FY) 2000 Community Food Projects Competitive Grants Program grant.

By this notice, CSREES additionally solicits stakeholder input from any interested party regarding the FY 2000 Community Food Projects Competitive Grants Program for use in development of any future requests for proposals for this program.

**DATES:** Proposals must be received on or before June 29, 2000. Proposals received after this date will not be considered for funding. Comments regarding this request for proposals are requested within six months from the issuance of this notice. Comments received after that date will be considered to the extent practicable.

**ADDRESSES:** The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Community Food Projects Competitive Grants Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW, Washington, DC 20024.

Proposals sent via the U.S. Postal Service must be sent to the following address: Community Food Projects Competitive Grants Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245.

Written comments should be submitted by mail to: Policy and Program Liaison Staff; Office of Extramural Programs; USDA–CSREES; STOP 2299; 1400 Independence Avenue, SW; Washington, DC 20250–2299; or via e-mail to: RFP–OEP@reeusda.gov. In your comments, please include the name of the program and the fiscal year of the RFP to which you are responding.

**FOR FURTHER INFORMATION CONTACT:** Dr. Mark R. Bailey, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2241, 1400 Independence Avenue, SW, Washington, DC 20250–2241; telephone: (202) 401–1898; mbailey@reeusda.gov, or Dr. Elizabeth Tuckermanty, Cooperative State Research, Education, and Extension Service, U.S. Department of Agriculture, STOP 2240, 1400 Independence Avenue, SW, Washington, DC 20250–2240, telephone: (202) 205–0241; Internet: etuckermanty@reeusda.gov.

**SUPPLEMENTARY INFORMATION:**

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### Stakeholder Input

CSREES is soliciting comments regarding this solicitation of applications from any interested party. These comments will be considered in the development of any future RFP for the program. CSREES has determined that this program is not an agricultural research, extension, or education program for the purposes of section 103(c)(2) of the Agricultural Research, Extension, and Education Reform Act of 1998, 7 U.S.C. 7613(c)(2). Therefore, CSREES is not required by statute to solicit stakeholder input regarding this RFP. CSREES, however, always welcomes constructive comments from interested parties regarding an RFP or particular program. Comments should be submitted as provided for in the **ADDRESSES** and **DATES** portions of this Notice.

### Catalog of Federal Domestic Assistance

This program is listed in the Catalog of Federal Domestic Assistance under 10.225, Community Food Projects Competitive Grants Program.

### Part I—General Information

*A. Legislative Authority*

Section 25 of the Food Stamp Act of 1977, as amended by Section 401(h) of the Federal Agriculture Improvement and Reform Act of 1996 (Pub. L. No. 104–127) (7 U.S.C. 2034), authorized a new program of Federal grants to support the development of community food projects.

*B. Purpose, Scope and Fund Availability*

1. Purpose and Scope

a. *Community Food Projects.* The purpose of the Community Food Projects Competitive Grants Program (CFPCGP) is to support the development of Community Food Projects with a one-time infusion of Federal dollars to make such projects self-sustaining or to support stand-alone T&TA activities. Community Food Projects should be designed to: (i) Meet the food needs of low-income people; (ii) increase the self-reliance of communities in providing for their own food needs; and (iii) promote comprehensive responses to local food, farm, and nutrition issues.

Community Food Projects are intended to take a comprehensive approach to developing long-term solutions that help to ensure food security in communities by linking the food production and processing sectors to community development, economic opportunity, and environmental enhancement. Comprehensive solutions may include elements such as: (i) Improved access to high quality, affordable food among low-income households; (ii) expanded economic opportunities for community residents through local businesses or other economic development, improved

employment opportunities, job training, youth apprenticeship, school-to-work transition, and the like, and (iii) support for local food systems, from urban gardening to local farms that provide high quality fresh foods, ideally with minimal adverse environmental impact. Any solution proposed must tie into community food needs.

Project goals should integrate multiple objectives into their design. Proposed projects should seek to address impacts beyond a specific goal such as increasing food produced or available for a specific group. Goals and objectives should integrate economic, social, and environmental impacts such as job training, employment opportunities, small business expansion, neighborhood revitalization, open space development, transportation assistance or other community enhancements.

Proposed projects should seek comprehensive solutions to problems across all levels of the food system, not only short-term food relief. This point is emphasized because some proposals submitted previously were primarily for expanding applicant efforts in food relief and assistance, or for connecting established or partially established programs (such as community gardens and farmers' markets), with little evidence of strategic planning and participation by stakeholders in the proposed project design. Proposals should emphasize a food system and/or food security approach and show evidence of information sharing, coalition building, and substantial community linkages.

Applicants should be aware of several USDA and Federal policy initiatives that have the potential to strengthen the impact and success of some Community Food Projects. These include the Department's Community Food Security Initiative and its seven action areas of local infrastructure, economic and job security, Federal nutrition assistance safety net, supplemental food provided by nonprofit groups, food production and marketing, education and awareness, and research, monitoring, and evaluation.

Other related Federal activities include: food recovery and gleaning efforts; connecting low-income urban consumers with rural food producers; aiding citizens in leaving public assistance and achieving self-sufficiency; and utilizing microenterprise and/or development projects related to community food needs. Other relevant and ongoing Federal initiatives include: USDA farmers' markets; USDA's Office of Sustainable Development and Small Farms; USDA and U.S. Department of Housing and Urban Development designated Empowerment Zones, Enterprise Communities; and the AmeriCorps National Service Program.

Applicants should recognize the role played by food and nutrition assistance programs administered by USDA. Applicants may choose to discuss, in their proposals, the utilization of these programs by the community in connection with the proposed Community Food Project. These programs include: the Food Stamp Program; child nutrition programs such as the School Lunch, School Breakfast, Women, Infants, and Children (WIC) Supplemental Nutrition, Child and Adult Care Food, and Summer Food Service Programs; and commodity distribution programs.

Resources available from other Federal programs such as the Community Food and Nutrition Program (CFNP) and Job Opportunities for Low-Income Individuals (JOLI) program (administered by the Office of Community Services within the U.S. Department of Health and Human Services), may also impact Community Food Projects.

The primary objectives of the CFPCGP are to increase the food self-reliance of communities; promote comprehensive responses to local food, farm and nutrition issues; develop innovative linkages between the public, for-profit, and nonprofit food sectors; and encourage long-term planning activities and comprehensive multi-agency approaches.

Community Food Projects are intended to bring together stakeholders from the distinct parts of the food system. Solutions to hunger and access to food should reflect a process that involves partnership building among the public, private nonprofit, and for-profit sectors. Together, these parties can address issues such as: the capacity of the community to produce food and support local growers; the need for, and location of, grocery stores that market affordable, high quality food; transportation to provide access to food supplies; economic opportunities for residents to increase income, thereby increasing economic access to high quality nutritious food; community development issues; and the environment. Wherever possible, Community Food Projects should support food systems based on strategies that improve the availability of high-quality locally or regionally produced foods to low-income people.

Community Food Projects should build on these local experiences and encourage innovative long-term efforts. A project should be designed to endure and outlive the one-time infusion of Federal funds. Community Food Projects should be designed to become self-supporting (or have a sustainable funding source). Projects also should have the potential to be a replicable model. Examples of previously funded Community Food Projects may be viewed on the Internet in the CFPCGP website at http://www.reeusda.gov/crgam/cfp/community.htm.

*b. Training and Technical Assistance Grants.* Potential applicants to the Community Food Projects Competitive Grants Program may have outstanding ideas that could address community food security problems, but are reluctant to submit proposals because they may not be familiar with the USDA and other Federal agency grant application and administration processes. The enabling legislation recognized this possibility when it authorized the Secretary of Agriculture to provide technical assistance to an entity seeking the assistance. T&TA project proposals are being solicited in this RFP in order to address this situation. T&TA projects should be designed to assist potential applicants in the following areas: understanding the grant application process; understanding the purposes of the CFPCGP; being familiar with the necessary components of a competitive CFPCGP proposal; understanding what constitutes an appropriate and eligible community food project under the CFPCGP; providing technical assistance, when appropriate, to successful applicants in carrying out their projects; and provide the USDA with a performance report at the conclusion of the grant that delineates the relative successes of their various technical assistance activities.

A T&TA project proposal should demonstrate an applicant's technical expertise in the above noted areas. The proposal should also show that the applicant organization has the capacity to provide training and technical assistance to applicants on a regional or national basis, through regional workshops, electronic media, or other appropriate means. Additionally, the applicant should also demonstrate capacity or experience in being able to assist successful applicants in carrying out their projects. Organizations that can demonstrate an involvement in community food security issues and programs are strongly encouraged to apply.

2. Fund Availability

The amount of funds available in FY 2000 for support of grant awards under this program is approximately

$2,400,000. Up to $250,000 of that amount will be available for T&TA Projects.

Applicants should request a budget commensurate with the proposed project. However, no single grant shall exceed $100,000 in any single year or more than $250,000 over three years.

Applicants, regardless of the type of project, may request one, two, or three years of funding, but in all cases, the grant term may not exceed three years for any one project. A Community Food Project may be supported by only a single grant under this program.

Awards will be made based on the merit of the proposed project with budgets considered only after the merits of the project have been determined. USDA reserves the right to negotiate final budgets with successful applicants. The grantee shall perform a substantive portion of the project. No more than one-third of a Community Food Project award, as determined by budget expenditures, may be subawarded to for-profit organizations. For additional knowledge or expertise that is not available within the applicant organization, funds for expert consultation may be included in the "All Other Direct Costs" section of the proposed budget.

*C. Definitions*

For the purpose of awarding grants under this program, the following definitions are applicable:

*Administrator* means the Administrator of CSREES and any other officer or employee of the Department to whom the authority involved is delegated.

*Authorized departmental officer* means the Secretary or any employee of the Department who has the authority to issue or modify grant instruments on behalf of the Secretary.

*Authorized organizational representative* means the president, director, or chief executive officer or other designated official of the applicant organization who has the authority to commit the resources of the organization.

*Budget period* means the interval of time (usually 12 months) into which the project period is divided for budgetary and reporting purposes.

*Cash contributions* means the applicant's cash outlay, including the outlay of money contributed to the applicant by non-Federal third parties.

*Community Food Project* is a community-based project that requires a one-time infusion of Federal assistance to become self-sustaining and is designed to increase food security in a community by: (i) Meeting the food needs of low-income people; (ii) increasing the self-reliance of communities in providing for their own food needs; and (iii) promoting comprehensive responses to local food, farm, and nutrition issues.

*Department* or *USDA* means the United States Department of Agriculture.

*Expert reviewers* means individuals selected from among those recognized as uniquely qualified by training and experience in their respective fields to give expert advice on the merit of grant applications in such fields who evaluate eligible proposals submitted to this program in their respective area(s) of expertise.

*Grant* means the award by the Secretary of funds to an eligible entity to assist in meeting the costs of conducting, for the benefit of the public, an identified Community Food or Training and Technical Assistance Project.

*Grantee* means the organization designated in the grant award document as the responsible legal entity to which a grant is awarded.

*Matching* means that portion of allowable project costs not borne by the Federal Government, including the value of in-kind contributions.

*Prior approval* means written approval evidencing prior consent by an authorized departmental officer.

*Private non-profit* entity means any nongovernmental corporation, trust, association, cooperative or other organization which: (i) Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; (ii) is not organized primarily for profit; and (iii) uses its net proceeds to maintain, improve, and/or expand its operations.

*Project* means the particular activity within the scope of the program supported by a grant award.

*Project director* means the single individual designated in the grant application and approved by the Secretary who is responsible for the direction and management of the project.

*Project period* means the period, as stated in the award document, during which Federal sponsorship begins and ends.

*Secretary* means the Secretary of Agriculture and any other officer or employee of the Department of Agriculture to whom the authority involved is delegated.

*Third party in-kind contributions* means non-cash contributions of property or services including real property, equipment, supplies and other expendable property, provided by non-Federal third parties and directly benefitting and specifically identifiable to the project.

*Training and Technical Assistance (T&TA) Project* means a project of regional or national scope that requests Federal Assistance to help community-based entities develop proposals for funding under the CFPCGP and to provide information, education, and skills training to Community Food Project applicants, potential applicants, and grantees.

*D. Eligibility*

1. Community Food Project Grant Eligibility

Private, nonprofit or other entities meeting the following three requirements are eligible to receive a Community Food Project grant:

a. Have experience in the area of:

i. Community food work, particularly concerning small and medium-size farms, including the provision of food to people in low-income communities and the development of new markets in low-income communities for agricultural producers; or

ii. Job training and business development activities for food-related activities in low-income communities;

b. Demonstrate competency to implement a project, provide fiscal accountability, collect data, and prepare reports and other necessary documentation; and

c. Demonstrate a willingness to share information with researchers, practitioners, and other interested parties.

2. Technical and Training Assistance Grant Eligibility

Private, nonprofit or other entities meeting the following three requirements are eligible to apply for and receive a T&TA grant under this program:

a. Have the capacity to provide, on a regional or national basis, training and technical assistance in community food security, including the assessment of community food needs, appraisal of existing community assets pertaining to food security issues, coalition building, project development, evaluation and completion, proposal preparation, and fund raising;

b. Demonstrate competency to implement a T&TA project, provide fiscal accountability, collect data, and prepare reports and other necessary documentation; and

c. Demonstrate a willingness to share information with researchers, evaluators, practitioners, and other interested parties.

3. Partners and Collaborators

Applicants are encouraged to seek and create partnerships with public or private, nonprofit or for-profit entities, including links with academic and/or other appropriate professionals, community-based organizations, and local government entities. Only the applicant must meet the eligibility requirements. Project partners and collaborators need not meet the eligibility requirements.

*E. Matching Requirements*

Successful Community Food Project applicants must provide matching funds amounting to at least 50 percent of the total cost of the project during the term of the grant award. The Federal share of a Community Food Project costs can be no more than 50 percent of the total. Matching funds are not required for T&TA grants.

Community Food Project grantees may provide matching funds through cash and/or in-kind contributions, including third-party in-kind contributions, fairly evaluated, including facilities. The non-Federal share of the funding may come from State government, local government, other non-profit entities, or private sources. Examples of qualifying matching contributions may include direct costs such as: rent for office space used exclusively for the funded project; duplication or postage costs; and staff time from an entity other than the applicant for job training or nutrition education.

**Part II—Preparation of a Proposal**

*A. Program Application Materials*

Program application materials are available at the CFPCGP website (http://www.reeusda.gov/crgam/cfp/community.htm). Program application materials also are available from the Proposal Services Unit, Office of Extramural Programs, USDA/CSREES at (202) 401–5048. These materials may also be requested via Internet by sending a message with your name, mailing address (not e-mail) and phone number to psb@reeusda.gov. If calling or sending e-mail, please indicate that you want a copy of the application materials for the Fiscal Year 2000 Community Food Projects Competitive Grants Program.

*B. Content of Proposals*

1. General

The proposal should follow these guidelines, enabling reviewers to more easily evaluate the merits of each proposal in a systematic, consistent fashion:

(a) The proposal should be prepared on only one side of the page using standard size (8½″ ×11″) white paper, one inch margins, typed or word processed using no type smaller than 12 point font, and single or double spaced. Use an easily readable font face (*e.g.*, Geneva, Helvetica, Times Roman).

(b) Each page of the proposal, beginning after the Project Summary, and including the budget pages, required forms, and any appendices, should be numbered sequentially in the top right hand corner.

(c) The proposal should be stapled in the upper left-hand corner. Do not bind. An original and 8 copies (9 total) must be submitted in one package.

2. Cover Page

Each copy of each grant proposal must have as its cover page an "Application for Funding", Form CSREES–661. One copy of the application, preferably the original, must contain the pen-and-ink signature(s) of the proposing project director(s) (PD) and the authorized organizational representative who possesses the necessary authority to commit the organization's time and other relevant resources to the project. Any proposed PD or co-PD whose signature does not appear on Form CSREES–661 will not be listed on any resulting grant award. Complete both signature blocks located at the bottom of the "Application for Funding" form.

Form CSREES–661 serves as a source document for the CSREES grant database; it is therefore important that it be completed accurately. The following items are highlighted as having a high potential for errors or misinterpretations:

(a) Title of Proposed Project (Block 6). The title of the proposed project must be brief (80-character maximum), yet represent the major thrust of the effort being proposed.

(b) Blocks 7., 13., 18., 19., 20., and 21. have been completed for you.

(c) In Block 8., enter "Community Food Project", or "T&TA Project."

(d) Principal Investigator(s)/Project Director(s) (PI/PD) (Block 15). Note that providing a Social Security Number is voluntary, but is an integral part of the CSREES information system and will assist in the processing of the proposal.

(e) Other Funding Agencies (Block 22). List the names or acronyms of all other public or private funding agencies including other agencies within USDA and other programs funded by CSREES to whom your application has been or might be sent. In the event you decide to send your application to another organization or agency at a later date, you must inform the identified CSREES Program Director as soon as practicable. Submitting your proposal to other potential funding agencies will not prejudice its review by CSREES; however, duplicate support for the same project will not be provided.

3. Table of Contents

For consistency and ease in locating information, each proposal must contain a detailed Table of Contents just after the cover page. The Table of Contents should contain page numbers for each component of the proposal.

4. Project Summary

The Project Summary must be 250 words or less, on a separate page which should be placed immediately after the Table of Contents and should not be numbered. The names and organizations of all PDs and co-PDs should be listed on this form, in addition to the title of the project. The summary should be a self-contained, specific description of the activity to be undertaken and should focus on overall project goal(s) and supporting objectives, and plans to accomplish the project goal(s). The importance of a concise, informative Project Summary cannot be overemphasized.

5. Prior CFPCGP Funding

If an applicant has previously received CFPCGP support, information on the results from prior funding must be included. For each award received, list the CFPCGP award number, the title of the project, the amount and period of support, a brief summary of the results completed, and the actual and anticipated long-term effects of these results. This information should be provided on a separate page, immediately following the project summary.

6. Project Narrative

For Community Food Project Proposals, the Project Narrative shall not exceed 10 single- or double-spaced pages of written text. To ensure fair and equitable competition, reviewers are instructed to read only the first 10 pages of a project narrative and may ignore information on additional pages. The Project Narrative must repeat and respond to the eight points in (a) through (h) below:

a. *The Community To Be Served and the Needs To Be Addressed.* Identify and succinctly describe the critical elements and needs of the local food economy or food system, including demographics, income, and geographic characteristics of the area to be served.

b. *The Organizations Involved in the Project.* List the organizations to be involved in carrying out the proposed project and the segments of the local food economy or system they link.

Include a description of the relevant experience of each organization, including the applicant organization, that will be involved, and any project history. Proposals should demonstrate extensive community linkages and coalitions. Letters from the organizations involved acknowledging their support and contributions must be provided in an appendix to the proposal. Letters specifying the type and amount of support, where appropriate, are strongly encouraged to provide evidence of community involvement.

c. *Project Goals and Purposes.* List the goals and/or purposes of the project and a justification for the goals in terms of the identified need(s).

d. *Activities to Achieve the Goals.* Discuss how the goals will be achieved. Provide a systematic description of the approach by which the goals will be accomplished.

e. *Timeline.* Identify the major milestones that will indicate progress toward achieving the project goals. Provide a timeline or systematic description of the approach for accomplishing major project objectives.

f. *Relationship to Program Objectives.* Discuss how the project will make progress toward addressing the three major objectives of the CFPCGP. Each Community Food Project, by definition, must be designed to: (i) Meet the food needs of low-income people; (ii) increase the self-reliance of communities in providing for their own food needs; and (iii) promote comprehensive responses to local food, farm and nutrition issues.

In addressing the objectives, applicants may want to describe how the project fosters: innovative linkages and coalitions between two or more sectors of the food system; entrepreneurial, job training, and microenterprise opportunities; and short-term and long-term planning to promote community food security through multiple activities conducted in collaboration with other entities.

g. *Evaluation.* Community Food Project proposals should contain a strong evaluation component. Innovative evaluation strategies are especially encouraged. Evaluations should focus on the measurement of success in meeting the three objectives of the CFPCGP.

Through CFPCGP project operations and an evaluation of them, USDA also hopes to learn more about what happens to make such projects succeed, partially succeed, or fail. Therefore, proposals are encouraged that include both process evaluations (developing and monitoring indicators of progress towards the objectives) and outcome evaluations (to determine whether the objectives were met). Applicants should seek the help of experts in evaluation design and implementation, as appropriate.

h. *Self-Sustainability.* Describe how a one-time infusion of Federal funds will be sufficient for the proposed Community Food Project to advance local capacity-building and achieve sustainability. Entrepreneurial projects should provide evidence (*e.g.*, a market analysis or the outline of a business plan) to demonstrate that it is likely to become self-sustaining and provide employees with important job skills.

For T&TA project proposals, the Project Narrative shall not exceed 10 pages. To ensure fair and equitable competition, reviewers are instructed to read only the first 10 pages of a project narrative and to ignore information on additional pages. The project narrative must repeat and respond to the following six points in (a) through (f) below:

a. *Community Food Security Issues and Programs.* The proposal should provide a succinct description of community food security issues and programs and the scope of involvement of the applicant entity. Such items as the food economy or food system should be noted as should pertinent information regarding demographics, income, geographic characteristics of the area(s) previously served.

b. *Organizations Involved.* List all collaborating organizations and individuals who will be assisting you and their respective roles in provision of training and technical assistance. Provide documentation that these organizations have agreed to collaborate if the proposal is successful.

c. *Project Goals and Purposes.* List the goals and/or purposes of the project and a justification for the goals in terms of the types of services that will be provided.

d. *Activities to Achieve the Goals.* Discuss how the goals will be achieved. Provide a systematic description of the approach by which the goals will be accomplished.

e. *Time Line.* The proposed work should be for a three-year period. Training and technical assistance should be scheduled so that potential applicant organizations will have ample opportunity to take advantage of the assistance offered with enough time to construct and submit a community food project proposal in any given year.

f. *Evaluation.* T&TA proposals should contain an internal evaluation component so as to provide enough timely information over the course of the project to improve the training and technical assistance.

7. Key Personnel

Identify the key personnel to be involved in the project, including the project director, if known, and describe their relevant experience. In the Appendix, include resumes or vitae that provide adequate information for reviewers to make an informed judgment as to the capabilities and experience of the key personnel. For new positions in the project or for positions that are currently unfilled, a job description should be provided. An applicant should include an organizational chart, if available, detailing where the project fits in the overall organization.

8. Collaborative and/or Subcontractual Arrangements

If it will be necessary to enter into formal consulting or collaborative arrangements with others, such arrangements should be fully explained and justified. Evidence, in the form of a letter or e-mail from the collaborator/subcontractor that details the services that will be provided, and a budget and a budget narrative, should be provided as an appendix to the grant application. If the need for consultant services is anticipated, the proposal narrative should provide a justification for the use of such services, a statement of work to be performed, the rate of pay, and a resume or curriculum vita for each consultant. For purposes of proposal development, informal day-to-day contacts between key project personnel and outside experts are not considered to be collaborative arrangements and thus do not need to be detailed.

All anticipated subcontractual arrangements also should be explained and justified in this section. A proposed statement of work and a budget and budget narrative for each arrangement involving the transfer of substantive programmatic work or the providing of financial assistance to a third party must be provided.

If you expect to enter into subcontractual arrangements, please note that the provisions contained in 7 CFR part 3019, USDA Uniform Administrative Requirements for Grant and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and the general provisions contained in 7 CFR part 3015.205, USDA Uniform Federal Assistance Regulations, flow down to

subrecipients. In addition, required clauses from Sections 40–48 ("Procurement Standards") and Appendix A ("Contract Provisions") to 7 CFR part 3019 should be included in final contractual documents, and it is necessary for the subawardee to make a certification relating to debarment/suspension.

9. Budget

a. Budget Form—Prepare the Community Food Projects Competitive Grants Program budget form in accordance with instructions provided. A separate budget form is required for each year of requested support. In addition, a cumulative budget and budget narrative (see section b. below) is required detailing the total support requested for the overall project period. The budget form may be reproduced as needed by applicants. Funds may be requested under any of the categories listed on the form, provided that the item or service for which support is requested is allowable under the authorizing legislation, the applicable Federal cost principles, and these program guidelines, and can be justified as necessary for the successful conduct of the proposed project.

The following guidelines should be used in developing your proposal budget(s):

1. Salaries and Wages. Salaries and wages are allowable charges and may be requested for personnel who will be working on the project in proportion to the time such personnel will devote to the project. If salary funds are requested, the number of Senior and Other Personnel and the number of CSREES-Funded Work Months must be shown in the spaces provided. Grant funds may not be used to augment the total salary or rate of salary of project personnel or to reimburse them for time in addition to a regular full-time salary covering the same general period of employment. Salary funds requested must be consistent with the normal policies of the institution.

2. Fringe Benefits. Funds may be requested for fringe benefit costs if the usual accounting practices of your organization provide that organizational contributions to employee benefits (social security, retirement, etc.) be treated as direct costs. Fringe benefit costs may be included only for those personnel whose salaries are charged as a direct cost to the project.

3. Nonexpendable Equipment. Nonexpendable equipment means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 (or lower, depending on institutional policy) or more per unit. As such, items of necessary instrumentation or other nonexpendable equipment should be listed individually by description and estimated cost in the Budget Narrative. This applies to revised budgets as well, as the equipment item(s) and amount(s) may change.

4. Materials and Supplies. The types of expendable materials and supplies which are required to carry out the project should be indicated in general terms with estimated costs in the Budget Narrative.

5. Travel. The type and extent of travel and its relationship to project objectives should be described briefly and justified. Airfare allowances normally will not exceed round-trip jet economy air accommodations. U.S. flag carriers must be used when available. See 7 CFR part 3015.205(b)(4) for further guidance.

All successful applicants should plan to attend an evaluation training meeting. Therefore applicants should include in their proposed budget request funding for two persons to travel to Washington, DC to attend a two to three day meeting. More information will be provided once successful applicants are identified.

6. All Other Direct Costs. Anticipated direct project charges not included in other budget categories must be itemized with estimated costs and justified in the Budget Narrative. This also applies to revised budgets, as the item(s) and dollar amount(s) may change. Examples may include space rental at remote locations, subcontractual costs, and charges for consulting services, telephone, facsimile, shipping costs, and fees necessary for laboratory analyses. You are encouraged to consult the "Instructions for Completing the Community Food Projects Competitive Grants Program Budget" for additional guidance relating to this budget category. Form AD–1048 must be completed by each subcontractor or consultant and retained by the grantee.

7. Indirect Costs—If available, the current rate negotiated with the cognizant Federal negotiating agency should be used. Indirect costs may not exceed the negotiated rate. If a negotiated rate is used, the percentage and base should be indicated in the space allotted under item K. on the Budget Form. If no rate has been negotiated, a reasonable dollar amount for indirect costs may be requested, which will be subject to approval by USDA. In the latter case, if a proposal is recommended for funding, an indirect cost rate proposal must be submitted prior to award to support the amount of indirect costs requested. CSREES will request an indirect cost rate proposal and provide instructions, as necessary. A proposer may elect not to charge indirect costs and, instead, use all grant funds for direct costs. If indirect costs are not charged, the phrase "None requested" should be written in this space.

b. Budget Narrative—All budget categories, with the exception of Indirect Costs for which support is requested, must be individually listed (with costs) and justified on a separate sheet of paper and placed immediately behind the Budget Form.

c. Matching Funds—As stated in part I.E., matching funds are mandatory for Community Food Projects. (Matching funds are not mandatory for T&TA projects.) Proposals should include written verification of commitments of matching support (including both cash and in-kind contributions) from third parties. Written verification means:

(i) For any third party cash contributions, a separate pledge agreement for each donation, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) the dollar amount of the cash donation; and (5) a statement that the donor will pay the cash contribution during the grant period; and

(ii) For any third party in-kind contributions, a separate pledge agreement for each contribution, signed by the authorized organizational representatives of the donor organization and the applicant organization, which must include: (1) The name, address, and telephone number of the donor; (2) the name of the applicant organization; (3) the title of the project for which the donation is made; (4) a good faith estimate of the current fair market value of the third party in-kind contribution; and (5) a statement that the donor will make the contribution during the grant period.

The sources and amounts of all matching support from outside the applicant institution should be summarized on a separate page and placed in the proposal immediately following the Budget Narrative. All pledge agreements must be placed in the proposal immediately following the summary of matching support.

The value of applicant contributions to the project shall be established in accordance with applicable cost principles. Applicants should refer to the following for further guidance and other requirements relating to matching and allowable costs: 7 CFR part 3019, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations; OMB Circular A–21, Cost Principles for Educational Institutions; OMB Circular A–122, Cost Principles for Non-Profit Organizations; Federal Acquisition Regulations (48 CFR subpart 31.2, Principles for determining costs with profitmaking firms and those nonprofit organizations that are specifically excluded from the provisions of OMB Circular No. A–122); and 7 CFR part 3015, the USDA Uniform Federal Assistance Regulations.

10. Current and Pending Support

All proposals must contain Form CSREES–663 listing other current publicly or privately supported (including in-house) projects to which key personnel identified in the proposal have committed portions of their time, whether or not salary support for person(s) involved is included in the budget for this proposed project. Analogous information must be provided for any pending proposals that are being considered by, or that will be submitted in the near future to, other possible sponsors, including other USDA Programs or agencies. Concurrent submission of identical or similar proposals to other possible sponsors will not prejudice proposal review or evaluation by CSREES for this purpose. However, a proposal that duplicates or overlaps substantially with a proposal already reviewed and funded (or to be funded) by another organization or agency will not be funded under this program. Note that the project being proposed should be included in the pending section of the form.

11. Certifications

By signing Form CSREES–661 the applicant is providing the certifications required by 7 CFR part 3017, regarding Debarment and Suspension and Drug Free Workplace, and 7 CFR part 3018, regarding Lobbying. The certification forms are included in the application package for informational purposes only. These forms should not be submitted with the proposal since by signing form CSREES–661 your organization is providing the required certifications. If the project will involve a subcontractor or consultant, the subcontractor/consultant should submit a form AD–1048 to the grantee organization for retention in their records. This form should not be submitted to USDA.

12. Compliance With the National Environmental Policy Act (NEPA) Form CSREES–1234

As outlined in 7 CFR part 3407 (CSREES supplemental regulations implementing NEPA), the environmental data for any proposed project is to be provided to CSREES so that CSREES may determine whether any further action is needed. In most cases, however, the preparation of environmental data may not be required. Certain categories of actions are excluded from the requirements of NEPA.

In order for CSREES to determine whether any further action is needed with respect to NEPA, pertinent information regarding the possible environmental impacts of a particular project is necessary; therefore, Form CSREES–1234, "NEPA Exclusions Form," must be included in the proposal indicating whether the applicant is of the opinion that the project falls within a categorical exclusion, the specific exclusion, and the reasons therefore. Form CSREES–1234 and supporting documentation should be included as the last component of the proposal.

Even though a project may fall within the categorical exclusions, CSREES may determine that an Environmental Assessment or an Environmental Impact Statement is necessary for an activity. This will be the case in rare instances when substantial controversy on environmental grounds exists or other extraordinary conditions or circumstances are present which may cause such activity to have a significant environmental effect.

*C. Submission of Proposals*

1. When To Submit (Deadline Date)

Proposals must be received on or by June 29, 2000. Proposals received after this date will not be considered for funding.

2. What To Submit

An original and eight copies must be submitted. All copies of the proposal must be submitted in one package.

3. Where To Submit

Applicants are strongly encouraged to submit completed proposals via overnight mail or delivery service to ensure timely receipt by the USDA. The address for hand-delivered proposals or proposals submitted using an express mail or overnight courier service is: Community Food Projects Competitive Grants Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; Room 303, Aerospace Center; 901 D Street, SW; Washington, DC 20024.

Proposals sent via the U.S. Postal Service must be sent to the following address: Community Food Projects Competitive Grants Program; c/o Proposal Services Unit; Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2245; 1400 Independence Avenue, SW; Washington, DC 20250–2245.

*D. Acknowledgment of Proposals*

The receipt of proposals will be acknowledged by e-mail. Therefore, applicants are encouraged to provide e-mail addresses, where designated, on the Form CSREES–661. If the applicant's e-mail address is not indicated, CSREES will acknowledge receipt of the proposal by letter.

Once the proposal has been assigned an identification number, please cite that number on all future correspondence. If the applicant does not receive an acknowledgment within 60 days of the submission deadline, please contact the Program Director.

**Part III—Review Process**

*A. General*

Each proposal will be evaluated in a two-part process. First, each proposal will be screened to ensure it meets the basic eligibility requirements as set forth in this RFP. Proposals not meeting the eligibility requirements will be returned without review. Second, each proposal that meets the eligibility requirements will be evaluated and judged on its merits by expert reviewers.

Since the award process must be completed by September 30, 2000, applicants should submit fully developed proposals that meet all the requirements set forth in this RFP and have fully developed budgets as well. However, USDA does retain the right to conduct discussions with applicants to resolve technical and/or budget issues as it deems necessary.

A number of expert reviewers will conduct the merit review based on the evaluation criteria. These reviewers will be drawn from a number of areas, among them government, universities, non-profit organizations, and other pertinent entities involved in community food security or similar activities. The views of the individual reviewers will be used by CSREES to

determine which proposals will be recommended to the Administrator for funding. Evaluated proposals will be ranked based on merit. Final approval for those proposals recommended for an award will be made by the Administrator.

There is no commitment by USDA to fund any particular proposal or to make a specific number of awards. Care will be taken to avoid actual, potential, and the appearance of conflicts of interest among reviewers. Evaluations will be confidential to USDA staff members, expert reviewers, and the project director(s), to the extent permitted by law.

*B. Evaluation Factors*

The evaluation of Community Food Project proposals by expert reviewers will be based on the following criteria, weighted relative to each other, and assigned a point value, as noted in the parentheses following each criteria discussion.

1. How well the proposed project addresses the three statutory CFPCGP objectives of: (i) Meeting the food needs of low-income people; (ii) increasing the self-reliance of communities in providing for their own food needs; and (iii) promoting comprehensive responses to local food, farm, and nutrition issues (25 points);

2. How significant are the food security issues that will be addressed by the proposed project, and is there an informative description of the community, its characteristic, assets, and needs (15 points);

3. The appropriateness of the goals and purposes of the project and how these goals will be achieved. Proposed project activities should be designed to address one or more of the following goals, which will be given equal weight: (i) Developing linkages between two or more sectors of the food system; (ii) supporting the development of entrepreneurial activities; (iii) developing innovative linkages between the for-profit and nonprofit food sectors; and (iv) encouraging long-term planning activities and multi-system, interagency approaches (20 points);

4. The relevance of the experience of the organizations that are involved in the proposed project, including the applicant entity, and the type and extent of support that other organizations will be providing. Applicant organizations should demonstrate a history of commitment to and direct involvement in food security projects in low-income communities or in communities with low-income groups. The qualifications of staff involved with the proposed project and/or organizational leadership should reflect the expertise necessary to carry out the proposed activities or similar types of activities. Experience in and connections with the community will be considered as important as academic or professional credentials in this regard (20 points);

5. The viability of plans for realistically achieving self-sufficiency with a one-time infusion of Federal funds. Entrepreneurial projects should provide evidence (*e.g.*, a market analysis or the outline of a business plan) to demonstrate that it is likely to become self-sustaining. Other projects should identify actual or potential funding sources for continuation of the project after Federal funding has ended (15 points);

6. The strength of the proposed project's evaluation component and how it will contribute to the evaluation of the CFPCGP on a national basis (8 points); and

7. The time line for accomplishing project goals and objectives is realistic and achievable (2 points).

The evaluation of T&TA Projects by expert reviewers will be based on the following criteria, weighted relative to each other, and assigned a point value, as noted in the parentheses following each criteria:

1. How well the proposed project assists applicants, eligible entities, and others in understanding the three statutory CFPCGP objectives of: (i) Meeting the food needs of low income people; (ii) increasing the self-reliance of communities in providing for their own food needs; and (iii) promoting comprehensive responses to local food, farm, and nutrition issues (35 points);

2. The appropriateness of goals and purposes of the project and how those goals will provide T&TA activities that will assist organizations and individuals regionally or nationwide in addressing the CFPCGP goals of: (i) Developing linkages between two or more sectors of the food system; (ii) supporting the development of entrepreneural activities; (iii) developing innovative linkages between the for-profit and nonprofit food sectors; and (iv) encouraging long-term planning activities and multiple activities conducted in collaboration with other entities (30 points);

3. The experience of the applicant and other organizations (if any) to be involved in the proposed project. Applicants should demonstrate a history of or the capability for involvement in T&TA on Community Food Projects or other similar programs. The relevant qualifications of staff involved in the proposed project should be provided (20 points) and;

4. The timeline for accomplishing the planning, scheduling, and delivery of T&TA is realistic and achievable (15 points).

*C. Conflicts-of-Interest and Confidentiality*

During the evaluation process, extreme care will be taken to prevent any actual or perceived conflicts-of-interest that may impact review or evaluation. For the purpose of determining conflict-of-interest the academic and administrative autonomy of an institution shall be determined by reference to the January 1998 issue of the Codebook for Compatible Statistical Reporting of Federal Support to Universities, Colleges, and Nonprofit Institutions, prepared by Quantum Research Corporation for the National Science Foundation.

Names of submitting institutions and individuals, as well as proposal content and evaluations, will be kept confidential, except to those involved in the review process, to the extent allowed by law. In addition, the identities of expert reviewers will remain confidential throughout the entire review process. Therefore, the names of reviewers will not be released to applicants.

**Part IV—Additional Information**

*A. Access to Peer Review Information*

Copies of summary reviews, not including the identity of reviewers, will be sent to the applicant PD after the review process has been completed.

*B. Grant Awards*

(1) General

Within the limit of funds available for such purpose, the awarding official of CSREES shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious under the procedures set forth in this RFP. The date specified by the Administrator as the effective date of the grant shall be no later than September 30. It should be noted that the project need not be initiated on the grant effective date, but as soon thereafter as practical so that project goals may be attained within the funded project period. All funds granted by CSREES under this RFP shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations, the terms and conditions of the award, the applicable Federal cost principles, and the Department's assistance regulations (parts 3015, 3016, and 3019 of 7 CFR).

(2) Organizational Management Information

Specific management information relating to an applicant shall be submitted on a one-time basis as part of the responsibility determination prior to the award of a grant identified under this RFP, if such information has not been provided previously under this or another CSREES program. CSREES will provide copies of forms recommended for use in fulfilling these requirements as part of the preaward process.

(3) Grant Award Document and Notice of Grant Award

The grant award document shall include at a minimum the following:

(a) Legal name and address of performing organization or institution to whom the Administrator has awarded the grant;

(b) Title of project;

(c) Name(s) and address(es) of project director(s) chosen to direct and control approved activities;

(d) Identifying grant number assigned by the Department;

(e) Project period, specifying the amount of time the Department intends to support the project;

(f) Total amount of Departmental financial assistance approved by the Administrator during the project period;

(g) Legal authority(ies) under which the grant is awarded;

(h) Approved budget plan for categorizing allocable project funds to accomplish the stated purpose of the grant award; and

(i) Other information or provisions deemed necessary by CSREES to carry out its respective granting activities or to accomplish the purpose of a particular grant.

The notice of grant award, in the form of a letter, will be prepared and will provide pertinent instructions or information to the grantee that is not included in the grant award document.

All grants awarded under this program will be awarded using a funding mechanism whereby CSREES agrees to support a specified level of effort for a predetermined time period without additional support at a future date.

*C. Use of Funds; Changes*

(1) Delegation of Fiscal Responsibility

Unless the terms and conditions of the grant state otherwise, the grantee may not in whole or in part delegate or transfer to another person, institution, or organization the responsibility for use or expenditure of grant funds.

(2) Changes in Project Plans

(a) The permissible changes by the grantee, PD(s), or other key project personnel in the approved project grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee or the PD(s) is uncertain as to whether a change complies with this provision, the question must be referred to the CSREES Authorized Departmental Officer (ADO) for a final determination.

(b) Changes in approved goals or objectives shall be requested by the grantee and approved in writing by the CSREES ADO prior to effecting such changes. In no event shall requests for such changes be approved which are outside the scope of the original approved project.

(c) Changes in approved project leadership or the replacement or reassignment of other key project personnel shall be requested by the grantee and approved in writing by the awarding official of CSREES prior to effecting such changes.

(d) Transfers of actual performance of the substantive programmatic work in whole or in part and provisions for payment of funds, whether or not Federal funds are involved, shall be requested by the grantee and approved in writing by the ADO prior to effecting such transfers, unless prescribed otherwise in the terms and conditions of the grant.

(e) Changes in Project Period: The project period may be extended by CSREES without additional financial support, for such additional period(s) as the ADO determines may be necessary to complete or fulfill the purposes of an approved project. Any extension of time shall be conditioned upon prior request by the grantee and approval in writing by the ADO, unless prescribed otherwise in the terms and conditions of a grant, but in no case shall a grant period of performance exceed three (3) years.

(f) Changes in Approved Budget: Changes in an approved budget must be requested by the grantee and approved in writing by the ADO prior to instituting such changes if the revision will involve transfers or expenditures of amounts requiring prior approval as set forth in the applicable Federal cost principles, Departmental regulations, or in the grant award.

*D. Applicable Federal Statutes and Regulations*

Several other Federal statutes and regulations apply to grant proposals considered for review and to grants awarded under this program. These include but are not limited to:

7 CFR Part 1.1—USDA implementation of the Freedom of Information Act.

7 CFR Part 3—USDA implementation of OMB Circular No. A–129 regarding debt collection.

7 CFR Part 15, subpart A—USDA implementation of Title VI of the Civil Rights Act of 1964, as amended.

7 CFR Part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*e.g.*, Circulars Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308, as well as general policy requirements applicable to recipients of Departmental financial assistance.

7 CFR Part 3016—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.

7 CFR Part 3017—USDA implementation of Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants).

7 CFR Part 3018—USDA implementation of Restrictions on Lobbying. Imposes on recipients of Federal contracts, grants, cooperative agreements, and loans prohibitions and requirements for disclosure and certification related to lobbying.

7 CFR Part 3019—USDA implementation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations.

7 CFR Part 3052—USDA implementation of OMB Circular No. A–133, Audits of States, Local Governments, and Non-profit Organizations.

7 CFR Part 3407—CSREES supplemental regulations for implementation of the National Environmental Policy Act of 1969, as amended.

29 U.S.C. 794 (section 504, Rehabilitation Act of 1973) and 7 CFR Part 15d (USDA implementation of statute)—prohibiting discrimination based upon physical or mental handicap in Federally assisted programs.

35 U.S.C. 200 *et seq.*—Bayh-Dole Act, controlling allocation of rights to inventions made by employees of small business firms and domestic nonprofit organizations, including universities, in Federally assisted programs (implementing regulations are contained in 37 CFR part 401).

*E. Confidential Aspects of Proposals and Awards*

(1) When a proposal results in a grant, it becomes a part of the record of the Agency's transactions, available to the public upon specific request. Information that the Secretary determines to be of a confidential, privileged, or proprietary nature will be held in confidence to the extent permitted by law. Therefore, any information that the applicant wishes to have considered as confidential, privileged, or proprietary should be clearly marked within the proposal.

(2) When a proposal does not result in a grant the original copy will be retained by the CSREES for a period of one year. Other copies will be destroyed. Such a proposal will be released only with the consent of the applicant or to the extent required by law. A proposal may be withdrawn at any time prior to the final action thereon.

*F. Regulatory Information*

For the reasons set forth in the final Rule-related Notice to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. Under the provisions of the Paperwork Reduction Act of 1995 as amended (44 U.S.C. chapter 35), the collection of information requirements contained in this Notice have been approved under OMB Document No. 0524–0022.

Done at Washington, DC, this 11th day of May 2000.

**Colien Hefferan,**

*Associate Administrator, Cooperative State Research, Education, and Extension Service.*

[FR Doc. 00–12336 Filed 5–16–00; 8:45 am]

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Part III

# Department of Education

**Smaller Learning Communities Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000 Funds**

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## DEPARTMENT OF EDUCATION

**[CFDA No. 84.215L]**

### Smaller Learning Communities Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000 Funds

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing these grants and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a Smaller Learning Communities planning or implementation grant under this competition. These grants are authorized by title X, part A, section 10105 of the Elementary and Secondary Education Act of 1965 (ESEA) (20 U.S.C. 8005).

*Purpose of Program:* The Smaller Learning Communities grant program will support the development of small, safe, and successful learning environments in large high schools that ensure all students graduate with the knowledge and skills necessary to make successful transitions to college and careers, and to be good citizens. "Large high schools" are schools that include grades 11 and 12 and enroll at least 1,000 students in grades 9 and above.

*Eligible Applicants:* Local educational agencies (LEAs) applying on behalf of large high schools or large high schools funded by the Bureau of Indian Affairs (BIA schools), are eligible to apply for a planning or implementation grant. Applicants may work independently or in partnership with other public agencies or private non-profit organizations or both. A group of LEAs may also apply following procedures specified in 34 CFR 75.127–129 of EDGAR. Applicants may establish their eligibility using enrollment data for the current school year or the most recently completed school year.

*Deadline for Transmittal of Applications:* July 17, 2000.

*Deadline for Intergovernmental Review:* September 14, 2000.

*Estimated Available Funds:* $45,000,000.

**Note:** The Secretary intends to reserve $2,250,000 from these funds for evaluation, technical assistance, and school networking activities.

*Types and Ranges of Awards:* The Secretary will award both planning grants and implementation grants under this notice. LEAs may apply on behalf of one or more eligible schools. LEAs may also propose a district-wide strategy directed at eligible high schools. For a one-year planning grant, an LEA may request, on behalf of a single school, $25,000 to $50,000 per project. LEAs applying on behalf of a group of eligible schools or that intend to develop a district-wide strategy may request funds up to $250,000 per planning grant. For a three-year implementation grant, an LEA may request, on behalf of a single school, $250,000 to $500,000 per project. LEAs applying on behalf of a group of eligible schools or that intend to implement a district-wide strategy may request funds up to $2,500,000 per implementation grant. LEAs may submit multiple applications targeting separate schools within each funding category. However, an LEA may not apply on behalf of an eligible high school in more than one application. The total amount an LEA may receive through any combination of awards made under this program may not exceed $4 million.

**Note:** The size of awards will be based on a number of factors. These factors include the scope, quality, and comprehensiveness of the proposed program and the size of the population to be served.

*Estimated Number of Awards:* The Secretary is not estimating the number of awards under each category of grants available through this notice.

*Project Period:* Planning grants will fund activities up to 12 months. Implementation grants will fund activities up to 36 months.

**Note:** Applicants applying for implementation grants are required to provide detailed budget information for the total grant period requested. To provide the applicant maximum flexibility regarding start-up and maintenance costs, the Secretary anticipates awarding the entire grant amount for both planning and implementation at the time of the initial award.

*Page Limits:* Applicants are strongly encouraged to limit the application narrative to no more than 20 to 25 double-spaced, standard-type pages.

The following standards are preferred: (1) A "page" is 8.5″ × 11″ (one side only) with one-inch margins (top, bottom, and sides). (2) All text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, must be double-spaced (no more than three lines per vertical inch). If using a proportional computer font, applicants are requested to use a 12-point font.

The page limit does not apply to the cover sheet, the one-page abstract, budget section, appendices, and forms and assurances. However, all of the application narrative must be included in the narrative section.

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98 and 99.

**SUPPLEMENTARY INFORMATION:** The recent violent incidents in a number of schools across the country deeply disturbed Americans. The incidents reinforced what many educational practitioners and researchers were already highlighting as a problem—the impersonal nature of large high schools that leave too many young people feeling apathetic, isolated, and alienated from their peers, schools, and communities.

Research on school size has created a widespread movement towards smaller schools and the creation of smaller learning communities within large high schools. In 1996, the National Association of Secondary School Principals, in conjunction with the Carnegie Foundation for the Advancement of Teaching, issued a report entitled, "Breaking Ranks: Changing an American Institution." The report recommends that high schools break into units of no more than 600 students: (1) To ensure that teachers and students get to know and care about each other; and (2) to provide teachers with opportunities to use a variety of instructional strategies that accommodate and engage individual learners.

These recommendations are supported further by a growing body of research on the association between smaller learning environments and positive student outcomes. In general, smaller learning communities have been found to have positive effects on students' relationships with peers, teachers, and staff, and their extracurricular participation. Students participating in smaller learning communities also have been found to have better attendance, higher course passage rates, and fewer suspensions compared to demographically similar students in more traditional high school settings (Oxley, 1990; Fine 1994). Further studies suggest that, for example, the benefits of smaller schools may include higher rates of school satisfaction, school completion, or postsecondary enrollment (Raywid 1995; Klonsky 1995; Funk and Bailey 1999; Kemple and Snipes 2000). New research suggests that smaller school size may even help compensate for the adverse effects of poverty on student achievement in elementary, middle, and secondary schools (Rural School and Community Trust: http://ruralchallengepolicy.org.

National statistics show that approximately 70 percent of American

high school students today attend schools that enroll more than 1,000 students. Nationwide, 4,500 high schools enroll 1,000 or more students. Over time, high schools have become increasingly larger. While some schools have realized the benefits of smaller learning communities and have restructured and reorganized, there are thousands of schools that have not yet begun the process of creating smaller learning communities.

Researchers have suggested that the positive outcomes associated with smaller schools stem from the schools' ability to create close, personal environments in which teachers can work collaboratively, with each other and with a small set of students, to challenge students and support learning. A variety of strategies, such as block scheduling and teacher advisories, are thought to provide important supports for smaller learning environments. Some data suggest that these approaches offer substantial advantages to both teachers and students (Ziegler 1993; Caroll 1994).

**Description of Program**

The Smaller Learning Communities grant program is authorized under section 10105 of part A of title X of the ESEA (see Appendix A). Title X authorizes the Secretary to support nationally significant programs and projects to: (1) Improve the quality of education; (2) assist all students in meeting challenging State content standards; and (3) contribute in achieving the National Education Goals.

The goal of the Smaller Learning Communities grant program is to encourage large high schools to undertake research-based strategies in developing, implementing, and expanding smaller learning communities. Strategies for recasting large schools as a set of small learning communities are described in the Conference Report for the Consolidated Appropriations Act, 2000 [Pub. L. 106–113, H.R. Conference Report No. 106–479, at 1240(1999)]. These strategies include but are not limited to—(1) Establishing small learning clusters, "houses," career academies, magnet schools, or other approaches to creating schools within schools;

(2) Block scheduling;

(3) Personal adult advocates, teacher-advisory systems, and other mentoring strategies;

(4) Reducing teaching loads; and

(5) Other innovations designed to create a more personalized high school experience for students and improve student achievement.

The definitions and terms used above are expanded in Appendix B.

**Application Content**

Title X [part A, section 10105 (a)] of ESEA specifies particular content that all Smaller Learning Communities grant applications must include (this is called "required content"). Each of these required items has been incorporated into the selection criteria that are published in this notice. Required content is repeated in Appendix C.

Title X [part A, section 10105 (b)] also provides examples of activities that may be funded by a grant, and thus may be included in a proposal. These examples are listed in Appendix D as "allowable activities."

The Smaller Learning Communities grant program will award two types of grants—planning grants and implementation grants.

**Planning Grants**

The purpose is to provide grantees the opportunity to develop a plan for recasting a large high school (or high schools) as a set of small learning communities. Thus, the planning and development activities described in the applicant's planning grant proposal shall result in the production and submission of a viable implementation plan, including the elements described in Appendix C of this notice. Schools with a viable implementation plan will be able to take the next step, which is to implement the plan and create the smaller learning communities. The Department may hold future competitions for implementation grants limited to LEAs that have successfully developed implementation plans through planning grants.

Planning grants will also describe schools' overall need for the project.

**Implementation Grants**

To apply for implementation funds, applicants must be prepared either to implement a new smaller learning community program within each targeted high school, or to expand an existing smaller learning community program. Thus, applications for an implementation grant must describe a viable implementation plan. Implementation grants will also describe schools' overall need for the project.

**Reporting Requirements and Expected Outcomes**

Both planning and implementation grant applicants must describe their:

(a) Project goals,

(b) Measurable objectives,

(c) Measures of student outcomes and performance, and

(d) Indicators to gauge progress toward meeting project goals and objectives. These elements form the basis for a student database and reporting system.

The Secretary requires grantees with implementation grants to have a data collection system with the capacity to produce annual performance reports. These reports will record the grantee's yearly progress toward expected programmatic outcomes. The Secretary will use these reports to measure the success of the grantee's project, as well as the progress of the Department of Education's Smaller Learning Communities grant program nationwide. Outcome and performance measures that will be required include:

(1) Number of students scoring at each proficiency level for each subject measured by the State (or district) assessment.

(2) Number of students taking the SAT and ACT, and their average scores.

(3) Number of students who take courses for which they receive both high school and college credit.

(4) Number of students completing high school.

(5) Number of students involved in extracurricular activities.

(6) Number of incidents of student violence.

(7) Number of expulsions, suspensions or other disciplinary actions.

(8) Number of reported incidents of student alcohol or drug use.

(9) Overall reported average daily attendance for October.

**Note:** The actual performance report form is undergoing separate OMB review.

Implementation grant applicants will be required to submit, with their applications, initial baseline data for each measure of student outcomes and performance named above. Baseline data will describe the same school year upon which grant eligibility has been established. These data may be reported in either the application narrative or in an appendix. Upon notification of award, grantees with implementation grants will be required to submit student outcome and performance data for three years preceding the baseline year.

**Outreach Sessions**

To share information about the Smaller Learning Communities grant program, the Department held a series of regional-based outreach sessions. Information disseminated at these sessions is available on the website listed below. The Department will also

sponsor a satellite teleconference and webcast on June 8, 2000 from 12:00 to 1:30 p.m. EST to help applicants prepare for this grant competition. To register for this event, applicants are asked to visit our web page, at the U.S. Department of Education site. It follows: http://www.ed.gov/offices/OESE/SLCP.

**Competition Requirements**

*Waiver of Proposed Rulemaking:* Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed rules. However, section 437(d)(1) of the General Education Provisions Act (GEPA) exempts from this requirement rules that apply to the first competition under a new or substantially revised program. The Smaller Learning Communities grant program was funded for the first time under the fiscal year 2000 appropriation for Labor, Health and Human Services and Education (Public Law 106–113). As this competition is the first competition under the program, it qualifies as a new competitive grants program. The Secretary, in accordance with section 437(d)(1) of GEPA, to ensure timely awards, has decided to forgo public comments with respect to the requirements in this notice.

*Priorities:* The Secretary is particularly interested in receiving applications that meet the following invitational priorities. However, an application that meets the invitational priorities will receive no competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

(1) The Secretary invites applications that plan to develop, implement, or expand a smaller learning community in high schools currently enrolling 2,500 or more students in grades 9 and above. Applicants may provide data reflecting enrollment during the current school year or the most recently completed school year.

(2) The Secretary invites applications that plan to develop, implement, or expand a smaller learning community in high schools residing within designated Empowerment Zones or Enterprise Communities. Applicants must provide proof of such designation within their application.

**Selection Criteria**

Under the Smaller Learning Communities grant program competition announced in this notice, a technical review panel will make a careful evaluation of applications. Each panelist will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Secretary. The Secretary will use the following selection criteria and associated point values in evaluating applications for planning and implementation grants:

(a) The maximum score for all of these criteria is 100 points.

(b) The maximum score for each criterion is indicated in parentheses. Within each criterion, the Secretary evaluates each factor equally.

**Planning Grants**

(a) *Need for the project.* (25 points) In determining the need for the proposed project, the Secretary considers the following factors:

(1) The description and documentation of the need for the services to be provided and the need for the activities to be carried out by the proposed project, in targeted schools, consistent with the social and educational problems and issues generally associated with the impersonal nature of large high schools. Need may consider factors such as: enrollment; attendance and drop-out rates, incidents of violence, drug and alcohol use and disciplinary actions; percentage of students who pass graduation exams or local assessments, enroll in advanced level courses, register for college entrance exams and matriculate into postsecondary institutions or training; percentage of students that have limited English proficiency, that are considered migrant youth, that come from low-income families or are otherwise considered disadvantaged; the applicant's fiscal capacity to fund programs described here without Federal assistance; or other local need factors as described by the applicant.

(2) The extent to which specific gaps or weaknesses (including the nature and magnitude of those gaps and weaknesses) in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project.

(b) *Foundation for planning.* (15 points) In determining the merit of the proposed process for developing a viable implementation plan, the Secretary considers the extent to which the following activities:

(1) Involve and document the support of stakeholders, both within the school community (*e.g.*, administrators, teachers, other staff, students, and parents) and within the greater community (*e.g.*, representatives of institutions of higher education, employers, workforce investment boards, youth councils, and community-based organizations).

(2) Collect and use data that describe school needs.

(3) Use research-based findings in the proposed restructuring of the learning environment.

(c) *Feasibility and soundness of the planning process.* (50 points) In determining the feasibility and soundness of the planning process as a means toward producing a viable implementation plan, the Secretary considers the extent to which the planned activities:

(1) Are based on a commitment to meet the needs of all students and ensure the successful completion of their education or career goals.

(2) Will establish smaller learning communities having clear goals and objectives connected to a mission statement and to student needs.

(3) Are likely to prepare the applicant to implement smaller learning communities.

(4) Follow a timeline appropriate to the goals and outcomes to be achieved.

(5) Involve key personnel who are qualified to undertake project activities.

(d) *Commitment of resources to the planning effort.* (10 points) In determining the commitment of resources to the planning effort the Secretary will consider the extent to which:

(1) The requested budget adequately supports the proposed activities.

(2) State, local, and other Federal funds will be used to support the development of the plan.

(3) The administrative and managerial relationship between the LEA and the smaller learning community demonstrates a commitment to the concept of a smaller learning community and the planning process.

**Implementation Grants**

(a) *Need for the project.* (25 points) In determining the need for the proposed project, the Secretary considers the following factors:

(1) The description and documentation of the need for the services to be provided and the need for the activities to be carried out by the proposed project, in targeted schools, consistent with the social and educational problems and issues generally associated with the impersonal nature of large high schools. Need may consider factors such as: enrollment; attendance and drop-out rates, incidents of violence, drug and alcohol use and disciplinary actions; percentage of students who pass graduation exams or local assessments, enroll in advanced level courses, register for college entrance exams and matriculate into postsecondary

institutions or training; percentage of students that have limited English proficiency, that are considered migrant youth, that come from low-income families or are otherwise considered disadvantaged; the applicant's fiscal capacity to fund programs described here without Federal assistance; or other local need factors as described by the applicant.

(2) The extent to which specific gaps or weaknesses (including the nature and magnitude of those gaps or weaknesses) in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project.

(b) *Foundation for implementation.* (10 points) In determining the quality of the implementation plan, the Secretary considers the extent to which the implementation process:

(1) Substantively involves and documents the support of stakeholders both within the school community (e.g., administrators, teachers, other staff, students, and parents) and within the greater community (e.g., such as representatives of institutions of higher education, employers, workforce investment boards, youth councils, and community-based organizations).

(2) Uses research-based findings and outside technical assistance in the proposed restructuring.

(c) *Feasibility and soundness of the plan* (45 points) In determining the quality of the proposed project, the Secretary considers the extent to which:

(1) The goals and objectives of the smaller learning communities correspond to identified needs, to a mission statement, and are written in terms of student outcomes, including achievement.

(2) The proposed smaller learning communities will enable all students to reach challenging State content standards and performance standards, ensuring the successful completion of high school and preparation for college or a career.

(3) The curriculum and instructional practices within each smaller learning community are aligned to its goals and to its theme or emphases, where they exist.

(4) Professional development activities offered to teachers, non-instructional school staff, and others are aligned with smaller learning community goals.

(5) The applicant provides a rationale for—

- Identifying grade levels and ages of students to be served by the smaller learning community; and
- The methods and timetable for placing students in the smaller learning community.

**Note:** Students are not to be placed according to ability, performance, or any other measure of merit.

(6) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including—

- The past experience, training, and clearly defined responsibilities of personnel who have key roles in carrying out the project; and
- The timelines and milestones for accomplishing project tasks.

(d) *Quality of the project evaluation.* (10 points) In determining the quality of the evaluation, the Secretary considers whether the applicant has designed an effective method for:

(1) Collecting student performance data for—

- Required annual performance reports;
- Baseline data (refer to "Reporting Requirements and Expected Outcomes") and data for three years preceding the baseline (the latter due upon award); and
- Monitoring and understanding changes in student outcomes for continuous improvement.

(2) Describing, on an annual basis, the smaller learning communities and related program changes undertaken to make the smaller learning communities safe and successful. This information will be reported in the Annual Performance Report.

(e) *Adequacy of resources.* (10 points) In determining the adequacy of resources for the proposed project, the Secretary considers the extent to which:

(1) The State, local, and other Federal funds will be used to support the implementation of the plan.

(2) The applicant will limit equipment and other purchases in order to maximize the amounts spent on delivery of services to students.

(3) The applicant demonstrates a commitment to sustaining the project beyond the period covered by the Federal grant.

**Intergovernmental Review of Federal Programs**

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedures established in each State under the Executive order.

If you want to know the name and address of any State Single Point of Contact (SPOC), see the list published in the **Federal Register** on January 21, 2000 (65 FR 3552); or you may view the latest SPOC list on the OMB Web site at the following address: http://www.whitehouse.gov/omb/grants.

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, area-wide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA #84.215L, U.S. Department of Education, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, D.C. time) on the date indicated in this notice.

**Please Note That the Above Address is not the Same Address as the One to Which the Applicant Submits its Completed Application. Do Not Send Applications to the Above Address.**

**Instructions for Transmittal of Applications**

(a) If you want to apply for a grant, you must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.215L), Room 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC 20202–4725 or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.215L), Room 3633, Regional Office Building #3, 7th

and D Streets, SW, (D Street, southwest entrance), Washington, D.C.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Note:** (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(d) The Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(e) The applicant must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Assistance (ED 424) the CFDA number for this competition: CFDA 84.215L.

**Application Instructions and Forms**

The appendices to this notice contain all required forms and instructions, including instructions for preparing the application narrative, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), various assurances and certifications, and a checklist for applicants.

To apply for an award under this competition, your application must be organized in the following order and include the following four parts. The parts and additional materials are as follows:

*Part I:* Coversheet for the Smaller Learning Communities (SLC) Grant Program Application Package (Appendix F).

*Part II:* Application for Federal Assistance (ED 424, Exp. 06/30/2001) and instructions.

*Part III:* Budget Information-Non-Construction Programs (ED Form No. 524) and instructions. An applicant for a multi-year project must provide a budget narrative that provides budget information for each budget period of the proposed project period.

*Part IV:* Application Narrative.

In preparing the narrative, applicants should clearly keep in mind the selection criteria that will be used to evaluate applications, and ensure that each of these criteria are addressed. Section 8005(a) of the statute describes additional information that applicants must address in their applications. Please refer to the statute, which is provided in Appendix A of this application package.

*Part V:* Appendices.

Applications may contain appendices that are excluded from the 20–25 page limitation. However, appendices may be used only to explicate or corroborate points already made clear in the text. For example, implementation grant applicants may place in an appendix the baseline data used to address the selection criterion "Quality of the project evaluation."

*Part VI:* Assurances and Certifications:

a. Assurances-Non-Construction Programs (Standard Form 424B).

b. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

c. Certifications regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

**Note:** ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions.

An applicant may submit information on photostatic copies of the application, budget forms, assurances, and certifications as printed in this notice in the **Federal Register**. However, the application form, assurances, and certifications must each have an original signature. All applicants are required to submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application, one bound and one unbound copy suitable for photocopying. Please mark each application as "original" or "copy." To aid with the review of applications, the Department encourages applicants to submit three additional paper copies and one electronic copy (in Department of Education standard program format) of the application. The Department will not penalize applicants who do not provide additional copies. No grant may be awarded unless a completed application form, including the signed assurances and certifications, has been received.

**FOR FURTHER INFORMATION CONTACT:** John De Cleene or Todd May, Smaller Learning Communities Grant Program, U.S. Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone: (202) 260–2195 (John De Cleene) or (202) 260–0960 (Todd May). E-mail: smallerlearningcommunities@ed.gov.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities may obtain this notice in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

*Electronic Access to This Document*

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http://ocfo.ed.gov/fedreg.html

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

**Program Authority:** 20 U.S.C. 8005.

Dated: May 11, 2000.

**Michael Cohen,**

*Assistant Secretary for Elementary and Secondary Education.*

**Patricia McNeil,**

*Assistant Secretary for Vocational and Adult Education.*

**Appendix A.—ESEA, Title X, Part A**

*Sec. 10105. Smaller Learning Communities*

(a) In General.—Each local educational agency desiring a grant under this section shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary

may require. Each such application shall describe—

(1) Strategies and methods the applicant will use to create the smaller learning community or communities;

(2) Curriculum and instructional practices, including any particular themes or emphases, to be used in the learning environment;

(3) The extent of involvement of teachers and other school personnel in investigating, designing, implementing and sustaining the smaller learning community or communities;

(4) The process to be used for involving students, parents and other stakeholders in the development and implementation of the smaller learning community or communities;

(5) Any cooperation or collaboration among community agencies, organizations, businesses, and others to develop or implement a plan to create the smaller learning community or communities;

(6) The training and professional development activities that will be offered to teachers and others involved in the activities assisted under this part;

(7) The goals and objectives of the activities assisted under this part, including a description of how such activities will better enable all students to reach challenging State content standards and State student performance standards;

(8) The methods by which the applicant will assess progress in meeting such goals and objectives;

(9) If the smaller learning community or communities exist as a school-within-a-school, the relationship, including governance and administration, of the smaller learning community to the rest of the school;

(10) A description of the administrative and managerial relationship between the local educational agency and the smaller learning community or communities, including how such agency will demonstrate a commitment to the continuity of the smaller learning community or communities, including the continuity of student and teacher assignment to a particular learning community;

(11) How the applicant will coordinate or use funds provided under this part with other funds provided under this Act or other Federal laws;

(12) Grade levels or ages of students who will participate in the smaller learning community or communities; and

(13) The method of placing students in the smaller learning community or communities, such that students are not placed according to ability, performance or any other measure, so that students are placed at random or by their own choice, not pursuant to testing or other judgments.

(b) Authorized Activities.—Funds under this section may be used—

(1) To study the feasibility of creating the smaller learning community or communities as well as effective and innovative organizational and instructional strategies that will be used in the smaller learning community or communities;

(2) To research, develop and implement strategies for creating the smaller learning community or communities, as well as effective and innovative changes in curriculum and instruction, geared to high State content standards and State student performance standards;

(3) To provide professional development for school staff in innovative teaching methods that challenge and engage students to be used in the smaller learning community or communities; and

(4) To develop and implement strategies to include parents, business representatives, local institutions of higher education, community-based organizations, and other community members in the smaller learning communities, as facilitators of activities that enable teachers to participate in professional development activities, as well as to provide links between students and their community.

## Appendix B.—Definitions and Terms

*Definition.* The following definition is used in this notice:

*Magnet School* means a public school or education center that offers a special curriculum capable of attracting substantial numbers of students of different racial backgrounds.

*Terms.* The following terms are used in this notice:

*Flexible Scheduling* is a means of reconfiguring the school day. For example, block courses may be scheduled for two or more continuous class periods or days to allow students greater time for laboratory or project-centered work, field trips or work-based learning, and special assemblies or speakers.

*Career Academies* are typically schools-within-schools that offer students academic programs organized around broad career themes. Often integrating classroom instruction with work-based learning, academies try to equip students with the necessary skills for both workforce entry and postsecondary education.

*Career Clusters* generally refer to groupings formed around broad-based industry areas and address all types of skills, ranging from entry-level to advanced practice. A cluster represents those industries or career areas that have a high degree of commonality in work functions, knowledge, or skills.

*Houses* generally are organizational arrangements that assign students and teachers to sub-schools. Students take some or all courses with their house members and from their house teachers. Each house typically has its own student activity program, student government, disciplinary policies, and social activities. Houses may be year-long (within a grade) or multi-year (combine grades).

*Mentoring Programs* designate adults to act as advocates for students. Teachers, counselors, and other school staff (as well as community volunteers or employees at work-based learning sites) serve as mentors, working in consultation with classroom teachers, counselors, and related service personnel to help students individually or in small groups, on a regular basis over an extended period of time.

*Schools-within-Schools* are autonomous programs housed within a larger school building. These programs report directly to the district rather than to the host school's principal and are formally authorized by the superintendent or board of education. Schools-within-schools have their own culture, program, staff, students, budget, and school space.

*Teacher Advisories* are similar to mentoring programs. They organize adults to personalize the high school experience and support academic achievement. Some schools and districts establish advisory classes that meet weekly; others schedule students for less formal one-on-one or group time with teachers. Advisory activities may include helping students develop personal learning plans, introducing students to career clusters, helping students select courses, and working with students on postsecondary plans and pre-employment skills.

## Appendix C.—Required Content

### Planning Grants

Planning grants will describe the planning and development activities that will be undertaken to produce and submit a viable Implementation Plan, as described below and in section 10105(a) of the ESEA (Appendix A).

### Implementation Grants

Implementation Plans will describe—

(a) The smaller learning communities the applicant will create.

(b) Additional strategies the applicant will combine with the smaller learning

communities so that they are safe and successful. "Additional strategies" may include, for example, new instructional practices, curriculum, or themes; or they may include a process for involving parents in their students' education.

(c) How the proposed collection of strategies (the smaller learning communities along with other proposed strategies)—

(1) Address identified school needs;

(2) Are based on reliable research and effective practice; and

(3) Will enable all students to meet challenging standards.

(d) The extent of involvement of teachers and other personnel in investigating, designing, implementing, and sustaining the smaller learning community or communities;

(e) The process to be used for involving students, parents, and other stakeholders in the development and implementation of the smaller learning community or communities;

(f) Any cooperation or collaboration among community agencies, organizations, businesses, and others to develop or implement a plan to create the smaller community or communities;

(g) The training and professional development activities that will be offered to teachers and others involved in the activities assisted under part A of title X of the ESEA;

(h) The goals and objectives of the activities assisted under part A of Title X of the ESEA, including a description of how such activities will help enable all students to reach challenging State content standards and State student performance standards;

(i) The methods by which the applicant will assess progress in meeting such goals and objectives;

(j) If the smaller learning community or communities exist as a school-within-a-school, the relationship, including the governance and administration, of the smaller learning community to the rest of the school;

(k) The administrative and managerial relationship between the LEA and the smaller learning community or communities, including how the LEA will demonstrate a commitment to the continuity of the smaller learning community or communities, including the continuity of student and teacher assignment to a particular learning community;

(l) How the applicant will coordinate or use funds provided under part A of title X of the ESEA with other funds provided under the ESEA or other Federal laws; and

(m) The grade levels or ages of students who will participate in the smaller learning community or communities; and

(n) The method of placing students in the smaller learning community or communities, such that students are not placed according to ability, performance, or any other measure of merit, so that students are placed at random or by their own choice, not pursuant to testing or other judgments.

## Appendix D.—Allowable Activities

### Planning Grants

Examples of activities that may be conducted under a planning grant include—

(1) Studying the feasibility of recasting a large school as a set of smaller learning communities and investigating instructional strategies that are appropriate for smaller learning communities;

(2) Building consensus among key stakeholders and supporting planning and development activities to provide guidance in creating the smaller learning community;

(3) Assessing staff training and development needs for participation in and management of the smaller learning community;

(4) Developing strategies to include parents, business representatives, local institutions of higher education, community-based organizations, and other community members in the smaller learning communities, as facilitators of activities that enable teachers to participate in professional development activities, as well as to provide links between students and their community;

(5) Initiating pilot projects to test key components of the program design and data collection methods;

(6) Analyzing statutory, regulatory, and administrative barriers to the creation of the smaller learning environment; and

(7) Preparing the implementation plan required for submission of a proposal for a future implementation grant.

### Implementation Grants

Examples of activities that may be conducted under an implementation grant include—

(1) Implementing and expanding strategies for creating the smaller learning community or communities, as well as effective and innovative changes in curriculum and instruction, geared to high State content standards and performance standards;

(2) Providing professional development for school staff in innovative teaching methods that challenge and engage students in the smaller learning community or communities;

(3) Implementing and expanding strategies to include parents, business representatives, local institutions of higher education, community-based organizations, and other community members in the smaller learning communities, as facilitators of activities that enable teachers to participate in professional development activities, as well as to provide links between students and their community;

(4) Implementing and expanding strategies that benefit eligible large schools throughout the applicant's district. Examples of these may include implementing a district-wide ninth grade academy, teacher advisory program, or district-wide mentoring program;

(5) Obtaining the services of outside experts in the implementation of the smaller learning community. Assistance may include curriculum development, leadership strategies, community consensus building, data collection, or evaluation design;

(6) Providing stipends and release time for teachers, administrators, and community members involved in the implementation or expansion of the smaller learning community; and

(7) Implementing academic and social support systems for students attending the smaller learning community.

## Appendix E.—Instructions for the Application Narrative

The narrative is the section of the application where statutory application requirements and the selection criteria used by reviewers in evaluating the application are addressed. The narrative must encompass each function or activity for which funds are being requested. Before preparing the application narrative, you should read carefully the statute, the description of the program, and the selection criteria we use to evaluate applications.

You should note the preferable page limits for the application narrative stated in this notice under *Page Limits*.

1. Begin with a one-page Abstract summarizing the proposed Smaller Learning Communities project, including a short description of the population to be served by the project and, if available, data on project participants' overall need, demographics and race/ethnicity. Also include a description of project objectives and activities.

2. Include a table of contents listing the parts of the narrative in the order of the selection criteria and the page numbers where the parts of the narrative are found. Be sure to number the pages.

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3. Describe fully the proposed project in light of the selection criteria in the order in which the criteria are listed in the application package. Do not simply paraphrase the criteria.

4. Provide the following in response to the attached "Notice to all Applicants:" (1) A reference to the portion of the application in which information appears as to how you are addressing steps to promote equitable access and participation, or (2) a separate statement that contains that information.

5. If the application is from a group, attach the group's agreement. When applying for funds as a group, such as a consortium, individual eligible applicants must enter into an agreement signed by all members of the group. The group's agreement must detail the activities each member of the group plans to perform, and must bind each member to every statement and assurance made in the group's application. (The designated applicant must submit the group's agreement with its application.)

6. You may include supporting documentation as appendices to the narrative. This material should be concise and pertinent to the competition. Note that we consider only information contained in the application when ranking applications. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

7. Attach copies of all required assurances and forms.

**Estimated Public Reporting Burden**

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is To be inserted],(Expiration Date: [To be inserted]). The time required to complete this information collection is estimated to average sixty-five (65) hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* Diane Austin, Smaller Learning Communities Grant Program, U.S. Department of Education, 400 Maryland Avenue SW, FB–6, 5C149, Washington, DC 20202–6200.

*If you have comments or concerns regarding the status of your individual submission of this form, write directly to:* Diane Austin, Smaller Learning Communities Grant Program, U.S. Department of Education, 400 Maryland Avenue SW, FB–6, 5C149, Washington, DC 20202–6200.

## Appendix F.—Application Coversheet

**Coversheet: Smaller Learning Communities (SLC) Grant Program Application Package**

1. Type of grant applied for. (Check just one.)

____ Application for Planning Grant
____ Application for Implementation Grant

2. LEA Name and Address:

NCES District ID:

3. Name and Address of Each School Named in the Accompanying SLC Application:

1. Name:
2. Name:
3. Name:
4. Name:
5. Name:
6. Name:

(Please list any additional schools on a separate page and attach.)

**Checklist for Applicants**

The following forms and other items must be included in the application in the order listed below:

____1. Application cover sheet (Appendix F).
____2. Application for Federal Assistance (ED 424).
____3. Budget Information—Non-Construction Programs ED Form No. 524) and budget narrative.
____4. Application Narrative, including information that addresses section 427 of the General Education Provisions Act (see the section entitled "NOTICE TO ALL APPLICANTS"), and relevant appendices.
____5. Group agreement, if applicable.
____6. Assurances—Non-Construction Programs (SF 424B).
____7. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013).
____8. Disclosure of Lobbying Activities (Standard Form LLL).
____9. GPRA.

[OMB Control No. 1810–0631 (exp. 10/31/2000)]

**Notice to All Applicants**

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103–382).

*To Whom Does This Provision Apply?*

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.

*What Does This Provision Require?*

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

*What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?*

The following examples may help illustratc how an applicant may comply with section 427:

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in Braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

**Estimated Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1810–0631 (Exp. 10/31/2000). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

BILLING CODE 4000–01–P

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# Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

## Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
_____ _____ _____ _____ - _____
City State County ZIP Code + 4

Organizational Unit
_____

2. Applicant's D-U-N-S Number: |_|_|_|_|_|_|_|_|_|

3. Applicant's T-I-N |_|_| - |_|_|_|_|_|_|_|

4. Catalog of Federal Domestic Assistance #: **84.338** →

5. Project Director: _____
Address: _____
_____ _____ _____ _____
City State Zip code + 4
Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____
E-Mail Address: _____

6. Is the applicant delinquent on any Federal debt? ___Yes ___No
*(If "Yes," attach an explanation.)*
Title: _____
_____

7. Type of Applicant *(Enter appropriate letter in the box.)* |_____|

A - State
B - County
C - Municipal
D - Township
E - Interstate
F - Intermunicipal
G - Special District
H - Independent School District
I - Public College or University
J - Private, Non-Profit College or University
K - Indian Tribe
L - Individual
M - Private, Profit-Making Organization
N - Other *(Specify)*: _____

8. Novice Applicant ___Yes ___No

## Application Information

9. Type of Submission:
*-PreApplication* *-Application*
___Construction ___Construction
___Non-Construction ___Non-Construction

10. Is application subject to review by Executive Order 12372 process?
___Yes *(Date made available to the Executive Order 12372 process for review)*: ___/___/_____
___No *(If "No," check appropriate box below.)*
___Program is not covered by E.O. 12372.
___Program has not been selected by State for review.

11. Proposed Project Dates: ___/___/_____ ___/___/_____
**Start Date:** **End Date:**

12. Are any research activities involving human subjects planned at any time during the proposed project period? ___Yes ___No
a. If "Yes," Exemption(s) #: b. Assurance of Compliance #:
_____ ***OR*** _____
c. IRB approval date: ___Full IRB **or**
_____ ___Expedited Review

13. Descriptive Title of Applicant's Project:

## Estimated Funding

| | | |
|---|---|---|
| **14a.** Federal | $ | .00 |
| **b.** Applicant | $ | .00 |
| **c.** State | $ | .00 |
| **d.** Local | $ | .00 |
| **e.** Other | $ | .00 |
| **f.** Program Income | $ | .00 |
| **g. TOTAL** | $ | .00 |

ED 424 (rev 11/12/99)

## Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative:

b. Title:

c. Tel. #: ( ) _____ Fax #: ( ) _____

d. E-mail Address:

**e. Signature of Authorized Representative**

Date: ___/___/_____

**Instructions for ED 424**

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No."** **The remaining parts of item 11 are then not applicable.**

If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

**If the applicant organization has an approved Multiple Project Assurance of Compliance** on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application,



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is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

**Paperwork Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

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## Protection of Human Subjects in Research (Attachment to ED 424)

### I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned.

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

### II. Information on Research Activities Involving Human Subjects

**A. Definitions.**

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

**—Is it a research activity?**

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

**—Is it a human subject?**

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily*

*determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

**B. Exemptions.**

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

***Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.***

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**DUNS Number Instructions**

D-U-N-S No.: Please provide the applicant's D-U-N-S Number. You can obtain your D-U-N-S Number at no charge by calling **1-800-333-0505** or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL:

**http://www.dnb.com/dbis/aboutdb/intlduns.htm**

The D-U-N-S Number is a unique nine-digit number that does not convey any information about the recipient. A built in check digit helps assure the accuracy of the D-U-N-S Number. The ninth digit of each number is the check digit, which is mathematically related to the other digits. It lets computer systems determine if a D-U-N-S Number has been entered correctly.

Dun & Bradstreet, a global information services provider, has assigned D-U-N-S numbers to over 43 million companies worldwide.

| | U.S. DEPARTMENT OF EDUCATION<br>BUDGET INFORMATION<br>NON-CONSTRUCTION PROGRAMS | OMB Control Number: 1890-0004<br>Expiration Date: 02/28/2003 |
|---|---|---|
| **Name of Institution/Organization** | | Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form. |

**SECTION A - BUDGET SUMMARY**
**U.S. DEPARTMENT OF EDUCATION FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11, Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

**ED Form No. 524**

| Name of Institution/Organization | | | | Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form. | | |
|---|---|---|---|---|---|---|
| **SECTION B - BUDGET SUMMARY NON-FEDERAL FUNDS** | | | | | | |
| **Budget Categories** | **Project Year 1 (a)** | **Project Year 2 (b)** | **Project Year 3 (c)** | **Project Year 4 (d)** | **Project Year 5 (e)** | **Total (f)** |
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direc Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11, Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |
| **SECTION C - OTHER BUDGET INFORMATION** (see instructions) | | | | | | |

**ED Form No. 524**

**Paperwork Burden Statement**

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. This form is now undergoing OMB clearance and should be considered draft until a new valid OMB collection number is obtained.

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, DC 20503.

## INSTRUCTIONS FOR ED FORM 524

### General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program instructions if attached.

### Section A – Budget Summary: U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

### Section B – Budget Summary: Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

### Section C – Other Budget Information

*Pay attention to applicable program specific instructions, if attached.*

Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

If applicable to this program, provide the rate and base on which fringe benefits are calculated.

Provide other explanations or comments you deem necessary.

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**OMB Approval No. 0348-0040**
**Assurances: Non-Construction Programs**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.**

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management, and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §§276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally assisted construction subagreements.
10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the

National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L.93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| **Signature of Authorized Certifying Official** | **Title** |
|---|---|
| **Applicant Organization** | **Date Submitted** |

*Authorized for Local Reproduction*
*Standard Form 424 B (4-88) Prescribed by OMB Circular A-102*

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## Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

### 1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

### 2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110–

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

### 3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 600 Independence Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT PR/AWARD NUMBER AND / OR PROJECT NAME |
|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE |
| SIGNATURE DATE |

ED 80-0013

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE |
| SIGNATURE DATE |

**ED 80-0014, 9/90 (Replaces GCS-009 (REV 12/88), which is obsolete)**

**Approved by OMB**
**0348-0046**

## Disclosure of Lobbying Activities

*Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352*
*(See reverse for public burden disclosure)*

| | | |
|---|---|---|
| **1. Type of Federal Action:**<br>a. contract<br>____ b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | **2. Status of Federal Action:**<br>a. bid/offer/application<br>_____ b. initial award<br>c. post-award | **3. Report Type:**<br>a. initial filing<br>_____ b. material change<br><br>**For material change only:**<br>Year _____ quarter _____<br>Date of last report_____ |
| **4. Name and Address of Reporting Entity:**<br>____ Prime _____ Subawardee<br>Tier_____, if Known:<br><br>**Congressional District, if known:** | **5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime:<br><br>**Congressional District, if known:** | |
| **6. Federal Department/Agency:** | **7. Federal Program Name/Description**<br><br>CFDA Number, *if applicable*: _____ | |
| **8. Federal Action Number,** *if known:* | **9. Award Amount**, *if known:*<br><br>**$** | |
| **10. a. Name and Address of Lobbying Registrant**<br>(if individual, last name, first name, MI): | **b. Individuals Performing Services** *(including address if different from No. 10a)*<br>*(last name, first name, MI):* | |
| 11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure. | **Signature:** _____<br><br>**Print Name:**_____<br><br>**Title:**_____<br><br>**Telephone No.:** _____ **Date:** _____ | |
| **Federal Use Only** | **Authorized for Local Reproduction**<br>**Standard Form - LLL (Rev. 7-97)** | |

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

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According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**Certification of Eligibility for Federal Assistance in Certain Programs**

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or
2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105l);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ _____

(Signature) (Date)

_____

(Typed or Printed Name)

Name or Number of the USDE program under which this certification is being made: _____

State Single Point of Contact (SPOC) List

The official version of the State Single Point of Contact List is published by the Office of Management and Budget (OMB). The Department has made every effort to ensure the accuracy of the information contained in this unofficial version. However, the only official version of the State Single Point of Contact (SPOC) List is posted on the Grants Management section of the OMB web site:

**http://www.whitehouse.gov/omb/grants/spoc.html**.

[FR Doc. 00–12368 Filed 5–16–00; 8:45 am]
BILLING CODE 4000–01–U

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Federal Register

Wednesday,
May 17, 2000

Part IV

# Department of Commerce

**National Telecommunications and Information Administration**

**Technology Opportunities Program (TOP); Notice**

**DEPARTMENT OF COMMERCE**

**National Telecommunications and Information Administration**

**[Docket Number: 981203295–0112–04]**

**RIN 0660–ZA06**

**Technology Opportunities Program (TOP)**

**AGENCY:** National Telecommunications and Information Administration, Commerce.

**ACTION:** Notice of applications received.

**SUMMARY:** On January 5, 2000, in the **Federal Register** (65 FR 681–688), the National Telecommunications and Information Administration (NTIA) announced the availability of funds for the Technology Opportunities Program (TOP) to promote the widespread use of advanced telecommunications and information technologies in the public and non-profit sectors. By providing matching grants for information infrastructure projects, this program will help develop a nationwide, interactive, multimedia information infrastructure that is accessible to all citizens, in rural as well as urban areas. This Notice announces the applications that were received in response to the January 5, 2000, solicitation.

In all, 662 applications were received from forty-eight states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. The total amount requested by the applications is $269.6 million.

Notice is hereby given that the program received applications from the following organizations. Identification of any application only indicates its receipt. It does not indicate that it has been accepted for review, that it has been determined to be eligible for funding, or that an application will receive an award.

| | | |
|---|---|---|
| Alabama: | | |
| City of Troy | Troy | 000136 |
| Crisis Services of North Alabama | Huntsville | 000446 |
| Dothan/Houstan County Communications District | Dothan | 000072 |
| George C. Wallace State Community College | Hanceville | 000449 |
| Madison County Commissions | Huntsville | 000634 |
| Reverend Peter James Kirksey and Florence Lee Kirksey Foundation | Boligee | 000265 |
| Scottsboro/Jackson County | Scottsboro | 000020 |
| Alaska: | | |
| Alaska Information Radio Reading & Education Service | Anchorage | 000601 |
| Alaska Justice Statistical Analysis Unit | Anchorage | 000536 |
| Borough of Matanuska-Susitna | Palmer | 000155 |
| Sitka Tribe of Alaska | Sitka | 000048 |
| TDX Foundation | Anchorage | 000051 |
| University of Alaska Fairbanks | Fairbanks | 000129 |
| University of Alaska Southeast | Ketchikan | 000199 |
| Arizona: | | |
| Arizona Department of Environmental Quality | Phoenix | 000164 |
| Arizona State University | Tempe | 000464 |
| City of Flagstaff | Flagstaff | 000026 |
| City of Tucson | Tucson | 000035 |
| Coconino County Information Systems | Flagstaff | 000031 |
| Community Council, Inc dba Community Forum | Phoenix | 000203 |
| Lowell Observatory | Flagstaff | 000122 |
| Navajo Family Health Resource Network | Window Rock | 000382 |
| Northern Arizona Academy | Show Low | 000380 |
| Pima County | Tucson | 000276 |
| Portable Practical Education Programs, Inc | Tucson | 000168 |
| Volunteer Interfaith Caregiver Program | Sierra Vista | 000098 |
| Arkansas: | | |
| 70 West Fire Protection Association | Hot Springs | 000126 |
| City of Murfreesboro | Murfreesboro | 000310 |
| Communities in Schools of Arkansas, Inc | Little Rock | 000213 |
| University of Central Arkansas | Conway | 000232 |
| California: | | |
| Association of Bay Area Governments | Oakland | 000054 |
| Black Technologies Advancement | San Jose | 000304 |
| Black Women for Wellness | Los Angeles | 000416 |
| Board of Trustee of the Leland Stanford Junior University | Stanford | 000427 |
| California School of Professional Psychology Research & Service Foundation | San Diego | 000208 |
| California Science Center Foundation | Los Angeles | 000325 |
| California State University Fresno Foundation | Fresno | 000431 |
| California State University Fresno Foundation | Fresno | 000641 |
| Center for Autobiographic Studies | Lake View Terrace | 000405 |
| Center for Medical Studies | Irvine | 000540 |
| Charles R. Drew University of Medicine | Los Angeles | 000252 |
| CHARO Community Development Corporation | Los Angeles | 000466 |
| City of Bakersfield | Bakersfield | 000608 |
| City of El Monte | El Monte | 000049 |
| City of Fremont | Fremont | 000330 |
| City Of Mirada | La Mirada | 000644 |
| City of Santa Clarita | Santa Clarita | 000147 |
| City of Turlock | Turlock | 000165 |
| City of West Hollywood | West Hollywood | 000496 |
| Colfax Elementary School District | Colfax | 000130 |
| Community College Foundation | Sacramento | 000599 |

| | | |
|---|---|---|
| Community Development Technologies Center | Los Angeles | 000647 |
| Contra Costa County Board of Supervisors | Concord | 000219 |
| CSPP Research and Service Foundation | San Diego | 000260 |
| Desert Sands Unified School District | La Quinta | 000216 |
| East Bay Community Foundation | Oakland | 000486 |
| Foundation for Advancements in Science and Education | Los Angeles | 000286 |
| Foundation for Understanding and Enhancement | Walnut Creek | 000106 |
| Greenlining Institute | San Francisco | 000598 |
| Grossman Union High School District | El Cajon | 000334 |
| Ink People, Inc | Eureka | 000392 |
| Japanese American Cultural & Community Center | Los Angeles | 000407 |
| Kingdom Harvest Ministries | Los Angeles | 000585 |
| KQED, Inc | San Francisco | 000551 |
| Landon Pediatric Foundation | Ventura | 000278 |
| Latino Issues Forum | San Francisco | 000447 |
| Legal Aid Society of Orange County | Santa Ana | 000284 |
| Lemon Grove School District | Lemon Grove | 000153 |
| Los Angeles County Museum of Natural History Foundation | Los Angeles | 000437 |
| Los Angeles Theatre Alliance | Los Angeles | 000089 |
| Mission City Community Network, Inc | North Hills | 000552 |
| Nonprofit Tech Association | San Francisco | 000421 |
| NORCAL Center on Deafness, Inc | Sacramento | 000378 |
| Orange County | Santa Ana | 000052 |
| Orange County Sheriff | Santa Ana | 000369 |
| Palm Springs Public Library | Palm Springs | 000152 |
| Pangea Foundation | San Diego | 000403 |
| People Oriented Systems Institute (POSI) | Hayward | 000033 |
| Pesticide Action Network North America Regional Center | San Francisco | 000509 |
| Rancho Santiago Community College District | Santa Ana | 000354 |
| Rolling Readers USA, Inc | San Diego | 000587 |
| Round Valley Indian Health Center | Covelo | 000340 |
| San Diego County | San Diego | 000289 |
| San Diego State University Foundation | San Diego | 000262 |
| San Diego State University Foundation | San Diego | 000477 |
| San Jose State University Foundation | San Jose | 000011 |
| San Jose State University Foundation | San Jose | 000345 |
| SLONET Regional Information Access | San Luis Obispo | 000511 |
| Social and Public Art Resource Center | Venice | 000522 |
| Southern California Association of Governments | Los Angeles | 000207 |
| Special Services for Groups | Los Angeles | 000193 |
| Tri-City Mental Health Center | Pomona | 000484 |
| University of California | Santa Barbara | 000467 |
| University of California | Davis | 000602 |
| Western Identification Network, Inc | Sacramento | 000436 |
| Western University of Health Sciences | Pomona | 000311 |
| Westside Center for Independent Living, Inc | Los Angeles | 000388 |
| Youth Policy Institute | Manhattan Beach | 000632 |
| Colorado: | | |
| Board of Weld County Commissioners | Greeley | 000096 |
| CESR-RockThePlanet.org | Boulder | 000430 |
| City of Wheat Ridge | Wheat Ridge | 000470 |
| Community Health System | Colorado Springs | 000670 |
| County Sheriffs of Colorado | Longmont | 000373 |
| Denver Juvenile Court | Denver | 000448 |
| Family Learning Center | Boulder | 000526 |
| Five Points Media Center Corporation | Denver | 000450 |
| Garfield County Emergency Communications Authority | Garfield | 000090 |
| Poudre Fire Authority | Fort Collins | 000056 |
| Poudre Health Services District | Fort Collins | 000258 |
| Rocky Mountain Mutual Housing Association | Denver | 000294 |
| Technology Transfer Solutions | Greenwood Village | 000397 |
| United States Space Foundation | Colorado Springs | 000142 |
| University of Colorado at Denver | Denver | 000135 |
| Connecticut: | | |
| Bloomfield Board of Education | Bloomfield | 000205 |
| Connecticut Association for United Spanish Action, Inc | Meriden | 000327 |
| Groton Public Schools | Groton | 000434 |
| Hall Neighborhood House, Inc | Bridgeport | 000563 |
| Leadership, Education and Athletics in Partnership, Inc | New Haven | 000577 |
| Northwestern Connecticut Community College | Litchfield | 000003 |
| Saint Francis Hospital and Medical Center | Hartford | 000112 |
| State of Connecticut | Wethwesfield | 000433 |
| Towards Education for All with Multimedia, Ltd. | West Hartford | 000313 |
| Town of Bloomfield | Bloomfield | 000094 |
| Town of Darien | Darien | 000032 |
| Town of Manchester | Manchester | 000386 |

| | | |
|---|---|---|
| Town of Vernon | Vernon | 000131 |
| Wilton Police Department | Wilton | 000215 |
| WorkPlace, Inc | Bridgeport | 000256 |
| District of Columbia: | | |
| American Institute for Social Justice | Washington | 000341 |
| American Public Health Association | Washington | 000545 |
| Byte Back, Inc | Washington | 000588 |
| Children's National Medical Center | Washington | 000546 |
| Church Association for Community Services | Washington | 000562 |
| DC Children and Youth Investment Trust Corporation | Washington | 000547 |
| Fund for the Future of Our Children | Washington | 000558 |
| Joint Center for Political and Economic Studies | Washington | 000523 |
| Joint Educational Facilities | Washington | 000550 |
| Lutheran Social Services of the National Capital Area | Washington | 000677 |
| Metropolitan Police Department | Washington | 000603 |
| National Council of La Raza, Inc | Washington | 000457 |
| National Organization for Children | Washington | 000596 |
| Peoples Involvement Corporation | Washington | 000655 |
| See Forever Foundation | Washington | 000555 |
| Startup Anywhere | Washington | 000590 |
| The Congress of National Black Churches | Washington | 000538 |
| University of the District of Columbia | Washington | 000574 |
| Florida: | | |
| Broward County | Ft. Lauderdale | 000366 |
| Christian Shopping Network, Inc | Orlando | 000513 |
| City of Homestead | Homestead | 000593 |
| City of Lauderhill | Lauderhill | 000100 |
| Department of Health | Tallahassee | 000406 |
| Everglades Wildlife Sanctuary, Inc | LaBelle | 000027 |
| Fairchild Tropical Garden | Miami | 000145 |
| Florida Community College at Jacksonville | Jacksonville | 000298 |
| Florida Gulf Coast University | Fort Myers | 000451 |
| Indian River Community College | Fort Pierce | 000495 |
| Miami-Dade Community College | Miami | 000458 |
| Miami-Dade Weed & Seed, Inc | Miami | 000414 |
| Miccosukee Tribe of Indians of Florida | Miami | 000489 |
| Mote Marine Laboratory | Sarasota | 000188 |
| Pinellas County | Clearwater | 000390 |
| Pinellas County Cooperative Extension Service | Largo | 000409 |
| RLJ Business Development, Inc | North Miami Beach | 000357 |
| Sarasota County Board of County Commissioners | Sarasota | 000488 |
| School Board of Miami-Dade County | Miami | 000305 |
| School Board of Miami-Dade County | Miami | 000368 |
| South Florida Regional Planning Council | Hollywood | 000117 |
| Techworld PCS | Miami | 000610 |
| Town of Indialantic | Indialantic | 000065 |
| University of Central Florida | Orlando | 000162 |
| Georgia: | | |
| City of Atlanta | Atlanta | 000537 |
| Clayton County Government | Jonesboro | 000662 |
| Coastal Plain Regional Library | Tifton | 000068 |
| Dublin Laurens Commission of Children Youth and Family | Dublin | 000267 |
| Georgia Bureau of Investigation | Decatur | 000044 |
| Georgia Department of Human Resources | Atlanta | 000083 |
| Georgia Tech Research Corporation | Atlanta | 000204 |
| South Georgia Business and Development Authority | Camilla | 000480 |
| St. Joseph's/Candler Health System | Savannah | 000424 |
| West Georgia Telecommunications Alliance, Inc | Carrollton | 000275 |
| Hawaii: | | |
| Bishop Museum | Honolulu | 000399 |
| Child and Family Service | Ewa Beach | 000141 |
| Hawaii Health Systems Foundation | Honolulu | 000009 |
| National Tropical Botanical Garden | Kalaheo | 000494 |
| St. Francis Healthcare System | Honolulu | 000198 |
| Idaho: | | |
| Blaine County | Hailey | 000014 |
| Capital City Development Corporation | Boise | 000041 |
| Saint Alphonsus Regional Medical Center, Inc | Boise | 000661 |
| Illinois: | | |
| Carole Robertson Center for Learning | Chicago | 000114 |
| Center for Neighborhood Technology | Chicago | 000435 |
| Charles A. Hayes Family Investment Center | Chicago | 000514 |
| Chicago State University | Chicago | 000170 |
| Chicago State University | Chicago | 000627 |
| City of Rockford | Rockford | 000393 |
| Eastern Will County Dispatch Center | Crete | 000241 |

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|---|---|---|
| Educational Assistance Ltd | Wheaton | 000187 |
| Illinois Community Action Association | Springfield | 000569 |
| Illinois Department of Corrections | Springfield | 000247 |
| Jobs for Youth/Chicago, Inc | Chicago | 000218 |
| Kane County | Geneva | 000080 |
| LPE Foundation | Schaumburg | 000251 |
| McHenry County | Woodstock | 000086 |
| Metro McLean County Centralized Communications Center | Bloomington | 000077 |
| Mexican Fine Arts Center Museum | Chicago | 000583 |
| Network Exchange Collaborative | Chicago | 000246 |
| Performance Community | Chicago | 000116 |
| Signal Community Institute | Chicago | 000271 |
| Southern Illinois University at Edwardsville | Edwardsville | 000004 |
| Touchette Regional Hospital | Centreville | 000349 |
| Trailsways Girl Scout Council, Inc | Joliet | 000460 |
| University of Illinois | Champaign | 000163 |
| Village of North Aurora | North Aurora | 000095 |
| Winnebago County | Rockford | 000352 |
| Woman Made | Chicago | 000659 |
| Indiana: | | |
| City of Noblesville | Noblesville | 000022 |
| Four County Comprehensive Mental Health | Logansport | 000045 |
| Hamilton Center, Inc | Terre Haute | 000600 |
| Housing Authority of the City of Evansville | Evansville | 000481 |
| Indiana State Council of Opportunities Industrialization Center, Inc | Indianapolis | 000280 |
| Indiana Youth Services Association, Inc | Indianapolis | 000007 |
| Integrated Public Safety Commission | Indianapolis | 000365 |
| Purdue University | West Lafayette | 000288 |
| Stone Belt Arc, Inc | Bloomington | 000581 |
| Kansas: | | |
| Chanute Public Schools | Chanute | 000226 |
| Colby Public Schools | Colby | 000618 |
| Emporia State University | Emporia | 000175 |
| Inter-Faith Ministries | Wichita | 000184 |
| Learning for Life Institute | Lenexa | 000636 |
| United Way of the Plains | Wichita | 000240 |
| Urban League of Wichita, Inc | Wichita | 000441 |
| Kentucky: | | |
| Appalachian College Association | Berea | 000015 |
| Center for Rural Development | Somerset | 000320 |
| City of Louisville | Louisville | 000150 |
| Commonwealth of Kentucky | Richmond | 000005 |
| Innovative Productivity, Inc | Louisville | 000335 |
| Lost Squadron Museum, Inc | Middlesboro | 000292 |
| Morehead State University | Rowan | 000042 |
| Pulaski County Extension Service | Somerset | 000525 |
| University of Kentucky Research Foundation | Lexington | 000272 |
| University of Louisville Research Foundation, Inc | Louisville | 000132 |
| Louisiana: | | |
| City of Shreveport | Shreveport | 000177 |
| Dillard University | New Orleans | 000609 |
| Grambling State University | Grambling | 000306 |
| Housing Authority of East Baton Rouge Parish | Baton Rouge | 000214 |
| Jefferson Parish Sheriff's Office | Thibodaux | 000362 |
| Military Education and Training Enhancement Fund, Incorporated | New Orleans | 000046 |
| Parish of Lafourche | Thibodaux | 000328 |
| Redemption Christian Center Church | Hammond | 000564 |
| Shreveport Community Renewal | Shreveport | 000374 |
| Southern University at Baton Rouge | Baton Rouge | 000024 |
| St. Bernard Sheriffs Department | Chalmette | 000666 |
| St. Martin Parish | St. Martinsville | 000401 |
| Technology Institute of New Orleans | New Orleans | 000371 |
| Maine: | | |
| Blue Hill Memorial Hospital | Blue Hill | 000013 |
| Cary Medical Center | Caribou | 000293 |
| Coastal Enterprises, Inc | Wiscasset | 000185 |
| CyberSeniors.org | Portland | 000530 |
| Eastern Maine Development Corporation | Bangor | 000415 |
| Pine Tree Legal Assistance, Inc | Portland | 000319 |
| South Portland Police Department | South Portland | 000034 |
| Western Maine Community Action | East Wilton | 000091 |
| Maryland: | | |
| Baltimore City Health Department | Baltimore | 000322 |
| Coppin State College | Baltimore | 000510 |
| Development Training Institute | Baltimore | 000539 |
| Hagerstown Telework Center | Hagerstown | 000505 |

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|---|---|---|
| Maryland Department of Aging | Baltimore | 000159 |
| Maryland Department of Human Resources | Baltimore | 000270 |
| Prince George's County Public Schools | Upper Marlboro | 000576 |
| Tri-County Council For Southern Maryland | Charlotte Hall | 000111 |
| Massachusetts: | | |
| All Care Visiting Nurse Association | Lynn | 000638 |
| Boston Photo Collaborative | Jamaica Plain | 000524 |
| Business Inclusion Council, Inc | Worchester | 000281 |
| Digital Bridge Foundation | Roxbury | 000295 |
| Education Development Center, Inc | Newton | 000191 |
| Friends of the Soldiers' Home in Holyoke, Inc | Holyoke | 000104 |
| Greater Boston Police Council, Inc | Waltham | 000029 |
| Hebrew Rehabilitation Center for Aged | Boston | 000194 |
| Legal Assistance Corporation for Central Massachusetts | Worcester | 000062 |
| Massachusetts Executive Office of Health and Human Services | Boston | 000606 |
| Museum of Science | Boston | 000465 |
| Northeastern University | Boston | 000672 |
| Quincy-Geneva Housing Corporation | Dorchester | 000630 |
| Salem State College | Salem | 000268 |
| Spaulding Rehabilitation Hospital | Boston | 000108 |
| Springfield Technical Community College | Sprinfield | 000224 |
| Timothy Smith Trust for "Old Roxbury" | Boston | 000221 |
| United Way of Massachusetts Bay, Inc | Boston | 000614 |
| USS Constitution Museum Foundation | Boston | 000309 |
| VSA Arts of Massachusetts | Boston | 000394 |
| Wilbraham Public Access | Wilbraham | 000148 |
| Woburn Housing Authority | Woburn | 000103 |
| Michigan: | | |
| Academy of Westland | Westland | 000074 |
| Albion College | Albion | 000367 |
| Black Child and Family Institute | Lansing | 000291 |
| City of Detroit Employment and Training Department | Detroit | 000222 |
| City of Fraser | Fraser | 000442 |
| Deckerville Community Hospital | Deckerville | 000591 |
| Genesee County Community Action Agency | Flint | 000498 |
| Grand Rapids Legal Assistance | Grand Rapids | 000476 |
| Grand Traverse Band of Ottawa and Chippewa Indians | Suttons Bay | 000503 |
| Great Lakes Community Broadcasting, Inc | Mount Pleasant | 000491 |
| Keweenaw Bay Ojibwa Community College | Baraga | 000379 |
| Lapeer County | Lapeer | 000314 |
| Lenawee County Sheriff | Adrian | 000227 |
| Livingston County | Howell | 000384 |
| Macomb Intermediate School District | Clinton | 000617 |
| Madonna University | Livonia | 000264 |
| Michigan Humanities Council | Lansing | 000353 |
| Michigan State University | East Lansing | 000285 |
| Michigan State University | East Lansing | 000507 |
| Mott Community College | Flint | 000561 |
| Muskegon Community Health Project | Muskegon | 000250 |
| Northpointe Behavioral Healthcare Systems | Kingsford | 000485 |
| Operation ABLE of Michigan | Southfield | 000266 |
| School District of the City of Detroit | Detroit | 000018 |
| University of Michigan | Ann Arbor | 000471 |
| Valley Area Agency on Aging | Flint | 000228 |
| Wayne County | Detroit | 000261 |
| Webworks Alliance | Jackson | 000234 |
| Minnesota: | | |
| Anoka County | Anoka | 000167 |
| Arts Midwest | Minneapolis | 000440 |
| Asian Media Access, Inc | Minneapolis | 000200 |
| Children's Health Care, Inc | Minneapolis | 000529 |
| City of Mankato | Mankato | 000350 |
| City of Minneapolis | Minneapolis | 000059 |
| City of Minneapolis | Minneapolis | 000376 |
| Community Health Information Collaborative | Duluth | 000143 |
| Hennepin County | Minneapolis | 000283 |
| Hennepin County | Minneapolis | 000296 |
| MIGIZI Communications, Inc | Minneapolis | 000506 |
| Minnesota American Indian Chamber of Commerce | Minneapolis | 000567 |
| Northwest Technical College | Bemidji | 000064 |
| Ordway Center for the Performing Arts | St. Paul | 000239 |
| Pine Technical College | Pine City | 000329 |
| Saint Paul Public Schools ISD 625 | St. Paul | 000438 |
| Saint Paul Urban League | Saint Paul | 000344 |
| South Central Service Cooperative | North Mankato | 000355 |

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|---|---|---|
| Mississippi: | | |
| Central Mississippi Planning and Development District | Jackson | 000439 |
| City of Olive Branch | Olive Branch | 000342 |
| Mississippi Action for Community Education | Greenville | 000356 |
| Missouri: | | |
| Barnes-Jewish Hospital | St. Louis | 000363 |
| Boys and Girls Club of Greater Kansas City | Kansas City | 000646 |
| City of Ballwin | Ballwin | 000040 |
| City of St. Louis | St. Louis | 000299 |
| Learning Exchange | Kansas City | 000468 |
| Missouri State Highway Patrol | Jefferson City | 000432 |
| National Association of Black Telecommunications Professionals, Inc | St. Louis | 000279 |
| Neighborhood Alliance Resource Center | Kansas City | 000154 |
| REJSIS Commission | St. Louis | 000315 |
| St. Louis 2004 Corporation | St. Louis | 000445 |
| St. Louis County Government Department of Human Services | Clayton | 000348 |
| St. Louis Zoo | St. Louis | 000479 |
| Trinity Full Gospel Ministries | St. Louis | 000575 |
| University of Missouri at Missouri-St.Louis | St. Louis | 000520 |
| Montana: | | |
| Eureka Public School | Eureka | 000359 |
| Fort Peck Health Coalition | Wolf Point | 000039 |
| Loud Thunder International, Inc | Great Falls | 000592 |
| Montana Department of Labor and Industry | Helena | 000190 |
| Montana District Export Council | Silver Bow | 000651 |
| Montana State University at Billings | Billings | 000277 |
| Montana Supreme Court | Helena | 000128 |
| Montana Tech of the University of Montana | Butte | 000105 |
| University of Montana | Dillon | 000010 |
| University of Montana | Missoula | 000463 |
| West Mont Home Management Services | Helena | 000076 |
| Nebraska: | | |
| City of Crete | Crete | 000058 |
| City of South Sioux City | South Sioux City | 000047 |
| Educational Service Unit #7 | Columbus | 000422 |
| Lincoln Action Program, Inc | Lincoln | 000019 |
| Lincoln Arts Council | Lincoln | 000568 |
| North Platte Nebraska Hospital Corporation | North Platte | 000426 |
| Omaha Tribe of Nebraska | Macy | 000102 |
| Rural Health Partners, Inc, d.b.a Heartland Health Alliance | Lexington | 000428 |
| West Community Schools | Omaha | 000273 |
| Winnebago Housing & Development Commission | Winnebago | 000620 |
| Nevada: | | |
| Community Services Agency | Reno | 000197 |
| Nevada Association of Latin Americans | Las Vegas | 000640 |
| Supreme Court of Nevada | Carson | 000123 |
| United Way of Northern Nevada & the Sierra | Reno | 000418 |
| New Hampshire: | | |
| Concord Hospital | Concord | 000099 |
| Crotched Mountain Foundation | Greenfield | 000235 |
| JSI Research and Training | Concord | 000528 |
| Manchester Neighborhood Housing Services, Inc | Manchester | 000084 |
| New Jersey: | | |
| Atlantic County | Northfield | 000493 |
| Bergen County Workforce Investment Board | Hackensack | 000061 |
| Borough of North Plainfield | North Plainfield | 000597 |
| Burlington County Institute of Technology Foundation | Mount Holly | 000081 |
| City of Camden | Camden | 000490 |
| City of Camden | Camden | 000594 |
| City of Newark | Newark | 000595 |
| County of Essex | Newark | 000223 |
| First Baptist Community Development Corporation | Somerset | 000559 |
| Kennedy Dancers, Inc | Jersey City | 000408 |
| Legal Services of New Jersey | Edison | 000395 |
| Puerto Rican Action Board, Incorporated | New Brunswick | 000134 |
| Salem County Inter-Agency Council of Human Services | Salem | 000063 |
| State of New Jersey | Trenton | 000501 |
| Township of Irvington | Irvington | 000055 |
| Township of Upper | Tuckahoe | 000417 |
| University of New Jersey | Piscataway | 000107 |
| New Mexico: | | |
| Branigan Cultural Center Foundation | Las Cruces | 000263 |
| Crownpoint Institute of Technology | Crownpoint | 000474 |
| Cuba Independent Schools, #62 | Cuba | 000548 |
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**Bernadette McGuire-Rivera,**

*Associate Administrator, Office of Telecommunications and Information Applications.*

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip laws" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**S.J. Res. 40/P.L. 106–198**
Providing for the appointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 249)

**S.J. Res. 42/P.L. 106–199**
Providing for the reappointment of Manuel L. Ibanez as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 250)

**Last List May 5, 2000**

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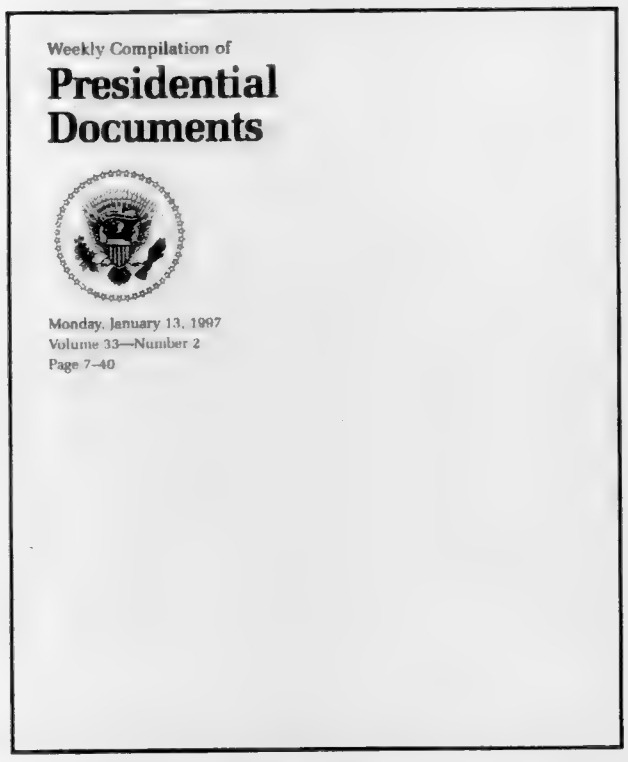


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# Rules and Regulations

Federal Register
Vol. 65, No. 97
Thursday, May 18, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### 7 CFR Part 245

### Determining Eligibility for Free and Reduced Price Meals and Free Milk in Schools

*CFR Correction*

In Title 7 of the Code of Federal Regulations, parts 210 to 299, revised as of January 1, 2000, page 285, § 245.6a is corrected by revising the fourth sentence of paragraph (a)(2)(v), and revising the last sentence in paragraph (a)(5) to read as follows:

**§ 245.6a Verification requirements.**

(a) * * *

(2) * * *

(v) * * * Selected households must also be informed that, in lieu of any information that would otherwise be required, they can submit proof of current food stamp, FDPIR or TANF certification as described in paragraph (a)(3) of this section to verify the free meal eligibility of a child who is a member of a food stamp, FDPIR or TANF household. * * *

* * * * *

(5) * * * Verification of eligibility is not required of households when the determination of eligibility was based on documentation provided by the State or local agency responsible for the administration of the Food Stamp Program, FDPIR or TANF Program, as described in § 245.6(b).

* * * * *

[FR Doc. 00–55508 Filed 5–17–00; 8:45 am]
BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30043; Amdt. No. 1992]**

### Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matter incorporated by reference in the amendment is as follows:

*For Examination*—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

*For Purchase*—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

*By Subscription*—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South McArthur Blvd, Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

### The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each

SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on May 12, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * effective upon publication.

| FDC date | State | City | Airport | FDC number | SIAP |
|---|---|---|---|---|---|
| 04/25/00 | CA | Burbank | Burbank-Glendale-Pasadena | FDC 0/4208 | LOC RWY 8 AMDT 2A This corrects TL00–11. |
| 4/25/00 | CA | Burbank | Burbank-Glendale-Pasadena | FDC 0/4209 | ILS RWY 8 AMDT 35A This corrects TL00–11. |
| 04/26/00 | GA | Marietta | Cobb County-Mc Collum Field | FDC 0/4266 | GPS RWY 9 ORIG–A. |
| 04/26/00 | GA | Marietta | Cobb County-Mc Collum Field | FDC 0/4268 | VOR/DME RWY 9 ORIG–D. |
| 04/26/00 | GA | Marietta | Cobb County-Mc Collum Field | FDC 0/4278 | ILS RWY 27 ORIG–D. |
| 04/27/00 | GA | Marietta | Cobb County-Mc Collum Field | FDC 0/4324 | GPS RWY 27 ORIG–B. |
| 04/27/00 | IL | Moline | Quad City | FDC 0/4367 | NDB OR GPS RWY 9, AMDT 27B. |
| 04/27/00 | MA | Bedford | Laurence G. Hanscon Field | FDC 0/4355 | VOR RWY 23 AMDT 8C. |
| 04/27/00 | MI | Bellaire | Antrim County | FDC 0/4334 | GPS RWY 2 ORIG-A. |
| 04/27/00 | MO | Kansas City | Kansas City Intl | FDC 0/4361 | NDB RWY 9, AMDT 8. |
| 04/27/00 | NC | North Wilkesboro | Wilkes County | FDC 0/4315 | NDB RWY 1, AMDT 2A. |
| 04/27/00 | NC | North Wilkesboro | Wilkes County | FDC 0/4316 | ILS RWY 1, ORIG-A. |
| 04/27/00 | NE | Grand Island | Central Nebraska Regional | FDC 0/4365 | ILS RWY 35, AMDT 9A. |
| 04/27/00. | OH | Akron | Akron-Canton Regional | FDC 0/4339 | VOR OR GPS RWY 23 AMDT 9. |
| 04/27/00 | OH | Columbus | Port Columbus Intl | FDC 0/4352 | NDB OR GPS RWY 10L, AMDT 8. |
| 04/27/00 | OH | Springfield | Springfield-Beckly Muni | FDC 0/4335 | VOR OR GPS RWY 6 AMDT 10A. |
| 04/27/00 | OH | Springfield | Springfield-Beckley Muni | FDC 0/4336 | VOR RWY 24 AMDT 10. |
| 04/27/00 | OR | John Day | Grant Co. Rgnl/Ogilvie Field | FDC 0/4359 | GPS RWY 9, ORIG. |
| 04/27/00 | SD | Aberdeen | Aberdeen Regional | FDC 0/4337 | VOR/DME OR GPS RWY 13 AMDT 12. |
| 04/27/00 | SD | Pierre | Pierre Regional | FDC 0/4340 | VOR/DME OR TACAN OR GPS RWY 25 AMDT 16. |
| 04/27/00 | WI | Appleton | Outagamie County Regional | FDC 0/4345 | VOR/DME RWY 3 AMDT 8B. |
| 04/27/00 | WI | Appleton | Outagamie County Regional | FDC 0/4346 | LOC BC RWY 11 AMDT 1A. |
| 04/27/00 | WI | Rhinelander | Rhinelander-Onieda | FDC 0/4341 | VOR/DME OR GPS RWY 27 ORIG-C. |
| 04/28/00 | DE | Georgetown | Sussex County | FDC 0/4421 | RNAV RWY 4, ORIG-A. |
| 04/28/00 | DE | Georgetown | Sussex County | FDC 0/4422 | RNAV RWY 22, ORIG-A. |
| 04/28/00 | IL | Macomb | Macomb Muni | FDC 0/4386 | LOC RWY 27, AMDT 2A. |

| FDC date | State | City | Airport | FDC number | SIAP |
|---|---|---|---|---|---|
| 04/28/00 | MD | Ocean City | Ocean City Muni | FDC 0/4405 | RNAV RWY 14, ORIG-A. |
| 04/28/00 | MO | Kansas City | Kansas City Intl | FDC 0/4402 | VOR/DME OR TACAN RWY 1L, ORIG. |
| 04/28/00 | MO | Kansas City | Kansas City Intl | FDC 0/4403 | VOR/DME OR TACAN RWY 19R, ORIG. |
| 04/28/00 | NY | Farmingdale | Republic | FDC 0/4395 | ILS RWY 14, AMDT 7A. |
| 04/28/00. | SD | Aberdeen | Aberdeen Regional | FDC 0/4388 | VOR OR GPS RWY 31, AMDT 20. |
| 04/28/00 | UT | Salt Lake City | Salt Lake City Intl | FDC 0/4408 | ILS RWY 34R (CAT I,II,III), ORIG. |
| 04/28/00 | UT | Salt Lake City | Salt Lake City Intl | FDC 0/4411 | GPS RWY 16L, ORIG. |
| 04/28/00 | UT | Salt Lake City | Salt Lake City Intl | FDC 0/4412 | GPS RWY 17, ORIG. |
| 04/28/00 | UT | Salt Lake City | Salt lake City Intl | FDC 0/4414 | ILS/DME RWY 16R (CAT I, II, III), AMDT 3. |
| 04/28/00 | UT | Salt Lake City | Salt Lake City Intl | FDC 04/4416 | VOR/DME OR TACAN OR GPS RWY 34R, AMDT 7. |
| 04/28/00 | UT | Salt Lake City | Salt Lake City Intl | FDC 0/4420 | ILS/DME RWY 34L, AMDT 1. |
| 05/01/00 | FL | West Palm Beach | North Palm Beach County General Aviation. | FDC 0/4476 | VOR RWY 85 AMDT 1. |
| 05/01/00 | IA | Marshalltown | Marshalltown Muni | FDC 0/4499 | GPS RWY 12, ORIG-A. |
| 05/01/00 | KS | Garden City | Garden City Regional | FDC 0/4495 | VOR/DME OR GPS RWY 35, AMDT 1. |
| 05/01/00 | KS | Garden City | Garden City Regional | FDC 0/4496 | VOR/DME OR GPS RWY 30, ORIG. |
| 05/01/00 | KS | Goodland | Renner Field (Goodland Muni) | FDC 0/4493 | VOR/DME RWY 30, AMDT 6. |
| 05/01/00 | KS | Hays | Hays Regional | FDC 0/4494 | VOR/DME RWY 34, AMDT 2A. |
| 05/01/00 | KS | Hays | Hays Regional | FDC 0/4501 | LOC RWY 34, AMDT 2A. |
| 05/01/00 | KS | Ottawa | Ottawa Muni | FDC 0/4474 | GPS RWY 17, ORIG. |
| 05/01/00 | MO | Jefferson City | Jefferson City Memorial | FDC 0/4497 | LOC BC RWY 12, AMDT 6C. |
| 05/01/00 | MO | Jefferson City | Jefferson City Memorial | FDC 0/4498 | NDB RWY 12, AMDT 2A. |
| 05/01/00 | MO | Kansas City | Kansas City Intl | FDC 0/4500 | NDB OR GPS RWY 1L, AMDT 15. |
| 05/01/00 | ND | Jamestown | Jamestown Muni | FDC 0/4490 | LOC/DME BC RWY 13, AMDT 7C. |
| 05/01/00 | NE | Grand Island | Central Nebraska Regional | FDC 0/4472 | LOC/DME BC RWY 17, AMDT 9A. |
| 05/01/00 | NE | Omaha | Eppley Airfield | FDC 0/4491 | VOR RWY 32L, AMDT 10A. |
| 05/01/00 | SD | Rapid City | Rapid City Regional | FDC 0/4489 | VOR OR TACAN OR GPS RWY 14, ORIG. |
| 05/01/00 | SD | Watertown | Watertown Muni | FDC 0/4487 | VOR OR TACAN OR GPS RWY 17, AMDT 16. |
| 05/01/00 | | Watertown | Watertown Muni | FDC 0/4488 | VOR/DME OR TACAN RWY 35, AMDT 11. |
| 05/01/00 | SD | Williston | Sloulin Field Intl | FDC 0/4492 | VOR/DME OR GPS RWY 29, AMDT 3A. |
| 05/01/00 | UT | Salt Lake City | Salt Lake City Intl | FDC 0/4477 | ILS/DME RWY 16L (CAT I, II, III), AMDT 12. |
| 05/02/00 | CA | Monterey | Monterey Peninsula | FDC 0/4543 | ILS RWY 10R AMDT 26. |
| 05/03/00 | ID | Boise | Boise Air Terminal (Gowen Field). | FDC 0/4599 | GPS RWY 28L, AMDT 1A. |
| 05/03/00 | MA | Nantucket | Nantucket Memorial | FDC 0/4598 | LOC BC RWY 6 AMDT 10. |
| 05/03/00 | MID | Sand Island | Henderson Field | FDC 0/4564 | AY ATOLL, MQ. GPS RWY 6 ORIG. |
| 05/03/00 | WY | Guernesey | Camp Guernsey | FDC 0/4567 | NDB RWY 32, ORIG. |
| 05/04/00 | GA | Mc Rae | Telfair-Wheeler | FDC 0/4638 | NDB OR GPS RWY 20 AMDT 8. |
| 05/04/00 | KS | Garden City | Garden City Regional | FDC 0/4633 | NDB RWY 35, ORIG. |
| 05/04/00 | KS | Garden City | Garden City Regional | FDC 0/4637 | VOR/DME RWY 17, AMDT. |
| 05/04/00 | MI | Detroit | Detroit Metropolitan Wayne County. | FDC 0/4689 | ILS RWY 3R (CAT I, II, III), AMDT 13. |
| 05/04/00 | MO | Fort Leonard Wood | Waynesville Regional Arpt at Forney Field. | FDC 0/4639 | LOC RWY 14, ORIG. |
| 05/04/00 | MO | Fort Leonard Wood | Waynesville Regional Arpt at Forney Field. | FDC 0/4640 | NDB/DME RWY 14 AMDT 1. |
| 05/04/00 | MO | Fort Leonard Wood | Waynesville Regional Arpt at Forney Field. | FDC 0/4641 | VOR RWY 32, ORIG. |
| 05/04/00 | MO | Fort Leonard Wood | Waynesville Regional Arpt at Forney Field. | FDC 0/4642 | NDB RWY 32, ORIG. |
| 05/04/00 | MO | Fort Leonard Wood | Waynesville Regional Arpt at Forney Field. | FDC 0/4649 | GPS RWY 14, ORIG. |
| 05/04/00 | TX | Houston | George Bush Intercontinental Airport/Houston. | FDC 0/4631 | GPS RWY 8, ORIG. This Replaces FDC 0/4261. |

| FDC date | State | City | Airport | FDC number | SIAP |
|---|---|---|---|---|---|
| 05/04/00 | TX | Houston | George Bush Intercontinental Airport/Houston. | FDC 0/4632 | ILS RWY 8, AMDT 18G. This Replaces FDC 0/4292. |
| 05/05/00 | ID | Driggs | Driggs-Reed Memorial | FDC 0/4702 | GPS-A, ORIG-A. |
| 05/05/00 | IN | Evansville | Evansville Regional | FDC 0/4678 | NDB OR GPS RWY 22, AMDT 12. |
| 05/05/00 | MO | Fort Leonard Wood | Waynesville Regional Arpt at Forney Field. | FDC 0/4721 | GPS RWY 32, ORIG. |
| 05/05/00 | OH | Middletown | Hook Field Muni | FDC 0/4746 | LOC RWY 23; AMDT 7D. |
| 05/08/00 | IN | Evansville | Evansville Regional | FDC 0/4786 | VOR OR GPS RWY 4, AMDT 5. |
| 05/09/00 | GUA | Agana | Guam Intl | FDC 0/4825 | GPS RWY 24R ORIG. |
| 05/09/00 | IL | Freeport | Albertus | FDC 0/4819 | NDB RWY 6, ORIG-A. |
| 05/09/00 | IL | Freeport | Albertus | FDC 0/4820 | LOC RWY 24, ORIG-A. |
| 05/09/00 | IL | Freeport | Albertus | FDC 0/4821 | VOR OR GPS RWY 24, AMDT 6A. |
| 05/09/00 | MO | Fredericktown | Fredericktown Regional | FDC 0/4809 | RNAV RWY 19, ORIG. This replaces FDC 0/4021. |
| 05/09/00 | MO | Fredericktown | Fredericktown Regional | FDC 0/4810 | RNAV RWY 1, ORIG. This replaces FDC 0/4054. |
| 05/09/00 | MO | Marshall | Marshall Memorial Muni | FDC 0/4833 | RNAV RWY 36, ORIG-A. |
| 05/09/00 | MO | Marshall | Marshall Memorial Muni | FDC 0/4834 | RNAV RWY 18, ORIG-A. |
| 05/09/00 | WI | Madison | Dane County Regional-Truax Field. | FDC 0/4827 | ILS RWY 18, AMDT 7B |
| 05/10/00 | CA | Burbank | Burbank-Glendale-Pasadena | FDC 0/4849 | NDB RWY 8 AMDT 2A. This replaces FDC 0/4211 IN TL00–11 |

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 15 CFR Part 902

### 50 CFR Part 600

**[Docket No. 980812215–0109–02; I.D. 072898D] 648–AK76**

## Magnuson-Stevens Act Provisions; Fishing Capacity Reduction Program

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Interim final rule; request for public comments.

**SUMMARY:** NMFS issues interim final framework regulations specifying procedures for requesting and conducting fishing capacity reduction programs (reduction programs). A reduction program pays harvesters in a fishery with too much fishing capacity either to surrender their fishing permits for that fishery or both to surrender all their fishing permits and withdraw their fishing vessels from all fishing. Reduction costs can be paid by post-reduction harvesters, taxpayers, or others. The intent is to decrease excess harvesting capacity, increase the economic efficiency of harvesting, and facilitate the conservation and management of fishery resources in each fishery in which NMFS conducts a reduction program.

**DATES:** This interim final rule is effective June 19, 2000. Comments must be received on or before June 19, 2000.

**ADDRESSES:** Copies of the Regulatory Impact Review may be obtained from Michael L. Grable, Chief, Financial Services Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3282. Written comments should be sent to Michael L. Grable at the above address. Comments also may be sent, via facsimile, to (301) 713–1306. NMFS will not accept comments sent by e-mail or the Internet. Comments involving the reporting burden estimates or any other aspects of the collection of information requirements contained in this interim final rule should be sent to both Michael L. Grable and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 (ATTN: NOAA Desk Officer).

**FOR FURTHER INFORMATION CONTACT:** Michael L. Grable, (301) 713-2390.

**SUPPLEMENTARY INFORMATION:**

### Background

Many U.S. fisheries have excess fishing capacity. Excess fishing capacity decreases earnings, complicates management, and imperils conservation. To provide for fishing capacity reduction programs, Congress amended the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by adding section 312(b)-(e) (16 U.S.C. 1861a(b)-(e)). To finance reduction costs, Congress amended Title XI of the Merchant Marine Act, 1936 (Title XI), by adding new sections 1111 and 1112. The Title XI provisions involving fishing capacity reduction loans have been codified at 46 U.S.C. App. 1279f and g.

This action adds a subpart L to 50 CFR part 600 establishing framework regulations for requesting and conducting fishing capacity reduction programs. These framework regulations were published as a proposed rule on February 11, 1999 (64 FR 6854–6869), with a public comment period that ended on April 12, 1999.

While NMFS received numerous comments on the proposed rule (addressed in more detail below), it believes further comment on the revised capacity reduction referenda provisions would be useful.

### Comments on Proposed Rule and Responses

NMFS received comments from 24 entities. Most of the comments are from organizations that represent the views of many parties. All but one of the comments supported fishing capacity reduction, although many comments disagreed with some aspects of the proposed rule. The following summarizes the comments and gives NMFS' responses.

*Comment Issue 1*: Five comments addressed interest rates for loans financing capacity reduction costs.

Three comments said that a reduction loan interest rate 2 percent higher than the interest cost for borrowing loan capital from the U.S. Treasury is unnecessary, burdensome, and counterproductive.

One comment said that the interim final rule should state whether the reduction loan interest rate is fixed or adjustable and that the interest rate projected for reduction planning purposes can change before reduction implementation.

One comment said that there should be no interest prepayment penalties.

*Response*: A reduction loan interest rate 2 percent higher than NMFS' interest cost is required by the statute (46 U.S.C. App. 1279g).

Reduction loan interest rates depend on prevailing yields on comparable maturity Treasury obligations at the time the U.S. Treasury Department establishes the interest rate NMFS must pay on loan capital borrowed from the U.S. Treasury. The actual interest rate NMFS charges for a specific reduction loan could be higher or lower than the interest rates projected for reduction planning purposes. The projection of an interest rate could occur many months before the disbursement of reduction loan funds. The interim final rule revises the proposed rule to more fully address this issue (see § 600.1012(b) and (c) and the definition of "Treasury percentage" in § 600.1000).

All reduction loan interest rates are fixed rather than adjustable. There is no prepayment penalty.

*Comment Issue 2*: Ten comments involved the reduction program process.

Six comments said that referenda about industry fee systems should occur earlier in the reduction process. Most believed that, until referenda first demonstrate the fishing industry's willingness to pay for financed reduction programs, fishery management councils (FMCs) will be reluctant to process fishery management plan (FMP) amendments complementing reduction programs and industry will be reluctant to submit reduction bids. Some also believed that industry will be reluctant to prepare business plans until after successful referenda.

Three comments said that the reduction process would be shorter if all its components were concurrent.

One comment said that the process for reduction loans should be kept as simple as possible, or the fishing industry will seek subsidized reduction programs rather than financed ones.

Two comments said that pre-bidding referenda should involve ranges of projected reduction results, with a minimum acceptable level.

*Response*: NMFS based the proposed rule's process for financed reduction programs on two concepts. First, industry reduction proponents and an FMC should demonstrate their commitment to a reduction program by establishing, at the time of making a reduction program request, everything necessary for prompt and reliable reduction program completion. Second, reduction bidding results need to be known before a referendum asks post-reduction harvesters to commit themselves to repaying a reduction loan.

NMFS acknowledges that FMCs may be reluctant to invest the time and resources necessary to prepare and process FMP reduction amendments, and industry may be reluctant to submit reduction bids, unless referenda have first demonstrated the industry's willingness to pay for financed reduction programs. The interim final rule revises the proposed rule in many places to better address these concerns (see, particularly, § 600.1010).

The interim final rule provides for pre-bidding referenda and, if necessary, a post-bidding referendum as well. The necessary pre-bidding referendum can occur at any time after an FMC requests a reduction program and before NMFS proposes a plan and regulations to implement the program. Each pre-bidding referendum is based on a reduction loan amount not greater than the maximum specified in the business plan being sufficient to reduce at least the minimum amount of fishing capacity specified in the business plan. A post-bidding referendum occurs only if the maximum reduction loan amount is insufficient to reduce at least the minimum amount of fishing capacity.

If an initial pre-bidding referendum occurs before the FMC adopts any FMP reduction amendment necessary, the referendum is based on the FMP reduction amendment that the business plan specifies. If afterwards, the referendum is based on the FMP reduction amendment that the FMC adopts.

If the initial pre-bidding referendum is successful, the reduction process proceeds. If the referendum precedes any FMP reduction amendment necessary, a second pre-bidding referendum is required if, in NMFS' judgment, the adopted FMP reduction amendment differs materially from the FMP reduction amendment that the business plan specifies. A material difference would, for example, be a post-reduction harvesting allocation for the harvesters who must repay a reduction loan that is less than the allocation specified in the business plan. The second pre-bidding referendum is to determine whether the referendum voters approve an industry fee system despite any such material difference.

If the initial pre-bidding referendum is unsuccessful, the reduction process then either ceases or is suspended pending an appropriate amendment of the business plan.

The interim final rule requires the business plan to specify the maximum amount of a reduction loan and the minimum amount of fishing capacity this must be sufficient to reduce. The interim final rule also requires the business plan to provide guidance about when pre-bidding referenda should occur.

Under the interim final rule, a reduction request from an FMC based on a business plan serves as the FMC's endorsement, in principle, of all aspects of the business plan that depend on the FMC's action (see § 600.1003(g)). Endorsement in principle does not, however, mean that the FMC will eventually vote to recommend implementing the business plan's concept of an FMP reduction amendment. Implementing any FMP reduction amendment necessary remains subject to all the requirements applicable to all other FMP amendments. Endorsement in principle merely means that the FMC has taken whatever action the FMC deems necessary to endorse the business plan (including the business plan's proposed FMP reduction amendment) by requesting NMFS to initiate a reduction program based on the business plan. Subsequent consideration, in accordance with the ordinary Magnuson-Stevens Act process, of the FMP reduction amendment may result either in no FMP amendment or one that differs from the business plan specifications.

Nevertheless, an FMC may not make a reduction request based on a business plan that the FMC does not endorse in principle. If an FMC cannot endorse the business plan in principle, the FMC should not make a reduction request.

If reduction bidding achieves, with a reduction loan not greater than the maximum amount that the business plan specifies, at least the minimum amount of fishing capacity reduction that the business plan specifies, then a post-bidding referendum does not occur. A post-bidding referendum occurs only if bidding does not achieve at least the minimum reduction for not more than the maximum reduction loan.

Any necessary post-bidding referendum is to determine whether the referendum voters approve an industry fee system for a reduction less than the minimum.

This pre- and post-bidding approach should solve several problems. First, the approach should solve the problem of an FMC not wanting to make a large time and resource investment in an FMP reduction amendment without assurance that the industry is willing to repay a reduction loan. The business plan's survey (§ 600.1003(n)(12) in the interim final rule) of potential referendum voters should provide an FMC with enough assurance for the FMC to make a reduction request based upon that business plan. A successful pre-bidding referendum reinforces this assurance before an FMC invests time and resources in an FMP reduction amendment.

Second, allowing a second pre-bidding referendum should solve the problem of an actual FMP reduction amendment that differs materially from the FMP reduction amendment specified in the business plan.

Third, allowing a post-bidding referendum should solve the problem of reduction bidding results that do not achieve at least the minimum amount of fishing capacity reduction that the business plan specifies for a reduction loan whose principal amount is not greater than the maximum that the business plan specifies.

Finally, the approach eliminates the need for a linear processing sequence that precludes concurrent work on different parts of the reduction process. The revision allows the FMP reduction amendment process to proceed concurrently with the rest of the reduction process that occurs before NMFS proposes a plan and regulations to implement a reduction program. All other components of the reduction process, up to NMFS' publication of a plan and regulations implementing each reduction program, may now occur before an FMC prepares and processes, and NMFS approves, an FMP reduction amendment. The FMP reduction amendment must still, however, be in place before NMFS proposes the reduction plan and implementing regulations.

A completed business plan, however, remains essential both to an FMC's reduction request and the pre-bidding referendum that follows. Without a completed business plan, the FMC cannot fully know what it is endorsing in principle, NMFS does not fully know what the FMC and the industry is requesting, and referendum voters do not fully know for what they are voting.

The interim final rule requires that the business plan specify the maximum reduction cost and the minimum reduction that must be achieved for that cost. This achieves the same result as specifying ranges of projected reduction results, with a minimum acceptable level.

*Comment Issue 3*: Five comments involved payment and collection of the reduction loan repayment fee.

All 5 comments, to one degree or another, said that the proposed rule's fee payment and collection provisions are too costly, burdensome, or complicated.

One comment said that fish buyers in California, Washington, and Oregon collect other fees for state and industry groups, and that the interim final rule should allow the payment and collection of the reduction loan repayment fee to conform to established regional practices.

One comment said that the fee payment and collection provisions provide an incentive for "kickbacks" based on misreported fish deliveries, and that this could change the assumptions upon which accurate catch reporting depends.

One comment said that these provisions do not accommodate fish buyers paying for fish on a periodic, rather than a trip, basis.

One comment said that collecting the fee that repays reduction loans is not the fish buyers' business, and that the fish buyers' cost of collecting the fee could itself be considered an illegal fee under the Magnuson-Stevens Act.

One comment said that, because bank rules about interest bearing accounts vary widely from state to state, some fish buyers might be able to offset some fee collection costs by interest earnings while others might not. The comment said that this violates section 301(a)(4) of the Magnuson-Stevens Act.

One comment said that fee collection audits are unrestricted.

One comment said that fish buyers are the enforcers of fee collection, without protection against fish sellers who might sue them. If a fish buyer deducts the fee over a fish seller's protest, the fish buyer risks the fish seller's legal action. Fish buyers refusing to buy fish from fish sellers who refuse to pay the fee (the alternative to deducting the fee over the fish seller's protest) is inconsistent with the business of buying fish.

One comment said that the proposed rule's provision about state confidentiality requirements not preventing NMFS' access to fish tickets places fish buyers in an impossible position.

One comment said that many fish buyers will be unaware of their fee collection responsibilities.

*Response*: The proposed rule is a framework rule involving matters common to all reduction programs. Some aspects of a framework rule will apply, without exception, to all reduction programs. Other aspects of the framework rule may be inappropriate for application to some reduction programs in some reduction fisheries. Nevertheless, these aspects provide a framework against which everyone can measure the circumstances of different reduction programs in different reduction fisheries. The rule's fee collection, deposit, disbursement, accounting, record keeping, and reporting procedures are of the latter type. § 253.27(q)(10), § 253.36(f), and § 253.37(h) of the proposed rule provide sufficient opportunity for approaches in each reduction program different from the framework approach. Nevertheless, the interim final rule revises the proposed rule to require business planners to consult with fish buyers before including in their business plan any special circumstances in their reduction fishery that might require some fee provisions different from the framework provisions (see § (n)(9)). Thus, the interim final rule provides opportunity for reduction program to accommodate the circumstances of, and practices, in different fisheries as long as accommodation does not jeopardize the intent and purpose of the framework rule provisions.

There are substantial penalties for misreporting catches and otherwise failing to pay and collect the fees due. The rule's fee accounting and reporting provisions require documentation that provides ample audit opportunity, and NMFS intends to audit sufficiently to ensure compliance.

NMFS believes the time at which fish sellers deliver fee fish to fish buyers is the most appropriate time for the fish sellers to pay and the fish buyers to collect the fee. The interim final rule, however, revises the proposed rule to provide for paying and collecting fees on bonuses at the time the bonuses first become known rather than at the time the fish sellers deliver the fee fish involving the bonuses to fish buyers (see § 600.1013(c)(2)).

The Magnuson-Stevens Act requires fish buyers to collect the fee. Interest earnings on collected fee revenues might allow, depending on state banking regulations, some fish buyers to offset some of the costs of discharging this statutory obligation.

A reduction loan can involve up to $100 million repaid on a incidental

basis amortized over 20 years by many fish sellers, and collected by many fish buyers, as a small percentage of variable revenue from many fishing trips. This loan collection environment is susceptible to considerable nonperformance and fraud. Due diligence requires audit and, where necessary, enforcement.

Auditing is not, however, unrestricted. The rule restricts audits to those "reasonably necessary...to ensure proper fee payment, collection, deposit, disbursement, record keeping, and reporting." The rule also restricts audits to "reasonable times and places..." NMFS does not intend any greater auditing burden than reasonable due diligence requires for the proper repayment of reduction loans. Audits may either be random (deterrent) or triggered by circumstances that indicate fee payment and collection activities inconsistent with this rule's requirements, but will not be more frequent or burdensome than needed to fulfill due diligence.

NMFS does not anticipate that fish sellers will violate these regulations by refusing to pay the fee. If any do, this does not excuse fish buyers from failing to comply with these regulations, either by collecting the fee over the fish seller's protest or by refusing to buy fish from fish sellers from whom fish buyers are unable to collect the fee as the Magnuson-Stevens Act requires.

The interim final rule does not contain the proposed rule's provision about fish tickets and state confidentiality requirements.

The interim final rule requires fish buyers to maintain the records and to submit the reports specified in § 600.1014(d) (or whatever alternative records and reports might be specified, under § 600.1014(j), in the implementation regulations for each reduction program). If landing records that a state requires contain some or all of the data that § 600.1014(d) requires and state confidentiality provisions do not prevent NMFS' access to the records maintained for the state, then fish buyers can use those records to meet appropriate portions of the § 600.1014(d) requirements. If, however, state confidentiality provisions make those records unavailable to NMFS, then fish buyers will be required to maintain separate records that meet the requirements of § 600.1014(d).

Where it becomes necessary to audit the reports that fish buyers submit in compliance with § 600.1014(d), trip tickets (or equivalent accounting records establishing the pounds of fee fish purchased and the price paid) are essential audit documentation. If, for any reason, any state law or regulation makes it illegal for fish buyers to keep separate records that involve some or all of the same data as the landing records that the fish buyers keep for state purposes, then a financed reduction program will not be possible unless there is a change in the state law or regulations to give NMFS access to the records necessary for administration of reduction loans. The interim final rule revises the proposed rule accordingly (see § 600.1003(n)(11)(i) and § 600.1014(f) and (g)).

Existing regulations require many fish buyers to have dealer permits, so NMFS often knows who the authorized fish buyers are. The rule also requires each business plan to include information about fish buyers who can, after reduction, reasonably be expected to have fee collection responsibilities. The rule requires NMFS to notify, both by a **Federal Register** notice and by mailed notification to fish buyers of whom NMFS is aware, all fish buyers about their fee collection responsibilities.

*Comment Issue 4*: Four comments involved exempting reduction requests preceding publication of the proposed rule from some aspects of the interim final rule.

All four comments generally said that various parties had expended much effort and expense on two reduction requests that substantially preceded NMFS's publishing the proposed rule. The proposed rule required the FMCs and the business planners for these two reduction requests to start at the beginning of a process of which they were unaware before NMFS published the proposed rule. Thus, these parties would have to expend additional time and money for the sole purpose of resubmitting their requests to conform with the interim final rule. This may be inequitable, because NMFS assured the parties involved that the lack of a proposed rule would not deter NMFS from processing their reduction requests as far as possible without a interim final rule. The interim final rule should ensure expeditious consideration of these two reduction requests.

*Response*: On November 27, 1997, the Pacific FMC submitted a request for a financed reduction program in the fishery for Pacific coast groundfish (limited entry trawl fishery). On October 10, 1997, the North Pacific FMC submitted a request for a financed reduction program in the fishery for Bering Sea and Aleutian Islands king and tanner crab. Industry proponents have since prepared business plans for each of these requests. The business planners and the FMCs have already expended considerable effort on these business plans and reduction requests. Both requests and their acceptances preceded, by many months, the publication of the proposed rule. NMFS agrees that it is counterproductive to now require the FMCs to resubmit these two reduction requests. The FMCs do not, consequently, have to resubmit these two reduction requests in accordance with the process in the interim final rule. However, the business planners and the FMCs will have to submit some additional information required by the interim final rule. After review of both plans and the interim final rule, NMFS will specify this additional information.

*Comment Issue 5*: Six comments concerned proposed rule provisions that allow financed reduction programs to involve only fishing permits in the reduction fishery, rather than requiring reduction programs to involve all fishing permits held by reduction program participants. These comments were evenly divided between supporting and opposing these provisions.

Three comments supported the proposed rule provisions. These comments generally said that it is impractical and unreasonable to require post-reduction harvesters in reduction fisheries to pay for the cost of reducing fishing permits in non-reduction fisheries, and otherwise agreed with the proposed rule's preamble discussion of this aspect.

Three comments opposed the proposed rule provisions. These comments generally said that reducing only the fishing permits in the reduction fishery causes reduction program fishing vessels to shift their effort from the reduction fishery to any non-reduction fisheries for which the vessels also have fishing permits. The goal of each reduction program should be removing the fishing capacity involved in a reduction program from all fishing rather than just fishing in the reduction fishery. To enable this result, one of these comments said that the interim final rule must define the term "fishery" differently than the Magnuson-Stevens Act does.

One comment said that the proposed rule provisions are inconsistent with the objective in section 312(b)(2) of the Magnuson-Stevens Act because the proposed rule provisions merely shift reduction costs to other fisheries in which reduction participants' vessels might also have fishing permits rather than obtaining the maximum sustained reduction in fishing capacity at the least cost.

Another comment said that all reduction programs should involve

analysis of the reduction programs' impact on non-reduction fisheries and that it is unacceptable and contrary to the Magnuson-Stevens Act for improvements in a reduction fishery to occur at the expense of any other fishery.

*Response*: The Magnuson-Stevens Act authorizes conducting reduction programs, like fishery management plans, on a fishery-by-fishery basis. Each reduction program must occur within a fishery that meets the Magnuson-Stevens Act's definition of "fishery". This requires each reduction program to occur in "one or more stocks of fish which can be treated as a unit for purposes of conservation and management and which are identified on the basis of geographical, scientific, technical, recreational, and economic characteristics..." and to involve "fishing for such stocks..." The objective in section 312(B)(2) of the Magnuson-Stevens Act relates to each reduction program in each reduction fishery.

While section 312(b)(2)(A) of the Magnuson-Stevens Act authorizes reductions that include both fishing permit revocations and fishing vessel scrappings (or title restrictions that prevent future fishing), section 312(b)(2)(B) also authorizes reductions that are restricted to fishing permit revocations alone.

In a financed program, the post-reduction harvesters in the reduction fishery are paying for fishing capacity reduction. They are retiring excess capacity in their fishery. The Government is simply lending them the money to do this. NMFS should not require a borrower composed of post-reduction harvesters to spend any of the borrower's reduction loan proceeds on reducing fishing capacity that the borrower does not want to reduce. This includes reducing capacity in non-reduction fisheries, which benefits parties other than the borrower.

In a subsidized program, however, the taxpayers are paying the cost of reducing fishing capacity. The taxpayers can choose, through their Government, the fishing capacity reduction alternative that provides the broadest fishery conservation and management benefit. This may include withdrawing fishing vessels (either by scrapping them or imposing title restrictions that prevent their fishing) and revoking all fishing permits associated with the scrapped vessels that are not individually transferable. Individually transferable fishing permits in non-reduction fisheries could not, however, be revoked as part of such a reduction program (because these permits may be used by vessels other than the vessels whose fishing is prevented by scrapping or title restriction). Revoking individually transferable fishing permits in non-reduction fisheries would require separate reduction programs in the non-reduction fisheries involved.

A financed reduction program is, in essence, a contribution from post-reduction harvesters in a reduction fishery to fisheries conservation and management in that fishery. It is a contribution that is in the best economic interest of the post-reduction harvesters, but, nonetheless, it is their voluntary contribution. NMFS should not limit the opportunities for satisfying the statutory purposes by requiring post-reduction harvesters willing to repay the cost of buying and retiring fishing permits in their reduction fishery to also pay the cost of buying and retiring fishing permits in non-reduction fisheries. It is not in the taxpayers' interest to do so, because the net effect may be to limit most reduction programs to those whose entire cost the taxpayers bear. This is true because harvesters in reduction fisheries are generally unlikely to approve industry fee systems in reduction fisheries for repaying reduction loans that benefit harvesters in non-reduction fisheries.

In the interim final rule's revision of the proposed rule, business planners have the option of reducing only fishing permits in the reduction fishery or both doing that and withdrawing fishing vessels by scrapping or title restriction. The latter enables the revocation of all permits, except individually transferrable ones in non-reduction fisheries, associated with withdrawn vessels. Although business planners may voluntarily choose to withdraw fishing vessels, either by scrapping them or imposing title restrictions that prevent their fishing, FMCs may not require business planners to do so.

There is, however, one exception where a financed reduction program should always include the reduction of fishing permits that involve species other than those in the reduction fishery. That exception is fishing permits that merely allow the incidental catch of non-reduction species during directed fishing for reduction species. Once the directed fishing permits are bought and retired, the incidental fishing permits are of no further use. In addition to being useless, the incidental fishing permits were always a corollary of the directed fishing permits, and should be revoked along with the directed fishing permits. Accordingly, the interim final rule revises the proposed rule in this respect (see § 600.1011(d)).

The interim final rule also revises the proposed rule to require business planners and FMCs to consider the effect on non-reduction fisheries of financed reduction programs that involve only fishing permits in the reduction fishery (see § 600.1003(l) and § 600.1003(n)(9)).

NMFS notes that there may be other potential alternatives to deal with this situation. One alternative might be combining fisheries for fishery conservation and management purposes, which might then allow a financed reduction program to relate to the combined fishery rather than just to one of the fisheries. Another alternative might be conducting a separate financed (indeed, even subsidized) program in a fishery that a reduction program in another fishery affects. Both these potential alternatives would avoid one group of post-reduction harvesters paying for another group's benefit.

*Comment Issue 6*: Two comments concerned post-reduction fish allocations in financed reduction programs that do not involve all the harvesters in the reduction fishery. For example, say, a reduction fishery involves both longline and pot gear, but the financed reduction program in that reduction fishery involves only fishing permits for the longline gear.

One comment supported, and one comment opposed, allocations of this type and the proposed rule's treatment of this issue. The supporting comment said that allocation of the post-reduction resource protects the investment of the post-reduction harvesters who must repay a reduction loan as well as the interest as the Federal Government in ensuring the reduction loan's repayment. The opposing comment said that the allocation might damage the operators of non-reduction fishing gear who may have been less responsible for overfishing and, thus, creating the crisis in the fishery to which the financed reduction program relates.

*Response*: NMFS believes post-reduction allocation is essential in financed reduction programs that involve fewer than all the harvesters in a reduction fishery.

Assume that a fishery is composed of "A" gear fishermen and "B" gear fishermen, each group has a pre-reduction allocation equal to 50 percent of the fishery's total allowable catch, and the "A" gear fishermen encumber themselves with a 20-year debt to pay for buying and retiring 50 percent of the "A" gear fishing permits. Unless their post-reduction allocation stays at 50 percent of the fishery's total allowable catch, there is no economic incentive for the "A" gear fishermen to pay for

buying half of the pre-reduction "A" gear fishing permits. Similarly, neither does the government have the requisite assurance that up to 5 percent of the "A" gear fishermen's post-reduction trip proceeds will be sufficient to repay the reduction loan over a 20-year period. Without post-reduction allocations, there is little economic incentive either for the reduction borrowers to borrow or for the reduction lender to lend, and the taxpayers may, consequently, be called upon to pay for most reduction programs of this type.

Moreover, it is inequitable for "A" gear fishermen to pay for a benefit that "B" gear fishermen receive without payment. Business plans for, and FMPs complementing, financed reduction programs that involve only one of several gear types within a reduction fishery must adequately address this critical issue sufficiently to provide economic incentive both for reduction borrowers and the reduction lender.

Financed reduction programs cannot usefully address the possibility that allocations to gear operators who some perceive as less responsible harvesters may have impacted allocations to other gear operators who some perceive as more responsible harvesters.

*Comment Issue 7*: Two comments involved consultation with fishing communities and other interested parties during reduction program development. One comment pointed out, in the context of reduction programs that involve only fishing permits in a reduction fishery, that the law requires this consultation. The other comment said that, if NMFS consults with conservation organizations (and other interested parties who are, presumably, not directly involved in the reduction fishery), "those entities must have their own substantiated fishery and economic data base [sic] to be considered a valid consulting participants [sic], or we will challenge their participation. No more rhetoric of how many people they represent, they will deal in facts and not personal agenda generalities."

*Response*: The statutory reduction provisions require consultation "as appropriate, with Councils, Federal agencies, State and regional authorities, affected fishing communities, participants in the fishery, conservation organizations, and other interested parties throughout the development and implementation of any..." reduction program.

*Comment Issue 8*: One comment addressed the potential for the eventual replacement of the fishing capacity that reduction programs remove from reduction fisheries (and other comments also indirectly involved this issue). The comment expressed concern about the potential for post-reduction fishing capacity to gradually expand through the post-reduction adoption of new technology and the pre-reduction existence of latent fishing capacity. This comment said that analysis of the Fishing Capacity Reduction Demonstration Program and the Fishing Capacity Reduction Initiative in the Northeast multispecies fishery suggests that the existence of significant latent fishing capacity will result in little or no long-term reduction in the multispecies fishery's fishing capacity.

*Response*: The reduction programs in the Northeast multispecies fishery were authorized under the Interjurisdictional Fisheries Act rather than under the Magnuson-Stevens Act. The Interjurisdictional Fisheries Act does not address the issue involved in this comment, but the reduction provisions of the Magnuson-Stevens Act do. The reduction provisions of the Magnuson-Stevens Act require FMPs for reduction fisheries to prevent the replacement of fishing capacity removed by the program through a moratorium on new entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet (16 U.S.C. 1861a(b)(1)(B)(i)).

The proposed rule addresses this statutory provision by requiring each reduction request (and, in the instance of financed reduction programs, each business plan) to demonstrate how the FMP complies with this statutory provision or will comply with it after an FMP reduction amendment. The interim final rule continues this requirement.

*Comment 9*: NMFS should evaluate the efficacy of each reduction program two years after the reduction program's implementation. The evaluation should help identify areas where capacity leaks back into the fishery and will help in designing future reduction programs. It will take a few more reduction programs to iron out the difficulties in designing efficient reduction programs, and post-program evaluation will be critical.

*Response*: NMFS agrees. NMFS will include post-reduction evaluations as part of the SAFE reports under 50 CFR 600.315(e).

*Comment 10*: Reduction is an extremely valuable tool to remove capital from fisheries in a rational and orderly fashion. Many of the proposed rule's elements will allow capacity reduction to move forward.

*Response*: NMFS agrees.

*Comment 11*: The proposed rule does not define "capacity". If this is intentional in order to provide flexibility in constructing reduction programs this should be stated. The proposed rule's preamble uses "excess capacity", but does not define the term. "Excess capacity" could mean either that there are more vessels than necessary for maximum economic efficiency or that the capacity exceeds the resource's ability to support the capacity. The use of "full potential fishing capacity" highlights this problem. Defining these terms has enormous implications for interpreting the regulations and these definitions should undergo public comment before their adoption. Alternatively, the interim final rule should state that definitions for these terms will be included in the program implementation regulations.

*Response*: The term "excess capacity" did not appear in the proposed rule (the term appeared only once in the proposed rule's preamble).

The statutory term "full potential fishing capacity" appeared once in the proposed rule (in the definition of the term "non-replacement requirement") and once in the proposed rule's preamble.

The appropriate context in which to make distinctions between concepts like "more vessels in a fishery than are necessary for maximum economic efficiency" and "capacity in the fishery...[exceeding] what the resources can support" is implementation of the Magnuson-Stevens Act's provision that authorizes a reduction program only if the reduction program "is necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the fishery." Each reduction program must meet one of these criteria. For the sake of flexibility, NMFS does not qualify these criteria further. Each reduction request must make its best case on the merits of the request's own particulars.

*Comment 12*: "Reduction fishery" traditionally refers to fisheries that convert fish to meal and/or oil. Substitute "buyback fishery" for "reduction fishery".

*Response*: "Fishing capacity reduction" is the operative statutory term. NMFS chose, for brevity's sake, to define a fishery in which reduction is proposed or occurs as a "reduction fishery" rather than a "fishing capacity reduction fishery". The interim final rule defines the term "reduction fishery" sufficiently to distinguish this term from a fishery involving the production of fish meal and oil.

*Comment 13*: The interim final rule should "include criteria that will be used to determine..." a reduction loan's

repayment period. A repayment period can be longer than the maximum 5 percent repayment fee might otherwise indicate.

*Response*: The amount annually required to service debt is a function of principal, interest, and the repayment term. Business planners must propose an annual reduction loan debt service burden that post-reduction harvesters are likely to be willing to undertake in return for a finite reduction in fishing capacity. Harvester referenda must subsequently approve this. Subject to the statutory constraints (maximum 5 percent fee and maximum 20-year repayment period), NMFS will accommodate each business plan's debt service proposal unless the circumstances of the reduction program involved clearly warrant doing otherwise.

*Comment 14*: Failure to address how in-kind compensation (e.g., dock space, ice) affects the delivery value used to calculate the reduction loan repayment fee could result in "creative reimbursement arrangements to avoid fees." The interim final rule should avoid this result by addressing this issue.

*Response*: The fee rate required to repay reduction loans is applied to "delivery value". The proposed rule's definition of "delivery value" excludes in-kind compensation because "delivery value", as defined in the proposed rule, is the "full, fair market value...in an arm's length transaction..." Full, fair market value in an arm's length transaction cannot, by definition, include in-kind compensation. In-kind compensation cannot, consequently, be used to avoid the fee. Nevertheless, the interim final rule revises the proposed rule's definition of "delivery value" to clarify that the term includes "the value of in kind compensation or all other goods or services exchanged in lieu of cash." (see the definition of "delivery value" in § 600.1000).

*Comment 15*: The proposed rule's definition of "fee fish" requires fishing vessels in a post-reduction fishery to pay the reduction loan repayment fee on fish harvested incidentally to the targeted reduction species. The definition of this term should allow each reduction program to define the "fee fish" that will be used to calculate the fee. Some fisheries may have an incidental catch of "fee fish", and the interim final rule should "clearly state that incidental catches in non reduction program fisheries are not subject to the fee unless those fisheries are included in the referendum for a financed reduction program."

*Response*: The term "fee fish", as defined in the interim final rule, means all fish harvested from the reduction fishery. The term fee fish excludes fish harvested incidentally while fishing for fish not included in the reduction fishery. The term "reduction fishery", as defined in the interim final rule, means the fishery or portion of a fishery to which a program applies. The reduction fishery must specify each included species, as well as any limitations by gear type, size of fishing vessel, geographic area, and any other relevant factor. Except in extraordinary instances, the interim final rule's intent is to limit fee fish to those that are directly rather than incidentally harvested.

*Comment 16*: The proposed rule requires a reduction request to list all parties who are authorized to fish in the proposed reduction fishery and to specify the catch allocated to those parties for the past five years. The proposed rule also requires a business plan to analyze the proposed reduction loan's cost effectiveness based on the best historical fishing revenue and expense date available in the reduction fishery. NMFS is a likely source for this information, but these data are considered confidential at the individual fishing vessel level required by the regulations. The regulations in 50 CFR 600 Subpart E state that this type of information can only be released to NMFS employees or contractors, state employees, and Council staff or contractors. Thus, business planners will not have access to this information. The interim final rule should address this by requiring NMFS to provide, in an aggregate form, the data business planners need.

*Response*: The proposed rule intends catch allocation data to be aggregate data for all parties authorized to fish in the reduction fishery rather than individual data for each such party. The interim final rule revises the proposed rule to make this intent clearer (see § 600.1003(j) and § 600.1005(f)).

Section 253.27(q)(5)(1) of the proposed rule merely requires that business plans include the "Best historical fishing revenue and expense data (and any other relevant productivity measures) available in the reduction fishery." This neither requires these data to be provided at the individual fishing vessel or fishing permit level nor requires those data to be identified with specific fishing vessels or fishing permits. The interim final rule revises this aspect of the proposed rule to clarify that NMFS seeks the "best and most representative historical...data... available..." (see § 600.1003(n)(5)(l)).

NMFS does not know, in every fishery that may become the subject of a reduction request (which includes fisheries managed by states), who may have the best available data. NMFS may have these data for some fisheries, but may not have them for others. The fishing industry itself generally is the source of these data, and, if adequate data have not been elsewhere gathered, business planners must arrange to make available sufficiently representative data from the industry in order to make the business planners' case.

This aspect of the rule does not require NMFS to violate data confidentiality, and NMFS intends, upon request, to make available to business planners, in a way that does not violate data confidentiality, whatever useful data NMFS has.

*Comment 17*: The proposed rule requires the FMCs to provide the names and addresses of fishing permit holders authorized to fish in a reduction fishery, but NMFS (as the permitting authority) has the most current information and should supply the information itself.

*Response*: NMFS has these data for fishing permits in Federal fisheries. Nevertheless, the referenda aspect of the statutory reduction provisions requires NMFS, "in consultation with the FMC..." to "identify, to the extent practicable, and notify all permit or vessel owners who would be affected by the..." (16 U.S.C. App. 1861a) reduction. The proposed rule was premised on the assumption that an FMC would ask NMFS for the data needed to complete this aspect of a reduction request, examine the data NMFS provided, and, where necessary, consult with NMFS about any aspect of the data before confirming the data by including them in a reduction request to NMFS. NMFS continues to believe this is the most appropriate approach. Moreover, reduction programs can involve state, as well as Federal, fisheries, and NMFS may not have these data for fishing permits in state fisheries.

The interim final rule revises the proposed rule to clarify that NMFS is a source of Federal fishing permit data (see § 600.1003(i) and § 600.1005(e)).

*Comment 18*: The proposed rule requires the FMCs to provide the names and addresses of likely post-reduction fish buyers, but NMFS has this information in NMFS' dealer permit database and should, consequently, remove this requirement.

*Response*: The proposed rule requires business planners, not FMCs, to provide this information (although FMCs must include business plans with reduction

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requests). NMFS may not always have these data even for all Federal fisheries, let alone state fisheries. Where NMFS has these data, however, NMFS will be pleased to supply the data to business planners for their review, (where appropriate) revision, and inclusion in their business plans. Where NMFS does not have these data, business planners must produce the data for inclusion in their business plans.

*Comment 19*: Business planners must be able to gauge the amount of time NMFS will take to implement reduction. The regulations should specify a maximum time for the agency to do this.

*Response*: NMFS will process reduction requests as quickly as NMFS can, but cannot specify time limits for doing so.

*Comment 20*: Reduction amendments to FMPs may not always be necessary to accommodate reduction because "some Councils may be able to adjust management plans through a framework adjustment rather than a full plan amendment." The interim final rule should change "reduction amendment" to "reduction amendment or framework adjustment."

*Response*: The interim final rule revises the proposed rule's definition of the term "reduction amendment" to include framework adjustments (see the definition of this term in § 600.1000).

*Comment 21*: In some cases, latent fishing permits may be held by parties who do not own fishing vessels. The basis of the referendum voter lists should be explained ("in particular, whether it is based on vessels or permits"). The proposed rule "does not state if a reduction program could apportion voting rights based on landings, permit categories, days-at-sea usage, or other criteria." Referenda results "may require as much as one-third of the industry to fund a program they oppose." This could both be unfair and make designing successful reductions difficult. In a fishery where the few catch most of the fish, the many who catch few of the fish could force the former into a reduction they oppose. (The example given is a 100 permit fishery where 20 percent of the fishing permit holders catch 80 percent of the fish). "The interim final rule should clearly state how voting rights are apportioned...[and should allow apportionment] based on relative criteria determined by the designers of the program." The proposed rule does not specify what happens if an eligible voter is inadvertently omitted. The interim final rule should provide for an appeal process prior to referendum ballot distribution.

*Response*: Referenda voters under the statutory reduction provisions are "permit or vessel owners who would be affected by the program..." The rule mirrors the statutory language by including either fishing vessel owners or fishing permit owners as potential referenda voters. Nevertheless, because reduction programs can occur only in limited access fisheries, NMFS believes referenda voters will always be those who hold fishing permits at the time of the referenda.

The proposed rule requires each reduction implementation plan to include the names and addresses of all parties eligible to vote in a referendum. The interim final rule, however, revises the proposed rule to allow referenda before reduction implementation plans. This requires public comment about voter eligibility to occur earlier in the reduction process. Consequently, the interim final rule also revises the proposed rule to make the names and addresses of eligible voters subject to public comment by including them in the **Federal Register** notice that NMFS publishes when NMFS accepts a request for a financed reduction program (see § 600.1003(i) and § 600.1004(a)).

During the proposed rule's formulation, NMFS considered the possibility of apportioning referenda votes according to various criteria. NMFS believed, however, that the most equitable approach in the greatest number of cases is a one fishing permit/one vote rule. NMFS still believes this. NMFS believes that the concern in this comment might be better addressed by an FMC. This Council, by refusing to request a reduction program (based on a business plan that allows the many who catch little to force a reduction of their fishing permits on the few who catch much) unless it appears to be in the best conservation and management interest of the reduction fishery and in the best economic interest of all post-reduction harvesters in the reduction fishery. However, NMFS does not, for a variety of reasons, anticipate that this hypothetical situation will often occur. Initiating a financed reduction program requires NMFS, for example, to determine that post-reduction harvesters will be able to repay the reduction loan. If, prospectively, the cost of buying 80 percent of the fishing permits that produce 20 percent of the fish were so high that the remaining 20 percent of fishing permit holders could not, with 20 percent more fish to harvest, reasonably afford to repay that cost over 20 years at a maximum fee limited to 5 percent of ex-vessel landings, then NMFS could decide not to initiate the reduction program.

*Comment 22*: The interim final rule should address the impact of fishing vessels or fishing permits being sold, bankruptcies, and corporate dissolutions during the interim between bid acceptance and actual fishing capacity reduction.

*Response*: Bids are irrevocable offers. NMFS' acceptance of bids creates reduction contracts that entitle NMFS to specific performance of the contract obligations. This is as far as NMFS can reasonably go to ensure that reduction contracts culminate in the reduction results upon which referenda are based. NMFS will, as a matter of course, take whatever legal action may be available to NMFS to enforce specific performance of reduction contracts, but cannot predict the outcome of hypothetical future events. NMFS realizes that some circumstances (e.g., bankruptcy) could conceivably delay or prevent NMFS' enforcing specific performance, but NMFS will have to deal with these circumstances as they present themselves during the conduct of each reduction program. Nevertheless, the interim final rule revises the proposed rule to more specifically address the impact of these potential occurrences (see § 600.1011, particularly § 600.1011(f) and (g)).

*Comment 23*: "There may be a long period between bidding and actual implementation of the program. While at some point the bidders must commit to participation...they should...[be able to] withdraw up to the point...referendum ballots are prepared."

*Response*: The proposed rule requires NMFS immediately after bid closing to accept bids, notify bidders, and conduct a referendum.

The proposed rule also requires NMFS to tally all ballots and notify all referendum voters, within seven business days after the last day for receipt of ballots, of the referendum results.

Additionally, in response to other comments about the proposed rule, the interim final rule revises the proposed rule to restrict post-bidding referenda to situations in which bidding results are insufficient for the maximum reduction loan amount specified in the business plan to reduce the minimum amount of fishing capacity specified in the business plan (see § 600.1010(c)).

NMFS will do everything possible to keep the elapsed time between bid closing and actual reduction as short as possible. NMFS fully realizes the commercial necessity of doing so.

NMFS' reduction experience in the Northeast multispecies fishery demonstrates that irrevocable bids are essential to effective reduction. Irrevocability will limit bidding to fishing permit or fishing vessel owners who are serious about reduction. This will also prevent the situation in which bid results that initially conformed with a business plan's capacity reduction specifications become nonconforming because of subsequent bid withdrawals.

*Comment 24*: Invitations to bid "should include projections of the benefits of capacity reduction on the management plan for the subject species, notice of possible capital gains tax liabilities, and other limitations such as to CCF contributions. This information may not be readily apparent to permit holders."

*Response*: The reduction plan that NMFS publishes in the **Federal Register** will, for each financed reduction program, "describe in detail all relevant aspects of implementing..." each reduction program. NMFS believes the reduction plan may be the better place to discuss, if appropriate, any matters like those involved in this comment. Invitations to bid are contractual in nature, and NMFS believes they should focus only on contractual matters.

*Comment 25*: The interim final rule "should specify that NMFS will follow established standards for conducting referenda." The proposed rule does not specify that voting would be conducted by secret ballot, but the interim final rule should.

*Response*: NMFS does not know to what standards this comment refers. The interim final rule revises the proposed rule to clarify ballot confidentiality (see § 600.1010(d)(10)).

*Comment 26*: Where reduction programs involve withdrawing fishing vessels from fishing, the proposed rule requires state registered fishing vessels to always be scrapped (rather than either being scrapped or having their titles restricted). This complicates reduction programs involving both Federally registered and state registered fishing vessels, and may increase reduction cost or put owners of state-registered fishing vessels at a disadvantage. Some states may have the ability to impose title restrictions that will prevent the future use of state-registered fishing vessels in other fisheries. Fishing vessels not required to be scrapped should not be allowed to be sold to other countries if they exacerbate overcapacity in (presumably) any other fishery in the world. "Vessels should also not be allowed to be sold to foreigners and then enter a fishery in U.S. waters that may not be subject to U.S. jurisdiction."

*Response*: Although some states may have this title-restriction ability, NMFS has no way of ensuring that these states will enforce such title restrictions for as long as the fishing vessels exist. Moreover, little may prevent a fishing vessel owner whose fishing vessel title has been restricted in one State from re-registering the vessel in another state that cannot or will not similarly restrict the vessel's title. Federal title restrictions for Federally-documented fishing vessels are effective for reduction purposes, but state title restrictions for state-registered fishing vessels may not always be effective.

For the reasons stated in the preamble to the proposed rule, NMFS does not believe it should, for fishing vessels involved in financed reduction programs, impose any non-statutory use restrictions. No foreign country need allow these fishing vessels to be registered under the country's national flag or harvest fisheries resources under the country's national jurisdiction if the country believes that this registration is inconsistent with: the country's economic interests, the country's fisheries conservation and management responsibilities, the country's obligations under treaties or international law, or any other aspect of the country's sovereign affairs. Finally, all vessels fishing in U.S. waters are subject to U.S. jurisdiction.

*Comment 27*: The interim final rule should state that reduction loan repayment is the only basis for post-reduction fee increases. The interim final rule should "describe the criteria NMFS will use to increase the fee amount rather than extend the period of the payback... This should include a determination that the increased fee will not result in a significant impact on ...[post-reduction fishermen or communities]."

*Response*: The only statutory authority NMFS has for any reduction fee (including the subsequent increase of an initial fee) is repayment of a reduction loan. Absent specific circumstances that clearly warrant the contrary, NMFS has no particular preference, in the instance of a reduction loan whose initial maturity was shorter than the statutory maximum, for either fee increases or longer repayment periods. NMFS will certainly attempt to avoid significantly adverse effects on post-reduction harvesters and fishing communities, but, where actual gross revenue experience in a reduction fishery clearly indicates the projected need for a fee increase in order to repay a reduction loan within the maximum maturity, NMFS is obliged to increase the fee up to and including the maximum fee.

*Comment 28*: Harvesters base their referenda votes on the fee rate projected to be necessary to repay the reduction loan. Additional fees during the time that post-reduction harvesters are paying the reduction loan repayment fee may become an economic burden. The interim final rule should prohibit the adoption of additional fees (e.g., for observer programs, for research or enforcement costs) during the period the industry is paying back reduction loan.

*Response*: Neither the reduction framework rule nor reduction regulations implementing any reduction program can control matters not pertinent to fishing capacity reduction. Fees involving matters other than the repayment of reduction loans may become necessary or advisable at some time during the 20 years during which reduction loans are repayable. While NMFS will always attempt to avoid fees that have significant adverse impacts, neither the reduction framework rule nor reduction program implementation regulation can prohibit whatever non-reduction fees may become necessary or advisable in the future. Furthermore, a reduction program should make the fishery economical and paying reduction fees should not be overly burdensome.

*Comment 29*: The proposed rule's requirement that the fishing industry submit business plans and the FMCs make certain other submissions places an enormous burden on the industry and the Councils—or, for state requests, on the states—to prepare capacity reduction programs. This shifts the burden of preparation from the Secretary to the Council and the industry. This is a shift that has not been accompanied by an increase in Council resources. Business plans should not always be required. The interim final rule should allow flexibility in determining the lead authority for the preparation of a financed reduction program or, alternatively, NMFS should immediately identify resources that will be made available to Councils to meet the requirements imposed by the regulation.

*Response*: For the reasons stated in the preamble to the proposed rule, NMFS believes that the business plan requirements appropriately place, on a reduction's industry proponents, the burden of developing proposals for financed reduction programs. NMFS realizes that business plans require industry to undertake a large effort. This is, however, no different from planning

for other business investments. NMFS views financed reduction programs as post-reduction harvesters making business investments in their economic future by retiring some of their competition, thereby increasing their harvests of finite natural resources. NMFS can lend post-reduction harvesters the money required to make this investment. As a lender, however, it is not appropriate for NMFS to do the business planning that may determine whether the investment succeeds or fails. Moreover, no one is more qualified to do this business planning than the harvesters affected by the plan and who will be required to mortgage, in effect, up to 5 percent of their future gross revenue over as much as 20 years to repaying the reduction investment's cost. Reduction planning is expensive, but so is most business planning. Reduction planning may, however, from time-to-time be eligible for grants. The Saltonstall-Kennedy Fisheries Research and Development Program's fiscal year 2000 grant cycle includes reduction planning.

Although FMCs have the lesser burden of reviewing, rather than preparing, business plans, the burden is one that cannot reasonably be avoided. It is the FMCs' responsibility to manage and conserve the national fisheries. Determining if a reduction program will assist in this is integral to an FMC's mandate. The reduction framework rule is not the proper venue for addressing FMC personnel or resource matters.

*Comment 30*: "By failing to list the four possible funding sources included in the statute, the proposed rule sends a strong message that reduction programs must be industry funded. The interim final rule should clearly identify possible funding sources and ...emphasize that industry funding is only one way to finance a reduction program."

*Response*: Financed reduction programs, in which the direct beneficiaries of a reduction program repay the programs' cost, are the preferred way of funding most reduction programs. The proposed rule, however, also equally addressed subsidized reduction programs, in which the taxpayers or other contributors fund reduction program costs. These are the only two basic methods of funding reduction program costs. Under the proposed rule, if any portion of a reduction program's cost is funded by a reduction loan, the reduction program is a financed reduction program. All other reduction programs are subsidized reduction programs, even though three different statutory funding sources are included in this category: (1) appropriations under the reduction provisions of the Magnuson-Stevens Act, (2) appropriations under the Saltonstall-Kennedy Act, and (3) contributions from States or other public or private sources. In the first 2 funding sources for subsidized reduction programs, Federal taxpayers provide the subsidy; in the third, State taxpayers or other public or private entities provide the subsidy. There appears to be no functional reason for the reduction framework rule to separately address the 3 different sources of subsidized funding.

*Comment 31*: Different industry groups may present competing business plans to the FMCs. The proposed rule does not provide criteria for deciding what industry groups have standing. "Do the FMCs decide which proposals are forwarded to the Secretary for review? How will specific reduction proposals be compared and how will the choice be made between them?" The interim final rule should allow the FMCs to decide what reduction request to forward to NMFS, but should clearly explain the criteria the FMCs should consider in making this decision.

*Response*: NMFS believes it is best to leave this to the FMCs' discretion. NMFS cannot, in a fishery subject to an FMC's jurisdiction, undertake a reduction program unless the FMC first requests NMFS to do so. Consequently, the FMCs have discretion to entertain reduction proposals from whatever industry reduction proponents the FMCs deem appropriate. The FMCs may reject proposals, merge or consolidate proposals, or accept proposals as submitted. If the industry proponents of a financed reduction program and the appropriate FMC cannot come to agreement about a prospective reduction program, it makes little sense for the FMC to request a financed reduction program. In financed reduction programs, NMFS believes the FMCs should defer to representative business planners who make a strong case for increasing the economic efficiency of post-reduction harvesters in the reduction fishery and, most particularly, for the widespread industry support that successful referenda require. Proposals for financed reduction programs that do not potentially enjoy widespread industry support will fail and waste much time, effort, and resources.

*Comment 32*: Reduction "is important for the preservation of natural resources and the economic stability of American fisheries."

*Response*: NMFS agrees.

*Comment 33*: The requirement that a proposed reduction be lawful at the time of reduction must be made clear. No person or government body can guarantee what will be lawful in the future. Future judicial interpretation is always an unknown. As long as a proposed reduction is not known to be unlawful at the time it is requested, all such requirements should be deemed satisfied.

*Response*: All reduction programs will be lawful at the time of their occurrence, and NMFS agrees that no one can guarantee what will be lawful in the future.

*Comment 34*: The proposed rule is sufficient for fisheries under Federal jurisdiction. For state-managed fisheries, however, it would be useful to have a sample request and business plan accessible at NMFS' web site.

*Response*: The proposed rule outlined the required contents of reduction requests and business plans for both Federal and state fisheries. NMFS does not have any samples that NMFS could post at NMFS' web site. NMFS is, however, willing to advise all parties about reduction in any appropriate way NMFS can.

*Comment 35*: The proposed rule "has been thoughtfully and thoroughly developed..." and "has great merit and practical application ..." to the salmon driftnet and purse seine fishery in Bristol Bay, Alaska.

*Response*: NMFS notes this comment.

*Comment 36*: "In some cases...industry-funded license reductions may represent the only viable alternative to achieving needed reductions of capacity. In complex fisheries, overcapacity and inadequate management in any major fishery can lead to adverse consequences for other fisheries."

*Response*: NMFS agrees.

*Comment 37*: Where fishing permit reductions involve Bristol Bay and Chignic, the number of fishing permits bought back from local residents must be proportional with the number of fishing permits bought back from parties who do not reside in Alaska. 1,325 Bristol Bay salmon fishing permits were initially issued to residents of the Bristol Bay and Chignic watershed region. Today, only about 900 of these remain owned by local residents. Each fishing permit sold to non-residents of the local area results in the loss of 2 crewmen jobs from the local economy. This devastates the local economy.

*Response*: A framework rule involving matters common to all reduction programs is not the appropriate place to address this matter.

*Comment 38*: The "technical requirements for information ...[should not be] implemented in a way that the available databases and their managers

cannot accommodate. Flexibility to meet the data variability and personnel constraints should be clearly provided."

*Response*: It is not clear to what "technical requirements for information" this comment related. Requiring unavailable data is nonfunctional. The interim final rule is a framework rule common to all reduction programs, and NMFS will accommodate specific data or technical information circumstances that do not reasonably allow individual requests for reduction programs to comply with the framework rule. The interim final rule revises the proposed rule to provide flexibility in this and other respects (see § 600.1001(f)).

*Comment 39*: Reduction planners (either industry business planners or Government reduction planners) will be unqualified to fully understand fisheries complexity and to "comprehensively formulate a feasible...plan." Theoretical reduction plans might not achieve the intended purpose, and might have unplanned impacts on "the permit holder, vessel owner, financiers, and buyers (fish fee collectors)..." Experience demonstrates that "decisions are reached to appease political agendas, therefore, constituents of the fisheries will not take a plan or program at face value." Industry members will incur substantial expense in analyzing reduction plans. Reduction plans will involve a major economic impact on small fishery businesses. The "massive economic data that will be required..." may be nonexistent.

*Response*: Financed reduction programs are based on business plans that the fishing industry itself develops. When FMCs request financed reduction programs, they must base their requests on those business plans. If NMFS undertakes financed reduction programs, NMFS must, to the greatest extent possible, base these programs on those business plans. Moreover, all fishing permit holders or fishing vessel owners affected have the opportunity, through a referendum, to approve or reject the business plans upon which financed reduction programs are based. A financed reduction program is not possible unless at least two-thirds of those voting in a referendum approve the fee necessary to repay a reduction loan.

Subsidized reduction programs are based on implementation plans that NMFS develops from general FMC recommendations. The rule provides ample opportunity for the views of all affected parties to be heard and duly considered.

Whether to offer one's fishing capacity for reduction in either a financed or subsidized reduction program is the voluntary decision of each fishing permit holder and/or fishing vessel owner.

*Comment 40*: A business plan should be subjected to a referendum of fishing permit holders and fishing vessel owners. Additionally, the fish buyers that are responsible for collecting the fee that repays a reduction loan should vote in a referendum about (presumably) the "fee collection, disbursement, and accounting..." aspects of the reduction. Moreover, a referendum committee of fishing vessel and fishing permit owners and fish buyers should review the results of all referenda involving financed reduction programs "to alleviate [sic] any questions by the fishery as to the valid tally of support or non-support..." A subsidized reduction program should also be subjected to a referendum of fishing permit and fishing vessel owners.

*Response*: The Magnuson-Stevens Act reduction provisions authorize referenda only for fee payers (fish sellers), not fee collectors (fish buyers). Fish buyers pay no fee, and cannot vote in referenda about fee payment. The statutory reduction provisions do not authorize referenda for subsidized reduction programs, where no one either pays or collects a fee. Those provisions do, however, require NMFS to consult with fish sellers, fish buyers, and all other affected parties through the development and implementation of subsidized reduction programs.

NMFS is the referendum authority under the statutory reduction provisions, and NMFS believes it can competently exercise this authority. NMFS does not, consequently, perceive a need for fish-seller and fish-buyer committees that will review referenda results. Moreover, the fact that referenda may sometimes follow irrevocable bidding precludes any referenda review or collaboration that lengthens the time between the submission of irrevocable bids and completing the reduction programs to which the bids relate.

*Comment 41*: It is good "that industry is expected to pay for...[reduction] in the long run.", but landing taxes are already high ("nearly 10 percent off the top for salmon in

Alaska...") This, combined with the high cost of business and depressed markets, threatens the survival of many family fishing businesses. Further landing taxes should be minimal. As an alternative, consider putting "a large tax [25 percent or more] on the sales of permits."

*Response*: In financed reduction programs, the industry's business plans project the amount by which fishing capacity is reduced and the prospective fee rate necessary to pay for that reduction. Fee rates are based on post-reduction gross revenue that can only be projected over the life of the reduction loans, but all business is planned on the basis of future income that can only be projected. For a financed reduction loan to be possible, affected fishing vessel or fishing permit owners must vote in a referendum to approve the fee necessary to repay a reduction loan of a certain maximum amount whose disbursement in the form of reduction payments will reduce fishing capacity by a certain minimum amount. Business planners are unlikely to suggest a fee higher than post-reduction producers are reasonably likely to be able to pay, and, in the event they do, referenda voters are unlikely to approve a higher fee. Post-reduction fee rates may increase if post-reduction gross revenue proves to be lower than projected at the time of reduction, but may never exceed 5 percent of gross revenue. NMFS has no authority to consider the alternative this comment suggested.

*Comment 42*: The proposed rule is a "very well done plan on how to implement. It is believable, do-able, and very much needed in the fishing industry."

*Response*: NMFS notes this comment.

*Comment 43*: The comment applauds this avenue to reduce overcapitalization, return economic viability to fishing, and resolve many concerns (including bycatch and habitat) that the race for fish creates. Reductions reduces fishermen's pressure by eliminating "derby fisheries."

*Response*: NMFS agrees that fishing capacity reduction can help improve fisheries economics and fisheries conservation and management.

*Comment 44*: The fee for fish processed at sea cannot equitably be calculated in the same way as the fee for raw fish delivered ashore. Using appropriate recovery rates, NMFS should convert processed fish to the fish's round weight equivalent and calculate the fee based on the ex-vessel price for raw fish. If there is an ex-vessel price for raw fish delivered at sea, NMFS should use this. If not, NMFS should use the ex-vessel price for raw fish delivered ashore. Where all fish in a reduction fishery are processed and delivered at sea, NMFS must devise an appropriate proxy for a raw-fish, ex-vessel price. The fee should, in all cases, be based on the ex-vessel price for raw fish, rather than on the value that at-sea processing adds.

*Response*: NMFS considered this issue during the proposed rule's formulation, but elected in the proposed

rule to define "delivery value" and associated terms in a way that required payment of the reduction loan repayment fee based on fish in whatever form the fish existed at the time that the party who harvested the fish first delivered the fish for value to an unrelated fish buyer. This resulted, for fish harvested and processed at sea by the same party, in applying the fee rate to a higher delivery value than for fish delivered unprocessed and subsequently processed ashore by an unrelated fish buyer. There are good arguments for and against this approach, but, on balance, the more equitable way to resolve this issue is, as this comment suggests, to apply the fee to unprocessed fish. Doing so, however, creates considerable problems of its own.

One primary problem is a formula for accurately and efficiently converting the weight of processed fish to the weight of unprocessed fish. Another is a common value for unprocessed fish (prices may vary from time to time and from fish buyer to fish buyer). Nevertheless, the interim final rule revises the proposed rule to make the fee payable on the basis of the value of unprocessed fish. The interim final rule requires each business plan, for fisheries in which related parties both catch and process fish at sea, to formulate an accurate and efficient means of converting processed weight to unprocessed weight and of commonly valuing unprocessed fish (see, in § 600.1000, the definition of the terms "delivery value", "processed fish", and "unprocessed fish" and, in § 600.1003(n)(11), the new business plan requirement in this respect).

*Comment 45*: The framework rule represents an "excellent job of distilling common sense answers from some very difficult and complex issues."

*Response*: NMFS notes the comment.

*Comment 46*: The reduction loan repayment fee is the delivery value of fee fish times the fee rate. The definition of "delivery value", however, excludes "any deductions whatsoever" from the price that a fish buyer pays a fish seller when the fish seller first delivers fish to the fish buyer. This excludes "weighbacks" (small, unmarketable fish that the fish buyer deducts from the weight of delivered fish upon which the fish buyer calculates the delivery value). To comply with the statute's restriction of the fee to no more than 5 percent of ex-vessel value, the fee rate must be applied to the net weight of delivered fish (landed fish minus "weighbacks").

*Response*: Representative fish tickets provided with this comment deduct the weight of weighbacks from the gross weight of fee fish delivered before applying the purchase price per pound to the resulting net weight. Under these circumstances, the fee is not, as the proposed rule defined the relevant term, applied to the weighbacks because the fish buyer did not pay any "delivery value" for the weighbacks because they were deducted from the total weight of delivered fish before calculating the "delivery value" on the net weight of delivered fish. The rule bases the fee on whatever value fish buyers pay fish sellers for fish subject to the fee (see the definition of the term "delivery value" in § 600.1000).

*Comment 47*: This comment supported fishing capacity reduction, but is frustrated that "the system" moves so slowly.

*Response*: NMFS will expedite the process as much as it possibly can, but fishing capacity reduction is a complex undertaking. The FMP amendment required to complement each reduction program may become a major source of delay in implementing each reduction program.

*Comment 48*: The reduction concept is "totally objectionable and immoral." Allowing "two thirds of the fishermen in a fishery..." to authorize the fee system required to repay a loan forces the other one third to repay a loan they do not want. The commenter objects to "forced loans." The commenter does not "believe in borrowing...", and "objects] to being forced to pay back a loan to stay fishing." Government should not be in the business of making loans. Reduction programs will not increase the price of post-reduction fish. The reduction concept "has the potential to force out small boat owners."

*Response*: NMFS notes the comment. The Magnuson-Stevens Act authorizes reduction programs and specifies the way in which they must be conducted. This rule implements the Act.

The reduction concept has the potential to reduce fishing capacity of every size, but decisions about whether to offer any fishing capacity for reduction are always the voluntary decisions of individual fishing permit and/or fishing vessel owners.

*Comment 49*: Reduction might have the collateral effect of putting some shoreline processors out of business, because fewer fishing vessels could result in the need for fewer shoreline processors.

*Response*: Absent concurrent reductions in total allowable catches, post-reduction harvests will require the same fish processing capacity as pre-reduction harvests. NMFS hopes that fewer harvesters catching the same amount of fish will not always mean a need for fewer processors, but it sometimes unavoidably may. Nevertheless, the statutory objective of the reduction provisions of the Magnuson-Stevens Act is to reduce fishing capacity.

*Comment 50*: "Congress made it very clear in the Sustainable Fisheries Act of 1996 that all capacity reduction plans must achieve measurable and significant improvements in the cónservation and management of the fishery in question..."

*Response*: The rule reflects this aspect of the statutory reduction provisions.

**Summary of Revisions**

The proposed rule was Subpart D of 50 CFR Part 253. The interim final rule, however, is subpart L of 50 CFR Part 600.

The following sections of the interim final rule revise the proposed rule:

(1) *§ 600.1000*. This section is revised to add some terms, delete some terms, rename some terms, and amend the definition of some terms. Added terms include: "address of record", "bid", "business week", "fair market value", "fishing capacity reduction specifications", "net delivery value", "post-bidding referendum", "pre-bidding referendum", "processed fish", "reduction amendment specifications", "request", "treasury percentage", "unprocessed fish", and "vote". Deleted terms include: "consistency requirement", "control requirement", "Council", "necessity requirement", and "nonreplacement requirement". Renamed terms include: "program plan", which becomes "implementation plan"; "program regulations", which becomes "implementation regulations"; and "management plan", which becomes "controlling fishery management plan or program (CFMP)". Amended definitions include "borrower", "delivery value", "fee fish", "fish buyer", "fish delivery", "fish seller", "reduction amendment", "reduction fishery", and "reduction payment".

(2) *§ 600.1001(f)*. This section is added to provide for waivers of framework rule provisions in order to accommodate special circumstances in particular reduction fisheries.

(3) *§ 600.1002*. This section is new. It encompasses four general requirements, three of which were, in the proposed rule, terms defined in § 253.25. This new section required conforming revisions of various other sections of the proposed rule.

(4) *§ 600.1003*. Paragraph (g) of this section is revised to require each request for a financed reduction program to include the FMC's endorsement in principle of any reduction amendment

to the FMP that the business plan proposes. Paragraph (i) of this section is revised to clarify that NMFS is a source for the fishing permit data that this section requires in requests for financed reduction programs. Paragraph (j) of this section is revised to clarify that financed reduction program requests require aggregate, rather than individual, catch data. Paragraph (n)(11) of this section is revised to require the business plan included in each financed reduction request to evaluate the need for fee payment and collection provisions in each reduction fishery's implementation regulations different from the fee collection provisions in the framework rule.

(5) *§ 600.1005*. Paragraph (e) of this section is revised to clarify that NMFS is a source for the fishing permit data that this section requires in requests for subsidized reduction programs. Paragraph (f) of this section is revised to clarify that financed reduction program requests require aggregate, rather than individual, catch data.

(6) *§ 600.1010*. This section is revised extensively to provide for referenda preceding reduction amendments to FMPs as well as other referenda that may be required by no longer limiting referenda to those following reduction bidding. This also required appropriately revising other sections of the proposed rule that referenced referenda. Paragraph (d)(10) of this section is revised to establish the confidentiality of referenda ballots.

(7) *§ 600.1011*. This section, particularly paragraphs (f) and (g), is revised to clarify the effect of reduction payments that NMFS is unable to make because of reduction contract non-performance.

(8) *§ 600.1012*. This section is new. Paragraphs (b) and (c) of this section pertain to reduction loan interest rates, including the effect of any difference between prospective and actual reduction loan interest rates. The balance of this new section pertains to the reduction loan obligation, including principal amount, repayment term, and penalties for non-payment or non-collection.

(9) *§ 600.1013(c)(2)*. This paragraph is revised to clarify that the fee applicable to post-delivery fish bonuses is paid and collected when the bonuses first become known rather than when fish sellers first deliver fish to fish buyers.

(10) *§ 600.1015*. This section is new. This provision is necessary to ensure prompt payment.

(11) *§ 600.1016*. This section is new. This provision is necessary to ensure compliance.

The interim final rule further revises the proposed rule to make the rule briefer, clearer, and more internally consistent.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers OMB assigned to NOAA's information collection requirements pursuant to the Paperwork Reduction Act (PRA). This interim final rule codifies OMB control number 0648–0376 and OMB control number 0648–0413 for Part 600 Subpart L—Fishing Vessel Capacity Reduction.

## Classification

The Assistant Administrator for Fisheries, NMFS, determined that this interim final rule is consistent with the Magnuson-Stevens Act and other applicable laws.

This interim final rule has been determined to be significant for purposes of E.O. 12866, and a Regulatory Impact Review has been prepared by NMFS (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration when this rule was proposed that, if adopted as proposed, it would not have a significant economic impact on a substantial number of small entities. NMFS received no comments about this certification. Because this interim final rule only establishes a framework for implementing future reduction programs in specific reduction fisheries, each future reduction program will require its own implementation regulations and analysis of effects on small entities. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This interim final rule contains new collection of information requirements subject to the PRA that have been approved by OMB, under OMB Control No. 0648–0376. The estimates of the public reporting burden for these requirements are: 6,634 hours for developing a business plan, 4 hours per voter for a referendum, four hours to make a bid, 10 minutes per fishing trip to maintain records on transactions, 2 hours for a buyer's monthly report, 4 hours for a buyer's annual report, 2 hours for a buyer/seller report (where either a buyer refuses to a fee or the seller refuses to pay the fee to the buyer), and 270 hours for state approval of a business plan and amendments to a state fishery management plan.

Emergency clearance has also been obtained under OMB Control Number 0648-0413 to conduct, in accordance with the interim final rule's revised referenda procedures, more than one referendum for each reduction program if the circumstances of a reduction program require multiple referenda. The response time per voter for these referenda is 4 hours. NMFS intends to ask OMB for a three-year extension of the clearance for these requirements, which are currently only approved on an emergency basis.

The response time estimates above include the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and revising the collection of information.

Send comments regarding the extension of the emergency clearance or any other aspect of the collection of information requirements contained in this rule, including the burden hour estimates, and suggestions for reducing the burdens to NMFS (see **ADDRESSES**) and to OMB (see **ADDRESSES**).

## List of Subjects

*15 CFR Part 902*

Reporting and recordkeeping requirements.

*50 CFR Part 600*

Fishing capacity reduction, Fisheries, Fishing permits, Fishing vessels, Intergovernmental relations, Loan programs-business, Reporting and recordkeeping requirements.

Dated: May 8, 2000.

**Penelope D. Dalton,**

*Assistant Administrator for Fisheries, National Marine Fisheries Services.*

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, is amended and 50 CFR part 600 is amended as follows:

**15 CFR Chapter IX**

## PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

**Authority:** 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) is amended by adding under 50 CFR the following entries in numerical order:

**§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.**

* * * * *

(b) * * *

| CFR part or section where the information collection requirement is located | Current OMB control number (All numbers begin with 0648–) |
|---|---|
| * * * * * * * | |
| 50 CFR | |
| * * * * * * * | |
| 600.1001 | - 0376 |
| 600.1003 | - 0376 |
| 600.1005 | - 0376 |
| 600.1006 | - 0376 |
| 600.1009 | - 0376 |
| 600.1010 | - 0376 and–0413 |
| 600.1011 | - 0376 |
| 600.1012 | - 0376 |
| 600.1013 | - 0376 |
| 600.1014 | - 0376 |
| * * * * * * * | |

3. The authority citation for 50 CFR part 600 continues to read as follows:

**Authority:** 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

4. In § 600.5, a paragraph (c) is added to read as follows:

**§ 600.5 Purpose and scope.**

* * * * *

(c) This part also governs fishing capacity reduction programs under the Magnuson-Stevens Act.

5. A subpart L is added to read as follows:

**50 CFR Chapter VI**

**PART 600 MAGNUSON-STEVENS ACT PROVISIONS**

**Subpart L—Fishing Capacity Reduction**

Sec.

600.1000 Definitions.
600.1001 Requests.
600.1002 General requirements.
600.1003 Content of a request for a financed program.
600.1004 Accepting a request for, and determinations about initiating, a financed program.
600.1005 Content of a request for a subsidized program.
600.1006 Accepting a request for, and determinations about conducting, a subsidized program.
600.1007 Reduction amendments.
600.1008 Implementation plan and implementation regulations.
600.1009 Bids.
600.1010 Referenda.
600.1011 Reduction methods and other conditions.
600.1012 Reduction loan.
600.1013 Fee payment and collection.
600.1014 Fee collection deposits, disbursements, records, and reports.
600.1015 Late charges.
600.1016 Enforcement.
600.1017 Prohibitions and penalties.
600.1018 Implementation regulations for each program. [Reserved]

**Subpart L—Fishing Capacity Reduction**

**Authority:** 16 U.S.C. 1861a(b)–(e).

**§ 600.1000 Definitions.**

In addition to the definitions in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and in § 600.10 of this title, the terms used in this subpart have the following meanings:

*Address of Record* means the business address of a person, partnership, or corporation. Addresses listed on permits or other NMFS records are presumed to be business addresses, unless clearly indicated otherwise.

*Bid* means the price a vessel owner or reduction fishery permit holder requests for reduction of his/her fishing capacity. It is an irrevocable offer in response to the invitation to bid in § 600.1009.

*Borrower* means, individually and collectively, each post-reduction fishing permit holder and/or fishing vessel owner fishing in the reduction fishery.

*Business plan* means the document containing the information specified in § 600.1003(n) and required to be submitted with a request for a financed program.

*Business week* means a 7-day period, Saturday through Friday.

*Controlling fishery management plan or program (CFMP)* means either any fishery management plan or any state fishery management plan or program, including amendments to the plan or program, pursuant to which a fishery is managed.

*Delivery value* means:

(1) For unprocessed fish, all compensation that a fish buyer pays to a fish seller in exchange for fee fish; and

(2) For processed fish, all compensation that a fish buyer would have paid to a fish seller in exchange for fee fish if the fee fish had been unprocessed fish instead of processed fish.

Delivery value encompasses fair market value, as defined herein, and includes the value of all in-kind compensation or all other goods or services exchanged in lieu of cash. It is synonymous with the statutory term "ex-vessel value" as used in section 312 of the Magnuson Act.

*Deposit principal* means all collected fee revenue that a fish buyer deposits in a segregated account maintained at a federally insured financial institution for the sole purpose of aggregating collected fee revenue before sending the fee revenue to NMFS for repaying a reduction loan.

*Fair market value* means the amount that a buyer pays a seller in an arm's length transaction or, alternatively, would pay a seller if the transaction were at arm's length.

*Fee* means the amount that fish buyers deduct from the delivery value under a financed reduction program. The fee is the delivery value times the reduction fishery's applicable fee rate under section 600.1013.

*Fee fish* means all fish harvested from a reduction fishery involving a financed program during the period in which any amount of the reduction loan remains unpaid. The term fee fish excludes fish harvested incidentally while fishing for fish not included in the reduction fishery.

*Final development plan* means the document NMFS prepares, under § 600.1006(b) and based on the preliminary development plan the requester submits, for a subsidized program.

*Financed* means funded, in any part, by a reduction loan.

*Fish buyer* means the first ex-vessel party who:

(1) in an arm's—length transaction, purchases fee fish from a fish seller;

(2) takes fish on consignment from a fish seller; or

(3) otherwise receives fish from a fish seller in a non arm's-length transaction.

*Fish delivery* means the point at which a fish buyer first purchases fee fish or takes possession of fee fish from a fish seller.

*Fishing capacity reduction specifications* means the minimum amount of fishing capacity reduction and the maximum amount of reduction loan principal specified in a business plan.

*Fish seller* means the party who harvests and first sells or otherwise delivers fee fish to a fish buyer.

*Fishery Management Plan (FMP)* means any Federal fishery management plan, including amendments to the plan, that the Secretary of Commerce approves or adopts pursuant to section 303 of the Magnuson-Stevens Act.

*Fund* means the Fishing Capacity Reduction Fund, and each subaccount for each program, established in the U.S. Treasury for the deposit into, and disbursement from, all funds, including all reduction loan capital and all fee revenue, involving each program.

*Implementation plan* means the plan in § 600.1008 for carrying out each program.

*Implementation regulations* mean the regulations in § 600.1008 for carrying out each program.

*Net delivery value* means the delivery value minus the fee.

*Post-bidding referendum* means a referendum that follows bidding under § 600.1009.

*Post-reduction* means after a program reduces fishing capacity in a reduction fishery.

*Pre-bidding referendum* means a referendum that occurs at any time after a request for a financed program but before a proposal under § 600.1008 of a implementation plan and implementation regulations.

*Preliminary development plan* means the document specified in § 600.1005(g) and required to be submitted with a request for a subsidized program.

*Processed fish* means fish in any form different from the form in which the fish existed at the time the fish was first harvested, unless any such difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

*Program* means each instance of reduction under this subpart, in each reduction fishery—starting with a request and ending, for a financed program, with full reduction loan repayment.

*Reduction* means the act of reducing fishing capacity under any program.

*Reduction amendment* means any amendment, or, where appropriate, framework adjustment, to a CFMP that may be necessary for a program to meet the requirements of this subpart.

*Reduction amendment specifications* mean the reduction amendment to a CFMP specified in a business plan.

*Reduction contract* means the invitation to bid under § 600.1009, together with each bidder's irrevocable offer and NMFS' conditional or non-conditional acceptance of each such bid under § 600.1009.

*Reduction cost* means the total dollar amount of all reduction payments to fishing permit owners, fishing vessel owners, or both, in a reduction fishery.

*Reduction fishery* means the fishery or portion of a fishery to which a program applies. The reduction fishery must specify each included species, as well as any limitations by gear type, fishing vessel size, geographic area, and any other relevant factor(s).

*Reduction loan* means a loan, under section 1111 and section 1112 of Title XI of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1279f and g App.), for financing any portion, or all, of a financed program's reduction cost and repayable by a fee under, and in accordance with, § 600.1012, § 600.1013, and § 600.1014.

*Reduction payment* means the Federal Government's fishing capacity reduction payment to a fishing permit owner, fishing vessel owner, or both, under a reduction contract. Additionally, it is payment for reduction to each bidder whose bid NMFS accepts under § 600.1009. In a financed program each reduction payment constitutes a disbursement of a reduction loan's proceeds and is for either revoking a fishing permit or both revoking a fishing permit and withdrawing a vessel from fishing either by scrapping or title restriction.

*Reduction permit* means any fishing permit revoked in a program in exchange for a reduction payment under a reduction contract.

*Reduction vessel* means any fishing vessel withdrawn from fishing either by scrapping or title restriction in exchange for a reduction payment under a reduction contract.

*Referendum* means the voting process under § 600.1010 for approving the fee system for repaying a reduction loan.

*Request* means a request, under § 600.1001, for a program.

*Requester* means a Council for a fishery identified in § 600.1001(c), a state governor for a fishery identified in § 600.1001(d), or the Secretary for a fishery identified in § 600.1001(e).

*Scrap* means to completely and permanently reduce a fishing vessel's hull, superstructures, and other fixed structural components to fragments having value, if any, only as raw materials for reprocessing or for other non-fisheries use.

*Subsidized* means wholly funded by anything other than a reduction loan.

*Treasury percentage* means the annual percentage rate at which NMFS must pay interest to the U.S. Treasury on any principal amount that NMFS borrows from the U.S. Treasury in order to generate the funds with which to later disburse a reduction loan's principal amount.

*Unprocessed fish* means fish in the same form as the fish existed at the time the fish was harvested, unless any difference in form represents, in the reduction fishery involved, the standard ex-vessel form upon which fish sellers and fish buyers characteristically base the delivery value of unprocessed fish.

*Vote* means a vote in a referendum.

### § 600.1001 Requests.

(a) A Council or the Governor of a State under whose authority a proposed reduction fishery is subject may request that NMFS conduct a program in that fishery. Each request shall be in writing and shall be submitted to the Director, Office of Sustainable Fisheries, NMFS. Each request shall satisfy the requirements of § 600.1003 or § 600.1005, as applicable, and enable NMFS to make the determinations required by § 600.1004 or § 600.1006, as applicable.

(b) NMFS cannot conduct a program in any fishery subject to the jurisdiction of a Council or a state unless NMFS first receives a request from the Council or the governor to whose jurisdiction the fishery is subject.

(c) For a fishery subject to the jurisdiction of a Council, only that Council can or must make the request. If the fishery is subject to the jurisdiction of two or more Councils, those Councils must make a joint request. No Council may make a request, or join in making a request, until after the Council conducts a public hearing about the request.

(d) For a fishery subject to the jurisdiction of a State, only the Governor of that State can make the request. If the fishery is subject to the jurisdiction of two or more states, the Governors of those States shall make a joint request. No Governor of a State may make a request, or join in making a request, until the State conducts a public hearing about the request.

(e) For a fishery under the direct management authority of the Secretary, NMFS may conduct a program on NMFS' own motion by fulfilling the requirements of this subpart that reasonably apply to a program not initiated by a request.

(f) Where necessary to accommodate special circumstances in a particular fishery, NMFS may waive, as NMFS deems necessary and appropriate, compliance with any specific requirements under this subpart not required by statute.

### § 600.1002 General requirements.

(a) Each program must be: (1) Necessary to prevent or end overfishing, rebuild stocks of fish, or achieve measurable and significant improvements in the conservation and management of the reduction fishery;

(2) Accompanied by the appropriate environmental, economic and/or socioeconomic analyses, in accordance with applicable statutes, regulations, or other authorities; and

(3) Consistent with the CFMP, including any reduction amendment, for the reduction fishery.

(b) Each CFMP for a reduction fishery must: (1) Prevent the replacement of fishing capacity removed by the program through a moratorium on new

entrants, restrictions on vessel upgrades, and other effort control measures, taking into account the full potential fishing capacity of the fleet;

(2) Establish a specified or target total allowable catch or other measures that trigger closure of the fishery or adjustments to reduce catch; and

(3) Include, for a financed program in a reduction fishery involving only a portion of a fishery, appropriate provisions for the post-reduction allocation of fish between the reduction fishery and the rest of the fishery that both protect the borrower's reduction investment in the program and support the borrower's ability to repay the reduction loan.

**§ 600.1003 Content of a request for a financed program.**

A request for a financed program shall:

(a) Specify the reduction fishery.

(b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.

(c) Specify whether the program is to be wholly or partially financed and, if the latter, specify the amount and describe the availability of all funding from sources other than a reduction loan.

(d) Project the availability of all Federal appropriation authority or other funding, if any, that the financed program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.

(e) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a).

(f) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b).

(g) If a reduction amendment is necessary, include an actual reduction amendment or the requester's endorsement in principle of the reduction amendment specifications in the business plan. Endorsement in principle is non-binding.

(h) Request that NMFS conduct, at the appropriate time, a referendum under § 600.1010 of this subpart.

(i) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester. The list shall take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves. The list may include any relevant information that NMFS may supply to the requester.

(j) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (i) of this section.

(k) Specify the criteria for determining the types and number of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

(1) The characteristics of the fishery;

(2) Whether the program is limited to a particular gear type within the reduction fishery or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor;

(3) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels;

(4) The reduction amendment required;

(5) The needs of fishing communities;

(6) Minimizing the program's reduction cost; and

(7) All other relevant factors.

(l) Include the requester's assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts.

(m) Include any other information or guidance that would assist NMFS in developing an implementation plan and implementation regulations.

(n) Include a business plan, prepared by, or on behalf of, knowledgeable and concerned harvesters in the reduction fishery, that:

(1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least reduction cost and in the minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Establish the appropriate point for NMFS to conduct a pre-bidding referendum and be sufficiently detailed to enable NMFS to readily:

(A) Design, propose, and adopt a timely and reliable implementation plan,

(B) Propose and issue timely and reliable implementation regulations,

(C) Invite bids,

(D) Accept or reject bids, and

(E) Complete a program in accordance with this subpart, and

(ii) Address, consistently with this subpart:

(A) The contents and terms of invitations to bid,

(B) Bidder eligibility,

(C) The type of information that bidders shall supply,

(D) The criteria for accepting or rejecting bids,

(E) The terms of bid acceptances,

(F) Any referendum procedures in addition to, but consistent with, those in § 600.1010, and

(G) All other technical matters necessary to conduct a program;

(2) Projects and supports the reduction fishery's annual delivery value during the reduction loan's repayment period based on documented analysis of actual representative experience for a reasonable number of past years in the reduction fishery;

(3) Includes the fishing capacity reduction specifications upon which both the pre-bidding referendum and the bidding under § 600.1009 will be based. The reduction loan's maximum principal amount cannot, at the interest rate projected to prevail at the time of reduction, exceed the principal amount that can be amortized in 20 years by 5 percent of the projected delivery value;

(4) States the reduction loan's repayment term and the fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over its repayment term;

(5) Analyzes and demonstrates the ability to repay the reduction loan at the minimum reduction level and at various reduction-level increments reasonably greater than the minimum one, based on the:

(i) Best and most representative historical fishing revenue and expense data and any other relevant productivity measures available in the reduction fishery, and

(ii) Projected effect of the program on the post-reduction operating economics of typical harvesters in the reduction fishery, with particular emphasis on the extent to which the reduction increases the ratio of delivery value to fixed cost and improves harvesting's other relevant productivity measures;

(6) Demonstrates how the business plan's proposed program meets, or will

meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(7) Demonstrates how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b);

(8) Includes, if a reduction amendment is necessary, the reduction amendment specifications upon which the pre-bidding referendum will be based;

(9) Includes an assessment of the program's potential impact on fisheries other than the reduction fishery, including an evaluation of the likely increase in participation or effort in such other fisheries, the general economic impact on such other fisheries, and recommendations that could mitigate, or enable such other fisheries to mitigate, any undesirable impacts;

(10) Specifies the names and addresses of record of all fish buyers who can, after reduction, reasonably be expected to receive deliveries of fee fish. This shall be based on the best information available, including any information that NMFS may be able to supply to the business planners;

(11) Specifies, after full consultation with fish buyers, any special circumstances in the reduction fishery that may require the implementing regulations to contain provisions in addition to, or different from, those contained in § 600.1013 and/or § 600.1014 in order to accommodate the circumstances of, and practices in, the reduction fishery while still fulfilling the intent and purpose of § 600.1013 and/or § 600.1014—including, but not limited to:

(i) In the case of reduction fisheries in which state data confidentiality laws or other impediments may negatively affect the efficient and effective conduct of the same, specification of who needs to take what action to resolve any such impediments, and

(ii) In the case of reduction fisheries in which some fish sellers sell unprocessed, and other fish sellers sell processed fish to fish buyers, specification of an accurate and efficient method of establishing the delivery value of processed fish; and

(12) Demonstrates by a survey of potential voters, or by any other convincing means, a substantial degree of potential voter support for the business plan and confidence in its feasibility.

(o) Include the requester's statement of belief that the business plan, the CFMP, the reduction amendment specifications, and all other request aspects constitute a complete, realistic, and practical prospect for successfully completing a program in accordance with this subpart.

**§ 600.1004 Accepting a request for, and determinations about initiating, a financed program.**

(a) *Accepting a request.* Once it receives a request, NMFS will review any request for a financed program to determine whether the request conforms with the requirements of § 600.1003. If the request does not conform, NMFS will return the request with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the **Federal Register** requesting public comments on the request. Such notice shall state the name and address of record of each eligible voter, as well as the basis for having determined the eligibility of those voters. This shall constitute notice and opportunity to respond about adding eligible voters, deleting ineligible voters, and/or correcting any voter's name and address of record. If, in NMFS' discretion, the comments received in response to such notice warrants it, or other good cause warrants it, NMFS may modify such list by publishing another notice in the **Federal Register**.

(b) *Determination about initiating a financed program.* After receipt of a conforming request for a financed program, NMFS will, after reviewing and responding to any public comments received in response to the notice published in the **Federal Register** under paragraph (a) of this section, initiate the program if NMFS determines that: (1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b);

(3) The program, if successfully implemented, is cost effective;

(4) The reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart and the borrower is capable of repaying the reduction loan. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart; and

(5) The program accords with all other applicable law;

**§ 600.1005 Content of a request for a subsidized program.**

A request for a subsidized program shall:

(a) Specify the reduction fishery.

(b) Project the amount of the reduction and specify what a reduction of that amount achieves in the reduction fishery.

(c) Project the reduction cost, the amount of reduction cost to be funded by Federal appropriations, and the amount, if any, to be funded by other sources.

(d) Project the availability of Federal appropriations or other funding, if any, that completion of the program requires, including the time at which funding from each source will be available and how that relates to the time at which elements of the reduction process are projected to occur.

(e) List the names and addresses of record of all fishing permit or fishing vessel owners who are currently authorized to harvest fish from the reduction fishery, excluding those whose authority is limited to incidentally harvesting fish from the reduction fishery during directed fishing for fish not in the reduction fishery. The list shall be based on the best information available to the requester, including any information that NMFS may supply to the requester, and take into account any limitation by type of fishing gear operated, size of fishing vessel operated, geographic area of operation, or other factor that the proposed program involves.

(f) Specify the aggregate total allowable catch in the reduction fishery during each of the preceding 5 years and the aggregate portion of such catch harvested by the parties listed under paragraph (e) of this section.

(g) Include a preliminary development plan that: (1) Specifies a detailed reduction methodology that accomplishes the maximum sustained reduction in the reduction fishery's fishing capacity at the least cost and in a minimum period of time, and otherwise achieves the program result that the requester specifies under paragraph (b) of this section. The methodology shall:

(i) Be sufficiently detailed to enable NMFS to prepare a final development plan to serve as the basis for NMFS to readily design, propose, and adopt a timely and reliable implementation plan and propose and issue timely and reliable implementation regulations, and

(ii) Include:

(A) The contents and terms of invitations to bid,

(B) Eligible bidders,

(C) The type of information that bidders shall supply,

(D) The criteria for accepting or rejecting bids, and

(E) The terms of bid acceptances;

(2) Specifies the criteria for determining the types and numbers of fishing permits or fishing permits and fishing vessels that are eligible for reduction under the program. The criteria shall take into account:

(i) The characteristics of the fishery,

(ii) Whether the program is limited to a particular gear type within the reduction fishery, or is otherwise limited by size of fishing vessel operated, geographic area of operation, or other factor,

(iii) Whether the program is limited to fishing permits or involves both fishing permits and fishing vessels,

(iv) The reduction amendment required,

(v) The needs of fishing communities, and

(vi) The need to minimize the program's reduction cost; and

(3) Demonstrates the program's cost effectiveness.

(h) Demonstrate how the program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a).

(i) Demonstrate how the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2).

(j) Specify any other information or guidance that assists NMFS in preparing a final development plan and a proposed implementation plan and proposed implementation regulations.

(k) Include the requester's statement of belief that the program constitutes a reasonably realistic and practical prospect for successfully completing a program in accordance with this subpart.

**§ 600.1006 Accepting a request for, and determinations about conducting, a subsidized program.**

(a) *Accepting a request.* NMFS will review any request for a subsidized program submitted to NMFS to determine whether the request conforms with the requirements of § 600.1005. If the request does not conform, NMFS will return it with guidance on how to make the request conform. If the request conforms, NMFS shall accept it and publish a notice in the **Federal Register** requesting public comments about the request.

(b) *Final development plan.* After receipt of a conforming request, NMFS will prepare a final development plan if NMFS determines that the reduction requested constitutes a realistic and practical prospect for successfully completing a program in accordance with this subpart. This includes enabling NMFS to readily design, propose, and adopt a timely and reliable implementation plan as well as propose and issue timely and reliable implementation regulations and otherwise complete the program in accordance with this subpart. NMFS will, as far as possible, base the final development plan on the requester's preliminary development plan. Before completing the final development plan, NMFS will consult, as NMFS deems necessary, with the requester, Federal agencies, state and regional authorities, affected fishing communities, participants in the reduction fishery, conservation organizations, and other interested parties in preparing the final development plan.

(c) *Reaffirmation of the request.* After completing the final development plan, NMFS will submit the plan to the requester for the requester's reaffirmation of the request. Based on the final development plan, the reaffirmation shall: (1) Certify that the final development plan meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) Certify that the CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2); and

(3) Project the date on which the requester will forward any necessary reduction amendment and, if the requester is a Council, proposed regulations to implement the reduction amendment. The requester shall base any necessary reduction amendment on the final development plan.

(d) *Determinations about conducting a subsidized program.* After NMFS' receipt of the requester's reaffirmation, any required reduction amendment, and any proposed regulations required to implement the amendment, NMFS will initiate the program if NMFS determines that: (1) The program meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(a);

(2) The CFMP meets, or will meet after an appropriate reduction amendment, the requirements in § 600.1002(b)(1) and (2); and

(3) The program is reasonably capable of being successfully implemented;

(4) The program, if successfully implemented, will be cost effective; and

(5) The program is in accord with all other applicable provisions of the Magnuson-Stevens Act and this subpart.

**§ 600.1007 Reduction amendments.**

(a) Each reduction amendment may contain provisions that are either dependent upon or independent of a program. Each provision of a reduction amendment is a dependent provision unless the amendment expressly designates the provision as independent.

(b) Independent provisions are effective without regard to any subsequent program actions.

(c) Dependent provisions are initially effective for the sole limited purpose of enabling initiation and completion of the pre-reduction processing stage of a program.

(d) All dependent provisions of a reduction amendment for a financed program are fully in force and effect for all other purposes only when NMFS either: (1) For bidding results that conform to the fishing capacity reduction specifications and are not subject to any other condition, notifies bidders, under § 600.1009(e)(3), that reduction contracts then exist between the bidders and the United States; or

(2) For bidding results that do not conform to the fishing capacity reduction specifications or are subject to any other condition, notifies bidders whose bids NMFS had conditionally accepted, under § 600.1010 (d)(8)(iii), that the condition pertaining to the reduction contracts between them and the United States is fulfilled.

(e) If NMFS does not, in accordance with this subpart and any special provisions in the implementation regulations, subsequently make all reduction payments that circumstances, in NMFS' judgment, reasonably permit NMFS to make and, thus, complete a program, no dependent provisions shall then have any further force or effect for any purpose and all final regulations involving such dependent provisions shall then be repealed.

**§ 600.1008 Implementation plan and implementation regulations.**

(a) As soon as practicable after deciding to initiate a program, NMFS will prepare and publish, for a 60-day public comment period, a proposed implementation plan and implementation regulations. During the public comment period, NMFS will conduct a public hearing of the proposed implementation plan and implementation regulations in each state that the program affects.

(b) To the greatest extent practicable, NMFS will base the implementation plan and implementation regulations for a financed program on the business plan. The implementation plan for a financed program will describe in detail

all relevant aspects of implementing the program, including:

(1) The reduction fishery;

(2) The reduction methodology;

(3) The maximum reduction cost;

(4) The maximum reduction loan amount, if different from the maximum reduction cost;

(5) The reduction cost funding, if any, other than a reduction loan;

(6) The minimum acceptable reduction level;

(7) The potential amount of the fee;

(8) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;

(9) The invitation to bid and bidding procedures;

(10) The criteria for determining bid acceptance;

(11) The referendum procedures; and

(12) Any relevant post-referendum reduction procedures other than those in the implementation regulations or this subpart.

(c) NMFS will base each implementation plan and implementation regulations for a subsidized program on the final development plan. The implementation plan will describe in detail all relevant aspects of implementing the program, including: (1) The reduction fishery;

(2) The reduction methodology;

(3) The maximum reduction cost;

(4) The reduction-cost funding, if any, other than Federal appropriations;

(5) The criteria for determining the types and number of fishing permits or fishing permits and fishing vessels eligible to participate in the program;

(6) The invitation to bid and bidding procedures;

(7) The criteria for determining bid acceptance; and

(8) Any relevant post-bidding program procedures other than those in the implementation regulations or this subpart.

(d) The implementation regulations will:

(1) Specify, for invitations to bid, bids, and reduction contracts under § 600.1009:

(i) Bidder eligibility,

(ii) Bid submission requirements and procedures,

(iii) A bid opening date, before which a bidder may not bid, and a bid closing date, after which a bidder may not bid,

(iv) A bid expiration date after which the irrevocable offer contained in each bid expires unless NMFS, before that date, accepts the bid by mailing a written acceptance notice to the bidder at the bidder's address of record,

(v) The manner of bid submission and the information each bidder shall supply for NMFS to deem a bid responsive,

(vi) The conditions under which NMFS will accept or reject a bid,

(vii) The manner in which NMFS will accept or reject a bid, and

(viii) The manner in which NMFS will notify each bidder of bid acceptance or rejection;

(2) Specify any other special referendum procedures or criteria; and

(3) Specify such other provisions, in addition to and consistent with those in this subpart, necessary to regulate the individual terms and conditions of each program and reduction loan. This includes, but is not limited to:

(i) Provisions for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with § 600.1013 and § 600.1014,

(ii) Prospective fee rate determinations, and

(iii) Any other aspect of fee payment, collection, deposit, disbursement, accounting, record keeping, and/or reporting.

(e) NMFS will issue final implementation regulations and adopt a final implementation plan within 45 days of the close of the public-comment period.

(f) NMFS may repeal the final implementation regulations for any program if: (1) For a financed program, the bidding results do not conform to the fishing capacity reduction specifications or a post-bidding referendum does not subsequently approve an industry fee system based on the bidding results;

(2) For a subsidized program, NMFS does not accept bids; and

(3) For either a financed program or a subsidized program, if NMFS is unable to make all reduction payments due to a material adverse change.

**§ 600.1009 Bids.**

(a) Each invitation to bid, bid, bid acceptance, reduction contract, and bidder—or any other party in any way affected by any of the foregoing—under this subpart is subject to the terms and conditions in this section: (1) Each invitation to bid constitutes the entire terms and conditions of a reduction contract under which:

(i) Each bidder makes an irrevocable offer to the United States of fishing capacity for reduction, and

(ii) NMFS accepts or rejects, on behalf of the United States, each bidder's offer;

(2) NMFS may, at any time before the bid expiration date, accept or reject any or all bids;

(3) For a financed program in which bidding results do not conform to the fishing capacity reduction specifications, NMFS' acceptance of any bid is subject to the condition that the industry fee system necessary to repay the reduction loan is subsequently approved by a successful post-bidding referendum conducted under § 600.1010. Approval or disapproval of the industry fee system by post-bidding referendum is an event that neither the United States nor the bidders can control. Disapproval of the industry fee system by an unsuccessful post-bidding referendum fully excuses both parties from any performance and fully discharges all duties under any reduction contract;

(4) For a financed program in one reduction fishery that is being conducted under appropriate implementation regulations simultaneously with another financed program in another reduction fishery, where the acceptance of bids for each financed program is conditional upon successful post-bidding referenda approving industry fee systems for both financed programs, NMFS' acceptance of all bids is, in addition to any condition under paragraph (a)(3) of this section, also subject to the additional conditions that both referenda approve the industry fee systems required for both financed programs—all as otherwise provided in paragraph (a)(3) of this section;

(5) Upon NMFS' acceptance of the bid and tender of a reduction payment, the bidder consents to:

(i) The revocation, by NMFS, of any reduction permit, and

(ii) Where the program also involves the withdrawal of reduction vessels from fishing:

(A) Title restrictions imposed by the U.S. Coast Guard on any reduction vessel that is federally documented to forever prohibit and effectively prevent any future use of the reduction vessel for fishing in any area subject to the jurisdiction of the United States or any state, territory, commonwealth, or possession of the United States, or

(B) Where reduction vessel scrapping is involved and the reduction vessel's owner does not comply with the owner's obligation under the reduction contract to scrap the reduction vessel, take such measures as necessary to cause the reduction vessel's prompt scrapping. The scrapping will be at the reduction vessel owner's risk and expense. Upon completion of scrapping, NMFS will take such action as may be necessary to recover from the reduction vessel owner any cost or expense NMFS incurred in causing the reduction vessel to be scrapped and any other damages NMFS may have incurred and such

owner shall be liable to the United States for such cost, expenses, and damages;

(6) Money damages not being an adequate remedy for a bidder's breach of a reduction contract, the United States is, in all particulars, entitled to specific performance of each reduction contract. This includes, but is not limited to, the scrapping of a reduction vessel;

(7) Any reduction payment is available, upon timely and adequately documented notice to NMFS, to satisfy liens, as allowed by law, against any reduction permit/and or reduction vessel; provided, however, that:

(i) No reduction payment to any bidder either relieves the bidder of responsibility to discharge the obligation which gives rise to any lien or relieves any lien holder of responsibility to protect the lien holder's interest,

(ii) No reduction payment in any way gives rise to any

liability of the United States for the obligation underlying any lien,

(iii) No lien holder has any right or standing, not otherwise provided by law, against the United States in connection with the revocation of any reduction permit or the title restriction or scrapping of any reduction vessel under this subpart, and

(iv) This subpart does not provide any lien holder with any right or standing to seek to set aside any revocation of any reduction permit or the title restriction or scrapping of any reduction vessel for which the United States made, or has agreed to make, any reduction payment. A lien holder is limited to recovery against the holder of the reduction permit or the owner of the reduction vessel as otherwise provided by law; and

(8) Each invitation to bid may specify such other terms and conditions as NMFS believes necessary to enforce specific performance of each reduction contract or otherwise to ensure completing each program. This includes, but is not limited to, each bidder's certification, subject to the penalties in § 600.1017, of the bidder's full authority to submit each bid and to dispose of the property involved in the bid in the manner contemplated by each invitation to bid.

(b) NMFS will not invite bids for any program until NMFS determines that:

(1) Any necessary reduction amendment is fully and finally approved and all provisions except those dependent on the completion of reduction are implemented;

(2) The final implementation plan is adopted and the final implementation regulations are issued;

(3) All required program funding is approved and in place, including all Federal appropriation and apportionment authority;

(4) Any reduction loan involved is fully approved;

(5) Any non-Federal funding involved is fully available at the required time for NMFS disbursement as reduction payments; and

(6) All other actions necessary to disburse reduction payments, except for matters involving bidding and post-bidding referenda, are completed.

(c) After making the affirmative determinations required under paragraph (b) of this section, NMFS will publish a **Federal Register** notice inviting eligible bidders to offer to the United States, under this subpart, fishing capacity for reduction.

(d) NMFS may extend a bid closing date and/or a bid expiration date for a reasonable period. NMFS may also issue serial invitations to bid if the result of previous bidding, in NMFS' judgment, warrant this.

(e) After the bid expiration date, NMFS will: (1) Analyze responsive bids;

(2) Determine which bids, if any, NMFS accepts; and

(3) Notify, by U.S. mail at each bidder's address of

record, those bidders whose bids NMFS accepts that a reduction contract now exists between them and the United States—subject, where appropriate, to the conditions provided for elsewhere in this subpart.

(f) NMFS will keep confidential the identity of all bidders whose bids NMFS does not accept. In financed programs where bidding results do not conform to the fishing capacity reduction specifications, NMFS also will keep confidential the identity of all bidders whose bids NMFS does accept until after completing a successful post-bidding referendum under § 600.1010.

**§ 600.1010 Referenda.**

(a) *Referendum success.* A referendum is successful if at least two-thirds of the ballots that qualify to be counted as referendum votes under subparagraph (d)(6) of this section are cast in favor of an industry fee system.

(b) *Pre-bidding referendum*—(1) *Initial referendum.* An initial pre-bidding referendum shall be conducted for each financed program. The business plan shall, subject to this subpart, determine the chronological relationship of the initial pre-bidding referendum to other pre-bidding aspects of the reduction process sequence. The initial pre-bidding referendum shall be based on the fishing capacity reduction specifications. If the initial pre-bidding referendum precedes the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the reduction amendment specifications. If the initial pre-bidding referendum follows the adoption of any necessary reduction amendment, the initial pre-bidding referendum shall also be based on the adopted reduction amendment;

(2) *Successful initial pre-bidding referendum.* If the initial pre-bidding referendum is successful, the reduction process will proceed as follows:

(i) If the initial pre-bidding referendum follows reduction amendment adoption, no second pre-bidding referendum shall be conducted.

(ii) If the initial pre-bidding referendum precedes reduction amendment adoption, a second pre-bidding referendum shall be conducted if, in NMFS' judgment, the reduction amendment subsequently adopted differs, in any respect materially affecting the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan, from the reduction amendment specifications upon which the initial pre-bidding referendum successfully occurred. The sole purpose of any second pre-bidding referendum shall be to determine whether the voters authorize an industry fee system despite any such difference between the reduction amendment specifications and a subsequently adopted reduction amendment.

(3) *Unsuccessful initial pre-bidding referendum.* If the initial pre-bidding referendum is unsuccessful, the reduction process will either cease or NMFS may suspend the process pending an appropriate amendment of the business plan and the request.

(c) *Post-bidding referendum.* A post-bidding referendum shall occur only if, in NMFS' judgment, the result of bidding under § 600.1009 does not conform, in any material respect, to the fishing capacity reduction specifications and such result justifies, in NMFS' judgment, conducting a post-bidding referendum. Bidding that results in reducing fishing capacity in any amount not less than the minimum fishing capacity reduction amount for any reduction loan amount not more than the maximum reduction loan amount, and otherwise achieves all material requirements of the fishing capacity reduction specifications, shall conform to the fishing capacity reduction specifications. The sole purpose of any post-bidding referendum shall be to determine whether voters authorize an industry fee system for bidding that results in reducing fishing capacity in

any amount materially less than the minimum amount in the fishing capacity reduction specifications.

(d) NMFS will conduct referenda in accordance with the following: (1) *Eligible voters.* The parties eligible to vote in each referendum are the parties whose names are listed as being eligible to vote in the notice published in the **Federal Register** under § 600.1004(a);

(2) *Ballot issuance.* NMFS will mail, by U.S. certified mail, return receipt requested, a ballot to each eligible voter. Each ballot will bear a randomly derived, 5-digit number assigned to each eligible voter. Each ballot will contain a place for the voter to vote for or against the proposed industry fee system and a place, adjacent to the 5-digit number, for the signature of the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf. Each ballot will contain a place for the person signing the ballot to print his or her name. NMFS will enclose with each ballot a specially-marked, postage-paid, pre-addressed envelope that each voter shall use to return the ballot to NMFS;

(3) *Voter certification.* Each ballot will contain a certification, subject to the penalties set forth in § 600.1017, that the person signing the ballot is the fishing permit or fishing vessel owner to whom the ballot is addressed or, if the fishing permit or fishing vessel owner is an organization, the person having authority to vote and cast the ballot on the organization's behalf;

(4) *Information included on a ballot.* Each ballot mailing will:

(i) Summarize the referendum's nature and purpose,

(ii) Specify the date by which NMFS must receive a ballot in order for the ballot to be counted as a qualified vote,

(iii) Identify the place on the ballot for the voter to vote for or against the proposed industry fee system, the place on the ballot where the voter shall sign the ballot, and the purpose of the return envelope,

(iv) For each pre-bidding referendum, state:

(A) The fishing capacity reduction specifications,

(B) The reduction loan's repayment term, and

(C) The fee rate, or range of fee rates, prospectively necessary to amortize the reduction loan over the loan's term,

(v) For each initial pre-bidding referendum that precedes reduction amendment adoption, state the reduction amendment specifications,

(vi) For each initial pre-bidding referendum that follows reduction amendment adoption, summarize the material aspects of the reduction amendment adopted,

(vii) For each second pre-bidding referendum, summarize how the adopted reduction amendment materially differs from the reduction amendment specifications upon which a successful initial pre-bidding referendum occurred and how this material difference affects the borrower's reduction investment in the program and the borrower's ability to repay the reduction loan,

(viii) For each post-bidding referendum, specify the actual bidding results that do not conform to the fishing capacity reduction specifications, and

(ix) State or include whatever else NMFS deems appropriate;

(5) *Enclosures to accompany a ballot.* Each ballot mailing will include:

(i) A specially-marked, postage-paid, and pre-addressed envelope that a voter must use to return the original of a ballot to NMFS by whatever means of delivery the voter chooses, and

(ii) Such other materials as NMFS deems appropriate;

(6) *Vote qualification.* A completed ballot qualifies to be counted as a vote if the ballot:

(i) Is physically received by NMFS on or before the last day NMFS specifies for receipt of the ballot,

(ii) Is cast for or against the proposed industry fee system,

(iii) Is signed by the voter,

(iv) Is the original ballot NMFS sent to the voter bearing the same 5-digit number that NMFS assigned to the voter, and

(v) Was returned to NMFS in the specially-marked envelope that NMFS provided for the ballot's return;

(6) *Vote tally and notification.* NMFS will:

(i) Tally all ballots qualified to be counted as referendum votes,

(ii) Notify, by U.S. mail at the address of record, all eligible voters who received ballots of:

(A) The number of potential voters,

(B) The number of actual voters who returned a ballot,

(C) The number of returned ballots that qualified to be counted as referendum votes,

(D) The number of votes for and the number of votes against the industry fee system, and

(E) Whether the referendum was successful and approved the industry fee system or unsuccessful and disapproved the industry fee system, and

(iii) If a successful referendum is a post-bidding referendum, NMFS will, at the same time and in the same manner, also notify the bidders whose bids were conditionally accepted that the condition pertaining to the reduction contracts between them and the United States is fulfilled;

(7) *Conclusiveness of referendum determinations.* NMFS' determinations about ballot qualifications and about all other referendum matters, including, but not limited to, eligible voters and their addresses of record, are conclusive and final as of the date NMFS makes such determinations. No matter respecting such determinations shall impair, invalidate, avoid, or otherwise render unenforceable any referendum, reduction contract, reduction loan, or fee payment and collection obligation under § 600.1013 and § 600.1014 necessary to repay any reduction loan;

(8) *Ballot confidentiality.* NMFS will not voluntarily release the name of any party who voted. NMFS will restrict the availability of all voter information to the maximum extent allowed by law; and

(9) *Conclusive authorization of industry fee system.* Each successful referendum conclusively authorizes NMFS' imposition of an industry fee system—including the fee payment, collection, and other provisions regarding fee payment and collection under § 600.1013 and § 600.1014—to repay the reduction loan for each financed program that NMFS conducts under this subpart.

**§ 600.1011 Reduction methods and other conditions.**

(a) *Reduction permits or reduction permits and reduction vessels.* Each program may involve either the surrender and revocation of reduction permits or both the surrender and revocation of reduction permits and the withdrawal from fishing either by title restriction or by scrapping of reduction vessels. No financed program may, however, require such title restriction or scrapping of reduction vessels unless the business plan voluntarily includes the same.

(b) *Reduction permit revocation and surrender.* Each reduction permit is, upon NMFS' tender of the reduction payment for the reduction permit, forever revoked. Each reduction permit holder shall, upon NMFS' tender of the reduction payment, surrender the original reduction permit to NMFS. The reduction permit holder, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction permit and with the fishing vessel that was used to harvest

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fishery resources under the reduction permit that could qualify the reduction permit holder or the fishing vessel owner for any present or future limited access system fishing permit in the reduction fishery.

(c) *Reduction vessel title restriction or scrapping.* For each program that involves reduction vessel title restriction or scrapping: (1) Each reduction vessel that is subject to title restriction only and is thus not required to be scrapped, is, upon NMFS' tender of the reduction payment, forever prohibited from any future use for fishing in any area subject to the jurisdiction of the United States or any State, territory, possession, or commonwealth of the United States. NMFS will request that the U.S. Coast Guard permanently restrict each such reduction vessel's title to exclude the reduction vessel's future use for fishing in any such area;

(2) Each reduction vessel owner whose reduction vessel is required to be scrapped shall, upon NMFS' tender of the reduction payment, immediately cease all further use of the reduction vessel and arrange, without delay and at the reduction vessel owner's expense, to scrap the reduction vessel to NMFS' satisfaction, including adequate provision for NMFS to document the physical act of scrapping; and

(3) Each reduction vessel owner, upon NMFS' tender of the reduction payment, forever relinquishes any claim associated with the reduction vessel and with the reduction permit that could qualify the reduction vessel owner or the reduction permit holder for any present or future limited access system fishing permit in the reduction fishery.

(d) *Fishing permits in a non-reduction fishery.* A financed program that does not involve the withdrawal from fishing or scrapping of reduction vessels may not require any holder of a reduction permit in a reduction fishery to surrender any fishing permit in any non-reduction fishery or restrict or revoke any fishing permit other than a reduction permit in the reduction fishery, except those fishing permits authorizing the incidental harvesting of species in any non-reduction fishery during, and as a consequence of, directed fishing for species in the reduction fishery.

(e) *Reduction vessels disposition.* Where a business plan requires the withdrawal from fishing of reduction vessels as well as the revocation of reduction permits: (1) Each reduction vessel that is not documented under Federal law must in every case always be scrapped, without regard to whether a program is a financed program or a subsidized program;

(2) No financed program may require any disposition of a reduction vessel documented under Federal law other than the title restriction in paragraph (b) of this section unless the business plan volunteers to do otherwise; and

(3) Any subsidized program may require the scrapping of reduction vessels documented under Federal law.

(f) *Reduction payments.* NMFS will disburse all reduction payments in the amount and in the manner prescribed in reduction contracts, except reduction payments that a bidder's reduction-contract nonperformance prevents NMFS from disbursing. In financed programs, the reduction loan's principal amount is the total amount of all reduction payments that NMFS disburses from the proceeds of a reduction loan. Any reduction payment that NMFS, because of a bidder's reduction-contract nonperformance, disburses but subsequently recovers, shall reduce the principal amount of the reduction loan accordingly.

(g) *Effect of reduction-contract nonperformance.* No referendum, no reduction contract, no reduction loan, and no fee payment and collection obligation under § 600.1013 and § 600.1014 necessary to repay any reduction loan, shall be impaired, invalidated, avoided, or otherwise rendered unenforceable by virtue of any reduction contract's nonperformance. This is without regard to the cause of, or reason for, nonperformance. NMFS shall endeavor to enforce the specific performance of all reduction contracts, but NMFS' inability, for any reason, to enforce specific performance for any portion of such reduction contracts shall not relieve fish sellers of their obligation to pay, and fish buyers of their obligation to collect, the fee necessary to fully repay the full reduction loan balance that results from all reduction payments that NMFS actually makes and does not recover.

(h) *Program completion.* Other than the payment and collection of the fee that repays a reduction loan and any other residual matters regarding reduction payments and the disposition of reduction permits and reduction vessels, a program shall be completed when NMFS tenders or makes all reduction payments under all reduction contracts that circumstances, in NMFS' judgment, reasonably permit NMFS to make.

**§ 600.1012 Reduction loan.**

(a) *Obligation.* The borrower shall be obligated to repay a reduction loan. The borrower's obligation to repay a reduction loan shall be discharged by fish sellers paying a fee in accordance with § 600.1013. Fish buyers shall be obligated to collect the fee in accordance with § 600.1013 and to deposit and disburse the fee revenue in accordance with § 600.1014.

(b) *Principal amount, interest rate, repayment term, and penalties for non-payment or non-collection.* The reduction loan shall be: (1) In a principal amount that shall be determined by subsequent program events under this subpart, but which shall not exceed the maximum principal amount in the fishing capacity reduction specifications;

(2) At an annual rate, that shall be determined by subsequent events, of simple interest on the reduction loan's principal balance that shall equal 2 percent plus the Treasury percentage; (3) Repayable over the repayment term specified in the business plan or otherwise determined by subsequent events; and

(4) Subject to such provisions as implementation regulations shall specify for the payment of costs and penalties for non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with § 600.1013 and § 600.1014.

(c) *Effect of prospective interest rate.* Any difference between a prospective interest rate projected, for the purpose of any aspect of reduction planning or processing under this subpart, before the U.S. Treasury determines the Treasury percentage and an interest rate first known after the U.S. Treasury determines the Treasury percentage shall not void, invalidate, or otherwise impair any reduction contract, any reduction loan repayment obligation, or any other aspect of the reduction process under this subpart. Should any such difference result in a reduction loan that cannot, at the maximum fee rate allowed by law, be repaid, as previously projected, within the maximum maturity, any amount of the reduction loan remaining unpaid at maturity shall be repaid after maturity by continuing fee payment and collection under this subpart at such maximum fee rate until the reduction loan's unpaid principal balance and accrued interest is fully repaid. The above notwithstanding, at the discretion of the Secretary, the reduction contract can be voided if a material adverse change affects the reduction contract, reduction loan obligation, or any other aspect of the reduction process under this subpart.

**§ 600.1013 Fee payment and collection.**

(a) *Amount.* The fee amount is the delivery value times the fee rate.

(b) *Rate.* NMFS will establish the fee rate. The fee rate may not exceed 5 percent of the delivery value. NMFS will establish the initial fee rate by calculating the fee revenue annually required to amortize a reduction loan over the reduction loan's term, projecting the annual delivery value, and expressing such fee revenue as a percentage of such delivery value. Before each anniversary of the initial fee rate determination, NMFS will recalculate the fee rate reasonably required to ensure reduction loan repayment. This will include any changed delivery value projections and any adjustment required to correct for previous delivery values higher or lower than projected.

(c) *Payment and collection.* (1) The full fee is due and payable at the time of fish delivery. Each fish buyer shall collect the fee at the time of fish delivery by deducting the fee from the delivery value before paying, or promising to pay, the net delivery value. Each fish seller shall pay the fee at the time of fish delivery by receiving from the fish buyer the net delivery value, or the fish buyer's promise to pay the net delivery value, rather than the delivery value. Regardless of when the fish buyer pays the net delivery value, the fish buyer shall collect the fee at the time of fish delivery;

(2) In the event of any post-delivery payment for fee fish— including, but not limited to bonuses—whose amount depends on conditions that cannot be known until after fish delivery, that either first determines the delivery value or later increases the previous delivery value, the fish seller shall pay, and the fish buyer shall collect, at the time the amount of such post-delivery payment first becomes known, the fee that would otherwise have been due and payable as if the amount of the post-delivery payment had been known, and as if the post-delivery payment had consequently occurred, at the time of initial fish delivery;

(3)(i) Each fish seller shall be deemed to be, for the purpose of the fee collection, deposit, disbursement, and accounting requirements of this subpart, both the fish seller and the fish buyer, and shall be responsible for all requirements and liable for any penalties under this subpart applicable to fish sellers and/or fish buyers, each time that a fish seller sells fee fish to:

(A) Any party whose place of business is not located in the United States, who does not take delivery or possession of the fee fish in the United States, who is not otherwise subject to this subpart, or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(B) Any party who is a general food-service wholesaler or supplier, a restaurant, a retailer, a consumer, some other type of end-user, or some other party not engaged in the business of buying fish from fish sellers for the purpose of reselling the fish, either with or without processing the fish, or

(C) Any other party who the fish seller has good reason to believe is a party not subject to this subpart or to whom or against whom NMFS cannot otherwise apply or enforce this subpart,

(ii) In each such case the fish seller shall, with respect to the fee fish involved in each such case, discharge, in addition to the fee payment requirements of this subpart, all the fee collection, deposit, disbursement, accounting, record keeping, and reporting requirements that this subpart otherwise imposes on the fish buyer, and the fish seller shall be subject to all the penalties this subpart provides for a fish buyer's failure to discharge such requirements;

(4) Fee payment begins on the date NMFS specifies under the notification procedures of paragraph (d) of this section and continues without interruption at the fee rates NMFS specifies in accordance this subpart until NMFS determines that the reduction loan is fully repaid. If a reduction loan is, for any reason, not fully repaid at the maturity of the reduction loan's original amortization period, fee payment and collection shall continue until the reduction loan is fully repaid, notwithstanding that the time required to fully repay the reduction loan exceeds the reduction loan's initially permissible maturity.

(d) *Notification.* (1) At least 30 days before the effective date of any fee or of any fee rate change, NMFS will publish a **Federal Register** notice establishing the date from and after which the fee or fee rate change is effective. NMFS will then also send, by U.S. mail, an appropriate notification to each affected fish seller and fish buyer of whom NMFS has notice;

(2) When NMFS determines that a reduction loan is fully repaid, NMFS will publish a **Federal Register** notice that the fee is no longer in effect and should no longer be either paid or collected. NMFS will then also send, by U.S. mail, notification to each affected fish seller and fish buyer of whom NMFS has knowledge;

(3) If NMFS fails to notify a fish seller or a fish buyer by U.S. mail, or if the fish seller or fish buyer otherwise does not receive the notice, of the date fee payments start or of the fee rate in effect, each fish seller is, nevertheless, obligated to pay the fee at the fee rate in effect and each fish buyer is, nevertheless, obligated to collect the fee at the fee rate in effect.

(e) *Failure to pay or collect.* (1) If a fish buyer refuses to collect the fee in the amount and manner that this subpart requires, the fish seller shall then advise the fish buyer of the fish seller's fee payment obligation and of the fish buyer's fee collection obligation. If the fish buyer still refuses to properly collect the fee, the fish seller, within the next 7 calendar days, shall forward the fee to NMFS. The fish seller at the same time shall also advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish that the fish seller delivered, and

(iv) The fish buyer's reason, if known, for refusing to collect the fee in accordance with this subpart;

(2) If a fish seller refuses to pay the fee in the amount and manner that this subpart requires, the fish buyer shall then advise the fish seller of the fish buyer's collection obligation and of the fish seller's payment obligation. If the fish seller still refuses to pay the fee, the fish buyer shall then either deduct the fee from the delivery value over the fish seller's protest or refuse to buy the fee fish. The fish buyer shall also, within the next 7 calendar days, advise NMFS in writing of the full particulars, including:

(i) The fish buyer's and fish seller's name, address, and telephone number,

(ii) The name of the fishing vessel from which the fish seller made or attempted to make fish delivery and the date of doing so,

(iii) The quantity and delivery value of each species of fee fish the fish seller delivered or attempted to deliver,

(iv) Whether the fish buyer deducted the fee over the fish seller's protest or refused to buy the fee fish, and

(v) The fish seller's reason, if known, for refusing to pay the fee in accordance with this subpart.

(f) *Implementation regulations at variance with this section.* If any special circumstances in a reduction fishery require, in NMFS's judgment, fee payment and/or collection provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section,

NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

**§ 600.1014 Fee collection deposits, disbursements, records, and reports.**

(a) *Deposit accounts.* Each fish buyer that this subpart requires to collect a fee shall maintain a segregated account at a federally insured financial institution for the sole purpose of depositing collected fee revenue and disbursing the fee revenue directly to NMFS in accordance with paragraph (c) of this section.

(b) *Fee collection deposits.* Each fish buyer, no less frequently than at the end of each business week, shall deposit, in the deposit account established under paragraph (a) of this section, all fee revenue, not previously deposited, that the fish buyer collects through a date not more than two calendar days before the date of deposit. Neither the deposit account nor the principal amount of deposits in the account may be pledged, assigned, or used for any purpose other than aggregating collected fee revenue for disbursement to the Fund in accordance with paragraph (c) of this section. The fish buyer is entitled, at any time, to withdraw deposit interest, if any, but never deposit principal, from the deposit account for the fish buyer's own use and purposes.

(c) *Deposit principal disbursement.* On the last business day of each month, or more frequently if the amount in the account exceeds the account limit for insurance purposes, the fish buyer shall disburse to NMFS the full amount of deposit principal then in the deposit account. The fish buyer shall do this by check made payable to the Fund subaccount to which the deposit principal relates. The fish buyer shall mail each such check to the Fund subaccount lockbox that NMFS establishes for the receipt of the disbursements for each program. Each disbursement shall be accompanied by the fish buyer's settlement sheet completed in the manner and form that NMFS specifies. NMFS will specify the Fund subaccount lockbox and the manner and form of settlement sheet by means of the notification in § 600.1013(d).

(d) *Records maintenance.* Each fish buyer shall maintain, in a secure and orderly manner for a period of at least 3 years from the date of each transaction involved, at least the following information: (1) For all deliveries of fee fish that the fish buyer buys from each fish seller:

(i) The date of delivery,

(ii) The seller's identity,

(iii) The weight, number, or volume of each species of fee fish delivered,

(iv) The identity of the fishing vessel that delivered the fee fish,

(v) The delivery value of each species of fee fish,

(vi) The net delivery value,

(vii) The identity of the party to whom the net delivery value is paid, if other than the fish seller,

(viii) The date the net delivery value was paid, and

(ix) The total fee amount collected;

(2) For all fee collection deposits to and disbursements from the deposit account:

(i) The dates and amounts of deposits,

(ii) The dates and amounts of disbursements to the Fund's lockbox account, and

(iii) The dates and amounts of disbursements to the fish buyer or other parties of interest earned on deposits.

(e) *Annual report.* In each year, on the date to be specified in each implementation regulation, succeeding the year during which NMFS first implemented a fee, each fish buyer shall submit to NMFS a report, on or in the form NMFS specifies, containing the following information for the preceding year, or whatever longer period may be involved in the first annual report, for all fee fish each fish buyer purchases from fish sellers: (1) Total weight, number, or volume bought;

(2) Total delivery value paid;

(3) Total fee amounts collected;

(4) Total fee collection amounts deposited by month;

(5) Dates and amounts of monthly disbursements to each Fund lockbox account;

(6) Total amount of interest earned on deposits; and

(7) Depository account balance at year-end.

(f) *State records.* If landing records that a state requires from fish sellers contain some or all of the data that this section requires and state confidentiality laws or regulations do not prevent NMFS' access to the records maintained for the state, then fish buyers can use such records to meet appropriate portions of this section's recordkeeping requirements. If, however, state confidentiality laws or regulations make such records unavailable to NMFS, then fish buyers shall maintain separate records for NMFS that meet the requirements of this section. If any state law or regulation prohibits fish buyers, or fish sellers where appropriate, from keeping, for the purpose of complying with any requirement of this section, separate records that involve some or all of the same data elements as the landing records that the fish buyers also keep, for state purposes and under state law or regulation, then a financed reduction program will not be possible.

(g) *Audits.* NMFS or its agents may audit, in whatever manner NMFS believes reasonably necessary for the duly diligent administration of reduction loans, the financial records of fish buyers and fish sellers in each reduction fishery in order to ensure proper fee payment, collection, deposit, disbursement, accounting, record keeping, and reporting. Fish buyers and fish sellers shall make all records of all program transactions involving post-reduction fish harvests, fish deliveries, and fee payments, collections, deposits, disbursements, accounting, record keeping, and reporting available to NMFS or NMFS' agents at reasonable times and places and promptly provide all requested information reasonably related to these records that such fish sellers and fish buyers may otherwise lawfully provide. Trip tickets (or similar accounting records establishing the pounds of fee fish that each fish buyer buys from each fish seller each time that each fish buyer does so and each price that each fish buyer then pays to each fish seller for the fee fish) are essential audit documentation.

(h) *Confidentiality of records.* NMFS and NMFS' auditing agents shall maintain the confidentiality of all data to which NMFS has access under this section and shall neither release the data nor allow the data's use for any purpose other than the purpose of this subpart; provided, however, that NMFS may aggregate such data so as to preclude their identification with any fish buyer or any fish seller and use them in the aggregate for other purposes).

(i) *Refunds.* When NMFS determines that a reduction loan is fully repaid, NMFS will refund any excess fee receipts, on a last-in/first-out basis, to the fish buyers. Fish buyers shall return the refunds, on a last-in/first-out basis, to the fish sellers who paid the amounts refunded.

(j) *Implementation regulations at variance with this section.* If any special circumstances in a reduction fishery require, in NMFS's judgment, fee collection deposit, disbursement, or records provisions in addition to, or different from, those in this section in order to accommodate the circumstances of, and practices in, a reduction fishery while still fulfilling the intent and purpose of this section, NMFS may, notwithstanding this section, include such provisions in the implementation regulations for such reduction fishery.

**§ 600.1015 Late charges.**

The late charge to fish buyers for fee payment, collection, deposit, and/or disbursement shall be one and one-half (1.5) percent per month, or the maximum rate permitted by state law, for the total amount of the fee not paid, collected, deposited, and/or disbursed when due to be paid, collected, deposited, and/or disbursed. The full late charge shall apply to the fee for each month or portion of a month that the fee remains unpaid, uncollected, undeposited, and/or undisbursed.

**§ 600.1016 Enforcement.**

In accordance with applicable law or other authority, NMFS may take appropriate action against each fish seller and/or fish buyer responsible for non-payment, non-collection, non-deposit, and/or non-disbursement of the fee in accordance with this subpart to enforce the collection from such fish seller and/or fish buyer of any fee (including penalties and all costs of collection) due and owing the United States on account of the loan that such fish seller and/or fish buyer should have, but did not, pay, collect, deposit, and/or disburse in accordance with this subpart. All such loan recoveries shall be applied to reduce the unpaid balance of the loan.

**§ 600.1017 Prohibitions and penalties.**

(a) The following activities are prohibited, and it is unlawful for any party to: (1) Vote in any referendum under this subpart if the party is ineligible to do so;

(2) Vote more than once in any referendum under this subpart;

(3) Sign or otherwise cast a ballot on behalf of a voter in any referendum under this subpart unless the voter has fully authorized the party to do so and doing so otherwise comports with this subpart;

(4) Interfere with or attempt to hinder, delay, buy, or otherwise unduly or unlawfully influence any eligible voter's vote in any referendum under this subpart;

(5) Submit a fraudulent, unauthorized, incomplete, misleading, unenforceable by specific performance, or inaccurate bid in response to an invitation to bid under this subpart or, in any other way, interfere with or attempt to interfere with, hinder, or delay, any invitation to bid, any bid submitted under any invitation to bid, any reduction contract, or any other reduction process in connection with any invitation to bid;

(6) Revoke or attempt to revoke any bid under this subpart;

(7) Fail to comply with the terms and conditions of any invitation to bid, bid, or reduction contract under this subpart, including NMFS' right under such reduction contracts to specific performance;

(8) Fail to fully and properly pay and collect any fee due payable, and collectible under this subpart or otherwise avoid, decrease, interfere with, hinder, or delay any such payment and collection,

(9) Convert, or otherwise use for any purpose other than the purpose this subpart intends, any paid or collected fee;

(10) Fail to fully and properly deposit on time the full amount of all fee revenue collected under this subpart into a deposit account and disburse the full amount of all deposit principal to the Fund's lockbox account—all as this subpart requires;

(11) Fail to maintain full, timely, and proper fee payment, collection, deposit, and/or disbursement records or make full, timely, and proper reports of such information to NMFS—all as this subpart requires;

(12) Fail to advise NMFS of any fish seller's refusal to pay, or of any fish buyer's refusal to collect, any fee due and payable under this subpart;

(13) Refuse to allow NMFS or agents that NMFS designates to review and audit at reasonable times all books and records reasonably pertinent to fee payment, collection, deposit, disbursement, and accounting under this subpart or otherwise interfere with, hinder, or delay NMFS or it agents in the course of their activities under this subpart;

(14) Make false statements to NMFS, any of the NMFS' employees, or any of NMFS' agents about any of the matters in this subpart;

(15) Obstruct, prevent, or unreasonably delay or attempt to obstruct, prevent, or unreasonably delay any audit or investigation NMFS or its agents conduct, or attempt to conduct, in connection with any of the matters in this subpart; and/or

(16) Otherwise materially interfere with the efficient and effective conduct of reduction and the repayment of reduction loans under this subpart.

(b) Any party who violates one or more of the prohibitions of paragraph (a) of this section is subject to the full range of penalties the Magnuson-Stevens Act and 15 CFR part 904 provide—including, but not limited to: civil penalties, sanctions, forfeitures, and punishment for criminal offenses—and to the full penalties and punishments otherwise provided by any other applicable law of the United States.

(c) Additionally, NMFS may take any and all appropriate actions, including the communication of action at law, against each party responsible for the non-payment, non-collection, non-deposit, and/or non-disbursement in accordance with § 600.1013 and/or § 600.1014 to enforce the United States' receipt from such party of any fee—including penalties and all costs of collection—due and owing the United States on account of the reduction loan that such party should have, but did not, pay, collect, deposit, and/or disburse in accordance with § 600.1013 and/or § 600.1014. All such reduction loan recoveries shall be applied to reduce the unpaid balances of reduction loans.

**§ 600.1018 Implementation regulations for each program. [Reserved]**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 884

**[Docket No. 99N–1309]**

## Obstetrical and Gynecological Devices; Classification of Female Condoms

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is classifying the preamendments female condom intended for contraceptive and prophylactic purposes. Under this rule, the preamendments female condom is being classified into class III (premarket approval). This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the FDA Modernization Act of 1997.

**DATES:** This rule is effective June 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

**SUPPLEMENTARY INFORMATION:**

### I. Background

In a proposal published in the **Federal Register** of June 10, 1999 (64 FR 31164)

(hereinafter referred to as the June 10, 1999, proposal), FDA solicited comments regarding the proposed classification of female condoms. The June 10, 1999, proposal provided the regulatory history of female condoms, as well as the recommendation of the Obstetrical and Gynecological Device Classification Panel (the Panel) that this particular device be classified into class III. Specifically, the Panel recommended that this device be classified into class III because no published laboratory or clinical study data could be found that demonstrate its safety and effectiveness. Also, the Panel believed that general controls and special controls would not provide reasonable assurance of the safety and effectiveness of the device and the device is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury. FDA agreed with the Panel's recommended classification.

The Panel also recommended that the device be identified as an intravaginal pouch because it is a sheath-like device that lines the vaginal wall and is inserted into the vagina prior to the initiation of coitus. FDA proposed to change the name of the generic type of the device to female condom.

The 90-day comment period ended September 8, 1999, and FDA stated that upon consideration of public comment it would issue a final rule classifying this device. FDA received one comment endorsing the June 10, 1999, proposal.

## II. Conclusion

FDA has concluded that the female condom be classified into class III because general controls and special controls do not provide reasonable assurance of the safety and effectiveness of the device, and the device is purported or represented to be for a use in supporting or sustaining human life or for a use which is of substantial importance in preventing impairment of human health, or presents a potential unreasonable risk of illness or injury. FDA has further concluded that the generic type of this device be identified as "female condom." FDA intends to issue a call for premarket approval applications (PMA's) for these devices.

## III. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## IV. Analysis of Impacts

FDA has examined the impacts of the rule under Executive Order 12866, Executive Order 13132, the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so it is not subject to review under the Executive Order.

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the order and, consequently, a federalism summary impact statement is not required.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA believes that there is no interest at this time in marketing the device to be classified by this rule. FDA is taking this action because it has determined that premarket approval is necessary to provide reasonable assurance of the safety and effectiveness of the device, if there is any interest in marketing one in the future. Without this rule (and a subsequent requirement for PMA's), a person could market a device by claiming substantial equivalence to the Gee Bee Ring. All premarket submissions for "female condom" type devices that FDA has received to date have been for devices that have been found to be not substantially equivalent to the Gee Bee Ring and, therefore, those devices are not preamendments devices and are not to be classified by this rule. Under section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)), a rule requiring PMA's for this device could not take effect any sooner than 30 months after the effective date of a final rule classifying the device or 90 days after publication of the final rule requiring the PMA's, whichever is later.

The agency therefore certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and, therefore, a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

## V. Paperwork Reduction Act of 1995

FDA tentatively concludes that this rule requires no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 884 is amended as follows:

## PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 884.5330 is added to subpart F to read as follows:

### § 884.5330 Female condom.

(a) *Identification.* A female condom is a sheath-like device that lines the vaginal wall and is inserted into the vagina prior to the initiation of coitus. It is indicated for contraceptive and prophylactic (preventing the transmission of sexually transmitted diseases) purposes.

(b) *Classification.* Class III (premarket approval).

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* No effective date has been established of the requirement for premarket approval for the devices described in paragraph (b) of this section. See § 884.3 for effective

dates of requirement for premarket approval.

Dated: May 9, 2000.

**Linda S. Kahan,**

*Deputy Director for Regulations Policy, Center for Devices and Radiological Health.*

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## DEPARTMENT OF DEFENSE

### Department of the Navy

### 32 CFR Part 701

### Department of the Navy Privacy Act Program

**AGENCY:** Department of the Navy.

**ACTION:** Final rule.

**SUMMARY:** On September 14, 1999, at 64 FR 49850, the Department of the Navy unintentionally deleted subparts F and G to 32 CFR part 701. These subparts provide the policies and procedures for the Department of the Navy Privacy Program and are still current and relevant to the Navy's Privacy Program. Therefore, this final rule adds subparts F and G to 32 CFR part 701.

**EFFECTIVE DATE:** September 14, 1999.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685-6545.

**SUPPLEMENTARY INFORMATION:**

**Executive Order 12866, 'Regulatory Planning and Review'**

It has been determined that 32 CFR part 701, subparts F and G are not significant regulatory action. The rule does not:

(1) Have an annual effect to the economy of $100 million or more; or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

**Public Law 96–354, 'Regulatory Flexibility Act' (5 U.S.C. 601)**

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

**Public Law 96–511, 'Paperwork Reduction Act' (44 U.S.C. Chapter 35)**

It has been certified that this part does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

**List of Subjects in 32 CFR Part 701**

Privacy.

Accordingly, Chapter I, 32 CFR part 701, is amended by adding subparts F and G to read as follows:

**Subpart F—Department of the Navy Privacy Act Program**

Sec.

701.100 Purpose.
701.101 Applicability.
701.102 Definitions.
701.103 Policy.
701.104 Responsibility and authority.
701.105 Systems of records.
701.106 Safeguarding records in systems of records.
701.107 Criteria for creating, altering, amending and deleting Privacy Act systems of records.
701.108 Collecting information about individuals.
701.109 Access to records.
701.110 Amendment of records.
701.111 Privacy Act appeals.
701.112 Disclosure of records.
701.113 Exemptions.
701.114 Enforcement actions.
701.115 Computer matching program.

**Subpart G—Privacy Act Exemptions**

701.116 Purpose.
701.117 Exemption for classified records.
701.118 Exemptions for specific Navy record systems.
701.119 Exemptions for specific Marine Corps records systems.

### Subpart F—Department of the Navy Privacy Act Program

**Authority:** Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

**§ 701.100 Purpose.**

Subparts F and G of this part implement the Privacy Act (5 U.S.C. 552a), and DoD Directive 5400.11,[1] and DoD 5400.11–R,[2] (32 CFR part 310) and provides Department of the Navy policies and procedures for:

(a) Governing the collection, safeguarding, maintenance, use, access, amendment, and dissemination of personal information kept by Department of the Navy in systems of records;

(b) Notifying individuals if any systems of records contain a record pertaining to them;

(c) Verifying the identity of individuals who request their records before the records are made available to them;

(d) Notifying the public of the existence and character of each system of records.

(e) Exempting systems of records from certain requirements of the Privacy Act; and

(f) Governing the Privacy Act rules of conduct for Department of the Navy personnel, who will be subject to criminal penalties for noncompliance with 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988.

**§ 701.101 Applicability.**

This subpart and subpart G of this part apply throughout the Department of the Navy. It is also applicable to contractors by contract or other legally binding action, whenever a Department of the Navy contract provides for the operation of a system of records or portion of a system of records to accomplish a Department of the Navy function. For the purposes of any criminal liabilities adjudged, any contractor or any employee of such contractor is considered to be an employee of Department of the Navy. In case of a conflict, this subpart and subpart G of this part take precedence over any existing Department of the Navy directive that deals with the personal privacy and rights of individuals regarding their personal records, except for disclosure of personal information required by 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act and implemented by Secretary of the Navy Instruction 5720.42F,[3] 'Department of the Navy Freedom of Information Act Program.'

**§ 701.102 Definitions.**

For the purposes of this subpart and subpart G of this part, the following meanings apply.

*Access.* The review or copying of a record or parts thereof contained in a system of records by any individual.

*Agency.* For the purposes of disclosing records subject to the Privacy Act between or among Department of Defense (DoD) components, the Department of Defense is considered a single agency. For all other purposes, Department of the Navy is considered an agency within the meaning of Privacy Act.

[1] Copies may be obtained: http://www.whs.osd.mil/corres.htm.

[2] See footnote 1 to § 701.100.

[3] Copies may be obtained: Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

*Confidential source.* A person or organization who has furnished information to the Federal Government either under an express promise that the person's or the organization's identity will be held in confidence or under an implied promise of such confidentiality if this implied promise was made before September 27, 1975.

*Defense Data Integrity Board.* Consists of members of the Defense Privacy Board, as outlined in DoD Directive 5400.11 and, in addition, the DoD Inspector General or the designee, when convened to oversee, coordinate and approve or disapprove all DoD component computer matching covered by the Privacy Act.

*Disclosure.* The transfer of any personal information from a system of records by any means of communication (such as oral, written, electronic, mechanical, or actual review), to any person, private entity, or government agency, other than the subject of the record, the subject's designated agent or the subject's legal guardian.

*Federal personnel.* Officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve Components), individuals or survivors thereof, entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor benefits).

*Individual.* A living citizen of the United States or alien lawfully admitted to the U.S. for permanent residence. The legal guardian of an individual has the same rights as the individual and may act on his or her behalf. No rights are vested in the representative of a deceased person under this instruction and the term "individual" does not embrace an individual acting in a non-personal capacity (for example, sole proprietorship or partnership).

*Individual access.* Access to information pertaining to the individual by the individual or his or her designated agent or legal guardian.

*Maintain.* Includes maintain, collect, use, or disseminate.

*Member of the public.* Any individual or party acting in a private capacity.

*Minor.* Under this subpart and subpart G of this part, a minor is an individual under 18 years of age, who is not a member of the U.S. Navy or Marine Corps, nor married.

*Official use.* Under this subpart and subpart G of this part, this term is used when Department of the Navy officials and employees have a demonstrated need for the use of any record or the information contained therein in the performance of their official duties.

*Personal information.* Information about an individual that is intimate or private to the individual, as distinguished from information related solely to the individual's official functions or public life.

*Privacy Act (PA) request.* A request from an individual for notification as to the existence of, access to, or amendment of records pertaining to that individual. These records must be maintained in a system of records.

*Record.* Any item, collection, or grouping of information about an individual that is maintained by a naval activity including, but not limited to, the individual's education, financial transactions, and medical, criminal, or employment history, and that contains the individual's name or other identifying particulars assigned to the individual, such as a finger or voice print or a photograph.

*Review authority.* An official charged with the responsibility to rule on administrative appeals of initial denials of requests for notification, access, or amendment of records. The Secretary of the Navy has delegated his review authority to the Assistant Secretary of the Navy (Manpower and Reserve Affairs (ASN(MRA)), the General Counsel (OGC); and the Judge Advocate General (NJAG). Additionally, the Office of Personnel Management (OPM) is the review authority for civilian official personnel folders or records contained in any other OPM record.

*Risk assessment.* An analysis which considers information sensitivity, vulnerability, and cost to a computer facility or word processing center in safeguarding personal information processed or stored in the facility or center.

*Routine use.* Disclosure of a record outside the Department of Defense for a purpose that is compatible with the purpose for which the record was collected and maintained by the Department of Defense. The routine use must have been included in the notice for the system of records published in the **Federal Register**.

*Statistical record.* A record maintained only for statistical research, or reporting purposes, and not used in whole or in part in making any determination about a specific individual.

*System manager.* An official who has overall responsibility for a system of records. He or she may serve at any level in Department of the Navy. Systems managers are indicated in the published record systems notices. If more than one official is indicated as a system manager, initial responsibility resides with the manager at the appropriate level (i.e., for local records, at the local activity).

*System of records.* A group of records under the control of a Department of the Navy activity from which information is retrieved by the individual's name or by some identifying number, symbol, or other identifying particular assigned to the individual. System notices for all Privacy Act systems of records must be published in the **Federal Register** and are also published in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211.[4]

*Word processing equipment.* Any combination of electronic hardware and computer software integrated in a variety of forms (firmware, programmable software, hard wiring, or similar equipment) that permits the processing of textual data. Generally, the equipment contains a device to receive information, a computer-like processor with various capabilities to manipulate the information, a storage medium, and an output device.

*Word processing system.* A combination of equipment employing automated technology, systematic procedures, and trained personnel for the primary purpose of manipulating human thoughts and verbal or written communications into a form suitable to the originator. The results are written or graphic presentations intended to communicate verbally or visually with another individual.

*Working day.* All days excluding Saturday, Sunday, and legal holidays.

**§ 701.103 Policy.**

It is the policy of Department of the Navy to:

(a) Ensure that all its personnel comply fully with 5 U.S.C. 552a, DoD Directive 5400.11 and DoD 5400.11–R, to protect individuals from unwarranted invasions of privacy. Individuals covered by this protection are living citizens of the U.S. or aliens lawfully admitted for permanent residence. A legal guardian of an individual or parent of a minor when acting on the individual's or minor's behalf, has the same rights as the individual or minor. (A member of the Armed Forces is not a minor for the purposes of this subpart and subpart G of this part).

(b) Collect, maintain, and use only that personal information needed to support a Navy function or program as authorized by law or E.O., and disclose this information only as authorized by 5 U.S.C. 552a and this subpart and subpart G of this part. In assessing need, consideration shall be given to alternatives, such as use of information

[4] See footnote 3 to § 701.101.

not individually identifiable or use of sampling of certain data for certain individuals only. Additionally, consideration is to be given to the length of time information is needed, and the cost of maintaining the information compared to the risks and adverse consequences of not maintaining the information.

(c) Keep only personal information that is timely, accurate, complete, and relevant to the purpose for which it was collected.

(d) Let individuals have access to, and obtain copies of, all or portions of their records, subject to exemption procedures authorized by law and this subpart and subpart G of this part.

(e) Let individuals request amendment of their records when discrepancies proven to be erroneous, untimely, incomplete, or irrelevant are noted.

(f) Let individuals request an administrative review of decisions that deny them access, or refuse to amend their records.

(g) Ensure that adequate safeguards are enforced to prevent misuse, unauthorized disclosure, alteration, or destruction of personal information in records.

(h) Maintain no records describing how an individual exercises his or her rights guaranteed by the First Amendment (freedom of religion, political beliefs, speech, and press; peaceful assemblage; and petition for redress of grievances), unless they are:

(1) Expressly authorized by statute;

(2) Authorized by the individual;

(3) Within the scope of an authorized law enforcement activity; or

(4) For the maintenance of certain items of information relating to religious affiliation for members of the naval service who are chaplains. This should not be construed, however, as restricting or excluding solicitation of information which the individual is willing to have in his or her record concerning religious preference, particularly that required in emergency situations.

(5) Maintain only systems of records which have been published in the **Federal Register**, in accordance with periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211 and § 701.105. These OPNAVNOTEs 5211 provide a listing of all Department of the Navy Privacy Act systems of records and identify the Office of Personnel Management (OPM) government-wide systems containing information on Department of the Navy civilian employees, even though technically, Department of the Navy does not have cognizance over them. A Privacy Act systems notice outlines what kinds of information may be collected and maintained by naval activities. When collecting/maintaining information in a Privacy Act system of records, review the systems notice to ensure activity compliance is within the scope of the system. If you determine the systems notice does not meet your needs, contact the systems manager or Chief of Naval Operations (N09B30) with your concerns so that amendment of the system may be considered.

**§ 701.104 Responsibility and authority.**

(a) *Chief of Naval Operations (CNO).* CNO is designated as the official responsible for administering and supervising the execution of 5 U.S.C. 552a, DoD Directive 5400.11, and DoD 5400.11–R. CNO has designated the Assistant Vice Chief of Naval Operations (N09B30) as principal Privacy Act Coordinator for the Department of the Navy to:

(1) Set Department of the Navy policy on the provisions of the Privacy Act.

(2) Serve as principal advisor on all Privacy Act matters.

(3) Oversee the administration of the Privacy Act program, which includes preparing the Department of the Navy Privacy Act report for submission to Congress.

(4) Develop Navy-wide Privacy Act training program and serve as training-oversight manager.

(5) Conduct staff assistance visits within Department of the Navy to review compliance with 5 U.S.C. 552a and this subpart and subpart G of this part.

(6) Coordinate and prepare responses for Privacy Act requests received for Office of the Secretary of the Navy records.

(b) *Commandant of the Marine Corps (CMC).* CMC is responsible for administering and supervising the execution of this subpart and subpart G of this part within the Marine Corps. The Commandant has designated the Director, Manpower Management Information Systems Division (HQMC (Code ARAD)) as the Privacy Act coordinator for Headquarters, U.S. Marine Corps.

(c) *Privacy Act Coordinator.* Each addressee is responsible for implementing and administering a Privacy Act program under this subpart and subpart G of this part. Each addressee shall designate a Privacy Act Coordinator to:

(1) Serve as principal point of contact on Privacy Act matters.

(2) Provide training for activity/command personnel on the provisions of 5 U.S.C. 552a and this subpart and subpart G of this part.

(3) Issue implementing instruction which designates the activity's Privacy Act Coordinator, Privacy Act records disposition, Privacy Act processing procedures, identification of Privacy Act systems of records under their cognizance, and training aids for those personnel involved with systems of records.

(4) Review internal directives, practices, and procedures, including those having Privacy Act implications and where Privacy Act Statements (PASs) are needed.

(5) Compile input and submit consolidated Privacy Act report to Echelon 2 Privacy Act Coordinator, who, in turn, will provide consolidated report to CNO (N09B30).

(6) Maintain liaison with records management officials (i.e., maintenance and disposal procedures and standards, forms, and reports), as appropriate.

(7) Provide guidance on handling Privacy Act requests and scope of Privacy Act exemptions.

(8) Conduct staff assistance visits within command and lower echelon commands to ensure compliance with the Privacy Act.

(9) Echelon 2 Privacy Act Coordinators shall provide CNO (N09B30) with a complete listing of all Privacy Act Coordinators under their jurisdiction. Such information should include activity name and address, office code, name of Privacy Act Coordinator, commercial and DSN telephone number, and FAX number, if applicable.

(d) *Release authority.* Officials having cognizance over the requested subject matter are authorized to respond to requests for notification, access, and/or amendment of records. These officials could also be systems managers (see § 701.104(g)).

(e) *Denial authority.* Within the Department of the Navy, the following chief officials, their respective vice commanders, deputies, principal assistants, and those officials specifically designated by the chief official are authorized to deny requests, either in whole or in part, for notification, access and amendment, made under this subpart and subpart G of this part, when the records relate to matters within their respective areas of responsibility or chain of command:

(1) Department of the Navy. Civilian Executive Assistants; CNO; CMC; Chief of Naval Personnel; Commanders of the Naval Systems Commands, Office of Naval Intelligence, Naval Security Group Command, Naval Imaging Command, and Naval Computer and Telecommunications Command; Chief, Bureau of Medicine and Surgery;

Auditor General of the Navy; Naval Inspector General; Director, Office of Civilian Personnel Management; Chief of Naval Education and Training; Commander, Naval Reserve Force; Chief of Naval Research; Commander, Naval Oceanography Command; heads of Department of the Navy Staff Offices, Boards, and Councils; Flag Officers and General Officers. NJAG and his Deputy, and OGC and his Deputies are excluded from this grant of authorization. While NJAG and OGC are not denial authorities, they are authorized to further delegate the authority conferred here to other senior officers/officials within NJAG and OGC.

(2) For the shore establishment.(i) All officers authorized under Article 22, Uniform Code of Military Justice (UCMJ) or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C),[5] to convene general courts-martial.

(ii) Commander, Naval Investigative Service Command.

(iii) Deputy Commander, Naval Legal Service Command.

(3) In the Operating Forces. All officers authorized by Article 22, Uniform Code of Military Justice (UCMJ), or designated in section 0120, Manual of the Judge Advocate General (JAGINST 5800.7C), to convene general courts-martial.

(f) *Review authority.* (1) The Assistant Secretary of the Navy (Manpower and Reserve Affairs), is the Secretary's designee, and shall act upon requests for administrative review of initial denials of requests for amendment of records related to fitness reports and performance evaluations of military personnel (see § 701.111(c)(3)).

(2) The Judge Advocate General and General Counsel, as the Secretary's designees, shall act upon requests for administrative review of initial denials of records for notification, access, or amendment of records, as set forth in § 701.111(c)(2) and (4).

(3) The authority of the Secretary of the Navy (SECNAV), as the head of an agency, to request records subject to the Privacy Act from an agency external to the Department of Defense for civil or criminal law enforcement purposes, under subsection (b)(7) of 5 U.S.C. 552a, is delegated to the Commandant of the Marine Corps, the Director of Naval Intelligence, the Judge Advocate General, and the General Counsel.

(g) *Systems manager.* Systems managers, as designated in Department of the Navy's compilation of systems notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211,[6] "Current Privacy Act Issuances") shall:

(1) Ensure the system has been published in the **Federal Register** and that any additions or significant changes are submitted to CNO (N09B30) for approval and publication. The systems of records should be maintained in accordance with the systems notices as published in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances."

(2) Maintain accountability records of disclosures.

(h) *Department of the Navy employees.* Each employee of the Department of the Navy has certain responsibilities for safeguarding the rights of others. These include:

(1) Not disclosing any information contained in a system of records by any means of communication to any person or agency, except as authorized by this subpart and subpart G of this part.

(2) Not maintaining unpublished official files which would fall under the provisions of 5 U.S.C. 552a.

(3) Safeguarding the privacy of individuals and confidentiality of personal information contained in a system of records.

**§ 701.105 Systems of records.**

To be subject to this subpart and subpart G of this part, a "system of records" must consist of "records" that are retrieved by the name, or some other personal identifier, of an individual and be under the control of Department of the Navy.

(a) *Retrieval practices.* (1) Records in a group of records that are not retrieved by personal identifiers are not covered by this subpart and subpart G of this part, even if the records contain information about individuals and are under the control of Department of the Navy. The records must be retrieved by personal identifiers to become a system of records.

(2) If records previously not retrieved by personal identifiers are rearranged so they are retrieved by personal identifiers, a new system notice must be submitted in accordance with § 701.107.

(3) If records in a system of records are rearranged so retrieval is no longer by personal identifiers, the records are no longer subject to this subpart and subpart G of this part and the records system notice should be deleted in accordance with § 701.107.

(b) *Recordkeeping standards.* A record maintained in a system of records subject to this subpart and subpart G of this part must meet the following criteria:

(1) Be accurate. All information in the record must be factually correct.

(2) Be relevant. All information contained in the record must be related to the individual who is the record subject and also must be related to a lawful purpose or mission of the Department of the Navy activity maintaining the record.

(3) Be timely. All information in the record must be reviewed periodically to ensure that it has not changed due to time or later events.

(4) Be complete. It must be able to stand alone in accomplishing the purpose for which it is maintained.

(5) Be necessary. All information in the record must be needed to accomplish a Department of the Navy mission or purpose established by Federal Law or E.O. of the President.

(c) *Authority to establish systems of records.* Identify the specific Federal statute or E.O. of the President that authorizes maintaining each system of records. When a naval activity uses its "internal housekeeping" statute, i.e., 5 U.S.C. 301, Departmental Regulations, the naval instruction that implements the statute should also be identified. A statute or E.O. authorizing a system of records does not negate the responsibility to ensure the information in the system of records is relevant and necessary.

(d) *Exercise of First Amendment rights.* (1) Do not maintain any records describing how an individual exercises rights guaranteed by the First Amendment of the U.S. Constitution unless expressly authorized by Federal law; the individual; or pertinent to and within the scope of an authorized law enforcement activity.

(2) First amendment rights include, but are not limited to, freedom of religion, freedom of political beliefs, freedom of speech, freedom of the press, the right to assemble, and the right to petition.

(e) *System manager's evaluations and reviews.* (1) Evaluate each new system of records. Before establishing a system of records, evaluate the information to be included and consider the following:

(i) The relationship of each item of information to be collected and retained to the purpose for which the system is maintained (all information must be relevant to the purpose);

(ii) The specific impact on the purpose or mission if each category of information is not collected (all information must be necessary to accomplish a lawful purpose or mission.);

[5] Copies may be obtained: Judge Advocate General, Navy Department, 1322 Patterson Avenue, SE, Suite 3000, Washington Navy Yard, Washington, DC 20374-5066.

[6] See footnote 3 to § 701.101.

(iii) The ability to meet the informational needs without using personal identifiers (will anonymous statistical records meet the needs?);

(iv) The length of time each item of information must be kept;

(v) The methods of disposal;

(vi) The cost of maintaining the information; and

(vii) Whether a system already exists that serves the purpose of the new system.

(2) Evaluate and review all existing systems of records.

(i) When an alteration or amendment of an existing system is prepared pursuant to § 701.107(b) and (c), do the evaluation described in paragraph (e) of this section.

(ii) Conduct the following reviews annually and be prepared to report, in accordance with § 701.104(c)(8), the results and corrective actions taken to resolve problems uncovered.

(A) Training practices to ensure all personnel are familiar with the requirements of 5 U.S.C. 552a, and DoD Directive 5400.11, "DoD Privacy Program", this subpart and subpart G of this part, and any special needs their specific jobs entail.

(B) Recordkeeping and disposal practices to ensure compliance with this subpart and subpart G of this part.

(C) Ongoing computer matching programs in which records from the system have been matched with non-DoD records to ensure that the requirements of § 701.115 have been met.

(D) Actions of Department of the Navy personnel that resulted in either Department of the Navy being found civilly liable or a person being found criminally liable under 5 U.S.C. 552a, to determine the extent of the problem and find the most effective way of preventing the problem from occurring in the future.

(E) Each system of records notice to ensure it accurately describes the system. Where major changes are needed, alter the system notice in accordance with § 701.107(b). If minor changes are needed, amend the system notice pursuant to § 701.107(c).

(iii) Every even-numbered year, review a random sample of Department of the Navy contracts that provide for the operation of a system of records to accomplish a Department of the Navy function, to ensure the wording of each contract complies with the provisions of 5 U.S.C. 552a and paragraph (h) of this section.

(iv) Every three years, beginning in 1992, review the routine use disclosures associated with each system of records to ensure the recipient's use of the records continues to be compatible with the purpose for which the information was originally collected.

(v) Every three years, beginning in 1993, review each system of records for which exemption rules have been established to determine whether each exemption is still needed.

(vi) When directed, send the reports through proper channels to the CNO (N09B30).

(f) *Discontinued information requirements.* (1) Immediately stop collecting any category or item of information about individuals that is no longer justified, and when feasible, remove the information from existing records.

(2) Do not destroy records that must be kept in accordance with retention and disposal requirements established under SECNAVINST 5212.5,[7] "Disposal of Navy and Marine Corps Records."

(g) *Review records before disclosing outside the Federal government.* Before disclosing a record from a system of records to anyone outside the Federal government, take reasonable steps to ensure the record which is being disclosed is accurate, relevant, timely, and complete for the purposes it is being maintained.

(h) *Federal government contractors.*— (1) *Applicability to Federal government contractors.* (i) When a naval activity contracts for the operation of a system of records to accomplish its function, the activity must ensure compliance with this subpart and subpart G of this part and 5 U.S.C. 552a. For the purposes of the criminal penalties described in 5 U.S.C. 552a, the contractor and its employees shall be considered employees of the agency during the performance of the contract.

(ii) Consistent with parts 24 and 52 of the Federal Acquisition Regulation (FAR), contracts for the operation of a system of records shall identify specifically the record system and the work to be performed, and shall include in the solicitations and resulting contract the terms as prescribed by the FAR.

(iii) If the contractor must use records that are subject to this subpart and subpart G of this part to perform any part of a contract, the contractor activities are subject to this subpart and subpart G of this part.

(iv) This subpart and subpart G of this part do not apply to records of a contractor that are:

(A) Established and maintained solely to assist the contractor in making internal contractor management decisions, such as records maintained by the contractor for use in managing the contract;

(B) Maintained as internal contractor employee records, even when used in conjunction with providing goods or services to the naval activity;

(C) Maintained as training records by an educational organization contracted by a naval activity to provide training when the records of the contract students are similar to and commingled with training records of other students, such as admission forms, transcripts, and academic counseling and similar records; or

(D) Maintained by a consumer reporting agency to which records have been disclosed under contract in accordance with 31 U.S.C. 952d.

(v) For contracting that is subject to this subpart and subpart G of this part, naval activities shall publish instructions that:

(A) Furnish Privacy Act guidance to personnel who solicit, award, or administer Government contracts;

(B) Inform prospective contractors of their responsibilities under this subpart and subpart G of this part and the Department of the Navy Privacy Program;

(C) Establish an internal system for reviewing contractor's performance for compliance with the Privacy Act; and

(D) Provide for the biennial review of a random sample of contracts that are subject to this subpart and subpart G of this part.

(2) *Contracting procedures.* The Defense Acquisition Regulatory (DAR) Council, which oversees the implementation of the FAR within the Department of Defense, is responsible for developing the specific policies and procedures for soliciting, awarding, and administering contracts that are subject to this subpart and subpart G of this part and 5 U.S.C. 552a.

(3) *Contractor compliance.* Naval activities shall establish contract surveillance programs to ensure contractors comply with the procedures established by the DAR Council under the preceding subparagraph.

(4) *Disclosing records to contractors.* Disclosing records to a contractor for use in performing a contract let by a naval activity is considered a disclosure within Department of the Navy. The contractor is considered the agent of Department of the Navy when receiving and maintaining the records for that activity.

**§ 701.106 Safeguarding records in systems of records.**

Establish appropriate administrative, technical, and physical safeguards to

[7] Copies may be obtained: OPNAV/SECNAV Directives Control Office, Washington Navy Yard, Building 200, Washington, DC 20350–2000.

ensure the records in every system of records are protected from unauthorized alteration, destruction, or disclosure. Protect the records from reasonably anticipated threats or hazards that could result in substantial harm, embarrassment, inconvenience, or unfairness to any individual on whom information is maintained.

(a) *Minimum standards.* (1) Conduct risk analysis and management planning for each system of records. Consider sensitivity and use of the records, present and projected threats and vulnerabilities, and present and projected cost-effectiveness of safeguards. The risk analysis may vary from an informal review of a small, relatively insensitive system to a formal, fully quantified risk analysis of a large, complex, and highly sensitive system.

(2) Train all personnel operating a system of records or using records from a system of records in proper record security procedures.

(3) Label information exempt from disclosure under this subpart and subpart G of this part to reflect their sensitivity, such as "FOR OFFICIAL USE ONLY," "PRIVACY ACT SENSITIVE: DISCLOSE ON A NEED-TO-KNOW BASIS ONLY," or some other statement that alerts individuals of the sensitivity to the records.

(4) Administer special administrative, physical, and technical safeguards to protect records processed or stored in an automated data processing or word processing system to protect them from threats unique to those environments.

(b) *Records disposal.* (1) Dispose of records from systems of records so as to prevent inadvertent disclosure. Disposal methods are considered adequate if the records are rendered unrecognizable or beyond reconstruction (*i.e.*, such as tearing, burning, melting, chemical decomposition, burying, pulping, pulverizing, shredding, or mutilation). Magnetic media may be cleared by completely erasing, overwriting, or degaussing the tape.

(2) The transfer of large volumes of records (*e.g.*, printouts and computer cards) in bulk to a disposal activity such as a Defense Reutilization and Marketing Office for authorized disposal is not a disclosure of records, if the volume of records, coding of the information, or some other factor render it impossible to recognize any personal information about a specific individual.

(3) When disposing or destroying large quantities of records from a system of records, care must be taken to ensure that the bulk of the records is maintained to prevent easy identification of specific records. If such bulk is maintained, no special procedures are required. If bulk is not maintained, or if the form of the records makes individually identifiable information easily discernable, dispose of the records in accordance with paragraph (b)(1) of this section.

**§ 701.107 Criteria for creating, altering, amending and deleting Privacy Act systems of records.**

(a) *Criteria for a new system of records.* A new system of records is one for which no existing system notice has been published in the **Federal Register**. If a notice for a system of records has been canceled or deleted, and it is determined that it should be reinstated or reused, a new system notice must be published in the **Federal Register**. Advance public notice must be given before a naval activity may begin to collect information for or use a new system of records. The following procedures apply:

(1) Describe in the record system notice the contents of the record system and the purposes and routine uses for which the information will be used and disclosed.

(2) The public shall be given 30 days to comment on any proposed routine uses before the routine uses are implemented.

(3) The notice shall contain the date the system of records will become effective.

(b) *Criteria for an alteration to a system of records notice.* A system is considered altered when any one of the following actions occur or is proposed:

(1) A significant increase or change in the number or types of individuals about whom records are maintained. For example, a decision to expand a system of records that originally covered personnel assigned to only one naval activity to cover personnel at several installations would constitute an altered system. An increase or decrease in the number of individuals covered due to normal growth or decrease is not an alteration.

(2) A change that expands the types or categories of information maintained. For example, a personnel file that has been expanded to include medical records would be an alteration.

(3) A change that alters the purpose for which the information is used. In order to be an alteration, the change must be one that is not reasonably inferred from any of the existing purposes.

(4) A change to equipment configuration (either hardware or software) that creates substantially greater use of records in the system. For example, placing interactive computer terminals at regional offices when the system was formerly used only at the headquarters would be an alteration.

(5) A change in the manner in which records are organized or in the method by which records are retrieved.

(6) Combining record systems due to a reorganization within Department of the Navy.

(7) Retrieving by Social Security Numbers (SSNs), records that previously were retrieved only by names would be an alteration if the present notice failed to indicate retrieval by SSNs. An altered system of records must be published in the **Federal Register**. Submission for an alteration must contain a narrative statement, the specific changes altering the system, and the system of records notice.

(c) *Criteria for amending a systems of records notice.* Minor changes to published system of records notices are considered amendments. All amendments should be forwarded to CNO (N09B30) for publication in the **Federal Register**. When submitting an amendment to a system of records notice, the naval activity must include a description of the specific changes proposed and the system of records notice.

(d) *Criteria for deleting a system of records notice.* When a system of records is discontinued, incorporated into another system, or determined to be no longer subject to this subpart and subpart G of this part, a deletion notice must be published in the *Federal Register*. The deletion notice shall include the system identification number, system name, and the reason for deleting it. If a system is deleted through incorporation into or merger with another system, identify the successor system in the deletion notice.

**§ 701.108 Collecting information about individuals.**

(a) *Collecting directly from the individual.* To the greatest extent practicable, collect information for systems of records directly from the individual to whom the record pertains if the record may be used to make an adverse determination about the individual's rights, benefits, or privileges under the Federal programs.

(b) *Collecting information about individuals from third persons.* It might not always be practical to collect all information about an individual directly from that person, such as verifying information through other sources for security or employment suitability determinations; seeking other opinions, such as a supervisor's comments on past performance or other evaluations; obtaining the necessary information directly from the individual would be

exceptionally difficult or would result in unreasonable costs or delays; or, the individual requests or consents to contacting another person to obtain the information.

(c) *Soliciting the social security number (SSN).* (1) It is unlawful for any Federal, State, or local government agency to deny an individual a right, benefit, or privilege provided by law because the individual refuses to provide his or her SSN. However, this prohibition does not apply if a Federal law requires that the SSN be provided, or the SSN is required by a law or regulation adopted before January 1, 1975, to verify the individual's identity for a system of records established and in use before that date.

(2) Before requesting an individual to provide the SSN, the individual must be advised whether providing the SSN is mandatory or voluntary; by what law or other authority the SSN is solicited; and what uses will be made of the SSN.

(3) The preceding advice relates only to the SSN. If other information about the individual is solicited for a system of records, a Privacy Act statement (PAS) also must be provided to him/her.

(4) The notice published in the **Federal Register** for each system of records containing SSNs solicited from individuals must indicate the authority for soliciting the SSNs and whether it is mandatory for the individuals to provide their SSNs. E.O. 9397 requires federal agencies to use SSNs as numerical identifiers for individuals in most federal records systems, however, it does not make it mandatory for individuals to provide their SSNs.

(5) When entering military service or civilian employment with the Department of the Navy, individuals must provide their SSNs. This is then the individual's numerical identifier and is used to establish personnel, financial, medical, and other official records (as authorized by E.O. 9397). The individuals must be given the notification described above. Once the individual has provided his or her SSN to establish the records, a notification is not required when the SSN is requested only for identification or to locate the records.

(6) The Federal Personnel Manual [8] must be consulted when soliciting SSNs for use in systems of records maintained by the Office of Personnel Management.

(7) A Department of the Navy activity may request an individual's SSN even though it is not required by Federal statute, or is not for a system of records in existence and operating prior to January 1, 1975. However, the separate Privacy Act Statement for the SSN, alone, or a merged Privacy Act Statement covering both the SSN and other items of personal information, must make clear that disclosure of the number is voluntary. If the individual refuses to disclose his or her SSN, the activity must be prepared to identify the individual by alternate means.

(d) *Contents of Privacy Act Statement.* (1) When an individual is requested to furnish information about himself/herself for a system of records, a Privacy Act Statement must be provided to the individual, regardless of the method used to collect the information (*i.e.*, forms, personal or telephonic interview, etc). If the information requested will not be included in a system of records, a Privacy Act Statement is not required.

(2) The Privacy Act Statement shall include the following:

(i) The Federal law or E.O. that authorizes collecting the information (*i.e.*, E.O. 9397 authorizes collection of SSNs);

(ii) Whether or not it is mandatory for the individual to provide the requested information (It is only mandatory when a Federal law or E.O. of the President specifically imposes a requirement to furnish the information and provides a penalty for failure to do so. If furnishing information is a condition for granting a benefit or privilege voluntarily sought by the individual, it is voluntary for the individual to give the information.);

(iii) The principle purposes for collecting the information;

(iv) The routine uses that will be made of the information (*i.e.*, to whom and why it will be disclosed outside the Department of Defense); and

(v) The possible effects on the individual if the requested information is not provided.

(3) The Privacy Act Statement must appear on the form used to collect the information or on a separate form that can be retained by the individual collecting the information. If the information is collected by means other than a form completed by the individual, *i.e.*, solicited over the telephone, the Privacy Act Statement should be read to the individual and if requested by the individual, a copy sent to him/her. There is no requirement that the individual sign the Privacy Act Statement.

(e) *Format for Privacy Act Statement.* When forms are used to collect information about individuals for a system of records, the Privacy Act Statement shall appear as follows (listed in the order of preference):

(1) Immediately below the title of the form,

(2) Elsewhere on the front page of the form (clearly indicating it is the Privacy Act Statement),

(3) On the back of the form with a notation of its location below the title of the form, or

(4) On a separate form which the individual may keep.

**§ 701.109 Access to records.**

(a) *Individual access to records.* (1) *Right of access.* Only individuals who are subjects of records maintained in systems of records and by whose personal identifiers the records are retrieved have the right of individual access under this subpart and subpart G of this part, unless they provide written authorization for their representative to act on their behalf. Legal guardians or parents acting on behalf of a minor child also have the right of individual access under this subpart and subpart G of this part.

(2) *Notification of record's existence.* Each naval activity shall establish procedures for notifying an individual, in response to his or her request, if a system of records identified by him/her contains a record pertaining to the individual.

(3) *Individual request for access.* Individuals shall address requests for access to records in systems of records to the system manager or the office designated in the Department of the Navy compilation of system notices (periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances").

(4) *Verifying identity.* (i) An individual shall provide reasonable verification of identity before obtaining access to records.

(ii) When requesting records in writing, naval activities may not insist that a requester submit a notarized signature. The courts have ruled that an alternative method of verifying identity must be established for individuals who do not have access to notary services. This alternative permits requesters to provide an unsworn declaration that states "I declare under perjury or penalty under the laws of the United States of America that the foregoing is true and correct."

(iii) When an individual seeks access in person, identification can be verified by documents normally carried by the individual (*i.e.*, identification card, driver's license, or other license, permit or pass normally used for identification purposes).

(iv) When access is requested other than in writing, identity may be verified by the individual's providing minimum identifying data such as full name, date and place of birth, or other information

[8] Copies may be obtained: Office of Personnel Management, 1900 E Street, Washington, DC 20415.

necessary to locate the record sought. If the information sought is sensitive, additional identifying data may be required. Telephonic requests should not be honored.

(v) Allow an individual to be accompanied by a person of his or her choice when viewing the record; however, require the individual to provide written authorization to have the record discussed in front of the other person.

(vi) Do not deny access to an individual who is the subject of the record solely for refusing to divulge his or her SSN, unless it is the only means of retrieving the record or verifying identity.

(vii) Do not require the individual to explain why he or she is seeking access to a record under this subpart and subpart G of this part.

(viii) Only a designated denial authority may deny access. The denial must be in writing and contain the information required by paragraph (d) of this section.

(5) *Blanket requests not honored.* Do not honor requests from individuals for notification and/or access concerning all Department of the Navy systems of records. In these instances, notify the individual that requests for notification and/or access must be directed to the appropriate system manager for the particular record system being requested, as indicated in the periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances"; and the request must either designate the particular system of records to be searched, or provide sufficient information for the system manager to identify the appropriate system. Also, provide the individual with any other information needed for obtaining consideration of his or her request.

(6) *Granting individual access to records.* (i) Grant the individual access to the original record (or exact copy) without any changes or deletions, other than those made in accordance with § 701.113.

(ii) Grant the individual's request for an exact copy of the record, upon the signed authorization of the individual, and provide a copy to anyone designated by the individual. In either case, the copying fees may be assessed to the individual pursuant to § 701.109(b).

(iii) If requested, explain any record or portion of a record that is not understood, as well as any changes or deletions.

(7) *Illegible or incomplete records.* Do not deny an individual access solely because the physical condition or format of the record does not make it readily available (*i.e.*, when the record is in a deteriorated state or on magnetic tape). Either prepare an extract or recopy the document exactly.

(8) *Access by parents and legal guardians.* (i) The parent of any minor, or the legal guardian of any individual declared by a court of competent jurisdiction to be incompetent due to physical or mental incapacity or age, may obtain access to the record of the minor or incompetent individual if the parent or legal guardian is acting on behalf or for the benefit of the minor or incompetent. However, with respect to access by parents and legal guardians to medical records and medical determinations about minors, use the following procedures:

(A) In the United States, the laws of the state where the records are located might afford special protection to certain medical records (*i.e.*, drug and alcohol abuse treatment, and psychiatric records). The state statutes might apply even if the records are maintained by a naval medical facility.

(B) For installations located outside the U.S., the parent or legal guardian of a minor shall be denied access if all four of the following conditions are met:

*(1)* The minor at the time of the treatment or consultation was 15, 16, or 17 years old;

*(2)* The treatment or consultation was within a program authorized by law or regulation to provide confidentiality to the minor;

*(3)* The minor indicated a desire that the treatment or consultation record be handled in confidence and not disclosed to a parent or guardian; and

*(4)* The parent or legal guardian does not have the written authorization of the minor or a valid court order granting access.

(ii) A minor or incompetent has the same right of access as any other individual under this subpart and subpart G of this part. The right of access of the parent or legal guardian is in addition to that of the minor or incompetent.

(9) *Access to information compiled in reasonable anticipation of a civil proceeding.* (i) An individual is not entitled under this subpart and subpart G of this part to access information compiled in reasonable anticipation of a civil action or proceeding.

(ii) The term "civil action or proceeding" includes quasi-judicial and pre-trial judicial proceedings, as well as formal litigation.

(iii) Paragraphs (a)(9)(i) and (ii) of this section do not prohibit access to records compiled or used for purposes other than litigation, nor prohibit access to systems of records solely because they are frequently subject to litigation. The information must have been compiled for the primary purpose of litigation.

(10) *Personal notes or records not under the control of the Department of the Navy.* (i) Certain documents under the control of a Department of the Navy employee and used to assist him/her in performing official functions are not considered Department of the Navy records within the meaning of this subpart and subpart G of this part. These documents are not systems of records that are subject to this subpart and subpart G of this part, if they are:

(A) Maintained and discarded solely at the discretion of the author;

(B) Created only for the author's personal convenience;

(C) Not the result of official direction or encouragement, whether oral or written; and

(D) Not shown to other persons for any reason or filed in agency files.

(11) *Relationship between the Privacy Act and FOIA.* In some instances, individuals requesting access to records pertaining to themselves may not know which Act to cite as the appropriate statutory authority. The following guidelines are to ensure that the individuals receive the greatest degree of access under both Acts:

(i) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, are processed under Secretary of the Navy Instruction 5720.42F, "Department of the Navy Freedom of Information Act Program."

(ii) Access requests that specifically state or reasonably imply that they are made under 5 U.S.C. 552a are processed under this subpart and subpart G of this part.

(iii) Access requests that cite both 5 U.S.C. 552a, as amended by the Computer Matching Act of 1988 and 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act are processed under the Act that provides the greater degree of access. Inform the requester which instruction was used in granting or denying access.

(iv) Do not penalize the individual access to his or her records otherwise releasable under 5 U.S.C. 552a and periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances", simply because he or she failed to cite the appropriate statute or instruction.

(12) *Time limits.* Acknowledge requests for access made under Privacy Act or this subpart and subpart G of this part within 10 working days after receipt, and advise the requester of your

decision to grant/deny access within 30 working days.

(b) *Reproduction fees.* Normally, only one copy of any record or document will be provided. Checks or money orders for fees should be made payable to the Treasurer of the United States and deposited to the miscellaneous receipts of the treasury account maintained at the finance office servicing the activity.

(1) Fee schedules shall include only the direct cost of reproduction and shall not include costs of:

(i) Time or effort devoted to searching for or reviewing the record by naval personnel;

(ii) Fees not associated with the actual cost of reproduction;

(iii) Producing a copy when it must be provided to the individual without cost under another regulation, directive, or law;

(iv) Normal postage;

(v) Transportation of records or personnel; or

(vi) Producing a copy when the individual has requested only to review the record and has not requested a copy to keep, and the only means of allowing review is to make a copy (*e.g.*, the record is stored in a computer and a copy must be printed to provide individual access, or the naval activity does not wish to surrender temporarily the original record for the individual to review).

(2) Fee schedules.

(i) Office copy (per page).....$.10

(ii) Microfiche (per fiche).....$.25

(3) Fee waivers. Waive fees automatically if the direct cost of reproduction is less than $15, unless the individual is seeking an obvious extension or duplication of a previous request for which he or she was granted a waiver. Decisions to waive or reduce fees that exceed $15 are made on a case-by-case basis.

(c) *Denying individual access.* (1) Deny the record subject access to requested record only if it was compiled in reasonable anticipation of a civil action or proceeding or is in a system of records that has been exempt from the access provisions of § 701.113.

(2) Deny the individual access only to those portions of the record for which the denial will serve a legitimate government purpose. An individual may be refused access for failure to comply with established procedural requirements, but must be told the specific reason for the refusal and the proper access procedures.

(3) Deny the individual access to his or her medical and psychological records if it is determined that access could have an adverse affect on the mental or physical health of the individual. This determination normally should be made in consultation with a medical practitioner. If it is medically indicated that access could have an adverse mental or physical effect on the individual, provide the record to a medical practitioner named by the individual, along with an explanation of why access without medical supervision could be harmful to the individual. In any case, do not require the named medical practitioner to request the record for the individual. If, however, the individual refuses or fails to designate a medical practitioner, access shall be refused. The refusal is not considered a denial for reporting purposes under the Privacy Act.

(d) Notifying the individual. Written denial of access must be given to the individual. The denial letter shall include:

(1) The name, title, and signature of a designated denial authority;

(2) The date of the denial;

(3) The specific reason for the denial, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part authorizing the denial;

(4) The individual's right to appeal the denial within 60 calendar days of the date the notice is mailed; and

(5) The title and address of the review authority.

### § 701.110 Amendment of records.

(a) *Individual review and amendment.* Encourage individuals to review periodically, the information maintained about them in systems of records, and to avail themselves of the amendment procedures established by this subpart and subpart G of this part.

(1) *Right to amend.* An individual may request to amend any record retrieved by his or her personal identifier from a system of records, unless the system has been exempt from the amendment procedures under this subpart. Amendments under this subpart and subpart G of this part are limited to correcting factual matters, not matters of opinion (*i.e.*, information contained in evaluations of promotion potential or performance appraisals). When records sought to be amended are covered by another issuance, the administrative procedures under that issuance must be exhausted before using the Privacy Act. In other words, the Privacy Act may not be used to avoid the administrative procedures required by the issuance actually covering the records in question.

(2) *In writing.* Amendment requests shall be in writing, except for routine administrative changes, such as change of address.

(3) *Content of amendment request.* An amendment request must include a description of the information to be amended; the reason for the amendment; the type of amendment action sought (*i.e.*, deletion, correction, or addition); and copies of available documentary evidence supporting the request.

(b) *Burden of proof.* The individual must provide adequate support for the request.

(c) *Verifying identity.* The individual may be required to provide identification to prevent the inadvertent or intentional amendment of another's record. Use the verification guidelines provided in § 701.109(a)(4).

(d) *Limits on amending judicial and quasi-judicial evidence and findings.* This subpart and subpart G of this part do not permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Amendments to such records must be made in accordance with procedures established for such proceedings. This subpart and subpart G of this part do not permit a collateral attack on a judicial or quasi-judicial finding; however, this subpart and subpart G of this part may be used to challenge the accuracy of recording the finding in a system of records.

(e) *Standards for amendment request determinations.* The record which the individual requests to be amended must meet the recordkeeping standards established in § 701.105. The record must be accurate, relevant, timely, complete, and necessary. If the record in its present state does not meet each of the criteria, grant the amendment request to the extent necessary to meet them.

(f) *Time limits.* Within 10 working days of receiving an amendment request, the systems manager shall provide the individual a written acknowledgement of the request. If action on the amendment request is completed within the 10 working days and the individual is so informed, no separate acknowledgment is necessary. The acknowledgment must clearly identify the request and advise the individual when to expect notification of the completed action. Only under exceptional circumstances should more than 30 working days be required to complete the action on an amendment request.

(g) *Granting an amendment request in whole or in part.*—(1) *Notify the requester.* To the extent the amendment request is granted, the systems manager shall notify the individual and make the appropriate amendment.

(2) *Notify previous recipients.* Notify all previous recipients of the information (as reflected in the disclosure accounting record) that the amendment has been made and provide each a copy of the amended record. Recipients who are known to be no longer retaining the record need not be advised of the amendment. If it is known that other naval activities, DoD components, or Federal agencies have been provided the information that now requires amendment, or if the individual requests that these agencies be notified, provide the notification of amendment even if those activities or agencies are not listed on the disclosure accounting form.

(h) *Denying an amendment request in whole or in part.* If the amendment request is denied in whole or in part, promptly notify the individual in writing. Include in the notification to the individual the following:

(1) Those sections of 5 U.S.C. 552a or this subpart and subpart G of this part upon which the denial is based;

(2) His or her right to appeal to the head of the activity for an independent review of the initial denial;

(3) The procedures for requesting an appeal, including the title and address of the official to whom the appeal should be sent; and

(4) Where the individual can receive assistance in filing the appeal.

(i) *Requests for amending OPM records.* The records in an OPM government-wide system of records are only temporarily in the custody of naval activities. Requests for amendment of these records must be processed in accordance with OPM Regulations and the Federal Personnel Manual. The denial authority may deny a request, but all denials are subject to review by the Assistant Director for Workforce Information, Personnel Systems Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415.

(j) *Individual's statement of disagreement.* (1) If the review authority refuses to amend the record as requested, the individual may submit a concise statement of disagreement listing the reasons for disagreeing with the refusal to amend.

(2) If possible, incorporate the statement of disagreement into the record. If that is not possible, annotate the record to reflect that the statement was filed and maintain the statement so that it can be readily obtained when the disputed information is used or disclosed.

(3) Furnish copies of the statement of disagreement to all individuals listed on the disclosure accounting form (except those known to be no longer retaining the record), as well as to all other known holders of copies of the record.

(4) Whenever the disputed information is disclosed for any purpose, ensure that the statement of disagreement also is used or disclosed.

(k) *Department of the Navy statement of reasons.* (1) If the individual files a statement of disagreement, the naval activity may file a statement of reasons containing a concise summary of the activity's reasons for denying the amendment request.

(2) The statement of reasons shall contain only those reasons given to the individual by the appellate official and shall not contain any comments on the individual's statement of disagreement.

(3) At the discretion of the naval activity, the statement of reasons may be disclosed to those individuals, activities, and agencies that receive the statement of disagreement.

### § 701.111 Privacy Act appeals.

(a) *How to file an appeal.* The following guidelines shall be followed by individuals wishing to appeal a denial of notification, access, or amendment of records.

(1) The appeal must be received by the cognizant review authority (*i.e.*, ASN (MRA), NJAG, OGC, or OPM) within 60 calendar days of the date of the response.

(2) The appeal must be in writing and requesters should provide a copy of the denial letter and a statement of their reasons for seeking review.

(b) *Time of receipt.* The time limits for responding to an appeal commence when the appeal reaches the office of the review authority having jurisdiction over the record. Misdirected appeals should be referred expeditiously to the proper review authority.

(c) *Review authorities.* ASN (MRA), NJAG, and OGC are authorized to adjudicate appeals made to SECNAV. NJAG and OGC are further authorized to delegate this authority to a designated Assistant NJAG and the Principal Deputy General or Deputy General Counsel, respectively, under such terms and conditions as they deem appropriate.

(1) If the record is from a civilian Official Personnel Folder or is contained on any other OPM forms, send the appeal to the Assistant Director for Workforce Information, Personnel Systems and Oversight Group, Office of Personnel Management, 1900 E Street, NW, Washington, DC 20415. Records in all systems of records maintained in accordance with the OPM government-wide systems notices are only in the temporary custody of the Department of the Navy.

(2) If the record pertains to the employment of a present or former Navy and Marine Corps civilian employee, such as Navy or Marine Corps civilian personnel records or an employee's grievance or appeal file, to the General Counsel, Navy Department, 720 Kennon Street, SE, Washington Navy Yard, Building 36, Washington, DC 20374–5012.

(3) If the record pertains to a present or former military member's fitness reports or performance evaluations to the Assistant Secretary of the Navy (Manpower and Reserve Affairs), Navy Department, Washington, DC 20350–1000.

(4) All other records dealing with present or former military members to the Judge Advocate General, Navy Department, 1322 Patterson Avenue, SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

(d) *Appeal procedures.* (1) If the appeal is granted, the review authority shall advise the individual that his or her appeal has been granted and provide access to the record being sought.

(2) If the appeal is denied totally or in part, the appellate authority shall advise the reason(s) for denying the appeal, citing the appropriate subsections of 5 U.S.C. 552a or this subpart and subpart G of this part that apply; the date of the appeal determination; the name, title, and signature of the appellate authority; and a statement informing the requester of his or her right to seek judicial relief in the Federal District Court.

(e) *Final action, time limits and documentation.* (1) The written appeal notification granting or denying access is the final naval activity action on the initial request for access.

(2) All appeals shall be processed within 30 working days of receipt, unless the appellate authority finds that an adequate review cannot be completed within that period. If additional time is needed, notify the applicant in writing, explaining the reason for the delay and when the appeal will be completed.

(f) *Denial of appeal by activity's failure to act.* An individual may consider his or her appeal denied if the appellate authority fails to:

(1) Take final action on the appeal within 30 working days of receipt when no extension of time notice was given; or

(2) Take final action within the period established by the notice to the appellate authority of the need for an extension of time to complete action on the appeal.

**§ 701.112 Disclosure of records.**

(a) *Conditions of disclosure.* (1) 5 U.S.C. 552a prohibits an agency from disclosing any record contained in a system of records to any person or agency, except when the record subject gives written consent for the disclosure or when one of the 12 conditions listed below in this subsection applies.

(2) Except for disclosures made under 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42F, "Department of the Navy Freedom of Information Act Program," before disclosing any record from a system of records to any recipient other than a Federal agency, make reasonable efforts to ensure the record is accurate, relevant, timely, and complete for Department of the Navy purposes. Records discovered to have been improperly filed in the system of records should be removed before disclosure.

(i) If validation cannot be obtained from the record itself, the naval activity may contact the record subject (if reasonably available) to verify the accuracy, timeliness, completeness, and relevancy of the information.

(ii) If validation cannot be obtained from the record and the record subject is not reasonably available, advise the recipient that the information is believed to be valid as of a specific date and reveal any factors bearing on the validity of the information.

(b) *Nonconsensual disclosures.* 5 U.S.C. 552a provides 12 instances when a record in a system of records may be disclosed without the written consent of the record subject:

(1) *Disclosures within the Department of Defense.* For purposes of disclosing records, the Department of Defense is considered a single agency; hence, a record may be disclosed to any officer or employee in the Department of Defense (including private contractor personnel who are engaged to perform services needed in connection with the operation of a system of records for a DoD component), who have a need for the record in the performance of their duties, provided this use is compatible with the purpose for which the record is maintained. This provision is based on the "need to know" concept.

(i) For example, this may include disclosure to personnel managers, review boards, discipline officers, courts-martial personnel, medical officers, investigating officers, and representatives of the Judge Advocate General, Auditor General, Naval Inspector General, or the Naval Investigative Service, who require the information in order to discharge their official duties. Examples of personnel outside the Department of the Navy who may be included are: Personnel of the Joint Staff, Armed Forces Entrance and Examining Stations, Defense Investigative Service, or the other military departments, who require the information in order to discharge an official duty.

(ii) It may also include the transfer of records between naval components and non-DoD agencies in connection with the Personnel Exchange Program (PEP) and interagency support agreements. Disclosure accountings are not required for intra-agency disclosure and disclosures made in connection with interagency support agreements or the PEP. Although some disclosures authorized by this paragraph might also meet the criteria for disclosure under other exceptions specified in the following paragraphs of this section, they should be treated under this paragraph for disclosure accounting purposes.

(2) *Disclosures required by the FOIA.* (i) A record must be disclosed if required by 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986, which is implemented by Secretary of the Navy Instruction 5720.42F, "Department of the Navy Freedom of Information Act Program."

(ii) 5 U.S.C. 552 (1988) as amended by the Freedom of Information Reform Act of 1986 and Secretary of the Navy Instruction 5720.42F, "Department of the Navy Freedom of Information Act Program" require that records be made available to any person requesting them in writing, unless the record is exempt from disclosure under one of the nine FOIA exemptions. Therefore, if a record is not exempt from disclosure, it must be provided to the requester.

(iii) Certain records, such as personnel, medical, and similar files, are exempt from disclosure under exemption (b)(6) of 5 U.S.C. 552 (1988) as amended by the Freedom of Information Act Reform Act of 1986. Under that exemption, disclosure of information pertaining to an individual can be denied only when the disclosure would be a clearly unwarranted invasion of personal privacy. The first step is to determine whether a viable personal privacy interest exists in these records involving an identifiable living person. The second step is to consider how disclosure would benefit the general public in light of the content and context of the information in question. The third step is to determine whether the identified public interests qualify for consideration. The fourth step is to balance the personal privacy interests against the qualifying public interest. Numerous factors must be considered such as: The nature of the information to be disclosed (*i.e.*, Do individuals normally have an expectation of privacy in the type of information to be disclosed?); importance of the public interest served by the disclosure and probability of further disclosure which may result in an unwarranted invasion of privacy; relationship of the requester to the public interest being served; newsworthiness of the individual to whom the information pertains (*i.e.*, high ranking officer, public figure); degree of sensitivity of the information from the standpoint of the individual or the individual's family, and its potential for being misused to the harm, embarrassment, or inconvenience of the individual or the individual's family; the passage of time since the event which is the topic of the record (*i.e.*, to disclose that an individual has been arrested and is being held for trial by court-martial is normally permitted, while to disclose an arrest which did not result in conviction might not be permitted after the passage of time); and the degree to which the information is already in the public domain or is already known by the particular requester.

(iv) Records or information from investigatory records, including personnel security investigatory records, are exempt from disclosure under the broader standard of "an unwarranted invasion of personal privacy" found in exemption (b)(7)(C) of 5 U.S.C. 552. This broader standard applies only to records or information compiled for law enforcement purposes.

(v) A disclosure under 5 U.S.C. 552 about military members must be in accordance with Secretary of the Navy Instruction 5720.42F, "Department of the Navy Freedom of Information Act Program", but the following information normally may be disclosed from military personnel records (except for those personnel assigned to sensitive or routinely deployable units, or located in a foreign territory), without a clearly unwarranted invasion of personal privacy: Full name, rank, date of rank, base pay, past duty stations, present duty station and future duty station (if finalized), unless the stations have been determined by the Department of the Navy to be sensitive, routinely deployable, or located in a foreign territory, office or duty telephone number, source of commission, promotion sequence number, awards and decorations, attendance at professional military schools, and duty status at any given time.

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(vi) The following information normally may be disclosed from civilian employee records about CONUS employees: Full name, present and past position titles and occupational series, present and past grades, present and past annual salary rates (including performance awards or bonuses, incentive awards, merit pay amount, Meritorious and Distinguished Executive Ranks, and allowances and differentials), past duty stations, present duty station and future duty station (if finalized), including room numbers, shop designations, or other identifying information regarding buildings or places of employment, unless the duty stations have been determined by the Department of the Navy to be sensitive, routinely deployable, or located in a foreign territory, position descriptions, identification of job elements, and those performance standards (but not actual performance appraisals) that the disclosure of which would not interfere with law enforcement programs or severely inhibit Department of the Navy effectiveness.

(viii) Disclosure of home addresses and home telephone numbers normally is considered a clearly unwarranted invasion of personal privacy and is prohibited. However, they may be disclosed if the individual has consented to the disclosure; the disclosure is required by the FOIA; the disclosure is required by another law, such as 42 U.S.C. 653, which provides assistance to states in locating parents who have defaulted on child support payments, or the collection of alimony, and to state and local tax authorities for the purpose of enforcing tax laws. However, care must be taken prior to release to ensure that a written record is prepared to document the reasons for the release determination.

(A) When compiling home addresses and telephone numbers, the individual may be offered the option of authorizing disclosure of the information without further consent for specific purposes, such as locator services. In that case, the information may be disclosed for the stated purpose without further consent. If the information is to be disclosed for any other purpose, a signed consent permitting the additional disclosure must be obtained from the individual.

(B) Before listing home addresses and telephone numbers in Department of the Navy telephone directories, give the individual the opportunity to refuse such a listing. If the individual requests that the home address or telephone number not be listed in the directory, do not assess any additional fee associated with maintaining an unlisted number for government-owned telephone services.

(C) The sale or rental of lists of names and addresses is prohibited unless such action is specifically authorized by Federal law. This does not prohibit the disclosure of names and addresses made under Secretary of the Navy Instruction 5720.42F, "Department of the Navy Freedom of Information Act Program."

(D) In response to FOIA requests, information concerning special and general courts-martial results (*e.g.*, records of trial) are releasable. However, information regarding summary courts-martial and non-judicial punishment are generally not releasable. The balancing of interests must be done. It is possible that in a particular case, information regarding non-judicial punishment should be disclosed pursuant to a FOIA request (*i.e.*, the facts leading to a nonjudicial punishment are particularly newsworthy or the case involves a senior official abusing the public trust through office-related misconduct, such as embezzlement). Announcement of nonjudicial punishment dispositions under JAGMAN, subsection 0107, is a proper exercise of command authority and not a release of information under FOIA or this subpart and subpart G of this part. Exceptions to this policy must be coordinated with CNO (N09B30) or CMC (ARAD) prior to responding to requesters, including all requests for this type of information from members of Congress.

(3) *Disclosures for established routine uses.* (i) Records may be disclosed outside the Department of the Navy if the disclosure is for an established routine use.

(ii) A routine use shall:

(A) Be compatible with and related to the purpose for which the record was created;

(B) Identify the persons or organizations to whom the record may be disclosed;

(C) Identify specifically the uses for which the information may be employed by the receiving person or organization; and

(D) Have been published previously in the **Federal Register**.

(iii) A routine use shall be established for each user of the information outside the Department of the Navy who needs the information for an official purpose.

(iv) Routine uses may be established, discontinued, or amended without the consent of the individuals to whom the records pertain. However, new and amended routine uses must be published in the **Federal Register** at least 30 days before the information may be disclosed under their provisions.

(v) In addition to the routine uses established by the Department of the Navy for each system of records, common "Blanket Routine Uses," applicable to all record systems maintained with the Department of the Navy, have been established. These "Blanket Routine Uses" are published at the beginning of the Department of the Navy's **Federal Register** compilation of record systems notices rather than at each system notice and are also reflected in periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances." Unless a system notice specifically excludes a system of records from a "Blanket Routine Use," all "Blanket Routine Uses" apply to that system.

(vi) If the recipient has not been identified in the **Federal Register** or if the recipient, though identified, intends to employ the information for a purpose not published in the **Federal Register**, the written consent of the individual is required before the disclosure can be made.

(4) *Disclosures to the Bureau of the Census.* Records may be disclosed to the Bureau of the Census for purposes of planning or carrying out a census, survey, or related activities authorized by 13 U.S.C. 8.

(5) *Disclosures for statistical research or reporting.* Records may be disclosed to a recipient for statistical research or reporting if:

(i) Prior to the disclosure, the recipient has provided adequate written assurance that the records shall be used solely for statistical research or reporting; and

(ii) The records are transferred in a form that does not identify individuals.

(6) *Disclosures to the National Archives and Records Administration.* (i) Records may be disclosed to the National Archives and Records Administration for evaluation to determine whether the records have sufficient historical or other value to warrant preservation by the Federal government. If preservation is warranted, the records will be retained by the National Archives and Record Administration, which becomes the official owner of the records.

(ii) Records may be disclosed to the National Archives and Records Administration to carry out records management inspections required by Federal law.

(iii) Records transferred to a Federal Records Center operated by the National Archives and Records Administration for storage are not within this category. Those records continue to be maintained and controlled by the transferring naval activity. The Federal

Records Center is considered the agent of Department of the Navy and the disclosure is made under paragraph (b)(1) of this section.

(7) *Disclosures when requested for law enforcement purposes.* (i) A record may be disclosed to another agency or an instrumentality of any governmental jurisdiction within or under the control of the U.S. for a civil or criminal law enforcement activity if:

(A) The civil or criminal law enforcement activity is authorized by law (federal, state or local); and

(B) The head of the agency (or his or her designee) has made a written request to the naval activity specifying the particular record or portion desired and the law enforcement purpose for which it is sought.

(ii) Blanket requests for any and all records pertaining to an individual shall not be honored. The requesting agency must specify each record or portion desired and how each relates to the authorized law enforcement activity.

(iii) If a naval activity discloses a record outside the Department of Defense for law enforcement purposes without the individual's consent and without an adequate written request, the disclosure must be under an established routine use, such as the "Blanket Routine Use" for law enforcement.

(iv) Disclosure to foreign law enforcement agencies is not governed by the provisions of 5 U.S.C. 552a and this paragraph, but may be made only under established "Blanket Routine Uses," routine uses published in the individual record system notice, or to other governing authority.

(8) *Disclosure to protect the health or safety of an individual.* Disclosure may be made under emergency conditions involving circumstances affecting the health and safety of an individual (*i.e.*, when the time required to obtain the consent of the individual to whom the records pertain might result in a delay which could impair the health or safety of a person) provided notification of the disclosure is sent to the record subject. Sending the notification to the last known address is sufficient. In instances where information is requested by telephone, an attempt will be made to verify the inquirer's and medical facility's identities and the caller's telephone number. The requested information, if then considered appropriate and of an emergency nature, may be provided by return call.

(9) *Disclosures to Congress.* (i) A record may be disclosed to either House of Congress at the request of either the Senate or House of Representatives as a whole.

(ii) A record also may be disclosed to any committee, subcommittee, or joint committee of Congress if the disclosure pertains to a matter within the legislative or investigative jurisdiction of the committee, subcommittee, or joint committee.

(iii) Disclosure may not be made to a Member of Congress requesting in his or her individual capacity. However, for Members of Congress making inquiries on behalf of individuals who are subjects of records, a "Blanket Routine Use" has been established to permit disclosures to individual Members of Congress.

(A) When responding to a congressional inquiry made on behalf of a constituent by whose identifier the record is retrieved, there is no need to verify that the individual has authorized the disclosure to the Member of Congress.

(B) The oral or written statement of a Congressional staff member is sufficient to establish that a request has been received from the individual to whom the record pertains.

(C) If the constituent inquiry is made on behalf of an individual other than the record subject, provide the Member of Congress only that information releasable under 5 U.S.C. 552. Advise the Member of Congress that the written consent of the record subject is required before additional information may be disclosed. Do not contact the record subject to obtain consent for the disclosure to the Member of Congress unless the Congressional office specifically requests it be done.

(10) *Disclosures to the Comptroller General for the General Accounting Office (GAO).* Records may be disclosed to the Comptroller General of the U.S., or authorized representative, in the course of the performance of the duties of the GAO.

(11) *Disclosures under court orders.* (i) Records may be disclosed under the order of a court of competent jurisdiction.

(ii) When a record is disclosed under this provision and the compulsory legal process becomes a matter of public record, make reasonable efforts to notify the individual to whom the record pertains. Notification sent to the last known address of the individual is sufficient. If the order has not yet become a matter of public record, seek to be advised as to when it will become public. Neither the identity or the party to whom the disclosure was made nor the purpose of the disclosure shall be made available to the record subject unless the court order has become a matter of public record.

(iii) The court order must bear the signature of a federal, state, or local judge. Orders signed by court clerks or attorneys are not deemed to be orders of a court of competent jurisdiction. A photocopy of the order, regular on its face, will be sufficient evidence of the court's exercise of its authority of the minimal requirements of SECNAVINST 5820.8A,[9] "Release of Official Information for Litigation Purposes and Testimony by Department of the Navy Personnel."

(12) *Disclosures to consumer reporting agencies.* Certain information may be disclosed to consumer reporting agencies (i.e., credit reference companies such as TRW and Equifax, etc.) as defined by the Federal Claims Collection Act of 1966 (31 U.S.C. 952d). Under the provisions of that Act, the following information may be disclosed to a consumer reporting agency:

(i) Name, address, taxpayer identification number (SSN), and other information necessary to establish the identity of the individual;

(ii) The amount, status, and history of the claim; and

(iii) The agency or program under which the claim arose. 31 U.S.C. 952d specifically requires that the **Federal Register** notice for the system of records from which the information will be disclosed indicate that the information may be disclosed to a consumer reporting agency.

(c) *Disclosures to commercial enterprises.* Records may be disclosed to commercial enterprises only under the criteria established by Secretary of the Navy Instruction 5720.42F and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support.

(1) Any information required to be disclosed by Secretary of the Navy Instruction 5720.42F and 42 U.S.C. 653, Parent Locator Service for Enforcement of Child Support may be disclosed to a requesting commercial enterprise.

(2) Commercial enterprises may present a consent statement signed by the individual indicating specific conditions for disclosing information from a record. Statements such as the following, if signed by the individual, are considered sufficient to authorize the disclosure: I hereby authorize the Department of the Navy to verify my SSN or other identifying information and to disclose my home address and telephone number to authorized representatives of (name of commercial enterprise) to be used in connection

[9] Copies may be obtained: Judge Advocate General, Navy Department, (Code 34), 1322 Patterson Avenue, SE, Suite 3000, Washington Navy Yard, Washington, DC 20374–5066.

with my commercial dealings with that enterprise. All information furnished will be used in connection with my financial relationship with (name of commercial enterprise).

(3) When a consent statement as described in the preceding subsection is presented, provide the information to the commercial enterprise, unless the disclosure is prohibited by another regulation or Federal law.

(4) Blanket consent statements that do not identify the Department of Defense or Department of the Navy, or that do not specify exactly the information to be disclosed, may be honored if it is clear that the individual, in signing the consent statement, was seeking a personal benefit (i.e., loan for a house or automobile) and was aware of the type of information necessary to obtain the benefit sought.

(5) Do not honor requests from commercial enterprises for official evaluations of personal characteristics such as personal financial habits.

(d) *Disclosure of health care records to the public.* This paragraph applies to disclosure of information to the news media and the public concerning individuals treated or hospitalized in Department of the Navy medical facilities and, when the cost of care is paid by the Department of the Navy, in non-Federal facilities.

(1) *Disclosures without the individual's consent.* Normally, the following information may be disclosed without the individual's consent:

(i) Information required to be released by Secretary of the Navy Instruction 5720.42F and OPM Regulations and the Federal Personnel Manual, as well as the information listed in paragraphs (b)(2)(v) (for military personnel) and (b)(2) of this section.

(ii) For civilian employees; and

(iii) General information concerning medical conditions, i.e., date of admission or disposition; present medical assessment of the individual's condition if the medical practitioner has volunteered the information, i.e., the individual's condition presently is (stable) (good) (fair) (serious) (critical), and the patient is (conscious) (semi-conscious) (unconscious).

(2) *Disclosures with the individual's consent.* With the individual's informed consent, any information about the individual may be disclosed. If the individual is a minor or has been declared incompetent by a court of competent jurisdiction, the parent of the minor or appointed legal guardian of the incompetent may give consent on behalf of the individual.

(e) Disclosure of Personal Information on Group/Bulk Orders. Do not use personal information including complete SSNs, home addresses and phone numbers, dates of birth, etc., on group/bulk orders. This personal information should not be posted on lists that everyone listed on the orders sees. Such a disclosure of personal information violates the Privacy Act and this subpart and subpart G of this part.

(f) *Disclosure accounting.* Keep an accurate record of all disclosures made from a record (including those made with the consent of the individual) except those made to DoD personnel for use in performing their official duties; and those made under the FOIA. Disclosure accounting is to permit the individual to determine what agencies or persons have been provided information from the record, enable Department of the Navy activities to advise prior recipients of the record of any subsequent amendments or statements of dispute concerning the record, and provide an audit trial of Department of the Navy's compliance with 5 U.S.C. 552a.

(1) Disclosure accountings shall contain the date of the disclosure; a description of the information disclosed; the purpose of the disclosure; and the name and address of the person or agency to whom the disclosure was made.

(2) The record subject has the right of access to the disclosure accounting except when the disclosure was made at the request of a civil or criminal law enforcement agency under paragraph (b)(7) of this section; or when the system of records has been exempted from the requirement to provide access to the disclosure accounting.

(g) *Methods of disclosure accounting.* Since the characteristics of various records maintained within the Department of the Navy vary widely, no uniform method for keeping disclosure accountings is prescribed. The primary criteria are that the selected method be one which will:

(1) Enable an individual to ascertain what persons or agencies have received disclosures pertaining to him/her;

(2) Provide a basis for informing recipients of subsequent amendments or statements of dispute concerning the record; and

(3) Provide a means to prove, if necessary that the activity has complied with the requirements of 5 U.S.C. 552a and this subpart and subpart G of this part.

(h) *Retention of disclosure accounting.* Maintain a disclosure accounting of the life of the record to which the disclosure pertains, or 5 years after the date of the disclosure, whichever is longer. Disclosure accounting records are normally maintained with the record, as this will ensure compliance with paragraph (f) of this section.

**§ 701.113 Exemptions.**

(a) *Using exemptions.* No system of records is automatically exempt from all provisions of 5 U.S.C. 552a. A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the exemption rule for the system. Subpart G of this part contains the systems designated as exempt, the types of exemptions claimed, the authority and reasons for invoking the exemptions and the provisions of 5 U.S.C. 552a from which each system has been exempt. Exemptions are discretionary on the part of Department of the Navy and are not effective until published as a final rule in the **Federal Register**. The naval activity maintaining the system of records shall make a determination that the system is one for which an exemption may be established and then propose an exemption rule for the system. Submit the proposal to CNO (N09B30) for approval and publication in the **Federal Register**.

(b) *Types of exemptions.* There are two types of exemptions permitted by 5 U.S.C. 552a.

(1) *General exemptions.* Those that authorize the exemption of a system of records from all but specifically identified provisions of 5 U.S.C. 552a.

(2) *Specific exemptions.* Those that allow a system of records to be exempt from only a few designated provisions of 5 U.S.C. 552a.

(c) *Establishing exemptions.* (1) 5 U.S.C. 552a authorizes the Secretary of the Navy to adopt rules designating eligible systems of records as exempt from certain requirements. The Secretary of the Navy has delegated the CNO (N09B30) to make a determination that the system is one for which an exemption may be established and then propose and establish an exemption rule for the system. No system of records within Department of the Navy shall be considered exempt until the CNO (N09B30) has approved the exemption and an exemption rule has been published as a final rule in the **Federal Register**. A system of records is exempt from only those provisions of 5 U.S.C. 552a that are identified specifically in the Department of the Navy exemption rule for the system.

(2) No exemption may be established for a system of records until the system itself has been established by publishing a notice in the **Federal Register**, at least 30 days prior to the effective date, describing the system. This allows

interested persons an opportunity to comment. An exemption may not be used to deny an individual access to information that he or she can obtain under Secretary of the Navy Instruction 5720.42F, "Department of the Navy Freedom of Information Act Program."

(d) *Exemption for classified material.* All systems of records maintained by the Department of the Navy shall be exempt under section (k)(1) of 5 U.S.C. 552a, to the extent that the systems contains any information properly classified under E.O. 12958 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

**Note:** Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without establishing an exemption rule.

(e) *Exempt records in nonexempt systems.* (1) An exemption rule applies to the system of records for which it was established. If a record from an exempt system is incorporated intentionally into a system that has not been exempt, the published notice and rules for the nonexempt system will apply to the record and it will not be exempt from any provisions of 5 U.S.C. 552a.

(2) A record from one component's (i.e., Department of the Navy) exempted system that is temporarily in the possession of another component (i.e., Army) remains subject to the published system notice and rules of the originating component's (i.e., Department of the Navy). However, if the non-originating component incorporates the record into its own system of records, the published notice and rules for the system into which it is incorporated shall apply. If that system of records has not been exempted, the record shall not be exempt from any provisions of 5 U.S.C. 552a.

(3) A record accidentally misfiled into a system of records is governed by the published notice and rules for the system of records in which it actually should have been filed.

(f) *General exemptions.* (1)*Central Intelligence Agency (CIA).* The Department of the Navy is not authorized to establish an exemption for records maintained by the CIA under subsection (j)(1) of 5 U.S.C. 552a.

(2) *Law enforcement.* (i) The general exemption provided by subsection (j)(2) of 5 U.S.C. 552a may be established to protect criminal law enforcement records maintained by Department of the Navy.

(ii) To be eligible for the (j)(2) exemption, the system of records must be maintained by an element that performs, as one of its principal functions, the enforcement of criminal laws. The Naval Investigative Service, Naval Inspector General, and military police activities qualify for this exemption.

(iii) Criminal law enforcement includes police efforts to detect, prevent, control, or reduce crime, or to apprehend criminals, and the activities of prosecution, court, correctional, probation, pardon, or parole authorities.

(iv) Information that may be protected under the (j)(2) exemption includes:

(A) Information compiled for the purpose of identifying criminal offenders and alleged criminal offenders consisting of only identifying data and notations of arrests; the nature and disposition of criminal charges; and sentencing, confinement, release, parole, and probation status;

(B) Information compiled for the purpose of a criminal investigation, including reports of informants and investigators, and associated with an identifiable individual; and

(C) Reports identifiable to an individual, compiled at any stage of the enforcement process, from arrest, apprehension, indictment, or preferral of charges through final release from the supervision that resulted from the commission of a crime.

(v) The (j)(2) exemption does not apply to:

(A) Investigative records maintained by a naval activity having no criminal law enforcement duties as one of its principle functions, or

(B) Investigative records compiled by any element concerning individual's suitability, eligibility, or qualification for duty, employment, or access to classified information, regardless of the principle functions of the naval activity that compiled them.

(vi) The (j)(2) exemption established for a system of records maintained by a criminal law enforcement activity cannot protect law enforcement records incorporated into a nonexempt system of records or any system of records maintained by an activity not principally tasked with enforcing criminal laws. All system managers, therefore, are cautioned to comply strictly with Department of the Navy regulations or instructions prohibiting or limiting the incorporation of criminal law enforcement records into systems other than those maintained by criminal law enforcement activities.

(g) *Specific exemptions.* Specific exemptions permit certain categories of records to be exempted from specific provisions of 5 U.S.C. 552a. Subsections (k)(1)–(k)(7) of 5 U.S.C. 552a allow exemptions for seven categories of records. To be eligible for a specific exemption, the record must meet the corresponding criteria.

**Note:** Department of the Navy Privacy Act systems of records which contain classified information automatically qualify for a (k)(1) exemption, without an established exemption rule.

(1) *(k)(1) exemption:* Information properly classified under Secretary of the Navy Instruction 5720.42F, "Department of the Navy Freedom of Information Act Program" and E.O. 12958, in the interest of national defense or foreign policy.

(2) *(k)(2) exemption:* Investigatory information (other than that information within the scope of paragraph (f)(2) of this section) compiled for law enforcement purposes. If maintaining the information causes an individual to be ineligible for or denied any right, benefit, or privilege that he or she would otherwise be eligible for or entitled to under Federal law, then he or she shall be given access to the information, except for the information that would identify a confidential source (see paragraph (h) of this section, "confidential source"). The (k)(2) exemption, when established, allows limited protection on investigative records maintained for use in personnel and administrative actions.

(3) *(k)(3) exemption:* Records maintained in connection with providing protective services to the President of the United States and other individuals under 18 U.S.C. 3056.

(4) *(k)(4) exemption:* Records required by Federal law to be maintained and used solely as statistical records that are not used to make any determination about an identifiable individual, except as provided by 13 U.S.C. 8.

(5) *(k)(5) exemption:* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent such material would reveal the identity of a confidential source (see paragraph (h) of this section, "confidential source"). This exemption allows protection of confidential sources in background investigations, employment inquiries, and similar inquiries used in personnel screening to determine suitability, eligibility, or qualifications.

(6) *(k)(6) exemption:* Testing or examination material used solely to

determine individual qualifications for appointment or promotion in the Federal or military service if the disclosure would compromise the objectivity or fairness of the testing or examination process.

(7) *(k)(7) exemption:* Evaluation material used to determine potential for promotion in the military services, but only to the extent that disclosure would reveal the identity of a confidential source (see paragraph (h) of this section, "confidential source".)

(h) *Confidential source.* Promises of confidentiality are to be given on a limited basis and only when essential to obtain the information sought. Establish appropriate procedures for granting confidentiality and designate those categories of individuals authorized to make such promises.

**§ 701.114 Enforcement actions.**

(a) *Administrative remedies.* An individual who alleges he or she has been affected adversely by a naval activity's violation of 5 U.S.C. 552a or this subpart and subpart G of this part shall be permitted to seek relief from SECNAV through proper administrative channels.

(b) *Civil court actions.* After exhausting all administrative remedies, an individual may file suit in Federal court against a naval activity for any of the following acts:

(1) *Denial of an amendment request.* The activity head, or his or her designee wrongfully refuses the individual's request for review of the initial denial of an amendment or, after review, wrongfully refuses to amend the record;

(2) *Denial of access.* The activity wrongfully refuses to allow the individual to review the record or wrongfully denies his or her request for a copy of the record;

(3) *Failure to meet recordkeeping standards.* The activity fails to maintain an individual's record with the accuracy, relevance, timeliness, and completeness necessary to assure fairness in any determination about the individual's rights, benefits, or privileges and, in fact, makes an adverse determination based on the record; or

(4) *Failure to comply with Privacy Act.* The activity fails to comply with any other provision of 5 U.S.C. 552a or any rule or regulation promulgated under 5 U.S.C. 552a and thereby causes the individual to be adversely affected.

(c) *Criminal penalties.* Subsection (i)(1) of 5 U.S.C. 552a authorizes three criminal penalties against individuals for violations of its provisions. All three are misdemeanors punishable by fines of $5,000.

(1) *Wrongful disclosure.* Any member or employee of Department of the Navy who, by virtue of his or her employment or position, has possession of or access to records and willfully makes a disclosure knowing that disclosure is in violation of 5 U.S.C. 552a or this subpart and subpart G of this part.

(2) *Maintaining unauthorized records.* Any member or employee of Department of the Navy who willfully maintains a system of records for which a notice has not been published under periodic Chief of Naval Operations Notes (OPNAVNOTEs) 5211, "Current Privacy Act Issuances."

(3) *Wrongful requesting or obtaining records.* Any person who knowingly and willfully requests or obtains information concerning an individual under false pretenses.

**§ 701.115 Computer matching program.**

(a) *General.* 5 U.S.C. 552a and this subpart and subpart G of this part are applicable to certain types of computer matching, i.e., the computer comparison of automated systems of records. There are two specific kinds of matching programs that are fully governed by 5 U.S.C. 552a and this subpart and subpart G of this part:

(1) Matches using records from Federal personnel or payroll systems of records;

(2) Matches involving Federal benefit programs to accomplish one or more of the following purposes:

(i) To determine eligibility for a Federal benefit.

(ii) To comply with benefit program requirements.

(iii) To effect recovery of improper payments or delinquent debts from current or former beneficiaries.

(b) *The record comparison must be a computerized one.* Manual comparisons are not covered, involving records from two or more automated systems of records (i.e., systems of records maintained by Federal agencies that are subject to 5 U.S.C. 552a); or a Department of the Navy automated systems of records and automated records maintained by a non-Federal agency (i.e., State or local government or agent thereof). A covered computer matching program entails not only the actual computerized comparison, but also preparing and executing a written agreement between the participants, securing approval of the Defense Data Integrity Board, publishing a matching notice in the **Federal Register** before the match begins, ensuring that investigation and due process are completed, and taking ultimate action, if any.

## Subpart G—Privacy Act Exemptions

**Authority:** Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

**§ 701.116 Purpose.**

Subparts F and G of this part contain rules promulgated by the Secretary of the Navy, pursuant to 5 U.S.C. 552a (j) and (k), and subpart F, § 701.113, to exempt certain systems of Department of the Navy records from specified provisions of 5 U.S.C. 552a.

**§ 701.117 Exemption for classified records.**

All systems of records maintained by the Department of the Navy shall be exempt from the requirements of the access provision of the Privacy Act (5 U.S.C. 552a(d)) under the (k)(1) exemption, to the extent that the system contains information properly classified under E.O. 12958 and that is required by that E.O. to be kept secret in the interest of national defense or foreign policy. This exemption is applicable to parts of all systems of records including those not otherwise specifically designated for exemptions herein which contain isolated items of properly classified information.

**§ 701.118 Exemptions for specific Navy record systems.**

(a) *System identifier and name:*

(1) *N01070–9, White House Support Program.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iv) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5),

but only to the extent that such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2), (k)(3), and (k)(5).

(4) *Reasons:* (i) Exempted portions of this system contain information which has been properly classified under E.O. 12958, and which is required to be kept secret in the interest of national defense or foreign policy. Exempted portions of this system may also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information, and which was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record. Exempted portions of this system may also contain information collected and maintained in connection with providing protective services to the President and other individuals protected pursuant to 18 U.S.C. 3056. Exempted portions of this system may also contain investigative records compiled for law enforcement purposes, the disclosure of which could reveal the identity of sources who provide information under an express or implied promise of confidentiality, compromise investigative techniques and procedures, jeopardize the life or physical safety of law-enforcement personnel, or otherwise interfere with enforcement proceedings or adjudications.

(b) *System identifier and name:*

(1) *N01131–1, Officer Selection and Appointment System.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iv) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(5), (k)(6), and (k)(7).

(4) *Reasons:* (i) Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(c) *System identifier and name:*

(1) *N01133–2, Recruiting Enlisted Selection System.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iv) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(5), (k)(6), and (k)(7).

(4) *Reasons:* Granting individuals access to portions of this system of records could result in the disclosure of classified material, or the identification of sources who provided information to the government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that does not disclose the identity of a confidential source.

(d) *System identifier and name:*

(1) *N01640–1, Individual Correctional Records.*

(2) *Exemption:* (i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reason:* (i) Granting individuals access to portions of these records pertaining to or consisting of, but not limited to, disciplinary reports, criminal investigations, and related statements of witnesses, and such other related matter in conjunction with the enforcement of criminal laws, could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(e) *System identifier and name:*

(1) *N01754–3, Navy Child Development Services Program.*

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

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(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

(3) *Authority:* 5 U.S.C. 552a(k)(2).

(4) *Reasons:* (i) Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recrimination, as well as to protect their right to privacy. It is essential that the identities of all individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accountings, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

(f) *System identifier and name:*

(1) *N03834–1, Special Intelligence Personnel Access File.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4) (G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1) and (k)(5).

(4) *Reasons:* (i) Exempted portions of this system contain information that has been properly classified under E.O. 12356, and that is required to be kept secret in the interest of national defense or foreign policy.

(ii) Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for access to classified information and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(g) *System identifier and name:*

(1) *N04060–1, Navy and Marine Corps Exchange Security Files.*

(2) *Exemption:* (i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(2).

(4) *Reasons:* (i) Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and could also reveal and render ineffectual investigative techniques, sources, and methods used by these activities.

(h) [Reserved]

(i) *System identifier and name:*

(1) *N05041–1, Inspector General (IG) Records.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Portions of this system of records may be exempt from the provisions of 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1) and (k)(2).

(4) *Reasons:* (i) From subsection (c)(3) because the release of the disclosure accounting would permit individuals to obtain valuable information concerning the nature of the investigation and would present a serious impediment to the orderly conduct of any investigative activities. Such accounting could result in the release of properly classified information which would compromise the national defense or disrupt foreign policy.

(ii) From subsections (d) and (f) because access to the records would inform individuals of the existence and nature of the investigation; provide information that might result in the concealment, destruction, or fabrication of evidence; possibly jeopardize the safety and well-being of informants, witnesses and their families; likely reveal and render ineffectual investigatory techniques and methods and sources of information; and possibly result in the invasion of the personal privacy of third parties. Access could result in the release of properly classified information which could compromise the national defense or disrupt foreign policy. Amendment of the records would interfere with the ongoing investigation and impose an impossible administrative burden by requiring investigations to be continually reinvestigated.

(iii) From subsection (e)(1) because in the course of the investigation it is not always possible, at least in the early stages of the inquiry, to determine relevance and or necessity as such determinations may only occur after the information has been evaluated. Information may be obtained concerning the actual or potential violation of laws or regulations other than those relating to the ongoing investigation. Such information should be retained as it can aid in establishing patterns of improper activity and can provide valuable leads in the conduct of other investigations.

(iv) From subsection (e)(4)(G) and (H) because this system of records is exempt from individual access pursuant to subsections (k)(1) and (k)(2) of the Privacy Act of 1974.

(v) From subsection (e)(4)(I) because it is necessary to protect the confidentiality of sources and to protect the privacy and physical safety of witnesses. Although the system is exempt from this requirement, the Department of the Navy has published a notice in broad, generic terms in the belief that this is all that subsection (e)(4)(I) of the Act requires.

(j) *System identifier and name:*

(1) *N05300–3, Faculty Professional Files.*

(2) *Exemption:* Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian

employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4) (G) and (H), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(5).

(4) *Reasons:* Exempted portions of this system contain information considered relevant and necessary to make a release determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(k) *System identifier and name:*

(1) *N05354–1, Equal Opportunity Information Management System.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1) and (k)(5).

(4) *Reasons:* Granting access to information in this system of records could result in the disclosure of classified material, or reveal the identity of a source who furnished information to the Government under an express or implied promise of confidentiality. Material will be screened to permit access to unclassified material and to information that will not disclose the identity of a confidential source.

(l) *System identifier and name:*

(1) *N05520–1, Personnel Security Eligibility Information System.*

(2) *Exemption:* (i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(v) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(4)(G) and (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(7).

(4) *Reasons:* Granting individuals access to information collected and maintained in this system of records could interfere with orderly investigations; result in the disclosure of classified material; jeopardize the safety of informants, witnesses, and their families; disclose investigative techniques; and result in the invasion of privacy of individuals only incidentally related to an investigation. Material will be screened to permit access to unclassified information that will not disclose the identity of sources who provide the information to the government under an express or implied promise of confidentiality.

(m) *System identifier and name:*

(1) *N05520–4, NCIS Investigative Files System.*

(2) *Exemption:* (i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), (e)(3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reason:*

(i) Granting individuals access to information collected and maintained by this activity relating to the enforcement of criminal laws could interfere with the orderly investigations, with the orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by these components and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to portions of these records, and the reasons therefor, necessitate the exemption of this system of records from the requirement of the other cited provisions.

(5) *Exemption:*

(i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iii) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(iv) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(v) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(vi) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(6) *Authority:* 5 U.S.C. 552a(k)(1), (k)(3), (k)(4), (k)(5) and (k)(6).

(7) *Reason:*

(i) The release of disclosure accountings would permit the subject of

an investigation to obtain valuable information concerning the nature of that investigation, and the information contained, or the identity of witnesses or informants, would therefor present a serious impediment to law enforcement. In addition, disclosure of the accounting would amount to notice to the individual of the existence of a record.

(ii) Access to the records contained in this system would inform the subject of the existence of material compiled for law enforcement purposes, the premature release of which could prevent the successful completion of investigation, and lead to the improper influencing of witnesses, the destruction of records, or the fabrication of testimony. Exempt portions of this system also contain information that has been properly classified under E.O. 12958, and that is required to be kept secret in the interest of national defense or foreign policy.

(iii) Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified information, and was obtained by providing an express or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(iv) The notice of this system of records published in the **Federal Register** sets forth the basic statutory or related authority for maintenance of the system.

(v) The categories of sources of records in this system have been published in the **Federal Register** in broad generic terms. The identity of specific sources, however, must be withheld in order to protect the confidentiality of the source, of criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(vi) This system of records is exempted from procedures for notice to an individual as to the existence of records pertaining to him/her dealing with an actual or potential civil or regulatory investigation, because such notice to an individual would be detrimental to the successful conduct and/or completion of an investigation, pending or future. Mere notice of the fact of an investigation could inform the subject or others that their activities are under, or may become the subject of, an investigation. This could enable the subjects to avoid detection, to influence witnesses improperly, to destroy records, or to fabricate testimony.

(vii) Exempt portions of this system containing screening board reports.

(viii) Screening board reports set forth the results of oral examination of applicants for a position as a special agent with the Naval Investigation Service Command. Disclosure of these records would reveal the areas pursued in the course of the examination and thus adversely affect the result of the selection process. Equally important, the records contain the candid views of the members composing the board. Release of the records could affect the willingness of the members to provide candid opinions and thus diminish the effectiveness of a program which is essential to maintaining the high standard of the Special Agent Corps., *i.e.*, those records constituting examination material used solely to determine individual qualifications for appointment in the Federal service.

(n) *System identifier and name:*

(1) *N05520–5, Personnel Security Program Management Records System.*

(2) *Exemption:*

(i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of 5 U.S.C. 552a: (d)(1–5).

(3) *Authority:* 5 U.S.C. 552a(k)(1) and (k)(5).

(4) *Reasons:*

(i) Granting individuals access to information collected and maintained in this system of records could result in the disclosure of classified material; and jeopardize the safety of informants, and their families. Further, the integrity of the system must be ensured so that complete and accurate records of all adjudications are maintained. Amendment could cause alteration of the record of adjudication.

(o) *System identifier and name:*

(1) *N05527–1, Security Incident System.*

(2) *Exemption:*

(i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e)(2), and (e)(4)(G) through (I), (e)(5), (e)(8), (f) and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reasons:*

(i) Granting individuals access to information collected and maintained by this component relating to the enforcement of criminal laws could interfere with orderly administration of justice, and possibly enable suspects to avoid detection or apprehension. Disclosure of this information could result in concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and of law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of privacy of individuals only incidentally related to an investigation.The exemption of the individual's right of access to his or her records, and the reason therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(p) *System identifier and name:*

(1) *N05527–4, Naval Security Group Personnel Security/Access Files.*

(2) *Exemption:*

(i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iv) Records maintained solely for statistical research or program evaluation purposes and which are not used to make decisions on the rights, benefits, or entitlement of an individual except for census records which may be disclosed under 13 U.S.C. 8, may be exempt pursuant to 5 U.S.C. 552a(k)(4).

(v) Investigatory material compiled solely for the purpose of determining

suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(vi) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(1) through (k)(5).

(4) *Reasons:*

(i) Exempt portions of this system contain information that has been properly classified under E.O. 12958, and that is required to be kept secret in the interest of national defense or foreign policy.

(ii) Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualification, eligibility or suitability for access to classified special intelligence information, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(q) *System identifier and name:*

(1) *N05800–1, Legal Office Litigation/ Correspondence Files.*

(2) *Exemption:*

(i) Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(ii) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(v) Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

(vi) Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(1), and (f)(2), (3), and (4).

(3) *Authority:* 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), (k)(6), and (k)(7).

(4) *Reasons:*

(i) Subsection (d) because granting individuals access to information relating to the preparation and conduct of litigation would impair the development and implementation of legal strategy. Accordingly, such records are exempt under the attorney-client privilege. Disclosure might also compromise on-going investigations and reveal confidential informants. Additionally, granting access to the record subject would seriously impair the Navy's ability to negotiate settlements or pursue other civil remedies. Amendment is inappropriate because the litigation files contain official records including transcripts, court orders, investigatory materials, evidentiary materials such as exhibits, decisional memorandum and other case-related papers. Administrative due process could not be achieved by the "exparte" correction of such materials.

(ii) Subsection (e)(1) because it is not possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. What appeared relevant and necessary when collected, ultimately may be deemed unnecessary upon assessment in the context of devising legal strategy. Information collected during civil litigation investigations which is not used during subject case is often retained to provide leads in other cases or to establish patterns of activity.

(iii) Subsections (f)(2), (3), and (4) because this record system is exempt from the individual access provisions of subsection (d).

(r) *System identifier and name:*

(1) *N01000–5, Naval Clemency and Parole Board Files.*

(2) *Exemption:*

(i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(4), (d), (e)(4)(G), and (f).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reasons:*

(i) Granting individuals access to records maintained by this Board could interfere with internal processes by which Board personnel are able to formulate decisions and policies with regard to clemency and parole in cases involving naval prisoners and other persons under the jurisdiction of the Board. Material will be screened to permit access to all material except such records or documents as reflecting items of opinion, conclusion, or recommendation expressed by individual board members or by the board as a whole.

(ii) The exemption of the individual's right to access to portions of these records, and the reasons therefore, necessitate the partial exemption of this system of records from the requirements of the other cited provisions.

(s) *System identifier and name:*

(1) *N06320–2, Family Advocacy Program System.*

(2) *Exemption:*

(i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3) and (d).

(3) *Authority:* 5 U.S.C. 552a(k)(2) and (k)(5).

(4) *Reasons:*

(i) Exemption is needed in order to encourage persons having knowledge of abusive or neglectful acts toward children to report such information, and to protect such sources from embarrassment or recriminations, as well as to protect their right to privacy. It is essential that the identities of all

individuals who furnish information under an express promise of confidentiality be protected. Additionally, granting individuals access to information relating to criminal and civil law enforcement, as well as the release of certain disclosure accounting, could interfere with ongoing investigations and the orderly administration of justice, in that it could result in the concealment, alteration, destruction, or fabrication of information; could hamper the identification of offenders or alleged offenders and the disposition of charges; and could jeopardize the safety and well being of parents and their children.

(ii) Exempted portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment and Federal contracts, and that was obtained by providing an express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(t) *System identifier and name:*

(1) *N12930–1, Human Resources Group Personnel Records.*

(2) *Exemption:*

(i) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(ii) Testing or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service may be exempt pursuant to 5 U.S.C. 552a(k)(6), if the disclosure would compromise the objectivity or fairness of the test or examination process.

(iii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (d), (e)(4)(G) and (H), and (f).

(3) *Authority:* 5 U.S.C. 552a(k)(5) and (k)(6).

(4) *Reasons:*

(i) Exempted portions of this system contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal employment, and was obtained by providing express or implied promise to the source that his or her identity would not be revealed to the subject of the record.

(ii) Exempted portions of this system also contain test or examination material used solely to determine individual qualifications for appointment or promotion in the Federal service, the disclosure of which would comprise the objectivity or fairness of the testing or examination process.

**§ 701.119 Exemptions for specific Marine Corps record systems.**

(a) *System identifier and name:*

(1) *MMN00018, Base Security Incident Reporting System.*

(2) *Exemption:*

(i) Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

(ii) Portions of this system of records are exempt from the following subsections of the Privacy Act: (c)(3), (c)(4), (d), (e) (2) and (3), (e)(4)(G) through (I), (e)(5), (e)(8), (f), and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reasons:*

(i) Granting individuals access to information collected and maintained by these activities relating to the enforcement of criminal laws could interfere with orderly investigations, with the orderly administration of justice, and might enable suspects to avoid detection or apprehension. Disclosure of this information could result in the concealment, destruction, or fabrication of evidence, and jeopardize the safety and well being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffectual investigative techniques, sources, and methods used by this component, and could result in the invasion of the privacy of individuals only incidentally related to an investigation. The exemption of the individual's right of access to his or her records, and the reasons therefore, necessitate the exemption of this system of records from the requirements of other cited provisions.

(b) *System identifier and name:*

(1) *MIN00001, Personnel and Security Eligibility and Access Information System.*

(2) *Exemption:*

(i) Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

(ii) Records maintained in connection with providing protective services to the President and other individuals under 18 U.S.C. 3506, may be exempt pursuant to 5 U.S.C. 552a(k)(3).

(iii) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

(iv) Portions of this system of records are exempt for the following subsections of the Privacy Act: (c)(3), (d), (e)(1), (e)(4)(G) through (I), and (f).

(3) *Authority: 5 U.S.C. 552a(k)(2), (k)(3), and (k)(5), as applicable.*

(4) *Reasons:*

(i) Exempt portions of this system contain information that has been properly classified under E.O. 12958, and that is required to be kept secret in the interest of national defense or foreign policy.

(ii) Exempt portions of this system also contain information considered relevant and necessary to make a determination as to qualifications, eligibility, or suitability for Federal civilian employment, military service, Federal contracts, or access to classified, compartmented, or otherwise sensitive information, and was obtained by providing an expressed or implied assurance to the source that his or her identity would not be revealed to the subject of the record.

(iii) Exempt portions of this system further contain information that identifies sources whose confidentiality must be protected to ensure that the privacy and physical safety of these witnesses and informants are protected.

Dated: May 12, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–12465 Filed 5–17–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

(CGD08–00–011)

RIN 2115–AE47

## Drawbridge Operating Regulation; Massalina Bayou, Florida

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Commander, Eighth Coast Guard District has temporarily changed the regulation governing the operation of the Tarpon Dock bascule span drawbridge across Massalina Bayou, mile 0.0, at Panama City, Bay County, Florida. The draw of the bridge may remain closed to navigation from 9 p.m. until 11 p.m. on July 4, 2000. This temporary rule is issued to facilitate movement of vehicular traffic associated with a fireworks display. Presently the draw opens on signal at all times.

**DATES:** This rule is effective from 9 p.m. to 11 p.m. on July 4, 2000.

**ADDRESSES:** Material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD08–00–011 and are available for inspection or copying at the Bridge Administration Branch, Eighth Coast Guard District, 501 Magazine Street, Room 1313, New Orleans, Louisiana, 70130–3396 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** David Frank, Bridge Administration Branch, at the address given above. Telephone (504) 589–2965.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. This temporary bridge closure has become an annual event in conjunction with the 4th of July fireworks celebration. The closure is for two hours and does not significantly affect marine traffic.

### Background and Purpose

The City of Panama City, Florida requested a temporary rule, changing the operation of the Tarpon Dock bascule span drawbridge. The rule is needed to accommodate the additional volume of vehicular traffic that the fireworks display is expected to generate. The Tarpon Dock bascule span drawbridge across Massalina Bayou has a vertical clearance of 7 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists primarily of commercial fishing vessels, sailing vessels and other recreational craft.

### Regulatory Evaluation

This temporary rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This is because the number of vessels impaired by the closed-to-navigation period is minimal. All commercial vessels still have ample opportunity to transit this waterway before and after the two-hour closure on July 4, 2000.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this temporary rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit through the Tarpon dock bridge across Massalina Bayou from 9 p.m. to 11 p.m. on July 4, 2000.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding the temporary rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Eighth Coast Guard District at the address above.

### Collection of Information

This temporary rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

### Federalism

We have analyzed this temporary rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This temporary rule would not impose an unfunded mandate.

### Taking of Private Property

This temporary rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This temporary rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This temporary rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

### Environmental

The Coast Guard considered the environmental impact of this temporary rule and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this temporary rule is categorically excluded from further environmental documentation. Bridge Administration Program actions that can be categorically excluded include promulgation of operating

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regulations or procedures for drawbridges. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 117**

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations, as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. From 9 p.m. until 11 p.m. on July 4, 2000, a new temporary § 117.T301 is added to read as follows:

**§ 117.T301 Massalina Bayou.**

The draw of the Tarpon Dock bascule span bridge, Massalina Bayou, mile 0.0 at Panama City, shall open on signal; except that from 9 p.m. until 11 p.m. on July 4, 2000, the draw need not open for the passage of vessels.

Dated: May 5, 2000.

**K.J. Eldridge,**

*Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.*

[FR Doc. 00–12571 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[COTP Western Alaska 00–003]**

**RIN 2115–AA97**

### Safety Zone; Port Graham, Cook Inlet, Alaska

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary 250-yard radius safety zone on the navigable waters located in Port Graham, Cook Inlet, Alaska. The Derrick Barge LOS ANGELES will anchor in this position and assemble the Exploratory Drilling Structure "OSPREY". This safety zone is implemented to ensure the safe and timely anchoring of the Derrick Barge LOS ANGELES and the safe assembly of the Drilling Structure OSPREY in Port Graham, Cook Inlet, Alaska. This safety zone is necessary because the operation requires the LOS ANGELES to remain in the anchoring position until the assembly of the OSPREY is complete. Vessels or personnel not engaged in the anchoring and assembly operation, and operating within the 250-yard radius may place themselves at risk to injury.

**DATES:** This temporary final rule is effective from 12:01 a.m. on June 16, 2000, until 11:59 p.m. on July 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander Rick Rodriguez, Chief of Port Operations, USCG Marine Safety Office, Anchorage, at (907) 271–6724.

**SUPPLEMENTARY INFORMATION:**

**Regulatory History**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM and delaying the effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public. The OSPREY platform is a large structure that is difficult to maneuver, and will be towed in the strong currents of Cook Inlet, Alaska and vessels or personnel not engaged in the towing or setting down operation operating within the 600-yard radius may place themselves at risk of injury. The event is scheduled for June 16, 2000 and the permit request was only recently received.

**Background and Purpose**

The Coast Guard is establishing a temporary 250-yard radius safety zone on the navigable waters of the United States around the position Latitude 59–21.40 N, Longitude 151–49.50 W. The Derrick Barge LOS ANGELES will anchor in this position and assemble the tower to the tower legs of the Exploratory Drilling Structure "OSPREY" in Port Graham, Cook Inlet, Alaska. The safety zone is designed to permit the safe and timely anchoring and assembly of this structure in the narrow timeframe in which this can be safely done. The safety zone's 250-yard standoff also aids the safety of these evolutions by minimizing conflicts and hazards that might otherwise occur with other transiting vessels. The limited size of the zone is designed to minimize impact on other mariners transiting through the area.

**Regulatory Evaluation**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this rule will have significant economic impacts on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Because this safety zone is very small, will only be in effect for twenty five days, and does not impede access to other maritime facilities in the area, the Coast Guard believes there will be no impact to small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

**Collection of Information**

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Federalism**

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation because it establishes a safety zone

**Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) and E.O. 12875, Enhancing the Intergovernmental Partnership, (58 FR 58093; October 28, 1993) govern the issuance of Federal

regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

**Temporary Final Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. From 12:01 a.m. on June 16, 2000, until 11:59 p.m. on July 10, 2000, § 165.T17–003 is temporarily added to read as follows:

**§ 165.T17–003 Safety Zone; Port Graham, Cook Inlet, Alaska.**

(a) *Description.* The following area is a Safety Zone: All navigable waters within a 250-yard radius of the Derrick Barge LOS ANGELES, located in Port Graham, Cook Inlet, Alaska.

(b) *Effective Dates.* This section is effective from 12:01 a.m. on June 16, 2000, until 11:59 p.m. on July 10, 2000.

(c) *Regulations.*

(1) The Captain of the Port means the Captain of the Port, Western Alaska. The Captain of the Port may authorize or designate any Coast Guard commissioned, warrant, or petty officer to act on his behalf as his representative.

(2) The general regulations governing safety zones contained in Title 33 Code of Federal Regulations, part 165.23 apply. No person or vessel may enter, transit through, anchor or remain in this safety zone, with the exception of attending vessels, without first obtaining permission from the Captain of the Port, Western Alaska, or his representative. The Captain of the Port or his representative may be contacted in the vicinity of the SWAN via marine VHF channel 16. The Captain of the Port's representative can also be contacted by telephone at (907) 271–6700.

Dated: April 14, 2000.

**W. J. Hutmacher,**

*Captain, U.S. Coast Guard Captain of the Port, Western Alaska.*

[FR Doc. 00–12461 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–15–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[MO 096–1096b; FRL–6701–6]**

## Approval and Promulgation of Implementation Plans: State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** In this final rule, we (EPA) are announcing approval of a revision to Missouri's State Implementation Plan (SIP) for air pollution control. This action approves the inspection and maintenance (I/M) program which is applicable to the St. Louis nonattainment area as a revision to the SIP. The state program requires the implementation of a motor vehicle I/M program containing many of the features of an enhanced I/M program in Jefferson, St. Louis, and St. Charles counties and St. Louis City. We proposed approval of this program in the **Federal Register** on February 17, 2000. This final action is being published to meet our statutory obligation under the Clean Air Act (CAA or the Act).

**DATES:** This rule is effective on June 19, 2000.

**ADDRESSES:** A copy of the state submittal is available at the following address for inspection during normal business hours: EPA, Region 7, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Leland Daniels at (913) 551–7651.

**SUPPLEMENTARY INFORMATION:** This section provides additional information by addressing the following questions:

**What Is a SIP?**

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards that we established. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide. Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally enforceable SIP. Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

**What Is the Federal Approval Process for a SIP?**

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding our proposed action on the state submission. If adverse comments are received, we must address them prior to taking any final action.

All state regulations and supporting information that we approve under section 110 of the CAA are incorporated into the Federally approved SIP. The record of such SIP approvals is maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date.

**What Does Federal Approval of a State Regulation Mean?**

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take an enforcement action to return a violator to compliance. Citizens are also offered legal recourse to address violations as described in section 304 the CAA.

**What Is Being Addressed in This Document?**

In a letter of November 10, 1999 to Dennis Grams, Regional Administrator, Stephen Mahfood, Director, Missouri Department of Natural Resources (MDNR), submitted a revised I/M program as an amendment to the SIP. The submittal included the SIP revision and a number of attachments including the adopted state statute and regulation, the signed I/M contract, a memorandum of understanding with the Missouri Highway Patrol, an interagency agreement with the Missouri Department of Revenue (MDOR), the I/M budget, modeling input and output files, sample calculations, a table showing the number of vehicles in the I/M program, procedures and specifications, a list of zip codes for the I/M program, the public education program, and an example of the MDOR contract with fee offices. The Missouri rule being approved is 10 CSR 10–5.380, Motor Vehicle Emissions Inspection, with a state effective date of December 30, 1999.

On February 17, 2000 we proposed to approve this SIP revision. The proposal stated that the state I/M regulations established pass/fail exhaust standards for hydrocarbons, carbon monoxide, carbon dioxide, and oxides of nitrogen. Missouri neither passes nor fails vehicles based on carbon dioxide readings, nor do we require states to base compliance on carbon dioxide measurements, anywhere. Carbon dioxide is measured but only as a quality control process.

The public comment period was open through March 20, 2000. No comments were received. In the February 17, 2000, proposal, we noted that comments had been received on a prior proposal (64 FR 9460 on February 26, 1999) on a previous submission of the I/M program. The comments asserted deficiencies in the previous state submission. We also noted that the submission on which the February 17 proposal was based contained substantial revisions to the prior submittal, and encouraged comments relevant to the revised submittal. No comments were forthcoming, and we have determined that the prior comments are not relevant to the state's November 1999 submittal and our February 17, 2000 proposal.

On April 5, 2000 MDNR began implementation of the I/M program in the St. Louis nonattainment area.

This **Federal Register** notice takes final action to fully approve the I/M program, including the state's I/M rule, as it relates to the Missouri portion of the St. Louis nonattainment area.

**Have the Requirements for Approval of a SIP Revision Been Met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR section 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in our proposal published February 17, 2000, the revision meets the substantive SIP requirements of the CAA, including section 110, Part D of Title I, and implementing regulations in 40 CFR part 51, subpart S (the "I/M rule"). In the February 17 proposal, we discussed in detail how the state's submittal meets each of the relevant requirements of the I/M rule and EPA's rationale for approval. The reader is referred to that discussion for the rationale for this final action.

**What Action Is EPA Taking?**

Section 182(b) of the Act requires states with moderate ozone nonattainment areas to implement a "basic" I/M program. The state's plan relies on the I/M program and other specific control measures to achieve the necessary emission reductions so that the National Ambient Air Quality Standards are met. The I/M rule strengthens the SIP by obtaining needed emission reductions. Today's final action incorporates the St. Louis I/M program into the SIP.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller

General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 17, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 8, 2000.

**Dennis Grams,**

*Regional Administrator, Region 7.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart AA—Missouri**

2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10–5.380, under Chapter 5, to read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Missouri Department of Natural Resources** | | | | |
| * | * | * | * | * |
| **Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area** | | | | |
| * | * | * | * | * |
| 10–5.380 | Motor vehicle emissions inspection. | 12/30/99 | [insert FR cite] May 18, 2000. | |
| * | * | * | * | * |

3. In § 52.1320 the table in paragraph (e) is amended by adding an entry at the end of the table in the Nonregulatory SIP Provisions for the inspection/maintenance program, to read as follows:

* * * * *

(e) * * *

EPA-APPROVED MISSOURI NONREGULATIONS SIP PROVISIONS

| Name of nonregulatory SIP Provision | Applicable geographic or nonattainment area | State submittal date | EPA approval date | Comments |
|---|---|---|---|---|
| * | * | * | * | * |
| Implementation plan for the Missouri inspection/maintenance program | St. Louis | 11/12/99 | [insert FR cite] May 18, 2000. | |

[FR Doc. 00–12395 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[Region 7 Tracking No. MO 102–1102; FRL–6701–5]**

**Approval and Promulgation of Implementation Plans; State of Missouri**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a nitrogen oxides ($NO_X$) reasonably available control technology (RACT) rule which is applicable to the St. Louis, Missouri, ozone nonattainment area. This rule reduces $NO_X$ emissions in the St. Louis area by requiring major sources to install or comply with RACT as required by the Clean Air Act (CAA).

**DATES:** This rule is effective on June 19, 2000.

**ADDRESSES:** Copies of the state submittal are available at the following address for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Kim Johnson at (913) 551–7975.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?
What is being addressed in this action?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

**What is a SIP?**

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

**What is the Federal approval process for a SIP?**

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

**What does Federal approval of a state regulation mean to me?**

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

**What is being addressed in this document?**

$NO_X$ emissions combine with volatile organic compound emissions on hot, sunny days to form ground level ozone, commonly known as smog. The purpose of the following rule is to establish RACT requirements in Missouri for major sources of $NO_X$ emissions. These requirements will result in reductions of $NO_X$ emissions which will help achieve reductions in ozone levels in the St. Louis ozone nonattainment area. The St. Louis ozone nonattainment area includes Franklin, Jefferson, St. Charles, and St. Louis counties, and St. Louis City in Missouri and Madison, St. Clair and Monroe counties in Illinois.

We are taking final action to approve as an amendment to the Missouri SIP, rule 10 CSR 10–5.510, "Control of Emissions of Nitrogen Oxides," submitted to us on November 12, 1999. This $NO_X$ RACT rule is applicable to all sources with the potential to emit 100 tons per year or more of nitrogen oxides in the Missouri portion of the St. Louis nonattainment area. The rule establishes emission limits, work practices, monitoring, testing, and recordkeeping and reporting requirements for boilers, stationary internal combustion (IC) turbines, stationary IC engines, incinerators, regenerative container melting glass furnaces, and portland cement kilns.

The rule also requires any other stationary source, which has the potential to emit $NO_X$ in amounts greater than the major stationary source threshold, to undertake a "case-by-case" RACT study to evaluate controls to minimize $NO_X$ emissions. This "case-by-case" analysis establishes a procedure for identifying all available control technologies and selecting the technology that provides the most effective, cost reasonable reduction technique.

For those units subject to a $NO_X$ emission limitation, the final compliance deadline is May 1, 2002. An extension of the compliance deadline may be granted by the director, if the affected installation submits a plan no later than January 1, 2001. This plan, which is subject to approval by the Missouri Department of Natural Resources, must include a detailed analysis of the air quality benefit that will occur if the compliance date is extended, a detailed explanation of why the compliance date should be extended, and a proposed schedule for meeting compliance.

As required by 40 CFR 51.261(a)(2), no extension of the compliance date can be approved if it extends final compliance beyond the attainment date in the approved SIP.

We have reviewed the $NO_X$ controls and averaging provisions in this rule and have determined that they are consistent with relevant EPA guidance and with $NO_X$ controls approved as RACT for other states.

No comments were received in response to the public comment period regarding this rule action.

For more background information, the reader is referred to the proposal for this rulemaking published on February 17, 2000, at 65 FR 8092.

**Have the requirements for approval of a SIP revision been met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR Part 51, Appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations and part D of Title I of the CAA.

**What action is EPA taking?**

We are taking final action to approve as an amendment to the Missouri SIP rule 10 CSR 10–5.510, "Control of Emissions of Nitrogen Oxides," as meeting the requirement for $NO_X$ RACT which is applicable to the Missouri portions of the St. Louis ozone nonattainment area.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant

economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 17, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 4, 2000

**Dennis Grams,**

*Regional Administrator, Region 7.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

## Subpart AA—Missouri

2. § 52.1320 is amended by:

a. In the table to paragraph (c), Chapter 5, adding in numerical order entry "10–5.510."

The addition reads as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

EPA—APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| **Missouri Department of Natural Resources** | | | | |
| * * * * * * * | | | | |
| **Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area** | | | | |
| * * * * * * * | | | | |
| 10–5.510 | Control of Emissions of Nitrogen Oxides. | February 29, 2000 | [insert FR cite and May 18, 2000]. | |
| * * * * * * * | | | | |

[FR Doc. 00–12387 Filed 5–17–00; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MO 103–1103; FRL–6701–3]**

### Approval and Promulgation of Implementation Plans; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is approving Missouri's 15% Rate-of-Progress Plan (ROPP), and Missouri rule 10–CSR 10–5.300, "Control of Emissions From Solvent Metal Cleaning." This Plan is intended to fulfill the requirements of section 182(b)(1)(A) of the Clean Air Act (CAA or Act).

**DATES:** This rule is effective on June 19, 2000.

**ADDRESSES:** Copies of the state submittals are available at the following address for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Royan Teter at (913) 551–7609.

**SUPPLEMENTARY INFORMATION:**

Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a State Implementation Plan (SIP)?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this action?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

#### What Is a SIP?

Section 110 of the CAA requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

#### What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

#### What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

#### What Is Being Addressed in This Document?

On November 12, 1999, Missouri submitted a revised ROPP. The plan established the 1996 target level of volatile organic compound (VOC) emissions for the Missouri portion of the St. Louis ozone nonattainment area. Missouri achieves the required reductions through a combination of 19 state and 9 Federal measures.

On February 17, 2000, (65 FR 8083) EPA proposed to approve Missouri's ROPP and VOC rule 10 CSR 10–10.300. The public provided comments on the proposed action. We are responding to those comments below.

#### Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, Appendix V. In addition, as explained above and in more detail in the technical support document which was part of the proposed action, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

*Response to Comments*

The Missouri Coalition for the Environment and the Sierra Club submitted jointly written comments regarding our February 17, 2000 proposal (65 FR 8083) to approve Missouri's 15% ROPP, and Missouri rule 10–CSR 10–5.300, "Control of Emissions From Solvent Metal Cleaning." Their paraphrased comments and EPA's responses follow.

1. Comments Relating to the Statutory Requirements for Review of the ROPP

*Comment:* The commenters stated that the ROPP should be disapproved because it fails to show reasonable further progress "as a matter of law." The commenters argue that the St. Louis nonattainment area is currently classified as "serious" under section 181 of the Act, and is therefore subject to the reasonable further progress (RFP) requirements of section 182(c) rather than 182(b).

In addition, they argue section 182(b) is no longer relevant for purposes of determining RFP because it governs RFP toward the goal of attainment by 1996 whereas it is now 2000. They contend the plan should be disapproved based on the premise that section 182(c) is the applicable CAA requirement and their conclusion that Missouri's plan does not purport to satisfy the RFP requirements of section 182(c).

*Response:* The St. Louis area is classified under section 181(a) of the Act as a moderate ozone nonattainment area, and has not been reclassified under section 181(b) as suggested by the commenters. In any event, the RFP requirements of section 182(b)(1) are applicable to all areas classified as

moderate or higher, and must be met regardless of an area's classification and attainment date.

The RFP requirements of the CAA are structured in an additive fashion. For example, section 182(c) states that serious areas must meet the requirements of both subsections (b) and (c). As stated in the proposal on Missouri's submission, the scope of this rulemaking is limited to determining whether the submission meets the RFP requirements in section 182(b)(1). Whether it also meets additional requirements of the Act, even if such requirements were relevant, is beyond the scope of the rulemaking.

2. Comments on the Adequacy of EPA's Notice of Its Statutory Authority for the Rule

*Comment:* The commenters argue that EPA failed to give notice of its statutory authority to approve a 15% Plan which relies on reductions in VOC emissions achieved after November 15, 1996 (the date specified in section 182(b)(1)(A)(i) for achieving the reductions). The commenters state that EPA has not met the notice requirements of section 307(d)(3)(C) of the Act, or section 553 of the Administrative Procedure Act (APA).

*Response:* As a preliminary matter, EPA notes that section 307(d) is not applicable to this rulemaking. Section 307(d)(1) lists the actions to which section 307(d) applies, and the list does not include approval of SIP submissions. *See, e.g., Missouri Limestone Producers* v. *Browner*, 165 F. 3d 619, 621 (8th Cir. 1999). Therefore, the rulemaking is governed by the provisions of section 553 of the APA, which requires, in relevant part, that a notice of proposed rulemaking include "reference to the legal authority" for the proposed rule, and "a description of the subjects and issues involved" in the proposed rule. APA, section 553(b). In general, the notice must be sufficient to allow for "informed public comment." *Id.* at 623.

EPA believes that the notice criteria in section 553(b) were met in the notice of proposed rulemaking on the ROPP. The notice contained a description of the statutory requirements in section 182(b)(1) of the Act against which submission was evaluated and a description of how the submission meets those requirements. The notice contains a description of the issues involving the November 15, 1996 deadline, and a discussion of the rationale for approving a ROPP extending beyond that date. See 65 FR 8089–8091.

EPA notes that the commenters submitted extensive comments which took issue with EPA's stated legal basis for proposing to approve the ROPP. Therefore, EPA believes that the notice of proposed rulemaking provided sufficient notice to allow for "informed public comment" and to satisfy the requirements of the APA. The fact that the commenters disagree with EPA's basis for approval, to which EPA is responding below, does not mean that EPA failed to provide adequate notice of the basis for the proposed approval.

3. Comments Relating to the ROPP's Sufficiency With Respect to the Statutory Requirements

*Comment:* In general, the commenters assert that since section 182(b)(1) requires that the plan include a 15% decrease in baseline emissions by November 15, 1996, EPA cannot approve a plan which includes reductions occurring after 1996.

*Response:* This assertion is contrary to relevant case law and would provide a disincentive for states to continue to achieve emission reductions in an area once a statutory date is missed, thus defeating the purpose of section 182(b)(1). As EPA explained in the proposal, even after the November 15, 1996 deadline for demonstrating the 15% VOC reduction has passed, the requirement to achieve the emission reduction remains, and the reduction must be demonstrated as soon as practicable. This is based on the ruling in *Delaney* v. *EPA*, 898 F. 2d 687, 691 (9th Cir. 1990), stating that once a statutory deadline has passed and has not been replaced by a later one, the deadline then becomes as soon as possible, which EPA has interpreted to be as soon as practicable. The Missouri submission indicates, and EPA agrees, that this date is 2003, when the full reductions from the second phase of Missouri's motor vehicle inspection and maintenance program will be realized. As indicated in EPA's proposal, neither Missouri nor EPA has been able to identify any practicable measures which are not included in the plan and which could accelerate this demonstration date.

EPA also notes that the commenters do not take issue with the analysis of other measures, but only with the determination that a plan with a demonstration date after 1996 can be approved. For the reasons stated above and in the proposal, EPA believes that the Missouri submission can be approved even though the demonstration date is after 1996.

EPA also notes that, under the commenters' view that a 15% ROPP with a post-1996 demonstration date cannot be approved, there would be a disincentive for a state to adopt and implement a plan for achieving the 15% ROPP reductions, since EPA would be required to disapprove any post-1996 plan submitted by a state. In addition, EPA would be unable to promulgate a Federal plan after 1996, since it would also be unable to achieve emission reductions by 1996. EPA's approach keeps the requirement for emission reductions in place after 1996, and ensures that the reductions will be achieved as soon as practicable after that date.

*Comment:* Referring to language in section 182(b)(1)(A) of the CAA the commenters assert that Missouri's ROPP falls short of achieving the required VOC emissions reductions. They note that Missouri's plan only accounts for emissions growth between 1990 and 1996 and contend that the plan should also account for growth that occurred between 1996 and the time the state's plan was submitted. They further contend that Missouri's use of 1996 emissions projections (developed by applying economic growth factors to emissions estimates from previous years), is arbitrary and capricious for two reasons: (1) Their belief that there is no basis for relying on emissions projections at this late date, asserting that 1996 actual emissions should be inventories instead; and (2) the ROPP does not account for growth after 1996.

*Response:* Section 182(b)(1)(A)(i) reads, "By no later than 3 years after the date of enactment of the Clean Air Act Amendments of 1990, the state shall submit a revision to the applicable implementation plan to provide for volatile organic compound emission reductions within 6 years after the enactment of the Clean Air Act Amendments of 1990, of at least 15 percent from baseline emissions accounting for any growth in emissions after the year in which the Clean Air Act Amendments are enacted." As acknowledged by the commenters, the statute clearly contemplated that states would submit their ROPP by 1993 and implement them by 1996. The growth for which they must account is clearly tied to 1996.

The 1993 due date leads to a reasonable conclusion that Congress intended for the states to determine the required level of emissions reductions based on *projected* as opposed to actual emissions. Such an approach provides for equitable treatment of the states. It ensures there is no advantage gained from delayed implementation of emission control measures until after the compliance date has passed and

actual emissions can be estimated, rather than risk implementing a control plan designed around emission projections that are too high.

Though not directly relevant to this rulemaking, but nonetheless important to achieving the air quality standards, EPA notes that neither Missouri nor EPA intends to ignore post-1996 changes in the area's emissions inventory. Appropriate consideration of such changes is paramount to ensuring that ozone levels in the St. Louis area are reduced to acceptable levels. Missouri has accounted for such changes in its attainment demonstration upon which EPA proposed action on April 17, 2000 (65 FR 20404).

*Comment:* The commenters stated that, even if a plan could be submitted after the statutory deadline for achieving the 15% reductions, most of the reductions included in the Missouri submission are not creditable because they did not occur prior to November 15, 1996.

*Response:* As stated previously, once the statutory deadline for demonstrating the 15% ROPP reductions has passed, the requirement remains in effect, and the new deadline is a date which is as expeditious as practicable. Similarly, ROPP reductions are creditable if the state shows that the reduction will occur by the new ROPP demonstration date. Because Missouri has shown that the remaining reductions will occur by the 2003 demonstration date, EPA believes that the reductions are creditable under section 182(b)(1).

4. Comments Relating to the Absence of Contingency Measures in the 15% Plan

*Comment:* The commenters argue that Missouri's submission should not be approved because it does not include "any specific contingency measures," and EPA's proposal makes no reference to the contingency measures to be approved as part of the 15% ROPP. The commenters assert that section 172(c)(9) of the Act requires that contingency measures meeting the requirements of that section must be included in any ROPP, and that failure to do so must result in disapproval of the plan. The commenters argue that this view linking the requirements of section 172(c)(9) with the requirements for ROPP was announced as an EPA interpretation of section 172(c)(9) in the April 16, 1992, General Preamble (57 FR 13,498).

*Response:* EPA does not agree that the contingency measure requirement in section 172(c)(9) must be met in order to meet the requirements for an approvable 15% ROPP. The Act requires contingency measures as part of the overall SIP and not as feature of each component of that plan, such as the 15% ROPP. Contrary to the commenters' contention, our position is supported by the plain language of section 172(c)(9). While the other subsections in section 172(c) begin with "such plan provisions shall * * * ," section 172(c)(9) begins with "such plan shall * * *." "Such plan" refers to the overall nonattainment plan rather than an individual element or provision of it. The difference in language between the contingency measures requirement and the other requirement in section 172(c) emphasizes that the contingency measures serve to backstop the entire nonattainment plan and not just particular elements of it.

This interpretation is consistent with the statement in the General Preamble cited by the commenters which, contrary to their characterization, did not state that contingency measures must be included in the ROPP. In the General Preamble, EPA stated the Act's requirements for nonattainment plan submittals for moderate nonattainment areas. these included the requirement for a 15% ROPP (discussed in section III.A.3.(a)), an attainment demonstration (discussed in section III.A.3.(b)), and contingency measures (discussed in section III.A.3.(c)), see 57 FR 13,498, 13507–13,512, as well as other requirements for moderate areas.

EPA stated that it expected the contingency measures would be submitted at the same time as these other plan elements, but did not state that the 15% ROPP or any other specific submittals were required to include contingency measures. Logically, had EPA intended to assert that contingency measures are required in 15% Plans, it would have said so in the General Preamble discussion of the requirements for 15% ROPP (section III.A.3.(a)), which contained a lengthy discussion of the contents of 15% Plans.

The commenters correctly note that EPA's proposal did not address the issue of whether the various VOC rule submittals, including rule 10 CSR 10–5.300 (which EPA proposed to approve into the SIP in the February 17, 2000, proposed rulemaking), were adequate to meet the contingency measure requirements of section 172(c)(9). The issue was not addressed because the proposal related only to whether Missouri met the 15% ROPP requirements in section 182(b)(1).

In the proposal (65 FR 8083, 8088), EPA noted that rule 10–5.300 had been submitted as part of the state's 1998 contingency measure SIP, and that a small fraction of the VOC reductions (0.64 tons per day out of an approximate total of 9 tons per day) was included in the state's 15% Plan demonstration. EPA has not determined whether the 1998 submittal meets the requirements of section 172(c)(9), and, as explained above, can approve Missouri's ROPP demonstration without making that determination. EPA will address the SIP's adequacy with respect to contingency measures in a separate rulemaking.

5. Comments Relating to EPA's Authority to Engage in Retroactive Rulemaking

*Comment:* Finally, the commenters object to EPA's proposed action as "retroactive" rulemaking which is not authorized under the Act. This comment is based on their assertion that EPA is proposing "to give legal effect as of 1996 to events potentially occurring in 2000 and beyond."

*Response:* This comment is based on an incorrect characterization of EPA's proposal. Although not stated, this comment appears to be based on the commenters' view, addressed above, that EPA cannot approve a 15% ROPP which relies on reductions occurring after 1996, and that to approve such a plan we are making it "retroactive" to 1996. However, this is not what EPA has done. Rather, EPA has explained the legal and policy basis for approving a ROPP demonstration which extends beyond 1966.

In addition, EPA's approval of the state plan does not take effect until the future effective date specified in this notice, and EPA's approval of the plan does not alter the effective dates (which were established by Missouri during its rulemaking process) of the rules on which the plan relies. For these reasons, EPA is not engaged in "retroactive" rulemaking and is authorized under the Act to take this final action.

**What Action Is EPA Taking?**

We are taking final action to approve Missouri's 15% ROPP for the St. Louis area and VOC rule 10 CSR 10–5.300. In separate actions published in today's **Federal Register**, we are approving several other VOC regulations which are elements of the ROPP.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant

economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998).

This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirement of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859), March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this section must be filed in the United States Court of Appeals for the appropriate circuit by July 17, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 8, 2000.

**Dennis Grams,**

*Regional Administrator, Region 7.*

Chapter I, title 40 of the code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart AA—Missouri**

2. In § 52.1320, the table in paragraph (c) is amended by revising the entry for 10–5.300, under Chapter 5, to read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

EPA–APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | DPA approval date | Explanation |
|---|---|---|---|---|
| **Missouri Department of Natural Resources** | | | | |
| • | • | • | • | • |
| **Chapter 5—Air Quality Standards and Pollution Control Regulations for the St. Louis Metropolitan Area** | | | | |
| • | • | • | • | • |
| 10–5.300 | Control of Emissions From Solvent Metal Cleaning. | May 30, 1998 | May 18, 2000. | |
| • | • | • | • | • |

3. In § 52.1320, the table in paragraph (e) is amended by adding the following entry at the end of the table: "15% Rate-of-Progress Plan."

**§ 52.1320 Identification of plan.**

* * * * *

(e) * * *

EPA–APPROVED MISSOURI NONREGULATORY SIP PROVISIONS

| Name of nonregulatory SIP provision | Applicable geographic or nonattainment area | State Submittal date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| 15% Rate-of-Progress Plan. | St. Louis | 11/12/99 | May 18, 2000 | |

[FR Doc. 00–12385 Filed 5–17–00; 8:45 am]
BILLING CODE 6560–50–D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[Region 7 Tracking No. MO 101–1101; FRL–6701–4]**

### Approval and Promulgation of Implementation Plans; State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a set of volatile organic compound (VOC) rules for the St. Louis, Missouri, nonattainment area. These rules are intended to satisfy the reasonably available control technology (RACT) requirements of section 182(b)(2) of the Clean Air Act (Act) Amendments of 1990. The VOC reductions achieved by the implementation of these rules will be accounted for in the 15% Rate-of-Progress Plan (ROPP) and the attainment demonstration for the St. Louis nonattainment area as required in section 182(b)(1)(A) of the Act. EPA is addressing the reductions as part of the 15% ROPP and the attainment demonstration in separate rulemaking actions.

**DATES:** This rule is effective on June 19, 2000.

**ADDRESSES:** Copies of the state submittals are available at the following address for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

**FOR FURTHER INFORMATION CONTACT:** Kim Johnson at (913) 551–7975.

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this action?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

### What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

### What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that we have approved a given state regulation with a specific effective date.

### What Does Federal Approval of a State Regulation Mean to me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

### What Is Being Addressed in This Document?

VOC emissions combine with nitrogen oxide emissions on hot, sunny days to form ground level ozone, commonly known as smog. The purpose of the following rules is to establish RACT requirements for major sources of VOC emissions to help reduce ozone concentrations in the St. Louis ozone nonattainment area. The St. Louis ozone nonattainment area includes Franklin, Jefferson, St. Charles, and St. Louis counties, and St. Louis City in Missouri.

We are taking final action to approve as an amendment to the Missouri SIP the following rules:

*10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading, and Transfer*

Missouri has updated its existing rule 10 CSR 10–5.220 to improve the clarity of the regulation and generally strengthen the SIP. This rule restricts VOC emissions from the handling of petroleum liquids in five specific areas.

These areas include petroleum storage tanks with a capacity greater than 40,000 gallons, the loading of gasoline into delivery vessels, the transfer of gasoline from delivery vessels into storage containers, gasoline delivery vessels, and the fueling of motor vehicles from storage containers.

*10 CSR 10–5.295 Control of Emissions From Aerospace Manufacture and Rework Facilities*

This new rule requires all aerospace manufacture and rework facilities in the St. Louis nonattainment area, which emit greater than 25 tons per year, to use low VOC coatings and cleaning solvents.

*10 CSR 10–5.500 Control of Emissions From Volatile Organic Liquid Storage*

This rule limits the VOC emissions from installations storing large volumes of volatile organic liquids. The control requirements apply to all 40,000 gallon or larger volatile organic liquid storage containers storing liquid with a maximum true vapor pressure of one-half pound per square inch or greater.

*10 CSR 10–5.520 Control of Volatile Organic Compound Emissions From Existing Major Sources*

This new rule requires major facilities that are not regulated by current category-specific RACT regulations to conduct a RACT study and implement the RACT level controls defined by the study as approved by Missouri. Major facilities are defined as having the potential to emit 100 tons per year or more of VOCs.

*10 CSR 10–5.530 Control of Volatile Organic Compound Emissions From Wood Furniture Manufacturing Operations*

This rule limits the VOC emissions from wood furniture manufacturing operations that have the potential to emit equal to or greater than 25 tons per year of VOC emissions.

*10 CSR 10–5.540 Control of Emissions From Batch Process Operations*

This rule establishes RACT controls to limit the VOC emissions from batch process operations. The control requirements apply to batch operation sources that have the potential to emit equal to or greater than 100 tons per year of VOC emissions and that are identified by one of seven different four digit standard industrial classification codes under the chemical manufacturing category.

*10 CSR 10–5.550 Control of Volatile Organic Compound Emissions From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry*

This new rule implements RACT control of VOC emissions from the synthetic organic chemical manufacturing industry. Specifically, this rule requires RACT for control of VOC emissions from any vent stream originating from a process unit in which a reactor process or distillation operation is located.

*Summary*

These new VOC RACT rules are consistent with Federal regulations and are consistent with the appropriate EPA control techniques guidelines or alternative control techniques documents. The rules contain enforceable emission limits, appropriate compliance methods, require recordkeeping to determine compliance, and meet all applicable enforceability requirements.

No comments were received in response to the public comment period regarding this rule action.

For more background information and a more detailed description of EPA's rationale for approval, the reader is referred to the proposal for this rulemaking published on February 17, 2000, at 65 FR 8094.

**Have the Requirements for Approval of a SIP Revision Been Met?**

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, Appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations and Part D of Title I of the Act.

**What Action Is EPA Taking?**

We are taking final action to approve as an amendment to the Missouri SIP the following rules applicable to the St. Louis nonattainment area:

10 CSR 10–5.220 Control of Petroleum Liquid Storage, Loading, and Transfer
10 CSR 10–5.295 Control of Emissions From Aerospace Manufacture and Rework Facilities
10 CSR 10–5.500 Control of Emissions from Volatile Organic Liquid Storage
10 CSR 10–5.520 Control of Volatile Organic Compound Emissions From Existing Major Sources
10 CSR 10–5.530 Control of Volatile Organic Compound Emissions From Wood Furniture Manufacturing Operations
10 CSR 10–5.540 Control of Emissions from Batch Process Operations
10 CSR 10–5.550 Control of Volatile Organic Compound Emissions From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry

These rules will reduce VOC emissions in the St. Louis area and meet the RACT requirements of section 182(b)(2) of the Act as amended in 1990.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority

to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 17, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: May 2, 2000

**Dennis Grams,**

*Regional Administrator, Region 7.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart AA—Missouri**

2. § 52.1320 is amended by:

a. In the table to paragraph (c), Chapter 5, revising the entry for "10–5.220";

b. In the table to paragraph (c), Chapter 5, adding in numerical order entries "10–5.295," "10–5.500," "10–5.520," "10–5.530," "10–5.540," and "10–5.550."

The revision and additions read as follows:

**§ 52.1320 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| | **Missouri Department of Natural Resources** | | | |
| * | * | * | * | * |
| | **Chapter 5—Air Quality Standards and Air Pollution Control Regulations for the St. Louis Metropolitan Area** | | | |
| * | * | * | * | * |
| 10–5.220 | Control of Petroleum Liquid Storage, Loading, and Transfer. | August 30, 1999 | May 18, 2000. | |
| * | * | * | * | * |
| 10–5.295 | Control of Emissions From Aerospace Manufacturing and Rework Facilities. | February 29, 2000 | May 18, 2000. | |
| * | * | * | * | * |
| 10–5.500 | Control of Emissions From Volatile Organic Liquid Storage. | February 29, 2000 | May 18, 2000. | |
| 10–5.520 | Control of Volatile Organic Compound Emissions From Existing Major Sources. | February 29, 2000 | May 18, 2000. | |
| 10–5.530 | Control of Volatile Organic Compound Emissions From Wood Furniture Manufacturing Operations. | February 29, 2000 | May 18, 2000. | |
| 10–5.540 | Control of Emissions From Batch Process Operations. | February 29, 2000 | May 18, 2000. | |
| 10–5.550 | Control of Volatile Organic Compound Emissions From Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry. | February 29, 2000 | May 18, 2000. | |

EPA-APPROVED MISSOURI REGULATIONS—Continued

| Missouri citation | Title | State effective date | EPA approval date | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |

[FR Doc. 00–12384 Filed 5–17–00; 8:45am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 228

[FRL–6702–1]

### Ocean Dumping: Designation of Site

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) designates an existing dredged material disposal site located in the Gulf of Mexico at the mouth of Atchafalaya Bay for the continued disposal of dredged material removed from the bar channel of the Atchafalaya River and Bayous Chene, Boeuf, and Black, Louisiana. This action is necessary to provide an acceptable ocean dumping site for current and future disposal of this material. This final site designation is for an indefinite period and is subject to monitoring to insure that unacceptable adverse environmental impacts do not occur.

**DATES:** This rule is effective on June 19, 2000.

**ADDRESSES:** Monica Young (6WQ–EM), EPA Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733.

Information supporting this designation is available for review at the following location: EPA, Region 6, 1445 Ross Ave, 9th floor file room, Dallas, TX 75202.

**FOR FURTHER INFORMATION CONTACT:** Monica Young 214–665–7349.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), as amended, (33 U.S.C. 1401 *et seq.*), gives the Administrator of EPA the authority to designate sites where ocean dumping may be permitted. On December 23, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

EPA's Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, Section 228.4) state that ocean dumping sites will be designated by promulgation in Part 228. A list of "Approved Interim and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*). That list established the Atchafalaya River Bar Channel ocean dredged material disposal site (ODMDS) on an interim basis.

The interim designation of the Atchafalaya River Bar Channel ODMDS was extended indefinitely in January 1980. However, Section 506 of the Water Resources Development Act (WRDA) of 1992, amended MPRSA such that beginning January 1, 1997, open water offshore disposal could only be into ODMDSs either designated by EPA under § 102(c) of the Act or selected by the Corps of Engineers (COE) under § 103(b) as an alternative site. Since EPA had not ruled on final designation by January 1, 1997, the Atchafalaya River Bar Channel ODMDS was selected by the New Orleans District COE as a § 103(b) alternative to accommodate annual channel maintenance dredging beyond 1996. Recognizing a five (5) year extension of the COE's § 103(b) selection allowed the continued use of the Atchafalaya River Bar Channel ODMDS through the year 2006, EPA was to designate the Atchafalaya River Bar Channel ODMDS site pursuant to § 102(c) of MPRSA, or to find that the site is inappropriate for final designation. This site designation is being published as final rulemaking in accordance with § 228.4(e) of the Ocean Dumping Regulations, which permits the designation of ocean disposal sites for dredged material.

#### Regulated Entities

Entities potentially regulated by this action are persons, organizations, or government bodies seeking to dispose of dredged material in ocean waters at the Atchafalaya River Bar Channel ODMDS, under the MPRSA, 33 U.S.C. 1401 *et seq.* The Rule would be primarily of relevance to parties in the Morgan City area seeking permits from the COE to transport dredged material for the purpose of disposal into ocean waters at the Atchafalaya River Bar Channel ODMDS, as well as the COE itself (when proposing to dispose of dredged material at the ODMDS). Potentially regulated categories and entities seeking to use the ODMDS and thus subject to this Rule include:

| Category | Examples of regulated entities |
|---|---|
| Federal Government | U.S. Army Corps of Engineers Civil Works Projects. Other Federal Agencies, including the Department of Defense. |
| Industry and General Public | Port Authorities. Marinas and Harbors. Shipyards and Marine Repair Facilities. Berth Owners. |
| State, local and tribal governments | Governments owning and/or responsible for ports, harbors, and/or berths. Government agencies requiring disposal of dredged material associated with public works projects. |

This table lists the types of entities that EPA is now aware could potentially be regulated. EPA notes, however, that nothing in this final ruling alters in any way, the jurisdiction of EPA, or the types of entities regulated under the MPRSA. To determine if you or your organization is potentially regulated by this action, you should carefully consider whether you expect to propose ocean disposal of dredged material, in accordance with the Purpose and Scope provisions of 40 CFR 220.1, and if you wish to use the Atchafalaya River Bar Channel ODMDS. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. Since ODMDS use is restricted to dredged material removed from the bar channel of the Atchafalaya River, EPA anticipates that the COE will be the only user of the ODMDS.

#### EIS Development

Section 102 (2)(c) of the National Environmental Policy Act of 1969 (NEPA), as amended (Pub. L. 91–190, 42 U.S.C. 4321 *et seq.*), requires that

Federal agencies prepare Environmental Impact Statements (EISs) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. NEPA does not apply to ODMDS designations, however EPA voluntarily prepared an EIS in connection with this designation action.

EPA prepared a Draft EIS on the designation of the Atchafalaya River Bar Channel ODMDS in November, 1983. Six comment letters were received on the Draft EIS. Based on the comments received, EPA determined that a Supplemental Draft EIS was appropriate to correct information deficiencies and include more recent data in response to the commenting agencies. EPA and the COE jointly prepared the Supplemental Draft EIS, which was distributed to interested agencies, environmental groups and individuals for review in December, 1990. Five comments letters were received on the Supplemental Draft EIS. Responses to these comments were included in EPA's Final EIS, which was completed and distributed to interested agencies, environmental groups and individuals in November, 1998. The 30-day comment period on EPA's Final EIS closed on January 11, 1999.

Only one comment letter, from the State of Louisiana, Department of Culture, Recreation and Tourism, Office of Cultural Development, was received on the Final EIS. The Louisiana Office of Cultural Development found the document to be thorough and well written, and concurred with the evaluation that there would be no effect on significant cultural resources, and as such, had no objections to the proposal.

EPA's NEPA review included coordination with the State of Louisiana under requirements of the Coastal Zone Management Act. The State of Louisiana concurred with EPA's determination that final designation of the Atchafalaya River Bar Channel ODMDS is consistent, to the maximum extent practicable, with the Louisiana Coastal Resources Program.

This final rulemaking document fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

**Site Designation**

EPA's proposal to designate the Atchafalaya River Bar Channel ODMDS was published in the **Federal Register** on February 6, 1991 (pages 4777–4781). The public comment period on this proposed rule closed on March 25, 1991. One comment letter was received on the proposed rule from the U.S. Department of the Interior (DOI), Office of the Secretary, in Washington, D.C. The DOI recommended: (1) That dredged material be used for beneficial purposes (e.g., to rebuild eroded shoreline and increase marsh habitats); (2) that the final rule include a requirement for dredged material to be used to build bird islands and avoid shell reefs, in consultation with the U.S. Fish and Wildlife Service and the Louisiana Department of Wildlife and Fisheries; and (3) that the final rule require, prior to each dredging event, an interagency evaluation of the feasibility of using the dredged material to create marsh, reduce shoreline erosion, or build bird nesting/roosting islands.

In response to DOI's comments on the proposed rule (and similar comments received on the Supplemental Draft EIS), the Final EIS evaluated these recommendations, and other reasonable, beneficial use alternatives. EPA's action [*i.e.*, site designation under § 102(c) of MPRSA] does not authorize the placement of dredged materials or require interagency evaluation of beneficial use alternatives. However, beneficial use alternatives and other options for the placement of dredged material are evaluated through annual COE dredging conferences.

The Atchafalaya River Bar Channel ODMDS is located east of, and parallel to, the Atchafalaya River bar channel and is approximately 18.5 miles long. The center of the ODMDS is approximately 16 miles from the mouth of the Atchafalaya River. North Point of Point au Fer Island is about 2 miles east of the northern end of the site. The average water depth at the site is approximately 16 feet. Boundary coordinates of the rectangular shaped site are as follows: 29E20′59.92″N, 91E 23′33.23″W; 29E20′43.94″N, 91E23′09.73″W; 29E08′15.46″N, 91E34′51.02″W; and 29E07′59.43″N, 91E34′27.51″W.

**Ocean Dumping Site Designation Criteria**

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, further use of the site may be terminated or limitations placed on the use of the site to reduce the impacts to acceptable levels.

The five general criteria are given in 40 CFR 228.5 of the Ocean Dumping Regulations. EPA has determined, based on the information and analyses in the Draft EIS, Supplemental Draft EIS, and Final EIS, that the site is acceptable under the five general criteria. The Continental Shelf location is not feasible and no environmental benefit would be obtained by selecting such a site. Historical use of the site has not resulted in substantial adverse impacts to living resources of the ocean or to other uses of the marine environment.

Section 228.6 of the Ocean Dumping Regulations lists eleven specific factors to be used in evaluating a proposed disposal site to assure that the general criteria are met. The characteristics of the site are reviewed below in terms of these eleven specific factors.

1. *Geographical position, depth of water, bottom topography, and distance from coast* (40 CFR 228.6(a)(1)).

Geographical position and average water depth are given above. The Atchafalaya River Bar Channel ODMDS is located in the near shore area of the Gulf of Mexico (*i.e.*, to a depth of about 75 feet). The ODMDS gently slopes from a depth of about 5 feet at its near shore end to about 22 feet at its seaward end. Except for being located adjacent to the dredged channel, the area occupied by the ODMDS is similar in depth and bottom topography to the overall lower Atchafalaya River area.

2. *Location in relation to breeding, spawning, nursery, feeding, or passage areas of living resources in adult or juvenile phases* (40 CFR 228.6(a)(2)).

The northwestern Gulf of Mexico is a breeding, spawning, nursery, and feeding area for shrimp, menhaden, and bottomfish. To complete their life cycles, many of the species migrate seasonally between the coastal estuaries and the Gulf. Because the timing varies by species, some migration can occur at almost any time of the year. The ODMDS is located in a region dominated by species that are estuary-related. The ODMDS represents a small area (9.14 square miles) of the total range of the white and brown shrimp and their related communities; however, the nearby Atchafalaya River estuarine area is one of the region's major nursery areas.

Disposal of material at the ODMDS would have negligible effects on Federally listed endangered and threatened species. Endangered whale species which may be found in the vicinity of the ODMDS are the sei, fin, humpback, right, and sperm. However, occurrences of whales off Louisiana are

considered rare, and because the animals generally inhabit waters far deeper than those in the ODMDS, it is unlikely that disposal operations would have any impact on whale species.

Three species of sea turtles (hawksbill, Kemp's ridley, and leatherback) classified as endangered and two species of sea turtles (green and loggerhead) classified as threatened could potentially inhabit the ODMDS. Hopper dredging has been identified as a source of mortality (incidental take) to sea turtles in inshore waters. However, disposal of maintenance material dredged from the Atchafalaya River Bar Channel is by hydraulic cutter head pipeline dredge, which has not been identified as a source of sea turtle mortality.

3. *Location in relation to beaches and other amenity areas* (40 CFR 228.6(a)(3)).

The nearest point of land is North Point of Point au Fer Island, about 2 miles from the northeast end of the ODMDS. While it may be possible to observe the disposal plume, the plume is expected to dissipate quickly after completion of the disposal operations. Except for minor affects of these limited observations, there should be no effects on the aesthetics of the area. There are no known recreational parks, beaches, or other amenity areas in proximity to the ODMDS.

4. *Types and quantities of wastes proposed to be disposed of, and proposed methods of release, including methods of packing the waste, if any* (40 CFR 228.6(a)(4)).

Material dredged from the upper one-third of the bar channel generally is comprised of 26% sand, 30% silt, and 44% clay, and material from the lower two-thirds of the bar channel generally is comprised of 7% sand, 44% silt, and 49% clay. An estimated 9 to 11 million cubic yards of material is removed annually from the Atchafalaya River Bar Channel using a hydraulic cutter head pipeline dredge and released within the ODMDS as an un-cohesive slurry. Future disposal operations will follow the past disposal pattern with respect to types, quantities, and methods of release. Any material disposed of at the site is required to comply with the criteria of the Ocean Dumping Regulations. None of the material will be packaged in any way. The COE will likely be the only user of the site.

5. *Feasibility of surveillance and monitoring* (40 CFR 228.6(a)(5)).

The ODMDS is shallow and close to shore, which facilitates surveillance and monitoring of the site. Operational observations can be made using shore-based radar, aircraft, ship riders, and day-use boats. Monitoring would be facilitated by the database that has been established for the ODMDS. A monitoring program has been developed by EPA in cooperation with the COE for the ODMDS, as part of the "Atchafalaya ODMDS Site Management Plan."

6. *Dispersal, horizontal transport and vertical mixing characteristics of the area, including prevailing current direction and velocity, if any* (40 CFR 228.6(a)(6)).

Water currents in the vicinity of the ODMDS are very complex. Although tides, loop current intrusions, and river flow may affect the local currents, the currents are influenced predominantly by winds. Thus, the direction and velocity of currents vary throughout the year.

Water currents in the area can reach velocities sufficient to resuspend the disposed dredged material. The resuspended material would be transported in the direction of the current causing the resuspension. During these periods, constant mixing of the dredged material and sediments originally in the area takes place. The mixed dredged material and background sediments settle as the velocity decreases, and become resuspended when some event again raises the current velocity.

Sediment transport at the ODMDS is both to the northwest and to the southeast. The prevailing northwest currents are relatively weak and generally transport silt-sized and clay-sized particles. In the winter, however, stronger currents to the southeast, which are driven by the passage of cold-air outbreaks (northers), transport the latter particle sizes plus sand-sized particles. Gale-force winds for a duration of 20 to 30 hours are common during the passage of one of the cold-air outbreaks, which occur from 15 to 30 times each year.

7. *Existence and effects of current and previous discharges dumping in the area (including cumulative effects)* (40 CFR 228.6(a)(7)).

Sediment physical and chemical characteristics are generally similar within and adjacent to the ODMDS. Identified effects of dredged material disposal on sediments within the ODMDS include a few relatively high concentrations for sedimentary constituents (alpha chlordane, some chlorinated biphenols, para-para-DDD, iron, aluminum, perylene, zinc, oil, and grease). However, the area is influenced by shallow water depths, frequent resuspension of bottom sediments by winds and waves, and input of large quantities of fine sediments from riverine sources. Furthermore, dredged materials released at the ODMDS are similar to background sediments in the vicinity and are widely distributed by natural processes after deposition. Since the effects of disposal area temporary, there are no cumulative effects.

8. *Interference with shipping, fishing, recreation, mineral extraction, desalination, fish and shellfish culture, areas of special scientific importance and other legitimate uses of the ocean* (40 CFR 228.6(a)(8)).

The ODMDS is outside the navigation channel and, thus, not in the path of ocean-going vessels. Some smaller boats may pass over the site; however, since any mounds are expected to be short-lived, there should be no interference. All dredging and disposal operations are closely coordinated among the dredging operators and the shipping interests to avoid interference with ship traffic. Without dredging, the channel would be impassible to most shipping.

There is periodic, short-term, interference with recreational activities at the ODMDS during disposal operations. The plumes of dredged material have a minor impact on targeted fish stocks, temporarily affecting recreational fishing in the area. This interference is temporary and restricted to the relatively small area of the ODMDS being used for disposal at the particular time. Past experience with use of the site for disposal of dredged material has not indicated interference with oil and gas exploration or production. No other types of mineral extraction are taking place either within the site or in the general vicinity of the site.

The nearest oyster leases are located about 4 miles to the east of the ODMDS, near Point au Fer. Because the transport of suspended materials from the ODMDS is mainly parallel to the coastline, adverse effects of disposal operations on these oyster beds should be minimal. In addition, the oyster beds are naturally subjected to periodic episodes of high, suspended-solid concentrations from the waters of the Atchafalaya River. There have been no impacts to oyster leases from past use, and no impact is expected to result from future use of the ODMDS.

The Atchafalaya Delta Wildlife Management Area is located about 8 miles to the north of the ODMDS. Shell Keys National Wildlife Refuge and Russell Sage—Marsh Island State Wildlife Refuge are located about 29 miles to the west of the ODMDS. There has been no impact to the refuges from past use, and none is expected to result from future use of the ODMDS.

Periodically, scientific studies are carried out in the area. Use of the site

is not expected to interfere with any such studies. It is not expected that use of the site for disposal of dredged material would interfere with any other legitimate uses of the ocean.

9. *The existing water quality and ecology of the site as determined by available data or by trend assessment of baseline surveys* (40 CFR 228.6(a)(9)).

The water quality and ecology of the ODMDS generally reflect that of the near shore region off the Louisiana coast affected by discharges from the Atchafalaya River. The variations in water quality depend on the amount and mixing of freshwater runoff, which are highly variable.

In the summer, calm winds, freshwater input, and intrusions of offshore waters may restrict vertical mixing in the near shore waters. Under these conditions, bottom waters can be depleted of oxygen. This hypoxic condition (dissolved-oxygen content of less than 2 ppm) may be an annual phenomenon, but the event is patchy and ephemeral and has been shown to affect shelf waters from the Mississippi Delta to the upper Texas coast.

With the following exceptions, concentrations of trace metals in waters from the Atchafalaya River Bar Channel were below detection limits: concentrations of barium, iron, and manganese from the channel sample were greater, by a factor of 4, 2, and 3, respectively. There are no EPA marine acute or chronic criteria for these elements, however, and copper was less than the detection limit.

None of the water-column parameters measured during site surveys indicated that dredged material after disposal has a permanent or measurable effect on water quality in the area of the ODMDS. Waters off southeastern Louisiana are generally turbid because of shallow depths and riverine influences, and the levels of most parameters in the ODMDS appear to be typical of the region.

A site survey of macrofaunal distribution and abundance found 40 taxa, with very little difference in average taxa richness or overall average abundance. The general pattern of percent taxa and abundance group was approximately similar to those identified in other near-coastal and estuarine waters of the northern Gulf of Mexico.

The ODMDS benthic assemblage is dominated by species that live for about 1 year and undergo rapid population expansions. Results of site surveys indicated that most macrofaunal species were distributed in patches throughout the study area and several are considered opportunistic. Endemic species have considerable ability to adapt to a range of natural disturbances in their habitat. Thus, if dredged-material disposal had affected the density of these organisms, these effects could not be discerned.

Fish collected during site surveys are characteristic of the area. Furthermore, relative numbers of dominant organisms collected, such as large numbers of sciaenids (drums and croakers), are similar to results of other baseline studies conducted in the area.

10. *Potentiality for the development or recruitment of nuisance species in the disposal site* (40 CFR 228.6(a)(10)).

Past disposal of dredged material at the existing ODMDS has not resulted in the development or recruitment of nuisance species. Considering the similarity of the dredged material with the existing sediments, it is expected that continued disposal of dredged material will not result in the development or recruitment of such species.

11. *Existence at or in close proximity to the site of any significant natural or cultural features of historical importance* (40 CFR 228.6(a)(11)).

Studies, which involved literature search and coordination with the Louisiana State Historic Preservation Officer, did not demonstrate any known features of historical importance within the ODMDS. However, results from the literature review indicate shipwrecks may be found near the Point Au Fer Shell Reef and at the mouth of the Atchafalaya River. Hence, the northernmost portion of the ODMDS is considered to have the greatest potential to contain submerged cultural resources.

Future dredging and disposal operations at the ODMDS will consider the results of the submerged cultural resources survey. Plans and specifications for dredging contracts would be reviewed by COE cultural resources specialists to ensure that significant cultural resources are not impacted by any proposed action. In addition, future disposal into the ODMDS area will be reviewed by the COE in compliance of Section 106 of the National Historic Preservation Act of 1966 (as amended), Final Rule for Operation and Maintenance Of Army Corps of Engineers Civil Works Projects Involving the Discharge of Dredged Material Into Waters of the U.S. or Ocean Waters (33 CFR parts 209, 335, 336, 337, and 338), and requirements of the Louisiana SHPO.

**Action**

The action evaluated through this EPA rulemaking and completed NEPA/EIS processes is designation under § 102(c) of MPRSA of the existing COE § 103(b) alternative ODMDS for dredged material removed from the Atchafalaya River Bar Channel. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal of dredged materials removed from the Atchafalaya River Bar Channel. The evaluative processes provide a thorough and objective evaluation of reasonable alternatives, including no action, and the information needed to evaluate the suitability of an ocean disposal area for final site designation. EPA's final site designation is being conducted in accordance with the MPRSA, the Ocean Dumping Regulations, and other applicable Federal environmental legislation. Once designated, the appropriateness of ocean disposal is determined on a case-by-case basis.

EPA emphasizes that ocean disposal site designation does not constitute or imply EPA Region VI's or the COE's approval of ocean disposal of dredged material from any project. Before disposal of any dredged material at the Atchafalaya River Bar Channel ODMDS may occur, EPA Region VI and the COE must evaluate the proposed project according to the Ocean Dumping Criteria (40 CFR part 227) adopted pursuant to the MPRSA. EPA Region VI or the COE will not allow ocean disposal of dredged material if either agency determines that the Ocean Dumping Criteria are not met. In addition, the COE is required to evaluate all proposed dredging projects associated with the Atchafalaya River in accordance with the Coastal Zone Management Act, the Magnuson-Stevens Fishery Conservation and Management Act, and the Endangered Species Act.

**Administrative Requirements**

*1. Executive Order 12875*

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of

State, local, and tribal governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's final Rule does not create a mandate on State, local, or tribal governments. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. This final Rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this Rule.

*2. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's final Rule does not significantly or uniquely affect the communities of Indian tribal governments. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*3. Executive Order 12866*

Under Executive Order 12866, (58 FR51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and other requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(a) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principals set forth in the Executive Order.

This final Rule should have minimal impact on permittees. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. Consequently, EPA has determined that this Rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

*4. Executive Order 13045*

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant." as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This final Rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have any reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA.

*5. Executive Order 13132*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is no required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the Agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 because it only has the effect of designating an existing ocean disposal site and does not alter the relationship or the distribution of power and responsibilities among the levels of government. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*6. Regulatory Flexibility Act, as Amended by the Small Businesses Regulatory Enforcement Fairness Act of 1996*

The Regulatory Flexibility Act (RFA) provides that whenever an agency promulgates a final rule under 5 U.S.C. 553, the agency must prepare a regulatory flexibility analysis (RFA) unless the head of the agency certifies that the final Rule will not have a significant economic impact on a substantial number of small entities (5 U.S.C. 604 and 605). Today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. Consequently, EPA's final Rule will not impose any additional economic burden on small entities. For this reason, the Regional Administrator certifies, pursuant to section 605(b) of the RFA, that the final Rule will not have a significant economic impact on a substantial number of small entities.

*7. Paperwork Reduction Act*

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OMB. Since the final Rule would not establish or modify any information or record-keeping requirements, but only finalizes existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

*8. The Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

This final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. As described elsewhere in this preamble, today's final Rule would only have the effect of designating an existing ocean disposal site pursuant to section 102(c) of MPRSA. Consequently, it imposes no new enforceable duty on any State, local, or tribal governments or the private sector. Similarly, EPA has also determined that this Rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this Rule.

*9. National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12 (d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This Rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*10. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 19, 2000.

*11. Endangered Species Act*

Pursuant to section 7(a) of the Endangered Species Act, federal agencies must insure that their actions are unlikely to jeopardize the continued existence of listed threatened or endangered species or result in adverse modification or destruction of designated critical habitat. Continuing to dispose of dredged material at the designated site will not materially change the status quo and there is no designated critical habitat in the area. Moreover, the COE will continue to consult with the National Marine Fisheries Service (NMFS) on its own project-specific use of the site and on any project for which it proposes to issue a permit authorizing disposal of dredged material at the site. EPA accordingly found today's designation action was unlikely to adversely affect any listed species or critical habitat. NMFS concurred in that finding by letter dated September 9, 1999.

*12. Magnuson-Stevens Fishery Conservation and Management Act*

Under section 305(b)(2) of the Magnuson-Stevens Fishery Conservation and Management Act, federal agencies must consult with the NMFS and appropriate fisheries councils before undertaking actions that may adversely affect designated essential fish habitat. NMFS has designated most of the Gulf of Mexico, including the area in which the designated disposal site is located, as essential fish habitat. It is unlikely that today's designation action will adversely affect essential fish habitat because it will not materially change the status quo. Because potentially adverse effects might be associated with its future use in the context of a specific project, the COE will continue to consult NMFS on a case-by-case basis. See 50 CFR 605.920(2).

**List of Subjects in 40 CFR Part 228**

Environmental protection, Water pollution control.

Dated: January 25, 2000.

**Jerry Clifford,**

*Acting Regional Administrator of Region 6.*

In consideration of the foregoing, EPA amends subchapter H of chapter I of title 40 of the Code of Federal Regulations as set forth below.

## PART 228—CRITERIA FOR THE MANAGEMENT OF DISPOSAL SITES FOR OCEAN DUMPING

1. The authority citation for part 228 continues to read as follows:

**Authority:** 33 U.S.C. 1412 and 1418.

**§ 228.14 [Amended]**

2. Amend § 228.14 by removing and reserving paragraph (j)(5).

3. Amend § 228.15 by adding a new paragraph (j)(21) to read as follows:

**§ 228.15 Dumping sites designated on a final basis.**

* * * * *

(j) * * *

(21) Atchafalaya River and Bayous Chene, Boeuf, and Black, LA

(i) *Location:* 29E20′59.92″ N, 91E 23′ 33.23″ W; 29E20′43.94″ N, 91E23′09.73″ W; 29E08′15.46″ N, 91E34′51.02″ W; and 29E07′59.43″ N, 91E34′27.51″ W.

(ii) *Size:* 9.14 square miles.

(iii) *Depth:* Average water depth of 16 feet.

(iv) *Primary Use:* Dredge material.

(v) *Period of Use:* Indefinite period of time.

(vi) *Restriction:* Disposal shall be limited to dredged material from the bar channel of the Atchafalaya River and Bayous Chene, Boeuf, and Black, Louisiana.

* * * * *

[FR Doc. 00–12388 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 00–322; MM Docket No. 98–112; RM–9027; RM–9268; RM–9384]**

### Radio Broadcasting Services; Anniston and Ashland, AL, and College Park, GA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** At the request of WNNX License Investment Company this document substitutes Channel 263C3 for Channel 263C at Anniston, Alabama, reallots Channel 263C3 to College Park, Georgia, and modifies the license of Station WHMA to specify operation on Channel 263C3 at College Park. In addition, this document allots Channel 261C3 to Anniston, Alabama, and Channel 264A to Ashland, Alabama. *See* 63 FR 38787, published July 20, 1998. The reference coordinates for Channel 263C3 at College Park, Georgia, are 33–45–32 and 84–30–10. The reference coordinates for Channel 261C3 at Anniston, Alabama, are 33–40–51 and 85–48–56. The reference coordinates for Channel 264A at Ashland, Alabama, are 33–13–15 and 85–49–35. With this action, the proceeding is terminated.

**DATES:** Effective June 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau (202) 418–2177.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order* in MM Docket No. 98–112, adopted April 24, 2000, and released April 28, 2000. The full text of this decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY-A257, 445 12th Street, SW, Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

**PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303, 334, 336.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing Channel 263C and adding Channel 261C3 at Anniston.

3. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by adding Channel 264A, at Ashland.

4. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by adding College Park, Channel 263C3.

Federal Communications Commission.

**John A. Karousos,**

*Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 00–12256 Filed 5–17–00; 8:45 am]

BILLING CODE 6712–01–P

## ENVIRONMENTAL PROTECTION AGENCY

### 48 CFR Parts 1516 and 1552

**[FRL–6606–6]**

**RIN 2030–AA74**

### Acquisition Regulation: Award Fee

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** EPA is taking direct final action on amending the EPA Acquisition Regulation (EPAAR) to comport with changes made to the Federal Acquisition Regulation (FAR) in Federal Acquisition Circular (FAC) 97–15 dated December 27, 1999 (FAR Case 98–017). The changes to the FAR were made to implement the rulings of the United States Court of Appeals and the United States Court of Federal Claims that the Contracts Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies.

**DATES:** This rule is effective on August 16, 2000, without further notice, unless EPA receives adverse comments by June 19, 2000. If we receive adverse comments, we will, before the rule's effective date, publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

**ADDRESSES:** Written comments should be submitted to the contact listed below at the following address: U.S. Environmental Protection Agency, Office of Acquisition Management (3802R), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: rellins.jean@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Corel WordPerfect format or ASCII file format. No confidential business information (CBI) should be submitted through e-mail. Electronic comments on this rule may be filed on-line at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** Jean Rellins, U.S. EPA, Office of Acquisition Management, (3802R), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460, Telephone: (202) 564–4434.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

*Why is EPA utilizing a direct final rule to revise an EPAAR clause?* Federal Acquisition Circular 97–15 amended the FAR to implement the rulings of the United States Court of Appeals and the United States Court of Federal Claims (Burnside-Ott case) that the Contract Disputes Act applies to all disputes arising under Government contracts, unless a more specific statute provides for other remedies. This direct final rule is being published without prior proposal because we view this as a non-controversial change to the EPAAR intended to make the EPAAR consistent with the FAR. We do not anticipate any adverse comments. This rule will be effective on August 16, 2000, without further notice unless we receive adverse comments by June 19, 2000. If EPA receives adverse comments, we will,

before the rule's effective date, publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We also will publish a notice of proposed rulemaking in a future edition of the **Federal Register**. We will address the comments on the direct final rule as part of that proposed rulemaking.

**B. Executive Order 12866**

This direct final rule is not a significant regulatory action for the purposes of Executive Order 12866; therefore, no review is required by the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB).

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because this direct final rule does not contain information collection requirements that require the approval of OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

**D. Regulatory Flexibility Act**

The EPA certifies that this direct final rule does not exert a significant economic impact on a substantial number of small entities. The requirements to contractors under the rule impose no reporting, record keeping, or any compliance costs.

**E. Unfunded Mandates**

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess their regulatory actions on State, local, and Tribal governments, and the private sector. This direct final rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in one year. Any private sector costs for this action relate to paperwork requirements and associated expenditures that are far below the level established for UMRA applicability. Thus, the rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**F. Executive Order 13045**

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions on environmental health or safety risks.

**G. Executive Order 13132**

Executive Order 13132 entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This direct final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This direct final rule merely changes the EPAAR to be consistent with the FAR. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

**H. Executive Order 13084**

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by Tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal government "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

**I. National Technology Transfer and Advancement Act of 1995**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**J. Submission to Congress and the General Accounting Office**

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rules report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Accordingly, under the authority of 5 U.S.C. 301; Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c), 48 CFR Chapter 15 is amended as follows:

**List of Subjects in 48 CFR Part 1516 and 1552**

Government procurement.

1. The authority citation for part 1516 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

2. Section 1516.405 is amended by revising paragraph (a) as follows:

**1516.405 Contract clauses.**

(a) The Contracting Officer shall insert the clause at 1552.216–70, Award fee (May 2000), in solicitations and contracts where a cost-plus-award-fee contract is contemplated.

* * * * *

3. The authority citation for part 1552 continues to read as follows:

**Authority:** Sec. 205(c), 63 Stat. 390, as amended, 40 U.S.C. 486(c).

4. Section 1552.216–70 is amended by revising the prescription date from (SEPT 1995) to (May 2000), and revising paragraph (b) to read as follows:

**1552.216–70 Award fee.**

* * * * *

(b) Award fee determinations made by the Government under this contract are unilaterally determined by the Fee Determination Official (FDO). The amount of the award fee to be paid is determined by the Government's judgmental evaluation of the contractor's performance in terms of the criteria stated in the contract. This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

* * * * *

Dated: April 28, 2000.

**Betty L. Bailey,**

*Director, Office of Acquisition Management.*

[FR Doc. 00–12022 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–U

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 222 and 223

[Docket No. 000511138–0136–01; I.D. 051100B]

RIN 0648–A019

### Sea Turtle Conservation; Restrictions to Fishing Activities

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; request for comments.

**SUMMARY:** NMFS is closing an area along eastern North Carolina and Virginia to fishing with large-mesh gillnets with a stretched mesh size of 6 inches (15.24 cm) or greater for a 30-day period. The closed area includes all Atlantic Ocean waters between Cape Hatteras and 38° N. latitude (near the Virginia-Maryland border), west of 75° W. longitude, and a specified part of Chesapeake Bay. NMFS is taking this action because of its determination that gillnet fishing with large-mesh gillnets is the most likely cause of significant increases in the stranding of sea turtles listed as threatened or endangered under the Endangered Species Act (ESA) along the eastern coast of North Carolina. This action is necessary to protect threatened and endangered turtles from being taken by large-mesh gillnets along the North Carolina and Virginia coasts during their northern migration.

**DATES:** This action is effective from May 12, 2000 through June 12, 2000. Comments on this action are requested, and must be received at the appropriate address or fax number (**ADDRESSES**) by no later than 5 p.m., eastern daylight time, on June 12, 2000.

**ADDRESSES:** Written comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz (ph. 727–570–5312, fax 727–570–5517, e-mail Chuck.Oravetz@noaa.gov), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail Barbara.Schroeder@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles—even incidentally—is prohibited, with exceptions identified in 50 CFR 223.206. The incidental take of endangered species may only legally be authorized by an incidental take statement or an incidental take permit issued pursuant to section 7 or 10 of the ESA. Existing sea turtle conservation regulations specify procedures that NMFS may use to determine that unauthorized takings of sea turtles are occurring during fishing activities, and to impose additional restrictions to conserve listed sea turtles and to prevent unauthorized takings (50 CFR 223.206(d)(4)). Restrictions may be effective for a period of up to 30 days and may be renewed for additional periods of up to 30 days each.

**Recent Events**

The Sea Turtle Salvage and Stranding Network has documented a high level of sea turtle strandings in North Carolina this spring. There have been two stranding events involving unprecedented numbers of turtles, along the Outer Banks in Dare and Hyde counties.

During the first stranding event, a total of 71 turtles (69 loggerheads and 2 Kemp's ridleys) washed ashore on the ocean-facing beaches between Rodanthe and Ocracoke from April 14–17, 2000. There were no externally obvious signs of death on the turtles. Necropsies revealed that the turtles had excellent fat stores and were probably in good health prior to their deaths. A few of the turtles had been feeding on nearshore, benthic species, but most had empty guts, suggesting that they were in a migratory, rather than foraging, mode. The uniform state of decomposition of the turtles indicated that they had likely all died suddenly within a short period of time, probably no more than a few days before stranding on the beach. Large amounts of sargassum weed blew ashore, coincident with the turtle strandings, and indicative of the

movement of warm Gulf Stream waters close to shore.

NMFS began investigating possible causes of the sea turtle mortality event immediately. The absence of other species in the die-off was inconsistent with a toxic algae bloom. Also, there were no major traumatic injuries such as might be caused by dredging or blasting. None of the turtles had ingested any fishing hooks. NMFS, therefore, turned attention to activities that could drown large numbers of turtles, such as net fishing. There was no trawl fishing activity in the area at the time, and gillnetting was reportedly light, although there was some activity for dogfish nearshore. Monkfish gillnetting was reported to be over in the area, but NMFS subsequently learned that gillnetters continued landing monkfish in North Carolina through the end of April. Gillnetting therefore was the most likely cause of this stranding event. Sea turtles are vulnerable to entanglement in gillnets and can drown in under an hour of forced submergence.

Oceanographic conditions probably played a role in concentrating the sea turtles off the Outer Banks. Loggerhead and Kemp's ridley turtles are known to use summer foraging grounds along the mid-Atlantic and northeast seaboard. For many turtles, their spring migrations to these feeding grounds from wintering areas along the southeastern U.S. or from warm offshore waters will bring them near Cape Hatteras. The warm Gulf Stream flows southwest to northeast past Cape Hatteras. The exact position of the Gulf Stream in this area can be highly variable week-to-week, and its position, along with local winds and counterclockwise warm-water currents from the Gulf Stream can strongly affect the coastal waters. This spring, the Gulf Stream has come quite close to Cape Hatteras: only 10 to 15 nautical miles. As usual, the coastal water inshore of the Gulf Stream has been strongly affected by eddies off the Gulf Stream. Around the time of this first stranding event, warm eddies brought water up to 20 °C (68 °F) ashore along Ocracoke and Hatteras Islands, while coastal waters farther to the north were still cold (less than 14 °C), deterring turtles from proceeding northward up the coast. The warm eddy allowed turtles to move inshore where they were vulnerable to coastal fisheries and where they were more likely to strand. Onshore winds that began on April 14 likely pushed the carcasses ashore. Immediately after this stranding event, cold water pushed in from the north around Cape Hatteras, replacing the warm eddy waters. Sea turtles were forced back offshore to find warmer water. While cold water prevailed along the coast, the strandings were greatly diminished.

A second stranding event began on May 3. From May 3–8, approximately 209 additional sea turtles (3 Kemp's ridleys, the rest loggerheads) were found dead on ocean beaches between Oregon Inlet and Hatteras Inlet. Virtually all were severely decomposed, suggesting that they had been dead at sea for at least several days before stranding. The sheer numbers and the advanced decomposition of these animals preclude meaningful necropsies. Those carcasses that have been scanned with a magnetometer have not contained any hooks. Four of the carcasses were entangled in fishing gear: Three loggerheads carried pieces of gillnet with a mesh size of 12 inches (30.48 cm) stretched, and one loggerhead was carrying gillnet with a mesh size of 10 inches (25.4 cm) stretched.

Oceanographic conditions were again a factor in this wave of strandings. Cold water lay along the North Carolina coast all the way to Cape Lookout through the end of April. Sea turtles can tolerate water temperatures down to about 10 °C, but with warm water (greater than 20 °C) only 15 to 20 nm offshore, they likely would have remained in or near the 20 °C thermal front. Satellite imagery showed a small tongue of warm water curling back towards the coast from the Gulf Stream, about 15 nautical miles east of Avon, on April 30. This tongue of warm water slowly grew and extended westward until it hit the North Carolina coast between Avon and Rodanthe on May 3, the day the turtle carcasses washed ashore. Because the satellite imagery so clearly shows a distinct water mass moving in from offshore at the exact place and time that the strandings started, it is clear that the turtles also died offshore, perhaps as much as a week before they stranded, and were then brought ashore by that water mass. Three fisheries were active in offshore waters the week prior to the strandings: hook-and-line fishing for mackerel, bluefish gillnetting, and monkfish gillnetting. The mesh sizes of the gear recovered with the stranded turtles are only consistent with gillnets for monkfish. Again, there was no evidence that the turtles had been hooked.

**Analysis of Other Factors**

Examination of the strandings on the Outer Banks indicates that the most likely source of sea turtle mortality is large-mesh gillnetting for monkfish and possibly dogfish. Other possible causes are not consistent with the nature of the strandings. Satellite sea surface temperature information has allowed NMFS to reconstruct the likely times and locations of the sea turtle mortality. Gillnetting for dogfish and monkfish have been the active fisheries in those times and places. These fisheries deploy thousands of yards/meters of gillnets and have very long soak times, ranging from overnight to several days. Large-mesh gillnets are known to be highly effective at catching turtles and in fact were the gear of choice during the historical sea turtle fishery. Bluefish gillnetting was also active in offshore waters at the time of the second mortality event. The bluefish fishery, however, uses smaller-mesh nets (5½ inches/13.97 cm), much less net per boat, and much shorter soak times (less than an hour to several hours) than the large-mesh gillnet fisheries. While bluefish gillnets can catch and drown turtles, these fishing characteristics make bluefish gillnetting a smaller threat to sea turtles.

**Impacts on Sea Turtles**

The number of dead turtles in these two stranding events is unprecedented. The 10-year stranding average (1989–98) for the entire state of North Carolina for loggerheads is 219 per year; in contrast, approximately 290 have stranded in just these two events. Springtime strandings in Dare and Hyde counties, North Carolina, however, are not unusual. Historically, there has been a small spike in turtle strandings in statistical zone 35, which generally corresponds to those two counties, as the north-migrating turtles encountered coastal fisheries. In recent years, the number of stranded turtles, particularly loggerheads, has grown. In 1997 and 1998, a total of 34 and 26 loggerheads stranded in Zone 35 in May and the first 2 weeks of June. The strandings increased dramatically in 1999, to a total of 86 loggerheads for that same period. That stranding level was itself a record. NMFS believes that these increases in mortality are the result of increased fishing effort, a shift of fishing effort later into the season, fishing methods that are more lethal to sea turtles, and, this year, oceanographic conditions that likely concentrated sea turtles off Cape Hatteras.

Strandings are a minimum indicator of at-sea mortality as winds and currents will carry many carcasses offshore. The turtles involved in the second stranding event likely were killed 10–20 nm offshore and only reached shore because a warm eddy broke off. Other turtles that may have died before the eddy formed likely were swept out to sea by the Gulf Stream.

This extreme increase in loggerhead mortality may pose a serious threat to the species' recovery, especially as the mortality has occurred at a choke point in these turtles' migration to their summer foraging grounds. Most loggerheads in U.S. waters come from one of two genetically distinct nesting populations. The population that nests in south Florida is much larger and has shown increases in nesting. The northern population that nests from northeast Florida through North Carolina is much smaller and nesting numbers are stable or declining. Previous studies suggest that up to half of the turtles stranded in North Carolina would be from the smaller, northern population. The overwhelming number of stranded turtles has precluded a full analysis of the sizes of the affected animals, but preliminary data suggest that they had a representative distribution, ranging from immatures to adults.

**Continued Threat to Sea Turtles**

Historical data show that increases in sea turtle strandings move south-to-north up the mid-Atlantic coast in May and June, as the migratory turtles arrive. Virginia has shown seasonal pulses in sea turtle strandings which could be magnified if the stranding trend in North Carolina continues northward. Strandings in Virginia are always the highest in the month of June, and the stranding reports for zone 36 (36-37° N. latitude) and zone 37 (37–38° N. latitude [approximately the Virginia-Maryland border]) combined have shown a definite increase in strandings in the past several years. For example, strandings in June of 1994 were recorded to be 62 animals in zones 36 and 37 combined, 81 were found in 1995, 64 in 1996, 145 in 1997, 161 in 1998, and 157 in 1999. A total of 230 dead sea turtles stranded in Virginia in 1999, including 200 loggerheads, 18 Kemp's ridleys, 6 leatherbacks and 6 unidentified turtles. Most of the strandings in Virginia have been documented from the ocean beaches south of Cape Henry and the inshore beaches in southern Chesapeake Bay. Relatively few strandings are reported from the remote and sparsely populated barrier islands of the Eastern Shore.

Based on past data, NMFS anticipates an increase in strandings in Virginia during late May and June with the migration of turtles up the Atlantic coast. Given the unusually high level of strandings in North Carolina this year and the increasing trend in strandings in recent years in Virginia, it is critical that action be implemented to reduce the likelihood that interactions with fishing gear will result in additional mortalities of sea turtles. Several large-mesh gillnet fisheries–monkfish, smooth dogfish, and black drum–are currently operating in Atlantic waters off Virginia and in Chesapeake Bay.

The coastal waters north of Cape Hatteras have warmed rapidly since May 3, and sea turtles are now moving northward toward Virginia. In fact, an aerial survey flown May 6 between the Virginia border and Cape Hatteras, approximately 5 nm offshore, sighted 30 turtles that are already north of Oregon Inlet. South of Oregon Inlet, where the strandings have been occurring, only 3 turtles were sighted. The waters to the north and farther offshore have not been surveyed, but it is clear that turtles are already entering waters off Virginia. No major stranding event has occurred in Virginia yet, but as the turtles continue their northward migration, they will continue to be vulnerable to coastal and offshore large-mesh gillnet fisheries. The turtles will likely still be concentrated on their migratory routes over the next weeks, until they disperse over their foraging grounds. Gillnet fisheries in the path of the migration can capture and kill large numbers of turtles and possibly disrupt other turtles from reaching important feeding areas. Further mortality, added to the already record-setting number of strandings, along with the undetected at-sea mortality, could be extremely damaging to loggerheads, particularly the non-recovering northern population.

**Closure of Large-Mesh Gillnet Fishing**

Pursuant to 50 CFR 223.206(d)(4), the exemption for incidental taking of sea turtles in 50 CFR 223.206(d)(1) does not authorize incidental takings during fishing activities if the takings may be likely to jeopardize the continued existence of a species listed under the ESA. Regulations at 50 CFR 223.206(d)(4) provide that the Assistant Administrator for Fisheries, NOAA, (AA) may issue a determination that incidental takings in the course of fishing activities are unauthorized, and specify procedures that the AA may use to impose additional restrictions to conserve listed sea turtles and prevent such takings. The level of mortality suffered by loggerhead turtles this spring off eastern North Carolina is already unprecedented and is severely impacting the northern nesting population of loggerheads. Continued mortality caused by incidental capture in large-mesh gillnets during loggerhead migrations along the mid-Atlantic coast could significantly affect this population and its ability to recover and may be likely to jeopardize the species. Therefore, the AA issues this determination that takings of threatened or endangered sea turtles by large-mesh gillnetters in mid-Atlantic waters along eastern North Carolina and Virginia are unauthorized and issues this additional restriction on fishing activities to conserve threatened and endangered sea turtles, particularly loggerhead turtles. Specifically, the AA closes the Atlantic Ocean waters of North Carolina and Virginia and in the mouth of the Chesapeake Bay to all fishing with gillnets with a stretched mesh size of 6 inches (15.24 cm) or greater. The closed area includes all offshore waters bounded by 35°13′ N. latitude on the south (approximately Cape Hatteras), 38° N. latitude on the north (just south of the Maryland-Virginia border), 75° W. longitude on the east, and the North Carolina and Virginia coasts on the west. At inlets, the western boundary of the closed area is the COLREGS demarcation line, except in Chesapeake Bay, where the closed area includes the waters contained in the regulated navigation area for Chesapeake Bay entrance and Hampton Roads, Va. and adjacent waters (as defined at 33 CFR 165.501(a)) that are east of the southeastern span of the Hampton Roads Bridge-Tunnel and the line connecting Old Point Comfort Light and Fort Wool Light. This closure is effective from May 12, 2000 through 11:59 p.m. (local time) June 12, 2000. For the duration of this closure, no gillnet with a stretched mesh size measuring 6 inches (15.24 cm) or greater may be set in the closed area. All such gillnets that are currently set must be retrieved by 11:59 p.m on May 15, 2000.

This restriction has been announced on the NOAA weather channel, in newspapers, and other media.

**Additional Conservation Measures**

The AA may withdraw or modify any additional restriction on fishing activities if the AA determines that such action is warranted. Notification of any additional sea turtle conservation measures, including any extension of this 30-day action, will be published in the **Federal Register** pursuant to 50 CFR 223.206(d)(4).

NMFS will continue to monitor sea turtle strandings to gauge the effectiveness of these conservation measures.

**Classification**

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA has determined that this action is necessary to respond to an emergency situation to provide adequate protection for endangered and

threatened sea turtles, primarily the loggerhead sea turtle, pursuant to the ESA and other applicable law.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing this action in a timely manner to protect the listed sea turtles. Notification of and opportunity to comment on the procedures allowing the implementation of temporary measures to protect sea turtles was provided through the proposed rule which established these actions (57 FR 18446, April 30, 1992). For the same reasons, the AA finds good cause also under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. NMFS is making the rule effective May 12, 2000 through June 12, 2000. Immediately, no gillnets with a stretched mesh size measuring 6″ (15.24cm) or greater may be set in the closed area. The rule provides sufficient time—over one day—to retrieve all nets set previously. As stated earlier, this restriction has been announced on the NOAA weather radio, in newspapers, and other media.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.*, are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule (57 FR 57348, December 4, 1992) requiring turtle excluder device use in shrimp trawls and creating the regulatory framework for the issuance of notices such as this. Copies of the EA are available (see **ADDRESSES**).

**Authority**: 16 U.S.C. 1531.

Dated: May 12, 2000.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12396 Filed 5–12–00; 4:44 pm]

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# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–AEA–01]**

### Proposed Cancellation of Federal Airway: V–162 HAR–MRB

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking

**SUMMARY:** This notice proposes to cancel Federal Airway 162 (V–162) between Harrisburg, PA (HAR) and Martinsburg, WV (MRB). The FAA is proposing this action due to restrictions on the HAR VOR. The airway would be deleted from aeronautical charts.

**DATES:** Comments must be received on or before June 19, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, AEA–520, Docket NO. 00–AEA–01, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the Airspace Branch, AEA–520, F.A.A. Eastern Region, Federal Building #111 John F. Kennedy International Airport, Jamaica, NY 11430.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520 F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following state is made: "Comments to Airspace Docket No. 00–AEA–01." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with the FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Regional Counsel, AEA–7, F.A.A. Eastern Region, Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to cancel V–162 between HAR VOR, PA and MRB VOR, WV. The FAA is proposing this action due to restrictions on the HAR VOR resulting from a flight check. The FAA is proposing this action to enhance the safety of air traffic operations. Domestic VOR airways are published in Paragraph 6010(a) of FAA Order 7400.9G, dated September 1, 1999, and Effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed action would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace Incorporation by reference, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### §71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points dated September 1, 1999, and effective September 16, 1999, is proposed to be amended as follows:

* * * * *

*Paragraph 6011 VOR Federal; Airways*

V–162 cancelled between Harrisburg, PA (HAR) and Martinsburg, WV (MRB)

* * * * *

Issued in Jamaica, New York, on April 19, 2000.

**Franklin D. Hatfield,**

*Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 00–11491 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–15–M

## DEPARTMENT OF DEFENSE

## Department of the Navy,

## 32 CFR Part 701

**[Secretary of the Navy Instruction 5211.5]**

## Privacy Act; Implementation

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of the Navy is proposing to add an exemption rule for a Privacy Act system of records. The exemption is intended to increase the value of the system of records for law enforcement purposes, to comply with prohibitions against the disclosure of certain kinds of information, and to protect the privacy of individuals identified in the system of records.

**DATES:** Comments must be received on or before July 17, 2000 to be considered by this agency.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

**SUPPLEMENTARY INFORMATION:**

### Executive Order 12866

It has been determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

### Regulatory Flexibility Act

It has been determined that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

### Paperwork Reduction Act

It has been determined that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

### List of Subjects in 32 CFR Part 701

Privacy.

1. The authority citation for 32 CFR part 701, Subpart G continues to read as follows:

**Authority:** Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. Section 701.118, is amended by adding paragraph (u) as follows:

**§ 701.118 Exemptions for specific Navy record systems.**

(u) *System identifier and name:* (1) N05813–4, Trial/Government Counsel Files.

(i) *Exemption.* Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws. Portions of this system of records that may be exempt pursuant to subsection 5 U.S.C. 552a(j)(2) are (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(5), (e)(4)(G), (H), and (I), (e)(8), (f), and (g).

(ii) *Exemption.* Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

(iii) *Exemption.* Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Portions of this system of records that may be exempt pursuant to subsections 5 U.S.C. 552a(k)(1) and (k)(2) are (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

(iv) *Authority:* 5 U.S.C. 552a(j)(2), (k)(1), and (k)(2).

(v) *Reason:* (1) From subsection (c)(3) because release of accounting of disclosure could place the subject of an investigation on notice that he/she is under investigation and provide him/her with significant information concerning the nature of the investigation, resulting in a serious impediment to law enforcement investigations.

(2) From subsections (c)(4), (d), (e)(4)(G), and (e)(4)(H) because granting individuals access to information collected and maintained for purposes relating to the enforcement of laws could interfere with proper investigations and orderly administration of justice. Granting individuals access to information relating to the preparation and conduct of criminal prosecution would impair the development and implementation of legal strategy. Amendment is inappropriate because the trial/government counsel files contain official records including transcripts, court orders, and investigatory materials such as exhibits, decisional memorandum and other case-related papers. Disclosure of this information could result in the concealment, alteration or destruction of evidence, the identification of offenders or alleged offenders, nature and disposition of charges; and jeopardize the safety and well-being of informants, witnesses and their families, and law enforcement personnel and their families. Disclosure of this information could also reveal and render ineffective investigation techniques, sources, and methods used by law enforcement personnel, and could result in the invasion of privacy of individuals only incidentally related to an investigation.

(3) From subsection (e)(1) because it is not always possible in all instances to determine relevancy or necessity of specific information in the early stages of case development. Information collected during criminal investigations and prosecutions and not used during the subject case is often retained to provide leads in other cases.

(4) From subsection (e)(2) because in criminal or other law enforcement investigations, the requirement that information be collected to the greatest extent practicable from the subject individual would alert the subject as to the nature or existence of an investigation, presenting a serious impediment to law enforcement investigations.

(5) From subsection (e)(3) because compliance would constitute a serious impediment to law enforcement in that it could compromise the existence of a confidential investigation or reveal the identity of witnesses or confidential informants.

(6) From subsection (e)(4)(I) because the identity of specific sources must be withheld in order to protect the confidentiality of the sources of

criminal and other law enforcement information. This exemption is further necessary to protect the privacy and physical safety of witnesses and informants.

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely, and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light and the accuracy of such information can only be determined in a court of law. The restrictions of subsection (e)(5) would restrict the ability of trained investigators and intelligence analysts to exercise their judgment in reporting on investigations and impede the development of intelligence necessary for effective law enforcement.

(8) From subsection (e)(8) because compliance would provide an impediment to law enforcement by interfering with the ability to issue warrants or subpoenas and by revealing investigative techniques, procedures, or evidence.

(9) From subsections (f) and (g) because this record system is exempt from the individual access provisions of subsection (d).

(10) Consistent with the legislative purpose of the Privacy Act of 1974, the Department of the Navy will grant access to nonexempt material in the records being maintained. Disclosure will be governed by the Department of the Navy's Privacy Regulation, but will be limited to the extent that the identity of confidential sources will not be compromised; subjects of an investigation of an actual or potential criminal violation will not be alerted to the investigation; the physical safety of witnesses, informants and law enforcement personnel will not be endangered, the privacy of third parties will not be violated; and that the disclosure would not otherwise impede effective law enforcement. Whenever possible, information of the above nature will be deleted from the requested documents and the balance made available. The controlling principle behind this limited access is to allow disclosures except those indicated above. The decisions to release information from these systems will be made on a case-by-case basis.

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Dated: March 29, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–10053 Filed 5–17–00; 8:45 am]

BILLING CODE 5001–10–F

## POSTAL SERVICE

### 39 CFR Part 111

### Line-of-Travel Sequencing for Basic Carrier Route Periodicals

**ACTION:** Proposed rule.

**SUMMARY:** The Postal Service is soliciting comments on a proposed change to the Domestic Mail Manual that would require mailers to prepare basic rate carrier route Periodicals mail in line-of-travel sequence.

**DATES:** Comments must be received on or before June 19, 2000.

**ADDRESSES:** Comments must be sent to the Manager, Mail Preparation and Standards, 475 L'Enfant Plaza SW, Room 6800, Washington, DC 20260–2405. Fax: 202–268–4336. Comments will be available for public viewing from 9 a.m. to 4 p.m. in the Postal Service Library, 475 L'Enfant Plaza, 11th Floor, Washington, DC. Copies of comments also may be requested via fax or email.

**FOR FURTHER INFORMATION CONTACT:** Anne Emmerth, 202–268–2363, aemmerth@email.usps.gov.

**SUPPLEMENTARY INFORMATION:** In 1996, the Postal Service began requiring line-of-travel sequencing for all basic Enhanced Carrier Route Standard Mail (A). LOT sequencing generally approximates carriers' actual sequence of delivery. A cost study shows that this preparation has resulted in significant savings due to a reduction in time spent by carriers casing mail. Analysis indicates that implementing a line-of-travel requirement for packages of basic rate carrier route Periodicals could produce significant savings.

The Postal Service and representatives from the Periodicals industry are concerned about recent upward trends in mail processing costs for Periodicals and have been studying ways to lower costs. Out of these discussions came several ideas for further examination. One of these ideas is to require Periodicals mail qualifying for basic carrier route rates to be prepared in line-of-travel (LOT) sequence. A Postal Service cost study indicates that requiring LOT sequencing for basic rate carrier route Periodicals will result in reduced costs.

Accordingly, the Postal Service is proposing to require that Periodicals mailers prepare basic rate carrier route mail in line-of-travel sequence. Mailers would be required to sort their mail using the current USPS line-of-travel product within 90 days before the date of mailing. As an alternative, mailers may opt to prepare mail in actual walk sequence to qualify for basic carrier route rates.

The line-of-travel product contains a list of each ZIP+4 code that a route serves. The ZIP+4 codes are numbered in sequence according to their first occurrence on the route as served by the carrier. Each ZIP+4 is appended with either an "A" (for ascending) or a "D" (for descending) to specify the order in which the addresses in that ZIP+4 must be arranged. For Periodicals, all basic rate carrier route pieces would be sequenced in ascending ZIP+4 code line-of-travel order. As an alternative, mailers could prepare basic rate carrier route mail in actual walk sequence.

The proposed effective date of this change is September 9, 2000.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites comments on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

**PART 111—[AMENDED]**

1. The authority citation for 39 CFR Part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual (DMM) as set forth below:

**E Eligibility**

* * * * *

**E200 Periodicals**

* * * * *

**E230 Nonautomation Rates**

* * * * *

2.0 CARRIER ROUTE RATES

* * * * *

[Amend 2.2 by revising the heading and item a, renumbering item b as item c, and adding new item b to read as follows:]

2.2 Sequencing

Preparation to qualify eligible pieces for carrier route rates is optional and is subject to M200. Carrier route sort need not be done for all carrier routes in a 5-digit area. Specific rate eligibility is subject to these standards:

a. The carrier route rates apply to copies in carrier route packages of six or more letter-size pieces each that are sorted to carrier routes, 5-digit carrier routes, or 3-digit carrier routes trays; and six or more flat-size pieces or irregular parcel-size pieces each that are sorted to carrier route, 5-digit, or 5-digit scheme carrier routes sacks. (Preparation of 5-digit scheme carrier routes sacks is optional, but, if performed, must be done for all 5-digit scheme destinations.) The applicable sequencing requirements in M050 and in 2.2b or 2.2c also must be met.

b. Basic carrier route rate mail must be prepared either in carrier walk sequence or in line-of-travel (LOT) sequence according to LOT schemes prescribed by the USPS (M050).

c. The high density and saturation rates apply to pieces that are eligible for carrier route rates under 2.2a, are prepared in carrier walk sequence, and meet the applicable density standards in 6.0 for the rate claimed.

* * * * *

**M Mail Preparation and Sortation**

**M000 General Preparation Standards**

* * * * *

**M050 Delivery Sequence**

* * * * *

3.0 DELIVERY SEQUENCE INFORMATION

* * * * *

3.4 Line-of-Travel Sequence

[Revise the first sentence to read as follows:]

Unless the mail is prepared in carrier walk sequence, LOT sequence is required for mailings at Enhanced Carrier Route basic Standard Mail (A) rates and carrier route basic Periodicals rates.* * *

4.0 DOCUMENTATION

4.1 General

[Revise the fourth sentence to read as follows:] .

* * * For Periodicals, the postage statement must be annotated in the "Sequencing Date" block on each of the lines where basic, high density, and saturation per piece rate postage is reported. * * *

* * * * *

**M200 Periodicals (Nonautomation)**

1.0 BASIC STANDARDS

* * * * *

1.3 Carrier Route and Walk Sequence

[Revise the second sentence of 1.3 to read as follows:]

* * * Periodicals for which a carrier route discount is claimed must be prepared as a carrier route mailing under this section and either the walk sequencing standard or the line-of-travel sequencing standard in M050; pieces prepared with a simplified address must also meet the standards in A040.

* * * * *

An appropriate amendment to 39 CFR part 111 to reflect these changes will be published if the proposal is adopted.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–12443 Filed 5–17–00; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[PA 112–4084; FRL–6702–7]**

### Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Withdrawal of Proposed Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of notice of proposed rulemaking.

**SUMMARY:** On February 2, 1999 (64 FR 5015), EPA proposed to approve the Commonwealth of Pennsylvania's regulations for Nitrogen Oxides ($NO_X$) Allowance Requirements (commonly referred to as the $NO_X$ Budget Rule) as a revision to the State Implementation Plan (SIP). Prior to our taking any final rulemaking, the Commonwealth informed us that it was revising the rule. On December 27, 1999, the Commonwealth submitted a new SIP revision request to EPA which consists of the revised version of its $NO_X$ Budget Rule. Because the Commonwealth of Pennsylvania has now submitted the revised version of its $NO_X$ Budget Rule as a SIP revision, we are withdrawing our February 2, 1999 proposed rule on the old version. EPA will initiate a new and separate rulemaking on the Commonwealth's December 27, 1999 SIP revision submittal.

**FOR FURTHER INFORMATION CONTACT:** Cristina Fernandez, (215) 814–2178, or by e-mail at fernandez.cristina@epa.gov.

Dated: March 19, 2000.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

[FR Doc. 00–12519 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–U

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 000211038–0038–01; I.D. 101499D]**

**RIN 0648–AM93**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Snapper-Grouper Fishery off the Southern Atlantic States; Greater Amberjack Trip Limit; Resubmission of Disapproved Measure in Amendment 9

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes a rule that would implement a previously disapproved 1,000–lb (454–kg) commercial trip limit for greater amberjack as originally contained in Amendment 9 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The intended effect of the trip limit is to prevent overfishing and conserve and manage greater amberjack.

**DATES:** Comments on this proposed rule must be received at the appropriate address or fax number, (see **ADDRESSES**), no later than 5:00 p.m., eastern standard time, on June 19, 2000.

**ADDRESSES:** Copies of documents supporting the proposed commercial trip limit for greater amberjack may be obtained upon request from the South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699; telephone: 843-571-4366; fax: 843-769-4520.

Copies of the economic analyses of the proposed commercial trip limit for greater amberjack may be obtained upon request from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; telephone: 727–570–5305; fax: 727–570–5583.

Written comments on this proposed rule may be submitted to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702. Comments also may be sent via

fax to 727–570–5583. Comments will not be accepted if submitted via e-mail or Internet.

**FOR FURTHER INFORMATION CONTACT:** Peter J. Eldridge, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Peter.Eldridge@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery off the southern Atlantic states is managed under the FMP. The FMP was prepared by the South Atlantic Fishery Management Council (Council) and approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) through regulations at 50 CFR part 622.

NMFS determined that the status of the greater amberjack stock relative to the FMP's current overfishing definition is unknown in the *Report to Congress: Status of Fisheries of the United States, NMFS, October 1999*. Current data show declines in average size and landings of greater amberjack. Accordingly, in Amendment 9 to the FMP the Council proposed precautionary measures to ensure that greater amberjack did not approach an overfished condition. Specifically, Amendment 9 to the FMP proposed to: (1) Reduce the recreational bag limit from 3 to 1 greater amberjack per person per day; (2) prohibit harvest and possession in excess of the bag limit during April throughout the EEZ; (3) establish a 1000–lb (454–kg) commercial trip limit with no more than one trip allowed per day; (4) establish a commercial quota of 1,169,931 lb (530,672 kg) (63 percent of 1995 landings); (5) begin the fishing year May 1; (6) prohibit the sale of greater amberjack harvested under the bag limit when the season is closed; and (7) prohibit coring (removal of the head from the carcass).

On September 8, 1998, NMFS announced the availability of Amendment 9 to the FMP and requested public comments on it (63 FR 47461). On November 12, 1998, NMFS published a proposed rule to implement the measures in Amendment 9 to the FMP and requested comments on this rule (63 FR 63276). On December 9, 1998, after considering the comments received on the amendment and the proposed rule, NMFS partially approved Amendment 9 to the FMP. NMFS disapproved the proposed 1,000–lb (454–kg) commercial trip limit for greater amberjack because information at that time indicated that the benefits of the trip limit did not exceed costs. Subsequently, NMFS conducted another economic analysis of the expected effects of this measure, based on more recent information, that indicates that the benefits of the trip limit may exceed costs (net benefits), especially if a "derby" fishery is prevented. Based on the conclusions of the supplemental economic analysis, the Council resubmitted the proposed commercial trip limit for greater amberjack, as contained in Amendment 9 to the FMP, to NMFS for review, approval, and implementation. On January 26, 2000, NMFS approved the amberjack trip limit measure.

## Classification

This proposed rule has been determined to be significant for purposes of Executive Order 12866.

The Council prepared a final supplemental environmental impact statement for Amendment 9 to the FMP that assessed the environmental impacts of its greater amberjack trip limit. A notice of its availability was published on October 9, 1998 (63 FR 54476).

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification is based on NMFS' analyses and is summarized as follows:

*Determination of Nature and Size of Economic Impacts on Small Entities:* This determination and discussion is based on a series of analyses conducted by NMFS following the original disapproval decision by the Secretary of Commerce and the subsequent resubmittal of the action. One part of the determination is to decide if a substantial number of the population will be affected by the proposed Federal action and defining the population is key to the determination of substantial number. For the purposes of this determination, a narrow definition of the population that might be impacted by the action will be used. Although there are about 2,000 vessels permitted to legally harvest greater amberjack, the population is defined as being limited to those vessels that actually landed greater amberjack in the most recent fishing year for which data are available. It is further determined that all of these fishing vessels represent small entities as defined by the Small Business Administration. During the 1996–97 fishing year a total of 553 commercial fishing craft landed greater amberjack and took 3685 trips on which landings of greater amberjack were reported. Of the 553 fishing craft that could be potentially impacted, 73 reported a total of 290 trips that resulted in landing over 1,000 pounds of greater amberjack on at least one trip during the 1996–97 fishing season. In terms of the population as defined, 13 percent of the population had one or more trips on which 1,000 pounds of greater amberjack were landed and this represents 8 percent of all greater amberjack trips.

The fishing craft (small entities) expected to be directly impacted by the action are engaged in commercial fishing activities that result in the landing and sale of a variety of snapper grouper species as well as other species. In other words, these fishing businesses are not totally dependent on their ability to harvest greater amberjack. For those 73 entities reporting at least one trip on which 1,000 pounds of greater amberjack were reported, they had average gross revenues from fishing of $41,342 for the 1996–97 fishing year and $12,274, or about 30 percent of that average gross revenue, was attributed to landings of greater amberjack. Assuming no changes in fishing behavior if the trip limit is implemented, the amount of greater amberjack revenue in excess of the 1,000 pound trip limit during the 1996–97 fishing season could be interpreted as "lost" revenue for those trips that resulted in greater amberjack catches in excess of 1,000 pounds. However, it is known from empirical observations in other fisheries where a trip limit was introduced that fishing behavior indeed changes. The behavior can be of two different general types. When trip limits are introduced and the vessel cannot generate enough gross revenue from the trip to cover costs, the entity will either forego fishing for the species in question or will attempt to switch target species if that avenue is available. The other straightforward behavior change is to take additional trips of the original target species if the expected gross revenue will more than cover the costs of the trip. Because the data existed for this fishery, an extension of the analysis was conducted to investigate the probable change in fishing behavior and this analysis indicated that the fishermen would tend to take additional trips for greater amberjack rather than ceasing fishing or switching to an alternate species. The analysis resulted in an expectation that those vessels directly impacted by the trip limit would take an average of about 4 extra trips targeting greater amberjack if the trip limit is implemented. The analysis further indicated that the overall outcome of the trip limit would be a loss of about 3 percent of net operating revenue (gross revenue less trip costs) for the 73 vessels directly

impacted or about four tenths of a percent loss in net operating revenue for the entire population of 553 vessels that land greater amberjack. Recalling that species other than greater amberjack are also harvested by these vessels, the 4 extra trips would also result in additional revenues derived from landing other species in association with greater amberjack. However, the landings and revenue associated with the 4 extra trips per vessel were not specifically calculated and are thus not considered in the analysis except to note that the impact would be lessened if these additional landings were to be considered. The trip limit is not expected to result in any of the affected small entities being forced to cease business operations if the trip limit goes into effect. This result is based on the analysis of vessel behavior following the imposition of a trip limit and the analysis indicated that a trip limit of 1,000 pounds would allow for the full recovery of the trip costs and additional trips would be taken instead of the small entity ceasing business operations.

There are no capital, operating, reporting or other compliance costs associated with the action and due to the lack of such costs there are no differential impacts for small versus large entities. Similarly, since there are no capital costs of compliance, there is no issue related to the total amount of capital available to the small entities that may be affected by the action.

*Overall Conclusion*: These results indicate that a substantial number of small entities will not be impacted to a significant degree by the action to implement a 1,000 pound trip limit for commercial fishermen operating in the snapper grouper fishery of the South Atlantic.

Copies of NMFS' economic analysis are available (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 12, 2000.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.44, paragraph (c)(4) is added to read as follows:

**§ 622.44 Commercial trip limits.**

* * * * *

(c) * * *

(4) *Greater amberjack.* Until the fishing year quota specified in § 622.42(e)(3) is reached, 1,000 lb (454 kg). No more than one trip may be made per day. See § 622.43(a)(5)(i) for the limitations regarding greater amberjack after the fishing year quota is reached.

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[FR Doc. 00–12577 Filed 5–17–00; 8:45 am]

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# Notices

Federal Register
Vol. 65, No. 97
Thursday, May 18, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions and Publication of Notice of Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice.

**SUMMARY:** Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR parts 215 and 217 in the legal notice section of the newspapers listed in the **SUPPLEMENTARY INFORMATION SECTION** of this notice. As provided in 36 CFR part 215.5(a) and 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the principal newspaper to be utilized for publishing legal notices of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested notice in writing and to those known to be interested in or affected by a specific decision. In addition, the Responsible Official in the Southern Region will also publish notice of proposed actions under 36 CFR 215 in the newspapers that are listed in the Supplementary Information section of this notice. As provided in 36 CFR part 215(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

**DATES:** Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR parts 215 and 217, and notices of proposed actions under 36 CFR part 215 shall begin on or after May 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Jean Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning, 1720 Peachtree Road, NW, Atlanta, Georgia 30309, Phone: 404–347–4867.

**SUPPLEMENTARY INFORMATION:** Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 and the Responsible Officials in the Southern Region will give notice of decisions subject to appeal under 36 CFR 215 in the following newspapers which are listed by Forest Service administrative unit. Responsible Officials in the Southern Region will also give notice of proposed actions under 36 CFR part 215 in the following principal newspapers which are listed by Forest Service administrative unit. The timeframe for comment on a proposed action shall be based on the date of publication of the notice of the proposed action in the principal newspaper. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper for both 36 CFR parts 215 and 217.

Where more than one newspaper is listed for any unit, the first newspaper listed is the principal newspaper that will be utilized for publishing the legal notices of decisions. Additional newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the principal newspaper.

The following newspapers will be used to provide notice.

**Southern Region**

*Regional Forester Decisions*

Affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico. *Atlanta Journal*, published daily in Atlanta, GA.

Affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico or only one Ranger District will appear in the principal newspaper elected by the National Forest of that state or Ranger District.

**National Forests in Alabama, Alabama**

*Forest Supervisor Decisions*

*Montgomery Advertiser*, published daily in Montgomery, AL

*District Ranger Decisions*

*Bankhead Ranger District: Northwest Alabamian*, published weekly (Monday & Thursday) in Haleyville, AL

*Conecuh Ranger District: The Andalusia Star News*, published daily (Tuesday through Saturday) in Andalusia, AL

*Oakmulgee Ranger District: The Tuscaloosa News*, published daily in Tuscaloosa, AL

*Shoal Creek Ranger District: The Anniston Star*, published daily in Anniston, AL

*Talladega Ranger District: The Daily Home*, published daily in Talladega, AL

*Tuskegee Ranger District: Tuskegee News* published weekly (Thursday) in Tuskegee, AL

**Caribbean National Forest, Puerto Rico**

*Forest Supervisor Decisions*

*El Nuevo Dia*, published daily in Spanish in San Juan, PR;

*San Juan Star,:* published daily in English in San Juan, PR

**Chattahoochee-Oconee National Forest, Georgia**

*Forest Supervisor Decisions*

*The Times:* published daily in Gainesville, GA

*District Ranger Decisions*

*Armuchee Ranger District: Walker County Messenger*, published bi-weekly (Wednesday & Friday) in LaFayette, GA

*Toccoa Ranger District: The News Observer*, published weekly (Wednesday) in Blue Ridge, GA

*Brasstown Ranger District: North Georgia News*, published weekly (Wednesday) in Blairsville, GA

*Tallulah Ranger District: Clayton Tribune*, published weekly (Thursday) in Clayton, GA

*Chattooga Ranger District: Northeast Georgian*, published twice weekly (Tuesday & Friday) in Cornelia, GA

*Chieftain & Toccoa Record*, published twice weekly (Tuesday & Friday) in Toccoa, GA

*White County News Telegraph:* published weekly (Thursday) in Cleveland, GA

*The Dahlonega Nuggett*, published weekly (Thursday) in Dahlonega, GA

*Cohutta Ranger District: Chatsworth Times*, published weekly (Wednesday) in Chatsworth, GA

*Oconee Ranger District: Monticello News*, published weekly (Thursday) in Monticello, GA

**Cherokee National Forest, Tennessee**

*Forest Supervisor Decisions*

*Knoxville News Sentinel:* published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)

*Johnson City Press,:* published daily in Johnson City, TN (covering Carter, Cocke, Green, Johnson, Sullivan, Unicoi and Washington Counties)

*District Ranger Decisions*

*Ocoee-Hiwassee Ranger District: Polk County News*, published weekly (Wednesday) in Benton, TN

*Tellico-Hiwassee Ranger District: Monroe County Advocate*, published weekly (Thursday) in Sweetwater, TN

*Nolichucky-Unaka Ranger District: Johnson City Press*, published daily in Johnson City, TN

*Watauga Ranger District: Johnson City Press*, published daily in Johnson City, TN.

**Daniel Boone National Forest, Kentucky**

*Forest Supervisor Decisions*

*Lexington Herald-Leader*, published daily in Lexington, KY

*District Ranger Decisions*

*Morehead Ranger District: Morehead News*, published bi-weekly (Tuesday and Friday) in Morehead, KY

*Stanton Ranger District: The Clay City Times*, published weekly (Thursday) in Stanton, KY

*London Ranger District: The Sentinel-Echo*, published tri-weekly (Monday, Wednesday, and Friday) in London, KY

*Somerset Ranger District: Commonwealth-Journal*, published daily (Sunday through Friday) in Somerset, KY

*Stearns Ranger District: McCreary County Record*, published weekly (Tuesday) in Whitley City, KY

*Redbird Ranger District: Manchester Enterprise*, published weekly (Thursday) in Manchester, KY

**National Forests in Florida, Florida**

*Forest Supervisor Decisions*

*The Tallahassee Democrat*, published daily in Tallahassee, FL

*District Ranger Decisions*

*Apalachicola Ranger District: The Liberty Journal*, published weekly (Wednesday) in Bristol, FL

*Lake George Ranger District: The Ocala Star Banner*, published daily in Ocala, FL

*Osceola Ranger District: The Lake City Reporter*, published daily (Monday–Saturday) in Lake City, FL

*Seminole Ranger District: The Daily Commercial*, published daily in Leesburg, FL

*Wakulla Ranger District: The Tallahassee Democrat*, published daily in Tallahassee, FL

**Francis Marion & Sumter National Forest, South Carolina**

*Forest Supervisor Decisions*

*The State*, published daily in Columbia, SC.

*District Ranger Decisions*

*Enoree Ranger District: Newberry Observer*, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC.

*Andrew Pickens Ranger District: The Daily Journal*, published daily in Seneca, SC.

*Long Cane Ranger District: The Augusta Chronicle*, published daily in Augusta, GA.

*Wambaw Ranger District: Post and Courier*, published daily in Charleston, SC.

*Witherbee Ranger District: Post and Courier*, published daily in Charleston, SC.

**George Washington and Jefferson National Forests, Virginia**

*Forest Supervisor Decisions*

*Roanoke Times*, published daily in Roanoke, VA

*District Ranger Decisions*

*Lee Ranger District: Shenandoah Valley Herald*, published weekly (Wednesday) in Woodstock, VA

*Warm Springs Ranger District: The Recorder*, published weekly (Thursday) in Monterey, VA

*Pedlar Ranger District: Roanoke Times*, published daily in Roanoke, VA

*James River Ranger District: Virginian Review*, published daily (except Sunday) in Covington, VA

*Deerfield Ranger District: Daily News Leader*, published daily in Staunton, VA

*Dry River Ranger District: Daily News Record*, published daily (except Sunday) in Harrisonburg, VA

*Blacksburg Ranger District: Roanoke Times*, published daily in Roanoke, VA

*Monroe Watchman*, published weekly (Thursday) in Union, WV (only for those decisions in West VA—notice will be published in the *Roanoke Time and Monroe Watchman.)*

*Glenwood Ranger District: Roanoke Times*, published daily in Roanoke, VA

*New Castle Ranger District: Roanoke Times*, published daily in Roanoke, VA

*Mount Rogers National Recreation Area: Bristol Herald Courier*, published daily in Bristol, VA

*Clinch Ranger District: Kingsport-Times News*, published daily in Kingsport, TN

*Wythe Ranger District: Southwest Virginia Enterprise*, published by-weekly (Wednesday and Saturday) in Wytheville, VA

**Kisatchie National Forest, Louisiana**

*Forest Supervisor Decisions*

*The Town Talk* published daily in Alexandria, LA

*District Ranger Decisions*

*Caney Ranger District: Minden Press Herald*, published daily in Minden, LA

*Homer Guardian Journal*, published weekly (Wednesday) in Homer, LA

*Catahoula Ranger District: The Town Talk*, published daily in Alexandria, LA

*Calcasieu Ranger District: The Town Talk*, published daily in Alexandria, LA

*Kisatchie Ranger District: Natchitoches Times*, published daily (Tuesday–Friday and on Sunday) in Natchitoches, LA

*Winn Ranger District: Winn Parish Enterprise* published weekly (Wednesday) in Winnfield, LA

**Land Between the Lakes National Recreation Area, Kentucky and Tennessee**

*The Paducah Sun* published daily in Paducah, KY

**National Forests in Mississippi, Mississippi**

*Forest Supervisor Decisions*

*Clarion-Ledger* published daily in Jackson, MS

*District Ranger Decisions*

*Bienville Ranger District: Clarion-Ledger*, published daily in Jackson, MS

*Chickasawhay Ranger District: Clarion-Ledger*, published daily in Jackson, MS

*Delta Ranger District: Clarion-Ledger*, published daily in Jackson, MS

*De Soto Ranger District: Clarion-Ledger*, published daily in Jackson, MS

*Holly Springs Ranger District: Clarion-Ledger*, published daily in Jackson, MS

*Homochitto Ranger District: Clarion-Ledger*, published daily in Jackson, MS

*Tombigbee Ranger District: Clarion-Ledger*, published daily in Jackson, MS

**National Forests in North Carolina, North Carolina**

*Forest Supervisor Decisions*

*The Asheville Citizen-Times*, published daily in Asheville, NC

*District Ranger Decisions*

*Appalachian Ranger District: The Asheville Citizen-Times* published daily in Asheville, NC

*Cheoah Ranger District: Graham Star,* published weekly (Thursday) in Robbinsville, NC

*Croatan Ranger District: The Sun Journal,* published weekly (Sunday through Friday) in New Bern, NC

*Grandfather Ranger District: McDowell News,* published daily in Marion, NC

*Highlands Ranger District: The Highlander,* published weekly (mid May-mid Nov Tues & Fri; mid Nov-mid May Tues only) in Highlands, NC

*Pisgah Ranger District: The Asheville Citizen-Times* published daily in Asheville, NC

*Tusquitee Ranger District: Cherokee Scout,* published weekly (Wednesday) in Murphy, NC

*Uwharrie Ranger District: Montgomery Herald,* published weekly (Wednesday) in Troy, NC

*Wayah Ranger District: The Franklin Press,* published by-weekly (Wednesday and Friday) in Franklin, NC

**Ouachita National Forest, Arkansas, Oklahoma**

*Forest Supervisor Decisions*

*Arkansas Democrat-Gazette,* published daily in Little Rock, AR

*District Ranger Decisions*

*Caddo Ranger District: Arkansas Democrat-Gazette,* published daily in Little Rock AR

*Cold Springs Ranger District: Arkansas Democrat-Gazette,* published daily in Little Rock, AR

*Fourche Ranger District: Arkansas Democrat-Gazette,* published daily in Little Rock, AR

*Jessieville Ranger District: Arkansas Democrat-Gazette,* published daily in Little Rock, AR

*Mena Ranger District: Arkansas Democrat-Gazette,* published daily in Little Rock, AR

*Oden Ranger District: Arkansas Democrat-Gazette,* published daily in Little Rock, AR

*Poteau Ranger District: Arkansas Democrat-Gazette,* published daily in Little Rock, AR

*Winona Ranger District: Arkansas Democrat-Gazette,* published daily in Little Rock, AR

*Womble Ranger District: Arkansas Democrat-Gazette,* published daily in Little Rock, AR

*Choctaw Ranger District: Tulsa World,* published daily in Tulsa, OK

*Kiamichi Ranger District: Tulsa World,* published daily in Tulsa, OK

*Tiak Ranger District: Tulsa World,* published daily in Tulsa, OK

**Ozark-St. Francis National Forest: Arkansas**

*Forest Supervisor Decisions*

*The Courier,* published daily (Tuesday through Sunday) in Russellville, AR

*District Ranger Decisions*

*Sylamore Ranger District: Stone County Leader,* published weekly (Tuesday) in Mountain View, AR

*Buffalo Ranger District: Newton County Times,* published weekly in Jasper, AR

*Bayou Ranger District: The Courier,* published daily (Tuesday through Sunday) in Russellville, AR

*Pleasant Hill Ranger District: Johnson County Graphic,* published weekly (Wednesday) in Clarksville, AR

*Boston Mountain Ranger District: Southwest Times Record,* published daily in Fort Smith, AR

*Magazine Ranger District: Southwest Times Record,* published daily in Fort Smith, AR

*St. Francis Ranger District: The Daily World,* published daily (Sunday through Friday) in Helena, AR

**National Forests and Grasslands in Texas, Texas**

*Forest Supervisor Decisions*

*The Lufkin Daily News,* published daily in Lufkin, TX

*District Ranger Decisions*

*Angelina National Forest: The Lufkin Daily News,* published daily in Lufkin, TX

*Davy Crockett National Forest: The Lufkin Daily News,* published daily in Lufkin, TX

*Sabine National Forest: The Lufkin Daily News,* published daily in Lufkin, TX

*Sam Houston National Forest: The Courier,* published daily in Conroe, TX

*Caddo & LBJ National Grasslands: Denton Record-Chronicle,* published daily in Denton, TX

Dated: May 12, 2000.

**David G. Holland,**

*Deputy Regional Forester for Natural Resources.*

[FR Doc. 00–12491 Filed 5–17–00; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Booger Placer Claim, Suction Dredging Nez Perce National Forest, Idaho County, Idaho

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; intent to prepare environmental impact statement.

**SUMMARY:** The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental effects of dredging on the Booger placer claim on Little Elk Creek. The claimant has proposed using one eight-inch suction dredge to remove possible gold deposits from the gravel and at bedrock in the stream channel of Little Elk Creek. The operation is proposed for five years, to operate when water and weather conditions allow. The Booger placer claim is located in Section 33, T30N, R8E, BPM.

**DATES:** Written comments and suggestions should be received on or before June 19, 2000, to receive timely consideration in the preparation of the draft EIS.

**ADDRESSES:** Send written comments and suggestions on the proposed action or requests for a map of the proposed action or to be placed on the project mailing list to Kevin Martin, District Ranger, Red River Ranger District, P.O. Box 416, Elk City, Idaho 83525.

**FOR FURTHER INFORMATION CONTACT:** Jo Ellis, District Geologist, Red River Ranger District, P.O. Box 416, Elk City, Idaho 83525; phone (208) 842–2245.

**SUPPLEMENTARY INFORMATION:** The proposed action is proposed pursuant to the 1872 Mining Law, the Organic Administration Act of 1897 and Forest Service mining regulations, Title 36 Code of Federal Regulation (CFR), Part 228, Subpart A. The United States mining laws at 30 U.S.C. 21–54 Confer a statutory right to enter upon the public land to search for and remove certain minerals. The Forest Service has the responsibility to make sure that the activities are conducted so as to minimize adverse environmental impacts to National Forest System lands, 36 CFR, Part 228, Subpart A.

The proposal involves processing streambed gravel to bedrock over the entire 4,020 foot length of the claim. Deeps of the gravel are between three and six feet deep. The stream channel, between high water marks, varies from six to ten feet in width. This work would take place over five years of more whenever water and weather conditions allow operations.

The process involves utilizing high-pressure water pumps driven by gasoline-powered motors, which create suction in a flexible intake pipe. A mixture of streambed sediment and water is vacuumed into the intake pipe and passed over a sluice box mounted on a floating barge. Dense particles (including gold) are trapped in the sluice box. The remainder of the entrained material is discharged into the stream as tailings or spoils. A hole is created in the gravel so bedrock is exposed. Cracks in the bedrock are then cleared with the suction. Cable attached to a winch move large boulders or rootwads.

The Forest Service will consider a range of alternatives to the proposed action. One of these will be the "no action" alternative, in which the Plan of Operations would not be approved. Additional alternatives will examine varying intensity and duration of the proposed activities, including restrictions on the size of equipment and length of seasonal operation, as well as respond to the issues and other resource values.

Public participation is an important part of the project, commencing with the initial scoping process (40 CFR 1501.7), which starts with publication of this notice and continues for the next 30 days. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the Nez Perce Tribe, and other individuals or organizations that may be interested in or affected by the proposed action.

Comments from the public and other agencies will be used in preparation of the draft EIS. The scoping process will be used to:

1. Identify potential issues;
2. Identify major issues to be analyzed in depth;
3. Eliminate minor issues or those that have been covered by a relevant previous environmental analysis, such as the Nez Perce National Forest Plan EIS;
4. Identify alternatives to the proposed action;
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the Environmental Protection Agency and available for public review in July 2000. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final EIS, which is expected to be filed in October 2000. A Record of Decision will be issued not less than 30 days after publication of a Notice of Availability of the final EIS in the **Federal Register**.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal in such a way that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir, 1986), and Wisconsin Heritages Inc. v. Harris, 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period in order that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Kevin Martin is the responsible official for this environmental impact statement.

Dated: May 5, 2000.

**Kevin Martin,**

*District Ranger, Red River Ranger District, Nez Perce National Forest.*

[FR Doc. 00–12476 Filed 5–17–00; 8:45 am]

BILLING CODE 3410–11–M

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Illinois Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Illinois Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on Tuesday, June 13, 2000, at the 55 West Monroe Street, Suite 525, Chicago, Illinois 60603. The purpose of the meeting is to discuss civil rights issues of interest and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James E. Scales, 618–453–1045, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 12, 2000.

**Lisa M. Kelly,**

*Special Assistant to the Staff Director, Regional Programs Coordination Unit.*

[FR Doc. 00–12501 Filed 5–17–00; 8:45 am]

BILLING CODE 6335–01–P

## COMMISSION ON CIVIL RIGHTS

### Agenda and Notice of Public Meeting of the Wisconsin Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Wisconsin Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 4:00 p.m. on Wednesday, June 7, 2000, at the Milwaukee Hilton, 509 West Wisconsin Avenue, Milwaukee, Wisconsin 53202. The purpose of the meeting is to discuss civil rights issues and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Geraldine McFadden, 414–444–1952, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign

language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 12, 2000.

**Lisa M. Kelly,**

*Special Assistant to the Staff Director, Regional Programs Coordination Unit.*

[FR Doc. 00–12500 Filed 5–17–00; 8:45 am]

BILLING CODE 6335–01–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–828]**

### Silicomanganese From the People's Republic of China: Notice of Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce .

**ACTION:** Notice of Final Results of Antidumping Duty Administrative Review.

**SUMMARY:** On November 8, 1999, the Department of Commerce ("the Department") published the preliminary results of administrative review of the antidumping duty order on silicomanganese from the People's Republic of China ("PRC"). This review covers two manufacturers/exporters, Guangxi Bayi Ferroalloy Works ("Bayi"), and Sichuan Emei Ferroalloy Import and Export Co., Ltd. ("Emei"). The period of review ("POR") is December 1, 1997 through November 30, 1998.

The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "*Final Results of Review.*" The final margins differ from those published in the preliminary results due to changes that we made since the preliminary results. For details regarding these changes, see the section of the notice entitled "*Changes Since the Preliminary Results.*"

**EFFECTIVE DATE:** May 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Timothy Finn or Howard Smith, AD/CVD Enforcement Group II, Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0065 or (202) 482–5193 respectively.

**SUPPLEMENTARY INFORMATION:**

### Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Rounds Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations at 19 CFR part 351 (1999).

### Background

Since the publication of the preliminary results, the following events have occurred. On November 29, 1999 the respondents and the petitioner (Eramet Marietta Inc. ("Eramet")) submitted publicly available information and comments regarding factor valuation. On December 8, 1999 the respondents filed rebuttal comments regarding the petitioner's November 29, 1999 factor value submission. The Department issued supplemental questionnaires to the respondents on December 16, 1999, and received responses to those questionnaires on January 7, 2000. On January 11, 2000, the Department published in the **Federal Register** a notice extending the due date for the final results until May 6, 2000 (65 FR 1597). In January 2000, the Department conducted verifications of Bayi and Emei. Public versions of our verification reports, dated March 1, 2000, are on file in the Central Records Unit ("CRU"), room B–099 of the main Department of Commerce building, under the appropriate case number. In response to the Department's invitation to comment on the preliminary results of review, the petitioner and the respondents filed case and rebuttal briefs in March 2000. The Department held a public hearing regarding this review on April 3, 2000.

The Department has conducted this administrative review in accordance with section 751 of the Act.

### Scope of the Review

The merchandise covered by this order is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon, and iron, and normally containing much smaller proportions of minor elements, such as carbon, phosphorous and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon and not more than 3 percent phosphorous. All compositions, forms and sizes of silicomanganese are included within the scope of this investigation, including silicomanganese slag, fines and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese. This investigation covers all silicomanganese, regardless of its tariff classification. Most silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States ("HTS"). Some silicomanganese may also currently be classifiable under HTS subheading 7202.99.5040. Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope is dispositive.

### Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" ("Decision Memorandum") from Holly A. Kuga, Acting Deputy Assistant Secretary, Important Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 8, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Record Unit, room B–099 of the main Department of Commerce building. In addition a complete version of the Decision Memorandum can be accessed directly on the Web at *www.ita.doc.gov/import_admin/records/frn*. The paper copy and electronic version of the Decision Memorandum are identical in content.

### Use of Facts Available

For a discussion of our use of facts available, see the "Facts Available" section of the Decision Memorandum.

### Changes Since the Preliminary Results of Review

Based on the corrections presented at verification, the Department's verification findings, and our analysis of the petitioner's and the respondents' comments, we have made certain changes to the factors of production and surrogate values used to calculate the margins in the preliminary results. We have also corrected certain clerical errors in our margin calculations. The changes and corrections are discussed

in the relevant sections of the Decision Memorandum. Further details regarding the changes and corrections can be found in the Decision Memorandum, surrogate value memorandum (*see Surrogate Values Used for the Final Results of the 1997–1998 Administrative Review of Silicomanganese From the People's Republic of China*) and company-specific analysis memoranda (*see Analysis for the Final Results of the 1997–1998 Administrative Review of Silicomanganese From the People's Republic of China: Guangxi Bayi Ferroalloy and Analysis for the Final Results of the 1997–1998 Administrative Review of Silicomanganese From the People's Republic of China: Sichuan Emei Ferroalloy Import and Export Co., Ltd.*), all of which are on file in room B–099 of the main Department of Commerce building.

**Final Results of Review**

We determine that the following percentage weighted-average margins exist for the period December 1, 1997 through November 30, 1998:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| Guangxi Bayi Ferroalloy Works | 126.22 |
| Sichuan Emei Ferroalloy Import and Export Co., Ltd | 182.97 |

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated exporter/importer-specific assessment rates. We divided the total dumping margins for sales to a specific importer by the total units of subject merchandise sold to the importer in order to calculate a per-unit dollar assessment. The per-unit dollar amount will be assessed uniformly against each unit of subject merchandise that the importer entered during the POR.

*Cash Deposit Requirements*

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of silicomanganese from the PRC entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above; (2) for previously reviewed or investigated companies not listed above that have separate rates, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) the cash deposit rate for all other PRC exporters will continue to be 150.00 percent; and (4) the cash-deposit rate for non-PRC exporters will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective orders ("APOs") of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305 or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 771(i) of the Act.

Dated: May 8, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

**Appendix—Issues in Decision Memorandum**

*Comments and Responses*

I. Factor Valuation
II. Facts Available
III. Clerical Errors
IV. Miscellaneous Issues
1. Classifying Electrode Paste as a Direct Material or Part of Overhead
2. Allocating Costs Over Production Quantities That Include Fines
3. Reducing Normal Value for Sales of Silicomanganese Slag
4. Recalculating Emei's Electricity Consumption Based on Verification Findings

[FR Doc. 00–12581 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–DS–P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**[C–533–063]**

**Certain Iron-Metal Castings from India: Final Results of Countervailing Duty Administrative Review**

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of countervailing duty administrative review.

**SUMMARY:** On November 12, 1999, the Department of Commerce (the Department) published in the **Federal Register** its preliminary results of administrative review of the countervailing duty order on certain iron-metal castings from India for the period January 1, 1997 through December 31, 1997 (64 FR 61592). The Department has now completed this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

We have not made changes in the subsidy calculations from the preliminary results. For information on the net subsidy for each reviewed company, and for all non-reviewed companies, see the *Final Results of Review* section of this notice. We will instruct the U.S. Customs Service (Customs) to assess countervailing duties as detailed in the *Final Results of Review* section of this notice.

**EFFECTIVE DATE:** May 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert Copyak, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 4012, Washington, D.C. 20230; telephone: (202) 482–2786.

**SUPPLEMENTARY INFORMATION:**

**Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995. The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR part 351 (1998), unless otherwise indicated. Because the request for this administrative review was filed before January 1, 1999, the Department's substantive countervailing duty regulations, which were published in the **Federal Register** on November 25,

1998 (*see* CVD Regulations, 63 FR 65348), do not govern this review.

**Background**

On November 12, 1999, the Department published the preliminary results of administrative review of the countervailing duty order on certain iron metal castings from India. *See Notice of Preliminary Results and Partial Recission of Countervailing Duty Administrative Review: Certain Iron-Metal Castings from India*, 64 FR 61592 (November 12, 1999) (*Preliminary Results*). Pursuant to 19 CFR 351.213(b), this review covers only those producers/exporters of the subject merchandise for which a review was specifically requested. The producers/exporters of the subject merchandise for which this review was requested are:

AGV Exports,
Agarwal Hardware,
Ambika Exports,
Bengal Export Corporation,
Bengal Iron Corporation,
Bhagyadevi Factory,
Calcutta Ferrous Ltd.,
Carnation Enterprise Pvt. Ltd.,
Carnation Industries,[1]
Commex Corporation,
Crescent Foundry Co. Pvt. Ltd.,
Delta Enterprises,
Delta Corporation Ltd.,
Dinesh Brothers Pvt. Ltd.,
Dugar International,
Edcons Castings,
Essen International,
Ganapati Suppliers,
Global Intertrade,
Hargolal & Sons,
Hindustahn Malleables & Forgings Ltd.,
J.K. Udyog,
Kajaria Iron Castings Ltd.,[2]
Kajaria Iron Castings Pvt. Ltd.,
Kauntia Exports,
Kejriwal Iron & Steel Works,
Kiswok Industries Pvt. Ltd.,[3]
Metflow Corporation Pvt. Ltd.,
Nandikeshwari Iron Foundry Pvt. Ltd.,
Orissa Metal Industries,
Overseas Iron Foundry Pvt. Ltd.,
Rangilal & Sons,
RBA Exports,
R.B. Agarwalla & Company,
R.B. Agarwalla & Company Pvt. Ltd.,
RR Enterprise,
RSI Limited,
RS Ispat Pvt. Ltd.,
Samitex Corporation,
Sammitex,
Serampore Industries Pvt. Ltd.,
Shakti Isabgel Industries,
Shree Hanuman Foundry & Engineering Co. Ltd.,
Shree Rama Enterprises,
Shree Uma Foundries Pvt. Ltd.,
Siko Exports,
Sitaram Maohogarhia & Sons Pvt. Ltd.,
Sociedad J.B. Nagar,
SSL Exports,
Super Iron Foundry,
Tara Engineering Works,
Thames Engineering,
Tirupati International Pvt. Ltd.,
Tirupati Trading Company,
Trident Industries,
Trident International,
Uma Iron & Steel, and
Victory Castings Ltd.

The following companies, for which a review was requested, certified that they either do not produce or did not export the subject merchandise to the United States during the period of review (POR): AGV Exports, Agarwal Hardware Works & Foundries Pvt. Ltd., Ambika Exports, Bengal Iron Corporation, Bhagyadevi Factory, Delta Enterprises, Edcons Castings Pvt. Ltd., Essen International, Hargolal & Sons, Hindustahn Malleables & Forgings Ltd., J.K. Udyog, Kauntia Exports, Metflow Corporation Pvt. Ltd., Orissa Metal Industries, Overseas Iron Foundry Pvt. Ltd., RBA Exports, R.B. Agarwalla & Company Pvt. Ltd., RR Enterprise, RS Ispat Pvt. Ltd., Samitex Corporation, Sammitex, Shree Hanuman Foundry & Engineering Co. Ltd., Shree Rama Enterprises, Shree Uma Foundries Pvt. Ltd., Siko Exports, Sitaram Madhogarhia & Sons Pvt. Ltd., Tara Engineering Works, Tirupati International Pvt. Ltd., and Tirupati Trading Company. In addition, the Government of India (GOI) certified that the following companies either do not exist or do not export the subject merchandise to the United States: Dugar International, Global Intertrade, Shakti Isabgel Industries, Sociedad J.B. Nagar, and Trident Industries. Therefore, in accordance with section 351.213(d)(3) of the Department's regulations, we rescinded the review with respect to these companies at the time of the preliminary results.

**See Preliminary Results, 64 FR at 61592**

We invited interested parties to comment on the preliminary results. On December 13, 1999, case briefs were submitted by the Engineering Export Promotion Council of India and the exporters of certain iron-metal castings from India (respondents), and the Municipal Castings Fair Trade Council and its members (petitioners). On December 20, 1999, rebuttal briefs were submitted by the respondents and petitioners. None of the interested parties requested a hearing. This review covers 29 programs.

**Scope of the Review**

Imports covered by this administrative review are shipments of Indian manhole covers and frames, clean-out covers and frames, and catch basin grates and frames. These articles are commonly called municipal or public works castings and are used for access or drainage for public utility, water, and sanitary systems. During the review period, such merchandise was classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 7325.10.0010 and 7325.10.0050. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

**Verification**

As provided in section 782(i) of the Act, we verified information submitted by the GOI and certain producers/exporters of the subject merchandise. We followed standard verification procedures, including meeting with government and company officials and examining relevant accounting and financial records and other original source documents. Our verification results, which were issued on September 9, 1999, are outlined in the verification reports, the public versions of which are on file in the Central Records Unit (CRU), Room B–099 of the Main Commerce Building.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (*Decision Memorandum*) from Holly A. Kuga, Acting Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated concurrent with this notice, which is hereby adopted by this notice. A list of issues which parties have raised and to which we have responded, all of which are addressed in the Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

**Use of Facts Available**

For a discussion of our application of facts available, see the "Facts Available"

[1] Carnation Industries was formerly Carnation Enterprise Pvt. Ltd.

[2] Kajaria Iron Castings Ltd. was formerly Kajaria Iron Castings Pvt. Ltd.

[3] Kiswok Industries Pvt. Ltd. was formerly Kejriwal Iron & Steel Works.

section of the Decision Memorandum, which is on file in the CRU and available on the web at www.ita.doc.gov/import_admin/records/frn.

**Changes Since the Preliminary Results**

We have not made any changes to the subsidy rate calculations from the preliminary results.

**Final Results of Review**

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to this review. We will instruct Customs to assess countervailing duties as indicated below on all appropriate entries. For the period January 1, 1997 through December 31, 1997, we determine the net subsidy rates for the reviewed companies to be as follows:

| Producers/exporters | Ad valorem rates (percentages) |
|---|---|
| Bengal Export Corporation | 8.35 |
| Calcutta Ferrous Ltd | 9.28 |
| Calcutta Iron Foundry | 0.42 |
| Carnation Industries Ltd | 0.72 |
| Commex Corporation | 2.71 |
| Crescent Foundry Co. Pvt. Ltd | 0.84 |
| Delta Corporation Ltd | 27.65 |
| Dinesh Brothers (Pvt.) Ltd | 1.71 |
| Ganapati Suppliers Pvt. Ltd | 5.17 |
| Kajaria Iron Castings Ltd | 5.19 |
| Kiswok Industries Pvt. Ltd | 14.90 |
| Nandikeshwari Iron Foundry Pvt. Ltd | 13.72 |
| Rangilal & Sons | 0.00 |
| R.B. Agarwalla & Company | 3.56 |
| RSI Limited | 0.90 |
| Seramapore Industries Pvt. Ltd | 1.51 |
| SSL Exports | 27.65 |
| Super Iron Foundry | 1.08 |
| Thames Engineering | 27.65 |
| Trident International | 27.65 |
| Uma Iron & Steel Company | 2.10 |
| Victory Castings Ltd | 1.88 |

**Revocation of CVD Order**

As a result of the International Trade Commission's determination that revocation of this countervailing duty order would not likely lead to continuation or recurrence of material injury to an industry in the United States in the reasonably foreseeable future, the Department, pursuant to section 751(d)(2) of the Act, revoked the countervailing duty order on iron metal castings from India. *See Revocation of Countervailing Duty Order: Iron Metal Castings from India*, 64 FR 61602 (November 12, 1999). Pursuant to section 751(c)(6)(A)(iv) of the Act and 19 CFR 351.222(i)(2)(ii), the effective date of revocation was January 1, 2000. Accordingly, the Department instructed Customs to discontinue suspension of liquidation and collection of cash deposits on entries of the subject merchandise entered or withdrawn from warehouse on or after January 1, 2000. The Department, however, will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

**Administrative Protective Order**

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: May 10, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

**Appendix I—Issues Addressed in the Decision Memorandum**

*Methodology and Background Information*

I. Applicable Statute and Regulations
II. Facts Available
III. Benchmark Rate

*Analysis of Programs*

I. *Programs Conferring Subsidies*
  A. Pre-Shipment Export Financing
  B. Post-Shipment Export Financing
  C. Exemption of Export Credit from Interest Taxes
  D. Income Tax Deductions Under Section 80 HHC
  E. Import Mechanisms (Sale of Licenses)
  F. Passbook Scheme
  G. Duty Entitlement Passbook Scheme
II. *Programs Determined To Be Not Countervailable*
  A. Long-Term Financing from "All-India Development Banks"
  B. Long-Term Loan from the West Bengal Industrial Finance Corporation
  C. Leasing of Land from the Regional Government of West Bengal
III. *Programs Found To Be Not Used*
  A. West Bengal Incentive Scheme 1993
  1. State Capital Investment Subsidy
  B. Market Development Assistance
  C. Rediscounting of Export Bills Abroad
  D. International Price Reimbursement Scheme
  E. Cash Compensatory Support Program
  F. Programs Operated by the Small Industries Development Bank of India
  G. Export Promotion Replenishment Scheme
  H. Export Promotion Capital Goods Scheme
  I. Benefits for Export Oriented Units and Export Processing Zones
  J. Special Imprest Licenses
  K. Special Benefits
  L. Duty Drawback on Excise Taxes
  M. Payment of Premium Against Advance Licenses
  N. Pre-Shipment Export Financing in Foreign Currency
  O. Subsidies Provided by the State of Orissa
  P. Advance Licenses
IV. *Other Program Examined*
  A. Bridge Loan
V. *Programs Found Not To Exist*
  A. State Value-Added Tax "Set-Off" Program
  B. Interest Rate Surcharge Exemption
VI. *Analysis of Comments*
  A. Cash Credit Benchmark Interest Rate
  B. Leasing of Land
  C. Long-Term Financing
  D. Benefit Provided Under the Passbook Scheme
  E. Section 80HHC—Tax Savings Relating to Subject Castings
  F. Double-Counting of Subsidies
  G. Overdue Penalty Interest Paid

[FR Doc. 00–12580 Filed 5–17–00; 8:45 am]
BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Notice of Recruitment

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice of Recruitment.

**SUMMARY:** U.S. Department of Commerce Invites Small and Medium Enterprises to Join U.S. Delegation to Asia Pacific Economic Cooperation (APEC) Small and Medium Enterprise (SME) Ministerial Meeting and Related Events.

**DATES:** Conference: June 19–23, 2000.

Apply for participation in the U.S. Delegation by: no later than June 2, 2000.

**ADDRESSES:** Conference location at International Convention Center in Bandar Seri Begawan, Brunei Darussalam.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Brenda J. Fisher, APEC Affairs Coordinator, Room 2316, International Trade Administration, U.S. Department of Commerce at phone 202/482–5334; fax 202/482–3316; or email: Brenda(underscore)Fisher@ita.doc.gov.

**SUPPLEMENTARY INFORMATION:**

**Mission Description**

Brunei, Chair of APEC 2000, will host the Small and Medium Enterprise (SME) Ministerial and related events, including a Business Forum and E-Commerce Workshop, from June 20–23, in Bandar Seri Begawan.

The Department of Commerce is the lead U.S. Government agency on SME issues in APEC. It is important that the DOC maintain the profile of SME issues within the APEC forum and make substantial, tangible progress on USG objectives, including E-Commerce. A senior Commerce Department official will lead the U.S. delegation, including interagency and private sector participation.

The Ministerial will focus on building the foundations on which SMEs can flourish in the digital economy by holding workshops and discussions that will produce recommendations on how to best exploit

- Information and communication technology
- Human resources and development
- Strategic alliances between SMEs and SMEs and larger firms
- Financing SMEs.

**Participants**

- Ministers from APEC Economies representing small business.
- Private Sector Delegations from all 21 APEC member economies.

**Commercial Setting**

The APEC SME Ministerial and related events are being held in Brunei as it is the Chair of APEC during 2000. The confluence of senior government officials and private sector delegations from the 21 APEC member economies is expected to generate frank and constructive discussions on issues of concern to all APEC member economies and business communities.

Private sector businesses will have a unique chance to shape APEC's action agenda for SMEs during the June 20–23 SME Ministerial Meeting, SME Business Forum and associated events. Continuing the tradition of past Business Forums, all 21 APEC SME Ministers have agreed to interact with delegates from the SME Business Forum, E-Commerce Workshop, and Women Leaders' Network meeting—to be held concurrently at the International Convention Center in Bandar Seri Begawan.

The Business Forum will provide a platform for frank and constructive discussions on issues of concern to all APEC economies and business communities. The E-Commerce Workshop participants are to develop a set of recommendations that will constitute a collective action plan for APEC members on improving the adoption of e-commerce by SMEs. The Women Leaders' Network meeting will bring together women from business, academia, and government from the APEC economies in a single forum to discuss the pressing issues surrounding womens' involvement in SME businesses.

The formal agendas for the meetings provide opportunities for interaction between senior Government officials and business leaders from the participating 21 APEC member economies (Australia, Brunei, Canada, Chile, Hong Kong, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, Peoples' Republic of China, Russia, Singapore, Thailand, Taiwan, United States, and Vietnam). Of course, networking can also be conducted on the margins of the official programs as well. The intent of these interactions is to develop tangible, practical and prioritized recommendations for APEC Ministers to act upon during the Ministerial Meeting on June 22–23.

The SME Business Forum recommendations and action plans from two associated APEC SME events, the E-Commerce Workshop (involving 200 government officials and private sector) and Women Leaders' Network (a meeting of 350 businesswomen), will be combined to provide a framework for practical action regarding programs and policies for SMEs. Participants will have an opportunity to shape the APEC dialogue on subjects vital to the growth and development of SMEs, including strategic alliances (between SMEs and between SMEs and larger firms); creating the best environment for e-commerce, and other information and communications technologies; financing; and developing human resources.

**Mission Goals**

Our policy objectives are to advance U.S. interests for SMEs in APEC and work to implement the USG theme of building the foundations on which economies, particularly SMEs, can flourish in the digital economy. We will continue to press within APEC to produce tangible outcomes for the private sector and enhance public-private dialogue. Specifically, we seek Ministerial endorsement of the U.S. SME Business Partnership Initiative, developed in cooperation with the U.S. Chamber of Commerce. The partnership works on a bilateral basis with other APEC economies to develop internet-based matchmaking systems of qualified SME companies. The Initiative demonstrates first-hand the value-added of strategic partnerships, particularly when the appropriate due diligence is conducted. This program offers an excellent example of outcomes-oriented APEC work. We also will maintain momentum on the APEC Consumer Education and Protection Initiative (CEPI), developed with the Direct Selling Association.

The U.S. delegation head will deliver general remarks during the Ministerial meetings on one theme, strategic alliances. It is hoped that our private sector delegation will represent firms who are engaged in strategic alliances in Asia, and/or can support the formation of strategic partnerships via the use of the Internet and electronic commerce. There will be several opportunities for informal interaction with both other Ministers and the private sector delegation members.

**Mission Scenario**

Optional Gold Key Program in Malaysia—June 19.

Women Leaders' Network Meeting in Brunei—June 17–20.

Business Forum and E-Commerce Workshop—June 20–22.

(Note: Agendas call for plenary sessions, interaction with Ministers, and working group breakout sessions to deliberate on Ministerial themes.)

SME Ministerial—June 22–23.

The Ministerial and related events will be held at the International Convention Center in Bandar Seri Begawan, Brunei Darussalam from June 20 to 23, 2000. Each private sector participant is responsible for arranging travel itinerary, hotel accommodations and paying for his/her stay in Brunei. The registration fees for the Ministerial-related events vary: Women Leaders' Network Meeting registration fee is $200.00/delegate; Business Forum registration fee is $150.00/delegate; E-Commerce Workshop registration fee for the first 5 U.S. firms accepted on U.S. delegation is waived. The registration fee for subsequent participants for the E-Commerce Workshop is $100.00/delegate.

In addition, U.S. private sector members of the delegation are being offered an optional group Gold Key program in Kuala Lumpur, Malaysia on June 19. The Commercial Service in Malaysia is responsible for organizing the optional one-day program, which will include an Embassy briefing, meeting appointments, and reception. Cost to participate in the Gold Key is $500/company.

There will be opportunities for informal interaction with both other

Ministers and private sector delegation members. The head of the U.S. delegation will also interact with U.S. private sector participants via hospitality events and other meetings.

**Criteria for Participant Selection**

*Eligibility*

Participating companies must be incorporated in the United States.

A company is eligible to participate only if the products and/or services that it will promote on the U.S. delegation are either (a) manufactured in the United States; or (b) if manufactured or produced outside the United States, are marketed under the name of a U.S. firm and have at least 51 percent U.S. content of the value of the finished product/service.

*Selection Criteria*

Five to ten representatives of U.S. companies will be selected on the basis of:

- Company representatives' ability to participate in discussions of relevant marketing and investment issues they face in international trade, and/or demonstration of knowledge of working with information or other high-technology means, including e-commerce, to support strategic alliances between small and medium-sized firms (defined as not more than 500 employees) and/or between SMEs and larger firms. This would reflect consistency of company's market development goals with the scope and desired outcomes of the mission as described.
- Whether the company's overall business objectives, including those of any U.S. or overseas affiliates, are fully consistent with the mission's foreign and commercial policy objectives.
- Timely receipt of signed mission application and registration materials. For those interested in the optional Gold Key program in Malaysia, timely receipt of participation agreement, marketing form, company brochures, and $500.00 fee for each participating firm.

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Internet, direct mail and broadcast fax, e-mail, notices by industry trade associations and other multiplier groups, and press releases.

Any partisan political activities (including political contributions) of an applicant are entirely irrelevant to the selection process.

**Time Frame for Applications**

*Application deadline:* The Bruneian Government has requested that all participants be identified by no later than June 10, 2000. ITA staff expect recruitment outreach to conclude on/about June 2, 2000, in order to allow for time for review and approval of applications from the private sector.

Expressions of interest to obtain application and registration materials should be submitted immediately to: Brenda J. Fisher, APEC Affairs Coordinator, Room 2316, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230. Phone 202 482 5334, Fax 202 482 3316; E-mail: Brenda__Fisher@ita.doc.gov

For overall meeting agendas, list of speakers, registration fees, and other administrative/logistical details, please visit the following websites, which are being regularly updated.

For SME Ministerial: *http://apecsme2000.rba.com.bn*

For E-Commerce Workshop: *http://www.apec2000.gov.bn/ecomm*

For SME Business Forum: *http://www.bsmenet.org.bn/bizforum/index.htm*

For Women Leaders' Meeting: *http://www.apec2000.gov.bn/wln*

Dated: May 12, 2000.

**Philip R. Agress,**

*Acting Deputy Assistant Secretary for Asia and the Pacific, ITA/USDOC.*

[FR Doc. 00–12466 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–FP–P

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Visiting Committee on Advanced Technology

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of partially closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, June 6, 2000 from 8:15 a.m. to 5:30 p.m. and Wednesday, June 7, 2000 from 8 a.m. to 12:15 p.m. The Visiting Committee on Advanced Technology is composed of fourteen members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST programs; a presentation by one of the Visiting Committee members on Engineering Materials for Technological Applications; an indepth review of the Information Technology Laboratory; an indepth review of the Baldridge National Quality Program; an indepth review of the Electronics and Electrical Engineering Laboratory; and a laboratory tour. Discussions scheduled to begin at 8 a.m. and to end at 12:15 p.m. on June 7, 2000, on staffing of management positions at NIST, the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership, and feedback sessions will be closed.

**DATES:** The meeting will convene June 6, 2000 at 8:15 a.m. and will adjourn at 12:15 p.m. on June 7, 2000.

**ADDRESSES:** The meeting will be held in the Employees' Lounge (seating capacity, 80, includes 38 participants), Administration Building at NIST, Gaithersburg, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Dr. Brian C. Belanger, Executive Director, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, MD 20899–1004, telephone number (301) 975–4720.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on July 15, 1999, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: May 10, 2000.

**Raymond G. Kammer,**

*Director.*

[FR Doc. 00–12442 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–13–M

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Malcolm Baldrige National Quality Award Board of Overseers

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Thursday, June 8, 2000. The Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Review Roles/Responsibilities of Judges and Overseers; Health Care and Education Update; 2000 Baldrige Criteria Changes and Future Criteria Evolution; New Marketing Documents; Discussion of Program Issues, and Key Issues from the June 7 Judges' Meeting.

**DATES:** The meeting will convene June 8, 2000, at 8:30 a.m. and adjourn at 3:00 p.m. on June 8, 2000.

**ADDRESSES:** The meeting will be held at the National Institute of Standards and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: May 10, 2000.

**Raymond G. Kammer,**

*Director.*

[FR Doc. 00–12441 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–13–M

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Judges Panel of the Malcolm Baldrige National Quality Award

**AGENCY:** National Institute of Standards and Technology, Department of Commerce.

**ACTION:** Notice of closed meeting.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Wednesday, June 7, 2000. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to Review the 2000 Baldrige Award Cycle; Discussion of Senior Examiner Training for Site Visits and Final Judging Interaction; Judges' Survey of Applicants; and Judging Process Improvement. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

**DATES:** The meeting will convene June 7, 2000, at 11:00 a.m. and adjourn at 4:30 p.m. on June 7, 2000. The entire meeting will be closed.

**ADDRESSES:** The meeting will be held at the National Institute of Standards and Technology, Chemistry Building, Room A228, Gaithersburg, Maryland 20899.

**FOR FURTHER INFORMATION CONTACT:** Dr. Harry Hertz, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

**SUPPLEMENTARY INFORMATION:** The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on March 31, 2000, that the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 10, 2000.

**Raymond G. Kammer,**

*Director.*

[FR Doc. 00–12582 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–13–M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 041800A]**

### Notice of Availability of Draft Stock Assessment Reports

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** NMFS has revised the Alaska, Atlantic and Gulf of Mexico, and Pacific marine mammal stock assessment reports in accordance with the Marine Mammal Protection Act (MMPA). Draft revised 2000 reports are available for public review and comment.

**DATES:** Comments must be received by August 16, 2000.

**ADDRESSES:** Send requests for printed copies of the draft Reports to: Chief, Marine Mammal Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3226, Attn: Stock Assessments. Copies of the regional reports may also be requested from Anita Lopez, Alaska Fisheries Science Center (F/AKC), NMFS, 7600 Sand Point Way, NE BIN 15700, Seattle, WA 98115–0070 (Alaska); Janeen Quintal, Northeast Fisheries Science Center, 166 Water St., Woods Hole, MA 02543 (Northwest Atlantic); Steven Swartz, Southeast Fisheries Science Center, 75 Virginia Beach Dr., Miami, FL 33149 (Mid-Atlantic and Gulf of Mexico); and Tim Price, Southwest Regional Office (F/SWO3), NMFS, 501 West Ocean Boulevard, Long Beach, CA 90802–4213 (Pacific). Electronic copies of the reports can be found at the following internet address: http://www.nmfs.gov/prot_res/mammals/sa_rep/sar.html. Electronic copies of the Atlantic and Gulf of Mexico Marine Mammal Stock Assessments can also be found at the following internet address: http://www.nefsc.nmfs.gov/psb/assesspdfs.htm.

**FOR FURTHER INFORMATION CONTACT:** Emily Hanson, Office of Protected Resources, NMFS, at (301) 713–2322, ext. 101, Anita Lopez (206) 526–4045,

regarding Alaska regional stock assessments; Janeen Quintal, (508) 495–2252 regarding Northwest Atlantic regional stock assessments; Steven Swartz, (305) 361–4487, regarding Mid-Atlantic and Gulf of Mexico regional stock assessments; or Tim Price, (562) 980–4020, regarding Pacific regional stock assessments.

**SUPPLEMENTARY INFORMATION:** Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare stock assessment reports (SARs) for each stock of marine mammals that occurs in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, estimates of annual human-caused mortality from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock.

The MMPA also requires NMFS and FWS to review these reports annually for strategic stocks of marine mammals and at least every three years for stocks determined to be non-strategic. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups, reviewed the status of marine mammal stocks as required, and revised reports for which new information was available. Summary tables for all stocks of marine mammals in the three regions (Tables 1–3) indicate revisions to the reports. NMFS solicits public comments on these draft revised Alaska, Atlantic and Gulf of Mexico, and Pacific reports.

### Alaska Stocks

NMFS, in conjunction with the Alaska Scientific Review Group, reviewed information available for all strategic stocks of Alaska marine mammals under its authority, as well as Pacific white-sided dolphins, harbor porpoise (3 stocks), Dall's porpoise, and gray whales for the 2000 Stock Assessment Reports. A total of 14 of the 32 Alaska stock assessment reports were revised for 2000. These reports are identified by a November 1, 1999, date-stamp at the beginning of each report.

Most proposed changes to the stock assessment reports incorporate new information into mortality estimates. New Potential Biological Removal level (PBR) estimates have been calculated for those stocks having new abundance estimates. The new information on abundance and mortality did not change the status (strategic or not) of any of the Alaska stocks relative to the last time the respective stock assessment report was revised.

As recommended by the Alaska Scientific Review Group (ASRG), NMFS proposes to change the recovery factor for the Cook Inlet stock of beluga whales. The proposed recovery factor for this stock would decrease from 0.5 to 0.3. The ASRG recommended a recovery factor of 0.1 be incorporated into the draft 2000 report. However, three significant pieces of information have become available. First, the Alaska Natives in the Cook Inlet area are cooperating to control the harvest, and no beluga were killed for subsistence in 1999. Second, the 1999 surveys indicate that the decline of the stock has abated. Third, the first year of observer coverage reported no beluga taken in Cook Inlet fisheries, suggesting that mortality incidental to commercial fishing does not appear to be a significant factor affecting the Cook Inlet beluga stock. Therefore, NMFS intends to use a recovery factor of 0.3 until additional information indicates that a revision is warranted.

The proposed minimum population estimate for the North Pacific stock of Pacific white-sided dolphins was reduced from 486,719 animals to 26,880 animals, which would reduce the Potential Biological Removal level (PBR) from 4,867 animals to 269 animals. The minimum population estimate of 486,719 animals was based on an abundance estimate that reflected the range-wide estimate of Pacific white-sided dolphins, rather than one that could be applied just to the North Pacific stock. The full estimate is not considered appropriate to apply to the North Pacific management stock, but the portion of the estimate derived from sightings north of 45°N in the Gulf of Alaska can be used as the population estimate for this stock, yielding the proposed minimum population estimate of 26,880 animals.

### Atlantic and Gulf of Mexico Stocks

The draft 2000 Atlantic and Gulf of Mexico Stock Assessment Reports were prepared by staff of the Northeast Fisheries Science Center and Southeast Fisheries Science Center. The reports were presented at the November 1999 meeting of the Atlantic Scientific Review Group, and subsequent revisions were based on the group's advice. The 2000 Stock Assessment Reports contain updated assessments for Atlantic strategic stocks and for Atlantic and Gulf of Mexico stocks for which new information was available. These reports are identified by a December 1999 date-stamp at the beginning of each report.

A total of 28 of the 60 Atlantic and Gulf of Mexico SARs were revised for 2000. Most of the proposed changes incorporate new information into sections on population size and mortality estimates. The revised reports include 15 strategic and 13 non-strategic stocks. For the first time, individual species abundance estimates are available for the Western North Atlantic stocks of Atlantic spotted and Pantropical spotted dolphins.

Based on recent modeling that suggests that the population of the Western North Atlantic stock of Northern right whales is in decline, the maximum net productivity for this stock has been estimated as zero, and therefore PBR for this stock would be reduced to zero. This decrease would change the focus of the Atlantic Large Whale Take Reduction Team from concentrating on reducing to eliminating the incidental mortality and serious injury of right whales. Information on human interactions (fishery and ship strikes) between the right whale, humpback whale, fin whale, and minke whale stocks were reviewed and updated.

The stock definition for humpback whales is proposed to be changed from the North Atlantic Stock to the Gulf of Maine stock, based on genetic analysis and the fidelity of whales to this region for feeding. Although the stock structure was revised, the abundance estimate is based on the entire North Atlantic aggregation of humpback whales. Existing data does not allow NMFS to separately estimate abundance for the Gulf of Maine feeding stock.

The Western North Atlantic stock of long-finned pilot whales was changed to "strategic" based on the annual incidental mortality estimate.

### Pacific Stocks

The draft 2000 Stock Assessment Reports present a complete set of revised stock assessments for Pacific marine mammal stocks under NMFS jurisdiction. New abundance estimates are available and have been included for ten Hawaiian stocks and 25 U.S. West Coast stocks. The assessments in this report include stocks studied by the Southwest Fisheries Science Center and the National Marine Mammal Laboratory. The Pacific and Alaska Scientific Review Groups reviewed and commented on earlier versions of these draft stock assessment reports.

Mortality estimates for the California drift gillnet fishery are based on data from 1997–98 because entanglement rates of marine mammals decreased after implementation of the Take Reduction Plan in 1997.

The California/Oregon/Washington stock of short-finned pilot whales is proposed to be classified as not strategic. Including driftnet mortality

only for years after implementation of the Take Reduction Plan (1997–1998), the average annual human-caused mortality in 1997–1998 (3 animals) is estimated to be less than the PBR, and therefore they would not be classified as strategic.

The Central California stock of harbor porpoise is proposed to be classified as strategic because of increased mortality from the halibut set gillnet fishery. The average annual mortality for 1996–1998 is greater than the calculated PBR for Central California harbor porpoise. Based on the success of reducing harbor porpoise mortality in east coast fisheries, efforts are currently underway to encourage voluntary use of pingers in the central California set gillnet fishery. The observer program for this fishery is scheduled to be continued and will provide information on the success of any voluntary measures.

The Hawaii stock of false killer whales is proposed to be listed as strategic because the rate of serious injury to false killer whales within the U.S. Exclusive Economic Zone in the Hawaii longline fishery exceeds the PBR. However, the available abundance estimate, on which PBR is based, is based only on a portion of the species' range in Hawaiian waters. Additional studies of abundance, distribution, and fishery-related mortality would be required to re-evaluate this species' status in the future.

The stock assessment report for the California/Oregon/Washington stock of dwarf sperm whale (*Kogia simus*) has been discontinued. The lack of reliable sighting or stranding records off the U.S. west coast since the 1970s suggests the stock does not occur in waters under U.S. jurisdiction on a regular basis.

The stock of blue whale formerly known as the 'California/Mexico stock' has been renamed the "Eastern North Pacific stock" to reflect current knowledge of whale movements between the U.S. west coast and the eastern tropical Pacific (Mate et al. 1999, Stafford et al. 1999).

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Table 1--Summary table of Alaska marine mammal stocks. Marine mammal stock assessment reports that were revised relative to the 1999 reports, and that have draft 2000 Stock Assessment Reports available, are identified by an 11/1/99 date of last revision. Changes to the estimates of abundance, human-caused mortality, and other items are also indicated.

| Species | Stock Area | NMFS Center | Nmin | Rmax | Fr | PBR | Total Annual Mortality | Annual Fishing Mortality | Strategic Status | Last Revision |
|---|---|---|---|---|---|---|---|---|---|---|
| Baird's beaked whale | Alaska | AKC | N/A | 0.02 | 0.50 | N/A | 0 | 0 | N | 6/25/99 |
| Bearded seal | Alaska | AKC | N/A | 0.06 | 0.50 | N/A | 2 | 2 | N | 8/8/97 |
| Beluga whale | Beaufort Sea | AKC | 32,453 | 0.02 | 1.00 | 649 | 184 | 0 | N | 6/25/99 |
| Beluga whale | East Chukchi Sea | AKC | 3,710 | 0.02 | 1.00 | 74 | 68 | 0 | N | 6/25/99 |
| Beluga whale | East Bering Sea | AKC | 6,439 | 0.02 | 1.00 | 129 | 122 | 1 | N | 6/25/99 |
| Beluga whale | Bristol Bay | AKC | 1,316 | 0.02 | 1.00 | 26 | 20 | 1 | N | 6/25/99 |
| Beluga whale | Cook Inlet | AKC | ~~273~~ 303 | 0.02 | ~~0.50~~ 0.30 | ~~2.7~~ 1.8 | 87 | 0 | Y | 11/1/99 |
| Bowhead whale | Western Arctic | AKC | 7,738 | 0.02 | 0.50 | 77 | 49 | 0 | Y | 11/1/99 |
| Cuvier's beaked whale | Alaska | AKC | N/A | 0.02 | 0.50 | N/A | 0 | 0 | N | 6/25/99 |
| Dall's porpoise | Alaska | AKC | 76,874 | 0.02 | 1.00 | 1,537 | 42 | 42 | N | 11/1/99 |
| Fin whale | Northeast Pacific | AKC | N/A | 0.02 | 0.10 | N/A | 0 | 0 | Y | 12/30/98 |
| Gray whale | Eastern North Pacific | AKC | ~~21,597~~ 24,477 | 0.02 | 1.00 | ~~432~~ 490 | ~~47~~ 140 | ~~4~~ 64 | N | 11/1/99 |
| Harbor porpoise | Southeast Alaska | AKC | ~~8,156~~ 8,376 | 0.02 | 0.50 | ~~82~~ 83 | ~~4~~ 3 | ~~4~~ 3 | N | 11/1/99 |
| Harbor porpoise | Gulf of Alaska | AKC | ~~7,085~~ 16,630 | 0.02 | 0.50 | ~~71~~ 166 | ~~25~~ 25 | ~~25~~ 25 | N | 11/1/99 |
| Harbor porpoise | Bering Sea | AKC | 8,549 | 0.02 | 0.50 | 86 | 2 | 2 | N | 11/1/99 |
| Harbor seal | Southeast Alaska | AKC | 35,226 | 0.06 | 1.00 | 2,114 | 1,785 | 36 | N | 12/30/98 |
| Harbor seal | Gulf of Alaska | AKC | 28,917 | 0.06 | 0.50 | 868 | 827 | 36 | N | 12/30/98 |

Table 1 - cont.

| Species | Stock Area | NMFS Center | Nmin | Rmax | Fr | PBR | Total Annual Mortality | Annual Fishing Mortality | Strategic Status | Last Revision |
|---|---|---|---|---|---|---|---|---|---|---|
| Harbor seal | Bering Sea | AKC | 12,648 | 0.06 | 0.50 | 379 | 192 | 31 | N | 12/30/98 |
| Humpback whale | Western North Pacific | AKC | 367 | 0.02 | 0.10 | 0.7 | ~~0.2~~ 0.4 | ~~0.2~~ 0.4 | Y | 11/1/99 |
| Humpback whale | Central North Pacific | AKC | 3,698 | 0.02 | 0.10 | 7.4 | ~~1~~ 2.8 | ~~1~~ 2.8 | Y | 11/1/99 |
| Killer whale | Eastern North Pacific Northern Resident | AKC | 717 | 0.02 | 0.50 | 7.2 | 0.8 | 0.8 | N | 12/30/98 |
| Minke whale | Alaska | AKC | N/A | 0.02 | 0.50 | N/A | 0 | 0 | N | 8/8/97 |
| Northern right whale | North Pacific | AKC | N/A | 0.02 | 0.10 | N/A | 0 | 0 | Y | 11/1/99 |
| Northern fur seal | Eastern North Pacific | AKC | 848,539 | 0.043 | 0.50 | 18,244 | ~~1,725~~ 1,724 | ~~17~~ 16 | Y | 11/1/99 |
| Pacific white-sided dolphin | ~~Central~~ North Pacific | AKC | ~~486,719~~ 26,880 | 0.02 | 0.50 | ~~4,867~~ 269 | 4 | 4 | N | 11/1/99 |
| Ribbon seal | Alaska | AKC | N/A | 0.06 | 0.50 | N/A | 1 | 1 | N | 8/8/97 |
| Ringed seal | Alaska | AKC | N/A | 0.06 | 0.50 | N/A | 1 | 1 | N | 8/8/97 |
| Sperm whale | North Pacific | AKC | N/A | 0.02 | 0.10 | N/A | 0 | 0 | Y | 12/30/98 |
| Spotted seal | Alaska | AKC | N/A | 0.06 | 0.50 | N/A | 2 | 2 | N | 8/8/97 |
| Stejner's beaked whale | Alaska | AKC | N/A | 0.02 | 0.50 | N/A | 0 | 0 | N | 6/25/99 |
| Steller sea lion | Eastern U.S. | AKC | 30,403 | 0.06 | 0.75 | 1,368 | 16 | 16 | Y | 11/1/99 |
| Steller sea lion | Western U.S. | AKC | 39,031 | 0.06 | 0.10 | 234 | 442 | 30 | Y | 11/1/99 |

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Table 2--Summary table of Atlantic and Gulf of Mexico marine mammal stocks. Marine mammal stock assessment reports that were revised relative to the 1999 reports, and that have draft 2000 Stock Assessment Reports available, are identified by a 12/99 date of last revision. Changes to the estimates of abundance, human-caused mortality, and other items are also indicated.

| Species | Stock Area | NMFS Center | Nmin | Rmax | Fr | PBR | Total Annual Mortality and Serious Injury | Annual Fishing Mortality and Serious Injury | Strategic Status | Last Revision |
|---|---|---|---|---|---|---|---|---|---|---|
| Harbor seal | Western North Atlantic | NEC | 30,990 | 0.12 | 1.0 | 1,859 | ~~934~~ 873 | ~~934~~ 873 | N | 12/99 |
| Gray seal | Western North Atlantic | NEC | NA | NA | NA | NA | ~~70~~ 75 | ~~70~~ 75 | N | 12/99 |
| Harp seal | Western North Atlantic | NEC | N/A | N/A | N/A | N/A | ~~394~~ 402 | ~~394~~ 402 | N | 12/99 |
| Hooded seal | Western North Atlantic | NEC | N/A | N/A | N/A | N/A | 5.6 | 5.6 | N | 10/99 |
| Harbor porpoise | Gulf of Maine/Bay of Fundy | NEC | 48,289 | 0.04 | 0.5 | 483 | ~~1,895~~ 1,578 | ~~1,895~~ 1,578 | Y | 12/99 |
| Risso's dolphin | Western North Atlantic | NEC | ~~11,140~~ 22,540 | 0.04 | 0.48 | ~~107~~ 216 | ~~7.2~~ 13 | ~~7.2~~ 13 | N | 12/99 |
| Atlantic white-sided dolphin | Western North Atlantic | NEC | 19,196 | 0.04 | 0.48 | 184 | ~~291~~ 223 | ~~291~~ 223 | Y | 12/99 |
| White-beaked dolphin | Western North Atlantic | NEC | N/A | 0.04 | N/A | N/A | 0.00 | 0.00 | N | 8/97 |
| Common dolphin | Western North Atlantic | NEC | ~~16,060~~ 11,142 | 0.04 | 0.48 | ~~154~~ 107 | ~~780~~ 612 | ~~780~~ 612 | Y | 12/99 |
| Atlantic spotted dolphin | Western North Atlantic | NEC | ~~1,617~~[4] 23,699[2] | 0.04 | 0.5 | ~~16~~ 236 | ~~9.9~~ 7.8[1] | ~~9.9~~ 7.8[1] | N | 12/99 |
| Pantropical spotted dolphin | Western North Atlantic | NEC | ~~1,617~~[4] 8,450 | 0.04 | 0.5 | 84 | ~~9.9~~ 7.8[1] | ~~9.9~~ 7.8[1] | N | 12/99 |
| Striped dolphin | Western North Atlantic | NEC | ~~18,220~~ 44,500 | 0.04 | 0.5 | ~~182~~ 445 | ~~11~~ 7.3 | ~~11~~ 7.3 | N | 12/99 |
| Spinner dolphin | Western North Atlantic | NEC | N/A | N/A | N/A | N/A | 0.31 | 0.31 | N | 12/98 |

Table 2 - cont.

| Species | Stock Area | NMFS Center | Nmin | Rmax | Fr | PBR | Total Annual Mortality and Serious Injury | Annual Fishing Mortality and Serious Injury | Strategic Status | Last Revision |
|---|---|---|---|---|---|---|---|---|---|---|
| Bottlenose dolphin | Western North Atlantic, offshore | ~~NEC~~ SEC | ~~8,794~~ 20,642[2] | 0.04 | 0.5 | ~~88~~ 206 | ~~10~~ 5.3 | ~~10~~ 5.3 | N | 12/99 |
| Bottlenose dolphin | Western North Atlantic, coastal | SEC | 2,482 | 0.04 | 0.5 | 25 | ~~29~~ 46 | ~~29~~ 46 | Y | 12/99 |
| Dwarf sperm whale | Western North Atlantic | SEC | ~~N/A~~ 373[3] | 0.04 | ~~N/A~~ 0.5 | ~~N/A~~ 7.5 | ~~0.00~~ 0.25 | ~~0.00~~ 0.25 | N | 12/99 |
| Pygmy sperm whale | Western North Atlantic | SEC | ~~N/A~~ 373[3] | 0.04 | ~~N/A~~ 0.5 | ~~N/A~~ 7.5 | ~~0.00~~ 0.25 | ~~0.00~~ 0.25 | N | 12/99 |
| Killer whale | Western North Atlantic | NEC | N/A | 0.04 | N/A | N/A | 0.00 | 0.00 | N | 7/95 |
| Pygmy killer whale | Western North Atlantic | SEC | 6 | 0.04 | 0.5 | 0.1 | 0.00 | 0.00 | N | 7/95 |
| Northern bottlenose whale | Western North Atlantic | NEC | N/A | 0.04 | N/A | N/A | 0.00 | 0.00 | N | 12/98 |
| Cuvier's beaked whale | Western North Atlantic | NEC | ~~895~~ 2,419 [4] | 0.04 | 0.5 | ~~8.9~~ 24 | ~~9.7~~ 9.5 | ~~9.7~~ 9.5[5] | Y | 12/99 |
| Mesoplodon beaked whale | Western North Atlantic | NEC | ~~895~~ 2,419 [4] | 0.04 | 0.5 | ~~8.9~~ 24 | ~~9.7~~ 9.5 | ~~9.7~~ 9.5[5] | Y | 12/99 |
| Pilot whale, long-finned | Western North Atlantic | NEC | ~~4,968~~ 8,148[6] | 0.04 | 0.48 | ~~48~~ 78 | 87 146 | ~~87~~ 146[7] | ~~N~~ Y | 12/99 |
| Pilot whale, short-finned | Western North Atlantic | ~~NEC~~ SEC | ~~457~~ 8,148[6] | 0.04 | 0.48 | ~~4.4~~ 78 | ~~87~~ 146 | ~~87~~ 146[7] | Y | 12/99 |
| Sperm whale | ~~Western~~ North Atlantic | NEC | ~~1,617~~ 3,400 | 0.04 | 0.1 | ~~3.2~~ 6.8 | 0.00 | 0.00 | Y | 12/99 |
| North Atlantic right whale | Western North Atlantic | NEC | ~~295~~ 291 | ~~0.025~~ 0 | 0.1 | ~~0.4~~ 0.0 | ~~1.8~~ 1.4 | ~~1.0~~ 0.8[8] | Y | 12/99 |
| Humpback whale | ~~Western North Atlantic~~ Gulf of Maine | NEC | 10,019 | 0.065 | 0.1 | 32.6 | ~~5.4~~ 3.7 | ~~4.4~~ 2.7[9] | Y | 12/99 |

Table 2 - cont.

| Species | Stock Area | NMFS Center | Nmin | Rmax | Fr | PBR | Total Annual Mortality and Serious Injury | Annual Fishing Mortality and Serious Injury | Strategic Status | Last Revision |
|---|---|---|---|---|---|---|---|---|---|---|
| Fin whale | Western North Atlantic | NEC | 1,803 | 0.04 | 0.1 | 3.6 | ~~0.5~~ 0.8 | 0.20 [10] | Y | 12/99 |
| Sei whale | Nova Scotia | NEC | N/A | 0.04 | 0.1 | N/A | 0.00 | 0.00 | Y | 12/99 |
| Minke whale | Canadian east coast | NEC | ~~2,145~~ 3,097 | 0.04 | 0.5 | ~~21~~ 31 | ~~5.8~~ 2.7 | ~~4.8~~ 2.7 | N | 12/99 |
| Blue whale | Western North Atlantic | NEC | ~~N/A~~ 308 | 0.04 | 0.1 | ~~N/A~~ 0.6 | 0.00 | 0.00 | Y | 12/99 |
| Bottlenose dolphin | Gulf of Mexico, outer continental shelf | SEC | 43,233 | 0.04 | 0.5 | 432 | 2.8 | 2.8 | N | 7/95 |
| Bottlenose dolphin | Gulf of Mexico, continental shelf edge and slope | SEC | 4,530 | 0.04 | 0.5 | 45 | 2.8 | 2.8 | N | 7/95 |
| Bottlenose dolphin | Western Gulf of Mexico coastal | SEC | 2,938 | 0.04 | 0.5 | 29 | 13 | 13 | N | 8/97 |
| Bottlenose dolphin | Northern Gulf of Mexico coastal | SEC | 3,518 | 0.04 | 0.5 | 35 | 10 | 10 | N | 8/97 |
| Bottlenose dolphin | Eastern Gulf of Mexico coastal | SEC | 8,963 | 0.04 | 0.5 | 0.5 | 8 | 8 | N | 8/97 |
| Bottlenose dolphin | Gulf of Mexico bay, sound, and estuarine | SEC | 3,933 | 0.04 | 0.5 | 39.7 | N/A | N/A | Y | 10/99 |
| Atlantic spotted dolphin | Northern Gulf of Mexico | SEC | 2,255 | 0.04 | 0.5 | 23 | 1.5 | 1.5 | N | 6/95 |
| Pantropical spotted dolphin | Northern Gulf of Mexico | SEC | 26,510 | 0.04 | 0.5 | 265 | 1.5 | 1.5 | N | 7/95 |
| Striped dolphin | Northern Gulf of Mexico | SEC | 3,409 | 0.04 | 0.5 | 34 | 0.00 | 0.00 | N | 7/95 |
| Spinner dolphin | Northern Gulf of Mexico | SEC | 4,465 | 0.04 | 0.5 | 45 | 0.00 | 0.00 | N | 7/95 |
| Rough-toothed dolphin | Northern Gulf of Mexico | SEC | 660 | 0.04 | 0.5 | 6.6 | 0.00 | 0.00 | N | 7/95 |
| Clymene dolphin | Northern Gulf of Mexico | SEC | 4,120 | 0.04 | 0.5 | 41 | 0.00 | 0.00 | N | 7/95 |

Table 2 - cont.

| Species | Stock Area | NMFS Center | Nmin | Rmax | Fr | PBR | Total Annual Mortality and Serious Injury | Annual Fishing Mortality and Serious Injury | Strategic Status | Last Revision |
|---|---|---|---|---|---|---|---|---|---|---|
| Fraser's dolphin | Northern Gulf of Mexico | SEC | 66 | 0.04 | 0.5 | 0.7 | 0.00 | 0.00 | N | 7/95 |
| Killer whale | Northern Gulf of Mexico | SEC | 197 | 0.04 | 0.5 | 2.0 | 0.00 | 0.00 | N | 7/95 |
| False killer whale | Northern Gulf of Mexico | SEC | 236 | 0.04 | 0.5 | 2.4 | 0.00 | 0.00 | N | 7/95 |
| Pygmy killer whale | Northern Gulf of Mexico | SEC | 285 | 0.04 | 0.5 | 2.8 | 0.00 | 0.00 | N | 7/95 |
| Dwarf sperm whale | Northern Gulf of Mexico | SEC | N/A | 0.04 | N/A | N/A | 0.00 | 0.00 | N | 10/99 |
| Pygmy sperm whale | Northern Gulf of Mexico | SEC | N/A | 0.04 | N/A | N/A | 0.00 | 0.00 | N | 10/99 |
| Melon-headed whale | Northern Gulf of Mexico | SEC | 2,888 | 0.04 | 0.5 | 29 | 0.00 | 0.00 | N | 7/95 |
| Risso's dolphin | Northern Gulf of Mexico | SEC | 2,199 | 0.04 | 0.5 | 22 | 19 | 19 | N | 7/95 |
| Cuvier's beaked whale | Northern Gulf of Mexico | SEC | 20 | 0.04 | 0.5 | 0.2 | 0.00 | 0.00 | N | 7/95 |
| Blainville's beaked whale | Northern Gulf of Mexico | SEC | N/A | N/A | N/A | N/A | 0.00 | 0.00 | N | 7/95 |
| Gervais' beaked whale | Northern Gulf of Mexico | SEC | N/A | N/A | N/A | N/A | 0.00 | 0.00 | N | 7/95 |
| Pilot whale, short-finned | Northern Gulf of Mexico | SEC | 186 | 0.04 | 0.5 | 1.9 | 0.3 | 0.3 | Y | 7/95 |
| Sperm whale | Northern Gulf of Mexico | SEC | 411 | 0.04 | 0.1 | 0.8 | 0.00 | 0.00 | Y | 7/95 |
| Bryde's whale | Northern Gulf of Mexico | SEC | 17 | 0.04 | 0.5 | 0.2 | 0.00 | 0.00 | N | 7/95 |

1. Mortality data are not separated by species; therefore, species-specific estimates are not available. The mortality estimate represents both Atlantic and Pantropical spotted dolphins. Estimates may include sightings of the coastal form of Atlantic spotted dolphins.
2. Estimates may include sightings of the coastal form.
3. This estimate may include both the dwarf and pygmy sperm whales.
4. This estimate includes Cuvier's beaked whales and undifferentiated Mesoplodon spp. beaked whales.
5. The estimate does not differentiate species of beaked whales (Mesoplodon spp.) and includes an unknown number of Cuvier's beaked whales.
6. This estimate may include both long-finned and short-finned pilot whales.
7. Mortality data are not separated by species; therefore, species-specific estimates are not available. This mortality estimate represents both long-finned and short-finned pilot whales. Total mortality includes Nova Scotia 94-96 average of 9 long-finned pilot whales.
8. This is the average mortality of right whales based on 5 years of observer data (0.0) and additional fishery impact records (~~1.0~~ 0.8).
9. This is the average mortality of humpback whales based on 5 years of observer data (~~0.6~~ 0.25) and additional fishery impact records (~~3.8~~ 2.4).
10. The mortality estimate is based on a review of NMFS anecdotal records from 1994-1998, that yielded an average of 0.8 human caused mortality - 0.6 ship strikes, 0.2 fishery interactions.

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Table 3--Summary table of Pacific marine mammal stocks. All of the Pacific marine mammal stocks under NMFS jurisdiction were revised relative to the 1999 reports, and have draft 2000 Stock Assessment Reports available. Changes to the estimates of abundance, human-caused mortality, and other items are also indicated.

| Species | Stock Area | NMFS Center | Nmin | Rmax | Fr | PBR | Total Annual Mortality and Serious Injury | Annual Fish. Mortality and Serious Injury | Strategic Status | Last Revision |
|---|---|---|---|---|---|---|---|---|---|---|
| California sea lion | U.S. | SWC | ~~111,339~~ 109,854 | 0.12 | 1.0 | ~~6,680~~ 6,591 | ~~974~~ 1,352 | ~~915~~ 1,208 | N | 1/3/00 |
| Harbor Seal | California | SWC | 27,962 | 0.12 | 1.0 | 1,678 | ~~243~~ ≥39 | ~~234~~ N/A | N | 1/3/00 |
| Harbor Seal | Oregon/ Washington Coast | AKC | ~~24,733~~ 24,705 | 0.12 | 1.0 | ~~1,484~~ 1,482 | ~~19~~ ≥18 | ~~17~~ ≥16 | N | 1/3/00 |
| Harbor Seal | Inland Washington | AKC | ~~16,104~~ 15,174 | 0.12 | 1.0 | ~~966~~ 910 | ~~41~~ ≥43 | ~~36~~ ≥38 | N | 1/3/00 |
| Northern Elephant Seal | California breeding | SWC | 51,625 | 0.083 | 1.0 | 2,142 | ~~145~~ ≥33 | ~~145~~ ≥33 | N | 1/3/00 |
| Guadalupe Fur Seal | Mexico to California | SWC | 3,028 | 0.137 | 0.5 | 104 | 0.0 | 0.0 | Y | 1/3/00 |
| Northern Fur Seal | San Miguel Island | AKC | ~~6,720~~ 2,336 | 0.086 | 1.0 | ~~216~~ 100 | 0.0 | 0.0 | N | 1/3/00 |
| Monk seal | Hawaii | SWC | ~~1,423~~ 1,436 | 0.07 | 0.1 | 5.0 | N/A | N/A | Y | 1/3/00 |
| Harbor porpoise | Central California | SWC | 4,172 | 0.04 | 0.50 | 42 | ~~24~~ 63 | ~~24~~ 63 | ~~N~~ Y | 1/3/00 |
| Harbor porpoise | Northern California | SWC | ~~7,640~~ 8,061 | 0.04 | ~~0.5~~ 1.0 | ~~76~~ 81 | ~~0.0~~ ≥0.2 | ~~0.0~~ ≥0.2 | N | 1/3/00 |
| Harbor porpoise | Oregon/ Washington Coast | AKC | 32,769 | 0.04 | 0.5 | 328 | 12 | 12 | N | 1/3/00 |
| Harbor porpoise | Inland Washington | AKC | 2,545 | 0.04 | 0.4 | 20 | 15 | 15 | N | 1/3/00 |
| Dall's Porpoise | California/ Oregon/ Washington | SWC | ~~34,393~~ 81,866 | 0.04 | ~~0.48~~ 0.45 | ~~330~~ 737 | ~~22~~ 12 | ~~22~~ 12 | N | 1/3/00 |
| Pacific White-sided Dolphin | California/ Oregon/ Washington | SWC | ~~82,939~~ 17,475 | 0.04 | ~~0.48~~ 0.45 | ~~796~~ 157 | ~~22.0~~ ≥6.8 | ~~22.0~~ ≥6.8 | N | 1/3/00 |
| Risso's Dolphin | California/ Oregon/ Washington | SWC | ~~22,388~~ 13,079 | 0.04 | ~~0.5~~ 0.4 | ~~224~~ 105 | ~~37~~ 5.5 | ~~37~~ 5.5 | N | 1/3/00 |
| Bottlenose Dolphin | California coastal | SWC | ~~134~~ 154 | 0.04 | 0.5 | ~~1.3~~ 1.5 | 0 | 0 | N | 1/3/00 |

Table 3 - cont.

| Species | Stock Area | NMFS Center | Nmin | Rmax | Fr | PBR | Total Annual Mortality and Serious Injury | Annual Fish. Mortality and Serious Injury | Strategic Status | Last Revision |
|---|---|---|---|---|---|---|---|---|---|---|
| Bottlenose Dolphin | California/ Oregon/ Washington Offshore | SWC | ~~1904~~ 850 | 0.04 | ~~0.4~~ 0.5 | ~~15~~ 8.5 | ~~4.4~~ 0 | ~~4.4~~ 0 | N | 1/3/00 |
| Striped Dolphin | California/ Oregon/ Washington | SWC | ~~19,248~~ 17,995 | 0.04 | ~~0.4~~ 0.5 | ~~154~~ 180 | ~~1.2~~ 0 | ~~1.2~~ 0 | N | 1/3/00 |
| Common dolphin, short-beaked | California/ Oregon/ Washington | SWC | ~~309,717~~ 318,795 | 0.04 | 0.5 | ~~3,097~~ 3,188 | ~~272~~ 79 | ~~272~~ 79 | N | 1/3/00 |
| Common dolphin, long-beaked | California | SWC | ~~5,504~~ 27,739 | 0.04 | ~~0.48~~ 0.45 | ~~53~~ 250 | 14 | ~~14~~ | N | 1/3/00 |
| Northern right whale dolphin | California/ Oregon/ Washington | SWC | ~~15,080~~ 10,060 | 0.04 | ~~0.5~~ 0.48 | ~~151~~ 97 | ~~47~~ 15 | ~~47~~ 15 | N | 1/3/00 |
| Killer whale | Eastern North Pacific Transient | AKC | ~~336~~ 376 | 0.04 | 0.45 | ~~3.0~~ 3.4 | ~~2.0~~ 2.6 | ~~2.0~~ 2.4 | N | 1/3/00 |
| Killer whale | Eastern North Pacific Offshore | SWC | 209 | 0.04 | 0.5 | 2.1 | 0 | 0 | N | 1/3/00 |
| Killer whale | Eastern North Pacific Southern Resident | AKC | ~~89~~ 84 | 0.04 | 0.5 | ~~0.9~~ 0.8 | 0 | 0 | N | 1/3/00 |
| Short-finned pilot whale | California/ Oregon/ Washington | SWC | 717 | 0.04 | ~~0.48~~ 0.4 | ~~6.9~~ 5.7 | ~~13~~ 3.0 | ~~13~~ 3.0 | ~~Y~~ N | 1/3/00 |
| Baird's Beaked Whale | California/ Oregon/ Washington | SWC | ~~252~~ 313 | 0.04 | ~~0.4~~ 0.5 | ~~3.1~~ 2.0 | ~~1.2~~ 0 | ~~1.2~~ 0 | N | 1/3/00 |
| Mesoplodont Beaked Whales | California/ Oregon/ Washington | SWC | ~~2,840~~ 2,734 | 0.04 | ~~0.45~~ 0.5 | ~~26~~ 27 | ~~9.2~~ 0 | ~~9.2 – 13~~ 0 | N | 1/3/00 |
| Cuvier's Beaked Whale | California/ Oregon/ Washington | SWC | ~~6,070~~ 4,309 | 0.04 | 0.5 | ~~61~~ 43 | ~~28~~ 0 | ~~28~~ 0 | N | 1/3/00 |
| Pygmy Sperm Whale | California/ Oregon/ Washington | SWC | ~~2,059~~ 2,837 | 0.04 | ~~0.45~~ 0.5 | ~~19~~ 28 | ~~2.8~~ 0 | ~~2.8~~ 0 | N | 1/3/00 |
| ~~Dwarf Sperm Whale~~ | ~~California/ Oregon/ Washington~~ | ~~SWC~~ | ~~N/A~~ | ~~0.04~~ | ~~0.5~~ | ~~N/A~~ | ~~N/A~~ | ~~N/A~~ | ~~N~~ | Stock Assessment Discontinued |

Table 3 - cont.

| Species | Stock Area | NMFS Center | Nmin | Rmax | Fr | PBR | Total Annual Mortality and Serious Injury | Annual Fish. Mortality and Serious Injury | Strategic Status | Last Revision |
|---|---|---|---|---|---|---|---|---|---|---|
| Sperm whale | California/ Oregon/ Washington | SWC | ~~992~~ 995 | 0.04 | 0.1 | 2.0 | ~~3.0~~ 2.5 | ~~3.0~~ 2.5 | Y | 1/3/00 |
| Humpback whale | California/ Oregon/ Washington | SWC | ~~563~~ 861 | 0.04 | 0.1 | ~~0.5~~ 1.7 | ~~1.8~~ 1.4 | 1.2 | Y | 1/3/00 |
| Blue whale | ~~California/ Oregon/ Washington~~ Eastern North Pacific | SWC | ~~1,463~~ 1,716 | 0.04 | 0.1 | ~~1.5~~ 1.7 | ~~0.2~~ 0.0 | 0 | Y | 1/3/00 |
| Fin whale | California/ Oregon/ Washington | SWC | ~~747~~ 1,044 | 0.04 | 0.1 | ~~1.5~~ 2.1 | ~~<1~~ 0.4 | 0 | Y | 1/3/00 |
| Bryde's whale | California/ Oregon/ Washington | SWC | 11,163 | 0.04 | 0.5 | ~~0.2~~ N/A | 0 | 0 | N | 1/3/00 |
| Sei whale | California/ Oregon/ Washington | SWC | N/A | 0.04 | 0.1 | N/A | 0 | 0 | Y | 1/3/00 |
| Minke whale | California/ Oregon/ Washington | SWC | 440 | 0.04 | 0.45 | 4.0 | ~~3.6~~ 0 | ~~3.6~~ 0 | N | 1/3/00 |
| Rough-Toothed Dolphin | Hawaii | SWC | ~~N/A~~ 76 | 0.04 | 0.5 | ~~N/A~~ 0.8 | N/A | N/A | N | 1/3/00 |
| Risso's Dolphin | Hawaii | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | 1/3/00 |
| Bottlenose Dolphin | Hawaii | SWC | ~~N/A~~ 479 | 0.04 | 0.5 | ~~N/A~~ 4.8 | N/A | N/A | N | 1/3/00 |
| Pantropical spotted dolphin | Hawaii | SWC | ~~N/A~~ 2,040 | 0.04 | 0.5 | ~~N/A~~ 20 | N/A | N/A | N | 1/3/00 |
| Spinner dolphin | Hawaii | SWC | ~~677~~ 2,355 | 0.04 | 0.5 | ~~6.8~~ 24 | N/A | N/A | N | 1/3/00 |
| Striped dolphin | Hawaii | SWC | ~~N/A~~ 52 | 0.04 | 0.5 | ~~N/A~~ 0.5 | N/A | N/A | N | 1/3/00 |
| Melon-headed whale | Hawaii | SWC | ~~N/A~~ 81 | 0.04 | 0.5 | ~~N/A~~ 0.8 | N/A | N/A | N | 1/3/00 |
| Pygmy killer whale | Hawaii | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | 1/3/00 |
| False killer whale | Hawaii | SWC | ~~N/A~~ 83 | 0.04 | 0.5 | ~~N/A~~ 0.8 | ~~N/A~~ 9.0 | ~~N/A~~ 9.0 | ~~N~~ Y | 1/3/00 |
| Killer whale | Hawaii | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | 1/3/00 |

Table 3 - cont.

| Species | Stock Area | NMFS Center | Nmin | Rmax | Fr | PBR | Total Annual Mortality and Serious Injury | Annual Fish. Mortality and Serious Injury | Strategic Status | Last Revision |
|---|---|---|---|---|---|---|---|---|---|---|
| Pilot whale, short-finned | Hawaii | SWC | ~~N/A~~ 1,313 | 0.04 | 0.5 | ~~N/A~~ 13 | N/A | N/A | N | 1/3/00 |
| Blainville's beaked whale | Hawaii | SWC | ~~N/A~~ 43 | 0.04 | 0.5 | ~~N/A~~ 0.4 | N/A | N/A | N | 1/3/00 |
| Cuvier's beaked whale | Hawaii | SWC | ~~N/A~~ 29 | 0.04 | 0.5 | ~~N/A~~ 0.3 | N/A | N/A | N | 1/3/00 |
| Pygmy sperm whale | Hawaii | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | 1/3/00 |
| Dwarf sperm whale | Hawaii | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | 1/3/00 |
| Sperm whale | Hawaii | SWC | ~~N/A~~ 43 | 0.04 | 0.1 | ~~N/A~~ 0.4 | N/A | N/A | Y | 1/3/00 |
| Blue whale | Hawaii | SWC | N/A | 0.04 | 0.1 | N/A | N/A | N/A | Y | 1/3/00 |
| Fin whale | Hawaii | SWC | N/A | 0.04 | 0.1 | N/A | N/A | N/A | Y | 1/3/00 |
| Bryde's whale | Hawaii | SWC | N/A | 0.04 | 0.5 | N/A | N/A | N/A | N | 1/3/00 |

Dated: May 15, 2000.

**Art Jeffers,**

*Acting Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–12579 Filed 5–17–00; 8:45 am]

BILLING CODE 3510–22–C

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### National Security Education Board Meeting

**AGENCY:** National Defense University, National Security Education Program, Department of the Army.

**ACTION:** Notice of meeting.

**SUMMARY:** Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VII of Public Law 102–183, as amended.

**DATES:** June 13, 2000.

**ADDRESSES:** The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

**FOR FURTHER INFORMATION CONTACT:** Dr. Edmond J. Collier, Deputy Director for Programs, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703) 696–1991. Electronic mail address: colliere@ndu.edu.

**SUPPLEMENTARY INFORMATION:** The Board meeting is open to the public.

Dated: May 12, 2000.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 00–12464 Filed 5–17–00; 8:45 am]

BILLING CODE 5001–10–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Final Environmental Assessment for BRAC 95 Disposal and Reuse of Camp Kilmer, New Jersey

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** In accordance with Public Law 101–510 (as amended), the Defense Base Closure and Realignment Act of 1990, the Defense Base Closure and Realignment Commission recommended the closure of Camp Kilmer, New Jersey. The Final Environmental Assessment (EA) evaluates the environmental impacts of the disposal and subsequent reuse of the 49 acres. Alternatives examined in the EA include no action, unencumbered disposal of the property, encumbered disposal of the property. Encumbered disposal refers to transfer or conveyance of property having restrictions on subsequent use as a result of any Army-imposed or legal restraint. The unencumbered disposal alternative refers to the transfer of property without encumbrances such as environmental restrictions and easements. Under the no action alternative, the Army would not dispose of property but would maintain it in caretaker status for an indefinite period.

**DATES:** Comments must be submitted on or before June 19, 2000.

**ADDRESSES:** A copy of the Final EA may be obtained by writing to Mr. Carl Burgamy, Jr., U.S. Army Corps of Engineers, U.S. Army Engineer District, Mobile (CESAM–PD), 109 St. Joseph Street, Mobile, AL 36602.

**FOR FURTHER INFORMATION CONTACT:** Mr. Carl Burgamy, Jr. at (334) 690–2036 or telefax at (334) 690–2727.

**SUPPLEMENTARY INFORMATION:** While closure of Camp Kilmer is the Army's primary action, the EA also analyzes the potential environmental effects of reuse as a secondary action by means of evaluating intensity-based reuse scenarios. The Army's preferred alternative for disposal of Camp Kilmer's excess property is encumbered disposal, with encumbrances pertaining to easements, use restrictions, restrictions pertaining to asbestos-containing material, future remedial activities after transfer, utility dependencies.

A Notice of Intent (NOI) declaring the Army's intent to prepare an EA for the closure of Camp Kilmer was published in the **Federal Register** on September 22, 1995 (60 FR 49264).

The Final EA is available for review at the Main Public Library, 340 Plainfield Ave., Edison, NJ 08817. Prior to initiating action the Army will consider comments received on this EA.

Dated: May 15, 2000.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health); OASA (I&E).*

[FR Doc. 00–12583 Filed 5–17–00; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Final Environmental Impact Statement (FEIS) for Schofield Barracks Wastewater Treatment Plant Effluent Treatment and Disposal, Oahu, HI

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** This announces the availability of the FEIS, which assesses the effects of implementing a system to treat and dispose of wastewater effluent from Schofield Barracks, Wheeler Army Airfield, and adjacent military lands.

Under the lead alternative, the Army would improve its Schofield Barracks Wastewater Treatment Plant to provide a higher quality effluent that would meet new State of Hawaii guidelines for effluent reuse. Part of the effluent would be used to irrigate two Army golf courses on Schofield Barracks. The balance would then be provided for irrigation reuse to Dole Foods Corporation and possibly other agricultural interests in Central Oahu. Wet weather discharge would be into Lake Wilson, an agricultural reservoir owned by Dole Foods Corporation. The lead alternative would preclude the construction of a long pipeline to the coastline and avoid disposal into the ocean.

Other alternatives considered by the FEIS included the no action alternative, which would limit the use of the Army effluent under the State of Hawaii guidelines for effluent reuse, and a joint project with the City and County of Honolulu (CCH), which would require construction of a new 14-mile pipeline from Central Oahu to the CCH's Honouliuli Wastewater Treatment Plant at the Ewa area.

None of the alternatives considered, with the possible exception of the no action alternative, are anticipated to have significant environmental impact. The Army's lead alternative provides the most potential for effluent reuse in Central Oahu.

**DATES:** Written comments received within 30 days of the publication of the Environmental Protection Agency's Notice of Availability for this action will be considered by the Army during final decision making.

**ADDRESSES:** To obtain a copy of the FEIS, contact Mr. Edward Yamada, U.S. Army Engineer District, Honolulu, ATTN: CEPOH–ED–E, Fort Shafter, HI 96858–5440; telephone: (808) 438–5421; FAX: (808) 438–7801.

**FOR FURTHER INFORMATION CONTACT:** Mr. Alvin Char, 25th Infantry Division

(Light) and U.S. Army Garrison Hawaii, ATTN: APVG–GWV, Schofield Barracks, Hawaii 96857–5013; Telephone: (808) 656–2878, ext. 1062, and Fax (808) 656–1039.

**SUPPLEMENTARY INFORMATION:** Public scoping meetings and public meetings were held after distribution of the DEIS. All interested individuals, private organizations, and government agencies were encouraged to provide input into the EIS review process. All comments received were addressed and included in the FEIS.

Coordination was undertaken with adjoining land owners; the U.S. Environmental Protection Agency; other Federal agencies; State of Hawaii agencies such as the Departments of Health, Land and Natural Resources, Transportation, Business and Economic Development, Offices of State Planning, and Environmental Quality Control; City and County of Honolulu agencies such as Board of Water Supply, Departments of Public Works, Land Utilization, and General Planning; and organizations such as the Mililani and Wahiawa Neighborhood Boards.

Dated: May 15, 2000.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I&E).*

[FR Doc. 00–12562 Filed 5–17–00; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Intent To Prepare an Environmental Impact Statement (EIS) for the Northern Training Complex With a Multi-Purpose Digital Training Range and Expanded Maneuver Areas, Drop Zones, and Landing Zones at Fort Knox, KY

**AGENCY:** U.S. Army Armor Center and Fort Knox, Department of the Army.

**ACTION:** Notice of intent.

**SUMMARY:** Fort Knox proposes to construct and operate a multi-purpose digital training range and a series of maneuver areas, drop zones and landing zones. These facilities would provide a multi-functional war-fighting capability to meet the Army's training needs for soldiers in urban and restricted terrain combat scenarios. These facilities would upgrade existing substandard range facilities and expand the installation's training capacity to train Armor soldiers in a realistic training environment for urban and restricted terrain combat. The current facilities do not meet modern tank gunnery standards and are inadequate to support training for regional conflicts in urban and restricted areas. The project would include the installation of fiber optics, upgrading of existing roadways and construction of utilities to the site. The proposed training complex would ensure soldiers are combat ready.

**ADDRESSES:** Please direct written comments concerning the scope of the Northern Training Complex to:

Al Freeland, Chief, Environmental Management Division, Directorate of Base Operations Support, U.S. Army Armor Center, ATTN: ATZK–OSE, Building 1110, Room 216, Ironsides & 6th Avenue, Fort Knox, KY 40121–5000;

or

Gail Pollock, Environmental Protection Specialist, at the same address; by fax at (502) 624–3000.

**FOR FURTHER INFORMATION CONTACT:** Al Freeland at (502) 624–3629 or Gail Pollock at (502) 624–6684.

**SUPPLEMENTARY INFORMATION:** The EIS will consider reasonable alternatives including: (1) Construct the Northern Training Complex that includes the Wilcox Multi-Purpose Digital Training Range (Wilcox MPDTR) and the Maneuver Areas, Drop Zones, and Landing Zones in Training Areas 16, 17, and 18 (Training Area Complex) (preferred alternative); (2) upgrade Yano Multi-Purpose Tank Range to a Digital Range and construct Maneuver Areas, Drop Zones, and landing Zones in Training Areas 16, 17, and 18; (3) upgrade Cedar Creek Multi-Purpose Tank Range to a Digital Range and construct Maneuver Areas, Drop Zones, and Landing Zones in Training Areas 16, 17, and 18; and (4) no action (continue operations with existing ranges and facilities). Other reasonable alternatives will also be considered.

*Significant Issues:* The primary issues to be analyzed in this EIS include: Noise (aircraft/range firing), impacts to wetlands and riparian areas, removal of approximately 2,500 acres of forests, soil erosion, water quality, endangered species, cultural resources, and other issues raised during public scoping.

*Scoping:* The Army prepared Draft Environmental Assessments for the Wilcox Multi-Purpose Digital Tank Range and the Training Area 16, 17 and 18 Maneuver/Drop Zones and Landing Zones. The Environmental Assessments resulted in a determination to prepare an EIS to encompass all areas affected within the proposed Northern Training Complex.

A mailing list has been prepared for public scoping and review throughout the process of preparation of this EIS. This list includes local, state and Federal officials having jurisdictional expertise or other interests in the project; concerned citizens; conservation groups; and local news media.

Comments concerning the scope of the EIS may also be emailed to Ms. Gail Pollock at pollockl@ftknox-emph3.army.mil.

Dated: May 15, 2000.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I&E).*

[FR Doc. 00–12584 Filed 5–17–00; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF EDUCATION

### Notice of Proposed Information Collection Requests

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before July 17, 2000.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 12, 2000.

**William Burrow,**

*Leader, Information Management Group, Office of the Chief Information Officer.*

**Office of the Undersecretary**

*Type of Review:* New collection.
*Title:* Annual Performance Report for the Preparing Tomorrow's Teachers to Use Technology Grant Program.
*Frequency:* Annually.
*Affected Public:* Not-for-profit institutions (primary); individuals or household; State, local, or Tribal Government; SEAs or LEAs.
*Reporting and Recordkeeping Hour Burden:*
*Responses:* 225.
*Burden Hours:* 2,250.
*Abstract:* This submission requests approval for a web-based performance report needed by the U.S. Department of Education (ED) to obtain baseline data and information on the progress and effectiveness of the Preparing Tomorrow's Teachers to use Technology (PT3) grantees. The PT3 grant program was established to assist consortia of public and private entities in developing and implementing teacher training programs that prepare prospective teachers to use technology for improved instructional practices and student learning opportunities in the classroom. The performance reports will be completed by all 225 grantees and data gathered from the reports will be used by ED to determine which activities are most successful at training preservice teachers to integrate technology and to determine the overall effectiveness of the PT3 grant program.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jackie Montague at 202–708–5359. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–12487 Filed 5–17–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before June 19, 2000. On May 11, 2000, a 60-day notice was incorrectly published in the **Federal Register** regarding this information collection. This 30-day notice should have been published since this is a discretionary grant and qualifies for the streamlined process.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB.

Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: May 12, 2000.

**William Burrow,**

*Leader, Information Management Group, Office of the Chief Information Officer.*

**Office of Elementary and Secondary Education**

*Type of Review:* Revision of a currently approved collection.
*Title:* Safe and Drug-Free Schools and Communities National Programs—Federal Activities—Grant Competition to Prevent High-Risk Drinking and Violent Behavior Among College Students (1890–0001) (KA).
*Frequency:* Annually.
*Affected Public:* State, Local, or tribal Government; SEAs or LEAs (primary); not-for-profit institutions (primary).
*Reporting and Recordkeeping Hour Burden:*
*Responses:* 50.
*Burden Hours:* 1,600.
*Abstract:* This program supports the development or enhancement, implementation, and evaluation of campus-based strategies to prevent high-risk drinking and violent behavior among college students. This collection falls under the Streamlined Discretionary Grant Process, 1890–0001.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements

should be directed to Kathy Axt at (703) 426–9692. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–12488 Filed 5–17–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.334]**

### Office of Postsecondary Education, Gaining Early Awareness and Readiness for Undergraduate Programs

### Notice Inviting Applications for New Awards for Fiscal Year 2000; Correction

**SUMMARY:** On April 27, 2000 we published in the **Federal Register** (65 FR 24764) a notice inviting applications for new awards for fiscal year 2000 for the Gaining Early Awareness and Readiness for Undergraduate Program (GEAR UP). That document incorrectly listed the priority for Partnerships that establish or maintain a scholarship program as invitational. Please note that Partnerships that establish or maintain a scholarship program will receive a competitive priority, as was stated in the application package for this year's competition.

The priority therefore reads as follows:

**Competitive Preference Priority**

The Secretary will give preference to Partnership projects that establish or maintain financial assistance programs that award scholarships to participating students, either in accordance with section 404E of the Higher Education Act of 1965, as amended, or in accordance with GEAR UP regulations. The Secretary will award up to five (5) additional points, in addition to any points the applicant earns under the selection criteria, to applicants who meet this priority, depending on how well the application meets the priority.

Also in that same Notice we stated that applications for a Partnership or State grant that serve students in Empowerment Zones, Supplemental Empowerment Zones, or Enterprise Communities would be given a Competitive Preference Priority. The language used to explain this priority (The Secretary will select an application that meets this priority over an application of comparable merit that does not meet this priority) comes directly from the Education Department General Regulations (EDGAR) 34 CFR Part 75.105. This notice clarifies that this preference will be applied as a tie-breaker only.

Finally, that notice incorrectly listed the maximum grant amount for State grants as $5 million. The correct maximum grant amount for State grants is $2.1 million.

**FOR FURTHER INFORMATION CONTACT:** Rafael Ramirez, Office of Postsecondary Education, U.S. Department of Education, 1900 K Street, NW, Room 6252, Washington, DC 20006. Telephone: (202) 502–7676. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**Electronic Access to This Document**

You may view this document in text or Adobe Portable Document Format (PDF) on the Internet at the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

http://ifap.ed.gov/csb_html/fedlreg.htm

To use the PDF you must have the Adobe Acrobat Reader Program, which is available free at the first of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C. area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Number: 84.334 Gaining Early Awareness and Readiness for Undergraduate Program)

Dated: May 15, 2000.

**A. Lee Fritschler,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 00–12525 Filed 5–17–00; 8:45 am]

BILLING CODE 4000–01–U

## DEPARTMENT OF ENERGY

### National Nuclear Security Administration; Postponement of Scoping Meeting for the Proposed Relocation of the Los Alamos National Laboratory Technical Area 18 Missions

**AGENCY:** Department of Energy, National Nuclear Security Administration.

**ACTION:** Postponement of scoping meeting.

**SUMMARY:** On May 2, 2000, the Department of Energy (DOE) announced in the **Federal Register**, (65 FR 25472), that it would hold scoping meetings for the proposal to relocate missions at Technical Area 18 (TA–18). Due to the recent fire at the Los Alamos National Laboratory (LANL), the scoping meeting scheduled for May 17, 2000 at the Betty Ehart Senior Center, 2132 Central Avenue, Los Alamos, NM, has been postponed. DOE will provide notice of the new date, time, and location for this meeting when it becomes available. DOE regrets any inconvenience for this postponement. Any questions associated with the TA–18 Project can be asked by calling Mr. Jay Rose at 1–800–832–0885, ext. 65484.

Issued in Washington, D.C., this 15th day of May 2000.

**Henry Garson,**

*NEPA Compliance Officer, Office of Defense Programs, Department of Energy.*

[FR Doc. 00–12630 Filed 5–16–00; 1:33 pm]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC00–500–001, FERC–500]**

### Information Collection Submitted for Review and Request for Comments

May 12, 2000.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of submission for review by the Office of Management and Budget (OMB) and request for comments.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) has submitted the energy information collection listed in this notice to the Office of Management and Budget (OMB) for review under the provisions of Section 3507 of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13). Any interested person may file comments on the collection of information directly with OMB and

should address a copy of those comments to the Commission, as explained below. The Commission received comments from two entities in response to an earlier **Federal Register** notice of November 9, 1999 (64 FR 62184–85) and has responded to those comments in this submission.

**DATES:** Comments regarding this collection are best assured of having their full effect if received on or before June 10, 2000.

**ADDRESSES:** Address comments to Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Federal Energy Regulatory Commission Desk Officer, 725 17th Street, NW, Washington, DC 20503. A copy of the comments should also be sent to Federal Energy Regulatory Commission, Office of the Chief Information Officer, Attention: Mr. Michael Miller, CI–1, 888 First Street, NE, Washington, DC 20426. Mr. Miller may be reached by telephone at (202)208–1415 and by e-mail at mike.miller@ferc.fed.us.

**SUPPLEMENTARY INFORMATION:**

**Description**

The energy information collection submitted to OMB for review contains:

1. *Collection of Information:* FERC–500, "Application for License, Relicense for Water Projects with More than 5 MW Capacity."

2. *Sponsor:* Federal Energy Regulatory Commisison.

3. *Control No.:* 1902–0058. The Commission is now requesting that OMB approve a three year extension of the expiration date, with no changes to the existing collection. This is a mandatory collection requirement.

4. *Necessity of Collection of Information:* Submission of the information is necessary to fulfill the requirements of Part I of the Federal Power Act (FPA) in order for the Commission to make the required finding that the proposal is economically sound, is best adopted to a comprehensive plan for improving/developing a waterway or waterways. Under Part I of the FPA (16 U.S.C. sections 79a *et seq.*), the Commission has the authority to issue licenses for hydroelectric projects on the waters over which Congress has jurisdiction. The Electric Consumers Protection Act (ECPA) (Pub. L. 99–495, 100 Stat. 1243) provides the Commission with the responsibility of issuing licenses for nonfederal hydroelectric plants. ECPA also amended the language of the EPA concerning environmental issues to ensure environmental quality. The information collected under FERC–500 is used by the Commission to determine the broad impact of a hydropower license application.

5. *Respondent Description:* The respondent universe currently comprises on average, 9 applicants for a hydropower license/relicense.

6. *Estimated Burden:* 15,276 total burden hours, 9 respondents 1 response (on occasion), 1,697 hours per response (rounded off).

7. *Estimated Cost to Burden to Respondents:* The estimated cost burden to respondents: 15,276÷2080 hours per year×$111,545 per year=$819,212.

**Statutory Authority:** Sections 4(e), 9, 10, 14 and 15 of the Federal Power Act (FPA), 16 U.S.C. Sections 791a *et seq.* and Energy Consumers Protection Act, Pub. L. 99–495, 100 Stat. 1243

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12470 Filed 5–17–00; 8:45 am]

**BILLING CODE 6717–01–M**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–275–000]**

### Chesapeake Panhandle Limited Partnership, Complainant, v. Natural Gas Pipeline Company of America, MidCon Gas Products Corp., MidCon Gas Services Corp., KN Energy, Inc. and Kinder Morgan, Inc., Respondents; Notice of Complaint

May 12, 2000.

Take notice that on May 10, 2000, Chesapeake Panhandle Limited Partnership (Complainant) filed with the Federal Energy Regulatory Commission a complaint against Natural Gas Pipeline Company of America ("NGPL"), MidCon Gas Products Corp. (MidCon Gas Products), MidCon Gas Services Corp. (MidCon Gas Services), KN Energy, Inc. (KN) and Kinder Morgan, Inc. (Kinder Morgan) (collectively, Respondents) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206. According to the Complaint, Respondents, all affiliated companies, acted in concert to circumvent the filed rate doctrine and violate NGPL's Tariff by charging rates for gathering services which NGPL performed in connection with jurisdictional transportation services and which, in sum, exceeded the rate specified in the NGPL Tariff governing the relevant service.

Complainant alleges that from March 3, 1998 until January 1, 2000, Respondents effectively charged (i) a "gathering fee" which in certain months exceeded the Maximum rate NGPL, a jurisdictional provider of gathering services through NGPL's West Panhandle Gathering System, was authorized to charge and (ii) a fuel retention rate for gathering service provided by NGPL, which was not included in NGPL's filed Tariff. The "gathering fee" and fuel retention rate were established in a Gas Sales and Purchase Agreement (GAS Sales Agreement) which MC Panhandle, Inc. (MC Panhandle), an affiliate of NGPL, had initially executed with another NGPL affiliate, MidCon Gas Services. MidCon Gas Services' interest was later transferred by assignment to MidCon Gas Products. Complainant states that, in 1998, it acquired ownership of MC Panhandle, the owner of certain gas wells in Moore and Carson Counties, Texas, subject to the terms of the Gas Sales Agreement. It avers that through this purchase it became obligated to pay, and in fact paid (through a reduced gas sales price), rates for gathering services actually performed by NGPL that were greater than the applicable rates set forth in NGPL's FERC Gas Tariff.

According to the Complainant, although the Gas Sales Agreement was nominally between MC Panhandle (later succeeded by Chesapeake Panhandle) and MidCon Gas Services (later succeeded by its affiliate MidCon Gas Products), NGPL's role in the transaction as: (1) The provider of the gathering service, (2) the affiliate of the Gas Sales Agreements's Buyers, MidCon Gas Services and MidCon Gas Products, (3) the affiliate of the Gas Sales Agreement's initial Seller, MC Panhandle, and (4) a signatory to the Gas Sales Agreement, effectively make NGPL a party to the Gas Sales Agreement and, in any event, support the inference that NGPL benefited from the actions of its affiliates in charging a rate for services which NGPL provided, but for which NGPL itself could not lawfully have charged. Thus, Complainant seeks a refund, with interest, of the amounts it was charged (by way of a gas sales price reduction) for "gathering fees" in excess of NGPL's authorized gathering rate and fuel retainage during the period from March 3, 1998 through December 31, 1999.

Questions concerning the Complaint may be directed to counsel for Complainant, James F. Bowe, Jr., Dewey Ballantine LLP, 1775 Pennsylvania Ave., NW, Washington, DC 20006–4605, Phone 202/429–1444, Fax 202/862–1093, e-mail *jbowe@deweyballantine.com*.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 30, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are Available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–2222) for assistance. Answers to the complaint shall also be due on or before May 30, 2000.

**Linwood A. Watson, Jr.**

*Acting Secretary.*

[FR Doc. 00–12474 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–233–001]**

### Midwestern Gas Pipeline Transmission; Notice of Compliance Filing

May 12, 2000.

Take notice on May 9, 2000, Midwestern Gas Transmission Company (Midwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets identified below, with an effective date of May 1, 2000:

Substitute Fourth Revised Sheet No. 90
Substitute Second Revised Sheet No. 98
Substitute Second Revised Sheet No. 99
Substitute Third Revised Sheet No. 100
Substitute First Revised Sheet No. 101
Seventh Revised Sheet No. 110A

Midwestern states that this filing is in compliance with the Commission's April 26, 2000 Order Accepting Tariff Sheets Subject to Conditions in the above-referenced docket (April 26 Order). Midwestern Gas Transmission Company, 91 FERC ¶ 61,099 (2000).

Midwestern further states that the April 26 Order required Midwestern to file revised tariff language that would (1) Correct the Gas Industry Standards Board version reference in its tariff; and (2) specify the requirements of the waiver set forth in 18 CFR 284.8(i) of the Commission's regulations. Midwestern requests an effective date of May 1, 2000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12473 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–219–001]**

### Northwest Pipeline Corporation; Notice of Compliance Filing

May 12, 2000.

Take notice that on May 8, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing additional information related to its March 16, 2000 filing in the above referenced docket.

Northwest states that the purpose of this filing is to comply with the Commission's Letter order issued April 26, 2000 in Docket No. RP00–219, which directed Northwest to provide additional information related to the reconciliation of 1999 lost and unaccounted for volumes and the allocation of fuel usage at the Jackson Prairie storage facility.

Northwest states that a copy of this filing has been served upon each person designated on the official service list complied by the Secretary in this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12472 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP99–513–003]**

### Questar Pipeline Company; Notice of Tariff Filing

May 12, 2000.

Take notice that on May 8, 2000, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 7, with an effective day of May 8, 2000.

Questar states that the filing is being made to implement a negotiated-rate contract as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, *et al.* The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Questar further states that the tendered tariff sheet revises Questar's Tariff to implement a new negotiated-rate transportation service agreement between Questar and Texaco Natural Gas, Inc., executed May 1, 2000, with service commencing May 8, 2000.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12471 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–229–001]**

### Tennessee Gas Pipeline Company; Notice of Compliance Filing

May 12, 2000.

Take notice that on May 9, 2000, Tennessee Gas Pipeline Company (Tennessee), tendered for filing the revised tariff sheets identified below for inclusion in Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1, with an effective date of May 1, 2000:

Substitute Fourth Revised Sheet No. 328
Substitute Fifth Revised Sheet No. 329
Substitute Third Revised Sheet No. 336
Substitute Third Revised Sheet No. 337A
Substitute Third Revised Sheet No. 342
Substitute Second Revised Sheet No. 342A
Substitute Fifth Revised Sheet No. 347
Tenth Revised Sheet No. 412

Tennessee states that this filing is in compliance with the Commission's April 26, 2000 Order Accepting Tariff sheets Subject to Conditions in the above-referenced docket (April 26, Order). Tennessee Gas Pipeline Company, 91 FERC ¶ 61,098 (2000).

Tennessee further states that the April 26 Order required Tennessee to file revised tariff language that would (1) correct the Gas Industry Standards Board version reference in its tariff; and (2) specify the requirements of the waiver set forth in 18 CFR 284.8(i) of the Commission's regulations.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12549 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP00–362–000]**

### Texas Gas Transmission Corporation; Notice of Application

May 12, 2000.

Take notice that on May 5, 2000, pursuant to section 7 of the Natural Gas Act (NGA) and part 157 of the Regulations of the Federal Energy Regulatory Commission (Commission), Texas Gas Transmission Corporation (Texas Gas), P.O. Box 20008, Owensboro, Kentucky 42304, filed in Docket No. CP00–362–000 an abbreviated application for a certificate of public convenience and necessity to be issued for the abandonment of five injection/withdrawal wells and the installation and operation of one horizontal injection/withdrawal well within it's Midland Storage Field in Muhlenberg County, Kentucky, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

The name, address, and telephone number of the person to whom correspondence and communications concerning this application should be addressed is: David N. Roberts, Manager of Certificates and Tariffs, Texas Gas Transmission Corporation, PO Box 20008, Owensboro, Kentucky, 42304; Phone No. 270/688–6712.

Texas Gas avers that the well replacement will alleviate safety issues associated with the existing five wells, will restore well deliverability that has deteriorated over time, and will allow for more efficient utilization of the storage reservoir. The project's purpose is not to increase the storage capacity or deliverability of the Texas Gas Midland Storage Field, but simply to guarantee that existing levels can be maintained in a safer, more cost effective and efficient manner so that Texas Gas can continue to meet customer contact obligations.

In association with the installation of the replacement well, Texas Gas will need to construct approximately 300 feet of 8-inch diameter lateral line to connect the well to the existing 16-inch diameter field tributary line. This lateral line will be constructed pursuant to Texas Gas's blanket certificate authorized in Docket No. CP82–407–000 (20 FERC ¶ 62,417 (1982)) and the Commission's blanket certificate regulations found at 18 CFR part 157, including the environmental conditions found at 18 CFR 157.206(b).

Texas Gas has requested expedited review of the application in order to begin drilling of the horizontal replacement well by July 1, 2000. This would allow Texas Gas to complete the proposed well during a period of low field pressure and optimal drilling conditions.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before June 2, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if not motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or

if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Texas Gas to appear or be represented at the hearing.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12475 Filed 5–17–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EG00–140–000, et al.]**

### NEPA Energy LP, et al.; Electric Rate and Corporate Regulation Filings

May 10, 2000.

Take notice that the following filings have been made with the Commission:

**1. NEPA Energy LP**

[Docket No. EG00–140–000]

Take notice that on April 26, 2000, NEPA Energy LP (NEPA) filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

NEPA acquired a 94 MW eligible facility (Facility) located in North East Pennsylvania on March 29, 2000. NEPA is a limited partnership with NEPA Energy LLC as the general partner. NEPA Energy LLC is a wholly-owned subsidiary of Welch Food, Inc., a cooperative (Welch). NEPA states that once the Facility is operational, NEPA will be engaged directly and exclusively in the business of owning and/or operating all or part of an eligible facility (as defined in section 32(a)(1) of the Public Utility Holding Company Act), be selling electricity at wholesale and making no retail electricity sales.

*Comment date*: May 31, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

**2. Indianapolis Power & Light Company**

[Docket Nos. ER00–1026–002 and OA00–4–002]

Take notice that on May 1, 2000, Indianapolis Power & Light Company filed a letter in compliance with the Commission's orders issued February 24, 2000 in the above-referenced dockets, 90 FERC ¶ 61,180 (2000) and 90 FERC ¶ 61,174 (2000).

*Comment date*: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. Jack A. Fusco**

[Docket No. ID–3483–000]

Take notice that on April 28, 2000, Jack A. Fusco filed with the Federal Energy Regulatory Commission an Application for Authority to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

*Comment date*: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. W. Thaddeus Miller**

[Docket No. ID–3484–000]

Take notice that on April 28, 2000, W. Thaddeus Miller filed with the Federal Energy Regulatory Commission an Application for Authority to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

*Comment date*: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Scott B. Helm**

[Docket No. ID–3485–000]

Take notice that on April 28, 2000, Scott B. Helm filed with the Federal Energy Regulatory Commission an Application for Authority to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

*Comment date*: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. E. Thomas Webb**

[Docket No. ID–3494–000]

Take notice that on April 28, 2000, E. Thomas Webb filed with the Federal Energy Regulatory Commission an Application for Authority to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

*Comment date*: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. James S. Potter**

[Docket No. ID–3495–000]

Take notice that on May 1, 2000 James S. Potter filed with the Federal Regulatory Energy Commission an Abbreviated Application for Authorization to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

*Comment date*: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. David B. Kinnard**

[Docket No. ID–3496–000]

Take notice that on May 1, 2000, David B. Kinnard filed with the Federal Energy Regulatory Commission an Abbreviated Application for Authorization to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

*Comment date*: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Roger L. Petersen**

[Docket No. ID–3497–000]

Take notice that on May 1, 2000, Roger L. Peterson filed with the Federal Energy Regulatory Commission an Abbreviated Application to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

*Comment date*: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Paul A. Farr**

[Docket No. ID–3498–000]

Take notice that on May 1, 2000, Paul A. Farr filed with the Federal Energy Regulatory Commission an Abbreviated Application to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

*Comment date*: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Robert W. Burke, Jr.**

[Docket No. ID–3499–000]

Take notice that on May 1, 2000, Robert W. Burke, Jr. filed with the Federal Energy Regulatory Commission an Abbreviated Application to Hold Interlocking positions pursuant to section 305(b) of the Federal Power Act.

*Comment date*: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Lockhart Power Company**

[Docket No. OA96–163–003]

Take notice that on April 28, 2000, Lockhart Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission), a report in compliance with the Commission's order in Allegheny Power Service Co., *et al.*, 90 FERC ¶ 61,224 (2000).

*Comment date*: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. PPL Electric Utilities Corporation**

[Docket No. OA97–688–001]

Take notice that on May 2, 2000, PPL Electric Utilities Corporation filed with the Federal Energy Regulatory

Commission a report in compliance with the Commission's order in Allegheny Power Service Company, 90 FERC ¶ 61,224 (2000).

*Comment date*: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Orange and Rockland Utilities, Inc.**

[Docket No. OA97–708–001]

Take notice that on May 2, 2000, Orange and Rockland Utilities, Inc. tendered for filing with the Federal Energy Regulatory Commission (Commission), a report in compliance with the Commission's order in Allegheny Power Service Co., et al., 90 FERC ¶ 61,224 (2000).

*Comment date*: June 9, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. UtiliCorp United Inc.**

[Docket No. ER00–175–001]

Take notice that on May 2, 2000, UtiliCorp United, Inc., tendered for filing supplements to its October 21, 1999, filing of rate schedules in Docket No. ER00–175–000.

*Comment date*: May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. California Independent System Operator Corporation**

[Docket No. ER00–1365–001]

Take notice that on May 1, 2000, the California Independent System Operator Corporation (ISO), tendered for filing modifications to Amendment No. 26 of the ISO Tariff to comply with the Commission's order in California Independent System Operator Corp., 90 FERC ¶ 61,345 (2000). The ISO states that this filing has been served upon all parties in this proceeding.

*Comment date*: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. Ameren Services Company**

[Docket No. ER00–2362–000]

Take notice that on May 1, 2000, Ameren Services Company (Ameren), tendered for filing a revised Network Integration Transmission Service Agreement with the City of Newton, Illinois (Newton). The revised Agreement includes a Distribution Facilities Charge.

Ameren seeks an effective date of June 1, 2000, subject to conditions, or, in the alternative, an effective date of May 2, 2000. Accordingly, Ameren seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on Newton and on the Illinois Commerce Commission.

*Comment date*: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. Ameren Services Company**

[Docket No. ER00–2364–000]

Take notice that on May 1, 2000, Ameren Services Company (Ameren), tendered for filing a revised unexecuted Network Integration Transmission Service Agreement (Network Transmission Agreement) and a revised Network Operating Agreement with Soyland Power Cooperative, Inc., (Soyland). The revised Network Transmission Agreement includes a Distribution Facilities Charge.

Ameren seeks an effective date of June 1, 2000, subject to conditions, or, in the alternative, an effective date of May 2, 2000 for the revised Network Transmission Agreement and a date sixty days from filing for the revised Network Operating Agreement. Accordingly, Ameren seeks waiver of the Commission's notice requirements with respect to the Network Transmission Agreement.

Copies of the filing have been served on Soyland and on the Illinois Commerce Commission.

*Comment date*: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. Ameren Services Company**

[Docket No. ER00–2365–000]

Take notice that on May 1, 2000, Ameren Services Company (Ameren), tendered for filing a revised unexecuted Network Integration Transmission Service Agreement (Network Transmission Agreement) and a revised Network Operating Agreement with Clay Electric Cooperative, Inc. (Clay). The revised Network Transmission Agreement includes a Distribution Facilities Charge.

Ameren seeks an effective date of June 1, 2000, subject to conditions, or, in the alternative, an effective date of May 2, 2000 for the revised Network Transmission Agreement and a date sixty days from filing for the revised Network Operating Agreement. Accordingly, Ameren seeks waiver of the Commission's notice requirements with respect to the Network Transmission Agreement. Copies of the filing have been served on Clay and on the Illinois Commerce Commission.

*Comment date*: May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**20. Ameren Services Company**

[Docket No. ER00–2366–000]

Take notice that on May 1, 2000, Ameren Services Company (Ameren), tendered for filing a revised unexecuted Network Integration Transmission Service Agreement with Edgar Electric Cooperative Association (Edgar). The revised Agreement includes a Distribution Facilities Charge.

Ameren seeks an effective date of June 1, 2000, subject to conditions, or, in the alternative, an effective date of May 2, 2000. Accordingly, Ameren seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on Edgar and on the Illinois Commerce Commission.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**21. Ameren Services Company**

[Docket No. ER00–2367–000]

Take notice that on May 1, 2000, Ameren Services Company (Ameren), tendered for filing a revised Network Integration Transmission Service Agreement with Cinergy Services, Inc., (Cinergy). The revised Agreement includes a Distribution Facilities Charge.

Ameren seeks an effective date of June 1, 2000, subject to conditions, or, in the alternative, an effective date of May 2, 2000. Accordingly, Ameren seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on Cinergy and on the Illinois Commerce Commission.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**22. CMS Marketing, Services and Trading Company**

[Docket No. ER00–2368–000]

Take notice that on May 1, 2000, CMS Marketing, Services and Trading Company (Seller) tendered for filing an executed service agreement for wholesale power service to CMS MS&T Michigan, L.L.C. (Buyer) pursuant to Seller's Market Based.

Power Sales Tariff accepted for filing in Docket No. ER96–2350–000. The filing includes an administrative tariff amendment to facilitate acceptance of the service agreement.

The filing request has an effective date of June 1, 2000.

Copies of the filing have been served on the Michigan Public Service Commission and Buyer.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

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**23. PG&E Energy Services Corporation**

[Docket No. ER00–2369–000]

Take notice that on May 1, 2000, PG&E Energy Services Corporation (PGES), 345 California Street, Suite 3200, San Francisco, California 94104, tendered for filing revisions to its rate schedule FERC No. 1 providing for the resale of Firm Transmission Rights (FTRs) issued by the California Independent Service Operator Corporation pursuant the Commission's November 10, 1999 order in Docket No. ER98–3594–000 and agreements between PGES and its affiliate, PG&E Energy Trading-Power, L.P., concerning the resale of FTRs.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**24. Allegheny Energy Supply Company, L.L.C.**

[Docket No. ER00–2370–000]

Take notice that on May 1, 2000, Allegheny Energy Supply Company tendered for filing a Power Sales Agreement under which Allegheny Energy Supply provides the power and energy needed by West Penn Power Company, doing business as Allegheny Power, necessary to meet its obligations as a provider of last resort under the retail direct access program implemented in the Commonwealth of Pennsylvania.

AE Supply request waiver of the prior notice requirements and an effective date of November 18, 1999.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**25. Southwestern Public Service Company**

[Docket No. ER00–2371–000]

Take notice that on May 1, 2000, New Century Services, Inc., on behalf of Southwestern Public Service Company (SPS), tendered for filing the Interconnection Agreement between West Texas Municipal Power Agency and SPS. This agreement is intended to supersede the Interconnection Agreement filed in Docket No. ER96–1969–000.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**26. New England Power Pool**

[Docket No. ER00–2378–000]

Take notice that on May 1, 2000, the New England Power Pool (NEPOOL) Participants Committee tendered for filing for acceptance a signature page to the New England Power Pool Agreement dated September 1, 1971, as amended, signed by Praxair, Inc. (Praxair). The NEPOOL Agreement has been designated NEPOOL FPC No. 2.

The Participants Committee states that the Commission's acceptance of Praxair's signature page would permit NEPOOL to expand its membership to include Praxair. The Participants Committee further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make Praxair a member in NEPOOL.

The Participants Committee requests an effective date of July 1, 2000, for commencement of participation in NEPOOL by Praxair.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**27. Alliant Energy Corporate Services, Inc.**

[Docket No. ER00–2379–000]

Take notice that on May 1, 2000, Alliant Energy Corporate Services, Inc., tendered for filing an amendment on behalf of IES Utilities Inc. (IES), Interstate Power Company (IPC) and Wisconsin Power and Light Company (WPL), in the above Dockets. This amendment is being filed because IES and IPC will join the Mid-America Interconnected Network, Inc.

Alliant Energy Corporate Services, Inc., requests an effective date of May 1, 2000, and accordingly, requests waiver of the Commission's notice requirements to permit the requested effective date.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, the Public Service Commission of Wisconsin, and all parties listed on the service list as compiled by the Secretary in this proceeding.

*Comment date:* May 22, 2000, in accordance with Standard Paragraph E at the end of this notice.

**28. Florida Power Corporation**

[Docket No. ER00–2380–000]

Take notice that on May 2, 2000, Florida Power Corporation (Florida Power) tendered for filing a service agreement providing for non-firm point-to-point transmission service and a service agreement providing for short term firm point-to-point transmission service by Florida Power to Cargill-Alliant, LLC pursuant to its open access transmission tariff.

Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective on May 1, 2000

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**29. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC**

[Docket No. ER00–2381–000]

Take notice that on May 2, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 1 to Supplement No. 31 to the Market Rate Tariff to incorporate a Netting Agreement with Cargill-Alliant, LLC into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of April 19, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**30. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC**

[Docket No. ER00–2382–000]

Take notice that on May 2, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 39 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of March 28, 2000 or on a date as determined by the Commission to Florida Power & Light Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**31. California Independent System Operator Corporation**

[Docket No. ER00–2383–000]

Take notice that on May 2, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a proposed amendment (Amendment No. 29) to the ISO Tariff. Amendment No. 29 includes proposed changes to the ISO Tariff that implement ten-minute markets to reduce uninstructed deviations, enable the submission of Adjustment Bids with inter-Scheduling Coordinator trades, provide for the automation of Dispatch instructions, expand the membership of the independent Market Surveillance Committee, and modify the standards that Scheduling Coordinators must meet to avoid the need to post financial security in connection with their trades in ISO markets.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**32. Alliant Energy Corporate Services, Inc.**

[Docket No. ER00–2384–000]

Take notice that on April 26, 2000, Alliant Energy Corporate Services, Inc. (Alliant Energy) on behalf of Interstate Power Company (IPC), tendered for filing a Unit Participation Capacity Transaction (Agreement) between IPC and IES Utilities Inc., for the period May 1, 2000 through September 30, 2000. The Agreement was negotiated to provide service under the Alliant Energy System Coordination and Operating Agreement among IES Utilities Inc., Interstate Power Company, Wisconsin Power & Light and Alliant Energy.

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**33. New England Power Pool**

Docket No. ER00–2385–000

Take notice that on May 2, 2000, the New England Power Pool (NEPOOL) Participants Committee and Transmission Owners submitted as a supplement to the NEPOOL Open Access Transmission Tariff (the NEPOOL Tariff) Appendix A to the implementation rule for Ancillary Service Schedule 1 (Scheduling, System Control and Dispatch Service) of the NEPOOL Tariff. Appendix A sets forth the detailed methodology, in accordance with the previously-approved implementation rule for Schedule 1, for recovery of costs associated with the ownership of certain control center facilities required to provide scheduling, system control and dispatch services.

The NEPOOL Participants Committee and Transmission Owners state that copies of these materials were sent to the NEPOOL Participants and the six New England State governors and regulatory commissions.

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**34. California Power Exchange Corporation**

Docket No. ER00–2386–000

Take notice that on May 2, 2000, California Power Exchange Corporation (CalPX), on behalf of its CalPX Trading Services Division (CTS), tendered for filing proposed Amendment No. 3 to its CTS Rate Schedule FERC No. 1. Amendment No. 3 is designed to allow CTS to implement two new services in response to demand from CTS participants and the market: (1) A daily block forward market; and (2) a balance of the month market.

CTS requests waiver of the Commission's notice provisions to permit an effective date of June 29, 2000 for delivery on July 1, 2000. If the Commission does not grant the requested waiver, CTS requests an effective date of July 2, 2000 for delivery on the next delivery day for the applicable block.

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**35. California Power Exchange Corporation**

Docket No. ER00–2387–000

Take notice that on May 2, 2000, the California Power Exchange Corporation (CalPX), tendered for filing proposed amendments of Schedule Nos. 3 and 4 of its FERC Electric Service Tariff No. 3. These proposed amendments collectively comprise CalPX's Tariff Amendment No. 14. The purpose of the amendments is to enable CalPX to track the changes to be implemented by Tariff No. 26 of the California Independent System Operator Corporation (CAISO). The Commission accepted CAISO Tariff Amendment No. 26 with certain conditions in an order issued in Docket No. ER00–1365–000 on March 31, 2000.

Consistent with that order, CalPX requests an effective date for its Tariff Amendment No. 14 of ten days after the software modifications of both CalPX and CAISO are complete.

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**36. Commonwealth Edison Company**

Docket No. ER00–2388–000

Take notice that on May 2, 2000, Commonwealth Edison Company (ComEd), tendered for filing a Short-Term Firm Transmission Service Agreement (Agreement) establishing Alliant Energy Corporate Services, Inc. (Alliant), as a short-term firm customer under the terms of ComEd's OATT.

ComEd requests an effective date of July 22, 1998 to coincide with the first day of service to Alliant under this type of Service Agreement. Copies of this filing were served on Alliant.

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**37. Central Vermont Public Service Corporation**

Docket No. ER00–2389–000

Take notice that on May 2, 2000, Central Vermont Public Service Corporation tendered for filing a Transmission Service Agreement—Amendment No. 1 between Central Vermont Public Service Corporation and Green Mountain Power Company. Central Vermont also filed a certificate of concurrence executed by Green Mountain. Central Vermont states that the Amendment modifies the terms on which the parties operate the interconnections between them.

Copies of the filing were served upon Green Mountain and the Vermont Public Service Board.

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**38. PPL Electric Utilities Corporation**

[Docket Nos. ER00–2390–000]

Take notice that on May 2, 2000, PPL Utilities Corporation (PPL Utilities), formerly known as PP&L, Inc. filed a notice of cancellation of PPL Utilities' Open Access Transmission Tariff (Tariff), FERC Electric Tariff Volume No. 4. No customers have or are taking service under the Tariff.

PPL Utilities requests an effective date of the cancellation of July 3, 2000.

Notice of the proposed cancellation has been served upon all entities that have signed service agreements under the Tariff.

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**39. Indianapolis Power & Light Company**

[Docket No. ES00–33–000]

Take notice that on May 2, 2000, Indianapolis Power & Light Company submitted an application pursuant to Section 204 of the Federal Power Act seeking Commission authorization to issue short-term debt instruments in an amount not to exceed $500 million, from time to time, for a period commencing July 30, 2000, through July 29, 2002.

*Comment date:* May 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

**40. Doswell Limited Partnership**

[Docket No. ER00–2391–000]

Take notice that on May 2, 2000, Doswell Limited Partnership (Doswell) petitioned the Commission for (1) Acceptance of Doswell Rate Schedule FERC No. 2 and Form of Service Agreement; (2) acceptance of the Power Purchase Agreement entered into on April 17, 2000, between Doswell and Virginia Electric Power Company; (3) the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and (4) the waiver of certain Commission Regulations.

*Comment date:* May 23, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraph**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12468 Filed 5–17–00; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG00–138–000, et al.]**

## TXU (No.5) Pty Ltd., et al.; Electric Rate and Corporate Regulation Filings

May 11, 2000.

Take notice that the following filings have been made with the Commission:

**1. TXU (No.5) Pty Ltd.**

[Docket No. EG00–138–000]

Take notice that on May 9, 2000, TXU (No. 5) Pty Ltd, filed a withdrawal of their Application for Commission Determination of Exempt Wholesale Generator Status that was filed with the Federal Energy Regulatory Commission (Commission) on April 27, 2000, pursuant to Rule 216 of the Rules of Practice and Procedure (18 CFR 365.216).

*Comment date*: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. ISO New England Inc.**

[Docket Nos. EL00–62–001 and ER00–2052–002]

Take notice that on May 8, 2000, ISO New England Inc. amended its March 31, 2000 filing (as corrected on April 3 and May 1, 2000) to request termination of the New England Power Pool (NEPOOL) Installed Capability market effective June 1, 2000.

Copies of said filing and a redacted version of Appendix 1 have been served upon the Secretary of the NEPOOL Participants Committee, as well as upon the utility regulatory agencies of the six New England States and the New England Conference of Public Utilities Commissioners.

*Comment date*: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. ISO New England Inc.**

[Docket Nos. EL00–62–002 and ER00–2052–003]

Take notice that on May 8, 2000, contemporaneously with ISO New England Inc.'s amendment of its March 31, 2000 filing (as corrected on April 3 and May 1, 2000) to request termination of the New England Power Pool (NEPOOL) Installed Capability market effective June 1, 2000, ISO New England also filed separately in these dockets (on a confidential basis under 18 CFR 388.112) an Appendix 1, reporting mitigation activity in the Installed Capability market, in accordance with NEPOOL Market Rule 17.

Copies of said filing and a redacted version of Appendix 1 have been served upon the Secretary of the NEPOOL Participants Committee, as well as upon the utility regulatory agencies of the six New England States and the New England Conference of Public Utilities Commissioners.

*Comment date*: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. Paul T. Champagne**

[Docket No. ID–3500–000]

Take notice that on May 4, 2000, Paul T. Champagne filed an Application for Authorization to Hold Interlocking Positions pursuant to section 305(b) of the Federal Power Act.

*Comment date*: June 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Southern Minnesota Municipal Power Agency**

[Docket No. NJ00–3–001]

Take notice that on May 3, 2000, Southern Minnesota Municipal Power Agency tendered for filing a revision to schedule 4 of its non-jurisdictional tariff. That revised version of schedule 4 was proffered as a replacement for the version filed on April 25, 2000, and noticed on April 28, 2000 in the above-referenced docket number.

*Comment date*: May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. El Paso Electric Company**

[Docket No. OA97–686–001]

Take notice that on May 5, 2000, El Paso Electric Company filed a report with the Federal Energy Regulatory Commission (Commission) pursuant to the Commission's order in Allegheny Power Service Co., *et al.*, 90 FERC ¶ 61,224 (2000).

*Comment date*: June 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. AllEnergy Marketing Company, L.L.C., New England Power Company, Massachusetts Electric Company, Nantucket Electric Company, Granite State Electric Company and The Narragansett Electric Company**

[Docket No. OA00–1–001]

Take notice that on May 4, 2000 in compliance with the Commission's April 4, 2000 order in New England Power Company, *et al.*, 91 FERC ¶ 61,013 (2000), AllEnergy Marketing Company, L.L.C., New England Power Company, Massachusetts Electric Company, Nantucket Electric Company, Granite State Electric Company and The

Narragansett Electric Company submitted for filing a revised power marketer code of conduct.

*Comment date*: June 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Arizona Public Service Company**

[Docket No. ER99–2852–001]

Take notice that on May 4, 2000, Arizona Public Service Company (APS), tendered for filing a Compliance Refund Report for refunds made in accordance with the Commission's letter of approval of the Offer of Settlement dated March 30, 2000 with the Arizona Electric Power Cooperative, Inc. in Docket No. ER99–2852–0000.

Copies of this filing have been served on Arizona Electric Power Cooperative, Inc. and the Arizona Corporation Commission.

*Comment date*: May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Southern California Edison Company**

[Docket No. ER98–441–019]

Take notice that on May 3, 2000, Reliant Energy Mandalay, LLC, Reliant Energy Etiwanda, LLC, Reliant Energy Power Generation, Inc., Reliant Energy Services, Inc., Southern California Edison Company, the California Independent System Operator Corp., the California Power Exchange, Pacific Gas and Electric Company, and San Diego Gas & Electric Company tendered for filing an Offer of Settlement. The Offer of Settlement resolves all of the unresolved issues set forth in Article X, sections A.2 through A.5, of the Stipulation and Agreement filed on April 2, 1999 in this docket and approved by the Commission on May 28, 1999.

Copies of the filing were served on the parties to the service list established in the above-captioned proceeding.

*Comment date*: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. California Independent System Operator Corporation**

[Docket Nos. ER99–1971–006]

Take notice that on May 3, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Notice of Effective Date, dated May 2, 2000, which specifies that the Tariff revisions relating to the Generator Communications Project approved in Amendment No. 14 to the ISO Tariff became effective on February 7, 2000, pursuant to the Commission's May 26, 1999 order in this proceeding.

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

*Comment date*: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Fresno Cogeneration Partners, L.P.**

[Docket No. ER00–2392–000]

Take notice that on May 3, 2000, Fresno Cogeneration Partners, L.P. (FCPLP), tendered for filing, under section 205 of the Federal Power Act and Part 35 of the Commission's Regulations, a petition for order accepting initial rate schedule, Electric Rate Schedule FERC No. 1, pertaining to the sale of energy, capacity, replacement reserves at market-based rates, and for the waiver of certain Commission regulations and blanket authorization of others. FCPLP also requests authority, as provided in the proposed rate schedule, to sell ancillary services.

FCPLP requests that this rate schedule become effective as of April 28, 2000.

Copies of the filing were served on the California Public Utilities Commission and the California Independent System Operator.

*Comment date*: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. PacifiCorp**

[Docket No. ER00–2393–000]

Take notice that on May 3, 2000, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Long-term Firm Point-to-Point Transmission Service Agreement with Western Area Power Administration, Rocky Mountain Region (Western) under PacifiCorp's FERC Electric Tariff, First Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

*Comment date*: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC**

[Docket No. ER00–2394–000]

Take notice that on May 3, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Supplement No. 40 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of April 7, 2000 to Conectiv Energy Supply, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date*: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. PG&E Energy Services Corporation**

[Docket No. ER00–2395–000]

Take notice that on May 3, 2000, PG&E Energy Services Corporation (PGES), 345 California Street, Suite 3200, San Francisco, California 94104, tendered for filing revisions to its market-based rate schedule and code of conduct to reflect its proposed affiliation with Portland General Electric Company.

*Comment date*: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. Energetix, Inc.**

[Docket No. ER00–2396–000]

Take notice that on May 3, 2000, Energetix, Inc., tendered for filing to amend its market-based rate tariff, FERC Electric Rate Schedule No. 1, to permit sales to its affiliate, Rochester Gas and Electric Corporation, without making a separate filing under section 205 of the Federal Power Act.

*Comment date*: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. Consumers Energy Company**

[Docket No. ER00–2397–000]

Take notice that on May 3, 2000, Consumers Energy Company (Consumers), tendered for filing a Facilities Agreement Between Consumers and Modular Power Systems, LLC, (Modular), dated April 26, 2000. Under the Facilities Agreement, Consumers is to construct, operate and maintain various interconnection facilities.

Consumers requests that the Facilities Agreement be allowed to become effective within 60 days after filing.

Copies of the filing were served upon Modular and upon the Michigan Public Service Commission.

*Comment date*: May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. Baconton Power LLC**

[Docket No. ER00–2398–000]

Take notice that on May 3, 2000, Baconton Power LLC, tendered for filing pursuant to section 205 of the Federal Power Act, a request for blanket approval to make sales at market-based rates from its generator located in southwestern Georgia. Baconton also requests the waivers traditionally granted to parties authorized to sell power at market-based rates.

Baconton seeks a waiver of the Commission's 60-day prior notice and filing requirements and an effective date from the Commission of May 17, 2000.

*Comment date:* May 24, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. Louisville Gas and Electric Company/Kentucky Utilities Company**

[ Docket No. ER00–2399–000]

Take notice that on May 4, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements between the Companies and Cinergy Capital and Trading, Inc., under the Companies Open Access Transmission Tariff.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. Louisville Gas and Electric Company/Kentucky Utilities Company**

[Docket No. ER00–2400–000]

Take notice that on May 4, 2000, Louisville Gas and Electric Company (LG&E)/Kentucky Utilities (KU) (hereinafter Companies), tendered for filing executed Firm and Non-Firm Point-to-Point Transmission Service Agreements between the Companies and MIECO, Inc., under the Companies Open Access Transmission Tariff.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**20. Pacific Gas and Electric Company**

[Docket No. ER00–2401–000]

Take notice that on May 4, 2000, Pacific Gas and Electric Company (PG&E) tendered for filing an agreement entitled "GPU Solar Service Agreement for Wholesale Distribution Service" (Service Agreement) with GPU Solar, Inc., submitted pursuant to the PG&E Wholesale Distribution Tariff (WDT).

The Service Agreement facilitates payment of PG&E's costs of designing, constructing, procuring, testing, placing in operation, owning, operating and maintaining the customer-specific facilities requested by GPU Solar, Inc., required for service over PG&E's distribution facilities. PG&E has requested certain waivers.

Copies of this filing have been served upon GPU Solar, Inc., and the California Public Utilities Commission.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**21. WPS Resources Operating Companies**

[Docket No. ER00–2402–000]

Take notice that on May 4, 2000, WPS Resources Operating Companies (WPSR) tendered for filing an executed Service Agreement with Upper Peninsula Power Company, providing for transmission service under FERC Electric Tariff, Volume No. 1.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**22. Wisconsin Public Service Corporation**

[Docket No. ER00–2403–000]

Take notice that on May 4, 2000, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with Wisconsin Electric Power Supply Company, providing for transmission service under FERC Electric Tariff, Volume No. 1.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**23. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC**

[Docket No. ER00–2404–000]

Take notice that on May 4, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply). tendered for filing Amendment No. 1 to Supplement No. 35 to the Market Rate Tariff to incorporate a Netting Agreement with NewEnergy, Inc. into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of April 10, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**24. Cinergy Services, Inc.**

[Docket No. ER00–2405–000]

Take notice that on May 4, 2000, Cinergy Services, Inc., on behalf of The Cincinnati Gas & Electric Company (CG&E), tendered for filing for approval an Interconnection Agreement dated as of March 30, 2000 and entered into by and between the City of Lebanon, Ohio, The Cincinnati Gas & Electric Company and Cinergy Services, Inc.

The Interconnection Agreement will allow for an interconnection point at the 69 KV bus of the City of Lebanon's switching station located adjacent to CG&E's Warren 138 KV Substation.

Cinergy states that it has served a copy of its filing upon the City of Lebanon, Ohio and the Public Utilities Commission of Ohio.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**25. Entergy Services, Inc.**

[Docket No. ER00–2406–000]

Take notice that on May 4, 2000, Entergy Services, Inc. (Entergy Services), tendered for filing on behalf of Entergy Gulf States, Inc. (Entergy Gulf States), tendered for filing a Long-Term Market Rate Sales Agreement between Entergy Gulf States and Brazos Electric Power Cooperative, Inc., for the sale of power under Entergy Services' Rate Schedule SP.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**26. PPL EnergyPlus, LLC**

[Docket No. ER00–2407–000]

Take notice that on May 4, 2000, PPL EnergyPlus, LLC (PPL EnergyPlus), tendered for filing revisions to its Rate Schedule No. 4.

PPL EnergyPlus has served a copy of this filing on PPL Electric Utilities Corporation.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**27. PJM Interconnection, L.L.C.**

[Docket No. ER00–2408–000]

Take notice that on May 4, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing signature pages to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA) for ECONnergy PA, Inc. (ECONnergy) and Utilimax.com, Inc. (Utilimax.com), and an amended Schedule 17 listing the parties to the RAA.

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PJM states that it served a copy of its filing on all parties to the RAA, including ECONnergy and Utilimax.com, and each of the state electric regulatory commissions within the PJM Control Area.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**28. Puget Sound Energy, Inc.**

[Docket No. ER00–2409–000]

Take notice that on May 4, 2000, Puget Sound Energy, Inc. (PSE), tendered for filing a Notice of Cancellation of a Service Agreement for Long-Term Firm Point-To-Point Transmission Service under FERC Electric Tariff Original Volume No. 7 Open Access Transmission Tariff with the United States of America Department of Energy acting by and through the Bonneville Power Administration (Bonneville), as Transmission Customer (Service Agreement No. 104 under PSE's FERC Electric Tariff Third Revised Volume No. 7).

PSE states that a copy of the filing was served upon Bonneville.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**29. PPL Electric Utilities Corporation**

[Docket No. ER00–2410–000]

Take notice that on May 4, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission a Service Agreement between PPL Utilities and the Borough of Lewisberry under PPL Utilities' Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5.

PPL Utilities requests an effective date of May 1, 2000, for the Power Sales Agreement.

PPL Utilities states that a copy of this filing has been provided to the Borough of Lewisberry and to the Pennsylvania Public Utility Commission.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**30. PPL Electric Utilities Corporation**

[Docket No. ER00–2411–000]

Take notice that on May 4, 2000, PPL Electric Utilities Corporation (PPL Utilities), tendered for filing with the Federal Energy Regulatory Commission a Power Sales Agreement between PPL Utilities and the Borough of Lewisberry under PPL Utilities' Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5.

PPL Utilities requests an effective date of May 1, 2000 for the Power Sales Agreement.

PPL Utilities states that a copy of this filing has been provided to the Borough of Lewisberry and to the Pennsylvania Public Utility Commission.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**31. Consumers Energy Company**

[Docket No. ER00–2412–000]

Take notice that on May 4, 2000 Consumers Energy Company (Consumers), tendered for filing a Notice of Cancellation, terminating Consumers Energy Company Rate Schedule FERC No. 76, a facilities agreement with Wolverine Power Supply Cooperative, Inc., (Wolverine). The termination is by fully executed agreement between the two parties. Consumers requests that the cancellation be effective May 1, 2000, as specified in the termination agreement.

Copies of the filing were served upon Wolverine and upon the Michigan Public Service Commission.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**32. American Electric Power Service Corporation**

[Docket No. ER00–2413–000]

Take notice that on May 4, 2000, American Electric Power Service Corporation, on behalf of the operating companies of the American Electric Power System (collectively, AEP), tendered for filing an amendment to the AEP open access transmission tariff.

AEP states that a copy of the filing has been served on all of AEP's transmission customers and on the state public service commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**33. New Century Services, Inc.**

[Docket No. ER00–2414–000]

Take notice that on May 4, 2000, New Century Services, Inc. (NCS), on behalf of Public Service Company of Colorado (Public Service), tendered for filing the Master Power Purchase and Sale Agreement between Public Service and South Plains Electric Cooperative, Inc., which is an umbrella service agreement under Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, Original Volume No. 6).

NCS requests that this agreement become effective on March 8, 2000.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**34. Entergy Services, Inc.**

[Docket No. ER00–2415–000]

Take notice that on May 5, 2000, Entergy Services, Inc. (Entergy Services), as agent for Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing its 2000 annual rate redetermination update (Update) in accordance with the Open Access Transmission Tariff filed in compliance with FERC Order No. 888 in Docket No. OA96–158–000. Entergy Services states that the Update redetermines the formula rate in accordance with the annual rate redetermination provisions of Appendix 1 to Attachment H and Appendix A to Schedule 7.

*Comment date:* May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**35. Reliant Energy Maryland Holdings, LLC, Reliant Energy New Jersey Holdings, LLC and Reliant Energy Pennsylvania Holdings, LLC**

[Docket Nos. ER00–2417–000]

Take notice that on May 4, 2000, Reliant Energy Maryland Holdings, LLC, Reliant Energy New Jersey Holdings, LLC and Reliant Energy Pennsylvania Holdings, LLC (collectively, the Reliant Energy PJM Companies), tendered for filing pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d (1994), and Part 35 of the Commission's Regulations, 18 CFR 35, revisions to their tariffs to provide for sales of regulation service at market-based rates through the Pennsylvania-New Jersey-Maryland Interchange Energy Market (PJM PX). Each of the Reliant Energy PJM Companies has further revised its tariff to consolidate provisions regarding energy, capacity and ancillary services into one market-based tariff per company.

The Reliant Energy PJM Companies request waiver of the prior notice requirements of Section 35.3 of the Commission's regulations, 18 CFR 35.3, to permit their filing to become effective as of June 1, 2000, or the date on which the PJM Interconnection, L.L.C., implements amendment to its Open Access Transmission Tariff and Operating Agreement regarding market-based pricing for Regulation service.

*Comment date:* May 25, 2000, in accordance with Standard Paragraph E at the end of this notice.

**36. Cinergy Services, Inc.**

[Docket No. ER00–2418–000]

Take notice that on May 5, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cinergy Capital & Trading, Inc. (C&T).

Cinergy and C&T are requesting an effective date of April 5, 2000.

*Comment date:* May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**37. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC**

[Docket No. ER00–2419–000]

Take notice that on May 26, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 4 to Supplement No. 5 to the Market Rate Tariff to incorporate a Netting Agreement with Koch Energy Trading Inc., into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of March 23, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

*Comment date:* May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**38. New Century Services, Inc.**

[Docket No. ER00–2420–000]

Take notice that on May 5, 2000, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (the Companies), tendered for filing a service agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and PPL Montana LLC.

*Comment date:* May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**39. Cinergy Services, Inc.**

[Docket No. ER00–2422–000]

Take notice that on May 3, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Cinergy Capital & Trading, Inc., (C&T).

Cinergy and Conectiv are requesting an effective date of April 5, 2000.

*Comment date:* May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**40. Des Plaines Green Land Development, L.L.C.**

[Docket No. ER00–2423–000]

Take notice that on May 5, 2000, Des Plaines Green Land Development, L.L.C. (Des Plaines), tendered for filing its proposed Emergency Redispatch Tariff. The tariff provides for the dispatch of the Des Plaines Generation Facility during emergencies by Commonwealth Edison Co. (ComEd), the utility with which the facility is interconnected.

Des Plaines requests that the proposed tariff become effective April 11, 2000, the requested effective date of the Interconnection Agreement between Des Plaines and ComEd, and has therefore requested that the Commission waive its notice requirements.

Des Plaines has served copies of the filing on the Illinois Commerce Commission and ComEd, the only customer under the proposed tariff.

*Comment date:* May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**41. New England Power Pool**

[Docket No. ER00–2424–000]

Take notice that on May 5, 2000, the New England Power Pool Participants Committee submitted a Load Response Program and changes to Market Rule Appendix 20–B, and requested expedited consideration of the Program and these changes in order to have them become effective on June 1, 2000.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

*Comment date:* May 26, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12467 Filed 5–17–00; 8:45 am]

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP00–141–000]**

## Northwest Pipeline Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed White River Replacement Project and Request for Comments on Environmental Issues

May 12, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the White River Replacement Project involving construction and operation of facilities by Northwest Pipeline Corporation (Northwest) in King County, Washington.[1] These facilities would consist of about 2000 feet of pipeline. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys

[1] Northwest's application was filed with the Commission under section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice northwest provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

**Summary of the Proposed Project**

Northwest wants to ensure the long-term safety and integrity of its dual pipelines where they cross the meandering White River in King County, Washington, by replacing certain sections at a deeper depth. Northwest seeks authority to construct and operate 1900 feet each of its 26-inch-diameter and a 30-inch-diameter pipeline. Approximately 1600 feet of the abandonment and replacement would occur south of the river and 300 feet would occur north of the river. No construction activities would occur on these two pipelines in the active river as this section was previously buried at a sufficient depth. The replacement pipelines would be offset 100 feet west of the existing pipelines. Additionally, Northwest would remove a 665-foot length of 26-inch-diameter pipeline from the stream channel which was previously abandoned in-place. Northwest would construct a permanent stabilization structure on the north bank and a permanent habitat enhancement structure near the south bank.

The location of the project facilities is shown in appendix 1, figures 1–3.

**Land Requirements for Construction**

Replacement of the proposed facilities would require the use of 22.2 acres of land, including 6.0 acres of existing right-of-way (ROW), 10.7 acres of new ROW, 4.4 acres of industrial land located 3.3 miles to the west in the town of Auburn, and 1.1 acres of unimproved open land located 1400 feet north of the pipeline work area. The final permanent ROW would be 3.9 acres.

**The EA Process**

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have had proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- geology and soils
- water resources, fisheries, and wetlands
- vegetation and wildlife
- endangered and threatened species
- public safety
- land use
- cultural resources
- air quality and noise
- hazardous waste

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure our comments are considered, please carefully follow the instructions in the public participation section beginning on page 4.

**Currently Identified Environmental Issues**

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Northwest. This preliminary list of issues may be changed based on your comments and our analysis.

- Construction in a stream channel used by the federally threatened Puget Sound Chinook salmon and bull trout and the candidate species Coho salmon.
- Construction of fish habitat enhancement logjams near the south bank.
- Use of temporary and permanent ROW on the Muckleshoot Indian Reservation.
- Construction of a bank stabilization structure on the north side of the White River channel.
- Clearing of a 5.8-acre area of forest and scrub-shrub vegetation; and the disturbance of a 2-acre riparian area and a 0.1 acre area of wetland.

**Public Participation**

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded.

- Send two copies of your letter: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NW., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas Group 2.
- Reference Docket No. DP00–141–000.
- Mail your comments so that they will be received in Washington, DC on or before June 12, 2000.

**Becoming an Intervenor**

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12469 Filed 5–17–00; 8:45 am]

**BILLING CODE 6717–01–M**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6702–6]**

### Agency Information Collection Activities: Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program (National Wastewater Management Excellence Awards Program)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Questionnaire for the Annual National Clean Water Act Recognition Awards Program (National Wastewater Management Excellence Awards Program) EPA ICR Number 1287.05, and OMB Control Number 2040–0101, approved through December 31, 2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before July 17, 2000.

**ADDRESSES:** Office of Water, Office of Wastewater Management, Municipal Support Division, Municipal Assistance Branch, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Maria E. Campbell, 202–260–5815/Fax Number 202–260–0116/e-mail at campbell.maria@epa.gov.

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are public wastewater treatment plants, municipalities, industries, universities, manufacturing sites, and States.

*Title:* Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program (National Wastewater Management Excellence Awards Program) (OMB Control No. 2040–0101, EPA ICR No. 1287.05) expires 12/31/00.

*Abstract:* This ICR requests re-approval to collect data from EPA's National Clean Water Act Recognition Awards nominees. The awards are for the following program categories: Operations and Maintenance (O&M), Beneficial Use of Biosolids (Biosolids), Combined Sewer Overflow Controls (CSO), and Storm Water (SW) Management.

**Note:** Information collection approval for the Pretreatment awards program is included in the National Pretreatment Program ICR (OMB Control No. 2040–0009, EPA ICR No. 0003.08), approved through May 31, 2000.

The National Clean Water Act Recognition Awards Program is managed by EPA's Office of Wastewater Management (OWM). The Awards Program is authorized under section 501(e) of the Clean Water Act, as amended. The Awards Program is intended to provide recognition to communities and industries which have demonstrated outstanding technological achievements, innovative processes, devices or other outstanding methods in their waste treatment and pollution abatement programs. Approximately 50 awards are presented annually. The achievements of these award winners are summarized in reports, news articles, national publications, and **Federal Register** Notice.

The information is collected from approximately 200 respondents at a total cost of $79,200 per year and 2800 burden hours, including $46,000 and 1600 burden hours for the respondents' time, and $33,200 and 1200 burden hours for the States' review time. Submission of information on behalf of the respondents is voluntary. No confidential information is requested. The Agency only collects information from award nominees under a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. Based on the data collection, national panels will evaluate the nominees' efforts and recommend finalists. The collections will be used by the respective awards programs to evaluate and determine which abatement achievements should be recognized.

As currently structured, the O&M awards program has nine categories which recognize municipal achievements. The biosolids awards program has four categories which recognize municipal biosolids operations, technology and research achievements, and public acceptance; the CSO awards program has one category which recognizes municipal programs; and the SW awards program has two categories which recognize municipal and industrial programs. All nominees are screened for environmental compliance by the States and EPA. Municipalities and institutions desiring to be considered for National awards voluntarily complete the questionnaires and provide design and operating information about their facility or programs. The award nominations are reviewed by State/Regional officials prior to forwarding them for National award consideration. At the National level, award reviews involve Federal officials and review panels comprised of representatives of EPA, State water pollution control agencies, and affiliated associations.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

*Respondents:* Officials at public wastewater treatment plants,

municipalities, industries, universities, States and manufacturing sites.

*Estimated Number of Respondents:* 200.

*Estimated Number of Responses Per Respondent:* 1.

*Frequency of Collection:* Once a year.

*Estimated Total Annual Burden on Respondents:* 2800 hours (1600 hours for the response time and 1200 hours for the States' review time).

Burden means the total time, effort, or financial resources expended to generate, maintain, retain, disclose, or provide information to EPA. This estimate includes the time needed to review instructions, collect, validate, and verify information; complete and review the collection of information; and transmit the information to EPA.

Dated: May 2, 2000.

**Michael B. Cook,**

*Director, Office of Wastewater Management.*

[FR Doc. 00–12523 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6702–2]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Performance Track Program Level One: The Environmental Achievement Track

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Performance Track Program Level One: The Environmental Achievement Track, ICR Number 1949.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before June 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No.1949.01. For technical questions about the ICR contact Ken Munis, at 202–260–9560.

**SUPPLEMENTARY INFORMATION:**

*Title:* Performance Track Program Level One: The Environmental Achievement Track, EPA ICR No. 1949.01. This is a new collection.

*Abstract:* The Environmental Protection Agency is developing a national Performance Track Program. In the July, 1999 report, "Aiming for Excellence: Actions to Encourage Stewardship and Accelerate Environmental Progress," the Agency committed to developing a Performance Track Program to reward and motivate top environmental performance.

The Performance Track is a two-tiered, voluntary program designed to promote leadership in environmental protection through the use of Environmental Management Systems (EMS), Pollution Prevention Programs, and public reporting. Qualifying program participants will benefit from a variety of incentives, such as public recognition, reduced monitoring and reporting, and operational flexibility. EPA will announce and begin to solicit applications for level one of the Performance Track, the Environmental Achievement Track, in June of 2000. Level two, the Environmental Stewardship Track, will be announced in May of 2001.

Participation in the Performance Track program is voluntary. To be considered for acceptance into the program, applicants for the Environmental Achievement Track will be asked to submit information documenting their EMS, history of compliance with EPA regulations, commitment to continuous environmental performance improvement, and commitment to public outreach and performance reporting. Upon acceptance to the Environmental Achievement Track, participants will be required to make environmental performance reports accessible to the public.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 3/02/2000 (65 FR 11305); no comments were received.

· *Burden Statement:* The annual public reporting and record keeping burden for this collection of information is estimated to average 252 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Various Industries

*Estimated Number of Respondents:* 250.

*Frequency of Response:* Annually .

*Estimated Total Annual Hour Burden:* 50,450 hours.

*Estimated Total Annualized Capital, O&M Cost Burden:* 0

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1949.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave, NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 11, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–12518 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6701–2]

### National Drinking Water Advisory Council; Contaminant Candidate List and 6-Year Review of Existing Regulations Working Group; Notice of Open Meeting

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice.

Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Contaminant Candidate List (CCL) Regulatory Determination and 6-Year Review of Existing Regulations Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held June 5–6, 2000, from 8:30 a.m.–5:00 p.m. ET (approximately), at RESOLVE, 1255 23rd Street, NW, Suite 275, Washington, DC 20037. The meeting is open to the public to observe and statements will be taken from the public as time allows. Seating is limited.

This is the first of three scheduled meetings to address the 6-Year Review of Existing Regulations. The purpose of the meeting is to begin the process of developing a protocol for selecting existing National Primary Drinking Water Regulation (NWPDRs) for possible revision. As a starting point, the Working Group will review a strawman protocol developed by U.S. EPA. Final recommendations will be forwarded to the full NDWAC for further consideration.

For more information, contact April McLaughlin, Designated Federal Officer, Contaminant Candidate List and Regulatory Determination and 6-Year Review of Existing Regulations Working Group, U.S. EPA (4607), Office of Ground Water and Drinking Water, 401 M Street SW, Washington, DC 20460. The telephone number is 202–260–5524, fax 202–401–6135, and e-mail *mclaughlin.april@epa.gov*.

Dated: May 8, 2000.

**Janet Pawlukiewicz,**

*Acting Designated Federal Officer, National Drinking Water Advisory Council.*

[FR Doc. 00–12521 Filed 5–17–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 12, 2000.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written comments should be submitted on or before June 19, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0410.

*Title:* Forecast of Investment Usage Report and Actual Usage of Investment Report.

*Report No.:* FCC Reports 495–A and FCC 495–B.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 300.

*Estimated Time Per Response:* 40 hours.

*Frequency of Response:* Annual reporting requirement.

*Total Annual Burden:* 12,000 hours.

*Total Annual Cost:* N/A.

*Needs and Uses:* The Forecast of Investment Usage Report and the Actual Use of Investment Report implement the FCC's *Joint Cost Order,* which requires that certain telephone plant investments used for both regulated and nonregulated purposes be allocated on the basis of forecasted regulated and nonregulated use. The detection and correction of forecasting errors requires reporting of both forecasted and actual investment usage data. Sixty incumbent local exchange carriers (ILECs) file the annual reports based on study areas. If the data were collected less frequently, the Commission would not have the data in a timely manner to perform its functions. These annual reports are designed to obtain the data that are needed to evaluate ILECs proposed annual tariffs and to ensure against cross subsidization of nonregulated operations by related operations. These regulated activities are in the interests of, and for the benefit of, the ratepayers. These data are also a part of the data necessary to support the Commission's audit and other oversight functions.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–12497 Filed 5–17–00; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 2410]**

### Petitions for Reconsideration of Action in Rulemaking Proceeding

May 12, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by June 2, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time of filing oppositions has expired.

*Subject:* Implementation of the Satellite Home Viewer Improvement Act of 1999 (CS Docket No. 99–363).
*Number of Petitions Filed:* 2.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–12498 Filed 5–17–00; 8:45 am]

BILLING CODE 6712–01–M

## FEDERAL ELECTION COMMISSION

### Sunshine Act Meetings

**AGENCY:** Federal Election Commission.

### Cancellations of Previously Announced Meetings

*Tuesday, May 16, 2000, 10 a.m.*

Meeting closed to the public.

*Thursday, May 18, 2000, 10 a.m.*

Meeting open to the public.

**DATE AND TIME:** Tuesday, May 23, 2000 at 10 a.m.

**PLACE:** 999 E Street NW, Washington, DC.

**STATUS:** This meeting will be closed to the public.

**ITEMS TO BE DISCUSSED:**

Compliance matters pursuant to 2 U.S.C. 437g.
Audits conducted pursuant to 2 U.S.C. 437g, 438a(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

**DATE AND TIME:** Thursday, May 25, 2000 at 10 a.m.

**PLACE:** 999 E Street NW, Washington, DC (ninth floor).

**STATUS:** This meeting will be open to the public.

**ITEMS TO BE DISCUSSED:**

Correction and approval of Minutes
Draft Advisory Opinion 2000–06
Gerald M. Moan on behalf of the 2000 Convention Committee of the Reform Party U.S.A.
Draft Advisory Opinion 2000–07
Alcatel USA, Inc. by counsel, Jonathan B. Newton
Proposal to initiate a Notice of Proposed Rulemaking on Political Committee Definition (11 CFR 100.5)
Administrative matters.

**PERSON TO CONTACT FOR INFORMATION:** Ron Harris, Press Officer, telephone: (202) 694–1220.

**Mary W. Dove,**

*Acting Secretary of the Commission.*

[FR Doc. 00–12623 Filed 5–16–00; 11:39 am]

BILLING CODE 6715–01–M

## FEDERAL HOUSING FINANCE BOARD

### Sunshine Act Meeting

### Announcing an Open Meeting of the Board

**TIME AND DATE:** 10 a.m., Monday, May 22, 2000.

**PLACE:** Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

**STATUS:** The entire meeting will be open to the public.

**MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:**

- Proposed Rule: FHLBank Capital Structure.

**CONTACT PERSON FOR MORE INFORMATION:** Elaine L. Baker, Secretary to the Board, (202) 408–2837.

**William W. Ginsberg,**

*Managing Director.*

[FR Doc. 00–12631 Filed 5–16–00; 2:22 pm]

BILLING CODE 6725–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Office of Public Health and Science; Availability of Funds and Requests for Applications for Cooperative Agreements for the National Community Centers of Excellence (CCOE) in Women's Health Program

**AGENCY:** Office of the Secretary, Office of Public Health and Science, Office on Women's Health.

**Purpose**

To provide recognition and funding to community-based programs that unite promising approaches in women's health across five components: (1) Comprehensive health service delivery, (2) training for lay and professional health providers, (3) community-based research, (4) public education/outreach, and (5) leadership development for women as health care consumers and providers. The focus of the CCOE initiative is not to develop new programs or to fund direct service or research, but rather to integrate, coordinate, and strengthen linkages between activities that are already underway in the community in order to reduce fragmentation in women's health services and activities. Another major purpose of the CCOE program is to foster the replication of promising models and strategies that coordinate and integrate women's health activities at the community level and improve health outcomes for underserved women.

The CCOE program addresses women's health from a women-centered, holistic, multi-disciplinary, and community-based perspective (see definitions below). Women's health issues are defined in the context of women's lives, including their multiple social roles and the importance of relationships with other people to their lives. This definition of women's health encompasses both mental and physical health (including oral health) and spans the life course.

The CCOE program will operate under cooperative agreements, to allow a collaborative relationship between the CCOE and the federal agencies. The funding agencies of the Department of Health and Human Services (HHS) include the Office on Women's Health; the Office of Minority and Women's Health in the Bureau of Primary Health Care of the Health Resources and Services Administration; and the Office of Minority Health. These agencies will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of program activities.

HHS is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010. Emphasis will be placed on aligning activities and programs with the Healthy People 2010: Goal 2—eliminating health disparities due to age, gender, race/ethnicity, education, income, disability, living in rural localities, or sexual orientation. More information on the Healthy People 2010 objectives may be found on the Health People 2010 web site: *http://www.health.gov/healthypeople*. Copies of the Healthy People 2010: Conference Edition Volumes I and II can be purchased by calling (301) 468–5960 (cost $22.00). The reference document entitled "Healthy People 2010: Understanding and Improving Health" is available for $9.00. Another reference is the Healthy People 2000 Review—1998–99. One free copy may be obtained from the National Center for Health Statistics (NCHS), 6525 Belcrest Road, Room 1064, Hyattsville, MD 20782 or telephone (301) 436–8500 (*DHHS Publication No,. (PHS) 99–1256). This document may also be downloaded from the NCHS web site: http://www.cdc.gov/nchs.

*Program Goals*

1. Reducing the fragmentation of services and access barriers that women encounter by providing a framework for the coordination and integration of comprehensive health services with research, training, and leadership

activities in the community to advance women's health.

2. Creating healthier communities with a more integrated and coordinated infrastructure for women's health targeted at underserved women.

3. Empowering underserved women as health care consumers and decision-makers.

4. Increasing the women's health knowledge base with rigorous, community-based research that reflects the health needs and issues of underserved women.

5. Increasing the number of health professionals who have training in working with underserved communities, boosting the number of girls who pursue health careers, and increasing the leadership skills and opportunities for women in the community and those who provide health services to the community.

6. Spreading the successes of model women's health strategies and new innovations to communities across the country.

7. Eliminating health disparities for women who are underserved due to age, gender, race/ethnicity, education, income, disability, living in rural localities, or sexual orientation.

**Background**

The National Centers of Excellence in Women's Health (CoEs) have been functioning in academic health centers since 1996. The unique feature of the CoE program has been the way it has brought together the disparate set of women's health activities that take place in academic health centers: linking together women's health research, medical education, clinical services, community outreach, and leadership development for women in academic medicine to create a more dynamic and informed system of care. The primary role of the CoEs has been to unite women's health activities and programs, promote multi-disciplinary and cross-departmental collaborations, and institutionalize a more integrative approach to women's health in academic health centers. The success of the CoE model has been rooted in this integrative approach.

The intent of the National Community Centers of Excellence in Women's Health Program (CCOE) is to maintain an emphasis on the linkage, coordination, and sharing of knowledge between different activities in women's health. Like the CoE program, the CCOE program will use an integrative approach, with the funding focused on linking activities rather than on creating new ones from the ground up. The CCOE program will adopt the components of the CoE Program (women's health research, health provider training, comprehensive clinical services, community outreach, and leadership development), but will focus on the community-based organization as the nucleus for operationalizing the new model. The CCOE program will also add a technical assistance component, so that the lessons learned from this unique model can be replicated in other communities around the country.

The CCOE program will be distinct from the CoE program in two important ways:

1. Applicants must be a community hospital, community health center, or other community-based organization. One award will be reserved for a community health center funded under Section 330 of the Public Health Service Act. Applications from academic health centers or organizations that are part of academic health centers will not be accepted as the CoE model is designed for such organizations.

2. To increase the geographic range of the Center of Excellence model, applications will be accepted from organizations in all of the American States and Territories except those that currently have CoE programs including CA, CT, IL, IN, LA, MA, MI, NC, PA, PR, WA, and WI.

As noted in Healthy People 2010, which outlines the health goals for our Nation, most successful community health initiatives involve multiple disciplines and interventions, linking community strengths and resources so that the whole is indeed greater than the sum of its parts. The CCOE program will link resources across women's health activities and disciplines to increase awareness/ knowledge, and to move women's health efforts forward more efficiently.

**Eligible Applicants**

Applicants must be a public or private nonprofit community-based hospital, community health center, or community-based organization serving underserved women. Academic health centers or organizations that are part of academic health centers are not eligible for funds under this announcement. To increase the geographic range of the overall Center of Excellence model, applications will be accepted from organizations in all of the American States and Territories except those which already have a National Center of Excellence in Women's Health (CoE) program. Thus applications will not be accepted from programs in the following states: CA, CT, IL, IN, LA, MA, MI, NC, PA, PR, WA, WI. One award will be reserved for a community health center funded under section 330 of the Public Health Service Act.

**Deadline**

To receive consideration, applications must be received by June 30, 2000 at 2 p.m. (Eastern Time). Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Application submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

**Addresses/Contacts**

Applications must be prepared using Form PHS 5161–1 (Revised June 1999). Application kits and questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed in writing to Ms. Anna Kindermann, Division of Program Management, Office on Women's Health, Parklawn Building, Room 16A–55, 5600 Fishers Lane, Rockville MD 20857, email: akindermann@osophs.dhhs.gov.

Completed applications are to be submitted to: Ms. Anna Kindermann, Division of Program Management, Office on Women's Health, Parklawn Building, Room 16A–55, 5600 Fishers Lane, Rockville MD 20857.

Technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Division of Management Operations, Office of Minority Health, Office of Public Health and Science, Rockville, MD, 20852, telephone (301) 594–0758, Ext. 157.

**Availability of Funds**

Approximately $450,000 is available for award in FY 2000 under this announcement. It is projected that awards of up to $150,000 total costs (direct and indirect) for a 12-month period will be made to approximately 3 competing applicants.

**Period of Support**

The start date for the cooperative agreement is September 30, 2000. Support may be requested for a total project period not to exceed 5 years.

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Noncompeting continuation awards of up to $150,000 will be made subject to satisfactory performance and availability of funds.

**Use of Grant Funds**

*Project Requirements*

The major component of a CCOE program must consist of activities aimed at developing and strengthening a framework for bringing together a comprehensive array of services for women, and connecting those with promising strategies to: train a cadre of health care providers that are capable of addressing underserved women's health needs at the community level with an emphasis on prevention or moderation of illness or injury that appear controllable through individual knowledge and behavior; conduct participatory, community-based research in women's health; enhance public education and outreach activities in women's health with an emphasis on prevention or moderation of illness or injury that appear controllable through individual knowledge and behavior; and promote leadership/career development for women in the health professions and women/girls in the community. A project may develop outreach and education materials, training programs, and leadership development activities/ materials. Award recipients must also, with input from community representatives, put into place and track a set of measurable objectives for improving health outcomes and decreasing health disparities for underserved women in the community.

Each CCOE must also demonstrate an ability to foster the transfer of lessons learned and successful strategies. These may include either process-based lessons (for example: How to bring multiple community partners together) or outcomes-based lessons (for example: How to increase diabetes screening and control through improved outreach, education, and treatment). The CCOEs must foster the replication of promising models from their sites through activities such as showcasing them at meetings and workshops; providing direct technical assistance to other communities; developing replication guides/materials; and providing technical assistance to health professionals, directly or through their professional organizations, interested in working with under-served women in the community.

**Use of Funds**

A majority (75%) of the funds from the CCOE award must be targeted at staffing and efforts aimed at coordinating and integrating the major components of the CCOE program. The remainder (25%) of the award funding must be targeted at staff and efforts to foster the transfer of lessons learned/ successful strategies from the CCOE program.

Funds may be used to cover costs of personnel, consultants, supplies (including screening, education, and outreach supplies), equipment, and grant related travel. Funds may not be used for construction, building alterations, medical treatment, or renovations. All budget requests must be fully justified in terms of the proposed goals and objectives and include a computational explanation of how costs were determined.

**Criteria for Evaluating Applications**

*Review of Applications*

Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive to the announcement or nonconforming will be returned without comment. Accepted application will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by a technical review panel composed of government experts in the fields of program management, community service delivery, community outreach, health education, community research, and community leadership development. Consideration will be given to applicants that demonstrate progress toward eliminating health disparities through the integration of services, research, education, training, and leadership/career development. Preference will also be given to applicants located in rural, medically underserved areas. Applicants are advised to pay close attention to the specific program guidelines and general instructions in the application kit.

*Application Requirements*

Each applicant for a cooperative agreement funded under this announcement must:

1. Be a sustainable organization with an established network of partnering organizations capable of ensuring a coordinated women's health system in the community. The network of partnering organizations must have the capacity to plan and coordinate comprehensive health services (as defined below) for women and unite them with community-based women's health research, teaching/training opportunities in community women's health, leadership opportunities for women in health, and community outreach/education activities in women's health.

2. Demonstrate the ways in which the organization and the care that is coordinated through its partners are women-focused and sensitive to the importance of patient/provider communication/ relationships for medically underserved women of all ages. The care that is coordinated through this organization must be focused on health promotion, disease prevention, and treatment.

3. Detail/specify the roles and resources that each partnership organization will bring to the project and state the duration and terms of agreement, as confirmed by a signed agreement between the applicant organization and each partner. The documents must be signed by individuals with the authority to represent the organization (*e.g.*, president chief executive officer, executive director).

*Application Review Criteria:* The technical review of applications will consider the following factors:

Factor 1: Background—10%

Adequacy of demonstrated knowledge of systems of health care for underserved women at the local level; demonstrated need within the proposed community and target population of underserved women; demonstrated support and established linkages in order to conduct proposed National Community Center of Excellence in Women's Health model; extent and documented outcome of past efforts/ activities with underserved women.

Factor 2: Objectives—10%

Merit of the objectives outlined by the applicant to address the CCOE program goals (outlined above) in a way relevant to community needs and resources. Objectives should be measurable and attainable in the stated time frame.

Factor 3: Methodology—55%

I. Extent to which the applicant demonstrates access to medically underserved women.

II. Soundness of pre-existing community resources and linkages that can be built upon and coordinated to meet the requirements of the CCOE program.

III. Appropriateness of proposed approach and specific activities described to address each element of the National Community Center of Excellence in Women's Health program including 1.comprehensive women's health services, 2. public outreach and education, 3. training for professional and lay health care workers working

with underserved women, 4. participatory community-based research, 5. leadership/career development for women providers, and women/girls in the community, and 6. ability to train others in lessons learned and replication of successful strategies.

IV. Soundness of evaluation objectives for measuring program effectiveness and changes in health outcomes.

Factor 4: Management Plan—15%

Applicant organization's capability to manage and evaluate the project as determined by: the qualifications of proposed staff or requirements for "to be hired" staff, proposed staff level of effort, management experience of the lead agency; and the experience of each partnership organization as it relates to its defined roles and to the National Center of Excellence in Women's Health model.

Factor 5: Evaluation—10%

Thoroughness, feasibility and appropriateness of the evaluation design, and data collection and analysis procedures for the establishment of a National Community Center of Excellence in Women's Health. Potential for replication of the project for similar target populations and communities.

Award Criteria

Funding decisions will be determined by the *Director, Division for Program Management, Office on Women's Health*, and will take under consideration: the recommendations and ratings of the review panel; funding preference; geographic distribution; and health problem areas having the greatest impact on women's health. Consideration will be given to projects proposed to be implemented in Empowerment Zones, Enterprise Communities; and preference to those in rural, medically underserved areas.

**Definitions**

For the purposes of this cooperative agreement program, the following definitions are provided:

Community-based: In which the locus of control and decision-making powers are located at the community level, representing the community or a significant segment of the community.

Community-based Organization: Public and private, non-profit organizations which are representative of communities or significant segments of communities.

Community health center: A community-based organization that provides comprehensive primary care and preventive services to medically underserved populations. This includes but is not limited to Federally Qualified health centers, Federally Qualified health center look-alike, Migrant Health Centers, Primary Care Public Housing Health Centers, Healthcare for the Homeless Centers, and other community-based health centers.

Comprehensive women's health services: Services including, but going beyond traditional reproductive health services to address the health needs of underserved women in the context of their lives, including a recognition of the importance of relationships in women's lives, and the fact that women play the role of health providers and decision-makers for the family. Services include basic primary care services; acute, chronic, and preventive services; mental and dental health services; patient education and counseling; promotion of healthy behaviors (like nutrition, smoking cessation, substance abuse services); and enabling services. Ancillary services are also provided such as laboratory tests, X-ray, environmental, and pharmacy services.

Coordinated care: The formal linkages, case management services, partnering arrangements, and patient advocate supports that rationalize women's health resources and help underserved women to navigate through the comprehensive health services they need. Community-based organizations are expected to coordinate with State and local health departments, nonprofit organizations, academic institutions, or other local organizations in the community as appropriate.

Culturally competent: Information and services provided in the language, educational, and cultural context that is most appropriate for the individuals for whom the information and services are intended.

Enabling services: Services that help women access health care, such as transportation, translation, child care, and case management.

Healthy People 2010: A set of national health objectives that outlines the prevention agenda for the Nation. Healthy People 2010 identifies the most significant preventable threats to health and establishes national goals for the next ten years. Individuals, groups, and organizations are encouraged to integrate Healthy People 2010 into current programs, special events, publications, and meetings. Businesses can use the framework, for example, to guide worksite health promotion activities as well as community-based initiatives. Schools, colleges, and civic and faith-based organizations can undertake activities to further the health of all members of their community. Health care providers can encourage their patients to pursue healthier lifestyles and to participate in community-based programs. By selecting from among the national objectives, individuals and organizations can build an agenda for community health improvement and can monitor results over time.

Holistic: Looking at women's health from the perspective of the whole person and not as a group of different body parts. It includes mental as well as physical health.

Integrated: In the CCOE context, the bringing together of the numerous spheres of activity that touch women's health, including clinical services, research, health training, public health outreach and education, and leadership development for women. The goal of this approach is to unite the strengths of each of these areas, and create a more informed and efficient system of women's health for underserved women.

Multi-disciplinary: An approach that is based on the recognition that women's health crosses many disciplines, and that women's health issues need to be addressed across multiple disciplines, such as adolescent health, geriatrics, cardiology, mental health, reproductive health, nutrition, dermatology, endocrinology, immunology, rheumatology, etc.

Participatory, community-based research: Research in which community members participate on equal footing, to maximize the potential for exchange in knowledge and implementation of research findings. Community members work with researchers to help determine research issues, shape the research process/ objectives, and bring research results back to the community. The shared goal is to maintain scientific rigor in the research methods, while also incorporating the skills, knowledge, and strengths of the participants/ beneficiaries of the research. There is an emphasis on ensuring that research results are translated into practice and communicated back to the community.

Sustainability: An organization's or program's staying power: the capacity to maintain both the financial resources and the partnerships/linkages needed to provide the services demanded by the CCOE program. It also involves the ability to survive change, incorporate needed changes, and seize opportunities provided by a changing environment.

Underserved Women: In the context of the CCOE model, women who encounter barriers to health care that result from any combination of the following characteristics: poverty,

ethnicity and culture, mental or physical state, housing status, geographic location, language, sexual orientation, age, and lack of health insurance.

Women-centered: Addressing the needs and concerns of women in an environment that is welcoming to women, fosters a commitment to women, treats women with dignity, and empowers women through respect and education. The emphasis is on working with women not for women. Women clients are considered active partners in their own health and wellness.

**Reporting and Other Requirements**

*General Reporting Requirements*

In addition to those listed above, a successful applicant will submit an annual progress report, an annual Financial Status Report, and a final Progress Report and a final Financial Status Report in the format established by the Office on Women's Health, in accordance with provisions of the general regulations which apply under "Monitoring and Reporting Program Performance," 45 CFR part 74, Subpart J and Part 92

*Provision of Smoke-Free Workplace and Nonuses of Tobacco Products by Recipients of PHS Grants*

HHS strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

*Public Health System Reporting Requirements*

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised on proposed health services grant applications submitted by community-based non-governmental organizations within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate state and local health agencies in the area(s) to be impacted: (a) a copy of the face page of the application (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, (3) a description of the coordination planned with the appropriate state or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office on Women's Health.

*State Reviews*

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline. The Office on Women's Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See "Intergovernmental Review of Federal Programs," Executive Order 12372, and 45 CFR Part 100 for a description of the review process and requirements.)

**Authority:** This program is authorized by 42 U.S.C. 300u–2(a)(1), 300u–3, and 300u–6(e).

**OMB Catalog of Federal Domestic Assistance**

The OMB Catalog of Federal Domestic Assistance Number is pending.

Dated: May 11, 2000.

**David Satcher,**

*Assistant Secretary for Health and Surgeon General.*

[FR Doc. 00–12462 Filed 5–17–00; 8:45 am]

BILLING CODE 4160–17–U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcement No. ACF/ACYF/HS 2000–08]**

### FY 2000 Announcement of Financial Assistance To Expand Head Start Enrollment

**AGENCY:** Administration on Children, Youth and Families (ACYF), ACF, DHHS.

**ACTION:** FY 2000 Announcement of financial assistance to expand Head Start enrollment.

**SUMMARY:** The Head Start Bureau of the Administration on Children, Youth and Families announces that competing applications will be accepted to fund Head Start programs to serve Federally-recognized Indian reservations and Alaska Native villages not currently served by Head Start and areas where Head Start services are not available for the children of migrant and seasonal farm workers. It is expected that a total of approximately $3,000,000 will be awarded to support these programs.

**DATES:** The closing date for receipt of applications is July 21, 2000.

**ADDRESSES:** Applications should be submitted to: Head Start Unserved Competition, ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209, Phone # 1–800–351–2293.

Copies of the program announcement and necessary application forms can be downloaded from the Head Start Web site at: *www.acf.dhhs.gov/programs/hsb*

**FOR FURTHER INFORMATION CONTACT:** ACYF Operations Center at: 1815 N. Fort Myer Drive, Suite 300, Arlington, VA 22209 or telephone: 1–800–351–2293 or email to: ehs@lcgnet.com

**SUPPLEMENTARY INFORMATION:**

**Part I. General Information**

*A. Background*

Head Start is a national program providing comprehensive developmental services primarily to low-income preschool children and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of the parents of enrolled children in the development, conduct, and direction of local programs. Head Start currently serves approximately 835,000 children

through a network of 1520 grantees and more than 700 delegate agencies.

While Head Start is targeted primarily towards children whose families have incomes at or below the poverty line, regulations permit up to ten percent of the Head Start children in local programs to be from families who do not meet these low-income criteria. The Head Start statute also requires that a minimum of ten percent of enrollment opportunities in each program be made available to children with disabilities. Such children are expected to be enrolled in the full range of Head Start services and activities in a mainstream setting with their non-disabled peers, and to receive needed special education and related services.

Head Start programs are locally-designed to provide services through a variety of program options, based on the needs of local families that are not being met by existing early childhood and child care programs. Program options include part-day/part-year and full-day/full year center-based programs, home-based programs, combinations of center and home-based options and locally designed options.

Head Start for Children of Migrant and Seasonal Farmworkers

For purposes of establishing eligibility for Migrant Head Start services, a migrant family is defined as follows:

A family with one or more children under the age of compulsory school attendance who changed their residence by moving from one geographic location to another, either intrastate or interstate, within the past two years, for the purpose of engaging in agricultural work.

A seasonal farmworker family is a family engaged primarily in seasonal agricultural labor who has not changed its residence to another geographic location in the preceding two years.

In addition to providing the comprehensive child development services that all Head Start programs provide, Migrant/Seasonal Head Start programs typically operate for extended hours (8 to 12 hours per day), depending on the parents' work schedules, and may serve children five to seven days per week. Migrant/Seasonal programs also typically provide child development and child care services to infants, toddlers and preschool-aged children.

**Note:** Recent changes to the Head Start Act allow migrant Head Start programs to serve seasonal farmworker families in addition to serving migrant families. However, seasonal farmworker families may be served only where there is an adequate level of services being provided to migrant families. This expansion is targeted on those states in which there are no migrant programs, despite the presence of significant numbers of migrant families. Any request for serving seasonal farmworker families must be fully explained by the applicant, including the reasons such a proposal is being made and why the applicant believes that an adequate level of services is being provided to migrant families.

Statutory and Regulatory Authority

The Head Start program is authorized by the Head Start Act, 42 U.S.C. 9831 *et seq.*, as amended.

The relevant regulations are:

- 45 CFR part 1301, Head Start Grants Administration.
- 45 CFR part 1302, Policies and Procedures for Selection, Initial Funding and Refunding of Head Start Grantees, and for Selection of Replacement Grantees.
- 45 CFR part 1303, Appeal procedures for Head Start grantees and current or prospective delegate agencies.
- 45 CFR part 1304, Program performance standards for the operation of Head Start programs by grantees and delegate agencies.
- 45 CFR part 1305, Eligibility, recruitment, selection, enrollment and attendance in Head Start.
- 45 CFR part 1306, Head Start staffing requirements and program options.
- 45 CFR part 1308, Head Start program performance standards on services for children with disabilities.
- 45 CFR part 1309, Head Start Facilities Purchase
- 45 CFR part 74, Uniform administrative requirements for awards and subawards to institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations; and certain grants and agreements with States, local governments and Indian tribal governments
- 45 CFR part 92, Uniform administrative requirements for grants and cooperative agreements to State and local governments.

*B. Purpose of Announcement*

This announcement solicits applications from eligible applicants that wish to compete for Head Start grants to serve Federally-recognized Indian reservations not currently served by Head Start and areas where Head Start services are not available for the children of migrant and seasonal farm workers.

The Administration on Children, Youth and Families (ACYF) is also providing funding to expand Head Start services through two other national competitions. Head Start Bureau Program Instruction ACYF–HS–PI–00–02, issued on February 15, 2000, announced the availability of approximately $185,000,000 to increase enrollment in geographical areas currently served by Head Start grantees. In addition, an announcement published in the **Federal Register** on February 29, 2000 describes a competition for approximately $40,000,000 to expand services to children under age three and pregnant women in low-income families through funding additional Early Head Start programs.

*C. Eligible Applicants*

Expansion applications under this announcement should be submitted under one of the following two categories:

*Category 1.* Applicants that wish to serve Head Start-eligible children living on Federally-recognized Indian reservations or Alaskan Native villages where a Head Start program does not currently operate.

Eligible applicants are the Tribal governments of unserved reservations that wish to initiate a Head Start program or agencies designated by these Tribal governments.

*Category 2.* Applicants that wish to serve Head Start-eligible children of migrant or seasonal farm workers in the following states:

Connecticut, Iowa, Kansas, Kentucky, Louisiana, Massachusetts, Mississippi, Missouri, Montana, Oklahoma, and Puerto Rico.

Eligible applicants are local public or private non-profit or for profit agencies.

*D. Available Funds*

*Category 1.* For applicants applying to serve preschool children on unserved Indian reservations under Category 1, up to approximately $1,000,000 will be made available. No minimum enrollment level has been established for new Indian Head Start projects. Applicants should propose to serve a sufficient number of children to ensure a viable and cost-efficient program.

*Category 2.* For applicants applying to serve migrant and seasonal children (infants, toddlers and preschoolers) under Category 2, up to approximately $2,000,000 will be made available. While no minimum enrollment level has been established for Migrant Head Start projects, applicants should indicate a sufficient number of eligible children to ensure a viable and cost-efficient program. Factors to be addressed related to program viability should include the size of the service area proposed and a sufficient population to justify program services in "off years" when the population of

migrant children might be low due to crop failure, variations in the migrant stream or natural disasters such as drought or flood.

*E. Recipient Share of the Project*

Section 640(b) of the Head Start Act requires, with certain exceptions, that at least 20 percent of the total cost of a Head Start project come from sources other than the Federal government. Therefore, a project requesting $100,000 in Federal funds must include a match of at least $25,000 (20 percent of the total project costs). The non-Federal share may be in cash or in-kind, fairly valued, and may include facilities, equipment or volunteer services. In certain instances, as described in Section 640(b) of the Head Start Act, the requirement for a 20 percent non-federal match may be waived in part or in whole.

Expansion funds should not be used to support services that were previously provided without Federal assistance. However, expansion funds can be used to provide Head Start services, either directly or through a delegate agency, to eligible families who are enrolled in other program settings but not currently receiving comprehensive Head Start services.

Applicants may use a variety of strategies for delivering services, including:

- Combining child care, pre-kindergarten and other resources with Head Start funds and directly managing full-day, full-year services.
- Funding new delegate agencies or other appropriate arrangements which will enable local child care agencies, preschool programs or family child care providers to provide Head Start services.

**Part II. Application Requirements**

*A. Purpose of Project Description*

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specified project for which funds are requested.

*B. General Instructions*

Cross-referencing should be used rather than repetition. ACYF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

The Head Start Bureau is also requesting that applicants provide a summary of the project description which includes:

- The name and address of the applicant agency.
- The category of application (Category 1 or 2).
- The total number of children to be served when the program is fully operational. For applicants applying under Category 2, include the number of infant and toddlers and the number of preschoolers proposed to be served. Also include the number of children of migrant farmworkers and the number of children, if any, of seasonal farmworkers.
- The total ongoing ACYF funds requested for a 12 month period when the project is fully operational. (Do not include one-time start-up funds here.)
- The amount of any proposed one-time start-up funding requested from ACYF.
- The amount and source of any additional funding that will help support the project (i.e., funds that are in addition to Federal Head Start funds and beyond the amounts required to meet non-federal-share requirements).

The community(ies) to be served (name of town(s), city (ies) and county(ies), or the Federally recognized Indian Reservation where children will be served.

- The type of program option(s) proposed (part-day, full-day, home-based, combination program option or locally-designed options such as family child care) and proposed hours per day and days per year that children will be served in each option.
- The target date for beginning full services to new children.

*C. Objectives and Need for Assistance*

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to. Incorporate demographic data and participant/beneficiary information, as needed.

The Head Start Bureau is particularly interested in the following:

1. A description of the need for Head Start services within the agency's service area. Provide an analysis of changes in family needs, including the implications of welfare reform and employment patterns on family needs for child care and other support services. Include data on eligible, unserved children and families. Identify any special populations of low-income children and families that have been unserved or underserved by Head Start in the past.

2. A description of the services, resources, and capacities of other local child care and early childhood programs and providers serving low-income families and how the proposed strategy for expansion of Head Start will complement and enhance the effectiveness of these other community agencies.

3. Evidence of the involvement of community agencies that serve low-income families, such as child care, early childhood education, health, welfare and other programs, in the assessment of community and family needs and the development of proposed priorities and strategies.

4. A description of the children and families to be served, the type of program option that will be operated and the geographic area in which program services will be expanded. Explain: (i) The rationale for the decisions made and how they are supported by the applicant's community assessment and consultations; (ii) how the proposed expansion will meet the needs of families for full-day, full-year services and (iii) how the proposal will help assure that all families within the service area, regardless of their cultural, linguistic or ethnic backgrounds, have

an improved opportunity to be considered for Head Start enrollment. Describe any special efforts to reach previously unserved or underserved populations of low-income families.

*D. Results or Benefits Expected*

Identify the results and benefits to be derived.

The Head Start Bureau is particularly interested in the following:

1. Based on the stated program objectives, identify the specific results or benefits that could be expected for children and families participating in the program. Identify the specific community-wide results or benefits including those resulting from collaborative partnership with other child and family development staff working in a variety of community agencies.

2. Identify both qualitative and quantitative data the program will collect to measure progress towards the stated results or benefits. Identify how the program will determine the extent to which it has achieved its stated objectives.

*E. Approach*

Outline a plan of action that describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

The Head Start Bureau is particularly interested in the following:

1. A description of how children and families will be recruited and selected for the program. Describe procedures to ensure that services will be provided to individuals who have the most serious need for Head Start services, including children with disabilities and unserved and underserved populations.

2. A description of strategies for delivering high quality services to children and family members, as defined by the Head Start Performance Standards, including the involvement of parents and other community members and organizations in the program strategy. Include, as appropriate, a discussion of all proposed collaborative relationships with other local organizations and the nature of the proposed collaboration(s). If applicable, describe any proposed modifications or improvements in current program practices, such as adaptations to encourage parent involvement by low-income working families.

3. A staffing pattern that will enable services to be provided in accordance with the Head Start Program Performance Standards in all component areas. Identify all proposed staff or staff positions, their proposed salary rates and the length of time they will be employed each year. Discuss how proposed compensation levels will attract and retain well-qualified and effective staff members.

4. A description of plans for staff training and development of newly-hired staff members and a discussion of how proposed staff will be supported by the grantee's organizational structure.

5. A discussion of start-up plans and a timetable to implement the increased enrollment in a carefully planned but timely and efficient manner. Describe how the program will obtain or upgrade classroom space and other facilities to required licensing standards, recruit and train new staff or community-based providers, arrange for adequate transportation, and recruit, select and enroll eligible children and families.

*F. Organizational Capacity and Experience*

Provide information on the applicant organization and cooperating partners.

The Head Start Bureau is particularly interested in the following:

1. Evidence of the applicant's experience and ability to administer a Head Start program, to successfully meet the Head Start Program Performance Standards and to manage the proposed expansion strategy. Include a discussion of any proposed changes and improvements in program management and governance.

2. From applicants who are establishing partnerships with other child care and early childhood agencies, providers or funding sources:

Letters of commitment from the child care and early childhood agencies and providers, including documentation of the additional resources that will be combined with the requested Head Start funds to create a high quality, full-day, full-year program. Explain and itemize these resources or services, and whether or not these costs are included as part of the non-Federal share.

A description of plans for managing, monitoring, and assisting the efforts of proposed new delegate agencies and other forms of collaborative arrangements to assure that the Head Start Program Performance Standards are met.

A description of the experience of the applicant and the proposed partnering agencies in collaborating to deliver high quality early childhood program services and in managing multiple sources of funding.

A description of how the applicant will track, manage and account for multiple funding streams, allocate costs to different funding sources, and make adjustments in the event of fluctuations in the availability of other funding sources.

*G. Cost Effectiveness and Budget Appropriateness*

Provide a narrative budget justification that describes how the proposed costs are derived. Discuss the necessity, reasonableness and allocability of the proposed costs.

The Head Start Bureau is particularly interested in the following:

1. A description of two budgets, one for ongoing operating costs for a 12-month period, the other for one-time start-up costs such as the renovation of facilities, purchases of equipment and initial training of new staff members. Identification in the budget of the required non-Federal share of the cost of the project. Include a discussion of strategies for obtaining the required non-Federal share, as described in Section I.E. of this announcement.

2. A description of how the proposed budget is reasonable, appropriate and cost-effective in view of the proposed services, strategies and anticipated outcomes.

3. A description of the extent to which the proposal includes significant other resources to complement the requested Head Start expansion funds.

**Part III. Evaluation Criteria**

Applications will be reviewed and evaluated on the following criteria:

*1. Objectives and Need for Assistance (20 Points)*

- The extent to which the application provides current data on the needs of young children, families, and communities for expanded Head Start services, including analyses of changes in poverty and family mobility, employment opportunities and welfare reform, and any special unserved or underserved populations or groups.
- The extent to which the application provides convincing evidence of the involvement and support of other organizations serving low-income families in assessing family and community needs and resources, developing proposed plans and strategies, and in active partnerships to implement the proposed expansion.

Information provided in response to Section II.C. of this announcement will

be used to evaluate applicants on the above criterion.

*2. Results or Benefits Expected (10 Points)*

- The extent to which the applicant identifies the results and benefits to be derived from the project and links these to the stated objectives.
- The extent to which the applicant describes the kinds of data to be collected and how they will be utilized to measure progress towards the stated results or benefits.

Information provided in response to Section II.D. of this announcement will be used to evaluate applicants on this criterion.

*3. Approach (25 Points)*

- The extent to which the application includes a detailed, well-organized, and credible plan of action to carry out the proposed expansion of Head Start services, including plans for recruitment and selection of children, arrangements for transportation and facilities and plans for start-up of the new services.
- The extent to which the application includes clear plans and a demonstrated commitment to implement the Head Start Program Performance Standards, including involvement of parents and families in program design and decision making.
- The extent to which the application proposes, where possible, to collaborate with other community providers to deliver a high quality, cost-effective Head Start program.
- The extent to which the application provides sound, cost-effective staffing, organizational and management strategies, including staff training and development to ensure that the expansion provides high quality and responsive services.
- The extent to which the application demonstrates a sound strategy for facilitating the transition of Head Start children from the Head Start program to the local school system by coordinating with the local education agency and the local schools who will be enrolling Head Start children.

Information provided in response to Section II.E. will be used to evaluate applicants on the above criterion.

*4. Organizational Capacity & Experience (20 Points)*

The extent of the demonstrated capacity of the applicant organization, key leaders and managers and, where appropriate, proposed partnering organizations in:

- Providing high quality, responsive services to young children and families, including evidence of the capability to meet the Head Start Program Performance Standards;
- Managing expansion of program services in an effective and timely manner; and
- Managing successful partnerships to serve young children and their families that involve sharing resources, staffing and facilities.

Information provided in response to Section II.F. will be used to evaluate applicants on the above criterion.

*5. Cost Effectiveness and Budget Appropriateness (25 Points)*

- The extent to which the proposed budget is reasonable, appropriate and cost effective in view of the proposed services, strategies and anticipated outcomes.
- The extent to which the applicant has mobilized significant additional resources to complement Head Start expansion funds.

Information provided in response to Section II.G. and the applicant's proposed budget will be used to evaluate applicants on the above criterion.

## IV. The Application Process

*A. Availability of Forms*

Eligible agencies interested in applying for funds must submit the required forms included at the end of this announcement in Appendix A.

In order to be considered, an application must be submitted on Standard Form 424. Each application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. As required by the Head Start Program Performance Standards, any current Head Start grantee's Head Start Policy Council must approve the application. Applications must be prepared in accordance with the guidance provided in this announcement.

*B. Application Submission*

One signed original and two copies of the grant application, including all attachments, are required. Completed applications must be sent to: Head Start Expansion Unserved Competition, ACYF Operations Center, 1815 North Fort Myer Drive—Suite 300, Arlington, VA 22209.

In order to make the review of proposals easier, applicants should include in their proposals a Table of Contents and page numbers. Although there is no specific limit on the number of pages that applications may contain, applicants are encouraged to be as concise as possible.

*C. Application Consideration*

Applications will be reviewed against the evaluation criteria outlined above. The review will be conducted in the Washington, DC area by persons knowledgeable about the Head Start program and early childhood care, education and development, and may include staff of Head Start programs, parents of Head Start children, Federal staff from the ACF Regional Offices and the Head Start and Child Care Bureaus, and other experts, such as university faculty members and the staff of child care and pre-kindergarten programs and agencies.

The results of the competitive reviews will be taken into consideration by the Associate Commissioner of the Head Start Bureau who, in consultation with the Indian and Migrant Programs Branches, will recommend projects to be funded. The Commissioner of ACYF will make the final selection of the applications to be funded.

The Commissioner may elect not to fund applicants that have program, management, fiscal or other problems and situations that make it unlikely that they would be able to provide effective Head Start services. Also, the Commissioner may decide not to fund projects that would require unreasonably large initial start-up costs for facilities or equipment or which require unreasonably large on-going funding levels relative to the number of children and families proposed to be served.

Applicants which do not meet the requirement found in Section 641 of the Head Start Act of being a local agency, within the community(ies) it is proposing to serve, will not be selected for funding.

Successful applicants will be notified through a Financial Assistance Award which sets forth the amount of funds awarded, the terms and conditions of the grant supplement, and other relevant information.

*D. Amount of Funds Awarded to Successful Applicants*

In deciding the amount of funds to apply for, applicants should be guided by the need for services in their community, the amount needed to effectively and efficiently carry out the program of services proposed, the amount needed to provide high quality comprehensive services, and the availability of funds in the competitive area. There are no predetermined cost-per-child guidelines or limits to which applicants must conform.

After applications are selected for funding, the Commissioner will

determine if they will be funded for all or only part of the number of children proposed. In determining the amount of funds a selected applicant will receive, the Commissioner will consider:

- The application's competitive review ranking;
- The relative need for services in a proposed service area compared to other communities in the competitive area;
- The proposed costs in Federal Head Start funds and;
- The amount of funds available in the competitive area.

For example, an applicant which is able to expand Head Start services at a relatively lower cost in Federal Head Start funds because it shares costs with a child care agency will likely be awarded funds to serve a larger portion of the children it proposed serving than another applicant. Through the determination of funding levels, we hope to achieve a distribution of funds that is equitable and which allows as many children and communities as is possible to receive the benefits of a high quality Head Start program.

*E. Closing Date for Receipt of Applications*

*Deadline:* The closing date for the receipt of applications is July 21, 2000. Applications shall be considered as meeting this deadline if they are either:

1. Received on or before the deadline date at the address specified in the program announcement, or

2. Sent on or before the deadline date and received by ACYF in time for the independent review. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

Applications hand carried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m. at the ACYF Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA. 22209, between Monday and Friday (excluding Federal Holidays). (Applicants are cautioned that express/overnight mail services may not always deliver as agreed.)

ACYF cannot accommodate the transmission of applications by FAX or through other electronic media. Therefore, applications transmitted to ACYF electronically will not be accepted regardless of the date or time of submission and time of receipt.

*Late Applications:* Applications that do not meet the criteria stated above are considered late applications. ACYF will notify each late applicant that its application will not be considered.

*Extension of deadlines.* ACF may extend the deadline for all applicants because of acts of God such as floods, hurricanes, *etc.*, or when there is a disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

*F. Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995, (Pub.L. 104–13), the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and record keeping requirements or program announcements. This Program Instruction meets all information collection requirements approved for ACF grant applications under OMB Control Number 0970–0139.

*G. Executive Order 12372—Notification Process*

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applications from federally-recognized Indian Tribes are exempt from E.O. 12372.

Applicants from these thirteen jurisdictions and from federally recognized Indian tribes need take no action regarding E.O. 12372. All other applicants should contact their SPOC as soon as possible to alert them to the prospective application and to receive any necessary instructions. Applicants must submit material to the SPOC as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the SF 424, item 16a.

Under 45 CFR 100.8(a)(2), SPOCs have 60 days from the application deadline date to comment on applications submitted under this announcement. Therefore, the comment period for State processes will end on September 22, 2000. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to trigger the "accommodate or explain" rule.

Comments submitted directly to ACF should be addressed to: Head Start Bureau, Grants Officer, Room 2210, 330 C Street, SW, Washington, DC 20201.

ACF will notify the State of any application received which has no indication that the State process has had an opportunity for review.

A list of Single Points of Contact for each State and territory is included at Appendix B.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: May 11, 2000.

**James Harrell,**

*Deputy Commissioner, Administration on Children, Youth and Families.*

BILLING CODE 4184–01–P

## Appendix A—Application Forms

**APPLICATION FOR FEDERAL ASSISTANCE**

OMB Approval No. 0348-0043

| | | | |
|---|---|---|---|
| | | **2. DATE SUBMITTED** | Applicant Identifier |
| **1. TYPE OF SUBMISSION:** Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction | | **3. DATE RECEIVED BY STATE** | State Application Identifier |
| | | **4. DATE RECEIVED BY FEDERAL AGENCY** | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, State, and zip code)*: | Name and telephone number of person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER** *(EIN)*:

__ __ – __ __ __ __ __ __ __

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ___

A. State — H. Independent School Dist
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ___ ___

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify)*:

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:**

__ __ – __ __ __

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.)*:

| **13. PROPOSED PROJECT** | | **14. CONGRESSIONAL DISTRICTS OF:** | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |

| **15. ESTIMATED FUNDING:** | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON.

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ **Yes** If "Yes," attach an explanation. ☐ **No**

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

| a. Type Name of Authorized Representative | b. Title | c. Telephone Number |
|---|---|---|
| d. Signature of Authorized Representative | | e. Date Signed |

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Prescribed by OMB Circular A-102

BILLING CODE 4184–01–C

**Instructions for the SF–424**

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) an applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (*e.g.*, construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. *List only the largest political entities affected (e.g., State,* counties, cities).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of inkind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's *authorization for you to sign this application as official* representative must be on file in the applicant's office (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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## BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

**SECTION A - BUDGET SUMMARY**

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. Totals | | $ | $ | $ | $ | $ |

**SECTION B - BUDGET CATEGORIES**

| 6. Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY (1) | (2) | (3) | (4) | Total (5) |
|---|---|---|---|---|---|
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges *(sum of 6a-6h)* | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS *(sum of 6i and 6j)* | $ | $ | $ | $ | $ |
| | | | | | |
| 7. Program Income | $ | $ | $ | $ | $ |

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

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| SECTION C - NON-FEDERAL RESOURCES | | | | |
|---|---|---|---|---|
| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTAL *(sum of lines 8-11)* | $ | $ | $ | $ |

| SECTION D - FORECASTED CASH NEEDS | | | | | |
|---|---|---|---|---|---|
| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
| 13. Federal | $ | $ | $ | $ | $ |
| 14. Non-Federal | | | | | |
| 15. TOTAL *(sum of lines 13 and 14)* | $ | $ | $ | $ | $ |

| SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT | | | | |
|---|---|---|---|---|
| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTAL *(sum of lines 16-19)* | $ | $ | $ | $ |

| SECTION F - OTHER BUDGET INFORMATION | |
|---|---|
| 21. Direct Charges: | 22. Indirect Charges: |
| 23. Remarks: | |

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**Standard Form 424A (Rev. 7-97) Page**

**Instructions for the SF-424A**

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the grantor Federal agency. The sponsoring agency may issue instructions for *General Instructions*

This section is designed for applicants who can be funded for one or more grant programs by a single Federal grantor agency. If any exceptions to this general rule are made, guidelines will be issued by the grantor agency. Applicants should contact the grantor agency for guidelines on how to complete this form for the grant programs they plan to apply for. Section A, B, C, and D should include the budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding periods. Sections A, B, C, and D should include budget estimates for the first budget period (usually a year) and for subsequent budget periods (usually years) when such estimates are required for the grant program. Section E should include budget estimates for the whole project except when applying for assistance which does not require Federal authorization of continuation funding (see item 16). Section F should include other budget information that may be required by the grantor agency.

*Section A, Budget Summary Lines 1-4, Columns (a) and (b)*

For applications for grant programs contained in the Catalog of Federal Domestic Assistance, enter the Catalog program title and the Catalog number in Column (a), Line 1 (e.g., CDBG-Entitlement Grants, 14.218; Economic Development-Grants for Public Works Impact Projects, 11.307). If more than one program is to be funded under a single program category, use additional lines as needed.

For applications for grant programs not contained in the Catalog, enter the name of each program to be funded in Column (a), Line 1 and a short description of the program title and project type (e.g., Research on Pediatric Drugs).

For applications for grant programs which require funding from more than one Federal agency (e.g., joint funding or multiple program funding), list the separate program name for each Federal agency in Column (a), Lines 1 and 2 (e.g., Model Cities-HUD, 14.318; Model Cities-DOT, 20.309). If more than two programs are to be funded, use additional lines as needed.

For applications for grant programs which will not be funded by the Federal government (e.g., programs funded entirely by State or local governments), enter the program name in Column (a), Line 1 (e.g., Human Corps-State of Utah).

*Columns (c) and (d)*

Enter the estimated amounts of non-Federal funds (e.g., State, local, private) which will be contributed or otherwise made available for the program. If only two columns are needed, use Column (c).

*Column (e)*

Enter the total of Columns (b), (c), and (d).

*Line 5*

Enter the total for each column. If only one program is listed, the total should be the same as Line 1. If only two columns are needed, the total should be the same as Line 2.

*Section B, Budget Summary Lines 6-10*

Enter in Column (a) the same grant programs listed in Column (a), Section A. Enter in Column (b) the amount of Federal funds to be used for each program listed in Column (a). If only two columns are needed, use Column (b).

*Column (c)*

Enter the estimated amounts of non-Federal funds (e.g., State, local, private) which will be contributed or otherwise made available for the program. If only two columns are needed, use Column (c).

*Column (d)*

Enter the total of Columns (b) and (c).

*Line 11*

Enter the total for each column. If only one program is listed, the total should be the same as Line 6. If only two columns are needed, the total should be the same as Line 7.

*Section C, Budget Summary Lines 12-15*

Enter in Column (a) the same grant programs listed in Column (a), Section A. Enter in Column (b) the amount of non-Federal funds to be used for each program listed in Column (a). If only two columns are needed, use Column (b).

*Column (c)*

Enter the estimated amounts of non-Federal funds (e.g., State, local, private) which will be contributed or otherwise made available for the program. If only two columns are needed, use Column (c).

*Column (d)*

Enter the total of Columns (b) and (c).

*Line 16*

Enter the total for each column. If only one program is listed, the total should be the same as Line 11. If only two columns are needed, the total should be the same as Line 12.

*Section D, Forecasted Cash Needs*

*Line 17*

Enter the amount of cash needed by quarter from the grantor agency during the first year.

*Line 18*

Enter the amount of cash from all other sources needed by quarter during the first year.

*Line 19*

Enter the totals of amounts on Lines 17 and 18.

*Section E, Budget Estimates of Federal Funds Needed for Balance of the Project*

*Lines 20-23*

Enter in Column (a) the same grant programs listed in Column (a), Section A. Enter in Column (b) the amount of Federal funds needed to complete the programs listed in Column (a). If only two columns are needed, use Column (b).

*Column (c)*

Enter the estimated amounts of Federal funds which will be needed to complete the programs listed in Column (a). If only two columns are needed, use Column (c).

*Column (d)*

Enter the total of Columns (b) and (c).

*Line 24*

Enter the total for each column. If only one program is listed, the total should be the same as Line 20. If only two columns are needed, the total should be the same as Line 21.

*Section F, Other Budget Information*

*Line 25*

Enter the appropriate indirect cost rate information.

*Line 26*

Enter any remarks or explanations deemed necessary or information required by the grantor agency.

**Instructions for the SF–424A**

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

*General Instructions*

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

*Section A. Budget Summary Lines 1–4 Columns (a) and (b)*

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) Through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

*Section B. Budget Categories*

In the columns headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

*Section C. Non-Federal Resources*

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter the totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

*Section D. Forecasted Cash Needs*

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

*Section E. Budget Estimates of Federal Funds Needed for Balance of the Project*

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

*Section F. Other Budget Information*

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

**Assurances—Non-Construction Programs**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing

data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

**Note:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 CFR 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohl abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Polices Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a.–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safely Standards Act (40 U.S.C. §§ 327–333) labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.), related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing the program.

---

Signature of Authorization Certifying Official

---

Title

---

Applicant Organization

---

Date Submitted

**Administration for Children, Youth, and Families, U.S. Department of Health and Human Services**

**CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW, Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals. Alternate I applies.

4. For grantees who are individuals. Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation. State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant: and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement, consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

**Certification Regarding Drug-Free Workplace Requirements**

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—(1) The dangers of drug abuse in the workplace; (2) the grantee's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—(1) Abide by the terms of the statement; and (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or (2) requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

(B) The grantee may insert in the space provided below the sites(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant.

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency, designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

[55 FR 21690, 21702, May 25, 1990]

**Administration for Children, Youth, and Families, U.S. Department of health and Human Services**

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered

transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause title "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is ■ material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**Administration for Children, Youth, and Families, U.S. Department of Health and Human Services**

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

BILLING CODE 4184–01–P

## DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

Approved by OMB
0348-0046

| | | |
|---|---|---|
| **1. Type of Federal Action:**<br>☐ a. contract<br>☐ b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | **2. Status of Federal Action:**<br>☐ a. bid/offer/application<br>b. initial award<br>c. post-award | **3. Report Type:**<br>☐ a. initial filing<br>b. material change<br>**For Material Change Only:**<br>year _____ quarter _____<br>date of last report _____ |
| **4. Name and Address of Reporting Entity:**<br>☐ Prime ☐ Subawardee<br>Tier _____, *if known*:<br><br>**Congressional District**, *if known*: | **5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:**<br><br>**Congressional District**, *if known*: | |
| **6. Federal Department/Agency:** | **7. Federal Program Name/Description:**<br><br>CFDA Number, *if applicable*: _____ | |
| **8. Federal Action Number**, *if known*: | **9. Award Amount**, *if known*:<br>$ | |
| **10. a. Name and Address of Lobbying Registrant**<br>(*if individual, last name, first name, MI*): | **b. Individuals Performing Services** (*including address if different from No. 10a*)<br>(*last name, first name, MI*): | |
| **11.** Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure. | Signature: _____<br>Print Name: _____<br>Title: _____<br>Telephone No.: _____ Date: _____ | |
| **Federal Use Only:** | Authorized for Local Reproduction<br>Standard Form LLL (Rev. 7-97) | |

BILLING CODE 4184–01–C

### Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or ■ material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime of subaward recipient. Identify the tier of the subawardee, *e.g.*, the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number

for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (*e.g.*, Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, *e.g.*, "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in items 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

BILLING CODE 4184–01–P

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## Protection of Human Subjects
## Assurance Identification/Certification/Declaration
### (Common Federal Rule)

Policy: Research activities involving human subjects may not be conducted or supported by the Departments and Agencies adopting the Common Rule (56FR28003, June 18, 1991) unless the activities are exempt from or approved in accordance with the common rule. See section 101(b) the common rule for exemptions. Institutions submitting applications or proposals for support must submit certification or appropriate Institutional Review Board (IRB) review and approval to the Department or Agency in accordance with the common rule.

Institutions with an assurance of compliance that covers the research to be conducted on file with the Department, Agency, or the Department of Health and Human Services (HHS) should submit certification of IRB review and approval with each application or proposal unless otherwise advised by the Department or Agency. Institutions which do not have such an assurance must submit an assurance and certification of IRB review and approval within 30 days of a written request from the Department or Agency.

1 Request Type
☐ ORIGINAL
☐ FOLLOWUP
☐ EXEMPTION

2 Type of Mechanism
☐ GRANT ☐ CONTRACT ☐ FELLOWSHIP
☐ COOPERATIVE AGREEMENT
☐ OTHER:_____

3 Name of Federal Department or Agency and, if known, Application or Proposal Identification No.

4 Title of Application or Activity

5 Name of Principal Investigator,Program Director, Fellow, or Other

6 Assurance Status of this Project *(Respond to one of the following)*

☐ Services, covers this activity:
This Assurance, on file with Dartment of Health and Human Assurance identification no. M-_____ IRB identification no. _____

☐ This Assurance, on file with *(agency/dept)*_____, covers this activity

Assurance identification no _____ IRB identification no _____*(if applicable)*

☐ No assurance has been filed for this project. This institution declares that it will provide an Assurance and Certification of IRB review and approval upon request.

☐ Exemption Status. Human subjects are involved, but this activity qualifies for exemption under Section 101(b), paragraph_____.

7 Certification of IRB Review (Respond to one of the following IF you have an Assurance on file)

☐ This activity has been reviewed and approved by the IRB in accordance with the common rule and any other governing regulations or subparts on *(date)*_____ by ☐ Full IRB Review or ☐ Expedited Review

☐ This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by the common rule will be reviewed and approved before they are initiated and that appropriate further certification will be submitted.

8 Comments

9 The official signing below certifies that the information provided above is correct and that, as required, future reviews will be performed and certification will be provided.

10 Name and Address of Institution

11 Phone No *(with area code)*

12 Fax No *(with area code)*

13 Name of Official

14 Title

15 Signature

16 Date

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OPTIONAL FORM 310 (Rev. 1/98
Sponsored by HHS/NIH

Public reporting burden for this collection of information is estimated to average less than an hour per response. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: NIH, Project Clearance Office, 6701 Rockledge Drive, MSC 7730, Bethesda, Md. 20892-7730, ATTN: PRA 0925-0418. *Do not return*



BILLING CODE 4184-01-C

**Certification Regarding Environmental Tobacco Smoke**

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1,000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

## Appendix B—SPOC Listing

**State Single Point of Contact Listing Maintained by OMB**

In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," Section 4, "the Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development." This attached listing is the OFFICIAL OMB LISTING. This listing is also published in the Catalogue of Federal Domestic Assistance biannually.

**OMB State Single Point of Contact Listing***

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144, e-mail: jonis@ep.state.az.us

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning and Research/State Clearinghouse, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, 540 S. duPont Hi., Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW—Suite 1200, Washington, DC 20005, Telephone: (202) 727–6537, FAX: (202) 727–1617, e-mail: charlesnic@yahoo.com or cnichols-ogmd@dcgov.org

Florida

Cherie L. Trainor, Coordinator, Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438 or (850) 414–5495, FAX: (850) 414–0479, e-mail: cherie.trainor@dca.state.fl.us

Georgia

Debra S. Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington Street, S.W.—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–3855, FAX: (404) 656–7901, e-mail: ssda@mail.opb.state.ga.us

Illinois

Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director, John-Mark Hack, Deputy Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–2849

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

Linda C. Janey, JD, Manager, Clearinghouse and Plan Review Unit, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2305, Telephone: (410) 767–4491, FAX: (410) 767–4480, e-mail: Linda@mail.op.state.md.us

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone (601) 359–6762, FAX: (601) 359–6764

Missouri

Lois Pohl/Carol Meyer, Federal Assistance Clearinghouse, Office Of Administration, P.O. Box 809, Room 915, Jefferson Building, Jefferson City, Missouri 65102, Telephone: (573) 751–4834, FAX: (573) 522–4395

Nevada

Heather Elliott, Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–6367, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Nick Mandell, Local Government Division, Room 201, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–4991, FAX: (505) 827–4948

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Marsha Roth, Albany, New York 12224, Telephone: (518)474–1605, FAX: (518) 486–5617

North Carolina

Chrys Baggett, Director, North Carolina State Clearinghouse, Office of the Secretary of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

Jim Boyd, North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Department 105, Bismarck, North Dakota 58505–0170, Telephone: (701) 328–2094, FAX: (701) 328–2308

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 222–2656, FAX: (401) 222–2083

South Carolina

Omegia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th Floor, Columbia, South Carolina 29201,

Telephone: (803) 734–0494, FAS: (803) 734–0645

Texas

Tom Adams, Single Point of Contact, State of Texas, Governor's Office of Budget and Planning, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711–2428, Telephone: (512) 463–1771, FAX: (512) 936–2681; e-mail: tadams@governor.state.tx.us

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

West Virginia

Judith Dryer, Chief Program Manager, West Virginia Development Office, Building #6, Room 645, State Capitol, Charleston, West Virginia 25305, Telephone: (304) 558–0350, FAX: (304) 558–0362

Wisconsin

Jeff Smith, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

Wyoming

Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capital, Room 124, Cheyenne, Wyoming 82002 FAX: (307) 632–3909

*TERRITORIES*

Guam

Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444 or (809) 723–6190, FAX: (809) 724–3270 or (809) 724–3103

Northern Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 674–2256, FAX: (670) 664–2272

Please direct all questions and correspondence about intergovernmental review to: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272.

Virgin Islands

Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct all questions and correspondence about intergovernmental review to: Daisey Millen, Telephone: (809) 774–0750, FAX: (809) 776–0069.

If you would like a copy of this list faxed to your office, please call our publications office at: (202) 395–9068.

* In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process BUT GRANT APPLICANTS ARE STILL ELIGIBLE TO APPLY FOR THE GRANT EVEN IF YOUR STATE, TERRITORY, COMMONWEALTH, ETC. DOES NOT HAVE A "STATE SINGLE POINT OF CONTACT." JURISDICTIONS WITHOUT "STATE SINGLE POINTS OF CONTACTS" INCLUDE: Alabama; Alaska, American Samoa; Colorado; Connecticut; Kansas; Hawaii; Idaho; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; and Washington.

This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

[FR Doc. 00–12373 Filed 5–17–00; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[Document Identifier: HCFA–R–197]**

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Type of Information Collection Request:* Revision of a currently approved collection;

*Title of Information Collection:* Maximizing the Effective Use of Telemedicine: A Study of the Effects, Cost Effectiveness and Utilization Patterns of Consultations via Telemedicine";

*Form No.:* HCFA–R–197 (OMB# 0938–0705);

*Use:* This study deals with several issues of importance to HCFA regarding the recent proliferation of Telemedicine programs. The primary goal of this study is to develop policy recommendations for Medicare concerning utilization review and payment methods for Telemedicine services. The major objective is to evaluate the use of interactive video Telemedicine consultation.; Recommendations will be based on analysis of the use of Telemedicine for such medical consultation.;

*Frequency:* Other: periodically;

*Affected Public:* Individuals or households, Business or other for-profit, and Not-for-profit institutions;

*Number of Respondents:* 1,450;

*Total Annual Responses:* 84,235;

*Total Annual Hours:* 360.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's Web site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 4, 2000.

**John P. Burke III,**

*HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.*

[FR Doc. 00–12477 Filed 5–17–00; 8:45 am]

BILLING CODE 4120–03–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### White House Initiative on Asian Americans and Pacific Islanders, President's Advisory Commission; Notice of Meeting; Correction

In **Federal Register** Document 00–11449 appearing on page 26219 in the issue for Friday, May 5, 2000, the following corrections have been made to the Notice of Meeting for the President's Advisory Commission. The room number for the meeting on May 17, 2000 has been changed from Room 800 of the Hubert H. Humphrey Building to the Stonehenge Room of the Hubert H. Humphrey Building. A time change has taken place for the meeting on May 19, 2000. The meeting will take place from 9:00 a.m.–1:00 p.m. Those are the only changes to be noted. All other information is correct as it appears.

An additional meeting has been scheduled and will take place on Thursday, May 18, 2000. This meeting will be open to the public. The meeting will be held on May 18, 2000 from 2:00 p.m.–5:00 p.m. in Room 800 of the Hubert H. Humphrey Building located at 200 Independence Avenue, SW, Washington, DC 20201.

Requests to address the Commission should be made in writing and should include the name, address, telephone number and business or professional affiliation of the interested party. Individuals or groups addressing similar issues are encouraged to combine comments and present through a single representative. The allocation of time for remarks may be adjusted to accommodate the level of expressed interest. Written requests should be faxed to (301) 443–0259. Anyone who has interest in attending any portion of the meetings or who requires additional information about the Commission should contact: Mr. Tyson Nakashima, Office of the White House Initiative on Asian Americans and Pacific Islanders, Parklawn Building, Room 10–42, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–2492. Anyone who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mr. Nakashima no later than Tuesday, May 16, 2000.

Dated: May 11, 2000.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00–12445 Filed 5–17–00; 8:45 am]

**BILLING CODE 4160–15–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Mutant Aequorea Victoria Fluorescent Proteins Having Increased Cellular Fluorescence**

George N. Pavlakis, George A. Gaitanaris, Roland H. Stauber, John N. Vournakis (NCI)

U.S. Patent 6,027,881 issued 22 February 2000

Licensing Contact: Girish C. Barua; 301/406–7056 ext. 263; e-mail: gb18t@nih.gov

The Green Fluorescent Protein (GFP) from the jellyfish Aequorea victoria is rapidly becoming an important reporter molecule for monitoring gene expression in vivo, in situ and in real time. GFP can be used to tag proteins, cellular compartments, or cells, and has found many uses in the study of biological processes. Unlike other bioluminescent reporters, GFP fluoresces in the absence of any other proteins, substrates, or cofactors. Improved signal to noise ratio is important for several applications using GFP. We have generated GFP mutants that increase the fluorescent signal by at least tenfold over the wild-type GFP in mammalian cells. These mutants emit either green or blue light, detectable when single copy genes are inserted into the cell.

**Method for Refolding Recombinant Endostatin**

Dong Xie, Paul Grulich, John W. Erickson (NCI)

DHHS Reference No. E–260–99/0 filed 18 Feb 2000

Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail rr154Z@nih.gov

Endostatin is a naturally occurring collagen-derived fragment that has been the subject of intense interest due to its reported anti-tumor and anti-metastatic properties. Endostatin's exact mode of action is unknown, and a detailed analysis of this mode of action has been hampered by the inability to consistently produce large quantities of refolded recombinant endostatin. While endostatin can be recombinantly produced, the isolated protein is found in an unfolded state. Thus a need exists to produce recombinant endostatin in a biologically active form for continuing clinical development and studying specific motifs or structures associated with endostatin which may be responsible for its anti-angiogenic/metastatic properties. The current invention comprises a method of renaturing endostatin comprising contacting unfolded endostatin with an effective amount of cyclodextrin in an aqueous environment buffered at a neutral or acidic ph.

**CpG Oligodeoxynucleotides Used To Improve Human Immune Responses**

Dennis Klinman, Daniela Verthelyi, Kenji Ishii (FDA)

DHHS Reference No. E–078–00/0 filed 14 Jan 2000

Licensing Contact: Peter Soukas; 301–496–7056, ext. 268; e-mail: ps193c@nih.gov

This invention concerns immune-activating oligonucleotides containing CpG motifs. Although it is known that certain CpG sequences can induce responses from human immune system cells, individual subjects show considerable heterogeneity in their response to different CpG sequences. These different responses make it difficult to induce a therapeutic immune response in all members of a diverse population using a single CpG sequence, even if such a sequence is repeated in a CpG oligonucleotide. The inventors have found that a broad-based immunomodulatory response scan be generated in a wide cross-section of subjects by using a mixture of multiple different CpG motifs. The mixture of oligodeoxynucleotides of the present invention can either be mixtures of different oligodeoxynucleotides expressing different CpG motif is or a

single oligodeoxynucleotide containing multiple different motifs. The oligodeoxynucleotides of the current invention have the capacity to stimulate humoral, cell-mediated immune responses or both humoral and cell-mediated immune responses, depending on the motifs utilized. The oligodeoxynucleotides of the present invention have uses including, but not limited to, treating allergies infectious diseases, cancer, and autoimmune disorders; furthermore, the obligodeoxynucleotides of the present invention have utility as vaccine adjutants for conventional and DNA vaccines, and as anti-sense therapeutics.

**A Novel Neuropeptide Potentially Involved in Pain Regulation, Blood Pressure Control, and Other Physiological Functions**

Dr. Ted. Usdin (NIMH)
DHHS Reference No. E–123–99/0 filed 15 Jun 1999
Licensing Contact: Norbert Pontzer; 301/496–7736 ext. 284; e-mail: np59n@nih.gov

A 39 amino acid peptide which activates the newly discovered parathyroid 2 (PTH2) receptor has been isolated, sequenced and cloned. The PTH2 receptor is a member of the secretin receptor family which includes receptors for secretin, vasoactive intestinal polypeptide, calcitonin, glucagon, gastric inhibitory polypeptide and CRF. Immunohistochemical mapping of the PTH2 receptor shows a distribution of PTH2 receptor in: endocrine tissue including pancreatic, islet somatostatin cells; thyroid parafollincular cells and peptide secreting cells in the intestine; heart muscle, and nervous tissue including areas of the hypothalamus involve din pituitary regulation and the somatic and visceral primary sensory neuron terminals in the dorsal horn of the spinal column. This distribution suggests that the ligand or an antagonist may be used to treat pain, high blood pressure, diabetes, GI disturbances, psychiatric disease and other pathologies.

**Novel Disulfide Conjugated Cell Toxins and Methods of Making and Using Them**

David Fitzgerald, Michael J. Iadarola (NCI)
DHHS Reference No. E–301–99/0 filed 22 Oct 1999
Licensing Contact: Marlene Shinn; 301/496–7056 ext. 285; e-mail: ms482m@nih.gov

Efforts to find more effective treatments of chronic pain with few unwanted side effects or which do not dampen acutely painful potentially dangerous stimuli remains a continuing challenge. Current analgesic therapies often fall short of therapeutic goals and typically have unacceptable side effects. Thus the discovery of a more efficacious and safe means to control chronic pain is unpredictable and therapeutically advantageous.

The NIH announces a new technology which is an effective treatment for pain control directed at the local ablation of NK–1 receptor expressing cells. The NK–1 receptor is found on a variety of cell types, the predominant expressing cells being pain-mediating neurons. Other cell types include brain cells and neostriatum cells through the axon collaterals of spiny projection neurons to name a few. This technology is the discovery of a novel conjugate generated between TNB–derivatized Substance P (SP) and a truncated version of Pseudomonas exotoxin, termed PE35. When administered to NK–1 receptor expressing cells, SP–PE35 induced cell death, while cells that expressed NK–2 and NK–3 receptors remained unaffected. This toxin allows for the killing of a specific category of cell types and is an effective means of treating a variety of conditions, in particular chronic pain or tumors that express NK–1 receptors. The toxin can be placed in a pharmaceutically acceptable excipient and can be combined with any method of procedure currently being used clinically, making it a versatile and superior form of treatment.

Dated: April 25, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, National Institutes of Health.*

[FR Doc. 00–12546 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by contacting Vasant Gandhi, J.D., Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7056 ext. 224; fax: 301/402–0220; e-mail: vg48q@nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Peptides That Inhibit the Binding of Human Monocyte Chemoattractant Protein-1 (MCP–1) to Its Receptor CCR2**

Teizo Yoshimura (NCI)
DHHS Reference No. E–235–99/0 filed 30 Nov 1999

MCP–1 is a chemoattractant protein and is a member of a family of proinflammatory cytokines called chemokines. Chemokines are of interest because of their ability to attract and activate specific leukocyte subsets to the exclusion of others. In particular, MCP–1 is capable of attracting monocytes but not neutrophils. The inventors isolated peptides with an antibody (E11) that immunoreacts with MCP–1. One such peptide may be useful in blocking the interaction of MCP–1 and its receptor CCR2 which may disrupt the formation and/or progression of a variety of disease states. MCP–1 has been detected in lesions of atherosclerosis, rheumatoid arthritis, pulmonary fibrosis and tumors such as malignant fibrous histiocytoma, malignant glioma, meningioma or melanoma.

**Inhibition of ABC Transporters by Transmembrane Domain Analogs**

Nadya Tarasova, Michael M Gottesman, Christine Hrycyna,
Christopher J Michejda (NCI)
DHHS Reference No. E–019–00/0 filed 18 Nov 1999

ABC transporters contain multiple transmembrane domains and are involved in the translocation of a variety of substrates across cell membranes. Upregulation of these transporters contributes to multiple drug resistance in cancer chemotherapy. The inventors have found that the P-gp (P-glycoprotein or Multiple Drug Resistance Protein-1) can be inhibited by properly substituted peptides corresponding to one of the transmembrane domains. Such inhibition can be used to enhance the activity of cancer chemotherapy in resistant tumors.

**Assay for the Detection of a Variety of Tumors in Biological Specimens**

Larry W. Fisher, Neal S. Fedarko, Marian F. Young (NICHD)
DHHS Reference No. E–173–98/0 filed 09 Apr 1999

The inventors have developed methods and reagents for the detection of bone sialoprotein (BSP) in biological samples. The technology relates to the disruption of a serum complex that masks the majority of BSP from established detection systems. Furthermore, there is evidence that there may be a more acidic form of BSP secreted not by normal bone, but only by tumors. Detection of BSP in serum may be a good marker of various bone diseases and a variety of cancers including breast, prostate, lung, and thyroid.

Dated: April 25, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 00–12547 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary & Alternative Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee*: National Center for Complementary and Alternative Medicine Special Emphasis Panel.

*Date*: June 5–7, 2000.

*Time*: 8:30 am to 1:00 pm.

*Agenda*: To review and evaluate grant applications.

*Place*: 6001 Executive Blvd., Room A1/A2, Rockville, MD 20852.

*Contact Person*: Eugene G. Hayunga, PhD, Scientific Review Administrator, National Institutes of Health, NCCAM, Building 31, Room 5B50, 9000 Rockville Pike, Bethesda, MD 20892, 301–594–2014, hayungae@od.nih.gov.

Dated: May 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12544 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Notice of Closed meetings.

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: June 14, 2000.

Time: 8:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise P. Corman, PhD, Scientific Review Administrator, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Clinical Trials Special Emphasis Panel.

Date: June 27, 2000.

Time: 8 am to 1 pm.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Joyce A. Hunter, National Heart, Lung, and Blood Inst., NIH, Rockledge Center, II, 6701 Rockledge Drive, Suite 7194, Bethesda, MD 20892–7924, 301/435–0288.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: July 13, 2000.

Time: 9 am to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: Hilton National Airport Hotel, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Louise P. Corman, PhD, Scientific Review Administrator, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel.

Date: July 14, 2000.

Time: 9 am to 12:30 pm.

Agenda: To review and evaluate grant applications.

Place: Washington National Airport Hilton, 2399 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Louise P. Corman, PhD, Scientific Review, Administrator, Review Branch, NIH, NHLBI, Rockledge Building II, 6701 Rockledge Drive, Suite 7180, Bethesda, MD 20892–7924, (301) 435–0270.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Fedeal Advisory Committee Policy.*

[FR Doc. 00–12543 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date:* June 15, 2000.

*Time:* 4 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, Bethesda, MD 20814.

*Contact Person:* Elsie D. Taylor, Scientific Review Administrator, Extramural Project Review Branch, National Institute of Alcohol

Abuse and Alcoholism National Institutes of Health, Suite 409, 6000 Executive Blvd. Bethesda, MD 20892–7003, 301–443–9787, etaylor@niaaa.nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12532 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

*Date:* June 6, 2000.

*Time:* 7 am to 8 am.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20914.

*Contact Person:* Ronald Suddendorf, Phd, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2926.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12533 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Acquired Immunodeficiency Syndrome Research Review Committee.

*Date:* June 15–16, 2000.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* The Governor's House Hotel, Cabinet Room, 1615 Rhode Island Avenue, NW, Washington, DC 20036.

*Contact Person:* Paula S. Strickland, Phd, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12534 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Communication Disorders Review Committee.

*Date:* June 14, 2000.

*Time:* 8 am to 6 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Latham Hotel, 3000 M Street, NW., Washington, DC 20007–3701.

*Contact Person:* Melissa Stick, PhD, MPH, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NIDCD/NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12535 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Subcommittee A.

*Date:* June 13, 2000.

*Time:* 8 am to 6 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Carole H. Latker, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–3663.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12536 Filed 5–17–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secretes or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

*Date:* May 24, 2000.

*Time:* 8 am to 4 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* One Washington Circle, 1 Washington Circle NW, Washington, DC 20037.

*Contact Person:* Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12538 Filed 5–17–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* June 22, 2000.

*Time:* 1:30 pm to 3:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* David I. Sommers, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12539 Filed 5–17–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel Summer Research Experiences for Undergraduates.

*Date:* June 14, 2000.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Laura Moen, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13H, Bethesda, MD 20892, 301–594–3998.

*Name of Committee:* National Institute of General Medical Sciences Special Emphasis Panel, Protein Structure Initiative.

*Date:* June 27–29, 2000.

*Time:* 8 pm to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Irene B. Glowinski, PhD, Assistant Chief, Office of Scientific Review, National Institutes of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892–6200, (301) 594–3663, glowinsi@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12541 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of General Medical Sciences; Notice of Closed meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Minority Programs Review Committee MARC Review Subcommittee A.

*Date:* June 22–23, 2000.

*Time:* 8 am to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Richard I. Martinez, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12542 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Environmental Health Services Special Emphasis Panel, Contract NIH 00–26.

*Date:* June 19, 2000.

*Time:* 9 am to 12 pm.

*Agenda:* To review and evaluate contract proposals.

*Place:* NIEHS—East Campus, Building 4401, Conference Room 122, 79 Alexander Drive, Research Triangle Park, NC 27709 (Telephone Conference Call).

*Contact Person:* Linda K. Bass, PhD, Scientific Review Administrator, NIEHS, PO Box 12233 EC–30, Research Triangle Park, NC 27709, (919) 541–1307.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115 Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: May 4, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12545 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Library of Medicine; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grants applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Biomedical Library Review Committee

*Date:* June 14–15, 2000

*Closed:* June 14, 2000, 8:30 am to 11:30 am

*Agenda:* To review and evaluate grant applications

*Place:* National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894

*Open:* June 14, 2000, 11:30 am to 12 pm

*Agenda:* Administrative Reports and Program Developments

*Place:* National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894

*Closed:* June 14, 2000, 12 pm to 1:30 pm.

*Agenda:* To review and evaluate fellowship grant applications.

*Place:* National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

*Closed:* June 14, 2000, 1:30 pm to 5:30 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894.

*Open:* June 15, 2000, 8:30 am to 9:00 am

*Agenda:* Administrative Reports and Program Development

*Place:* National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894

*Closed:* June 15, 2000, 9 am to 12 pm

*Agenda:* To review and evaluate grant applications

*Place:* National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894

*Closed:* June 15, 2000, 12 pm to 1:30 pm

*Agenda:* To review and evaluate resource grant applications

*Place:* National Library of Medicine, Board Room Bldg 38, 2E–09, 8600 Rockville Pike, Bethesda, MD 20894

*Contact Person:* Sharee Pepper, Phd, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive Suite 301, Bethesda, MD 20892, (301) 594–4933

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12540 Filed 5–17–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* May 30, 2000.

*Time:* 10 am to 1 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Dharam S. Dhindsa, DVM, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* May 30–31, 2000.

*Time:* 6 pm to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* American Inn of Bethesda, 8130 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Ramesh K. Nayak, Phd, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* May 31–June 1, 2000.

*Time:* 8:30 pm to 5 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.

*Contact person:* Gamil C. Debbas, PhD, Scientific Review Adminsitrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* May 31, 2000.

*Time:* 1 pm to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* May 31, 2000.

*Time:* 2 pm to 4 pm.

*Agenda:*To review and evaluate grant applications and/or proposals

*Place:* NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Syed Amir, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6168, MSC 7892, Bethesda, MD 20892 (301) 435–1043.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 10, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12537 Filed 5–17–00; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Prospective Grant of Exclusive License: Uridine Prodrug Analogues: Uses in Cancer Diagnosis and Therapy

**AGENCY:** National Institutes of Health, Public Health Service, DHHS.

**ACTION:** Notice.

**SUMMARY:** This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health, Department of Health and Human Services, is contemplating the grant of an exclusive license to practice the inventions embodied in PCT Patent Application S/N PCT/US98/23109 (23109) entitled, "Antitumor Uridine Analogs" which was filed on October 10, 1998 and claims priority to U.S. Patent Application S/N 60/063,587 entitled, "Diagnosis and Treatment of Tumors with Drugs Activated by Thymidylate Synthase," which was filed on October 10, 1997 to Nascent Pharmaceuticals LLC of San Francisco, California. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license territory will be worldwide and the field of use may be limited to human therapeutics and diagnostics for the detection and treatment of breast and gastrointestinal cancers.

**DATES:** Only *written* comments and/or license applications which are received by the National Institutes of Health on or before July 17, 2000 will be considered.

**ADDRESSES:** Requests for copies of the patent, inquiries, comments and other materials relating to the contemplated exclusive license should be directed to: Richard U. Rodriguez, M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD. 20852–3804. Telephone: (301) 496–7056, X287; Facsimile (301) 402–0220; E-mail rr154z@nih.gov.

**SUPPLEMENTARY INFORMATION:** The technology claimed in '23109 relates to methods, compounds and compositions for diagnosing and/or treating cancers with anti-tumor agents activated by thymidylate synthase (TS) and/or thymidine kinase (TK). In addition, the invention relates to the preparation and use of positron emitting nucleoside analogues for imaging applications.

TS is an essential enzyme for DNA synthesis, and it has been shown to be

more abundantly expressed in tumor cells than in normal cells. Historically, scientists have tried to capitalize upon this overexpression and have attempted to inhibit TS activity with the goal of shrinking tumors and/or killing tumor cells. For example, fluorouracil and floxuridine have been used to treat breast, colon, pancreas, stomach, ovarian and head/neck carcinomas, but the effectiveness of these approaches have been limited because many tumors are inherently resistant to these treatments, and even those that are initially sensitive, develop resistance during the course of treatment. It was subsequently shown, that a strong correlation exists between resistance and high level expression of TS.

The inventors have proceeded along another route, again, attempting to capitalize upon the high levels of TS in tumor cells. Instead of trying to inhibit TS activity, they have proposed the introduction of uridine analogue prodrugs into cancer cells. These prodrugs would then be converted to more toxic thymidine analogues. This approach seems to avoid the observed problems of TS inhibition and shows great promise.

Detection and diagnostic applications for this technology are also possible. In particular, the success of this type of strategy would be contingent upon the extent of prodrug incorporation into DNA and therefore, the analysis of a tumor cell's DNA could provide diagnostic information regarding the optimal therapy for a specific tumor type. Traditionally, methods to determine growth rates have been invasive, but this technology would provide for non-invasive external imaging methods which would avoid the need for biopsies as well as providing for the capability of scanning larger areas of the body.

Thymidine is an excellent probe for monitoring growth/DNA synthesis, but it cannot be used in these situations because it is quickly degraded in the body. Analogues of thymidine would obviate this problem and could be produced upon conversion of the contemplated uridine analogue prodrugs.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless within sixty (60) days from the date of this published notice, the NIH receives written evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Applications for a license in the field of use filed in response to this notice will be treated as objections to the grant of the contemplated exclusive license. Comments and objections submitted to this notice will not be made available for public inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: April 25, 2000.

**Jack Spiegel,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer.*

[FR Doc. 00–12548 Filed 5–17–00; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4570–N–02]**

## Office of the Assistant Secretary for Public and Indian Housing; Notice of Funding Availability for Fair Share Allocation of Incremental Voucher Funding Fiscal Year 2000; Amendments to NOFA and Reopening of Application Period

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice of Fund Availability (NOFA); Amendments and Reopening of Application Period.

**SUMMARY:** On March 10, 2000, HUD published its FY 2000 NOFA for Fair Share Allocation of Incremental Voucher Funding ("Fair Share NOFA"). This document amends the selection criteria of this NOFA primarily to better reflect the appropriate weight in points that should have been assigned to the "housing needs" selection criterion so that need is the most important basis for allocating incremental voucher funding. As discussed in more detail in the Supplementary Information section of this notice, the points of other selection criteria are also revised to better reflect their appropriate weight, and the separate criterion for portability is removed. This notice also explains that HUD will substitute the number of "contracted units" for "HUD-approved budget" the number of certificates and vouchers on the latest HUD-approved budget when the number of a PHA's contracted units is higher than the number of a PHA's budgeted units.

The application period for the Fair Share NOFA closed on April 24, 2000. This notice reopens the application period for an additional 30 day period.

**DATES:** Applications are due on June 19, 2000.

Applicants that already submitted applications by the April 24, 2000, application due date, need not resubmit a new application, and need not amend their applications. Applicants that already submitted applications, however, may submit new or amended applications if they so choose.

**SUPPLEMENTARY INFORMATION:**

### Background—March 10, 2000 NOFA

If you are interested in applying for funding under the Fair Share NOFA, and did not apply earlier, please review the entire Fair Share NOFA, published on March 10, 2000 (65 FR 13222). Except for the reopening of the application period and the revisions made by this document, all other provisions of the Fair Share NOFA are unchanged and remain applicable.

The March 10, 2000 Fair Share NOFA will provide you with detailed information regarding the submission of an application, Section 8 program requirements, the application selection process to be used by HUD in selecting applications for funding, and other valuable information relative to a PHA's application submission and participation in the program covered by this NOFA. The March 10, 2000 Fair Share NOFA is also available on HUD's internet site at http://www.hud.gov under "Funds Available." This **Federal Register** notice amending the March 10, 2000 Fair Share NOFA is also available at the same HUD web site.

### Reopening of Application Period

*Application Due Date.* Your completed application (an original and two copies) or any amendment to an earlier submitted application (also an original and two copies) is due on or before June 19, 2000 at the addresses shown below.

As noted earlier, applicants that already submitted applications by the April 24, 2000, application due date, need not resubmit a new application, and need not amend their applications. Applicants that already submitted applications, however, may submit new or amended applications if they so choose.

Submission of new or amended applications should clearly identify the name of the applicant, the applicant HA code (*e.g.* CA002), and whether the information submitted is new and replaces a previously submitted application in its entirety or is an addendum to the previously submitted application.

*Address for Submitting Applications.* Submit your original application or your original application amendment and one copy to Michael E. Diggs, Director

of the Grants Management Center, Department of Housing and Urban Development, 501 School Street, SW, Suite 800, Washington, DC 20024.

Submit the second copy of your application or application amendment to the local HUD Field Office Hub, Attention: Director, Office of Public Housing, or to the local HUD Field Office Program Center, Attention: Program Center Coordinator.

The Grants Management Center is the official place of receipt for all applications in response to this NOFA.

*Delivered Applications.* If you are hand delivering your application, or application amendment, it is due on or before 5:00 pm, Eastern time, on the application due date to the Office of Public and Indian Housing's Grants Management Center (GMC) in Washington, DC. A copy is also to be submitted by the applicant to the local HUD Field Office Hub or local HUD Field Office Program Center.

This application deadline in this notice is firm as to date and hour. In the interest of fairness to all competing PHAs, HUD will not consider any application or application amendment that is received after the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

*Mailed Applications.* Applications sent by U.S. mail will be considered timely filed if postmarked before midnight on the application due date and received within ten (10) days of that date.

*Applications Sent by Overnight Delivery.* Applications sent by overnight delivery will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

*For Application Kit.* An application kit is not available and is not necessary for submitting an application for funding under this NOFA. The March 10, 2000 Fair Share NOFA, as amended by this notice, contains all of the information necessary for the submission of an application for voucher funding in connection with this NOFA.

*For Further Information and Technical Assistance.* You may contact George C. Hendrickson, Housing Program Specialist, Room 4216, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Room 4216, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–1872, ext. 4064, or you may contact Ms. Sherry McCown at the Grants Management Center at (202) 358–0273. (These are not toll-free numbers.) Persons with hearing or speech impairments may access these numbers via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (this is a toll-free number).

**Amendments to Selection Criteria and Points Assigned**

This document amends the selection criteria in Section IV of the March 10, 2000 Fair Share NOFA primarily to better reflect the appropriate weight in points that should have been assigned to the "housing needs" selection criterion so that need is the most important basis for allocating incremental voucher funding. Weights of other criteria are reduced accordingly. This document also alters or removes two selection criteria that do not assess a public housing agency's housing needs and are otherwise problematic. First, the residency preference subcategory is being altered to provide for the assignment of points to PHAs that will limit applicability of residency preferences to 15% of all new admissions to the program, as well as to those PHAs that do not have a residency preference or agree to eliminate one. This change is made in recognition that some PHAs with legally adopted residency preferences and great housing needs would have been penalized by the language provided in the March 10, 2000 Fair Share NOFA. Second, the portability selection criterion is removed because portability is adequately covered in the Area-Wide Housing Opportunities (Selection Criterion 2) and because the portability criterion would have awarded too many points for PHAs promising to absorb portable families with the new funds, relative to the March 10, 2000 Fair Share NOFA's treatment of PHAs that already are absorbing portable families. Because of the changes in the Selection Criteria, changes were required to be made to Attachment 2 to the March 10, 2000 Fair Share NOFA (Fair Share Application Checklist) and the amended checklist is included in this notice.

This document also revises the total amount of points a PHA is eligible to receive under the Fair Share NOFA. The March 10, 2000 Fair Share NOFA provided for a total of 160 points. The amendments made by this notice provide that the total number of points a PHA is eligible to receive is 100 points.

The changes made by this document are as follows:

- Selection Criterion 1: Housing Needs—the maximum number of points for this criterion is changed from 30 to 45 points, and the assignment of these points is based more specifically on the percentage of the State's housing need in the PHA's jurisdiction.
- Selection Criterion 2: Efforts of PHA to Provide Area-Wide Housing Opportunities for Families—the points for this criterion are changed from 60 to 30 points. To correspond to the reduction in the point total for this criterion, all the subcategories under Selection Criterion 2 are reduced from 10 to 5 points. In addition, the residency preference subcategory is changed as discussed above. PHAs that would have received points for this subcategory will still receive points and need submit nothing else unless they choose to amend their certification. PHAs that would not have received points but would qualify under the amended language need to submit the required certification.
- Selection Criterion 3: Local Initiatives—the points for this criterion are changed from 20 to 10 points.
- Selection Criterion 4: Disabled Families—the points for this criterion are changed from 20 to 10 points.
- Selection Criterion 5: Medicaid Home and Community Based Services Waivers under Section 1915(c) of the Social Security Act—the points for this criterion are changed from 10 to 5 points.
- Selection Criterion 6: Portability—this criterion is removed as a selection criterion for the reasons discussed above. Statements already submitted in response to this criterion will not be considered.

**Substitution of "Contracted Units" for Budgeted Units When Number of Contracted Units Is Higher Than Number of Budgeted Units**

In the March 10, 2000 Fair Share NOFA, HUD used the term "HUD-approved budget" in discussing the calculation of maximum funding allowed under the NOFA. For example, in Section V.(A) ("Fair Share Application Process"), HUD advises that the "The GMC may recommend for approval the maximum funding for a PHA under this NOFA that does not exceed the lesser of 25% of the PHA vouchers and certificates on the latest HUD-approved budget or 25% of the number of vouchers available in the State, whichever is less." (See page 13226, first column). Reference to 25%

of HUD-approved budget ("budgeted units") for certificates and vouchers also appears in Section V(B) and Section VI(A) (also on page 13226).

Because the automated data on budgeted units are not optimal in all cases, through this notice, HUD provides notification that it will substitute in this calculation contracted units (*i.e.*, the number of units under an Annual Contributions Contract) for the number of certificates and vouchers on the latest HUD-approved budget when the number of a PHA's contracted units is higher than the number of a PHA's budgeted units. The determination of contracted units shall be made in accordance with Attachment 3 (Methodology for Determining Lease-Up and Budget Authority Utilization Percentage Rates) to the March 10, 2000 Fair Share NOFA (see page 13229).

Accordingly, in the FY 2000 NOFA for Fair Share Allocation of Incremental Voucher Funding, notice document 00–6027, beginning at 65 FR 13222, in the issue of Friday, March 10 2000, the following amendments are made to Section IV of the NOFA at 65 FR 13224, and Attachment 2 at 65 FR 13229:

**IV. Fair Share Application Rating Process**

(A) *Selection Criteria.* The GMC will use the Selection Criteria shown below for the rating of applications submitted in response to this NOFA. The maximum score under the selection criteria for fair share funding is 100 points.

(1) Selection Criterion 1: Housing Needs (45 points).

(a) Description: This criterion assesses the housing need in the primary market area specified in the PHA's application compared with the housing need for the State. Housing need is defined as the number of very low-income renter households with severe rent burden, based on 1990 Census data. Very low-income is defined as income at or below the Section 8 very low-income limits. Severe rent burden is defined as a household paying 50 percent or more of its gross income for rent.

(b) Needs Data: For the purpose of this criterion, housing needs are based on a tabulation of 1990 Census data prepared for the Department by the Bureau of the Census. Data on housing needs are available for all States, all counties (county equivalents), and places with populations of 10,000 or more as of 1990. Information will be posted on the HUD Home Page site on the Internet's world wide web (http://www.hud.gov under "Funds Available") indicating the proportion of each State's housing needs for primary markets.

(c) Rating and Assessment: The number of points assigned is based on the percentage of the State's housing need that is within the PHA's primary market area. The primary market area is defined as the jurisdiction (or its closest equivalent in terms of areas for which housing needs data are available) in which the PHA is authorized to operate and where the vouchers will be used, as described in its application. (See paragraph VI(C) of this NOFA regarding regional (multi-county) and State PHAs.)

(1) The GMC will assign the following points :

• 45 points (maximum). For each percentage point of the State's housing need (rounded to the nearest percentage point), the PHA will receive two points.

(2) A State, regional or multi-county PHA will receive points based on the areas it serves where the vouchers will be used, *e.g.*, the entire State or the sum of the housing needs for the counties and/or localities comprising its primary market area.

(3) A PHA with a primary market area that is a community with a population of 10,000 or less, or a PHA for which housing needs data are not available, will receive 2 points.

(2) Selection Criterion 2: Efforts of PHA to Provide Area-Wide Housing Opportunities for Families (30 points).

(a) Description: Many PHAs have undertaken voluntary efforts to provide area-wide housing opportunities for families. The efforts described in response to this selection criterion must be beyond those required by federal law or regulation such as the portability provisions of the Section 8 voucher program. The GMC will assign points to PHAs that have established cooperative agreements with other PHAs or created a consortium of PHAs in order to facilitate the transfer of families and their rental assistance between PHA jurisdictions. In addition, the GMC will assign points to PHAs that have established relationships with non-profit groups to provide families with additional counseling, or have directly provided counseling, to increase the likelihood of a successful move by the families to areas that do not have large concentrations of poverty.

(b) Rating and Assessment: The GMC will assign point values for any of the following assessments for which the PHA qualifies and add the points for all the assessments (maximum of 30 points) to determine the total points for this Selection Criterion:

• 5 Points—Assign 5 points if the PHA documents that it participates in an area-wide exchange program where all PHAs absorb portable Section 8 families.

• 5 Points—Assign 5 points if the PHA certifies that (i) its administrative plan does not include a "residency preference" for selection of families to participate in its voucher program, or (ii) it will eliminate immediately any "residency preference" currently in its administrative plan, or (iii) it will limit applicability of residency preferences to 15% of all new admissions to the voucher program.

• 5 Points—Assign 5 points if the PHA documents that it has established a contractual relationship with a non-profit agency or the local governmental entity to provide housing counseling for families that want to move to low-poverty or non-minority areas. The five PHAs approved for the FY 93 Moving to Opportunity (MTO) for Fair Housing Demonstration, PHAs participating in the Regional Opportunity Counseling (ROC) Program, and any other PHAs that receive counseling funds from HUD in connection with the demolition of public housing, public housing vacancy consolidation, or settlement of litigation involving desegregation may qualify for points under this assessment. However, these PHAs must identify all activities undertaken, other than those funded and required under the MTO Demonstration, ROC Program, or the court-ordered plans or plans for relocating public housing families, to expand housing opportunities.

• 5 Points—Assign 5 points if the PHA documents that it participates with other PHAs in using a metropolitan wide or combined waiting list for selecting participants in the program.

• 5 Points—Assign 5 points if the PHA documents that it has implemented other initiatives that have resulted in expanding housing opportunities in areas that do not have undue concentrations of poverty or minority families.

• 5 Points—Assign 5 points if the PHA has formed a consortium or joint venture with other PHAs to administer its voucher program.

(3) Selection Criterion 3: Local Initiatives (10 points).

(a) Description: The application must describe the extent to which the PHA demonstrates locally initiated efforts in support of its voucher and certificate programs or comparable tenant-based rental assistance programs. Evaluation of a locality's contribution is measured competitively by whether the locality is able to provide services, cash contributions, or tax abatements to rental property owners leasing to Section 8 families, or demonstrates its

intention to provide this kind of support in the future.

(b) Rating and Assessment: The GMC will assign one of two point-values, as follows:

• 10 points: The State or locality provides local support (e.g., financial, manpower for inspection services) to its voucher or certificate program.

• 0 points: The State or locality does not provide support to the PHA's voucher or certificate program.

(4) Selection Criterion 4: Disabled Families (10 points).

(a) Description: The GMC will assign 10 points to PHAs that indicate at least 15 percent or more of the vouchers they are requesting (or funded by HUD) under this NOFA will be used to house disabled families. The PHA's application must be specific as to the exact percentage of vouchers that will be issued solely to disabled families. Disabled families are defined as follows:

(i) *Disabled Family.* A family whose head, spouse, or sole member is a person with disabilities. The term "disabled family" may include two or more such persons with disabilities living together, and one or more such persons with disabilities living with one or more persons who are determined essential to the care and well-being of the person or persons with disabilities (live-in aides).

(ii) *Person with disabilities.* A person who—

a. Has a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423), or

b. Is determined to have a physical, mental or emotional impairment that:

1. Is expected to be of long-continued and indefinite duration;

2. Substantially impedes his or her ability to live independently; and

3. Is of such a nature that such ability could be improved by more suitable housing conditions, or

c. Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)).

The term "person with disabilities" does not exclude persons who have the disease of acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome (HIV).

**(Note:** While the above definition of a "person with disabilities" is to be used for purposes of determining a family's eligibility for a Section 8 voucher designated as being for a disabled family under this NOFA, the definition of a person with disabilities contained in section 504 of the Rehabilitation Act of 1973 and its implementing regulations must be used for purposes of meeting the requirements of Fair Housing laws, including providing reasonable accommodations.)

No individual shall be considered a person with disabilities for the purpose of determining eligibility solely on the basis of any drug or alcohol dependence.

(b) Rating and Assessment: The GMC will assign one of two point values, as follows:

• 10 points: The PHA will use not less than 15 percent of the vouchers being requested (or funded by HUD) to house disabled families.

• 0 points: The PHA will use less than 15 percent of the vouchers it is requesting (or funded by HUD) to house disabled families.

(5) Selection Criterion 5: Medicaid Home and Community Based Services Waivers Under Section 1915(c) of the Social Security Act (5 points).

(a) Description: This selection criterion is for PHAs interested in the provision of Section 8 voucher assistance to families within their jurisdiction who are disabled and also covered under a waiver of Section 1915(c) of the Social Security Act. Section 1915(c) waivers are approved by the Health Care Financing Administration within the Department of Health and Human Services (HHS) for the agency within each State responsible for the administration of the medicaid program. Contacting the responsible State agency (for example, the Agency for Health Care Administration in the State of Florida) will assist the PHA in determining how many, if any, individuals are covered by a Section 1915(c) waiver in the PHA's legal area of operation. These waivers allow medicaid-eligible individuals at risk of being placed in hospitals, nursing facilities or intermediate care facilities the alternative of being cared for in their homes and communities. These individuals are thereby assisted in preserving their independence and ties to family and friends at a cost no higher than that of institutional care.

While a Section 1915(c) waiver may cover individuals other than those who are disabled, the focus of Selection Criterion 5 is on disabled families only. The definition of disabled families listed under Selection Criterion 4 will be used by PHAs for purposes of the issuance of vouchers to disabled families in connection with Selection Criterion 5; *i.e.*, only those individuals that meet the definition of a disabled family in this announcement are to be considered in connection with a PHA determining how many such disabled families are covered by a Section 1915(c) waiver in their legal area of operation and whether to try to qualify for the 5 points available under Selection Criterion 5. The PHA's application must be specific as to the percentage of vouchers that will be issued to such disabled families.

Any PHA attempting to qualify for the 5 points available under Selection Criterion 5 should also include information within its application indicating the collaborative efforts already undertaken with the responsible State agency to identify eligible families, as well as agreements reached with that agency for future referrals of such families. HUD reserves the right at some future point in time to conduct an evaluation of the success of the PHA's efforts to collaborate with the State agency and to successfully house individuals that meet the requirements of being covered by a Section 1915(c) waiver, qualify as a disabled family under this announcement, and are otherwise eligible for a Section 8 voucher.

(b) Rating and Assessment: The GMC will assign one of two point values as follows:

• 5 points: The PHA will use not less than 3 percent of the vouchers being requested (or funded by HUD) to house Section 8 eligible, disabled families covered by a waiver under Section 1915(c) of the Social Security Act.

• 0 points: The PHA will use less than 3 percent of the vouchers it is requesting (or funded by HUD) to house Section 8 eligible, disabled families covered by a waiver under Section 1915(c) of the Social Security Act.

(c) Prohibition Against Double Counting. The number (percentage) of disabled families that a PHA indicates it will issue vouchers to when qualifying for the 5 points available under Selection Criterion 5 cannot be used to also qualify for the 10 points available under Selection Criterion 4 or conversely.

Dated: May 15, 2000.

**Harold Lucas,**

*Assistant Secretary for Public and Indian Housing.*

**BILLING CODE 4210–33–P**

**Attachment 2**

**FAIR SHARE VOUCHER APPLICATION CHECKLIST**

**PHA NAME:** _____

**CITY/STATE:** _____

**PHA CODE #:** _____

_____ Delivered by the **due date**, or mailed and postmarked before midnight on due date, or placed in transit with overnight delivery service before due date.

_____ **Original and one copy** of application submitted to Michael E. Diggs, Director of the Grants Management Center, Department of Housing and Urban Development, 501 School St., SW, Suite 800, Washington, D.C., 20024; and **one copy** sent to local HUD Field Office Hub, Attn: Director, Office of Public Housing, or to the local HUD Field Office Program Center, Attention: Program Center Coordinator.

_____ **If applicable**, PHA designates another **housing agency, nonprofit agency, or contractor to administer new funding.**

_____ Copy of letter from local HUD Field Office requiring contract administrator.

_____ Agreement from contract agency to administer funding on behalf of applicant.

_____ Copy of PHA letter to local HUD Field Office appealing requirement for contract administrator.

_____ Copy of written response to appeal from local HUD Field Office.

_____ PHA listed on HUD Home Page Internet site as passing **90% lease-up OR 90% budget authority utilization -or-**

_____ PHA <u>not</u> listed as meeting 90% thresholds. PHA includes information confirming 90% lease-up or budget authority utilization for 1998 or 1999 using same methodology and data sources indicated in Attachment 3 to the Fair Share NOFA.

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_____ PHA is in **compliance with all fair housing and civil rights laws** (refer to Section III. General Program Requirements).

_____ PHA has **not been debarred or otherwise disqualified** from providing assistance under the Section 8 Housing Choice Voucher Program.

_____ **Form HUD-52515**, Funding Application (January 1996 version), completed in its entirety, except Section C. (See Section VI.(A) of the NOFA and form HUD-52515 regarding information to be entered thereon.)

_____ **Letter of Intent and Narrative**

_____ Includes statement of acceptance of a reduction in the number of vouchers.

_____ Includes minimum number of vouchers PHA will accept:_____.

_____ Includes a narrative description of how the application meets, or will meet, the application selection criteria.

Housing Needs **(Criterion 1)**. Areas PHA is authorized to operate in (HUD-52515).

_____ Efforts of PHA to Provide Area-Wide Housing Opportunities for Families **(Criterion 2)**.

_____ Evidence of participation in area-wide exchange program where all PHA absorb portable Section 8 families.

_____ Certification that (i) the PHA's administrative plan does not include a "residency preference" for selection of families to participate in its voucher program, or (ii) PHA will eliminate immediately any "residency preference" currently in its administrative plan, or (iii) the PHA will limit applicability of residency preferences to 15% of all new admissions to the voucher program..

_____ PHA contract to provide housing counseling for families moving to low-poverty/non-minority areas.

_____ Is an approved PHA for FY 1993 Moving to Opportunity (MTO) Fair Housing Demonstration, - **or**-

_____ Is a participant in the Regional Opportunity Counseling (ROC) Program, -**or**-.

_____ Receives counseling funds related to public housing demolition, vacancy consolidation, or litigation.

_____ Describes other activities expanding housing opportunities (not MTO, ROC, or litigation efforts).

_____ Documentation of PHA's Participation With Other PHAs in Using Metropolitan-Wide/Combined Waiting List.

_____ Documentation of Other Initiatives Resulting in Expansion of Housing Opportunities.

_____ Documentation of Consortium or Joint Venture with other PHAs to administer its voucher program.

_____ Local Initiatives (**Criterion 3**). Narrative description of locally initiated efforts in support of the PHA's voucher and certificate programs.

_____Disabled Families (**Criterion 4**). Includes a narrative description indicating the PHA will use 15 percent or more of the vouchers being requested/funded to house disabled families.

_____Medicaid Home and Community Based Services Waivers Under Section 1915(c) of the Social Security Act (**Criterion 5**). Includes narrative description indicating the percentage of vouchers to be issued to disabled families covered by a Section 1915(c) waiver, and the collaborative efforts undertaken with the State agency to identify eligible families/agreements for future referrals of such families from that agency.

_____**Description of Primary Market Area**. Regional (multi-county) and State PHAs clearly identify which cities and counties they will use the vouchers in that are within their legal area of operation.

_____Statement Regarding Steps PHA Will Take To: **(Affirmatively Further Fair Housing)**

_____ Eliminate impediments to fair housing identified in local Analysis of Impediments (AI) to Fair Housing Choice,

_____ Remedy discrimination in housing, or

_____ Promote fair housing rights and fair housing choice.

_____ **Program Summary**. Provide a separate, one paragraph statement describing

how the vouchers being applied for will address the local housing needs of eligible families in renting decent, safe, and affordable housing. Describe, where applicable, how the vouchers will be used to expand existing housing choices, and whether the PHA intends to use the vouchers to establish or expand upon its existing Family Unification Program, partnerships with local government, nonprofit agencies, or private industry groups. Also address any related notable local program activities, best practices, or accomplishments.

_____**Application Checklist**. A copy of this Checklist has been included as part of the PHA's application.

[FR Doc. 00–12586 Filed 5–15–00; 4:58 pm]
BILLING CODE 4210–33–C

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Application

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

**Permit Number TE805269–6**

Applicant: Daniel A. Soluk, Illinois Natural History Survey, Champaign, Illinois.

The applicant requests a permit amendment to take Hine's Emerald Dragonfly (Somatochlora hineana) in the states of Alabama, Michigan, Missouri and Ohio. The applicant is currently authorized to conduct take in Illinois and Wisconsin. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: May 12, 2000.

**Charles M. Wooley,**

*Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.*

[FR Doc. 00–12573 Filed 5–17–00; 8:45 am]
BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of a Draft Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Atlantic Coast Piping Plover in Massachusetts

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The Massachusetts Division of Fisheries and Wildlife has applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a)(1)(B) of the Endangered Species Act (Act). The requested permit, which is for a period of three years, would authorize the incidental take of the threatened piping plover *(Charadrius melodus)* in Massachusetts. The proposed take would occur as a result of specific actions relating to the management of recreational use of beaches where breeding piping plovers are found.

The Massachusetts Division of Fisheries and Wildlife has prepared a draft environmental assessment (EA) for the incidental take application. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application and draft EA should be received on or before June 19, 2000.

**ADDRESSES:** Written comments regarding the application and requests for copies of the draft EA and the conservation plan should be addressed to Field Supervisor, New England Field Office, 22 Bridge St., Unit 1, Concord, New Hampshire 03301–4986, telephone (603) 225–1411. Please refer to permit TE813653 when submitting comments. Comments regarding the conservation plan will be forwarded to the Massachusetts Division of Fisheries and Wildlife for review and response.

**FOR FURTHER INFORMATION CONTACT:** Susanna L. von Oettingen at the above address.

**SUPPLEMENTARY INFORMATION:**

The Atlantic Coast piping plover was listed as a threatened species on January 10, 1986. Because of its listing as threatened, the piping plover is protected by the Act's prohibitions against "take". However, the Service may issue permits to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23 and 17.32. For threatened species, such permits are available for scientific purposes, incidental take, or special purposes consistent with the purposes of the Act.

The Massachusetts Division of Fisheries and Wildlife (Division) has applied to the Service for an incidental take permit pursuant to Section 10(a)(1)(B) of the Act. This permit would authorize the incidental take of piping plovers through otherwise lawful activities occurring on plover breeding beaches. Included in the application is a conservation plan prepared by the Division detailing the activities that would result in incidental take and describing measures that mitigate, minimize and monitor the amount of take. In 1996, the Division was granted a Section 10(a)(1)(B) permit for the incidental take of piping plovers. The permit expired in 1998. The conservation plan included in the current application under review is an updated document and will replace the earlier conservation plan.

The revised recovery plan for the Atlantic Coast piping plover (U.S. Fish and Wildlife Service, 1996. Piping Plover (*Charadrius melodus*), Atlantic Coast Population, Revised Recovery Plan. Hadley, MA. 258 pp) identified New England (which includes Massachusetts) as a recovery unit. Guidelines in the recovery plan state that permits for incidental take that will reduce the productivity of breeding piping plovers should only be allowed in recovery units where the subpopulation has achieved at least 70% of its portion of the recovery goal. The 1999 preliminary estimate of 634 pairs of piping plovers in the New England recovery unit indicate that the population has exceeded the recovery goal of 627 pairs specified in the recovery plan. Furthermore, under an intensive management program, the Massachusetts piping plover population has increased more than four-fold over the last ten years, from 140 pairs in 1990 to 505 pairs in 1999.

The purpose of the proposed incidental take permit is to provide increased flexibility in managing Massachusetts beaches for use by recreationists and homeowners, while assuring continued progress toward the recovery of the Massachusetts and Atlantic Coast populations of the piping plover. The additional flexibility in managing beaches will prevent a disproportionate expenditure of resources directed at the protection of a few nests or broods in areas where they may significantly disrupt beach access by large numbers of people and be highly vulnerable to disturbance and/or mortality. Management flexibility also

will create incentives for the continued participation by beach management agencies and organizations involved in protecting piping plovers.

The two alternatives presented by the Division in the conservation plan and the draft EA are limited to the proposed action and the no-action alternative (continuation of current management recommendations without increased flexibility for limited take).

The proposed action establishes strict statewide and site-specific eligibility criteria that must be met prior to the implementation of the proposed Section 10 incidental take permit. Statewide eligiblity requirements determine the level of take that will be allowed for each breeding season. Site-specific eligibility requirements determine whether a landowner may participate in permitted activities, and requires that these landowners make additional plover protection commitments, including the use of predator exclosures, prohibition of dogs, implementation of public outreach programs (for heavily-used public recreational beaches), and plover monitoring and reporting. The proposed permit would be effective during the 2000, 2001 and 2002 plover breeding seasons. Authorized take would only affect piping plovers; take of other federally-listed species is specifically excluded from the proposed action.

Incidental take likely to occur on eligible sites may result from several management activities outlined in the conservation plan. Certain activities will be automatically authorized statewide and at particular sites. Statewide activities automatically proposed to be authorized include the taking of chicks on paved or improved roads and in parking lots and take caused by fireworks located within one-half mile or more from plover nests or chicks. Additional proposed take automatically permitted at three sites includes: (1) Take from fireworks at Crane Beach, Ipswich; (2) take from unescorted essential vehicles on a specified portion of Crane's Beach; (3) take from unescorted vehicles on a specified portion of Plymouth Beach, Plymouth; and (4) take of chicks by unescorted vehicles on a specified portion of Sandy Neck, Barnstable.

Additional discretionary take may also be authorized at a limited number of sites that meet specific eligibility requirements. Landowners that choose to undertake such actions may apply to be included under the Division's proposed permit that will authorize the incidental take. Proposed authorized activities are: (1) Reduction of symbolically-fenced buffer areas around plover nests, applicable to one plover nest per site per year; (2) moving eggs from heavily-used pedestrian or vehicle access points; (3) limited use of escorted off-road vehicle caravans for recreational access during periods when unfledged chicks are present on the beach; and (4) limited use of vehicles for homeowner access after dark through areas with unfledged chicks.

Take of piping plovers primarily will occur either through direct mortality of chicks, harassment of chicks or adults, or mortality of eggs that occurs as the result of nest abandonment or inadequate incubation or nest defense. As a result of these takings, overall reproductive success will be reduced at individual sites, and adverse effects may occur to immediate habitats of individuals pairs or broods. However, the level of incidental take likely to occur will not reduce productivity enough to substantially slow progress toward recovery. Take that occurs as a result of a permit issued to the Division will not include mortality of adults, nor will actions undertaken within the scope of such a permit permanently degrade otherwise suitable habitat.

The Division has proposed to minimize and monitor the level of incidental take through a number of measures. Continued population growth over the duration of the permit should be ensured by conditioning the authorization of discretionary incidental take on maintaining average productivity of 1.5 chicks fledged per pair for the entire state, individual Management Units and individual sites. If statewide productivity falls below 1.5 chicks fledged per pair, incidental take authorized for the following year will be limited. The conservation plan encompasses a sufficiently large geographic area that should some sites experience adverse effects from environmental or demographic stochasticity, unsuccessful management, or larger incidental take than predicted, those set-backs may be balanced by more favorable conditions or results of management elsewhere in the planning unit. Finally, the proposed permit duration of three years will allow for a relatively rapid evaluation of the conservation plan in light of management results and changes in the overall status of the Massachusetts and New England plover populations that may occur in 2000, 2001 and 2002.

The 1996 Section 19(a)(1)(B) incidental take permit granted to the Division outlined eligibility requirements similar to those proposed in the current application. Due to a decrease in piping plover productivity in 1996, permit activities were not allowed to occur the following year in order to ensure the continued recovery of piping plovers in Massachusetts. Piping plover productivity also fell below the established eligibility criteria in 1997, again precluding the implementation of measures permitted in the 1996 Section 10 permit. The eligibility criteria proposed in the current Section 10(a)(1)(B) permit application provide a greater range of options than the previous permit. These options will allow greater flexibility to implement the portions of the proposed permit that will have the least impact on the recovery of the Massachusetts population of the piping plover.

Dated: May 11, 2000.

**Mamie Parker,**

*Deputy Regional Director, Region 5.*

[FR Doc. 00–12492 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–55–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Letters of Authorization To Take Marine Mammals

**AGENCY:** U.S. Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of Letters of Authorization to take marine mammals incidental to oil and gas industry activities.

**SUMMARY:** In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that Letters of Authorization to take polar bears and Pacific walrus incidental to oil and gas industry exploration, development, and production activities have been issued to the following companies:

| Company | Activity | Date issued |
|---|---|---|
| BP Exploration (Prudhoe Bay Unit) | Production | April 21, 2000. |
| BP Exploration (Kuparuk Unit) | Production | April 21, 2000. |
| Western Geophysical (Anadarko) | Exploration | April 21, 2000. |

| Company | Activity | Date issued |
|---|---|---|
| BP Exploration (Northstar) | Development | May 3, 2000. |
| ARCO Alaska, Inc. (Meltwater North) | Exploration | May 3, 2000. |
| ARCO Alaska, Inc. (Spark # 1) | Exploration | May 3, 2000. |
| ARCO Alaska, Inc. (Rendezvous A&B) | Exploration | May 3, 2000. |
| ARCO Alaska, Inc. (Lookout A) | Exploration | May 3, 2000. |
| ARCO Alaska, Inc. (Moose's Tooth A&C) | Exploration | May 3, 2000. |
| ARCO Alaska, Inc. (Clover A&B) | Exploration | May 3, 2000. |
| ARCO Alaska, Inc. (Cairn) | Exploration | May 3, 2000. |
| Western Geophysical (ARCO) | Exploration | May 3, 2000. |
| Western Geophysical (BP Exploration) | Exploration | May 3, 2000. |
| Kuukpik/Fairweather Geophysical | Exploration | May 3, 2000. |
| BP Exploration (Point Thomson) | Exploration | May 3, 2000. |

**FOR FURTHER INFORMATION CONTACT:** Mr. John W. Bridges at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (300) 362–5148 or (907) 786–3810.

**SUPPLEMENTARY INFORMATION:**

Letters of Authorization were issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities (65 FR 16828; March 30, 2000)."

Dated: May 8, 2000.

**Mike Boylan,**

*Acting Deputy Regional Director.*

[FR Doc. 00–12527 Filed 5–17–00; 8:45 am]

**BILLING CODE 4310–55–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Notice of Final Agency Action To Take 90.94 Acres of Land, More or Less, Into Trust for the Lower Brule Sioux Tribe of Indians of South Dakota

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Notice of intent to take land into trust.

**SUMMARY:** This provides notice that a final agency determination has been made to acquire 90.94 acres of land, more or less, into trust for the Lower Brule Sioux Tribe of Indians of South Dakota. The United States will acquire title no sooner than thirty days after this notice is published. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1 and pursuant to 25 CFR 151.12(b), 61 **Federal Register** 18082–18083, April 24, 1996.

**FOR FURTHER INFORMATION CONTACT:** Terrance L. Virden, Bureau of Indian Affairs, Director, Office of Trust Responsibilities, MS–4513/MIB/Code 200, 1849 C Street, NW, Washington, DC 20240; telephone (202) 208–5831.

**SUPPLEMENTARY INFORMATION:** On April 6, 2000, the Assistant Secretary—Indian Affairs made a final determination that the United States will accept 90.94 acres of land, more or less, in trust for the Lower Brule Sioux Tribe of Indians of South Dakota. It was determined that the acceptance of the following described land into trust, pursuant to 25 U.S.C. 465, would be in the best interest of the Lower Brule Sioux Tribe of Indians of South Dakota.

**Lyman County, South Dakota**

A portion of the Northeast Quarter of the Northwest Quarter (NE¼NW¼) lying North of Highway No. 16 (shown as Lot H–1 in Book 3 of Plats, Page 108) and except Lot "A" of Lester's Addition (a subdivision of the NE¼NW¼) of Section Twenty-Four (24) and the West Half of the Southwest Quarter (W½SW¼) of Section Thirteen (13), the Northwest Quarter of the Northwest Quarter of the Northwest Quarter (NW¼NW¼NW¼) of Section Twenty-Four (24), and the Northeast Quarter of the Northwest Quarter of the Northwest Quarter (NE¼NW¼NW¼) of Section Twenty-Four (24), Township One Hundred Four North (104N), Range Seventy-Two West (72W) of the Fifth Principal Meridian, Lyman County, South Dakota.

Subject to any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: May 12, 2000.

**Kevin Gover,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 00–12585 Filed 5–17–00; 8:45 am]

**BILLING CODE 4310–02–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY090–00–1310–EJ]**

### Notice of Availability of Final Environmental Impact Statement for the Pinedale Anticline Natural Gas Exploration and Development Project, and Proposed Amendment to the Pinedale Resource Management Plan

**AGENCY:** Lead Agency—Bureau of Land Management, Interior. Cooperating Agencies—U.S. Forest Service, Department of Agriculture, Corps of Engineers, U.S. Army, State of Wyoming.

**ACTION:** Notice of Availability of Final Environmental Impact Statement (FEIS) for the Pinedale Anticline Natural Gas Exploration and Development Project, Sublette County, Wyoming, and Notice of 30-day protest period for proposed amendment to the Pinedale Resource Management Plan (RMP).

**SUMMARY:** The FEIS is an abbreviated FEIS. The FEIS and the Draft EIS (DEIS) comprise the entire document for filing purposes and for the decision making process. Please refer to the DEIS for more detailed analysis and description of the proposed action and alternatives. The FEIS contains 7 Sections. Section 1, Introduction; Section 2, Potential Management Scenario for Continued Exploration and Development; Section 3, Analysis of Revised Sales Gas Pipeline Alternatives; Section 4, Errata; Section 5, Comment Responses and Letters; Section 6, Responses to Environmental Group Notices and Alerts; and Section 7, Public Hearing Comments and Responses. BLM has identified the Resource Protection (RP) Alternative on Federal Lands and Minerals as its preferred alternative based on information contained in the DEIS, comments received during public scoping, and comments received on the DEIS. BLM considers the RP Alternative on All Lands and Minerals to be the environmentally preferred alternative.

The Pinedale Anticline EIS identifies the need for amendment, planning review, and/or maintenance of the following 1988 Pinedale RMP items: (1) The amendment of a Pinedale RMP off-road vehicle (ORV) designation; (2) the update and modification, if necessary, of visual resource management (VRM) classification; and (3) withhold unleased Federal lands and minerals and/or expired leases in the Hoback Basin, southern foothills of the Gros Ventre Range, and the Wind River Front from oil and gas leasing until the effects of leasing these lands can be addressed in a planning review of the Pinedale RMP and Bridger-Teton Leasing EIS.

**DATES:** Comments on the FEIS will be accepted for 30 days following the date that the Environmental Protection Agency (EPA) publishes their Notice of Availability in the **Federal Register**. The EPA notice is anticipated to be published on June 2, 2000. Protest of the proposed ORV designation amendment to the Pinedale RMP must be postmarked within 30 days following the date that the Environmental Protection Agency publishes the filing notice for the Final EIS in the **Federal Register**.

**ADDRESSES:** Comments on the FEIS should be sent to Bureau of Land Management, Bill McMahan (Project Coordinator), 280 Highway 191 North, Rock Springs, WY 82901, or they can be e-mailed to bill_mcmahan@blm.gov.

Protests on the proposed ORV designation amendment to the Pinedale RMP should be sent to the Director (210), Bureau of Land Management, Attention: Brenda Williams, 1849 C Street NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Bill McMahan, Project Coordinator, Bureau of Land Management, Rock Springs, Wyoming 82901, (307) 352–0224.

**SUPPLEMENTARY INFORMATION:** The DEIS (NOA published by EPA in the **Federal Register**, November 26, 1999; comment due date February 4, 2000, following State Director approval of a 10 day extension of time for review/comment on the DEIS) analyzed a proposal by the Pinedale Anticline Operators to drill up to 900 new wells to achieve 700 producing locations over the next 10 to 15 years on their leased acreage within the Pinedale Anticline Project Area (PAPA) (approximately 197,345 acres) in western Wyoming. Lands associated with the new drilling program are located between the town of Pinedale, Wyoming, and the Jonah Natural Gas Field (30 miles south); and between the Green River on the west and Wyoming Highway 191 on the east (between 8 and 15 miles wide). Comments were received on the DEIS from a number of groups. A total of 235 comment letters were received. BLM held a public hearing on January 12, 2000. A total of 86 people signed in at the hearing—17 gave statements. BLM responses to each comment letter and hearing comments are included in Sections 5, 6, and 7 of the FEIS.

Factors Affecting Pinedale Resource Management Plan (RMP) Completed in 1988—The Pinedale Anticline EIS addresses the need for amendment, planning review, and/or maintenance of the Pinedale RMP. The EIS identifies that (1) the RMP decision designating portions of the PAPA as "open" to off-road vehicle (ORV) use should be amended from "open" to "limited to existing roads and trails" to protect surface values and to be consistent with other oil/gas development areas; (2) the visual resource management (VRM) classification for the VRM classifications within the Resource Area need to be updated and the RMP modified if necessary; and (3) all Federal lands and minerals that are unleased and/or that have expired leases in the Hoback Basin, southern foothills of the Gros Ventre Range, and the Wind River Front should be withheld from oil and gas leasing until the effects of leasing these lands can be addressed in a planning review to determine any needed modification to the 1988 Pinedale RMP and to the Bridger-Teton Leasing EIS (Management Areas 21, 45, 71, and 72).

The RMP planning review for the identified areas (see Pinedale Anticline DEIS Figure 5–2) would address new issues and concerns for air quality related values, protection of scenic values of the mountain ranges, protection of the new and/or more densely populated rural subdivisions occurring on private surface underlain by Federal minerals, and other resource concerns. An analysis of these factors may affect Federal mineral leasing and other Federal authorizations on the described lands.

The Pinedale Anticline EIS proposal to amend the Pinedale RMP ORV "open" area designation to "limited to existing roads and trails" is protestable. This is the only part of the Pinedale Anticline EIS that is protestable under the BLM Planning Regulations (43 CFR 1610.5–2). Anyone disagreeing with the proposed decision to change the ORV designation within the Pinedale Anticline project area must file a written protest within the 30-day review period for the FEIS. The proposed amendment may be protested by parties who participated in the Pinedale Anticline EIS process, who have an interest which is or may be adversely affected by the proposed change, and who raised issue with ORV use during the EIS process. The protest must include the following information: (1) The name, mailing address, telephone number, and interest of the person filing the protest; (2) a statement of the issue(s) submitted during the DEIS review process by the protesting party, or an indication of the date the issue(s) were discussed for the record; (3) a statement of the part(s) of the recommendation being protested; (4) a copy of all documents addressing the issue(s) that were submitted during the DEIS review process by the protesting party, or an indication of the date the issue(s) were discussed for the record; and (5) a concise statement explaining why the proposed decision is believed to be wrong.

At the end of the 30-day protest period, the proposed change, if not protested, will become final. If a protest is received, approval of oil and gas development will be based upon the existing ORV designation until final action on the protest has been completed. Any significant change made as a result of a protest will be made available for public review and comment before it is approved.

This DEIS, in compliance with section 7(c) of the Endangered Species Act (as amended), includes the Biological Assessment for the purpose of identifying any endangered or threatened species which are likely to be affected by the proposed action.

Dated: May 12, 2000.

**Alan L. Kesterke,**

*Associate State Director.*

[FR Doc. 00–12495 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–030–2000–1310–DB]**

### Notice of Intent To Prepare an Environmental Impact Statement; Desolation Flats Natural Gas Development Project, Carbon and Sweetwater Counties, Wyoming, To Conduct a Planning Review of the Proposed Project Area, and If Necessary, Amend Either or Both the Great Divide and Green River Resource Management Plans

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) and to conduct scoping for the Desolation Flats Natural Gas

Development Project, Carbon and Sweetwater Counties, Wyoming.

**SUMMARY:** Under section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Land Management (BLM), Rawlins Field Office, will direct the preparation of an EIS on the potential impacts of a proposed natural gas field development project. Approximately 385 gas wells and associated facilities could be constructed on approximately 229,781 acres of primarily Federal land (some private and State included), over a 20-year development period. The project area is located in southwestern Carbon County and southeastern Sweetwater County, Wyoming. The proposed action may be modified, as a result of comments received during scoping or anytime during the preparation of the draft EIS, to include actions that may, upon review, require a plan amendment to the Green River and Great Divide Resource Management Plans. A planning review of existing land-use decisions would be conducted. Additionally an evaluation of potential relevant and important resource values in the Desolation Flats project area portion of the Monument Valley Management Area of the Rock Springs Field Office would be done. Any needed changes in existing management or any new management actions to be prescribed for the area will be identified and, if necessary, the Green River RMP amended. In accordance with 43 CFR 3420.1–2, this notice also serves as a call for coal and other resource information to solicit indications of interest and information on coal resource development potential in the proposed project area and on other resources which may be affected by the proposed project. Affected Federal lands are administered by the BLM Rawlins and Rock Springs Field Offices. The EIS will be prepared by a third-party contractor.

**DATES:** Comments on the project proposal will be accepted through June 23, 2000. Public scoping meetings will be held at 7 p.m. on the following dates, at the following locations:

—June 7, 2000, in Rock Springs, Wyoming, Bureau of Land Management, Rock Springs Field Office, 280 Highway 191 North.
—June 8, 2000, in Rawlins, Wyoming, Bureau of Land Management, Rawlins Field Office, 1300 North Third Street.

**ADDRESSES:** Comments should be sent to Bureau of Land Management, Rawlins Field Office, John Spehar, Team Leader, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301, phone (307) 328–4200, or e-mailed to rawlins__wymail@blm.gov. Additionally, the Scoping Notice will be posted on the Wyoming BLM homepage at www.wy.blm.gov. Your response is important and will be considered in the environmental analysis process. If you do respond, we shall keep you informed of decisions resulting from the analysis. Please note that public comments submitted for this scoping review, including names, e-mail addresses, and street addresses of the respondents will be available for public review and disclosure at the above address during regular business hours (7:45 a.m. to 4:30 p.m.) Monday through Friday, except holidays. Individual respondents may request confidentially. If you wish to withhold your name, e-mail address, or street address from public review or from disclosure under the Freedom of Information Act, you must state this plainly at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Bureau of Land Management, John Spehar, Project Manager, 1300 North Third Street, P.O. Box 2407, Rawlins, Wyoming 82301, phone 307–328–4264, e-mail: John_Spehar@blm.gov.

**SUPPLEMENTARY INFORMATION:** Marathon Oil Company (Marathon) has notified the Bureau of Land Management that Marathon and other operators propose a 20-year field development project. The proposed project area, referred to as the Desolation Flats area, is generally located in Townships 13–16 North, Ranges 94–96 West, Sixth Principal meridian, Carbon and Sweetwater Counties, Wyoming.

The project area is located approximately 14 miles west and north of Baggs, Wyoming. The project area is approximately 229,781 acres in size. The vast majority of land and mineral ownership is Federal. The Federal land surface and Federally owned minerals are managed by the Rawlins and Rock Springs BLM Field Offices.

Marathon and other operators propose to drill 385 wells on 361 locations and construct associated facilities, including roads, well pads, pipelines, and compressor stations. Drilling of exploratory or confirmation/delineation wells on existing Federal leases will be permitted on a case-by-case basis during the preparation of the EIS. A site-specific environmental assessment (EA) will be prepared for each individual drilling proposal.

The Desolation Flats project area contains lands covered by two existing natural gas development project EISs. The Mulligan Draw Unit EIS and the Dripping Rock/Cedar Breaks Area EA were approved for spacing of one well per section and for drilling in the Almond Formation. The intent of including the Mulligan Draw EIS area and the Dripping Rock/Cedar Breaks EA area within the Desolation Flats project area, as described by the operators, is to determine the feasibility and environmental impacts of a well-spacing density greater than the authorized one-well per 640-acre spacing.

This EIS will address cumulative impacts and will include consideration of affects of other oil and gas projects addressed in recently completed EISs for the Mulligan Draw Gas Field Project, the Creston/Blue Gap Natural Gas Project, the soon to be completed Continental Divide/Wamsutter II Natural Gas Project, and the recently proposed Atlantic Rim Coalbed Methane Project EA. Potential issues to be addressed in the EIS include, but are not limited to: impacts to wildlife populations and their habitats, access road development and transportation management, surface and ground water resources, impacts from additional drilling and production activities, reclamation, noxious weed control, conflicts with livestock grazing operations, protection of cultural and paleontological resources, threatened and endangered species, and cumulative impacts.

Dated: May 12, 2000.

**Alan R. Pierson,**

*State Director.*

[FR Doc. 00–12496 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–22–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ID–010–0777–XQ]**

### Notice of Meeting

**AGENCY:** Lower Snake River District, Bureau of Land Management, Interior.

**ACTION:** Meeting notice.

**SUMMARY:** The Lower Snake River District Resource Advisory Council will meet in Boise. Potential agenda topics are the Interior Columbia Basin Ecosystem Management Plan, the Integrated Natural Resources Management Plan for the U.S. Air Force

Enhanced Training in Idaho project, sage grouse habitat management, implementation of rangeland standards and guidelines, off-highway vehicle management and other land management issues.

**DATES:** June 22, 2000. The meeting will begin at 9 a.m. Public comment periods will be held at 9:30 a.m. and 4 p.m.

**ADDRESSES:** The meeting will be held at the Lower Snake River District Office, located at 3948 Development Avenue, Boise, Idaho.

**FOR FURTHER INFORMATION CONTACT:** Barry Rose, Lower Snake River District Office (208–384–3393).

Dated: May 12, 2000.

**Howard Hendrick,**

*District Manager.*

[FR Doc. 00–12490 Filed 5–17–00; 8:45 am]

**BILLING CODE 4310–84–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–958–1430–ET; GP0–0014; OR–54087]**

### Public Land Order No. 7446; Withdrawal of Public Lands for the Desert Springs Seed Orchard; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Public Land Order.

**SUMMARY:** This order withdraws 80 acres of public land from surface entry and mining for a period of 50 years and transfers administrative jurisdiction to the Forest Service to protect its investment in the development of a seed orchard. The land has been and will remain open to mineral leasing.

**EFFECTIVE DATE:** May 18, 2000.

**FOR FURTHER INFORMATION CONTACT:** Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6189.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), to protect the proposed investment of Federal funds and related facilities for the Forest Service's Desert Springs Seed Orchard:

**Willamette Meridian**

T. 33 S., R. 18 E.,
Sec. 11, E½SE¼.

The area described contains 80 acres in Lake County.

2. Administrative jurisdiction of the land described in Paragraph 2 is hereby transferred to the Forest Service.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the land under lease, license, or permit, or governing the disposal of its mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 50 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: May 4, 2000.

**Sylvia V. Baca,**

*Assistant Secretary of the Interior.*

[FR Doc. 00–12478 Filed 5–17–00; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[WY–100–1430–EU; WYW–146697]**

### Notice of Realty Action; Recreation and Public Purposes (R&PP) Act Classification; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The following public lands located near Pinedale, Wyoming, have been examined and found suitable for classification for conveyance to Sublette County under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Sublette County intends to use the land as a shooting sports complex.

**Sixth Principal Meridian**

T. 33 N., R. 109 W.,
Section 7, Lots 1 and 2.
T. 33 N., R. 110 W.
Section 12, S½NE¼NE¼, SE¼NE¼.

The land described above contains 132.67 acres.

**FOR FURTHER INFORMATION CONTACT:** Detailed information concerning this action is available for review at the Pinedale Field Office, Bureau of Land Management, 432 East Mill Street, P.O. Box 768, Pinedale, Wyoming 82941, or contact Bill Wadsworth at (307) 367–5341.

**SUPPLEMENTARY INFORMATION:** The lands are not needed for Federal purposes. Conveyance is consistent with current BLM land use planning and would be in the public interest. The conveyances, when completed, will be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. A right-of-way for ditches and canals constructed by the authority of the United States. Upon publication of this notice in the **Federal Register**, the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance or classification of the lands to the Field Manager, Bureau of Land Management, Pinedale Field Office, P.O. Box 768, Pinedale, Wyoming 82941.

The analysis may identify that an amendment to the Pinedale RMP is needed. If a plan amendment is needed, other notices, mailings, or media releases will announce a 30-day protest period on the proposed amendment.

**Classification Comments**

Interested parties may submit comments involving the suitability of the lands for a shooting sports complex. Comments on the classification should only address whether the land is physically suited for a shooting sports complex (as appropriate), whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

**Application Comments**

Interested parties may submit comments regarding the specific uses proposed in the conveyance applications and plans of development, whether the BLM followed proper administrative procedures in reaching the decisions, or any other factor not directly related to the suitability of the land for a shooting sports complex. Any adverse comments will be reviewed by the State Director. In the absence of any

adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: May 4, 2000.

**Priscilla Mecham,**

*Field Manager.*

[FR Doc. 00–12574 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–84–M

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[ES–960–1910–BJ–4377; ES–50671, Group 154, Minnesota]**

### Notice of Filing of Plat of Survey; Minnesota

The plat of the dependent resurvey of portions of the south, east and north boundaries, portions of the subdivisional lines, the survey of the subdivision of sections 1 through 4, 6, 7, 9 through 21, 23 through 28, and 30 through 36, the reestablishment of the record meander line in sections 2, 3, 4, 11, 18, 23 and 34, and the metes-and-bounds survey in section 34, Township 143 North, Range 39 West, 5th Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on June 19, 2000.

The survey was requested by the Bureau of Indian Affairs.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., June 19, 2000.

Copies of the plat will be made available upon request and prepayment of the appropriate fee.

Dated: May 4, 2000.

**Stephen G. Kopach,**

*Chief Cadastral Surveyor.*

[FR Doc. 00–12479 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–GJ–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AZA 18465]**

### Notice of Proposed Withdrawal Extension and Opportunity for Public Meeting; Arizona

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Prisons, Department of Justice, has filed an application to extend Public Land Order No. 6493 for a 20-year period. This order withdrew public land from surface entry and mining for sewage treatment, a water well, and a buffer zone for a Federal Correctional Institution located on adjacent land.

**DATES:** Comments and requests for a public meeting must be received by August 16, 2000.

**ADDRESSES:** Comments and meeting requests should be sent to the Facilities Manager, Federal Correctional Institution, 37900 North 45th Avenue, Phoenix, Az 85027–7003.

**FOR FURTHER INFORMATION CONTACT:** D.C. Henderson, Federal Correctional Institution, Phoenix, Arizona; 623–465–9757.

**SUPPLEMENTARY INFORMATION:** On May 2, 2000, the Bureau of Prisons filed an application to extend Public Land Order No. 6493 for a 20-year period. Public Land Order No. 6493 withdrew the following described land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

**Gila and Salt River Meridian**

T. 6 N., R. 2 E.,
Sec. 28, N½SW¼SW¼;
Sec. 29, E½SE¼NE¼, E½NE¼SE¼, and NE¼SE¼SE¼.

The area described contains 70 acres in Maricopa County.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal extension may present their views in writing, by the date specified above, to the Facilities Manager, Federal Correctional Institution, Phoenix, Arizona.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal extension. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal extension must submit a written request, by the date specified above, to the Facilities Manager, Federal Correctional Institution, Phoenix, Arizona. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

Dated: May 9, 2000.

**Kelly Grissom,**

*Acting Deputy State Director, Resources Division.*

[FR Doc. 00–12528 Filed 5–17–00; 8:45 am]

BILLING CODE 4410–05–P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of Information Collection Request.

**SUMMARY:** To comply with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), we are notifying you that an information collection request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

**DATES:** Written comments should be received on or before June 19, 2000.

**ADDRESSES:** You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (OMB Control Number 1010-NEW), 725 17th Street, NW, Washington, DC 20503. You should also send copies of these comments to us. Our mailing address for written comments regarding this information collection is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. Email address is *RMP.comments@mms.gov*.

**Public Comment Procedure**

Your comments and copies of your comments may be submitted to the addresses listed above. Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Report of Sales and Royalty Remittance, Form MMS–2014, OMB Control Number 1010–NEW, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we

have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov*. You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* Report of Sales and Royalty Remittance.

*OMB Control Number:* 1010–NEW.

*Bureau Form Number:* Form MMS–2014.

*Abstract:* The Secretary of the Interior is responsible for the collection of royalties from leases producing minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands and Federal onshore and offshore leases, to collect the royalties due, and to distribute the funds in accordance with those laws. MMS is responsible for the royalty management functions assigned to the Secretary and is developing a financial accounting system which includes royalty and production reporting as a part of an overall effort to improve management of the nation's resources. This new system will be effective October 1, 2001, and will replace both the Accounting and Financial System and the Production Accounting and Auditing System.

MMS's proposal for royalty reporting requirements was published in the Federal Register on February 23, 1999 (64 FR 8835).

In April 1996, RMP undertook a compliance reengineering initiative. The principal reengineering objective was to define and implement a new compliance strategy ensuring that Federal and Indian mineral lease revenues were accurately and timely paid in the most cost-effective manner possible.

The Royalty Policy Committee (RPC), which includes representatives from industry, States, Indian Tribal and allottee groups, and MMS, issued recommendations in June 1996 to streamline both royalty and production reporting. An action plan was developed to implement many of the recommendations. However, in August 1996, the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA) was enacted into law. RSFA significantly changed many of RMP's historical operating assumptions as well as some fundamental Federal oil and gas mineral revenue financial activities. Although near-term changes in processes and systems were made to implement the law, long-term strategies, business processes, and aging systems needed to be addressed for RMP to be cost-effective and responsive to customer needs. The decision was made April 1, 1997, to expand reengineering to all RMP core business processes. This is the most comprehensive review of RMP's business processes and organization since its creation in 1982.

When a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the United States, Indian tribe, or allottee a share (royalty) each month of the full value received for the minerals taken from leased lands. The Report of Sales and Royalty Remsittance, Form MMS–2014, is the only document used for reporting royalties, certain rents, and other lease-related transactions to MMS.

As part of our reengineering effort, we analyzed current information collection requirements for the existing Form MMS–2014 and built upon the RPC's earlier recommendations. As a result of our analysis, we developed and incorporated revised reporting requirements for Form MMS–2014 which will reduce the volume of lines reported and processed, minimize errors and related error correction workloads, simplify reporting and lower costs for both industry and RMP. The revised Form MMS–2014 incorporates RPC's recommendations and input received from States, Indian Tribes, and other industry groups.

Industry will not begin using the revised Form MMS–2014 until October 1, 2001, when we implement our new financial accounting system. However, we are requesting approval of this revised form immediately, so that industry can begin work on the necessary systems development and reprogramming adjustments and changes that may be required as they prepare for the new reporting requirements that will be effective October 1, 2001. Please note that the existing Form MMS–2014 will continue to be used until the change over to the revised Form MMS–2014 in the fall of 2001.

Failure to collect the information provided by Form MMS–2014 would render it impossible to ensure that MMS is collecting and disbursing the full value of royalties received from production of leased lands. Collection of royalties directly impacts the amount of funds made available to the United States Treasury, to State governments, and to Indian Tribes and allottees.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. As required in 5 CFR 1320.8(d), MMS published a 60-day **Federal Register** Notice on February 23, 1999 (64 FR 8835), soliciting comments from the public on this revised Form MMS–2014.

*Respondents/Affected Entities:* Payors-companies or individuals who enter into a contract to develop, produce, and dispose of minerals from Federal or Indian lands.

*Frequency of Response:* Monthly.

*Estimated Number of Respondents:* 2,300 payors.

*Estimated Annual Reporting and Recordkeeping "Hour" Burden:* 124,500 hours.

*Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden:* $4.7 million.

*Comments:* Section 3506(c)(2)(A) of the Paperwork Reduction Act requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality,

usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this Notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by June 19, 2000.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, telephone (202) 208–7744.

Dated: March 27, 2000.

**Lucy Querques Denett,**

*Associate Director for Royalty Management.*

[FR Doc. 00–12485 Filed 5–17–00; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

### Minerals Management Service

### Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

**AGENCY:** Minerals Management Service (MMS), Interior.

**ACTION:** Notice of Information Collection Request (OMB Control Number 1010–NEW).

**SUMMARY:** Under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*), we are notifying you that an information collection request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

**DATES:** Submit written comments on or before June 19, 2000.

**ADDRESSES:** You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Interior Department (OMB Control Number 1010–NEW), 725 17th Street, NW, Washington, DC 20503; telephone (202) 395–7340. You should also send copies of these comments to us. Our mailing address for written comments regarding this information collection is David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier or overnight delivery address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225.

**Public Comment Procedure**

If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to the offices listed in the **ADDRESSES** section. You may also comment via the Internet to *RMP.comments@mms.gov.* Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Include Attn: OMB Control Number 1010–NEW, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov.* You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

**FOR FURTHER INFORMATION CONTACT:** Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Production Accounting and Auditing System Reports.

*OMB Control Number:* 1010–NEW.

*Bureau Form Numbers:* Forms MMS–4054, MMS–4055, MMS–4056, and MMS–4058.

*Abstract:* The Secretary of the Interior is responsible for the collection of royalties from lessees who produce minerals from leased Federal and Indian lands. The Secretary is authorized to manage lands, to collect royalties due, and to distribute royalty funds. MMS is responsible for the royalty management functions assigned to the Secretary and is developing a financial accounting system which includes royalty and production reporting as a part of an overall effort to improve management of the nation's resources. This new system will be effective October 1, 2001, and will replace both the Accounting and Financial System and the Production Accounting and Auditing System. MMS' proposal was published in the **Federal Register** on February 23, 1999 (64 FR 8844). We received 15 comments related to production reporting. We responded to these comments in the ICR that we submitted to OMB.

In April 1996, MMS undertook a compliance reengineering initiative. The principal reengineering objective was to define and implement a new compliance strategy ensuring that Federal and Indian mineral lease revenues were accurately and timely paid in the most cost-effective manner possible.

The Royalty Policy Committee (RPC), which includes representatives from industry, States, Indian Tribal and allottee groups, and MMS, issued recommendations in June 1996 to streamline both royalty and production reporting. An action plan was developed to implement many of the recommendations. However, in August 1996, the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA) of 1996, was enacted into law. RSFA significantly changed many of the Royalty Management Program's (RMP) historical operating assumptions as well as some fundamental Federal oil and gas mineral revenue financial activities. Although near-term changes in processes and systems were made to implement the law, long-term strategies, business processes, and aging systems needed to be addressed for RMP to be cost-effective and responsive to customer needs. The decision was made April 1, 1997, to expand reengineering to all RMP core business processes. This is the most comprehensive review of RMP's business processes and organization since its creation in 1982.

As part of our reengineering effort, we analyzed current information collection requirements for existing Forms MMS–3160, MMS–4051, MMS–4054, MMS–4055, MMS–4056, and MMS–4058 (OMB control Number 1010–0040) to confirm the presence of data needed to

support future RMP processes. As a result, RMP deleted Forms MMS–3160 and MMS–4051 and streamlined and modified required data elements on Forms MMS–4054 through MMS–4058. These revised forms will not be used until RMP implements it's new financial accounting system, currently scheduled for implementation in October 2001.

MMS proposes to use these four revised forms for gathering oil and gas production data from industry as follows:

a. Form MMS–4054, Oil and Gas Operations Report (OGOR),

b. Form MMS–4055, Gas Analysis Report (GAR),

c. Form MMS–4056, Gas Plant Operations Report (GPOR), and

d. Form MMS–4058, Production Allocation Schedule Report (PASR).

The data from these forms are matched with sales and royalty data reported to MMS. The production reports provide MMS with ongoing information on lease, agreement (property) and facility production, sales volumes, and inventories. The reports summarize all operations on a property or facility during a reporting period. They identify production by API well number and sales by product. Data collected are used as a method of cross checking reported production with reported sales.

Industry will not begin using the revised forms until October 2001 when we implement our new financial accounting system. However, we are requesting approval of these revised forms immediately, so that industry can begin work on the necessary systems development and reprogramming adjustments and changes that may be required as they prepare for the new reporting requirements that will be effective October 2001. Please note that the existing forms (Forms MMS–4054, MMS–4055, MMS–4056, and MMS–4058) will continue to be used until the change over to the revised forms in the fall of 2001.

Failure to collect all of this information will prevent MMS from ensuring that all royalties owed on lease production are paid. Additionally, the data are shared electronically with the MMS's Offshore Minerals Management program, Bureau of Land Management, Bureau of Indian Affairs, and tribal and State governments so they can perform their lease management responsibilities.

*Respondents/Affected Entities:* Operators of Federal or Indian leases.

*Frequency of Response:* Monthly.

*Estimated Number of Respondents:* 2,450 operators.

*Estimated Total Annual Reporting and Recordkeeping "Hour" Burden:* 89,717 hours.

*Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden:* $1.5 million.

*Comments:* Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. . . ." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. As required in 5 CFR 1320.8(d), MMS published a 60-day **Federal Register** Notice on February 23, 1999 (64 FR 8835), soliciting comments from the public on these revised forms.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by June 19, 2000.

*MMS Information Collection Clearance Officer:* Jo Ann Lauterbach, telephone (202) 208–7744.

Dated: May 11, 2000.

**Lucy Querques Denett,**

*Associate Director for Royalty Management.*

[FR Doc. 00–12486 Filed 4–17–00; 8:45 am]

BILLING CODE 4310–MR–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Central Valley Project Improvement Act, Criteria for Evaluating Water Management Plans

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice.

**SUMMARY:** To meet the requirements of the Central Valley Project Improvement Act (CVPIA) of 1992 and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Conservation Plans, dated April 30, 1993. In September 1996 Reclamation revised the document and renamed it to Criteria for Evaluating Water Management Plans (Criteria). The Criteria have been revised again in 1999.

The City of Roseville and El Dorado Irrigation District have developed Water Management Plans (Plan) which Reclamation has evaluated and preliminarily determined to meet the requirements of the Criteria.

The 1999 Criteria were developed based on information provided during public scoping and review sessions held throughout Reclamation's Mid-Pacific (MP) Region. Reclamation uses these Criteria to evaluate the adequacy of all Plans developed by Central Valley Project contractors. The Criteria were developed and the Plans have been evaluated for the purpose of promoting the most efficient water use reasonably achievable by all MP Region contractors. Reclamation made a commitment (stated within the Criteria) to publish a notice of its draft determination of the adequacy of each contractor's Plan in the **Federal Register** to allow the public a minimum of 30 days to comment on its preliminary determinations.

**DATES:** All public comments must be received by June 19, 2000.

**ADDRESSES:** Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Please mail comments to Lucille Billingsley, Bureau of Reclamation, 2800 Cottage Way, MP–410, Sacramento, California 95825.

**FOR FURTHER INFORMATION CONTACT:** To be placed on a mailing list for any subsequent information, please contact Lucille Billingsley at the address above.

or by telephone at (916) 978–5215 (TDD 978–5608).

**SUPPLEMENTARY INFORMATION:** Under provision of Section 3405(e) of the CVPIA (Title 34 Pub. L. 102–575), "The Secretary [of the Interior] shall establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405(e)(1), these criteria will be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices."

The Criteria states that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 irrigable acre-feet and agricultural contracts over 2,000 irrigable acres) will prepare Plans which will be evaluated by Reclamation based on the following required information detailed in the sections listed below to develop, implement, monitor, and update their Plans. The sections are:

1. Description of the District
2. Inventory of Water Resources
3. Best Management Practices (BMPs) for Agricultural Contractors
4. BMP's for Urban Contractors
5. Plan Implementation
6. Exemption Process
7. Regional Criteria
8. 5-Year Revisions

Public comment on Reclamation's preliminary (*i.e.*, draft) determination of both the City of Roseville's and El Dorado Irrigation District's Plans are invited at this time. A copy of both Plans will be available for review at Reclamation's MP Regional Office located in Sacramento, California, and MP's Central California Area Office located in Folsom, California. If you wish to review a copy of the plan, please contact Ms. Billingsley to find the office nearest you.

Dated: May 11, 2000.

**Mary Johannis,**

*Acting Regional Resources Manager, Mid-Pacific Region.*

[FR Doc. 00–12350 Filed 5–17–00; 8:45 am]

**BILLING CODE 4310–94–M**

## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

### Refuge Water Supply Long-Term Water Service Agreements

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Bureau of Reclamation (Reclamation) has scheduled the first meeting for long-term water service contracts with the California Department of Fish and Game, Grassland Water District (representing the Grasslands Resources Conservation District), and long-term memoranda of understanding with the U.S. Fish and Wildlife Service. This first meeting will include distribution of the draft agreements, establishing each party's negotiation team, and setting the schedule for future negotiation sessions. The public is welcome to observe the meeting process.

**DATES:** The first meeting will be held on Thursday, May 18, 2000 from 10 a.m. to 1 p.m.

**ADDRESSES:** The meeting will be held at the Expo Inn, 1413 Howe Avenue, Sacramento, California.

**FOR FURTHER INFORMATION CONTACT:** Stan Yarborough, Reclamation, at (916) 978–5516.

**SUPPLEMENTARY INFORMATION:** The water service contractual agreements are to provide "firm water supplies of suitable quality to maintain and improve wetland habitat areas on units of the National Wildlife Refuge System in the Central Valley of California; on the Gray Lodge, Los Banos, Volta, North Grasslands, and Mendota state wildlife management areas; and on the Grasslands Resources Conservation District in the Central Valley of California," in accordance with the requirements of section 3406(d) of the Central Valley Project Improvement Act (CVPIA). Before the enactment of the CVPIA, most of the Federal, State and local refuges identified above did not have firm water supplies to meet optimum refuge water management needs (Level 4 needs). The negotiation process that commences on May 18, 2000, is intended to yield new long-term refuge water service agreements to supply up to Level 4 needs. In some cases, these new agreements may replace existing agreements.

Dated: May 11, 2000.

**Mary Johannis,**

*Acting Regional Resources Manager, Mid-Pacific Region.*

[FR Doc. 00–12349 Filed 5–15–00; 5:09 pm]

**BILLING CODE 4310–94–P**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Cost Recovery Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Cytec Industries, Inc., Ford Motor Company, and SPS Technologies, Inc.*, Civil Action No. 00–CV–2248 was lodged with the United States District Court for the Eastern District of Pennsylvania on May 2, 2000. This Consent Decree resolves certain claims of the United States against Cytec Industries, Inc., Ford Motor Company, and SPS Technologies ("Settling Defendants") under Sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606 and 9607(a), for performance of Operable Unit 1 response action and for Operable Unit 1 future response costs at the Boarhead Farms Superfund Site located in Bridgeton Township, Pennsylvania. The Consent Decree requires the Settling Defendants to perform all Operable Unit 1 activities (as defined in the Decree) and to pay all Future Response Costs relating to Operable Unit 1 activities at the Boarhead Farms Superfund Site.

The Department of Justice will accept written comments on the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Cytec Industries, Inc., Ford Motor Company, and SPS Technologies, Inc.*, DOJ #90–11–2–06036.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Philadelphia, PA 19106 and at EPA Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Consent Decree may be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC

20044–7611. When requesting a copy of the proposed Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "Consent Decree Library" in the amount of $21.00 (for Decree without appendices) or $50.00 (for Decree with appendices), and please reference *United States* v. *Cytec Industries, Inc., Ford Motor Company, and SPS Technologies, Inc., DOJ No. 90–11–2–06036.*

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.*

[FR Doc. 00–12482 Filed 5–17–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Roger D. Williams*, Civil Action No. 2:00CV296 (E.D. Va.), was lodged with the United States District Court for the Eastern District of Virginia, Norfolk Division, on April 21, 2000. This proposed Consent Decree concerns a complaint filed by the United States against Roger D. Williams, pursuant to sections 309(b) and (d) of the Clean Water Act, 33 U.S.C. 1319(b) and (d), to obtain injunctive relief and impose civil penalties against Roger D. Williams for alleged violation of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, by unlawfully discharging and/or controlling and directing the discharge of dredged and fill materials into waters of the United States at a 40-acre site located on Sondej Avenue immediately east of Bowers Hill Auto Parts and south of South Military Highway in the city of Chesapeake, Norfolk County, Virginia. The proposed Consent Decree requires Roger D. Williams to perform a restoration project at the site.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to: Yvette M. Wilkerson-Barron, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and refer to *United States* v. *Roger D. Williams*, DJ Reference No. 90–5–1–1–4518.

The proposed Consent Decree may be examined at the Clerk's Office of the United States District Court for the Eastern District of Virginia, 193 Walter E. Hoffman United States Courthouse, 600 Granby Street, Norfolk, Virginia.

**Letitia J. Grishaw,**

*Chief Environmental Defense Section, Environment and Natural Resources Division, United States Department of Justice.*

[FR Doc. 00–12481 Filed 5–17–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Membership of the 2000 Senior Executive Service Performance Review Boards

**AGENCY:** Department of Justice.

**ACTION:** Notice of Department of Justice's 2000 Senior Executive Service Performance Review Boards.

**SUMMARY:** Pursuant to the requirements of 5 U.S.C. 4314(c)(4), the Department of Justice announces the membership of its Senior Executive Service (SES) Performance Review Boards (PRBs). The purpose of the PRBs is to provide fair and impartial review of SES performance appraisals and bonus and recertification recommendations. The PRBs will make recommendations regarding the final performance ratings to be assigned, SES bonuses to be awarded, and the recertification of SES career appointees.

**FOR FURTHER INFORMATION CONTACT:** Joanne W. Simms, Director, Personnel Staff, Justice Management Division, Department of Justice, Washington, DC 20530; (202) 514–6788.

**Department of Justice, 2000 Senior Executive Service Performance Review Board Members**

*Community Oriented Policing Services*

Dennis E. Greenhouse, Deputy Director

*Office of the Solicitor General*

Lawrence G. Wallace, Deputy Solicitor General

*Office of Legal Counsel*

Robert J. Delahunty, Special Counsel

*Office of Professional Responsibility*

H. Marshall Jarrett, Counsel on Professional Responsibility

*Office of Intelligence Policy and Review*

James A. Baker, Deputy Counsel for Intelligence Operations

*Office of Policy Development*

Kevin R. Jones, Deputy Assistant Attorney General

*Office of Information and Privacy*

Daniel J. Metcalfe, Director (Policy and Litigation)

*Antitrust Division*

Willie L. Hudgins, Assistant Chief, Litigation II Section
Mary Jean Moltenbrey, Deputy Director of Operations
Anthony V. Nanni, Chief, Litigation I Section
Kenneth Heyer, Chief, Competition Policy Section

*Civil Division*

Gary W. Allen, Director, Aviation and Admiralty Litigation, Torts Branch
Felix V. Baxter, Director, Federal Programs Branch
JoAnn J. Bordeaux, Deputy Director, Environmental Tort Litigation, Torts Branch
Vito J. Dipietro, Director, Intellectual Property Litigation, Commercial Litigation Branch
J. Patrick Glynn, Director, Environmental Tort Litigation, Torts Branch
Thomas W. Hussey, Director, Office of Immigration Litigation
J. Christopher Kohn, Director, Corporate/Financial Litigation, Commercial Litigation Branch
Neil H. Koslowe, Special Litigation Counsel, Federal Programs Branch
Sheila M. Lieber, Deputy Director, Federal Programs Branch
Mark B. Stern, Appellate Litigation Counsel, Appellate Staff

*Civil Rights Division*

Merrily A. Friedlander, Chief, Coordination and Review Section
Katherine A. Baldwin, Chief, Employment Litigation Section
David K. Flynn, Chief, Appellate Section
Joan A. Magagna, Chief, Housing and Civil Enforcement Section

*Criminal Division*

Joseph E. Gangloff, Principal Deputy Chief, Public Integrity Section
Terry R. Lord, Chief, Chief Exploitation & Obscenity Section
Maureen H. Killion, Senior Associate Director, Office of Enforcement Operations
Thomas G. Snow, Deputy Director, Office of International Affairs

*Environment and Natural Resources Division*

Virginia P. Butler, Chief, Land Acquisition Section
Robert L. Bruffy, Executive Officer
Walker B. Smith, Deputy Section Chief, Environmental Enforcement Section

Pauline H. Millius, Chief, Policy, Legislation & Special Litigation Section

*Justice Management Division*

Linda A. Cinciotta, Director, Office of Attorney Personnel Management
Stuart Frisch, General Counsel
Michael A. Perez, Associate Director for Financial Management

*Tax Division*

Stephen J. Csontos, Senior Legislative Counsel
Robert S. Watkins, Section Chief, Civil Trial Section, Central Region
Joseph E. Young, Executive Officer

*Bureau of Prisons*

Keith E. Hall, Assistant Director, Human Resources Management Division
James B. Jones, Deputy Assistant Director, Administration Division
Thomas R. Kane, Assistant Director, Information, Policy, and Public Affairs
Bruce K. Sasser, Assistant Director, Administration Division
Morris L. Thigpen, Sr., Director, National Institute of Corrections
Ronald J. Waldron, Senior Deputy Assistant Director, Industries, Education, and Vocational Training

*Immigration and Naturalization Service*

John P. Chase, Director of Internal Audit
Gustavo De La Viña, Assistant Commissioner for Border Patrol
Carol A. Hall, Assistant Commissioner for Human Resources and Development
Michel A. Pearson, Executive Associate Commissioner for Field Operations
Jeffrey L. Weiss, Director, Asylum Division
David A. Yentzer, Assistant Commissioner for Administration

*United States Marshals Service*

Suzanne D. Smith, Assistant Director for Human Resources

*Office of Justice Programs*

Gary N. Silver, Director, Office of Administration

*Executive Office for Immigration Review*

Jack E. Perkins, Chief Administrative Hearing Officer

*Executive Office for United States Attorneys*

Michael W. Bailie, Director, Office of Legal Education
David W. Downs, Deputy Director for Operations
Frank M. Kalder, Deputy Director for Financial Management

*Executive Office for United States Trustees*

Jeffrey M. Miller, Associate Director

**Valerie M. Willis,**

*Executive Secretary, Senior Executive Resources Board.*

[FR Doc. 00–12480 Filed 5–17–00; 8:45 am]

BILLING CODE 4410–AR–M

## DEPARTMENT OF JUSTICE

### National Institute of Justice

**[OJP (NIJ)–1274]**

### Announcement of the Availability of the National Institute of Justice Solicitation for a National Evaluation of the Domestic Violence Victims' Civil Legal Assistance Program.

**AGENCY:** Office of Justice Programs, National Institute of Justice, Justice.

**ACTION:** Notice of solicitation.

**SUMMARY:** Announcement of the availability of the National Institute of Justice "National Evaluation of the Domestic Violence Victims' Civil Legal Assistance Program."

**DATES:** Proposals must be received by close of business July 10, 2000.

**ADDRESSES:** National Institute of Justice, 810 Seventh Street NW, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center, 1–800–421–6770.

**SUPPLEMENTARY INFORMATION:**

#### Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

#### Background

This announcement solicits proposals for a National Evaluation of the Violence Against Women Office's (VAWO) Domestic Violence Victims' Civil Legal Assistance Program. A description of this VAWO program can be found at http://www.ojp.usdoj.gov/vawo/grants/civil/descrip.htm.

The purpose of this national evaluation is to: (1) Document the range of local activities and programs supported by the FY1998, FY1999, and FY2000 Violence Against Women Office (VAWO) grants to provide civil legal assistance; (2) document local programs funded by other sources of assistance, the gaps these programs fill, whom they serve, and how VAWO funded programs fit into the larger funding picture in a jurisdiction; (3) examine and document grantee planning and implementation efforts; (4) evaluate the need for the adequacy of special conditions imposed on grantees to preserve victim safety and confidentiality, while simultaneously enhancing the professional services offered by grantees; and (5) determine the effectiveness of these programs in meeting the needs of the women they serve.

Under this solicitation, one evaluation project of up to $800,000 will be funded for a period of up to 36 months.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–3420 to obtain a copy of "National Evaluation of the Domestic Violence Victims' Civil Legal Assistance Program" (refer to document No. SL000424). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

**Julie E. Samuels,**

*Acting Director, National Institute of Justice.*

[FR Doc. 00–12564 Filed 5–17–00; 8:45 am]

BILLING CODE 4410–18–M

## DEPARTMENT OF JUSTICE

### National Institute of Justice

**[OJP (NIJ)–1273]**

### Announcement of the Availability of the National Institute of Justice Solicitation for a National Evaluation of Grants To Combat Violent Crimes Against Women on Campus

**AGENCY:** Office of Justice Programs, National Institute of Justice, Justice.

**ACTION:** Notice of solicitation.

**SUMMARY:** Announcement of the Availability of the National Institute of Justice "National Evaluation of Grants to Combat Violent Crimes Against Women on Campus."

**DATES:** Proposals must be received by close of business July 5, 2000.

**ADDRESSES:** National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

**SUPPLEMENTARY INFORMATION:**

**Authority**

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, Sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

**Background**

This solicitation is based on the Congressional reporting requirements of the Higher Education Amendments of 1998 for an evaluation of the effectiveness of the Grants to Combat Violent Crimes Against Women on Campuses Program (VAW Campus Program). The National Institute of Justice (NIJ), in collaboration with the Office of Justice Programs' Violence Against Women Office (VAWO), is soliciting proposals for this national evaluation. The evaluation should examine impact issues regarding those institutions of higher education that are VAW Campus Program grantees; implementing comprehensive, coordinated responses to violence against women, including sexual assault, domestic violence, and stalking. One grant of up to $850,000 will be awarded. The duration of the evaluation is up to 36 months, with summary reports required for each component of the evaluation—baseline data, process, and impact.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "National Evaluation of Grants to Combat Violent Crimes Against Women on Campus" (refer to document no. SL000422). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

**Julie E. Samuels,**

*Acting Director, National Institute of Justice.*

[FR Doc. 00–12565 Filed 5–17–00; 8:45 am]

BILLING CODE 4410–18–U

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–35,579 and TA–W–35,579A]**

### Mitchell Energy and Development Corporation Headquartered in the Woodlands, Texas, Operating Throughout the State of Texas and Mitchell Louisiana Gas Services L.P., and Operating Throughout the State of Louisiana; Termination of Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

On March 24, 1999, the Department issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance for the workers and former workers of Mitchell Energy and Development Corporation and Mitchell Louisiana Gas Services L.P. (TA–W–35,579.) Notice of the determination was published in the **Federal Register** on May 21, 1999 (64 FR 27811).

The certification was based on information supplied by the company which the Department concluded to indicate that crude oil production was approximately half of total company revenues. The Department issued the certification on the basis of increased aggregate U.S. imports of crude oil.

Following receipt of a request from the company that coverage of the certification be expanded to include workers not covered by the certification, the Department on December 6, 1999 instituted an investigation on behalf of workers employed in the following organizational subdivisions of the subject firm which had not been specifically identified in the certification as covered: Mitchell Energy Corporation, Mitchell Gas Services, L.P., and MND Services. The Department determined it appropriate to institute a new investigation with respect to the three above-mentioned subsidiary entities and that investigation was instituted as TA–W–37, 142.

Following the receipt and review of additional information requested by the Department in conjunction with its investigation with respect to the subsidiary entities, it was concluded less than six percent of revenues of Mitchell Energy and Development Corporation are derived from production of crude oil and that such crude oil is in fact a by-product of the subject firm's primary activities: the acquisition and processing of natural gas and natural gas liquids. Thus, upon the review of more detailed information than that initially submitted by the subject firm, it was concluded that a certification of eligibility to apply for worker adjustment assistance cannot be based upon increased imports of crude oil.

Based upon the additional evidence obtained and in accordance with Section 223(d) of the Act, on February 9, 2000, the Director of the Division of Trade Adjustment Assistance instituted an investigation to determine separations of workers from Mitchell Energy and Development Corporation and Mitchell Louisiana Gas Services L. P. (TA–W–35,579 and TA–W–35,579A) continue to be attributable to the conditions for certification specified in Section 222 of the Act. Notice of the investigation was published in the **Federal Register** on February 25, 2000.

The Department has surveyed customers of the primary products of Mitchell Energy and Development Corporation—natural gas and natural gas liquids—in order determine to whether imports of such products contributed importantly to the worker separations. None of the surveyed customers purchased imported natural gas or natural gas liquids.

**Conclusion**

Upon the review of the evidence it is determined that the Certification of Eligibility to Apply for Worker Adjustment Assistance with respect to workers of Mitchell Energy and Development Corporation, headquartered in the Woodlands, Texas operating throughout the state of Texas (TA–W–35,579) and Mitchell Louisiana Gas Services L.P. and operating throughout the state of Louisiana (TA–W–579A) is terminated. The effective date of this termination is May 18, 2000.

Signed at Washington, DC. this 10th day of May 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–12508 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37,553]**

### Swank, Inc., Attleboro, Massachusetts; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 10, 2000, in response to a petition filed on the same date on behalf of workers at Swank, Inc., Attleboro, Massachusetts.

The petitioning group of workers are covered by an existing certification issued on April 30, 2000 (TA–W–37,531). Consequently, further investigation in this case would serve no purpose, and this investigation has been terminated.

Signed in Washington, DC, this 5th day of May, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–12509 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37,243]**

### Whizard Protective Ware Corporation, Birmingham, Ohio; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Whizard Protective Ware Corporation, Birmingham, Ohio. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–37,243; Whizard Protective Ware Corporation, Birmingham, Ohio (May 10, 2000.

Signed at Washington, DC, this 12th day of May, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–12507 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection Request; Submitted for Public Comment and Recommendations; Business Confidential Data Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the information collection of the Business Confidential Data Request, ETA 9014.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

**DATES:** Written comments must be submitted on or before July 17, 2000. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses:

**ADDRESSES:** Edward A. Tomchick, Division of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210, 202–219–5555 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Sections 222, 223 and 249 of Title II, Chapter 2 of the Trade Act of 1974, as amended, authorizes the Secretary of Labor to collect the data necessary for the Secretary to determine worker eligibility of apply for Trade Adjustment Assistance (TAA). The Business Confidential Data Request is submitted to the workers' firm upon receipt of a TAA petition. The information requested is used by the investigative work group of the Division of Trade Adjustment Assistance to present an objective set of facts for the Secretary to determine whether increased imports of articles like or directly competitive with those produced by the petitioning workers' firm contributed importantly to declines in sales or production, and employment at the subject firm plant.

#### II. Current Actions

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for a extension of collection of information previously approved and assigned OMB Control No. 1205–0197. There is no change in burden.

*Type of Review:* Extension without change.

*Agency:* Employment and Training Administration.

*Title:* Business Confidential Data Request.

*OMB Number:* 1205–0197.

*Agency Number:* ETA 9014.

*Affected Public:* Businesses.

*Frequency:* On occasion.

*Number of Respondents:* 1,500 (Estimated 1,400 plus the carry over of 100 cases from the previous year.)

*Estimated Time Per Respondent:* 3 hours per response.

*Total Burden Hours:* 4,500.

*Total Burden Cost (capital/startup):* None.

*Total Burden Cost (operating/maintaining):* None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 12, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 00–12511 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Customer Survey

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public

and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the information collection of the Customer Survey, ETA 8562.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

**DATES:** Written comments must be submitted on or before July 17, 2000. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**ADDRESSES:** Edward A. Tomchick, Division of Trade Adjustment Assistance, Employment and Training Administration, Department of labor, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210, 202–219–5555 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Division of Trade Adjustment Assistance is required under the Trade Act of 1974 to conduct investigations to determine whether increased imports have contributed importantly to actual or threatened decreases in employment at firms whose workers have petitioned for Trade Adjustment Assistance benefits. The Customer Survey is designed to provide information on which determinations are based.

## II. Current Actions

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A))] for an extension of collection of information previously approved and assigned OMB Control No. 1205–0190. There is no change in burden.

*Type of Review:* Extension without change.
*Agency:* Employment and Training Administration.
*Title:* Customer Survey.
*OMB Number:* 1205–0190.
*Agency Number:* ETA 8562.
*Affected Public:* Businesses.
*Frequency:* On occasion.
*Number of Respondents:* 2,220.
*Estimated Time Per Resondent:* 1.78 hours.
*Total Burden Hours:* 3,951.
*Total Burden Cost (capital/startup):* None.
*Total Burden Cost (operating/maintaining):* None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 12, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 00–12512 Filed 5–17–00; 8:45 am]

**BILLING CODE 4510–30–M**

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## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations; Oil and Gas Drilling and Exploration Oilfield Services

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the information collection of the Oil and Gas Drilling and Exploration Oilfield Services, ETA 9018.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

**DATES:** Written comments must be submitted on or before July 17, 2000. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumption used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

**ADDRESSES:** Edward A. Tomchick, Division of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210, 202–219–5555 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Division of Trade Adjustment Assistance is required under the Trade Act of 1974 to conduct investigations to determine whether increased imports have contributed importantly to actual or threatened decreases in employment at firms whose workers have petitioned for Trade Adjustment Assistance benefits. The "Oil and Gas Drilling and Exploration Oilfield Services" Business Confidential Data Request is designed to provide information on which determinations are based.

## II. Current Actions

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)] for an

extension of collection of information previously approved and assigned OMB Control No. 1205–0272. There is no change in burden.

*Type of Review:* Extension without change.

*Agency:* Employment and Training Administration.

*Title:* Oil and Gas Drilling and Exploration Oilfield Services.

*OMB Number:* 12205–0272.

*Agency Number:* ETA 9018.

*Affected Public:* Businesses.

*Frequency:* On occasion.

*Number of Respondents:* 75.

*Estimated Time Per Respondent:* 3 hours.

*Total Burden Hours:* 225.

*Total Burden Cost:* (capital/startup) None.

*Total Burden Cost:* (operating/maintaining) None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 12, 2000.

**Edward A. Tomchick,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. 00–12513 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[NAFTA–003790]**

### 3–I, Incorporated Murrells Inlet, South Carolina; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act Public Law 103–1 concerning transitional adjustment assistance, hereinafter called NAFTA–TAA and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2331), an investigation was initiated on March 8, 2000, in response to a petition filed on behalf of workers at 3–I, Inc., Murrells Inlet, South Carolina. Workers produced t-shirts.

The petitioner has requested that the petition be withdrawn due to lack of significant worker separations. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of May, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–12510 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment Standards Administration

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the proposed extension collection of the following: (1) Rehabilitation Maintenance Certificate (OWCP–17); and Application to Employ Homeworkers (WH–46), Piece Rate Measurements, and Homeworker Handbook (WH–75). Copies of the proposed information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this Notice.

**DATES:** Written comments must be submitted to the office listed in the addresses section below on or before July 17, 2000.

**ADDRESSES:** Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW, Room S–3201, Washington, DC 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

**SUPPLEMENTARY INFORMATION:**

### Rehabilitation Maintenance Certificate (OWCP–17)

*I. Background*

The Office of Workers' Compensation Programs (OWCP) administers the Longshore and Harbor Workers' Compensation Act and the Federal Employees' Compensation Act. These Acts provide employment rehabilitation benefits to eligible injured workers. The OWCP–17 is a form which is submitted, signed, and dated by an injured worker receiving rehabilitation services to request reimbursement from OWCP for expenses incurred as a result of participation in an approved rehabilitation effort. The form requires the signature of a facility official to verify that the employee is in attendance at the program.

*II. Review Focus*

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

*III. Current Actions*

The Department of Labor seeks the extension of approval to collect this information in order to carry out its responsibility to provide vocational rehabilitation services to injured workers currently unemployed as a result of their injury, to enhance their employment potential.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Rehabilitation Maintenance Certificate.

*OMB Number:* 1215–0161.

*Agency Number:* OWCP–17.

*Affected Public:* Individuals or households, Businesses or other for-profit; Not-for-profit institutions.

*Total Respondents:* 1,300.

*Frequency:* Monthly.

*Total Responses:* 15,600.

*Average Time per Response:* 10 minutes.

*Estimated Total Burden Hours:* 2,605.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

**Application to Employ Homeworkers, (WH–46), Piece Rate Measurements, and Homeworker Handbook (WH–75)**

**I. Background**

Section 11(d) of the Fair Labor Standards Act (FLSA) authorizes the Secretary of Labor to regulate, restrict, or prohibit industrial homework as necessary to prevent evasion of the minimum requirements of the Act. Restrictions exist on seven homework industries, (knitted outerwear, women's apparel, jewelry manufacturing, gloves and mittens, button and buckle manufacturing, handkerchief manufacturing, and embroideries). Homework in these industries is permitted only in certain hardship cases. Homework is permitted under the FLSA in all other industries, provided the employer maintains homeworker handbooks for such employees which record hours of work and certain other required payroll information. Further, employers of homeworkers in certain restricted industries must first obtain a certification from the Department of Labor authorizing the employment of such workers. Employers in the restricted industries under the certification program who pay workers based on piece rates must maintain documentation of the work measurements used to establish such piece rates and the circumstances under which measurements were conducted.

*II. Review Focus*

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

*III. Current Actions*

The Department of Labor seeks the extension of approval to collect this information in order assure compliance with the FLSA in homework employment.

*Type of Review:* Extension.

*Agency:* Employment Standards Administration.

*Title:* Application to Employ Homeworkers.

*OMB Number:* 1215–0013.

*Affected Public:* Business or other for-profit; Individuals or households; Not-for-profit institutions.

*Frequency:* On occasion.

*Reporting Burden:*

| Title | Agency No. | No. of respondents | No. of responses | Average time per response | Burden hours |
|---|---|---|---|---|---|
| Application To Employ Homeworkers | WH–46 | 71 | 36 | 30 min. | 18 |
| Homeworker Handbooks | WH–75 | 4,684 | 18,736 | 30 min. | 9,368 |

*Recordkeeping Burden:*

| Title | No. of record-keepers | No. of records | Average time per response | Burden hours |
|---|---|---|---|---|
| Piece Rate Measurement | 71 | 213 | 60½ min. | 215 |
| Homeworker Handbook | 1,171 | 18,736 | ½ min. | 156 |

*Total Respondents (Recordkeeping and Reporting):* 4,755.

*Total Annual Responses (Recordkeeping and Reporting):* 18,772.

*Estimated Total Burden Hours (Recordkeeping and Reporting):* 9,757.

*Total Burden Cost (capital/startup):* $0.

*Total Burden Cost (operating/maintenance):* $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 12, 2000.

**Margaret J. Sherrill,**

*Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.*

[FR Doc. 00–12506 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–47–P

## DEPARTMENT OF LABOR

## Mine Safety and Health Administration

## Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. Freeman United Coal Mining Company**

[Docket No. M–2000–037–C]

Freeman United Coal Mining Company, 1999 Wabash Avenue, Suite 200B, Springfield, Illinois 62704–5364 has filed a petition to modify the application of 30 CFR 75.1909(b)(6) to its Crown II Mine (I.D. No. 11–02236) located in Macoupin County, Illinois. The petitioner requests a modification of the standard to permit a diesel-powered road grader to be operated without front wheel brakes. The petitioner proposes to operate its diesel grader at a maximum speed of 10 miles per hour, lower the grader blade (mold board) to increase stopping capability in emergencies, and provide training for the grader operators on how to recognize appropriate levels of speed for

different road and slope conditions. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**2. Neumeister Coal Company**

[Docket No. M–2000–038–C]

Neumeister Coal Company, 28 Frank Lane, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 49.2(b) (availability of mine rescue teams) to its #2 Slope Mine (I.D. No. 36–07166) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams with three members and one alternate for either team. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and members of the rescue team, and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**3. Tito Coal**

[Docket No. M–2000–039–C]

Tito Coal, 118 Fairview Lane, Williamstown, Pennsylvania 17098 has filed a petition to modify the application of 30 CFR 49.2(b) (availability of mine rescue teams) to its Whites Vein Slope (I.D. No. 36–06815) located in Schuylkill County, Pennsylvania. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams with three members and one alternate for either team. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and members of the rescue team, and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**4. Canyon Fuel Company, L.L.C.**

[Docket No. M–2000–040–C]

Canyon Fuel Company, L.L.C., HC 35 Box 380, Helper, Utah 84526 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Skyline Mine No. 3 (I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the standard to permit the belt entry to be used as the return entry during two-entry longwall panel development, and the operator the option to use the belt haulage entry as an intake entry for additional face ventilation during longwall panel retreat mining. The petitioner asserts that this modification will provide maximum protection for the miners during longwall panel development and retreat mining under adverse ground conditions, multiple seam mining conditions, and deep cover. Upon granting of this petition, the petitioner requests that the terms and conditions contained in the Decision and Order not apply in any panel during the period from completion of development mining of the two-entry longwall panel until the beginning of the longwall equipment set-up activities, and conditioned on the conveyor belt in the two-entry panel not being energized. The petitioner asserts that during this time, all other existing standards will apply. The petitioner proposes to install a low-level carbon monoxide or equivalent product of combustion detection system in all longwall panel belt entries used as an intake or return air course and in the primary intake entry. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and that application of the existing standard would result in a diminution of safety to the miners.

**5. Canyon Fuel Company, L.L.C.**

[Docket No. M–2000–041–C]

Canyon Fuel Company, L.L.C. has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its Skyline Mine No. 3 (I.D. No. 42–01566) located in Carbon County, Utah. The petitioner requests a modification of the standard to permit the belt entry to be used as the return entry during two-entry longwall panel development, and to allow the operator the option to use the belt haulage entry as an intake entry for additional face ventilation during longwall panel retreat mining. The petitioner asserts that this modification will provide maximum protection for the miners during longwall panel development and retreat mining under adverse ground conditions, multiple seam mining conditions, and deep cover. Upon granting of this petition, the petitioner requests that the terms and conditions contained in the Decision and Order not apply in any panel during the period from completion of development mining of the two-entry longwall panel until the beginning of the longwall equipment set-up activities, and conditioned on the conveyor belt in the two-entry panel not being energized. The petitioner asserts that during this time, all other existing standards will apply. The petitioner proposes to install a low-level carbon monoxide or equivalent product of combustion detection system in all longwall panel belt entries used as an intake or return air course and in the primary intake entry. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard, and that application of the existing standard would result in a diminution of safety to the miners.

**6. Marfork Coal Company, Inc.**

[Docket No. M–2000–042–C]

Marfork Coal Company, Inc., P.O. Box 457, Whitesville, West Virginia 25209 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Brushy Eagle Mine (I.D. No. 46–08315) located in Raleigh County, West Virginia. The petitioner requests a modification of the standard to permit the use of an automatic fire detection system based on carbon monoxide monitoring of the underground belt conveyor entries. The petitioner proposes to install a low-level carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**7. Elk Run Coal Company, Inc.**

[Docket No. M–2000–043–C]

Elk Run Coal Company, Inc., P. O. Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Castle Mine (I.D. No. 46–08055) located in Boone County, West Virginia. The petitioner proposes to use continuous mining machines with nominal voltage of the power circuits not to exceed 2,300 volts. The petitioner asserts that its alternative method would not result in a diminution of safety to the miners, and would provide at least the same measure of protection as the existing standard.

**8. Appalachian Eagle, Inc.**

[Docket No. M–2000–044–C]

Appalachian Eagle, Inc., P.O. Box 751, Bradley, West Virginia 25818–0772 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Mine No. 1 (I.D. No. 46–05437) located in Kanawha County, West Virginia. The petitioner requests a modification of the

standard to permit the use of a carbon monoxide monitoring system to monitor belt air used in the face. The petitioner proposes to use a carbon monoxide monitoring system as an early warning fire detection in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**9. Roberts Bros. Coal Company, Inc.**

[Docket No. M–2000–045–C]

Roberts Bros. Coal Company, Inc., 660 B. John Hardy Road, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Cardinal #2 Mine (I.D. No. 15–17216) located in Hopkins County, Kentucky. The petitioner proposes to use a 200KW, 480-volt, diesel powered generator set with an approved diesel drive engine to move equipment in and out of the mine and to perform rehab work in areas outby section loading points. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**Request for Comments**

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 19, 2000. Copies of these petitions are available for inspection at that address.

Dated: May 8, 2000.

**Carol J. Jones,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 00–12530 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–43–P

## DEPARTMENT OF LABOR

### Mine Safety and Health Administration

### Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

**1. Hopkins County Coal, LLC**

[Docket No. M–2000–027–C]

Hopkins County Coal, LLC, P.O. Box 711, Madisonville, Kentucky 42431 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Island Mine (I.D. No. 15–17515) located in Madisonville County, Kentucky. The petitioner proposes to use a spring-loaded device with specific fastening characteristics instead of a padlock to secure plugs and electrical type connectors to batteries, and to permissible mobile powered equipment, to prevent the battery plugs from accidentally separating from the receptacle during normal operation of battery equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**2. Elk Run Coal Company, Inc.**

[Docket No. M–2000–028–C]

Elk Run Coal Company, Inc., P.O. Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its White Knight Mine (I.D. No. 46–08055) located in Sylvester County, West Virginia. The petitioner proposes to use continuous mining machines with nominal voltage of the power circuits not to exceed 2,300 volts. The petitioner asserts that its alternative method would not result in a diminution of safety to the miners and would provide at least the same measure of protection as the existing standard.

**3. B & B Anthracite Coal Company**

[Docket No. M–2000–029–C]

B & B Anthracite Coal Company, 225 Main Street, Joliett, Pennsylvania 17981 has filed a petition to modify the application of 30 CFR 49.2(b) (availability of mine rescue teams) to its Rock Ridge Slope Mine (I.D. No. 36–07741) located in Schuylkill County, West Virginia. The petitioner requests a modification of the standard to permit the reduction of two mine rescue teams with five members and one alternate each, to two mine rescue teams of three members with one alternate for either team. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and members of the rescue team and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**4. West Ridge Resources, Inc.**

[Docket No. M–2000–030–C]

West Ridge Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.500(d) (permissible electric equipment)to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner proposes to use the following nonpermissible low-voltage or battery powered electronic testing and diagnostic equipment inby the last open crosscut: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, electronic tachometers and battery operated drills. The petitioner has listed in this petition for modification specific procedures that would be followed when using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**5. Genwal Resources, Inc.**

[Docket No. M–2000–031–C]

Genwal Resources, Inc., P.O. Box 1420, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.500(d) (permissible electric equipment) to its Crandall Canyon Mine (I.D. No. 42–01715) located in Carbon County, Utah. The petitioner proposes to use the following nonpermissible low-voltage or battery powered electronic testing and diagnostic equipment inby the last open crosscut: lap top computers, oscilloscopes, vibration analysis machines, cable fault detectors, point temperature probes, infrared temperature devices and recorders, pressure and flow measurement devices, signal analyzer devices, ultrasonic thickness gauges, electronic component testers, electronic tachometers and battery operated drills. The petitioner has listed in this petition for modification specific procedures that would be followed when using this equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**6. Sidney Coal Company, Inc.**

[Docket No. M–2000–032–C]

Sidney Coal Company, Inc., P.O. Box 299, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its Rockhouse Energy Mining Company, Mine No. 1 (I.D. No.

15–17651) located in Sidney County, Kentucky. The petitioner requests a modification of the standard to allow air coursed through belt haulage entries to be used to ventilate active working places. The petitioner proposes to install a low-level carbon monoxide detection system in all belt entries at certain locations as an early warning fire detection system. The petitioner also proposes to adhere to other conditions. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**7. Sidney Coal Company, Inc.**

[Docket No. M–2000–033–C]

Sidney Coal Company, Inc., P.O. Box 299, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Rockhouse Energy Mining Company, Mine No. 1 (I.D. No. 15–17651) located in Sidney County, Kentucky. The petitioner proposes to use 4,160 volt longwall face equipment, and to submit proposed revisions for its approved part 48 training plans to the District Manager that would specify initial and refresher training. The petitioner has listed specific procedures in this petition for modification that would be followed when using the longwall equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**8. Sidney Coal Company, Inc.**

[Docket No. M–2000–034–C]

Sidney Coal Company, Inc., P.O. Box 299, Sidney, Kentucky 41564 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Rockhouse Energy Mining Company, Mine No. 1 (I.D. No. 15–17651) located in Sidney County, Kentucky. The petitioner proposes to plug and mine through oil and gas wells using the specific procedures listed in this petition for modification, and notify the District Manager or designee prior to mining within 300 feet of a plugged oil and gas well. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and will not result in a diminution of safety to the miners.

**9. West Ridge Resources, Inc.**

[Docket No. M–2000–035–C]

West Ridge Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.352 (return air courses) to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner proposes to use the belt entry as a return air course during two-entry longwall development, and an intake during longwall extraction, to ensure adequate ventilation to dilute and render harmless any methane or other noxious gases that may accumulate. The petitioner asserts that the application of the existing standard would result in a diminution of safety and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

**10. West Ridge Resources, Inc.**

[Docket No. M–2000–036–C]

West Ridge Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.500(d) (permissible electric equipment)to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner submitted this petition on March 22, 2000. This petition is a duplicate of a previously submitted petition. Therefore, the petitioner has rescinded this petition.

**11. National Gypsum Company**

[Docket No. M–2000–001–M]

National Gypsum Company, 2550 M Street, NW, Washington, DC 20037 has filed a petition to modify the application of 30 CFR 56.11001 (safe access) to its Kaufman-George Pit (I.D. No. 13–01615) located in Webster County, Iowa. The petitioner requests a modification of the standard to: permit the equipment operator to move between two parked pieces of mobile equipment provided that each piece of equipment is parked on level ground with the parking brakes engaged; the equipment operator has ensured that the pieces of equipment are no further than 36 inches apart; and the equipment operator uses the equipment's platforms, handholds, and foot supports to maintain three-point contact at all times when moving between the pieces of equipment. The petitioner asserts that application of the existing standard would result in a diminution of safety and that the proposed alternative method would provide equivalent or superior protection as the existing standard.

**12. Original Sixteen to One Mine, Inc.**

[Docket No. M–2000–002–M]

Original Sixteen to One Mine, Inc., P.O. Box 1621, Alleghany, California 95910 has filed a petition to modify the application of 30 CFR 57.11059 (respirable atmosphere for hoist operators underground) to its Sixteen to One Mine (I.D. No. 04–01299) located in Sierra County, California. The petitioner requests a modification of the standard to permit continued use of its "permissible combination self-contained breathing apparatus (SCBA) and pressure demand Type C supplied air respirator" (MSHA approved TC–13F–146 issued 4–13–88 and NIOSH approved). The petitioner states that in the interest of the health and safety of the hoist operator and miners, an exemption from the standard would allow the equipment to be used without modification, and continue to meet safety standards specific to the Sixteen to One Mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard and that application of the existing standard would result in a diminution of safety to the miners.

**Request for Comments**

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 19, 2000. Copies of these petitions are available for inspection at that address.

Dated: May 8, 2000.

**Carol J. Jones,**

*Director, Office of Standards, Regulations, and Variances.*

[FR Doc. 00–12529 Filed 5–17–00; 8:45 am]

BILLING CODE 4510–43–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Nixon Presidential Historical Materials; Opening of Materials

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of opening of materials.

**SUMMARY:** This notice announces the opening of additional files from the Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act ("PRMPA", 44 U.S. C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR part 1275), NARA has identified, inventoried, and prepared for public access integral file segments

among the Nixon Presidential historical materials. In addition, NARA is preparing for public access approximately 400 pages of documents among the Nixon Presidential materials that are responsive to a February 1, 1999 interagency memo from the National Security Council (NSC) to declassify and release documents concerning human rights abuses in Chile from 1968–1991.

**DATES:** Except with respect to the materials responsive to the NSC memo on Chile, NARA intends to make these materials described in this notice available to the public beginning June 30, 2000. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials must notify the Archivist of the United States in writing of the claimed right, privilege, or defense before June 19, 2000. The Chile material will be released no sooner than 30 days after the date of publication, at times determined by the NSC.

**ADDRESSES:** The materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland beginning at 8:45 a.m. on June 30, 2000. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

**FOR FURTHER INFORMATION CONTACT:** Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–713–6950.

**SUPPLEMENTARY INFORMATION:** The integral file segments of textual materials to be opened on June 30, 2000, consist of 4 cubic feet.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. Some of the materials are from the White House Central Files, Subject Files. The Subject Files are based on an alphanumerical file scheme of 61 primary categories. Listed below are the integral file segments from the White House Central Files, Subject Files in this opening.

Subject Category: Volume: 3 cubic feet.
Federal Government (FG):

FG 66 Administrative Conference of the United States
FG 70 Advisory Commission on Postal Distribution Service
FG 71 Advisory Council on Historic Preservation
FG 73 American Battle Monuments Commission
FG 74 American Red Cross
FG 91 Commission on Executive, Legislative, and Judicial Salaries
FG 92 Commission on Fine Arts
FG 96 Commission on Presidential Scholars
FG 97 Commission to Study Mortgage Interest Rates
FG 98 Commission on Economic Development
FG 99 Committee on Population and Family Planning

Public access to some of the items in the file segments listed in this notice will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations).

In response to the February 1, 1999, interagency memo from the National Security Council, documents concerning human rights abuses located among the Nixon Presidential materials previously classified will be made available at times determined by the NSC.

Additionally, other documents which were previously withheld from public access have been reviewed and/ or declassified under the Mandatory Review provisions of Executive Order 12958 and will be made available.

Previously restricted materials: Volume: 1 cubic feet.

Dated: May 12, 2000.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 00–12493 Filed 5–17–00; 8:45 am]

**BILLING CODE 7515–01–P**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Bioengineering and Environmental Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L 92–463, as amended, the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Bioengineering and Environmental Systems (1189).

*Date/Time:* June 8–9, 2000; 8 am–5 pm.

*Place:* Room 120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Fred G. Heineken, Program, Director, Division of Bioengineering and Environmental Systems, NSF, 4201 Wilson Blvd., Arlington, VA 22230. (703) 306–1318.

*Agenda:* To review and evaluate proposals as part of the selection process for awards.

*Purpose of Meeting:* To review and evaluate Biochemical Eng./Biotechnology POWRE + Large proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12458 Filed 5–17–00; 8:45 am]

**BILLING CODE 7555–01–M**

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Civil and Mechanical Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Civil and Mechanical Systems (1205).

*Date and Time:* June 14, 2000 and June 15, 2000, 8 a.m. to 5 p.m.

*Place:* NSF, 4201 Wilson Boulevard, Room 580, Arlington, Virginia 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Joy Paushcke, Program Director, National Earthquake Engineering Simulation Program, Room 545, 4201 Wilson Boulevard, Arlington, VA (703) 306–1361.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate nominations for the FY'00 National Earthquake Engineering Simulation Review Panel proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12456 Filed 5–17–00; 8:45 am]

**BILLING CODE 7555–01–M**

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## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Design, manufacture, and Industrial Innovation—(1194).

*Date and Time:* June 5–8, and June 13–14, 2000, 8 am–5:30 pm.

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Kamalakar Rajurkar, Program Director, Manufacturing Machines, and Equipment, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Unsolicited proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12447 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings of the Special Emphasis Panel in Electrical and Communications Systems (1196):

*Date and Time:* May 23, 2000, 8:30 am to 5 pm.

*Place:* Room 580, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Paul Werbos, Program Director, Control, Networks, and Computational Intelligence, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1339.

*Agenda:* To review and evaluate CNCI proposals submitted to the Division as part of the selection process for awards.

*Date and Time:* June 1–2, 2000, 8:30 am to 5 pm.

*Place:* Room 580, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. James Mink, Program Director, Electronics, Phonics, and Device Technologies, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1339.

*Agenda:* To review and evaluate EPDT proposals submitted to the Division as part of the selection process for awards.

*Purpose of Meetings:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Reason for Closing:* The proposals being viewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12455 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Electrical and Communications Systems (1196).

*Date and Time:* June 8–9, 2000—8:30 a.m. to 5:00 p.m.

*Place:* National Science Foundation, Room 580, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Persons:* Dr. Usha Varshney, Program Director, Electronic, Photonics and Device Technologies (EPDT), Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230, Telephone: (703) 306–1339.

*Purpose:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate research proposals in the Electronics, Photonics and Device Technologies program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c), (4) and (6) the Government in the Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12457 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Experimental & Integrative Activities (1193).

*Date and Time:* June 29, 2000, 8 a.m.–5:30 p.m.

*Place:* Room 1235 and 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Anthony Maddox, CISE Educational Innovation, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1981.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

*Agenda:* To review and evaluate CISE Educational Innovation proposals submitted in response to the program announcement (NSF) 00–33).

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12448 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science

Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Experimental & Integrative Activities (1193).

*Date and Time:* July 24, 2000, 8 am–5 pm.

*Place:* Room 310, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Caroline Wardle, Information Technology Workforce, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1981.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

*Agenda:* To review and evaluate information Technology Workforce proposals submitted in response to the program announcement (NSF 00–77).

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 522b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12453 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Advisory Panel for Genetics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science announces the following meeting.

*Name:* Advisory Panel for Genetics (1149) (Panel C).

*Date and Time:* Monday & Tuesday, June 5–6, 2000, 9 A.M.—5 P.M.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Philip Harriman, Program Director, (703) 306–1439, Program Director for Microbial Observatories, Room 655, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate research proposals submitted to the Microbial Observatories Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12452 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Geosciences (1756).

*Date & Time:* June 5–6, 2000, 8 A.M.

*Place:* Room 730, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Michael Mayhew, Program Director, Education and Human Resources Program, Division of Earth Sciences, Room 785, National Science Foundation, Arlington, VA 22230, (703) 306–1557.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the Geoscience Education Panel, as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12449 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Information and Intelligent Systems; Notice of Meeting.

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Information and Intelligent Systems (#1200).

| Dates of meetings | Locations |
|---|---|
| June 1–2, 2000. | National Science Foundation, Arlington, VA. |
| June 5–6, 2000. | National Science Foundation, Arlington, VA. |

*Type of Meeting:* Closed.

*Contact Persons:* Michael Lesk and Richard Hilderbrandt, Division of Information and Intelligent Systems, Room 1115, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1930.

*Minutes:* May be obtained from the contact person listed above.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate Information Technology Research (ITR) proposals submitted to the Information Technology Research Program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12450 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Committee of Visitors; Special Emphasis Panel in Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Committee of Visitors, Special Emphasis Panel in Integrative Activities (1373).

*Date and Time:* June 14–15, 2000; 8:30 a.m.–5 p.m.; June 16, 2000; 8:30 a.m.–12 p.m.

*Place:* Room 390, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Part-Open.

*Agenda:*

| Dates | Meeting times | Type of session | Agenda topic |
|---|---|---|---|
| 6/14 | 8:30–11:00 | Open | Program overview. |
| | 11:00–5:00 | Closed | Review of proposals, proposal processing. |
| 6/15 | 8:30–5:00 | Closed | Review of proposals, proposal processing. |
| 6/16 | 8:30–11:00 | Closed | Review of proposals, proposal processing. |
| | 11:00–12:00 | Open | Presentation of Findings. |

*Contact:* Joseph F. Burt, Office of Integrative Activities, Room 1270, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, (703) 306–1040.

*Purpose of Meeting:* The Committee of Visitors for the Major Research Instrumentation Program (MRI) will meet to conduct a review of the process by which MRI proposals are reviewed and the outcomes achieved by funded MRI projects.

*Reason for Closing:* During clsoed sessions, the Committee of Visitors will examine proposals that include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12451 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Physics (1208.

*Date and Time:* July 10–12, 2000 from 8 am to 5 pm.

*Place:* Laboratori Nazionali del Gran Sasso (LNGS) I–67010 Asergi (L'Aquila) Italy.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Bradley D. Keister, Program Director for Nuclear Physics, Room 1015N, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230. (703) 306–1891.

*Purpose of Meeting:* To provide advice and recommendations concerning the development and construction of the Borexino Solar neutrino detector.

*Agenda:* To hear presentations and write recommendations concerning the development and construction of the Borexino Solar neutrino detector.

*Reason for Closing:* The proposals being reviewed include information of a proprietary of confidential nature, including technical information; information on personnel and proprietary data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12459 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Physics (1208).

*Date and Time:* June 9, 2000 from 8:00 a.m. to 5:00 p.m.

*Place:* Department of Physics, Princeton University.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Bradley D. Keister, Program Director for Nuclear Physics, Room 1015N, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230, (703) 306–1891.

*Purpose of Meeting:* To provide advice and recommendations concerning the activities of the Princeton group in the development and Construction of the Borexino Solar neutrino detector.

*Agenda:* To hear presentations and write recommendations concerning the activities of the Princeton group development and Construction of the Borexino Solar neutrino detector.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or Confidential nature, including technical information; information on personnel and proprietary data for Present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12460 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Research, Evaluation and Communication (1210).

*Date/Time:* June 26, 2000—Rooms 380 & 390 (8am–6pm)

June 27, 2000—Rooms 380 & 390 (8am–6pm)

July 13, 2000—Rooms 380 & 390 (8am–6pm)

July 14, 2000—Rooms 380 & 390 (8am–6pm)

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Elizabeth VanderPutten, Program Director, Research Evaluation and Communications Division National Science Foundation, Room 855, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1650.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate ROLE Proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and(6) of the Government in the Sunshine Act.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12446 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### U.S. National Assessment Synthesis Team; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended), the National

Science Foundation announces the following meeting.

*Name:* U.S. National Assessment Synthesis Team (#5219).

*Date and Time:* May 31, 2000, 8:30 a.m.–5:30 p.m., June 1, 2000, 8:30 a.m.–3:30 p.m.

*Place:* Renaissance Hotel, 999 Ninth Street, NW, Washington DC 20001.

*Type of Meeting:* Open.

*Contact Person:* Dr. Thomas Spence, National Science Foundation, 4201 Wilson Blvd., Suite 705, Arlington, VA 22230. Tel. 703–306–1502; Fax: 703–306–0372; E-mail: tspence@nsf.gov. Interested persons should contact Ms. Susan Henson at the above number as soon as possible to ensure space provisions are made for all participants and observers.

*Minutes:* May be obtained subsequent to the meeting from the contact person listed above.

*Purpose of Meeting:* To review preparation of the report the National Assessment Synthesis Team is preparing for the interagency Subcommittee on Global Change Research to report on the findings of the National Assessment of the potential consequences of climate variability and climate change for the United States.

*Agenda:* Day 1 (May 31): Members will review technical comments received and will discuss revisions to report; and opportunity for public comment will be provided in later afternoon. Day 2 (June 1): Discussion of technical comments and revisions will continue.

Dated: May 12, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12454 Filed 5–17–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting Notice

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** Vol. 65, No. 90/Tuesday, May 9, 2000.

**PREVIOUSLY ANNOUNCED TIME AND DATE:** 9:30 a.m., Tuesday, May 16, 2000.

**CHANGE IN MEETING:** A majority of the Board Members determined by recorded vote that the business of the Board required moving the Board Meeting date from Tuesday, May 16, 2000 to Wednesday, May 17, 2000 at this time and that no earlier announcement was possible.

**FOR MORE INFORMATION CONTACT:** Rhonda Underwood, (202) 314–6065.

Dated: May 15, 2000.

**Rhonda Underwood,**

*Federal Register Liaison Officer.*

[FR Doc. 00–12592 Filed 5–15–00; 8:45 am]

BILLING CODE 7533–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–423–LA–3; ASLBP No. 00–771–01–LA]**

### In the Matter of Northeast Nuclear Energy Company (Millstone Nuclear Power Station, Unit No. 3; Facility Operating License NPF–49); Notice of Oral Argument and Opportunity for Oral Limited Appearance Statements

May 12, 2000.

This proceeding involves the proposed increase in capacity (through the addition of high-density storage racks) of the spent fuel storage pool of the Millstone Nuclear Power Station, Unit No. 3, in New London County, Connecticut. Notice is hereby given that, as described in the Atomic Safety and Licensing Board's Memorandum and Order (Schedules for Proceeding), dated April 19, 2000, the oral argument prescribed by 10 CFR Part 2, Subpart K, §§ 2.1109 and 2.1113 will take place at the Richard Martin Center Auditorium, 120 Broad Street, New London, CT, on Wednesday, July 19, 2000, beginning at 9:00 a.m. To the extent necessary, the oral argument will continue on Thursday, July 20, 2000, at the same location, beginning at 9:00 a.m.

As set forth in the February 9, 2000 Notice of Hearing for this proceeding, 65 FR 7573 (Feb. 15, 2000), the Atomic Safety and Licensing Board, pursuant to 10 CFR 2.715(a), will entertain limited appearance statements from any person who is not a party to the proceeding, for the purpose of stating his or her views on the issues involved in this proceeding. Although these statements are not testimony or evidence and do not become part of the decisional record, they may assist the Licensing Board and the parties in their consideration of matters at issue in this proceeding.

Limited appearance statements may be submitted in writing at any time during this proceeding. In addition, in conjunction with the aforesaid oral argument, the Board has determined to hear oral limited appearance statements, at the Radisson Hotel, Ballroom 1 and 2, 35 Governor Winthrop Blvd., New London, Connecticut, from 7:00–9:00 p.m. on Tuesday, July 18, 2000 (or such lesser time as is necessary to accommodate speakers who are present). Further oral limited appearance statements will be heard on Thursday, July 20, 2000, at the Richard Martin Center Auditorium, for a two-hour period (or such lesser time as is necessary to accommodate speakers who are present) beginning at 9:00 a.m. or following conclusion of the oral argument, if such argument is not completed on July 19. Each oral statement may normally extend for up to approximately 5 minutes.

Written limited appearance statements, and requests to make oral statements, should be submitted to the Office of the Secretary, Rulemaking and Adjudications Staff, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of such statement or request should also be served on the Chairman of this Atomic Safety and Licensing Board, T–3 F23, U.S. Nuclear Regulatory Commission, Washington, DC 20555, or CXB2@nrc.gov. Those who have filed written requests to make statements will be given preference as to the time of their statements.

Documents related to this proceeding, issued prior to December 1, 1999, are available in print form for public inspection at the Commission's Public Document Room (PDR), 2120 L St. NW, Washington, DC. Documents issued subsequent to November 1, 1999 are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, <http://www.nrc.gov/NRC/ADAMS/index.html>).

For the Atomic Safety and Licensing Board.

Dated at Rockville, Maryland, May 12, 2000.

**Charles Bechhoefer,**

*Chairman, Administrative Judge.*

[FR Doc. 00–12550 Filed 5–17–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–193]**

### Rhode Island Atomic Energy Commission, Nuclear Research Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of a license amendment to Facility Operating License No. R–95, issued to Rhode Island Atomic Energy Commission (the licensee) for operation of the Rhode Island Atomic Energy Commission Research Reactor.

**Environmental Assessment**

*Identification of the Proposed Action*

The proposed action would allow extension of the license expiration time from August 27, 2002, to November 28,

2004, for the Rhode Island Atomic Energy Commission Research Reactor. By letter dated March 4, 2000, and supplement dated March 21, 2000, the licensee requested this license extension in accordance with the provisions of 10 CFR 50.90. The licensee submitted an Environmental Report with their supplement dated March 21, 2000.

*Need for the Proposed Action*

The proposed action is needed to allow continued operation of the Rhode Island Atomic Energy Commission Research Reactor for medical, environmental and physical science research, and development activities beyond the current term of the license.

*Environmental Impact of the Proposed Action*

The Rhode Island Atomic Energy Commission Research Reactor is on the Narragansett Bay Campus of the University of Rhode Island, in Narragansett, Rhode Island. The research reactor is housed in a metal and concrete building.

The Rhode Island Atomic Energy Commission Research Reactor is a moderate power (2 megawatts), pool-type research reactor. The NRC licensed the facility for operation up to 1 megawatt power level in 1964 and authorized operations up to 2 megawatts in 1968. Since 1964, the facility has operated 1625.4 megawatt-hours per year on average. The NRC ordered conversion from high-enriched to low-enriched uranium fuel in 1993. Data from recent operations, from 1995 to 1999, was assessed. The gaseous radiological release of Argon-41, the primary airborne effluent, has ranged from a high of 236.52 curies (Ci) in 1995 to a low of 50 Ci in 1999. Liquid effluents have been relatively small with the highest value in 1999 at 0.55 mCi. Low-level solid radioactive waste between 1995 and 1999 was 11.6 mCi in 56.8 cubic feet of material.

The Commission concludes that the radiological effects of the continued operation will be minimal based on past radiological releases. The radiological exposures for facility operations have been within regulatory limits. Conditions are not expected to change significantly.

As for potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological effluents and has no other environmental impact. Therefore, no significant non-radiological environmental impacts are associated with the proposed action.

In addition, the environmental impact associated with operation of research reactors has been generically evaluated by the staff and is discussed in the attached generic evaluation. This evaluation concludes that no significant environmental impact is associated with the operation of research reactors licensed to operate at power levels up to and including 2 megawatts thermal. We have determined that this generic evaluation is applicable to operation of the Rhode Island Atomic Energy Commission Research Reactor and that there are no special or unique features that would preclude reliance on the generic evaluation.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action. The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

*Alternatives to the Proposed Action*

An alternative to the proposed action for the Research Reactor Facility is to deny the application (*i.e.*, "no action" alternative). If the applications is denied, the licensee has indicated that it would apply for license renewal and operate under the timely renewal provisions of 10 CFR 2.109 until the Commission renewed or denied the license renewal application. With operation under timely renewal or renewal, the actual conditions of the reactor would not change. If the Commission denied license renewal, Rhode Island Atomic Energy Commission Research Reactor Operations would stop and decommissioning would be required with a likely small impact on the environment. The environmental impacts of the proposed action and alternative action are similar.

*Alternative Use of Resources*

This action does not involve the use of any resources not previously considered in the Hazards Analysis prepared for the issuance of the license in April 1963.

*Agencies and Persons Contacted*

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

On March 22, 2000, the staff consulted with the State of Rhode Island Division of Occupational & Radiological Health Official, Charles McMahon, regarding the environmental impact of the proposed action. The State official had no comment.

**Finding of No Significant Impact**

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 4, 2000, and supplement dated March 21, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 5th day of April 2000.

For the Nuclear Regulatory Commission.

**Ledyard B. Marsh,**

*Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.*

**Attachment—Environmental Considerations Regarding the Licensing of Research Reactors and Critical Facilities**

*Introduction*

This discussion deals with research reactors and critical facilities which are designed to operate at low power levels, 2 MWt and lower, and are used primarily for basic research in neutron physics, neutron radiography, isotope production, experiments associated with nuclear engineering, training and as a part of a nuclear physics curriculum. Operation of such facilities will generally not exceed a 5-day week, 8-hour day, or about 2000 hours per year. Such reactors are located adjacent to technical service support facilities with convenient access for students and faculty.

Sited most frequently on the campuses of large universities, the reactors are usually housed in already existing structures, appropriately modified, or placed in new buildings that are designed and constructed to blend in with existing facilities. However, the environmental considerations discussed herein are not limited to those which are part of universities.

*Facility*

There are no exterior conduits, pipelines, electrical or mechanical structures or transmission lines attached to or adjacent to the facility other than for utility services, which are similar to those required in other

similar facilities, specifically laboratories. Heat dissipation is generally accomplished by use of a cooling tower located on the roof of the building. These cooling towers typically are on the order of 10′ × 10′ × 10′ and are comparable to cooling towers associated with the air-conditioning systems of large office buildings.

Make-up for the cooling system is readily available and usually obtained from the local water supply. Radioactive gaseous effluents are limited to Ar-41 and the release of radioactive liquid effluents can be carefully monitored and controlled. Liquid wastes are collected in storage tanks to allow for decay and monitoring prior to dilution and release to the sanitary sewer system. Solid radioactive wastes are packaged and shipped offsite for storage at NRC-approved sites. The transportation of such waste is done in accordance with existing NRC–DOT regulations in approved shipping containers.

Chemical and sanitary waste systems are similar to those existing at other similar laboratories and buildings.

*Environmental Effects of Site Preparation and Facility Construction*

Construction of such facilities invariably occurs in areas that have already been disturbed by other building construction and, in some cases, solely within an already existing building. Therefore, construction would not be expected to have any significant effect on the terrain, vegetation, wildlife or nearby waters or aquatic life. The societal, economic and aesthetic impacts of construction would be no greater than those associated with the construction of a large office building or similar research facility.

*Environmental Effects of Facility Operation*

Release of thermal effluents from a reactor of less than 2 MWt will not have a significant effect on the environment. This small amount of waste heat is generally rejected to the atmosphere by means of small cooling towers. Extensive drift and/or fog will not occur at this low power level.

Release of routine gaseous effluents can be limited to Ar-41, which Is generated by neutron activation of air. Even this will be kept as low as practicable by using gases other than air for supporting experiments. Yearly doses to un-restricted areas will be at or below established guidelines in 10 CFR part 20 limits. Routine releases of radioactive liquid effluents can be carefully monitored and controlled in a manner that will ensure compliance with current standards. Solid radioactive wastes will be shipped to an authorized disposal site in approved containers. These wastes should not require more than a few shipping containers a year.

Based on experience with other research reactors, specifically TRIGA reactors operating in the 1 to 2 MWt range, the annual release of gaseous and liquid effluents to unrestricted areas should be less than 30 curies and 0.01 curies, respectively.

No release of potentially harmful chemical substances will occur during normal operation. Small amounts of chemicals and/or high-solid content water may be released from the facility through the sanitary sewer during periodic blowdown of the cooling tower or from laboratory experiments.

Other potential effects of the facility, such as aesthetics, noise, societal or impact on local flora and fauna are expected to be too small to measure.

*Environmental Effects of Accidents*

Accidents ranging from the failure of experiments up to the largest core damage and fission product release considered possible result in doses that are less than 10 CFR part 20 guidelines and are considered negligible with respect to the environment.

*Unavoidable Effects of Facility Construction and Operation*

The unavoidable effects of construction and operation involve the materials used in construction that cannot be recovered and the fissionable material used in the reactor. No adverse impact on the environment is expected from either of these unavoidable effects.

*Alternatives to Construction and Operation of the Facility*

To accomplish the objectives associated with research reactors, there are no suitable alternatives. Some of these objectives are training of students in the operation of reactors, production of radioisotopes, and use of neutron and gamma ray beams to conduct experiments.

*Long-Term Effects of Facility Construction and Operation*

The long-tern effects of research facilities are considered to be beneficial as a result of the contribution to scientific knowledge and training. Because of the relatively small amount of capital resources involved and the small impact on the environment, very little irreversible and irretrievable commitment is associated with such facilities.

*Costs and Benefits of Facility Alternatives*

The costs are on the order of several millions of dollars with very little environmental impact. The benefits include, but are not limited to, some combination of the following: conduct of activation analyses, conduct of neutron radiography, training of operating personnel, and education of students. Some of these activities could be conducted using particle accelerators or radioactive sources which would be more costly and less efficient. There is no reasonable alternative to a nuclear research reactor for conducting this spectrum of activities.

*Conclusion*

The staff concludes that there will be no significant environmental impact associated with the licensing of research reactors or critical facilities designed to operate at power levels of 2 MWt or lower and that no environmental impact statements are required to be written for the issuance of construction permits or operating licenses for such facilities.

[FR Doc. 00–12554 Filed 5–17–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Experts' Meeting on High-Burnup Fuel Behavior Under Postulated Accident Conditions

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Nuclear Regulatory Commission will hold a meeting to further develop a Phenomena Identification and Ranking Table (PIRT) for fuel rod response to loss of coolant accidents (LOCAs). PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues. About twenty of the world's best technical experts are participating in this activity, and the experts represent a balance between industry, universities, foreign researchers, and regulatory organizations. The current PIRT activity is addressing postulated LOCAs in a BWR and a PWR.

**DATES:** May 31–June 2, 2000, 8:30 a.m.–5:30 p.m.

**ADDRESSES:** Room T10A1 (TWFN) of the Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD.

**SUPPLEMENTARY INFORMATION:** The meeting agenda will be posted on the NRC Web site at *http://www.nrc.gov/RES/meetings.htm* by May 25, 2000. The meeting is open to the public. Attendees will need to obtain a visitor badge at the TWFN building lobby.

**FOR FURTHER INFORMATION CONTACT:** Dr. Ralph Meyer, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, DC 20555–0001, telephone (301) 415–6789.

Dated at Rockville, Maryland, this 12th day of May 2000.

For the Nuclear Regulatory Commission.

**Charles E. Rossi,**

*Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research.*

[FR Doc. 00–12555 Filed 5–17–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Severe Accident Management; Cancellation

The meeting of the ACRS Subcommittee on Severe Accident Management scheduled for May 18, 2000, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland has been canceled. Notice of this meeting was previously published in the **Federal Register** on Monday, May 8, 2000 (65 FR 26644).

Further information contact: Mr. Paul A. Boehnert, cognizant ACRS staff engineer, (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT).

Dated: May 11, 2000.

**Howard J. Larson,**

*Acting Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 00–12552 Filed 5–17–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Risk Analysis and Evaluation of Regulatory Options for Nuclear Byproduct Material Systems

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG/CR–6642, "Risk Analysis and Evaluation of Regulatory Options for Nuclear Byproduct Material Systems," dated December 1999.

**ADDRESSES:** Copies of NUREG/CR–6642 may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555–0001.

**FOR FURTHER INFORMATION CONTACT:** Ms. Torre Taylor, Mail Stop TWFN 9-C–24, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7900, e-mail: tmt@nrc.gov.

**SUPPLEMENTARY INFORMATION:** On August 25, 1999 (64 FR 46456), NRC published draft NUREG/CR–6642, "Risk Analysis and Evaluation of Regulatory Options for Nuclear Byproduct Material Systems," for public comment. All comments received during the comment period were reviewed in the preparation of the final NUREG report. The final version of NUREG/CR–6642 is now available. NUREG/CR–6642 presents a detailed, comparative risk analysis of nuclear byproduct materials, organized into groups of activities or "systems," such as nuclear pharmacy, pool irradiators, and industrial radiography. It also describes the methodology used in the risk analysis and provides the results of the analysis.

**Electronic Access**

NUREG/CR–6642 will also be available at NRC's web site under Reference Library—Technical Reports or directly at http://www.nrc.gov/NRC/NUREGS/CR6642/index.html.

Dated at Rockville, Maryland, this 10th day of March, 2000.

For the Nuclear Regulatory Commission.

**Catherine Haney,**

*Acting Chief, Rulemaking and Guidance Branch, Division of Industrial and Medical Nuclear Safety, NMSS.*

[FR Doc. 00–12553 Filed 5–17–00; 8:45 am]

BILLING CODE 7590–01–P

## RAILROAD RETIREMENT BOARD

### Proposed Collection; Comment Request

**SUMMARY:** In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Board (RRB) will publish periodic summaries of proposed data collections.

*Comments are invited on:* (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

*Title and purpose of information collection:* Statement of Claimant or other Person: OMB 3220–0183.

To support an application for an annuity under Section 2 of the Railroad Retirement Act (RRA) or for unemployment benefits under Section 2 of the Railroad Unemployment Insurance Act (RUIA), pertinent information and proofs must be furnished for the RRB to determine benefit entitlement. Circumstances may require an applicant or other person(s) having knowledge of facts relevant to the applicant's eligibility for an annuity or benefits to provide written statements supplementing or changing statements previously provided by the applicant.

Under the railroad retirement program these statements may relate to changes in annuity beginning date(s), dates for marriage(s), birth(s), prior railroad or non-railroad employment, an applicants request for reconsideration of an unfavorable RRB eligibility determination for an annuity or various other matters. The statements may also be used by the RRB to secure a variety of information needed to determine eligibility to unemployment and sickness benefits. Procedures related to providing information needed for RRA annuity or RUIA benefit eligibility determinations are prescribed in 20 CFR parts 217 and 320 respectively.

The RRB utilizes Form G–93, Statement of Claimant or Other Person to obtain the supplemental or corrective information from applicants or persons needed to determine applicant eligibility for an RRA annuity or RUIA benefits.

The RRB proposes non-burden impacting formatting and editorial changes to Form G–93. The completion time for Form G–93 is estimated at 15 minutes per response. The RRB estimates that approximately 90 Form G–93's are received annually. Completion is voluntary. One response is requested of each respondent.

*Additional Information or Comments:* To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

**Chuck Mierzwa,**

*Clearance Officer.*

[FR Doc. 00–12531 Filed 5–17–00; 8:45 am]

BILLING CODE 7905–01–M

## RAILROAD RETIREMENT BOARD

### Sunshine Act Meeting

### Notice of Public Meeting

The meeting of the Railroad Retirement Board which was to be held on May 17, 2000, 9 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611, has been canceled.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board. Phone No. 312–751–4920.

Dated: May 15, 2000.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 00–12607 Filed 5–16–00; 9:50 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 11a–3; SEC File No. 270–321; OMB Control No. 3235–0358.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) ("PRA"), the Securities and Exchange Commission (the "Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

### Rule 11a–3 Under the Investment Company Act of 1940; Offers of Exchange by Open-End Investment Companies Other Than Separate Accounts

Rule 11a–3 under the Investment Company Act of 1940 [17 CFR 270.11a–3] is an exemptive rule that permits open-end investment companies ("funds"), other than insurance company separate accounts, and funds' principal underwriters, to make certain exchange offers to fund shareholders and shareholders of other funds in the same group of investment companies. The rule requires a fund, among other things: (i) To disclose in its prospectus and advertising literature the amount of any administrative or redemption fee imposed on exchange transactions, other than a nominal one, to maintain and preserve records with respect to the actual costs incurred in connection with exchanges for at least six years; and (iii) to give the fund's shareholders a sixty day notice of a termination of an exchange offer or any material amendment to the terms of an exchange offer (unless the only material effect of an amendment is to reduce or eliminate an administrative fee, sales load or redemption fee payable at the time of an exchange).

The rule's requirements are designed to protect investors against abuses associated with exchange offers, to provide fund shareholders with information necessary to evaluate exchange offers and certain material changes in the terms of exchange offers, and to enable the Commission staff to monitor funds' use of administrative fees charged in connection with exchange transactions.

It is estimated that approximately 2,900 funds may choose to rely on the rule, and each fund may spend one hour annually complying with the recordkeeping requirement and another one hour annually complying with the notice requirement. The burdens associated with the disclosure requirement of the rule are accounted for in the burdens associated with the Form N–1A registration statement for funds. The total annual burden associated with the rule thereof, is limited to the recordkeeping and notice requirements under the rule, which is estimated to be 5,800 hours. This estimate represents an increase of 800 hours over the prior estimate of 5,000 hours. This increase in burden hours is attributable to an increase in the estimated number of funds from 2,500 to 2,900. The estimate of average burden hours is made solely for the purposes of the PRA, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: May 11, 2000.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12514 Filed 5–17–00; 8:45 am]

BILLING CODE 8010–01–M

**SECURITIES AND EXCHANGE COMMISSION**

**[Release No. 34–42773; File No. SR–Phlx–00–30]**

**Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Amending the Exchange's Certificate of Incorporation**

May 11, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 10, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, III, below, which Items have been prepared by the Exchange. On May 3, 2000, the Phlx filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Phlx proposes to amend Article Twentieth of its Certificate of Incorporation to add the words "owner" and "member organization" to the text of Article Twentieth and define the term "owner."[4] Article Twentieth authorizes the Phlx Board of Governors ("Board") to (1) assess fees, dues, and other charges upon members, lessors and lessees of memberships, and holders of permits as the Board may adopt by resolution or set forth in the Rules of the Board, and (2) assess penalties for failure to pay any fees, dues, or other charges owed to the Exchange, including cancellation of a membership or permit and forfeiture of all rights as a member, lessor, lessee, or holder of a permit. Under Article Twentieth the Board may delegate its powers with respect to the assessment of fees, dues, other charges, and penalties to any committee of the Board or the Chairman of the Board. Article Twentieth also provides that fees, dues, other charges, and penalties authorized under the Article are in addition to any fees, dues, other charges or penalties imposed under the By-Laws of the Phlx.

The proposed amendment to Article Twentieth adds "owners" and "member organizations" to the categories that will be subject to the Board's authority to assess fees, dues, and other charges. In addition, the amendment defines the term "owner" for purposes of the Phlx's Certificate of Incorporation and rules. As proposed, "owner" is defined as any person or entity who or which is a holder of equitable title to a membership in the Phlx.

The Exchange represents that "owners" and "member organizations" are implicitly covered under the current text of Article Twentieth; however, the Exchange believes that a direct reference to owners and member organizations will nevertheless help clarify matters relating to the interpretation of those terms. For example, a leasing agreement may expire, resulting in a situation where an owner who formerly leased its membership is not currently leasing that membership. The Exchange believes that the owner remains classified as a "lessor" even though the membership currently is not leased,[5] and, therefore, would be included in the current classes specified in Article Twentieth. However, the Exchange believes it is in the best interests of the members, owners and the Exchange to clarify the original intent of Article Twentieth by expanding the classes to include "owners."

The Exchange also believes that it is desirable to clarify that "member organizations" are intended to be within the scope of entities subject to fees, dues, and other charges imposed pursuant to Article Twentieth. For example, although member organizations are "owners" for purposes of Article Twentieth, there may be situations where the Exchange may wish to charge fees, dues, or other charges under Article Twentieth that affect certain classes of owners, such as member organizations, but not others. In such circumstances, an explicit reference to member organizations in Article Twentieth would be helpful.

**II. Self-Regulatory Organization's Statement Regarding the Purpose of, and the Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend the Exchange's Certificate of Incorporation to specifically permit the Board to impose fees, dues, and other charges upon "member organizations" and "owners." The proposed rule change clarifies the Board's authority to allocate dues, fees, and other charges among the Exchange's various constituents, thereby ensuring appropriate distribution of costs relating to maintaining and enhancing the competitive operations of the Exchange.

In addition, the amendment defines the term "owner" for purposes of the Exchange's Certificate of Incorporation and rules as any person or entity who or which is a holder of equitable title to a membership in the Exchange. The term "owner" is intended to encompass lessors and member organizations who are parties to A-B-C Agreements.[6] Lessors and member organizations that have provided all or part of the funds for the purchase of a membership pursuant to an A-B-C Agreement, are sometimes referred to in the Certificate of Incorporation and rules of the Exchange as holders of equitable title.[7] Therefore, defining the term "owner" as a holder of equitable title is consistent with the provisions relating to lessors and member organizations who are parties to A-B-C Agreements (both of whom are types of owners) and should

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Cindy Hoekstra, Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated May 2, 2000 ("Amendment No. 1"). Amendment No. 1 defines the term "owner" for purposes of the Certificate of Incorporation. Because of the substantive nature of the amendment, the Commission deems the filing date of the proposed rule change to be the date the amendment was filed, May 3, 2000.

[4] The Commission approved the proposed rule change adopting Article Twentieth. *See* Securities Exchange Act Release No. 42317 (January 5, 2000), 65 FR 2215 (January 13, 2000) (SR–Phlx–99–48).

[5] *See e.g.*, Phlx By-Law, Article I, Section 1–1(f): "The term 'lessor' means a holder of equitable title to a membership in the Exchange, including a former member of the Exchange, who has leased legal title to his membership to a lessee and has retained equitable title to such membership." *See also* Phlx Rule 17.

[6] The parties to an A-B-C Agreement are an employee, general partner, or officer, and the member organization with which such person is associated. *See* Phlx Rule 940.

[7] *See e.g.* Phlx Rules 17 and 940.

provide consistency throughout the Phlx's Certificate of Incorporation and rules.

2. Statutory Basis

For these reasons, the Exchange believes that the proposed rule change is consistent with section 6(b) of the Act [8] in general, and with Section 6(b)(4) [9] in particular in that it provides for the equitable allocation of reasonable dues, fees and other charges.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange believes that the proposed rule imposes no inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has neither solicited nor received written comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has been filed by the Exchange pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] The Exchange represents that the proposed rule change:

"(i) Does not significantly affect the protection of investors or the public interest;

(ii) Does not impose any significant burden on competition; and

(iii) Does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission." [12]

The Exchange has requested that the Commission accelerate the operative date of the proposal. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description of the proposed rule change, more than five business days prior to the date of filing the proposed rule change.

The Exchange represents that the operative date of this proposed rule change should be accelerated because the Exchange intends to implement the monthly capital funding fee on all seat owners as part of a long term financing plan.[13] Prior to implementing this fee, the Exchange wants to ensure that it is clear exactly who will be subject to the fee by amending Article Twentieth to add the two categories, "owner" and "member organization," and defining "owner." [14]

The Commission finds that it is appropriate to designate this proposal to become operative today because such designation is consistent with the protection of investors and the public interest.[15] Specifically, the Commission believes that adding the two additional categories and defining "owner" will clarify the original intent of Article Twentieth, and that it is appropriate to accelerate the operative date of the proposed rule change.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street NW, Washington DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–30 and should be submitted by June 8, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12515 Filed 5–17–00; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii).

[13] *See* Securities Exchange Act Release No. 42714 (April 24, 2000), 65 FR 25782 (May 3, 2000).

[14] Telephone conversation between Cindy Hoekstra, Counsel, Phlx, and Marla Chidsey, Attorney, Division of Market Regulation, Commission (May 11, 2000).

[15] 17 CFR 240.19b–4(f)(6)(iii). For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 240.19b–4(f)(6)(iii).

## DEPARTMENT OF STATE

**[Public Notice #3281]**

### Shipping Coordinating Committee Council and Technical Cooperation Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:30 a.m. on Thursday, 1 June 2000, in Room 6319, at U. S. Coast Guard Headquarters, 2100 Second Street, SW, Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 84th session of Council and the 48th Session of the Technical Cooperation Committee of the International Maritime Organization (IMO) which is scheduled for 12–16 June 2000, at the IMO Headquarters in London. Discussions will focus on papers received and draft U.S. positions.

Among other things, the items of particular interest are:

—Reports of Committees;
—Financial Matters;
—Work Program and Budget Prospects for 2000;
—Integrated Technical Cooperation Program/Technical Cooperation Fund

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Director, International Affairs, U.S. Coast Guard Headquarters, Commandant (G–CI), Room 2114, 2100 Second Street, SW, Washington, DC 20593–0001 or by calling: (202) 267–2280.

Dated: May 5, 2000.

**Stephen M. Miller,**

*Executive Secretary, Shipping Coordinating Committee.*

[FR Doc. 00–12569 Filed 5–17–00; 8:45 am]

BILLING CODE 4710–07–U

## TENNESSEE VALLEY AUTHORITY

### Environmental Impact Statement—Land Between the Lakes Public Use Plan, Lyon and Trigg Countries, Kentucky and Stewart County, Tennessee

**AGENCY:** Tennessee Valley Authority (TVA).

**ACTION:** Cancellation Notice.

**SUMMARY:** On March 1, 1995, TVA published in the **Federal Register** (60 FR 11161–11162) a Notice of Intent (NOI) to prepare an Environmental Impact Statement (EIS) on alternatives for public use at the Land Between The Lakes (LBL) National Recreation Area. On October 1, 1999, pursuant to the Land Between The Lakes Protection Act of 1998, LBL was established as a unit of the National Forest System and administrative responsibility was transferred from TVA to the U.S. Department of Agriculture. The 1995 NOI is hereby rescinded.

**FOR FURTHER INFORMATION CONTACT:** Harold M. Draper, NEPA Administration, Environmental Policy and Planning, Tennessee Valley Authority, 400 West Summit Hill Drive, Knoxville, Tennessee 37902–1499; telephone (865) 632–6889 or e-mail hmdraper@tva.gov.

Dated: May 5, 2000.

**Kathryn J. Jackson,**

*Executive Vice President, River System Operations and Environment.*

[FR Doc. 00–12483 Filed 5–17–00; 8:45 am]

BILLING CODE 8120–08–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Aviation Proceedings, Agreements Filed During the Week of May 5, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days after the filing of the applications.

*Docket Number:* OST–2000–7333.

*Date Filed:* May 4, 2000.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC12 NMS–ME 0105 dated 18 April 2000, North Atlantic-Middle East Resolution 002L, Special Readopting/Amending Resolution, between Canada, Mexico, USA and Middle East, Intended effective date: 31 May 2000.

*Docket Number:* OST–2000–7334.

*Date Filed:* May 4, 2000.

*Parties:* Members of the International Air Transport Association.

*Subject:* PTC12 NMS–ME 0106 dated 18 April 2000, North Atlantic-Middle East Resolutions r1–r18, PTC12 NMS–ME 0110 dated 20 April 2000 (Technical Correction), PTC12 NMS–ME 0107 dated 18 April 2000, North Atlantic-Israel Resolution r19–r37, Minutes—PTC12 NMS–ME 0109 dated 20 April 2000, Tables—PTC12 NMS–ME FARES 0057 dated 20 April 2000, Intended effective date: 1 June 2000.

**Andrea M. Jenkins,**

*Federal Register Liaison.*

[FR Doc. 00–12557 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–62–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Proposed Agency Information Collection Activities; Comment Request

**AGENCY:** Federal Railroad Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

**DATES:** Comments must be received no later than July 17, 2000.

**ADDRESSES:** Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number ____." Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6133). (These telephone numbers are not toll-free.)

**SUPPLEMENTARY INFORMATION:** The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding: (i) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)–(iv); 5 CFR 1320.8(d)(1)(i)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce the information requested. *See* 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

*Title:* Hours of Service Regulations.

*OMB Control Number:* 2130–0005.

*Abstract:* The collection of information is due to the railroad hours of service regulations set forth in 49 CFR Part 228 which require railroads to collect the hours of duty for covered employees, and records of train movements. Railroads whose employees have exceeded maximum duty limitations must report the circumstances. Also, a railroad that has developed plans for construction or reconstruction of sleeping quarters (Subpart C of 49 CFR part 228) must obtain approval of the Federal Railroad Administration (FRA) by filing a petition conforming to the requirements of Sections 228.101, 228.103, and 228.105.

*Form Number(s):* FRA F 6180.3.

*Affected Public:* Businesses.

*Respondent Universe:* 685 railroads.

*Frequency of Submission:* On occasion.

*Reporting Burden:*

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 228.11—Hours of Duty Records | 632 railroads | 27,375,000 records.. | 10 min./2 min. | 3,735,166 | $130,730,810 |
| 228.17—Dispatchers of Train Movements | 150 Dispatch Offices. | 54,750 records. | 6 hours | 328,500 | 11,497,500 |
| 228.19—Monthly Reports of Excess Service | 300 railroads | 1,800 reports | 2 hours | 3,600 | 63,000 |
| 228.103—Construction of Employee Sleeping Quarters | 632 railroads | 1 petition | 16 hours | 16 | 560 |
| 45 U.S.C. 61–641—Hours of Service Act | 15 railroads | 15 petitions .. | 10 hours | 150 | 5,250 |

*Total Responses:* 27,431,566.
*Estimated Total Annual Burden:* 4,067,432 hours.
*Status:* Regular Review.
*Title:* Railroad Operating Rules.
*OMB Control Number:* 2130–0035.
*Abstract:* The collection of information is due to the railroad operating rules set forth in 49 CFR part 217 which require Class I and Class II railroads to file with FRA copies of their operating rules, timetables, and timetable special instructions, and subsequent amendments thereto. Class III railroads are required to retain copies of these documents at their system headquarters. Also, the collection of information is due to 49 CFR 220.21 (b) which requires railroads to retain one copy of their current operating rules with respect to radio communications and one copy of each subsequent amendment thereto. These documents must be available to FRA upon request.
*Affected Public:* Businesses.
*Respondent Universe:* 633 railroads.
*Frequency of Submission:* On occasion.
*Reporting Burden:*

| CFR section | Respondent universe | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| 217.7—Copy-FRA-operating rules, timetables-ClassI/II. | 1 new railroad | 2 submission | 1 hour | 1 hour | $35 |
| —Amendments | 32 railroads | 96 amendments | 20 minutes | 32 hours | $1,120 |
| —Copy of operating rules, etc.—ClassIII | 20 new railroads | 20 submissions | .92 hour | 18 hours | $630 |
| —Amendments | 632 railroads | 1,896 amendment. | .25 hour | 474 hours | $16,590 |
| 217.9—Copy—prog. for perf. of Operational tests | 20 new railroads | 20 programs | 9.92 hours | 198 hours | $6,930 |
| —Amendments | 633 railroads | 3,165 amendments. | 1.92 hours | 6,077 hours | $212,695 |
| —Op. Test Records | 633 railroads | 495,000 test records. | .25 hour | 123,750 hours | $4,331,250 |
| —Summary-Tests, etc | 55 railroads | 55 summaries | 7 hours | 385 hours | $13.475 |
| 217.11–Copy—Inst Prog.—Employees | 20 new railroads | 20 programs | 9.92 hours | 198 hours | $6,930 |
| —Amendments | 633 railroads | 75 amendments | .92 hour | 69 hours | $2,380 |
| 220.21(b)-Copy-Op. Rules—Radio | Incl. under 217.7 | Incl. under 217.7 | Incl. under 217.7. | Incl. under 217.7 | Incl. under 217.7 |
| —Amendments. | | | | | |

*Total Responses:* 500,348
*Estimated Total Annual Burden:* 131,202 hours.
*Status:* Regular Review.
*Title:* State Safety Participation Regulations and Remedial Actions.
*OMB Control Number:* 2130–0509.
Abstract: The collection of information is set forth under 49 CFR Part 212, and requires qualified state inspectors to provide various reports concerning state investigative, inspection, and and surveillance activities regarding railroad compliance with Federal railroad safety laws and regulations to FRA for monitoring and enforcement purposes. Additionally, railroads are required to report to FRA actions taken to remedy certain alleged violations of law.
*Form Number(s):* FRA F 6180. 10, 6180.29/29A/33, 6180.61/67/68/68A/69/96/96A/96B
*Affected Public:* Businesses
*Respondent Universe:* States and Railroads
*Frequency of Submission:* On occasion
*Reporting Burden:*

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| CFR section | Respondent universe (States) | Total annual responses | Average time per response (hours) | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| —Application For Participation | 15 | 15 Updates | 2.5 | 38 | $1,330 |
| —Training Funding Agreement | 30 | 30 Agreement | 1 | 30 | 1,050 |
| —Inspector Training Reimbursement | 30 | 300 Vouchers | 1 | 300 | 10,500 |
| —Annual Work Plan | 30 | 30 reports | 15 | 450 | 15,750 |
| Inspection Form (FRA F 6180.96) | 30 | 18,000 forms | .25 | 4,500 | 126,000 |
| Motive Power and Equipment Violation Report (FRA F 6180.68, 6180.68A/69). | 19 | 150 reports | 1 | 150 hours | 4,200 |
| Violation of Oper. Practices Insp. Rpt (Form FRA F 6180.67). | 13 | 40 reports | 1 | 40 | 1,120 |
| —Application For Participation | 15 | 15 Updates | 2.5 | 38 | $1,330 |
| —Training Funding Agreement | 30 | 30 Agreements | 1 | 30 | 1,050 |
| —Inspector Training Reimbursement | 30 | 300 Vouchers | 1 | 300 | 10,500 |
| Violation of Hazardous Materials Inspection Rept (Form FRA F 6180.67). | 14 | 100 reports | 13 | 1,300 | 36,400 |
| Violation of Locomotive Inspection Act Rept. (Form FRA F 6180.10). | 17 | 50 reports | 1 | 50 | 1,400 |
| Violation of Safety Appliance Law Rpt. (Form FRA F 6180.29/29A). | 19 | 53 reports | 1 | 53 | 1,484 |
| Violation of Hours of Service Law Rpt. (Form FRA F 6180.33). | 13 | 21 reports | 1 | 21 reports | 588 |
| Violation of Accident/Incident Reporting Rules Rpt (Form FRA F 6180.61). | 13 | 10 reports | 1 | 10 | 280 |
| Remedial Actions Rpt (209.405/407) | 32 | 5,048 reports | .25 | 1,262 | 42,908 |
| —Violation Rpt Challenge | [1] 685 | 1,010 challenges. | 1 | 1,010 | 34,340 |
| Delayed Reports (209.407) | [1] 685 | 505 reports | .50 | 253 | 8,602 |

[1] Railroads.

*Total Responses:* 25,362.
*Estimated Total Annual Burden:* 9,467 hours.
*Status:* Regular Review.
*Title:* Rear-End Marking Devices.
*OMB Control Number:* 2130–0523.
*Abstract:* The collection of information is set forth under 49 CFR part 221 which requires railroads to furnish a detailed description of the type of marking device to be used for the trailing end of rear cars in order to ensure rear cars meet minimum standards for visibility and display. Railroads are required to furnish a certification that the device has been tested in accordance with current "Guidelines for Testing of FRA Rear End Marking Devices." Additionally, railroads are required to furnish detailed test records which include the testing organizations, description of tests number of samples tested, and the test results in order to demonstrate compliance with the performance standard.
*Affected Public:* Businesses.
*Respondent Universe:* 685 railroads.
*Frequency of Submission:* On occasion.
*Reporting Burden:*

| CFR section | Respondent universe | Total annual responses | Average time per response (hours) | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| Requests for Approval of Marking Devices & Signed Certification by Chief Operating Officer. | 685 railroads ..... | 2 requests ..... | 4 | 8 | $280 |
| Recordkeeping—Requests for Marking Devices ..... | 685 railroads ..... | 2 records ..... | .10 | .20 | 7 |
| Recordkeeping—Detailed Test Records ..... | 685 railroads ..... | 1 test record ..... | 20 | 20 | 700 |

*Total Responses:* 5.

*Estimated Total Annual Burden:* 28.2 hours.

*Status:* Regular Review.

*Title:* Certification of Glazing Materials.

*OMB Control Number:* 2130–0525.

*Abstract:* The collection of information is set forth under 49 CFR part 223 which requires the certification and permanent marking of glazing materials by the manufacturer along with the responsibility of the manufacturer to make available test verification data to railroads and FRA upon request.

*Affected Public:* Businesses.

*Respondent Universe:* 5 manufacturers.

*Frequency of Submission:* On occasion.

*Reporting Burden:*

| CFR section | Respondent universe (manufacturers) | Total annual responses | Average time per response | Total annual burden hours | Total annual burden cost |
|---|---|---|---|---|---|
| Requests—Glazing Certification Info ..... | 5 | 75 requests ..... | 15 minutes ..... | 19 | $475 |
| Preparing/Recording Glazing Marking Information ..... | 5 | 25,000 pieces ... | .0021 minutes ... | 52 | 1,300 |
| Certification Test ..... | 5 | 1 test ..... | 14 hours ..... | 14 | 1,120 |

*Total Responses:* 76.

*Estimated Total Annual Burden:* 85 hours.

*Status:* Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Authority:** 44 U.S.C. 3501–3520.

Issued in Washington, D.C. on May 12, 2000.

**Margaret B. Reid,**

*Acting Director, Office of Information Technology and Support Systems, Federal Railroad Administration.*

[FR Doc. 00–12568 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

### Alaska Railroad Corporation

[Docket Number FRA–2000–7350]

The Alaska Railroad Corporation (ARR) seeks a temporary waiver of compliance with a provision of the Passenger Equipment Safety Standards (49 CFR part 238). ARR has been transporting full-length dome cars owned by Westours Motorcoaches, Inc. since 1987. ARR states that the cars currently have two emergency exits on each side of the car located in the staggered hallways (a total of four emergency exits per car located mid-way between the upper main level and a small lower level). Westours Motorcoaches, Inc. determined that the placement of the current emergency exits did not comply with 49 CFR 238.113(a) which addresses the number and location of emergency exits. Accordingly, Westours contracted for retrofit of existing dome cars to comply with section 238.1139(a). Although delivery of compliant emergency windows was originally scheduled for April 1, 2000, due to technical problems, delivery may not be accomplished until as late as August 1, 2000.

ARR is therefore requesting a temporary waiver from section 238.113(a) until August 1, 2000 to permit it to use Westours Motorcoaches, Inc. dome cars in revenue and non-revenue service until that time.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with this proceeding since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceeding should identify the appropriate docket number (e.g. Docket No. FRA–2000–7350) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW, Washington, DC 20590. Communications received within 15 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning this proceeding are available for examination during regular business hours (9:00 am—5:00 pm) at the above facility.

All documents in the public docket are also available for inspection and copying on the internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, D.C. on May 11, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–12567 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA 2000–7354; Notice 1]**

### Honda Motor Co., Ltd.; Receipt of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 123

Honda Motor Co. Ltd. ("Honda"), a Japanese corporation, through American Honda Motor Co., Inc., of Torrance, California, has applied for a temporary exemption of two years from a requirement of S5.2.1 (Table 1) of Federal Motor Vehicle Safety Standard No. 123 *Motorcycle Controls and Displays*. The basis of the request is that "compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempt vehicles," 49 U.S.C. 30113(b)(3)(B)(iv).

We are publishing this notice of receipt of an application in accordance with the requirements of 49 U.S.C. 30113(b)(2). This action does not represent any judgment of the agency on the merits of the application.

Honda has applied on behalf of its NSS250 motor scooters. The scooters are defined as "motorcycles" for purposes of compliance with the Federal motor vehicle safety standards.

If a motorcycle is produced with rear wheel brakes, S5.2.1 of Standard No. 123 requires that the brakes be operable through the right foot control (the left handlebar is permissible only for a motor driven cycle (Item 11, Table 1), i.e., a motorcycle with a motor that produces 5 brake horsepower or less).

Honda petitions that it be allowed to use the left handlebar as the control for the rear brakes of its NSS250, which is a motorcycle and not a motor driven cycle. The model features an automatic transmission that eliminates the left-hand clutch lever as well as any left-foot gearshift lever. This leaves the left hand of the rider free to operate a brake lever. In Honda's opinion, "removal of the left-handlebar clutch lever, left-foot-controlled gearshift lever and right-foot-controlled rear brake pedal result in simpler operation." Honda points out that NHTSA exempted three other motorcycle manufacturers from this requirement of S5.2.1. in 1999 (Aprilia, 64 FR 44262; Vectrix, 64 FR 45585; and Italjet, 64 FR 58127).

Honda argues that the overall level of safety of the scooters equals or exceeds that of a motorcycle that complies with the brake control location requirement of Standard No. 123. Unlike the other exempted motorcycles, the NSS250 is equipped with a "combined brake system" which "provides single-point, front- and rear-wheel braking action." The vehicle meets the braking performance requirements "of both FMVSS 122 and ECE78." The company submitted test results demonstrating that the braking performance of the NSS250 with its combined brake system is better than that of a scooter without the combined brake system. For the second effectiveness test, for example, the NSS250 stopped in shorter distances than a Honda model equipped with a foot brake, that is to say, from a maximum speed of 65.4 mph in 165 feet (compared with 178 feet), and, from 30 mph, in 38 feet (compared with 40 feet).

Honda has developed the NSS250 for the world market. In Europe, Japan, and other Asian countries, scooters are equipped with handlebar-mounted front and rear brakes. Absent an exemption, then, Honda will be unable to sell the NSS250 in the United States. The cost to conform the NSS250 to comply with Standard No. 123 "would add considerable cost to the product" and result in a motorcycle that would not be competitive.

Honda will not sell more than 2,500 scooters a year while an exemption is in effect. It believes that an exemption would be in the public interest and consistent with the objectives of traffic safety because "the level of safety is equal to similar vehicles certified under FMVSS No. 123."

You may submit comments on the application described above. Comments should refer to the docket number and the notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. You should send at least two copies.

We shall consider all comments received before the close of business on the comment closing date indicated below. Comments will be available for examination in the docket at the above address both before and after that date. The Docket Room is open from 10:00 a.m. until 5:00 p.m. To the extent possible, comments filed after the closing date will also be considered.

We shall publish a notice of final action on the application pursuant to the authority indicated below.

Comment closing date: June 19, 2000.

(49 U.S.C. 30113; delegations of authority at 49 CFR 1.50. and 501.8)

Issued on May 11, 2000.

**Stephen R. Kratzke,**

*Associate Administrator for Safety Performance Standards.*

[FR Doc. 00–12556 Filed 5–17–00; 8:45 am]

BILLING CODE 4910–59–P

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**DEPARTMENT OF TRANSPORTATION**

**Surface Transportation Board**

**[STB Docket No. AB–32 (Sub-No. 89)]**

**Boston and Maine Corporation—Abandonment—In Middlesex County, MA**

On April 28, 2000, the Boston and Maine Corporation (B&M) filed with the Surface Transportation Board (Board), Washington, DC 20423, an application for permission to abandon and discontinue service on a line of railroad known as the Bemis Branch in Waltham and Watertown, MA, extending from milepost 8.83 to milepost 10.94, a distance of 2.11 miles, in Middlesex County, MA. The line traverses U.S. Postal Service Zip Codes 02451 and 02472. Applicant indicated that there are no agency stations located on the line.

The line does not contain federally granted rights-of-way. Any documentation in B&M's possession will be made available promptly to those requesting it. The applicants' entire case for abandonment and discontinuance was filed with the application.

The line of railroad has appeared on B&M's system diagram map or has been included in its narrative in category 1 since January 26, 1999.

The interest of railroad employees will be protected by *Oregon Short Line Railroad Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment and discontinuance or protests (including the protestant's entire opposition case), by June 12, 2000. All interested persons should be aware that following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28 of the Board's rules) and any request for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29 of the Board's rules) must be filed by June 12, 2000. Persons who may oppose the abandonment or discontinuance but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence should file comments. Persons interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed abandonment or discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance, pursuant to 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

Parties seeking information concerning the filing of protests should refer to 49 CFR 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB No. AB–32 (Sub-No. 89) and should be filed with the Secretary, Surface Transportation Board, Washington, DC 20423, no later than June 12, 2000. Interested persons may file a written comment or protest with the Board to become a party to this proceeding. A copy of each written comment or protest shall be served upon the applicant's representative, Robert B. Culliford, Boston and Maine Corporation, Iron Horse Park, North Billerica, MA 10862. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned and discontinued will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment and discontinuance, in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA).

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA (or EIS) may contact SEA. EAs in abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Decided: May 15, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–12587 Filed 5–17–00; 8:45 am]

**BILLING CODE 4915–00–P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–57 (Sub–No. 51)]**

### Soo Line Railroad Company—Abandonment—in Roberts County, SD

On April 28, 2000, Soo Line Railroad Company, d/b/a Canadian Pacific Railway (Soo) filed with the Surface Transportation Board (Board) an application for permission to abandon a portion of its line of railroad known as the Veblen Line, extending from milepost 208.8 near Rosholt to the end of the line at milepost 228.2 west of Claire City, a distance of 19.4 miles, in Roberts County, SD. The line includes the stations of Victor (milepost 213.8), New Effington (milepost 218.3), Hammer (milepost 223.4), Claire City (milepost 227.3), and Veblen (milepost 236.3), and traverses U.S. Postal Service ZIP Codes 57260, 57255, and 57224.

The line does not contain federally granted rights-of-way. Any documentation in Soo's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment (case-in-chief) was filed with the application.

The line of railroad has appeared on Soo's system diagram map or has been included in its narrative in category 1 since 1998.

The interest of railroad employees will be protected by *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case), by June 12, 2000. All interested persons should be aware that, following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) or for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by June 12, 2000. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

Applicant's reply to any opposition statements and its response to trail use requests must be filed by June 27, 2000. *See* 49 CFR 1152.26(a).

Persons opposing the abandonment that wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25. Persons interested only in seeking public use or trail use conditions should also file comments.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance (OFA) for continued rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

All filings in response to this notice must indicate the proceeding designation STB Docket No. AB–57 (Sub-No. 51) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Diane P. Gerth, Leonard, Street, and Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The line sought to be abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,000 filing fee. See 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 10, 2000.

By the Board. David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–12308 Filed 5–17–00; 8:45 am]

BILLING CODE 4915–00–P

# Corrections

Federal Register
Vol. 65, No. 97
Thursday, May 18, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27174]**

### Filings Under the Public Utility Holding Company Act of 1935, As Amended ("Act")

*Correction*

In notice document 00–11961 beginning on page 30650 in the issue of Friday, May 12, 2000, make the following correction:

On page 30650, in the third column, in the first paragraph under the heading *Financings*, in the seventh line down, "March 31, 2000" should read "March 31, 2002."

[FR Doc. C0–11961 Filed 5–17–00; 8:45 am]

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Federal Register

Thursday,
May 18, 2000

Part II

# Department of Commerce

**National Oceanic and Atmospheric Administration**

**15 CFR Part 922**
**Florida Keys National Marine Sanctuary Regulations; Proposed Rule**

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 922**

**[Docket No. 000510129–0129–01]**

**RIN 0648–A018**

## Florida Keys National Marine Sanctuary Regulations

**AGENCY:** National Marine Sanctuary Program (NMSP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule; proposed boundary expansion; summary of draft supplemental management plan for expansion area; public availability of draft supplemental management plan of expansion area; public hearings.

**SUMMARY:** By this document, NOAA is proposing to expand the boundary of the Florida Keys National Marine Sanctuary (FKNMS or Sanctuary) in the remote westernmost portion of the Sanctuary by 96 square nautical miles ($nm^2$) and to establish a 151 $nm^2$ no-take ecological reserve in the expanded area and in 55 $nm^2$ of the existing Sanctuary, to protect important coral reef resources.

This action is necessary to comprehensively protect some of the healthiest and most diverse coral reefs in the Florida Keys. The intended effect of this proposed rule is to protect the deepwater coral reef community in this area from being degraded by human activities.

**DATES:** Comments will be considered if received by July 31, 2000. For dates of hearings, see **SUPPLEMENTARY INFORMATION.**

**ADDRESSES:** Written comments must be submitted to Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, Florida, 33050. Comments may also be sent by facsimile to: (305) 743–2357. Comments will not be considered if submitted by e-mail or internet. For addresses of hearings, see **SUPPLEMENTARY INFORMATION.**

**FOR FURTHER INFORMATION CONTACT:** Billy Causey, Sanctuary Superintendent, (305) 743–2437.

**SUPPLEMENTARY INFORMATION:** NOAA proposes to establish a no-take ecological reserve in the Tortugas region of the Florida Keys to protect nationally significant coral reef resources and to protect an area that serves as a source of biodiversity for the Sanctuary as well as for the southwest shelf of Florida. Establishment of the proposed reserve would include expansion of the Sanctuary boundary to ensure that the reserve protects sensitive coral habitats lying outside the existing boundary of the Sanctuary.

This document publishes the coordinates for the proposed expansion area and for the proposed ecological reserve, summarizes the draft supplemental management plan for the proposed ecological reserve and publishes the text of the Proposed Revised Designation Document for the Sanctuary. The draft supplemental management plan details the proposed goals and objectives, management responsibilities, research activities, interpretive and educational programs, and enforcement, including surveillance activities, for the proposed ecological reserve. By this document, NOAA also proposes regulations to implement the proposed boundary expansion and establishment of an ecological reserve and to regulative activities in the reserve consistent with the purposes of its establishment and to make minor revisions to the existing Sanctuary boundary and to the boundaries of various zoned areas within that boundary to correct errors, provide clarification, and reflect more accurate data. NOAA will announce shortly the public availability of the Draft Supplement Environmental Impact Statement/Draft Supplemental Management Plan (DSEIS/SMP) prepared for the proposed expansion and proposed establishment of the ecological reserve.

Public hearings on the proposed actions and on the DSEIS/SMP will be held on the following locations on the dates and times indicated:

June 12, 2000: Homestead Senior High School, SE 12th Avenue, Homestead, FL, Main Cafeteria; 3:00–8:00 p.m.

June 13, 2000: Comfort Inn Executive Suites, 3860 Toll Gate Blvd., Naples, FL, 2nd Floor Conference Room; 3:00–8:00 p.m.

June 14, 2000: University of South Florida, Campus Activities Center, 2nd Street and 6th Avenue South, St. Petersburg, FL, CAC Central Room; 3:00–8;00 p.m.

June 21, 2000: The Sombrero Country Club, 4000 Sombrero Blvd., Marathon, FL Nautilus Room, 3:00–8:00 p.m.

June 22, 2000: Holiday Inn Beachside, 3841 N. Roosevelt Blvd., Key West, FL, Main Ballroom; 3:00–8:00 p.m.

July 11, 2000: U.S. Department of Commerce, Herbert C. Hoover Building, First Floor, HCHB Auditorium, Washington, D.C., 2:00–5:00 p.m.

The FKNMS, which was designated by the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA, Pub. L. 101–605) on November 16, 1990, consists of aproximately 2800 $nm^2$ (9500 square kilometers) of coastal and oceanic waters, and the submerged lands thereunder, surrounding the Florida Keys and the Dry Tortugas. These waters contain the marine equivalent of tropical rain forests in that they support high levels of biological diversity, are fragile and easily susceptible to damage from human activities, and possess high value to human beings if properly conserved. These environments support a vibrant tourist-based economy worth more than $1.2 billion per year. The management plan (MP) for the Sanctuary was implemented by regulations that became effective on July 1, 1997.

The FKNMS currently contains a network of 23 no-take zones, one of which is an ecological reserve (Western Sambo Ecological Reserve). This proposal would establish a second ecological reserve to protect the nationally significant coral reef resources of the Tortugas area. This proposal is being made to further the objectives of the National Marine Sanctuaries Act (NMSA, 16 U.S.C. § 1431 *et seq.*) and the FKNMSPA and to meet the objectives of Executive Order 13089, Coral Reef Protection.

The Torugas is located in the westernmost portion of the FKNMS approximately 70 miles west of Key West, a very strategic position oceanographically that makes it an ideal location for an ecological reserve. It contains the healthiest coral reefs found in the Sanctuary. Coral pinnacles as high as forty feet with the highest coral cover (>30%) found in the Keys jut up from the ocean floor. These coral formations are bathed by some of the clearest and cleanest waters found in the Florida Keys. This occurs where the tropical waters of the Caribbean mingle with the more temperate waters of the Gulf of Mexico.

Recent studies reveal that the Tortugas region is unique in its location and the extent to which oceanographic processes impact the area. The Tortugas plays a dynamic role in supporting marine ecosystems throughout south Florida and the Florida Keys. Larvae that are spawned from adult populations in the Tortugas are spread throughout the Keys and south and southwest Florida by a persistent system of currents and eddies that provide the retention and current pathways necessary for successful recruitment of both local and foreign spawned

juveniles with larval stages remaining from hours for some coral species up to one year for spiny lobster. In addition, the upwellings and convergences of the current systems provide the necessary food supplies in concentrated frontal regions to support larval growth stages.

The Tortugas is located at the transition between the Gulf of Mexico and the Atlantic and is strongly impacted by two major current systems, the Loop Current in the eastern Gulf of Mexico and the Florida Current in the Straits of Florida, as well as by the system of eddies that form and travel along the boundary of these currents. Of particular importance to the marine communities of the Tortugas and Florida Keys is the formation of a large counterclockwise rotating gyre (large eddy) that forms just south of the Tortugas where the Loop Current turns abruptly into the Straits of Florida. This gyre can persist for several months before it is forced downstream along the Keys decreasing in size and increasing in forward speed until its demise in the middle Keys. This gyre serves as a retention mechanism for local recruits and as a pathway to inshore habitats for foreign recruits. It may also serve as a potential food provider through plankton production and concentration.

The Tortugas is also located adjacent to two coastal current systems, including the wind-driven currents of both the Florida Keys coastal zone and the west Florida Shelf. Persistent westward winds over the Keys create a downwelling system that drives a westward coastal countercurrent along the lower Keys to the Tortugas. The countercurrent provides a return route to the Tortugas and its gyre-dominated circulation, and onshore surface Ekman transport (a process whereby wind-driven upwelling bottom water is transported 45 degrees to the left of the actual wind direction in the northern hemisphere) provide a mechanism for larval entry into coastal habitats. Circulation on the west Florida shelf is strongly influenced by wind forcing, but there also appears to be a significant southward mean flow, possibly due to the Loop Current. The effect of these currents on the Tortugas is to provide a larval return mechanism to the Florida Bay nursery grounds during periods of southeast winds, as well as the transport mechanism for low-salinity shelf waters from the north when the mean southward flow is strong.

The combination of downstream transport in the Florida Current, onshore Ekman transport along the downwelling coast, upstream flow in the coastal countercurrent and recirculation in the Tortugas gyre forms a recirculating recruitment pathway stretching from the Dry Tortugas to the middle Keys that enhances larval retention and recruitment into the Keys coastal waters of larvae spawned locally or foreign larvae from remote upstream areas of the Gulf of Mexico and Caribbean Sea. Convergences between the Florida Current front and coastal gyres provide a mechanism to concentrate foreign and local larvae, as well as their planktonic food supply. Onshore Ekman transport and horizontal mixing from frontal instabilities enhance export from the oceanic waters into the coastal zone. A wind- and gyre-driven countercurrent provides a return leg to aid larval retention in local waters. Seasonal cycles of the winds, countercurrent and Florida Current favor recruitment to the coastal waters during the fall when the countercurrent can extend the length of the Keys from the Dry Tortugas to Key Largo, onshore Ekman transport is maximum and downstream flow in the Florida Current is minimum. The mix and variability of the different processes forming the recruitment conveyor provide ample opportunity for local recruitment of species with larval stages ranging from days to several months. For species with longer larval stages, such as the spiny lobster, which has a six to 12-month larval period, a local recruitment pathway exists that utilizes retention in the Tortugas gyre and southwest Florida shelf and return via the Loop Current and the Keys conveyor system. Return from the southwest Florida shelf could also occur through western Florida Bay and the Keys coastal countercurrent, due to a net southeastward flow recently observed connecting the Gulf of Mexico to the Atlantic through the Keys.

Two coral reef areas of unusual biological diversity and abundance would be included in the proposed ecological reserve: Sherwood Forest and Riley's Hump. Sherwood Forest is an area of low relief but high coral cover on the northwest flank of Tortugas Bank, lying just outside the existing Sanctuary boundary. The area's name was inspired by the bizarre mushroom-shaped coral heads that are an adaptation to the low light conditions. There seem to be indications that the mushroom shape is the result of a composite of two coral species. The coral reef is so well developed, that it forms a veneer over the true bottom approximately three feet (ft) below the reef. This veneer is riddled with holes and caves, providing ideal habitats for a high diversity of fish. Soft corals, gorgonian forests, sponges, and black corals are also present. Coral abundance exceeds 30% cover in many areas, compared to 10% for the rest of the Florida Keys.

Riley's Hump is a deep reef terrace (22–27 meters (m) deep) dominated by algae interspersed with coral, located approximately 10 nm southwest of the dry Tortugas National Park (DRTO). It is not known for spectacular coral formations but for its richness of fish and other marine life. A small population of sargassum, or red-tailed triggerfish, is among the unique species found in the area. Large pelagic fish (tunas, jacks, and sharks) are common in the area as well as dolphins. Evidence suggests that this low profile reef is an aggregation or spawning site for snapper-grouper species, including gray, cubera, mutton, dog, red and yellowtail snapper, black grouper and ocean triggerfish. The deeper water habitats to the south of Riley's Hump contain important habitat for red and goldeye snapper, tilefish, golden crab and snowy grouper.

Despite its beauty and productivity, the Tortugas has been exploited for decades, greatly diminishing its potential as a source of larval recruits to the downstream portion of the Florida Keys and to itself. Fish and lobster populations have been significantly depleted thus threatening the integrity and natural dynamics of the ecosystem. Currently large freighters use Riley's Hump as a secure place to anchor between port visits. The several-ton anchors and chains of these ships are devastating large areas of fragile coral reef habitat that provide the foundation for economically important fisheries.

Visitation to the Tortugas region has increased dramatically over the past 10 years. Visitation in the DRTO increased 400% from 1984 through 1998. The population of South Florida is projected to increase from the current 6.3 million people to more than 12 million by 2050. With continued technological innovations such as global positioning systems (GPS), electronic fish finders, better and faster vessels, this increase in population will translate to more pressure on the resources in the Tortugas. By designating this area an ecological reserve, NOAA hopes to create a seascape of promise—a place where the ecosystem's full potential can be realized and a place that humans can experience, learn from and respect. This goal is consistent with E.O. 13089, Coral Reef Protection, and the U.S. Coral Reef Task Force's recommendations.

This DSEIS/SMP supplements the FEIS/MP for the Sanctuary. Further, because this proposed reserve includes a Sanctuary boundary expansion, this

DSEIS/SMP is developed pursuant to section 304(a)(2) of the NMSA, 16 U.S.C. § 1434(a)(2), consistent with, and in fulfillment of, the requirements of the National Environmental Policy Act of 1969.

Four other actions under various jurisdictions are underway to ensure comprehensive protection of the unique resources of the Tortugas region (Fig. 1):

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Figure 1. Tortugas Ecological Reserve Study Area (TERSA) showing resource agency jurisdictions and two coral banks: Sherwood Forest and Riley's Hump. The grid represents the study area for the proposed reserve and was used as a framework for collecting and organizing data and designing the proposed reserve (each grid cell represents one minute by one minute of latitude or approximately one square nautical mile.

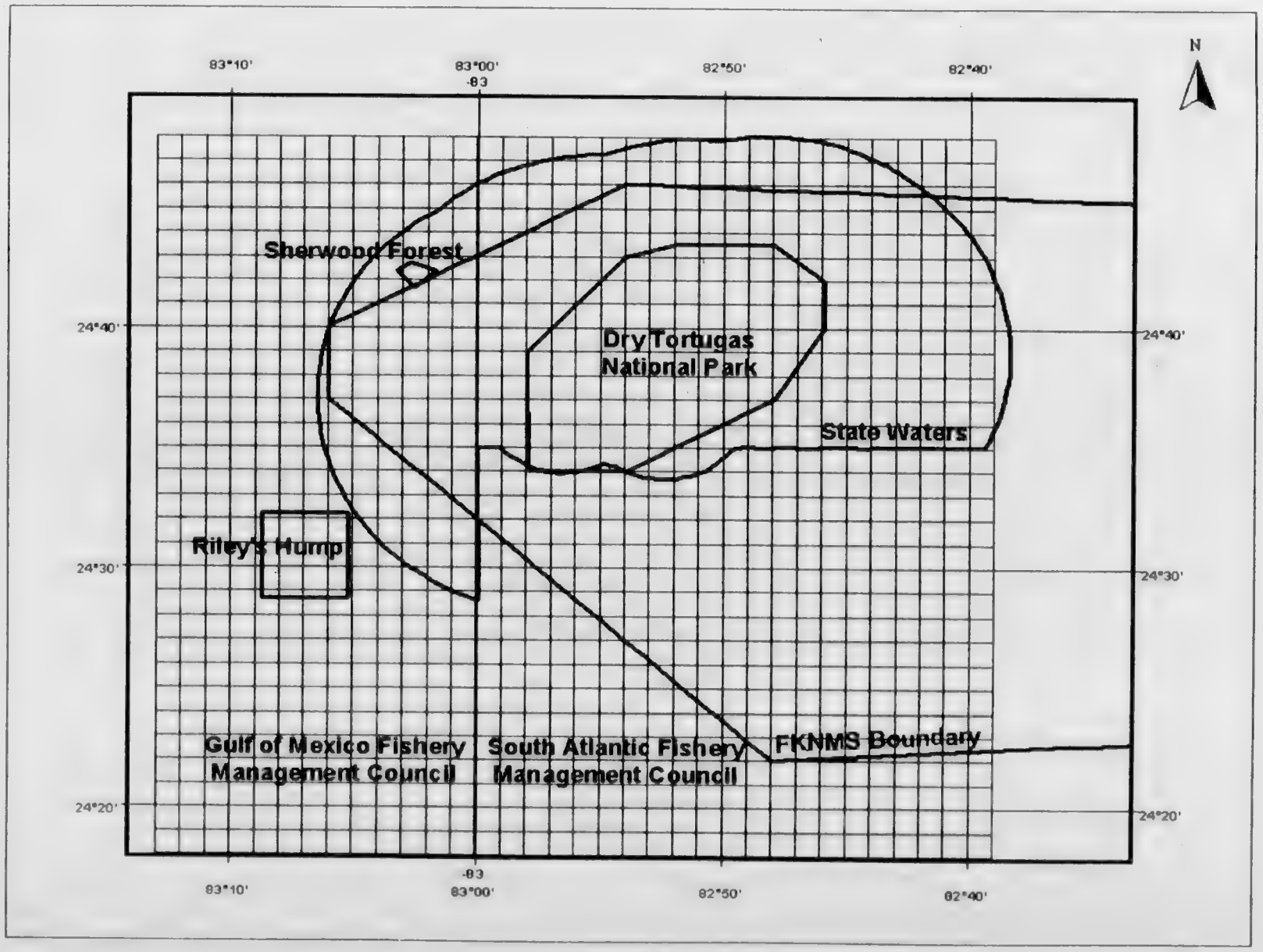

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• The National Park Service (NPS) is revising the General Management Plan for the DRTO that will include as the preferred alternative a proposal to create a Research/Natural Area (RNA) within the Park. The proposed boundary and regulations for the RNA will be compatible with NOAA's proposed ecological reserve.

• Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Gulf of Mexico Fishery Management Council (GMFMC) has primary federal responsibility and expertise for the development of fishery management plans (FMPs) throughout the Gulf of Mexico and has developed an Essential Fish Habitat Amendment to the Gulf of Mexico Fishery Management Plan (GMFMP) which includes the area of the proposed ecological reserve. The GMFMP is implemented by regulations promulgated by the National Marine Fisheries Service (NMFS) (50 CFR part 622). At the GMFMC's meeting on November 9, 1999, the FKNMS and NMFS requested that the GMFMC take steps to prohibit fishing, consistent with the purpose of the proposed ecological reserve. The GMFMC accepted this request and is now working toward amending the GMFMP to prohibit fishing in the proposed area. At its meeting on March 21, 2000, the GMFMC considered an options paper on the proposed Tortugas Ecological Reserve and voted to proceed with a preferred alternative that would be consistent with the no-take status of the reserve. Based on the GMFMC's action, the regulations for the ecological reserve proposed by the FKNMS would also prohibit fishing. Because the GMFMC's action is not yet final and NMFS has not issued final regulations to implement that action, the proposed ecological reserve regulations would state that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that the GMFMC's action and NMFS implementation would prohibit fishing in the location of the proposed Tortugas Ecological Reserve). The FKNMS regulations prohibiting fishing would be consistent with the GMFMC's preferred alternative.

• NMFS is amending the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks to be consistent with the no-take status of the proposed reserve.

• The State of Florida is drafting fishing regulations to prohibit fishing in those portions of Tortugas North that lie within State waters. Sanctuary regulations implementing the reserve would not become effective in State waters until approved by the State of Florida.

Combined with the establishment of the proposed ecological reserve, these actions would result in comprehensive protection for the nationally significant coral reef habitats from shallow to deep water extending from the Park into Sanctuary and GMFMC waters.

**Process To Define a Proposed Ecological Reserve Boundary**

Since 1991, NOAA has been concerned about the need to better protect the Tortugas area. This need is documented in the Draft and Final Environmental Impact Statement (EIS)/ Management Plans for the Sanctuary (DOC 1995 and 1996). In the Draft Environmental Impact Statement and Draft Management Plan (DEIS/MP), NOAA proposed a boundary for a 110 $nm^2$ Replenishment Reserve (Ecological Reserve) in the Tortugas area to protect significant coral resources while minimizing or avoiding adverse impacts to users. Public comment indicated that the then-proposed boundary would not protect the most significant coral reef resources and identified serious adverse economic impacts on commercial fishers from the then-proposed boundary and then-proposed no-take regulations. Accepting these comments, NOAA postponed establishing a reserve and went back to the drawing board by convening an *ad hoc* 25-member Working Group (WG) of the Sanctuary Advisory Council (SAC), composed of key stakeholder representatives, eight SAC members, and government agency representatives with resource management authority in the Tortugas area to recommend a "preferred boundary alternative" for the reserve.

One of the key stakeholders in the WG process was the NPS because of its stewardship of the DRTO which is surrounded by but jurisdictionally separate from the FKNMS. The NPS's involvement in the design of the reserve was critical because of the important shallow water coral reef resources found within the Park and the connectivity of those resources with surrounding Sanctuary waters. Coordination with the NPS was further motivated by the fact that the Park is revising its general management plan concurrent with the design of the ecological reserve and is considering making part of the Park a no-take area.

The process to develop the proposed ecological reserve can be described in three phases. The design phase (Phase I) took place from April 1998 to June 1999 and culminated with the SAC's recommendation and NOAA's acceptance of a preferred boundary. Phase II is the development of this DSEIS/SMP and solicitation of public comments on them. Phase III will be the development of a Final Supplemental Environmental Impact Statement/Final Supplemental Management Plan (FSEIS/MP), responding to public comment and establishing the reserve.

The WG collaborated and reached agreement on a recommendation to the State of Florida and the SAC regarding a preferred alternative for an ecological reserve in the Tortugas area. The WG developed criteria for evaluating a broad range of location, size and regulatory alternatives.

Over a 13-month period, the WG met five times and built up a knowledge base on the Tortugas region using scientific information provided by Sanctuary staff, personal knowledge, information received from constituents, and anecdotal information. To inform the WG of the resources and human uses of the area, two forums were held: one on ecological aspects of the region and one on socioeconomic uses. Scientists and knowledgeable locals were invited to present their information to the WG. The Tortugas 2000 website (http://www.fknms.nos.noaa.gov/tortugas) was a critical tool for disseminating information and was constantly updated as the process evolved and products were produced.

The Sanctuary and the NPS commissioned an ecological site characterization document composed of three chapters covering: physical oceanography and recruitment; fish and fisheries; and benthic communities. The information contained in these analyses was used to inform the WG of the resources and uniqueness of the Tortugas region and the data was used to create geographic information system (GIS) maps of the resources.

In addition to the ecological information, socioeconomic data was gathered from the commercial and recreational users of the area. It was first determined that approximately 105–110 commercial fishermen used the area. Information was collected on catch, costs, and trips from 90 of the fishermen. These 90 fishermen caught more than 90% of the total harvest from the Tortugas. The entire population of recreational charter users was interviewed and data on trips and costs were obtained. The commercial and recreational data were input into a GIS format and maps were produced showing use intensity.

A critical aspect of this GIS data was the creation of maps with a consistent scale and a consistent grid cell

framework so comparisons could be made between the maps. The study area was partitioned into one minute by one minute (approximately one $nm^2$) grid cells which facilitated the collection and analysis of data and the creation of boundary alternatives.

In February, the WG developed criteria for the ecological reserve that addressed ecological and socioeconomic concerns. On April 7, 1999, a packet of GIS maps was sent to the WG to assist in formulating draft alternatives. At its April 22–23 meeting, the criteria were first prioritized by the entire WG and then, in order to develop a broad range of alternatives, the WG broke into two groups: those who were conservation-oriented and those who were use-oriented. The groups reprioritized the criteria according to their interests, resulting in a less protective profile and a more protective profile. This exercise produced a matrix of criteria profiles that were used to develop the draft alternatives. In order to develop alternatives, the WG was broken up into four groups of varied perspectives (this was done to facilitate the development of a consensus).

These groups convened around roundtables and were presented with large, blank grid maps with corresponding transparent overlays. They also had workbooks showing maps of resources and uses. Each group was instructed to develop one alternative for each criteria profile. Observers who were not WG members were allowed to provide input into the drawing of the maps. Twelve draft alternatives were produced representing a range of protection options.

At the May 22 meeting, the WG chose two of the 12 alternatives to focus on and from those two alternatives a compromise arose that was presented by members of the WG. After considerable deliberation, this compromise was ultimately endorsed by the WG through consensus as the recommended "preferred alternative."

The preferred alternative would expand the boundary of the Sanctuary by approximately 96 $nm^2$ to include two significant coral reef areas known as Sherwood Forest and Riley's Hump and establish a Tortugas Ecological Reserve of approximately 151 $nm^2$. This alternative would expand the boundary of the Sanctuary in its northwesternmost corner by approximately 36 $nm^2$ to include Sherwood Forest and would expand the boundary in its southwesternmost corner by adding a noncontiguous area of approximately 60 $nm^2$ to include Riley's Hump. The proposed ecological reserve would also incorporate approximately 55 $nm^2$ of the existing Sanctuary in its northwest corner. The area of the proposed Tortugas Ecological Reserve surrounding Sherwood Forest would encompass approximately 91 $nm^2$ and would be called Tortugas North; the area surrounding Riley's Hump would be called Tortugas South.

On June 15, 1999, a presentation on the WG's process and recommended preferred alternative was given to the SAC. Following a lengthy and thorough deliberation the SAC voted unanimously to adopt the recommendation of the WG and forward it to NOAA and the State of Florida.

In developing the boundary alternatives presented in this document, Sanctuary staff took into consideration the deliberations of the WG, the recommendation of the SAC, the requirements of the FKNMSPA, National Marine Sanctuaries Act and NEPA, and the NPS's proposed Research/Natural Area alternative. Sanctuary staff developed five boundary alternatives for analysis which represent a broad range of areas for protection. The basis for these alternatives was the SAC's recommended preferred boundary alternative as well as the two alternatives that the WG chose to focus on at their final meeting. The alternatives were modified in order to create a broad range of options for consideration.

*Boundary Alternative I.* This alternative would be taking no action, that is, not expanding the boundary of the Sanctuary and not establishing a Tortugas Ecological Reserve.

*Boundary Alternative II (Fig. 2).* This alternative would establish a Tortugas Ecological Reserve of approximately 55 $nm^2$ in the northwesternmost portion of the existing Sanctuary boundary.

Areas within the SAC's recommended reserve boundary that would be not protected by this alternative would have to be protected by the relevant management agency. This alternative includes a portion of Sherwood Forest and the coral pinnacles north of Tortugas Bank; it does not include Riley's Hump. It includes some coral and hardbottom habitat north of the DRTO.

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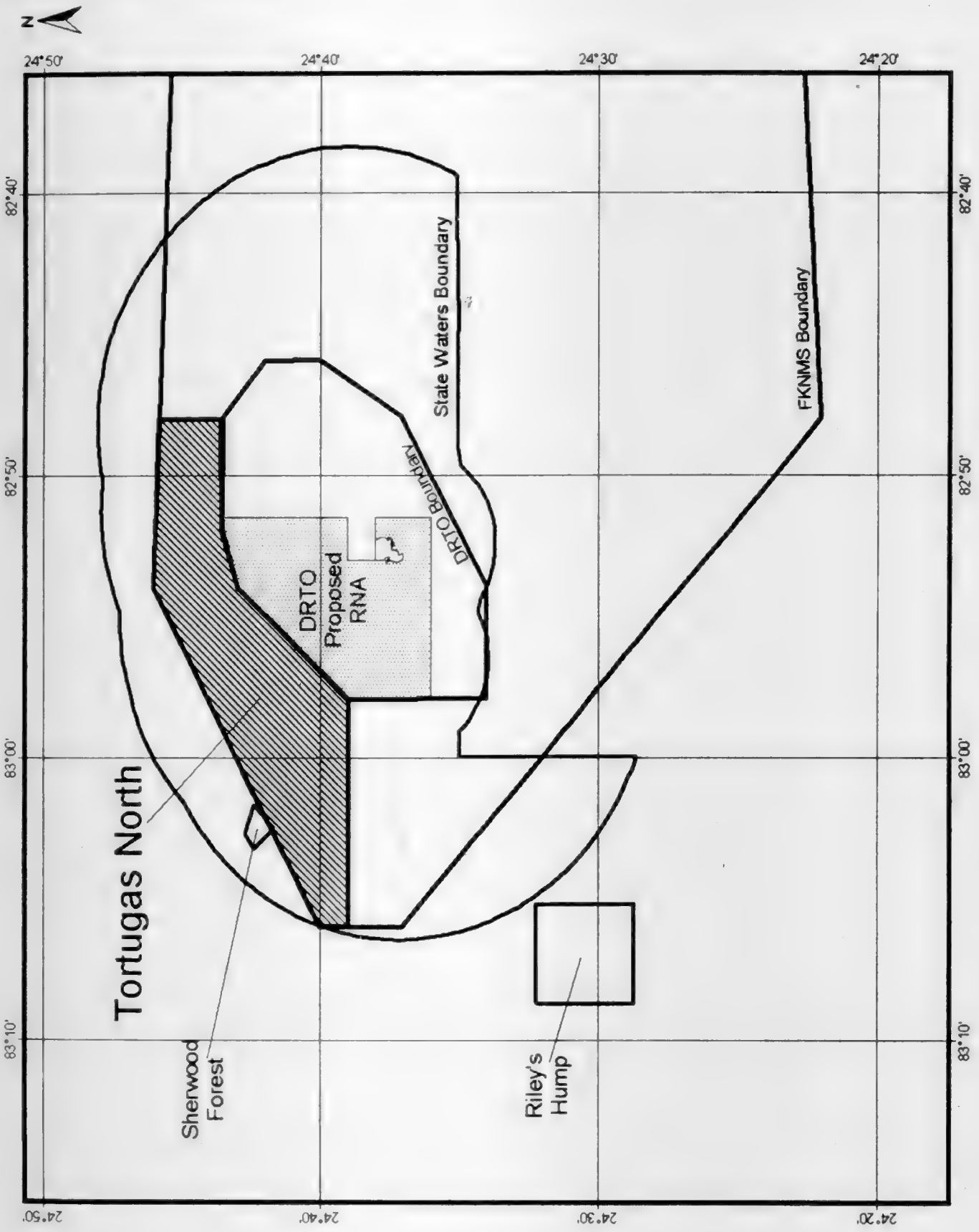


Figure 2. Boundary Alternative II

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Boundary Alternative III (Fig. 3—Preferred Boundary Alternative). This alternative would expand the boundary of the Sanctuary in its northwesternmost corner by approximately 36 $nm^2$ to include Sherwood Forest. In addition, this alternative would expand the boundary in its southwesternmost corner by adding a noncontiguous area of approximately 60 $nm^2$ to include Riley's Hump. The proposed ecological reserve would also incorporate approximately 55 $nm^2$ of the existing Sanctuary in its northwest corner, for a total Tortugas Ecological Reserve area of approximately 151 $nm^2$. The area of the proposed Tortugas Ecological Reserve surrounding Sherwood Forest would encompass approximately 91 $nm^2$ and would be called Tortugas North; the area surrounding Riley's Hump would be called Tortugas South. This alternative would involve four different management jurisdictions: FKNMS, State of Florida, GMFMC, and NMFS, all of which are in the process of taking steps to protect the areas within their respective jurisdictions. This alternative represents the WG's recommendation adopted by the SAC and recommended to NOAA and the State of Florida.

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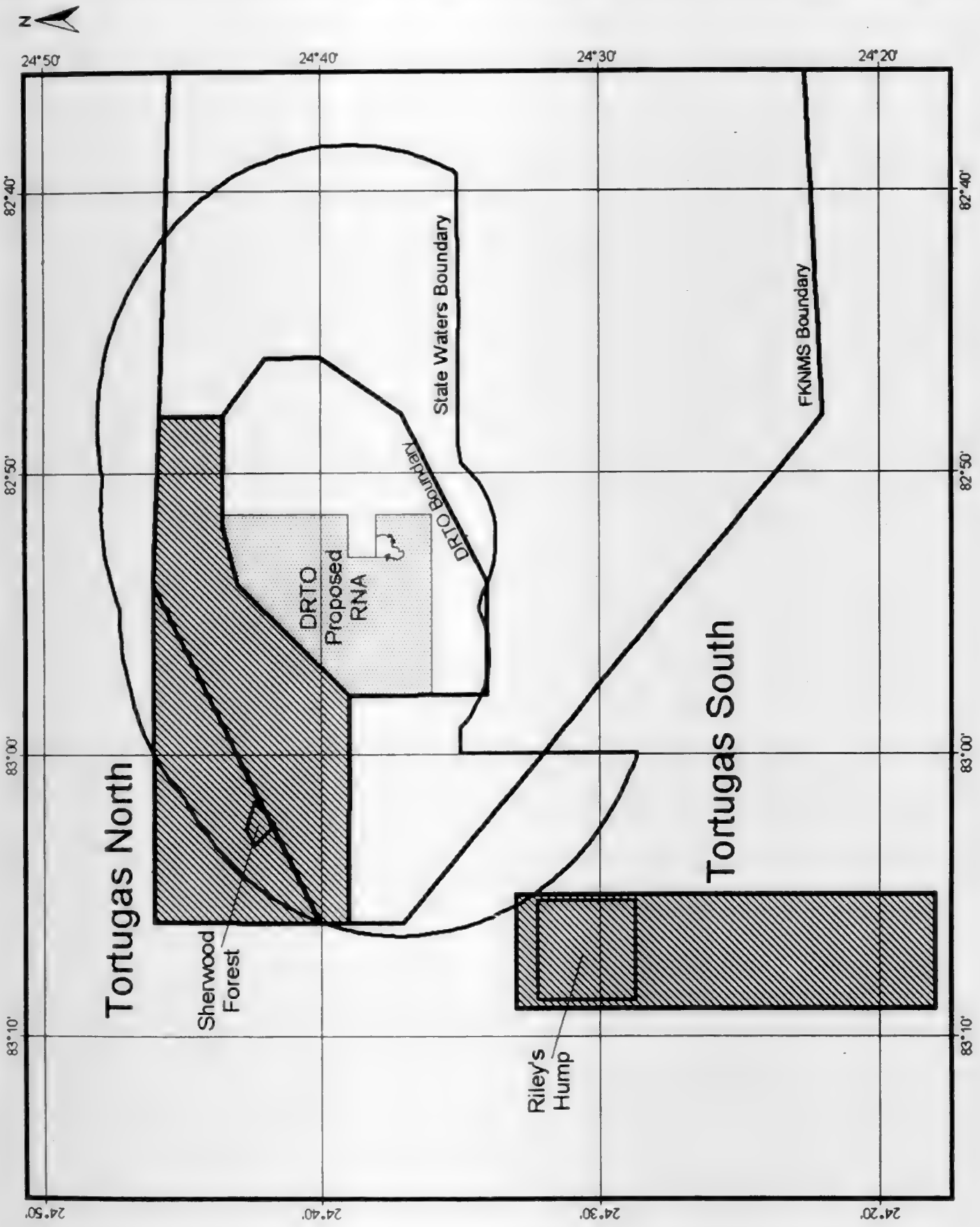


Figure 3. Boundary Alternative III (Preferred Boundary Alternative)

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*Boundary Alternative IV (Fig. 4).* This alternative would increase the area of Tortugas North over that in Alternative III by an additional 23 $nm^2$ to the south to make it conterminous with the NPS's proposed Research/Natural Area within the DRTO. The total area of the Tortugas North portion of the Tortugas Ecological Reserve would be approximately 115 $nm^2$. The Tortugas South area would be the same as in Alternative III. The total area for the Tortugas Ecological Reserve would be about 175 $nm^2$. This alternative would involve the same Sanctuary boundary expansion as in Alternative III.

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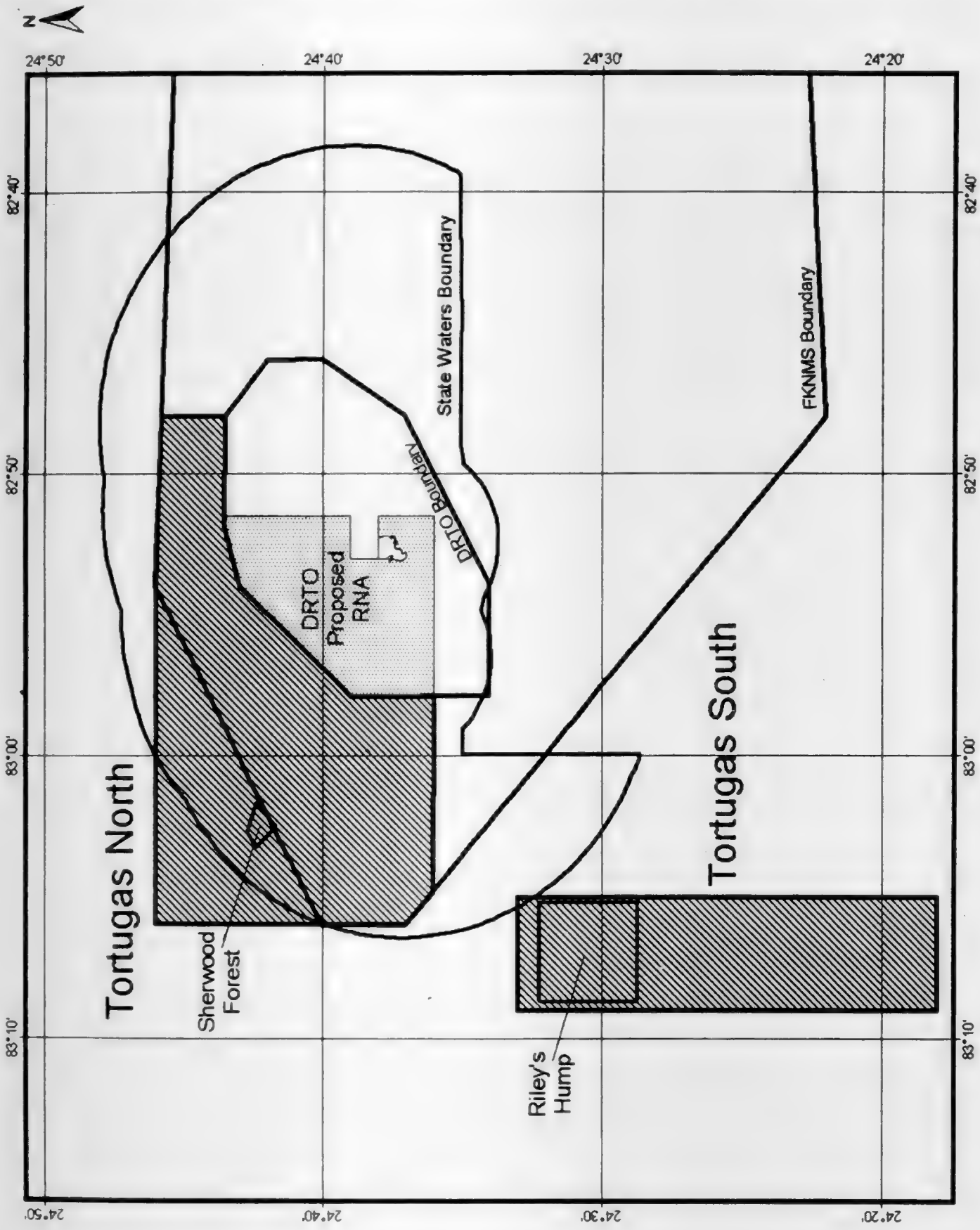


Figure 4. Boundary Alternative IV.

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*Boundary Alternative V (Fig. 5).* This alternative would expand the Sanctuary boundary over the expansions of Alternatives III and IV by three nm to the west in the northwesternmost corner of the Sanctuary. This would extend the western boundary of Tortugas North to the same longitude as the western boundary of Tortugas South. The area of Tortugas North would be increased by 31 $nm^2$ over Alternatives III and IV. The area of Tortugas North would be approximately 145 $nm^2$. Tortugas South would be reduced it in its southern extent over Alternatives III and IV by moving its southern boundary approximately 15 nm to the north. The area of Tortugas South would be approximately 45 $nm^2$ making the total area of the Tortugas Ecological Reserve approximately 190 $nm^2$.

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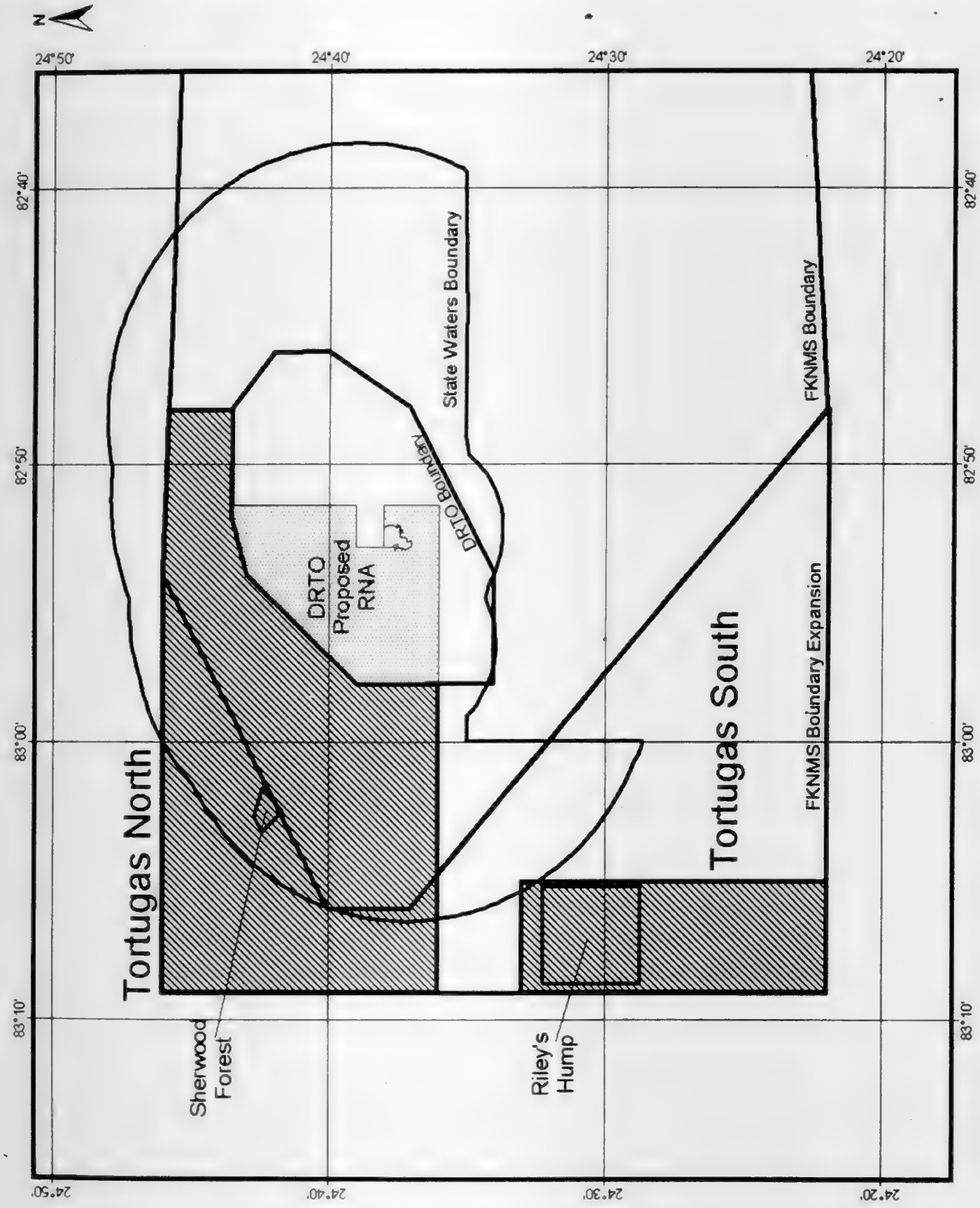


Figure 5. Boundary Alternative V

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*Boundary Expansion (Fig. 6).* Boundary Alternatives III, IV, and V would require expansion of the existing Sanctuary boundary. The original boundary in the western portion of the Sanctuary was drawn based on bathymetry as there was little information available at the time on significant ecological features. Consistent with E.O. 13089, Coral Reef Protection, and consistent with establishing an ecological reserve that comprehensively protects the resources, NOAA is now proposing to expand the boundary of the Sanctuary through the adoption of Boundary Alternative III to protect nationally significant coral reef resources that were unknown to the agency and to Congress at the time the Sanctuary was designated.

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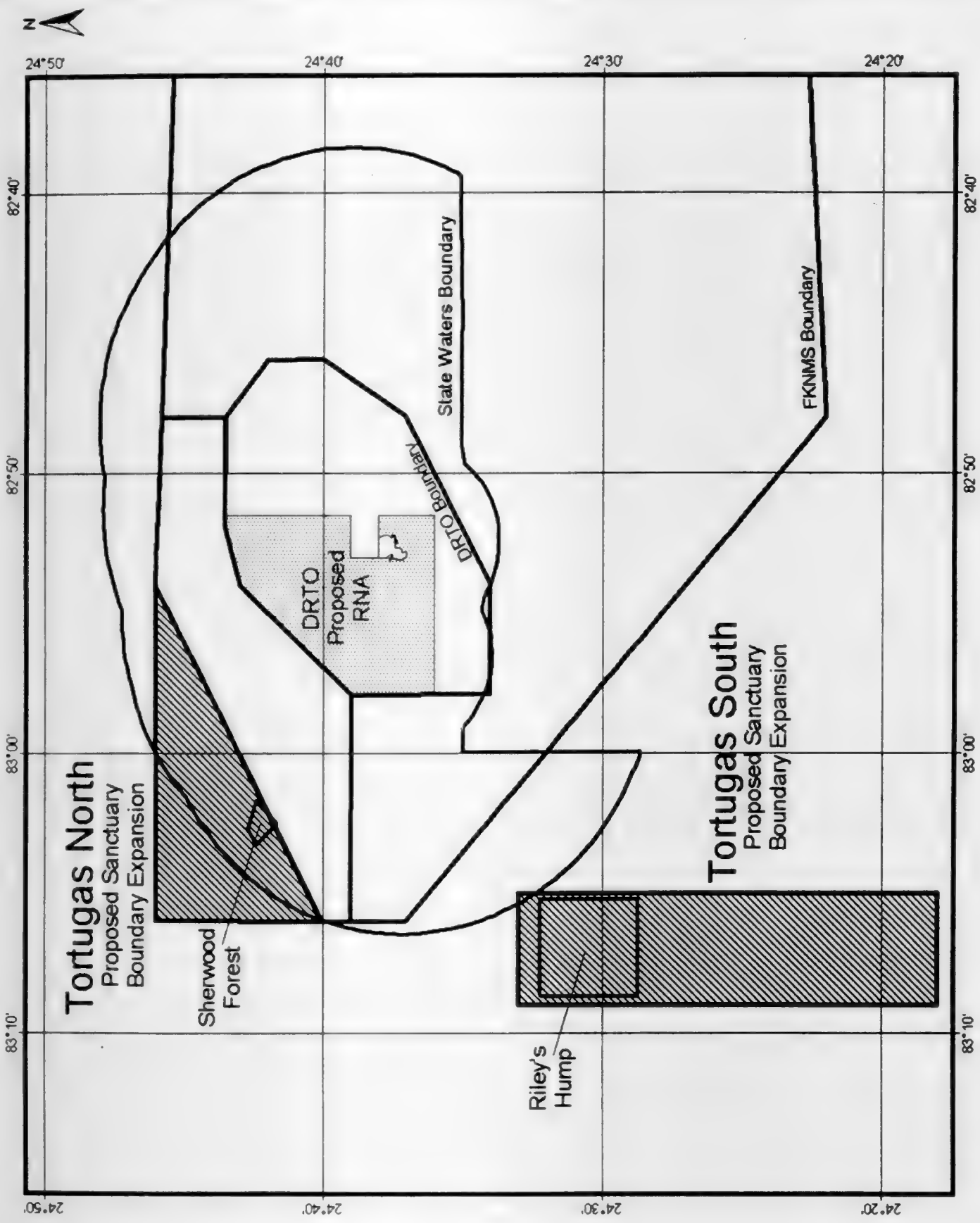


Figure 6. Proposed Sanctuary Boundary Expansion for Boundary Alternatives III and IV (shown in dark gray)

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**Development and Description of Regulatory Alternatives**

Four alternatives for regulating human activities within the reserve were developed. The regulatory alternatives are independent of the boundary alternatives (*i.e.*, regulatory alternatives can be paired with various boundary alternatives).

The foundation for these alternatives is the current FKNMS Sanctuary-wide regulations (15 CFR part 922, subpart P, in particular, § 922.163) and the additional regulations applicable to ecological reserves (15 CFR 922.164(d)). All of the alternatives begin with this foundation. In summary, the Sanctuary-wide regulations prohibit mineral and hydrocarbon exploration; removal of, injury to, or possession of coral or live rock; alteration of, or construction on, the seabed; discharge or deposit of materials or other matter; operation of vessels in a manner that endangers life, marine resources, or property; diving and snorkeling without flying a diver's down flag; releasing exotic species; damaging or removing markers; moving, removing, injuring, or possessing Sanctuary historical resources; taking or possessing protected wildlife; possessing or using explosives or electrical charges; harvesting or possessing marine life species not in accordance with the Florida Administrative Code; and interfering with law enforcement authorities.

In summary, the ecological reserve regulations prohibit the take or disturbance of any dead or living material; fishing; discharge or deposit of any material except cooling water or engine exhaust; anchoring when a mooring buoy is available or on living or dead coral; and touching living or dead coral. Transit by vessels is allowed provided that all fishing gear is stowed away. Currently, there is one ecological reserve in the Sanctuary (Western Sambo Ecological Reserve).

Other regulatory alternatives considered but rejected were taking no action, or making the entire proposed ecological reserve a no access, research/education-only area. The no-action alternative was rejected because it would not provide sufficient protection to coral reef resources from anchoring and other consumptive activities. Making the entire reserve a no access, research/education-only area appears to unnecessarily restrict non-consumptive activities.

**Regulatory Alternative A**

- Apply existing Sanctuary-wide and, with minor modifications described below, existing ecological reserve regulations, to Tortugas North and South.

Proposed regulations:

- *Tortugas North:* Apply existing Sanctuary-wide and, with minor modifications described below, existing ecological reserve regulations.
- *Tortugas South:* Apply existing Sanctuary-wide and, with minor modifications described below, existing ecological reserve regulations.
- The existing ecological reserve regulations would be revised at 15 CFR 922.164(d)(1) to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR Parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).
- *Objective:* To minimize human disturbance in order to restore and maintain ecological integrity including a full assemblage of fishes, coral, and other benthic invertebrates.

**Regulatory Alternative B**

- Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Alternative A).
- Prohibit anchoring in, prohibit mooring by vessels more than 100 ft in length overall (LOA), and control access to Tortugas South via permit and require a call-in prior to entering or when leaving.

Proposed regulations:

- Tortugas North. Same as in Alternative A above.
- Tortugas South. Same as in Alternative A above. In addition, prohibit anchoring, prohibit mooring by vessels more than 100 ft LOA, require a permit to enter the reserve for other than continuous transit, and require permitted vessels to call-in prior to entering or when leaving.

Description of access permit: Permit would be free, no paperwork would be required, and Sanctuary staff would be available year-round to handle requests.

*Application:* Applicant must call the Key West or Marathon Sanctuary office to request a permit and would have to radio into the Sanctuary staff person at Fort Jefferson (DRTO) prior to entering and upon leaving the reserve.

**Required Information:**

1. Names, addresses, and telephone numbers of owner, captain, and applicant.
2. Vessel name and home port.
3. USCG documentation number, state license, or boat registration number.
4. Length of vessel and primary propulsion type (*i.e.*,s motor or sail).
5. Number of divers.
6. Requested effective date and duration of permit.

Permit duration: For the time the vessel is in the area, not to exceed two weeks.

*Restrictions:* Vessels longer than 100 ft LOA cannot use the mooring buoys. Advance reservations no more than one month in advance.

*Special Conditions:* Doubling-up on mooring buoys would be permissible, leave and return privileges (dive during day, stay at the park overnight) would be allowed within the time period covered by the permit.

*Call-in requirement:* Permit holders must notify FKNMS staff at Fort Jefferson by radio no less than 30 minutes and no more than six hours before entering the reserve and upon leaving.

*Objective:* To minimize human disturbance in order to restore and maintain ecological integrity including a full assemblage of fishes, coral, and other benthic invertebrates and to create a reference area for studying human impacts on the ecosystem. This alternative would better protect Tortugas South by prohibiting anchoring and by controlling access (except for continuous transit) by a new type of permit. Prohibiting anchoring would better protect the coral reef resources in Tortugas South because the high cover of coral and the deep water depths make it difficult to anchor without damaging coral. The prohibition on mooring by vessels more than 100 ft LOA would protect the buoys from being ripped off their moorings by vessels exceeding the buoy's mooring capacity. Making Tortugas South a controlled access area would enhance its utility as a reference site for research and would facilitate enforcement of the regulations by giving advance notice to enforcement officers of the presence of a user vessel in this remote area.

**Regulatory Alternative C (Preferred Regulatory Alternative)**

- Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Alternative A).
- Prohibit anchoring in, prohibit mooring by vessels more than 100 ft LOA, and control access to Tortugas North and South via permit and require call-in prior to entering and upon leaving (as described in Alternative B).

Proposed regulations:

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• *Tortugas North*. Same as for Tortugas South in Alternative B above.
• *Tortugas South*. Same as for Tortugas South in Alternative B above.

*Objective:* To minimize human disturbance in order to restore and maintain ecological integrity including a full assemblage of fishes, coral, and other benthic invertebrates and to create a reference area for studying human impacts on the ecosystem. Over Regulatory Alternative B, this alternative provides increased protection to Tortugas North by prohibiting anchoring and by controlling access (except for continuous transit) by access permit. Prohibiting anchoring would better protect the coral reef resources in Tortugas North because of the difficulty of anchoring without damaging coral due to the high cover of coral and the deep water depths. Anchoring by vessels 50 m or greater in length is already prohibited in approximately 19% of Tortugas North. The prohibition on mooring by vessels more than 100 ft LOA would protect the buoys from being ripped off their moorings by vessels exceeding the buoy's mooring capacity. Making Tortugas North a controlled access area would enhance its utility as a reference site for researching and would facilitate enforcement of the regulations by giving advance notice to enforcement officers of the presence of a user vessel in this remote area. The existing ATBA already prohibits vessels 50 m or greater from accessing approximately 23% of Tortugas North.

**Regulatory Alternative D**

• Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Alternative A).
• Prohibit anchoring in, prohibit mooring by vessels more than 100 ft LOA, and control access to Tortugas North via permit and require call-in prior to entering and upon leaving (as described in Alternative B).
• Prohibit anchoring in, prohibit mooring by vessels more than 100 ft LOA, and restrict access to Tortugas South to research or educational activities only.

Proposed regulations:

• *Tortugas North*. Same as in Alternative C above.
• *Tortugas South*. Except for passage without interruption through the area with fishing gear stowed away or for law enforcement purposes, no person could enter Tortugas South except to conduct or cause to be conducted scientific research, or for educational use specifically authorized by and conducted in accordance with the scope, purpose, terms and conditions of a valid National Marine Sanctuary General permit (see 15 CFR 922.166(a)).

*Objective:* To minimize human disturbance in order to restore and maintain ecological integrity including a full assemblage of fishes, coral, and other benthic invertebrates and to create a reference area for studying human impacts on the ecosystem. Tortugas North would have the same protections as outlined in Regulatory Alternative C above. This alternative provides increased protection to Tortugas South over Alternative C by making it a research/education-only area. Making Tortugas South a research/education-only area would greatly enhance its utility as a reference site for researching and monitoring the effects of human activities on the functioning of a coral reef ecosystem. The prohibition on mooring by vessels more than 100 ft LOA would protect the buoys from being ripped off their moorings by vessels exceeding a buoy's mooring capacity.

The regulations proposed by this action would implement Regulatory Alternative C and would amend 15 CFR 922.161 to expand the boundary of the FKNMS to be consistent with Boundary Alternative III. The revised Sanctuary boundary coordinates would be set forth in Appendix I to part 922 which would also be revised to make minor revisions in the existing boundary to correct errors, provide clarification, and reflect more accurate data and, in the area of Biscayne National Park, to provide a fixed enforceable boundary. Appendix IV to part 922 would be revised to make the area within the coordinates for Boundary Alternative III an ecological reserve, to provide clarification, and to remove no longer needed introductory text. Appendices II, V, VI, and VII would be revised to correct errors, provide clarification, and reflect more accurate data.

The proposed regulations would revise the ecological reserve regulations at 15 CFR 922.164(d)(1) to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these parts); to prohibit anchoring in the Tortugas Ecological Reserve; entering the Tortugas Ecological Reserve without a valid access permit (except for continuous transit, law enforcement purposes, or monitoring); or tying a vessel greater than 100 ft (30.48 meters) LOA to a mooring buoy in the Tortugas Ecological Reserve or tying more than one vessel (other than vessels carried on board a vessel), if the combined lengths would exceed 100 ft (30.48 meters) LOA, to a mooring buoy or to a vessel tied to a mooring buoy in the ecological reserve. The reason for the length restriction is to prevent a buoy from being ripped off its mooring.

Because all anchoring would be prohibited in the northern portion of the Tortugas Bank no-anchoring zone established by 15 CFR 922.164(g), the proposed regulations would revise the zone to be consistent. The existing zone is an area within the Sanctuary boundary where vessels 50 m or greater in LOA are prohibited from anchoring. The northern portion of the zone overlaps the proposed ecological reserve.

The proposed regulations would add a new section to provide for permits for access to the ecological reserve. A person with a valid access permit would be allowed to enter the Tortugas Ecological Reserve. Access permits would not require written applications or the payment of any fee. Access permits would have to be requested at least 72 hours but no longer than one month before the date the permit would be effective. Permits could be requested via telephone or radio by contacting FKNMS at the Sanctuary offices at Key West or Marathon. A permit applicant would be required to provide, as applicable, the following information: vessel name; the names, addresses, and telephone number of the owner, operator and applicant; USCG documentation, state license, or registration number; home port; length of vessel and propulsion type (*i.e.*, motor or sail); number of divers; and the requested effective date and duration of permit (two weeks, maximum). The Sanctuary Superintendent would issue a permit to the owner or to the owner's representative for the vessel when all applicable information has been provided. FKNMS would provide a permit number to the applicant and confirm the effective date and duration period of the permit. Written confirmation of permit issuance would be provided upon request. Permit holders would be required to notify FKNMS staff at the Dry Tortugas National Park office, by telephone or radio, no less than 30 minutes and no more than six hours before entering and upon leaving the Tortugas Ecological Reserve. Permit holders could leave and return to the ecological reserve during the time their permit is effective.

Finally, the proposed regulations would add a new definition to 15 CFR

922.162, to define "length overall (LOA) or length of a vessel."

**Proposed Revised Designation Document**

Because NOAA is proposing to expand the boundary of the Sanctuary, the Designation Document for the Sanctuary needs to be revised to incorporate the new boundary coordinates, to authorize the regulation of entering or leaving specified areas of the Sanctuary, and to make necessary technical and editorial corrections of the Designation Document. The text of the Proposed Revised Designation Document follows:

**Proposed Revised Designation Document for the Florida Keys National Marine Sanctuary**

*Article I. Designation and Effect*

On November 16, 1990, the Florida Keys National Marine Sanctuary and Protection Act, Pub. L. 101–605 (16 U.S.C. 1433 note), became law. That Act designated an area of waters and submerged lands, including the living and nonliving resources within those waters future as described therein, as the Florida Keys National Marine Sanctuary (Sanctuary). By this revised Designation Document, the boundary of the Sanctuary is expanded to include important coral reef resources in two areas known as Sherwood Forest and Riley's Hump, just beyond the westernmost portion of the statutory Sanctuary boundary.

Section 304 of the National Marine Sanctuaries Act (NMSA), 16 U.S.C. 1431 *et seq.*, authorizes the Secretary of Commerce to issue such regulations as are necessary and reasonable to implement the designation, including managing and protecting the conservation, recreational, ecological, historical, research, educational and esthetic resources and qualities of a national marine sanctuary. Section 1 of Article IV of this Designation Document lists activities of the type that are presently being regulated or may have to be regulated in the future, in order to protect Sanctuary resources and qualities. Listing in section 1 does not mean that a type of activity will be regulated in the future; however, if a type of activity is not listed, it may not be regulated, except on an emergency basis, unless section 1 is amended following the procedures for designation of a sanctuary set forth in paragraphs (a) and (b) of section 304 of the NMSA, to include the type of activity.

Nothing in this Designation Document is intended to restrict activities that do not cause an adverse effect on the resources, or qualities of the Sanctuary or on Sanctuary property, or that do not pose a threat of harm to users of the Sanctuary.

*Article II. Description of the Area*

The Florida Keys National Marine Sanctuary boundary encompasses approximately 2900 $nm^2$ (9,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, surrounding the Florida Keys in Florida. The easternmost point of the Sanctuary is the northeasternmost point of Biscayne National Park and the westernmost point is approximately 15 kilometers to the west of the western boundary of Dry Tortugas National Park, a linear distance of approximately 335 kilometers. The contiguous area boundary on the Atlantic Ocean side of the Florida Keys runs south from Biscayne National Park generally following the 300-foot isobath, curving in a southwesterly direction along the Florida Keys archipelago until south of the Dry Tortugas. The contiguous area boundary on the Gulf of Mexico side of the Florida Keys runs from this southern point in a straight line to the northwest and then when directly west of the Dry Tortugas in a straight line to the north. The boundary then turns to the east and slightly south and follows a straight line to just west of Key West and then turns to the northeast and follows a straight line parallel to the Florida Keys approximately five miles to the south, and then follows the Everglades National Park boundary until Division Point where the boundary then follows the western shore of Manatee Bay, Barnes Sound, and Card Sound. The boundary then follows the southern boundary of Biscayne National Park and up its eastern boundary until its northeasternmost point. Starting just to the east of the most western boundary line of the contiguous portion of the Sanctuary, there is a vertical rectangular shaped area of 60 $nm^2$ just to the south.

The shoreward boundary of the Sanctuary is the mean high-water mark except around the Dry Tortugas where it is the boundary of the Dry Tortugas National Park. The Sanctuary boundary encompasses the entire Florida coral reef tract, all of the mangrove islands of the Florida Keys, and some of the sea grass meadows of the Florida Keys. The precise boundary of the Sanctuary is set forth at the end of this Designation Document.

*Article III. Characteristics of the Area That Give It Particular Value*

The Florida Keys extend approximately 223 miles southwest from the southern tip of the Florida peninsula. Adjacent to the Florida Keys land mass are located spectacular unique, nationally significant marine environments, including sea grass meadows, mangrove islands, and extensive living coral reefs. These marine environments support rich biological communities possessing extensive conservation, recreational, commercial, ecological, historical, research, educational, and aesthetic values which give this area special national significance. These environments are the marine equivalent of tropical rain forests in that they support high levels of biodiversity, are fragile and easily susceptible to damage from human activities, and possess high value to humans if properly conserved. These marine environments are subject to damage and loss of their ecological integrity from a variety of sources of disturbance.

The Florida Keys are a limestone island archipelago. The Keys are located at the southern edge of the Florida Plateau, a large carbonate platform made of a depth of up to 7000 meters of marine sediments, which have been accumulating for 150 million years and which have been structurally modified by subsidence and sea level fluctuation. The Keys region is generally divided into five distinct areas: the Florida reef tract, one of the world's largest coral reef tracts and the only barrier reef in the United States; Florida Bay, described as an active lime-mud factory because of the high carbonate content of its silts and muds; the Southwest Continental Shelf; the Straits of Florida; and the Keys themselves.

The 2.5 million-acre Sanctuary contains one of north America's most diverse assemblages of terrestrial, estuarine, and marine fauna and flora, including, in addition to the Florida reef tract, thousands of patch reefs, one of the world's largest sea grass communities covering 1.4 million acres, mangrove fringed shorelines, mangrove islands, and various hardbottom habitats. These diverse habitats provide shelter and food for thousands of species of marine plants and animals, including more than 50 species of animals identified under Federal or State law, as endangered or threatened. The Keys were at one time a major sea faring center for European and American trade routes to the Caribbean, and the submerged cultural and historic resources (*i.e.*, shipwrecks) abound in the surrounding waters. In addition, the Sanctuary may contain substantial archaeological resources of pre-European cultures.

The uniqueness of the marine environment draws multitudes of

visitors to the Keys. The major industry in the Florida Keys is tourism, including activities related to the Keys' marine resources, such as dive shops, charter fishing and dive boats and marinas, as well as hotels and restaurants. The abundance of the resources also supports a large commercial fishing employment sector.

The number of visitors to the Keys grows each year, with a concomitant increase in the number of residents, homes, jobs, and businesses. As population grows and the Keys accommodate ever-increasing resource-use pressures, the quality and quantity of Sanctuary resources are increasingly threatened. These pressures require coordinated and comprehensive monitoring and researching of the Florida Keys' region.

*Article IV. Scope of Regulations*

*Section 1. Activities Subject to Regulation*

The following activities are subject to regulation under the NMSA, either throughout the entire Sanctuary or within identified portions of it or, as indicated, in areas beyond the boundary of the Sanctuary, to the extent necessary and reasonable. Such regulation may include prohibitions to ensure the protection and management of the conservation, recreational, ecological, historical, research, educational, or aesthetic resources and qualities of the area. Because an activity is listed here does not mean that such activity is being or will be regulated. All listing means is that the activity can be regulated, after compliance with all applicable regulatory laws, without going through the designation procedures required by paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b). Further, no regulation issued under the authority of the NMSA except an emergency regulation issued with the approval of the Governor of the State of Florida may take effect in the area of the Sanctuary lying within the seaward boundary of the State of Florida if the Governor of the State of Florida certifies to the Secretary of Commerce that such regulation is unacceptable within the forty-five-day review period specified in NMSA. Detailed definitions and explanations of the following "activities subject to regulation" appear in the Sanctuary Management Plan:

1. Exploring for, developing, or producing oil, gas, and/or minerals (*e.g.*, clay, stone, sand, gravel, metalliferous ores, nonmetalliferous ores) in the Sanctuary;

2. Touching, climbing on, taking, removing, moving, collecting, harvesting, injuring, destroying or causing the loss of, or attempting to take, remove, move, collect, harvest, injure, destroy or cause the loss of, coral in the Sanctuary;

3. Drilling into, dredging or otherwise altering the seabed of the Sanctuary, except incidental to allowed fishing and boating practices or construction activities permitted by county, state or federal regulatory agencies; or constructing, placing or abandoning any structure, material or other matter on the seabed of the Sanctuary, except as authorized by appropriate permits or incidental to allowed fishing practices;

4. Discharging or depositing, within or beyond the boundary of the Sanctuary, any material that subsequently enters the Sanctuary and injures a Sanctuary resource or quality;

5. Operating water craft in the Sanctuary

(a) In a manner that could injure coral, hardbottoms, seagrass, mangroves, or any other immobile organism attached to the seabed,

(b) In a manner that could injure or endanger the life of divers, fishermen, boaters or other users of the Sanctuary,

(c) In a manner that could disturb marine mammals, marine reptiles, or bird rookeries;

6. Diving or boating activities in the Sanctuary including anchoring that could harm Sanctuary resources, Sanctuary property, or other users of the Sanctuary;

7. Stocking within the Sanctuary or releasing within the Sanctuary or from beyond the boundary of the Sanctuary, native or exotic species of plant, invertebrate, fish, amphibian or mammals;

8. Defacing, marking, or damaging in any way or displacing, removing, or tampering with any markers, signs, notices, placards, navigational aids, monuments, stakes, posts, mooring buoys, boundary buoys, trap buoys, or scientific equipment in the Sanctuary;

9. Removal, injury, preservation, curation, and management of historic resources within the Sanctuary without the appropriate state and/or federal permits;

10. Taking, removing, moving, catching, collecting, harvesting, feeding, injuring, destroying, or causing the loss of, or attempting to take, remove, move, catch, collect, harvest, feed, injure, destroy or cause the loss of any marine mammal, marine reptile, or bird within the Sanctuary, without the appropriate state and/or federal permits;

11. Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities in any area of the Sanctuary designated as an Existing Management Area, Wildlife Management Area, Ecological Reserve, Sanctuary Preservation Area, or Special-Use Area;

12. The carrying and possessing of specified fishing gear in any area of the Sanctuary designated as an Existing Management Area, Wildlife Management Area, Ecological Reserve, Sanctuary Preservation Area, or Special-Use Area except for passage without interruption through;

13. Entering or leaving any Wildlife Management Area, Ecological Reserve, Sanctuary Preservation Area, or Special-Use Area except for passage without interruption through or for law enforcement purposes;

14. Harvest of marine life as defined and regulated by the State of Florida under its marinelife rule;

15. Mariculture;

16. Possessing or using explosives or releasing electrical charges or substances poisonous or toxic to fish and other living marine resources within the Sanctuary or beyond the boundary of the Sanctuary (possession of ammunition shall not be considered possession of explosives);

17. Removal and disposal of lost, out-of-season, or illegal gear discovered within the Sanctuary; removal of vessels grounded, lodged, stuck or otherwise perched on coral reefs, hardbottom, or seagrasses within the Sanctuary; and removal and disposal of derelict or abandoned vessels or other vessels within the Sanctuary for which ownership cannot be determined or for which the owner takes no action for removal or disposal; and salvaging and towing of vessels abandoned or disabled within the Sanctuary vessels or of vessels within the Sanctuary otherwise needing salvaging or towing; and

18. Interfering with, obstructing, delaying or preventing an investigation, search, seizure or deposition of seized property in connection with enforcement of the NMSA or any regulation or permit issued under the NMSA.

*Section 2. Emergency Regulation*

Where necessary to prevent or minimize the destruction of, loss of, or injury to a Sanctuary resource or quality; or to minimize the imminent risk of such destruction, loss or injury, any activity, including any not listed in Section 1 of this article, is subject to immediate temporary regulation,

including prohibition. However, no such regulation may take effect in any area of the Sanctuary lying within the seaward boundary of the State of Florida without the approval of the Governor of the State of Florida.

*Article V. Effect on Leases, Permits, Licenses, and Rights*

Pursuant to paragraph (c)(1) of section 304 of the NMSA, 16 U.S.C. 1434(c)(1), no valid lease, permit, license, approval or other authorization issued by any federal, State, or local authority of competent jurisdiction, or any right of subsistence use or access, may be terminated by the Secretary of Commerce, or his or her designee, as a result of a designation, or as a result of any sanctuary regulation, if such authorization or right was in effect on the effective date of the designation (November 16, 1990 with respect to the statutory Sanctuary boundary;_____, 2000 with respect to the expansion area made by this revision to the designation document).

In no event may the Secretary of Commerce or his or her designee issue a permit authorizing, or otherwise approving: (1) The exploration for, development of, or production of oil, gas, or minerals within the Sanctuary; or (2) The disposal of dredged materials within the Sanctuary (except by certification in accordance with applicable National Marine Sanctuary Program regulations of valid authorizations in existence on the effective date of Sanctuary designation). Any purported authorizations issued by other authorities after the effective date of Sanctuary designation for any of these activities within the Sanctuary shall be invalid.

*Article VI. Alteration of This Designation*

The terms of designation, as defined in paragraph (a) of section 304 of the NMSA, 16 U.S.C. 1434(a), may be modified only by the procedures outlined in paragraphs (a) and (b) of section 304 of the NMSA, 16 U.S.C. 1434(a) and (b), including public hearings, consultation with interested federal, state, and local government agencies, review by the appropriate Congressional committees, review by the Governor of the State of Florida, and approval by the Secretary of Commerce, or his or her designee. No designation, term of designation, or implementing regulation may take effect in the area of the Sanctuary lying within the seaward boundary of the State of Florida if the Governor of the State of Florida certifies to the Secretary of Commerce that such designation or term of designation regulation is unacceptable within the forty-five-day review period specified in NMSA.

*Florida Keys National Marine Sanctuary Boundary Coordinates (Based on North American Datum of 1983)*

The boundary of the Florida Keys National Marine Sanctuary—

(a) Begins at the northeasternmost point of Biscayne National Park located at a point approximately 25 degrees 39 minutes north latitude, 80 degrees 05 minutes west longitude, then runs eastward to the point located at 25 degrees 39 minutes north latitude, 80 degrees 04 minutes west longitude; and

(b) Then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 04 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 05 minutes west longitude,

(iii) 25 degrees 21 minutes north latitude, 80 degrees 07 minutes west longitude, and

(iv) 25 degrees 16 minutes north latitude, 80 degrees 08 minutes west longitude;

(c) Then runs southwesterly and connects in succession the points at the following coordinates:

(i) 25 degrees 07 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 06 minutes west longitude,

(viii) 24 degrees 46 minutes north latitude, 83 degrees 06 minutes west longitude,

(ix) 24 degrees 46 minutes north latitude, 82 degrees 54 minutes west longitude,

(x) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(xi) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xii) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) Then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) After Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) Then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and

(g) Then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

The shoreward boundary of the Florida Keys National Marine Sanctuary is the mean high-water mark except around the Dry Tortugas where the boundary is conterminous with that of the Dry Tortugas National Park, formed by connecting in succession the points at the following coordinates:

(i) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(ii) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 seconds west longitude;

(iii) 24 degrees 39 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 seconds west longitude;

(iv) 24 degrees 43 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(v) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 52 minutes 0 seconds west longitude;

(vi) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude;

(vii) 24 degrees 42 minutes 0 seconds north latitude, 82 degrees 46 minutes 0 seconds west longitude;

(viii) 24 degrees 40 minutes 0 seconds north latitude, 82 degrees 46 minutes 0 seconds west longitude;

(ix) 24 degrees 37 minutes 0 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude; and

(x) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude.

The Florida Keys National Marine Sanctuary also includes the area located within the boundary formed by connecting in succession the points at the following coordinates;

(i) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude,

(ii) 24 degrees 33 minutes north latitude, 83 degrees 05 minutes west longitude,

(iii) 24 degrees 18 minutes north latitude, 83 degrees 05 minutes west longitude,

(iv) 24 degrees 18 minutes north latitude, 83 degrees 09 minutes west longitude, and

(v) 24 degrees 33 minutes north latitude, 83 degrees 09 minute west longitude.

End of Proposed Revised Designation Document.

**Summary of Draft Supplemental Management Plan**

The draft supplemental management plan complements the existing Management Plan in several respects.

A supplement to the Administrative Action Plan targets the development of a memorandum of understanding to clearly define the roles and responsibilities if the various agencies responsible for resource management in the Tortugas region. The MOU would cover, at a minimum, the following activities: cooperative enforcement, research, and sharing of facilities. Management of the Tortugas Ecological Reserve would necessitate a high degree of coordination and cooperation between the affected agencies particularly the FKNMS and the NPS. Both agencies have similar missions and responsibilities. Consequently, cooperation would not only save money but would also improve resource protection. The NPS has a variety of assets, such as land, housing and dockage, that, under a workable agreement, could potentially be used to support management of the ecological reserve. An agreement on the use of these lands and facilities would be pursued by the FKNMS and NPS.

The State of Florida is the co-trustee for a significant portion of the waters and marine resources within the proposed reserve and would co-manage them with the FKNMS.

The NMFS has responsibility for regulating the fisheries in the federal waters of the reserve. NMFS has considerable expertise and some assets that could be utilized in managing the reserve, particularly in the areas of research and monitoring.

NOAA's Office of Law Enforcement also has responsibility for enforcing fishing and Sanctuary regulations and has assets and technology that could potentially be used for enforcement.

The U.S. Coast Guard has responsibility for enforcing federal laws within U.S. waters. It has several large offshore patrol vessels based in Key West that could be used in conjunction with Sanctuary patrol vessels for enforcement of the Sanctuary regulations within the reserve areas.

A supplement to the Education and Outreach Action Plan would facilitate the production of a documentary video or film on the development and environmental qualities and characteristics of the ecological reserve. In addition, the supplement to the Plan would develop a visitor's center in Key West to interpret the marine environment and resources of the reserve and the Tortugas region for the visiting public.

A supplement to the Enforcement Action Plan would be the hiring of additional enforcement officers to patrol the reserve; the installation, operation and maintenance of surveillance radar; the purchase and installation of housing for Sanctuary staff at Fort Jefferson; and the purchase, operation and maintenance of an offshore patrol vessel.

A supplement to the Mooring and Boundary Buoy Action Plan would be the installation and maintenance of mooring buoys in Tortugas North and South and boundary buoys in Tortugas North.

A supplement to the Regulatory Action Plan would be the issuance of final regulations to implement the boundary expansion and the establishment of the reserve. The supplement would call for extensive coordination with the State of Florida, the Gulf of Mexico Fishery Management Council, and NMFS to ensure that all approvals and required regulations are obtained and in place. A collateral aspect to the issuance of regulations would be publication on NOAA nautical charts of the new boundaries for the Sanctuary and the reserve.

A supplement to the Research and Monitoring Action Plan would be the hiring of additional support staff; the design and implementation of long-term ecological monitoring; the undertaking of a feasibility study in conjunction with the NPS on reestablishing the Dry Tortugas Marine Laboratory; establishment of a wireless data transfer capability using the existing two-way radio network; establishment of the Tortugas as a long-term ocean ecosystem observatory with continuous, automated collection of key physical and biological parameters; and the design and implementation of a non-use valuation study of the national significance of the coral reef resources in the Tortugas region.

**Miscellaneous Rulemaking Requirements**

*Marine Protection, Research, and Sanctuaries Act*

Paragraph (a)(4) of section 304 the NMSA, 16 U.S.C. 1434(a)(4), requires that the procedures specified in section 304 for designating a National Marine Sanctuary be followed for modifying any term of designation. Because this action would revise the Sanctuary boundary to include an additional 96 square nautical miles, it would revise the boundary terms of designation thus triggering the requirements of section 304. In particular, section 304 requires that the Secretary of Commerce to submit to the Committee on Resources of the United States House of Representatives and the Committee on Commerce, Science, and Transportation of the United States Senate, on the same day as this notice is published, a prospectus on the proposal, which must contain, among other things, the terms of the proposed designation, the proposed regulations, a draft management plan detailing the proposed goals and objectives, management responsibilities, research activities for the area, and a draft environmental impact statement. In accordance with section 304, the required prospectus is being submitted to the specified Congressional Committees.

*Executive Order 12866*

This action has been determined to be significant for purposes of E.O. 12866. That Order requires a draft text of the regulations to be proposed, a reasonably detailed description of the need for the action, an explanation of how the action will meet that need, and an assessment of the potential costs and benefits, including an explanation of the manner in which the action is consistent with statutory mandates, and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions (referred to as a Regulatory Impact Review (RIR). In accordance with the requirements of the Executive Order, NOAA has prepared an RIR for this action. The RIR is contained in part V of the DSEIS/SMP. NOAA will announce shortly the public availability of the DSEIS/SMP.

*Regulatory Flexibility Act*

In accordance with the requirements of section 603(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), NOAA has prepared an initial regulatory flexibility analysis (IRFA) describing the

impact of this proposed action on small entities. Section 603(b) (5 U.S.C. 603(b)) requires that each IRFA contain a description of the reasons why the action is being considered, a succinct statement of the objectives of, and legal basis for, the action, a description of and, where feasible, an estimate of the number of small entities to which the proposed action will apply, a description of the projected reporting, recordkeeping and other compliance requirements of the proposed action, including an estimate of the classes of small entities which would be subject to the requirement and the type of professional skills necessary for preparation of the report or record, and an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed action. In addition, section 603(c) (5 U.S.C. 603(c)) requires that each IRFA contain a description of any significant alternatives to the proposed action which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed action on small entities. The complete IRFA is contained in Parts I, IV, and V of the DSEIS/SMP.

The following is a summary of the IRFA:

Statement of Need and Why Regulatory Action is being Considered

As previously set forth in this regulatory preamble.

Goals, Objectives, and Legal Basis

As previously set forth in this regulatory preamble.

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements.

The only record keeping or reporting requirements are the permit and call-in, call-out requirements for the reserve previously described in the Preamble under proposed regulations. There are two classes of users that would be affected by these proposed requirements: commercial dive boat operators and private boaters. The type of skills necessary to request an access permit and to provide notification when entering or leaving the proposed ecological reserve would be use of marine radio equipment.

Relevant Federal Rules Which May Duplicate, Overlap or Conflict With the Proposed Action.

The GMFMC is amending the GMFMP to prohibit fishing in the areas of Tortugas North and South that are beyond State of Florida waters in the Exclusive Economic Zone. NMFS would implement these amendments by issuing a no-fishing rule for those areas. Also, NMFS is amending the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks and its implementing regulations to be consistent with the no-take status of the proposed reserve.

The State of Florida is drafting fishing regulations to prohibit fishing in those portions of Tortugas North that lie within State waters. Sanctuary regulations implementing the reserve would not become effective in State waters until approved by the State of Florida. These actions in conjunction with the Sanctuary rule on no-take would ensure comprehensive protection for the coral reef resources and to facilitate user awareness and compliance with the rules.

Description and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply.

It is estimated that there are up to 64 commercial fishers and 10 recreational charter vessel (fishing and/or diving) operators who could be affected by the proposed rule. All of these are considered small entities for purposes of the Regulatory Flexibility Act.

Description of Any Significant Alternatives to the Proposed Action Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize any Significant Economic Impact of the Proposed Action on Small Entities

Approach to the Analysis of Alternatives.

The analysis of the alternatives focuses on market economic impacts as measured by direct revenue, costs and profits of the business firms directly affected by the "no-take" regulations. These impacts are then translated into the secondary or multiplier impacts on the local economy. For the recreational industry, the impact area is defined as Monroe County, Florida and, for the commercial fisheries the impact areas are Monroe County and Lee/Collier counties. For the commercial fisheries, the results presented here are an aggregation of the impacts on both Monroe and Lee/Collier counties. The market economic impacts include estimates of output/sales, income and employment.

The approach begins by first analyzing the "no-take" regulation for each boundary alternative.

Analyses are presented for the recreation industry (broken down into consumptive and nonconsumptive), the commercial fisheries, commercial shipping, treasure salvors and then other benefits (nonusers, scientific and education values). The other regulations are then analyzed. These include the no anchoring regulation, access restrictions, and sanctuary-wide regulations (for boundary alternatives that include areas outside current Sanctuary boundary). For most of the sanctuary-wide regulations, there is no additional or incremental impact over the "no-take" regulation.

For the recreation industry and the commercial fishing industry, the impacts first are estimated by assuming a complete loss for any activity displaced. This is done by adding up all the activities within the geographic area defined by an ecological reserve boundary (*i.e.*, the no-take area) and applying the appropriate economic parameters. Next, a qualitative approach is used to assess whether the results from step 1 are likely to occur. Mitigating and offsetting factors are taken into account. With respect to the recreational industry sector, consumptive recreation is separated from non-consumptive recreation since consumptive recreation activities are displaced from the "no-take" areas and may potentially be negatively impacted, while non-consumptive activities would be beneficiaries of the "no-take" areas. With respect to the commercial fisheries, all would be displaced from the "no-take" areas and, potentially, would be negatively impacted in the short term. Over the long term, creation of the ecological reserve is expected to generate replenishment effects to the fisheries. Over the longer term, there would be long-term benefits even to commercial reef fishermen and related dependent businesses. The analysis assumes that all entities impacted are small entities within the meaning of the Regulatory Flexibility Act.

*Definition of the Study Areas.* For purposes of the analyses presented in this report, there are five basic study areas. The first is a 1,020 $nm^2$ area called the TERSA (see Fig.1). This was the area selected by the FKNMS for analyzing different alternatives for the proposed Tortugas Ecological Reserve. All socioeconomic information was collected and organized in the TERSA at geographical resolution of one $nm^2$. Detailed descriptions of the data are included for the recreation industry and for the commercial fisheries.

*Boundary Alternatives*

As described earlier in this Preamble.

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No-take Regulations

Recreation Industry

Boundary Analysis

The interpretation of the estimates provided in this analysis is critical to understanding the "true" impact of the various alternatives proposed for the Tortugas Ecological Reserve. The estimates from the geographic information system (GIS) analysis for the different boundary alternatives are simply the sum of each measurement within the boundaries for a given alternative. The estimates therefore represent the maximum total potential loss from displacement of the consumptive recreational activities. This analysis ignores possible mitigating factors and the possibility of net benefits that might be derived if the proposed ecological reserve has replenishment effects. Although the extent of the mitigating factors or the potential benefits from replenishment are unknown, this analysis discusses these as well as other potential benefits of the proposed ecological reserve after the maximum potential losses from displacement of the current consumptive recreational uses are presented and discussed.

There are two types of potential losses identified and quantified in the analysis—non-market economic values and market economic values.

*Non-Market Economic Values.* There are two types of non-market economic values. The first is consumer's surplus, which is the amount of economic value a consumer receives by consuming a good or service over and above what he or she pays for the good or service. It is a net benefit to the consumer and in the context of recreation use of natural resources, where the natural resources go unpriced in markets, this value is often referred to as the net user value of the natural resource. The second type of non-market economic value is one received by producers or owners of the businesses providing goods or services to the users of the natural resources. This is commonly referred to as producer's surplus. The concept is similar to consumer's surplus in that the businesses do not pay a price for the use of natural resources when providing goods or services to users of the resources. However, this concept is a little more complicated because, in "welfare economics," not all producers' surplus is considered a proper indicator in the improvement of welfare. Only that portion of producer's surplus called "economic rent" is appropriate for inclusion. Economic rent is the amount of profit a business receives over and above a normal return on investment (*i.e.*, the amount of return on investment that could be earned by switching to some alternative activity). Again, because businesses that depend on natural resources in the Tortugas do not have to pay for the use of them, there exists the possibility of earning above normal rates of return on investment or "economic rent." This like consumer's surplus, would be additional economic value attributable to the natural resources (*i.e.*, another user value).

Economic rents are different from consumer's surplus in that supply and demand conditions are often likely to lead to dissipation of the economic rents. This is generally true for most open access situations. As new firms enter the industry because of the lure of higher than normal returns on investment, the net effect is to eliminate most if not all of the economic rent. However, given the remoteness of the TERSA, it is likely that all economic rents would not be eliminated. Accounting profits are used as a proxy for economic rents in the analysis. The absolute levels of accounting profits are not a good proxy for economic rents, however, they are used here as an index for assessing the relative impacts across the different boundary alternatives.

The estimates for consumer's surplus were derived by combining estimates of person-days from all the operators in the TERSA with estimates of consumer's surplus per person-day. The estimates were derived separately by season.

*Market Economic Values.* Revenues from the charter boat operations that provided service to the consumptive recreational users provide the basis for this portion of the analysis. Total output/sales, income and employment impacts on the Monroe County economy are then derived from these estimates. These impacts include the ripple or multiplier impacts. Total output/sales is equal to business revenue times the total-output multiplier of 1.12. Income was then derived by taking the total output/sales impact and dividing by the total output-to-income ratio (2.63). Total employment was derived by dividing the total income impact by the total income-to-employment ratio ($23,160).

*Boundary Alternative I: No Action*

The no-action alternative simply means that the proposed Tortugas Ecological Reserve would not be established and the corresponding no-take regulations would not be issued. The no-action alternative has a simple interpretation in that any costs of imposing the no-take regulations, for any given alternative with no-take regulations, would be the benefits of the no-action alternative. That is, by not adopting the no-take regulations, the costs are avoided. Similarly, any benefits from imposing the no-take regulations, for any given alternative with no-take regulations, would be the costs of the no action alternative. That is, by not adopting the no-take regulations, the costs are the benefits lost by not adopting the no-take regulations. Said another way, the opportunities lost. The impacts of the no-action alternative can only be understood by comparing them to the impacts of one of the alternatives.

*Boundary Alternative II (See Fig. 2)*

Non-Market Economic Values. This alternative would displace more than 26% of the total person-days of diving for lobsters, about 26% of the spearfishing, and just more than 2% of the fishing. Across all three consumptive recreational activities just less than 6% of the person-days would be displaced. This alternative is entirely within the existing Sanctuary boundary. Because of the way in which consumer's surpluses are calculated, they generally mirror the patterns in displaced use. Minor differences would be due to the distributions across activities by season. Only in the case of diving for lobsters are the impacts on person-days and profits equal. For spearfishing, the impacts on profits are lower than the affect on person-days (18.7% versus 25.9%), while for fishing the affect is greater on profits than on person-days (6.5% versus 1.2%). The GIS-generated maps show why diving for lobsters and spearfishing is relatively more affected than fishing. The reason is that diving for lobsters and spearfishing are concentrated on Tortugas Bank, while relatively little fishing currently takes place on the Tortugas Bank.

*Market Economic Values.* Presently, there are 12 charter boats operating within the TERSA, nine of which would be potentially affected by this alternative. Direct business revenue would include potential losses of 26.6% for diving for lobsters, 20% for spearfishing, and 3% for fishing. Across all three consumptive recreational activities, 9.5% of revenue would be potentially affected. Through the ripple or multiplier effects, 9.5% of output/sales, income and employment associated with all the consumptive recreational activities in the TERSA could potentially be lost. Although these costs could have an affect on the nine firms operating in the TERSA, the affect would not likely be noticed in the Monroe County economy because the affect would amount to only a fraction of a percent of the total economy

supported by recreating visitors to the Florida Keys.

*Boundary Alternative III (Preferred Boundary Alternative—See Fig. 3)*

*Non-Market Economic Values.* Because the portion of this alternative that is within the FKNMS boundary is exactly the same as Alternative II, the analysis for that portion of this alternative is exactly the same. The entire alternative would displace more than 26% of the total person-days of diving for lobsters, about 26% of the spearfishing, and just more than 3% of the fishing. Across all three consumptive recreational activities more than 7% of the person-days would be displaced. For fishing, 40% of the displaced activity would be from within the FKNMS boundary. Consumer's surpluses generally mirror patterns of displaced use. Again, minor differences would be due to the distributions across activities by season. Only in the case of diving for lobsters are the effects on person-days and profits equal. For spearfishing, the effect on profits is lower than the affect on person-days (18.7% versus 25.9%), while for fishing the effect is greater on profits than on person-days (10.2% versus 3.0%).

*Market Economic Values.* Nine of the twelve charter boats operating within the TERSA would be potentially affected by this alternative. Direct business revenue would include potential losses of 26.6% for diving for lobsters, 20.0% for spearfishing, and 6.3% for fishing. Across all three consumptive recreational activities, 11.7% of revenue would be potentially affected. Through the ripple or multiplier effects, 11.7% of output/sales, income and employment associated with all the consumptive recreational activities in the TERSA could potentially be lost. Although these costs could have an affect on the nine firms operating in the TERSA, the affect would not likely be noticed in the Monroe County economy because the affect would amount to only a fraction of a percent of the total economy supported by recreating visitors to the Florida Keys.

*Boundary Alternative IV (See Fig. 4)*

*Non-Market Economic Values.* This alternative would displace more than 73% of the total person-days of diving for lobsters, just less than 72% of the spearfishing, and more than 6% of the fishing. Across all three consumptive recreational activities more than 18% of the person-days would be displaced. All the diving for lobsters and spearfishing activity displaced would be from within the FKNMS boundary. For fishing, 71% of the displaced activity would be from within the FKNMS boundary. Similarly to the other alternatives, consumer's surpluses mirror the patterns in displaced use because of the way in which they are calculated. Minor differences would be due to the distributions across activities by season. Again, profits are only equal to the affect on person-days for diving for lobsters. For spearfishing, the effect on profits is lower than the affect on person-days (56.2% versus 71.7%), while for fishing the affect is greater on profits than on person-days (17.6% versus 6.3%).

*Market Economic Values.* Ten of the twelve charter boats operating within the TERSA would be potentially affected by this alternative. Direct business revenue would include potential losses of 73.4% for diving for lobsters, 59.0% for spearfishing, and 10.5% for fishing. Across all three consumptive recreational activities, 28.7% of revenue would be potentially affected. Through the ripple or multiplier effects, 28.7% of output/sales, income and employment associated with all the consumptive recreational activities in the TERSA could potentially be lost. Although these impacts could have significant affect on the ten firms operating in the TERSA, the affect would not likely be noticed in the Monroe County economy because the affect would amount to only a fraction of a percent of the total economy supported by recreating visitors to the Florida Keys.

*Boundary Alternative V (See Fig. 5)*

*Non-Market Economic Values.* This alternative would displace more than 86% of the total person-days of diving for lobsters, more than 84% of the spearfishing, and more than 7% of the fishing. Across all three consumptive recreational activities more than 21% of the person-days would be displaced. For diving for lobsters 85% of the displaced activity would be from within the FKNMS boundary, 59% of the fishing, and 85% of the spearfishing. Because of the way in which consumer's surpluses are calculated, they generally mirror the patterns in displaced use. Minor differences would be due to the distributions across activities by season. Profits are only equal to the affect on person-days for diving for lobsters. For spearfishing, the effects on profits are lower than the affect on person-days (65.5% versus 84.7%), while for fishing the affect is greater on profits than on person-days (21.9% versus 7.6%).

*Market Economic Values.* Eleven of the twelve charter boats operating within the TERSA would be potentially affected by this alternative. Direct business revenue would include potential losses of 86.7% for diving for lobsters, 69.0% for spearfishing, and 12.9% for fishing. Across all three consumptive recreational activities, 34.1% of revenue would be potentially affected. Through the ripple or multiplier effects, 34.1% of output/sales, income and employment associated with all the consumptive recreational activities in the TERSA could potentially be lost. Although these effects could have significant affect on the ten firms operating in the TERSA, the affect would not likely be noticed in the Monroe County economy because the affect would amount to only a fraction of a percent of the total economy supported by recreating visitors to the Florida Keys.

Mitigating Factors—Are the Potential Losses Likely? In the above GIS-based analysis, effects are referred to as "potential losses." The reason is that there are several factors that could mitigate these potential losses and further there is a possibility that there might not be any losses at all. It is quite possible that there might be actual benefits to even the current displaced users. These factors are referred to only in qualitative terms because it is not possible to quantify them. Below two possible mitigating factors, how likely they might mitigate the potential losses from displacement, and further how this might differ for each of the three alternatives are discussed.

*Substitution.* If displaced users are simply able to relocate their activities, they may be able to fully or partially mitigate their losses. This of course depends on the availability of substitute sites and further depends on the substitute site qualities. Several scenarios are possible. Even when total activity remains constant (*i.e.*, person-days remain the same as they simply go to other sites), if the quality of the site is lower there could be some loss in consumer's surplus. If it costs more to get to the substitute sites, there could still be increases in costs and thus lower profits. If there is not a completely adequate supply of substitute sites, then there could be losses in total activity and in all the non-market and market economic measures referenced in our above analysis of displaced use. The possibilities for substitution vary by alternative.

*Long-term benefits from Replenishment Effects.* Ecological reserves or marine reserves may have beneficial effects beyond the direct ecological protection for the sites themselves. That is, both the size and

number of fish, lobster and other invertebrates both inside and outside the reserves may increase. Five spawning areas have been identified in the western portion of the TERSA. The long-term benefits from the reserve could offset any losses from displacement and may also result in long-term benefits and no costs to recreational users that would be displaced by the proposed Tortugas Ecological Reserve. Again, this conclusion may still vary by alternative.

*Boundary Alternative II*

*Substitution.* Complete mitigation by substituting to alternative sites has a high probability for this alternative because over half of the Tortugas Bank would still be available for all consumptive recreation activities. Given the equal distribution of use for diving for lobsters and spearfishing on the Tortugas Bank, it is not likely that increased costs of relocation would occur or that there would be losses from users forced to go to sites of lower quality. Crowding effects, by pushing all the use currently spread over the whole Tortugas Bank onto half the bank, would also be unlikely given the small absolute amounts of activity. For fishing, only 1% of the activity would be displaced, so for this activity we would also expect there would be no crowding effects and recreational fishermen would not likely suffer any losses.

*Long-term Benefits from Replenishment Effects.* One spawning area has been identified in the Alternative II boundary area. As previously described, Alternative II is the portion of the preferred alternative (Alternative III) that lies within the existing Sanctuary boundary. Therefore the long-term benefits to stocks derived from the portion of the preferred alternative that lies outside of the existing Sanctuary boundary would not be realized. This alternative is the smallest one analyzed and so the potential long-term benefits to stocks outside the protected area would be smaller than for the other alternatives. However, the displaced activity to be mitigated is also much smaller and thus on net there is a high likelihood that there would be long-term benefits to all the consumptive recreational users in the TERSA.

*Boundary Alternative III (Preferred Boundary Alternative)*

*Substitution.* As with Alternative II, complete mitigation by substituting to alternative sites has a high probability for this alternative because of the small proportion of the Tortugas Bank included in the alternative. Given the equal distribution of use for diving for lobsters and spearfishing on the Tortugas Bank, it is not likely that increased costs of relocation would occur or that there would be losses from users forced to go to sites of lower quality. Crowding effects, again, would be unlikely given the small absolute amounts of activity. For fishing, only 3% of the activity would be displaced, so recreational fishermen would not likely suffer any losses.

*Long-term Benefits from Replenishment Effects.* Three spawning areas have been identified in the Alternative III boundary area. Because this alternative includes areas outside the existing sanctuary boundary, the potential long-term benefits to stocks outside the protected area would be comparatively larger than it would be for Alternative II. The mitigating effort required on the part of operators in the boundary alternative also would be comparatively larger, but as mentioned above, because of the small percentage of the active recreational area included in the alternative, the effect is likely to be very small. Therefore, there is a high likelihood that there would be long-term benefits to all the consumptive recreational users in the TERSA.

*Boundary Alternative IV*

*Substitution.* Under this alternative, about 73% of the diving for lobsters and 72% of the spearfishing would be displaced. The potential for substituting to other sites is greatly reduced as compared with Alternatives II and III. The reason is that all of the Tortugas Bank lies within this boundary alternative. Some substitution is possible, but the probability of crowding effects rises considerably for diving for lobsters and spearfishing.

For fishing, substitution mitigating all the losses is still highly probable since only about 6% of the fishing activity would be displaced. This represents a relatively low amount of activity and given the wide distribution of this activity in the study area, crowding effects are still a low probability under this alternative.

*Long-term Benefits from Replenishment Effects.* Four spawning sites have been identified within the Alternative IV boundary area. For diving for lobsters and spearfishing, it is not clear whether there would be significant benefits offsite given that most of this activity currently takes place on the Tortugas Bank and none of the bank available for the activity. Not much is currently known about other areas which might benefit from the stock effect and where they could relocate to reap these benefits. Whether the activities displaced could find alternative sites where both the quantity and quality of activity could be maintained or enhanced seems less likely given the extent of displacement.

For fishing, however, the small amount of displacement relative to the entire area plus the wider distribution of fishing activity still makes it highly likely that the long-term benefits of replenishment would more than offset the potential losses from displacement resulting in net benefits to this group.

*Boundary Alternative V*

*Substitution.* This alternative displaces about 87% of the diving for lobsters and 85% of the spearfishing. Substitution possibilities for these activities are reduced even more, meaning that losses given are more likely to actually occur.

For fishing, mitigating all the losses through substitution is still highly probable since only about 8% of the fishing activity would be displaced. This again, represents a relatively low amount of activity and given the wide distribution of this activity in the study area, crowding effects are still a low probability under this alternative.

*Long-term Benefits from Stock Effects.* Four spawning sites have been identified in the Alternative V boundary area. However, because the entire Tortugas Bank would be closed to diving for lobsters and spearfishing and the additionally large area encompassed by the proposed reserve, it is highly unlikely that these two user groups would benefit from the enhanced stocks of lobster and fish. Therefore, under this alternative, the maximum potential losses are highly likely to occur.

For fishing, however, the stock effects for the reserve could be substantial. Whether the benefits would be large enough to offset the displacement cannot immediately be determined. But given the past experience with reserves, it is still somewhat likely that the long-term benefits would offset the displacement costs yielding net benefits.

Benefits of the Proposed Tortugas Ecological Reserve to Recreational Users on Entire Florida Keys Reef Tract. Above we discussed the possibility that consumptive recreational users could possibly benefit if there were long-term offsite impacts. But there is also the possibility that a protected area in the Tortugas could yield beneficial stock effects to a wide variety of species all along the entire Florida Keys reef tract and to species such as sailfish that are primarily offshore species. Even small increases in recreational tourist activities along the entire Florida Keys

reef tract could more than offset the total displacements from the most extreme alternative analyzed here. One-tenth of one percent increase in the total recreational visitor contribution along the entire Florida Keys reef tract would more than offset the maximum potential losses from Boundary Alternative V.

*Non-consumptive Users (Divers) in Tortugas.* Currently there is one operator who brings divers to the TERSA for non-consumptive diving. There were 1,048 person-days of non-consumptive diving which account for 4.98% of the total recreational activity in the TERSA (excluding the National Park). Of the total non-consumptive diving, 83.3% is currently done within the existing Sanctuary boundary. It is expected that this group would be benefitted by the ecological reserve. As the site improves in quality, we would expect that the demand for this site would increase and person-days, consumer's surplus, business revenues and profits would all increase. This would be expected to vary by alternative with the more protective alternatives having greater benefits.

**Commercial Fishery**

*Boundary Analysis*

*Boundary Analysis Methodology.* In performing the boundary analysis, the impact estimates for each alternative are broken out by "within the FKNMS boundary" and "outside the FKNMS boundary."

Commercial fishing is prohibited in the DRTO so these grid cells are "true" zeroes in the analysis. Before breaking out the impact, the status of each grid cell (*i.e.*, inside or outside of the boundary) had to be determined. Two methods were considered to carry out this task: The "centroid method" and the "intersection method." The centroid method characterizes a grid cell as within a boundary if the centroid (*e.g.*, center point) of the cell is within the boundary. The intersection method characterizes a grid cell as within a boundary if any part of the cell is intersected by the boundary. The centroid method was selected because it was more consistent with how the data was collected (*i.e.*, 1 $nm^2$ grid cells was the finest resolution).

The interpretation of the estimates provided in this analysis is critical to understanding the "true" impact of the various alternatives proposed for the Tortugas Ecological Reserve. The estimates from the geographic information system (GIS) analyses for the different boundary alternatives are the sum of each measurement within the boundary for a given alternative. The estimates therefore represent the maximum total potential loss from displacement of the commercial fishing activities. This analysis ignores possible mitigating factors and the possibility of net benefits that might be derived if the proposed ecological reserve has replenishment effect. Although the extent of the mitigating factors or the potential benefits from replenishment cannot be quantified, these as well as other potential benefits of the proposed ecological reserve are discussed after presenting and discussing the maximum potential losses from displacement of the current commercial fisheries.

The boundary analysis is driven by the catch summed across grid cells within each boundary alternative. The set of relationships, measures and methods described in Leeworthy and Wiley (1999) are then used to translate catch into estimates of market and non-market economic values potentially affected. These estimates are broken-down by area both inside and outside FKNMS boundary and are done by species.

The boundary alternatives are ordered according to size and potential impact. Alternative I is the "No Action" alternative and is the least protective alternative. Alternative III is the "Preferred Alternative." Alternatives IV and V are the largest and "Most Protective" alternatives. For catch, generally the higher the alternative number the greater the potential affect on catch, except for king mackerel and shrimp. Potential affect on king mackerel catch is the same for both Alternatives IV and V and, the potential affect on shrimp catch is the same for the preferred Alternative III and Alternative IV.

Both the market and non-market economic values potentially lost from displacement for each alternative, except the "No-action" Alternative (Boundary Alternative I), are summarized in Leeworthy and Wiley (1999), which includes greater detail by species/species groups, and for the market economic values, separate estimates for Monroe and Collier/Lee counties.

*Boundary Alternative I: No Action*

The no action alternative simply means that the proposed Tortugas Ecological Reserve would not be established and the corresponding no-take regulations would not be issued. The no action alternative has a simple interpretation in that any costs of imposing the no-take regulations, for any given alternative with no-take regulations, would be the benefits of the no action alternative. That is, by not adopting the no-take regulations, the costs are avoided. Similarly, any benefits from imposing the no-take regulations, for any given alternative with no-take regulations, would be the costs of the no action alternative. That is, by not adopting the no-take regulations, the costs are the benefits lost by not adopting the no-take regulations. Said another way, the opportunities lost. The effects of the no action alternative can only be understood by comparing it to one of the alternatives. Thus the effects of the no action alternative can be obtained by reading the effects from any of the alternatives in reverse.

*Boundary Alternative II*

*Market Economic Values.* This alternative could potentially affect 4.2% of the catch of king mackerel, 6% of the lobster catch, 12.96% of the reef fish catch, and 1% of the shrimp catch in the TERSA. This would lead to a reduction in about $411 thousand in harvest revenue or 6% of the TERSA harvest revenue. This reduction in revenue would result in a reduction of 5.8% of total output, income and employment generated by the TERSA fishery. Since this alternative was restricted to reside within FKNMS current boundary, the effects are all inside FKNMS boundary. Although these effects might seem significant to those firms that might potentially be affected, the overall affect on the local economies would be so small they would not be noticed. Harvest revenue potentially impacted was only 0.67% of all harvest revenue of catch landed in Monroe County. In addition, this lost revenue would translate (accounting for the multiplier effects) into only fractions of a percent of the total Monroe County economy; 0.035% of total output, 0.046% of total income and 0.045% of total employment.

*Non-market Economic Values.* For all species/species groups, this alternative could result in a potential loss of over $473 thousand in consumer's surplus. This was 6.28% of the consumer's surplus generated by the entire TERSA. Although producer's surplus or economic rents are estimated to be zero, about 5.54% of the return to labor and capital of the TERSA fishery is potentially affected by this alternative.

*Boundary Alternative III (Preferred Boundary Alternative)*

*Market Economic Values.* This alternative could potentially affect 14% of the catch of king mackerel, 11.58% of the lobster catch, 20.30% of the reef fish catch, and 8.16% of the shrimp catch in the TERSA. This would lead to a

reduction in about $844 thousand in harvest revenue or 12.26% of the TERSA harvest revenue. This reduction in revenue would result in a reduction of 12.16% of total output, income and employment generated by the TERSA fishery. The impacts are split almost evenly between the areas inside and outside the FKNMS boundary. Although these costs might seem significant to those firms that might potentially be affected, the overall affect on the local economies would be so small they would not be noticed. Harvest revenue potentially affected was only 1.16% of all harvest revenue of catch landed in Monroe County. In addition, this lost revenue would translate (accounting for the multiplier effects) into only fractions of a percent of the total Monroe County economy; 0.0596% of total output, 0.0779% of total income and 0.0785% of total employment.

*Non-market Economic Values.* For all species/species groups, this alternative could result in a potential loss of about $880 thousand in consumer's surplus. This was 11.7% of the consumer's surplus generated by the entire TERSA. Whereas the market economic values were almost evenly split inside and outside the FKNMS, 53.76% of the consumer's surplus potentially affected is from inside the FKNMS boundary. This is due to the distributions of lobster and reef fish catch where a higher proportion of the potentially affected catch come from inside the FKNMS boundary, whereas the distributions of shrimp and king mackerel come largely from outside the FKNMS boundary.

Although producer's surplus or economic rents are estimated to be zero, about 11.5% of the return to labor and capital of the TERSA fishery is potentially affected by this alternative. The distribution inside versus outside the FKNMS boundary follows that of the market economic values with 48% from catch inside the FKNMS boundary.

*Boundary Alternative IV*

*Market Economic Values.* This alternative could potentially affect 15.57% of the catch of king mackerel, 16.4% of the lobster catch, 28.19% of the reef fish catch, and 8.16% of the shrimp catch in the TERSA. This would lead to a reduction in about $1.126 million in harvest revenue or 16.45% of the TERSA harvest revenue. This reduction in revenue would result in a reduction of 16.05% of total output, income and employment generated by the TERSA fishery. About 61.65% of the harvest revenue and 60.34% of the output, income and employment impacts would come from catch displaced from within FKNMS boundary. Although the costs might seem significant to those firms that might potentially be affected, the overall impact on the local economies would be so small they would not be noticed. Harvest revenue potentially affected was only 1.82% of all harvest revenue of catch landed in Monroe County. In addition, this lost revenue would translate (accounting for the multiplier effects) into only fractions of a percent of the total Monroe County economy; 0.0968% of total output, 0.127% of total income and 0.1281% of total employment.

*Non-market Economic Values.* For all species/species groups, this alternative could result in a potential loss of about $1.1 million in consumer's surplus. This was 14.64% of the consumer's surplus generated by the entire TERSA and 63.14% of the consumer's surplus potentially affected is from catch from inside the FKNMS boundary. This is due to the distributions of lobster and reef fish catch where a higher proportion of the potentially affected catch come from inside the FKNMS boundary, whereas the distributions of shrimp and king mackerel come largely from outside the FKNMS boundary. Although producer's surplus or economic rents are estimated to be zero, about 15.6% of the return to labor and capital of the TERSA fishery is potentially affected by this alternative. The distribution inside versus outside the FKNMS boundary follows that of the market economic values with 61.68% from catch inside the FKNMS.

*Boundary Alternative V*

*Market Economic Values.* This alternative could potentially affect 15.57% of the catch of king mackerel, 17.58% of the lobster catch, 29.57% of the reef fish catch, and 10.26% of the shrimp catch in the TERSA. This would lead to a reduction in about $1.224 million in harvest revenue or 17.89% of the TERSA harvest revenue. This reduction in revenue would result in a reduction of 17.5% of total output, income and employment generated by the TERSA fishery. About 56.68% of the harvest revenue and 55.26% of the output, income and employment impacts would come from catch displaced from within the FKNMS boundary. Although the costs might seem significant to those firms that might potentially be affected, the overall impact on the local economies would be so small they would not be noticed. Harvest revenue potentially affected was only 1.98% of all harvest revenue of catch landed in Monroe County. In addition, this lost revenue would translate (accounting for the multiplier effects) into only fractions of a percent of the total Monroe County economy; 0.106% of total output, 0.138% of total income and 0.1399% of total employment.

*Non-market Economic Values.* For all species/species groups, this alternative could result in a potential loss of about $1.24 million in consumer's surplus. This was 16.4% of the consumer's surplus generated by the entire TERSA. 56.2% of the consumer's surplus potentially affected is from catch from inside the FKNMS boundary. This is due to the distributions of lobster and reef fish catch where a higher proportion of the potentially affected catch come from inside the FKNMS boundary, whereas the distributions of shrimp and king mackerel come largely from outside the FKNMS boundary. Although producer's surplus or economic rents are estimated to be zero, about 16.97% of the return to labor and capital of the TERSA fishery is potentially affected by this alternative. The distribution inside versus outside the FKNMS boundary follows that of the market economic values with 56.7% from catch inside the FKNMS boundary.

*Profiles of Fishermen Potentially Affected*

In the overview section, a profile of the approximately 110 TERSA fishermen based on a sample of 90 was given with a comparison with other commercial fishermen in Monroe County. The profiles of those potentially affected by each alternative are compared. Statistical tests were performed comparing the sample distributions for the groups that fished within each boundary alternative as compared with TERSA fishermen as a whole. Except for the number of fishing operations potentially affected, the only significant differences for all alternatives were in membership in organizations and in fish house usage.

In terms of memberships in organizations, the fishermen potentially affected by all alternatives had significantly lower participation rates in the Conch Coalition, the Organized Fishermen of Florida (OFF) and in the Monroe County Commercial Fishermen, Inc. (MCCF), but had a significantly higher participation rates in environmental organizations and the Chambers of Commerce. Fish house usage was significantly lower for those fishermen potentially affected by all alternatives.

Fishermen potentially affected by Boundary Alternative II were the only group that was significantly different. These fishermen had less experience

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fishing in Monroe County than the general TERSA fishermen, however they were not significantly different with respect to years fishing in the TERSA. Fishermen potentially affected by Boundary Alternative II also earned a significantly lower proportion of their income from fishing than the general TERSA fishermen; however, they earned a significantly higher proportion of their income from fishing within the TERSA than the general TERSA fishermen.

Fishermen potentially affected by Boundary Alternative II were also significantly different from the general TERSA fishermen in the distribution of their primary hauling port. A significantly higher proportion of those potentially affected by this alternative used Key West/Stock Island and Tavenier than the general TERSA fishermen, and they used Big Pine Key, Marathon and Naples/Ft. Myers significantly less than the general TERSA fishermen.

Fifty-one (51) or 57% of the sampled fishing operations could be potentially affected by Boundary Alternative II followed by 64 operations or 71% for Alternative III, and 65 operations or 72% for both Boundary Alternatives IV and V. Twenty-four (24) of the 28 or 86% of all the lobster operations could be potentially affected by Boundary Alternative II, while 27 of the 28 lobster operations or 96% are potentially affected by Boundary Alternatives III, IV, and V. Six (6) of the 18 or 33.3% of the shrimp operations are potentially affected by Boundary Alternative II, while Boundary Alternative III could potentially affect 15 of 18 or 83% of the shrimp operations. Boundary Alternatives IV and V could potentially affect 14 of the 18 or 78% of the shrimp operations. Fifteen (15) of the 16 king mackerel operations could be potentially affected by Boundary Alternative II, while Boundary Alternatives III, IV and V could potentially affect all 16 of the king mackerel operations. Thirty-seven (37) of the 42 or 88% of the reef fish operations could be potentially affected by Boundary Alternative II, while 40 or 95% of the reef fish fishing operations could be potentially affected by Boundary Alternative III. Boundary Alternatives IV and V could potentially affect all 42 reef fish operations.

Other Potential Costs and Mitigating Factors—Are the Potential Losses Likely?

In the above GIS-based analysis, the effects are referred to as "potential losses" or "maximum potential losses." There is the possibility that there could be an additional cost not discussed but which cannot be quantified, that is, crowding and the resulting conflicts among users forced to compete in a smaller area. There are also several factors that could mitigate all the potential losses and further there is a possibility that there might not be any losses at all. It is quite possible that there might be actual net benefits to even the current displaced users. Below the issue of crowding costs and the mitigating factors and potential for beneficial outcomes are discussed in qualitative terms because of the difficulty in quantifying them. Two mitigating factors, how likely they might mitigate the potential losses from displacement, and how this might differ for each of the alternatives, are discussed.

*Crowding.* As shown above, each of the alternatives would result in a certain amount of displacement. Displacement of commercial fishing activity is a certainty under all boundary alternatives, except Boundary Alternative I, the No-action Alternative. If this displacement results in the activity being transferred to other sites, there is a potential for crowding effects. Crowding effects could raise the costs of fishing, both private costs to each fishing operation and social costs in resolving conflicts.

Crowding conflicts were one of the issues mentioned when the State of Florida created the lobster trap certificate program which was designed to reduce the number of lobster traps. If fishing stocks outside the protected area are already fished to their limits (*i.e.*, limits of sustainable harvests), then displacement could also lead to adverse stock effects and a lower level of catch from all commercial fisheries. Crowding effects would represent a potential cost not accounted for in our above GIS-based analysis and the potential for the existence of crowding effects would vary by alternative. Whether crowding effects are experienced would depend on the status of the fisheries outside the proposed protected area, the extent of displacement, the current knowledge and fishing patterns of the displaced fishermen, and other potential regulations. The trap reduction program is an example where crowding effects could be mitigated by making room for the displaced traps.

*Relocation.* If displaced commercial fishermen are simply able to relocate their fishing effort and they are able to partially or completely replace their lost catch by fishing elsewhere, then there might be less or no affect. However, the possibility exists that displacement, even if it does not result in lower overall catch, may result in higher costs. This would result in lower profits to fishing operations. Whether fishermen are able to relocate to other fishing sites and replace lost catch or avoid cost increases would depend, like with the issue of crowding, on the status of the fisheries outside the proposed protected area, the extent of the displacement, the current knowledge and fishing patterns of the displaced fishermen, and other potential regulations.

*Long-term benefits from Replenishment Effects.* Ecological reserves or marine reserves may have beneficial effects beyond the direct ecological protection from the sites themselves. That is, both the size and number of fish, lobster, and other invertebrates both inside and outside the reserves may increase *i.e.*, the replenishment effect. It is clear that fishers all over the world believe no-take zones increase yields because they fish as close to the boundary as possible. The long-term benefits from the reserve could offset any losses from displacement and may also result in long-term benefits and no costs (net benefits) to commercial fishermen that would be displaced by a proposed reserve. Again, this conclusion may vary by alternative.

*Boundary Alternative II*

*Crowding and Relocation.* For the commercial lobster fishery, it appears that the lobster trap reduction program could fully mitigate the potential for crowding costs. This boundary alternative would displace 2,228 traps. A ten percent reduction in traps in the TERSA would provide space for 3,690 traps. Further, lobster fishermen in the TERSA only catch 68% of their lobsters from the TERSA. Thus, lobster fishermen are knowledgeable about fishing in other areas of the Keys where they might move their displaced traps. Thus, under this boundary alternative there would be no crowding costs for the commercial lobster fishery and the fishermen would be able to replace catch from other areas. Thus, for the commercial lobster fishery, the potential economic losses identified in Table 1 are not likely to occur under Boundary Alternative II.

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*Table 1. Maximum Potential Losses to the Commercial Fisheries from Displacement*

| Area/Measure | Total TERSA | Alternatives: Alternative II | Preferred Alternative | Alternative IV | Alternative V |
|---|---|---|---|---|---|
| **Total TERSA** | | | | | |
| Market[1] | | | | | |
| Harvest Revenue | $ 6,884,992 | $ 411,632 | $ 843,583 | $ 1,126,237 | $ 1,224,849 |
| Total Output | $ 14,957,717 | $ 865,819 | $ 1,817,843 | $ 2,400,730 | $ 2,621,627 |
| Total Income | $ 9,273,785 | $ 536,808 | $ 1,127,063 | $ 1,488,453 | $ 1,625,409 |
| Total Employment | 404 | 23 | 49 | 65 | 71 |
| Non-market | | | | | |
| Consumer's Surplus[2] | $ 7,537,781 | $ 473,097 | $ 879,973 | $ 1,103,808 | $ 1,239,587 |
| Producer's Surplus[3] | $ - | $ - | $ - | $ - | $ - |
| Return to Labor & Capital[4] | $ 1,926,162 | $ 106,789 | $ 221,968 | $ 300,599 | $ 326,880 |
| **Inside FKNMS** | | | | | |
| Market | | | | | |
| Harvest Revenue | $ 3,476,456 | $ 411,632 | $ 411,632 | $ 694,284 | $ 694,284 |
| Total Output | $ 7,292,387 | $ 865,819 | $ 865,819 | $ 1,448,700 | $ 1,448,700 |
| Total Income | $ 4,521,280 | $ 536,808 | $ 536,808 | $ 898,194 | $ 898,194 |
| Total Employment | 197 | 23 | 23 | 39 | 39 |
| Non-market | | | | | |
| Consumer's Surplus | $ 3,890,933 | $ 473,097 | $ 473,097 | $ 696,932 | $ 696,932 |
| Producer's Surplus | $ - | $ - | $ - | $ - | $ - |
| Return to Labor & Capital | $ 1,029,118 | $ 106,789 | $ 106,789 | $ 185,420 | $ 185,420 |
| **Outside FKNMS** | | | | | |
| Market | | | | | |
| Harvest Revenue | $ 3,408,536 | $ - | $ 431,951 | $ 431,953 | $ 530,565 |
| Total Output | $ 7,665,330 | $ - | $ 952,024 | $ 952,030 | $ 1,172,927 |
| Total Income | $ 4,752,505 | $ - | $ 590,255 | $ 590,259 | $ 727,215 |
| Total Employment | 207 | - | 26 | 26 | 32 |
| Non-market | | | | | |
| Consumer's Surplus | $ 3,646,848 | $ - | $ 406,876 | $ 406,876 | $ 542,655 |
| Producer's Surplus | $ - | $ - | $ - | $ - | $ - |
| Return to Labor & Capital | $ 897,044 | $ - | $ 115,179 | $ 115,179 | $ 141,460 |

1. Market economic measures include impacts on Monroe County and Collier/Lee counties. See Appendix A, Tables A.6 – A.11 in Leeworthy and Wiley (1999) for details by species and counties.
2. Maximum values from each species were used when range of estimates was generated from multiple demand equations. See Appendix B in Leeworthy and Wiley (1999) for detailed calculations by species and alternatives.
3. Producer's surplus or economic rents were assumed to be zero for two reasons. First, all fisheries, except spiny lobsters, are open access fisheries and therefore economic rents would be zero i.e., firms are earning only normal rates of return on investment. Second, even using total return to labor & capital, which overstates return on investment, does not yield rates of return on investment above normal rates of return.
4. Return to Labor & Capital is not a non-market value but would include rent if it existed.

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Crowding is not an issue for the king mackerel commercial fishery because king mackerel is a pelagic species and thus moves around and catching them elsewhere is highly likely without interfering with other fishermen. Shrimp fishermen currently only catch ten percent of their total shrimp catch from the TERSA. Displacement of shrimp catch under Boundary Alternative II would only be about one percent of their TERSA catch and less than one percent of their total shrimp catch. It would seem highly likely that there would be no crowding costs from displacement and given the small amounts of catch affected, it is highly likely that shrimp fishermen would be able to replace lost catch from other sites. Thus, for the king mackerel and shrimp commercial fisheries, the potential economic losses identified in Table 1 are not likely to occur under Boundary Alternative II.

Reef fish fishermen comprise the largest group of TERSA fishermen. Under Boundary Alternative II, 37 of the sampled 42 fishermen would be affected. Reef fish fishermen are knowledgeable of other fishing locations outside the TERSA. In 1997, they caught 52% of their reef fish from areas in the Keys outside the TERSA. However, stocks of reef fish in the TERSA and throughout the Keys appear to be overfished. Alternative II displaces about 13% of the reef fish catch in the TERSA. Given the status of reef fish stocks, the losses identified in Table 1 are likely to occur in the short-term until the benefits of replenishment could offset these losses in the longer-term.

*Replenishment.* No replenishment benefits to the king mackerel or shrimp commercial fisheries are expected. For the lobster and reef fish fisheries, replenishment benefits are expected. Invertebrates and reef fish at other marine reserves had shown estimated increases in yields of 46–50% within three kilometers of the protected areas. Also, five spawning areas were identified in the western portion of the TERSA. Only one of the five spawning areas is located within the Boundary Alternative II boundary. The reserve would protect this area, and this area would support the replenishment effect. For the commercial lobster fishery, we expect long-term net benefits under Boundary Alternative II. For the commercial reef fish fishery, it is not clear whether the full 13% lost catch from displacement would be replaced from replenishment, but the costs of displacement would be mitigated and the losses expected to be less than the 13% reductions that are the basis for the losses calculated and presented in Table 1.

*Boundary Alternative III (Preferred Boundary Alternative)*

*Crowding and Relocation.* For the lobster fishery, there is some potential for crowding costs. This boundary alternative would displace 4,346 traps. A ten percent reduction in traps in the TERSA would provide space for 3,690 traps. However, if the remaining 656 traps are relocated to zones 1–3 in the Keys, there would be more than adequate space given the 10% reduction in traps that took place in Monroe County between 1997–98 and 1998–99 (475,094 to 428,411). Lobster fishermen in the TERSA only catch 68% of their lobsters from the TERSA. Thus, lobster fishermen are knowledgeable about fishing in other areas of the Keys where they might move their displaced traps. Thus, under this alternative there would be no crowding costs for lobsters and we expect that the lobster fishermen would be able to replace catch from other areas. Thus, for the lobster fishery, the potential economic losses identified in Table 1 are not likely to occur under this alternative.

Crowding is not an issue for king mackerel commercial fishery because king mackerel is a pelagic species and thus moves around and catching them elsewhere is highly likely without interfering with other fishermen. Shrimp fishermen currently only catch ten percent of their total shrimp catch from the TERSA. Displacement of shrimp catch under Boundary Alternative III would only be about eight percent of their TERSA catch and less than one percent of their total shrimp catch. It would seem highly likely that there would be no crowding costs from displacement and given the small amounts of catch affected, it is highly likely that shrimp fishermen would be able to replace lost catch from other sites. Thus for the commercial king mackerel and shrimp fisheries, the potential economic losses identified in Table 1 are not likely to occur under this alternative.

Reef fish fishermen comprise the largest group of TERSA fishermen. Under Boundary Alternative III, 40 of the sampled 42 fishermen would be affected. Reef fish fishermen are knowledgeable of other fishing locations outside the TERSA. In 1997, they caught 52% of their reef fish from areas in the Keys outside the TERSA. However, stocks of reef fish in the TERSA and throughout the Keys appear to be overfished. Boundary Alternative III displaces 20% of the reef fish catch in the TERSA. Given the status of reef fish stocks, the losses identified in Table 1 are likely to occur in the short-term until the benefits of replenishment could offset these losses in the longer-term.

*Replenishment.* No replenishment benefits to the commercial king mackerel or shrimp fisheries are expected. For the commercial lobsters and reef fish fisheries, replenishment benefits are expected. Yields of invertebrates and reef fish of 46–50% have been reported within three kilometers of the protected areas at other marine reserves. Five spawning areas have been reported in the western portion of the TERSA. Three of the five spawning areas are located within the alternative III boundary and would be protected, thus bolstering the replenishment effect. For the commercial lobster fishery, long-term net benefits would be expected under Boundary Alternative III. For the commercial reef fish fishery, it is not clear whether the full 20% lost catch from displacement would be replaced from replenishment, but the costs of displacement would be mitigated and the losses expected to be less than the 20% reductions that are the basis for the losses calculated and presented in Table 1.

*Boundary Alternative IV*

*Crowding and Relocation.* For the commercial lobster fishery, there is some potential for crowding costs. This boundary alternative would displace an estimated 6,050 traps. A ten percent reduction in traps in the TERSA would provide space for 3,690 traps. However, if the remaining 2,360 traps are relocated to zones 1–3 in the Keys, there would be more than adequate space given the 10% reduction in traps that took place in Monroe County between 1997–98 and 1998–99 (475,094 to 428,411).

Lobster fishermen in the TERSA only catch 68% of their lobsters from the TERSA. Thus, lobster fishermen are knowledgeable about fishing in other areas of the Keys where they might move their displaced traps. Thus, under this alternative there would be no crowding costs for the commercial lobster fishery and fishermen would be able to replace catch from other areas. Thus, for the commercial lobster fishery, the potential economic losses identified in Table 1 are not likely to occur under Boundary Alternative IV.

Crowding is not an issue for the king mackerel fishery because king mackerel is a pelagic species and thus moves around and catching them elsewhere is highly likely without interfering with other fishermen. Shrimp fishermen

currently only catch ten percent of their total shrimp catch from the TERSA. Displacement of shrimp catch under Boundary Alternative IV would only be about eight percent of their TERSA catch and less than one percent of their total shrimp catch. It would seem highly likely that there would be no crowding costs from displacement and given the small amounts of catch affected, it is highly likely that shrimp fishermen would be able to replace lost catch from other sites. Thus, for the commercial king mackerel and shrimp fisheries, the potential economic losses identified in Table 1 are not likely to occur under Boundary Alternative IV.

Reef fish fishermen comprise the largest group of TERSA fishermen. Under Boundary Alternative IV, all 42 of the sampled fishermen would be affected. Reef fish fishermen are knowledgeable of other fishing locations outside the TERSA. In 1997, they caught 52% of their reef fish from areas in the Keys outside the TERSA. However, stocks of reef fish in the TERSA and throughout the Keys appear to be overfished. Boundary Alternative IV displaces 28% of the reef fish catch in the TERSA. Given the status of reef fish stocks, the losses identified in Table 1 are likely to occur in the short-term until the benefits of replenishment could offset these losses in the longer-term.

*Replenishment.* No replenishment benefits to the commercial king mackerel and shrimp fisheries are expected. For the commercial lobster and reef fish fisheries, replenishment benefits are expected. Increases in yields of invertebrates and reef fish of 46–50% have been reported within three kilometers of the protected areas at other marine reserves. Five spawning areas have been in the western portion of the TERSA. Four of the five spawning areas are located within the Boundary Alternative IV boundary and would be protected, thus bolstering the replenishment effect. For the commercial lobster fishery, no long-term net benefits would be expected under Boundary Alternative IV. For the commercial reef fish fishery, it is not clear whether the full 28% lost catch from displacement would be replaced from replenishment, but the costs of displacement would be mitigated and the losses expected to be less than the 28% reductions that are the basis for the losses calculated and presented in Table 1.

*Boundary Alternative V*

*Crowding and Relocation.* For the commercial lobster fishery, there is some potential for crowding costs. This boundary alternative would displace 6,487 traps. A ten percent reduction in traps in the TERSA would provide space for 3,690 traps. However, if the remaining 2,797 traps are relocated to zones 1–3 in the Keys, there would be more than adequate space given the 10% reduction in traps that took place in Monroe County between 1997–98 and 1998–99 (475,094 to 428,411). Lobster fishermen in the TERSA only catch 68% of their lobsters from the TERSA and they are knowledgeable about fishing in other areas of the Keys where they might move their displaced traps. Thus, under this boundary alternative there would be no crowding costs for the commercial lobster fishery and fishermen would be able to replace catch from other areas. Therefore, for the commercial lobster fishery, the potential economic losses identified in Table 1 are not likely to occur under Boundary Alternative V.

Crowding is not an issue for the king mackerel commercial fishery because king mackerel is a pelagic species and thus moves around and catching them elsewhere is highly likely without interfering with other fishermen. Shrimp fishermen currently only catch ten percent of their total shrimp catch from the TERSA. Displacement of shrimp catch under Boundary Alternative V would only be about ten percent of their TERSA catch and about one percent of their total shrimp catch. It would seem highly likely that there would be no crowding costs from displacement and given the small amounts of catch affected, it is highly likely that shrimp fishermen would be able to replace lost catch from other sites. Thus, for the king mackerel and shrimp commercial fisheries, the potential economic losses identified in Table 1 are not likely to occur under Boundary Alternative V.

Reef fish fishermen comprise the largest group of TERSA fishermen. Of the 90 TERSA fishermen sampled, 42 were reef fish fishermen. Under Boundary Alternative V, all 42 would be affected. Reef fish fishermen are knowledgeable of other fishing locations outside the TERSA. In 1997, they caught 52% of their reef fish from areas in the Keys outside the TERSA. However, stocks of reef fish in the TERSA and throughout the Keys appear to be overfished. Boundary Alternative V displaces 29% of the reef fish catch in the TERSA. Given the status of reef fish stocks, the losses identified in Table 1 are likely to occur in the short-term until the benefits of replenishment could offset these losses in the longer-term.

*Replenishment.* No replenishment benefits to the king mackerel and shrimp commercial fisheries are expected. For the lobster and reef fish commercial fisheries, replenishment benefits are expected. Increases in yields of invertebrates and reef fish of 46–50% have been reported within three kilometers of the protected areas at other marine reserves. Five spawning areas have been identified in the western portion of the TERSA. Four of the five spawning areas are located within the Boundary Alternative V boundary and would be protected, thus bolstering the replenishment effect. For the lobster commercial fishery, long-term net benefits under Boundary Alternative V are expected. For reef fish, it is not clear whether the full 29% lost catch from displacement would be replaced from replenishment, but the costs of displacement would be mitigated and the losses expected to be less than the 29% reductions that are the basis for the losses calculated and presented in Table 1.

**Commercial Shipping**

No effect for any of the alternatives.

**Treasure Salvors**

No expected effect for any of the alternatives. One permit for inventorying submerged cultural resources in Sanctuary waters was issued for the Tortugas area of the Sanctuary. There were no submerged cultural resources found on the Tortugas Bank. Currently, it is unknown whether there are any submerged cultural resources on Riley's Hump, located in Tortugas South.

**Other Regulations**

*Boundary Alternative I*

This alternative is the no-action alternative required by NEPA that assumes that no reserve would be established and that the current management regime and range of human activities would continue. Thus, no regulatory alternatives are applicable.

*Boundary Alternative II*

This alternative limits the reserve to the existing Sanctuary boundary for a total area of approximately 55 square nautical miles (Fig. 2). This alternative includes a portion of Sherwood Forest and the coral pinnacles north of Tortugas Bank; it does not include Riley's Hump. It includes some coral and hardbottom habitat north of the DRTO.

Regulatory Alternative A: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North

and South. The provisions of this alternative applicable to Tortugas South are not relevant under this boundary alternative. The Sanctuary-wide regulations already apply to Tortugas North and the effects of the ecological reserve regulations have been analyzed under the no-take discussion above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR Parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Regulatory Alternative B: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy. The provisions of this alternative applicable to Tortugas South are not relevant under this boundary alternative. The Sanctuary-wide regulations already apply to Tortugas North and the effects of the ecological reserve regulations have been analyzed under the no-take discussion above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Regulatory Alternative C (Preferred Regulatory Alternative): Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas North and South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B). The provisions of this alternative applicable to Tortugas South are not relevant under this boundary alternative. The Sanctuary-wide regulations already apply to Tortugas North and the effects of the ecological reserve regulations have been analyzed under the no-take discussion above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

This regulatory alternative has no incremental impact on commercial fishing or recreational consumptive users since they are displaced by the "no-take" regulation. The dive operator servicing nonconsumptive diving and currently operating in Tortugas North would be prohibited from anchoring. His vessel is less than 100 ft LOA and thus he would be unaffected by the prohibition on mooring. The location and availability of mooring buoys would constrain the number and choice of available dive sites. It is unknown whether this would have any impact on the future business volume of dive operators or the quality of the experience to nonconsumptive divers. The extent of impact would be dependent on the number and locations of mooring buoys (to be determined).

This regulatory alternative would have little impact on commercial shipping because continuous transit would be allowed. Vessels 50m or greater in registered length are already prohibited from anchoring in 19.3% of Tortugas North. The main effect would be to ban such vessels from anchoring on the remainder of Tortugas North. There would be no incremental impact to treasure salvors since they would be displaced by the "no-take" regulation. The one dive operator servicing nonconsumptive diving and currently operating in Tortugas North would be required to obtain Tortugas access permits. Any new dive operators would also be required to obtain a permit. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve. It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve will not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit.

Regulatory Alternative D: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); prohibit anchoring in and control access to Tortugas North via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B); and prohibit anchoring and restrict access to Tortugas South to research or education activities only. Because the provisions of this alternative applicable to Tortugas South are not relevant under this boundary alternative, the impacts of this alternative are the same as described for Regulatory Alternative C, above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

*Boundary Alternative III (Preferred Boundary Alternative)*

This alternative involves a Sanctuary boundary expansion and represents the WG's recommendation adopted by the SAC and recommended to NOAA and the State of Florida for a reserve with a total area of approximately 151 $nm^2$ (Fig. 3). It is NOAA's preferred boundary alternative.

Regulatory Alternative A: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South. Boundary Alternative III includes areas currently outside the Sanctuary boundary. A small portion of Tortugas North and all of Tortugas South would be outside the existing Sanctuary boundary. The Sanctuary-wide regulations would become effective in the expansion areas of Tortugas North and South. The existing Sanctuary regulations and their impacts are presented in Table 21 of the DSEIS/SMP. More detailed descriptions of the regulations are included in Appendix C to the DSEIS/SMP. The effects of the ecological reserve regulations have been analyzed under the no-take discussion above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Regulatory Alternative B: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B). Boundary Alternative III includes areas currently outside the Sanctuary boundary. A small portion of Tortugas North and all of Tortugas South would be outside the existing Sanctuary boundary. The Sanctuary-wide regulations would become effective in the expansion areas of

Tortugas North and South. The existing Sanctuary regulations and their impacts are presented in Table 21 of the DSEIS/SMP. More detailed descriptions of the regulations are included in Appendix C to the DSEIS/SMP. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

The effects of the ecological reserve regulations have been analyzed under the no-take discussion above. The prohibition on anchoring would have no incremental impact on commercial fishing or recreational consumptive users since they are displaced by the "no-take" regulation. The one dive operator servicing nonconsumptive diving and currently operating in Tortugas North would be prohibited from anchoring. There are no known recreational dive operators servicing Tortugus South. The location and availability of mooring buoys would constrain the number and choice of available dive sites. It is unknown whether this would have any impact on the future business volume of dive operators or the quality of the experience to nonconsumptive divers. The extent of impact would be dependent on the number and locations of mooring buoys (to be determined). The prohibition on anchoring would impact commercial shipping in the boundary expansion areas, especially in Tortugas South. The prohibition on anchoring in Tortugas North is discussed under Boundary/Regulatory Alternative II.C above. Anchoring by large commercial vessels is known to occur on Riley's Hump, which would be included in the Sanctuary as part of Tortugas South under Boundary Alternative III and thus would be subject to the anchoring prohibition. The impact of this regulation on commercial vessel operators is expected to be small since other anchorages are available a short distance outside the Sanctuary boundary.

There would be no incremental impact on treasure salvors from the no-anchoring prohibition since they would be displaced by the "no-take" regulation. The permit requirements would have no incremental impact on fishermen or salvors because they would be displaced by the "no-take" regulations. There are no known nonconsumptive dive operators currently operating in Tortugas South. Any nonconsumptive dive operators operating in Tortugas South in the future would be required to obtain Tortugas access permits. It is not possible to gauge the extent of any such future activity. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve.

It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve would not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit.

Regulatory Alternative C (Preferred Regulatory Alternative): Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas North and South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B). The only difference between the impacts of this regulatory alternative from those discussed under Regulatory Alternative B would be those associated with the requirement to obtain a permit for other than continuous transit access to Tortugas North. The permit requirements would have no incremental impact on fishermen or salvors because they would be displaced by the "no-take" regulations. There is only one known nonconsumptive dive operator currently operating in Tortugas North. He and any new nonconsumptive dive operators operating in Tortugas North would be required to obtain Tortugas access permits. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve. It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve would not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Regulatory Alternative D: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); prohibit anchoring in and control access to Tortugas North via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B); and prohibit anchoring and restrict access to Tortugas South to research or education activities only. The only difference between the impacts of this regulatory alternative from those discussed under Regulatory Alternative C would be those associated with limiting noncontinuous transit access to Tortugas South to research/educational purposes. For the commercial fisheries, salvors, and recreational consumptive users, there would be no incremental impacts since the "no-take" regulation would displace these user groups. There are no known nonconsumptive dive operators currently operating in Tortugas South and no recreational diving is known to occur there. Under this alternative, none would be allowed in the future. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

*Boundary Alternative IV*

This alternative involves an expansion to the south by 23 $nm^2$ of Tortugas North to make it conterminous with the NPS's proposed Research/Natural Area within the DRTO for a total area of approximately 175 $nm^2$ not including the Park area (Fig. 4). It also involves the same boundary expansion as Boundary Alternative III.

Regulatory Alternative A: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South. A small portion of Tortugas North and all of Tortugas South would be outside the existing Sanctuary boundary. The Sanctuary-wide regulations would become effective in the expansion areas of Tortugas North and South. The existing Sanctuary regulations and their impacts are presented in Table 21 of the DSEIS/SMP. More detailed descriptions of the regulations are included in Appendix C to the DSEIS/SMP. The effects of the ecological reserve regulations which, under Boundary Alternative IV would apply to a larger area because of the southern expansion of Tortugas North, have been analyzed under the no-take discussion above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological

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Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these parts).

Regulatory Alternative B: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy. A small portion of Tortugas North and all of Tortugas South would be outside the existing Sanctuary boundary. The Sanctuary-wide regulations would become effective in the expansion areas of Tortugas North and South. The existing Sanctuary regulations and their impacts are presented in Table 21 of the DSEIS/SMP. More detailed descriptions of the regulations are included in Appendix C to the DSEIS/SMP. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these parts).

The effects of the ecological reserve regulations which under Boundary Alternative IV would apply to a larger area because of the southern expansion of Tortugas North have been analyzed under the no-take discussion above. The prohibition on anchoring would have no incremental impact on commercial fishing or recreational consumptive users since they are displaced by the "no-take" regulation. There are no known recreational dive operators servicing Tortugus South. The location and availability of mooring buoys would constrain the number and choice of available dive sites. It is unknown whether this would have any impact on the future business volume of dive operators or the quality of the experience to nonconsumptive divers. The extent of impact would be dependent on the number and locations of mooring buoys (to be determined).

The prohibition on anchoring would impact commercial shipping in the boundary expansion areas, especially in Tortugas South. The prohibition on anchoring in Tortugas North is discussed under Boundary/Regulatory Alternative II.C. above. Anchoring by large commercial vessels is known to occur on Riley's Hump, which would be included in the Sanctuary as part of Tortugas South under Boundary Alternative IV and thus would be subject to the anchoring prohibition. The impact of this regulation on commercial vessel operators is expected to be small since other non-coral reef anchorages outside the Sanctuary boundary are available a short distance away.

There would be no incremental impact on treasure salvors from the no-anchoring prohibition since they would be displaced by the "no-take" regulation.

The permit requirements would have no incremental impact on fishermen or salvors because they would be displaced by the "no-take" regulations. There are no known nonconsumptive dive operators currently operating in Tortugas South. Any nonconsumptive dive operators operating in Tortugas South in the future would be required to obtain Tortugas access permits. It is not possible to gauge the extent of any such future activity. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve. It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve would not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit.

Regulatory Alternative C (Preferred Regulatory Alternative ): Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas North and South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B). The only difference between the impacts of this regulatory alternative from those discussed under Alternative B would be those associated with the requirement to obtain a permit for other than continuous transit access to Tortugas North. Under this boundary alternative there are 2.75 more person-days of recreational nonconsumptive use than under Boundary Alternatives II and III. While the area of Tortugas North would be increased by the expansion to the south, the permit requirements would have no incremental impact on fishermen or salvors because they would be displaced by the "no-take" regulations. There is only one known nonconsumptive dive operator currently operating in Tortugas North. He and any new nonconsumptive dive operators operating in Tortugas North would be required to obtain Tortugas access permits. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve. It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve would not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Regulatory Alternative D: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); prohibit anchoring in and control access to Tortugas North via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B); and prohibit anchoring and restrict access to Tortugas South to research or education activities only. The only difference between the impacts of this regulatory alternative from those discussed under regulatory Alternative C would be those associated with limiting non-continuous transit access to Tortugas South to research/educational purposes. For the commercial fisheries, salvors, and recreational consumptive users, there would be no incremental impacts since the "no-take" regulation would displace these user groups. There are no known nonconsumptive dive operators currently operating in Tortugas South and no recreational diving is known to occur there. Under this alternative, none would be allowed in the future. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

*Boundary Alternative V*

This alternative involves a Sanctuary boundary expansion to the west by three minutes ending at longitude 83′09″ instead of 83′06″ and would increase the reserve area to 190 $nm_2$ (Fig. 5). Tortugas North would be expanded to the west and Tortugas South would be shortened to the north. Sanctuary-wide

regulations would be applied to the expansion area.

Regulatory Alternative A: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South. The Sanctuary-wide regulations would become effective in the expansion area. The existing Sanctuary regulations and their impacts are presented in Table 21 of the DSEIS/SMP. More detailed descriptions of the regulations are included in Appendix C to the DSEIS/SMP. The effects of the ecological reserve regulations which, under Boundary Alternative V apply to a larger area because of the Sanctuary expansion, have been analyzed under the no-take discussion above. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these parts).

Regulatory Alternative B: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described under regulatory Alternative A); and prohibit anchoring in and control access to Tortugas South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy. A small portion of Tortugas North and all of Tortugas South would be outside the existing Sanctuary boundary. The Sanctuary-wide regulations would become effective in the expansion area. The existing Sanctuary regulations and their impacts are summarized in Table 21 of the DSEIS/SMP. More detailed descriptions of the regulations are included in Appendix C to the DSEIS/SMP. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

The effects of the ecological reserve regulations which, under Boundary Alternative V apply to a larger area because of the Sanctuary expansion, have been analyzed under the no-take discussion above. The prohibition on anchoring would have no incremental impact on commercial fishing or recreational consumptive users since they are displaced by the "no-take" regulation. There are no known recreational dive operators servicing Tortugus South. The location and availability of mooring buoys would constrain the number and choice of available dive sites. It is unknown whether this would have any impact on the future business volume of dive operators or the quality of the experience to nonconsumptive divers. The extent of impact would be dependent on the number and locations of mooring buoys (to be determined).

The prohibition on anchoring would impact commercial shipping in the boundary expansion area, especially in Tortugas South. Anchoring by large commercial vessels is known to occur on Riley's Hump, which would be included in the Sanctuary as part of Tortugas South under Boundary Alternative V and thus would be subject to the anchoring prohibition. While the Sanctuary area has been expanded, the impact of this regulation on commercial vessel operators is still expected to be small since other non-coral reef anchorages are available a short distance away outside the Sanctuary boundary.

There would be no incremental impact on treasure salvors from the no-anchoring prohibition since they would be displaced by the "no-take" regulation.

The permit requirements would have no incremental impact on fishermen or salvors because they would be displaced by the "no-take" regulations.

There are no known nonconsumptive dive operators currently operating in Tortugas South. Any nonconsumptive dive operators operating in Tortugas South in the future would be required to obtain Tortugas access permits. It is not possible to gauge the extent of any such future activity. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve. It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve would not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit.

Regulatory Alternative C (Preferred Regulatory Alternative): Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Regulatory Alternative A); and prohibit anchoring in and control access to Tortugas North and South via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B). The only difference between the impacts of this regulatory alternative from those discussed under Regulatory Alternative B would be those associated with the requirement to obtain a permit for other than continuous transit access to Tortugas North. Under this boundary alternative there are 3.25 more person-days of recreational nonconsumptive use than under Boundary Alternatives IV. While the area of Tortugas North would be increased by the expansion to the west, the permit requirements would have no incremental impact on fishermen or salvors because they would be displaced by the "no-take" regulations. There is one known nonconsumptive dive operator currently operating in Tortugas North. He and any new nonconsumptive dive operators operating in Tortugas North would be required to obtain Tortugas access permits. There would be minor time costs associated with obtaining a permit and getting permission to access the reserve. It is expected that fulfilling all the permit requirements and obtaining permission to access the reserve would not exceed 10 minutes of each permittee's time for each visit to the reserve. No special professional skills would be necessary to apply for a permit. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

Regulatory Alternative D: Apply existing Sanctuary-wide and, with minor modifications, existing ecological reserve regulations to Tortugas North and South (as described in Alternative A); prohibit anchoring in and control access to Tortugas North via permit, require call-in for entering and leaving, and prohibit vessels longer than 100 ft LOA from using a mooring buoy (as described in Regulatory Alternative B); and prohibit anchoring and restrict access to Tortugas South to research or education activities only. The only difference between the impacts of this regulatory alternative from those discussed under Regulatory Alternative C would be those associated with limiting noncontinuous transit access to Tortugas South to research/educational purposes. For the commercial fisheries, salvors, and recreational consumptive users, there would be no incremental impacts since the "no-take" regulation would displace these user groups. There are no known nonconsumptive dive operators currently operating in Tortugas South and no recreational diving is known to occur there. Under

this alternative, none would be allowed in the future. The existing ecological reserve regulations would be revised to reflect that fishing would be prohibited in the Tortugas Ecological Reserve except to the extent authorized by 50 CFR Parts 622 and 635 (it is anticipated that no fishing would be authorized in the Tortugas Ecological Reserve by these Parts).

**Selection of the Preferred Alternative**

*Introduction*

This section sets forth the agency's preferred alternative (Fig. 3) and why it was selected.

*Preferred Alternative*

NOAA has selected Boundary Alternative III combined with Regulatory Alternative C as its preferred alternative.

*General Rationale*

NOAA has adopted Boundary Alternative III and Regulatory Alternative C because this combination achieves the objectives of all five of the criteria listed below. Based on its analysis, NOAA believes that this preferred alternative would adequately protect the nationally significant coral reef resources of the Tortugas region and fulfill the objectives of the FKNMSPA and the NMSA.

The preferred alternative is of sufficient size and imposes adequate protection measures to achieve the goals and objectives of the FKNMSPA and the NMSA while not unduly impacting user groups. Boundary Alternative III is consistent with the recommendations of the SAC to NOAA and the State of Florida. While the WG and SAC recommended Regulatory Alternative A (application of the existing Sanctuary-wide and existing ecological reserve regulations) NOAA believes that the more protective approach of Regulatory Alternative C is warranted because of the threat to coral reef resources posed by the anchoring of vessels and the difficulty of enforcing regulations in this remote area, particularly Tortugas South. Coral cover is so high and water depths so deep in the Tortugas that anchoring is virtually impossible without damaging coral. Enforcement would be greatly facilitated by the notice of user presence that would be provided to the FKNMS by the permit requirement.

*Comparison of Alternatives*

This section compares the four alternatives based on five criteria which are: (1) Protect ecosystem integrity, (2) increase scientific understanding, (3) facilitate non-consumptive human activities, (4) protect natural spawning, nursery, and permanent residence areas, and (5) minimize adverse socioeconomic impacts. These criteria are consistent with the goals of the Florida Keys National Marine Sanctuary and Protection Act (FKNMSPA), the National Marine Sanctuaries Act (NMSA), the Final Management Plan (MP), the public scoping comments, the Working Group's criteria, and the U.S. Coral Reef Task Force (CRTF) recommendations.

*Criteria:* Protect ecosystem integrity.

*Objective:* Choose an area and protective measures that protect the highest biological diversity and widest range of contiguous habitats.

*Rationale/Source:* FKNMSPA, NMSA, scoping comments, and WG/SAC.

*Analysis:* Boundary Alternative II does not encompass enough range of habitat to adequately protect the integrity of the ecosystem. The critical areas of Sherwood Forest and Riley's Hump are not part of this alternative. Boundary Alternative II offers no insurance against the effects of a catastrophic event (*e.g.*, cold weather, low salinity) that could potentially damage resources of the area. Boundary Alternatives III, IV and V include a sufficient range of viable habitats to protect ecosystem integrity and include two replicate components that would help to ensure against the effects of catastrophic events. The increased area of Boundary Alternatives IV and V has negligible increased benefit to protecting ecosystem integrity compared to Alternative III. Regulatory Alternative A would not adequately protect ecosystem integrity because of the threat to coral reef resources by anchoring. Regulatory Alternative B would not adequately protect ecosystem integrity in Tortugas North because of the threat to coral reef resources by anchoring and would not provide notice to FKNMS of the presence of users to facilitate enforcement. Regulatory Alternative C adequately protects ecosystem integrity and facilitates enforcement. Regulatory Alternative D would adequately protect ecosystem integrity and facilitates enforcement but would unduly restrict uses in Tortugas South.

*Criteria:* Increase scientific understanding of human effects on ecosystem processes

*Objective:* Choose an area and protective measures that will facilitate the monitoring of anthropogenic impacts and the evaluation of the efficacy of the ecological reserve for protecting coral reef health and biodiversity.

*Rationale/Source:* FKNMSPA, NMSA, scoping comments, and WG/SAC.

*Analysis:* Given the absence of unexploited areas in the Tortugas region, Boundary Alternatives II-V would serve to increase scientific understanding of marine ecosystems, their response to management and their recovery from fishing impacts. Boundary Alternatives III-V offer the added scientific benefit of protecting Riley's Hump which would add to existing knowledge of effective reserve design regarding networks and energy flow between reserves. Also, the inclusion of Tortugas South would significantly add to the understanding of the importance of the Tortugas region in sustaining the Florida Keys ecosystem. Boundary Alternatives IV and V encompass all of Tortugas Bank which would compromise the study of fishing effects because there would be no comparable habitat for use as a reference site. Regulatory Alternatives A, B, and C would provide for essentially the same level of scientific understanding. Regulatory Alternative D would facilitate the most scientific understanding of human effects on ecosystem processes because it would create a research/education-only area in the Tortugas which could serve as a reference to areas where recreational diving is allowed.

*Criteria:* Facilitate non-consumptive uses.

*Objective:* Choose an area and protective measures that will allow non-consumptive uses and provide a range of habitats to observe and study.

*Rationale/Source:* FKNMSPA, NMSA, MP.

*Analysis:* Boundary Alternatives II–V would serve well in enhancing opportunities for non-consumptive activities such as education, photography, underwater wilderness opportunities, and ecotourism. Boundary Alternatives III–V provide enhanced opportunities over Alternative II because of the addition of Tortugas South. Regulatory Alternatives A, B, and C would provide the same non-consumptive opportunities. Regulatory Alternative D would prohibit all consumptive and non-consumptive activities in Tortugas South other than research and education.

*Criteria:* Protect natural spawning, nursery, and permanent residence areas.

*Objective:* Choose an area and protective measures that will protect known or reported spawning areas and habitat that supports resident fish and other marine life.

*Rationale/Source:* MP, scoping comments, and WG/SAC.

*Analysis:* Boundary Alternative II protects only one of eight known fish

spawning aggregations and does not include Riley's Hump which is a critical source area for larvae. Sherwood Forest, an important permanent residence area for a variety of species, is not part of Boundary Alternative II. Boundary Alternative III would protect 5 of the 8 known fish spawning areas as well as approximately 87% of the known coral reef habitat and 76% of the known hardbottom habitat. Boundary Alternative IV would encompass 6 out of 8 known fish spawning sites as well as 100% of the known coral and hardbottom habitat. Boundary Alternative V would encompass 7 out of the 8 known fish spawning sites and would protect all of the known coral and hardbottom habitat. Boundary Alternative V's expansion of Tortugas North to the west would provide increased protection for deepwater habitats and associated species. The reduction in size of Tortugas South would provide less protection for deep water habitat has the least and associated species.

*Criteria:* Minimize adverse socioeconomic impacts.

*Objective:* Choose an area and protective measures that meets the objectives of the other criteria but that does not unduly impact users.

*Rationale/Source:* FKNMSPA, NMSA, scoping comments, and WG/SAC.

*Analysis:* Boundary Alternative II will have the least impact on recreational and commercial users whereas Boundary Alternatives IV and V will have the most. Boundary Alternative III has moderate impacts on users, mostly lobster fishermen and handline fishermen. Altenatives IV and V have significantly greater impacts because they include the southern half of Tortugas Bank which is heavily utilized by both recreational and commercial users. Alternative III offers a compromise because it allows for continued exploitation of the southern half of Tortugas Bank including trolling for pelagic species. Ignoring the potential of such effects as replenishment that would result in a net economic benefit, Regulatory Alternative A has significant adverse socioeconomic effects on users including small entities. There are 12 recreational charter operations that would be affected by this alternative and approximately 110 commercial fishing operations all of which are small entities. No lesser degree of protection than that provided by Regulatory Alternative A would provide an adequate degree of protection for the resources of the Tortugas and even Regulatory Alternative A by itself would not provide sufficient protection to coral reef resources from anchoring and would not provide FKNMS adequate notice to facilitate enforcement. Accordingly, other than the no-action alternative, no other regulatory alternatives that would provide a lesser degree of protection were considered. Regulatory Alternative B would provide adequate protection from anchoring damage in the Tortugas South and would provide adequate notification to FKNMS to facilitate enforcement there but would not provide adequate protection to Tortugas North. Regulatory Alternative C would provide both adequate resource protection and adequate notification to FKNMS to facilitate enforcement with insignificant incremental costs to users. NOAA's preferred alternative (Boundary Alternative III/Regulatory Alternative C) could potentially impact, if one assumes no mitigating factors, 9 recreational charter uses with total annual revenue losses of approximately $152,054 and 64 commercial fishermen with total annual revenue losses of approximately $843,583. Regulatory Alternative D would facilitate the study of fishing impacts and diver impacts but would prohibit any uses of the area.

### Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the PRA. The only record keeping or reporting requirements are the permit and call-in, call-out requirements for the reserve previously described in the Preamble under proposed regulations. There are two classes of users that would be affected by these proposed requirements: commercial dive boat operators and private boaters. The type of skills necessary to request an access permit and to provide notification when entering or leaving the proposed ecological reserve would be use of marine radio equipment. These requirements have been submitted to OMB for approval. The public reporting burden for these requirements is estimated to be 10 minutes per application for a permit and 2 minutes per call-in or call out, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether these proposed collections of information are necessary for the proper performance of the functions of NOAA, including whether the information has practical utility; the accuracy of the burden estimates; ways to minimize the burden of the collection of information, including through use of automated collection techniques or other forms of information technology.

### List of Subjects in 15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: May 10, 2000.

**Ted Lillestolen,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth in the preamble, 15 CFR part 922 is proposed to be amended as follows:

## PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

**Authority:** 16 U.S.C. 1431 *et seq.*

2. Section 922.161 is revised to read as follows:

### § 922.161 Boundary.

The Sanctuary consists of an area of approximately 2900 square nautical miles (9,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, surrounding the Florida Keys in Florida. Appendix I to this subpart sets forth the precise Sanctuary boundary.

3. In § 922.162, definitions for "Length overall (LOA) or length," "Stem," and "Stern" are added alphabetically as follows:

### § 922.162 Definitions.

* * * * *

*Length overall (LOA)* or *length* means, as used in § 922.167 with respect to a vessel, the horizontal distance, rounded to the nearest foot (with 0.5 ft and above rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments.

* * * * *

*Stem* means the foremost part of a vessel, consisting of a section of timber

or fiberglass, or cast, forged, or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end.

*Stern* means the aftermost part of the vessel.

* * * * *

4. In § 922.164, paragraphs (d)(1)(ii), (d)(1)(iii), (d)(1)(v) and (d)(1)(vi) are revised as follows:

**§ 922.164 Additional activity regulations by Sanctuary area.**

* * * * *

(d) * * *

(1) * * *

(ii) Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities, except as authorized by paragraph (d)(1)(iii) of this section. However, fish, invertebrates, and marine plants may be possessed aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such resources can be shown not to have been harvested within, removed from, or taken within, the ecological reserve or Sanctuary Preservation Area as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through such reserves or Areas, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.

(iii) Except for catch and release fishing by trolling in the Conch Reef, Alligator Reef, Sombrero Reef, and Sand Key Sanctuary Preservation Areas, and except for fishing in the Tortugas Ecological Reserve authorized by 50 CFR parts 622 and 635, fishing by any means. However, gear capable of harvesting fish may be aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such gear is not available for immediate use when entering and during transit through such Ecological Reserve or Sanctuary Preservation Area, and no presumption of fishing activity shall be drawn therefrom. * * *

(v) Anchoring in the Tortugas Ecological Reserve. In all other Ecological Reserves and Sanctuary Preservation Areas, placing any anchor in a way that allows the anchor or any portion of the anchor apparatus (including the anchor, chain or rope) to touch living or dead coral, or any attached living organism. When anchoring dive boats, the first diver down must inspect the anchor to ensure that it is not touching living or dead coral, and will not shift in such a way as to touch such coral or other attached organism. No further diving shall take place until the anchor is placed in accordance with these requirements.

(vi) Except in the Tortugas Ecological Reserve where mooring buoys must be used, anchoring instead of mooring when a mooring buoy is available or anchoring in other than a designated anchoring area when such areas have been designated and are available.

4. In § 922.164, paragraphs (d)(1)(viii) and (d)(1)(ix) are added to read as follows:

**§ 922.164 Additional activity regulations by Sanctuary area.**

* * * * *

(d) * * *

(1) * * *

(1) * * *

(viii) Except for passage without interruption through the area, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of this section, entering the Tortugas Ecological Reserve without a valid access permit issued pursuant to § 922.167 or entering or leaving the Tortugas Ecological Reserve with a valid access permit issued pursuant to § 922.167 without notifying FKNMS staff at the Dry Tortugas National Park office by telephone or radio no less than 30 minutes and no more than 6 hours, before entering and upon leaving the Tortugas Ecological Reserve.

(ix) Tying a vessel greater than 100 feet (30.48 meters) LOA, or tying more than one vessel (other than vessels carried on board a vessel) if the combined lengths would exceed 100 feet (30.48 meters) LOA, to a mooring buoy or to a vessel tied to a mooring buoy in the Tortugas Ecological Reserve.

5. In § 922.164, paragraph (g) is revised to read as follows:

**§ 922.164 Additional activity regulations by Sanctuary area.**

* * * * *

(g) *Anchoring on Tortugas Bank.* Vessels 50 meters or greater in registered length, are prohibited from anchoring on the portion of Tortugas Bank within the Florida Keys National Marine Sanctuary west of the Dry Tortugas National Park that is outside of the Tortugas Ecological Reserve. The boundary of the area closed to anchoring by vessels 50 meters or greater in registered length is formed by connecting in succession the points at the following coordinates (based on the North American Datum of 1983):

(1) 24 deg. 39.00′ N 83 deg. 06.00′ W

(2) 24 deg. 32.00′ N 83 deg. 00.05′ W

(3) 24 deg. 37.00′ N 83 deg. 06.00′ W

(4) 24 deg. 40.00′ N 83 deg. 06.00′ W

(5) 24 deg. 39.00′ N 83 deg. 06.00′ W

6. Revise the heading of § 922.166 to read as follows:

**§ 922.166 Permits other than for access to the Tortugas Ecological Reserve-application procedures and issuance criteria.**

7. Redesignate § 922.167 as § 922.168 and revise it to read as follows:

**§ 922.168 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.**

(a) A person may conduct an activity prohibited by §§ 922.163 or 922.164 if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on July 1, 1997, or by any valid right of subsistence use or access in existence on July 1, 1997, provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of July 1, 1997, of the existence of such authorization or right and requests certification of such authorization or right; for the area added to the Sanctuary by the boundary expansion for the Tortugas Ecological Reserve, the holder of such authorization or right notifies the Director, in writing, within 90 days of __, 2000, of the existence of such authorization or right and requests certification of such authorization or right.

(2) The holder complies with the other provisions of this § 922.168; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by §§ 922.163 or 922.164 may conduct the activity without being in violation of applicable provisions of §§ 922.163 or 922.164, pending final agency action on his or her certification request, provided the holder is in compliance with this § 922.168.

(c) Any holder of an authorization or right described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited

spawning aggregations and does not include Riley's Hump which is a critical source area for larvae. Sherwood Forest, an important permanent residence area for a variety of species, is not part of Boundary Alternative II. Boundary Alternative III would protect 5 of the 8 known fish spawning areas as well as approximately 87% of the known coral reef habitat and 76% of the known hardbottom habitat. Boundary Alternative IV would encompass 6 out of 8 known fish spawning sites as well as 100% of the known coral and hardbottom habitat. Boundary Alternative V would encompass 7 out of the 8 known fish spawning sites and would protect all of the known coral and hardbottom habitat. Boundary Alternative V's expansion of Tortugas North to the west would provide increased protection for deepwater habitats and associated species. The reduction in size of Tortugas South would provide less protection for deep water habitat has the least and associated species.

*Criteria:* Minimize adverse socioeconomic impacts.

*Objective:* Choose an area and protective measures that meets the objectives of the other criteria but that does not unduly impact users.

*Rationale/Source:* FKNMSPA, NMSA, scoping comments, and WG/SAC.

*Analysis:* Boundary Alternative II will have the least impact on recreational and commercial users whereas Boundary Alternatives IV and V will have the most. Boundary Alternative III has moderate impacts on users, mostly lobster fishermen and handline fishermen. Altenatives IV and V have significantly greater impacts because they include the southern half of Tortugas Bank which is heavily utilized by both recreational and commercial users. Alternative III offers a compromise because it allows for continued exploitation of the southern half of Tortugas Bank including trolling for pelagic species. Ignoring the potential of such effects as replenishment that would result in a net economic benefit, Regulatory Alternative A has significant adverse socioeconomic effects on users including small entities. There are 12 recreational charter operations that would be affected by this alternative and approximately 110 commercial fishing operations all of which are small entities. No lesser degree of protection than that provided by Regulatory Alternative A would provide an adequate degree of protection for the resources of the Tortugas and even Regulatory Alternative A by itself would not provide sufficient protection to coral reef resources from anchoring and would not provide FKNMS adequate notice to facilitate enforcement. Accordingly, other than the no-action alternative, no other regulatory alternatives that would provide a lesser degree of protection were considered. Regulatory Alternative B would provide adequate protection from anchoring damage in the Tortugas South and would provide adequate notification to FKNMS to facilitate enforcement there but would not provide adequate protection to Tortugas North. Regulatory Alternative C would provide both adequate resource protection and adequate notification to FKNMS to facilitate enforcement with insignificant incremental costs to users. NOAA's preferred alternative (Boundary Alternative III/Regulatory Alternative C) could potentially impact, if one assumes no mitigating factors, 9 recreational charter uses with total annual revenue losses of approximately $152,054 and 64 commercial fishermen with total annual revenue losses of approximately $843,583. Regulatory Alternative D would facilitate the study of fishing impacts and diver impacts but would prohibit any uses of the area.

**Paperwork Reduction Act**

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This proposed rule contains collection-of-information requirements subject to review and approval by the Office of Management and Budget (OMB) under the PRA. The only record keeping or reporting requirements are the permit and call-in, call-out requirements for the reserve previously described in the Preamble under proposed regulations. There are two classes of users that would be affected by these proposed requirements: commercial dive boat operators and private boaters. The type of skills necessary to request an access permit and to provide notification when entering or leaving the proposed ecological reserve would be use of marine radio equipment. These requirements have been submitted to OMB for approval. The public reporting burden for these requirements is estimated to be 10 minutes per application for a permit and 2 minutes per call-in or call out, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether these proposed collections of information are necessary for the proper performance of the functions of NOAA, including whether the information has practical utility; the accuracy of the burden estimates; ways to minimize the burden of the collection of information, including through use of automated collection techniques or other forms of information technology.

**List of Subjects in 15 CFR Part 922**

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: May 10, 2000.

**Ted Lillestolen,**

*Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth in the preamble, 15 CFR part 922 is proposed to be amended as follows:

## PART 922—NATIONAL MARINE SANCTUARY PROGRAM REGULATIONS

1. The authority citation for part 922 continues to read as follows:

**Authority:** 16 U.S.C. 1431 *et seq.*

2. Section 922.161 is revised to read as follows:

**§ 922.161 Boundary.**

The Sanctuary consists of an area of approximately 2900 square nautical miles (9,800 square kilometers) of coastal and ocean waters, and the submerged lands thereunder, surrounding the Florida Keys in Florida. Appendix I to this subpart sets forth the precise Sanctuary boundary.

3. In § 922.162, definitions for "Length overall (LOA) or length," "Stem," and "Stern" are added alphabetically as follows:

**§ 922.162 Definitions.**

* * * * *

*Length overall (LOA)* or *length* means, as used in § 922.167 with respect to a vessel, the horizontal distance, rounded to the nearest foot (with 0.5 ft and above rounded upward), between the foremost part of the stem and the aftermost part of the stern, excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments.

* * * * *

*Stem* means the foremost part of a vessel, consisting of a section of timber

or fiberglass, or cast, forged, or rolled metal, to which the sides of the vessel are united at the fore end, with the lower end united to the keel, and with the bowsprit, if one is present, resting on the upper end.

*Stern* means the aftermost part of the vessel.

* * * * *

4. In § 922.164, paragraphs (d)(1)(ii), (d)(1)(iii), (d)(1)(v) and (d)(1)(vi) are revised as follows:

**§ 922.164 Additional activity regulations by Sanctuary area.**

* * * * *

(d) * * *

(1) * * *

(ii) Possessing, moving, harvesting, removing, taking, damaging, disturbing, breaking, cutting, spearing, or otherwise injuring any coral, marine invertebrate, fish, bottom formation, algae, seagrass or other living or dead organism, including shells, or attempting any of these activities, except as authorized by paragraph (d)(1)(iii) of this section. However, fish, invertebrates, and marine plants may be possessed aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such resources can be shown not to have been harvested within, removed from, or taken within, the ecological reserve or Sanctuary Preservation Area as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through such reserves or Areas, provided further that in an Ecological Reserve or Sanctuary Preservation Area located in Florida State waters, such vessel is in continuous transit through the Ecological Reserve or Sanctuary Preservation Area.

(iii) Except for catch and release fishing by trolling in the Conch Reef, Alligator Reef, Sombrero Reef, and Sand Key Sanctuary Preservation Areas, and except for fishing in the Tortugas Ecological Reserve authorized by 50 CFR parts 622 and 635, fishing by any means. However, gear capable of harvesting fish may be aboard a vessel in an Ecological Reserve or Sanctuary Preservation Area, provided such gear is not available for immediate use when entering and during transit through such Ecological Reserve or Sanctuary Preservation Area, and no presumption of fishing activity shall be drawn therefrom. * * *

(v) Anchoring in the Tortugas Ecological Reserve. In all other Ecological Reserves and Sanctuary Preservation Areas, placing any anchor in a way that allows the anchor or any portion of the anchor apparatus (including the anchor, chain or rope) to touch living or dead coral, or any attached living organism. When anchoring dive boats, the first diver down must inspect the anchor to ensure that it is not touching living or dead coral, and will not shift in such a way as to touch such coral or other attached organism. No further diving shall take place until the anchor is placed in accordance with these requirements.

(vi) Except in the Tortugas Ecological Reserve where mooring buoys must be used, anchoring instead of mooring when a mooring buoy is available or anchoring in other than a designated anchoring area when such areas have been designated and are available.

4. In § 922.164, paragraphs (d)(1)(viii) and (d)(1)(ix) are added to read as follows:

**§ 922.164 Additional activity regulations by Sanctuary area.**

* * * * *

(d) * * *

(1) * * *

(1) * * *

(viii) Except for passage without interruption through the area, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of this section, entering the Tortugas Ecological Reserve without a valid access permit issued pursuant to § 922.167 or entering or leaving the Tortugas Ecological Reserve with a valid access permit issued pursuant to § 922.167 without notifying FKNMS staff at the Dry Tortugas National Park office by telephone or radio no less than 30 minutes and no more than 6 hours, before entering and upon leaving the Tortugas Ecological Reserve.

(ix) Tying a vessel greater than 100 feet (30.48 meters) LOA, or tying more than one vessel (other than vessels carried on board a vessel) if the combined lengths would exceed 100 feet (30.48 meters) LOA, to a mooring buoy or to a vessel tied to a mooring buoy in the Tortugas Ecological Reserve.

5. In § 922.164, paragraph (g) is revised to read as follows:

**§ 922.164 Additional activity regulations by Sanctuary area.**

* * * * *

(g) *Anchoring on Tortugas Bank.* Vessels 50 meters or greater in registered length, are prohibited from anchoring on the portion of Tortugas Bank within the Florida Keys National Marine Sanctuary west of the Dry Tortugas National Park that is outside of the Tortugas Ecological Reserve. The boundary of the area closed to anchoring by vessels 50 meters or greater in registered length is formed by connecting in succession the points at the following coordinates (based on the North American Datum of 1983):

(1) 24 deg. 39.00′ N 83 deg. 06.00′ W

(2) 24 deg. 32.00′ N 83 deg. 00.05′ W

(3) 24 deg. 37.00′ N 83 deg. 06.00′ W

(4) 24 deg. 40.00′ N 83 deg. 06.00′ W

(5) 24 deg. 39.00′ N 83 deg. 06.00′ W

6. Revise the heading of § 922.166 to read as follows:

**§ 922.166 Permits other than for access to the Tortugas Ecological Reserve-application procedures and issuance criteria.**

7. Redesignate § 922.167 as § 922.168 and revise it to read as follows:

**§ 922.168 Certification of preexisting leases, licenses, permits, approvals, other authorizations, or rights to conduct a prohibited activity.**

(a) A person may conduct an activity prohibited by §§ 922.163 or 922.164 if such activity is specifically authorized by a valid Federal, State, or local lease, permit, license, approval, or other authorization in existence on July 1, 1997, or by any valid right of subsistence use or access in existence on July 1, 1997, provided that:

(1) The holder of such authorization or right notifies the Director, in writing, within 90 days of July 1, 1997, of the existence of such authorization or right and requests certification of such authorization or right; for the area added to the Sanctuary by the boundary expansion for the Tortugas Ecological Reserve, the holder of such authorization or right notifies the Director, in writing, within 90 days of __, 2000, of the existence of such authorization or right and requests certification of such authorization or right.

(2) The holder complies with the other provisions of this § 922.168; and

(3) The holder complies with any terms and conditions on the exercise of such authorization or right imposed as a condition of certification, by the Director, to achieve the purposes for which the Sanctuary was designated.

(b) The holder of an authorization or right described in paragraph (a) of this section authorizing an activity prohibited by §§ 922.163 or 922.164 may conduct the activity without being in violation of applicable provisions of §§ 922.163 or 922.164, pending final agency action on his or her certification request, provided the holder is in compliance with this § 922.168.

(c) Any holder of an authorization or right described in paragraph (a) of this section may request the Director to issue a finding as to whether the activity for which the authorization has been issued, or the right given, is prohibited

by §§ 922.163 or 922.164, thus requiring certification under this section.

(d) Requests for findings or certifications should be addressed to the Director, Office of Ocean and Coastal Resource Management; ATTN: Sanctuary Superintendent, Florida Keys National Marine Sanctuary, P.O. Box 500368, Marathon, FL 33050. A copy of the lease, permit, license, approval, or other authorization must accompany the request.

(e) The Director may request additional information from the certification requester as he or she deems reasonably necessary to condition appropriately the exercise of the certified authorization or right to achieve the purposes for which the Sanctuary was designated. The information requested must be received by the Director within 45 days of the postmark date of the request. The Director may seek the views of any persons on the certification request.

(f) The Director may amend any certification made under this § 922.168 whenever additional information becomes available justifying such an amendment.

(g) Upon completion of review of the authorization or right and information received with respect thereto, the Director shall communicate, in writing, any decision on a certification request or any action taken with respect to any certification made under this § 922.168, in writing, to both the holder of the certified lease, permit, license, approval, other authorization, or right, and the issuing agency, and shall set forth the reason(s)for the decision or action taken.

(h) Any time limit prescribed in or established under this § 922.168 may be extended by the Director for good cause.

(i) The holder may appeal any action conditioning, amending, suspending, or revoking any certification in accordance with the procedures set forth in § 922.50.

(j) Any amendment, renewal, or extension made after July 1, 1997, to a lease, permit, license, approval, other authorization or right is subject to the provisions of Sec. 922.49.

8. Add a new § 922.167 to read as follows:

**§ 922.167 Permits for access to the Tortugas Ecological Reserve.**

(a) A person may enter the Tortugas Ecological Reserve other than for passage without interruption through the reserve, for law enforcement purposes, or for purposes of monitoring pursuant to paragraph (d)(2) of § 922.164, if authorized by a valid access permit issued pursuant to § 922.167.

(b)(1) Access permits must be requested at least 72 hours but no longer than one month before the date the permit is desired to be effective. Access permits do not require written applications or the payment of any fee. Permits may be requested via telephone or radio by contacting FKNMS at any of the following numbers:

Key West office: telephone: (305) 292–0311.

Marathon office: telephone: (305) 743–2437.

(2) The following information must be provided, as applicable:

(i) Vessel name.

(ii) Name, address, and telephone number of owner and operator.

(iii) Name, address, and telephone number of applicant.

(iv) USCG documentation, state license, or registration number.

(v) Home port.

(vi) Length of vessel and propulsion type (*i.e.*, motor or sail).

(vii) Number of divers.

(viii) Requested effective date and duration of permit (2 weeks, maximum).

(c) The Sanctuary Superintendent will issue a permit to the owner or to the owner's representative for the vessel when all applicable information has been provided. FKNMS will provide a permit number to the applicant and confirm the effective date and duration period of the permit. Written confirmation of permit issuance will be provided upon request.

9. Revise Appendices I, II, IV, V, VI, and VII to Subpart P of Part 922 to read as follows:

**Appendix I to Subpart P of Part 922—Florida Keys National Marine Sanctuary Boundary Coordinates**

**(Appendix Based on North American Datum of 1983)**

1. The boundary of the Florida Keys National Marine Sanctuary—

(a) Begins at the northeasternmost point of Biscayne National Park located at approximately 25 degrees 39 minutes north latitude, 80 degrees 05 minutes west longitude, then runs eastward to the point at 25 degrees 39 minutes north latitude, 80 degrees 04 minutes west longitude; and

(b) Then runs southward and connects in succession the points at the following coordinates:

(i) 25 degrees 34 minutes north latitude, 80 degrees 04 minutes west longitude,

(ii) 25 degrees 28 minutes north latitude, 80 degrees 05 minutes west longitude, and

(iii) 25 degrees 21 minutes north latitude, 80 degrees 07 minutes west longitude;

(iv) 25 degrees 16 minutes north latitude, 80 degrees 08 minutes west longitude;

(c) Then runs southwesterly approximating the 300-foot isobath and connects in succession the points at the following coordinates:

(i) 25 degrees 07 minutes north latitude, 80 degrees 13 minutes west longitude,

(ii) 24 degrees 57 minutes north latitude, 80 degrees 21 minutes west longitude,

(iii) 24 degrees 39 minutes north latitude, 80 degrees 52 minutes west longitude,

(iv) 24 degrees 30 minutes north latitude, 81 degrees 23 minutes west longitude,

(v) 24 degrees 25 minutes north latitude, 81 degrees 50 minutes west longitude,

(vi) 24 degrees 22 minutes north latitude, 82 degrees 48 minutes west longitude,

(vii) 24 degrees 37 minutes north latitude, 83 degrees 06 minutes west longitude,

(viii) 24 degrees 46 minutes north latitude, 83 degrees 06 minutes west longitude,

(ix) 24 degrees 44 minutes north latitude, 81 degrees 55 minutes west longitude,

(x) 24 degrees 51 minutes north latitude, 81 degrees 26 minutes west longitude, and

(xi) 24 degrees 55 minutes north latitude, 80 degrees 56 minutes west longitude;

(d) Then follows the boundary of Everglades National Park in a southerly then northeasterly direction through Florida Bay, Buttonwood Sound, Tarpon Basin, and Blackwater Sound;

(e) After Division Point, then departs from the boundary of Everglades National Park and follows the western shoreline of Manatee Bay, Barnes Sound, and Card Sound;

(f) Then follows the southern boundary of Biscayne National Park to the southeasternmost point of Biscayne National Park; and

(g) Then follows the eastern boundary of Biscayne National Park to the beginning point specified in paragraph (a).

2. The shoreward boundary of the Florida Keys National Marine Sanctuary is the mean high-water mark except around the Dry Tortugas where the boundary is coterminous with that of the Dry Tortugas National Park, formed by connecting in succession the points at the following coordinates:

(a) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(b) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 second west longitude;

(c) 24 degrees 39 minutes 0 seconds north latitude, 82 degrees 58 minutes 0 seconds west longitude;

(d) 24 degrees 43 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude;

(e) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 52 minutes 0 seconds west longitude;

(f) 24 degrees 43 minutes 32 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude;

(g) 24 degrees 42 minutes 0 seconds north latitude, 82 degrees 46 minutes, 0 seconds west longitude;

(h) 24 degrees 40 minutes 0 seconds north latitude, 82 degrees 46 minutes 0 seconds west longitude;

(i) 24 degrees 37 minutes 0 seconds north latitude, 82 degrees 48 minutes 0 seconds west longitude; and

(j) 24 degrees 34 minutes 0 seconds north latitude, 82 degrees 54 minutes 0 seconds west longitude.

3. The Florida Keys National Marine Sanctuary also includes the area located

within the boundary formed by connecting in succession the points at the following coordinates:

(a) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude,

(b) 24 degrees 33 minutes north latitude, 83 degrees 05 minutes west longitude, and

(c) 24 degrees 18 minutes north latitude, 83 degrees 05 minutes west longitude;

(d) 24 degrees 18 minutes north latitude, 83 degrees 09 minutes west longitude; and

(e) 24 degrees 33 minutes north latitude, 83 degrees 09 minutes west longitude.

**Appendix II to Subpart P of Part 922—Existing Management Areas Boundary Coordinates**

1. The boundary of each of the Existing Management Areas is formed by connecting in succession the points at the following coordinates:

*National Oceanic and Atmospheric Administration:*

KEY LARGO-MANAGEMENT AREA

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 25 deg. 19′45″ N | 80 deg. 12′00″ W. |
| 2 | 25 deg. 16′02″ N | 80 deg. 08′07″ W. |
| 3 | 25 deg. 07′05″ N | 80 deg. 12′05″ W. |
| 4 | 24 deg. 58′03″ N | 80 deg. 19′08″ W. |
| 5 | 25 deg. 02′02″ N | 80 deg. 25′25″ W. |
| 6 | 25 deg. 19′45″ N | 80 deg. 12′00″ W. |

LOOE KEY MANAGEMENT AREA

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 31′62″ N | 81 deg. 26′00″ W. |
| 2 | 24 deg. 33′57″ N | 81 deg. 26′00″ W. |
| 3 | 24 deg. 34′15″ N | 81 deg. 23′00″ W. |
| 4 | 24 deg. 32′20″ N | 81 deg. 23′00″ W. |
| 5 | 24 deg. 31′62″ N | 81 deg. 26′00″ W. |

*United States Fish and Wildlife Service:*

GREAT WHITE HERON NATIONAL WILDLIFE REFUGE

[Based on the North American Datum of 1983]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 43.8′ N | 81 deg. 48.6′ W. |
| 2 | 24 deg. 43.8′ N | 81 deg. 37.2′ W. |
| 3 | 24 deg. 49.2′ N | 81 deg. 37.2′ W. |
| 4 | 24 deg. 49.2′ N | 81 deg. 19.8′ W. |
| 5 | 24 deg. 48.0′ N | 81 deg. 19.8′ W. |
| 6 | 24 deg. 48.0′ N | 81 deg. 14.4′ W. |
| 7 | 24 deg. 49.2′ N | 81 deg. 14.4′ W. |
| 8 | 24 deg. 49.2′ N | 81 deg. 08.4′ W. |
| 9 | 24 deg. 43.8′ N | 81 deg. 08.4′ W. |
| 10 | 24 deg. 43.8′ N | 81 deg. 14.4′ W. |
| 11 | 24 deg. 43.2′ N | 81 deg. 14.4′ W. |
| 12 | 24 deg. 43.2′ N | 81 deg. 16.2′ W. |
| 13 | 24 deg. 42.6′ N | 81 deg. 16.2′ W. |
| 14 | 24 deg. 42.6′ N | 81 deg. 21.0′ W. |
| 15 | 24 deg. 41.4′ N | 81 deg. 21.0′ W. |
| 16 | 24 deg. 41.4′ N | 81 deg. 22.2′ W. |
| 17 | 24 deg. 43.2′ N | 81 deg. 22.2′ W. |
| 18 | 24 deg. 43.2′ N | 81 deg. 22.8′ W. |
| 19 | 24 deg. 43.8′ N | 81 deg. 22.8′ W. |
| 20 | 24 deg. 43.8′ N | 81 deg. 24.0′ W. |
| 21 | 24 deg. 43.2′ N | 81 deg. 24.0′ W. |
| 22 | 24 deg. 43.2′ N | 81 deg. 26.4′ W. |
| 23 | 24 deg. 43.8′ N | 81 deg. 26.4′ W. |
| 24 | 24 deg. 43.8′ N | 81 deg. 27.0′ W. |
| 25 | 24 deg. 43.2′ N | 81 deg. 27.0′ W. |
| 26 | 24 deg. 43.2′ N | 81 deg. 29.4′ W. |
| 27 | 24 deg. 42.6′ N | 81 deg. 29.4′ W. |
| 28 | 24 deg. 42.6′ N | 81 deg. 30.6′ W. |
| 29 | 24 deg. 41.4′ N | 81 deg. 30.6′ W. |
| 30 | 24 deg. 41.4′ N | 81 deg. 31.2′ W. |
| 31 | 24 deg. 40.8′ N | 81 deg. 31.2′ W. |
| 32 | 24 deg. 40.8′ N | 81 deg. 32.4′ W. |

GREAT WHITE HERON NATIONAL WILDLIFE REFUGE—Continued

[Based on the North American Datum of 1983]

| Point | Latitude | Longitude |
|---|---|---|
| 33 | 24 deg. 41.4′ N | 81 deg. 32.4′ W. |
| 34 | 24 deg. 41.4′ N | 81 deg. 34.2′ W. |
| 35 | 24 deg. 40.8′ N | 81 deg. 34.2′ W. |
| 36 | 24 deg. 48.0′ N | 81 deg. 35.4′ W. |
| 37 | 24 deg. 39.6′ N | 81 deg. 35.4′ W. |
| 38 | 24 deg. 39.6′ N | 81 deg. 36.0′ W. |
| 39 | 24 deg. 39.0′ N | 81 deg. 36.0′ W. |
| 40 | 24 deg. 39.0′ N | 81 deg. 37.2′ W. |
| 41 | 24 deg. 37.8′ N | 81 deg. 37.2′ W. |
| 42 | 24 deg. 37.8′ N | 81 deg. 37.8′ W. |
| 43 | 24 deg. 37.2′ N | 81 deg. 37.8′ W. |
| 44 | 24 deg. 37.2′ N | 81 deg. 40.2′ W. |
| 45 | 24 deg. 36.0′ N | 81 deg. 40.2′ W. |
| 46 | 24 deg. 36.0′ N | 81 deg. 40.8′ W. |
| 47 | 24 deg. 35.4′ N | 81 deg. 40.8′ W. |
| 48 | 24 deg. 35.4′ N | 81 deg. 42.0′ W. |
| 49 | 24 deg. 36.0′ N | 81 deg. 42.0′ W. |
| 50 | 24 deg. 36.0′ N | 81 deg. 48.6′ W. |
| 51 | 24 deg. 43.8′ N | 81 deg. 48.6′ W. |

KEY WEST NATIONAL WILDLIFE REFUGE

[Based on the North American Datum of 1983]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 40.0′ N | 81 deg.49.0′ W. |
| 2 | 24 deg. 40.0′ N | 82 deg.10.0′ W. |
| 3 | 24 deg. 27.0′ N | 82 deg.10.0′ W. |
| 4 | 24 deg. 27.0′ N | 81 deg.49.0′ W. |
| 5 | 24 deg. 40.0′ N | 81 deg.49.0′ W. |

2. When differential Global Positioning Systems data becomes available, these coordinates may be revised by publication in the **Federal Register** Notice to reflect the increased accuracy of such data.

**Appendix IV to Subpart P of Part 922—Ecological Reserves Boundary Coordinates**

1. The boundary of the Western Sambo Ecological Reserve is formed by connecting in succession the points at the following coordinates:

WESTERN SAMBO

[Based on differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 33.70′ N | 81 deg. 40.80′ W. |
| 2 | 24 deg. 28.85′ N | 81 deg. 41.90′ W. |
| 3 | 24 deg. 28.50′ N | 81 deg. 43.70′ W. |
| 4 | 24 deg. 33.50′ N | 81 deg. 43.10′ W. |
| 5 | 24 deg. 33.70′ N | 81 deg. 40.80′ W. |

2. The Tortugas Ecological Reserve consists of two discrete areas, Tortugas North and Tortugas South.

3. The boundary of Tortugas North is formed by connecting in succession the points at the following coordinates:

TORTUGAS NORTH

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 46′00″ N 83 deg.06′00″ W.. | |
| 2 | 24 deg. 46′00″ N | 82 deg. 54′00″ W. |
| 3 | 24 deg. 45′05″ N | 82 deg. 48′00″ W. |
| 4 | 24 deg. 43′32″ N | 82 deg. 48′00″ W. |
| 5 | 24 deg. 43′32″ N | 82 deg. 52′00″ W. |
| 6 | 24 deg. 43′00″ N | 82 deg. 54′00″ W. |
| 7 | 24 deg. 39′00″ N | 82 deg. 58′00″ W. |
| 8 | 24 deg. 39′00″ N 8183 deg. 06′00″ W.. | |
| 9 | 24 deg. 46′00″ N 8183 deg. 06′00″ W.. | |

4. The boundary of Tortugas South is formed by connecting in succession the points at the following coordinates:

### TORTUGAS SOUTH

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 33′00″ N | 83 deg. 09′00″ W. |
| 2 | 24 deg. 33′00″ N | 83 deg. 05′00″ W. |
| 3 | 24 deg. 18′00″ N | 83 deg. 05′00″ W. |
| 4 | 24 deg. 18′00″ N | 83 deg. 09′00″ W. |
| 5 | 24 deg. 33′00″ N | 83 deg. 09′00″ W. |

**Appendix V to Subpart P of Part 922—Sanctuary Preservation Areas: Boundary Coordinates**

The boundary of each of the Sanctuary Preservation Areas (SPAs) is formed by connecting in succession the points at the following coordinates:

### ALLIGATOR REEF

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 50.98′ N | 80 deg. 36.84′ W. |
| 2 | 24 deg. 50.51′ N | 80 deg. 37.35′ W. |
| 3 | 24 deg. 50.81′ N | 80 deg. 37.63′ W. |
| 4 | 24 deg. 51.23′ N | 80 deg. 37.17′ W. |
| 5 | 24 deg. 50.98′ N | 80 deg. 36.84′ W. |

Catch and release fishing by trolling only is allowed in this SPA.

### CARYSFORT/SOUTH CARYSFORT REEF

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 25 deg. 13.78′ N | 80 deg. 12.00′ W. |
| 2 | 25 deg. 12.03′ N | 80 deg. 12.98′ W. |
| 3 | 25 deg. 12.24′ N | 80 deg. 13.77′ W. |
| 4 | 25 deg. 14.13′ N | 80 deg. 12.78′ W. |
| 5 | 25 deg. 13.78′ N | 80 deg. 12.00′ W. |

### CHEECA ROCKS

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 54.42′ N | 80 deg. 36.91′ W. |
| 2 | 24 deg. 54.25′ N | 80 deg. 36.77′ W. |
| 3 | 24 deg. 54.10′ N | 80 deg. 37.00′ W. |
| 4 | 24 deg. 54.22′ N | 80 deg. 37.15′ W. |
| 5 | 24 deg. 54.42′ N | 80 deg. 36.91′ W. |

### COFFINS PATCH

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 41.47′ N | 80 deg. 57.68′ W. |
| 2 | 24 deg. 41.12′ N | 80 deg. 57.53′ W. |
| 3 | 24 deg. 40.75′ N | 80 deg. 58.33′ W. |
| 4 | 24 deg. 41.06′ N | 80 deg. 58.48′ W. |
| 5 | 24 deg. 41.47′ N | 80 deg. 57.68′ W. |

### CONCH REEF

[Based on differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 57.48′ N | 80 deg. 27.47′ W. |
| 2 | 24 deg. 57.34′ N | 80 deg. 27.26′ W. |
| 3 | 24 deg. 56.78′ N | 80 deg. 27.52′ W. |
| 4 | 24 deg. 56.96′ N | 80 deg. 27.73′ W. |
| 5 | 24 deg. 57.48′ N | 80 deg. 27.47′ W. |

Catch and release fishing by trolling only is allowed in this SPA.

### DAVIS REEF

[Based on differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 55.61′ N | 80 deg. 30.27′ W. |
| 2 | 24 deg. 55.41′ N | 80 deg. 30.05′ W. |
| 3 | 24 deg. 55.11′ N | 80 deg. 30.35′ W. |
| 4 | 24 deg. 55.34′ N | 80 deg. 30.52′ W. |
| 5 | 24 deg. 55.61′ N | 80 deg. 30.27′ W. |

### DRY ROCKS

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 25 deg. 07.59′ N | 80 deg. 17.91′ W. |
| 2 | 25 deg. 07.41′ N | 80 deg. 17.70′ W. |
| 3 | 25 deg. 07.25′ N | 80 deg. 17.82′ W. |
| 4 | 25 deg. 07.41′ N | 80 deg. 18.09′ W. |
| 5 | 25 deg. 07.59′ N | 80 deg. 17.91′ W. |

### GRECIAN ROCKS

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 25 deg. 06.91′ N | 80 deg. 18.20′ W. |
| 2 | 25 deg. 06.67′ N | 80 deg. 18.06′ W. |
| 3 | 25 deg. 06.39′ N | 80 deg. 18.32′ W. |
| 4 | 25 deg. 06.42′ N | 80 deg. 18.48′ W. |
| 5 | 25 deg. 06.81′ N | 80 deg. 18.44′ W. |
| 6 | 25 deg. 06.91′ N | 80 deg. 18.20′ W. |

### EASTERN DRY ROCKS

[Based on Differential Global Positioning Systems Data]

| Point | atitude | Longitude |
|---|---|---|
| 1 | 24 deg. 27.92′ N | 81 deg. 50.55′ W. |
| 2 | 24 deg. 27.73′ N | 81 deg. 50.33′ W. |
| 3 | 24 deg. 27.47′ N | 81 deg. 50.80′ W. |
| 4 | 24 deg. 27.72′ N | 81 deg. 50.86′ W. |
| 5 | 24 deg. 27.92′ N | 81 deg. 50.55′ W. |

### THE ELBOW

[Based on Differential Global Positioning Systems data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 25 deg. 08.97′ N | 80 deg. 15.63′ W. |
| 2 | 25 deg. 08.95′ N | 80 deg. 15.22′ W. |
| 3 | 25 deg. 08.18′ N | 80 deg. 15.64′ W. |
| 4 | 25 deg. 08.50′ N | 80 deg. 16.07′ W. |
| 5 | 25 deg. 08.97′ N | 80 deg. 15.63′ W. |

### FRENCH REEF

[Based on Differential Global Positioning Systems data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 25 deg. 02.20′ N | 80 deg. 20.63′ W. |
| 2 | 25 deg. 01.81′ N | 80 deg. 21.02′ W. |
| 3 | 25 deg. 02.36′ N | 80 deg. 21.27′ W. |
| 4 | 25 deg. 02.20′ N | 80 deg. 20.63′ W. |

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HEN AND CHICKENS

[Based on Differential Global Positioning Systems data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 56.38′ N | 80 deg. 32.86′ W. |
| 2 | 24 deg. 56.21′ N | 80 deg. 32.63′ W. |
| 3 | 24 deg. 55.86′ N | 80 deg. 32.95′ W. |
| 4 | 24 deg. 56.04′ N | 80 deg. 33.19′ W. |
| 5 | 24 deg. 56.38′ N | 80 deg. 32.86′ W. |

LOOE KEY

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 33.24′ N | 81 deg. 24.03′ W. |
| 2 | 24 deg. 32.70′ N | 81 deg. 23.85′ W. |
| 3 | 24 deg. 32.52′ N | 81 deg. 24.70′ W. |
| 4 | 24 deg. 33.12′ N | 81 deg. 24.81′ W. |
| 5 | 24 deg. 33.24′ N | 81 deg. 24.03′ W. |

MOLASSES REEF

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 25 deg. 01.00′ N | 80 deg. 22.53′ W. |
| 2 | 25 deg. 01.06′ N | 80 deg. 21.84′ W. |
| 3 | 25 deg. 00.29′ N | 80 deg. 22.70′ W. |
| 4 | 25 deg. 00.72′ N | 80 deg. 22.83′ W. |
| 5 | 25 deg. 01.00′ N | 80 deg. 22.53′ W. |

NEWFOUND HARBOR KEY

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 37.10′ N | 81 deg. 23.34′ W. |
| 2 | 24 deg. 36.85′ N | 81 deg. 23.28′ W. |
| 3 | 24 deg. 36.74′ N | 81 deg. 23.80′ W. |
| 4 | 24 deg. 37.00′ N | 81 deg. 23.86′ W. |
| 5 | 24 deg. 37.10′ N | 81 deg. 23.34′ W. |

ROCK KEY

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 27.48′ N | 81 deg. 51.35′ W. |
| 2 | 24 deg. 27.30′ N | 81 deg. 51.15′ W. |
| 3 | 24 deg. 27.21′ N | 81 deg. 51.60′ W. |
| 4 | 24 deg. 27.45′ N | 81 deg. 51.65′ W. |
| 5 | 24 deg. 27.48′ N | 81 deg. 51.35′ W. |

SAND KEY

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 27.58′ N | 81 deg. 52.29′ W. |
| 2 | 24 deg. 27.01′ N | 81 deg. 52.32′ W. |
| 3 | 24 deg. 27.02′ N | 81 deg. 52.95′ W. |
| 4 | 24 deg. 27.61′ N | 81 deg. 52.94′ W. |
| 5 | 24 deg. 27.58′ N | 81 deg. 52.29′ W. |

Catch and release fishing by trolling only is allowed in this SPA.

SOMBRERO KEY

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 37.91′ N | 81 deg. 06.78′ W. |
| 2 | 24 deg. 37.50′ N | 81 deg. 06.19′ W. |
| 3 | 24 deg. 37.25′ N | 81 deg. 06.89′ W. |
| 4 | 24 deg. 37.91′ N | 81 deg. 06.78′ W. |

Catch and release fishing by trolling only is allowed in this SPA.

**Appendix VI to Subpart P of Part 922—Special-Use Areas Boundary Coordinates and Use Designations**

The boundary of each of the Special-Use is formed by connecting in succession the points at the following coordinates:

CONCH REEF

[Research Only]

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 56.83′ N | 80 deg. 27.26′ W. |
| 2 | 24 deg. 57.10′ N | 80 deg. 26.93′ W. |
| 3 | 24 deg. 56.99′ N | 80 deg. 27.42′ W. |
| 4 | 24 deg. 57.34′ N | 80 deg. 27.26′ W. |
| 5 | 24 deg. 56.83′ N | 80 deg. 27.26′ W. |

EASTERN SAMBO

[Research Only]

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 29.84′ N | 81 deg. 39.59′ W. |
| 2 | 24 deg. 29.55′ N | 81 deg. 39.35′ W. |
| 3 | 24 deg. 29.37′ N | 81 deg. 39.96′ W. |
| 4 | 24 deg. 29.77′ N | 81 deg. 40.03′ W. |
| 5 | 24 deg. 29.84′ N | 81 deg. 39.59′ W. |

LOOE KEY

[Research Only]

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 34.17′ N | 81 deg. 23.01′ W. |
| 2 | 24 deg. 33.98′ N | 81 deg. 22.96′ W. |
| 3 | 24 deg. 33.84′ N | 81 deg. 23.60′ W. |
| 4 | 24 deg. 34.23′ N | 81 deg. 23.68′ W. |
| 5 | 24 deg. 34.17′ N | 81 deg. 23.01′ W. |

TENNESSEE REEF

[Research Only]

[Based on Differential Global Positioning Systems Data]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 24 deg. 44.77′ N | 80 deg. 47.12′ W. |
| 2 | 24 deg. 44.57′ N | 80 deg. 46.98′ W. |
| 3 | 24 deg. 44.68′ N | 80 deg. 46.59′ W. |
| 4 | 24 deg. 44.95′ N | 80 deg. 46.74′ W. |
| 5 | 24 deg. 44.77′ N | 80 deg. 47.12′ W. |

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**Appendix VII to Subpart P of Part 922—Areas To Be Avoided Boundary Coordinates**

### In The Vicinity of the Florida Keys

[Reference Charts: United States 11466, 27th Edition—September 1, 1990 and United States 11450, 4th Edition—August 11,1990]

| Point | Latitude | Longitude |
|---|---|---|
| 1 | 25 deg. 45.00′ N | 80 deg. 06.10′ W. |
| 2 | 25 deg. 38.70′ N | 80 deg. 02.70′ W. |
| 3 | 25 deg. 22.00′ N | 80 deg. 03.00′ W. |
| 4 | 25 deg. 00.20′ N | 80 deg. 13.40′ W. |
| 5 | 24 deg. 37.90′ N | 80 deg. 47.30′ W. |
| 6 | 24 deg. 29.20′ N | 81 deg. 17.30′ W. |
| 7 | 24 deg. 22.30′ N | 81 deg. 43.17′ W. |
| 8 | 24 deg. 28.00′ N | 81 deg. 43.17′ W. |
| 9 | 24 deg. 28.70′ N | 81 deg. 43.50′ W. |
| 10 | 24 deg. 29.80′ N | 81 deg. 43.17′ W. |
| 11 | 24 deg. 33.10′ N | 81 deg. 35.15′ W. |
| 12 | 24 deg. 33.60′ N | 81 deg. 26.00′ W. |
| 13 | 24 deg. 38.20′ N | 81 deg. 07.00′ W. |
| 14 | 24 deg. 43.20′ N | 80 deg. 53.20′ W. |
| 15 | 24 deg. 46.10′ N | 80 deg. 46.15′ W. |
| 16 | 24 deg. 51.10′ N | 80 deg. 37.10′ W. |
| 17 | 24 deg. 57.50′ N | 80 deg. 27.50′ W. |
| 18 | 25 deg. 09.90′ N | 80 deg. 16.20′ W. |
| 19 | 25 deg. 24.00′ N | 80 deg. 09.10′ W. |
| 20 | 25 deg. 31.50′ N | 80 deg. 07.00′ W. |
| 21 | 25 deg. 39.70′ N | 80 deg. 06.85′ W. |
| 22 | 25 deg. 45.00′ N | 80 deg. 06.10′ W. |

### In the Vicinity of Key West Harbor

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

| Point | Latitude | Longitude |
|---|---|---|
| 23 | 24 deg. 27.95′ N | 81 deg. 48.65′ W. |
| 24 | 24 deg. 23.00′ N | 81 deg. 53.50′ W. |
| 25 | 24 deg. 26.60′ N | 81 deg. 58.50′ W. |
| 26 | 24 deg. 27.75′ N | 81 deg. 55.70′ W. |
| 27 | 24 deg. 29.35′ N | 81 deg. 53.40′ W. |
| 28 | 24 deg. 29.35′ N | 81 deg. 50.00′ W. |
| 29 | 24 deg. 27.95′ N | 81 deg. 48.65′ W. |

### Area Surrounding the Marquesas Keys

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

| Point | Latitude | Longitude |
|---|---|---|
| 30 | 24 deg. 26.60′ N | 81 deg. 59.55′ W. |
| 31 | 24 deg. 23.00′ N | 82 deg. 03.50′ W. |
| 32 | 24 deg. 23.60′ N | 82 deg. 27.80′ W. |
| 33 | 24 deg. 34.50′ N | 82 deg. 37.50′ W. |
| 34 | 24 deg. 43.00′ N | 82 deg. 26.50′ W. |
| 35 | 24 deg. 38.31′ N | 81 deg. 54.06′ W. |
| 36 | 24 deg. 37.91′ N | 81 deg. 53.40′ W. |
| 37 | 24 deg. 36.15′ N | 81 deg. 51.78′ W. |
| 38 | 24 deg. 34.40′ N | 81 deg. 50.60′ W. |
| 39 | 24 deg. 33.44′ N | 81 deg. 49.73′ W. |
| 40 | 24 deg. 31.20′ N | 81 deg. 52.10′ W. |
| 41 | 24 deg. 28.70′ N | 81 deg. 56.80′ W. |
| 42 | 24 deg. 26.60′ N | 81 deg. 59.55′ W. |

### Area Surrounding the Dry Tortugas Islands

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

| Point | Latitude | Longitude |
|---|---|---|
| 43 | 24 deg. 32.00′ N | 82 deg. 53.50′ W. |
| 44 | 24 deg. 32.00′ N | 83 deg. 00.05′ W. |
| 45 | 24 deg. 39.70′ N | 83 deg. 00.05′ W. |
| 46 | 24 deg. 45.60′ N | 82 deg. 54.40′ W. |
| 47 | 24 deg. 45.60′ N | 82 deg. 47.02′ W. |

AREA SURROUNDING THE DRY TORTUGAS ISLANDS—Continued

[Reference Chart: United States 11434, 21st Edition—August 11, 1990]

| Point | Latitude | Longitude |
|---|---|---|
| 48 | 24 deg. 42.80′ N | 82 deg. 43.90′ W. |
| 49 | 24 deg. 39.50′ N | 82 deg. 43.90′ W. |
| 50 | 24 deg. 35.60′ N | 82 deg. 46.40′ W. |
| 51 | 24 deg. 32.00′ N | 82 deg. 53.50′ W. |

[FR Doc. 00–12150 Filed 5–12–00; 8:45 am]

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Federal Register

Thursday,
May 18, 2000

Part III

# Environmental Protection Agency

40 CFR Part 131

Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California; Rule

VOL 65 ISS 97 MY 18 2000 UMI

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 131**

**[FRL–6587–9]**

**RIN 2040–AC44**

## Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** This final rule promulgates: numeric aquatic life criteria for 23 priority toxic pollutants; numeric human health criteria for 57 priority toxic pollutants; and a compliance schedule provision which authorizes the State to issue schedules of compliance for new or revised National Pollutant Discharge Elimination System permit limits based on the federal criteria when certain conditions are met.

EPA is promulgating this rule based on the Administrator's determination that numeric criteria are necessary in the State of California to protect human health and the environment. The Clean Water Act requires States to adopt numeric water quality criteria for priority toxic pollutants for which EPA has issued criteria guidance, the presence or discharge of which could reasonably be expected to interfere with maintaining designated uses.

EPA is promulgating this rule to fill a gap in California water quality standards that was created in 1994 when a State court overturned the State's water quality control plans which contained water quality criteria for priority toxic pollutants. Thus, the State of California has been without numeric water quality criteria for many priority toxic pollutants as required by the Clean Water Act, necessitating this action by EPA. These Federal criteria are legally applicable in the State of California for inland surface waters, enclosed bays and estuaries for all purposes and programs under the Clean Water Act.

**EFFECTIVE DATE:** This rule shall be effective May 18, 2000.

**ADDRESSES:** The administrative record for today's final rule is available for public inspection at the U.S. Environmental Protection Agency, Region 9, Water Division, 75 Hawthorne Street, San Francisco, California 94105, between the hours of 8:00 a.m. and 4:30 p.m. For access to the administrative record, call Diane E. Fleck, P.E., Esq. at 415 744–1984 for an appointment. A reasonable fee will be charged for photocopies.

**FOR FURTHER INFORMATION CONTACT:** Diane E. Fleck, P.E., Esq. or Philip Woods, U.S. Environmental Protection Agency, Region 9, Water Division, 75 Hawthorne Street, San Francisco, California 94105, 415–744–1984 or 415–744–1997, respectively.

**SUPPLEMENTARY INFORMATION:** This preamble is organized according to the following outline:

A. Potentially Affected Entities
B. Introduction and Overview
1. Introduction
2. Overview
C. Statutory and Regulatory Background
D. California Water Quality Standards Actions
1. California Regional Water Quality Control Board Basin Plans, and the Inland Surface Waters Plan (ISWP) and the Enclosed Bays and Estuaries Plan (EBEP) of April 1991
2. EPA's Review of California Water Quality Standards for Priority Toxic Pollutants in the ISWP and EBEP, and the National Toxics Rule
3. Status of Implementation of CWA Section 303(c)(2)(B)
4. State-Adopted, Site-Specific Criteria for Priority Toxic Pollutants
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P. National Technology Transfer and Advancement Act
Q. Executive Order 13132 on Federalism
R. Executive Order 13045 on Protection of Children From Environmental Health Risks and Safety Risks

### A. Potentially Affected Entities

Citizens concerned with water quality in California may be interested in this rulemaking. Entities discharging pollutants to waters of the United States in California could be affected by this rulemaking since water quality criteria are used by the State in developing National Pollutant Discharge Elimination System (NPDES) permit limits. Categories and entities that ultimately may be affected include:

| Category | Examples of potentially affected entities |
|---|---|
| Industry | Industries discharging pollutants to surface waters in California or to publicly-owned treatment works. |
| Municipalities | Publicly-owned treatment works discharging pollutants to surface waters in California |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your facility might be affected by this action, you should carefully examine the applicability criteria in § 131.38(c). If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

**B. Introduction and Overview**

*1. Introduction*

This section introduces the topics which are addressed in the preamble and provides a brief overview of EPA's basis and rationale for promulgating Federal criteria for the State of California. Section C briefly describes the evolution of the efforts to control toxic pollutants; these efforts include the changes enacted in the 1987 CWA Amendments, which are the basis for this rule. Section D summarizes California's efforts since 1987 to implement the requirements of CWA section 303(c)(2)(B) and describes EPA's procedure and actions for determining whether California has fully implemented CWA section 303(c)(2)(B). Section E provides the rationale and approach for developing this final rule, including a discussion of EPA's legal basis for this final rule. Section F describes the development of the criteria included in this rule. Section G summarizes the provisions of the final rule and discusses implementation issues. Sections H, I, J, K , L, M, N, O, P, and Q briefly address the requirements of Executive Order 12866, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, the Paperwork Reduction Act, the Endangered Species Act, the Congressional Review Act, Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, the National Technology Transfer and Advancement Act, and Executive Order 13132, Federalism, respectively.

The proposal for this rulemaking was published in the **Federal Register** on August 5, 1997. Changes from the proposal are generally addressed in the body of this preamble and specifically addressed in the response to comments document included in the administrative record for this rulemaking. EPA responded to all comments on the proposed rule, including comments received after the September 26, 1997, deadline. Although EPA is under no legal obligation to respond to late comments, EPA made a policy decision to respond to all comments.

Since detailed information concerning many of the topics in this preamble was published previously in the **Federal Register** in preambles for this and other rulemakings, references are frequently made to those preambles. Those rulemakings include: Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California; Proposed Rule, 62 FR 42159, August 5, 1997 (referred to as the "proposed CTR"); Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants, 57 FR 60848, December 22, 1992 (referred to as the "National Toxics Rule" or "NTR"); and the NTR as amended by Administrative Stay of Federal Water Quality Criteria for Metals and Interim Final Rule, Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance—Revision of Metals Criteria, 60 FR 22228, May 4, 1995 (referred to as the "National Toxics Rule [NTR], as amended"). The NTR, as amended, is codified at 40 CFR 131.36. A copy of the proposed CTR and its preamble, and the NTR, as amended, and its preambles are contained in the administrative record for this rulemaking.

EPA is making this final rule effective upon publication. Under the Administrative Procedure Act, 5 U.S.C. 553(d)(3), agencies must generally publish a rule no more than 30 days prior to the effective date of the rule except as otherwise provided for by the Agency for good cause. The purpose of the 30-day waiting period is to give affected parties a reasonable time to adjust their behavior before the final rule takes effect. See *Omnipoint Corp.* v. *F.C.C.*, 78 F.3d 620, 630–631 (D.C. Cir. 1996); *Riverbend Farms, Inc.* v. *Madigan*, 958 F.2d 1479, 1485 (9th Cir. 1992).

In this instance, EPA finds good cause to make the final rule effective upon publication. In order to find good cause, an Agency needs to find that the 30-day period would be: (1) Impracticable, (2) unnecessary, or (3) contrary to the public interest. Here EPA is relying on the second reason to support its finding of good cause. EPA also notes that the State has requested EPA to make the rule immediately effective.

EPA finds that in this instance, waiting 30 days to make the rule effective is unnecessary. As explained in further detail elsewhere in this preamble, this rule is not self implementing; rather it establishes ambient conditions that the State of California will implement in future permit proceedings. These permit proceedings will, by regulation, take longer than 30 days to complete. This means that although the rule is immediately effective, no discharger's conduct would be altered under the rule in less than 30 days, and therefore the 30-day period is unnecessary.

*2. Overview*

This final rule establishes ambient water quality criteria for priority toxic pollutants in the State of California. The criteria in this final rule will supplement the water quality criteria promulgated for California in the NTR, as amended. In 1991, EPA approved a number of water quality criteria (discussed in section D), for the State of California. Since EPA had approved these criteria, it was not necessary to include them in the 1992 NTR for these criteria. However, the EPA-approved criteria were subsequently invalidated in State litigation. Thus, this final rule contains criteria to fill the gap created by the State litigation.

This final rule does not change or supersede any criteria previously promulgated for the State of California in the NTR, as amended. Criteria which EPA promulgated for California in the NTR, as amended, are footnoted in the final table at 131.38(b)(1), so that readers may see the criteria promulgated in the NTR, as amended, for California and the criteria promulgated through this rulemaking for California in the same table. This final rule is not intended to apply to waters within Indian Country. EPA recognizes that there are possibly waters located wholly or partly in Indian Country that are included in the State's basin plans. EPA will work with the State and Tribes to identify any such waters and determine whether further action to protect water quality in Indian Country is necessary.

This rule is important for several environmental, programmatic and legal reasons. Control of toxic pollutants in surface waters is necessary to achieve the CWA's goals and objectives. Many of California's monitored river miles, lake acres, and estuarine waters have elevated levels of toxic pollutants. Recent studies on California water bodies indicate that elevated levels of toxic pollutants exist in fish tissue which result in fishing advisories or bans. These toxic pollutants can be attributed to, among other sources, industrial and municipal discharges.

Water quality standards for toxic pollutants are important to State and EPA efforts to address water quality problems. Clearly established water quality goals enhance the effectiveness of many of the State's and EPA's water programs including permitting, coastal water quality improvement, fish tissue quality protection, nonpoint source controls, drinking water quality protection, and ecological protection. Numeric criteria for toxic pollutants allow the State and EPA to evaluate the adequacy of existing and potential control measures to protect aquatic ecosystems and human health. Numeric criteria also provide a more precise basis for deriving water quality-based effluent limitations (WQBELs) in

National Pollutant Discharge Elimination System (NPDES) permits and wasteload allocations for total maximum daily loads (TMDLs) to control toxic pollutant discharges. Congress recognized these issues when it enacted section 303(c)(2)(B) to the CWA.

While California recognizes the need for applicable water quality standards for toxic pollutants, its adoption efforts have been stymied by a variety of factors. The Administrator has decided to exercise her CWA authorities to move forward the toxic control program, consistent with the CWA and with the State of California's water quality standards program.

Today's action will also help restore equity among the States. The CWA is designed to ensure all waters are sufficiently clean to protect public health and/or the environment. The CWA allows some flexibility and differences among States in their adopted and approved water quality standards, but it should be implemented in a manner that ensures a level playing field among States. Although California has made important progress toward satisfying CWA requirements, it has not satisfied CWA section 303(c)(2)(B) by adopting numeric water quality criteria for toxic pollutants. This section was added to the CWA by Congress in 1987. Prior to today, the State of California had been the only State in the Nation for which CWA section 303(c)(2)(B) had remained substantially unimplemented after EPA's promulgation of the NTR in December of 1992. Section 303(c)(4) of the CWA authorizes the EPA Administrator to promulgate standards where necessary to meet the requirements of the Act. The Administrator determined that this rule was a necessary and important component for the implementation of CWA section 303(c)(2)(B) in California.

EPA acknowledges that the State of California is working to satisfy CWA section 303(c)(2)(B). When the State formally adopts, and EPA approves, criteria consistent with statutory requirements, as envisioned by Congress in the CWA, EPA intends to stay this rule. If within the applicable time frame for judicial review, the States' standards are challenged, EPA will withdraw this rule after such judicial review is complete and the State standards are sustained.

### C. Statutory and Regulatory Background

The preamble to the August 5, 1997, proposed rule provided a general discussion of EPA's statutory and regulatory authority to promulgate water quality criteria for the State of California. See 62 FR 42160–42163. EPA is including that discussion in the record for the final rule. Commenters questioned EPA's authority to promulgate certain aspects of the proposal. EPA is responding to those comments in the appropriate sections of this preamble, and in the response to comments document included in the administrative record for this rulemaking. Where appropriate, EPA's responses expand upon the discussion of statutory and regulatory authority found in the proposal.

### D. California Water Quality Standards Actions

*1. California Regional Water Quality Control Board Basin Plans, and the Inland Surface Waters Plan (ISWP) and the Enclosed Bays and Estuaries Plan (EBEP) of April 1991*

The State of California regulates water quality through its State Water Resources Control Board (SWRCB) and through nine Regional Water Quality Control Boards (RWQCBs). Each of the nine RWQCBs represents a different geographic area; area boundaries are generally along watershed boundaries. Each RWQCB maintains a Basin Plan which contains the designated uses of the water bodies within its respective geographic area within California. These designated uses (or "beneficial uses" under State law) together with legally-adopted criteria (or "objectives" under State law), comprise water quality standards for the water bodies within each of the Basin areas. Each of the nine RWQCBs undergoes a triennial basin planning review process, in compliance with CWA section 303. The SWRCB provides assistance to the RWQCBs.

Most of the Basin Plans contain conventional pollutant objectives such as dissolved oxygen. None of the Basin Plans contains a comprehensive list of priority toxic pollutant criteria to satisfy CWA section 303(c)(2)(B). The nine RWQCBs and the SWRCB had intended that the priority toxic pollutant criteria contained in the three SWRCB statewide plans, the Inland Surface Waters Plan (ISWP), the Enclosed Bays and Estuaries Plan (EBEP), and the Ocean Plan, apply to all basins and satisfy CWA section 303(c)(2)(B).

On April 11, 1991, the SWRCB adopted two statewide water quality control plans, the ISWP and the EBEP. These statewide plans contained narrative and numeric water quality criteria for toxic pollutants, in part to satisfy CWA section 303(c)(2)(B). The water quality criteria contained in the SWRCB statewide plans, together with the designated uses in each of the Basin Plans, created a set of water quality standards for waters within the State of California.

Specifically, the two plans established water quality criteria or objectives for all fresh waters, bays and estuaries in the State. The plans contained water quality criteria for some priority toxic pollutants, provisions relating to whole effluent toxicity, implementation procedures for point and nonpoint sources, and authorizing compliance schedule provisions. The plans also included special provisions affecting waters dominated by reclaimed water (labeled as Category (a) waters), and waters dominated by agricultural drainage and constructed agricultural drains (labeled as Category (b) and (c) waters, respectively).

*2. EPA's Review of California Water Quality Standards for Priority Toxic Pollutants in the ISWP and EBEP, and the National Toxics Rule*

The EPA Administrator has delegated the responsibility and authority for review and approval or disapproval of all new or revised State water quality standards to the EPA Regional Administrators (see 40 CFR 131.21). Thus, State actions under CWA section 303(c)(2)(B) are submitted to the appropriate EPA Regional Administrator for review and approval.

In mid-April 1991, the SWRCB submitted to EPA for review and approval the two statewide water quality control plans, the ISWP and the EBEP. On November 6, 1991, EPA Region 9 formally concluded its review of the SWRCB's plans. EPA approved the narrative water quality criterion and the toxicity criterion in each of the plans. EPA also approved the numeric water quality criteria contained in both plans, finding them to be consistent with the requirements of section 303(c)(2)(B) of the CWA and with EPA's national criteria guidance published pursuant to section 304(a) of the CWA.

EPA noted the lack of criteria for some pollutants, and found that, because of the omissions, the plans did not fully satisfy CWA section 303(c)(2)(B). The plans did not contain criteria for all listed pollutants for which EPA had published national criteria guidance. The ISWP contained human health criteria for only 65 pollutants, and the EBEP contained human health criteria for only 61 pollutants for which EPA had issued section 304(a) guidance criteria. Both the ISWP and EBEP contained aquatic life criteria for all pollutants except cyanide and chromium III (freshwater only) for which EPA has CWA section

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304(a) criteria guidance. The SWRCB's administrative record stated that all priority pollutants with EPA criteria guidance were likely to be present in California waters. However, the SWRCB's record contained insufficient information to support a finding that the excluded pollutants were not reasonably expected to interfere with designated uses of the waters of the State.

Although EPA approved the statewide selenium objective in the ISWP and EBEP, EPA disapproved the objective for the San Francisco Bay and Delta, because there was clear evidence that the objective would not protect the designated fish and wildlife uses (the California Department of Health Services had issued waterfowl consumption advisories due to selenium concentrations, and scientific studies had documented selenium toxicity to fish and wildlife). EPA restated its commitment to object to National Pollutant Discharge Elimination System (NPDES) permits issued for San Francisco Bay that contained effluent limits based on an objective greater than 5 parts per billion (ppb) (four day average) and 20 ppb (1 hour average), the freshwater criteria. EPA reaffirmed its disapproval of Californias' site-specific selenium objective for portions of the San Joaquin River, Salt Slough, and Mud Slough. EPA also disapproved of the categorical deferrals and exemptions. These disapprovals included the disapproval of the State's deferral of water quality objectives to effluent dominated streams (Category a) and to streams dominated by agricultural drainage (Category b), and the disapproval of the exemption of water quality objectives to constructed agricultural drains (Category c). EPA found the definitions of the categories imprecise and overly broad which could have led to an incorrect interpretation.

Since EPA had disapproved portions of each of the California statewide plans which were necessary to satisfy CWA section 303(c)(2)(B), certain disapproved aspects of California's water quality standards were included in EPA's promulgation of the National Toxics Rule (NTR) (40 CFR 131.36, 57 FR 60848). EPA promulgated specific criteria for certain water bodies in California.

The NTR was amended, effective April 14, 1995, to stay certain metals criteria which had been promulgated as total recoverable. Effective April 15, 1995, EPA promulgated interim final metals criteria as dissolved concentrations for those metals which had been stayed (Administrative Stay of Federal Water Quality Criteria for Metals and Interim Final Rule, Water Quality Standards; Establishment of Numeric Criteria for Priority Toxic Pollutants; States' Compliance—Revision of Metals Criteria; 60 FR 22228, 22229, May 4, 1995 [the NTR, as amended]). The stay was in response to a lawsuit against EPA challenging, among other issues, metals criteria expressed as total recoverable concentrations. A partial Settlement Agreement required EPA to stay specific metals criteria in the NTR. EPA then promulgated certain metals criteria in the dissolved form through the use of conversion factors. These factors are listed in the NTR, as amended. A scientific discussion of these criteria is found in a subsequent section of this preamble.

Since certain criteria have already been promulgated for specific water bodies in the State of California in the NTR, as amended, they are not within the scope of today's final rule. However, for clarity in reading a comprehensive rule for the State of California, these criteria are incorporated into 40 CFR 131.38(d)(2). Footnotes to the Table in 40 CFR 131.38(b)(1) and 40 CFR 131.38(d)(3) clarify which criteria (and for which specific water bodies) were promulgated by the NTR, as amended, and are therefore excluded from this final rule. The appropriate (freshwater or saltwater) aquatic life criteria which were promulgated in the NTR, as amended, for all inland surface waters and enclosed bays and estuaries include: chromium III and cyanide. The appropriate (water and organism or organism only) human health criteria which were promulgated in the NTR, as amended, for all inland surface waters and enclosed bays and estuaries include:

antimony
thallium
asbestos
acrolein
acrylonitrile
carbon tetrachloride
chlorobenzene
1,2-dichloroethane
1,1-dichloroethylene
1,3-dichloropropylene
ethylbenzene
1,1,2,2-tetrachloroethane
tetrachloroethylene
1,1,2-trichloroethane
trichloroethylene
vinyl chloride
2,4-dichlorophenol
2-methyl-4,6-dinitrophenol
2,4-dinitrophenol
benzidine
bis(2-chloroethyl)ether
bis(2-ethylhexyl)phthalate
3,3-dichlorobenzidine
diethyl phthalate
dimethyl phthalate
di-n-butyl phthalate
2,4-dinitrotoluene
1,2-diphenylhydrazine
hexachlorobutadiene
hexachlorocyclopentadiene
hexachloroethane
isophorone
nitrobenzene
n-nitrosodimethylamine
n-nitrosodiphenylamine

Other pollutant criteria were promulgated in the NTR, as amended, for specific water bodies, but not all inland surface waters and enclosed bays and estuaries.

*3. Status of Implementation of CWA Section 303(c)(2)(B)*

Shortly after the SWRCB adopted the ISWP and EBEP, several dischargers filed suit against the State alleging that it had not adopted the two plans in compliance with State law. The plaintiffs in a consolidated case included: the County of Sacramento, Sacramento County Water Agency; Sacramento Regional County Sanitation District; the City of Sacramento; the City of Sunnyvale; the City of San Jose; the City of Stockton; and Simpson Paper Company.

The dischargers alleged that the State had not adopted the ISWP and EBEP in compliance with the California Administrative Procedures Act (Gov Code. Section 11340, *et seq.*), the California Environmental Quality Act (Pub. Re Code, Section 21000, *et seq.*), and the Porter-Cologne Act (Wat. Code, Section 13200, *et seq.*). The allegation that the State did not sufficiently consider economics when adopting water quality objectives, as allegedly required by Section 13241 of the Porter Cologne Act, was an important issue in the litigation.

In October of 1993, the Superior Court of California, County of Sacramento, issued a tentative decision in favor of the dischargers. In March of 1994, the Court issued a substantively similar final decision in favor of the dischargers. Final judgments from the Court in July of 1994 ordered the SWRCB to rescind the ISWP and EBEP. On September 22, 1994, the SWRCB formally rescinded the two statewide water quality control plans. The State is currently in the process of readopting water quality control plans for inland surface waters, enclosed bays and estuaries.

CWA section 303(c)(2)(B) was fully implemented in the State of California from December of 1992, when the NTR was promulgated, until September of 1994, when the SWRCB was required to rescind the ISWP and EBEP. The provisions for California in EPA's NTR together with the approved portions of

California's ISWP and EBEP implemented the requirements of CWA section 303(c)(2)(B). However, since September of 1994, when the SWRCB rescinded the ISWP and EBEP, the requirements of section 303(c)(2)(B) have not been fully implemented in California.

The scope of today's rule is to re-establish criteria for the remaining priority toxic pollutants to meet the requirements of section 303(c)(2)(B) of the CWA. Pursuant to section 303(c)(4), the Administrator has determined that it is necessary to include in today's action criteria for priority toxic pollutants, which are not covered by the NTR, as amended, or by the State through EPA-approved site-specific criteria, for waters of the United States in the State of California.

*4. State-Adopted, Site-Specific Criteria for Priority Toxic Pollutants*

The State has the discretion to develop site-specific criteria when appropriate e.g., when statewide criteria appear over-or under-protective of designated uses. Periodically, the State through its RWQCBs will adopt site-specific criteria for priority toxic pollutants within respective Basin Plans. These criteria are intended to be effective throughout the Basin or throughout a designated water body. Under California law, these criteria must be publicly reviewed and approved by the RWQCB, the SWRCB, and the State's Office of Administrative Law (OAL). Once this adoption process is complete, the criteria become State law.

These criteria must be submitted to the EPA Regional Administrator for review and approval under CWA section 303. These criteria are usually submitted to EPA as part of a RWQCB Basin Plan Amendment, after the Amendment has been adopted under the State's process and has become State law.

a. State-Adopted Site-Specific Criteria Under EPA Review

The State of California has recently reviewed and updated all of its RWQCB Basin Plans. All of the Basin Plans have completed the State review and adoption process and have been submitted to EPA for review and approval. Some of the Basin Plans contain site-specific criteria. In these cases, the State-adopted site-specific criteria are used for water quality programs.

EPA has not yet concluded consultation under the Endangered Species Act with the U.S. Department of Interior, Fish and Wildlife Service, and the U.S. Department of Commerce, National Marine Fisheries Service, on EPA's tentative approval/disapproval actions on the RWQCB Basin Plans. In this situation, the more stringent of the two criteria (the State-adopted site-specific criteria in the RWQCB Basin Plans, or the Federal criteria in this final rule), would be used for water quality programs including the calculation of water quality-based effluent criteria in National Pollutant Discharge Elimination System (NPDES) permits.

b. State-Adopted Site-Specific Criteria With EPA Approval

In several cases, the EPA Regional Administrator has already reviewed and approved State-adopted site-specific criteria within the State of California. Several of these cases are discussed in this section. All of the EPA approval letters referenced in today's preamble are contained in the administrative record for today's rule.

*Sacramento River:* EPA has approved site-specific acute criteria for copper, cadmium and zinc in the Sacramento River, upstream of Hamilton City, in the Central Valley Region (RWQCB for the Central Valley Region) of the State of California. EPA approved these site-specific criteria by letter dated August 7, 1985. Specifically, EPA approved for the Sacramento River (and tributaries) above Hamilton City, a copper criterion of 5.6 µg/l (maximum), a zinc criterion of 16 µg/l (maximum) and a cadmium criterion of 0.22 µg/l (maximum), all in the dissolved form using a hardness of 40 mg/l as CaCO3. (These criteria were actually adopted by the State and approved by EPA as equations which vary with hardness.) These "maximum" criteria correspond to acute criteria in today's final rule. Therefore, Federal acute criteria for copper, cadmium, and zinc for the Sacramento River (and tributaries) above Hamilton City are not necessary to protect the designated uses and are not included in the final rule. However, the EPA Administrator is making a finding that it is necessary to include chronic criteria for copper, cadmium and zinc for the Sacramento River (and tributaries) above Hamilton City, as part of the statewide criteria promulgated in today's final rule.

*San Joaquin River:* The selenium criteria in this rule are not applicable to portions of the San Joaquin River, in the Central Valley Region, because selenium criteria have been either previously approved by EPA or previously promulgated by EPA as part of the NTR. EPA approved and disapproved State-adopted site-specific selenium criteria in portions of the San Joaquin River, in the Central Valley Region of the State of California (RWQCB for the Central Valley Region). EPA's determination on these site-specific criteria is contained in a letter dated April 13, 1990.

Specifically, EPA approved for the San Joaquin River, mouth of Merced River to Vernalis, an aquatic life selenium criterion of 12 µg/l (maximum with the understanding that the instantaneous maximum concentration may not exceed the objective more than once every three years). Today's final rule does not affect this Federally-approved, State-adopted site-specific acute criterion, and it remains in effect for the San Joaquin River, mouth of Merced River to Vernalis. Therefore, an acute criterion for selenium in the San Joaquin River, mouth of Merced River to Vernalis is not necessary to protect the designated use and thus is not included in this final rule.

By letter dated April 13, 1990, EPA also approved for the San Joaquin River, mouth of Merced River to Vernalis, a State-adopted site-specific aquatic life selenium criterion of 5 µg/l (monthly mean); however, EPA disapproved a State-adopted site-specific selenium criterion of 8 µg/l (monthly mean—critical year only) for these waters. Subsequently, EPA promulgated a chronic selenium criterion of 5 µg/l (4 day average) for waters of the San Joaquin River from the mouth of the Merced River to Vernalis in the NTR. This chronic criterion applies to all water quality programs concerning the San Joaquin River, mouth of Merced River to Vernalis. Today's final rule does not affect the Federally-promulgated chronic selenium criterion of 5 µg/l (4 day average) set forth in the NTR. This previously Federally-promulgated criterion remains in effect for the San Joaquin River, mouth of Merced River to Vernalis.

*Grassland Water District, San Luis National Wildlife Refuge, and Los Banos State Wildlife Refuge:* EPA approved for the Grassland Water District, San Luis National Wildlife Refuge, and Los Banos State Wildlife Refuge, a State-adopted site-specific aquatic life selenium criterion of 2 µg/l (monthly mean) by letter dated April 13, 1990. This Federally-approved, State-adopted site-specific chronic criterion remains in effect for the Grassland Water District, San Luis National Wildlife Refuge and Los Banos State Wildlife Refuge. Therefore it is not necessary to include in today's final rule, a chronic criterion for selenium for the Grassland Water District, San Luis National Wildlife Refuge and Los Banos State Wildlife Refuge, and thus, it is not included in this final rule.

*San Francisco Regional Board Basin Plan of 1986:* EPA approved several priority toxic pollutant objectives (CWA criteria) that were contained in the1986 San Francisco Regional Board Basin Plan, as amended by SWRCB Resolution Numbers 87–49, 87–82 and 87–92, by letters dated September 2, 1987 and December 24, 1987. This Basin Plan, the SWRCB Resolutions, and the EPA approval letters are contained in the administrative record for this rulemaking. It is not necessary to include these criteria for priority toxic pollutants that are contained in the San Francisco Regional Board's 1986 Basin Plan as amended, and approved by EPA. Priority pollutants in this situation are footnoted in the matrix at 131.38(b)(1) with footnote "b." Where gaps exist in the State adoption and EPA approval of priority toxic pollutant objectives, the criteria in today's rule apply.

EPA is assigning "human health, water and organism consumption" criteria to waters with the States' municipal or "MUN" beneficial use designation in the Basin Plan. Also, some pollutants regulated through the Basin Plan have different averaging periods, *e.g.*, one hour as compared with the rule's "short-term." However, where classes of chemicals, such as polynuclear aromatic hydrocarbons, or PAHs, and phenols, are regulated through the Basin Plan, but not specific chemicals within the category, specific chemicals within the category are regulated by today's rule.

### E. Rationale and Approach for Developing the Final Rule

This section explains EPA's legal basis for today's final rule, and discusses EPA's general approach for developing the specific requirements for the State of California.

#### *1. Legal Basis*

CWA section 303(c) specifies that adoption of water quality standards is primarily the responsibility of the States. However, CWA section 303(c) also describes a role for the Federal government to oversee State actions to ensure compliance with CWA requirements. If EPA's review of the States' standards finds flaws or omissions, then the CWA authorizes EPA to correct the deficiencies (see CWA section 303(c)(4)). This water quality standards promulgation authority has been used by EPA to issue final rules on several separate occasions, including the NTR, as amended, which promulgated criteria similar to those included here for a number of States. These actions have addressed both insufficiently protective State criteria and/or designated uses and failure to adopt needed criteria. Thus, today's action is not unique.

The CWA in section 303(c)(4) provides two bases for promulgation of Federal water quality standards. The first basis, in paragraph (A), applies when a State submits new or revised standards that EPA determines are not consistent with the applicable requirements of the CWA. If, after EPA's disapproval, the State does not amend its rules so as to be consistent with the CWA, EPA is to promptly propose appropriate Federal water quality standards for that State. The second basis for an EPA action is in paragraph (B), which provides that EPA shall promptly initiate promulgation "* * * in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of this Act." EPA is using section 303(c)(4)(B) as the legal basis for today's final rule.

As discussed in the preamble to the NTR, the Administrator's determination under CWA section 303(c)(4) that criteria are necessary to meet the requirements of the Act could be supported in several ways. Consistent with EPA's approach in the NTR, EPA interprets section 303(c)(2)(B) of the CWA to allow EPA to act where the State has not succeeded in establishing numeric water quality standards for toxic pollutants. This inaction can be the basis for the Administrator's determination under section 303(c)(4) that new or revised criteria are necessary to ensure designated uses are protected.

EPA does not believe that it is necessary to support the criteria in today's rule on a pollutant-specific, water body-by-water-body basis. For EPA to undertake an effort to conduct research and studies of each stream segment or water body across the State of California to demonstrate that for each toxic pollutant for which EPA has issued CWA section 304(a) criteria guidance there is a "discharge or presence" of that pollutant which could reasonably "be expected to interfere with" the designated use would impose an enormous administrative burden and would be contrary to the statutory directive for swift action manifested by the 1987 addition of section 303(c)(2)(B) to the CWA. Moreover, because these criteria are ambient criteria that define attainment of the designated uses, their application to all water bodies will result in additional controls on dischargers only where necessary to protect the designated uses.

EPA's interpretation of section 303(c)(2)(B) is supported by the language of the provision, the statutory framework and purpose of section 303, and the legislative history. In adding section 303(c)(2)(B) to the CWA, Congress understood the existing requirements in section 303(c)(1) for States to conduct triennial reviews of their water quality standards and submit the results of those reviews to EPA and in section 303(c)(4)(B) for promulgation. CWA section 303(c) includes numerous deadlines and section 303(c)(4) directs the Administrator to act "promptly" where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act. Congress, by linking section 303(c)(2)(B) to the section 303(c)(1) three-year review period, gave States a last chance to correct this deficiency on their own. The legislative history of the provision demonstrates that chief Senate sponsors, including Senators Stafford, Chaffee and others wanted the provision to eliminate State and EPA delays and force quick action. Thus, to interpret CWA section 303(c)(2)(B) and (c)(4) to require such a cumbersome pollutant specific effort on each stream segment would essentially render section 303(c)(2)(B) meaningless. The provision and its legislative background indicate that the Administrator's determination to invoke section 303(c)(4)(B) authority can be met by the Administrator making a generic finding of inaction by the State without the need to develop pollutant specific data for individual stream segments. Finally, the reference in section 303(c)(2)(B) to section 304(a) criteria suggests that section 304(a) criteria serve as default criteria; that once EPA has issued them, States were to adopt numeric criteria for those pollutants based on the 304(a) criteria, unless they had other scientifically defensible criteria. EPA also notes that this rule follows the approach EPA took nationally in promulgating the NTR for States that failed to comply with CWA section 303(c)(2)(B). 57 FR 60848, December 22, 1992. EPA incorporates the discussion in the NTR preamble as part of this rulemaking record.

This determination is supported by information in the rulemaking record showing the discharge or presence of priority toxic pollutants throughout the State. While this data is not necessarily complete, it constitutes a strong record supporting the need for numeric criteria for priority toxic pollutants with section 304(a) criteria guidance where the State does not have numeric criteria.

Today's final rule would not impose any undue or inappropriate burden on the State of California or its dischargers. It merely puts in place numeric criteria

for toxic pollutants that are already used in other States in implementing CWA programs. Under this rulemaking, the State of California retains the ability to adopt alternative water quality criteria simply by completing its criteria adoption process. Upon EPA approval of those criteria, EPA will initiate action to stay the Federally-promulgated criteria and subsequently withdraw them.

*2. Approach for Developing This Rule*

In summary, EPA developed the criteria promulgated in today's final rule as follows. Where EPA promulgated criteria for California in the NTR, EPA has not acted to amend the criteria in the NTR. Where criteria for California were not included in the NTR, EPA used section 304(a) National criteria guidance documents as a starting point for the criteria promulgated in this rule. EPA then determined whether new information since the development of the national criteria guidance documents warranted any changes. New information came primarily from two sources. For human health criteria, new or revised risk reference doses and cancer potency factors on EPA's Integrated Risk Information System (IRIS) as of October 1996 form the basis for criteria values (see also 63 FR 68354). For aquatic life criteria, updated data sets resulting in revised criteria maximum concentrations (CMCs) and criteria continuous concentrations (CCCs) formed the basis for differences from the national criteria guidance documents. Both of these types of changes are discussed in more detail in the following sections. This revised information was used to develop the water quality criteria promulgated here for the State of California.

**F. Derivation of Criteria**

*1. Section 304(a) Criteria Guidance Process*

Under CWA section 304(a), EPA has developed methodologies and specific criteria guidance to protect aquatic life and human health. These methodologies are intended to provide protection for all surface waters on a national basis. The methodologies have been subject to public review, as have the individual criteria guidance documents. Additionally, the methodologies have been reviewed by EPA's Science Advisory Board (SAB) of external experts.

EPA has included in the record of this rule the aquatic life methodology as described in "Appendix B—Guidelines for Deriving Water Quality Criteria for the Protection of Aquatic Life and Its Uses" to the "Water Quality Criteria Documents; Availability" (45 FR 79341, November 28, 1980) as amended by the "Summary of Revisions to Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" (50 FR 30792, July 29, 1985). (**Note:** Throughout the remainder of this preamble, this reference is described as the 1985 Guidelines. Any page number references are to the actual guidance document, not the notice of availability in the **Federal Register**. A copy of the 1985 Guidelines is available through the National Technical Information Service (PB85–227049), is in the administrative record for this rule, and is abstracted in Appendix A of *Quality Criteria for Water*, 1986.) EPA has also included in the administrative record of this rule the human health methodology as described in "Appendix C—Guidelines and Methodology Used in the Preparation of Health Effects Assessment Chapters of the Consent Decree Water Criteria Documents" (45 FR 79347, November 28, 1980). (Note: Throughout the remainder of this preamble, this reference is described as the Human Health Guidelines or the 1980 Guidelines.) EPA also recommends that the following be reviewed: "Appendix D—Response to Comments on Guidelines for Deriving Water Quality Criteria for the Protection of Aquatic Life and Its Uses," (45 FR 79357, November 28, 1980); "Appendix E—Responses to Public Comments on the Human Health Effects Methodology for Deriving Ambient Water Quality Criteria" (45 FR 79368, November 28, 1980); and "Appendix B—Response to Comments on Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" (50 FR 30793, July 29, 1985). EPA placed into the administrative record for this rulemaking the most current individual criteria guidance for the priority toxic pollutants included in today's rule. (**Note:** All references to appendices are to the associated **Federal Register** publication.)

EPA received many comments related to the issue of what criteria should apply in the CTR if the CWA section 304(a) criteria guidance is undergoing re-evaluation, or if new data are developed that may affect a recommended criterion. As science is always evolving, EPA is faced with the challenge of promulgating criteria that reflect the best science and sound science. EPA addressed this challenge in some detail in its **Federal Register** notice that contained the Agency's current section 304(a) criteria guidance (63 FR 68335, December 10, 1998). There, EPA articulated its policy, reiterated here, that the existing criteria guidance represent the Agency's best assessment until such time as EPA's re-evaluation of a criteria guidance value for a particular chemical is complete. The reason for this is that both EPA's human health criteria guidance and aquatic life criteria guidance are developed taking into account numerous variables. For example, for human health criteria guidance, EPA evaluates many diverse toxicity studies, whose results feed into a reference dose or cancer potency estimate that, along with a number of exposure factors and determination of risk level, results in a guidance criterion. For aquatic life, EPA evaluates many diverse aquatic toxicity studies to determine chronic and acute toxicity taking into account how other factors (such as pH, temperature or hardness) affect toxicity. EPA also, to the extent possible, addresses bioaccumulation or bioconcentration. EPA then uses this toxicity information along with exposure information to determine the guidance criterion. Importantly, EPA subjects such evaluation to peer review and/or public comment.

For these reasons, EPA generally does not make a change to the 304(a) criteria guidance based on a partial picture of the evolving science. This makes sense, because to address one piece of new data without looking at all relevant data is less efficient and results in regulatory impacts that may go back and forth, when in the end, the criteria guidance value does not change that much. Certain new changes, however, do warrant change in criteria guidance, such as a change in a value in EPA's Integrated Risk Information System (IRIS) because it represents the Agency consensus about human health impacts. These changes are sufficiently examined across the Agency such that EPA believes they can be incorporated into EPA's water quality criteria guidance. EPA has followed this approach in the CTR. Included in the administrative record for today's rule is a document entitled "Status of Clean Water Act Section 304(a) Criteria" which further explains EPA's policy on managing change to criteria guidance.

*2. Aquatic Life Criteria*

Aquatic life criteria may be expressed in numeric or narrative form. EPA's 1985 Guidelines describe an objective, internally consistent and appropriate way of deriving chemical-specific, numeric water quality criteria for the protection of the presence of, as well as

the uses of, both fresh and salt water aquatic organisms.

An aquatic life criterion derived using EPA's CWA section 304(a) method "might be thought of as an estimate of the highest concentration of a substance in water which does not present a significant risk to the aquatic organisms in the water and their uses." (45 FR 79341.) EPA's guidelines are designed to derive criteria that protect aquatic communities. EPA's 1985 Guidelines attempt to provide a reasonable and adequate amount of protection with only a small possibility of substantial overprotection or underprotection. As discussed in detail below, there are several individual factors which may make the criteria somewhat overprotective or underprotective. The approach EPA is using is believed to be as well balanced as possible, given the state of the science.

Numerical aquatic life criteria derived using EPA's 1985 Guidelines are expressed as short-term and long-term averages, rather than one number, in order that the criterion more accurately reflect toxicological and practical realities. The combination of a criterion maximum concentration (CMC), a short-term concentration limit, and a criterion continuous concentration (CCC), a four-day average concentration limit, are designed to provide protection of aquatic life and its uses from acute and chronic toxicity to animals and plants, without being as restrictive as a one-number criterion would have to be (1985 Guidelines, pages 4 & 5). The terms CMC and CCC are the formal names for the two (acute and chronic) values of a criterion for a pollutant; however, this document will also use the informal synonyms acute criterion and chronic criterion.

The two-number criteria are intended to identify average pollutant concentrations which will produce water quality generally suited to maintenance of aquatic life and designated uses while restricting the duration of excursions over the average so that total exposures will not cause unacceptable adverse effects. Merely specifying an average value over a time period may be insufficient unless the time period is short, because excursions higher than the average may kill or cause substantial damage in short periods.

A minimum data set of eight specified families is recommended for criteria development (details are given in the 1985 Guidelines, page 22). The eight specific families are intended to be representative of a wide spectrum of aquatic life. For this reason it is not necessary that the specific organisms tested be actually present in the water body. EPA's application of its guidelines to develop the criteria matrix in this rule is judged by the Agency to be appropriate for all waters of the United States (U.S.), and to all ecosystems (1985 Guidelines, page 4) including those waters of the U.S. and ecosystems in the State of California.

Fresh water and salt water (including both estuarine and marine waters) have different chemical compositions, and freshwater and saltwater species often do not inhabit the same water. To provide additional accuracy, criteria are developed for fresh water and for salt water.

For this rule, EPA updated freshwater aquatic life criteria contained in CWA section 304(a) criteria guidance first published in the early 1980's and later modified in the NTR, as amended, for the following ten pollutants: arsenic, cadmium, chromium (VI), copper, dieldrin, endrin, lindane (gamma BHC), nickel, pentachlorophenol, and zinc. The updates used as the basis for this rule are explained in a technical support document entitled, *1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water* (U.S. EPA–820–B–96–001, September 1996), available in the administrative record to this rulemaking; this document presents the derivation of each of the final CMCs and CCCs and the toxicity studies from which the updated freshwater criteria for the ten pollutants were derived.

The polychlorinated biphenyls (PCB) criteria in the criteria matrix for this rule differs from that in the NTR, as amended; for this rule, the criteria are expressed as the sum of seven aroclors, while for the NTR, as amended, the criteria are expressed for each of seven aroclors. The aquatic life criteria for PCBs in the CTR are based on the criteria contained in the 1980 criteria guidance document for PCBs which is included in the administrative record for this rule. This criteria document explains the derivation of aquatic life criteria based on total PCBs. For more information see the Response to Comments document for this rule. Today's chronic aquatic life criteria for PCBs are based on a final residue value (FRV). In EPA's guidelines for deriving aquatic life criteria, an FRV-based criterion is intended to prevent concentrations of pollutants in commercially or recreationally important aquatic species from affecting the marketability of those species or affecting the wildlife that consume aquatic life.

The proposed CTR included an updated freshwater and saltwater aquatic life criteria for mercury. In today's final rule, EPA has reserved the mercury criteria for freshwater and saltwater aquatic life, but is promulgating human health criteria for mercury for all surface waters in California. In some instances, the human health mercury criteria included in today's final rule may not protect some aquatic species or threatened or endangered species. In such instances, more stringent mercury limits may be determined and implemented through use of the State's narrative criterion. The reasons for reserving the mercury aquatic life numbers are explained in further detail in Section L, Endangered Species Act.

a. Freshwater Acute Selenium Criterion

EPA proposed a different freshwater acute aquatic life criterion for selenium for this rule than was promulgated in the NTR, as amended. EPA's proposed action was consistent with EPA's proposed selenium criterion maximum concentration for the Water Quality Guidance for the Great Lakes System (61 FR 58444, November 14, 1996). This proposal took into account data showing that selenium's two most prevalent oxidation states, selenite and selenate, present differing potentials for aquatic toxicity, as well as new data which indicated that various forms of selenium are additive. Additivity increases the toxicity of mixtures of different forms of the pollutant. The proposed approach produces a different selenium acute criterion concentration, or CMC, depending upon the relative proportions of selenite, selenate, and other forms of selenium that are present.

The preamble to the August 5, 1997, proposed rule provided a lengthy discussion of this proposed criterion for the State of California. See 62 FR 42160–42208. EPA incorporates that discussion here as part of this rulemaking record. In 1996, a similar discussion was included in the proposed rule for the Great Lakes System. Commenters questioned several aspects of the Great Lakes proposal. EPA is continuing to respond to those comments, and to follow up with additional literature review and toxicity testing. In addition, the U.S. FWS and U.S. NMFS (collectively, the Services) are concerned that EPA's proposed criterion may not be sufficiently protective of certain threatened and endangered species in California. Because the Services believe there is a lack of data to show for certain that the proposed criterion would not affect threatened and endangered species, the Services prefer that EPA further investigate the protectiveness of the

criterion before finalizing the proposed criterion. Therefore, EPA is not promulgating a final acute freshwater selenium criterion at this time.

b. Dissolved Metals Criteria

In December of 1992, in the NTR, EPA promulgated water quality criteria for several States that had failed to meet the requirements of CWA section 303(c)(2)(B). Included among the water quality criteria promulgated were numeric criteria for the protection of aquatic life for 11 metals: arsenic, cadmium, chromium (III), chromium (VI), copper, lead, mercury, nickel, selenium, silver and zinc. Criteria for two metals applied to the State of California: chromium III and selenium.

The Agency received extensive public comment during the development of the NTR regarding the most appropriate approach for expressing the aquatic life metals criteria. The principal issue was the correlation between metals that are measured and metals that are bioavailable and toxic to aquatic life. It is now the Agency's policy that the use of dissolved metal to set and measure compliance with aquatic life water quality standards is the recommended approach, because dissolved metal more closely approximates the bioavailable fraction of the metal in the water column than does total recoverable metal.

Since EPA's previous aquatic life criteria guidance had been expressed as total recoverable metal, to express the criteria as dissolved, conversion factors were developed to account for the possible presence of particulate metal in the laboratory toxicity tests used to develop the total recoverable criteria. EPA included a set of recommended freshwater conversion factors with its Metals Policy (see Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria, Martha G. Prothro, Acting Assistant Administrator for Water, October 1, 1993). Based on additional laboratory evaluations that simulated the original toxicity tests, EPA refined the procedures used to develop freshwater conversion factors for aquatic life criteria. These new conversion factors were made available for public review and comment in the amendments to the NTR on May 4, 1995, at 60 FR 22229. They are also contained in today's rule at 40 CFR 131.38(b)(2).

The preamble to the August 5, 1997, proposed rule provided a more detailed discussion of EPA's metals policy concerning the aquatic life water quality criteria for the State of California. See 62 FR 42160–42208. EPA incorporates that discussion here as part of this rulemaking record. Many commenters strongly supported the Agency's policy on dissolved metals aquatic life criteria. A few commenters expressed an opinion that the metals policy may not provide criteria that are adequately protective of aquatic or other species. Responses to those comments are contained in a memo to the CTR record entitled "Discussion of the Use of Dissolved Metals in the CTR" (February 1, 2000, Jeanette Wiltse) and EPA's response to comments document which are both contained in the administrative record for the final rule.

*Calculation of Aquatic Life Dissolved Metals Criteria:* Metals criteria values for aquatic life in today's rule in the matrix at 131.38(b)(1) are shown as dissolved metal. These criteria have been calculated in one of two ways. For freshwater metals criteria that are hardness-dependent, the metals criteria value is calculated separately for each hardness using the table at 40 CFR 131.38(b)(2). (The hardness-dependent freshwater values presented in the matrix at 40 CFR 131.38(b)(1) have been calculated using a hardness of 100 mg/l as CaCO3 for illustrative purposes only.) The hardness-dependent criteria are then multiplied by the appropriate conversion factors in the table at 40 CFR 131.38(b)(2). Saltwater and freshwater metals criteria that are not hardness-dependent are calculated by taking the total recoverable criteria values (from EPA's national section 304(a) criteria guidance, as updated and described in section F.2.a.) before rounding, and multiplying them by the appropriate conversion factors. The final dissolved metals criteria values, as they appear in the matrix at 40 CFR 131.38(b)(1), are rounded to two significant figures.

*Translators for Dissolved to Total Recoverable Metals Limits:* EPA's National Pollutant Discharge Elimination System (NPDES) regulations require that limits for metals in permits be stated as total recoverable in most cases (see 40 CFR 122.45(c)) except when an effluent guideline specifies the limitation in another form of the metal, the approved analytical methods measure only dissolved metal, or the permit writer expresses a metal's limit in another form (*e.g.*, dissolved, specific valence, or total) when required to carry out provisions of the CWA. This is because the chemical conditions in ambient waters frequently differ substantially from those in the effluent and these differences result in changes in the partitioning between dissolved and absorbed forms of the metal. This means that if effluent limits were expressed in the dissolved form, additional particulate metal could dissolve in the receiving water causing the criteria to be exceeded. Expressing criteria as dissolved metal requires translation between different metal forms in the calculation of the permit limit so that a total recoverable permit limit can be established that will achieve water quality standards. Thus, it is important that permitting authorities and other authorities have the ability to translate between dissolved metal in ambient waters and total recoverable metal in effluent.

EPA has completed guidance on the use of translators to convert from dissolved metals criteria to total recoverable permit limits. The document, *The Metals Translator: Guidance for Calculating a Total Recoverable Permit Limit From a Dissolved Criterion* (EPA 823–B–96–007, June 1996), is included in the administrative record for today's rule. This technical guidance examines how to develop a metals translator which is defined as the fraction of total recoverable metal in the downstream water that is dissolved, *i.e.*, the dissolved metal concentration divided by the total recoverable metal concentration. A translator may take one of three forms: (1) It may be assumed to be equivalent to the criteria guidance conversion factors; (2) it may be developed directly as the ratio of dissolved to total recoverable metal; and (3) it may be developed through the use of a partition coefficient that is functionally related to the number of metal binding sites on the adsorbent in the water column (*e.g.*, concentrations of total suspended solids or TSS). This guidance document discusses these three forms of translators, as well as field study designs, data generation and analysis, and site-specific study plans to generate site-specific translators.

California Regional Water Quality Control Boards may use any of these methods in developing water quality-based permit limits to meet water quality standards based on dissolved metals criteria. EPA encourages the State to adopt a statewide policy on the use of translators so that the most appropriate method or methods are used consistently within California.

c. Application of Metals Criteria

In selecting an approach for implementing the metals criteria, the principal issue is the correlation between metals that are measured and metals that are biologically available and toxic. In order to assure that the metals criteria are appropriate for the chemical conditions under which they are applied, EPA is providing for the

adjustment of the criteria through application of the "water-effect ratio" procedure. EPA notes that performing the testing to use a site-specific water-effect ratio is optional on the part of the State.

In the NTR, as amended, EPA identified the water-effect ratio (WER) procedure as a method for optional site-specific criteria development for certain metals. The WER approach compares bioavailability and toxicity of a specific pollutant in receiving waters and in laboratory waters. A WER is an appropriate measure of the toxicity of a material obtained in a site water divided by the same measure of the toxicity of the same material obtained simultaneously in a laboratory dilution water.

On February 22, 1994, EPA issued *Interim Guidance on the Determination and Use of the Water-Effect Ratios for Metals* (EPA 823-B–94–001) now incorporated into the updated Second Edition of the Water Quality Standards Handbook, Appendix L. A copy of the Handbook is contained in the administrative record for today's rule. In accordance with the WER guidance and where application of the WER is deemed appropriate, EPA strongly encourages the application of the WER on a watershed or water body basis as part of a water quality criteria in California as opposed to the application on a discharger-by-discharger basis through individual NPDES permits. This approach is technically sound and an efficient use of resources. However, discharger specific WERs for individual NPDES permit limits are possible and potentially efficient where the NPDES discharger is the only point source discharger to a specific water body.

The rule requires a default WER value of 1.0 which will be assumed, if no site-specific WER is determined. To use a WER other than the default of 1.0, the rule requires that the WER must be determined as set forth in EPA's WER guidance or by another scientifically defensible method that has been adopted by the State as part of its water quality standards program and approved by EPA.

The WER is a more comprehensive mechanism for addressing bioavailability issues than simply expressing the criteria in terms of dissolved metal. Consequently, expressing the criteria in terms of dissolved metal, as done in today's rule for California, does not completely eliminate the utility of the WER. This is particularly true for copper, a metal that forms reduced-toxicity complexes with dissolved organic matter.

The *Interim Guidance on Determination and Use of Water-Effect Ratios for Metals* explains the relationship between WERs for dissolved criteria and WERs for total recoverable criteria. Dissolved measurements are to be used in the site-specific toxicity testing underlying the WERs for dissolved criteria. Because WERs for dissolved criteria generally are little affected by elevated particulate concentrations, EPA expects those WERs to be somewhat less than WERs for total recoverable criteria in such situations. Nevertheless, after the site-specific ratio of dissolved to total metal has been taken into account, EPA expects a permit limit derived using a WER for a dissolved criterion to be similar to the permit limit that would be derived from the WER for the corresponding total recoverable criterion.

d. Saltwater Copper Criteria

The saltwater copper criteria for aquatic life in today's rule are 4.8 µg/l (CMC) and 3.1 µg/l (CCC) in the dissolved form. These criteria reflect new data including data collected from studies for the New York/New Jersey Harbor and the San Francisco Bay indicating a need to revise the former copper 304(a) criteria guidance document to reflect a change in the saltwater CMC and CCC aquatic life values. These data also reflect a comprehensive literature search resulting in added toxicity test data for seven new species to the database for the saltwater copper criteria. EPA believes these new data have national implications and the national criteria guidance now contains a CMC of 4.8 µg/l dissolved and a CCC of 3.1 µg/l dissolved. In the amendments to the NTR, EPA noticed the availability of data to support these changes to the NTR, and solicited comments. The data can be found in the draft document entitled, *Ambient Water Quality Criteria—Copper, Addendum 1995*. This document is available from the Office of Water Resource Center and is available for review in the administrative record for today's rule.

e. Chronic Averaging Period

In establishing water quality criteria, EPA generally recommends an "averaging period" which reflects the duration of exposure required to elicit effects in individual organisms (TSD, Appendix D–2). The criteria continuous concentration, or CCC, is intended to be the highest concentration that could be maintained indefinitely in a water body without causing an unacceptable effect on the aquatic community or its uses (TSD, Appendix D–1). As aquatic organisms do not generally experience steady exposure, but rather fluctuating exposures to pollutants, and because aquatic organisms can generally tolerate higher concentrations of pollutants over a shorter periods of time, EPA expects that the concentration of a pollutant can exceed the CCC without causing an unacceptable effect if (a) the magnitude and duration of exceedences are appropriately limited and (b) there are compensating periods of time during which the concentration is below the CCC. This is done by specifying a duration of an "averaging period" over which the average concentration should not exceed the CCC more often than specified by the frequency (TSD, Appendix D–1).

EPA is promulgating a 4-day averaging period for chronic criteria, which means that measured or predicted ambient pollutant concentrations should be averaged over a 4-day period to determine attainment of chronic criteria. The State may apply to EPA for approval of an alternative averaging period. To do so, the State must submit to EPA the basis for such alternative averaging period.

The most important consideration for setting an appropriate averaging period is the length of time that sensitive organisms can tolerate exposure to a pollutant at levels exceeding a criterion without showing adverse effects on survival, growth, or reproduction. EPA believes that the chronic averaging period must be shorter than the duration of the chronic tests on which the CCC is based, since, in some cases, effects are elicited before exposure of the entire duration. Most of the toxicity tests used to establish the chronic criteria are conducted using steady exposure to toxicants for a least 28 days (TSD, page 35). Some chronic tests, however, are much shorter than this (TSD, Appendix D–2). EPA selected the 4-day averaging period based on the shortest duration in which chronic test effects are sometimes observed for certain species and toxicants. In addition, EPA believes that the results of some chronic tests are due to an acute effect on a sensitive life stage that occurs some time during the test, rather than being caused by long-term stress or long-term accumulation of the test material in the organisms.

Additional discussion of the rationale for the 4-day averaging period is contained in Appendix D of the TSD. Balancing all of the above factors and data, EPA believes that the 4-day averaging period falls within the scientifically reasonable range of values for choice of the averaging period, and is an appropriate length of time of

pollutant exposure to ensure protection of sensitive organisms.

EPA established a 4-day averaging period in the NTR. In settlement of litigation on the NTR, EPA stated that it was "in the midst of conducting, sponsoring, or planning research related to the basis for and application of" water quality criteria and mentioned the issue of averaging period. See Partial Settlement Agreement in *American Forest and Paper Ass'n, Inc. et al.* v. *U.S. EPA* (Consolidated Case No. 93–0694 (RMU), D.D.C.). EPA is re-evaluating issues raised about averaging periods and will, if appropriate, revise the 1985 Guidelines.

EPA received public comment relevant to the averaging period during the comment period for the 1995 Amendments to the NTR (60 FR 22228, May 4, 1995), although these public comments did not address the chronic averaging period separately from the allowable excursion frequency and the design flow. Comments recommended that EPA use the 30Q5 design flow for chronic criteria.

While EPA is undertaking analysis of the chronic design conditions as part of the revisions to the 1985 Guidelines, EPA has not yet completed this work. Until this work is complete, for the reasons set forth in the TSD, EPA continues to believe that the 4-day chronic averaging period represents a reasonable, defensible value for this parameter.

EPA added language to the final rule which will enable the State to adopt alternative averaging periods and frequencies and associated design flows where appropriate. The State may apply to EPA for approval of alternative averaging periods and frequencies and related design flows; the State must submit the bases for any changes. Before approving any change, EPA will publish for public comment, a notice proposing the changes.

f. Hardness

Freshwater aquatic life criteria for certain metals are expressed as a function of hardness because hardness and/or water quality characteristics that are usually correlated with hardness can reduce or increase the toxicities of some metals. Hardness is used as a surrogate for a number of water quality characteristics which affect the toxicity of metals in a variety of ways. Increasing hardness has the effect of decreasing the toxicity of metals. Water quality criteria to protect aquatic life may be calculated at different concentrations of hardnesses measured in milligrams per liter (mg/l) as calcium carbonate ($CaCO_3$).

Section 131.38(b)(2) of the final rule presents the hardness-dependent equations for freshwater metals criteria. For example, using the equation for zinc, the total recoverable CMCs at a hardness of 10, 50, 100 or 200 mg/l as $CaCO_3$ are 17, 67, 120 and 220 micrograms per liter (µg/l), respectively. Thus, the specific value in the table in the regulatory text is for illustrative purposes only. Most of the data used to develop these hardness equations for deriving aquatic life criteria for metals were in the range of 25 mg/l to 400 mg/l as $CaCO_3$, and the formulas are therefore most accurate in this range. The majority of surface waters nationwide and in California have a hardness of less than 400 mg/l as $CaCO_3$.

In the past, EPA generally recommended that 25 mg/l as $CaCO_3$ be used as a default hardness value in deriving freshwater aquatic life criteria for metals when the ambient (or actual) hardness value is below 25 mg/l as $CaCO_3$. However, use of the approach results in criteria that may not be fully protective. Therefore, for waters with a hardness of less than 25 mg/l as $CaCO_3$, criteria should be calculated using the actual ambient hardness of the surface water.

In the past, EPA generally recommended that if the hardness was over 400 mg/l, two options were available: (1) Calculate the criterion using a default WER of 1.0 and using a hardness of 400 mg/l in the hardness equation; or (2) calculate the criterion using a WER and the actual ambient hardness of the surface water in the equation. Use of the second option is expected to result in the level of protection intended in the 1985 Guidelines whereas use of the first option is thought to result in an even more protective aquatic life criterion. At high hardness there is an indication that hardness and related inorganic water quality characteristics do not have as much of an effect on toxicity of metals as they do at lower hardnesses. Related water quality characteristics do not correlate as well at higher hardnesses as they do at lower hardnesses. Therefore, if hardness is over 400 mg/l as $CaCO_3$, a hardness of 400 mg/l as $CaCO_3$ should be used with a default WER of 1.0; alternatively, the WER and actual hardness of the surface water may be used.

EPA requested comments in the NTR amendments on the use of actual ambient hardness for calculating criteria when the hardness is below 25 mg/l as $CaCO_3$, and when hardness is greater than 400 mg/l as $CaCO_3$. Most of the comments received were in favor of using the actual hardness with the use of the water-effect ratio (1.0 unless otherwise specified by the permitting authority) when the hardness is greater than 400 mg/l as $CaCO_3$. A few commenters did not want the water-effect ratio to be mandatory in calculating hardness, and other commenters had concerns about being responsible for deriving an appropriate water-effect ratio. Overall, the commenters were in favor of using the actual hardness when calculating hardness-dependent freshwater metals criteria for hardness between 0–400 mg/l as $CaCO_3$. EPA took those comments into account in promulgating today's rule.

A hardness equation is most accurate when the relationships between hardness and the other important inorganic constituents, notably alkalinity and pH, are nearly identical in all of the dilution waters used in the toxicity tests and in the surface waters to which the equation is to be applied. If an effluent raises hardness but not alkalinity and/or pH, using the hardness of the downstream water might provide a lower level of protection than intended by the 1985 guidelines. If it appears that an effluent causes hardness to be inconsistent with alkalinity and/or pH, the intended level of protection will usually be maintained or exceeded if either (1) data are available to demonstrate that alkalinity and/or pH do not affect the toxicity of the metal, or (2) the hardness used in the hardness equation is the hardness of upstream water that does not contain the effluent. The level of protection intended by the 1985 guidelines can also be provided by using the WER procedure.

In some cases, capping hardness at 400 mg/l might result in a level of protection that is higher than that intended by the 1985 guidelines, but any such increase in the level of protection can be overcome by use of the WER procedure. For metals whose criteria are expressed as hardness equations, use of the WER procedure will generally be intended to account for effects of such water quality characteristics as total organic carbon on the toxicities of metals. The WER procedure is equally useful for accounting for any deviation from a hardness equation in a site water.

*3. Human Health Criteria*

EPA's CWA section 304(a) human health criteria guidance provides criteria recommendations to minimize adverse human effects due to substances in ambient water. EPA's CWA section 304(a) criteria guidance for human health are based on two types of

toxicological endpoints: (1) carcinogenicity and (2) systemic toxicity (i.e., all other adverse effects other than cancer). Thus, there are two procedures for assessing these health effects: one for carcinogens and one for non-carcinogens.

If there are no data on how a chemical agent causes cancer, EPA's existing human health guidelines assume that carcinogenicity is a "non-threshold phenomenon," that is, there are no "safe" or "no-effect levels" because even extremely small doses are assumed to cause a finite increase in the incidence of the effect (i.e., cancer). Therefore, EPA's water quality criteria guidance for carcinogens are presented as pollutant concentrations corresponding to increases in the risk of developing cancer. See Human Health Guidelines at 45 FR 79347.

With existing criteria, pollutants that do not manifest any apparent carcinogenic effect in animal studies (i.e., systemic toxicants), EPA assumes that the pollutant has a threshold below which no effect will be observed. This assumption is based on the premise that a physiological mechanism exists within living organisms to avoid or overcome the adverse effect of the pollutant below the threshold concentration.

**Note:** Recent changes in the Agency's cancer guidelines addressing these assumptions are described in the Draft Water Quality Criteria Methodology: Human Health, 63 FR 43756, August 14, 1998.

The human health risks of a substance cannot be determined with any degree of confidence unless dose-response relationships are quantified. Therefore, a dose-response assessment is required before a criterion can be calculated. The dose-response assessment determines the quantitative relationships between the amount of exposure to a substance and the onset of toxic injury or disease. Data for determining dose-response relationships are typically derived from animal studies, or less frequently, from epidemiological studies in exposed populations.

The dose-response information needed for carcinogens is an estimate of the carcinogenic potency of the compound. Carcinogenic potency is defined here as a general term for a chemical's human cancer-causing potential. This term is often used loosely to refer to the more specific carcinogenic or cancer slope factor which is defined as an estimate of carcinogenic potency derived from animal studies or epidemiological data of human exposure. It is based on extrapolation from test exposures of high doses over relatively short periods of time to more realistic low doses over a lifetime exposure period by use of linear extrapolation models. The cancer slope factor, q1*, is EPA's estimate of carcinogenic potency and is intended to be a conservative upper bound estimate (e.g. 95% upper bound confidence limit).

For non-carcinogens, EPA uses the reference dose (RfD) as the dose-response parameter in calculating the criteria. For non-carcinogens, oral RfD assessments (hereinafter simply "RfDs") are developed based on pollutant concentrations that cause threshold effects. The RfD is an estimate (with uncertainty spanning perhaps an order of magnitude) of a daily exposure to the human population (including sensitive subgroups) that is likely to be without appreciable risk of deleterious effects during a lifetime. See Human Health Guidelines. The RfD was formerly referred to as an "Acceptable Daily Intake" or ADI. The RfD is useful as a reference point for gauging the potential effect of other doses. Doses that are less than the RfD are not likely to be associated with any health risks, and are therefore less likely to be of regulatory concern. As the frequency of exposures exceeding the RfD increases and as the size of the excess increases, the probability increases that adverse effect may be observed in a human population. Nonetheless, a clear conclusion cannot be categorically drawn that all doses below the RfD are "acceptable" and that all doses in excess of the RfD are "unacceptable." In extrapolating non-carcinogen animal test data to humans to derive an RfD, EPA divides either a No Observed-Adverse Effect Level (NOAEL), Lowest Observed Adverse Effect Level (LOAEL), or other benchmark dose observed in animal studies by an "uncertainty factor" which is based on professional judgment of toxicologists and typically ranges from 10 to 10,000.

For CWA section 304(a) human health criteria development, EPA typically considers only exposures to a pollutant that occur through the ingestion of water and contaminated fish and shellfish. Thus, the criteria are based on an assessment of risks related to the surface water exposure route only where designated uses are drinking water and fish and shellfish consumption.

The assumed exposure pathways in calculating the criteria are the consumption of 2 liters per day of water at the criteria concentration and the consumption of 6.5 grams per day of fish and shellfish contaminated at a level equal to the criteria concentration but multiplied by a "bioconcentration factor." The use of fish and shellfish consumption as an exposure factor requires the quantification of pollutant residues in the edible portions of the ingested species.

Bioconcentration factors (BCFs) are used to relate pollutant residues in aquatic organisms to the pollutant concentration in ambient waters. BCFs are quantified by various procedures depending on the lipid solubility of the pollutant. For lipid soluble pollutants, the average BCF is calculated from the weighted average percent lipids in the edible portions of fish and shellfish, which is about 3%; or it is calculated from theoretical considerations using the octanol/water partition coefficient. For non-lipid soluble compounds, the BCF is determined empirically. The assumed water consumption is taken from the National Academy of Sciences publication *Drinking Water and Health* (1977). (Referenced in the Human Health Guidelines.) This value is appropriate as it includes a margin of safety so that the general population is protected. See also EPA's discussion of the 2.0 liters/day assumption at 61 FR 65183 (Dec. 11, 1996). The 6.5 grams per day contaminated fish and shellfish consumption value was equivalent to the average per-capita consumption rate of all (contaminated and non-contaminated) freshwater and estuarine fish and shellfish for the U.S. population. See Human Health Guidelines.

EPA assumes in calculating water quality criteria that the exposed individual is an average adult with body weight of 70 kilograms. EPA assumes 6.5 grams per day of contaminated fish and shellfish consumption and 2.0 liters per day of contaminated drinking water consumption for a 70 kilogram person in calculating the criteria. Regarding issues concerning criteria development and differences in dose per kilogram of body weight, RfDs are always derived based on the most sensitive health effect endpoint. Therefore, when that basis is due to a chronic or lifetime health effect, the exposure parameters assume the exposed individual to be the average adult, as indicated above.

In the absence of this final rule, there may be particular risks to children. EPA believes that children are protected by the human health criteria contained in this final rule. Children are protected against other less sensitive adverse health endpoints due to the conservative way that the RfDs are derived. An RfD is a public health protective endpoint. It is an amount of a chemical that can be consumed on a daily basis for a lifetime without expecting an adverse effect. RfDs are based on sensitive health endpoints and

are calculated to be protective for sensitive human sub-populations including children. If the basis of the RfD was due to an acute or shorter-term developmental effect, EPA uses exposure parameters other than those indicated above. Specifically, EPA uses parameters most representative of the population of concern (*e.g.*, the health criteria for nitrates based on infant exposure parameters). For carcinogens, the risk assessments are upper bound one in a million ($10^{-6}$) lifetime risk numbers. The risk to children is not likely to exceed these upper bounds estimates and may be zero at low doses. The exposure assumptions for drinking water and fish protect children because they are conservative for infants and children. EPA assumes 2 liters of untreated surface water and 6.5 grams of freshwater and estuarine fish are consumed each day. EPA believes the adult fish consumption assumption is conservative for children because children generally consume marine fish not freshwater and estuarine.

EPA has a process to develop a scientific consensus on oral reference dose assessments and carcinogenicity assessments (hereinafter simply cancer slope factors or slope factors or q1*s). Through this process, EPA develops a consensus of Agency opinion which is then used throughout EPA in risk management decision-making. EPA maintains an electronic data base which contains the official Agency consensus for oral RfD assessments and carcinogenicity assessments which is known as the Integrated Risk Information System (IRIS). It is available for use by the public on the National Institutes of Health's National Library of Medicine's TOXNET system, and through diskettes from the National Technical Information Service (NTIS). (NTIS access number is PB 90–591330.)

Section 304(a)(1) of the CWA requires EPA to periodically revise its criteria guidance to reflect the latest scientific knowledge: "(A) On the kind and extent of all identifiable effects on health and welfare * * *; (B) on the concentration and dispersal of pollutants, or their byproducts, through biological, physical, and chemical processes; and (C) on the effects of pollutants on the biological community diversity, productivity, and stability, including information on the factors affecting eutrophication rates of organic and inorganic sedimentation for varying types of receiving waters." In developing up-to-date water quality criteria for the protection of human health, EPA uses the most recent IRIS values (RfDs and q1*s) as the toxicological basis in the criterion calculation. IRIS reflects EPA's most current consensus on the toxicological assessment for a chemical. In developing the criteria in today's rule, the IRIS values as of October 1996 were used together with currently accepted exposure parameters for bioconcentration, fish and shellfish and water consumption, and body weight. The IRIS cover sheet for each pollutant criteria included in today's rule is contained in the administrative record.

For the human health criteria included in today's rule, EPA used the Human Health Guidelines on which criteria recommendations from the appropriate CWA section 304(a) criteria guidance document were based. (These documents are also placed in the administrative record for today's rule.) Where EPA has changed any parameters in IRIS used in criteria derivation since issuance of the criteria guidance document, EPA recalculated the criteria recommendation with the latest IRIS information. Thus, there are differences between the original 1980 criteria guidance document recommendations, and those in this rule, but this rule presents EPA's most current CWA section 304(a) criteria recommendation. The basis (q1* or RfD) and BCF for each pollutant criterion in today's rule is contained in the rule's Administrative Record Matrix which is included in the administrative record for the rule. In addition, all recalculated human health numbers are denoted by an "a" in the criteria matrix in 40 CFR 131.38(b)(1) of the rule. The pollutants for which a revised human health criterion has been calculated since the December 1992 NTR include:

mercury
dichlorobromomethane
1,2-dichloropropane
1,2-trans-dichloroethylene
2,4-dimethylphenol
acenaphthene
benzo(a)anthracene
benzo(a)pyrene
benzo(b)flouranthene
benzo(k)flouranthene
2-chloronaphthalene
chrysene
dibenzo(a,h)anthracene
indeno(1,2,3-cd)pyrene
N-nitrosodi-n-propylamine
alpha-endosulfan
beta-endosulfan
endosulfan sulfate
2-chlorophenol
butylbenzyl phthalate
polychlorinated biphenyls.

In November of 1991, the proposed NTR presented criteria for several pollutants in parentheses. These were pollutants for which, in 1980, insufficient information existed to develop human health water quality criteria, but for which, in 1991, sufficient information existed. Since these criteria did not undergo the public review and comment in a manner similar to the other water quality criteria presented in the NTR (for which sufficient information was available in 1980 to develop a criterion, as presented in the 1980 criteria guidance documents), they were not proposed for adoption into the water quality criteria, but were presented to serve as notice for inclusion in future State triennial reviews. Today's rule promulgates criteria for these nine pollutants:

copper
1, 2-dichloropropane
1,2-trans-dichloroethylene
2,4-dimethylphenol
acenaphthene
2-chloronaphthalene
N-nitrosodi-n-propylamine
2-chlorophenol
butylbenzene phthalate

All the criteria are based on IRIS values—either an RfD or q1*—which were listed on IRIS as of November 1991, the date of the proposed NTR. These values have not changed since the final NTR was published in December of 1992. The rule's Administrative Record Matrix in the administrative record of today's rule contains the specific RfDs, q1*s, and BCFs used in calculating these criteria.

*Proposed Changes to the Human Health Criteria Methodology:* EPA recently proposed revisions to the 1980 ambient water quality criteria derivation guidelines (the Human Health Guidelines). See *Draft Water Quality Criteria Methodology: Human Health*, 63 FR 43756, August 14, 1998; see also *Draft Water Quality Criteria Methodology: Human Health*, U.S. EPA Office of Water, EPA 822–Z–98–001. The EPA revisions consist of five documents: *Draft Water Quality Criteria Methodology: Human Health*, EPA 822–Z–98–001; *Ambient Water Quality Criteria Derivation Methodology Human Health, Technical Support Document, Final Draft*, EPA–822–B–98–005; and three Ambient Water Quality Criteria for the Protection of Human Health, Drafts—one each for Acrylonitrile, 1,3-Dichloropropene (1,3-DCP), and Hexachlorobutadiene (HCBD), respectively, EPA–822–R–98–006, –005, and –004. All five documents are contained in the administrative record for today's rule.

The proposed methodology revisions reflect significant scientific advances that have occurred during the past nineteen years in such key areas as cancer and noncancer risk assessments, exposure assessments and bioaccumulation. For specific details on

these proposed changes and others, please refer to the **Federal Register** notice or the EPA document.

It should be noted that some of the proposed changes may result in significant numeric changes in the ambient water quality criteria. However, EPA will continue to rely on existing criteria as the basis for regulatory and non-regulatory decisions, until EPA revises and reissues a 304(a) criteria guidance using the revised final human health criteria methodology. The existing criteria are still viewed as scientifically acceptable by EPA. The intention of the proposed methodology revisions is to present the latest scientific advancements in the areas of risk and exposure assessment in order to incrementally improve the already sound toxicological and exposure bases for these criteria. As EPA's current human health criteria are the product of many years worth of development and peer review, it is reasonable to assume that revisiting all existing criteria, and incorporating peer review into such review, could require comparable amounts of time and resources. Given these circumstances, EPA proposed a process for revisiting these criteria as part of the overall revisions to the methodology for deriving human health criteria. This process is discussed in the Implementation Section of the Notice of *Draft Revisions to the Methodology for Deriving Ambient Water Quality Criteria for the Protection of Human Health* (see 63 FR 43771–43776, August 14, 1998).

The State of California in its Ocean Plan, adopted in 1990 and approved by EPA in 1991, established numeric water quality criteria using an average fish and shellfish consumption rate of 23 grams per day. This value is based on an earlier California Department of Health Services estimate. The State is currently in the process of readopting its water quality control plans for inland surface waters, enclosed bays, and estuaries. The State intends to consider information on fish and shellfish consumption rates evaluated and summarized in a report prepared by the State's Pesticide and Environmental Toxicology Section of the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency. The report, entitled, *Chemicals in Fish Report No. 1: Consumption of Fish and Shellfish in California and the United States,* was published in final draft form in July of 1997, and released to the public on September 16, 1997. The report is currently undergoing final evaluation, and is expected to published in final form in the near future. This final draft report is contained in the administrative record for today's rule. Although EPA has not used this fish consumption value here because this information has not yet been finalized, the State may use any appropriate higher state-specific fish and shellfish consumption rates in its readoption of criteria in its statewide plans.

a. 2,3,7,8-TCDD (Dioxin) Criteria

In today's action, EPA is promulgating human health water quality criteria for 2,3,7,8-tetrachlorodibenzo-p-dioxin ("dioxin") at the same levels as promulgated in the NTR, as amended. These criteria are derived from EPA's 1984 CWA section 304(a) criteria guidance document for dioxin.

For National Pollutant Discharge Elimination System (NPDES) purposes, EPA supports the regulation of other dioxin and dioxin-like compounds through the use of toxicity equivalencies or TEQs in NPDES permits (see discussion below). For California waters, if the discharge of dioxin or dioxin-like compounds has reasonable potential to cause or contribute to a violation of a narrative criterion, numeric water quality-based effluent limits for dioxin or dioxin-like compounds should be included in NPDES permits and should be expressed using a TEQ scheme.

EPA has been evaluating the health threat posed by dioxin nearly continuously for over two decades. Following issuance of the 1984 criteria guidance document, evaluating the health effects of dioxin and recommending human health criteria for dioxin, EPA prepared draft reassessments reviewing new scientific information relating to dioxin in 1985 and 1988. EPA's Science Advisory Board (SAB), reviewing the 1988 draft reassessment, concluded that while the risk assessment approach used in 1984 criteria guidance document had inadequacies, a better alternative was unavailable (see SAB's *Dioxin Panel Review of Documents from the Office or Research and Development relating to the Risk and Exposure Assessment of 2,3,7,8-TCDD* (EPA–SAB–EC–90–003, November 28, 1989) included in the administrative record for today's rule). Between 1988 and 1990, EPA issued numerous reports and guidances relating to the control of dioxin discharges from pulp and paper mills. See e.g., EPA Memorandum, "Strategy for the Regulation of Discharges of PHDDs & PHDFs from Pulp and Paper Mills to the Waters of the United States," from Assistant Administrator for Water to Regional Water Management Division Directors and NPDES State Directors, dated May 21, 1990 (AR NL–16); EPA Memorandum, "State Policies, Water Quality Standards, and Permit Limitations Related to 2,3,7,8-TCDD in Surface Water," from the Assistant Administrator for Water to Regional Water Management Division Directors, dated January 5, 1990 (AR VA–66). These documents are available in the administrative record for today's rule.

In 1991, EPA's Administrator announced another scientific reassessment of the risks of exposure to dioxin (see Memorandum from Administrator William K. Reilly to Erich W. Bretthauer, Assistant Administrator for Research and Development and E. Donald Elliott, General Counsel, entitled *Dioxin: Follow-Up to Briefing on Scientific Developments,* April 8, 1991, included in the administrative record for today's rule). At that time, the Administrator made clear that while the reassessment was underway, EPA would continue to regulate dioxin in accordance with existing Agency policy. Thereafter, the Agency proceeded to regulate dioxin in a number of environmental programs, including standards under the Safe Drinking Water Act and the CWA.

The Administrator's promulgation of the dioxin human health criteria in the 1992 NTR affirmed the Agency's decision that the ongoing reassessment should not defer or delay regulating this potent contaminant, and further, that the risk assessment in the 1984 criteria guidance document for dioxin continued to be scientifically defensible. Until the reassessment process was completed, the Agency could not "say with any certainty what the degree or directions of any changes in the risk estimates might be" (57 FR 60863–64).

The basis for the dioxin criteria as well as the decision to include the dioxin criteria in the 1992 NTR pending the results of the reassessment were challenged. See *American Forest and Paper Ass'n, Inc. et al.* v. *U.S. EPA* (Consolidated Case No. 93–0694 (RMU) D.D.C.). By order dated September 4, 1996, the Court upheld EPA's decision. EPA's brief and the Court's decision are included in the administrative record for today's rule.

EPA has undertaken significant effort toward completion of the dioxin reassessment. On September 13, 1994, EPA released for public review and comment a draft reassessment of toxicity and exposure to dioxin. See *Health Assessment Document for 2,3,7,8-Tetrachlorobenzo-p-Dioxin (TCDD) and Related Compounds,* U.S. EPA, 1994. EPA is currently addressing comments made by the public and the SAB and anticipates that the final

revised reassessment will go to the SAB in the near future. With today's rule, the Agency reaffirms that, notwithstanding the on-going risk reassessment, EPA intends to continue to regulate dioxin to avoid further harm to public health, and the basis for the dioxin criteria, both in terms of the cancer potency and the exposure estimates, remains scientifically defensible. The fact that EPA is reassessing the risk of dioxin, virtually a continuous process to evaluate new scientific information, does not mean that the current risk assessment is "wrong". It continues to be EPA's position that until the risk assessment for dioxin is revised, EPA supports and will continue to use the existing risk assessment for the regulation of dioxin in the environment. Accordingly, EPA today promulgates dioxin criteria based on the 1984 criteria guidance document for dioxin and promulgated in the NTR in 1992.

*Toxicity Equivalency:* The State of California, in its 1991 water quality control plans, adopted human health criteria for dioxin and dioxin-like compounds based on the concept of toxicity equivalency (TEQ) using toxicity equivalency factors (TEFs). EPA Region 9 reviewed and approved the State's use of the TEQ concept and TEFs in setting the State's human health water quality criteria for dioxin and dioxin-like compounds.

In 1987, EPA formally embraced the TEQ concept as an interim procedure to estimate the risks associated with exposures to 210 chlorinated dibenzo-p-dioxin and chlorinated dibenzofuran (CDD/CDF) congeners, including 2,3,7,8-TCDD. This procedure uses a set of derived TEFs to convert the concentration of any CDD/CDF congener into an equivalent concentration of 2,3,7,8-TCDD. In 1989, EPA updated its TEFs based on an examination of relevant scientific evidence and a recognition of the value of international consistency. This updated information can be found in EPA's 1989 *Update to the Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-dioxins and -dibenzofurans (CDDs and CDFs)* (EPA/625/3–89/016, March 1989). EPA had been active in an international effort aimed at adopting a common set of TEFs (International TEFs/89 or I–TEFs/89), to facilitate information exchange on environmental contamination of CDD/CDF. This document reflects EPA's support of an internationally consistent set of TEFs, the I–TEFs/89. EPA uses I–TEFs/89 in many of its regulatory programs.

In 1994, the World Health Organization (WHO) revised the TEF scheme for dioxins and furans to include toxicity from dioxin-like compounds (Ahlborg et al., 1994). However, no changes were made to the TEFs for dioxins and furans. In 1998, the WHO re-evaluated and revised the previously established TEFs for dioxins (Ds), furans (Fs) and dioxin-like compounds (Vanden Bers, 1998). The nomenclature for this TEF scheme is TEQDFP–WHO98, where TEQ represents the 2,3,7,8-TCDD Toxic Equivalence of the mixture, and the subscript DFP indicates that dioxins (Ds) furans (Fs) and dioxin-like compounds (P) are included in the TEF scheme. The subscript 98 following WHO displays the year changes were made to the TEF scheme.

EPA intends to use the 1998 WHO TEF scheme in the near future. At this point however, EPA will support the use of either the 1989 interim procedures or the 1998 WHO TEF scheme but encourages the use of the 1998 WHO TEF scheme in State programs. EPA expects California to use a TEF scheme in implementing the 2,3,7,8-TCDD water quality criteria contained in today's rule. The TEQ and TEF approach provide a methodology for setting NPDES water quality-based permit limits that are protective of human health for dioxin and dioxin-like compounds.

Several commenters requested EPA to promulgate criteria for other forms of dioxin, in addition to 2,3,7,8-TCDD. EPA's draft reassessment for dioxin examines toxicity based on the TEQ concept and I–TEFs/89. When EPA completes the dioxin reassessment, the Agency intends to adopt revised 304(a) water quality criteria guidance based on the reassessment for dioxin. If necessary, EPA will then act to amend the NTR and CTR to reflect the revised 304(a) water quality criteria guidance.

b. Arsenic Criteria

EPA is not promulgating human health criteria for arsenic in today's rule. EPA recognizes that it promulgated human health water quality criteria for arsenic for a number of States in 1992, in the NTR, based on EPA's 1980 section 304(a) criteria guidance for arsenic established, in part, from IRIS values current at that time. However, a number of issues and uncertainties existed at the time of the CTR proposal concerning the health effects of arsenic. These issues and uncertainties were summarized in "Issues Related to Health Risk of Arsenic" which is contained in the administrative record for today's rule. During the period of this rulemaking action, EPA commissioned a study of arsenic health effects by the National Research Council (NRC) arm of the National Academy of Sciences. EPA received the NRC report in March of 1999. EPA scientists reviewed the report, which recommended that EPA lower the Safe Drinking Water Act arsenic maximum contaminant level (MCL) as soon as possible (The arsenic MCL is currently 50 µg/l.) The bladder cancer analysis in the NRC report will provide part of the basis for the risk assessment of a proposed revised arsenic MCL in the near future. After promulgating a revised MCL for drinking water, the Agency plans to revise the CWA 304(a) human health criteria for arsenic in order to harmonize the two standards. Today's rule defers promulgating arsenic criteria based on the Agency's previous risk assessment of skin cancer. In the meantime, permitting authorities in California should rely on existing narrative water quality criteria to establish effluent limitations as necessary for arsenic. California has previously expressed its science and policy position by establishing a criterion level of 5 µg/l for arsenic. Permitting authorities may, among other considerations, consider that value when evaluating and interpreting narrative water quality criteria.

c. Mercury Criteria

The human health criteria promulgated here use the latest RfD in EPA's Integrated Risk Information System (IRIS) and the weighted average practical bioconcentration factor (PBCF) from the 1980 section 304(a) criteria guidance document for mercury. EPA considered the approach used in the Great Lakes Water Quality Guidance ("Guidance") incorporating Bioaccumulation Factors (BAFs), but rejected this approach for reasons outlined below. The equation used here to derive an ambient water quality criterion for mercury from exposure to organisms and water is:

$$HHC = \frac{RfD \times BW}{WC + (FC \times PBCF)}$$

Where:
RfD = Reference Dose
BW = Body Weight
WC = Water Consumption
FC = Total Fish and Shellfish Consumption per Day
PBCF = Practical Bioconcentration Factor (weighted average)

For mercury, the most current RfD from IRIS is $1 \times 10^{-4}$ mg/kg/day. The RfD used a benchmark dose as an estimate of a No Observed Adverse Effect Level (NOAEL). The benchmark dose was calculated by applying a Weibel model

for extra risk to all neurological effects observed in 81 Iraqi children exposed in utero as reported in Marsh, et. al. (1987). Maternal hair mercury was the measure of exposure. Extra risk refers to an adjustment for background incidence of a given health effect. Specifically, the extra risk is the added incidence of observing an effect above the background rate relative to the proportion of the population of interest that is not expected to exhibit such as effect. The resulting estimate was the lower 95% statistical bound on the 10% extra risk; this was 11 ppm mercury in maternal hair. This dose in hair was converted to an equivalent ingested amount by applying a model based on data from human studies; the resulting benchmark dose was $1 \times 10^{-3}$ mg/kg body weight /day. The RfD was calculated by dividing the benchmark dose by a composite uncertainty factor of 10. The uncertainty factor was used to account for variability in the human population, in particular the wide variation in biological half-life of methylmercury and the variation that is observed in the ration of hair mercury to mercury in the blood. In addition the uncertainty factor accounts for lack of a two-generation reproductive study and the lack of data on long term effects of childhood mercury exposures. The RfD thus calculated is $1 \times 10^{-4}$ mg/kg body weight/day or 0.1 µg/kg/day. The body weight used in the equation for the mercury criteria, as discussed in the Human Health Guidelines, is a mean adult human body weight of 70 kg. The drinking water consumption rate, as discussed in the Human Health Guidelines, is 2.0 liters per day.

The bioconcentration factor or BCF is defined as the ratio of chemical concentration in the organism to that in surrounding water. Bioconcentration occurs through uptake and retention of a substance from water only, through gill membranes or other external body surfaces. In the context of setting exposure criteria it is generally understood that the terms "BCF" and "steady-state BCF" are synonymous. A steady-state condition occurs when the organism is exposed for a sufficient length of time that the ratio does not change substantially.

The BCFs that were used herein are the "Practical Bioconcentration Factors (PBCFs)" that were derived in 1980: 5500 for fresh water, 3765 for estuarine coastal waters, and 9000 for open oceans. See pages C–100–1 of Ambient Water Quality Criteria for Mercury (EPA 440/5–80–058) for a complete discussion on the PBCF. Because of the way they were derived, these PBCFs take into account uptake from food as well as uptake from water. A weighted average PBCF was calculated to take into account the average consumption from the three waters using the following equation:

$$\text{Weighted Average Practical BCF} = \frac{\sum(\text{FC} \times \text{PBCF})}{\sum(\text{FC})} = \frac{(0.00172)(5500) + (0.00478)(3765) + (0.0122)(9000)}{0.00172 + 0.00478 + 0.0122} = \frac{137.3}{0.0187} = 7342.6$$

Given the large value for the weighted average PBCF, the contribution of drinking water to total daily intake is negligible so that assumptions concerning the chemical form of mercury in drinking water become less important. The human health mercury criteria promulgated for this rule are based on the latest RfD as listed in IRIS and a weighted PBCF from the 1980 § 304(a) criteria guidance document for mercury.

On March 23, 1995 (60 FR 15366), EPA promulgated the Great Lakes Water Quality Guidance ("Guidance"). The Guidance incorporated bioaccumulation factors (BAFs) in the derivation of criteria to protect human health because it is believed that BAFs are a better predictor than BCFs of the concentration of a chemical within fish tissue since BAFs include consideration of the uptake of contaminants from all routes of exposure. A bioaccumulation factor is defined as the ratio (in L/kg) of a substance's concentration in tissue to the concentration in the ambient water, in situations where both the organism and its food are exposed and the ratio does not change substantially over time. The final Great Lakes Guidance establishes a hierarchy of four methods for deriving BAFs for non-polar organic chemicals: (1) Field-measured BAFs; (2) predicted BAFs derived using a field-measured biota-sediment accumulation factor; (3) predicted BAFs derived by multiplying a laboratory-measured BCF by a food chain multiplier; and (4) predicted BAFs derived by multiplying a BCF calculated from the log Kow by a food-chain multiplier. The final Great Lakes Guidance developed BAFs for trophic levels three and four fish of the Great Lakes Basin. Respectively, the BAFs for mercury for trophic level 3 and 4 fish were: 27,900 and 140,000.

The BAF promulgated in the GLI was developed specifically for the Great Lakes System. It is uncertain whether the BAFs of 27,900 and 140,000 are appropriate for use in California at this time; therefore, today's final rule does not use the GLI BAF in establishing human health criteria for mercury in California. The magnitude of the BAF for mercury in a given system depends on how much of the total mercury is present in the methylated form. Methylation rates vary widely from one water body to another for reasons that are not fully understood. Lacking the data, it is difficult to determine if the BAF used in the GLI represents the true potential for mercury to bioaccumulate in California surface waters. The true, average BAF for California could be higher or lower. For more information see EPA's Response to Comments document in the administrative record for this rule (specifically comments CTR–002–007(b) and CTR–016–007).

EPA is developing a national BAF for mercury as part of revisions to its 304(a) criteria for human health; however, the BAF methodology that will be used is currently under evaluation as part of EPA's revisions to its National Human Health Methodology (see section F.3 above). EPA applied a similar methodology in its Mercury Study Report to Congress (MSRC) to derive a BAF for methylmercury. The MSRC is available through NTIS (EPA–452/R–97–003). Although a BAF was derived in the MSRC, EPA does not intend to use this BAF for National application. EPA is engaged in a separate effort to incorporate additional mercury bioaccumulation data that was not considered in the MSRC, and to assess uncertainties with using a National BAF approach for mercury. Once the proposed revised human health methodology, including the BAF component, is finalized, EPA will revise its 304(a) criteria for mercury to reflect changes in the underlying methodology, recommendations contained in the MSRC, and recommendations in ■ National Academy of Science report on human health assessment of methylmercury. When EPA changes its 304(a) criteria recommendation for mercury, States and Tribes will be expected to review their water quality standards for mercury and make any revisions necessary to ensure their standards are scientifically defensible.

New information may become available regarding the bioaccumulation

of mercury in certain water bodies in California. EPA supports the use of this information to develop site-specific criteria for mercury. Further, if a California water body is impaired due to mercury fish tissue or sediment contamination, loadings of mercury could contribute to or exacerbate the impairment. Therefore, one option regulatory authorities should consider is to include water quality-based effluent limits (WQBELs) in permits based on mass for discharges to the impaired water body. Such WQBELs must be derived from and comply with applicable State water quality standards (including both numeric and narrative criteria) and assure that the discharge does not cause or contribute to a violation of water quality standards.

d. Polychlorinated Biphenyls (PCBs) Criteria

The NTR, as amended, calculated human health criteria for PCBs using a cancer potency factor of 7.7 per mg/kg-day from the Agency's IRIS. This cancer potency factor was derived from the Norback and Weltman (1985) study which looked at rats that were fed Aroclor 1260. The study used the linearized multistage model with a default cross-species scaling factor (body weight ratio to the $^{2}/_{3}$ power). Although it is known that PCB mixtures vary greatly as to their potency in producing biological effects, for purposes of its carcinogenicity assessment, EPA considered Aroclor 1260 to be representative of all PCB mixtures. The Agency did not pool data from all available congener studies or generate a geometric mean from these studies, since the Norback and Weltman study was judged by EPA as acceptable, and not of marginal quality, in design or conduct as compared with other studies. Thereafter, the Institute for Evaluating Health Risks (IEHR, 1991) reviewed the pathological slides from the Norback and Weltman study, and concluded that some of the malignant liver tumors should have been interpreted as nonmalignant lesions, and that the cancer potency factor should be 5.1 per mg/kg-day as compared with EPA's 7.7 per mg/kg-day.

The Agency's peer-reviewed reassessment of the cancer potency of PCBs published in a final report, *PCBs: Cancer Dose-Response Assessment and Applications to Environmental Mixtures* (EPA/600/P–96/001F), adopts a different approach that distinguishes among PCB mixtures by using information on environmental processes. (The report is included in the administrative record of today's rule.) The report considers all cancer studies (which used commercial mixtures only) to develop a range of cancer potency factors, then uses information on environmental processes to provide guidance on choosing an appropriate potency factor for representative classes of environmental mixtures and different pathways. The reassessment provides that, depending on the specific application, either central estimates or upper bounds can be appropriate. Central estimates describe a typical individual's risk, while upper bounds provide assurance (*i.e.*, 95% confidence) that this risk is not likely to be underestimated if the underlying model is correct. Central estimates are used for comparing or ranking environmental hazards, while upper bounds provide information about the precision of the comparison or ranking. In the reassessment, the use of the upper bound values were found to increase cancer potency estimates by two or three-fold over those using central tendency. Upper bounds are useful for estimating risks or setting exposure-related standards to protect public health, and are used by EPA in quantitative cancer risk assessment. Thus, the cancer potency of PCB mixtures is determined using a tiered approach based on environmental exposure routes with upper-bound potency factors (using a body weight ratio to the $^{3}/_{4}$ power) ranging from 0.07 (lowest risk and persistence) to 2 (high risk and persistence) per mg/kg-day for average lifetime exposures to PCBs. It is noteworthy that bioaccumulated PCBs appear to be more toxic than commercial PCBs and appear to be more persistent in the body. For exposure through the food chain, risks can be higher than other exposures.

EPA issued the final reassessment report on September 27, 1996, and updated IRIS to include the reassessment on October 1, 1996. EPA updated the human health criteria for PCBs in the National Toxics Rule on September 27, 1999. For today's rule, EPA derived the human health criteria for PCBs using a cancer potency factor of 2 per mg/kg-day, an upper bound potency factor reflecting high risk and persistence. This decision is based on recent multimedia studies indicating that the major pathway of exposure to persistent toxic substances such as PCBs is via dietary exposure (*i.e.*, contaminated fish and shellfish consumption).

Following is the calculation of the human health criterion (HHC) for organism and water consumption:

$$HHC = \frac{RF \times BW \times (1{,}000\ \mu g/mg)}{q1^* \times [WC + (FC \times BCF)]}$$

Where:

RF = Risk Factor = $1 \times 10^{-6}$
BW = Body Weight = 70 kg
q1* = Cancer slope factor = 2 per mg/kg-day
WC = Water Consumption = 2 l/day
FC = Fish and Shellfish Consumption = 0.0065 kg/day
BCF = Bioconcentration Factor = 31,200

the HHC (µg/l) = 0.00017 µg/l (rounded to two significant digits).

Following is the calculation of the human health criterion for organism only consumption:

$$HHC = \frac{RF \times BW \times (1{,}000\ \mu g/mg)}{q1^* \times FC \times BCF}$$

Where:

RF = Risk Factor = $1 \times 10^{-6}$
BW = Body Weight = 70 kg
q1* = Cancer slope factor = 2 per mg/kg-day
FC = Total Fish and Shellfish Consumption per Day = 0.0065 kg/day
BCF = Bioconcentration Factor = 31,200

the HHC (µg/l) = 0.00017 µg/l (rounded to two significant digits).

The criteria are both equal to 0.00017 µg/l and apply to total PCBs. *See PCBs: Cancer Dose Response Assessment and Application to Environmental Mixtures* (EPA/600/9–96–001F). For a discussion of the body weight, water consumption, and fish and shellfish consumption factors, see the Human Health Guidelines. For a discussion of the BCF, see the 304(a) criteria guidance document for PCBs (included in the administrative record for today's rule).

e. Excluded Section 304(a) Human Health Criteria

As is the case in the NTR, as amended, today's rule does not promulgate criteria for certain priority pollutants for which CWA section 304(a) criteria guidance exists because those criteria were not based on toxicity to humans or aquatic organisms. The basis for those particular criteria is organoleptic effects (*e.g.*, taste and odor) which would make water and edible aquatic life unpalatable but not toxic. Because the basis for this rule is to protect the public health and aquatic life from toxicity consistent with the language and intent in CWA section 303(c)(2)(B), EPA is promulgating criteria only for those priority toxic pollutants whose criteria recommendations are based on toxicity. The CWA section 304(a) human health criteria based on organoleptic effects for zinc and 3-methyl-4-chlorophenol are excluded for this reason. See the 1992 NTR discussion at 57 FR 60864.

f. Cancer Risk Level

EPA's CWA section 304(a) criteria guidance documents for priority toxic pollutants that are based on carcinogenicity present concentrations for upper bound risk levels of 1 excess cancer case per 100,000 people ($10^{-5}$), per 1,000,000 people ($10^{-6}$), and per 10,000,000 people ($10^{-7}$). However, the criteria documents do not recommend a particular risk level as EPA policy.

As part of the proposed rule, EPA requested and received comment on the adoption of a $10^{-5}$ risk level for carcinogenic pollutants. The effect of a $10^{-5}$ risk level would have been to increase (*i.e.*, make less stringent) carcinogenic pollutant criteria values (noted in the matrix by footnote c) that are not already promulgated in the NTR, by one order of magnitude. For example, the organism-only criterion for gamma BHC (pollutant number 105 in the matrix) is 0.013 µg/l; the criterion based on a $10^{-5}$ risk level would have been 0.13 µg/l. EPA received several comments that indicated a preference for a higher ($10^{-4}$ and $10^{-5}$) risk level for effluent dependent waters or other types of special circumstances.

In today's rule, EPA is promulgating criteria that protect the general population at an incremental cancer risk level of one in a million ($10^{-6}$) for all priority toxic pollutants regulated as carcinogens, consistent with the criteria promulgated in the NTR for the State of California. Standards adopted by the State contained in the Enclosed Bays and Estuaries Plan (EBEP), and the Inland Surface Waters Plan (ISWP), partially approved by EPA on November 6, 1991, and the Ocean Plan approved by EPA on June 28, 1990, contained a risk level of $10^{-6}$ for most carcinogens. The State has historically protected at a $10^{-6}$ risk level for carcinogenic pollutants.

EPA, in its recent human health methodology revisions, proposed acceptable lifetime cancer risk for the general population in the range of $10^{-5}$ to $10^{-6}$. EPA also proposed that States and Tribes ensure the most highly exposed populations do not exceed a $10^{-4}$ risk level. However, EPA's draft methodology revisions also stated that it will derive 304(a) criteria at a $10^{-6}$ risk level, which the Agency believes reflects the appropriate risk for the general population and which applies a risk management policy which ensures protection for all exposed population groups. (Draft Water Quality Criteria Methodology: Human Health, EPA 822–Z–98–001, August 1998, Appendix II, page 72).

Subpopulations within a State may exist, such as recreational and subsistence anglers, who as a result of greater exposure to a contaminant are at greater risk than the standard 70 kilogram person eating 6.5 grams per day of fish and shellfish and drinking 2.0 liters per day of drinking water with pollutant levels meeting the water quality criteria. EPA acknowledges that at any given risk level for the general population, those segments of the population that are more highly exposed face a higher relative risk. For example, if fish are contaminated at a level permitted by criteria derived on the basis of a risk level of $10^{-6}$, individuals consuming up to 10 times the assumed fish consumption rate would still be protected at a $10^{-5}$ risk level. Similarly, individuals consuming 100 times the general population rate would be protected at a $10^{-4}$ risk level. EPA, therefore, believes that derivation of criteria at the $10^{-6}$ risk level is a reasonable risk management decision protective of designated uses under the CWA. While outside the scope of this rule, EPA notes that States and Tribes, however, have the discretion to adopt water quality criteria that result in a higher risk level (*e.g.*, $10^{-5}$). EPA expects to approve such criteria if the State or Tribe has identified the most highly exposed subpopulation within the State or Tribe, demonstrates the chosen risk level is adequately protective of the most highly exposed subpopulation, and has completed all necessary public participation.

This demonstration has not happened in California. Further, the information that is available on highly exposed subpopulations in California supports the need to protect the general population at the $10^{-6}$ level. California has cited the Santa Monica Bay Seafood Consumption Study as providing the best available data set for estimating consumption of sport fish and shellfish in California for both marine or freshwater sources (Chemicals in Fish Report No. 1: Consumption of Fish and Shellfish in California and the United States, Final Draft Report, July 1997). Consumption rates of sport fish and shellfish of 21g/day, 50 g/day, 107 g/day, and 161 g/day for the median, mean, 90th, and 95th percentile rates, respectively, were determined from this study. Additional consumption of commercial species in the range of approximately 8 to 42 g/day would further increase these values. Clearly the consumption rates for the most highly exposed subpopulation within the State exceeds 10 times the 6.5 g/day rates used in the CTR. Therefore, use of a risk level of $10^{-5}$ for the general population would not be sufficient to protect the most highly exposed population in California at a $10^{-4}$ risk level. On the other hand, even the most highly exposed subpopulations cited in the California study do not have consumption rates approaching 100 times the 6.5 g/day rates used in the CTR. The use of the $10^{-6}$ risk level to protect average level consumers does not subject these subpopulations to risk levels as high as $10^{-4}$.

EPA believes its decision to establish a $10^{-6}$ risk level for the CTR is also consistent with EPA's policy in the NTR to select the risk level that reflect the policies or preferences of CWA programs in the affected States. California adopted standards for priority toxic pollutants for its ocean waters in 1990 using a $10^{-6}$ risk level to protect human health (California Ocean Plan, 1990). In April 1991, and again in November 1992, California adopted standards for its inland surface waters and enclosed bays and estuaries in its Inland Surface Waters Plan (ISWP) and its Enclosed Bays and Estuaries Plan (EBEP) using a $10^{-6}$ risk level. To be consistent with the State's water quality standards, EPA used a $10^{-6}$ risk level for California in the NTR at 57 FR 60867. The State has continued using a $10^{-6}$ risk level to protect human health for its standards that were not withdrawn with the ISWP and EBEP. The most recent expression of risk level preference is contained in the Draft Functional Equivalent Document, Amendment of the Water Quality Control Plan for Ocean Waters of California, October 1998, where the State recommended maintaining a consistent risk level of $10^{-6}$ for the human health standards that it was proposing to revise.

EPA received several comments requesting a $10^{-5}$ risk level based on the risk level chosen for the Great Lakes Water Quality Guidance (the Guidance). There are several differences between the guidelines for the derivation of human health criteria contained in the Guidance and the California Toxics Rule (CTR) that make a $10^{-5}$ risk factor appropriate for the Guidance, but not for the CTR. These differences result in criteria developed using the $10^{-5}$ risk factor in the Guidance being at least as stringent as criteria derived under the CTR using a $10^{-6}$ risk factor. The relevant aspects of the Guidance include:

- Use of fish consumption rates that are considerably higher than fish consumption rates for the CTR.
- Use of bioaccumulation factors rather than bioconcentration factors in

estimating exposure, considerably increasing the dose of carcinogens to sensitive subgroups.

• Consideration of additivity of effects of mixtures for both carcinogenic and noncarcinogenic pollutants.

This combination of factors increase the calculated carcinogenic risk substantially under the Guidance (the combination would generally be more than one order of magnitude), making a lower overall risk factor acceptable. The Guidance risk factor provides, in fact, criteria with at least the same level of protection against carcinogens as criteria derived with a higher risk factor using the CTR. A lower risk factor for the CTR would not be appropriate absent concomitant changes in the derivation procedures that provide equivalent risk protection.

**G. Description of Final Rule**

*1. Scope*

Paragraph (a) in 40 CFR 131.38, entitled "Scope," states that this rule is a promulgation of criteria for priority toxic pollutants in the State of California for inland surface waters, enclosed bays, and estuaries. Paragraph (a) in 40 CFR 131.38 also states that this rule contains an authorizing compliance schedule provision.

2. EPA Criteria for Priority Toxic Pollutants

EPA's criteria for California are presented in tabular form at 40 CFR 131.38. For ease of presentation, the table that appears combines water quality criteria promulgated in the NTR, as amended, that are outside the scope of this rulemaking, with the criteria that are within the scope of today's rule. This is intended to help readers determine applicable water quality criteria for the State of California. The table contains footnotes for clarification.

Paragraph (b) in 40 CFR 131.38 presents a matrix of the applicable EPA aquatic life and/or human health criteria for priority toxic pollutants in California. Section 303(c)(2)(B) of the CWA addresses only pollutants listed as "toxic" pursuant to section 307(a) of the CWA for which EPA has developed section 304(a) criteria guidance. As discussed earlier in this preamble, the section 307(a) list of toxics contains 65 compounds and families of compounds, which potentially include thousands of specific compounds. Of these, the Agency identified a list of 126 "priority toxic pollutants" to implement the CWA (see 40 CFR 131.36(b)). Reference in this rule to priority toxic pollutants, toxic pollutants, or toxics refers to the 126 priority toxic pollutants.

EPA has not developed both aquatic life and human health CWA section 304(a) criterion guidance for all of the priority toxic pollutants. The matrix in 40 CFR 131.38(b) contains human health criteria in Column D for 92 priority toxic pollutants which are divided into Column 1: criteria for water consumption (i.e., 2.0 liters per day) and aquatic organism consumption (i.e., 6.5 grams per day of aquatic organisms); and Column 2: criteria for aquatic organism consumption only. The term aquatic organism includes fish and shellfish such as shrimp, clams, oysters and mussels. One reason the total number of priority toxic pollutants with criteria today differs from the total number of priority toxic pollutants contained in earlier published CWA section 304(a) criteria guidance is because EPA has developed and is promulgating chromium criteria for two valence states with respect to aquatic life criteria. Thus, although chromium is a single priority toxic pollutant, there are two criteria for chromium for aquatic life protection. See pollutant 5 in today's rule at 40 CFR 131.38(b). Another reason is that EPA is promulgating human health criteria for nine priority pollutants for which health-based national criteria have been calculated based on information obtained from EPA's IRIS database (EPA provided notice of these nine criteria in the NTR for inclusion in future State triennial reviews. See 57 FR 60848, 60890).

The matrix contains aquatic life criteria for 23 priority pollutants. These are divided into freshwater criteria (Column B) and saltwater criteria (Column C). These columns are further divided into acute and chronic criteria. The aquatic life criteria are considered by EPA to be protective when applied under the conditions described in the section 304(a) criteria documents and in the TSD. For example, water body uses should be protected if the criteria are not exceeded, on average, once every three year period. It should be noted that the criteria maximum concentrations (the acute criteria) are short-term concentrations and that the criteria continuous concentrations (the chronic criteria) are four-day averages. It should also be noted that for certain metals, the actual criteria are equations which are included as footnotes to the matrix. The toxicity of these metals is water hardness dependent and may be adjusted. The values shown in the table are illustrative only, based on a hardness expressed as calcium carbonate of 100 mg/l. Finally, the criterion for pentachlorophenol is pH dependent. The equation is the actual criterion and is included as a footnote. The value shown in the matrix is for a pH of 7.8. Several of the freshwater aquatic life criteria are incorporated into the matrix in the format used in the 1980 criteria methodology which uses a final acute value instead of a continuous maximum concentration. This distinction is noted in footnote g of the table.

The final rule at 40 CFR 131.38(c) establishes the applicability of the criteria to the State of California. 40 CFR 131.38(d) is described later in Section F, of this preamble. EPA has included in this rule provisions necessary to implement numeric criteria in a way that maintains the level of protection intended. These provisions are included in 40 CFR 131.38(c) of today's rule. For example, in order to do steady state waste load allocation analyses, most States have low flow values for streams and rivers which establish flow rates for various purposes. These low flow values become design flows for sizing treatment plants and developing water quality-based effluent limits and/or TMDLs. Historically, these design flows were selected for the purposes of waste load allocation analyses which focused on instream dissolved oxygen concentrations and protection of aquatic life. With the publication of the 1985 TSD, EPA introduced hydrologically and biologically based analyses for the protection of aquatic life and human health. (These concepts have been expanded subsequently in EPA's *Technical Guidance Manual for Performing Wasteload Allocations, Book 6, Design Conditions*, U.S. EPA, 1986. These analyses are included in Appendix D of the revised TSD. The discussion here is greatly simplified and is provided to support EPA's decision to promulgate design flows for instream flows and thereby maintain the adequacy of the criteria for priority toxic pollutants.) EPA recommended either of two methods for calculating acceptable low flows, the traditional hydrologic method developed by the U.S. Geological Survey or a biological based method developed by EPA. Other methods for evaluating the instream flow record may be available; use of these methods may result in TMDLs and/or water quality-based effluent limitations which adequately protect human health and/or aquatic life. The results of either of these two methods, or an equally protective alternative method, may be used.

The State of California may adopt specific design flows for streams and rivers to protect designated uses against the effects of toxics. EPA believes it is

important to specify design flows in today's rule so that, in the absence of state design flows, the criteria promulgated today would be implemented appropriately. The TSD also recommends the use of three dynamic models to perform wasteload allocations. Dynamic wasteload models do not generally use specific steady state design flows but accomplish the same effect by factoring in the probability of occurrence of stream flows based on the historical flow record.

The low flows specified in the rule explicitly contain duration and frequency of occurrence which represent certain probabilities of occurrence. Likewise, the criteria for priority toxic pollutants are defined with duration and frequency components. Dynamic modeling techniques explicitly predict the effects of variability in receiving water, effluent flow, and pollution variation. Dynamic modeling techniques, as described in the TSD, allow for calculating wasteload allocations that meet the criteria for priority toxic pollutants without using a single, worst-case concentration based on a critical condition. Either dynamic modeling or steady state modeling can be used to implement the criteria promulgated today. For simplicity, only steady state conditions are discussed here. Clearly, if the criteria were implemented using design flows that are too high, the resulting toxic controls would not be adequate, because the resulting ambient concentrations would exceed EPA's criteria.

In the case of aquatic life, assuming exceedences occur more frequently than once in three years on the average, exceedences would result in diminished vitality of stream ecosystems characterized by the loss of desired species. Numeric water quality criteria should apply at all flows that are equal to or greater than flows specified below. The low flow values are:

| Type of criteria | Design flow |
|---|---|
| Acute Aquatic Life (CMC). | 1 Q 10 or 1 B 3 |
| Chronic Aquatic Life (CCC). | 7 Q 10 or 4 B 3 |
| Human Health ..... | harmonic mean flow |

Where:

1 Q 10 is the lowest one day flow with an average recurrence frequency of once in 10 years determined hydrologically;

1 B 3 is biologically based and indicates an allowable exceedence of once every 3 years. It is determined by EPA's computerized method (DFLOW model);

7 Q 10 is the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically;

4 B 3 is biologically based and indicates an allowable exceedences for 4 consecutive days once every 3 years. It is determined by EPA's computerized method (DFLOW model);

EPA is requiring that the harmonic mean flow be applied with human health criteria. The harmonic mean is a standard calculated statistical value. EPA's model for human health effects assumes that such effects occur because of a long-term exposure to low concentration of a toxic pollutant, for example, two liters of water per day for seventy years. To estimate the concentrations of the toxic pollutant in those two liters per day by withdrawal from streams with a high daily variation in flow, EPA believes the harmonic mean flow is the correct statistic to use in computing such design flows rather than other averaging techniques. (For a description of harmonic means see "Design Stream Flows Based on Harmonic Means," Lewis A. Rossman, Jr. of Hydraulics Engineering, Vol. 116, No. 7, July, 1990.)

All waters (including lakes, estuaries, and marine waters), whether or not suitable for such hydrologic calculations, are subject to the criteria promulgated today. Such criteria will need to be attained at the end of the discharge pipe, unless the State authorizes a mixing zone. Where the State plans to authorize a mixing zone, the criteria would apply at the locations allowed by the mixing zone. For example, the chronic criteria (CCC) would apply at the defined boundary of the chronic mixing zone. Discussion of and guidance on these factors are included in the revised TSD in Chapter 4.

EPA is aware that the criteria promulgated today for some of the priority toxic pollutants are at concentrations less than EPA's current analytical detection limits. Analytical detection limits have never been an acceptable basis for setting water quality criteria since they are not related to actual environmental impacts. The environmental impact of a pollutant is based on a scientific determination, not a measuring technique which is subject to change. Setting the criteria at levels that reflect adequate protection tends to be a forcing mechanism to improve analytical detection methods. See 1985 Guidelines, page 21. As the methods improve, limits based on the actual criteria necessary to protect aquatic life and human health become measurable. The Agency does not believe it is appropriate to promulgate criteria that are not sufficiently protective. EPA discusses this issue further in its Response to Comment Document for today's final rule.

EPA does believe, however, that the use of analytical detection limits are appropriate for assessing *compliance* with National Pollutant Discharge Elimination System (NPDES) permit limits. This view of the role of detection limits was first articulated in guidance for translating dioxin criteria into NPDES permit limits. See "Strategy for the Regulation of Discharges of PHDDs and PHDFs from Pulp and Paper Mills to Waters of the U.S." Memorandum from the Assistant Administrator for Water to the Regional Water Management Division Directors, May 21, 1990. This guidance presented a model for addressing toxic pollutants which have criteria less than current detection limits. EPA, in more recent guidance, recommends the use of the "minimum level" or ML for reporting sample results to assess compliance with WQBELs (TSD page 111). The ML, also called the "quantification level," is the level at which the entire analytical system gives recognizable mass spectra and acceptable calibration points, i.e., the point at which the method can reliably quantify the amount of pollutant in the sample. States can use their own procedures to average and otherwise account for monitoring data, *e.g.*, quantifying results below the ML. These results can then be used to assess compliance with WQBELs. (See 40 CFR part 132, Appendix F, Procedure 8.B.) This approach is applicable to priority toxic pollutants with criteria less than current detection limits. EPA's guidance explains that standard analytical methods may be used for purposes of assessing compliance with permit limits, but not for purposes of establishing water quality criteria or permit limits. Under the CWA, analytical methods are appropriately used in connection with NPDES permit limit compliance assessments. Because of the function of water quality criteria, EPA has not considered the sensitivity of analytical methods in deriving the criteria promulgated today.

EPA has promulgated 40 CFR 131.38(c)(3) to determine when freshwater or saltwater aquatic life criteria apply. This provision incorporates a time parameter to better define the critical condition. The structure of the paragraph is to establish

applicable rules and to allow for site-specific exceptions where the rules are not consistent with actual field conditions. Because a distinct separation generally does not exist between freshwater and saltwater aquatic communities, EPA is establishing the following: (1) The freshwater criteria apply at salinities of 1 part per thousand and below at locations where this occurs 95% or more of the time; (2) saltwater criteria apply at salinities of 10 parts per thousand and above at locations where this occurs 95% more of the time; and (3) at salinities between 1 and 10 parts per thousand the more stringent of the two apply unless EPA approves the application of the freshwater or saltwater criteria based on an appropriate biological assessment. The percentiles included here were selected to minimize the chance of overlap, that is, one site meeting both criteria. Determination of these percentiles can be done by any reasonable means such as interpolation between points with measured data or by the application of calibrated and verified mathematical models (or hydraulic models). It is not EPA's intent to require actual data collection at particular locations.

In the brackish water transition zones of estuaries with varying salinities, there generally will be a mix of freshwater and saltwater species. Generally, therefore, it is reasonable for the more stringent of the freshwater or saltwater criteria to apply. In evaluating appropriate data supporting the alternative set of criteria, EPA will focus on the species composition as its preferred method. This assignment of criteria for fresh, brackish and salt waters was developed in consultation with EPA's research laboratories at Duluth, Minnesota and Narragansett, Rhode Island. The Agency believes such an approach is consistent with field experience.

Paragraph (d) in 40 CFR 131.38 lists the designated water and use classifications for which the criteria apply. The criteria are applied to the beneficial use designations adopted by the State of California; EPA has not promulgated any new use classifications in this rule.

*Exceedences Frequency:* In a water quality criterion for aquatic life, EPA recommends an allowable frequency for excursions of the criteria. See 1985 Guidelines, pages 11–13. This allowable frequency provides an appropriate period of time during which the aquatic community can recover from the effect of an excursion and then function normally for a period of time before the next excursion. An excursion is defined as an occurrence of when the average concentration over the duration of the averaging period is above the CCC or the CMC. As ecological communities are naturally subjected to a series of stresses, the allowable frequency of pollutant stress may be set at a value that does not significantly increase the frequency or severity of all stresses combined. See also TSD, Appendix D. In addition, providing an allowable frequency for exceeding the criterion recognizes that it is not generally possible to assure that criteria are never exceeded. (TSD, page 36.)

Based on the available data, today's rule requires that the acute criterion for a pollutant be exceeded no more than once in three years on the average. EPA is also requiring that the chronic criterion for a pollutant be exceeded no more than once in three years on the average. EPA acknowledges that States may develop allowable frequencies that differ from these allowable frequencies, so long as they are scientifically supportable, but believes that these allowable frequencies are protective of the designated uses where EPA is promulgating criteria.

The use of aquatic life criteria for developing water quality-based effluent limits in permits requires the permitting official to use an appropriate wasteload allocation model. (TSD, Appendix D–6.) As discussed above, there are generally two methods for determining design flows, the hydrologically-based method and the biologically-based method.

The biologically-based method directly uses the averaging periods and frequencies specified in the aquatic life criteria for determining design flows. (TSD, Appendix. D–8.) Because the biologically-based method calculates the design flow directly from the duration and allowable frequency, it most accurately provides the allowed number of excursions. The hydrologically based method applies the CMC at a design flow equal to or equivalent to the 1Q10 design flow (i.e., the lowest one-day flow with an average recurrence frequency of once in ten years), and applies the CCC at the 7Q10 design flow (i.e., the lowest average seven consecutive day flow with a recurrence frequency of once in ten years).

EPA established a three year allowable frequency in the NTR. In settlement of the litigation on the NTR, EPA stated that it was in the midst of conducting, sponsoring, or planning research aimed at addressing scientific issues related to the basis for and application of water quality criteria and mentioned the issue of allowable frequency. See Partial Settlement Agreement in *American Forest and Paper Ass'n, Inc. et al.* v. *U.S. EPA* (Consolidated Case No. 93–0694 (RMU) D.D.C. To that end, EPA is reevaluating issues raised about allowable frequency as part of its work in revising the 1985 Guidelines.

EPA recognizes that additional data concerning (a) the probable frequency of lethal events for an assemblage of taxa covering a range of sensitivities to pollutants, (b) the probable frequency of sublethal effects for such taxa, (c) the differing effects of lethal and sublethal events in reducing populations of such taxa, and (d) the time needed to replace organisms lost as a result of toxicity, may lead to further refinement of the allowable frequency value. EPA has not yet completed this work. Until this work is complete, EPA believes that where EPA promulgates criteria, the three year allowable frequency represents a value in the reasonable range for this parameter.

*3. Implementation*

Once the applicable designated uses and water quality criteria for a water body are determined, under the National Pollutant Discharge Elimination System (NPDES) program discharges to the water body must be characterized and the permitting authority must determine the need for permit limits. If a discharge causes, has the reasonable potential to cause, or contributes to an excursion of a numeric or narrative water quality criteria, the permitting authority must develop permit limits as necessary to meet water quality standards. These permit limits are water quality-based effluent limitations or WQBELs. The terms "cause," "reasonable potential to cause," and "contribute to" are the terms in the NPDES regulations for conditions under which water quality-based permit limits are required. See 40 CFR 122.44(d)(1).

Since the publication of the proposed CTR, the State of California adopted procedures which detail how water quality criteria will be implemented through NPDES permits, waste discharge requirements, and other regulatory approaches. These procedures entitled, *Policy for Implementation of Toxics Standards for Inland Surface Waters, Enclosed Bays, and Estuaries of California* were adopted on March 2, 2000. Once these procedures are submitted for review under CWA section 303(c), EPA will review them as they relate to water quality standards, and approve or disapprove them.

Several commenters understood the language in the preamble to the proposed rule regarding implementation

to mean that site-specific criteria, variances, and other actions would be prohibited or severely limited by the CTR. Site-specific criteria, variances and other actions modifying criteria are neither prohibited nor limited by the CTR. The State, if it so chooses, still can make these changes to its water quality standards, subject to EPA approval. However, with this Federal rule in effect, the State cannot implement any modifications that are less stringent than the CTR without an amendment to the CTR to reflect these modifications. EPA will make every effort to expeditiously accommodate Federal rulemaking of appropriate modifications to California's water quality standards. In the preamble to the proposed CTR, and here today, EPA is emphasizing that these efforts to amend the CTR on a case-by-case basis will generally increase the time before a modification can be implemented.

*4. Wet Weather Flows*

EPA has for a longtime maintained that CWA section 301(b)(1)(C) applies to NPDES permits for discharges from municipal separate storm sewer systems. Recently, the U.S. Court of Appeals for the Ninth Circuit upheld NPDES permits issued by EPA for five Arizona municipal separate storm sewer systems and addressed this issue specifically. *Defenders of Wildlife, et al.* v. *Browner*, No. 98–71080 (9th Cir., October 1999). The Court held that the CWA does not require "strict compliance" with State water quality standards for municipal storm sewer permits under section 301(b)(1)(C), but that at the same time, the CWA does give EPA discretion to incorporate appropriate water quality-based effluent limitations under another provision, CWA section 402(p)(3)(B)(iii).

The Court based its decision on the structure of section 402(p)(3), which contains distinct language for discharges of industrial storm water and municipal storm water. In section 402(p)(3)(A), Congress requires that "dischargers associated with industrial activity shall meet all applicable provisions of [section 402] and section [301]." 33 U.S.C. section 1342(p)(3)(A). The Court noted, therefore, that by incorporation, industrial storm water discharges need to achieve "any more stringent limitation, including those necessary to meet water quality standards * * *" The Court explained that industrial storm water discharges "must comply strictly with State water quality standards" but that Congress chose not to include a similar provision for municipal storm sewer discharges, including instead a requirement for controls to reduce pollutants to the maximum extent practicable or MEP standard in section 402(p)(3)(B). Reading the two related sections together, the Court concluded that section 402(p)(3)(B)(iii) does not require "strict compliance" by municipal storm sewer discharges according to section 301(b)(1)(C). At the same time, however, the Court found that the language in CWA section 402(p)(3)(B)(iii) which states that permits for discharges from municipal storm sewers shall require "such other provisions as the Administrator of the state determines appropriate for the control of such pollutants" provides EPA with discretion to incorporate provisions lending to ultimate compliance with water quality standards.

EPA believes that compliance with water quality standards through the use of Best Management Practices (BMPs) is appropriate. EPA articulated its position on the use of BMPs in storm water permits in the policy memorandum entitled, "Interim Permitting Approach for Water Quality-Based Effluent Limitations In Storm Water Permits" which was signed by the Assistant Administrator for Water, Robert Perciasepe on August 1, 1996 (61 FR 43761, August 9, 1996). A copy of this memorandum is contained in the administrative record for today's rule. The policy affirms the use of BMPs as a means to attain water quality standards in municipal storm water permits, and embraces BMPs as an interim permitting approach.

The interim permitting approach uses BMPs in first-round storm water permits, and expanded or better-tailored BMPs in subsequent permits, where necessary, to provide for the attainment of water quality standards. In cases where adequate information exists to develop more specific conditions or limitations to meet water quality standards, these conditions or limitations are to be incorporated into storm water permits, as necessary and appropriate.

This interim permitting approach, however, only applies to EPA. EPA encourages the State to adopt a similar policy for municipal storm water permits. This interim permitting approach provides time, where necessary, to more fully assess the range of issues and possible options for the control of storm water discharges for the protection of water quality. More information on this issue is included in the response to comment document in response to specific storm water issues raised by commenters.

*5. Schedules of Compliance*

A compliance schedule refers to an enforceable sequence of interim requirements in a permit leading to ultimate compliance with water quality-based effluent limitations or WQBELs in accordance with the CWA. The authorizing compliance schedule provision authorizes, but does not require, the permit issuing authority in the State of California to include such compliance schedules in permits under appropriate circumstances. The State of California is authorized to administer the National Pollutant Discharge Elimination System (NPDES) program and may exercise its discretion when deciding if a compliance schedule is justified because of the technical or financial (or other) infeasibility of immediate compliance. An authorizing compliance schedule provision is included in today's rule because of the potential for existing dischargers to have new or more stringent effluent limitations for which immediate compliance would not be possible or practicable.

*New and Existing Dischargers:* The provision allows compliance schedules only for an "existing discharger" which is defined as any discharger which is not a "new California discharger." A "new California discharger" includes "any building, structure, facility, or installation from which there is, or may be, a 'discharge of pollutants', the construction of which commences after the effective date of this regulation." These definitions are modeled after the existing 40 CFR 122.2 definitions for parallel terms, but with a cut-off date modified to reflect this rule. Only "new California dischargers" are required to comply immediately upon commencement of discharge with effluent limitations derived from the criteria in this rule. For "existing dischargers" whose permits are reissued or modified to contain new or more stringent limitations based upon certain water quality requirements, the permit could allow up to five years, or up to the length of a permit, to comply with such limitations. The provision applies to new or more stringent effluent limitations based on the criteria in this EPA rule.

EPA has included "increasing dischargers" within the category of "existing dischargers" since "increasing dischargers" are existing facilities with a change—an increase—in their discharge. Such facilities may include those with seasonal variations. "Increasing dischargers" will already have treatment systems in place for their current discharge, thus, they have less

opportunity than a new discharger does to design and build a new treatment system which will meet new water quality-based requirements for their changed discharge. Allowing existing facilities with an increasing discharge a compliance schedule will avoid placing the discharger at a competitive disadvantage vis-a-vis other existing dischargers who are eligible for compliance schedules.

Today's rule does not prohibit the use of a short-term "shake down period" for new California dischargers as is provided for new sources or new dischargers in 40 CFR 122.29(d)(4). These regulations require that the owner or operator of (1) a new source; (2) a new discharger (as defined in 40 CFR 122.2) which commenced discharge after August 13, 1979; or (3) a recommencing discharger shall install and implement all pollution control equipment to meet the conditions of the permit before discharging. The facility must also meet all permit conditions in the shortest feasible time (not to exceed 90 days). This shake-down period is not a compliance schedule. This approach may be used to address violations which may occur during a new facility's start-up, especially where permit limits are water quality-based and biological treatment is involved.

The burden of proof to show the necessity of a compliance schedule is on the discharger, and the discharger must request approval from the permit issuing authority for a schedule of compliance. The discharger should submit a description of the minimum required actions or evaluations that must be undertaken in order to comply with the new or more restrictive discharge limits. Dates of completion for the required actions or evaluations should be included, and the proposed schedule should reflect the shortest practicable time to complete all minimum required actions.

*Duration of Compliance Schedules:* Today's rule provides that compliance schedules may provide for up to five years to meet new or more stringent effluent limitations in those limited circumstances where the permittee can demonstrate to the permit authority that an extended schedule is warranted. EPA's regulations at 122.47 require compliance with standards as soon as possible. This means that permit authorities should not allow compliance schedules where the permittee fails to demonstrate their necessity. This provision should not be considered a default compliance schedule duration for existing facilities.

In instances where dischargers wish to conduct toxicological studies, analyze results, and adopt and implement new or revised water quality-based effluent limitations, EPA believes that five years is sufficient time within which to complete this process. See the preamble to the proposed rule.

Under this rule, where a schedule of compliance exceeds one year, interim requirements are to be specified and interim progress reports are to be submitted at least annually to the permit issuing authority, in at least one-year time intervals.

The rule allows all compliance schedules to extend up to a maximum duration of five years, which is the maximum term of any NPDES permit. See 40 CFR 122.46. The discharger's opportunity to obtain a compliance schedule occurs when the existing permit for that discharge is issued, reissued or modified to contain more stringent limits based on the water quality criteria in today's rule. Such compliance schedules, however, cannot be extended to any indefinite point of time in the future because the compliance schedule provision in this rule will sunset on May 18, 2005. The sunset applies to the authorizing provision in today's rule (40 CFR 131.38(e)), not to individual schedules of compliance included in specific NPDES permits. Delays in reissuing expired permits (including those which continue in effect under applicable NPDES regulations) cannot indefinitely extend the period of time during which a compliance schedule is in effect. This would occur where the permit authority includes the single maximum five-year compliance schedule in a permit that is reissued just before the compliance schedule provision sunsets (having been previously issued without WQBELS using the rule's criteria on the eve of the effective date of this rule). Instead, the effect of the sunset provision is to limit the longest time period for compliance to ten years after the effective date of this rule.

EPA recognizes that where a permit is modified during the permit term, and the permittee needs the full five years to comply, the five-year schedule may extend beyond the term of the modified permit. In such cases, the rule allows for the modified permit to contain a compliance schedule with an interim limit by the end of the permit term. When the permit is reissued, the permit authority may extend the compliance schedule in the next permit, provided that, taking into account the amount of time allowed under the previous permit, the entire compliance schedule contained in the permit shall not exceed five years. Final permit limits and compliance dates will be included in the record for the permit. Final compliance dates must occur within five years from the date of permit issuance, reissuance, or modification, unless additional or less time is provided for by law.

EPA would prefer that the State adopt an authorizing compliance schedule provision but recognizes that the State may not be able to complete this action for some time after promulgation of the CTR. Thus, EPA has chosen to promulgate the rule with a sunset provision which states that the authorizing compliance schedule provision will cease or sunset on May 18, 2005. However, if the State Board adopts, and EPA approves, a statewide authorizing compliance schedule provision significantly prior to May 18, 2005, EPA will act to stay the authorizing compliance schedule provision in today's rule. Additionally, if a Regional Board adopts, and the State Board adopts and EPA approves, a Regional Board authorizing compliance schedule provision, EPA will act to stay today's provision for the appropriate or corresponding geographic region in California. At that time, the State Board's or Regional Board's authorizing compliance schedule provision will govern the ability of the State regulatory entity to allow a discharger to include a compliance schedule in a discharger's NPDES permit.

*Antibacksliding:* EPA wishes to address the potential concern over antibacksliding where revised permit limits based on new information are the result of the completion of additional studies. The Agency's interpretation of the CWA is that the antibacksliding requirements of section 402(o) of the CWA do not apply to revisions to effluent limitations made before the scheduled date of compliance for those limitations.

*State Compliance Schedule Provisions:* EPA supports the State in adopting a statewide provision independent of or as part of the effort to readopt statewide water quality control plans, or in adopting individual basin-wide compliance schedule provisions through its nine Regional Water Quality Control Boards (RWQCBs). The State and RWQCBs have broad discretion to adopt a provision, including discretion on reasonable lengths of time for final compliance with WQBELs. EPA recognizes that practical time frames within which to set interim goals may be necessary to achieve meaningful, long-term improvements in water quality in California.

At this time, two RWQCBs have adopted an authorizing compliance schedule provision as an amendment to

their respective Basin Plans during the Boards' last triennial review process. The Basin Plans have been adopted by the State and have come to EPA for approval. Thus, the Basin Plans' provisions are effective for the respective Basins. If and when EPA approves of either Regional Basin Plan, EPA will expeditiously act to amend the CTR, staying its compliance schedule provision, for the appropriate geographic region.

*6. Changes From Proposed Rule*

A few changes were made in the final rule from the proposal both as a result of the Agency's consideration of issues raised in public comments and Endangered Species Act consultation with the U.S. Fish and Wildlife Service (FWS) and U.S. National Marine Fisheries Service (NMFS). The important changes include: reserving the mercury aquatic life criteria; reserving the selenium freshwater acute aquatic life criterion; reserving the chloroform human health criteria; and adding a sunset provision to the authorizing compliance schedule provision. EPA also clarified that the CTR will not replace priority toxic pollutant criteria which were adopted by the San Francisco Regional Water Quality Control Board in its 1986 Basin Plan, adopted by the State Board, and approved by EPA; specifying the harmonic mean for human health criteria for non-carcinogens and adding a provision which explicitly allows the State to adopt and implement an alternative averaging period, frequency, and design flow for a criterion after opportunity for public comment.

The first two changes, the reservation of mercury criteria and selenium criterion, are discussed in more detail below in Section L., The Endangered Species Act (ESA). The selenium criterion is also discussed in more detail above in Section E., Derivation of Criteria, in subsection 2.b., Freshwater Acute Selenium Criterion. EPA has also decided to reserve a decision on numeric criteria for chloroform and therefore not promulgate chloroform criteria in the final rule. As part of a large-scale regulation promulgated in December 1998 under the Safe Drinking Water Act, EPA published a health-based goal for chloroform (the maximum contaminant level goal or MCLG) of zero, see 63 FR 69390, Dec. 16, 1998. EPA provided new data and analyses concerning chloroform for public review and comment, including a different, mode of action approach for estimating the cancer risk, 63 FR 15674, March 31, 1998, but did not reach a conclusion on how to use that new information in establishing the final MCLG, pending further review by the Science Advisory Board. EPA has now concluded that any further actions on water quality criteria should take into account the new data and analysis as reviewed by the SAB. This decision is consistent with a recent federal court decision vacating the MCLG for chloroform (*Chlorine Chemistry Council v. EPA*, No. 98–1627 (DC Cir., Mar. 31,2000)). EPA intends to reassess the human health 304(a) criteria recommendation for chloroform. For these reasons, EPA has decided to reserve a decision on numeric criteria for chloroform in the CTR and not promulgate water quality criteria as proposed. Permitting authorities in California should continue to rely on existing narrative criteria to establish effluent limitations as necessary for chloroform.

The sunset provision for the authorizing compliance schedule provision has been added to ease the transition from a Federal provision to the State's provision that was adopted in March 2000 as part of its' new statewide implementation plan. The sunset provision is discussed in more detail in Section G.5 of today's preamble. The CTR matrix at 40 CFR 131.38(b)(1) makes it explicit that the rule does not supplant priority toxic pollutant criteria which were adopted by the San Francisco Regional Water Quality Control Board in its 1986 Basin Plan, adopted by the State Board, and approved by EPA. This change is discussed more fully in Section D.4. of today's preamble. EPA modified the design flow for implementing human health criteria for non-carcinogens from a 30Q5 to a harmonic mean. Human health criteria for non-carcinogens are based on an RfD, which is an acceptable daily exposure over a lifetime. EPA matched the criteria for protection over a human lifetime with the longest stream flow averaging period, i.e., the harmonic mean. Lastly, the CTR now contains language which is intended to make it easier for the State to adopt and implement an alternative averaging period, frequency and related design flow, for situations where the default parameters are inappropriate. This language is found at 40 CFR 131.38(c)(2)(iv).

**H. Economic Analysis**

This final rule establishes ambient water quality criteria which, by themselves, do not directly impose economic impacts (see section K). These criteria combined with the State-adopted designated uses for inland surface waters, enclosed bays and estuaries, and implementation policies, will establish water quality standards. Until the State implements these water quality standards, there will be no effect of this rule on any entity. The State will implement these criteria by ensuring that NPDES permits result in discharges that will meet these criteria. In so doing, the State will have considerable discretion.

EPA has analyzed the indirect potential costs and benefits of this rule. In order to estimate the indirect costs and benefits of the rule, an appropriate baseline must be established. The baseline is the starting point for measuring incremental costs and benefits of a regulation. The baseline is established by assessing what would occur in the absence of the regulation. At present, State Basin Plans contain a narrative water quality criterion stating that all waters shall be maintained free of toxic substances in concentrations that produce detrimental physiological responses in human, plant, animal, or aquatic life. EPA's regulation at 40 CFR 122.44(d)(1)(vi) requires that where a discharge causes or has the reasonable potential to cause an excursion above a narrative criterion within a State water quality standard, the permitting authority must establish effluent limits but may determine limits using a number of options. These options include establishing "effluent limits on a case-by-case basis, using EPA's water quality criteria published under section 304(a) of the CWA, supplemented where necessary by other relevant information" (40 CFR 122.44(d)(1)(vi)(B)). Thus, to the extent that the State is implementing its narrative criteria by applying the CWA section 304(a) criteria, this rule does not impose any incremental costs because the criteria in this rule are identical to the CWA section 304(a) criteria. Alternatively, to the extent that the State is implementing its narrative criteria on a "case-by-case basis" using "other relevant information" in its permits this rule may impose incremental indirect costs because the criteria in these permits may not be based on CWA 304(a) criteria. Both of these approaches to establishing effluent limits are in full compliance with the CWA.

Because a specific basis for effluent limits in all existing permits in California is not known, it is not possible to determine a precise estimate of the indirect costs of this rule. The incremental costs of the rule may be as low as zero, or as high as $61 million. The high estimate of costs is based on the possibility that most of the effluent limits now in effect are not based on 304(a) criteria. EPA evaluated these

indirect costs using two different approaches. The first approach uses existing discharge data and makes assumptions about future State NPDES permit limits. Actual discharge levels are usually lower than the level set by current NPDES permit limits. This approach, representing the low-end scenario, also assumes that some of the discretionary mechanisms that would enhance flexibility (*e.g.*, site specific criteria, mixing zones) would be granted by the State. The second approach uses a sample of existing permit limits and assumes that dischargers are actually discharging at the levels contained in their permits and makes assumptions about limits statewide that would be required under the rule. This approach, representing the high-end scenario, also assumes that none of the discretionary mechanisms that would enhance flexibility (*e.g.*, site specific criteria, mixing zones) would be granted by the State. These two approaches recognize that the State has significant flexibility and discretion in how it chooses to implement standards within the NPDES permit program, the EA by necessity includes many assumptions about how the State will implement the water quality standards. These assumptions are based on a combination of EPA guidance and current permit conditions for the facilities examined in this analysis. To account for the uncertainty of EPA's implementation assumptions, this analysis estimates a wide range of costs and benefits. By completing the EA, EPA intends to inform the public about how entities might be potentially affected by State implementation of water quality standards in the NPDES permit program. The costs and benefits sections that follow summarize the methodology and results of the analysis.

*1. Costs*

EPA assessed the potential compliance costs that facilities may incur to meet permit limits based on the criteria in today's rule. The analysis focused on direct compliance costs such as capital costs and operation and maintenance costs (O&M) for end-of-pipe pollution control, indirect source controls, pollution prevention, monitoring, and costs of pursuing alternative methods of compliance.

The population of facilities with NPDES permits that discharge into California's enclosed bays, estuaries and inland surface waters includes 184 major dischargers and 1,057 minor dischargers. Of the 184 major facilities, 128 are publicly owned treatment works (POTWs) and 56 are industrial facilities. Approximately 2,144 indirect dischargers designated as significant industrial users discharge wastewater to those POTWs. In the EA for the proposed CTR, EPA used a three-phased process to select a sample of facilities to represent California dischargers potentially affected by the State's implementation of permit limits based on the criteria contained in this rule.

The first phase consisted of choosing three case study areas for which data was thought to exist. The three case studies with a total of 5 facilities included: the South San Francisco Bay (the San Jose/Santa Clara Water Pollution Control Plant and Sunnyvale Water Pollution Control Plant); the Sacramento River (the Sacramento Regional Wastewater Treatment Plant); and the Santa Ana River (the City of Riverside Water Quality Control Plant and the City of Colton Municipal Wastewater Treatment Facility). The second phase consisted of selecting five additional major industrial dischargers to complement the case-study POTWs.

The third phase involved selecting 10 additional facilities to improve the basis for extrapolating the costs of the selected sample facilities to the entire population of potentially affected dischargers. The additional 10 facilities were selected such that the group examined: (1) Was divided between major POTWs and major industrial discharger categories in proportion to the numbers of facilities in the State; (2) gave greater proportionate representation to major facilities than minor facilities based on a presumption that the majority of compliance costs would be incurred by major facilities; (3) gave a proportionate representation to each of four principal conventional treatment processes typically used by facilities in specified industries in California; and (4) was representative of the proportionate facilities located within the different California Regional Water Quality Control Boards. Within these constraints, facilities were selected at random to complete the sample.

In the EA for today's final rule, EPA primarily used the same sample as the EA for the proposed rule with some modifications. EPA increased the number of minor POTWs and minor industrial facilities in the sample. EPA randomly selected four new minor POTW facilities and five new minor industrial facilities to add to the sample. The number of sample facilities selected in each area under the jurisdiction of a Regional Water Quality Control Board was roughly proportional to the universe of facilities in each area.

For those facilities that were projected to exceed permit limits based on the criteria, EPA estimated the incremental costs of compliance. Using a decision matrix or flow chart, costs were developed for two different scenarios—a "low-end" cost scenario and a "high-end" cost scenario—to account for a range of regulatory flexibility available to the State when implementing permit limits based on the water quality criteria. The assumptions for baseline loadings also vary over the two scenarios. The low-end scenario generally assumed that facilities were discharging at the maximum effluent concentrations taken from actual monitoring data, while the high-end scenario generally assumed that facilities were discharging at their current effluent limits. The decision matrix specified assumptions used for selection of control options, such as optimization of existing treatment processes and operations, in-plant pollutant minimization and prevention, and end-of-pipe treatment.

The annualized potential costs that direct and indirect dischargers may incur as a result of State implementation of permit limits based on water quality standards using today's criteria are estimated to be between $33.5 million and $61 million. EPA believes that the costs incurred as a result of State implementation of these permit limits will approach the low-end of the cost range. Costs are unlikely to reach the high-end of the range because State authorities are likely to choose implementation options that provide some degree of flexibility or relief to point source dischargers. Furthermore, cost estimates for both scenarios, but especially for the high-end scenario, may be overstated because the analysis tended to use conservative assumptions in calculating these permit limits and in establishing baseline loadings. The baseline loadings for the high-end were based on current effluent limits rather than actual pollutant discharge data. Most facilities discharge pollutants in concentrations well below current effluent limits. In addition, both the high-end and low-end cost estimates in the EA may be slightly overstated since potential costs incurred to reduce chloroform discharges were included in these estimates. EPA made a decision to reserve the chloroform human health criteria after the EA was completed.

Under the low-end cost scenario, major industrial facilities and POTWs would incur about 27 percent of the potential costs, indirect dischargers would incur about 70 percent of the potential costs, while minor dischargers would incur about 3 percent. Of the major direct dischargers, POTWs would incur the largest share of projected costs (87 percent). However, distributed

among 128 major POTWs in the State, the average cost per plant would be $61,000 per year. Chemical and petroleum industries would incur the highest cost of the industrial categories (5.6 percent of the annual costs, with an annual average of $25,200 per plant). About 57 percent of the low-end costs would be associated with pollution prevention activities, while nearly 38 percent would be associated with pursuing alternative methods of compliance under the regulations.

Under the high-end cost scenario, major industrial facilities and POTWs would incur about 94 percent of the potential costs, indirect dischargers would incur about 17 percent of the potential costs, while minor dischargers would incur about 5 percent. Among the major, direct dischargers, two categories would incur the majority of potential costs—major POTWs (82 percent), Chemical/Petroleum Products (9 percent). The average annual per plant cost for different industry categories would ranges from zero to $324,000. The two highest average cost categories would be major POTWs ($324,000 per year) and Chemical/Petroleum Products ($221,264 per year). The shift in proportion of potential costs between direct and indirect dischargers is due to the assumption that more direct dischargers would use end-of-pipe treatment under the high-end scenario. Thus, a smaller proportion of indirect dischargers would be impacted under the high-end scenario, since some municipalities are projected to add end-of-pipe treatment which would reduce the need for controls from indirect discharges. Over 91 percent of the annual costs are for waste minimization and treatment optimization costs. Waste minimization would represent nearly 84% of the total annual costs. Capital and operation and maintenance costs would make up less than 9 percent of annual costs.

*Cost-Effectiveness:* Cost-effectiveness is estimated in terms of the cost of reducing the loadings of toxic pollutants from point sources. The cost-effectiveness is derived by dividing the projected annual costs of implementing permit limits based on water quality standards using today's criteria by the toxicity-weighted pounds (pound-equivalents) of pollutants removed. Pound-equivalents are calculated by multiplying pounds of each pollutant removed by the toxic weight (based on the toxicity of copper) for that pollutant.

Based on this analysis, State implementation of permit limits based on today's criteria would be responsible for the reduction of about 1.1 million to 2.7 million toxic pound-equivalents per year, or 15 to 50 percent of the toxic-weighted baseline loadings for the high- and low-end scenarios, respectively. The cost-effectiveness of the scenarios would range from $22 (high-end scenario) to $31 (low-end scenario) per pound-equivalent.

*2. Benefits*

The benefits analysis is intended to provide insight into both the types and potential magnitude of the economic benefits expected as a result of implementation of water quality standards based on today's criteria. To the extent feasible, empirical estimates of the potential magnitude of the benefits were developed and then compared to the estimated costs of implementing water quality standards based on today's criteria.

To perform a benefits analysis, the types or categories of benefits that apply need to be defined. EPA relied on a set of benefits categories that typically apply to changes in the water resource environment. Benefits were categorized as either use benefits or passive (nonuse) benefits depending on whether or not they involve direct use of, or contact with, the resource. The most prominent use benefit categories are those related to recreational fishing, boating, and swimming. Another use benefit category of significance is human health risk reduction. Human health risk reductions can be realized through actions that reduce human exposure to contaminants such as exposure through the consumption of fish containing elevated levels of pollutants. Passive use benefits are those improvements in environmental quality that are valued by individuals apart from any use of the resource in question.

Benefits estimates were derived in this study using an approach in which benefits of discrete large-scale changes in water quality beyond present day conditions were estimated wherever feasible. A share of those benefits was then apportioned to implementation of water quality standards based on today's criteria. The apportionment estimate was based on a three-stage process:

First, EPA assessed current total loadings from all sources that are contributing to the toxics-related water quality problems observed in the State. This defines the overall magnitude of loadings. Second, the share of total loadings that are attributable to sources that would be controlled through implementation of water quality standards based on today's criteria was estimated. Since this analysis was designed to focus only on those controls imposed on point sources, this stage of the process entailed estimating the portion of total loadings originating from point sources. Third, the percentage reduction in loadings expected due to implementation of today's criteria was estimated and then multiplied by the share of point source loadings to calculate the portion of benefits that could be attributed to implementation of water quality standards based on today's criteria.

Total monetized annual benefits were estimated in the range of $6.9 to $74.7 million. By category, annual benefits would be $1.3 to $4.6 million for avoided cancer risk, $2.2 to $15.2 million for recreational angling, and $3.4 to $54.9 million for passive use benefits.

There are numerous categories of potential or likely benefits that have been omitted from the quantified and monetized benefit estimates. In terms of potential magnitudes of benefit, the following are likely to be significant contributors to the underestimation of the monetized values presented above:

- Improvements in water-related (in-stream and near stream) recreation apart from fishing. The omission of potential motorized and nonmotorized boating, swimming, picnicking, and related in-stream and stream-side recreational activities from the benefits estimates could contribute to an appreciable underestimation of total benefits. Such recreational activities have been shown in empirical research to be highly valued, and even modest changes in participation and or user values could lead to sizable benefits statewide. Some of these activities can be closely associated with water quality attributes (notably, swimming). Other recreational activities may be less directly related to the water quality improvements, but might nonetheless increase due to their association with fishing, swimming, or other activities in which the participants might engage.
- Improvements in consumptive and nonconsumptive land-based recreation, such as hunting and wildlife observation. Improvements in aquatic habitats may lead (via food chain and related ecologic benefit mechanisms) to healthier, larger, and more diverse populations of avian and terrestrial species, such as waterfowl, eagles, and otters. Improvements in the populations for these species could manifest as improved hunting and wildlife viewing opportunities, which might in turn increase participation and user day values for such activities. Although the scope of the benefits analysis has not allowed a quantitative assessment of these values at either pre- or post-rule

conditions, it is conceivable that these benefits could be appreciable.

• Improvements in human health resulting from reduction of non-cancer risk. EPA estimated that implementation of water quality standards based on the criteria would result in a reduction of mercury concentrations in fish tissue and, thus, a reduction in the hazard from consumption of mercury contaminated fish. However, EPA was unable to monetize benefits due to reduced non-cancer health effects.

• Human health benefits for saltwater anglers outside of San Francisco Bay were not estimated. The number of saltwater anglers outside of San Francisco Bay is estimated to be 673,000 (based on Huppert, 1989, and U.S. FWS, 1993). The omission of other saltwater anglers may cause human health benefits to be underestimated. In addition, benefit estimates in the EA may be slightly overstated since potential benefits from reductions in chloroform discharges were included in these estimates. EPA made a decision to reserve the chloroform human health criteria after the EA was completed.

EPA received a number of comments which requested the Agency use the cost-benefit analysis in the EA as a factor in setting water quality criteria. EPA does not use the EA as a basis in determining protective water quality criteria. EPA's current regulations at 40 CFR 131.11 state that the criteria must be based on sound scientific rationale and must protect the designated use. From the outset of the water quality standards program, EPA has explained that while economic factors may be considered in designating uses, they may not be used to justify criteria that are not protective of those uses. 44 FR 25223–226, April 30, 1979. See e.g. *Mississippi Commission on Natural Resources* v. *Costle*, 625 F. 2d 1269, 1277 (5th Cir. 1980). EPA reiterated this interpretation of the CWA and its implementing regulations in discussing section 304(a) recommended criteria guidance stating that "they are based solely on data and scientific judgments on the relationship between pollutant concentrations and environmental and human health effects and do not reflect consideration of economic impacts or the technological feasibility of meeting the chemical concentrations in ambient water." 63 FR 36742 and 36762, July 7, 1998.

### I. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

### J. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating any regulation for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows an Agency to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government Agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of the affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and EPA informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act (UMRA)) for State, local, or tribal governments or the private sector. Today's rule imposes no enforceable duty on any State, local or Tribal governments or the private sector; rather, the CTR promulgates ambient water quality criteria which, when combined with State-adopted uses, will create water quality standards for those water bodies with adopted uses. The State will then use these resulting water quality standards in implementing its existing water quality control programs. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule establishes ambient water quality criteria which, by themselves do not directly impact any entity. The State will implement these criteria by ensuring that NPDES permits result in discharges that will meet these criteria. In so doing, the State will have considerable discretion. Until the State implements these water quality standards, there will be no effect of this rule on any entity. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

### K. Regulatory Flexibility Act

The Regulatory Flexibility Act generally requires Federal agencies to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the Agency certifies that the rule will not have a significant economic impact of a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business according to RFA default definitions for small businesses (based on SBA size

standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This final rule will not impose any requirements on small entities.

Under the CWA water quality standards program, States must adopt water quality standards for their waters that must be submitted to EPA for approval. If the Agency disapproves a State standard and the State does not adopt appropriate revisions to address EPA's disapproval, EPA must promulgate standards consistent with the statutory requirements. EPA has authority to promulgate criteria or standards in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act. These State standards (or EPA-promulgated standards) are implemented through various water quality control programs including the National Pollutant Discharge Elimination System (NPDES) program that limits discharges to navigable waters except in compliance with an EPA permit or permit issued under an approved State NPDES program. The CWA requires that all NPDES permits must include any limits on discharges that are necessary to meet State water quality standards.

Thus, under the CWA, EPA's promulgation of water quality criteria or standards establishes standards that the State, in turn, implements through the NPDES permit process. The State has considerable discretion in deciding how to meet the water quality standards and in developing discharge limits as needed to meet the standards. In circumstances where there is more than one discharger to a water body that is subject to water quality standards or criteria, a State also has discretion in deciding on the appropriate limits for the different dischargers. While the State's implementation of federally-promulgated water quality criteria or standards may result indirectly in new or revised discharge limits for small entities, the criteria or standards themselves do not apply to any discharger, including small entities.

Today's rule, as explained above, does not itself establish any requirements that are applicable to small entities. As a result of EPA's action here, the State of California will need to ensure that permits it issues include limits as necessary to meet the water quality standards established by the criteria in today's rule. In so doing, the State will have a number of discretionary choices associated with permit writing. While California's implementation of today's rule may ultimately result in some new or revised permit conditions for some dischargers, including small entities, EPA's action today does not impose any of these as yet unknown requirements on small entities.

The RFA requires analysis of the economic impact of a rule only on the small entities subject to the rule's requirements. Courts have consistently held that the RFA imposes no obligation on an Agency to prepare a small entity analysis of the effect of a rule on entities not regulated by the rule. *Motor & Equip. Mrfrs. Ass'n* v. *Nichols*, 142 F.3d 449, 467 & n.18 (D.C. Cir. 1998)(quoting *United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996); see also *American Trucking Association, Inc.* v. *EPA*, 175 F.3d 1027 (D.C. Cir. 1999). This final rule will have a direct effect only on the State of California which is not a small entity under the RFA. Thus, individual dischargers, including small entities, are not directly subject to the requirements of the rule. Moreover, because of California's discretion in implementing these standards, EPA cannot assess the extent to which the promulgation of this rule may subsequently affect any dischargers, including small entities. Consequently, certification under section 605(b) is appropriate. *State of Michigan, et al.* v. *U.S. Environmental Protection Agency*, No. 98–1497 (D.C. Cir. Mar. 3, 2000), slip op. at 41–42.

### L. Paperwork Reduction Act

This action requires no new or additional information collection, reporting, or record keeping subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

### M. Endangered Species Act

Pursuant to section 7(a) of the Endangered Species Act (ESA), EPA has consulted with the U.S. Fish and Wildlife Service and the U.S. National Marine Fisheries Service (collectively, the Services) concerning EPA's rulemaking action for the State of California. EPA initiated informal consultation in early 1994, and completed formal consultation in April 2000. As a result of the consultation, EPA modified some of the provisions in the final rule.

As part of the consultation process, EPA submitted to the Services a Biological Evaluation for their review in October of 1997. This evaluation found that the proposed CTR was not likely to jeopardize the continued existence of any Federally listed species or result in the destruction or adverse modification of designated critical habitat. In April of 1998, the Services sent EPA a draft Biological Opinion which tentatively found that EPA's proposed rule would jeopardize the continued existence of several Federally listed species and result in the destruction or have adverse effect on designated critical habitat. After lengthy discussions with the Services, EPA agreed to several changes in the final rule and the Services in turn issued a final Biological Opinion finding that EPA's action would not likely jeopardize the continued existence of any Federally listed species or result in the destruction or adverse modification of designated critical habitat. EPA's Biological Evaluation and the Services' final Biological Opinion are contained in the administrative record for today's rule.

In order to ensure the continued protection of Federally listed threatened and endangered species and to protect their critical habitat, EPA agreed to reserve the aquatic life criteria for mercury and the acute freshwater aquatic life criterion for selenium. The Services believe that EPA's proposed criteria are not sufficiently protective of Federally listed species and should not be promulgated. EPA agreed that it would reevaluate these criteria in light of the Services concerns before promulgating them for the State of California. Other commitments made by EPA are described in a letter to the Services dated December 16, 1999; this letter is contained in the administrative record for today's rule.

### N. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a major rule as defined

by 5 U.S.C. 804(2). This rule will be effective May 18, 2000.

**O. Executive Order 13084, Consultation and Coordination With Indian Tribal Governments**

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance cots on them. Today's rule will only address priority toxic pollutant water quality criteria for the State of California and does not apply to waters in Indian country. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

**P. National Technology Transfer and Advancement Act**

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

**Q. Executive Order 13132 on Federalism**

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The rule does not affect the nature of the relationship between EPA and States generally, for the rule only applies to water bodies in California. Further, the rule will not substantially affect the relationship of EPA and the State of California, or the distribution of power or responsibilities between EPA and the State. The rule does not alter the State's authority to issue NPDES permits or the State's considerable discretion in implementing these criteria. The rule simply implements Clean Water Act section 303(c)(2)(B) requiring numeric ambient water quality criteria for which EPA has issued section 304(a) recommended criteria in a manner that is consistent with previous regulatory guidance that the Agency has issued to implement CWA section 303(c)(2)(B). Further, this rule does not preclude the State from adopting water quality standards that meet the requirements of the CWA. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local government representatives in developing this rule. EPA and the State reached an agreement that to best utilize its respective resources, EPA would promulgate water quality criteria and the State would concurrently work on a plan to implement the criteria. Since the proposal of this rule, EPA has kept State officials fully informed of changes to the proposal. EPA has continued to invite comment from the State on these changes. EPA believes that the final CTR incorporates comments from State officials and staff.

**R. Executive Order 13045 on Protection of Children From Environmental Health Risks and Safety Risks**

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria; the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While this final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, we nonetheless have reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. As a matter of EPA policy, we therefore have assessed the environmental health or safety effects of ambient water quality criteria on children. The results of this assessment are contained in section F.3., Human Health Criteria.

**List of Subjects in 40 CFR Part 131**

Environmental protection, Indians—lands, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

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Dated: April 27, 2000.

**Carol Browner,**

*Administrator.*

For the reasons set out in the preamble, part 131 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

## PART 131—WATER QUALITY STANDARDS

1. The authority citation for part 131 continues to read as follows:

**Authority:** 33 U.S.C. 1251 *et seq.*

## Subpart D—[Amended]

2. Section 131.38 is added to subpart D to read as follows:

### § 131.38 Establishment of Numeric Criteria for Priority Toxic Pollutants for the State of California.

(a) *Scope.* This section promulgates criteria for priority toxic pollutants in the State of California for inland surface waters and enclosed bays and estuaries. This section also contains a compliance schedule provision.

(b)(1) Criteria for Priority Toxic Pollutants in the State of California as described in the following table:

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| A | | B Freshwater | | C Saltwater | | D Human Health ($10^{-6}$ risk for carcinogens) For consumption of: | |
|---|---|---|---|---|---|---|---|
| # Compound | CAS Number | Criterion Maximum Conc. [a] B1 | Criterion Continuous Conc. [d] B2 | Criterion Maximum Conc. [d] C1 | Criterion Continuous Conc. [d] C2 | Water & Organisms ($\mu$g/L) D1 | Organisms Only ($\mu$g/L) D2 |
| 1. Antimony | 7440360 | | | | | 14 a,s | 4300 a,t |
| 2. Arsenic [b] | 7440382 | 340 i,m,w | 150 i,m,w | 69 i,m | 36 i,m | | |
| 3. Beryllium | 7440417 | | | | | n | n |
| 4. Cadmium [b] | 7440439 | 4.3 e,i,m,w,x | 2.2 e,i,m,w | 42 i,m | 9.3 i,m | n | n |
| 5a. Chromium (III) | 16065831 | 550 e,i,m,o | 180 e,i,m,o | | | n | n |
| 5b. Chromium (VI) [b] | 18540299 | 16 i,m,w | 11 i,m,w | 1100 i,m | 50 i,m | n | n |
| 6. Copper [b] | 7440508 | 13 e,i,m,w,x | 9.0 e,i,m,w | 4.8 i,m | 3.1 i,m | 1300 | |
| 7. Lead [b] | 7439921 | 65 e,i,m | 2.5 e,i,m | 210 i,m | 8.1 i,m | n | n |
| 8. Mercury [b] | 7439976 | [Reserved] | [Reserved] | [Reserved] | [Reserved] | 0.050 a | 0.051 a |
| 9. Nickel [b] | 7440020 | 470 e,i,m,w | 52 e,i,m,w | 74 i,m | 8.2 i,m | 610 a | 4600 a |
| 10. Selenium [b] | 7782492 | [Reserved] p | 5.0 q | 290 i,m | 71 i,m | n | n |
| 11. Silver [b] | 7440224 | 3.4 e,i,m | | 1.9 i,m | | | |
| 12. Thallium | 7440280 | | | | | 1.7 a,s | 6.3 a,t |
| 13. Zinc [b] | 7440666 | 120 e,i,m,w,x | 120 e,i,m,w | 90 i,m | 81 i,m | | |
| 14. Cyanide [b] | 57125 | 22 o | 5.2 o | 1 r | 1 r | 700 a | 220,000 a,j |
| 15. Asbestos | 1332214 | | | | | 7,000,000 fibers/L k,s | |
| 16. 2,3,7,8-TCDD (Dioxin) | 1746016 | | | | | 0.000000013 c | 0.000000014 c |
| 17. Acrolein | 107028 | | | | | 320 s | 780 t |
| 18. Acrylonitrile | 107131 | | | | | 0.059 a,c,s | 0.66 a,c,t |
| 19. Benzene | 71432 | | | | | 1.2 a,c | 71 a,c |
| 20. Bromoform | 75252 | | | | | 4.3 a,c | 360 a,c |
| 21. Carbon Tetrachloride | 56235 | | | | | 0.25 a,c,s | 4.4 a,c,t |
| 22. Chlorobenzene | 108907 | | | | | 680 a,s | 21,000 a,j,t |
| 23. Chlorodibromomethane | 124481 | | | | | 0.401 a,c | 34 a,c |
| 24. Chloroethane | 75003 | | | | | | |
| 25. 2-Chloroethylvinyl Ether | 110758 | | | | | | |

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| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 26. Chloroform | 67663 | | | | | [Reserved] | [Reserved] |
| 27. Dichlorobromomethane | 75274 | | | | | 0.56 a,c | 46 a,c |
| 28. 1,1-Dichloroethane | 75343 | | | | | | |
| 29. 1,2-Dichloroethane | 107062 | | | | | 0.38 a,c,s | 99 a,c,t |
| 30. 1,1-Dichloroethylene | 75354 | | | | | 0.057 a,c,s | 3.2 a,c,t |
| 31. 1,2-Dichloropropane | 78875 | | | | | 0.52 a | 39 a |
| 32. 1,3-Dichloropropylene | 542756 | | | | | 10 a,s | 1,700 a,t |
| 33. Ethylbenzene | 100414 | | | | | 3,100 a,s | 29,000 a,t |
| 34. Methyl Bromide | 74839 | | | | | 48 a | 4,000 a |
| 35. Methyl Chloride | 74873 | | | | | n | n |
| 36. Methylene Chloride | 75092 | | | | | 4.7 a,c | 1,600 a,c |
| 37. 1,1,2,2-Tetrachloroethane | 79345 | | | | | 0.17 a,c,s | 11 a,c,t |
| 38. Tetrachloroethylene | 127184 | | | | | 0.8 c,s | 8.85 c,t |
| 39. Toluene | 108883 | | | | | 6,800 a | 200,000 a |
| 40. 1,2-Trans-Dichloroethylene | 156605 | | | | | 700 a | 140,000 a |
| 41. 1,1,1-Trichloroethane | 71556 | | | | | n | n |
| 42. 1,1,2-Trichloroethane | 79005 | | | | | 0.60 a,c,s | 42 a,c,t |
| 43. Trichloroethylene | 79016 | | | | | 2.7 c,s | 81 c,t |
| 44. Vinyl Chloride | 75014 | | | | | 2 c,s | 525 c,t |
| 45. 2-Chlorophenol | 95578 | | | | | 120 a | 400 a |
| 46. 2,4-Dichlorophenol | 120832 | | | | | 93 a,s | 790 a,t |
| 47. 2,4-Dimethylphenol | 105679 | | | | | 540 a | 2,300 a |
| 48. 2-Methyl-4,6-Dinitrophenol | 534521 | | | | | 13.4 s | 765 t |
| 49. 2,4-Dinitrophenol | 51285 | | | | | 70 a,s | 14,000 a,t |
| 50. 2-Nitrophenol | 88755 | | | | | | |
| 51. 4-Nitrophenol | 100027 | | | | | | |
| 52. 3-Methyl-4-Chlorophenol | 59507 | | | | | | |
| 53. Pentachlorophenol | 87865 | 19 f,w | 15 f,w | 13 | 7.9 | 0.28 a,c | 8.2 a,c,j |
| 54. Phenol | 108952 | | | | | 21,000 a | 4,600,000 a,j,t |
| 55. 2,4,6-Trichlorophenol | 88062 | | | | | 2.1 a,c | 6.5 a,c |
| 56. Acenaphthene | 83329 | | | | | 1,200 a | 2,700 a |
| 57. Acenaphthylene | 208968 | | | | | | |
| 58. Anthracene | 120127 | | | | | 9,600 a | 110,000 a |

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 59. Benzidine | 92875 | | | | | 0.00012 a,c,s | 0.00054 a,c,t |
| 60. Benzo(a)Anthracene | 56553 | | | | | 0.0044 a,c | 0.049 a,c |
| 61. Benzo(a)Pyrene | 50328 | | | | | 0.0044 a,c | 0.049 a,c |
| 62. Benzo(b)Fluoranthene | 205992 | | | | | 0.0044 a,c | 0.049 a,c |
| 63. Benzo(ghi)Perylene | 191242 | | | | | | |
| 64. Benzo(k)Fluoranthene | 207089 | | | | | 0.0044 a,c | 0.049 a,c |
| 65. Bis(2-Chloroethoxy)Methane | 111911 | | | | | | |
| 66. Bis(2-Chloroethyl)Ether | 111444 | | | | | 0.031 a,c,s | 1.4 a,c,t |
| 67. Bis(2-Chloroisopropyl)Ether | 39638329 | | | | | 1,400 a | 170,000 a,t |
| 68. Bis(2-Ethylhexyl)Phthalate | 117817 | | | | | 1.8 a,c,s | 5.9 a,c,t |
| 69. 4-Bromophenyl Phenyl Ether | 101553 | | | | | | |
| 70. Butylbenzyl Phthalate | 85687 | | | | | 3,000 a | 5,200 a |
| 71. 2-Chloronaphthalene | 91587 | | | | | 1,700 a | 4,300 a |
| 72. 4-Chlorophenyl Phenyl Ether | 7005723 | | | | | | |
| 73. Chrysene | 218019 | | | | | 0.0044 a,c | 0.049 a,c |
| 74. Dibenzo(a,h)Anthracene | 53703 | | | | | 0.0044 a,c | 0.049 a,c |
| 75. 1,2 Dichlorobenzene | 95501 | | | | | 2,700 a | 17,000 a |
| 76. 1,3 Dichlorobenzene | 541731 | | | | | 400 | 2,600 |
| 77. 1,4 Dichlorobenzene | 106467 | | | | | 400 | 2,600 |
| 78. 3,3'-Dichlorobenzidine | 91941 | | | | | 0.04 a,c,s | 0.077 a,c,t |
| 79. Diethyl Phthalate | 84662 | | | | | 23,000 a,s | 120,000 a,t |
| 80. Dimethyl Phthalate | 131113 | | | | | 313,000 s | 2,900,000 t |
| 81. Di-n-Butyl Phthalate | 84742 | | | | | 2,700 a,s | 12,000 a,t |
| 82. 2,4-Dinitrotoluene | 121142 | | | | | 0.11 c,s | 9.1 c,t |
| 83. 2,6-Dinitrotoluene | 606202 | | | | | | |
| 84 Di-n-Octyl Phthalate | 117840 | | | | | | |
| 85. 1,2-Diphenylhydrazine | 122667 | | | | | 0.040 a,c,s | 0.54 a,c,t |
| 86. Fluoranthene | 206440 | | | | | 300 a | 370 a |
| 87. Fluorene | 86737 | | | | | 1,300 a | 14,000 a |
| 88. Hexachlorobenzene | 118741 | | | | | 0.00075 a,c | 0.00077 a,c |
| 89. Hexachlorobutadiene | 87683 | | | | | 0.44 a,c,s | 50 a,c,t |
| 90. Hexachlorocyclopentadiene | 77474 | | | | | 240 a,s | 17,000 a,j,t |
| 91. Hexachloroethane | 67721 | | | | | 1.9 a,c,s | 8.9 a,c,t |

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| | | | | | | | |
|---|---|---|---|---|---|---|---|
| 92. Indeno(1,2,3-cd) Pyrene | 193395 | | | | | 0.0044 a,c | 0.049 a,c |
| 93. Isophorone | 78591 | | | | | 8.4 c,s | 600 c,t |
| 94. Naphthalene | 91203 | | | | | | |
| 95. Nitrobenzene | 98953 | | | | | 17 a,s | 1,900 a,j,t |
| 96. N-Nitrosodimethylamine | 62759 | | | | | 0.00069 a,c,s | 8.1 a,c,t |
| 97. N-Nitrosodi-n-Propylamine | 621647 | | | | | 0.005 a | 1.4 a |
| 98. N-Nitrosodiphenylamine | 86306 | | | | | 5.0 a,c,s | 16 a,c,t |
| 99. Phenanthrene | 85018 | | | | | | |
| 100. Pyrene | 129000 | | | | | 960 a | 11,000 a |
| 101. 1,2,4-Trichlorobenzene | 120821 | | | | | | |
| 102. Aldrin | 309002 | 3 g | | 1.3 g | | 0.00013 a,c | 0.00014 a,c |
| 103. alpha-BHC | 319846 | | | | | 0.0039 a,c | 0.013 a,c |
| 104. beta-BHC | 319857 | | | | | 0.014 a,c | 0.046 a,c |
| 105. gamma-BHC | 58899 | 0.95 w | | 0.16 g | | 0.019 c | 0.063 c |
| 106. delta-BHC | 319868 | | | | | | |
| 107. Chlordane | 57749 | 2.4 g | 0.0043 g | 0.09 g | 0.004 g | 0.00057 a,c | 0.00059 a,c |
| 108. 4,4'-DDT | 50293 | 1.1 g | 0.001 g | 0.13 g | 0.001 g | 0.00059 a,c | 0.00059 a,c |
| 109. 4,4'-DDE | 72559 | | | | | 0.00059 a,c | 0.00059 a,c |
| 110. 4,4'-DDD | 72548 | | | | | 0.00083 a,c | 0.00084 a,c |
| 111. Dieldrin | 60571 | 0.24 w | 0.056 w | 0.71 g | 0.0019 g | 0.00014 a,c | 0.00014 a,c |
| 112. alpha-Endosulfan | 959988 | 0.22 g | 0.056 g | 0.034 g | 0.0087 g | 110 a | 240 a |
| 113. beta-Endosulfan | 33213659 | 0.22 g | 0.056 g | 0.034 g | 0.0087 g | 110 a | 240 a |
| 114. Endosulfan Sulfate | 1031078 | | | | | 110 a | 240 a |
| 115. Endrin | 72208 | 0.086 w | 0.036 w | 0.037 g | 0.0023 g | 0.76 a | 0.81 a,j |
| 116. Endrin Aldehyde | 7421934 | | | | | 0.76 a | 0.81 a,j |
| 117. Heptachlor | 76448 | 0.52 g | 0.0038 g | 0.053 g | 0.0036 g | 0.00021 a,c | 0.00021 a,c |
| 118. Heptachlor Epoxide | 1024573 | 0.52 g | 0.0038 g | 0.053 g | 0.0036 g | 0.00010 a,c | 0.00011 a,c |
| 119-125. Polychlorinated biphenyls (PCBs) | | | 0.014 u | | 0.03 u | 0.00017 c,v | 0.00017 c,v |
| 126. Toxaphene | 8001352 | 0.73 | 0.0002 | 0.21 | 0.0002 | 0.00073 a,c | 0.00075 a,c |
| | | | | | | | |
| Total Number of Criteria [h] | | 22 | 21 | 22 | 20 | 92 | 90 |

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**Footnotes to Table in Pararagraph (b)(1):**

a. Criteria revised to reflect the Agency q1* or RfD, as contained in the Integrated Risk Information System (IRIS) as of October 1, 1996. The fish tissue bioconcentration factor (BCF) from the 1980 documents was retained in each case.

b. Criteria apply to California waters except for those waters subject to objectives in Tables III–2A and III–2B of the San Francisco Regional Water Quality Control Board's (SFRWQCB) 1986 Basin Plan, that were adopted by the SFRWQCB and the State Water Resources Control Board, approved by EPA, and which continue to apply.

c. Criteria are based on carcinogenicity of 10 (-6) risk.

d. Criteria Maximum Concentration (CMC) equals the highest concentration of a pollutant to which aquatic life can be exposed for a short period of time without deleterious effects. Criteria Continuous Concentration (CCC) equals the highest concentration of a pollutant to which aquatic life can be exposed for an extended period of time (4 days) without deleterious effects. ug/L equals micrograms per liter.

e. Freshwater aquatic life criteria for metals are expressed as a function of total hardness (mg/L) in the water body. The equations are provided in matrix at paragraph (b)(2) of this section. Values displayed above in the matrix correspond to a total hardness of 100 mg/l.

f. Freshwater aquatic life criteria for pentachlorophenol are expressed as a function of pH, and are calculated as follows: Values displayed above in the matrix correspond to a pH of 7.8. CMC = exp(1.005(pH) − 4.869). CCC = exp(1.005(pH) − 5.134).

g. This criterion is based on 304(a) aquatic life criterion issued in 1980, and was issued in one of the following documents: Aldrin/Dieldrin (EPA 440/5–80–019), Chlordane (EPA 440/5–80–027), DDT (EPA 440/5–80–038), Endosulfan (EPA 440/5–80–046), Endrin (EPA 440/5–80–047), Heptachlor (440/5–80–052), Hexachlorocyclohexane (EPA 440/5–80–054), Silver (EPA 440/5–80–071). The Minimum Data Requirements and derivation procedures were different in the 1980 Guidelines than in the 1985 Guidelines. For example, a "CMC" derived using the 1980 Guidelines was derived to be used as an instantaneous maximum. If assessment is to be done using an averaging period, the values given should be divided by 2 to obtain a value that is more comparable to a CMC derived using the 1985 Guidelines.

h. These totals simply sum the criteria in each column. For aquatic life, there are 23 priority toxic pollutants with some type of freshwater or saltwater, acute or chronic criteria. For human health, there are 92 priority toxic pollutants with either "water + organism" or "organism only" criteria. Note that these totals count chromium as one pollutant even though EPA has developed criteria based on two valence states. In the matrix, EPA has assigned numbers 5a and 5b to the criteria for chromium to reflect the fact that the list of 126 priority pollutants includes only a single listing for chromium.

i. Criteria for these metals are expressed as a function of the water-effect ratio, WER, as defined in paragraph (c) of this section. CMC = column B1 or C1 value x WER; CCC = column B2 or C2 value x WER.

j. No criterion for protection of human health from consumption of aquatic organisms (excluding water) was presented in the 1980 criteria document or in the 1986 Quality Criteria for Water. Nevertheless, sufficient information was presented in the 1980 document to allow a calculation of a criterion, even though the results of such a calculation were not shown in the document.

k. The CWA 304(a) criterion for asbestos is the MCL.

l. [Reserved]

m. These freshwater and saltwater criteria for metals are expressed in terms of the dissolved fraction of the metal in the water column. Criterion values were calculated by using EPA's Clean Water Act 304(a) guidance values (described in the total recoverable fraction) and then applying the conversion factors in § 131.36(b)(1) and (2).

n. EPA is not promulgating human health criteria for these contaminants. However, permit authorities should address these contaminants in NPDES permit actions using the State's existing narrative criteria for toxics.

o. These criteria were promulgated for specific waters in California in the National Toxics Rule ("NTR"), at § 131.36. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries and waters of the State defined as inland, i.e., all surface waters of the State not ocean waters. These waters specifically include the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta. This section does not apply instead of the NTR for this criterion.

p. A criterion of 20 ug/l was promulgated for specific waters in California in the NTR and was promulgated in the total recoverable form. The specific waters to which the NTR criterion applies include: Waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; and waters of Salt Slough, Mud Slough (north) and the San Joaquin River, Sack Dam to the mouth of the Merced River. This section does not apply instead of the NTR for this criterion. The State of California adopted and EPA approved a site specific criterion for the San Joaquin River, mouth of Merced to Vernalis; therefore, this section does not apply to these waters.

q. This criterion is expressed in the total recoverable form. This criterion was promulgated for specific waters in California in the NTR and was promulgated in the total recoverable form. The specific waters to which the NTR criterion applies include: Waters of the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; and waters of Salt Slough, Mud Slough (north) and the San Joaquin River, Sack Dam to Vernalis. This criterion does not apply instead of the NTR for these waters. This criterion applies to additional waters of the United States in the State of California pursuant to 40 CFR 131.38(c). The State of California adopted and EPA approved a site-specific criterion for the Grassland Water District, San Luis National Wildlife Refuge, and the Los Banos State Wildlife Refuge; therefore, this criterion does not apply to these waters.

r. These criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays or estuaries including the San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta. This section does not apply instead of the NTR for these criteria.

s. These criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the Sacramento-San Joaquin Delta and waters of the State defined as inland ( *i.e.*, all surface waters of the State not bays or estuaries or ocean) that include a MUN use designation. This section does not apply instead of the NTR for these criteria.

t. These criteria were promulgated for specific waters in California in the NTR. The specific waters to which the NTR criteria apply include: Waters of the State defined as bays and estuaries including San Francisco Bay upstream to and including Suisun Bay and the Sacramento-San Joaquin Delta; and waters of the State defined as inland (i.e., all surface waters of the State not bays or estuaries or ocean) without a MUN use designation. This section does not apply instead of the NTR for these criteria.

u. PCBs are a class of chemicals which include aroclors 1242, 1254, 1221, 1232, 1248, 1260, and 1016, CAS numbers 53469219, 11097691, 11104282, 11141165, 12672296, 11096825, and 12674112, respectively. The aquatic life criteria apply to the sum of this set of seven aroclors.

v. This criterion applies to total PCBs, e.g., the sum of all congener or isomer or homolog or aroclor analyses.

w. This criterion has been recalculated pursuant to the 1995 Updates: Water Quality Criteria Documents for the Protection of Aquatic Life in Ambient Water, Office of Water, EPA–820-B–96–001, September 1996. See also Great Lakes Water Quality Initiative Criteria Documents for the Protection of Aquatic Life in Ambient Water, Office of Water, EPA–80–B–95–004, March 1995.

x. The State of California has adopted and EPA has approved site specific criteria for the Sacramento River (and tributaries) above Hamilton City; therefore, these criteria do not apply to these waters.

**General Notes to Table in Paragraph (b)(1)**

1. The table in this paragraph (b)(1) lists all of EPA's priority toxic pollutants whether or not criteria guidance are available. Blank spaces indicate the absence of national section 304(a) criteria guidance. Because of variations in chemical nomenclature systems, this listing of toxic pollutants does not duplicate the listing in Appendix A to 40 CFR Part 423–126 Priority Pollutants. EPA has added the Chemical Abstracts Service (CAS) registry numbers, which provide a unique identification for each chemical.

2. The following chemicals have organoleptic-based criteria recommendations that are not included on this chart: zinc, 3-methyl-4-chlorophenol.

3. Freshwater and saltwater aquatic life criteria apply as specified in paragraph (c)(3) of this section.

(2) Factors for Calculating Metals Criteria. Final CMC and CCC values should be rounded to two significant figures.

(i) $CMC = WER \times (Acute\ Conversion\ Factor) \times (\exp\{m_A[\ln(hardness)]+b_A\})$

(ii) $CCC = WER \times (Acute\ Conversion\ Factor) \times (\exp\{m_C[\ln(hardness)]+b_C\})$

(iii) Table 1 to paragraph (b)(2) of this section:

| Metal | $m_A$ | $b_A$ | $m_C$ | $b_C$ |
|---|---|---|---|---|
| Cadmium | 1.128 | -3.6867 | 0.7852 | -2.715 |
| Copper | 0.9422 | -1.700 | 0.8545 | -1.702 |
| Chromium (III) | 0.8190 | 3.688 | 0.8190 | 1.561 |
| Lead | 1.273 | -1.460 | 1.273 | -4.705 |
| Nickel | 0.8460 | 2.255 | 0.8460 | 0.0584 |
| Silver | 1.72 | -6.52 | | |
| Zinc | 0.8473 | 0.884 | 0.8473 | 0.884 |

Note to Table 1: The term "exp" represents the base e exponential function.

(iv) Table 2 to paragraph (b)(2) of this section:

| Metal | Conversion factor (CF) for freshwater acute criteria | CF for freshwater chronic criteria | CF for saltwater acute criteria | CF [a] for saltwater chronic criteria |
|---|---|---|---|---|
| Antimony | [d] | [d] | [d] | [d] |
| Arsenic | 1.000 | 1.000 | 1.000 | 1.000 |
| Beryllium | [d] | [d] | [d] | [d] |
| Cadmium | [b] 0.944 | [b] 0.909 | 0.994 | 0.994 |
| Chromium (III) | 0.316 | 0.860 | [d] | [d] |
| Chromium (VI) | 0.982 | 0.962 | 0.993 | 0.993 |
| Copper | 0.960 | 0.960 | 0.83 | 0.83 |
| Lead | [b] 0.791 | [b] 0.791 | 0.951 | 0.951 |
| Mercury | | | | |
| Nickel | 0.998 | 0.997 | 0.990 | 0.990 |
| Selenium | | [c] | 0.998 | 0.998 |
| Silver | 0.85 | [d] | 0.85 | [d] |
| Thallium | [d] | [d] | [d] | [d] |
| Zinc | 0.978 | 0.986 | 0.946 | 0.946 |

**Footnotes to Table 2 of Paragraph (b)(2):**

[a] Conversion Factors for chronic marine criteria are not currently available. Conversion Factors for acute marine criteria have been used for both acute and chronic marine criteria.

[b] Conversion Factors for these pollutants in freshwater are hardness dependent. CFs are based on a hardness of 100 mg/l as calcium carbonate ($CaCO_3$). Other hardness can be used; CFs should be recalculated using the equations in table 3 to paragraph (b)(2) of this section.

[c] Bioaccumulative compound and inappropriate to adjust to percent dissolved.

[d] EPA has not published an aquatic life criterion value.

**Note to Table 2 of Paragraph (b)(2):** The term "Conversion Factor" represents the recommended conversion factor for converting a metal criterion expressed as the total recoverable fraction in the water column to a criterion expressed as the dissolved fraction in the water column. See "Office of Water Policy and Technical Guidance on Interpretation and Implementation of Aquatic Life Metals Criteria", October 1, 1993, by Martha G. Prothro, Acting Assistant Administrator for Water available from Water Resource Center, USEPA, Mailcode RC4100, M Street SW, Washington, DC, 20460 and the note to § 131.36(b)(1).

(v) Table 3 to paragraph (b)(2) of this section:

| | Acute | Chronic |
|---|---|---|
| Cadmium | CF=1.136672—[(ln {hardness}) (0.041838)] | CF = 1.101672—[(ln {hardness})(0.041838)] |
| Lead | CF=1.46203—[(ln {hardness})(0.145712)] | CF = 1.46203—[(ln {hardness})(0.145712)] |

(c) *Applicability.* (1) The criteria in paragraph (b) of this section apply to the State's designated uses cited in paragraph (d) of this section and apply concurrently with any criteria adopted by the State, except when State regulations contain criteria which are more stringent for a particular parameter and use, or except as provided in footnotes p, q, and x to the table in paragraph (b)(1) of this section.

(2) The criteria established in this section are subject to the State's general rules of applicability in the same way and to the same extent as are other Federally-adopted and State-adopted numeric toxics criteria when applied to the same use classifications including mixing zones, and low flow values below which numeric standards can be exceeded in flowing fresh waters.

(i) For all waters with mixing zone regulations or implementation procedures, the criteria apply at the appropriate locations within or at the boundary of the mixing zones; otherwise the criteria apply throughout the water body including at the point of discharge into the water body.

(ii) The State shall not use a low flow value below which numeric standards can be exceeded that is less stringent than the flows in Table 4 to paragraph (c)(2) of this section for streams and rivers.

(iii) Table 4 to paragraph (c)(2) of this section:

| Criteria | Design flow |
|---|---|
| Aquatic Life Acute Criteria (CMC). | 1 Q 10 or 1 B 3 |
| Aquatic Life Chronic Criteria (CCC). | 7 Q 10 or 4 B 3 |
| Human Health Criteria. | Harmonic Mean Flow |

**Note to Table 4 of Paragraph (c)(2):** 1. CMC (Criteria Maximum Concentration) is the water quality criteria to protect against acute effects in aquatic life and is the highest instream concentration of a priority toxic pollutant consisting of a short-term average not to be exceeded more than once every three years on the average.

2. CCC (Continuous Criteria Concentration) is the water quality criteria to protect against chronic effects in aquatic life and is the highest in stream concentration of a priority toxic pollutant consisting of a 4-day average not to be exceeded more than once every three years on the average.

3. 1 Q 10 is the lowest one day flow with an average recurrence frequency of once in 10 years determined hydrologically.

4. 1 B 3 is biologically based and indicates an allowable exceedence of once every 3 years. It is determined by EPA's computerized method (DFLOW model).

5. 7 Q 10 is the lowest average 7 consecutive day low flow with an average recurrence frequency of once in 10 years determined hydrologically.

6. 4 B 3 is biologically based and indicates an allowable exceedence for 4 consecutive days once every 3 years. It is determined by EPA's computerized method (DFLOW model).

(iv) If the State does not have such a low flow value below which numeric standards do not apply, then the criteria included in paragraph (d) of this section apply at all flows.

(v) If the CMC short-term averaging period, the CCC four-day averaging period, or once in three-year frequency is inappropriate for a criterion or the site to which a criterion applies, the State may apply to EPA for approval of an alternative averaging period, frequency, and related design flow. The State must submit to EPA the bases for any alternative averaging period, frequency, and related design flow. Before approving any change, EPA will publish for public comment, a document proposing the change.

(3) The freshwater and saltwater aquatic life criteria in the matrix in paragraph (b)(1) of this section apply as follows:

(i) For waters in which the salinity is equal to or less than 1 part per thousand 95% or more of the time, the applicable criteria are the freshwater criteria in Column B;

(ii) For waters in which the salinity is equal to or greater than 10 parts per thousand 95% or more of the time, the applicable criteria are the saltwater criteria in Column C except for selenium in the San Francisco Bay estuary where the applicable criteria are the freshwater criteria in Column B (refer to footnotes p and q to the table in paragraph (b)(1) of this section); and

(iii) For waters in which the salinity is between 1 and 10 parts per thousand as defined in paragraphs (c)(3)(i) and (ii) of this section, the applicable criteria are the more stringent of the freshwater or saltwater criteria. However, the Regional Administrator may approve the use of the alternative freshwater or saltwater criteria if scientifically defensible information and data demonstrate that on a site-specific basis the biology of the water body is dominated by freshwater aquatic life and that freshwater criteria are more appropriate; or conversely, the biology of the water body is dominated by saltwater aquatic life and that saltwater criteria are more appropriate. Before approving any change, EPA will publish for public comment a document proposing the change.

(4) *Application of metals criteria.* (i) For purposes of calculating freshwater aquatic life criteria for metals from the equations in paragraph (b)(2) of this section, for waters with a hardness of 400 mg/l or less as calcium carbonate, the actual ambient hardness of the surface water shall be used in those equations. For waters with a hardness of over 400 mg/l as calcium carbonate, a hardness of 400 mg/l as calcium carbonate shall be used with a default Water-Effect Ratio (WER) of 1, or the actual hardness of the ambient surface water shall be used with a WER. The same provisions apply for calculating the metals criteria for the comparisons provided for in paragraph (c)(3)(iii) of this section.

(ii) The hardness values used shall be consistent with the design discharge conditions established in paragraph (c)(2) of this section for design flows and mixing zones.

(iii) The criteria for metals (compounds #1—#13 in the table in paragraph (b)(1) of this section) are expressed as dissolved except where otherwise noted. For purposes of calculating aquatic life criteria for metals from the equations in footnote i to the table in paragraph (b)(1) of this section and the equations in paragraph (b)(2) of this section, the water effect ratio is generally computed as a specific pollutant's acute or chronic toxicity value measured in water from the site covered by the standard, divided by the respective acute or chronic toxicity value in laboratory dilution water. To use a water effect ratio other than the default of 1, the WER must be determined as set forth in Interim Guidance on Determination and Use of Water Effect Ratios, U.S. EPA Office of Water, EPA–823–B–94–001, February 1994, or alternatively, other scientifically defensible methods adopted by the State as part of its water quality standards program and approved by EPA. For calculation of criteria using site-specific values for both the hardness and the water effect ratio, the hardness used in the equations in paragraph (b)(2) of this section must be determined as required in paragraph (c)(4)(ii) of this section. Water hardness must be calculated from the measured calcium and magnesium ions present, and the ratio of calcium to magnesium should be approximately the same in standard laboratory toxicity testing water as in the site water.

(d)(1) Except as specified in paragraph (d)(3) of this section, all waters assigned any aquatic life or human health use classifications in the Water Quality Control Plans for the various Basins of the State ("Basin Plans") adopted by the California State Water Resources Control Board ("SWRCB"), except for ocean waters covered by the Water Quality Control Plan for Ocean Waters of California ("Ocean Plan") adopted by the SWRCB with resolution Number 90–27 on March 22, 1990, are subject to the criteria in paragraph (d)(2) of this section, without exception. These criteria apply to waters identified in the Basin Plans. More particularly, these criteria apply to waters identified in the Basin Plan chapters designating beneficial uses for waters within the region. Although the State has adopted several use designations for each of these waters, for purposes of this action, the specific standards to be applied in paragraph (d)(2) of this section are based on the presence in all waters of some aquatic life designation and the presence or absence of the MUN use designation (municipal and domestic supply). (See Basin Plans for more detailed use definitions.)

(2) The criteria from the table in paragraph (b)(1) of this section apply to the water and use classifications defined in paragraph (d)(1) of this section as follows:

| Water and use classification | Applicable criteria |
|---|---|
| (i) All inland waters of the United States or enclosed bays and estuaries that are waters of the United States that include a MUN use designation. | (A) Columns B1 and B2—all pollutants<br>(B) Columns C1 and C2—all pollutants<br>(C) Column D1—all pollutants |
| (ii) All inland waters of the United States or enclosed bays and estuaries that are waters of the United States that do not include a MUN use designation. | (A) Columns B1 and B2—all pollutants<br>(B) Columns C1 and C2—all pollutants<br>(C) Column D2—all pollutants |

(3) Nothing in this section is intended to apply instead of specific criteria, including specific criteria for the San Francisco Bay estuary, promulgated for California in the National Toxics Rule at § 131.36.

(4) The human health criteria shall be applied at the State-adopted 10 (−6) risk level.

(5) Nothing in this section applies to waters located in Indian Country.

(e)*Schedules of compliance.* (1) It is presumed that new and existing point source dischargers will promptly comply with any new or more restrictive water quality-based effluent limitations ("WQBELs") based on the water quality criteria set forth in this section.

(2) When a permit issued on or after May 18, 2000 to a new discharger contains a WQBEL based on water quality criteria set forth in paragraph (b) of this section, the permittee shall comply with such WQBEL upon the commencement of the discharge. A new discharger is defined as any building, structure, facility, or installation from which there is or may be a "discharge of pollutants" (as defined in 40 CFR 122.2) to the State of California's inland surface waters or enclosed bays and estuaries, the construction of which commences after May 18, 2000.

(3) Where an existing discharger reasonably believes that it will be infeasible to promptly comply with a new or more restrictive WQBEL based on the water quality criteria set forth in this section, the discharger may request approval from the permit issuing authority for a schedule of compliance.

(4) A compliance schedule shall require compliance with WQBELs based on water quality criteria set forth in paragraph (b) of this section as soon as possible, taking into account the dischargers' technical ability to achieve compliance with such WQBEL.

(5) If the schedule of compliance exceeds one year from the date of permit issuance, reissuance or modification, the schedule shall set forth interim requirements and dates for their achievement. The dates of completion between each requirement may not exceed one year. If the time necessary for completion of any requirement is more than one year and is not readily divisible into stages for completion, the permit shall require, at a minimum, specified dates for annual submission of progress reports on the status of interim requirements.

(6) In no event shall the permit issuing authority approve a schedule of compliance for a point source discharge which exceeds five years from the date of permit issuance, reissuance, or modification, whichever is sooner. Where shorter schedules of compliance are prescribed or schedules of compliance are prohibited by law, those provisions shall govern.

(7) If a schedule of compliance exceeds the term of a permit, interim permit limits effective during the permit shall be included in the permit and addressed in the permit's fact sheet or statement of basis. The administrative record for the permit shall reflect final permit limits and final compliance dates. Final compliance dates for final permit limits, which do not occur during the term of the permit, must occur within five years from the date of issuance, reissuance or modification of the permit which initiates the compliance schedule. Where shorter schedules of compliance are prescribed or schedules of compliance are prohibited by law, those provisions shall govern.

(8) The provisions in this paragraph (e), Schedules of compliance, shall expire on May 18, 2005.

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Part IV

# National Credit Union Administration

12 CFR Parts 716 and 741

Privacy of Consumer Financial Information; Requirements for Insurance; Final Rule

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**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Parts 716 and 741**

**Privacy of Consumer Financial Information; Requirements for Insurance**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** The NCUA Board is issuing a final privacy rule applicable to all federally-insured credit unions, as required by the recently enacted Gramm-Leach-Bliley Act (the GLB Act or Act). The final rule requires credit unions to have a privacy policy and provide certain disclosures and notices to individuals about whom credit unions collect nonpublic personal information. It also restricts a credit union's ability to disclose nonpublic personal information, including giving individuals in some cases an opportunity to opt out of the disclosure. In drafting the rule, the NCUA participated as part of an interagency group composed of representatives from the NCUA, the Federal Trade Commission, the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Office of Thrift Supervision, Secretary of the Treasury, and Securities and Exchange Commission (collectively, the Agencies). The other Agencies are also required to issue regulations to implement the GLB Act. NCUA's final rule takes into account the unique circumstances of federally-insured credit unions and their members but is comparable and consistent with the regulations of the other Agencies as required by the GLB Act.

**EFFECTIVE DATE:** This rule is effective November 13, 2000. However, compliance is not required until July 1, 2001.

**ADDRESSES:** National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

**FOR FURTHER INFORMATION CONTACT:** Mary F. Rupp or Regina M. Metz, Staff Attorneys, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

**SUPPLEMENTARY INFORMATION:**

## I. Background

On February 24, 2000, NCUA issued a proposed privacy regulation as required by the GLB Act. 65 FR 10988, March 1, 2000. The comment period for the proposed rule ended March 31, 2000. Ninety-nine comments were received on the proposal, 26 from natural person credit unions; two from corporate credit unions; four from national credit union trade associations; 20 from state credit union leagues; one from a credit union service organization; one from the Congressional Privacy Caucus; five from law firms; seven from insurance companies; three from banks; two from federal agencies; 13 from businesses; one from a special interest group; one from a private party; and 13 from miscellaneous trade groups.

As required by the GLB Act, the NCUA has consulted with the other Agencies to ensure that its final rule is consistent and comparable with the final rules of the other Agencies. However, the NCUA's rule takes into account the comments received from the credit union community. Those commenters asked NCUA to take into account the unique nature of credit union structure and operations, particularly, the relationship between a credit union and its members and credit unions and credit union service organizations (CUSOs).

NCUA's final rule mirrors the other Agencies' final rules except for modifications appropriate to address the different circumstances of credit unions such as references to credit unions, CUSOs, members and nonmembers. The section-by-section summary of comments that follows points out those provisions that differ from the other Agencies' final rules. Besides differences in terms or definitions, a significant modification is in the use of examples in the rule. All of the Agencies' final rules will contain examples to aid understanding. NCUA has attempted to use examples pertinent to credit union circumstances and, therefore, has changed or deleted some examples used in the other Agencies' rule.

NCUA and the other Agencies are adding subparts to the table of contents in the final rule and reorganizing some of the subsections. NCUA and the other Agencies are also changing some of the language in the section names in the table of contents so that references to various notices are consistent with one another. In addition, NCUA and the other Agencies are revising various terms so that terminology is used consistently in the final rule and changing the passive voice to the active voice in several places. In some places, such as § 716.6, long provisions are broken into lists. Lastly, NCUA and the other Agencies are adding sample clauses as an appendix to the final rule.

NCUA and the other Agencies are developing examination standards and guidelines. A credit union's compliance with this rule will be reviewed as part of the regular examination process.

## II. Summary of Comments

The NCUA requested comment on all aspects of the proposed rule as well as comment on specific provisions and issues highlighted in the proposal. Below is a discussion of the comments and changes to the proposal based on the comments. If a provision was not commented on and is not being changed in the final rule, the discussion from the proposal is not repeated.

*Section 716.1 Purpose and Scope*

Proposed paragraph (b) set out the scope of the NCUA rule, stating that it applies to all federally-insured credit unions. Section 505(a)(2) of the GLB Act provides that the NCUA Board has enforcement authority for federally-insured credit unions and any subsidiaries. One commenter objected to the statement in the proposal that, while CUSOs may be considered "subsidiaries," the Federal Credit Union Act does not give the NCUA direct regulatory or supervisory authority over CUSOs. The commenter states that NCUA should take regulatory responsibility for CUSOs so that there is one regulator for all credit union activities. In addition to the fact that NCUA does not have direct regulatory or supervisory authority over these entities, NCUA's position is that CUSOs should be regulated, depending on the type of business in which they engage, by the primary regulators for those activities. For example, a CUSO engaged in securities brokerage activities would be subject to the Securities and Exchange Commission's privacy regulation.

The NCUA Board specifically requested comment on whether it would be appropriate to exempt federally-insured corporate credit unions from the rule because the membership of corporate credit unions, with the exception of a few natural person incorporators, is natural person credit unions, not consumers. Twelve of the 13 commenters that responded requested that corporates be exempt. The one commenter in opposition to exemption was the Congressional Privacy Caucus. Its reason for opposing exemption is persuasive, namely that there is no authority in the GLB Act for an exemption, and therefore, if a corporate has a customer or consumer it should be required to provide the appropriate notice.

The commenters in support of exemption noted that: a corporate credit union's only contact with a consumer is

through a natural person credit union; a corporate is member-owned and should be defined as an affiliate of each of its member owners; a corporate cannot perform under the burden of having to provide a privacy notice directly to natural persons; since the few natural person members a corporate may have only maintain a share account and receive no other consumer services, the rule should clarify that those individuals are not consumers; and, if a corporate receives nonpublic personal information about a natural person as part of processing member accounts for a natural person credit union, it is required to adhere to the "reuse of information" limitations in section 502(c)of the GLB Act. One commenter notes that a natural person credit union may disclose nonpublic personal information to a corporate credit union in connection with a proposed or actual securitization of a loan portfolio. The commenter incorrectly equates this type of activity with "servicing and processing transactions." The proposal treated those individuals whose loans are purchased by a credit union as customers of the credit union. The final rule treats them as consumers, unless the credit union is servicing their loan, then they are members/customers. Therefore, a corporate credit union's duty to provide notice and an opportunity to opt out to individuals whose loans it purchases is only triggered if the corporate is servicing the loan or sharing nonpublic personal information about the consumers with nonaffiliated third parties that are not within an exception.

The Board agrees with the Congressional Privacy Caucus that it has no authority to exempt corporate credit unions. It appears from the comments that a corporate credit union will rarely have natural person members or customers. Members appear limited to those corporate credit unions that have natural person incorporators that maintain a share account. Those members are limited in number and so the burden to provide initial and annual notices should be minimal. On the other hand, corporate credit unions may have consumers. Consistent with the interpretation discussed in the Federal Trade Commission's proposal and now part of the final rule, the Board does not consider the members of a natural person credit union, that itself is a member of a corporate credit union, to be the corporate credit union's members or consumers, if the corporate credit union merely provides services to the natural person credit union. In this case, the corporate credit union may receive financial information about the natural person credit union's members, but it is only as a result of providing a service to its own member credit union. 65 FR 11174, 11177 (March 1, 2000). The final rule, consistent with the other Agencies, has added an example to the definition of consumer to clarify this. 12 CFR 716.3(e)(2)(iv). In that situation, the corporate is governed by the limitations on redisclosure in § 716.11.

NCUA, consistent with the other Agencies, has clarified in its final rule that initial notices are always required for customers, now defined as members, but not always for consumers by replacing "consumer" with "member" in paragraph (a)(1) and relying on paragraph (a)(2) to address consumers.

The final rule adds language to paragraph (b)(1) to clarify that commercial or agricultural purposes are included within the business purpose exemption. In addition language is added to this paragraph, clarifying that nothing in this part modifies, limits or supersedes the standards governing certain health information promulgated by the Secretary of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996.

*Section 716.2 Rule of Construction*

Proposed § 716.2 of the rule set out a rule of construction intended to clarify the effect of the examples used in the rule. It stated that the examples are not exclusive and that compliance with an example, to the extent applicable, constituted compliance with the rule. A few commenters objected to having the examples in the rule and suggested that they be an Appendix to the rule, so that they are not misinterpreted as being part of the regulation. An equal number of commenters supported having the examples in the rule. They found it helpful to have the examples adjacent to the provision they are clarifying. The Board agrees with those commenters and has retained the examples in the rule and at the request of the commenters provided additional examples where appropriate.

Several commenters requested that NCUA provide examples of model forms. The Board is including, as an Appendix to the rule, examples of disclosure language that a credit union may, if applicable, use as part of its disclosure.

*Section 716.3 Definitions*

(a) and (g) *Affiliate and Control.* The proposed rule defined "affiliate" and "control" using the same definitions as the other Agencies. The Board asked for comment on whether the definitions should be amended to reflect the particular relationship between a credit union and its CUSO. The proposal, adopting the definition in section 509(6) of the GLB Act, stated that an affiliation is found when one company controls, is controlled by, or is under common control with another company. It defined control as a 25% ownership interest; control in any manner over the election of directors or management; or the power to exercise a controlling influence over the management or policies of a company as determined by NCUA.

All 41 commenters that commented on this issue supported having a different definition of control. One of the reasons given in support of a different definition was that CUSOs are much more limited than bank affiliates. The Federal Credit Union Act (FCU Act) limits whom CUSOs can serve and the services they can provide. CUSOs must primarily serve credit unions and their members, and their services must be related to the routine operations of credit unions. Therefore, because of statutory limitations, CUSOs are closely affiliated with credit unions in the types of services they provide and the persons or entities they serve.

The commenters noted that the FCU Act limits the amount a federal credit union can invest in a CUSO to one percent of its paid-in unimpaired capital and surplus, making it difficult for a small credit union to have a 25% ownership interest in certain kinds of CUSOs. The commenters concluded that the proposed definition has a discriminatory impact on smaller credit unions because it will result in fewer smaller credit unions having affiliates and, therefore, smaller credit unions will have more burdensome disclosure requirements than larger credit unions.

Several of the commenters stressed that credit unions are part of a cooperative movement that includes their CUSOs. They all work together to solve operational problems and help credit unions compete. There are often more than four credit unions investing in one CUSO. Members of the credit union view the CUSO as an extension of their credit union, and, in their minds, it is an affiliate of their credit union.

A few commenters suggested that certain types of CUSOs should not be covered under the privacy rules because they are performing credit union functions on behalf of the credit union's members. The examples given were shared branching and ATM services. It is unclear what the commenters meant by this comment but, if their concern was that credit unions be able to share

with those CUSOs, these types of activities are specifically excluded from the opt out requirements by § 716.10. If on the other hand, their concern is that CUSOs that are also financial institutions not be subject to the privacy regulation, the Agency with primary regulatory authority over the CUSO will make that determination. Section 716.3(e)(2)(iv) of the final rule clarifies that members of the credit union would not be the CUSO's customer or consumer if the CUSO's function is limited to providing services to the natural person credit union and, as part of that service, it receives financial information about the natural person credit union's member.

The proposed rule included examples of entities that are affiliates for credit unions. For a federal credit union, the only entity that is an affiliate is a CUSO, as addressed in 12 CFR part 712, that is controlled by the federal credit union. For a state-chartered credit union, an affiliate is a company that is controlled by a credit union. One commenter asked that the example for state-chartered credit unions be changed to "a company that is controlled by one or more credit unions." The current example does not limit control to one credit union, it merely addresses how one credit union has an affiliate. The number of credit unions affiliated with a particular company will be determined by the definition of control, not by changing the example of how a credit union is an affiliate of a company.

The Board asked for comment on whether a CUSO that is 100% owned by credit unions should be considered an affiliate of all the investing credit unions, regardless of whether any one credit union owns 25%. Although unanimous in their desire to expand the definition, the commenters had different suggestions on how to handle the issue of control. Several opposed limiting the expansion to 100% credit union owned because: A limited partnership CUSO would never qualify because the CUSO rule does not permit a credit union to be a general partner; CUSOs were often started in a cooperative manner with a state league as the initial investor; and majority credit union owned CUSOs often have some non-credit union investors because of the nature of their product or service or because of the need for additional capital.

Some of the suggestions for control of a CUSO were: 100% credit union owned; 100% credit union or CUSO owned; 100% credit union or credit union related entity owned; primarily or wholly owned by credit unions; 65% credit union owned; 25% credit union owned; and any credit union ownership.

Rather than change the definition of control, the NCUA Board believes that it should remain consistent and comparable with the other Agencies, and so it has added an example to category (3) of the definition that recognizes the unique relationship between a credit union and its CUSO. Category (3) states that control of a company includes the power to exercise control, directly or indirectly over the management or policies of the company, as determined by the NCUA. The new example states that NCUA will presume a controlling influence if the CUSO is 67% credit union owned. This percentage reflects a controlling interest by credit unions in the CUSO. In addition, the Board suggests credit unions that do not fall within the example, but believe that they have the power to exercise control, directly or indirectly, over the management or policies of their CUSO, petition the Board for a determination. The Board will process these requests for action pursuant to § 790.3 of the rules. 12 CFR 790.3.

(b) *Clear and conspicuous.* Title V of the GLB Act and the proposed rule required that various notices be "clear and conspicuous." The proposed rule defined this term to mean that the notice is reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice. The proposed rule did not mandate the use of any particular technique for making the notices clear and conspicuous, but instead allowed each credit union the flexibility to decide for itself how best to comply with this requirement. Ways in which a notice may satisfy the clear and conspicuous standard would include, for instance, using a plain-language caption, in a type set easily seen, that is designed to call attention to the information contained in the notice. Other plain language principles were provided in the examples that follow the general rule.

Several commenters recommended that the Board replace this definition with one more consistent with other Federal Reserve Board regulation definitions or modify the examples. In the final rule, NCUA and the other Agencies have retained the definition in the proposed rule, but revised the examples. The examples are not mandatory. A credit union must decide for itself how best to comply with the general rule, and may use techniques not listed in the examples.

Several commenters requested that the Board provide clarification on the form of the notice and whether it is permissible to insert it in a newsletter or statement. The final rule clarifies that a credit union may provide the notice separately or combined with another document if the notice uses distinctive type size, style, and graphic devices.

The final rule also provides examples of how notices provided on a web site can be clear and conspicuous. This might entail, for instance, a dialogue box that pops up whenever a member accesses a web page or a simple graphic (hypertext link or hotlink) near the top of the page or in close proximity to the credit union's logo. Other elements on the web site, such as text, graphics, hyperlinks, or sound, should not distract the consumer's attention away from the notice. The example also provides that the credit union should either place the notice or a link to the notice on a screen that consumers frequently access, such as a home page. Any link to the notice should be labeled appropriately to convey the importance, nature, and relevance of the notice.

(c) *Collect.* The proposed rule in § 716.3(c) defined collect as "to obtain information that is organized or retrievable on a personally identifiable basis, irrespective of the source of the underlying information." Several commenters recommended NCUA specify whether information that is organized or retrievable only in the aggregate is excluded from the definition. In the final rule, the NCUA and the other Agencies are revising the definition to specify that information must be organized or retrievable by the credit union by the individual's name or by identifying number, symbol, or other particular assigned to the individual.

(e),(i) and (j) *Consumer, Customer, and Customer relationship; (n) and (o) Member and Member relationship.* The proposed rule defined "customer" as any consumer who has a customer relationship with a particular credit union. A customer relationship means that there is an ongoing relationship between the credit union and a consumer. These definitions paralleled the ones used by the other Agencies. Eleven commenters requested that the term "member" be used rather than customer. Some of those commenters suggested that only members be considered customers. This suggestion is contrary to the GLB Act that makes a distinction between the protections for consumers who obtain a financial product or services and those consumers that establish a relationship of a more lasting nature. Sometimes, those consumers with relationships of a more lasting nature are not actual members of the credit union and so, the

definition of customer cannot be limited to actual members.

Some of the reasons in support of using the term "member," rather than "customer," and including certain nonmembers within that category were that: credit unions have a unique relationship with their members and that relationship should be reflected in their regulations; and only a member is entitled to borrow, vote, and serve on the board of a credit union.

The Board agrees with the commenters that a credit union's relationship with its members is unique and so, it has substituted the term "member" for "customer" in the final rule. NCUA used this same approach successfully in its Truth in Savings Rule. 12 CFR part 707. However, the Board cautions credit unions that the term "member," as used in this rule, essentially parallels the term "customer" used by the other Agencies. The term "member" includes individuals who are not actually members, but are entitled to the same privacy protections provided to members. Examples of individuals that fall within the definition of "member" in part 716 are nonmember joint account holders, nonmembers establishing an account at a low-income designated credit union and nonmembers holding an account in a state-chartered credit union under state law.

Several commenters stated that customer relationship is too broadly defined and should not apply to the situation where a credit union purchases a nonmember's loan, but not the servicing rights. NCUA and the other Agencies agree and are deleting this relationship from the definition of member/customer relationship. A consumer will be the member/customer of the financial institution that holds the servicing rights and a consumer of the other financial institutions that own the loan.

Several commenters asked that the final rule clarify that a series of isolated transactions does not transform a consumer to a member/customer. The final rule has added an "s" to isolated transaction to clarify this point.

A few commenters noted that notices and an opportunity to opt out should not have to be provided to both the consumer and the consumer's legal representative. NCUA and the other Agencies agree and are amending § 716.3(e)(1) to reflect that it is the consumer "or" the consumer's legal representative.

(f) *Federal functional regulator.* NCUA, consistent with the other Agencies, adopted the definition of "government regulator" in proposed rule § 716.3(m) to include the federal functional regulators, as defined in the GLB Act, the state insurance authorities, the Department of Treasury, and the Federal Trade Commission. One commenter objected to the definition and asked NCUA to revise it to include state regulators. The rule already takes into account the role of state regulators on the issue of affiliates.

In the final rule, the NCUA and the other Agencies are deciding not to use a definition for government regulator and instead have restated the definition for "Federal functional regulator" from the GLB Act. The term is used in the exception set out in § 716.15(a)(4) for disclosures to law enforcement agencies, including a federal functional regulator, the Department of Treasury, a state insurance authority, and the Federal Trade Commission.

*(l), (m) Financial institution and Financial product or service.* The proposed rule defined "financial institution" in § 716.3(k) as any institution the business of which is engaging activities that are financial in nature, or incidental to such financial activities, as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)). The proposed rule also exempted from the definition of "financial institution" those entities specifically excluded by the GLB Act. The proposed rule defined "financial product or service" in § 716.3(l) as any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k). The definition included the financial institution's evaluation of information collected in connection with an application by a consumer for a financial service or product even if the application is ultimately rejected or withdrawn. It also included the distribution of information about a consumer for the purpose of assisting the consumer obtain a financial product or service. In the final rule, NCUA, consistent with the other Agencies, no longer includes such distribution of information to be a financial service. Other than this change, NCUA has retained both definitions in § 716.3(l) and (m) of the final rule, but NCUA has added examples of financial institutions.

Several commenters requested that the Board list financial activities or attach section 4(k) to part 716. One commenter provided sample language. One commenter supported a *de minimis* exception for companies whose consumer component is less than one percent. A few commenters requested that the Board adopt the Federal Trade Commission's example which provides that an entity is a financial institution if it is significantly engaged in financial activities, such as a retailer that extends credit by issuing its own credit card directly to consumers. The Federal Trade Commission also provided an example that a financial institution does not include a business that only accepts payment by check or cash, or through credit cards issued by others, or through deferred payment or "lay-away" plans. A few commenters also requested that the Board clarify the definition of financial products and services or expand it with examples.

Examples of activities that are financial in nature include: lending, exchanging, transferring, investing for others, or safeguarding money or securities; insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, or providing and issuing annuities, and acting as principal, agent, or broker for purposes of the foregoing, in any state; providing financial, investment, or economic advisory services; and underwriting, dealing in, or making a market in securities. Examples of activities that are incidental to financial activities include: brokering or servicing loans; leasing real or personal property (or acting as agent, broker, or advisor in such leasing) without operating, maintaining or repairing the property; appraising real or personal property; check guaranty, collection agency, credit bureau, and real estate settlement services; providing financial or investment advisory activities including tax planning, tax preparation, and instruction on individual financial management; management consulting and counseling activities (including providing financial career counseling); courier services for banking instruments; printing and selling checks and related documents; community development or advisory activities; selling money orders, savings bonds, or traveler's checks. The activities also include leasing real or personal property (or acting as agent, broker, or advisor in such leasing) where the lease is functionally equivalent to an extension of credit; acting as fiduciary; providing investment, financial, or economic advisory services; and operating a travel agency in connection with financial services. The Board of Governors of the Federal Reserve and the Department of Treasury have authority under section 4(k) to determine other activities in the future to be financial in nature or incidental to financial activities.

Due to the wide range of activities that are defined as financial in nature under section 4(k) of the Bank Holding Company Act, the definition of "financial institution" encompasses a broad spectrum of businesses. In the final rule, the NCUA has added examples of financial institutions, including nontraditional financial institutions. These may include, but are not limited to: personal property appraisers; real estate appraisers; career counselors for employees in financial occupations; digital signature services; courier services; real estate settlement services; manufacturers of computer software and hardware; and travel agencies operated in connection with financial services. However, many entities that are within the broad definition of financial institution likely will not be subject to the rule's disclosure requirements because not all financial institutions have consumers.

*(q), (r), and (s) Nonpublic personal information, Personally identifiable financial information, and Publicly available information.*

(q) *Nonpublic personal information.* The Board invited comment on two alternative interpretations of the definition of nonpublic personal information in proposed § 716.3(o). Alternative A defined nonpublic personal information to include personally identifiable financial information and any list, description, or other grouping of consumers and any publicly available information pertaining to them that is derived using personally identifiable financial information. The proposed rule excluded publicly available information from the scope of "nonpublic personal information" when the information is part of a list, description, or other grouping of consumers that is derived without using personally identifiable financial information. The example that followed the general definition clarified that publicly available information and other identifying information about consumers, such as addresses, would be considered nonpublic personal information if the information is derived from information consumers provided to a financial institution on an application.

Alternative B would have permitted a financial institution to release publicly available information regardless of the source, but still would have prohibited the release of this information as part of a list, description or other grouping of consumers that was derived using personally identifiable financial information. Thus, under alternative B, a credit union could have disclosed the name, address, or other information available to the general public about an individual, as long as it was not disclosed as part of a list.

Alternative A would have required compliance with the notice and opt out requirements if the credit union had received such information from the individual. Under alternative A, in order for the information to be considered publicly available, the credit union would have had to obtain the information from government records, widely distributed media, or government-mandated disclosures. The fact that information was available from those sources would have been immaterial if the credit union did not actually obtain the information from one of them.

Approximately 40 commenters supported alternative B, that information should not be nonpublic personal information if it is publicly available. A few commenters supported alternative A. The Congressional Privacy Caucus urged the Agencies to adopt alternative A because, unless the financial institution has actually obtained the data from a public source, it cannot be certain the information is publicly available. The consensus of the interagency group is to adopt the broader, alternative B, with modifications. Therefore, nonpublic personal information does not include publicly available information, except if it is disclosed in the form of a list derived using personal identifiable financial information.

The final rule adopts an approach that the NCUA and the other Agencies believe incorporates the benefits of both alternatives. Under the final rule, information will be deemed to be "publicly available" and therefore excluded from the definition of "nonpublic personal information" if a credit union reasonably believes that the information is lawfully made available to the general public from one of the three categories of sources listed in the rule. 12 CFR § 716.3(s)(2). In this way, a credit union will be able to avoid the burden of having to actually obtain information from a public source, but will not be free simply to assume that information is publicly available without some reasonable basis for that belief. The final rule cites, as an example of information a credit union might reasonably believe to be publicly available, the fact that someone has a loan that is secured by a mortgage in jurisdictions where mortgages are recorded. 12 CFR § 716.3(s)(3)(iii)(1). The rule also states that a credit union will have a reasonable basis to believe that a telephone number is publicly available if the credit union either looked the number up in a telephone book or was informed by the consumer that the number is not unlisted. 12 CFR § 716.3(s)(iii)(2).

NCUA also specifically invited comment on whether the definition of "nonpublic personal information" would cover information about a consumer that contains no indicators of a consumer's identity. Approximately 40 commenters said no, that aggregated data should not be nonpublic personal information because it is not personally identifiable.

Some commenters contended that the fact that an individual is a customer or consumer of a financial institution is not nonpublic personal information. They also requested that the regulation allow financial institutions to sell lists of consumers and customers. A couple of commenters concurred with the Board's inclusion of lists of consumers as nonpublic personal information.

The final rule in § 716.3(q) includes examples of lists that would and would not be considered nonpublic personal information. A list of individuals' names and street addresses that is derived using personally identifiable financial information, other than publicly available information, would be nonpublic personal information. Such a list that is not derived using personally identifiable financial information and does not indicate that individuals on the list are a consumer of the credit union would not be nonpublic personal information.

(r) *Personally identifiable financial information.* The GLB Act defined "nonpublic personal information" to include "personally identifiable financial information" but did not define the latter term. The proposed rule in § 716.3(p) generally defined personally identifiable information as information a credit union obtains in connection with providing a consumer a financial service or product. A few commenters supported this definition. Approximately 30 commenters said that proposed definition is too broad and that personally identifiable financial information should not include nonfinancial information.

NCUA continues to believe that this approach creates a workable and clear standard for distinguishing information that is financial from information that is not, while at the same time giving meaning to the word "financial." The broad scope of what is deemed a "financial product or service" under the GLB Act requires a comparably broad scope of what is deemed "financial information."

NCUA and the other Agencies have revised the definition in the final rule

§ 716.3(r) to add a couple of additional examples of what would and would not be personally identifiable financial information. One of the new examples of personally identifiable financial information is information the credit union collects through an Internet cookie, an information collecting device from a web server. A new example of what would not be personally identifiable financial information is information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers, such as account numbers, names or addresses.

NCUA has retained other examples of personally identifiable financial information from the proposed rule. One such example is the fact that an individual has been a credit union's member or has obtained a financial product or service from it. NCUA disagrees with those commenters who maintain that member relationships should not be considered personally identifiable financial information. Clearly, information that a particular person has a member relationship identifies that person, and this is personally identifiable. The NCUA believes that this information is also financial, because it communicates that the person has a financial relationship with the credit union. While this information would in many cases be a matter of public record, that does not change the analysis of whether the information is personally identifiable financial information.

(s) *Publicly available information.* The proposed rule in § 716.3(q) defined "publicly available information" as information lawfully made available to members of the general public that is obtained from three broad types of sources: Official public records, widely distributed media, or information from public disclosures required by law. The proposed rule stated that information obtained over the Internet would be considered publicly available information if it was obtainable from a site available to the general public without requiring a password or similar restriction.

The Board invited comment on what information should be considered publicly available, particularly in the context of information available over the Internet. Approximately 35 commenters wrote that publicly available information includes information that could be derived from a public source, even if it is obtained from a nonpublic source, such as an application for financial services. Several commenters wrote that publicly available information should include name, address, and phone number. A couple of commenters suggested that the Board model its definition after the Securities and Exchange Commission's definition of publicly available information.

The NCUA and the other Agencies have modified and adopted the Securities and Exchange Commission's proposed definition in the final rule. NCUA's final rule defines "publicly available information" as information the financial institution has a reasonable basis to believe is lawfully made available to the general public from the three broad types of sources. 12 CFR 716.3(s). The NCUA and the other Agencies have decided that financial institutions have a reasonable basis to believe information is lawfully available to the general public if they take steps to determine that the information is of the type available to the general public and, if an individual can direct that the information not be made available to the general public, that an individual has not done so. The examples of what constitutes a reasonable basis were discussed in the above section on nonpublic personal information.

Publicly available information will be excluded from the scope of "nonpublic personal information," whether or not the credit union obtains it from a publicly available source (unless, as previously noted, it is part of a list of consumers that is derived using personally identifiable financial information). Under this approach, the fact that a consumer has given publicly available information to a credit union would not automatically extend to that information the protections afforded to nonpublic personal information.

Several commenters objected to the example in § 716.3(q)(2)(ii) of the proposed rule that publicly available information from widely distributed media includes information from an Internet site that is available to the general public "without requiring a password or similar restriction." The NCUA and the other Agencies agree with the commenters that some web sites require a password or fee to obtain public information. Therefore, the example in the final rule provides that widely distributed media includes information from a web site that is available to the general public on an unrestricted basis. The fact that a web site has a fee or password does not render the web site restricted.

**Subpart A—Privacy and Opt Out Notices**

*Section 716.4 Initial Privacy Notice to Consumers Required*

The GLB Act requires a financial institution to provide an initial notice of its privacy policies and practices in two circumstances. For customers, the notice must be provided at the time of establishing a customer relationship. For credit unions, ordinarily this will be at the time an individual applies for membership. For consumers who do not become members, the credit union must provide the notice prior to disclosing nonpublic personal information about the consumer to a nonaffiliated third party.

Proposed § 716.4(a) required a credit union to provide an individual a privacy notice prior to the time that it establishes a customer relationship. The final rule provides that the credit union must provide the initial notice not later than the time it has established a member relationship. Nothing in the proposed rule is intended to discourage a credit union from providing a privacy notice at an earlier point in the relationship to make it easier for an individual to compare several institutions' privacy policies and practices in advance of conducting transactions.

The final rule provides in § 716.4(c)(2) that a credit union establishes a member relationship with a consumer when the credit union originates or the consumer's loan. However, if the credit union transfers the servicing rights to a loan, the membership relationship transfers with the servicing rights. The final rule provides examples of this "loan rule" in § 716.4(c)(3)(ii), including examples of a credit union that originates the loan and retains the servicing rights or purchases the servicing rights to the loan.

A few commenters requested that the rule not require a new opt out notice when an existing customer opens a new account. NCUA agrees that it is unnecessary for a credit union to provide a member with additional copies of its initial notice every time the member obtains a financial product or service. The final rule in § 716.4(d) contains a new provision that the credit union need not provide a new privacy notice to an existing member who has already received a notice that was accurate with respect to the new financial product or service. If the credit union's privacy policies and practices have changed, the credit union may provide the member with a revised privacy notice if it chooses to do so. Under § 716.8, the credit union would

have to provide a new privacy notice if the new account was not covered by the previously provided notice.

The proposed rule in § 716.4(f) provided that, if a credit union and consumer orally enter into a contract for financial services over the telephone, the credit union may provide the consumer with the initial notice after providing the service so as not to delay the transaction. Several commenters wrote that when accounts are opened over the phone it would be reasonable for the credit union to provide the disclosures, including opt out notices at a reasonable time after the transaction, such as within 20 days. They contended that the rule should not require the consumer to consent to the subsequent delivery of the notice. This would be consistent with the requirements under the Truth in Savings Act. One commenter wrote that the notice should be in writing at the time the service is provided, not later.

Consistent with the proposed rule, the final rule allows, in some cases, for subsequent delivery of initial notices within a reasonable time after the credit union establishes a member relationship and examples of this under § 716.4(e). First, the credit union may provide notice after the fact if the establishment of the member relationship is not at the customer's election. This might occur, for instance, when a share account is transferred. Second, a credit union may send notice after establishing a member relationship when to do otherwise would substantially delay the consumer's transaction and the consumer agrees to receive the notice at a later time. An example of this would be when a transaction is conducted over the telephone and the member desires prompt delivery of the financial product or service. Third, the final rule also permits after-the-fact notices when an independent third party arranges the member relationship on the credit union's behalf without its prior knowledge. Typical of this type of arrangement would be the submission to a credit union by a college's financial aid office of a completed student loan application along with a request for prompt disbursement upon the credit union's acceptance of the application.

The Board notes that in most situations, and particularly in situations involving the establishment of a member relationship in person, a credit union should give the initial notice at a point when the consumer still has a meaningful choice about whether to enter into the member relationship. The exceptions listed in the examples, while not exhaustive, are intended to illustrate the less frequent situations when delivery either would pose a significant impediment to the conduct of a routine business practice or the consumer agrees to receive the notice later in order to obtain a financial product or service immediately.

In circumstances when it is appropriate to deliver an initial notice after the member relationship is established, a credit union should deliver the notice within a reasonable time thereafter. A few commenters requested that the final rule specify precisely how many days a credit union has in which to deliver the notice under these circumstances. However, the Board believes that a rule prescribing the maximum number of days would be inappropriate because (a) the circumstances of when an after-the-fact notice is appropriate are likely to vary significantly, and (b) a rule that attempts to accommodate every circumstance is likely to provide more time than is appropriate in many instances. Thus, rather than establish a rule that the Board believes may be viewed as applicable in all circumstances, the Board elected to retain the more general rule as set out in the proposal in § 716.4(e)(1).

As the Board noted in the preamble to the proposed rule, nothing in the rule is intended to discourage a credit union from providing an individual with a privacy notice at an earlier point in the relationship if the institution wishes to do so in order to make it easier for the individual to compare its privacy policies and practices with those of other financial institutions in advance of conducting transactions. The Board requested comment on who should receive a notice where there is more than one party to an account. Approximately 50 commenters replied that the regulation should require only that the primary account holder should receive the notice and right to opt out. The reasons in support of giving only the primary account holder notice and opt out rights were that: This is consistent with other regulations; some joint account holders are minors; some live in the same households as each other; addresses for some joint account holders are not available; and it would be burdensome to provide notice and opt out to all account holders. A few commenters wrote that the financial institution should have the option to offer more than one party to an account individual notice and opt out rights and incur the extra cost.

The commenters who noted that one notice is consistent with other regulations cited those implementing the Equal Credit Opportunity Act (Regulation B, 12 CFR part 202) and the Truth in Lending Act (Regulation Z, 12 CFR part 225). Commenters noted that under both regulations, a financial institution is permitted to give only one notice. The authorities cited include requirements that the financial institution give disclosures, as appropriate, to the "primary applicant" if this is readily apparent (in the case of Regulation B; *see* 12 CFR 202.9(f)) or to a person "primarily liable on the account" (in the case of Regulation Z; *see* 12 CFR 226.5(b)).

The Board found these comments persuasive with respect to financial products and services, other than loans (including lines of credit). The Board believes that co-makers and guarantors on loans should receive the notice and right to opt out because of the extent and nature of nonpublic personal information provided to the credit union in conjunction with these types of transactions. Co-makers and guarantors of loans are entitled to receive separate notices. The final rule in § 716.4(f) provides that if two or more consumers obtain a financial product or service, other than a loan, from the credit union jointly, it may satisfy the initial notice requirement by providing one initial notice to those consumers jointly, but that either consumer may exercise the opt out right.

For ease of reference, the final rule provides in § 716.4(g) that credit unions should refer to § 716.9 for methods of delivering an initial privacy notice or § 716.6 for initial notices for nonmember consumers.

*Section 716.5 Annual Privacy Notice to Members Required*

The proposed rule required a credit union to provide customers with a clear and conspicuous notice that accurately reflects the privacy policies and practices, once during any period of twelve consecutive months. Although the GLB Act requires financial institutions to provide annual notices to customers, several commenters recommended eliminating the requirement. A few commenters wrote that the Board should require credit unions to send the notice once every calendar year, not once annually, so that they can send the notices to all customers in a mass mailing with other required disclosures. The final rule provides that the credit union may define the 12-consecutive-month period, and includes a new example.

The Board requested comment on whether the example of dormant accounts provides a clear standard for whether an individual is exempt from the annual notice requirement and whether the applicable standard should

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be the credit union's policies or state law. The Board also requested comment on whether the standard should apply to members as well as nonmembers.

A few commenters supported application of the dormant account standard under state law. Several commenters supported use of the term inactive instead of dormant. Several commenters wrote that the credit union's policy on inactive accounts, rather than state law on dormant accounts should apply. These commenters contended that reliance on state dormancy laws might produce conflicting results and unnecessary burden for credit unions operating in more than one state. Several commenters supported a standard of 12 months with no documented account activity rather than either term. The final rule retains the examples and uses the term inactive instead of dormant. The Board believes an example that suggests credit unions look to their own inactive account policies provides adequate guidance and greater flexibility than suggesting credit unions look to state dormancy laws.

Some commenters said members and nonmembers should be treated the same with regard to the standard for dormant accounts. The Board has retained the distinction between nonmember and member inactive accounts because a credit union may still have a duty to provide notices to an individual who is a member under the credit union's bylaws, regardless of whether a member's account has been declared inactive. The duty to provide notice to an individual who is a member under the credit union's bylaws only ceases when the member relationship terminates.

*Section 716.6 Information To Be Included in Initial and Annual Privacy Notices*

The proposed rule provides the required content for the initial and annual notices to customers. The proposed rule required notices to include: categories of nonpublic personal information that a credit union may collect; categories it may disclose; categories of affiliates and nonaffiliated third parties to whom a credit union discloses nonpublic personal information; information about former customers; information disclosed to service providers; the right to opt out; disclosures made under the Fair Credit Reporting Act (FCRA); and confidentiality, security, and integrity standards. The final rule provides that a credit union need only include each of the above items that apply to it, but may include other information.

Several commenters found these requirements burdensome and more detailed than the GLB Act requires. One commenter requested that the right to opt out not be disclosed in the privacy notice. A few commenters requested that the Board use the plain language of the GLB Act for the content of the notice and delete other requirements. The final rule provides that a credit union may send a short-form initial notice with an opt out notice for nonmember consumers under § 716.6(c). This short-form must state that a privacy notice is available upon request and provide a reasonable means, such as a toll-free number, by which the consumer may obtain the notice.

The proposed rule requested comment on whether a disclosure that a credit union makes disclosures as permitted by law to nonaffiliated third parties in addition to those described in the notice would be adequate. Several commenters wrote that this disclosure was adequate. A couple of commenters objected to this disclosure because the GLB Act specifically exempts notice in these instances and it could cause consumer confusion. The final rule retains the provision for disclosures as permitted by law as the NCUA and the other Agencies proposed it.

Several commenters requested that the Board clarify the meaning of the terms "categories of information" that are "collected" and "disclosed" and amend the examples. A few commenters recommended the rule retain the examples used for the categories of information collected and repeat those examples for the categories of information disclosed. NCUA and the other Agencies are revising and expanding the examples for these terms in the final rule in § 716.6(e).

One commenter suggested that the Board create an exemption from the annual notice requirement for credit unions that do not share nonpublic personal information with nonaffiliated third parties. NCUA and the other Agencies are rejecting this suggestion, but the final rule in § 716.6(e)(5) permits credit unions to provide simplified notices if they do not disclose or intend to disclose nonpublic personal information to affiliates or nonaffiliated third parties except under the exceptions authorized in §§ 716.14 and 716.15.

The proposed rule stated that the NCUA was in the process of preparing proposed section 501 standards relating to administrative, technical, and physical safeguards. A few commenters wrote that credit unions need guidance on security standards. The NCUA intends to issues proposed standards as an appendix to this regulation for notice and public comment in approximately one month.

A couple of commenters wrote that the disclosures of who has access to the information were unnecessary and could be harmful to a financial institution's security. The final rule provides that the credit union need only describe in general terms who is authorized to have access to the information and provides an example in § 716.6(e)(6).

A few commenters requested that the rule clarify that the privacy policies and practices of several different affiliated financial institutions may be described on a single notice. Related to this point, commenters requested that the final rule address whether affiliated financial institutions, each of whom has a customer or member relationship with the same consumer, may elect to send only one notice to the consumer on behalf of all of the affiliates covered by the notice and have that one notice satisfy the disclosure obligations under § 716.4 of each affiliate. NCUA and the other Agencies agree that financial institutions should be able to combine initial disclosures in one document. The final rule reflects this flexibility, in § 716.6(e)(7). NCUA and the other Agencies emphasize that the notice must be accurate for all financial institutions using the notice.

*Section 716.7 Form of Opt Out Notice to Consumers and Opt Out Methods*

The proposed rule in § 716.8 provided as an example that a credit union will provide adequate notice of the right to opt out if it identifies: The categories of information that may be disclosed; the categories of nonaffiliated third parties to whom the information may be disclosed; and that the consumer may opt out of those disclosures. The final rule adds that the credit union should also identify the financial products or services that the consumer obtains, either singly or jointly from the credit union, to which the opt out direction would apply.

The proposed rule also provided several examples by which a credit union may provide a reasonable means for the consumer to opt out, including check off boxes, self-addressed stamped reply forms, and electronic mail addresses. Approximately 20 commenters requested that the Board delete the stamped reply example, contending it is unreasonable, unfair, costly to financial institutions, and not a statutory requirement. A couple of commenters supported the concept of stamped reply forms so that opting out would be convenient for the consumer.

In the final rule, the Board has deleted the reference to self-addressed and stamped, but has retained the example of a reply form in § 716.7(a)(2)(ii)(B).

Several commenters wrote that they supported allowing opt outs by electronic means. The final rule retains this example in § 716.7(a)(2)(ii)(C).

A few commenters recommended that the Board permit the consumer to opt out orally. Approximately 16 commenters requested that the final rule include an example of opt out by means of a toll-free telephone number. The final rule adds the example of a credit union providing a toll-free telephone number that consumers may call to opt out in § 716.7(a)(2)(ii)(D).

The proposed rule stated that a credit union does not provide a reasonable means of opting out if it requires a consumer to send his or her own letter informing the credit union of the opt out election. One commenter supported this interpretation. Four commenters disagreed and wrote that the proposed rule goes beyond the GLB Act on this issue. The final rule retains this example in § 716.7(a)(2)(iii)(A). The final rule also provides another example of an unreasonable means of opting out. This would be if the credit union describes in a subsequent opt out notice that a consumer may opt out by designating check-off boxes that were provided with the initial notice, but not included with the subsequent notice.

Several commenters requested that the Board provide that credit unions will be able to impose their own requirements on how consumers opt out. For example, a commenter requested that the Board permit credit unions to require customers to submit account numbers with an opt out request. The final rule provides that a credit union may require each consumer to opt out through a specific means, if it is reasonable for that consumer. 12 CFR 716.7(a)(2)(iv). The final rule provides that a credit union may provide the opt out notice together with or on the same form as the initial notice. 12 CFR 716.7(b).

NCUA requested comment on how the right to opt out should apply to joint account holders and trustees of commingled trust accounts, where a trustee manages a single account on behalf of multiple beneficiaries. For the same reasons as in the discussion on initial notice under § 716.4, approximately 50 commenters supported only requiring that the primary account holder get a right to opt out. A few commenters wrote that either party on a joint account should have the right to opt out. One commenter requested that, if one party to a joint account wants to opt out, the financial institution should honor his or her request. The final rule provides that the credit union need only provide one opt out notice to holders of accounts, other than loans, but that either party to the joint account may exercise an opt out direction. 12 CFR 716.7(d). The final rule provides that the credit union may treat the opt out direction by a joint consumer as applying to all of the associated joint consumers or permit each joint consumer to opt out separately. The final rule also provides an example. 12 CFR 716.7(d)(5).

With regard to application of the right to opt out to trustees, as previously discussed in connection with the definition of consumer, 12 CFR § 716.3(e)(1), a credit union need not provide notice to both a consumer and a consumer's legal representative. Thus, a credit union may provide notice of the right to opt out to either the beneficiaries or their legal representative.

The proposed rule in § 716.8(d) stated that a consumer has the right to opt out at any time. The proposed rule also required that the sharing of nonpublic personal information stop promptly when the consumer opts out. Some commenters asked the Board to clarify in the final rule how long a credit union has after receiving an opt out to cease disclosing nonpublic personal information to nonaffiliated third parties. Several commenters requested that the rule provide no opt out rights once a sharing or affinity program has begun. Several commenters requested that the right to opt out should only affect disclosures after the consumer has opted out and should not apply retroactively. One commenter requested that the rule require a financial institution has to comply with a consumer's subsequent opt out within 30 days of his or her request.

The final rule retains the consumer's continuing right to opt out. 12 CFR 716.7(f). The final rule also requires the sharing of nonpublic personal information to stop as soon as reasonably practicable after the credit union receives the opt out direction. 12 CFR 716.7(e). NCUA, consistent with the other Agencies, believes that it is appropriate to retain this more general rule in light of the wide range of practices throughout the financial institutions industry. A potential drawback of a more prescriptive rule is that a credit union might use the standard as a safe harbor in all instances and thus fail to honor an opt out as early as it is otherwise capable of doing. Another drawback is that a standard that is set in light of current industry practices and capabilities is likely to become outmoded quickly as advances in technology increase efficiency. NCUA therefore declines to adopt a more rigid standard, and instead retains the rule as set out in § 716.7(e) of the final rule.

The proposed rule in § 716.8(e) stated that an opt out will continue until a consumer revokes it in writing, or, if the consumer agrees, electronically. The final rule retains those requirements in § 716.7(g). The final rule clarifies that when the member relationship terminates, the opt out direction continues to apply to information collected during the relationship. If the individual then enters into a new member relationship with the credit union, the former opt out direction does not apply to the new relationship. 12 CFR 716.7(g)(2). The final rule states that requirements for delivery of the opt out notices are found in § 716.9. 12 CFR 716.7(h).

NCUA requested comment on the regulatory burden of complying with opt out notices. How do credit unions expect to give opt out opportunities? How many opt outs do credit unions expect to receive and need to process? Commenters who responded generally did not address these issues with specificity, but some stated that complying with the opt out notice requirements and directions will be burdensome.

*Section 716.8 Revised Privacy Notices*

For ease of reference in the final rule, NCUA and the other Agencies are grouping the provisions concerning revised notices into one section. The proposed rule contained requirements that a credit union send a customer a new notice and opt out when there is a change in terms. A couple of commenters recommended eliminating these requirements. A couple of commenters recommended the Board revise the language to specify a "material" change in terms. One commenter wrote that when a financial institution changes its terms, a consumer's prior opt out should remain in effect for 30 days while he or she is permitted to consider the new right to opt out. NCUA and the other Agencies are retaining these requirements in the final rule as proposed, but are adding an additional example. The new example provides that the credit union must provide a revised policy notice if it discloses nonpublic personal information to a nonaffiliated third party about a former customer who has not had the opportunity to exercise an opt out right regarding that disclosure. The final rule moves the requirements

for delivery of the revised notices to § 716.9.

*Section 716.9 Delivering Privacy and Opt Out Notices*

In the proposed rule, the rules governing how credit unions must provide the initial and annual privacy notices and opt out notices were found in various sections depending on the type of notice. For ease of reference in the final rule, NCUA and the other Agencies are grouping the provisions concerning delivery of privacy and opt out notices into one section.

The proposed rule provided that the notices may be delivered in writing or, if the consumer agrees, electronically. The proposed rule required that the credit union provide the notices so that each recipient can reasonably be expected to receive actual notice. A few commenters objected to the requirement that the credit union must reasonably expect the customer will receive the notice. Their reasons were that this requirement is: Not expressly stated in the statute, not consistent with other disclosure regulations, and burdensome. The final rule in § 716.9(a) contains the requirements for any privacy notices and opt out notices, including short-form initial notices.

The proposed rule provided examples of acceptable methods of delivery of the notice to customers where the credit union may reasonably expect the customer will receive the notice. The Board requested comment on the regulatory burden of providing the initial notice and the methods credit unions expect to use to provide the notice.

One commenter recommended the reference to sending the consumer an electronic mail notice be deleted because a preferable method would be for a customer to access the notice on a secure site. Several commenters requested that the regulation provide examples of other means of electronic delivery, such as posting the notice on the web and informing the consumer to access the site, or sending an electronic mail with a link to the notice. The final rule retains the examples of reasonable and unreasonable expectations of delivery in § 716.9(b).

The proposed rule stated that oral notices alone are insufficient. A few commenters requested that oral notice be permitted where the financial institution establishes the customer relationship over the telephone. A few commenters objected that it would be costly to train staff to provide oral notices. The final rule retains the provision that oral notices alone are insufficient in § 716.9(d).

Several commenters wrote that providing the annual notice will be burdensome and a waste of resources. One commenter requested that credit unions not be required to send the notice unless their policies have changed. Some commenters requested that the regulation permit the credit union to comply with the annual notice requirement by posting the notice on its web site. NCUA and the other Agencies agree with the commenters. For annual notices only, the final rule permits a credit union to reasonably expect a member to receive notice if the member uses the credit union's web site to access financial products and services electronically, agrees to receive notices there, and the credit union posts the current privacy policy there in a clear and conspicuous manner. 12 CFR § 716.9(c).

Several commenters requested that customers should be able to waive the right to receive the annual notice. Another commenter wrote that a credit union should be able to comply with the law by providing the policy to customers only upon their request. A couple of commenters requested that credit unions should not have to send the notice to customers who have opted out. The final rule permits the credit union to reasonably expect that a member will receive actual notice of the privacy notice if he or she has requested the credit union refrain from sending any information regarding the member relationship and the current policy remains available to the member upon request. 12 CFR 716.9(c).

The proposed rule in § 716.4(g) required the credit union to provide the notice to the customer in a form that can be retained or obtained at a later time, in a written form or if the customer agrees, in electronic form. Some commenters supported the requirement for the notice to be retainable or obtainable and some opposed it as burdensome. A few commenters wrote that the Board should delete the requirement that the consumer must agree to the electronic form. One commenter suggested that the agreement should be implied if the customer initiates an electronic transaction.

NCUA requested comment on whether there are situations where providing notice by mail is impracticable. Several commenters suggested the credit union should not have to provide the notice by mail if the credit union does not have the customer's current address. Some commenters suggested that the credit union should not have to provide the disclosures at all if it does not have the address or another way to contact the customer.

Section 716.9(e) of the final rule retains the requirement that the initial notice, annual notice, and any revised notice be given in a way so that the member may either retain them or access them at a later time and provides examples, such as mailing the notice to the last known address. NCUA acknowledges that, in some cases, credit unions will not have any means of delivery.

**Subpart B—Limits on Disclosures**

*Section 716.10 Limits on Disclosure of Nonpublic Personal Information to Nonaffiliated Third Parties*

NCUA and the other Agencies are moving the main operative provisions from § 716.7 in the proposed rule to § 716.10 in the final rule. The proposed rule in § 716.7 required that a credit union give the consumer a reasonable opportunity to opt out before it discloses the consumer's information. The proposed rule provided an example that when a credit union has mailed a privacy notice to a customer, he or she will have 30 days to opt out. NCUA invited comment on whether 30 days is a reasonable opportunity to opt out in the case of notices sent by mail. Several commenters requested that NCUA remove the reference to 30 days. Several commenters wrote that 30 days was a reasonable time period. A few commenters recommended 15 days and one recommended 60 days. The final rule retains 30 days as an example of a reasonable period of time to allow the consumer to opt out by mailing a form, calling a toll-free number, or any other reasonable means. 12 CFR 716.10(a)(3)(i).

NCUA also requested comment on whether an example in the context of transactions conducted using an electronic medium would be helpful. One commenter wrote that three days was a reasonable period for the consumer to opt out when the delivery of the notice was by electronic methods. A few commenters requested that the Board specify a uniform time frame as a reasonable opt out period, no matter how the credit union has delivered the notice. The Board agrees with these commenters. The final rule adds an example of reasonable opportunity to opt out by electronic means for a member who opens an on-line account with a credit union. If the credit union makes the notices available on its web site, the member may opt out by any reasonable means within 30 days after the date he or she acknowledges receipt of a notice. 12 CFR 716.10(a)(3)(ii).

The proposed rule also provided an example of a reasonable method for the consumer to opt out in an isolated transaction. One commenter recommended not requiring the opt out to be a necessary part of the transaction. A couple of commenters recommended allowing the consumer to opt out at a later time by mail. The final rule retains the example from the proposed rule. 12 CFR 716.10(a)(3)(iii).

A couple of commenters requested that the Board clarify the description of partial opt outs. The Board believes the description is adequate and the final rule retains the description from the proposed rule. 12 CFR 716.10(c).

*Section 716.11 Limits on Redisclosure and Reuse of Information*

Section 716.12 of the proposed rule implemented the GLB Act's limitations on redisclosure and reuse of nonpublic personal information about consumers. Section 502(c) provides that a nonaffiliated third party that receives nonpublic personal information from a financial institution shall not, directly or through an affiliate of the third party, disclose the information to any person that is not affiliated with either the financial institution or the third party, unless the disclosure would be lawful if made directly by the financial institution. The final rule revises the language and adds examples.

Paragraph (a)(1) of the proposed rule set out the GLB Act's redisclosure limitation as it applies to a credit union that receives information from another financial institution. Paragraph (b)(1) of the proposed rule mirrored the provisions of paragraph (a)(1), but applied the redisclosure limits to any nonaffiliated third party that receives nonpublic personal information from a credit union.

The Board requested comment on whether subsequent disclosures by the third party to parties other than the credit union are lawful. One commenter wrote that no third party reuse should be allowed. Approximately 11 commenters thought some reuse by third parties should be allowed as permitted by law or the exceptions.

Some of these commenters criticized imposing limits on reuse premised on the conclusion that Congress, by addressing limits on redisclosures in section 502(c) of the GLB Act, provided the only limits that may be imposed on what a recipient of nonpublic personal information can do with that information. The Board, consistent with the other Agencies, disagrees with that premise. Section 502(c) is silent on the question of reuse, making it necessary to look to the overall purpose of the statute to determine whether the Board should impose limits on the ability of nonaffiliated third parties to reuse nonpublic personal information that they receive from a credit union. The Board, consistent with the other Agencies, believes that the overall purposes of subpart A of Title V of the Act makes it appropriate to impose limits on reuse, depending on whether the information was obtained pursuant to one of the exceptions in section 502(e) of the GLB Act (as implemented by §§ 716.14 and 716.15 of the final rule).

When disclosures are made in connection with one of the purposes set out in section 502(e), those disclosures are exempt from the notice and opt out protections altogether. A consumer has no right to prohibit those disclosures or even to know more than the financial institution is making the disclosures "as permitted by law." The only protection afforded by the statute for disclosures made under section 502(e) is the limited nature of the exceptions. The Board believes it would be inappropriate to undermine the protection by allowing the recipient of nonpublic personal information to reuse the information for any purpose, including marketing.

By contrast, when a consumer decides not to opt out after being given adequate notices and the opportunity to do so, that consumer has made a decision to permit the sharing of his or her nonpublic personal information to the categories of entities identified in the financial institution's notices. The consumer's primary protection in the case of a disclosure falling outside the 502(e) exceptions comes from receiving the mandatory disclosures and the right to opt out. The statute provides only the additional protection in section 502(c), restricting a recipient's ability to redisclose information to entities that are not affiliated with either the recipient or the financial institution making the disclosure initially. Thus, if a consumer permits a financial institution to disclose nonpublic personal information to the categories of nonaffiliated third parties that are described in the institution's notices, recipients of that nonpublic personal information appear authorized under the statute to make disclosures that comply with those notices.

To implement this statutory scheme, the Board, consistent with the other Agencies, has retained a limit on reuse in addition to the limit on redisclosures. The final rule addresses a credit union's disclosure of the information it receives from a financial institution to: The credit union's own affiliates, the financial institution's affiliates, and others. A credit union may disclose the information to its affiliates who, in turn, may disclose and use the information only to the same extent as the credit union. Second, a credit union may disclose the information to the affiliates of the financial institution from whom the credit union received the information. Third, a credit union may disclose and use the information pursuant to the exceptions under §§ 716.14 and 716.15. The limits on redisclosure and reuse that apply to recipients of information and their affiliates will vary, depending on whether the information was provided pursuant to one of the exceptions in §§ 716.14 and 716.15.

If a credit union received the nonpublic personal information from a financial institution pursuant to an exception under §§ 716.14 and 716.15, the credit union may disclose the information to its affiliates or to affiliates of the financial institution from which the information was received. In addition, the credit union may disclose and use the information pursuant to an exception in 716.14 or 716.15 in the ordinary course of business to carry out the activity covered by that exception. 12 CFR 716.11(a)(1)(iii). An example of this is if a credit union performs correspondent services for another credit union and receives a list containing member information, the credit union performing the services may disclose the list in response to a subpoena or to its attorneys, accountants, or auditors. The credit union could not use the list for its own marketing or disclose the list to a third party for marketing. The credit union's affiliates may disclose and use the information, but only to the extent permissible for the credit union.

If a credit union received the nonpublic personal information from a financial institution other than pursuant to an exception under § 716.14 or 716.15, the credit union may disclose the information to its affiliates or to the affiliates of the financial institution that made the initial disclosure. In addition, the credit union may disclose the information to any other person if the disclosure would be lawful if the financial institution made the disclosure directly to that person. The final rule also provides an example. The credit union may disclose a list it receives from a financial institution to another nonaffiliated third party only if the financial institution could have lawfully disclosed it to the nonaffiliated third party. The credit union may disclose the list in accordance with the privacy policy of the financial institution, as limited by the opt out directions of each

consumer whose information the credit union intends to disclose. The affiliates of the credit union may disclose the information only to the extent that the credit union may disclose the information.

The Board requested comment on whether the rule should require a credit union that discloses nonpublic personal information to a nonaffiliated third party to develop policies and procedures to ensure that the third party complies with the limits on redisclosure of that information. Approximately 25 commenters thought that the credit union should not be responsible for third party compliance because it would be burdensome and unnecessary. A few commenters replied that financial institutions should develop policies and procedures on third party compliance. A few commenters wrote that the Board should suggest confidentiality agreements between credit unions and vendors. One commenter suggested that a credit union should use due diligence when selecting the third party.

The Board, consistent with the other Agencies, has given these comments due consideration and § 716.11 of the final rule does not impose a specific duty on credit unions to monitor third parties' use of nonpublic personal information provided by the credit unions. The Board notes, however, that credit unions may have contracts in place that limit what the recipient may do with the information. The Board also notes that the limits on reuse as stated in the final rule provide a basis for an action to be brought against an entity that violates those limits.

Paragraphs (c) and (d) of the final rule mirror the provisions of paragraphs (a) and (b) of the final rule. The same general redisclosure and reuse limits apply to any nonaffiliated financial institution that receives nonpublic personal information from a credit union as would apply to a credit union that receives such information from a nonaffiliated financial institution.

*Section 716.12 Limits on Sharing of Account Number Information for Marketing Purposes*

Section 502(d) of the GLB Act prohibits a financial institution from disclosing, other than to a consumer reporting agency, an account number or similar form of access number or access code for a credit card account, deposit account, or transaction account of a consumer to any nonaffiliated third party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer. Proposed § 716.13 restated this statutory prohibition with minor stylistic changes intended to make the rule easier to read.

A few commenters recommended that the Board clarify that these limits only apply to credit card accounts, transaction accounts and deposit accounts. Several commenters requested that the Agencies provide a definition and specific examples of a transaction account. A few commenters requested confirmation that transaction accounts do not include mortgage accounts or insurance accounts. The final rule clarifies that a transaction account is an account other than a share account or credit card account, and does not include an account to which a third party cannot initiate a charge. 12 CFR 716.12(c)(2).

The Board also requested comment on whether a flat prohibition would disrupt routine, unobjectionable practices. Several commenters were concerned that it would disrupt the practices of a service provider who prepares and distributes monthly credit union statements and includes literature about products with the statement. Approximately 18 commenters requested that the Board clarify that the scope of the prohibition is narrow. One commenter requested that the Agencies adopt this rule unchanged from the proposed and not add any exceptions.

The commenters requested clarification that the limits on sharing do not apply to a financial institution itself or those acting on behalf of the financial institution. Some credit unions noted that they use agents or service providers to conduct marketing on the credit union's behalf. This might occur, for instance, when a credit union instructs a service provider that assists in the delivery of monthly statements to include a "statement stuffer" with the statement informing consumers about a financial product or service offered by the credit union. NCUA, consistent with the other Agencies, recognizes the need to disclose account numbers in this instance, and believes that there is little risk to the consumer presented by such disclosure. Similarly, NCUA recognizes that a credit union may use agents to market the credit union's own financial products and services. Commenters advocating that the final rule exclude disclosures to agents stated that the agents effectively act as the credit union in the marketing of its financial products and services. These commenters suggested that there was no more reason to preclude sharing the account numbers with an agent hired to market the credit union's financial products and services than there would be to preclude sharing between two departments of the same credit union.

The final rule provides for an exception to the prohibition on account number disclosure to the credit union's agent or service provider solely in order to perform marketing for the credit union's products or services, as long as the agent or service provider cannot directly initiate charges to the account. 12 CFR 716.12(b)(1).

The Board requested comment on whether the GLB Act prohibits a credit union from disclosing encrypted account numbers to a marketing firm if the credit union does not provide the key to the marketer. The Board also requested comment on whether an exception could avoid creating risks that may arise when a third party is provided access to a consumer's account. Approximately 21 commenters requested that the rule permit a financial institution to disclose an encrypted, truncated, scrambled, reference, or similarly coded form number to identify a customer. NCUA, consistent with the other Agencies, believes that consumers will be adequately protected by disclosures of encrypted account numbers that do not enable the recipient to access the consumer's account. The final rule provides a negative example that an account number, or similar form of access number or code, does not include a number or code in an encrypted form, if the credit union does not provide the recipient with a means to decode the number or code. 12 CFR 716.12(c)(1).

The Board also requested comment on whether a consumer should be able to consent to the disclosure of his or her account number and what standards should apply. All of the approximately ten commenters who commented on this issue wrote that the regulation should state that a consumer may consent to disclosure. A few commenters requested that the rule permit credit unions to share a customer's account number with a third party if the customer actually purchases the marketed product. The final rule addresses consumer consent in § 716.15, and does not address it again in this section.

Several commenters requested that a credit union should be able to disclose an account number to a participant in a private label credit card program or an affinity or similar program where participants are identified to the member when the member enters the program. Under these programs, a consumer typically will be offered certain benefits, often by a retail merchant, in return for using a credit card that is issued by a particular financial institution. In the example of a private label credit card, the consumer

understands the need for the merchant and the financial institution to share the consumer's account number. The NCUA and the other Agencies believe this sort of disclosure is appropriate and does not create a significant risk to the consumer. The final rule provides for this exception in § 716.12(b)(2) where the participants are identified to the consumer at the time the consumer enters into the program.

**Subpart C—Exceptions**

*Section 716.13 Exception to Opt Out Requirements for Service Providers and Joint Marketing*

Section 502(b) of the GLB Act creates an exception to the opt out rules for the disclosure of information to service providers and for marketing. A consumer will not have the right to opt out of disclosing nonpublic personal information to nonaffiliated third parties under these circumstances, if the credit union satisfies certain requirements. Section 502(b) of the GLB Act provides that the financial institution must "fully disclose" to the consumer that it will provide this information to the nonaffiliated third party before the information is shared. This disclosure should be provided as part of the initial notice that is required by § 716.4. NCUA invited comment on whether the proposed rule in § 716.9 appropriately implemented the requirement of "full" disclosure.

A couple of commenters suggested that consumers should be fully informed of the parties to the joint marketing agreements. One supported this approach so that members can report abuses to NCUA. Another commenter opposed specific, separate disclosures for joint marketing agreements. The Board believes that the notice requirement as proposed satisfies the full disclosure requirement of the GLB Act and, therefore, retains the same notice requirement in the final rule.

The GLB Act allows the Agencies to impose requirements on the disclosure of information pursuant to the exception for service providers beyond those imposed in the statute. NCUA, like the other Agencies, did not do so in the proposed rules, but invited comment on whether additional requirements should be imposed, and, if so, what those requirements should address. Approximately ten commenters wrote that the Agencies should reconsider this exception for opt out requirements for service providers and also eliminate the notice requirement. These commenters wrote that the notice and contract requirements under § 502(b) should not apply to outsourcing arrangements where the third party agent, processor or server is performing operational functions on behalf of the credit union. They requested that service providers instead should be exempt from notice and opt out requirements under the § 716.10 exception. The final rule in § 716.13 retains application of this section to service providers because it is statutory.

One commenter requested that the Agencies provide examples of this service provider exception. The exception would apply, for example, to service providers whose services are not necessary in order for the credit union to provide financial services or products to consumers. The final rule provides a new example, that if a credit union discloses nonpublic personal information to a financial institution with whom it performs joint marketing, the contract must prohibit the institution from disclosing or using the information except as necessary to carry out the joint marketing or under an exception in § 716.14 or 716.15 in the ordinary course of business to carry out that marketing.

The proposed rule in § 716.9 required the credit union to enter into a contract with the third party that requires the third party to maintain the confidentiality of the information. Several commenters requested that the Board exempt existing contracts from the requirement of the confidentiality provision or extend the time frame for existing contracts to comply. The final rule provides a two-year grandfather period for service agreements entered into before July 1, 2000, under § 716.18(c).

The proposed rule in § 716.9 provided that the contract should require the third party: (i) To maintain the confidentiality of the information at least to the same extent as is required for the credit union; and (ii) to use the information solely for the purposes for which the information is disclosed or as otherwise permitted by the exceptions in § § 716.10 and 716.11 of the proposed rule. The final rule in § 716.13 deletes the first provision as redundant and clarifies that the use under the exceptions (§ § 716.14 and 716.15 of the final rule) is in the ordinary course of business to carry out the purposes for which the credit union disclosed the information.

The Board requested comment on the application of the exception to credit unions that contract with credit scoring vendors to evaluate borrower creditworthiness. Approximately nine commenters responded that the exception should be interpreted so that it does not inhibit credit scoring, market response, or consumer behavioral models.

NCUA sought comment on whether the rule should require a credit union to take steps to assure itself that the product being jointly marketed and the other participants in the joint marketing agreement do not present undue risks for the credit union. Several commenters opposed the Board requiring credit unions to take steps to ensure that the products and participants do not present undue risks. One commenter wrote that Letter to Credit Unions No. 150 already provides adequate protection against undue risks. One commenter supported the credit unions taking steps against undue risks. The final rule does not add new requirements to ensure against undue risks.

*Section 716.14 Exceptions to Notice and Opt Out Requirements for Processing and Servicing Transactions*

The proposed rule in § 716.13 set out certain exceptions for disclosures of nonpublic personal information in connection with the administration, processing, servicing, and sale of a consumer's account. One commenter suggested the Board should apply the exception in cases where the use of information is for the benefit of the credit union and not the third party. Several commenters requested that the Board make the rule consistent with the plain language of the GLB Act and use the terms "in connection with," not "required" for servicing. NCUA and the other Agencies agree with the commenters. NCUA has made stylistic changes and has revised its use of the terms "in connection with" in the final rule. NCUA has also deleted the reference to underwriting insurance at the consumer's request or for reinsurance purposes, because credit unions do not engage directly in those activities.

Several of the commenters requested that the Board broaden the exception and clarify the definition and list examples of servicing transactions. Approximately ten commenters requested that the Board clarify that the exceptions should include collection activities or products or services associated with a loan, such as those to protect collateral securing a loan. Commenters also recommended adding other examples to the list of exceptions, such as private label credit cards, electronic funds transfer transactions, statement mailing, ATMs, mechanical breakdown insurance, gap insurance on leasing, and one credit union phoning another to check on available funds before depositing a check drawn on the

other credit union. Some of these examples have been included and the Board believes they are sufficiently illustrative of transactions that would qualify as servicing transactions.

*Section 716.15 Other Exceptions to Notice and Opt Out Requirements*

The proposed rule in § 716.11 set out other exceptions, not made in connection with the administration, processing, servicing, and sale of a consumer's account. One of the exceptions was for disclosures made with the consent or at the direction of the consumer. The Board requested comment whether it should add safeguards to this exception to minimize the potential for consumer confusion. One commenter recommended that the Agencies not allow the consumer consent provision to be a way to evade the notice and opt out in the rest of the GLB Act.

Several commenters wrote that the consumer consent requirement should be a flexible requirement that the consumer can exercise by phone, email, or Internet. A few commenters requested that the Agencies eliminate the consent requirement. A couple of commenters wrote that the exception should permit implied consent.

Approximately ten commenters wrote that the consent exception should permit financial institutions to share nonpublic personal information about consumers with third parties with whom they have co-branding and affinity relationships. For example, in these cases, the name of a third party who is the provider of a financial product is prominently displayed on credit cards or private label cards. If the third party is a financial institution, the proposed rule already provided an exception to the opt out requirement. Commenters requested that the same exception should also apply where the third party is not a financial institution. Commenters wrote that an opt out requirement would be burdensome and would delay providing customers the benefits they expect to receive.

After considering these comments, the NCUA and the other Agencies have decided to adopt this section of the final rule in § 716.15 virtually as proposed in § 716.11. However, the NCUA and the other Agencies are changing the reference in the proposed rule from government regulator to federal functional regulator, the Secretary of Treasury, a state insurance authority, and the Federal Trade Commission.

**Subpart D—Relation to Other Laws; Effective Date**

*Section 716.16 rotection of Fair Credit Reporting Act*

The Agencies and NCUA are adopting § 716.16 as proposed in § 716.15.

*Section 716.17 Relation to State Laws*

Section 507 of the GLB Act states that Title V does not preempt any state law that provides greater protections than are provided by Title V. Determinations of whether a state law or Title V provides greater protections are to be made by the Federal Trade Commission after consultation with the agency that regulates either the party filing a complaint or the credit union about whom the complaint was filed. Determinations of whether state or federal law afford greater protections may be initiated by any interested party or on the Federal Trade Commission's own motion.

Proposed § 716.15 was substantively identical to section 507. Although statutorily mandated, many commenters felt compelled to note the hardship, if not impossibility, it will be for financial institutions to comply with the federal regulation and the many different state laws that may apply to them. The difficulties include: when to follow state law; what state law to follow; and redesigning computer systems to take into account the different requirements.

One commenter suggested that "federal credit unions may be subject to a state compliance examination" in states where state law is controlling. The Board would treat compliance by a federal credit union with a state privacy law the same as it treats a federal credit union's compliance with other controlling state law. The NCUA will coordinate with the appropriate state regulator to ensure that a federal credit union is in compliance with the controlling state privacy provisions.

*Section 716.18 Effective Date; Transition Rule*

Section 510 of the GLB Act states that, as a general rule, the relevant provisions of Title V take effect 6 months after the date on which rules are required to be prescribed. However, section 510(1) authorizes the Agencies to prescribe a later date in the rules enacted pursuant to section 504.

Proposed § 716.16(a) had an effective date of November 13, 2000. NCUA invited comment on whether six months following adoption of final rules was sufficient to enable credit unions to comply with the rules. Fifty-four of the 55 commenters that commented on this provision requested that the effective date for mandatory compliance be extended. The sole dissenting commenter was the Congressional Privacy Caucus.

The Congressional Privacy Caucus' rationale was that six months is sufficient time for financial institutions to comply. The other 54 commenters offered a variety of reasons why six months is not sufficient. Some of the reasons in support of extending the compliance date were: operationally and financially it is a burden for financial institutions because they must identify customers and consumers and the sources and uses of consumer information, train staff, prepare disclosure statement and reprogram computers; prompt corrective action compliance, Y2K compliance and end of year timing, all make this a difficult period for credit unions to comply; credit unions would not be able to include the disclosure with their annual statements; this is the holiday season which is a busy time for the members and the post office; this was not budgeted for in the 2000 budget; and Congress gave the Agencies authority to extend the compliance date. Some commenters noted that, if financial institutions are required to rush compliance, there is a much greater likelihood of mistakes.

The Board agrees that six months after publication of the final rule may be insufficient time in certain instances for a credit union to ensure that its forms, systems, and procedures comply with the rule. In order to accommodate situations requiring additional time, the Board retained the effective date of November 13, 2000, but, consistent with its authority under section 510(1) of the GLB Act to extend the effective date, the Board will give credit unions until July 1, 2001 to be in full compliance with the regulation.

Credit unions are expected, however, to begin compliance efforts promptly, to use the period prior to June 30, 2001, to implement and test their systems, and be in full compliance by July 1, 2001. Given that this provides credit unions with slightly over 13 months in which to comply with the rule, the Board has determined that there no longer is any need for a separate phase-in for providing initial notices. Thus, a credit union will need to deliver all required opt out notices and initial notices before July 1, 2001. The final rule provides a new example that the credit union provides an initial notice to consumers who are members as of July 1, 2001, if by that date, it has established a system for providing initial notice to all new members and has mailed the initial notice to all existing members.

Credit unions are encouraged to provide disclosures as soon as practicable. Depending on the readiness of a credit union to process opt out elections, credit unions might wish to consider including the privacy and opt out notices in the same mailing as is used to provide tax information to members in the first quarter of 2001 to increase the likelihood that a member will not mistake the notices for an unwanted solicitation. The Board believes that this extension represents a fair balance between those seeking prompt implementation of the protections afforded by the statute and those concerned about the reliability of the systems that are put in place.

In response to a concern by some commenters that existing service contracts may not comply with § 716.13(a)(2) of the final rule, the NCUA and the other Agencies are agreeing to postpone the mandatory compliance date for existing third party service contracts to state that the third party agrees to maintain the confidentiality of nonpublic personal information, until July 1, 2002. All third party service contracts entered into after July 1, 2000, however, must comply with the requirement.

**Appendix A**

Approximately 19 commenters requested that the Agencies provide sample or model disclosure forms of the notice. The Board, consistent with the other Agencies, has provided sample disclosure language in Appendix A to its final rule. The Board urges credit unions to carefully review whether these clauses accurately reflect a given credit union's policies and practices before using the clauses. Credit unions are free to use different language and to include as much detail as they think is appropriate in their notices.

The sample clauses are intended to minimize the burden and costs to credit unions, including small credit unions. This is especially true for small credit unions that only share nonpublic personal information with nonaffiliated third parties pursuant to the exceptions provided in § § 716.14 and 716.15. These credit unions may provide relatively simple initial and annual notices to members.

**III. Regulatory Procedures**

*A. Paperwork Reduction Act*

NCUA has submitted the reporting requirements in Parts 716 and 741 to the Office of Management and Budget and is awaiting approval and issuance of a new OMB control number (3133;____). Approximately 20 commenters wrote that this regulation will result in increased costs. Several commenters also wrote that there will be increased paperwork burden. Commenters cited dollar amounts from $500 to ten million dollars, for system changes, staff hours, and mailing costs. A few commenters wrote that the cost may depend on what their vendors will charge to upgrade their systems. One commenter wrote that there would be no increased costs. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB number. The control number will be displayed in the table at 12 CFR part 795.

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires, subject to certain exceptions, that NCUA prepare an initial regulatory flexibility analysis (IRFA) with a proposed rule and a final regulatory flexibility analysis (FRFA) with a final rule, unless NCUA certifies that the rule will not have a significant economic impact on a substantial number of small credit unions. For purposes of the Regulatory Flexibility Act, and in accordance with NCUA's authority under 5 U.S.C. 601(4), NCUA has determined that small credit unions are those with less than one million dollars in assets. *See* 12 CFR 791.8(a). NCUA's final rule will apply to approximately 1,626 small credit unions, out of a total of approximately 10,627 federally-insured credit unions.

At the time of issuance of the proposed rule, NCUA could not make such a determination for certification. Therefore, NCUA issued an IRFA pursuant to section 603 of the Regulatory Flexibility Act. After reviewing the comments submitted in response to the proposed rule, NCUA believes that it does not have sufficient information to determine whether the final rule would have a significant economic impact on a substantial number of small credit unions. Therefore, pursuant to section 604 of the Regulatory Flexibility Act, NCUA provides the following FRFA.

This FRFA incorporates NCUA's initial findings, as set forth in the IRFA; addresses the comments submitted in response to the IRFA; and describes the steps NCUA has taken in the final rule to minimize the impact on small entities, consistent with the objectives of the GLB Act. Also, in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), NCUA will in the near future issue a Small Credit Union Compliance Guide to assist small credit unions in complying with this rule.

1. *Statement of the Need and Objectives of the Rule.* The final rule implements the provisions of Title V, Subtitle A of the GLB Act addressing consumer privacy. In general, these statutory provisions require financial institutions to provide notice to consumers about an institution's privacy policies and practices, restrict institutions from sharing nonpublic personal information about consumers with nonaffiliated third parties, and permit consumers to prevent institutions from disclosing nonpublic personal information about them to certain nonaffiliated third parties by "opting out" of that disclosure. Section 504 of the GLB Act requires NCUA and the other Agencies, in consultation with representatives of state insurance authorities, to prescribe "such regulations as may be necessary" to carry out the purposes of Title V, Subtitle A. NCUA believes that the final rule gives credit unions greater certainty on how to comply with the statute.

2. *Summary of Significant Issues Raised in Public Comments and Assessment of Issues.* NCUA does not have a practicable or reliable basis for quantifying the costs of the proposed rule or any alternatives, but sought comment on the potential costs. NCUA specifically requested information on the costs of creating privacy policy disclosures, distributing privacy policy disclosures, implementing "opt out" disclosure and processing requirements, and complying with the proposed rule in its entirety.

The comments varied, and were not specific to small credit unions. Approximately 20 commenters wrote that this regulation will result in increased costs. Commenters cited dollar amounts from $500 to ten million dollars, for system changes, staff hours, and mailing costs. A few commenters wrote that the cost may depend on what their vendors will charge to upgrade their systems. One commenter wrote that there would be no increased costs.

After considering the comments received, NCUA does not have a practicable or reliable basis for quantifying the costs of implementing the requirements of the GLB Act. We expect that compliance costs will vary significantly between credit unions depending on information sharing practices.

NCUA believes that the new compliance requirements will indeed create additional economic costs for some credit unions, especially those that choose to disclose information to nonaffiliated third parties. Most, if not,

all of these costs result from requirements expressly mandated by the GLB Act. These costs include, but are not limited to: (1) Reviewing current information sharing practices; (2) determining operational and computer programming changes necessary; (3) identifying sources and uses of member information; (4) preparing disclosure forms; and (5) training staff. Credit unions that disclose nonpublic personal information about consumers to nonaffiliated third parties will be required to provide opt out notices to consumers, as well as a reasonable opportunity to opt out of certain disclosures. These credit unions will have to develop systems for keeping track of consumers' opt out directions. Some credit unions, particularly those that disclose nonpublic information about consumers to nonaffiliated third parties, may need the advice of legal counsel to ensure that they comply with the rule.

However, NCUA continues to believe that the costs of implementing the opt out provisions of the final rule will be insubstantial for credit unions that do not disclose nonpublic personal information about consumers to nonaffiliated third parties. These credit unions may provide relatively simple initial and annual notices to consumers with whom they establish member relationships. However, NCUA cannot determine either the number or identity of credit unions that will not disclose nonpublic personal information about consumers to nonaffiliated third parties.

In the IRFA, NCUA recognized that the Congressional Conferees on the Act wished to ensure that smaller financial institutions are not placed at a competitive disadvantage by a statutory regime that permits certain information to be shared freely within an affiliate structure while limiting the ability to share that same information with nonaffiliated third parties. The Conferees stated that, in prescribing regulations, the federal regulatory agencies should take into consideration any adverse competitive effects upon small commercial banks, thrifts, and credit unions. *See* H.R. Conf. Rep. No. 106–434, at 173 (1999).

Accordingly, NCUA also sought comment on whether the requirements of the Act and this rule will create additional burden for small credit unions, particularly those that disclose nonpublic personal information about consumers to nonaffiliated third parties. In connection with any such burden, NCUA requested comment on whether any exemptions for small credit unions would be appropriate. A few commenters suggested that small credit unions not have to provide opt out notices, but those suggestions were not consistent with the objectives of the GLB Act. Although NCUA could exempt small credit unions from providing a notice and opportunity for consumers to opt out of certain information disclosures, NCUA does not believe that such an exemption would be appropriate, given the purpose of the Act to protect the confidentiality and security of nonpublic personal information about consumers.

Several commenters noted that small credit unions are penalized by the definition of "control" in the rule. The Board has added an example to the definition of control that will assist small credit unions.

Further, NCUA, consistent with the other Agencies, has revised some of the requirements in the final rule so that they are less burdensome. The discussion below reviews some of the other significant changes:

a. *Sample disclosure clauses* (Appendix A to Part 716) and Compliance Guide for Certain Credit Unions (Supplementary Information, Part V). Many commenters expressed concern over the amount of detail that appears to be required in both initial and annual notices. In addition, many of the commenters requested model forms for guidance as to the level of detail required. NCUA did not intend for the disclosures to be overly detailed and thus, burdensome for credit unions and potentially overwhelming for consumers. In response to these comments, Appendix A to Part 716 contains sample clauses to clarify the level of detail that NCUA believes is necessary and appropriate to be consistent with the statute.

NCUA has also provided additional assistance under the caption "Guidance for Certain Credit Unions" (Guidance). Supplementary Information, Part V. The Guidance generally clarifies the operation of the final rule. It also provides an example of a notice for small credit unions that only share nonpublic personal information with nonaffiliated third parties pursuant to the exceptions provided in §§ 716.14 and 716.15. The Guidance may be used in conjunction with the sample clauses contained in Appendix A.

The sample clauses under Appendix A and the Guidance are intended to minimize the burden and costs to credit unions, including small credit unions. This is especially true for small credit unions that only share nonpublic personal information with nonaffiliated third parties pursuant to the exceptions provided in §§ 716.14 and 716.15. These credit unions may provide relatively simple initial and annual notices to members.

b. *Definition of nonpublic personal information.* In the preamble to the proposed rule, NCUA offered for comment two alternatives for defining nonpublic personal information. The first, (Alternative A) deemed information as publicly available only if a credit union *actually obtained* the information from a public source, whereas the second (Alternative B) treated information as publicly available if a credit union *could* obtain it from such a source. A significant majority of commenters favored Alternative B. Many commenters suggested that implementing Alternative A would be overly burdensome. Credit unions would have to develop some sort of methodology to distinguish between information obtained from consumers, versus information obtained through public sources. In response to these comments, the final rule adopts a modified version of Alternative B (refer to Section-by-section analysis for additional information) that treats information as publicly available if a credit union could obtain the information from a public source. The final rule addresses the concerns of credit unions—including small credit unions—by adopting the least economically burdensome definition of nonpublic personal information.

c. *Effective date.* Section 510 of the GLB Act states that, as a general rule, the relevant provisions of Title V take effect six months after the date on which rules are required to be prescribed, *i.e.*, November 12, 2000. However, section 510(1) authorizes the NCUA and the other Agencies to prescribe a later date in the rules enacted pursuant to section 504. The proposed rule sought comment on the effective date prescribed by the statute. The overwhelming majority of commenters requested additional time to comply with the final rule. Several commenters noted that credit unions may encounter difficulty managing the expenses and resources required to comply with the final rule as the credit union's budget for the current year was established prior to the issuance of the proposed regulation. This may be especially true for small credit unions that face already tight budgetary constraints due to heightened competition. In response to these concerns, NCUA has retained the effective date of November 13, 2000, but, consistent with its authority under section 510(1) of the GLB Act to extend the effective date, NCUA will give credit unions until July 1, 2001 to be in full compliance with the regulation. This

additional time will allow credit unions to properly budget for any necessary expenses and staff resources required to comply with this rule and to make all necessary operational changes.

d. *New notices not required for each new financial product or service.* Some commenters expressed concern that the proposed rule may require a new initial notice each time a consumer obtains a new financial product or service. This would be especially burdensome for credit unions that adopt a universal privacy policy that covers multiple products and services. To address these concerns and minimize economic burden, the final rule was clarified to instruct credit unions that a new initial notice is not required if the credit union has given its initial notice to the member, and that initial notice remains accurate with respect to the new product or service.

e. *Short form initial notice for consumers.* In the proposed rule, credit unions were required to provide consumers a copy of a credit union's complete initial notice even when there is no member relationship. NCUA agrees with commenters that suggested that the statute's objectives for the initial notice requirements could be achieved in a less burdensome way. Therefore, NCUA has exercised its exemptive authority as provided in section 504(b) to create an exception to the general rule that otherwise requires a credit union to provide a consumer with both the initial and opt out notices before disclosing nonpublic personal information about that consumer to nonaffiliated third parties. A credit union may provide a "short-form" initial notice along with the opt out notice to a consumer with whom the credit union does not have a member relationship. This short-form notice must state that the disclosure containing information about the credit union's privacy policies and practices is available upon request and provide one or more reasonable means by which the consumer may obtain a copy of the notice. This provision in the final rule will lessen the burden on credit unions, including small credit unions.

3. *Steps to Minimize the Significant Economic Impact on Small Entities Consistent with the Objectives of the GLB Act.* The objectives of Title V of the GLB Act are that each financial institution has an affirmative and continuing obligation to respect the privacy of its consumers and to protect the security and confidentiality of those consumers' nonpublic personal information. NCUA carefully considered comments that suggested a variety of alternatives that could minimize the economic and overall burden of complying with the final rule. As stated above, NCUA has made changes to the proposal as a result of the comments that it hopes will ease the burden for small credit unions.

Nonetheless, the statute does not authorize the NCUA to create exemptions from the GLB Act based on a credit union's size or to mandate different compliance standards for small credit unions. The rule applies to all federally-insured credit unions, regardless of size. Moreover, different compliance standards would be inconsistent with the purposes of the GLB Act.

NCUA believes that the burden is relatively small for credit unions that only disclose nonpublic personal information about consumers to nonaffiliated third parties pursuant to the exceptions provided under §§ 716.14 and 716.15. NCUA's determination is based on an analysis of comments received in response to the proposed rule. These credit unions may provide relatively simple initial and annual notices to consumers with whom they establish member relationships. At this time, it is not clear if information-sharing among affiliates in large institutional entities will place small credit unions at a disadvantage. NCUA believes that further experience under the regulation would be appropriate before considering any exemptions in this area for small credit unions.

*C. Executive Order 13132*

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. This final rule will apply to all federally-insured credit unions, but it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Section 507 of the GLB Act states that state law may provide greater consumer protections than this proposed rule. In that event, federal law would not preempt state law. NCUA has determined the proposed rule does not constitute a policy that has federalism implications for purposes of the executive order.

*D. Small Business Regulatory Enforcement Fairness Act*

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by section 551 of the Administrative Procedures Act. 5 U.S.C. 551. NCUA has recommended to The Office of Management and Budget that it determine that this is not a major rule, and is awaiting its determination.

*E. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families*

NCUA has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

**IV. Agency Regulatory Goal**

NCUA's goal is clear, understandable regulations that impose minimal regulatory burden. Some commenters responded that the rule is not understandable and intrusive if implemented as proposed. The majority of the commenters did not address this issue.

**V. Guidance for Certain Credit Unions**

To minimize the burden and costs to a credit union and generally clarify the operation of the final rule, NCUA and the other Agencies are including this compliance guide that may be used in conjunction with the sample clauses contained in Appendix A. This guide specifically applies to a credit union that: (1) Does not have any affiliates; only discloses nonpublic personal information to nonaffiliated third parties in accordance with an exception under § § 716.14 and 716.15, such as in connection with servicing or processing a financial product or service that a consumer requests or authorizes; and (3) does not intend to reserve the right to disclose nonpublic personal information to nonaffiliated third parties, except under § § 716.14 and 716.15.[1]

In general, if a credit union discloses nonpublic personal information to nonaffiliated third parties only as

[1] A credit union that discloses or reserves the right to disclose nonpublic personal information to a nonaffiliated third party under other circumstances must comply with other provisions in the rule, notably §§ 716.7, 716.8, and 716.3, if applicable. A creidt union that discloses or reserves the right to disclose nonpublic personal information to an affiliate must comply with other provisions in the rule, notably § 716.6(a)(7), if applicable.

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authorized under an exception, then that credit union's only responsibilities under the regulation are to provide an initial and annual notice of its privacy policies and practices to each of its members. The credit union is not required to provide an opt out notice to its member.

A. *Initial notice to members.* A credit union must provide a notice of its policies and practices to each of its members. A member is a natural person who has a continuing relationship with a credit union, as described in § 716.4(c). For instance, an individual who is accepted for membership under the credit union's bylaws is a member of that credit union. By contrast, an individual who uses a credit union's ATM to withdraw funds from a checking account maintained at *another* financial institution is not a member of that credit union. Even if an individual repeatedly uses a credit union's ATM that individual is not the credit union's member. In other words, the credit union is obligated to provide an initial and annual notices to each of its own members, but not its consumers.

B. *Time to provide initial notice.* A credit union must provide a notice of its policies and practices to each of its members not later than when it establishes a member relationship (§ 716.4(a)(1)). For instance, a credit union must provide a notice to an individual not later than when he or she is accepted for membership. Thus, a credit union can provide the notice to a potential member together with the membership agreement and signature card.

If an existing member of a credit union obtains a new financial product or service from it, that credit union need not provide another initial notice to him or her (§ 716.4(d)) if the initial notice has covered the subsequent product.

For instance, if Alison Individual walks into Credit Union for the first time on July 2, 2001, to apply for membership and open a share account, Credit Union complies with this provision of the rule if it provides an initial notice to Alison together with the documents that constitute the contract for membership and the share account. When Alison is accepted for membership and opens her account on that day, she becomes a member of Credit Union. Allison maintains her membership and, six months later, returns to Credit Union to obtain a loan. If the initial notice that Credit Union provided to Alison was accurate when she became a member and opened her account, then Credit Union need not provide another initial notice to her when she obtains the loan because it has provided the notice to Allison when she became a member.

C. *Method of providing the initial notice.* A credit union must provide its initial notice so that each member can reasonably be expected to receive actual notice, in writing, of its privacy policies and practices (§ 716.9(a)). For example, a credit union may provide the initial notice by mailing a printed copy of it together with the documents and other materials that constitute the share account agreement or at an earlier time. Similarly, a credit union may provide the initial notice by hand-delivering a printed copy of it to the member together with the documents that constitute the membership and share account agreement or at an earlier time.

D. *Compliance with initial notice requirement for existing members by effective date.* A credit union is required to provide an initial notice to each of its current members not later than July 1, 2001 (§ 716.18(b)). A credit union complies with this provision of the rule if it mails a printed copy of the notice to the member's last known address.

E. *Annual notice.* During the continuation of the member relationship, a credit union also must provide an annual notice to the member, as described in § 716.5(a). A credit union must provide an annual notice to each member at least once in any period of 12 consecutive months during which the member relationship exists. A credit union may define the 12-consecutive-month period, but must consistently apply that period to the member. A credit union may define the 12-consecutive-month period as a calendar year and provide the annual notice to the member once in each calendar year following the calendar year in which it provided the initial notice.

For example, assume that Credit Union defines the 12-consecutive-month period as a calendar year and provides annual notices to all of its members on October 1 of each year. If Alison Individual is accepted for membership by Bonanza on July 2, 2001, and thereby becomes a member, then Credit Union must provide an initial notice to Alison together with the documents that constitute the contract for membership or at an earlier time. Credit Union also must provide an annual notice to Alison by December 31, 2002. If Credit Union provides an annual notice to Alison on October 1, 2002, as it does for other members, then it must provide the next annual notice to Alison not later than October 1, 2003.

F. *Method of providing the annual notice.* Like the initial notice, the annual notice must be provided so that each member can reasonably be expected to receive actual notice, in writing, of a credit union's privacy policies and practices (§ 716.9(a)). A credit union complies with this provision of the rule if it mails a printed copy of the notice to the member's last known address.

G. *Joint accounts.* If two or more members jointly obtain a financial product or service, other than a loan, then a credit union may provide one initial notice to those members jointly. Similarly, a credit union may provide one annual notice to those members jointly.

H. *Information described in the initial and annual notices.* The initial and annual notices must include an accurate description of the following four items of information:

1. The categories of nonpublic personal information that the credit union collects (§ 716.6(a)(1));

2. The fact that the credit union does not disclose nonpublic personal information about its current members to affiliates or nonaffiliated third parties, except as authorized by §§ 716.14 and 716.15 (§ 716.6(a)(2)–(3)). When describing the categories with respect to those parties, the credit union is required to state only that it makes disclosures to other nonaffiliated third parties as permitted by law (§ 716.6(c));

3. The categories of nonpublic personal information about the credit union's former members that it discloses and the categories of affiliates and nonaffiliated third parties to whom it discloses nonpublic personal information about its former members (§ 716.6(a)(4));

4. The credit union's policies and practices with respect to protecting the confidentiality and security of nonpublic personal information (§ 716.6(a)(8)).

For each of these four items of information above, a credit union may use a sample clause contained in Appendix A. The NCUA Board emphasizes that a credit union may use a sample clause only if that clause accurately describes its actual policies and practices.

I. *Sample notice.* A credit union ("Credit Union") that (i) does not have any affiliates and (ii) only discloses nonpublic personal information to nonaffiliated third parties as authorized under §§ 716.14 and 716.15, may comply with the requirements of § 716.6 of the rule by using the following sample notice, if applicable.

Credit union collects nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;

- Information about your transactions with us or others; and
- Information we receive from a consumer reporting agency. [2]

We do not disclose any nonpublic personal information about you to anyone, except as permitted by law.

If you decide to terminate your membership or become an inactive member, we will adhere to the privacy policies and practices as described in this notice.

Credit union restricts access to your personal and account information to those employees who need to know that information to provide products or services to you. Credit union maintains physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

J. *Initial and annual notices must be clear and conspicuous.* NCUA emphasizes that a credit union must ensure that both the initial and annual notices must be clear and conspicuous, as defined in § 716.3(b).

**List of Subjects**

*12 CFR Part 716*

Consumer protection, Credit unions, Privacy, Reporting and recordkeeping requirements.

*12 CFR Part 741*

Bank deposit insurance, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on May 8, 2000.

**Sheila A. Albin,**

*Acting Secretary of the Board.*

For the reasons set out in the preamble, it is proposed that 12 CFR chapter VII be amended by adding a new part 716 to read as follows:

## PART 16—PRIVACY OF CONSUMER FINANCIAL INFORMATION

Sec.

716.1 Purpose and scope.
716.2 Rule of construction.
716.3 Definitions.

**Subpart A—Privacy and Opt Out Notices**

716.4 Initial privacy notice to consumers required.
716.5 Annual privacy notice to members required.
716.6 Information to be included in initial and annual privacy notices.
716.7 Form of opt out notice to consumers and opt out methods.
716.8 Revised privacy notices.
716.9 Delivering privacy and opt out notices.

**Subpart B—Limits on Disclosures**

716.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.
716.11 Limits on redisclosure and reuse of information.
716.12 Limits on sharing of account number information for marketing purposes.

**Subpart C—Exceptions**

716.13 Exception to opt out requirements for service providers and joint marketing.
716.14 Exceptions to notice and opt out requirements for processing and servicing transactions.
716.15 Other exceptions to notice and opt out requirements

**Subpart D—Relation To Other Laws; Effective Date**

716.16 Protection of Fair Credit Reporting Act.
716.17 Relation to state laws.
716.18 Effective date; transition rule.

**Appendix A to Part 716—Sample Clauses**

**Authority:** 15 U.S.C. 6801 *et seq.*, 12 U.S.C. 1751 *et seq.*

### § 716.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the credit unions listed in paragraph (b) of this section. This part:

(1) Requires a credit union to provide notice to members about its privacy policies and practices;

(2) Describes the conditions under which a credit union may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a credit union from disclosing that information to most nonaffiliated third parties by "opting out" of that disclosure, subject to the exceptions in § § 716.13, 716.14, and 716.15.

(b) *Scope.* (1) This part applies only to nonpublic personal information about individuals who obtain financial products or services for personal, family or household purposes. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial or agricultural purposes. This part applies to federally-insured credit unions. This part refers to a federally-insured credit union as "you" or "the credit union."

(2) Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable financial information promulgated by the Secretary of Health and Human Services under the authority of §§ 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–1320d–8).

### § 716.2 Rule of construction.

The examples in this part and the sample clauses in appendix A of this part are not exclusive. Compliance with an example or use of a sample clause, to the extent applicable, constitutes compliance with this part.

### § 716.3 Definitions.

As used in this part, unless the context requires otherwise:

(a)(1) *Affiliate* means any company that controls, is controlled by, or is under common control with another company.

(2) *Examples.* (i) An affiliate of a federal credit union is a credit union service organization (CUSO), as provided in 12 CFR part 712, that is controlled by the federal credit union.

(ii) An affiliate of a federally-insured, state-chartered credit union is a company that is controlled by the credit union.

(b)(1) *Clear and conspicuous* means that a notice is reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

(2) *Examples.* (i) *Reasonably understandable.* You make your notice reasonably understandable if you:

(A) Present the information contained in the notice in clear, concise sentences, paragraphs and sections;

(B) Use short, explanatory sentences or bullet lists whenever possible;

(C) Use definite, concrete, everyday words and active voice whenever possible;

(D) Avoid multiple negatives;

(E) Avoid legal and highly technical business terminology wherever possible; and

(F) Avoid explanations that are imprecise and readily subject to different interpretations.

(ii) *Designed to call attention.* You design your notice to call attention to the nature and significance of the information in it if you:

(A) Use a plain-language heading to call attention to the notice;

(B) Use a typeface and type size that are easy to read;

(C) Provide wide margins and ample line spacing;

(D) Use boldface or italics for key words; and

(E) In a form that combines your notice with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars.

[2] A credit union is required to describe only those general categories that apply to its policies and practices. Accordingly, if a credit union does not collect information from "a consumer reporting agency," for instance, then it need not describe that category in its notices.

(iii) *Notices on web sites.* If you provide notices on a web page, you design your notice to call attention to the nature and significance of the information in it if you use text or visual cues to encourage scrolling down the page if necessary to view the entire notice and ensure that other elements on the web site (such as text graphics, hyperlinks or sound) do not distract attention form the notice, and you either:

(A) Place the notice on a screen frequently accessed by consumers, such as a home page or a page on which transactions are conducted; or

(B) Place a link on a screen frequently accessed by consumers, such as a home page or a page on which transactions are conducted, that connects directly to the notice and is labeled appropriately to convey the importance, nature and relevance of the notice.

(c) *Collect* means to obtain information that you organize or can retrieve by the name of an individual or by identifying number, symbol, or other identifying particular assigned to the individual, irrespective of the source of the underlying information.

(d) *Company* means any corporation, limited liability company, business trust, general or limited partnership, association or similar organization.

(e)(1) *Consumer* means an individual who obtains or has obtained a financial product or service from you, that is to be used primarily for personal, family or household purposes, or that individual's legal representative.

(2) *Examples.* (i) An individual who provides nonpublic personal information to you in connection with obtaining or seeking to obtain credit union membership is your consumer regardless of whether you establish a member relationship.

(ii) An individual who provides nonpublic personal information to you in connection with using your ATM is your consumer.

(iii) If you hold ownership or servicing rights to an individual's loan, the individual is your consumer, even if you hold those rights in conjunction with one or more financial institutions. (The individual is also a consumer with respect to the other financial institutions involved). This applies, even if you, or another financial institution with those rights, hire an agent to collect on the loan or to provide processing or other services.

(iv) An individual who is a consumer of another financial institution is not your consumer solely because you act as agent for, or provide processing or other services to, that financial institution.

(v) An individual is not your consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that you sponsor or for which you act as a trustee or fiduciary.

(f) *Consumer reporting agency* has the same meaning as in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f)).

(g) *Control* of a company means:

(1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of voting security of the company, directly or indirectly, or acting through one or more other persons;

(2) Control in any manner over the election of a majority of the directors, trustees or general partners (or individuals exercising similar functions) of the company; or

(3) The power to exercise, directly or indirectly, a controlling influence over the management or policies of the company, as the NCUA determines. With respect to state-chartered credit unions, NCUA will consult with the appropriate state regulator prior to making its determination.

(4) *Example.* NCUA will presume a credit union has a controlling influence over the management or policies of a CUSO, if the CUSO is 67% owned by credit unions.

(h) *Credit union* means a federal or state-chartered credit union that the National Credit Union Share Insurance Fund insures.

(i) *Customer* means a consumer who has a customer relationship with a financial institution other than a credit union.

(j) *Customer relationship* means a continuing relationship between a consumer and a financial institution other than a credit union.

(k) *Federal functional regulator* means—

(1) The National Credit Union Administration Board;

(2) The Board of Governors of the Federal Reserve System;

(3) The Office of the Comptroller of the Currency;

(4) The Board of Directors of the Federal Deposit Insurance Corporation;

(5) The Director of the Office of Thrift Supervision; and

(6) The Securities and Exchange Commission.

(l)(1)*Financial institution* means any institution the business of which is engaging in activities that are financial in nature or incidental to such financial activity as described in section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) Examples of financial institutions may include, but are not limited to: credit unions; banks; insurance companies; securities brokers, dealers, and underwriters; loan brokers and servicers; tax planners and preparation services; personal property appraisers; real estate appraisers; career counselors for employees in financial occupations; digital signature services; courier services; real estate settlement services; manufacturers of computer software and hardware; and travel agencies operated in connection with financial services.

(3) *Financial institution* does not include:

(i) Any person or entity with respect to any financial activity that is subject to the jurisdiction of the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 *et seq.*);

(ii) The Federal Agricultural Mortgage Corporation or any entity chartered and operating under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*); or

(iii) Institutions chartered by Congress specifically to engage in securitizations, secondary market sales (including sales of servicing rights) or similar transactions related to a transaction of a consumer, as long as such institutions do not sell or transfer nonpublic personal information to a nonaffiliated third party.

(m) (1) *Financial product or service* means any product or service that a financial holding company could offer by engaging in an activity that is financial in nature or incidental to such a financial activity under section 4(k) of the Bank Holding Company Act of 1956 (12 U.S.C. 1843(k)).

(2) *Financial service* includes your evaluation or brokerage of information that you collect in connection with a request or an application from a consumer for a financial product or service.

(n) *Member* means a consumer who has a member relationship with you. For purposes of this part only, it will include certain nonmembers.

(o)(1) *Member relationship* means a continuing relationship between a consumer and you under which you provide one or more financial products or services to the consumer that are to be used primarily for personal, family or household purposes. As noted in the examples, this will include certain consumers that are not your members.

(2) *Examples.* (i) A consumer has a continuing relationship with you if the consumer:

(A) Is your member as defined in your bylaws;

(B) Is a nonmember who has a share, share draft, or credit card account with you jointly with a member;

(C) Is a nonmember who has a loan that you service;

(D) Is a nonmember who has an account with you and you are a credit union that has been designated as a low-income credit union; or

(E) Is a nonmember who has an account in a federally-insured, state-chartered credit union pursuant to state law.

(ii) A consumer does not, however, have a member relationship with you if the consumer is a nonmember and:

(A) The consumer only obtains a financial product or service in isolated transactions, such as using your ATM to withdraw cash from an account maintained at another financial institution or purchasing travelers checks; or

(B) You sell the consumer's loan and do not retain the rights to service that loan. (p)(1) *Nonaffiliated third party* means any person except:

(i) Your affiliate; or

(ii) A person employed jointly by you and any company that is not your affiliate (but nonaffiliated third party includes the other company that jointly employs the person).

(q)(1) *Nonpublic personal information* means:

(i) Personally identifiable financial information; and

(ii) Any list, description or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information.

(2) *Nonpublic personal information* does not include:

(i) Publicly available information, except as included on a list described in paragraph (q)(1)(ii) of this section; or

(ii) Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived without using any personally identifiable financial information, other than publicly available information.

(3) *Examples of lists.* (i) Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information, other than publicly available information, such as account numbers.

(ii) Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived using personally identifiable financial information, other than publicly available information, either in whole or in part, and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a credit union, other than publicly available information.

(r)(1) *Personally identifiable financial information* means any information:

(i) A consumer provides to you to obtain a financial product or service from you;

(ii) About a consumer resulting from any transaction involving a financial product or service between you and a consumer; or

(iii) You otherwise obtain about a consumer in connection with providing a financial product or service to that consumer.

(2) Personally identifiable financial information does not include publicly available information.

(3) *Examples.* (i) *Information included.* Personally identifiable financial information includes:

(A) Information a consumer provides to you on an application to obtain membership, a loan, credit card or other financial product or service;

(B) Account balance information, payment history, overdraft history, and credit or debit card purchase information;

(C) The fact that an individual is or has been one of your members or has obtained a financial product or service from you;

(D) Any information about your consumer if it is disclosed in a manner that indicates that the individual is or has been your consumer;

(E) Any information that a consumer provides to you or that you or your agent otherwise obtain in connection with collecting on a loan or servicing a loan;

(F) Any information you collect through an Internet "cookie" (an information collecting device from a web server); and

(G) Information from a consumer report.

(ii) *Information not included.* Personally identifiable financial information does not include:

(A) A list of names and addresses of customers of an entity that is not a financial institution; and

(B) Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

(s)(1) *Publicly available information* means any information that you have a reasonable basis to believe is lawfully made available to the general public from:

(i) Federal, state or local government records;

(ii) Widely distributed media; or

(iii) Disclosures to the general public that are required to be made by federal, state or local law.

(2) *Reasonable basis.* You have a reasonable basis to believe that information is lawfully made available to the general public if you have taken steps to determine:

(i) That the information is of the type that is available to the general public; and

(ii) Whether an individual can direct that the information not be made available to the general public and, if so, that your member or consumer has not done so.

(3) *Examples.* (i) *Government records.* Publicly available information in government records includes information in government real estate records and security interest filings.

(ii) *Widely distributed media.* Publicly available information from widely distributed media includes information from a telephone book, a television or radio program, a newspaper or a web site that is available to the general public on an unrestricted basis. A web site is not restricted merely because an Internet service provider or site operator requires a fee or a password, so long as access is available to the general public.

(iii) *Reasonable basis.* (1) You have a reasonable basis to believe that mortgage information is lawfully made available to the general public if you have determined that the information is of the type included on the public record in the jurisdiction where the mortgage would be recorded.

(2) You have a reasonable basis to believe that an individual's telephone number is lawfully made available to the general public if you have located the telephone number in the telephone book or have been informed by the consumer that the telephone number is not unlisted.

(t) *You* means a federally-insured credit union.

## Subpart A—Privacy and Opt Out Notices

### § 716.4 Initial privacy notice to consumers required.

(a) *Initial notice requirement.* You must provide a clear and conspicuous notice that accurately reflects your privacy policies and practices to a:

(1) *Member,* not later than when you establish a member relationship, except as provided in paragraph (e) of this section; and

(2) *Consumer,* before you disclose any nonpublic personal information about the consumer to any nonaffiliated third party, if you make such a disclosure other than as authorized by § § 716.14 and 716.15.

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(b) *When initial notice to a consumer is not required.* You are not required to provide an initial notice to a consumer under paragraph (a) of this section if:

(1) You do not disclose any nonpublic personal information about the consumer to any nonaffiliated third party, other than as authorized by §§ 716.14 and 716.15; and

(2) You do not have a member relationship with the consumer.

(c) *When you establish a member relationship.* (1) *General rule.* You establish a member relationship when you and the consumer enter into a continuing relationship.

(2) *Special rule for loans.* You establish a member relationship with a consumer when you originate, or acquire the servicing rights to a loan to the consumer for personal, household or family purposes and that is the only basis for the member relationship. If you subsequently transfer the servicing rights to that loan to another financial institution, the member relationship transfers with the servicing rights.

(3)(i) *Examples of establishing member relationship.* You establish a member relationship when the consumer:

(A) Becomes your member under your bylaws;

(B) Is a nonmember and opens a credit card account with you jointly with a member under your procedures;

(C) Is a nonmember and executes the contract to open a share or share draft account with you or obtains credit from you jointly with a member, including an individual acting as a guarantor;

(D) Is a nonmember and opens an account with you and you are a credit union designated as a low-income credit union;

(E) Is a nonmember and opens an account with you pursuant to state law and you are a state-chartered credit union.

(ii) *Examples of loan rule.* You establish a member relationship with a consumer who obtains a loan for personal, family, or household purposes when you:

(A) Originate the loan to the consumer and retain the servicing rights; or

(B) Purchase the servicing rights to the consumer's loan.

(d) *Existing members.* When an existing member obtains a new financial product or service that is to be used primarily for personal, family, or household purposes, you satisfy the initial notice requirements of paragraph (a) of this section as follows:

(1) You may provide a revised policy notice, under § 716.8, that covers the member's new financial product or service; or

(2) If the initial, revised, or annual notice that you most recently provided to that member was accurate with respect to the new financial product or service, you do not need to provide a new privacy notice under paragraph (a) of this section.

(e) *Exceptions to allow subsequent delivery of notice.* (1) You may provide the initial notice required by paragraph (a)(1) of this section within a reasonable time after you establish a member relationship if:

(i) Establishing the member relationship is not at the member's election;

(ii) Providing notice not later than when you establish a member relationship would substantially delay the member's transaction and the member agrees to receive the notice at a later time.

(2) *Examples of exceptions.* (i) *Not at member's election.* Establishing a member relationship is not at the member's election if you acquire a member's deposit liability from another financial institution and the member does not have a choice about your acquisition.

(ii) *Substantial delay of member's transaction.* Providing notice not later than when you establish a member relationship would substantially delay the member's transaction when:

(A) You and the individual agree over the telephone to enter into a member relationship involving prompt delivery of the financial product or service; or

(B) You establish a member relationship with an individual under a program authorized by Title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) or similar student loan programs where loan proceeds are disbursed promptly without prior communication between you and the member.

(iii) *No substantial delay of member's transaction.* Providing notice not later than when you establish a member relationship would not substantially delay the member's transaction when the relationship is initiated in person at your office or through other means by which the member may view the notice, such as on a web site.

(f) *Joint relationships.* If two or more consumers jointly obtain a financial product or service, other than a loan, from you, you may satisfy the requirements of paragraph

(a) of this section by providing one initial notice to those consumers jointly.

(g) *Delivery.* When you are required to deliver an initial privacy notice by this section, you must deliver it according to the methods in § 716.9. If you use a short-form initial notice for nonmember consumers according to § 716.6(c), you may deliver your privacy notice according to § 716.6(c)(3).

### § 716.5 Annual privacy notice to members required.

(a)(1) *General rule.* You must provide a clear and conspicuous notice to members that accurately reflects your privacy policies and practices not less than annually during the continuation of the member relationship. *Annually* means at least once in any period of 12 consecutive months during which that relationship exists. You may define the 12-consecutive-month period, but you must apply it to the member on a consistent basis.

(2) *Example.* You provide a notice annually if you define the 12-consecutive-month period as a calendar year and provide the annual notice to the member once in each calendar year following the calendar year in which you provide the initial notice. For example, if a member opens an account on any day of year one, you must provide an annual notice to that member by December 31 of year two.

(b) (1) *Termination of member relationship.* You are not required to provide an annual notice to a former member.

(2) *Examples.* Your member becomes your former member when:

(i) An individual is no longer your member as defined in your bylaws;

(ii) In the case of a nonmember's share or share draft account, the account is inactive under the credit union's policies;

(iii) In the case of a nonmember's closed-end loan, the loan is paid in full, you charge off the loan, or you sell the loan without retaining servicing rights;

(iv) In the case of a credit card relationship or other open-end credit relationship with a nonmember, you no longer provide any statements or notices to the nonmember concerning that relationship or you sell the credit card receivables without retaining servicing rights; or

(v) You have not communicated with the nonmember about the relationship for a period of twelve consecutive months, other than to provide annual privacy notices or promotional material.

(c) *Delivery.* When you are required to deliver an annual privacy notice by this section, you must deliver it according to the methods in § 716.9.

### § 716.6 Information to be included in initial and annual privacy notices.

(a) *General rule.* The initial and annual privacy notices under §§ 716.4 and 716.5 must include each of the following items of information that

applies to you or to the consumers to whom you send your privacy notice, in addition to any other information you wish to provide:

(1) The categories of nonpublic personal information that you collect;

(2) The categories of nonpublic personal information that you disclose;

(3) The categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information, other than those parties to whom you disclose information under §§ 716.14 and 716.15;

(4) The categories of nonpublic personal information about your former members that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose it, other than those parties to whom you disclose information under §§ 716.14 and 716.15;

(5) If you disclose nonpublic personal information to a nonaffiliated third party under § 716.13 (and no other exception applies to that disclosure), a separate statement of the categories of information you disclose and the categories of third parties with whom you have contracted;

(6) An explanation of the consumer's right under § 716.10(a) to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the methods by which the consumer may exercise that right at that time;

(7) Any disclosures that you make under section 603(d)(2)(A)(iii) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) (that is, notices regarding the ability to opt out of disclosure of information among affiliates);

(8) Your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information; and

(9) Any disclosures you make under paragraph (b) of this section.

(b) *Description of nonaffiliated third parties subject to exceptions.* If you disclose nonpublic personal information to third parties as authorized under § § 716.14 and 716.15, you are not required to list those exceptions in the initial or annual privacy notices required by § § 716.4 and 716.5. When describing the categories with respect to those parties, you are required to state only that you make disclosures to other nonaffiliated third parties as permitted by law.

(c) *Short-form initial notice with opt out notice for nonmember consumers.* (1) You may satisfy the initial notice requirements in §§ 716.4(a)(2), 716.7(b), and 716.7(c) for a consumer who is not a member by providing a short-form initial notice at the same time as you deliver an opt out notice as required in § 716.7.

(2) A short-form initial notice must:

(i) Be clear and conspicuous;

(ii) State that your privacy notice is available upon request; and

(iii) Explain a reasonable means by which the consumer may obtain that notice.

(3) You must deliver your short-form initial notice according to § 716.9. You are not required to deliver your privacy notice with your short form initial notice. You instead may simply provide the consumer a reasonable means to obtain your privacy notice. If a consumer who receives your short-form notice requests your privacy notice, you must deliver your privacy notice according to § 716.9.

(4) *Examples of obtaining privacy notice.* You provide a reasonable means by which a consumer may obtain a copy of your privacy notice if you:

(i) Provide a toll-free telephone number that the consumer may call to request the notice; or

(ii) For a consumer who conducts business in person at your office, maintain copies of the notice on hand that you provide to a consumer immediately upon request.

(d) *Future disclosures.* Your notice may include:

(1) Categories of nonpublic personal information that you reserve the right to disclose in the future, but do not currently disclose; and

(2) Categories of affiliates or nonaffiliated third parties to whom you reserve the right in the future to disclose, but to whom you do not currently disclose, nonpublic personal information.

(e) *Examples.* (1) *Categories of nonpublic personal information that you collect.*

You satisfy the requirement to categorize the nonpublic personal information that you collect if you list the following categories, as applicable:

(i) Information from the consumer;

(ii) Information about the consumer's transactions with you or your affiliates;

(iii) Information about the consumer's transactions with nonaffiliated third parties; and

(iv) Information from a consumer reporting agency.

(2) *Categories of nonpublic personal information you disclose.* (i) You satisfy the requirement to categorize the nonpublic personal information that you disclose if you list the categories described in paragraph (e)(1) of this section, as applicable, and a few examples to illustrate the types of information in each category.

(ii) If you reserve the right to disclose all of the nonpublic personal information about consumers that you collect, you may simply state that fact without describing the categories or examples of the nonpublic personal information you disclose.

(3) *Categories of affiliates and nonaffiliated third parties to whom you disclose.* You satisfy the requirement to categorize the affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information if you list the following categories, as applicable, and a few examples to illustrate the types of third parties in each category.

(i) Financial service providers;

(ii) Non-financial companies; and

(iii) Others.

(4) *Disclosures under exception for service providers and joint marketers.* If you disclose nonpublic personal information under the exception in § 716.13 to a nonaffiliated third party to market products or services that you offer alone or jointly with another financial institution, you satisfy the disclosure requirement of paragraph (a)(5) of this section if you:

(i) List the categories of nonpublic personal information you disclose, using the same categories and examples you used to meet the requirements of paragraphs (a)(2) of this section, as applicable; and

(ii) State whether the third party is:

(A) A service provider that performs marketing services on your behalf or on behalf of you and another financial institution; or

(B) A financial institution with whom you have a joint marketing agreement.

(5) *Simplified notices.* If you do not disclose, and do not intend to disclose, nonpublic personal information about members or former members to affiliates or nonaffiliated third parties except as authorized under §§ 716.14 and 716.15, you may simply state that fact, in addition to the information you must provide under paragraphs (a)(1), (a)(8), (a)(9) and (c) of this section.

(6) *Confidentiality and security.* You describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information if you do both of the following:

(i) Describe in general terms who is authorized to have access to the information.

(ii) State whether you have security practices and procedures in place to ensure the confidentiality of the information in accordance with your policy. You are not required to describe technical information about the safeguards you use.

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(7) *Joint notice with affiliates.* You may provide a joint notice from you and one or more of your affiliates or other financial institutions, as specified in the notice, as long as the notice is accurate with respect to you and the other institution.

**§ 716.7 Form of opt out notice to consumers and opt out methods.**

(a)(1) *Form of opt out notice.* If you are required to provide an opt out notice under § 716.10(a)(1), you must provide a clear and conspicuous notice to each of your consumers that accurately explains the right to opt out under that section. The notice must state:

(i) That you disclose or reserve the right to disclose nonpublic personal information about your consumer to a nonaffiliated third party;

(ii) That the consumer has the right to opt out of that disclosure; and

(iii) A reasonable means by which the consumer may exercise the opt out right.

(2) *Examples.* (i) *Adequate opt out notice.* You provide adequate notice that the consumer can opt out of the disclosure of nonpublic personal information to a nonaffiliated third party if you:

(A) Identify all of the categories of nonpublic personal information that you disclose or reserve the right to disclose and all of the categories of nonaffiliated third parties to whom you disclose the information, as described in § 716.6(a)(2) and (3) and state that the consumer can opt out of the disclosure of that information; and

(B) Identify the financial products or services that the consumer obtains from you, either singly or jointly, to which the opt out direction would apply.

(ii) *Reasonable opt out means.* You provide a reasonable means to exercise an opt out right if you:

(A) Designate check-off boxes in a prominent position on the relevant forms with the opt out notice;

(B) Include a reply form together with the opt out notice;

(C) Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your web site, if the consumer agrees to the electronic delivery of information; or

(D) Provide a toll-free telephone number that consumers may call to opt out.

(iii) *Unreasonable opt out means.* You *do not* provide a reasonable means of opting out if:

(A) The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right; or

(B) The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that was provided with the initial notice but not included with the subsequent notice.

(iv) *Specific opt out means.* You may require each consumer to opt out through a specific means, as long as that means is reasonable for that consumer.

(b) *Same form as initial notice permitted.* You may provide the opt out notice together with or on the same written or electronic form as the initial notice you provide in accordance with § 716.4.

(c) *Initial notice required when opt out notice delivered subsequent to initial notice.* If you provide the opt out notice later than required for the initial notice in accordance with § 716.4, you must also include a copy of the initial notice in writing or, if the consumer agrees, electronically.

(d) *Joint relationships.* (1) If two or more consumers jointly obtain a financial product or service, other than a loan, from you, you may provide only a single opt out notice. Your opt out notice must explain how you will treat an opt out direction by a joint consumer as explained in the examples in paragraph (d)(5) of this section.

(2) Any of the joint consumers may exercise the right to opt out. You may either:

(i) Treat an opt out direction by a joint consumer to apply to all of the associated joint consumers; or

(ii) Permit each joint consumer to opt out separately.

(3) If you permit each joint consumer to opt out separately, you must permit one of the joint consumers to opt out on behalf of all of the joint consumers.

(4) You may not require all joint consumers to opt out before you implement any opt out direction.

(5) *Example.* If John and Mary have a joint share account with you and arrange for you to send statements to John's address, you may do any of the following, but you must explain in your opt out notice which opt out policy you will follow:

(i) Send a single opt out notice to John's address, but you must accept an opt out direction from either John or Mary.

(ii) Treat an opt out direction by either John or Mary as applying to the entire account. If you do so, and John opts out, you may not require Mary to opt out as well before implementing John's opt out direction.

(iii) Permit John and Mary to make different opt out directions. If you do so, and if John and Mary both opt out, you must permit one or both of them to notify you in a single response (such as on a form or through a telephone call).

(e) *Time to comply with opt out.* You must comply with the consumer's opt out direction as soon as reasonably practicable after you receive it.

(f) *Continuing right to opt out.* A consumer may exercise the right to opt out at any time.

(g) *Duration of consumer's opt out direction.* (1) A consumer's direction to opt out under this section is effective until the consumer revokes it in writing or, if the consumer agrees, electronically.

(2) When a member relationship terminates, the member's opt out direction continues to apply to the nonpublic personal information that you collected during or related to the relationship. If the individual subsequently establishes a new member relationship with you, the opt out direction that applied to the former relationship does not apply to the new relationship.

(h) *Delivery.* When you are required to deliver an opt out notice by this section, you must deliver it according to the methods in § 716.9.

**§ 716.8 Revised privacy notices.**

(a) *General rule.* Except as otherwise authorized in this part, you must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party other than as described in the initial notice that you provided to that consumer under § 716.4, unless:

(1) You have provided to the consumer a revised notice that accurately describes your policies and practices;

(2) You have provided to the consumer a new opt out notice;

(3) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(4) The consumer does not opt out.

(b) *Examples.* (1) Except as otherwise permitted by § § 716.13, 716.14 and 716.15, you must provide a revised notice if you—

(i) Disclose a new category of nonpublic personal information to any nonaffiliated third party;

(ii) Disclose nonpublic personal information to a new category of nonaffiliated third party; or

(iii) Disclose nonpublic personal information about a former member to a nonaffiliated third party, and that former member has not had the opportunity to exercise an opt out right regarding that disclosure.

(2) A revised notice is not required if you disclose nonpublic personal information to a new nonaffiliated third

party that you adequately described in your prior notice.

(c) *Delivery.* When you are required to deliver a revised privacy notice by this section, you must deliver it according to the methods in § 716.9.

**§ 716.9 Delivering privacy and opt out notices.**

(a) *How to provide notices.* You must provide any privacy notices and opt out notices, including short-form initial notices, that this part requires so that each consumer can reasonably be expected to receive actual notice in writing or, if the consumer agrees, electronically.

(b) (1) *Examples of reasonable expectation of actual notice.* You may reasonably expect that a consumer will receive actual notice if you:

(i) Hand-deliver a printed copy of the notice to the consumer;

(ii) Mail a printed copy of the notice to the last known address of the consumer;

(iii) For the consumer who conducts transactions electronically, post the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service;

(iv) For an isolated transaction with the consumer, such as an ATM transaction, post the notice on the ATM screen and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining the particular financial product or service.

(2) *Examples of unreasonable expectations of actual notice.* You may not, however, reasonably expect that a consumer will receive actual notice if you:

(i) Only post a sign in your branch or office or generally publish advertisements of your privacy policies and practices;

(ii) Send the notice via electronic mail to a consumer who does not obtain a financial product or service from you electronically.

(c) *Annual notices only.* You may reasonably expect that a member will receive actual notice of your annual privacy notice if:

(1) The member uses your web site to access financial products and services electronically and agrees to receive notices at your web site and you post your current privacy notice continuously in a clear and conspicuous manner on your web site; or

(2) The member has requested that you refrain from sending any information regarding the member relationship, and your current privacy notice remains available to the member upon request.

(d) *Oral description of notice insufficient.* You may not provide any notice required by this part solely by orally explaining the notice, either in person or over the telephone.

(e) *Retention or accessibility of notices for members.* (1) For members only, you must provide the initial notice required by § 716.4 (a)(1), the annual notice required by § 716.5(a) and the revised notice required by § 716.8 so that the member can retain them or obtain them later in writing or, if the member agrees, electronically.

(2) *Examples of retention or accessibility.* You provide the privacy notice to the member so that the member can retain it or obtain it later if you:

(i) Hand-deliver a printed copy of the notice to the member;

(ii) Mail a printed copy of the notice to the last known address of the member upon request of the member; or

(iii) Make your current privacy notice available on a web site (or a link to another web site) for the member who obtains a financial product or service electronically and agrees to receive the notice at the web site.

## Subpart B—Limits on Disclosures

**§ 716.10 Limits on disclosure of nonpublic personal information to nonaffiliated third parties.**

(a) (1) *Conditions for disclosure.* Except as otherwise authorized in this part, you may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third party unless:

(i) You have provided to the consumer an initial notice as required under § 716.4;

(ii) You have provided to the consumer an opt out notice as required in § 716.7;

(iii) You have given the consumer a reasonable opportunity, before you disclose the information to the nonaffiliated third party, to opt out of the disclosure; and

(iv) The consumer does not opt out.

(2) *Opt out definition.* Opt out means a direction by the consumer that you not disclose nonpublic personal information about that consumer to a nonaffiliated third party, other than as permitted by §§ 716.13, 716.14 and 716.15.

(3) *Examples of reasonable opportunity to opt out.* You provide a consumer with a reasonable opportunity to opt out if:

(i) *By mail.* You mail the notices required in paragraph (a)(1) of this section to the consumer and allow the consumer to opt out by mailing a form, calling a toll-free telephone number, or any other reasonable means within 30 days from the date you mailed the notices.

(ii) *By electronic means.* A member opens an on-line account with you and agrees to receive the notices required in paragraph (a)(1) of this section electronically, and you make the notices available to the member on your web site and allow the member to opt out by any reasonable means within 30 days after the date that the member acknowledges receipt of the notices.

(iii) *Isolated transaction with consumer.* For an isolated transaction, such as the purchase of a traveler's check by a consumer, you provide the consumer with a reasonable opportunity to opt out if you provide the notices required in paragraph (a)(1) of this section at the time of the transaction and request that the consumer decide, as a necessary part of the transaction, whether to opt out before completing the transaction.

(b) *Application of opt out to all consumers and all nonpublic personal information.* (1) You must comply with this section, regardless of whether you and the consumer have established a member relationship.

(2) Unless you comply with this section, you may not, directly or through an affiliate, disclose any nonpublic personal information about a consumer that you have collected, regardless of whether you collected it before or after receiving the direction to opt out from the consumer.

(c) *Partial opt out.* You may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

**§ 716.11 Limits on redisclosure and reuse of information.**

(a)(1) *Information you receive under an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution under an exception in § 716.14 or 716.15 of this part, your disclosure and use of that information is limited as follows:

(i) You may disclose the information to the affiliates of the financial institution from which you received the information; and

(ii) You may disclose the information to your affiliates, but your affiliates may, in turn, disclose and use the information only to the extent that you may disclose and use the information; and

(iii) You may disclose and use the information pursuant to an exception in § 716.14 or 716.15 in the ordinary course of business to carry out the

activity covered by the exception under which you received the information.

(2) *Example.* If you receive a member list from a credit union in order to provide correspondent services under the exception in § 716.14(a), you may disclose that information under any exception in § 716.14 or 716.15 in order to provide those services. For example, you could disclose the information in response to a properly authorized subpoena or to your attorneys, accountants, and auditors. You could not disclose that information to a third party for marketing purposes or use that information for your own marketing purposes.

(b)(1) *Information you receive outside of an exception.* If you receive nonpublic personal information from a nonaffiliated financial institution other than under an exception in § 716.14 or 716.15 of this part, you may disclose the information only:

(i) To the affiliates of the financial institution from which you received the information;

(ii) To your affiliates, but your affiliates may, in turn, disclose the information only to the extent that you can disclose the information;

(iii) To any other person, if the disclosure would be lawful if made directly to that person by the financial institution from which you received the information; and

(iv) Pursuant to an exception in § 716.14 or 716.15.

(2) *Example.* If you obtain a customer list from a nonaffiliated financial institution outside of the exceptions in § § 716.14 and 716.15,

(i) You may use the list for your own purposes;

(ii) You may disclose that list to another non-affiliated third party only if the financial institution from which you purchased the list could have disclosed the list to that third party, that is you may disclose the list in accordance with the privacy policy of the financial institution from which you received the list, as limited by the opt out direction of each consumer whose nonpublic personal information you intend to disclose; and

(iii) You may disclose that list as permitted by § 716.14 or 716.15, such as to your attorneys or accountants.

(c) *Information you disclose under an exception.* If you disclose nonpublic personal information to a nonaffiliated third party under an exception in § 716.14 or 716.15 of this part, the disclosure and use of that information by the third party is limited as follows:

(1) The third party may disclose the information to your affiliates;

(2) The third party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third party may disclose and use the information; and

(3) The third party may disclose and use the information pursuant to an exception in § 716.14 or 716.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

(d) *Information you disclose outside of an exception.* If you disclose nonpublic personal information to a nonaffiliated third party other than under an exception in § 716.14 or 716.15 of this part, the third party may disclose the information only:

(1) To your affiliates;

(2) To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third party can disclose the information;

(3) To any other person, if the disclosure would be lawful if made directly to that person by you; and

(4) Pursuant to an exception in § 716.14 or 716.15.

### § 716.12 Limits on sharing of account number information for marketing purposes.

(a) *General prohibition on disclosure of account numbers.* You must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, share account or transaction account to any nonaffiliated third party for use in telemarketing, direct mail marketing or other marketing through electronic mail to the consumer.

(b) *Exceptions.* Paragraph (a) of this section does not apply if you disclose an account number or similar form of access number or access code:

(1) To your agent or service provider solely in order to perform marketing for your own products or services, as long as the agent or service provider cannot directly initiate charges to the account; or

(2) To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the member when the member enters into the program.

(c) *Examples.* (1) *Account number.* An account number, or similar form of access number or access code, does not include a number or code in an encrypted form, as long as you do not provide the recipient with a means to decode the number or code.

(2) *Transaction account.* A transaction account is an account other than a share or credit card account. A transaction account does not include an account to which a third party cannot initiate a charge.

## Subpart C—Exceptions

### § 716.13 Exception to opt out requirements for service providers and joint marketing.

(a) *General rule.* (1) The opt out requirements in § § 716.7 and 716.10 do not apply when you provide nonpublic personal information to a nonaffiliated third party to perform services for you or functions on your behalf, if you:

(i) Provide the initial notice in accordance with § 716.4; and

(ii) Enter into a contractual agreement with the third party that prohibits the third party from disclosing or using the information other than to carry out the purposes for which you disclosed the information, including use under an exception in § 716.14 or 716.15 in the ordinary course of business to carry out those purposes.

(2) *Example.* If you disclose nonpublic personal information under this section to a financial institution with which you perform joint marketing, your contractual agreement with that institution meets the requirements of paragraph (a)(1)(ii) of this section if it prohibits the institution from disclosing or using the nonpublic personal information except as necessary to carry out the joint marketing or under an exception in § 716.14 or 716.15 in the ordinary course of business to carry out that joint marketing.

(b) *Service may include joint marketing.* The services that a nonaffiliated third party performs for you under paragraph (a) of this section may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more financial institutions.

(c) *Definition of joint agreement.* For purposes of this section, *joint agreement* means a written contract pursuant to which you and one or more financial institutions jointly offer, endorse, or sponsor a financial product or service.

### § 716.14 Exceptions to notice and opt out requirements for processing and servicing transactions.

(a) *Exceptions for processing transactions at consumer's request.* The requirements for initial notice in § 716.4(a)(2), the opt out in § § 716.7 and 716.10 and service providers and joint marketing in § 716.13 do not apply if

you disclose nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

(1) Servicing or processing a financial product or service that a consumer requests or authorizes;

(2) Maintaining or servicing the consumer's account with you, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or

(3) A proposed or actual securitization, secondary market sale (including sales of servicing rights) or similar transaction related to a transaction of the consumer.

(b) *Necessary to effect, administer, or enforce a transaction* means that the disclosure is:

(1) Required, or is one of the lawful or appropriate methods, to enforce your rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or

(2) Required, or is a usual, appropriate or acceptable method:

(i) To carry out the transaction or the product or service business of which the transaction is a part, and record, service or maintain the consumer's account in the ordinary course of providing the financial service or financial product;

(ii) To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;

(iii) To provide a confirmation, statement or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;

(iv) To accrue or recognize incentives or bonuses associated with the transaction that are provided by you or any other party;

(v) In connection with:

(A) The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit or other payment card, check or account number, or by other payment means;

(B) The transfer of receivables, accounts or interests therein; or

(C) The audit of debit, credit or other payment information.

### § 716.15 Other exceptions to notice and opt out requirements.

(a) *Exceptions to opt out requirements.* The requirements for initial notice to consumers in § 716.4(a)(2), the opt out in § § 716.7 and 716.10 and service providers and joint marketing in § 716.13 do not apply when you disclose nonpublic personal information:

(1) With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;

(2)(i) To protect the confidentiality or security of your records pertaining to the consumer, service, product or transaction;

(ii) To protect against or prevent actual or potential fraud, unauthorized transactions, claims or other liability;

(iii) For required institutional risk control or for resolving consumer disputes or inquiries;

(iv) To persons holding a legal or beneficial interest relating to the consumer; or

(v) To persons acting in a fiduciary or representative capacity on behalf of the consumer;

(3) To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;

(4) To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978 (12 U.S.C. 3401 *et seq.*), to law enforcement agencies (including a federal functional regulator, the Secretary of the Treasury, with respect to 31 U.S.C. Chapter 53, Subchapter II (Records and Reports on Monetary Instruments and Transactions) and 12 U.S.C. Chapter 21 (Financial Recordkeeping), a state insurance authority, with respect to any person domiciled in that insurance authority's state that is engaged in providing insurance, and the Federal Trade Commission), self-regulatory organizations, or for an investigation on a matter related to public safety;

(5)(i) To a consumer reporting agency in accordance with the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), or

(ii) From a consumer report reported by a consumer reporting agency;

(6) In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit; or

(7)(i) To comply with federal, state or local laws, rules and other applicable legal requirements;

(ii) To comply with a properly authorized civil, criminal or regulatory investigation, or subpoena or summons by federal, state or local authorities; or

(iii) To respond to judicial process or government regulatory authorities having jurisdiction over you for examination, compliance or other purposes as authorized by law.

(b) *Examples of consent and revocation of consent.* (1) A consumer may specifically consent to your disclosure to a nonaffiliated insurance company of the fact that the consumer has applied to you for a mortgage so that the insurance company can offer homeowner's insurance to the consumer.

(2) A consumer may revoke consent by subsequently exercising the right to opt out of future disclosures of nonpublic personal information as permitted under § 716.7(f).

## SUBPART D—RELATION TO OTHER LAWS; EFFECTIVE DATE

### § 716.16 Protection of Fair Credit Reporting Act.

Nothing in this part shall be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681 *et seq.*), and no inference shall be drawn on the basis of the provisions of this part regarding whether information is transaction or experience information under section 603 of that Act.

### § 716.17 Relation to state laws.

(a) *In general.* This part shall not be construed as superseding, altering, or affecting any statute, regulation, order or interpretation in effect in any state, except to the extent that such state statute, regulation, order or interpretation is inconsistent with the provisions of this part, and then only to the extent of the inconsistency.

(b) *Greater protection under state law.* For purposes of this section, a state statute, regulation, order or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order or interpretation affords any consumer is greater than the protection provided under this part, as determined by the Federal Trade Commission, after consultation with the National Credit Union Administration, on the Federal Trade Commission's own motion or upon the petition of any interested party.

### § 718.18 Effective date; transition rule.

(a) *Effective date.* This part is effective November 13, 2000. In order to provide sufficient time for you to establish policies and systems to comply with the requirements of this part, the National Credit Union Administration Board has

extended the time for compliance with this part until July 1, 2001.

(b)(1) *Notice requirement for consumers who were your members on the compliance date.* By July 1, 2001, you must provide an initial notice, as required by § 716.4, to consumers who are your members on July 1, 2001.

(2) *Example.* You provide an initial notice to consumers who are your members on July 1, 2001, if, by that date, you have established a system for providing an initial notice to all new members and have mailed the initial notice to all your existing members.

(c) *Two-year grandfathering of service agreements.* Until July 1, 2002, a contract that you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of § 716.13(a)(2) of this part, even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as the agreement was entered into on or before July 1, 2000.

## APPENDIX A TO PART 716—SAMPLE CLAUSES

Credit unions, including a group of affiliates that use a common privacy notice, may use the following sample clauses, if the clause is accurate for each institution that uses the notice.

*A–1—Categories of information you collect (all credit unions)*

You may use this clause, as applicable, to meet the requirement of § 716.6(a)(1) to describe the categories of nonpublic personal information you collect.

*Sample Clause A–1:*

We collect nonpublic personal information about you from the following sources:

- Information we receive from you on applications or other forms;
- Information about your transactions with us, our affiliates, or others; and
- Information we receive from a consumer reporting agency.

*A–2—Categories of information you disclose (credit unions that disclose outside of the exceptions)*

You may use one of these clauses, as applicable, to meet the requirement of § 716.6(a)(2) to describe the categories of nonpublic personal information you disclose. These clauses may be used if you disclose nonpublic personal information other than as permitted by the exceptions in § § 716.13, 716.14, and 716.15.

*Sample Clause A–2, Alternative 1:*

We may disclose the following kinds of nonpublic personal information about you:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income"*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

*Sample Clause A–2, Alternative 2:*

We may disclose all of the information that we collect, as described [*describe location in the notice, such as "above" or "below"*].

*A–3—Categories of information you disclose and parties to whom you disclose (credit unions that do not disclose outside of the exceptions)*

You may use this clause, as applicable, to meet the requirements of § 716.6(a)(2), (3) and (4) to describe the categories of nonpublic personal information about members and former members that you disclose and the categories of affiliates and nonaffiliated third parties to whom you disclose. This clause may be used if you do not disclose nonpublic personal information to any party, other than as permitted by the exceptions in § § 716.14, and 716.15.

*Sample Clause A–3:*

We do not disclose any nonpublic personal information about our members and former members to anyone, except as permitted by law.

*A–4—Categories of parties to whom you disclose (credit unions that disclose outside of the exceptions)*

You may use this clause, as applicable, to meet the requirement of § 716.6(a)(3) to describe the categories of affiliates and nonaffiliated third parties to whom you disclose nonpublic personal information. This clause may be used if you disclose nonpublic personal information other than as permitted by the exceptions in § § 716.13, 716.14, and 716.15, as well as when permitted by the exceptions in § § 716.14, and 716.15.

*Sample Clause A–4:*

We may disclose nonpublic personal information about you to the following types of third parties:

- Financial service providers, such as [*provide illustrative examples, such as "mortgage bankers, securities broker-dealers, and insurance agents"*];
- Non-financial companies, such as [*provide illustrative examples, such as "retailers, direct marketers, airlines, and publishers"*]; and
- Others, such as [*provide illustrative examples, such as "non-profit organizations"*].

We may also disclose nonpublic personal information about you to nonaffiliated third parties as permitted by law.

*A–5—Service provider/joint marketing exception*

You may use one of these clauses, as applicable, to meet the requirements of § 716.6(a)(5) related to the exception for service providers and joint marketers in § 716.13. If you disclose nonpublic personal information under this exception, you must describe the categories of nonpublic personal information you disclose and the categories of third parties with whom you have contracted.

*Sample Clause A–5, Alternative 1:*

We may disclose the following information to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements:

- Information we receive from you on applications or other forms, such as [*provide illustrative examples, such as "your name, address, social security number, assets, and income"*];
- Information about your transactions with us, our affiliates, or others, such as [*provide illustrative examples, such as "your account balance, payment history, parties to transactions, and credit card usage"*]; and
- Information we receive from a consumer reporting agency, such as [*provide illustrative examples, such as "your creditworthiness and credit history"*].

*Sample Clause A–5, Alternative 2:*

We may disclose all of the information we collect, as described [*describe location in the notice, such as "above" or "below"*] to companies that perform marketing services on our behalf or to other financial institutions with whom we have joint marketing agreements.

*A–6—Explanation of opt out right (credit unions that disclose outside of the exceptions)*

You may use this clause, as applicable, to meet the requirement of § 716.6(a)(6) to provide an explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right. This clause may be used if you disclose nonpublic personal information other than as permitted by the exceptions in §§ 716.13, 716.14, and 716.15.

*Sample Clause A–6:*

If you prefer that we not disclose nonpublic personal information about you to nonaffiliated third parties, you may opt out of those disclosures, that is, you may direct us not to make those disclosures (other than disclosures permitted by law). If you wish to opt out of disclosures to nonaffiliated third parties, you may [*describe a reasonable means of opting out, such as "call the following toll-free number: (insert number)*].

*A–7—Confidentiality and security (all credit unions)*

You may use this clause, as applicable, to meet the requirement of § 716.6(a)(8) to describe your policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

*Sample Clause A–7:*

We restrict access to nonpublic personal information about you to [*provide an appropriate description, such as "those employees who need to know that information to provide products or services to you"*]. We maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

## PART 741—REQUIREMENTS FOR INSURANCE

1. The authority citation for part 741 continues to read as follows:

**Authority:** 12 U.S.C. 1757, 1766, and 1781–1790. Section 741.4 is also authorized by 31 U.S.C. 3717.

2. Add § 741.220 to part 741 to read as follows:

### § 741.220 Privacy of consumer financial information.

Any credit union which is insured pursuant to Title II of the Act must adhere to the requirements stated in part 716 of this chapter.

[FR Doc. 00–12014 Filed 5–17–00; 8:45 am]

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Part V

# Department of Education

**National Institute on Disability and Rehabilitation Research, Office of Special Education and Rehabilitative Services; Final Funding Priorities for Research and Training Centers and Inviting Applications; Notices**

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## DEPARTMENT OF EDUCATION

### National Institute on Disability and Rehabilitation Research

**AGENCY:** Department of Education.

**ACTION:** Notice of Final Funding Priorities for Fiscal Years 2000–2001 for Research and Training Centers.

**SUMMARY:** The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces final funding priorities for three Rehabilitation Research and Training Centers (RRTCs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 2000–2001. The Assistant Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

**EFFECTIVE DATE:** These priorities take effect on June 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9136. Internet: Donna__Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

**SUPPLEMENTARY INFORMATION:** This notice contains final priorities for one RRTC related to Rehabilitation for Persons with Long-Term Mental Illness and two RRTCs related to Independent Living. The final priorities refer to NIDRR's Long Range Plan (the Plan). The Plan can be accessed on the World Wide Web at: *http://www.ed.gov/legislation/FedRegister/other/1999–12/68576.html.*

These final priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764).

**Note:** This notice of final priorities does *not* solicit applications. A notice inviting applications is published in this issue of the **Federal Register**.

### Analysis of Comments and Changes

On February 23, 2000 the Assistant Secretary published a notice of proposed priorities in the **Federal Register** (64 FR 9182). The Department of Education received 13 letters commenting on the notice of proposed priority by the deadline date. Technical and other minor changes—and suggested changes the Assistant Secretary is not legally authorized to make under statutory authority—are not addressed.

### Rehabilitation Research and Training Centers

*Rehabilitation of Persons with Long-term Mental Illness*

*Comment:* Eleven commenters suggested that the RRTC should add a priority addressing the role of technology in self-determination.

*Discussion:* The RRTC is established for the purpose of conducting research that can facilitate improving services and supports for individuals with Long-Term Mental Illness (LTMI). NIDRR recognizes the need for better understanding of the role of technology in rehabilitation of individuals with disabilities, including applications of information technologies in the delivery of supports and services to individuals with LTMI.

*Changes:* The priority has been revised to require that applicants conduct research on technology in self-determination.

*Comment:* The request for application should specifically ask for research and development issues related to societal barriers that result from the problems related to the stigma and discrimination experienced by persons with mental illness.

*Discussion:* Applicants have the discretion to propose to address stigmas, discrimination, and barriers as they relate to self-determination. However, after consulting with officials at the National Institute on Mental Health (NIMH), NIDRR has determined that research on these topics duplicate NIMH research. NIDRR declines to add a requirement that applicants specifically address research and development issues related to societal barriers that result from the problems related to the stigma and discrimination experienced by persons with mental illness.

*Change:* None.

*Comment:* NIDRR is encouraged to examine opportunities to enhance self-determination efforts, particularly opportunities to expand consumer and family member initiated acts of self-determination in delivery of patient care and rehabilitative services and other self-determination efforts that are succeeding.

*Discussion:* The priority provides a discussion on the issue of enhancing opportunities to expand consumer and family member initiated acts of self-determination in delivery of patient care and rehabilitative services. The applicant has the discretion to pursue research related to all aspects of improving self-determination services and supports for individuals with LTMI in the proposal. The peer review process will evaluate the merits of the proposals.

*Change:* None.

*Comment:* NIDRR is encouraged to use resources to increase availability of evidence-based service delivery programs such as the Program of Assertive Community Treatment (PACT).

*Discussion:* The priority provides a discussion on the issue of community-based and evidence-based service delivery. Applicants could propose to address examples of evidence-based service delivery in fulfilling the requirements of the priority. However, NIDRR has no basis to determine that all applicants should be required to address this issue or to utilize a specific theory, model, or approach.

*Change:* None.

The Department of Education received two letters commenting upon the two proposed priorities on independent living.

*Improved Management of CIL Programs and Services*

*Comment:* One commenter suggested that NIDRR require the RRTC to address successful management practices applied by organizations in the for-profit sector that could be utilized by CILs.

*Discussion:* In the background statement, NIDRR notes that CILs operate in an environment of public and private and nonprofit and business entities. We agree that the for-profit sector may offer CILs models of successful management practices. In addressing the required research activities, applicants have the discretion to propose specific research approaches and theoretical perspectives. The peer review process will evaluate the merits of the proposals.

*Changes:* We have revised the fourth activity to reflect that business organizations are potential models of successful management for CILs.

*Comment:* One commenter recommended that the training to improve core competency skills be extended to all staff members, including

those facing barriers related to cultural and linguistic diversity. The same commenter recommended that the statement regarding evaluation of strategies for improved recruitment and retention of staff be worded so that it includes all center staff, with an emphasis on people from diverse backgrounds.

*Discussion:* In the background statement, NIDRR notes that staffing problems in general are an issue for CILs that must be addressed. Similarly, NIDRR recognizes that improvement of core competencies is an issue for all CIL staff. The language of the proposed activities needs to be changed to fully address the concerns of NIDRR.

*Changes:* NIDRR has revised the activities to clarify that the training needs and the recruitment and retention of all staff, including those who are geographically dispersed or cultural and linguistic minorities, must be addressed.

*Comment:* One commenter recommended that the focus be broadened to include examination of CIL partnerships with public and private agencies that may have newly acquired authority and resources aimed at the mission of employment of people with disabilities.

*Discussion:* In the priority, NIDRR notes that CILs operate in an environment of public and private and nonprofit and business entities. NIDRR notes that the ability to form effective working relationships with a range of organizations is essential for successful CIL operation. As noted in the background statement, recent developments in employment services and entitlement benefits for individuals pose additional challenges. NIDRR prefers to allow the applicant to develop and propose plans that draw upon the range of actors that may facilitate employment. The peer review process will evaluate the merits of the proposals.

*Changes:* None.

*Il and the New Paradigm of Disability*

*Comment:* One commenter indicated that the priority was not clearly worded when presenting the activity that references "generic community services".

*Discussion:* The background statement indicates that a challenge to facilitating independent living and community integration is the changing universe of disability. NIDRR encourages applicants to address a range of strategies that could facilitate advocacy and community services for persons with significant disabilities, including persons from a changing universe population. An applicant might propose to focus upon a range of appropriate populations with different degrees of need for services. The peer review process will evaluate the merits of the proposals.

*Changes:* None.

*Comment:* One commenter asked for clarification so that the priority explicitly includes "the policy environment as part of the social environment" cited in the opening paragraph.

*Discussion:* NIDRR has long supported policy research on disability and independent living. Inclusion of a policy focus is in line with positions established in the Plan.

*Changes:* The priority has been revised to explicitly include "the policy environment".

*Rehabilitation Research and Training Centers*

The authority for the RRTC program is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(2)). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training. The Assistant Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

**Description of Rehabilitation Research and Training Centers**

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

**Priority 1: Long-Term Mental Illness**

*Background*

The Surgeon General estimates that approximately 20 percent of the U.S. population experience a mental disorder in any given year, that 9 percent of the adult population have a diagnosable major mental illness, and that a subpopulation of 5.4 percent of the population is considered to have a significant mental illness (Kessler, R.C., McGonagle, K.A., Zhoa, S., Nelson, C.B., Hughes, M., Eshlemon, S., Wittchen, H.U., Kendler, K.S. (1994). Lifetime and 12-month prevalence of DSM–IIIR psychiatric disorders in the United States. Results from the National

Comorbidity Survey. Archives of General Psychiatry, 51–8–19). The costs to society of mental illness are substantial. The indirect costs of mental illness in 1990, stemming from lost productivity at work, school, or home, were estimated at $78.6 billion (Rice and Miller, 1996). As the population grows, the needs of a growing number of individuals with a significant mental illness are not being met. Only one in four adults with a diagnosable mental disorder receives treatment and one third of children and adolescents needing mental health services are treated (Manderscheid and Henderson, 1998), this can be attributed to many factors. Inadequate community resources, including lack of access to new medications and psychosocial treatments, unemployment, and lack of options for long-term care complicate the lives of individuals with long-term mental illness. Many individuals also experience homelessness, family disruptions, chronic medical conditions, alcohol and substance abuse, incarceration, and social isolation, as well as the potential for periodic exacerbation.

Quality is an important factor in the delivery of effective mental health services. Defining quality services is not an easy task, nor is there ready consensus on all components of the concept. The Institute of Medicine states that quality of services is "the degree to which health services for individuals and populations increase the likelihood of desired health outcomes and are consistent with current professional knowledge" (Marder, 1999). However, measuring the quality of services provided to individuals with significant mental illness, as well as measuring outcomes, present numerous challenges because of the periodic and chronic nature of the illness, and the ongoing need for intensive therapeutic services and long-term support. Practitioners, policy makers, and consumers continue to ask questions about how to adequately meet the multifaceted needs of individuals with significant mental illness.

Generally, family members and consumers want community-based support services and treatment programs that are accessible and designed to meet long-term needs. The potential for individuals with serious mental illness to be maintained in the community rather than in institutions, work productively, live independently, and participate in rehabilitation planning is increased when a comprehensive support system is available in community settings. Research on consumer participation and community-based programs has provided evidence that there is a positive relationship between the level of consumer participation and therapeutic outcomes (Kent & Read, 1998).

Proponents of community-based service programs and support systems long have advocated that consumers be empowered to participate in the decisionmaking process. However, one reason individuals with disabilities have limited opportunities to participate in decisions about their services is related to the lack of consensus on a definition for self-determination. Self-determination is defined and implemented differently (Ward, 1999) depending on the program, philosophy, and purposes for implementing a self-determination model. However, there are some common concepts in the definitions for self-determination, in particular, consumer control, choice, self-direction, empowerment, leadership, and self-advocacy (Ward & Roger, 1999) as potential elements of self-direction. While most mental health professionals support the concept of self-determination, not all agree that individuals with psychiatric disabilities should have control over or participate in planning and decisionmaking activities (Kent & Read, 1998).

Individuals with psychiatric disabilities are not yet full participants in the disability self-determination movement. It is widely alleged that professionals in the psychiatric disabilities community continue to use medical compliance as a control mechanism and as a determining factor for awarding patients certain privileges. The right to choose among treatment options is often regarded as a privilege that is earned through medical compliance (Chamberlain & Powers, 1999).

Obstacles to the development and implementation of self-determination efforts include controversy over whether severe mental illness is a lifelong process or whether recovery is possible. Some discussions of this issue suggest that the need for extensive, lifelong support and the severity of the illness preclude using a self-determination approach. In addition, the impact of self-determination approaches on quality of services is unknown. Methodologies, indicators, and standards for measuring quality of care within self-determination models would facilitate understanding the impact of this approach on rehabilitation outcomes. In particular, research that addresses questions about the ability of individuals with serious mental illnesses to make decisions about treatment and medication management is lacking.

Traditionally, program planning and treatment decisions in the mental health field have been made by clinicians, and often involve maintaining patients on medication without consumer input or choice. Policies and service systems tend to be based on a paternalistic model that restricts consumer control and input. However, there is evidence that consumer and family involvement in decisionmaking and program planning have the potential to foster higher quality services and responsiveness from providers.

The quality of services can potentially be improved by using information technology to involve consumers and families in decisionmaking. Efforts to support individual choice can be enhanced by using emerging technologies to improve access to services, particularly for individuals in remote areas, reduce information dissemination barriers, improve employment training and job opportunities, and enhance training options for service providers. Although recent studies have discussed the digital divide for individuals with disabilities (New York Times, 2000; Disability Statistics Center, 2000) there is a paucity of research on the benefits of using technology to support self-determination. Research addressing consumer benefits and satisfaction with uses of technology for activities associated with improving their independence, barriers that prevent access and expanded use of technology, service provider knowledge and experience using technology to support self-determination, and the effectiveness of technology to improve or enhance self-determination is limited.

Similarly, the effectiveness service models incorporating self-determination and their relationship to rehabilitation outcomes have not been evaluated. In addition, there has not been adequate study of the impact of the various components of self-determination models on the rehabilitation process.

Better understanding of the implications of self-determination for rehabilitation outcomes potentially will answer questions related to competency, patient rights, recovery, outcomes, and policies. Research addressing these issues, describing standards for quality, and establishing outcome measures for consumer driven decisions is lacking in the research literature. Studies evaluating self-determination will potentially further the understanding of the rehabilitation process for individuals with significant mental illness, and identify strengths,

weaknesses, and needed improvements in the existing models.

The Plan emphasizes the importance of independent living and community integration. Central to independent living is the recognition that each individual has a right to independence that comes from exercising maximal control over his or her life. These activities include making decisions involved in managing one's own life, sustaining the ability and opportunity to make choices in performing everyday activities, and minimizing physical and psychological dependence on others. Independent living is a concept that also emphasizes participation and equity in the right to share in the opportunities, risks, and rewards available to all citizens.

**Priority: Improving Services and Supports for Individuals With Long-Term Mental Illness**

The Assistant Secretary, in collaboration with the Substance Abuse and Mental Health Services Administration and the Center for Mental Health Services, will establish an RRTC for the purpose of improving services and supports for individuals with long-term mental illness. In carrying out these purposes, the Center must:

(1) Develop measures that can be applied to evaluate self-determination activities in terms of rehabilitation outcomes, quality of services, and availability of community resources;

(2) Identify and assess self-determination direction theories, models, and activities, as well as the barriers to participation in self-determination activities for individuals with disabilities;

(3) Develop and evaluate management tools to enable service providers to support self-determination;

(4) With significant and persistent mental illness and publish a comprehensive report in the fourth year of the grant; and

(5) Address in its research the specific needs of minority populations with LTMI.

**Two Priorities on Independent Living**

*Background*

The mission of NIDRR emphasizes developing knowledge that will "improve substantially the options for disabled individuals to perform regular activities in the community, and the capacity of society to provide full opportunities and appropriate supports for its disabled" as stated in the Plan. Much of NIDRR's work reflects the components of the Independent Living (IL) philosophy: consumer control, self-help, advocacy, peer relationships and peer role models, and equal access to society, programs, and activities. NIDRR has funded subject-specific RRTCs in IL since 1980 and supports other projects that incorporate principles of IL.

Most recently, NIDRR has funded one RRTC on Centers for Independent Living (CIL) management and services and a second on IL and disability policy. The last year of the five-year project period for the awards was 1999. In light of the research agenda established in the Plan, and input obtained from the Rehabilitation Services Administration (RSA) and other Federal agencies and constituents, in various meetings that addressed related themes, NIDRR has identified critical issues in independent living to be addressed at this time. There is a continuing need to fund two Centers that study independent living and community integration.

Independent living and achieving community integration to the maximum extent possible are issues at the crux of NIDRR's mission. NIDRR is committed to the creation of a theoretical framework with measurable outcomes that is based upon the experiences of individuals with disabilities. The new paradigm of disability embodied in the Plan requires analysis of the extent to which socioenvironmental factors help or hinder individuals with disabilities in attaining full participation in society. Questions as basic as defining independent living in the context of diverse socioeconomic factors must be addressed. Current challenges to independent living derive from the changing characteristics of both the IL service system and the disability population.

Substantial administrative, advocacy, strategic and service-delivery issues affect the daily activities of Centers for Independent Living (CILs). Critical issues include funding and resource management, quality staffing, and relationships with other agencies key to the success of CILs. The issue of financial management of CILs calls for a balanced approach to identify existing policies, regulations, models, and programs that serve to hinder or help in establishing sound fiscal operation. Financial management requires expertise in fiscal analysis, budgeting, understanding grant requirements and program rules, accounting, auditing, and fundraising.

CILs, which spend substantial amounts of money on personnel, are subject to staffing problems typical of human service organizations and small businesses, including recruitment problems, training and competency development, and retention problems. Staffing problems may impede the ability of CILs to deliver individualized information and support services. An essential step in strengthening continuity in services is to recruit, train, and retain first line managers.

CILs lack documentation of the competencies required for IL management. Awareness of competency needs is key to developing successful recruitment strategies and staff development programs. For example, innovative recruitment strategies are needed to attract youth with disabilities that are transitioning from school to independent living to obtain employment expeiences in CIL service programs. Creative efforts to attract young persons entering the job market as employees could assist the CILs in understanding the needs of youth with disabilities as consumers as well, including work experience opportunities while still in school, upon graduation and after college. Career development, with pathways to more responsible positions in CILs, can be a key to the retention of competent staff.

CILs exist in a framework of public agencies, nonprofit organizations, and the local business sectors. The ability to form effective partnerships and cooperative working relationships with appropriate entities is essential to successful CIL operation. Historically, relationships with State governments, including Vocational Rehabilitation agencies, Statewide Independent Living Councils, State Consumer Advocacy Organizations and County and City governments have been at the heart of CIL operations and responsibilities. Recent developments in the area of employment services and entitlement benefits for individuals with disabilities pose additional opportunities and challenges for CILs by introducing new actors, new clients, and new rules. Passage of the Workforce Investment Act of 1998 and the Work Incentives Improvement Act of 1999 might provide new opportunities for CILs to play a role in the process of vocational rehabilitation and employment.

A challenge to facilitating independent living and community integration is the changing universe of disability. Demographic, social and environmental trends affect the prevalence and distribution of various types of disability as well as the demands of those disabilities on social policy and service systems. Within the universe of disabilities are: (1) Changing etiologies for existing disabilities; (2) growth in segments of the population with higher prevalence rates for certain

disabilities; (3) the consequences of changes in public policy and in health care services and technologies; and (4) the appearance of new disabilities. Some of the RRTCs sponsored by NIDRR that address these issues including the following: Aging with a Disability, Measuring Rehabilitative Outcomes, and Economic Research on Employment Policy for Persons with Disabilities.

The CILs and consumer organizations can prepare to address changing needs of diverse populations with attention to the infrastructure of resource availability and management strategy. At the same time, there is a need to frame the history and role of the independent living movement within the context of theories of society and social movements and organizational and group structure. Such a framework could identify ways to: (1) Reach out to underserved populations, (2) collaborate with key organizations that might not be perceived as traditional disability advocates, and (3) recognize the role of environmental factors on successfully independent living and achieving community integration. A sound theoretical base can be drawn upon to develop policy and service-delivery models that can help maximize social participation for individuals with disabilities.

Researchers have identified an association between disabilities and poverty, especially among youth (Fujiura G *et al.*, "Disability Among Ethnic and Racial Minorities in the United States," *Journal of Disability Policy Studies*, Vol. 9, No. 2, pgs. 112–130, 1998). The growing number of individuals aging with long-standing disabilities, as well as the increase in the population of older persons who acquire disabilities as they age, is another aspect of a changing disability population. Newer etiologies of disability, such as HIV/AIDS, multiple chemical sensitivity and environmental illness, challenge IL concepts, services, and research. CILs and other organizations can serve as a resource to teach youth, aging persons, and underserved populations, including those from cultural and linguistic diversity about independent living. There may be an opportunity for CILs to develop strong alliances with parent information training centers and schools (from pre-school through postsecondary programs) and with the aging and underserved populations through appropriate partnerships.

As an example of the role of demographic factors, disability has a disproportionate impact upon African Americans, Hispanic Americans, and American Indians. An array of culturally-sensitive service-delivery models, community organizations, and other resources is necessary to provide services to individuals from minority backgrounds. Organizations with grassroots orientations, including CILs, are in a unique position to help identify the specific needs of individuals from those affected populations. Model strategies in other countries might be adapted to reach unserved and underserved populations in the United States.

Physical environment, including the built environment, can pose numerous obstacles that confound living independently. Individuals with disabilities living in rural communities may be isolated from CILs and vocational rehabilitation services. Isolation resulting from distance, lack of available transportation, lack of monetary resources to support social services, limited job opportunities, lack of a health care delivery system, the digital divide due to a lack of technology, and unavailability of accessible and affordable housing can be problems for rural Americans. Similar problems may confront persons from minority backgrounds in inner cities and remote areas, persons who are homeless, and migrants. For all populations, and for all salient issues that affect independent living and community integration, the social and economic costs and benefits of various strategies must be evaluated.

The Plan discusses research on physical inclusion, including the identification and evaluation of models that facilitate housing that are consistent with consumer choice. In addition to physical and economic accessibility, model housing approaches must maximize community integration and ability to participate in a range of normative activities.

**Priority 1: Improved Management of CIL Programs and Services**

The Assistant Secretary will establish an RRTC on IL management, services and strategies that will conduct research and training activities and develop and evaluate model approaches to enhance the capacity of CILs to operate and manage effective advocacy, service programs and businesses, and develop and maintain effective external partnerships. In carrying out this purpose, the Center must:

(1) Develop a database of existing CIL funding and economic resources, and identify innovative and best practices in creating secure economic foundations for CILs;

(2) Working in collaboration with appropriate entities, design and test several options for generating funding from alternative sources, including business development strategies and analyze policy-related and programmatic consequences of various funding options, especially those independent of public financing;

(3) Identify best practices and develop and test programs for CILs in expanding services to youth with disabilities and their families, including those from diverse cultural backgrounds, and in interfacing with education and transition programs to prepare children and youth for independent living, including life long learning;

(4) Develop and test strategies to enable CILs to benefit from management models of other successful community-based organizations or business organizations. Develop and test innovative models of cost-effective training to improve core competency skills of CIL staff, including geographically dispersed and culturally and linguistically diverse CIL staff, including but not limited to those from Indian tribes and tribal organizations, and evaluate strategies for improved recruitment and retention of CIL staff, including those from diverse backgrounds;

(5) Review CIL and vocational rehabilitation agency policies related to collaborations, and design strategies for innovative partnerships to promote employment outcomes for individuals with disabilities;

(6) Coordinate activities with and provide instruments, curricula, methodologies, and resource guides, as well as research findings, including but not necessarily limited to distance learning and web-based technologies, to the RSA training and technical assistance provider under Part C of Title VII of the Rehabilitation Act; and

(7) Provide training and information for CILs, policy makers, including business leaders and educators, administrators, and advocates on research findings and identified strategies.

In carrying out these purposes, the Center must coordinate with other NIDRR, including Section 21 Leadership Training and the RRTCs on Disability Statistics and Persons with Disabilities from Minority Backgrounds, and OSERS grantees and community-based organizations that focus upon independent living and with the National Center for the Dissemination of Disability Research. The RRTC on improved management of CIL programs and services will be funded jointly by NIDRR and RSA and will be required to work closely with the RSA grantee providing training, technical assistance,

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and transition assistance to CILs and Statewide Independent Living Councils under Part C of Title VII of the Rehabilitation Act.

**Priority 2: IL and the New Paradigm of Disability**

The Assistant Secretary will establish an RRTC on IL and the New Paradigm of Disability that will facilitate the development of innovative independent living strategies to meet the challenges of the 21st century. This Center will promote an understanding of independent living concepts and practices in the context of the physical and social environments noted in the new paradigm of disability, including assessment of the application of independent living to the changing universe of disability. In carrying out these purposes, the Center must:

(1) Develop an analytical framework for research on living independently that incorporates the definition of IL, the contextual framework of disability and an accessible community, and the changing universe of disability as articulated in the Plan, and is grounded in social science theory and methods;

(2) Identify and evaluate strategies to promote accessible cost-effective advocacy and generic community services for individuals with significant disabilities, and address specifically at least one changing universe population;

(3) Evaluate the use of peer networks and communication channels to assist individuals with disabilities to maintain wellness, access community services, and participate in community life, including education and employment;

(4) Assess the concept and application of independent living for diverse populations of cultural and linguistic minorities, including but not limited to those from Indian tribes and tribal organizations, Latinos and Asians and identify and evaluate culturally appropriate independent living approaches and strategies to assist individuals within these groups to attain self-determined independent living goals; and

(5) Provide training and information for CILs, policy makers, including business leaders and educators, administrators, and advocates on research findings and identified strategies.

In carrying out these purposes, the project must coordinate with other NIDRR, including Section 21 Leadership Training and the RRTCs on Disability Statistics and Persons with Disabilities from Minority Backgrounds, and OSERS grantees and community-based organizations that focus on independent living, the Center on Emergent Disability, the National Center for the Dissemination of Disability Research, and the RSA training and technical assistance provider under Part C of Title VII of the Rehabilitation Act.

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**Applicable Program Regulations: 34 CFR Part 350**

**Program Authority:** 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number: 84.133B, Rehabilitation Research and Training Centers)

Dated: May 11, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–12502 Filed 5–17–00; 8:45 am]

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## DEPARTMENT OF EDUCATION

**[CFDA No.: 84.133B]**

### Office of Special Education and Rehabilitative Services, National Institute on Disability and Rehabilitation Research, Notice Inviting Applications for New Rehabilitation Research Training Centers for Fiscal Year 2000

*NOTE TO APPLICANTS:* This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

These programs support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

*APPLICABLE REGULATIONS:* The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; Disability and Rehabilitation Research Projects and Centers—34 CFR Part 350, and the Notice of Final Priority published elsewhere in this issue of the **Federal Register**.

*PRE-APPLICATION MEETINGS:* Interested parties are invited to participate in a pre-application meeting to discuss the funding priority for the two RRTCs on Improved Management of Centers for Independent Living (CIL) Programs and Services and Independent Living (IL) and the New Paradigm of Disability and to receive technical assistance through individual consultation and information about the funding priorities.

A pre-application meeting for the RRTC on Improving Service and Supports for Individuals with Long-Term Mental Illness will be held on June 13, 2000 at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW, Washington, DC between 10:00 a.m. and 12:00 a.m.

The pre-application meeting for the Independent Living priorities will be held on June 15, 2000 at the Department of Education, Office of Special Education and Rehabilitative Services, Switzer Building, Room 3065, 330 C St. SW, Washington, DC between 10:00 a.m. and 12:00 a.m.

NIDRR staff will also be available at this location on from 1:30 p.m. to 5:00 p.m. on that same day of the meeting to provide technical assistance through individual consultation and information about the funding priorities. NIDRR will make alternate arrangements to accommodate interested parties who are unable to attend the pre-application meeting in person. For further information or to make arrangements to attend either in person or by telephone contact the following: for the pre-application meeting on the Long-Term Mental Illness priority contact Connie Pledger, Switzer Building, room 3423, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone (202)

205–4352. And for the pre-application meeting on the Independent Living priority contact David Keer, Switzer Building, room 3431, 400 Maryland Avenue, SW, Washington, DC 20202. Telephone (202) 205–5633. If you use a Telecommunication Device for the Deaf (TDD), you may call (202) 205–4475.

**Assistance to Individuals with Disabilities at the Public Meetings**

The meeting site is accessible to individuals with disabilities, and a sign language interpreter will be available. If you need an auxiliary aid or service other than a sign language interpreter in order to participate in the meeting (e.g. other interpreting service such as oral, cued speech, or tactile interpreter; assistive listening device; or materials in alternate format), notify the contact person listed in this Notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request we receive after this date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

APPLICATION NOTICE FOR FISCAL YEAR 2000 REHABILITATION RESEARCH AND TRAINING CENTERS

[CFDA No. 84–133B]

| Funding priority | Deadline for transmittal of applications | Estimated number of awards | Award amount (per year)* | Project period (months) |
|---|---|---|---|---|
| 84.133B–1 Improved management of CIL programs and services. | July 17, 2000 | 1 | $500,000 | 60 |
| 84.133B–5 IL and the new paradigm of disability | July 17, 2000 | 1 | 500,000 | 60 |
| 84.133B–7 Improving service and supports for individuals. | July 17, 2000 | 1 | 550,000 | 60 |

*Program Title:* Rehabilitation Research and Training Center.

*CFDA Number:* 84.133B.

*Purpose of Program:* RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

*Eligible Applicants:* Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

*Selection Criteria:* The Assistant Secretary uses the following selection criteria to evaluate applications for RRTCs on Improved Management of CIL Programs and Services, IL and the New Paradigm of Disability and Improving Service and Supports for Individuals with Long-Term Mental Illness (See section 350.54). The total maximum score for the criteria is 100 points.

(a) *Importance of the problem* (9 points total). (1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total). (1) The Secretary considers the responsiveness of the application to an absolute or competitive priority published in the **Federal Register**.

(2) In determining the application's responsiveness to the absolute or competitive priority, the Secretary considers the extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (4 points).

(c) *Design of research activities* (35 points total). (1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and (E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) *Design of training activities* (11 points total). (1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) *Design of dissemination activities* (8 points total). (1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) *Design of technical assistance activities* (4 points total). (1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) *Plan of operation* (4 points total). (1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(h) *Collaboration* (2 points total). (1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (2 points).

(i) *Adequacy and reasonableness of the budget* (3 points total). (1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) *Plan of evaluation* (7 points total). (1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) *Project staff* (9 points total). (1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been

underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (2 points).

(l) *Adequacy and accessibility of resources* (3 points total). (1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (2 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

**Instructions for Application Narrative**

The Assistant Secretary strongly recommends the following:

(a) A one-page abstract;

(b) An application narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 125 pages double-spaced (no more than 3 lines per vertical inch) 8–1/2′× 11″pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(c) A font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

**Instructions for Transmittal of Applications**

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.133B [Applicant should include title]), Washington, DC 20202–4725, or

(2) Hand deliver or express mail the original and two copies of the application by 4:30 p.m. [Washington, DC time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # 84.133B [Applicant should include title]), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

**Notes:**

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department *must* include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

**Application Forms and Instructions**

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

*Part I:* Application for Federal Assistance (Standard Form 424 (Rev. 1/12/1999) and instructions.

*Part II:* Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

*Part III:* Application Narrative.

*Additional Materials*

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Certification of Eligibility for Federal Assistance in Certain Programs (ED Form 80–0016).

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

*For Applications Contact:* The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue S.W., room 3317, Switzer Building, Washington, D.C. 20202 or call (202) 205–8207. Individuals who use a Telecommunications Device for the Deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**FOR FURTHER INFORMATION CONTACT:** Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3414, Switzer Building, Washington, D.C. 20202–2645. Telephone: (202) 205–5880 or TDD (202) 205–4475. Internet: Donna_Nangle@ed.gov

*Electronic Access to This Document*

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of document is the Document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Numbers: 84.133B, Rehabilitation Research Training Centers)

*Program Authority:* 29 U.S.C. 760–762.

Dated: May 11, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

## Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

**Frequent Questions**

*1. Can I Get an Extension of the Due Date?*

No. On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

*2. What Should Be Included in the Application?*

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is not useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

*3. What Format Should Be Used for the Application?*

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

*4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?*

Yes. You may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

*5. What Is the Allowable Indirect Cost Rate?*

The limits on indirect costs vary according to the program and the type of application. The Rehabilitation Research Training Centers are limited to a 15% indirect cost rate.

*6. Can Profitmaking Businesses Apply for Grants?*

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

*7. Can Individuals Apply for Grants?*

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

*8. Can NIDRR Staff Advise me Whether my Project is of Interest to NIDRR or Likely to be Funded?*

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

*9. How do I Assure That my Application Will be Referred to the Most Appropriate Panel for Review?*

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

*10. How Soon After Submitting my Application Can I Find Out if it Will be Funded?*

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

*11. Can I Call NIDRR to Find Out if my Application is Being Funded?*

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

*12. If my Application is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?*

No. Funding in subsequent years is subject to availability of funds and project performance.

*13. Will all Approved Applications be Funded?*

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

*Estimated Public Reporting Burden*

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820–0027, Washington, DC 20503.

*Rehabilitation Research Training Center*

(CFDA No. 84.133B) 34 CFR Part 350.

BILLING CODE 4000–01–U

# Application for Federal Education Assistance

**Note: If available, please provide application package on diskette and specify the file format.**

U.S. Department of Education

Form Approved
OMB No. 1875-0106
Exp. 06/30/2001

## Applicant Information

1. Name and Address

Legal Name:_____

Address:_____

_____

City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number

3. Applicant's T-I-N

4. Catalog of Federal Domestic Assistance #: 8 4

5. Project Director:_____

Address:_____

City _____ State _____ ZIP Code + 4 _____

Tel. #: ( ) _____ Fax #: ( ) _____

E-Mail Address:_____

6. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

*(If "Yes," attach an explanation.)*

Title:_____

7. Type of Applicant *(Enter appropriate letter in the box.)* ☐

| | |
|---|---|
| A State | H Independent School District |
| B County | I Public College or University |
| C Municipal | J Private, Non-Profit College or University |
| D Township | K Indian Tribe |
| E Interstate | L Individual |
| F Intermunicipal | M Private, Profit-Making Organization |
| G Special District | N Other *(Specify)*:_____ |

8. Novice Applicant ☐ Yes ☐ No

## Application Information

9. Type of Submission:

| *—PreApplication* | *—Application* |
|---|---|
| ☐ Construction | ☐ Construction |
| ☐ Non-Construction | ☐ Non-Construction |

10. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

11. Proposed Project Dates:

| Start Date: | End Date: |
|---|---|
| ___/___/_____ | ___/___/_____ |

12. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #:

*OR*

b. Assurance of Compliance #:

c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

13. Descriptive Title of Applicant's Project:

## Estimated Funding

| | | |
|---|---|---|
| 14a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

## Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ Fax #: ( ) _____

d. E-Mail Address:

e. **Signature of Authorized Representative** Date: ___/___/_____

REV. 11/12/99

ED 424

## Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Tax Identification Number.** Enter the tax identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

7. **Type of Applicant.** Enter the appropriate letter in the box provided.

8. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

9. **Type of Submission.** Self-explanatory.

10. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

12. **Human Subjects.** Check "Yes" **or** "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 12 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 12a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 12a, are appropriate. **Provide this narrative information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 12.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 12a and continue with the remaining parts of item 12, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    **If the applicant organization has an approved Multiple Project Assurance of Compliance** on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 12b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 12c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 12c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 12b and skip 12c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

### Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

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## PROTECTION OF HUMAN SUBJECTS IN RESEARCH
## (Attachment to ED 424)

### I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 12 on the application "Yes" and designated exemptions in 12a , **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 12 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 12/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

### II. Information on Research Activities Involving Human Subjects

**A. Definitions.**

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

**—Is it a research activity?**

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

**U.S. DEPARTMENT OF EDUCATION**

**BUDGET INFORMATION**

**NON-CONSTRUCTION PROGRAMS**

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

**SECTION A - BUDGET SUMMARY**
**U.S. DEPARTMENT OF EDUCATION FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

ED Form No. 524

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| Name of Institution/Organization | Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form. |
|---|---|

**SECTION B - BUDGET SUMMARY**
**NON-FEDERAL FUNDS**

| Budget Categories | Project Year 1 (a) | Project Year 2 (b) | Project Year 3 (c) | Project Year 4 (d) | Project Year 5 (e) | Total (f) |
|---|---|---|---|---|---|---|
| 1. Personnel | | | | | | |
| 2. Fringe Benefits | | | | | | |
| 3. Travel | | | | | | |
| 4. Equipment | | | | | | |
| 5. Supplies | | | | | | |
| 6. Contractual | | | | | | |
| 7. Construction | | | | | | |
| 8. Other | | | | | | |
| 9. Total Direct Costs (lines 1-8) | | | | | | |
| 10. Indirect Costs | | | | | | |
| 11. Training Stipends | | | | | | |
| 12. Total Costs (lines 9-11) | | | | | | |

**SECTION C - OTHER BUDGET INFORMATION** (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

# INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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**Prescribed by OMB Circular A-102**

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9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

**Standard Form 424B (Rev. 7-97) Back**

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**CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

**DRUG-FREE WORKPLACE**
**(GRANTEES WHO ARE INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

---

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

| NAME OF APPLICANT | PR/AWARD NUMBER AND / OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0013 12/98

## Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

**Instructions for Certification**

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

**Certification**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

| NAME OF APPLICANT | PR/AWARD NUMBER AND/OR PROJECT NAME |
|---|---|
| PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE | |
| SIGNATURE | DATE |

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

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## Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

**OR**

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ _____

(Signature) (Date)

_____

(Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

## DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

| 1. Type of Federal Action: | 2. Status of Federal Action: | 3. Report Type: |
|---|---|---|
| ☐ a. contract<br>b. grant<br>c. cooperative agreement<br>d. loan<br>e. loan guarantee<br>f. loan insurance | ☐ a. bid/offer/application<br>b. initial award<br>c. post-award | ☐ a. initial filing<br>b. material change<br>**For Material Change Only:**<br>year _____ quarter _____<br>date of last report _____ |

| 4. Name and Address of Reporting Entity: | 5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime: |
|---|---|
| ☐ Prime ☐ Subawardee<br>Tier _____, *if known*:<br><br>**Congressional District**, *if known*: | **Congressional District**, *if known*: |
| **6. Federal Department/Agency:** | **7. Federal Program Name/Description:**<br><br>CFDA Number, *if applicable*: _____ |
| **8. Federal Action Number**, *if known*: | **9. Award Amount**, *if known*:<br>$ |
| **10. a. Name and Address of Lobbying Registrant**<br>(*if individual, last name, first name, MI*): | **b. Individuals Performing Services** (*including address if different from No. 10a*)<br>(*last name, first name, MI*): |

| 11. | |
|---|---|
| Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure. | Signature: _____<br>Print Name: _____<br>Title: _____<br>Telephone No.: _____ Date: _____ |

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Standard Form LLL (Rev. 7-97)

## INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

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Part VI

# Department of Housing and Urban Development

24 CFR Parts 3280 and 3282
Manufactured Home Construction and Safety Standards: Smoke Alarms; Proposed Rule

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**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Parts 3280 and 3282**

**[Docket No. FR–4552–P–01]**

**RIN 2502–AH48**

## Manufactured Home Construction and Safety Standards: Smoke Alarms

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the Federal Manufactured Home Construction and Safety Standards to revise the requirements for the location and placement of smoke alarms. The purpose of these amendments is to improve the effectiveness and performance of smoke alarms in early warning detection of manufactured home fires and to reduce the rate of fire fatalities in new manufactured housing.

**DATES:** *Comments Due Date:* July 17, 2000.

**ADDRESSES:** Address all comments concerning this proposed rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the docket number and title listed above. A copy of each comment submitted will be available for public inspection and copying weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Comments submitted by facsimile (FAX) will not be accepted.

**FOR FURTHER INFORMATION CONTACT:** Rebecca J. Holtz, Acting Director, Office of Consumer and Regulatory Affairs, Room 9156, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0502 (this is not a toll-free number). Persons who have difficulty hearing or speaking may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Background

The National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401–5426) ("the Act") authorizes the Secretary to establish and amend the Federal Manufactured Home Construction and Safety Standards ("the Standards" or "HUD Code"), codified in 24 CFR part 3280. The purpose of the Act is to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents, and to improve the quality and durability of manufactured homes (42 U.S.C. 5401).

One of the most significant factors in meeting these objectives, from the perspective of fire safety, is the requirement in the Standards for the installation of permanently wired smoke detectors in manufactured homes (24 CFR 3280.208). The enforcement program for this requirement is designed to ensure that a manufactured home is not labeled or shipped without such smoke alarms. Nevertheless, fire data studies conducted for HUD by the National Fire Protection Association (NFPA) have continued to indicate that in about 40% of HUD-code homes where fatal fires have occurred smoke alarms were not present or operational.

This fact suggests a high rate of occupant disabling of smoke alarms. This may be a result of frequent false and nuisance alarms caused, for example, by the close proximity of these devices to cooking appliances. In addition, findings from the National Smoke Detector Project conducted by the Consumer Product Safety Commission (CPSC) indicated that for all homes investigated only about 70% of the smoke alarms were working.

The NFPA also reported that the rate of fire fatalities for all manufactured homes was cut nearly in half when alarms were operational. This emphasizes the importance of reducing the occupant disabling problem and improving the reliability and effectiveness of smoke alarms.

HUD had also previously designated the NFPA to undertake a consensus process to develop recommendations for new manufactured housing standards. The Department has received both a proposal (TIA 97–1) and the NFPA 501 Standard (1999 edition) developed through that process. The proposal and relevant provisions in NFPA 501 contained recommendations that would revise the present smoke alarm requirements in HUD's Standards. The Department also commissioned the National Institute of Standards and Technology (NIST) to evaluate the adequacy of the current requirements for smoke alarms in the Standards and to recommend alternatives that are consistent with national fire safety standards for other types of housing and that would reduce the incidence of nuisance alarms.

The findings and recommendations from the NFPA and NIST evaluations were compatible and have formed the basis for the proposed revisions to the smoke alarm requirements in the Standards contained in this rule. In addition, HUD has included provisions in the rule for testing smoke alarms to ensure that all installed smoke alarms are operational. These testing provisions are based in part on recommendations in the NFPA study on manufactured home fire data and other proposals now being considered by the NFPA Consensus Committee.

### II. Proposed Changes

The proposed rule would make the following major changes to the Standards:

—The proposed rule would replace the term "smoke detector" with the term "smoke alarm". While these terms are commonly used interchangeably, other housing codes generally define a "smoke detector" as a device that detects visible or invisible particles of combustion but does not include an alarm. By contrast, a "smoke alarm" is a self-contained unit that is responsive to smoke and incorporates a sensor, controls, and an alarm-sounding device.

—The proposed rule would revise all of the current location requirements contained in the Standards to enhance performance, improve audibility, and minimize the potential for false alarms. In general, the proposed rule would require more smoke alarms per home.

—The proposed rule would require manufacturers to install a smoke alarm that protects the living room and kitchen areas. However, the proposed rule would restrict manufacturers from installing a smoke alarm in the kitchen to minimize false alarms due to cooking and the potential for occupants to disable the alarm. If installed within 20 feet of a cooking appliance, the proposed rule would require that the smoke alarm include a temporary silencing feature (hush button) to provide consumers with a mechanism to shut off the alarm temporarily for about 15–20 minutes (e.g., if the alarm sounds frequently during periods of cooking). Alternatively, the proposed rule would permit manufacturers to install photoelectric type smoke alarms, which are less sensitive to cooking fumes.

—The proposed rule would require manufacturers to install a smoke alarm in each bedroom rather than outside each bedroom because occupants are most vulnerable when asleep.

—The proposed rule would permit manufacturers to mount smoke alarms on ceilings to avoid other locations

that may be more vulnerable to false alarms. The proposed rule would prescribe clearance distances, and manufacturers would not be able to modify them, even if permitted by the listing for the alarm. In rooms with sloping ceilings, the proposed rule would require manufacturers to mount smoke alarms within the distance determined by the hypotenuse of a right triangle whose horizontal leg measures 3 feet and whose vertical leg is perpendicular to its horizontal leg from the highest point of the ceiling.

—The proposed rule would require manufacturers to install smoke alarms that are interconnected so that the operation of any one alarm activates all other alarms in the home to maximize the likelihood of being awakened to nighttime fires. In addition, as recommended by both the NFPA and NIST evaluations, the proposed rule would permit the use of smoke alarms powered by a battery rated for a 10-year life as an alternative to permanently wired alarms with battery back-up. While HUD is aware that there are currently no commercially available 10-year battery-powered alarms that include an interconnection feature, HUD decided to include the 10-year battery alarm option in this proposed rule as an incentive to develop the interconnection feature. HUD is interested in receiving comments on the use of 10-year battery smoke alarms, including any suggestions regarding methods to encourage homeowners to maintain or replace these alarms as needed.

—The proposed rule would establish separate operational, location, and connection requirements for visual and tactile appliances that can benefit hearing- and sight-impaired persons.

—The proposed rule would require additional restrictions on the placement of smoke alarms for bathrooms, kitchens, and areas where forced air equipment is located to improve the effectiveness and functionality of the alarms.

—The proposed rule would require operational testing at the factory to ensure that all alarms are responding. The proposed rule would also require manufacturers to replace any alarm that, though correctly wired, does not function properly during testing. The proposed rule would also require manufacturers to provide installers with specific written instructions for inspecting and testing smoke alarms during installation of the home, and to provide homeowners with the smoke alarm manufacturer's information describing the operation, method and frequency of testing, and proper maintenance of the smoke alarm.

In addition to addressing these changes, commenters are encouraged to submit other recommendations that would make smoke alarms more tamper resistant and less susceptible to nuisance alarms, and to suggest methods that would encourage homeowners to replace smoke alarms because of their age or other factors that may hinder their performance.

A conforming change to the terminology used in 24 CFR part 3282, Manufactured Home Procedural and Enforcement Regulations, substituting "alarms" in place of "detectors" is also made by this rule.

## III. Findings and Certifications

*Regulatory Planning and Review*

The Office of Management and Budget (OMB) has reviewed this rule in accordance with Executive Order 12866, (captioned "Regulatory Planning and Review"). OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes to the rule resulting from this review are available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk.

*Paperwork Reduction Act*

The proposed new information collection requirements contained in § 3280.208(f) have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. OMB has issued HUD the control number 2502–0253 for the information collection requirements under the current Manufactured Housing Construction and Safety Standards Program.

The public reporting burden for this new collection of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided in the following table.

| Information collection | Number of respondents | Responses per respondent | Total annual responses | Hours per response | Total hours |
|---|---|---|---|---|---|
| § 3280.208(f) Manufacturer's Alarm Instructions ..... | 340 | 1,088 | 370,600 | .0833 | 30,833 |

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received by July 17, 2000. Comments must refer to the proposal by name and docket number (FR–4552–P–01) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503

and

Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule will not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the Unfunded Mandates Reform Act of 1995.

*Environmental Review*

A Finding of No Significant Impact (FONSI) with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The FONSI is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

*Impact on Small Entities*

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule and in so doing certifies that the rule would not have a significant economic impact on a substantial number of small entities. The rule would revise HUD's existing regulations for the placement and installation of smoke alarms in new manufactured housing. The requirements would ensure that smoke alarms installed in new homes will be more effective in warning of the presence of smoke. This is accomplished primarily by changing the location requirements to ensure that alarms operate more effectively. Because manufacturers are already required to provide working smoke alarms in manufactured homes, the costs associated with complying with new requirements would be minimal.

HUD has conducted a material and labor cost impact analysis for this rule. The potential cost impact, based on a per home cost determined to be approximately $28.05, multiplied by 350,000 homes produced in a year (assuming conservatively that no manufacturer currently uses AC smoke alarms with battery backups), is $9.8 million annually. This does not represent a significant economic effect on either an industry-wide or per unit basis.

The following chart provides a comparison of cost based on HUD's existing regulation and this proposed rule, and the estimate of the approximate cost increase of this new rule.

| | Current rule | New rule | Change | Cost increase |
|---|---|---|---|---|
| (1) Smoke alarm | 2 × $5.50=$11<br>2 AC powered alarms (ionization). | 2 × $8.50=$17.00<br>2 × $8.50=$17.00<br>4 AC+Battery alarms (ionization). | 34 − 11=23 | $23 |
| (2) Wiring | 40′ × $0.06=$2.40 | 40′ × $0.07=$2.80<br>20′ × $0.07=$1.40 | 4.20 − 2.40=1.80 | 1.80 |
| (3) Labor | $3.25 | 6.50 | 6.50 − 3.25=3.25 | 3.25 |
| Total | | | | 28.05 |

In estimating the cost under the current regulation and proposed new regulation, HUD used the following assumptions based on an average home (28″ × 60″) that contains three bedrooms: (1) The home has a smoke alarm in each bedroom and one in the common area (all four smoke alarms have battery backups); (2) installation involves 40 feet of 14–2 wiring for two smoke detectors (current rule), and an additional 20 feet of 14–3 wiring for the two newly required alarms in each bedroom); (3) the cost of installation of 14–2 wiring = $0.06 per lineal foot; (4) the cost of installation of 14–3 wiring = $0.07 per lineal foot; (5) the labor costs are lump sum costs that were obtained from manufactured home builders; (6) the prices reflected in the table were obtained from manufactured home producers (i.e., close to actual costs incurred by manufactured home builders); (7) the cost obtained from smoke alarm manufacturers are generally higher than costs paid by home producers (the costs do not include larger quantity discounts); and (8) approximately 30% of manufactured home producers currently are using AC+ battery smoke alarms.

Notwithstanding HUD's determination that this rule would not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

*Federalism Impact*

This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

**List of Subjects**

*24 CFR Part 3280*

Fire prevention, Housing standards, Manufactured homes.

*24 CFR Part 3282*

Administrative practice and procedure, Consumer protection, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements, Warranties.

Accordingly, for the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 3280 and 3282 as follows:

## PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for 24 CFR part 3280 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d), 5403, and 5424.

2. Amend § 3280.202 as follows:

a. Remove from the definition of "Single-station alarm device" the word "detector" and add in its place the word "alarm";

b. Remove the definition of "Smoke detector"; and

c. Add the definition of "Smoke alarm" to read as follows:

**§ 3280.202 Definitions.**

* * * * *

*Smoke alarm:* A single- or multiple-station alarm device that is responsive to smoke.

3. Revise § 3280.208 to read as follows:

**§ 3280.208 Smoke alarm requirements.**

(a) *Labeling.* Each smoke alarm required under this section must conform with the requirements of ANSI UL 217–1993, Single and Multiple Station Smoke Alarms, or ANSI UL 268–1989, Smoke Detectors for Fire Protective Signaling, and must bear a label to evidence conformance.

(b) *Required smoke alarm locations.* (1) At least one smoke alarm must be installed in each of the following locations:

(i) To protect the living room and kitchen space. When located within 20 feet horizontally from cooking appliances, the smoke alarm must incorporate a temporary silencing feature or be of a photoelectric type.

(ii) In each sleeping room.

(iii) On the ceiling of the upper level above each stairway, other than a basement stairway, in any multistory home completed in accordance with this part or part 3282 of this chapter. The alarm must be located so that smoke rising in the stairway cannot be prevented from reaching the alarm by an intervening door or obstruction.

(iv) For each basement stairway, the instructions for installers and information for homeowners required in paragraph (f) of this section must clearly indicate that a smoke alarm is to be located on the basement ceiling near the stairway.

(2) A smoke alarm required under this section must not be placed in a location that impairs its effectiveness or in any of the following locations:

(i) Kitchens, garages, and any space where the temperature can reasonably be expected to fall below 40 °F or exceed 100 °F;

(ii) Within 3 feet horizontally from a door to a kitchen, a bathroom containing a tub or shower, or a supply grille of a forced-air heating or cooling system or appliance;

(iii) Within 3 feet horizontally from any discharge grille when a home is equipped or designed for future installation of a roof-mounted evaporative cooler or other equipment discharging conditioned air through a ceiling grille into the living space; and

(iv) Any location that is not in accordance with the listing, unless required under this section.

(c) *Mounting requirements.* (1) Except in rooms with sloped ceilings or as permitted pursuant to paragraph (e) of this section, smoke alarms must be mounted either on the ceiling at least 4 inches from each wall or on a wall with the top of the alarm not less than 4 inches or more than 12 inches below the ceiling.

(2) Except as permitted pursuant to paragraph (e) of this section, in rooms with sloped ceilings, smoke alarms must be mounted on the ceiling within 3 feet, measured horizontally, from one of the highest points of the ceiling and at least 4 inches from any structural element.

(d) *Connection to power source.* (1) Each smoke alarm must be powered from:

(i) The electrical system of the home as the primary power source and a battery as a secondary power source; or

(ii) A battery rated for a 10-year life, provided the smoke alarm is listed for use with a 10-year battery.

(2) Each smoke alarm whose primary power source is the home electrical system must be mounted on an electrical outlet box and connected by a permanent wiring method to a general electrical circuit. The wiring circuit for the alarm must not include any switches between the over-current protective device and the alarm and must not be protected by a ground fault circuit interrupter.

(3) Smoke alarms must be interconnected such that the operation of any one smoke alarm causes the alarm to be triggered in all smoke alarms in the home.

(e) *Visible and tactile notification appliances.* (1) In addition to the smoke alarms required pursuant to this section, the manufacturer must provide visible and listed tactile notification appliances when ordered by the purchaser. These appliances are required to operate from the primary power source, but are not required to operate from a secondary power source.

(2) A visible notification appliance in a sleeping room:

(i) Must have a minimum rating of 177 candela, except that where the visible notification appliance is wall-mounted or suspended more than 24 inches below the ceiling, a minimum rating of 110 candela is permitted; and

(ii) Must be located within 16 feet of the pillow, in any sleeping room that is larger than 14 × 16 feet.

(3) A visible notification appliance in an area other than a sleeping room must have a minimum rating of 15 candela.

(f) *Testing and maintenance.* (1) After being installed by the home manufacturer at the factory, each smoke alarm must be tested in accordance with the alarm manufacturer's instructions. Any smoke alarm that is correctly wired and does not function as designed during the test must be replaced. Any smoke alarm that is replaced by the home manufacturer also must be tested in accordance with this paragraph.

(2) Home manufacturers must provide specific written instructions for installers on how to inspect and test the operation of smoke alarms during installation of the home. These instructions must indicate that any smoke alarm that does not meet the inspection or testing requirements needs to be replaced and retested.

(3) Home manufacturers must provide the homeowner with the alarm manufacturer's information describing the operation of the smoke alarm, method and frequency of testing, and proper maintenance. This information shall be placed in a conspicuous location within the manufactured home in a manner likely to assure that it is not removed until removed by the purchaser. No dealer, distributor, construction contractor, or other person shall interfere with the distribution of this information.

## PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

4. The authority citation for 24 CFR part 3282 continues to read as follows:

**Authority:** 42 U.S.C. 3535(d) and 5424.

5. Amend § 3282.203(b)(4) by removing the word "detectors" and adding in its place the word "alarms".

Dated: April 21, 2000.

**William C. Apgar,**

*Assistant Secretary for Housing-Federal Housing Commissioner.*

[FR Doc. 00–12563 Filed 5–17–00; 8:45 am]

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**S.J. Res. 40/P.L. 106–198**
Providing for the appointment of Alan G. Spoon as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 249)

**S.J. Res. 42/P.L. 106–199**
Providing for the reappointment of Manuel L. Ibanez as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 250)

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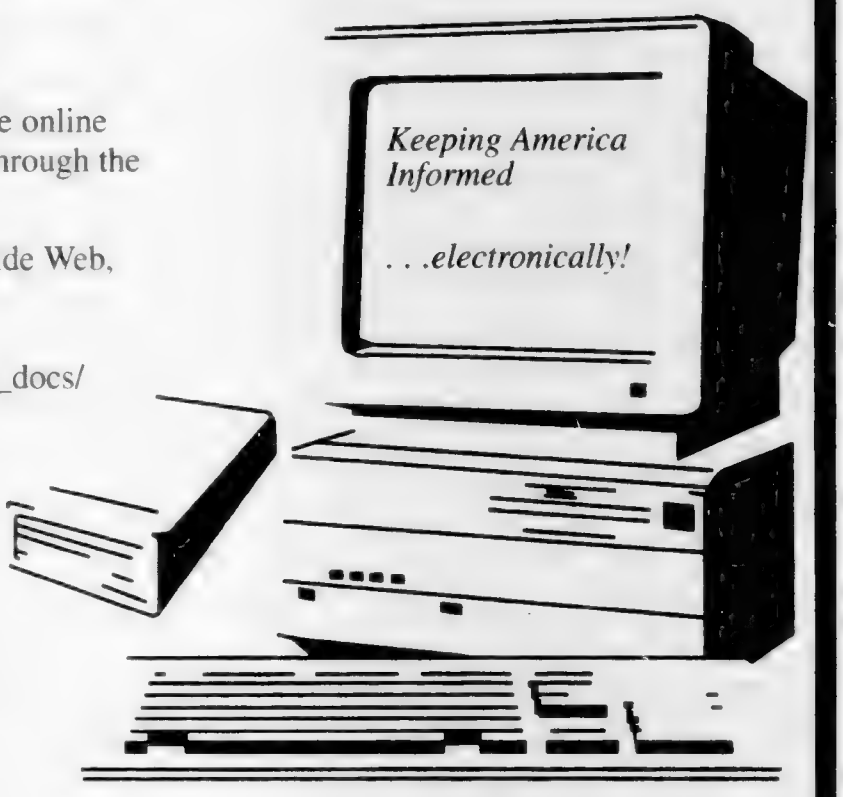


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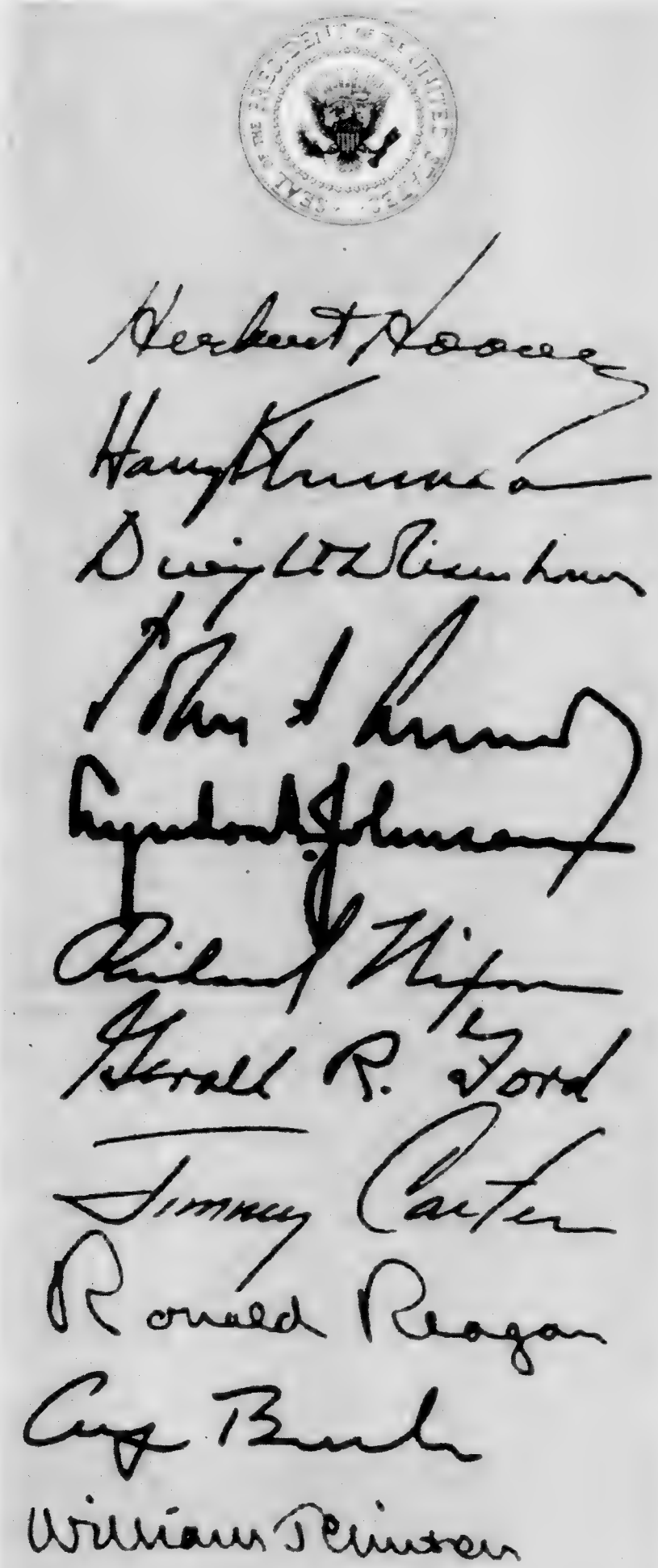


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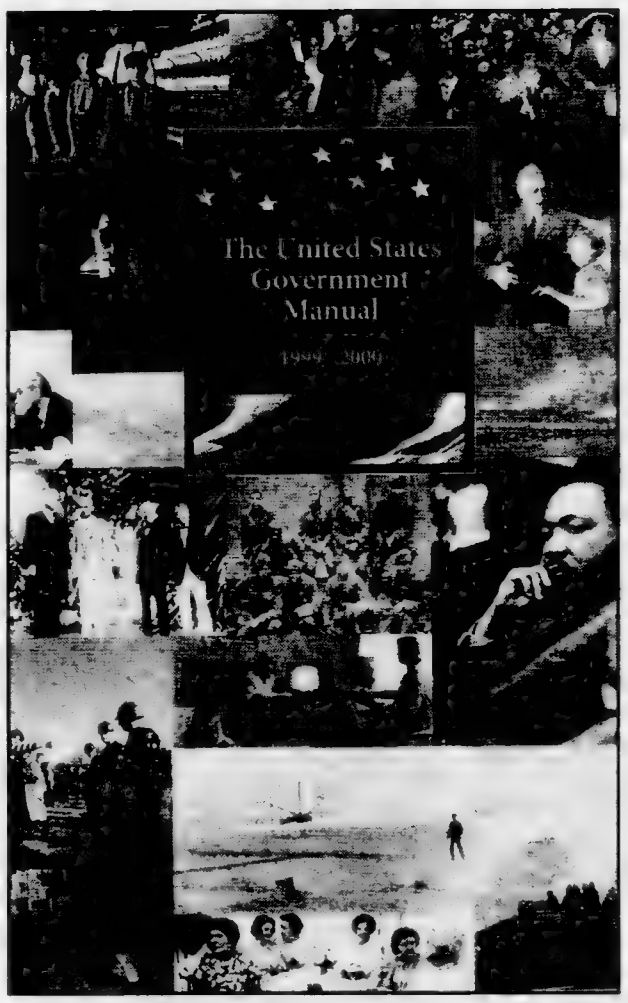


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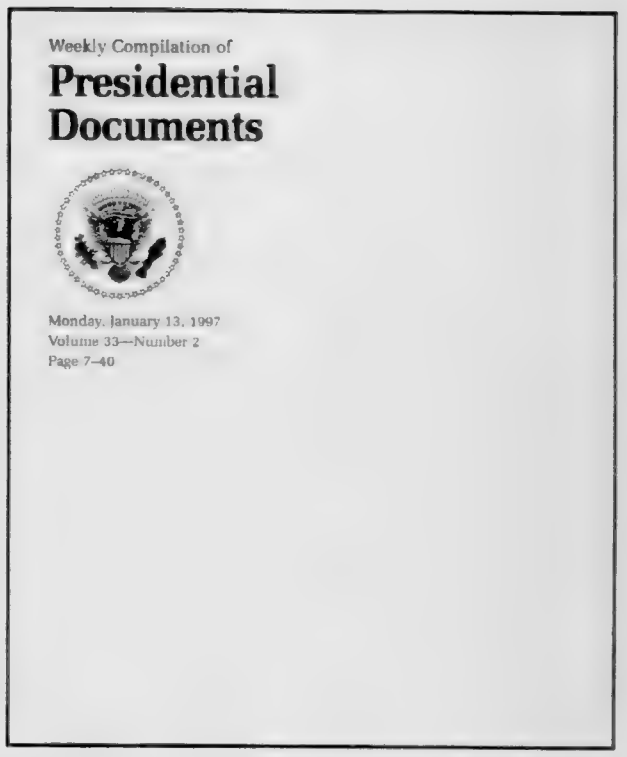


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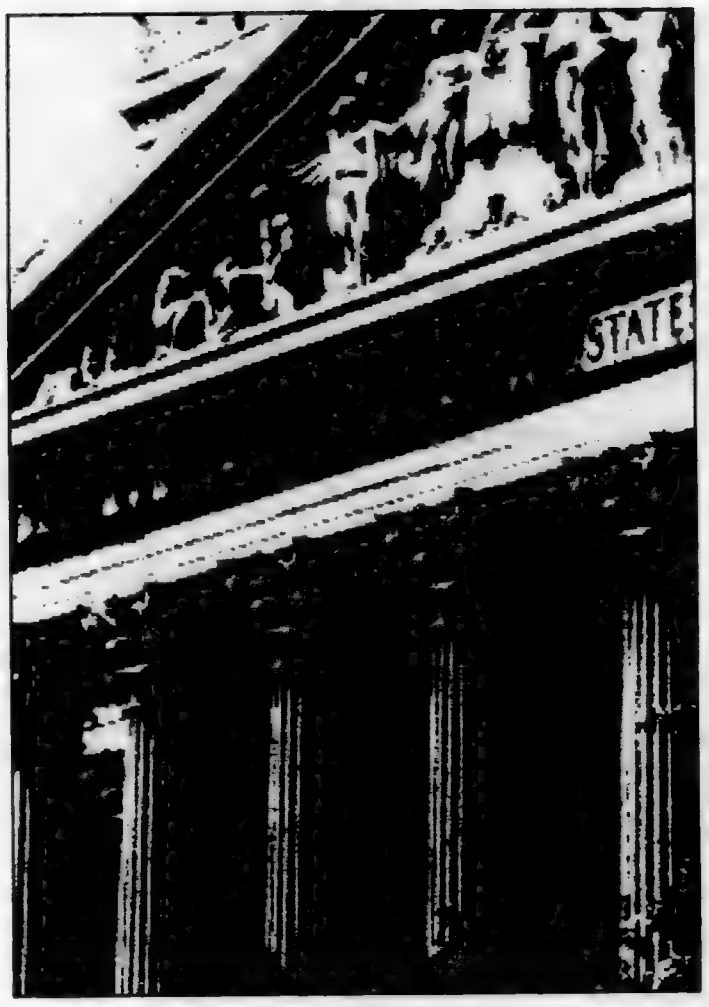


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# Presidential Documents

Title 3—

## The President

**Proclamation 7308 of May 15, 2000**

## National Defense Transportation Day and National Transportation Week, 2000

**By the President of the United States of America**

**A Proclamation**

Throughout the past century, America's national transportation system has played a crucial role in strengthening our economy, protecting our safety, and improving the quality of life for all Americans. Interconnecting networks of railroads, ports, and waterways have transported millions of passengers and billions of dollars' worth of freight. Our national highway system connected cities to rural communities and people to jobs. The Wright Brothers' invention of the airplane gave birth to a world-class aviation system that revolutionized travel, created new industries, and brought the nations of the world closer. The quality and versatility of all these modes of transportation gave our Nation a powerful defense tool as well, enabling us to move troops and materiel swiftly and efficiently in times of conflict and crisis. Now, as we begin a new century, our national transportation system must embrace exciting new possibilities and new challenges.

One of the most important of those challenges is safety. Advances in technology offer us great hope for progress in reducing accidents and fatalities. For example, the Federal Aviation Administration is working in partnership with the airline industry, pilots, technicians, and air traffic controllers to use improved forecasting and new communications technology to detect severe weather sooner, to let pilots and passengers know promptly about anticipated delays, and to centralize air traffic decisionmaking during severe storms in order to reduce delays. Automobile manufacturers are also using new technologies and design innovations—from stronger metals to new safety lights to advanced brake technology—to prevent accidents and save lives.

Another of our great transportation challenges is to develop alternative fuels and clean energy sources that will not harm our environment. Earlier this year, I signed an Executive Order to ensure the Federal Government's leadership in reducing petroleum consumption and promoting the use of alternative fuel vehicles (AFVs). By developing and using AFVs, we can reduce greenhouse gases and other pollutants, enhance our Nation's energy self-sufficiency by reducing the demand for imported oil, and create new products and jobs.

If we make wise and informed choices today and in the years to come, we can make our communities more livable, give our citizens greater choice and mobility, protect our environment, and help create a truly global community. The 20th century was indeed a golden age for transportation; the 21st century can be an even brighter one.

In recognition of the importance of our Nation's transportation system to our national security and economic health, and in honor of the many dedicated men and women who have ensured its continued excellence through the years, the United States Congress, by joint resolution approved May 16, 1957 (36 U.S.C. 120), has designated the third Friday in May of each year as "National Defense Transportation Day" and, by joint resolution approved May 14, 1962 (36 U.S.C. 133), declared that the week during which that Friday falls be designated "National Transportation Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim Friday, May 19, 2000, as National Defense Transportation Day and May 14 through May 20, 2000, as National Transportation Week. I urge all Americans to observe these occasions with appropriate ceremonies, programs, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

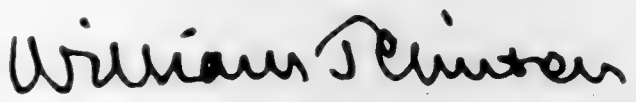

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Federal Register
Vol. 65, No. 98
Friday, May 19, 2000

# Presidential Documents

**Title 3—**

## The President

**Executive Order 13156 of May 17, 2000**

### Amendment to Executive Order 12871 Regarding the National Partnership Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide for a uniform policy for the Federal Government relating to labor-management partnerships, it is hereby ordered that Executive Order 12871, as amended by Executive Order 12983, is further amended as follows:

**Section 1.** Section 1(a)(10) of the order is amended by striking "two" and inserting "three."

William J. Clinton

THE WHITE HOUSE,
*May 17, 2000.*

[FR Doc. 00–12840
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# Rules and Regulations

Federal Register
Vol. 65, No. 98
Friday, May 19, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 104 and 111

**[Notice 2000–10]**

### Administrative Fines

**AGENCY:** Federal Election Commission.

**ACTION:** Final Rule; transmittal of regulations to Congress.

**SUMMARY:** The Treasury and General Government Appropriations Act, 2000, amended the Federal Election Campaign Act of 1971 (hereinafter "the Act" or "FECA") to permit the Federal Election Commission to impose civil money penalties for violations of the reporting requirements of the FECA that occur between January 1, 2000, and December 31, 2001. The amendments are intended to expedite and streamline the Commission's enforcement procedures. The Commission is promulgating amendments to its compliance procedure regulations to implement the new program. Further information is provided in the supplementary information that follows.

**EFFECTIVE DATE:** July 14, 2000. The Commission transmitted the final rules and the Explanation and Justification to Congress pursuant to 2 U.S.C. 438(d) on May 12, 2000. The Commission anticipates that 30 legislative days will elapse by the effective date.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Mai T. Dinh, Staff Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Commission is issuing final rules to establish the administrative fines program that Congress authorized in amendments to section 309(a)(4) of the FECA, 2 U.S.C. 437g(a)(4). These amendments were enacted as part of the Treasury and General Government Appropriations Act, 2000, Public Law 106–58, 106th Cong., Section 640, 113 Stat. 430, 476–77 (1999). Under 2 U.S.C. 434, treasurers of political committees are required to file reports periodically to the Commission by a certain deadline. Prior to enactment of the amendment to the FECA, the Commission handled failures to file the reports in a timely manner under the enforcement procedures in 11 CFR part 111. The purpose of the administrative fines program is to institute streamlined procedures, while preserving the respondents' due process rights, to process violations of the reporting requirements of 2 U.S.C. 434(a) and assess a civil money penalty based on the schedules of penalties for such violations. The final rules include new subpart B of 11 CFR part 111, and technical amendments to 11 CFR 104.5, 111.8, 111.20, and 111.24 to implement the administrative fines program.

Section 438(d) of Title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on May 12, 2000.

### Explanation and Justification

The Commission initiated this rulemaking by issuing a Notice of Proposed Rulemaking (NPRM) on March 29, 2000, in which it sought comments to the proposed rule. 65 FR 16534 (March 29, 2000). The comment period ended on April 28, 2000. The Commission received one comment in response to the NPRM from Akin, Gump, Strauss, Hauer & Feld. The comment included a request for a public hearing. Because Congress intended for this new program to apply to violations that occur in 2000 and 2001, the final rules need to be issued in a timely manner so that the program will be applicable to the reports that are due in 2000. Holding a public hearing would postpone publication of the final rules and delay the effective date, possibly until February or March, 2001. This late effective date would allow the Commission to apply the administrative fines procedure to only one major reporting period—the 2001 Mid-Year Report. This would not give the Commission a sufficient basis to determine whether to recommend that Congress make the program permanent. Also, the Commission received only one request for a public hearing and that requester did submit extensive comments. Therefore, the Commission will not hold a public hearing on this final rule.

*General Comments*

The commenter's overriding concern was that the proposed procedures do not afford adequate procedural due process and therefore, violate the Fifth Amendment's Due Process Clause of the U.S. Constitution. The commenter argued that the procedures do not meet the balancing test in *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), by failing to recognize the respondents' private interests, by minimizing the potential risk of erroneous result, and by placing undue emphasis on administrative expediency. The commenter claimed that the potential risk of erroneous result is high because the civil money penalty calculation includes three factors that could be misapplied and because the advent of mandatory electronic filing could flood the Commission's computers and lead to a breakdown that would unfairly penalize the respondents.

The Commission disagrees with this assessment. The Commission does recognize that the respondents have a property interest at stake. Except for political committees with low levels of financial activity during the reporting period, the civil money penalty will not exceed fifteen percent of the level of activity in the report for respondents who have no previous violations. For committees whose financial activity is less than $25,000 and who do not have a previous violation, the civil money penalty will not exceed $1000 or the level of activity, whichever is less. Thus, the cost of additional procedures such as a hearing for the respondent as well as the Commission will exceed the benefit of having them. Also, the *Mathews* balancing test considers whether additional procedures will provide greater protection against deprivation of a property interest or error. Within the administrative fines program, additional procedures in most cases will not afford the respondents greater protection against either. As

stated in the NPRM, the factual and legal issues involved in violations of the reporting requirements of 2 U.S.C. 434(a) are relatively straightforward. The Commission will carefully review the facts and its records before it will even proceed with a reason to believe finding. For the most part, the factual disputes surrounding this type of violation are whether the respondent filed the report and when the report was filed. If the respondent disagrees with the facts in the notification of the reason to believe finding, he or she can send proof of the filing and the date of the filing. The Commission expects that the reviewing officer will be able to resolve these types of factual disputes based on the written submissions.

The Commission also disagrees with the commenter's assertion that the procedures set forth in the NPRM pose a large potential risk of erroneous result. The civil money penalty calculation is a simple arithmetic formula whereby an error can be readily corrected by the Commission or the reviewing officer when it is brought to their attention. It is premature to predict the impact of mandatory electronic filing on administrative fines. It will have no real effect on the administrative fines program during the year 2000 because mandatory electronic filing is not scheduled to begin until January, 2001. Given that most committees will file only two reports during 2001 (2000 Year End and 2001 Mid-Year reports) before the administrative fines program sunsets on December 31, 2001, the impact is likely to be minimal, if any. The Commission's electronic filing system has been designed to accommodate filings by all committees that will be mandated to file electronically in 2001. As a result, there is no expectation that the system will have an adverse impact on the ability of committees to file their reports in a timely manner. In fact, committees may find that electronic filing is easier, faster, and more convenient than paper filing. Nevertheless, any failure of the Commission's system that prevents committees from filing their reports when due would be recognized by the Commission as a circumstance beyond the control of the filer and would be taken into account when considering reason to believe findings or the final determination.

The Commission recognizes that the need to avoid administrative burdens is one of the stated purposes for the amendment to the FECA. Congressman William Thomas, Chairman of the Committee of House Administration, stated the following on the floor of the House of Representatives on September 15, 1999:

> Allowing the FEC to impose administrative fines for reporting violations without the lengthy procedural steps required in a normal enforcement case will free critical FEC resources for more important disclosure and enforcement efforts. The rights of those under these regulations are protected by preserving the option of appeal to a U.S. District Court for those who believe the FEC erred.

The Commission, however, disagrees with the commenter that the proposed rule sacrifices the respondents' rights and procedural due process in the interest of administrative efficiency. The Commission applied the *Mathews* balancing test in developing the administrative fines procedures, taking into consideration the private interests involved and the nature of the violation. The Commission believes that the procedures in the final rules more than adequately meet the *Mathews* test in providing the respondents with procedural due process.

*Section 104.5 Filing Dates*

Paragraph (i) is being added to section 104.5 to encourage political committees to keep proof that they filed their reports and the dates on which the reports were filed. Retaining this evidence will allow a respondent to demonstrate timely filing if the respondent disagrees with the Commission on whether the report was filed and if so, the date of the filing. No substantive comments were made concerning this proposed section.

*Section 111.8 Internally Generated Matters; Referrals*

Paragraph (d) is being added to section 111.8 to permit the Commission to process complaint-generated matters that allege violations of the reporting requirements of 2 U.S.C. 434(a) under the administrative fines program. The Commission received no substantive comment on this section.

*Section 111.20 Public Disclosure of Commission Action*

New paragraph (c) in section 111.20 is being added to provide for the public disclosure of the enforcement file once the matter is completely resolved. The Commission did not receive any substantive comments to this section.

*Section 111.24 Civil Penalties*

Revised paragraph (a) of section 111.24 allows for the imposition of civil money penalties so as to make section 111.24 consistent with 11 CFR part 111, subpart B. The Commission did not receive any substantive comments on this section.

*Section 111.30 When Will Subpart B Apply?*

The amendment to FECA authorizes the administrative fines procedures for violations of the reporting requirements of 2 U.S.C. 434(a) that occur between January 1, 2000 and December 31, 2001. Therefore, this section provides that subpart B only applies to violations that occur during that time frame and subpart B sunsets as of January 1, 2002. The Commission did not receive any substantive comments on this section.

*Section 111.31 Does This Subpart Replace Subpart A of This Part for Violations of the Reporting Requirements of 2 U.S.C. 434(a)?*

Under the amendment to FECA, the Commission has discretion to apply either the administrative fines procedures or the current enforcement procedures set forth in §§ 111.9 through 111.19 to violations of the reporting requirements of 2 U.S.C. 434(a). The amendment, however, still requires the Commission to find reason to believe that a violation has occurred prior to making a final determination. Thus, §§ 111.1 through 111.8, which include the Commission's reason to believe procedures, will apply to violations processed through the administrative fines procedures. Please note that under 2 U.S.C. 437g(b), the Commission will continue to publish the names of political committees that fail to file their reports when due in the calendar quarter preceding an election including pre-election reports if the committees do not respond within four business days of being notified by the Commission of their failure to file. Sections 111.20 through 111.24, which pertain to public disclosure, confidentiality, *ex parte* communications, representation by counsel, and civil penalties, will also apply to violations processed under subpart B. In addition, while the Commission anticipates that it will process most of these violations under the administrative fines procedures, § 111.31 makes clear that the Commission has the discretion to use the enforcement procedures in §§ 111.9 through 111.19 to handle these violations in circumstances the Commission deems appropriate.

Proposed § 111.31(b) is being modified to include complaint-generated matters that allege violations of the reporting requirements of 2 U.S.C. 434(a) along with violations of other provisions of the FECA in the administrative fines program. The alleged violations of the reporting

requirements will be processed through subpart B while the other alleged violations will be handled through the enforcement process of subpart A. The Commission made this modification to maintain consistency in its prosecution of alleged violations of the reporting requirement of 2 U.S.C. 434(a). The Commission did not receive any substantive comments on this section.

*Section 111.32 How Will the Commission Notify Respondents of a Reason To Believe Finding and a Proposed Civil Money Penalty?*

The Commission will follow its current procedures in finding reason to believe and in notifying the respondents of its finding. If the Commission, by an affirmative vote of at least four of its members, finds reason to believe that a violation has occurred, the Chairman or the Vice-Chairman will notify the respondent of the finding. The notification will include the legal and factual basis for the finding as well as the proposed civil money penalty in accordance with the schedules of penalties and an explanation of the respondent's right to challenge the finding and/or the proposed civil money penalty.

As stated in the NPRM, the Commission will also continue to follow its current procedure of notifying the political committees of their duty to file their reports and the dates on which the reports are due prior to the filing deadline. Thus, political committees will continue to be on notice of their legal obligation to file their reports in a timely manner.

The commenter urged that the Commission include a regulation stating when a report filed electronically is considered "filed." The Commission agrees that the regulations should include such a provision but has decided that this topic is better addressed in the Commission's rulemaking regarding mandatory electronic filing.

*Section 111.33 What Are the Respondent's Choices Upon Receiving the Reason To Believe Finding and the Proposed Civil Money Penalty?*

Upon receipt of the notification of the reason to believe finding and the proposed civil money penalty, the respondents will have two options. They may pay the civil money penalties pursuant to § 111.34. The Commission will process the payment and then close the matter. Respondents may also challenge the reason to believe finding and/or the proposed civil money penalty by following the procedures set forth in § 111.35. The Commission did not receive any substantive comments on this section.

*Section 111.34 If the Respondent Decides To Pay the Civil Money Penalty and Not To Challenge the Reason To Believe Finding, What Should the Respondent Do?*

A respondent who does not wish to challenge the reason to believe finding and the proposed civil money penalty must submit a check or money order equal to the amount of the proposed civil money penalty to the Commission within 40 days of the reason to believe determination. Once the Commission receives payment, it will send the respondent a final determination that the respondent has violated 2 U.S.C. 434(a) and acknowledgment of the respondent's payment of the civil money penalty. The matter would then be closed and the file would be placed on the public record pursuant to 11 CFR 111.20 and new 11 CFR 111.42. The Commission did not receive any substantive comments on this section.

*Section 111.35 If the Respondent Decides To Challenge the Alleged Violation or Proposed Civil Money Penalty, What Should the Respondent Do?*

Proposed § 111.35 in the NPRM set forth the requirements that respondents must meet to challenge a reason to believe finding and/or proposed civil money penalty. The requirements included filing a notice of intent to challenge within twenty days of the date of the Commission finding reason to believe and filing a written response with supporting documentation within forty days of that date. This proposed section also provided for circumstances the Commission will consider in determining whether to levy a civil money penalty and defenses that the Commission will not accept.

The commenter had several criticisms of this aspect of the administrative fines procedures. First, the commenter objected to the requirement of the notice of intent to challenge the reason to believe finding and/or proposed civil money penalty, stating that the requirement is "contrary to the plain language of the statute, which forbids the Commission from making an adverse determination 'until the person has been given notice and an opportunity to be heard before the Commission' " (citation omitted). While the Commission disagrees with the commenter's legal analysis on this issue, the Commission agrees that a notice of intent to challenge is not necessary. Consequently, that step has been eliminated from the final rules.

The commenter also objected to the use of the date of the Commission's reason to believe determination to trigger the time that the respondent has to file a notice of intent and the written response. The commenter suggested that the time to file the notice of intent and the written response should not begin until receipt of the notification of the Commission's reason to believe finding.

In determining when the time to appeal begins to toll, some federal agencies chose the date on which the decision was made, not the date of receipt, often providing thirty days from the date of the initial decision. *See e.g.*, Coast Guards Regulations on Suspension, Revocation, and Appeals, 33 CFR 158.190 (2000); Department of the Interior Regulations on Public Lands, 43 CFR 4.356 (2000). The Commission also notes that several agencies that begin to toll the time for appeal upon service of an initial adverse decision provide thirty days for a party to file the appeal. *See* Federal Retirement Thrift Investment Board Privacy Act Regulations, 5 CFR 1630.13 (2000); National Indian Gaming Commission Regulations on Appeals, 25 CFR parts 524 and 539 (2000); Postal Service Regulations on Suspension and Revocation of Appeal, 39 CFR 501.12 (2000). Seen in this context, the Commission believes that forty days is an ample and fair amount of time for respondents to file a written response. The Commission has extended the traditional thirty day appeal period an additional ten days to take into account the time it takes for Commission staff to prepare the mailing as well as for the Postal Service to deliver the notification, with a few additional days as a margin for error.

The commenter strongly disagrees with the list of defenses in proposed § 111.35 that the Commission will and will not consider, suggesting that the Commission has failed to balance the respondent's rights with "administrative expediency" for the Commission. The commenter recommends that the Commission eliminate proposed § 111.35(c)(1)(iii) and (c)(4) because the Commission has no rationale for limiting defenses to "48-hour extraordinary circumstance" and errors on the part of the Commission. In addition, the commenter believes that the Commission should allow "good faith" defenses.

The Commission has sound policy reasons for limiting the respondents' defenses beyond streamlining the administrative process. A key cornerstone of campaign finance law is the full and timely disclosure of the political committee's financial activity.

Such disclosure is essential to providing the public with accurate and complete information regarding the financing of federal candidates and political campaigns. Thus, violations of the reporting requirements of 2 U.S.C. 434(a) are strict liability offenses. Political committees are aware or should be aware of their legal duty to file the required reports in a timely manner, and the Commission makes ongoing efforts to remind committees of their duty. Committees are given ample time from the end of the reporting period to the filing deadline to prepare and file their reports. Absent extraordinary circumstances beyond the committees' control, the Commission sees no reason why committees cannot file their reports by the deadline. The rationale behind the "48-hour extraordinary circumstances" exception is that the Commission recognizes there may be instances such as natural disasters where a committee's office is located in the disaster area and the committee cannot timely file a report because of lack of electricity or flooding or destruction of committee records. The Commission, however, expects the committee to file its report as soon as it can reasonably do so.

The commenter argues that under proposed § 111.35(c)(4)(iv) respondents may be held liable for the failure of the Commission's computers. Any failure of the Commission's system that prevents committees from filing their reports when due would be recognized as an extraordinary circumstance beyond the respondents' control. Therefore, § 111.35(c)(4)(iv) has been revised to exclude Commission computer failures from the list of circumstances that the Commission will not consider as extraordinary circumstances.

The commenter states that, under the Due Process Clause of the U.S. Constitution, the Commission bears the burden of proving the factual allegations, not the respondent. In its notification to the respondent of its reason to believe finding, the Commission does include the factual and legal basis for its finding based on the information available to it. Only the respondents can answer the Commission's allegations, devise their defenses, and provide the documents that would support their defenses. Supporting documentation will permit the reviewing officer to evaluate the respondents' factual allegations and defenses. Administrative procedures under other federal agencies also require respondents to provide the factual and legal basis for seeking relief or appealing a decision of the agency. *See e.g.*, 18 CFR 1312.12(d) (2000) (Tennessee Valley Authority's regulations requiring the petition for relief from an assessment of a civil penalty to "set forth in full the legal and factual basis for the requested relief."); 25 CFR 577.3 (2000) (The National Indian Gaming Commission's hearing regulations state that "* * * the respondent shall file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefor and that includes, when available, supporting evidence in the form of affidavits."). Therefore, requiring a respondent to include reasons for challenging the reason to believe finding and/or proposed civil money penalty and the factual basis for those reasons does not violate a respondent's rights under the Due Process Clause.

*Section 111.36 Who Will Review the Respondent's Written Response?*

Proposed § 111.36 in the NPRM provided for an impartial reviewing officer to review the reason to believe finding, the proposed civil money penalty, the Commission's documentation, and the respondent's written response and to make a recommendation to the Commission. The reviewing officer may request that the respondent and/or the Commission staff submit supplemental information. Paragraph (b) is being revised to clarify the consequence of failure by the respondent to file the supplemental information. Such failure will entitle the reviewing officer to draw an adverse inference.

The commenter expressed concern that the procedures described in proposed § 111.36 fail to meet the statutory requirements of Administrative Procedure Act (APA), 5 U.S.C. 551, *et. seq.*, and the Due Process Clause of the U.S. Constitution. The commenter states that the proposed rule does not include provisions that incorporate 5 U.S.C. 555(b) and (c), which entitle a party to appear in person, to be represented by counsel, and to have access to documents that are the basis of the reviewing officer's recommendation to the Commission. The commenter argues that oral hearings will fulfill the requirements of 5 U.S.C. 555(b) and the *Mathews* balancing test to determine whether an agency's procedures afford respondents adequate procedural due process. The commenter contends that oral hearings would give greater meaning to the respondents' right to an "opportunity to be heard"; would settle disputes without need for litigation, thereby conserving resources; and would develop a full administrative record for the purposes of judicial review. The Commission disagrees with some of these contentions and believes that these objectives can be achieved in all cases without need for an oral hearing.

With regard to the respondents' right to be represented by counsel, new § 111.31 explicitly incorporates § 111.23, which allows for respondents to be represented by counsel in any matter before the Commission. The commenter cited to 5 U.S.C. 555(c) as the basis for requiring the Commission to give respondents access to documents used by the reviewing officer in formulating his or her recommendation. The Commission disagrees with this reading of this section of the APA. Section 555(c) states that a "person compelled to submit data or evidence is entitled to retain or * * * procure a copy or transcript thereof." Thus, respondents are entitled to keep a copy of their written submissions or ask the Commission to send them a copy of their written submissions. It does not grant the respondents the right to obtain or review other documents that the reviewing officer relied upon to make his or her recommendation. The Commission, however, recognizes that a respondent should be given copies of any additional documents that the reviewing officer examines after the respondent has filed a challenge to the reason to believe finding and/or proposed civil money penalty. For example, Commission staff might possibly provide additional materials regarding receipt of an electronically filed report. Therefore, paragraph (d) is being added to revised § 111.36 to provide for that procedure. Revised § 111.36 also adds new paragraph (f) to require the reviewing officer to send the respondent a copy of the recommendation to the Commission and allows the respondent to file with the Commission Secretary a written response to the recommendation within ten days of the transmittal of the recommendation. However, the respondent will not be able to make any new arguments, that is, the respondent may not make arguments that the respondent did not make in its original written response or that are not in direct response to the arguments made by the reviewing officer in his or her recommendation to the Commission.

The commenter interprets the second sentence of 5 U.S.C. 555(b) as creating an independent right to appear in person with counsel whenever there is an agency proceeding. The Commission disagrees with this interpretation. In reading 5 U.S.C. 555(b) as a whole, it is apparent that the entitlement described in the second sentence is triggered only

if the person is compelled to appear in person in an agency proceeding. Thus, if a person is compelled to appear in person, the person may chose to appear by himself or herself, to appear with counsel, or send counsel or a duly qualified representative in his or her stead. The right to appear under 5 U.S.C. 555(b) "is not blindly absolute, without regard to the status or nature of the proceedings and concern for the orderly conduct of public business." *DeVyver* v. *Warden*, 388 F.Supp. 1213, 1222 (M.D. Pa. 1974) (citing *Easton Utilities Commission* v. *Atomic Energy Commission*, 424 F.2d 847, 852 (D.C. Cir. 1970)).

Moreover, 5 U.S.C. 555(b) does not afford the respondents a right to a hearing. The Supreme Court has held that even where a statute requires an "opportunity for hearing," it "cannot impute to Congress the design requiring, nor does due process demand, a hearing when it appears conclusively from the applicant's 'pleadings' that the applicant cannot succeed." *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 621 (1973) (involving the Federal Drug Administration's procedure for withdrawing approval of a new drug application). Similarly, lower courts have held that agencies may make a decision solely on the written submission, much like summary judgment, where there are no disputed issues of material fact that cannot be resolved by the written submissions. *State of Pennsylvania* v. *Riley*, 84 F.3d 125, 130 (3rd Cir. 1996) (citing *Moreau* v. *F.E.R.C.*, 982 F.2d 556, 568 (D.C. Cir.1993); *Altenheim German Home* v. *Turnock*, 902 F.2d 582, 584 (7th Cir. 1990); *California* v. *Bennett*, 843 F.2d, 333, 340 (9th Cir. 1988); *Bell Telephone Co. of Pennsylvania* v. *FCC*, 503 F.2d 1250, 1267–68 (3rd Cir. 1974); *Puerto Rico Aqueduct & Sewer Auth.* v. *E.P.A.*, 35 F.3d 600, 606 (1st Cir. 1994); *Louisiana Ass'n of Indep. Producers and Royalty Owners* v. *FERC*, 958 F.2d 1101, 1113–15 (D.C. Cir. 1992); *City of St. Louis* v. *Department of Transp.*, 936 F.2d 1528, 1534 n. 1 (8th Cir. 1991)).

The court in *Puerto Rico Aqueduct & Sewer* recognized the need for administrative summary judgment. It stated that:

> The choice between summary judgment and full adjudication—in virtually any context—reflects a balancing of the value of efficiency against the values of accuracy and fairness. Seen in that light, summary judgment often makes especially good sense in an administrative forum, for, given the volume of matters coursing through an agency's hallways, efficiency is perhaps more central to an agency than to a court. . . . Administrative summary judgment is not only widely accepted, but also intrinsically valid. An agency's choice of such a procedural device is deserving of deference under "the very basic tenet of administrative law that agencies should be free to fashion their own rules of procedure." *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 544, 98 S.Ct. 1197, 1212, 55 L.Ed.2d 460 (1978).

35 F. 3d at 606.

The balancing of accuracy and fairness with the need for efficiency in an agency contains two of the three prongs of the *Mathews* test. Unlike other types of violations that may involve complex factual and legal issues requiring extensive fact finding and analysis and witness testimony, the legal and factual issues pertaining to violations of the reporting requirements of 2 U.S.C. 434(a), are elementary and readily ascertainable by review of written submissions. Because of this, a hearing will not significantly increase accuracy and fairness but will drain the Commission's resources and hinder its efficiency. Therefore, the Commission does not believe that a hearing is legally required especially in light of the additional procedures that are being added to the final rules. *See supra.*

Paragraph (c) is being added to revised § 111.36 to strongly encourage respondents to submit documents to the reviewing officer under §§ 111.35 and 111.36 that are sworn to in the form of affidavits or declarations. More weight and credibility are generally given to statements and documents that are given under oath or are subject to the penalty of perjury.

The commenter had several additional comments with regard to the reviewing officer. First, the commenter stated that the reviewing officer could not be viewed as impartial if he or she is within the Reports Analysis Division (RAD) or the Office of General Counsel (OGC) and suggested an independent position be created to ensure objectivity and to shield the reviewing officer from the supervision of the General Counsel or the Assistant Staff Director of RAD. The Commission agrees that "[i]mpartiality does not require total independence from the government agency or the presence of an administrative law judge * * * [but] only decisionmaker independence * * * from the individual action to be decided." P. Verkuil, *A Study of Informal Adjudication*, 43 U. Chi. L. Rev. 739, 750 n.45 (1976) (citing *Goldberg* v. *Kelly*, 397 U.S. 254, 271 (1970)). The Commission recognizes the need to separate its prosecutorial functions from its role as the decider of facts. Consequently, at this time, the Commission anticipates that the reviewing officer most likely will not be an employee within OGC or RAD.

The commenter also suggested that the civil money penalties in the schedules of penalties in § 111.43 should be considered the maximum civil money penalty and that the reviewing officer should have the authority to reduce the civil money penalty after considering mitigating factors and the totality of the circumstances to create "more flexibility in applying the new rules." The Commission disagrees. Allowing the reviewing officer to reduce the civil money penalty would vest in the reviewing officer the authority to make final decisions, contrary to the FECA and long standing practice. *See* 2 U.S.C. 437c(c). Final agency decisions must be made by an affirmative vote of four members of the Commission. Also, if the reviewing officer is granted the discretion to reduce the civil money penalties, different civil money penalty amounts may be levied against political committees that commit identical violations, resulting in lack of uniformity and certainty and giving rise to the perception of unfairness.

Finally with respect to the reviewing officer, the commenter advocated that this person should be subject to the Commission's ethics regulation. Further, the person "should not be a member of the enforcement staff who previously served as counsel in a matter where the current respondent was either a witness or a respondent" because it will create a conflict of interest and an appearance of impropriety. As an employee of the Commission and the federal government, the reviewing officer will be subject to the Commission's Standards of Conduct set forth at 11 CFR part 7, and the Standards of Ethical Conduct for Employees of the Executive Branch. The conflict of interest standard in 11 CFR 7.2(c) is designed to address instances where the employee's private interests are inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities. Nothing in the rules bars an employee from serving in different capacities at different times such as employees in the Office of General Counsel subsequently filling positions in Commissioners' offices.

Section 111.37 What Will the Commission Do Once It Receives the Respondent's Written Response and the Reviewing Officer's Recommendation?

The Commission will make a final determination, by an affirmative vote of at least four of its members, as to whether the respondent has violated the reporting requirements of 2 U.S.C. 434(a) and the amount of the civil

money penalty, if any. The Commission will then authorize the reviewing officer to notify the respondent of its decision. The Commission did not receive any substantive comments on this section.

*Section 111.38 Can the Respondent Appeal the Commission's Final Determination?*

This section follows the amendment to the FECA by specifying that respondents may appeal a final adverse determination by the Commission to a federal district court where the respondents reside or conduct business by filing a written petition within thirty days of receipt of the Commission's final determination. Respondents, however, may not raise any issue that they did not timely raise in the administrative proceeding. The Commission received no substantive comments on this section.

*Section 111.39 When Must the Respondent Transmit Payment of the Civil Money Penalty?*

Unless the respondent appeals the Commission's final determination, the respondent must send a check or money order to the Commission within thirty days of receipt of the final determination. Once there is a final determination of the civil money penalty amount, the civil money penalty will be a debt owed to the United States. If the respondent does not submit full payment, the Commission may forward the debt to the U.S. Department of the Treasury for collection under the Debt Collection Improvement Act of 1996 within 180 days of the date after the final determination. 31 U.S.C. 3711(g); 31 U.S.C. 3716(c)(6). In the alternative, the Commission may initiate a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A). The Commission did not receive any substantive comments on this section.

*Section 111.40 What Happens If the Respondent Does Not Pay the Civil Money Penalty Pursuant to 11 CFR 111.34 and Does Not Submit a Written Response to the Reason To Believe Finding Pursuant to 11 CFR 111.35?*

The Commission will make a final determination and assess a civil money penalty, if any. The respondents will be notified by letter of the final determination. The respondent must pay any assessed civil money penalty within thirty days of receipt of the final determination. Unpaid civil money penalties are debts owed to the United States and may be transferred to the U.S. Department of the Treasury for collection. 31 U.S.C. 3711(g); 31 U.S.C. 3716(c)(6). In the alternative, the Commission may initiate a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A). There were no substantive comments on this section.

*Section 111.41 To Whom Should the Civil Money Penalty Payment Be Made Payable?*

Respondents must pay the civil money penalties by check or money order and make the check or money order payable to the Federal Election Commission. The Commission did not receive any substantive comments on this section.

*Section 111.42 Will the Enforcement File Be Made Available to the Public?*

Once the enforcement matter is closed, the file will be made available to the public subject to the provisions of 11 CFR 4.4(a)(3). A matter is considered closed when neither the Commission nor the respondent files a civil action in federal court or when there is a final disposition of the civil action pursuant to 11 CFR 111.20(c). The Commission received no substantive comments on this section.

*Section 111.43 What Are the Schedules of Penalties?*

Proposed § 111.43 contained two schedules of penalties—one for election sensitive reports and one for all other reports. The Commission took into account the level of activity in the report, the number of days late, the election sensitivity of the reports, and the existence of previous violations in developing the schedules. Two of these factors—the level of activity and the existence of previous violations—are mandated by the FECA. The Commission included the number of days as a factor because fairness demands that a report that is only a few days late should not be treated in the same manner as one that is many days late or not filed. Similarly, several state agencies responsible for overseeing state campaign finance laws levy fines on a per day basis for violations of their reporting requirements. *See e.g.*, Fla. Stat. Ann. § 106.04(8) (West 2000); Haw. Rev. Stat. § 11–193(a)(5) (1999); N.M. Stat. Ann. § 1–19–35A (Michie 1999). Because of the need to disseminate campaign finance information prior to an election for it to have a meaningful impact, the Commission concluded that it is especially important for reports due prior to an election to be filed in a timely manner and before the election. Thus, the Commission developed a different schedule of penalties for election sensitive reports that imposes a higher civil money penalty for these reports than other types of reports. In addition, the schedule of penalties for election sensitive reports uses an earlier cut-off date in considering a report not to be filed than the date used for reports that are not election sensitive.

The commenter made several comments and suggestions regarding the schedules of penalties. First, the commenter urged the Commission to calculate the level of activity based on contributions and expenditures less overhead and administrative costs, rather than receipts and disbursements, arguing that a calculation based on receipts and disbursements does not further the goals of FECA and discriminates against political action committees. This argument implicitly assumes that disclosure of some types of receipts and disbursements is of lesser importance than disclosure of other types. The Commission disagrees with this assumption. The amendment to the FECA clearly states that the Commission must take into account the "amount of the violation involved," which is not limited to contributions and expenditures. Under section 434 of the Act, political committees are required to disclose all receipts and disbursements in their reports, not just contributions and expenditures. Moreover, Congress could have drafted the amendment to include just contributions and expenditures, as it did for mandatory electronic filing in Section 639 within the same amendment, but it did not. This difference in terms used in these two sections is strong evidence that Congress intended these two provisions to reach different types of financial activity. Thus, the Commission concludes that the "amount of the violation involved" is equal to receipts and disbursements.

The commenter suggested that the final rules should state that committees with no receipts or disbursements will not be subject to the administrative fines, and urged the Commission to allow committees to send an affidavit attesting to the fact that they did not have any receipts or disbursements in lieu of filing a report. The Commission cannot do so because it does not have the authority to waive reporting requirements in this situation. While the Commission theoretically could make a final determination that a committee with no receipts and disbursements is in violation of 2 U.S.C. 434(a), the Commission could not assess a civil money penalty against the committee because the schedules of penalties only provides for civil money penalties if the level of activity is $1.00 or more. However, committees with no financial activity should file their reports; otherwise, the Commission will calculate an estimated level of activity

based on the average level of activity over the current or previous two-year election cycle. Unless the committees file their reports disclosing no financial activity, the Commission will assess civil money penalties based on these estimated levels of activity or $5500 if the Commission cannot calculate the estimated levels of activity.

The commenter advocates the creation of a "safe harbor" for committees that do not have any contributions or expenditures in the given reporting period because these committees have not engaged in any political activity in that period. As discussed above, one of the mandated factors in determining the civil money penalty is the amount of the violation, which is not limited to just contributions and expenditures. Committees are required to file reports even if the committees did not have any contributions or expenditures. To create such a "safe harbor" would be to implicitly allow committees to ignore their affirmative and legal duty to file the required reports.

The commenter characterized the schedules of penalties in the NPRM as lacking a rational basis and as discriminating against small committees. The commenter suggested that the Commission break down the level of activity by $5,000 increments. The basis for the schedules of penalties is discussed above. The Commission believes the breakdowns in the schedules of penalties using the levels of activity fairly and equitably assess civil money penalties that reflect the nature and scope of the violation. The Commission notes, however, that the commenter was correct in stating that small committees that fall within the first range, $1–$24,999.99, could potentially pay a civil money penalty that exceeds their total financial activity for a given reporting period. Therefore, the two schedules in § 111.43 are being amended to include a provision stating that respondents with no previous violations will not be assessed a civil money penalty that exceeds the levels of activity in the report.

The preamble to the NPRM included an alternative method for calculating the schedule of penalties for the election sensitive reports. Instead of a fifty percent increase in the base amounts, the NPRM sought comment on adding a flat amount of $1000 to the base amounts for all levels of activity. No comments directly addressing this issue were received. However, the commenter expressed concern that the schedules of penalties discriminated against committees with low levels of financial activity. The Commission has determined that a flat $1000 addition to the base amounts would impose on committees with low levels of financial activity a significantly higher civil money penalty relative to their level of activity than committees with higher levels of financial activity. Consequently, the Commission has decided to adopt a schedule of penalties that increases the base amounts by fifty percent for election sensitive reports instead of adding a flat $1000 to the base amounts.

The commenter suggested that the civil money penalties in the schedules of penalties may be too high in some instances. The Commission agrees that the civil money penalties it initially proposed for non-filers were too high. Therefore, the civil money penalties for non-filers are being reduced in the schedules of penalties in § 111.43 (a) and (b). With respect to both election sensitive reports and non-election sensitive reports, the resulting civil money penalties for non-filers are higher than the civil money penalties for reports filed 30 days late, but are not as high as the civil money penalties proposed in the NPRM.

Finally, paragraphs (d) and (e) are being revised to clarify that election sensitive reports include reports due before special elections.

*Examples of Civil Money Penalties*

*Example 1:* The respondent files an October quarterly report 20 days late. The level of activity on the report is $105,000. The civil money penalty is calculated as follows. The base amount is $900. The per day amount is $125 multiplied by 20 days, which equals $2500. The civil money penalty is the sum of these two amounts, which is $3400.

*Example 2:* The respondent in the above example has one prior violation in the current two-year election cycle. The premium for the one prior violation is 25% of the civil money penalty calculated in example 1, which equals $850. The civil money penalty is the sum of this premium and the civil money penalty from example 1, which is $4250.

*Example 3:* The respondent files a July quarterly report on September 1. The report contains $500 in receipts and disbursements. The respondent is a non-filer because the report was more than thirty days late. The civil money penalty is $500 because it is the lesser of the level of activity in the report and $900, which is the civil money penalty for a non-filer whose level of activity is less than $25,000.

*Example 4:* The respondent in the example 3 had one prior violation in the current two-year election cycle. Because this is not the respondent's first violation, the civil money penalty is not capped by the respondent's level of activity. The civil money penalty is the $900 assessed against non-filers whose level of activity is less than $25,000 plus ■ 25% premium equaling $225 for the one prior violation. Therefore, the civil money penalty for this respondent is $1125.

*Section 111.44 What Is the Schedule of Penalties for 48-Hour Notices?*

Committees are required to report within 48 hours of receipt of those contributions of $1000 or more that are received after the 20th day but more than 48 hours before an election. 2 U.S.C. 434(a)(6). The Commission developed a different schedule of penalties for failure to file these notices on time because of the nature and timing of these notices and the need to have them filed on time. The schedule proposed in the NPRM did not distinguish between notices that are filed late and those that are not filed at all, and would have imposed a civil money penalty equal to fifteen percent of the amount of the contribution(s) not reported on time plus $100. In the final rules that follow, this schedule of penalties is also being reduced because the resulting civil money penalties may be too high. The amount in the final schedule of penalties is being reduced to 10% of the amount of the contribution(s) not timely reported plus $100.

*Section 111.45 What Actions Will Be Taken To Collect Unpaid Civil Money Penalties?*

The Commission may take any and all appropriate actions authorized and required by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 *et. seq.*). This section adopts the Federal Claims Collection Standards issued jointly by the Department of Justice and the General Accounting Office, 4 CFR parts 101–105, to provide procedures for the collection of the debt. This section also adopts by cross-reference the regulations issued by U.S. Department of the Treasury at 31 CFR 285.2, 285.4, and 285.7. Changes are being made to this section in the final rules for clarification purposes. The Commission did not receive any substantive comments on this section.

**Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

The attached final rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the final rule will impose penalties which are scaled to take into account the size of the financial activity of the political committees. Thus, committees with less financial activity will be subject to lower fines than committees with more

financial activity. Also, the Commission anticipates that there will not be a large number of small committees that would be subject to the process in the proposed rules. Therefore, the final rules will not have a significant economic impact on a substantial number of small entities.

**List of Subjects**

*11 CFR Part 104*

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

*11 CFR Part 111*

Administrative practice and procedures, Elections, Law enforcement.

For reasons set out in the preamble, subchapter A, Chapter I of Title 11 of the Code of Federal Regulations is amended as follows:

## PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

1. The authority for part 104 continues to read as follows:

**Authority:** 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a.

2. 11 CFR 104.5 is amended by adding new paragraph (i) to read as follows:

**§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).**

* * * * *

(i) Committees should retain proof of mailing or other means of transmittal of the reports to the Commission.

## PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))

3. The authority for part 111 continues to read as follows:

**Authority:** 2 U.S.C. 437g, 437d(a), 438(a)(8).

4. 11 CFR 111.8 is amended by adding new paragraph (d) to read as follows:

**§ 111.8 Internally generated matters; referrals (2 U.S.C. 437g(a)(2)).**

* * * * *

(d) Notwithstanding §§ 111.9 through 111.19, for violations of 2 U.S.C. 434(a), the Commission, when appropriate, may review internally generated matters under subpart B of this part.

5. 11 CFR 111.20 is amended by adding new paragraph (c) to read as follows:

**§ 111.20 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).**

* * * * *

(c) For any compliance matter in which a civil action is commenced, the Commission will make public the non-exempt 2 U.S.C. 437g investigatory materials in the enforcement and litigation files no later than thirty (30) days from the date on which the Commission sends the complainant and the respondent(s) the required notification of the final disposition of the civil action. The final disposition may consist of a judicial decision which is not reviewed by a higher court.

6. 11 CFR 111.24(a) is revised to read as follows:

**§ 111.24 Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.).**

(a) Except as provided in 11 CFR part 111, subpart B and in paragraph (b) of this section, a civil penalty negotiated by the Commission or imposed by a court for a violation of the Act or chapters 95 or 96 of title 26 (26 U.S.C.) shall not exceed the greater of $5,500 or an amount equal to any contribution or expenditure involved in the violation. In the case of a knowing and willful violation, the civil penalty shall not exceed the greater of $11,000 or an amount equal to 200% of any contribution or expenditure involved in the violation.

* * * * *

7. Part 111 is amended by designating 11 CFR 111.1 through 111.24 as subpart A—Enforcement—and by adding new subpart B to read as follows:

## Subpart B—Administrative Fines

Sec.


111.30 When will subpart B apply?
111.31 Does this subpart replace subpart A of this part for violations of the reporting requirements of 2 U.S.C. 434(a)?
111.32 How will the Commission notify respondents of a reason to believe finding and a proposed civil money penalty?
111.33 What are the respondent's choices upon receiving the reason to believe finding and the proposed civil money penalty?
111.34 If the respondent decides to pay the civil money penalty and not to challenge the reason to believe finding, what should the respondent do?
111.35 If the respondent decides to challenge the alleged violation or proposed civil money penalty, what should the respondent do?
111.36 Who will review the respondent's written response?
111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?
111.38 Can the respondent appeal the Commission's final determination?
111.39 When must the respondent pay the civil money penalty?
111.40 What happens if the respondent does not pay the civil money penalty pursuant to 11 CFR 111.34 and does not submit a written response to the reason to believe finding pursuant to 11 CFR 111.35?
111.41 To whom should the civil money penalty payment be made payable?
111.42 Will the enforcement file be made available to the public?
111.43 What are the schedules of penalties?
111.44 What is the schedule of penalties for 48-hour notices that are not filed or filed late?
111.45 What actions will be taken to collect unpaid civil money penalties?


**§ 111.30 When will subpart B apply?**

Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a) committed by political committees and their treasurers on or after July 14, 2000, and on or before December 31, 2001.

**§ 111.31 Does this subpart replace subpart A of this part for violations of the reporting requirements of 2 U.S.C. 434(a)?**

(a) No; §§ 111.1 through 111.8 and 111.20 through 111.24 shall apply to all compliance matters. This subpart will apply, rather than §§ 111.9 through 111.19, when the Commission, on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, and when appropriate, determines that the compliance matter should be subject to this subpart. If the Commission determines that the violation should not be subject to this subpart, then the violation will be subject to all sections of subpart A of this part.

(b) Subpart B will apply to compliance matters resulting from a complaint filed pursuant to 11 CFR 111.4 through 111.7 if the complaint alleges a violation of 2 U.S.C. 434(a). If the complaint alleges violations of any other provision of any statute or regulation over which the Commission has jurisdiction, subpart A will apply to the alleged violations of these other provisions.

**§ 111.32 How will the Commission notify respondents of a reason to believe finding and a proposed civil money penalty?**

If the Commission determines, by an affirmative vote of at least four (4) of its members, that it has reason to believe that a respondent has violated 2 U.S.C. 434(a), the Chairman or Vice-Chairman shall notify such respondent of the Commission's finding. The written notification shall set forth the following:

(a) The alleged factual and legal basis supporting the finding including the type of report that was due, the filing deadline, the actual date filed (if filed), and the number of days the report was late (if filed);

(b) The applicable schedule of penalties;

(c) The number of times the respondent has been assessed a civil

money penalty under this subpart during the current two-year election cycle and the prior two-year election cycle;

(d) The amount of the proposed civil money penalty based on the schedules of penalties set forth in 11 CFR 111.43 or 111.44; and

(e) An explanation of the respondent's right to challenge both the reason to believe finding and the proposed civil money penalty.

**§ 111.33 What are the respondent's choices upon receiving the reason to believe finding and the proposed civil money penalty?**

The respondent must either send payment in the amount of the proposed civil money penalty pursuant to 11 CFR 111.34 or submit a written response pursuant to 11 CFR 111.35.

**§ 111.34 If the respondent decides to pay the civil money penalty and not to challenge the reason to believe finding, what should the respondent do?**

(a) The respondent shall transmit payment in the amount of the civil money penalty to the Commission within forty (40) days of the Commission's reason to believe finding.

(b) Upon receipt of the respondent's payment, the Commission shall send the respondent a final determination that the respondent has violated the statute or regulations and the amount of the civil money penalty and an acknowledgment of the respondent's payment.

**§ 111.35 If the respondent decides to challenge the alleged violation or proposed civil money penalty, what should the respondent do?**

(a) Within forty (40) days of the Commission's reason to believe finding, the respondent shall submit to the Commission a written response.

(b) The written response shall contain the following:

(1) Reason(s) why the respondent is challenging the reason to believe finding and/or civil money penalty which may consist of:

(i) The existence of factual errors; and/or

(ii) The improper calculation of the civil money penalty; and/or

(iii) The existence of extraordinary circumstances that were beyond the control of the respondent and that were for a duration of at least 48 hours and that prevented the respondent from filing the report in a timely manner;

(2) The factual basis supporting the reason(s); and

(3) Supporting documentation.

(4) Examples of circumstances that will not be considered extraordinary include, but are not limited to, the following:

(i) Negligence;

(ii) Problems with vendors or contractors;

(iii) Illness of staff;

(iv) Computer failures (except failures of the Commission's computers); and

(v) Other similar circumstances.

**§ 111.36 Who will review the respondent's written response?**

(a) A reviewing officer shall review the respondent's written response. The reviewing officer shall be a person who has not been involved in the reason to believe finding.

(b) The reviewing officer shall review the reason to believe finding with supporting documentation and the respondent's written response with supporting documentation. The reviewing officer may request supplemental information from the respondent and/or the Commission staff. The respondent shall submit the supplemental information to the reviewing officer within a time specified by the reviewing officer. The reviewing officer will be entitled to draw an adverse inference from the failure by the respondent to submit the supplemental information.

(c) All documents required to be submitted by the respondents pursuant to this section and § 111.35 should be submitted in the form of affidavits or declarations.

(d) If the Commission staff, after the respondent files a written response pursuant to § 111.35, forwards any additional documents pertaining to the matter to the reviewing officer for his or her examination, the reviewing officer shall also furnish a copy of the document(s) to the respondents.

(e) Upon completion of the review, the reviewing officer shall forward a written recommendation to the Commission along with all documents required under this section and 11 CFR 111.32 and 111.35.

(f) The reviewing office shall also forward a copy of the recommendation to the respondent. The respondent may file with the Commission Secretary a written response to the recommendation within ten (10) days of transmittal of the recommendation. This response may not raise any arguments not raised in the respondent's original written response or not directly responsive to the reviewing officer's recommendation.

**§ 111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?**

(a) If the Commission, after having found reason to believe and after reviewing the respondent's written response and the reviewing officer's recommendation, determines by an affirmative vote of at least four (4) of its members, that the respondent has violated 2 U.S.C. 434(a) and the amount of the civil money penalty, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(b) If the Commission, after reviewing the reason to believe finding, the respondent's written response, and the reviewing officer's written recommendation, determines by an affirmative vote of at least four (4) of its members, that no violation has occurred, or otherwise terminates its proceedings, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(c) The Commission will modify the proposed civil money penalty only if the respondent is able to demonstrate that the amount of the proposed civil money penalty was calculated on an incorrect basis.

(d) The Commission may determine, by an affirmative vote of at least four of its members, that a violation of 2 U.S.C. 434(a) has occurred but waive the penalty because the respondent has convincingly demonstrated the existence of extraordinary circumstances that were beyond the respondent's control and that were for a duration of at least 48 hours. The Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

**§ 111.38 Can the respondent appeal the Commission's final determination?**

Yes; within thirty (30) days of receipt of the Commission's final determination under 11 CFR 111.37, the respondent may submit a written petition to the district court of the United States for the district in which the respondent resides, or transacts business, requesting that the final determination be modified or set aside. The respondent's failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondent's right to present such argument in a petition to the district court under 2 U.S.C. 437g.

**§ 111.39 When must the respondent pay the civil money penalty?**

(a) If the respondent does not submit a written petition to the district court of the United States, the respondent must remit payment of the civil money penalty within thirty (30) days of receipt

of the Commission's final determination under 11 CFR 111.37.

(b) If the respondent submits a written petition to the district court of the United States and, upon the final disposition of the civil action, is required to pay a civil money penalty, the respondent shall remit payment of the civil money penalty to the Commission within thirty (30) days of the final disposition of the civil action. The final disposition may consist of a judicial decision which is not reviewed by a higher court.

(c) Failure to pay the civil money penalty may result in the commencement of collection action under 31 U.S.C. 3701 *et seq.* (1996), or a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A), or any other legal action deemed necessary by the Commission.

**§ 111.40 What happens if the respondent does not pay the civil money penalty pursuant to 11 CFR 111.34 and does not submit a written response to the reason to believe finding pursuant to 11 CFR 111.35?**

(a) If the Commission, after the respondent has failed to pay the civil money penalty and has failed to submit a written response, determines by an affirmative vote of at least four (4) of its members that the respondent has violated 2 U.S.C. 434(a) and determines the amount of the civil money penalty, the respondent shall be notified by letter of its final determination.

(b) The respondent shall transmit payment of the civil money penalty to the Commission within thirty (30) days of receipt of the Commission's final determination.

(c) Failure to pay the civil money penalty may result in the commencement of collection action under 31 U.S.C. 3701 *et seq.* (1996), or a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A), or any other legal action deemed necessary by the Commission.

**§ 111.41 To whom should the civil money penalty payment be made payable?**

Payment of civil money penalties shall be made in the form of a check or money order made payable to the Federal Election Commission.

**§ 111.42 Will the enforcement file be made available to the public?**

(a) Yes; the Commission shall make the enforcement file available to the public.

(b) If neither the Commission nor the respondent commences a civil action, the Commission shall make the enforcement file available to the public pursuant to 11 CFR 4.4(a)(3).

(c) If a civil action is commenced, the Commission shall make the enforcement file available pursuant to 11 CFR 111.20(c).

**§ 111.43 What are the schedules of penalties?**

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

| If the level of activity in the report was: | And the report was filed late, the civil money penalty is: | Or the report was not filed, the civil money penalty is: |
|---|---|---|
| $1–24,999.99[a] | [$100 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $900 × [1 + (.25 × Number of previous violations)]. |
| $25,000–49,999.99 | [$200 + ($50 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $1800 × [1 + (.25 × Number of previous violations)]. |
| $50,000–74,999.99 | [$300 + ($75 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $2700 × [1 + (.25 × Number of previous violations)]. |
| $75,000–99,999.99 | [$400 + ($100 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $3500 × [1 + (.25 × Number of previous violations)]. |
| $100,000–149,999.99 | [$600 + ($125 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $4500 × [1 + (.25 × Number of previous violations)]. |
| $150,000–199,999.99 | [$800 + ($150 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $5500 × [1 + (.25 × Number of previous violations)]. |
| $200,000–249,999.99 | [$1000 + ($175 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $6500 × [1 + (.25 × Number of previous violations)]. |
| $250,000–349,999.99 | [$1500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $8000 × [1 + (.25 × Number of previous violations)]. |
| $350,000–449,999.99 | [$2000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $9000 × [1 + (.25 × Number of previous violations)]. |
| $450,000–549,999.99 | [$2500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $9500 × [1 + (.25 × Number of previous violations)]. |
| $550,000–649,999.99 | [$3000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $10,000 × [1 + (.25 × Number of previous violations)]. |
| $650,000–749,999.99 | [$3500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $10,500 × [1 + (.25 × Number of previous violations)]. |
| $750,000–849,999.99 | [$4000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $11,000 × [1 + (.25 × Number of previous violations)]. |

| If the level of activity in the report was: | And the report was filed late, the civil money penalty is: | Or the report was not filed, the civil money penalty is: |
|---|---|---|
| $850,000–949,999.99 | [$4500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $11,500 × [1 + (.25 × Number of previous violations)]. |
| $950,000 or over | [$5000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $12,000 × [1 + (.25 × Number of previous violations)]. |

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in accordance with the following schedule of penalties.

| If the level of activity in the report was: | And the report was filed late, the civil money penalty is: | Or the report was not filed, the civil money penalty is: |
|---|---|---|
| $1–24,999.99[a] | [$150 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $1000 × [1 + (.25 × Number of previous violations)]. |
| $25,000–49,999.99 | [$300 + ($50 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $2000 × [1 + (.25 × Number of previous violations)]. |
| $50,000–74,999.99 | [$450 + ($75 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $3000 × [1 + (.25 × Number of previous violations)]. |
| $75,000–99,999.99 | [$600 + ($100 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $4000 × [1 + (.25 × Number of previous violations)]. |
| $100,000–149,999.99 | [$900 + ($125 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $5000 × [1 + (.25 × Number of previous violations)]. |
| $150,000–199,999.99 | [$1200 + ($150 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $6000 × [1 + (.25 × Number of previous violations)]. |
| $200,000–249,999.99 | [$1500 + ($175 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $7500 × [1 + (.25 × Number of previous violations)]. |
| $250,000–349,999.99 | [$2250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $9000 × [1 + (.25 × Number of previous violations)]. |
| $350,000–449,999.99 | [$3000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $10,000 × [1 + (.25 × Number of previous violations)]. |
| $450,000–549,999.99 | [$3750 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $11,000 × [1 + (.25 × Number of previous violations)]. |
| $550,000–649,999.99 | [$4500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $12,000 × [1 + (.25 × Number of previous violations)]. |
| $650,000–749,999.99 | [$5250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $13,000 × [1 + (.25 × Number of previous violations)]. |
| $750,000–849,999.99 | [$6000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $14,000 × [1 + (.25 × Number of previous violations)]. |
| $850,000–949,999.99 | [$6750 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $15,000 × [1 + (.25 × Number of previous violations)]. |
| $950,000 or over | [$7500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)]. | $16,000 × [1 + (.25 × Number of previous violations)]. |

[a] The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be $5,500.

(d) *Definitions.* For this section only, the following definitions will apply:

*Election Sensitive Reports* means third quarter reports due on October 15th before the general election (for all committees required to file this report except committees of candidates who do not participate in that general election); monthly reports due October 20th before the general election (for all committees required to file this report except committees of candidates who do not participate in that general election); and pre-election reports for primary, general, and special elections under 11 CFR 104.5.

*Estimated level of activity* means total receipts and disbursements reported in the current two-year election cycle divided by the number of reports filed to date covering the activity in the current two-year election cycle. If the respondent has not filed a report covering activity in the current two-year election cycle, estimated level of activity means total receipts and disbursements reported in the prior two-

year election cycle divided by the number of reports filed covering the activity in the prior two-year election cycle.

*Level of activity* means the total amount of receipts and disbursements for the period covered by the late report. If the report is not filed, the level of activity is the estimated level of activity.

*Number of previous violations* mean all prior final civil money penalties assessed under this subpart during the current two-year election cycle and the prior two-year election cycle.

(e) For purposes of the schedules of penalties in paragraphs (a) and (b) of this section,

(1) Reports that are not election sensitive reports are considered to be filed late if they are filed after their due dates but within thirty (30) days of their due dates. These reports are considered to be not filed if they are filed after thirty (30) days of their due dates or not filed at all.

(2) Election sensitive reports are considered to be filed late if they are filed after their due dates but prior to four (4) days before the primary election for pre-primary reports, prior to four (4) days before the special election for pre-special election reports, or prior to four (4) days before the general election for all other election sensitive reports. These reports are considered to be not filed if they are not filed prior to four (4) days before the primary election for pre-primary reports, prior to four (4) days before the special election for pre-special election reports or prior to four (4) days before the general election for all other election sensitive reports.

**§ 111.44 What is the schedule of penalties for 48-hour notices that are not filed or are filed late?**

(a) If the respondent fails to file timely a notice regarding contribution(s) received after the 20th day but more than 48 hours before the election as required under 2 U.S.C. 434(a)(6), the civil money penalty will be calculated as follows:

(1) Civil money penalty = $100 + (.10 × amount of the contribution(s) not timely reported).

(2) The civil money penalty calculated in paragraph (a)(1) of this section shall be increased by twenty-five percent (25%) for each prior violation.

(b) For purposes of this section, prior violation means a civil money penalty that has been assessed against the respondent under this subpart in the current two-year election cycle or the prior two-year election cycle.

**§ 111.45 What actions will be taken to collect unpaid civil money penalties?**

The Commission may take any and all appropriate collection actions authorized and required by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 et. seq.). The U.S. Department of the Treasury regulations at 31 CFR 285.2, 285.4, and 285.7 and the Federal Claims Collection Standards issued jointly by the Department of Justice and the Government Accounting Office at 4 CFR parts 101 through 105 also apply.

Dated: May 12, 2000.

**Darryl R. Wold,**

*Chairman, Federal Election Committee.*

[FR Doc. 00–12484 Filed 5–18–00; 8:45 am]

BILLING CODE 6715–01–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 91

**[Docket No. FAA–2000–7110; Amendment No. 91–262]**

**RIN 2120–AG94**

### Special Visual Flight Rules

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** This action amends the language regarding aircraft operating in accordance with Special Visual Flight Rules (SVFR). Specially, this action will permit a general aviation pilot at a satellite airport where weather reporting is not available, to depart in meteorological conditions less than basic Visual Flight Rules (VFR) weather minimums provided that the pilot determines that he has the requisite flight visibility. The FAA is taking this action to reduce the number of unnecessary flight delays being faced by general aviation aircraft while providing an equivalent level of safety.

**EFFECTIVE DATE:** The rule is effective on May 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Avis P. Person, Airspace and Rules Division (ATA–400), Air Traffic Airspace Management Program, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone number (202) 267–8783.

**SUPPLEMENTARY INFORMATION:** The FAA published this direct final rule with a request for comments in the **Federal Register** on March 24, 2000 (65 FR 16114). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 23, 2000. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Washington, DC, on May 12, 2000.

**Donald P. Byrne,**

*Assistant Chief Counsel, Regulations Division.*

[FR Doc. 00–12561 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 97

**[Docket No. 30042; Amdt. No. 1991]**

### Standard Instrument Approach Procedures; Miscellaneous Amendments

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

**DATES:** An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

**ADDRESSES:** Availability of matters incorporated by reference in the amendment is as follows:

**For Examination**

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

**For Purchase**

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

**By Subscription**

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

**FOR FURTHER INFORMATION CONTACT:** Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125, telephone: (405) 954–4164.

**SUPPLEMENTARY INFORMATION:** This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviatiion Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

**The Rule**

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

**Conclusion**

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) IS not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 97**

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on May 12, 2000.

**L. Nicholas Lacey,**

*Director, Flight Standards Service.*

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

## PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

**§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]**

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective June 15, 2000*

Patterson, LA, Harry P. Williams Memorial, ILS RWY 24, Orig
Patterson, LA, Harry P. Williams Memorial, LOC/DME RWY 24, Amdt 3, CANCELLED
Chicago, IL, Chicago O'Hare Intl, RNAV RWY 14L, Orig
Chicago, IL, Chicago O'Hare Intl, RNAV RWY 14R, Orig
Ardmore, OK, Ardmore Muni, VOR–B, Amdt 1
Ardmore, OK, Ardmore Muni, NDB RWY 31, Amdt 5
Ardmore, OK, Ardmore Muni, ILS RWY 31, Amdt 4
Ardmore, OK, Ardmore Muni, RNAV RWY 31, Orig
Ardmore, OK, Ardmore Muni, GPS RWY 31, Orig, CANCELLED
Rutland, VT, Rutland State, LOC/DME RWY 19, Orig

** * * Effective July 13, 2000*

Churchville, MD, Harford County, VOR/DME–A, Amdt 1

** * * Effective August 10, 2000*

Tanana, AK, Ralph M. Calhoun Meml, VOR/DME RWY 6, Amdt 1
Tanana, AK, Ralph M. Calhoun Meml, VOR–A, Amdt 7
Miami, FL, Miami Intl, LOC RWY 30, Amdt 6
Miami, FL, Miami Intl, NDB OR GPS RWY 27L, Amdt 19
Miami, FL, Miami Intl, ILS RWY 9L, Amdt 29

Miami, FL, Miami Intl, ILS RWY 9R, Amdt 9
Miami, FL, Miami Intl, ILS RWY 12, Amdt 4
Miami, FL, Miami Intl, ILS RWY 27L, Amdt 23
Miami, FL, Miami Intl, ILS RWY 27R, Amdt 14
Orlando, FL, Orlando Intl, VOR/DME RNAV RWY 36L, Orig, CANCELLED
Titusville, FL, Space Coast Regional, GPS RWY 9, Orig-B
Chicago, IL, Chicago Midway, ILS RWY 13C, Amdt 40
Winston Salem, NC, Smith Reynolds, VOR/DME RWY 15, Amdt 1B
Winston Salem, NC, Smith Reynolds, NDB RWY 33, Amdt 25B
Winston Salem, NC, Smith Reynolds, GPS RWY 15, Orig-B
Winston Salem, NC, Smith Reynolds, GPS RWY 33, Orig-B
New Philadelphia, OH, Harry Clever Field, VOR–A, Amdt 1
New Philadelphia, OH, Harry Clever Field, GPS RWY 14, Amdt 1
Portland, OR, Portland Intl, NDB OR GPS RWY 28L, Amdt 4
Portland, OR, Portland Intl, NDB RWY 28R, Amdt 11
Portland, OR, Portland Intl, ILS RWY 10R, Amdt 31
Myrtle Beach, SC, Myrtle Beach Intl, ILS RWY 17, Amdt 1
Myrtle Beach, SC, Myrthe Beach Intl, ILS RWY 35, Amdt 1
Myrtle Beach, SC, Myrtle Beach Intl, GPS RWY 35, Orig, CANCELLED
Myrtle Beach, SC, Myrtle Beach Intl, RNAV RWY 35, Orig
Myrtle Beach, SC, Myrtle Beach Intl, RNAV RWY 17, Orig
Madison, SD, Madison Muni, GPS RWY 33, Orig-B

** * * Effective October 5, 2000*

Cordova, AK, Merle K. (Mudhole) Smith, GPS RWY 27, Orig-A
Arcata-Eureka, CA, Arcata, VOR RWY 14, Amdt 7A
Montrose, CO, Montrose Regional, GPS RWY 13, Orig-B
Oxford, CT, Waterbury-Oxford, NDB RWY 18, Amdt 5A
Oxford, CT, Waterbury-Oxford, GPS RWY 18, Orig-A
Springfield, IL, Capital, NDB OR GPS RWY 4, Amdt 18A
Springfield, IL, Capital, NDB RWY 22, Orig-A
Sterling Rockfalls, IL, Whiteside Co Arpt-Jos H Bittorf Fld, LOC BC RWY 7, Amdt 5A
Sterling Rockfalls, IL, Whiteside Co Arpt-Jos H Bittorf Fld, NDB OR GPS RWY 7, Amdt 5A
Grand Rapids, MI, Gerald R. Ford Intl, VOR RWY 17, Orig-C
Cleveland, OH, Cuyahoga County, LOC BC RWY 5, Amdt 10B
Cleveland, OH, Cuyahoga County, NDB OR GPS RWY 23, Amdt 8B
Columbus, OH, Rickenbacker Intl, NDB OR GPS RWY 5R, Orig-A
Delarare, OH, Delaware Muni, VOR RWY 28, Orig-A
Delaware, OH, Delaware Muni, GPS RWY 10, Orig-A
Delaware, OH, Delaware Muni, GPS RWY 28, Orig-A
Mansfield, OH, Mansfield Lahm Muni, VOR OR GPS RWY 32, Amdt 6B
Wilmington, OH, Airborne Airpark, VOR/DME OR GPS RWY 22R, Amdt 4C
Pawtucket, RI, North Central State, GPS RWY 23, Orig-A
Pawtucket, RI, North Central State, LOC RWY 5, Amdt 5A
Spearfish, SD, Black Hills-Clyde Ice Field, GPS RWY 12, Orig-D

The FAA published an amendment in Docket No. 29995, Amdt. No. 1986 to Part 97 of the Federal Aviation Regulations (65 FR 20896; dated Wednesday, April 19, 2000), under § 97.23 effective June 15, 2000. That amendment, which appeared on page 20898, first column, lines 21 and 22, is corrected to read as follows:

Lancaster, PA, Lancaster, VOR/DME OR GPS RWY 8, Amdt 4

[FR Doc. 00–12559 Filed 5–18–00; 8:45 am]
BILLING CODE 4910–13–M

## SOCIAL SECURITY ADMINISTRATION

### 20 CFR Part 404

**[Regulations No. 4]**

**RIN 0960–AF03**

## Addition of Medical Criteria for Evaluating Down Syndrome in Adults

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Final rule.

**SUMMARY:** We are adding a new listing to evaluate non-mosaic Down syndrome in adults. Our current regulations only include a listing for evaluating Down syndrome in children; we evaluate claims filed by adults with Down syndrome under other listings. We are establishing a separate adult listing for this disorder to acknowledge its lifelong impact and severity. We expect that these final rules will simplify and expedite our adjudication of claims filed by adults with non-mosaic Down syndrome.

**DATES:** These rules are effective June 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Michelle Hungerman, Social Insurance Specialist, Office of Disability, Social Security Administration, 3–A–9 Operations Building, 6401 Security Boulevard, Baltimore, Maryland, 21235–6401, (410) 965–2289, TTY (410) 966–5609. For information on eligibility, claiming benefits, or coverage of earnings, call our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778.

**SUPPLEMENTARY INFORMATION:**

### Background

We pay disability benefits under title II of the Social Security Act (the Act) to disabled individuals who are insured under the Act. We also pay child's insurance benefits based on disability and widow's and widower's insurance benefits for disabled widows, widowers, and surviving divorced spouses of insured individuals. In addition, we make Supplemental Security Income (SSI) payments under title XVI of the Act to persons who are disabled and who have limited income and resources. For adults under both the title II and title XVI programs, and for persons claiming child's insurance benefits based on disability under title II, "disability" means that an impairment(s) results in an inability to engage in any substantial gainful activity. Disability must be the result of any medically determinable physical or mental impairment(s) that can be expected to result in death or that has lasted or can be expected to last for a continuous period of at least 12 months.

Although the listings are contained only in part 404, we incorporate them by reference in the SSI program by § 416.925 of our regulations. The listings are divided into part A and part B. We apply the criteria in part A when we evaluate impairments in adults, that is, persons age 18 or over. The listings in part A describe, for each of several major body systems, impairments that are considered severe enough to prevent a person from doing any gainful activity.

As a result of medical advances in disability evaluation and treatment, and program experience, we are required to periodically review and update the listings. In the Notice of Proposed Rulemaking (NPRM) we published in the **Federal Register** (64 FR 55215) on October 12, 1999, we indicated that we would review these rules on July 2, 2001. However, based on our experience adjudicating claims filed by adults with non-mosaic Down syndrome, we believe that these rules will continue to be valid for our program purposes after that date. Therefore, these rules will be in effect for 8 years after the effective date, unless we extend them, or revise and issue them again.

### Explanation of Final Rules

Aside from the change in the date on which these rules will no longer be effective, which we discussed above, we have made no changes from the proposed rules. We are adding a new listing to evaluate claims filed by adults who have non-mosaic Down syndrome. Since 1990, we have evaluated claims filed on behalf of children who have

non-mosaic Down syndrome under listing 110.06, but we have not had a Down syndrome listing for adults. Instead, we evaluate most of these claims under listing 12.05-Mental Retardation—which requires measurement of intellectual functioning. Almost all adults with Down syndrome also have moderate to severe musculoskeletal abnormalities, and many have other impairments, including cardiac, gastrointestinal, oral/facial and skeletal abnormalities. We also evaluate the physical impairments that such individuals may have under the appropriate body system listings.

For children, current listing 110.06 represents what we have known for some time: that when we obtain appropriate evidence, virtually all individuals who have non-mosaic Down syndrome will be found disabled under our rules. Therefore, listing 110.06 is met by showing that the individual has Down syndrome (excluding mosaic Down syndrome) that has been established by clinical findings, including the characteristic physical features, and laboratory evidence, including chromosomal analysis.

When listing 110.06 is met, disability is established from birth. In recognition of the fact that non-mosaic Down syndrome rarely, if ever, improves to the point that an individual would not meet our definition of disability, we are adding a corresponding listing in part A. We expect that this listing will simplify and expedite our adjudication of cases filed by adults with non-mosaic Down syndrome. We also expect that these rules will simplify and expedite the process of performing disability redeterminations at age 18 for individuals who are eligible for SSI as children on the basis of non-mosaic Down syndrome. Although it is the only listing in section 10.00, we are numbering the new listing as listing 10.06, to correspond to listing 110.06 in part B.

As in the childhood listing, final listing 10.06 provides that an individual age 18 or older who has non-mosaic Down syndrome established by clinical and laboratory findings, including chromosomal analysis, is considered disabled from birth. The new sections 10.00A and 10.00B in the preface to the listing provide rules for documenting non-mosaic Down syndrome. These rules are similar to those in the corresponding sections of the part B listing, 110.00A and 110.00B. Final 10.00A includes a provision similar to one in current 110.00A.2, which states that an individual with Down syndrome is considered disabled from birth. We included this provision in the final rules for adults to establish that the 12-month duration requirement has been met.

As we have done in part B of our listings, we are excluding mosaic Down syndrome from the listing. Mosaic Down syndrome is a rare form of the condition that is manifested in a wide range of impairment severity. The condition can be profound and disabling, but it can also be so slight as to go undetected. Therefore, it would not be appropriate to conclude that mosaic Down syndrome is always disabling. However, we will still find individuals with mosaic Down syndrome disabled if their impairments meet or are medically equivalent in severity to the requirements of other listings. An individual whose mosaic Down syndrome is "severe" but whose impairment(s) do not meet or medically equal the requirements of a listing may also be found disabled at the fifth step of the sequential evaluation process, based on an assessment of his or her residual functional capacity and consideration of his or her age, education, and work experience.

Finally, we are adding a new section 10.00C. This paragraph provides guidance for evaluating other chromosomal abnormalities.

**Other Changes**

Section 10.00 of part A of the listings was reserved for future use. We are now adding a new preface (10.00A, 10.00B, and 10.00C) and new listing 10.06 in this section. For this reason, and because Down syndrome often has physical as well as mental effects, we are adding the heading "Multiple body systems" for this section. We are also making minor editorial changes to the introductory text and table of contents to part A of appendix 1, to reflect the provisions of the final rules.

**Public Comments**

In the NPRM, we provided the public with a 60-day comment period. In response to the NPRM, we received comments from 20 commenters. Most of the comments came from individuals, many of whom have family members with Down syndrome. These commenters supported the proposed rules, without any suggested changes. Several comments came from interested organizations, including the National Down Syndrome Congress, the National Down Syndrome Society, the Arc of the United States, and the Joseph P. Kennedy, Jr., Foundation. Other comments came from the State agencies that make disability determinations for us.

All of the commenters supported the addition of an adult listing for evaluating non-mosaic Down syndrome. The summaries of the significant comments we received and our responses to them follow. We have tried to summarize the commenters' views accurately, and have responded to all of the significant issues raised that are within the scope of the proposed rules.

*Comment:* Commenters from a State agency that makes disability determinations for us agreed that including a separate listing for evaluating non-mosaic Down syndrome in adults was a good idea that would help simplify the adjudication of these cases. Two commenters from a State agency asked us to consider additional revisions to the listings to include other genetic disorders. One of these commenters specifically suggested we add a listing for evaluating Lowe's syndrome.

*Response:* We have not adopted the comment. Lowe's syndrome is a genetic disorder that primarily affects the eyes, brain, and kidneys. As with most genetic disorders, the physical stigmas and the degree of mental retardation associated with Lowe's syndrome vary widely. Therefore, we cannot conclude that the impairment is always of listing-level severity. Section 10.00C of these final rules provides that genetic disorders other than non-mosaic Down syndrome should be evaluated under the listings for the affected body system. We believe that this section will allow us to evaluate appropriately the effects of other genetic disorders, including Lowe's syndrome.

*Comment:* One commenter indicated that laboratory testing for Down syndrome is generally done at birth or soon thereafter. This commenter stated that, since the listing would apply to individuals who are at least 18 years old, the result of any laboratory testing might be difficult to obtain due to the passage of time. The commenter questioned what type of medical evidence could be used to establish the diagnosis under the provisions of section 10.00B of these final rules. The commenter also asked if SSA would pay for chromosomal analysis if needed.

*Response:* Section 10.00B of the final rules provides that, in lieu of a copy of the actual laboratory report, medical evidence that is persuasive that a positive diagnosis has been confirmed by an appropriate laboratory testing, at some time prior to evaluation, is acceptable documentation of the existence of non-mosaic Down syndrome. Under this provision, the file must contain an acceptable reference to the fact that testing was conducted and the results of that testing. The referenced results must be consistent

with other evidence in file, *e.g.*, the description of the usual abnormal physical findings, the individual's educational history, or the results of psychological testing, if performed. Generally, this information will give us sufficient evidence to establish the diagnosis. However, in the unusual case in which it becomes necessary, SSA can purchase the appropriate blood test.

*Comment:* Another commenter from a State agency that makes disability determinations for us agreed that this listing will assist in the adjudication of adult cases, age-18 redetermination cases, and continuing disability review (CDR) cases. This commenter asked whether we could revise the listing to indicate that medical improvement is not expected and that the cases adjudicated under listing 10.06 be diaried for 7 years.

*Response:* After we find that an individual is disabled, we must evaluate his or her continued eligibility for benefits from time to time. SSA issues guidelines on how to schedule these reviews through internal operating instructions in our Program Operations Manual System (POMS). We will consider the guidelines recommended by the commenter when we issue POMS instructions on how to schedule CDR diaries for adults found disabled based on non-mosaic Down syndrome.

*Comment:* One commenter representing an interested organization expressed support for adding a new listing to provide for the evaluation of Down syndrome for adults. This commenter urged SSA to provide training to all adjudicators when these rules become final.

*Response:* We agree with the commenter's recommendation. In accordance with our usual practice, we will conduct training for all adjudicators after the final rules are published.

For the reasons given in our responses to the comments on the proposed rules, we have not made further changes to the text of the proposed rules. Other than the one change discussed above, we are publishing the proposed regulations as final regulations.

**Regulatory Procedures**

**Executive Order 12866**

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules do not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, the final rules were not subject to OMB review. We have also determined that these final rules meet the plain language requirement of Executive Order 12866 and the President's memorandum of June 1, 1998 (63 FR 31885).

**Regulatory Flexibility Act**

We certify that these final rules will not have a significant economic impact on a substantial number of small entities because they only affect individuals. Therefore, a regulatory flexibility analysis, as provided in the Regulatory Flexibility Act, as amended, is not required.

**Paperwork Reduction Act**

These final rules impose no reporting/recordkeeping requirements necessitating clearance by OMB.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social Security-Survivors Insurance; 96.006, Supplemental Security Income)

**List of Subjects in 20 CFR Part 404**

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: May 3, 2000.

**Kenneth S. Apfel,**

*Commissioner of Social Security.*

For the reasons set out in the preamble, we are amending part 404, subpart P, of chapter III of title 20 of the Code of Federal Regulations to read as follows:

## PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950– )

1. The authority citation for subpart P of part 404 continues to read as follow:

**Authority:** Secs. 202, 205(a), (b) and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b) and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub.L. 104–193, 110 Stat. 2105, 2189.

**Appendix 1 to Subpart P of Part 404—[Amended]**

2. Appendix 1 to subpart P of part 404 is amended as follows:

a. Item 11 of the introductory text before Part A of appendix 1 is revised.

b. The Table of Contents for part A of appendix 1 is amended by adding section 10.00.

c. Section 10.00 is added to Part A of appendix 1.

The added and revised text reads as follows:

**Appendix 1 To Subpart P of Part 404—Listing of Impairments**

* * * * *

11. Multiple Body Systems (10.00): June 19, 2008, and (10.00): July 2, 2001.

* * * * *

Part A

* * * * *

10.00 Multiple Body Systems

* * * * *

10.00 MULTIPLE BODY SYSTEMS

A. Down syndrome (except for mosaic Down syndrome (see 10.00C)) established by clinical findings, including the characteristic physical features, and laboratory evidence is considered to meet the requirement of listing 10.06, commencing at birth.

B. Documentation must include confirmation of a positive diagnosis by a clinical description of the usual abnormal physical findings associated with the condition and definitive laboratory tests, including chromosomal analysis. Medical evidence that is persuasive that a positive diagnosis has been confirmed by appropriate laboratory testing, at some time prior to evaluation, is acceptable in lieu of a copy of the actual laboratory report.

C. Other chromosomal abnormalities, *e.g.*, mosaic Down syndrome, fragile X syndrome, phenylketonuria, and fetal alcohol syndrome, produce a pattern of multiple impairments but manifest in a wide range of impairment severity. Therefore, the effects of these impairments should be evaluated under the affected body system.

10.01 Category of Impairments, Multiple Body Systems

10.06 *Down syndrome (excluding mosaic Down syndrome)* established by clinical and laboratory findings, as described in 10.00B. Consider the individual disabled from birth.

* * * * *

[FR Doc. 00–12593 Filed 5–18–00; 8:45 am]

BILLING CODE 4191–02–U

**DEPARTMENT OF TRANSPORTATION**

**Federal Highway Administration**

**23 CFR Parts 450 and 771**

**49 CFR Parts 619 and 622**

**Federal Transit Administration**

# Policy Guidance Concerning Application of Title VI of the Civil Rights Act of 1964 to Metropolitan and Statewide Planning

**AGENCIES:** Federal Highway Administration (FHWA), and Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of policy.

**SUMMARY:** This document publishes guidance regarding the implementation of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–4) concerning nondiscrimination in federally assisted programs, in metropolitan and statewide planning. This guidance was previously issued on October 7, 1999, as a memorandum to FTA Regional Administrators and FHWA Division Administrators, and is printed in its entirety.

**FOR FURTHER INFORMATION CONTACT:** For application to metropolitan planning, Mr. Sheldon M. Edner, FHWA, (202) 366–4066 or Mr. Charles Goodman, FTA, (202) 366–1944. For application to statewide planning, Mr. Dee Spann, FHWA, (202) 366–4086 or Mr. Paul Verchinski, FTA, (202) 366–1626. All are located at the U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

## Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at http://www.nara.gov/fedreg and the Government Printing Office's web page at http://www.access.gpo.gov/nara.

(Authority: 23 U.S.C. 315; 49 CFR 1.48 and 1.51)

Issued on: May 9, 2000.

**Nuria I. Fernandez,**

*Acting Administrator.*

**Kenneth R. Wykle,**

*Federal Highway Administrator.*

The guidance memorandum reads as follows:

Date: October 7, 1999.
Subject: *ACTION:* Implementing Title VI Requirements in Metropolitan and Statewide Planning
From: Gordon J. Linton, Administrator, FTA
Kenneth R. Wykle, Administrator, FHWA
To: FTA Regional Administrators
FHWA Division Administrators

## Background

The purpose of this memorandum is to issue clarification to you in implementing Title VI of the 1964 Civil Rights Act (42 U.S.C. 2000d–1) and related regulations, The President's Executive Order on Environmental Justice, the U.S. DOT Order, and the FHWA Order.

Title VI states that "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Title VI bars intentional discrimination as well as disparate impact discrimination (*i.e.*, a neutral policy or practice that has a disparate impact on protected groups).

The Environmental Justice (EJ) Orders further amplify Title VI by providing that "each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."

Increasingly, concerns for compliance with provisions of Title VI and the EJ Orders have been raised by citizens and advocacy groups with regard to broad patterns of transportation investment and impact considered in metropolitan and statewide planning. While Title VI and EJ concerns have most often been raised during project development, it is important to recognize that the law also applies equally to the processes and products of planning. The appropriate time for FTA and FHWA to ensure compliance with Title VI in the planning process is during the planning certification reviews conducted for Transportation Management Areas (TMAs) and through the statewide planning finding rendered at approval of the Statewide Transportation Improvement Program (STIP).

This memorandum serves as clarification pending issuance of revised planning and environmental regulations.

## Requested Action

We request that during certification reviews you raise questions that serve to substantiate metropolitan planning organization (MPO) self-certification of Title VI compliance. Suggested questions are attached. Also attached are a series of actions that could be taken to support Title VI compliance and EJ goals, improve planning performance, and minimize the potential for subsequent corrective action and complaint.

Statewide planning is also subject to the same Title VI legislative requirements as the metropolitan planning process. The FHWA division offices, jointly with FTA regional offices, should review and document Title VI compliance when making the TEA–21 required finding that STIP development and the overall planning process is consistent with the planning requirements.

In part, the purpose of asking the questions attached to this memorandum is to review the basis upon which the annual self-certification of compliance with Title VI is made. The metropolitan planning certification reviews in TMAs and STIP findings offer an opportunity to FHWA and FTA staff to verify the procedures and analytical foundation upon which the self-certification is made. If it becomes evident that the self-certification was not adequately supported, a corrective action is to be included in their certification report to rectify the deficiency.

The FHWA's and FTA's Division and Regional Administrators should involve their respective civil rights staffs in the EJ and Title VI portions of the metropolitan planning certification reviews in TMAs and statewide planning findings.

## Forthcoming Planning Regulations

As you know, FHWA and FTA are preparing to revise the planning (23 CFR 450 and 49 CFR 619) and environmental (23 CFR 771 and 49 CFR 622) regulations. In these rulemakings and subsequent documents, we will propose clarifications and appropriate procedural and analytical approaches for more completely complying with the provisions of Title VI and the Executive Order on Environmental Justice. Specifically, the proposals will focus on

public involvement strategies for minority and low-income groups and assessment of the distribution of benefits and adverse environmental impacts at both the plan and project level.

If you have questions on metropolitan applications of this memorandum, please contact Sheldon M. Edner, Team Leader, Metropolitan Planning and Policies, FHWA, (202) 366–4066; or Charlie Goodman, Division Chief, Metropolitan Planning, FTA (202) 366–1944. On statewide applications, please contact Dee Spann, Team Leader, Statewide Planning, FHWA; (202) 366–4086; or Paul Verchinski, Chief, Statewide Planning, FTA, (202) 366–1626.

**Assessing Title VI Capability—Review Questions**

*September 1999*

Discussion of these important issues will be held as part of planning certification reviews, and the discussion will be held as part of statewide planning findings that are made as part of Statewide Transportation Improvement Program (STIP) approval. These questions are offered as an aid to reviewing and verifying compliance with Title VI requirements:

*1. Overall Strategies and Goals*

- What strategies and efforts has the planning process developed for ensuring, demonstrating, and substantiating compliance with Title VI? What measures have been used to verify that the multi-modal system access and mobility performance improvements included in the plan and Transportation Improvement Program (TIP) or STIP, and the underlying planning process, comply with Title VI?
- Has the planning process developed a demographic profile of the metropolitan planning area or State that includes identification of the locations of socio-economic groups, including low-income and minority populations as covered by the Executive Order on Environmental Justice and Title VI provisions?
- Does the planning process seek to identify the needs of low-income and minority populations? Does the planning process seek to utilize demographic information to examine the distributions across these groups of the benefits and burdens of the transportation investments included in the plan and TIP (or STIP)? What methods are used to identify imbalances?

*2. Service Equity*

- Does the planning process have an analytical process in place for assessing the regional benefits and burdens of transportation system investments for different socio-economic groups? Does it have a data collection process to support the analysis effort? Does this analytical process seek to assess the benefit and impact distributions of the investments included in the plan and TIP (or STIP)?
- How does the planning process respond to the analyses produced? Imbalances identified?

*3. Public Involvement*

- Does the public involvement process have an identified strategy for engaging minority and low-income populations in transportation decisionmaking? What strategies, if any, have been implemented to reduce participation barriers for such populations? Has their effectiveness been evaluated?
- Has public involvement in the planning process been routinely evaluated as required by regulation? Have efforts been undertaken to improve performance, especially with regard to low-income and minority populations? Have organizations representing low-income and minority populations been consulted as part of this evaluation? Have their concerns been considered?
- What efforts have been made to engage low-income and minority populations in the certification review public outreach effort? Does the public outreach effort utilize media (such as print, television, radio, etc.) targeted to low-income or minority populations? What issues were raised, how are their concerns documented, and how do they reflect on the performance of the planning process in relation to Title VI requirements?
- What mechanisms are in place to ensure that issues and concerns raised by low-income and minority populations are appropriately considered in the decisionmaking process? Is there evidence that these concerns have been appropriately considered? Has the metropolitan planning organization (MPO) or State DOT made funds available to local organizations that represent low-income and minority populations to enable their participation in planning processes?

**Guidance:**

**Assessing Title VI Capability—FTA/FHWA Actions**

*Environmental Justice in State Planning and Research (SPR) and Unified Planning Work Programs (UPWPs)*

At a minimum, FHWA and FTA should review with States, MPOs, and transit operators how Title VI is addressed as part of their public involvement and plan development processes. Since there is likely to be the need for some upgrading of activity in this area, a work element to assess and develop improved strategies for reaching minority and low-income groups through public involvement efforts and to begin developing or enhancing analytical capability for assessing impact distributions should be considered in upcoming SPRs and UPWPs.

*Review Public Involvement Efforts During Certification Reviews for Title VI Consistency*

In many areas, room for improvement exists in public involvement processes regarding engagement of minority and low-income individuals. It is appropriate to review the extent to which MPOs and States have made proactive efforts to engage these groups through their public involvement programs. Further, FHWA and FTA should review the record of complaints or concerns raised regarding Title VI in the planning process under review. During the on-site element of the metropolitan certification review, the public involvement process, now required by statute, should make a special effort to engage and involve representatives of minority and low-income groups to hear their views regarding changes to and performance of the planning process.

*Options for FHWA/FTA Metropolitan Certification Review Actions*

(1) FHWA and FTA should seek to determine what, if any, processes are in place to assess the distribution of impacts on different socio-economic groups for the investments identified in the transportation plan and TIP. If the planning process has no such capability in place, there needs to be further investigation as to how the MPO is able to annually self-certify its compliance with the provisions of Title VI.

(2) If no documented process exists for assessing the distributional effects of the transportation investments in the region, the planning certification report should include a corrective action directing the development of a process for accomplishing this end. This will

serve to put the process on notice regarding existing requirements and prepare it for future regulatory requirements. If a minimal effort is in place, FHWA and FTA should encourage the planning process participants to become familiar with the provisions of the Executive Order on Environmental Justice and identify needed improvements based on the Order.

(3) If no formal evaluation of the public involvement process has been conducted per the requirement for periodic assessment (see 23 CFR 450.316(b)), a corrective action to conduct an evaluation should be included in the certification report. The formal evaluation should, at a minimum, assess the effectiveness of efforts to engage minority and low-income populations through the local public involvement process. If the MPO or State has conducted a public involvement evaluation, FHWA and FTA should determine whether the involvement of minorities and low-income individuals has been addressed and what strengths and deficiencies were identified. Recommended improvements or corrective actions for the certification report or STIP findings can be tied to the results of the MPO's or State's public involvement evaluation.

[FR Doc. 00–12590 Filed 5–18–00; 8:45 am]
BILLING CODE 4910–22–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

[TD 8885]

RIN 1545–AW55

## The Solely for Voting Stock Requirement in Certain Corporate Reorganizations

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation.

**SUMMARY:** This document contains final regulations relating to the solely for voting stock requirement in certain corporate reorganizations under section 368(a)(1)(C). The final regulations provide that a prior acquisition of a target corporation's stock by an acquiring corporation generally will not prevent the solely for voting stock requirement in a "C" reorganization of the target corporation and the acquiring corporation from being satisfied. They affect persons engaging in certain transactions occurring after December 31, 1999.

**DATES:** *Effective Date:* These regulations are effective May 19, 2000.

*Applicability Date:* These regulations apply to transactions occurring after December 31, 1999, unless the transaction occurs pursuant to a written agreement that is (subject to customary conditions) binding on that date and at all times thereafter.

**FOR FURTHER INFORMATION CONTACT:** Marnie Rapaport, (202) 622–7550 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

On June 14, 1999, the IRS and Treasury issued a notice of proposed rulemaking in the **Federal Register** (64 FR 31770) setting forth rules relating to the solely for voting stock requirement in reorganizations under section 368(a)(1)(C). The proposed regulations provided that prior ownership of stock of a target corporation by an acquiring corporation will not by itself prevent the solely for voting stock requirement of a "C" reorganization from being satisfied. The regulations propose to reverse the IRS's previous position that the acquisition of assets of a partially controlled subsidiary does not qualify as a tax-free "C" reorganization. See Rev. Rul. 54–396 (1954–2 C.B. 147). This position subsequently was sustained in litigation in *Bausch & Lomb Optical Co.* v. *Commissioner*, 267 F.2d 75 (2d Cir.), *cert. denied*, 361 U.S. 835 (1959) (the *Bausch & Lomb* doctrine). A public hearing regarding these proposed regulations was held on October 5, 1999. Written comments to the notice were received. After consideration of all the comments, the proposed regulations are adopted as revised by this Treasury decision.

### Explanation of Revisions and Summary of Comments

*The Applicability Date*

The proposed regulations apply to transactions occurring after the date that a Treasury decision adopting the regulations is published in the **Federal Register**, except that they do not apply to any transactions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date that the regulations are published as final regulations in the **Federal Register**, and at all times thereafter.

A commentator requested that taxpayers be allowed to apply the proposed regulations to transactions occurring before the proposed regulations are published as final regulations.

The IRS and Treasury Department determined that the increased flexibility that results from the proposed regulations should be available to taxpayers in structuring transactions before their publication as final regulations. Accordingly, the IRS and the Treasury Department issued Notice 2000–1 (2000–2 I.R.B. 288), which changes the proposed effective date of the proposed regulations to apply to any transactions occurring after December 31, 1999, unless the transaction occurs pursuant to a written agreement binding on that date. Notice 2000–1 further provides that the proposed regulations, when finalized, will adopt this effective date rule and that taxpayers may rely on Notice 2000–1 until final regulations are issued. Accordingly, the final regulations adopt this effective date rule.

Finally, Notice 2000–1 provides that taxpayers may request a private letter ruling permitting them to apply the final regulations to transactions occurring on or after June 11, 1999 (the date the proposed regulations were filed with the **Federal Register**) to which the final regulations would not otherwise apply, and for which there was not a written agreement (subject to customary conditions) binding on June 11, 1999 and at all times thereafter. The Notice cautions, however, that a private letter ruling will not be issued unless the taxpayer establishes to the satisfaction of the IRS that there is not a significant risk of different parties to the transaction taking inconsistent positions, for U.S. tax purposes, with respect to the applicability of the final regulations to the transaction. Any such requests for a ruling will continue to be considered.

*Extension of the Repeal of the Bausch & Lomb Doctrine to "B" Reorganizations*

A comment was received requesting that the IRS reconsider its position in Rev. Rul. 69–294 (1969–1 C.B. 110), where the *Bausch & Lomb* doctrine was applied to disqualify a purported section 368(a)(1)(B) reorganization that followed a tax-free section 332 liquidation. In Rev. Rul. 69–294, X owned all of the stock of Y and Y owned 80 percent of the stock of Z. Y completely liquidated into X in a section 332 liquidation. As part of the plan, X (now owning 80 percent of the stock of Z) acquired the minority 20 percent stock interest in Z in exchange for X voting stock in a purported "B" reorganization. The ruling holds that the exchange with the 20 percent minority shareholders was not a "B" reorganization. The rationale is that although the acquisition from the

minority shareholders was "solely for voting stock," the liquidation of Y, as part of the same plan, resulted in X acquiring 80 percent of the Z stock in exchange for Y stock surrendered back to Y on the liquidation of Y and not solely in exchange for X voting stock.

The commentator's suggestion is beyond the scope of this regulations project, which relates to "C" reorganizations. In light of these regulations, however, the IRS and Treasury Department may reconsider Rev. Rul. 69–294.

**Effect on Other Documents**

The following publication is obsolete as of January 1, 2000: Rev. Rul. 54–396 (1954–2 C.B. 147).

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal author of these regulations is Marnie Rapaport of the Office of the Assistant Chief Counsel (Corporate), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Adoption of Amendments to the Regulations**

Accordingly, 26 CFR part 1 is amended as follows:

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Section 1.368–2 is amended by adding paragraph (d)(4) to read as follows:

**§ 1.368–2 Definition of terms.**

* * * * *

(d) * * *

(4)(i) For purposes of paragraphs (d)(1) and (2)(ii) of this section, prior ownership of stock of the target corporation by an acquiring corporation will not by itself prevent the solely for voting stock requirement of such paragraphs from being satisfied. In a transaction in which the acquiring corporation has prior ownership of stock of the target corporation, the requirement of paragraph (d)(2)(ii) of this section is satisfied only if the sum of the money or other property that is distributed in pursuance of the plan of reorganization to the shareholders of the target corporation other than the acquiring corporation and to the creditors of the target corporation pursuant to section 361(b)(3), and all of the liabilities of the target corporation assumed by the acquiring corporation (including liabilities to which the properties of the target corporation are subject), does not exceed 20 percent of the value of all of the properties of the target corporation. If, in connection with a potential acquisition by an acquiring corporation of substantially all of a target corporation's properties, the acquiring corporation acquires the target corporation's stock for consideration other than the acquiring corporation's own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties), whether from a shareholder of the target corporation or the target corporation itself, such consideration is treated, for purposes of paragraphs (d)(1) and (2) of this section, as money or other property exchanged by the acquiring corporation for the target corporation's properties. Accordingly, the transaction will not qualify under section 368(a)(1)(C) unless, treating such consideration as money or other property, the requirements of section 368(a)(2)(B) and paragraph (d)(2)(ii) of this section are met. The determination of whether there has been an acquisition in connection with a potential reorganization under section 368(a)(1)(C) of a target corporation's stock for consideration other than an acquiring corporation's own voting stock (or voting stock of a corporation in control of the acquiring corporation if such stock is used in the acquisition of the target corporation's properties) will be made on the basis of all of the facts and circumstances.

(ii) The following examples illustrate the principles of this paragraph (d)(4):

*Example 1.* Corporation P (P) holds 60 percent of the Corporation T (T) stock that P purchased several years ago in an unrelated transaction. T has 100 shares of stock outstanding. The other 40 percent of the T stock is owned by Corporation X (X), an unrelated corporation. T has properties with a fair market value of $110 and liabilities of $10. T transfers all of its properties to P. In exchange, P assumes the $10 of liabilities, and transfers to T $30 of P voting stock and $10 of cash. T distributes the P voting stock and $10 of cash to X and liquidates. The transaction satisfies the solely for voting stock requirement of paragraph (d)(2)(ii) of this section because the sum of $10 of cash paid to X and the assumption by P of $10 of liabilities does not exceed 20% of the value of the properties of T.

*Example 2.* The facts are the same as in *Example 1* except that P purchased the 60 shares of T for $60 in cash in connection with the acquisition of T's assets. The transaction does not satisfy the solely for voting stock requirement of paragraph (d)(2)(ii) of this section because P is treated as having acquired all of the T assets for consideration consisting of $70 of cash, $10 of liability assumption and $30 of P voting stock, and the sum of $70 of cash and the assumption by P of $10 of liabilities exceeds 20% of the value of the properties of T.

(iii) This paragraph (d)(4) applies to transactions occurring after December 31, 1999, unless the transaction occurs pursuant to a written agreement that is (subject to customary conditions) binding on that date and at all times thereafter.

* * * * *

**David A. Mader,**

*Acting Deputy Commissioner of Internal Revenue.*

Approved: May 9, 2000.

**Jonathan Talisman,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–12406 Filed 5–18–00; 8:45 am]

BILLING CODE 4830–01–P

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 155**

**46 CFR Part 32**

**[USCG 1998–4443]**

**RIN 2115–AF65**

## Emergency Control Measures for Tank Barges

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements measures for maintaining or regaining control of a tank barge that will reduce the likelihood of a tank barge's

grounding and spilling its cargo. These measures are necessary because without them a tug that loses its tow lacks ready means for regaining control of it. They should increase the safety of marine transport and protect the environment.

**DATES:** This final rule is effective June 19, 2000 except for 33 CFR 155.230(b)(1) and 46 CFR 32.15–15(e), which are effective on December 11, 2000.

**ADDRESSES:** The Docket Management Facility maintains the public docket for this rulemaking. Unless otherwise indicated, documents mentioned in this preamble will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** For questions on this final rule, call Mr. Robert Spears, Project Manager, Office of Standards Evaluation and Development, telephone 202–267–1099; or Mr. Allen Penn, Technical Advisor, Office of Design and Engineering Standards, telephone 202–267–2997. For questions on viewing the docket, call Ms. Dorothy Walker, Chief, Documents, Department of Transportation, telephone 202–366–9329.

**Background and Purpose**

On January 19, 1996, the tugboat SCANDIA, towing the oil barge NORTH CAPE, caught fire five miles off the coast of Rhode Island. The crew could not control the fire, and without power they were unable to prevent the barge, carrying 4 million gallons of oil, from grounding and spilling about a quarter of its contents into the coastal waters. The NORTH CAPE spill led Congress to add, in section 901 of the 1996 Coast Guard Authorization Act (Pub. L. 104–324), a new statute, 46 U.S.C. 3719. It directs the Secretary of Transportation to issue rules necessary to reduce oil spills from single-hull non-self-propelled tank vessels. On October 6, 1997, we published a notice of proposed rulemaking (NPRM) on safety of towing vessels and tank barges (62 FR 52057). With the interim rule we published on December 30, 1998 (63 FR 71754), we adjusted safety measures proposed in the NPRM. With this final rule, instead of requiring just one emergency control measure, we are requiring an anchoring system (on single-hull tank barges) plus one other (backup) measure.

**Statutory Mandate**

46 U.S.C. 3719 directs us to issue rules requiring a single-hull, non-self-propelled tank vessel (or the vessel towing it), operating in the open ocean or coastal waters, to have at least one of the three safety measures listed in the law. Under reasonably foreseeable sea conditions, without assistance, either the tank barge or the vessel towing it must have—

(1) A crewmember and an operable anchor on board the tank barge that together can stop the barge from drifting; and either

(2) An emergency system that will allow the retrieval of the barge by the towing vessel if the towline parts; or

(3) Another measure or combination of measures that the Coast Guard determines will provide protection against grounding of the tank vessel equivalent to that provided by the measure described in paragraph (1) or (2).

Another statute to reduce oil spills from single-hull tank barges, 46 U.S.C. 4102(f)(2), directs the Coast Guard to require the use of fire suppression systems and other measures for towing vessels. On October 19, 1999, we published an interim rule, Fire Protection Measures for Towing Vessels (USCG 1998–4445) that implements some of the fire protection measures we had proposed in the NPRM of October 6, 1997. A supplemental notice of proposed rulemaking will propose further measures in response to comments we received. Both statutes mandating new rules direct the Coast Guard to consult with the Towing Safety Advisory Committee (TSAC) in developing them. As we noted in the NPRM, we considered the recommendations of the TSAC and incorporated them as we deemed appropriate.

**Regulatory Approach**

In response to these statutory mandates, the Coast Guard proposed rules for fire protection and fire-fighting on towing vessels operating anywhere in U.S. waters, and rules for arresting and retrieving tank barges. This final rule applies to single-hull tank barges, as specified in 46 U.S.C. 3719. Rules in 33 CFR 155.230 before this rulemaking required emergency towing capability for both single-hull and double-hull barges operating outside the boundary line. So double-hull tank barges already satisfy 33 CFR 155.230 as amended by this rule. The rules for barge control require any single-hull tank barge or the vessel towing it on certain waters to have two of three emergency control systems, where one serves for anchoring the barge while one of the other two serves for arresting or retrieving it.

**Discussion of Comments and Changes**

The Coast Guard received a total of 23 documents containing 38 comments to the public docket of the interim rule on emergency control measures for tank barges. Of these comments, 11 concerned anchoring systems, 5 concerned the rule as applied, or not applied, to barges being pushed or towed alongside on limited routes, 12 concerned specific sections of 33 CFR Part 155, and the rest concerned general features of the proposed rule. We held a public meeting on May 12, 1999, at the Department of Transportation in Washington, D.C. This final rule addresses the comments from the meeting and all other comments noted above. The following paragraphs contain summaries of the comments and explanations of any changes made by this rule to the interim rule.

*Anchoring Systems*

Eleven comments received from companies, organizations, or individuals on the West Coast opposed the use of anchoring systems there. They offered many reasons to support some alternative means of maintaining control of barges along the West Coast: many cited the unsuitability of anchors as a means to control barges due to the lack of anchorage areas. The comments also cited the high costs to retrofit their barges, arguing that water depths on the West Coast drop off into significantly deeper water closer to shore than along the East Coast. Some comments reported that the heavy surge gear and bridle legs used in towing on the West Coast act as anchors in shallow water when they lie on the bottom; it is not uncommon for operators to use this equipment to "anchor" barges in sheltered areas until storms or dangerous seas subside. The Coast Guard acknowledges these comments and has changed the interim rule to give those operating barges on the West Coast the option of using the heavy surge gear and bridle legs in place of the anchoring systems otherwise required by this final rule. We do not extend this option to barges operating on the East Coast and the Gulf Coast, since the anchoring system required by the final rule is both feasible and effective in the shallower waters of those Coasts. Further, the heavy surge gear and bridle legs have not been shown to be an effective means of anchoring barges in those waters.

*Application to Barges Pushed or Towed Alongside on Limited Routes*

Five comments opposed applying this rule to barges not towed astern or barges towed on limited routes. The Coast Guard agrees with these comments and has changed the rule to exempt these specific kinds of towing.

*Comments Relating to Specific Sections of the CFR*

1. *33 CFR 155.230(b)(1)(i)(C).* One comment suggests letting the operator of the system consult either the master or mate regarding appropriate length of line, cable, or chain. The Coast Guard agrees with the comment and has changed this section of the rule by adding the mate as an alternative to the operator of the system.

2. *33 CFR 155.230(b)(1)(i)(D).* Three comments opposed requiring the operator of the system to wear a safety belt or harness secured by lanyard to a lifeline, a drop line, or a fixed structure. The Coast Guard partially agrees with these comments and has changed this section of the rule to recommend that the operator of the system wear a safety belt or harness only during rough seas or foul weather.

3. *33 CFR 155.230(b)(1)(iii).* One comment opposed requiring training all crewmembers on manned barges in the operation of the anchoring system. The Coast Guard disagrees. To avoid having to place a person on a barge for a genuinely emergent anchoring or retrieval, it is essential that every crewmember already on the barge know how to operate the anchoring system. Another comment suggests that the Coast Guard require exam questions or training to improve safety of anchoring. The Coast Guard partially agrees, yet has not changed the rule, since this section already requires crew training in anchoring.

4. *33 CFR 155.230(b)(2)(iv).* Seven comments opposed requiring drills that involve actually retrieving a drifting barge. They state that requiring such drills will place one or more crewmembers in danger and impose high costs of re-rigging the system. A related comment suggested a one-time training "exercise" for each master, and quarterly "tabletop" retrieval drills and gear inspection. The Coast Guard agrees with these comments and has changed the rule to require an annual barge-retrieval drill, and a drill not more than one month after the employment of the master or mate responsible for supervising retrieval. This requirement allows for methods other than actually retrieving a drifting barge to demonstrate each participant's ability to perform his or her part in regaining control of a barge.

*General Comments*

1. One comment opposed the applicability of this rule to the Strait of Juan de Fuca and parts of Puget Sound. It states that the open-ocean type swells that can cause towline failures are not common in the Strait, and that there are ample sheltered areas for vessels to wait for changes in unfavorable winds or tides. The Coast Guard does not agree with this comment; towline failures may occur in these waters, and this rule's measures may reduce the likelihood of tank barges grounding and spilling cargo there. We have not changed the applicability of this rule.

2. Two comments support the use of escort tugs in certain areas, such as "sensitive" waters. This issue is beyond the scope of this rulemaking.

3. Three comments opposed remote-control anchoring systems. This is outside the scope of this rule because it does not require such anchoring systems. However, one could propose the use of such a system, and seek Coast Guard approval for it.

4. Two comments suggest grandfathering existing anchoring systems on tank barges. This would allow existing systems to meet less stringent standards (ones other than those from the American Bureau of Shipping (ABS)). The Coast Guard partially agrees, and has changed the wording to require "general conformity" rather than "substantial agreement" with ABS (or another recognized class society's) standards. If a Coast Guard representative inspects your anchoring system you should indicate which standards you are using as guidance. The Coast Guard may decide to establish whether or not your anchoring system is in general conformity with that standard or another acceptable standard. We will inform you of any corrective action needed. We will review this practice after getting some experience with it and will modify it as necessary.

5. One comment requested the use of synthetic line, instead of chain or wire, as approved equipment for the anchoring system. The wording in this final rule calls for anchor systems to generally conform with standards from ABS (or another recognized class society). It does not prohibit the use of new system components that are found (by ABS or another recognized class society) to be comparable to accepted or approved equipment in widespread use. However, wire cable may substitute for chain under current applicable rules of ABS; there is no mention in those rules of line (natural or synthetic) as a suitable substitute for anchor chain. Since it is not addressed in ABS rules, synthetic line is not yet acceptable.

**Regulatory Evaluation**

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. However, it is significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]; because of public interest generated by the NPRM, it has been reviewed by the Office of the Secretary.

A Regulatory Assessment under paragraph 10e of the regulatory policies and procedures of DOT is available in the docket for inspection or copying where indicated under **ADDRESSES**. A summary of the Assessment follows; unless otherwise indicated, the Assessment expresses costs and benefits in end-of-1998 values:

**Summary of Benefits**

Measures published in this rule should yield a net cost of $307 per barrel of oil not spilled. This preventive cost compares favorably, for example, with costs of property damage and actual restoration and cleanup (excluding intangibles and transfer costs such as fines, judgments resulting from litigation, and insurance benefits paid) incurred thus far as a result of the 20,000-barrel spill from the barge NORTH CAPE in January of 1996. The costs of that spill thus far total about $50.2 million, which averages about $2,550 per barrel spilled. This per-barrel cost for only one spill is nearly seven times the per-barrel costs of this rule to avert similar events industry-wide.

Table 1 illustrates the calculation of net cost-effectiveness from total quantifiable costs and benefits resulting from implementation of this rule. It normalizes the benefits into cost-effectiveness ratios to reflect the cost per unit of oil not spilled. Here's how: The total estimated dollar cost of this rule appears on Line (1); the total property damage averted, an avoided cost expressed in dollars, appears on Line (2) and is subtracted from total dollar costs to yield a net cost, which appears on Line (3); pollution averted, the principal benefit, which is expressed in barrels of oil not spilled, appears on Line (4); and the net cost from Line (3), divided by the pollution-averted benefit from Line (4) to yield an expression of cost-

effectiveness shown in units of net discounted dollars per discounted barrels of oil not spilled, appears on the bottom line. This procedure permits us to treat benefits from avoidance of pollution and property damage together in terms of net cost-effectiveness.

TABLE 1.—CONTROL MEASURES FOR TANK BARGES (BARGE ANCHORING AND RETRIEVAL): COST EFFECTIVENESS EXPRESSED IN DOLLARS PER BARREL OF OIL NOT SPILLED

| Type of benefits & costs | Quantity | Units |
|---|---|---|
| (1) Cost of this rule | 8,803,031 | Dollars (PV). |
| (2) *Property damage-averted* [1] | *5,667,792* | *Dollars (PV).* |
| (3) (1) minus (2) Net cost | 3,135,239 | Dollars (PV). |
| (4) *Pollution averted* [2] | *10,205* | *Barrels of oil unspilled (PV).* |
| (3)÷(4) **Net cost effectiveness** | **307** | **Dollars per barrel - unspilled.** |

**Note:** benefits, shown on lines (2) and (4), are italicized. Net cost effectiveness is shown in bold.
[1] Damage to vessels and equipment.
[2] Oil not spilled overboard into bodies of water.

The principal benefit of this rule is protection against oil spillage and property damage that may result when a tow line to a tank barge parts or the towing vessel otherwise loses control over the tank barge, permitting it to run aground. Quantifiable benefits accrue from averted pollution measured in barrels of oil not spilled and in averted damage to property such as vessels and machinery, measured in dollars. The latter is an avoided cost. During 1999–2014 inclusive, this rule will avert 10,205 barrels of oil spillage and $5.7 million of property damage.

To construct the benefits analysis, the Coast Guard used data from its Marine Safety Information System (MSIS) and underlying reports to provide a reasonable approximation for modeling marine casualties and pollution incidents. The model postulates that, if requirements in this rule were not enacted, the normalized frequency and severity of pollution and damage due to towline ruptures would continue at about the same magnitude as during a representative five-year base period, which the Coast Guard identified as 1992–1996. This period captures the maritime environment after the Oil Pollution Act (OPA 90); the Coast Guard considers the period long enough to capture a representative history, while short enough to be reasonably current. Reports for 1992–96 are largely complete. (We considered using 1992–1997, but rejected it because report histories for 1997 remain open and we consider them too preliminary to present a fair sample.)

The analysis recognized that a range of variables extant in the marine interface of people, vessels, machines, and the sea may result in the occurrence of some of the casualties targeted by this rule after it is in force. Accordingly, the Coast Guard assembled an analytical team comprised of marine inspectors, program analysts, and economists, who reviewed data and individual case files and who obtained consultations from a range of subject-matter experts. This team proceeded through a multi-step risk assessment that considered the combined and interactive effects of this rule and several related rules that are in effect or mandated by law for completion in the near future. The analysis yielded a probability of 32 percent that installed and working powered anchoring-systems and emergency-retrieval devices on the affected tank barges, both single-hull and double-hull vessels, would have prevented or mitigated pollution and property damage resulting from that particular casualty.

The benefits analysis uses the phase-out of tank-barge capacity due under OPA 90 as a proxy for the reduction of exposure and spill potential, an innovation that helped to guard against the overstatement of benefits, since, during 1998–2014 and before the final phase-out of all single-hull tank barges, single-hull tank barge capacity, which represents the segment of industry primarily affected by this rule, will likely decrease at a much sharper rate than will the actual count of available in-service single-hull tank barges. This is because the phase-out favors longevity for the smallest single-hull tank barges.

We used the phase-out schedule and probabilities of effectiveness to weigh capacity, and used this in turn to calculate the benefits and avoided costs. In addition, we reflated the avoided costs—averted dollar damages to property such as vessels and machinery—from base-period calculations to end-of-1998 values, by relying on an adjustment factor based on a Consumer Price Index.

The Coast Guard considered several non-quantifiable benefits. No injuries, deaths, or missing persons turned up in casualty reports for the base period. However, the types of casualties addressed in this rule, particularly ones that occur in inclement weather, are inherently dangerous; a future casualty of the kind that this rule will mitigate could otherwise result in some deaths and injuries. Further, while the pool of oil-pollution benefit analyzed in the assessment of this rule totaled slightly less than 39,000 barrels of oil during the base period, the upper bound of oil at risk in those casualties—the total cargo of oil aboard affected tank barges when accidents occurred—exceeded 180,000 barrels. Future casualties of the kind that this rule will mitigate could otherwise result in far more serious spills than this regulatory assessment indicates.

**Summary of Costs**

Firms running tank barges, along with a few State and local governments, will incur costs primarily to purchase, install, and maintain powered anchoring systems and owners' and operators' choices among retrieval systems on certain tank barges, and in some instances, on towing vessels. The Coast Guard will incur modest incremental inspection costs. Costs of this rule will total $8.8 million. We subtracted avoided costs from total costs to yield a $3.1 million net cost.

Where we adjusted benefit calculations to reflect phase-out of tank-barge capacity due under OPA 90 to approximate both declining exposure and declining potential for volume of spills, we also adjusted cost calculations to accommodate the phase-out of hulls instead of volume. We did this because we quantify the purchase, installation, and maintenance of equipment required by this rule hull by hull.

Purchase and installation costs accrue to owners and operators of tank barges

and their towboats between 90 days and two years after the publication of the interim rule [63 FR 71754 (December 30, 1998)]. They should total between $7.93 million and $7.98 million. Fleet-wide, costs for purchase and installation of powered anchoring systems will total $7.82 million, 98 percent of the total; and, fleet-wide, costs for retrieval systems will range between $112,000 and $157,000, depending on how individual owners and operators weigh the lower initial investment required for powered anchoring systems against the lower maintenance costs for retrieval systems using hooks. A sensitivity analysis contained in the regulatory assessment showed that a typical decision, if made on an economic basis, will depend on the particular deal that the owner or operator can drive and the remaining life of the barge. Beyond all those, qualitative decision factors include not only availability of up-front capital but personal or corporate preferences.

Recurring costs to industry comprise maintenance, repair, and, in some cases, replacement of components. The present value of these costs total about $751,000 for powered anchoring systems, and range between $49,000 for retrieval systems using hooks and $117,000 powered anchoring systems. Recurring incremental costs borne by the Coast Guard for inspections and law enforcement should total about $4,500 at present value.

Double-hull tank barges are already in compliance with this rule as a result of their satisfying 33 CFR 155.230 before this rulemaking. This rule should affect up to 180 single-hull tank barges operating on open oceans or in coastal waters. We believe that many of these barges are already in compliance. The costs that we report account for our estimates that, of the 180 barges, 97 will need to install powered anchoring systems and 24 barges or towing vessels will need to install retrieval systems. The Coast Guard does not expect economic abandonment of any barges on account of this rule. The per-barge costs are relatively low, and the first phase-out among the affected tank barges does not occur until January 1, 2004. The two-year phase-in for the more costly powered anchoring systems obviates the need for an extra, out-of-cycle dry-dock period for the installation. Most tank barges incurring new costs as a result of this rule are eligible to remain in service until 2015.

**Unfunded Mandates Reform Act and Enhancing the Intergovernmental Partnership**

The Unfunded Mandates Reform Act of 1995 (UMRA) [2 U.S.C. 1531–1538] and E.O. 12875, Enhancing the Intergovernmental Partnership [58 FR 58093, (October 28, 1993)], govern the issuance of Federal rules that require unfunded mandates. An unfunded mandate is a requirement that a State, local, or tribal government or the private sector incur direct costs without the Federal Government's having first provided the funds to pay those costs. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, an analysis under the UMRA is necessary.

While several State and local governments operate some tank barges, entities in the private sector own and operate most of the affected barges. This final rule will not directly affect tribal governments. The total burden of Federal mandates imposed by this rule is about $8.8 million and will not result in annual expenditures of $100 million or more. Therefore, this rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We analyzed this final rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Small Entities**

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard considers the economic impact on small entities of each rule for which a general notice of proposed rulemaking is required. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

An analysis of impacts on small entities for this final rule appears in the regulatory assessment; it is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Double-hull tank barges are already in compliance with this rule's requirements for equipment by virtue of their compliance with 33 CFR 155.230 before the interim rule on emergency control measures became effective. That section required an emergency towline, the most common form of barge-retrieval system, on any oil barge operating offshore. The requirements of this rule for anchoring systems apply only to single-hull barges. Further, most towing vessels are now in voluntary compliance with requirements, or their owners may choose an option that shifts requirements to a few barges that are not now in voluntary compliance. As a result, most towing vessels should not incur compliance costs.

The impact of this rule will fall primarily on single-hull tank barges and, perhaps, several towing vessels. The rule will require: (1) Owners and operators of single-hull tank barges that do not already have emergency anchoring systems to purchase and install them; (2) owners and operators of vessels towing tank barges, regardless of size, to purchase and carry emergency retrieval systems if they do not already have them; and (3) masters of towing vessels to learn, and train crews, to deploy anchors and operate retrieval systems. Owners and operators of tank barges and towing vessels are responsible for both inspecting their systems and maintaining them in good working order. The purpose is to decrease the probability of barge breakaways and of the oil spillage, pollution, and property damage that could result.

The Coast Guard established a two-year phase-in period for the requirements of anchoring systems. Although the Coast Guard received no comments concerning small entities, we recognize that some of the single-hull tank barges are likely owned and operated by small firms not dominant in the industry. Barges affected by this rule must undergo two drydock inspections in five years, no more than three years apart. The two-year phase-in permits barges to undergo the installation of a powered anchoring system during normal yard availability. So they may both avoid incurring the extra cost of a third drydocking during a five-year period and avoid incurring the opportunity costs of lost revenue during a third drydocking. The long phase-in will thus permit most small entities to explore the market, plan, and schedule

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installations during normal yard availability. It reduces the pressure for small entities to compete with major operators for this availability.

Small owners and operators of single-hull tank barges do incur costs from the phase-out mandated by OPA 90. However, we believe that smaller barges affected by this rule are the very ones likeliest to be owned by small owners and operators, many of whom will have the opportunity to amortize purchase and installation costs associated with this rule through the end of the year 2014. The 146 relatively small barges among the 180 barges directly affected by this rule may remain in service until January 1, 2015, the end of the phase-out period: the last vessels to be phased out under OPA 90.

The equipment required by this rule is in common use in the industry and does not represent novel or untried technology. Some small entities, no doubt, are among the majority of owners and operators who already meet some or all of the requirements. Others will incur a financial burden under this rule, those who must purchase and install equipment. But the costs are fairly low in comparison with the replacement cost of a tank barge, very low in comparison with the replacement cost of a towing vessel, and extremely low in comparison with the damage that could be caused by, and the liability that could result from, an accident and resultant spill.

The crafting of this rule so that many affected vessels are already in compliance, and the two-year phase-in period for installation of retrievable anchoring systems, together provide important accommodations to, and significant flexibility for, small entities and others affected by this rule.

Accordingly, we certify under section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*] that this final rule will not have a significant economic impact on a substantial number of small entities.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this final rule so they can better evaluate its effects on them and participate in the rulemaking. If this rule affects your small business or organization and you have questions concerning its provisions or options for compliance, please call Mr. Robert Spears, telephone 202–267–1099.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about enforcement by Federal agencies. The Ombudsman will annually evaluate this enforcement and rate each agency's responsiveness to small business. If you wish to comment on enforcement by the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*].

**Impact on Federalism**

This final rule revises the regulations at 33 CFR 155.230 addressing equipment, equipment operation, maintenance, manning, and training (personnel qualification) for tank barges and the vessels towing them. It also revises those regulations at 46 CFR 32.15–15 that address equipment for tank barges. We have analyzed this final rule in accordance with the principles and criteria contained in Executive Order (E.O.) 13132. It is well settled that States are preempted from establishing any requirements for tank vessels and the vessels that tow them in the categories of design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning. See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke* _____ U.S. _____, 2000 U.S. LEXIS 1895 (March 6, 2000). Thus, this entire rule falls within preempted categories. Because States may not promulgate regulations within the categories discussed above, preemption is not an issue under E.O. 13132.

The NPRM and an effective interim rule for this rulemaking were issued before the E.O. went into effect. However, we are aware that this is a national rule of great interest to coastal States. As a result, we provided States and the public ample opportunity to consult and comment during the comment periods and public meetings first for the NPRM and also following the publication of the interim rule that was in place before promulgation of this final rule. We have considered their comments on this rulemaking—whether received through consultation, letters to the docket, or public meetings—and believe that we have accommodated their concerns.

**Barges Carrying Non-Petroleum Oil**

The Edible Oil Regulatory Reform Act [Pub. L. 104–55, 109 Stat. 546–547 (1995)] requires federal agencies to differentiate between classes of oils and consider different treatment of these classes, if appropriate. The Coast Guard has determined that bulk spills of animal fat, vegetable oil, and other non-petroleum oil can be damaging to the environment; therefore, tank barges carrying these products must comply with this final rule.

**Environment**

The Coast Guard considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraphs (34)(c) and (d) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under **ADDRESSES.**

**List of Subjects**

*33 CFR Part 155*

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

*46 CFR Part 32*

Cargo vessels, Fire prevention, Marine safety, Navigation (water), Occupational safety and health, Reporting and recordkeeping requirements, Seamen.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 155 and 46 CFR part 32, as follows:

## 33 CFR PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 and the note following it continue to read as follows:

**Authority:** 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3703, 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46, 1.46(iii).

Sections 155.110–155.130, 155.350–155.400, 155.430, 155.440, 155.470, 155.1030 (j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

**Note:** Additional requirements for vessels carrying oil or hazardous materials appear in 46 CFR parts 30 through 36, 150, 151, and 153.

2. Revise § 155.230 to read as follows:

**§ 155.230 Emergency control systems for tank barges.**

(a) *Application.* This section does not apply to foreign vessels engaged in innocent passage (that is, neither entering nor leaving a U.S. port); it applies to tank barges and vessels towing them on the following waters:

(1) On the territorial sea of the U.S. [as defined in Presidential Proclamation 5928 of December 27, 1988, it is the belt of waters 12 nautical miles wide with its shoreward boundary the baseline of the territorial sea], unless—

(i) The barge is being pushed ahead of, or towed alongside, the towing vessel; and

(ii) The barge's coastwise route is restricted, on its certificate of inspection (COI), so the barge may operate "in fair weather only, within 20 miles of shore," or with words to that effect. The Officer in Charge, Marine Inspection, may define "fair weather" on the COI.

(2) In Great Lakes service unless—

(i) The barge is being pushed ahead of, or towed alongside, the towing vessel; and

(ii) The barge's route is restricted, on its certificate of inspection (COI), so the barge may operate "in fair weather only, within 5 miles of a harbor," or with words to that effect. The Officer in Charge, Marine Inspection, may define "fair weather" on the COI.

(3) On Long Island Sound. For the purposes of this section, Long Island Sound comprises the waters between the baseline of the territorial sea on the eastern end (from Watch Hill Point, Rhode Island, to Montauk Point, Long Island) and a line drawn north and south from Premium Point, New York (about 40°54.5′N, 73°45.5′W), to Hewlett Point, Long Island (about 40°50.5′N, 73°45.3′W), on the western end.

(4) In the Strait of Juan de Fuca.

(5) On the waters of Admiralty Inlet north of Marrowstone Point (approximately 48°06′N, 122°41′W).

(b) *Safety program.* If you are the owner or operator of a single-hull tank barge or of a vessel towing it, you must adequately man and equip either the barge or the vessel towing it so the crew can arrest the barge by employing *Measure 1*, described in paragraph (b)(1) of this section. Moreover, the crew must be able to arrest or retrieve the barge by employing either *Measure 2* or *Measure 3*, described in paragraphs (b)(2) and (3) of this section, respectively. If you are the owner or operator of a double-hull tank barge, you must adequately equip it and train its crew or, if it is unmanned, train the crew of the vessel towing it, so the crew can retrieve the barge by employing *Measure 2* described in paragraph (b)(2) of this section.

(1) *Measure 1.* Each single-hull tank barge, whether manned or unmanned, must be equipped with an operable anchoring system that conforms to 46 CFR 32.15–15; except that, for barges operating only on the West Coast of the U.S., a system comprising heavy surge gear and bridle legs may serve instead of the anchoring system. Because these systems will also serve as emergency control systems, the owner or operator must ensure that they meet the following criteria:

(i) *Operation and performance.* When the barge is underway—

(A) The system is ready for immediate use;

(B) No more than two crewmembers are needed to operate the system and anchor the barge or arrest its movement;

(C) While preparing to anchor the barge or arrest its movement, the operator of the system should confer with the master or mate of the towing vessel regarding appropriate length of cable or chain to use; and

(D) Each operator of the system should wear a safety belt or harness secured by a lanyard to a lifeline, drop line, or fixed structure such as a welded padeye, if the sea or the weather warrants this precaution. Each safety belt, harness, lanyard, lifeline, and drop line must meet the specifications of ANSI A10.14.

(ii) *Maintenance and inspections.* The owner or operator of the system shall inspect it annually. The inspection must verify that the system is ready for immediate use, and must include a visual inspection of the equipment that comprises the system in accordance with the manufacturer's recommendations. The inspection must also verify that the system is being maintained in accordance with the manufacturer's recommendations. The inspection need not include actual demonstration of the operation of the equipment or system.

(iii) *Training.* On each manned barge, every crewmember must be thoroughly familiar with the operation of the system. On each vessel towing an unmanned barge, every deck crewmember must be thoroughly familiar with the operation of the system installed on the barge. If during the last 12 months the system was not used to anchor or arrest the movement of the barge, then a drill on the use of the system must be conducted within the next month. The drill need not involve actual deployment of the system. However, it must allow every participant to demonstrate the competencies (that is, the knowledge, skills, and abilities) needed to ensure that everyone assigned a duty in anchoring or arresting the movement of the barge is ready to do his or her duty.

(2) *Measure 2.* If you are the owner or operator of a tank barge or a vessel towing it and this section applies to you by virtue of paragraph (a) of this section, you must have installed an emergency retrieval system or some other measure acceptable to the Coast Guard, as provided in paragraph (b)(3) of this section. Any such system must meet the following criteria:

(i) *Design.* The system must use an emergency towline with *at least* the same pulling strength as required of the primary towline. The emergency towline must be readily available on either the barge or the vessel towing it. The towing vessel must have on board equipment to regain control of the barge and continue towing (using the emergency towline), without having to place personnel on board the barge.

(ii) *Operation and performance.* The system must use a stowage arrangement that ensures the readiness of the emergency towline and the availability of all retrieval equipment for immediate use in an emergency whenever the barge is being towed astern.

(iii) *Maintenance and inspection.* The owner or operator of the system shall inspect it annually. The inspection must verify that the emergency retrieval system is ready for immediate use, and must include a visual inspection of the equipment that comprises the system in accordance with the manufacturer's recommendations. The inspection must also verify that the system is being maintained in accordance with the manufacturer's recommendations. The inspection need not include actual demonstration of the operation of the equipment or system. Details concerning maintenance of towlines appear in 33 CFR 164.74(a)(3) and Navigation and Vessel Inspection Circular (NVIC) No. 5–92. Our NVICs are available online at http://www.uscg.mil/hq/g-m/nvic/index.htm.

(iv) *Training.* Barge-retrieval drills must take place annually, and not more than one month after a master or mate responsible for supervising barge retrieval begins employment on a vessel that tows tank barges.

(A) Each drill must allow every participant to demonstrate the competencies (that is, the knowledge, skills, and abilities) needed to ensure that everyone assigned a duty in barge retrieval is ready to do his or her part to regain control of a drifting barge.

(B) If the drill includes actual operation of a retrieval system, it must be conducted under the supervision of the master or mate responsible for retrieval, and preferably in open waters free from navigational hazards so as to minimize risk to personnel and the environment.

(3) *Measure 3.* If you are the owner or operator of a tank barge or a vessel towing it and this section applies to you by virtue of paragraph (a) of this section,

you may use an alternative measure or system fit for retrieving a barge or arresting its movement as a substitute for Measure 2, described in paragraph (b)(2) of this section. Before you use such a measure or system, however, it must receive the approval of the Commandant (G–MSE). It will receive this approval if it provides protection against grounding of the tank vessel comparable to that provided by one of the other two measures described in this section.

## 46 CFR PART 32—SPECIAL EQUIPMENT, MACHINERY, AND HULL REQUIRMENTS

3. The authority citation for part 32 continues to read as follows:

**Authority:** 46 U.S.C. 2103, 3306, 3703, 3719; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; Subpart 32.59 also issued under the authority of Sect. 4109, Pub. L. 101–380, 104 Stat. 515.

4. In § 32.15–15, revise paragraph (e) to read as follows:

**§ 32.15–15 Anchors, Chains, and Hawsers-TB/ALL.**

* * * * *

(e) *Barges Equipped with Anchors to Comply with 33 CFR 155.230(b)(1).* Each barge equipped with an anchor, to comply with 33 CFR 155.230(b)(1), must be fitted with an operable anchoring system that includes a cable or chain, and a winch or windlass. All components of the system must be in general conformity with the standards issued by a recognized classification society. A list of recognized classification societies, including information for ordering copies of approved standards, is available from Commandant (G–MSE), 2100 Second Street SW, Washington, DC 20593–0001; telephone (202) 267–6925 or fax (202) 267–4816. If the Coast Guard finds that your anchoring system is not in general conformity with an approved standard, it will advise you how to bring it into such conformity.

* * * * *

Dated: May 8, 2000.

**J.C. Card,**

*Vice Admiral, U.S. Coast Guard, Acting Commandant.*

[FR Doc. 00–12570 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–15–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[CGD05–00–013]**

**RIN 2115–AA97**

## Safety Zone; Atlantic Ocean, Virginia Beach, VA.

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule; request for comments.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone for the Virginia Beach fireworks displays, north of the Virginia Beach Fishing Pier, in the Atlantic Ocean. This action will restrict vessel traffic on the Atlantic Ocean within a 2500-foot radius of a fireworks laden barge. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

**DATES:** This rule is effective from May 20, 2000 through July 4, 2000.

**ADDRESSES:** Comments must be received by June 15, 2000. You may mail comments and related material to USCG Marine Safety Office Hampton Roads, 200 Granby Street, Norfolk, Virginia, or deliver them to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. USCG Marine Safety Office Hampton Roads maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Petty Officer Roddy Corr, project officer, USCG Marine Safety Office Hampton Roads, telephone number (757) 441–3290.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

Although this rule is being published as a temporary final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the rule is both reasonable and workable. Accordingly, we encourage you to submit comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–00–013), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope.

### Regulatory History

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing an NPRM. We were not notified of these events until May 5, 2000. There was insufficient time to publish an NPRM, allow for comments, and publish a final rule in sufficient time to allow notice to the public for the fireworks displays taking place prior to July 4, 2000. In previous years, these and similar events have been held without incident and without comment from the public regarding the Coast Guard's establishment of limited safety zones around barges engaged in launching fireworks. An NPRM will be published for those Virginia Beach fireworks displays taking place after July 4, 2000 of which we have been notified.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Most of these events will take place within 30 days of the publication of this rule. Delaying the effective date of the regulation would be contrary to the public interest because immediate action is needed to protect the mariners and spectators from the hazards associated with the fireworks display.

### Background and Purpose

The Coast Guard is establishing a temporary safety zone for the Virginia Beach fireworks displays north of the Virginia Beach Fishing Pier, in the Atlantic Ocean. The safety zone will restrict vessel traffic within a 2500-foot radius of a fireworks laden barge in approximate position 36°50.75′ north and 076°58.40′ west. The safety zone is necessary to protect mariners and spectators from the hazards associated with the fireworks display.

The safety zone will be enforced from 9 p.m. until 11 p.m. on May 20, 2000; May 27, 2000—rain date May 28, 2000; June 4, 2000—rain date June 10, 2000; June 11, 2000—rain date June 17, 2000; June 18, 2000—rain date June 24, 2000; June 25, 2000—rain date July 1, 2000; and July 4, 2000.

Additional public notifications will be made prior to the event via marine information broadcasts.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). This temporary final rule only affects a limited area for two hours/event, alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid entering the restricted area. The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of the DOT is unnecessary.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Atlantic Ocean off Virginia Beach, Virginia within a 2500-foot radius of a fireworks laden barge located in approximate position 36°50.75′ north and 076°58.40′ west.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This temporary final rule only affects a limited area for two hours/event, alternative routes exist for maritime traffic, and advance notification via marine information broadcasts will enable mariners to plan their transit to avoid entering the restricted area.

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the federal government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. This regulation will have no impact on the environment.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T05–013 to read as follows:

**§ 165.T05–013 Safety Zone; Atlantic Ocean, Virginia Beach, VA.**

(a) *Location.* The following area is a safety zone: All waters of the Atlantic Ocean, north of the Virginia Beach Fishing Pier, within a 2500-foot radius of a fireworks laden barge in approximate position 36°50.75″ north and 076°58.40″ west

(b) *Captain of the Port.* Captain of the Port means the Commanding Officer of the Marine Safety Office Hampton Roads, Norfolk, VA or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on his behalf.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones found in § 165.23 of this part.

(2) Persons or vessels requiring entry into or passage through a safety zone must first receive authorization from the Captain of the Port. The Coast Guard representative enforcing the safety zone can be contacted on VHF marine band radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (757) 484–8192.

(3) The Captain of the Port will notify the public of changes in the status of this safety zone by marine information broadcast on VHF marine band radio, channel 22 (157.1 MHz).

(d) *Dates.* This section applies from 9 p.m. until 11 p.m. on the following dates:

(1) May 20, 2000.

(2) May 27, 2000—rain date May 28, 2000.

(3) June 4, 2000—rain date June 10, 2000.

(4) June 11, 2000—rain date June 17, 2000.

(5) June 18, 2000—rain date June 24, 2000.

(6) June 25, 2000—rain date July 1, 2000.

(7) July 4, 2000.

Dated: May 12, 2000.

**J. E. Schrinner,**

*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

[FR Doc. 00–12640 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–15–U

**POSTAL SERVICE**

**39 CFR Part 111**

## Preparation Changes for Palletized Standard Mail (A) and Bound Printed Matter and for Standard Mail (A) and Standard Mail (B) Claimed at DBMC Rates

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service requiring mailers to utilize one Labeling List (L605) for palletized mailings of Standard Mail (A) packages of flats, letter trays, and sacks prepared on pallets, regardless of whether the mail is prepared for entry at destination bulk mail center (DBMC) rates; to require mailers to utilize Labeling List L605 for Standard Mail (A) and Standard Mail (B) machinable parcels prepared in sacks or on pallets for pieces claimed at DBMC rates; to implement package reallocation between auxiliary service facilities (ASFs) and BMCs for Standard Mail (A) packages of flats placed on pallets; and to utilize Labeling List L605 for the preparation of all Standard Mail (B) that is claimed at DBMC rates and for Bound Printed Matter other than machinable parcels prepared on pallets.

**DATES:** *Effective date:* October 15, 2000. Compliance is optional as of October 15, 2000. Compliance will be required early January 2001 on a date to be announced in the **Federal Register** that coincides with implementation of the R2000 omnibus rate case.

**FOR FURTHER INFORMATION CONTACT:** Karen A. Magazino, (202) 268–3854 or Cheryl Beller, (202) 268–5166.

**SUPPLEMENTARY INFORMATION:** On January 4, 2000, the Postal Service published for public comment in the **Federal Register** a proposed rule (65 FR 264–270) to allow offshore mail to ride along on DBMC pallets (or in sacks of machinable parcels) drop shipped to destination BMCs.

In addition, the document also proposed requiring mailers to use Labeling List L605 for all Standard Mail (A) flats, letter trays, and sacks prepared on pallets, regardless of where the mail is deposited or the rates are claimed. L605 currently is used for BMC and Origin BMC (OBMC) Presort of nonmachinable Parcel Post discounts. L605 delineates the ASF service areas and also includes the ZIP Codes for the offshore destinations within their respective BMC service areas. With this final rule, the offshore mail will "ride along" with the mail that is eligible for DBMC rate but will not be eligible for the DBMC discount. The benefit is that offshore mail will bypass the origin BMC and should receive better service. The three BMCs that presently service offshore destinations (New Jersey, San Francisco, and Seattle) already are receiving BMC service area pallets and sacks that contain offshore mail prepared using Labeling List L601. Therefore, the addition of offshore mail to these DBMC containers should have no negative impact.

Requiring the use of Labeling List L605 for all Standard Mail (A) flats, letter trays, and sacks prepared on pallets regardless of whether DBMC rates are claimed also will ensure that the eight ASFs always are included in the presort logic hierarchy and that ASF pallets are prepared when the volume warrants.

Labeling List L601 will be retained and will continue to be applicable for Standard Mail (A) and Standard Mail (B) machinable parcels, except when DBMC rates are claimed for such mail deposited at ASFs.

Current Labeling List L602, which contains the ZIP Code ranges for DBMC rate eligibility, will be deleted from the DMM. This information will appear, instead, in DMM Module E. This Final Rule does change current standards for DBMC rate eligibility. However, DMM E651.5.0 has been revised to reorganize and clarify eligibility requirements for Standard Mail (A) DBMC discounts.

### Package Reallocation To Protect the BMC Pallet

To ensure that the creation of an ASF pallet does not take away from BMC pallets, the Postal Service will allow protection of the BMC pallet through the optional use of package reallocation between a "child" ASF and the "parent" BMC pallet. Package reallocation for protecting a BMC pallet is similar to the option implemented on July 29, 1999, for protecting the SCF pallet. In protecting a BMC pallet, any amount of mail necessary to achieve the minimum BMC pallet weight could be reallocated from one ASF pallet and the ASF pallet could be eliminated if necessary. Mailers who choose to utilize package reallocation to protect the BMC pallet must use PAVE-certified presort software.

### Utilization of Labeling Lists L601 and L605 for Preparation of Standard Mail (B)

Rather than sorting to L601, palletized Bound Printed Matter (other than machinable parcels) will be required to be prepared using L605 for sortation of mail to both BMC and ASF pallets. L601 will continue to be used for sortation of Bound Printed Matter machinable parcels both in sacks and on pallets.

The elimination of Labeling List L602 affects Parcel Post (Parcel Select) claimed at DBMC rates. Rather than using L602 for both DBMC rate eligibility and mail preparation, Parcel Post (Parcel Select) mailers claiming DBMC rates must sort to and deposit mail at a BMC or ASF using L605. However, eligibility for the DBMC rates (which does not change) will be determined using new DMM Exhibit E652.1.3d. For Parcel Post (Parcel Select) machinable parcels, mailers claiming the DBMC rates may continue the current practice of opting to sort mail using L601 (BMC sortation only) under the condition that mail for 3-digit ZIP Codes served by an ASF in Exhibit E652.1.3d is not eligible for DBMC rates, nor is mail for 3-digit ZIP Codes that do not appear on Exhibit E652.1.3d.

L605 will continue to be used for BMC Presort and OBMC Presort mailings of nonmachinable Parcel Post. L601 will continue to be required for machinable parcels claiming BMC Presort and OBMC Presort rates.

### Summary of Comments From the Proposed Rule

The Postal Service received three pieces of correspondence commenting on the Proposed Rule. Respondents included one mailer and two direct marketing companies.

The specific points raised in the comments are presented below, organized by general comments and by specific comments on particular issues. In addition to receiving these comments from the mailing industry, the Postal Service has had extensive ongoing exchanges of viewpoints with representatives of the mailing industry and software vendors. This cooperative effort has led to the development of revised standards that the Postal Service believes strikes a better balance between the interests of the mailers and those of the Postal Service.

*1. General Comments*

Two comments were received indicating that the elimination of L602 will create a positive effect in the data processing area by using one labeling list for packages of flats, letter trays, and sacks prepared on pallets. Commenters further explained that it is better to use one list for identifying where the mail is going independent of the drop shipment process. One mailer asked if the elimination of L602 was required to implement this rule. The elimination of L602 is necessary because mail for offshore destinations is not entitled to

the DBMC rate, these ZIPS are not included in L602, and mail for offshore destinations currently cannot be placed on DBMC pallets. Furthermore, when a mailer is sorting a list for entry at DBMC rates using this list, the offshore mail will be entered at the origin BMC and must be processed at the origin BMC and transported through the postal network to the destinating BMC that serves the offshore ZIP Codes. In addition, the offshore mail is frequently placed in sacks because it cannot be placed on DBMC pallets.

One commenter indicated that the creation of the ASF pallet, when volume warrants regardless of whether or not the mail is prepared for entry at the DBMC rates, should have a positive effect on their manufacturing area. Currently, if mail is prepared for DBMC rates and drop shipment is not utilized, then the pallet label must be changed to the appropriate BMC destination. Under this final rule, this would not happen and labor costs could be saved.

*2. Eligibility of Offshore Destination Mail for the DBMC Discount*

Two comments were received from direct marketing companies proposing that the offshore destinations that "ride-along" with the DBMC mail be eligible for the DBMC discount. The commenters also indicated that their customers would be paying freight costs to move these pieces, and will be preparing mail to enter the postal system further into the process, but will not be compensated by receiving the DBMC discount. The Postal Service cannot extend the DBMC discount for offshore destinations. The Postal Service needs the rates to fully reflect the true processing costs when offering a discount. This mail is unusual in its origin-destination characteristics and does not necessarily comply with the existing destination entry discount structure. The Postal Service still incurs significant transportation costs while moving the mail to the offshore destinations. In addition, the Postal Service does not want to discourage mailers from taking advantage of the DSCF discounts that are available. Sectional center facility mail entered at these offshore destinations might revert to DBMC entry if the DBMC discount was offered.

*3. No Discounts for ASF Mail on BMC Pallets*

One commenter was concerned that a discount does not exist for ASF mail on BMC pallets. If the discount requirements were more clearly documented, drop ship mailers could evaluate the costs and benefits of paying transportation costs for the ASF mail. The Postal Service would like to emphasize that the eligibility of ASF mail to qualify for the DBMC discount has not changed. ASF pallets are allowed and required only if the DBMC rate is claimed for mail deposited at the ASF. The significant change resulting from this final rule is that DMM E651 Exhibit 5.1 and DMM E652 Exhibit 1.3 will be used to determine eligibility, not Labeling List L602. If packages of flats on pallets are reallocated from an ASF pallet to a BMC pallet under M045.6.0, mail for the ASF ZIP Codes placed on the BMC pallet are not eligible for the DBMC rates.

*4. Machine-Readable List for Section E and the Parent/Child BMC/ASF Table*

One commenter stated that if L602 (which lists the ZIP Codes entitled to the DBMC discount) is moved from module L to module E, then the Postal Service must still provide a machine-readable list of these ZIP Codes. This commenter maintains if this list is not provided in machine-readable form, then the authors of computer presort and entry point analysis software, such as PAVE-certified software and Mail.dat application software, would each be required to key in updates by hand from a hard-copy printed list. Manual updates also could create an unacceptable amount of redundant work and would create an environment prone to numerous errors. This commenter also stated the Parent/Child BMC/ASF table should be made available in machine-readable form because the proposed changes for the protected BMC pallets will make this information increasingly important to authors of PAVE-certified and Mail.dat application software. The Postal Service has had extensive ongoing discussions with representatives from the USPS National Customer Support Service center and Distribution Networks at USPS headquarters. To address this concern the Postal Service will provide an electronic product to mailers of the Parent/Child table and the new Module E eligibility tables. The Postal Service believes that this effort strikes a better balance between the interests of the mailers and their concerns and the needs of the Postal Service to provide high quality service and optimize operational efficiency.

*5. Package Reallocation*

One commenter emphasized that the package reallocation options should be clearly stated. To clarify the package reallocation option, the Postal Service will review the DMM language for clarification purposes. In addition, a new Quick Service Guide will be designed to demonstrate the standards for package reallocation, protecting the SCF or BMC pallet level. Package reallocation will remain optional and if performed must be done for the complete mailing job using PAVE-certified software.

*6. Lead Time for Software Vendors*

One commenter indicated that the lead time for software changes should be factored into the implementation schedule. For the required elements, the Postal Service met with the software vendors and mailers to discuss this concern. Based on the comments received the Postal Service has determined to place all the provisions of this final rule into effect on an optional basis on October 15, 2000. The required provisions of this final rule will be required on the same date that new rules are implemented for the R–00 Omnibus Rate Case (expected in January 2001). Mail presented on and after that effective date must be prepared in accordance with the required provisions of this Final Rule. Generally, requests for exceptions to these required preparation standards on or after the implementation date will not be honored if the reason for the request is that software was not available to mailers in time to prepare the mailings. It is expected that this phased implementation period will provide software vendors and mailers enough time to develop, test, and implement the required provisions so that the mailings entered on or after the effective date will be prepared under these new standards.

**List of Subjects in 39 CFR Part 111**

Administrative practice and procedure, Postal Service.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

**PART 111—[AMENDED]**

1. The authority citation for 39 CFR part 111 continues to read as follows:

**Authority:** 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual (DMM) as set forth below:

**Domestic Mail Manual (DMM)**

E ELIGIBILITY

**E600 Standard Mail**

* * * * *

**E650 Destination Entry**

**E651 Regular, Nonprofit, and Enhanced Carrier Route Standard Mail**

* * * * *

5.0 DBMC DISCOUNT

**5.1 Definition**

[Amend 5.1 by replacing "L602" with "E651.5.0 Exhibit 5.1" to read as follows:]

For this standard, destination bulk mail center (DBMC) includes all bulk mail centers (BMCs) and auxiliary service facilities (ASF's) as shown in Exhibit 5.1.

[Add new Exhibit 5.1.]

EXHIBIT 5.1—BMC/ASF—DBMC RATES

| Eligible destination ZIP codes | DBMC pallets |
|---|---|
| 005, 068–079, 085–098, 100–119, 124–127, 340 | BMC NEW JERSEY NJ 00102 |
| 010–067, 120–123, 128, 129 | BMC SPRINGFIELD MA 05500 |
| 130–136, 140–149 | ASF BUFFALO NY 140 |
| 150–168, 260–266, 439–447 | BMC PITTSBURGH PA 15195 |
| 080–084, 137–139, 169–199 | BMC PHILADELPHIA PA 19205 |
| 200–212, 214–239, 244, 254, 267, 268 | BMC WASHINGTON DC 20499 |
| 240–243, 245–249, 270–297, 376 | BMC GREENSBORO NC 27075 |
| 298, 300–312, 317–319, 350–352, 354–368, 373, 374, 377–379, 399 | BMC ATLANTA GA 31195 |
| 299, 313–316, 320–339, 341, 342, 344, 346, 347, 349 | BMC JACKSONVILLE FL 32099 |
| 369–372, 375, 380–397, 700, 701, 703–705, 707, 708, 713, 714, 716, 717, 719–729 | BMC MEMPHIS TN 38999 |
| 250–253, 255–259, 400–418, 421, 422, 425–427, 430–433, 437, 438, 448–462, 469–474 | BMC CINCINNATI OH 45900 |
| 434–436, 465–468, 480–497 | BMC DETROIT MI 48399 |
| 500–516, 520–528, 612, 680, 681, 683–689 | BMC DES MOINES IA 50999 |
| 498, 499, 540–551, 553–564, 566 | BMC MPLS/ST PAUL MN 55202 |
| 570–577 | ASF SIOUX FALLS SD 570 |
| 565, 567, 580–588 | ASF FARGO ND 580 |
| 590–599, 821 | ASF BILLINGS MT 590 |
| 463, 464, 530–532, 534, 535, 537–539, 600–611, 613 | BMC CHICAGO IL 60808 |
| 420, 423, 424, 475–479, 614–620, 622–631, 633–639 | BMC ST LOUIS MO 63299 |
| 640, 641, 644–658, 660–662, 664–679, 739 | BMC KANSAS CITY KS 64399 |
| 730, 731, 734–738, 740, 741, 743–746, 748, 749 | ASF OKLAHOMA CITY OK 730 |
| 706, 710–712, 718, 733, 747, 750–799, 885 | BMC DALLAS TX 75199 |
| 690–693, 800–816, 820, 822–831 | BMC DENVER CO 80088 |
| 832–834, 836, 837, 840–847, 898, 979 | ASF SALT LAKE CTY UT 840 |
| 850, 852, 853, 855–857, 859, 860, 863, 864 | ASF PHOENIX AZ 852 |
| 865, 870–875, 877–884 | ASF ALBUQUERQUE NM 870 |
| 889–891, 893, 900–908, 910–928, 930–935 | BMC LOS ANGELES CA 90901 |
| 894, 895, 897, 936–966 | BMC SAN FRANCISCO CA 94850 |
| 835, 838, 970–978, 980–986, 988–994 | BMC SEATTLE WA 98000 |

[Delete current 5.2 and 5.3 and replace with new 5.2 through 5.5. Redesignate current 5.4 and 5.5 as 5.6 and 5.7.]

**5.2 General Eligibility**

Pieces in a mailing that meet the standards in 1.0 through 5.0 are eligible for the DBMC rate when they meet all of the following conditions: (1) are deposited at a BMC or ASF, (2) are addressed for delivery to one of the 3-digit ZIP Codes served by the BMC or ASF where deposited that are listed in Exhibit 5.1, and (3) are placed in a tray, sack, or pallet (subject to the standards for the rate claimed) that is labeled to the BMC or ASF where deposited, or labeled to a postal facility within that BMC's or ASF's service area (see Exhibit 5.1). If packages of flats on pallets are reallocated from an ASF pallet to a BMC pallet under M045.6.0, mail for the ASF ZIP Codes placed on the BMC pallet are not eligible for the DBMC rates. DBMC rate mail must also be eligible for Presorted, automation, or Enhanced Carrier Route rates, subject to the corresponding standards for those rates.

**5.3 Eligibility for ADC or AADC Sortation**

All pieces in an ADC or AADC sack or tray are eligible for the DBMC discount if the ADC or AADC facility ZIP Code (as shown on Line 1 of the corresponding container label) is within the service area of the BMC or ASF as shown in Exhibit 5.1 at which the sack or tray is deposited. All pieces in a palletized ADC package or bundle are eligible for the DBMC discount if the ADC facility that is the destination of the package or bundle (determined by using the label to ZIP Code in Column B of L004) is within the service area of the BMC or ASF at which it is deposited as shown in Exhibit 5.1.

**5.4 Eligibility in Mixed ADC or Mixed AADC Containers**

Mail in mixed ADC or mixed AADC sacks or trays qualify for the DBMC rates only if all the pieces in the sack or tray are for the service area of the DBMC or DASF as shown in Exhibit 5.1. Mailers who opt to claim the DBMC rates for mail in Mixed ADC or Mixed AADC containers must prepare separate mixed ADC or mixed AADC sacks or trays for pieces eligible for and claimed at the DBMC rate and for pieces not claimed at the DBMC rate. Otherwise applicable restrictions (*e.g.*, minimum volume, number of less-than-full trays) are excepted when necessary to comply with this standard.

**5.5 Additional Standards for Machinable Parcels**

Additional standards are as follows:

a. Destination BMC/ASF Containers. Machinable parcels palletized under M045 or sacked under M610 may be sorted to destination BMCs under L601 or to destination BMCs and ASFs under L605. When machinable parcels are sorted to both destination BMCs and ASFs under L605, they qualify for DBMC rates under 5.2. Mailers also may opt to sort machinable parcels to only destination BMCs under L601. If machinable parcels are sorted under L601, then only mail for 3-digit ZIP Codes served by a BMC as listed in Exhibit 5.1 are eligible for DBMC rates (*i.e.*, mail for 3-digit ZIP Codes served by an ASF in Exhibit 5.1 is not eligible

for DBMC rates, nor is mail for 3-digit ZIP Codes that do not appear on Exhibit 5.1).

b. Mixed BMC Containers. Pieces in mixed BMC sacks or on mixed BMC pallets that are sorted to the origin BMC under M045 or M610 are eligible for the DBMC rates if both of the following conditions are met:

(1) The mixed BMC sack or pallet is entered at the origin BMC facility to which it is labeled.

(2) The pieces are for 3-digit ZIP Codes listed as eligible destination ZIP Codes for that BMC in Exhibit 5.1.

* * * * *

**E652 Parcel Post**

1.0 BASIC STANDARDS

* * * * *

**1.2 General**

[Revise 1.2 to read as follows:]

For Parcel Post mailings claimed at DBMC, DSCF, or DDU rates, pieces must meet the applicable standards in 1.0 through 6.0 and the following criteria:

a. May be bedloaded, on pallets, in pallet boxes on pallets, in sacks, or in other authorized containers as specified in 2.0 through 6.0, depending on the facility at which the pieces are deposited.

b. Is not plant-loaded.

c. Be part of a single mailing of 50 or more pieces that are eligible for and claimed at any Parcel Post rate or rates.

d. Be deposited at a destination BMC (DBMC) or destination auxiliary service facility (DASF) or other equivalent facility; destination sectional center (DSCF); or destination delivery unit (DDU) as applicable for the rate claimed and as specified by the USPS.

e. Be addressed for delivery within the ZIP Code ranges that the applicable entry facility serves.

[Revise 1.3 to read as follows:]

**1.3 DBMC Rates**

For DBMC rates, pieces must meet the applicable standards in 1.0 through 6.0 and the following:

a. Pieces must be part of a Parcel Post mailing that is deposited at a BMC or ASF under L605.

b. Pieces deposited at each BMC or ASF must be addressed for delivery within the ZIP Code range of that facility.

c. Pieces must be addressed for delivery within a ZIP Code eligible for DBMC rates under Exhibit 1.3, and if sacked or palletized must be prepared in accordance with M041 and M045 or M630. Mail meeting the additional criteria in 4.0 may be deposited at a designated facility other than the BMC or ASF where the DBMC parcels would otherwise be deposited.

[Move formerly designated 1.3 (e) and (f) to new section as 1.4 (a) and (b).]

[Add new Exhibit 1.3]

EXHIBIT 1.3—BMC/ASF—DBMC RATES

| Eligible destination ZIP codes | DBMC pallets |
|---|---|
| 005, 068–079, 085–098, 100–119, 124–127, 340 | BMC NEW JERSEY NJ 00102 |
| 010–067, 120–123, 128, 129 | BMC SPRINGFIELD MA 05500 |
| 130–136, 140–149 | ASF BUFFALO NY 140 |
| 150–168, 260–266, 439–447 | BMC PITTSBURGH PA 15195 |
| 080–084, 137–139, 169–199 | BMC PHILADELPHIA PA 19205 |
| 200–212, 214–239, 244, 254, 267, 268 | BMC WASHINGTON DC 20499 |
| 240–243, 245–249, 270–297, 376 | BMC GREENSBORO NC 27075 |
| 298, 300–312, 317–319, 350–352, 354–368, 373, 374, 377–379, 399 | BMC ATLANTA GA 31195 |
| 299, 313–316, 320–339, 341, 342, 344, 346, 347, 349 | BMC JACKSONVILLE FL 32099 |
| 369–372, 375, 380–397, 700, 701, 703–705, 707, 708, 713, 714, 716, 717, 719–729 | BMC MEMPHIS TN 38999 |
| 250–253, 255–259, 400–418, 421, 422, 425–427, 430–433, 437, 438, 448–462, 469–474 | BMC CINCINNATI OH 45900 |
| 434–436, 465–468, 480–497 | BMC DETROIT MI 48399 |
| 500–516, 520–528, 612, 680, 681, 683–689 | BMC DES MOINES IA 50999 |
| 498, 499, 540–551, 553–564, 566 | BMC MPLS/ST PAUL MN 55202 |
| 570–577 | ASF SIOUX FALLS SD 570 |
| 565, 567, 580–588 | ASF FARGO ND 580 |
| 590–599, 821 | ASF BILLINGS MT 590 |
| 463, 464, 530–532, 534, 535, 537–539, 600–611, 613 | BMC CHICAGO IL 60808 |
| 420, 423, 424, 475–479, 614–620, 622–631, 633–639 | BMC ST LOUIS MO 63299 |
| 640, 641, 644–658, 660–662, 664–679, 739 | BMC KANSAS CITY KS 64399 |
| 730, 731, 734–738, 740, 741, 743–746, 748, 749 | ASF OKLAHOMA CITY OK 730 |
| 706, 710–712, 718, 733, 747, 750–799, 885 | BMC DALLAS TX 75199 |
| 690–693, 800–816, 820, 822–831 | BMC DENVER CO 80088 |
| 832–834, 836, 837, 840–847, 898, 979 | ASF SALT LAKE CTY UT 840 |
| 850, 852, 853, 855–857, 859, 860, 863, 864 | ASF PHOENIX AZ 852 |
| 865, 870–875, 877–884 | ASF ALBUQUERQUE NM 870 |
| 889–891, 893, 900–908, 910–928, 930–935 | BMC LOS ANGELES CA 90901 |
| 894, 895, 897, 936–966 | BMC SAN FRANCISCO CA 94850 |
| 835, 838, 970–978, 980–986, 988–994 | BMC SEATTLE WA 98000 |

[Redesignate 1.4 through 1.5 as 1.5 through 1.6 and insert new number 1.4 to read as follows:]

**1.4 DSCF and DDU Rates**

For DSCF and DDU rates, pieces must meet the applicable standards in 1.0 through 1.6 and the following criteria:

[Insert old 1.3e and 1.3f as new 1.4a and 1.4b.]

* * * * *

L LABELING LISTS

* * * * *

**L600 Standard Mail**

[Amend the heading of Labeling List 601 by removing "Machinable Parcels" to read as follows:]

**L601 Bulk Mail Centers**

[Revise introductory paragraph to read as follows:]

Use this list for the following:

(1) Standard Mail (A) machinable parcels if ASF mail is not prepared and claimed at DBMC rates.

(2) Bound Printed Matter machinable parcels.

(3) Parcel Post if ASF mail is not prepared and claimed at DBMC rates except non-machinable BMC and OBMC Presort rate mail.

(4) Presorted Special Standard Mail and Presorted Library Mail to BMC destinations.

* * * * *

[Remove Labeling List 602.]

* * * * *

[Revise the heading of Labeling List 605 to read as follows:]

**L605 BMCs/ASFs**

[Revise introductory paragraph to read as follows:]

Use this list for the following:

(1) Standard Mail (A) pallets of packages of flats, letter trays, and/or sacks.

(2) Parcel Post machinable parcels if ASF mail is entered at the ASF and claimed at the DBMC rates.

(3) Standard Mail (A) machinable parcels if ASF mail is entered at the ASF and claimed at DBMC rates.

(4) Parcel Post nonmachinable parcels claimed at OBMC and BMC Presort rates.

(5) Bound Printed Matter packages and/or sacks on pallets.

* * * * *

M MAIL PREPARATION AND SORTATION

**M000 General Preparation Standards**

**M010 Mailpieces**

**M011 Basic Standards**

1.0 TERMS AND CONDITIONS

* * * * *

**1.2 Presort Levels**

[Amend 1.2 by revising 1.2n to read as follows:]

Terms used for presort levels are defined as follows:

* * * * *

n. ASF/BMC: all pieces are addressed for delivery in the service area of the same auxiliary service facility (ASF) or bulk mail center (BMC) (see L601 or L605, as applicable).

* * * * *

**M040 Pallets**

**M041 General Standards**

* * * * *

5.0 PREPARATION

**5.1 Presort**

[Amend 5.1 by revising the last two sentences to read as follows:]

* * * The standards for package reallocation to protect the SCF or BMC pallet (M045.5.0 and 6.0) are optional methods of pallet preparation designed to retain as much mail as possible at the SCF or BMC level. These standards may result in some packages of Periodicals and Standard Mail (A) flats and irregular parcels that are part of a mailing job prepared in part as palletized flats at automation rates not being placed on the finest level of pallet possible. Mailers must use PAVE-certified presort software to prepare mailings using package reallocation (package reallocation is optional, but, if performed, must be done for the complete mailing job).

**5.2 Required Preparation**

[Amend 5.2 by revising 5.2a to read as follows:]

These standards apply to:

a. Periodicals, Standard Mail (A), and Parcel Post (other than BMC Presort, OBMC Presort, DSCF, and DDU rate mail). A pallet must be prepared to a required sortation level when there are 500 pounds of Periodicals or Standard Mail packages, sacks, or parcels or six layers of Periodicals or Standard Mail (A) letter trays. For packages of Periodicals flats, irregular parcels, and packages of Standard Mail (A) flats on pallets prepared under the standards for package reallocation (M045.5.0), not all mail for a required 5-digit destination is required to be on a 5-digit pallet or optional 5-digit scheme pallet. For packages of Standard Mail (A) flats on pallets prepared under the standards for package reallocation (M045.6.0), not all mail for a required ASF pallet is required to be on an ASF pallet. Mixed pallets of sacks, trays, or machinable parcels must be labeled to the BMC or ADC (as appropriate) serving the post office where mailings are entered into the mailstream. The processing and distribution manager of that facility may issue a written authorization to the mailer to label mixed BMC or mixed ADC pallets to the post office or processing and distribution center serving the post office where mailings are entered. These pallets contain all mail remaining after required and optional pallets are prepared to finer sortation levels under M045, as appropriate.

* * * * *

6.0 COPALLETIZED, COMBINED, OR MIXED-RATE LEVEL MAILINGS OF FLAT-SIZE MAILPIECES

* * * * *

**6.4 Standard Mail (A)**

[Amend 6.4 by and replacing the first sentence with the following sentence to read as follows:]

To copalletize different Standard Mail (A) flat-size mailings, the mailer must consolidate on pallets all independently sorted packages from each mailing to achieve the finest presort level for the mailing, except that a copalletized mailing prepared under M045.5.0 or 6.0, using package reallocation, may not always result in all packages being placed on the finest pallet level possible.* * *

* * * * *

**M045 Palletized Mailings**

* * * * *

4.0 PALLET PRESORT AND LABELING

**4.1 Packages, Bundles, Sacks, or Trays on Pallets**

[Amend 4.1 by revising 4.1e to read as follows:]

Preparation sequence and Line 1 labeling:

* * * * *

e. As appropriate:

(1) Periodicals: ADC: required; for Line 1, use L004.

(2) Standard Mail: BMC/ASF: required, except that an ASF may not be required if using package reallocation used under 6.0; for Line 1, use L605.

* * * * *

**4.2 Machinable Parcels—Standard Mail**

[Amend 4.2 by revising 4.2b and 4.2c to read as follow:]

Preparation sequence and Line 1 labeling:

* * * * *

b. ASF: allowed and required only if DBMC rate is claimed for mail deposited at ASF; for Line 1, use L605. Exhibit E651.5.1 or Exhibit E652.1.3 determines DBMC rate eligibility.

c. Destination BMC: required; for Line 1, use L601 (L605 if DBMC rate is claimed for mail deposited at ASF under 4.2b).

* * * * *

[Revise heading of 5.0 to read as follows:]

5.0 PACKAGE REALLOCATION TO PROTECT SCF PALLET FOR PERIODICALS FLATS AND IRREGULAR PARCELS AND STANDARD MAIL (A) FLATS ON PALLETS

**5.1 Basic Standards**

[Amend 5.1 by revising the first sentence to read as follows:]

Package reallocation to protect the SCF pallet is an optional preparation method (if performed, package reallocation must be done for the complete mailing job); only PAVE-certified presort software may be used to create pallets under the standards in 5.2 through 5.4 * * *

* * * * *

[Redesignate 6.0 through 14.0 as 7.0 through 15.0, respectively, and insert new 6.0 to read as follows:]

6.0 PACKAGE REALLOCATION TO PROTECT BMC PALLET FOR STANDARD MAIL (A) FLATS ON PALLETS

**6.1 Basic Standards**

Package reallocation to protect the BMC pallet level is an optional preparation method (if performed, package reallocation to protect the BMC pallet must be done for the complete mailing job); only PAVE-certified presort software may be used to create pallets under the standards in 6.2 through 6.4. The software will determine if mail for a BMC service area would fall beyond the BMC level when ASF pallets are prepared. Reallocation is performed only when there is mail for the BMC service area that would fall beyond the BMC pallet level as a result of an ASF pallet being prepared. The amount of mail required to bring the mail that would fall beyond the BMC pallet level back to a BMC level is the minimum volume that would be reallocated from an ASF pallet, where possible. The "parent" BMCs listed in Exhibit 6.1 can be protected with package reallocation by using mail from the ASF "child" pallets.

EXHIBIT 6.1—"PARENT" BMC/CHILD" ASF

| "Parent" BMC service areas | "Child" ASF ZIP code areas served |
|---|---|
| Pittsburgh BMC | Buffalo ASF: 130–136; 140–149 |
| Denver BMC | Albuquerque ASF: 865, 870–875, 877–884<br>Phoenix ASF: 850, 852, 853, 855–857, 859, 860, 863, 864<br>Salt Lake City ASF: 832–834, 836, 837, 840–847, 898, 979<br>Billings ASF: 590–599, 821 |
| Dallas BMC | Oklahoma City ASF: 730, 731, 734–738, 740, 741, 743–746, 748, 749 |
| Des Moines BMC | Sioux Falls ASF: 570–577 |
| Minneapolis BMC | Fargo ASF: 565, 567, 580–588 |

**6.2 General Reallocation Rules**

In general, when reallocating:

a. The reallocation process does not affect package preparation. Reallocate only complete packages and only the minimum number of packages necessary to create a BMC pallet that meets the 250-pound minimum pallet weight. Based on the weight of individual pieces within a package and packaging parameters, the weight of mail that is reallocated may be slightly more than the minimum volume required to create a BMC pallet.

b. Use Exhibit 6.1 to reallocate packages from the ASF pallet to create a BMC pallet. The ASF pallet may be eliminated to protect the BMC pallet.

c. Reallocate mail only from the ASF pallet. Package reallocation is used only between the "parent" BMC and the "child" ASF. Mail from finer levels of pallets (e.g., SCF pallet) may not be reallocated.

d. Mailers may use any minimum pallet weight(s) permitted by standard and may use different minimum weights for different pallet levels in conjunction with package reallocation.

**6.3 Reallocation of Packages from ASF pallets**

When reallocating packages from ASF pallets:

a. Use Exhibit 6.1 to identify an ASF pallet of adequate weight that can support reallocation of one or more packages to bring the mail that has fallen through the BMC level back to the BMC level without eliminating the ASF pallet. A sufficient amount of mail must remain on the ASF pallet after reallocation to meet the ASF pallet weight minimum of 250 pounds. If an ASF pallet of adequate weight is available, then create a BMC pallet by combining the reallocated mail from the ASF pallet with the mail that would fall beyond the BMC pallet level.

b. If no single ASF pallet within the BMC service area contains an adequate volume of mail to allow reallocation of the portion of the mail on a pallet as described in 6.3a, then eliminate one ASF pallet and reallocate all of the mail to create a BMC pallet.

**6.4 Documentation**

Mailings must be supported by documentation produced by PAVE-certified software meeting the standards in P012.

* * * * *

**10.0 Pallets of Machinable Parcel**

* * * * *

[Amend 10.3, formerly 9.3, to read as follows:]

**10.3 DBMC Rate**

If applicable, a BMC pallet may include pieces that are eligible for the DBMC rate and pieces that are ineligible.

* * * * *

**M073 Combined Mailings of Standard Mail (A) and Standard Mail (B) Parcels**

1.0 COMBINED MACHINABLE PARCELS—RATES OTHER THAN PARCEL POST OBMC PRESORT, BMC PRESORT, DSCF, AND DDU

* * * * *

**1.6 Sack Preparation**

[Amend 1.6 by revising 1.6a(2) and 1.6a(3) to read as follows:]

The requirements for sack preparation are as follows:

a. Sack size, preparation sequence, and Line 1 labeling:

* * * * *

(2) Destination ASF: allowed and required only if DBMC rate is claimed for mail deposited at ASF (minimum of 10 pounds, smaller volume not permitted); for Line 1, use L605. DBMC rate eligibility is determined by Exhibit E651.1.3.

(3) Destination BMC: required (minimum of 10 pounds, smaller volume not permitted); for Line 1, use L605 if DBMC rate is claimed for mail deposited at ASF under 4.2b; otherwise,

use L601. DBMC rate eligibility is determined by Exhibit E651.5.1.

* * * * *

**M610 Presorted Standard Mail (A)**

* * * * *

5.0 MACHINABLE PARCELS

* * * * *

**5.2 Sack Preparation**

[Amend 5.2 by revising 5.2(b) and 5.2(c) to read as follows:]

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

b. Destination ASF: allowed and required only if DBMC rate is claimed for mail deposited at ASF (minimum of 10 pounds, smaller volume not permitted); for Line 1, use L605. DBMC rate eligibility is determined by Exhibit E651.1.3.

c. Destination BMC: required (minimum of 10 pounds, smaller volume not permitted); for Line 1, use L605 if DBMC rate is claimed for mail deposited at ASF under 5.2b; otherwise, use L601. DBMC rate eligibility is determined by Exhibit E651.5.1.

* * * * *

**M630 Standard Mail (B)**

* * * * *

6.0 MACHINABLE PARCELS

* * * * *

**6.2 Sack Preparation**

[Amend 6.2 by revising 6.2b and 6.2c to read as follows:]

Sack size, preparation sequence, and Line 1 labeling:

* * * * *

b. ASF: allowed and required only if DBMC rate is claimed for mail deposited at ASF (minimum of 10 pieces/20 pounds/1,000 cubic inches, smaller volume not permitted); for Line 1, use L605. Exhibit E652.1.3d determines DBMC rate eligibility.

c. Destination BMC: required (minimum of 10 pieces/20 pounds/1,000 cubic inches, smaller volume not permitted); for Line 1, use L605 if DBMC rate is claimed for mail deposited at ASF under 6.2b; otherwise, use L601. Exhibit E652.1.3d determines DBMC rate eligibility.

* * * * *

P POSTAGE AND PAYMENT METHODS

**P000 Basic information**

**P010 General Standards**

* * * * *

**P012 Documentation**

* * * * *

2.0 STANDARDIZED DOCUMENTATION—FIRST-CLASS MAIL, PERIODICALS, AND STANDARD MAIL (A)

* * * * *

**2.2 Format and Content**

[Amend 2.2 by replacing last two sentences of 2.2d (4) to read as follows:]

For First-Class Mail, Periodicals, and Standard Mail (A), standardized documentation includes:

* * * * *

d. For packages on pallets, the body of the listing reporting these required elements:

* * * * *

(4) * * * Document SCF or BMC pallets created as a result of package reallocation under M045.5.0 or 6.0 on the USPS Qualification Report by designating the protected pallet with an identifier of "PSCF" (for a SCF pallet) or "PBMC" (for a BMC pallet). These identifiers are required to appear only on the USPS Qualification Report; they are not required to appear on pallet labels or in any other mailing documentation.

* * * * *

**2.4 Sortation level**

[Amend 2.4 by inserting new sortation level and abbreviation immediately below "SCF [pallets created from package reallocation]" to read as follows:]

The actual sortation level (or corresponding abbreviation) is used for the package, tray, sack, or pallet levels required by 2.2 and shown below:

| Sortation level | Abbreviation |
|---|---|
| * * * * | * |
| BMC [pallets created from package reallocation] | PBMC |
| * * * * | * |

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–12444 Filed 5–18–00; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 300**

**[FRL–6604–8]**

## National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct Final Action to Delete Releases at the Mid-Atlantic Wood Preservers, Inc. Site from the National Priorities List (NPL).

**SUMMARY:** The EPA announces the deletion of releases at the Mid-Atlantic Wood Preservers, Inc. Site (the Site) from the NPL. The NPL is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The EPA has determined that no further response pursuant to CERCLA is appropriate.

**DATES:** This "direct final" action will be effective July 18, 2000 unless EPA receives dissenting comments by June 19, 2000. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Comments may be mailed to Matthew T. Mellon, Remedial Project Manager, U.S. EPA, Region III, 1650 Arch Street (3HS23), Philadelphia, PA 19103–2029.

Comprehensive information on the Site is available at EPA's Region III office and at the local information repository located at the Provinces Branch Library, Severn Square Shopping Center, 2624 Annapolis Road, Severn, MD 21144.

Requests for copies of documents associated with this action should be directed to the Region III Docket Office. The address and phone number for the Regional Docket Office is U.S. EPA Region III Public Reading Room, 1650 Arch Street, Philadelphia, PA 19103–2029; (215) 814–3157.

**FOR FURTHER INFORMATION CONTACT:**

Matthew T. Mellon, Remedial Project Manager, U.S. EPA, Region III, 1650 Arch Street (3HS23), Philadelphia, PA 19103–2029, (215) 814–3168, or

Richard Kuhn, Community Involvement Coordinator, U.S. EPA, Region III, 1650 Arch Street (3HS43), Philadelphia, PA 19103–2029, (215) 814–3063.

**SUPPLEMENTARY INFORMATION:**

**Table of Contents**

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion
V. Action

## I. Introduction

EPA Region III announces the deletion of releases at the Site from the NPL, which constitutes Appendix B of the NCP. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Superfund (Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions if the conditions at the Site warrant such action.

The EPA will accept comments on this notice for 30 days after publication of this notice in the **Federal Register**.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses the history of the Mid-Atlantic Wood Preservers, Inc. Site and explains how the Site meets the deletion criteria. Section V announces EPA's intention to delete the Site from the NPL unless dissenting comments are received during the comment period.

## II. NPL Deletion Criteria

The NCP establishes the criteria that EPA uses to delete Sites from the NPL. In accordance with 40 CFR 300.425(e), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider, in consultation with the State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Sites may not be deleted from the NPL until the State in which the site is located has concurred on the proposed deletion.

## III. Deletion Procedures

Section 300.425(e)(4) of the NCP sets forth requirements for site deletions to ensure public involvement in the decision. The EPA is required to conduct the following activities:

(i) Publish a notice of intent to delete in the **Federal Register** and solicit comment through a public comment period of a minimum of 30 calendar days;

(ii) Publish a notice of availability of the notice of intent to delete in a major local newspaper of general circulation at or near the Site;

(iii) Place copies of information supporting the proposed deletion in the information repository at or near the site proposed for deletion; and,

(iv) Respond to each significant comment and any significant new data submitted during the comment period and include this response document in the final deletion package.

Upon completion of the public comment period, the EPA Regional Office will, if necessary, prepare a Responsiveness Summary to evaluate and address comments that were received. The public is welcome to contact the EPA Region III Office to obtain a copy of this Responsiveness Summary, if one is prepared.

If none of the comments received during the comment period are dissenting, the Site will be deleted from the NPL, effective July 18, 2000.

Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. Furthermore, deletion from the NPL does not in any way alter EPA's right to take enforcement actions, as appropriate. The NPL is designed primarily for informational purposes and to assist Agency management.

## IV. Basis for Site Deletion

The Mid-Atlantic Wood Preservers, Inc. Site occupies approximately 3.17 acres straddling Shipley Avenue in Harmans, Anne Arundel County, Maryland in a mixed industrial and residential area. Between 1974 and February 1993, the Site was occupied by a wood treatment facility operated under the name of Fort McHenry Lumber Company, d/b/a Mid-Atlantic Wood Preservers, Inc. (collectively MAWP). Until MAWP ceased operations, this facility utilized a chromated copper arsenate (CCA) water-borne wood treating process. This two-part process began by pressure treating dimensional lumber in a housed processing plant. The wood was then moved to a concrete drip pad and left to dry. The facility consisted of two parcels: a Treatment Yard to the east of Shipley Avenue and a Storage Yard to the west.

Stoney Run Creek flows north through a wetland area approximately six hundred feet west of the Site, extending approximately four miles before discharging to the Patapsco River near Elkridge, Maryland. Drainage from the Treatment Yard enters the storm water drain in Shipley Avenue, which ultimately discharges to Stoney Run Creek, approximately 1200 feet from the Site. Drainage from the Storage Yard flows west to Stoney Run Creek.

In 1978, water in a shallow residential well hydraulically downgradient of the MAWP facility was found to contain up to 19,500 µg/l chromium, far exceeding the Federal and State drinking water standard of 50 µg/l for chromium (this standard has since been increased to 100 µg/l). Subsequently, the Maryland Water Resources Administration (WRA) identified MAWP as a user of chromium and a potential source of ground water contamination.

In February 1979, the Maryland WRA determined that MAWP had discharged CCA into the soil and that the ground water beneath the facility had become contaminated with chromium and arsenic. The Maryland WRA issued an Administrative Order requiring MAWP to develop and implement a plan to remove contaminated soil and to remediate contaminated ground water in the vicinity of the facility. Mandated actions included removal of twenty-six cubic yards of contaminated soil at the facility, modification of the product storage system to prevent overflows, and installation of a concrete drainage pad to collect CCA drippings. On December 26, 1980, Maryland WRA issued a "Notice of Compliance."

A Site Investigation was performed at the Site by EPA in January 1983. Analyses of ground water indicated that arsenic and chromium levels in the ground water still exceeded drinking water standards. The public water supply was extended to properties in the area by the local government. The Site was promulgated to the National Priorities List (NPL) in June 1986. In July 1986, MAWP entered into a Consent Order with EPA to perform a Remedial Investigation and Feasibility Study (RI/FS) at the Site.

The RI reaffirmed the presence of elevated levels of arsenic in the on-Site soil and slightly elevated levels of chromium in the ground water. The risk assessment concluded that arsenic and chromium were contaminants of concern and that the potential carcinogenic risk at the Site was dominated by incidental ingestion of

on-Site surface soil by workers. On December 31, 1990, the EPA Regional Administrator signed the Record of Decision (ROD) identifying the remedial action to be taken to address the unacceptable risks to human health identified in the RI/FS process.

In December 1991, following unsuccessful efforts to negotiate a Consent Decree with MAWP, EPA issued a Unilateral Administrative Order (UAO) requiring MAWP to implement the selected remedy. The selected remedy, as described in the ROD and the UAO, consisted of the following:

- Excavation, stabilization and off-site disposal of "hot spots" of contaminated soils with arsenic concentrations greater than 1,000 mg/kg;
- Construction of an enlarged roofed drip pad that complies with the Resource Conservation and Recovery Act (RCRA) Subpart W wood treating regulations;
- Capping of those portions of the Treatment Yard that were not covered by the treatment plant, enlarged drip pad or paved parking area with an asphalt/concrete cap;
- Capping of soils in the Storage Yard contaminated with arsenic exceeding 10 mg/kg with an asphalt/concrete cap;
- Excavation of any off-Site soils containing arsenic at concentrations greater than 10 mg/kg (i.e., background concentration of arsenic in area soils) and consolidation of those soils on-Site prior to paving with the asphalt/concrete cap;
- Environmental monitoring to ensure the effectiveness of the remedy;
- Implementation of a deed restriction to preclude future land use which might compromise the effectiveness of the remedy.

Pre-design sampling performed in April and June 1992 indicated that no soil on- or off-site had concentrations of arsenic greater than 1,000 mg/kg and therefore, excavation, stabilization and off-site disposal was not necessary. Predesign sampling did, however, indicate that surface soils on a portion of the adjacent Number One Supply property had been contaminated by runoff from the MAWP property. The sampling results indicated that the western portion of the Number One Supply property nearest the paved parking lot was not contaminated (i.e., levels of arsenic were less than 10 mg/kg), but the center portion and the eastern portions of the property did contain arsenic at concentrations greater than 10 mg/kg.

On February 4, 1993, MAWP informed EPA that it was ceasing business operations and closing the facility. Because MAWP was ceasing its wood treating operations, there was no longer a need to expand the drip pad to prevent potential future releases from wood drying operations. The remedial objectives were satisfied by extending the asphalt cap to all areas of the Treatment Yard not currently paved or covered by existing buildings, including those areas previously planned to be covered by the expanded drip pad.

The Remedial Action Work Plan and Remedial Design were approved by EPA on May 14, 1993. The scaled-back remedy included excavation and consolidation of contaminated soils from the Number One Supply property, paving of the MAWP property, implementation of institutional controls, long-term monitoring, and maintenance of the asphalt cap.

Construction activities were implemented from June to August 1993. In September 1993, EPA negotiated a Prospective Purchaser Agreement (PPA) with Gunther's Leasing Transport, Inc. (Gunther), which became effective January 24, 1994. In accordance with the PPA, Gunther agreed to implement the necessary institutional controls and perform operation and maintenance (O&M) activities, including environmental monitoring, as required by the EPA-approved O&M Plan. On July 5, 1994, Gunther filed EPA-approved "Restrictions on Land Use" for the MAWP site with the Clerk of Circuit Court, Anne Arundel County, Maryland.

Long-term environmental monitoring has been performed in accordance with the Post-Remedy Sampling and Analysis Plan contained in the RA Work Plan (ERM, April 1993). Monitoring and maintenance of the asphalt cap has been conducted with reports submitted to EPA on a biannual basis. A Five-Year Review dated August 26, 1998, confirmed that measures taken at the site remain effective, as do the results from long-term environmental monitoring completed on February 12, 1999.

The remedial action selected for the Site has been implemented in accordance with the Record of Decision. As a result, human health threats and potential environmental impacts arising from releases at the Site have been eliminated. Continued protection of human health and the environment will be achieved by maintenance activities and performance of the Five-Year Reviews, as required by CERCLA.

## V. Action

The EPA, with concurrence from the State of Maryland, has determined that all appropriate response under CERCLA at the Site has been completed, and no further CERCLA response action is appropriate in order to provide protection of human health and environment. Therefore, EPA is deleting the Site from the NPL.

This action will be effective July 18, 2000. However, if EPA receives dissenting comments by June 19, 2000, EPA will publish a document that withdraws this action. If, after reviewing such comments, EPA decides to proceed with the deletion, EPA will publish a notice of deletion in the **Federal Register** and place copies of the final deletion package, including a Responsiveness Summary, in the Site repositories.

### List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: April 5, 2000.

**Bradley M. Campbell,**

*Regional Administrator, Region III.*

Part 300, title 40 of the Code of Federal Regulations is amended as follows:

## PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

**Authority:** 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p.351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

### Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site "Mid-Atlantic Wood Preservers, Inc., Harmans, Maryland.".

[FR Doc. 00–12516 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–P

## GENERAL SERVICES ADMINISTRATION

### 41 CFR Chapter 301

**[FTR Amendment 87]**

**RIN 3090–AH18**

### Federal Travel Regulation; Maximum Per Diem Rates and Other Travel Allowances; Correction

**AGENCY:** Office of Governmentwide Policy, GSA.

**ACTION:** Final rule; correction.

**SUMMARY:** This document corrects entries listed in the prescribed maximum per diem rates for locations within the continental United States

(CONUS) contained in a final rule appearing in Part III of the **Federal Register** of Thursday, December 2, 1999 (64 FR 67670). The rule, among other things, increased/decreased the maximum lodging amounts in certain existing per diem localities, added new per diem localities, and removed a number of previously designated per diem localities.

**EFFECTIVE DATE:** January 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Joddy P. Garner, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone 202–501–4857.

**SUPPLEMENTARY INFORMATION:** In rule document 99–31215 beginning on page 67670 in the issue of Thursday, December 2, 1999, make the following corrections:

**Appendix A to Chapter 301 [Corrected]**

1. On page 67674, under the State of Colorado, city of Aspen, the seasonal dates, column one and lodging rates, column three are revised to read as follows: "January 1–March 31 $163, April 1–May 31 $68, June 1–December 31 $140".

2. On page 67678, under the State of Louisiana, the names of cities of New Orleans/Plaquemine/St. Bernard, column two is revised to read as follows: "Orleans, Iberville, Jefferson Parish and St. Bernard".

Pages 67674 and 67678, as corrected, read as follows:

**Appendix A to Chapter 301—Prescribed Maximum Per Diem Rates for CONUS**

* * * * *

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| Per diem locality: | | Maximum lodging amount (room rate only—no taxes) (a) | + | M&IE rate (b) | = | Maximum per diem rate [4] (c) |
|---|---|---|---|---|---|---|
| Key city[1] | County and/or other defined location [2], [3] | | | | | |
| (October 1-May 31) | | 69 | | 38 | | 107 |
| San Mateo/Redwood City | San Mateo | 99 | | 42 | | 141 |
| Santa Barbara | Santa Barbara | 99 | | 38 | | 137 |
| Santa Cruz | Santa Cruz | | | | | |
| (June 1-September 30) | | 99 | | 42 | | 141 |
| (October 1-May 31) | | 68 | | 42 | | 110 |
| Santa Rosa | Sonoma | 65 | | 42 | | 107 |
| Santa Monica | City limits of Santa Monica (see Los Angeles) | | | | | |
| (June 1-September 30) | | 110 | | 38 | | 148 |
| (October 1-May 31) | | 99 | | 38 | | 137 |
| South Lake Tahoe | El Dorado (see also Stateline, NV) | 108 | | 42 | | 150 |
| Sunnyvale/Palo Alto/San Jose | Santa Clara | 125 | | 46 | | 171 |
| Tahoe City | Placer | 128 | | 42 | | 170 |
| Truckee | Nevada | 69 | | 42 | | 111 |
| Visalia | Tulare | 58 | | 38 | | 96 |
| West Sacramento | Yolo | 64 | | 30 | | 94 |
| Yosemite National Park | Mariposa | | | | | |
| (May 1-October 31) | | 100 | | 46 | | 146 |
| (November 1-April 30) | | 76 | | 46 | | 122 |
| | | | | | | |
| COLORADO | | | | | | |
| Aspen | Pitkin | | | | | |
| (January 1-March 31) | | 163 | | 46 | | 209 |
| (April 1-May 31) | | 68 | | 46 | | 186 |
| (June 1-December 31) | | 140 | | 46 | | 114 |
| Boulder | Boulder | | | | | |
| (May 1-October 15) | | 90 | | 42 | | 132 |
| (October 16-April 30) | | 79 | | 42 | | 121 |
| Colorado Springs | El Paso | | | | | |
| (May 15-September 14) | | 73 | | 38 | | 111 |
| (September 15-May 14) | | 59 | | 38 | | 97 |
| Cortez | Montezuma | 64 | | 34 | | 98 |
| Crested Butte | City limits of Crested Butte (see Gunnison) | 95 | | 42 | | 137 |
| Denver | Denver, Adams, and Arapahoe | 83 | | 42 | | 125 |
| Durango | La Plata | | | | | |
| (June 1-October 31) | | 95 | | 38 | | 133 |
| (November 1-May 31) | | 61 | | 38 | | 99 |
| Fort Collins | Larimer (except Loveland) | 59 | | 34 | | 93 |
| Gunnison | Gunnison (except Crested Butte) | | | | | |
| (June 15-September 30) | | 69 | | 34 | | 103 |
| (October 1-June 14) | | 60 | | 34 | | 94 |
| Jefferson County | Jefferson County | 69 | | 34 | | 103 |
| Loveland | City limits of Loveland (see Larimer County) | 69 | | 30 | | 99 |
| Montrose | Montrose | 59 | | 34 | | 93 |
| Pueblo | Pueblo | | | | | |
| (June 1-September 30) | | 75 | | 34 | | 109 |
| (October 1-May 31) | | 58 | | 34 | | 92 |
| Silverthorne/Keystone | Summit | | | | | |
| (December 1-April 1) | | 170 | | 38 | | 208 |
| (April 2-November 30) | | 130 | | 38 | | 168 |

| Per diem locality: Key city[1] | County and/or other defined location [2], [3] | Maximum lodging amount (room rate only—no taxes) (a) | + | M&IE rate (b) | = | Maximum per diem rate [4] (c) |
|---|---|---|---|---|---|---|
| South Bend | St. Joseph | 58 | | 34 | | 92 |
| Valparaiso/Burlington Beach | Porter | 69 | | 34 | | 103 |
| | | | | | | |
| IOWA | | | | | | |
| Cedar Rapids | Linn | 56 | | 34 | | 90 |
| Des Moines | Polk | 67 | | 34 | | 101 |
| | | | | | | |
| KANSAS | | | | | | |
| Kansas City/Overland Park | Wyandotte and Johnson | 85 | | 38 | | 123 |
| Wichita | Sedgwick | 58 | | 38 | | 96 |
| | | | | | | |
| KENTUCKY | | | | | | |
| Covington | Kenton | 80 | | 38 | | 118 |
| Louisville | Jefferson | 63 | | 38 | | 101 |
| | | | | | | |
| LOUISIANA | | | | | | |
| Baton Rouge | East Baton Rouge Parish | 65 | | 38 | | 103 |
| Gonzales | Ascension Parish | 59 | | 34 | | 93 |
| Lake Charles | Calcasieu Parish | 74 | | 34 | | 108 |
| New Orleans/Plaquemine/St. Bernard | Orleans, Iberville, Jefferson Parish and St. Bernard | 88 | | 42 | | 130 |
| Shreveport | Caddo | 60 | | 38 | | 98 |
| St. Francisville | West Feliciana | 75 | | 38 | | 113 |
| | | | | | | |
| MAINE | | | | | | |
| Bangor | Penobscot | 56 | | 30 | | 86 |
| Bar Harbor | Hancock | | | | | |
| (July 1-September 15) | | 104 | | 38 | | 142 |
| (September 16-June 30) | | 75 | | 38 | | 113 |
| Bath | Sagadahoc | | | | | |
| (May 1-October 31) | | 61 | | 34 | | 95 |
| (November 1-April 30) | | 55 | | 34 | | 89 |
| Kennebunk | York | 62 | | 38 | | 100 |
| Kittery | Portsmouth Naval Shipyard (see York County) | | | | | |
| (May 1-October 31) | | 70 | | 34 | | 104 |
| (November 1-April 30) | | 55 | | 34 | | 89 |
| Portland | Cumberland | | | | | |
| (July 1-October 31) | | 80 | | 38 | | 118 |
| (November 1-June 30) | | 70 | | 38 | | 108 |
| Rockport | Knox | 87 | | 42 | | 129 |
| Wiscasset | Lincoln | 59 | | 38 | | 97 |
| | | | | | | |
| MARYLAND | | | | | | |
| (For the counties of Montgomery and Prince George's, see District of Columbia.) | | | | | | |
| Annapolis | Anne Arundel | 90 | | 42 | | 132 |
| Baltimore | Baltimore | 110 | | 42 | | 152 |
| Columbia | Howard | 109 | | 42 | | 151 |
| Grasonville | Queen Annes | 63 | | 38 | | 101 |

Dated: May 11, 2000.

**Peggy G. DeProspero,**

*Acting Director, Travel Management Policy Division.*

[FR Doc. 00–12340 Filed 5–18–00; 8:45 am]

BILLING CODE 6820–34–C

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 622

**[Docket No. 000120016–0135–02; I.D. 112299C]**

**RIN 0648–AM70**

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Gag, Red Grouper, and Black Grouper Management Measures

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement a regulatory amendment prepared by the Gulf of Mexico Fishery Management Council (Council) in accordance with framework procedures for adjusting management measures in the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This final rule increases the commercial and recreational minimum size limits for gag and black grouper; prohibits the commercial harvest and the sale or purchase of gag, black grouper, and red grouper from February 15 to March 15 each year; and establishes two areas in the eastern Gulf of Mexico that are closed to all fishing, except fishing for highly migratory species. The intended effect of this final rule is to protect the spawning aggregations for these species and to prevent overfishing.

**DATES:** This final rule is effective June 19, 2000.

**ADDRESSES:** Copies of the final regulatory flexibility analysis (FRFA) may be obtained from the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, telephone: 727–570–5305, fax: 727–570–5583, email: Richard.Raulerson@noaa.gov.

**FOR FURTHER INFORMATION CONTACT:** Dr. Roy E. Crabtree, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Roy.Crabtree@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The reef fish fishery in the Gulf of Mexico EEZ is managed under the FMP. The FMP was prepared by the Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

In accordance with the framework procedures of the FMP, the Council recommended, and NMFS published, a proposed rule (65 FR 4221, January 26, 2000) to increase the commercial and recreational minimum size limits for gag and black grouper; prohibit the commercial harvest and the sale or purchase of gag, black grouper, and red grouper harvested from the Gulf EEZ from February 15 to March 15 each year; and establish two areas in the eastern Gulf of Mexico (Madison and Swanson sites and Steamboat Lumps) that would be closed to all fishing, except fishing for highly migratory species (i.e., tunas, marlin, sailfish, swordfish, and oceanic sharks). The preamble to the proposed rule explained the need and rationale for these measures. Those descriptions are not repeated here.

After considering the comments received on the proposed rule, NMFS partially approved the regulatory amendment. The proposed additional increases in the recreational minimum size limit for gag and black grouper from 22 inches to 24 inches (55.9 cm to 61 cm), to be phased in over a 2-year period following implementation of this final rule, were disapproved (see Response to Comment 3 under "Comments and Responses" below).

### Comments and Responses

*Comment 1*: Two Council members stated in their minority report that the proposed measures are insufficient to prevent overfishing and protect male gag. Specifically, they stated that the commercial 1-month closed season is too short to be effective. Several environmental groups also suggested that additional measures, including additional marine reserves, are needed to protect gag.

*Response*: NMFS agrees that additional measures to reduce fishing mortality will probably be required to achieve levels consistent with the Council's management objective. The Council's intent in preparing this amendment was to reduce overfishing to a level consistent with the 20–percent spawning potential ratio (SPR) management target in effect at the time it adopted final measures for the regulatory amendment. On November 17, 1999, NMFS approved a maximum fishing mortality threshold of 30-percent SPR for gag and black grouper, as proposed by the Council under its Generic Sustainable Fisheries Act Amendment to the Fishery Management Plans of the Gulf of Mexico. Additional reductions in fishing mortality will probably be needed to prevent this threshold from being exceeded. To address this concern, and other problems in the grouper fishery, the Council is developing an FMP amendment. NMFS agrees that the effectiveness of the 1-month closure of the commercial fishery could be reduced if, in response to the closure, fishing effort increases immediately before or after the closure; however, the closure will provide some reduction in fishing mortality and provide some protection to spawning aggregations. NMFS believes that additional measures to protect spawning aggregations may be required in the future; however, the 1-month closure is an appropriate step at this time.

*Comment 2*: A for-hire fishing organization and two Council members stated that the proposal to close two areas to all fishing exceeds the most restrictive alternative presented and discussed at public hearings and should be disapproved. A commercial fishing organization and a for-hire fishing organization questioned the need for closing the two areas to all fishing. Nine individuals and seven environmental organizations expressed strong support for the two closed areas and suggested the closure period should be extended beyond the 4-year period.

*Response*: This rule closes the two areas only to fisheries under the jurisdiction of the Council. The Council has requested that NMFS' Highly Migratory Species Division (HMS Division), Office of Sustainable Fisheries, issue a compatible rule prohibiting fishing for all Atlantic highly migratory species in these two areas. The HMS Division is currently considering this request and expects to take appropriate action soon. Any HMS Division's rulemaking action will involve proposed and final rules and will provide the opportunity for public comment on proposed measures. The Council recommended closure of the two areas to all fishing in order to reduce bycatch mortality of gag and black grouper and to improve enforcement of the closure to fishing.

The closure to all fishing under the Council's jurisdiction is a logical extension of the Council's earlier proposal that was the subject of public hearings and a workshop involving affected fishery participants and is based on public comments. This earlier proposal would have closed areas to all

reef fish fishing and to the use of all bottom gear capable of catching reef fish. At the Council's March 1999 meeting, NMFS enforcement personnel stated that the areas should be closed to all fishing rather than just to fishing in one fishery to enhance enforcement significantly. At its July 1999 meeting and after receiving public comment on the selection of the two sites, the Council determined that a closure to all fishing was necessary to achieve the goals of the proposed measure.

NMFS has approved this measure along with its 4-year sunset provision as recommended by the Council. The Council may consider extending the duration of the closure, as appropriate, at some subsequent time.

*Comment 3*: Two Council members stated in their minority report that the proposed measures place an unfair and greater burden on the recreational sector than on the commercial fishery. Eighteen individuals objected to the proposal to increase the recreational minimum size limit and stated that regulations should reduce the commercial harvest only. Several individuals stated that reductions in the recreational bag limit would be more effective than increases in the minimum size limit since some released fish die as a result of capture trauma. A total of 277 individuals favored the increase in the recreational minimum size limit. In a minority report, four other Council members objected to the delay in the increase in the recreational minimum size limit to 24 inches (61.0 cm) and argued that an immediate increase to 24 inches (61.0 cm) is needed to reduce overfishing. A total of 279 individuals supported the increase in the commercial minimum size limit, and 3 individuals opposed this increase. Three environmental groups expressed support for the increased size limit and one expressed opposition.

*Response*: NMFS believes that minimum size limits are an appropriate and effective method of protecting immature fish in many fisheries. NMFS recognizes that the effectiveness of minimum size limits can be reduced if release mortality rates are high. In the shallow-water grouper recreational fishery and the hand-line commercial fishery, release mortality rates appear to be relatively low and, therefore, consistent with effective minimum size limits.

NMFS disagrees that regulations should affect only the commercial sector. Restrictions in both the recreational and commercial sectors should be equitable. The increase in the recreational minimum size limit to 22 inches (55.9 cm) and the measures intended to reduce the commercial harvest should result in an equitable harvest by each sector. NMFS believes that the proposed increase in the recreational minimum size limit from 22 to 24 inches (55.9 cm to 61.0 cm) could disproportionately reduce the recreational harvest compared to the commercial harvest reduction. Such an inequitable reduction in the harvest between the two sectors is contrary to national standard 4 and section 303(a)(14) of the Magnuson-Stevens Act. The administrative record indicates that the proposed increase in the minimum size limit from 22 inches to 24 inches (55.9 cm to 61.0 cm) in the recreational fishery would result in a disproportionally large reduction in the recreational harvest compared to the commercial harvest reduction resulting from the combined measures for the commercial fishery. Consequently, NMFS has disapproved the Council's proposed increase in the recreational minimum size limit from 22 inches to 24 inches (55.9 cm to 61.0 cm). NMFS will consider further minimum size limit changes for the recreational fishery if the Council proposes measures that ensure equitable reductions in the harvest by each sector. NMFS believes that the Council can resolve this issue later this year as it develops a comprehensive FMP amendment to address problems in the shallow-water grouper fishery.

The Council considered, but did not recommend, establishing a separate bag limit for gag. The current bag limit of five fish is an aggregate bag limit for shallow-water grouper. The Council considered analyses indicating that harvest would not be reduced significantly by setting a gag bag limit of two fish per person per day because few individuals land more than two fish. The Council may choose to reconsider bag limit reductions as it develops an FMP amendment to address conservation and management issues in the grouper fishery.

*Comment 4*: Four Council members, a commercial fishing organization, and a for-hire fishing organization stated that the proposed measures are not based upon the best available science. Specifically, a Council minority report questioned the need for the protection of male gag and the scientific information indicating a recent declining proportion of male gag in the Gulf of Mexico. The for-hire organization objected to the use of SPR as a valid reference point upon which to base management decisions. Conversely, two individuals and five environmental organizations argued that the measures are based on the best available science, which they believe particularly supports the need to protect male gag through closed areas.

*Response*: NMFS believes that the approved measures are based on the best available science and are consistent with the precautionary approach to fisheries management. Uncertainty regarding scientific information does not preclude precautionary management action. Sufficient scientific information suggests that the proportion of males in the Gulf gag stock has decreased as a result of heavy exploitation. NMFS is concerned that the loss of males and the fishing effort on spawning aggregations could disrupt spawning and ultimately reduce recruitment. It is uncertain to what extent males have been depleted and whether such depletion has affected spawning success. However, closure of two areas to allow further study of this issue is an appropriate precautionary management measure.

SPR is an appropriate proxy for fishing mortality and, thus, an appropriate reference point upon which to base management decisions that are intended to address overfishing. The intent of this final rule is to reduce and prevent overfishing; thus, the use of SPR in this context is appropriate.

*Comment 5*: Four Council members stated in their minority report that the 1-month closure of the commercial fishery only is not fair and equitable to all fishermen and should be disapproved based on national standard 4. An organization representing the commercial fishing industry, one environmental group and 25 individuals also objected to the 1-month closure of the commercial fishery. Many of these individuals explicitly objected to the lack of prior notice regarding the closure during 2000 and stated that uncertainty regarding the closure in 2000 interfered with efficient fishing operations. An additional 273 individuals questioned the effectiveness of a 1-month closure. They stated that effort would be shifted to other months and that ex-vessel prices would decrease as a result of the closure. Seventeen individuals and three environmental groups expressed support for the 1-month closure, although many of these believed that the closure should be extended to encompass the entire spawning season (3–4 months). Some individuals also suggested that a seasonal closure of spawning areas should be established.

*Response*: NMFS believes that the approved measures will result in approximately equal percent reductions of the harvests in the recreational and commercial sectors and, thus, the approved measures are fair and equitable. NMFS agrees that effort

shifting in the commercial fishery may reduce the effectiveness of the 1-month closure of the commercial fishery; however, NMFS believes that the closure will provide some reductions in fishing mortality of gag, black grouper, and red grouper and will provide some limited protection to spawning aggregations of these species. Additional measures to reduce fishing mortality and protect spawning aggregations may be required in the future. NMFS also recognizes that limited notification of fishery closures places a hardship on the participants in the commercial fishery. Because this final rule does not become effective until after March 15, 2000, the 1-month closure of the commercial fishery will not occur until 2001.

*Comment 6*: Four Council members stated in their minority report that the regulatory amendment does not adequately consider the economic impact on fishing communities.

*Response*: For analyzing economic impacts, information is available at the county level and is not available disaggregated to show fishing communities. However, all affected entities are included in the RIR's aggregate economic analysis. Therefore, because fishing communities would be affected, the economic impact on them is included in the aggregate analysis. The Council and NMFS prepared a Regulatory Impact Review (RIR) and a Final Regulatory Flexibility Analysis (FRFA) that assess the socioeconomic effects of the preferred measures and alternatives considered by the Council and NMFS. The costs and benefits of the rule are assessed in the RIR and the economic impacts on small entities are assessed in the RIR/FRFA. The Council considered the economic implications of each alternative for achieving the management objective of reducing and preventing overfishing. The FRFA identifies the alternatives with less adverse economic impacts on small entities and sets forth the reasons why such alternatives were rejected. NMFS believes that the approved measures are based on the best available scientific information and will achieve the management objective in a fair and equitable manner, while minimizing the adverse economic impacts to the extent practicable.

*Comment 7*: Four Council members stated in their minority report that the regulatory amendment fails to address bycatch in the recreational fishery as required by the Magnuson-Stevens Act. One environmental group opposed the size limit increase based on its belief that bycatch would be increased.

*Response*: NMFS believes that the approved increase in the minimum size limit will reduce fishing mortality on small, immature grouper in the shallow-water grouper fishery and that this reduction in fishing mortality outweighs any increase in the resulting regulatory discards. National standard 9 requires that bycatch and bycatch mortality be minimized to the extent practicable. NMFS believes that bycatch in the recreational gag/black grouper fishery has been reduced to the extent practicable. Most bycatch in the recreational grouper fishery results from regulatory discards, which are an inevitable result of measures such as bag limits, size limits, and closed seasons. The elimination of these measures, with the intent of reducing bycatch, would increase overall fishing mortality and increase the rate of exploitation of immature grouper. Thus, the elimination of these measures to reduce bycatch would contribute to overfishing and is not practicable.

*Comment 8*: A total of 284 individuals commented that longlines were responsible for most of the problems in the shallow-water grouper fishery and suggested that longlines either be eliminated from the fishery or restricted to depths beyond 40–50 fathoms (73.2–91.4 m). One individual suggested that spear fishing for grouper be eliminated. Another individual suggested that fish traps be eliminated.

*Response*: The Council did not propose gear restrictions in the grouper fishery in this regulatory amendment. The Council is expected to consider additional gear restrictions in its FMP amendment for the grouper fishery currently under development.

*Comment 9*: Two individuals and five environmental groups responded to concerns raised by the NMFS Southeast Fisheries Science Center regarding the closed areas (see the proposed rule preamble). Comments received stated that (1) baseline data exist with which to compare changes in the closed area after 4 years; (2) the 4-year duration of the closure is too short but can and should be extended by the Council and NMFS; (3) scientists can provide criteria with which to judge the "success" or "failure" of the closure after the closure is approved; and (4) the results of studies within the closed areas will provide useful information to management agencies.

*Response*: NMFS has approved the closure of the two areas and will work with the Council to develop an appropriate experimental design and review existing baseline data.

## Changes From the Proposed Rule

For the reasons discussed under the Response to Comment 3, NMFS has disapproved the measure that would have phased in additional increases in the recreational minimum size limit for gag and black grouper from 22 inches (55.9 cm) to 24 inches (61 cm). Those additional phased-in increases have been removed from § 622.37(d)(2)(iii)(B) of this final rule.

In § 622.45(c)(4), the wording of the seasonal restriction on sale or purchase of gag, black grouper, or red grouper harvested by a vessel with a Federal commercial permit for Gulf reef fish has been revised to clarify that the restriction applies throughout the Gulf rather than only in the Gulf EEZ. This is consistent with the wording of the corresponding seasonal closure of the commercial fishery for gag, black grouper, and red grouper.

## Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

The regulatory amendment implemented by this final rule was prepared by the Council and submitted to NMFS for review, approval, and implementation under authority of the Magnuson-Stevens Act. The Council prepared an initial regulatory flexibility analysis (IRFA) for the four measures proposed in the regulatory amendment. NMFS prepared an FRFA for the final rule implementing the regulatory amendment. The FRFA was based on the IRFA, public comments, and subsequent analysis by NMFS. A summary of the FRFA follows:

The final rule implements four management actions: (1) An increase in the minimum size limits for gag and black grouper from 20 to 24 inches (50.8 cm to 61.0 cm) for commercial fishermen; (2) an increase in the minimum size limits for gag and black grouper from 20 inches to 22 inches (from 50.8 cm to 55.9 cm) for recreational fishermen; (3) a 1-month seasonal closure of the commercial fishery for gag, black and red grouper; and (4) a year-round prohibition of recreational and commercial fishing in two specific areas where gag spawning aggregations are known to occur. The Council also proposed that the recreational minimum size limit for gag and black grouper be increased from 22 inches to 24 inches (from 55.9 cm to 61.0 cm) over the 2-year period following implementation of this final rule; however, NMFS disapproved that provision. The approved measures will result in a significant economic impact

on a substantial number of small business entities.

NMFS received over 600 comments on the proposed action. The comments pertaining to economic impacts of the actions are summarized as follows. Some comments stated that the proposal to close two areas to all fishing is too restrictive, while other comments gave strong support to the two closed areas. NMFS responds that the closure to all fishing under the Council's jurisdiction is a logical extension of the Council's earlier proposal to close areas to reef fish fishing and is based on public comment. However, this final rule closes the areas to fishing only for species under the Council's management.

Some comments stated that the size limit proposal unfairly limits the recreational catch while several individuals favored bag limit reductions instead. There were 227 comments in favor of the proposed recreational size limit. 279 comments favored the commercial size limit, and 3 were opposed. NMFS believes that size limits are an appropriate method of protecting immature fish but is concerned that the proposed increases in the recreational size limit to 24 inches (61.0 cm) could unfairly reduce the recreational harvest. NMFS, therefore, disapproved the increase in the recreational size limit beyond 22 inches (55.9 cm).

A total of 273 individuals questioned the effectiveness of a 1-month closure, with some noting that the closure should be extended to encompass the entire spawning season (3–4 months). NMFS agrees that a 1-month closure would be less effective than a longer closure, but notes that the closure will result in a reduction in fishing mortality and is, therefore, an appropriate step at this time, notwithstanding the possible need for future reductions in fishing mortality.

Some comments stated that the regulatory amendment does not adequately consider the economic impact on fishing communities. NMFS notes that an RIR, IRFA, and FRFA were prepared that assess the economic impacts of the Council's proposed measures and the alternatives it considered.

In summary, there were no changes to the proposed rule that were based solely on the public comments. However, NMFS disapproved the Council's proposal for a subsequent increase in the recreational size limit for gag and black grouper from 22 inches to 24 inches (55.9 cm to 61.0 cm) because this size increase for the recreational sector could cause disproportionately large harvest reductions compared to the commercial sector's harvest reductions, and would, thus, be in conflict with national standard 4. Numerous public comments were in support of this decision; they alleged that the further minimum-size increase for the recreational fishery was discriminatory because of the arguably unfair and inequitable potential effects on recreational harvests.

The Council determined that 242 commercial vessels historically fishing in the Gulf of Mexico EEZ would be negatively affected by the seasonal and year-round area closures. A relatively small proportion of the for-hire fleet is also expected to be impacted adversely by the two year-round area closures. The minimum size limits will affect 757 commercial vessels and an unknown number of for-hire vessels. All of these units are classified as small business entities under the RFA. Most of the commercial vessels use handline gear, have an average length of 38 ft (11.6 m), and generate average annual gross revenues of about $50,000. The for-hire businesses tend to use traditional charter fishing boats with offshore capability. No additional reporting, recordkeeping, or other compliance requirements by small entities are contained in the final rule.

Significant alternatives to the proposed actions were identified. The Council rejected four alternatives to change the size limits. The status quo of a 20-inch (50.8-cm) minimum size limit was rejected because increasing the size limits will help achieve the objective of preventing overfishing. The impacts of some of the other rejected alternatives were greater than for the proposed limits, and the proposed alternative would help meet the regulatory amendment objectives while minimizing the adverse economic impacts. NMFS' decision to disapprove the phased-in increase to a 24-inch (61.0-cm) recreational minimum size limit will tend to minimize adverse impacts on some for-hire small businesses.

There were three alternatives to the proposal to implement a 1-month seasonal commercial closure for gag, black and red grouper. The status quo was rejected because action was needed in order to attain the objectives of the regulatory amendment. The other two alternatives were rejected because they would have resulted in greater adverse impacts on fishermen.

The remaining action would prohibit fishing for 4 years in two specific areas. The Council considered and rejected four alternatives to the closed areas, including the status quo. The status quo was rejected because the area closures will provide essential protection for a portion of the gag population. Based on the sizes of the closed areas considered, impacts from the other alternatives would have lesser or greater impacts. The Council's recommendation falls in the middle and represents an attempt to achieve the objective of protecting gag stocks while minimizing negative economic impacts. The 4-year sunset provision for the closed areas also represents an attempt to minimize the negative economic impacts.

This rule is necessary because the gag stock is approaching an overfished condition, and the Magnuson-Stevens Act requires the Council to take action to prevent overfishing.

A copy of the FRFA is available from NMFS (see **ADDRESSES**).

**List of Subjects in 50 CFR Part 622**

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: May 12, 2000.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.34, add paragraphs (k) and (o) to read as follows:

**§ 622.34 Gulf EEZ seasonal and/or area closures.**

* * * * *

(k) *Closure of the Madison and Swanson sites and Steamboat Lumps.* No person may fish within the Madison and Swanson sites or Steamboat Lumps for any species of fish except highly migratory species. Highly migratory species means tuna species, marlin (*Tetrapturus spp.* and *Makaira spp.*), oceanic sharks, sailfishes (*Istiophorus spp.*), and swordfish (*Xiphias gladius*). This prohibition is effective through June 16, 2004. For the purpose of this paragraph (k), fish means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals and birds. The Madison and Swanson sites are bounded by rhumb lines connecting, in order, the following points:

| Point | North lat. | West long. |
|---|---|---|
| A | 29°17′ | 85°50′ |
| B | 29°17′ | 85°38′ |
| C | 29°06′ | 85°38′ |
| D | 29°06′ | 85°50′ |
| A | 29°17′ | 85°50′ |

Steamboat Lumps is bounded by rhumb lines connecting, in order, the following points:

| Point | North lat. | West long. |
|---|---|---|
| A | 28°14′ | 84°48′ |
| B | 28°14′ | 84°37′ |
| C | 28°03′ | 84°37′ |
| D | 28°03′ | 84°48′ |
| A | 28°14′ | 84°48′ |

* * * * *

(o) *Seasonal closure of the commercial fishery for gag, red grouper, and black grouper.* From February 15 to March 15, each year, no person aboard a vessel for which a valid Federal commercial permit for Gulf reef fish has been issued may possess gag, red grouper, or black grouper in the Gulf, regardless of where harvested. However, a person aboard a vessel for which the permit indicates both charter vessel/headboat for Gulf reef fish and commercial Gulf reef fish may continue to retain gag, red grouper, and black grouper under the bag and possession limit specified in § 622.39(b), provided the vessel is operating as a charter vessel or headboat. From February 15 until March 15, each year, the sale or purchase of gag, red grouper, or black grouper is prohibited as specified in § 622.45(c)(4).

3. In § 622.37, paragraph (d)(2)(ii) is revised and paragraph (d)(2)(iii) is added to read as follows:

**§ 622.37 Size limits.**

* * * * *

(d) * * *

(2) * * *

(ii) Red grouper and yellowfin grouper—20 inches (50.8 cm), TL.

(iii) Black grouper and gag—(A) For a person not subject to the bag limit specified in § 622.39(b)(1)(ii)—24 inches (61.0 cm), TL.

(B) For a person subject to the bag limit specified in § 622.39(b)(1)(ii)—22 inches (55.9 cm), TL.

* * * * *

4. In § 622.45, paragraph (c)(4) is added to read as ollows:

**§ 622.45** *Restrictions on sale/purchase.*

* * * * *

(c) * * *

(4) From February 15 until March 15, each year, no person may sell or purchase a gag, black grouper, or red grouper harvested from the Gulf by a vessel with a valid Federal commercial permit for Gulf reef fish. This prohibition on sale/purchase does not apply to gag, black grouper, or red grouper that were harvested, landed ashore, and sold prior to February 15 and were held in cold storage by a dealer or processor.

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[FR Doc. 00–12578 Filed 5–18–00; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 622 and 654

[Docket No. 000511134–0134–01; I.D. 072699D]

RIN 0648–AL81

## Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Fishery Management Plans of the Gulf of Mexico; Addition to FMP Framework Provisions; Stone Crab Gear Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NMFS issues this final rule to implement those provisions of the Generic Sustainable Fisheries Act Amendment to the Fishery Management Plans (FMPs) of the Gulf of Mexico (SFA Amendment) that modify the framework regulatory adjustment procedures in the FMPs for reef fish, red drum, and coastal migratory pelagics. These FMP framework modifications allow timely addition of various stock population parameters to the appropriate FMP(s), including biomass-based estimates of minimum stock size thresholds (MSSTs), optimum yield (OY), maximum sustainable yield (MSY), stock biomass achieved by fishing at MSY ($B_{MSY}$), and maximum fishing mortality thresholds (MFMTs). These regulations also revise the stone crab trap construction requirements, as proposed by the SFA Amendment. The intended effects are to provide a more timely mechanism for incorporating stock population parameters into the applicable FMPs when such information becomes available and to establish stone crab trap construction regulations that are compatible with those of the State of Florida and that will reduce finfish bycatch.

**DATES:** This final rule is effective June 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Roy Crabtree, telephone: 727–570–5305, fax: 727–570–5583, e-mail: Roy.Crabtree@noaa.gov.

**SUPPLEMENTARY INFORMATION:** The SFA Amendment addresses fisheries under the FMPs for coral and coral reef resources, coastal migratory pelagics, red drum, reef fish, shrimp, spiny lobster, and stone crab. The FMPs were prepared by the Gulf of Mexico Fishery Management Council (Council), except for the FMPs for coastal migratory pelagics and spiny lobster that were prepared jointly by the South Atlantic and Gulf of Mexico Fishery Management Councils. All of these FMPs, except the spiny lobster and stone crab FMPs, are implemented

under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. The Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic is implemented by regulations at 50 CFR part 640; the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico is implemented by regulations at 50 CFR part 654.

On August 18, 1999, NMFS announced the availability of the SFA Amendment and requested comments on it (64 FR 44884). On November 2, 1999, NMFS published a proposed rule to implement those provisions of the SFA Amendment that required rulemaking (i.e., the modifications of the framework procedures of the applicable FMPs and the changes to the stone crab trap construction requirements) and requested comments on the proposed rule (64 FR 59153). The background and rationale for the measures in the SFA Amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here.

On November 17, 1999, after considering the comments received, NMFS partially approved the SFA Amendment. NMFS approved the portions of the amendment dealing with descriptions of the fisheries and fishing communities, the spawning potential ratio (SPR) proxies submitted for the MFMTs (except for red snapper), the MSSTs for shrimp, and the proposed changes in the construction characteristics of stone crab traps. NMFS disapproved the portion of the amendment dealing with bycatch reporting, because the Council has not fulfilled the Magnuson-Stevens Act requirement to develop standardized reporting to assess the amount and type of bycatch. NMFS also disapproved the portion of the amendment dealing with bycatch reduction, except for the measure for the construction of stone crab traps. This disapproval was based on national standard 9, because the Council has not fulfilled the Magnuson-Stevens Act mandate to reduce bycatch to the extent practicable and has not adequately explained why additional measures to reduce bycatch are not practicable. NMFS disapproved the following actions regarding overfishing targets and thresholds. All of the SPRs submitted as proxies for MSY, OY, and the MSST were disapproved based on national standards 1 and 2 because they are not consistent with the best available scientific information and do not provide an adequate basis for achieving OY on a continuing basis. The targets and thresholds proposed for shrimp are biomass-based; however, the proxies for MSY and OY were disapproved and must be revised to reflect the yields associated with the various biomass proxies proposed. The MFMT (referred to as an "overfishing threshold") for royal red shrimp was disapproved based on national standards 1 and 2 because no fishing mortality rate is explicitly specified; therefore, no objective basis was provided for determining whether overfishing is occurring. NMFS disapproved the rebuilding schedules for king mackerel and red snapper based on national standards 1 and 2. The rebuilding targets specified are fishing mortality based (static SPR) rather than biomass-based as required by the Magnuson-Stevens Act and the national standard guidelines. NMFS recently provided the information needed to develop new rebuilding plans to the Council. The static SPR targets would not allow an adequate determination of the management measures required to rebuild these stocks to a biomass capable of producing MSY because static SPR is not sensitive to population size and reflects only current levels of fishing mortality. The Council did not propose rebuilding schedules for red drum, Nassau grouper, or jewfish. Additional rationale for NMFS' approvals and disapprovals of the various components of the SFA Amendment are provided in the Comments and Responses Section.

Those measures that were disapproved were not contained in the proposed rule; therefore, no changes to the proposed rule resulted from the disapprovals. No comments were received on the proposed rule, and the proposed rule has been adopted as final without change. NMFS received 11 comments on the SFA Amendment. They are summarized below:

**Comments and Responses**

*Comment 1*: Two environmental groups recommended that NMFS disapprove the environmental assessment (EA) included in the amendment. They commented that the EA failed to adequately analyze the direct, indirect, and cumulative environmental impacts of the proposed actions and reasonable alternatives that would minimize adverse impacts.

*Response*: NMFS disagrees. NMFS has determined that no significant impact on the human environment will result from the approved measures. The proposed action, in the context of the fishery as a whole, will not have an adverse impact on the environment. The description of the affected environment for the fisheries under the jurisdiction of the Gulf of Mexico Fisheries Management Council is discussed in the Generic Amendment for Addressing Essential Fish Habitat. The only specific regulatory action that would affect fish stocks or the environment is the adoption of the construction characteristics of stone crab traps set forth in Chapter 46–13.002(2)(a) of Florida law. This measure is intended to reduce bycatch in the stone crab fishery and is not expected to have any adverse effects on the environment. The remaining measures proposed in the SFA Amendment address bycatch, overfishing definitions, and rebuilding schedules; however, the amendment proposes no regulatory actions that directly affect allocations or would be expected to substantially alter existing fishing practices in a way that would be detrimental to the environment. In addition, section 13.0 of the EA incorporates by reference sections of the amendment containing a description of the expected environmental consequences of each of the proposed alternatives considered. Additional environmental analyses and determinations will be made as future regulatory measures are implemented to achieve the goals of the SFA Amendment.

*Comment 2*: Five groups objected to the provisions of the amendment regarding reporting and minimization of bycatch. All commented that additional reporting requirements were needed to fully describe bycatch and that additional measures were required to reduce bycatch.

*Response*: NMFS agrees that additional bycatch reporting measures are required. NMFS has disapproved the portion of the amendment dealing with bycatch reporting. The Council has not fulfilled the Magnuson-Stevens Act requirement to develop standardized reporting to assess the amount and type of bycatch. The Council has taken steps to improve bycatch reporting, such as the cooperative state-Federal program under development by the Gulf States Marine Fisheries Commission, but this program is not yet fully implemented. Furthermore, NMFS is developing a bycatch reporting requirement in future and current logbooks that will be implemented on January 1, 2001. The Council proposed no new measures to improve bycatch reporting in its SFA Amendment; however, the Council is currently developing options to address bycatch problems in the shrimp fishery. These options include requiring bycatch reduction devices (BRDs) in the eastern Gulf, permits, logbooks, and observer programs.

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NMFS agrees that the SFA amendment does not fulfill the Magnuson-Stevens Act mandate to reduce bycatch to the extent practicable. The Council has not adequately explained why additional measures to reduce bycatch are not practicable. NMFS has disapproved the portion of the amendment dealing with bycatch reduction except the modifications in the construction of stone crab traps. NMFS has requested that the Council take more aggressive action throughout the Gulf to reduce shrimp trawl bycatch. Such action could include extending the requirement for BRDs into Federal waters east of Cape San Blas, Florida, effort reduction in the fishery, closed areas, or seasonal closures. NMFS has approved the proposed changes in the construction characteristics of stone crab traps intended to reduce bycatch in that fishery.

*Comment 3*: Three environmental groups recommended disapproval of the proposed rebuilding plans for overfished species on the basis that the plans were either incomplete or proposed no specific description of how stocks are to be rebuilt. Some recommended that interim goals were needed within the proposed rebuilding period to ensure that rebuilding was occurring on schedule.

*Response*: NMFS has disapproved the rebuilding schedules for king mackerel and red snapper based on national standards 1 and 2 because they specified fishing mortality-based rebuilding targets rather than biomass-based targets, and because the time to rebuild in the absence of fishing mortality was not estimated based on rebuilding to biomass at MSY, as required by the Magnuson-Stevens Act and the national standard guidelines. Therefore, they are not based on the best available scientific information and provide no adequate basis for preventing overfishing and rebuilding stocks. Furthermore, the 26-percent spawning potential ratio (SPR) level specified as a proxy for red snapper is unlikely to reflect the fishing mortality rate at MSY according to the 1999 report of the Reef Fish Stock Assessment Panel. The Council did not propose rebuilding schedules for red drum, Nassau grouper, or jewfish. NMFS has recently provided the Council with information needed to revise rebuilding plans and requested that the Council submit the revisions through framework procedures as soon as possible. NMFS agrees that interim goals within an extended rebuilding period would be a valuable and precautionary way to ensure that a stock is rebuilding as planned; however, such goals are not explicitly required by the guidelines.

*Comment 4*: Four environmental groups commented on the fishery management targets and thresholds proposed and specifically on the lack of any specification of the minimum stock size threshold (MSST). Some groups suggested that an interim SPR proxy be established for the MSST until biomass-based estimates are available.

*Response*: NMFS has disapproved the SPRs submitted as proxies for MSY, OY, and MSST based on national standards 1 and 2. The Council must provide biomass-based estimates of MSY, OY, and MSST that are consistent with the Magnuson-Stevens Act and the national standard guidelines rather than proxies based on fishing mortality, which is not based on the best available scientific information and would not provide an adequate measure for determining whether OY can be achieved on a continuing basis. The SPR proxies submitted for MFMT were approved with the exception of red snapper, which was disapproved based on national standards 1 and 2 because the 26-percent SPR level specified is unlikely to reflect the fishing mortality rate at MSY, according to the 1999 report of the Reef Fish Stock Assessment Panel. The MFMT for royal red shrimp was also disapproved because no fishing mortality rate is explicitly specified. Static SPR is an acceptable proxy for the MFMT; however, SPR is not biomass-based and is not an acceptable proxy for MSST. Transitional SPR can be a useful measure of the extent to which past fishing mortality has distorted the age structure of a stock, but it is not sensitive to population size or biomass and, thus, is not an acceptable proxy for MSST.

*Comment 5*: Two charter-boat groups commented on the need for increased bycatch reduction in the shrimp fishery. They stated that BRDs have not reduced bycatch sufficiently and that a bycatch quota is needed in the shrimp fishery.

*Response*: NMFS agrees that additional bycatch reduction is required in the Gulf shrimp fishery. NMFS has disapproved the portion of the amendment dealing with bycatch reduction. The Council has not fulfilled the Magnuson-Stevens Act mandate to reduce bycatch to the extent practicable and has not adequately explained why additional measures to reduce bycatch are not practicable. NMFS has encouraged the Council to take more aggressive action throughout the Gulf to reduce shrimp trawl bycatch. NMFS has also notified the Council that additional measures to monitor bycatch in the shrimp fishery are needed. The Council is currently developing options to address bycatch problems in the shrimp fishery. These options include BRDs in the eastern Gulf, permits, logbooks, and observer programs. The Council has not previously considered bycatch quotas in the shrimp fishery; however, this idea may merit future consideration.

*Comment 6*: Three charter-boat groups commented that the overfishing thresholds for finfish were too conservative and should be disapproved. They specifically objected to the proposed thresholds for red snapper, jewfish, and Nassau grouper. They stated that MSY should be established on an individual basis.

*Response*: NMFS agrees that MSY thresholds should be established on an individual species basis. NMFS disagrees that the proposed overfishing thresholds are overly conservative. The proposed SPR levels are consistent with a large body of published scientific literature regarding appropriate threshold levels to prevent recruitment overfishing. NMFS has disapproved the SPRs submitted as proxies for MSY, OY, and MSST based on national standards 1 and 2, because they are based on fishing mortality and are not consistent with the best available scientific information and are not adequate criteria for determining whether OY can be achieved on a continuing basis. The Council must provide species-specific, biomass-based estimates of MSY, OY, and MSST that are consistent with the Magnuson-Stevens Act and the national standard guidelines.

*Comment 7*: One environmental group commented that the MFMT level should be set lower than MSY.

*Response*: NMFS disagrees. Both MSY and MFMT are limit thresholds. MSY is a biomass-based yield and MFMT is a fishing mortality rate, and, therefore, the two thresholds are not strictly comparable. NMFS' technical guidance recommends that MFMT be specified as the fishing mortality rate associated with MSY ($F_{MSY}$). The SFA amendment specified fishing-mortality-rate proxies (i.e., SPR) for MSY for most species. Thus, the amendment specifies MSY equal to MFMT for most stocks. The use of an SPR proxy is appropriate for MFMT but not for MSY, and NMFS has disapproved the SPR proxies submitted for MSY. Static SPR is an acceptable proxy for the MFMT; however, SPR is not biomass-based and is not indicative of any particular stock size or yield. Transitional SPR can be a useful measure of the extent to which past fishing mortality has distorted the age structure of a stock, but it is not sensitive to population size or biomass

and, thus, is not an acceptable proxy for MSY. The Council must provide species-specific, biomass-based estimates of MSY and MSST in addition to the fishing-mortality-based proxies provided.

*Comment 8*: Two environmental groups commented that additional measures are required to reduce bycatch in the reef fish fishery. These groups specifically raised concerns regarding bycatch of Nassau grouper and jewfish and requested that NMFS evaluate the level of bycatch of these two species.

*Response*: The Marine Recreational Fisheries Statistics Survey monitored bycatch in the reef fish recreational fishery. NMFS agrees that additional measures to reduce bycatch and better bycatch reporting measures in the commercial fishery are required. NMFS has disapproved the portions of the amendment dealing with reducing bycatch and bycatch reporting. The Council has taken steps to improve bycatch reporting, such as the cooperative state-Federal program under development by the Gulf States Marine Fisheries Commission, but this program is not yet fully implemented. Furthermore, NMFS is developing a bycatch reporting requirement in future and current logbooks that will be implemented on January 1, 2001. NMFS intends to continue to evaluate the effect of bycatch on the recovery of overfished reef fish stocks and to encourage the Council to take additional steps to reduce bycatch and increase the survival rates of fish caught and released in the reef fish fishery as needed. Thus, the Council has made progress towards improved bycatch monitoring in the Gulf, but several of the measures are still in development. The Council is also considering the need for mandatory observers to monitor bycatch in Gulf fisheries.

NMFS intends to continue to evaluate the effect of bycatch on the recovery of overfished reef fish stocks and to encourage the Council to take additional steps to reduce bycatch and increase the survival rates of fish caught and released in the reef fish fishery as needed. NMFS recently published a NOAA Technical Report assessing the status of Nassau grouper and jewfish. NMFS is currently monitoring numbers of jewfish and Nassau grouper caught and released in the recreational fishery.

*Comment 9*: One commercial industry group commented that the proposed red snapper overfishing targets and thresholds were far too conservative.

*Response*: NMFS disapproved the proposed red snapper overfishing targets and thresholds but disagrees with the assertion that the proposed thresholds are overly conservative. The proxies proposed for red snapper overfishing targets and thresholds are consistent with previous recommendations of the reef fish stock assessment panels that were available to the Council at the time the SFA amendment was prepared. NMFS disapproved the overfishing thresholds and the rebuilding period proposed for red snapper because (1) the rebuilding target specified is fishing-mortality-based (26-percent SPR) rather than biomass-based, (2) the 26-percent SPR level specified as a proxy for MSY is unlikely to reflect the fishing mortality rate at MSY, according to the 1999 report of the Reef Fish Stock Assessment Panel, and (3) the time to rebuild in the absence of fishing mortality was not estimated based on rebuilding to biomass at MSY, as required by the Magnuson-Stevens Act and the national standard guidelines. The Council must provide additional biomass-based estimates of MSY and MSST, in addition to the fishing-mortality-based proxies provided, that address the recommendations of the Stock Assessment Panel and are consistent with the Magnuson-Stevens Act and the national standard guidelines. Biomass-based targets and thresholds were included in the 1999 red snapper stock assessment and have been reviewed by the Reef Fish Stock Assessment Panel, but not yet by the Council.

*Comment 10*: One commercial industry group commented that the Gulf shrimp fishery has already minimized bycatch to the extent practicable. They argued that BRDs do not reduce bycatch mortality effectively and should not be required.

*Response*: NMFS disagrees. Current estimates of the effectiveness of BRDs suggest that a reduction in red snapper mortality of approximately 40 percent has been achieved and that greater reductions in 2000 are likely to result from changes in the design of acceptable BRDs, and from improvements in industry's ability to use BRDs effectively as experience is gained. The 1999 Reef Fish Stock Assessment Panel also concluded that red snapper bycatch was reduced about 40 percent in 1999. BRD performance improved in 1999, in part, because NMFS no longer allows the BRD configuration in which the elephant ear flap obstructs the opening of the BRD.

The Council is currently developing options to address bycatch problems in the shrimp fishery. These options include BRDs in the eastern Gulf, permits, logbooks, and observer programs. NMFS believes that BRDs have significantly reduced shrimp trawl bycatch in the western Gulf but that additional reductions are needed. NMFS has disapproved the portion of the amendment dealing with bycatch reduction based on national standard 9, except that portion addressing the modifications in stone crab trap construction. The Council has made progress towards reducing bycatch in the Gulf shrimp fishery by requiring BRDs in the western Gulf, but the Council has not adequately explained why additional measures to reduce bycatch are not practicable. Thus, it is not clear that the Council has fulfilled the Magnuson-Stevens Act's mandate to reduce bycatch to the extent practicable. Bycatch in the shrimp fishery has a substantial effect on many finfish stocks, including red snapper. NMFS has encouraged the Council to take more aggressive action throughout the Gulf to reduce shrimp trawl bycatch. Such action could include extending the requirement for BRDs into Federal waters east of Cape San Blas, Florida, effort reduction in the fishery, closed areas, or seasonal closures. NMFS believes that these actions may be practicable and could reduce bycatch substantially. NMFS has also notified the Council that additional measures to monitor bycatch in the shrimp fishery are needed.

*Comment 11*: Two environmental groups commented that more conservative fishery management targets and thresholds are needed for hermaphroditic species (species that change sex) such as groupers.

*Response*: NMFS agrees that a precautionary approach to the management of hermaphroditic species is appropriate. Hermaphroditic species may respond differently to fishing mortality than typical non-hermaphroditic species do, and, in some situations, hermaphrodites that change sex from female to male may be more sensitive to overfishing than non-hermaphrodites. The SFA amendment proposes more conservative targets and thresholds for grouper than those currently approved. NMFS has approved the SPR proxies proposed for MFMT for hermaphroditic groupers but has disapproved the SPR proxies proposed for MSY, OY, and MSST for hermaphroditic groupers based on national standards 1 and 2, because they are based on fishing mortality, are not consistent with the best available scientific information, and are not adequate criteria for determining whether OY can be achieved on a continuing basis. The Council must provide biomass-based estimates of MSY, OY, and MSST; the estimates

must be consistent with the national standard guidelines in addition to the fishing-mortality-based proxies provided by the Council. The Reef Fish Stock Assessment Panel will review these biomass-based estimates and evaluate their appropriateness for promoting sustainable fisheries for hermaphroditic species.

**Classification**

The Regional Administrator, Southeast Region, NMFS, with the concurrence of the Assistant Administrator for Fisheries, NOAA, determined that the approved measures of the SFA Amendment are necessary for the conservation and management of the fisheries of the Gulf of Mexico and that, with the exception of the provisions that were disapproved, the SFA Amendment is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

**List of Subjects**

*50 CFR Part 622*

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

*50 CFR Part 654*

Fisheries, Fishing.

Dated: May 15, 2000

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR parts 622 and 654 are amended as follows:

## PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 622.48, paragraphs (c) and (d) are revised, and paragraph (j) is added to read as follows:

**§ 622.48 Adjustment of management measures.**

* * * * *

(c) *Coastal migratory pelagic fish.* For a species or species group: Age-structured analyses, target date for rebuilding an overfished species, MSY (or proxy), stock biomass achieved by fishing at MSY ($B_{MSY}$) (or proxy), maximum fishing mortality threshold (MFMT), minimum stock size threshold (MSST), OY, TAC, quota (including a quota of zero), bag limit (including a bag limit of zero), size limits, vessel trip limits, closed seasons or areas and reopenings, gear restrictions (ranging from regulation to complete prohibition), reallocation of the commercial/recreational allocation of Atlantic group Spanish mackerel, and permit requirements.

(d) *Gulf reef fish.* (1) For a species or species group: Target date for rebuilding an overfished species, TAC, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, quotas, MSY (or proxy), OY, and estimates of stock biomass achieved by fishing at MSY ($B_{MSY}$), minimum stock size threshold (MSST), and maximum fishing mortality threshold (MFMT).

(2) SMZs and the gear restrictions applicable in each.

* * * * *

(j) *Gulf red drum.* Target date for rebuilding an overfished species, MSY (or proxy), stock biomass achieved by fishing at MSY ($B_{MSY}$), OY, TAC, minimum stock size threshold (MSST), maximum fishing mortality threshold (MFMT), escapement rates for juvenile fish, bag limits, size limits, gear harvest limits, and other restrictions required to prevent exceeding allocations or quotas.

## PART 654—STONE CRAB FISHERY OF THE GULF OF MEXICO

3. The authority citation for part 654 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

4. In § 654.22, paragraph (a) is revised to read as follows:

**§ 654.22 Gear restrictions.**

(a) *Trap construction requirements.* No person fishing for stone crab may transport on the water or fish with any trap which does not meet the following requirements:

(1) Each trap must be constructed of wood, plastic, or wire.

(2) A trap may be no larger in dimension than 24 by 24 by 24 inches (61 by 61 by 61 cm) or 8.0 $ft^3$ (0.23 $m^3$).

(3) The throats (entrances) to all wood and plastic traps must be located on the top horizontal section of the trap. If the throat is longer in one dimension, the throat size in the longer dimension must not exceed 5½ inches (14.0 cm) and in the shorter dimension must not exceed 3½ inches (9.0 cm). If the throat is round, the throat size must not exceed 5 inches (12.7 cm) in diameter.

(4) In any wire trap used to harvest stone crabs, each throat must be horizontally oriented. The width of the opening where the throat meets the vertical wall of the trap and the opening of the throat at its farthest point from the vertical wall, inside the trap, must be greater than the height of any such opening. No such throat may extend farther than 6 inches (15.2 cm) into the inside of any trap, measured from where the throat opening meets the vertical wall of the trap to the throat opening at its farthest point from the vertical wall, inside the trap.

(5) A wire trap must have at least three unobstructed escape rings installed, each with a minimum inside diameter of 2⅜ inches (6.0 cm). One such escape ring must be located on a vertical outer surface adjacent to each crab retaining chamber.

(6) A plastic or wire trap must have a degradable panel.

(i) A plastic trap will be considered to have degradable panel if it contains at least one sidewall with a rectangular opening no smaller in either dimension than that of the throat. This opening may be obstructed only with a cypress or untreated pine slat or slats no thicker than ¾ inch (1.9 cm) such that when the slat degrades, the opening in the sidewall of the trap will no longer be obstructed.

(ii) A wire trap will be considered to have a degradable panel if one of the following methods is used in construction of the trap:

(A) The trap lid tie-down strap is secured to the trap at one end by a single loop of untreated jute twine, a corrodible loop composed of non-coated steel wire measuring 24 gauge or thinner, or an untreated pine dowel no larger than 2 inches (5.1 cm) in length by ⅜ inch (0.95 cm) in diameter. The trap lid must be secured so that when the jute, corrodible loop, or pine dowel degrades, the lid will no longer be securely closed.

(B) The trap contains at least one sidewall with a vertical rectangular opening no smaller in either dimension than 6 inches (15.2 cm) in height by 3 inches (7.6 cm) in width. This opening may be laced, sewn, or otherwise obstructed by—

(*1*) A single length of untreated jute twine knotted only at each end and not tied or looped more than once around a single mesh bar;

(*2*) Untreated pine slat(s) no thicker than 3/8 inch (0.95 cm);

(*3*) Non-coated steel wire measuring 24 gauge or thinner;

(*4*) A panel of ferrous single-dipped galvanized wire mesh made of 24 gauge or thinner wire; or

(*5*) A rectangular panel made of any material, fastened to the trap at each of the four corners of the rectangle by rings made of non-coated 24 gauge or thinner wire or single strands of untreated jute twine. When the jute, untreated pine slat(s), non-coated steel wire, wire mesh panel, or corner fasteners degrade, the opening in the sidewall of the trap must no longer be obstructed.

* * * * *

[FR Doc. 00–12669 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 980414095–8240–02; I.D. 051200A]**

### Fisheries of the Northeastern United States; Dealer Reporting Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notification of a 2-month termination of the deferral of Interactive Voice Response (IVR) System reporting requirements for Atlantic cod purchases.

**SUMMARY:** NMFS announces that it is terminating the current deferral of IVR reporting requirements of Atlantic cod for a 2-month period, beginning May 28, 2000, and ending July 31, 2000. One of the management measures for Atlantic cod includes two conditional 1-month closures in the Gulf of Maine (GOM). If the preliminary landings of GOM cod from May 1, 2000, through July 31, 2000, indicate that the trigger of 1.67 million lb (759 mt) has been reached, the closures would become effective. This deferral will enable NMFS to determine if the trigger has been reached. Any dealer issued a Northeast (NE) multispecies permit must submit, through the IVR system, a weekly summary of Atlantic cod purchased from May 28, 2000, through July 31, 2000.

**DATES:** The 2-month termination of the deferral of the IVR system reporting requirements is effective May 28, 2000, through July 31, 2000. Effective August 1, 2000, the IVR system reporting requirement for Atlantic cod is deferred until notification terminating the deferral for Atlantic cod is published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Sandra Arvilla, (978) 281–9255 or Gregory Power, (978) 281–9304.

**SUPPLEMENTARY INFORMATION:** To effectively monitor landings of quota-managed species on a timely basis, NMFS issued a final rule (63 FR 52639, October 1, 1998) requiring federally permitted dealers to submit a weekly summary of purchases of quota-managed species through the IVR system within 3 days of the end of the reporting week. To minimize the burden of dealer reporting requirements, the regulations implementing the use of an IVR system authorize (§ 648.7(a)(ii)) the Administrator, Northeast Region, NMFS (RA), to defer the IVR reporting requirements for any species if landings are not expected to reach levels that would cause the applicable target exploitation rate specified in the applicable Fishery Management Plan (FMP) for that species to be achieved, resulting in specific management changes. NMFS announced in the **Federal Register** (63 FR 57931, October 29, 1998) the deferral of IVR reporting requirements for Atlantic mackerel, butterfish, and regulated NE multispecies, which included Atlantic cod.

To address the overfishing of Gulf of Maine and Georges Bank cod, NMFS recently published a final rule implementing Framework Adjustment 33 to the NE Multispecies FMP (65 FR 21658, April 24, 2000). One of the management measures under Framework Adjustment 33 is the conditional 1-month closure of two areas, which would become effective if preliminary landings from May 1, 2000, through July 31, 2000, indicate that more than 1.67 million lb (759 mt) of GOM cod have been landed. As specified in § 648.81(o), if the RA determines that preliminary landings through July 31, 2000, indicate that more than 1.67 million lb (759 mt) has been landed as of, or before, July 31, 2000, NMFS shall implement the closures. The trigger (1.67 million lb (759 mt)) is established at a level that is 50 percent of the total allowable catch (TAC) level between the TACs associated with $F_{0.1}$ and $F_{max}$.

In order to monitor effectively Atlantic cod landings relative to the trigger of 1.67 million lb (759 mt), NMFS is requiring any dealer issued a NE multispecies permit to submit, through the IVR system, a weekly summary of Atlantic cod purchases made from May 28, 2000, through July 31, 2000. IVR reports must be submitted within 3 days of the end of the reporting week. Purchases of Atlantic cod transacted July 30–31, 2000, must be reported via the IVR system by midnight, Eastern time, Tuesday, August 8, 2000. Following submission of IVR reports for Atlantic cod purchases occurring from May 28, 2000, through July 31, 2000, the IVR system reporting requirements for Atlantic cod will again be deferred until notification terminating the deferral is published in the **Federal Register**.

Dealers must continue to report through the IVR system, their purchases of the species specified in § 648.7(a) for which IVR reporting requirements have not been deferred. These species are summer flounder, scup, black sea bass, *Illex* squid and *Loligo* squid. If no purchases of any quota-managed species are made during the reporting week, a negative report, so stating, must be submitted.

As specified in § 648.7(a)(1), dealers must continue to report purchases of all species, including those species for which IVR reporting has been deferred, on the detailed written reports.

### Classification

This action is authorized by 50 CFR part 648 and is exempt from review under E.O. 12866.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 15, 2000.

**Bruce Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12668 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–22–F

# Proposed Rules

Federal Register
Vol. 65, No. 98
Friday, May 19, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NUCLEAR REGULATORY COMMISSION

**10 CFR Part 50**

### Public Workshop on Performance-Based Approach—Voluntary Option

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of workshop.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) will host a public workshop to solicit feedback on the implementation of the direct final rule for 10 CFR 50.54(a) and to gather information to determine the need for the development of the voluntary alternative rulemaking based on Nuclear Energy Institute petition PRM–50–62. On February 23, 1999, the NRC published a direct final rule in the **Federal Register** (64 FR 9029), that amended its regulations to permit power reactor licensees to implement certain quality assurance (QA) program changes without obtaining prior NRC approval of these changes. The direct final rule became effective on April 26, 1999. Based on the workshop outcome, the staff will determine whether additional rulemaking is warranted. The NRC invites comments from interested parties who are unable to attend the workshop.

**DATES:** The workshop will be held on Wednesday, June 7, 2000, from 9 a.m. to 12 p.m.

**ADDRESSES:** U.S. Nuclear Regulatory Commission, One White Flint North (Room 14 B6), 11555 Rockville Pike, Rockville, MD 20852–2738, (301) 415–7000.

**FOR FURTHER INFORMATION CONTACT:** Robert Pettis, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–3214, email *rlp4@nrc.gov*.

**SUPPLEMENTARY INFORMATION:** The discussion topics are tentative and subject to change. Anyone interested in providing a presentation on these or other related topics, please contact Robert Pettis at (301) 415–3214.

Dated at Rockville, Maryland this 12th day of May, 2000.

For the Nuclear Regulatory Commission.

**Theodore R. Quay,**

*Chief, IQMB, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–12621 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

## DEPARTMENT OF TRANSPORTATION

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 99–NM–163–AD]**

**RIN 2120–AA64**

### Airworthiness Directives; Boeing Model 777 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the supersedure of an existing airworthiness directive (AD), applicable to all Boeing Model 777 series airplanes, that currently requires repetitive testing of the engine fire shutoff switch (EFSS) to determine if the override mechanism and the switch handle are operational, and replacement of the EFSS, if necessary. That AD also requires, for certain airplanes, installation of a collar on a specific circuit breaker of the standby power management panel, and installation of placards to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch. That AD was prompted by a report indicating that a solenoid and an override mechanism of the EFSS were not operational due to overheating of the solenoid. The actions specified by the proposed AD are intended to prevent damage to the EFSS solenoid and to the override mechanism, and consequent failure of the EFSS due to overheating of the solenoid; such failure could result in the inability of the flightcrew to discharge the fire extinguishing agent in the event of an engine fire. This action would add various actions that would terminate the repetitive testing requirements.

**DATES:** Comments must be received by July 3, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Larry Reising, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2683; fax (425) 227–1181.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped

postcard on which the following statement is made: "Comments to Docket Number 99–NM–163–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–163–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

On May 5, 1997, the FAA issued AD 97–10–11, amendment 39–10023 (62 FR 25837, May 12, 1997), applicable to all Boeing Model 777 series airplanes, to require repetitive testing of the engine fire shutoff switch (EFSS) to determine if the override mechanism and the switch handle are operational, and replacement of the EFSS, if necessary. That AD also requires, for certain airplanes, installation of a collar on a specific circuit breaker of the standby power management panel, and installation of placards to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch. That action was prompted by a report indicating that a solenoid and an override mechanism of the EFSS were not operational due to overheating of the solenoid. The actions specified by that AD are intended to prevent damage to the EFSS solenoid and to the override mechanism due to overheating of the solenoid; such failure of the EFSS could result in the inability of the flightcrew to discharge the fire extinguishing agent in the event of an engine fire.

**Actions Since Issuance of Previous Rule**

In the preamble to AD 97–10–11, the FAA specified that the actions required by that AD were considered "interim action" and that once a final action is identified, the FAA may consider additional rulemaking action. The FAA has determined that further rulemaking action is indeed necessary; this proposed AD follows from that determination.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Alert Service Bulletin 777–26A0009, dated October 23, 1997. The service bulletin describes procedures for activating the circuit breaker C26612 in the P310 panel; removing the placards in the flight compartment; and replacing the EFSS with a new EFSS. Accomplishment of these actions eliminates the need for repetitive testing of the EFSS required by AD 97–10–11. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 97–10–11 to continue require repetitive testing of the EFSS to determine if the override mechanism and the switch handle are operational, and replacement of the EFSS, if necessary. The proposed AD also would continue to require, for certain airplanes, installation of a collar on a specific circuit breaker of the standby power management panel, and installation of placards to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch. In addition, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

**Differences Between the Proposed AD and the Service Bulletin**

Operators should note that the effectivity listing of Boeing Alert Service Bulletin 777–26A0009 affects airplanes having line positions 1 through 93 inclusive. The FAA has determined that, although the engine fire control switches, part number (P/N) 233W6201–1, and P/N's S231W263–1 and –2, were installed on affected airplanes during manufacture, it may be possible that these switches have been installed on Model 777 series airplanes during maintenance activities. Therefore, the FAA has determined that the applicability of the proposed AD would affect all Model 777 series airplanes.

**Cost Impact**

There are approximately 196 airplanes of the affected design in the worldwide fleet. The FAA estimates that 48 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 97–10–11, and retained in this proposed AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on the U.S. operators is estimated to be $2,880, or $60 per airplane, per testing cycle.

The new actions that are proposed in this AD action would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost approximately $4,054 per airplane. Based on these figures, the cost impact of the new proposed requirements of this AD on U.S. operators is estimated to be $197,472, or $4,114 per airplane.

The cost impact figures discussed above is based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by removing amendment 39–10023 (62 FR 25837, May 12, 1997), and by adding a new airworthiness directive (AD), to read as follows:

**Boeing:** Docket 99–NM–163–AD. Supersedes AD 97–10–11, Amendment 39–10023.

*Applicability:* All Model 777 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent damage to the engine fire shutoff switch (EFSS) solenoid and to the override mechanism, and consequent failure of the EFSS, which could result in the inability of the flightcrew to discharge the fire extinguishing agent in the event of an engine fire, accomplish the following:

**Restatement of Actions Required by AD 97–10–11**

*Repetitive Testing of the EFSS*

(a) For all airplanes: Within 14 days after May 27, 1997 (the effective date of AD 97–10–11, amendment 39–10023), perform a test of the EFSS of both the left-and right-hand engines to determine if the override mechanism and the switch handle are operational, in accordance with Boeing Alert Service Bulletin 777–26A0012, dated May 1, 1997.

(1) If the override mechanism and the switch handle of the EFSS are operational, prior to further flight, accomplish the requirements of paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable, in accordance with the alert service bulletin.

(i) For Group 1 airplanes identified in the alert service bulletin: Install a collar on circuit breaker C26612 of panel P310 of the standby power management panel. Following accomplishment of this installation, prior to further flight, install placards near the EFSS of both engines and near the auxiliary power unit (APU) EFSS to advise the flightcrew that the override mechanism must be pushed in order to pull the fire switch.

(ii) For Group 2 airplanes identified in the alert service bulletin: Ensure that a collar is installed on circuit breaker C26612 of panel P310 of the standby power management panel. If a collar is not installed, prior to further flight, install a collar on circuit breaker C26612 of panel P310 of the standby power management panel.

(2) If the override mechanism or the switch handle of the EFSS is not operational, prior to further flight, replace the EFSS with a new or serviceable EFSS, in accordance with the alert service bulletin.

(b) For all airplanes: Repeat the requirements of paragraph (a) of this AD thereafter at intervals not to exceed 500 flight hours.

**New Actions Required by This AD**

*Terminating Action*

(c) For all airplanes: Within 2 years after the effective date of this AD, accomplish the actions specified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD in accordance with Boeing Alert Service Bulletin 777–26A0009, dated October 23, 1997. Accomplishment of all three actions constitutes terminating action for the repetitive testing requirements of paragraph (b) of this AD.

(1) Replace the engine fire control module.

(2) Activate the circuit breaker C26612 in the P310 panel.

(3) Remove the placards in the flight compartment.

*Spares*

(d) As of the effective date of this AD, no person shall install an engine fire control module, part number (P/N) 233W6201–1, or engine fire switches P/N S231W263–1 or –2, on any airplane.

*Alternative Methods of Compliance*

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

*Special Flight Permits*

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 15, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–12674 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–NM–12–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Short Brothers Model SD3–60 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Short Brothers Model SD3–60 series airplanes. This proposal would require affixing a label containing revised engine limitations on the ditching hatch, and revising the airplane flight manual to reflect the revised engine limitations. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent the use of incorrect engine limitations, which could result in an overspeed of the propellers and potential for blade failure.

**DATES:** Comments must be received by June 19, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Short Brothers, Airworthiness & Engineering Quality, P.O. Box 241, Airport Road, Belfast BT3 9DZ, Northern Ireland. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of

the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–12–AD." The postcard will be date stamped and returned to the commenter.

**Availability of NPRMs**

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

**Discussion**

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on certain Short Brothers Model SD3–60 series airplanes. The CAA advises that the manufacturer has revised the engine limitations to reflect amended propeller speed tolerance. The display of old, incorrect engine limitations could result in an overspeed of the propellers and potential for blade failure.

**Explanation of Relevant Service Information**

The manufacturer has issued Shorts Service Bulletin SD360–11–23, dated November 17, 1998, which describes procedures for affixing a label containing revised engine limitations on the ditching hatch. The new label will ensure that the flight crew observes the new engine limitations and amended propeller speed tolerance. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 015–11–98 in order to ensure the continued airworthiness of these airplanes in the United Kingdom.

Service Bulletin SD360–11–23 refers to certain revisions to the Aircraft Flight Manual (AFM), which also contain the revised engine limitations and propeller speed tolerances. These AFM revisions include Doc. No. SB 4.8, amendment P9; Doc. No. SB 4.9, amendment P12; and Doc. No. SB 4.10, amendment P7.

**FAA's Conclusions**

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

**Cost Impact**

The FAA estimates that 15 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $900, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**Short Brothers PLC:** Docket 2000–NM–12–AD.

*Applicability:* Model SD3–60 series airplanes, certificated in any category, serial numbers SH3716 through SH3763 inclusive.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the display of incorrect engine limitations, which could result in an overspeed of the propellers and potential for blade failure, accomplish the following:

**Label Replacement and AFM Revision**

(a) Within 6 months after the effective date of this AD: Replace the existing engine-limitations label with a new label containing revised engine limitations, and revise the

Limitations section of the FAA-approved airplane flight manual to reflect the revised engine limitations; in accordance with Shorts Service Bulletin SD360–11–23, dated November 17, 1998.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Note 3:** The subject of this AD is addressed in British airworthiness directive 015–11–98.

Issued in Renton, Washington, on May 15, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–12673 Filed 5–18–00; 8:45 am]

**BILLING CODE 4910–13–U**

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–107644–98]**

**RIN 1545–AX20**

## Dollar-Value LIFO Regulations; Inventory Price Index Computation Method

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking and notice of public hearing.

**SUMMARY:** This document contains proposed regulations under section 472 of the Internal Revenue Code that relate to accounting for inventories under the last-in, first-out (LIFO) method. The proposed regulations provide guidance regarding methods of valuing dollar-value LIFO pools and affect persons who elect to use the dollar-value LIFO and inventory price index computation (IPIC) methods. This document also provides notice of a public hearing on these proposed regulations.

**DATES:** Written and electronic comments must be received by August 17, 2000. Requests to speak (with outlines of oral comments) at a public hearing scheduled for September 15, 2000, at 10 a.m., must be received by August 25, 2000.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (REG–107644–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to:

CC:DOM:CORP:R (REG–107644–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC.

Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Jeffery G. Mitchell, (202)622–4970; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy Traynor of the Regulations Unit at (202) 622–7180 (not toll-free calls).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) that relate to the last-in, first-out (LIFO) inventory accounting method under section 472 of the Internal Revenue Code (Code). The LIFO method of accounting for goods treats inventories on hand at the end of the year as consisting first of inventory on hand at the beginning of the year and then of inventories acquired during the year.

Under § 1.472–8, a taxpayer is permitted to use the dollar-value LIFO method of accounting for inventories, which accounts for inventories in terms of dollars of cost rather than specific goods. The dollar-value LIFO method measures increases or decreases in inventory quantities by comparing the total cost of the quantity of goods on hand at the beginning and end of the taxable year in terms of equivalent-value dollars, *i.e.*, base-year cost. The current-year dollar cost of beginning and ending inventory may be converted into a base-year dollar cost using price indexes. Then, the quantity of base-year cost in beginning and ending inventory can be compared and the increase (increment) or decrease (liquidation) can be measured.

Section 472(f) directs the Secretary to prescribe regulations that permit the use of suitable published governmental price indexes for purposes of the LIFO method. The IRS and Treasury Department prescribed the inventory price index computation (IPIC) method in § 1.472–8(e)(3) (TD 7814, 47 FR 11271, 1982–1 C.B. 84), pursuant to authority contained in sections 472 and 7805. Under the IPIC method, inventory price indexes are computed with reference to consumer or producer price indexes published by the United States Bureau of Labor Statistics (BLS). The IPIC method was intended to simplify the use of the dollar-value LIFO method so that the LIFO method could be used by more taxpayers and would be easier to use by taxpayers already using the dollar-value LIFO method.

### Explanation of Provisions

This document contains proposed amendments to the IPIC method provided in § 1.472–8(e)(3) of computing the LIFO value of a dollar-value inventory pool that are intended to simplify and clarify certain aspects of the IPIC method as well as to modify the computational methodology so that the IPIC method produces a more accurate and suitable inventory price index. In addition, the proposed regulations provide rules for computing the LIFO value of a dollar-value pool when a taxpayer receives LIFO inventories in certain nonrecognition transactions.

*1. Elimination of Requirement To Use 10 Percent Categories and BLS Weights*

Section 1.472–8(e)(3)(iii) of the regulations provides detailed rules for assigning inventory items to index categories published by the BLS in the "CPI Detailed Report" or the "PPI Detailed Report" for purposes of computing an inventory price index. Items are first assigned to the most detailed index category listed in the appropriate table of the "CPI Detailed Report" or the "PPI Detailed Report" that contains those items. If the total current-year cost of the items in a single detailed index category equals or exceeds 10 percent of the total inventory value, the taxpayer must use the published index for that selected index category for all items that are included in that detailed index category. If the total current-year cost of items in a

single detailed index category is less than 10 percent of the total inventory value, the taxpayer must investigate successively less detailed index categories until it reaches an index category that meets the 10 percent threshold. The taxpayer, however, may only use the published index for a less detailed selected index category if it has at least one item that would have been included in each of the most detailed index categories subsumed by the selected category. For example, a taxpayer may only use the published index for the "Fresh fruits" category from the "CPI Detailed Report" if its inventory includes at least one apple, banana, orange, citrus fruit other than orange, and other fresh fruit. If the taxpayer's inventory does not contain at least one item in each of the most detailed index categories within the selected index category, the taxpayer must compute an appropriate index for the selected index category. An appropriate index for the selected index category is a weighted average of the published indexes for the most detailed index categories that include at least one of the taxpayer's inventory items. The weights to be used in computing the appropriate index are the BLS weights listed for the detailed index categories. In computing an index for a pool, however, a taxpayer must weight the appropriate indexes for the selected index categories comprising the pool according to the taxpayer's actual inventory weights for those selected index categories.

The proposed regulations eliminate the requirement to use 10 percent categories and BLS weights to determine an appropriate index for two reasons. First, the weight assigned to an index category by the BLS may vary dramatically from the taxpayer's actual inventory weight for that category. Consequently, the index computed for those items using BLS weights will not accurately reflect the taxpayer's inflation experience. Second, the requirement to use 10 percent categories and BLS weights was intended to simplify the index computation procedure for those taxpayers that did not keep detailed inventory records. In practice, however, this requirement adds complexity to the index computation for most taxpayers. Moreover, even the most detailed BLS index categories are fairly broad and, with current inventory recordkeeping procedures and practices, most taxpayers have sufficiently detailed books and records to classify their inventory items according to the most detailed BLS index categories.

The proposed regulations require a taxpayer to classify its inventory items into the most detailed index category listed in the "CPI Detailed Report" or the "PPI Detailed Report." For purposes of computing a weighted average pool index, the weight assigned to each selected index category will be the relative current-year cost of the items in that category. The IRS and Treasury Department request written comments regarding rules for excluding index categories that contain items with a *de minimis* amount of relative current-year cost from the pool index computation.

*2. Weighted Harmonic Mean for Computing Pool Index*

A pool index computed using the dollar-value LIFO method should reflect a weighted average of the inflation rates of the items contained in the ending inventory. Under LIFO methods that compute an internal index, the index computation procedure automatically produces an appropriately weighted pool index. However, when a taxpayer computes a LIFO inventory pool index using externally generated inflation rates, the taxpayer must weight the inflation rates to compute an appropriate composite index for the pool.

Section 1.472–8(e)(3)(iii)(B) states that the appropriate indexes are weighted according to the relative current-year costs of the items in each selected index category. However, the regulations do not set forth how to compute a weighted average of the appropriate indexes using the amount of relative current-year costs in each selected index category. The IRS provided an example of IPIC weighting methodology in Rev. Proc. 84–57 (1984–2 C.B. 496). The example computes a weighted average pool index based on a weighted arithmetic mean of the appropriate indexes. (Weighted Arithmetic Mean = [Sum of (Weight × Appropriate Index)]/Sum of Weights). The example provided in Rev. Proc. 98–49 (1998–37 I.R.B. 9), also used a weighted arithmetic mean to compute a weighted average percent change for a selected index category.

The IRS and Treasury Department have determined that a weighted arithmetic mean is mathematically inappropriate for averaging inflation indexes based on current-year costs. The mathematically correct method of averaging inflation indexes using relative current-year costs is a weighted harmonic mean. (Weighted Harmonic Mean = Sum of Weights/Sum of [Weight/Appropriate Index]). Therefore, the proposed regulations make the weighted harmonic mean the only acceptable method of computing a weighted average pool index using relative current-year costs of items in ending inventory.

*3. Double-Extension or Link-Chain Method of Index Computation*

The current regulations do not indicate whether the inventory price index should be computed using a link-chain or double-extension methodology. Section 1.472–8(e)(3)(ii) merely states that "[a]n inventory price index computed [under the IPIC method] shall be a stated percentage of the percent change in the selected consumer or producer price index or indexes for a specific category or categories of goods."

In practice, some taxpayers have used a link-chain methodology, and others a double-extension methodology. The proposed regulations specifically permit either method. The proposed regulations also explain how to compute an index under each method and provide examples.

*4. Selecting Indexes as of an Appropriate Month*

Section 1.472–8(e)(3)(iii)(C) states that a taxpayer not using the retail inventory method must select indexes "as of the month or months" most appropriate to its method of determining current-year cost, or make a one-time binding election of an appropriate representative month. The IRS has ruled that a month is an appropriate representative month if there is a nexus between the selected month, the taxpayer's method of determining current-year cost, and the taxpayers' historical experience of inventory purchases. Rev. Rul. 89–29 (1989–1 C.B. 168). In practice, there has been confusion about the meaning of the phrase "month or months most appropriate to the taxpayer's method of determining current-year cost."

The proposed regulations clarify that, for each dollar-value pool, a taxpayer should either annually determine the month most appropriate to its method of determining the current-year cost of the pool (appropriate month) or make a one-time election of a representative appropriate month (representative month) for the pool. The principles of Rev. Rul. 89–29 continue to apply for purposes of determining whether a particular month is appropriate or representative. An appropriate index is computed by comparing the published cumulative index for the appropriate or representative month to the published cumulative index for the appropriate or representative month used for the immediately preceding year (in the case of a taxpayer using the link-chain IPIC method) or the published cumulative index for the month preceding the first

day of the base year (in the case of a taxpayer using the double-extension IPIC method). The proposed regulations also clarify that a taxpayer electing to use a representative month must use an appropriate month, rather than the representative month, to compute an appropriate index in certain circumstances, such as a short taxable year.

*5. Taxpayers Eligible To Use "Department Store Inventory Price Indexes"*

The current regulations prohibit the use of the IPIC method by a taxpayer that is eligible to use inventory price indexes prepared by the BLS for the purpose of valuing the LIFO inventories of a specific industry. Specifically, § 1.472–8(e)(3)(i) provides that a taxpayer eligible to use the retail price indexes prepared by the BLS and published in "Department Store Inventory Price Indexes" may not use the IPIC method.

Some retailers may carry goods traditionally carried by department stores and other goods that are not traditionally carried by department stores. Such taxpayers may qualify as department stores, but "Department Store Inventory Price Indexes" may not provide indexes that are applicable for some of the taxpayers' departments. Whenever one or more departments of a department store do not fit into any one of the 23 major groups established by the BLS or into the special combinations listed in Rev. Proc. 86–46 (1986–2 C.B. 739), the taxpayer may use either an index that represents an average for the whole of the remainder of the LIFO inventory or the store total index published by the BLS. However, the express terms of the current regulations prohibit taxpayers eligible to value their LIFO inventories using "Department Store Inventory Price Indexes" from using the IPIC method to compute an index for any dollar-value pool.

The proposed regulations eliminate the eligibility restrictions applicable to the IPIC method. Generally, any taxpayer may adopt the IPIC method as long as it uses that method for all goods accounted for under the dollar-value LIFO method. However, a taxpayer eligible to use "Department Store Inventory Price Indexes" may elect to use those indexes for LIFO inventory items that fall within any of the 23 major groups listed in "Department Store Inventory Price Indexes" and the IPIC method for the remainder of its LIFO inventory items, or may elect to use the IPIC method for all of its LIFO inventories. The proposed regulations do not, however, affect the ability of an eligible taxpayer to use "Department Store Inventory Price Indexes" to value its LIFO inventories in accordance with § 1.472–1(k) and Rev. Proc. 86–46.

*6. Selection From "CPI Detailed Report" or "PPI Detailed Report"*

Section 1.472–8(e)(3)(iii)(C) states that a retailer may select indexes from the "CPI Detailed Report" or the "PPI Detailed Report," but if equally appropriate indexes may be selected from either, a retailer using the retail inventory method must select from the "CPI Detailed Report" and a retailer not using the retail inventory method must select from the "PPI Detailed Report."

The proposed regulations eliminate the need for a retailer to determine whether the "CPI Detailed Report" and "PPI Detailed Report" contain equally appropriate indexes. The proposed regulations require retailers using the retail inventory method to select indexes from the "CPI Detailed Report." All other taxpayers must select indexes from the "PPI Detailed Report."

*7. Elimination of Requirement To Convert Published Indexes Into Retail Price Indexes or Cost Price Indexes*

Section 1.472–8(e)(3)(iii)(C) provides that if a retailer using the retail inventory method selects an index from the "PPI Detailed Report," the selected index must be converted into a retail price index, and that if a retailer not using the retail inventory method selects an index from the "CPI Detailed Report," the selected index must be converted into a cost price index. The regulations further provide that manufacturers, processors, wholesalers, jobbers, and distributors must convert selected indexes into cost price indexes.

This conversion requirement in the current regulations was intended to more accurately represent the taxpayer's inflation experience relative to the selected price index. However, due to the inability of many taxpayers to determine gross profit percentages at the detailed index category level and the fact that gross profit percentages for many taxpayers are relatively constant, this conversion requirement may not actually increase the accuracy of the indexes used in the inventory price index computation. The IRS and Treasury Department have concluded that the administrative burden of converting published indexes into retail price or cost price indexes outweighs any benefits of increased accuracy from the procedure. Thus, the proposed regulations eliminate the requirement to convert published price indexes into either retail price indexes or cost price indexes.

*8. Relocation and Clarification of Special Pooling Rules*

Section 1.472–8(e)(3)(iv) provides special, elective pooling rules for retailers, wholesalers, jobbers, and distributors that use the IPIC method. Such taxpayers are permitted to establish an inventory pool for any group of goods included in one of the eleven general categories of consumer goods described in the "CPI Detailed Report." Although wholesalers, jobbers and distributors are allowed to pool goods according to categories found in the "CPI Detailed Report," they must select indexes from the "PPI Detailed Report" pursuant to § 1.472–8(e)(3)(iii)(C). The current regulations provide no special, elective pooling rules for manufacturers that use the IPIC method. However, Rev. Proc. 84–57 provides that an inventory pool or pools may be established for any group of goods included within one of the 15 general categories of producer goods described in Table 6 of the "PPI Detailed Report."

The proposed regulations provide special, elective pooling rules for LIFO inventories accounted for under the IPIC method. Specifically, retailers using the retail inventory method may establish an inventory pool for any group of goods accounted for under the IPIC method included within one of the general expenditure categories (*i.e.*, major groups) in Table 3 of the "CPI Detailed Report." Retailers not using the retail method, wholesalers, jobbers, distributors, processors, and manufacturers may establish an inventory pool for any group of goods accounted for under the IPIC method included within one of the 2-digit commodity codes (*i.e.*, major commodity groups) in Table 6 of the "PPI Detailed Report." The special, elective pooling rules provided in the proposed regulations correspond with the pooling rules found in section 474(b) so that a taxpayer may change from the simplified dollar-value LIFO method of section 474 to the IPIC method without changing its pooling structure. In addition, the special, elective pooling rules for taxpayers using the IPIC method are relocated with the general pooling rules applicable to all taxpayers in § 1.472–8(b) and (c).

*9. Clarification of the Definition of "Eligible Small Business"*

Section 1.472–8(e)(3)(ii) permits an eligible small business, as defined under section 474(b) of the Internal Revenue

Code of 1954, to compute an inventory price index for its pool(s) using 100 percent of the percent change in the selected indexes. All other taxpayers must compute an inventory price index for their pools using 80 percent of the percent change in the selected indexes. At the time the regulations were published, section 474(b) defined an eligible small business as a taxpayer with average annual gross receipts that did not exceed $2,000,000 for the 3-taxable-year period ending with the taxable year.

Section 474 was amended by the Tax Reform Act of 1986. Public Law 99–514, 100 Stat. 2348. An eligible small business is now defined by section 474(c) as a taxpayer with average annual gross receipts that do not exceed $5,000,000 for the 3 preceding taxable years. The proposed regulations clarify that the IPIC method definition of "eligible small business" mirrors the definition in current section 474.

*10. New Base Year for IPIC Method Changes*

Section 1.472–8(e)(vi) requires a taxpayer that changes to the IPIC method from another dollar-value LIFO method to treat the year of change as the base year in determining the LIFO value of the inventory pool(s) for the year of change and later taxable years. The taxpayer is also required to restate indexes of existing layers of increment in terms of new base-year cost. This procedure is generally known as updating the base year.

The proposed regulations clarify that the base year updating procedure applies in the case of a voluntary change to the IPIC method, but is discretionary in the case of an involuntary change to the IPIC method. If an examining agent determines that a taxpayer's dollar-value LIFO method does not clearly reflect income, the agent may require the taxpayer to change to the double-extension IPIC method on a cut-off basis with or without an updated base year. If the examining agent chooses not to update the base year, the examining agent will ascertain the amount of any increment in terms of base-year cost for the year of change by comparing the total base-year cost of the beginning inventory determined under the taxpayer's dollar-value LIFO method and the total base-year cost of the ending inventory determined under the double-extension IPIC method. Any increment so determined will be valued using the index computed under the double-extension IPIC method.

*11. Inventories Received in a Nonrecognition Transaction*

Under current law, the treatment of LIFO inventories received in a nonrecognition transaction depends upon whether the transaction qualifies as a corporate reorganization to which section 381 applies. Section 381(c)(5) provides that inventory accounting methods generally carry over, uninterrupted, to a transferee in a transaction described in section 381(a).

However, inventory accounting methods generally do not carry over to a transferee in other nonrecognition transactions such as transfers to a controlled corporation under section 351, divisive "D" reorganizations under section 368(a)(1)(D), or contributions to a partnership under section 721 (non-section 381 transfers). *Textile Apron Company, Inc.* v. *Commissioner*, 21 T.C. 146 (1953), *acq.*, 1954–1 C.B. 7. But see § 1.263A–7(c)(4); 1.1502–17. If a transferee that has never owned inventories or that has accounted for inventories using a method other than LIFO wants to use the LIFO method to account for inventories received in a non-section 381 transfer, it must elect the LIFO method for the year of transfer. The inventories received in the transfer are treated as opening inventory and their cost is determined using the average cost method as provided in section 472(b)(3). Rev. Rul. 70–564 (1970–2 C.B. 109). A transferee that previously elected to use the LIFO method may account for the LIFO inventories received in a non-section 381 transfer using its preexisting LIFO method. The LIFO layers of the transferor retain the transferor's original acquisition dates and costs and are integrated into the transferee's existing LIFO layers. *Commissioner* v. *Joseph E. Seagram & Sons, Inc.*, 394 F.2d 738 (1968), rev'g, 46 T.C. 698 (1966); Rev. Rul. 70–565 (1970–2 C.B. 110).

An election to use the dollar-value LIFO method for LIFO inventories received in a non-section 381 transfer, however, may not continue the LIFO reserve of the transferor. If the mix of goods in the inventory changes significantly after the transfer, the mechanics of the dollar-value LIFO method may produce an increment in the first taxable year that effectively eliminates the LIFO reserve established by the transferor. This occurs because the transferee's base year is the year in which it elects LIFO.

A taxpayer using the dollar-value LIFO method determines whether there is an increase or decrease in the quantity of inventory by comparing the base-year cost of the ending inventory to the base-year cost of the beginning inventory. When inventory is received in a non-section 381 transfer, the transferee's basis is determined by reference to the transferor's basis in the inventory. The transferee's base-year cost, however, is not determined by reference to the transferor's base-year cost. The transferee's base-year cost of inventory received in a non-section 381 transfer is equal to the transferee's cost of the inventory, which is generally the carryover basis of the inventory. Since the transferor's basis was established by reference to the actual cost of the goods in years prior to the transfer, the carryover basis of the inventory may be considerably lower than what it would cost to purchase or produce the goods in the current year. If a new item enters the transferee's inventory, § 1.472–8(e)(2)(iii) only permits the transferee to reconstruct the base-year unit cost of that item back to the year in which it elected LIFO. If the transferee elected LIFO in the year in which the non-section 381 transfer occurred, the base-year unit cost of the new item will not be comparable to the base-year unit cost of the items that were received in the transfer and comprised the opening inventory. The disparity in the base-year unit costs may produce an increment in terms of base-year cost that would not have occurred but for the low base-year unit cost of the inventory received in the transfer.

While the current regulations contain a provision requiring a taxpayer that changes to the IPIC method from another LIFO method to treat the year of change as the base year in determining the LIFO value of the inventory pool(s) for the year of change and later taxable years, the provision does not apply to an initial adoption of LIFO by a transferee. When a transferee elects the LIFO and IPIC methods for LIFO inventories received in a non-section 381 transfer, the transferee will have an increment in the year in which the inventories are received even without a significant change in the mix of goods in the transferee's ending inventory. The IPIC method invariably produces an increment because the index used to convert the current-year cost of the ending inventory to base-year cost will reflect only one year of inflation while the difference between the current-year cost and the carryover basis of the opening inventory reflects more than one year of inflation.

The IRS and Treasury Department have determined that recapture of the LIFO reserve established by the transferor's use of the dollar-value LIFO method solely by virtue of the mechanical application of the dollar-

value LIFO method after a non-section 381 transfer is inappropriate, given the business continuity principles governing the tax treatment of the underlying transaction. Accordingly, the proposed regulations provide that if a transferee uses the dollar-value LIFO method for inventories that were received in a nonrecognition transaction to which section 381 does not apply and that were accounted for using the dollar-value LIFO method by the transferor, the transferee must use the year of transfer as the base year and the transferor's current-year cost of the inventory received as the new base-year cost of such inventory for purposes of determining future increments and liquidations. The proposed regulations do not affect a newly formed transferee's ability to elect new accounting methods or the holdings of Rev. Rul. 70–564 and Rev. Rul. 70–565. However, the new base year rule does not apply to a non-section 381 transaction if the transaction was made with the principal purpose of availing the transferee of a method of accounting that would be unavailable to the transferor (or would be unavailable without securing consent from the Commissioner). In determining the principal purpose of a transfer, consideration will be given to all of the facts and circumstances. However, if a transferor acquired inventory in a bargain purchase within the five taxable years preceding the year of the transfer and accounted for that inventory using a dollar-value LIFO method that did not treat the bargain purchase inventory and physically identical inventory acquired at market prices as separate items, the transfer will be deemed made with the principal purpose of availing the transferee of a method of accounting that would be unavailable to the transferor (or would be unavailable without securing consent from the Commissioner).

**Proposed Effective Date**

These regulations are proposed to be effective for taxable years beginning on or after the date they are published in the **Federal Register** as final regulations.

**Effect on Other Documents**

Rev. Proc. 84–57 will become obsolete as of the date these regulations are published in the **Federal Register** as final regulations. In addition, Rev. Proc. 98–49 is modified with respect to the requirements to use 10 percent categories and BLS weights, to compute a weighted average using a weighted arithmetic mean, and to convert selected indexes to cost, as of the date these regulations are published in the **Federal Register** as final regulations.

**Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Comments and Public Hearing**

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 15, 2000, at 10 a.m., in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written or electronic comments by August 17, 2000 and submit an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by August 25, 2000.

A period of 10 minutes will be allocated to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information. The principal author of these regulations is Jeffery G. Mitchell of the Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

## PART 1—INCOME TAXES

**Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

§ 1.472–8 also issued under 26 U.S.C. 472. * * *

**Par. 2.** Section 1.472–8 is amended as follows:

1. Paragraph (b)(4) is added.

2. The text of paragraph (c) following the paragraph heading is redesignated as paragraph (c)(1) and a paragraph heading for newly designated paragraph (c)(1) is added.

3. Paragraph (c)(2) is added.

4. Paragraphs (e)(3) and (h) are revised.

The revisions and additions read as follows:

**§ 1.472–8 Dollar-value method of pricing LIFO inventories.**

* * * * *

(b) * * *

(4) *Inventory price index pools.* A manufacturer or processor that elects to use the inventory price index computation method described in paragraph (e)(3) of this section to value its dollar-value pools may establish an inventory pool for any group of goods included within one of the 2-digit commodity codes (*i.e.*, major commodity groups) in Table 6 (Producer price indexes for commodity groups, subgroups, product classes, and individual items) of the "PPI Detailed Report" published by the United States Bureau of Labor Statistics (Available from New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954). Inventory pools that comprise less than 5 percent of the total inventory value may be combined to form a single miscellaneous inventory pool. If the resulting miscellaneous inventory pool

itself comprises less than 5 percent of the total inventory value, that pool may be combined only with the largest inventory pool.

(c) * * * (1) *In general.* * * *

(2) *Inventory price index pools.* A retailer using the retail inventory method that elects to use the inventory price index computation method described in paragraph (e)(3) of this section (the IPIC method) may establish an inventory pool for any group of goods accounted for under the IPIC method included within one of the general expenditure categories (*i.e.*, major groups) in Table 3 (Consumer Price Index for all Urban Consumers (CPI-U): U.S. city average, detailed expenditure categories) of the "CPI Detailed Report" published by the United States Bureau of Labor Statistics (Available from New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954). A retailer not using the retail inventory method, wholesaler, jobber, or distributor electing to use the IPIC method may establish an inventory pool for any group of goods accounted for under the IPIC method included within one of the 2-digit commodity codes (*i.e.*, major commodity groups) in Table 6 (Producer price indexes for commodity groups, subgroups, product classes, and individual items) of the "PPI Detailed Report" published by the United States Bureau of Labor Statistics. Inventory pools that comprise less than 5 percent of the total inventory value may be combined to form a single miscellaneous inventory pool. If the resulting miscellaneous inventory pool itself comprises less than 5 percent of the total inventory value, that pool may be combined only with the largest inventory pool.

* * * * *

(e) * * *

(3) *Inventory price index computation method*—(i) *In general.* The inventory price index computation method provided by this paragraph (e)(3) (the IPIC method) is a method of determining the LIFO value of a dollar-value inventory pool with reference to indexes published by the United States Bureau of Labor Statistics (BLS). An inventory price index computed using the IPIC method will be accepted by the Commissioner as an appropriate method of computing an index, and the use of that inventory price index to compute the LIFO value of a dollar-value inventory pool will be accepted as accurate, reliable, and suitable. The appropriateness of a taxpayer's computation of an inventory price index, including the selection of the consumer or producer price indexes and the propriety of all computations incidental to the use of those consumer or producer price indexes, will be determined in connection with the examination of the taxpayer's income tax return. A taxpayer using the IPIC method may elect to establish inventory pools in accordance with the special rules in paragraphs (b)(4) and (c)(2) of this section or the general rules for establishing inventory pools in paragraphs (b) and (c) of this section. Taxpayers eligible to use the IPIC method are described in paragraph (e)(3)(ii) of this section. The manner in which an inventory price index is computed using the IPIC method is described in paragraph (e)(3)(iii) of this section. Rules relating to the adoption of, or change to, the IPIC method are in paragraph (e)(3)(iv) of this section.

(ii) *Eligibility.* Any taxpayer electing to use the dollar-value LIFO method may elect to compute an inventory price index in accordance with the IPIC method. Except as provided in this paragraph (e)(3)(ii), a taxpayer using the IPIC method must use that method in determining the value of all goods for which the taxpayer has elected to use the dollar-value LIFO method. A taxpayer that uses the retail price indexes prepared by the BLS and published in "Department Store Inventory Price Indexes" (Available from the BLS by calling (202) 606–6325 and entering document code 2415) may elect to use the IPIC method for inventory items that do not fall within any of the major groups listed in "Department Store Inventory Price Indexes."

(iii) *Computation of an inventory price index*—(A) *In general.* An inventory price index computed using the IPIC method is used to convert the current-year cost of the inventory in a dollar-value inventory pool to base-year cost for purposes of determining whether an increment or liquidation in terms of base-year cost exists and to value the increment, if any, at current-year cost. A taxpayer must compute a separate inventory price index for each dollar-value inventory pool. The computation of an index for each pool involves the following four steps which are described in more detail in this paragraph (e)(3)(iii): First, selection of a BLS table and an appropriate month, second, selection of an index category, third computation of an appropriate index for each selected index category, and fourth, computation of a pool index. A taxpayer may compute an inventory price index for each dollar-value inventory pool under the IPIC method using a double-extension method (the double-extension IPIC method) or a link-chain method (the link-chain IPIC method) without regard to whether the use of a double-extension method is impractical or unsuitable. See paragraphs (e)(3)(iii)(D) and (E) of this section. The use of the double-extension IPIC method or the link-chain IPIC method is a method of accounting, and whichever method is adopted must be applied consistently to all of the taxpayer's dollar-value inventory pools accounted for using the IPIC method.

(B) *Selection of a BLS table and appropriate month—(1) In general.* An inventory price index computed using the IPIC method is computed with reference to the consumer or producer price indexes for specific categories of inventory items listed in the "CPI Detailed Report" or "PPI Detailed Report" published by the BLS for the appropriate month. A taxpayer may elect to use either the preliminary or final indexes published by the BLS for the appropriate month provided that the chosen indexes are used consistently from year to year. A taxpayer that elects to use final indexes must use preliminary indexes for the appropriate month for any taxable year in which it files its original federal income tax return before the BLS publishes final indexes.

(*2*) *BLS table selection.* Manufacturers, processors, wholesalers, jobbers, distributors, and retailers not using the retail inventory method must select indexes from Table 6 (Producer price indexes for commodity groups, subgroups, product classes, and individual items) of the "PPI Detailed Report," unless the taxpayer can demonstrate that the selection of an index from another table of the "PPI Detailed Report" would be more appropriate. Retailers using the retail inventory method must select indexes from Table 3 (Consumer Price Index for all Urban Consumers (CPI–U): U.S. city average, detailed expenditure categories) of the "CPI Detailed Report."

(*3*) *Appropriate month.* In the case of a retailer using the retail inventory method, the appropriate month is the last month of the retailer's taxable year. In the case of all other taxpayers, the appropriate month is a month most appropriate to the taxpayer's method of determining the current-year cost of each dollar-value inventory pool under paragraph (e)(2)(ii) of this section. A taxpayer not using the retail inventory method may annually select an appropriate month for each dollar-value inventory pool or make an election of a representative appropriate month (representative month). An election of a representative month is a method of

accounting and must be used for the taxable year of the election and all subsequent taxable years, unless the taxpayer obtains the consent of the Commissioner as provided in § 1.446–1(e) to change or revoke its election. The election of a representative month must be clearly set forth on Form 970. See paragraph (e)(3)(iv)(A) of this section.

(C) *Selection of an index category—(1) In general.* The inventory items in each dollar-value pool should be classified according to the most detailed listings in the appropriate tables of the "CPI Detailed Report" or the "PPI Detailed Report." The selection of a consumer or producer price index category for a specific item to compute an inventory price index under the IPIC method is a method of accounting. However, the selection of a new consumer or producer price index category for a specific item as a result of revisions to the "CPI Detailed Report" or the "PPI Detailed Report" is a change in underlying facts and not a change in method of accounting. Change in method of accounting rules relating to changes in selected indexes are in paragraph (e)(3)(iv) of this section.

*(2) Index selection from the PPI Detailed Report.* Manufacturers, processors, wholesalers, jobbers, distributors, and retailers not using the retail inventory method must classify their inventory items according to the detailed listings in the appropriate table(s) of the "PPI Detailed Report." Each specific inventory item in the taxpayer's inventory must be assigned to the most detailed index category listed in the appropriate tables (as determined under paragraph (e)(3)(iii)(B)(*2*) of this section) of the "PPI Detailed Report" that includes that specific inventory item. Manufacturers and processors must assign each raw material inventory item to the most detailed index category that includes that raw material and each finished good inventory item to the most detailed index category that includes that finished good. Manufacturers and processors must assign work-in-process inventory items to the most detailed index category that includes the finished good into which the item will be manufactured or processed. For this purpose, the term finished good means a good that is in a saleable state. For example, a gasoline engine manufacturer that also produces pistons for the engines must assign finished pistons that have not yet been affixed to an engine block and the piston work-in-process items to the most detailed index category that includes pistons. Finished pistons that have been affixed to an engine block must be assigned to the most detailed index category that includes the engine.

*(3) Index selection from the CPI Detailed Report.* Retailers using the retail inventory method must classify their inventory items according to the detailed listings in the appropriate tables of the "CPI Detailed Report." Each specific inventory item in the taxpayer's inventory must be placed in the most detailed index category listed in the appropriate table (as determined under paragraph (e)(3)(iii)(B)(*2*) of this section) of the "CPI Detailed Report" that includes that specific inventory item.

(D) *Computation of an appropriate index—(1) Double-extension IPIC method.* In the case of a taxpayer using the double-extension IPIC method, an appropriate index for a selected index category is the percent change in the published cumulative indexes for that category for the index period between the appropriate or representative month of the current taxable year (determined under paragraph (e)(3)(iii)(B)(*3*) of this section) and the month preceding the first day of the base year (the base month). The percent change in the published indexes is equal to the quotient of the published cumulative index for the appropriate or representative month of the current year divided by the published cumulative index for the base month.

*(2) Link-chain IPIC method.* In the case of a taxpayer using the link-chain IPIC method, an appropriate index for a selected index category is the percent change in the published cumulative indexes for that category during the index period between the appropriate or representative month of the current taxable year (determined under paragraph (e)(3)(iii)(B)(*3*) of this section) and the appropriate or representative month used for the immediately preceding taxable year. The percent change in the published indexes is equal to the quotient of the published cumulative index for the appropriate or representative month of the current year divided by the published cumulative index for the appropriate or representative month used for the immediately preceding year (or, for the month immediately preceding the first day of the taxable year, if such year is the first taxable year in which the taxpayer uses dollar-value LIFO).

*(3) Limitation on index period.* A taxpayer electing to use a representative month under paragraph (e)(3)(iii)(B)(*3*) of this section must use an appropriate month, rather than the representative month, to determine the index period in the circumstances described in this paragraph (e)(3)(iii)(D)(*3*) and other similar circumstances. For example, if the first taxable year in which the taxpayer uses the IPIC method is also the first taxable year in which the taxpayer uses the dollar-value LIFO method, the index period is the period between the month immediately preceding the first day of the taxable year and an appropriate month for that taxable year. Likewise, in the case of a short taxable year, the index period ordinarily is the period between the base month (double-extension IPIC method) or the appropriate or representative month used for the preceding taxable year (link-chain IPIC method) and the appropriate month for the short taxable year. Similarly, if a taxpayer using the link-chain IPIC method is granted consent to change its method of determining the current-year cost of a dollar-value pool and its representative month, the index period is the period between the old representative month used for the preceding taxable year and the new representative month for the year of change.

(E) *Computation of a pool index—(1) Weighted average pool index.* To compute an inventory price index for a dollar-value pool, a taxpayer must compute a weighted average pool index. A weighted average pool index is a weighted harmonic mean of the appropriate indexes (determined under paragraph (e)(3)(iii)(D) of this section) for each selected index category represented in the taxpayer's ending inventory. The formula for computing a weighted harmonic mean is: Sum of weights/Sum of (Weight/Appropriate Index). The costs to be used in computing a weighted harmonic mean are the relative amount of current-year costs (or, in the case of a retailer using the retail inventory method, the relative retail selling prices) in each index category represented in the ending inventory of the pool.

*(2) Double-extension IPIC method.* Under the double-extension IPIC method, an inventory price index computed for each pool is 1.0 plus a stated percentage of the increase since the base date in the weighted average pool index determined under paragraph (e)(3)(iii)(E)(*1*) of this section. In the case of an eligible small business as defined in section 474, the stated percentage is 100%. In the case of all other taxpayers, the stated percentage is 80%. Thus, the inventory price index for an eligible small business is equal to the weighted average pool index determined under paragraph (e)(3)(iii)(E)(*1*) of this section. The inventory price index for all other taxpayers is computed using the

following formula: 1 + [ 0.8 * (weighted average pool index − 1)].

(*3*) *Link-chain IPIC method.* Under the link-chain IPIC method, an inventory price index for each pool is 1.0 plus a stated percentage of the increase since the base date in a cumulative index. In the case of an eligible small business as defined in section 474, the stated percentage is 100%. In the case of all other taxpayers, the stated percentage is 80%. The cumulative index for each taxable year is the product of the weighted average pool index determined under paragraph (e)(3)(iii)(E)(*1*) of this section multiplied by the cumulative index for the immediately preceding taxable year. The cumulative index for the taxable year is computed using the following formula: (weighted average pool index * preceding year's Cumulative Index). The inventory price index for a taxable year of an eligible small business is equal to the cumulative index for the taxable year. The inventory price index for a taxable year of all other taxpayers is computed using the following formula: 1 + [0.8 * (Cumulative Index for the taxable year − 1)].

(F) *Examples.* The following examples illustrate the rules of this paragraph (e)(3)(iii):

*Example 1. Double-extension Method.*

(i) *Introduction.* R is a retail furniture merchant with more than $5,000,000 in average annual gross receipts for all relevant years. For the taxable year ending December 31, 1996, R used the first-in, first-out method of identifying inventory and valued its inventory at cost. R's inventory on December 31, 1996, had a cost of $850,000.00. R elected to use the dollar-value LIFO and double-extension IPIC methods for its taxable year ending December 31, 1997. R determines the current-year cost of inventory items by reference to the actual cost of the goods most recently purchased. R elected to pool its inventory in accordance with the special IPIC pooling rules of paragraph (b)(4) of this section. R does not use the retail inventory method. All of R's inventory items fall within the 2-digit commodity code in Table 6 (Producer price indexes for commodity groups, subgroups, product classes, and individual items) of the "PPI Detailed Report" for "furniture and household durables." Therefore, R will maintain a single inventory pool.

(ii) *Select a BLS table and appropriate month for the 1997 taxable year.* R determines that the appropriate month for the taxable year ending December 31, 1997, is October. Because R is a retailer not using the retail inventory method, R must select indexes from the "PPI Detailed Report." The indexes in Table 6 of the "PPI Detailed Report" are appropriate for R's inventory.

(iii) *Select index categories for the 1997 taxable year.* R's inventory items can be classified into five detailed categories listed in Table 6 of the "PPI Detailed Report" published for October, 1997. The categories and current-year cost of items in those categories can be summarized as follows:

| Commodity code | Category | Current-year cost |
|---|---|---|
| 12120101 | Living Room Table | $111,924.00 |
| 12120211 | Dining Room table | 159,578.00 |
| 12120216 | Dining Room chairs | 98,639.00 |
| 12130101 | Upholstered Sofas | 332,488.00 |
| 12130111 | Upholstered Chairs | 218,751.00 |
| | | 921,380.00 |

(IV) *Compute appropriate indexes for the 1997 taxable year.* Because R elected to use the double-extension IPIC method, R will compute appropriate indexes in accordance with paragraph (e)(3)(iii)(D)(*1*) of this section (published cumulative index for October, 1997 divided by published cumulative index for December, 1996). R computes the appropriate indexes as follows:

| Category | Oct. '97 index | Dec. '96 index | Appropriate index |
|---|---|---|---|
| Living Room Table | 172.4 | 169.2 | 1.018913 |
| Dining Room Table | 171.9 | 168.1 | 1.022606 |
| Dining Room Chairs | 172.8 | 169.7 | 1.018268 |
| Upholstered Sofas | 142.2 | 140.9 | 1.009226 |
| Upholstered Chairs | 134.1 | 132.5 | 1.012075 |

(v) *Compute a weighted average pool index for the 1997 taxable year.* R must first compute a weighted average pool index using the formula set forth in paragraph (e)(3)(iii)(E)(*1*) of this section (Sum of weights/Sum of [Weight/Appropriate Index]). The weighted average pool index is computed as follows:

| Category | Weight | Appropriate index | Quotient |
|---|---|---|---|
| Living Room Table | $111,924.00 | 1.018913 | $109,846.47 |
| Dining Room Table | 159,578.00 | 1.022606 | 156,050.33 |
| Dining Room Chairs | 98,639.00 | 1.018268 | 96,869.39 |
| Upholstered Sofas | 332,488.00 | 1.009226 | 329,448.51 |
| Upholstered Chairs | 218,751.00 | 1.012075 | 216,141.10 |
| Total | 921,380.00 | | $908,355.80 |

| Sum of weights | Sum of (weight/appropriate index) | Weighted average pool index |
|---|---|---|
| $921,380.00 | $908,355.80 | 1.0143382 |

(vi) *Compute an inventory price index for the 1997 taxable year.* R computes an inventory price index for the pool using the formula set forth in paragraph (e)(3)(iii)(E)(*2*) of this section. The inventory price index is 1.0114710 (1 + [0.8 * (1.0143382 − 1)]).

(vii) *Determine the LIFO value of the pool for the 1997 taxable year.* R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the inventory items in the pool by the inventory price index. The total base-year cost of R's ending inventory is $910,930.71 ($921,380/1.011471). R compares the ending inventory at base-year cost to the beginning inventory at base-year cost and determines that the amount of the layer of increment for the taxable year in terms of base-year cost is

$60,930.71 ($910,930.71 – $850,000.00). R multiplies the base-year cost of the increment by the inventory price index computed for the taxable year and determines that the LIFO value of the increment is $61,629.65 ($60,930.71 * 1.011471). Thus, the LIFO value of R's inventory at the end of the 1997 taxable year is $911,629.65 ($850,000 opening inventory + $61,629.65 increment).

(viii) *Select a BLS table and appropriate month for the 1998 taxable year.* For the 1998 taxable year, R must compute a new inventory price index under the double-extension IPIC method to determine the LIFO value of its dollar-value pool. R determines that the appropriate month for the taxable year ending December 31, 1998, is November.

(ix) *Select index categories for the 1998 taxable year.* The inventory items contained in R's ending inventory can be classified into five detailed categories listed in Table 6 of the "PPI Detailed Report" published for November, 1998. The categories and current-year cost of items in those categories can be summarized as follows:

| Commodity code | Category | Current-year cost |
|---|---|---|
| 12120103 | Living Room Desks | $125,008.00 |
| 12120211 | Dining Room Table | 136,216.00 |
| 12120216 | Dining Room Chairs | 113,569.00 |
| 12130101 | Upholstered Sofas | 343,900.00 |
| 12130111 | Upholstered Chairs | 233,050.00 |
| | | 951,743.00 |

(x) *Compute appropriate indexes for the 1998 taxable year.* Because R uses the double-extension IPIC method, R will compute an appropriate index in accordance with paragraph (e)(3)(iii)(D)(*1*) of this section (published cumulative index for November, 1998 divided by published cumulative index for December, 1996). R computes the appropriate indexes as follows:

| Category | Nov. '98 index | Dec. '96 index | Appropriate index |
|---|---|---|---|
| Living Room Desks | 172.6 | 160.3 | 1.076731 |
| Dining Room Table | 174.8 | 168.1 | 1.039857 |
| Dining Room Chairs | 177.0 | 169.7 | 1.043017 |
| Upholstered Sofas | 144.9 | 140.9 | 1.028389 |
| Upholstered Chairs | 136.6 | 132.5 | 1.030943 |

(xi) *Compute a pool index for the 1998 taxable year.* R must first compute a weighted average pool index using the formula set forth in paragraph (e)(3)(iii)(E)(*1*) of this section (Sum of weights/(Sum of [Weight/Appropriate Index])). The weighted average pool index is computed as follows:

| Category | Weight | Appropriate index | Quotient |
|---|---|---|---|
| Living Room Desks | $125,008.00 | 1.076731 | $116,099.56 |
| Dining Room Table | 136,216.00 | 1.039857 | 130,994.93 |
| Dining Room Chairs | 113,569.00 | 1.043017 | 108,885.09 |
| Upholstered Sofas | 343,900.00 | 1.028389 | 334,406.53 |
| Upholstered Chairs | 233,050.00 | 1.030943 | 226,055.17 |
| Total | 951,743.00 | | 916,441.28 |

| Sum of weights | Sum of (weight/appropriate index) | Weighted average pool index |
|---|---|---|
| $951,743.00 | $916,441.28 | 1.0385204 |

(xii) *Compute an inventory price index for the 1997 taxable year.* R computes the inventory price index for the pool using the formula set forth in paragraph (e)(3)(iii)(E)(*2*) of this section. The inventory price index is 1.0308163 (1 + [0.8 * (1.0385204 – 1)]).

(xiii) *Determine the LIFO value of the pool for the 1998 taxable year.* R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the inventory items in the pool by the pool index. The total base-year cost of the ending inventory is $923,290.60 ($951,743.00/1.0308163). R compares the ending inventory at base-year cost to the beginning inventory at base-year cost and determines that the amount of the layer of increment for the taxable year in terms of base-year cost is $12,359.89 ($923,290.60 – $910,930.71). R multiplies the base-year cost of the increment by the pool index computed for the taxable year and determines that the LIFO value of the increment is $12,740.78 ($12,359.89 * 1.0308163). Thus, the LIFO value of R's inventory at the end of the 1997 taxable year is $924,370.43 ($850,000.00 base year layer + $61,629.65 1997 layer + $12,740.78 1998 layer).

*Example 2. Link-chain Method.* (i) *Introduction.* The facts are the same as Example 1, except that R uses the link-chain IPIC method. The double-extension IPIC method and the link-chain IPIC method yield the same results for the first taxable year in which the IPIC method is used. Therefore, this example only illustrates how R would compute an inventory price index and determine the LIFO value of its dollar-value pool for the 1998 taxable year.

(ii) *Select a BLS table and appropriate month for the 1998 taxable year.* R determines that the appropriate index month for the taxable year ending December 31, 1998, is November.

(iii) *Select index categories for the 1998 taxable year.* R's inventory items can be classified into five detailed categories listed in Table 6 of the "PPI Detailed Report" published for November, 1998. The categories and current-year cost of items in those categories can be summarized as follows:

| Commodity code | Category | Current-year cost |
|---|---|---|
| 12120103 | Living Room Desks | $125,008.00 |
| 12120211 | Dining Room Table | 136,216.00 |

| Commodity code | Category | Current-year cost |
|---|---|---|
| 12120216 | Dining Room Chairs | 113,569.00 |
| 12130101 | Upholstered Sofas | 343,900.00 |
| 12130111 | Upholstered Chairs | 233,050.00 |
| | | 951,743.00 |

(iv) *Compute appropriate indexes for the 1998 taxable year.* Because R uses the link-chain IPIC method, R will compute an appropriate index in accordance with paragraph (e)(3)(iii)(D)(*2*) of this section (published cumulative index for the November, 1998 divided by published cumulative index for the October, 1997). R computes the appropriate indexes as follows:

| Category | Nov. '98 index | Oct. '97 index | Appropriate index |
|---|---|---|---|
| Living Room Desks | 172.6 | 162.0 | 1.065432 |
| Dining Room Table | 174.8 | 171.9 | 1.016870 |
| Dining Room Chairs | 177.0 | 172.8 | 1.024306 |
| Upholstered Sofas | 144.9 | 142.2 | 1.018987 |
| Upholstered Chairs | 136.6 | 134.1 | 1.018643 |

(v) *Compute a pool index for the 1998 taxable year.* R must first compute a weighted average pool index using the formula set forth in paragraph (e)(3)(iii)(E)(*1*) of this section (Sum of weights/Sum of [Weight/Appropriate Index]). The weighted average pool index is computed as follows:

| Category | Weight | Appropriate index | Quotient |
|---|---|---|---|
| Living Room Desks | $125,008.00 | 1.065432 | $117,330.81 |
| Dining Room Table | 136,216.00 | 1.016870 | 133,956.16 |
| Dining Room Chairs | 113,569.00 | 1.024306 | 110,874.09 |
| Upholstered Sofas | 343,900.00 | 1.018987 | 337,492.04 |
| Upholstered Chairs | 233,050.00 | 1.018643 | 228,784.77 |
| Total | 951,743.00 | ..... | 928,437.87 |

| Sum of weights | Sum of (weight/appropriate index) | Weighted average pool index |
|---|---|---|
| $951,743.00 | $928,437.87 | 1.0251014 |

(vi) *Compute an inventory price index for the 1997 taxable year.* R computes the inventory price index in accordance with paragraph (e)(3)(iii)(E)(*3*) of this section. R multiplies the weighted average pool index by the prior year's cumulative index to get the cumulative index for the taxable year. Because 1997 was the first year in which R used the link-chain IPIC method, the prior year's cumulative index is equal to the 1997 weighted average pool index. The cumulative index for 1998 is 1.0397995 (1.0143382 * 1.0251014). R computes the inventory price index using the formula set forth in paragraph (e)(3)(iii)(E)(*3*) of this section. The inventory price index is 1.0318396 (1 + [0.80 * (1.0397995 − 1)]).

(vii) *Determine the LIFO value of the pool for the 1998 taxable year.* R determines the total base-year cost of its ending inventory by dividing the total current-year cost of the inventory items in the pool by the inventory price index. The total base-year cost of the ending inventory is $922,374.95 ($951,743.00/1.0318396). R compares the ending inventory at base-year cost to the beginning inventory at base-year cost and determines that the amount of the layer of increment for the taxable year in terms of base-year cost is $11,444.24 ($922,374.95 − $910,930.71). R multiplies the base-year cost of the increment by the pool index computed for the taxable year and determines that the LIFO value of the increment is $11,808.62 ($11,444.24 * 1.0318396). Thus, the LIFO value of R's inventory at the end of the 1998 taxable year is $923,438.27 ($850,000 base year layer + $61,629.65 1997 layer + $11,808.62 1998 layer).

(iv) *Adoption or change of method—* (A) *Adoption or change to IPIC method.* The use of an inventory price index computed using the IPIC method is a method of accounting. A taxpayer permitted to adopt the dollar-value LIFO method without first securing the consent of the Commissioner may also adopt the IPIC method incident to that adoption without first securing the consent of the Commissioner. The IPIC method may be adopted and used only if the taxpayer indicates on a Form 970, "Application to Use LIFO Inventory Method," or in such other manner as may be acceptable to the Commissioner, a listing of each dollar-value inventory pool, the type of goods included in each pool, the consumer or producer price index or indexes selected for each pool, whether the taxpayer will use the double-extension IPIC method or the link-chain IPIC method of computing an inventory price index, and if the taxpayer makes a one-time binding election of an appropriate representative month, the representative month. In the case of a taxpayer permitted to adopt the IPIC method without requesting the Commissioner's consent, the Form 970 shall be attached to the taxpayer's income tax return for the taxable year of that adoption. In all other cases, a taxpayer may change to the IPIC method prescribed by this paragraph only after first securing the consent of the Commissioner as provided in § 1.446–1(e). In such cases, the Form 970 containing the information described above must be attached to a Form 3115, "Application for Change in Accounting Method," filed in accordance with § 1.446–1(e). Taxpayers must maintain adequate books and records in order to satisfy the requirements of § 1.472–2(h), including adequate books and records of the use and computations of the IPIC method. Notwithstanding the rules in paragraph (e)(1) of this section, a taxpayer that adopts or changes to the use of an inventory price index computed using the IPIC method is not required to demonstrate that the use of any other method of computing the LIFO value of a dollar-value inventory pool is impractical.

(B) *Change in selected index.* The selection of a consumer or producer price index category for a specific item

to compute an appropriate index under paragraph (e)(3)(iii)(B) of this section is a method of accounting. A taxpayer desiring to change the selection of such a consumer or producer price index must secure the consent of the Commissioner as provided in § 1.446–1(e).

(C) *New base year—(1) Voluntary change—(i) In general.* In the case of a taxpayer using a method other than the IPIC method to determine the LIFO value of a dollar-value inventory pool, any layers of inventory increments previously determined by that method and the LIFO value of those layers are retained if the taxpayer voluntarily changes to the use of the IPIC method. In the case of a taxpayer changing the selection of an index category for an inventory item, any layers of inventory increments previously determined and the LIFO value of those layers are retained. Instead of using the earliest taxable year for which the taxpayer adopted the LIFO method for any items in the pool, the year of change is used as the new base year in determining the LIFO value of the inventory pool for the year of change and later taxable years. The cumulative index as of the first day of the year of change (the base date) is 1.00. The base-year costs of layers of increment in the pool at the beginning of the year of change must be restated in terms of new base-year cost, using the year of change as the new base year, and the indexes for previously determined inventory increments must be recomputed accordingly. The new base-year cost of a pool is equal to the total current-year cost of all the items in the pool as determined pursuant to the taxpayer's established method of determining the total current-year cost of items making up the pool under paragraph (e)(2)(ii) of this section. See paragraph (f)(2) of this section for rules relating to a change to the dollar-value method from another method of pricing LIFO inventories.

*(ii) Example.* The following example illustrates the rules of this paragraph (e)(3)(iv)(C)(*1*):

*Example.* (i) X began using a dollar-value LIFO method other than the IPIC method in 1990 and maintains a single dollar-value pool. X is granted permission to change to the IPIC method, beginning with the taxable year ending December 31, 2000. X will continue to use a single dollar-value pool under the IPIC method. X's beginning inventory as of January 1, 2000, computed using its former method, is as follows:

| | Base-year costs | Index | LIFO value |
|---|---|---|---|
| Base layer | $135,000 | 1.00 | $135,000 |
| 1991 layer | 20,000 | 1.43 | 28,600 |
| 1994 layer | 60,000 | 1.55 | 93,000 |
| 1995 layer | 13,000 | 1.59 | 20,670 |
| 1997 layer | 2,000 | 1.61 | 3,220 |
| Totals | 230,000 | | 280,490 |

(ii) Under X's method of determining the current-year cost of items, the current-year cost of the beginning inventory is $391,000. Thus, X's new base-year cost as of January 1, 2000 is $391,000. X allocates this new base-year cost to each LIFO layer based on the ratio of old base-year cost of the layer to the total old base-year cost of the pool. To recompute the indexes for each of its LIFO layers, X divides the LIFO value of each layer by the new base-year cost attributable to the layer. The new base-year costs, recomputed indexes, and LIFO value of X's inventory are as follows:

| | Base-year costs | Index | LIFO value |
|---|---|---|---|
| Base layer | $229,500 | 0.588235 | $135,000 |
| 1991 layer | 34,000 | 0.841176 | 28,600 |
| 1994 layer | 102,000 | 0.911765 | 93,000 |
| 1995 layer | 22,100 | 0.935294 | 20,670 |
| 1997 layer | 3,400 | 0.947059 | 3,220 |
| Totals | 391,000 | | 280,490 |

*(2) Involuntary change—(i) In general.* If a taxpayer uses a method of accounting other than the IPIC method to determine the LIFO value of a dollar-value inventory pool and the Commissioner determines that the method does not clearly reflect income, the Commissioner may require the taxpayer to change to the IPIC method. If a taxpayer is unable to provide a sufficient basis, including information from its books and records, to compute an adjustment under section 481, and the Commissioner requires the taxpayer to change to the IPIC method, the Commissioner will require the taxpayer to change to the double-extension IPIC method and implement the change on a cut-off basis without a new base year. Under the cut-off basis without a new base year, the Commissioner will determine the amount of any increment in terms of base-year cost for the year of change by comparing the total base-year cost of the beginning inventory under the taxpayer's method and the total base-year cost of the ending inventory under the double-extension IPIC method described in this paragraph (e)(3) and value any increment so determined using the inventory price index computed under the double-extension IPIC method.

*(ii) Example.* The following example illustrates the rules of this paragraph (e)(3)(iv)(C)(*2*):

*Example.* (i) Y began using a dollar-value LIFO method other than the IPIC method in 1994 and maintains a single dollar-value pool. Under Y's method of determining the current-year cost of items, the current-year cost of Y's ending inventory for the 2000 taxable year is $348,160. Y's beginning inventory as of January 1, 2000, computed using its method, is as follows:

| | Base-year costs | Index | LIFO value |
|---|---|---|---|
| Base layer | $105,000 | 1.00 | $105,000 |
| 1995 layer | 3,000 | 1.70 | 5,100 |
| 1996 layer | 5,500 | 2.00 | 11,000 |

| | Base-year costs | Index | LIFO value |
|---|---|---|---|
| 1997 layer | 2,900 | 2.50 | 7,250 |
| 1998 layer | 1,400 | 2.85 | 3,990 |
| Totals | 117,800 | | 132,340 |

(ii) Upon examination, it is determined that Y's dollar-value LIFO method does not clearly reflect income. If Y is unable to provide the examining agent with a sufficient basis to compute a section 481 adjustment arising from a change to a dollar-value LIFO method that does clearly reflect income, and the examining agent chooses to change Y to the IPIC method, the change will be implemented as follows. First, the examining agent will compute an inventory price index under the double-extension IPIC method in accordance with this paragraph (e)(3). For purposes of this example, assume that the inventory price index computed under the double-extension IPIC method is 1.438793. Second, the examining agent will divide the current-year cost of Y's ending inventory by the inventory price index to determine the base-year cost of Y's inventory under the double-extension IPIC method. The base-year cost is $241,980.60 ($348,160/1.438793). Third, the examining agent will compare the base-year cost of the ending inventory determined under the double-extension IPIC method to the base-year cost of the beginning inventory determined under Y's method of accounting to determine the amount of any increment. The increment at base-year cost for the 2000 taxable year is $124,180.60 ($241,980.60 − $117,800.00). Fourth, the examining agent will value the increment by multiplying the base-year cost of the increment by the inventory price index. The LIFO value of the increment is $178,670.18 ($241,980.60 * 1.438793). Finally, the examining agent will reduce Y's cost of goods sold and increases Y's gross income for the 2000 taxable year by the increase in the LIFO value of the 2000 ending inventory, or $178,670.18.

(v) *Effective date*—(A) *In general.* The rules of this paragraph (e)(3) and paragraphs (b)(4) and (c)(2) of this section are applicable for taxable years beginning on or after the date these regulations are published in the **Federal Register** as final regulations.

(B) *Change in method of accounting.* Any change in a taxpayer's method of accounting necessary to comply with this paragraph (e)(3) or paragraphs (b)(4) or (c)(2) of this section is a change in method of accounting to which the provisions of section 446 and the regulations thereunder apply. For the first taxable year beginning on or after the date these regulations are published in the **Federal Register** as final regulations, a taxpayer is granted the consent of the Commissioner to change its method of accounting to a method required or permitted by this paragraph (e)(3) and paragraphs (b)(4) and (c)(2) of this section. A taxpayer that wants to change its method of accounting under this paragraph (e)(3)(v) must follow the automatic consent procedures in Rev. Proc. 99–49 (1999–52 I.R.B. 725) (see § 601.601(d)(2) of this chapter). However, the scope limitations in section 4.02 of Rev. Proc. 99–49 do not apply. In addition, if the taxpayer's method of accounting for its LIFO inventories is an issue under consideration at the time the application is filed with the national office, the audit protection of section 7 of Rev. Proc. 99–49 does not apply. If a taxpayer changing its method of accounting under this paragraph (e)(3)(v)(B) is under examination, before an appeals office, or before a federal court with respect to any income tax issue, the taxpayer must provide a copy of the application to the examining agent(s), appeals officer or counsel for the government, as appropriate, at the same time it files the application with the national office. A change under this paragraph (e)(3)(v)(B) must be made using a cut-off basis and new base year in accordance with paragraph (e)(3)(iv)(C)(*1*) of this section. Because a change under this paragraph (e)(3)(v)(B) is made on a cut-off basis, a section 481(a) adjustment is not required. However, a taxpayer changing its method of accounting under this paragraph (e)(3)(v)(B) must comply with the requirements of section 10.04(3) of the APPENDIX of Rev. Proc. 99–49 (concerning bargain purchases).

* * * * *

(h) *Inventories received in certain nonrecognition transactions*—(1) *In general.* Except as provided in paragraph (h)(3) of this section, if inventories are received in a transaction described in paragraph (h)(2) of this section, then for purposes of determining future increments and liquidations the transferee must use the year of the transfer as the base year and the current-year cost (determined under the transferor's method of accounting) of the inventories received as the new base-year cost of such inventories. Likewise, the transferee must use the current-year cost (determined under the transferee's method of accounting) of its beginning inventory, if any, as the new base-year cost of the beginning inventory for purposes of determining future increments and liquidations. The total new base-year cost of the transferee's beginning inventory is equal to the new base-year cost of the inventories received and the new base-year cost of the beginning inventory. The cumulative index as of the first day of the year in which the inventory is received (the base date) is 1.00. The base-year costs of any layers of increment in the pool, as determined after the transfer, must be restated in terms of new base-year costs and the indexes for all such layers must be restated in terms of the new base year index. See paragraph (e)(3)(iv)(C)(*1*) of this section for an example of this computation.

(2) *Transactions to which this paragraph (h) applies.* A transaction is described in this paragraph (h) if—

(i) The transferee determines its basis in the inventories, in whole or in part, by reference to the basis of the inventories in the hands of the transferor;

(ii) The transferor used the dollar-value LIFO method to account for the transferred inventories;

(iii) The transferee uses the dollar-value LIFO method to account for the inventories in the year of the transfer; and

(iv) The transaction is not described in section 381(a).

(3) *Anti-avoidance rule.* The rule in paragraph (h)(1) of this section will not apply to a transaction entered into with the principal purpose to avail the transferee of a method of accounting that would be unavailable to the transferor (or would be unavailable to the transferor without securing consent from the Commissioner). In determining the principal purpose of a transfer, consideration will be given to all of the facts and circumstances. However, a transfer is deemed made with the principal purpose to avail the transferee of a method of accounting that would be unavailable to the transferor without securing consent from the Commissioner if the transferor acquired inventory in a bargain purchase within the five taxable years preceding the year of the transfer and used a dollar-value LIFO method to account for that inventory that did not treat the bargain purchase inventory and physically identical inventory acquired at market prices as separate items. Inventory is deemed acquired in a bargain purchase

if the actual cost of the inventory (or, if appropriate, the allocated cost of the inventory) was less than or equal to 50 percent of the replacement cost of physically identical inventory. Inventory is not considered acquired in a bargain purchase if the actual cost of the inventory (or, if appropriate, the allocated cost of the inventory) was greater than or equal to 75 percent of the replacement cost of physically identical inventory.

(4) *Effective date.* The rules of this paragraph (h) are applicable for transfers on or after the date these regulations are published in the **Federal Register** as final regulations.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

[FR Doc. 00–12174 Filed 5–18–00; 8:45 am]

BILLING CODE 4830–01–U

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[REG–105089–99]**

**RIN 1545–AX38**

### Guidance Under Section 356 Relating to the Treatment of Nonqualified Preferred Stock and Other Preferred Stock in Certain Exchanges and Distributions; Hearing Cancellation

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Cancellation of notice of public hearing on proposed rulemaking.

**SUMMARY:** This document provides notice of cancellation of a public hearing on proposed regulations relating to the treatment of nonqualified preferred stock and other preferred stock in certain exchanges and distributions under section 356 of the Internal Revenue Code.

**DATES:** The public hearing originally scheduled for Wednesday, May 31, 2000, at 10 a.m., is cancelled.

**FOR FURTHER INFORMATION CONTACT:** LaNita Van Dyke of the Regulations Unit, Assistant Chief Counsel (Corporate), at (202) 622–7180 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:** A notice of proposed rulemaking and notice of public hearing that appeared in the **Federal Register** on January 26, 2000, (65 FR 4203), announced that a public hearing was scheduled for May 31, 2000, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Ave., NW., Washington, DC. The subject of the public hearing is proposed regulations under section 354, 355, 356, and 1036 of the Internal Revenue Code. The deadline for requests to speak and outlines of oral comments expired on May 10, 2000.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of May 15, 2000, no one has requested to speak. Therefore, the public hearing scheduled for May 31, 2000, is cancelled.

**Cynthia E. Grigsby,**

*Chief, Regulations Unit, Assistant Chief Counsel (Corporate).*

[FR Doc. 00–12682 Filed 5–18–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 9

**[Notice No. 897]**

**RIN 1512–AA07**

### Red Mountain Viticultural Area (99R–367P)

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing to establish a viticultural area within the State of Washington to be called "Red Mountain." The proposed viticultural area is within Benton County and entirely within the existing Yakima Valley viticultural area as described in the regulations. Mr. Lorne Jacobson of Hedges Cellars submitted the petition. Mr. Jacobson believes that "Red Mountain" is a widely known name for the petitioned area, that the area is well defined, and that the area is distinguished from other areas by its soil and climate.

**DATES:** Send your comments on or before July 18, 2000.

**ADDRESSES:** Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 897).

**FOR FURTHER INFORMATION CONTACT:** Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8210.

**SUPPLEMENTARY INFORMATION:**

**1. Background on Viticultural Areas**

*What Is ATF's Authority To Establish a Viticultural Area?*

ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added 27 CFR part 9, American Viticultural Areas, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

*What Is the Definition of an American Viticultural Area?*

An American viticultural area is a delimited grape-growing region distinguishable by geographic features. Viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

*What Is Required To Establish a Viticultural Area?*

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;
- A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and
- A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

**2. Red Mountain Petition**

ATF has received a petition proposing to establish a viticultural area within the State of Washington to be known as "Red Mountain." The petitioner is Mr. Lorne Jacobson of Hedges Cellars. The proposed viticultural area is entirely within the existing Yakima Valley

viticultural area described in 27 CFR 9.69. According to Mr. Jacobson, Red Mountain has a distinct identity that sets it apart from the rest of the Yakima Valley viticultural area. He reports that grapes grown on Red Mountain are known for their quality and are highly sought after by Washington State winemakers.

The proposed area encompasses approximately 3,400 acres, of which approximately 600 acres are planted to vineyards. The petitioner estimates the proposed area can accommodate 2,700 acres of grape plantings.

*What Name Evidence Has Been Provided?*

The petitioner has submitted as evidence of name recognition several newspaper and magazine articles referencing Red Mountain as a wine producing area. These publications include: The Seattle Post-Intelligencer; the Globe and Mail, (Toronto); Wine Access (Canada); Decanter (UK); and Wine (UK). Other sources cited by the petitioner as referring to the wines of Red Mountain include: Decanter Magazine Guide to Oregon, Washington State and Idaho (Third Edition, 1996); Touring the Washington Wine Country, published by the Washington Wine Commission (1997 edition); and Connoisseur's Guide to California (July 1997 edition).

Several of these references describe the geographic and climatic conditions of Red Mountain as particularly suited to grape growing. Examples include:

- Decanter Magazine Guide to Oregon, Washington State and Idaho (Third Edition, 1996): "The Red Mountain region, at the confluence of the Columbia, Snake and Yakima rivers, is a relatively warm area, and vineyards on upper slopes, again with south facing aspects, are yielding superior wine. * * *. Evidence is mounting to indicate that Red Mountain may be one of the genuine special vineyard sites."
- Wine Access, November 1998: "Although most of Eastern Washington's vineyards bask in a hot, dry climate, Klipsun [an area vineyard] sits between a gap in the Rattlesnake and Red Mountains in the lower Yakima Valley that is regularly blessed with slightly cooler air that filters through the gap from Canada. This, along with its stingy soils best described as sandy, silty loam, and silty loam over gravel, helps to explain the elegant, concentrated nature of the Klipsun fruit."
- Touring the Washington Wine Country, by the Washington Wine Commission (1997 edition): "Many of the award-winning Cabernet Sauvignons that emerged from Washington's first quarter-century of fine winemaking used a percentage of their fruit from the vineyards sloping down from Red Mountain toward the Yakima River just above Benton City near Richland. This site offers good air drainage and light soils that encourage grape vines to seek nutrients via deep roots. Irrigated vineyards allow the grape growers to control vine vigor and to ease the vines into dormancy before winter."

*What Boundary Evidence Has Been Provided?*

The petitioner has submitted as boundary evidence one U.S.G.S. map titled "Benton City, Washington" (1974) on which Red Mountain is prominently labeled. The proposed viticultural area starts on the ridgeline of Red Mountain and then sweeps down in a triangle toward the southwest, encompassing the southern slope of the mountain down to an elevation of 560 feet. The petitioner notes that there is a small vineyard site on the eastern bank of the Yakima River, due west of the proposed boundaries. He states that this valley floor site has different growing conditions than those on the higher elevations of Red Mountain. There are currently 13 vineyards on Red Mountain, all on the southwestern slope and within the proposed boundaries. The oldest of these vineyards was planted in 1975. According to the petitioner, these boundaries contain a grape growing area with a distinctive character based on soil, topography and climate.

*What Evidence Relating to Geographical Features Has Been Provided?*

The petitioner asserts that geographical and climatic features of Red Mountain distinguish it from the surrounding Yakima Valley viticultural area.

- *Soil:* The petitioner states that Red Mountain's soil associations (landscapes with distinctive proportional patterns of soils) are unique in the Yakima Valley viticultural area. In support of this statement, the petitioner has submitted soil survey maps issued by the U.S. Department of Agriculture's Soil Conservation Service for the Yakima County and Benton County areas. Using these maps, the petitioner compared the soil associations for Red Mountain and other grape growing areas in the Yakima Valley viticultural area.

According to the Benton County area soil survey maps, the dominant soil association of Red Mountain is Warden-Shano. A more specific analysis reveals that the following soils are present within the Warden-Shano association: Warden silt loam, Hezel loamy fine sand, Scooteney silt loam, and Kiona very stony silt loam. The petitioner compared this data with soil data for Gleed, Buena, and Sunnyside, other grape growing areas in Washington State within the Yakima Valley viticultural area. The soil associations of these areas are composed of Weirman-Ashue, Harwood-Gorst-Selah, Ritzville-Starbuck, Cowiche-Roza, Warden Esquatzel, and Quincy-Hezel. Thus, argues the petitioner, Red Mountain has a soil association which sets it apart from the rest of the Yakima Valley viticultural area.

- *Climate:* According to the petitioner, temperatures on Red Mountain tend to be hotter during the growing season than those in other areas of the Yakima Valley viticultural area.

To support this contention, the petitioner submitted temperature data gathered from weather stations in the Washington Public Agriculture Weather System administered by Washington State University. He compared data from the weather stations of Benton City, Sunnyside, Buena, and Gleed, all located in the Yakima Valley viticultural area. The Benton City station is located on Red Mountain within the proposed viticultural area. A comparison of average annual air temperatures for the years 1995 through 1999 shows that the Benton City station consistently had the warmest temperatures. The average temperature difference between Benton City and Gleed, the coolest site, ranged from 3.92 to 5.61 degrees.

The petitioner states that the difference of only a few degrees over the course of a growing season can produce dramatic results on the enological characteristics of wine. He further states that Red Mountain is typically the first grape growing area in Washington State to harvest grapes because of its warmer temperatures. According to the petitioner, the warmer temperatures also help to produce fully mature, ripe grapes with exceptional balance that differ substantially in quality from those of other growing areas in the state.

- *Topography:* Existing vineyards in the proposed viticultural area lie on the southwest-facing slope of Red Mountain. Elevation ranges of these vineyards are from approximately 600 to 1,000 feet. The petitioner notes that there is an immense gap separating the northwest end of Red Mountain from the southeast extremity of nearby Rattlesnake Ridge. He states that cooler, continental air masses flow south from Canada through this gap. In addition, the Yakima River flows north around Red Mountain before joining the Columbia River, creating an air drainage

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system. The petitioner further states that these characteristics, along with the predominate southwest facing slope of Red Mountain, serve to flush the warm daytime air off the face of Red Mountain and replace it with a cooler air mass. According to the petitioner, the resulting growing environment yields grapes that are both high in sugar (due to warmer daytime temperatures) and high in acid (due to lower evening temperatures).

**3. Public Participation**

*Who May Comment on This Notice?*

ATF requests comments from all interested persons. In addition, ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

*Can I Review Comments Received?*

Copies of the petition, the proposed regulations, the appropriate map, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Liaison and Public Information, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC, 20226.

*Will ATF Keep My Comments Confidential?*

ATF cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We may also disclose the name of any person who submits a comment.

*How Do I Send Facsimile Comments?*

You may submit comments of not more than three pages by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be 8½″ x 11″ in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

*How Do I Send Electronic Mail (E-mail) Comments?*

You may submit comments by e-mail by sending the comments to nprm@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages 8½″ x 11″ in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

*How Do I Send Comments to the ATF Internet Web Site?*

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at *http://www.atf.treas.gov/core/regulations/rules.htm*.

*Can I Request a Public Hearing?*

If you desire the opportunity to comment orally at a public hearing on this proposed regulation, you must submit your request in writing to the Director within the 60-day comment period. The Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

**4. Regulatory Analyses and Notices**

*Does the Paperwork Reduction Act Apply to This Proposed Rule?*

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

*How Does the Regulatory Flexibility Act Apply to This Proposed Rule?*

These proposed regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement or approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

*Is This a Significant Regulatory Action as Defined by Executive Order 12866?*

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

Drafting Information: The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco, and Firearms.

**List of Subjects in 27 CFR Part 9**

Administrative practices and procedures, Consumer protection, Viticultural areas, Wine.

**Authority and Issuance**

Accordingly, for the reasons set out in the preamble, Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

## PART 9—AMERICAN VITICULTURAL AREAS

**Paragraph 1.** The authority citation for part 9 continues to read as follows:

**Authority:** 27 U.S.C. 205

### Subpart C—Approved American Viticultural Areas

**Par. 2.** Subpart C is amended by adding § 9.167 to read as follows:

* * * * *

**§ 9.167 Red Mountain.**

(a) Name. The name of the viticultural area described in this section is "Red Mountain."

(b) Approved Maps. The appropriate map for determining the boundaries of the Red Mountain viticultural area is one U.S.G.S. map titled "Benton City, Washington" 7.5 minute series (topographic), (1974).

(c) Boundaries. The Red Mountain viticultural area is located within Benton County, Washington, entirely within the existing Yakima Valley viticultural area. The boundaries are as follows:

(1) The northwest boundary beginning on this map at the intersection of the 560-foot elevation level and the aqueduct found northwest of the center of section 32.

(2) Then following the aqueduct east to its endpoint at an elevation of approximately 650-feet, again in section 32.

(3) From this point in a straight line southeast to the 1173-foot peak, located southeast of the center of section 32.

(4) From this peak southeast in a straight-line across the lower southwest corner of section 33 to the 1253-foot

peak located due north of the center of section 4.

(5) Then in a straight-line southeast to the 1410-foot peak located in the southwest corner of section 3.

(6) From this peak in a straight-line southeast to the border of Sections 10 and 11 where the power-line crosses these two sections. This intersection is northeast of the center of section 10 and northwest of the center of section 11.

(7) From this point in a straight line southeast to the 600-foot elevation line where this intersections State Highway 224 southwest of the center of section 11.

(8) From this point southwest, following the north side of State Highway 224, through section 10, through the southeast corner of section 9, through the northwest corner of section 16, through section 17 to where the 560-foot elevation level intercepts State Highway 224 southwest of the center of section 17 just east of Demoss Road.

(9) From this 560-foot elevation point, running north along this elevation line through section 17, through section 8, through section 5 and through section 32 until meeting the beginning point at the aqueduct in section 32.

Signed: May 11, 2000.

**Bradley A. Buckles,**

*Director.*

[FR Doc. 00–12662 Filed 5–18–00; 8:45 am]

BILLING CODE 4810–31–P

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 167**

**[USCG–1999–5198]**

## Port Access Route Study for Approaches to Los Angeles/Long Beach

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of study results.

**SUMMARY:** The Coast Guard announces the results of a Port Access Route Study which evaluated the vessel routing and traffic management measures for the approaches to Los Angeles and Long Beach. The study was necessary because of major port improvements made to both ports. It was completed in July, 1999. This document summarizes the study recommendations.

**ADDRESSES:** Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–5198 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

**FOR FURTHER INFORMATION CONTACT:** For questions on this notice, contact Lieutenant Commander Brian Tetreault, Vessel Traffic Management Officer, Eleventh Coast Guard District, telephone 510–437–2951, e-mail Btetreault@d11.uscg.mil; or Mike Van Houten, Aids to Navigation Section Chief, Eleventh Coast Guard District, telephone 510–437–2968, e-mail MVanHouten@d11.uscg.mil. For questions on viewing the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

**SUPPLEMENTARY INFORMATION:** You may obtain a copy of the Port Access Route Study (PARS) by contacting either person at the Eleventh Coast Guard District listed under **FOR FURTHER INFORMATION CONTACT**. A copy is also available in the public docket at the address listed under the **ADDRESSES** section and electronically on the DMS Web Site at http://dms.dot.gov.

*Geographic coordinates.* All geographic coordinates cited in this notice utilize the North American Datum of 1983 (NAD 83).

### Definitions

The following definitions should help you review this document:

*Precautionary area* means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

*Regulated Navigation Area or RNA* is a water area within a defined boundary for which regulations for vessels navigating within the area have been established under this part.

*Separation Zone or line* means a zone or line separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or from the adjacent sea area; or separating traffic lanes designated for particular classes of ships proceeding in the same direction.

*Traffic lane* means an area within defined limits in which one-way traffic is established.

*Traffic Separation Scheme or TSS* means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

*Vessel routing system* means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

### Background and Purpose

#### When Did the Coast Guard Conduct This Port Access Route Study (PARS)?

We announced the PARS in a document published in the **Federal Register** on March 11, 1999 (63 FR 12140) and completed the study in July, 1999.

#### Why Did the Coast Guard Conduct the PARS?

A PARS was needed to evaluate the effects of port improvement projects for the ports of Los Angeles and Long Beach on navigational safety and vessel traffic management efficiency, and to recommend any necessary changes to existing routing measures. This study recommends modifications to the existing TSS's.

The study area included the navigable waters of Los Angeles and Long Beach Harbors, the Los Angeles/Long Beach TSS, and all waters bounded by the coastline and the following coordinates:

| Latitude | Longitude |
|---|---|
| 33°47.00′ N | 118°25.40′ W. |
| 33°47.00′ N | 118°38.60′ W. |
| 33°15.50′ N | 118°38.60′ W. |
| 33°15.50′ N | 117°52.70′ W. |
| 33°35.30′ N | 117°52.70′ W. |

Major port improvement projects for the Ports of Los Angeles and Long Beach began in 1995 and should be completed by June, 2000. These projects include the following:

- Lengthening of the Los Angeles Approach Channel to extend approximately 3.5 nautical miles beyond the Los Angeles breakwater.
- Deepening of the Los Angeles Approach Channel to a project depth of 81 feet.
- Slight shift of the Long Beach Approach to a 355 degrees True inbound course.
- Deepening of the Long Beach Approach Channel to a project depth of 69 feet.

Fill and construction activities within the Los Angeles/Long Beach Harbors and development of a shallow water habitat have constricted the amount of room available for small commercial and recreational traffic to maneuver within the Outer Harbor and in the area

immediately outside the San Pedro, Middle, and Long Beach breakwaters. This has the effect of concentrating traffic flows and placing small marine traffic more directly in competition with deep draft traffic for use of the Precautionary Area.

**What Data Did the Coast Guard Use To Help Conduct the PARS?**

Recommendations relied heavily on the comments received during the PARS. While all comments on related issues of vessel routing were welcome, the notice of study solicited comments on the following specific questions to help focus the study:

1. What navigational hazards do vessels operating in the study area face? Will there be additional hazards once port improvement projects are completed?

2. Are there strains on the current vessel routing system? Will there be additional strains once port improvement projects are completed?

3. Are modifications to the existing vessel routing measures needed to address existing or future hazards and strains and improve traffic management efficiency in the study area?

4. Do you have any specific recommendations regarding aids to navigation design for the lengthened approach channels?

Three comment letters were received and indicated strong overall support for the study recommendations. We also reviewed the results of a 1982 LA/LB Port Access Route Study (47 FR 27430, June 24, 1982) and a 1995 Port Access Route Study (61 FR 55248, October 25, 1996) which focused on vessel traffic management measures along the California coast from San Francisco to Los Angeles.

**Study Recommendations**

The study recommends three changes to the existing vessel routing and traffic management measures.

*1. Expand the Existing LA/LB Precautionary Area*

The study found that the existing Precautionary Area should be expanded to provide enhanced navigational safety in light of the pending and planned improvements to the port facilities and navigational channels previously discussed. The port improvements discussed above will allow even larger vessels to call on Los Angeles and Long Beach. These larger, less maneuverable ships will be constrained to the channels. The study also noted that the current practice of freighters, tankers, tugs and barges, fishing boats and pleasure craft converging in the Precautionary Area would continue to present hazards for all mariners.

Expansion of the existing Precautionary Area should result in several positive impacts for safe navigation. First, the expanded Precautionary Area should give vessels of all types, sizes, and drafts more time and room to maneuver in their approach to or departure from the ports. Second, the Commander, Eleventh Coast District, is planning modifications to the San Pedro Bay RNA, promulgated at 33 CFR 165.1109, to geographically match the expanded Precautionary Area. When specified categories of vessels enter the RNA, they are required to slow. This allows more time for vessel traffic management, *e.g.* queuing of vessels arriving and departing during peak periods and coordinating passing arrangements. Finally, the expanded Precautionary Area should be well adapted to the lengthened Los Angeles entrance channel. This study recommends the new Precautionary Area as the area enclosed by the following geographical positions:

| Latitude | Longitude |
|---|---|
| 33°43.40′ N | 118°10.80′ W. |
| 33°37.70′ N | 118°06.50′ W. |
| 33°35.50′ N | 118°09.00′ W. |
| 33°35.50′ N | 118°17.60′ W. |
| 33°42.30′ N | 118°17.60′ W. |

*2. Relocate the Western and Southern TSSs*

The study found that the existing western and southern TSSs do not yield safe or practical approaches to the improved Long Beach and Los Angeles entrance channels. The study recommends a shift of the western TSS to the south and a shift of the southern TSS to the west.

A. Western TSS

In order to reduce the maneuvering difficulties for vessels needing to use the extended Los Angeles entrance channel, the western TSS needs to be relocated to the south. The proposed coordinates should allow even the largest vessels safe transit between Los Angeles channel and the western lane. This study recommends shifting the western TSS 2.25 nautical miles (NM) to the south. The new northern edge of the northbound coastwise lane would begin at 33°38.70′ N, 118°17.60′ W, extend approximately 2.5 NM at 270° True, and turn northwest to 300° True at 33°38.70′ N, 118°20.60′ W. The new southern edge of the southbound coastwise lane would extend the existing lane at 120° True for approximately 4.45 NM before turning to 090° True at 33°35.50′ N, 118°23.43′ W. The lane will meet the Precautionary Area at 33°35.50′ N, 118°17.60′ W. Traffic lanes will remain 1 NM wide and separated by the Separation Zone formed by a line connecting the following geographical positions:

| Latitude | Longitude |
|---|---|
| 33° 37.70′ N | 118° 17.60′ W. |
| 33° 36.50′ N | 118° 17.60′ W. |
| 33° 36.50′ N | 118° 23.10′ W. |
| 33° 43.20′ N | 118° 36.90′ W. |
| 33° 44.90′ N | 118° 35.70′ W. |
| 33° 37.70′ N | 118° 20.90′ W |

B. Southern TSS

In order to reduce the maneuvering difficulties for vessels needing to use the extended Los Angeles entrance channel and the Long Beach channel, the southern TSS should be shifted westward. The recommended shift aligns the southern TSS with Long Beach channel and should allow a more direct approach to Los Angeles channel. The study also noted that by shifting the existing southern TSS, oil platforms located in the TSS separation zone would no longer be in the TSS, which should increase the safety of the platforms and transiting vessels.

This study recommends the following changes to the southern TSS for the Los Angeles/Long Beach approach. The eastern edge of the northbound coastwise lane would begin at 33°20.00′ N, 118°02.30′ W, extend in the direction of 340° True and meet the Precautionary Area at 33°35.50′ N, 118°09.00′ W. The western edge of the southbound coastwise lane would begin at the Precautionary Area at 33°35.50′ N, 118°114.00′ W, extend in the direction of 160° True, and end at 33°18.70′ N, 118°06.75′ W. The Separation Zone formed by a line connecting the following geographical positions will separate inbound and outbound traffic lanes:

| Latitude | Longitude |
|---|---|
| 33°35.50′ N | 118°10.30′ W. |
| 33°35.50′ N | 118°12.75′ W. |
| 33°19.70′ N | 118°03.50′ W. |
| 33°19.00′ N | 118°05.60′ W. |

The new lanes will no longer be tapered, but will have a constant width of 1 NM wide through their entire length.

*Modifications to Aids to Navigation*

The PARS solicited specific recommendations regarding the aids to navigation design for the lengthened approach channels to Los Angeles and Long Beach, CA. Specific

recommendations included adding, deleting, relocating and upgrading the existing buoys in these channels. The Commander, Eleventh Coast Guard District will review these recommendations and make final decisions concerning Los Angeles-Long Beach aids to navigation in light of the Coast Guard's waterways analysis management system (WAMS). Specific questions on WAMS should be directed to the Eleventh Coast Guard District's points of contact listed in **FOR FURTHER INFORMATION CONTACT**.

*Modifications to the RNA*

The Commander, Eleventh Coast Guard District is planning modifications to the San Pedro Bay RNA. A notice of proposed rulemaking (NPRM), only dealing with the RNA, will be published in the **Federal Register**. As previously discussed, one proposed change will make the RNA geographically the same as the precautionary area. The RNA rulemaking will also address vessel operating requirements; vessel size, speeds, draft limitations; operating conditions; pilot boarding areas; and restrictions under hazardous conditions.

*Conclusion*

We appreciate the comments we received concerning the PARS. We will solicit additional comments on the recommended changes to the existing routing measures we will propose in an NPRM to be published in the **Federal Register** before making any submission to the International Maritime Organization.

Dated: May 11, 2000.

**R.C. North,**

*Rear Admiral, U. S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.*

[FR Doc. 00–12572 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–15–P

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 51**

**[AD–FRL–6701–1; Docket No. A–99–05]**

**RIN 2060–AF01**

## Requirements for Preparation, Adoption, and Submittal of State Implementation Plans (Guideline on Air Quality Models); Conference on Air Quality Modeling

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; conference.

**SUMMARY:** We announce the Seventh Conference on Air Quality Modeling. Such a conference is required by Section 320 of the Clean Air Act (CAA) to be held every 3 years. The purpose of the Seventh Conference is to provide a forum for public review and comment on proposed revisions to the Guideline on Air Quality Models—"Guideline" published on April 21, 2000. The proposed revisions are based on our review and analyses of comments received at the Sixth Conference on Air Quality Modeling, held in August 1995.

**DATES:** The seventh conference will be held on June 28, 2000 from 9 a.m. to 5:30 p.m. and on June 29, 2000 from 8:30 a.m. to 5 p.m. Requests to speak at the conference should be submitted to the individual listed below by June 15, 2000. All written comments must be submitted by close of business August 21, 2000.

**ADDRESSES:** *Conference:* The conference will be held in the EPA Auditorium, 401 M Street, S.W., Washington, D.C.

*Comments:* Written statements or comments not presented at the conference should be submitted (in duplicate if possible) to: OAR Regulatory Docket (6102), Room M–1500, Waterside Mall, Attention: OAR Regulatory Docket A–99–05, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. We invite you to submit adverse or critical comments pertinent to the proposal to that docket. The docket is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, at the address above. Please furnish duplicate comments to Tom Coulter, Air Quality Modeling Group (MD–14), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711. You may send electronic versions of comments pertinent to the proposal to: A-AND-R-DOCKET@epamail.epa.gov. Alternatively, comments are acceptable in WordPerfect 6.1 (or higher), preferably zipped (*e.g.*, WinZip) as an attachment to the e-mail message. You must include the docket identification (A–99–05) with all electronic submittals. You may file electronic comments on this proposal online at many Federal Depository Libraries.

**FOR FURTHER INFORMATION CONTACT:** C. Thomas Coulter, Air Quality Modeling Group (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone (919) 541–0832.

**SUPPLEMENTARY INFORMATION:**

**Background**

The Guideline (appendix W to 40 CFR part 51) is used by EPA, States, and industry to prepare and review new source permits and State Implementation Plan revisions. The Guideline serves as a means by which consistency is maintained in air quality analyses. We originally published the Guideline in April 1978 and it was incorporated by reference in the regulations for the Prevention of Significant Deterioration (PSD) of Air Quality in June 1978. We revised the Guideline in 1986, and updated it with supplement A in 1987, supplement B in July 1993, and supplement C in August 1995. We published the Guideline as appendix W to 40 CFR part 51 when we issued supplement B. We republished the Guideline in August 1996 (61 FR 41838) to adopt the CFR system for labeling paragraphs.

To support the process of developing and revising the Guideline during the period 1977–1988, we held the First, Second and Third Conferences on Air Quality Modeling as required by Section 320 of the Clean Air Act to help standardize modeling procedures. These modeling conferences provided us with comments on the Guideline and associated revisions, thereby helping us introduce improved modeling techniques into the regulatory process.

In October 1988, we held the Fourth Conference on Air Quality Modeling. Its purpose was to advise the public on new modeling techniques and to solicit comments to guide our consideration of any rulemaking needed to further revise the Guideline. The new models provided techniques for situations where specific procedures had not previously been available, and also improved several previously adopted techniques.

We held the Fifth Conference on Air Quality Modeling in March 1991, which served as a public hearing for the proposed supplement B revisions to the Guideline (*op. cit.*). Since the Fifth Conference and the adoption of supplement C, we believed it was time to consider a wide range of modeling issues in order to update our available modeling tools with state-of-the-science techniques. We thus held the sixth conference as an ideal forum for airing these issues and for the public to offer new ideas. We reviewed and analyzed the public feedback from the sixth conference, and placed a summary in the docket (II–G–01). This information served as a foundation for the proposed Guideline revision we announced on April 21, 2000 (65 FR 21506).

To review support documents and data for our proposal, and to prepare for the seventh conference, you may obtain technical materials from several sources. You may get copies of some materials from the docket (see **ADDRESSES**). We have uploaded many materials, for example essential codes, preprocessors, utilities, test cases, and user's manuals for the new modeling systems, to our website (www.epa.gov/scram001; see 7th Conference).

**Public Participation**

The Seventh Conference on Air Quality Modeling will be open to the public; no admission fee is charged and there is no formal registration. The conference will begin the first morning with introductory remarks by the presiding EPA official. The conference will continue with prepared presentations on several key modeling systems: The development of an enhanced Gaussian dispersion model with boundary layer parameterization (AERMOD [1]); the development of the CALPUFF modeling system by Earth Tech, Inc. under the auspice of the Interagency Workgroup on Air Quality Modeling (IWAQM [2]); the development and testing of ISC–PRIME by the Electric Power Research Institute's building downwash program; and revisions to the Emissions and Dispersion Modeling System (EDMS) by the Federal Aviation Administration. There will also be presentations on several models for consideration as "alternative models" for case-by-case application.

The second morning, there will be critical reviews/discussions of the new modeling systems facilitated first by the American Meteorological Society's Committee on Meteorological Aspects of Air Pollution, and then by the Air & Waste Management Association's AB–3 Committee. We also plan to feature a special panel presentation on the next generation of air quality models that may be driven by output from four-dimensional prognostic models. This will be followed by statements from representatives of State and local air pollution control agencies and by appropriate Federal agencies. The conference will then be opened to statements and comments from the general public. As information develops, we will post an agenda for the conference on our website (www.epa.gov/scram001; see 7th Conference).

For the new models and modeling techniques described on June 28th, EPA will be asking the public to address the following questions:

- Has the scientific merit of the models presented been established?
- Are the models' accuracy sufficiently documented?
- Are the proposed regulatory uses of individual models for specific applications appropriate and reasonable?
- Do significant implementation issues remain or is additional guidance needed?
- Are there serious resource constraints imposed by modeling systems presented?
- What additional analyses or information are needed?

Those wishing to speak at the conference, whether to volunteer a presentation on a special topic or to offer general comment on any of the modeling techniques scheduled for presentation, should contact us at the address given in the **FOR FURTHER INFORMATION CONTACT** section no later than June 15, 2000. Such persons should identify the organization (if any) on whose behalf they are speaking and the length of presentation. If a presentation of general comments is projected to be longer than 10 minutes, the presenter should also state why a longer period is needed. Persons failing to submit a written notice but desiring to speak at the conference should notify the presiding officer immediately before the conference and they will be scheduled on a time-available basis.

The conference will be conducted informally and chaired by an EPA official. There will be no sworn testimony or cross examination. A verbatim transcript of the conference proceedings will be produced and placed in the docket. Speakers should bring extra copies of their presentation for inclusion in the docket and for the convenience of the reporter. Speakers will be permitted to enter into the record any additional written comments that are not presented orally. Additional written statements or comments should be sent to the OAR Regulatory Docket (see **ADDRESSES** section). A transcript of the proceedings and a copy of all written comments will be maintained in Docket A–99–05 which will remain open until August 21, 2000 for the purpose of receiving additional comments.

[1] AMS/EPA Regulatory MODel; AERMOD is being developed by AERMIC: AMS/EPA Regulatory Model Improvement Committee.

[2] IWAQM was formed in 1991 to provide a focus for development of technically sound regional air quality models for regulatory assessments of pollutant source impacts on federal Class I areas. IWAQM is an interagency collaboration that includes efforts by EPA, U.S. Forest Service, National Park Service, and Fish and Wildlife Service.

Dated: May 9, 2000.

**Bob Perciasepe,**

*Assistant Administrator for Air and Radiation.*

[FR Doc. 00–12390 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 81

[AZ–098–0025 FRL–6703–1]

## Determination of Attainment of the 1-Hour Ozone Standard for the Phoenix Metropolitan Area, Arizona and Determination Regarding Applicability of Certain Clean Air Act Requirements

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA proposes to determine that the Phoenix metropolitan serious ozone nonattainment area has attained the 1-hour ozone air quality standard deadline required by the Clean Air Act (CAA), November 15, 1999. Based on this proposal, we also propose to determine that the CAA's requirements for reasonable further progress and attainment demonstrations and for contingency measures are not applicable to the area for so long as the Phoenix metropolitan area continues to attain the 1-hour ozone standard.

**DATES:** Comments on this proposal must be received in writing by June 19, 2000. Comments should be addressed to the contact listed below.

**ADDRESSES:** Copies of our draft technical support document for this rulemaking and our policies governing attainment findings and the applicability of CAA requirements in areas attaining the 1-hour ozone standard are contained in the docket for this rulemaking. The docket is available for inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region 9, Office of Air Planning, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1248.

Arizona Department of Environmental Quality, Office of Outreach and Information, First Floor, 3033 N. Central Avenue, Phoenix, Arizona 85012, (602) 207–2217

Copy of this document and the TSD are also available in the air programs section of EPA Region 9's website, www.epa.gov/region09/air.

**FOR FURTHER INFORMATION CONTACT:** Frances Wicher, Office of Air Planning

(AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, California 94105, (415) 744–1248, wicher.frances@epa.gov.

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## I. Attainment Finding

### *A. Phoenix's Current Ozone Classification*

The Phoenix metropolitan ozone nonattainment area is located in the eastern portion of Maricopa County, Arizona and encompasses the cities of Phoenix, Mesa, Scottsdale, Tempe, Chandler, Glendale, 17 other jurisdictions, and considerable unincorporated County lands. The area is currently classified as serious for the 1-hour ozone national ambient air quality standard (NAAQS). 40 CFR 81.303.

When the Clean Air Act (CAA) Amendments were enacted in 1990, each area of the County that was designated nonattainment for the 1-hour ozone standard, including the Phoenix area, was classified by operation of law as "marginal," "moderate," "serious," "severe," or "extreme" depending on the severity of the area's air quality problem. CAA sections 107(d)(1)(C) and 181(a). The Phoenix metropolitan area was initially classified as moderate. See 40 CFR 81.303 and 56 FR 56694 (November 6, 1991).

Upon the Phoenix area's classification as moderate, the CAA required Arizona to submit a state implementation plan (SIP) demonstrating attainment of the 1-hour ozone standard in the Phoenix area as expeditiously as practicable but no later than November 15, 1996. CAA sections 181(a)(1) and 182(b)(1)(A)(i). The SIP had to also meet several other CAA requirements for moderate areas. See generally CAA section 182(b).

The Phoenix area was still violating the 1-hour ozone standard in late 1996. On November 6, 1997, we determined that the Phoenix metropolitan area had not attained the 1-hour ozone standard by its attainment date of November 15, 1996. As a result of our finding, the area was reclassified to serious, by operation of law under CAA section 181(b)(1)(A). 62 FR 60001.

Upon the Phoenix area's reclassification to serious, the CAA required Arizona to submit a revised SIP demonstrating attainment of the 1-hour ozone standard in the Phoenix area as expeditiously as practicable but no later than November 15, 1999. CAA sections 181(a)(1) and 182(c)(2)(A). The SIP had to also meet several other CAA requirements for serious areas. See generally CAA section 182(c). The serious area SIP revisions were due to us by March 22, 1999. 63 FR 64415 (November 20, 1998).

### *B. Clean Air Act Requirements for Attainment Findings*

Under CAA section 181(b)(2)(A), we must determine within six months of the applicable attainment date whether an ozone nonattainment area has attained the standard. If we find that a serious area has not attained the standard and does not qualify for an extension, it is reclassified by operation of law to severe.[1] Under CAA section 181(b)(2)(A), we must base our determination of attainment or failure to attain on the area's design value as of its applicable attainment date, which for the Phoenix metropolitan area is November 15, 1999.

The 1-hour ozone NAAQS is 0.12 ppm not to be exceeded on average more than one day per year over any three year period. 40 CFR 50.9 and appendix H. Under our policies, we determine if an area has attained the one-hour standard by calculating, at each monitor, the average number of days over the standard per year during the preceding three year period.[2] For this proposal, we have based our determination of attainment on both the design value and the average number of exceedance days per year as of November 15, 1999.

The design value is an ambient ozone concentration that indicates the severity of the ozone problem in an area and is used to determine the level of emission reductions needed to attain the standard, that is, it is the ozone level around which a State designs its control strategy for attaining the ozone standard. A monitor's design value is the fourth highest ambient concentration recorded at that monitor over the previous three years. An area's design value is the highest of the design values from the area's monitors.[3]

We make attainment determinations for ozone nonattainment areas using all available, quality-assured air quality data for the 3-year period up to and including the attainment date.[4] Consequently, we used all 1997, 1998, and 1999 (through November 15) quality-assured air quality data available to determine whether the Phoenix area attained the 1-hour ozone standard by November 15, 1999. From the available data, we have calculated the average number of days over the standard and the design value for each ozone monitor in the Phoenix nonattainment area.

### *C. Attainment Finding for the Phoenix Area*

#### 1. Adequacy of the Phoenix Area Ozone Monitoring Network

Determining whether or not an area has attained under CAA section 181(b)(1)(A) is based on monitored air quality data. Thus, the validity of a determination of attainment depends on whether the monitoring network adequately measures ambient ozone levels in the area.

We have previously expressed concerns regarding the adequacy of the

[1] If a state does not have the clean data necessary to show attainment of the 1-hour standard but does have clean air in the year immediately preceding the attainment date and has fully implemented its applicable SIP, it may apply to EPA, under CAA section 181(a)(5), for a one-year extension of the attainment date.

[2] See generally 57 FR 13506 (April 16, 1992) and Memorandum from D. Kent Berry, Acting Director, Air Quality Management Division, EPA, to Regional Air Office Directors; "Procedures for Processing Bump Ups and Extensions for Marginal Ozone Nonattainment Areas," February 3, 1994 (Berry memorandum). While explicitly applicable only to marginal areas, the general procedures for evaluating attainment in this memorandum apply regardless of the initial classification of an area because all findings of attainment are made pursuant to the same Clean Air Act requirements in section 181(b)(2).

[3] The fourth highest value is used as the design value because a monitor may record up to 3 exceedances of the standard in a 3 year period and still show attainment, that is, with 3 exceedances it would average 1 day over the standard per year, the maximum allowed to show attainment of the 1-hour ozone standard. If the monitor records a fourth exceedance in that period, it would average more than 1 exceedance day per year and would no longer show attainment. Therefore, if a State can reduce the fourth highest ozone value to below the standard, thus preventing a fourth exceedance, then it will be able to demonstrate attainment.

[4] All quality-assured available data include all data available from the state and local/national air monitoring (SLAMS/NAMS) network as submitted to EPA's AIRS system and all data available to EPA from special purpose monitoring (SPM) sites that meet the requirements of 40 CFR 58.13. See *Memorandum* John Seitz, Director, OAQPS, to Regional Air Directors; "Agency Policy on the Use of Ozone Special Purpose Monitoring Data," August 22, 1997.

official ozone monitoring network in the Phoenix area.[5] However, over the past several years, the Maricopa County Environmental Services Department, which operates the local air monitoring system, has made substantial revisions to its ozone monitoring network.

We evaluate four basic elements in determining the adequacy of an area's ozone monitoring network. The network needs to meet the design requirements of 40 CFR part 58, appendix D; the network needs to utilize monitoring equipment designated as reference or equivalent methods under 40 CFR part 53; the agency or agencies operating the equipment need to have a quality assurance plan in place that meets the requirements of 40 CFR part 58, appendix A; and for urban areas with populations greater than 200,000, at least two monitoring sites must be designated as National Air Monitoring Stations (NAMS).

The ozone network in the Phoenix area meets or exceeds all four of these requirements and is therefore adequate for use in determining the ozone attainment status of the area. A more detailed analysis of the ozone monitoring network is contained in the TSD accompanying this proposal.

2. The Phoenix Area's Ozone Design Value for the 1997–1999 Period

We have listed in Table 1 the design values and the number of exceedance days for the 1997 to 1999 period for each monitoring site in the Phoenix metropolitan area. We calculated the design values following the procedures in the Laxton memo.[6] A complete listing of the ozone exceedances at each monitor as well as our calculations of the design values can be found in the TSD.

TABLE 1.—AVERAGE NUMBER OF OZONE EXCEEDANCES DAYS PER YEAR AND DESIGN VALUES BY MONITOR IN THE PHOENIX METROPOLITAN AREA (1997–1999)

| Site | Average number of exceedance days per year | Site design value (ppm) |
|---|---|---|
| Blue Point | 0 | 0.107 |
| Central Phoenix | 0 | 0.103 |
| Fountain Hills | 0 | 0.113 |
| South Scottsdale | 0 | 0.098 |
| Emergency Management | 0 | 0.109 |
| Falcon Field | 0 | 0.101 |
| Maryvale | 0 | 0.101 |
| Mesa | 0 | 0.109 |
| South Phoenix | 0 | 0.1 |
| West Phoenix | 0 | 0.112 |
| Pinnacle Peak | 0 | 0.112 |
| North Phoenix | 0 | 0.113 |
| Glendale | 0 | 0.099 |
| West Chandler | 0 | 0.094 |
| Palo Verde | 0 | 0.091 |
| JLG Supersite | 0 | 0.098 |
| Mount Ord | 0 | 0.106 |
| Humboldt Mountain | 0 | 0.101 |

From Table 1, the highest design value at any monitor, and thus the design value for the Phoenix metropolitan ozone nonattainment area, is 0.113 ppm at the Fountain Hills and North Phoenix sites. The Phoenix metropolitan area has not recorded an exceedance of the 1-hour ozone standard at any monitoring site during the 1997 to 1999 period, so the average number of days over the standard at all monitors in the area is zero.

Because the area's design value is below the 0.12 ppm 1-hour ozone standard and the area has averaged less than 1 exceedance per year at each monitor for the 1997 to 1999 period, we propose to find that the Phoenix metropolitan area has attained the 1-hour ozone standard by its Clean Air Act mandated attainment date of November 15, 1999.

*D. Attainment Findings and Redesignations to Attainment*

A finding that an area has attained the 1-hour ozone standard under CAA section 181(b)(1)(A) does not redesignate the area to attainment for the 1-hour standard nor does it guarantee a future redesignation to attainment.

The redesignation of an area to attainment is a separate process under CAA section 107(d)(3)(E) from a finding of attainment under CAA section 181(b)(1)(A). Unlike an attainment finding where we need only determine that the area has had the pre-requisite number of clean years, a redesignation requires multiple determinations. Under section 107(d)(3)(E), these determinations are:

1. We must determine, *at the time of the redesignation*, that the area has attained the relevant NAAQS.

2. The State must have a fully approved SIP for the area.

3. We must determine that the improvements in air quality are due to permanent and enforceable reductions in emissions resulting from implementation of the SIP and applicable federal regulations and other permanent and enforceable reductions.

4. We must have fully approved a maintenance plan for the area under CAA section 175(A).

5. The State must have met all the nonattainment area requirements applicable to the area.

At this time, Arizona has not formally requested that we redesignate the Phoenix metropolitan area to attainment for the 1-hour ozone standard nor has it submitted a maintenance plan for the area.

**II. Applicability of Clean Air Act Planning Requirements**

*A. EPA's Policy and its Legal Basis*

CAA section 182(c) requires States with serious ozone nonattainment areas to submit certain revisions to their SIPs. These revisions include:

1. a demonstration that the plan will result in emission reductions of ozone precursors of at least 3 percent per year from 1996 to 1999 (this provision is known as the 9 percent rate of progress (ROP) plan), CAA section 182(c)(2)(B);

2. a demonstration that the plan will result in attainment of the 1-hour ozone standard as expeditiously as practicable but not later than November 15, 1999, CAA section 182(c)(2)(A);

3. contingency measures that will be undertaken if the area fails to make reasonable further progress, meet a rate of progress milestone, or to attain the standard by the applicable attainment date, CAA sections 172(c)(9) and 182(c)(9).

For the reasons described below and discussed in our Ozone Clean Data Policy,[7] we believe that it is reasonable

[5] For a description of these concerns, see "Technical Support Document for the Notice of Final Rulemaking for the Finding of Failure to Attain and Denial of Attainment Date Extension for Ozone in the Phoenix (Arizona) Metropolitan Area," EPA Region 9, October 27, 1997.

[6] See *memorandum*, William G. Laxton, Director, Technical Support Division, Office of Air Quality Planning and Standards to Regional Air Directors, "Ozone and Carbon Monoxide Design Value Calculations," June 18, 1990.

[7] See *memorandum*, John S. Seitz, Director, OAQPS, EPA, to Regional Air Directors, "Reasonable Further Progress, Attainment Demonstrations, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standard," May 10, 1995. We have also explained at length in other actions our rationale for the reasonableness of this interpretation of the Act and incorporate those explanations by reference here. See 61 FR 20458

Continued

to interpret the CAA not to require these provisions for serious ozone nonattainment areas that are determined to be meeting the 1-hour ozone standard.

9 percent ROP Plan

The 9 percent ROP requirement in section 182(c)(2)(B) is the minimum RFP requirement for serious areas.[8]

CAA Section 171(1) states that, for purposes of part D of Title I, RFP "means such annual incremental reductions in emissions of the relevant air pollutant as are required by [Part D] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date." Thus, whether dealing with the general RFP requirement of section 172(c)(2), or the more specific RFP requirement for a 9 percent ROP in section 182(c)(2)(B), the stated purpose of RFP is to ensure attainment by the applicable attainment date. If an area has in fact attained the standard, the stated purpose of the RFP requirement will have already been fulfilled. We, therefore, do not believe that a State needs to submit revisions providing for the further emission reductions to meet the RFP/ROP provisions of sections 172(c)(2) or 182(c)(2)(B) for serious areas meeting the 1-hour ozone standard.

We note that we took this view with respect to the general RFP requirement of section 172(c)(2) in our "General Preamble for the Interpretation of Title I of the Clean Air Act Amendments of 1990" at 57 FR 13498 (April 16, 1992). In the General Preamble, we stated, in the context of a discussion of the requirements applicable to the evaluation of requests to redesignate nonattainment areas to attainment, that the "requirements for RFP will not apply in evaluating a request for redesignation to attainment since, at a minimum, the air quality data for the area must show that the area has already attained. Showing that the State will make RFP towards attainment will, therefore, have no meaning at that point." (57 FR 13564.)[9]

Closely tied with the RFP/ROP requirement is the milestone demonstration requirement in CAA section 182(g). This section requires that States with ozone nonattainment areas classified as serious and above must determine every three years, starting in 1996, whether each area has achieved the reductions necessary to meet the required rate of progress milestone. These milestone reports are due to EPA within 90 days after the date on which the milestone occurs (e.g., 90 days after November 15 1996 and November 16, 1999).[10]

For areas that are meeting the 1-hour standard, there is no RFP/ROP requirement and thus no milestone on which to report. Consequently, we believe the milestone reporting requirement in section 182(g) is also not applicable to areas attaining the 1-hour ozone standard.

Attainment Demonstration

Analogous reasoning applies to the attainment demonstration requirement. Section 182(c)(2) requires that a State submit a SIP revision for a serious ozone nonattainment area demonstrating that the plan will "provide for attainment of the ozone national primary ambient air quality standard by the attainment date" and that this demonstration be based on "photochemical grid modeling or any other analytical method determined by the Administrator, in the Administrator's discretion, to be at least as effective." If a serious area has in fact monitored attainment of the standard based on existing controls, we believe it is not necessary for the State to make a further submission containing additional measures or demonstrations to show attainment.

This belief is also consistent with our interpretation of certain section 172(c) requirements in the General Preamble to Title I, where we stated there that no other measures to provide for attainment would be needed by areas seeking redesignation to attainment since "attainment will have been reached." (57 FR 13564; *see also* the September 4, 1992, John Calcagni memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" at page 6.) Upon attainment of the NAAQS, the focus of state planning efforts shifts to the maintenance of the NAAQS and the development of a maintenance plan under section 175A.

Closely tied with the attainment demonstration requirement is the tracking requirement in section 182(c)(5). This section requires that States with ozone nonattainment areas classified as serious and above submit every three years, starting in 1996, a demonstration as to whether current aggregate vehicle mileage, aggregate vehicle emissions, congestion levels, and other relevant parameters are consistent with those used for the area's attainment demonstration.

In an area meeting the 1-hour ozone standard, there is no attainment demonstration that requires the use of estimated aggregate vehicle mileage, aggregate vehicle emissions, or other relevant parameters. Consequently, we believe the parameter tracking requirement in section 182(c)(5) is also not applicable to areas attaining the 1-hour ozone standard.

Contingency Measures

CAA section 172(c)(9) requires a State to submit contingency measures that will be implemented if an area fails to make RFP or fails to attain by the applicable attainment date. Section 182(c)(9) additionally requires that the State must submit contingency measures that will be implemented if an area fails to meet a ROP milestone.

We have previously interpreted the contingency measure requirement of section 172(c)(9) as no longer applying once an area has attained the standard since those "contingency measures are directed at ensuring RFP and attainment by the applicable date." See 57 FR 13564; *see also* the September 4, 1992, John Calcagni memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" at page 6. Similarly, the section 182(c)(9) requirement for contingency measures are directed at assuring ROP milestones are met. Because no milestones are required for areas attaining the 1-hour standard, there is no need for contingency measures to ensure that they will be met.

Other Serious Nonattainment Area SIP Requirements

A number of SIP requirements for serious ozone nonattainment areas are not tied to whether the area has attained the 1-hour standard. Arizona is obligated to submit these requirements

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(May 7, 1996) (Cleveland-Akron-Lorrain, Ohio); 60 FR 36723 (July 18, 1995) (Salt Lake and Davis Counties, Utah); 60 FR 37366 (July 20, 1995) and 61 FR 31832–31833 (June 21, 1996) (Grand Rapids, MI). Our interpretation has also been upheld by the United States Court of Appeals for the 10th Circuit in *Sierra Club* v. *EPA*, 99 F.3d 1551 (10th Cir. 1996).

[8] The title of section 182(c)(2)(B) is "REASONABLE FURTHER PROGRESS DEMONSTRATION," which makes clear that the 9 percent ROP requirement is the minimum RFP requirement for serious areas.

[9] *See also* "Procedures for Processing Requests to Redesignate Areas to Attainment," from John Calcagni, Director, Air Quality Management Division, to Regional Air Division Directors, September 4, 1992, at page 6 (stating that the "requirements for reasonable further progress • • • will not apply for redesignations because they only have meaning for areas not attaining the standard").

[10] Milestone reports are not required when a milestone occurs on an attainment date in cases where the standard has been attained. In this case, we are proposing to determine that the Phoenix metropolitan area has attained by its attainment date, November 15, 1999, which is also its milestone date. Thus, even if we believed that the milestone requirement applies to areas attaining the 1-hour ozone standard, Arizona would not be required to submit a milestone report.

even if we finalize today's proposed determination that the area has attained the 1-hour standard and that the CAA planning requirements discussed above no longer apply to the area. These requirements include:

- A current, comprehensive, and accurate emission inventory of actual emissions (section 172(c)(3));
- Reasonable available control technology for major sources and certain other sources (section 182(a)(2));
- An enhanced motor vehicle inspection and maintenance program (section 182(c)(3));
- A new source review program (sections 172(c)(5), 173(a), and 182(c)(6)–(8) and (10));
- An enhanced ambient monitoring program (section 182(c)(1)); and
- A clean fuel vehicle program (section 182(c)(4)).

*B. Effects of the Proposed Determination on the Phoenix Area and a Future Violation on This Proposed Determination*

If we finalize today's proposed determinations for the Phoenix metropolitan ozone nonattainment area, then the State of Arizona will no longer be required to submit a 9 percent ROP plan, an attainment demonstration, or contingency measures for the area. Any sanction clocks under CAA section 179(a) or requirements that we promulgate a federal implementation plan under CAA section 110(c) for these SIP requirements are suspended.

The lack of a requirement to submit these SIP revisions and the suspension of sanction clocks/FIP requirements will exist only as long as the Phoenix metropolitan area continues to attain the 1-hour ozone standard. If we subsequently determine that the Phoenix area has violated the 1-hour ozone standard (prior to a redesignation to attainment), the basis for the determination that the area need not make these SIP revisions would no longer exist. Thus, a determination that an area need not submit these SIP revisions amounts to no more than a suspension of the requirement for so long as the area continues to attain the standard.

Should the Phoenix metropolitan area begin to violate the 1-hour standard, we will notify Arizona that we have determined that the area is no longer attaining the 1-hour standard. We also will provide notice to the public in the **Federal Register**. Once we determine that the area is no longer attaining the 1-hour ozone standard then Arizona will be required to address the pertinent SIP requirements within a reasonable amount of time. We will set the deadline for the State to submit the required SIP revisions at the time we make a nonattainment finding.

Arizona must continue to operate an appropriate air quality monitoring network, in accordance with 40 CFR part 58, to verify the attainment status of the area. The air quality data relied upon to determine that the area is attaining the ozone standard must be consistent with 40 CFR part 58 requirements and other relevant EPA guidance.

*C. Effect of the Proposed Determination on Transportation Conformity*

CAA section 176(c) requires that federally funded or approved transportation actions in nonattainment areas "conform" to the area's air quality plans. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards.

One of the primary tests for conformity is to show that transportation plans and improvement programs will not cause motor vehicle emissions higher than the levels needed to make progress toward and to meet the air quality standards. These motor vehicle emissions levels are set in an area's attainment, maintenance and/or RFP demonstrations and are known as the "transportation conformity budget."

We set the current ozone conformity budget for the Phoenix metropolitan area in our revised federal 15 percent ROP plan. 64 FR 36243 (July 6, 1999). A finding that the Phoenix area has attained the 1-hour and that the State no longer needs to submit attainment and ROP/RFP demonstrations will not affect the continued applicability of this budget. This budget will remain applicable until Arizona submits a maintenance demonstration with a revised transportation conformity budget (or should the Phoenix area again violate the 1-hour ozone standard, attainment and RFP/ROP demonstrations with budgets) and we find the new budget adequate.

## III. Administrative Requirements

This action merely proposes to find that the Phoenix area has attained a previously-established national ambient air quality standard based on an objective review of measured air quality data. It also proposes to determine that certain Clean Air Act requirements no longer apply to the Phoenix area because of the attainment finding. If finalized, it would not impose any new regulations, mandates, or additional enforceable duties on any public, nongovernmental or private entity. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Under Executive Order 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. It does not contain any unfunded mandate or significantly or uniquely affects small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) nor does it significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084, Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 10, 1998). This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, Federalism (64 FR 43255, August 10, 1999) because it does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed action also is not subject to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply to this proposed action because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that otherwise satisfy the provisions of the Clean Air Act. As required by section 3 of Executive Order 12988, Civil Justice Reform (61 FR 4729, February 7, 1996), in issuing this proposed action, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for

the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 40 CFR Part 81**

Environmental protection, Air pollution control, Intergovernmental relations, Ozone.

**Authority:** 42 U.S.C. 7401–7671q.

Dated: May 11, 2000.

**Laura Yoshii,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 00–12644 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[FRL–6604–7]**

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposal to delete releases at the Mid-Atlantic Wood Preservers, Inc. Site from the National Priorities List (NPL).

**SUMMARY:** The EPA proposes to delete releases at the Mid-Atlantic Wood Preservers, Inc. Site (the Site) from the NPL and requests public comment on this action. The NPL constitutes appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. The EPA has determined that no further response pursuant to CERCLA is appropriate.

**DATES:** Comments concerning this deletion must be received by June 19, 2000.

**ADDRESSES:** Comments may be mailed to Matthew T. Mellon, Remedial Project Manager, U.S. EPA, Region III, 1650 Arch Street (3HS23), Philadelphia, PA 19103–2029.

Comprehensive information on the Site is available at EPA's Region III office and at the local information repository located at the Provinces Branch Library, Severn Square Shopping Center, 2624 Annapolis Road, Severn, MD, 21144.

Requests for copies of documents associated with this action should be directed to the Region III Docket Office. The address and phone number for the Regional Docket Officer is U.S. EPA Region III Public Reading Room, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–3157.

**FOR FURTHER INFORMATION CONTACT:** Matthew T. Mellon, Remedial Project Manager, U.S. EPA, Region III, 1650 Arch Street (3HS23), Philadelphia, PA 19103–2029, (215) 814–3168, or Richard Kuhn, Community Involvement Coordinator, U.S. EPA, Region III, 1650 Arch Street (3HS43), Philadelphia, PA 19103–2029, (215) 814–3063.

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**.

Dated: April 5, 2000.

**Bradley M. Campbell,**

*Regional Administrator.*

[FR Doc. 00–12517 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### 45 CFR Part 1159

**RIN 3135–AA16**

### Implementation of the Privacy Act of 1974

**AGENCY:** National Endowment for the Arts, NFAH

**ACTION:** Proposed rule.

**SUMMARY:** The National Endowment for the Arts (Endowment) proposes to amend its Privacy Act regulations to reflect administrative changes at the agency and to comply with the President's Memorandum on Plain Language in Government Writing. These regulations establish procedures by which an individual may determine whether a system of records maintained by the Endowment contains a record pertaining to him or her; gain access to such records; and request correction or amendment of such records. These regulations also establish exemptions from certain Privacy Act requirements for all or part of certain systems of records maintained by the Endowment.

**DATES:** Written comments on these regulations must be received by June 19, 2000.

**ADDRESSES:** Interested persons should submit written comments concerning these regulations to Karen Elias, Deputy General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW, Room 518, Washington, DC 20506. Written comments may also be sent to Ms. Elias by telefax at (202) 682–5572 or by electronic mail at eliask@arts.endow.gov.

**FOR FURTHER INFORMATION CONTACT:** Karen Elias, (202) 682–5418.

**SUPPLEMENTARY INFORMATION:** The Endowment operates as part of the National Foundation on the Arts and the Humanities under the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq*). The corresponding regulations published at 45 CFR Chapter XI, Subchapter A apply to the entire Foundation, while the regulations published at 45 CFR Chapter XI, Subchapter B apply only to the Endowment.

This proposed rule adds Privacy Act regulations to Subchapter B (45 CFR part 1159), replacing existing regulations in Subchapter A (45 CFR part 1115) with regard to the Endowment. The new regulations reflect administrative changes at the Endowment. In addition, the new regulations' question-and-answer format and increased detail as to several provisions of the Privacy Act are intended to increase understanding of the Endowment's Privacy Act policies. The Endowment is authorized to propose the new regulations under 5 U.S.C. 552a(f) of the Privacy Act.

**Regulatory Impact**

*Executive Order 12866, Regulatory Planning and Review*

This proposed rule is not classified as a significant rule under Executive Order 12866 because it will not result in: (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, geographic regions, or Federal, State, or local government agencies; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Accordingly, no regulatory impact assessment is required. In addition, based on the assessments noted in this paragraph, this proposed rule is not a "major rule" as defined at 5 U.S.C. 804(2).

*Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires that a regulation that has a significant economic impact on a substantial number of small entities, small

businesses, or small organizations include an initial regulatory flexibility analysis describing the regulation's impact on small entities. Such an analysis need not be undertaken if the agency certifies, under 5 U.S.C. 605(b), that the regulation will not have a significant economic impact on a substantial number of small entities. The Endowment has considered the impact of this proposed rule under the Regulatory Flexibility Act and certifies that this proposed rule is not likely to have a significant economic impact on a substantial number of small entities.

*Paperwork Reduction Act*

The Endowment certifies that this proposed rule does not require additional reporting under the criteria of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq*).

*Unfunded Mandates Reform Act of 1995*

This proposed rule does not include a Federal mandate that may result in the expenditure by the private sector or by State, local, and tribal governments (in the aggregate) of $100 million or more in any one year. Therefore, a statement under 2 U.S.C. 1532 is not required.

*Submission to Congress and the OMB*

This rule is hereby submitted for printing in the **Federal Register**, pursuant to 5 U.S.C. 552a(f). Copies of this proposed rule have been sent to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the OMB, in accordance with 5 U.S.C. 552a(r).

**List of Subjects in 45 CFR Part 1159**

Privacy.

For the reasons set out in this preamble, the Endowment proposes to add Title 45, Code of Federal Regulations, part 1159, as follows:

## PART 1159—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Sec.

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**Authority** 5 U.S.C. 552a(f).

### § 1159.1 What definitions apply to these regulations?

The definitions of the Privacy Act apply to this part. In addition, as used in this part:

(a) *Agency* means any executive department, military department, government corporation, or other establishment in the executive branch of the Federal government, including the Executive Office of the President or any independent regulatory agency.

(b) *Business day* means a calendar day, excluding Saturdays, Sundays, and legal public holidays.

(c) *Chairperson* means the Chairperson of the Endowment, or his or her designee;

(d) *Endowment* means the National Endowment for the Arts;

(e) *Endowment system* means a system of records maintained by the Endowment;

(f) *General Counsel* means the General Counsel of the Endowment, or his or her designee.

(g) *Individual* means any citizen of the United States or an alien lawfully admitted for permanent residence;

(h) *Maintain* means to collect, use, store, or disseminate records, as well as any combination of these recordkeeping functions. The term also includes exercise of control over and, therefore, responsibility and accountability for, systems of records;

(i) *Privacy Act* means the Privacy Act of 1974, as amended (5 U.S.C. 552a);

(j) *Record* means any item, collection, or grouping of information about an individual that is maintained by an agency and contains the individual's name or another identifying particular, such as a number or symbol assigned to the individual, or his or her fingerprint, voice print or photograph. The term includes, but is not limited to, information regarding an individual's education, financial transactions, medical history, and criminal or employment history;

(k) *Routine use* means, with respect to the disclosure of a record, the use of a record for a purpose that is compatible with the purpose for which it was collected;

(l) *Subject individual* means the individual to whom a record pertains. Uses of the terms "I", "you", "me", and other references to the reader of the regulations in this part are meant to apply to subject individuals as defined in this paragraph (l); and

(m) *System of records* means a group of records under the control of any agency from which information is retrieved by use of the name of the individual or by some number symbol, or other identifying particular assigned to the individual.

### § 1159.2 What is the purpose of these regulations?

The regulations in this part set forth the Endowment's procedures under the Privacy Act, as required by 5 U.S.C. 552a(f), with respect to systems of records maintained by the Endowment. These regulations establish procedures by which an individual may exercise the rights granted by the Privacy Act to determine whether an Endowment system contains a record pertaining to him or her, to gain access to such records; and to request correction or amendment of such records. These regulations also set identification requirements, prescribe fees to be charged for copying records, and establish exemptions from certain requirements of the Act for certain Endowment systems or components thereof.

### § 1159.3 Where should individuals send inquiries about the Endowment's system of records or implementation of the Privacy Act?

Inquiries about the Endowment's systems of records or implementation of the Privacy Act should be sent to the following address: National Endowment for the Arts, Office of the General Counsel, 1100 Pennsylvania Avenue NW, Room 518, Washington, DC 20506.

**§ 1159.4 How will the public receive notification of the Endowment's systems of records?**

(a) As required by the Privacy Act, the Endowment shall publish annually a notice of its systems of records in the **Federal Register**. Such publication shall not be made for those systems of records maintained by other agencies while in the temporary custody of the Endowment.

(b) At least 30 days prior to publication of information under paragraph (a) of this section, the Endowment shall publish in the **Federal Register** a notice of its intention to establish any new routine uses of any of its systems of records, thereby providing the public an opportunity to comment on such uses. This notice published by the Endowment shall contain the following:

(1) The name of the system of records for which the routine use is to be established;

(2) The authority for the system;

(3) The purpose for which the record is to be maintained;

(4) The proposed routine use(s);

(5) The purpose of the routine(s); and

(6) The categories of recipients of such use.

(c) Any request for additions to the routine uses of Endowment systems should be sent to the Office of the General Counsel (see § 1159.3 of this part).

(d) Any individual who wishes to know whether an Endowment system contains a record pertaining to him or her should write to the Office of the General Counsel (see § 1159.3 of this part). Such individuals may also call the Office of the General Counsel at (202) 682–5418 on business days, between the hours of 9 a.m. and 5:30 p.m., to schedule an appointment to make an inquiry in person. In either case, inquiries should be presented in writing and should specifically identify the Endowment systems involved. The Endowment will attempt to respond to an inquiry as to whether a record exists within 10 business days of receiving the inquiry.

**§ 1159.5 What government entities will the Endowment notify of proposed changes to its systems of records?**

When the Endowment proposes to establish or significantly changes any of its systems of records, it shall provide adequate advance notice of such proposal to the Committee on Government Reform of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), in order to permit an evaluation of the probable or potential effect of such proposal on the privacy or other rights of individuals. This report will be submitted in accordance with guidelines provided by the OMB.

**§ 1159.6 What limits exist as to the contents of the Endowment's systems of records?**

(a) The Endowment shall maintain only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required by statute or by executive order of the President. In addition, the Endowment shall maintain all records that are used in making determinations about any individual with such accuracy, relevance, timelines, and completeness as is reasonably necessary to ensure fairness to that individual in the making of any determination about him or her. However, the Endowment shall not be required to update retired records.

(b) The Endownment shall not maintain any record about any individual with respect to or describing how such individual exercises rights guaranteed by the First Amendment of the Constitution of the United States, unless expressly authorized by statute or by the subject individual, or unless pertinent to and within the scope of an authorized law enforcement activity.

**§ 1159.7 Will the Endowment collect information from me for its records?**

The Endowment shall collect information, to the greatest extent practicable, directly from you when the information may result in adverse determinations about your rights, benefits, or privileges under Federal programs. In addition, the Endowment shall inform you of the following, either on the form it uses to collect the information or on a separate form that you can retain, when it asks you to supply information:

(a) The statutory or executive order authority that authorizes the solicitation of the information;

(b) Whether disclosure of such information is mandatory or voluntary;

(c) The principle purpose(s) for which the information is intended to be used;

(d) The routine uses that may be made of the information, as published pursuant to § 1159.4 of this part; and

(e) Any effects on you of not providing all or any part of the required or requested information.

**§ 1159.8 How can I acquire access to Endowment records pertaining to me?**

The following procedures apply to records that are contained in an Endowment system:

(a) You may request review of records pertaining to you by writing to the Office of the General Counsel (see § 1159.3 of this part). You may also call the Office of the General Counsel at (202) 682–5418 on business days, between the hours of 9 a.m. and 5:30 p.m., to schedule an appointment to make such a request in person. In either case, your request should be presented in writing and should specifically identify the Endowment systems involved.

(b) Access to the record, or to any other information pertaining to you that is contained in the system, shall be provided if the identification requirements of § 1159.9 of this part are satisfied and the record is otherwise determined to be releasable under the Privacy Act and these regulations. The Endowment shall provide you an opportunity to have a copy made of any such record about you. Only one copy of each requested record will be supplied, based on the fee schedule in § 1159.12 of this part.

(c) The Endowment will comply promptly with requests made in person at scheduled appointments, if the requirements of this section are met and the records sought are immediately available. The Endowment will acknowledge mailed requests, or personal requests for documents that are not immediately available, within 10 business days, and the information requested will be provided promptly thereafter.

(d) If you make your request in person at a scheduled appointment, you may, upon your request, be accompanied by a person of your choice to review your record. The Endowment may require that you furnish a written statement authorizing discussion of your record in the accompanying person's presence. A record may be disclosed to a representative chosen by you upon your proper written consent.

(e) Medical or psychological records pertaining to you shall be disclosed to you unless, in the judgment of the Endowment, access to such records might have an adverse effect upon you. When such determination has been made, the Endowment may refuse to disclose such information directly to you. The Endowment will, however, disclose this information to a licensed physician designated by you in writing.

**§ 1159.9 What identification will I need to show when I request access to Endowment records pertaining to me?**

The Endowment shall require reasonable identification of all individuals who request access to records in an Endowment system to

ensure that they are disclosed to the proper person.

(a) The amount of personal identification required will of necessity vary with the sensitivity of the record involved. In general, if you request disclosure in person, you shall be required to show an identification card, such as a driver's license, containing your photograph and sample signature. However, with regard to records in Endowment systems that contain particularly sensitive and/or detailed personal information, the Endowment reserves the right to require additional means of identification as are appropriate under the circumstances. These means include, but are not limited to, requiring you to sign a statement under oath as to your identity, acknowledging that you are aware of the penalties for improper disclosure under the provisions of the Privacy Act.

(b) If you request disclosure by mail, the Endowment will request such information as may be necessary to ensure that you are properly identified. Authorized means to achieve this goal include, but are not limited to, requiring that a mail request include certification that a duly commissioned notary public of any State or territory (or a similar official, if the request is made outside of the United States) received an acknowledgment of identity from you.

(c) If you are unable to provide suitable documentation or identification, the Endowment may require a signed, notarized statement asserting your identity and stipulating that you understand that knowingly or willfully seeking or obtaining access to records about another person under false pretenses is punishable by a fine of up to $5,000.

**§ 1159.10 How can I pursue amendments to or corrections of an Endowment record?**

(a) You are entitled to request amendments to or corrections of records pertaining to you pursuant to the provisions of the Privacy Act, including 5 U.S.C. 552a(d)(2). Such a request should be made in writing and addressed to the Office of the General Counsel (see § 1159.3 of this part).

(b) Your request for amendments or corrections should specify the following:

(1) The particular record that you are seeking to amend or correct;

(2) The Endowment system from which the record was retrieved;

(3) The precise correction or amendment you desire, preferably in the form of an edited copy of the record reflecting the desired modification; and

(4) Your reasons for requesting amendment or correction of the record.

(c) The Endowment will acknowledge a request for amendment or correction of a record within 10 business days of its receipt, unless the request can be processed and the individual informed of the General Counsel's decision on the request within that 10-day period.

(d) If after receiving and investigating your request, the General Counsel agrees that the record is not accurate, timely, or complete, based on a preponderance of the evidence, then the record will be corrected or amended promptly. The record will be deleted without regard to its accuracy, if the record is not relevant or necessary to accomplish the Endowment function for which the record was provided or is maintained. In either case, you will be informed in writing of the amendment, correction, or deletion. In addition, if accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If after receiving and investigating your request, the General Counsel does not agree that the record should be amended or corrected, you will be informed promptly in writing of the refusal to amend or correct the record and the reason for this decision. You will also be informed that you may appeal this refusal in accordance with § 1159.11 of this part.

(f) Requests to amend or correct a record governed by the regulations of another agency will be forwarded to such agency for processing, and you will be informed in writing of this referral.

**§ 1159.11 How can I appeal a refusal to amend or correct an Endowment record?**

(a) You may appeal a refusal to amend or correct a record to the Chairperson. Such appeal must be made in writing within 10 business days of your receipt of the initial refusal to amend or correct your record. Your appeal should be sent to the Office of the General Counsel (see § 1159.3 of this part), should indicate that it is an appeal, and should include the basis for the appeal.

The Chairperson will review your request to amend or correct the record, the General Counsel's refusal, and any other pertinent material relating to the appeal. No hearing will be held.

(c) The Chairperson shall render his or her decision on your appeal within 30 business days of its receipt by the Endowment, unless the Chairperson, for good cause shown, extends the 30-day period. Should be Chairperson extend the appeal period, you will be informed in writing of the extension and the circumstances of the delay.

(d) If the Chairperson determines that the record that is the subject of the appeal should be amended or corrected, the record will be so modified, and you will be informed in writing of the amendment or correction. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be informed of the corrective action taken.

(e) If your appeal is denied, you will be informed in writing of the following:

(1) The denial and the reasons for the denial;

(2) That you may submit to the Endowment a concise statement setting forth the reasons for your disagreement as to the disputed record. Under the procedures set forth in paragraph (f) of this section, your statement will be disclosed whenever the disputed record is disclosed; and

(3) That you may seek judicial review of the Chairperson's determination under 5 U.S.C. 552a(g)(1)(a).

(f) Whenever you submit a statement of disagreement to the Endowment in accordance with paragraph (e)(2) of this section, the record will be annotated to indicate that it is disputed. In any subsequent disclosure, a copy of your statement of disagreement will be disclosed with the record. If the Endowment deems it appropriate, a concise statement of the Chairperson's reasons for denying your appeal may also be disclosed with the record. While you will have access to this statement of the Chairperson's reasons for denying your appeal, such statement will not be subject to correction or amendment. Where an accounting was made of prior disclosures of the record, all previous recipients of the record will be provided a copy of your statement of disagreement, as well as any statement of the Chairperson's reasons for denying your appeal.

**§ 1159.12 Will the Endowment charge me fees to locate, review, or copy records?**

(a) The Endowment shall charge no fees for search time or for any other time expended by the Endowment to review a record. However, the Endowment may charge fees where you request that a copy be made of a record to which you have been granted access. Where a copy of the record must be made in order to provide access to the record (e.g., computer printout where no screen reading is available), the copy will be made available to you without cost.

(b) Copies of records made by photocopy or similar process will be charged to you at the rate of $0.10 per page. Where records are not susceptible to photocopying (e.g., punch cards, magnetic tapes, or oversize materials),

you will be charged actual cost as determined on a case-by-case basis. A copying fee totaling $3.00 or less shall be waived, but the copying fees for contemporaneous requests by the same individual shall be aggregated to determine the total fee.

(c) Special and additional services provided at your request, such as certification or authentication, postal insurance, and special mailing arrangement costs, will be charged to you.

(d) A copying fee shall not be charged or, alternatively, it may be reduced, when the General Counsel determines, based on a petition, that the petitioning individual is indigent and that the Endowment's resources permit a waiver of all or part of the fee.

(e) All fees shall be paid before any copying request is undertaken. Payments shall be made by check or money order payable to the "National Endowment for the Arts."

**§ 1159.13 In what other situations will the Endowment disclose its records?**

(a) The Endowment shall not disclose any record that is contained in a system of records to any person or to another agency, except pursuant to a written request by or with the prior written consent of the subject individual, unless disclosure of the record is:

(1) To those officers or employees of the Endowment who maintain the record and who have a need for the record in the performance of their official duties;

(2) Required under the provisions of the Freedom of Information Act (5 U.S.C. 552). Records required to be made available by the Freedom of Information Act will be released in response to a request to the Endowment formulated in accordance with the National Foundation on the Arts and the Humanities regulations published at 45 CFR part 1100;

(3) For a routine use as published in the annual notice in the **Federal Register**;

(4) To the Census Bureau for purposes of planning or carrying out a census, survey, or related activity pursuant to the provisions of Title 13 of the United States Code;

(5) To a recipient who has provided the Endowment with adequate advance written assurance that the record will be used solely as a statistical research or reporting record, and the record is to be transferred in a form that is not individually identifiable;

(6) To the National Archives and Records Administration as a record that has sufficient historical or other value to warrant its continued preservation by the United States government, or for evaluation by the Archivist of the United States, or his or her designee, to determine whether the record has such value;

(7) To another agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if the activity is authorized by law, and if the head of the agency or instrumentality has made a written request to the Endowment for such records specifying the particular portion desired and the law enforcement activity for which the record is sought. The Endowment may also disclose such a record to a law enforcement agency on its own initiative in situations in which criminal conduct is suspected, provided that such disclosure has been established as a routine use, or in situations in which the misconduct is directly related to the purpose for which the record is maintained;

(8) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual if, upon such disclosure, notification is transmitted to the last known address of such individual;

(9) To either House of Congress, or, to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee of Congress, or subcommittee of any such joint committee;

(10) To the Comptroller General, or any of his or her authorized representatives, in the course of the performance of official duties of the General Accounting Office;

(11) To a consumer reporting agency in accordance with 31 U.S.C. 3711(e); or

(12) Pursuant to an order of a court of competent jurisdiction. In the event that any record is disclosed under such compulsory legal process, the Endowment shall make reasonable efforts to notify the subject individual after the process becomes a matter of public record.

(b) Before disseminating any record about any individual to any person other than an Endowment employee, the Endowment shall make reasonable efforts to ensure that such records are, or at the time they were collected were, accurate, complete, timely, and relevant for Endowment purposes. This paragraph (b) does not apply to disseminations made pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552) and paragraph (a)(2) of this section.

**§ 1159.14 Will the Endowment maintain a written account of disclosures made from its systems of records?**

(a) The Office of the General Counsel shall maintain a written log containing the date, nature, and purpose of each disclosure of a record to any person or to another agency. Such accounting shall also contain the name and address of the person or agency to whom each disclosure was made. This log need not include disclosures made to Endowment employees in the course of their official duties, or pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552).

(b) The Endowment shall retain the accounting of each disclosure for at least five years after the accounting is made or for the life of the record that was disclosed, whichever is longer.

(c) The Endowment shall make the accounting of disclosures of a record pertaining to you available to you at your request. Such a request should be made in accordance with the procedures set forth in § 1159.8 of this part. This paragraph (c) does not apply to disclosures made for law enforcement purposes under 5 U.S.C. 552a(b)(7) and § 1159.13(a)(7) of this part.

**§ 1159.15 Who has the responsibility for maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems?**

The Deputy Chairman for Management and Budget has the responsibility of maintaining adequate technical, physical, and security safeguards to prevent unauthorized disclosure or destruction of manual and automatic record systems. These security safeguards shall apply to all systems in which identifiable personal data are processed or maintained, including all reports and outputs from such systems that contain identifiable personal information. Such safeguards must be sufficient to prevent negligent, accidental, or unintentional disclosure, modification or destruction of any personal records or data, and must furthermore minimize, to the extent practicable, the risk that skilled technicians or knowledgeable persons could improperly obtain access to modify or destroy such records or data and shall further insure against such casual entry by unskilled persons without official reasons or data.

(a) *Manual systems.* (1) Records contained in a system of records as defined herein may be used, held or stored only where facilities are adequate to prevent unauthorized access by persons within or outside the Endowment.

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(2) All records, when not under the personal control of the employees authorized to use the records, must be stored in a locked metal filing cabinet. Some systems of records are not of such confidential nature that their disclosure would constitute a harm to an individual who is the subject of such record. However, records in this category shall also be maintained in locked metal filing cabinets or maintained in a secured room with a locking door.

(3) Access to and use of a system of records shall be permitted only to persons whose duties require such access within the Endowment, for routine uses as defined in § 1159.1 as to any given system, or for such other uses as may be provided herein.

(4) Other than for access within the Endowment to persons needing such records in the performance of their official duties or routine uses as defined in § 1159.1, or such other uses as provided herein, access to records within a system of records shall be permitted only to the individual to whom the record pertains or upon his or her written request to the General Counsel.

(5) Access to areas where a system of records is stored will be limited to those persons whose duties required work in such areas. There shall be an accounting of the removal of any records from such storage areas utilizing a written log, as directed by the Deputy Chairman for Management and Budget. The written log shall be maintained at all times.

(6) The Endowment shall ensure that all persons whose duties require access to and use of records contained in a system of records are adequately trained to protect the security and privacy of such records.

(7) The disposal and destruction of records within a system of records shall be in accordance with the rules promulgated by the General Services Administration.

(b) *Automated systems.* (1) Identifiable personal information may be processed, stored or maintained by automated data systems only where facilities or conditions are adequate to prevent unauthorized access to such systems in any form. Whenever such data, whether contained in punch cards, magnetic tapes or discs, are not under the personal control of an authorized person, such information must be stored in a locked or secured room, or in such other facility having greater safeguards than those provided for herein.

(2) Access to and use of identifiable personal data associated with automated data systems shall be limited to those persons whose duties require such access. Proper control of personal data in any form associated with automated data systems shall be maintained at all times, including maintenance of accountability records showing disposition of input and output documents.

(3) All persons whose duties require access to processing and maintenance of identifiable personal data and automated systems shall be adequately trained in the security and privacy of personal data.

(4) The disposal and disposition of identifiable personal data and automated systems shall be done by shredding, burning nor in the case of tapes or discs, degaussing, in accordance with my regulations now or hereafter proposed by the General Services Administration or other appropriate authority.

**§ 1159.16 Will the Endowment take steps to ensure that its employees involved with its systems of records are familiar with the requirements and implications of the Privacy Act?**

(a) The Chairperson shall ensure that all persons involved in the design, development, operation or maintenance of any Endowment system are informed of all requirements necessary to protect the privacy of subject individuals. The Chairperson shall also ensure that all Endowment employees having access to records receive adequate training in their protection, and that records have adequate and proper storage with sufficient security to assure the privacy of such records.

(b) All employees shall be informed of the civil remedies provided under 5 U.S.C. 552a(g)(1) and other implications of the Privacy Act, and the fact that the Endowment may be subject to civil remedies for failure to comply with the provisions of the Privacy Act and these regulations.

**§ 1159.17 Which of the Endowment's systems of records are covered by exemptions in the Privacy Act?**

(a) Pursuant to and limited by 5 U.S.C. 552a(j)(2), the Endowment system entitled "Office of the Inspector General Investigative Files" shall be exempted from the provisions of 5 U.S.C. 552a, except for subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i), insofar as that Endowment system contains information pertaining to criminal law enforcement investigations.

(b) Pursuant to and limited by 5 U.S.C. 552a(k)(2), the Endowment system entitled "Office of the Inspector General Investigative Files" shall be exempted from 5 U.S.C. 552a(c)(3); (d); (e)(1); (e)(4)(G), (H), and (I); and (f), insofar as that Endowment system consists of investigatory material compiled for law enforcement purposes, other than material within the scope of the exemption at 5 U.S.C. 552a(j)(2).

(c) The Endowment system entitled "Office of the Inspector General Investigative Files" is exempt from the above-noted provisions of the Privacy Act because their application might alert investigation subjects to the existence or scope of investigations; lead to suppression, alteration, fabrication, or destruction of evidence, disclose investigative techniques or procedures, reduce the cooperativeness or safety of witnesses; or otherwise impair investigations.

**§ 1159.18 What are the penalties for obtaining an Endowment record under false pretenses?**

(a) Under 5 U.S.C. 552a(i)(3), any person who knowingly and willfully requests or obtains any record concerning an individual from the Endowment under false pretenses shall be guilty of a misdemeanor and fined not more than $5,000.

(b) A person who falsely or fraudulently attempts to obtain records under the Privacy Act may also be subject to prosecution under other statutes, including 18 U.S.C. 494, 495, and 1001.

**§ 1159.19 What restrictions exist regarding the release of mailing lists?**

The Endowment may not sell or rent an individual's name and address unless such action is specifically authorized by law. This section shall not be construed to require the withholding of names and addresses otherwise permitted to be made public.

Dated: May 10, 2000.

**Karen Elias,**

*Deputy General Counsel.*

[FR Doc. 00–12624 Filed 5–18–00; 8:45 am]

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AF81**

## Endangered and Threatened Wildlife and Plants; Extension of Comment Period on Proposed Rule To List the Santa Barbara County Distinct Population of the California Tiger Salamander as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; second extension of comment period.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service) gives notice that the comment period on the proposed rule to list the Santa Barbara distinct population of the California tiger salamander will be reopened to allow for the inclusion of new information regarding the presence of the California tiger salamander in areas previously not identified as known salamander sites. The extension will allow all interested parties to submit oral or written comments on the proposal.

**DATES:** The reopened comment period closes June 5, 1999. Comments must be received by the closing date. Any comments received after the closing date may not be considered in the final decision on the proposal.

**ADDRESSES:** Written comments should be sent to Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

**FOR FURTHER INFORMATION CONTACT:** Carl Benz, at the above Ventura, California address, phone 805/644–1766, facsimile 805/644–3958.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 19, 2000, the Fish and Wildlife Service (Service) proposed to list the Santa Barbara County Distinct Vertebrate Population Segment of the California tiger salamander, (*Ambystoma californiense*), as endangered pursuant to the Endangered Species Act (Act) of 1973, as amended (Act). An emergency rule listing the population was published concurrently in the same issue of the **Federal Register**. The Santa Barbara County population segment of the California tiger salamander is endemic to low elevation (typically below 300 meters (1,000 feet)) vernal pools and seasonal ponds and the surrounding grasslands, oak woodlands, and coastal scrub of Santa Barbara County, California, and is imperiled primarily by habitat loss from conversion of natural habitat to intensive agriculture and urban development, habitat fragmentation, and agricultural contaminants. The original comment period closed March 20, 2000.

On March 24, 2000, the Service reopened the comment period in response to citizen requests that a public hearing be held. The comment period was extended until May 4, 2000, during which a public hearing was held on April 20, 2000, in Santa Maria, California.

This second extension of the comment period will enable the Service to consider in its final rule the results of surveys for California tiger salamanders conducted during this breeding season. Written comments may be submitted until June 5, 2000, to the Service office in the **ADDRESSES** section.

Author: The primary author of this notice is Carl Benz (see **ADDRESSES**).

**Authority:** The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Dated: May 15, 2000.

**Elizabeth H. Stevens,**

*Acting Manager, California/Nevada Operations.*

[FR Doc. 00–12609 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–55–U

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**RIN 1018–AE30**

## Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for the Southern California Distinct Vertebrate Population Segment of the Mountain Yellow-Legged Frog

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; notice of reopening of comment period.

**SUMMARY:** We, the Fish and Wildlife Service (Service), reopen the comment period on the proposed rule to list the southern California distinct vertebrate population segment (DPS) of the mountain yellow-legged frog (*Rana muscosa*) as an endangered species, pursuant to the Endangered Species Act of 1973, as amended (Act). The comment period is reopened in response to a request from the California Department of Fish and Game for additional time to obtain biological information regarding the mountain yellow-legged frog and formulate comments on the proposed rule. In addition, reopening of the comment period will allow further opportunity for all interested parties to submit comments on the proposal, which is available (see **ADDRESSES** section). We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

**DATES:** The reopened comment period closes June 19, 2000.

**ADDRESSES:** Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California, 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Glen Knowles, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section) at (760) 431–9440.

**SUPPLEMENTARY INFORMATION:**

**Background**

On December 22, 1999, the Service published a rule proposing endangered status for the southern California DPS of the mountain yellow-legged frog (*Rana muscosa*) in the **Federal Register** (64 FR 71714). The original comment period closed on February 22, 2000. On March 20, 2000, the Service published a notice reopening the comment period for 30 days (65 FR 14936). This reopened comment period closed on April 19, 2000. The comment period now closes on June 19, 2000. Written comments should be submitted to the Service (see **ADDRESSES** section).

The mountain yellow-legged frog is a true frog in the family Ranidae. The southern California mountain yellow-legged frog can still be found in small streams in the San Gabriel mountains, San Bernardino mountains, and the San Jacinto mountains. In addition to predation from trout and other widespread factors, the few remaining frogs are threatened by recreation (i.e. suction dredging, campgrounds, day use areas), the introduction of non-native competitors and predators, and demographics associated with small populations. Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location and status of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on the mountain yellow-legged frog or its habitat.

Author: The primary author of this notice is Glen Knowles (see **ADDRESSES** section).

**Authority:** The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: May 15, 2000.

**Elizabeth H. Stevens,**

*Acting Manager, California/Nevada Operations Office.*

[FR Doc. 00–12608 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–55–U

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 660

**[Docket No. 000504124–0124–01; I.D. 011900B]**

**RIN 0648–AK11**

## Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Prohibition on the Use of Set Net Fishing Gear

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** NMFS proposes regulations to prohibit the use of set net (gillnet and trammel nets) fishing gear to take groundfish species in portions of the exclusive economic zone (EEZ) (also known as the fishery management area) adjacent to state waters at four areas off California. Groundfish fisheries in the fishery management area are managed under the Fishery Management Plan for Groundfish Fisheries off the West Coast (Groundfish FMP). California has jurisdiction over fishing for groundfish and other species both within State waters and, with respect to State registered vessels, in the EEZ off California as long as State regulations are not in conflict with Federal regulations. This action would achieve consistency between regulations in waters under California jurisdiction and those in the EEZ. This action is intended to promote effective and consistent conservation of groundfish stocks and California managed species throughout their range and to avoid unnecessary bycatch of California-managed species that might otherwise be harvested in the closed areas but discarded.

**DATES:** Comments must be submitted by June 19, 2000.

**ADDRESSES:** Comments on the proposed rule should be sent to Rodney R. McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

**FOR FURTHER INFORMATION CONTACT:** Svein Fougner, Sustainable Fisheries Division, Southwest Region, NMFS, 562–980–4040.

**SUPPLEMENTARY INFORMATION:** The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes regional fishery management councils to prepare and submit fishery management plans (FMPs) to the Secretary of Commerce (Secretary) for approval and implementation. An FMP may incorporate the relevant fishery conservation and management measures of the coastal states, to the extent they are consistent with the National Standards, the other provisions of the Magnuson-Stevens Act, and any other applicable law.

The Groundfish FMP was prepared by the Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce in 1982. The FMP covers fisheries for over 80 species, including species that are taken in the EEZ and in State waters off California, Oregon and Washington. In the absence of Federal regulations under the Magnuson-Stevens Act a state may continue to apply its own regulations to fishers registered under the laws of that State even if they are fishing in the EEZ. Further, even for a fishery managed under an FMP, a state's regulations that affect fishing for managed species may remain in force as long as they do not conflict with the Federal regulations governing that fishery.

The Council recognized that there could be instances in which it might be desirable or necessary to adjust Federal regulations (pertaining to) fishing for species under the FMP to be consistent with state regulations to achieve effective conservation of groundfish as well as non-groundfish stocks that occur in both the EEZ and state waters. Therefore, the FMP contains procedures whereby state regulations can be reviewed by the Council to determine that state regulations are consistent with the FMP. The Council, after making such a determination, may request that Federal regulations be promulgated to ensure consistency in letter and effect.

This is the case with this proposed rule. As provided by the FMP, the Council reviewed for consistency with the goals and objectives of the FMP, California regulations prohibiting the use of set nets in certain EEZ waters adjacent to California waters. In deference to California's historical management of halibut and white croaker and in the interest of sound and consistent fishery management, the Council recommended that NMFS implement regulations to prohibit set net fishing for groundfish species in the portions of the EEZ in the areas currently closed under California law.

There are four California closures that would be affected by this proposed rule: (1) The portion of the fishery management area in an area between a line extending 245° magnetic from the most westerly point of the west point of the Point Reyes headlands in Marin County and the westerly extension of the California-Oregon boundary; (2) any waters in the fishery management area which are 40 fathom (fm) or less deep at mean lower low tide between a line extending 245° magnetic from the most westerly point of the west point of the Point Reyes headlands in Marin County and a line extending 225° magnetic from Pillar Point at half Moon Bay in San Mateo County, and 60 fm or less deep at mean lower low tide between a line extending 225° magnetic from Pillar Point at Half Moon Bay in San Mateo County to a line extending 220° magnetic from the mouth of Waddell Creek in Santa Cruz County; (3) any waters in the fishery management area that are 30 fm or less deep at mean lower low tide within the portion of California District 18 north of a line extending due west from Point Sal in Santa Barbara County; and (4) any waters in the fishery management area that are less than 35 fm deep in the area between a line running 180° true from Point Fermin and a line running 270° true from the south jetty of Newport Harbor. This last area is called Huntington Flats.

The primary goal of closures (1) through (3) was to minimize entanglement and drowning of protected birds and marine mammals off central California. Federal studies confirm that the take of sea otters and harbor porpoises has decreased significantly since California established set net closures in coastal waters. Closure (4) was the result of the Marine Resources Protection Act (MRPA), which was adopted through voters' approval of a ballot initiative (Proposition 132) in 1990. As in central California, several set net prohibitions in southern California were motivated

by the desire to minimize the adverse impacts of set net fishing on nontarget marine mammals, rockfish, and lingcod resources. However, at Huntington Flats, the primary emphasis was on public concern for state species, particularly California halibut, rather than protected species or targeted groundfish.

"Set net" is a term used in California law to define "any net or line used to take fish that is anchored to the bottom on each end and is not free to drift with the tide or current." This generic term includes gillnets and trammel nets as specified in Federal regulations: "Set net: A stationary, buoyed, and anchored gillnet or trammel net" (50 CFR 660.302(17)). A "gillnet" is defined in Federal regulations as "a rectangular net that is set upright in the water" (50 CFR 600.10(i)); a "trammel net" is defined as "a gillnet made with two or more walls joined to a common float line" (50 CFR 660.302(20)). Set nets work by gilling or entangling fish in their mesh.

Laws regulating set nets in the EEZ off California have typically been enacted by the California legislature to prevent drowning of marine birds and mammals, to conserve fishery resources, and to reduce fisheries conflicts. In 1990, California voters approved the MRPA, which prohibits the use of set nets to take rockfish in the EEZ. It also prohibits the use of set nets to take all species of fish in California waters along the mainland shore, within 1 mile of the offshore Channel Islands south of Point Arguello and in an area of the EEZ less than 35 fm deep at the Huntington Flats between the ports of San Pedro, Los Angeles County, and Newport Beach, Orange County.

Federal regulations implementing the FMP prohibit the use of set nets in the EEZ north of 38° N.lat. (Point Reyes, Marin County) but are silent on whether California's set net laws involving the take of groundfish continue to apply in the EEZ south of 38° N. lat. The current regulations do not specifically authorize California to regulate set nets in the EEZ south of 38° N.lat.

The absence of Federal groundfish regulations that specifically address California laws resulted in a Federal district court challenge by the Los Angeles Commercial Fishermen's Association (LACFA) on the legality of California's enforcement of set net prohibitions on the take of groundfish in the EEZ in the Huntington Flats area. On November 22, 1996, the LACFA obtained a court order that prohibited California from enforcing the MRPA prohibition on the use of set nets at Huntington Flats, and authorized set net permittees to fish for all commercial species of fish, not just groundfish, with set nets in the EEZ at Huntington Flats in waters less than 70 fm deep. This temporary restraining order was extended by a preliminary injunction issued March 20, 1997.

The purpose of this proposed action is to resolve the unintended conflict between the lack of Federal regulations under the FMP, which is silent on the use of set nets south of 38° N.lat. and California regulations, which prohibit the use of set nets both in State waters and some areas inside the EEZ. The set net closures are intended to conserve a number of non-groundfish species and non-fish living marine resources that are managed under California regulations and are taken in some areas incidental to fishing for groundfish. This proposed action should resolve this legal dispute and allow lifting of the injunction, allowing effective enforcement of the California law and regulations and conservation of the fish and non-fish species involved.

This action is consistent with the Magnuson-Stevens Act and especially with National Standards 7 and 9. National Standard 7 provides that management shall minimize duplication and costs in the conservation of fishery resources. The proposed action will reduce the cost of administering and enforcing state conservation and management measures in the identified areas by providing a single set of consistent measures. National Standard 9 provides that conservation and management measures shall, to the extent practicable, minimize bycatch and, to the extent bycatch cannot be avoided, minimize the mortality of such bycatch. This National Standard requires Councils to consider the bycatch effects of existing and planned conservation and management measures. Set net gear is relatively non-selective gear, and though groundfish may be the target species, there is often bycatch of other, non-groundfish species such as California halibut (much of which is dead and therefore wasted). The proposed action will reduce this bycatch of species managed under California regulations in both California waters and the EEZ.

The proposed action also promotes conservation Objective 4 of the FMP, which is to control the impacts of the groundfish fishery on non groundfish species to maintain their long-term reproductive health where conservation problems have been identified for non-groundfish species and the best scientific information shows that the groundfish fishery has a direct impact on the ability of those species to maintain their long-term reproductive health. The FMP authorizes the Council to consider establishing management measures to reduce fishing mortality of non-groundfish species for documented conservation reasons. In this instance, fishers are currently able to fish for groundfish with set net gear in the identified areas, and non-groundfish will be taken incidental to groundfish. Those non-groundfish species will either be killed and discarded or will be retained illegally; in either case, there will be fishing mortality above that which the state would allow in its management program for those non-groundfish species. The proposed action is designed to eliminate this mortality from bycatch of non-groundfish species while minimizing disruption of the groundfish fishery; it will not preclude achievement of any quota, harvest guideline, or allocation of groundfish.

In addition to the preferred action, two alternatives to address this issue were considered by the Council. The "no action" alternative would have resulted in the Council not recommending any regulations. The second alternative would have set Federal regulations the same as State laws for three areas off central California but allowed the continued use of set nets to take groundfish in the EEZ at Huntington Flats off southern California. The Council ultimately concluded that the lack of a determination affirming the consistency of Federal and California regulations left a legal void that impaired enforcement of California laws and regulations to conserve non-groundfish species and other living marine resources.

**Classification**

The proposed action is consistent with the requirements of the Magnuson-Stevens-Act and the Groundfish FMP. The proposed action will not result in, or promote overfishing of, any groundfish stocks or other species. The proposed action should reduce bycatch of non-groundfish species in the area closed to set net fishing. There may be some improved protection of essential fish habitat for groundfish species in the areas closed to set net fishing. The proposed action will eliminate confusion about applicable regulations in the area while enhancing the enforcement of California regulations. There will be no duplication of effort.

NMFS prepared an initial regulatory flexibility analysis (IRFA) that describes the impacts that the proposed rule, if adopted, would have on small entities. A copy of this analysis is available from NMFS (see **ADDRESSES**). A summary of the analysis follows.

The direct effect of this Federal action would be to prohibit fishing for groundfish species using set net gear in the EEZ in the Huntington Flats area. This will affect fishers who have used set net gear in the waters to be closed. It is noted that four areas would be closed; however, direct effects of the action would only be felt at Huntington Flats, as there apparently has been no set net fishing in the other three areas for many years. Therefore, no new effects would be felt from the closure of those 3 years by Federal regulation. This action is not expected to affect processors since other gear types continue to land Federal species in this area at levels comparable to those before the closure.

The category of small businesses possibly affected by the proposed regulation is the 89 vessels that reported set net landings from the Huntington Flats area between 1990 and 1995. Owners of 33 of the 89 vessels held gill and trammel net permits in the 1996–1997 season, and thus may be directly affected by this rule by not being able to fish for groundfish in the EEZ at depths less than 35 fm in the Huntington Flats area. These 33 permit holders represent 14 percent of California's total of 235 gill and trammel net permit-holders. While an evaluation of the effects on individual vessels has not been conducted, estimates for the group of vessels show that the reduction in gross revenues for most vessels is likely to be well below 5 percent. An analysis for the proposed action showed that, for a subset of active set net vessels, an average of 30 percent of total annual value by vessel comes from set net fishing in the Huntington Flats area. The remaining 70 percent is taken by other gear types or in other areas. Of the average vessel's annual value of landings from Huntington Flats (30 percent of the total from all areas and gear types), the value of groundfish species represents only 4.5 percent. This represents the value of groundfish species caught in the entire Huntington Flats area, and thus includes the EEZ outside the closure in question (beyond depths of 35 fm). The proposed action allows for set net fishing for groundfish at depths deeper than 35 fm, and public testimony from LACFA indicates up to seven vessels can successfully operate outside 35 fm (see Section 4.2). Further, the proposed action does not prohibit the use of other gear or fishing for other species within or outside the closure area. Based on this analysis, it is expected the closure of Federal waters out to 35 fm at the Huntington Flats area will result in an average reduction of 1.4 percent of annual gross revenue by vessel.

In addition to the proposed action, two alternatives were considered. The first, a "no action" alternative, would impose the least burden on small entities. However, this alternative would leave the inconsistency between California and Federal regulations in place and would greatly increase the difficulty of enforcing California regulations at Huntington Flats. There could be significant bycatch and discard mortality of state-managed species taken in association with groundfish. Further, if set net fishing were to resume in the other three areas, there could be adverse effects on marine mammals and seabirds. The other alternative would adopt the proposed Federal closures for the three areas in which California's action has already resulted in elimination of set net fishing, while allowing set net fishing to continue at Huntington Flats. This alternative would reinforce California's closures and maintain protection for marine mammals and seabirds. However, it would also maintain the inconsistency between State and Federal regulations at Huntington Flats, creating enforcement difficulties for the California and possibly result in significant bycatch and discard mortality as set net fishers could retain groundfish but not state-managed species taken in this portion of the EEZ. Therefore, this alternative was rejected.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

An informal consultation was conducted under section 7 of the Endangered Species Act and it was determined that the proposed action is not likely to adversely affect any listed species or adversely affect any critical habitat designated for any listed species.

The proposed action should reduce the potential for entanglement of marine mammals in set nets in the area to be closed to set net fishing and therefore is consistent with the Marine Mammal Protection Act.

This action is being proposed in response to a request from California that was endorsed by the Council. The action will make California regulations and Federal regulations consistent and will thus facilitate sound conservation of state-managed resources as well as federally-managed resources. No new costs are imposed on California. Thus, the proposed action is consistent with E.O. 13132 of August 4, 1999.

**List of Subjects in 50 CFR Part 660**

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: May 12, 2000.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 660 as follows:

## PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

2. In § 660.322, paragraph (d) is revised to read as follows:

**§ 660.322 Gear restrictions.**

* * * * *

(d) *Set nets.* Fishing for groundfish with set nets is prohibited in the following portions of the fishery management area:

(1) Waters north of 38° N.lat.;

(2) The area between a line extending 245° magnetic from the most westerly point of the west point of the Point Reyes headlands in Marin County and the westerly extension of the California-Oregon boundary;

(3) Waters which are 40 fm or less deep at mean lower low tide between a line extending 245° magnetic from the most westerly point of the west point of the Point Reyes headlands in Marin County and a line extending 225° magnetic from Pillar Point at half Moon Bay in San Mateo County, and 60 fm or less deep at mean lower low tide between a line extending 225° magnetic from Pillar Point at Half Moon Bay in San Mateo County to a line extending 220° magnetic from the mouth of Waddell Creek in Santa Cruz County;

(4) The portion of California District 18 north of a line extending due west from Point Sal in Santa Barbara County in waters 30 fm or less deep at mean lower low tide in the portion of the EEZ between a line extending due west form Point Sal in Santa Barbara County and a line extending due south from Point San Luis in San Luis Obispo County; and

(5) In waters less than 35 fm deep between a line running 180° true from Point Fermin and a line running 270° true from the south jetty of Newport Harbor.

[FR Doc. 00–12576 Filed 5–18–00; 8:45 am]
BILLING CODE 3510–22–F

# Notices

Federal Register
Vol. 65, No. 98
Friday, May 19, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

### Commission on 21st Century Production Agriculture

**AGENCY:** Office of the Secretary, Department of Agriculture.

**ACTION:** Notice of meeting.

**SUMMARY:** The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting in June of the Commission on 21st Century Production Agriculture. The purpose of the meeting on June 14–16, 2000 is a working session, which will be to address issues regarding agricultural policy initiatives to be included in the Commission report. The meeting is open to the public.

**PLACE, DATE, AND TIME OF MEETING:** This meeting will be held June 14, 2000 from 12–5 p.m. EST in Room 108–A, Whitten Building; June 15, 2000 from 9 a.m.–5 p.m. EST in Room 108–A, Whitten Building; June 16, 2000 from 9 a.m.–12 EST in Room 221–A, Whitten Building.

**FOR FURTHER INFORMATION CONTACT:** Mickey Paggi on (202–720–3139), Director, Commission on 21st Century Production Agriculture, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Dated: May 15, 2000.

**Keith J. Collins,**

*Chief Economist.*

[FR Doc. 00–12656 Filed 5–18–00; 8:45 am]

BILLING CODE 3410–01–M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. 00–041–1]**

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of a currently approved information collection in support of the export of animals and animal products from the United States.

**DATES:** We invite you to comment on this docket. We will consider all comments that we receive by July 18, 2000.

**ADDRESSES:** Please send your comment and three copies to: Docket No. 00–041–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.
Please state that your comment refers to Docket No. 00–041–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the use of VS Form 17–140, contact Dr. Lisa Ferguson, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–4928. For copies of more detailed information on the information collection, contact Ms. Cheryl Groves, APHIS' Information Collection Coordinator, at (301) 734–5086.

**SUPPLEMENTARY INFORMATION:** *Title:* U.S. Origin Health Certificate.

*OMB Number:* 0579–0020.

*Expiration Date of Approval:* October 31, 2000.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The export of agricultural commodities, including animals and animal products, is a major business in the United States and contributes to a favorable balance of trade. As part of its mission, the U.S. Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS), maintains information regarding the import health requirements of other countries for animals and animal products exported from the United States.

Most countries require a certification that our animals are free from specific diseases and show no clinical evidence of disease. This certification generally must carry the USDA seal and be endorsed by an authorized APHIS veterinarian. VS Form 17–140, United States Origin Health Certificate, is generally used to meet these requirements. Regulations requiring a U.S. Origin Health Certificate under certain circumstances are contained in 9 CFR part 91. The regulations in part 91 are authorized under 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; and 49 U.S.C. 1509 (d).

We are asking the Office of Management and Budget (OMB) to approve our continued use of VS Form 17–140, United States Origin Health Certificate, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

*Estimate of burden:* The public reporting burden for this collection of information is estimated to average .4994 hours per response.

*Respondents:* State, Federal, and accredited veterinarians, animal owners, and exporters.

*Estimated annual number of respondents:* 2,800.

*Estimated annual number of responses per respondent:* 15.

*Estimated annual number of responses:* 42,000.

*Estimated total annual burden on respondents:* 21,009 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 15th day of May 2000.

**Bobby R. Accord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 00–12658 Filed 5–18–00; 8:45 am]

BILLING CODE 3410–34–U

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

**RIN 0584–AC87**

### Food Stamp Program: Maximum Allotments for Alaska, Hawaii, Guam, and the Virgin Islands

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** General notice.

**SUMMARY:** By this notice, the Department of Agriculture is updating for Fiscal Year 2000 the maximum food stamp allotments for participating households in Alaska, Hawaii, Guam, and the Virgin Islands. These annual adjustments, required by law, take into account changes in the cost of food and statutory adjustments since the amounts were last calculated.

**EFFECTIVE DATE:** This notice is effective May 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302, or telephone at (703) 305–2516. The e-mail address is Margaret.Batko@FNS.USDA.GOV.

**SUPPLEMENTARY INFORMATION:**

**Implementation**

As required by Section 3(o) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2012(o), State agencies should have implemented this action on October 1, 1999, based on advance notice of the new amounts. As required by regulations published at 47 FR 46485 (October 19, 1982), annual statutory adjustments to the maximum allotment levels and income eligibility standards are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

*Executive Order 12866*

This notice has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

*Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule and related notice to 7 CFR part 3015, subpart V (48 FR 29916, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

*Regulatory Flexibility Act*

The Under Secretary for Food, Nutrition, and Consumer Services has certified that this action will not have a significant economic impact and will not have an impact on a substantial number of small entities. The action will increase the amount of money spent on food through increases in food stamp benefits. However, this money will be distributed among all eligible food stamp vendors, so the effect on any one vendor will not be significant.

*Paperwork Reduction Act*

This action does not contain reporting or record keeping requirements subject to review by OMB pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

*Unfunded Mandate Reform Act of 1995 (UMRA)*

Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This notice contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

**Background**

*Thrifty Food Plan (TFP) and allotments.* As provided for in Section 3(o) of the Act, 7 U.S.C. 2012(o), the TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan provides for a diet required to feed a family of four persons consisting of a man and woman aged 20 to 50, a child 6 to 8 and a child 9 to 11. The cost of the TFP is adjusted monthly to reflect changes in the costs of the food groups.

The TFPs for Alaska and Hawaii are based on an adjusted average for the six-month period that ends with June 1999. Since the Bureau of Labor Statistics (the source of food price data) no longer publishes monthly information to compute Alaska and Hawaii TFPs, the adjusted average provides a proxy for actual June 1999 TFP costs. The adjusted average is equal to January-June 1999 TFP costs for Alaska and Hawaii increased by the average percentage difference between the cost of the TFP in Alaska and Hawaii in June and the January-June average in 1986 (a 1.53 percent increase over January-June costs in Alaska and 1.82 percent increase in Hawaii).

For the period January through June 1999, the average cost of the TFP was $516.20 in Alaska, and $653.10 in Hawaii. The proxy in Alaska for actual June 1999 TFP costs was $524.09. This proxy is multiplied by three separate adjustment factors to create three TFPs for Urban Alaska, Rural I Alaska, and

Rural II Alaska. The proxy in Hawaii for actual June 1999 TFP costs was $664.98. The June 1999 cost of the TFP was $628.80 in Guam and $548.50 in the Virgin Islands.

The maximum food stamp allotment is paid to households that have no net income. For households with some type of income, their allotments are determined by reducing the maximum allotment for their household size by 30 percent of the household's net income in accordance with Section 8 (a) of the Act, 7 U.S.C. 2017 (a). To obtain the maximum food stamp allotment for each household size, the TFP costs are divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result rounded down to the nearest dollar.

Pursuant to Section 3 (o)(3) of the Act, maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and the District of Columbia, so they are based upon either the lower of their respective TFPs or the TFP for rural II Alaska.

MAXIMUM ALLOTMENT AMOUNTS [1]—OCTOBER 1999 AS ADJUSTED.

| Household size | Urban Alaska | Rural I Alaska | Rural II Alaska | Hawaii | Guam[2] | Virgin Islands[2] |
|---|---|---|---|---|---|---|
| 1 | $158 | $202 | $245 | $199 | $188 | $164 |
| 2 | 290 | 370 | 450 | 365 | 345 | 301 |
| 3 | 415 | 530 | 645 | 523 | 495 | 431 |
| 4 | 528 | 673 | 819 | 664 | 628 | 548 |
| 5 | 627 | 799 | 973 | 789 | 746 | 651 |
| 6 | 752 | 959 | 1168 | 947 | 896 | 781 |
| 7 | 831 | 1060 | 1291 | 1047 | 990 | 863 |
| 8 | 950 | 1212 | 1475 | 1196 | 1131 | 987 |
| Each Additional Member | +119 | +152 | +184 | +150 | +141 | +123 |

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, and 100 percent of the TFP and rounding.

[2] Adjusted to reflect changes in the cost of food in the 48 States and D.C., which correlate with price changes in these areas. Maximum allotments in these areas cannot exceed those in Rural II Alaska.

Dated: February 16, 2000.

**Samuel Chambers, Jr.,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 00–12654 Filed 5–18–00; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

RIN 0584–AC88

## Food Stamp Program: Maximum Allotments for the 48 States and the District of Columbia, and Income Eligibility Standards for the 48 States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** General notice.

**SUMMARY:** The purpose of this notice is to update for Fiscal Year 2000 the maximum allotment levels, which are the basis for determining the amount of food stamps which participating households receive and the gross and net income limits for food stamp eligibility. These adjustments, required by law, take into account changes in the cost of living and statutory adjustments since the amounts were last calculated.

**DATES:** This notice is effective May 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Margaret Werts Batko, Assistant Chief, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2516. The e-mail address is Margaret.Batko@FNS.USDA.GOV

**SUPPLEMENTARY INFORMATION:**

### Implementation

As required by Section 3(o) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2012(o), State agencies should have implemented the adjustments to the maximum food stamp allotments reflected in this notice on October 1, 1999, based on advance notice of the new amounts. In accordance with regulations published at 47 FR 46485–46487 (October 19, 1982), annual statutory adjustments to the maximum allotment levels and income eligibility standards are issued by general notices published in the **Federal Register** and not through rulemaking proceedings.

### Classification

*Executive Order 12866*

This notice has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

*Executive Order 12372*

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29116, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

*Regulatory Flexibility Act*

The Under Secretary for Food, Nutrition and Consumer Services has certified that this action will not have a significant economic impact and will not have an impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

*Paperwork Reduction Act*

This action does not contain reporting or record keeping requirements subject to approval by OMB pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

*Unfunded Mandate Reform Act of 1995 (UMRA)*

Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or

tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, Section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This notice contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of more than $100 million or more in any one year. Thus this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

**Background**

*Income Eligibility Standards*

The eligibility of households for the Food Stamp Program, except those in which, in accordance with Section 5(a) of the Act, 7 U.S.C. 2014(a), all members are receiving "benefits under a State program funded under part A of title IV of the Social Security Act, supplemental security income [SSI] benefits under title XVI of the Social Security Act, or aid to the aged, blind, or disabled under title I, X, XIV, or XV of the Social Security Act * * *", is determined by comparing their incomes to the appropriate income eligibility standards (limits). Pursuant to Section 5(c)(2) of the Act, households containing an elderly or disabled member are required to have qualifying net incomes, while households which do not contain an elderly or disabled member must have qualifying net incomes and qualifying gross incomes. Households in which all members are receiving Social Security Act title IV benefits or SSI are "categorically eligible;" under 7 CFR 273.2(j)(2) their incomes do not have to be below the income limits.

As provided in Section 5(c)(1) of the Act, the net and gross income limits applicable to food stamp eligibility are derived from the Federal income poverty guidelines established under Section 673(2) of the Community Services Block Grant Act, 42 U.S.C. 9902(2). The net income limit is 100 percent of the poverty line. The gross income limit is 130 percent of the poverty line. The guidelines are updated annually. Based on that update, the Food Stamp Program's income eligibility standards are updated each October 1. Instructions for implementation of the required adjustments for October 1, 1999, were issued by the Deputy Administrator of the Food and Nutrition Service, Food Stamp Program, in a July 26, 1999, memorandum to all State Food Stamp Program Directors. The revised income eligibility standards for the 48 States (including the District of Columbia, Guam and the Virgin Islands), Alaska and Hawaii are as follows:

FOOD STAMP PROGRAM

[October 1, 1999–September 30, 2000]

| Household size | 48 States [1] | Alaska | Hawaii |
|---|---|---|---|
| **Net Monthly Income Eligibility Standards (100 Percent of Poverty Level)** | | | |
| 1 | $687 | $860 | $791 |
| 2 | 922 | 1,154 | 1,061 |
| 3 | 1,157 | 1,447 | 1,331 |
| 4 | 1,392 | 1,740 | 1,601 |
| 5 | 1,627 | 2,034 | 1,871 |
| 6 | 1,862 | 2,327 | 2,141 |
| 7 | 2,097 | 2,620 | 2,411 |
| 8 | 2,332 | 2,914 | 2,681 |
| Each Add. Member | +235 | +294 | +270 |
| **Gross Monthly Income Eligibility Standards (130 Percent of Poverty Level)** | | | |
| 1 | $893 | $1,118 | $1,029 |
| 2 | 1,199 | 1,500 | 1,380 |
| 3 | 1,504 | 1,881 | 1,731 |
| 4 | 1,810 | 2,262 | 2,082 |
| 5 | 2,115 | 2,644 | 2,433 |
| 6 | 2,421 | 3,025 | 2,784 |
| 7 | 2,726 | 3,406 | 3,135 |
| 8 | 3,032 | 3,788 | 3,486 |
| Each Add. Member | +306 | +382 | +351 |
| **Gross Monthly Income Eligibility Standards for Households Where Elderly Disabled Are a Separate Household (165 Percent of Poverty Level)** | | | |
| 1 | $1,133 | $1,419 | $1,305 |
| 2 | 1,521 | 1,903 | 1,751 |
| 3 | 1,909 | 2,387 | 2,196 |
| 4 | 2,297 | 2,871 | 2,642 |
| 5 | 2,684 | 3,355 | 3,087 |
| 6 | 3,072 | 3,839 | 3,533 |
| 7 | 3,460 | 4,323 | 3,978 |
| 8 | 3,848 | 4,807 | 4,424 |
| Each Add. Member | +388 | +484 | +446 |

[1] Includes District of Columbia, Guam, and the Virgin Islands

*Thrifty Food Plan (TFP) and Allotments*

As provided for in Section 3(o) of the Act, the TFP is a plan for the consumption of foods of different types (food groups) that a household might use to provide nutritious meals and snacks for household members. The plan reflects a diet required to feed a family of four persons consisting of a man and woman aged 20 to 50, a child 6 to 8 and a child 9 to 11. The cost of the TFP is adjusted monthly to reflect changes in the costs of the food groups.

The TFP is also the basis for establishing food stamp allotments. "Allotment" is defined in Section 3(a) of the Act as "the total value of coupons a household is authorized to receive during each month." Food stamp allotments are adjusted periodically to reflect the changes in food cost levels indicated in the changing amounts of the TFP. Prior to the amendment of Section 3(o) of the Act by Section 804 of Public Law 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, allotment amounts were established on each October 1 at 103% of the cost of the TFP in the previous June. Amended Section 3(o)(4) of the Act now provides that the TFP will be adjusted each October 1 to reflect the exact cost, or 100%, of the TFP for the previous June, rounding the results to the nearest lower dollar increment for each household size, except that on October 1,1996, the TFP was not to have been reduced below the amounts in effect on September 30, 1996.

To obtain the maximum food stamp allotment for each household size for the period October 1, 1999, to September 30, 2000, June 1999 TFP costs for the above described four-person household were divided by four, multiplied by the appropriate household size and economy of scale factor, in accordance with Section 3(o)(1) of the Act, and the final result was rounded down to the nearest dollar. The maximum benefit, or allotment, is paid to households with no net income. For a household with income, the household's allotment is determined by reducing the maximum allotment for the household's size by 30 percent of the individual household's net income in accordance with Section 8(a) of the Act, 7 U.S.C. 2017(a). The following table shows the current allotments for the 48 States and the District of Columbia.

MAXIMUM FOOD STAMP ALLOTMENTS
[October 1999—September 2000]

| Household size | 48 States and DC |
|---|---|
| 1 | 127 |
| 2 | 234 |
| 3 | 335 |
| 4 | 426 |
| 5 | 506 |
| 6 | 607 |
| 7 | 671 |
| 8 | 767 |
| Add on | 96 |

Dated: February 16, 2000.

**Samuel Chambers, Jr.,**

*Administrator, Food and Nutrition Service.*

[FR Doc. 00–12655 Filed 5–18–00; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Berkeley Electric Cooperative, Inc; Notice of Availability of an Environmental Assessment

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of aailability of an Environmental Assessment.

**SUMMARY:** Notice is hereby given that the Rural Utilities Service (RUS) is issuing an Environmental Assessment (EA) with respect to the potential environmental impacts related to the construction of a 115/24.9 kV electric distribution substation by Berkeley Electric Cooperative. RUS may provide financing assistance for the project.

**FOR FUTHER INFORMATION CONTACT:** Bob Quigel, RUS, Engineering and Environmental Staff, Stop 1571, 1400 Independence Avenue, SW, Washington, DC 20250–1571, telephone: (202) 720–0468. Bob's e-mail address is bquigel@rus.usda.gov. Information is also available from Tom Meyers, Vice President of Engineering, at Berkeley Electric Cooperative, P.O. Box 1234, Monks Corner, South Carolina, 29461–1234, telephone (843) 761–8200.

**SUPPLEMENTARY INFORMATION:** The project consists of the construction of a 115/24.9 kV electric distribution substation located in Dorchester County, South Carolina, on the southern side of Ridge Road approximately 1000 feet east of the intersection of Parkers Ferry Road and Ridge Road. The fenced area for the substation will be approximately 7.5 acres. The fence surrounding the substation will be 7 feet high and topped with 3 strands of barbed wire. A short gravel road will be constructed from Ridge Road to the substation site. Approximately 500 feet of overhead 115 kV transmission line will connect the substation to an existing transmission line south of Parkers Ferry Road. Three underground distribution feeder lines will connect the substation to Berkeley Electric Cooperative's electric distribution system.

Berkeley Electric Cooperative submitted to RUS an environmental report which describes the project further and considers its potential environmental impacts. RUS has conducted an independent evaluation of the environmental report and believes that it accurately assesses the impacts of the proposed project. No adverse impacts are expected with the construction of the project. RUS has accepted the document as its Environmental Assessment and is making it available for public review.

The EA can be reviewed at Berkeley Electric Cooperative's Headquarters Office at 414 North Highway 52, Moncks Corner, South Carolina 29461 and their Johns Island District Office located at 3351 Maybank Highway, Johns Island, South Carolina 29455.

Questions and comments should be sent to RUS at the address provided. RUS should receive comments on the EA in writing within 30 days of the publication date of this notice to ensure that the comments are taken into consideration prior to RUS making its environmental determination.

Any final action by RUS related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of environmental review procedures as prescribed by the Council on Environmental Quality Regulations and RUS Environmental Policies and Procedures.

Dated: May 15, 2000.

**Glendon D. Deal,**

*Acting Director, Engineering and Environmental Staff.*

[FR Doc. 00–12653 Filed 5–18–00; 8:45 am]

BILLING CODE 3410–15–U

## DEPARTMENT OF COMMERCE

### International Trade Administration

**(A–588–837)**

### Notice of Court Decision: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice.

**SUMMARY:** In a suit challenging the Department of Commerce's antidumping duty investigation of large newspaper printing presses and components thereof, whether assembled or unassembled, from Japan, the Court of International Trade has affirmed the Department of Commerce's remand determination and entered final judgment. *See Mitsubishi Heavy Industries, Ltd., et al.*, v. *United States*, Consol. Court No. 96–10–02292, Slip Op. 00–45 (CIT April 26, 2000). This decision was not in harmony with the Department of Commerce's original final determination. As a result, the revised antidumping duty margin for Mitsubishi Heavy Industries, Ltd. is 59.67 percent. The revised antidumping duty margin for Tokyo Kikai Seisakusho, Ltd., is 51.97 percent. The revised "All Others" rate is 55.05 percent.

Consistent with the decision of the Court of Appeals for the Federal Circuit in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department of Commerce will direct the Customs Service to change the cash deposit rate being used in connection with the suspension of liquidation of the subject merchandise once there is a "final and conclusive" decision in this case.

**EFFECTIVE DATE:** May 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Irene Darzenta Tzafolias at (202) 482–0922, or David J. Goldberger at (202) 482–4136, Office of Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 23, 1996, the Department of Commerce (the Department) published notice of its final determination of the less-than-fair-value (LTFV) investigation of large newspaper printing presses and components thereof, whether assembled or unassembled (LNPP), from Japan. *See Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 38139 (July 23, 1996). In the final determination of the LTFV investigation, the Department established a final dumping margin of 62.96 percent ad valorem for Mitsubishi Heavy Industries, Ltd. (MHI), 56.28 percent ad valorem for Tokyo Kikai Seisakusho, Ltd., (TKS) and 58.97 percent ad valorem for "All Others." On September 4, 1996, the Department published an antidumping duty order correcting ministerial errors made in the final determination and instructing the Customs Service to collect cash deposits at the rate of 62.26 percent ad valorem for MHI, 56.28 percent ad valorem for TKS, and 58.69 percent ad valorem for "All Others." *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan*, 61 FR 46621 (September 4, 1996).

Following publication of the Department's antidumping duty order, respondents MHI and TKS and the petitioner, Goss Graphic System, Inc., filed a lawsuit with the Court of International Trade (CIT) challenging various aspects of the Department's final determination of the LTFV investigation. In its first decision in this case on June 23, 1998, *Mitsubishi Heavy Industries, Ltd.* v. *United States*, 15 F. Supp. 2d 807 (CIT 1998), the CIT issued an order remanding several issues to the Department. As part of its remand determination filed on December 21, 1998, the Department revised its calculation of certain indirect selling expenses, resulting in revised margins for the respondents. *See September 17, 1998, Final Results of Redetermination Pursuant to Court Remand* at 1–4. In *Mitsubishi Heavy Industries*, v. *United States*, 54 F. Supp. 2d 1183 (CIT 1999), the CIT ordered a second remand determination in order for the Department to further explain its foreign like product determination. No additional recalculations were required in the Department's second redetermination, and the CIT has now affirmed the redetermination and issued final judgment.

As a result, the revised antidumping duty margin for MHI is 59.67 percent. The revised antidumping duty margin for TKS is 51.97 percent. The revised "All Others" rate is 55.05 percent.

#### Suspension of Liquidation

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Court of Appeals for the Federal Circuit (CAFC) held that the Department must publish notice of a decision of the CIT or the CAFC which is not in harmony with the Department's determination. Publication of this notice fulfills this obligation. The CAFC also held that the Department must suspend liquidation of the subject merchandise until there is a "final and conclusive" decision on the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation of the subject merchandise pending the expiration of the period to appeal the CIT's April 26, 2000 ruling, or if that ruling is appealed, pending a final decision by the CAFC. However, because entries of the subject merchandise continue to be suspended pursuant to the antidumping duty order in effect (the Department is conducting an administrative review for the 1998–1999 period), the Department need not send additional instructions to the Customs Service to suspend liquidation. Further, consistent with *Timken*, the Department will order the Customs Service to change the relevant cash deposit rates in the event that the CIT's ruling is not appealed or the CAFC issues a final decision affirming the CIT's ruling.

Dated: May 12, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–12677 Filed 5–18–00; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Institute of Standards and Technology

### Announcement of a Public Workshop Regarding a Proposed Memorandum of Understanding Between the National Institute of Standards and Technology and the National Cooperation for Laboratory Accreditation

**AGENCY:** National Institute of Standards and Technology.

**ACTION:** Notice of public meeting.

**SUMMARY:** The National Institute of Standards and Technology (NISTO invites interested parties to attend a public workshop regarding a proposed Memorandum of Understanding (MOU) between NIST and the National Cooperation for Laboratory Accreditation (NACLA). The workshop will include a brief presentation on the

components of the MOU, and an opportunity for discussion.

The purpose of the proposed MOU is to develop and maintain a system in the United States that will (a) recognize competent laboratory accreditation bodies to accredit testing and calibration laboratories when the services of such laboratories are required to demonstrate compliance with procurement and regulatory requirements of government at Federal, state or local levels, and to meet the needs of the private sector; (b) promote the use by government and the private sector of such accreditation bodies; and, (c) recognize competent laboratory accreditation bodies to carry out designated activities under government-to-government agreements on the mutual recognition of conformity assessment activities in support of NIST's role as a designating authority under those agreements.

The proposed MOU with NACLA will support a key goal of the National Technology Transfer and Advancement Act of 1995 (NTTAA) by reducing redundancy and complexity in the development and promulgation of conformity assessment requirements and measures by government at all levels. The draft MOU will be posted on the NIST website at *http://www.ts.nist.gov* by June 1st. Copies of the draft MOU may also be requested from NIST. Interested parties are invited to submit comments to NIST a any time before the workshop. There is no charge to attend the workshop.

**DATES:** The workshop will be held on June 23, 2000, from 10 a.m. to 12 p.m.

**ADDRESSES:** The workshop will be held at The National Institute Standards and Technology, Administration Building, Lecture Room A, 100 Bureau Drive, Gaithersburg, MD 20899. Comments on the proposed MOU should be sent to the attention of "NACLA Comments" at the Office of the Director, Technology Services, National Institute of Standards and Technology, Mail Stop 2000, Gaithersburg, MD 20899–2000.

**FOR FURTHER INFORMATION CONTACT:** For further information, you may telephone 301–975–2396 or e-mail: mary.saunders@nist.gov.

**SUPPLEMENTARY INFORMATION:** The National Technology Transfer and Advancement Act of 1995 (PL 104–113, 1996) directs NIST to coordinate Federal, state and local conformity assessment activities with the private sector with the goal of eliminating unnecessary duplication and complexity in the development and promulgation of conformity assessment requirements and measures. NIST focused on coordination of laboratory accreditation as a key element of conformity assessment in the Implementation Plan it provided to Congress. NIST believes that a proposed MOU with NACLA supports an important goal of the NTTAA, to reduce redundancy and complexity in the development and promulgation of conformity assessment requirements and measures by government at all levels. The MOU will also improve coordination and communication between and within the private and public sectors on conformity assessment requirements and practices.

The purpose of the MOU will be to develop and maintain a system in the United States that will (a) recognize competent laboratory accreditation bodies to accredit testing calibration laboratories when the services of such laboratories are required to demonstrate compliance with procurement and regulatory requirements of government at Federal, state or local levels; (b) promote the use by government and the private sector of such accreditation bodies; and, (c) recognize competent laboratory accreditation bodies to carry out designated activities under government-to-government agreements on the mutual recognition of conformity assessment activities in support of NIST's role as a designating authority under those agreements.

A brief presentation on the MOU will be made at the workshop. After the presentation there will be an opportunity for public discussion. Written comments may be submitted to NIST at any time prior to the workshop. There is no attendance fee.

**Raymond G. Kammer,**

*Director.*

[FR Doc. 00–12636 Filed 5–18–00; 8:45 am]

**BILLING CODE 3510–13–M**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

**[Docket No. 000404094–0094–01]**

**RIN 0648–ZA84**

### Improved Methods for Ballast Water Treatment and Management and Prevention of Small Boat Transport of Invasive Species: Request for Proposals for FY 2000

**AGENCIES:** National Sea Grant College Program, National Oceanic and Atmospheric Administration, Department of Commerce and Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of request for proposals.

**SUMMARY:** The purpose of this notice is to advise the public that the National Sea Grant College Program (Sea Grant) and the U.S. Fish and Wildlife Service (Service) are entertaining proposals to participate in innovative research, outreach, and demonstration projects that address the problems of aquatic invasive species in U.S. waters. In FY 2000 only, Sea Grant expects to make available about $700,000, and the Service $300,000, to support projects to improve ballast water treatment and management in the Chesapeake Bay and the Great Lakes in particular (Sea Grant), and in U.S. coastal and Great Lakes waters in general (Service). Also in FY 2000 only, Sea Grant expects to make available about $40,000 to support projects to reduce the transport of invasive species by small boats in the Lake Champlain Basin.

**DATES:** Proposals must be submitted before 5 p.m. EST on June 19, 2000.

**ADDRESSES:** Proposals must be submitted to the National Sea Grant Office at: National Sea Grant College Program, R/SG, Attn: Invasive Species Competition, Room 11841, NOAA, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Leon M. Cammen, Invasive Species Coordinator, National Seat Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910, or Mary Robinson, Secretary, National Sea Grant Office, 301–713–2435; facsimile 301–713–0799; or Sharon Gross, U.S. Fish and Wildlife Service, 703–358–1718; facsimile 703–358–2044.

**SUPPLEMENTARY INFORMATION:**

### 1. Program Authority

**Authority:** 16 U.S.C. 4701 *et seq.*; 33 U.S.C. 1121–1131.

Catalog of Federal Assistance Number: 11.417, Sea Grant Support; 15.FFA, Fish and Wildlife Management Assistance.

### II. Program Description

*Background*

Nonindigenous species introductions are increasing in frequency and causing substantial damage to the Nation's environment and economy. Although the most prominent of these introductions in the aquatic environment has been the zebra mussel, many other nonindigenous species have been introduced and have truly become

a nationwide problem that threatens many aquatic ecosystems. While some intentional introductions may have been beneficial effects, many other nonindigenous species already present in U.S. waters, or with the potential to invade, may cause significant damage to coastal resources and the economies that depend upon them. In response, the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701 *et seq.*) and the National Invasive Species Act of 1996 (16 U.S.C. 4711–4714) established a framework for the Nation to address the problems of aquatic nuisance species invasions of coastal and Great Lakes ecosytems.

In addition, the Acts recognized the serious threat posed by ballast water discharge in causing new invasions and called for ballast water management demonstration programs. A 1996 National Research Council study of the ballast water problem, "Stemming the Tide," concluded that with the growth of global shipping, and the changes modern shipping practices, introductions of nonindigenous species through ballast water discharge were likely to remain a serious problem. The study called for the development of improved technology for the management of ballast water to eliminate this threat to the Nation's ecosystems. A demonstration project testing filtration of ballast water as a method of reducing introductions has been carried out in the Great Lakes, but the possibility that there will be a single solution that is acceptable for all modes of shipping operations and classes of vessels is unlikely.

In addition, vessels that declare No Ballast On Board (NOBOB) may still pose a potential risk for introducing nonindigenous species by reballasting into tanks containing residual ballast (including sediments) and subsequently discharging this mixture into the receiving waters. Although the concern has been most strongly expressed with respect to the Great Lakes, residual water and sediment also represent a potential problem in other regions of the country.

In addition to the potential for introductions of nonindigenous species from large ships, small recreational boats are a major vector of movement of some invasive species. For example, recreational boating has been identified as a major cause of the movement of zebra mussels from larger bodies of water, such as the Great Lakes and Lake Champlain, to smaller inland lakes. Outreach and educational activities targeting the recreational boating community appear to be the most effective means of addressing this problem.

*Funding Availability and Priorities*

(1) Ballast Water Treatment and Management

The National Sea Grant College Program of the National Oceanic and Atmospheric Administration (NOAA) of the Department of Commerce (DOC) and the U.S. Fish and Wildlife Service of the Department of the Interior (DOI) encourage proposals that address one of the following three program areas:

(a) Research to develop workable and effective methods to eliminate nonindigenous species introductions from ballast water without imposing undue hardships on the shipping industry. Possible approaches include (but are not limited to) development and/or demonstration of ship-board or on-shore technologies for treatment or management of ballast water. Projects that include on-vessel demonstrations of feasibility will be given priority.

(b) Research and/or synthesis of existing information and measurement to develop a set of ballast water effluent standards and/or test methods that can be used to evaluate the effectiveness of ballast water exchange and other technologies or treatments that may be developed, such that by meeting such a standard, any ballast water pumped into the environment would not pose an unacceptable risk of introduction on nonindigenous species to the receiving waters.

(c) Research and/or synthesis of information and measurements to determine the risk of the introduction of nonindigenous species to the receiving waters from vessels carrying residual ballast (also known as vessels declaring No Ballast On Board, or NOBOB). Research should include consideration of vessels that have reballasted into tanks containing residual ballast and subsequently discharged this mixture into the receiving waters. Studies that examine the risk of introductions by NOBOBs, through analyses of shipping patterns and biological components, would be useful in developing preventative technology and practices. An approach that compared NOBOB patterns and risks of the Great Lakes and Chesapeake Bay would be very useful, as the Chesapeake could serve as a model for other U.S. coastal port systems.

The National Sea Grant College Program will support only those ballast water projects that clearly target ballast water management issues in the Chesapeake Bay and/or the Great Lakes, but investigators located outside those regions may participate if all demonstrations are carried out in the targeted regions. About $700,000 is available from Sea Grant to support these activities in FY 2000. The Federal funding requested for individual projects may not exceed $350,000; matching funds may also be included, but are not required. Proposals are limited to one year of funding, but activities may extend for up to two years; an annual report showing satisfactory progress must be submitted at the end of the first year. Project activities should include identified milestones for each project year. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of: (a) The Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

The U.S. Fish and Wildlife Service will support projects that address ballast water management issues anywhere in coastal waters of the United States. About $300,000 is available to support these activities in FY 2000. The Federal funding requested for individual projects may not exceed $150,000; matching funds may also be included, but are not required. The indirect cost rate may not exceed 15 percent of direct costs. Proposals are limited to one year of funding, but activities may extend for up to two years; an annual report showing satisfactory progress must be submitted at the end of the first year. Project activities should include identified milestones for each project year.

(2) Small Boat Transport of Zebra Mussels and Other Aquatic Nuisance Species From Lake Champlain

The National Sea Grant College Program encourages proposals that address the following program area:

(a) Outreach and education to prevent the spread of aquatic nuisance species from Lake Champlain to nearby waters. Project activities should be consistent with the Recreational Activities Guidelines developed by the Aquatic Nuisance Species Task Force [**Federal Register**, April 13, 2000, Volume 65, Number 72, Pages 19953–19957].

About $40,000 is available from Sea Grant to support the "Small Boat Transport" program area in FY 2000; matching funds may also be included,

but are not required. Proposals are limited to one year of funding, but activities may extend for up to two years; an annual report showing satisfactory progress must be submitted at the end of the first year. Project activities should include identified milestones for each project year. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of: (a) The Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

**III. Eligibility**

Any person may apply for funding in response to this announcement. Applications from non-Federal and eligible Federal applicants will be competed against each other. Proposals selected for funding from non-Federal applicants will be funded through a project grant or cooperative agreement under the terms of this notice. Federal agencies will be funded through an inter-agency transfer.

**Please Note:** A Federal applicant will be considered eligible only if it can demonstrate that it has legal authority to receive funds from another federal agency in excess of its appropriation. The Economy Act (31 U.S.C. 1535) will not be considered as legal authority to transfer funds since awards issued under this announcement will not constitute a purchase of goods or services by DOC or DOI.

**IV. Evaluation Criteria**

The evaluation criteria for proposals submitted for support under this announcement are as follows:

(1) Impact of Proposed Project (65%): The effect this activity will have on reducing the impact of invasive species on the environment and/or the economy, or the need for this activity as a necessary step toward such a reduction in impact; inclusion of field-scale demonstration for projects proposing to develop ballast water treatment technologies or practices; and the degree to which potential users of the results of the proposed activity have been involved in planning the activity and will be involved in the execution of the activity as appropriate.

(2) Scientific or Professional Merit (35%): Degree to which the activity will advance the state of the science or discipline through synthesis of existing information and use and extension of cutting edge as well as state-of-the-art methods; degree to which new approaches to solving problems and exploiting opportunities in resource management or development, or in public outreach on such issues will be employed; degree to which investigators are qualified by education, training and/or experience to execute the proposed activity; and record of achievement with previous funding.

**V. Selection Procedures**

Proposals will be subjected to peer review and ranked in accordance with the assigned weights of the above evaluation criteria by an independent panel consisting of government, academic, and industry experts. Panel members will provide individual evaluations on each proposal, but there will be no consensus advice. Their recommendations and evaluations will be considered by the Federal Program Officers for Sea Grant and the Service who will: (a) Ascertain which proposals best meet the program priorities, as described in Section II under Funding Availability and Priorities, giving consideration to geographic distribution and representation, maintaining a balanced program of research, and not substantially duplicating other projects that are currently funded or are approved for funding by NOAA, DOI, and other State and Federal agencies (hence, awards may not necessarily be made to the highest-scored proposal); (b) select the proposals to be funded; (c) determine which components of the selected projects will be funded; (d) determine the total duration of funding for each proposal; and (e) determine the amount of funds available for each proposal.

Investigators may be asked to modify objectives, work plans, or budgets prior to final approval of the award. Subsequent grant administration procedures will be in accordance with current DOC or DOI grants procedures. A summary statement of the scientific review by the peer panel will be provided to each applicant.

**VI. Instructions for Application**

*Timetable*

June 19, 2000, 5 p.m. EST—Full proposals due at NSGO.

July 15, 2000 (approximate)—Successful applicants notified.

October 1, 2000 (approximate)—Funds awarded to successful applicants; projects begin.

*General Guidelines*

The ideal proposal attacks a well-defined problem that will be or is a significant societal issue. The organization or people whose task it will be to make related decisions, or who will be able to make specific use of the project's results, will have been identified and contacted by the Principal Investigator(s). The project will show an understanding of what constitutes necessary and sufficient information for responsible decision-making or for applied use, and will show how that information will be provided by the proposed activity, or in concert with other planned activities.

Research projects are expected to have: A rigorous, hypothesis-based scientific work plan, or a well-defined, logical approach to address an engineering problem; a strong rationale for the proposed research; and a clear and established relationship with the ultimate users of the information. Their contribution to the research may be in the form of collaboration, in-kind services, or dollar support. Projects that are solely monitoring efforts are not appropriate for funding.

*What To Submit*

Each proposal must include the first seven items listed below; the standard forms included as Item 8 will be required only for proposals selected for funding. All pages should be single- or double-spaced, typewritten in at least a 10-point font, printed on metric A4 (210 mm x 297 mm) or 8.5″ x 11″ paper. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including figures, charts, graphs, maps, photographs, and other pictorial presentations, are included in the 15-page limitation for the Project Description; letters of support, if any, are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices, other than support letters, if any, are permitted. Failure to adhere to the above limitations will result in the proposal being rejected without review.

(1) Signed Title Page: The title page should be signed by the Principal Investigator and the institutional representative. The Principal Investigators and collaborators and the institutional representative should be identified by affiliation and contact information. The total amount of

Federal funds being requested should be listed for each budget period; for projects involving multiple institutions, the total should include all subrecipient budgets.

(2) Project Summary: This information is very important. Prior to attending the peer review panel meetings, some of the panelists may read only the project summary. Therefore, it is critical that the project summary accurately describes the research being proposed and conveys all essential elements of the research. Applicants are encouraged to use the Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the following information:

1. Title: Use the exact title as it appears in the rest of the application.

2. Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator.

3. Funding: Funding request for each year of the project, including matching funds if appropriate.

4. Project Period: Start and competition dates. Proposals should request a start date of September 1, 2000, or later.

5. Project Summary: This should be a brief statement of the rationale for the project, the scientific or technical objectives and/or hypotheses to be tested, and a summary of work to be completed.

(3) Project Description (15-Page Limit)

(a) Introduction/Background/Justification: Subjects that the investigator(s) may wish to include in this section are: (i) current state of knowledge; (ii) contributions that the study will make to the particular discipline or subject area; (iii) contributions and impacts the study will make toward reducing the problem of aquatic invasive species; and (iv) as appropriate, contributions of investigator's previously funded research results to current proposal.

(b) Research or Technical Plan: (i) Objectives to be achieved, hypotheses to be tested; (ii) plan of work—discuss how stated project objectives will be achieved; and (iii) role of project personnel.

(c) Output: Describe the project outputs and impacts that will enhance the Nations's ability to reduce the impacts of aquatic invasive species.

(d) Coordination with other Program Elements: Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

(e) Vessel Selection (if appropriate): Applications proposing on-board demonstrations of ballast water management should address the requirements and priorities listed in the National Invasive Species Act of 1996 (16 U.S.C. 4711–4714) for selecting vessels for demonstration projects. These requirements are available through the Sea Grant web site (www.mdsg.umd.edu/NSGO/research/nonindigenous/RFPOO.html) or from Dr. Leon Cammen at the National Sea Grant Office (phone: 301–713–2435 x136 or e-mail: leon.cammen@noaa.gov).

(4) Literature Cited

(5) Budget and Budget Justification: There should be a separate budget for each year of the project as well as a cumulative annual budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may use their own form as long as it provides the same information as the Sea Grant form. Subcontracts should have a separate budget page. Matching funds must be indicated if provided. Applicants should provide justification for all budget items in sufficient detail to enable the reviewers to evaluate the appropriateness of the funding requested. For those applications to be supported by the Service, the indirect cost rate may not exceed 15 percent of direct costs. For those applications to be supported by Sea Grant, regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the Recipient shall be the lesser of: (a) The Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) the line item amount for the Federal share of indirect costs contained in the approved budget of the award.

(6) Current and Pending Support: Applicants must provide information on all current and pending support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. All current project support from whatever source (*e.g.*, Federal, State, or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the Principal Investigator and other senior personnel must be included, even if they receive no Federal salary support from the project(s). The number of person-months per year to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals already submitted or submitted concurrently to other possible sponsors, including those within the Departments of Commerce and the Interior.

(7) Vitae (2 pages maximum per investigator).

(8) Standard Application Forms: These forms will be required only for those proposals selected for funding following the review process. Applicants may obtain all required application forms through the Sea Grant web site: (*http://www.nsgo.seagrant.org/research/rfp/index.html#3*) or from Dr. Leon M. Cammen at the National Sea Grant Office (phone: 301–713–2435 x136 or e-mail: leon.cammen@noaa.gov).

(a) Standard Forms 424, Application for Federal Assistance, and 424B, Assurances—Non-Construction Programs, (Rev 4–88). Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424. For Section 10, applicants should enter either "11.417" for the CFDA Number and "Sea Grant Support" for the title or "15.FFA" for the CFDA Number and "Fish and Wildlife Management Assistance" for the title depending on the agency that will be supporting the project. The form must contain the original signature of an authorized representative of the applying institution.

(b) Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying", and the following explanations are hereby provided:

(i) Non-Procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR part 26, Section 105) are subject to 15 CFR part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(iii) Anti-Lobbying. Persons (as defined at 15 CFR part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions", and the lobbying section of the certification form prescribed above applies to applications/bids for

grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single-family maximum mortgage limit for affected programs, whichever is greater; and

(iv) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities", as required under 15 CFR part 28, Appendix B.

(c) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities". Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

**VII. How To Submit**

Proposals must be submitted to the National Sea Grant Office according to the schedule outlined above. Although investigators are not required to submit more than 3 copies of each proposal, the normal review process requires 10 copies. Investigators are encouraged to submit sufficient copies for the full review process, if it does not cause a financial hardship, if they wish all reviewers to receive color, unusually sized (not 8.5″ x 11″), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. Proposals should be addressed to: National Sea Grant Office, R/SG, Attn.: Mrs. Geraldine Taylor, Invasive Species Competition, 1315 East-West Highway, Room 11806, Silver Spring, MD 20910 (phone number for express mail applications is 301–713–2435).

Applications received after the deadline and applications that deviate from the format described above or exceed the budget limitations will be returned to the sender without review. Facsimile transmissions and electronic mail submission of proposals will not be accepted.

**VIII. Other Requirements**

(1) Federal Policies and Procedures—Recipients and subrecipients are subject to all Federal laws and Federal, DOC, and DOI policies, regulations, and procedures applicable to Federal financial assistance awards.

(2) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(3) Pre-Award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC or DOI to cover pre-award costs.

(4) No Obligation for Future Funding—If an application is selected for funding, DOC and DOI have no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC or DOI.

(5) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(a) The delinquent account is paid in full,

(b) A negotiated repayment schedule is established and at least one payment is received, or

(c) Other arrangements satisfactory to DOC or DOI are made.

(6) Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity.

(7) False Statements—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(8) Intergovernmental Review—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs".

(9) Purchase of American-Made Equipment and Products—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(10) Pursuant to Executive Orders 12876, 12900, and 13021, DOC/NOAA is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the Nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: http://www.ed.gov/offices/OCR/99minin.html.

(11) For awards receiving funding for the collection or production of geospatial data (*e.g.*, GIS data layers), the recipient will comply to the maximum extent practicable with E.O. 12906, Coordinating Geographic Data Acquisition and Access, The National Spatial Data Infrastructure, 59 FR 17671 (April 11, 1994). The award recipient must document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center and make that standardized documentation electronically accessible. The standard can be found at the following Internet website: (http://www.fgdc.gov/standards/standards/html).

**Classification**

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collection of information requirements subject to the Paperwork Reduction Act. The Sea Grant Budget Form, 90–4, Sea Grant Summary Form, 90–2, and Standard Forms 424 and 424b have been approved under control numbers 0648–0362, 0648–0362, 0348–0043, and 0348–0040, respectively. Send comments on any aspect of these collections to National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (Attention: Francis S. Schuler) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: NOAA Desk Officer). Notwithstanding

any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Dated: May 12, 2000.

**Louisa Koch,**

*Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.*

Dated: May 10, 2000.

**Cathleen Short,**

*Assistant Director—Fisheries, Fish and Wildlife Service.*

[FR Doc. 00–12627 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–KA–M

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

May 15, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** May 19, 2000.

**FOR FURTHER INFORMATION CONTACT:** Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 69228, published on December 10, 1999.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

May 15, 2000.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 6, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 19, 2000, you are directed to adjust the limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Sublevels in Group I | |
| 315 | 134,267,555 square meters. |
| 336 | 176,630 dozen. |
| 338/339 | 2,340,182 dozen of which not more than 1,727,430 dozen shall be in Categories 338–S/339–S [2]. |
| 341 | 684,724 dozen of which not more than 415,540 shall be in Cateogry 341–Y [3]. |
| 342 | 269,911 dozen. |
| 345 | 128,000 dozen. |
| 347/348 | 2,302,424 dozen. |
| 351 | 567,560 dozen. |
| 352 | 1,642,583 dozen. |
| 360 | 8,076,935 numbers of which not more than 5,369,811 shall be in Category 360–P [4]. |
| 361 | 4,343,917 numbers. |
| 362 | 7,264,329 numbers. |
| 443 | 129,225 numbers. |
| 445/446 | 284,457 dozen. |
| 447 | 69,344 dozen. |
| 640 | 1,359,055 dozen. |
| 647 | 1,539,516 dozen. |
| 648 | 1,107,760 dozen. |
| 649 | 961,354 dozen. |
| 651 | 787,814 dozen of which not more than 140,341 dozen shall be in Category 651–B [5]. |
| 659–S [6] | 637,529 kilograms |
| Group II | |
| 330, 332, 349, 353, 354, 359–O [7], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [8], as a group. | 125,767,893 square meters equivalent. |
| Group IV | |
| 832, 834, 838, 839, 843, 850–852, 858 and 859, as a group. | 11,881,397 square meters equivalent. |
| Level not in a Group | |
| 870 | 33,149,638 kilograms. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020.

[3] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[4] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[5] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[6] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[7] Category 359–O: all HTS number except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[8] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.00–12604 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in India

May 15, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs reducing limits.

**EFFECTIVE DATE:** May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70220, published on December 16, 1999.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

May 15, 2000.

Commissioner of Customs,

*Department of the Treasury, Washington, DC 20229.*

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 22, 2000, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 336/636 | 997,391 dozen. |
| 338/339 | 4,159,857 dozen. |
| 340/640 | 2,166,908 dozen. |
| 341 | 4,565,583 dozen of which not more than 2,828,440 dozen shall be in Category 341–Y [2]. |
| 342/642 | 1,300,544 dozen. |
| 345 | 231,410 dozen. |
| 351/651 | 311,800 dozen. |
| 363 | 51,293,555 numbers. |
| 369–D [3] | 1,468,208 kilograms. |
| 641 | 1,661,508 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc.00–12605 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Request for Public Comments on a Request That the United States Consult With Mexico and Canada Concerning a Certain Filament Yarn; Amendment

May 15, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Amending request for public comments concerning a request for consultations on certain filament yarn.

**FOR FURTHER INFORMATION CONTACT:** Martin Walsh, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice published in the **Federal Register** on March 1, 2000 (65 FR 11040) advised the public that CITA had been petitioned to initiate consultations with Mexico and Canada under Section 7(2) of Annex 300–B of the North American Free Trade Agreement (NAFTA) for the purpose of amending the NAFTA rules of origin to permit the use of non-North American filament viscose rayon yarn classified in HTS headings 5403.10, 5403.31, 5403.32 and 5403.41 of the Harmonized Tariff Schedule of the United States in NAFTA originating goods. This notice amends, but does not cancel, that notice. The petition has been amended to request consultations on the use of non-North American filament yarn classified in HTS heading 5403.39 of the Harmonized Tariff Schedule of the United States, in addition to the four filament viscose rayon yarn headings listed in that notice.

There will be a 30-day comment period beginning on May 19, 2000 and extending through June 19, 2000. Anyone wishing to comment or provide data or information regarding domestic production or availability of filament yarn classified in HTS headings 5403.10, 5403.31, 5403.32, 5403.39 and 5403.41 is invited to submit 10 copies of such comments or information to D. Michael Hutchinson, Acting Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

The solicitation of comments is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute a "foreign affairs function of the United States."

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–12626 Filed 5–18–00; 8:45 am]

BILLING CODE 3510–DR–F

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**[OMB Control No. 9000–0150]**

## Submission for OMB Review; Comment Request Entitled Small Disadvantaged Business Procurement Credits

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0150).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Small Business Procurement Credit Programs. A request for public comments concerning this burden was published at 65 FR 13953, March 15, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Comments may be submitted on or before June 19, 2000.

**ADDRESSES:** Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503; and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Victoria Moss, Federal Acquisition Policy Division, GSA, (202) 501–4764.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

This FAR requirement concerning small disadvantaged procurement credit programs implements the Department of Justice proposal to reform affirmative action in Federal procurement, which was designed to ensure compliance with the constitutional standards established by the Supreme Court. The credits include price evaluation factor targets and certifications.

### B. Annual Reporting Burden

*Number of Respondents:* 20,340
*Responses Per Respondent:* 8.97
*Total Responses:* 183,257
*Average Burden Hours Per Response:* 2.09
*Total Burden Hours:* 383,007

### Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0150, Small Disadvantaged Business Procurement Credit Programs, in all correspondence.

Dated: May 16, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 00–12633 Filed 5–18–00; 8:45 am]

BILLING CODE 6820–34–P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**[OMB Control No. 9000–0152]**

## Proposed Collection; Comment Request Entitled Service Contracting

**AGENCIES:** Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0152).

**SUMMARY:** Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Service Contracting. A request for public comments concerning this burden estimate was published at 65 FR 13953, March 15, 2000. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

**DATES:** Comments may be submitted on or before June 19, 2000.

**ADDRESSES:** Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** Linda Klein, Federal Acquisition Policy Division, GSA, (202) 501–3775.

**SUPPLEMENTARY INFORMATION:**

### A. Purpose

This FAR requirement implements the statutory requirements of Sec. 834, Pub. L. 101–510, concerning uncompensated overtime. The coverage requires that offerors identify uncompensated overtime hours and the uncompensated overtime rate for procurements valued at $100,000 or more. This permits Government contracting officers to ascertain cost realism of proposed labor rates for professional employees.

### B. Annual Reporting Burden

*Number of Respondents:* 19,906
*Responses Per Respondent:* 1
*Total Responses:* 19,906
*Average Burden Per Response:* 30 minutes
*Total Burden Hours:* 9,953

### Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0152, Service Contracting, in all correspondence.

Dated: May 16, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 00–12634 Filed 5–18–00; 8:45 am]

BILLING CODE 6820–34–P

## DEPARTMENT OF DEFENSE

### Defense Finance and Accounting Service

### Privacy Act of 1974; System of Records

**AGENCY:** Defense Finance and Accounting Service, DoD.

**ACTION:** Notice of a new system of records.

**SUMMARY:** The Defense Finance and Accounting Service proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This action will be effective without further notice on June 19, 2000 unless comments are received that would result in a contrary determination.

**ADDRESSES:** Privacy Act Officer, Defense Finance and Accounting Service, 1931 Jefferson Davis Highway, ATTN: DFAS/PE, Arlington, VA 22240–5291.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Pauline E. Korpanty at (703) 607–3743.

**SUPPLEMENTARY INFORMATION:** The complete inventory of Defense Finance and Accounting Service records system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on April 24, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: May 10, 2000.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**T7335**

**SYSTEM NAME:**

Defense Civilian Pay System (DCPS).

**SYSTEM LOCATION:**

Defense Finance and Accounting Service-Denver Finance Center, 6760 East Irvington Place, Denver, CO 80279–5000.

Defense Finance And Accounting Service-Pensacola Operation Location, Civilian Pay Directorate, Code P, 130 West Avenue, Suite A, Pensacola, FL 32508–5120.

Defense Finance and Accounting Service-Charleston Operating Location, Civilian Pay Directorate, Code P, 1545 Truxtun Avenue, Charleston, SC 29405–1968.

Defense Finance and Accounting Service, Systems Engineering Organization Pensacola, 250 Raby Avenue, Building 801, Pensacola, FL 32509–5128.

Director, Area Command Mechanicsburg, 5450 Carlisle Pike, Building 309, Mechanicsburg, PA 17055–0975.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All DoD civilian employees paid by appropriated funds and employees of the Executive Office of the President who are paid by the Defense Finance and Accounting Service's consolidated civilian payroll offices.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Individual's pay and leave records; source documents for posting of time and leave attendance; individual retirement deduction records, source documents, and control files; wage and separation information files; health benefit records; income tax withholding records; allowance and differential eligibility files, such as, but not limited to clothing allowances and night rate differentials; withholding and deduction authorization files, such as, but not limited to federal income tax withholding, insurance and retirement deductions; accounting documents files, input data posting media, including personnel actions affecting pay; accounting and statistical reports and computer edit listings; claims and waivers affecting pay; control logs and collection/disbursement vouchers; listings for administrative purposes, such as, but not limited to health insurance, life insurance, bonds, locator files, and checks to financial institutions; correspondence with the civilian personnel office, dependents, attorneys, survivors, insurance companies, financial institutions, and other governmental agencies; leave and earnings statements; separation documents; official correspondence; federal, state, and city tax reports and tapes; forms covering pay changes and deductions; and documentation pertaining to garnishment of wages.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. Chapter 53, 55, and 81; and E.O. 9397 (SSN).

**PURPOSE(S):**

The records are used to accurately compute individual employees pay entitlements, withhold required and authorized deductions, and issue payments for amounts due. Output products are forwarded as required to the subject matter areas to ensure accurate accounting and recording of pay to civilian employees.

These records and related products are also used to verify and balance all payments, deductions, and contributions with the DD Form 592 (Payroll for Personal Services Certification and Summary) in the DFAS civilian pay office and other applicable subject matter areas, and to report this information to the recipients and other government and nongovernment agencies.

Records are also used for extraction or compilation of data and reports for management studies and statistical analyses for use internally or externally as required by DoD or other government agencies.

All records in this system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Federal Reserve Banks under procedures specified in 31 CFR part 210 for health benefit carriers to ensure proper credit for employee-authorized health benefit deductions;

Officials of labor organizations recognized under E.O. 11491 and E.O. 11636, as amended, when relevant and necessary to their duties of exclusive representation concerning personnel policies, practices, and matters affecting working conditions (including disclosure of reasons for non-deduction of dues, if applicable);

To the U.S. Treasury, to maintain cash accountability;

To the Internal Revenue Service to record withholding and social security information;

To the Bureau of Employment Compensation to process disability claims;

To the Social Security Administration and Office of Personnel Management to credit the employee's account for Federal Insurance Contributions Act or Civil Service Retirement withheld;

To the National Finance Center, Office of Thrift Savings Plan for participating employees;

To state revenue departments to credit employee's state tax withholding;

To state employment agencies which require wage information to determine eligibility for unemployment compensation benefits of former employees;

To city revenue departments of appropriate cities to credit employees for city tax withheld;

To any agency or component thereof that needs the information for proper accounting of funds, such as, but not limited to the Office of Personnel Management to assist in resolving complaints, grievances, etc. and to compute Civil Service Retirement annuity.

To Federal, State, and local agencies for the purpose of conducting computer matching programs as regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a).

The "Blanket Routine Uses" published at the beginning of the DFAS compilation of systems of records notices also apply to this system.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Disclosures pursuant to 5 U.S.C. 552a(b)(12) may be made from this system to "consumer reporting agencies' as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)). The purpose of this disclosure is to aid in the collection of outstanding debts owed to the Federal government; typically to provide an incentive for debtors to repay delinquent Federal government debts by making these debts part of their credit records.

The disclosure is limited to information necessary to establish the identity of the individual, including name, address, and taxpayer identification number (Social Security Number); the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a commercial credit report.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Maintained in file folders, notebooks/binders, and visible file binders/cabinets; in card files; in computers and computer output products; and on microform such as microfiche or microfilm.

**RETRIEVABILITY:**

Retrieved by name, Social Security Number, civilian payroll number, or other identification number or system identifier (Unit Identification Code, Submitting Office Number, Accountable Disbursing Station Symbol Number).

**SAFEGUARDS:**

As a minimum, records are accessed by person(s) responsible for servicing and authorized to use the record system in the performance of their official duties who are properly screened and cleared for need to know. Additionally, at some Centers, records are in office buildings protected by guards and controlled by the screening of personnel and the registration of visitors.

**RETENTION AND DISPOSAL:**

Disposition pending (until NARA disposition is approved, treat as permanent).

**SYSTEM MANAGER(S) AND ADDRESS:**

Program Manager, Defense Finance and Accounting Service-Headquarters, ATTN: DFAS–HQ/FMP–SMO, 250 Raby Avenue, Building 801, Pensacola, FL 32509–5128.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individual should furnish full name, Social Security Number, current address, and telephone number.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Officer at the appropriate DFAS Center.

Individuals should provide full name, Social Security Number, or other information verifiable from the record itself.

**CONTESTING RECORD PROCEDURES:**

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from the Privacy Act Officer at any DFAS Center.

**RECORD SOURCE CATEGORIES:**

Information is obtained from previous employers, financial institutions, medical institutions, automated systems interfaces, state or local governments, and from other DoD components and other Federal agencies such as, but not limited to, Social Security Administration, Internal Revenue Service, state revenue departments, State Department, and Department of Defense components (including the Department of the Air Force, Army, or Navy, or Defense agencies); correspondence with attorneys, dependents, survivors, or guardians may also furnish data for the system.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 00–12190 Filed 5–18–00; 8:45 am]
BILLING CODE 5001–10–F

## DEPARTMENT OF DEFENSE

### Department of the Army; Corps of Engineers

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following committee meeting:

*Name of Committee:* Coastal Engineering Research Board (CERB).

*Date of Meeting:* June 12–16, 2000.

*Place:* Laguna Cliffs Marriott Resort, Dana Point, California.

*Time:* 1 p.m. to 5 p.m. (June 12, 2000).
8 a.m. to 5 p.m. (June 13, 2000)
8 a.m. to 4:30 p.m. (June 14, 2000)
8:30 a.m. to 10:30 a.m. (June 15, 2000)
1 p.m. to 5 p.m. (June 15, 2000)
8 a.m. to 12 p.m. (June 16, 2000)

**FOR FURTHER INFORMATION CONTACT:** Inquiries and notice of intent to attend the meeting may be addressed to Colonel Robin R. Cababa, Executive Secretary, Coastal Engineering Research Board, U.S. Army Engineer Research and Development Center, Waterways Experiment Station, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199.

**SUPPLEMENTARY INFORMATION:**

*Proposed Agenda:* The Coastal Inlets Research Program and the Monitoring Completed Coastal Projects Program Reviews, in conjunction with the CERB, will be discussed on the afternoon of June 12.

The CERB meeting will be June 13–14. The theme of the meeting is Regional Sediment Management. The session on June 13 will consist of presentations dealing with a review of CERB business and updates, such as Strategic Planning for Research and Development (R&D); R&D Funding Update; National Shoreline Study; Section 227, Shoreline Erosion Control Development and Demonstration Program; and North Carolina Beaches Study. A field trip is planned for the afternoon with an overview preceding the trip. On Wednesday, June 14, there will be presentations pertaining to the theme, such as Regional Sediment Management (Mobile Demonstration), Expansion of Regional Sediment Management, Ports Role in Regional Sediment Management, Dredging Industry Capabilities to Support Regional Sediment Management, Role of Academia in Regional Sediment Management, panel discussion of the State of California Perspectives on Regional Sediment Management, San Diego County Beach Nourishment Program, a panel discussion on County Perspectives on Regional Sediment Management, U.S. Geological Survey Research Relevant to Regional Sediment Management, and Regional Sediment Management Work Unit. The Board will go into Executive Session on the morning of June 15.

On Thursday afternoon, June 15, the Coastal Navigation and Storm Damage Reduction Program Review will be held, which also includes the Coastal Sedimentation and Dredging Proposals.

On Friday morning, June 16, the Coastal Navigation and Storm Damage Reduction Program Review continues with the Coastal Navigation Hydrodynamics Program proposals and the Coastal Structure Evaluation and Design work units. The morning session concludes with the Coastal Field Data Collection Program Review.

These meetings are open to the public; participation by the public is scheduled for 3:30 p.m. on June 14.

The entire meeting is open to the public, but since seating capacity of the meeting room is limited, advance notice of intent to attend, although not required, is requested in order to assure adequate arrangements. Oral participation by public attendees is encouraged during the time scheduled on the agenda; written statements may be submitted prior to the meeting or up to 30 days after the meeting.

**James R. Houston,**

*Director, Coastal and Hydraulics Laboratory.*

[FR Doc. 00–12675 Filed 5–18–00; 8:45 am]

BILLING CODE 3710–61–M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Naval Research Advisory Committee

**AGENCY:** Department of the Navy, DOD.

**ACTION:** Notice.

**SUMMARY:** The Naval Research Advisory Committee (NRAC) Panel on Quality of Life will meet to examine Quality of Life issues for Sailors and Marines in an effort to anticipate what they will be for the new Navy of the 21st century and what the Navy's responses to the new challenges will have to look like. All sessions of the meeting will be open to the public.

**DATES:** The meeting will be held on Wednesday, May 31, 2000, 8:30 a.m. to 5 p.m.; on Thursday, June 1, 2000, from 8:30 a.m. to 5 p.m.; and on Friday, June 2, 2000, from 8:30 a.m. to 3 p.m.

**ADDRESSES:** The meeting will be held at the Office of Naval Research, 800 North Quincy Street, Arlington, Virginia.

**FOR FURTHER INFORMATION CONTACT:** Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone (703) 696–6769.

Dated: May 11, 2000.

**J.L. Roth,**

*Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.*

[FR Doc. 00–12595 Filed 5–18–00; 8:45 am]

BILLING CODE 3810–FF–P

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before June 19, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 15, 2000.

**William Burrow,**

*Leader, Information Management Group, Office of the Chief Information Officer.*

### Office of Elementary and Secondary Education

*Type of Review:* Revision of a currently approved collection.

*Title:* Goals 2000, Parental Information and Resource Center's Annual/Final Performance Report (JM).

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions (primary).

*Reporting and Recordkeeping Hour Burden:* Responses: 58; Burden Hours: 226.

*Abstract:* Recipients of grants under the Parental Assistance Program must submit an annual performance report that establishes substantial progress toward meetintg their project objective to receive a continuation award.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify

the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Jackie Montague at (202) 708–5359. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–12606 Filed 5–18–00; 8:45 am]
BILLING CODE 4000–01–P

## DEPARTMENT OF EDUCATION

### Web-based Education Commission; Telephone Conference Call

**AGENCY:** Office of Postsecondary Education, Education.

**ACTION:** Web-based Education Commission; Telephone Conference Call.

**SUMMARY:** This notice announces the telephone conference call for the full Commission. Notice of this conference call is required under Section 10 (a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to call into the conference.

**DATE:** The conference call will be on May 25, 2000, from 12:00–1:00 p.m. eastern standard time. Individuals interested in listening in on the call should contact the Commission for instructions.

**FOR FURTHER INFORMATION CONTACT:** David Byer, Executive Director, Web-based Education Commission, U.S. Department of Education, 1990 K Street, NW, Washington, DC 20006–8533. Telephone: (202) 219–7045. Fax: (202) 502–7873. Email: *web—commission_ed.gov*.

**SUPPLEMENTARY INFORMATION:** The Web-based Education Commission is authorized by Title VIII, Part J of the Higher Education Amendments of 1998, as amended by the Fiscal 2000 Appropriations Act for the Departments of Labor, Health, and Human Services, and Education, and Related Agencies. The Commission is required to conduct a thorough study to assess the critical pedagogical and policy issues affecting the creation and use of web-based and other technology-mediated content and learning strategies to transform and improve teaching and achievement at the K–12 and postsecondary education levels. The Commission must issue a final report to the President and the Congress, not later than 12 months after the first meeting of the Commission, which occurred November 16–17, 1999. The final report will contain a detailed statement of the Commission's findings and conclusions, as well as recommendations.

The purpose of the May 25 conference call is to (1) Provide an update on Commission activities; (2) discuss activities of each working group; (3) report on the progress of the web site design; and (4) discuss plans for the next Commission hearing in Atlanta on June 26, 2000.

The conference call is open to the public. Records are kept of all Commission proceedings and are available for public inspection at the office of the Web-based Education Commission, Room 8089, 1990 K Street, NW, Washington, DC 20006–8533 from the hours of 9:00 a.m. to 5:30 p.m.

**Assistance To Individuals With Disabilities**

The conference call is accessible to individuals with disabilities. Individuals who will need accommodations for a disability in order to participate in the call (i.e. interpreting services, assistive listening devices, or materials in alternative format) should contact the person listed in this notice at least two weeks before the scheduled meeting date. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation.

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*http://www.ed.gov/news/html*

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**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/indes.html*

**A. Lee Fritschler,**

*Assistant Secretary, Office of Postsecondary Education.*

[FR Doc. 00–12670 Filed 5–18–00; 8:45 am]
BILLING CODE 4000–01–U

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Los Alamos

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting; correction.

On May 9, 2000, the Department of Energy published a notice of open meeting announcing a meeting on May 24, 2000 of the Environmental Management Site-Specific Advisory Board, Los Alamos (65 FR 26824). In that notice the meeting address was Highlands University, Kennedy Hall, 11th Street and University Avenue, Las Vegas, New Mexico. Today's notice is announcing that the meeting address has changed due to the fires at Los Alamos. The new meeting address is 2040 South Pacheco Street, Santa Fe, New Mexico 87505.

Issued in Washington, DC on May 16, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–12748 Filed 5–18–00; 8:45 am]
BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Office of Energy Efficiency and Renewable Energy

### Proposed Agency Information Collection

**AGENCY:** Department of Energy.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of Energy (DOE) invites public comment on a proposed information collection that DOE is developing for submission to the Office of Management and Budget (OMB), pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*). This information collection would collect information from Combined Heat and Power (CHP) facilities concerning the details of newly installed CHP power systems.

**DATES:** Consideration will be given to comments submitted by July 18, 2000.

**ADDRESSES:** Written comments may be submitted to the U.S. Department of Energy, Office of Industrial Technologies, Attn: Thomas J. King, Room 5F–064, 1000 Independence Avenue, SW, Washington, DC 20585.

**FOR FURTHER INFORMATION CONTACT:** Thomas J. King, (202) 586–2387.

**SUPPLEMENTARY INFORMATION**

*Collection Title:* U.S. Department of Energy/Combined Heat and Power Registry

*Type of Review:* New collection.

*OMB Number:* None.

*Type of Respondents:* Individuals, Businesses, State and Local Governments.

*Estimated Number of Respondents:* 1,000.

*Estimated Total Burden Hours:* 500.

*Frequency of Response:* One time only.

*Abstract:* DOE plans to publicize widely the existence of the registry through it Regional Offices, the CHP website, meetings, conferences and the like, and through its relationship with CHP organizations. Due to the recent high level of interest in CHP, DOE expects that many CHP installers, individuals, utilities, governments, and businesses will wish to register their CHP systems in order to gain recognition on the CHP webpage and also be potentially eligible for an award. Registration would take place electronically (a paper form would be available upon request) by responding to a series of very brief questions. If a system met the established criteria, a CHP certificate would be sent to the facility. Registration would take place one time only. DOE plans to aggregate the data and generate reports detailing the geographic distribution of systems and among other things, the sizes and types of systems. This data collection will assist DOE in its management of and planning for the continued success of the CHP initiative.

*Request for Comments:* Pursuant to 44 U.S.C. 3506(c)(2)(A), DOE invites comments on: (1) Whether the proposed collection of information is necessary to measure the progress and success of the CHP registry; (2) the accuracy of DOE's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who choose to respond. Additional information about DOE's proposed information collection may be obtained from the contact person named in this notice.

Issued in Washington, DC on May 9, 2000.

**Dan Reicher,**

*Assistant Secretary, Office of Energy Efficiency and Renewable Energy.*

[FR Doc. 00–12635 Filed 5–18–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. EG00–54–000, et al.];**

## Tenaska Alabama Partners, L.P., et al.; Electric Rate and Corporate Regulation Filings

May 12, 2000.

Take notice that the following filings have been made with the Commission:

1. Tenaska Alabama Partners, L.P.

[Docket Nos. EG00–54–000 and ER00–840–001]

Take notice that on May 4, 2000, Tenaska Alabama Partners, L.P., 1044 North 115th Street, Suite 400, Omaha, Nebraska 68154 (Tenaska Alabama) submitted for filing with the Federal Energy Regulatory Commission a notification of non-material change in status to the Tenaska Alabama partnership.

*Comment date:* June 1, 2000, in accordance with Standard Paragraph E at the end of this notice.

**2. Cabrillo Power I LLC**

[Docket No. ER00–2426–000]

Take notice that on May 8, 2000, Cabrillo Power I LLC (Cabrillo I), tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, a revised Schedule A to the Reliability Must Run Agreement (the RMR Agreement) between Cabrillo I and the California Independent System Operator Corporation (the ISO) relating to the Encina generating plant at Carlsbad, California.

Cabrillo I states that the revisions to Schedule A correct certain inaccuracies in the figures for reactive power in the currently effective version, which was originally filed by San Diego Gas & Electric Company (SDG&E) which formerly operated the Encina plant. Cabrillo I further states that the corrections are acceptable to the ISO and to SDG&E, which, under the ISO Tariff, bears costs payable by the ISO under the RMR Agreement.

Cabrillo I states that it has served a copy of its filing on the California Public Utilities Commission.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**3. California Independent System Operator Corporation**

[Docket No. ER00–2427–000]

Take notice that on May 8, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and PG&E Energy Trading—Power, L.P. for acceptance by the Commission.

The ISO states that this filing has been served on PG&E Energy Trading—Power, L.P., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of April 26, 2000.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**4. California Independent System Operator Corporation**

[Docket No. ER00–2428–000]

Take notice that on May 8, 2000, the California Independent System Operator Corporation, tendered for filing a Participating Generator Agreement between the ISO and GPU Solar, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on GPU Solar, Inc., and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective May 1, 2000.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**5. Unicom Energy, Inc.**

[Docket ER00–2429–000]

Take notice that on May 8, 2000, Unicom Energy, Inc. (UEI), tendered for filing proposed market-based rate schedules for the sale of capacity and energy pursuant to negotiated agreements, together with a form of service agreement and a code of conduct to govern relationships with franchised public utilities.

UEI requests that the Commission accept these rate schedules for filing and grant such waivers of its regulations and blanket authorizations as the Commission has granted to power marketers and non-franchised public utilities with market-based rate authority.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**6. Potomac Electric Power Company**

[Docket No. ER00–2430–000]

Take notice that on May 8, 2000, Potomac Electric Power Company (Pepco), tendered for filing a service agreement pursuant to Pepco FERC Electric Tariff, Original Volume No. 5, entered into between Pepco and NewEnergy, Inc.

An effective date of May 1, 2000 for this service agreement, with waiver of notice, is requested.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**7. Commonwealth Chesapeake Company, L.L.C.**

[Docket No. ER00–2431–000]

Take notice that on May 8, 2000, Commonwealth Chesapeake Company, L.L.C. (Commonwealth Chesapeake), tendered for filing pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d (1994), and Part 35 of the Commission's regulations, 18 CFR 35, revisions to its tariff to provide for sales of regulation service at market-based rates through the Pennsylvania-New Jersey-Maryland Interchange Energy Market (PJM PX). Commonwealth Chesapeake further proposes to amend its tariff to confirm the availability of operating reserves and energy imbalance service at market-based rates.

Commonwealth Chesapeake requests waiver of the prior notice requirements of Section 35.3 of the Commission's regulations, 18 CFR 35.3, to permit its filing to become effective as of June 1, 2000, or the date on which the PJM Interconnection, L.L.C. implements amendments to its Open Access Transmission Tariff and Operating Agreement regarding market-based pricing for regulation service.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**8. Puget Sound Energy, Inc.**

[Docket No. ER00–2432–000]

Take notice that on May 8, 2000, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point Service Agreement) with Public Utility District No. 1 of Snohomish County (Snohomish PUD), as Transmission Customer.

A copy of the filing was served upon Snohomish PUD.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**9. Duke Energy Corporation**

[Docket No. ER00–2434–000]

Take notice that on May 8, 2000, Duke Energy Corporation (Duke) tendered for filing a Service Agreement with Enron Power Marketing, Inc., for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**10. Ameren Services Company**

[Docket No. ER00–2435–000]

Take notice that on May 8, 2000, Ameren Services Company (ASC), the transmission provider, tendered for filing two Service Agreements for Long-Term Firm Point-to-Point Transmission Services between ASC and Ameren Energy, Inc. as agent for Ameren Services Company (AE). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to AE pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER 96–677–004.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**11. Duke Energy Corporation**

[Docket No. ER00–2436–000]

Take notice that on May 8, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with LG&E Energy Marketing Inc., for Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on April 28, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**12. Wisconsin Energy Corporation Operating Companies**

[Docket No. ER00–2437–000]

Take notice that on May 8, 2000, Wisconsin Energy Corporation Operating Companies tendered for filing notice that effective May 1, 2000, Service Agreement No. 8, under Wisconsin Energy Corporation Operating Companies' FERC Electric Tariff, Original Volume No. 1, is to be canceled.

Copies of the filing have been served on El Paso Merchant Energy, L. P., the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**13. Southern Company Services, Inc.**

[Docket No. ER00–2438–000]

Take notice that on May 9, 2000, Southern Company Services, Inc. (SCS), by and on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern), tendered for filing a Notice of Cancellation of SCSI Rate Schedule No. 73. This rate schedule relates only to the Unit Power Sales Agreement between Southern and the City of Tallahassee, Florida, which expires by its terms on May 31, 2000. The Notice of Termination filed by Southern in the referenced docket seeks an effective date of May 31, 2000, the same date as set forth for termination in the underlying Unit Power Sales Agreement.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**14. Consumers Energy Company**

[Docket No. ER00–2439–000]

Take notice that on May 9, 2000, Consumers Energy Company (Consumers), tendered for filing a Facilities Agreement Between Consumers and Modular Power Systems, LLC, (Modular), dated May 1, 2000. Under the Facilities Agreement, Consumers is to construct, operate and maintain various protective, monitoring and metering facilities that will be needed in connection with the operation of generating facilities being constructed by Modular.

Consumers requests that the Facilities Agreement be allowed to become effective within 60 days after filing.

Copies of the filing were served upon Modular and upon the Michigan Public Service Commission.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**15. El Paso Electric Company**

[Docket No. ER00–2440–000]

Take notice that on May 9, 2000, El Paso Electric Company tendered for filing an amendment to two power sale agreements with Rio Grande Electric Cooperative.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**16. Alliant Energy Corporate Services, Inc.**

[Docket No. ER00–2441–000]

Take notice that on May 9, 2000, Alliant Energy Corporate Services, Inc., tendered for filing executed Service Agreements for short-term firm point-to-point transmission service and non-firm point-to-point transmission service, establishing Calpine Power Services Company as a point-to-point Transmission Customer under the terms of the Alliant Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of May 1, 2000, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**17. Midwest Independent Transmission System Operator, Inc.**

[Docket No. ER00–2442–000]

Take notice that on May 9, 2000, Midwest Independent Transmission System Operator, Inc., tendered for filing executed signature pages to the "Agreement of the Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., A Delaware Non-Stock Corporation," and the "Agency Agreement for Open Access Transmission Service Offered by the Midwest ISO for Nontransferred Transmission Facilities' executed by Madison Gas & Electric Company were filed with the Commission.

A copy of this filing was served on Public Service Commission of Wisconsin.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**18. Central Maine Power Company**

[Docket No. ER00–2443–000]

Take notice that on May 9, 2000, Central Maine Power Company (CMP), tendered for filing a service agreement for Non-firm Local Point-to-Point Transmission Service entered into with Constellation Power Source, Inc. Service will be provided pursuant to CMP's Open Access Transmission Tariff, designated rate schedule CMP—FERC Electric Tariff, Original Volume No. 3, as supplemented.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**19. Florida Power & Light Company**

[Docket No. ER00–2444–000]

Take notice that on May 9, 2000, Florida Power & Light Company (FPL), tendered for filing Service Agreements with Conectiv Energy Supply, Inc., Duke Energy Trading and Marketing, L.L.C., and Sempra Energy Trading Corp., for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreements be made effective on April 12, 2000.

*Comment date:* May 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

**20. PJM Interconnection, L.L.C.**

[Docket Nos. ER00–2445–000 and EL00–74–000]

Take notice that on May 8, 2000, PJM Interconnection, L.L.C. (PJM) submitted pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d, the following revised sheets to Attachment K of PJM's Open Access Transmission Tariff (Tariff) on file with the Commission:

Fourth Revised Sheet No. 172
Third Revised Sheet No. 173
Second Revised Sheet No. 174
Original Sheet No. 174a

PJM also requests, pursuant to FPA Section 206, 16 U.S.C. § 824e, that the Commission order the same revisions to the same language as it appears on the following pages of Schedule 1 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (OA):

Third Revised Page No. 41
Second Revised Page No. 42
Sixth Revised Page No. 43
Original Page No. 43a

PJM states that these Tariff and OA revisions are intended to forestall an abusive bidding tactic that is enabled by a market design flaw identified by PJM's Market Monitoring Unit (MMU), which last summer resulted in electric customers paying in excess of the maximum lawful price prescribed by the OA.

*Comment date:* June 2, 2000, in accordance with Standard Paragraph E at the end of this notice.

**Standard Paragraphs**

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12629 Filed 5–18–00; 8:45 am]

BILLING CODE 6717–01–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6700–6]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Establishing No-Discharge Zones Under Clean Water Act Section 312

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Establishing No-Discharge Zones Under Clean Water Act section 312, EPA ICR Number 1791.03, OMB Control Number 2040–0187; current expiration date 10/31/2000. This ICR will consolidate two ICRs associated with the establishment of no-discharge zones under CWA section 312 (EPA ICR Numbers 1791.01 to 1791.02). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before July 18, 2000.

**ADDRESSES:** A copy of this ICR can be obtained from and written comments may be submitted to James C. Woodley, Marine Pollution Control Branch, Oceans and Coastal Protection Division, U.S. Environmental Protection Agency, 4504F, Ariel Rios, 1200 Penn. Ave., NW, Washington, DC 20460. In the

alternative, EPA will accept comments electronically. Comments should be sent to *woodley.james@epa.gov*. EPA will print electronic comments in hard-copy paper form for the official administrative record.

**FOR FURTHER INFORMATION CONTACT:** James C. Woodley, Oceans and Coastal Protection Division, U.S. Environmental Protection Agency, 4504F, Ariel Rios, 1200 Penn. Ave., NW, Washington, DC 20460, (202) 260–1952.

**SUPPLEMENTARY INFORMATION:**

*Affected entities:* Entities potentially affected by this action are State, local, and tribal governments.

*Title:* Establishing No-Discharge Zones Under Clean Water Act section 312 (OMB Control Number 2040–0187; EPA ICR Number 1791.03) expiring 10/31/2000.

*Abstract:* (A) Sewage No-discharge Zones: The need for EPA to obtain information for the establishment of no-discharge zones (NDZs) for vessel sewage in State waters stems from CWA sections 312(f)(3), (f)(4)(A), and (f)(4)(B), and subsequent regulations at 40 CFR 140.4(a-c). No-discharge zones are established to provide State and local governments with additional protection of waters from treated or untreated vessel sewage. There are 3 ways in which NDZs for vessel sewage can be established. This ICR discusses the information requirements associated with the establishment of NDZs for vessel sewage. The responses to this collection of information are required to obtain the benefit of a sewage NDZ (see 33 U.S.C. 1322). The information collection activities discussed in this ICR do not require the submission of any confidential information.

(B) UNDS No-discharge Zones: Under section 312(n) of the Clean Water Act ("Uniform National Discharge Standards for Vessels of the Armed Forces" or "UNDS") no-discharge zones ("NDZs") for discharges from Armed Forces vessels may be established by either State prohibition or EPA prohibition following the procedures in 40 CFR part 1700. UNDS also provides that the Governor of any State may petition EPA and the Secretary of Defense to review any determination or standard promulgated under the UNDS program if there is significant new information that could reasonably result in a change to the determination or standard. This ICR discusses the information that will be required from a State if it decides to establish a NDZ by State prohibition or apply for a NDZ by EPA prohibition, and the information that will be required from a State if it decides to submit a petition for review. The responses to this collection of information are required to obtain the benefit of an UNDS NDZ or a review of an UNDS determination or standard (see 33 U.S.C. 1322(n)). The information collection activities discussed in this ICR do not require the submission of any confidential information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

*Burden Statement:* Table 1 shows the annual respondent burdens for establishing sewage no-discharge zones as 1335 total hours. The average burden per respondent per year is 111.25 hours. Table 2 shows the annual respondent burdens for establishing UNDS no-discharge zones and petitioning for review of an UNDS determination or standard (957.50 hours total). The average burden per respondent per year is 160 hours. Table 3 shows the annual respondent burdens for all of CWA section 312 (2292.5 hours total). The average burden per respondent per year is 127 hours. The estimates include time for gathering information, and preparing and submitting requests. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: May 5, 2000.

**Robert H. Wayland III,**

*Director, Office of Wetlands, Oceans and Watersheds.*

TABLE 1.—SEWAGE NDZ TOTAL ESTIMATED RESPONDENT (STATE AGENCY) BURDEN AND COST SUMMARY

| | Number of respondents | Number of activities/year per respondent | Total number of hours per year | Total labor cost per year ($) | Total annual capital costs ($) | Total annual O&M costs ($) |
|---|---|---|---|---|---|---|
| Sewage No-Discharge Zone by State Prohibition [40 CFR 140.4(a)] | 8 | 1 | 873 | 29,032.00 | 0.00 | 1200.00 |
| Sewage No-Discharge Zone by EPA Prohibition [40 CFR 140.4(b)] | 2 | 1 | 231 | 7,410.00 | 0.00 | 300.00 |
| Drinking Water No-Discharge Zone [40 CFR 140.4(c)] | 2 | 1 | 231 | 7,410.00 | 0.00 | 300.00 |
| Total | 12 | | 1335 | 43,852.00 | 0.00 | 1800.00 |

TABLE 2.—UNDS TOTAL ESTIMATED RESPONDENT (STATE AGENCY) BURDEN AND COST SUMMARY

| | Number of respondents | Number of activities/year per respondent | Total number of hours per year | Total labor cost per year ($) | Total annual capital costs ($) | Total annual O&M costs ($) |
|---|---|---|---|---|---|---|
| UNDS No-Discharge Zone by State Prohibition [40 CFR 1700.9] | 4 | 1 | 717.00 | 23,815.12 | 0.00 | 600.00 |
| UNDS No-Discharge Zone by EPA Prohibition [40 CFR 1700.10] | 1 | 1 | 194.25 | 6,477.58 | 0.00 | 150.00 |
| UNDS Petition for Review [40 CFR 1700.12] | 1 | 1 | 46.25 | 1,578.27 | 0.00 | 150.00 |
| Total | 6 | | 957.50 | 31,870.97 | 0.00 | 900.00 |

TABLE 3.—TOTAL CWA SECTION 312 ESTIMATED RESPONDENT (STATE AGENCY) BURDEN AND COST SUMMARY

| | Number of respondents | Number of activities per year | Total number of hours per year | Total labor cost per year ($) | Total annual capital costs ($) | Total annual O&M costs ($) |
|---|---|---|---|---|---|---|
| Total | 18 | 18 | 2292.5 | 75,722.97 | 0.00 | 2700 |

[FR Doc. 00–12647 Filed 5–18–00; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–00292; FRL–6558–1]**

## Chemical-Specific Rules, TSCA Section 8(a); Request for Comment on Renewal of Information Collection Activities

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): Chemical-Specific Rules, TSCA Section 8(a) (EPA ICR No. 1198.06, OMB No. 2070–0067). This ICR involves a collection activity that is currently approved and scheduled to expire on August 31, 2000. The information collected under this ICR helps EPA evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing, use, or disposal of identified chemical substances and mixtures. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

**DATES:** Written comments, identified by the docket control number OPPTS–00292 and administrative record number AR–225, must be received on or before July 18, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00292 and administrative record number AR–225 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

*For technical information contact:* Keith Cronin, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–8157; fax number: (202) 260–1096; e-mail address: cronin.keith@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture, process or import, or propose to manufacture, process or import, chemical substances and mixtures. Potentially affected categories and entities may include, but are not limited to:

| Type of business | SIC codes |
|---|---|
| Industrial organic chemicals | 2819 |
| Adhesives and sealants | 2891 |
| Paints and allied products | 2851 |
| Textile goods | 2899 |
| Petroleum products | 5172 |

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The Standard Industrial Classification (SIC) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

### II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

*A. Electronically*

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal**

**Register** listings at http://www.epa.gov/fedrgstr/.

*B. Fax-on-Demand*

Using a faxphone call (202) 401–0527 and select item 4081 for a copy of the ICR.

*C. In Person*

The Agency has established an official record for this action under docket control number OPPTS–00292 and administrative record number AR–225. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

## III. How Can I Respond to this Action?

*A. How and to Whom Do I Submit the Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00292 and administrative record number AR–225 on the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* Submit your comments and/or data electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in Units III.A.1. and 2. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00292 and administrative record number AR–225. Electronic comments may also be filed online at many Federal Depository Libraries.

*B. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

*C. What Should I Consider when I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number and administrative record number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

*D. What Information is EPA Particularly Interested in?*

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.

2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.

3. Enhance the quality, utility, and clarity of the information to be collected.

4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

## IV. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

*Title:* Chemical-Specific Rules, TSCA Section 8(a).

*ICR numbers:* EPA ICR No. 1198.06, OMB No. 2070–0067.

*ICR status:* This ICR is currently scheduled to expire on August 31, 2000. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's information collections appear on the collection instruments or instructions, in the **Federal Register** notices for related rulemakings and ICR notices, and, if the collection is contained in a regulation, in a table of OMB approval numbers in 40 CFR part 9.

*Abstract:* TSCA section 8(a) authorizes the Administrator of EPA to promulgate rules that require persons who manufacture, import or process chemical substances and mixtures, or who propose to manufacture, import, or process chemical substances and mixtures, to maintain such records and submit such reports to EPA as may be

reasonably required. Any chemical covered by TSCA for which EPA or another Federal Agency has a reasonable need for information and which cannot be satisfied via other sources is a proper potential subject for a chemical-specific TSCA section 8(a) rulemaking. Information that may be collected under TSCA section 8(a) includes, but is not limited to, chemical names, categories of use, production volume, byproducts of chemical production, existing data on deaths and environmental effects, exposure data, and disposal information. Generally, EPA uses chemical-specific information under TSCA section 8(a) to evaluate the potential for adverse human health and environmental effects caused by the manufacture, importation, processing, use, or disposal of identified chemical substances and mixtures. Additionally, EPA may use TSCA section 8(a) information to assess the need or set priorities for testing and/or further regulatory action. To the extent that reported information is not considered confidential, environmental groups, environmental justice advocates, state and local government entities and other members of the public will also have access to this information for their own use.

Responses to the collection of information are mandatory (see 40 CFR part 704). Respondents may claim all or part of a notice confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

**V. What are EPA's Burden and Cost Estimates for this ICR?**

Under the PRA, "burden" means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. For this collection it includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average about 69 hours per response. The following is a summary of the estimates taken from the ICR:

*Respondents/affected entities:* 4.

*Frequency of response:* On occasion.

*Estimated total/average number of responses for each respondent:* 1.

*Estimated total annual burden hours:* 275.

*Estimated total annual burden costs:* $0.

**VI. Are There Changes in the Estimates from the Last Approval?**

There are no changes in the burden estimates since the last approval of this ICR.

**VII. What is the Next Step in the Process for this ICR?**

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

**List of Subjects**

Environmental protection, Reporting and recordkeeping requirements.

Dated: May 11, 2000.

**Susan H. Wayland,**

*Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.*

[FR Doc. 00–12648 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–F

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## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6607–3]**

**Environmental Impact Statements; Notice of Availability**

*Responsible Agency:* Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed May 08, 2000

Through May 12, 2000 Pursuant to 40 CFR 1506.9.

*EIS No. 000139, Draft EIS, NPS, CA, NV,* Legislative EIS—Timbisha Shoshone Tribal Homeland, To Establish a Permanent Tribal Land Base and Related Cooperative Activities, The Transfer of Federal Land and Acquisition of Private Land, Death Valley National Park, Saline Valley, CA and Lida Ranch near Lida, NV, Due: July 19, 2000, Contact: Alan Schmierer (415) 427–1441.

*EIS No. 000140, Final EIS, BLM, WY,* Horse Creek Coal Lease Application (Federal Coal Lease Application WYW–141435), Implementation, Campbell and Converse Counties, WY, Due: June 19, 2000, Contact: Nancy Doelger (307) 261–7627.

*EIS No. 000141, Draft EIS, AFS,* Forest Service Roadless Area Conservation, Implementation, Proposal to Protect Roadless Areas, In addition, the Agency is proposing special consideration for the Tongass National Forest, Due: July 03, 2000, Contact: Scott Conroy (703) 605–5299.

*EIS No. 000142, Draft EIS, FHW, NV,* Reno Railroad Corridor, Implementation of the Freight Railroad Grade Separation Improvements in the Central Portion of the City of Reno, Washoe County, NV, Due: July 03, 2000, Contact: John T. Price (775) 687–1204.

*EIS No. 000143, Final EIS, UAF, FL,* Tyndall Air Force Base, Implementation, Proposed Conversion of Two F–15 Fighter Squadrons to F–22 Fighter Squadons, FL, Due: June 19, 2000, Contact: Herman Bell (850) 283–8572.

*EIS No. 000144, Final EIS, SFW, CA,* High Desert Power Project, Construction and Operation, A Combined-Cycle Natural Gas-Fueled Electrical Generation Power Planet, Approval of Incidental Take Permit Authorization under Sections 7 and 10 of the Federal ESA, San Bernardino County, CA, Due: June 19, 2000, Contact: George Walker (760) 255–8852.

*EIS No. 000145, Draft Supplement, NOA, FL,* Florida Keys National Marine Sanctury (FKNMS), Comprehensive Management Plan, Updated Information, Proposal to Establish a No-Take Ecological Reserve in the Tortugas Region, FL, Due: July 31, 2000, Contact: Billy D. Causey (305) 743–2437.

**Amended Notices**

*EIS No. 000101, Draft EIS, FAA, NC,* Piedmont Triad International Airport, Construction and Operation, Runway 5L/23R and New Overnight Express Air Cargo Sorting and Distribution Facility, and Associated Developments, Funding, NPDES and COE Section 404 Permit, City of Greensboro, Guilford County, NC, Due: June 07, 2000, Contact: Donna

M. Meyer (404) 305–7150. Revision of FR notice published on 04/14/2000: CEQ Comment Date corrected from 05/30/2000 to 06/07/2000.

*EIS No. 000135, Draft Supplement, NPS, MS,* Natchez Trace Parkway, Update Information on the Construction of Section 3P13 (Old Agency Road), City of Ridgeland, Madison County, MS, Due: July 12, 2000, Contact: Wendall Simpson (601) 680–4005.

Published FR 05–12–00 Correction to Title.

Dated: May 16, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–12680 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

**[ER–FRL–6607–4]**

### Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 01, 2000 Through May 05, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 2000 (65 FR 20157).

**Draft EISs**

*ERP No. D–FAA–B51019–RI* Rating EC2, T. F. Green Airport Project, To Implement the Part 150 Noise Abatement Procedures in a Safe and Efficient Manner, Warwick County, RI.

*Summary:* EPA expressed concerns regarding the analysis of community noise impacts and mitigation measures described in the DEIS.

*ERP No. D–FHW–E40308–TN* Rating EC2, TN–374 (North Parkway) Project, Construction from TN13 to TN 76 in Clarksville, Funding, US Coast Guard and COE Section 404 Permits, Montgomery County, TN.

*Summary:* EPA expressed environmental concerns regarding purpose and need and potential wetland impacts. EPA requested clarification of these issues.

*ERP No. D–FHW–F40388–WI* Rating EC2, US–14/61 Westby—Virogua Bypass Corridor Study, Transportation Improvements, Funding and COE Section 404 Permit, Cities of Virogua and Westby, Vernon County, WI.

*Summary:* EPA expressed concern that the document did not provide information on how this project relates to plans for the Highway 14 and 61 corridors.

*ERP No. D–FHW–H40167–MO* Rating EC2, US 65 Improvements, from County Road 65–122 South to Route EE Intersection south of Buffalo, COE Section 404 Permit, Dallas County, MO.

*Summary:* EPA expressed concerns regarding possible detrimental impacts to drinking water supplies; lack of cumulative and indirect impacts analysis; and a lack of maps detailing information addressed in the various sections of the DEIS.

*ERP No. D–FRC–K03023–00* Rating EC2, Southern Trails Pipeline Project (CP99–163–000), Conversion of an Existing Crude Oil Pipeline (known as the ARCO Four Corners Pipeline Line 90 System), Construction and Operation, CA, AZ, UT and NM.

*Summary:* EPA identified some concerns and additional analysis needs, particularly in the area of socioeconomics and the treatment of environmental justice.

*ERP No. D–FTA–F54012–OH* Rating EC2, Bera/I–X Center Red Line Extension Project, Southwest Corridor Major Investment, Transit Improvements, Funding, Cuyahoga County, OH.

*Summary:* EPA expressed concerns because of the lack of discussion pertaining to avoidance, minimization and mitigation of wetlands and the insufficiency of the content and format of noise and vibration analysis.

*ERP No. D–USN–K11033–CA* Rating EC2, El Toro Marine Corps Air Station Disposal and Reuse, Implementation, Orange County, CA.

*Summary:* EPA expressed concern that re-use activities could lead to exceedences of applicable air quality standards, could result in increased water pollution, or could harm wildlife. EPA recommended that the Navy identify mitigation to protect wetlands, develop a restoration alternative, and consider an environmental management system (EMS) to mitigate risks.

*ERP No. DA–IBR–J35005–00* Rating EC2, Animas-La Plata Project (ALP Project), Municipal and Industrial Water Supply, Reservoir Construction in Ridges Basin, Implementation and Water Acquisition Funding, Additional Information concerning Project Alternatives Developed in 1996 through 1997, CO NM.

*Summary:* EPA requested that additional information be provided on how the various environmental impacts of the alternatives are being compared and details of the proposed wetland and habitat mitigation plan.

*ERP No. DS–DOD–A11075–00* Rating LO, National Missile Defense Deployment (NMD) System, Upgraded Early Warning Radar Supplement (UEWR), To Addresses Interior Replacement of Electronic Hardware and Computer Software, Affected Areas Clear Air Force Station (AFS), Denali Borough, AK; Beale Air Force Base (AFB), Yuba County, CA; and Cape Cod AFS, Barnstable County, MA.

*Summary:* EPA had no objection to this project.

**Final EISs**

*ERP No. F–BOP–E80002–SC* South Carolina—Federal Correctional Institution, Construct and Operate, Possible Sites: Andrew, Bennettsville, Oliver and Salters, SC.

*Summary:* EPA expressed environmental concerns regarding potential wetlands impacts.

*ERP No. F–FAA–B51021–MA* Provincetown Municipal Airport Safety and Operational Enhancement Project, Improvements (1) Firefighter Equipment Garage; (2) General Aviation Parking Apron Expansion; (3) Runaway Safety Areas, and (4) a Runaway Extension, COE Section 404 Permit, Cape Cod National Seashore, Barnstable County, MA.

*Summary:* EPA has no objections to the recommended actions in the FEIS but asked to be actively involved in any NEPA reevaluation associated with any future runway extension project at the airport.

*ERP No. F–FHW–H50001–MO* MO–19 Missouri River Replacement Bridge Project, Construction and Operation, US Coast Guard and COE Section 404 Permits, Gasconade and Montgomery Counties, MO.

*Summary:* EPA urged FHWA/MoDOT to condition the Record of Decision for the selection of the 5–W1 alternative pending completion of Fish and Wildlife Service surveys for three endangered species.

*ERP No. F–FHW–K40225–CA* Marin US–101 High Occupancy Vehicle (HOV) Gap Closure Project, Construction from US 101 I–580 on US–101 from Lucky Drive to North San Pedro Road and I–580 from Irene Street to US–101, Funding, COE Section 404 and Bridge Permits, Marin County, CA.

*Summary:* No formal comment letter was sent to the preparing agency.

*ERP No. F–FTA–K40238–CA* Downtown Sacramento—Folsom Corridor, Improvement of Transit Services, US 50/Folsom Boulevard,

Funding and COE Section 404 Permit, Transportation Systems Management (TSM) and Light Rail Transit (LRT), City and County of Sacramento, CA.

*Summary:* No formal comment letter was sent to the preparing agency.

*ERP No. F–FTA–K54023–CA* Vasona Corridor Light Rail Transit Project, Extension of existing Light Rail Transit (LRT), in portion of the Cities of San Jose, Campbell and Los Gatos, Santa Clara County, CA.

*Summary:* No formal comment letter was sent to the preparing agency.

*ERP No. F–IBR–K39054–CA* Groundwater Replenishment System, Implementation to Repurifying Water from Orange County Water District (OCWD) Orange County Sanitation District (OCSD), Funding and COE Section 404 Permit, Orange County, CA.

*Summary:* EPA continues to express concern regarding (1) potential emergency response procedures and contingency plans, (2) how the injection process would improve the effectiveness of the saltwater intrusion barrier, and (3) a preliminary monitoring plan to be implemented by the project operators.

*ERP No. F–SFW–L64046–WA* Little Pend Oreille National Wildlife Refuge, Implementation, Comprehensive Conservation Plan, Stevens and Pend Oreille Counties, WA.

*Summary:* No formal comment letter was sent to the preparing agency.

*ERP No. F–TVA–E09805–TN* Addition of Electric Generation Peaking and Baseload Capacity at Greenfield Sites, Construction and Operation of Combustion Turbines (CTs), Haywood County, TN.

*Summary:* EPA expressed concern with the proposal to develop new power plants proposed for greenfields as opposed to brownfields or the expansion/repowering of existing plants. EPA also expressed concern that the project would likely induce growth with associated impacts. EPA recommended that TVA continue to coordinate with local community leaders regarding environmental justice issues.

*ERP No. F–USN–K11083–CA* Hunters Point (Former) Naval Shipyard Disposal and Reuse, Implementation, City of San Francisco, San Francisco County, CA.

*Summary:* EPA continues to object to the FEIS based upon inadequate mitigation on potential impacts to the environmental justice community at Hunters Point.

*ERP No. FS–UAF–A11074–00* Evolved Expendable Launch Vehicle (EELV) Program, Development, Operation and Deployment, Proposed Launch Locations are Cape Canaveral Air Station (AS), Florida and Vandenberg Air Force Base (AFB), California, Federal Permits and Licenses, FL and CA.

*Summary:* EPA had no objection to the Final document.

Dated: May 16, 2000.

**Joseph C. Montgomery,**

*Director, NEPA Compliance Division, Office of Federal Activities.*

[FR Doc. 00–12681 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[OPPTS–42212; FRL–6559–9]**

## Priority-Setting Workshop for the Endocrine Disruptor Screening Program; Notice of Public Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice invites public participation in a workshop to discuss the development of a priority-setting system for the selection of chemicals for testing in the Endocrine Disruptor Screening Program (EDSP). The Agency's 1998 Proposed Statement of Policy for the EDSP contains a set of principles and a general strategy for setting priorities for testing. The Agency has developed a draft version of a priority-setting system and seeks public input on the further design and implementation of the system. The workshop will also provide an overall update and invite general comment on other aspects of the EDSP, including the status of the standardization and validation efforts and the approach for pesticide active ingredients.

**DATES:** The meeting will be held on Monday, June 5, 2000, from 10 a.m. to 5 p.m.; on June 6 from 9 a.m. to 5 p.m.; and on June 7 from 9 a.m. to 4 p.m. Your request to participate in the meeting must be received by EPA on or before May 31, 2000.

**ADDRESSES:** The meeting will be held at Crystal City Hilton, 2399 Jefferson Davis Hwy., Arlington VA, (703) 418–6800. Requests to participate may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your request must identify docket control number OPPTS–42212 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

*For technical information contact:* For information related to the overall program status of the EDSP: Gary Timm, telephone number: (202) 260–1859, e-mail: timm.gary@epa.gov or Anthony Maciorowski, telephone number: (202) 260–3048, e-mail: maciorowski.anthony@epa.gov, Office of Science Coordination and Policy (7101), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

For information on pesticide activities under the EDSP: Penny Fenner-Crisp, telephone number: (703) 605–0654, e-mail: fenner-crisp.penelope@epa.gov, Office of Pesticide Programs (7501C), Environmental Protection Agency, 1200 Pennsylvania Ave.. NW., Washington, DC 20460.

For information on the Endocrine Disruptor Priority-Setting Database (EDPSD): Jim Darr, telephone number: (202) 260–3441, e-mail: darr.james@epa.gov or Patrick Kennedy, telephone number: (202) 260–3916, e-mail: kennedy.patrick@epa.gov, Economics, Exposure, and Technology Division (7406), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

**SUPPLEMENTARY INFORMATION:**

### I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who manufacture, import, or use chemical substances that are addressed by the EDPSD. The general public may also have an interest in the design and implementation of the EDPSD and in other aspects of the Endocrine Disruptor Screening Program covered at the workshop. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

### II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

*A. Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://

www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

The EDPSD can be downloaded on or after May 22, 2000, from http://www.ergweb.com/endocrine.

*B. In person.* The Agency has established an official record for this meeting under docket control number OPPTS–42212. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the EDPSD, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

## III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that is considered CBI. Please indicate if you would like to make oral comments at the meeting so that adequate time can be reserved on the agenda. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–42212 in the subject line on the first page of your request.

*A. By mail.* You may submit a written request to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

*B. In person or by courier.* You may deliver a written request to: OPPT Document Control Office (DOC) in the East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DOC is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DOC is (202) 260–7093.

*C. Electronically.* You may submit your request electronically by e-mail to: "oppt.ncic@epa.gov." Do not submit any information electronically that you consider to be CBI. Use WordPerfect 6.1/8.0 or ASCII file format and avoid the use of special characters and any form of encryption. All comments in electronic form must be identified by docket control number OPPTS–42212. You may also file a request online at many Federal Depository Libraries.

## IV. Background Information on the Workshop

The Agency described the major elements of a proposed EDSP and the Agency's plan for implementation in a December 28, 1998, **Federal Register** notice (63 FR 42208) (FRL–6052–9). The EDSP has five major components:

1. Sorting, in which chemicals are classified according to the availability of information on each chemical's endocrine disrupting potential.
2. Priority Setting, in which EPA will determine the priority order for entry into Tier 1 Screening.
3. Tier 1 Screening, a battery of *in vitro* and *in vivo* assays designed to identify those chemicals that are not likely to interact with the estrogen, androgen, or thyroid hormone systems.
4. Tier 2 Testing, a battery of assays designed to determine whether a chemical may have an effect in humans similar to that of naturally occurring hormones and to identify, characterize, and quantify those effects for estrogen, androgen, and thyroid hormone effects.
5. Hazard Assessment, a weight-of-evidence evaluation of Tier 1 and Tier 2 results.

It is expected that the Sorting step will result in a relatively small number of chemicals proceeding directly to Tier 2 Testing or to Hazard Assessment and that the vast majority of chemicals will be placed in Priority Setting for Tier 1 Screening. The universe of chemicals of concern to EPA as potential endocrine disruptors is estimated to number more than 87,000 and includes pesticides, commercial chemicals, cosmetic ingredients, food additives, nutritional supplements, and certain mixtures. The Agency's initial priority-setting efforts are focusing on two groups of chemicals:

1. Pesticide active ingredients (~900 chemicals).
2. High production volume chemicals used as inert ingredients in pesticides (HPV Inerts, ~620 chemicals).

The EDPSD is being developed to help set Tier 1 priorities. At present, the EDPSD contains data on potential endocrine-related toxicity for only HPV Inerts. The Agency plans to incorporate predictions of toxicity based on quantitative structure-activity relations (QSAR) into the EDPSD when appropriate QSAR models are agreed upon. Incorporation of QSAR data will allow the EDPSD to rank a much larger number of chemicals on both effects and exposure factors. The Agency plans to hold a workshop on the use of QSAR in the EDSP later this year. Hazard and exposure data on pesticide active ingredients may be included in future versions of the EDPSD as a means of increasing the accessibility of these data, but there are no near-term plans to use the EDPSD to set testing priorities for pesticide active ingredients. The EDPSD will undergo a formal peer review after implementation of final decisions regarding its scope and content.

The EDPSD utilizes a "compartment-based priority-setting strategy" that builds upon distinct compartments of exposure- and effects-related information and criteria as well as a category of specially targeted priorities. The EDPSD presently contains the following compartments:

*Exposure Data Compartments*

Human Biological Monitoring Data
Ecological Biological Monitoring Data
Chemicals in Food and Drinking Water
Chemicals in Consumer/Cosmetic Products
Occupational Exposure Chemicals
Surface Water Monitoring Data
Indoor Air Monitoring Data
Outdoor Air Monitoring Data
Sediments/Soil Monitoring Data
Superfund Data
Environmental Releases/Environmental Fate
Production/Import Volumes/Environmental Fate
Exposure Multi-Hit Compartment

*Effects Data Compartments*

Epidemiological and Clinical Data on Endocrine-Related Effects
Reproductive/Developmental Toxicity in Laboratory Animals
Chronic/Subchronic Toxicity in Laboratory Animals
Carcinogenicity in Endocrine Target Tissues in Laboratory Animals
Ecotoxicity Effects
Effects Multi-Hit Compartment

*Combined Compartments*

Rank in Human Biological Monitoring x Highest Rank in Any Health Effects Compartment
Highest Rank in Any Other Human Exposure Compartment x Highest Rank in Any Health Effect Compartment
Rank in Ecological Biological Monitoring Compartment x Highest Rank in a Related Ecotoxicity Effects Compartment

Highest Rank in Any Other Ecological Exposure Compartment x Highest Rank in a Related Ecotoxicity Effects Compartment

*Specially Targeted Priorities*

Mixtures
Naturally Occurring Non-Steroidal Estrogens
Nominations

**V. Purpose and Structure of the Workshop**

The first day of the workshop will provide an overview of the EDSP, including a discussion of the Agency's overall approach to priority setting, how pesticide active ingredients are being addressed differently than other chemicals, the current status of standardization and validation activities, and the projected time lines for chemical selection and testing. The second and third days of the workshop will focus on the EDPSD. The Agency held a workshop in January 1999, to discuss the basic design of the EDPSD. The EDPSD is now a functional database and the Agency seeks comment on the specific hazard and exposure data elements included in the database, the ranking algorithms, and the priority lists that result from various ranking options.

The workshop will be structured around discussion of the specific issues listed in the agenda by invited participants. A limited amount of time will be allotted for additional comment by other meeting attendees. Participants may also submit written comments during or after the meeting. Please submit comments no later than 30 days following the workshop. Comments should be sent to the docket address listed in Unit III. and should reference the docket control number OPPTS–42212.

**VI. Agenda**

*Monday, June 5 Overview of the Endocrine Disruptor Screening Program*

10:00 a.m. Welcome
10:15 a.m. Overview of the Endocrine Disruptor Screening Program
10:45 a.m. Standardization and Validation Activities
11:00 a.m. Overview of Priority Setting
11:15 a.m. Questions
11:30 a.m. OPP Activities to Prioritize Pesticide Active Ingredients
12:00 noon Questions on Prioritization of Active Ingredients
12:15 p.m. Lunch
1:30 p.m. Public Comments on the Endocrine Disruptor Screening Program, Standardization/Validation Activities, or the OPP Actives Approach
3:00 p.m. Break
3:15 p.m. Demo of EDPSD version 2
5:00 p.m. End of Demo

*Tuesday, June 6 Panel Discussion of the Priority Setting Database (Exposure and Effects)*

9:00 a.m. Overview of the Current Status of the EDPSD
9:15 a.m. Completeness of Data Sources used in Exposure Compartments
10:30 a.m. Break
10:45 a.m. Ranking Algorithms Used in Exposure Compartments
12:00 noon Lunch
1:30 p.m Quality of the Data in Exposure Compartments
2:30 p.m. Break
2:45 p.m. Completeness of Data Sources used in Effects Compartments
4:00 p.m. Ranking Algorithms Used in Effects Compartments
5:00 p.m. End of day

*Wednesday, June 7 Panel Discussion of the Priority Setting Database (Effects, Combined Exposure and Effects Compartments, and Weights)*

9:00 a.m. Quality of the Data in Effects Compartments
10:00 a.m. Definition and Ranking Procedure of the Combined Compartments
10:45 a.m. Break
11:00 a.m. Discussion of Database Default Weights and Ranked List of HPV/Inerts
12:00 noon Lunch
1:30 p.m. Continue Discussion of Database Default Weights and Ranked List of HPV/Inerts
3:00 p.m. Public Comments on EDPSD
4:00 p.m. End of Workshop

The overall objective of the panel discussions is to address the key issues that bear upon the ability of the EDPSD to accomplish its intended purpose of setting Tier 1 priorities. These issues include:

Are the exposure and effects data sources adequate? Are any important data sources missing?

Are the compartment definitions clear? Should any compartments be added? Should any existing compartments be split or combined?

Does the ranking algorithm for each compartment make sense, e.g., rank based on average concentration in monitoring compartments, rank based on lowest observed adverse effect level (LOAEL) in effects compartments?

Certain compartments have a lot of ties in their rankings. How should you break ties in rankings in the chemical selection process, e.g., if you want to pick the top 10 chemicals from a given compartment and there are 15 chemicals tied at rank #6, what do you do?

With respect to the EPA default scenario: Do the overall category weightings make sense, i.e., cumulative weights for exposure vs. effects vs. combined compartments? Do the cumulative weights for human health vs. ecological concerns make sense? Do the individual compartment weights make sense? Suggested alternatives?

Is the EDPSD sufficiently transparent in terms of its operation and documentation, i.e., is the basis of the ranking readily understandable to the user?

**List of Subjects**

Environmental protection, Chemicals, Endocrine disruptors, Pesticides.

Dated: May 15, 2000.

**Stephen L. Johnson,**

*Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.*

[FR Doc. 00–12632 Filed 5–16–00; 1:33 pm]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP–34225; FRL–6588–7]**

## Organophosphate Pesticide; Availability of Preliminary Risk Assessments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of documents that were developed as part of the EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These documents are the preliminary human health and ecological risk assessments and related documents for diazinon. This notice also starts a 60-day public comment period for the preliminary risk assessments. Comments and data are to be limited to issues directly associated with the organophosphate pesticide, diazinon, and its preliminary risk assessments. By allowing access and opportunity for comment on the preliminary risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure our decisions under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments may be appropriate. These documents reflect only the work and analysis conducted

as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

**DATES:** Comments and data on these assessments, identified by docket control number OPP–34225, must be received on or before July 18, 2000.

**ADDRESSES:** Comments and data may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify the docket control number OPP–34225 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Karen Angulo, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

### *A. Does this Action Apply to Me?*

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the preliminary risk assessments for diazinon, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the preliminary risk assessments for the one organophosphate pesticide may also be accessed at http: www.epa.gov/pesticides/op.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34225. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

### *C. How and to Whom Do I Submit Comments?*

You may submit comments and data through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34225 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–34225. Electronic comments may also be filed online at many Federal Depository Libraries.

### *D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

### *E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

### II. What Action is the Agency Taking?

EPA is making available preliminary risk assessments that have been developed as part of EPA's process for making reregistration eligibility decisions for the organophosphate pesticides and for tolerance reassessments consistent with the FFDCA, as amended by the FQPA. The Agency's preliminary human health and ecological risk assessments for one organophosphate pesticide are available in the individual organophosphate pesticide docket: Diazinon.

Included in the individual organophosphate pesticide docket is the Agency's preliminary risk assessments. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed for the one organophosphate pesticide listed in this notice. The Agency cautions that these risk assessments are preliminary assessments only and that further refinements of the risk assessments will be appropriate for the one organophosphate pesticide. These documents reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

As the preliminary risk assessments for the remaining organophosphate pesticides are completed and registrants are given a 30-day review period to identify possible computational or other clear errors in the risk assessments, these risk assessments and registrant responses will be placed in the organophosphate pesticide docket for diazinon. A notice of availability for subsequent assessments will appear in the **Federal Register**.

The Agency is providing an opportunity, through this notice, for interested parties to provide written comments and data and input to the Agency on the preliminary risk assessments for the chemical specified in this notice. Such comments and data and input could address, for example, the availability of additional data to further refine the risk assessments, such as percent crop treated information or submission of residue data from food processing studies, or could address the Agency's risk assessment methodologies and assumptions as applied to this specific chemicals. Comments and data should be limited to issues raised within the preliminary risk assessments and associated documents. EPA will provide other opportunities for public comment and data on other science issues associated with the organophosphate pesticide tolerance reassessment program. Failure to comment on any such issues as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and data should be submitted by July 18, 2000 at the address given under Unit I. Comments and data will become part of the Agency record for this organophosphate pesticide.

### List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: May 16, 2000.

**Jack E. Housenger,**

*Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.*

[FR Doc. 00–12676 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

[PF–943; FRL–6558–2]

## Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–943, must be received on or before June 19, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–943 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224; e-mail address: miller.joanne@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–943. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any

information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–943 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3.*Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–943. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the amendment of the regulation for residues of glufosinate-ammonium, a pesticide chemical, in or on food commodities derived from cotton under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this request contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not evaluated the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

### List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 9, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

### Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The summary identifies an analytical method available to EPA for the detection and measurement of the residues of glufosinate-ammonium in or on cotton commodities.

### Aventis CropScience USA

*PP 0F6140*

EPA has received a pesticide petition (PP 0F6140) from Aventis CropScience USA, PO Box 12014, 2 T. W. Alexander Drive, Research Triangle Park, NC 27709, proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180.473(a)(1) by establishing tolerances for residues of the herbicide glufosinate-ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolite, 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents in or on the raw agricultural commodities derived from cotton: undelinted seed at 3.5 parts per million (ppm) and gin byproducts at 12.0 ppm. Aventis CropScience also proposes to amend 40 CFR part 180.473(c) by establishing tolerances for residues of the herbicide glufosinate-ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-, monoammonium salt) and its metabolites, 3-methylphosphinico-propionic acid, and 2-acetamido-4-methylphosphinico-butanoic acid expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents in or on the raw agricultural commodities derived from transgenic cotton tolerant to glufosinate-ammonium: Undelinted seed at 3.5 ppm and gin byproducts at 12.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA: however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of

the petition. Additional data may be needed before EPA rules on the petition.

*A. Residue Chemistry*

1. *Plant metabolism.* The metabolism of glufosinate-ammonium in plants has been investigated and is understood. The crop residue profile following selective use of glufosinate-ammonium on transgenic crops is different from that found in conventional crops. The crop residue observed after non-selective use is the metabolite 3-methylphosphinico-propionic acid which is found only in trace amounts. The principal residue identified in the metabolism studies after selective use of glufosinate-ammonium on transgenic crops is the acetylated derivative of parent material, 2-acetamido-4-methylphosphinico-butanoic acid with lesser amounts of 3-methylphosphinico-propionic acid observed.

2. *Analytical method.* The enforcement analytical method utilizes gas chromatography for detecting and measuring levels of glufosinate-ammonium and metabolites with a general limit of quantification of 0.05 ppm. This method allows detection of residues at or above the proposed tolerances.

3. *Magnitude of residues.* Field residue trials were conducted across the five major regions of cotton production in the U.S. Two different treatment regimes were examined to represent use patterns which are the most likely to result in the highest residues. Glufosinate-ammonium derived residues did not exceed 3.4 ppm in undelinted cotton seed and 11.6 ppm in cotton gin byproducts (trash) when sampled at 70 days or more after the last treatment. No significant concentration of the residues occurred in the processed cotton commodities meal and hull and in refined oil the residues were less than the limit of quantitation (LOQ) of the analytical method. Thus, tolerances are not being proposed for the processed commodities from cotton.

*B. Toxicological Profile*

1. *Acute toxicity.* Glufosinate-ammonium has been classified as toxicity category III for acute oral, dermal and inhalation toxicity. It is toxicity category III for eye irritation. It is not a dermal irritant (toxicity category IV) nor is it a dermal sensitizer. The oral $LD_{50}$ is 2 gram/kilogram (g/kg) in male rats and 1.62 g/kg in female rats.

2. *Genotoxicity.* Based on results of a complete genotoxicity database, there is no evidence of mutagenic activity in a battery of studies, including: *Salmonella* spp., *E. coli*, *in vitro* mammalian cell gene mutation assays, mammalian cell chromosome aberration assays, *in vivo* mouse bone marrow micronucleus assays, and unscheduled DNA synthesis assays.

3. *Reproductive and developmental toxicity.* In a developmental toxicity study, groups of 20 pregnant female Wistar rats were administered glufosinate-ammonium by gavage at doses of 0, 0.5, 2.24 10, 50 and 250 mg/kg/day from days 7 to 16 of pregnancy. The no observed adverse effect level (NOAEL) for maternal toxicity is 10 mg/kg/day; the lowest observed adverse effect level (LOAEL) is 50 mg/kg/day based on vaginal bleeding and hyperactivity in dams. In the fetus, the NOAEL is 50 mg/kg/day, based on dilated renal pelvis observations at the LOAEL of 250 mg/kg/day.

In a developmental toxicity study, groups of 15 pregnant female Himalayan rabbits were administered glufosinate-ammonium by gavage at doses of 0, 2.0, 6.3 or 20.0 millgrams/kilogram/day (mg/kg/day) from days 7 to 19 of pregnancy. In maternal animals, decreases in food consumption and body weight gain were observed at the 20 mg/kg/day dose level. The NOAEL for both maternal and developmental toxicity was 6.3 mg/kg/day.

In a multi-generation reproduction study, glufosinate-ammonium was administered to groups of 30 male and 30 female Wistar/Han rats in the diet at concentrations of 0, 40, 120 or 360 ppm. The LOAEL for systemic toxicity is 120 ppm based on increased kidney weights in both sexes and generations. The systemic toxicity NOAEL is 40 ppm. The LOAEL for reproductive/developmental toxicity is 360 ppm based on decreased numbers of viable pups in all generations. The NOAEL is 120 ppm.

4. *Subchronic toxicity.* In a subchronic oral toxicity study, glufosinate-ammonium was administered to 10 NMRI mice/sex/ dose in the diet at levels of 0, 80, 320 or 1,280 ppm (equivalent to 0, 12, 48, or 192 mg/kg/day) for 13 weeks. Significant ($p < 0.05$) increases were observed in serum aspartate aminotransferase and in alkaline phosphatase in high-dose (192 mg/kg/day) males. Also observed were increases in absolute and relative liver weights in mid-(48 mg/kg/day) and high-dose males. The NOAEL is 12 mg/kg/day, the LOAEL is 48 mg/kg/day based on the changes in clinical biochemistry and liver weights.

5. *Chronic toxicity.* In a combined chronic toxicity/oncogenicity study, glufosinate-ammonium was administered to 50 Wistar rats/sex/dose in the diet for 130 weeks at dose levels of 0, 40, 140, or 500 ppm (mean compound intake in males was 0, 1.9, 6.8, and 24.4 mg/kg/day and for females was 0, 2.4, 8.2 and 28.7 mg/kg/day, respectively). A dose-related increase in mortality was noted in females at 140 and 500 ppm, whereas in males increased absolute and relative kidney weights were noted at 140 ppm and 500 ppm. The NOAEL was considered to be 40 ppm. No treatment-related oncogenic response was noted.

In an oncogenicity study, glufosinate-ammonium was administered to 50 NMRI mice/sex/dose in the diet at dose levels of 0, 80, 160 (males only) or 320 (females only) ppm for 104 weeks. The NOAEL for systemic toxicity is 80 ppm (10.82/16.19 mg/kg/day in males/females (M/F)), and the LOAEL is 160/320 ppm (22.60/63.96 mg/kg/day in M/F), based on increased mortality in males, increased glucose levels in males and females, and changes in glutathione levels in males. No increase in tumor incidence was found in any treatment group.

In a chronic feeding study, glufosinate-ammonium technical was fed to male and female beagle dogs for 12 months in the diet at levels of 2.0, 5.0 or 8.5 mg/kg/day. The NOAEL is 5.0 mg/kg/day based on clinical signs of toxicity, reduced weight gain and mortality 8.5 mg/kg/day.

In a rat oncogenicity study, glufosinate-ammonium was administered to Wistar rats (60/sex/group) for up to 24 months at 0, 1,000, 5,000, or 10,000 ppm (equivalent to 0, 45.4, 228.9, or 466.3 mg/kg/day in males and 0, 57.1, 281.5, or 579.3 mg/kg/day in females). The LOAEL for chronic toxicity is 5,000 ppm (equivalent to 228.9 mg/kg/day for male rats and 281.5 mg/kg/day for females), based on increased incidences of retinal atrophy. The chronic NOAEL is 1,000 ppm. Under the conditions of this study, there was no evidence of carcinogenic potential. Dosing was considered adequate based on the increased incidence of retinal atrophy.

6. *Animal metabolism.* Studies conducted in rats using $^{14}$C-glufosinate-ammonium have shown that the compound is poorly absorbed (5-10%) after oral administration and is rapidly eliminated primarily as the parent compound. The highest residue levels were found in liver and kidney tissues.

The metabolic profile and the quantitative distribution of metabolites was very similar in both goat and hen. The vast majority of the dose was excreted, primarily as parent compound. The very limited residues found in edible tissues, milk and eggs were comprised principally of glufosinate and 3-methylphosphinico-

propionic acid (Hoe 061517), with lesser amounts of *N*-acetyl-L-glufosinate (Hoe 099730) and 2-methylohosphinico-acetic acid (Hoe 064619).

7. *Metabolite toxicology*. Additional testing has been conducted with the major metabolites, Hoe 061517 and Hoe 099730, as well as the L-isomer of glufosinate-ammonium, identified as Hoe 058192. Based on sub-chronic and developmental toxicity study results, a profile of similar or less toxicity compared to the parent compound, glufosinate-ammonium, was observed.

8. *Endocrine disruption*. No special studies have been conducted to investigate the potential of glufosinate-ammonium to induce estrogenic or other endocrine effects. However, no evidence of estrogenic or other endocrine effects have been noted in any of the toxicology studies that have been conducted with this product and there is no reason to suspect that any such effects would be likely.

*C. Aggregate Exposure*

1. *Dietary exposure*. Tolerances have been established (40 CFR part 180.473) for the combined residues of glufosinate-ammonium and metabolites in or on a variety of raw agricultural commodities. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicity studies. EPA, therefore, has no, established an acute reference dose (RfD) for the general population including infants and children. An acute RfD of 0.063 mg/kg/day was established, however, for the females 13+ subgroup. An acute analysis was conducted for the sub-population of females 13+. Chronic dietary analysis was conducted for the usual populations.

i. *Food*. An acute dietary analysis was conducted using the Dietary Exposure Evaluation Model (DEEM) software and the 1994-1996 CSFII consumption data base. The analysis assumed tolerance level residues for all commodities and 100% of crop treated. This Tier One analysis resulted in an exposure of 0.007432 mg/kg bw/day (95th percentile) for the female 13+ sub-population (the only population of concern) representing 35% utilization of the acute reference dose (RfD).

Chronic dietary analysis was conducted to estimate exposure to potential glufosinate-ammonium residues in or on registered and proposed commodities. The DEEM software and the 1994-1996 USDA food consumption data were used. Tolerance level residues were assumed for all commodities and conservative percent crop treated values were incorporated for major crops (25% corn, 15% soybean, 10% potatoes, 20% cotton), whereas 100% of the crop was assumed to be treated for all other registered or pending uses. Chronic dietary exposure estimates from residues of glufosinate-ammonium for the US Population utilized approximately 25% of the chronic RfD. The sub-population with the highest exposure was children 1-6 utilizing approximately 67% of the chronic RfD. This analysis was based on highly conservative assumptions. The Agency has no concerns with RfD utilization up to 100%.

ii. *Drinking water*. US EPA's Standard Operating Procedure (SOP) for Drinking Water Exposure and Risk Assessments was used to perform the drinking water assessment. The models screening concentrations in ground water (SCI-GROW) and EPA's Pesticide Root Zone Model (PRZM)-EXAMS were used to estimate the concentration of glufosinate-ammonium which might occur in water. The acute drinking water level of comparison (DWLOC) for females 13+ is 408 parts per billion (ppb). In comparison, the acute drinking water estimated concentrations (DWEC) calculated by Generic expected environmental concentration (GENEEC) is 45 ppb, nearly an order of magnitude below the DWLOC.

The chronic DWLOC calculated for adults is 184 ppb and that for children/toddlers is 24 ppb. The chronic DWEC calculated using a worst case scenario is 11 ppb (GENEEC). Thus, the drinking water estimated concentration represents only 11% of the DWLOC for adults and 46% of that for children/toddlers. The DWLOC are based on highly conservative dietary (food) exposures and are expected to be much higher in real world situations reducing further the percent utilization of the DWLOC even more favorable.

2. *Non-dietary exposure*. Glufosinate-ammonium is currently registered for use on the following non-food sites: areas around ornamentals, shade trees, Christmas trees, shrubs, walks, driveways, flower beds, farmstead buildings, in shelter belts, and along fences. It is also registered for use as a post-emergent herbicide on farmsteads, areas associated with airports, commercial plants, storage and lumber yards, highways, educational facilities, fence lines, ditch banks, dry ditches, schools, parking lots, tank farms, pumping stations, parks, utility rights-of-way, roadsides, railroads, and other public areas and similar industrial and non-food crop areas. It is also registered for lawn renovation uses.

The EPA has determined that there are no acute or chronic non-dietary exposure scenarios. Further, the Agency has determined that it is not appropriate to aggregate short- and intermediate-term non-dietary exposure with dietary exposures in risk assessments because the end-points are different.

*D. Cumulative Effects*

Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity." EPA has indicated that, at this time, the Agency does not have available data to determine whether glufosinate-ammonium has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, glufosinate-ammonium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance petition, therefore, it has not been assumed that glufosinate-ammonium has a common mechanism of toxicity with other substances.

*E. Safety Determination*

1. *U.S. population*. Using the conservative assumptions described above, based on the completeness and reliability of the toxicity data, it is concluded that chronic dietary exposure to the registered and proposed uses of glufosinate-ammonium will utilize at most 25% of the chronic RfD for the US Population. The actual exposure is likely to be much less as more realistic data and models are developed. Exposures below 100% of the RfD are generally assumed to be of no concern because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risk to human health.

The acute population of concern, female 13+ utilizes 35% of the acute RfD. This is a Tier One highly conservative assessment and actual exposure is likely to be far less. DWLOC based on dietary exposures are greater than highly conservative estimated levels, and would be expected to be well below the 100% level of the RfD, if they occur at all.

EPA has concluded that it is not appropriate to aggregate non-dietary exposures with dietary exposures in a risk assessment because the toxicity end-points are different.

Therefore, there is a reasonable certainty that no harm will occur to the

US Population from aggregate exposure (food, drinking water and nonresidential) to residues of glufosinate-ammonium and metabolites.

2. *Infants and children.* The toxicological data base is sufficient for evaluating prenatal and postnatal toxicity for glufosinate-ammonium. There are no prenatal or postnatal susceptibility concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproduction study. Based on clinical signs of neurological toxicity in short and intermediate dermal toxicity studies with rats, EPA has determined that an added FQPA safety factor of 3x is appropriate of assessing the risk of glufosinate-ammonium derived residues in crop commodities.

Using the conservative assumptions described in the exposure section above, the percent of the chronic reference dose that will be used for exposure to residues of glufosinate-ammonium in food for children 1-6 (the most highly exposed sub group) is 67%. Infants utilize 43% of the chronic RfD. As in the adult situation, DWLOC are higher than the worst case drinking water estimated concentrations and are expected to use well below 100% of the RfD, if they occur at all.

Therefore, there is a reasonable certainty that no harm will occur to infants and children from aggregate exposure to residues of glufosinate-ammonium.

*F. International Tolerances*

Maximum residue limits (Codex MRLs) for glufosinate-ammonium and metabolites in or on cotton commodities have not been established by the Codex Alimentarius Commission.

[FR Doc. 00–12651 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–912A; FRL–6559–1]**

## Amended Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the amended filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–912A, must be received on or before June 19, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION** section. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–912A in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Cynthia Giles-Parker, Fungicide Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7740; and e-mail address: giles-parker.cynthia@.epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS | Examples of potentially affected entities |
|---|---|---|
| Industry | 111<br>112<br>311<br>32532 | Crop production<br>Animal production<br>Food manufacturing<br>Pesticide manufacturing |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–912A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket

control number PF–912A in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by E-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 5.1/6.1 or ASCII file format. All comments in electronic form must be identified by docket control number PF–912A. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

## II. What Action is the Agency Taking?

A Notice of Filing (NOF) for trifloxystrobin was first published in the **Federal Register** on August 17, 1998 (63 FR 43937) (FRL–6018–2) . Since that time, EPA has received an amended pesticide petition as follows proposing the establishment of regulations for residues of trifloxystrobin in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition. The chronic and acute dietary risk numbers are lower than the ones in the initial NOF. For this reason, the Agency has assigned a 15-day comment period for this notice.

## List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 9, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

*Summaries of Petition*

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represent the views of the petitioner. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**Amended Petition**

*PP 9F05070*

In the **Federal Register** of January 19, 2000 (65 FR 2949) (FRL–6485–8), EPA published a notice that it had received a pesticide petition (PP 9F05070) from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419 proposing tolerances for the fungicide trifloxystrobin. EPA has received an amendment to PP 9F05070 from Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for the combined residues of trifloxystrobin and its metabolite, CGA–321113, in or on the raw agricultural commodities almond nutmeat at 0.04 parts per million (ppm); almond hulls at 3.0 ppm; hops dried cones at 11.0 ppm; sugar beet roots at 0.1 ppm; sugar beet tops at 4.0 ppm; sugar beet dried pulp at 0.4 ppm; sugar beet molasses at 0.2 ppm; potato tubers at 0.04 ppm; fruiting vegetables at 0.5 ppm; wheat grain at 0.05 ppm; wheat forage at 0.3 ppm; wheat hay at 0.2; wheat straw at 5.0 ppm; wheat bran 0.15 ppm; and asperated grain fractions at 5.0 ppm. The tolerances proposed in this amendment will not increase the overall risk of the chemical. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

[FR Doc. 00–12652 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–F

VOL 65 ISS 98 MY 19 2000 UMI

**ENVIRONMENTAL PROTECTION AGENCY**

**[OPP–181077; FRL–6559–4]**

## Thiamethoxam; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** EPA has received a specific exemption request from the Mississippi Department of Agriculture and Commerce to use the pesticide thiamethoxam (CAS No. 153719–23–4) to treat up to 1,000,000 acres of cotton to control cotton aphids. The Applicant proposes the use of a new chemical which has not been registered by the EPA; this would also be a first food use of this pesticide. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

**DATES:** Comments, identified by docket control number OPP–181077, must be received on or before June 5, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181077 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703 308–9362; fax number: 703 308–5433; e-mail address: schaible.stephen@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. Does this Action Apply to Me?*

You may be potentially affected by this action if you petition EPA for emergency exemption under section 18 of FIFRA. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| State government | 9241 | State agencies that petition EPA for section 18 pesticide exemption |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. Other types of entities not listed in the table in this unit could also be regulated. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine the applicability provisions in this document. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–181077. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–181077 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–181077. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI that I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of

the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the proposed rule or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the Administrator determines that emergency conditions exist which require the exemption. The Mississippi Department of Agriculture and Commerce has requested the Administrator to issue a specific exemption for the use of thiamethoxam on cotton to control cotton aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the Applicant asserts that cotton aphid has developed resistance to most currently labeled and recommended insecticides in Mississippi. It is claimed that laboratory assays, field experiments, and field experience indicate that insecticides currently recommended for cotton aphid control are variable in effectiveness to the extent that agricultural consultants and cotton producers consider them to be unreliable. Studies suggest aphids may be initially controlled with registered alternatives such as dicrotophos, endosulfan, methomyl and imidacloprid, but that populations resurge rapidly following application. Aphids are naturally controlled by the fungal disease *Neozygites fresenii* once aphid populations have reached high infestation levels, but it is often difficult to predict when disease epizootics will occur. Recently, participation in the Boll Weevil Eradication Program has resulted in greater risk of yield threatening outbreaks of cotton aphids. Because of the intensive use of malathion for eradication of the boll weevil, the early years of eradication effort are considered to be years of increased risk of secondary pest outbreak; survey data collected in Mississippi in 1998 support this claim. The Applicant estimates that in the event of a severe aphid outbreak yield losses as high as 50 lbs per acre could be sustained using currently available products. It is claimed that yield losses using thiamethoxam under similar conditions would be around 10 lbs. per acre. These yield losses would result in a projected difference in net returns to the producer of $25 per acre, in the event of heavy, sustained aphid infestations.

The Applicant proposes to make no more than two applications of the product Centric, containing 25% of the active ingredient thiamethoxam, to a maximum of 1,000,000 acres of cotton in Mississippi, between June 15 and September 15, 2000; a maximum of 94,000 lbs. a.i. (375,000 lbs. of product) would be used under this exemption.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 of FIFRA require publication of a notice of receipt of an application for a specific exemption proposing "use of a new chemical (i.e., an active ingredient) which has not been registered by the EPA", and also " a first food use of a chemical." The notice provides an opportunity for public comment on the application.

The Agency, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Mississippi Department of Agriculture and Commerce.

**List of Subjects**

Environmental protection, Pesticides and pests.

Dated: May 10, 2000.

**James Jones,**

*Director, Registration Division, Office of Pesticide Programs.*

[FR Doc. 00–12650 Filed 5–18–00; 8:45 am]

BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6702–8]**

## South Bay Asbestos Superfund Site; Proposed Notice of Administrative Settlement

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; request for public comment.

**SUMMARY:** In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9600 *et seq.*, notice is hereby given that a proposed prospective purchaser agreement associated with the South Bay Asbestos Superfund Site was executed by the United States Environmental Protection Agency ("EPA)") on May 5, 2000. The proposed prospective purchaser agreement would resolve certain potential claims of the United States under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, and section 7003 of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6973, against WCSJ LLC (the "Purchaser"). The subject property is the Highway 237 Disposal Site (formerly known as the Marshland Landfill). The purchaser intends to develop 45 acres for commercial use, to be known as the Legacy Terrace Development, and 23 acres will be preserved and maintained as open space. The proposed settlement would require the purchaser to pay EPA a one-time payment of $250,000.

For thirty (30) calendar days following the date of publication of this notice, EPA will receive written comments relating to the proposed settlement. If requested prior to the expiration of this public comment period, EPA will provide an opportunity for a public meeting in the effected area. EPA's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105.

**DATES:** Comments must be submitted on or before June 19, 2000.

*Availability:* The proposed prospective purchaser agreement and additional background documentation relating to the settlement are available for public inspection at the U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed settlement may be obtained from Kara Christenson, Assistant Regional Counsel (ORC–2), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Comments should reference "WCSJ LLC, South Bay Asbestos Area Superfund Site," and "Docket No. 2000–07" and should be addressed to Kara Christenson at the above address.

**FOR FURTHER INFORMATION CONTACT:** Kara Christenson, Assistant Regional Counsel (ORC–2), Office of Regional Counsel, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105; E-mail: christenson.kara@epa. gov; phone: (415) 744–1330.

**Keith Takata,**

*Director, Superfund Division, Region IX.*

[FR Doc. 00–12645 Filed 5–18–00; 8:45 am]

**BILLING CODE 6560–50–M**

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System.

**Background**

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83—Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

**Request for Comment on Information Collection Proposals**

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

**DATES:** Comments must be submitted on or before July 18, 2000.

**ADDRESSES:** Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Mary M. West, Chief, Financial Reports Section (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

**Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Reports**

1. *Report title:* Monthly Survey of Industrial Electricity Use.

*Agency form number:* FR 2009.

*OMB control number:* 7100–0057.

*Frequency:* Monthly.

*Reporters:* FR 2009a/c: Electric utility companies; FR 2009b: Cogenerators.

*Annual reporting hours:* FR 2009a/c: 2,196 hours; FR 2009c: 1,188 hours.

*Estimated average hours per response:* FR 2009a/c: 1 hour; FR 2009b: 30 minutes.

*Number of respondents:* FR 2009a/c: 183; FR 2009b: 198. Small businesses are affected.

*General description of report:* This information collection is voluntary (12 U.S.C. 225a, 263, 353 *et seq.*, and 461) and individual respondent data are given confidential treatment (5 U.S.C. 552(b)(4)).

*Abstract:* The survey collects information on the volume of electric power delivered during the month to classes of industrial customers. Currently, there are two versions of the survey: the FR 2009a, collects information from electric utilities, the FR 2009b collects information from manufacturing and mining facilities that generate electric power for their own use.

*Current Actions:* During the next two years the industrial output index will be revised to reflect the new North American Industry Classification System (NAICS). The published series will be categorized under the NAICS codes instead of the current Standard Industrial Classification (SIC) codes. To facilitate this transition process, the Federal Reserve will ask utilities to reclassify their customers using the new codes. The FR 2009c has been created in the NAICS format for use by respondents that have made the

transition from SIC to NAICS codes. The FR 2009a would be completed by only the respondents that choose to report SIC codes. This approach would not impose any added burden on the respondents. The Federal Reserve also proposes to eliminate the FR 2009a after the two-year transition period.

2. *Report title:* The Bank Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates.

*Agency form number:* FR Y–8.

*OMB control number:* 7100–0126.

*Frequency:* Quarterly.

*Reporters:* Bank holding companies, financial holding companies.

*Annual reporting hours:* 169,027 hours.

*Estimated average hours per response:* 7.2 hours.

*Number of respondents:* 5,869.

*Small businesses are not affected.*

*General description of report:* This information collection is authorized by section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)) and section 225.5(b) of Regulation Y (12 CFR 225.5(b)) and is given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(4) and (8)).

*Abstract:* The FR Y–8 collects information on the movement of funds between a domestic bank holding company and its subsidiaries in order to identify broad categories of intercompany transactions and balances that may affect the financial condition of the subsidiary bank. The report also collects information on income recognized by subsidiary banks from other bank holding company members as well as information on credit extended by subsidiary banks to other bank holding company members. Domestic top-tier bank holding companies with assets of $300 million or more are required to file the FR Y–8 on a semiannual basis (June and December). Also, interim reporting is currently required within ten calendar days of certain large asset transfers. The Federal Reserve proposes to delete the current information on the FR Y–8 and collect fourteen items of information on Section 23A covered transactions.

*Current actions:* On September 21, 1999, a **Federal Register** notice (64 FR 51121) was issued for public comment to completely revise the FR Y–8 to enhance the Federal Reserve's ability to monitor bank exposures to affiliates and to ensure compliance with section 23A of the Federal Reserve Act. Specifically, the initial proposal would have required bank holding companies to report quarterly, for each of their subsidiary banks, four items of information on covered transactions under section 23A. Domestic financial top-tier bank holding companies would be required to provide information on an individual-bank-basis for each of their insured depository institutions. The interim report would be eliminated. After this proposal was issued, the enactment of the Gramm-Leach-Bliley Act (GLBA) of 1999 increased the importance of section 23A of the Federal Reserve Act and revised the requirements of section 23A. These changes required revisions to the initial proposal.

The GLBA expands the coverage of section 23A to include a new entity, the financial subsidiary, as an affiliate of the insured depository institution. In addition, GLBA applied additional section 23A limits to certain transactions between insured depository institutions, their affiliates, and their financial subsidiaries that engage in the new banking powers. The revised FR Y–8 report will retain the four items initially proposed. However, the Federal Reserve also proposes to collect additional items that would be completed only by bank holding companies that have insured depository institutions that own financial subsidiaries. These additional items are necessary to adequately assess the different section 23A limits that apply to institutions with and without financial subsidiaries.

Based on the revisions to section 23A, the Federal Reserve proposes that all bank holding companies, including financial holding companies, report for their insured depository institutions the following four items, which were part of the original proposal: For all covered transactions subject to section 23A's collateral requirements, holding companies would report for each of their insured depository institutions (a) the outstanding amount of such transactions as of the report date and (b) the maximum amount of such transactions during the calendar quarter ending with the report date. For covered transactions *not* subject to the collateral requirements, holding companies would likewise report for each of their insured depository institutions (a) the outstanding amount of such transactions as of the report date and (b) the maximum amount of such transactions during the calendar quarter ending with the report date. All transactions between insured depository institutions and financial subsidiaries would be excluded from these four items.

In addition, holding companies engaged in new powers through financial subsidiaries would report ten additional items on covered transactions between the insured depository institution and financial subsidiaries and between the affiliates of the insured depository institution and the financial subsidiaries. For all covered transactions subject to section 23A's collateral requirements between the insured depository institution and financial subsidiaries, holding companies would report for each of their insured depository institutions (a) the outstanding amount of such transactions as of the report date and (b) the maximum amount of such transactions during the calendar quarter ending with the report date. For all covered transactions not subject to section 23A's collateral requirements between the insured depository institution and financial subsidiaries, holding companies would report for each of their insured depository institutions (a) the outstanding amount of such transactions as of the report date and (b) the maximum amount of such transactions during the calendar quarter ending with the report date. For purchase of, or investment in, securities issued by the financial subsidiaries of the insured depository institution by the insured depository institution, the holding company would report the outstanding amount of (a) equity securities as of the report date and (b) debt securities as of the report date. For purchase of, or investment in, securities issued by the financial subsidiaries of the insured depository institution by the affiliates of the insured depository institution, the financial holding company would report the outstanding amount of (a) equity securities as of the report date and (b) debt securities as of the report date. For loans and other extensions of credit by affiliates of the insured depository institution to the financial subsidiaries of the insured depository institution, the holding company would report (a) the outstanding amount of such transactions as of the report date and (b) the maximum amount of such transactions during the calendar quarter ending with the report date.

In order to monitor the amount of covered transactions that an insured depository institution has with financial subsidiaries, the Federal Reserve believes that it is necessary to distinguish those covered transactions from covered transactions the insured depository institution has with other affiliates of the holding company. The additional items on investments in and extensions of credit to financial subsidiaries will provide the information needed to determine whether the insured depository institution is evading the limits on

transactions with their financial subsidiaries.

The comment period ended on November 22, 1999, and the Federal Reserve received public comments from twelve bank holding companies on the initially proposed revisions to the FR Y–8. Respondents suggested the following four alternatives for reducing burden: Collect the proposed items on the commercial bank or bank holding company quarterly financial statements or through the examination process, eliminate the reporting of the maximum aggregate amounts outstanding during the quarter, exempt institutions from reporting based upon an asset size, and exempt institutions with no affiliates or covered transactions from reporting.

In response to public comments received in 1999 on the initially proposed revisions, the Federal Reserve also proposes to add a declaration page and two check boxes to the reporting form to reduce reporting burden. The proposed declaration page and check boxes will alleviate reporting burden by exempting certain insured depository institutions from completing all of the proposed report items.

Section 23A of the Federal Reserve Act is one of the most important statutes protecting the federal safety net by limiting exposures of the insured depository institutions to affiliates. GLBA has elevated the importance of Section 23A and the need to collect information to monitor bank exposures to affiliates. The Federal Reserve strongly believes that a separate report collected on an individual insured depository institution basis for all insured depository institutions that are owned by the bank holding company is necessary to monitor compliance with section 23A. The information requested at the end of each reporting period as well as the maximum amount during the period should be available and not significantly burdensome to report because insured depository institutions already should, on an ongoing basis, be continuously monitoring their section 23A covered transaction exposures to ensure compliance with the statute.

The proposed revised report would become effective with the September 30, 2000, reporting date.

3. *Report title:* Daily Advance Report of Deposits.

*Agency form number:* FR 2000.

*OMB control number:* 7100–0087.

*Frequency:* Weekly.

*Reporters:* Depository institutions.

*Annual reporting hours:* 24,960 hours.

*Estimated average hours per response:* 36 minutes.

*Number of respondents:* 160. Small businesses are affected.

*General description of report:* This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).

*Abstract:* This advance report is commonly referred to as the Markstat D. The Markstat D report collects selected deposit and vault cash data for the most recent reporting week from a sample of large commercial banks and thrifts before such data become available for the universe of all FR 2900 weekly reporters. At present, ten data items (a subset of those on the FR 2900) are collected on the report. The advance report is used in the construction of preliminary estimates of the monetary aggregates for the week just ending.

*Current actions:* The Federal Reserve proposes dropping three items from the FR 2000 and reducing the authorized panel size from 186 to 160 institutions. The elimination of the three reporting items and the reduction of the authorized panel size would reduce reporting burden by 15,662 hours.

**Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports**

1. *Report titles:* Quarterly Report of Interest Rates on Selected Direct Consumer Installment Loans; Quarterly Report of Credit Card Plans.

*Agency form numbers:* FR 2835; FR 2835a.

*OMB control number:* 7100–0085.

*Frequency:* Quarterly.

*Reporters:* Commercial banks.

*Annual reporting hours:* FR 2835: 90 hours; FR 2835a: 200 hours.

*Estimated average hours per response:* FR 2835: 9 minutes; FR 2835a: 30 minutes.

*Number of respondents:* FR 2835: 150; FR 2835a: 100. Small businesses are not affected.

*General description of report:* These information collections are voluntary (12 U.S.C. 248(a)(2)). The FR 2835a individual respondent data are given confidential treatment (5 U.S.C. 552 (b)(4)), the FR 2835 data however, is not given confidential treatment.

*Abstract:* The FR 2835 collects the most common interest rate charged at a sample of 150 commercial banks on two types of consumer loans made in a given week each quarter: new auto loans and other loans for consumer goods and personal expenditures. The data are reported for the calendar week beginning on the first Monday of each survey month (February, May, August, and November).

The FR 2835a collects information on two measures of credit card interest rates from a sample of 100 commercial banks (authorized panel size), selected to include banks with $1 billion or more in credit card receivables, and a representative group of smaller issuers. The data are representative of interest rates paid by consumers on bank credit cards because the panel includes virtually all large issuers and an appropriate sample of other issuers.

2. *Report title:* Report of Changes in Foreign Investments (Made Pursuant to Regulation K).

*Agency form number:* FR 2064.

*OMB control number:* 7100–0109.

*Frequency:* Event generated.

*Reporters:* Member banks, Edge and agreement corporations, and bank holding companies.

*Annual reporting hours:* 750 hours.

*Estimated average hours per response:* 30 minutes.

*Number of respondents:* 50. Small businesses are not affected.

*General description of report:* This information collection is mandatory (12 U.S.C. 602, 625 and 1844) and is given confidential treatment (5 U.S.C. 552(b)(4)).

*Abstract:* Member banks, Edge and agreement corporations, and bank holding companies are required to file the FR 2064 to record changes in their international investments. The FR 2064 report is event generated and is filed no later than the last day of the month following the month in which the change occurred. The Federal Reserve uses the information to monitor investments in the international operations of U.S. banking organizations and to fulfill its supervisory responsibility under Regulation K.

3. *Report title:* Report of Transaction Accounts, Other Deposits, and Vault Cash; Report of Certain Eurocurrency Transactions.

*Agency form number:* FR 2900; FR 2950/2951.

*OMB control number:* 7100–0087.

*Frequency:* Weekly, quarterly.

*Reporters:* Depository institutions.

*Annual reporting hours:* 984,138 hours.

*Estimated average hours per response:* FR 2900: 3.50; FR 2950/2951: 1.00.

*Number of respondents:* FR 2900: 4,813 weekly, and 5,880 quarterly; FR 2950/2951: 497 weekly, and 2 quarterly. Small businesses are affected.

*General description of report:* This information collection is mandatory (12 U.S.C. 248(a), 461, 603, and 615, and 3105(b)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

*Abstract:* The FR 2900 report collects information on deposits and related items from depository institutions that have transaction accounts or

nonpersonal time deposits and that are not fully exempt from reserve requirements ("nonexempt institutions"). The FR 2950/2951 collects information on Eurocurrency transactions from depository institutions that obtain funds from foreign (non-U.S.) sources or that maintain foreign branches. The Federal Reserve proposes to raise the deposit cutoff used to determine weekly versus quarterly FR 2900 reporting (the "nonexempt cutoff") above its indexed level of $84.5 million to $95 million. These mandatory reports are used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates.

4. *Report title:* Annual Report of Total Deposits and Reservable Liabilities.
*Agency form number:* FR 2910a.
*OMB control number:* 7100–0175.
*Frequency:* Annual.
*Reporters:* Depository institutions.
*Annual reporting hours:* 2,734 hours.
*Estimated average hours per response:* 30 minutes.
*Number of respondents:* 5,468. Small businesses are affected.
*General description of report:* This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).
*Abstract:* This report collects information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and agreement corporations) that are fully exempt from reserve requirements under the Garn-St Germaine Depository Institutions Act of 1982. This mandatory report is used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates.

5. *Report title:* Allocation of Low Reserve Tranche and Reservable Liabilities Exemption.
*Agency form number:* FR 2930/2930a.
*OMB control number:* 7100–0088.
*Frequency:* Annually, and on occasion.
*Reporters:* Depository institutions.
*Annual reporting hours:* 64 hours.
*Estimated average hours per response:* 15 minutes.
*Number of respondents:* 255. Small businesses are affected.
*General description of report:* This information collection is mandatory: FR 2930 (12 U.S.C. 248(a), 461, 603, and 615) and FR 2930a (12 U.S.C. 248(a) and 461). It is also given confidential treatment (5 U.S.C. 552(b)(4)).
*Abstract:* The FR 2930 and the FR 2930a provide information on the allocation of the low reserve tranche and reservable liabilities exemption for depository institutions having offices (or groups of offices) that submit separate FR 2900 deposits reports. The data collected on these reports are needed for the calculation of required reserves.

6. *Report title:* Report of Foreign (Non-U.S.) Currency Deposits.
*Agency form number:* FR 2915.
*OMB control number:* 7100–0237.
*Frequency:* Quarterly.
*Reporters:* Depository institutions.
*Annual reporting hours:* 366 hours.
*Estimated average hours per response:* 30 minutes.
*Number of respondents:* 183. Small businesses are affected.
*General description of report:* This information collection is mandatory (12 U.S.C. 248(a)(2), and 3105(b)(2)) and is given confidential treatment (5 U.S.C. 552(b)(4)).
*Abstract:* The FR 2915 collects weekly averages of the amounts outstanding for foreign (non-U.S.) currency deposits held at U.S. offices of depository institutions, converted to U.S. dollars and included on the FR 2900 (OMB No. 7100–0087), the principal deposits report that is used for the calculation of required reserves and for the construction of the monetary aggregates. Foreign currency deposits are subject to reserve requirements and, therefore, are included in the FR 2900. However, foreign currency deposits are not included in the monetary aggregates. The FR 2915 data are used to back foreign currency deposits out of the FR 2900 data for construction and interpretation of the monetary aggregates. The FR 2915 data are also used to monitor the volume of foreign currency deposits.

**Proposal To Approve Under OMB Delegated Authority the Discontinuation of the Following Reports**

1. *Report title:* Quarterly Gasoline Company Report.
*Agency form number:* FR 2580.
*OMB control number:* 7100–0009.
*Frequency:* Quarterly.
*Reporters:* Gasoline companies.
*Annual reporting hours:* 4 hours.
*Estimated average hours per response:* 9 minutes.
*Number of respondents:* 7. Small businesses are not affected.
*Abstract:* The FR 2580 collects outstanding balances on retail credit card accounts at gasoline companies. The number of FR 2580 reporters has declined over time as the industry structure has changed. Initially, the data were collected from the universe of approximately thirty gasoline companies; subsequently, some smaller companies withdrew from the sample or were merged into other companies. In recent years some major companies have entered into "co-branding" arrangements with banks and have significantly reduced, or eliminated, their own credit card portfolios. The Federal Reserve recommends discontinuing the FR 2580 primarily because the number of respondents has dwindled. The decrease in reporting is due in part to the purchase of some of the gasoline companies' receivables by depository institutions in recent years. Because of the difficulty in maintaining a meaningful sample and because of the small fraction of consumer credit that these receivables represent, the Federal Reserve does not believe it is useful to continue the report.

2. *Report title:* Quarterly Report of Selected Deposits, Vault Cash, and Reserve Liabilities.
*Agency form number:* FR 2910q.
*OMB control number:* 7100–0175.
*Frequency:* Quarterly.
*Reporters:* Depository institutions.
*Annual reporting hours:* 3,936 hours.
*Estimated average hours per response:* 2 hours.
*Number of respondents:* 492. Small businesses are affected.
*General description of report:* This information collection is mandatory (12 U.S.C. 248(a) and 461) and is given confidential treatment (5 U.S.C. 552(b)(4)).
*Abstract:* This report collects information from depository institutions (other than U.S. branches and agencies of foreign banks and Edge and agreement corporations) that are fully exempt from reserve requirements under the Garn-St Germaine Depository Institutions Act of 1982. This report is used by the Federal Reserve for administering Regulation D (Reserve Requirements of Depository Institutions) and for constructing, analyzing, and controlling the monetary and reserve aggregates. The Federal Reserve proposes eliminating the exempt deposit cutoff and discontinuing this report associated with that cutoff. The Federal Reserve believes that, for exempt institutions, the quarterly reports of condition are adequate for quarterly benchmarking of the monetary aggregates. The Federal Reserve also believes that by shifting the current FR 2910q reporters to the annual, two-item FR 2910a, the Board will be able to adequately monitor compliance with Regulation D. The shift in reporting frequency of the almost 500 FR 2910q

respondents to the FR 2910a would reduce reporting burden by 3,690 hours.

Board of Governors of the Federal Reserve System, May 15, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–12589 Filed 5–18–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHS Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 2000.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

*1. Antioch Holding Company,* Antioch, Illinois; to acquire 24.99 percent of the voting shares of Lakes Region Bancorp, Inc, Third Lake, Illinois, and thereby indirectly acquire Anchor Bank, Third Lake, Illinois.

**B. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. Valley Capital Corporation,* Greenwood, Mississippi; to merge with State Capital Corporation, Brookhaven, Mississippi, and thereby indirectly acquire State Bank and Trust Company, Brookhaven, Mississippi.

Board of Governors of the Federal Reserve System, May 15, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–12588 Filed 5–18–00; 8:45 am]

BILLING CODE 6210–01–P

## BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting; Notice

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 10 a.m., Wednesday, May 24, 2000.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Lynn S. Fox, Assistant to the Board; 202–452–3204.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 17, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–12744 Filed 5–17–00; 10:54 am]

BILLING CODE 6210–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00D–1278]**

### Draft Guidance for Industry on Female Sexual Dysfunction: Clinical Development of Drug Products for Treatment; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Female Sexual Dysfunction: Clinical Development of Drug Products for Treatment." The draft guidance is intended to provide recommendations to industry on the development of drug products for the treatment of female sexual dysfunction (FSD).

**DATES:** Submit written comments on the draft guidance by July 18, 2000. General comments on agency guidance documents are welcome at any time.

**ADDRESSES:** Copies of this draft guidance for industry can be obtained on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

**FOR FURTHER INFORMATION CONTACT:** Lana L. Pauls, Center for Drug Evaluation and Research (HFD–580), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4260.

**SUPPLEMENTARY INFORMATION:** FDA is announcing the availability of a draft guidance for industry entitled "Female Sexual Dysfunction: Clinical Development of Drug Products for Treatment." The draft guidance provides recommendations for sponsors designing clinical trials in support of new drug applications for the treatment of FSD. It includes recommendations on the appropriate definition of the patient population to be studied, inclusion and exclusion criteria, the use of scales and questionnaires to assess FSD, and

primary endpoints for trials of drug products.

This Level 1 draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on the development of drugs for the treatment of FSD. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 12, 2000.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 00–12594 Filed 5–18–00; 8:45 am]

**BILLING CODE 4160–01–F**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[HCFA–3034–N]**

### Medicare Program; Meeting of the Executive Committee of the Medicare Coverage Advisory Committee—June 6, 2000

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** This notice announces a public meeting of the Executive Committee (the Committee) of the Medicare Coverage Advisory Committee (MCAC). The Committee will hear reports from the Medical and Surgical Procedures Panel meeting of April 12 and 13, 2000, during which biofeedback and pelvic floor electrical stimulation in the treatment of urinary incontinence were deliberated. The Committee will also discuss presentations from interested persons regarding procedural aspects of future public meetings of the medical specialty panels of the MCAC. Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2, section 10(a)(1) and (a)(2)).

**DATES:**

*The Meeting:* June 6, 2000, from 8 a.m. until 3 p.m., E.D.T.

*Deadline for Presentations and Comments:* May 17, 2000, 5 p.m., E.D.T.

*Special Accommodations:* Persons attending the meeting who are hearing impaired and require sign language interpretation, or have a condition that requires other special assistance or accommodations, are asked to notify the Executive Secretary by May 25, 2000.

**ADDRESSES:**

*The Meeting:* The meeting will be held at the Baltimore Convention Center, One West Pratt Street, Baltimore, Maryland 21201.

*Presentations and Comments:* Submit formal presentations and written comments to Constance A. Conrad, Executive Secretary; Office of Clinical Standards and Quality; Health Care Financing Administration; 7500 Security Boulevard; Mail Stop S3–02–01; Baltimore, MD 21244.

*Website:* You may access up-to-date information on this meeting at www.hcfa.gov/quality/8b.htm.

*Hotline:* You may access up-to-date information on this meeting on the HCFA Advisory Committee Information Hotline, 1–877–449–5659 (toll free) or in the Baltimore area (410) 786–9379.

**FOR FURTHER INFORMATION CONTACT:** Constance A. Conrad, Executive Secretary, 410–786–4631.

**SUPPLEMENTARY INFORMATION:** On August 13, 1999, we published a notice (64 FR 44231) to describe the MCAC, which provides advice and recommendations to us about clinical issues.

#### Current Panel Members

Harold C. Sox, MD (Chairperson); Thomas V. Holohan; Leslie P. Francis; John H. Ferguson; Robert L. Murray; Alan M. Garber; Michael D. Maves; Frank J. Papatheofanis; Ronald M. Davis; Daisy Alford-Smith; Joe W. Johnson; Robert H. Brook; Linda A. Bergthold; Randel E. Richner.

#### Meeting Topic

The Committee will hear reports from the Medical and Surgical Procedures Panel meeting of April 12 and 13, 2000, during which biofeedback and pelvic floor electrical stimulation in the treatment of urinary incontinence. The Committee will also hear and discuss presentations from interested persons regarding procedural aspects of future public meetings of the medical specialty panels of the MCAC.

#### Procedure and Agenda

This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 1 hour. The Committee may limit the number and duration of oral presentations to the time available. If you wish to make formal presentations you must notify the For Further Information Contact, and submit the following by the Deadline for Presentations and Comments date listed in the **DATES** section of this notice: a brief statement of the general nature of the evidence or arguments you wish to present, the names and addresses of proposed participants, and an estimate of the time required to make the presentation. We will request that you declare at the meeting whether you have any financial involvement with manufacturers of any items or services being discussed (or with their competitors).

After the public presentation, we will make a presentation to the Committee. After our presentation, the Committee will deliberate openly. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. Prior to the review of the Medical Specialty Panel recommendation, the Committee will allow approximately a 30-minute open public session for any attendee to address issues specific to the topic. After the open session, the members will vote and the Committee will make its recommendation.

**Authority:** 5 U.S.C. App. 2, section 10(a)(1) and (a)(2).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 11, 2000.

**Jeffrey L. Kang,**

*Director Office of Clinical Standards and Quality, Health Care Financing Administration.*

[FR Doc. 00–12686 Filed 5–18–00; 8:45 am]

**BILLING CODE 4120–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Care Financing Administration

**[HCFA–1136–N]**

### Medicare Program; June 5, 2000, Meeting of the Practicing Physicians Advisory Council

**AGENCY:** Health Care Financing Administration (HCFA), HHS.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

**DATES:** The meeting is scheduled for June 5, 2000, from 9 a.m. until 5 p.m., E.D.T.

**ADDRESSES:** The meeting will be held in the Multipurpose Room/Auditorium, first Floor, Health Care Financing Administration Building, 7500 Security Boulevard, Baltimore, Maryland 21244.

**FOR FURTHER INFORMATION CONTACT:** Paul Rudolf, Executive Director, Practicing Physicians Advisory Council, Room 435–H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, (202) 690–7874. News media representatives should contact the HCFA Press Office, (202) 690–6145. For additional information and updates on committee activities, please refer to the HCFA Advisory Committees Information Line 1–(877)–449–5659 toll free or (410)–786–9379 local or via the Internet at http://www.hcfa.gov/fac.

**SUPPLEMENTARY INFORMATION:** The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare or Medicaid in the previous year. Members of the Council include both participating and nonparticipating physicians and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members are invited to serve for overlapping 4-year terms. In accordance with section 14 of the Federal Advisory Committee Act, terms of more than 2 years are contingent upon the renewal of the Council by appropriate action before the end of the 2-year term. The Council held its first meeting on May 11, 1992.

The current members are: Jerold M. Aronson; Richard Bronfman; Joseph Heyman; Sandral Hullett; Stephen A. Imbeau; Jerilynn S. Kaibel; Angelyn L. Moultrie; Derrick K. Latos; Dale Lervick; Sandra B. Reed; Amilu Rothhammer; Maisie Tam; Victor Vela; Kenneth M. Viste, Jr.; and Douglas L. Wood. The Council Chairperson is Derrick L. Latos.

At this meeting, council members will be updated on Physician Regulatory Issues Team (PRIT); Physician Service Plan (PSP); Advance Beneficiary Notices (ABN); and the Chief Financial Officer (CFO) audit and the error rate, including analysis, claims review, and educational effort. The agenda will provide for discussion and comment on the updates and following topics:

- Office of Financial Management Program Integrity Customer Service Plan (evaluation and improvement of program integrity customer service to providers).
- Private Fee for Service Medicare+Choice and how to educate physicians about this new option.

For additional information and clarification on the topics listed, call the contact person listed above.

Individual physicians or medical organizations that represent physicians that wish to make 5-minute oral presentations on agenda issues should contact the Executive Director by 12 noon, May 23, 2000, to be placed on the schedule. Testimony is limited to listed agenda issues, and the number of oral presentations may be limited by the time constraints. A written copy of the presenter's oral remarks should be submitted to the Executive Director no later than 12 noon, May 23, 2000, for distribution to the Council members for review before the meeting. Physicians and organizations not scheduled to speak may also submit written comments to the Executive Director and the Council members.

The meeting is open to the public, but attendance is limited to the space available. Individuals requiring sign language interpretation for the hearing impaired and/or other special accommodation, should contact John Lanigan at (202) 690–7418 at least 10 days before the meeting.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and sections 10(a) and 14(a)(1)(A) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR Part 11)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 16, 2000.

**Nancy-Ann Min DeParle,**

*Administrator, Health Care Financing Administration.*

[FR Doc. 00–12660 Filed 5–18–00; 8:45 am]

BILLING CODE 4120–01–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4557–N–20]**

## Federal Property Suitable as Facilities To Assist the Homeless

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

**FOR FURTHER INFORMATION CONTACT:** Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–937–7588.

**SUPPLEMENTARY INFORMATION:** In accordance with 24 CFR part 581 and section 501 of the Steward B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the

homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the agency cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interests as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington DC 20332–8020; (202) 767–4184; ARMY: Mr. Jeff Holste, Military Programs, U.S. Army Corps of Engineers, Installation Support Center, Planning & Real Property Branch, Attn: CEMP–IP, 7701 Telegraph Road, Alexandria, VA 22315–3862; (703) 428–6318; (These are not toll-free numbers).

Dated: May 11, 2000.

**Fred Karnas, Jr.,**

*Deputy Assistant Secretary for Special Needs Assistance Programs.*

**Title V, Federal Surplus Property Program: Federal Register Report for 5/19/00**

**Suitable/Available Properties**

*Land (by State)*

Nebraska

0.22 acres
Offutt AFB
Sarpy Co: NE 68113–
Landholding Agency: Air Force
Property Number: 18200020009
Status: Unutilized
Comment: small

**Unsuitable Properties**

*Buildings (by State)*

Alabama

Bldgs. 3365, 3366
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–5000
Landholding Agency: Army
Property Number: 21200020001
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 3553–3555
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020002
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 3610, 3611
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020003
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 3640–3643
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number 21200020004
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3657
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number 21200020005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5100
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020006
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5204
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020007
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5658
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020008
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5671
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020009
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 5672
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020010
Status: Unutilized
Reasons: Secured Area

Bldg. 6109
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 6212, 6262
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 6300
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 6603
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7108
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7385
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7549
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020017
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 7551, 7552
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020018
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 7555, 7557, 7558
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020019
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldgs. 7581, 7588
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020020
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7595
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020021
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7603
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020022
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7846
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020023
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 8017
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898–
Landholding Agency: Army
Property Number: 21200020024
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 8973
Redstone Arsenal
Redstone Arsenal Co: Madison AL 35898
Landholding Agency: Army
Property Number: 21200020025
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Alaska

Bldg. 7192
Elmendorf AFB
Anchorage Co: AK 99506–3240
Landholding Agency: Air Force
Property Number: 18200020001
Status: Unutilized
Reason: Secured Area

Bldg. 7231
Elmendorf AFB
Anchorage Co: AK 99506–3240
Landholding Agency: Air Force
Property Number: 18200020002
Status: Unutilized
Reason: Secured Area

Bldg. 14427
Elmendorf AFB
Anchorage Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200020003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area

Bldg. 14487
Elmendorf AFB
Anchorage Co: AK 99506–
Landholding Agency: Air Force
Property Number: 18200020004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area

Arizona

Bldg. 13440
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21200020026
Status: Unutilized
Reason: Extensive deterioration

Bldg. 13556
Fort Huachuca
Sierra Vista Co: Cochise AZ 85635–
Landholding Agency: Army
Property Number: 21200020027
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. S–21
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200020028
Status: Unutilized
Reason: Secured Area

Bldg. S–25
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200020029
Status: Unutilized
Reason: Secured Area

Bldg. S–402
Sharpe Site
Lathrop Co: San Joaquin CA 95231–
Landholding Agency: Army
Property Number: 21200020030
Status: Unutilized
Reason: Secured Area

Florida

Bldg. 72905
Cape Canaveral AFS
Brevard Co: FL 32907–
Landholding Agency: Air Force
Property Number: 18200020006
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 62644
Cape Canaveral AFS
Brevard Co: FL 32907–
Landholding Agency: Air Force
Property Number: 18200020007
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Georgia

Bldg. P–8665
Hunter Army Airfield
Savannah Co: Chatham GA 31409–
Landholding Agency: Army
Property Number: 21200020031
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2304, 2313
Fort Gordon
Ft. Gordon Co: Richmond GA 30905–
Landholding Agency: Army
Property Number: 21200020032
Status: Unutilized
Reason: Extensive deterioration

Hawaii

Bldgs. 16, 18, 20
Kokee AFS
Kauai Co: HI 00000–
Landholding Agency: Air Force
Property Number: 18200020005
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

5 Bldgs.
Schofield Barracks
S–701, 712, 713, 734, 735
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200020033
Status: Unutilized
Reason: Extensive deterioration

25 Bldgs.
Schofield Barracks
S703–708, 714–727, 737–741
Wahiawa Co: HI 96786–
Landholding Agency: Army
Property Number: 21200020034
Status: Unutilized
Reason: Extensive deterioration

11 Bldgs.
Aliamanu Military
Reservation
Honolulu Co: HI 96818–
Location: 701, 731, 732, 900, 905, 936, 977, 1476, 1487, 1857, 1901

Landholding Agency: Army
Property Number: 21200020035
Status: Unutilized
Reason: Extensive deterioration

13 Bldgs.
Aliamanu Military
Reservation
Honolulu Co: HI 96818–
Location: 1100, 1133, 1209, 1320, 1400, 1409, 1458, 1609, 1636, 1910, 1931, 2123, 2124
Landholding Agency: Army
Property Number: 21200020036
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2138
Aliamanu Military
Reservation
Honolulu Co: HI 96818–
Landholding Agency: Army
Property Number: 21200020037
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
Aliamanu Military
Reservation
Honolulu Co: HI 96818–
Location: 1001, 1002, 2137, 2139
Landholding Agency: Army
Property Number: 21200020038
Status: Unutilized
Reason: Extensive deterioration

Kansas

Bldg. P–941
Fort Riley
Ft. Riley Co: Geary KS 66442–
Landholding Agency: Army
Property Number: 21200020039
Stauts: Unutilized
Reason: Secured Area

Louisiana

Bldg. 5969 A–D
Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–
Landholding Agency: Army
Property Number: 21200020040
Stauts: Unutilized
Reason: Floodway

Maryland

Bldg. 392
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020041
Stauts: Unutilized
Reason: Extensive deterioration

Bldg. 546
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020042
Stauts: Unutilized
Reason: Extensive deterioration

Bldg. 563
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020043
Stauts: Unutilized
Reason: Extensive deterioration

Bldg. 582
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020044
Stauts: Unutilized
Reason: Extensive deterioration

Bldg. 605
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020045
Status: Unutilized
Reason: Extensive deterioration

Bldg. 617
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020046
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 2501, 2508
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020047
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2835
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 20755–5115
Landholding Agency: Army
Property Number: 21200020048
Status: Unutilized
Reason: Extensive deterioration

Bldg. E3543
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200020049
Status: Unutilized
Reason: Extensive deterioration

Bldg. 05452
Aberdeen Proving Ground
Aberdeen Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 21200020050
Status: Unutilized
Reason: Extensive deterioration

Ohio

Bldg. 150
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200020051
Status: Unutilized
Reason: Extensive deterioration

Detached Garage 132
Defense Supply Center
Columbus Co: Franklin OH 43216–5000
Landholding Agency: Army
Property Number: 21200020052
Status: Unutilized
Reason: Extensive deterioration

Texas

Bldg. CB–1
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020053
Status: Unutilized
Reason: Secured Area

Bldgs. S–1, S–2
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020054
Status: Unutilized
Reason: Secured Area

Bldgs. S–3, S–4
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020055
Status: Unutilized
Reason: Secured Area

Bldgs. S–9, S–11
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020056
Status: Unutilized
Reason: Secured Area

Bldgs. 23T, 25T, 27T, 28T
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020057
Status: Unutilized
Reason: Secured Area

Bldg. 31W
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020058
Status: Unutilized
Reason: Secured Area

Bldg. 32T
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020059
Status: Unutilized
Reason: Secured Area

Bldgs. 35M, 35W
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020060
Status: Unutilized
Reason: Secured Area

Bldg. 39M
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020061
Status: Unutilized
Reason: Secured Area

Bldgs. 44T, 46T, 47T
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020062
Status: Unutilized
Reason: Secured Area

Bldgs. 50W, 52W
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020063
Status: Unutilized
Reason: Secured Area

Bldg. 53D
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020064
Status: Unutilized
Reason: Secured Area

Bldg. 82G
Longhorn AAP

Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020065
Status: Unutilized
Reason: Secured Area

Bldgs. P112, P116, P118, P120
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020066
Status: Unutilized
Reason: Secured Area

Bldgs. 201, 206
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020067
Status: Unutilized
Reason: Secured Area

Bldgs. 213–216
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020068
Status: Unutilized
Reason: Secured Area

Bldgs. 401, 413A, 414
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020069
Status: Unutilized
Reason: Secured Area

Bldgs. 713, 713B, 716, 717
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020070
Status: Unutilized
Reason: Secured Area

Bldgs. 812, 813, 814
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020071
Status: Unutilized
Reason: Secured Area

Bldgs. 823, 824
Longhorn AAP
Karnack Co: Harrison TX 75661–
Landholding Agency: Army
Property Number: 21200020072
Status: Unutilized
Reason: Secured Area

Virginia

Bldg. SS0310
Fort A.P. Hill
Bowling Green Co: Carolin VA 22427–
Landholding Agency: Army
Property Number: 21200020073
Status: Unutilized
Reason: Extensive deterioration

Bldg. TT1279
Fort A.P. Hill
Bowling Green Co: Carolin VA 22427–
Landholding Agency: Army
Property Number: 21200020074
Status: Unutilized
Reason: Extensive deterioration

Bldg. TT1280
Fort A.P. Hill
Bowling Green Co: Carolin VA 22427–
Landholding Agency: Army
Property Number: 21200020075
Status: Unutilized
Reason: Extensive deterioration

Bldg. TT1281
Fort A.P. Hill
Bowling Green Co: Carolin VA 22427–
Landholding Agency: Army
Property Number: 21200020076
Status: Unutilized
Reason: Extensive deterioration

Bldg. TT1304
Fort A.P. Hill
Bowling Green Co: Carolin VA 22427–
Landholding Agency: Army
Property Number: 21200020077
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2477
Fort Belvoir
Ft. Belvoir Co: VA 22060–5301
Landholding Agency: Army
Property Number: 21200020078
Status: Unutilized
Reason: Extensive deterioration

Bldg. C3677–00
Radford AAP
Radford Co: VA 24141–
Landholding Agency: Army
Property Number: 21200020079
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 5504–00
Radford AAP
Radford Co: VA 24141–
Landholding Agency: Army
Property Number: 21200020080
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 7503–00
Radford AAP
Radford Co: VA 24141–
Landholding Agency: Army
Property Number: 21200020081
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. T–12050
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 21200020082
Status: Unutilized
Reason: Extensive deterioration

Wisconsin

Bldg. 0423–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020083
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 0931–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020084
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 1800–1
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020085
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 1805–1, 1805–2, 1852–1
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020086
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1994–0, 1995–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020087
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 3502–0, 3566–1
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020088
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 4524–4
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020089
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 6536–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020090
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6662–0, 6666–0, 6669–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020091
Status: Unutilized
Reasons: Secured Area

Bldgs. 6706–2, 6712–0, 6724–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020092
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6731–2, –3, –4
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020093
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6732–0, 6732–1, 6736–0, 6738–0, 6738–1
Landholding Agency: Army

Property Number: 21200020094
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6826–2, 6850–1, 6863–0, 6881–0, 6882–1
Landholding Agency: Army
Property Number: 21200020095
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6953–1, 6955–1, 6956–1, 6957–1
Landholding Agency: Army
Property Number: 21200020096
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

12 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 1725–1 thru 7, 1725–13 thru 17
Landholding Agency: Army
Property Number: 21200020097
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1810–1 thru 4
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020098
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1825–1 thru 4
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020099
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1875–1 thru 4
Badger AAP
Baraboo Co: Sauk WI 53913
Landholding Agency: Army
Property Number: 21200020100
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

13 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 1996–1 thru 10, 1996–19 thru 21
Landholding Agency: Army
Property Number: 21200020101
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2002–0, 3002–0, 4002–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020102
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2003–0, 3003–0, 4003–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020103
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2005–0, 3005–0, 4005–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020104
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2007–0, 3007–0, 4007–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020105
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2008–0, 3008–0, 4008–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020106
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2011–0, 3011–0, 4011–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020107
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2012–0, 3012–0, 4012–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020108
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2013–0, 3013–0, 4013–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020109
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 8002–0, 8003–0, 8004–0, 8006–0
Landholding Agency: Army
Property Number: 21200020110
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 0420–01, 02, 03
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020111
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 0712–17, 18, 19
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020112
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 0923–01, 02, 05, 06, 08
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020113
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

29 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 1600–01 thru 18, 1600–31 thru 39, 41, 42
Landholding Agency: Army
Property Number: 21200020114
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 1650–36, thru 42
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020115
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2014–0, 3014–0, 4014–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020116
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2019–0, 3019–0, 4019–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020117
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2020–0, 3020–0, 4020–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020118
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2022–0, 3022–0, 4022–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020119
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

6 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 2024–0, 3024–0, 4024–0, 2025–0, 3025–0, 4025–0
Landholding Agency: Army
Property Number: 21200020120
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2026–0, 3026–0, 4026–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020121
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2035–0, 3035–0, 4035–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020122
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2043–0, 3043–0, 4043–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number 21200020123
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2046–0, 3046–0, 4046–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020124
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2500–0, 3500–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020125
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 2501–0, 3501–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020126
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

7 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 2506–0, 3506–0, 4506–0, 2508–1, 2508–2, 3508–1, 3508–2
Landholding Agency: Army
Property Number: 21200020127
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

13 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 2510–1 thru 3, 3510–1 thru 3, 2513–1 thru 4, 3513–1 thru 3
Landholding Agency: Army
Property Number: 21200020128
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

5 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 2517–1, 2517–2, 3517–1, 3517–2, 3517–3
Landholding Agency: Army
Property Number: 21200020129
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

6 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 2546–1 thru 4, 2555–0, 3555–0
Landholding Agency: Army
Property Number: 21200020130
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 3044–0
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020131
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 3502–1, 3502–2
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020132
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 3516–1, 2, 3
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020133
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 4524–1, 2, 3
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020134
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

22 Bldgs.
Badger APP
Baraboo Co: Sauk WI 53913–
Location: 6513–1, 6513–6 thru 10, 6513–13 thru 24, 6513–30, 6513–43, 6513–44, 6513–46
Landholding Agency: Army
Property Number: 21200020135
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6529–0, 6586–1
Badger APP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020136
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6529–0, 6586–1
Badger APP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020137
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6672–1, 6672–2
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020138
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6702–3, 6702–4, 6704–3, 6704–4
Landholding Agency: Army
Property Number: 21200020139
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6705–3, 6705–4
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020140
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

15 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6709–2, 6709–5, thru 13, 6709–17 thru 19, 6709–21, 6709–27
Landholding Agency: Army
Property Number: 21200020141
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

11 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6804–2 thru 7, 6804–9 thru 13
Landholding Agency: Army
Property Number: 21200020142
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

20 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6807–1 thru 5, 6807–7 thru 10, 6807–12 thru 15, 6807–17, 6807–19 thru 21, 6807–24, 6807–54, 6807–56
Landholding Agency: Army
Property Number: 21200020143
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

4 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6808–1, 4, 6, 8
Landholding Agency: Army
Property Number: 21200020144
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

20 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 6810–1 thru 3, 6810–5, 6810–6, 6810–8, 6810–10 thru 16, 33 thru 38
Landholding Agency: Army
Property Number: 21200020145
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

7 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–

Location: 6812–1 thru 7
Landholding Agency: Army
Property Number: 21200020146
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6814–1 thru 5
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020147
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6817–1 thru 4
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020148
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6828–1, 2, 8
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020149
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6829–1, 2
Badger AAJP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020150
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6837–1, 2
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020151
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 6868–1, 2, 3, 7, 8
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020152
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldgs. 8000–1, 2, 3
Badger AAP
Baraboo Co: Sauk WI 53913–
Landholding Agency: Army
Property Number: 21200020153
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

28 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: 9062–01 thru 18, 25, 28, 9063–01 thru 05, 11, 12, 15
Landholding Agency: Army
Property Number: 21200020154
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

45 Bldgs.
Badger AAP
Baraboo Co: Sauk WI 53913–
Location: Steam Pressure Reducing Station
Landholding Agency: Army
Property Number: 21200020155
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

**Unsuitable Properties**

*Land (by State)*

North Carolina

0.52 acres
Summerall TACAN Annex
Seymour Johnson AFB
Wayne Co: NC 27530–
Landholding Agency: Air Force
Property Number: 18200020008
Status: Unutilized
Reason: Within airport runway clear zone

[FR Doc. 00–12299 Filed 5–18–00; 8:45 am]

BILLING CODE 4210–29–M

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Availability of Final Environmental Impact Statement for the Proposed Issuance of an Incidental Take Permit for High Desert Power Project, Victorville, San Bernardino County, CA

**AGENCY:** Fish and Wildlife Service, Interior (Lead Agency); Bureau of Land Management, Interior, Air Force, Corps of Engineers, Army (Cooperating Agencies).

**ACTION:** Notice of availability of a final environmental impact statement.

**SUMMARY:** This notice advises the public of the availability of the Final Environmental Impact Statement on the application to incidentally take the threatened Desert Tortoise (*Gopherus agassizii*) and the Mohave ground squirrel (*Spermophilis mohavensis*), a species listed as threatened by the State of California. The High Desert Power Project Limited Liability Company (Applicant) has applied to the Fish and Wildlife Service (Service) for a 50-year incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended (Act). This notice is provided pursuant to section 10 of the Act and National Environmental Policy Act Regulation (40 CFR 1506.6).

**DATES:** A Record of Decision and permit decision will occur no sooner than 30 days from this notice.

**ADDRESSES:** Copies of the incidental take permit application materials and Final Environmental Impact Statement are available for review at the following government offices and libraries:

Government Offices—Fish and Wildlife Service, Ventura Field Office, 2493 Portola Road, Suite B, Ventura, California 93003, (805) 644–1766; and the Bureau of Land Management, Barstow Field Office, 2601 Barstow Road, Barstow, California 92311, (760) 252–6000.

Libraries—California State Library, Information and Reference Center, 914 Capital Mall, Room 301, Sacramento, California 95814, (916) 654–0261; San Bernardino County Library, Adelanto Branch, 11744 Bartlett Avenue, Adelanto, California 92301, (760) 246–5661; and the San Bernardino County Library, Victorville Branch, 15011 Circle Drive, Victorville, California 92392, (760) 245–4222.

**FOR FURTHER INFORMATION CONTACT:** Mr. George Walker, Fish and Wildlife Service Biologist, Barstow, California, at (760) 255–8852.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 9 of the Act and Federal regulation prohibit the "take" of animal species listed as endangered or threatened. That is, no one may harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). Under limited circumstances, the Service, however, may issue permits to authorize "incidental take" of listed animal species (defined by the Act as take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity). Regulations governing permits for endangered and threatened species, respectively, are at 50 CFR 17.32 and 17.22.

The High Desert Power Project Limited Liability Company seeks an incidental take permit for the threatened desert tortoise, and for the Mohave ground squirrel should it be listed under the Act during the term of the permit. Take of these species would be incidental to the High Desert Power Project. The Applicant proposes to construct, operate and maintain a 680- to 830-megawatt natural gas-fueled electricity generation power plant on a 25-acre site located in the northeast corner of the Southern California Logistics Airport, formerly a part of George Air Force Base, in the City of Victorville, San Bernardino County, California. The Applicant proposes to use an additional 24-acre area for construction staging. The proposed project also includes the construction, operation and maintenance of 7 water injection/extraction wells within the Mojave River watershed; 2 water supply pipelines (one approximately 2.5 miles in length and the other approximately

6.5 miles in length); 2 natural gas supply pipelines (one approximately 3.5 miles in length and the other approximately 32 miles in length); and a 7-mile-long electrical transmission line.

Construction of the Power Project and associated facilities would result in short-term, long-term, and permanent disturbances to desert tortoise and Mohave ground squirrel habitat. The Power Project would disturb approximately 630.2 acres of habitat, with approximately 244.1 acres of short-term disturbance and 386.1 acres of long-term and/or permanent disturbance.

The Applicant proposes to minimize and/or mitigate for impacts associated with the Power Project, in part, by conducting pre-construction surveys of proposed work areas and construction zones, and by developing an employee and contractor education program that would describe allowable practices when constructing in desert tortoise and Mohave ground squirrel habitat area. The Applicant would revegetate habitat disturbed during construction, operation, maintenance, and/or decommissioning activities in accordance with an approved plan. As compensation for impacts to habitat on private land, the Applicant would ensure the protection in perpetuity of 1,242.8 acres of off-site mitigation lands or habitat credits, having habitat value for both desert tortoises and Mohave ground squirrels that is at least as great as the value of the habitat being impacted. The number of compensation acres was developed based on an agency-approved formula which assesses the categories of previous and potential disturbance, the condition and classification of the impacted habitat, and potential impacts to adjacent habitat. To mitigate for impacts to desert tortoise and Mohave ground squirrel associated with construction and operation of this gas pipeline, the Applicant proposes that funding for restoration activities may be provided either in lieu of or in combination with the purchase of compensation lands or habitat credits.

In addition to issuance of an incidental take permit by the Service, High Desert Power Project Limited Liability Company has requested other federal authorizations for the proposed project. The company seeks Nationwide Permit No. 12 authorizations by the Army Corps of Engineers, pursuant to Section 404 of the Clean Water Act, for pipeline crossings of waters of the United States. The company also seeks a right-of-way grant from the Bureau of Land Management pursuant to Section 28 of the Mineral Leasing Act of 1920, to authorize construction, operation and maintenance of the 32-mile natural gas pipeline. The U.S. Air Force has Federal land management authority over the lands located within the former George Air Force Base. The High Desert Power Project Limited Liability Company and Victor Valley Economic Development Authority have jointly requested that the Air Force act to supplement its prior environmental record and to authorize specifically the uses of the former George Air Force Base lands proposed for the High Desert Power Project by way of an addendum to an existing lease agreement between the Air Force and Victor Valley Economic Development Authority. Additionally, the High Desert Power Project Limited Liability Company has requested that the Air Force grant easements authorizing the use of certain Federal lands adjacent to the former George Air Force Base for the construction, operation and maintenance of linear features of the High Desert Power Project.

On December 30, 1998, a notice was published in the **Federal Register** (63 FR 71940) announcing that the Service would take the lead in preparing an Environmental Impact Statement addressing the Federal actions associated with the High Desert Power Project. The Bureau of Land Management, U.S. Air Force and the Army Corps of Engineers may use this Environmental Impact Statement as the basis for their separate Federal decisions.

The Draft Environmental Impact Statement analyzed the potential environmental impacts that may result from the Federal actions requested in support of the proposed development of the High Desert Power Project, and identified various alternatives, including the No Action Alternative (no incidental take permit), the Combined Cycle Power Plant with Dry Cooling Alternative, and various alternatives proposing the power plant be located in different locations. Several of these alternatives would reduce the amount of habitat disturbance and levels of take of threatened and endangered species compared to the Proposed Project Alternative but would have potentially greater adverse effects on other resources such as air quality, land use, views, and geological hazards. Five comment letters, totaling 16 individual comments, were received on the Draft Environmental Impact Statement. A response to each comment has been included in Final Environmental Impact Statement.

The analysis provided in the Final Environmental Impact Statement is intended to accomplish the following: inform the public of the proposed action; address public comments received on the Draft Environmental Impact Statement; disclose the direct, indirect, and cumulative environmental effects of the proposed actions; and indicate any irreversible commitment of resources that would result from implementation of the proposed action.

**Elizabeth H. Stevens,**

*Deputy Manager, Region 1, California/Nevada Operations Office, Sacramento, California.*

[FR Doc. 00–12348 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[AK–962–1410–HY]**

### Notice for Publication; F–19155–4 Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1613(e), will be issued to Doyon, Limited. The lands involved are in the vicinity of Fort Yukon, Alaska.

**Fairbanks Meridian, Alaska**

T. 18 N., R. 14 E.,
Secs. 29 and 32, those lands formerly within Native allotment F–14713 Parcel B.

Containing approximately 40 acres.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Fairbanks Daily News Miner*. Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599, (907) 271–5960.

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government, or regional corporation, shall have until June 19, 2000 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart

E, shall be deemed to have waived their rights.

**Stephanie Clusiau,**

*Land Law Examiner, Branch of ANCSA Adjudication.*

[FR Doc. 00–12611 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–$$–U

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[CA–610–09–0777–42]**

### Amendment to the Meeting of the California Desert District Advisory Council

**SUMMARY:** Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management, U.S. Department of the Interior, will participate in a field tour of the BLM-administered public lands within the West Mojave Management Planning area on Friday, June 9, 2000, from 7:30 a.m to 4 p.m., and meet in formal session on Saturday, June 10, from 8 a.m. to 5 p.m. The Saturday meeting will be held at the Kerr-McGee Center, located at 100 West California Avenue, Ridgecrest, California. To reach the Center, turn west onto California from China Lake Boulevard and follow the road to the Center.

The Council and interested members of the public will assemble for the field tour at the Best Western China Lake Inn parking lot at 7:15 a.m. and depart at 7:30 a.m. Tour stops will include the Desert Tortoise Natural Area, the Rand Mountains, and the Jawbone Canyon Off-Highway Vehicle Recreation Area. Members of the public are welcome to participate in the tour, but should plan on providing their own transportation, drinks, and lunch.

The Council will meet in formal session on Saturday. Discussions will focus on issues being addressed in the West Mojave Coordinated Management Plan. Council members also will hear a presentation and accept public comment on the development of BLM's National Off-Highway Vehicle Management Strategy. The presentation is scheduled to begin at 10:15 a.m.

The national strategy will be developed with substantial input from off-highway vehicle (OHV) user groups, environmental organizations, State and local agencies, and the general public. The strategy will address land-management issues prompted by the growing popularity of OHV recreation. The strategy will recognize the interests of OHV users while protecting environmental sensitive areas on BLM-managed public lands.

BLM will accept written and oral comments at the June 10 meeting. The Council Chair will determine the time allotment for each speaker, based on the number of people who register to comment. Written comments also may be submitted to Mark Conley, BLM OHV Coordinator, Bureau of Land Management, 2800 Cottage Way, Room W–1834, Sacramento, CA 95825.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the beginning of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land Management, Public Affairs Office, 6221 Box Springs Boulevard, Riverside, California 92507–0714. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

**FOR FURTHER INFORMATION CONTACT:** Doran Sanchez at (909) 697–5220, BLM California Desert District External Affairs.

Dated: May 15, 2000.

**Tim Salt,**

*District Manager.*

[FR Doc. 00–12610 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–40–U

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

**[OR–030–00–1020–XU: GPO–0210]**

### Notice of Correction; John Day/Snake Resource Advisory Council Meeting

**AGENCY:** Vale District, Bureau of Land Management, Interior.

**ACTION:** Meeting of John Day/Snake Resource Advisory Council: Enterprise, Oregon, May 23 & 24, 2000.

**SUMMARY:** Correction to the second day meeting location published May 3, 2000 in the **Federal Register.** On May 24, 2000 the meeting will be held next door to Wallowa-Whitman National Forest office, 88401 Hwy 82, at the Best Western Rama Inn conference room, Enterprise, Oregon from 8:00 a.m. to 3:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** Juan Palma, Bureau of Land Management, Vale District Office, 100 Oregon Street, Vale, Oregon 97918, Telephone (541) 473–3144.

**Juan Palma,**

*District Manager.*

[FR Doc. 00–12596 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–33–M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Cape Cod National Seashore Advisory Commission Two Hundred and Twenty-Eight Meeting; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770 U.S.C. App 1, section 10), that a meeting of the Cape Code National Seashore Advisory Commission will be held on Friday, June 2, 2000.

The Commission was reestablished pursuant to Public Law 87–126 as amended by Public Law 105–280. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of Cape Code National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Headquarters, Marconi Station, Wellfleet, Massachusetts for the regular business meeting to discuss the following:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting—March 17, 2000
3. Report of Officers
4. Subcommittee Reports
   Personal Watercraft Subcommittee
   Nickerson Fellowship Committee
5. Superintendent's Report:
   Highlands Center
   News from Washington
   Fort Hill burn results
   Penniman House renovations
   Horseshoe Crabs
   USGS Water Study
6. Old Business
   Advisory Committee Handbook
7. New Business
8. Agenda and date for next meeting
9. Public comment
10. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to Commission members. Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least

seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, 99 Marconi Site Road, Wellfleet, MA 02667.

Dated: May 8, 1999.

**Maria Burks,**

*Deputy Superintendent.*

[FR Doc. 00–12317 Filed 5–18–00; 8:45 am]

BILLING CODE 4310–70–M

## INTERNATIONAL TRADE COMMISSION

**[Investigations Nos. 731-TA–846–850 (Final)]**

### Certain Seamless Carbon and Alloy Steel Standard, Line, and Pressure Pipe From the Czech Republic, Japan, Mexico, Romania, and South Africa

**AGENCY:** United States International Trade Commission.

**ACTION:** Revised schedule for the subject investigations.

**EFFECTIVE DATE:** May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Bob Carr (202–205–3402), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:** On May 3, 2000, the Department of Commerce notified the Commission of its final determinations with regard to Japan and South Africa. The Commission must make its final determinations in antidumping investigations within 45 days after notification of Commerce's final determinations, or in this case by June 16, 2000. The Commission is revising its schedule to conform with this statutory deadline.

The Commission's new schedule for these investigations is as follows: the Commission will make its final release of information on May 31, 2000; and final party comments are due on June 5, 2000.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

**Authority:** These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: May 16, 2000.

By order of the Commission.

**Donna R. Koehnke**

*Secretary.*

[FR Doc. 00–12679 Filed 5–18–00; 8:45 am]

BILLING CODE 7020–02–P

## INTERNATIONAL TRADE COMMISSION

**[Inv. No. 731–TA–762 (Remand)]**

### Static Random Access Memory Semiconductors From Taiwan; Notice and Scheduling of Remand Proceedings

**AGENCY:** United States International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** The U.S. International Trade Commission (the Commission) hereby gives notice of the second remand of its final antidumping investigation No. 731–TA–762 (Final) for reconsideration in light of the order of the Court of International Trade.

**EFFECTIVE DATE:** May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Diane Mazur, Office of Investigations, telephone 202–205–3184, or Michael Diehl, Esq., Office of the General Counsel, telephone 202–205–3095, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

**SUPPLEMENTARY INFORMATION:**

#### Background

In April 1998, the Commission, by a one-to-one vote, determined that the domestic industry producing static random access memory semiconductors (SRAMS) was materially injured by subject imports from Taiwan. On June 30, 1999, the Court of International Trade (CIT) remanded the determination to the Commission with instructions to explain how it ensured that it did not attribute the price depressing effects from other known factors to the subject imports. In September 1999, the Commission submitted Chairman Bragg's remand views as its "Views on Remand" in response to the order, again finding material injury to the domestic industry. On April 11, 2000, Judge Pogue remanded the Commission's remand determination for further explanation of certain matters including whether the Commission properly relied on several lost revenue allegations. On April 26, 2000, the CIT granted a consent motion setting the due date for the submission of the Commission's remand views to the CIT to Monday, June 26, 2000.

#### Scheduling the Vote

The Commission will vote on the remand determination at a public meeting to be held on Monday, June 12, 2000. The meeting is tentatively scheduled for 2:00 p.m.

#### Reopening the Record

In order to assist it in making its determination on remand, the Commission is reopening the record on remand in this investigation for the limited purpose of gathering information regarding those lost revenue allegations discussed by the court. The Commission is not reopening the record for any other purpose, except to receive any comments from the parties on new information gathered regarding the lost revenue allegations.

#### Participation in These Proceedings

Only those persons who were interested parties to the original administrative proceedings (i.e., persons listed on the Commission Secretary" service list) may participate in these remand proceedings.

#### Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Information obtained during the remand investigation will be released to parties under the administrative protective order ("APO") in effect in the original investigation on May 24, 2000. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make business proprietary information gathered in the final investigation and this remand investigation available to additional authorized applicants, that are not covered under the original APO, provided that the application is made not later than seven (7) days after publication of the Commission's notice or reopening the record on remand in the **Federal Register**. Applications must be filed for any persons on the Judicial Protective Order in the related CIT case,

but not covered under the original APO. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO in this remand investigation.

**Written Submissions**

The parties will be permitted to submit comments not to exceed 10 pages, double-spaced and single sided, on stationery measuring 8½ x 11 inches, addressing the accuracy, reliability, or probative value of new information gathered in the remand investigation regarding the lost revenue allegations. Any material in these comments that does not address these limited issues will be stricken from the record. The due date for the party comments is June 7, 2000.

All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of section 201.6, 207.3, and 207.7 of the Commission's rules. In accordance with section 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

**Authority:** This action is taken under the authority of the Tariff Act of 1930, title VII.

Issued: May 15, 2000.

By order of the Commission.

**Donna R. Koehnke,**

*Secretary.*

[FR Doc. 00–12678 Filed 5–18–00; 8:45 am]

BILLING CODE 7020–02–P

## DEPARTMENT OF LABOR

### Employment Standards Administration, Wage and Hour Division

### Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this date may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

**New General Wage Determination Decisions**

The number of decisions added to the Government Printing Office document entitled "General Wage Determinations Issued under the Davis-Bacon and Related Acts" are listed by Volume and States:

*Volume IV*

Michigan:
MI000089 (May 19, 2000)
MI000090 (May 19, 2000)
MI000091 (May 19, 2000)
MI000092 (May 19, 2000)
MI000093 (May 19, 2000)
MI000094 (May 19, 2000)
MI000095 (May 19, 2000)
MI000096 (May 19, 2000)
MI000097 (May 19, 2000)

**Modifications to General Wage Determination Decisions**

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

*Volume I*

Maine:
ME000015 (Feb. 11, 2000)
ME000022 (Feb. 11, 2000)
ME000031 (Feb. 11, 2000)
ME000032 (Feb. 11, 2000)
ME000034 (Feb. 11, 2000)
ME000035 (Feb. 11, 2000)
ME000036 (Feb. 11, 2000)
ME000037 (Feb. 11, 2000)
ME000038 (Feb. 11, 2000)
New York:
NY000007 (Feb. 11, 2000)

*Volume II*

Pennsylvania:
PA000006 (Feb. 11, 2000)
PA000014 (Feb. 11, 2000)
PA000015 (Feb. 11, 2000)
PA000028 (Feb. 11, 2000)
Florida:
FL000015 (Feb. 11, 2000)
FL000017 (Feb. 11, 2000)
FL000046 (Feb. 11, 2000)
Kentucky:
KY000025 (Feb. 11, 2000)

*Volume IV*

Michigan:

MI000001 (Feb. 11, 2000)
MI000002 (Feb. 11, 2000)
MI000003 (Feb. 11, 2000)
MI000004 (Feb. 11, 2000)
MI000005 (Feb. 11, 2000)
MI000007 (Feb. 11, 2000)
MI000030 (Feb. 11, 2000)
MI000031 (Feb. 11, 2000)
MI000046 (Feb. 11, 2000)
MI000047 (Feb. 11, 2000)
MI000049 (Feb. 11, 2000)
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MI000084 (Feb. 11, 2000)
MI000086 (Feb. 11, 2000)

Minnesota:
MN000003 (Feb. 11, 2000)
MN000005 (Feb. 11, 2000)
MN000007 (Feb. 11, 2000)
MN000008 (Feb. 11, 2000)
MN000012 (Feb. 11, 2000)
MN000015 (Feb. 11, 2000)
MN000027 (Feb. 11, 2000)
MN000031 (Feb. 11, 2000)
MN000043 (Feb. 11, 2000)
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MN000047 (Feb. 11, 2000)
MN000049 (Feb. 11, 2000)
MN000056 (Feb. 11, 2000)
MN000058 (Feb. 11, 2000)
MN000059 (Feb. 11, 2000)
MN000061 (Feb. 11, 2000)

Ohio:
OH000001 (Feb. 11, 2000)
OH000002 (Feb. 11, 2000)
OH000003 (Feb. 11, 2000)
OH000008 (Feb. 11, 2000)
OH000013 (Feb. 11, 2000)
OH000018 (Feb. 11, 2000)
OH000024 (Feb. 11, 2000)
OH000026 (Feb. 11, 2000)
OH000029 (Feb. 11, 2000)
OH000032 (Feb. 11, 2000)
OH000035 (Feb. 11, 2000)

*Volume V*

Arkansas:
AR000008 (Feb. 11, 2000)
AR000023 (Feb. 11, 2000)
AR000027 (Feb. 11, 2000)

Kansas:
KS000006 (Feb. 11, 2000)
KS000007 (Feb. 11, 2000)
KS000008 (Feb. 11, 2000)
KS000012 (Feb. 11, 2000)
KS000016 (Feb. 11, 2000)
KS000018 (Feb. 11, 2000)
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KS000021 (Feb. 11, 2000)
KS000022 (Feb. 11, 2000)
KS000023 (Feb. 11, 2000)
KS000026 (Feb. 11, 2000)
KS000069 (Feb. 11, 2000)

Missouri:
MO000001 (Feb. 11, 2000)

Texas:
TX000109 (Feb. 11, 2000)

*Volume VI*

Oregon:
OR000001 (Feb. 11, 2000)

Washington:
WA000008 (Feb. 11, 2000)

*Volume VII*

Hawaii:
HI000001 (Feb. 11, 2000)

**General Wage Determination Publication**

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 11th day of May, 2000.

**Carl J. Poleskey,**

*Chief, Branch of Construction Wage Determinations.*

[FR Doc. 00–12372 Filed 5–18–00; 8:45 am]

BILLING CODE 4510–27–M

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Proposed Collection; Comment Request

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Annual Refiling Survey (ARS) forms. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addressee section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before July 18, 2000.

**ADDRESSES:** Send comments to Sytrina D. Toon, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, N.E., Washington, D.C. 20212, telephone number 202–691–7628 (this is not a toll free number).

**FOR FURTHER INFORMATION CONTACT:** Sytrina D. Toon, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Standard Industrial Classification (SIC) system was replaced by the North American Industry Classification System (NAICS) in 1997 as the standard for industrial classification. As a result of this change, the Bureau of Labor Statistics (BLS) converted its data from an SIC-basis to a NAICS-basis over a three-year period. This included converting SIC codes for business establishments on the Bureau's sampling frame to 1997 NAICS codes. Forms were designed to gather information necessary for converting

SIC codes to NAICS codes from respondents. A revision of NAICS to be implemented in 2002 will affect industries in mining, construction, manufacturing, wholesale trade, retail trade, and Internet services. These previously approved ARS forms will be used to convert SIC codes to the new 2002 NAICS codes.

**II. Desired Focus of Comments**

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technical collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

**III. Current Action**

The forms are the Annual Refiling Survey (ARS) forms that the BLS currently uses to gather industrial and geographical data on business establishments. They are specifically designed to gather information necessary to convert SIC codes to NAICS codes. This is a revision of the previously approved ARS forms to implement the NAICS 2002 revision.

*Type of Review:* Revision of a currently approved collection.

*Agency:* Bureau of Labor Statistics.

*Title:* Annual Refiling Survey.

*OMB Number:* 1220–0032.

*Affected Public:* Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal government; State, local, or tribal government.

*Total Respondents:* 1,700,150.

*Frequency:* Annually.

*Total Responses:* 1,700,150.

| Form | Total responses | Frequency | Total responses | Average time per response (hours) | Estimated total burden (hours) |
|---|---|---|---|---|---|
| 3023–NVS | 1,573,500 | Once | 1,573,500 | .083 | 130,601 |
| 3023–NVM | 15,650 | Once | 15,650 | .75 | 11,738 |
| 3023–NCA | 111,000 | Once | 111,000 | .167 | 18,537 |
| 3023–NAX | | Once | | .083 | |
| Totals | 1,700,150 | | 1,700,150 | | 160,870 |

The BLS is not expected to use the 3023–NAX form in the NAICS 2002 conversion, but its approval also is requested.

*Total Burden Cost (capital/startup):* 0.

*Total Burden Cost (operating/maintenance):* 0.

Comments submitted in response to this noticed will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 12th day of May 2000.

**Karen A. Krein,**

*Acting Chief, Division of Management Systems, Bureau of Labor Statistics.*

[FR Doc. 00–12667 Filed 5–18–00; 8:45 am]

BILLING CODE 4510–24–M

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**DEPARTMENT OF LABOR**

**Mine Safety and Health Administration**

**Proposed Information Collection Request Submitted for Public Comment and Recommendations; Ground Control Plan**

**ACTION:** Extension.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

**DATES:** Submit comments on or before July 18, 2000.

**ADDRESSES:** Written comments shall be mailed to Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 715, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to tomalley@msha.gov, along with an original printed copy. Ms. O'Malley can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

**FOR FURTHER INFORMATION CONTACT:** Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Each operator of a surface coal mine is required under 30 CFR 77.1000 to establish and follow a ground control plan that is consistent with prudent engineering design and which will ensure safe working conditions. The plans are based on the type of strata expected to be encountered, the height and angle of highwalls and spoil banks, and the equipment to be used at the mine. Ground control plans are required by 30 CFR 77.1000–1 to be filed with the MSHA District Manager in the district in which the mine is located. The plans are reviewed by MSHA to ensure that highwalls and spoil banks are maintained in safe condition through the use of sound engineering design.

**II. Desired Focus of Comments**

Currently, the Mine Safety and Health Administration (MSHA) is soliciting

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comments concerning the proposed extension of the information collection related to the Ground Control Plan. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and selecting "Statutory and Regulatory Information" then "Paperwork Reduction Act Submissions (http://www.msha.gov/regspwork.htm)", or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

**III. Current Actions**

MSHA is seeking to continue the requirement for mine operators to submit ground control plans to ensure that highwalls and spoil banks are maintained in safe condition so that a safe working environment is provided for miners.

*Type of Review:* Extension.
*Agency:* Mine Safety and Health Administration.
*Title:* Ground Control Plan.
*OMB Number:* 1219–0026.
*Affected Public:* Business or other for-profit.
*Cite/Reference/Form/etc:* 30 CFR 77.1000 and 77–1000–1.
*Total Respondents:* 159.
*Frequency:* On occasion.
*Total Responses:* 159.
*Average Time per Response:* 8 hours.
*Estimated Total Burden Hours:* 1,404.
*Estimated Total Burden Cost:* $204.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 15, 2000.

**Theresa M. O'Malley,**

*Program Analysis Officer, Office of Program Evaluation and Information Resources.*

[FR Doc. 00–12665 Filed 5–18–00; 8:45 am]

**BILLING CODE 4510–43–M**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Agency Information Collection Activities; Announcement of OMB Approval

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Pension and Welfare Benefits Administration (PWBA) is announcing that a collection of information has been approved the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 for the Voluntary Fiduciary Correction Program (VFC Program). This notice announces the OMB approval number and expiration date.

**FOR FURTHER INFORMATION CONTACT:** Address comments on the VFC Program in writing to: VFC Program, Office of Enforcement, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5702, 200 Constitution Avenue, NW, Washington, DC 20210. Written comments may also be sent by Internet to: vfc-program@pwba.dol.gov.

For general questions regarding the VFC Program, contact the appropriate PWBA Regional Office listed in Appendix C of the VFC Program (65 FR 14179), or Jeffrey A. Monhart, Investigator, Office of Enforcement, Pension and Welfare Benefits Administration ((202) 219–8820). For comments on the VFC Program, contact Elizabeth A. Goodman, Pension Law Specialist, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration ((202) 219–8671).

Address comments on the information collection request (ICR) and requests for copies of the ICR to Gerald B. Lindrew, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782. These telephone numbers are not toll-free.

**SUPPLEMENTARY INFORMATION:** On March 15, 2000, PWBA published a notice concerning its adoption of a Voluntary Fiduciary Correction Program (65 FR 14164), which allows certain persons to correct possible fiduciary breaches of Part 4 of Title I of ERISA, and to avoid potential civil actions initiated by the Department of Labor under the Employee Retirement Income Security Act of 1974 (ERISA), and the assessment of civil penalties under section 502(1) of ERISA. Although written comments on the VFC Program were accepted through May 15, 2000, the Department submitted the information collection request (ICR) included in the VFC Program to OMB using emergency procedures, and requested approval by April 14, 2000. The information collection provisions of the VFC Program generally require that documentation of the correction of a fiduciary breach be supplied to the Department.

On April 14, 2000, OMB approved the ICR under emergency provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320. The approval will expire on September 30, 2000. The control number assigned to this ICR by OMB is 1210–0118. PWBA will take any comments received into consideration in finalizing the VFC Program and in preparing the application for continuing approval of the ICR, which will be submitted to OMB prior to the expiration of the emergency approval.

Dated: May 15, 2000.

**Gerald B. Lindrew,**

*Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.*

[FR Doc. 00–12664 Filed 5–18–00; 8:45 am]

**BILLING CODE 4510–29–M**

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Agency Information Collection Activities; Announcement of OMB Approval

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice.

**SUMMARY:** The Pension and Welfare Benefits Administration (PWBA) is announcing that a collection of information has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 for the Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (Form EFAST–1). This notice announces the OMB approval number and expiration date.

**FOR FURTHER INFORMATION CONTACT:** Individuals with questions about the Form EFAST–1 or who need assistance in completing the Form EFAST–1 may call the EFAST Help Desk at (202) 219–8770. This is not a toll-free number. The Form EFAST–1 and instructions are available for viewing and downloading via the Department of Labor's Internet site (www.efast.dol.gov). Copies of the Form EFAST–1 and instructions may also be obtained by calling PWBA's Publication Hotline at 1–800–998–7542.

Address requests for copies of the information collection request (ICR) to Gerald B. Lindrew, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW., Room N–5647, Washington, DC, 20210. Telephone: (202) 219–4782. This is not a toll-free number.

**SUPPLEMENTARY INFORMATION:** On March 9, 2000, PWBA published a notice concerning the submission of the proposed Application for EFAST Electronic Signature and Codes for EFAST Transmitters and Software Developers (65 FR 12577) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320. The Department submitted the information collection request included in Form EFAST–1 to OMB using emergency procedures and requested approval by March 24, 2000. On April 11, 2000, OMB approved the ICR under emergency provisions of the Paperwork Reduction Act of 1995. The approval will expire on August 31, 2000. The control number assigned to this ICR by OMB is 1210–0117.

The Form EFAST–1 that was available on PWBA's Internet website has now been revised to include the OMB control number. In addition , as a result of a comment receive by the Department, the Department has also made minor revisions to the Form EFAST–1 and the instructions. Additional issues raised in the comment will be reviewed with other comments received by the close of the comment period on May 8, 2000 as a part of the application for continuing approval of the ICR that will be submitted to OMB prior to the expiration of the emergency approval.

Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. Accordingly, persons who wish to complete the Form EFAST–1 should obtain a copy of the Form EFAST–1 displaying the OMB contol number and including the recent revisions.

Dated: May 15, 2000.

**Gerald B. Lindrew,**

*Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.*

[FR Doc. 00–12666 Filed 5–18–00; 8:45 am]

BILLING CODE 4510–29–M

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

### Medical Child Support Working Group

**AGENCY:** Pension and Welfare Benefits Administration, Department of Labor.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is given of the date of the ninth meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments.

**DATES:** The ninth meeting of the MCSWG will be held on Thursday, June 8th, 2000, from 10:30 a.m. to approximately 12:30 p.m.

**ADDRESSES:** The meeting will be held in the 6th Floor Auditorium of the Aerospace Building, 901 D St. SW, Washington, DC. All interested parties are invited to attend this public meeting. Seating may be limited and will be available on a first-come, first-serve basis. Persons needing special assistance, such as sign language interpretation or other special accommodation, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401–6953; fax (202) 401–5559; e-mail: sweinstein@acf.dhhs.gov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register**. However, it is expected this will be the last meeting.

**SUPPLEMENTARY INFORMATION:** Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) (FACA), notice is given of a meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (P.L. 105–200).

The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) Recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under proposed regulations; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act ; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary.

The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of: (1) DOL; (2) DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); (7) children potentially eligible for medical support, such as child advocacy organizations; (8) State medical child support organizations; and (9) organizations representing State child support programs.

**Agenda**

The agenda for this meeting includes review and approval of the MCSWG's report to the Secretaries containing recommendations for appropriate measures to address the impediments to the effective enforcement of medical child support as listed above. At the May, 1999, meeting the MCSWG formed four (4) subcommittees to discuss barriers, issues, options, and recommendations in the interim between full MCSWG meetings. At the next three meetings (August, 1999, October, 1999, and November, 1999), the subcommittees presented their draft recommendations to the full MCSWG for further discussion and consideration. At the January, 2000, meeting the MCSWG discussed the recommendations to be contained in the report to the Secretaries. At the March, 2000, meeting the MCSWG reviewed for approval the draft report. At this meeting, the MCSWG will review and approve the final report.

**Public Participation**

Members of the public wishing to present oral statements to the MSCWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meeting. Such request should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meeting.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and DHHS. At DOL, these documents will be available at the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m. Questions regarding the availability of documents from DOL should be directed to Ms. Ellen Goodwin, Pension and Welfare Benefits Administration, Department of Labor (telephone (202) 219–7222, ext. 2722). This is not a toll-free number. Any written comments on the minutes should be directed to Ms. Samara Weinstein, Executive Director of the Working Group, as shown above.

Signed at Washington, DC, this 16th day of May, 2000.

**Leslie Kramerich,**

*Acting Assistant Secretary for Pension and Welfare Benefits.*

[FR Doc. 00–12663 Filed 5–18–00; 8:45 am]

BILLING CODE 4510–29–P

## FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

### Sunshine Act Meeting

May 15, 2000.

**TIME AND DATE:** 10 a.m., Monday, May 15, 2000.

**PLACE:** Room 6005, 6th Floor, 1730 K Street NW, Washington, DC.

**STATUS:** Closed pursuant to 5 U.S.C. § 552b(c)(10)).

**MATTERS TO BE CONSIDERED:** It was determined by unanimous vote of a quorum of the Commission that the Commission consider and act upon the following in closed session:

1. *Eagle Energy, Inc.* v. *Secretary of Labor (MSHA) and FMSHRC,* 4th Cir. No. 00–1073, FMSHRC Docket No. WEVA 98–39.

No earlier announcement of the meeting was possible.

**CONTACT PERSON FOR MORE INFO:** Jean Ellen: (202) 653–5629, (202) 708–9300 for TDD Relay, 1–800–877–8339 for toll-free.

**Jean H. Ellen,**

*Chief Docket Clerk.*

[FR Doc. 00–12757 Filed 5–17–00; 1:30 pm]

BILLING CODE 6735–01–M

## NORTHEAST DAIRY COMPACT COMMISSION

### Notice of Meeting

**AGENCY:** Northeast Dairy Compact Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The Compact Commission will hold its regular monthly meeting to consider matters relating to administration and enforcement of the price regulation, including the reports and recommendations of the Commission's standing Committees.

**DATES:** The meeting will begin at 10:30 a.m. on Wednesday, June 7, 2000.

**ADDRESSES:** The meeting will be held at The Centennial Inn, Armenia White Room, 96 Pleasant Street, Concord, New Hampshire (I–93 Exit 14).

**FOR FURTHER INFORMATION CONTACT:** Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, VT 05602. Telephone (802) 229–1941.

**Authority:** 7 U.S.C. 7256.

Dated: May 15, 2000.

**Kenneth M. Becker,**

*Executive Director.*

[FR Doc. 00–12612 Filed 5–18–00; 8:45 am]

BILLING CODE 1650–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–331 License No. DPR–49]**

### IES Utilities Inc., et al., (Duane Arnold Energy Center); Order Approving Transfer of Operating Authority and Conforming Amendment

I.

IES Utilities Inc. (the licensee), Central Iowa Power Cooperative (CIPCO), and the Corn Belt Power Cooperative (Corn Belt) are the holders of Facility Operating License No. DPR–49, which authorizes operation of the Duane Arnold Energy Center (DAEC or the facility). The facility is located near the town of Palo in Linn County, Iowa. The license authorizes IES Utilities Inc., to possess, use, and operate DAEC and authorizes CIPCO and Corn Belt to possess the facility.

II.

By application dated November 24, 1999, the Commission was informed that IES Utilities Inc., entered into operating service agreements with Nuclear Management Company, LLC (NMC). The application was supplemented by submittals dated February 4 and March 17, 2000. The initial application and the supplements are hereinafter referred to as "the application" unless otherwise indicated. Under the proposed transaction, NMC will be designated as the exclusive licensee authorized to use and operate DAEC in accordance with the terms and conditions of the license. The transaction involves no change in plant ownership. The licensee requested approval of the proposed transfer of operating authority under the DAEC facility operating license to NMC. The application also requested a conforming amendment to reflect the transfer. The proposed amendment would add NMC to the license as the licensee authorized to use and operate DAEC, and delete references to IES Utilities Inc. as the operator.

According to the application for approval filed by IES Utilities Inc., NMC would become the licensee authorized to use and operate DAEC following approval of the proposed license transfer. NMC will assume exclusive responsibility for the operation and maintenance of DAEC. Ownership of DAEC will not be affected by the proposed transfer of operating authority. The plant owners will retain their current ownership interests. NMC will not own any portion of DAEC. Likewise, the plant owners' entitlement to capacity and energy from DAEC will not be affected by the transfer of operating authority. No physical changes to the DAEC facility were proposed in the application.

Approval of the transfer of operating authority under the facility operating license and conforming license amendment was requested by IES Utilities Inc., pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 4, 2000 (65 FR 5703). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by IES Utilities Inc., and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that NMC is qualified to hold the operating authority under the license, and that the transfer of the operating authority under the license to NMC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a Safety Evaluation dated May 15, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *It is hereby ordered* that the transfer of operating authority under the license as described herein to NMC is approved, subject to the following conditions:

(1) After receipt of all required regulatory approvals of the transfer of operating authority to NMC, IES Utilities Inc., and NMC shall inform the Director of the Office of Nuclear Reactor Regulation, in writing of such receipt within 5 business days and of the date of the closing of the transfer no later than 7 business days before the date of closing. If the transfer is not completed by April 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(2) NMC shall, prior to completion of the transfer of operating authority for DAEC, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that NMC has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

*It is further ordered* that consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject transfer of operating authority is approved. The amendment shall be issued and made effective when the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated November 24, 1999, and supplements dated February 4 and March 17, 2000, and the safety evaluation dated May 15, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 15th day of May 2000.

**Brian W. Sheron,**

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–12617 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–282, 50–306, 72–10; License No. DPR–42, License No. DPR–60, License No. SNM–2506]**

## Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2, and Prairie Island Independent Spent Fuel Storage Installation); Order Approving Transfers of Operating Authority and Conforming Amendments

I.

Northern States Power Company (NSP or the licensee) is the holder of Facility Operating Licenses Nos. DPR–42 and DPR–60, which authorize operation of Prairie Island Nuclear Generating Plant, Units 1 and 2 (Prairie Island or the facility), and Materials License No. SNM–2506, which authorizes operation of the Prairie Island Independent Spent Fuel Storage Installation (Prairie Island ISFSI). The facility and the Prairie Island ISFSI are located at the licensee's site in Goodhue County, Minnesota. The operating licenses authorize NSP to

possess, use, and operate Prairie Island. The materials license authorizes NSP to receive, acquire, and possess power reactor spent fuel at the Prairie Island ISFSI.

II.

By application dated November 24, 1999, as supplemented February 2, 2000, NSP informed the Commission that NSP entered into operating service agreements with Nuclear Management Company, LLC (NMC). The initial application and the supplement are hereinafter collectively referred to as "the application," unless otherwise indicated. Under the proposed transaction, NMC will be designated as the exclusive licensee authorized to use and operate Prairie Island and the Prairie Island ISFSI in accordance with the terms and conditions of the licenses. The transaction involves no change in ownership. The licensee requested approval of the proposed transfer of operating authority under the Prairie Island facility operating licenses and materials license to NMC. The application also requested conforming amendments to reflect the transfer. The proposed amendments would add NMC to the licenses as the licensee authorized to use and operate Prairie Island and the Prairie Island ISFSI and delete references to NSP as the operator.

According to the application for approval filed by NSP, NMC would become the licensee authorized to use and operate Prairie Island and the Prairie Island ISFSI following approval of the proposed license transfers. NMC will assume exclusive responsibility for the operation and maintenance of Prairie Island and the Prairie Island ISFSI. Ownership of Prairie Island and the Prairie Island ISFSI will not be affected by the proposed transfers of operating authority. NSP will retain ownership of the facility and the Prairie Island ISFSI. NMC will not own any portion of Prairie Island or the Prairie Island ISFSI. Likewise, NSP's entitlement to capacity and energy from Prairie Island will not be affected by the transfer of operating authority. No physical changes to Prairie Island or the Prairie Island ISFSI were proposed in the application.

Approval of the transfer of operating authority under the facility operating licenses and conforming license amendments was requested by NSP pursuant to 10 CFR 50.80 and 50.90, and approval of the transfer of the materials license and conforming amendment was requested by NSP pursuant to 10 CFR 72.50 and 72.56. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 15, 2000 (65 FR 7574). Pursuant to such notice, Carol Overland, an individual, North American Water Office, an environmental organization, and the Prairie Island Indian Community filed hearing requests. The Commission presently has the matter under consideration.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Pursuant to 10 CFR 72.50, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information in the application by NSP, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that NMC is qualified to hold the operating authority under the licenses, and that the transfer of the operating authority under the licenses to NMC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility and the Prairie Island ISFSI will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing finding are supported by a safety evaluation dated May 15, 2000.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. §§ 2201(b), 2201(i), and 2234, and 10 CFR 50.80 and 10 CFR 72.50, *it is hereby ordered* that the transfer of operating authority under the licenses, as described herein, to NMC is approved, subject to the following conditions:

(1) After receipt of all required regulatory approvals of the transfer of operating authority to NMC, NSP and NMC shall inform the Director of the Office of Nuclear Reactor Regulation and the Director of the Office of Nuclear Material Safety and Safeguards, in writing of such receipt within 5 business days, and of the date of the closing of the transfers no later than 7 business days prior to the date of closing. If the transfers are not completed by April 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(2) NMC shall, prior to completion of the transfers of operating authority for Prairie Island, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that NMC has obtained the appropriate amount of insurance required of licensees under 10 CFR 140 of the Commission's regulations.

*It is further ordered* that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject transfer of operating authority are approved. The amendments shall be issued and made effective at the time the proposed transfers are completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated November 24, 1999, and supplement dated February 2, 2000, and the safety evaluation dated May 15, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 15th day of May 2000.

**Brian W. Sheron,**

*Acting Director, Office of Nuclear Reactor Regulation.*

**William F. Kane,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–12613 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–263, License No. DPR–22]**

## Northern States Power Company (Monticello Nuclear Generating Plant, Unit No. 1); Order Approving Transfer of License and Conforming Amendment

I.

Northern States Power Company (NSP or the licensee) is the holder of Facility Operating License No. DPR–22, which authorizes operation of Monticello Nuclear Generating Plant, Unit No. 1 (Monticello or the facility). The facility is located in Wright County at the licensee's site in Wright and Sherburne Counties, Minnesota. The license authorizes NSP to possess, use, and operate Monticello.

II.

By application dated October 29, 1999, as supplemented March 14 and April 25, 2000, the Commission was informed that NSP entered into an agreement on March 24, 1999, to merge with New Century Energies, Inc. (NCE). The initial application and the supplements are hereinafter collectively referred to as "the application," unless otherwise indicated. Under the proposed transaction, NCE will be merged with and into NSP, which will be renamed Xcel Energy, Inc. (Xcel). At the time of the merger, NSP will transfer all of its existing electric and natural gas utility facilities and operations currently conducted directly by NSP to a newly formed utility operating company subsidiary (referred to herein as "New NSP") of Xcel. The licensee requested approval of the proposed transfer of the Monticello facility operating license to New NSP. The application also requested approval of a conforming amendment to reflect the transfer. The proposed amendment would add a footnote to the license to reflect the transfer from NSP to New NSP, which will be known as Northern States Power Company, the same name now used by NSP.

According to the application for approval filed by NSP, the facility would be transferred to New NSP after approval of the proposed license transfer and New NSP would become responsible for the operation, maintenance, and eventual decommissioning of Monticello. No physical changes to the Monticello facility or operational changes were proposed in the application.

Approval of the transfer of the facility operating license and conforming license amendment was requested by NSP pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 10, 2000 (65 FR 6641). Pursuant to such notice, Carol Overland, an individual, and North American Water Office, an environmental organization, filed hearing requests. The Commission currently has the matter under consideration.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by NSP and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that New NSP is qualified to hold the license and that the transfer of the license to New NSP is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations; and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated May 12, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of the license, as described herein, to New NSP is approved, subject to the following conditions:

(1) New NSP shall, prior to completion of the subject transfer, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that New NSP has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) New NSP shall provide the Director of the Office of Nuclear Reactor Regulation a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from New NSP to its parent, Xcel Energy, Inc., or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of New NSP's consolidated net utility plant, as recorded on its books of account.

(3) After receipt of all required regulatory approvals of the transfer of Monticello to New NSP, NSP shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the date of the closing of the transfer of Monticello no later than 7 business days before the date of closing. If the transfer of the license is not completed by April 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

*It is further ordered* that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject license transfer is approved. The amendment shall be issued and made effective at the time the proposed license transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated October 29, 1999, supplements dated March 14 and April 25, 2000, and the safety evaluation dated May 12, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 12th day of May 2000.

For the Nuclear Regulatory Commission.

**Brian W. Sheron,**

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–12618 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### In the Matter of Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2, and Prairie Island Independent Spent Fuel Storage Installation); Order Approving Transfer of Licenses and Conforming Amendments

[Docket Nos. 50–282, 50–306, 72–10, License No. DPR–42, License No. DPR–60, License No. SNM–2506]

I.

Northern States Power Company (NSP or the licensee) is the holder of Facility Operating Licenses Nos. DPR–42 and DPR–60, which authorize operation of Prairie Island Nuclear Generating Plant, Units 1 and 2 (Prairie Island or the facility), and Materials License No. SNM–2506, which authorizes operation of the Prairie Island Independent Spent Fuel Storage Installation (Prairie Island ISFSI). The facilities are located at the licensee's site in Goodhue County, Minnesota. The operating licenses authorize NSP to possess, use, and operate Prairie Island. The materials license authorizes NSP to receive, acquire, and possess power reactor spent fuel at the Prairie Island ISFSI.

II.

By application dated October 29, 1999, as supplemented March 14 and April 25, 2000, the Commission was informed that NSP entered into an agreement on March 24, 1999, to merge with New Century Energies, Inc. (NCE). The initial application and the supplements are hereinafter collectively referred to as "the application," unless otherwise indicated. Under the proposed transaction, NCE will be merged with and into NSP, which will be renamed Xcel Energy, Inc. (Xcel). At the time of the merger, NSP will transfer all of its existing electric and natural gas utility facilities and operations currently conducted directly by NSP to a newly formed utility operating company subsidiary (referred to herein as "New NSP") of Xcel. The licensee requested approval of the proposed transfer of the Prairie Island facility operating licenses and the Prairie Island ISFSI materials license to New NSP. The application also requested conforming amendments to reflect the transfer. The proposed amendments would add a footnote to the licenses to reflect the transfer from NSP to New NSP, which will be known as Northern States Power Company, the same name now used by NSP.

According to the application for approval filed by NSP, the facility and the Prairie Island ISFSI would be transferred to New NSP following approval of the proposed license transfers, and New NSP would become responsible for the operation, maintenance, and eventual decommissioning of Prairie Island and the Prairie Island ISFSI. No physical changes to the facilities or operational changes were proposed in the application.

Approval of the transfer of the facility operating licenses and conforming license amendments was requested by NSP pursuant to 10 CFR 50.80 and 50.90, and approval of the transfer of the materials license and conforming amendment was requested by NSP pursuant to 10 CFR 72.50 and 72.56. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 10, 2000 (65 FR 6642). Pursuant to such notice, Carol Overland, an individual, and North American Water Office, an environmental organization, filed hearing requests. The Commission presently has the matter under consideration.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Pursuant to 10 CFR 72.50, no license shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission gives its consent in writing. Upon review of the information in the application by NSP, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that New NSP is qualified to hold the licenses, and that the transfer of the licenses to New NSP is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility and the Prairie Island ISFSI will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated .

III.

Accordingly, pursuant to Sections 161b, 161i, 161o, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), 2201(o), and 2234, and 10 CFR 50.80 and 10 CFR 72.50, *It Is Hereby Ordered* that the transfer of the licenses, as described herein, to New NSP is approved, subject to the following conditions:

(1) New NSP shall, prior to completion of the subject transfers, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that New NSP has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(2) New NSP shall provide the Director of the Office of Nuclear Reactor Regulation and the Director of the Office of Nuclear Materials Safety and Safeguards a copy of any application, at the time it is filed, to transfer (excluding grants of security interests or liens) from New NSP to its parent, Xcel Energy, Inc., or to any other affiliated company, facilities for the production, transmission, or distribution of electric energy having a depreciated book value exceeding 10 percent (10%) of New NSP's consolidated net utility plant, as recorded on its books of account.

(3) After receipt of all required regulatory approvals of the transfer of Prairie Island and the Prairie Island ISFSI to New NSP, NSP shall inform the Director of the Office of Nuclear Reactor Regulation and the Director of the Office of Nuclear Material Safety and Safeguards, in writing of such receipt within 5 business days, and of the date of the closing of the transfer of Prairie Island and the Prairie Island ISFSI no later than 7 business days prior to the date of closing. If the transfer of the licenses is not completed by April 1, 2001, this Order shall become null and

void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

*It Is Further Ordered* that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject license transfers are approved. The amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated October 29, 1999, supplements dated March 14 and April 25, 2000, and the safety evaluation dated May 12, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 12th day of May 2000.

For the Nuclear Regulatory Commission.

**Brian W. Sheron,**

*Acting Director, Office of Nuclear Reactor Regulation.*

**William F. Kane,**

*Director, Office of Nuclear Material Safety and Safeguards.*

[FR Doc. 00–12619 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Northern States Power Company (Monticello Nuclear Generating Plant, Unit No. 1); Order Approving Transfer of Operating Authority and Conforming Amendment

[Docket No. 50–263; License No. DPR–22]

**I.**

Northern States Power Company (NSP or the licensee) is the holder of Facility Operating License No. DPR–22, which authorizes operation of Monticello Nuclear Generating Plant, Unit No. 1 (Monticello or the facility). The facility is located in Wright County at the licensee's site in Wright and Sherburne Counties, Minnesota. The license authorizes NSP to possess, use, and operate Monticello.

**II.**

By application dated November 24, 1999, as supplemented February 2, 2000, NSP informed the Commission that NSP entered into operating service agreements with Nuclear Management Company, LLC (NMC). The initial application and the supplement are hereinafter collectively referred to as "the application," unless otherwise indicated. Under the proposed transaction, NMC will be designated as the exclusive licensee authorized to use and operate Monticello in accordance with the terms and conditions of the license. The transaction involves no change in plant ownership. The licensee requested approval of the proposed transfer of operating authority under the Monticello facility operating license to NMC. The application also requested a conforming amendment to reflect the transfer. The proposed amendment would add NMC to the license as the licensee authorized to use and operate Monticello and delete references to NSP as the operator.

According to the application for approval filed by NSP, NMC would become the licensee authorized to use and operate Monticello following approval of the proposed license transfer. NMC will assume exclusive responsibility for the operation and maintenance of Monticello. Ownership of Monticello will not be affected by the proposed transfer of operating authority. NSP will retain its current ownership interest. NMC will not own any portion of Monticello. Likewise, NSP's entitlement to capacity and energy from Monticello will not be affected by the transfer of operating authority. No physical changes to the Monticello facility were proposed in the application.

Approval of the transfer of operating authority under the facility operating license and conforming license amendment was requested by NSP pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 15, 2000 (65 FR 7574). Pursuant to such notice, Carol Overland, an individual, and North American Water Office, an environmental organization, filed hearing requests. The Commission presently has the matter under consideration.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by NSP, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that NMC is qualified to hold the operating authority under the license, and that the transfer of the operating authority under the license to NMC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated .

**III.**

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *It Is Hereby Ordered* that the transfer of operating authority under the license, as described herein, to NMC is approved, subject to the following conditions:

(1) After receipt of all required regulatory approvals of the transfer of operating authority to NMC, NSP and NMC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the date of the closing of the transfer of Monticello no later than 7 business days prior to the date of closing. If the transfer is not completed by April 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(2) NMC shall, prior to completion of the transfer of operating authority for Monticello, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that NMC has obtained the appropriate amount of insurance required of

licensees under 10 CFR Part 140 of the Commission's regulations.

*It Is Further Ordered* that, consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject transfer of operating authority is approved. The amendment shall be issued and made effective at the time the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated November 24, 1999, and supplement dated February 2, 2000, and the safety evaluation dated May 15, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 15th day of May 2000.

For the Nuclear Regulatory Commission.

**Brian W. Sheron,**

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–12620 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Nos. 50–266, 50–301, 72–005; License Nos. DPR–24, DPR–27]**

### Wisconsin Electric Power Company (Point Beach Nuclear Plant, Units 1 and 2); Order Approving Transfer of Operating Authority and Conforming Amendments

I.

Wisconsin Electric Power Company (WEPCo or the licensee) is the holder of Facility Operating Licenses Nos. DPR–24 and DPR–27, which authorize operation of the Point Beach Nuclear Plant, Units 1 and 2 (Point Beach or the facility). The facility is located at the licensee's site in the town of Two Creeks, Manitowac County, Wisconsin. The licenses authorize WEPCo to possess, use, and operate Point Beach.

II.

By application dated November 24, 1999, as supplemented January 31, 2000, the Commission was informed that WEPCo entered into operating service agreements with Nuclear Management Company, LLC (NMC). The initial application and the supplement are hereinafter referred to as "the application," unless otherwise indicated. Under the proposed transaction, NMC will be designated as the licensee authorized to use and operate Point Beach in accordance with the terms and conditions of the licenses. The transaction involves no change in plant ownership. The licensee requested approval of the proposed transfer of operating authority under the Point Beach facility operating licenses to NMC. The application also requested conforming amendments to reflect the transfer. The proposed amendments would add NMC to the licenses and reflect that NMC is exclusively authorized to use and operate Point Beach. As a result of the transfer of licenses with respect to operating authority thereunder and conforming license amendments, NMC will also become and act as the general licensee for the Independent Spent Fuel Storage Installation (ISFSI) at Point Beach pursuant to 10 CFR 72.210.

According to the application for approval filed by WEPCo, NMC would become the licensee authorized to use and operate Point Beach following approval of the proposed license transfers. NMC will assume exclusive responsibility for the operation and maintenance of Point Beach. Ownership of Point Beach will not be affected by the proposed transfer of operating authority. WEPCo will retain its current ownership interest. NMC will not own any portion of Point Beach. Likewise, WEPCo's entitlement to capacity and energy from Point Beach will not be affected by the transfer of operating authority. No physical changes to the Point Beach facility were proposed in the application.

Approval of the transfer of operating authority under the facility operating licenses and conforming license amendments was requested by WEPCo pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 4, 2000 (65 FR 5705). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer or control of the license, unless the Commission shall give its consent in writing. Upon review of the information in application by WEPCo, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that NMC is qualified to hold the operating authority under the licenses, and that the transfer of the operating authority under the licenses to NMC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act, and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a safety evaluation dated May 15, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *it is hereby ordered* that the transfer of operating authority under the licenses, as described herein, to NMC is approved, subject to the following conditions:

(1) After receipt of all required regulatory approvals of the transfer of operating authority to NMC, WEPCo and NMC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days, and of the date of the closing of the transfer no later than 7 business days prior to the date of closing. If the transfer is not completed by April 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(2) NMC shall, prior to completion of the transfer of operating authority for Point Beach, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that NMC has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

*It is further ordered* that, consistent with 10 CFR 2.1315(b), license amendments that make changes, as indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the licenses to reflect the subject transfer of operating authority is approved. The amendments shall be issued and made effective at the time the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated November 24, 1999, and supplement dated January 31, 2000, and the safety evaluation dated May 15, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 15th day of May 2000.

For the Nuclear Regulatory Commission.

**Brian W. Sheron,**

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–12614 Filed 5–18–00; 8:45 am]

BILLING CODE 7510–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–305; License No. DPR–43]**

**Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company; (Kewaunee Nuclear Power Plant, Unit No. 1); Order Approving Transfer of Operating Authority and Conforming Amendment**

I.

Wisconsin Public Service Corporation (WPSC), Wisconsin Power and Light Company (WP&L), and Madison Gas and Electric Company (MGE) (the licensees), are the holders of Facility Operating License No. DPR–43, which authorizes operation of Kewaunee Nuclear Power Plant, Unit No. 1 (Kewaunee or the facility). The facility is located at the licensees' site in Kewaunee County, Wisconsin. The license authorizes the licensees to possess, use, and operate Kewaunee.

II.

By application dated November 24, 1999, as supplemented December 7, 1999, and February 8, 2000, the Commission was informed that WPSC, on behalf of itself and WP&L and MGE, entered into operating service agreements with Nuclear Management Company, LLC (NMC). The initial application and the supplements are hereinafter referred to as "the application" unless otherwise indicated. Under the proposed transaction, NMC will be designated as the exclusive licensee authorized to use and operate Kewaunee in accordance with the terms and conditions of the license. The transaction involves no change in plant ownership. WPSC requested approval of the proposed transfer of operating authority under the Kewaunee facility operating license to NMC. The application also requested a conforming amendment to reflect the transfer. The proposed amendment would add NMC to the license as the licensee authorized to use and operate Kewaunee, and make changes to the license to reflect that the current licensees no longer have operating authority.

According to the application for approval filed by WPSC, NMC would become the licensee authorized to use and operate Kewaunee following approval of the proposed license transfer. NMC will assume exclusive responsibility for the operation and maintenance of Kewaunee. Ownership of Kewaunee will not be affected by the proposed transfer of operating authority. WPSC, WP&L, and MGE will retain their current ownership interest. NMC will not own any portion of Kewaunee. Likewise, the licensees' entitlement to capacity and energy from Kewaunee will not be affected by the transfer of operating authority. No physical changes to the Kewaunee facility were proposed in the application.

Approval of the transfer of operating authority under the facility operating license and conforming license amendment was requested by WPSC pursuant to 10 CFR 50.80 and 50.90. Notice of the application for approval and an opportunity for a hearing was published in the **Federal Register** on February 4, 2000 (65 FR 5706). No hearing requests or written comments were received.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. Upon review of the information in the application by WPSC, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that NMC is qualified to hold the operating authority under the license and that the transfer of the operating authority under the license to NMC is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission, subject to the conditions set forth below. The NRC staff has further found that the application for the proposed license amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter 1; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendment can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendment will not be inimical to the common defense and security or the health and safety of the public; and the issuance of the proposed amendment will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a Safety Evaluation dated May 15, 2000.

III.

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 50.80, *It is hereby ordered* that the transfer of operating authority under the license as described herein to NMC is approved, subject to the following conditions:

(1) After receipt of all required regulatory approvals of the transfer of operating authority to NMC, WPSC and NMC shall inform the Director of the Office of Nuclear Reactor Regulation in writing of such receipt within 5 business days and of the date of the closing of the transfer no later than 7 business days before the date of closing. If the transfer is not completed by April 1, 2001, this Order shall become null and void, provided, however, upon written application and for good cause shown, such date may in writing be extended.

(2) NMC shall, prior to completion of the transfer of operating authority of Kewaunee, provide the Director of the Office of Nuclear Reactor Regulation satisfactory documentary evidence that NMC has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

*It is further ordered* that consistent with 10 CFR 2.1315(b), a license amendment that makes changes, as

indicated in Enclosure 2 to the cover letter forwarding this Order, to conform the license to reflect the subject transfer of operating authority is approved. The amendment shall be issued and made effective at the time the proposed transfer is completed.

This Order is effective upon issuance.

For further details with respect to this action, see the initial application dated November 24, 1999, and supplements dated December 7, 1999, and February 8, 2000, and the safety evaluation dated May 15, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 15th day of May 2000.

For the Nuclear Regulatory Commission.

**Brian W. Sheron,**

*Acting Director, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–12616 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on June 6, 2000, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

**Tuesday, June 6, 2000–1:00 p.m. until the conclusion of business**

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff person named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone: 301/415–7360) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule, *etc.*, that may have occurred.

Dated: May 15, 2000.

**Richard K. Major,**

*Acting Associate Director for Technical Support, ACRS/ACNW.*

[FR Doc. 00–12622 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

### Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued a revision to a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 3 of Regulatory Guide 1.8, "Qualification and Training of Personnel for Nuclear Power Plants," provides current guidance on qualifications and training for nuclear power plant personnel that is acceptable to the NRC staff. This regulatory guide endorses ANSI/ANS–3.1–1993, "Selection, Qualification, and Training of Personnel for Nuclear Power Plants," with certain clarifications, additions, and exceptions.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Recently published regulatory guides are available on the NRC's web site at <*WWW.NRC.GOV*> in the Reference Library under Regulatory Guides. Regulatory guides are also available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, OCIO, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289. Issued guides may also be purchased may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 3rd day of May 2000.

For the Nuclear Regulatory Commission.

**Ashok C. Thadani,**

*Director, Office of Nuclear Regulatory Research.*

[FR Doc. 00–12615 Filed 5–18–00; 8:45 am]

BILLING CODE 7590–01–P

## SECURITIES AND EXCHANGE COMMISSION

### Issuer Delisting; Notice of Applicantion to Withdraw from Listing and Registration; (Audiovox Corporation, Class A Common Stock, $.01 Par Value) File No. 1–09532

May 12, 2000.

Audiovox Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw the security described above ("Security" from listing and registration on the American Stock Exchange LLC ("Amex").

The Company has undertaken to transfer trading in its Security from the

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

Amex to the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq"), which it considers to be the preeminent marketplace from the securities of companies in its market segment. The Company has registered its Security pursuant to Section 12(g) of the Act [3] by filing a Registration Statement on Form 8–A with the Commission on January 11, 2000. The Security subsequently became designated for quotation and began trading on the Nasdaq National Market, and was simultaneously suspended from trading on the Amex, on January 13, 2000.

The Company has stated that it has complied with the Rules of the Amex governing the withdrawal of its Security from listing and registration on the Exchange, and that the Amex in turn has indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's trading and designation for quotation on the Nasdaq National Market or its registration under Section 12(g) of the Act. [4]

Any interested person may, on or before June 5, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, fracts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–12598 Filed 5–18–00; 8:45 am]

**BILLING CODE 8010–01–M**

[3] 15 U.S.C. 78*l*(g).

[4] *Id.*

[5] 17 CFR 200.30–3(a)(1).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27176]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

May 12, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 6, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After June 6, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/permitted to become effective.

**Energy East, Corp., et al. (70–9609)**

Energy East Corporation ("Energy East"), a New York corporation and a public utility holding company exempt from registration under section 3(a)(1) of the Act, by order of the Commission [1] and its subsidiaries, New York State Electric & Gas Corporation ("NYSEG"); Energy East Enterprises, Inc. ("Energy East Enterprises"); and Maine Natural Gas, L.L.C. ("Maine Natural Gas"), each located at One Canterbury Green, Stamford, Connecticut 06904; Connecticut Energy Corporation ("Connecticut Energy"), and its utility subsidiary, The Southern Connecticut Gas Company ("Southern Connecticut Gas"), each located at 855 Main Street, Bridgeport, CT 06604; CMP Group, Inc. ("CMP Group"), a Maine corporation and a public utility holding company exempt from registration under section 3(a)(1) of the Act, by order of the Commission [2] and CMP Group's utility subsidiaries, Central Maine Power Company ("Central Maine Power"); Maine Electric Power Company, Inc. ("MEPCo"); and NORVARCO, each located at 83 Edison Drive, Augusta, ME 04336; CTG Resources, Inc. ("CTG Resources"), a Connecticut corporation and a public utility holding company exempt from registration under section 3(a)(1) by rule 2 under the Act and CTG Resourses' utility subsidiary Connecticut Natural Gas Corporation ("Connecticut Natural Gas"), each located at 100 Columbus Boulevard, Hartford, CT 06103; and Berkshire Energy Resources ("Berkshire") a Massachusetts corporation and a public utility holding company exempt from registration under section 3(a)(2) by rule 2 under the Act and Berkshire's utility subsidiary, The Berkshire Gas Company ("Berkshire Gas"), each located at 115 Chesire Road, Pittsfield, MA 01201 (collectively, "Applicants") [3] have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12, 13(b), 32, 33 and 34 of the Act and rules 42, 43, 45, 46, 52, 53, 54, 58 and 80–92 under the Act.

Upon completion of the Mergers, Energy East would own interests in the following eight public utility companies, each of which would be wholly owned by companies within the Energy East system, unless otherwise indicated: (1) NYSEG; (2) Southern Connecticut Gas; (3) Main Natural Gas (formerly CMP Natural Gas, L.L.C.); [4] Central Maine Power, (5) MEPCo; [5] (6) NORVARCO; (7) Connecticut Natural

[1] Holding Co. Act Release No. 27128 (Feb. 2, 2000).

[2] Holding Co. Act Release No. 26977 (Feb. 12, 1999).

[3] Two related application-declarations (collectively, "Merger Applications") seeking approvals required to complete the proposed acquisitions ("Mergers") by Energy East of Connecticut Energy (S.E.C. File No. 70–9545), CMP Group, CTG Resources and Berkshire (S.E.C. File No. 70–9569) have been filed. The Commission authorize the acquisition of Connecticut Energy, Holding Co. Act Release No. 27128 (Feb. 2, 2000). A notice of the 70–9569 merger filing was issued, Holding Co. Act Release No. 27171 (April 21, 2000).

[4] Maine Natural Gas is a joint venture between New England Gas Development Corp. (holding a 19% interest), a wholly owned subsidiary of CMP Group, and Energy East Enterprises, a Maine corporation (holding an 81% interest), a wholly owned subsidiary of Energy East and a public utility holding company exempt from registration under section 3(a)(1) of the Act, by order of the Commission, Holding Co. Act Release No. 26977 (Feb. 12, 1999).

[5] Central Maine Power owns 78.3% voting interest of MEPCo with the remaining interests owned by two other Maine utilities.

Gas; and (8) Berkshire Gas (collectively, "Utility Subsidiaries").[6]

As explained more fully in the Merger Applications, Applicants propose Connecticut Energy, CMP Group, CTG Resources and Berkshire will remain in existence as first tier subsidiaries of Energy East following the Mergers. In addition, Energy East currently owns Energy East Enterprises which is a public utility holding company by virtue of the 81% interest it holds in Maine Natural Gas (collectively, "Intermediate Holding Companies").

Upon completion of the Merger, Energy East will also own approximately 41 other subsidiary companies that are not public utility companies under the Act (collectively, "Nonutility Subsidiaries").[7] Among the Nonutility Subsidiaries is Energy East Management Corporation ("EE Management"). A separate application-declaration has been filed with the Commission by Energy East in connection with EE Management assuming the role of providing management, administrative and corporate support services to the companies in the Energy East System.[8]

Collectively, the Utility Subsidiaries, the Intermediate Holding Companies and the Nonutility Subsidiaries are referred to as the "Subsidiaries." The term "Subsidiaries" shall also include entities that become subsidiaries of Energy East after the consummation of the Mergers.

Applicants state that the cash portion of the consideration to be paid in the Mergers will be financed in part by the issuance of approximately $500 million of unsecured debt ("Acquisition Debt"). Energy East requests authority to maintain in place the Acquisition Debt and to refinance such Acquisition Debt. Applicants request approval for a program of external financing, credit support arrangements, and other related proposals for the period commencing on the effective date of an order issued under this filing and ending March 31, 2003 ("Authorization Period"). As described more fully below, Applicants propose to enter into numerous types of financing transactions to meet Energy East's capital requirements immediately following the Mergers and to plan future financing. Applicants seek authorization and approval of the Commission with respect to: (1) Ongoing financing activities of Energy East and its subsidiaries; (2) intrasystem extension of credit; (3) the creation or acquisition of nonutility subsidiaries; (4) the payment of dividends out of capital and unearned surplus; and (5) other related matters pertaining to Energy East and its Subsidiaries.

*1. General Terms and Conditions of Financing*

Financings by each Applicant will be subject to the following limitations: (1) The effective cost of money on short-term debt authorized in this proceeding will not exceed the competitive market rates available at the time of issuance to companies with comparable credit ratings with respect to debt having similar maturities; the obligations incurred in connection with any short-term financing with respect to Utility Subsidiaries will bear interest at a rate that will not exceed 300 basis points over the comparable term London Interbank Offered Rate ("LIBOR"); (2) maturity of long-term indebtedness will not exceed 50 years; (3) the underwriting fees, commissions, or similar remuneration paid in connection with the issue, sale, or distribution of a security is estimated not to exceed 5% of the principal amount of the financing; and (4) Energy East's common equity will be at least 30% of its pro forma consolidated capitalization.

As explained more fully below, Energy East requests authority to issue and sell from time to time common stock, preferred stock, and unsecured debentures having maturities of up to 50 years ("Debentures") in an aggregate amount not to exceed $2.5 billion, and unsecured short-term indebtedness having maturities of one year or less ("Short-Term Debt") in an aggregate principal amount at any time outstanding not to exceed $750 million, provided that the aggregate principal amount of all indebtedness (including Acquisition Debt, Debentures and Short-Term Debt), of Energy East at any time outstanding shall not exceed $1.5 billion ("Energy East Debt Limitation ").

Applicants state that the proceeds from the financing will be used for general corporate purposes, including: (1) Financing, in part, investments by and capital expenditures of Energy East and its Subsidiaries, including, the funding of future investments in exempt wholesale generators ("EWGs"), foreign utility companies ("FUCOs"), companies engaged or formed to engage in activities permitted by rule 58 ("Rule 58 Subsidiaries"), and exempt telecommunications companies ("ETCs"); (2) the repayment, redemption, refunding or purchase by Energy East or any Subsidiary of any of its own securities under rule 42; and (3) financing working capital requirements of Energy East and its Subsidiaries.

*2. Energy East External Financing*

Energy East requests authority to issue and sell from time to time during the Authorization Period, commons stock, preferred stock, and Debentures in an aggregate amount not to exceed $2.5 billion and up to $750 million of Short-Term Debt at any time outstanding subject to the terms and conditions discussed below.

a. Common Stock

Energy East requests authorization to issue and sell from time to time common stock during the Authorization Period, either: (1) Through underwritten public offering; (2) in private placements; (3) under its dividend reinvestment plan and stock-based management incentive and employee benefit plans; or (4) in exchange for securities or assets being acquired from other companies. Energy East also proposes to issue and sell common stock or options, warrants, or other stocks purchase rights that are exercisable for common stock and issue common stock upon the exercise of such options, warrants, or other stock purchase rights. Energy East states that it may also buy back shares of common stock during the Authorization Period in accordance with rule 42.

Energy East also requests authorization to issue and/or sell shares of common stock under its existing stock plans and similar plans or plan funding arrangements later adopted, and to engage in other sales of its treasury shares for general business purposes, without any additional prior Commission order. Energy East seeks authority for the issuance and sale of its shares in accordance with its dividend reinvestment plan under the authorization and within the limitations set forth in this application-declaration.

Energy East requests authorization to issue common stock in consideration for an acquisition by Energy East or a Nonutility Subsidiary of securities or assets of a business, the acquisition of which has been approved by the Commission in this proceeding (see item 11 below) or is exempt under the Act or the rules (specifically, rule 58).

b. Preferred Stock

Energy East requests authorization to issue and sell preferred stock from time to time during the Authorization Period. The dividends payable on any series of preferred stock, as well as all other terms and conditions and any associated

[6] A description of the Utility Subsidiaries may be found in the notice in S.E.C. File No. 70–9569, Holding Co. Act Release No. 27171 (April 21, 2000).

[7] A listing and description of the Nonutility Subsidiaries may be found in the notice in S.E.C. File No. 70–9569, Holding Co. Act Release No. 27171 (April 21, 2000).

[8] See S.E.C. File No. 70–9675.

placement, underwriting or selling agent fees, commissions and discounts, if any, would be established by negotiation or competitive bidding and reflected in the applicable purchase agreement or underwriting agreement setting forth the terms; provided, that the dividend rate on any series of preferred stock would not exceed the rate generally obtainable at the time of issuance for preferred securities having the same or reasonably similar terms and conditions issued by utility holding companies of reasonably comparable credit quality, as determined by competitive capital markets.

c. Short-Term Debt

Energy East requests authorization to have outstanding at any one time during the Authorization Period, up to $750 million of unsecured Short-Term Debt, in aggregate principal amount, subject to the Energy East Debt Limitation. The effective cost of money on short-Term Debt authorized in this proceeding will not exceed the competitive market rates available at the time of issuance to companies with comparable credit ratings with respect to debt having similar maturities.

Energy East states that it may also establish bank lines in an aggregate principal amount not to exceed the $750 million limitation. Loans under these lines will have maturities not more than one year from the date of each borrowing. Energy East further states that it may engage in other types of short-term financing generally available to borrowers with comparable credit ratings as it may deem appropriate in light of its needs and market conditions at the time of issuance.

d. Debentures

Energy East requests authorization to issue and sell from time to time during the Authorization Period Debentures in one or more series, subject to the Energy East Debt Limitation. The Debentures: (1) May be convertible into any other securities of Energy East; (2) will have maturities ranging from one to 50 years; (3) may be subject to optional and/or mandatory redemption, in whole or in part, at par, or at various premiums about the principal amount; (4) may be entitled to mandatory or optional sinking fund provisions; (5) may provide for reset of the coupon under a remarketing arrangement; and (6) may be called from existing investors by a third party. In addition, Energy East states that it may have the right to defer the payment of interest on the Debentures of one or more series (which may be fixed, floating or "multi-modal" debentures, *i.e.*, debentures where the interest is periodically reset for each reset period). The Debentures would be issued under an indenture to be entered into between Energy East and a national bank, as trustee. Energy East states that it will not issue any Debentures that are not at the time of original issuance rated at least investment grade by a nationally recognized statistical rating organization, without further Commission authorization.

e. Other Securities

Energy East states that it may find it necessary or desirable to issue and sell other types of securities during the Authorization Period in addition to those specifically enumerated in the application-declaration. Energy East requests that the Commission reserve jurisdiction over the issuance of additional types of securities and the amounts, subject to the Energy East Debt Limitation. Energy East states it will file a post-effective amendment in this proceeding which will describe the general terms and amounts of each security and request a supplemental order of the Commission authorizing the issuance of that security by Energy East.

*3. Utility Subsidiary Financing*

a. Short-Term Debt of the Utility Subsidiaries

The Utility Subsidiaries request authority to issue and sell from time to time during the Authorization Period securities, to the extent they are not otherwise exempt under rule 52(a), with maturities of one year or less, up to the following aggregate principal amounts: NYSEG $275,000,000; Maine Natural Gas $50,000,000; Central Maine Power $150,000,000; MEPCo $30,000,000; NORVARCO $30,000,000; Southern Connecticut Gas $100,000,000; Connecticut Natural Gas $100,000,000; and Berkshire Gas $50,000,000.

Applicants state that subject to these limitations, the Utility Subsidiaries may engage in short-term financing as they deem appropriate in light of their needs and market conditions at the time of issuance. Short-term securities could include, without limitation, commercial paper sold in established commercial paper markets in a manner similar to Energy East, notes to banks under bank lines of credit and debt securities issued under their respective indentures and note programs. The obligations incurred in connection with any short-term security will bear interest at a rate which is not greater than 300 basis points over LIBOR.

*4. Short-Term Debt of Intermediate Holding Companies*

Each of the Intermediate Holding Companies requests authority to issue, sell and have outstanding at any one time during the Authorization Period debt securities with maturities of one year or less in the following aggregate principal amounts: CMP Group $30,000,000; Connecticut Energy $30,000,000; CTG Resources $30,000,000; Berkshire $30,000,000; and Energy East Enterprises $30,000,000.

Applicants state that subject to such limitations, the Intermediate Holding Companies may engage in short-term financing as they deem appropriate in light of their needs and market conditions at the time of issuance. This short-term financing could include, without limitation, commercial paper sold in established commercial paper markets in a manner similar to Energy East, bank lines and debt securities issued under their respective indentures and note programs. The obligations incurred in connection with any short term financing will bear interest at a rate which is not greater than 300 basis points over LIBOR.

*5. Nonutility Subsidiary Financing*

The Nonutility Subsidiaries request that the Commission reserve jurisdiction over the issuance by any Nonutility Subsidiary of any securities where the exemption under rule 52(b) would not apply. Energy East states that it will file a post-effective amendment in this proceeding which will describe the general terms of each non-exempt security and their amounts and request a supplemental order of the Commission authorizing the issuance of that security.

Where the Nonutility Subsidiary making the borrowing is not wholly owned by Energy East, directly or indirectly, Applicants request authorization for Energy East or a Nonutility Subsidiary, to make loans to these subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital.

*6. Guaranties*

a. Energy East Guaranties

Energy East requests authorization to enter into guaranties, obtain letters of credit, enter into expense agreements or otherwise provide credit support to or on behalf of subsidiaries (collectively, "Energy East Guaranties") as may be appropriate to enable each Subsidiary to operate in the ordinary course of business, in an aggregate principal amount not exceed $1 billion outstanding at any one time, provided,

that the amount of any Energy East Guaranties in respect of obligations of any EWG, FUCO or Rule 58 Subsidiary shall also be subject to the limitations of rule 53(a)(1) or rule 58(a)(1), as applicable.

b. Nonutility Subsidiary Guaranties

Nonutility Subsidiaries request authorization to enter into guaranties, obtain letters of credit, enter into expense agreements or otherwise provide credit support to or on behalf of other Nonutility Subsidiaries (collectively, "Nonutility Subsidiary Guaranties") in an aggregate principal amount not to exceed $700 million outstanding at any one time, exclusive of any guaranties and other forms of credit support that are exempt under rule 45(b) and rule 52, provided, that the amount of any Nonutility Subsidiary Guaranties in respect of obligations of any Rule 58 Subsidiary shall also be subject to the limitations of rule 58(a)(1).

c. Intermediate Holding Company Guaranties

Each Intermediate Holding Company requests authorization to enter into guaranties, obtain letters of credit, enter into expense agreements or otherwise provide credit support to or on behalf of their respective subsidiary companies (collectively, "Intermediate Holding Company Guaranties") as may be appropriate to enable such companies to operate in the ordinary course of business, in an aggregate principal amount not to exceed $30 million outstanding at any one time, provided, that the amount of any Intermediate Holding Company Subsidiary Guaranties in respect of obligations of any Rule 53 Subsidiary shall also be subject to the limitations of rule 58(a)(1).

*7. Hedging Transactions*

a. Interest Rate Hedges

Energy East, and to the extent not exempt under rule 52, the Subsidiaries, request authority to enter into interest rate hedging transactions ("Interest Rate Hedges") with respect to outstanding indebtedness of such companies in order to manage and minimize interest rate costs. Interest Rate Hedges would only be entered into with counterparties ("Approved Counterparties") whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Standard and Poor's, are equal to or grater than BBB, or an equivalent rating from Moody's Investors Service, Fitch Investor Service or Duff and Phelps. Interest Rate Hedges would involve the use of financial instruments commonly used in today's capital markets, such as interest rate swaps, caps, collars, floors, and structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), or transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations.

b. Anticipatory Hedges

Energy East and the Subsidiaries request authorization to enter into interest rate hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges"). Anticipatory Hedges would only be entered into with Approved Counterparties, and would be used to fix and/or limit the interest rate risk associated with any new issuance through: (1) A forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury obligations and/or a forward swap (each a "Forward Sale"); (2) the purchase of put options on U.S. Treasury obligations (a "Put Options Purchase"); (3) a Put Options Purchase in combination with the sale of call options on U.S. Treasury obligations (a "Zero Cost Collar"); (4) transactions involving the purchase or sale, including short sales, of U.S. Treasury obligations; or (5) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars.

The Applicants state they will comply with the then existing financial disclosure requirements of the Financial Accounting Standards Board associated with all interest rate hedges and anticipatory hedges.

*8. Changes in Capital Stock in Subsidiaries*

Energy East, on behalf of the Subsidiaries, requests authorization to change the terms of the authorized capital stock capitalization of any wholly owned Subsidiary or Intermediate Holding Company, by an amount deemed appropriate by Energy East or other intermediate parent company. If that authority were granted, a Subsidiary would be able to change the par value, or change between par and no-par stock, without additional Commission approval. Any action of this type by a Utility Subsidiary would be subject to, and would be taken only upon receipt of, necessary approvals by the state commission in the state or states where the Utility Subsidiary is incorporated and doing business.

*9. Financing Subsidiaries*

Energy East and the Subsidiaries request authorization to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships, or other entities ("Financing Subsidiaries") created specifically for the purpose of facilitating the financing of the authorized and exempt activities of Energy East and the Subsidiaries. The Financing Subsidiaries would issue long-term debt or equity securities, including monthly income preferred securities, to third parties and transfer the proceeds of these financings by the Financing Subsidiaries to Energy East or to a Subsidiary.

Applicants state that, if the direct parent company of a Financing Subsidiary is authorized in this proceeding or any subsequent proceeding to issue long-term debt or similar types of equity securities, then the amount of those securities issued by its Financing Subsidiary would count against the limitation applicable to its parent for those securities. In these cases, however, the guaranty by the parent of that security issued by its Financing Subsidiary would not count against the limitations on Energy East Guaranties or Intermediate Holding Company Guaranties or Nonutility Subsidiary Guaranties. If the parent is not authorized in this or in a subsequent proceeding to issue similar types of securities, the amount of any guaranty not exempt under rules 45(b)(7) and 52 that is entered into by the parent company with respect to securities issued by its Financing Subsidiary would count against the limitation on Energy East Guaranties, Intermediate Holding Company Guaranties or Nonutility Subsidiary Guaranties. Energy East requests that the Commission reserve jurisdiction over any transfer of proceeds of financing by any Financing Subsidiary to Energy East pending completion of the record.

*10. Intermediate Subsidiaries*

Energy East requests authorization to acquire, directly or indirectly, the securities of one or more intermediate subsidiaries ("Intermediate Subsidiaries" are those subsidiaries organized for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more EWGs or FUCOs, Rule 58 Subsidiaries, ETCs or other Nonutility Subsidiaries (as authorized in this proceeding or in a separate proceeding), provided that Intermediate Subsidiaries may also engage in development activities ("Development Activities")

and administrative activities ("Administrative Activities"), relating to these subsidiaries). To the extent these transactions are not exempt from the Act or otherwise authorized, or permitted by rule, regulation or order of the Commission, Energy East requests authority for Intermediate Subsidiaries to provide management, administrative, project development and operating services to these entities. Applicants state that these services may be rendered at fair market prices to the extent they qualify for any of the exceptions from the "at cost" standard requested in item 12, below.

Applicants request authority for the Intermediate Subsidiaries to expend up to $100 million during the Authorization Period on Development Activities. Applicants state that Development Activities will be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, power purchasers, thermal "hosts," fuel suppliers and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and such other preliminary activities as may be required in connection with the purchase, acquisition, financing or construction of facilities or the acquisition of securities of or interests in new businesses.

Applicants state that Energy East may determine from time to time to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries, and the activities and functions related to such investments, under one or more Intermediate Subsidiaries. To the extent that these transactions are not otherwise exempt under the Act or rules, Energy East requests authorization to consolidate or otherwise reorganize under one or more direct or indirect Intermediate Subsidiaries, Energy East's ownership interests in existing and future Nonutility Subsidiaries.

*11. Investments in Energy-Related Assets*

Nonutility Subsidiaries request authorization to acquire or construct in one or more transactions during the Authorization Period, nonutility energy assets in the United States, including, natural gas production, gathering, processing, storage and transportation facilities and equipment, liquid oil reserves and storage facilities, and associated facilities (collectively, "Energy-Related Assets") that would be incidental to the energy marketing, brokering and trading operations of Energy East Subsidiaries. Nonutility Subsidiaries request authorization to invest up to $500 million ("Investment Limitation") during the Authorization Period in Energy-Related Assets or in the equity securities of existing of new companies substantially all of whose physical properties consist or will consist of Energy-Related Assets. These Energy-Related Assets may be acquired for cash or in exchange for common stock or other securities of Energy East or a Nonutility Subsidiary of Energy East or any combination of the same.

*12. Exemption from Section 13(b)*

Energy East's Nonutility Subsidiaries request authorization to provide services to sell goods to each other at fair market prices determined without regard to cost, and thus, request an exemption (to the extent rule 90(d) does not apply) under section 13(b) from the cost standards of rules 90 and 91 as applicable to these transactions, in any case in which the Nonutility Subsidiary purchasing these goods or services is:

(1) A FUCO or foreign EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(2) An EWG which sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC"), provided that the purchaser is not one of the Utility Subsidiaries;

(3) A "qualifying facility" ("QF") within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") that sells electricity exclusively (a) at rates negotiated at arms' length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, and/or (b) to an electric utility company (other than a Utility Subsidiary) at the purchaser's "avoided cost" as determined in accordance with the regulations under PURPA;

(4) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser is not one of the Utility Subsidiaries; or

(5) A Rule 58 Subsidiary that (a) is partially owned by Energy East, provided that the ultimate purchaser of such goods or services is not a Utility Subsidiary or EE Management (or any other entity that Energy East may form whose activities and operations are primarily related to the provision of goods and services to Utility Subsidiaries of EE Management), (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in clauses (1) through (4) immediately above, or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

*13. Activities of Rule 58 Subsidiaries Within and Outside the United States*

Energy East, on behalf of any current or future Rule 58 Subsidiaries, requests authorization to engage in business activities, permitted by rule 58, including energy marketing, energy management services and consulting services, both within and outside the United States. Energy East requests that the Commission: (1) Reserve jurisdiction over energy marketing activities outside the United States and Canada pending completion of the record in this proceeding; (2) authorize Energy East and its direct and indirect subsidiaries to provide energy management and consulting services anywhere outside the United States; and (3) reserve jurisdiction over other activities of Rule 58 Subsidiaries outside the United States, pending completion of the record.

*14. Payment of Dividends*

a. Energy East, the Intermediate Holding Companies and the Utility Subsidiaries

Energy East, Intermediate Holding Companies and their respective Utility Subsidiaries request authorization to pay dividends out of capital and unearned surplus in an amount up to the retained earnings of such companies prior to the Mergers. In addition, after the Mergers are completed, each of these companies requests authorization to pay dividends out of earnings before amortization of goodwill, for the duration of the goodwill amortization period.

b. Nonutility Subsidiaries

Energy East requests authorization, on behalf of itself and each of its current and future non-exempt Nonutility Subsidiaries, that these companies be permitted to pay dividends with respect to the securities of these companies, through the Authorization Period, out of capital and unearned surplus.

*15. Tax Allocation Agreement*

Applicants request the Commission approve an agreement for the allocation of consolidated tax among Energy East and the Subsidiaries ("Tax Allocation Agreement"). Approval is necessary because the proposed Tax Allocation Agreement may provide for the retention by Energy East of certain payments for tax losses incurred, rather than allocate these losses to Subsidiaries without payment, as rule 45(c)(5) would otherwise require. Applicants state that Energy East or its finance subsidiary will create tax deductions chiefly in the form of deductions for interest expense on the Acquisition Debt that are non-recourse to the Subsidiaries.

For the Commission by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12599 Filed 5–18–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Rogers Corporation, Capital Stock, $1 Par Value, and Rights To Purchase Capital Stock, $1 Par Value) File No. 1–04347**

May 12, 2000.

Rogers Corporation ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 12d2–2(d) thereunder,[2] to withdraw the securities described above ("Securities") from listing and registration on the Pacific Exchange, Inc. ("PCX").[3]

The Company is seeking to withdraw its Securities from listing and registration on the PCX in conjunction with the commencement of their trading on the New York Stock Exchange, Inc. ("NYSE"). The Company hopes that, with an NYSE listing, it will be able to realize a broader market base for its Securities than it has had through the PCX.

Subsequent to the filing of the Company's Registration Statements on Form 8–A with the Commission, which became effective on April 6, 2000, trading in the Securities commenced on the NYSE at the opening of business on April 18, 2000. In making the determination to withdraw its Securities from listing and registration on the PCX in conjunction with the new listing and registration on the NYSE, the Company hopes to avoid both the costs associated with maintaining multiple listings and a potential fragmentation of the market for its Securities.

The Company has stated that it has complied with the rules of the PCX governing the withdrawal of its Securities, and that the PCX has in turn indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Securities from listing and registration on the PCX and shall have no effect upon the Securities' continued listing and registration on the NYSE. By reason of section 12(b) of the Act [4] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission under section 13 of the Act.[5]

Any interested person may, on or before June 5, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–12597 Filed 5–18–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] The Company previously filed an application with the Commission to withdraw its Securities from listing and registration on the American Stock Exchange LLC. The Commission has already solicited public comment on this prior application. *See* Securities Exchange Act Release No. 42744 (May 2, 2000), 65 FR 26646 (May 8, 2000).

[4] 15 U.S.C. 78*l*(b).

[5] 15 U.S.C. 78m.

[6] 17 CFR 200.30–3(a)(1).

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 24453; 812–11980]**

**Lifetime Achievement Fund, Inc., et al.; Notice of Application**

May 12, 2000.

**AGENCY:** Securities and Exchange Commission ("Commission").

**ACTION:** Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1)(F)(ii) of the Act.

**SUMMARY OF APPLICATION:** Applicants request an order to permit a fund of funds relying on section 12(d)(1)(F) of the Act to charge a sales load in excess of 1½ percent.

**APPLICANTS:** Lifetime Achievement Fund, Inc. (the "Fund"), Manarin Investment Counsel, Ltd. (the "Adviser") and Manarin Securities Corporation (the "Distributor").

**FILING DATES:** The application was filed on February 17, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 6, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, c/o Charles H. Richter, Lifetime Achievement Fund, Inc., 11605 West Dodge Road, Omaha, NE 68154.

**FOR FURTHER INFORMATION CONTACT:** Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application

may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

**Applicants' Representations**

1. The Fund is a Maryland corporation and is registered under the Act as an open-end management investment company. The Fund intends to invest all or substantially all of its assets in the shares of various other registered investment companies ("Underlying Funds") in reliance on section 12(d)(1)(F) of the Act. The Adviser is registered under the Investment Advisers Act of 1940 and acts as investment adviser to the Fund. The Distributor is the principal underwriter to the Fund. Applicants request relief to permit the Fund to charge a sales load in excess of the limit in section 12(d)(1)(F)(ii) of the Act.

**Applicants' Legal Analysis**

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities of another investment company if such securities represent more than 3% of the acquiring company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of any other acquired investment companies, represent more than 10% of the acquiring company's total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies.

2. Section 12(d)(1)(F) of the Act provides that Section 12(d)(1) shall not apply to securities purchased by an acquiring company if the company and its affiliates own no more than 3% of an acquired company's securities, provided that the acquiring company does not impose a sales load of more than 1.5% on its shares. In addition, section 12(d)(1)(F) provides that no acquired company is obligated to honor any acquiring company redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company.

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors.

4. Applicants request an order under section 12(d)(1)(J) exempting them from the sales load limitation in section 12(d)(1)(F)(ii). Applicants agree, as a condition to the requested order that any sales charges, distribution related fees, and service fees relating to the shares of the Fund, when aggregated with any sales charges, distribution related fees and service fees paid by the Fund relating to its acquisition, holding or disposition of shares of the Underlying Funds will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealers Inc. ("NASD") Conduct Rules.

**Applicants' Conditions**

1. The Fund will comply with section 12(d)(1)(F) of the Act in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges, distribution related fees, and service fees relating to the shares of the Fund, when aggregated with any sales charges, distribution related fees and service fees paid by the Fund relating to its acquisition, holding or disposition of shares of the Underlying Funds will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules.

3. No Underlying Fund will acquire securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act except to the extent that such Underlying Fund (a) receives securities of another investment company as a dividend or as a result of a plan of reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting such Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes; or (ii) engage in interfund borrowing and lending transactions.

4. Before approving any advisory contract under section 15 of the Act, the Board of the Fund, including a majority of the Board who are not "interested persons" (as defined in section 2(a)(19) of the Act), will find that the advisory fees charged under the contract are based on services provided that are in addition to, rather than duplicative of, services provided under any Underlying Fund advisory contract. This finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the Fund.

For the Commission, by the Division of Investment Management, under delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12600 Filed 5–18–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

### Sunshine Act Meeting Notice

**Agency Meetings**

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 22, 2000.

An open meeting will be held on Tuesday, May 23, 2000 at 9:00 a.m. in Room 1C30.

The subject matter of the open meeting scheduled for Tuesday, May 23, 2000 at 9 a.m. will be:

The Commission's Division of Investment Management will conduct a roundtable discussing several issues relating to investment advisers. The roundtable will bring together investment advisers, legal counsel to advisers, representatives from state regulatory bodies, representatives from the NASD, and others to discuss these issues and offer their recommendations. For further information, please contact Cynthia M. Fornelli at (202) 942–0720, or J. David Fielder at (202) 942–0530.

A closed meeting will be held on Wednesday, May 24, 2000 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

The subject matter of the closed meeting scheduled Wednesday, May 24, 2000 will be:

Institution and settlement of injunctive actions; and Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further

information and to ascertain that, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: May 16, 2000.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 00–12687 Filed 5–16–00; 4:07 pm]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42779; File No. SR–OPRA–00–04]**

## Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

May 12, 2000.

Pursuant to Rule 11Aa3–2 under the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on May 9, 2000, the Options Price Reporting Authority ("OPRA")[2] submitted to the Securities and Exchange Commission ("SEC" or "Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("OPRA Plan"). The proposed OPRA Plan amendment would extend the current temporary capacity allocation plan for peak usage periods through the close of trading on May 25, 2000, to minimize the likelihood that during this period the total number of messages generated by the OPRA participant exchanges will exceed the processor's (*i.e.*, Securities Industry Automation Corporation ("SIAC")) aggregate message handling capacity. In addition, to accommodate the anticipated entry into OPRA of the International Securities Exchange ("ISE"), the amendment has been modified to reallocate OPRA systems capacity during peak usage periods among the options exchanges to include ISE. If, as expected, the ISE becomes a participant in OPRA, the amendment, as modified, would proportionally reduce the existing allocations to the Amex, CBOE, PCX, and Phlx, based on each OPRA participant's relative share of total OPRA systems capacity, to allocate systems capacity to the ISE. The Commission is publishing this notice and order to solicit comments from interested persons on the proposed OPRA Plan amendment, as modified, and to grant accelerated approval to the proposed OPRA Plan amendment, as modified, on a temporary basis, for 120 days.

### I. Description and Purpose of the Amendment

As discussed above, OPRA proposes to extend the temporary period during which the message handling capacity of its processor is allocated among the participant exchanges, currently scheduled to end on May 13, 2000,[3] for an additional twelve days, through the close of trading on May 25, 2000. Through May 25, 2000, the processor's aggregate message-handling capacity, estimated by the processor to be 3,540 messages per second,[4] will be allocated among the participants by automatically limiting the number of messages that each participant may input to the processor as follows:

American Stock Exchange: 1,024 messages per second
Chicago Board Options Exchange: 1,366 messages per second
Pacific Exchange: 635 messages per second
Philadelphia Stock Exchange: 515 messages per second

ISE is scheduled to begin trading on May 26, 2000[5] and is expected prior to that date to become a participant in OPRA. To date, the OPRA participants have been unable to agree to a method by which to allocate existing capacity to ISE. Because there has been no increase in overall OPRA systems capacity that would accommodate ISE's capacity needs, the 60 messages per second that ISE has requested for its first month of operation will have to be allocated to ISE by reducing the other OPRA participants current allocation levels. To facilitate the allocation of existing capacity to ISE, the Commission is modifying the proposed OPRA Plan amendment to provide for a promotional distribution of capacity to ISE based on each OPRA participant's relative share of total OPRA system capacity if, as expected, ISE becomes a participant in OPRA.

Specifically, the proposed allocation plan, which will be in effect on a temporary basis for 120 days, would operate as follows during peak usage periods:

- The existing allocation scheme would remain in place through May 25, 2000.
- Assuming, as anticipated, that ISE is a participant in OPRA, from May 26 until June 25, 2000, ISE would be allocated 55 messages per second,[6] with the other exchanges' existing allocation reduced proportionally. To provide ISE with a capacity allocation of 55 messages per second during its first month of operation, the following allocation among the exchanges would result: 1,008 messages per second to the Amex (a reduction of 16 messages per second); 1,345 messages per second to the CBOE (a reduction of 21 messages per second); 625 messages per second to the PCX ( a reduction of 10 messages per second); 507 messages per second to the Phlx (a reduction of 8 messages per second); and 55 messages per second to ISE.
- Assuming, as anticipated, that ISE is a participant in OPRA, beginning June 26, 2000, ISE's allocation would be increased by 55 messages per second every 30 days for as long as this Order is in effect (*i.e.*, 110, 165, and 220 messages per second for ISE's second, third, and fourth months of operation, respectively). The same proportional reduction in the current level of capacity allocated to the existing markets would provide the additional allocation for ISE.

In the event that additional capacity becomes available to the OPRA system

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[1] 17 CFR 240.11Aa3–2.

[2] OPRA is a National Market System Plan approved by the Commission pursuant to Section 11A of the Act and Rule 11Aa3–2 thereunder. *See* Securities Exchange Act Release No. 17638 (Mar. 18, 1981).

The OPRA Plan provides for the collection and dissemination of last sale and quotation information on options that are traded on the member exchanges. The five exchanges that agreed to the OPRA Plan are the American Stock Exchange ("AMEX"); the Chicago Board Options Exchange ("CBOE"); the New York Stock Exchange ("NYSE"); the Pacific Exchange ("PCX"); and the Philadelphia Stock Exchange ("PHLX").

[3] The Commission approved three consecutive temporary capacity allocation plans that were proposed by OPRA Participants. *See* Securities Exchange Act Release Nos. 42328 (January 11, 2000), 65 FR 2988 (January 19, 2000) (order approving File No. SR–OPRA–00–01); 42362 (January 28, 2000), 65 FR 5919 (February 7, 2000) (order approving File No. SR–OPRA–00–02); and 42493 (March 3, 2000), 65 FR12597 (March 9, 2000) (order approving File No. SR–OPRA–00–03). In addition, the Commission has sought public comment on two alternative formulas for allocating OPRA systems capacity during peak usage periods. *See* Securities Exchange Act Release No. 42755 (May 4, 2000), 65 FR 30148 (May 10, 2000) (File No. 4–434).

[4] The proposed OPRA Plan amendment incorrectly referred to 3,518 messages per second. It had been modified here pursuant to OPRA's verbal request. Telephone conversation between Joseph Corrigan, Executive Director, OPRA, and Deborah Flynn, Senior Special Counsel, Division of Market Regulation, Commission, on May 9, 2000.

[5] ISE was registered as a national securities exchange for options trading on February 24, 2000. *See* Securities Exchange Act Release No. 42455, 65 FR 11387 (March 2, 2000).

[6] Although ISE initially requested from OPRA a capacity allocation during peak periods of 60 messages per second, the Commission is allocating 55 messages per second to it during its first month of operation. The Commission believes that the ISE, like the other options exchanges, will need to undertake efforts to encourage its market makers to quote as efficiency as possible to stay within the 55 messages per second cap.

during the 120 days that this order is in effect, and the OPRA participants fail to agree to a new allocation plan to reflect the higher capacity available, the additional capacity would be distributed in the same proportions as allocated under this Order. If, at any time, the OPRA participants submit to the Commission a proposed OPRA Plan amendment that is consistent with the Act, the Commission will act to replace and supersede this temporary order with that proposal.

**II. Implementation of the Plan Amendment**

OPRA believes the proposed extension of the temporary capacity allocation program through May 25, 2000, is needed to avoid delays and queues in the dissemination of options market information. The availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities, is necessary to achieve the objective of Section 11(A)(a)(1)(C)(iii) of the Act.[7] Accordingly, OPRA requests that the Commission permit the extension of the proposed allocation program to be put into effect summarily upon publication of notice of this filing, pursuant to paragraph (c)(4) of Rule 11Aa3–2 under the Act.[8] Based on a finding by the Commission that such action, as modified for the reasons described in Section IV below, is necessary or appropriate in the public interest, for the protection of investors or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system, or is otherwise in furtherance of the purposes of the Act.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, and all written statements with respect to the proposed OPRA Plan amendment that are filed with the Commission, and all written communications relating to the proposed OPRA Plan amendment between the Commission and any person, other than those withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available at the principal offices of OPRA. All submissions should refer to File No. SR–OPRA–00–04 and should be submitted by June 9, 2000.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Plan Amendment**

After careful review, the Commission finds that the proposed OPRA Plan amendment, as modified, is consistent with the requirements of the Act and the rules and regulations thereunder.[9] Specifically, the Commission believes that the proposed amendment, as modified, which allocated the limited capacity of the OPRA system among the options markets during peak usage periods, is consistent with Rule 11Aa3–2 under the Act[10] in that it will contribute to the maintenance of fair and orderly markets and remove impediments to, and perfect the mechanisms of, a national market system. The Commission notes that the aggregate message traffic generated by the options exchanges is rapidly approaching the outside limit, and at times surpasses, OPRA's systems capacity. OPRA's processor has informed the Commission that current plans to enhance OPRA's systems are not expected to be completed before the end of the second quarter of this year, at the earliest. Consequently, the Commission is concerned that, absent a program to allocate systems capacity among the options markets that is put in place immediately, systems queuing of options quotes may be the norm, to the detriment of all investors and other participants in the option markets. The Commission believes that the agreed-upon extension of the current allocation plan is a reasonable means for addressing potential strains on capacity that may occur between now and May 25, 2000.

The Commission believes that the reallocation of OPRA systems capacity to provide an allocation to ISE is appropriate if, as expected, the ISE becomes a participant in OPRA, particularly in light of the temporary nature of the allocation plan, which will be in effect for no more than 120 days. In fact, several factors make it likely that this temporary plan will be superceded prior to its expiration date. First, if at any time the OPRA participant exchanges files with the Commission a capacity allocation plan for peak usage periods that is consistent with the Act, the Commission will act to substitute that proposal for this plan. Second, the Commission recently requested comment on its proposed amendment to the OPRA Plan to adopt an objective capacity allocation formula.[11] The Commission notes that the comment period on that proposal expires on June 9, 2000. Approving this interim measure on a temporary basis will permit the comment letters received by the Commission to be carefully considered before deciding whether to take final action on the proposal. Finally, the enhancements to the OPRA system are expected to increase systems capacity from 3,540 messages per second to 8,000 messages per second. That increase will create incentives for the OPRA participants to reevaluate this capacity allocation plan and submit to the Commission a modified capacity allocation plan consistent with the Act.

The Commission further believes that the proposed amendment to the OPRA Plan to reallocate OPRA system capacity among the options exchanges, including ISE, on a temporary basis is necessary to accommodate ISE's entry into the market. The Commission rarely invokes its authority to modify proposed amendments to national market system plans, but believes that exigent circumstances including, the inability of the OPRA participants to agree to an allocation that includes ISE, the potential harm to investors should queuing occur, and the desirability of permitting ISE to begin trading, mandate the Commission's action. Specifically, the Commission finds that it is necessary and appropriate to approve the proposed allocation plan, as modified,[12] to be in effect for no more than 120 days, to ensure that all potential barriers to entry are removed prior to ISE's commencement of trading.

The Commission finds good cause to accelerate the proposed OPRA Plan amendment prior to the thirtieth day after the date of publication in the **Federal Register**. The Commission notes that the proposed OPRA Plan amendment is intended to allocate OPRA system capacity for a short period of time, 120 days, to mitigate potential disruption to the orderly dissemination of options market information caused by the inability of the OPRA system to handle the anticipated quote message

[7] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[8] 17 CFR 240.11 Aa3–2(c)(4).

[9] In approving this proposed OPRA Plan amendment, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 240.11Aa3–2.

[11] *See* Securities Exchange Act Release No. 42755 (May 4, 2000), 65 FR 30148 (May 10, 2000) (File No. 4–434).

[12] The Commission has authority to approve any proposed National Market System Plan amendment "with such changes or subject to such conditions as the Commission may deem necessary or appropriate," and to do so by order.

traffic. The Commission believes that approving the proposed capacity allocation will provide the options exchanges and OPRA with an immediate, short-term solution to a pressing problem, while giving the Commission and the options markets additional time to evaluate, and possibly implement, other quote mitigation strategies. In addition, the limited time frame of this capacity allocation program provides the Commission and the options exchanges with greater flexibility to modify the program, as necessary, to ensure the fairness of the allocation process to all of the options markets going forward. The Commission finds, therefore, that granting accelerated approval of the proposed OPRA Plan amendment, as modified, is appropriate and consistent with Section 11A of the Act.[13]

## V. Conclusion

*It is therefore ordered*, pursuant to Rule 11Aa3–2 of the Act,[14] that the proposed OPRA Plan amendment, as modified, (SR–OPRA–00–04) is approved on an accelerated basis until September 9, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12601 Filed 5–18–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42782; File No. SR–DTC–00–03]**

## Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to Establishing a Depository Link With SIS SegaInterSettle AG

May 15, 2000.

On February 22, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–DTC–00–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal was published in the **Federal Register** on March 9, 2000.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

## I. Description

Under the rule change, DTC will establish a free-of-payment omnibus account at SIS SegaInterSettle AG ("SIS") in order to create a one-way DTC–SIS link. The link will permit, but will not require, DTC to hold in its account at SIS positions in issues that are eligible at both DTC and SIS. The interface will enable DTC participants to more efficiently move and position their inventory through book-entry movements from one depository's books to the other's.[3]

Establishment of the link will enable a DTC participant to settle a cross-border transaction with an SIS counterparty by making a free-of-payment book-entry delivery from DTC's omnibus account at SIS to the SIS participant's account at SIS. Conversely, an SIS participant will be able to settle a cross-border transaction with a DTC participant by making a free-of-payment book-entry delivery from the SIS participant's account at SIS to the DTC omnibus account at SIS (while identifying the DTC participant to which the delivered securities should be credited). The receiving DTC participant then will be able to redeliver the securities on either a free-of-payment or versus-payment basis to any other DTC participant within DTC.

SIS will make SIS's custody and depository services (such as income collection, maturity presentments, and reorganization processing) available to DTC for securities held in DTC's account at SIS in accordance with SIS procedures. Whether DTC holds its underlying inventory in Switzerland or in the U.S., DTC services to DTC participants will be the same as are currently provided.

## II. Discussion

Section 17A(b)(3)(F)[4] of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible. For the reasons set forth below, the Commission believes that DTC's proposed rule change is consistent with DTC's obligations under the Act.

The Commission believes that the link between DTC and SIS should promote the prompt and accurate clearance and settlement of securities transactions. The central purpose of the link is to facilitate the efficient processing of cross-border securities transactions between DTC participants and SIS participants. By opening an omnibus account at SIS, DTC will enable its participants to substitute efficient book-entry movements for inefficient physical movements of securities certificates from SIS to DTC. The link should reduce much of the time, expense, costs, and risks associated with physically moving certificates from SIS and redepositing them at DTC.

The Commission also believes that DTC has established the link with SIS in a manner that is consistent with its safeguarding obligations under the Act. In order to assure itself that the linking with SIS is safe and prudent, DTC completed an extensive review of such things as: (1) SIS's operational controls, financial strength, technology capabilities, and audit arrangements; (2) Swiss regulation of SIS; and (3) application and effect of Swiss and U.S. laws as they pertain to the link.

Accordingly, the Commission finds that the link satisfies DTC's obligations to promote the prompt and accurate clearance and settlement of securities transactions and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

*It Is Therefore Ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–00–03) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[5]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12628 Filed 5–18–00; 8:45 am]

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[13] 15 U.S.C. 78k–1.

[14] 17 CFR 240.11Aa3–2.

[15] 17 CFR 200.30–3(a)(29).

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 42482, (March 1, 2000), 65 FR 12602.

[3] With respect to global share issues of issuers such as UBS, DTC expects to hold the bulk of its positions at DTC so that DTC's position will be reflected on the books of U.S. transfer agents.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice No. 3315]**

### Secretary of State's Advisory Committee on Private International Law; Notice of Declaration of Foreign Countries as Reciprocating Countries for the Enforcement of Family Support (Maintenance) Obligations

**AGENCY:** Office of the Legal Adviser, U.S. Department of State.

Section 459A of the Social Security Act (42 U.S.C. 659A) authorizes the Secretary of State with the concurrence of the Secretary of Health and Human Services to declare foreign countries or their political subdivisions to be reciprocating countries for the purpose of the enforcement of family support obligations if the country has established or has undertaken to establish procedures for the establishment and enforcement of duties of support for residents of the United States. These procedures must be in substantial conformity with mandatory elements set out in the statute: procedures for the establishment of paternity and support orders for children and custodial parents; a system for the enforcement of orders, including procedures for the collection and distribution of payments under such orders; providing administrative and legal services without cost to the U.S. applicant; and the designation of an agency to serve as a central authority.

Once such a declaration is made, support agencies in jurisdictions of the United States participating in the program established by Title IV–D of the Social Security Act (the IV–D program) must provide enforcement services under that program to such reciprocating countries as if the request for service came from a U.S. state.

The declarations authorized by the statute may be made "in the form of an international agreement, in connection with an international agreement or corresponding foreign declaration, or on a unilateral basis." The Secretary of State has authorized either the Legal Adviser or the Assistant Secretary for Consular Affairs to make such a declaration after consultation with the other.

As of this date, the following countries have been designated foreign reciprocating countries by such a declaration and a corresponding declaration from the foreign country.

| Country | Effective date |
|---|---|
| Ireland | September 10, 1997. |
| Slovak Republic | February 1, 1998. |
| The Canadian Province of Nova Scotia. | May 14, 1999. |
| Poland | June 14, 1999. |
| British Columbia | April 21, 2000. |
| Manitoba | April 21, 2000. |

**Information**

Each of these countries has designated a Central Authority to facilitate enforcement and ensure compliance with the standards of the statute. Information relating to these agreements, the designated Central Authorities, and the procedures for processing requests may be obtained from the United States Central Authority in the Department of Health and Human Services by contacting Stephen Grant, International Child Support Officer, Office of Child Support Enforcement (OCSE), 370 L'Enfant Promenade SW, 4 Aerospace Building, Washington, DC 20447, phone (202) 260–5943, fax (202) 401–5539, email "sgrant@acf.dhhs.gov".

Questions regarding this notice, the status of negotiations and agreements may be obtained by contacting the office of the Assistant Legal Adviser for Private International Law, South Building, Suite 203, 2430 E Street, NW, Washington, DC 20037–2800; phone (202) 776–8420, fax (202) 776–8482, "email pildb@his.com" or (415) 703–5890, fax (415) 703–1234.

The statute also permits individual states to establish or continue existing reciprocal arrangements with foreign countries when there has been no federal declaration. Many states have such arrangements with additional countries not yet the subject of a federal declaration. Information as to these arrangements may be obtained from the individual state IV–D Agency.

**Jeffrey D. Kovar,**

*Assistant Legal Adviser for Private International Law, Department of State.*

[FR Doc. 00–12661 Filed 5–18–00; 8:45 am]

BILLING CODE 4710–08–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

**AGENCY:** Federal Aviation Administration (FAA) DOT.

**ACTION:** Notice of meeting.

**SUMMARY:** The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

**DATES:** The meeting will be held on May 25, 2000, at 10 a.m.

**ADDRESSES:** The meeting will be held in Room 318, Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591.

**FOR FURTHER INFORMATION CONTACT:** Linda Williams, Office of Rulemaking, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9685.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Committee to be held on May 25, 2000. The agenda for this meeting will include reports from the Airplane Performance Working Group and the All-Weather Operations Working Group, and discussion of a new task, Extended Range Operations of Airplanes (ETOPS). Attendance is open to the interested public but may be limited by the space available. The Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements of the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

If you are in need of assistance or require a reasonable accommodation for this event, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on May 16, 2000.

**Gregory L. Michael,**

*Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.*

[FR Doc. 00–12683 Filed 5–18–00; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**Environmental Impact Statement on Transportation Improvements Within the Proposed North/South Central and Southeast Corridors in Austin, Texas**

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of Intent to prepare an environmental impact statement.

**SUMMARY:** The Federal Transit Administration (FTA) and the Capital Metropolitan Transportation Authority (CMTA) is issuing this notice to advise interested agencies and the public that an environmental impact statement is being prepared in accordance with the National Environmental Policy Act (NEPA) for transportation improvements in the proposed North/South Central and Southeast Corridors in Austin, Texas. Due to tremendous growth in the Austin Metropolitan Area over the past decade, major north-south freeways and arterials serving three major employment centers are severely congested. In 1997, 50% of commuters used north/south freeways daily. Additionally, the Austin metropolitan area has exceeded the Environmental Protection Agency (EPA) standards for ozone over the past three years and risks non-attainment designation in 2000. The proposed project will provide alternative means of travel for commuters to their destination, reduce congestion and vehicular emissions, and improve air quality in the region.

**DATES:** *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be sent to Surinder Marwah, Project Manager by June 23, 2000. *Scoping Meetings:* Three public scoping meetings will be held at the following locations and dates. Scoping material will be available at the meeting or in advance of the meeting by contacting Sam Archer, Capital Metro, at (512) 389–7546. A court reporter will be available to record comments and a sign language interpreter will be available for the hearing impaired. A TDD number (512) 389–3230 is also available for the hearing impaired. The buildings are accessible to people with disabilities.

*Public Scoping*

Tuesday, June 6, 2000, from 7:00 P.M. to 9:00 P.M., Winters Bldg.—Public Hearing Room, Texas Dept. of Human Services (Winters Building), 701 West 51st Street, Austin, Texas

Wednesday, June 7, 2000, from 7:00 P.M. to 9:00 P.M., South Austin Multipurpose Center, 2508 Durwood St., Austin, Texas

Thursday, June 8, 2000, from 7:00 P.M. to 9:00 P.M., Austin History Center Reception Room, 9th and Guadalupe, Austin, Texas

*Interagency Scoping*

Monday, June 5, 2000 from 1 P.M. to 3 P.M., Capital Metro, 2910 East 5th Street, Austin, Texas 78702

**ADDRESSES:** Written comments on the project scope should be sent to Surinder Marwah, Project Manager, Capital Metro, 2910 East 5th Street, Austin, Texas 78702. Telephone (512) 369–6047, Fax (512) 369–6072.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jesse Balleza, Federal Transit Administration, Region VI, 819 Taylor Street, Suite 8A36, Fort Worth, Texas 76102; Telephone (817) 978–0550.

**SUPPLEMENTARY INFORMATION:**

## I. Scoping

The Federal Transit Administration (FTA) in cooperation with the Capital Metropolitan Transportation Authority (Capital Metro), intends to prepare an Environmental Impact Statement (EIS) for the proposed North/South Central and Southeast Corridors in Austin, Texas. The public is invited to participate in developing the analysis approach, alignment alternatives to be evaluated, and the mode and technologies to be considered. Project comments may be made at the public scoping meetings or in writing. See the "Scoping Meeting'" section above for locations and times.

## II. Description of Corridor and Its Transportation Needs

The proposed North/South Central Corridor would provide service from Ben White Boulevard, through the central business district (CBD) to north Austin at McNeil Road. The proposed Southeast Corridor would provide service from the CBD to Pleasant Valley/Martin Luther King (MLK) Boulevard. Combined, the initial phase would be approximately 20 miles long and encompass approximately 26 stations, including park and ride lots. A portion of the proposed project would operate along the existing railroad right-of-way (ROW) owned by Capital Metro from McNeil Road in north Austin to Lamar Boulevard at Airport Road, then operate in the street through the CBD to Ben White Boulevard in south Austin, and in street from the CBD to IH–35 and then along existing railroad ROW to Pleasant Valley/MLK Blvd. The proposed alignment would provide access to three major activity centers in Austin, the University of Texas at Austin, the State Capitol Complex, and the CBD.

The Austin Metropolitan Area is one of the fastest growing regions in the United States. Between 1990 and 1997, the population increased almost 30% (U.S. Census). The Capital Area Metropolitan Planning Organization (CAMPO) estimates the population will exceed 1.9 million by year 2025. In 1997, 50% of commuters used north/south freeways daily (CAMPO). The current north-south freeways (IH–35 and Loop 1/Mopac Expressway) will have to increase capacity significantly to meet future demand.

Additionally, the Austin metropolitan area has exceeded the Environmental Protection Agency (EPA) standards for ozone over the past three years and risks non-attainment designation in 2000. The Texas Natural Resource Conservation Commission has attributed vehicular emissions as the single largest cause of air pollutants in the region.

Area residents particularly minority, elderly, or low-income individuals often rely on transit for their transportation needs. Regional employment also has continued to grow, particularly in the high-tech industry. The emergence of new activity centers along the proposed corridor within the last fifteen years has created new commuting patterns and additional demands on transportation facilities.

## III. Alternatives

The transportation alternatives proposed for consideration in this project area include:

*No-Action*—which involves no change to transportation services or facilities in the corridor beyond already committed projects;

*Enhanced Bus/Transportation System Management (TSM)*—alternative which consists of low to medium cost improvements to the facilities and operation of the Capital Metro bus system in addition to the currently planned transit improvements in the corridors, and

*Build Alternative*—Build alternatives (including line, station locations and support facilities), including light rail and bus rapid transit transportation modes generally following the existing railroad right-of-way (ROW) owned by Capital Metro from McNeil Road in north Austin to Lamar Blvd. At Airport Road, then operate in the street through the CBD to Ben White Blvd. in south Austin, and in street from the CBD to

IH–35 and then along existing railroad ROW to Pleasant Valley/MLK Blvd.

**IV. Probable Effects**

The FTA and Capital Metro will evaluate all significant environmental, social, and economic impacts of the alternatives analyzed in the EIS. Primary environmental issues include: land use and neighborhood protection, traffic and parking, visual, noise and vibration, safety, aesthetics, storm water management, archaeological, historic, cultural and ecological resources. Impacts on natural areas, rare and endangered species, air and water quality, groundwater, and potentially contaminated sites will also be studied. Displacements and relocations, ecosystems, water resources, hazardous waste, parklands, and energy impacts will be assessed. The impacts will be evaluated for the construction period and for the long-term operation of each alternative. Measures to avoid, minimize or mitigate any significant adverse impacts will be developed.

**V. FTA Procedures**

In accordance with the federal transportation planning regulations (23 CFR Part 450), the Draft EIS will be prepared to include an evaluation of the social, economic, and environmental impacts and benefits of the alternatives. The DEIS will consider the public and agency comments received and Capital Metro in coordination with CAMPO and other affected agencies, will select the preferred alternative. Then Capital Metro, as the local lead agency, will continue with the preparation of the Final EIS (FEIS). Opportunity for additional public comment will be provided throughout all phases of project development.

Issued on: May 16, 2000.

**Blas M. Uribe,**

*Deputy Regional Administrator.*

[FR Doc. 00–12637 Filed 5–18–00; 8:45 am]

**BILLING CODE 4910–57–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Environmental Impact Statement on Transit Improvements in Los Angeles

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of Intent to Prepare an Environmental Impact Statement.

**SUMMARY:** The Federal Transit Administration (FTA) and the Los Angeles County Metropolitan Transportation Authority (MTA) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transportation improvements in Los Angeles County, California. In addition, the MTA will be jointly issuing an Environmental Impact Report (EIR), pursuant to the California Environmental Quality Act (CEQA). The purposes of the project are to improve east-west travel options in the San Fernando Valley and to provide a connection to other portions of a regional rail and bus network. The options being considered include Transportation Systems Management (TSM) and Bus Rapid Transit (BRT). The latter alternative would be focused on the former Southern Pacific (SP) Burbank/Chandler railroad right-of-way.

In the course of this study, FTA expects the MTA and the Southern California Association of Governments, which is responsible for transportation planning in metropolitan Los Angeles, to establish priorities for the proposed transit improvement in the San Fernando Valley and the myriad of other competing projects and transit needs in the region. This prioritization of proposed projects and other transit needs will involve, among other considerations, the development of a financial plan that identifies for each capital need the non-Federal funds to be used along with the proposed Federal funding.

**DATES:** *Comment Due Date:* Written comments on the scope of the alternatives and impacts to be considered should be sent to the address below by June 23, 2000.

*Scoping Meeting Dates:* Scoping workshops will be held on: May 24, 2000 at Sherman Oaks Women's Club from 6:00 p.m. until 8:00 p.m., and on May 25, 2000 at the Conference Room at Kaiser Permanente, Woodland Hills from 6:00 p.m. until 8:00 p.m. See the **ADDRESSES** below. The public is invited to arrive at any time. There will be no formal presentations; both workshops will be held in an open house format.

**ADDRESSES:** *Written comments* on the project scope should be sent to Kevin Michel, Transportation Planning Manager, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Mail Stop 99–22–5, Los Angeles, California, 90012–2952. All comments received will be forwarded to the FTA.

*The scoping workshops* will be held at the following locations: Sherman Oaks Woman's Club, 4808 Kester Avenue, Sherman Oaks, California, 91403 and at Kaiser Permanente, 5601 DeSoto Avenue, Woodland Hills, California 91367. Both locations are accessible to persons with disabilities. Spanish-speaking MTA staff will be present. If hearing-impaired services will be needed, please notify Mr. Michel at the MTA address above, or call TTY (800) 252–9040. Other questions about the scoping workshops may be directed by voice telephone to Mr. Michel at (213) 922–2854.

**FOR FURTHER INFORMATION CONTACT:** Ervin Poka or Ray Tellis, Federal Transit Administration/Federal Highway Administration Metropolitan Office, Telephone (213) 202–3950.

**SUPPLEMENTARY INFORMATION:** The FTA, in cooperation with the MTA, will prepare an Environmental Impact Statement (EIS) for a proposed public transit project in the San Fernando Valley, Los Angeles County California, to be implemented in an east-west corridor extending from the Metro Red Line station located in North Hollywood (scheduled to open on June 24, 2000) westward to Warner Center, a distance of approximately 14 miles. The purposes of the project are to improve east-west travel options in the San Fernando Valley and to provide a connection to other portions of the regional rail and bus network that is being planned and operated by the MTA.

FTA and MTA invite interested individuals, organizations, and federal, state, and local agencies to participate in defining the alternatives and environmental factors to be evaluated in the EIS/EIR. Scoping comments regarding these matters may be made at the workshops on the dates and at the locations indicated above. During scoping, comments should focus on identifying specific social, economic or environmental concerns to be evaluated and suggesting alternatives that should be considered during the EIS/EIR process. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments of that nature should be communicated after the draft EIS/EIR has been completed and publicized.

Scoping packets describing the proposed action will be sent to appropriate Federal, State and local agencies, and to other parties who are known to have shown an interest in the project.

*Background:* Transit planning for the San Fernando Valley has been underway since 1980, when Los Angeles County voters approved a ½ cent sales tax measure to fund regional rail improvements. In 1988, studies were conducted to identify alternatives, and in 1990 and 1992, the MTA

completed an EIR and "Subsequent EIR" for the study corridor. These studies and environmental documents led to the identification of a preferred rail alignment along the existing Southern Pacific Burbank/Chandler Branch, following Chandler Boulevard, Oxnard Street, Victory Boulevard, and Topham Street, which the MTA subsequently purchased in 1990. Environmental documents meeting California standards were certified in 1990 and 1992, addressing alternatives along both the SP Burbank/Chandler Branch and the Ventura Freeway median alignments. In 1994 the MTA Board of Directors endorsed the SP Burbank/Chandler Branch alignment.

An alternatives screening report and major investment study was prepared in 1995/96. The report evaluated the relative cost-effectiveness of a broad range of project alternatives, including all the previously studied rail transit options. In 1997 a Draft EIS was in preparation when the MTA began a financial and organizational restructuring which put several rail projects, including rail planning for the San Fernando Valley, on hold.

As part of the restructuring, the MTA and other regional agencies studied the feasibility of building non-rail (bus) transit enhancements in previous rail corridors. In addition, the MTA board directed staff to proceed with a Bus Rapid Transit demonstration project. One of the demonstration lines is on Ventura Boulevard in the San Fernando Valley.

*Description of the Study Area:* The study corridor extends from the North Hollywood Red Line station (currently under construction), located at Lankershim Boulevard and Chandler Boulevard, west across the entire San Fernando Valley to the vicinity of the Warner Center Transit Hub. The length of the corridor is approximately 14 miles.

*Alternatives:* A range of alternatives is being considered as part of the EIS/EIR. These include the following:

*No Build:* This alternative would include the transit system primarily as it exists today, augmented by those additional projects for which a funding commitment has been made or which are reasonably expected to be in place by 2020. The Red Line would terminate at the North Hollywood station. Highway and HOV projects would be provided on a number of freeways. Existing bus headways would be maintained and the Rapid Bus Demonstration project on Ventura Boulevard would be implemented.

*Transportation Systems Management/ Best Bus:* This alternative would not require major investment for capital cost items, but would rather focus its efforts on maximizing the efficiency of existing facilities and expanding and improving the existing bus system. Headways on routes covered by the TSM would be significantly reduced. TSM improvements would include various projects to enhance the performance of bus transit on major arterials where bus service frequencies would be increased.

*Bus Rapid Transit Alternatives:* Buses would run along an exclusive roadway built within the SP Burbank/Chandler ROW between the North Hollywood Metro Red Line Station on the east and the Transit Hub in Warner Center. Stations would be placed approximately every mile along the 14-mile route, at major cross streets and trip destinations. Buses would be given priority at signals. Headways within the busway would vary between five and two and one-half minutes during peak periods, and the existing Valley bus network would be integrated with the busway. In addition to the busway, enough space is available for a parallel bikeway along the corridor.

The corridor is being considered in two phases. If funding is limited, a segment of the full project busway between Woodman Avenue and Balboa Boulevard would be constructed as an initial phase, or Minimum Operable Segment. This first phase would include five stations. Buses would run on-street along Oxnard Street and Victory Boulevard to complete their runs from North Hollywood to Warner Center, and provide cross-Valley service.

*Probable Effects:* The FTA and MTA will evaluate all significant environmental, social and economic impacts of the alternatives analyzed in the draft EIS/EIR. Potential impact categories which will be evaluated include: Land Use and Development; Economic and Fiscal Impacts; Displacement and Relocation; Traffic Circulation and Parking; Community and Neighborhood Impacts; Environmental Justice; Visual and Aesthetic Impacts; Air Quality; Noise and Vibration; Geotechnical Considerations; Water Resources; Natural Resources; Energy; Safety and Security; Cultural Resources; Community Facilities and Parklands; and Construction Impacts. The impacts will be evaluated both for the construction period and the long-term period of operation. Measures to mitigate adverse impacts will also be addressed.

*FTA Procedures:* The EIS process will be performed in accordance with Federal Transit Laws and FTA's regulations and guidelines for preparing an Environmental Impact Statement. The impacts of the project will be assessed, and, if necessary, the scope of the project will be revised or refined to minimize and mitigate any adverse impacts. After its publication, the draft EIS will be available for public review and comment. At least one public hearing will be held. On the basis of the draft EIS and comments received, the project will be revised or further refined as necessary and the final EIS prepared.

Date Issued: May 15, 2000.

**Leslie Rogers,**

*Regional Administrator.*

[FR Doc. 00–12639 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–57–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### Environmental Impact Statement on the Mid-City/Westside Transit Corridor in Los Angeles, CA

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Federal Transit Administration (FTA), as the Federal lead agency, and the Los Angeles County Metropolitan Transportation Authority (MTA), as the local lead agency, are issuing this notice to advise interested agencies and the public that a joint Environmental Impact Statement (EIS)/Environmental Impact Report (EIR), referred to as an EIS/EIR, is being prepared for transit improvements in the Mid-City/Westside Transit Corridor in Los Angeles, California in accordance with the National Environmental Policy Act (NEPA) of 1969 and the California Environmental Quality Act (CEQA). The EIS/EIR replaces the previous NEPA reviews by FTA and MTA of transit improvements in the Mid-City corridor, the most recent being "Los Angeles Rail Rapid Transit Project—Metro Rail Final Supplemental EIS/EIR for the Mid-City Segment from Wilshire/Western to Pico/San Vicente," August, 1992. The Mid-City extension of Metro Rail was suspended by the MTA Board of Directors in January 1998. The present EIS/EIR will study alternatives and extensions to the suspended subway in the Mid-City corridor and beyond to Santa Monica. In the course of this study, FTA expects the MTA and the Southern California Association of Governments, which is responsible for transportation planning in metropolitan Los Angeles, to establish priorities for the proposed transit improvements in

the Mid-City corridor and the myriad of other competing projects and transit needs in the region. This prioritization of proposed projects and other transit needs will involve, among other considerations, the development of a financial plan that identifies for each capital need the non-Federal funds to be used along with the proposed Federal funding.

FTA and MTA seek comments by interested parties and agencies on the scope of the Mid-City/Westside EIS/EIR. The date and location of public scoping meetings are provided below. The closing date for receiving comments on the scope of the EIS/EIR, and the address to which written comments should be sent, are also provided herein.

**DATES:** *Comment Due Date:* Written comments on the scope of the study should be sent, by June 23, 2000, to Mr. David Mieger of the Los Angeles County Metropolitan Transportation Authority at the address given below in **ADDRESSES.**

*Scoping Meeting Dates:* Please refer to **ADDRESSES** below for the dates, times, and locations of the public scoping meetings.

**ADDRESSES:** *For Written Comments:* Written comments on the scope of the EIS/EIR should be sent by June 23, 2000, to Mr. David Mieger, Los Angeles County Metropolitan Transportation Authority, One Gateway Plaza, Mail Stop 99–22–5, Los Angeles, California 90012. Written comments may also be turned in at the scoping meetings.

*For Scoping Meetings:* Public scoping meetings for the EIS/EIR will be held at the following locations at the dates and times indicated:

- Tuesday, May 23, 2000, Peterson Automotive Museum, 6060 Wilshire Boulevard, Los Angeles, CA 90036 (5 p.m.–8 p.m.)
- Wednesday, May 31, 2000, Veteran's Administration Hospital of West Los Angeles, 11301 Wilshire Boulevard, Los Angeles, CA 90038 (5 p.m.–8 p.m.)
- Tuesday, June 6, 2000, Ken Edwards Center, 1527 4th Street, Santa Monica, CA (5 p.m.–8 p.m.)
- Wednesday, June 7, 2000, California African-American Museum, 600 State Drive, Exposition Park, Los Angeles, CA 90037 (5 p.m.–8 p.m.)
- Thursday, June 8, 2000, Veteran's Memorial Complex, 4117 Overland Avenue, Culver City, CA 90232 (5 p.m.–8 p.m.)

The scoping meetings will be held in an "open house" format with MTA representatives available to discuss the project alternatives throughout the time periods given. Informational displays and written material will also be available. Comments may be submitted in writing at the public scoping meetings. All locations are accessible to persons with disabilities. Spanish-speaking MTA staff will be present. If hearing-impaired services will be needed, please notify Mr. David Mieger at the MTA address above, or call TTY (800) 252–9040. Other questions about the scoping workshops may be directed by voice telephone to Mr. Mieger at (213) 922–3040 or e-mail at miegerd@mta.net.

*For MIS Review:* A Major Investment Study (MIS) of the transportation needs in the Mid-City/Westside Corridor, dated February, 2000, and related environmental studies are available for review at the MTA Library at One Gateway Plaza, 15th Floor; Los Angeles, CA 90012 during normal business hours.

**FOR FURTHER INFORMATION CONTACT:** Ervin Poka or Ray Tellis, Federal Transit Administration/Federal Highway Administration Los Angeles Metropolitan Office. Phone: (213) 202–3950.

**SUPPLEMENTARY INFORMATION:** The EIS/EIR will present a comparative analysis of the environmental impacts, transportation benefits, and costs of reasonable transit alternatives in the Mid-City/Westside Corridor and will determine the appropriate mitigation measures for adverse impacts.

*Scoping:* The initial set of alternatives for the Mid-City/Westside Corridor were defined through a Major Investment Study (MIS) completed in February 2000 by the MTA, in accordance with USDOT regulations. Additional alternatives that may emerge from the scoping process will be considered.

FTA and MTA invite interested individuals, organizations, and public agencies to attend the scoping meetings and participate in identifying the scope and content of the EIS/EIR, including any significant environmental, social, or economic issues associated with the alternatives. The public is invited to comment specifically on the alternatives to be addressed, the transit modes and technologies to be evaluated, the alignments and termination points to be considered, the environmental, social, and economic impacts to be analyzed, and the evaluation approach to be used to select a preferred alternative. During scoping, comments should focus on identifying specific social, economic, or environmental impacts to be evaluated and suggesting alternatives that are less costly or less environmentally damaging, while meeting the identified transportation and other needs in the Mid-City/Westside Corridor. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the Draft EIS/EIR has been issued for public review.

An information packet describing the purpose of the project, the location, the proposed alternatives, and the impact areas to be evaluated is being mailed to affected Federal, State, and local agencies. Others may request these scoping materials by contacting Mr. David Mieger at (213) 922–3040 or by writing to him at his address above. If you wish to be placed on the project mailing list, please call the Project Hotline at 310–366–6443.

*Description of Study Area and Project Need:* The Mid-City/Westside Corridor is approximately bounded on the north by Sunset Boulevard, on the east by Hill Street, on the south by Manchester Boulevard, and on the west by the Pacific Ocean. The projected trip-making increase and resulting congestion would occur because of expected population growth, from 1.5 million persons in 1994 to 1.9 million in 2020, and of expected employment growth, from one million jobs in 1994 to 1.2 million jobs in 2020. The purposes of the project are to improve east-west travel options in the Mid-City/Westside areas of Los Angeles and to provide a connection to the previously completed Metro Rail Red Line and other portions of the regional rail and bus network.

*Alternatives:* In order to address current and long-range traffic congestion in the Mid-City and Westside areas of the Los Angeles Basin, the MTA has examined a wide range of east-west transit alternatives, including Bus Rapid Transit, Light Rail Transit such as the Blue Line to Long Beach, and Heavy Rail Transit such as the Red Line to Hollywood. In accordance with the intent of the MIS process, the MIS, in conjunction with the guidance provided by the MTA Board of Directors, resulted in a set of refined alternatives to be evaluated in detail in the EIS/EIR. These alternatives are: (1) No Build; (2) Transportation System Management; (3) Wilshire Bus Rapid Transit (BRT); (4) Exposition BRT; (5) Exposition Light Rail Transit (LRT); (6) Phased length combinations of Wilshire BRT and Exposition BRT or LRT; (7) Any additional alternatives that may result from the scoping process. Alignments for BRT extend from the Metro Red Line in downtown Los Angeles to downtown Santa Monica and include Wilshire Boulevard and the former Exposition railroad right-of-way. An alignment for LRT extends from downtown Los

Angeles to downtown Santa Monica along the Exposition railroad right-of-way. The TSM Alternative is not specific to an alignment but would rather improve service levels of existing bus service in the general Westside Corridor. Additionally, a No Build Alternative will evaluate the impacts of doing nothing to improve transit service during the twenty year planning timeframe of the project, beyond those improvements already scheduled and funded.

*Probable Effects:* The FTA and MTA will evaluate all significant environmental, social and economic impacts of the alternatives in the Draft EIS/EIR. Potential impact categories which will be evaluated include: Land Use and Development; Economic Impacts; Displacement and Relocation; Traffic Circulation and Parking; Community and Neighborhood Impacts; Environmental Justice; Visual and Aesthetic Impacts; Air Quality; Noise and Vibration; Geotechnical Considerations; Water Resources; Natural Resources; Energy; Safety and Security; Cultural Resources; Community Facilities and Parklands; and Construction Impacts. The impacts will be evaluated both for the construction period and the long-term period of operation. Measures to mitigate adverse impacts will also be addressed.

*FTA Procedures:* After the scope of the EIS/EIR evaluation has been determined, FTA and MTA will conduct the analyses and interagency coordination necessary to prepare a Draft EIS/EIR. The Draft EIS/EIR will be made available for public and agency review and comment, and a public hearing will be held. On the basis of the Draft EIS/EIR and comments received, MTA will select a Locally Preferred Alternative. If FTA approves of advancing the Locally Preferred Alternative into Preliminary Engineering (PE), the Final EIS/EIR responding to comments received and incorporating the results of PE, would then be prepared and released.

Issued on: May 15, 2000.

**Leslie T. Rogers,**

*Regional Administrator.*

[FR Doc. 00–12638 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–57–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Finance Docket No. 33870]**

### Eastern Alabama Railroad, Inc.—Acquisition Exemption—CSX Transportation, Inc.

Eastern Alabama Railroad, Inc. (EARY), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire and operate a rail line owned by CSX Transportation, Inc.[1] The rail line extends from milepost LAM 453.58, at Gannt's Junction, to milepost LAM 479.94, at Talladega, a distance of 26.36 miles in Talladega County, AL.

The transaction is expected to be consummated on or after May 17, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33870, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Fritz R. Kahn, Esq., 1920 N Street, NW, Eighth Floor, Washington, DC 20036–1601.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 12, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 00–12566 Filed 5–18–00; 8:45 am]

BILLING CODE 4915–00–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 8, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before June 19, 2000 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–1251.

*Regulation Project Number:* PS–5–91 Final.

*Type of Review:* Extension.

*Title:* Limitations on Percentage Depletion in the Case of Oil and Gas Wells.

*Description:* Section 1.613A–3(e)(6)(I) of the regulations requires each partner to separately keep records of the partner's share of the adjusted basis of partnership oil and gas property.

*Respondents:* Business or other for-profit.

*Estimated Number of Recordkeepers:* 1,500,000.

*Estimated Burden Hours Per Recordkeeper:* 2 minutes.

*Estimated Total Recordkeeping Burden:* 49,950 hours.

*OMB Number:* 1545–1545.

*Regulation Project Number:* REG–107644–97 Final.

*Type of Review:* Extension.

*Title:* Permitted Elimination of Preretirement Optional Forms of Benefits.

*Description:* The regulation permits an amendment to a qualified plan that eliminates certain Preretirement optional forms of benefit.

*Respondents:* Business or other for-profit.

*Estimated Number of Recordkeepers:* 135,000.

*Estimated Burden Hours Per Recordkeeper:* 22 minutes.

*Estimated Total Recordkeeping Burden:* 48,800 hours.

*OMB Number:* 1545–1685.

*Regulation Project Number:* REG–103735–00 NPRM and Temporary.

*Type of Review:* Extension.

*Title:* Tax Shelter Disclosure Statements.

*Description:* The regulations provide guidance on the filing requirement under section 6011 for certain corporate taxpayers engaged in transactions producing tax savings in excess of certain dollar thresholds.

*Respondents:* Business or other for-profit.

*Estimated Number of Respondents/ Recordkeepers:* 50.

[1] EARY represents that it has operated the rail line, as the assignee of a lease with option to purchase, since 1992 following its acquisition of the Natchez Trace Railroad's properties. *See Eastern Alabama Railway, Inc.—Acquisition and Operation Exemption—Natchez Trace Railroad,* Finance Docket No. 32044 (ICC served Apr. 16, 1992).

*Estimated Burden Hours Per Respondent/Recordkeeper:* 30 minutes.
*Frequency of Response:* Annually.
*Estimated Total Reporting/ Recordkeeping Burden:* 25 hours.

*OMB Number:* 1545–1686.
*Regulation Project Number:* REG–103736–00 NPRM and Temporary.
*Type of Review:* Extension.
*Title:* Requirement to Maintain List of Investors in Potentially Abusive Tax Shelters.
*Description:* The regulations provide guidance on the requirement under section 6112 to maintain a list of investors in potentially abusive tax shelters.
*Respondents:* Business or other for-profit.
*Estimated Number of Recordkeepers:* 50.
*Estimated Burden Hours Per Recordkeeper:* 2 hours, 2 minutes.
*Estimated Total Recordkeeping Burden:* 102 hours.

*OMB Number:* 1545–1687.
*Regulation Project Number:* REG–110311–98 NPRM and Temporary.
*Type of Review:* Extension.
*Title:* Corporate Tax Shelter Registration.
*Description:* The regulations provide the guidance required to activate the registration requirements of IRC § 6707 for confidential tax shelters described in IRC § 6111(d).
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents:* 4.
*Estimated Burden Hours Per Respondent:* 15 minutes.
*Frequency of Response:* On occasion.
*Estimated Total Reporting Burden:* 1 hour.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports Management Officer.*
[FR Doc. 00–12602 Filed 5–18–00; 8:45 am]
BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Submission for OMB Review; Comment Request

May 10, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

**DATES:** Written comments should be received on or before June 19, 2000 to be assured of consideration.

**Internal Revenue Service (IRS)**

*OMB Number:* 1545–0025.
*Form Number:* IRS Form 851.
*Type of Review:* Revision.
*Title:* Affiliations Schedule.
*Description:* Form 851 is filed by the parent corporation for itself and the affiliated corporations in the affiliated group of corporations that files a consolidated return (Form 1120). Form 851 is attached to Form 1120. This information is used to identify the members of the affiliated group, the tax paid by each, and to determine that each corporation qualifies as a member of the affiliated group as defined in section 1504.
*Respondents:* Business or other for-profit, Farms.
*Estimated Number of Respondents/ Recordkeepers:* 4,000.
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—10 hr., 46 min.
Learning about the law or the form—53 min.
Preparing and sending the form to the IRS—1 hr., 7 min.
*Frequency of Response:* Annually.
*Estimated Total Reporting/ Recordkeeping Burden:* 51,040 hours.

*OMB Number:* 1545–0745.
*Regulation Project Number:* LR–27–83 Temporary and LR–54–85 Temporary.
*Type of Review:* Extension.
*Title:* Floor Stocks Credits or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Repealed Articles; Excise Tax on Heavy Trucks (LR–27–83); and Excise Tax on Heavy Trucks, Truck Trailers and Semi-Trailers, and Tractors; Reporting and Recordkeeping Requirements (LR–54–85).
*Description:* LR–27–83 requires sellers of trucks, trailers and semi-trailers, and tractors to maintain records of the gross vehicle weights of articles sold to verify taxability. LR–54–85 requires that if the sale is to be treated as exempt, the seller and the purchaser must be registered and the purchaser must give the seller a resale certificate.
*Respondents:* Business or other for-profit.
*Estimated Number of Recordkeepers:* 4,100.
*Estimated Burden Hours Per Recordkeeper:* 1 hour, 1 minute.
*Estimated Total Recordkeeping Burden:* 4,140 hours.

*OMB Number:* 1545–1021.
*Form Number:* IRS Form 8594.
*Type of Review:* Extension.
*Title:* Asset Acquisition Statement.
*Description:* Form 8594 is used by the buyer and seller of assets to which goodwill or going concern value can attach to report the allocation of the purchase price among the transferred assets.
*Respondents:* Business or other for-profit, individuals or households.
*Estimated Number of Respondents/ Recordkeepers:* 20,000.
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—8 hr., 51 min.
Learning about the law or the form—1 hr., 23 min.
Preparing and sending the form to the IRS—1 hr., 35 min.
*Frequency of Response:* On occasion.
*Estimated Total Reporting/ Recordkeeping Burden:* 236,600 hours.

*OMB Number:* 1545–1086.
*Form Number:* IRS Form 8725.
*Type of Review:* Extension.
*Title:* Excise Tax on Greenmail.
*Description:* Form 8725 is used by persons who receive "greenmail" to compute and pay the excise tax on greenmail imposed under section 5881. IRS uses the information to verify that the correct amount of tax has been paid.
*Respondents:* Business or other for-profit.
*Estimated Number of Respondents/ Recordkeepers:* 12.
*Estimated Burden Hours Per Respondent/Recordkeeper:*
Recordkeeping—5 hr., 30 min.
Learning about the law or the form—42 min.
Preparing and sending the form to the IRS—49 min.
*Frequency of Response:* On occasion.
*Estimated Total Reporting/ Recordkeeping Burden:* 84 hours.
*Clearance Officer:* Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
*OMB Reviewer:* Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

**Lois K. Holland,**
*Departmental Reports, Management Officer.*
[FR Doc. 00–12603 Filed 5–18–00; 8:45 am]
BILLING CODE 4830–01–U

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# Corrections

Federal Register
Vol. 65, No. 98
Friday, May 19, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

**12 CFR Part 1102**

**[Docket No. AS99-1]**

### Appraisal Subcommittee; Appraiser Regulation; Disclosure of Information

*Correction*

In rule document 99–33476 beginning on page 72494, in the issue of Tuesday, December 28, 1999, make the following correction:

**§ 1102.306 [Corrected]**

On page 72498, in the first column, §1102.306 paragraph "(a)(2)(ii)" should read "(a)(2)(iv)"

[FR Doc. C9–33476 Filed 5–18–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday,
May 19, 2000

Part II

# Department of the Treasury

Office of the Comptroller of the Currency
Office of the Thrift Supervision

# Federal Reserve System

# Federal Deposit Insurance Corporation

12 CFR Parts 35, 207, 346, 533
Disclosure and Reporting of CRA-Related Agreements; Proposed Rule

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**DEPARTMENT OF THE TREASURY**

**Office of the Comptroller of the Currency**

**12 CFR Part 35**

**[Docket No. 00–11]**

**RIN 1557–AB85**

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 207**

**[Regulation G; Docket No. R–1069]**

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 346**

**RIN 3064–AC33**

**DEPARTMENT OF THE TREASURY**

**Office of Thrift Supervision**

**12 CFR Part 533**

**[Docket No. 2000–44]**

**RIN 1550–AB32**

## Disclosure and Reporting of CRA-Related Agreements

**AGENCIES:** Office of the Comptroller of the Currency (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS).

**ACTION:** Joint notice of proposed rulemaking.

**SUMMARY:** The OCC, Board, FDIC, and OTS (collectively, the agencies) are requesting comment on a proposed rule that implements provisions of the recently enacted Gramm-Leach-Bliley Act (the GLB Act or the Act). These provisions require nongovernmental entities or persons, insured depository institutions, and affiliates of insured depository institutions that are parties to certain agreements that are in fulfillment of the Community Reinvestment Act of 1977 to make the agreements available to the public and the appropriate agency and file annual reports concerning the agreements with the appropriate agency. These provisions are contained in section 711 of the Act and are codified as section 48 of the Federal Deposit Insurance Act (FDI Act).

The rule identifies the types of written agreements that are covered by section 711 of the GLB Act (referred to as covered agreements) and defines many of the terms used in the statute. The rule also describes how the parties to a covered agreement must make the agreement available to the public and the appropriate agencies and explains the type of information that must be included in the annual report filed by a party to a covered agreement.

The agencies solicit comments on all aspects of the proposed rule, including the specific areas discussed below. The agencies will issue a final rule after considering comments received.

**DATES:** Comments must be received on or before July 21, 2000.

**ADDRESSES:**

*OCC*: Comments should be addressed to Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Third floor, Washington, DC 20219, Attention: Docket No. 00–11. In addition, comments may be sent by facsimile transmission to fax number (202) 874–5274 or by Internet mail to regs.comments@occ.treas.gov. Comments will be available for public inspection and photocopying at the same location.

*Board*: Comments directed to the Board should refer to Docket No. R–1069 and may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mailroom between 8:45 a.m. and 5:15 p.m. and, outside those hours, to the security control room. Both the mailroom and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in room MP–500 of the Martin Building between 9:00 a.m. and 5 p.m. on weekdays.

*FDIC*: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m. (Fax number: (202) 898–3838). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

Comments may be submitted electronically over the Internet at *www.fdic.gov*. Further information concerning this option may be found below at the "FDIC's Electronic Public Comment Site." Comments also may be mailed electronically to comments@fdic.gov.

*OTS*: Send comments to Manager, Dissemination Branch, Information Management & Services Division, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, Attention Docket No. 2000–44. Hand deliver comments to Public Reference Room, 1700 G Street, NW, lower level, from 9 a.m. to 5 p.m. on business days. Send facsimile transmissions to FAX number (202) 906–7755 or (202) 906–6959 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW, from 10 a.m. until 4 p.m. on Tuesdays and Thursdays.

**FOR FURTHER INFORMATION CONTACT:**

*OCC*: Michael S. Bylsma, Director, Community and Consumer Law (202) 874–5750; or Karen O. Solomon, Director, Legislative and Regulatory Activities (202) 874–5090.

*Board*: Scott G. Alvarez, Associate General Counsel (202) 452–3583, Kieran J. Fallon, Senior Counsel (202) 452–5270, or Andrew Miller, Senior Attorney (202) 452–3428, Legal Division; Glenn E. Loney, Deputy Director (202) 452–3585, or James H. Mann, Attorney (202) 452–3667, Division of Consumer and Community Affairs; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf ("TDD") *only*, contact Janice Simms at (202) 452–4984.

*FDIC:* Deanna S. Caldwell, Community Affairs Officer (202) 736–0141; A. Ann Johnson, Counsel, Regulation and Legislation Section (202) 898–3573; or Joan M. Bateman, Review Examiner (202) 736–0187.

*OTS:* Richard Bennett, Counsel (Banking and Finance), (202) 906–7409; Karen Osterloh, Assistant Chief Counsel, (202) 906–6639; or Richard R. Riese, Director, Compliance Policy, (202) 906–6134, Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552.

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary of Proposed Rule

Section 711 of the GLB Act (Pub. L. 106–102, 113 Stat. 1338 (1999)) added a new section 48 to the FDI Act (12 U.S.C. 1831y) entitled "CRA Sunshine Requirements." Section 711 applies to written agreements that (1) are made in

fulfillment of the Community Reinvestment Act of 1977 (CRA),[1] (2) involve funds or other resources of an insured depository institution or affiliate with an aggregate value of more than $10,000 in a year, or loans with an aggregate principal value of more than $50,000 in a year, and (3) are entered into by an insured depository institution or affiliate of an insured depository institution and a nongovernmental entity or person. Section 711 does not, however, cover any agreement with a nongovernmental entity or person that has not had a CRA contact with the insured depository institution or affiliate or a banking agency, such as agreements entered into by entities or persons that solicit charitable contributions or other funds without regard to the CRA. Under section 711, the parties to a covered agreement must make the agreement available to the public and the appropriate agency. The parties also must file a report annually with the appropriate agency concerning the disbursement, receipt and use of funds or other resources under the agreement.

The proposed rule defines various terms necessary for determining which agreements are covered agreements and provides guidance for determining when a CRA contact has been made for purposes of identifying the parties whose agreements are covered by the rule. The proposed rule also describes the manner and scope of the Act's disclosure and annual reporting requirements.

Section 711 and the proposed rule apply only to agreements that are in writing. To be covered, a written agreement may be an understanding or agreement and need not be a legally binding contract.

Importantly, section 711 applies only to written agreements that are "made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act." Section 711 defines "fulfillment" of the CRA as a "list of factors" that the appropriate agency determines have a material impact on the agency's decision to approve or disapprove an application for a deposit facility under the CRA or to assign a CRA examination rating. The agencies propose to adopt for this purpose the list of factors identified by the agencies in the CRA regulations jointly issued by the agencies (CRA Regulations).[2] These factors include providing the types of loans considered in evaluating CRA performance, providing community development services, making CRA qualified investments, fulfilling a CRA strategic plan, providing retail banking services as described in the CRA Regulations, and providing or refraining from providing comments or testimony to an agency concerning the CRA performance of an insured depository institution.

The GLB Act exempts specific types of agreements from coverage, even if these agreements would otherwise meet the definition of a covered agreement. In particular, the Act and the proposed rule do not apply to any individual mortgage loan. The Act and proposed rule also do not apply to any specific contract or commitment for any type of loan or extension of credit to individuals, businesses, farms or other entities if the funds are loaned at rates that are not substantially below market rates and the purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to third parties.

In addition, as noted above, the Act exempts from coverage any agreement with a nongovernmental entity or person that has not commented on, testified about, or discussed with the insured depository institution, or otherwise contacted the institution, concerning the CRA. The proposed rule adopts the exemption as written in the statute and includes several examples of contacts that would be exempt under this provision as well as contacts that would not qualify for this exemption. An example of a contact that would qualify for this exemption is the dissemination of a similar fundraising letter to insured depository institutions and other businesses in the community encouraging all businesses in the community to meet their obligation to assist in making the community a better place to live and work. A CRA contact would be made, and a related agreement would not be exempt under this provision, if the entity or person had, for example, submitted comments to an agency concerning the CRA performance of the insured depository institution, contacted the institution or any affiliate about providing (or refraining from providing) CRA-related comments to an agency concerning the institution, or contacted the institution or any affiliate about the CRA performance of the institution.

The GLB Act requires those agreements that are covered by section 711, and that are not exempt, to be made available to the public and the appropriate agency. Section 711 provides that these disclosure obligations apply only to covered agreements entered into after November 12, 1999. Section 711 also requires that the agencies' rules for ensuring compliance with the Act's requirements not impose undue burden on the parties. Accordingly, the rule proposes to require disclosure of covered agreements and to define the scope of annual reports in a manner that fulfills the requirements of section 711 while at the same time adopting simple procedures that reduce duplicative reporting and rely on existing reports prepared by the parties for their own use or to fulfill other requirements.

The rule proposes that each party to a covered agreement be allowed to fulfill the public disclosure requirement of section 711 by making the agreement available to any member of the public on request, and allows each party to recover reasonable copying and mailing costs in responding to these requests. An insured depository institution may fulfill its public disclosure obligation by placing a copy of the agreement in the institution's CRA public file and making it available in the same manner as other information in the CRA public file.

The proposed rule also requires that each insured depository institution or affiliate that enters into a covered agreement file a complete copy of the agreement with the appropriate agency within 30 days of entering into the agreement. To avoid duplication of efforts and reduce burden, the rule would allow a nongovernmental entity or person to fulfill its obligation to make a covered agreement available to the appropriate agency by providing a copy to the agency upon the agency's request.

In addition to making covered agreements available, the GLB Act requires that annual reports be filed regarding resources provided and used under the agreement. These annual reporting obligations apply only to covered agreements entered into on or after May 12, 2000. For nongovernmental entities or persons, the type of information required to be included in an annual report depends on how the entity or person used the funds or resources received under the covered agreement. If a nongovernmental entity or person allocates and uses the funds or resources received under a covered agreement for a specific purpose, the person's annual report would have to provide a description of the specific purpose and state the amount used for the specific purpose. If the entity or person uses the funds or resources received under the covered agreement for other or general purposes (*e.g.*, general operating expenses), the rule proposes that the annual report provide

[1] 12 U.S.C. 2901 *et seq.*

[2] *See* 12 CFR 25.21–25.29 (OCC); 12 CFR 228.21–228.29 (Board); 12 CFR 345.21–345.29 (FDIC); 12 CFR 563e.21–563e.29 (OTS).

the detailed, itemized list described in section 711 of how such funds were used during the year. This list involves disclosure of the total amount of resources used by the person or entity for compensation of officers, directors, and employees; administrative expenses; travel expenses; entertainment expenses; consulting and professional fees; and other expenses or uses.

In keeping with section 711, the proposed rule includes a number of provisions designed to reduce the potential reporting burden of nongovernmental entities or persons. For example, the rule requires a nongovernmental entity or person to file an annual report only for a year in which the entity or person has received funds under a covered agreement. In addition, the annual report filed by a nongovernmental entity or person may consist of, or incorporate, a report that the entity or person has prepared for other purposes—such as a Federal or state tax return or annual financial statements—if the report provides the information required by the rule. To facilitate the use of reports that are prepared for other purposes, the rule would allow parties to file their annual reports on either a fiscal year or calendar year basis. If a nongovernmental entity or person is a party to five or more covered agreements, the entity or person may file a single, consolidated annual report relating to all of the agreements. Furthermore, a nongovernmental entity or person may fulfill its annual reporting requirements by sending its annual reports to the insured depository institution or affiliate that is a party to the agreement with a request that the institution or affiliate file the reports with the appropriate agency.

Under the GLB Act, the annual report filed by an insured depository institution or affiliate generally must include information on the amount, terms and conditions of any payments, fees, or loans provided by the institution or affiliate under the covered agreement, as well as payments, fees or loans received by the institution or affiliate under the agreement. The annual report of an insured depository institution or affiliate also must provide aggregate data on any loans, investments, or services provided under the covered agreement by each party to the agreement. The rule includes these requirements. The rule would allow an insured depository institution or affiliate that is a party to 5 or more covered agreements to file a single, consolidated annual report for all of the agreements. In addition, if an insured depository institution and affiliate are parties to the same covered agreement, the institution and affiliate may file a consolidated annual report for the agreement.

Section 711 does not authorize any agency to enforce the provisions of any covered agreement, and the proposed rule adopts this provision. The GLB Act, however, provides that a covered agreement may become unenforceable if the appropriate agency determines that a nongovernmental entity or person that is a party to the agreement has willfully failed to comply in a material way with the Act's disclosure and reporting requirements and the entity or person, after receiving notice, fails to comply with the Act after a reasonable period of time. The proposed rule includes this provision and clarifies that, in these circumstances, the covered agreement becomes unenforceable only by the nongovernmental entity or person that has willfully and materially failed to comply with section 711.

The Act requires the agencies to consult and coordinate with each other in drafting the proposed rule to assure, to the extent possible, that the regulations of each agency are consistent and comparable. The agencies have gone beyond these requirements and have developed the proposed rule on an interagency basis. The agencies believe the adoption of a uniform rule should assist the public in complying with the requirements of the Act. Furthermore, as required by the Act, the agencies have sought to ensure that the proposed rule does not place an undue burden on the parties to covered agreements and protects proprietary and confidential information to the maximum extent consistent with the language and purpose of the Act.

The agencies request comment on all aspects of the proposed rule, including the specific provisions and issues highlighted in this preamble, and will incorporate comments received into the final rule as appropriate. The agencies recognize that insured depository institutions, affiliates, and nongovernmental entities and persons can not identify agreements that are covered by section 711 until, in particular, the agencies adopt the list of factors that are considered to be in "fulfillment" of the CRA. Accordingly, the agencies propose to act expeditiously to adopt a rule in final form following conclusion of the comment period. Once a final rule is adopted, the parties to covered agreements will be expected promptly to disclose any agreement that is covered by section 711 and was entered into after November 12, 1999, and file an annual report for any covered agreement entered into on or after May 12, 2000, in accordance with the requirements of the final rule. The agencies request comment on how the parties to covered agreements entered into after these dates, but before issuance of the final rule, should be required to comply with the requirements of the final rule.

## II. Detailed Explanation of Proposed Rule

This section provides a more detailed discussion of the proposed rule and includes examples that are designed to assist users in understanding the scope and application of the proposed rule. The examples included in the preamble are not exclusive. The agencies request comment on whether the examples included in the preamble are useful and whether additional examples would prove helpful. The proposed rule includes examples only of situations that would and would not constitute a CRA contact by a nongovernmental entity or person. These examples relating to CRA contact are part of the rule. The agencies request comment on whether examples illustrating other parts of the rule should be incorporated into the text of the regulation.

In keeping with the goal of consistency among the agencies' rules and to facilitate compliance, the proposed rule uses the term "insured depository institution" rather than "bank" or "savings association." As discussed below, the rule identifies the specific agency or agencies with whom a covered agreement and its related annual reports should be filed, and the agency or agencies that would be considered a relevant supervisory agency for a covered agreement.

For ease of reference, the rule and the remaining portions of this preamble refer to a "nongovernmental entity or person" as a "person."[3] The terms "nongovernmental entity or person" and "person," as well as several other terms used in the rule, are defined in section ____.8 of the proposed rule. The rule generally defines a nongovernmental entity or person to mean any company or individual other than the Federal government, a state, local or tribal government, or an insured depository institution or affiliate. The agencies request comment on whether users would find it more helpful to have this section of definitions at the beginning of the rule.

The following description applies to each agency's proposed rule. Since the

[3] The OTS rule, however, refers to a "nongovernmental entity or person" as a "NGEP."

rule of each agency will be codified at a different part of the Code of Federal Regulations, the following description references the proposed rule using only the proposed rule's section numbers.

*A. Definition of Covered Agreement*

Section ____.2 of the proposed rule defines which agreements are covered by the rule and the term "fulfillment of the CRA." The Act's exemptions from the definition of a covered agreement also are set forth in section ____.2.

1. Covered Agreements

The proposed rule defines a covered agreement as any contract, arrangement, or understanding that meets all of the following four criteria:

- The agreement is in writing;
- The agreement is made pursuant to, or in connection with, the fulfillment of the CRA, as defined in section ____.2(c) of the proposed rule;
- The parties to the agreement include (1) an insured depository institution or an affiliate of an insured depository institution, and (2) a person; and
- The agreement provides for the insured depository institution or affiliate to provide cash payments, grants, or other consideration (other than loans) having an aggregate value of more than $10,000 in any calendar year, or to make loans in an aggregate principal amount of more than $50,000 in any calendar year.

The proposed rule clarifies that an agreement may be a covered agreement even if the agreement is not legally binding on the parties. Under the proposed rule, an exchange of written correspondence reflecting a mutual agreement or a written agreement that lacks the consideration necessary for it to be a legally binding contract would constitute a covered agreement if the agreement meets the four criteria discussed above. Moreover, to be covered, an agreement may be with an insured depository institution or any affiliate of an insured depository institution, including a bank holding company or a nonbank affiliate.

The following examples illustrate when a written contract, arrangement or understanding may exist under the rule. The proposed rule does not attempt to specifically define what constitutes a "contract," "arrangement," or "understanding."

**Example 1:** An organization sends a letter to an insured depository institution requesting that the institution provide a $15,000 grant to the organization. The insured depository institution responds in writing and agrees to provide the grant in connection with its annual grant program. The exchange of letters constitutes a written understanding. This written understanding would be a covered agreement under the proposed rule if the agreement is made pursuant to, or in connection with, the fulfillment of the CRA and the agreement is not otherwise exempt under section ____.2(b).

**Example 2:** An organization issues a general, written solicitation for charitable contributions to businesses in its local community. An insured depository institution makes a $20,000 charitable contribution by check to the organization in response to the solicitation. The insured depository institution does not have any written contract, arrangement or understanding with the organization concerning the donation. The general request for funds and the check are not themselves a contract, arrangement or understanding. Since there is no other written agreement between the insured depository institution and the organization, there is no covered agreement between the entities.

**Example 3:** A bank holding company unilaterally issues a press release announcing that its subsidiary banks have established a goal of making $100 million of community development grants in low-and moderate-income (LMI) neighborhoods over the next 5 years. The unilateral pledge is not a contract, arrangement or understanding entered into with a person and, therefore, is not a covered agreement.

**Example 4:** An association of community groups and an affiliate of an insured depository institution orally agree that the affiliate will seek to make $100,000 in grants available to the organization's constituent members over the next year. The oral agreement is not reduced to writing. Oral agreements are not within the scope of the statute and, accordingly, the agreement is not a covered agreement.

The agencies invite comment on whether the rule should define the terms "contract," "arrangement" and "understanding" and, if so, what those definitions should be. The agencies also request comment on whether any of the examples provided above should be modified or amended, and whether additional examples would be useful.

2. Exemptions for Certain Agreements

Section 711 specifically exempts certain types of agreements from coverage even if they otherwise meet the definition of a covered agreement. Section ____.2(b) of the proposed rule implements these exemptions.

a. Qualifying Loans

The first statutory exemption is for any individual mortgage loan. Under this exemption, any mortgage loan made by an insured depository institution or affiliate to any individual or entity is exempt from the requirements of section 711. This exemption is available for any mortgage loan, regardless of the identity of the borrower, the type of real estate securing the loan, or the rate charged on the loan.

The statute also exempts from coverage "any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities if the funds are loaned at rates [that are] not substantially below market rates and if the purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to other parties."[4] Under the statute, this exemption is available for any type of loan to any individual or entity if the loan meets the market rate and re-lending restrictions of the statute.

The agencies request comment on the application of this exemption to agreements that involve a commitment to make one or more loans or extensions of credit that meet the market rate and re-lending restrictions of the statute. In particular, comment is requested on whether this exemption provides an exemption only for a specific commitment to make a loan or extension or credit. Under this interpretation, the exemption would be available for a commitment by an insured depository institution or affiliate to provide a specific loan or extension of credit to one or more individuals or entities that is on market terms and not for purposes of re-lending, such as a loan commitment typically made in the course of providing a line of credit to a small business. The agencies also request comment on whether this exemption includes an exemption for a commitment to make multiple loans that meet the Act's restrictions. Under this interpretation, a commitment to make any number or amount of loans that meet the Act's restrictions over a period of time would be exempt from coverage. The agencies request comment on which interpretation of the exemption is more consistent with the language and purposes of the Act.

To be entirely exempt under the proposed rule, an agreement must be exclusively a loan, extension of credit or loan commitment that meets the requirements of the exemption. However, as discussed further below, if an agreement includes a loan, extension of credit or loan commitment that meets the rule's requirements to be exempt and also provides for the insured depository institution or affiliate to provide other funds or resources, the value of the exempt loan, extension of credit or loan commitment may be excluded in determining whether the

[4] 12 U.S.C. 1831y(e)(1)(B)(ii).

agreement is in fulfillment of the CRA and meets the Act's dollar thresholds.[5]

The following examples illustrate these provisions of the proposed rule:

**Example 1:** An insured depository institution provides a $1 million mortgage loan to an organization pursuant to a written agreement. The agreement is an individual mortgage loan and is exempt from coverage under the rule, regardless of the interest rate on the loan or whether the purpose of the loan was for re-lending.

**Example 2:** An affiliate of an insured depository institution provides a $500,000 working capital loan to a small business pursuant to a written agreement. The loan is made on market terms and the purposes of the loan do not include re-lending. The agreement is exempt from coverage under the rule.

**Example 3:** An insured depository institution enters into a written agreement with a community development organization to make $250 million in small business loans in the community over the next five years. The loans would be made on market terms and not for purposes of re-lending. Each small business loan made by the insured depository institution pursuant to the agreement is exempt from coverage. The agreement by the insured depository institution with the association, however, is not a commitment to make a specific loan or extension of credit and would not be exempt under one interpretation of the exemption. This commitment to make loans would be exempt under the other interpretation of the exemption.

**Example 4:** A business organization receives a mortgage loan from an affiliate of an insured depository institution pursuant to a written agreement. The agreement also provides that the affiliate will make a $12,000 investment in a local community development corporation the following month. The agreement is not an exempt agreement under the rule because it is not exclusively a mortgage loan. Although the mortgage loan may be excluded when considering if the agreement meets the Act's dollar thresholds, the agreement would meet these thresholds because it provides for the affiliate to make other payments in excess of $10,000 in a calendar year.

The agencies request comment on these exemptions. In particular, comment is invited on whether a mortgage loan includes any loan secured by real estate, or only a loan that is secured by real estate and made for the purchase or improvement of the real estate or for the refinancing of such a loan. Comment also is invited on whether the agencies should define when loans are made at "substantially below market rates" and, if so, what that definition should be. For example, should the agencies provide that the relevant market rate for a loan is the rate that would be charged on a comparable transaction (*e.g.*, a construction loan, permanent financing, a small business loan, or an unsecured consumer loan) with a comparable person (*e.g.*, a person with similar financial resources and credit history) that is not a party to the agreement? In addition, should the agencies provide a formula for determining whether a loan bears a rate that is substantially below the market rate? Such a formula could provide, for example, that a rate is substantially below the market rate if it is more than a specified percentage (*e.g.*, 10 percent) or number of basis points (*e.g.*, 200 basis points) below the rate that would be charged in a comparable transaction.

The agencies also request comment on whether the rule should provide guidance on when a loan is made "for purposes of re-lending" and what constitutes "re-lending" under the rule. For example, should the rule provide that the purposes of a loan are determined by reference to the underlying loan documents or by whom the documents refer to as the lender?

b. Agreements With Persons Who Have Not Made a CRA Contact

Section 711 also exempts from coverage any agreement entered into by an insured depository institution or affiliate with a person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the CRA. This provision broadly exempts from all of the provisions of section 711 any agreement by an insured depository institution or affiliate with a person that has not had a contact concerning the CRA (CRA contact). The Conference Report for the Act indicates that a wide range of organizations that solicit funds without regard to the CRA may benefit from this exemption, including civil rights groups, community groups providing housing or other services in low-income neighborhoods, the American Legion, and community theater groups.[6]

The proposed rule adopts the exemptive language contained in section 711. In addition, the proposed rule provides examples of actions by a person that would constitute a CRA contact under the rule and examples of actions that would not constitute a CRA contact under the rule. These examples are intended to illustrate different types of actions that are or are not CRA contacts based on the wording and purpose of the exemption and the scope of the statutory exemption. These examples are not exclusive. For ease of reference, the proposed rule divides the examples of actions that constitute a CRA contact into two categories: contacts with an agency and contacts with an insured depository institution or affiliate.

As discussed below, the agencies request comment on various aspects of this exemption. In particular, the agencies invite comment on whether the rule should provide a more detailed definition of the exemption. The agencies also request comment on whether the examples provided are appropriate and useful and, if so, whether other examples should be included or areas addressed with examples.

*CRA Contact with an Agency.* As a general matter, a person has made a CRA contact if the person submits written or oral comments or testimony to an agency concerning the record of performance or future performance under the CRA of an insured depository institution or CRA affiliate.[7] If a person had this type of contact with an agency and subsequently enters into an agreement with the insured depository institution or any affiliate of the insured depository institution that meets the requirements of section 711, the agreement is not exempt.

"Comments" and "testimony" refer to any type of written submission or oral statement by a person to an agency. The terms include the submission of written materials to an agency in connection with an application by an insured depository institution or company for a deposit facility or an examination of an insured depository institution under the CRA, and oral statements made by a person to an agency during a public or private meeting held concerning a transaction or CRA examination.

The rule provides two examples of contacts with an agency that would *not* constitute a CRA contact. The first example involves a person that provides written or oral comments or testimony to an agency in response to a direct request by the agency for comments or testimony from that person. In such circumstances, the contact would result due to an action by the agency and imposing the rule's requirements on the person might impede the agency's ability to obtain necessary or useful information. This example of a direct request for comments or testimony does not apply, however, to comments or

[5] The agencies note, however, that if the other consideration is provided to reduce the effective interest rate paid on the loan or extension of credit to a rate that is substantially below the market rate, the loan or extension of credit would not itself be exempt from coverage.

[6] *See* H.R. Conf. Rep. No. 106–434 at 179 (1999).

[7] As discussed further below, a contact concerning the performance of a "CRA affiliate" of an insured depository institution is considered to be a contact concerning the CRA performance of the insured depository institution.

testimony that are provided in response to a general invitation by an agency for public comments (*e.g.*, a *Federal Register* notification) in connection with a CRA performance evaluation or an application for a deposit facility.

The second example provides that a person does not make a CRA contact with an agency by making a statement concerning an insured depository institution at a widely attended conference or seminar on a general topic, even if representatives of an agency were in attendance at the conference or seminar when the statement was made. A public or private meeting or hearing relating to one or more insured depository institutions or a transaction to acquire a deposit facility is not considered a widely attended conference or seminar on a general topic.

*CRA Contact with Insured Depository Institution or Affiliate.* Contacts by a person with an insured depository institution or affiliate will not cause an agreement to become subject to the requirements of section 711 unless the contact is a CRA contact. The rule provides several examples of the types of contacts with an insured depository institution or affiliate that are CRA contacts and that would make the exemption unavailable.

The first example involves a contact with an insured depository institution or affiliate about providing (or refraining from providing) written or oral comments or testimony to an agency concerning the record of performance or future performance under the CRA of the insured depository institution.

The second example involves a contact with an insured depository institution or affiliate about providing (or refraining from providing) written comments to the institution that would have to be included in the institution's CRA public file. Under the agencies' CRA Regulations, a written comment generally must be placed in an institution's CRA public file if it specifically relates to the institution's performance in helping to meet community credit needs.[8] Because this information is intended for consideration by the agencies in the course of a CRA examination or evaluation of an application for a deposit facility, the submission of comments for inclusion in an institution's CRA public file is considered a CRA contact.

The third example involves a contact with an insured depository institution or affiliate concerning the CRA rating of the insured depository institution, or the CRA record of performance of the insured depository institution.

The fourth example involves a contact with an insured depository institution or affiliate concerning actions that should be taken to improve the CRA performance of the insured depository institution.

The fifth example involves a contact with an insured depository institution or affiliate concerning any obligation or responsibility that the insured depository institution may have to meet the banking needs of its community. In this example, the contact occurs while the insured depository institution or an affiliate of the institution has an application for a deposit facility pending before an agency or is undergoing a publicly announced CRA performance examination.

If a person has one of the contacts described above and subsequently enters into a covered agreement with the insured depository institution or any affiliate of the insured depository institution, the agreement is not exempt under the rule. The rule and the examples do not contemplate that a discussion or contact must include any particular words or phrases, such as "Community Reinvestment Act," "CRA" or "CRA rating" in order to be a CRA contact. Instead, the substance and context of the discussion or contact are the controlling factors.

Under the examples included in the rule, a person would *not* have a CRA contact by sending a similar fundraising letter to an insured depository institution or affiliate and other businesses in the community encouraging all businesses in the community to meet their obligation to assist in making the local community a better place to live and work. In addition, a person would not make a CRA contact by sending a general offering circular to financial institutions offering to sell a portfolio of loans and having discussions with a particular insured depository institution concerning the loan portfolio if no reference to the CRA or the institution's CRA performance is made in the offering circular or in the parties' discussions.[9] A person also would not make a CRA contact with an insured depository institution or affiliate by making a statement concerning the institution or affiliate before a widely attended conference or seminar on a general topic, even if representatives of the institution or affiliate were in attendance at the conference or seminar when the statement was made.

The agencies request comment on whether the rule should more specifically define the terms of the exemption for persons that have not made a CRA contact or more specifically define when a CRA contact has occurred and, if so, how a CRA contact should be defined. The agencies also request comment on the examples of a CRA contact included in the rule, including whether any of the examples should be amended or deleted or whether additional examples should be provided. For example, the agencies request comment on whether a CRA contact under the Act includes a general discussion about the CRA that does not involve any discussion of the performance of an insured depository institution under the CRA or obligation of the institution to serve the banking needs of its community.

In addition, the agencies request comment on whether the rule can and should be limited to exclude from the scope of CRA contacts discussions with an insured depository institution or affiliate concerning whether particular loans, services, investments or community development activities are generally eligible for consideration by an agency under the CRA Regulations. The marketing of products and services to insured depository institutions frequently may include a general statement of whether the product or service is eligible for credit under the CRA. If the rule were limited in this manner, then the situation described in section ____.2(b)(2)(iii)(D) of the rule would not be a CRA contact even if the offering circular included a statement that the loans included in the loan pool were of the type that could be considered by an agency under the CRA Regulations. A discussion of whether or how loans, services, investments or activities would impact a particular institution's CRA rating or performance would, however, continue to be considered a CRA contact.

The agencies also request comment on whether the rule can and should be limited to cover only contacts that involve providing CRA-related comments or testimony to an agency or discussions with an insured depository institution or affiliate about providing (or refraining from providing) such comments or testimony to an agency. If the rule was limited in this fashion, the actions described in section ____.2(b)(2)(ii)(B)(*3*), (*4*) and (*5*) would not constitute a CRA contact because

[8] *See* 12 CFR 25.43(a)(1) (OCC); 12 CFR 228.43(a)(1) (Board); 12 CFR 345.43(a)(1) (FDIC); 12 CFR 563e.43(a)(1) (OTS).

[9] A CRA contact would occur under the proposed rule, however, if the offering materials indicated that the loans in the mortgage pool would receive favorable consideration by the agencies under the CRA, or if the parties discussed how the transaction would improve the institution's CRA performance.

the person did not submit CRA-related comments or testimony to an agency or discuss with or contact the insured depository institution or any affiliate about providing (or refraining from providing) CRA-related comments or testimony to an agency.

Additionally, the agencies request comment on whether there should be a temporal relationship between a CRA contact and when an agreement is made. In this regard, under the proposed rule, a covered agreement entered into in 2001 between an insured depository institution and a person would not be exempt if the person had submitted a comment to an agency concerning the CRA performance of the institution several years earlier. Section 711, however, appears to have been intended to apply to agreements that result from, or were influenced by, a CRA contact. Where a CRA contact occurs a significant period of time before the negotiation of an agreement, however, there may be no link or influence between the CRA contact and the agreement. Furthermore, the passage of time may make it difficult for the parties to a covered agreement to determine or effectively track whether a CRA contact occurred at all.

For these reasons, the agencies specifically request comment on whether the rule should require that a CRA contact occur within a specified period, such as two years (or a shorter or longer period), before the parties entered into the agreement. Similarly, the agencies request comment on whether a CRA contact should include a contact that occurs after the parties enter into an agreement, such as within 90 days after the beginning of the term of the agreement, at any time during the term of the agreement, or some other period of time. For example, if a person provides comments or testimony to an agency concerning the CRA performance of an insured depository institution after entering into an agreement with the institution, would the person's actions suggest that the agreement and the comments or testimony were linked?

The agencies also request comment on how the rule and the exemption discussed above should apply in circumstances where a covered agreement involves several parties and a CRA contact has been made by or concerning only one of the parties. For example, how should the rule apply where several nongovernmental entities or persons enter into a covered agreement with an insured depository institution and only one of the entities or persons has made a CRA contact? Similarly, how should the rule apply where a nongovernmental entity or person has a CRA contact concerning one insured depository institution and subsequently enters into a covered agreement jointly with the institution and several other unaffiliated insured depository institutions? In addition, how should the rule and exemption apply where a person has a CRA contact with an agency but the relevant insured depository institution or affiliate does not know the contact occurred?

c. Request for Comment on Additional Exemptions

The agencies recognize that the language of section 711 and, accordingly, the types of agreements captured under the proposed rule are broad. The agencies are concerned that, in light of this breadth, certain agreements that were not intended to be covered by the Act may be considered covered agreements under the proposed rule. For example, supervisory experience suggests that insured depository institutions enter into a wide variety of contracts in their normal day-to-day operations that, directly or indirectly, relate to activities considered by the agencies in connection with a CRA evaluation. During the negotiation of these contracts and as an incident to the underlying business transaction, the parties may discuss whether the activities contemplated by the contract are viewed favorably under the agencies' CRA Regulations, involve loans within the institution's CRA assessment area, or would otherwise improve the institution's CRA performance. These types of contacts would be CRA contacts under the proposed rule and a related business agreement would be covered if the agreement was in fulfillment of the CRA and met the other criteria to be a covered agreement.

The Act grants the Board the ability to determine, by regulation, that specific types of contacts are exempt and, consequently, that a related agreement is not covered by section 711. The agencies specifically invite comment on whether and how the Board should exercise its exemptive authority in this area, including whether there are particular types of CRA contacts that occur and that, given their context and purpose, do not implicate the concerns of the Act. For example, if the proposed definition of CRA contact is retained in the final rule, should the Board exercise its discretion in this area to provide an exemption for CRA contacts that occur in connection with the purchase of loans by an insured depository institution or affiliate on an arm's length basis in the secondary market even where the negotiation of the agreement included a general discussion of the effect of the transaction on the CRA performance of the insured depository institution? Are there other types of contacts that occur in connection with the ordinary day-to-day business of an insured depository institution or affiliate that should be exempted from coverage because, for example, the CRA contact does not involve any coercive aspect or was initiated by the insured depository institution? If so, how could such an exemption or exemptions be framed narrowly to exclude only those types of contacts (and related agreements) that are not within the intended scope of the Act?

3. Fulfillment of the CRA

Under the GLB Act, a written agreement is a covered agreement only if it is "made pursuant to, or in connection with the fulfillment of the Community Reinvestment Act of 1977." [10] The Act defines "fulfillment" of the CRA to mean "a list of factors that the appropriate Federal banking agency determines have a material impact on the agency's decision to (A) approve or disapprove an application for a deposit facility [under the CRA]; or (B) to assign a rating to an insured depository institution [under the CRA]." [11]

The Conference Report for the GLB Act indicates that the list of factors should include "a full enumeration of the relevant factors that [an] agency reviews and considers in examining the performance of an insured financial institution in connection with the CRA, including any and all items a regulator would attach importance to in determining the evaluation under the [CRA] of the performance of a financial institution." [12] The agencies' CRA Regulations set forth the criteria that the agencies consider in evaluating the CRA performance of an insured depository institution for purposes of assigning a CRA rating to an institution and evaluating an application by an institution or company for a deposit facility under the CRA.[13] These regulations permit the agencies to consider broadly the lending, investment and service activities of an insured depository institution in evaluating the institution's performance under the CRA.

For these reasons, the proposed rule would define the list of factors for purposes of section 711 generally by

[10] 12 U.S.C. 1831y(e)(1)(A).

[11] *Id.* at 1831y(e)(2).

[12] H.R. Conf. Rep. No. 106–434 at 179 (1999).

[13] *See* 12 CFR 25.21–25.29 (OCC); 12 CFR 228.21–228.29 (Board); 12 CFR 345.21–345.29 (FDIC); 12 CFR 563e.21–563e.29 (OTS).

reference to the criteria enumerated in Subpart B of the CRA Regulations jointly issued by the agencies. These criteria reflect the factors that the agencies previously have determined have a material impact on an agency's assignment of a CRA rating and assessment of the CRA factor in decisions to approve or disapprove an application for a deposit facility. These factors are summarized in the proposed rule as follows:

(1) Home purchase, home improvement, small business, small farm, community development, and consumer lending as described in the lending test portion of the CRA Regulations, including loan purchases, loan commitments, and letters of credit;

(2) Making investments, deposits, or grants, or acquiring membership shares that have as their primary purpose community development, as described in the investment test portion of the CRA Regulations;

(3) Delivering retail banking services, as described in the service test portion of the CRA Regulations;

(4) Providing community development services, as described in the service test portion of the CRA Regulations;

(5) For a wholesale or limited-purpose insured depository institution, community development lending, qualified investments, and community development services, as described in the community development test portion of the CRA Regulations for wholesale or limited-purpose insured depository institutions;

(6) For small insured depository institutions, the lending and other activities described in the small insured depository institution performance standard of the CRA Regulations; [14]

(7) For an insured depository institution whose CRA performance is evaluated on the basis of a strategic plan, any element of that plan as described in the strategic plan portion of the CRA Regulations;

(8) Providing or refraining from providing written or oral comments or testimony to any agency concerning the record of performance or future performance under the CRA of an insured depository institution that is a party to the agreement or an affiliate of a party to the agreement; and

(9) Providing or refraining from providing written comments to an insured depository institution that is a party to the agreement or an affiliate of a party to the agreement that would have to be included in the institution's CRA public file.

An activity is within the factors enumerated in paragraphs (1) through (7) if it would be considered by the agencies under the relevant performance test or standard in the CRA Regulations.[15] These activities may be conducted by an insured depository institution that is a party to the agreement or an affiliate of a party to the agreement.[16] In addition, an agreement would be considered in fulfillment of the CRA if any of these activities is performed by a nongovernmental entity or person that is a party to the agreement and an insured depository institution receives favorable consideration for the activities under the CRA.

The proposed rule's list of factors also includes providing (or refraining from providing) CRA-related comments or testimony to an agency or written comments to an insured depository institution that must be included in the institution's CRA public file. The agencies' CRA Regulations generally require the agencies to consider comments received from the public or included in an insured depository institution's CRA public file when evaluating the CRA performance of the institution.[17] The CRA Regulations also require an agency to consider written or oral comments submitted to the agency when acting on applications for a deposit facility.[18] Accordingly, such comments and testimony are among the factors that may have a material impact on an agency's decision to assign a CRA rating or evaluation under the CRA of an application for a deposit facility.

While the level of activity that will have a material effect on a CRA rating or an application decision varies with the circumstances involving the particular insured depository institution, the GLB Act by its terms requires that the agencies identify the list of *factors* that have a material impact on an agency's decision to assign a CRA rating or to approve an application for a deposit facility under the CRA. The Act does not appear to incorporate a quantitative threshold for the agencies to use in defining the list of factors that are material to such a decision. Instead, the GLB Act explicitly sets a threshold dollar level for the minimum amount of activities that must be performed in order for an agreement to be covered by section 711. As discussed below, these value thresholds are $10,000 in cash payments, grants or other consideration and $50,000 in loans. For these reasons, the proposed rule provides that an agreement is in fulfillment of the CRA if it pertains to a "factor" that the agencies determine is "material" to an institution's rating or application—such as the institution's lending—rather than to a level of performance that the agencies determine is material to the CRA evaluation of that insured depository institution.

The agencies request comment on this reading of section 711 and on whether the list of factors properly identifies the "factors" that are material to a CRA evaluation. The agencies also request comment on whether the agencies have interpreted the statutory mandate to identify the "list of factors that * * * have a material impact" on an agency's decision to assign a CRA rating and to approve or disapprove an application under the CRA in a manner consistent with the language and purposes of section 711. In particular, comment is invited on whether the proposed list of factors that are considered to be in fulfillment of the CRA can and should be expanded, restricted, or altered consistent with the language and purpose of the Act. For example, although the agencies consider an insured depository institution's lending in all geographic areas and to borrowers of all income ranges for certain purposes in evaluating the institution's CRA performance, can and should the rule's

[14] The terms wholesale insured depository institution, limited-purpose insured depository institution, and small insured depository institution refer to a wholesale, limited-purpose or small bank or savings association as defined in Subpart A of the relevant agency's CRA Regulations. *See* 12 CFR 25.12(o), (t) and (w) (OCC); 12 CFR 228.12(o), (t), and (w) (Board); 12 CFR 345.12(o), (t), and (w) (FDIC); and 12 CFR 563e.12(n), (s), and (v) (OTS). An agreement that involves the performance of activities by a wholesale, limited-purpose or small insured depository institution is in fulfillment of the CRA only if the agreement involves the performance of one of the activities within the scope of the relevant performance test or standard for the particular type of institution.

[15] Thus, for example, an agreement that relates to the consumer lending activities of an insured depository institution would be considered to be in fulfillment of the CRA if the institution's consumer lending activities were considered by the appropriate agency at the institution's most recent CRA examination. Under the CRA Regulations, an institution's consumer lending activities are considered in certain circumstances by an agency if such lending constitutes a substantial majority of the institution's business or the institution has elected to have its consumer lending activities considered by the appropriate agency. *See* 12 CFR 25.22(a) (OCC); 12 CFR 228.22(d) (Board); 12 CFR 345.22(a) (FDIC); 12 CFR 563.22(a) (OTS).

[16] As discussed further below, a "CRA affiliate" of an insured depository institution is viewed as part of the insured depository institution. Accordingly, activities performed by a CRA affiliate of an insured depository institution are considered to be performed by the insured depository institution.

[17] *See* 12 CFR 25.21(b)(6) and 25.43(a)(1) (OCC); 12 CFR 228.21(b)(6) and 228.43(a)(1) (Board); 12 CFR 345.21(b)(6) and 345.43(a)(1) (FDIC); 12 CFR 563e.21(b)(6) and 563e.43(a)(1) (OTS).

[18] *See* 12 CFR 25.29(c) (OCC); 12 CFR 228.29(b) (Board); 12 CFR 345.29(c) (FDIC); 12 CFR 563e.29(c) (OTS).

list of factors focus on those types of lending (and other activities) that are reasonably likely to receive favorable consideration under the CRA Regulations, such as certain types of lending in LMI areas or to LMI borrowers?

The terms of a written agreement generally determine whether the contract, arrangement or understanding is in fulfillment of the CRA. However, the parties to a written agreement may not evade coverage under the Act by reaching an oral understanding that a party will submit (or refrain from submitting) oral or written CRA-related comments or testimony to an agency or written comments to an insured depository institution that would have to be included in the institution's CRA public file and excluding this understanding from the terms of the written agreement. In addition, if an agreement includes a loan, extension of credit or loan commitment that, if done separately, would be exempt from coverage and also provides for the insured depository institution or affiliate to provide other funds or resources, the parties may exclude the exempt loan, extension of credit or loan commitment when determining if the agreement is in fulfillment of the CRA.

The following are examples of agreements that would be in fulfillment of the CRA under the proposed rule. Unlike the examples of CRA contacts, these examples are not included in the proposed rule. Each example illustrates *only* the fulfillment criteria of the rule and assumes that the agreement meets the other requirements necessary to be considered a covered agreement. In this regard, even if an agreement is in fulfillment of the CRA, it may still be exempt from coverage under the rule if it is an exempt loan or loan commitment, or if the person that is a party to the agreement has not had a CRA contact.

**Example 1:** An insured depository institution enters into an agreement with a local business organization that provides for the institution to make $500,000 in small business loans to third parties in the institution's assessment area in the next two years. The agreement is in fulfillment of the CRA because an institution's small business lending activity is considered as part of the lending test under the CRA Regulations. The agreement might still be exempt from coverage depending on the scope of the exemption for loan commitments.

**Example 2:** An insured depository institution enters into an agreement with a development corporation to invest $1 million in a project the purpose of which is the revitalization of an LMI neighborhood within the institution's assessment area. The agreement is in fulfillment of the CRA because the investment is a qualified investment under the CRA Regulations and would be considered as part of the investment test under the CRA Regulations.

**Example 3:** An insured depository institution enters into an agreement with a supermarket chain that provides for the institution to open a branch in certain of the chain's stores. The agreement is in fulfillment of the CRA because an institution's record of opening and closing branches is evaluated in the context of the distribution of its branches as part of the service test under the CRA Regulations.

**Example 4:** An insured depository institution enters into a written agreement with an organization to provide the organization with a $25,000 donation to assist in covering the organization's general operating expenses. A representative of the organization orally agrees that, in return for the contribution, the organization will submit a comment to or testify before the appropriate agency in support of the institution's recently announced proposal to merge with another insured depository institution. The written agreement is in fulfillment of the CRA because the organization orally agreed in connection with the agreement to provide comments or testimony to an agency concerning the CRA record of performance of the institution.

The following are examples of agreements that would not be in fulfillment of the CRA under the proposed rule:

**Example 5:** An insured depository institution enters into an agreement with a local theater company for the institution to make a $20,000 charitable donation to the company for each of the next five years. The agreement is not in fulfillment of the CRA because the donation does not have community development as its primary purpose and, thus, would not be considered a qualified investment under the CRA Regulations.

**Example 6:** An insured depository institution enters into an agreement with a neighborhood association to donate 100 hours of employee time to the organization's annual effort to clean up the neighborhood. The agreement is not in fulfillment of the CRA because the services are not considered community development services or other qualifying services under the CRA Regulations.

The agencies note that the proposed rule's list of factors does not include performance of activities designed to ensure compliance with Federal laws that prohibit discriminatory or other illegal credit practices, such as the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) and the Fair Housing Act (42 U.S.C. 3601 *et seq.*). Although the agencies consider evidence of these practices in evaluating an insured depository institution's performance under the CRA, the agencies are concerned that including such activities in the list of factors could have an unintended and detrimental impact on compliance and enforcement of the fair lending laws.[19] The agencies specifically request comment on whether this view is correct, or whether the list of factors should be expanded to include activities designed to ensure compliance with the fair lending laws.

Comment also is solicited on whether the list of factors should be expanded to include other activities. For example, the proposed rule's list of factors does not specifically include the provision of advisory or consulting services concerning CRA-related activities. Should the rule include a reference to these or other activities?

4. Value

A written agreement is a covered agreement only if it calls for an insured depository institution or affiliate to provide to one or more persons cash payments, grants, or other consideration of more than $10,000 in any calendar year, or to make loans that have an aggregate principal amount of more than $50,000 in any calendar year. The statutory threshold is based on the total value of payments and loans provided under the agreement and does not require that these payments or loans be made to a party to the agreement.[20] Accordingly, under the proposed rule, all cash payments, grants, consideration or loans provided by an insured depository institution or affiliate under the agreement, including amounts provided to individuals or entities that are not parties to the agreement, would be considered in determining whether an agreement meets the rule's dollar thresholds. However, if an agreement includes a loan, extension of credit or loan commitment that, if done separately, would be exempt from coverage and also provides for the institution or affiliate to provide other funds or resources, the parties may exclude the exempt loan, extension of credit or loan commitment when determining if the agreement meets the dollar thresholds of the rule. *See* discussion under II.A.2.a. above concerning qualifying loans.

Under the proposal, an agreement that provides for payments to be made in any calendar year in excess of the dollar thresholds established by the statute is a covered agreement for its entire term. The agencies believe that using a calendar year period for these calculations should facilitate

[19] For example, a requirement that an insured depository institution publicly disclose an agreement to use "mystery shoppers" to test the institution's compliance with the fair lending laws or to settle a fair lending complaint could deter the institution from entering into such agreements.

[20] *See* 12 U.S.C. 1831y(e)(1)(A)(i).

compliance with the rule by providing all parties to a covered agreement a uniform basis for determining whether the agreement is covered by the rule and because the terms of an agreement may not coincide with the parties' fiscal years. The agencies invite comment on whether another 12-month period would provide a more appropriate basis for these calculations.

The following are examples of the value provisions of the proposed rule. These examples illustrate only the application of the dollar thresholds of the proposed rule.

**Example 1:** An insured depository institution enters into an agreement with a small business investment company pursuant to which the institution will invest $25,000 in the company. The agreement meets the dollar threshold criterion to be a covered agreement because the institution will provide more than $10,000 in funds (other than loans) under the agreement.

**Example 2:** An insured depository institution and a community organization enter into a written agreement pursuant to which the institution will invest $1 million in a state-sponsored investment fund that supports affordable housing initiatives for LMI individuals. The community organization will not receive any funds or other resources from the insured depository institution or its affiliates under the agreement. The agreement meets the dollar threshold criterion for a covered agreement under the proposed rule.

**Example 3:** An affiliate of an insured depository institution provides a $100,000 loan to an association of small businesses pursuant to a written agreement. The loan is on market terms and not for purposes of re-lending. The agreement also provides for the affiliate to make a $5,000 grant to the local chamber of commerce's small business incubator. Because the loan is made on market terms and not for purposes of re-lending, the loan would be an exempt agreement under the proposed rule if it were a separate agreement. Accordingly, the value of the loan may be excluded in determining the value of the agreement. After excluding the loan, the agreement would not meet the dollar criterion of the rule.

**Example 4:** An insured depository institution and a community development corporation enter into a written agreement that requires an affiliate of the insured depository institution to provide the organization with a grant of $5,000 in 2000, $8,000 in 2001, and $11,000 in 2002. The agreement exceeds the dollar threshold criterion of the rule because the agreement provides for payments in excess of $10,000 during 2002. Assuming the agreement meets the other requirements of the rule and is not otherwise exempt, the agreement is a covered agreement for its entire term.

The agencies request comment on how the dollar thresholds in the statute should be applied in situations where an agreement does not have a specific term or does not specify a timetable for the disbursement of funds or resources under the agreement. For example, if an agreement provides that an insured depository institution will make $40,000 in grants over a 5-year period, but does not specify the years in which the grants will be made, should the rule create a presumption that the entire sum ($40,000) is provided in the first year of the agreement or assume that the value is paid in equal yearly installments of $8,000? An alternative approach would rely on how the payments are actually made under the agreement. Under this alternative approach, if the payments under the agreement actually exceeded $10,000 in a calendar year, the agreement would then become a covered agreement.

The agencies also invite comment on whether the rule should provide guidance on how to determine the value of an agreement that does not specify the amount of payments, grants, loans or other consideration to be provided under the agreement, such as an agreement for an insured depository institution to open a branch or to begin offering a new loan product.

### 5. Related Agreements Considered a Single Agreement

In two circumstances, section 711 of the GLB Act requires that separate agreements or contracts be aggregated for purposes of determining whether the agreements—taken as a whole—meet the definition of a covered agreement.[21] Section ____.3 of the rule implements these requirements. If separate agreements are considered a single agreement under section ____.3, the combined agreement must still meet the criteria to be a covered agreement to be covered by the rule. Loans, extensions of credit and loan commitments that are specifically excluded from the definition of covered agreement under ____.2(b) of the rule are not required to be aggregated with other agreements.

#### a. Agreements Entered Into by the Same Parties

Section ____.3(a) provides that all written contracts, arrangements, or understandings that are entered into by an insured depository institution or affiliate of an insured depository institution will be considered to be part of a single agreement if the contracts, arrangements, or understandings are entered into with the same person within a 12-month period and each agreement is in fulfillment of the CRA. This aggregation rule applies to all written agreements entered into during the 12-month period by the same person on the one hand, and any part of the same organization, including an insured depository institution and any of its affiliates, on the other hand.

**Example 1:** In April, an insured depository institution enters into a written agreement with Community Development Organization, Inc. pursuant to which the institution makes an $8,000 investment in the organization. In November of the same year, an affiliate of the insured depository institution and Community Development Organization, Inc. enter into a written agreement under which the affiliate makes an additional $8,000 investment in the organization. For purposes of this example, both investments are assumed to be qualified investments under the CRA Regulations and considered in the evaluation of the institution's CRA performance. The separate agreements must be aggregated under the rule and the combined agreement meets the $10,000 dollar threshold of the rule. Accordingly, the agreements are jointly considered a covered agreement.

**Example 2:** In September, an insured depository institution orally agrees to donate $15,000 of computer equipment to a local housing organization. In December, the institution and organization enter into a written agreement for the institution to make a $5,000 CRA qualified investment in local housing project that is eligible for low-income housing tax credits. The agreements do not need to be aggregated under the rule because the September agreement was not in writing.

**Example 3:** In February, an insured depository institution enters into a written agreement with Partnership A for the institution to make a $9,000 grant to Partnership A for the purpose of rehabilitating affordable-housing units. In August of the same year, an affiliate of the insured depository institution enters into a written agreement with Partnership A under which the affiliate makes a payment of $9,000 so that its employees may have access to the child care center operated by Partnership A. The August agreement is not in fulfillment of the CRA. Accordingly, the two agreements would not be aggregated under the rule.

#### b. Substantively Related Contracts

Section 711 requires the aggregation of separate but "substantively related contracts" even where the contracts are entered into with different persons.[22] Unlike the aggregation rule discussed above, the rule aggregating "substantively related contracts" applies only to separate, written contracts and does not apply to other types of written arrangements or understandings.

The rule defines written contracts entered into by an insured depository institution or any of its affiliates as "substantively related" if the contracts were negotiated in a coordinated

[21] *See* 12 U.S.C.1831y(e)(1) and (2).

[22] *See* 12 U.S.C. 1831y(e)(1)(A)(ii).

fashion. The rule does not require that the separate contracts each be in fulfillment of the CRA or that the parties to the contracts (other than the banking organization) be the same. Thus, the rule prevents parties from evading the disclosure and reporting obligations of the statute by separating out from an agreement payments or grants that may not themselves be in fulfillment of the CRA.

**Example 1:** Two housing organizations jointly approach an insured depository institution to obtain funding. A representative of the insured depository institution meets with both organizations at the same time to discuss their funding needs. The institution enters into a written contract with one organization to provide it with $9,000 for the purpose of rehabilitating affordable housing units. The institution enters into a separate written contract with the other organization to provide the organization with an unrestricted grant of $9,000. Because the contracts were negotiated in a coordinated fashion, the contracts must be aggregated under the rule. When aggregated, the contracts would meet the statute's $10,000 dollar threshold and each contract would be a covered agreement.

**Example 2:** A bank holding company announces its intention to acquire an insured depository institution. A Florida-based group and a California-based group independently approach the bank holding company to seek funding for specific projects and separately negotiate written contracts with the bank holding company. The contracts would not be aggregated under the rule, and each contract would be a covered agreement only if that contract on its own met the requirements of the rule.

The agencies request comment on the aggregation rules included in section ____.3, including the proposed definition of "substantively related contracts" and whether there are alternative definitions that would achieve the purposes of the statute. The agencies also request comment on how these aggregation rules should apply when a CRA contact has not occurred prior to one of the agreements or was made by only one of the persons that is a party to the agreements. For example, when a single person enters into two agreements with an insured depository institution during a 12-month period, but engages in a CRA contact between the first and second agreement, should the first agreement be excluded from aggregation because a CRA contact had not occurred at the time it was entered into? Alternatively, should the agreements be aggregated because a CRA contact occurred prior to the second agreement and the agreements otherwise meet the requirements for aggregation under the rule? Similarly, should substantively related contracts entered into by separate persons be aggregated under the rule only if each person had engaged in a CRA contact?

6. CRA Affiliate Treated as Insured Depository Institution

The CRA Regulations provide that an insured depository institution, at its election, may request that an agency consider certain activities conducted by an affiliate in evaluating the CRA performance of the insured depository institution.[23] In these circumstances, the selected activities of the affiliate are viewed as activities of the insured depository institution.

The proposed rule generally considers a contact concerning this type of affiliate, referred to as a "CRA affiliate," of an insured depository institution to be the equivalent of a contact concerning an insured depository institution (*see* section ____.2(b)(2)). Similarly, an agreement is considered to be in fulfillment of the CRA if it concerns the performance of any of the activities listed in section ____.2(c) by a "CRA affiliate" of an insured depository institution (*see* section ____.2(c)).

The proposed rule defines a "CRA affiliate" as any company that is an affiliate of an insured depository institution and whose activities were considered by an agency in assessing the CRA performance of the institution at the institution's most recent CRA examination.[24] Under the rule, a company is considered a CRA affiliate only to the extent its activities were taken into account in the CRA evaluation of an affiliated insured depository institution.

**Example 1:** A person submits a written comment to an agency concerning the lending performance under the CRA of a mortgage company that is affiliated with an insured depository institution. The insured depository institution elected, in accordance with the agencies' CRA Regulations, to have the lending activities of the mortgage company considered in the institution's most recent CRA performance evaluation. The mortgage affiliate, therefore, is considered a CRA affiliate with respect to its lending activities. Accordingly, the agreement is in fulfillment of the CRA for purposes of section 711 and the person has engaged in a CRA contact under section ____.2(b)(2) because the selected activities of a CRA affiliate and contacts with an agency regarding a CRA affiliate are considered activities of and contacts concerning an insured depository institution.

**Example 2:** An affiliate of an insured depository institution engages in mortgage lending and provides credit counseling services. The insured depository institution elected to have only the mortgage lending activities of the affiliate considered in its most recent CRA performance evaluation. The affiliate and a community group enter into an agreement that provides for the affiliate to provide credit counseling services in the local community. The agreement is not in fulfillment of the CRA because the affiliate is not considered a CRA affiliate with respect to its credit counseling activities.

To assist persons in complying with the rule, section ____.2(e) of the proposed rule requires that an insured depository institution or affiliate inform the other parties to a covered agreement if the agreement concerns the activities of a CRA affiliate. The institution or affiliate must provide this notification not later than the time the agreement is entered into if the affiliate is a CRA affiliate at that time.

Because the status of an affiliate of an insured depository institution may change, an agreement that concerns the activities of an affiliate may become a covered agreement *after* the date the parties enter into the agreement. For example, a person may enter into an agreement that concerns the lending activities of a newly formed affiliate. If an insured depository institution subsequently elects to have the lending activities of the new affiliate considered during its next CRA performance examination, the affiliate would become a CRA affiliate. In such circumstances, the proposed rule requires the insured depository institution or affiliate to inform the other parties to the agreement that the affiliate has become a CRA affiliate within a reasonable period of time after the change of status occurs.

Where an agreement concerns the activities of an affiliate that becomes a CRA affiliate, the agreement would be in fulfillment of the CRA only once the affiliate becomes a CRA affiliate. If the agreement met the other requirements of the rule, the agreement would become a covered agreement at that time. Section ____.2(e) clarifies that in these circumstances the parties to the agreement have no disclosure or reporting obligations under the rule until the agreement becomes a covered agreement. In applying the disclosure and reporting requirements of the rule, the agreement would be considered to have been entered into on the date it became a covered agreement.

The agencies request comment on the proposed rule's treatment of CRA affiliates, including whether the

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[23] *See* CRA lending test (12 CFR 25.22(c), 228.22(c), 345.22(c) and 563e.22(c)); CRA investment test (12 CFR 25.23(c), 228.23(c), 345.23(c) and 563e.23(c)); CRA service test (12 CFR 25.24(c), 228.24(c), 345.24(c) and 563e.24(c)); CRA community development test for wholesale and limited-purpose institutions (12 CFR 25.25(d), 228.25(d), 345.25(d) and 5632.25(d)); and CRA strategic plans (12 CFR 25.27(c), 228.27(c), 245.27(c) and 563e.27(c)).

[24] *See* Proposed Rule, section ____.8(c).

requirement that an insured depository institution or affiliate inform the other parties when an agreement concerns a CRA affiliate is useful and practicable. The agencies also request comment on whether the rule should provide a similar notice procedure for agreements that involve an activity of an insured depository institution, such as consumer lending, that the institution elects for the first time to be considered under the CRA during the term of the agreement. [25] In addition, the agencies request comment on whether there is an appropriate and less burdensome way for the rule to determine whether an affiliate is a CRA affiliate at the time the parties enter into an agreement.

*B. Disclosure of Covered Agreements*

Section 711 requires that each party to a covered agreement fully disclose the agreement in its entirety and make the full text of the agreement available to the public and the appropriate agency with supervisory responsibility over the relevant insured depository institution.

1. Disclosure to the Public

The proposed rule requires that each party to a covered agreement make a complete copy of the agreement available to any member of the public upon request. The rule would permit an insured depository institution to fulfill its public disclosure obligation by placing a copy of a covered agreement in the institution's CRA public file and making it available in accordance with the procedures set forth in the CRA Regulations relating to public files. [26]

A party may make a covered agreement available to any individual or entity that requests the agreement by mailing it to the requestor, and the proposal would specifically permit the party to charge the requestor for the costs of copying and mailing the agreement, so long as the fees are reasonable. The proposal does not otherwise specify or require a party to employ any particular method in responding to requests from the public for a covered agreement. For example, a party also could make an agreement available to an individual or entity with access to the Internet by posting the agreement on a publicly accessible website or to members of the public within a local geographic area by making the agreement available for inspection at an office within that area.

The proposed rule provides that a party's obligation to make a covered agreement available to the public terminates 12 months after the end of the term of the covered agreement. The agencies believe that this time period would permit interested members of the public adequate time to obtain a covered agreement from the parties, while not placing an undue recordkeeping burden on the parties to covered agreements. Members of the public would continue to be able to obtain copies of a covered agreement from the relevant supervisory agency under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) after this 12-month period.

The agencies request comment on all aspects of the proposed rule's public disclosure requirements. Comment is sought on whether the rule should include illustrative examples of how a party may make an agreement available to a member of the public and, if so, whether there are additional methods (other than those discussed above) that should be allowed for making an agreement available to the public. For example, should the rule explicitly allow a person to arrange for another entity or individual to make the person's covered agreements available to the public, or allow a party to recover reasonable fees for searching its records for a covered agreement? Comment also is requested on whether affiliates of insured depository institutions should be permitted to disclose an agreement to the public by placing the agreement in the CRA public file of an affiliated insured depository institution. In addition, comment is invited on whether it is reasonable, appropriate and consistent with the statute to rely on access to covered agreements through the agencies for public disclosure requests made more than 12 months after the term of the agreement and whether this period should be longer or shorter.

2. Filing of Covered Agreement by Insured Depository Institutions With Agencies

The rule requires each insured depository institution and affiliate that is a party to a covered agreement to provide a complete copy of the agreement to each relevant supervisory agency (as defined below) within 30 days after the parties enter into the agreement. If two or more insured depository institutions or affiliates are parties to the same agreement, the institutions and affiliates may jointly file a copy of the agreement with the relevant supervisory agencies.

3. Persons Must Make Covered Agreements Available to Agency

Section 711 requires each party to a covered agreement to make the agreement available to the appropriate agency. Because the relevant supervisory agencies would receive a copy of any covered agreement from the insured depository institution or affiliate that is a party to the agreement, the rule provides that a nongovernmental entity or person may fulfill its statutory obligation in this area by providing, upon request from the relevant supervisory agency, a complete copy of the agreement to the agency. The copy must be provided to the agency within 30 days of the agency's request. As with disclosure to the public, the rule provides that a person's obligation to make an agreement available to an agency terminates 12 months after the end of the term of the agreement.

The agencies believe this procedure will reduce regulatory burden and avoid duplicative filings. At the same time, this procedure requires persons to make copies of covered agreements available to the agencies consistent with the statute.

4. Relevant Supervisory Agency

The Act requires that parties to a covered agreement make the agreement available to, and file annual reports with, the appropriate Federal banking agency with supervisory responsibility over the relevant insured depository institution. The proposed rule uses the term "relevant supervisory agency" to identify the appropriate agency for a particular covered agreement. Under the rule, the "relevant supervisory agency" is—

- The OCC in the case where—
  - The parties to the agreement include a national bank or subsidiary of a national bank; or
  - A national bank or subsidiary or CRA affiliate of a national bank provides funds or resources under the agreement;
- The Board in the case where—
  - The parties to the agreement include a state member bank, subsidiary of a state member bank, bank holding company, or subsidiary of a bank holding company (other than an insured depository institution or subsidiary thereof); or
  - A state member bank or subsidiary or CRA affiliate of a state member bank provides funds or resources under the agreement;
- The FDIC in the case where—
  - The parties to the agreement

[25] *See* footnote 15 above.

[26] *See* 12 CFR 25.43 (OCC); 12 CFR 228.43 (Board); 12 CFR 345.43 (FDIC); 12 CFR 563e.43 (OTS).

include a state nonmember bank or subsidiary of a state nonmember bank; or

* A state nonmember bank or subsidiary or CRA affiliate of a state nonmember bank provides funds or resources under the agreement; or

• The OTS in the case where—

* The parties to the agreement include a savings association, subsidiary of a savings association, savings and loan holding company or subsidiary of a savings and loan holding company; or

* A savings association or subsidiary or CRA affiliate of a savings association provides funds or resources under the agreement.

The agencies believe this definition will ensure that a covered agreement and its related annual reports are filed with the agency or agencies that have supervisory authority over the insured depository institution or affiliate that is involved with the agreement, either as a party or as a source of funds or resources paid under the agreement.

More than one agency may be the relevant supervisory agency with respect to a single covered agreement. For example, if a national bank, state nonmember bank, and a savings association provide funds pursuant to a covered agreement entered into by their parent bank holding company, the OCC, FDIC, OTS, and Board would each be a relevant supervisory agency for the agreement. The agencies solicit comment on the proposed rule's definition of "relevant supervisory agency," including whether there are alternative definitions that might reduce the filing burdens of parties while ensuring the appropriate agencies receive the filings contemplated by the Act.

5. Treatment of Confidential or Proprietary Information

Covered agreements may contain confidential or proprietary information the disclosure of which may cause competitive or other harm to one or more of the parties to the agreement. Section 711 of the Act directs the agencies to ensure that the implementing regulations "do not impose an undue burden on the parties [to a covered agreement] and that proprietary and confidential information is protected."[27] This provision must be read in harmony with other provisions of section 711 that require that a covered agreement "shall be in its entirety fully disclosed, and the full text thereof made available * * * to the public." Other provisions of section 711 require the reporting of the terms and value of covered agreements, the identity of the parties to the agreement, and the uses of funds and resources provided under covered agreements.

In light of these provisions, and in order to ensure the uniform disclosure of covered agreements under the Act by the parties and the agencies, the proposed rule would allow a party to a covered agreement to request a determination from the relevant supervisory agency whether the agency could withhold specific portions of the agreement from public disclosure. In considering these requests, the agencies will apply the procedures and standards of the Freedom of Information Act (5 U.S.C. 552 *et seq.*) (FOIA), which governs public access to all records of an agency, including documents filed with the agency by third parties. If the relevant supervisory agency determines that it could withhold specific portions of the covered agreement from public disclosure under FOIA, the proposed rule would permit the parties to the agreement to also withhold those specific portions of the agreement from any copies of the agreement directly made available to the public. A party could withhold from public disclosure only those limited portions of a covered agreement determined to be exempt from public disclosure under FOIA by the relevant supervisory agency.

In applying the standards under FOIA, the agencies note that section 711 may require disclosure of some types of information that an agency might normally be able to withhold from disclosure under FOIA. In light of the directive of section 711, the agencies may not be able to withhold under FOIA—or permit a party to withhold from public disclosure—many of the provisions contained in a covered agreement. For example, the agencies might not be able to permit a party to withhold the amount of payments or loans to be made under the agreement, the persons receiving such payments or loans, and the terms of any such payments or loans. It may be possible that only limited types of information could be withheld from public disclosure under the proposed rule. Such information might include, for example, individual account numbers or information detailing a particular institution's proprietary underwriting criteria.

The agencies welcome comment on whether covered agreements are likely to contain confidential or proprietary information the disclosure of which would harm the parties to the agreement given the definition of covered agreements. The agencies also request comment on whether, and if so to what degree, such information may be withheld from public disclosure under section 711. If covered agreements typically contain particular types of information that may properly be withheld from public disclosure under section 711, should the rule specify these types of information and allow the parties to withhold this information without seeking prior agency review or in lieu of the agency review process? The agencies also invite comment on whether the proposed agency review process is useful and practicable and whether there are alternative or additional procedures that the agencies can and should implement under section 711 to protect confidential and proprietary information. The agencies also invite comment on whether the rule should specifically permit a party that has requested agency review of a covered agreement to delay disclosing the agreement to the public until the agency rules on the request.

6. Disclosure Limited to Covered Agreements Entered Into After November 12, 1999

The proposed rule's disclosure obligations apply only to covered agreements entered into after November 12, 1999, the effective date of section 711 of the GLB Act. Under the rule, a written modification, amendment, renewal, or extension of an agreement creates a new agreement. Thus, if an agreement entered into before November 12, 1999, is modified, amended, renewed or extended after that date, the parties must disclose the entire new agreement if it otherwise meets the criteria to be a covered agreement. Disclosure is not required if the pre-November 12, 1999, agreement expressly provided for the renewal or extension and established the terms of the agreement during the renewal or extension period.

**Example:** An insured depository institution and a community organization enter into a written agreement in January 1999 that calls for the institution to place an ATM in the local community by December 2000. In September 2000, the parties enter into a written modification of the agreement that calls for the institution to establish a full-service branch rather than an ATM. If the modified agreement meets the criteria to be a covered agreement, the modified agreement must be disclosed in accordance with the rule.

*C. Annual Reports*

The Act requires each person, insured depository institution, or affiliate of an insured depository institution that is a party to a covered agreement to file a report relating to the covered agreement.[28]

[27] 12 U.S.C. 1831y(h)(2)(A).

These annual reporting obligations apply only to covered agreements entered into on or after May 12, 2000.[28]

1. No Report Required by Person That Does Not Receive Funds or Resources

The proposed rule requires that each party to a covered agreement file an annual report for the fiscal years during the term of the agreement. The rule does not, however, require a nongovernmental entity or person to file an annual report with respect to a particular covered agreement for any fiscal year during which the person did not receive any funds under the covered agreement. The agencies believe that requiring an annual report in such circumstances would not further the purpose of the statute because the person would not have received any funds or resources under the agreement during the fiscal year. Under the proposed rule, however, each insured depository institution and affiliate that is a party to a covered agreement must file an annual report each year during the term of the agreement. The agencies request comment on whether this reporting exemption for persons is appropriate.

**Example 1:** A savings association and a community development organization that rehabilitates affordable housing in the association's assessment area enter into a covered agreement pursuant to which the association will invest $100,000 in the organization over three years. The investment will be used to support a rehabilitation project that is expected to take three years to complete. If the savings association provides the full $100,000 in the first year of the agreement, the organization must file an annual report with the OTS for the fiscal year in which it received the $100,000. The organization is not required to file an annual report with the OTS for its subsequent fiscal years during the term of the agreement.

**Example 2:** A state non-member bank enters into a covered agreement with a community organization to make $1 million in community development grants in the community over the next two years. The community organization will not receive any funds or other resources under the agreement (including under the grants as they are made). The agreement is a covered agreement and must be made available to the public and the FDIC. In addition, the state non-member bank must file annual reports concerning grants made and actions taken under the agreement. The community organization is not required, however, to file any annual reports concerning the agreement because the organization receives no funds or resources under the agreement.

**Example 3:** An insured depository institution and an organization enter into a written agreement pursuant to which the institution commits to make $10 million in small business loans in the local community over the next three years. The loans would be made at market rates and would not be for purposes of re-lending. The organization would not receive any funds or resources under the agreement, including under the loans as they are made. Even if a commitment by an insured depository institution to make multiple loans on market terms and not for purposes of re-lending is a covered agreement (*see* Part I.A.2 above), the organization would not have to file any annual report concerning the agreement because it would receive no funds or resources under the agreement. Under the proposed rule, the institution would have to file an annual report during the term of the agreement indicating the aggregate amount and number of loans made during the year under the agreement. Each individual loan made pursuant to the commitment would be exempt from coverage and, accordingly, each borrower would have no reporting obligation under the rule.

2. Contents of Annual Report Filed by Persons

Section 711 requires that the annual report filed by a nongovernmental entity or person provide a detailed, itemized accounting of how the person used any funds or resources received under the covered agreement during the previous year. The proposed rule would allow this detailed accounting to be provided in two ways: a description of the specific purpose or purposes for which the funds were used, or a segmentation of funds used for general purposes in a pre-defined list of expense categories.

a. Specific Purpose Funds and Resources

The first reporting method applies to funds or other resources that a person receives under a covered agreement and allocates and uses for a specific purpose. Specific purpose funds or resources are those that a person targets and uses for a distinct program, the purchase of a distinct asset, or the payment of a distinct expense. For example, a person would use this reporting method if, pursuant to the terms of the covered agreement or otherwise, the person specifically allocated and used the funds received under a covered agreement for a particular loan program, to purchase computers, to sponsor a particular seminar, or to pay the salary of a particular person. A specific purpose must be a purpose that is more limited than the categories of expenses enumerated below for the reporting of general purpose funds. In other words, funds or resources are not allocated or used for a specific purpose if they are allocated or used for general operational expenses, to support the organization's general activities in the community, or to cover general compensation, administrative, travel, entertainment, consulting or professional expenses.

Under the proposed rule, funds or resources allocated and used for a specific purpose must be segregated in the annual report from funds used for general purposes. For funds received under a covered agreement and allocated and used for a specific purpose, a person's annual report must provide the following information: (1) A description of each specific purpose for which the funds or resources were used during the fiscal year; and (2) the amount of funds or resources used for each specific purpose during the fiscal year.

**Example 1**: An organization receives $15,000 from an insured depository institution under a covered agreement. The organization allocates and uses the $15,000 to sponsor a seminar on affordable housing initiatives. The organization's annual report for the fiscal year would report that it received $15,000, that it used the $15,000 to sponsor the seminar, and provide a brief description of the seminar.

**Example 2**: A community group receives $50,000 from an insured depository institution under a covered agreement. During its fiscal year, the community group specifically allocates and uses $45,000 of the funds to purchase computer equipment and the remaining $5,000 is used for general operating expenses. The group's annual report for the fiscal year must state that the group received $50,000 under the agreement during the fiscal year and that $45,000 was used to purchase computer equipment. In addition, the annual report must provide the detailed, itemized list of expenses described below because some funds were used for general purposes.

b. All Other Funds and Resources

Funds or other resources received under a covered agreement may be used for general purposes or unspecified purposes. The second reporting method addresses funds or resources that are received under a covered agreement and that are not allocated and used for a specific purpose. Under this method, the reporting person must provide a detailed, itemized list of how the reporting person has used its funds during the fiscal year. This list must include, at a minimum, the amount of funds used during the fiscal year for—

- Compensation of officers, directors, and employees;
- Administrative expenses;
- Travel expenses;
- Entertainment expenses;
- Payment of consulting and professional fees; and
- Other expenses and uses.

The annual report may reflect the total amount of funds from all sources that

[28] See the discussion above concerning the treatment of agreements entered into prior to May 12, 2000, that are modified, amended, renewed, or extended after that date.

the person used during the fiscal year for the types of expenses listed above. The annual report must, however, specify the total amount of funds that the person received under the covered agreement and that were used for general or unspecified purposes. The agencies may determine from this information the proportion of general purpose funds received under the covered agreement that were used for each category of expenses listed above.

**Example**: In March, a person receives an unrestricted grant of $15,000 under a covered agreement. The person includes the funds in its general operating budget and does not allocate and use the funds for a specific purpose. The person's annual report for the fiscal year must state that the person received $15,000 of general purpose funds. The annual report also must indicate the total amount of funds and resources that the person used during the fiscal year for compensation, administrative expenses, travel expenses, entertainment expenses, consulting and professional fees, and other expenses and uses.

c. Use of Other Reports

As noted above, section 711 directs the agencies to ensure that regulations implementing that section "do not impose an undue burden on the parties." The legislative history also indicates that the agencies should allow reporting parties to use reports prepared for other purposes to fulfill the annual reporting requirements.[29] Accordingly, the proposed rule does not require that a person's annual report be prepared on a special form or in a particular format. Instead, the rule provides that a person's annual report may consist of or incorporate reports or documents that the person has prepared for public, internal or other purposes so long as the documents filed with the relevant supervisory agency contain all of the information required by the rule. For example, a person's annual report may consist of a Federal or state tax return, a report prepared for the person's members or shareholders, or the person's financial statements if such documents provide the information required by the rule.

In this regard, the agencies have reviewed several tax forms commonly filed by tax-exempt nonprofit organizations. Internal Revenue Form 990, which is the Federal tax return form for certain tax-exempt nonprofit organizations, requires the filing organization to provide information that is at least as detailed, and in some cases more detailed, than the list of expenses contained in section 711. In particular, Form 990 requires a tax-exempt organization to separately state the amount that the organization spent during the tax year on compensation of officers, directors, trustees and key employees; salaries and wages of other employees; professional fundraising fees; accounting fees; legal fees; supplies; telephone; postage and shipping; occupancy; printing and publications; travel; conferences, conventions and meetings; and an itemized list of other uses. Since these categories of expenses include and are more specific than the list of expenses required to be provided for general purpose funds, a person may use a properly completed Form 990 to fulfill the rule's reporting requirements for general purpose funds. Other forms or reports also may be used, separately or in combination, to fulfill the rule's reporting requirements so long as they contain, in total, the information required by the rule.

d. Consolidated Annual Reports Permitted

The GLB Act requires the agencies to permit persons that are parties to a large number of covered agreements to file a consolidated annual report relating to all of the covered agreements.[30] Accordingly, section ____.5 of the proposed rule permits a person that is a party to 5 or more covered agreements to file a single consolidated report covering all of the person's covered agreements. A person's consolidated report must identify the person filing the report and each agreement covered by the report. All other information required by the rule may be provided on an aggregate basis for all agreements covered by the annual report. Any consolidated report must be filed with all of the relevant supervisory agencies for the covered agreements included in the report.

**Example**: A community development organization is a party to six separate covered agreements with six unaffiliated insured depository institutions. Under each agreement, the organization receives $15,000 to fund the rehabilitation of a specific low-income housing project identified in the agreement. The organization allocates and uses all of the funds for the specified purpose. If the organization elects to file a consolidated annual report, the consolidated report must (1) identify the organization and the six covered agreements, (2) state that the organization received $90,000 under the agreements, and (3) state that the person allocated and used the $90,000 to fund the rehabilitation project and provide a description of the project.

e. Specific Request for Comments

The agencies invite comment on all aspects of the proposed rule's annual reporting requirements for nongovernmental entities and persons. The agencies also specifically request comment on the following:

- Are the rule's reporting requirements for specific purpose funds and resources reasonable and appropriate? Would the proposed rule limit the burden associated with reporting funds or resources received for a specific purpose? Should the regulation provide additional guidance as to when a person has allocated and used funds or resources for a specific purpose or allow, rather than require, a person to use this reporting method when it allocates and uses funds for a specific purpose?
- Should the detailed, itemized list of uses contained in the proposed rule be expanded to include other categories of uses or expenses, such as grants or loans made, or services provided, to others?
- Are there additional information items that should be included in annual reports? For example, should a person be required to state in each annual report the aggregate amount of funds or resources that the person has received to date under the covered agreement?
- Should the agencies permit a person to file a consolidated annual report if the person is a party to 2 or more covered agreements?
- Where a covered agreement provides for an institution or affiliate to take several actions including making a specific loan that, if agreed to separately, would be exempt from coverage under the rule, can and should the agencies allow the person's annual report to exclude information concerning the loan that would otherwise be exempt under the rule?
- Are there additional ways that the agencies could reduce the reporting burden on persons consistent with the language and purposes of the Act? For example, should the agencies issue optional sample reporting forms that might be used by a person, insured depository institution or affiliate?

3. Contents of Annual Report of Insured Depository Institutions and Affiliates

The annual reporting requirements for insured depository institutions and affiliates are largely specified in section 711. The annual report for an insured depository institution or affiliate must identify the entity filing the report and identify the covered agreement to which the annual report relates. In addition, the annual report must provide—

- The aggregate amount of payments, fees and loans (listed separately)

[29] *See* H.R. Conf. Rep. No. 106–434 at 179 (1999).

[30] *See* 12 U.S.C. 1831y(h)(2)(B).

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provided by the insured depository institution or affiliate under the agreement to any other party during the fiscal year;

- The aggregate amount of payments, fees and loans (listed separately) received by the insured depository institution or affiliate under the agreement from any other party during the fiscal year;
- A description of the terms and conditions of any payments, fees, or loans provided to, or received from, another party under the agreement; and
- The aggregate amount and number of loans, amount and number of investments, and amount of services provided under the covered agreement to any person that is *not* a party to the agreement—
  - * By the insured depository institution or affiliate; and
  - * By *any other* party to the agreement, unless such information is not known to the insured depository institution or affiliate or will be contained in an annual report filed by a person.

These informational requirements track those established by the statute.

The rule would allow an insured depository institution and an affiliate that are parties to the same covered agreement to file a single, consolidated report for the agreement. In addition, to reduce burden, the proposed rule would allow an insured depository institution or affiliate that is a party to 5 or more covered agreements to file a single consolidated report relating to all of the agreements.

The agencies request comment on whether an insured depository institution or affiliate should be permitted to file a consolidated report if it is a party to 2 or more covered agreements, and whether the rule can and should allow an insured depository institution or affiliate to not file an annual report for any fiscal year in which the institution or affiliate did not provide or receive any payments, fees or loans under the agreement. The agencies invite comment on whether the rule should provide additional guidance concerning the level of detail required to be provided in the annual report of an insured depository institution or affiliate, and whether there are additional ways the agencies could reduce the reporting burden of insured depository institutions and affiliates consistent with the Act. For example, are there ways the agencies could reduce the reporting burden for agreements that involve loans that are themselves exempt from coverage?

4. When and Where Must Annual Reports Be Filed

The proposed rule provides that each party to a covered agreement must prepare and file an annual report with the relevant supervisory agency for the fiscal year in which the party enters into the agreement and each subsequent fiscal year during the term of the covered agreement.[31] The agencies have adopted a fiscal year reporting period to allow the parties to coordinate preparation of their annual reports with other documents or reports that typically are prepared on a fiscal year basis, such as income tax returns and financial statements. However, to provide parties with maximum flexibility, the rule also permits a party to elect to use the calendar year as their fiscal year for purposes of the rule.[32] The agencies request comment on whether providing the option of fiscal year or calendar year reporting would reduce regulatory burden or whether the rule should require reporting on a calendar year basis. In addition, the agencies request comment on whether a person should be required to file an annual report after the end of a covered agreement's term if, by that time, the person has not completely used all the funds or resources received under the agreement.

Each party to a covered agreement must file its annual report for a fiscal year with each relevant supervisory agency within 6 months of the end of the party's fiscal year. Under section 711 and the rule, a person may fulfill this filing requirement by providing its annual report to the insured depository institution or affiliate that is a party to the agreement within 5 months of the end of the person's fiscal year with instructions for the institution or affiliate to file the report with all of the relevant supervisory agencies on behalf of the person. An insured depository institution or affiliate that receives an annual report from a person in this manner must forward it to the relevant supervisory agencies within 30 days.

This method of filing allows the annual reports of a person and an insured depository institution or affiliate that relate to the same covered agreement to be filed together. It also reduces the likelihood that annual reports will be filed with the wrong agency because the insured depository institution or affiliate will know its relevant supervisory agency while the nongovernmental entity or person may not.

The agencies invite comment on the filing requirements of the rule. In particular, the agencies request comment on whether the 5- and 6-month filing windows will provide the parties sufficient time to prepare their annual reports and whether there are additional ways that the agencies might reduce the filing burdens of parties consistent with the Act.

*D. Compliance Provisions*

Section 711 specifically provides that nothing in that section authorizes the agencies to enforce the provisions of any covered agreement. The proposed rule incorporates this provision. (*See* section ____.7(e)) This is consistent with the long-standing policy of the agencies that CRA-related agreements entered into between insured depository institutions (or their affiliates) and persons are private matters between the parties and are not enforced by the agencies.

The agencies may enforce compliance by insured depository institutions and affiliates with the disclosure and reporting requirements of section 711 using the cease and desist and other enforcement powers granted in section 8 of the FDI Act.[33] Section 8 of the FDI Act, however, applies only to insured depository institutions, affiliates and institution-affiliated parties, as defined in the FDI Act. The provisions of section 8 of the FDI Act, therefore, generally do not apply to nongovernmental entities or persons that are parties to a covered agreement. Section 711 instead includes special compliance provisions applicable to nongovernmental entities or persons that are party to a covered agreement.[34]

Under these provisions, the material and willful failure of a person to comply with section 711 may cause the related covered agreement to be unenforceable. In particular, under the Act, if the appropriate agency determines that a person has willfully failed to comply with section 711 in a material way, and the person does not comply with the law after receiving notice and a reasonable period of time, the agreement thereafter is unenforceable by operation of section 711. The Act specifically provides that inadvertent or *de minimis*

[31] As discussed in II.C.1. above, the proposed rule would not require a nongovernmental entity or person to file an annual report during the term of a covered agreement if the entity or person did not receive any funds or resources under the agreement in that fiscal year.

[32] *See* Proposed Rule section __.8(f). The rule also provides that the "fiscal year" for an individual or entity that does not have a fiscal year is the calendar year.

[33] *See* 12 U.S.C. 1818.

[34] Other Federal statutes outside the banking laws also may provide for penalties if an insured depository institution, affiliate, or person fails to comply with the disclosure and reporting requirements of the Act. *See* 18 U.S.C. 1001

reporting errors will not subject the filing party to any penalty. The rule requires the agencies to provide a person written notice and an opportunity to respond before determining the person has not complied with the rule, and allows the person at least 90 days to correct a willful and material violation. The agencies request comment on whether this written notice should be sent to all the parties to the agreement.

The rule also clarifies that, in these circumstances, the agreement becomes unenforceable only by the party that has willfully and materially failed to comply with the rule. Any other party to the agreement may continue to enforce the agreement against the noncomplying party. The agencies believe this construction is the most consistent reading of the language and purpose of the Act. The agencies note that an alternative construction could encourage persons to violate the statute in an attempt to avoid performance under a legally binding contract, thereby frustrating the purpose of the statute. If the insured depository institution or affiliate elects not to enforce the covered agreement against the noncomplying person, the appropriate agency may assist the institution or affiliate in identifying a successor person to assume the responsibilities of the person under a covered agreement that has become unenforceable.

Section 711 also provides that, if an individual diverts funds or resources received under a covered agreement for his or her personal financial gain and contrary to the purposes of the agreement, the appropriate agency may order the individual to disgorge the funds and/or prohibit the individual from being a party to any covered agreement for up to 10 years. As noted above, the Act specifically provides that it does not authorize the agencies to enforce any provision of a covered agreement. If, however, a court or other body of competent jurisdiction determines that an individual has diverted funds or resources for personal financial gain and contrary to the purposes of the agreement, the agencies may take one of the actions specified in the statute.

*E. Other Definitions and Rule of Construction*

Section ____.8 of the proposed rule defines other terms used in the rule. Because section 711 amended the FDI Act, the rule provides that the terms "insured depository institution," "control," "Federal banking agency" and "appropriate Federal banking agency" have the same meaning as in the FDI Act.[35]

1. "Person" and "Nongovernmental Entity or Person"

Section 711 of the GLB Act applies only to agreements entered into by a "nongovernmental entity or person" with an insured depository institution or affiliate. For ease of reference, the rule uses the term "person" instead of the phrase "nongovernmental entity or person." (The OTS rule, however, refers to a "nongovernmental entity or person" as a "NGEP.") As a general matter, the rule defines a "person" to mean any individual or entity other than the U.S. government, a state government, a unit of local government, an Indian tribe, or any department, agency, or instrumentality of such a governmental entity. A "person" does not include a federally chartered public corporation that receives federal funds appropriated specifically for that corporation. A nongovernmental entity that is affiliated with, or receives funding from, such a federally chartered public corporation, however, would be considered a "person" under the rule, unless the entity independently qualified for an exclusion.

The proposal also would not treat insured depository institutions and their affiliates as persons. Section 711 appears to draw a distinction between insured depository institutions (and their affiliates) and nongovernmental entities and persons and imposes separate obligations on insured depository institutions (and their affiliates) and nongovernmental entities or persons.

The agencies request comment on the proposed definition of "nongovernmental entity or person," including whether specific types of entities should be added or removed from the list of entities and individuals excluded from the definition of the term.

2. Affiliate and Control

The term "affiliate" is defined in the FDI Act by reference to the Bank Holding Company Act. Under the Bank Holding Company Act, an affiliate is any company that controls, is controlled by, or is under common control with another company. A company generally is considered to control another entity if it owns or controls 25 percent or more of any class of the other entity's voting securities.

The proposed rule creates a special rule of construction that would apply in situations where an insured depository institution has filed an application with an agency to become affiliated or merge with another entity. In such circumstances, a person may have a CRA contact and enter into an agreement with the acquiring insured depository institution (or holding company thereof) concerning the CRA performance of the target institution. The agencies believe these types of contacts constitute a CRA contact under section 711 and that any agreement resulting from such contact is a covered agreement if it otherwise meets the requirements of section 711. Accordingly, the rule provides that an insured depository institution is deemed to be an affiliate of any company that would be under common control or merged with the institution pursuant to a transaction that is pending before an agency. This rule of construction applies only where the agency application is pending at both the time an agreement is entered into and the time when a triggering CRA contact occurs.

**Example:** A bank holding company files an application with the Board to acquire control of an additional insured depository institution. While the application is pending, an organization contacts the bank holding company to discuss perceived deficiencies in the CRA performance record of the insured depository institution to be acquired. The bank holding company and the organization enter into a written agreement that provides for the target institution to increase its level of community development grants by $1 million per year for the next three years. The target institution would be considered an "affiliate" of the bank holding company under the proposed rule. Accordingly, the agreement would be a covered agreement because the organization had a CRA contact with the holding company concerning the CRA record of performance of an affiliated insured depository institution.

3. Term of agreement

Under the rule, the duration of a party's obligation to make a covered agreement publicly available and to file annual reports concerning the agreement is based on the term of the covered agreement. As a general matter, the term of an agreement ends on the agreement's termination date established by the parties. Agreements that do not establish a termination date are deemed for purposes of the proposed rule to terminate on the last date on which any party makes any payments or provides any loan or other

[35] The agencies note that the definition of "insured depository institution" in the FDI Act includes special-purpose insured depository institutions that are not subject to the CRA. *See, e.g.*, 12 CFR 228.11(c)(3). An agreement that relates to the activities of a special-purpose insured depository institution, however, would not be in fulfillment of the CRA and, thus, would not be a covered agreement under the rule.

resources under the agreement. The rule gives the agencies discretion, in appropriate circumstances, to determine that the term of such an agreement is a shorter or longer period. The appropriate agency could exercise this discretion, for example, where a one-time grant is made to a person late in a year with the clear expectation that the funds would be used in the next year. In such circumstances, the agency could require the person to file an annual report for the next year.

**III. Placement of Proposed Rule**

The agencies propose to implement section 711 by adding a new part to their regulations.[36] These new parts would be separate from the agencies' CRA Regulations. The agencies believe this placement is appropriate because section 711 of the GLB Act amended the FDI Act, and not the CRA, and is independent of the CRA and the CRA Regulations. The agencies note, however, that because section 711 concerns CRA-related agreements, the proposed rule includes several cross-references to the CRA Regulations. The agencies request comment on whether users would find it more convenient if the proposed rule was incorporated into the agencies' existing CRA Regulations and, if so, how the agencies could make clear that the rule does not in any way affect the CRA.

**IV. Regulatory Flexibility Act Analysis**

*OCC*: In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the OCC is publishing the following initial regulatory flexibility analysis with this proposed rulemaking.

The proposed rule would implement provisions of section 711 of the GLB Act. A description of the reasons why action by the OCC is being considered and a statement of the objectives of, and legal basis for, the proposed rule are contained in the **SUPPLEMENTARY INFORMATION**.

The proposed rule includes reporting requirements that would apply to all insured depository institutions, including national banks, affiliates of insured depository institutions, including national bank subsidiaries, and persons that enter into covered agreements (as defined by the proposed rule). The proposed rule requires insured depository institutions, affiliates, and persons that enter into a covered agreement to make the agreement available to members of the public and to the appropriate agency, and to file an annual report with the appropriate agency concerning the disbursement and use of funds under the agreement.

These reporting provisions are required by section 711 of the GLB Act and apply regardless of the size of the insured depository institution, affiliate, or person. Section 711 does not authorize the OCC to provide an exemption for covered agreements based on the size of any entity within the scope of its provisions. The Act, however, directs the OCC and the other agencies to ensure that the proposed rule does not impose an undue burden on the parties to covered agreements. The proposed rule includes several provisions, described in detail in the **SUPPLEMENTARY INFORMATION** that are designed to limit the potential impact of the proposed rule on insured depository institutions, affiliates and persons or entities of any size. For example, the rule gives entities and persons flexibility in determining how to make a covered agreement available to the public. In addition, the proposed rule would allow persons to use reports that have been prepared for other purposes, such as tax returns and financial statements, to fulfill the annual reporting requirement. The rule also allows an insured depository institution, affiliate, or person that is a party to 5 or more covered agreements to prepare a single, consolidated annual report relating to all of the agreements.

As noted above, the proposed rule applies to insured depository institutions, affiliates, and persons that enter into covered agreements. These agreements are entered into by private parties, are not enforced by the OCC and, to date, have not been required to be disclosed to the OCC. In addition, the OCC and the other agencies have specifically requested comment on the scope of the proposed rule and will issue a final rule after review of public comments. Accordingly, the OCC cannot estimate at this time the total number of national banks or their subsidiaries that would be subject to the requirements of the rule and the number of such entities that would be considered small entities. Similarly, the OCC cannot estimate at this time the total number of persons that may enter into a covered agreement with these entities, and therefore be subject to the requirements of the rule.

The OCC specifically seeks comment on the likely burden that the proposed rule would impose on national banks and other entities within the OCC's supervisory jurisdiction that are subject to it and on persons who enter into covered agreements with those entities.

*Board*: In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this proposed rulemaking. The proposed rule would implement provisions of section 711 of the GLB Act. A description of the reasons why action by the Board is being considered and a statement of the objectives of, and legal basis for, the proposed rule are contained in the supplementary material provided above.

The proposed rule includes reporting requirements that would apply to all insured depository institutions, affiliates of insured depository institutions, and persons that enter into covered agreements (as defined by the proposed rule). The proposed rule requires insured depository institutions, affiliates, and persons that enter into a covered agreement to make the agreement available to members of the public and to the appropriate agency, and to file an annual report with the appropriate agency concerning the disbursement and use of funds under the agreement.

These reporting provisions are required by section 711 of the GLB Act and would apply regardless of the size of the insured depository institution, affiliate, or person. The Act does not authorize the Board to provide an exemption for covered agreements based on the size of the insured depository institution, affiliate or person that enters into the agreement.

The Act, however, directs the Board and the other agencies to ensure that the proposed rule does not impose an undue burden on the parties to covered agreements and the proposed rule includes several provisions that are designed to limit the potential impact of the proposed rule on insured depository institutions, affiliates and persons, including small institutions, affiliates and persons. For example, the rule gives entities and persons flexibility in determining how to make a covered agreement available to the public. In addition, the proposed rule would allow persons to use reports that have been prepared for other purposes, such as tax returns and financial statements, to fulfill the annual reporting requirement. The rule also allows insured depository institutions, affiliates, and persons that are a party to 5 or more covered agreements to prepare a single, consolidated annual report relating to all of the agreements.

As noted above, the proposed rule applies only to insured depository institutions, affiliates, and persons that

[36] *See* 12 CFR Part 35 (OCC); 12 CFR Part 207 (Board); 12 CFR Part 346 (FDIC); and 12 CFR Part 533 (OTS).

enter into covered agreements. These agreements are entered into by private parties, are not enforced by the Board and, to date, have not been required to be disclosed to the Board. In addition, the Board and the other agencies have specifically requested comment on the scope of the proposed rule and will issue a final rule after review of public comments. Accordingly, the Board cannot estimate at this time the total number of state member banks, bank holding companies, and nonbank subsidiaries of a bank holding company that would be subject to the requirements of the rule and the number of such entities that would be considered small entities. Similarly, the Board cannot estimate at this time the total number of persons that may enter into a covered agreement with the types of entities listed above and, thereby, be subject to the requirements of the rule or the number of such persons that would be considered small entities.

The Board specifically seeks comment on the likely burden that the proposed rule would impose on insured depository institutions and affiliates within the Board's supervisory jurisdiction and on persons who enter into covered agreements with such entities.

*FDIC:* Consistent with the Regulatory Flexibility Act (5 U.S.C. 601–612) (RFA), the FDIC is required to publish an initial regulatory flexibility analysis relating to the proposed rule. The proposed rule would implement provisions of section 711 of the GLB Act and would apply to all insured depository institutions, affiliates of insured depository institutions, and persons that enter into the types of covered agreements described in section 711 and in the proposed rule.

Material contained in the Supplementary Information section of this document contains statements about the legal basis for and objectives of the FDIC in proposing this rule. The GLB Act incorporates disclosure and reporting requirements applicable to all insured depository institutions, affiliates, and persons that enter into covered agreements. Insured depository institutions, affiliates, and persons must make the covered agreements available to the general public and to the appropriate supervisory agency. They must also file an annual report with the appropriate supervisory agency describing the disbursement, receipt, and use of the funds under the agreement. The GLB Act does not provide exemptions for the reporting or disclosure requirements based on the size of the insured depository institution, affiliate, or person; similarly the GLB Act does not authorize the FDIC to provide for exemptions.

Because the GLB Act requires the agencies to ensure that the proposed rule does not impose an undue burden on the parties to a covered agreement, the proposed rule contains provisions that limit the potential impact on insured depository institutions, affiliates, and persons. For example, the proposed rule provides flexibility to entities and persons regarding the way a covered agreement is made available to the public. Insured depository institutions are permitted to disclose covered agreements to the public by placing it in their CRA public files, and parties may satisfy their obligation to make covered agreements available to the public, in part, by posting the agreement on a publicly available Internet website. Although the GLB Act states that parties to a covered agreement must make the agreement available to an agency, the proposed rule requires a person that is a party to an agreement to disclose the covered agreement to an agency upon the agency's request for a copy of the agreement. In addition, the proposed rule would allow persons to use reports that have been prepared for other purposes, such as tax returns and financial statements, to fulfill the annual reporting requirement. Recognizing that many tax returns and financial statements are based on fiscal year reporting periods, the proposed regulation permits either a fiscal or calendar year reporting period so that parties may coordinate their required annual report with other reports or filings. The rule also would permit insured depository institutions, affiliates, and persons that are parties to 5 or more covered agreements to file a single, consolidated report relating to all of the agreements and would allow insured depository institutions and affiliates that are parties to the same covered agreement to file a single consolidated report. Finally, the proposed rule does not require annual reports to be prepared on a special form or in a particular format. All of these provisions were developed to minimize the impact and burden the proposed rule would have on parties to a covered agreement.

Before passage of the GLB Act, parties to covered agreements were not required to disclose the agreements to the FDIC; therefore, at this time, the FDIC cannot estimate the total number of insured state non-member banks, affiliates of state non-member banks, or persons that would be subject to the requirements of the proposed rule. Similarly, the FDIC cannot predict which parties to covered agreements may be classified as small businesses or entities. Although the FDIC and the other agencies have requested comment on the scope of the proposed rules, presently, the FDIC cannot determine whether the proposed rule would have a significant economic impact on a substantial number of small entities. The FDIC requests comment on the likely significance of the economic impact the proposed rule would impose on FDIC-supervised banks and affiliates and on persons who enter into a covered agreement.

*OTS:* The Regulatory Flexibility Act requires federal agencies to either prepare an initial regulatory flexibility analysis (IRFA) with a proposed rule or certify that the proposed rule would not have a significant economic impact on a substantial number of small entities. OTS cannot, at this time, determine whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, OTS includes the following IRFA.

A description of the reasons why OTS is considering this action and a statement of the objectives of, and legal basis for, this proposed rule, are contained in the supplementary materials provided above.

*A. Small Entities to Which the Proposed Rule Would Apply*

The proposed rule would apply to the following types of entities if they are a party to a covered agreement: (1) Savings associations; (2) certain affiliates of savings associations; [37] and (3) nongovernmental entities or persons that enter into covered agreements with savings associations or affiliates of savings associations. The proposed rule would apply regardless of the size of the savings association, affiliate, or persons.

OTS is unable to estimate how many covered agreements exist, how many savings associations, affiliates of savings associations, or persons are parties to such covered agreements, or how many parties to covered agreements are "small businesses" or "small organizations" under the Regulatory Flexibility Act. To date, parties to such agreements have not had to disclose or report the agreements to OTS. Generally, neither OTS nor any other Federal agency is a party to covered agreements. Finally, OTS does not enforce such agreements. Thus, OTS does not have information about these agreements.

OTS has very limited information that would assist in an estimate. According

[37] OTS's rule applies to the following affiliates: savings and loan holding companies and companies that are controlled by savings associations or savings and loan holding companies.

to December 31, 1999 data, OTS calculates that of the approximately 1,100 savings associations, a maximum of 486 are small savings associations. Small savings associations are generally defined, for Regulatory Flexibility Act purposes, as those with assets under $100 million. 13 CFR 121.201, Division H (1999). OTS also calculates that these 486 savings associations hold approximately 100 subordinate organizations that could possibly qualify as small entities. OTS further calculates that a maximum of 205 savings and loan holding companies could possibly qualify as small entities. OTS does not have data on how many of these subordinate organizations or holding companies may actually qualify as small entities. Nor does OTS have data on how many other affiliates of savings associations exist (*e.g.*, companies that are under common control with a savings association), how many of these affiliates are affiliates of small savings associations, or how many of these affiliates are themselves small entities. OTS does not know how many persons have entered into covered agreements with savings associations or affiliates of savings associations or how many of these persons are small entities.

OTS specifically seeks comment on the number and size of savings associations, affiliates of savings associations, and persons that are parties to covered agreements. OTS also seeks comment on how many covered agreements may currently exist and approximately how many will be entered into each year in the future.

*B. Requirements of the Proposed Rule*

As described more fully in the supplementary material provided above, the proposed rule contains new disclosure and reporting requirements. Most of the requirements are mandated by section 711 of the GLB Act. The GLB Act, however, directs the Federal banking agencies to ensure that the regulations prescribed by the agency do not impose an undue burden on the parties.

The primary requirements under the proposed rule involve disclosure and reporting of covered agreements. The proposal would require each party to a covered agreement to disclose the agreement to the public by making a complete copy available to any individual or entity upon request. It would also require each savings association or affiliate that is a party to the covered agreement to provide a copy to each relevant supervisory agency (as defined in the proposal) and would require each person that is a party to provide a copy to each relevant supervisory agency upon request.

To minimize the disclosure burden, the proposal would:

- Terminate the public disclosure requirement and the requirement for a person to provide a copy to the relevant supervisory agencies upon request 12 months after the end of the term of the covered agreement;
- Not mandate any particular method for disclosing the agreement to the public;
- Allow each party to charge reasonable copying and mailing fees when it discloses an agreement to the public;
- Allow a savings association to publicly disclose by placing a copy of the covered agreement in its CRA public file and making it available under the public file procedures;
- Require a person to provide a copy to the relevant supervisory agencies only if the agency requests a copy; and
- Allow two or more insured depository institutions or affiliates that are parties to a covered agreement to jointly file with each relevant supervisory agency.

The proposal would require each party to a covered agreement to file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement. To minimize the reporting burden, the proposal would:

- Not mandate any particular form for the annual report;
- Allow each party to report on its own fiscal year basis;
- Exempt a person from filing a report for a fiscal year if the person does not receive any funds or resources during that year;
- Provide simplified reporting procedures for persons that allocate and use funds or other resources under a covered agreement for a specific purpose;
- Allow a person's report to consist of, or incorporate, reports prepared for other purposes, such as tax forms and financial statements;
- Permit a savings association, affiliate, or person that is a party to five or more covered agreements to file a single consolidated annual report covering all of the covered agreements, aggregating certain information;
- Allow a savings association and its affiliates that are parties to the same covered agreement to file a single consolidated report; and
- Allow a person to file its report with the insured depository institution or affiliate that is a party to the agreement (rather than with the relevant supervisory agency).

It is possible that savings associations, affiliates, and persons have already established recordkeeping and other policies and practices that would already enable them to partly or fully meet the requirements of this proposed rule. To the extent that existing practices and available resources are insufficient, parties to covered agreements would need professional skills to comply with this proposed rule. To disclose covered agreements, parties may need clerical and computer personnel. To prepare required reports, parties may need personnel with these skills, as well as personnel skilled in financial and legal matters. Some degree of personnel training may be necessary, such as to enable employees to determine when they enter into covered agreements, and how to retain, record, and compile information about agreements to disclose and report them.

OTS does not have a practicable or reliable basis for quantifying the costs of this proposed rule, or of any alternatives to the rule. The requirements are too new for those subject to the law to have learned what the law requires and decide how to proceed. OTS cannot predict how savings associations, affiliates, and persons would comply with the proposed rule. For example, OTS cannot assess the extent to which savings associations, affiliates, and persons would avoid entering into covered agreements as a result of a final rule.

Rather than merely guess at the regulatory burden of this proposed rule, OTS solicits comment on these burdens and on ways to minimize the burdens, consistent with the GLB Act.

*C. Significant Alternatives*

The requirements in the proposed rule parallel those in the GLB Act. The proposed rule would clarify the statutory requirements in some areas and restate the requirements in a more understandable manner in other areas. It would not impose any substantially different requirements.

Congress has decided that "each" insured depository institution, affiliate, or person that is a party to a covered agreement must disclose and report the agreement. The GLB Act does not expressly authorize OTS to exempt small savings associations, affiliates, or persons from these requirements. OTS does not interpret the statute to permit such an exemption.

The supplementary material provided above describes and solicits comment on a number of alternatives that would reduce the regulatory burden. These include:

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- Limiting the types of agreements that are covered by the rule (*e.g.*, defining "CRA contacts," "fulfillment of CRA," and the calculation of value more narrowly, or defining the statutory exemptions for certain types of loans, extensions of credit and commitments more broadly);
- Simplifying the procedures for parties to delete proprietary and confidential information;
- Limiting which parties to an agreement must comply with the disclosure and reporting requirements in multi-party agreements (*e.g.*, not applying the requirements to parties that have not made CRA contacts, have not been the subject of CRA contacts, or do not know that CRA contacts have occurred); and
- Providing more flexible reporting requirements (*e.g.*, allowing parties to two or more agreements to use consolidated reporting procedures, permitting affiliated persons that are parties to the same covered agreement to file a consolidated report, allowing persons to elect to report on specific purpose funds or resources under the itemized reporting procedures, and exempting savings associations and affiliates from filing a report for a fiscal year if the savings association or affiliate has not had transactions to report).

OTS requests comment on whether these or other alternatives would reduce the burdens and whether any exceptions for small institutions would be appropriate.

*D. Other Matters*

These proposed requirements do not appear to duplicate or overlap with any other Federal rules. To the extent that required information is already contained in reports prepared for other purposes, the proposed rule allows a person's report to consist of, or incorporate, these existing reports.

OTS lacks sufficient information about the contents of covered agreements, however, to conclude whether the proposed requirements conflict with other Federal rules. One area of potential conflict is the rule's requirement to make a "complete copy" of a covered agreement available to the public and to the relevant supervisory agencies. OTS solicits specific comment on whether covered agreements contain information that savings associations, affiliates, or persons may be barred from disclosing under other Federal rules (*e.g.*, private customer information), or may be permitted to refrain from disclosing to the public or a Federal banking agency under other Federal rules (*e.g.*, proprietary information). OTS also generally seeks comment on any Federal rules that may duplicate, overlap, or conflict with the proposal.

## V. Executive Order 12866 Determination

*OCC:* The Comptroller of the Currency has determined that this proposed rule does not constitute a significant regulatory action for the purpose of Executive Order 12866. Reporting and disclosure are mandated by section 711 of the GLB Act. The proposed rule closely follows the requirements of that statute. As described in the **SUPPLEMENTARY INFORMATION,** however, the proposal also contains regulatory options designed to minimize costs and burdens, where feasible and consistent with the statute. The OCC invites national banks and the public to provide specific cost estimates and related data that would contribute to the accuracy of the OCC's evaluations of the costs of the requirements in the rule.

*OTS:* OTS has determined that this proposed rule does not constitute a significant regulatory action for the purpose of Executive Order 12866. Reporting and disclosure are mandated by section 711 of the GLB Act. Many of the proposed provisions closely follow the requirements of this section. OTS has exercised its discretion, to the extent possible, to propose regulatory options to minimize costs and burdens. Nevertheless, OTS acknowledges that the rule would impose costs on insured depository institutions, affiliates, and nongovernmental entities or persons by requiring these entities to disclose and report on agreements. Therefore, OTS invites the thrift industry and the public to provide any cost estimates and related data that they think would be useful to the agency in evaluating the overall costs of the rule.

## VI. Paperwork Reduction Act

The information collection and reporting requirements of the proposed rule are described in II. above. In summary, the proposed rule requires persons, insured depository institutions, and affiliates of insured depository institutions that are parties to covered agreements (as defined by the proposed rule) to make the agreements available to the public and the relevant supervisory agencies and to file annual reports relating to the agreements with the relevant supervisory agencies. These reporting and disclosure requirements are required under Title VII of the GLB Act (Pub. L. 106–102, 113 Stat. 1465 (1999)), which adds new section 48 to the Federal Deposit Insurance Act (12 U.S.C. 1831y).

The proposed rule requires each person, insured depository institution, and affiliate of an insured depository institution that is a party to a covered agreement to make a complete copy of the agreement available to the public on request at any time during the term of the agreement and 12 months after the term of the agreement (proposed ____.4(b)). Accordingly, each party must retain a copy of the agreement for that period. Any party to a covered agreement may request that the relevant supervisory agency determine whether certain portions of the agreement may be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*) prior to making the agreement available to the public (proposed ____.4(b)(1)(ii)).

An insured depository institution or affiliate of an insured depository institution that enters into a covered agreement must file a copy of the agreement with the supervisory agency within 30 days of entering into the agreement (proposed ____.4(c)(2)(i)). A person must make the agreement available to the relevant supervisory agency upon request (proposed ____.4(c)(1)).

The proposed rule also requires each person, insured depository institution, or affiliate of an insured depository institution that is a party to a covered agreement to file an annual report that relates to the agreement for each fiscal year during the term of the agreement with the relevant supervisory agency of the insured depository institution or affiliate that is a party to the agreement (proposed ____.5(b)). The annual report of a person must include (1) the name and address of the person filing the report, (2) the names of the parties to the agreement, and (3) the amount of funds or resources received during the fiscal year (proposed ____.5(d)). The annual report of an insured depository institution or affiliate must include (1) the name and principal place of business of the institution or affiliate, (2) sufficient information to identify the covered agreement for which the annual report is being filed, and (3) information on payments and other resources provided or received under the agreement (proposed ____.5(e)). The proposed rule allows a person to send its annual report either to the relevant supervisory agency of each insured depository institution or affiliate that is a party to the agreement or to an insured depository institution or affiliate that is a party to the agreement. The insured depository institution or affiliate must send the annual report of a person to the relevant supervisory agency within 30 days of receiving the report (proposed ____.5(f)(2)(ii)).

Finally, an insured depository institution or affiliate that is a party to a covered agreement that concerns the performance of any activity of a CRA affiliate (as defined in ——.8(c)) is required to notify each person that is a party to the agreement that the agreement concerns a CRA affiliate (proposed ____.2(d)).

The agencies request public comment on all aspects of the collections of information contained in this proposed rule, including how burdensome it would be for persons, insured depository institutions, and affiliates to comply with each of the reporting and disclosure requirements of the proposed rule.

The estimated total annual reporting and disclosure burden of the proposed rule will depend on the number of covered agreements. The agreements that trigger the disclosure and reporting requirements of the proposed rule, however, are entered into by private parties on a voluntary basis, are not enforced by the agencies and, to date, have not been required to be disclosed to the agencies. As a result, the agencies cannot accurately estimate at this time the total number of insured depository institutions, affiliates or persons that are parties to covered agreements or the total number of covered agreements that may be subject to the disclosure and reporting requirements of the rule. The agencies also are unable to identify a reasonable proxy for estimating the number of covered agreements. Solely for purposes of complying with the requirements of the Paperwork Reduction Act, each agency has computed the estimate of annual paperwork burden assuming that 50 percent of the insured depository institutions it regulates are parties to one covered agreement. In addition, the agencies have assumed that one person is a party to each of these agreements. The agencies specifically request comment on these assumptions, the total number of persons, insured depository institutions, and affiliates that may be parties to covered agreements, and the total number of covered agreements that may be subject to the disclosure and reporting requirements of the rule.

The agencies also invite comment on:

(1) Whether the collections of information contained in the notice of proposed rulemaking are necessary for the proper performance of each agency's functions, including whether the information has practical utility;

(2) The accuracy of each agency's estimate of the burden of the proposed information collections;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

The agencies will revisit these estimates when they have more information on the scope of the rule and the number of potential respondents and covered agreements. The revised estimates will also reflect all comments received concerning the burden estimates. Respondents/recordkeepers are not required to respond to these collections of information unless the agencies display a currently valid Office of Management and Budget (OMB) control number. The agencies are currently requesting their respective control numbers for these information collections from OMB.

*OCC:* The collection of information requirements contained in the Regulation will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). Comments on the collections of information should be sent to the Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW, Third Floor, Attention: 1557–to be assigned, Washington, DC 20219, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1557–to be assigned), Washington, DC 20503.

The potential respondents include national banks, subsidiaries of national banks, and nongovernmental entities or persons.

Estimated number of financial institution respondents: 1,200.

Estimated number of nongovernmental entity or person respondents: 1,200.

Estimated average annual burden hours for all disclosure and reporting requirements of the proposed rule per financial institution respondent per agreement: 6 hours.

Estimated burden hours for all disclosure and reporting requirements of the proposed rule per nongovernmental entity or person per agreement: 4 hours.

Estimated total annual reporting and disclosure burden: 12,000 hours.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320, appendix A.1), the Board reviewed the Regulation under the authority delegated to the Board by the OMB. Comments on the collections of information should be sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551, with a copy to the Office of Management and Budget, Paperwork Reduction Project (7100–to be assigned), Washington, DC 20503.

The potential respondents are state member banks, bank holding companies, affiliates of bank holding companies other than savings associations, national banks, insured nonmember banks, and subsidiaries of such associations and banks, and nongovernmental entities or persons.

Estimated number of financial institution respondents: 507.

Estimated number of nongovernmental entity or person respondents: 507.

Estimated average annual burden hours for all disclosure and reporting requirements of the proposed rule per financial institution respondent per agreement: 6 hours.

Estimated burden hours for all disclosure and reporting requirements of the proposed rule per nongovernmental entity or person per agreement: 4 hours.

Estimated total annual reporting and disclosure burden: 5,070 hours.

*FDIC:* The collections of information contained in the Regulation will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The FDIC will use any comments received to develop its new burden estimates. Comments on the collections of information should be sent to Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, F–4080, 550 17th Street, NW, Washington, DC 20429, with a copy to the Office of Management and Budget, Paperwork Reduction Project (3064–to be assigned), Washington, DC 20503.

The potential respondents are insured nonmember banks, subsidiaries of insured nonmember banks, and nongovernmental entities or persons.

Estimated number of financial institution respondents: 2,850.

*Estimated number of nongovernmental entity or person respondents:* 2,850.

Estimated average annual burden hours for all disclosure and reporting requirements of the proposed rule per financial institution respondent per agreement: 6 hours.

Estimated burden hours for all disclosure and reporting requirements of the proposed rule per nongovernmental entity or person per agreement: 4 hours.

*Estimated total annual reporting and disclosure burden:* 28,500 hours.

*OTS:* The collection of information requirements contained in the Regulation will be submitted to the OMB in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507). The OTS will use any comments received to develop its new burden estimates. Comments on the collection of information should be sent to the Dissemination Branch (1550-to be assigned), Office of Thrift Supervision, 1700 G Street, NW, Washington, DC 20552, with a copy to the Office of Management and Budget, Paperwork Reduction Project (1550-to be assigned), Washington, DC 20503.

The potential respondents are savings and loan holding companies, savings associations, companies controlled by savings and loan holding companies and savings associations, and nongovernmental entities or persons.

*Estimated number of financial institution respondents:* 552.

*Estimated number of nongovernmental entity or person respondents:* 552.

Estimated average annual burden hours for all disclosure and reporting requirements of the proposed rule per financial institution respondent per agreement: 6 hours.

Estimated burden hours for all disclosure and reporting requirements of the proposed rule per nongovernmental entity or person per agreement: 4 hours.

*Estimated total annual reporting and disclosure burden:* 5,520 hours.

**VII. Solicitation of Comments Regarding the Use of "Plain Language"**

Section 722 of the GLB Act requires the agencies to use "plain language" in all proposed and final rules published after January 1, 2000. The agencies invite comments about how to make the proposed rule easier to understand, including answers to the following questions:

(1) Have the agencies organized the material in an effective manner? If not, how could the material be better organized?

(2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated?

(3) Does the rule contain technical language or jargon that is unclear? If so, which language requires clarification?

(4) Would a different format (with respect to the grouping and order of sections and use of headings) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would increasing the number of sections (and making each section shorter) clarify the rule? If so, which portions of the rule should be changed in this respect?

(6) What additional changes would make the rule easier to understand?

The agencies also solicit comment about whether it would be appropriate and useful to include in the rule the examples discussed in this preamble. The agencies note that creating safe harbors in the rule may generate certain problems over time due to changes in technology or business practices. Are there alternatives that the agencies should consider to illustrate the terms in the rule?

**VIII. FDIC's Electronic Public Comment Site**

The FDIC has included a page on its web site to facilitate the submission of electronic comments in response to this general solicitation (the EPC site). The EPC site provides an alternative to the written letter and may be a more convenient way for you to submit your comments. Commenting through the EPC site will assist the FDIC to more accurately and efficiently analyze comments submitted electronically. If you submit your comments through the EPC site your comments will receive the same consideration that they would receive if submitted in hard copy to the FDIC's street address. Information provided through the EPC site will be used by the FDIC only to assist in its analysis of the proposed regulation. The FDIC will not use an individual's name or any other personal identifier of an individual to retrieve records or information submitted through the EPC site. Like comments submitted in hard copy to the FDIC's street address, EPC site comments will be made available in their entirety (including the commenter's name and address if the commenter chooses to provide them) for public inspection.

The EPC site will be available on the FDIC's home page at *http://www.fdic.gov*. You will be able to provide comments directly on any of the sections of the proposed regulation as well as the specific questions that have been asked in the preceding Supplementary Information section. You will also be able to view the regulation and Supplementary Information sections that related to your comments directly on the site. Because the GLB Act requires promulgation of this regulation, the FDIC encourages you to provide written comments in the spaces provided. Written comments enable the FDIC to thoughtfully consider possible changes to the proposed regulation.

The FDIC is also interested in your feedback on the EPC site. We have provided a space for you to comment on the site itself. Answers to this question will help the FDIC evaluate the EPC site for use in future rulemaking.

At the conclusion of the EPC site you will have an opportunity to provide us with your name, indicate whether you are an individual, insured depository institution, financial holding company, community-based organization, trade association, government agency, or other, and provide the name of the organization you represent, if applicable. Whether you choose to respond to these questions is entirely up to you. Any responses received may help the FDIC to better understand the public comments it receives.

**IX. Unfunded Mandates Act of 1995**

*OCC:* Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The proposed rule would not apply to state, local or tribal governments. Although the proposed rule would apply to insured depository institutions, affiliates, and nongovernmental entities and persons, OCC is not required to assess the effects of its regulatory actions on the private sector to the extent such regulations incorporate requirements specifically set forth in law. 2 U.S.C. 1531. Many of the proposed provisions closely follow the requirements of Section 711 of the GLBA. Moreover, the proposal contains regulatory options designed to minimize costs and burdens. Therefore, the OCC has determined that this proposed rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

*OTS:* Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The proposed rule would not apply to state, local or tribal governments. Although the proposed rule would apply to insured depository institutions, affiliates, and nongovernmental entities and persons, OTS is not required to assess the effects of its regulatory actions on the private sector to the extent such regulations incorporate requirements specifically set forth in law. 2 U.S.C. 1531. Many of the proposed provisions closely follow the requirements of section 711 of the GLB Act. Moreover, OTS has exercised its discretion, to the extent possible, to propose regulatory options to minimize costs and burdens. Therefore, the OTS has determined that this proposed rule will not result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Accordingly, the OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

**List of Subjects**

*12 CFR Part 35*

Community development, Credit, Freedom of information, Investments, National banks, Reporting and recordkeeping requirements.

*12 CFR Part 207*

Banks, banking, Community development, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements.

*12 CFR Part 346*

Banks, banking, Community development, and Reporting and recordkeeping.

*12 CFR Part 533*

Administrative practice and procedure, Business and industry, Community development, Confidential business information, Credit, Freedom of information, Holding companies, Investments, Mortgages, Nonprofit organizations, Penalties, Reporting and recordkeeping requirements, Savings association.

**Office of the Comptroller of the Currency**

**12 CFR Chapter I**

**Authority and Issuance**

For the reasons set out in the joint preamble, the OCC proposes to amend title 12, chapter I, of the Code of Federal Regulations by adding a new part 35 to read as follows:

## PART 35—DISCLOSURE AND REPORTING OF CRA RELATED AGREEMENTS

Sec.

35.1 Purpose and scope.
35.2 Definition of covered agreement.
35.3 Related agreements considered a single agreement.
35.4 Disclosure of covered agreements.
35.5 Annual reports.
35.6 Release of information under FOIA.
35.7 Compliance provisions.
35.8 Other definitions and rules of construction.

**Authority:** 12 U.S.C. 1831y.

### § 35.1 Purpose and scope.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, and affiliate of an insured depository institution that enters into a covered agreement to:

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) The provisions of this part are enforced by the OCC with respect to national banks and their subsidiaries.

### § 35.2 Definition of covered agreement.

(a) *General definition.* A covered agreement is any contract, arrangement, or understanding (whether or not legally binding) that meets all of the following criteria:

(1) The agreement is in writing.

(2) The parties to the agreement include:

(i) An insured depository institution or an affiliate of an insured depository institution; and

(ii) A nongovernmental entity or person (referred to hereafter as a person).

(3) The agreement provides for the insured depository institution or any affiliate to:

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA), as defined in paragraph (c) of this section.

(b) *Agreements that are not covered agreements*— (1) *Certain loans.* A covered agreement does not include:

(i) Any individual mortgage loan; or

(ii) Any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities if:

(A) The funds are loaned at rates not substantially below market rates; and

(B) The purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to third parties.

(2) *Agreements where there has not been a CRA contact*—(i)*General.* A covered agreement does not include any agreement entered into by an insured depository institution or affiliate of an insured depository institution with a person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the CRA.

(ii) *Examples of CRA contact.* The following are examples of CRA contacts. These examples are not exclusive and other actions by a person may also make the exemption in paragraph (b)(2)(i) of this section unavailable. If a person engages in any of the following actions and subsequently enters into an agreement with the insured depository institution or any affiliate of the institution, the agreement is not exempt under paragraph (b)(2)(i) of this section.

(A) *CRA contact with a Federal banking agency.* (*1*) The person submits a written comment to a Federal banking agency that discusses the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(*2*) The person provides oral testimony or comments to a Federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(B) *CRA contact with insured depository institution or affiliate.* (*1*) The person has a discussion with, or otherwise contacts, an insured

depository institution or any affiliate of the institution about providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the record of performance or future performance under the CRA of the institution or any CRA affiliate of the institution.

(2) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written comments to the institution that must be included in the institution's CRA public file.

(3) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning the CRA rating of the institution, or the CRA record of performance of the institution or any CRA affiliate of the institution.

(4) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning actions that should be taken to improve the CRA performance of the institution or any CRA affiliate of the institution.

(5) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning any obligation or responsibility that the institution or any CRA affiliate of the institution may have to meet the banking needs of its community and the discussion or contact occurs while the institution or any affiliate has an application for a deposit facility pending at a Federal banking agency or is undergoing a publicly announced CRA performance examination.

(iii) *Examples of actions that are not CRA contacts.* The following are examples of actions that are not CRA contacts. The actions described in these examples would not, by themselves, cause the exemption in paragraph (b)(2)(i) of this section to be unavailable. These examples are not exclusive.

(A) A person provides comments or testimony concerning an insured depository institution or affiliate to a Federal banking agency in response to a direct request by the agency for comments or testimony from that person. Direct requests for comments or testimony do not include a general invitation by a Federal banking agency for comments or testimony from the public in connection with a CRA performance evaluation of, or application for a deposit facility by, an insured depository institution or an application by a company to acquire an insured depository institution.

(B) A person makes a statement concerning an insured depository institution or affiliate at a widely attended conference or seminar regarding a general topic. A public or private meeting, public hearing, or other meeting regarding one or more specific institutions or affiliates or transactions involving an application for a deposit facility is not considered a widely attended conference or seminar.

(C) A person sends a similar fundraising letter to insured depository institutions and to other businesses in its community. The letter encourages all businesses in the community to meet their obligation to assist in making the local community a better place to live and work.

(D) A person sends a general offering circular to financial institutions offering to sell a portfolio of loans. An insured depository institution that receives the offering circular discusses with the person whether the loans are in the institution's local community. No reference to the CRA or the institution's CRA performance is made in the offering circular or in the discussions of the parties.

(c) *Fulfillment of the CRA—(1) General.* Fulfillment of the CRA means the list of factors that the Federal banking agencies have determined have a material impact on an agency's decision:

(i) To approve or disapprove an application for a deposit facility (as defined in section 803 of the CRA (12 U.S.C. 2902)); or

(ii) To assign a rating to an insured depository institution under section 807 of the CRA (12 U.S.C. 2906).

(2) *List of factors.* The list of factors referred to in paragraph (c)(1) of this section means the performance of any of the following activities by an insured depository institution or CRA affiliate that is a party to the agreement or that is an affiliate of a party to the agreement or by any person that is a party to the agreement:

(i) Providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution;

(ii) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in § 25.22, including loan purchases, loan commitments, and letters of credit;

(iii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in § 25.23;

(iv) Delivering retail banking services, as described in § 25.24(d);

(v) Providing community development services, as described in § 25.24(e);

(vi) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in § 25.25(c);

(vii) In the case of a small insured depository institution, any lending or other activity described in § 25.26(a); or

(viii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 25.27(f).

(d) *Agreements relating to activities of CRA affiliates.* An insured depository institution or affiliate that is a party to a covered agreement that concerns the performance of any activity of a CRA affiliate described in paragraph (c) of this section must notify each person that is a party to the agreement that the agreement concerns a CRA affiliate. The insured depository institution or affiliate must provide this notice prior to the time the agreement is entered into if the affiliate is a CRA affiliate at that time, or within a reasonable time after the affiliate becomes a CRA affiliate if the affiliate is not a CRA affiliate at the time the agreement is entered into.

(e) *Disclosure and reporting of certain existing agreements that become covered agreements.* An agreement that concerns the performance of any activity described in paragraph (c) of this section by an affiliate may become a covered agreement after it is entered into if the affiliate subsequently becomes a CRA affiliate. In that event, the disclosure and reporting obligations under §§ 35.4 and 35.5 begin on the date that the agreement becomes a covered agreement and do not apply to the period prior to that date.

**§ 35.3 Related agreements considered a single agreement.**

The following rules must be applied in determining whether a written contract, arrangement, or understanding is a covered agreement under § 35.2.

(a) *Contracts, arrangements, or understandings entered into by same*

*parties.* All written contracts, arrangements, or understandings to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement if the contracts, arrangements, or understandings:

(1) Are entered into with the same person;

(2) Were entered into within the same 12-month period; and

(3) Are each in fulfillment of the CRA.

(b) *Substantively related contracts.* All written contracts to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement, without regard to whether the other parties to the contracts are the same or whether each such contract is in fulfillment of the CRA, if the contracts were negotiated in a coordinated fashion and a person is a party to each contract.

**§ 35.4 Disclosure of covered agreements.**

(a) *Effective date.* This section applies only to covered agreements entered into after November 12, 1999.

(b) *Disclosure of covered agreements to the public—(1) Disclosure required.* (i) Each person and each insured depository institution or affiliate that enters into a covered agreement must make a complete copy of the covered agreement available to any individual or entity upon request.

(ii) In disclosing a covered agreement to the public under paragraph (b)(1)(i) of this section, a person, insured depository institution, or affiliate may withhold from disclosure only those portions of an agreement that the relevant supervisory agency determines are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*).

(2) *Duration of obligation.* The obligation to disclose a covered agreement terminates 12 months after the end of the term of the agreement.

(3) *Reasonable copy and mailing fees.* Each person and each insured depository institution or affiliate may charge an individual or entity that requests a copy of a covered agreement a reasonable fee not to exceed the cost of copying and mailing the agreement.

(4) *Use of CRA public file by insured depository institution.* An insured depository institution may fulfill its obligation under this paragraph (b) by placing a copy of the covered agreement in the insured depository institution's CRA public file and making the agreement available in accordance with the procedures set forth in § 35.43.

(c) *Disclosure of covered agreements to the relevant supervisory agency—*(1) *Disclosure by person.* Each person that is a party to a covered agreement must provide a complete copy of the agreement to the relevant supervisory agency within 30 days of receiving a request from the agency for the agreement. This obligation terminates 12 months after the end of the term of the covered agreement.

(2) *Disclosure by insured depository institution or affiliate—*(i) *Filing with the relevant supervisory agency.* Each insured depository institution or affiliate that is a party to a covered agreement must provide a copy of the agreement to each relevant supervisory agency within 30 days after the date the insured depository institution or affiliate enters into the agreement.

(ii) *Joint filings.* In the event that two or more insured depository institutions or affiliates are parties to a covered agreement, the insured depository institution(s) and affiliate(s) may jointly file a copy of the covered agreement with each relevant supervisory agency. Any joint filing must identify the insured depository institution(s) and affiliate(s) for whom the covered agreement is being filed.

(d) *Relevant supervisory agency.* For purposes of this section and § 35.5, the "relevant supervisory agency" for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

**§ 35.5 Annual reports.**

(a) *Effective date.* This section applies only to covered agreements entered into on or after May 12, 2000.

(b) *Annual report required.* Each person and each insured depository institution or affiliate that is a party to a covered agreement must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

(c) *Duration of reporting requirement—*(1) *General.* An annual report under this section must be filed with each relevant supervisory agency for:

(i) The fiscal year in which the parties enter into the covered agreement; and

(ii) Each fiscal year during the term of the covered agreement.

(2) *Exception for person that has not received any funds or resources.* A person is not required to file an annual report for a covered agreement for any fiscal year during the term of the agreement in which the person did not receive any funds or other resources under the agreement.

(d) *Annual reports filed by person—*(1) *General.* The annual report filed by a person under this section must include the following:

(i) The name and mailing address of the person filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The amount of funds or resources received under the covered agreement during the fiscal year; and

(iv) The information required by paragraphs (d)(2) and (d)(3) of this section concerning the use of funds received under the covered agreement.

(2) *Reporting for funds or resources allocated and used for a specific purpose.* For funds or other resources that the person received during the fiscal year under the covered agreement and allocated and used for a specific purpose during the fiscal year, the annual report must:

(i) Describe each specific purpose for which the funds or resources were used during the fiscal year; and (ii) State the amount of funds or resources used during the fiscal year for each specific purpose.

(3) *Funds or resources used for other purposes.* For all funds or resources that the person received during the fiscal year under the covered agreement and did not use for a specific purpose, the annual report must:

(i) State the amount received during the fiscal year; and

(ii) Provide a detailed, itemized list of how the funds or resources were used during the fiscal year, including the total amount used for:

(A) Compensation of officers, directors, and employees;

(B) Administrative expenses;

(C) Travel expenses;

(D) Entertainment expenses;

(E) Payment of consulting and professional fees; and

(F) Other expenses or uses.

(4) *Use of other reports.* The annual report filed by a person may consist of, or incorporate, a report prepared for any other purpose, such as an Internal Revenue Service form, a state tax form,

a report to members or shareholders, financial statements, or other report, so long as the annual report contains all of the information required by this paragraph (d).

(5) *Consolidated reports permitted.* A person that is a party to five or more covered agreements may file with each relevant supervisory agency a single consolidated annual report covering all the covered agreements. Any consolidated report must contain all the information required by this paragraph (d). The information required to be reported under paragraph (d)(1)(iii), (d)(2), and (d)(3) of this section may be reported on an aggregate basis for all covered agreements.

(e) *Annual report filed by insured depository institution or affiliate*—(1) *General.* The annual report filed by an insured depository institution or affiliate must include the following:

(i) The name and principal place of business of the insured depository institution or affiliate filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans provided by the insured depository institution or affiliate under the covered agreement to any other party to the agreement during the fiscal year;

(iv) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans received by the insured depository institution or affiliate under the covered agreement from any other party to the agreement during the fiscal year;

(v) A general description of the terms and conditions of any payments, fees, or loans reported under paragraphs (e)(1)(iii) and (iv) of this section, or, in the event such terms and conditions are set forth:

(A) In the covered agreement, a statement identifying the covered agreement and the date the agreement was filed with the relevant supervisory agency; or

(B) In a previous annual report filed by the insured depository institution or affiliate, a statement identifying the date the report was filed with the relevant supervisory agency; and

(vi) The aggregate amount and number of loans, aggregate amount and number of investments, and aggregate amount of services provided under the covered agreement to any individual or entity not a party to the agreement:

(A) By the insured depository institution or affiliate during its fiscal year; and

(B) By any other party to the agreement, unless such information is not known to the insured depository institution or affiliate filing the report or such information is or will be contained in the annual report filed by a person under paragraph (d) of this section.

(2) *Consolidated reports permitted*—(i) *Party to large number of agreements.* An insured depository institution or affiliate that is a party to five or more covered agreements may file a single consolidated annual report with each relevant supervisory agency covering all the covered agreements.

(ii) *Affiliated entities party to the same agreement.* An insured depository institution and its affiliates that are parties to the same covered agreement may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraph (e)(1)(iii), (iv), and (vi) of this section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing*—(1) *General.* Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a person.* (i) A person may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than five months following the end of the person's fiscal year:

(A) A copy of the person's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the person.

(ii) An insured depository institution or affiliate that receives an annual report from a person pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the person within 30 days.

**§ 35.6 Release of information under FOIA.**

The OCC will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*) and the OCC's Rules Regarding the Availability of Information (12 CFR part 4). A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

**§ 35.7 Compliance provisions.**

(a) *Willful failure to comply with disclosure and reporting obligations.* (1) If the OCC determines that a person has willfully failed to comply in a material way with §§ 35.4 or 35.5, the OCC will notify the person in writing of that determination and provide the person a period of 90 days (or such longer period as the OCC finds to be reasonable under the circumstances) to comply.

(2) If the person does not comply within the time period established by the OCC, the agreement shall thereafter be unenforceable by that person by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) The OCC may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a person by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the person's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, the OCC may take either or both of the following actions:

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, the OCC will provide written notice and an opportunity to present information to the OCC concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with the OCC under §§ 35.4 or 35.5 will not subject the reporting party to any penalty.

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(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing the OCC to enforce the provisions of any covered agreement.

**§ 35.8 Other definitions and rules of construction.**

(a) *Affiliate.* "Affiliate" means:

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 35.2, an "affiliate" includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time:

(i) The parties enter into the agreement; and

(ii) The person that is a party to the agreement makes a CRA contact, as described in § 35.2(b)(2).

(b) *Control.* "Control" is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A "CRA affiliate" of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination.

(d) *CRA public file.* For purposes of this part, "CRA public file" means the public file maintained by an insured depository institution and described in § 25.43.

(e) *Federal banking agency; appropriate Federal banking agency.* The terms "Federal banking agency" and "appropriate Federal banking agency" have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(f) *Fiscal year.* (1) The fiscal year for a person that does not have a fiscal year shall be the calendar year;

(2) Any person, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(g) *Insured depository institution.* "Insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(h) *Nongovernmental entity or person.* (1) *General.* A "nongovernmental entity or person" is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include:

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (h)(2)(i) through (iii) of this section.

(i) *Party.* The term "party" with respect to a covered agreement means each person and each insured depository institution or affiliate that entered into the agreement.

(j) *Person.* For purposes of this part, a "person" is any nongovernmental entity or person.

(k) *Term of agreement.* An agreement that does not by its terms establish a termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the appropriate Federal banking agency otherwise notifies each party in writing.

Dated: May 10, 2000.

**John D. Hawke, Jr.,**

*Comptroller of the Currency.*

**Federal Reserve System**

**12 CFR Chapter II**

**Authority and Issuance**

For the reasons set out in the joint preamble, Title 12, Chapter II, of the Code of Federal Regulations is proposed to be amended by adding a new part 207 to read as follows:

## PART 207—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS (REGULATION G)

Sec.

207.1 Purpose and scope of this part.
207.2 Definition of covered agreement.
207.3 Related agreements considered a single agreement.
207.4 Disclosure of covered agreements.
207.5 Annual reports.
207.6 Release of information under FOIA.
207.7 Compliance provisions.
207.8 Other definitions and rules of construction used in this part.

**Authority:** 12 U.S.C. 1831y.

**§ 207.1 Purpose and scope of this part.**

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, and affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) The provisions of this part are enforced by the Board with respect to state member banks, bank holding companies, and affiliates of bank holding companies, other than banks, savings associations and subsidiaries of banks and savings associations.

**§ 207.2 Definition of covered agreement.**

(a) *General definition.* A covered agreement is any contract, arrangement, or understanding (whether or not legally binding) that meets all of the following criteria—

(1) The agreement is in writing.

(2) The parties to the agreement include—

(i) An insured depository institution or an affiliate of an insured depository institution; and

(ii) A nongovernmental entity or person (referred to hereafter as a person).

(3) The agreement provides for the insured depository institution or any affiliate to—

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA), as defined in paragraph (c) of this section.

(b) *Agreements that are not covered agreements*—(1) *Certain loans.* A covered agreement does not include—

(i) Any individual mortgage loan; or

(ii) Any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities if—

(A) The funds are loaned at rates not substantially below market rates; and

(B) The purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to third parties.

(2) *Agreements where there has not been a CRA contact.* (i) *General.* A covered agreement does not include any agreement entered into by an insured depository institution or affiliate of an insured depository institution with a person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the CRA.

(ii) *Examples of CRA contact.* The following are examples of CRA contacts. These examples are not exclusive and other actions by a person may also make the exemption in paragraph (b)(2)(i) of this section unavailable. If a person engages in any of the following actions and subsequently enters into an agreement with the insured depository institution or any affiliate of the institution, the agreement is not exempt under paragraph (b)(2)(i) of this section.

(A) *CRA contact with a Federal banking agency.* (*1*) The person submits a written comment to a Federal banking agency that discusses the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(*2*) The person provides oral testimony or comments to a Federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(B) *CRA contact with insured depository institution or affiliate.* (*1*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the record of performance or future performance under the CRA of the institution or any CRA affiliate of the institution.

(*2*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written comments to the institution that must be included in the institution's CRA public file.

(*3*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning the CRA rating of the institution, or the CRA record of performance of the institution or any CRA affiliate of the institution.

(*4*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning actions that should be taken to improve the CRA performance of the institution or any CRA affiliate of the institution.

(*5*) The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning any obligation or responsibility that the institution or any CRA affiliate of the institution may have to meet the banking needs of its community and the discussion or contact occurs while the institution or any affiliate has an application for a deposit facility pending at a Federal banking agency or is undergoing a publicly announced CRA performance examination.

(iii) *Examples of actions that are not CRA contacts.* The following are examples of actions that are not CRA contacts. The actions described in these examples would not, by themselves, cause the exemption in paragraph (b)(2)(i) of this section to be unavailable. These examples are not exclusive.

(A) A person provides comments or testimony concerning an insured depository institution or affiliate to a Federal banking agency in response to a direct request by the agency for comments or testimony from that person. Direct requests for comments or testimony do not include a general invitation by a Federal banking agency for comments or testimony from the public in connection with a CRA performance evaluation of, or application for a deposit facility by, an insured depository institution or an application by a company to acquire an insured depository institution.

(B) A person makes a statement concerning an insured depository institution or affiliate at a widely attended conference or seminar regarding a general topic. A public or private meeting, public hearing, or other meeting regarding one or more specific institutions or affiliates or transactions involving an application for a deposit facility is not considered a widely attended conference or seminar.

(C) A person sends a similar fundraising letter to insured depository institutions and to other businesses in its community. The letter encourages all businesses in the community to meet their obligation to assist in making the local community a better place to live and work.

(D) A person sends a general offering circular to financial institutions offering to sell a portfolio of loans. An insured depository institution that receives the offering circular discusses with the person whether the loans are in the institution's local community. No reference to the CRA or the institution's CRA performance is made in the offering circular or in the discussions of the parties.

(c) *Fulfillment of the CRA*—(1) *General.* Fulfillment of the CRA means the list of factors that the Federal banking agencies have determined have a material impact on an agency's decision—

(i) To approve or disapprove an application for a deposit facility (as defined in section 803 of the CRA (12 U.S.C. 2902)); or

(ii) To assign a rating to an insured depository institution under section 807 of the CRA (12 U.S.C. 2906).

(2) *List of factors.* The list of factors referred to in paragraph (c)(1) of this section means the performance of any of the following activities by an insured depository institution or CRA affiliate that is a party to the agreement or that is an affiliate of a party to the agreement or by any person that is a party to the agreement—

(i) Providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution;

(ii) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in § 228.22 of Regulation BB (12 CFR 228.22), including loan purchases, loan commitments, and letters of credit;

(iii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in § 228.23 of Regulation BB (12 CFR 228.23);

(iv) Delivering retail banking services, as described in § 228.24(d) of Regulation BB (12 CFR 228.24(d));

(v) Providing community development services, as described in

§ 228.24(e) of Regulation BB (12 CFR 228.24(e));

(vi) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in § 228.25(c) of Regulation BB (12 CFR 228.25(c));

(vii) In the case of a small insured depository institution, any lending or other activity described in § 228.26(a) of Regulation BB (12 CFR 228.26(a)); or

(viii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 228.27(f) of Regulation BB (12 CFR 228.27(f)).

(d) *Agreements relating to activities of CRA affiliates.* An insured depository institution or affiliate that is a party to a covered agreement that concerns the performance of any activity of a CRA affiliate described in paragraph (c) of this section must notify each person that is a party to the agreement that the agreement concerns a CRA affiliate. The insured depository institution or affiliate must provide this notice prior to the time the agreement is entered into if the affiliate is a CRA affiliate at that time, or within a reasonable time after the affiliate becomes a CRA affiliate if the affiliate is not a CRA affiliate at the time the agreement is entered into.

(e) *Disclosure and reporting of certain existing agreements that become covered agreements.* An agreement that concerns the performance of any activity described in paragraph (c) of this section by an affiliate may become a covered agreement after it is entered into if the affiliate subsequently becomes a CRA affiliate. In that event, the disclosure and reporting obligations under §§ 207.4 and 207.5 begin on the date that the agreement becomes a covered agreement and do not apply to the period prior to that date.

### § 207.3 Related agreements considered a single agreement.

The following rules must be applied in determining whether a written contract, arrangement, or understanding is a covered agreement under § 207.2.

(a) *Contracts, arrangements, or understandings entered into by same parties.* All written contracts, arrangements, or understandings to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement if the contracts, arrangements, or understandings—

(1) Are entered into with the same person;

(2) Were entered into within the same 12-month period; and

(3) Are each in fulfillment of the CRA.

(b) *Substantively related contracts.* All written contracts to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement, without regard to whether the other parties to the contracts are the same or whether each such contract is in fulfillment of the CRA, if the contracts were negotiated in a coordinated fashion and a person is a party to each contract.

### § 207.4 Disclosure of covered agreements.

(a) *Effective date.* This section applies only to covered agreements entered into after November 12, 1999.

(b) *Disclosure of covered agreements to the public*—(1) *Disclosure required.* (i) Each person and each insured depository institution or affiliate that enters into a covered agreement must make a complete copy of the covered agreement available to any individual or entity upon request.

(ii) In disclosing a covered agreement to the public under paragraph (b)(1)(i) of this section, a person, insured depository institution, or affiliate may withhold from disclosure only those portions of an agreement that the relevant supervisory agency determines are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*).

(2) *Duration of obligation.* The obligation to disclose a covered agreement terminates 12 months after the end of the term of the agreement.

(3) *Reasonable copy and mailing fees.* Each person and each insured depository institution or affiliate may charge an individual or entity that requests a copy of a covered agreement a reasonable fee not to exceed the cost of copying and mailing the agreement.

(4) *Use of CRA public file by insured depository institution.* An insured depository institution may fulfill its obligation under this paragraph (b) by placing a copy of the covered agreement in the insured depository institution's CRA public file and making the agreement available in accordance with the procedures set forth in section § 228.43 of Regulation BB (12 CFR 228.43).

(c) *Disclosure of covered agreements to the relevant supervisory agency*—(1) *Disclosure by person.* Each person that is a party to a covered agreement must provide a complete copy of the agreement to the relevant supervisory agency within 30 days of receiving a request from the agency for the agreement. This obligation terminates 12 months after the end of the term of the covered agreement.

(2) *Disclosure by insured depository institution or affiliate.* (i) *Filing with the relevant supervisory agency.* Each insured depository institution or affiliate that is a party to a covered agreement must provide a copy of the agreement to each relevant supervisory agency within 30 days after the date the insured depository institution or affiliate enters into the agreement.

(ii) *Joint filings.* In the event that two or more insured depository institutions or affiliates are parties to a covered agreement, the insured depository institution(s) and affiliate(s) may jointly file a copy of the covered agreement with each relevant supervisory agency. Any joint filing must identify the insured depository institution(s) and affiliate(s) for whom the covered agreement is being filed.

(d) *Relevant supervisory agency.* For purposes of this section and § 207.5, the "relevant supervisory agency" for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

### § 207.5 Annual reports.

(a) *Effective date.* This section applies only to covered agreements entered into on or after May 12, 2000.

(b) *Annual report required.* Each person and each insured depository institution or affiliate that is a party to a covered agreement must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

(c) *Duration of reporting requirement*—(1) *General.* An annual report under this section must be filed with each relevant supervisory agency for—

(i) The fiscal year in which the parties enter into the covered agreement; and

(ii) Each fiscal year during the term of the covered agreement.

(2) *Exception for person that has not received any funds or resources.* A person is not required to file an annual report for a covered agreement for any

fiscal year during the term of the agreement in which the person did not receive any funds or other resources under the agreement.

(d) *Annual reports filed by person*—(1) *General.* The annual report filed by a person under this section must include the following—

(i) The name and mailing address of the person filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The amount of funds or resources received under the covered agreement during the fiscal year; and

(iv) The information required by paragraphs (d)(2) and (d)(3) of this section concerning the use of funds received under the covered agreement.

(2) *Reporting for funds or resources allocated and used for a specific purpose.* For funds or other resources that the person received during the fiscal year under the covered agreement and allocated and used for a specific purpose during the fiscal year, the annual report must—

(i) Describe each specific purpose for which the funds or resources were used during the fiscal year; and

(ii) State the amount of funds or resources used during the fiscal year for each specific purpose.

(3) *Funds or resources used for other purposes.* For all funds or resources that the person received during the fiscal year under the covered agreement and did not use for a specific purpose, the annual report must—

(i) State the amount received during the fiscal year; and

(ii) Provide a detailed, itemized list of how the funds or resources were used during the fiscal year, including the total amount used for—

(A) Compensation of officers, directors, and employees;

(B) Administrative expenses;

(C) Travel expenses;

(D) Entertainment expenses;

(E) Payment of consulting and professional fees; and

(F) Other expenses or uses.

(4) *Use of other reports.* The annual report filed by a person may consist of, or incorporate, a report prepared for any other purpose, such as an Internal Revenue Service form, a state tax form, a report to members or shareholders, financial statements, or other report, so long as the annual report contains all of the information required by this paragraph (d).

(5) *Consolidated reports permitted.* A person that is a party to five or more covered agreements may file with each relevant supervisory agency a single consolidated annual report covering all the covered agreements. Any consolidated report must contain all the information required by this paragraph (d). The information required to be reported under paragraph (d)(1)(iii), (d)(2), and (d)(3) of this section may be reported on an aggregate basis for all covered agreements.

(e) *Annual report filed by insured depository institution or affiliate*—(1) *General.* The annual report filed by an insured depository institution or affiliate must include the following—

(i) The name and principal place of business of the insured depository institution or affiliate filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans provided by the insured depository institution or affiliate under the covered agreement to any other party to the agreement during the fiscal year;

(iv) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans received by the insured depository institution or affiliate under the covered agreement from any other party to the agreement during the fiscal year;

(v) A general description of the terms and conditions of any payments, fees, or loans reported under paragraphs (e)(1)(iii) and (iv) of this section, or, in the event such terms and conditions are set forth—

(A) In the covered agreement, a statement identifying the covered agreement and the date the agreement was filed with the relevant supervisory agency; or

(B) In a previous annual report filed by the insured depository institution or affiliate, a statement identifying the date the report was filed with the relevant supervisory agency; and

(vi) The aggregate amount and number of loans, aggregate amount and number of investments, and aggregate amount of services provided under the covered agreement to any individual or entity not a party to the agreement—

(A) By the insured depository institution or affiliate during its fiscal year; and

(B) By any other party to the agreement, unless such information is not known to the insured depository institution or affiliate filing the report or such information is or will be contained in the annual report filed by a person under paragraph (d) of this section.

(2) *Consolidated reports permitted.* (i) *Party to large number of agreements.* An insured depository institution or affiliate that is a party to five or more covered agreements may file a single consolidated annual report with each relevant supervisory agency covering all the covered agreements.

(ii) *Affiliated entities party to the same agreement.* An insured depository institution and its affiliates that are parties to the same covered agreement may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraphs (e)(1)(iii), (iv), and (vi) of this section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing*—(1) *General.* Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a person.* (i) A person may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than five months following the end of the person's fiscal year—

(A) A copy of the person's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the person.

(ii) An insured depository institution or affiliate that receives an annual report from a person pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the person within 30 days.

**§ 207.6 Release of information under FOIA.**

The Board will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*) and the Board's Rules Regarding the Availability of Information (12 CFR part 261). A party to a covered agreement may request

confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

**§ 207.7 Compliance provisions.**

(a) *Willful failure to comply with disclosure and reporting obligations.* (1) If the Board determines that a person has willfully failed to comply in a material way with §§ 207.4 or 207.5, the Board will notify the person in writing of that determination and provide the person a period of 90 days (or such longer period as the Board finds to be reasonable under the circumstances) to comply.

(2) If the person does not comply within the time period established by the Board, the agreement shall thereafter be unenforceable by that person by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) The Board may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a person by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the person's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, the Board may take either or both of the following actions—

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, the Board will provide written notice and an opportunity to present information to the Board concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with the Board under §§ 207.4 or 207.5 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing the Board to enforce the provisions of any covered agreement.

**§ 207.8 Other definitions and rules of construction used in this part.**

(a) *Affiliate.* "Affiliate" means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 207.2, an "affiliate" includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The person that is a party to the agreement makes a CRA contact, as described in § 207.2(b)(2).

(b) *Control.* "Control" is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A "CRA affiliate" of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination.

(d) *CRA public file.* For purposes of this part, "CRA public file" means the public file maintained by an insured depository institution and described in § 228.43 of Regulation BB (12 CFR 228.43).

(e) *Federal banking agency; appropriate Federal banking agency.* The terms "Federal banking agency" and "appropriate Federal banking agency" have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(f) *Fiscal year.* (1) The fiscal year for a person that does not have a fiscal year shall be the calendar year;

(2) Any person, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(g) *Insured depository institution.* "Insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(h) *Nongovernmental entity or person*—(1) *General.* A "nongovernmental entity or person" is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include—

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (h)(2)(i) through (iii) of this section.

(i) *Party.* The term "party" with respect to a covered agreement means each person and each insured depository institution or affiliate that entered into the agreement.

(j) *Person.* For purposes of this part, a "person" is any nongovernmental entity or person.

(k) *Term of agreement.* An agreement that does not by its terms establish a termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the appropriate Federal banking agency otherwise notifies each party in writing.

By order of the Board of Governors of the Federal Reserve System, May 10, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board*

## Federal Deposit Insurance Corporation

**12 CFR Chapter III**

### Authority and Issuance

For the reasons set out in the joint preamble, Title 12, Chapter III, of the Code of Federal Regulations is proposed to be amended by adding a new part 346 to read as follows:

## PART 346—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

Sec.

346.1 Purpose and scope of this part.
346.2 Definition of covered agreement.
346.3 Related agreements considered a single agreement.
346.4 Disclosure of covered agreements.
346.5 Annual reports.
346.6 Release of information under FOIA.
346.7 Compliance provisions.

346.8 Other definitions and rules of construction used in this part.

**Authority:** 12 U.S.C. 1831y.

**§ 346.1 Purpose and scope of this part.**

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act, Pub. L. 106–102, section 711, 113 Stat. 1465 (1999) (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, and affiliate of an insured depository institution that enters into a covered agreement to:

(1) Make the covered agreement available to the public and the appropriate federal banking agency; and

(2) File an annual report with the appropriate federal banking agency concerning the covered agreement.

(b) The provisions of this part are enforced by the FDIC with respect to a state nonmember insured bank or a foreign bank having an insured branch.

**§ 346.2 Definition of covered agreement.**

(a) *General definition.* A covered agreement is any contract, arrangement, or understanding (whether or not legally binding) that meets all of the following criteria:

(1) The agreement is in writing.

(2) The parties to the agreement include:

(i) An insured depository institution or an affiliate of an insured depository institution; and

(ii) A nongovernmental entity or person (referred to hereafter as a person).

(3) The agreement provides for the insured depository institution or any affiliate to:

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA), as defined in paragraph (c) of this section.

(b) *Agreements that are not covered agreements*—(1) *Certain loans.* A covered agreement does not include:

(i) Any individual mortgage loan; or

(ii) Any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities if:

(A) The funds are loaned at rates not substantially below market rates; and

(B) The purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to third parties.

(2) *Agreements where there has not been a CRA contact.* (i) *General.* A covered agreement does not include any agreement entered into by an insured depository institution or affiliate of an insured depository institution with a person who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the CRA.

(ii) Examples of CRA contact. The following are examples of CRA contacts. These examples are not exclusive and other actions by a person may also make the exemption in paragraph (b)(2)(i) of this section unavailable. If a person engages in any of the following actions and subsequently enters into an agreement with the insured depository institution or any affiliate of the institution, the agreement is not exempt under paragraph (b)(2)(i) of this section.

(A) *CRA contact with a federal banking agency. (1)* The person submits a written comment to a federal banking agency that discusses the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

*(2)* The person provides oral testimony or comments to a federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(B) *CRA contact with insured depository institution or affiliate. (1)* The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written or oral comments or testimony to any federal banking agency concerning the record of performance or future performance under the CRA of the institution or any CRA affiliate of the institution.

*(2)* The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written comments to the institution that must be included in the institution's CRA public file.

*(3)* The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning the CRA rating of the institution, or the CRA record of performance of the institution or any CRA affiliate of the institution.

*(4)* The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning actions that should be taken to improve the CRA performance of the institution or any CRA affiliate of the institution.

*(5)* The person has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning any obligation or responsibility that the institution or any CRA affiliate of the institution may have to meet the banking needs of its community and the discussion or contact occurs while the institution or any affiliate has an application for a deposit facility pending at a federal banking agency or is undergoing a publicly announced CRA performance examination.

(iii) *Examples of actions that are not CRA contacts.* The following are examples of actions that are not CRA contacts. The actions described in these examples would not, by themselves, cause the exemption in paragraph (b)(2)(i) of this section to be unavailable. These examples are not exclusive.

(A) A person provides comments or testimony concerning an insured depository institution or affiliate to a federal banking agency in response to a direct request by the agency for comments or testimony from that person. Direct requests for comments or testimony do not include a general invitation by a federal banking agency for comments or testimony from the public in connection with a CRA performance evaluation of, or application for a deposit facility by, an insured depository institution or an application by a company to acquire an insured depository institution.

(B) A person makes a statement concerning an insured depository institution or affiliate at a widely attended conference or seminar regarding a general topic. A public or private meeting, public hearing, or other meeting regarding one or more specific institutions or affiliates or transactions involving an application for a deposit facility is not considered a widely attended conference or seminar.

(C) A person sends a similar fundraising letter to insured depository institutions and to other businesses in its community. The letter encourages all businesses in the community to meet their obligation to assist in making the local community a better place to live and work.

(D) A person sends a general offering circular to financial institutions offering to sell a portfolio of loans. An insured depository institution that receives the offering circular discusses with the

person whether the loans are in the institution's local community. No reference to the CRA or the institution's CRA performance is made in the offering circular or in the discussions of the parties.

(c) *Fulfillment of the CRA*—(1) *General.* Fulfillment of the CRA means the list of factors that the federal banking agencies have determined have a material impact on an agency's decision:

(i) To approve or disapprove an application for a deposit facility (as defined in section 803 of the CRA (12 U.S.C. 2902)); or

(ii) To assign a rating to an insured depository institution under section 807 of the CRA (12 U.S.C. 2906).

(2) *List of factors.* The list of factors referred to in paragraph (c)(1) of this section means the performance of any of the following activities by an insured depository institution or CRA affiliate that is a party to the agreement or that is an affiliate of a party to the agreement or by any person that is a party to the agreement:

(i) Providing or refraining from providing written or oral comments or testimony to any federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution;

(ii) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in 12 CFR 345.22, including loan purchases, loan commitments, and letters of credit;

(iii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in 12 CFR 345.23;

(iv) Delivering retail banking services, as described in 12 CFR 345.24(d);

(v) Providing community development services, as described in 12 CFR 345.24(e);

(vi) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in 12 CFR 345.25(c);

(vii) In the case of a small insured depository institution, any lending or other activity described in 12 CFR 345.26(a); or

(viii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in 12 CFR 345.27(f).

(d) *Agreements relating to activities of CRA affiliates.* An insured depository institution or affiliate that is a party to a covered agreement that concerns the performance of any activity of a CRA affiliate described in paragraph (c) of this section must notify each person that is a party to the agreement that the agreement concerns a CRA affiliate. The insured depository institution or affiliate must provide this notice prior to the time the agreement is entered into if the affiliate is a CRA affiliate at that time, or within a reasonable time after the affiliate becomes a CRA affiliate if the affiliate is not a CRA affiliate at the time the agreement is entered into.

(e) *Disclosure and reporting of certain existing agreements that become covered agreements.* An agreement that concerns the performance of any activity described in paragraph (c) of this section by an affiliate may become a covered agreement after it is entered into if the affiliate subsequently becomes a CRA affiliate. In that event, the disclosure and reporting obligations under §§ 346.4 and 346.5 begin on the date that the agreement becomes a covered agreement and do not apply to the period prior to that date.

### § 346.3 Related agreements considered a single agreement.

The following rules must be applied in determining whether a written contract, arrangement, or understanding is a covered agreement under § 346.2.

(a) *Contracts, arrangements, or understandings entered into by same parties.* All written contracts, arrangements, or understandings to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement if the contracts, arrangements, or understandings:

(1) Are entered into with the same person;

(2) Were entered into within the same 12-month period; and

(3) Are each in fulfillment of the CRA.

(b) *Substantively related contracts.* All written contracts to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement, without regard to whether the other parties to the contracts are the same or whether each such contract is in fulfillment of the CRA, if the contracts were negotiated in a coordinated fashion and a person is a party to each contract.

### § 346.4 Disclosure of covered agreements.

(a) *Effective date.* This section applies only to covered agreements entered into after November 12, 1999.

(b) *Disclosure of covered agreements to the public*—(1) *Disclosure required.* (i) Each person and each insured depository institution or affiliate that enters into a covered agreement must make a complete copy of the covered agreement available to any individual or entity upon request.

(ii) In disclosing a covered agreement to the public under paragraph (b)(1)(i) of this section, a person, insured depository institution, or affiliate may withhold from disclosure only those portions of an agreement that the relevant supervisory agency determines are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*).

(2) *Duration of obligation.* The obligation to disclose a covered agreement terminates 12 months after the end of the term of the agreement.

(3) *Reasonable copy and mailing fees.* Each person and each insured depository institution or affiliate may charge an individual or entity that requests a copy of a covered agreement a reasonable fee not to exceed the cost of copying and mailing the agreement.

(4) *Use of CRA public file by insured depository institution.* An insured depository institution may fulfill its obligation under this paragraph (b) by placing a copy of the covered agreement in the insured depository institution's CRA public file and making the agreement available in accordance with the procedures set forth in 12 CFR 345.43.

(c) *Disclosure of covered agreements to the relevant supervisory agency*—(1) *Disclosure by person.* Each person that is a party to a covered agreement must provide a complete copy of the agreement to the relevant supervisory agency within 30 days of receiving a request from the agency for the agreement. This obligation terminates 12 months after the end of the term of the covered agreement.

(2) *Disclosure by insured depository institution or affiliate.* (i) *Filing with the relevant supervisory agency.* Each insured depository institution or affiliate that is a party to a covered agreement must provide a copy of the agreement to each relevant supervisory agency within 30 days after the date the insured depository institution or affiliate enters into the agreement.

(ii) *Joint filings.* In the event that two or more insured depository institutions or affiliates are parties to a covered agreement, the insured depository institution(s) and affiliate(s) may jointly

file a copy of the covered agreement with each relevant supervisory agency. Any joint filing must identify the insured depository institution(s) and affiliate(s) for whom the covered agreement is being filed.

(d) *Relevant supervisory agency.* For purposes of this section and § 346.5, the "relevant supervisory agency" for a covered agreement means the appropriate federal banking agency for:

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

**§ 346.5 Annual reports.**

(a) *Effective date.* This section applies only to covered agreements entered into on or after May 12, 2000.

(b) *Annual report required.* Each person and each insured depository institution or affiliate that is a party to a covered agreement must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

(c) *Duration of reporting requirement*—(1) *General.* An annual report under this section must be filed with each relevant supervisory agency for:

(i) The fiscal year in which the parties enter into the covered agreement; and

(ii) Each fiscal year during the term of the covered agreement.

(2) *Exception for person that has not received any funds or resources.* A person is not required to file an annual report for a covered agreement for any fiscal year during the term of the agreement in which the person did not receive any funds or other resources under the agreement.

(d) *Annual reports filed by person*—(1) *General.* The annual report filed by a person under this section must include the following:

(i) The name and mailing address of the person filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The amount of funds or resources received under the covered agreement during the fiscal year; and

(iv) The information required by paragraphs (d)(2) and (d)(3) of this section concerning the use of funds received under the covered agreement.

(2) *Reporting for funds or resources allocated and used for a specific purpose.* For funds or other resources that the person received during the fiscal year under the covered agreement and allocated and used for a specific purpose during the fiscal year, the annual report must:

(i) Describe each specific purpose for which the funds or resources were used during the fiscal year; and

(ii) State the amount of funds or resources used during the fiscal year for each specific purpose.

(3) *Funds or resources used for other purposes.* For all funds or resources that the person received during the fiscal year under the covered agreement and did not use for a specific purpose, the annual report must:

(i) State the amount received during the fiscal year; and

(ii) Provide a detailed, itemized list of how the funds or resources were used during the fiscal year, including the total amount used for:

(A) Compensation of officers, directors, and employees;

(B) Administrative expenses;

(C) Travel expenses;

(D) Entertainment expenses;

(E) Payment of consulting and professional fees; and

(F) Other expenses or uses.

(4) *Use of other reports.* The annual report filed by a person may consist of, or incorporate, a report prepared for any other purpose, such as an Internal Revenue Service form, a state tax form, a report to members or shareholders, financial statements, or other report, so long as the annual report contains all of the information required by this paragraph (d).

(5) *Consolidated reports permitted.* A person that is a party to five or more covered agreements may file with each relevant supervisory agency a single consolidated annual report covering all the covered agreements. Any consolidated report must contain all the information required by this paragraph (d). The information required to be reported under paragraphs (d)(1)(iii), (d)(2), and (d)(3) of this section may be reported on an aggregate basis for all covered agreements.

(e) *Annual report filed by insured depository institution or affiliate*—(1) *General.* The annual report filed by an insured depository institution or affiliate must include the following:

(i) The name and principal place of business of the insured depository institution or affiliate filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans provided by the insured depository institution or affiliate under the covered agreement to any other party to the agreement during the fiscal year;

(iv) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans received by the insured depository institution or affiliate under the covered agreement from any other party to the agreement during the fiscal year;

(v) A general description of the terms and conditions of any payments, fees, or loans reported under paragraphs (e)(1)(iii) and (iv) of this section, or, in the event such terms and conditions are set forth:

(A) In the covered agreement, a statement identifying the covered agreement and the date the agreement was filed with the relevant supervisory agency; or

(B) In a previous annual report filed by the insured depository institution or affiliate, a statement identifying the date the report was filed with the relevant supervisory agency; and

(vi) The aggregate amount and number of loans, aggregate amount and number of investments, and aggregate amount of services provided under the covered agreement to any individual or entity not a party to the agreement:

(A) By the insured depository institution or affiliate during its fiscal year; and

(B) By any other party to the agreement, unless such information is not known to the insured depository institution or affiliate filing the report or such information is or will be contained in the annual report filed by a person under paragraph (d) of this section.

(2) *Consolidated reports permitted.* (i) *Party to large number of agreements.* An insured depository institution or affiliate that is a party to five or more covered agreements may file a single consolidated annual report with each relevant supervisory agency covering all the covered agreements.

(ii) *Affiliated entities party to the same agreement.* An insured depository institution and its affiliates that are parties to the same covered agreement may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraphs (e)(1)(iii), (iv), and (vi) of this section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing*—(1) *General.* Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a person.* (i) A person may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than five months following the end of the person's fiscal year:

(A) A copy of the person's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the person.

(ii) An insured depository institution or affiliate that receives an annual report from a person pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the person within 30 days.

### § 346.6 Release of information under FOIA.

The FDIC will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*) and the FDIC's rules regarding Disclosure of Information (12 CFR part 309). A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

### § 346.7 Compliance provisions.

(a) *Willful failure to comply with disclosure and reporting obligations.* (1) If the FDIC determines that a person has willfully failed to comply in a material way with §§ 346.4 or 346.5, the FDIC will notify the person in writing of that determination and provide the person a period of 90 days (or such longer period as the FDIC finds to be reasonable under the circumstances) to comply.

(2) If the person does not comply within the time period established by the FDIC, the agreement shall thereafter be unenforceable by that person by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) The FDIC may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a person by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the person's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, the FDIC may take either or both of the following actions:

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, the FDIC will provide written notice and an opportunity to present information to the FDIC concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or de minimis errors in annual reports or other documents filed with the FDIC under §§ 346.4 or 346.5 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing the FDIC to enforce the provisions of any covered agreement.

### § 346.8 Other definitions and rules of construction used in this part.

(a) *Affiliate.* "Affiliate" means:

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 346.2, an "affiliate" includes any company that would be under common control or merged with another company on consummation of any transaction pending before a federal banking agency at the time:

(i) The parties enter into the agreement; and

(ii) The person that is a party to the agreement makes a CRA contact, as described in § 346.2(b)(2).

(b) *Control.* "Control" is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A "CRA affiliate" of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination.

(d) *CRA public file.* For purposes of this part, "CRA public file" means the public file maintained by an insured depository institution and described in 12 CFR 345.43.

(e) *Federal banking agency; appropriate federal banking agency.* The terms "federal banking agency" and "appropriate federal banking agency" have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(f) *Fiscal year.* (1) The fiscal year for a person that does not have a fiscal year shall be the calendar year;

(2) Any person, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(g) *Insured depository institution.* "Insured depository institution" has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(h) *Nongovernmental entity or person*—(1) *General.* A "nongovernmental entity or person" is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include:

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director,

employee, or representative) of an entity listed in paragraphs (h)(2)(i) through (iii) of this section.

(i) *Party.* The term "party" with respect to a covered agreement means each person and each insured depository institution or affiliate that entered into the agreement.

(j) *Person.* For purposes of this part, a "person" is any nongovernmental entity or person.

(k) *Term of agreement.* An agreement that does not by its terms establish a termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the appropriate federal banking agency otherwise notifies each party in writing.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 10th day of May, 2000.

**Robert E. Feldman,**

*Executive Secretary.*

**Department of the Treasury**

**Office of Thrift Supervision**

**12 CFR Chapter V**

**Authority and Issuance**

For the reasons set out in the joint preamble, OTS proposes to amend Title 12, Chapter V, of the Code of Federal Regulations by adding a new part 533 to read as follows:

## PART 533—DISCLOSURE AND REPORTING OF CRA-RELATED AGREEMENTS

Sec.

533.1 Purpose and scope of this part.
533.2 Definition of covered agreement.
533.3 Related agreements considered a single agreement.
533.4 Disclosure of covered agreements.
533.5 Annual reports.
533.6 Release of information under FOIA.
533.7 Compliance provisions.
533.8 Other definitions and rules of construction used in this part.

**Authority:** 12 U.S.C. 1462a, 1463, 1464, 1467a, and 1831y.

### § 533.1 Purpose and scope of this part.

(a) *General.* This part implements section 711 of the Gramm-Leach-Bliley Act (12 U.S.C. 1831y). That section requires any nongovernmental entity or person, insured depository institution, and affiliate of an insured depository institution that enters into a covered agreement to—

(1) Make the covered agreement available to the public and the appropriate Federal banking agency; and

(2) File an annual report with the appropriate Federal banking agency concerning the covered agreement.

(b) The provisions of this part are enforced by OTS with respect to savings associations, savings and loan holding companies, and companies that are controlled by savings associations or savings and loan holding companies.

### § 533.2 Definition of covered agreement.

(a) *General definition.* A covered agreement is any contract, arrangement, or understanding (whether or not legally binding) that meets all of the following criteria—

(1) The agreement is in writing.

(2) The parties to the agreement include—

(i) An insured depository institution or an affiliate of an insured depository institution; and

(ii) A nongovernmental entity or person (referred to as a NGEP).

(3) The agreement provides for the insured depository institution or any affiliate to—

(i) Provide to one or more individuals or entities (whether or not parties to the agreement) cash payments, grants, or other consideration (except loans) that have an aggregate value of more than $10,000 in any calendar year; or

(ii) Make to one or more individuals or entities (whether or not parties to the agreement) loans that have an aggregate principal amount of more than $50,000 in any calendar year.

(4) The agreement is made pursuant to, or in connection with, the fulfillment of the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA), as defined in paragraph (c) of this section.

(b) *Agreements that are not covered agreements.* (1) *Certain loans.* A covered agreement does not include—

(i) Any individual mortgage loan; or

(ii) Any specific contract or commitment for a loan or extension of credit to individuals, businesses, farms, or other entities if—

(A) The funds are loaned at rates not substantially below market rates; and

(B) The purpose of the loan or extension of credit does not include any re-lending of the borrowed funds to third parties.

(2) *Agreements where there has not been a CRA contact.* (i) *General.* A covered agreement does not include any agreement entered into by an insured depository institution or affiliate of an insured depository institution with a NGEP who has not commented on, testified about, or discussed with the institution, or otherwise contacted the institution, concerning the CRA.

(ii) *Examples of CRA contact.* The following are examples of CRA contacts. These examples are not exclusive and other actions by a NGEP may also make the exemption in paragraph (b)(2)(i) of this section unavailable. If a NGEP engages in any of the following actions and subsequently enters into an agreement with the insured depository institution or any affiliate of the institution, the agreement is not exempt under paragraph (b)(2)(i) of this section.

(A) *CRA contact with a Federal banking agency.* (*1*) The NGEP submits a written comment to a Federal banking agency that discusses the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(*2*) The NGEP provides oral testimony or comments to a Federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or any CRA affiliate of the institution.

(B) *CRA contact with insured depository institution or affiliate.* (*1*) The NGEP has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written or oral comments or testimony to any Federal banking agency concerning the record of performance or future performance under the CRA of the institution or any CRA affiliate of the institution.

(*2*) The NGEP has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution about providing (or refraining from providing) written comments to the institution that must be included in the institution's CRA public file.

(*3*) The NGEP has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning the CRA rating of the institution, or the CRA record of performance of the institution or any CRA affiliate of the institution.

(*4*) The NGEP has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning actions that should be taken to improve the CRA performance of the institution or any CRA affiliate of the institution.

(*5*) The NGEP has a discussion with, or otherwise contacts, an insured depository institution or any affiliate of the institution concerning any obligation or responsibility that the institution or any CRA affiliate of the institution may have to meet the banking needs of its community and the discussion or contact occurs while the

institution or any affiliate has an application for a deposit facility pending at a Federal banking agency or is undergoing a publicly announced CRA performance examination.

(iii) *Examples of actions that are not CRA contacts.* The following are examples of actions that are not CRA contacts. The actions described in these examples would not, by themselves, cause the exemption in paragraph (b)(2)(i) of this section to be unavailable. These examples are not exclusive.

(A) A NGEP provides comments or testimony concerning an insured depository institution or affiliate to a Federal banking agency in response to a direct request by the agency for comments or testimony from that NGEP. Direct requests for comments or testimony do not include a general invitation by a Federal banking agency for comments or testimony from the public in connection with a CRA performance evaluation of, or application for a deposit facility by, an insured depository institution or an application by a company to acquire an insured depository institution.

(B) A NGEP makes a statement concerning an insured depository institution or affiliate at a widely attended conference or seminar regarding a general topic. A public or private meeting, public hearing, or other meeting regarding one or more specific institutions or affiliates or transactions involving an application for a deposit facility is not considered a widely attended conference or seminar.

(C) A NGEP sends a similar fundraising letter to insured depository institutions and to other businesses in its community. The letter encourages all businesses in the community to meet their obligation to assist in making the local community a better place to live and work.

(D) A NGEP sends a general offering circular to financial institutions offering to sell a portfolio of loans. An insured depository institution that receives the offering circular discusses with the NGEP whether the loans are in the institution's local community. No reference to the CRA or the institution's CRA performance is made in the offering circular or in the discussions of the parties.

(c) *Fulfillment of the CRA.* (1) *General.* Fulfillment of the CRA means the list of factors that the Federal banking agencies have determined have a material impact on an agency's decision—

(i) To approve or disapprove an application for a deposit facility (as defined in section 803 of the CRA (12 U.S.C. 2902)); or (ii) To assign a rating to an insured depository institution under section 807 of the CRA (12 U.S.C. 2906).

(2) *List of factors.* The list of factors referred to in paragraph (c)(1) of this section means the performance of any of the following activities by an insured depository institution or CRA affiliate that is a party to the agreement or that is an affiliate of a party to the agreement or by any NGEP that is a party to the agreement—

(i) Providing or refraining from providing written or oral comments or testimony to any Federal banking agency concerning the record of performance or future performance under the CRA of an insured depository institution or CRA affiliate that is a party to the agreement or an affiliate of a party to the agreement or written comments that are required to be included in the CRA public file of any such insured depository institution;

(ii) Home-purchase, home-improvement, small business, small farm, community development, and consumer lending, as described in § 563e.22 of this chapter, including loan purchases, loan commitments, and letters of credit;

(iii) Making investments, deposits, or grants, or acquiring membership shares, that have as their primary purpose community development, as described in § 563e.23 of this chapter;

(iv) Delivering retail banking services, as described in § 563e.24(d) of this chapter;

(v) Providing community development services, as described in § 563e.24(e) of this chapter;

(vi) In the case of a wholesale or limited-purpose insured depository institution, community development lending, including originating and purchasing loans and making loan commitments and letters of credit, making qualified investments, or providing community development services, as described in § 563e.25(c) of this chapter;

(vii) In the case of a small insured depository institution, any lending or other activity described in § 563e.26(a) of this chapter; or

(viii) In the case of an insured depository institution that is evaluated on the basis of a strategic plan, any element of the strategic plan, as described in § 563e.27(f) of this chapter.

(d) *Agreements relating to activities of CRA affiliates.* An insured depository institution or affiliate that is a party to a covered agreement that concerns the performance of any activity of a CRA affiliate described in paragraph (c) of this section must notify each NGEP that is a party to the agreement that the agreement concerns a CRA affiliate. The insured depository institution or affiliate must provide this notice prior to the time the agreement is entered into if the affiliate is a CRA affiliate at that time, or within a reasonable time after the affiliate becomes a CRA affiliate if the affiliate is not a CRA affiliate at the time the agreement is entered into.

(e) *Disclosure and reporting of certain existing agreements that become covered agreements.* An agreement that concerns the performance of any activity described in paragraph (c) of this section by an affiliate may become a covered agreement after it is entered into if the affiliate subsequently becomes a CRA affiliate. In that event, the disclosure and reporting obligations under §§ 533.4 and 533.5 begin on the date that the agreement becomes a covered agreement and do not apply to the period prior to that date.

### § 533.3 Related agreements considered a single agreement.

The following rules must be applied in determining whether a written contract, arrangement, or understanding is a covered agreement under § 533.2.

(a) *Contracts, arrangements, or understandings entered into by same parties.* All written contracts, arrangements, or understandings to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement if the contracts, arrangements, or understandings—

(1) Are entered into with the same NGEP;

(2) Were entered into within the same 12-month period; and

(3) Are each in fulfillment of the CRA.

(b) *Substantively related contracts.* All written contracts to which an insured depository institution or an affiliate of the insured depository institution is a party shall be considered to be a single agreement, without regard to whether the other parties to the contracts are the same or whether each such contract is in fulfillment of the CRA, if the contracts were negotiated in a coordinated fashion and a NGEP is a party to each contract.

### § 533.4 Disclosure of covered agreements.

(a) *Effective date.* This section applies only to covered agreements entered into after November 12, 1999.

(b) *Disclosure of covered agreements to the public.* (1) *Disclosure required.* (i) Each NGEP and each insured depository institution or affiliate that enters into a covered agreement must make a complete copy of the covered agreement available to any individual or entity upon request.

(ii) In disclosing a covered agreement to the public under paragraph (b)(1)(i) of this section, a NGEP, insured depository institution, or affiliate may withhold from disclosure only those portions of an agreement that the relevant supervisory agency determines are exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552 *et seq.*).

(2) *Duration of obligation.* The obligation to disclose a covered agreement terminates 12 months after the end of the term of the agreement.

(3) *Reasonable copy and mailing fees.* Each NGEP and each insured depository institution or affiliate may charge an individual or entity that requests a copy of a covered agreement a reasonable fee not to exceed the cost of copying and mailing the agreement.

(4) *Use of CRA public file by insured depository institution.* An insured depository institution may fulfill its obligation under this paragraph (b) by placing a copy of the covered agreement in the insured depository institution's CRA public file and making the agreement available in accordance with the procedures set forth in § 563e.43 of this chapter.

(c) *Disclosure of covered agreements to the relevant supervisory agency.* (1) Disclosure by NGEP. Each NGEP that is a party to a covered agreement must provide a complete copy of the agreement to the relevant supervisory agency within 30 days of receiving a request from the agency for the agreement. This obligation terminates 12 months after the end of the term of the covered agreement.

(2) *Disclosure by insured depository institution or affiliate.* (i) *Filing with the relevant supervisory agency.* Each insured depository institution or affiliate that is a party to a covered agreement must provide a copy of the agreement to each relevant supervisory agency within 30 days after the date the insured depository institution or affiliate enters into the agreement.

(ii) *Joint filings.* In the event that two or more insured depository institutions or affiliates are parties to a covered agreement, the insured depository institution(s) and affiliate(s) may jointly file a copy of the covered agreement with each relevant supervisory agency. Any joint filing must identify the insured depository institution(s) and affiliate(s) for whom the covered agreement is being filed.

(d) *Relevant supervisory agency.* For purposes of this section and § 533.5, the *relevant supervisory agency* for a covered agreement means the appropriate Federal banking agency for—

(1) Each insured depository institution (or subsidiary thereof) that is a party to the covered agreement;

(2) Each insured depository institution (or subsidiary thereof) or CRA affiliate that makes payments or loans or provides services that are subject to the covered agreement; and

(3) Any company (other than an insured depository institution or subsidiary thereof) that is a party to the covered agreement.

**§ 533.5 Annual reports.**

(a) *Effective date.* This section applies only to covered agreements entered into on or after May 12, 2000.

(b) *Annual report required.* Each NGEP and each insured depository institution or affiliate that is a party to a covered agreement must file an annual report with each relevant supervisory agency concerning the disbursement, receipt, and uses of funds or other resources under the covered agreement.

(c) *Duration of reporting requirement.* (1) *General.* An annual report under this section must be filed with each relevant supervisory agency for—

(i) The fiscal year in which the parties enter into the covered agreement; and

(ii) Each fiscal year during the term of the covered agreement.

(2) *Exception for NGEP that has not received any funds or resources.* A NGEP is not required to file an annual report for a covered agreement for any fiscal year during the term of the agreement in which the NGEP did not receive any funds or other resources under the agreement.

(d) *Annual reports filed by NGEP.* (1) *General.* The annual report filed by a NGEP under this section must include the following—

(i) The name and mailing address of the NGEP filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The amount of funds or resources received under the covered agreement during the fiscal year; and

(iv) The information required by paragraphs (d)(2) and (d)(3) of this section concerning the use of funds received under the covered agreement.

(2) *Reporting for funds or resources allocated and used for a specific purpose.* For funds or other resources that the NGEP received during the fiscal year under the covered agreement and allocated and used for a specific purpose during the fiscal year, the annual report must—

(i) Describe each specific purpose for which the funds or resources were used during the fiscal year; and

(ii) State the amount of funds or resources used during the fiscal year for each specific purpose.

(3) *Reporting for funds or resources used for other purposes.* For all funds or resources that the NGEP received during the fiscal year under the covered agreement and did not use for a specific purpose, the annual report must—

(i) State the amount received during the fiscal year; and

(ii) Provide a detailed, itemized list of how the funds or resources were used during the fiscal year, including the total amount used for—

(A) Compensation of officers, directors, and employees;

(B) Administrative expenses;

(C) Travel expenses;

(D) Entertainment expenses;

(E) Payment of consulting and professional fees; and

(F) Other expenses or uses.

(4) *Use of other reports.* The annual report filed by a NGEP may consist of, or incorporate, a report prepared for any other purpose, such as an Internal Revenue Service form, a state tax form, a report to members or shareholders, financial statements, or other report, so long as the annual report contains all of the information required by this paragraph (d).

(5) *Consolidated reports permitted.* A NGEP that is a party to five or more covered agreements may file with each relevant supervisory agency a single consolidated annual report covering all the covered agreements. Any consolidated report must contain all the information required by this paragraph (d). The information required to be reported under paragraphs (d)(1)(iii), (d)(2), and (d)(3) of this section may be reported on an aggregate basis for all covered agreements.

(e) *Annual report filed by insured depository institution or affiliate.* (1) *General.* The annual report filed by an insured depository institution or affiliate must include the following—

(i) The name and principal place of business of the insured depository institution or affiliate filing the report;

(ii) Information sufficient to identify the covered agreement for which the annual report is being filed, such as by providing the names of the parties to the agreement and the date the agreement was entered into or by providing a copy of the agreement;

(iii) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans provided by the insured depository institution or affiliate under the covered agreement to

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any other party to the agreement during the fiscal year;

(iv) The aggregate amount of payments, aggregate amount of fees, and aggregate amount of loans received by the insured depository institution or affiliate under the covered agreement from any other party to the agreement during the fiscal year;

(v) A general description of the terms and conditions of any payments, fees, or loans reported under paragraphs (e)(1)(iii) and (e)(1)(iv) of this section, or, in the event such terms and conditions are set forth—

(A) In the covered agreement, a statement identifying the covered agreement and the date the agreement was filed with the relevant supervisory agency; or

(B) In a previous annual report filed by the insured depository institution or affiliate, a statement identifying the date the report was filed with the relevant supervisory agency; and

(vi) The aggregate amount and number of loans, aggregate amount and number of investments, and aggregate amount of services provided under the covered agreement to any individual or entity not a party to the agreement—

(A) By the insured depository institution or affiliate during its fiscal year; and

(B) By any other party to the agreement, unless such information is not known to the insured depository institution or affiliate filing the report or such information is or will be contained in the annual report filed by a NGEP under paragraph (d) of this section.

(2) *Consolidated reports permitted.* (i) *Party to large number of agreements.* An insured depository institution or affiliate that is a party to five or more covered agreements may file a single consolidated annual report with each relevant supervisory agency covering all the covered agreements.

(ii) *Affiliated entities party to the same agreement.* An insured depository institution and its affiliates that are parties to the same covered agreement may file a single consolidated annual report relating to the agreement with each relevant supervisory agency for the covered agreement.

(iii) *Content of report.* Any consolidated annual report must contain all the information required by this paragraph (e). The amounts and data required to be reported under paragraphs (e)(1)(iii), (e)(1)(iv), and (e)(1)(vi) of this section may be reported on an aggregate basis for all covered agreements.

(f) *Time and place of filing.* (1) General. Each party must file its annual report with each relevant supervisory agency for the covered agreement no later than six months following the end of the fiscal year covered by the report.

(2) *Alternative method of fulfilling annual reporting requirement for a NGEP.* (i) A NGEP may fulfill the filing requirements of this section by providing the following materials to an insured depository institution or affiliate that is a party to the agreement no later than five months following the end of the NGEP's fiscal year—

(A) A copy of the NGEP's annual report required under paragraph (d) of this section for the fiscal year; and

(B) Written instructions that the insured depository institution or affiliate promptly forward the annual report to the relevant supervisory agency or agencies on behalf of the NGEP.

(ii) An insured depository institution or affiliate that receives an annual report from a NGEP pursuant to paragraph (f)(2)(i) of this section must file the report with the relevant supervisory agency or agencies on behalf of the NGEP within 30 days.

### § 533.6 Release of information under FOIA.

OTS will make covered agreements and annual reports available to the public in accordance with the Freedom of Information Act (5 U.S.C. 552 *et seq.*), OTS's rules (part 505 of this chapter), and the Department of Treasury's rules (31 CFR part 1). A party to a covered agreement may request confidential treatment of proprietary and confidential information in a covered agreement or an annual report under those procedures.

### § 533.7 Compliance provisions.

(a) *Willful failure to comply with disclosure and reporting obligations.* (1) If OTS determines that a NGEP has willfully failed to comply in a material way with §§ 533.4 or 533.5, OTS will notify the NGEP in writing of that determination and provide the NGEP a period of 90 days (or such longer period as OTS finds to be reasonable under the circumstances) to comply.

(2) If the NGEP does not comply within the time period established by OTS, the agreement shall thereafter be unenforceable by that NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y).

(3) OTS may assist any insured depository institution or affiliate that is a party to a covered agreement that is unenforceable by a NGEP by operation of section 48 of the Federal Deposit Insurance Act (12 U.S.C. 1831y) in identifying a successor to assume the NGEP's responsibilities under the agreement.

(b) *Diversion of funds.* If a court or other body of competent jurisdiction determines that funds or resources received under a covered agreement have been diverted contrary to the purposes of the covered agreement for an individual's personal financial gain, OTS may take either or both of the following actions—

(1) Order the individual to disgorge the diverted funds or resources received under the agreement;

(2) Prohibit the individual from being a party to any covered agreement for a period not to exceed 10 years.

(c) *Notice and opportunity to respond.* Before making a determination under paragraph (a)(1) of this section, or taking any action under paragraph (b) of this section, OTS will provide written notice and an opportunity to present information to OTS concerning any relevant facts or circumstances relating to the matter.

(d) *Inadvertent or de minimis errors.* Inadvertent or *de minimis* errors in annual reports or other documents filed with OTS under §§ 533.4 or 533.5 will not subject the reporting party to any penalty.

(e) *Enforcement of provisions in covered agreements.* No provision of this part shall be construed as authorizing OTS to enforce the provisions of any covered agreement.

### § 533.8 Other definitions and rules of construction used in this part.

(a) *Affiliate. Affiliate* means—

(1) Any company that controls, is controlled by, or is under common control with another company; and

(2) For the purpose of determining whether an agreement is a covered agreement under § 533.2, an *affiliate* includes any company that would be under common control or merged with another company on consummation of any transaction pending before a Federal banking agency at the time—

(i) The parties enter into the agreement; and

(ii) The NGEP that is a party to the agreement makes a CRA contact, as described in § 533.2(b)(2).

(b) *Control. Control* is defined in section 2(a) of the Bank Holding Company Act (12 U.S.C. 1841(a)).

(c) *CRA affiliate.* A *CRA* affiliate of an insured depository institution is any company that is an affiliate of an insured depository institution to the extent, and only to the extent, that the activities of the affiliate were considered by the appropriate Federal banking agency when evaluating the CRA performance of the institution at its most recent CRA examination.

(d) *CRA public file.* For purposes of this part, *CRA public file* means the public file maintained by an insured depository institution and described in § 563e.43 of this chapter.

(e) *Federal banking agency; appropriate Federal banking agency.* The terms *Federal banking agency* and *appropriate Federal banking agency* have the same meanings as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(f) *Fiscal year.* (1) The fiscal year for a NGEP that does not have a fiscal year shall be the calendar year;

(2) Any NGEP, insured depository institution, or affiliate that has a fiscal year may elect to have the calendar year be its fiscal year for purposes of this part.

(g) *Insured depository institution. Insured depository institution* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(h) *Nongovernmental entity or person.* (1) *General. A nongovernmental entity or person* or *NGEP* is any partnership, association, trust, joint venture, joint stock company, corporation, limited liability corporation, company, firm, society, other organization, or individual.

(2) *Exclusions.* A nongovernmental entity or person does not include—

(i) The United States government, a state government, a unit of local government (including a county, city, town, township, parish, village, or other general-purpose subdivision of a state) or an Indian tribe or tribal organization established under Federal, state or Indian tribal law (including the Department of Hawaiian Home Lands), or a department, agency, or instrumentality of any such entity;

(ii) A federally-chartered public corporation that receives federal funds appropriated specifically for that corporation;

(iii) An insured depository institution or affiliate of an insured depository institution; or

(iv) An officer, director, employee, or representative (acting in his or her capacity as an officer, director, employee, or representative) of an entity listed in paragraphs (h)(2)(i), (h)(2)(ii), or (h)(2)(iii) of this section.

(i) *Party.* The term *party* with respect to a covered agreement means each NGEP and each insured depository institution or affiliate that entered into the agreement.

(j) *Term of agreement.* An agreement that does not by its terms establish a termination date is considered to terminate on the last date on which any party to the agreement makes any payment or provides any loan or other resources under the agreement, unless the appropriate Federal banking agency otherwise notifies each party in writing.

Dated: May 10, 2000.

By the Office of Thrift Supervision.

**Ellen Seidman,**

*Director.*

[FR Doc. 00–12337 Filed 5–18–00; 8:45 am]

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Federal Register

Friday,
May 19, 2000

Part III

# The President

Notice of May 18, 2000—Continuation of Emergency With Respect to Burma

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# Presidential Documents

**Title 3—**

## The President

**Notice of May 18, 2000**

## Continuation of Emergency With Respect to Burma

On May 20, 1997, I issued Executive Order 13047, effective at 12:01 a.m. eastern daylight time on May 21, 1997, certifying to the Congress under section 570(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208), that the Government of Burma has committed large-scale repression of the democratic opposition in Burma after September 30, 1996, thereby invoking the prohibition on new investment in Burma by United States persons, contained in that section. I also declared a national emergency to deal with the threat posed to the national security and foreign policy of the United States by the actions and policies of the Government of Burma, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706).

The National Emergency declared on May 20, 1997, must continue beyond May 20, 2000, because the Government of Burma continues its policies of committing large-scale repression of the democratic opposition in Burma. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to Burma. This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
*May 18, 2000.*

[FR Doc. 00–12912
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**S.J. Res. 40/P.L. 106–198**
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**S.J. Res. 42/P.L. 106–199**
Providing for the reappointment of Manuel L. Ibanez as a citizen regent of the Board of Regents of the Smithsonian Institution. (May 5, 2000; 114 Stat. 250)

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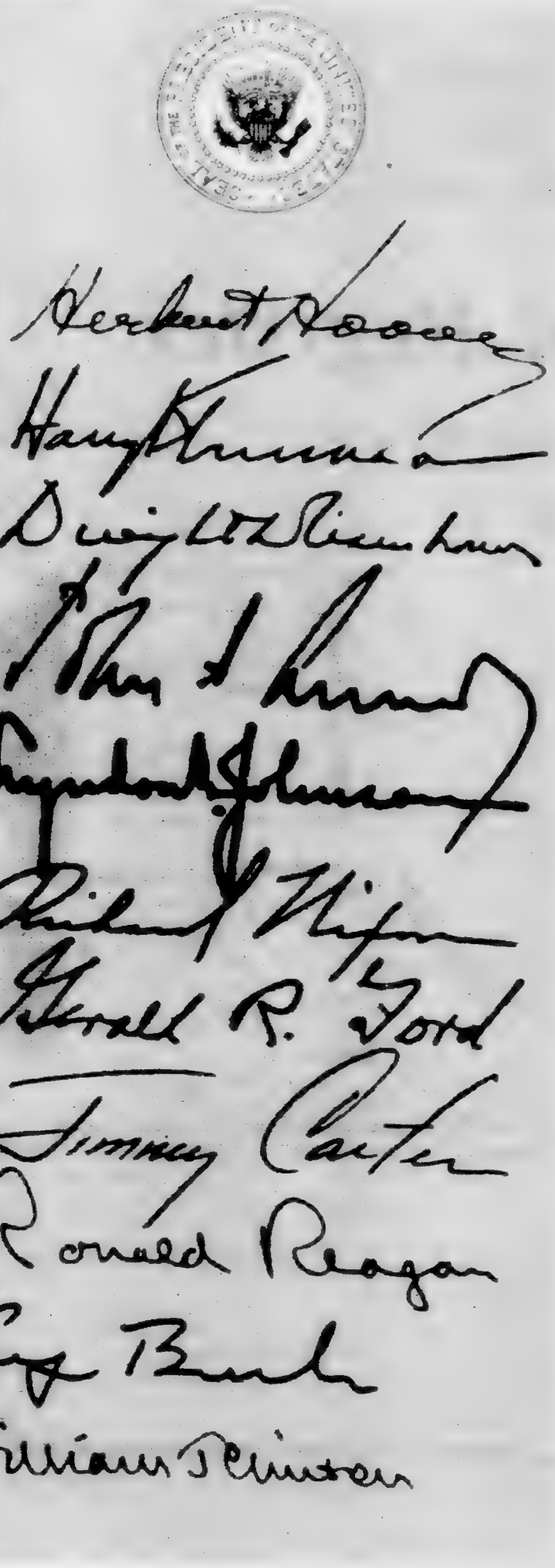

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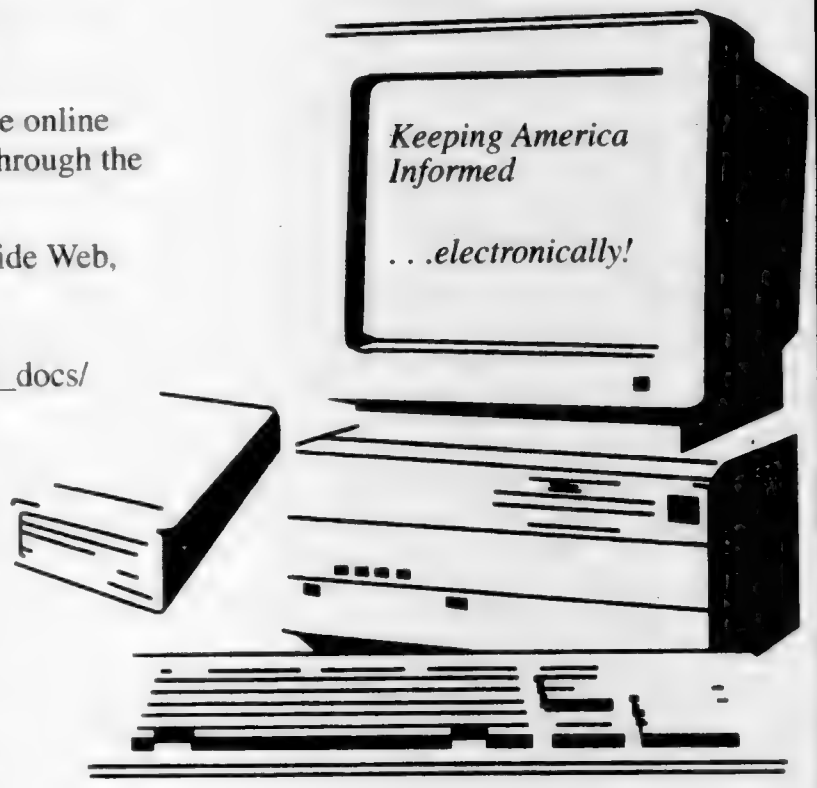


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# Rules and Regulations

Federal Register
Vol. 65, No. 99
Monday, May 22, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

**DEPARTMENT OF AGRICULTURE**

**Agricultural Marketing Service**

**7 CFR Part 985**

**[Docket No. FV00–985–3 FIR]**

## Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1999–2000 Marketing Year

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule that increased the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year. This interim final rule amended a prior interim final rule. When combined, the two interim final rules increased the Native spearmint oil salable quantity by 184,160 pounds from 1,125,755 pounds to 1,309,915 pounds, and the allotment percentage by 9 percent from 55 percent to 64 percent. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended these actions to avoid extreme fluctuations in supplies and prices, and, thus, help to maintain stability in the Far West spearmint oil market.

**EFFECTIVE DATE:** June 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 385, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or

George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Order No. 985 (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada, and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule continues an increase in the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1999–2000 marketing year, which ends on May 31, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 63 percent of the annual U.S. production of Scotch spearmint oil and approximately 93 percent of the annual U.S. production of Native spearmint oil.

This final rule adopts, without change, the provisions of an interim final rule published in the **Federal Register** on March 24, 2000 (65 FR 15832) that amended an interim final rule that was published in the **Federal Register** on February 10, 2000 (65 FR 6528). The two rules together increased the Native spearmint oil salable quantity that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year, which ends on May 31, 2000, by 184,160 pounds from 1,125,755 pounds to 1,309,915 pounds. The rules also increased the 1999–2000 allotment percentage by a total of 9 percent, from 55 percent to 64 percent.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year were recommended by the Committee at its October 7, 1998 meeting. The Committee recommended salable quantities of 1,199,190 pounds and 1,125,755 pounds, and allotment percentages of 65 percent and 55 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the November 17, 1998 issue of the **Federal Register** (63 FR 63804). A final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year was published in the January 19, 1999, issue of the **Federal Register** (64 FR 2799).

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

Sections 985.50, 985.51, and 985.52 provide the Committee authorization to consider and recommend salable quantities and allotment percentages for each class of spearmint oil for an ensuing marketing year. Section 985.51(b) provides the authority for the Committee to recommend that an increase in the salable quantity and allotment percentage for either or both classes of oil be considered.

Taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, the 1999–2000 marketing year salable quantity of 1,125,755 pounds will, therefore, be increased to 1,309,915 pounds.

The original total industry allotment base for Native spearmint oil for the 1999–2000 marketing year was established at 2,046,828 pounds and was revised during the year to 2,046,214 pounds to reflect a loss of 614 pounds of base due to non-production of some producers' total annual allotments. The Committee has used this revised allotment base in computing the increases to the Native spearmint oil salable quantity.

By increasing the salable quantity and allotment percentage from 1,125,755 pounds to 1,309,915 pounds, and 55 percent to 64 percent, respectively, this final rule makes an additional amount of Native spearmint oil available by releasing such oil from the reserve pool. When applied to each individual producer, the additional 9 percent allotment percentage increase allows each producer to take up to an amount equal to 9 percent of their allotment base from their Native spearmint oil reserve. If a producer does not have any reserve pool oil, or has less than 9 percent of their allotment base in the reserve pool, the increase in allotment percentage will actually make less than such amount available to the market.

For the 1999–2000 marketing year, producers receiving 18,324 pounds of additional allotment through these increases did not have any Native spearmint oil in reserve. Thus, rather than the 184,160 additional pounds as computed in the two interim final rules, this action effectively makes an additional 165,836 pounds of Native spearmint oil available to the market.

**Summary of the Native Spearmint Oil Increases for the 1999–2000 Marketing Year**

(A) Estimated 1999–2000 Allotment Base—2,046,828 pounds. This is the figure the original 1999–2000 salable quantities and allotment percentages for both classes of spearmint oil were based on.

(B) Revised 1999–2000 Allotment Base—2,046,214 pounds. This is 614 pounds less than the estimated allotment base of 2,046,828 pounds. This is less because some producers failed to produce all of their previous year's allotment.

(C) Initial 1999–2000 Allotment Percentage—55 percent. This was recommended by the Committee on October 7, 1998.

(D) Initial 1999–2000 Salable Quantity—1,125,755 pounds. This figure is 55 percent of the estimated allotment base of 2,046,828 pounds.

(E) Initial Increase in Allotment Percentage—5 percent. This was recommended by the Committee on January 13, 2000.

(F) Initial Revision of the 1999–2000 Allotment Percentage—60 percent. This figure was derived by adding the initial increase in the allotment percentage of 5 percent to the initial 1999–2000 allotment percentage of 55 percent and was effective on February 11, 2000.

(G) Initial Computed Increase in the 1999–2000 Salable Quantity—102,311 pounds. This is the product of the revised 1999–2000 allotment base of 2,046,214 and the initial 5 percent increase.

(H) Initially Revised 1999–2000 Salable Quantity—1,228,066 pounds. This figure, effective on February 11, 2000, is the sum of the initial salable quantity of 1,125,755 pounds and the initial computed increase of 102,311 pounds, and is approximately 60 percent of the estimated 1999–2000 allotment base of 2,046,214 pounds.

(I) Additional Increase in the Allotment Percentage—4 percent. This percentage increase was recommended by the Committee at its February 23, 2000, meeting.

(J) Amended 1999–2000 Allotment Percentage—64 percent. This is the sum of the initial allotment percentage of 55 percent and the 5 and 4 percent increases, and was effective on March 25, 2000.

(K) Additional Computed Increase in the 1999–2000 Salable Quantity—81,849 pounds. This is the product of the revised 1999–2000 allotment base of 2,046,214 pounds and the additional 4 percent increase in the allotment percentage.

(L) Final 1999–2000 Salable Quantity as Revised by Both Interim Final Rules—1,309,915 pounds. This figure is the sum of the initial salable quantity of 1,125,755 and the combined (computed) increases of 102,311 pounds and 81,849 pounds, and is approximately 64 percent of the revised 1999–2000 allotment base of 2,046,214 pounds.

The Department, based on its analysis of available information, has determined that the salable quantity and allotment percentage for Native spearmint oil for the 1999–2000 marketing year should continue to be 1,309,915 pounds and 64 percent, respectively.

This rule continues to relax the regulation of Native spearmint oil and will allow producers to meet market needs and improve returns. In conjunction with the issuance of this rule, the Department has reviewed the Committee's revised marketing policy statement for the 1999–2000 marketing year. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of section 985.50 of the order.

During its discussion of revising the 1999–2000 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

This increase in the 1999–2000 marketing year Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 7 spearmint oil handlers subject to regulation under the marketing order and approximately 119 producers of Scotch spearmint oil and 105 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would, thus, have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would fall into the category of large businesses.

Small spearmint oil producers represent a minority of farming operations and are more vulnerable to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the resources to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because of stronger incomes from alternate crops which could support the operation for a period of time. Despite the advantage larger producers may have, increasing the Native salable quantity and allotment percentage will help both large and small producers by improving returns.

This rule finalizes an interim final rule that was published in the **Federal Register** on March 24, 2000 (65 FR 15832) that amended an interim final rule that was published in the **Federal Register** on February 10, 2000 (65 FR 6528). The initial interim final rule increased the 1999–2000 marketing year Native spearmint oil salable quantity by 102,311 pounds from 1,125,755 pounds to 1,228,066 pounds, and the allotment percentage by 5 percent from 55 percent to 60 percent. The amended interim final rule increased the 1999–2000 marketing year Native spearmint oil salable quantity by an additional 81,849 pounds from 1,228,066 pounds to 1,309,915 pounds, and the allotment percentage by an additional 4 percent from 60 percent to 64 percent. This rule continues to relax the regulation of Native spearmint oil and will allow producers to meet market needs and improve returns.

The Committee considered alternatives to the increases based on projections and historical data available at both meetings. Recommendations at both meetings generally supported increases of 5 percent and 4 percent, respectively. The Committee reached its recommendations to increase the Native spearmint oil salable quantity by 102,311 pounds and 81,849 pounds, respectively, and the allotment percentage by 5 percent and 4 percent, respectively, after careful consideration of all available information. The Committee believes that the level attained in this final rule will achieve the objectives sought. Without the increases, the Committee believes the industry will not be able to meet market needs through the end of the current marketing year (May 31, 2000).

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

The Committee's meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons were also invited to submit information on the regulatory and informational impacts of this action on small businesses.

Interim final rules concerning this action were published in the **Federal Register** on February 10, 2000 (65 FR 6528), and on March 24, 2000 (65 FR 15832). Copies of the rules were mailed and faxed to the Committee office, which in turn notified Committee members and spearmint oil producers and handlers. In addition, the Committee's meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Copies of both rules were also made available on the Internet by the U.S. Government Printing Office. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including that contained in the prior proposed and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year, both interim final rules increasing the 1999–2000 marketing year Native spearmint oil salable quantity and allotment percentage, the Committee's recommendations and other available information, it is found that to continue

to revise § 985.218 to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

**List of Subjects in 7 CFR Part 985**

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

## PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

Accordingly, the interim final rule amending 7 CFR part 985 as published at 65 FR 15832 on March 24, 2000, and which amended the interim final rule published at 65 FR 6528 on February 10, 2000, is adopted as a final rule without change.

Dated: May 16, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–12801 Filed 5–19–00; 8:45 am]

BILLING CODE 3410–02–P

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Parts 1001, 1005, 1006, 1007, 1126, 1131, and 1135

**[Docket No. DA–97–12]**

### Milk in the New England and Other Marketing Areas; Order Amending the Orders; Correction

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule; correction.

**SUMMARY:** The Agricultural Marketing Service published in the **Federal Register** on September 1, 1999, (64 FR 47898) a final rule which consolidated 31 Federal milk marketing orders into 11 orders. This document corrects an error in section 73 of 7 of those orders by changing the term "pool plant operator" to "handler." The remaining 4 orders contain the correct language.

**EFFECTIVE DATE:** This correction is effective May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Nicholas Memoli, Marketing Specialist, Order Formulation Branch, USDA/AMS/Dairy Programs, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932, e-mail address Nicholas.Memoli@usda.gov.

**SUPPLEMENTARY INFORMATION:**

**Background and Need for Correction**

In the final rule (DA–97–12) issued August 23, 1999, and published in the **Federal Register** on September 1, 1999 (64 FR 47898), an error in Section 73(a) and (b) of Parts 1001, 1005, 1006, and 1007, and Section 73(b) of Parts 1126, 1131, and 1135 was inadvertently made. Specifically, the term "handler" was changed to "pool plant operator." The correct term is used in the 4 remaining orders (Parts 1030, 1032, 1033 and 1124) and is only different in the 7 orders because of an oversight in drafting the amendments to the orders. Therefore, the applicable provisions of the 7 orders need to be corrected.

**List of Subjects in 7 CFR Parts 1000 to 1199**

Milk orders.

Accordingly, 7 CFR Parts 1001, 1005, 1006, 1007, 1126, 1131, and 1135 are corrected by making the following correcting amendments:

## PARTS 1001, 1005, 1006, 1007, 1126, 1131, and 1135—[AMENDED]

1. The authority citation for Parts 1001, 1005, 1006, 1007, 1126, 1131, and 1135 continues to read as follows:

**Authority:** 7 U.S.C. 601–674, and 7253.

**§§ 1001.73, 1005.73, 1006.73, 1007.73, 1126.73, 1131.73, 1135.73 [Amended]**

2. In the introductory text of §§ 1001.73(a) and (b), 1005.73(a) and (b), 1006.73(a) and (b), 1007.73(a) and (b), 1126.73(b), 1131.73(b), and 1135.73(b), the words "pool plant operator" are revised to read "handler."

Dated: May 17, 2000.

**Kenneth C. Clayton,**

*Acting Administrator, Agricultural Maketing Service.*

[FR Doc. 00–12799 Filed 5–19–00; 8:45 am]

BILLING CODE 3410–02–P

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## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Part 707

### Truth in Savings

*CFR Correction*

In Title 12 of the Code of Federal Regulations, parts 600 to End, revised as of January 1, 2000, page 404, Part 707, Appendix C is corrected by adding Appendices A and B to the end to read as follows:

**APPENDIX C TO PART 707—OFFICIAL STAFF INTERPRETATIONS**

* * * * *

**Appendix A to Part 707—Annual Percentage Yield Calculation**

**Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes**

1. *Rounding for calculations.* The following are examples of permissible rounding rules for calculating dividends and the annual percentage yield:

i. The daily rate applied to a balance carried to five or more decimals. For example; .008219178%, 3.00% for a 365 day year, would be rounded to no less than .00822%.

ii. The daily dividends or interest earned carried to five or more decimals. For example; $.08219178082, daily dividends on $1,000 at 3% for a 365 day year, would be rounded to no less than $.08219.

2. *Exponents in a leap year.* The annual percentage yield formula's exponent numerator will remain 365 in leap years. The "days in term" figure used in the denominator should be consistent with the length of term used in the dividends calculation.

3. *First tier of a tiered-rate account.* When credit unions use a rate table, the first tier of a tiered rate account is to be disclosed and advertised; "Up to but not exceeding * * *", "$.01 to * * *", or similar language.

4. *Term Share Accounts Opened in Midterm.* For club accounts that meet the definition of a term share account, the annual percentage yield is based on the maximum number of days in the term not to exceed 365 days (or 366 days in a leap year).

**Part II. Annual Percentage Yield Earned for Periodic Statements**

1. *Balance method.* The dividend or interest figure used in the calculation of the annual percentage yield earned may be derived from the daily balance method or the average daily balance method. Regardless of the dividend calculation method, the balance used in the annual percentage yield earned formula is the average daily balance. The average daily balance calculation is the sum of the balances for each day in the period divided by the number of days in the period. The balance for each day is based on a point in time; i.e. beginning of day balance, end of day balance, closing of day balance, etc. Each day's balance, for dividend accrual and payment purposes, must be based on the same point in time and cannot be based on the day's low balance.

2. *Negative balances prohibited.* Credit unions must treat a negative account balance as zero to determine the balance on which the annual percentage yield earned is calculated. (See commentary to § 707.7(a)(2).)

*A. General Formula*

1. *Accrued but uncredited dividends.* To calculate the annual percentage yield earned, accrued but uncredited dividends:

i. May not be included in the balance for statements that are issued at the same time or less frequently than the account's compounding and crediting frequency. For

example, if monthly statements are sent for an account that compounds dividends daily and credits dividends monthly, the balance may not be increased each day to reflect the effect of daily compounding. Assume a credit union will pay $13.70 in dividends on $100,000 for the first day, $6.85 in dividends on $50,013.70 for the second day, and $3.43 in dividends on $25,020.55 for the third day. The sum of each days balance is $175,000 (does not include accrued, but uncredited, dividends amounts $13.70, $6.85, and $3.43), thereby resulting in an average daily balance for the three days of $58,333.33.

ii. Must be included in the balance for succeeding statements if a statement is issued more frequently than compounded dividends is credited on an account. For example, if monthly statements are sent for an account that compounds dividends daily and credits dividends quarterly, the balance for the second monthly statement would include dividends that had accrued for the prior month. Assume a credit union will pay $411.78 in dividends on 30 days of $100,000, $427.28 in dividends on 31 days of $100,411.78, and $415.23 in dividends on 30 days of $100,839.06. The balance (average daily balance in the account for the period) for the second 31 days is $100,411.78.

2. *Rounding.* The dividends earned figure used to calculate the annual percentage yield earned must be rounded to two decimals to reflect the amount actually paid. For example, if the dividends earned for a statement period is $20.074 and the credit union pays the member $20.07, the credit union must use $20.07 (not $20.074) to calculate the annual percentage yield earned. For accounts that pay dividends based on the daily balance method, compound and credit dividends or interest quarterly, and send monthly statements, the credit union may, but need not, round accrued dividends to two decimals for calculating the "projected" or "anticipated" annual percentage yield earned on the first two monthly statements issued during the quarter. However, on the quarterly statement the dividends earned figure must reflect the amount actually paid.

3. *Compounding frequency using the average daily balance method.* Any compounding frequency, including daily compounding, can be used when calculating dividends using the average daily balance method. (See comment 707.7(b), which does not require credit unions to compound or credit dividends at any particular frequency).

*B. Special Formula for Use Where Periodic Statement is Sent More Often Than the Period for Which Dividends are Compounded*

1. *Statements triggered by Regulation E.* Credit unions may, but need not, use this formula to calculate the annual percentage yield earned for accounts that receive quarterly statements and that are subject to Regulation E's rule calling for monthly statements when an electronic fund transfer has occurred. They may do so even though no monthly statement was issued during a specific quarter. This formula must be used for accounts that compound and credit dividends quarterly and that receive monthly statements, triggered by Regulation E, which comply with the provisions of § 707.6.

2. *Days in compounding period.* Credit unions using the special annual percentage yield earned formula must use the actual number of days in the compounding period.

## Appendix B to Part 707—Model Clauses and Sample Forms

1. *Modifications.* Credit unions that modify the model clauses will be deemed in compliance as long as they do not delete information required by TISA or regulation or rearrange the format so as to affect the substance or clarity of the disclosures.

2. *Format.* Credit unions may use inserts to a document (see Sample Form B–11) or fill-in blanks (see Sample Forms B–4 and B–5, which use double underlining to indicate terms that have been filled in) to show current rates, fees or other terms.

3. *Disclosures for opening accounts.* The sample forms illustrate the information that must be provided to a member when an account is opened, as required by § 707.4(a)(1). (See § 707.4(a)(2), which states the requirements for disclosing the annual percentage yield, the dividend rate, and the maturity of a term share account in responding to a member's request.)

4. *Compliance with Regulation E.* Credit unions may satisfy certain requirements under Part 707 with disclosures that meet the requirements of Regulation E. (See § 707.3(c).) The model clauses and sample forms do not give examples of disclosures that would be covered by both this regulation and Regulation E (such as disclosing the amount of a fee for ATM usage). Credit unions should consult appendix A to Regulation E for appropriate model clauses.

5. *Duplicate disclosures.* If a requirement such as a minimum balance applies to more than one account term (to obtain a bonus and determine the annual percentage yield, for example), credit unions need not repeat the requirement for each term, as long as it is clear which terms the requirement applies to.

6. *Guide to model clauses.* In the model clauses, italicized words indicate the type of disclosure a credit union should insert in the space provided (for example, a credit union might insert "March 25, 1995" in the blank for "(date)" disclosure). Brackets and diagonals ("/") indicate a credit union must choose the alternative that describes its practice (for example, [daily balance/average daily balance]).

7. *Sample forms.* The sample forms (B–4 through B–11) serve a purpose different from the model clauses. They illustrate various ways of adapting the model clauses to specific accounts. The clauses shown relate only to the specific transactions described.

[FR Doc. 00–55509 Filed 5–19–00; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

[Docket No. 99–NM–138–AD; Amendment 39–11735; AD 2000–10–11]

RIN 2120–AA64

## Airworthiness Directives; Gulfstream Model G–159 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Gulfstream Model G–159 series airplanes, that requires an inspection to determine the type of pneumatic deicing boots, and an Airplane Flight Manual (AFM) revision only for those airplanes equipped with "modern" boots. This amendment is prompted by reports of inflight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to ensure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

**EFFECTIVE DATE:** June 26, 2000.

**ADDRESSES:** Information pertaining to this amendment may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349.

**FOR FURTHER INFORMATION CONTACT:** Neil Berryman, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6098; fax (770) 703–6097.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to Gulfstream Model G–159 series airplanes was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on November 18, 1999 (64 FR 62991). That action proposed to require

an inspection to determine the type of pneumatic deicing boots, and an airplane flight manual (AFM) change only for those airplanes equipped with "modern" boots.

**Since the Issuance of the NPRM**

The FAA has received information indicating that natural ice shedding, melting, or sublimation from the protected areas of the pneumatic deicing boot system of the wing and tail leading edge will eliminate most residual ice. In light of that information, the FAA has determined that a revision of the last bulleted paragraph of the airplane flight manual revision specified in paragraph (a) of the NPRM is necessary. Consequently, that paragraph has been revised from, "The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions and after the airplane is determined to be clear of ice," to delete the phrase, "and after the airplane is determined to be clear of ice."

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

**Request to Add Further Requirements**

The commenter, the United Kingdom Civil Aviation Authority, requests that the statement in the supplemental notice of proposed rulemaking (NPRM) advising that a potential for adverse aerodynamic effects of ice adhering to the airplane exists should be addressed in more detail. The commenter explains that icing boots contaminated with dirt or in a deteriorated condition can induce such ice adhering to the airplane. The commenter points out that various cleaning and protection fluids are available that provide extended life to the deicing boots, protection of the boots against ultraviolet (UV) rays, and assistance in maintaining the boots in a clean condition. However, the commenter notes that not all maintenance programs schedule tasks effectively for the use of such cleaning and protection fluids. Therefore, the commenter requests that the FAA consider mandating a specific schedule to use such cleaning and protection products. The commenter states that such a required schedule should be required for airplanes equipped with either the "modern" or "older" boots.

The FAA does not concur with the commenter's requests. The FAA considers that normal wear and tear on the deicing boot materials is to be expected, and that the adhesion characteristics of the boot increases as the boot surface degrades over time. Operators have the responsibility to monitor the performance of the deicing boots installed on their airplanes, and to perform maintenance as required.

The FAA acknowledges that use of certain ice-phobic chemicals may provide an additional safety benefit. However, a variety of factors (*e.g.*, normal wear and tear, "patching," and oxidation of boot material) exist in varying degrees on individual airplanes. As a result, the optimum frequency of application will vary during the life of the boot. The FAA has received no quantitative data to demonstrate the adequacy of particular amounts of ice-phobic chemical sprays or to provide adequate intervals of application. Therefore, the FAA cannot establish an appropriate application interval at this time. However, if additional data becomes available, the FAA may consider further rulemaking.

**Conclusion**

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

**Cost Impact**

The FAA estimates that 141 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that it will take approximately 2 work hours per airplane to accomplish the AFM revision, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $16,920, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–10–11 Gulfstream Aerospace Corporation** (Formerly Grumman): Amendment 39–11735. Docket 99–NM–138–AD.

*Applicability:* Model G–159 series airplanes equipped with pneumatic deicing boots, certificated in any category.

To ensure that flightcrews activate the wing and tail pneumatic deicing boots at the first signs of ice accumulation on the airplane, accomplish the following:

**Note 1:** For the purposes of this AD, the following definitions of "older" and "modern" apply:

"Modern" pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. "Older" pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early de-ice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)

(a) Within 10 days after the effective date of this AD: Perform a visual inspection to determine if the types of pneumatic deicing boots installed are either "older" or "modern" boots.

(1) For those airplanes equipped with "older" pneumatic deicing boots, no further action is required by this AD.

(2) For those airplanes equipped with "modern" pneumatic deicing boots: Within 10 days after the inspection required by paragraph (a) of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. This may be accomplished by inserting a copy of this AD in the AFM.

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

"• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after leaving icing conditions."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate. The request shall be forwarded through an appropriate FAA Operations Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on June 26, 2000.

Issued in Renton, Washington, on May 15, 2000.

**Donald L. Riggin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–12672 Filed 5–19–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2000–NM–42–AD; Amendment 39–11728; AD 2000–10–04]**

**RIN 2120–AA64**

## Airworthiness Directives; Israel Aircraft Industries, Ltd., Model 1124 and 1124A Westwind Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) that is applicable to certain Israel Aircraft Industries, Ltd., Model 1124 and 1124A Westwind airplanes. This action requires a one-time X-ray inspection to detect missing rivets at the rib-to-spar connection of the aileron ribs, and corrective actions, if necessary. This action is necessary to prevent cracking of the aileron skin due to missing rivets, which could result in reduced structural integrity of the aileron and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 6, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 6, 2000.

Comments for inclusion in the Rules Docket must be received on or before June 21, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–42–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: 9-anm-iarcomment@faa.gov. Comments sent via the Internet must contain "Docket No. 2000–NM–42–AD" in the subject line and need not be submitted in triplicate.

The service information referenced in this AD may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** The Civil Aviation Administration of Israel (CAAI), notified the FAA that an unsafe condition may exist on certain Israel Aircraft Industries, Ltd., Model 1124 and 1124A Westwind airplanes. The CAAI advises that rivets in the aileron structure have been reported missing. On one airplane, 5 of the 13 aileron ribs were missing rivets. Investigation revealed certain rivets may not have been installed during production. This condition, if not corrected, could result in reduced structural integrity of the aileron and consequent reduced controllability of the airplane.

### Explanation of Relevant Service Information

The manufacturer has issued Israel Aircraft Industries 1124 Westwind Alert Service Bulletin No. 1124–27A–145, dated March 24, 2000, which describes procedures for a one-time X-ray inspection to detect missing rivets at the rib to spar connection of the aileron ribs, left and right sides, at work stations (WS) 158.00 through WS 246.00. The CAAI classified this alert service bulletin as mandatory and previously issued Israeli airworthiness directive 57–00–02–06, dated February 24, 2000, in order to assure the continued airworthiness of these airplanes in Israel.

### FAA's Conclusions

These airplane models are manufactured in Israel and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

### Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or

develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent cracking of the aileron skin due to missing rivets, which could result in reduced structural integrity of the aileron and consequent reduced controllability of the airplane. This AD requires a one-time X-ray inspection to detect missing rivets at the rib to spar connection of the aileron ribs, and corrective actions, if necessary. The actions are required to be accomplished in accordance with the alert service bulletin described previously, except as discussed below.

**Differences Between AD and Alert Service Bulletin**

Operators should note that, although the alert service bulletin specifies that the Customer Support Group at Galaxy Aerospace Company may be contacted for disposition of certain conditions, this amendment would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the CAAI (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this AD, a repair approved by either the FAA or the CAAI would be acceptable for compliance with this AD.

**Determination of Rule's Effective Date**

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–42–AD." The postcard will be date stamped and returned to the commenter.

**Regulatory Impact**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding the following new airworthiness directive:

**2000–10–04 Israel Aircraft Industries, Ltd.:** Amendment 39–11728. Docket 2000–NM–42–AD.

*Applicability:* Model 1124 and 1124A Westwind airplanes having serial numbers (S/N) 297, 304, and 400 through 410 inclusive; certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent cracking of the aileron skin due to missing rivets, which could result in reduced structural integrity of the aileron and consequent reduced controllability of the airplane, accomplish the following:

**X-Ray Inspection**

(a) Within 200 flight hours after the effective date of this AD, perform a one-time X-ray inspection to detect missing rivets at the rib-to-spar connection of the aileron ribs, left and right sides, at work stations (WS) 158.00 to WS 246.00, in accordance with Israel 1124 Westwind Alert Service Bulletin No. 1124–27A–145, dated March 24, 2000.

(1) If all rivets are installed, no further action is required by this AD.

(2) If any rivet is missing, prior to further flight, replace the aileron with a new or serviceable aileron, in accordance with Israel Aircraft Industries 1124/1124A Westwind Maintenance Manual, or repair the aileron in accordance with a method approved by

either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Administration of Israel (CAAI) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

**Alternative Methods of Compliance**

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(d) The inspection shall be done in accordance with 1124 Westwind (Israel Aircraft Industries) Alert Service Bulletin No. 1124–27A–145, dated March 24, 2000. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Galaxy Aerospace Corporation, One Galaxy Way, Fort Worth Alliance Airport, Fort Worth, Texas 76177. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**Note 3:** The subject of this AD is addressed in Israeli airworthiness directive 57–00–02–06, dated February 24, 2000.

(e) This amendment becomes effective on June 6, 2000.

Issued in Renton, Washington, on May 8, 2000.

**Vi L. Lipski,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 00–11951 Filed 5–19–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

[Docket No. 99–SW–36–AD; Amendment 39–11733; AD 2000–10–09]

RIN 2120–AA64

## Airworthiness Directives; Eurocopter France Model AS350B, BA, B1, B2, B3, D, and AS355E, F, F1, F2, and N Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for Eurocopter France Model AS350B, BA, B1, B2, B3, D, and AS355E, F, F1, F2, and N helicopters that requires replacing certain circuit breakers. This amendment is prompted by the discovery of the loss of electrical continuity between the terminals of an installed circuit breaker. The actions specified by this AD are intended to prevent loss of electrical power to the emergency flotation gear or other optional installations and subsequent loss of the helicopter emergency flotation capability.

**DATES:** Effective June 26, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 26, 2000.

**ADDRESSES:** The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5120, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD for Eurocopter France Model AS350B, BA, B1, B2, B3, D, and AS355E, F, F1, F2, and N helicopters was published in the **Federal Register** on February 23, 2000 (65 FR 8894). That action proposed to require inspecting Crouzet single-pole circuit breakers for proper operation; replacing any Crouzet single-pole circuit breaker that is not operating properly with an airworthy circuit breaker; and replacing all Crouzet single-pole circuit breakers with airworthy circuit breakers on or before July 1, 2000.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 150 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.25 work hour per helicopter to replace the circuit breakers, and that the average labor rate is $60 per work hour. Required parts will cost approximately $23 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,700, assuming the replacement of 150 circuit breakers.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation

Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**AD 2000–10–09 Eurocopter France:** Amendment 39–11733. Docket No. 99–SW–36–AD.

*Applicability:* Model AS350B, BA, B1, B2, B3, D, and AS355E, F, F1, F2, and N helicopters, with Crouzet single-pole circuit breaker, part numbers (P/N) 84 400 028, and P/N 84 400 031 through P/N 84 400 036, installed as part of any optional installations, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss of electrical power to the emergency flotation gear or other optional installations and subsequent loss of the helicopter emergency flotation capability, accomplish the following:

(a) On or before 200 hours time-in-service or within the next 3 calendar months, whichever occurs first:

(1) For Model AS350B, BA, B1, B2, B3, and D helicopters, inspect and if inoperable, replace the Crouzet single-pole circuit breakers installed in the flotation gear unit assembly and other optional installations for electrical continuity in accordance with section 2.B. of the Accomplishment Instructions contained in Eurocopter France Service Bulletin (SB) No. 01.00.47, dated November 10, 1998, except disregard the compliance times stated in paragraph 2.B.2) of the SB.

(2) For Model AS355E, F, F1, F2, and N helicopters, inspect and if inoperable, replace the Crouzet single-pole circuit breakers installed in the flotation gear unit assembly and other optional installations for electrical continuity in accordance with section 2.B. of the Accomplishment Instructions contained in SB No. 01.00.44, dated November 10, 1998, except disregard the compliance times stated in paragraph 2.B.2) of the SB.

(b) On or before July 1, 2000, replace all Crouzet single-pole circuit breakers in accordance with section 2.B. of the Accomplishment Instructions of the applicable SB.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) The inspection and modification shall be done in accordance with section 2.B. of the Accomplishment Instructions contained in Eurocopter France Service Bulletin No. 01.00.44 or No. 01.00.47, both dated November 10, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 26, 2000.

**Note 3:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 98–510–055(A) for the Model AS 355 helicopters and AD 98–511–074(A) for the Model AS 350 helicopters. Both DGAC AD's are dated December 16, 1998.

Issued in Fort Worth, Texas, on May 9, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–12352 Filed 5–19–00; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–SW–39–AD; Amendment 39–11734; AD 2000–10–10]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD) that applies to Eurocopter France Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N helicopters and requires inspecting the main gearbox suspension bi-directional cross-beam (cross-beam) for cracks, and replacing the cross-beam if a crack is found. This amendment requires the same inspections as the existing AD, but adds the time intervals for performing repetitive dye-penetrant inspections on cross-beams with 5,000 or more hours time-in-service (TIS). This amendment is prompted by the discovery that time intervals for performing the required dye-penetrant inspections are not included in the existing AD. The actions specified by this AD are intended to prevent failure of the cross-beam that could lead to rotation of the main gearbox, resulting in severe vibrations and a subsequent forced landing.

**DATES:** Effective June 26, 2000.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of August 3, 1998 (63 FR 35128, June 29, 1998).

**ADDRESSES:** The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office

of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, ASW–111, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5490, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–14–01, Amendment 39–10635 (63 FR 35128, June 29, 1998), which applies to Eurocopter France Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N helicopters, was published in the **Federal Register** on February 11, 2000 (65 FR 6927). That action proposed to require, at specified time intervals or cycles, repetitive visual and dye-penetrant inspections of the cross-beam for cracks and replacing, if necessary, the cross-beam with an airworthy cross-beam.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 454 helicopters of U.S. registry will be affected by this AD. It will take approximately 0.5 work hour per helicopter to accomplish each visual inspection, with an estimated average of 150 visual inspections per helicopter; 3 work hours per helicopter to accomplish a dye-penetrant inspection, with an estimated average of 3 dye-penetrant inspections per helicopter; and 6 work hours per helicopter to replace the cross-beam, if necessary. The average labor rate is $60 per work hour. Parts will cost approximately $6,000 per cross-beam. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $5,175,600 to perform 150 visual inspections and an average of 3 dye-penetrant inspections per helicopter and to replace the cross-beam on all 454 helicopters.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10635 (63 FR 35128), and by adding a new airworthiness directive (AD), Amendment 39–11734, to read as follows:

**AD 2000–10–10 Eurocopter France:** Amendment 39–11734. Docket No. 99–SW–39–AD. Supersedes AD 98–14–01, Amendment 39–10635, Docket No. 97–SW–25–AD.

*Applicability:* Model AS–350B, BA, B1, B2, and D, and Model AS–355E, F, F1, F2, and N helicopters, with main gearbox suspension bi-directional cross-beam (cross-beam), part number (P/N) 350A38–1018—all dash numbers, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the cross-beam that could lead to rotation of the main gearbox, resulting in severe vibrations and a subsequent forced landing, accomplish the following:

(a) For cross-beams having 2,000 or more hours time-in-service (TIS) or 10,000 or more operating cycles, whichever occurs first:

**Note 2:** The Master Service Recommendations and the flight log contain accepted procedures that are used to determine the cumulative operating cycles on the rotorcraft.

(1) Within 30 hours TIS, and thereafter at intervals not to exceed 30 hours TIS or 150 operating cycles, whichever occurs first, visually inspect the cross-beam for cracks in accordance with paragraph 2.B.1) of Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS–350 helicopters, or Eurocopter France Service Bulletin No. 05.00.29, applicable to Model AS–355 helicopters, both dated May 26, 1997.

(2) If a crack is found, remove the cross-beam and replace it with an airworthy cross-beam.

(b) For cross-beams having 5,000 or more hours TIS:

(1) In addition to continuing the repetitive inspections of paragraph (a)(1), before further flight, and thereafter at intervals not to exceed 550 hours TIS or 2,750 operating cycles, whichever occurs first, perform a dye-penetrant inspection in accordance with paragraph 2.B.2) of Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS–350 helicopters, or Eurocopter Service Bulletin No. 05.00.29, applicable to Model AS–355 helicopters, both dated May 26, 1996.

(2) If a crack is found, remove the cross-beam and replace it with an airworthy cross-beam.

(c) Prior to installing any replacement cross-beams, regardless of TIS or operating cycles, inspect the replacement cross-beam in accordance with paragraph (b)(1) of this AD.

(d) Modifying the helicopter in accordance with paragraph 2.B of the Accomplishment Instructions in Eurocopter Service Bulletin No. 63.00.07, applicable to Model AS–350B, BA, B1, B2, and D helicopters, or Eurocopter Service Bulletin No. 63.00.13, applicable to Model AS–355E, F, F1, F2, and N helicopters, both dated April 7, 1997, constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspections and replacements, if necessary, shall be done in accordance with Eurocopter France Service Bulletin No. 05.00.28, applicable to Model AS–350 helicopters, and Eurocopter France Service Bulletin No. 05.00.29, applicable to Model AS–355 helicopters, both dated May 26, 1997. The incorporation by reference of those documents was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of August 3, 1998 (63 FR 35128, June 29, 1998). Copies may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 26, 2000.

**Note 4:** The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 96–156–071(B)R1 and AD 96–155–053(B)R1, both dated June 4, 1997.

Issued in Fort Worth, Texas, on May 11, 2000.

**Eric Bries,**

*Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–12575 Filed 5–19–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 99–SW–86–AD; Amendment 39–11737; AD 2000–10–13]**

**RIN 2120–AA64**

## Airworthiness Directives; Eurocopter France Model SA–365N, SA–365N1, AS–365N2 and AS–365N3 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) applicable to Eurocopter France Model SA–365N, SA–365N1, AS–365N2 and AS–365N3 helicopters. This action requires inspecting the installation of each window panel on the enlarged sliding door (door). If any window panel is installed on the outside of the door, this AD requires installing and sealing the window panel on the inside. This amendment is prompted by the loss of a window panel in flight that was incorrectly sealed with the window installed on the outside of the door. This condition, if not corrected, could result in loss of a window panel in flight. The actions specified in this AD are intended to prevent loss of a window panel, impact with a main rotor blade, and subsequent loss of control of the helicopter.

**DATES:** Effective June 6, 2000.

Comments for inclusion in the Rules Docket must be received on or before July 21, 2000.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–86–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: 9-asw-adcomments@faa.gov.

**FOR FURTHER INFORMATION CONTACT:** Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model SA–365N, SA–365N1, AS–365N2 and AS–365N3 helicopters. The DGAC advises of the need to visually inspect each window for correct mounting to prevent loss of a window in flight, impact with a main rotor blade, and subsequent loss of control of the helicopter.

Eurocopter France has issued Telex Information No. 00097, dated November 9, 1999 (Telex). The Telex advises of the loss of a window panel in flight due to the window panel being sealed and positioned on the outside of the door. The Telex specifies visually inspecting the installation of each window panel and resuming flight if the window panels are inside the door. If the window panels are outside the door, the Telex specifies repositioning and resealing the window panels inside the door. The DGAC classified this Telex as mandatory and issued AD 1999–459–049(A), dated December 1, 1999, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA–365N, SA–365N1, AS–365N2 and AS–365N3 helicopters of the same type designs registered in the United States, this AD is being issued to prevent loss of a window panel, impact with a main rotor blade, and subsequent loss of control of the helicopter. This AD requires visually inspecting each window panel for correct installation on the door. If the window panel is installed properly, no further action is required by this AD. If any window panel is installed outside the door, this AD also requires, before further flight, removing, installing inside the door, and resealing the window panel. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity of the helicopter. Therefore, visually inspecting each window panel for correct installation on the door is required within 10 hours time-in-service and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 60 helicopters will be affected by this AD, that it will take approximately 0.25 work hour to accomplish the inspection and that the average labor rate is $60 per work hour. Based on these figures and assuming 10 windows are affected at $10 each for the seal and 1 hour to reinstall each window, the total cost impact of the AD on U.S. operators is estimated to be $1,600.

**Comments Invited**

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–86–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

**§ 39.13 [Amended]**

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**AD 2000–10–13 Eurocopter France:** Amendment 39–11737. Docket No. 99–SW–86–AD.

*Applicability:* Model SA–365N, SA–365N1, AS–365N2, and AS–365N3 helicopters, with enlarged sliding doors, part number (P/N) 365A82–1142–0051, 0054, 0153, or 0154, installed, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required within 10 hours time-in-service (TIS), unless accomplished previously.

To prevent loss of a window panel, impact with a main rotor blade, and subsequent loss of control of the helicopter, accomplish the following:

(a) Visually inspect each window panel in any enlarged sliding door (door) for correct positioning on the inside of the door. See Figure 1.

(1) If the window panel is installed on the inside of the door, no further action is required by this AD.

(2) If a window is installed on the outside, before further flight, remove the window and reinstall using a new seal.

**Note 2:** The following optional procedure may be used to remove and reinstall a window, however, any procedure that results in the installation of a properly sealed airworthy window panel on the inside of the door is acceptable:

a. From inside the door, cut the seal (see Figure 1, item 3). Push the window out and remove remnants of the seal from the window panel and door structure.

b. Remove all traces of the sealing compound (see Figure 1, item 4) with methyl ethyl ketone (MEK), acetone, or equivalent.

c. Thoroughly dust the grooves of a new seal with talcum powder.

d. Fit the new seal to the window panel. The joint will be located in the lower center of the window panel. The clearance between the seal and the window panel should not exceed 0.04 inch.

e. Insert a 0.01-inch diameter cord (ripcord works well) into the seal slot. Position the cord such that the cord ends are on the top center of the panel).

f. Press the window panel and seal assembly against the door from the inside.

g. Gently pull outward on the cord ends, allowing the outer edge of the seal to pull over the door structure. Continue pulling cord around the window panel until complete.

h. Apply PR1222 sealant between the seal and the door structure. Wipe off any excess sealant.

**Note 3:** Eurocopter Telex No. 00097, dated November 9, 1999, pertains to this AD.

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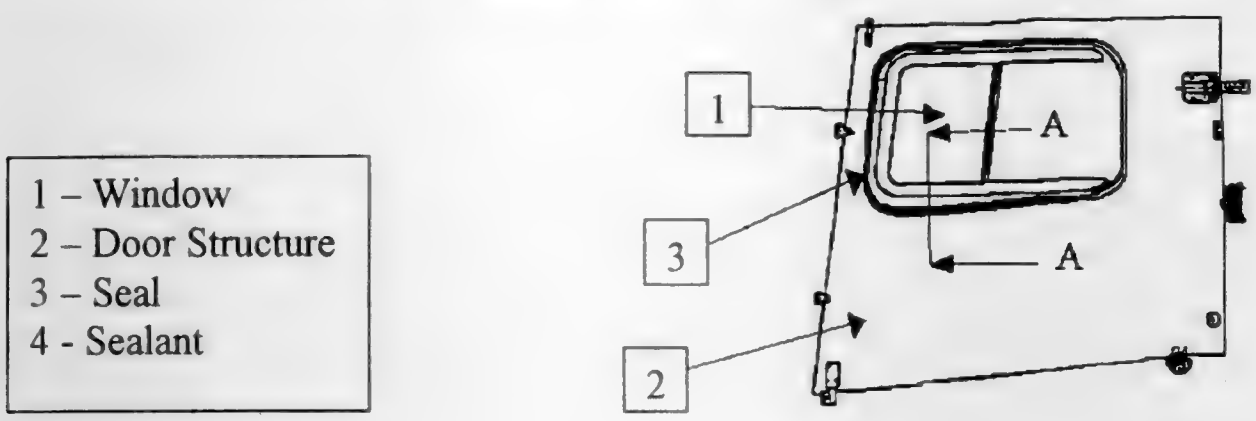


Figure 1

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(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on June 6, 2000.

**Note 5:** The subject of this AD is addressed in The Direction Generale De L'Aviation Civile (France) AD 1999–459–049(A), dated December 1, 1999.

Issued in Fort Worth, Texas, on May 15, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–12817 Filed 5–19–00; 8:45 am]

BILLING CODE 4910–13–U

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 99–SW–43–AD; Amendment 39–11738; AD 2000–10–14]**

**RIN 2120–AA64**

## Airworthiness Directives; Bell Helicopter Textron Canada (BHTC) Model 222, 222B, 222U, and 230 Helicopters

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD) for BHTC Model 222, 222B, 222U, and 230 helicopters that requires inspecting each flapping bearing to yoke attachment bolt (bolt) and replacing each bolt that shows thread damage, shank wear, or corrosion pitting with an airworthy bolt. This amendment is prompted by the discovery of a fractured bolt during a post-flight inspection. The actions specified by this AD are intended to prevent a fracture of a bolt, failure of the bearing and yoke interface, and subsequent loss of control of the helicopter.

**EFFECTIVE DATE:** June 26, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD for BHTC Model 222, 222B, 222U, and 230 helicopters was published in the **Federal Register** on March 1, 2000 (65 FR 11006). That action proposed to require inspecting the bolts and replacing each bolt that shows thread damage, shank wear, or corrosion with an airworthy bolt.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 101 helicopters of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per helicopter to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $20 per bolt. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $20,200.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

## PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701.

### § 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

**AD 2000–10–14 Bell Helicopter Textron Canada:** Amendment 39–11738. Docket No. 99–SW–43–AD.

*Applicability:* Model 222 helicopters, serial number (S/N) 47006 through 47089; Model 222B helicopters, S/N 47131 through 47156; Model 222U helicopters, S/N 47501 through 47574; and Model 230 helicopters, S/N 23001 through 23038 inclusive, certificated in any category.

**Note 1:** This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required within 150 hours time-in-service, unless accomplished previously.

To prevent the fracture of a flapping bearing to yoke attachment bolt (bolt), failure of the bearing and yoke interface, and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove one bolt at a time and inspect each bolt located as shown in Figure 1.

**Note 2:** For main rotor hubs installed on rotorcraft, the bolts may be removed, inspected, and installed one at a time.

**Note 3:** Bell Helicopter Textron Canada Alert Service Bulletins 230–98–15, 222–98–83, and 222U–98–54, all dated October 12, 1998, pertain to the subject of this AD.

(i) Clean each bolt with a cloth dampened with methyl ethyl ketone, RHO SOLV756, Desoto 110, or equivalent.

(ii) Visually inspect each bolt and discard those that have thread damage, shank wear, or corrosion.

(iii) Apply corrosion preventative compound MIL–C–16173 GR2, or equivalent, to the shank of the bolt only.

(iv) Install, torque, and lockwire each bolt.

(v) Coat each bolt head and nut with corrosion preventative compound MIL–C–16173 GR1 or equivalent.

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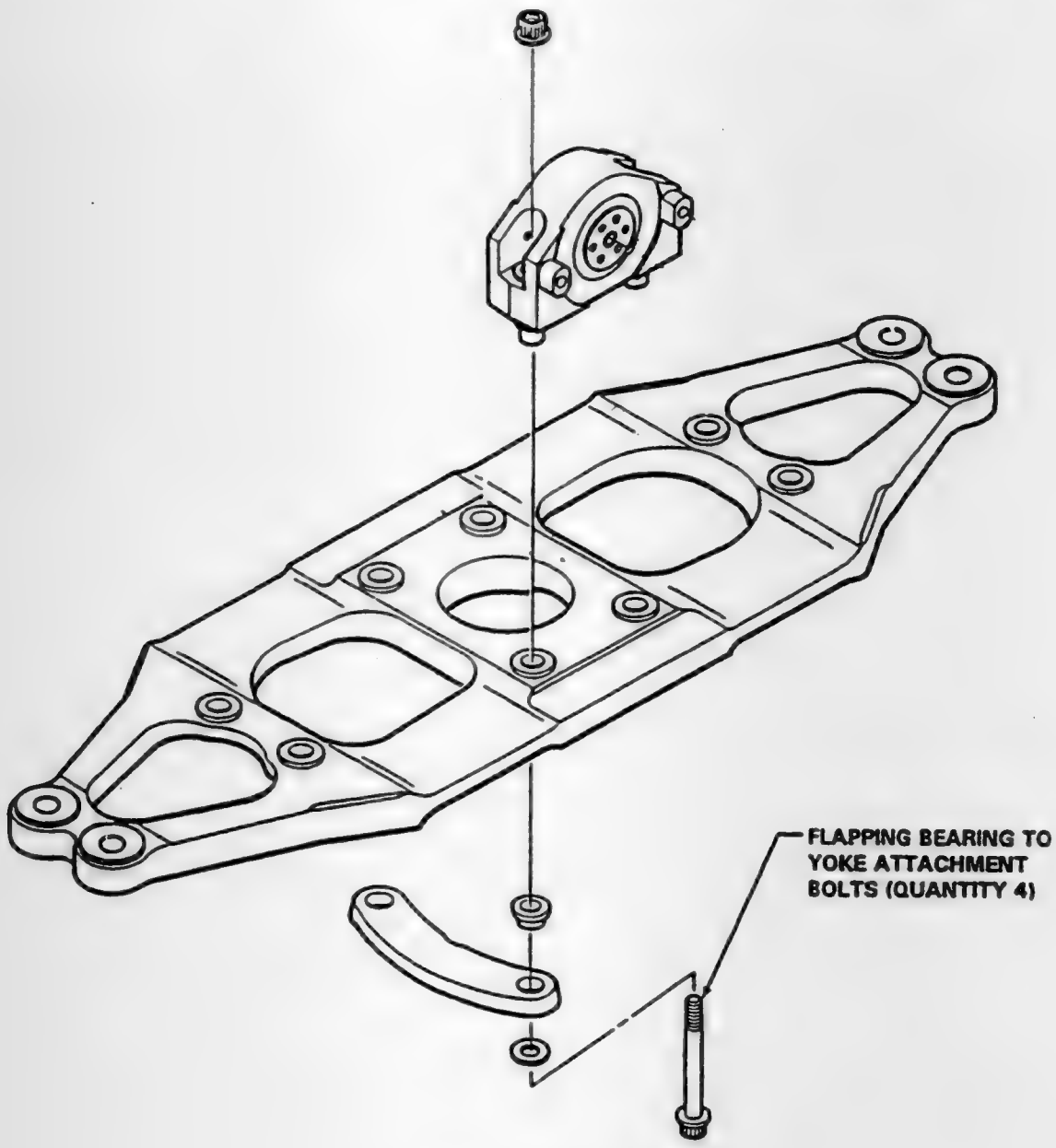


FIGURE 1

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(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

**Note 4:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on June 26, 2000.

**Note 5:** The subject of this AD is addressed in Transport Canada (Canada) AD's CF–99–12 and CF–99–13, both dated April 21, 1999.

Issued in Fort Worth, Texas, on May 15, 2000.

**Henry A. Armstrong,**

*Manager, Rotorcraft Directorate, Aircraft Certification Service.*

[FR Doc. 00–12818 Filed 5–19–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 99–ANM–11]**

### Establishment of Class D Airspace; Jackson, WY

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; establishment of effective date.

**SUMMARY:** This action establishes the effective date for the establishment of a Class D surface area at Jackson Hole Airport, Jackson, WY. The contractual agreements to run the Airport Traffic Control Tower (ATCT) under the FAA contract tower program have now been implemented. Operations at the ATCT will commence on May 15, 2000.

**EFFECTIVE DATE:** The effective date of FR Doc. 00–3382 is May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 99–ANM–11, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

**SUPPLEMENTARY INFORMATION:**

**History**

Airspace Docket No. 99–ANM–11, published in the **Federal Register** on February 14, 2000 (65 FR 7287), established a Class D surface airspace area at Jackson Hole Airport, Jackson, WY. This action was originally scheduled to become effective on April 20, 2000. A delay was encountered concerning the contractual requirements for the operation of the ATCT. The length of the delay was uncertain so a delay of effective date action was effected. Contractual requirements for the ATCT have been resolved, the new effective date for operations at Jackson Hole, WY is May 15, 2000.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Establishment of Effective Date**

The effective date on Airspace Docket 99–ANM–11 is hereby established as May 15, 2000.

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

Issued in Seattle, Washington, on May 4, 2000.

**Charles E. Davis,**

*Acting Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 00–12823 Filed 5–19–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Parts 110 and 165

**[CGD05–00–002]**

**RIN 2115–AA97, AA98**

### OPSAIL 2000, Delaware River, Philadelphia, PA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary regulations in the Delaware River, Philadelphia, Pennsylvania for OPSAIL 2000 activities. This action is necessary to provide for the safety of life on navigable waters before, during, and after OPSAIL 2000 events. This action will restrict vessel traffic in the Delaware River between Anchorage 9 (Mantua Creek anchorage) and the Benjamin Franklin Bridge.

**DATES:** This rule is effective from 8 a.m. on June 22, 2000 through 4 p.m. on June 23, 2000.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–00–002 and are available for inspection or copying at Coast Guard Marine Safety Office/Group Philadelphia, One Washington Avenue, Philadelphia, Pennsylvania 19147 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Junior Grade K. Codel, Coast Guard Marine Safety Office/Group Philadelphia, (215) 271–4991.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On March 28, 2000, we published a notice of proposed rulemaking (NPRM) entitled OPSAIL 2000, Delaware River, Philadelphia, PA in the **Federal Register** (65 FR 16361). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

**Background and Purpose**

Philadelphia OPSAIL 2000, Inc., is sponsoring OPSAIL 2000 activities in the Delaware River, Philadelphia, Pennsylvania. Planned events include the arrival of a number of international Tall Ships at Anchorage 9 (Mantua Creek anchorage) on June 22, 2000 and a Parade of Sail from that anchorage, upriver to the Benjamin Franklin Bridge on June 23, 2000.

The Coast Guard anticipates a large spectator fleet for this event. Operators should expect significant vessel congestion along the parade route.

The purpose of these regulations is to promote maritime safety and protect participants and the boating public immediately prior to, during, and after the scheduled event. The regulations will establish a clear parade route for the OPSAIL 2000 vessels, provide a safety buffer around the participating vessels while they are at anchor and in

transit, and in certain anchorage areas, modify existing anchorage regulations for the benefit of participants and spectators. The regulations will affect the movement of all vessels operating in the specified areas of the Delaware River.

It may be necessary for the Coast Guard to establish safety or security zones in addition to these regulations to safeguard dignitaries and certain vessels participating in the event. If the Coast Guard deems it necessary to establish such zones at a later date, the details of those zones will be announced separately via the **Federal Register**, Local Notice to Mariners, Safety Voice Broadcasts, and any other means available.

All vessel operators and passengers are reminded that vessels carrying passengers for hire or that have been chartered and are carrying passengers may have to comply with certain additional rules and regulations beyond the safety equipment requirements for all pleasure craft. When a vessel is not being used exclusively for pleasure, but rather is engaged in carrying passengers for hire or has been chartered and is carrying the requisite number of passengers, the vessel operator must possess an appropriate license and the vessel may be subject to inspection. The definition of the term "passenger for hire" is found in 46 U.S.C. 2101(21a). In general, it means any passenger who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage onboard the vessel. The definition of the term "passenger" is found in 46 U.S.C. 2101(21). It varies depending on the type of vessel, but generally means individuals carried aboard vessels except for certain specified individuals engaged in the operation of the vessel or the business of the owner/charterer. The law provides for substantial penalties for any violation of applicable license and inspection requirements. If you have any questions concerning the application of the above law to your particular case, you should contact the Coast Guard at the address listed in **ADDRESSES** for additional information.

Vessel operators are reminded they must have sufficient facilities on board their vessels to retain all garbage and untreated sewage. Discharge of either into any waters of the United States is strictly forbidden. Violators may be assessed civil penalties up to $25,000 or face criminal prosecution.

We recommend that vessel operators visiting the Philadelphia area for this event obtain an up to date edition of National Ocean Service Chart 12313 to avoid anchoring within a charted cable or pipeline area.

With the arrival of OPSAIL 2000 and spectator vessels in the Philadelphia area for this event, it will be necessary to curtail normal port operations to some extent. Interference will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled events.

**Discussion of the Rule**

The OPSAIL 2000 vessels are scheduled to arrive at Anchorage 9 (Mantua Creek anchorage) on June 22, 2000. The lead vessel is scheduled to begin the Parade of Sail at 9 a.m. on June 23, 2000, and will follow a parade route of approximately 8 nautical miles from that anchorage, upriver to the Benjamin Franklin Bridge. Two larger OPSAIL 2000 vessels which are unable to sail under the Walt Whitman Bridge will depart the Parade of Sail in the vicinity of the Schuylkill River and be berthed at the Philadelphia Naval Shipyard. The remainder of the OPSAIL 2000 vessels will be berthed along the Philadelphia, PA and Camden, NJ waterfronts as they complete the Parade of Sail.

The safety of parade participants and spectators will require that spectator craft be kept at a safe distance from the parade route during these vessel movements. The Coast Guard will be using safety zones along the parade route to keep all vessels not involved in the Parade of Sail a safe distance from the OPSAIL 2000 vessels. The parade route has been segmented in this rulemaking to facilitate the earliest possible reopening of the waterway once all OPSAIL 2000 vessels have cleared a particular segment of the route, but portions of the Delaware River will remain closed to all traffic until all of the OPSAIL 2000 vessels are safely moored at their assigned berths or have departed the event area.

The Coast Guard is temporarily modifying the existing anchorage regulations found at 33 CFR 110.157 to accommodate OPSAIL 2000 and spectator vessels. Anchorage 9 will be closed to all vessels except OPSAIL 2000 vessels that will be using it as the staging area for the Parade of Sail. Vessels will not be allowed to anchor in Anchorage 10 and Anchorage 11 to enable spectator vessels to safely follow the Parade of Sail. The southern portion of Anchorage 13, and the northern portion of Anchorage 12 will be closed because they are in the portion of the river that the OPSAIL 2000 vessels will be using to maneuver in preparation of mooring. The southern portion of Anchorage 12 will be designated exclusively for spectator vessels.

**Discussion of Comments and Changes**

We did not receive any comments on the proposed rule. No changes were made to the proposed rule.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the Parade of Sail on June 23, 2000. Although these regulations prevent traffic from transiting portions of the Delaware River during the event, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Delaware River in the vicinity of Philadelphia, Pennsylvania. The regulations will not have a significant impact on a substantial number of small entities for the

following reasons: the restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking process. No requests for assistance in understanding this rule were received.

Small businesses may send comments on the actions of the Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

**Federalism**

We have analyzed this rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.** By controlling vessel traffic during these events, this rule is intended to minimize environmental impacts of increased vessel traffic during the transits of event vessels.

**List of Subjects**

*33 CFR Part 110*

Anchorage grounds.

*33 CFR Part 165*

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Parts 110, and 165 as follows:

## PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. From 8 a.m. on June 22, 2000 until 4 p.m. on June 23, 2000 § 110.157 is amended by adding paragraph (d) to read as follows:

**§ 110.157 Delaware Bay and River.-**

* * * * *

(d) Not withstanding paragraphs (a) through (c) of this section, the following temporary regulations are in effect from 8 a.m. on June 22, 2000 until 4 p.m. on June 23, 2000 for OPSAIL 2000.

(1) Anchorage 9 will be closed to all vessels except OPSAIL 2000 vessels. "OPSAIL 2000 vessels" includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Philadelphia and approved by the Commander, Fifth Coast Guard District.

(2) No vessel may anchor in Anchorage 10, or Anchorage 13 south of the Benjamin Franklin Bridge, without permission of the Captain of the Port.

(3) No vessel may anchor in Anchorage 11 after 1 a.m. on June 23, 2000 without permission of the Captain of the Port.

(4) Anchorage 12:

(i) No vessel may anchor north of latitude 39°55′41″ N without permission of the Captain of the Port.

(ii) South of latitude 39° 55′ 41″ N is designated for the exclusive use of spectator vessels. "Spectator vessels" includes any vessel, commercial or recreational, being used for pleasure or carrying passengers, that is in the Port of Philadelphia to observe part or all of the events attendant to OPSAIL 2000.

## PART 165—[AMENDED]

3. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

4. Add temporary § 165.T05–002 to read as follows:

**§ 165.T05–002 Safety Zone; OPSAIL 2000, Delaware River, Philadelphia, PA.**

(a) *Definitions:* (1) *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Coast Guard Patrol Commander* is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commanding Officer, Coast Guard Marine Safety Office/Group Philadelphia.

(3) *OPSAIL 2000 Vessels* includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Philadelphia and approved by Commander, Fifth Coast Guard District.

(b) *Location.* The following areas are Safety Zones:

(1) *Parade of Sail—First Segment:* This moving safety zone includes all waters from 500 yards forward of the lead OPSAIL 2000 vessel to 100 yards aft of the last OPSAIL 2000 vessel, and extending 50 yards outboard of each OPSAIL 2000 vessel participating in the

Parade of Sail. This safety zone will move with the Parade of Sail as it transits the Delaware River from Anchorage 9 (Mantua Creek anchorage) to the Walt Whitman Bridge.

(2) *Parade of Sail—Second Segment:* All waters of the Delaware River, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and on the north by the Benjamin Franklin Bridge with the exception of the southern portion of Anchorage 12, defined as that portion of the anchorage south of latitude 39° 55′ 41″ N.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within these regulated areas unless authorized to do so by the Coast Guard Patrol Commander. Any person or vessel authorized to enter the regulated area must operate in strict conformance with any directions given by the Captain of the Port and leave the regulated area immediately if the Coast Guard Patrol Commander so orders.

(3) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (215) 271–4940.

(4) The Coast Guard Patrol Commander will notify the public of changes in the status of these zones by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective dates:* This section is effective from 8 a.m. on June 22, 2000 through 4 p.m. on June 23, 2000.

Dated: May 12, 2000.

**Thomas E. Bernard,**

*Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 00–12746 Filed 5–17–00; 12:28 pm]

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## POSTAL SERVICE

### 39 CFR Part 952

### Rules of Practice in Proceedings Relative to False Representation and Lottery Orders

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Rules of Practice in Proceedings Relative to False Representation and Lottery Orders to establish administrative procedures for issuing subpoenas and imposing the statutorily authorized civil penalties in proceedings conducted under 39 U.S.C. 3005(a).

**EFFECTIVE DATE:** May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Diane M. Mego, Esq., (703) 812–1905.

**SUPPLEMENTARY INFORMATION:** On March 14, 2000, the Postal Service published in the **Federal Register** a proposed rule to amend the Rules of Practice in Proceedings Relative to False Representation and Lottery Orders (65 FR 13707–13709). The proposed rule implements The Deceptive Mail Prevention and Enforcement Act, Pub. L. 106–168, 113 Stat. 1806, enacted on December 12, 1999, which grants the Judicial Officer authority to issue subpoenas requiring the attendance and testimony of witnesses and the production of any records (including books, papers, documents, and other tangible things which constitute or contain evidence) which the Judicial Officer considers relevant or material in any statutory proceeding conducted under 39 U.S.C. 3005(a). The Act also authorizes new administrative civil penalties.

Comments on the proposed rule were due on or before April 13, 2000. Two comments were received. One commenter was concerned that the proposed time limits for requesting a subpoena do not give the subpoenaed party a reasonable opportunity to comply with a document request or to appear at the hearing. The proposed time limits are consistent with the time limits already provided in part 952 and, therefore, have not been revised in this final rule. However, the rule recognizes the possibility that further time may be needed, and the presiding officer, at his discretion, may waive the time limits in the appropriate circumstances.

The other commenter, however, believed that the language allowing the presiding officer to exercise his discretion in granting subpoenas outside the proposed time limits improperly created standardless discretion in the presiding officer that could violate the subpoenaed individual's due process rights. Contrary to the commenter's belief, the rule could never be fashioned to cover every possibility that could arise throughout a proceeding. Granting the presiding officer the right to exercise his discretion protects the parties' rights by allowing the presiding officer to conduct each proceeding fairly. Therefore, the discretion language has been adopted as proposed.

The second commenter was also concerned that the proposed rule exceeds the authority granted by the Act by allowing the presiding officer to issue the subpoena, permitting the Judicial Officer to seek enforcement of a subpoena, and not providing sufficient oversight for the issuance of subpoenas.

Two of the comments concern the right to delegate authority. The commenter questions authorizing the presiding officer to issue subpoenas when 39 U.S.C. 3016(a)(2) gives that authority to the Judicial Officer. The commenter points out that the Act specifies that the Postmaster General may delegate the subpoena authority in investigations, but does not contain similar provisions applicable to the Judicial Officer. The language relied on by the commenter with respect to investigative subpoenas appears to be a specific limitation on the right to delegate, however, rather than a grant of authority to delegate. By limiting the authority to approve a subpoena during an investigation to only the Postmaster General, the General Counsel or Deputy General Counsel, the Act assures that the subpoena authority remains with a high-level official. Absent a specific, legislative intent to limit the Judicial Officer's ability to delegate his authority, the subpoena authority is impliedly delegable to the presiding officer, a high-level and independent official under his supervision.

The commenter also questions the authority of the Judicial Officer to seek enforcement of a subpoena when 39 U.S.C. 3016(c)(1) gives that authority to the Postmaster General. However, the ability of the Postmaster General to delegate this enforcement authority is not limited by the statute. Further, the Postmaster General would be considered one of the parties to any proceeding conducted under part 952. Therefore, it makes sense that the authority to seek enforcement of a subpoena should be delegated to the Judicial Officer absent a specific limitation on that authority by Congress.

The final comment concerns the form and issuance of the subpoena. The commenter was concerned that the proposed language did not offer sufficient oversight of the subpoena process by allowing the presiding officer to enter the name of the witness and sign the subpoena, but otherwise allow the requesting party to complete the subpoena before service. The proposed rules provide sufficient oversight by requiring the requesting party to "state the reasonable scope and general relevance to the case of the testimony and any records sought," which provides initial review by the presiding officer, and by allowing a motion to quash, which gives the presiding officer a further review if necessary. Furthermore, issuing subpoenas signed but otherwise in blank is a standard

practice (cf. Fed. R. Civ. P. 45(a)(3)). After careful review, the Judicial Officer determined that the proposed language does not require revision.

With regard to the effective date, the Postal Service has determined that there is good cause to make the new regulations effective upon publication. The public interest in the enforcement of consumer protection laws would not be served by delaying the application of subpoena requirements to persons who are subject to false representation or lottery proceedings under 39 U.S.C. 3005(a).

The Postal Service hereby adopts the following amendments to 39 CFR part 952.

**List of Subjects in 39 CFR Part 952**

Administrative practice and procedure, False representations, Fraud, Lotteries, Penalties, Postal Service.

**PART 952—[AMENDED]**

1. The authority citation for part 952 is revised to read as follows:

**Authority:** 39 U.S.C. 204, 401, 3005, 3012, 3016.

**§ 952.5 [Amended]**

2. Section 952.5 is amended by adding "and/or the assessment of civil penalties" to the end of the first sentence.

**§ 952.7 [Amended]**

3. Section 952.7(b) is amended by:

A. Adding "and/or the assessment of civil penalties authorized by 39 U.S.C. 3012" to the end of the first sentence; and

B. Adding "tentatively assess such civil penalties as he considers appropriate under applicable law;" after the phrase "release of mail unrelated to the matter complained of;" in the third sentence.

**§ 952.11 [Amended]**

4. Section 952.11 is amended by:

A. Adding "and/or assess civil penalties" after "orders" in the second sentence of paragraph (a); and

B. Adding "and/or assess civil penalties" after "orders" in paragraph (b).

**§ 952.17 [Amended]**

5. Section 952.17(b)(10) is amended by adding "§ 952.19 and" before "§ 952.21".

6. Section 952.19 is revised to read as follows:

**§ 952.19 Subpoenas.**

(a) *General.* Upon written request of either party filed with the Recorder or on his own initiative, the presiding officer may issue a subpoena requiring:

(1) *Testimony at a deposition.* The deposing of a witness in the city or county where the witness resides or is employed or transacts business in person, or at another location convenient for the witness that is specifically determined by the presiding officer;

(2) *Testimony at a hearing.* The attendance of a witness for the purpose of taking testimony at a hearing; and

(3) *Production of records.* In addition to paragraphs (a)(1) and (a)(2) of this section, the production by the witness at the deposition or hearing of records designated in the subpoena.

(b) *Voluntary cooperation.* Each party is expected:

(1) To cooperate and make available witnesses and evidence under its control as requested by the other party, without issuance of a subpoena, and

(2) To secure voluntary production of desired third-party records whenever possible.

(c) *Requests for subpoenas.* (1) A request for a subpoena shall to the extent practical be filed:

(i) At the same time a request for deposition is filed; or

(ii) 15 days before a scheduled hearing where the attendance of a witness at a hearing is sought.

(2) A request for a subpoena shall state the reasonable scope and general relevance to the case of the testimony and of any records sought.

(3) The presiding officer, in his discretion, may honor requests for subpoenas not made within the time limitations specified in this paragraph.

(d) *Requests to quash or modify.* Upon written request by the person subpoenaed or by a party, made within 10 days after service but in any event not later than the time specified in the subpoena for compliance, the presiding officer may:

(1) Quash or modify the subpoena if it is unreasonable and oppressive or for other good cause shown, or

(2) require the person in whose behalf the subpoena was issued to advance the reasonable cost of producing subpoenaed records. Where circumstances require, the presiding officer may act upon such a request at any time after a copy has been served upon the opposing party.

(e) *Form; issuance.* (1) Every subpoena shall state the title of the proceeding, shall cite 39 U.S.C. 3016(a)(2) as the authority under which it is issued, and shall command each person to whom it is directed to attend and give testimony, and if appropriate, to produce specified records at a time and place therein specified. In issuing a subpoena to a requesting party, the presiding officer shall sign the subpoena and may, in his discretion, enter the name of the witness and otherwise leave it blank. The party to whom the subpoena is issued shall complete the subpoena before service.

(2) The party at whose instance a subpoena is issued shall be responsible for the payment of fees and mileage of the witness and of the officer who serves the subpoena. The failure to make payment of such charges on demand may be deemed by the presiding officer as sufficient ground for striking the testimony of the witness and the evidence the witness has produced.

(f) *Service.* (1) *In general.* The party requesting issuance of a subpoena shall arrange for service.

(2) *Service within the United States.* A subpoena issued under this section may be served by a person designated under 18 U.S.C. 3061 or by a United States marshal or deputy marshal, or by any other person who is not a party and not less than 18 years of age at any place within the territorial jurisdiction of any court of the United States.

(3) *Foreign Service.* Any such subpoena may be served upon any person who is not to be found within the territorial jurisdiction of any court of the United States, in such manner as the Federal Rules of Civil Procedure prescribe for service in a foreign country. To the extent that the courts of the United States may assert jurisdiction over such person consistent with due process, the United States District Court for the District of Columbia shall have the same jurisdiction to take any action respecting compliance with this section by such person that such court would have if such person were personally within the jurisdiction of such court.

(4) *Service on Business Persons.* Service of any such subpoena may be made upon a partnership, corporation, association, or other legal entity by:

(i) Delivering a duly executed copy thereof to any partner, executive officer, managing agent, or general agent thereof, or to any agent thereof authorized by appointment or by law to receive service of process on behalf of such partnership, corporation, association, or entity;

(ii) Delivering a duly executed copy thereof to the principal office or place of business of the partnership, corporation, association, or entity; or

(iii) Depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such partnership,

corporation, association, or entity at its principal office or place of business.

(5) *Service on Natural Persons.* Service of any subpoena may be made upon any natural person by:

(i) delivering a duly executed copy to the person to be served; or

(ii) depositing such copy in the United States mails, by registered or certified mail, return receipt requested, duly addressed to such person at his residence or principal office or place of business.

(6) *Verified Return.* A verified return by the individual serving any such subpoena setting forth the manner of such service shall be proof of service. In the case of service by registered or certified mail, such return shall be accompanied by the return post office receipt of delivery of such subpoena.

(g) *Contumacy or refusal to obey a subpoena.* In the case of contumacy or refusal to obey a subpoena, the Judicial Officer may request the Attorney General to petition the district court for any district in which the person receiving the subpoena resides, is found, or conducts business (or in the case of a person outside the territorial jurisdiction of any district court, the district court for the District of Columbia) to issue an appropriate order for the enforcement of such subpoena. Any failure to obey such order of the court may be punishable as contempt.

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–12784 Filed 5–19–00; 8:45 am]

BILLING CODE 7710–12–U

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MN60–01–7285a; FRL–6604–5]**

### Approval and Promulgation of Implementation Plans; Minnesota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** We are approving a site-specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for LTV Steel Mining Company (LTV), formerly known as Erie Mining Company, located in St. Louis County, Minnesota. The Minnesota Pollution Control Agency (MPCA) submitted this SIP revision on September 29, 1998 in response to a request from LTV that EPA remove the Stipulation Agreement for Erie Mining Company from the State SIP. The rationale for the approval and other information are provided in this notice.

**DATES:** This action is effective on July 21, 2000 without further notice, unless EPA receives relevant adverse comments by June 21, 2000. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

**ADDRESSES:** Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

**SUPPLEMENTARY INFORMATION:** This supplementary information section is organized as follows:

A. What Action Is EPA Taking Today?
B. Why Was This SIP Revision Submitted?
C. Why Can We Approve This Request?
D. What Is the Background for This Rulemaking?

*A. What Action Is EPA Taking Today?*

We are approving MPCA's September 29, 1998 request for a site-specific revision to the Minnesota PM SIP. Specifically, we are approving the removal of the Stipulation Agreement for LTV Steel Mining Company, formerly known as Erie Mining Company, from the State PM SIP.

*B. Why Was This SIP Revision Submitted?*

The State requested that EPA remove the Stipulation Agreement from the SIP because the Agreement was initially submitted as a SIP to: (a) Provide a variance from state SIP rules for three years; and (b) provide a mechanism to make the 90 percent control efficiency federally enforceable. In its submittal, MPCA concludes that the Stipulation Agreement was satisfied on LTV's part because the source modified their air pollution control equipment to achieve 90 percent control efficiency, tested the furnaces, and submitted opacity data to support a higher opacity limit during the specified time frame. Further, MPCA did not act on the adjusted opacity limit provided for in the Stipulation Agreement by not issuing a facility permit which would have finalized a revised opacity limitation.

*C. Why Can We Approve This Request?*

At the time of the approval of the Stipulation Agreement, the National Ambient Air Quality Standards (NAAQS) for particulate matter were based on the total suspended particulates (TSP) indicator. On July 1, 1987 EPA replaced TSP as the indicator for the PM ambient standard with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers.

We are approving the current SIP submittal as a Direct Final **Federal Register** notice because removing the Stipulation Agreement from the SIP would pose no threat to continued maintenance of the PM NAAQS in the area. The state rules for particulate and opacity standards, which would become applicable to LTV, are contained in the federally approved PM SIP for Minnesota and are therefore federally enforceable.

Further, although section 193 of the Clean Air Act Amendments of 1990 (November 15, 1990) requires equivalent or greater emission reductions for modifications to control requirements in effect before the date of enactment of the 1990 Amendments, this requirement does not apply in this case because the area is designated attainment for PM and the Stipulation Agreement was not required for a nonattainment area plan. Additional information is available in our November 30, 1999 Technical Support Document (TSD).

*D. What Is the Background for This Rulemaking?*

On February 20, 1981 the State submitted to EPA a Stipulation Agreement for LTV as a revision to Minnesota's total suspended particulates (TSP) SIP. Emissions from 27 furnaces at LTV, located in St. Louis County, Minnesota, (designated a TSP attainment area), exceeded the State's opacity and particulate matter limitations. Therefore, MPCA and LTV entered into a Stipulation Agreement which would allow LTV to exceed the requirements of the State rules until December 31, 1983.

The Stipulation Agreement required LTV to implement a control strategy which would provide for 90 percent control, 5 percent more than required by the State rules, by December 31, 1983. An opacity limit was also to be

developed to reflect 90 percent control. Because LTV was located in a TSP attainment area and the TSP NAAQS would be protected during the period of the agreement, EPA approved the Stipulation Agreement into Minnesota's TSP SIP on November 27, 1981 at 46 FR 57893.

**EPA Action**

In this rulemaking action, EPA approves the removal of the Stipulation Agreement for LTV Steel Mining Company, formerly known as Erie Mining Company, from the State PM SIP. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the State Plan should relevant adverse comments be filed. This rule will be effective July 21, 2000 without further notice unless relevant adverse comments are received by June 21, 2000. If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 21, 2000.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

**Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

*B. Executive Order 13045*

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866; and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

*C. Executive Order 13084*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*D. Executive Order 13132*

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*E. Regulatory Flexibility*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial

number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. Submission to Congress and the Comptroller General*

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. section 804(3). EPA is not required to submit a rule report regarding this action under section 801 because this is a rule of particular applicability.

*H. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

*I. Petitions for Judicial Review*

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter.

Dated: April 27, 2000.

**David Ullrich,**

*Acting Regional Administrator, Region 5.*

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

## PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

2. Section 52.1220 is amended by adding paragraph (c)(53) to read as follows:

**§ 52.1220 Identification of plan.**

* * * * *

(c) * * *

(53) On September 29, 1998, the State of Minnesota submitted a site-specific revision to the particulate matter (PM) SIP for LTV Steel Mining Company (LTV), formerly known as Erie Mining Company, located in St. Louis County, Minnesota. This SIP revision was submitted in response to a request from LTV that EPA remove the Stipulation Agreement for Erie Mining Company from the State SIP, as was approved by EPA in paragraph (c)(18) of this section. Accordingly the Stipulation Agreement for Erie Mining Company referenced in paragraph (c)(18) of this section is removed from the SIP without replacement.

[FR Doc. 00–12642 Filed 5–19–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**40 CFR Part 52**

**[IA 104–1104; FRL–6702–9]**

## Approval and Promulgation of Implementation Plans; State of Iowa; Correction

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule; correction.

**SUMMARY:** On April 12, 1999 (64 FR 17548), EPA published a direct final action approving revisions to the Iowa State Implementation Plan (SIP). This document makes corrections to the table of EPA-Approved Iowa Regulations. The state effective date is corrected to read May 13, 1998, and notations are added to or deleted from the "Comments" column.

**EFFECTIVE DATE:** This final rule is effective May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Wayne Kaiser at (913) 551–7603.

**SUPPLEMENTARY INFORMATION:** In the part 52 table in subpart Q, § 52.820(c), which accompanied the April 12, 1999, document, the "state effective date" was listed as May 3, 1998. This action corrects the "state effective date" for all the rules listed, for which there has not been a subsequent revision and more current effective date, to May 13, 1998. Additionally, for rule 20.2, information has been added in the "Comments" column which specifies that certain portions of the rule are not SIP approved. Finally, we are deleting the notation in the "Comments" column for rule 25.1, which indicated that paragraph 25.1(12) was not SIP approved. All of rule 25.1 is SIP approved.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B),

provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is such good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary.

**Administrative Requirements**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule merely corrects an incorrect citation in a previous action, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely corrects a citation in a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act (CAA). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, our role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), we have no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, we have taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. As stated previously, we made such a good cause finding, including the reasons therefore and established an effective date of May 22, 2000. We will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This correction to the Iowa SIP table is not a "major rule" as defined by 5 U.S.C. 804 (2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 10, 2000.

**William Rice,**

*Acting Regional Administrator, Region 7.*

Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for Part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart Q—Iowa**

2. In § 52.820(c), the following entries in the table, EPA-approved regulations, are revised to read as follows:

**§ 52.820 Identification of plan.**

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

| Iowa citation | Title | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| **Iowa Department of Natural Resources, Environmental Protection Commission [567]** | | | | |
| **Chapter 20—Scope of Title-Definitions-Forms-Rule of Practice** | | | | |
| 567–20.1 | Scope of Title | 5/13/98 | [5/22/00 and FR cite]. | |
| 567–20.2 | Definitions | 10/14/98 | [5/22/00 and FR cite] | The definitions for anaerobic lagoon, odor, odorous substance, and odorous substance source, are not SIP approved. |
| 567–20.3 | Air Quality Forms Generally. | 5/13/98 | [5/22/00 and FR cite]. | |

EPA-APPROVED IOWA REGULATIONS—Continued

| Iowa citation | Title | State effective date | EPA approval date | Comments |
|---|---|---|---|---|
| * | * * * | * | * | * |
| | **Chapter 22—Controlling Pollution** | | | |
| 567–22.1 | Permits Required for New or Existing Stationary Sources. | 12/23/98 | [5/22/00 and FR cite] | Subrule 22.1(3) "b" (9) is not SIP approved. |
| * | * * * | * | * | * |
| 567–22.4 | Special Requirements for Major Stationary Sources Located in Areas Designated Attainment or Unclassified (PSD). | 5/13/98 | [5/22/00 and FR cite]. | |
| 567–22.5 | Special Requirements for Nonattainment Areas. | 5/13/98 | [5/22/00 and FR cite]. | |
| 567–22.8 | Permit by Rule | 5/13/98 | [5/22/00 and FR cite]. | |
| * | * * * | * | * | * |
| 567–22.203 | Voluntary Operating Permit Applications. | 10/14/98 | [5/22/00 and FR cite]. | |
| * | * * * | * | * | * |
| 567–22.300 | Operating Permit by Rule for Small Sources. | 10/14/98 | [5/22/00 and FR cite]. | |
| | **Chapter 23—Emission Standards for Contaminants** | | | |
| 567–23.1 | Emission Standards | 10/14/98 | [5/22/00 and FR cite] | Subrules 23.1(2)–(5) are not SIP approved. |
| 567–23.2 | Open Burning | 5/13/98 | [5/22/00 and FR cite]. | |
| 567–23.3 | Specific Contaminants | 5/13/98 | [5/22/00 and FR cite] | Subrule 23.3(3)(d) is not SIP approved. |
| * | * * * | * | * | * |
| | **Chapter 24—Excess Emissions** | | | |
| 567–24.1 | Excess Emission Reporting. | 5/13/98 | [5/22/00 and FR cite]. | |
| * | * * * | * | * | * |
| | **Chapter 25—Measurement of Emissions** | | | |
| 567–25.1 | Testing and Sampling of New and Existing Equipment. | 12/23/98 | [5/22/00 and FR cite]. | |
| * | * * * | * | * | * |
| | **Chapter 29—Qualification in Visual Determination of the Opacity of Emissions** | | | |
| 567–29.1 | Methodology and Qualified Observer. | 5/13/98 | [5/22/00 and FR cite] | |
| | **Chapter 31—Nonattainment Areas** | | | |
| * | * * * | * | * | * |
| 567–31.2 | Conformity of General Federal Actions to the Iowa SIP or Federal Implementation Plan. | 5/13/98 | [5/22/00 and FR cite]. | |
| * | * * * | * | * | * |

* * * * *

[FR Doc. 00–12646 Filed 5–19–00; 8:45 am]
BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 52 and 60

[SD–001–0010 & SD–001–0011; FRL–6603–1]

## Clean Air Act Approval and Promulgation of State Implementation Plan; South Dakota; New Source Performance Standards

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The EPA approves revisions to the South Dakota State implementation plan (SIP) which update the State's incorporation by reference of the Federal New Source Performance Standards (NSPS). The SIP revisions were submitted by the designee of the Governor of South Dakota on May 2, 1997 and on May 6, 1999. The State adopts the Federal NSPS by reference in subchapter 74:36:07 of the Administrative Rules of South Dakota (ARSD). The State also repealed a rule that required stack tests for asphalt batch plants, aside from the initial stack test required by the NSPS, to be performed if certain conditions existed. EPA approves the revisions to the ARSD 74:36:07 because the revisions are consistent with Federal regulations. This approval action does not extend to sources in Indian country.

**EFFECTIVE DATE:** This rule is effective on June 21, 2000.

**ADDRESSES:** Copies of the documents relative to this action are available for inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the State documents relevant to this action are available for public inspection at the Air Quality Program, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, South Dakota 57501. Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** Vicki Stamper, EPA Region VIII, (303) 312–6445.

**SUPPLEMENTARY INFORMATION:**

### I. What Action Is EPA Taking Today?

We approve two revisions to the South Dakota's NSPS regulations in subchapter 74:36:07 of the ARSD, except for those sources located in Indian country. These revisions were submitted for approval as part of the SIP on May 2, 1997 and on May 6, 1999.

The State's May 2, 1997 and May 6, 1999 SIP submittals included revisions to other subchapters of the ARSD. We acted on most of those revisions submitted on May 2, 1997 in an October 19, 1998 rulemaking (see 63 FR 55804–55807). In this document, we only act on the revisions to ARSD 74:36:07. We will act on the revisions to the other subchapters of the ARSD included in these submittals in separate rulemakings.

EPA proposed to approve these revisions to South Dakota's NSPS in subchapter 74:36:07 of the ARSD in the September 21, 1999 **Federal Register** (see 64 FR 51088–51091), except for those sources located in Indian country. In that document, EPA also proposed to clarify the interpretation of Indian country in South Dakota. No comments were submitted on our proposed approval of South Dakota's SIP revisions pertaining to the NSPS. EPA did receive comments on our proposed clarification of the interpretation of Indian country in South Dakota. See Section V. of this document for further discussion.

### II. What Changes Were Made to South Dakota's NSPS Regulation?

In South Dakota's May 2, 1995 SIP submittal, the State adopted four new NSPS categories in subchapter 74:36:07 of the ARSD. Specifically, the State incorporated by reference the following subparts of the Federal NSPS in 40 CFR part 60 as in effect on July 1, 1995 unless otherwise stated: subpart Eb (pertaining to large municipal waste combustors) as promulgated by EPA on December 19, 1995 (59 FR 65419–65436); 40 CFR part 60, subpart RRR (pertaining to the synthetic organic chemical manufacturing industry reactor processes); 40 CFR part 60, subpart UUU (pertaining to calciners and dryers in mineral industries); and 40 CFR part 60, subpart WWW (pertaining to municipal solid waste (MSW) landfills) as promulgated by EPA on March 12, 1996 (61 FR 9918–29). The State also updated its existing NSPS subparts to incorporate by reference the July 1, 1995 version of the Federal NSPS.

In South Dakota's May 6, 1999 SIP submittal, the State adopted one new NSPS subpart in subchapter 74:36:07 of the ARSD: 40 CFR 60, subpart Ec (pertaining to hospital/medical/infectious waste incinerators) as promulgated by EPA on September 15, 1997 (62 FR 48383–48390). The State also updated its incorporated by reference of 40 CFR part 60, subpart Eb (pertaining to municipal waste combustors) to reflect the version in effect as of July 1, 1997, and also updated its incorporation by reference of 40 CFR part 60, subpart WWW (pertaining to MSW landfills) to reflect the version as revised on June 16, 1998 (63 FR 32750–32753). Last, the State repealed its additional provisions for asphalt batch plants in Section 74:36:07:11 of the ARSD. This section previously required stack tests at asphalt batch plants, aside from the initial stack test required by the NSPS, if certain conditions existed. The State repealed this section because it was repetitive with recent changes to the ARSD. The State still has the ability to require stack performance tests at any time to determine compliance with emission limits.

### III. Why Is EPA Approving the South Dakota Revisions to the NSPS?

EPA approves these revisions to South Dakota's NSPS in ARSD 74:36:07 because the revisions ensure that the State's NSPS are up to date with the Federal NSPS.

We also believe the State met EPA's completeness criteria, including the public participation requirements of sections 110(a)(2) and 110(l) of the Clean Air Act, for the adoption of these revisions to ARSD 74:36:07. Specifically, the State of South Dakota held a public hearing on November 20, 1996, after providing notice to the public, for the revisions to the ARSD submitted to EPA on May 2, 1997. For the SIP revisions submitted to EPA on May 6, 1999, the State held a public hearing on February 18, 1999, after providing notice to the public.

### IV. How Do I Know What NSPS Subparts Have Been Approved as Part of the SIP or Delegated by EPA to the States?

We publish a table in 40 CFR 60.4 for Region VIII States that identify which NSPS subparts have been adopted by the States and delegated and approved by EPA. In this document, we update that table to reflect the NSPS subparts delegated to South Dakota. We are also updating the address listed for the State of South Dakota in 40 CFR 60.4.

**V. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in South Dakota?**

South Dakota is not authorized to carry out its NSPS program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

Lands within the exterior boundaries of the following Indian Reservations located within the State of South Dakota:

A. Cheyenne River Indian Reservation,
B. Crow Creek Indian Reservation,
C. Flandreau Indian Reservation,
D. Lower Brule Indian Reservation,
E. Pine Ridge Indian Reservation,
F. Rosebud Indian Reservation,
G. Standing Rock Indian Reservation, and
H. Yankton Indian Reservation.

EPA held a public hearing on December 2, 1999, in Badlands National Park, South Dakota, and accepted public comments on the question of the location and extent of Indian country within the State of South Dakota. EPA also received written comments on the question of the location and extent of Indian country pursuant to our September 21, 1999 notice of proposed approval of South Dakota's NSPS revisions. In a forthcoming **Federal Register** notice, EPA will respond to the comments that have been received and more specifically identify Indian country areas in the State of South Dakota.

**VI. What Final Action on the South Dakota SIP Submittals Is EPA Taking Today?**

We approve these revisions to South Dakota's NSPS in ARSD 74:36:07 because the revisions ensure that the State's NSPS are up to date with the Federal NSPS. However, our approval of these South Dakota SIP revisions does not extend to sources located in Indian Country, as defined in 18 U.S.C. 1151 and as further discussed in Section V. of this document.

**VII. What Are the Administrative Requirements Associated With This Action?**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective June 21, 2000.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 21, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

**List of Subjects**

*40 CFR Part 52*

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

*40 CFR Part 60*

Air pollution control, Aluminum, ammonium sulfate plants, Beverages, Carbon monoxide, Cement industry, Coal, Copper, Drycleaners, Electric power plants, Fertilizers, Fluoride, Gasoline, Glass and glass products, Grains, Graphic arts industry, Household appliances, Insulation, Intergovernmental relations, Iron, Lead, Lime, Metallic and nonmetallic mineral processing plants, Metals, Motor vehicles, Natural gas, Nitric acid plants, Nitrogen dioxide, Paper and paper products industry, Particulate matter, Paving and roofing materials, Petroleum, Phosphate, Plastics materials and synthetics, Reporting and recordkeeping requirements, Sewage disposal, Steel, Sulfur oxides, Tires,

Urethane, Vinyl, Waste treatment and disposal, Wool, Zinc.

Dated: May 2, 2000.

**Jack W. McGraw,**

*Acting Regional Administrator, Region 8.*

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

### Subpart QQ—South Dakota

2. Section 52.2170 is amended by adding paragraph (c)(18) to read as follows:

**§ 52.2170 Identification of plan.**

* * * * *

(c) * * *

(18) On May 2, 1997 and on May 6, 1999, the designee of the Governor of South Dakota submitted revisions to the new source performance standards in subchapter 74:36:07 of the Administrative Rules of South Dakota (ARSD).

(i) Incorporation by reference.

(A) Revisions to the Administrative Rules of South Dakota, Air Pollution Control Program, Chapter 74:36:07—New Source Performance Standards, subsections 74:36:07:01 through 74:36:07:10, 74:36:07:12 through 74:36:07:28, 74:36:07:31 through 74:36:07:33, and 74:36:07:43, effective December 29, 1996.

(B) Revisions to the Administrative Rules of South Dakota, Air Pollution Control Program, Chapter 74:36:07—New Source Performance Standards, subsections 74:36:07:06.02, 74:36:07:07.01, 74:36:07:11, and 74:36:07:43, effective April 4, 1999.

* * * * *

## PART 60—[AMENDED]

1. The authority citation for part 60 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7601.

### Subpart A—General Provisions

2. Section 60.4 is amended by:

a. Revising the address listed for the State of South Dakota in paragraph (b)(QQ); and

b. In the table in paragraph (c) entitled "Delegation Status of New Source Performance Standards [(NSPS) for Region VIII]" by revising the entries for "Eb—Large Municipal Waste Combustors," "Ec—Hospital/Medical/Infectious Waste Incinerators," "UUU—Calciners and Dryers in Mineral Industries," and "WWW—Municipal Solid Waste Landfills'; and removing the existing entry for "RRR—VOC Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Process"and adding a new entry for "RRR—VOC Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes" to read as follows:

**§ 60.4 Address.**

* * * * *

(b) * * *

(QQ) State of South Dakota, Air Quality Program, Department of Environment and Natural Resources, Joe Foss Building, 523 East Capitol, Pierre, SD 57501–3181.

* * * * *

(c) * * *

DELEGATION STATUS OF NEW SOURCE PERFORMANCE STANDARDS

[(NSPS) for Region VIII]

| Subpart | CO | MT [1] | ND | SD [1] | UT [1] | WY |
|---|---|---|---|---|---|---|
| * * * | | | | | | |
| Eb—Large Municipal Waste Combustors | | | | (*) | | (*) |
| Ec—Hospital/Medical/Infectious Waste Incinerators | | | (*) | (*) | | |
| * * * | | | | | | |
| RRR—VOC Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes | (*) | | (*) | (*) | (*) | (*) |
| * * * | | | | | | |
| UUU—Calciners and Dryers in Mineral Industries | (*) | | (*) | (*) | (*) | (*) |
| * * * | | | | | | |
| WWW—Municipal Solid Waste Landfills | | | (*) | (*) | (*) | (*) |

(*) Indicates approval of State regulation.

[1] Indicates approval of New Source Performance Standards as part of the State Implementation Plan (SIP).

[FR Doc. 00–12522 Filed 5–19–00; 8:45 am]

BILLING CODE 6560–50–U

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 70

**[FRL–6703–3]**

**RIN 2060–AJ12**

## Extension of Operating Permits Program, Interim Approval Expiration Dates

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action amends the operating permits regulations of EPA. Those regulations were originally promulgated on July 21, 1992. These amendments will extend up to December 1, 2001 all operating permits program interim approvals. This action will allow the time needed for permitting authorities to correct all remaining interim approval deficiencies and obtain full approval for their operating permits programs.

**DATES:** The regulatory amendments announced herein take effect on May 31, 2000. For those programs whose interim

approval expiration dates are amended by this action, interim approval will expire on December 1, 2001. Any program revisions necessary for a program to obtain full approval must be submitted to EPA not later than June 1, 2001.

**ADDRESSES:** *Docket.* Supporting material used in developing the proposal and final regulatory revisions is contained in Docket Number A–93–50. This docket is available for public inspection and copying between 8:30 a.m. and 5:30 p.m., Monday through Friday. The address of the EPA air docket is: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–93–50, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The Docket is located in Room M–1500, Waterside Mall (ground floor). The telephone number for the EPA air docket is (202) 260–7548. A reasonable fee may be charged for copying.

**FOR FURTHER INFORMATION CONTACT:** Roger Powell, Mail Drop 12, United States Environmental Protection Agency, Research Triangle Park, North Carolina 27711 (telephone 919–541–5331, e-mail: powell.roger@epa.gov).

**SUPPLEMENTARY INFORMATION:** On February 14, 2000, EPA published in the **Federal Register** a direct final rulemaking which would have extended until June 1, 2002, expiration dates for all State and local operating permits programs that have interim approvals (65 FR 7290) granted by EPA under its regulations at 40 CFR part 70 (part 70). A proposal to that effect was published the same day (65 FR 7333). In the rulemaking, EPA stated that if relevant adverse comments were received by the comment deadline specified in that action, March 15, 2000, EPA would publish a document informing the public that the rule would not take effect and that comments would be addressed in any final rule based on the proposed rule.

The EPA did receive an adverse comment on the direct final rulemaking within the comment deadline. Accordingly, EPA published a **Federal Register** document on March 29, 2000 withdrawing the rulemaking (65 FR 16523). This rulemaking represents the final rule based on the February 14, 2000 proposal, to which the adverse comment also applied. The comments on the proposal are addressed herein.

## I. Background

If an operating permits program administered by a State or local permitting authority under title V of the Clean Air Act (Act) does not fully meet, but does "substantially [meet]," the requirements of part 70, EPA may grant that program "interim approval." Permits granted under an interim approval are fully effective and expire at the end of their fixed term, unless renewed under a part 70 program. See 40 CFR 70.4(d)(2). Many State and local permitting programs have been granted interim approval, with most final interim approval actions having occurred in 1995 and 1996. See 40 CFR part 70, Appendix A. To obtain full approval, a permitting authority must submit to EPA program revisions to correct all deficiencies that caused the operating permits program to receive interim approval. Such submittal must be made no later than 6 months prior to the expiration of the interim approval. See 40 CFR 70.4(f)(2).

On August 29, 1994 (59 FR 44460) and August 31, 1995 (60 FR 45530), EPA proposed revisions to its part 70 operating permits program regulations. Primarily, the proposals addressed changes to the system for revising permits, but a number of other proposed changes were also included. The preamble to the August 31, 1995 proposal noted the concern of many permitting authorities over having to revise their operating permits programs twice; once to correct interim approval deficiencies, and again to address the revisions to part 70. In the August 1995 preamble, the Agency proposed that States with interim approval "* * * should be allowed to delay the submittal of any program revisions to address program deficiencies previously listed in their notice of interim approval until the deadline to submit other changes required by the proposed revisions to part 70" (60 FR 45552).

On October 31, 1996 (61 FR 56368), EPA amended 40 CFR 70.4(d)(2) to permit the Administrator to grant extensions to interim approval expiration dates to allow permitting authorities the opportunity to combine program revisions directed at the correction of interim approval deficiencies as well as the adoption of the part 70 revisions. In this rulemaking, all interim approvals granted prior to the date of issuance of a memorandum announcing EPA's position on this issue (memorandum from Lydia N. Wegman to Regional Division Directors, "Extension of Interim Approvals of Operating Permits Programs," June 13, 1996) were granted 10 month extensions from their different respective expiration dates.

The EPA then extended interim approval expiration dates for certain State and local permitting programs a second time, on August 29, 1997 (62 FR 45732). On July 27, 1998, EPA published a direct final rulemaking extending interim approval expiration dates a third time, this time covering all interim approved programs, until June 1, 2000. In each of these instances, delays in the expected promulgation of the final part 70 revisions past the previous interim approval expiration dates led EPA to grant the further extensions of the expiration deadlines. The Agency intended these extensions to provide State and local agencies time to apply to combine their program revisions and to allow EPA to take action on those requests.

Following discussions with various stakeholders and further deliberations concerning the revisions to the part 70 regulations, EPA is in the process of preparing a supplemental proposal to take comment on a series of possible part 70 revisions that arose out of those discussions and deliberations. The Agency anticipates publishing this supplemental proposal in the **Federal Register** in late summer or early fall of 2000. The EPA now projects promulgation of the entire final package of part 70 revisions for late 2001.

To prevent interim approvals from expiring on June 1, 2000, and to enable permitting authorities to defer correction of interim approval deficiencies until their adoption of the expected part 70 revisions, EPA published a direct final rule on February 14, 2000 to extend all interim approval expiration dates until June 1, 2002 (65 FR 7290). Simultaneously, EPA published an accompanying proposal, also to extend interim approval expiration dates until June 1, 2002 (65 FR 7333).

## II. Comments Received on the Proposal

The comment period for the February 14, 2000 proposal expired on March 15, 2000. During the comment period, EPA received two comment letters addressing that proposal.

The first commenter apparently misunderstood the mechanisms for allowing permitting authorities to combine program revisions. The comment addressed the fact that an interim approval expiration date of June 1, 2002 did not allow enough time to prepare program changes to address the expected revisions to part 70, which was projected for promulgation in late 2001.

The preamble of the direct final rulemaking on February 14, 2000 explained that after part 70 was revised, another interim approval expiration date extension of either 18 months or 2 years from the date of rulemaking revising part 70 would be available to

allow time for preparation of the combined program revisions. The Agency intended the interim approval expiration date extension until June 1, 2002 to be a measure to prevent interim approvals from expiring on June 1, 2000, before the part 70 revisions were promulgated. The commenter's concern, therefore, would have been addressed by the provisions explained in the February 2000 direct final rulemaking.

Prior extensions and the June 13, 1996 memorandum referenced above have been predicated upon the understanding that permitting authorities wishing to combine program revisions to meet the revised part 70 with program revisions to correct remaining interim approval deficiencies, were to request, within 30 days of promulgation of the part 70 revisions, an additional 18 month or 2 year extension of their interim approval deadline (65 FR 7291–7292). Accordingly, neither the direct final rule nor the proposal was intended to grant across-the-board extensions to interim approval deadlines sufficiently past the expected promulgation date of the part 70 revisions to allow the full cycle of State and local program revisions, submissions, and EPA approvals to occur.

The second commenter asserted that EPA's proposed action is contrary to the express terms of the Act and must be withdrawn. The commenter referred to Section 502(g) of the Act, which provides that "[a]n interim approval under [Section 502(g)] shall expire on a date set by the Administrator not later than 2 years after such approval, and may not be renewed."

This commenter further argued that the existing 40 CFR 70.4(d)(2) does not justify an extension of interim approval deadlines until June 1, 2002. The commenter stated that to the extent that § 70.4(d)(2) allowed an extension of interim approvals by up to 10 months on an individual basis, EPA had already granted this 10-month extension in the October 31, 1996 rulemaking and that, at any rate, the proposed extension to June 1, 2002 was longer than 10 months.

This commenter also asserted that to the extent § 70.4(d)(2) allowed longer interim approval periods for States to combine program changes, this provision did not justify the proposed extension to June 1, 2002 because § 70.4(d)(2) contemplated such extensions only after the promulgation of part 70 revisions, which has not occurred. Moreover, the commenter noted that this provision authorized additional time "only once per State" and that EPA had already granted multiple extensions in the past.

Finally, the commenter argued that the continuing extension of interim approvals does not represent sound policy. That commenter stated that the deficiencies in State programs that warranted EPA granting interim, rather than full, approval often involved important substantive issues. Moreover, the commenter argued that no real hardship would be suffered by States required to undertake more than one program revision, noting that States regularly revise their regulations and statutes as part of the State implementation plan process. Finally, the commenter argued that any pursuit of administrative convenience could not override statutory requirements and the purpose of the permit program.

In consideration of these comments, and taking into account the further delays in promulgating the revisions to part 70 and the need for a supplemental part 70 proposal, EPA is abandoning the concept of allowing program revisions to correct interim approval deficiencies to be combined with program revisions necessary to conform to the provisions of expected future revisions to part 70. The Agency concludes that it is no longer appropriate to continue extending interim approval expiration dates in furtherance of this combination approach.

Notwithstanding the repeated extensions of interim approvals, EPA has, in the preambles to those previous extensions, consistently encouraged permitting authorities to correct their remaining interim approval deficiencies and not await promulgation of the part 70 revisions. Indeed, a number of State and local permitting authorities have corrected their deficiencies and have either received full approval or submitted corrections to EPA to gain full approval. Most permitting authorities with interim approved programs, however, have not corrected all remaining deficiencies.

The EPA also is aware of programs that have undertaken rulemakings during their interim approval period to correct some but not all outstanding deficiencies, with some deficiencies remaining that are unrelated to the expected part 70 revisions. Moreover, further inquiry has demonstrated that the significant majority of remaining interim approval deficiencies are unrelated to the issues addressed by the revisions proposed to part 70, with most deficiencies not being altered or affected by expected revisions to part 70. Accordingly, EPA believes it is appropriate to require correction of all interim approval deficiencies without regard to the possible future promulgation of the part 70 revisions.

At the same time, for State and local programs to have the opportunity to correct all interim approval deficiencies, and to provide EPA the opportunity to act on these submittals, this rulemaking extends the interim approval expiration deadline until December 1, 2001. Under part 70, State and local permitting authorities must submit corrections of all remaining interim approval deficiencies by no later than 6 months prior to this deadline, namely by no later than June 1, 2001, for EPA to treat these submissions as timely.

The Agency believes it is necessary to extend interim approval expiration deadlines until December 1, 2001 both to ensure that permitting authorities have the opportunity to correct remaining deficiencies, and to ensure that title V permit programs continue to be implemented effectively by State and local permitting authorities. The Agency believes that State and local agencies are well equipped to continue effective administration and enforcement of operating permits programs, and to ensure the issuance of permits designed to serve the important compliance benefits of the Act.

In the absence of the extension granted in this rulemaking, interim approved programs would expire on June 1, 2000, automatically placing into effect the part 71 Federal operating permits program for 88 State and local permitting authorities. This outcome would only hinder the effort to issue operating permits and bring about the important benefits of permits, since sources without already issued part 70 permits in those jurisdictions newly subject to the part 71 Federal operating permits program would need to re-apply for part 71 permits within 1 year after the June 1, 2000 effective date. Consequently, those sources would not be issued operating permits until well after the time they would have been under a preserved part 70 program.

Finally, EPA is well aware that many permitting authorities with interim approved programs have not undertaken program revisions to correct their remaining deficiencies under the expectation that an extension past the June 1, 2000 deadline would be granted to allow the opportunity to combine their program revisions as previously discussed. Accordingly, today's action prevents the disruption that would occur from imposing the Federal permitting program on affected State and local agencies on relatively short notice. At the same time, EPA is hereby providing clear notice that to avoid having their programs expire and be replaced by the Federal permitting program, permitting authorities must

correct all remaining deficiencies and submit those corrections by the deadlines discussed above, with further notice that no additional extensions of interim approval deadlines will be granted. The EPA believes that all permitting authorities with currently identified interim approval deficiencies will be able to make any necessary revisions to their rules or statutes, and to submit any needed corrections, by no later than June 1, 2002.

## III. Effective Date

Section 553(d) of the Administrative Procedure Act (5 U.S.C.A., 551–59, 701–06) requires that EPA allow at least 30 days from the publication of a substantive rule before it becomes effective unless EPA determines there is good cause for a shorter deadline. The primary purpose of the delayed effective date is to give citizens a reasonable time to prepare to comply with, or take other action regarding, a rule. The Agency has determined that good cause exists for making this rulemaking effective on May 31, 2000 since delaying the effective date of the rulemaking would be impracticable and contrary to the public interest, and lead to serious dislocation in government programs.

The compelling argument for making this rulemaking effective on May 31, 2000 is that it must take effect before June 1, 2000 or it will fail to fulfill its intended function to prevent interim approval programs from expiring and being replaced by the Federal permitting program. On June 1, 2000, all interim approvals will expire and cannot be re-established after that date. As discussed above, expiration of State and local interim approved programs would frustrate the ongoing implementation of the title V permits program by permitting authorities and be contrary to the public interest. It would also force currently un-permitted sources to resubmit permit applications at the Federal level, even though they would have otherwise soon obtained State-issued permits. In light of the scale of such a disruption to State programs, it would be impracticable for EPA to be able to undertake substitute permitting responsibilities on such an expeditious basis to make up for the lost time. Finally, having to assume permitting responsibilities would also divert EPA resources from efforts to assist State and local agencies in correcting their programs, and from EPA's recent commencement of the Federal permitting program for sources located in Indian country.

## IV. Administrative Requirements

### *A. Docket*

The docket for this regulatory action is A–93–50. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this rulemaking. The principal purposes of the docket are: (1) To allow interested parties a means to identify and locate documents so that the parties can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials). The docket is available for public inspection at EPA's Air Docket, which is listed under the **ADDRESSES** section of this document.

### *B. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether each regulatory action is "significant," and therefore subject to the Office of Management and Budget (OMB) review and the requirements of the Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

1. Have an annual effect on the economy of $100 million or more, adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof.

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Pursuant to the terms of Executive Order 12866, it has been determined that this action is not a "significant" regulatory action because it does not substantially change the existing part 70 requirements for States or sources; requirements which have already undergone OMB review. Rather than impose any new requirements, this action only extends an existing deferral of those requirements. As such, this action is exempted from OMB review.

### *C. Regulatory Flexibility Act Compliance*

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities. In developing the original part 70 regulations, the Agency determined that they would not have a significant economic impact on a substantial number of small entities. Similarly, the same conclusion was reached in an initial regulatory flexibility analysis performed in support of the proposed part 70 revisions (a subset of which constitutes the action in this rulemaking). This action does not substantially alter the part 70 regulations as they pertain to small entities and accordingly will not have a significant economic impact on a substantial number of small entities. Rather, it leaves existing State and local permitting programs in place, whereas absence of EPA action would cause them to expire and be replaced by a new Federal permitting program.

### *D. Paperwork Reduction Act*

The OMB has approved the information collection requirements contained in part 70 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0243. The Information Collection Request (ICR) prepared for part 70 is not affected by the action in this rulemaking notice because the part 70 ICR determined burden on a nationwide basis, assuming all part 70 sources were included without regard to the approval status of individual programs. The action in this rulemaking notice, which simply provides for an extension of the interim approval of certain programs, does not alter the assumptions of the approved part 70 ICR used in determining the burden estimate. Furthermore, this action does not impose any additional requirements which would add to the information collection requirements for sources or permitting authorities.

### *E. Unfunded Mandates Reform Act.*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to

identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the action in this rulemaking does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector, in any one year. Although the part 70 regulations governing State operating permit programs impose significant Federal mandates, this action does not amend the part 70 regulations in a way that significantly alters the expenditures resulting from these mandates. Therefore, the Agency concludes that it is not required by section 202 of the UMRA of 1995 to provide a written statement to accompany this regulatory action.

*F. Submission to Congress and the General Accounting Office*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

*G. Applicability of Executive Order 13045*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1977), applies to any rule that EPA determines (1) Is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

*H. Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This rule change will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule change will not create new requirements but will only extend an existing deferral to allow permitting authorities to more efficiently revise their operating permits programs. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*I. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments because it applies only to State and local permitting programs. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*J. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by one or more voluntary consensus standard bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

**List of Subjects in 40 CFR Part 70**

Environmental protection, Air pollution control, Operating permits.

Dated: May 12, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as set forth below.

## PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

**Authority:** 42 U.S.C. 7401, *et seq.*

2. Appendix A of part 70 is amended by the following:

a. Revising the date at the end of the third sentence in paragraph (a) under Texas to read "December 1, 2001"; and

b. Revising the date at the end of the following paragraphs to read "December 1, 2001": Paragraph (a) under Alaska, Arkansas, Colorado, Connecticut, Delaware, District of Columbia, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, Minnesota, Montana, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Rhode Island, Vermont, Virgin Islands, Virginia, West Virginia, and Wisconsin; paragraphs (a), (b), and (c) under Alabama and Nevada; paragraphs (a), (b), (c)(1), (c)(2), (d)(1), and (d)(2) under Arizona; paragraphs (a) through (hh) under California; paragraphs (a) and (e) under Tennessee; and paragraphs (a) through (i) under Washington.

[FR Doc. 00–12789 Filed 5–19–00; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF DEFENSE

### 48 CFR Part 235

**[DFARS Case 200–D401]**

### Defense Federal Acquisition Regulation Supplement; Research, Development, Test, and Evaluation Budget Category Definitions

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove obsolete definitions pertaining to research and development efforts. The rule replaces the obsolete definitions with a reference to the current definitions pertaining to research and development found in the DoD Financial Management Regulation.

**EFFECTIVE DATE:** May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Schneider, Defense Acquisition Regulations Council, PDUSD(AT&L)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0326; telefax (703) 602–0350. Please cite DFARS Case 2000–D401.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule revises DFARS 235.001 to remove obsolete definitions pertaining to research and development and to replace the definitions with a reference to those in the DoD Financial Management Regulation (DoD 7000.14–R).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D401.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 235**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 235 is amended as follows:

1. The authority citation for 48 CFR Part 235 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

2. Section 235.001 is revised to read as follows:

**235.001 Definitions.**

"Research and development" means those efforts described by the Research, Development, Test, and Evaluation (RDT&E) budget activity definitions found in the DoD Financial Management Regulation (DoD 7000.14–R), Volume 2B, Chapter 5.

[FR Doc. 00–12417 Filed 5–19–00; 8:45 am]

BILLING CODE 5000–04–M

## DEPARTMENT OF DEFENSE

### 48 CFR Part 241

**[DFARS Case 99–D309]**

### Defense Federal Acquisition Regulation Supplement; Authority Relating to Utility Privatization

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Acting Director of Defense Procurement is adopting as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 2812 of the National Defense Authorization Act for Fiscal Year 2000. Section 2812 provides that DoD may enter into utility service contracts related to the conveyance of a utility system for periods not to exceed 50 years.

**EFFECTIVE DATE:** May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Melissa Rider, Defense Acquisition

Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–4245; telefax (703) 602–0350. Please cite DFARS Case 99–D309.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

DoD published an interim rule at 65 FR 2058 on January 13, 2000. The rule added a new section at DFARS 241.103 to implement Section 2812 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). Section 2812 amended 10 U.S.C. 2688 to provide authority for DoD to enter into utility service contracts related to the conveyance of a utility system for periods not to exceed 50 years. DoD received no public comments on the interim rule. The interim rule is converted to a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because utility services generally are not provided by small business concerns.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 241**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

**Interim Rule Adopted as Final Without Change**

Accordingly, the interim rule amending 48 CFR part 241, which was published at 65 FR 2058 on January 13, 2000, is adopted as a final rule without change.

[FR Doc. 00–12418 Filed 5–19–00; 8:45 am]

BILLING CODE 5000–04–M

**DEPARTMENT OF DEFENSE**

**48 CFR Part 252**

**[DFARS Case 2000–D007]**

**Defense Federal Acquisition Regulation Supplement; OMB Circular A–73, Audit of Federal Operations and Programs**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** The Acting Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove the requirement for contractors to comply with Office of Management and Budget (OMB) Circular No. A–73 when performing audit services for DoD. OMB rescinded Circular No. A–73 on May 22, 1995.

**EFFECTIVE DATE:** May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Haberlin, Defense Acquisition Regulations Council, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; telefax (703) 602–0350. Please cite DFARS Case 2000–D007.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On March 7, 1995, OMB published a notice of proposed rescission of OMB Circular No. A–73, Audit of Federal Operations and Programs (60 FR 12581). The circular contained audit practices and extended the application of certain principles of the Inspector General Act of 1978 (Public Law 100–504) (IG Act) to Federal agencies not covered by the IG Act. The March 7, 1995 notice stated that the circular was unnecessary. The audit practices in the circular had become common practices throughout the Federal Government, and the IG Act had been expanded in 1988 to cover almost all Federal entities of significant size. The notice further stated that the rescission would take place on May 22, 1995, unless OMB received comments that raised significant concerns regarding the proposed rescission. OMB rescinded the circular on May 22, 1995.

Therefore, this final rule revises the clause at DFARS 252.237–7001, Compliance with Audit Standards, to remove the requirement for contractors performing audit services to comply with OMB Circular No. A–73.

This rule was not subject to OMB review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2000–D007.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 252**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Part 252 is amended as follows:

1. The authority citation for 48 CFR Part 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.)

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

2. Section 252.237–7001 is revised to read as follows:

**252.237–7001 Compliance with audit standards.**

As prescribed in 237.270(d)(2), use the following clause:

**Compliance With Audit Standards (May 2000)**

The Contractor, in performance of all audit services under this contract, shall comply with "Government Auditing Standards" issued by the Comptroller General of the United States.

(End of clause)

[FR Doc. 00–12419 Filed 5–19–00; 8:45 am]

BILLING CODE 5000–04–M

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 648**

**[Docket No. 991228355–0140–02; I.D. 110999C]**

**RIN 0648–AM50**

## Fisheries of the Northeastern United States; Final 2000 Fishing Quotas for Atlantic Surf Clams, Ocean Quahogs, and Maine Mahogany Quahogs

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final 2000 fishing quotas for Atlantic surf clams, ocean quahogs, and Maine mahogany quahogs.

**SUMMARY:** NMFS issues these final quotas for the Atlantic surf clam, ocean quahog, and Maine mahogany quahog fisheries for the 2000 fisheries. This action is necessary to comply with the regulations governing these fisheries that require NMFS to publish annual quotas for each species for each fishing year. The intent of this action is to specify allowable harvest levels of Atlantic surf clams and ocean quahogs from the exclusive economic zone and an allowable harvest level of Maine mahogany quahogs from the waters north of 43°50′N. latitude for the fishing, year 2000.

**DATES:** Effective May 22, 2000 through December 31, 2000.

**ADDRESSES:** Copies of supporting documents including the Environmental Assessment, Regulatory Impact Review, Initial Regulatory Flexibility Analysis (EA/RIR/IRFA), and the Essential Fish Habitat Assessment are available from: Patricia A. Kurkul, Regional Administrator, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.gov/ro/doc/nr.htm.*

**FOR FURTHER INFORMATION CONTACT:** Myles Raizin, Fishery Policy Analyst, 978–281–9104, *Myles.A.Raizin@noaa.gov.*

**SUPPLEMENTARY INFORMATION:** The Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) directs the Assistant Administrator for Fisheries, in consultation with the Mid-Atlantic Fishery Management Council (Council), to specify quotas for surf clams and ocean quahogs on an annual basis from a range that represents the optimum yield (OY) for each fishery. It is the policy of the Council that the levels selected allow fishing to continue at that level for at least 10 years for surf clams and 30 years for ocean quahogs. While staying within this constraint, the Council policy is to also consider the economic benefits of the quotas. As specified in Amendment 10 to the FMP, the Maine mahogany quahog quota is in addition to the quota specified for the ocean quahog fishery.

Detailed background information regarding the development of these quotas was provided in the proposed rule published on January 4, 2000, (65 FR 275), and is not repeated here. The comment period for that rule ended on February 2, 2000. No comments were received, and the final quot as, unchanged from those in the proposed rule, are shown below.

FINAL 2000 SURF CLAM/OCEAN QUAHOG QUOTAS FOR JANUARY 1, 2000, THROUGH DECEMBER 31, 2000

| Fishery | 2000 final quotas (bu) | 2000 final quotas (hL) |
|---|---|---|
| [1] Surf clam | 2,565,000 | 1,366,000 |
| [1] Ocean quahog | 4,500,000 | 2,396,000 |
| [2] Maine mahogany quahog | 100,000 | 35,240 |

[1] 1 bushel = 1.88 cubic ft. = 53.24 liters
[2] 1 bushel = 1.2445 cubic ft. = 35.24 liters

### Classification

This action is authorized by 50 CFR part 648 and is exempt from review under E.O. 12866.

Because this rule only establishes year-long quotas to be used for the sole purpose of closing the fishery when the quotas are reached and does not establish any requirements for which a regulated entity must come into compliance, it is unnecessary to delay for 30 days the effective date of this rule. Therefore, the Assistant Administrator for Fisheries, NOAA, under 5 U.S.C. 553(d)(5), finds good cause not to delay the effective date of this rule.

NMFS completed a final regulatory flexibility analysis (FRFA) that contains the items specified in 5 U.S.C. 604(a). The FRFA is as follows:

### Final Regulatory Flexibility Analysis for Atlantic Surf Clam, Ocean Quahog, and Maine Mahogany Quahog 2000 Specifications

Need for, and Objectives of, the Rule

This rule is needed to establish allowable harvest levels of Atlantic surf clams and ocean quahogs from the exclusive economic zone and an allowable harvest level of Maine mahogany quahogs from the waters north of 43°50′N. lat. in 2000. The intent of this action is to comply with the regulations governing these fisheries that require the National Marine Fisheries Service to publish annual quotas for each species for each fishing year to conserve and manage the resource in compliance with the regulations, fishery management plan, and Magnuson-Stevens Fishery Conservation and Management Act.

### Public Comments

There were no public comments submitted in response to the initial regulatory flexibility analysis (IRFA). No changes were made to the proposed rule.

### Number of Small Entities

In 1998, a total of 47 vessels reported harvesting surf clams or ocean quahogs from Federal waters under an Individual Transferable Quota (ITQ) system. Average 1998 gross income for surf clam harvests was $65,919 per vessel, and $685,573 per vessel for ocean quahog harvests. In the small artisanal fishery for Maine mahogany quahogs in Maine, 39 vessels reported harvests in the clam logbooks, with an average value of $48,629 per boat. All of these vessels readily fall within the definition of a small business. From 9 to 12 processors participate in the surf clam and ocean quahog fisheries. However, 3 firms are responsible for the vast majority of purchases in the ex-vessel market and sale of processed clam products in appropriate wholesale markets. In 1999, surf clam allocation holders totaled 107

while 64 firms or individuals held ocean quahog allocation.

**Cost of Compliance**

No additional costs of compliance, including those associated with recordkeeping and reporting, would result from the implementation of the selected or alternative quotas.

**Minimizing Significant Economic Impact on Small Entities**

A review of the impacts identified by the regulatory flexibility analysis indicates that the impacts associated with the preferred alternative will not have significant economic impacts on small entities.

NMFS considered four alternatives to the selected 2000 surf clam quota. The selected quota and all alternatives fall within the range of OY established by the FMP. The selected quota (4.5 million bu (2.387 million hL)) is the same quota as was adopted for 1999, is 8 percent greater than the actual harvest in 1998 and so provides no restraint on the fishery, and may decrease ex-vessel prices due to a lessened demand in the fishery. There is a moderate risk that some allocation holders might not be able to market their share of the surf clam allocation. This risk is considered acceptable in order to provide a quota large enough to allow for some increase in demand for the product, while not setting it so high as to force some allocation holders out of business. There were two alternatives with quotas smaller than the one selected. The alternative with the smallest quota represents the minimum OY provided under the FMP (1.85 million bu (0.985 million hL)), a 22-percent decrease from the 1998 actual harvest. This quota was not selected because, at this quota level, the price per bushel would increase, however, overall revenues would fall because it is not likely the increased price would compensate for the reduction in amount of sales. The alternative with the same quota as the harvest level in 1998 actual harvest (2.365 million bu (1.259 million hL)) was not selected because it provided no opportunity for an increase in demand of surf clams, even though prices to fishermen for surf clams would likely be higher due to the restriction on the fishery. The alternatives with quotas larger than the selected quota (2.70 million bu (1.437 million hL) and 3.4 million bu (1.810 million hL)) representing a 14-percent increase from the 1998 actual catch and the maximum allowable quota allowed by the FMP would very likely depress ex-vessel prices. This would increase the risk of business failure for allocation holders not associated with a processor, as vertically integrated companies are expected to buy product from vessels using allocations they control before buying product outside the company.

NMFS considered four alternatives to the selected 2000 ocean quahog quota. The selected quota and all alternatives fall within the range of OY established by the FMP. The selected quota (4.5 million bu (2.396 million hL)), the same quota as was adopted for 1999, is 16 percent greater than the actual harvest in 1998 and so provides no restraint on the fishery. There is no expected change in ex-vessel prices in the fishery as a result of the quota. There were two alternatives with quotas smaller than the one selected. The alternative with the smallest quota represents the minimum OY provided under the FMP (4.0 million bu (2.130 million hL)), a 3-percent increase from the 1998 actual harvest. The next smaller quota alternative represents a 6-percent decrease from the 1999 quota, but a 9-percent increase from the actual harvest in 1998. Pending the outcome of additional assessments on the status of the resource to determine if reductions in the quota were indicated, and that none of these quotas was constraining to the current fishery, these alternatives were not selected. Two alternatives above the selected quota were also considered, 6.0 million bu (3.194 million hL), the maximum OY allowed by the FMP, and 4.75 million bu (2.529 million hL), a 6-percent increase from the 1999 quota and a 22-percent increase from the actual harvest in 1998. Both of these alternatives were not selected because of concerns that upcoming stock assessments might recommend reduced quotas and that the fishery would most likely not be able to utilize such and increase in the quota, anyway.

NMFS maintained the quota for the Maine mahogany quahog fishery at the 1999 level of 100,000 Maine bu (35,240 hL). Landings in 1998 totaled less than 75,000 Maine bu (26,430 hL) and 1999 landings were also expected to be less than the quota. Setting the quota at this level does not appear to either constrain the fishery or endanger the resource. Pending a survey of the resource in the Gulf of Maine, decreasing the quota in the face of steady catches under the quota would constrain the fishery to no purpose and increasing the quota when it could not likely be taken and without a scientific basis to do so is not justified.

A copy of the IRFA is available from the Northeast Regional Office (see **ADDRESSES**).

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: May 16, 2000.

**Andrew A. Rosenberg,**

*Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12836 Filed 5–19–00; 8:45 am]

BILLING CODE 3510–22–F

VOL 65 ISS 99 MY 22 2000 UMI



# Proposed Rules

Federal Register
Vol. 65, No. 99
Monday, May 22, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

### 7 CFR Part 930

**[Docket No. FV00–930–3 PR]**

### Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Decreased Assessment Rates

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would decrease the assessment rate for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00225 to $0.0017 per pound. It also would decrease the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.001125 to $0.00085 per pound. Both assessment rates are established for the Cherry Industry Administrative Board (Board) under Marketing Order No. 930 for the 2000–2001 and subsequent fiscal periods. The Board is responsible for local administration of the marketing order which regulates the handling of tart cherries grown in the production area. Authorization to assess tart cherry handlers enables the Board to incur expenses that are reasonable and necessary to administer the program. The fiscal period begins July 1 and ends June 30. The assessment rate would remain in effect indefinitely unless modified, suspended, or terminated.

**DATES:** Comments must be received by June 21, 2000.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

**FOR FURTHER INFORMATION CONTACT:** Patricia A. Petrella or Kenneth G. Johnson, DC Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, Suite 5D03, Unit 155, 4700 River Road, Riverdale, Maryland 20737, telephone: (301) 734–5243; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 930 (7 CFR part 930) regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, tart cherry handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein would be applicable to all assessable tart cherries beginning July 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule would decrease the assessment rate established for the Board for the 2000–2001 and subsequent fiscal periods for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00225 to $0.0017 per pound of cherries. The assessment rate for cherries utilized for juice, juice concentrate, or puree would also be decreased from $0.001125 to $0.00085 per pound.

The tart cherry marketing order provides authority for the Board, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Board are producers and handlers of tart cherries. They are familiar with the Board's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1999–2000 fiscal period, the Board recommended, and the Department approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended or terminated by the Secretary upon recommendation and information submitted by the Board or other information available to the Secretary.

The Board met on March 2, 2000, and unanimously recommended 2000–2001 expenditures of $455,000 and an assessment rate of $0.0017 per pound for cherries that are utilized in the production of tart cherry products other than juice, juice concentrate, or puree, and an assessment rate of $0.00085 per pound of cherries utilized for juice, juice concentrate, or puree. In comparison, last year's budgeted expenditures were $497,780. The assessment rates of $0.0017 and $0.00085 are lower than the rates currently in effect. The decreased assessment rates were recommended because the Board expects the 2000 crop to be large, wants to reduce handler costs, and wants to keep its monetary reserve within the authorized maximum of approximately one year's operational expenses specified in section 930.42(a) of the order. The decreased assessment rates together with funds from the Board's operating reserve and interest income are expected to generate enough income to meet the Board's reduced operating expenses in 2000–2001.

The major expenditures recommended by the Board for the 2000–2001 fiscal period include $175,000 for personnel, $120,000 for compliance, and $75,000 for Board meetings. Budgeted expenses for these items in 1999–2000 were $222,780 for personnel, $100,000 for Board meetings, and $100,000 for compliance.

The order provides that when an assessment rate based on the number of pounds of tart cherries handled is established, it should provide for differences in relative market values for various cherry products. The discussion of this provision in the order's promulgation record indicates that proponents testified that cherries utilized in high value products such as frozen, canned, or dried cherries should be assessed one rate while cherries used to make low value products such as juice concentrate or puree should be assessed at one-half that rate.

Data from the National Agricultural Statistics Service (NASS) states that for 1998, tart cherry utilization for juice, wine, or brined uses was 28.3 million pounds for all districts covered under the order. The total processed amount for 1998 was 303.8 million pounds. Juice, wine, and brined tart cherries represented less than 10 percent of the total processed crop, and about 8 percent over the last three seasons (1996 through 1998).

In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $416,500 (245 million pounds × $0.0017 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be $12,750 (15 million pounds × $0.00085 per pound). Therefore, total assessment income for 2000–2001 is estimated at $429,250. This amount plus adequate funds in the reserve and interest income would be sufficient to cover budgeted expenses. Funds in the reserve (currently $300,000) would be kept within the approximately one year's operational expenses permitted by the order (7 CFR 930.42(a)).

The proposed assessment rates would continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Board or other available information.

Although the assessment rates would be in effect for an indefinite period, the Board would continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Board meetings are available from the Board or the Department. Board meetings are open to the public and interested persons may express their views at these meetings. The Department would evaluate Board recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking would be undertaken as necessary. The Board's 2000–2001 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by the Department.

**The Regulatory Flexibility Act and Effects on Small Businesses**

The Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has prepared this initial regulatory flexibility analysis. The Regulatory Flexibility Act (RFA) would allow AMS to certify that regulations do not have a significant economic impact on a substantial number of small entities. However, as a matter of general policy, AMS' Fruit and Vegetable Programs (Programs) no longer opt for such certification, but rather perform regulatory flexibility analyses for any rulemaking that would generate the interest of a significant number of small entities. Performing such analyses shifts the Programs' efforts from determining whether regulatory flexibility analyses are required to the consideration of regulatory options and economic or regulatory impacts.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 900 producers of tart cherries in the production area and approximately 40 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of tart cherry producers and handlers may be classified as small entities.

This rule would decrease the assessment rate established for the Board and collected from handlers for the 2000–2001 and subsequent fiscal periods for cherries utilized in the production of tart cherry products other than juice, juice concentrate, or puree from $0.00225 to $0.0017 per pound, and the assessment rate for cherries utilized for juice, juice concentrate, or puree from $0.001125 to $0.00085 per pound. The Board unanimously recommended 2000–2001 expenditures of $455,000 and the reduced assessment rates. The quantity of assessable tart cherries for the 2000–2001 crop year is estimated at 260 million pounds. Assessment income, based on this crop, along with interest income and reserves would be adequate to cover budgeted expenses.

The major expenditures recommended by the Board for the 2000–2001 fiscal period include $175,000 for personnel, $120,000 for compliance, and $75,000 for Board meetings. Budgeted expenses for these items in 1999–2000 were $222,780 for personnel, $100,000 for Board meetings, and $100,000 for compliance.

Decreased assessment rates were recommended by the Board because the Board expects the 2000 crop to be large, wants to reduce handler costs, and

wants to keep its monetary reserve within the authorized maximum of approximately one year's operational expenses as specified in section 930.42(a) of the order.

The Board discussed the alternative of continuing the existing assessment rates, but concluded that the Board should operate as efficiently as possible and the amount collected could cause the operating reserve to exceed what is actually needed. In deriving the recommended assessment rates, the Board estimated assessable tart cherry production for the crop year at 260 million pounds. It further estimated that about 245 million pounds of the assessable poundage would be utilized in the production of high-valued products, like frozen, canned, or dried cherries, and that about 15 million pounds would be utilized in the production of low-valued products, like juice, juice concentrate, or puree. Potential assessment income from the high valued products would be approximately $416,500 (245 million pounds × $0.0017 per pound). The potential income from tart cherries utilized for juice, juice concentrate, or puree would be $12,750 (15 million pounds × $0.00085 per pound). Therefore, total assessment income for 2000–2001 is estimated at $429,250. This amount plus adequate supplies in the reserve would be sufficient to cover budgeted expenses. Funds in the reserve (currently $300,000) would be kept within the approximately one year's operational expenses permitted by the order (7 CFR 930.42(a)).

This action would decrease the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the Board's meeting was widely publicized throughout the tart cherry industry and all interested persons were invited to attend the meeting and participate in Board deliberations on all issues. Like all Board meetings, the March 2, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This action would impose no additional reporting or recordkeeping requirements on either small or large tart cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: the 2000–2001 fiscal period begins on July 1, 2000, and the rate of assessment applies to all assessable tart cherries handled during the fiscal period.

**List of Subjects in 7 CFR Part 930**

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

For the reasons set forth in the preamble, 7 CFR part 930 is proposed to be amended as follows:

## PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

**Authority:** 7 U.S.C. 601–674.

2. Section 930.200 is revised to read as follows:

**§ 930.200 Handler assessment rate.**

On and after July 1, 2000, the assessment rate imposed on handlers shall be $0.0017 per pound of cherries handled for tart cherries grown in the production area and utilized in the production of tart cherry products other than juice, juice concentrate, or puree. The assessment rate for juice, juice concentrate, and puree products shall be $0.00085 per pound.

Dated: May 16, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–12800 Filed 5–19–00; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 00–ACE–11]**

### Amendment of Class E Airspace; Kearney, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking

**SUMMARY:** This notice proposes to amend the Class E surface area at Kearney Municipal Airport, Kearney, NE. The FAA has received a request to amend the hours of Class E surface area from part time to full time. An increase in Part 121 and other Instrument Flight Rule (IFR) operations have made this request necessary. The intended effect of this rule is to amend the Class E surface area from part time to full time.

**DATES:** Comments must be received on or before July 10, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–11, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address list above.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties invited to participate in this proposed rulemaking by submitting such written, data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the

proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ACE–11." The postcard will be date/time stamped an returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice maybe changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A, which describes the procedures.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to amend the Class E surface area at Kearney Municipal Airport, Kearney, NE. The FAA has received a request to amend the Class E surface area from part time to full time. The intended effect of this action is to provide segregation of aircraft operating under IFR from aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of a small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6002 Class E airspace areas designated as a surface area for an airport*

* * * * *

**ACE NE E2 Kearney, NE [Revised]**

Kearney Municipal Airport, NE
(Lat. 40°43′37″N., long. 99°00′24″W.)
Kearney VOR
(Lat. 40°43′37″N., long. 99°00′18″W.
Within a 4.2-mile radius of Kearney Municipal Airport and within 3.1 miles each side of the 194° radial of the Kearney VOR extending from the 4.2-mile radius to 9.2 miles south of the VOR and within 3.1 miles each side of the 329° radial of the Kearney VOR extending from the 4.2-mile radius to 10 miles northwest of the VOR and within 3.1 miles each said of the 360° radial of the Kearney VOR extending form the 4.2-mile radius to 10 miles north of the airport.

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Dated: Issued in Kansas City, MO, on May 9, 2000.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 00–12820 Filed 5–19–00; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Airspace Docket No. 00–ACE–10]**

## Establishment of Class E Airspace; Lamoni, IA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to establish Class E airspace area at Lamoni Municipal Airport, Lamoni, IA. The Federal Aviation Administration has developed Area Navigation (RNAV) Runway (RWY) 17 and RNAV RWY 35 Standard Instrument Approach Procedures (SIAPs) to serve Lamoni Municipal Airport, Lamoni, IA. Controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate aircraft executing the SIAPs. This proposal would create controlled airspace at Lamoni Municipal Airport. The intended effect of this rule is to provide controlled airspace for aircraft executing the SIAPs at the Lamoni Municipal Airport.

**DATES:** Comments must be received on or before July 5, 2000.

**ADDRESSES:** Send comments on the proposal in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–10, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the office of the Manager, Airspace Branch, Air Traffic Division, at the address listed above.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal

Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:**

**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–ACE–10." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

**Availability of NPRMs**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–22A, which describes the procedures.

**The Proposal**

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Lamoni Municipal Airport, Lamoni, IA. The FAA has developed RNAV RWY 17 and RNAV RWY 35 SIAPs to serve the Lamoni Municipal Airport, Lamoni, IA. Controlled airspace extending upward from 700 feet AGL is needed to contain aircraft executing these SIAPs. The intended effect of this action is to provide segregation of aircraft operating under Instrument Flight Rules (IFR) from aircraft operating in visual weather conditions. The area would be depicted on appropriate aeronautical charts thereby enabling pilots to circumnavigate the area or otherwise comply with IFR procedures. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposed to amend 14 CFR part 71 as follows:

**PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS**

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

**ACE IA E5 Lamoni, IA [New]**

Lamoni Municipal Airport, IA
(Lat. 40°37′59″ N., long. 93°54′08″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Lamoni Municipal Airport.

* * * * *

Issued in Kansas City, MO, on May 9, 2000.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 00–12822 Filed 5–19–00; 8:45 am]

**BILLING CODE 4910–13–M**

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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**15 CFR Part 922**

**[Docket No. 970626156–0125–03]**

**RIN 0648–AK01**

**Regulation of the Operation of Motorized Personal Watercraft in the Gulf of the Farallones National Marine Sanctuary**

**AGENCY:** Marine Sanctuaries Division (MSD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

**ACTION:** Proposed rule; Notice of withdrawal; Notice of availability of Draft Environmental Assessment.

**SUMMARY:** NOAA proposes to amend the regulations governing activities in the Gulf of the Farallones National Marine Sanctuary (GFNMS or Sanctuary) to prohibit the operation of motorized personal watercraft (MPWC) within the boundaries of the GFNMS. This proposed action responds to a petition from the Environmental Action Committee (EAC) of West Marin, California.

This document also responds to comments received in response to a proposed rule that NOAA published on April 23, 1999, concerning operation of

MPWC in the Sanctuary and a public hearing held June 2, 1999, on the proposed rule. This document withdraws and replaces that proposed rule that proposed to prohibit the operation of MPWC within the nearshore areas of the Sanctuary. This regulation is necessary to protect sensitive biological resources, to minimize user conflict, and to protect the ecological, aesthetic, and recreational qualities of the Sanctuary. NOAA also announces the availability of a Draft Environmental Assessment (DEA) on the proposed rule.

**DATES:** Comments on the proposed rule or DEA must be received by June 21, 2000. A public hearing on this proposed rule will be held on June 12, 2000 at 6:30 p.m. at the address listed below.

**ADDRESSES:** Comments should be sent to Ed Ueber, Sanctuary Manager, Gulf of the Farallones National Marine Sanctuary, Ft. Mason, Building 201, San Francisco, California 94123; fax: (415) 561–6616. Comments received will be available for public inspection at the above address. A public hearing on the proposed rule will be held at the Bear Valley Visitor's Center at the Point Reyes National Seashore, Inverness, California, on June 12, 2000 at 6:30 p.m. The DEA may be obtained from the Sanctuary address indicated above.

**FOR FURTHER INFORMATION CONTACT:** Ed Ueber at (415) 561–6622.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In recognition of the national significance of the unique marine environment of the Gulf of the Farrallones, California, the GFNMS was designated in January, 1981. The GFNMS regulations at 15 CFR Part 922, Subpart H prohibit a relatively narrow range of activities to protect Sanctuary resources and qualities.

On April 18, 1996, the Environmental Action Committee (EAC) of West Marin, California, petitioned the GFNMS to ban the use of MPWC in the Sanctuary. Operation of MPWC is currently not regulated by the Sanctuary. The EAC identified a number of concerns regarding the use of MPWC within the Sanctuary. In its petition, the EAC asserted that: MPWC are completely incompatible with the existence of a marine sanctuary; pose a danger to the biological resources of the sanctuary, such as marine mammals, wildfowl, kelp beds, anadromous fish, and other marine life; create noise, water and air pollution; and threaten mariculture and other commerce throughout the Sanctuary. The EAC also stated that MPWC create a hazard for other Sanctuary users, including swimmers, sailboats, windsurfers, open-water rowing shells and kayaks. NOAA also received 195 letters from members of the public in response to media publicity about the petition. Sixty-four percent opposed regulation of MPWC; 33% supported the EAC's requested ban; one percent expressed no clear opinion.

To supplement existing information on the use and impacts of MPWC, NOAA published a Notice of Inquiry/ Request for Information in the **Federal Register** on August 21, 1997, initiating a 45-day comment period that ended October 6, 1997. NOAA requested information on the following: (1) The number of motorized personal watercraft being operated in the Sanctuary; (2) possible future trends in such numbers; (3) the customary launching areas for motorized personal watercraft in or near the Sanctuary; (4) the areas of use of motorized personal watercraft activity in the Sanctuary, including areas of concentrated use; (5) the periods (*e.g.*, time of year, day) of use of motorized personal watercraft in the Sanctuary, including periods of high incidence of use; (6) studies or technical articles concerning the impacts of motorized personal watercraft on marine resources and other users; (7) first person or documented accounts of impacts of motorized personal watercraft on marine resources and other users; and (8) any other information or other comments that may be pertinent to this issue. NOAA received 160 public comments in response to the notice of inquiry and two signature petitions during the comment period. One hundred fifty-three (96%) supported banning the operation of MPWC within the GFNMS. Two signature petitions were also received; one, with 276 signatures, supported the ban; the second, with 41 signatures, opposed the ban. Forty-four people spoke at a public meeting held to gather information during the comment period, all but one of who supported the petition to ban MPWC operation. Half of the speakers at the public meeting had previously submitted written comments.

Responses to and investigation of the specific questions in the August, 1997 notice revealed that: (1) The number of MPWC currently being operated in Sanctuary waters is believed by the proprietors of Lawson's Landing, the primary MPWC launch site in Sanctuary waters, to be less than 200 launches per year by approximately 20 users; (2) the use of MPWC in Sanctuary waters is believed to be increasing; (3) there are two established MPWC launch sites in the Sanctuary, at Bodega Harbor and Lawson's Landing; (4) the areas in the Sanctuary where MPWC are operated are in the vicinity of the mouth of Tomales Bay and the area outside Bodega Harbor—over 95% of MPWC operation that occurs in the Sanctuary occurs in these areas; (5) April through November appear to be the times of highest use of MPWC in Sanctuary waters; (6, 7, and 8) numerous studies, technical articles, and personal documentation such as photos, letters and logs of the impacts of MPWC on marine resources and other users were received and collected.

The following were identified during NOAA's review of this issue: (1) Water-based recreational activity is increasing in the United States; (2) water-based recreational activity has impacted coastal habitats, seabirds, marine mammals and fish; (3) operation of MPWC is a relatively new and increasingly popular water sport; (4) MPWC, are different from other types of motorized watercraft in their structure (smaller size, shallower draft, two-stroke engine, and exhaust venting to water as opposed to air) and their operational impacts (operated at faster speeds, operated closer to shore, make quicker turns, stay in a limited area, tend to operate in groups, and have more unpredictable movements); (5) MPWC have been operated in such a manner as to create a safety hazard to other resource users in the vicinity; (6) MPWC may interfere with marine commercial users; (7) MPWC have disturbed natural quiet and aesthetic appreciation; (8) MPWC have interfered with other marine recreational uses; (9) MPWC have impacted coastal and marine habitats; (10) MPWC have disturbed waterfowl and seabirds; (11) MPWC have disturbed marine mammals; (12) MPWC may disturb fish; (13) other jurisdictions have had problems with MPWC and have proposed and implemented various means of attempting to solve the problems; (14) the Sanctuary has sensitive areas that were deemed worthy of protection by the designation of a National Marine Sanctuary, including five State designated Areas of Special Biological Significance and four semi-enclosed estuarine areas; and (15) MPWC present a present and potential threat to resources and users of the GFNMS.

Based on this information, the NMSP published a proposed rule to prohibit operation of MPWC from the mean high tide line seaward to 1000 yards. The proposed rule was geared toward protecting Sanctuary resources and minimizing user conflict in the nearshore areas. NOAA received 53

public comments on the proposed rule. Fifty-one commentors (96%) supported a full ban on MPWC within the GFNMS and 2 (4%) opposed the proposed regulations. On June 2, 1999, a public hearing to accept comments on the proposed rule was held in Point Reyes, California. Five people spoke at the public hearing. Three people spoke in favor of a complete ban on MPWC within the GFNMS and two people spoke out against the proposed 1000-yard restriction. Comments received on the April 23 rule and NOAA's responses are provided below.

The waters of the Sanctuary are home to a rich diversity of marine biota and provide critical habitat for seabirds, marine mammals, fishes, invertebrates, sea turtles and marine flora. The importance and uniqueness of Sanctuary waters has been internationally recognized by the incorporation of Sanctuary waters into the United Nations' Man in the Biosphere system as part of the Golden Gate Biosphere Reserve, and the desigantion of Bolinas Lagoon as a RAMSAR site (the Convention for Wetlands of International Significance). The National Marine Fisheries Service is considering areas within the Sanctuary for designation as Essential Fish Habitat as mandated by the Magnuson-Stevens Fisheries Conservation and Management Act (James Bybee, NOAA, pers. comm., 7 January 2000).

Among the hundreds of bird species that reside in or migrate through the Sanctuary, many species are endangered, threatened or of special concern. These include the following species, which are found in the Sanctuary and on the Farallon Islandds:

(Key: FE=Federally listed as endangered; FT=Federally listed as threatened; SE=listed in the State of California as endangered; ST=listed in the State of California as threatened; CSC=California species of concern)

Swimmers [ducks and duck-like]

Aleutian Canada Goose, Branta canadensis leucopareia, FT
Barrow's Goldeneye, Bucephala islandica, CSC
Common Loon, Gavia immer, CSC
Double-crested Cormorant, Palacrocorax auritus, CSC
Harlequin Duck, Histrionicus histrionicus, CSC
Marbled Murrelet, Brachyramphus marmoratus, FT/SE

Aerialists [gulls and gull-like]

American White Pelican, Pelecanus erythorhynchos, CSC
Ashy Storm Petrel, Oceanodroma homochroa, CSC
California Brown, Pelican Pelecanus occidentalis californicus, FE/SE
California Gull, Larus californicus, CSC
California Least Tern, Sterna antillarum browni, FE/SE
Elegant Tern, Sterna elegant, CSC
Short-tailed Albatross, Diomedea albatrus, FE

Long-legged waders [e.g., herons, cranes]

California Black Rail, Laterallus jamaicensis corurniculus, ST

Smaller waders [e.g., plovers, sandpipers]

Long-billed Curlew, Numenius americanus, CSC
Western Snowy Plover, Charadrius alexandrinus niv., FT/CSC

Birds of prey [hawks, eagles, owls]

Bald Eagle check status, Halliaeetus leucocephalus, FT
Ferruginous Hawk, Buteo regalis, CSC
Osprey, Pandion haliaetus, CSC
Prairie Falcon, Falco mexicanus, CSC
Peregrine Falcon, Falco peregrinus, FE

Passerine birds [perching]

Saltmarsh common yellowthroat, Geothlypis trichas sinuosa, CSC

There are at least twelve critical marine band nesting areas along the shoreline of the Sanctuary. More than twelve species of marine birds breed within the Sanctuary and the nesting population on the Farallon Islands comprises the largest concentration of breeding marine birds in the continental U.S. During nesting and rearing of young, these sea birds are especially dependent on the Sanctuary's offshore waters for food.

Thirty-free species of marine mammals have been observed in the Sanctuary including one mustelid, six species of pinnipeds and twenty-six species of cetaceans. About 20% of the state's breeding population of harbor seals live within the boundaries of the Sanctuary, and northern fur seals are starting to recolonize historic pupping sites within the Sanctuary for the first time since 1820. Of the twenty-six species of cetaceans that occur in Sanctuary waters, nineteen are migratory, and seven are considered resident species. Many of these marine mammals occur in large concentrations and are dependent on the productive and secluded habitat of the Sanctuary's waters and adjacent coastal areas for breeding, pupping, hauling-out, feeding, and resting during migration. Three areas in the Sanctuary have been identified as critical feeding areas for the threatened Stellar sea lion, including the nearshore areas around Point Reyes, the northern half of Tomales Bay and areas adjacent to the Farallon Islands. Harbor seals, elephant seals, California sea lions, Dall's porpoise, harbor porpoise and gray whales are common residents in Sanctuary waters. Gray whales pass through the Sanctuary twice a year on their migration route between winter calving grounds in Mexico and summertime feeding areas in Alaska. In recent years, individuals have remained in the Gulf of the Farallones to feed instead of proceeding to the feeding grounds in Alaska. Some individuals have acclimated to conditions in the Sanctuary and are now year round residents. In 1999, unprecedented numbers of gray whales were foraging in Bodega Bay. Southern sea otter populations are also recovering from near extinction and recolonizing areas within their historic range. Sitings of sea otters in the GFNMS have increased from two individuals in 1992 to 20 animals in 1998 (Dr. Sarah Allen pers. comm. July 1999). It is imperative that these animals, be protected in an area which may be providing new opportunity for the species survival (Anonymous 1990).

Other populations of marine mammals are also recovering after years of human exploitation. As populations begin to rebound, individuals are expanding the populations distribution back into historic ranges. In many instances, such as the gray whales, sea otters, northern fur seals and elephant seals, animals are using feeding areas and haul outs that have not been utilized for decades. It is important for the Sanctuary to provide habitat that was historically available and allow these populations to return to their natural abundance and distribution levels. Four species of endangered sea turtles are also known to reside in or migrate through Sanctuary waters. A listing of all threatened and endangered marine mammals and sea turtles follows.

(Key: FE=Federally listed as endangered; FT=Federally listed as threatened; ST=listed in the State of California as threatened)

Pinnipeds

Guadelupe fur seal, Arctocephalus townsendi, FT/ST
Steller (Northern) sea lion, Eumetopias jubatus, FT

Mustelids

Southern sea otter, Enhydra lutris nereis, FT

Cetaceans

Blue whale, Balaenoptera musculus, FE

Humpback whale, Magaptera noveangliae, FE
Sei whale, Balaenoptera robustus, FE
Sperm whale, Physeter macrocphalus, FE
Fin whale, Balaenoptera physalus, FE

Sea Turtles

Green turtle, Chelonia mydas, FE
Leatherback turtle, Dermochelys coriacea, FE
Loggerhead turtle, Caretta caretta, FE
Olive (Pacific) ridley, Lepidochelys olivacea, FE

Because of its unique geology and geography, the biological diversity found within the Gulf of the Farallones National Marine Sanctuary rivals any location along the Pacific coast. Fueled by the strongest coastal upwelling in North America (Bakun 1973), abundant biological resources thrive in the productive waters of the Gulf's broad, shallow continental shelf. A counter-clockwise eddy that swirls south of Point Reyes in the Gulf of the Farallones concentrates the products of upwelling (Wing *et al.* 1995) and acts like an incubator for small developing animals. These in turn are food for organisms higher up on the food web. The result is a marine system that supports some of the most active commercial fisheries on the west coast, provides food and habitat to support the largest concentration of breeding seabirds in the continental United States, and supports roughly 20% of the breeding population for California's harbor seals. It is a destination feeding area for protected white sharks (Klimley and Ainley 1996) and endangered blue and humpback whales in the summer and fall (Kieckhefer 1992). The sharks aggregate in coastal areas and near the Farallon islands from spring through fall to feed on an abundance of seals and sea lions. The whales travel from Mexico to feed on the concentrations of krill and forage fish found in the Sanctuary's offshore habitats. From spring through late summer, krill swarm in the surface layers of the ocean (Smith and Adams 1988). It is during these daytime surface swarms that krill are most vulnerable to predators. Endangered whales, seabirds and salmon feed heavily on krill when they are concentrated in these surface aggregations.

The protected bays and coastal wetlands of the Sanctuary, such as Bodega Bay, Tomales Bay, Drakes Bay, Bolinas Lagoon, Estero Americano and Estero de San Antonio, provide diverse habitats including intertidal mudflats, send flats, salt marshes, submerged rocky terraces, and shallow subtidal areas. These areas support large populations of benthic fauna and concentrations of burrowing organisms and organisms living on marine plants. Submerged eelgrass (Zostera marina) beds are prevelant in the northern portion of Tomales Bay and provide crucial feeding habitat for more than 50 resident, breeding, and migratory bird species. These eelgrass beds are also important for many marine invertebrates and for the developing egg masses of herring and other fishes. It is estimated that approximately 30 million herring annually spawn on the eelgrass beds of Tomales Bay (Fox 1997). The shallow protected bays and estuaries are also important habitat for anadromus fish, surfperches, sharks, rays and flatfish. Over 150 species of fish are found in the Sanctuary including the federally endangered winter-run Chinook salmon and the federally threatened coho salmon, spring run Chinook salmon, steelhead trout and tidewater goby.

The nearshore coastal waters of the Sanctuary are sensitive biological habitats where myriad marine invertebrates and algae reside, where bird rookeries and pinniped haulout sites are present, where many critical nursery and food source habitats for wildlife are located, and where many nearshore users of the Sanctuary's water tend to concentrate.

The nearshore waters of the Sanctuary are the areas most heavily used for recreation. Areas such as Bodega Bay and Tomales Bay are used for sailing, canoeing, rowing, kayaking and swimming. These activities are often conducted close to shore and may be dependent on calm waters. The ability of MPWC to go very close to shore (due to their shallow draft) and move in unpredictable ways may be detrimental to the safety and aesthetic experience of those conducting these more benign recreational activities.

The offshore waters of the Sanctuary provide entrance and egress for commercial shipping traffic using ports in San Francisco Bay. Tankers and container ships traverse the Sanctuary in shipping lanes, which funnel traffic in northbound and southbound directions. These offshore waters also support active sport and commercial fisheries. Small skiffs and larger commercial vessels move at constant speeds or drift through the Sanctuary waters fishing for salmon and albacore. Rockfish and urchin boats fish high spots and reefs closer to shore. On the softer sediment of the continental shelf, crab fishermen lay out rows of crab pots each one identified with a buoy at the surface. All of these activities have gear in the water that extends some distance from the boat and the gear is not readily apparent to the casual observer. Most fishermen are aware of how other gear types are deployed and operated. In cases where the potential for conflict arises, most boats operating offshore have navigation equipment and radios to communicate with each other. Commercial whale watching and seabird operators regularly use the offshore area of the Sanctuary for wildlife viewing opportunities. These offshore areas provide important habitat for feeding blue whales, humpback whales, gray whales, harbor porpoise, Steller sea lions, Pacific white sided dolphins, Dall's porpoise, California sea lions, common murres, Cassin's auklets, rhinoceros auklets, three species of cormorants, two species of grebes, tufted puffins, pigeon guillemots, marbled murrelets, black footed albatross, storm petrels, shearwaters, fulmars and many species of seabirds and marine mammals that are less abundant.

Ten percent of California's threatened coho salmon population use the outer Sanctuary and Tomales Bay during the ocean phase of their life history before returning to Lagaunitas creek and other creeks on the spawning migration which completes their life cycle. Newly listed populations of chinook salmon also use the Gulf of the Farallons as adults before returning to the Sacramento River drainage to spawn. Because of the significant biological diversity found within the Sanctuary including 11 federally endangered and 7 threatened species of birds, fish, turtles, and marine mammals and the importance of Sanctuary habitats for maintaining these populations, NOAA as the public trustee agency for these resources takes a precautionary approach to their protection. The potential for adverse environmental impacts from MPWC operation poses an unacceptable risk to the health of these resources, and because of the high potential for user conflicts, NOAA has decided to prohibit MPWC from operating within the boundaries of the GFNMS, including waters surrounding the Farallon Islands. The restricted areas include Drakes Bay, Tomales Bay, Bolinas Lagoon, Estero Americano, Estero de San Antonio, Bodega Bay, and all other areas within Sanctuary boundary.

As of 1 November 1998, launching MPWC from Point Reyes National Seashore (PRNS) of Golden Gate National Recreation Area (GGNRA) was prohibited (U.S. Dept. of Interior 1998 a & b). On 25 October 1999, after NOAA published its April 23, 1999 proposed rule, Marine County banned the use of MPWC within three statute miles of the ocean shore line as well as all tributaries flowing into the ocean up to seven miles

inland.[1] As a result of these actions, areas of the PRNS, GGNRA and Marin County, which overlap with Sanctuary boundaries are now off limits to MPWC. The PRNS, GGNRA and the county of Marin decided that continued use of this area by MPWC would have resulted in an unacceptable risk to sensitive resources in the area.

Historically, there were four MPWC launch sites used to access Sanctuary waters—Lawson's Landing at Dillon Beach, Millerton Point Park, Inverness, and Bodega Harbor. As of 1 November 1998, launching MPWC from Golden Gate National Recreation Area (GGNRA) or Point Reyes National Seashore (PRNS) is prohibited (U.S. Dept. of Interior, 1998 a & b). Millerton Point Park and Inverness are within GGNRA and PRNS boundaries, respectively, and therefore can no longer be used. As a result of the Marin County ordinance, Lawson's Landing is no longer a legal launch site for MPWC, and Tomales Bay and portions of Bodega Bay are now off limits to MPWC. Also, all coastal waters within three miles of shore in Marin County are off limits to MPWC operation. This area overlays the eastern edge of the GFNMS. The only remaining legal MPWC launch site into the Sanctuary is now from Bodega Harbor in Sonoma County, which is not within the jurisdictional boundary of the Marin County ordinance.

With Marin County's recent action banning MPWC operation (Marin County ordinance 3302) within three miles of its shore, if NOAA were to maintain the previously proposed 1000 yard buffer, MPWC would be able to exit Bodega Harbor and operate only in a 0.4 square mile area in Bodega Bay. This area lies in the vessel access route in front of the entrance to Bodega Harbor creating a potential hazard for vessels going in and out of Bodega Harbor. Fog and low visibility are a part of the typical weather pattern for this area during most of the year. If MPWC entered the Sanctuary from a vessel or from a launch site north of the Sanctuary such as the Salmon Creek area (four miles south) they would be operating in the gray whale migration corridor and in important feeding and resting areas for marine mammals and seabirds. This transit from the north into the Sanctuary would also take them through a state marine preserve at Horseshoe Cove which is also designated an Area of Special Biological Significance (ABS). Through only a small portion of the ABS is in the Sanctuary, within the 1000 yard zone, such activity by MPWC could have negative effects on Sanctuary resources.

If the Sanctuary takes no action, MPWC could depart from Bodega Habor. After leaving the harbor, they could turn due west, to avoid Marin County's restricted area, and pass over the dangerous Bodega rock shoal to get offshore. Because of the shallow water over the shoal, ocean swells build and break unpredictably in this area. In the past, several boats have capsized and people have died in this unpredictable and dangerous area. Beyond the shoal, MPWC could exit the Sanctuary at Bodega Head by going north or get into the Sanctuary's offshore waters by continuing west. Both require passing in the vicinity of the state's ABS mentioned earlier. MPWC would then be operating in the same biologically rich area including the gray whale migration corridor.

Another option would be for MPWC to use the nearshore shore areas in Bodega Bay. Because of the Marin County ban, MPWC users would be restricted to the northern crescent of Bodega Bay adjacent to the county recreational area at Doran Beach. Doran Beach offers camping and attracts large weekend crowds on hot days. The protected nature of Doran Beach, in the lee of Bodega Head makes it a popular spot for swimming and other water sport activities. Recreational fisherman in small skiffs use this area for sportfishing and crabbing. Two public launch sites in Bodega Harbor offer easy access to these protecting nearshore waters. On windy days, the nearshore area off Doran Beach is a popular spot for windsurfers and sailboats. Operation of MPWC in this area increases the potential for conflict with other recreational users. The ability of MPWC to operate very close to shore (due to the shallow draft) and move in unpredictable ways may be detrimental to the safety and aesthetic experience of those conducting more benign recreational activities. NOAA believes that MPWC operation in offshore and nearshore areas of the Sanctuary creates a user conflict that can be avoided by prohibiting the use of MPWC in the Sanctuary. Operating MPWC in the nearshore area of Bodega Bay also places MPWC in an environmentally sensitive habitat close to observed gray whale feeding areas.

After considering the comments in response to NOAA's April 23, 1999, proposed rule, reviewing new MPWC regulations for agencies with contiguous and overlapping jurisdictional boundaries, and considering the increased sitings for federally threatened southern sea otters and numbers of gray whales feeding in Bodega Bay, new listings for salmon and steelhead, and requirements for the protection of the Sanctuary's biological resources, the Sanctuary has determined that a total ban on MPWC is necessary to adequately protect Sanctuary resources. This proposed rule would ensure that Sanctuary resources and qualities are not adversely impacted and would help avoid conflicts among various users in the Sanctuary. A total ban on MPWC within the GFNMS is the most effective, safe and enforcement regulations that ensures Sanctuary resource protection.

## II. Comments and Responses on Notice of Inquiry/Request for Information

The following is a summary of comments received on the Request for Information, and NOAA's responses.

Against Regulations:

*1. Comment:* NOAA has mischaracterized the level and pattern of MPWC use in the Sanctuary.

*NOAA Response:* NOAA disagrees. NOAA has solicited from the public and all launchsite owners the amount of use of MPWC in the Sanctuary. MPWC use in the Sanctuary is increasing at a time when marine mammal occurrence is expanding in duration of stay, numbers, species and location. Regulations banning MPWC use in adjoining Marin County, MCOSD, Point Reyes National Marine Seashore, Golden Gate National Recreational Area, and in the Monterey Bay National Marine Sanctuary leave the GFNMS resources vulnerable to increased interactions among MPWC and marine mammals, sea birds, shore birds, wading birds, and other Sanctuary resources and users.

*2. Comment:* NOAA's attempt to paint MPWCs as the primary source of fuel emissions in air and water in the Sanctuary is based on erroneous and outdated assumptions.

*NOAA Response:* NOAA disagrees. NOAA has not tried to paint MPWC as the primary source of fuel emissions in air and water in the Sanctuary, however MPWC are a source of fuel emissions. NOAA has considered the most current information available in its deliberations regarding the regulation of MPWC in the Sanctuary. Much of the information is from 1997 and 1998 data. The sources are reliable and respected in their fields, and have knowledge and experience in the Gulf of Farallones National Marine Sanctuary.

*3. Comment:* NOAA's suggestion that MPWC are operated at "fast" speed,

[1] On 14 January 2000 the California Coastal Commission (CCC) approved, on a 90-day emergency basis, the Marin County ban, which the CCC subsequently extended for an additional 90 days on 17 March 2000. The CCC will likely vote on whether to permanently approve the Marin County rule in May, 2000.

"close" to shore does not support the proposed 1000 yard restriction.

*NOAA Response:* NOAA disagrees. NOAA believes that these activities are not only detrimental to marine life in the 1000 yard zone, but to the entire Sanctuary as well. This was arrived at after a review of the literature, consideration of all comments, review of regulations of areas with contiguous boundaries, and the latest biological information. Therefore, NOAA agrees that the 1000 yard restriction be changed to a prohibition within the Sanctuary as the only way to adequately protect all sea birds, marine mammals and other resources within this marine ecosystem.

*4. Comment:* NOAA's assertion that MPWCs have disturbed the natural quiet and aesthetic appreciation in the "nearshore" does not support the proposed restriction on MPWC use.

*NOAA Response:* NOAA disagrees. Noises from MPWC have been noted in many comments and have detrimentally affected the enjoyment of other Sanctuary users. The MPWC Industry cites other vessels which make similar or greater noise than MPWC. However, MPWC may be perceived as being louder than other boats because they can travel faster, closer to shore, often travel in groups, tend to frequently accelerate and decelerate, and wake-jump. These characteristics create uneven, persistent noise apparently more bothersome to people and potentially to wildlife. Research indicates that the constancy of speed figures into noise generation, as most people adjust to a constant drone and cease to be disturbed by it, even at elevated levels, but the changes in loudness and pitch of MPWC are more disturbing to people than other watercraft (Wagner 1994). In addition, many MPWC have had mufflers removed which greatly changes their noise output.

*5. Comment*: NOAA's description of recreational use patterns in the Sanctuary belies its assertion that MPWCs have interfered with other recreational uses.

*NOAA Response*: NOAA disagrees. After consideration of public comment on this issue, including testimony at public hearings relative to MPWC use in or adjacent to the Sanctuary, NOAA has determined that MPWC conflict or pose the potential to conflict with other recreational uses such as swimming, kayaking, recreational fishing, boating and wildlife viewing.

*6. Comment*: The referenced studies regarding disturbance of water fowl and seabirds do not support NOAA's proposed restriction on MPWC use.

*NOAA Response*: NOAA disagrees. Scientific research indicates that even at slower speeds, MPWC are a significantly stronger source of disturbance to birds than more conventional motorboats. Levels of disturbance can be further increased when MPWC are used at high speeds or outside of established boating channels. Seabirds such as common murres and sooty shearwaters often form large aggregations on the surface of the ocean. Feeding aggregations of sooty shearwaters can often number in the thousands and cover significant offshore area. These feeding flocks are ephemeral in nature and their movement is dictated by the availability of their prey. After review of the literature, consideration of all comments, review of regulations of areas with contiguous boundaries, and the latest biological information, NOAA believes that the proposed restriction of MPWCs from coming within 1,000 yards of shore would be inadequate to protect all sea birds and marine mammals. Therefore, NOAA has proposed a prohibition on the operation of MPWC in the Sanctuary.

*7. Comment*: The proposed MPWC restriction is not necessary to protect marine mammals.

*NOAA Response*: As identified in numerous comments on NOAA's proposed rule, as well as in response to NOAA's notice of inquiry/request for information (8/21/97), there are significant concerns regarding the effects of MPWCs on living resources dependent upon the vitality of Sanctuary resources. Marine mammals currently at risk from MPWCs include southern sea otter (Enhydra lutris), blue whales (Blaenoptera musculus), humpback whales (Megaptera novaeangliae), gray whales (Eschrichtius robustus), Guadalupe fur seal (Arctocephalus townsendi), northern fur seal (Callorhinus ursinus), Steller sea lions (Eumetopias jubtus), and harbor porpoise (Phocoena phocoena). All of these animals move freely through the Sanctuary, four are listed as threatened or endangered.

Another recent change (1997, 1998, & 1999) has been that gray whales are staying in GFNMS during the summer and feeding in Bodega Bay and around the Farallon Islands. This new behavior in Bodega has increased from zero (0) in 1994 to at least 12 animals in 1999. Gray whales and MPWCs use the same areas, but whales have not been seen when MPWCs are using the area. Other animals of concern are Guadalupe fur seals (threatened) which have been seen on the Farallon Islands since 1993. This is a new species for this area. Steller sea lions (threatened) haul out and use the Farallon Islands and Point Reyes area transit all areas of the Sanctuary.

The latest (July 1999) uncommon behavior observed was for the endangered blue whales. These animals have almost always been observed offshore over depths greater than 100 fathoms. This year blue whales have been consistently seen within the area east of the Farallon Islands over depths of 40 to 50 fathoms and in July 1999 blue whales were seen one nautical mile off Chimney Rock over a depth of 20 fathoms.

Humpback whales have also been present one to two miles off Pt. Reyes. The observations of all these marine mammals (four are threatened and endangered species) were in areas outside of 1,000 yards. These animals require protection from MPWC in order to allow alternatives for them as populations move or increase and other areas are abandoned or become fully utilized.

As stated clearly by the MPWC industry in their comments, existing laws are not being followed by all MPWC operators and are also not enforced. Interactions of MPWCs with marine mammals, as well as with shore birds, wading birds and swimmers, are already illegal under federal, state or local statute, but still occur. A total prohibition will provide a clear and simple enforceable rule within the GFNMS.

Research has demonstrated that impacts resulting from MPWC use tend to be concentrated locally, producing more geographically limited, yet potentially more severe effects than would occur with other motorboats which are less maneuverable than MPWC [See DEA, Section III, Summary of Effects of MPWC on Marine Resources, for an expanded discussion (Snow, 1989).]

*8. Comment:* NOAA is mistaken in assuming MPWCs are predominantly used in an "aggressive" manner and points to no specific accidents or injuries involving other sanctuary users.

*NOAA Response:* NOAA did not use the term "aggressive" in the preamble to the proposed regulation.

*9. Comment:* NOAA's assertion that MPWCs pose a hazard to other water users because of a disproportionate risk of accidents is unreliable.

*NOAA Response:* NOAA reviewed published reports (U.S. Coast Guard, 1999) and considered various accident data and statistics that showed MPWCs are involved in a higher percentage of accidents than other types of watercraft.

*10. Comment:* NOAA cannot reasonably base its proposed prohibition of MPWC use within 1000 yards of

shore on unconfirmed, and in some cases unwritten, personal "documentation" and "communication" regarding interference with swimmers, kayakers and other recreational users of "nearshore" areas.

*NOAA Response:* NOAA disagrees. NOAA's decision to ban MPWC use within the Sanctuary is not solely based on interference with swimmers, kayakers and other recreational users of nearshore area. Evidence of MPWC's negative impact on marine resources in the Sanctuary is the primary concern to NOAA. However, because of U.S. Coast Guard statistics and reports of MPWC jeopardizing the well-being of swimmers, kayakers, canoeists, and other recreational boaters and users of nearshore areas of the Sanctuary, NOAA has determined that a prohibition on the operation of MPWC is the most prudent alternative to adopt for this sanctuary.

*11. Comment:* Responsible users do not chase or harass marine life; do not disrupt residents or businesses on the shore-line with high speed cruising; support restrictions on speed [and all watercraft] within 100–200 ft. of shore. MPWC operate within EPA noise and emissions requirements.

*NOAA response:* NOAA disagrees. Responsible users may not intentionally harass wildlife, but unintentional disturbance to wildlife from MPWC operation has the same negative impacts. See responses above for MPWC effects—intentional or unintentional. Testimony and comments from local residents contend that MPWC are disruptive. See response to comment 11 regarding enforcement and response to comment 4 addressing noise.

For Regulation:

*12. Comment:* MPWC should be completely prohibited throughout all of the Sanctuary. Do not establish an access corridor to launch at Bodega Harbor.

*NOAA response:* NOAA agrees. As discussed earlier, based on new and recent regulations for areas with contiguous and overlapping boundaries, the latest biological information on impacts of MPWC in offshore areas, as well as conflicts with other Sanctuary users, NOAA has determined that a Sanctuary-wide prohibition on the operation of MPWC is necessary and the best way to adequately protect the Sanctuary's resources. The GFNMS agrees with the concern that although restricting MPWC from coming within 1,000 yards of the shore would protect shore birds and wading birds, the Sanctuary resources that lie outside of this zone would remain at risk.

*13. Comment:* Golden Gate National Recreation Acrea (Park) has banned use of MPWC; Sanctuary (NOAA) should do the same.

*NOAA response:* NOAA agrees. The GFNMS boundaries are contiguous and overlap with the Point Reyes National Seashore (PRNS) and the Golden Gate National Recreational Area (GGNRA) which both prohibit MPWC use in their waters. The Marin County Open Space District (MCOSD) also shares management authority with GFNMS on Bolinas Lagoon where MPWC operation is also prohibited by the MCOSD. As of 25 October 1999, the County of Marin enacted an ordinance for the total ban of MPWC within three statute miles (15,840 ft.) of the ocean shore and all tributaries flowing into the ocean up to seven miles inland. This precludes MPWC operation in a large portion of the new shore area where County and Sanctuary jurisdictional boundaries overlap. NOAA concurs with and supports the other agencies assessment of resource impacts and user concerns created by the operation of MPWC in the marine environment of this area.

*14. Comment:* MPWC cause unacceptable pollution in the Sanctuary, particularly because propulsion by two-stroke engine results in oil exhaust direct to water.

*NOAA response:* NOAA agrees. MPWC are powered by a jet-propelled system that typically involves a two-stroke engine with an exhaust expulsion system that vents directly into the water. The two-stroke engines found on the vast majority of MPWC in the United States discharge more of their fuel (ranging from 10% to more than 50% of the unburned fuel/oil mixture, depending on manufacturing conditions and operating variables) than the four-stroke engines found on conventional recreational boats (Tahoe Research Group 1997). These emissions pose a serious threat to the environment, as two-stroke engines introduce more volatile organic compounds (by a factor of 10) into the water than four-stroke engines (Juttner *et al.* 1995; Tjarnlund *et al* 1995). These emissions can have significant adverse impacts in all areas of the Sanctuary.

*15. Comment:* MPWC cause unacceptable noise levels, which disturb marine wildlife (marine mammals, seabirds) as well as human visitors to the Sanctuary.

*NOAA response:* In general, unless modified by the operator (*i.e.*, removal or alteration of the muffler), MPWC do not appear to be any louder in the air than similarly powered conventional motorized watercraft (MPWC and conventional watercraft both registered between 74 and 84 decibels in tests conducted in 1990) (Woolley 1996) and appear to be quieter underwater (Gentry 1996). However, many MPWC operators alter or remove the mufflers to enhance craft performance, thus increasing the noise generated by their craft. Also, MPWC may be perceived as being louder than other boats because they can travel faster, closer to shore, often travel in groups, tend to frequently accelerate and decelerate, and wake-jump. These characteristics create uneven, persistent noise apparently more bothersome to people and potentially to wildlife. In addition, research indicates that the constancy of speed figures into noise generation, as most people adjust to a constant drone and cease to be disturbed by it, even at elevated levels, but the changes in loudness and pitch of MPWC are more disturbing to people than other watercraft (Wagner 1994).

*16. Comment:* Speed and mobility of MPWC cause negative effects on marine mammals and aquatic birds. Wildlife are not able to anticipate movement and may also cause susceptibility to disease and injury.

*NOAA response:* NOAA agrees. Research in Florida indicates that MPWC cause wildlife to flush at greater distances, with more complex behavioral responses than observed in disturbances caused by automobiles, all-terrain vehicles, foot approach, or motorboats. This was partially attributed by the scientists to the typical operation of MPWC, where they accelerate and decelerate repeatedly and unpredictably, and travel at fast speeds directly toward shore, while motor boats generally slow down as they approach shore (Rodgers 1997). Scientific research also indicates that even at slower speeds, MPWC were a significantly stronger source of disturbance to birds than were motor boats. Levels of disturbance were further increased when MPWC were used at high speeds or outside of established boating channels (Burger 1998). There is a general conclusion that marine mammals are more disturbed by watercraft such as MPWC, which run faster, on varying courses, or often change direction and speed, than they are by boats running parallel to shore with no abrupt course or major speed change.

Researchers note that MPWC may be disruptive to marine mammals when they change speed and direction frequently, are unpredictable, and may transit the same area repeatedly in a short period of time. In addition, because MPWC lack low-frequency long distance sounds underwater, they do not signal surfacing mammals or birds of approaching danger until they are

very close to them (Gentry 1996; Osborne 1966). Documented disturbance effects of MPWC on marine mammals could include shifts in activity patterns and site abandonment by harbor seals and Steller sea lions; site abandonment by harbor porpoise; injuries from collisions; avoidance by whales and mortality of endangered southern sea otters (Gentry 1996; Richardson et al. 1995, Anonymous 1990).

*17. Comment:* MPWC cause the disturbance of wildlife in the Sanctuary.

*NOAA response:* NOAA agrees. Many seabirds and marine mammals use the surface layer of the ocean within the GFNMS for resting and feeding opportunities. Common murres, loons, cormorants, grebes, auklets, and phalaropes are some of the seabirds that float on the surface of the ocean while resting or before diving and pursuing prey. These seabirds are at an increased risk from MPWC because MPWC operation causes disturbance and more complex behavioral responses from seabirds and at greater distances than that observed for motorboats (Rodgers 1997). One speaker at the public hearing testified that he and others observed six gray whales one afternoon loitering near the mouth of Tomales Bay for the afternoon. The next day, six MPWC were operating in the exact area where the gray whales had been. The gray whales had left the area. While this information is anecdotal, it is an indication that the presence of whales and MPWC operation are not compatible. When viewed in light of Gentry's (1996) work, MPWC activity may prevent wildlife from using necessary habitat.

*18. Comment:* MPWC will cause disruption of nesting, breeding, and feeding areas of seabirds.

*NOAA response.* NOAA agrees. Research notes that declining nesting success of grebes, coots, and moorhens in the Imperial National Wildlife Refuge were due to the noise and physical intrusion of MPWC (Snow 1989). In addition, MPWC have been observed flushing wading birds and nesting osprey from their habitat, contributing to abnormally high numbers of abandoned osprey nests on certain islands in the Florida Keys (U.S. Fish and Wildlife Service 1992). The number of active osprey nests in the lower Florida Keys "backcountry" dropped from five to zero between 1986 and 1999. Biologists believe this was due to MPWC flushing parents from the nests (Cuthbert and Suman 1995). Research suggests that declines in nesting birds in some states occurred simultaneously with MPWC operation. Numerous shoreline roost sites exist within the Sanctuary, and research has shown that human disturbance at bird roost sites can force birds to completely abandon a nesting area. Published evidence strongly suggests that estuarine birds may be seriously affected by even occasional disturbance during key parts of their feeding cycle, and when flushed from feeding areas, such as eelgrass beds, will usually abandon the area until the next tidal cycle (Kelly 1997). Nearshore areas in Bodega Bay, Sonoma County, provide important foraging habitat for shorebirds and waterfowl along the Pacific flyway. The Farallon Islands, located in San Francisco County, support the largest concentration of breeding seabirds in the continental United States. Several species of diving birds that nest on the Farallon Islands use the offshore areas of the Sanctuary to forage. These animals float on the surface of the water between repeated dives for food. MPWC operating in this offshore habitat would certainly disrupt seabirds foraging for prey to bring back to their young in nests.

*19. Comment:* MPWC will cause disruption of marine mammals; will allow jet skis to be used in part of gray whale migration route.

*NOAA response:* NOAA agrees. There is a general conclusion that marine mammals are more disturbed by watercraft such as MPWC, which run faster, on varying courses, or often change direction and speed, than they are by boats running parallel to shore with no abrupt course or major speed change. Researchers note that MPWC may be disruptive to marine mammals when they change speed and direction frequently, are unpredictable, and may transit the same area repeatedly in a short period of time. In addition, because MPWC lack low-frequency long distance sounds underwater, they do not signal surfacing mammals or birds of approaching danger until they are very close to them (Gentry 1996; Osborne, 1996). Possible disturbance effects of MPWC on marine mammals could include shifts in activity patterns and site abandonment by harbor seals and Steller sea lions; site abandonment by harbor porpoise; injuries from collisions; and avoidance by whales (Gentry 1996; Richardson *et al.* 1995). The gray whale migration corridor passes directly through the GFNMS. Twice a year gray whales pass through the Sanctuary on their migration between wintertime calving grounds in Mexico and summer feeding grounds in Alaska. In spring, mothers and calves travel in pairs close to shore. Since the whale migration corridor passes through the entire Sanctuary in a north-south direction, but varies in distance from shore, there is no way to distance MPWC from the migrating whales. In addition, the GFNMS is a destination feeding area for the endangered blue and humpback whales. Each summer these whales migrate to the GFNMS to feed on abundant swarms of krill found in the surface layers in the Gulf of the Farallones. It is critical that these whales feed enough in the summer and fall to sustain them through their migration and winter reproductive season. Disturbance from MPWC could reduce feeding opportunities and have serious consequences for these endangered populations. Endangered blue whales were observed feeding two miles off of the Point Reyes headlands during July of 1999. This is unusually close to shore for these animals, whose numbers in the area comprise a major concentration for the world, and who normally forage farther offshore. This unpredictable blue whale feeding activity demonstrates the necessity for protecting all of the Sanctuary's waters. Other jurisdictions have regulated MPWC specifically to protect marine mammals (*e.g.*, Hawaii).

*20. Comment:* Proposed rule will leave 95% of the Sanctuary unprotected [from the effects of jet skis]

*NOAA response:* NOAA agrees. NOAA's initial proposal of a 1000 yd. buffer would leave 95% of the Sanctuary open for MPWC operation. The Sanctuary was created in 1981 to protect and preserve the extraordinary ecosystems, including marine birds, mammals, and other natural resources of the waters surrounding the Farallon Islands and Point Reyes, and to ensure the continued availability of the area as a research and recreational resource. As discussed throughout this document, information supports a need to address the impacts of MPWC operation throughout the Sanctuary. As the public trustee for these important resources, it would be inadequate for the Sanctuary to leave resources at risk in 95% of the GFNMS and therefore NOAA has proposed a prohibition of the operation of MPWC in the entire Sanctuary.

*21. Comment:* MPWC use disturbs others using the Sanctuary and would cause danger to individual swimmers [and other boaters] in the Sanctuary.

*NOAA response:* NOAA agrees. The Sanctuary encourages multiple uses of its waters that are compatible with resource protection. When used as designed and in the current manner, MPWC have significant potential to interfere with a large number of other Sanctuary users. Numerous respondents to the proposed rule noted that MPWC

were interfering with, and often jeopardizing the well-being of, swimmers, kayakers, canoeists, and other recreational boaters and users of the Sanctuary. MPWC have been involved in numerous accidents, and thus pose a hazard to other water users. Although MPWC make up approximately 11% of vessels registered in the country (U.S. Dept. of Interior 1998c), Coast Guard statistics show that in 1996, 36% of all watercraft involved in accident were MPWC (U.S. Coast Guard 1999). In addition, numerous commentors noted that the operation of MPWC in the Sanctuary diminishes the aesthetic qualities of many beach and recreational areas, and may interfere with other economic uses of the areas based upon these aesthetic qualities.

*22. Comment:* A partial ban would be too hard to enforce; covering all of the Sanctuary would be more clear to jet ski users and to enforcement personnel.

*NOAA response:* NOAA agrees. With the implementation of the Marin County ban that regulates MPWC three miles shore, enforcing boundary violations would be difficult. Because the Sanctuary does not have enforcement personnel to staff a boat patrol at the three mile boundary and MPWC are not equipped with navigational equipment it would be impossible to enforce boundary violations. Before the Marin County ban, there was difficulty enforcing the Point Reyes National Seashore's (PRNS) quarter mile restriction. Despite local riders attempt at self-policing and creating no ride zones, violations were chronic and regulations were hard to enforce. This occurred in PRNS that has enforcement personnel on staff. A total prohibition will provide a clear and simple enforcement rule within the GFNMS.

## III. Summary of Proposed Regulations

Amendments to the GFNMS regulations are proposed in this rulemaking as follows:

The addition to 15 CFR 922.82(a) of a prohibition against operation of MPWC in the Sanctuary. The prohibition would include an exception for the use of MPWC for emergency search and rescue and law enforcement (other than training activities) by Federal, State and local jurisdictions.

An amendment to 15 CFR 922.81 to add a definition of "motorized personal watercraft." "Motorized personal watercraft" would be defined as "a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel".

## IV. Miscellaneous Rulemaking Requirements

*Executive Order 12866: Regulatory Impact*

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

*Regulatory Flexibility Act*

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities, as follows:

> The proposed rule would amend the Gulf of the Farallones National Marine Sanctuary (GFNMS or Sanctuary) regulations to prohibit the operation of motorized personal watercraft in the Sanctuary. The proposed rule would ensure that Sanctuary resources and qualities are not adversely impacted and would help avoid conflicts among various users of the Sanctuary.
>
> There is currently one legal launch location for MPWC operation in the Sancturary at Bodega Harbor in Sonoma County. Combined data from Marin County and Sonoma County estimates 20 MPWC users and approximately 200 launches per year. With the Marin County ban issued in October of 1999, it's estimated the Sonoma County parks would lose a launch fee of $5 dollars per launch for an estimated 100 launches form Bodega Harbor for a total loss of $500 dollars. This is a minor portion of the total revenues for the County park at Doran Beach. Consequently, the rule is not expected to have a significant economic impact on a substantial number of small entities.

Accordingly, a Regulatory Flexibility Analysis was not prepared.

*Paperwork Reduction Act*

This proposed rule would not impose an information collection requirement subject to review and approval by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3500 *et seq.*

*National Environmental Policy Act*

NOAA has concluded that this regulatory action does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required. A draft environmental assessment has been prepared. It is available for comment from the address listed at the beginning of this notice.

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**List of Subjects in 15 CFR Part 922**

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: May 16, 2000.

**Ted Lillestolen,**

*Deputy Assistant Administrator, Ocean Services and Coastal Zone Management.*

Accordingly, for the reasons set forth above, 15 CFR Part 922, Subpart H, is proposed to be amended as follows:

## PART 922, SUBPART H—THE GULF OF THE FARALLONES NATIONAL MARINE SANCTUARY

1. The authority citation for Part 922 continues to read as follows:

**Authority:** 16 U.S.C. 1431*et seq.*

2. Section 922.18 is amended by adding the following definition, in the appropriate alphabetical order.

**§ 922.81 Definitions.**

* * * * *

*Motorized personal watercraft* means a vessel which uses an inboard motor powering a water jet pump as its primary source of motive power and which is designed to be operated by a person sitting, standing, or kneeling on the vessel, rather than the conventional manner of sitting or standing inside the vessel.

3. Section 922.82 is amended by adding new paragraph (a)(7) as follows:

**§ 922.82 Prohibited or otherwise regulated activities.**

(a) * * *

(7) Operation of motorized personal watercraft, except for the operation of motorized personal watercraft for emergency search and rescue mission or law enforcement operations (other than routine training activities) carried out by National Park Service, U.S. Coast Guard, Fire or Police Departments or other Federal, State or local jurisdictions.

* * * * *

[FR Doc. 00–12797 Filed 5–19–00; 8:45 am]
BILLING CODE 3510–08–M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[MN60–01–7285b; FRL–6703–2]**

### Approval and Promulgation of Implementation Plans; Minnesota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** We are proposing to approve a site specific revision to the Minnesota particulate matter (PM) State Implementation Plan (SIP) for LTV Steel Mining Company, formerly known as Erie Mining Company, located in St. Louis County, Minnesota. In its submittal, the State has requested that we remove the Stipulation Agreement for Erie Mining Company from the Minnesota SIP. In the final rules section of this **Federal Register**, we are conditionally approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Comments must be received by June 21, 2000.

**ADDRESSES:** Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

**FOR FURTHER INFORMATION CONTACT:** Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson

Boulevard, Chicago, Illinois 60604, (312) 353–8328

**SUPPLEMENTARY INFORMATION:** For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: April 27, 2000.

**David A. Ullrich,**

*Acting Regional Administrator, Region 5.*

[FR Doc. 00–12643 Filed 5–19–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 300

**[FRL–6702–5]**

### National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of intent to delete the Schofield Army Barracks site from the National Priorities List.

**SUMMARY:** The Environmental Protection Agency (EPA) Region 9 announces the intent to delete the Schofield Army Barracks site ("the site") from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA and the State of Hawaii Department of Health have determined that the remedial action for the site has been successfully executed.

**DATES:** Comments concerning the proposed deletion of the Site from the NPL may be submitted on or before June 21, 2000.

**ADDRESSES:** Comments may be mailed to: Mark Ripperda, USEPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Mail Code SFD–8–3.

Comprehensive information on this site is available through the Region 9 public docket which is available for viewing by appointment only. Appointments for copies of the background information from the Regional public docket should be directed to the EPA Region 9 docket office at the following address: Superfund Records Center, USEPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

The deletion docket is also available at the following locations on Oahu: Wahiawa Public Library, 820 California Avenue, Wahiawa, Hawaii 96786; and Directorate of Public Works, Environmental Division, Bldg 105, 3rd Floor, Wheeler Army Airfield, Hawaii.

**FOR FURTHER INFORMATION CONTACT:** Mark Ripperda, USEPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Mail Code SFD–8–3; phone (415) 744–2408.

**SUPPLEMENTARY INFORMATION:**

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis of Intended Site Deletion

### I. Introduction

The U.S. EPA Region IX announces its intent to delete the Schofield Army Barracks site in Honolulu County, Hawaii, from the National Priorities List (NPL) and requests public comment on this proposed action. The NPL constitutes appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of these sites. EPA and the State of Hawaii Department of Health have determined that the remedial action for the site has been successfully executed.

EPA will accept comments on the proposal to delete this site for thirty (30) days after publication of this document in the **Federal Register**.

Section II of this document explains the criteria for deleting sites from the NPL. Section III discusses the procedures EPA is using for this action. Section IV discusses the Schofield Army Barracks site and explains how the site meets the deletion criteria.

### II. NPL Deletion Criteria

Section 300.425(e)(1) of the NCP provides that releases may be deleted from, or recategorized on the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the appropriate State, whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented, and no further response action by responsible parties is appropriate; or

(iii) The Remedial Investigation has shown that the release poses no significant threat to public health or the environment and, therefore, remedial measures are not appropriate.

Even if a site is deleted from the NPL, where hazardous substances, pollutants, or contaminants remain at the site above levels that allow for unlimited use and unrestricted exposure, EPA's policy is that a subsequent review of the site will be conducted at least every five years after the initiation of the remedial action at the site to ensure that the site remains protective of public health and the environment. If new information becomes available which indicates a need for further action, EPA may initiate additional remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without application of the Hazard Ranking System.

In the case of Schofield Army Barracks, the selected remedy is protective of human health and the environment. The Army will maintain the landfill cover and the water treatment system, and will perform long-term groundwater monitoring. The first five-year review will be conducted by EPA, the State of Hawaii Department of Health (HDOH), and the Army in the year 2002. Reviews will be conducted every five years thereafter.

### III. Deletion Procedure

The following procedures were used for the intended deletion of this site: (1) All appropriate response under CERCLA has been implemented and no further action by EPA or the Army is appropriate; (2) HDOH has concurred with the proposed deletion decision; (3) a notice has been published in the local newspapers and has been distributed to appropriate federal, state, and local officials and other interested parties announcing the commencement of a 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available in the local site information repositories.

Deletion of the site from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for

informational purposes and to assist Agency management. Section 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

EPA's Regional Office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete. If necessary, the Agency will prepare a Responsiveness Summary to address any significant public comments received.

A deletion occurs when the Regional Administrator places a final Notice of Deletion in the **Federal Register**. Generally, the NPL will reflect deletions in the final update following the Notice. Public notices and copies of the Responsiveness Summary will be made available to local residents by the Regional Office.

**IV. Basis of Intended Site Deletion**

The following site summary provides the Agency's rationale for the proposal to delete this site from the NPL.

*Site Background and History*

Schofield Barracks was established in 1908 to provide a base for the Army's defense of Pearl Harbor and the entire Island of Oahu. Initial construction of the post occurred between 1909 and 1917.

Schofield Barracks is headquarters for the 25th Infantry Division and 45th Support Group, and currently houses approximately 21,000 individuals. General operations performed at Schofield Barracks include administration, training, and small-scale industrial operations (vehicle repair and maintenance, weapons refinishing, laundering, electrical equipment service, sewage treatment, and municipal activities).

Schofield Barracks is in the north-central plateau of the Island of Oahu in the State of Hawaii. Schofield Barracks encompasses a total area of approximately 27.7 square miles and is divided into two sections, the East Range and the Main Post. Wheeler Army Airfield lies between the two Schofield Barracks sections. The town of Wahiawa is immediately north of the East Range. The town of Mililani is approximately 2 miles south of the East Range.

The recent history of reported groundwater contamination at Schofield Barracks began in April 1985, when the Army informed the Hawaii Department of Health (HDOH) that the industrial solvent trichloro-ethylene (TCE) was detected in wells supplying drinking water to Schofield Barracks at a concentration of approximately 30 parts per billion (ppb). In response to the detection of TCE in the water-supply wells, the Army installed an air-stripper treatment system in 1986 to remove TCE from the drinking water.

Schofield Barracks was placed on the NPL in September 1990 because of the risk posed to human health by the TCE contamination in a major drinking water aquifer. The Remedial Investigation identified two distinct plumes of TCE at Schofield; one originating from the on-base landfill and a larger plume originating in the East Range, several miles up-gradient from Schofield's municipal water supply wells. The East Range is a mountainous area marked by numerous deep ravines and heavy tropical vegetation. A distinct source was not found, though the general area of the source was defined by the monitoring well network and concentrations within the plume. The risk assessment concluded that the only risk to human health and the environment at Schofield under CERCLA was posed by the contaminated groundwater.

*Response Actions*

Overall, the remedial investigations and feasibility studies evaluated possible actions for four areas of the site: Operable Unit 1 (OU1) included the 10 most likely sources of the TCE contamination. Operable Unit 2 (OU2) included the groundwater plumes. Operable Unit 3 (OU3) included 34 additional possible sources of surface and subsurface contamination. Operable Unit 4 (OU4) included the Former Schofield Barracks Sanitary Landfill.

OU1 and OU3

The Record of Decision (ROD) for OU1, the most likely source areas, was signed by EPA on January 24, 1996. The ROD for OU3, the other possible source areas, was signed by EPA on November 8, 1996. Both RODs selected no action for these operable units because the remedial investigations showed that those areas were not currently sources of contamination to the groundwater. The remedial investigations produced no evidence that any of the sites in operable units 1 or 3 were originally sources of groundwater contamination. None of the sites in operable units 1 and 3 posed unacceptable risks to human health or the environment.

OU2

This operable unit consists of groundwater under Schofield Barracks that is contaminated with TCE. The Army, EPA and HDOH considered whether this contamination could be remedied within the aquifer or treated at the wellhead prior to the water being distributed for public use. The objectives for remediation are reducing risks to human health and the environment and satisfying applicable or relevant and appropriate requirements (ARARs). EPA determined that the federal drinking water standards, known as maximum contaminant levels (MCLs), are relevant and appropriate requirements within the aquifer. However, EPA may waive an ARAR where a selected remedy protects human health and the environment and it is technically impracticable to satisfy the requirement.

Remediation within the aquifer can be pursued either through natural attenuation or with some type of active treatment. While natural attenuation appears effective at confining the plume to its current configuration, the concentrations of TCE within the plume are decreasing too slowly for it to be considered a viable remedy. Active treatment of the groundwater is not practicable because of the hydrogeological conditions at the site. The depth to the water table is over 500 feet, the aquifer is composed of fractured volcanic rock, the aquifer is over 1000 feet thick, and approximately 120 million gallons of groundwater flow through the aquifer per day. Because of these conditions, the Army, EPA and HDOH concluded that treating the groundwater to achieve the MCL for TCE within the aquifer is technically impracticable. Therefore, EPA granted a technical impracticability (TI) waiver to this ARAR for OU2. However, the final remedy is fully protective of human health and the environment because the water will be treated before being distributed for public use.

The ROD for OU2, the groundwater aquifer, was signed by EPA on February 7, 1997. The selected remedy included the following actions:

- Continued treatment of contaminants in the Schofield Barracks Water Supply Wells by air stripping at the wellhead;
- The Army must consult with EPA and DOH prior to abandoning the water supply wells, because production at these wells may help to control plume migration;
- The Army must conduct semi-annual sampling and analysis of water supply wells, agricultural wells and monitoring wells in the region;
- The Army prepared plans to implement the contingency of wellhead treatment on water supply wells throughout the region. The Army will be required to install treatment systems on any wells that are impacted by the plume from Schofield Barracks above

one-half the maximum contaminant level (MCL) as established under the Safe Drinking Water Act;

- The Army must upgrade the treatment system or pay any incremental costs caused by contamination from Schofield Barracks at wells that already have a treatment system in place;
- Conduct five year reviews with the State of Hawaii and EPA.

The following actions were taken to implement the remedy decision for OU2:

- The Army installed air-stripper treatment units on their four contaminated municipal water supply wells at Schofield and will continue to operate the treatment system as long as contaminants in the influent water are above maximum contaminant levels (MCLs) specified in the Safe Drinking Water Act.
- The Army has sampled drinking water wells, agricultural wells and monitoring wells semi-annually throughout the central plateau area of Oahu since 1993 and will continue to do so until such time as the Army, EPA and HDOH agree that contaminant levels throughout the plume are below action levels.
- The groundwater contaminant plume appears to be confined by a system of dike impoundments and natural attenuation. The EPA, HDOH and the Army believe that it will not impact any additional down-gradient wells. Therefore, the contingency remedy for additional wellhead treatment is not expected to be needed.
- Institutional controls have been implemented that will restrict the placement of new drinking water wells into the contaminant plume. The Honolulu Board of Water Supply controls the installation of drinking water wells via a permit process. They will require the installation of wellhead treatment, paid for by the Army, on any wells that are drilled into the plume area.

OU4

The ROD for OU4, the landfill, was signed by EPA on September 26, 1996. The selected remedy included the following actions:

- Access restrictions and site security to limit human exposure to the landfill contents, prevent trespassing, and protect the integrity of the cap;
- Semi-annual ground water monitoring to monitor the effectiveness of the landfill site cap and determine groundwater flow directions in the vicinity of the landfill;
- Regrade the existing landfill cover;
- Remove Guinea grass from the existing cover and revegetate to improve future cap maintenance;
- Perform long-term maintenance of the landfill cover;
- Maintain existing passive landfill gas venting; and
- Install additional gas monitoring points at the perimeter of the landfill.

The following actions were taken to implement the remedy decision for OU4:

- The Army installed chain-link fence around the perimeter of the accessible portions of the landfill as an access restriction and has installed signs warning of potential health risks. The Former Landfill is part of a military installation that has a guard stationed at the entrances to monitor access to the installation 24 hours per day.
- The Army completed regrading the cover, installing nine new multi-level gas probes, stabilizing the sideslopes, and replacing and improving the vegetative cover in June 1998.
- The Army has conducted semi-annual groundwater monitoring and quarterly gas probe monitoring since the completion of the remedial action in June 1998. The groundwater monitoring is conducted as part of the OU2 work and it shows that the groundwater plume around the landfill is stable and at low levels of TCE concentration. The gas probe monitoring typically detects methane in four out of the 27 gas probe sampling points. The highest detection during the February 2000 monitoring event was 0.2 percent, which is well below the acceptable limit of 5 percent.

On July 21, 1998, the Army, EPA and HDOH, conducted a final inspection and determined that the remedial action had been successfully executed for all OUs. EPA reclassified Schofield Barracks to construction complete status in September 1998.

*Operation and Maintenance*

The Army is responsible for conducting long-term maintenance and upkeep of the landfill cover and for monitoring landfill gas, groundwater, and drinking water wells, in accordance with the approved Long-Term Operation, Maintenance and Monitoring Plans for OUs 2 and 4.

*Five Year Reviews*

CERCLA requires a five-year review of all sites with hazardous substances remaining above the health-based levels for unrestricted use of the site. Since the cleanup of the site utilized containment of hazardous materials within the landfill and wellhead treatment for drinking water, the five-year review process will be used to ensure that human health and the environment remain protected in the future. The first five-year review is scheduled for the year 2002.

*Community Involvement*

The Army published its final Community Relations Plan on January 31, 1997, after interviews with local residents and officials. An information repository was established at the Wahiawa Public Library and all reports and fact sheets were sent to the repository as they were completed.

The Army conducted public meetings prior to completing each of the four Records of Decision, and the public had no negative comments about any of the actions at Schofield.

*Applicable Deletion Criteria and State Concurrence*

EPA has determined that all appropriate responses under CERCLA at Schofield Army Barracks have been completed, and that no further CERCLA response is appropriate to protect human health and the environment. The Hawaii Department of Health concurred with the proposed deletion of the site from the NPL in a letter dated March 13, 2000. Therefore, EPA proposes to delete the site from the NPL. Documents supporting this action are available from the docket at the Region 9 office and in the Army's docket on Oahu.

Dated: April 25, 2000.

**Felicia Marcus,**

*Regional Administrator, Region IX.*

[FR Doc. 00–12520 Filed 5–19–00; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of Inspector General

### 42 CFR Part 1001

**RIN 0991–AB05**

## Medicare and State Health Care Programs: Fraud and Abuse; Ambulance Restocking Safe Harbor Under the Anti-Kickback Statute

**AGENCY:** Office of Inspector General (OIG), HHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This proposed rule would set forth a new safe harbor, as authorized under section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, to protect certain arrangements involving hospitals that replenish drugs and medical supplies used by ambulance providers when .

transporting emergency patients to the hospitals.

**DATES:** To assure consideration, public comments must be delivered to the address provided below by no later than 5 p.m. on July 21, 2000.

**ADDRESSES:** Please mail or deliver your written comments to the following address: Department of Health and Human Services, Office of Inspector General, 330 Independence Avenue, SW, Room 5246, Attention: OIG–62–P, Washington, DC 20201.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file OIG–62–P.

**FOR FURTHER INFORMATION CONTACT:** Vicki L. Robinson, Senior Counsel, Office of Counsel to the Inspector General, (202) 619–0335.

**SUPPLEMENTARY INFORMATION:**

## I. Background

Section 1128B(b) of the Social Security Act (the Act) (42 U.S.C. 1320a–7b(b)) provides criminal penalties for individuals or entities that knowingly and willfully offer, pay, solicit or receive remuneration in order to induce the referral of business reimbursable under the Federal or State health care programs. The offense is classified as a felony and is punishable by fines of up to $25,000 and imprisonment for up to five years. Violations of the anti-kickback statute may also result in the imposition of a civil money penalty (CMP) under section 1128A(a)(7) of the Act (42 U.S.C. 1320a–7a(a)(7)) or program exclusion under section 1128(b)(7) of the Act (42 U.S.C. 1320a–7(b)(7)).

The types of remuneration covered specifically include kickbacks, bribes and rebates, whether made directly or indirectly, overtly or covertly, in cash or in kind. In addition, prohibited conduct includes not only the payment of remuneration intended to induce referrals of patients, but also the payment of remuneration intended to induce the purchasing, leasing or ordering of any good, facility, service or item reimbursable by any Federal or State health care program.

*Establishing the Original Safe Harbors*

Since the statute on its face is so broad, concern had been expressed that some relatively innocuous commercial arrangements were technically covered by the statute and therefore were subject to criminal prosecution. As a response to the above concern, section 14 of the Medicare and Medicaid Patient and Program Protection Act of 1987, Public Law 100–93, specifically required the development and promulgation of regulations, the so-called "safe harbor" provisions, designed to specify various payment and business practices which, although potentially capable of inducing referrals of business under the Federal and State health care programs, would not be treated as criminal offenses under the anti-kickback statute. Beginning in July 29, 1991, we have published in the **Federal Register** a series of final regulations establishing "safe harbors" in various areas.[1] These OIG safe harbor provisions have been developed to limit the reach of the statute somewhat by permitting certain non-abusive arrangements, while encouraging beneficial and innocuous arrangements.

Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement action under the anti-kickback statute, the CMP provision for anti-kickback violations or program exclusion authority related to kickbacks. In giving the Department the authority to protect certain arrangements and payment practices under the anti-kickback statute, Congress intended the safe harbor regulations to be evolving rules that would be updated periodically to reflect changing business practices and technologies in the health care industry.

*OIG Advisory Opinions on Restocking Ambulance Supplies*

The OIG has issued four advisory opinions regarding arrangements between hospitals and other facilities providing emergency medical supplies, *i.e.*, "receiving facilities" and ambulance companies, under which the receiving facilities replenish ambulances with drugs and medical supplies used during the transport of *emergency* patients to the receiving facilities. In many of these arrangements, the drugs and supplies are replenished without charge to the ambulance company.

In OIG Advisory Opinion 97–6 (October 8, 1997), we responded to a request for an advisory opinion involving an ambulance replenishing arrangement that presented a specific set of facts clearly implicating the anti-kickback statute. The arrangement, as presented in the facts certified by the requesting party, contained no appropriate safeguards against fraud and abuse of the Federal health care programs and their beneficiaries. Accordingly, we concluded that the arrangement potentially violated the anti-kickback statute.

Subsequently, in 1998, we received several additional advisory opinion requests that involved ambulance replenishing arrangements, and issued three additional advisory opinions *approving* ambulance replenishing arrangements.[2] The facts of those three arrangements differed significantly from the facts that led to OIG Advisory Opinion 97–6. Specifically, the latter three opinions involved ambulance replenishing programs conducted in accordance with comprehensive, coordinated emergency medical delivery systems involving all of an area's ambulance providers and hospitals (as well as other components of the emergency medical system, such as physicians and local government officials). The OIG approved the three arrangements (with the limited exception of a portion of one of the three programs), persuaded that the arrangements posed little risk of Federal health care program fraud or abuse and that the arrangements promoted comprehensive and coordinated efforts to improve emergency medical care.

Since the release of OIG Advisory Opinion 98–14 in October 1998, the OIG has received no further advisory opinion requests on the topic of ambulance replenishing and few informal follow-up inquiries regarding these arrangements.

## II. Provisions of the Proposed Rule

The OIG believes that, in general, the ambulance and hospital industries understand the distinction between the first unfavorable advisory opinion and the subsequent three favorable opinions and are generally able to assess and structure arrangements accordingly. However, the OIG is aware of anecdotal reports that some receiving facilities are curbing or eliminating ambulance replenishing programs in order to cut emergency room costs, while other receiving facilities feel pressured to participate in ambulance replenishment arrangements. Some receiving facilities would like to implement or continue operating replenishing programs, but are concerned about possible liability under the anti-kickback statute.

We continue to believe that properly structured replenishing arrangements serve a significant public interest by providing a means of ensuring that ambulances are fully stocked with current medications, sanitary linens and

[1] 56 FR 35952 (July 29, 1991); 61 FR 2122 (January 25, 1996); 64 FR 63518 (November 19, 1999); and 64 FR 63504 (November 19, 1999).

[2] OIG Advisory opinion 98–7 (June 11, 1998); OIG Advisory Opinion 98–13 (September 30, 1998); and OIG Advisory Opinion 98–14 (October 28, 1998).

appropriate supplies, and that those supplies are compatible with equipment used in local emergency rooms so as to expedite the transfer of critically ill or injured patients to emergency room systems. Such replenishing arrangements are consistent with Federal policy established over the past 25 years.[3]

In an effort to further assure those providers engaged in innocuous and beneficial replenishing arrangements, we are proposing a new safe harbor under § 1001.952 of our regulations to protect certain arrangements between receiving facilities (including hospitals) and ambulance companies under which the receiving facilities replenish ambulances with drugs and medical supplies used during the transport of *emergency* patients to the receiving facilities. Under this proposed rule, we would provide safe harbor protection for ambulance replenishing arrangements that satisfy all of the conditions in one of two categories established by the safe harbor. Both categories pertain only to *emergency* ambulance services; the safe harbor would not protect replenishing of ambulance supplies, linens or medications following routine ambulance transports.

*Replenishing Arrangements Where Ambulance Provider Pays Receiving Facility Fair Market Value*

The first new proposed safe harbor would protect replenishing arrangements where an ambulance provider pays the receiving facility fair market value, based on an arms-length transaction, for replenished drugs or supplies (including linens) used in connection with the transport of an emergency patient. Payment would not need to be made at the time of the replenishing, provided commercially reasonable and appropriate payment arrangements have been made in advance. For linens, an exchange of a comparable quantity of laundered linens for soiled linens would be considered fair market value, notwithstanding any economic value attributable to the laundering of linens by receiving facilities, which often have specialized laundering equipment needed for compliance with sanitation requirements. A non-profit receiving facility would be protected under this safe harbor if it sells replenished drugs or medical supplies to a non-profit ambulance provider at cost in order to comply with the Non-Profit Institutions Act.[4]

*Remuneration in the Form of Contemporaneous Replenishing of Drugs or Medical Supplies*

The second proposed safe harbor would protect remuneration in the form of contemporaneous replenishing of drugs or medical supplies (including linens) used during an emergency transport of a patient to the receiving facility, even if the replenishing is for free or at reduced prices. We are proposing that the following seven conditions be met in order to qualify for protection under this safe harbor:

(1) Receiving facilities must provide replenishing on an equal basis for all ambulance providers who bring emergency patients to the receiving facility. This condition is intended to prevent receiving facilities from inappropriately using replenishing to attract or reward high referring ambulance providers.

(2) The replenishing arrangement must be part of a comprehensive and coordinated effort to improve the EMS delivery system in the relevant service area and must be open to all emergency ambulance providers and receiving facilities operating in the service area. It must be implemented with the participation of, and monitored by, a regional EMS Council or functionally similar entity, organization or association (the Oversight Entity). The Oversight Entity must be a non-profit entity composed of representatives of a broad array of participants in a service area's emergency medical system, such as hospitals, ambulance providers, emergency room physicians and nurses, public safety organizations, paramedics, local educational institutions and community residents. The involvement of a wide range of representatives of the local EMS community provides substantial assurance that the replenishment arrangement is intended to benefit the local community, rather than a single provider or group of providers. Participation in the Oversight Entity should be open to all interested parties in the service area on equal terms and conditions, *i.e.*, the Oversight Entity cannot be composed solely of representatives of a single health system. Typically, Oversight Entities will engage in the following types of activities:

—Standardization of EMS practices and equipment;
—Education and training for pre-hospital care providers;
—Ongoing evaluation and improvement of EMS capabilities in the service area;
—Public information campaigns; and
—Other activities designed to promote EMS care for the service area.

We recognize that the size, composition, structure and scope of activities of Oversight Entities may necessarily vary depending on the size and resources of the particular service area. We would expect, for example, an Oversight Entity in a small rural area with one hospital, a few physicians and one ambulance provider to look and operate differently than one in a densely populated urban area with several hospitals, a number of transport providers and diverse physicians, teaching facilities, Government agencies and the like. Oversight Entities should be part of a comprehensive and coordinated regional EMS system appropriate to the size and resources of the service area. We are not specifying any particular structure or legal form for the Oversight Entity; it must simply be functionally similar to a regional EMS Counsel. The participants in the Oversight Entity should be representative of the service area's EMS system. We are specifically soliciting comments on our proposal that safe harbored replenishing arrangements must be a part of a comprehensive and consolidated regional EMS system.

(3) The replenishing arrangement must be memorialized in writing, whether through a contract signed under the auspices of the Oversight Entity by all participating ambulance providers and receiving facilities or by a generally applicable plan or protocol promulgated or approved by the Oversight Entity. The replenishing arrangement must in practice comport with the terms of the written documentation.

(4) The receiving facility must not bill any Federal health care program or Federal program beneficiary for the replenished drugs or supplies, or write off such drugs or supplies as bad debt. The purpose of this requirement is to

[3] See, *e.g.*, Emergency Medical Services Systems Act of 1973 (EMSSA), Public Law 93–154 (providing Federal funding for the development of regional Emergency Medical Services (EMS) systems at the State, regional, and local levels, and defining "emergency medical services system" as "a system which provides for the arrangement of personnel, facilities and equipment for the effective and coordinated delivery in an appropriate geographical area of health care services under emergency conditions * * * and which is administered by a public or nonprofit private entity which has the authority and the resources to provide effective administration of the system."); Highway Safety Act of 1966, Public Law 89–594 (establishing an EMS program in the Department of Transportation); Emergency Medical Services for Children Program, under the Public Health Act, Public Law 98–555 (providing funds for enhancing pediatric EMS); and Trauma Care Systems Planning and Development Act of 1990, Public Law 101–590.

[4] 15 U.S.C. 13(c) exception to the Robinson-Patman Act (15 U.S.C. 13(a)–(f)). Inquiries as to the applicability of, or compliance with, the Non-Profit Institutions Act or the Robinson-Patman Act should be directed to the Federal Trade Commission.

prevent double payments by Medicare, which pays hospitals under Part A (through fiscal intermediaries), but which typically pays ambulance providers for drugs and supplies used during emergency transports under Part B (through carriers).

(5) In order to prevent "double dipping," ambulance providers may not bill any Federal health care program or Federal beneficiary *separately* for the replenished drugs or supplies.

(6) The receiving facility and the ambulance provider must maintain records of the replenished drugs or supplies and make those records available to the Secretary upon request.

(7) The receiving facility and ambulance provider must otherwise comply with all Federal, State and local laws regulating emergency medical care and the provision of drugs and medical supplies, including laws relating to the handling of controlled substances such as morphine.

Nothing in this preamble or the proposed regulations is intended to express any view as to the appropriate billing of the Federal health care programs for supplies used during emergency transport services. Parties seeking to comply with these proposed safe harbors would still need to comply with all relevant billing and claims filing rules. The fifth and sixth conditions described above for the second proposed safe harbor merely set forth criteria for determining whether a particular arrangement qualifies for safe harbor protection under the anti-kickback statute; the conditions do not purport to establish any reimbursement rule. Questions regarding reimbursement under the Medicare and Medicaid programs should be addressed to the Health Care Financing Administration or the party's relevant fiscal intermediary or carrier.

As with the existing safe harbor provisions currently codified in § 1001.952, compliance with these proposed safe harbors would be voluntary. Failure to fit into one of these safe harbors would not mean that an ambulance replenishment arrangement is *illegal*. Rather, it would simply mean that the arrangement would need to be evaluated on a case-by-case basis.

*Meeting the Criteria for Establishing New Safe Harbors*

Section 205 of the Health Insurance Portability and Accountability Act, Public Law 104–191, established certain criteria that the Secretary may consider when modifying or establishing safe harbors to the anti-kickback statute. We indicated our intent to consider these criteria in evaluating proposals for new safe harbors in our Notice of Intent to Develop Regulations (61 FR 69061; December 31, 1996). We have considered these criteria in developing this proposed rulemaking, and we believe, for the reasons described above, that the proposed safe harbor for certain ambulance replenishing arrangements is likely to: (l) Increase or have no effect on access for needy patients to health care services; (2) increase the quality of health care services for needy patients; (3) have little or no effect on the cost of Federal health care programs; (4) have little or no effect on competition; and (5) have little or no effect on the quantity of services provided in underserved areas. We further believe the proposed safe harbor contains safeguards that limit the potential for overutilization and assure that patients retain their freedom of choice of service providers.

## III. Regulatory Impact Statement

*Executive Order 12866, the Unfunded Mandates Reform Act, Executive Order 13132, and the Regulatory Flexibility Act*

The Office of Management and Budget (OMB) has reviewed this proposed rule in accordance with the provisions of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601-612), and has determined that it does not meet the criteria for a significant regulatory action. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health, safety distributive and equity effects. Section 202 of the Unfunded Mandates Reform Act, Public Law 104–4, requires that agencies prepare an assessment of anticipated costs and benefits on any rulemaking that may result in an expenditure by State, local or tribal Government, or by the private sector of $100 million or more in any given year. Further, Executive Order 13132, Federalism, requires agencies to determine if a rule will have a significant affect on States, on their relationship with the Federal Government, and on the distribution of power and responsibility among the various levels of government.

In addition, under the Small Business Enforcement Act (SBEA) of 1996, if a rule has a significant economic effect on a substantial number of small businesses, the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule. In addition, under the Regulatory Flexibility Act, if a rule has a significant economic effect on a substantial number of small businesses, the Secretary must specifically consider the economic effect of a rule on small business entities and analyze regulatory options that could lessen the impact of the rule.

Executive Order 12866 requires that all regulations reflect consideration of alternatives, costs, benefits, incentives, equity and available information. Regulations must meet certain standards, such as avoiding unnecessary burden. We believe that this proposed rule would have no significant economic impact. The proposed safe harbor provisions set forth in this rulemaking are designed to permit individuals and entities to freely engage in business practices and arrangements that encourage competition, innovation and economy. As indicated above, in doing so, these regulations impose no requirements on any party. Health care providers and others may voluntarily seek to comply with these provisions so that they have the assurance that their business practices are not subject to any enforcement actions under the anti-kickback statute. We believe that any aggregate economic effect of these safe harbor regulations would be minimal and would impact only those limited few who engage in prohibited behavior in violation of the statute. As such, we believe that the aggregate economic impact of these proposed regulations is minimal and would have no effect on the economy or on Federal or State expenditures

Additionally, in accordance with the Unfunded Mandates Reform Act of 1995, we believe that there are no significant costs associated with these proposed safe harbor guidelines that would impose any mandates on State, local or tribal governments, or the private sector that will result in an expenditure of $100 million or more in any given year. Further, in reviewing this rule under the threshold criteria of Executive Order 13132, Federalism, we have determined that this rule would not significantly affect the rights, roles and responsibilities of States, and that a full analysis under these Acts are not necessary.

Further, in accordance with the Regulatory Flexibility Act (RFA) of 1980, and the Small Business Regulatory Enforcement Act of 1996, which amended the RFA, we are required to determine if this rule will have a significant economic effect on a substantial number of small entities and, if so, to identify regulatory options that could lessen the impact. While

these safe harbor provisions may have an impact on small entities, we believe that the aggregate economic impact of this rulemaking would be minimal, since it is the nature of the violation and not the size of the entity that will result in a violation of the anti-kickback statute. Since the vast majority of individuals and entities potentially affected by these regulations do not engage in prohibited arrangements, schemes or practices in violation of the law, we believe that these proposed regulations would not have a significant economic impact on a number of small business entities, and that a regulatory flexibility analysis is not required for this rulemaking.

*Paperwork Reduction Act*

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA) of 1995, we are required to solicit public comments, and receive final OMB approval, on any information collection requirements set forth in rulemaking. While compliance with the provisions in this safe harbor rule would be voluntary, proposed § 1001.952(v)(3) contains information collection requirements that would require approval by OMB. As such, we are required to solicit public comments under section 3506(c)(2)(A) of the PRA on these requirements. Specifically, in order to qualify for safe harbor protection for ambulance restocking arrangements under § 1001.952(v)(3), the regulations would require that replenishing agreements be set forth in writing in the form of (1) a contract signed under the auspices of the oversight entity by all participating ambulance providers and receiving facilities or (2) a generally applicable plan or protocol promulgated or approved by the oversight entity. There is no obligation to submit these agreements to the Secretary, however, in order to achieve initial compliance with the safe harbor. In addition, to qualify for safe harbor protection for ambulance restocking arrangements under § 1001.952(v)(3), the receiving facility and the ambulance provider must maintain records of the replenished drugs and medical supplies (including linens) and make those records available to the Secretary promptly upon request. However, as indicated above, the safe harbor does *not require* any submission of reports, data collection or other documents in order to be in compliance with the anti-kickback statute.

In accordance with the PRA requirements, we are inviting comments on (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on parties, including through the use of automated collection techniques or other forms of information technology. As part of the OMB approval for the collection of information contained in this rule, we are soliciting public comments on this requirement, thereby initiating the normal PRA clearance.

*Title:* Ambulance Restocking Safe Harbor Under the Anti-Kickback Statute.

*Summary of the collection of information:* Proposed § 1001.952(v) would set forth a new statutory exception to the anti-kickback statute that covers any gift or transfer of drugs or medical supplies (including linens) by a hospital or other receiving facility to an ambulance provider for the purpose of replenishing comparable drugs or medical supplies (including linens) used by the ambulance provider in connection with the transport of an emergency patient to the hospital or other receiving facility. Safe harbors do not create any affirmative obligation on any individuals or entities. Seeking protection under these safe harbor provisions is purely voluntary.

The aggregate information burden for the information collection requirements contained in this proposed rulemaking is set forth below.

*Respondents:* In accordance with proposed § 1001.952(v), the respondents for the collection of information described in these regulations are parties involved in written agreements between (1) a hospital or other receiving facility that replenishes drugs and medical supplies, and (2) ambulance providers who bring emergency patients to the receiving facility.

*Estimated number of respondents:* The safe harbor being proposed in § 1001.952(v) would protect those restocking arrangements between receiving facilities that replenish drugs and medical supplies on an equal basis to all ambulance providers who transport their emergency patients to the receiving facility. Virtually all such replenishing arrangements already are memorialized in written contracts as a matter of prudent business practice, irrespective of the existence of the proposed safe harbor. We believe that few, if any, parties will enter into written arrangements specifically for the purposes of safe harbor protection. Accordingly, we estimate that the number of parties entering into written agreements to qualify for safe harbor protection will be negligible.

*Estimated number of responses per respondent:* None.

*Estimated total annual burden on respondents:* We believe that the burden of preparing written agreements and the aggregate information burden for the information collection requirements contained in this proposed rulemaking would be minimal. As indicated above, in most, if not all, cases the parties already have written agreements as part of the parties' replenishing arrangements, independent of the safe harbor requirements. Accordingly, any burden imposed by these proposed regulations would impose no burden on such parties.

*Comments on this information collection activity should be sent to:* Allison Herron Eydt, OIG Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, 725 17th Street, NW, Washington, DC 20053, FAX: (202) 395–6974.

Comments on these paperwork reduction requirements may be submitted to the above-cited individual within 60 days following the **Federal Register** publication of this proposed rule.

## IV. Public Inspection of Comments and Response to Comments

Comments will be available for public inspection June 5, 2000 in Room 5518, Office of Counsel to the Inspector General, at 330 Independence Avenue, SW, Washington, DC on Monday through Friday of each week (Federal holidays excepted) between the hours of 9 a.m. and 4 p.m., (202) 619–0089.

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and will respond to the comments in the preamble of the final rule.

## List of Subjects in 42 CFR Part 1001

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare.

Accordingly, 42 CFR part 1001 would be amended as set forth below:

**PART 1001—[AMENDED]**

1. The authority citation for part 1001 would continue to read as follows:

**Authority:** 42 U.S.C. 1302, 1320a–7, 1320a–7b, 1395u(h), 1395u(j), 1395u(k), 1395y(d), 1395y(e), 1395cc(b)(2)(D), (E) and (F), and 1395hh; and sec. 2455, Pub.L. 103–355, 108 Stat. 3327 (31 U.S.C. 6101 note).

2. Section 1001.952 would be amended by republishing the introductory text and by adding a new paragraph (v) to read as follows:

**§ 1001.952 Exceptions**

The following payment practices shall not be treated as a criminal offense under section 1128B of the Act and shall not serve as the basis for an exclusion:

* * * * *

(v) *Ambulance restocking.* (1) As used in section 1128B of the Act, "remuneration" does not include any gift or transfer of drugs or medical supplies (including linens) by a hospital or other receiving facility to an ambulance provider for the purpose of replenishing comparable drugs or medical supplies (including linens) used by the ambulance provider in connection with the transport of an emergency patient to the hospital or other receiving facility if all of the applicable standards in either paragraph (v)(2) or (v )(3) of this section are satisfied.

(2)(i) Except as otherwise provided in paragraph (v)(2)(ii) of this section, the ambulance provider pays the receiving facility fair market value, based on an arms-length transaction, for the replenished drugs or medical supplies (including linens). A non-profit receiving facility will be deemed to meet this standard if it sells replenished drugs or medical supplies to a non-profit ambulance provider at cost in order to comply with the Non-Profit Institutions Act (15 U.S.C. 13(c)), exception to the Robinson-Patman Act (15 U.S.C. 3(a)–(f)).

(ii) If payment is not made contemporaneously with the replenishing of the drugs or medical supplies (including linens), the receiving facility and the ambulance provider make commercially reasonable payment arrangements in advance.

(3)(i) The receiving facility replenishes drugs and medical supplies (including linens) on an equal basis for all ambulance providers who bring emergency patients to the receiving facility.

(ii) The replenishing arrangement must be implemented with the participation of, and monitored by, an oversight entity (as defined in paragraph (v)(4)(ii) of this section) as part of a comprehensive and coordinated regional emergency medical system appropriate to the size and resources of the service area and must be open and available to all emergency ambulance providers and receiving facilities in the service area.

(iii) The replenishing arrangement must be memorialized in writing. The writing may be in the form of—

(A) A contract signed under the auspices of the oversight entity by all participating ambulance providers and receiving facilities or

(B) A generally applicable plan or protocol promulgated or approved by the oversight entity.

(iv) The receiving facility refrains from billing any Federal health care program or Federal health care program beneficiary for the replenished drugs or medical supplies (including linens) and does not write off the cost of such drugs or medical supplies (including linens) as bad debt.

(v) The ambulance provider refrains from billing any Federal health care program or Federal health care program beneficiary *separately* for the replenished drugs or medical supplies (including linens).

(vi) The receiving facility and the ambulance provider maintain records of the replenished drugs and medical supplies (including linens) and make those records available to the Secretary promptly upon request.

(vii) The receiving facility and the ambulance provider otherwise comply with all Federal, State and local laws regulating emergency medical care and the provision of drugs and medical supplies, including, but not limited to, laws relating to the handling of controlled substances.

(4) For purposes of paragraph (v)(3) of this section—

(i) A "receiving facility" is a hospital or other facility that provides emergency medical services; and

(ii) An "oversight entity" is a regional emergency medical services council or functionally similar entity, association or organization that—

(A) Is described in section 501(c)(3) or 501(c)(4) of the Internal Revenue Code and exempt from taxation under section 501(a) of that Code;

(B) Includes, or is composed of, representatives of a broad array of participants in a service area's emergency medical system (*e.g.*, hospitals, ambulance providers, emergency room physicians, paramedics, public safety organizations, local educational institutions and community residents);

(C) Is open to all interested parties in the service area on equal terms and conditions; and

(D) Has as its mission the improvement of the emergency medical services delivery system in the relevant service area.

Dated: November 2, 1999.

**June Gibbs Brown,**

*Inspector General.*

Approved: November 18, 1999.

**Donna E. Shalala,**

*Secretary.*

[FR Doc. 00–12697 Filed 5–19–00; 8:45 am]

BILLING CODE 4150–04–P

## DEPARTMENT OF DEFENSE

### 48 CFR Parts 209 and 223

**[DFARS Case 2000–D004]**

### Defense Federal Acquisition Regulation Supplement; Pollution Control and Clean Air and Water

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Acting Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to revise and relocate policy on the level of approval required to except a contract from certain restrictions of the Clean Air Act or the Clean Water Act. The policy is moved from the Pollution Control and Clean Air and Water subpart to the Debarment, Suspension, and Ineligibility subpart of the DFARS, because the Federal Acquisition Regulation (FAR) subpart on Pollution Control and Clean Air and Water has been removed.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before July 21, 2000, to be considered in the formation of the final rule.

**ADDRESSES:** Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 2000–D004 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 2000–D004 in the subject line.

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**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra G. Haberlin, (703) 602–0289.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

On December 27, 1999, Item I of Federal Acquisition Circular 97–15 (64 FR 72415) removed Subpart 23.1, Pollution Control and Clean Air and Water, from the FAR. Subpart 23.1 contained policy pertaining to entities that are ineligible for contract award due to a violation of the Clean Air Act or the Clean Water Act. The FAR text was deemed unnecessary, because contracting officers can use the General Services Administration List of Parties Excluded from Federal Procurement and Nonprocurement Programs to ensure that they do not award contracts to ineligible entities. In accordance with Environmental Protection Agency regulations at 40 CFR 32.215(b), FAR Subpart 23.1 permitted an agency head to except a contract from the prohibition on award to a Clean Air Act or Clean Water Act violator if it was in the paramount interest of the United States to do so. DFARS Subpart 223.1 limited delegation of this exception authority to a level no lower than an official who is appointed by and with the advice of the Senate.

This DFARS rule proposes to—

1. Remove the text from DFARS Subpart 223.1, since FAR Subpart 23.1 no longer exists; and relocate the text to DFARS 209.405(b), since the corresponding text at FAR 9.405(b) addresses matters relating to entities on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs;

2. Retain a limitation on delegation of the exception authority, but lower the permitted level of delegation to a level no lower than a general or flag officer or a member of the Senior Executive Service; and

3. Designate the text already located at DFARS 209.405 as 209.405(a), and amend the text to clarify that the provisions of 10 U.S.C. 2393 regarding a "compelling reason" determination apply only to the conduct of business with entities that are debarred or suspended.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule pertains only to the exceptional situations where there is a need to conduct business with entities that are debarred or suspended or, because of a violation of the Clean Air Act or the Clean Water Act, are ineligible for award. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subparts also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D004.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Parts 209 and 223**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 209 and 223 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 209 and 223 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

**PART 209—CONTRACTOR QUALIFICATIONS**

2. Section 209.405 is revised to read as follows:

**209.405 Effect of listing.**

(a) Under 10 U.S.C. 2393(b), when a department or agency determines that a compelling reason exists for it to conduct business with a contractor that is debarred or suspended from procurement programs, it must provide written notice of the determination to the General Services Administration, Office of Acquisition Policy. Examples of compelling reasons are—

(1) Only a debarred or suspended contractor can provide the supplies or services;

(2) Urgency requires contracting with a debarred or suspended contractor;

(3) The contractor and a department or agency have an agreement covering the same events that resulted in the debarment or suspension and the agreement includes the department of agency decision not to debar or suspend the contractor; or

(4) The national defense requires continued business dealings with the debarred or suspended contractor.

(b)(i) The Procurement Cause and Treatment Code "H" annotation in the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs identifies contractors that are declared ineligible for award of a contract or subcontract because of a violation of the Clean Air Act (42 U.S.C. 7606) or the Clean Water Act (33 U.S.C. 1368).

(ii) Under the authority of 40 CFR 32.215(b), the agency head may grant an exception permitting award to a Code "H" ineligible contractor if it is in the paramount interest of the United States.

(A) The agency head may delegate this exception authority to a level no lower than a general or flag officer or a member of the Senior Executive Service.

(B) The official granting the exception must provide written notice to the Environmental Protection Agency debarring official.

**PART 223—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE**

**Subpart 223.1 [Removed]**

3. Subpart 223.1 is removed.

[FR Doc. 00–12414 Filed 5–19–00; 8:45 am]

BILLING CODE 5000–04–M

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**DEPARTMENT OF DEFENSE**

**48 CFR Part 215**

**[DFARS Case 2000–D300]**

**Defense Federal Acquisition Regulation Supplement; Profit Incentives To Produce Innovative New Technologies**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Acting Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 813 of the National Defense Authorization Act for Fiscal Year 2000. Section 813 requires DoD to review its profit guidelines to consider whether appropriate modifications, such as placing increased emphasis on technical risk as a factor for determining appropriate profit margins, would provide an increased profit incentive for contractors to develop and produce complex and innovative new technologies.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before July 21, 2000, to be considered in the formation of the final rule.

**ADDRESSES:** Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD(AT&L) DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfars@acq.osd.mil

Please cite DFARS Case 2000–D300 in all correspondence related to this proposed rule. E-mail correspondence should cite DFARS Case 2000–D300 in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602–0288.

**SUPPLEMENTARY INFORMATION:**

## A. Background

This rule proposes amendments to the profit policy in DFARS Subpart 215.4 to implement Section 813 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65). DoD published an advance notice of proposed rulemaking on February 10, 2000 (65 FR 6574), posted a preliminary draft on potential changes on the Defense Procurement Internet web site, and held a public meeting on February 23, 2000. Representatives from Government and industry participated in the public meeting.

The proposed rule amends the weighted guidelines method of profit computation at DFARS 215.404–71 to combine the management and cost control elements of the performance risk factor; to establish a new "technology incentive" range for technical risk; and, based on comments received at the public meeting, to slightly modify some of the cost control standards. In addition, the rule amends DFARS 215.404–4(b) to clarify that DoD departments and agencies must use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when cost or pricing data is obtained.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

## B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities are below $500,000, are based on adequate price competition, or are for commercial items, and do not require submission of cost or pricing data. Therefore, an initial regulatory flexibility analysis has not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2000–D300.

## C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

## List of Subjects in 48 CFR Part 215

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR part 215 is proposed to be amended as follows:

1. The authority citation for 48 CFR part 215 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

## PART 215—CONTRACTING BY NEGOTIATION

2. Section 215.404–4 is amended by revising paragraph (b)(1) introductory text to read as follows:

**215.404–4 Profit.**

(b) * * * (1) Departments and agencies must use a structured approach for developing a prenegotiation profit or fee objective on any negotiated contract action when cost or pricing data is obtained, except for cost-plus-award-fee contracts (see 215.404–74) or contracts with Federally Funded Research and Development Centers (FFRDCs) (see 215.404–75). There are three structured approaches—

* * * * *

3. Section 215.404–71–2 is revised to read as follows:

**215.404–71–2 Performance risk.**

(a) *Description.* This profit factor addresses the contractor's degree of risk in fulfilling the contract requirements. The factor consists of two parts:

(1) Technical—the technical uncertainties of performance.

(2) Management/cost control—the degree of management effort necessary—

(i) To ensure that contract requirements are met; and

(ii) To reduce and control costs.

(b) *Determination.* The following extract from the DD Form 1547 is annotated to describe the process.

| Item | Contractor risk factors | Assigned weighting | Assigned value | Base (item 18) | Profit objective |
|---|---|---|---|---|---|
| 21. ..... | Technical ..... | ([1]) | ([2]) | N/A | N/A |
| 22. ..... | Management/Cost Control ..... | ([1]) | ([2]) | N/A | N/A |
| 23. ..... | Reserved ..... | | | | |
| 24. ..... | Performance Risk (Composite) ..... | N/A | ([3]) | ([4])( | [5]) |

[1] Assign a weight (percentage) to each element according to its input to the total performance risk. The total of the two weights equals 100 percent.

[2] Select a value for each element from the list in paragraph (c) of this subsection using the evaluation criteria in paragraphs (d) and (e) of this subsection.

[3] Compute the composite as shown in the following example:

| | Assigned weighting (percent) | Assigned value (percent) | Weighted value (percent) |
|---|---|---|---|
| Technical ..... | 60 | 5.0 | 3.0 |
| Management/Cost Control ..... | 40 | 4.0 | 1.6 |

| | Assigned weighting (percent) | Assigned value (percent) | Weighted value (percent) |
|---|---|---|---|
| Composite Value | 100 | | 4.6 |

[4] Insert the amount from Block 18 of the DD Form 1547. Block 18 is total contract costs, excluding general and administrative expenses, contractor independent research and development and bid and proposal expenses, and facilities capital cost of money.
[5] Multiply (3) by (4).

(c) *Values: Normal and designated ranges.*

| Normal value (percnet) | Designated range (percent)j | |
|---|---|---|
| Standard | 4 | 2 to 6 |
| Alternate | 6 | 4 to 8 |
| Technology Incentive | 8 | 6 to 10 |

(1) *Standard.* The standard designated range should apply to most contracts.

(2) *Alternate.* Contracting officers may use the alternate designated range for research and development and service contractors when these contractors require relatively low capital investment in buildings and equipment when compared to the defense industry overall. If the alternate designated range is used, do not give any profit for facilities capital employed (see 215.404–71–4(c)(3)).

(3) *Technology incentive.* For the technical factor only, contracting officers may use the technology incentive range for acquisitions that include development or production of innovative new technologies.

(d) *Evaluation criteria for technical.* (1) Review the contract requirements and focus on the critical performance elements in the statement of work or specifications. Factors to consider include—

(i) Technology being applied or developed by the contractor;

(ii) Technical complexity;

(iii) Program maturity;

(iv) Performance specifications and tolerances;

(v) Delivery schedule; and

(vi) Extent of a warranty or guarantee.

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value in those cases where there is a substantial technical risk. Indicators are—

(A) Items are being manufactured using specifications with stringent tolerance limits;

(B) The efforts require highly skilled personnel or require the use of state-of-the-art machinery;

(C) The services and analytical efforts are extremely important to the Government and must be performed to exacting standards;

(D) The contractor's independent development and investment has reduced the Government's risk or cost;

(E) The contractor has accepted an accelerated delivery schedule to meet DoD requirements; or

(F) The contractor has assumed additional risk through warranty provisions.

(ii) Extremely complex, vital efforts to overcome difficult technical obstacles that require personnel with exceptional abilities, experience, and professional credentials may justify a value significantly above normal.

(iii) The following may justify a maximum value—

(A) Development or initial production of a new item, particularly if performance or quality specifications are tight; or

(B) A high degree of development or production concurrency.

(3) *Below normal conditions.* (i) The contracting officer may assign a lower than normal value in those cases where the technical risk is low.

Indicators are—

(A) Acquisition is for off-the-shelf items;

(B) Requirements are relatively simple;

(C) Technology is not complex;

(D) Efforts do not require highly skilled personnel;

(E) Efforts are routine;

(F) Programs are mature; or

(G) Acquisition is a follow-on effort or a repetitive type acquisition.

(ii) The contracting officer may assign a value significantly below normal for—

(A) Routine services;

(B) Production of simple items;

(C) Rote entry or routine integration of Government-furnished information; or

(D) Simple operations with Government-furnished property.

(4) *Technology incentive range.*

(i) The contracting officer may assign values within the technology incentive range when contracting performance includes the introduction of new, significant technological innovation. Use the technology incentive range only for the most innovative contract efforts. Innovation may be in the form of—

(A) Development or application of new technology that fundamentally changes the characteristics of an existing product or system and that results in increased technical performance, improved reliability, or reduced costs; or

(B) New products or systems that contain significant technological advances over the products or systems they are replacing.

(ii) When selecting a value within the technology incentive range, the contracting officer should consider the relative value of the proposed innovation to the acquisition as a whole. When the innovation represents a minor benefit, the contracting officer should consider using values less than the norm. For innovative efforts that will have a major positive impact on the product or program, the contracting officer may use values above the norm.

(e) *Evaluation criteria for management/cost control.*

(1) The contracting officer should evaluate—

(i) The contractor's management and internal control systems using contracting office information and reviews made by field contract administration offices or other DoD field offices;

(ii) The management involvement expected on the prospective contract action;

(iii) The degree of cost mix as an indication of the types of resources applied and value added by the contractor;

(iv) The contractor's support of Federal socioeconomic programs;

(v) The expected reliability of the contractor's cost estimates (including the contractor's cost estimating system);

(vi) The contractor's cost reduction initiatives (*e.g.*, competition advocacy programs, technical insertion programs, obsolete parts control programs, dual sourcing, square parts pricing reform, value engineering);

(vii) The adequacy of the contractor's management approach to controlling cost and schedule; and

(viii) Any other factors that affect the contractor's ability to meet the cost targets (*e.g.*, foreign currency exchange rates and inflation rates).

(2) *Above normal conditions.* (i) The contracting officer may assign a higher than normal value when the management effort is intense. Indicators of this are—

(A) The contractor's value added is both considerable and reasonably difficult;

(B) The effort involves a high degree of integration or coordination;

(C) The contractor has a substantial record of active participation in Federal socioeconomic programs;

(D) The contractor provides fully documented and reliable cost estimates;

(E) The contractor has an aggressive cost reduction program that has demonstrable benefits;

(F) The contractor uses a high degree of subcontract competition (*e.g.*, agressive dual sourcing);

(G) The contractor has a proven record of cost tracking and control; or

(H) The contractor aggressively seeks process improvements to reduce costs.

(ii) The contracting officer may justify a maximum value when the effort—

(A) Requires large scale integration of the most complex nature;

(B) Involves major international activities with significant management coordination (*e.g.*, offsets with foreign vendors); or

(C) Has critically important milestones.

(3) *Below normal conditions.* (i) The contracting officer may assign a lower than normal value when the management effort is minimal. Indicators of this are—

(A) The program is mature and many end item deliveries have been made;

(B) The contractor adds minimum value to an item;

(C) The efforts are routine and require minimal supervision;

(D) The contractor provides poor quality, untimely proposals;

(E) The contractor fails to provide an adequate analysis of subcontractor costs;

(F) The contractor does not cooperate in the evaluation and negotiation of the proposal;

(G) The contractor's cost estimating system is marginal;

(H) The contractor has made minimal effort to initiate cost reduction programs;

(I) The contractor's cost proposal is inadequate; or

(J) The contractor has a record of cost overruns or another indication of unreliable cost estimates and lack of cost control.

(ii) The following may justify a value significantly below normal—

(A) Reviews performed by the field contract administration offices disclose unsatisfactory management and internal control systems (*e.g.*, quality assurance, property control, safety, security); or

(B) The effort requires an unusually low degree of management involvement.

4. Section 215.404–702 is amended by adding paragraph (b)(1)(iii) to read as follows:

**215.404–72 Modified weighted guidelines method for nonprofit organizations other than FFRDCs.**

* * * * *

(b) * * *

(1) * * *

(iii) Do not assign a value from the technology incentive designated range.

* * * * *

[FR Doc. 00–12416 Filed 5–19–00; 8:45 am]

BILLING CODE 5000–04–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

### 48 CFR Parts 1803 and 1852

### NASA Inspector General Hotline Posters

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** This is a proposed rule to amend the NASA FAR Supplement (NFS) to require NASA contractors to display "hotline posters"on contracts exceeding $5,000,000 and performed at contractor facilities in the United States.

**DATES:** Comments should be submitted on or before July 21, 2000.

**ADDRESSES:** Interested parties should submit written comments to Paul Brundage, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20456–0001. Comments may also be submitted by email to pbrundage@hq.nasa.gov.

**FOR FURTHER INFORMATION CONTACT:** Paul Brundage, (202) 358–0481.

**SUPPLEMENTARY INFORMATION:**

### A. Background

NASA's Office of Inspector General (IG) has requested that NASA contractors be required to display "hotline posters" in contractor facilities performing work on some NASA contracts. Foreign contracts and contracts less than $5,000,000 would be exempt. This proposed rule would require contractors to obtain from the NASA IG "hotline posters" and to post them in facilities where and when work is performed on an applicable NASA contract. By waiver from Part 12, NASA might also impose this requirement on a case-by-case basis in contracts for commercial items when unusual circumstances warrant. An example of such circumstances might include procurements involving extraordinary concerns about the safety of human life.

### B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small business entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it only affects small business entities with contracts exceeding $5,000,000 and the NASA IG will provide the posters at no direct cost to contractors.

### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this proposed rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

### Lists of Subjects in 48 CFR Parts 1803 and 1852

Government procurement.

**Tom Luedtke,**

*Associate Administrator for Procurement.*

Accordingly, 48 CFR Parts 1803 and 1852 are proposed to be amended as follows:

1. The authority citation for 48 CFR Parts 1803 and 1852 continues to read as follows:

**Authority:** 42 U.S.C. 2473(c)(1).

## PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

2. Add Subpart 1803.70 to read as follows:

### Subpart 1803.70—IG Hotline Posters

1803.7000 Policy.

1803.7001 Contract clause.

### Subpart 1803.70—IG Hotline Posters

#### 1803.7000 Policy.

NASA requires contractors to display NASA hotline posters prepared by the NASA Office of Inspector General on those contracts specified in 1803.7001, so that employees of the contractor having knowledge of waste, fraud, or abuse, can readily identify a means to contact NASA's IG.

#### 1803.7001 Contract clause.

Contracting officers must insert the provision at 1852.203–70, Display of Inspector General Hotline Posters, in solicitations and contracts expected to exceed $5,000,000 and performed at contractor facilities in the United States.

## PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Add section 1852.203–70 to read as follows:

**1852.203–70 Display of Inspector General Hotline Posters.**

As prescribed in 1803.7001, insert the following clause:

Display of Inspector General Hotline Posters

(Date)

(a) The Contractor shall display prominently in common work areas within business segments performing work under this contract, Inspector General Hotline Posters available under paragraph (b) of this clause.

(b) Inspector General Hotline Posters may be obtained from NASA Office of Inspector General, Code W, Washington, DC, 20546–0001, (202) 358–1220.

(End of clause)

[FR Doc. 00–12781 Filed 5–19–00; 8:45 am]

BILLING CODE 7510–01–M

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### 49 CFR Parts 350, 390, 394, 395 and 398

[Docket No. FMCSA–97–2350]

RIN 2126–AA232

### Public Hearings on Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of hearings.

**SUMMARY:** The FMCSA is announcing the second through seventh public hearings for interested persons to present comments and views on the FMCSA's proposed revisions to its hours-of-service regulations (65 FR 25540, May 2, 2000). This action is necessary to inform the public about the dates, times, and locations of the hearings. The FMCSA hopes to hear from the public, specifically drivers of trucks and buses, about how the proposed hours-of-service regulations would improve highway safety and affect their professional, personal, and family life. All oral presentations will be transcribed and placed in the rulemaking docket for the FMCSA's consideration.

**DATES:** The second hearing will be June 7 and 8 in Ontario, CA. Subsequent hearings will be June 12 and 13 in Golden, CO; June 15 and 16 in Kansas City, MO; June 20 and 21 in Indianapolis, IN; June 26 and 27 in Vernon, CT; and June 29 and 30 in Atlanta, GA. All will begin at 8:30 a.m. and end at 5 p.m.

**ADDRESSES:** The second session will be at the Ontario Convention Center, Meeting Room 104B, 2000 Convention Center Way, Ontario, CA. The third will be held at Auditorium 2, Jefferson County Fairgrounds, 15200 West Sixth Avenue, Golden, CO. The fourth will be at the Wagstaff Theater, American Royal Center Complex, 1701 American Royal Court, Kansas City, MO. The fifth will be at the Union Federal Southwest Pavilion, Indiana State Fairgrounds, 1202 East 38th Street, Indianapolis, IN. The sixth will be at the Quality Inn Conference Center, 51 Hartford Turnpike (Route 83, I–84, Exit 63), Vernon, CT. The seventh will be at the Atlanta South Truck Stop, 122 Truck Stop Way (I–75, Exit 201), Jackson, GA.

**FOR FURTHER INFORMATION CONTACT:** *General Information.* For general information or if you have special needs contact Mr. Stanley Hamilton, Office of Regulatory Development, (202) 366–0665. *Specific Information.* For information concerning the rulemaking contact Mr. David Miller, Office of Driver and Carrier Operations, (202) 366–1790, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

Internet users may access all comment received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours each day, 365 days a year. Please follow the instructions on line for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's web page at http://www.*access.gpo.gov/nara.* Internet users may also find this document at the FMCSA's Motor Carrier Regulatory Information Service (MCREGIS) web site for notices at *http://www.fmcsa.dot.gov/rulesregs/fmcsr/rulemakings.htm.*

#### First Hearing Notice

The notice for the first hearing was published May 5, 2000 (65 FR 26166). The first hearing will be in Washington, DC on May 31 and June 1 at the DOT headquarters, Room 2230, 400 Seventh Street, SW 20590.

#### Accessibility Needs

If you need special accommodations, such as sign language interpretation, please contact Mr. Stanley Hamilton, Office of Regulatory Development, (202) 366–0665.

#### Oral and Written Comments

Oral comments should be limited to 10 minutes or less. Written comments must be sent to: Docket Clerk, Attn: DOT Docket No. FMCSA–97–2350, U.S. DOT Dockets, Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Persons who require acknowledgment of the receipt of their comments must enclose a stamped, self-addressed postcard. Comments may be reviewed at the above address from 9 a.m. through 5 p.m. Monday through Friday, except Federal holidays.

**Authority:** 49 U.S.C. 322, 31502, and 31136; and 49 CFR 1.73.

Issued on: May 15, 2000.

**Julie Anna Cirillo,**

*Acting Deputy Administrator.*

[FR Doc. 00–12736 Filed 5–19–00; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 051100D]

### Fisheries of the Exclusive Economic Zone Off Alaska; Halibut Bycatch Mortality Allowance in the Bering Sea and Aleutian Islands Management Area

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed reapportionment of Pacific halibut bycatch mortality allowance specified for the nontrawl fishery categories; request for comments.

**SUMMARY:** NMFS proposes the reapportionment of the 2000 halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery category to the other nontrawl fishery category in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to allow the harvest of species constrained by the other nontrawl halibut bycatch mortality

allowance, in particular Greenland turbot, while not further restricting the hook-and-line Pacific cod fishery. This action is intended to promote the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutians Islands Area (FMP).

**DATES:** Comments on this action must be received at the following address no later than 4:30 p.m., A.l.t., June 6, 2000.

**ADDRESSES:** Comments may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th Street, Room 453, Juneau, AK 99801. The final environmental assessment and final regulatory flexibility analysis prepared for the final 2000 total allowable catch specifications may be obtained from the same address.

**FOR FURTHER INFORMATION CONTACT:** Andrew Smoker, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the FMP prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP at subpart H of 50 CFR part 600 and 50 CFR part 679.

The BSAI halibut prohibited species catch (PSC) limit for nontrawl gear is an amount of halibut equivalent to 900 metric tons (mt) of halibut mortality (§ 679.21(e)(2)(i)). The Final 2000 Harvest Specifications of Groundfish for the BSAI established the apportionment of the nontrawl halibut PSC limit to bycatch allowances for the Pacific cod hook-and-line and other nontrawl fisheries was established as 748 mt and 84 mt respectively (65 FR 8282, February 18, 2000). As of April 22, 2000, 593 mt remain in the total 2000 halibut bycatch mortality allowance for the hook-and-line Pacific cod fishery. The other non-trawl fishery opened on May 1, 2000.

The hook-and-line fishery for Pacific cod will reopen on September 1, 2000, and is projected to take as much as 300 mt of halibut mortality for the remainder of 2000. The directed fishery for Greenland turbot, a constituent and primary fishery of the other nontrawl category, may require an estimated 150 mt of halibut mortality to fully harvest the remaining directed fishing allowance of Greenland turbot.

NMFS has determined that a reapportionment of 75 mt of halibut bycatch mortality allowance from the hook-and-line Pacific cod to the other nontrawl fishery category is necessary to promote achieving the optimum yield harvest of the BSAI nontrawl fisheries. This reapportionment is based on the best available scientific information pertaining to bycatch rates reported by NMFS-certified observers.

Therefore, in order to provide greater opportunity to harvest the BSAI Greenland turbot total allowable catch (TAC) while not jeopardizing the opportunity to harvest the amount of the Pacific cod TAC allocated to hook-and-line vessels, NMFS proposes to increase the halibut bycatch mortality allowance specified for the other nontrawl fishery category by 75 mt and reduce the halibut bycatch mortality allowance specified for the Pacific cod hook-and-line fishery by the same amount. The halibut bycatch mortality specifications for the 2000 BSAI nontrawl fisheries are listed in Table 7 of the final 2000 harvest specifications (65 FR 8282, February 18, 2000). To accommodate the proposed action, the 2000 BSAI final harvest specifications would be amended by adding the following Table 7A.

TABLE 7A.—2000 BSAI PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI NON-TRAWL FISHERIES

| Non-trawl fisheries | Halibut mortality (mt) BSAI |
|---|---|
| Pacific cod—Total [1] | 673. |
| Jan. 1–April 30 | 457. |
| May 1–Sept. 1 | 0. |
| Sept. 15–Dec. 31 | 216. |
| Other non-trawl—Total | 159. |
| May 1–Dec. 31 | 159. |
| Groundfish pot & jog | exempt. |
| Sablefish hook-and-line | exempt. |

[1] Consistent with § 679.21(e)(5)(iv)(A). Any unused halibut PSC from the first trimester may be rolled over into the third trimester.

NMFS invites public comments on its proposal to reallocate the projected unused amount of halibut mortality from the hook-and-line Pacific cod fishery to the other nontrawl fishery category.

## Classification

This action is authorized under 50 CFR 679.21(e)(4) and is exempt from OMB review under E.O. 12866.

NMFS prepared an environmental assessment (EA) and final regulatory flexibility assessment (FRFA) for the 2000 harvest specifications (See **ADDRESSES**). The proposed reapportionment of the BSAI nontrawl halibut PSC limit is intended to provide fuller opportunity to conduct the fishing activities considered in the EA/FRFA and is fully within the scope of these analyses.

**Authority:** 16 U.S.C. 773 *et seq.*, 1801 *et seq.* and 3631 *et seq.*

Dated: May 17, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12833 Filed 5–19–00; 8:45 am]

BILLING CODE 3510–22–P

# Notices

Federal Register
Vol. 65, No. 99
Monday, May 22, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

**[Docket No. CN–00–004]**

### Proposal to Reestablish the Advisory Committee on Universal Cotton Standards

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Notice of Intent to Reestablish the Advisory Committee on Universal Cotton Standards.

**SUMMARY:** The U.S. Department of Agriculture (USDA) is proposing to reestablish an advisory committee to review official Universal Standards for American Upland cotton prepared by USDA and make recommendations regarding the establishment or revision of the standards.

**DATES:** Comments must be received by June 21, 2000.

**ADDRESSES:** Send written comments to: Norma McDill, Cotton Program, AMS, USDA, 1400 Independence Avenue, Rm 2641–S, Washington, DC 20250–0224. Comments will be available for public inspection during regular business hours at the above office in Rm 2641-South Building, 14th & Independence Avenue, SW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Norma McDill, 202–720–2145.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Federal Advisory Committee Act (5 U.S.C. App.) , notice is hereby given that the Secretary of Agriculture intends to reestablish the Advisory Committee on Universal Standards composed of foreign and domestic representatives of the cotton industry. The purpose of the committee is to review official Universal Standards for U.S. Upland cotton prepared by USDA and make recommendations regarding the establishment or revision of the standards established under the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*). The last Advisory Committee on Universal Standards was established in 1997. This Advisory Committee's term ended in 1999.

The Secretary has determined that the work of the committee is in the public interest and is in connection with the duties of the Department of Agriculture. No other advisory committee in existence is capable of advising and assisting the Department on the task assigned, nor does the Department have an alternative means to obtain the technical and practical expertise needed from private industry.

Equal opportunity practices, in line with USDA policies, will be followed in all appointments to the committee. To ensure that the recommendations of the committee have taken into account the needs of diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities.

Balanced committee membership would be attained domestically and internationally through the following committee composition.

**Representation by Domestic Industry**

The U.S. cotton industry's committee membership will be comprised of 12 producers and ginners, 6 representatives of merchandising firms, and 6 representatives of textile manufacturers. These representatives will be appointed by the Secretary of Agriculture.

Each member will have one vote. Accordingly, voting privileges will be divided as follows: (1) U.S. cotton producers and ginners—12 votes; (2) U.S. merchandising firms—6 votes; (3) U.S. textile manufacturers—6 votes.

**Representation by Foreign Signatory Associations**

There will be 2 committee members from each of the foreign signatory associations. These committee members will be designated by the respective associations. Voting privileges will be divided as follows: (1) Foreign signatory merchant associations—6 votes; (2) Foreign signatory spinner associations—6 votes.

A thirty-day comment period is provided for interested persons to comment on this action.

Dated: May 17, 2000.

**Norma McDill,**

*Acting Deputy Administrator, Cotton Program.*

[FR Doc. 00–12798 Filed 5–19–00; 8:45 am]
BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. FV00–928–1NC]**

### Notice of Request for Extension of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for a currently approved information collection for Papayas Grown in Hawaii, Marketing Order No. 928.

**DATES:** Comments on this notice must be received by July 21, 2000.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S., P.O. Box 96456, Washington, DC 20090–6456; Tel: (202) 205–2829, Fax: (202) 720–5698, or E-mail: moabdocket_clerk@usda.gov.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C., 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

**SUPPLEMENTARY INFORMATION:**

*Title:* Papayas Grown in Hawaii, Marketing Order No. 928.

*OMB Number:* 0581–0102.

*Expiration Date of Approval:* November 30, 2000.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601–674), industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the Act, to provide the respondents the type of service they request, and to administer the program, which has operated since 1971.

The papaya marketing order regulates the handling of papayas grown in Hawaii, hereinafter referred to as the "order." The order authorizes production and marketing research and development projects, including paid advertising. The research and promotion activities are paid for by assessments on handlers of papaya.

The order, and rules and regulations issued thereunder, authorize the Papaya Administrative Committee (committee), the agency responsible for local administration of the order, to require handlers and growers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

The committee has developed forms as a means for persons to file required information with the Committee relating to papaya supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the Act and order. Papayas may be shipped year-round and these forms are utilized accordingly. A USDA form is used to allow growers to vote on amendments to or continuance of the marketing order. In addition, papaya growers and grower/handlers who are nominated by their peers to serve as representatives on the committee must file nomination forms with the Secretary.

Formal rulemaking amendments to the order must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the order. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the order whenever the order is amended. These forms are included in this request. The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the Act as expressed in the order, and the rules and regulations issued under the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the committee. Authorized committee employees and the industry are the primary users of the information, and AMS is the secondary user.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .76 hours per response.

*Respondents:* Hawaiian papaya growers and handlers and two public members in the production area of Hawaii.

*Estimated Number of Respondents:* 75.

*Estimated Number of Responses per Respondent:* 18.42

*Estimated Total Annual Burden on Respondents:* 1050 hours.

*Comments:* Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0102 and the Papaya Marketing Order No. 928, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456; Fax (202) 720–5698; or E-mail: moabdocket_clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave., S.W., Washington, D.C., room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: May 16, 2000.

**Robert C. Keeney,**

*Deputy Administrator, Fruit and Vegetable Programs.*

[FR Doc. 00–12802 Filed 5–19–00; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

**[Docket No. CN–00–005]**

### Notice of Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for the National Research, Promotion, and Consumer Information Programs.

**DATES:** Comments on this notice must be received on or before July 21, 2000 to be assured of consideration.

*Additional Information or Comments:* Contact A. Lee Cliburn, Program Appraisal Staff, Cotton Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Rm. 2633–South Building, Washington, DC 20090, Telephone (202–720–2145) and Fax (202–690–1718).

**SUPPLEMENTARY INFORMATION:**

*Title:* National Research, Promotion, and Consumer Information Programs.

*OMB Number:* 0581–0093.

*Expiration Date of Approval:* Current expiration date is 11/30/00.

*Type of Request:* Extension and revision of a currently approved information collection.

*Abstract:* National research and promotion programs are designed to strengthen the position of a commodity in the marketplace, maintain and expand existing domestic and foreign markets, and develop new uses and markets for specified agricultural commodities. The U.S. Department of Agriculture the responsibility for implementing and overseeing programs

for a variety of commodities including cotton, dairy, eggs, beef, pork, soybeans, honey, potatoes, watermelons, mushrooms, kiwifruit, popcorn, and olive oil. The enabling legislation includes the Cotton Research and Promotion Act of 1966 [7 U.S.C. 2101–2118]; the Dairy Production Stabilization Act of 1983 [7 U.S.C. 4501–4513]; the Fluid Milk Promotion Act of 1990 [7 U.S.C. 6401–6417]; the Egg Research and Consumer Information Act [7 U.S.C. 4301–4319]; the Beef Promotion and Research Act of 1985 [7 U.S.C. 2901–2911]; the Pork Promotion, Research and Consumer Information Act of 1985 [7 U.S.C. 4801–4819]; the Soybean Promotion, Research, and Consumer Information Act [7 U.S.C. 6301–6311]; Honey Research, Promotion, and Consumer Information Act, as amended [7 U.S.C. 4601–4612]; the Potato Research and Promotion Act [7 U.S.C. 2611–2627]; the Watermelon Research and Promotion Act [7 U.S.C. 4901–4916]; the Mushroom Promotion, Research, and Consumer Information Act of 1990 [7 U.S.C. 6101–6112]; the National Kiwifruit Research, Promotion, and Consumer Information Act [7 U.S.C. 7461–7473]; the Popcorn Promotion, Research and Consumer Information Act [7 U.S.C. 7481–7491]; and the Commodity Promotion, Research, and Information Act of 1996 [7 U.S.C. 7401–7425].

These programs carry out projects relating to research, consumer information, advertising, sales promotion, producer information, market development, and product research to assist, improve, or promote the marketing, distribution, and utilization of their respective commodities. Approval of the programs is required through referendum of those who would be covered. Industry boards administer the programs. These boards usually composed of producer, handler, processor, and in some cases, importer and public members, are appointed by the Secretary of Agriculture to administer the programs. The funding for such programs is from assessments on designated industry segments. The appointed boards are responsible for collecting assessments from the affected persons covered under these programs.

The Secretary also approves the boards' budgets, plans, and projects. These responsibilities have been delegated to the Agricultural Marketing Service (AMS). The applicable commodity program areas within AMS have direct oversight of the respective programs.

The information collection requirements in this request are essential to carry out the intents of the various Acts authorizing such programs, thereby providing a means of administering the programs. The objective in carrying out this responsibility includes assuring the following: (1) Funds are collected and properly accounted for; (2) expenditures of all funds are for the purposes authorized by the enabling legislation; and (3) the board's administration of the programs conforms to USDA policy. The applicable commodity programs within AMS have direct oversight of these freestanding programs. The forms covered under this collection require the minimum information necessary to effectively carry out the requirements of the respective orders, and their use is necessary to fulfill the intents of the Acts as expressed in the orders. The information collected is used only by authorized employees of the various boards and authorized employees of USDA.

The boards administering the various programs utilize a variety of forms to carry out the responsibilities. Such forms may include reports concerning status information such as handler and importer reports; transaction reports; exemption from assessment forms and reimbursement forms; forms and information concerning referenda including ballots; forms and informaiton concerning board nominations and selection and acceptance statements; certification of industry organizations; and recordkeeping requirements. The forms and information covered under this information collection require the minimum information necessary to effectively carry out the requirements of the programs and their use is necessary to fulfill the intent of the applicable authorities.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .0792943 hours per response.

*Respondents:* Producers, processors, handlers, and/or importers of a variety of agricultural commodities.

*Estimated Number of Respondents:* Total respondents are estimated to be 354,690.

*Estimated Number of Responses per Respondent:* Number of responses per respondent is estimated to average 12.389776.

*Estimated Total Annual Burden on Respondents:* Estimated total annual burden is 348,461 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to A. Lee Cliburn, Program Appraisal Staff, Cotton Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Rm. 2633–South Building, Washington, DC 20090. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: May 16, 2000.

**Lee Cliburn,**

*Acting Deputy Administrator, Cotton Programs.*

[FR Doc. 00–12803 Filed 5–19–00; 8:45 am]

**BILLING CODE 3410–02–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Southwest Oregon PIEC Advisory Committee will meet on June 8, 2000 in Roseburg, Oregon at the Roseburg Bureau of Land Management Office at 777 NW Garden Valley Blvd. The meeting will begin at 9:00 a.m. and continue until 5 p.m. Agenda items to be covered include: (1) Forest Service Roadless Initiative; (2) Public Comment; (3) Implementation Monitoring; (4) Refinement of Province Dead and Wood Policy; and (4) Current issues as perceived by Advisory Committee members.

**FOR FURTHER INFORMATION CONTACT:** Direct questions regarding this meeting to Roger Evenson, Province Advisory Committee Coordinator, USDA, Forest Service, Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, Oregon 97470, phone (541) 957–3344.

Dated: May 16, 2000.

**Michael D. Hupp,**

*Acting Designated Federal Official.*

[FR Doc. 00–12738 Filed 5–19–00; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Tennessee

**AGENCY:** Natural Resources Conservation Service (NRCS) in Tennessee, U.S. Department of Agriculture.

**ACTION:** Notice of Availability of proposed changes in Section IV of the FOTG of the NRCS in Tennessee for review and comment.

**SUMMARY:** It is the intention of NRCS in Tennessee to issue a revised conservation practice standard, Filter Strip (Code 393), in Section IV of the FOTG.

**DATES:** Comments will be received on or before June 21, 2000.

**FOR FURTHER INFORMATION CONTACT:** Inquire in writing to James W. Ford, State Conservationist, Natural Resources Conservation Service (NRCS), 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203. Copies of the practice standards will be made available upon written request.

**SUPPLEMENTARY INFORMATION:** Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS state technical guides used to perform highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Tennessee will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Tennessee regarding disposition of those comments and a final determination of change will be made.

Dated: May 10, 2000.

**James W. Ford,**

*State Conservationist, Natural Resources Conservation Service, Nashville, Tennessee.*

[FR Doc. 00–12782 Filed 5–19–00; 8:45 am]

BILLING CODE 3410–16–M

## DEPARTMENT OF COMMERCE

### International Trade Administration

### North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of first request for panel review.

**SUMMARY:** On May 12, 2000, Nycomed Amersham Canada Limited filed a First Request for Panel Review with the Canadian Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. A second request was filed by Bracco Diagnostics Inc. and Bracco Diagnostics Canada Inc. Panel review was requested of the final determination made by the Canada Customs and Revenue Agency, respecting Certain Contrast Media Used for Radiographic Imaging, Originating in or Exported from the United States of America (Including Puerto Rico). This determination was published in the *Canada Gazette*, Part I, (Vol. 134, No. 16) on April 15, 2000. The NAFTA Secretariat has assigned Case Number CDA-USA-00–1904–01 to this request.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue NW, Washington, DC 20230, (202) 482–5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Canadian Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 12, 2000, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 12, 2000);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 26, 2000); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 15, 2000.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 00–12729 Filed 5–19–00; 8:45 am]

BILLING CODE 3510–GT–U

## DEPARTMENT OF COMMERCE

### International Trade Administration

### North American Free-Trade Agreement, Article 1904, NAFTA Panel Reviews; Request for Panel Review

**AGENCY:** NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

**ACTION:** Notice of First Request for Panel Review.

**SUMMARY:** On May 4, 2000, Agromex Fertilizantes, S.A. de C.V. filed a First Request for Panel Review with the Mexican Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the final antidumping investigation determination made by the Secretaria de Comercio y Fomento Induustrial, respecting Urea, Originating in the United States of America and the Russian Federation. This determination was published in the Diario Official, on

April 17, 2000. The NAFTA Secretariat has assigned Case Number MEX-USA-00-1904-01 to this request.

**FOR FURTHER INFORMATION CONTACT:** Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, D.C. 20230, (202) 482-5438.

**SUPPLEMENTARY INFORMATION:** Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the Mexican Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 4, 2000, requesting panel review of the final determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is June 5, 2000);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 19, 2000); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 15, 2000.

**Caratina L. Alston,**

*United States Secretary, NAFTA Secretariat.*

[FR Doc. 00-12728 Filed 5-19-00; 8: 45 am]

BILLING CODE 3510-GT-U

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 051200F]**

### North Pacific Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

**DATES:** The Council and its advisory committees will meet in Portland, OR the week of June 5, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

**ADDRESSES:** All meetings will be held at the Doubletree Hotel-Portland Downtown, 310 SW. Lincoln, Portland, OR.

*Council address:* North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501-2252.

**FOR FURTHER INFORMATION CONTACT:** Council staff, telephone: 907-271-2809.

**SUPPLEMENTARY INFORMATION:** The Advisory Panel will begin at 8:00 a.m., Monday, June 5, and continue through Thursday, June 8. The Scientific Committee will begin at 8:00 a.m. on Monday, June 5, and continue through Wednesday, June 7.

The Council will begin their plenary session at 8:00 a.m. on Wednesday, June 7, continuing through Monday, June 12. All meetings are open to the public except Executive Sessions which may be held during the week to discuss litigation and/or personnel matters.

*Council:* The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. Reports

(a) Executive Director's Report.

(b) State Fisheries Report by Alaska Dept. of Fish and Game.

(c) NMFS Management Report.

(d) Enforcement and Surveillance reports by NMFS and the Coast Guard.

2. Observer Program:

(a) Final action on regulatory amendments.

(b) Observer Committee Report.

3. American Fisheries Act:

(a) Final action on inshore cooperative structure.

(b) Initial review of groundfish processor sideboards and excessive share caps.

(c) Review crab processing capacity and activities during 2000 opilio season.

(d) Review methods for allocating pollock to inshore cooperatives, calculations of Pacific cod sideboards, and crab sideboard exemptions.

(e) Status report on development of Supplemental Environmental Impact Statement for the American Fisheries Act.

4. Steller Sea Lion Protection:

(a) Status report on Reasonable and Prudent Alternatives for Pacific cod.

(b) Report on Russian sea lion research and management.

5. Staff Tasking:

(a) Review current tasking and proposals received; direction to staff on new amendments/analyses.

(b) Determine next steps for rationalization of Gulf of Alaska Pacific cod.

(c) Provide staff direction on development of Gulf of Alaska cooperatives.

(d) Provide staff direction for next steps in essential fish habitat stakeholder process; determine need for revisions to crab fishery management plan and halibut regulations to protect corals and sponges.

6. Magnuson-Stevens Act Reauthorization Issues:

Review current legislative proposals and recommendations from Council Chairmen's meeting.

7. Groundfish Management:

(a) Status report on development of groundfish Supplemental Environmental Impact Statement.

(b) Initial review of amendment to revise process for setting annual fishery specifications.

8. Crab Management:

(a) Final action on rebuilding plans for St. Matthew blue and Opilio crabs.

(b) Updates on crab cooperatives and permit buyback program.

(c) Crab Interim Action Committee report on appeals.

Advisory Meetings

*Advisory Panel:* With the exception of the reports listed under Item 1, the agenda for the Advisory Panel will mirror that of the Council listed above.

*Scientific and Statistical Committee (SSC):* The Scientific and Statistical Committee will address the following items on the Council agenda:

1. Inshore cooperative structure and groundfish processing sideboards and excessive share caps.
2. Observer program changes.
3. Groundfish Management:
(a) Status report on development of groundfish Supplemental Environmental Impact Statement; and
(b) Initial review of amendment to revise process for setting annual fishery specifications.
4. Steller sea lion protection.
5. Review of halibut charter individual fishing quota program analytical outline.

Other Committee/Workgroup & Industry Meetings

During the meeting week, the following groups will hold meetings to discuss various agenda issues of interest:

*Crab Permit Buyback Industry Meeting:* Monday, June 5, 7:00 p.m.

*Crab Interim Action Committee:* Tuesday, June 6, 1:00 p.m.

*Crab Cooperative Industry Meeting:* Tuesday, June 6, 7:00 p.m.

*Gulf of Alaska Cooperative Committee:* Thursday, June 8, 6:00 p.m.

*Ecosystems Committee:* Friday, June 9, 6:00 p.m.

Other committees and workgroups may hold impromptu meetings throughout the meeting week. Such meetings will be announced during regularly-scheduled meetings of the Council, Advisory Panel, and SSC, and will be posted at the hotel.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action of address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: May 17, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12835 Filed 5–19–00; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 051500A]**

### Marine Mammals; File No. 782–1446

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Receipt of application for amendment.

**SUMMARY:** Notice is hereby given that Alaska Fisheries Science Center, National Marine Mammal Laboratory, 7600 Sand Point Way, NE, Seattle, WA 98115 has requested an amendment to scientific research Permit No. 782–1446.

**DATES:** Written or telefaxed comments must be received on or before June 21, 2000.

**ADDRESSES:** The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Alaska Region, National Marine Fisheries Service, NOAA, P.O. Box. 21668, Juneau, AK 99802–1668 (907/586–7221); and

Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, WA 98115–0070 (206/526–6150).

Southwest Region, National Marine Fisheries Service, NOAA,501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4021).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

**FOR FURTHER INFORMATION CONTACT:** Simona Roberts or Ruth Johnson, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** The subject amendment to Permit No. 782–1446, issued on May 8, 1998 (63 FR 27265) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

Permit No. 782–1446 authorizes the permit holder to conduct aerial, ground and boat surveys annually for stock assessment of harbor seals (*Phoca vitulina*), California sea lions (*Zalophus californianus*), Steller sea lions (*Eumetopias jubatus*), and northern elephant seals (*Mirounga angustirostris*). The permit holder requests authorization to amend this permit to chemically immobilize adult male California sea lions in Oregon, Washington, and California for the removal of Satellite-Linked Time Depth Recorders (SLTDR).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 15, 2000.

**Ann Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 00–12837 Filed 5–19–00; 8: 45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

## DEPARTMENT OF THE INTERIOR

### U.S. Fish and Wildlife Service

**[I.D. 032300B]**

### Marine Mammals; File No. 960–1528–00

**AGENCIES:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce: U.S. Fish and Wildlife Service (USFWS), Interior.

**ACTION:** Issuance of permit.

**SUMMARY:** Notice is hereby given that Museum of Natural History Collections, Department of Environmental Studies, University of California, Santa Cruz, CA 95064 [Principal Investigator: Jeff Davis] has been issued a permit to take collect, import/export marine mammal specimens of the Orders Cetacea, Pinnipedia and Sirenia for purposes of scientific research and for deposit into a museum collection.

**ADDRESSES:** The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001)

**FOR FURTHER INFORMATION CONTACT:** Ruth Johnson, 301/713–2289.

**SUPPLEMENTARY INFORMATION:** On October 8, 1999, notice was published in the **Federal Register** (64 FR 54907) that a request for a scientific research permit to take marine mammal specimen had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 16, 2000.

**Ann D. Terbush,**

*Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.*

Dated: May 11, 2000.

**Kristen Nelson,**

*Chief, Branch of Permits, U.S. Fish and Wildlife Service, Department of the Interior.*

[FR Doc. 00–12838 Filed 5–19–00; 8:45 am]

BILLING CODE 3510–22–F

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[I.D. 051500C]

### Guidelines for Economic Analysis of Fishery Management Actions

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Guidelines for Economic Analysis of Fishery Management Actions (Guidelines) provide guidance on meeting the procedural and analytical requirements of Executive Order (E.O.) 12866 and the Regulatory Flexibility Act(RFA)for regulatory actions of federally managed fisheries. Specifically, the guidelines include a general framework for conducting economic analyses of regulatory actions; recommend that a preliminary regulatory economic evaluation be conducted early in the regulatory process to provide information on the impacts of proposed measures to the public and decision makers; outline the process for doing the regulatory impact review for meeting analytical requirements, including information requirements, analytical procedures, and methodologies; outline the steps for fulfilling the requirements of the Regulatory Flexibility Act; discuss the relationship of the Regulatory Flexibility Act to other applicable law; and identify ways of involving small entities in the rulemaking process.

**DATES:** Comments and information must be received no later than June 21, 2000.

**ADDRESSES:** Comments on the guidelines should be addressed to Theo R. Brainerd, Regulatory Services Division (Stn. 13212), Office of Sustainable Fisheries, NOAA/NMFS, 1315 East West Highway, Silver Spring, Maryland 20910.

Comments may also be sent via facsimile (fax) to 301–713–0696. A copy of the draft guidelines is available through the internet at: <<http: // www.nmfs.gov/sfa/>> under "Proposed & Final Rules, and Documents for Public Comment."

**FOR FURTHER INFORMATION CONTACT:** Theo R. Brainerd, NMFS, 301–713–2337.

**SUPPLEMENTARY INFORMATION:**

#### Background

The objective of E.O. 12866 (58 FR 51735, October 4, 1993) is to improve the Federal regulatory system. NMF complies with E.O. 12866 by preparing a Regulatory Impact Review (RIR) which includes an analysis of the economic effects of the proposed action and alternative actions. The RIR is intended to assist Councils and the NMFS in selecting the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts, and equity issues), unless a statute requires another regulatory approach.

The purpose of the RFA (5 U.S.C. 601 *et seq.*) is to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the regulatory action and applicable statutes, to fit regulatory and informational requirements to the scale of businesses, organizations, and governmental jurisdictions subject to the regulation. NMFS conducts a Regulatory Flexibility Act Analysis (RFAA) to assess the impacts of the proposed/final rule on small entities and describes steps the agency has taken to minimize any significant economic impact on small entities while achieving regulatory goals.

In comparison to the previous RIR/RFAA guidelines, these guidelines:

Incorporate the revisions to the Regulatory Flexibility Act made by the Small Business Regulatory Enforcement Act;

Revise the basis the agency will use to certify that a proposed regulation will not have a significant economic impact on a substantial number of small entities;

Place greater emphasis on the need for the Councils and NMFS to have draft analyses early in the FMP development process and final analyses available prior to a decision on the preferred course of action. These analyses would also be a source of information for public comment on the expected effects of the alternatives under consideration;

Provide recommendations concerning key topic areas and organization for the regulatory analyst to consider when developing and revising the regulatory analysis; and

Based on the growing regulatory emphasis on protected resources and habitat, recommend that analysts highlight, where appropriate, the effects on the non-consumptive uses of fishery, other living marine resources, and the ecological benefits derived from these resources and their habitats.

Dated: May 17, 2000.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12834 Filed 5–19–00; 8: 45 am]

BILLING CODE 3510–22–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

May 16, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50495, published on September 17, 1999.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

**May 16, 2000.**

Commissioner of Customs,
*Department of the Treasury*, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 22, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 338/638 | 1,036,327 dozen. |
| 339/639 | 1,423,401 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–12776 Filed 5–19–00; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

May 16, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs reducing limits.

**EFFECTIVE DATE:** May 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 54870, published on October 8, 1999.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

**May 16, 2000.**

Commissioner of Customs,
*Department of the Treasury*, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 4, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on May 23, 2000, you are directed to reduce the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Levels in Group I | |
| 200 | 978,348 kilograms. |
| 300/301 | 4,458,303 kilograms. |
| 338/339 | 1,316,416 dozen. |
| 340/640 | 1,621,199 dozen. |
| 342/642 | 406,864 dozen. |
| 345 | 481,695 dozen. |
| 347/348 | 1,783,321 dozen. |
| 360 | 1,453,677 numbers. |
| 369–S [2] | 1,053,142 kilograms. |
| 634/635 | 324,240 dozen. |
| 647/648 | 3,534,649 dozen. |

| Category | Adjusted twelve-month limit [1] |
|---|---|
| Group II | |
| 201, 218, 220, 222–224, 226, 227, 237, 239pt. [3], 332, 333, 352, 359–O [4], 362, 363, 369–O [5], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [6], 464, 469pt. [7], 603, 604–O [8], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [9], 666, 669–O [10], 670–O [11], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [12], as a group. | 112,319,410 square meters equivalent. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[4] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010, 6211.12.8020 (Category 359–S); and 6406.99.1550 (Category 359pt.).

[5] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[6] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[7] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[8] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[9] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[10] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000, 6406.10.9040 (Category 669pt.).

[11] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202 92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[12] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–12777 Filed 5–19–00; 8:45 am]

BILLING CODE 3510–DR–F

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Romania

May 17, 2000.

**AGENCY:** Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Issuing a directive to the Commissioner of Customs adjusting limits.

**EFFECTIVE DATE:** May 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for carryover, carryforward, swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 71116, published on December 20, 1999.

**D. Michael Hutchinson,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

**Committee for the Implementation of Textile Agreements**

May 17, 2000.

Commissioner of Customs,
*Department of the Treasury*, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 14, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000.

Effective on May 23, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

| Category | Adjusted twelve-month limit [1] |
|---|---|
| 315 | 3,972,521 square meters. |
| 410 | 141,672 square meters. |
| 435 | 13,505 dozen. |
| 443 | 106,580 numbers. |
| 444 | 34,384 numbers. |
| 447/448 | 32,456 dozen. |
| 647/648 | 243,780 dozen. |

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 00–12778 Filed 5–19–00; 8:45 am]

BILLING CODE 3510–DR–F

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.926B]**

### Office of Elementary and Secondary Education—Arts in Education Competitive Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

**Purpose of Program**

The goal of this grant competition is to provide assistance to local educational agencies (LEAs) on behalf of eligible schools to support media

literacy projects. "Media literacy" refers to the ability to understand and interpret the artistic content of images, including violent messages, transmitted through the electronic media.

**SUPPLEMENTARY INFORMATION:**

**Background**

Many studies have explored the relationship between children's viewing of violence through the media and their engaging in violent behavior. While there is little consensus among these studies regarding the impact that the electronic media have on youth violence, the Secretary believes that instruction that helps young people to critically analyze media messages about violence can help to prevent youth violence. Accordingly, this grant competition focuses on media literacy projects that include opportunities for youth to engage in non-violent, innovative arts programming. These projects will support model partnerships between schools and arts-based organizations to demonstrate new methods of improving the interpretive and creative skills of young people in dealing with the media arts. Young people will learn how to interpret the messages they receive on a daily basis through the media, and also how to engage in the creative process in developing better alternatives to media programming that include violent content.

Today's students—tomorrow's citizens and leaders in our democracy—will need a different set of understandings and skills in communications if they are to succeed in the global society and economy that are fueled by new media technologies. CD–ROMs, video games, music videos, interactive communications facilitated by personal computers, and the World Wide Web, as well as such older electronic media as television shows, movies, and recorded music, command an increasing amount of the attention and time of our children. We must help them learn to "read" and evaluate images as well as text. These technologies can be used to create and communicate ideas that portray alternatives to violence, drug use, and disrespect.

*Eligible Applicants:* LEAs with one or more schools where 75 percent or more of the children are from low-income families, based on the poverty criteria described in Title I Section 1113(a)(5) of the Elementary and Secondary Education Act. Applicants must submit evidence of their eligibility. For this purpose applicants may submit records kept for the purpose of Title I of the Elementary and Secondary Education Act that demonstrates that proof of eligibility.

**Note:** Potential applicants are reminded that, under the absolute priority published elsewhere in this notice, the Secretary will only fund under this competition media literacy projects in *schools* where the number of children from low-income families equals or exceeds 75 percent.

*Applications Available:* May 22, 2000.

*Deadline for Transmittal of Application:* July 21, 2000.

*Deadline for Intergovernmental Review:* August 21, 2000.

*Estimated Available Funds:* $990,000.

*Estimated Range of Awards:* $50,000 to $150,000.

*Estimated Average Size of Awards:* $100,000.

*Estimated Number of Awards:* 8–10.

*Project Period:* Up to 36 months.

**Note:** The Department is not bound by any estimates in this notice. Funding estimates are for the first year of the project period only. Funding for the second and third years is subject to the availability of funds and the approval of continuation awards (34 CFR 75.253).

*Applicable Regulations:* The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99.

*Priority: Absolute Priority:* The Secretary gives absolute priority to media literacy projects, implemented in schools where the number of children from low-income families equals or exceeds 75 percent, that are designed both to: (1) enable students in those schools to critically interpret and analyze the images, including violent messages, transmitted through the electronic media, and (2) help students in those schools to create their own media-based arts projects presenting alternative non-violent messages through the use of film, video, hypermedia, website design and other contemporary communications media. Applicants should clearly state in the abstract how their application addresses both elements of this priority. Only projects that meet both elements of this priority will be considered for funding.

*Selection Criteria:* The Secretary uses the selection criteria published in 34 CFR 75.209 and 75.210 to evaluate applications for the Arts in Education Competitive Grant Program. The application package includes the selection criteria and the points assigned to each criterion.

*Waiver of Proposed Rulemaking:* It is the Secretary's practice, in accordance with the Administrative Procedure Act (5 U.S.C. 553) to offer interested parties the opportunity to comment on proposed rules. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts from this requirement rules that apply to the first competition under a new or substantially revised program. Funding was provided for this new initiative in the fiscal year 2000 appropriations act enacted in October 1999. The Secretary, in accordance with section 437(d)(1) of GEPA, has decided to forego public comment in order to ensure timely grant awards.

*For Further Information or Applications:* Shelton Allen, U.S. Department of Education, 400 Maryland Avenue, SW, FOB6, Room 3C126, Washington, DC 20202–6140. Telephone: (202) 260–2487 or fax: (202) 205–5630. The e-mail address for Mr. Allen is: shelton—allen@ed.gov

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html.

**Program Authority:** 20 U.S.C. 8091.

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Dated: May 16, 2000.

**Michael Cohen,**

*Assistant Secretary for Elementary and Secondary Education.*

[FR Doc. 00–12760 Filed 5–19–00; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

### DOE Response to Recommendation 2000–2 of the Defense Nuclear Facilities Safety Board, Configuration Management, Vital Safety Systems

**AGENCY:** Department of Energy.

**ACTION:** Notice.

**SUMMARY:** The Defense Nuclear Facilities Safety Board Recommendation 2000–2, concerning the control of safety system configuration, was published in the **Federal Register** on March 16, 2000 (65 FR 14255). Under section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy was required to transmit a response to the Defense Nuclear Facilities Safety Board by April 28, 2000. The Secretary's timely response follows.

**DATES:** Comments, data, views, or arguments concerning the Secretary's response are due on or before June 21, 2000.

**ADDRESSES:** Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Cary, Senior Advisor to the Assistant Secretary for Environment, Safety and Health, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

Issued in Washington, DC on April 28, 2000.

**Michael A. Mikolanis,**

*Office of the Departmental Representative to the Defense Nuclear Facilities Safety Board.*

The Honorable John T. Conway, Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004–2901

Dear Mr. Chairman: The Department of Energy (DOE) acknowledges receipt of Defense Nuclear Facilities Safety Board (Board) Recommendation 2000–2, issued on March 8, 2000, regarding safety systems vital to the protection of the public, workers, and the environment. Along with the analysis contained in the March 2000 assessment prepared by the Office of the Assistant Secretary for Environment, Safety and Health on the impact of safety program weaknesses upon ventilation and confinement ventilation systems that perform safety functions, the DOE has completed a preliminary analysis of the issues raised in the Board's recommendation. The conclusions drawn from both of these analyses are consistent with the safety issues described in Recommendation 2000–2.

The Department accepts the recommendations contained in Recommendation 2000–2 and will develop an implementation plan to accomplish the following actions:

1. Development of expert-based guidelines for surveying and assessing confinement ventilation systems and implementation of a plan to identify and correct root cause deficiencies.

2. Incorporation of open commitments remaining in the action plan addressing safety issues related to High Efficiency Particulate Air filters.

3. Evaluation of existing practices and industry models for use in establishing a cognizant system engineer concept to strengthen the engineering resources available for facility configuration management.

4. Assessment of the availability and sufficiency of DOE expertise, identification of actions necessary to ensure expertise can be brought to bear in the life-cycle management of vital safety systems and that Federal technical expertise on safety systems is available to interface with operating contractors when significant system problems arise.

5. Review of line oversight of contractor programs to determine whether safety systems, as well as programs essential to system operability, are being included in those programs. As necessary, identify corrective actions to improve implementation of line oversight programs.

I have asked Mr. Steven Cary, Senior Advisor to the Assistant Secretary for Environment, Safety and Health, to serve as the responsible manager for this recommendation. Mr. Cary will be the principal point of contact with the Board for this recommendation, and he will work with you and your staff to develop an acceptable implementation plan that meets our mutual expectations. If you have questions, please contact him at (202) 586–6151.

Yours sincerely,

Bill Richardson

[FR Doc. 00–12761 Filed 5–19–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Nevada

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Wednesday, June 7, 2000: 6:30 p.m.–9 p.m.

**ADDRESSES:** Amargosa Valley Community Center, 821 E. Farm Road, Amargosa Valley, NV 89020.

**FOR FURTHER INFORMATION CONTACT:** Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

1. Discussion and review of additional underground water test area funding. Copies of the final agenda will be available at the meeting. Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on May 16, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–12762 Filed 5–19–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Rocky Flats

**AGENCY:** Department of Energy.

**ACTION:** Notice of Open Meeting.

**SUMMARY:** This notice announces a meeting of the Environmental

Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, June 1, 2000, 6 p.m.—9:30 p.m.

**ADDRESSES:** College Hill Library, Front Range Community College, 3705 West 122th Avenue, Westminster, CO.

**FOR FURTHER INFORMATION CONTACT:** Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda:*

1. Regular Update—Environmental Protection Agency
2. Board 2001 Work Plan Prioritization
3. Presentations on Future Site Use Proposals—by Staff from Congressman Udall's and Senator Allard's Offices
4. Presentation on Rock Creek Reserve Natural Resources Management Plan
5. Other Board business may be conducted as necessary

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday—Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9 a.m. to 4 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on May 16, 2000.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 00–12763 Filed 5–19–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–277–000]**

### Canyon Creek Compression Company; Notice of Tariff Filing

May 16, 2000.

Take notice that on May 10, 2000, Canyon Creek Compression Company (Canyon) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No.1, the tariff sheets listed on Appendix A to the filing, to be effective June 1, 2000.

Canyon states that these tariff sheets are being filed in compliance with the Commission's Order No. 587–G issued April 16, 1998 in Docket No. RM96–1–008, which order relates to interstate pipelines' business transactions using Internet communication as well as to various issues relating to the standardization of these business communications using the Internet.

Canyon requested any waivers which may be required for the tendered tariff sheets to become effective June 1, 2000, consistent with Order Nos. 587–G and 587–I.

Canyon states that copies of the filing have been mailed to its customers, interested state commissions and all parties set out the Commission's official service list in Docket No. RM96–1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for pubic inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12718 Filed 5–19–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL00–76–000]**

### French Broad Electric Membership Corporation v. Carolina Power & Light Company; Notice of Complaint

May 16, 2000.

Take notice that on May 12, 2000, French Broad Electric Membership Corporation (FBEMC) filed a complaint against Carolina Power & Light Company (CP&L) alleging that CP&L's rate for capacity charged to FBEMC for requirements service under a bundled Power Supply Agreement is unjust and unreasonable. FBEMC requests that the Commission establish hearing procedures to determine the just and reasonable rate to be effective 60 days after the filing of the complaint, direct CP&L to refund excessive amounts previously collected from FBEMC, and establish a refund effective date of 60 days after the filing of the complaint.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before June 1, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers

to the complaint shall also be due on or before June 1, 2000.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12726 Filed 5–19–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–279–000]**

### High Island Offshore System, L.L.C.; Notice of Tariff Filing

May 16, 2000.

Take notice that on May 10, 2000, High Island Offshore System, L.L.C. (HIOS), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing. HIOS proposes that the foregoing tariff sheets be made effective on June 1, 2000.

HIOS states this filing is made to reflect ministerial tariff changes resulting from the assumption of operating duties by the El Paso Energy Partners Operating Company (EPNOC). HIOS further states that the instant filing specifically modifies the company's address, telephone numbers and personnel titles and designations from its currently effective tariff to conform with the changes due to the assumption of operating duties by EPNOC. HIOS further states that the changes effected by this filing are purely ministerial.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us.online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12720 Filed 5–19–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–276–000]**

### Kinder Morgan Interstate Gas Transmission LLC; Notice of Tariff Filing

May 16, 2000.

Take notice that on May 10, 2000, Kinder Morgan Interstate Gas Transmission LLC (KMIGT) tendered for filing to become part of its FERC Gas Tariff, the following revised tariff sheets, to be effective June 1, 2000:

**Fourth Revised Volume No. 1–B**

First Revised Sheet No. 89A
First Revised Sheet No. 90
Original Sheet No. 90A
First Revised Sheet No. 91
First Revised Sheet No. 92

**Second Revised Volume No. 1–D**

First Revised Sheet No. 71A
First Revised Sheet No. 72
Original Sheet No. 72A
First Revised Sheet No. 73
First Revised Sheet No. 74

KMIGT states that the purpose of this filing is to make the changes in KMIGT's Tariff related to Internet communication. KMIGT has also updated related tariff references regarding electronic communications.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12717 Filed 5–19–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–278–00]**

### Natural Gas Pipeline Company of America; Notice of Tariff Filing

May 16, 2000.

Take notice that on May 10, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective June 1, 2000.

Natural states that these tariff sheets are being filed in compliance with the Commission's Order No. 587–G issued April 16, 1998 in Docket No. RM96–1–008, which order relates to interstate pipelines' business transactions using Internet communication as well as to various issue relating to the standardization of these business communications using the Internet.

Natural requested any waivers which may be required for the tendered tariff sheets to become effective June 1, 2000, consistent with Order Nos. 587–G and 587–I.

Natural states that copies of the filing have been mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RM96–1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/

rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12719 Filed 5–19–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER00–2425–000]**

### New England Power Pool; Notice of Filing

May 16, 2000.

Take notice that on May 5, 2000, the New England Power Pool (NEPOOL) Participants Committee submitted the Fifty-Third Agreement Amending the New England Power Pool Agreement (Fifty-Fourth Agreement) which addresses affiliation and representation issues raised by end user applications for membership in NEPOOL.

A July 1, 2000 effective data has been requested.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the NEPOOL Participants.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 26, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12714 Filed 5–19–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–283–000]**

### Questar Pipeline Company; Notice of Tariff Filing

May 16, 2000.

Take notice that on May 12, 2000, Questar Pipeline Company (Questar) tendered for filing as part of its FERC Gas Tariff, Third Revised Sheet No. 117, First Revised Volume No. 1, to be effective June 12, 2000.

Questar pursuant to prior Commission authority, provides underground natural-gas storage service at three aquifer storage reservoirs, Leroy, Coalville and Chalk Creek. Questar's currently effective tariff requires that working gas from these reservoirs be withdrawn to the extent practicable at the conclusion of the withdrawal period, beginning no later than March 1 of each year, and allows reinjection late in the fall.

Questar's only storage customer utilizing the aquifer reservoirs, Questar Gas Company (QGC), requested that it be allowed, but not required to, leave working gas in both the Leroy and Coalville storage aquifers during the summer months. Upon Questar's and QGC's joint engineering analysis, the parties ascertained that leaving approximately 50 percent of the working gas in place at two of its storage reservoirs, Leroy and Coalville and allowing QGC to inject and withdraw working gas between the end of the withdrawal period and beginning of the injection period, may be beneficial for QGC. Injecting and withdrawing natural gas in and out of these two reservoirs year round, improves reservoir performance and provides QGC with more accommodation and flexible storage service. Questar Pipeline has determined that making the change requested by QGC will not adversely affect the storage reservoirs' operations. Further, since QGC is the only customer using these storage reservoirs, this change will not affect other customers. Therefore, in response to QGC's request, Questar proposed modifications to its tariff that it believes will allow for more efficient and productive usage of the Leroy and Coalville storage reservoirs.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve.to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12724 Filed 5–19–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 516]**

### South Carolina Electric and Gas Co.; Notice of Public Information Meetings on the Saluda Project No. 516

May 16, 2000.

South Carolina Electric & Gas Company's Saluda Project's license expires in August 2007. The hydropower project and its reservoir, Lake Murray, are located in Saluda, Lexington, Newberry and Richland Counties, South Carolina. The Federal Energy Regulatory Commission (Commission) will hold two public information meetings to familiarize the public with the Commission's hydropower licensing program. Commission staff will give an overview of the Commission and its licensing procedures. There will be an opportunity for questions and answers.

Interested persons are invited to attend either or both meetings scheduled as follows:

**Tuesday, June 20, 2000**

2 to 4 p.m. (afternoon session)

6:30 to 8:30 p.m. (evening session)

Auditorium, Irmo Elementary School, 7401 Gibbes Street, Irmo, SC 29063; (803) 732–8278.

Please direct any questions regarding these meetings to either Jack Hannula, Commission Licensing Team Leader, 888 First Street NE, Washington, DC

20426; (202) 219–0116; or Charlie Compton, Lexington County Planning and Development, (803) 359–8121.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12715 Filed 5–19–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–284–000]**

### Southern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

May 16, 2000.

Take notice that on May 12, 2000, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the following tariff sheets to become effective July 1, 2000:

Third Revised Sheet No. 114
Third Revised Sheet No. 115

Southern states that the purpose of this filing is to revise Section 6.2 of the General Terms and Conditions to its tariff by expanding the rights of delivery point operators to consolidate multiple measurement stations into one delivery point.

Southern states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12725 Filed 5–19–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–281–000]**

### Trailblazer Pipeline Company; Notice of Tariff Filing

May 16, 2000.

Take notice that on May 11, 2000, Trailblazer, Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to be effective June 1, 2000.

Trailblazer states that these tariff sheets are being filed in compliance with the Commission's Order No. 587–G issued April 16, 1998 in Docket No. RM96–1–008, which order relates to interstate pipelines' business transactions using Internet communication as well as to various issues relating to the standardization of these business communications using the Internet.

Trailblazer requested any waivers which may be required for the tendered tariff sheets to become effective June 1, 2000, consistent with Order Nos. 587–G and 587–I.

Trailblazer states that copies of the filing have been mailed to its customers, interested state commissions and all parties set out on the Commission's official service list in Docket No. RM96–1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12722 Filed 5–19–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–280–000]**

### U–T Offshore System, L.L.C.; Notice of Tariff Filing

May 16, 2000.

Take notice that on May 10, 2000, U–T Offshore System, L.L.C. (UTOS), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing. UTOS proposes that the foregoing tariff sheets be made effective on June 1, 2000.

UTOS states this filing is made to reflect ministerial tariff changes resulting from the assumption of operating duties by the El Paso Energy Partners Operating Company (EPNOC). UTOS further states that the instant filing specifically modifies the company's address, telephone numbers and personnel titles and designations from its currently effective tariff to conform with the changes due to the assumption of operating duties by EPNOC. UTOS further states that the changes effected by this filing are purely ministerial.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12721 Filed 5–19–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP00–282–000]**

### Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

May 16, 2000.

Take notice that on May 11, 2000, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets listed to become effective June 1, 2000:

Second Revised Sheet No. 260
Fifth Revised Sheet No. 261
First Revised Sheet No. 261A
Second Revised Sheet No. 262
First Revised Sheet No. 290
Second Revised Sheet No. 291
Second Revised Sheet No. 291A
Third Revised Sheet No. 292
Third Revised Sheet No. 293

Williston Basin states that the revised tariff sheets are being filed in compliance with the requirements of Commission Order No. 637 issued February 9, 2000 in Docket Nos. RM98–10–000 and RM98–12–000. Specifically, the changes proposed reflect revisions to applicable sections of Williston Basin's FERC Gas Tariff to remove the price cap for short-term capacity releases and to revise the applicability of right of first refusal to incorporate the requirements of the Commission's Order.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc. fed.us/online/rims.htm (call 202–208–2222 for assistance).

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–12723 Filed 5–19–00; 8:45 am]
BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Revised Exhibit G Drawings, and Soliciting Comments, Motions to Intervene, and Protests

May 16, 2000.

a. *Application Type:* Revised Exhibit G Drawings for Nisqually Project.
b. *Project No:* 1862–038 and 1862–059.
c. *Dates Filed:* December 30, 1997; supplemented December 27, 1999 and May 5, 2000.
d. *Applicant:* Tacoma Power.
e. *Name of Project:* Nisqually Project.
f. *Location:* The Nisqually Project is on the Nisqually River in Pierce, Thurston, and Lew Counties, Washington. The project is partially located on lands of the Mount Baker-Snoqualmie National Forest.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)
h. *Applicant Contact:* Mr. Terry Ryan, Tacoma Power, 3628 South 35th Street, Tacoma, Washington 98409–3192; (253) 502–8793.
i. *FERC Contact:* Any questions on this notice should be addressed to Allyson Lichtenfels at (202) 219–3274 or by e-mail at allyson.lictenfels@ferc.fed.us.
j. *Deadline for Filing Comments and/or Motions:* June 22, 2000. Please include the project number (1862–038 and 1862–059) on any comments or motions filed.
k. *Description of Filing:* Tacoma Power filed revised exhibit G drawings on December 30, 1997, based on updated deed research of sales and trades of property and aerial surveys. Exhibit G, sheet 2 of 9, includes lands owned by the licensee added to the project boundary between La Grande spillway and powerhouse, near Township 16N, R3E and R4E. It also reflects the removal of a small parcel of land from the project boundary. Exhibit G drawings, sheets 5 and 6, reflect a reduction in the acreage of federal lands from 38 to 22 acres, to be consistent with proposed land exchanges between the United States Forest Service and the licensee.
l. *Locations of the Application:* A copy of the application is available for inspection any reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.
m. Individuals desiring to be included on the Commission's mailing list should be indicate by writing to the Secretary of the Commission.

*Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulation to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

*Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**David P. Boergers,**
*Secretary.*

[FR Doc. 00–12716 Filed 5–19–00; 8:45 am]
BILLING CODE 6717–01–M

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Notice of Intent To File an Application for a New License

May 16, 2000.

a. *Type of Filing:* Notice of Intent to File An Application for a New License.

b. *Project No.:* 2586.

c. *Date Filed:* April 24, 2000.

d. *Submitted By:* Alabama Electric Cooperative, Inc.—current licensee.

e. *Name of Project:* Conecuh River Hydroelectric Project.

f. *Location:* On the Conecuh River near the towns of Gantt and River Falls, in Covington County, Alabama.

g. *Filed Pursuant to:* Section 15 of the Federal Power Act.

h. *Licensee Contact:* Mike Noel, Alabama Electric Cooperative, Inc., 2027 East Three Notch Street, Andalusia, AL 36420 (334) 427–3248.

i. *FERC Contact:* Ron McKitrick, ronald.mckitrick@ferc.fed.us, (770 452–3778.

j. *Effective date of current license:* May 1, 1965.

k. *Expiration date of current license:* April 30, 2005.

l. *Description of the Project:* The project consists of the following two developments:

The Point "A" Development consists of the following existing facilities: (1) A 2,800-foot-long earthen dam comprised of a gated concrete spillway section; (2) a 700-acre reservoir at a normal water surface elevation of 170 feet msl; (3) a powerhouse, integral with the dam, containing three generating units with a total installed capacity of 5,200 kW, (4) a 0.39-mile-long, 46-kV transmission line; and (5) other appurtenances.

The Gantt Development consists of the following existing facilities: (1) A 1,562-foot-long earthen dam comprised of a gated concrete spillway section; (2) a 2,767-acre reservoir at a normal water surface elevation of 198 feet msl; (3) a powerhouse, integral with the dam, containing two generating units with a total installed capacity of 3,050 kW, and (4) other appurtenances.

m. Each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by April 30, 2003.

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12727 Filed 5–19–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Sunshine Act Meeting

**AGENCY HOLDING MEETING:** Federal Energy Regulatory Commission.

**FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT:** May 15, 2000, 65 FR 30985.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** May 17, 2000, 10 a.m.

**CHANGE IN THE MEETING:** The following Docket No. and Company has been added as Item CAE–34 on the Agenda scheduled for May 17, 2000 meeting.

*Item No.*
CAE–34
*Docket No. and Company*
EL00–75–000, Notice of Interim Procedures to Support Industry Reliability Efforts and Requests for Commission

**David P. Boergers,**

*Secretary.*

[FR Doc. 00–12909 Filed 5–18–00; 11:49 am]

BILLING CODE 6717–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6703–7]**

### SES Performance Review Board; Membership

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given of the membership of the EPA Performance Review Board.

**DATES:** May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Karen Stinson, Executive Resources and Special Programs, 3650, Office of Human Resources and Organizational Services, Office of Administration and Resources Management, Environmental Protection Agency, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460 (202) 260–1373.

**SUPPLEMENTARY INFORMATION:** Section 4314 (c) (1) through (5) of Title 5, U.S.C., requires each agency to establish in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. This board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointment authority relative to the performance of the senior executive.

Members of the EPA Performance Review Board are:

Lynda F. Carroll (Chair), Assistant Regional Administrator, Region 6
Joseph L. Dillon, Acting Comptroller, Office of the Chief Financial Officer
Joan Fidler, Director, Office of Management Operations, Office of International Activities
Ann E. Goode (Ex-Officio), Director, Office of Civil Rights, Office of the Administrator
Geoffrey H. Grubbs, Director, Office of Science and Technology, Office of Water
Clarence Hardy, Director, Office of Cooperative Environmental Management, Office of the Administrator
Walter W. Kovalick, Jr., Director, Technology Innovation Office, Office of Solid Waste and Emergency Response
Richard L. Lemley, Director, Facilities and Support Division, Office of Administration and Resources Management
Henry L. Longest II, Deputy Assistant Administrator for Management, Office of Research and Development
Hugh W. McKinnon (Outgoing Chair), Associate Director for Health (NRMRL), Office of Research and Development
Brian J. McLean, Director, Clean Air Markets, Office of Air and Radiation
Linda M. Murphy, Director, Office of Ecosystem Protection, Region 1
James O. Rauch, Assistant Inspector General for Audits, Office of the Inspector General
Eric V. Schaeffer, Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance
Keith A. Takata, Director, Superfund Division, Region 9
Linda A. Travers, Deputy Director, Office of Technology Operations and Planning, Office of Environmental Information
Marylouise M. Uhlig, Director, Office of Program Management Operations, Office of Prevention, Pesticides and Toxic Substances
Russell L. Wright, Director, Science and Ecosystem Support Division, Region 4
Daiva Balkus (Acting Executive Secretary) Acting Director, Office of Human Resources and Organizational Services, Office of Administration and Resources Management

Members of the Inspector General Subcommittee to the EPA Performance Review Board are:

Raymond J. DeCarli, Assistant Inspector General for Audits, Department of Transportation

James E. Henderson, Assistant Inspector General for Investigations, General Services Administration
Richard L. Skinner, Deputy Inspector General, Federal Emergency Management Agency

Dated: May 11, 2000.

**David J. O'Connor,**

*Acting Assistant Administrator for Administration and Resources, Management.*

[FR Doc. 00–12791 Filed 5–19–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL –6704–9]**

### Science Advisory Board; Emergency Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that a subcommittee of the US EPA Science Advisory Board (SAB) will hold a public meeting on the date and time noted. All times noted are Eastern Standard Time. SAB meetings are open to the public, however, seating is limited and available on a first come basis. *Important Notice:* Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

**Environmental Engineering Committee (EEC) Teleconference Meeting—June 5, 2000**

The Subcommittee on the Diffusion and Adoption of Innovations in Environmental Protection of the Science Advisory Board's (SAB) Environmental Engineering Committee (EEC) will conduct a public teleconference meeting on June 5, 2000 between the hours of 1 and 3 (Eastern Standard Time). The meeting will be coordinated through a conference call connection in room 6013 in the USEPA, Ariel Rios Building North, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20004. The public is encouraged to attend the meeting in the conference room noted above, however, the public may also attend through a telephonic link if lines are available. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Diana Pozun one week prior to the meeting (May 28, 2000) at (202) 564–4544, or via e-mail at *pozun.diana@epa.gov.*

*Purpose of the Meeting—Purpose of the Public Teleconference.* The purpose of the public teleconference is to clarify the charge questions for a public workshop being planned for June 28, 2000 and to identify any additional background materials that panel members may need to provide advice to the Agency.

The workshop will be a consultative Workshop on the Diffusion and Adoption of Innovations in Environmental Protection. The purpose of the workshop is to identify how the use of data, theories, and research methods derived from the study of the social process of diffusion and adoption of innovations may improve the adoption of innovative approaches to environmental protection: (a) Within EPA; (b) by state, tribal, and local government partners; and (c) by corporate and non-governmental organization partners in environmental protection. EPA program offices will consider the advice of the workshop panel members in developing strategies to encourage adoption of new strategies for environmental protection especially in the areas of watershed protection, pollution prevention and EPA's Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants, and use of social science tools and cultural profiling.

*Charge to the Workshop*—The panelists will consider the following charge questions:

(a) What are the different principal process models available for understanding the diffusion process and are some of them more appropriate to the EPA program areas under discussion than others?

(1) What is the role of information and information flow in diffusion and adoption of innovations? How critical are they and how can EPA learn to make them more effective?

(2) What have we learned about designing appropriate incentives for facilitating the adoption process?

(3) How important are social networks to the process of diffusion and adoption of innovation? How can EPA recognize and use them?

(4) What can EPA learn from diffusion efforts undertaken by other partners in environmental protection (state and local agencies, tribes, non-governmental organizations, and corporations)?

(b) What are the principal barriers to diffusion and adoption of innovations in selected EPA program areas? Are there some characteristics intrinsic to certain innovations that make them difficult to diffuse?

(c) How can EPA effectively measure the success of its efforts to encourage diffusion and adoption of innovations?

*Availability of Review Materials:* The following documents related to EPA's watershed approach can be found on the Internet or contact Louise Wise, telephone 202–260–9108; or via email at *wise.louise@epa.gov.*

(a) U.S. EPA. 1996. Watershed Approach Framework. (EPA840–S–96–001), Office of Water (4501F), U.S. EPA, Washington, DC, on the Internet at *http://www.epa.gov/OWOW/watershed/framework.html.*

(b) U. S. EPA. 1997. Statewide Watershed Management Facilitation. (EPA841–R–97–011), Office of Water (4503F), U.S. EPA, Washington, DC., on the Internet at *http://www.epa.gov/OWOW/watershed/wacademy/its08/.*

(c) U. S. EPA. 1997. Top 10 Watershed Lessons Learned. (EPA840–F–97–001), Office of Water (4501F), U.S. EPA, Washington, DC., on the Internet at *http://www.epa.gov/OWOW/lessons/.*

(d) Office of Wetlands, Oceans, & Watersheds, Features, on the Internet at *http://www.epa.gov/OWOW/highlight.html.*

The following documents related to EPA's Multimedia Strategy for Priority Persistent, Bioaccumulative, and Toxic (PBT) Pollutants are available from Thomas Murray, telephone (202)260–1876; or via email at *murray.thomas@epa.gov:*

(a) Issue Statement.

(b) Persistent, Bioaccumulative, and Toxic Chemicals Initiative, description on the Internet at *http://www.epa.gov/pbt.*

The following documents related to Social Science Tools: Cultural Profiling are available via mail or email from Theresa Trainor, telephone (202) 260–3009; or via e-mail at *trainor.theresa@epa.gov:*

(a) The Social Sciences and Environmental Protection: Experiences and Opportunities at the U.S. EPA (Mark Wamsley, July 1999).

(b) Community Cultural Profiling Guide: Understanding a Community's Sense of Place Fact Sheet.

(c) Community Profile of Nebraska's Central Platte River Region, A joint project between The Nature Conservancy and the United States Environmental Protection Agency, November 1, 1999.

*For Further Information*—Any member of the public wishing further information concerning this meeting or wishing to submit brief oral comments must contact Dr. Angela Nugent, Designated Federal Officer. Science Advisory Board (1400A), U.S. Environmental Protection Agency, 1200

Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 564–4562; FAX (202) 501–0582; or via e-mail at nugent.angela@epa.gov. Requests for oral comments must be in writing (e-mail, fax or mail) and received by Dr. Nugent no later than noon Eastern Time on May 28, 2000.

**Providing Oral or Written Comments at SAB Meetings**

It is the policy of the Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. Oral Comments: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments:* Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the committee for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: WordPerfect, Word, or Rich Text files (in IBM–PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

*General Information*—Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in The FY1999 Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256. Committee rosters, draft Agendas and meeting calendars are also located on our website.

*Meeting Access*—Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact the DFO at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 17, 2000.

**Donald G. Barnes,**

*Staff Director, Science Advisory Board.*

[FR Doc. 00–12914 Filed 5–19–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6600–3]**

### Notice of Proposed Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), As Amended, 42 U.S.C. 101, Nahant Marsh Site, Davenport, IA

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of Proposed Agreement and Covenant Not to Sue, Nahant Marsh Site, Davenport, Iowa.

**SUMMARY:** Notice is hereby given that a proposed agreement and covenant not to sue regarding property which the City of Davenport, Iowa intends to purchase at the Nahant Marsh Superfund Site, was signed by the United States Environmental Protection Agency (USEPA) on December 30, 1999, and by the United States Department of Justice on April 13, 2000. The property that is the subject of this agreement is owned by the Scott County Sportsmen's Association and is located at 4740 Wapello Avenue, Davenport, Iowa.

**DATES:** EPA will receive, on or before June 21, 2000, written comments relating to the proposed agreement and covenant not to sue.

**ADDRESSES:** Comments should be addressed to E. Jane Kloeckner, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. Fifth Street, Kansas City, Kansas 66101 and should refer to the Nahant Marsh Superfund Site.

The proposed agreement and covenant not to sue (Agreement) may be examined or obtained in person or by mail at the office of the United States Environmental Protection Agency, 901 No. Fifth Street, Kansas City, Kansas 66101, (913) 551–7010. In requesting a copy, please refer to the reference case and enclose a check in the amount of $14.25 (25 cents per page reproduction costs), payable to the United States Environmental Protection Agency.

**SUPPLEMENTARY INFORMATION:** The Nahant Marsh Site is part of a unique wetland located along the Upper Mississippi River. Soil and sediments at the Nahant Marsh site were contaminated with hazardous substances attributable to historic shooting range operations at the Scott County Sportsmen's Association Trap and Skeet Shooting Club facility. EPA investigations at the Site indicated a severe, acute ecological threat due to the lead shot contamination in the sediments. A threat to recreational users at the Site was also present due to the lead shot in the soil. EPA conducted a removal action at the Site in 1999 to mitigate these threats. The proposed agreement concerns the sale of the Association's facility and land.

EPA entered into a Consent Decree with the Scott County Sportsmen's Association to resolve the Association's liability under CERCLA for their operations which caused the release of hazardous substances at the facility. The Consent Decree settles claims by the United States, against Scott County Sportsmen's Association (SCSA) under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607. The Complaint of the United States seeks past and future CERCLA response costs incurred by EPA connection with the Nahant Marsh Superfund Site (the Site) and for damages for injuries to natural resources at the Site as determined by the Department of the Interior (Interior) and the United States Fish and Wildlife Service, the Natural Resource Trustee.

The Consent Decree requires SCSA to record a conservation easement for its property at the Site in favor of the Iowa Natural Heritage Foundation (INHF) for preservation of the land as a reserve for wildlife and to prevent residential, commercial and industrial development of the land. The SCSA is required to transfer ownership of its property at the Site to the City of Davenport, Iowa (the City), and notify EPA of the transfer. The SCSA has no assets other than the property it owns within the Site. All proceeds from the sale will be paid to the United States. The Consent Decree with SCSA is also subject to public comment pursuant to a separate **Federal Register** notice.

Pursuant to the Agreement with the City of Davenport that is the subject of this **Federal Register** notice, the City has agreed to purchase the property at its appraised value, to take the property subject to the conservation easement, to restrict residential or commercial development, and to use the property for environmental education purposes.

In exchange, the United States grants a covenant not to sue, intended to release the City from liability which otherwise would stem from ownership of the Property. The City agrees to pay the purchase price to EPA ($81,000) and to DOI ($5,000). The purchase price is in accordance with fair market value of the property as determined by an appraiser and appraisal approved by the Department of Justice. Under the terms of the Agreement and Covenant Not to Sue, the City will also place a restrictive covenant on the land that restricts residential development. In exchange, the City will receive a covenant not to sue for response actions and costs relating to the Site pursuant to Section 107(a) of CERCLA. The City will also receive a covenant not to sue for natural resource damages under CERCLA.

Dated: April 24, 2000.

**Nathaniel Scurry,**

*Acting Regional Administrator, United States Environmental Protection Agency, Region VII.*

[FR Doc. 00–11564 Filed 5–19–00; 8:45 am]

BILLING CODE 6560–50–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6704–3]**

## New Jersey State Prohibition on Marine Discharges of Vessel Sewage; Notice of Final Affirmative Determination

Notice is hereby given that a final determination has been made by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Shrewsbury River, County of Monmouth, State of New Jersey. A Notice of Receipt of Petition and Tentative Determination was published in the **Federal Register** on April 3, 2000 and public comments regarding the tentative determination were accepted through May 3, 2000.

Comments were received from four individuals, one supporting and three objecting to the establishment of the Shrewsbury River No Discharge Area. These individuals are as follows:

Philip G. Conner, Crockett Brothers Boatyard, P.O. Box 369, Oxford, Maryland 21654

Shoreway Marine, Inc. Highway 73, West Berlin, New Jersey 08091

Kim Shinn, Raritan Engineering, P.O. Box 1157, Millville, New Jersey 08332

Monmouth County Board of Health, P.O. Box 1255, Freehold, New Jersey 07728–1255

One individual stated that his boating experience on the Manasquan River and the Shark River has been that the pumpouts located in the No Discharge Area are accessible but are not readily available. This individual attempted on five different occasions to have his holding tank pumped out and was not successful. He wonders how EPA and the New Jersey Department of Environmental Protection (NJDEP) intend to enforce an additional No Discharge Area if the agencies have not addressed the current problems on the Manasquan River and the Shark River. In response to these comments, EPA acknowledges that pumpout facilities will occasionally be out of service, but this fact does not require a fundamental change to the No Discharge Area program. The commenter did not provide the specifics regarding these attempted pumpouts, such as whether all five attempts were at the same pumpout, the dates that these attempts occurred or the circumstances which prevented him from using the pumpouts. Another commenter stated that the Shark River pumpouts were not available beginning late August 1999. The commenter stated that this forced boaters to discharge their holding tanks into the Shark River. In response, EPA and NJDEP have attempted to get problems corrected when they are brought to our attention. Also, for the Shrewsbury River, the application documents that all of the existing pumpouts are expected to be available for the entire boating season.

Several commenters objected to the vessel population numbers and the calculations used to estimate the number of pumpouts needed based on the vessel population. They feel that the vessel population at private docks is too low and that peak occupancy rates are too low. The commenters also stated that the equations are old, outdated and need to be reevaluated. In response, the vessel population numbers are based on survey done by the local environmental commissions. These surveys were conducted on the water using visual observations to count the boats at private docks. The methods used to estimate the vessel populations are standard procedures established in the 1994 Clean Vessel Act Grant Program and the 1994 EPA guidance document entitled "Protecting Coastal Waters from Vessel and Marina Discharges" and have been accepted by EPA as valid numbers. Regarding the equations used to estimate the numbers of pumpouts to service the vessel population in the Shrewsbury, two different methods were used to calculate the number of pumpouts needed, which is between two and four pumpouts. There are five pumpouts currently available and another three facilities have been proposed. Based on the information provided by the commenters, no revision was made to the calculations.

Another comment concerned the lack of dump stations for disposal of waste from portable toilets. In response, EPA notes that the pumpouts which received Clean Vessel Act grant monies came equipped with wand systems. The wands permit the portable toilets to be pumped out in a safe and sanitary manner.

Another commenter asked what a boater returning after 6 p.m., when all the facilities have closed, should do to pump out a holding tank. In response, the boater has three options: they can pump the holding tank prior to the next trip out during business hours; they can pump out at a facility on the Navesink River such as Marine Park which is open 24 hours a day; or they can discharge the holding tank if they are beyond the three mile limit. The same commenter stated that there are many commercial fishing vessels "in the area" that operate year round and questioned how such an operator would pump out in the off season. In response, EPA acknowledges that there are some vessels which operate off season "in the area", but we note that the commenter has not documented that such vessels are active on the Shrewsbury River. The application provided did not identify any off season commercial vessels which are based in or active on the Shrewsbury River.

Another comment recommended that current laws should be enforced by the State of New Jersey and the New Jersey Marine Police instead of proceeding with this No Discharge Area proposal. In response, EPA is obligated to act on the application submitted, and we are without authority to require the state and local applicants to implement alternate approaches.

Another comment relates to the scheduling of a press event for May 11, 2000 while the comment period was still open. In response, the tentative scheduling of the event in advance of a final determination is required due to the busy schedules of EPA and NJDEP senior managers. In the event that a final determination had not been made or that the final determination was to deny the request, the press event would be

canceled, rescheduled or held to explain the grounds for denial.

Another comment concerned a survey of the boats registered in the State of Maryland indicating that 5.2% of the vessels were equipped with either a Type I or Type II Marine Sanitation Device (MSD). This commenter stated that little if any environmental benefit would be gained by elimination of these flow through discharges. In response, EPA contends that elimination of any source of pollutants results in an environmental benefit. This individual also stated that it is a well known fact that the existing, national prohibition on the discharge of untreated vessel sewage waste is not enforced. In response, EPA notes that New Jersey has prosecuted two boat captains criminally for discharging vessel waste. New Jersey conducted an investigation of the fishing fleet operating out of the Belmar Marina and found one boat that was discharging into the Shark River, a designated No Discharge Area. Further, it must be noted that EPA's decision in this matter is limited to the adequacy and availability of pumpout facilities, and these comments are not relevant to this specific decision.

A comment was received that contends the establishment of a No Discharge Area makes the use of Type I and Type II MSDs illegal. In response, this is not the case. The discharge of sewage from any vessels while inside the Area is prohibited. The use of a Type I or Type II MSD is not illegal once outside the No Discharge Area.

One individual advocated enforcing the existing laws, revising the standards for Type I and Type II MSDs to reflect the current state of the art technology and establishment of No Discharge Areas only where scientific evidence shows that boats discharging sewage are the cause of the water quality problems. In response, EPA agrees that existing laws should be enforced. EPA also agrees that technology-based standards should be determined by the best technology available. EPA Headquarters is currently considering a review of the technology for this purpose. We disagree that No Discharge Areas should only be established in areas where boaters have been determined to be the source of water quality problems. EPA supports the reduction of all known sources of pollution to address water quality impairment problems. These sources should include point and non-point sources alike.

One comment received supports the establishment of the No Discharge Area.

This petition was made by the NJDEP in cooperation with the North Coast Regional Environmental Planning Council (NCREPC), New Jersey Marine Sciences, Marine Trades Association of New Jersey, Monmouth County Planning Board, Monmouth County Environmental Council and Monmouth County Board of Health. Members of the NCREPC include the Borough of Eatontown, the Borough of Fair Haven, the Borough of Little Silver, the City of Long Branch, the Borough of Monmouth Beach, the Borough of Oceanport, the Borough of Red Bank, the Borough of Rumson, the Borough of Sea Bright, the Borough of Shrewsbury, the Township of Shrewsbury, the Borough of Tinton Falls, and the Borough of West Long Branch. Upon receipt of this affirmative determination in response to this petition, NJDEP will completely prohibit the discharge of sewage, whether treated or not, from any vessel in Shrewsbury River in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

The Shrewsbury River is located in Monmouth County, New Jersey, and is part of the Atlantic Coastal Drainage Basin. The Shrewsbury River drains approximately 27 square miles of urban/suburban residential development and agricultural lands. The Shrewsbury River runs easterly from Eatontown, Tinton Falls, and West Long Branch, New Jersey and then joins the Navesink River and empties into Sandy Hook Bay. The No Discharge Area will include the navigable waters of the Shrewsbury River and all its tributaries downstream to the point where the Route 36 Bridge crosses the river. The eastern boundary of the Area is a line from Lat./Long. 73°58′45″, 40°22′40″ to Lat./Long. 73°58′58″, 40°23′04″. The western boundary of the Area is at Lat./Long. 74°06′48″, 40°19′12″.

Information submitted by the State of New Jersey and the Shrewsbury Regional Environmental Planning Council states that there are six existing pumpout facilities at five different locations available to service vessels which use the Shrewsbury River. Atlantis Yacht Club, located at 66 River Avenue, Monmouth Beach, operates a stationary pumpout. The pumpout is available from 8:00 a.m. to 5:00 p.m. beginning April until October and is operated by the marina staff. A $5.00 fee is charged for the use of the pumpout. Carriage House Marina, located at 1200 Ocean Avenue, Sea Bright, operates a stationary pumpout and a portable pumpout. The pumpouts are available from 9:00 a.m. to 6:00 p.m. beginning May until October and is operated by the marina staff. A fee of $5.00 is charged for the use of the pumpout. Channel Club Marina, located at Channel Drive, Monmouth Beach, operates a stationary pumpout. The pumpout is available from 8:00 a.m. to 6:00 p.m. beginning May until October and is operated by the marina staff. No fee is charged for use of the pumpout. Navesink Marina, located at 1410 Ocean Avenue, Sea Bright, operates a stationary pumpout. The pumpout is available from 8:00 a.m. to 5:00 p.m. beginning April until October and is operated by the marina staff. A $5.00 fee is charged for the use of the pumpout. Oceanport Landing, located at 417 River Street, Oceanport, operates a portable pumpout. The pumpout is available from 8:00 a.m. to 4:30 p.m. beginning April until September and is operated by the marina staff. A $5.00 fee is charged for use of the pumpout. In the case of slip holders and residents of Oceanport, the $5.00 fee is waived. None of the facilities have draft restrictions which would exclude boats access to the pumpouts.

Vessel waste generated from the pumpout facilities within the No Discharge Area is discharged into municipal sewer lines and is conveyed to the Northeast Monmouth Regional Sewage Authority (NJPDES Permit No. NJ0024520) at 1 Highland Avenue in Monmouth Beach for treatment.

According to the State's petition, the maximum daily vessel population for the waters of Shrewsbury River is approximately 2115 vessels. This estimate is based on (1) vessels docked at marinas and yacht clubs (1303 vessels), (2) vessels docked at non-marina facilities (584 vessels) and (3) transient vessels (228 vessels). The vessel population based on length is 2240 vessels less than 26 feet in length, 700 vessels between 26 feet and 40 feet in length and 175 vessels greater than 40 feet in length. Based on number and size of boats, and using various methods to estimate the number of holding tanks, it is estimated that between two and four pumpouts are needed for the Shrewsbury River. As previously stated, five pumpout facilities are currently available to service the boating population. Additionally, three additional pumpouts have applied for pumpout grant funding.

The EPA hereby makes a final affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Shrewsbury River in the County of Monmouth, New Jersey.

Dated: May 8, 2000.

**Jeanne M. Fox,**

*Regional Administrator, Region 2.*

[FR Doc. 00–12795 Filed 5–19–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

[FRL–6704–4]

### Application From the States of Utah and Arizona for the Prohibition of the Discharge of Vessel Sewage Into Lake Powell; Notice of Receipt

The States of Utah and Arizona have submitted a joint application to the United States Environmental Protection Agency (EPA) to prohibit the discharge of sewage from all vessels into Lake Powell. Section 312(f)(3) of the Clean Water Act, 33 U.S.C. 1322(f)(3), allows States to prohibit discharges of sewage, whether treated or not, into some or all of their waters, except that no such prohibition shall apply until the EPA determines that adequate facilities are reasonably available for the safe and sanitary removal and treatment of sewage from all vessels on the waters to be covered by the prohibition.

For the reasons explained below, the EPA proposes to make an affirmative determination that adequate facilities exist, meaning that the States' complete prohibition of sewage discharges from vessels on Lake Powell would become effective. The EPA officials authorized to make this determination are the undersigned Regional Administrators for EPA Regions VIII and IX. (Region VIII includes Utah, and Region IX includes Arizona.) Before making this determination, however, the EPA is publishing this notice in order to announce that it has received this application and to provide any interested member of the public with an opportunity to comment on the application and/or the EPA's proposed determination.

Utah and Arizona submitted their joint application to the EPA in January of 2000 in cooperation with the Navajo Nation and the National Park Service, Glen Canyon National Recreational Area. According to the application, jurisdictional and enforcement authority for Lake Powell will reside with the respective States and the National Park Service. The Utah Department of Environmental Quality, the Utah Department of Natural Resources, the Arizona Department of Environmental Quality, the Arizona Department of Fish and Game and the National Park Service, Glen Canyon National Recreation Area will all be the enforcing agents should this application be approved. The United States Coast Guard also will be asked to continue its enforcement role.

The joint application states that Lake Powell is 186 miles long, with approximately 2000 miles of shore line. It receives 2.5 million visitors annually, with 4.3 million visitor days. Approximately 95% of the Lake is in Utah and 5% is in Arizona. The Navajo Nation bounds on the southeast portion of Lake Powell, but the jurisdiction of the Navajo Nation is not affected by the application of Utah and Arizona.

As described in more detail in the States' application, there are six authorized vessel entry/take-out points on the Lake: Wahweap, Stateline, Hite, Bullfrog, Hall's Crossing, and Antelope Point. The first five locations have major pumpout facilities. Due to the geomorphology of the Lake, it is nearly impossible to remove or launch a vessel from any other point on the Lake. A major water accessible vessel pumpout facility is also located at Dangling Rope. Each major facility has multiple pumps. In addition, eight supplemental mechanically operated floating pump out facilities are located at various areas on the Lake. These pumps are: Warm Creek Bay, located in Warm Creek Bay; Dominiquez Butte, near Lake Powell Channel Mile Marker 22; Rock Creek, near Lake Powell Channel Mile Marker 35; Oak Bay, located near Lake Powell Channel Mile Marker 51; Escalante, located near Lake Powell Channel Mile Marker 68A; Rincon, near Lake Powell Channel Mile Marker 77A; Hall's Creek Bay, located in Hall's Creek Bay on the Eastside; and Forgotten Canyon, near Lake Powell Channel Mile Marker 106. There are sixty-nine pumpouts on the Lake. All the facilities identified above are operational 24 hours per day. None of the facilities identified will exclude any vessel because of insufficient water depth adjacent to the facility. There are no fees to pump out at any facility. Treatment of all wastes from the pumpout facilities is to be in conformance with Federal law.

The States of Utah and Arizona, the Navajo Nation, and the National Park Service have stated that the complete prohibition of discharge from all vessels of any sewage, treated or not, into Lake Powell is necessary. Numerous beach closures have occurred because of fecal coliform bacterial contamination over the last several years. While it has not been demonstrated that these closures are due solely to vessel sewage, such discharges may be the cause of the closures. Prevention of discharge of human wastes to the waters of the Lake is critically important to protect public health and water quality of this important national resource.

The joint application also provides the following information regarding vessel use on Lake Powell:

VESSELS WITH INSTALLED TOILETS

| | Resident | Transient | Total No. |
|---|---|---|---|
| Peak* Day Usage (Memorial Day through Labor Day) | 1,800 | 5,600 | 7,400 |
| Off Peak Day Usage | 275 | 225 | 500 |

*July 4, 1999.

PEAK* PUMPING STATION USE CALCULATIONS

| | |
|---|---|
| Total Vessels | 7,400. |
| Average Stay | 5 days. |
| Pumpout Events/Day | 1,480. |
| Pumps/Hoses | 69. |
| Pumpouts per Station per Day | 22. |
| Estimated Pumpout time per event. | 15 minutes. |
| Total Time of Pumping per Station @ Peak* Day. | 5.5 hours. |

*July 4, 1999.

For more information about the requirements for state applications for complete prohibitions of sewage discharges pursuant to section 312(f)(3) of the Clean Water Act, please see 40 CFR 140.4(a). Copies of the application letters from the States of Utah and Arizona are available for public inspection and copying at the EPA's Denver, Colorado office. The person to contact for information is Douglas Johnson (8EPR-EP), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, CO, 80202–2466 or by telephone at (303) 312–6834. If you are interested in commenting on this application, please address your comments to Mr. Johnson and be sure that your comments are received by the EPA no later than July 6, 2000.

Dated: May 12, 2000.

**Jack W. McGraw,**

*Acting Regional Administrator, Region VIII.*

Dated: May 5, 2000.

**Laura Yoshii,**

*Deputy Regional Administrator, Region IX.*

[FR Doc. 00–12790 Filed 5–19–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### Public Information Collections Approved by Office of Management and Budget

May 15, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Pub. L. 96–511. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Not withstanding any other provisions of law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning the OMB control numbers and expiration dates should be directed to Judy Boley, Federal Communications Commission, (202) 418–0214.

**Federal Communications Commission**

*OMB Control No.:* 3060–0926.

*Expiration Date:* 05/31/2003.

*Title:* Transfer of the 4.9 GHz from Federal Government Use to the Private Sector—NPRM.

*Form No.:* FCC 601–605.

*Estimated Annual Burden:* 11,300 burden hours annually, 19 hours per response; 600 responses.

*Description:* The various information reporting and verification requirements, and the prospective coordination requirement will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934. Such information has been used in the past and will continue to be used to minimize interference, verify that applicants are legally and technically qualified to hold licenses, and to determine compliance with Commission rules.

*OMB Control No.:* 3060–0809.

*Expiration Date:* 04/30/2003.

*Title:* Communications Assistance for Law Enforcement Act, Report and Order and Order on Reconsideration.

*Form No.:* N/A.

*Estimated Annual Burden:* 36,000 burden hours annually, approximately 6 hours per response; 6,000 responses.

*Description:* The information submitted to the Commission will be used to determine whether or not telecommunications carriers are in conformance with the Communications Assistance for Law Enforcement Act requirements.

Federal Communications Commission.

**Magalie Roman Salas,**

*Secretary.*

[FR Doc. 00–12766 Filed 5–19–00; 8:45 am]

BILLING CODE 6712–01–U

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

*Type of Review:* Renewal of a currently approved collection.

*Title:* Procedures for Monitoring Bank Protection Act Compliance.

*OMB Number:* 3064–0095.

*Annual Burden:*

Estimated annual number of respondents: 5,800.

Estimated time per response: ½ hour.

Average annual burden hours: 2,900 hours.

*Expiration Date of OMB Clearance:* June 30, 2000.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

*FDIC Contact:* Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

*Comments:* Comments on this collection of information are welcome and should be submitted on or before June 21, 2000 to both the OMB reviewer and the FDIC contact listed above.

**ADDRESSES:** Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

**SUPPLEMENTARY INFORMATION:** The collection of information is used by FDIC bank examiners to assure that insured nonmember banks comply with 12 CFR Part 326 (Minimum Security Devices and Procedures for Insured Nonmember Banks), which implements the Bank Protection Act of 1968 and to review bank security programs.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00–12730 Filed 5–19–00; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL ELECTION COMMISSION

**[Notice 2000–11]**

### Computerized Magnetic Media Requirements for Presidential Committees

**AGENCY:** Federal Election Commission.

**ACTION:** Announcement of Changes to the Computerized Magnetic Media Requirements for Presidential Primary, General Election and Convention Committees.

**SUMMARY:** The Commission has revised its document entitled "Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding" ("CMMR"). The CMMR sets forth technical standards designed to ensure the compatibility of magnetic media provided for Commission use during the matching fund submission process and mandatory audits of these publicly-funded campaign committees.

**EFFECTIVE DATE:** April 13, 2000.

**FOR FURTHER NFORMATION CONTACT:** Rick Halter, Deputy Assistant Staff Director, or Charles Ratcliff, Data Systems Development Division; 999 E Street NW, Washington, DC 20463; (202) 694–1200 (Mr. Halter), (202) 694–1295 (Mr. Ratcliff), or (800) 424–9530 (toll free).

**SUPPLEMENTARY INFORMATION:** On June 21, 1990, the Federal Election Commission adopted a document entitled "Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding" ("CMMR"). The CMMR was revised on

January 30, 1992 to reflect technological advances during the intervening period (*see* 57 FR 4453 (Feb. 5, 1992)), and again on January 11, 1996 (*see* 61 FR 6245 (Feb. 16, 1996)). This Notice summarizes the most recent revisions, which were adopted by the Commission on April 13, 2000 and apply to all publicly-funded committees that participate in the 2000 presidential election.

The CMMR sets forth technical standards designed to ensure the compatibility of magnetic media provided for Commission use during the matching fund submission process, which is also discussed in the Commission's "Guideline for Presentation in Good Order" ("PIGO"), and the mandatory audits of publicly-funded presidential campaign and convention committees. Each presidential candidate and convention committee must agree to maintain and provide computerized magnetic media in the format prescribed by the CMMR, if the committee maintains or uses computerized information containing any specified categories of data. *See* 11 CFR 9003.1(b)(4), 9008.3(a)(4)(v), and 9033.1(b)(5). The technical standards in the CMMR include general requirements for magnetic tape and magnetic diskettes, as well as file format specifications for records of receipts, including contributors, vendors, invoices, bank accounts and check files.

Until this latest revision, the CMMR included file format specifications for records of disbursements. While the same information is still required, no particular format is now specified.

The CMMR has also been revised to reflect technological advances in computer software since the 1996 revisions. It thus provides campaigns with more options than the previous version of the CMMR. The Commission continues to encourage committees to provide samples of their magnetic tape or magnetic diskettes, so that the Commission may determine whether the samples comply with the specifications established.

The CMMR is included as Appendix 2 to the Commission's *Financial Control and Compliance Manual For Presidential Primary Candidates Receiving Public Financing* (April 2000). It is also available from the Commission's Public Records Office or the Audit Division, and will soon be available on the Commission's web site, www.fec.gov. The Public Records Office can be reached at (800) 424–9530, extension #3 (toll free), or 202–694–1120. That Office also responds to E-mail requests at pubrec@fec.gov.

Please note that the technical requirements found in the CMMR are not intended to promote or discourage the use of any particular computer system or software. The Commission believes that committees should have as much discretion as possible in selecting the computer equipment they wish to use, determining what types of financial records and information should be computerized, and deciding how the computerized information is maintained. However, committees are expected to present this financial information to the Commission in the format specified in the CMMR.

Dated: May 17, 2000.

**Darryl R. Wold,**

*Chairman, Federal Election Commission.*

[FR Doc. 00–12775 Filed 5–19–00; 8:45 am]

BILLING CODE 6715–01–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1327–DR]**

### Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Kansas (FEMA–1327–DR), dated May 3, 2000, and related determinations.

**EFFECTIVE DATE:** May 11, 2000

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate; Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of Kansas is hereby amended to include the Public Assistance program for the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 3, 2000:

Labette and Neosho Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–12811 Filed 5–19–00; 8:45 am]

BILLING CODE 6718–02–P

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1328–DR]**

### Missouri; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1328–DR), dated May 12, 2000, and related determinations.

**EFFECTIVE DATE:** May 12, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 12, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe thunderstorms and flash flooding on May 6–7, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Peter Martinasco of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Crawford, Franklin, Gasconade, Jefferson, St. Charles, Ste. Genevieve, St. Francois, St. Louis County, Warren and Washington Counties for Individual Assistance.

All counties within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**James L. Witt,**

*Director.*

[FR Doc. 00–12804 Filed 5–19–00; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1329–DR]**

### New Mexico; Major Disaster and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–1329–DR), dated May 13, 2000, and related determinations.

**EFFECTIVE DATE:** May 13, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 13, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of New Mexico, resulting from a severe forest fire beginning on May 5, 2000, and continuing is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of New Mexico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is requested and is determined to be warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mark S. Ghilarducci of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Mexico to have been affected adversely by this declared major disaster:

Bernalillo, Cibola, Los Alamos, McKinley, Mora, Rio Arriba, Sandoval, San Juan, San Miguel, Santa Fe, Taos, and Torrance Counties for Individual Assistance.

All counties within the State of New Mexico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**James L. Witt,**

*Director.*

[FR Doc. 00–12805 Filed 5–19–00; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–1329–DR]**

### New Mexico; Amendment No. 1 to Notice of a Major Disaster Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–1329–DR), dated May 13, 2000, and related determinations.

**EFFECTIVE DATE:** May 16, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster for the State of New Mexico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 13, 2000. Act (42 U.S.C. 5121 *et seq.*), as follows:

Chaves, DeBaca, Dona Ana, Eddy, Guadalupe, Lincoln, Otero, Sierra, and Socorro Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

**Lacy E. Suiter,**

*Executive Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–12806 Filed 5–19–00; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–3154–EM]**

### New Mexico; Emergency and Related Determinations

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of an emergency for the State of New Mexico (FEMA–3154-EM), dated May 10, 2000, and related determinations.

**EFFECTIVE DATE:** May 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated May 10, 2000, the President declared an emergency under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the emergency conditions in certain areas of the State of New Mexico, resulting from severe fire threats on May 10, 2000, and continuing is of sufficient severity and magnitude to warrant an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such an emergency exists in the State of New Mexico.

You are authorized to coordinate all disaster relief efforts which have the purpose of alleviating the hardship and suffering caused by the emergency on the local population, and to provide appropriate assistance for required emergency measures, authorized under Title V of the Stafford Act to save lives, protect property and public health and safety, or to lessen or avert the threat of a catastrophe in the designated areas. You are further authorized to identify, mobilize, and provide at your discretion, equipment and resources necessary to alleviate the impacts of the emergency and such other forms of assistance under Title V of the Stafford Act, as you may deem appropriate. In addition, you are authorized to provide emergency protective measures (Category B). This assistance excludes regular time costs for subgrantees regular employees. Assistance under this emergency is authorized at 75 percent Federal funding for eligible costs.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Mark S. Ghilarducci of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of New Mexico to have been affected adversely by this declared emergency:

The counties of Los Alamos, Sandoval and Santa Fe for assistance as specified in the declaration letter quoted above.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.

**James L. Witt,**

*Director.*

[FR Doc. 00–12809 Filed 5–19–00; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[FEMA–3154–EM]**

### New Mexico; Amendment No. 1 to Notice of an Emergency Declaration

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of an emergency for the State of New Mexico, (FEMA–3154–EM), dated May 10, 2000, and related determinations.

**EFFECTIVE DATE:** May 11, 2000.

**FOR FURTHER INFORMATION CONTACT:** Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

**SUPPLEMENTARY INFORMATION:** The notice of an emergency for the State of New Mexico is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of May 10, 2000:

Rio Arriba County for assistance as specified in the May 10, 2000, declaration letter.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

**Robert J. Adamcik,**

*Deputy Associate Director, Response and Recovery Directorate.*

[FR Doc. 00–12810 Filed 5–19–00; 8:45 am]

**BILLING CODE 6718–02–P**

## FEDERAL EMERGENCY MANAGEMENT AGENCY

**[Docket No.: FEMA–REP–1–RI–1]**

### Rhode Island Ingestion Pathway Plan for Millstone Nuclear Power Plant and Pilgrim Nuclear Power Station

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Notice.

**SUMMARY:** FEMA gives notice of approval of the State of Rhode Island Ingestion Pathway Plan in support of the overall emergency preparedness for the Millstone Nuclear Power Plant and Pilgrim Nuclear Power Station.

**DATES:** This certification and approval are effective as of April 14, 2000.

**FOR FURTHER INFORMATION CONTACT:** Regional Director, FEMA Region I, 442 J.W. McCormack POCH Boston, and Massachusetts 02109. Please refer to Docket No. FEMA–REP–1–RI–1.

**SUPPLEMENTARY INFORMATION:** In accordance with the Federal Emergency Management Agency (FEMA) Rule 44 CFR, Part 350, the State of Rhode Island submitted its ingestion pathway plan in support of the overall emergency preparedness for the Millstone Nuclear Power Plant and Pilgrim Nuclear Power Station. The plan was submitted to the Regional Director of FEMA Region I for review and approval on April 3, 1996. The Regional Director forwarded a recommendation for formal approval of the Rhode Island Plan to FEMA Headquarters for review and approval on November 29, 1999, in accordance with Section 350.11. This evaluation was based on a review of the plan; the joint exercise conducted on August 10–11, 1999, in accordance with section 350.9 for the exercise for Pilgrim Nuclear Power Station; and, a report of the public meeting held on March 20, 2000, to discuss the portion of the State of Rhode Island's plan and the Millstone

Nuclear Power Plant plan for Connecticut Communities in accordance with section 350.10. Based on an overall evaluation, I find and determine that the State of Rhode Island Ingestion Pathway plans can be implemented and are adequate to protect the health and safety of the public living in the Rhode Island portion of the ingestion pathway of Millstone Nuclear Power Plant and Pilgrim Nuclear Power Station by providing reasonable assurance that appropriate protective measures can be taken in the event of an accident at either one of these sites. FEMA will continue to review the status of the ingestion pathway plan in accordance with Sections 350.5 and 350.9.

Dated: May 16, 2000.

**Kay C. Goss,**

*Associate Director for Preparedness, Training, and Exercises.*

[FR Doc. 00–12808 Filed 5–19–00; 8:45 am]

BILLING CODE 6718–06–P

## FEDERAL RESERVE SYSTEM

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Board of Governors of the Federal Reserve System (Board).

**ACTION:** Notice and request for comment.

**SUMMARY:** In accordance with the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of the Currency (OCC) (collectively, the "agencies"), hereby give notice that they plan to submit to the Office of Management and Budget (OMB) requests for review of the information collection system described below. The Agencies may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number. The Agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), propose to extend without revision the following currently approved information collection: the Country Exposure Report for U.S. Branches and Agencies of Foreign Banks (FFIEC 019). However, minor clarifications are proposed to the instructions. The Board is publishing the request for extension on behalf of the agencies. At the end of the comment period, the comments and recommendations received will be analyzed to determine whether the FFIEC and the agencies should modify the information collections. The Board will then submit the reports to OMB for review and approval.

**DATES:** Comments must be submitted on or before July 21, 2000.

**ADDRESSES:** Interested parties are invited to submit written comments to any or all of the agencies. All comments should refer to the OMB control number and will be shared among the agencies.

*Board:* Written comments on the FFIEC 019 should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9:00 a.m. and 5:00 p.m., except as provided in section 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12(a). A copy of the comments may also be submitted to the OMB desk officer for the agencies: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Additional information or a copy of the collection may be requested from: *Board:* Mary M. West, Chief, Financial Reports Section, (202) 452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, (202) 452–3544, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551.

**SUPPLEMENTARY INFORMATION:** Proposal to extend for three years with minor instructional clarification the following currently approved collection of information:

*Report title:* Country Exposure Report for U.S. Branches and Agencies of Foreign Banks.

*Form number:* FFIEC 019.OMB number: 7100–0213.

*Frequency of response:* Quarterly.

*Affected Public:* U.S. branches and agencies of foreign banks.

*Number of respondents:* 230.

*Estimated average hours per response:* 10 hours.

*Estimated Annual reporting hours:* 9,200 hours.

**General Description of Report**

This information collection is mandatory: 12 U.S.C. 3105 and 3108 for the Board of Governors of the Federal Reserve System; sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1820) for the Federal Deposit Insurance Corporation; and the National Bank Act (12 U.S.C. 161) for the Office of the Comptroller of the Currency). This information collection is given confidential treatment. (5 U.S.C. 552(b)(8)). Small businesses (that is, small U.S. branches and agencies of foreign banks) are affected.

**Abstract**

All individual U.S. branches and agencies of foreign banks that have more than $30 million in direct claims on residents of foreign countries must file the FFIEC 019 report quarterly. Currently, all respondents report adjusted exposure amounts to the five largest countries having at least $20 million in total adjusted exposure. The Agencies collect this data to monitor the extent to which such branches and agencies are pursuing prudent country risk diversification policies and limiting potential liquidity pressures. No changes are proposed to the FFIEC 019 reporting form, however, minor clarifications are proposed to the instructions.

**Current Actions**

The instructional clarifications to the FFIEC 019 report that are the subject of this notice have been approved by the Agencies for implementation as of the September 30, 2000, report date. The proposed clarifications involve the treatment of credit derivatives as guarantees.

**Request for Comment**

Comments are invited on:

a. Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

b. The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collections on respondents,

including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance, and purchase of services to provide information.

Comments submitted in response to this notice will be shared among the agencies and will be summarized or included in the agencies' requests for OMB approval. All comments will become a matter of public record. Written comments should address the accuracy of the burden estimates and ways to minimize burden including the use of automated collection techniques or the use of other forms of information technology as well as other relevant aspects of the information collection request.

Board of Governors of the Federal Reserve System, May 16, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–12706 Filed 5–19–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 5, 2000.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. Ann Doolin Adcock*, Dumas, Arkansas; to acquire additional voting shares of M & F Financial Corporation, Dumas, Arkansas, and thereby indirectly acquire additional voting shares of Merchants and Farmers Bank, Dumas, Arkansas.

Board of Governors of the Federal Reserve System, May 16, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–12707 Filed 5–19–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 15, 2000.

**A. Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

*1. Northwest Bancorporation, Inc.*, Houston, Texas; to merge with Redstone Bancorporation, Inc., Houston, Texas, and thereby indirectly acquire Redstone Bank, N. A., Houston, Texas.

Board of Governors of the Federal Reserve System, May 16, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–12709 Filed 5–19–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 2000.

**A. Federal Reserve Bank of New York** (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045–0001:

*1. National Bank of Greece, S.A.*, Athens, Greece; to acquire NBG Asset Management Inc. and NBG Securities Inc., both of New York, New York, and thereby indirectly acquire through NBG International Limited, London, England, indirect control of Newbrook Group LLC, New Brook Capital Management, Inc., Newbrook Capital Management LLC, and Newbrook Securities LLC, and thereby engage in investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y; brokerage, riskless principal, and private placement activities, pursuant to §§ 225.28(b)(7)(i), (ii) and (iii) of Regulation Y, respectively; and private investment fund activities, including acting as a commodity pool operator for and controlling private investment funds that invest solely in assets that a bank holding company is permitted to hold

directly, see Travelers Group, Inc., and Citicorp, 84 Fed. Res. Bull. 985 (1998).

Board of Governors of the Federal Reserve System, May 16, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–12708 Filed 5–19–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL TRADE COMMISSION

### Children's Online Privacy Protection

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Notice of opportunity to participate and obtain co-sponsorship in agency public awareness campaign.

**SUMMARY:** The FTC seeks to identify organizations interested in participating in the FTC's public awareness campaign concerning the Children's Online Privacy Protection Act and the FTC Rule that implements the Act. Participation by such organizations will involve the development and dissemination of informational materials co-sponsored by the FTC. Interested parties should submit a written statement explaining their interest and qualifications.

**DATES:** The FTC has not established a deadline, but it encourages interested organizations to submit the requested statement as early as possible.

**FOR FURTHER INFORMATION CONTACT:** Mr. Randy Satterfield, (202) 326–3407, Office of Consumer and Business Education, Bureau of Consumer Protection, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, or rsatterfield@ftc.gov.

**SUPPLEMENTARY INFORMATION:** Effective April 21, 2000, the Children's Online Privacy Protection Rule, 16 CFR Part 312, issued by the FTC to implement the Children's Online Privacy Protection Act (COPPA), 15 U.S.C. 6501 *et seq.*, prohibits unfair or deceptive acts or practices in connection with the collection, use, or disclosure of personally identifiable information from and about children on the Internet. The Commission voted to issue its final Rule on October 20, 1999, and the Rule was published at 64 FR 59888 (November 3, 1999).

To promote greater public awareness of the Rule and the COPPA, the FTC has initiated a Children's Online Privacy Protection Act Communications Campaign ("COPPA Communications Campaign"). The Campaign is designed to provide parents, guardians, youngsters, teachers, and other members of the public with information about privacy on the Internet and the law's protections. The Campaign will help parents understand the legal obligations of Web site operators under the COPPA as well as options that parents have for protecting their children's personal information. You can visit the Campaign's Web site at the following Internet address: www.ftc.gov/kidzprivacy.

The Commission believes that encouraging the active involvement of a wide variety of corporations, associations, organizations, and other entities in this effort will lead to a broad and effective educational campaign. Thus, as part of its Campaign, the FTC is seeking to foster the efforts of other public and private for-profit and non-profit organizations in the development and dissemination of informational materials about COPPA and the FTC's Rule, by allowing such organizations to list the FTC as a co-sponsor in connection with their materials, subject to FTC staff review and approval of such materials. (Interested organizations should note at the outset that this co-sponsorship program will not be funded or supported by agency grant, contract, or otherwise, so each organization is expected to bear its own costs of participation.)

The Commission requests that organizations interested in pursuing such co-sponsorship opportunities submit a written statement to the FTC contact listed above, describing the background and nature of the organization's interest or role in children's privacy and/or the Internet, and the organization's experience and expertise in developing and disseminating public information materials addressing those issues. The statement must also describe the organization's ability to reach the target audiences discussed above, including the organization's financial, managerial, and operational capacity and resources for the printing, production, and distribution of brochures or booklets, public service spots, videos, Web-based promotions, posters, flyers, advertising, etc. The statement must also include any other information that may be relevant, such as pertinent individual or organizational affiliations and the potential, if any, for apparent or actual conflicts of interest. In addition, the statement must expressly acknowledge the organization's understanding and agreement that FTC co-sponsorship, if any, of the organization's activities would not be funded or supported by agency grant, contract, or otherwise, would not create any financial or property right in any natural or artificial person, and would be subject to FTC review and approval of the public information materials or activities to be co-sponsored. Finally, an authorized representative of the organization must sign the statement. The FTC will consider the organization's statement and other information made available to or obtained by the agency in determining whether it should co-sponsor or continue to co-sponsor a particular organization's public information efforts.

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

[FR Doc. 00–12754 Filed 5–19–00; 8:45 am]

BILLING CODE 6750–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[30DAY–31–00]**

### Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

**Proposed Projects**

1. Evaluation of Viral Hepatitis Educational Materials—New—National Center for Infectious Disease (NCID). The purpose of the proposed study is to assess the usefulness of hepatitis educational materials developed and distributed by the Hepatitis Branch, CDC. Annually, 125,000—200,000 Americans are infected with hepatitis A virus (HAV) and results in approximately 100 deaths. The estimated cost associated with HAV infections is estimated at $200 million a year in medical care and lost work days. An estimated 1 million to 1.25 million Americans are chronically infected with hepatitis B virus (HBV) and 4,000 to 5,000 die each year due to resultant cirrhosis and liver cancer. The estimated cost associated with HBV infections is estimated at $700 million a year in medical care and lost work days. It is estimated that 3.9 million

Americans have been infected with hepatitis C virus (HCV), 2.7 million of which are chronically infected. Not including the cost of liver transplantation, the estimated cost associated with HCV infections is $600 million a year in medical care and lost work days.

The annual burden hours are estimated to be 2403.

| Form name | Number of respondents | Number of responses/respondent | Avg. burden per responses (in hours) |
|---|---|---|---|
| Phone | 20 | 1 | 10/60 |
| Written | 14400 | 1 | 10/60 |

Dated: May 16, 2000.

**Nancy Cheal,**

*Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–12739 Filed 5–19–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00080]**

### Optimizing Strategies To Provide Sexually Transmitted Disease (STD) Partner Services; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement research program for Optimizing Strategies to Provide STD Partner Services. CDC is committed to achieving the health prómotion and disease prevention objective of "Healthy People 2010", a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus area(s) of Sexually Transmitted Diseases. For the conference copy of "Healthy People 2010", visit the Internet site: http://www.health.gov/healthypeople. The goal of this cooperative agreement research program is to develop and evaluate the delivery of cost-effective, innovative, and confidential approaches to providing effective partner services within a time frame that interrupts the chain of STD transmission. Partner services (PS) are a critical component of STD control and prevention in public health practice.

Initially, this process was named "contact tracing," but was renamed "partner notification" in the past two decades. Three primary strategies for partner notification are described in the literature, although other variations are also employed. The most common strategies are patient referral (patients are encouraged to notify sexual partners); provider referral, (health care staff, traditionally in the health department, notify partners); or contract referral (a time limit is agreed upon for patient referral, after which provider referral is initiated). In this program announcement, "partner services" is used to describe the constellation of services that should be provided to the sexual partners of individuals in whom a sexually transmitted disease has been detected and treated.

The purpose of PS is to break the chain of infection and re-infection that can occur when a STD is treated in only a part of a sexual dyad or network. STDs are often asymptomatic, many infected individuals are unaware of their infection, thus symptom-driven patient presentation for diagnosis and treatment fails to reach many people with STDs. PS may shorten the duration of infection in many additional individuals by identifying, treating, and counseling the sex partners of patients with STDs. Furthermore, PS offers a unique opportunity to assist at-risk, infected and uninfected people to adopt safer behaviors that will enable them to remain STD-free and is a key component of public health practice. The objectives of partner services include identifying, locating, notifying, testing, treating, and providing counseling to reduce STD risk for the sex partners of an individual diagnosed with chlamydia, gonorrhea, syphilis, trichomoniasis, herpes, or human immunodeficiency virus (HIV).

Despite the importance of partner services in public health practice, relatively little scientific information is available on the impact on disease transmission or cost effectiveness of various approaches, particularly for STDs that are treated in the private sector. Another limitation of the current science base is that existing data on partner services has been generated from federal, state, and local public health programs that have a legal responsibility to provide PS. This information does not reflect partner services in other clinical settings where the majority of STD diagnosis and treatment take place. At least half of STD care is sought from private providers. Therefore, further research across the full spectrum of STD treatment providers with respect to PS is clearly needed. Current data from a national survey of providers suggests that the most common method of notification in the private sector is patient referral, although the rate of new infections uncovered in the private sector from this method is not known. Fewer than 5 percent of providers reported engaging in provider referral and less than 50 percent consistently reported patients' names to health departments after a diagnosis of chlamydia, gonorrhea, syphilis, or HIV infection. Case reporting from providers and from laboratories enables the local health department to provide partner services. However, providers may also diagnose and treat presumptively without performing a laboratory test, and relatively little is known about case reporting or partner services following presumptive treatment.

Provider-perceived barriers to offering partner services include concerns about negative effects on relationships with patients and their partners, lack of training and time for these activities, and lack of reimbursement.

Nevertheless, providers agreed that PS could promote appropriate behavior and attitude change, and reduce (re)infection rates. In summary, this survey confirmed that the effectiveness of PS in the private sector is unknown and reporting of names to agencies that conduct PS is limited.

Current methods of PS require substantial time and effort from public health staff, although data estimating the magnitude of the reduction in STD incidence or prevalence within communities that is attributable to PS are currently lacking. Recent advances in STD detection and treatment, information system hardware and software, and behavioral interventions offer an unprecedented opportunity to:

(1) Design and evaluate innovative strategies that increase the effectiveness of partner elicitation;

(2) Improve the timely connection of partners with appropriate detection, treatment, and counseling services;

(3) Intervene to lower STD risk among sex partners; and

(4) Evaluate the cost-effectiveness of new methods in comparison to current strategies.

This is likely to require complex evaluation that moves from the index patient to the patient-partner dyad, to sexual networks, and to community levels of evaluation.

CDC envisions that data from this research program will be used to design cost-effective strategies that

(a) Augment the effectiveness of PS in the public and private sectors;

(b) Reduce the incidence and the prevalence of curable STDs; and

(c) Utilize the opportunities inherent in partner services to lower partners' risk behaviors.

Incidence and prevalence reductions should be demonstrably attributable to innovations in PS.

This program has four general objectives:

1. To develop, apply, and evaluate confidential and innovative partner services across a variety of practice settings using new techniques or technologies and to assess their effectiveness and acceptability in comparison with current PS methods;

2. To develop and assess the feasibility of policy level interventions that may be needed to make innovative strategies feasible;

3. To assess the cost-effectiveness of proposed alternatives in comparison with current methods of partner services; and

4. To develop mathematical models that assess the impact of current and alternative partner service approaches on rates of incident and prevalent infections.

**B. Eligible Applicants**

Applications may be submitted by public and private nonprofit and for-profit organizations; governments and their agencies; that is, universities, colleges, research institutions, managed care organizations, hospitals; State and local governments or their bona fide agents; and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Eligible applicants should collaborate with their local or state health department because this linkage is critical to the successful conduct of this research.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

**C. Availability of Funds**

Approximately $750,000 is available in FY 2000 to fund the first year of approximately 2–3 awards. It is expected that the average award will be $250,000, ranging from $100,000 to $350,000. It is expected that the awards will begin by September 30, 2000 and will be made for a 12-month budget period for a maximum project period of four years. Funding estimates may change. Continuation awards within an approved project period will be based on satisfactory progress as evidenced by required reports and on the availability of funds.

*Funding Preferences*

Funding preference will be given:

1. To applicants with access to subjects in public and private settings where STDs are diagnosed and treated;

2. To achieve geographic distribution;

3. To applications that address more than one STD;

4. To applications that involve collaboration with health departments; and

5. To applications that incorporate a mix of provider settings where chlamydia, gonorrhea, syphilis, trichomoniasis, herpes, or human immunodeficiency virus (HIV) are detected and treated.

Collaborative partnerships are strongly encouraged with managed care organizations, private practice settings, family planning clinics, or community and migrant health centers in addition to traditional public STD clinics.

**D. Program Requirements**

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

*1. Recipient Activities*

a. Design and conduct research to address the study question(s) as listed below. Applicants may address one or more of the study questions listed and are encouraged to address at least two.

Study Questions

(1) In comparison to current strategies, what innovative methods can be developed and evaluated to increase the timeliness, effectiveness, and cost-effectiveness of partner services across a variety of practice settings?

PS interventions should be tailored to patient, partner, or provider characteristics, to specific STDs, and to different practice settings in order to produce the most effective partner services. It is also important to assess methods that increase patient's cooperation, recall, and accuracy with respect to (a) providing names and locating information for partners or (b) following through with patient referral. Evaluation of the barriers that inhibit patients from naming partners or delivering patient referral in conjunction with interventions that overcome those barriers and increase the proportion of partners who receive medical evaluation, treatment, and counseling are encouraged. Development and evaluation of strategies that promote the timely and appropriate delivery of partner services are encouraged. There is also interest in identifying methods for delivering partner services that promote changes in partners' risk behaviors and how this may vary by whether or not the exposed partner had acquired an STD.

For new strategies, techniques, or technologies, identify how they can be implemented in public and private health care settings. Evaluations should address to what extent and how the use of the new technologies or techniques increase the productivity of staff and reduce the barriers to timely and effective partner services for staff, patients, and partners.

Finally, there is programmatic interest in assessing the cost-effectiveness of innovative strategies, new techniques, and new technologies. Such interest includes accurately determining the incremental cost of identifying and locating partners and infections using innovative strategies and their comparison with the cost of current strategies. Cost-effectiveness measures should include research, training, and program costs separately so that implementation can be examined independently of research costs.

Applications that combine some or all of the above elements are encouraged. Preference will be given to applications that:

(a) Propose the development, implementation, and evaluation of innovative strategies;

(b) Present a detailed plan for measuring and evaluating outcomes;

(c) Will be able to identify which elements of a proposed strategy account for its effectiveness;

(d) Make the incremental value of the strategy visible; and

(e) Incorporate technology transfer to settings where STDs are diagnosed and treated.

(f) Compare proposed innovative strategies with traditional methods of partner services and clarify whether

these new techniques or technologies offer any added value to current partner service activities.

(2) What policy level interventions can be developed, implemented, and evaluated to promote partner services across a broad spectrum of health care settings?

This may include identification of the policy sources, their policy function (advisory, regulatory, implementation), and the introduction and evaluation of policy-level changes that promote the improved delivery of partner services. There is interest in funding interventions that can produce the necessary policy changes, including linking the process of such interventions with specific outcomes (*e.g.*, policy changes in health care plans that make partner services reimbursable).

(3) Apply mathematical models to assess the impact of current and alternative partner service approaches on rates of incident and prevalent infections?

The application of mathematical models to assess which current strategies and proposed alternatives may be most valuable in increasing the timeliness and effectiveness of partner services are also encouraged. Consideration will be given to the use of existing databases. The use of cost-effectiveness data as part of a model (or series of models) is encouraged.

b. Evaluate and analyze the research data.

c. Disseminate study findings through presentations at scientific meetings and publications in peer-reviewed journals.

*2. CDC Activities*

A cooperative agreement reflects an assistance relationship between the Federal Government and the recipient in which substantial programmatic involvement is anticipated about the scientific or technical management of an activity during its performance. The CDC program office will:

a. Provide up-to date scientific information, technical assistance, and guidance in the design and conduct of the research.

b. As needed, assist in the development of a research protocol for local IRB review at cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. As needed, assist in data analysis and the preparation of manuscripts.

d. Convene meetings of all grantees for the exchange of information.

**E. Application Content**

Applications must be developed in accordance with the information contained in this program announcement, the PHS 398 Grant Application, and the instructions provided in this section. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

**Instructions**

The program narrative for sections 1–5 below should be no more than 25 single-spaced pages, printed on one side, with one-inch margins, and 10 or 12 cpi typeface. All pages, including appendices, should be numbered sequentially. The narrative must contain the following sections in the order presented below:

*1. Abstract:* Provide a brief abstract of the project. The abstract must reflect the project's focus and the length of the project period (maximum is 4 years) for which assistance is being requested (see "Availability of Funds" for additional information).

*2. Specific Aims:* List the broad, long-term objectives and what the specific research proposed in this application is intended to accomplish. State the hypotheses to be tested. One page is recommended.

*3. Background and Significance:* Briefly sketch the background leading to the present application, critically evaluate existing knowledge, and specifically identify the gaps which the project is intended to fill. State concisely the importance and health relevance of the research described in this application by relating the specific aims to the broad, long-term objections. Two to three pages are recommended.

*4. Preliminary Studies:* Use this section to provide an account of the principal investigator/program director's preliminary studies pertinent to the application information that will help to establish the experience and competence of the investigator to pursue the proposed project. The complete references to appropriate publications and manuscripts submitted or accepted for publication may be listed and are not part of the page limitations. Five collated sets of no more than 10 such items of background material may be submitted in an appendix. Six to eight pages are recommended for the narrative portion of the Preliminary Studies section.

*5. Research Design and Methods:* Describe the research design and the procedures to be used to accomplish the specific aims of the project. Include how the data will be collected, analyzed, and interpreted. Describe any new methodology and its advantage over existing methodologies. Discuss the potential difficulties and limitations of the proposed procedures and alternative approaches to achieve the aims. As part of this section, provide a tentative sequence or timetable for the project. Describe specific study protocols or plans for the development of study protocols. Describe the nature and extent of collaboration with CDC and/or others during various phases of the project. Describe in detail a plan for evaluating study results and for evaluating progress toward achieving project objectives.

*6. Inclusion of Racial and Ethnic Populations:* Describe the degree to which applicant will meet requirements regarding the inclusion of women, and members of minority groups in the proposed study.

*7. Human Subject Involvement:* Describe procedures that will provide for the protection of human subjects. Address how these procedures are in compliance with Federal regulations.

**F. Submission and Deadline**

*Letter of Intent (LOI)*

For planning purposes, a letter of intent to apply is requested and needed to staff the review panels, but not required, from potential applicants. Your letter of intent should include the following information: Program Announcement Number [00080], name and address of institution; name address, and telephone number of contact person; and specific objectives to be addressed by the proposed project.

The letter of intent must be submitted on or before June 12, 2000 to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

**Application**

Applicants should submit five copies of PHS–398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction Sheet for PHS 398.

Forms are available at the following Internet address: www.cdc.gov/...Forms, or in the application kit. On or before July 14, 2000 submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Deadline*: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for distribution to the review panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Applications*: Applications, which do not meet the criteria in (a) or (b) above, are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

Upon receipt, applications will be reviewed by CDC for completeness and responsiveness to the purpose of this request for applications (RFA) (as described in Section A), and as outlined under Eligible Applicants and Program Requirements (Items A to B). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

All proposals will be independently reviewed for scientific merit by no less than three reviewers with appropriate expertise using current National Institutes of Health (NIH) review criteria to evaluate the methods and scientific quality of the proposal. Factors to be considered will include:

1. The specific aims of the research project, *i.e.*, the intended accomplishment of the specific research proposal, and the hypothesis to be tested. (5 percent)

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and identification of specific knowledge gaps which the proposal is intended to fill. (10 percent)

3. The significance and innovation from scientific and programmatic standpoints of the proposed research, including the adequacy of the theoretical and conceptual framework for the research. (20 percent)

4. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, statistical analysis plan, and evaluation plan. (40 percent)

5. The extent to which the research will lead to feasible, cost-effective interventions. (10 percent)

6. Qualifications and appropriateness of the proposed personnel to accomplish the proposed activities as well as the degree of commitment and cooperation of proposed collaborators and organizations (as evidenced by letters detailing the nature and extent of the involvement). (10 percent)

7. Research Capacity—adequacy of existing and proposed facilities and resources. (5 percent)

8. Gender and minority issues. Does the application include:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

9. Human Subjects—What are the strategies for the recruitment and retention of human subjects? Are the procedures proposed adequate for the protection of human subjects and are they fully documented? Are all procedures in compliance with applicable published regulations and 45 CFR 46?

10. The reasonableness of the proposed budget to the proposed research and demonstration program. Applications that propose to address more than one of the study questions described in Section D: Program Requirements should include a separate budget breakdown for each study question to be addressed.

Final awards will be determined by the Director of the Division of STD Prevention (DSTD) based on priority scores assigned by the independent review group appointed by CDC, consultation with DSTD senior staff, the match between the proposal and the program announcement, the relevance and balance of proposed research relative to DSTD priorities, and the availability of funds.

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with an original plus two copies of:

1. Progress reports annually, no later than 90 days after the end of the budget period;

2. Financial status report, no later than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Additional Requirements*

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–21 Small, Minority, And Women-owned Business

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under section 318 of the Public Health Service Act, [42 U.S.C. Section 247c, as amended. The Catalog of Federal Domestic Assistance Number is 93.978.

**J. Where To Obtain Additional Information**

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave you name and address and will be instructed to identify the Announcement number of interest.

To obtain additional information, contact: Kang W. Lee, Grants Management Specialist, Procurement and Grants Office, Grants Management Branch, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146; Telephone number (770) 488–2733; FAX number (770) 488–2847; Email address kil8@cdc.gov.

See also the CDC home page on the Internet: http://www.cdc.gov.

For program technical assistance, contact: Janet S. St. Lawrence, Division of STD Prevention, Centers for Disease Control and Prevention (CDC), Mail Stop E44, 1600 Clifton Road NE, Atlanta, GA 30333, (404) 639–8298; FAX: (404) 639–8622; Email address: nzs4@cdc.gov.

Dated: May 16, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–12742 Filed 5–17–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00072]**

### Project CHOICES Efficacy Study; Notice of Availability of Funds

#### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Project CHOICES (Changing High-risk AlcOhol Use and Increasing Contraception Effectiveness Study) Efficacy Study. The purpose of the study is to establish efficacy of Project CHOICES, a behavioral intervention approach to reducing alcohol-exposed pregnancies, in a multi-site, randomized clinical trial. Project CHOICES targets non-pregnant women at high risk for an alcohol-exposed pregnancy with a dual focused intervention aimed at reducing risk drinking and engaging in effective contraception until risk drinking is resolved. High-risk women will be accessed in high prevalence, community-based settings. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and morality and improve the quality of life.

This announcement is related to the focus areas of Substance Abuse: Alcohol and Other Drugs; and Maternal, Infant, and Child Health. For the conference copy of "Healthy People 2010," visit the internet site: ≤http://www.health.gov/healthypeople>

#### B. Eligible Applicants

Eligible applicants are limited to those previously funded under Program Announcement No. 746: Nova Southeastern University, The University of Texas—Houston, and Virginia Commonwealth University.

These applicants have been funded by CDC since 1997 to develop and implement the Project CHOICES Feasibility Study. This new cooperative agreement would allow the grantees to implement the study as a clinical trial.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

#### C. Availability of Funds

Approximately $900,000 is available in FY 2000 to fund approximately 3 awards. It is expected that the average award will be $300,000, ranging from $250,000 to $350,000. It is expected that the awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

#### D. Program Requirements

Project CHOICES targets non-pregnant, fertile women, 18–44 years of age, who are moderate to heavy alcohol consumers. Potentially high prevalence populations of targeted women have been defined from previous studies, including the Project CHOICES Feasibility Study which is currently underway. Applicants must select from the following list of high prevalence populations two settings in which they will conduct the Project CHOICES Efficacy Study: A jail; an alcohol and drug treatment center; an Obstetrical-Gynecological clinic; a Sexually Transmitted Disease (STD) Clinic; a media-recruited population of high-risk women; a Women, Infants, and Children (WIC) clinic; or an HMO. Applicants will then implement a behavior intervention protocol drawn from the Project CHOICES Feasibility study in two selected settings. Applicants must demonstrate the ability to maintain a minimum of 200 women from each selected setting (to be equally randomized to experimental and control groups) in the clinical study.

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

*1. Recipient Activities*

a. Refine Project CHOICES protocol and implement as a clinical trial in two diverse settings.

b. Recruit and train staff in a timely manner to ensure study implementation within the 3-year project period.

c. Implement appropriate quality assurance procedures to assure that protocols for the efficacy study are being properly implemented.

d. Develop manuscripts and presentations describing the Project CHOICES Efficacy Study, results and recommendations.

*2. CDC Activities*

a. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project.

b. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

c. Assist in the overall coordination of the implementation and evaluation of the intervention protocol.

d. Provide current scientific information, and ensure adherence to appropriate scientific standards including human subject regulations.

#### E. Application Content

*Applications*

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 25 double-spaced pages (excluding attachments), printed on one side, with one inch margins, and unreduced font. Do not include any spiral or bound materials or pamphlets.

Program Narrative (not to exceed 25 pages):

The Program narrative should follow the PHS–398 (Rev. 4/98) application and Errata sheet, and should include the following information:

1. A demonstrated understanding of the problem of FAS and other prenatal alcohol-related conditions, and the role of brief intervention and treatment approaches to preventing these disorders; a justification of the need for the proposed study and the grantee's rationale for targeting the two selected settings as ones in which high prevalence populations of women at risk for a alcohol-exposed pregnancy can be accessed; and a description of how this study addresses Health People 2010 Objectives and the recommendations of the Institute of Medicine report: Fetal Alcohol Syndrome: Diagnosis, Epidemiology, Prevention and Treatment.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the approach to be taken in implementing

the study and the methods by which the objectives will be achieved and evaluated, including their sequence. A comprehensive evaluation plan must be outlined.

4. A description of the cooperative agreement's principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the study, as well as that portion of their salary to be paid by the cooperative agreement.

6. A description of the involvement of other entities that will relate to the proposed project, (*i.e.* recruitment settings), and letters of support as appropriate.

7. A detailed first year's budget for the cooperative agreement with future annual projections, if relevant. Awards will be made for a project period of up to three years.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: on the original and five copies of the application, the applicant must use "asterisks" to indicate those individuals for whom salaries and fringe benefits are not shown; the salaries and fringe benefits subtotals must still be shown. In addition, the applicant must submit an additional copy of page four (Form PHS–398), completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

**F. Submission and Deadline**

*Application*

Submit the original and 5 copies of PHS 398 (OMB Number 0925–0001). Adhere to the instructions on the Errata Instruction Sheet for PHS–398. Forms are available at the following Internet address: www.cdc.gov, or in the application kit.

On or before July 17, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

*Deadline:* Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

*Late Applications:* Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. *Applicant's Understanding of the Problem* (10 percent): The extent to which the applicant demonstrates an understanding of the problem of FAS and other alcohol-related birth defects, alcohol use patterns of childbearing-age women, and the maternal risk factors which contribute to harmful alcohol use during pregnancy. Also, a demonstrated understanding of the process of changing alcohol use behavior and of why pregnancy postponement is an important strategy for preventing alcohol-exposed pregnancies.

2. *Goals and Objectives* (15 percent): The extent to which the study goals are clearly stated and the objectives are specific, measurable, and time-phased. Also, the extent to which a plan is presented for evaluating the objectives.

3. *Description of the Target Population and Outline of Approach* (20 percent): The extent to which the applicant has provided a full and comprehensive description of the target population, including available statistics which provide reasonable justification for designating the group targeted as high risk for an alcohol-exposed pregnancy.

4. *Plan of Operation* (25 percent): The extent to which the applicant has provided an overall description of the approach to be taken in conducting the intervention trial. The applicant's description of its methods for alcohol assessment, counseling and referral for problem drinking, and provision of family planning services to high-risk clients. Applicant must also provide adequate demonstration of its ability to access a study population of at least 600 high-risk women annually, and to follow a cohort of 200 high-risk women for intervention activities.

Also to be evaluated under this section is the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(a) The proposed plan for the inclusion of women and racial and ethnic minority populations for appropriate representation;

(b) The proposed justification when representation is limited or absent;

(c) A statement as to whether the design of the study is adequate to measure differences when warranted; and

(d) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. *Capacity to Conduct Project Activities and Begin Study Operations in a Timely Fashion* (30 percent): The extent to which the applicant has provided information to support its ability to conduct the activities of the cooperative agreement including documentation of previous research experience in behavioral science research focusing on women's health issues, and/or addictive disorders; documentation of institutional support for the project; demonstrated ability to identify qualified personnel to fill key positions (including principal investigator, project coordinator, and intervention coordinator) and begin study activities in a timely fashion; and a description of how space required for the study will be acquired or designated.

6. *Budget Justification and Adequacy of Facilities* (not scored): The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds. The applicant shall describe and indicate the availability of facilities and equipment necessary to carry out this project.

7. *Human Subjects Review* (not scored): Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Semiannual progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 in the application kit.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301 and 317 of the Public Health Service Act, 42 U.S.C. sections 241 and 247b, as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

This and other funding opportunities may be found on the CDC home page on the Internet: http://www.cdc.gov.

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

William Paradies, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146; Telephone number: (770) 488–2721; Email address: wep2@cdc.gov.

For program technical assistance, contact:

Dr. Louise Floyd, (770) 488–7370, Email address: rlf3@cdc.gov .

OR

Connie Granoff, (770) 488–7513, Email address: clg4@cdc.gov. Division of Birth Defects, Child Development, and Disability and Health, National Center for Environmental Health, Centers for Disease Control and Prevention 4770 Buford Highway, (F–49), Atlanta, Georgia 30341–3724.

Dated: May 16, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00094]**

### Cooperative Agreements for the Development of State-Based Birth Defects Surveillance Programs and the Use of the Surveillance Data for Public Health Programs; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for developing and improving birth defects surveillance and using surveillance data to develop birth defects prevention programs and activities to improve the access of children born with birth defects to health services and early intervention programs. CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010", a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of Substance Abuse, Environmental Health, and Maternal, Infant, and Child Health. For the conference copy of "Healthy People 2010", visit the internet site: http://www.health.gov/healthypeople.

The purpose of the program is to support (1) the development, implementation, expansion, and evaluation of State based birth defects surveillance systems; (2) the development and implementation of State based programs to prevent birth defects; and (3) the development and implementation of activities to improve the access of children with birth defects to health services and early intervention programs.

**B. Eligible Applicants**

Applicants will be limited to those not currently involved in CDC Program Announcement 051 (Cooperative Agreements for Enhanced State-Based Birth Defects Surveillance and Use of Surveillance Data to Guide Prevention and Intervention Programs) and Program Announcement 643 (Centers of Excellence to Provide Surveillance, Research, Services, and Evaluation Aimed at Prevention of Birth Defects). See Attachment 1 for a list of the States funded under these program announcements.

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau. The eligible States are: Alabama, Alaska, Arizona, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kansas, Louisiana, Maryland, Minnesota, Mississippi, Nebraska, North Dakota, Ohio, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. Applicants may apply under one of two categories:

Category 1—States/territories/tribes with no birth defects surveillance systems; or

Category 2—States/territories/tribes with newly implemented or ongoing surveillance systems.

In the cover letter to the application, please state the category (1 or 2) for which you are applying.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

**C. Availability of Funds**

Approximately $800,000 is available in FY 2000 to fund approximately 3–6 awards in Category 1 and 3–6 awards in Category 2. It is expected that the average award will be $100,000, ranging from $50,000 to $150,000. The awards will begin on or about September 30, 2000, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

**Use of Funds**

These awards may be used for personnel services, equipment, travel, and other costs related to project activities. Project funds may not be used

to supplant State funds available for birth defects surveillance, prevention, health care services, patient care, construction, nor lease/purchase of facilities or space.

**D. Program Requirements**

In conducting activities to achieve the purpose of this program, Category 1 recipients will be responsible for the activities under 1. Recipient activities for States with no birth defects surveillance systems; Category 2 recipients will be responsible for the activities under 2. Recipient activities for States with newly implemented or ongoing surveillance systems; and CDC will be responsible for the activities under 3. CDC activities.

1. Category 1—Recipient Activities for States with no birth defects surveillance systems:

a. Develop and begin implementation of a State based surveillance system to ascertain cases and generate timely population-based data of major birth defects occurring in the State.

b. Analyze the surveillance data generated by the system in a timely fashion including rates and trends of major birth defects.

c. Disseminate data and collaborate with appropriate organizations within the State and with other States.

d. Develop and implement a plan to evaluate the surveillance methodology used.

e. Develop a plan and begin implementation of a birth defects prevention program (*e.g.* Neural Tube Defects (NTD) occurrence prevention), and/or develop a plan and begin implementation of activities to improve the access of children with birth defects to comprehensive, community-based, family-centered care.

f. Develop a plan to evaluate the intervention or prevention activities.

2. Category 2—Recipient Activities for States with newly implemented or ongoing surveillance systems:

a. Broaden methodologies and approaches which will improve, sustain, and expand the capacity of the existing State based surveillance system to ascertain cases and generate timely population-based data of major birth defects occurring in the State.

b. Analyze the surveillance data generated by the system in a timely fashion including rates and trends of major birth defects.

c. Disseminate data and collaborate with appropriate organizations within the State and with other States.

d. Develop and implement a plan to evaluate the surveillance methodology used.

e. Develop a plan and begin implementation of a birth defects prevention program (*e.g.*, Neural Tube Defects [NTD] occurrence prevention), and/or develop a plan and begin implementation of activities to improve the access of children with birth defects to comprehensive, community-based, family-centered care.

f. Develop a plan to evaluate the intervention or prevention activities.

3. CDC Activities.

a. Assist, if requested, in designing, developing, and evaluating methodologies and approaches used for State based birth defects surveillance.

b. Assist, if requested, in analyzing surveillance data related to birth defects.

c. Assist, if requested, in designing plans for prevention programs and plans to improve the access of children with birth defects to health services and intervention programs.

d. Provide, if requested, a reference point for sharing regional and national data and information pertinent to the surveillance and prevention of birth defects.

**E. Application Content**

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in describing the program plan.

The applicant should provide a detailed description of first-year activities and briefly describe future-year objectives and activities. The application must contain the following:

1. Cover Letter: A one page cover letter should indicate whether the applicant is applying for Category 1 or Category 2.

2. A one-page, single-spaced, typed abstract in 12 point font must be submitted with the application. The heading should include the title of the grant program, project title, organization, name and address, project director and telephone number. The abstract should clearly state which option the applicant is applying for: Category 1 or Category 2. The abstract should briefly summarize the program for which funds are requested, the activities to be undertaken, and the applicant's organization structure. The abstract should precede the Program Narrative. A table of contents that provides page numbers for each of the following sections should be included. All pages must be numbered.

3. Narrative: The narrative should be no more than 20 double-spaced pages printed on one side, with one inch margins, and unreduced font (12 pitch). The required detailed budget and detailed budget justification are not considered to be part of the Program Narrative. The narrative must contain the following sections:

a. Understanding the Problem and Current Status;

b. Impact on State based Birth Defects Surveillance;

c. Use of Surveillance Data for Prevention and Intervention;

d. Organizational and Program Personnel Capability;

e. Human Subjects Review;

4. Budget and Budget Justification—Provide a detailed budget which indicates the anticipated costs for personnel, fringe benefits, travel, supplies, contractual, consultants, equipment, indirect, and other items.

**F. Submission and Deadline**

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). On or before July 20, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement. Forms are available at the following Internet address: www.cdc.gov/od/pgo/forminfo.htm or in the application kit.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Applicant's understanding of the problem (10 percent):

The extent to which the applicant has a clear, concise understanding of the requirements, objectives, and purpose of the cooperative agreement. The extent to which the application reflects an understanding of the purpose and complexities of birth defects surveillance as it relates to their State.

2. Impact on State based birth defects surveillance (35 percent):

The extent to which the applicant describes the anticipated level of impact this cooperative agreement will have on birth defects surveillance activities in the State. The current and proposed activities evaluated in this element are specific for Category 1 and Category 2.

a. Evaluation criteria for category 1 (States with no birth defects surveillance systems):

(1) Plans for developing State based birth defects surveillance;

(2) Methods of case ascertainment;

(3) Timeliness of case ascertainment;

(4) Level of coverage of the population;

(5) Specific birth defects ascertained; and

(6) Plans for analyzing and reporting surveillance data to appropriate State, local, and federal health officials.

b. Evaluation criteria for category 2 (States with newly implemented or ongoing birth defects surveillance systems):

(1) Plans for improving/expanding State based birth defects surveillance;

(2) Methods of case ascertainment;

(3) Timeliness of case ascertainment;

(4) Level of coverage of the population;

(5) Specific birth defects ascertained;

(6) Plans for analyzing and reporting surveillance data to appropriate State, local, and federal health officials.

Also included in this criteria is the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

3. Use of the surveillance data for prevention and intervention (35 percent):

The extent to which the applicant describes the plans for using surveillance data to develop and implement programs to prevent birth defects and/or activities to improve the access of children with birth defects to health services and early interventions.

a. Develop a plan for working with appropriate partners in the State to develop prevention or intervention programs.

b. Describe methods or a plan for sharing surveillance data with programs or agencies that will use the data for prevention or intervention.

4. Organizational and program personnel capability (20 percent):

The extent to which the applicant has the experience, skills, and ability to develop and improve birth defects surveillance and use surveillance data to develop prevention or intervention programs. The adequacy of the present staff and capability to assemble competent staff to implement a birth defects surveillance system and develop programs for prevention or intervention. To the extent possible, the applicant shall identify all current and potential personnel who will work on this cooperative agreement including qualifications and specific experience as it relates to the requirements set forth in this announcement.

5. Human Subjects Review (not scored):

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

6. Budget justification and adequacy of facilities (not scored):

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of the cooperative agreement funds. The applicant shall describe and indicate the availability of facilities and equipment necessary to carry out this project.

**H. Other Requirements**

*Technical Reporting Requirements*

Provide CDC with original plus two copies of:

1. Semiannual progress reports;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 2 in the application kit.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–7 Executive Order 12372 Review

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301(a), 311 and 317 (c) of the Public Health Service Act [42 U.S.C. 241(a), 243, and 247 (b–4)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where To Obtain Additional Information**

For this and other CDC funding opportunities, refer to the CDC home page on the Internet: http://www.cdc.gov. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: William A. Paradies, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2721, E-mail address: WParadies@cdc.gov

Programmatic technical assistance may be obtained from: Larry D. Edmonds, State Services, Birth Defects and Pediatric Genetics Branch, Division of Birth Defects, Child Development, Disability and Health, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway NE., Mailstop F–45, Atlanta, GA 30341–3724, Telephone: (770) 488–7170, E-mail address: LEdmonds@cdc.gov

Dated: May 16, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).*

[FR Doc. 00–12740 Filed 5–19–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### Advisory Committee for Energy-Related Epidemiologic Research (ACERER) and ACERER Subcommittee for Community Affairs: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

*Name:* Advisory Committee for Energy-Related Epidemiologic Research (ACERER) Subcommittee for Community Affairs (SCA).

*Time and Date:* 9 a.m.–5:30 p.m., June 6, 2000.

*Place:* Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, Maryland 21044, telephone 410/730–3900, fax 410/730–1290.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 70 people.

*Purpose:* This subcommittee advises ACERER on matters related to community needs.

*Matters To Be Discussed:* Agenda items will include a discussion of the SCA recommendation concerning cumulative risk and dose; an update from CDC and the National Cancer Institute program development planning for communicating Iodine-131 exposures from nuclear weapons testing fallout; a panel discussion on community-based education and capacity building; and an update on the status and plans for CDC's and ATSDR's mechanisms for public participation at different Department of Energy sites.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Paul G. Renard, Executive Secretary, SCA, ACERER, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health (NCEH), CDC, 1600 Clifton Road, NE, (E–39), Atlanta, Georgia 30333, telephone 404/639–2550, fax 404/639–2575.

*Name:* Advisory Committee for Energy-Related Epidemiologic Research (ACERER).

*Times and Dates:* 8:30 a.m.–5 p.m., June 7, 2000; 8 a.m.–5 p.m., June 8, 2000.

*Place:* Sheraton Columbia Hotel, 10207 Wincopin Circle, Columbia, Maryland 21044, telephone 410/730–3900, fax 410/730–1290.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 70 people.

*Purpose:* This committee is charged with providing advice and recommendations to the Secretary, Department of Health and Human Services; and to the Director, CDC; and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), on establishment of a research agenda and the conduct of a research program pertaining to energy-related epidemiologic studies.

*Matters To Be Discussed:* Agenda items will include an update from the ACERER Subcommittee for Management Review of the Chernobyl Studies; an update from the ACERER SCA; a report on the status of the CDC report to Congress on fallout; an update on the Republic of the Marshall Islands Study; an update on the Hanford Thyroid Disease Study; and a workshop on the consideration of targeted screening for thyroid and parathyroid disease in a higher risk population exposed to Iodine-131.

Agenda items are subject to change as priorities dictate.

*Contact Person for More Information:* Michael J. Sage, Executive Secretary, ACERER, NCEH, CDC, 4700 Buford Highway, NE, (F–29), Atlanta, Georgia 30333, telephone 770/488–7002, fax 770/488–7015.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: May 16, 2000.

**Carolyn J. Russell,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 00–12741 Filed 5–19–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcement No. ACF/ACYF/CB FY 2000–01B]**

### Announcement of the Availability of Financial Assistance and Request for Applications To Support Adoption Opportunities Demonstration Projects, Child Abuse and Neglect Discretionary Activities, Child Welfare Training Projects, and Abandoned Infants Assistance Awards.

**AGENCY:** Children's Bureau, Administration on Children, Youth and Families, ACF, DHHS.

**ACTION:** Correction/cancellation.

**SUMMARY:** This document contains a correction to the Notice that was published in the **Federal Register** on Thursday, April 13, 2000 (65 FR 19904). The solicitation for competitive proposals for priority area 2000A.2—Operation of a National Adoption Information Exchange System as a freestanding entity is canceled.

The purposes of operating and maintaining a National Adoption Information Exchange System to bring together children who would benefit from adoption and qualified prospective adoptive parents who are seeking children and to conduct national recruitment efforts in order to reach prospective parents for children awaiting adoption will be combined with the task of continuing to develop an Internet-based photo listing system. Upon further consideration, it has been decided that separating the photo listing service from the exchange and database, upon which it depends, would cause serious confusion to State child welfare agencies, would undermine the integrity of what is a single effort to assist States in inter-jurisdictional recruitment of families, and would pose the possibility of supporting duplicative projects. Because the grant for the photo-listing service will be awarded following directions from Congress, the competition for the exchange alone is being canceled.

In accordance with the Department's Grants Policy Directive (GPD) 2.04(F), and ad hoc review will be done on the noncompetitive application for the combined exchange and photo-listing activities and a notification of the intent to award the grant will be published in the **Federal Register** prior to or simultaneously with the award of this grant. The notification will include, at a minimum, the following information:

(1) recipient's name; (2) amount of award; (3) project period; (4) reason for no competition; and (5) the name and address of the official to be contacted for more information on this award.

The complete corrected current availability of funds announcement package is posted on the Children's Bureau website: *http://www.acf.dhhs.gov/programs/cb/policy/cb200001.htm.*

**FOR FURTHER INFORMATION CONTACT:** The ACYF Operations Center at 1–800–351–2293 or send an email to *cb@lcgnet.com* or call Sally Flanzer, Children's Bureau, at 202–215–8914.

Dated: May 12, 2000.

**Patricia Montoya,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 00–12696 Filed 5–19–00; 8:45 am]

**BILLING CODE 4184–01–M**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

**[Program Announcement No. ACYF–PA–HS–2000–09]**

### Fiscal Year 2000 Discretionary Announcement for the Head Start and Early Head Starts—Higher Education Faculty Initiative; Availability of Funds and Request for Applications

**AGENCY:** Administration on Children, Youth and Families, ACF, DHHS.

**ACTION:** Fiscal Year 2000 Discretionary Announcement for the Early Childhood Higher Education Faculty Initiative and Request for Application.

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Statutory Authority 42 U.S. 9801, et. seq., The Head Start Act, as amended.

Catalog of Federal Deomestic Assistance (CFDA): 93.600 Head Start Act as amended.

**SUMMARY:** The Administration for Children and Families, Administration on Children, Youth and Families announces the availability of $1 million in funds to support one early childhood faculty initiative through a cooperative agreement. The cooperative agreement will be funded to provide opportunities for faculty in higher education to enhance their skills, knowledge and effectiveness as they teach teachers in Head Start and Early Head Start programs in order to insure better outcomes for children. A cooperative agreement is a form of Federal financial assistance that allows substantial Federal involvement in the activities for which funds are awarded.

**Note:** In order to satisfactorily compete under this announcement, it will be necessary for potential applicants to read the full announcement which is available through the Head Start Bureau's website: *www2.acf.dhhs.gov/programs/hsb/announce/index.htm.* Hard copies of the application may be obtained by writing or calling the ACYF Operations Center or sending an E-mail to: hs@lcgnet.com.

**DATES:** The closing date and time for the receipt of applications is 5:00 p.m. (Eastern Time Zone) on July 11, 2000. Applications received after the closing date will be classified as late.

**ADDRESSES:** Mail applications to: ACYF Operations Center, Attention: Early Childhood Higher Education Faculty Development Initiative Application, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209 (1–800–351–2293). Prior to preparing and submitting an application, in order to satisfactorily compete under this announcement, it will be necessary for potential applicants to read the full announcement which is available through the Head Start Bureau's website:*www2.acf.dhhs.gov/programs/hsb/announce/index.htm*

**FOR FURTHER INFORMATION CONTACT:** ACYF Operations Center at: 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209 (1–800–351–2292) or telephone: 1–800–351–2293– or E-mail:hs@lcgnet.com.

*Eligible Applicants:* Universities, colleges, foundations, national organizations, public and private non-profit and for-profit agencies and organizations.

**SUPPLEMENTARY INFORMATION:** The purpose of this announcement is to request applications for the design, implementation and management oversight for conducting Early Childhood Higher Education Faculty Initiative. The result of this initiative will be to improve the quality and effectiveness of child outcomes in Head Start and Early Head Start and other early childhood development programs nationwide. This cooperative agreement will be for a five year project period.

*Federal Share of Project Costs:* The maximum Federal share is not to exceed $1 million for the first 12-month budget period and $1 million for each succeeding 12-month period.

*Matching Requirements:* Non-Federal match is not required.

*Anticipated Number of Projects to be funded:* It is anticipated that one project will be funded.

### Evaluation Criteria

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed below.

*Criterion 1. Objectives and Need for Assistance: (25 Points)*

The extent to which the application identifies relevant physical, economic, social, financial, institutional or other problems requiring a grant; demonstrates the need for assistance; states the principal and subordinate objectives of the project; provides supporting documentation or other testimonies from concerned interests other than the applicant.

*Criterion 2. Results or Benefits Expected: (15 Points)*

The extent to which the application identifies the results and benefits to be derived; describes the anticipated contribution to policy, practice, theory and/or research; specific benefits should be described for faculty preparing Head Start and Early Head Start teachers, home visitors, and their supervisors and the whole early childhood community working with children birth through five.

*Criterion 3. Approach: (50 Points)*

The extent to which the application outlines an acceptable plan of action pertaining to the scope of the project which details how the proposed work will be accomplished, including a timeline; list of each organization, consultants, including the evaluation process, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution; assures the adequacy of time devoted to the project by key staff, the key staff should be knowledgeable of Head Start and Early Head Start, the applicant must fully describe the approach and/or methodology and delineate the relationship of each task to the accomplishment of the proposed objectives. There should be evidence that the planned approach reflects sufficient input from collaborating partners.

*Criterion 4. Budget Appropriateness: (10 Points)*

The extent to which the project's costs are reasonable in view of the activities to be carried out and the anticipated outcomes. The annual budget should include the cost for staff members to attend required conferences in the Washington, DC area.

### State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372,

"Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

**Note:** State/territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.

The following jurisdictions have elected not to participate in the Executive Order process: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372. Although the jurisidictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOC as soon as possible to alert them of the prospective applications and receive instructions .

Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those offical State process recommendations which may trigger the "accommodate or explain" rule. A list of the Single State Point of Contacts for each State and Territory can be found on the following website: *http://www.whitehouse.gov/omb/grants/spoc.html.*

When comments are submitted directly to ACF, they should be addressed to: William Wilson, Head Start Bureau, Office of Grants Management, 330 C. Street, SW, Washington, DC 20447. ATTN: Early Childhood Higher Education Faculty Initiative

*Reminder:* In order to satisfactorily compete under this announcement, it will be necessary for potential applicants to read the full announcement which is available through the Head Start Bureau's website: www2.acf.dhhs.gov/programs/hsb/announce/index.html. Mail applications to: ACYF Operations Center, Attention: Early Childhood Higher Education Faculty Initiative, 1815 North Fort Myers Drive, Suite 300, Arlington, VA 22209 (1–800–351–2293).

Dated: May 15, 2000.

**Patricia Montoya,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 00–12695 Filed 5–19–00; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Medical Child Support Working Group

**AGENCY:** Administration for Children and Families, DHHS.

**ACTION:** Notice of open meeting.

**SUMMARY:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is given of the date for the ninth meeting of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998. The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments.

**DATES:** The ninth meeting of the MCSWG will be held on Thursday, June 8, 2000, from 10:30 pm to approximately 12:30 pm.

**ADDRESSES:** The meeting will be held in the sixth floor conference room of the Aerospace Building, 901 D Street, SW, Washington, DC. All interested parties are invited to attend this public meeting. Seating may be limited and will be available on a first-come, first-serve basis. Persons needing special assistance, such as sign language interpretation or other special accommodation, should contact the Executive Director of the Medical Child Support Working Group, Office of Child Support Enforcement, at the address listed below.

**FOR FURTHER INFORMATION CONTACT:** Ms. Samara Weinstein, Executive Director, Medical Child Support Working Group, Office of Child Support Enforcement, Fourth Floor East, 370 L'Enfant Promenade, SW, Washington, DC 20447 (telephone (202) 401–6953; fax (202) 401–5559; e-mail: sweinstein@acf.dhhs.fov). These are not toll-free numbers. The date, location and time for subsequent MCSWG meetings will be announced in advance in the **Federal Register**. However, it is expected this will be the last meeting.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2) (FACA), notice is given of meetings of the Medical Child Support Working Group (MCSWG). The Medical Child Support Working Group was jointly established by the Secretaries of the Department of Labor (DOL) and the Department of Health and Human Services (DHHS) under section 401(a) of the Child Support Performance and Incentive Act of 1998 (P.L. 105–200).

The purpose of the MCSWG is to identify the impediments to the effective enforcement of medical support by State child support enforcement agencies, and to submit to the Secretaries of DOL and DHHS a report containing recommendations for appropriate measures to address those impediments. This report will include: (1) Recommendations based on assessments of the form and content of the National Medical Support Notice, as issued under proposed regulation; (2) appropriate measures that establish the priority of withholding of child support obligations, medical support obligations, arrearages in such obligations, and in the case of a medical support obligation, the employee's portion of any health care coverage premium, by such State agencies in light of the restrictions on garnishment provided under title III of the Consumer Credit Protection Act (15 U.S.C. 1671–1677); (3) appropriate procedures for

coordinating the provision, enforcement, and transition of health care coverage under the State programs for child support, Medicaid and the Child Health Insurance Program; (4) appropriate measures to improve the availability of alternate types of medical support that are aside from health care coverage offered through the noncustodial parent's health plan, and unrelated to the noncustodial parent's employer, including measures that establish a noncustodial parent's responsibility to share the cost of premiums, co-payments, deductibles, or payments for services not covered under a child's existing health coverage; (5) recommendations on whether reasonable cost should remain a consideration under section 452(f) of the Social Security Act; and (6) appropriate measures for eliminating any other impediments to the effective enforcement of medical support orders that the MCSWG deems necessary.

The membership of the MCSWG was jointly appointed by the Secretaries of DOL and DHHS, and includes representatives of: (1) DOL; (2)DHHS; (3) State Child Support Enforcement Directors; (4) State Medicaid Directors; (5) employers, including owners of small businesses and their trade and industry representatives and certified human resource and payroll professionals; (6) plan administrators and plan sponsors of group health plans (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1167(1)); (7) children potentially eligible for medical support, such as child advocacy organizations; (8) State medical child support organizations; and (9) organizations representing State child support programs.

*Agenda:* The agenda for this meeting includes review approval of the MCSWG's report to the Secretaries containing recommendations for appropriate measures to address the impediments to the effective enforcement of medical child support as listed above. At the May, 1999 meeting, the MCSWG formed four (4) sub-committees to discuss barriers, issues, options, and recommendations in the interim between full MCSWG meetings. At the next three meetings (August, 1999, October, 1999, and November, 1999), the sub-committees presented their draft recommendations to the full MCSWG for further discussion and consideration. At the January, 2000 meeting, the MCSWG discussed the recommendations to be contained in the report to the Secretaries. At the March, 2000 meeting, the MCSWG reviewed for approval the draft report. At this meeting, the MCSWG will review and approve the final report.

*Public participation:* Members of the public wishing to present oral statements to the MSCWG should forward their requests to Samara Weinstein, MCSWG Executive Director, as soon as possible and at least four days before the meeting. Such request should be made by telephone, fax machine, or mail, as shown above. Time permitting, the Chairs of the MCSWG will attempt to accommodate all such requests by reserving time for presentations. The order of persons making such presentations will be assigned in the order in which the requests are received. Members of the public are encouraged to limit oral statements to five minutes, but extended written statements may be submitted for the record. Members of the public also may submit written statements for distribution to the MCSWG membership and inclusion in the public record without presenting oral statements. Such written statements should be sent to the MCSWG Executive Director, as shown above, by mail or fax at least five business days before the meeting.

Minutes of all public meetings and other documents made available to the MCSWG will be available for public inspection and copying at both the DOL and the DHHS. At DHHS, these documents will be available at the MCSWG Executive Director's Office, Office of Child Support Enforcement (OCSE), Administration for Children and Families, U.S. Department of Health and Human Services, Aerospace Building, Fourth Floor-East, 370 L'Enfant Promenade, SW, Washington, DC from 8:30 a.m. to 5:30 p.m. Questions regarding the availability of documents from DHHS should be directed to Andrew J. Hagan, OCSE (telephone (202) 401–5375). This is not a toll-free number. Any written comments on the minutes should be directed to Ms. Samara Weinstein, Executive Director of the Working Group, as shown above.

Dated: May 16, 2000.

**Frank Fuentes,**

*Deputy Commissioner, Office of Child Support Enforcement.*

[FR Doc. 00–12779 Filed 5–19–00; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–1200]**

## Dietary Supplements Containing Ephedrine Alkaloids; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice of availability; extension of comment period.

**SUMMARY:** The Food and Drug Administration (FDA) is extending to July 3, 2000, the comment period for a notice published in the **Federal Register** of April 3, 2000, that announced the availability of new adverse event reports (AER's) and related information concerning dietary supplements containing ephedrine alkaloids. This action is being taken in response to requests for more time to submit comments to FDA.

**DATES:** Submit written comments on the notice of availability by July 3, 2000.

**ADDRESSES:** Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, or via e-mail to "FDADockets@oc.fda.gov". Comments are to be identified with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Marquita B. Steadman, Center for Food Safety and Applied Nutrition (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6733.

**SUPPLEMENTARY INFORMATION:**

### I. Extension of Comment Period

In the **Federal Register** of April 3, 2000 (64 FR 17510), FDA published a notice announcing a new public docket that makes available new adverse event reports and related information concerning dietary supplements containing ephedrine alkaloids. The **Federal Register** notice also announced FDA's intent to participate in a public forum to address safety information on such products.

Since publication of the April 3, 2000, **Federal Register** notice, FDA has received requests, both oral and written, to allow additional time for interested persons to comment. FDA believes that an extension of the comment period for an additional 45 days, until July 3, 2000, would be appropriate, in light of the amount of data FDA made publicly available on April 3, 2000. This extension will provide the public with

a total of 90 days to submit data, analyses, and other relevant information.

Although the agency has reviewed the requests asking for extensions of the comment period, the longest of which is for an additional 1 year, FDA does not believe that such a lengthy delay is in the best interest of the public health. FDA believes that delaying the receipt of comments for more than an additional 45 days (for a total of 90 days) is too long given the public health concerns at issue.

**II. How to Submit Comments**

Interested persons may, on or before July 3, 2000, submit written comments to the Dockets Management Branch (address above). You may also send comments to the Dockets Management Branch via e-mail to "FDADockets@oc.fda.gov". You should annotate and organize your comments to identify the specific issues to which they refer. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document, except that you may submit one copy if you are an individual. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 16, 2000.

**Margaret M. Dotzel,**

*Acting Associate Commissioner for Policy.*

[FR Doc. 00–12749 Filed 5–19–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Blood Products Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Blood Products Advisory Committee.

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on June 15, 2000, from 8 a.m. to 5 p.m. and on June 16, 2000, from 9 a.m. to 12:30 p.m.

*Location:* Holiday Inn, 8777 Georgia Ave., Silver Spring, MD.

*Contact Person:* Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–302), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3514, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 19516. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* On June 15, 2000, the committee will hear updates on summaries of the Public Health Service Advisory Committee on Blood Safety and Availability meeting, April 25 and 26, 2000; FDA's Transmissible Spongiform Encephalopathies Advisory Committee meeting, June 1 and 2, 2000; the FDA-sponsored workshop on plasticizers, October 18, 1999; and a briefing on blood supply monitoring. The committee will also hear presentations and provide recommendations on plasma pool screening by nucleic acid tests for Hepatitis A virus and, in the afternoon, the committee will hear presentations and provide recommendations on the development of rapid human immunodeficiency virus (HIV) tests. On June 16, 2000, the committee will hear updates on the requirements for syphilis testing, the risk of Hepatitis C virus to sexual partners, and relative sensitivity of Hepatitis B surface antigen and Hepatitis B virus nucleic acid tests. Also, the committee will hear and discuss presentations on the proposed document entitled "FDA Guidance on Universal Leukoreduction: Current Thinking."

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by Friday, June 2, 2000. Oral presentations from the public will be scheduled between approximately 11 a.m. to 11:30 a.m. and 2:30 p.m. to 3:30 p.m. on June 15, 2000, and between approximately 10:30 a.m. to 11:30 a.m. on June 16, 2000. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before Friday, June 9, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 11, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–12747 Filed 5–19–00; 8:45 am]

BILLING CODE 4160–01–F

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)–443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

**Proposed Project: The Black Lung Clinic Program Guidelines (42 CFR 55a) (OMB No. 0915–0081) Extension**

The purpose of the Black Lung Clinics Program (BLCP) is to stimulate and encourage local public and private agencies to improve the health status of coal workers and to increase coordination with other programs to assist the coal worker population. The goal of the BLCP is to provide services to minimize the effects of respiratory and pulmonary impairments of coal miners. Grantees provide specific diagnostic and treatment procedures required in the management of problems associated with black lung disease which improve the functional status, i.e., "quality of life", of the miner and reduces economic costs associated with morbidity and mortality arising from pulmonary diseases.

This request is for approval of the application requirements which are included in the program guidelines and the program regulation (42 CFR 55a.201 and 55a.301). Grantees must submit applications annually for continued grant support. The regulations outline the requirements for grant applications for States (55a.201) and entities other than States (55a.301). The program guidelines further elaborate on these requirements.

The grant application form is cleared under another OMB approval (OMB No.

0920–0428). The burden for completing the application is not reflected in the Black Lung clearance request because the burden is reported in the clearance of the application form. The current request for clearance includes one hour of burden, to keep the clearance of the program-specific application requirements on the OMB database.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 16, 2000.

**Jane Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00–12751 Filed 5–19–00; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Availability of the HRSA Preview: Cancellation of HIV/AIDS Programs, Special Projects of National Significance

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Cancellation of Notice of Availability of Funds.

**SUMMARY:** This notice rescinds the Notice of Availability of funds in notice FR Doc. 99–21257, Part II, in the issue of Wednesday, August 18, 1999 on the following page, 45016, in column 2, last line, "Special Projects of National Significance. In the table on page 45019, in the section HIV/AIDS Programs, under "Special Projects of National Significance (SPNS)." On page 45032, in column 3, from heading "Special Projects of National Significance (SPNS)" through to bottom of this column.

Dated: May 16, 2000.

**Claude Earl Fox,**

*Administrator.*

[FR Doc. 00–12753 Filed 5–19–00; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### Division of Transplantation Extramural Grant Program: Model Interventions To Increase Organ and Tissue Donation

**AGENCY:** Health Resources and Services Administration, HHS.

**ACTION:** Notice of Availability of Funds.

**SUMMARY:** The Health Resources and Services Administration's (HRSA) Office of Special Programs (OSP), Division of Transplantation (DoT) announces that applications will be accepted for fiscal year (FY) 2000 for grants to support projects demonstrating model interventions to increase organ and tissue donation. The grant program will assist qualified organ procurement organizations (OPOs) and other private non-profit entities eligible for funds under Section 371(a)(3) of the Public Health Service (PHS) Act , 42 U.S.C. 273(a)(3), as amended. HRSA/OSP/DoT invites applications from consortia of institutions/organizations to participate in the FY 2000 grant program.

**Availability of Funds**

The estimated total funds available for the first year of support (direct and indirect costs) for all awards made under this grant program in FY 2000 will be up to $1.5 million. HRSA anticipates funding 8–10 projects. It is anticipated that the cost range for each project year will be $100,000-$300,000 per award; however, projects that fall outside that range also will be considered. The total project period for applications submitted in response to this program announcement may not exceed three years.

**Eligible Applicants**

Eligible applicants are consortia consisting at a minimum of the following two types of organizations/institutions: (1) At least one organization/institution with demonstrated expertise and experience in research and evaluation design and methods in the behavioral and social sciences; and (2) at least one organization/institution with demonstrated expertise and experience in organ donation, including but not limited to: OPOs, hospitals, and other health care organizations; national or regional associations; community-based service organizations; and public health or other government agencies. One member of each consortium shall serve as the primary applicant institution, which is required to be a private non-profit institution.

**DATES:** A letter of intent to submit an application is requested by June 8, 2000. Applications for this announced grant must be postmarked no later than July 11, 2000 to be considered for competition. Applications shall be considered as meeting the deadline if they are: (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing and submission to the review committee. Applications received with a postmark after 7–11–2000 will not be accepted.

**ADDRESSES:** Application kits, which include detailed instructions, are available through the HRSA Grant Application Center (telephone: 1–877–477–2123, or e-mail: hrsagac@hrsa.gov). The program announcement also can be obtained by accessing any of the following three Web sites: www.hrsa.gov, www.hrsa.gov/osp/dot, or www.organdonor.gov. Letters of intent to submit an application should be mailed to Dr. Mary L. Ganikos, Chief, Education Branch, DoT, OSP, HRSA, 5600 Fishers Lane, Parklawn Building, Room 7C–22, Rockville, Maryland 20857. All applications must be mailed or delivered to HRSA Grants Application Center, 1815 N. Fort Meyer Drive, Suite 300 Arlington, VA 22209.

**FOR FURTHER INFORMATION CONTACT:** Additional information may be obtained from Dr. Mary L. Ganikos, at the address above or via the following contact information: telephone—(301) 443–7577; fax—(301) 443–1267; or e-mail—mganikos@hrsa.gov.

Dated: May 16, 2000.

**Claude Earl Fox,**

*Administrator.*

[FR Doc. 00–12752 Filed 5–19–00; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 2000.

*Name:* Maternal and Child Health Research Grants Review Committee.

*Date and Time:* June 14–16, 2000; 8 a.m.–5 p.m.

*Place:* Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

The meeting is open to the public on Wednesday, June 14, 2000, from 9 a.m.–10 a.m., and closed for the remainder of the meeting.

*Agenda:* The open portion of the meeting will cover opening remarks by the Director, Division of Research, Training and Education, who will report on program issues, congressional activities, and other topics of interest to the field of maternal and child health. The meeting will be closed to the public on Wednesday, June 14, 2000, from 10 a.m., to the remainder of the meeting, for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Associate Administrator for Management and Program Support, Health Resources and Services Administration, pursuant to Public Law 92–463.

Anyone wishing to obtain a roster of members, minutes of meetings, or other relevant information should write or contact Gontran Lamberty, Dr. P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, or by telephone at (301) 443–2190.

Dated: May 16, 2000.

**Jane M. Harrison,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 00–12750 Filed 5–19–00; 8:45 am]

BILLING CODE 4160–15–P

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4455–C–03]**

## Notice of Annual Factors for Determining Public Housing Agency Ongoing Administrative Fees for the Housing Choice Voucher Program and the Rental Certificate and Moderate Rehabilitation Programs; Technical Corrections

**AGENCY:** Office of the Assistant Secretary for Public and Indian Housing, HUD.

**ACTION:** Notice; technical corrections.

**SUMMARY:** This notice announces technical corrections to the monthly per unit fee amounts for use in determining the on-going administrative fee for public housing agencies (PHAs) administering the housing choice voucher program, and the rental certificate and moderate rehabilitation programs (including Single Room Occupancy and Shelter Plus Care) during Federal Fiscal Year (FY) 2000 published February 25, 2000 in the **Federal Register**.

**EFFECTIVE DATE:** May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4210, 451 Seventh Street, SW., Washington, DC 20410–8000; telephone number (202) 708–0477 (this is not a toll-free telephone number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:**

### I. Technical Amendment

This technical amendment corrects an error in the **Federal Register** dated February 25, 2000 (65 FR 10316). On page 10316, subpart (c)(1) Preliminary Fees, it reads "HUD may pay preliminary fees * * * if the first year of administering the Section 8 program was begun *prior* to *October 21, 1998* (Emphasis added)". The Quality Housing and Work Responsibility Act of 1998, (QHWRA) changed PHA eligibility for preliminary fees. PHAs now may earn a fee up to $500 per unit for the initial funding increment for the first year the PHA administers a tenant-based assistance program, and only if the first year the PHA was administering the Section 8 program was begun on or after the merger date of October 1, 1998. See 24 CFR 982.152 (c).

In addition to the above change, this notice transmits changes to the monthly Administrative Fees Amounts on the fee tables. The administrative fee revisions are in Appendix A. These changes are to correct a computer programming error that caused a small reduction in the fees in the listed areas. The metropolitan FMR areas that have changed are listed below with the **Federal Register** page number to enable PHAs to easily identify if these revised fees apply to their program. Note that when there is a duplicate city listing, check for the appropriate state.

Aurburn-Opelika, AL–MSA, Corvallis, OR–MSA, and Culpepper County, VA were omitted from the administrative fee schedule for FY 2000 published in the February 25, 2000 **Federal Register** (65 FR 10316). They are listed in the attached administrative fee revision.

The metropolitan areas that have changes and their page numbers in the February 25, FY 2000 **Federal Register** are as follows:

| Metropolitan FMR areas | Page | Metropolitan FMR areas | Page |
|---|---|---|---|
| Amarillo, TX | MSA 10362 | Laredo, TX | MSA 10362 |
| Anniston, AL | MSA 10318 | Louisille, KY–IN | MSA 10334 |
| Biloxi-Gulfport-Pascagpula, MS | MSA 10344 | Louisille, KY–IN | MSA 10334 |
| Columbia, GA | MSA 10345 | Lubbock, TX | MSA 10362 |
| Columbus, GA–AL | MSA 10318 | Macon, GA | MSA 10326 |
| Columbus, GA–AL | MSA 10326 | McAllen-Edinburg-Mission, TX | MSA 10362 |
| Cumberland, MD–WV | MSA 10338 | Memphis, TN–AR–MS | MSA 10361 |
| Cumberland, MD–WV | MSA 10368 | Memphis, TN–AR–MS | MSA 10361 |
| Decatur, AL | MSA 10318 | Montgomery, AL | MSA 10318 |
| Eau Claire, WI | MSA 10369 | Myrtle Beach, SC | MSA 10359 |
| Florence, AL | MSA 10318 | Owensboro, KY | MSA 10334 |
| Fort Smith, AR–OK | MSA 10319 | Parkersburg-Marietta, WV–OH | MSA 10369 |
| Fort Smith, AR–OK | MSA 10319 | Parkersburg-Marietta, WV–OH | MSA 10369 |
| Gadsden, AL | MSA 10318 | Pendleton County, KY | 10334 |
| Gallatin County, KY | 10334 | Provo-Orem, UT | MSA 10365 |
| Grant County, KY | 10334 | Reno, NV | MSA 10349 |
| Greenville-Spartanburg, Anderson, SC | MSA 10359 | Salt Lake City-Ogden, UT | MSA 10365 |
| Hattiesburg, MS | MSA 10344 | San Angelo, TX | MSA 10362 |
| Henderson County, TX | 10362 | Scranton-Wilkes-Barre-Hazleton, PA | MSA 10357 |
| Huntington-Ashland, WV–KY–OH | MSA 10334 | Sherman-Denison, TX | MSA 10362 |

| Metropolitan FMR areas | Page | Metropolitan FMR areas | Page |
|---|---|---|---|
| Huntington-Ashland, WV–KY–OH | MSA 10368 | Springfield, MO | MSA 10345 |
| Huntington-Ashland, WV–KY–OH | MSA 10368 | St. Joseph, MO | MSA 10345 |
| Johnson City-Kingsport-Bristol, TN–VA | MSA 10361 | Sumter, SC | MSA 10359 |
| Johnson City-Kingsport-Bristol, TN–VA | MSA 10361 | Texarkana, TX–AR | MSA 10319 |
| Joplin, MO | MSA 10345 | Texarkana, TX–AR | MSA 10362 |
| Killeen-Temple, TX | MSA 10362 | Waco, TX | MSA 10362 |
| | | Wausau, WI | MSA 10370 |

Dated: May 12, 2000.

**Gloria Cousar,**

*Deputy Assistant Secretary for Public and Assisted Housing Delivery.*

**BILLING CODE 4210–33–P**

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**APPENDIX A**

**SECTION 8 ADMINISTRATIVE FEE REVISIONS -- DOLLAR AMOUNT PER UNIT PER MONTH**

| METROPOLITAN FMR AREAS | A | B | C | COUNTIES COVERED |
|---|---|---|---|---|
| Anniston, AL MSA | 39.20 | 36.58 | 15.68 | Calhoun |
| Aurburn-Opelika, Al MSA | 39.20 | 36.58 | 15.68 | Lee |
| Columbus, GA-AL MSA | 39.20 | 36.58 | 15.68 | Russell |
| Decatur, AL MSA | 39.20 | 36.58 | 15.68 | Lawrence, Morgan |
| Florence, AL MSA | 39.20 | 36.58 | 15.68 | Colbert, Lauderdale |
| Gadsden, AL MSA | 39.20 | 36.58 | 15.68 | Etowah |
| Montgomery, AL MSA | 39.20 | 36.58 | 15.68 | Autauga, Elmore, Montgomery |
| Fort Smith, AR-OK MSA | 37.36 | 34.72 | 14.88 | Crawford, Sebasstian |
| Texarkana, TX-AR MSA | 36.57 | 34.12 | 14.63 | Bowie |
| Albany, GA MSA | 38.91 | 36.31 | 15.56 | Dougherty, Lee |
| Columbus, GA-AL MSA | 39.20 | 36.58 | 15.68 | Chattahmochee, Harris, Muscogee |
| Macon, GA MSA | 38.91 | 36.31 | 15.56 | Bibb, Houstom, Jones, Peach, Twigga |
| Louisville, KY-IN MSA | 36.73 | 34.27 | 14.69 | Bullitt, Jefferson, Oldham |
| Gallatin County, KY | 35.12 | 32.78 | 14.05 | Gallatin |
| Grant County, KY | 35.12 | 32.78 | 14.05 | Grant |
| Huntington-Ashland, WV-KY-OH MSA | 37.72 | 35.20 | 15.09 | Boyd, Carter, Greenup |
| Louisville, KY-IN MSA | 36.73 | 34.27 | 14.69 | Bullitt, Jefferson, Oldham |
| Owensboro, KY MSA | 35.12 | 32.78 | 14.05 | Daviess |
| Pendleton County, KY | 35.12 | 32.78 | 14.05 | Pendleton |
| Cumberland, MD-WV MSA | 37.72 | 35.20 | 15.09 | Allegany |
| Columbia, MO MSA | 38.40 | 35.83 | 15.36 | Boone |
| Joplin, MO MSA | 38.40 | 35.83 | 15.36 | Jasper, Newton |
| Springfield, MO MSA | 38.40 | 35.83 | 15.36 | Christian, Greene, Webster |
| St. Joseph, MO MSA | 38.40 | 35.83 | 15.36 | Andrew, Bucanan |
| Biloxi-Gulfport-Pascagpula, MS MSA | 38.68 | 36.10 | 15.47 | Hancock, Harrison, Jackson |
| Hattiesburg, MS MSA | 38.68 | 36.10 | 15.47 | Forrest, Lamar |
| Memphis, TN-AR-MS MSA | 41.71 | 38.94 | 16.69 | Desota |
| Reno, NV MSA | 53.01 | 48.51 | 20.79 | Washoe |
| Huntington-Ashland, WV-KY-OH MSA | 37.72 | 35.20 | 15.09 | Lawrence |
| Parkersburg-Marietta, WV-OH MSA | 37.72 | 35.20 | 15.09 | Washington |
| Fort Smith, AR-OK MSA | 36.31 | 33.88 | 14.52 | Sequoyah |
| Corvallis, OR MSA | 51.81 | 48.36 | 20.73 | Benton |
| Scranton--Wilkes-Barre--Hazleton,PA MSA | 38.56 | 36.00 | 15.43 | Columbia, Lackawanna, Luzerne, Wyoming |

[FR Doc. 00-12644 Filed 5-19-00; 8:45 am]
BILLING CODE 4210-27-P

**SECTION 8 ADMINISTRATIVE FEE REVISIONS -- DOLLAR AMOUNT PER UNIT PER MONTH**

| METROPOLITAN FMR AREAS | A | B | C | COUNTIES COVERED |
|---|---|---|---|---|
| Greenville-Spartanburg-Anderson, SC MSA | 37.69 | 35.17 | 15.08 | Anderson, Cherokee, Greenville, Pikena, Spartanburg |
| Myrtle Beach, SC MSA | 37.69 | 35.17 | 15.08 | Horry |
| Sumter, SC MSA | 37.69 | 35.17 | 15.08 | Sumter |
| Johnson City-Kingsport-Bristol,TN-VA MSA | 38.67 | 36.07 | 15.46 | Carter, Hawkins, Sullivan, Unicoi, Washington |
| Memphis, TN-AR-MS MSA | 41.71 | 38.94 | 16.69 | Fayette, Shelby, Tipton |
| Abilene, TX MSA | 36.57 | 34.12 | 14.63 | Taylor |
| Amarillo, TX MSA | 36.57 | 34.12 | 14.63 | Potter, Randall |
| Henderson County, TX | 36.47 | 34.12 | 14.63 | Henderson |
| Killeen-Temple, TX MSA | 36.57 | 34.12 | 14.63 | Bell, Coryell |
| Laredo, TX MSA | 36.57 | 34.12 | 14.63 | Webb |
| Lubbock, TX MSA | 36.57 | 34.12 | 14.63 | Lubbock |
| Mc Allen-Edinburg-Mission, TX MSA | 36.57 | 34.12 | 14.63 | Hidalgo |
| San Angelo, TX MSA | 36.57 | 34.12 | 14.63 | Tom Green |
| Sherman-Denison, TX MSA | 36.57 | 34.12 | 14.63 | Grayson |
| Texarkana, TX-AR MSA | 36.57 | 34.12 | 14.63 | Bowie |
| Waco, TX MSA | 36.57 | 34.12 | 14.63 | McLennan |
| Provo-Orem, UT MSA | 41.53 | 38.76 | 16.61 | Utah |
| Salt Lake City-Ogden, UT MSA | 41.53 | 38.76 | 16.61 | Davis, Salt Lake, Weber |
| Culpepper County, VA | 39.40 | 36.77 | 15.76 | Culpepper County |
| Johnson City-Kingsport-Bristol,TN-VA MSA | 38.67 | 36.07 | 15.46 | Scott, Washington, Bristol City |
| Eau Claire, WI MSA | 37.85 | 35.32 | 15.14 | Chippewa, Eau Claire |
| Wausau, WI MSA | 37.85 | 35.32 | 15.14 | Marathon |
| Cumberland, MD-WV MSA | 37.72 | 35.20 | 15.09 | Minmral |
| Huntington-Ashland, WV-KY-OH MSA | 37.72 | 35.20 | 15.09 | Cabell, Wayne |
| Parkersburg-Marietta, WV-OH MSA | 37.72 | 35.20 | 15.09 | Wood |

Note: A = First 600 units; B = Remainder of units; C = PHA owned units

[FR Doc. 00-12713 Filed 5-19-00; 8:45 am]
BILLING CODE 4210-33-P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–023232

*Applicant:* AZA Rhinoceros Taxon Advisory Group, c/o Buffalo Zoo, Buffalo, NY.

The applicant requests a permit to export blood samples from Indian Rhino (*Rhinoceros unicornis*) taken from captive held and captive born species being held in captivity in Canada and the United States. Samples are to be exported to University of Basel, Basel, Switzerland for scientific research purposes.

PRT–026630

*Applicant:* Duke University, Durham, NC.

The applicant requests a permit to import blood and tissue samples from Brown hyaena (*Hyaena brunnea*) taken from wild animals in Diamond Coast, Namibia. Samples are to be imported from Ministry of Environment & Tourism, Windhoek, Namibia for scientific research purposes.

PRT–027208

*Applicant:* Donald S. Usak, Roanoke, VA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–027256

*Applicant:* Baltimore Zoo, Baltimore, MD.

The applicant requests a permit to import 140 live Panamanian golden frogs (*Atelopus zeteki*) taken from the wild in Panama. The 140 is to consist of 20 pairs of adult specimens and 100 end-stage tadpoles. The import is for the purpose of enhancement of the propagation of the species.

PRT–025357

*Applicant:* Toledo Zoological Gardens, Toledo, OH.

The applicant requests a permit to import one captive-born male and one captive-born female African wild dog (*Lycaon pictus*) from the Hoedspruit Research and Breeding Centre, South Africa, for the purpose of enhancement of the survival of the species through propagation.

PRT–020925

*Applicant:* Susanne Shultz, State University of New York Stony Brook, NY.

The applicant requests a permit to import the prey remains of Diana monkey (*Cercopithecus diana*) and Jentink's duiker (*Cephalophus jentinki*) collected in the wild in Cote d'Ivoire (Ivory Coast), for scientific research.

PRT–026842

*Applicant:* Chicago Zoological Park, Brookfield, IL.

The applicant requests a permit to export hair, blood, and tissue samples from one male captive born Goeldi's monkey (*Callimico goeldii*) to the Anthropologisches Institut der Universitact Zuerich, Zuerich, Switzerland, for scientific research.

PRT–017383

*Applicant:* Elizabeth N. Knowles, Jacksboro, TX.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

### Marine Mammal

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–027073

*Applicant:* John R. Kauffman, Pennsburg, PA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories Canada for personal use.

PRT–027126

*Applicant:* Stephen C. Delano, Cold Spring, MN

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories Canada for personal use.

PRT–027135

*Applicant:* Donald R. Card, Grand Ledge, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT—027207

*Applicant:* Peter M. Shaw, Foristell, MO

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT—027206

*Applicant:* Greg Wilkie, Lenoir, NC

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT—027205

*Applicant:* Edward D. Yates, Wrightsville, PA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT—027204

*Applicant:* Darrell W. Hindman, St. Louis, MO

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–027386

*Applicant:* Samuel A. Francis, Goshen, KY

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

PRT–027384

*Applicant:* Dyrk T. Eddie, Kalispell, MT

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director

within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 16, 2000.

**Kristen Nelson,**

*Chief, Branch of Permits, Office of Management Authority.*

[FR Doc. 00–12710 Filed 5–19–00; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Reinstatement, Record of Decision on the Final General Management Plan and Final Environmental Impact Statement for the Missouri National Recreational River (59-Mile District), Nebraska and South Dakota

**SUMMARY:** Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the National Park Service (NPS) is announcing the Record of Decision on the Final General Management Plan (GMP) and Final Environmental Impact Statement (FEIS) for the Missouri National Recreational River (MNRR), 59-Mile District. The MNRR is located in portions of Clay, Union, and Yankton counties, South Dakota and Cedar, Dixon, and Knox counties, Nebraska.

More specifically, the NPS is reinstating a Record of Decision previously suspended by the bureau. After the Record of Decision was originally signed, it was discovered that the FEIS was inadvertently not filed with the Environmental Protection Agency (EPA) as required by 40 CFR 1506.9. Accordingly, the NPS suspended the Record of Decision (see 65 FR 10542), suspended implementation of the GMP, filed the FEIS with EPA, and reopened the required 30-day period of no-action.

**DATES:** The Regional Director, National Park Service, Midwest Region, and the District Engineer, Omaha District, U.S. Army Corps of Engineers approved the Record of Decision on December 17, 1999. That Record of Decision was reinstated effective April 10, 2000.

**FOR FURTHER INFORMATION CONTACT:** Paul Hedren, Superintendent, Missouri National Recreational River, P.O. Box 591, O'Neill, Nebraska 68763, or by e-mail to MNRR_Superintendent@nps.gov, or call 402–336–3970.

**SUPPLEMENTARY INFORMATION:** The EPA published its notice of availability for the FEIS in the **Federal Register** on March 10, 2000 (65 FR 12992). The 30-day no-action period ended on April 10, 2000. No public comments were received during this period. Accordingly, the NPS has determined that no changes to the FEIS or the original Record of Decision are necessary. The Record of Decision as printed in the **Federal Register** on December 17, 1999 (64 FR 72359) is reinstated.

Dated: May 8, 2000.

**David N. Given,**

*Acting Regional Director.*

[FR Doc. 00–12700 Filed 5–19–00; 8:45 am]

**BILLING CODE 4310–70–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Niobrara National Scenic River

**AGENCY:** National Park Service, Interior.

**ACTION:** Amended Notice of Intent to prepare an Environmental Impact Statement for the General Management Plan, Niobrara National Scenic River, Nebraska.

**SUMMARY:** The National Park Service will prepare a General Management Plan (GMP) and an Environmental Impact Statement (EIS) for the Niobrara National Scenic River (hereinafter, "the Park"), Nebraska, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), and a court decision invalidating a similar 1996 GMP/EIS and ordering a new one. This notice is being furnished as required by NEPA Regulation 40 CFR 1501.7, and serves to amend the Notice of Intent as published in the **Federal Register** on February 28, 2000 (65 FR 10542).

To facilitate sound planning and environmental assessment in the preparation of this EIS, the National Park Service intends to both validate information previously acquired for the 1996 GMP/EIS, and obtain suggestions and information from other agencies and the public on several court-driven issues to be addressed in the new EIS. The National Park Service will scope this GMP/EIS via the media, a newsletter, and through a World Wide Web page. Comments and participation in this scoping process are invited.

**DATES:** A project newsletter is being prepared, which is expected to be ready by the end of May 2000. The newsletter will contain specific information about how to provide input to the scoping phase of this project. Availability of the newsletter will be announced through local and regional media outlets. The newsletter will be sent to all addressees of record in the planning of the park's 1996 GMP/EIS, and to others who request the newsletter. To request a copy of the newsletter and to be added to the project mailing list, contact the park superintendent at 402–336–3970 or by writing to one of the addresses below.

**ADDRESSES:** Written comments and information should be directed to Superintendent, Niobrara National Scenic River, P.O. Box 591, O'Neill, Nebraska 68763; or by email, niob__gmp@nps.gov.

**FOR FURTHER INFORMATION CONTACT:** Superintendent, Niobrara National Scenic River, at either of the above addresses or at telephone number 402–336–3970.

**SUPPLEMENTARY INFORMATION:** Since the original notice of intent was published in February 2000, the United States Court of Appeals for the Eighth Circuit overturned the boundaries for the Niobrara National Scenic Riverway which has been established as part of a 1996 General Management Plan (GMP) for the park. A federal district court had overturned that GMP and associated Environmental Impact Statement (EIS) in a separate ruling. However, the district court ruling had retained the section of the GMP pertaining to the park's boundary. Therefore, the original notice of intent for the current project implied that boundaries were not within the scope of issues that would be addressed in the forthcoming GMP/EIS rewrite. The decision of the Court of Appeals has expanded the scope to include the park boundary.

The broad array of issues identified in the 1996 GMP/EIS, including land ownership, landscape conservation, water resource protection, hunting, fishing, and trapping, and visitor education and protection appear valid but reaffirmation will be sought through scoping. Specific examples of other issues that will be addressed in the GMP are: (1) the extent and manner in which partnerships can and will be employed to achieve management objectives, (2)

identify appropriate access and development in the park, particularly balancing growing park use and resource protection; and (3) identity appropriate land protection strategies workable on a predominantly privately owned landscape. Other issues may be added to this list following completion of scoping.

The new GMP will set forth a management concept for the park; establish plans for resource conservation, public use, and development; and identify strategies for resolving issues and achieving management objectives. It is expected that the GMP will guide park management for a period of fifteen to twenty years.

The GMP/EIS will investigate alternatives ranging from no-action to a variety of management approaches designed to guide public use and protect natural and cultural resources.

The environmental review of the GMP for the Niobrara National Scenic River will be conducted in accordance with requirements of NEPA (42 U.S.C. 4321 *et seq.*), NEPA regulations, and National Park Service procedures and policies for compliance with those regulations.

The National Park Service estimates the draft GMP and draft EIS will be available to the public in early 2001.

Dated: May 8, 2000.

**David N. Given,**

*Acting Regional Director.*

[FR Doc. 00–12701 Filed 5–19–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent To Prepare a Draft Environmental Impact Statement for Cumberland Island National Seashore, Georgia

**SUMMARY:** In accordance with Section 102(2)(c) of the National Environmental Policy Act of 1969 (Public Law 91–190, as amended), the National Park Service (NPS) is preparing an Environmental Impact Statement (DEIS) for a General Management Plan Amendment, a Wilderness Management Plan, a Resource Management Plan (Cultural and Natural) and a Commercial Services Plan. The DEIS will evaluate the environmental consequences associated with the proposed actions and the other alternatives on management of wilderness, cultural and natural resources, and commercial services.

**DATES:** A public scoping meeting will be scheduled this summer. Time and place of the public meeting will be publicized in area newspapers. The DEIS will be available sometime in late summer.

**FOR FURTHER INFORMATION CONTACT:** To provide comments on this planning effort and to receive copies of the DEIS, please contact: Art Frederick, Superintendent, Cumberland Island National Seashore, P.O. Box 806, St. Marys, Georgia 31558, Telephone: (912) 882–4336.

**SUPPLEMENTARY INFORMATION:** Since June 1996 the NPS has been engaged in a process to determine the management of the island's wilderness. During the discussions concerning wilderness management, the NPS realized that the planning effort should broaden its focus. As a result the NPS has prepared a series of plans addressing the management of wilderness, cultural resources, natural resources, and commercial services.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Dated: May 11, 2000.

**W. Thomas Brown,**

*Regional Director, Southeast Region.*

[FR Doc. 00–12703 Filed 5–19–00; 8:45 am]

BILLING CODE 4310–70–M

## DEPARTMENT OF THE INTERIOR

### Draft General Management Plan/ Environmental Impact Statement, Ebey's Landing National Historical Reserve, Washington

**AGENCY:** National Park Service.

**ACTION:** Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** The National Park Service will prepare a General Management Plan/Environmental Impact Statement (GMP/EIS) for Ebey's Landing National Historical Reserve.

A General Management Plan sets forth the basic management philosophy for a unit of the National Park System and provides the strategies for addressing issues and achieving identified management objectives for that unit. In the GMP/EIS and its accompanying public review process, the National Park Service will formulate and evaluate the environmental impacts of a range of alternatives to address distinct management strategies for the park, including resource protection and visitor use. The plan will guide the management of natural and cultural resources and visitor use of those resources for the next 15–20 years. Development concept plans for selected facilities may be included with the GMP.

Scoping is the term given to the process by which the scope of issues to be addressed in the GMP/EIS is identified. Representatives of Federal, State and local agencies, American Indian tribes, private organizations and individuals from the general public who may be interested in or affected by the proposed GMP/EIS are invited to participate in the scoping process by responding to this Notice with written comments.

All comments received will become part of the public record and copies of comments, including any names and home addresses of respondents, may be released for public inspection. Individual respondents may request that their home addresses be withheld from the public record, which will be honored to the extent allowable by law. Requests to withhold names and/or addresses must be stated prominently at the beginning of the comments. Anonymous comments will not be considered. Submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

Among the major issues likely to be addressed in the Ebey's Landing National Historical Reserve GMP/EIS are (1) resource information and protection, including a land protection plan, (2) cooperation with associated partners and interests, (3) interpretation, (4) visitor use and services, and (5) park administration. A full range of alternatives, including "no action", will be considered in the GMP/EIS to address these and other issues that may emerge during the planning process. The draft GMP/EIS is expected to be available for public review by the spring of 2001.

Because the responsibility for approving the GMP/EIS has been delegated to the National Park Service,

the EIS is a "delegated" EIS. The responsible official is John J. Reynolds, Regional Director, Pacific West Region, National Park Service.

**DATES:** Public scoping meetings will be held on Tuesday, June 20, 2000, 6:30–8:30 p.m. at the REI Seattle Flagship Store, Second Floor Meeting Room, 222 Yale Avenue North, Seattle, WA, and Wednesday, June 21, 2000, 2:30–5:00 p.m. and again at 7:00–9:00 p.m., at the Coupeville Recreation Hall, 901 NW Alexander Street, Coupeville, WA. Written comments on the scope of the issues and alternatives to be analyzed in the GMP/EIS should be received no later than August 15, 2000.

**ADDRESSES:** Written comments concerning the GMP/EIS should be sent to Reserve Manager, Ebey's Landing National Historical Reserve, P.O. Box 774, Coupeville, WA 98239–0774, or e-mail to ebla_administration@nps.gov.

**FOR FURTHER INFORMATION CONTACT:** Reserve Manager, Ebey's Landing National Historical Reserve, at (360) 678–6084, or NPS Reserve Liaison at (206) 220–4138.

Dated: May 11, 2000.

**William C. Walters,**

*Deputy Regional Director, Pacific West Region.*

[FR Doc. 00–12704 Filed 5–19–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Boston Harbor Islands Advisory Council; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (PL 92–463) that the Boston Harbor Islands Advisory Council will meet on Wednesday, June 7, 2000. The meeting will convene at 4 p.m. at the United States Courthouse, 1 Courthouse Way, Jury Room II, Boston, Massachusetts.

The Advisory Council was appointed by the Director of National Park Service pursuant to Public Law 104–333. The 28 members represent business, educational, cultural, and environmental entities; municipalities surrounding Boston Harbor; Boston Harbor advocates; and Native American interests. The purpose of the Council is to advise and make recommendations to the Boston Harbor Islands Partnership with respect to the development and implementation of a management plan and the operation of the Boston Harbor Islands National Recreation Area.

The Agenda for this meeting is as follows:

1. Approval of minutes from March 2, 2000.
2. Discuss and plan reportcard.
3. Discussion on the draft General Management Plan.

The meeting is open to the public. Further information concerning Council meetings may be obtained from the Superintendent, Boston Harbor Islands. Interested persons may make oral/written presentations to the Council or file written statements. Such requests should be made at least seven days prior to the meeting to: Superintendent, Boston Harbor Islands NRA, 408 Atlantic Ave., Boston, MA, 02110, telephone (617) 223–8667.

Dated: May 8, 2000.

**George E. Price, Jr.,**

*Superintendent, Boston Harbor Islands NRA.*

[FR Doc. 00–12702 Filed 5–19–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF THE INTERIOR

### National Park Service

### National Preservation Technology and Training Board: Meeting Cancellation

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1988), that the National Preservation Technology and Training Board that was scheduled to meet May 22, 2000, in Santa Fe, New Mexico is cancelled.

The Board was to meet Monday, May 22 from 8:30 a.m. to 5:30 p.m. in the DeVargas room of the Hotel St. Francis, 201 Don Gasper Avenue, Santa Fe, New Mexico. Matters to be discussed were to include, officer and committee reports; consideration of present and future NCPTT programs; consideration of NCPTT mission and long-range plan, assess the accomplishment of the board's first six years; and the election of officers for two-year terms. The board meeting will be rescheduled at a later time.

Persons wishing more information concerning this meeting, or who wish to submit written statements, may do so by contacting Mr. E. Blaine Cliver, Chief, HABS/HAER, National Park Service, 1849 C Street NW, Washington, DC 20240, telephone: (202) 343–9573.

Dated: May 16, 2000.

**Eric DeLong,**

*Acting Chief, HABS/HAER, Designated Federal Official, National Park Service.*

[FR Doc. 00–12699 Filed 5–19–00; 8:45 am]

BILLING CODE 4310–70–P

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to Sections 106 and 107 of CERCLA

Notice is hereby given that on May 5, 2000, the United states lodged a proposed Consent Decree with the United States District Court for the Southern district of Texas in *United States and State of Texas* v. *Alpha Metals, Inc., et al.*, Civ. A. No. G–00250, in connection with related case *Amoco Chemical Co., et al.* v. *United States, et al.*, Civ. A. No. G–96–272 (consolidated with Civ. A. No. G–96–247), pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607. The proposed Consent Decree resolves civil claims of the United States and the State of Texas against settling generator defendants and settling former owner/operator defendants, and contribution claims against settling federal agencies, regarding the Tex Tin Superfund Site—a former tin and copper smelter and metals reclamation facility established during WWII—located in Texas City, Texas. Under the proposed Consent Decree, settling defendants agree to perform the cleanup of the Tex Tin Site, financed in substantial part by settling federal agencies, at an estimated cost of approximately $27 million. In addition, the settling parties agree, among other things, to finance a proposed remedy addressing continued erosion in the Swan Lake Marsh are near Galveston Bay, pay natural resource damages relating to losses and injuries in the Swan Lake Marsh area, and reimburse Amoco Chemical Company for past response costs for work it performed at the Site.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States and State of Texas* v. *Alpha Metals, Inc., et al.*, DOJ No. 90–11–3–1669. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Texas, Houston, Texas, and the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a

copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $94.50 for the Decree, payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–12734 Filed 5–19–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Notice if hereby given that on May 3, 2000, a proposed Consent Decree in *United States* v. *Cedar Wood Apartments, Inc. et al,* Civil Action No. 00–C–2451, was lodged with the United States District Court for the Northern District of Illinois.

This consent decree represents a settlement of claims brought against the following twenty-four defendants under section 107 of CERCLA, 42 U.S.C. 9607, for the recovery of costs incurred by the United States in responding to the release or threatened release of hazardous substances at and from the Tri-County/Elgin Landfill Superfund Site in Elgin, Illinois: Cedar Woods Apartments, Inc.; Clarence Davids & Company; Eaton's Red Wood Inn; Elgin Academy; Elgin Public School District 46; Elgin Rehabilitation Center; Elgin Turners; The Famous Chili Pub, Ltd.; Genoa-Kingston Community Unit School District #424; Golf Rose Animal Hospital; Hamphire Grade School and Hampshire High School (Community Unit School District 300); Hiawatha Public School; Jewel Food Stores; Judson College; Olde Towne Animal Hospital; Pal Joey's Restaurant and Lounge; Rand Grove Partnership, an Illinois Partnership (owner and operator of Rand Grove Village Apartments); Red Lobster Inns of America, Inc. (n/k/a/ GMRI, Inc.), a Florida Corporation; West Chicago School District #33; St. Joseph Hospital; Town & Country Gardens; Vavrus & Associates; Village of Carol Stream; and Village Squire.

The United States Postal Service is also a party to the proposed Consent Decree. Through the Consent Decree, the United States Postal Service would resolve potential contribution claims that may be asserted against the United States due to alleged liability on behalf of the United States Postal Service.

Under the proposed settlement, the defendants and the United States Postal Service will collectively pay $168,069.42.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Cedar Wood Apartments, Inc. et al,* D.J. Ref. 90–11–3–1088/2.

The Consent Decree may be examined at the office of the United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $13.00 (25 cents per page reproduction cost, 52 pages) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 00–12733 Filed 5–19–00; 8:45 am]

BILLING CODE 4410–15–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

Notice is hereby given, in accordance with 28 CFR 50.7, that on May 11, 2000, the United States lodged a proposed Consent Decree with the United States District Court for the Western District of Wisconsin, in *United States* v. *Enzyme Bio-Systems, Ltd.*, Case No. *00–C–283–S* (W.D. Wis.), under section 309 of the Clean Water Act, 33 U.S.C. 1319. The proposed Consent Decree resolves certain claims of the United States against Enzyme Bio-Systems, arising out of Enzyme Bio-Systems' plant located at 2600 Kennedy Drive, Beloit, Wisconsin. Specifically, the United States alleged that Enzyme Bio-Systems, in violation of section 307(d) of the Clean Water Act, 33 U.S.C. 1317(d), exceeded certain effluent limitations set forth in its Industrial Discharge Permit issued to Enzyme Bio-Systems by the City of Beloit, Wisconsin.

Under the proposed Consent Decree Enzyme Bio-Systems will pay the United States a $46,100 civil penalty, Additionally, the proposed Consent Decree provides for the implementation of a Supplemental Environmental Project ("SEP") that requires expenditures of at least $850,000. The SEP involves Enzyme Bio-Systems: purchasing a pretreatment plant previously abandoned by the City of Beloit; installing and operating a reverse osmosis membrane treatment system capable of treating 25,000 gallons per day of high strength BOD; hauling the BOD filtrate off site for application as a soil conditioner, possible fertilizer substitute, or other environmentally beneficial reuse; petitioning the City to reduce Enzyme Bio-Systems' allowable effluent limits set forth in its Industrial Discharge Permit; and providing EPA with a SEP completion report and quarterly progress reports. This pollution reduction/prevention SEP will reduce the BOD load to the Beloit POTW, reduce the use of artificial chemical fertilizers by the potential land application of the BOD filtrate as fertilizer, and result in revenue to the City of Beloit for the purchase of its abandoned pretreatment facility. Because the technology of the reverse osmosis membrane system is very innovative and carries a risk of technological impracticability, if the pilot studies demonstrate that the membrane system cannot effectively filter high strength BOD filtrate, then Enzyme Bio-Systems can elect to pay an optional additional civil penalty in lieu of completing its obligations under the SEP requirements.

The Department of Justice will accept written comments relating to the proposed Consent Decree for 30 days after publication of this Notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044–7611, and should refer to *United States* v. *Enzyme Bio-Systems, Ltd.*, Case No. *00–C–283–S* (W.D. Wis.), DOJ No. 90–5–1–1–4504. The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Wisconsin, Madison, Wisconsin, and at the Region 5 Office of the United States Environment Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed Consent Decree may also be obtained by mail from the U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page), in the amount of $5.25 for the

Decree, payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.*

[FR Doc. 00–12732 Filed 5–19–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree and Proposed Prospective Purchaser Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

Under 28 CFR 50.7, notice is hereby given that on April 18, 2000, a proposed Consent Decree in *United States* v. *Scott County Sportsmen's Association*, Case No. 30–00–CV–10052 (S.D. Iowa) was lodged with the United States District Court for the Southern District of Iowa, Davenport Division. The Consent Decree settles claims by the United States, against Scott County Sportsmen's Association (SCSA) under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607. The Complaint of the United States seeks past and future CERCLA response costs incurred by EPA in connection with the Nahant Marsh Superfund Site (the Site) and for damages for injuries to natural resources at the Site as determined by the Department of the Interior (Interior), the Natural Resource Trustee. Defendant SCSA owned property on the Site and used it for target and skeet shooting, resulting in releases of lead, a hazardous substance.

The Consent Decree requires SCSA to record a conservation easement for its 78-acre property at the Site in favor of the Iowa Natural Heritage Foundation (INHF) for preservation of the land as a reserve for wildlife and to prevent residential, commercial and industrial development of the land. The SCSA is required to transfer ownership of its property at the Site to the City of Davenport, Iowa (the City), and notify EPA of the transfer. All proceeds from the sale of the Property will be paid to the United States. The City agrees to pay the purchase price of $86,000 to EPA (which will receive $81,000) and to Interior (which will receive $5,000) pursuant to a proposed Agreement and Covenant Not to Sue, or Prospective Purchaser Agreement, entered into between the United States and the City. Under the terms of the Prospective Purchaser Agreement, the City will also place a restrictive covenant on the land that restricts residential development.

In exchange for its commitments under the Consent Decree, Defendant SCSA will receive a covenant not to sue pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. 9606 AND 9607(a), for response actions and response costs relating to the Site. Defendant SCSA will also receive a covenant not to sue for natural resource damages under CERCLA.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Scott County Sportsmen's Association*, Case No. 3–00–CV–10052 (S.D. Iowa), D.J. Ref. No. 90–11–2–1372/1.

The Consent Decree may be examined at the office of the United States Attorney for the Southern District of Iowa, U.S. Courthouse Annex, 110 East Court Avenue, Suite 286, Des Moines, Iowa 50309. The Consent Decree may also be examined at the office of Region VII of the U.S. Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. A copy of the Consent Decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $15.00 (with exhibits) (25 cents per page reproduction cost) payable to the Consent Decree Library. If requesting a copy of the Consent Decree exclusive of exhibits, please enclose a check in the amount of $7.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

**Joel M. Gross,**

*Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.*

[FR Doc. 00–12731 Filed 5–19–00; 8:45 am]

**BILLING CODE 4410–15–M**

## DEPARTMENT OF JUSTICE

**[AAG/A Order No. 198–2000]**

### Privacy Act of 1974; System of Records

The Department of Justice proposes to modify the Office of the Inspector General Investigative Records System, JUSTICE/OIG–001, last published in the **Federal Register** on March 10, 1992 (57 FR 8476). The primary purpose of the system is to enable the Department's Office of the Inspector General to conduct its responsibilities under the Inspector General Act of 1978, as amended by the Inspector General Act Amendments of 1988, 5 U.S.C. App. 3, including its responsibility to conduct and supervise investigations relating to programs and operations of the Department. The Department now proposes to modify the system by adding one new routine use, revising two existing routine uses, and making other minor revisions.

New routine use (i) will permit the Department to share information about investigations with complainants and victims in order to inform them about the progress and results of investigations arising from the matters of which they complained or were the victim.

In addition, two current routine uses are being revised. First, routine use (a) relating to disclosures of records indicating a violation or potential violation of law or contract to those entities responsible for investigating, prosecuting or enforcing those laws or contracts is being revised to make it clear that disclosure extends both to records that indicate such a violation or potential violation standing alone and to records that do so only when viewed in combination with other documents. Second, routine use (d) relating to disclosures made to other entities in connection with the assignment, hiring, retention, issuance or revocation of a security clearance, reporting of an investigation, letting of a contract, or the issuance or revocation of a license, grant, or other benefit to an individual by those entities is being modified in two respects: (1) To eliminate the requirement that information may be released only upon the request of a specified entity and (2) to permit information pertinent to the issuance or retention of a professional license to be shared with the relevant professional licensing organization.

Finally, the Department is making minor revisions to the 'System Location,' 'Retirevability,' 'System Manager and Address,' and 'Retention and Disposal' sections to reflect current conditions. A typographical error in routine use (h) as it was originally published in the **Federal Register** (57 FR 8477), is also being corrected.

5 U.S.C. 552a(e)(4) and (11) provide that the public be given thirty days in which to comment on these proposed changes. Any comments must be submitted in writing to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 by June 21, 2000.

As required by 5 U.S.C. 552(r) and Office of Management and Budget (OMB) implementing regulations, the Department of Justice has provided a report on the proposed changes to OMB and the Congress.

A modified system description is set forth below.

Dated: May 8, 2000.

**Stephen R. Colgate,**

*Assistant Attorney General for Administration.*

**JUSTICE/OIG–001**

**SYSTEM NAME:**

Office of the Inspector General Investigative Records.

**SYSTEM LOCATION:**

U.S. Department of Justice, Office of the Inspector General, 950 Pennsylvania Ave., NW, Washington, DC 20530–0001 and 1425 New York Ave., NW, Suite 7100, Washington, DC 20530. During the course of an investigation, records are also kept in the investigations field offices, the addresses of which are listed on the OIG's website at http://www.usdoj.gov/org.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

* * * * *

(a) In the event that a record, either by itself or in combination with other information, indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general stature or particular program statute, or by rule, regulation, or order pursuant thereto, or a violation or potential violation of a contract, the relevant record may be disclosed to the appropriate agency, whether Federal, state, local, foreign, or international, charged with the responsibility or investigating or prosecuting such violation, enforcing or implementing such statute, rule, regulation, or order, or with enforcing such contract.

* * * * *

(d) A record may be disclosed to a Federal, State, local, foreign, or international agency, or other public authority or professional licensing organization, in connection with the assignment, hiring, or retention of an individual, the issuance or revocation of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance or revocation of a license, grant, or other benefit by such an entity, to the extent that the information is relevant and necessary to that entity's decision on the matter. No disclosure will be made under this paragraph unless the Inspector General or his designee determines that the information is sufficiently reliable to support a referral to another office within the Department of Justice or to another Federal, state, or local agency for criminal, civil, administrative, personnel, or regulatory action.

* * * * *

(h) Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(i) Information may be disclosed to complainants and victims to the extent necessary to provide them with information concerning the progress or results of the investigation or case arising from the matters of which they complained or were the victim.

* * * * *

**RETRIEVABILITY:**

Each OIG investigation is assigned a case number and all records relating to a particular investigation are filed and retrieved by that case number. In some instances, records may also be retrievable by the surnames of subjects, witnesses, and/or complaintants.

* * * * *

**RETENTION AND DISPOSAL:**

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, Job Number NI–60–97–4.

**SYSTEM MANAGER(S) AND ADDRESS:**

Office of the General Counsel, Office of the Inspector General, Department of Justice, 950 Pennsylvania Avenue, NW, Room 4261, Washington, DC 20530–0001.

* * * * *

[FR Doc. 00–12735 Filed 5–19–00; 8:45 am]

**BILLING CODE 4410–CJ–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Petitions for transitional adjustment assistance under the North American Free Trade Agreement-Transitional Adjustment Assistance Implementation Act (Public Law 103-182), hereinafter called (NAFTA–TAA), have been filed with State Governors under Section 250(b)(1) of Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended, are identified in the Appendix to this Notice. Upon notice from a Governor that a NAFTA–TAA petition has been received, the Director of the Division of Trade Adjustment Assistance (DTAA), Employment and Training Administration (ETA), Department of Labor (DOL), announces the filing of the petition and takes action pursuant to paragraphs (c) and (e) of Section 250 of the Trade Act.

The purpose of the Governor's actions and the Labor Department's investigations are to determine whether the workers separated from employment on or after December 8, 1993 (date of enactment of Pub. L. 103–182) are eligible to apply for NAFTA–TAA under Subchapter D of the Trade Act because of increased imports from or the shift in production to Mexico or Canada.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing with the Director of DTAA at the U.S. Department of Labor (DOL) in Washington, DC provided such request if filed in writing with the Director of DTAA not later than June 1, 2000.

Also, interested persons are invited to submit written comments regarding the subject matter of the petitions to the Director of DTAA at the address shown below not later than June 1, 2000.

Petitions filed with the Governors are available for inspection at the Office of the Director, DTAA, ETA, DOL, Room C–4318, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 16th day of May 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance*

APPENDIX

| Subject firm | Location | Date received at Governor's office | Petition No. | Articles produced |
|---|---|---|---|---|
| Dana Corporation (Wkrs) | Marion, OH | 05/05/2000 | NAFTA–3,879 | Axles & ring gears. |
| Ranco North America (Co.) | Plain City, OH | 05/01/2000 | NAFTA–3,880 | Plastic water valves, metal water valves. |
| Johnson Controls (Co.) | Goshen, IL | 05/01/2000 | NAFTA–3,881 | Machining equipment for parts. |
| Schmalbach Luheca Plastic Containers (Co.). | Novi, MI | 01/24/2000 | NAFTA–3,882 | Plastic bottles. |
| Maier's Bakery (Wkrs) | Easton, PA | 05/04/2000 | NAFTA–3,883 | Bread production. |
| Grayson Enterprises (Wkrs) | Eaton, IN | 05/04/2000 | NAFTA–3,884 | Sterile sampling & custom printed bags. |
| Lind Shoe (Wkrs) | Somerset, WI | 04/27/2000 | NAFTA–3,885 | Shoes. |
| Ingersoll Rand Transportation (Wkrs). | Los Angeles, CA | 05/22/2000 | NAFTA–3,886 | Door locks, door lock parts. |
| Vanity Fair Intimates (Co.) | Jackson, AL | 05/08/2000 | NAFTA–3,887 | Women's intimate apparel. |
| Lear Corporation (Wkrs) | El Paso, TX | 05/03/2000 | NAFTA–3,888 | Dies for crimpong cables, molds harness. |
| Pairgain Technologies (Wkrs) | Tustin, CA | 03/07/2000 | NAFTA–3,889 | Higain products. |
| Wheaton USA (Co.) | Pennsville, NJ | 04/28/2000 | NAFTA–3,890 | Silk screening of glass cosmetic bottle. |
| Nortel Networks (Wkrs) | Santa Clara, CA | 05/05/2000 | NAFTA–3,891 | Printed circuit. |
| Schreiber Foods (IBT) | Monroe, WI | 05/01/2000 | NAFTA–3,892 | Cheese products. |
| Peninsula Ligh Metals (Wkrs) | Hawthorne, CA | 05/03/2000 | NAFTA–3,893 | Wheels, pedestals, valves. |
| Southland Manufacturing (Co.) | Ashland, AL | 05/08/2000 | NAFTA–3,894 | Men's slacks. |
| Brunswick (Co.) | Tulsa, OK | 05/04/2000 | NAFTA–3,895 | Fishing tackle. |
| Ambar Chemical (Co.) | Manistee, MI | 04/28/2000 | NAFTA–3,896 | Calcium chloride products. |
| Hillsville Apparel (Co.) | Hillsville, VA | 05/09/2000 | NAFTA–3,897 | Men's women's & children's sportwear. |
| Volex (Co.) | Clinton, AR | 05/09/2000 | NAFTA–3,898 | Plastic finished power cord. |
| TI Group Automotive System (Co.). | Valdosta, GA | 05/02/2000 | NAFTA–3,899 | Auto parts. |
| Triboro Electric (Co.) | Doylestown, PA | 05/09/2000 | NAFTA–3,900 | Fluorescent & incandescent lighting. |
| Hamilton Beach—Proctor Silex (Co.). | Mount Airy, NC | 05/10/2000 | NAFTA–3,901 | Toasters. |
| Bertone KTG Mills (UNITE) | Brooklyn, NY | 05/01/2000 | NAFTA–3,902 | Trimmings. |
| Dana (Co.) | Kendallville, IN | 05/10/2000 | NAFTA–3,903 | Fuel rails. |
| APV America (USWA) | Lake Mills, WI | 05/09/2000 | NAFTA–3,904 | Valves. |
| Four Seasons Apparel (Co.) | Murfreesboro, NC | 05/12/2000 | NAFTA–3,905 | Sportwear. |
| RHI (Co.) | Farber, MO | 05/10/2000 | NAFTA–3,906 | Bricks for steel. |
| Go Dan Industrial (Wkrs) | Houston, TX | 04/05/2000 | NAFTA–3,907 | Automotive industrial radiators. |
| Invensys Appliance Controls (Co.). | Independence, VA | 05/09/2000 | NAFTA–3,908 | Cold controls for refrigeration. |
| Beloit Corporation (Co.) | Neeah, WI | 05/10/2000 | NAFTA–3,909 | Paper making machinery. |

[FR Doc. 00–12768 Filed 5–19–00; 8:45 am]
BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–37, 382]**

### Alaska Petroleum Contractors Alpine Project Kenai (Kenai, AK; Notice of Negative Determination Regarding Application for Reconsideration

By application dated April 24, 2000, petitioners requested administrative reconsideration of the Department's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm. The denial notice was signed on April 7, 2000, and published in the Federal Register on April 21, 2000 (64 FR 21474).

Pursuant to 29 CFR 90.18 (c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The April 7, 2000, denial of TAA for workers engaged in employment related to the fabrication and assembly of large oil production modules at Alaska Petroleum Contractors, Alpine Project Kenai, Kenai, Alaska, was based on the finding that the "contributed importantly" test of the worker group eligibility requirements of section 222 of the Trade Act of 1974 was not met. The contributed importantly test is generally determined by a survey of the major declining customers of the subject firm. The Department conducted a survey of the sole customer of Alaska Petroleum Contractors, Alpine Project Kenai, Kenai, Alaska. The customer did not import oil production modules during the time period relevant to the investigation.

The petitioners assert that many U.S. companies bid on the construction of offshore drilling platforms which was awarded to a Korean producer. They add that Alaska Petroleum Contractors would have been able to build this project or continue with planned work and deliver on site, except for cheaper foreign labor and material offered by the Koreans and the drop in crude oil prices

brought on by the importation of foreign oil.

The subject firm did not bid on the project identified by the petitioners. The Alpine Project Kenai, Kenai, Alaska, was scheduled for a specific period of time and employee layoffs were the result of the completion of that project. The workers were not engaged in the production of oil, therefore, any increase in imports of crude oil is not a basis for worker group certification for the workers of the subject firm. The Department is required to examine the imports of articles of like or directly competitive with those produced by the workers firm. In this case oil production modules.

**Conclusion**

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC this 11th day of May 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–12767 Filed 5–19–00; 8:45 am]

BILLING CODE 4510–30–M

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**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**[TA–W–37,378]**

**Bugbee & Niles Company, Incorporated Providence; Notice of Termination of Investigation**

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 22, 2000, in response to a petition filed on the same date on behalf of workers at Bugbee & Niles Company, Incorporated, Providence, Rhode Island.

The company official submitting the petition has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 10th day of May 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–12769 Filed 5–19–00; 8:45 am]

BILLING CODE 4510–30–M

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**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**[TA–W–37,335]**

**Calvin Klein New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on March 30, 2000, applicable to workers of Calvin Klein, New York, New York. The notice was published in the **Federal Register** on April 21, 2000 (FR 65 21474).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce women's sportswear. New findings show that there was a previous certification, TA–W–33,830, issued on March 10, 2000, for workers of Calvin Klein, New York, New York who were engaged in employment related to the production of women's sportswear. That certification expired March 10, 2000. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from February 1, 1999 to March 11, 2000, for workers of the subject firm.

The amended notice applicable to TA–W–37,335 is hereby issued as follows:

"All workers of Calvin Klein, New York, New York who became totally or partially separated from employment on or after March 11, 2000 through March 30, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 9th day of May 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–12770 Filed 5–19–00; 8:45 am]

BILLING CODE 4510–30–M

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**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**[TA–W–34,244 Riddle, Oregon; TA–W–34,244A Coos Bay, Oregon]**

**Cominco Ltd., Cominco American, Inc. Glenbrook Operations (Formerly Glenbrook Nickel Company); Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 25, 1998, applicable to workers of Glenbrook Nickel Company, Riddle, Oregon. The notice was published in the **Federal Register** on March 23, 1998 (63 FR 13879). The certification was amended March 20, 1998 to include another manufacturing facility of the subject firm. The notice was published in the **Federal Register** on March 31, 1998 (63 FR 15441).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of ferronickel. New information received from the company shows that Cominco Ltd and Cominco American are the owners of the Glenbrook properties. In 1998, Glenbrook Nickel Company became known as Cominco Ltd., Cominco American,—Glenbrook Operations. Information also shows that workers separated from employment at Glenbrook Nickel Company had their wages reported under a separate unemployment insurance (UI) tax account for Cominco Ltd., Cominco American,—Glenbrook Operations.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–34,244 and TA–W–344,244A are hereby issued as follows:

All workers of Cominco Ltd., Cominco American,—Glenbrook Operations (Formerly Glenbrook Nickel Company), Riddle, Oregon and Coos Bay, Oregon who became totally or partially separated from employment on or after January 30, 1997 through February 25, 2000 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this 12th day of May, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–12772 Filed 5–19–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

[TA–W–33,947]

### Herman Katz Enterprises, d/b/a H.K. Company Now Known as Katz Lace Corporation, New York, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 11, 1997, applicable to workers of Herman Katz Enterprises, d/b/a H.K. Company, New York, New York. The notice was published in the **Federal Register** on January 6, 1998 (63 FR 578).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of lace and performed office, administration, warehousing and distribution services. The company reports that in October, 1997, Herman Katz Enterprises, d/b/a H.K. Company "became known as Katz Lace Corporation". Worker separations continued to occur at the subject firm until its closing in November, 1999.

Accordingly, the Department is amending the certification determination to correctly identify the new title name to read "Herman Katz Enterprises, d/b/a H.K. Company, now know as Katz Lace Corporation", New York, New York.

The intent of the Department's certification is to include all workers of Herman Katz Enterprises, d/b/a H.K. Company, now known as Katz Lace Corporation who were adversely affected by increased imports.

The amended notice applicable to TA–W–33, 947 is hereby issued as follows:

All workers of Herman Katz Enterprises, d/b/a H.K. Company, now known as Katz Lace Corporation, New York, New York who became totally or partially separated from employment on or after October 7, 1996 through December 11, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 12th day of May 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

[FR Doc. 00–12771 Filed 5–19–00; 8:45 am]

BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigation Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than June 1, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 1, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 8th day of May, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

APPENDIX

[Petitions instituted on 05/08/2000]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 37,639 | Peninsula Light Metals () | LaMiranda, CA | 04/24/2000 | Engine Pedestals, Wheels, Valves. |
| 37,640 | Montana Power Co (Wkrs) | Butte, MT | 04/13/2000 | 10 Meter Readers. |
| 37,641 | Jo B's, Inc. (Co.) | Odenville, AL | 04/23/2000 | Baby Carrier. |
| 37,642 | Zeller Corporation (UAW) | Defiance, OH | 03/19/2000 | Universal Joints. |
| 37,643 | Philips Electronics North (Co.) | Wartburg, TN | 04/21/2000 | Power Supply Transformers. |
| 37,644 | Ranco North America (Co.) | Plain City, OH | 05/01/2000 | Water Valves. |
| 37,645 | Lind Shoe Company (Wkrs) | Somerset, WI | 04/20/2000 | Bowling Shoes. |
| 37,646 | Fairway Foods of Michigan (Wkrs) | Menominee, MI | 04/17/2000 | Fruits and Vegetables. |
| 37,647 | Eureka Co (The) (IAM) | Bloomington, IL | 04/14/2000 | Vacuum Cleaners. |
| 37,648 | Olympia Limited (Wkrs) | Hoboken, NJ | 04/04/2000 | Imitation Fur Coats. |
| 37,649 | San Manuel Healthcare (Wkrs) | San Manuel, AZ | 04/20/2000 | Medical Care Center. |
| 37,650 | Long Handles Shirts (Co.) | Monroe, NC | 04/17/2000 | Men's Knit Shirts. |
| 37,651 | Nortel Networks (Wkrs) | Santa Clara, CA | 04/20/2000 | Telephone Switches. |
| 37,652 | Monofrax, Inc (IAM) | Falconer, NY | 04/13/2000 | Fused Cast Refractories. |
| 37,653 | Frontier Foundry (Wkrs) | Titusville, PA | 04/22/2000 | Aluminum, Steel, Bronze Castings. |
| 37,654 | Garan, Inc (Co.) | Corinth, MS | 04/19/2000 | Cut Men, Women and Childrens Clothing. |
| 37,655 | Cassie Cotillion, Inc (Co.) | Albemarle, NC | 04/17/2000 | Children's Sleepwear. |
| 37,656 | United Protective Cloth. (Co.) | Purvis, MS | 04/11/2000 | Disposable Clothing. |
| 37,657 | Ambar Chemical, Inc. (Co.) | Manistee, MI | 04/25/2000 | Liquid Calcium. |
| 37,658 | Cooper Tools (Wkrs) | Statesboro, GA | 04/14/2000 | Scissors, and Hammers. |
| 37,659 | Climax Molybdenum Co. (Co.) | Empire, CO | 04/28/2000 | Mine Molybdenum. |
| 37,660 | Go Dan (Wkrs) | Houston, TX | 04/28/2000 | Radiators—Car and Truck. |

[FR Doc. 00–12774 Filed 5–19–00; 8:45 am]
BILLING CODE 4510–30–M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 1, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 1, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 1st day of May, 2000.

**Grant D. Beale,**

*Program Manager, Division of Trade Adjustment Assistance.*

APPENDIX

[Petitions instituted on 05/01/2000]

| TA–W | Subject firm (petitioners) | Location | Date of petition | Product(s) |
|---|---|---|---|---|
| 37,624 | PMC-Specialties Group (PACE) | Fords, NJ | 03/28/2000 | Butalated Hydroxy Teraline. |
| 37,625 | Thatcher Summit, Inc. (Comp) | Rexburg, ID | 04/19/2000 | Backpacks. |
| 37,626 | Thomson Consumer Elec. (IBEW) | Indianapolis, IN | 04/10/2000 | Printed Circuit Boards. |
| 37,627 | Bari Manufacturing Co. (UNITE) | Passaic, NJ | 04/10/2000 | Ladies' Jackets and Tops. |
| 37,628 | Hutchinson Technology (Wrks) | Sioux Falls, SD | 03/30/2000 | Thin Film Suspensions. |
| 37,629 | Raychem/Tyco Electronics (Comp) | Fuquay-Varina, NC | 04/17/2000 | Aerial Closures for Cable. |
| 37,630 | Motor Coils Manufacturing (IUE) | Braddock, PA | 04/17/2000 | Traction Motors for Locomotives. |
| 37,631 | Celestica Corp. (Comp) | Campton, KY | 04/17/2000 | Printed Circuit Boards. |
| 37,632 | Clark Material Handling (Comp) | Lexington, KY | 04/22/2000 | Forklifts. |
| 37,633 | Holmes Group/Rival Div. (Wrks) | Warrensburg, MO | 04/17/2000 | Heater Parts, Industrial Fans. |
| 37,634 | Marathon Oil Co. (Comp) | Lafayette, LA | 04/20/2000 | Crude Oil, Natural Gas Condensates. |
| 37,635 | MSX International (Wrks) | El Paso, TX | 04/18/2000 | Plastic Products. |
| 37,636 | Voyager Emblem Co. (USWA) | Sanborn, NY | 04/19/2000 | Emblems. |
| 37,637 | Fort James Operating Co. (Comp) | Clatskanie, OR | 03/28/2000 | Groundwood Specialty Papers. |
| 37,638 | Wildon Industries (Wrks) | Mt. Bethel, PA | 04/19/2000 | Solid Surfacing Materials. |

[FR Doc. 00–12773 Filed 5–19–00; 8:45 am]
BILLING CODE 4510–30–M

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Advisory Committee on the Records of Congress; Meeting

**AGENCY:** National Archives and Records Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Records Services.

**DATES:** June 12, 2000, from 10 a.m. to 11:30 a.m.

**ADDRESSES:** United States Capitol Building, Room S–211.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Gillette, Director, Center for Legislative Archives, (202) 501–5350.

**SUPPLEMENTARY INFORMATION:**

*Agenda*

Third Report to Congress

Electronic Records Archives

Other current issues and new business.

The meeting is open to the public.

Dated: May 16, 2000.

**Mary Ann Hadyka,**

*Committee Management Officer.*

[FR Doc. 00–12745 Filed 5–19–00; 8:45 am]
BILLING CODE 7515–01–P

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

*Name:* Special Emphasis Panel in Electrical and Communications Systems (1196).

*Date and Time:* June 12–13, 2000, 8:30 a.m. to 5 p.m.

*Place:* Room 330, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Filbert J. Bartoli, Program Director, Room 675, Division of Electrical and Communications Systems, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306–1339.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate unsolicited proposals submitted in response to the program announcement (NSF 99–2).

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial date, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 17, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12826 Filed 5–19–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel is Engineering Education and Centers; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Engineering Education and Centers (173).

*Date/Time:* July 17–18, 2000 7:30 a.m. to 5:30 p.m.

*Place:* Holiday Inn, 4610 North Fairfax Drive, Arlington, VA 22203.

*Type of Meeting:* Closed.

*Contact Person:* Mary Poats, Program Manager, Engineering Education and Centers Division, National Science Foundation, Room 585, 4201 Wilson Boulevard, Arlington, VA 22230.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate proposals submitted to the Combined Research-Curriculum Development Program.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 17, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12830 Filed 5–19–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Experimental & Integrative Activities (1193).

*Date/Time:* June 29, 2000, 8 a.m.–5 p.m.

*Place:* Room 120, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Anthony Maddox, CISE Educational Innovation, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, VA 22230, Telephone: (703) 306–1981.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

*Agenda:* To review and evaluate CISE Educational Innovation proposals submitted in response to the program announcement (NSF 00–33).

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 17, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12828 Filed 5–19–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Graduate Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

*Name:* Special Emphasis Panel in Graduate Education (57).

*Date/Time:* June 29th and 30th 2000, 8:00 a.m. to 5:00 p.m.

*Place:* National Science Foundation, 4201 Wilson Blvd., Room 375, Arlington, VA.

*Type of Meeting:* Closed.

*Contact Persons:* Dr. Sonia Ortega, Program Director, Mrs. Carolyn L. Piper, Asst. Program Director, Dr. Barbara Mulach, Presidential Management Intern, GK–12 Program and Ms. Deborah A. Daniels, Senior Program Assistant, Division of Graduate Education, National Science Foundation, 4201 Wilson Blvd. Room 907N, Arlington, VA 22230. (703) 306–1697.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate applications submitted to the NSF–Graduate teaching Fellows in K–12 Education program as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 17, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12829 Filed 5–19–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL SCIENCE FOUNDATION

### Special Emphasis Panel in Research, Evaluation and Communication; Notice of Meetings

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meetings:

*Name:* Special Emphasis Panel in Research, Evaluation and Communication (1210).

*Date/Time:*

July 6, 2000—Room 380 (8 a.m.–6 p.m.)
July 7, 2000—Room 380 (8 a.m.–6 p.m.)
July 17, 2000—Rooms 120, 130, 920 and 970 (2 p.m.–6 p.m.)
July 18, 2000—Rooms 120, 130, 920 and 970 (8 a.m.–6 p.m.)
July 19, 2000—Rooms 120, 130, 920 and 970 (8 a.m.–6 p.m.)

*Place:* National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

*Type of Meeting:* Closed.

*Contact Person:* Nora Sabelli, Program Director, Research Evaluation and Communication Division, National Science Foundation, Room 855, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1650.

*Purpose of Meeting:* To provide advice and recommendations concerning proposals submitted to NSF for financial support.

*Agenda:* To review and evaluate IERI Proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 17, 2000.

**Karen J. York,**

*Committee Management Officer.*

[FR Doc. 00–12827 Filed 5–19–00; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–289]**

## Amergen Energy Company, LLC; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–50 issued to AmerGen Energy Company, LLC, (the licensee) for operation of the Three Mile Island Nuclear Station, Unit 1 (TMI–1), located in Dauphin County, Pennsylvania.

The proposed amendment would remove the individual control building isolation and recirculation damper numbers from Technical Specification (TS) 4.12.1.3, and instead refer to the "required" dampers. The requirement to test these dampers remains the same. The Bases have been modified to indicate that the damper numbers for control building isolation and recirculation are contained in the Updated Final Safety Analysis Report (UFSAR).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment is an administrative change which removes an unnecessary level of detail from the Technical Specifications, and is consistent with NRC Revised Standard Technical Specifications (NUREG–1430, Rev.1). The TMI Unit 1 UFSAR currently identifies and describes the control building isolation and recirculation dampers required for emergency operation and their design function. TMI Unit 1 control room habitability requirements are not affected. The proposed amendment does not affect the existing surveillance frequency or the operability requirements for the required dampers. Therefore, the proposed amendment has no affect on the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed amendment is an administrative change which removes an unnecessary level of detail from the Technical Specifications, and is consistent with NRC Revised Standard Technical Specifications (NUREG–1430, Rev. 1). TMI Unit 1 control room habitability requirements are not affected. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The proposed amendment is an administrative change which removes an unnecessary level of detail from the Technical Specifications, and is consistent with NRC Revised Standard Technical Specifications (NUREG–1430, Rev.1). The existing Technical Specification surveillance frequency and operability requirements for required isolation and recirculation dampers are maintained. Therefore, the proposed amendment does not reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 21, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing

Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Edward J. Cullen, Jr., Esquire, PECO Energy Company, 2301 Market Street (S23–1), Philadelphia, PA 19103, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated May 4, 2000, as supplemented May 9, 2000, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 16th day of May 2000.

For the Nuclear Regulatory Commission.

**Timothy G. Colburn,**

*Senior Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–12765 Filed 5–19–00; 8:45 am]

BILLING CODE 7590–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

**FOR FURTHER INFORMATION CONTACT:** Suzy Barker, Staffing Reinvention Office, Employment Service, (202) 606–0830.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on Monday, April 10, 2000 (65 FR 19034). Individual authorities established or revoked under Schedules A and B and established under Schedule C between March 1, 2000, and March 31, 1999, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

**Schedule A**

The following Schedule A authority was established during the month of March:

*U.S. Chemical Safety and Hazard Investigations Board*

Up to 37 positions established to create the Chemical Safety and Hazard Investigations Board. No new appointments may be made under this authority after December 31, 2000. Effective March 20, 2000.

No Schedule A authorities were revoked during the month of March 2000.

**Schedule B**

The following Schedule B authority was established during the month of March 2000:

*Department of Treasury*

Positions, grades GS–5 through 9, of Treasury Enforcement Agent in the Bureau of Alcohol, Tobacco, and Firearms; and Treasury Enforcement Agent, Pilot, Marine Enforcement Officer, and Aviation Enforcement Officer in the U.S. Customs Service. Service under this authority may not exceed 3 years. Effective March 20, 2000.

No Schedule B authorities were revoked during the month of March 2000.

**Schedule C**

The following Schedule C authorities were established during March 2000:

*Department of Agriculture*

Confidential Assistant to the Administrator, Animal and Plant Inspection Service. Effective March 9, 2000.

Confidential Assistant to the Director, Legislative Affairs and Public Affairs Staff. Effective March 9, 2000.

Confidential Assistant to the Administrator, External Affairs Staff. Effective March 21, 2000.

Deputy Press Secretary to the Press Secretary. Effective March 21, 2000.

Confidential Assistant to the Administrator, Rural Utilities Service. Effective March 21, 2000.

Confidential Assistant to the Administrator, Inspection, Packers and Stockyards Administration. Effective March 24, 2000.

*Department of Commerce*

Special Assistant to the Director, Office of Public Affairs. Effective March 10, 2000.

Special Assistant to the Director, Office of Public Affairs and Press Secretary. Effective March 14, 2000.

Special Assistant to the Director, Office of Sustainable Development and Intergovernmental Affairs. Effective March 15, 2000.

*Department of Defense*

Director, Cooperative Threat Reduction to the Assistant Secretary of Defense (Strategy and Threat Reduction). Effective March 31, 2000.

*Department of Education*

Confidential Assistant to the Deputy Assistant Secretary, Office of Intergovernmental and Interagency Affairs. Effective March 8, 2000.

Confidential Assistant to the Director, Scheduling and Briefing Staff. Effective March 15, 2000.

Confidential Assistant to the Chief of Staff. Effective March 16, 2000.

Deputy Director, Scheduling and Briefing Staff to the Director Scheduling and Briefing Staff. Effective March 28, 2000.

Special Assistant to the Assistant Secretary, Office of Vocational and Adult Education. Effective March 30, 2000.

*Department of Energy*

Special Assistant to the Deputy Assistant Secretary for Transportation Technologies. Effective March 2, 2000.

Staff Assistant to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective March 8, 2000.

Special Assistant to the Director, Office of Economic Impact and Diversity. Effective March 8, 2000.

Special Assistant to the Director, Office of Scheduling and Advance. Effective March 16, 2000.

Special Assistant to the Director, Office of Scheduling and Advance. Effective March 17, 2000.

Special Assistant to the Director, Scheduling and Briefing. Effective March 28, 2000.

Deputy Assistant Secretary for Intergovernmental and External Affairs to the Principal Deputy Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 30, 2000.

*Department of Health and Human Services*

Confidential Assistant (Scheduling) to the Director of Scheduling and Advance. Effective March 2, 2000.

Director of Speechwriting to the Deputy Assistant Secretary for Public Affairs (Media). Effective March 16, 2000.

*Department of Housing and Urban Development*

Special Assistant to the Advisor for Management Reform and Operations. Effective March 8, 2000.

Director, Office of Insured Health Care Facilities to the Assistant Secretary for Housing—Federal Housing Commissioner. Effective March 16, 2000.

Senior Intergovernmental Relations Officer to the Deputy

Assistant Secretary for Intergovernmental Relations. Effective March 17, 2000.

*Department of Justice*

Secretary (Office Automation) to the United States Attorney General, Nevada. Effective March 7, 2000.

Special Assistant to the Director, Violence Against Women Office. Effective March 8, 2000.

Special Assistant to the Assistant Attorney General. Effective March 14, 2000.

*Department of Labor*

Special Assistant to the Director, Office of Public Liaison. Effective March 15, 2000.

Intergovernmental Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 22, 2000.

Chief of Staff to the Assistant Secretary, Office of Congressional and Intergovernmental Affairs. Effective March 22, 2000.

Associate Director to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 24, 2000.

Special Assistant to the Deputy Secretary of Labor. Effective March 24, 2000.

*Department of State*

Foreign Affairs Officer to the Under Secretary for Global Affairs. Effective March 7, 2000.

Special Assistant to the Chief of Protocol. Effective March 16, 2000.

Foreign Affairs Officer to the Deputy Director. Effective March 31, 2000.

*Department of Transportation*

Special Assistant to the Deputy Assistant Secretary for Transportation Policy. Effective March 15, 2000.

*Department of Veterans Affairs*

Special Assistant to the Chief of Staff. Effective March 2, 2000.

*Environmental Protection Agency*

Special Assistant to the Deputy Administrator. Effective March 10, 2000.

*National Aeronautics and Space Administration*

Public Affairs Specialist to the Associate Administrator for Public Affairs. Effective March 30, 2000.

*Occupational Safety and Health Review Commission*

Confidential Assistant to the Member (Commissioner), Occupational Safety and Health Review Commission. Effective March 8, 2000.

*Office of Management and Budget*

Public Affairs Specialist to the Associate Director for Communication. Effective March 17, 2000.

*Office of National Drug Control Policy*

Staff Assistant to the Director, Office of National Drug Control Policy. Effective March 16, 2000.

Staff Assistant to the Deputy Director, Supply Reduction. Effective March 23, 2000.

*Securities and Exchange Commission*

Secretary to the Director, Office of Compliance Inspections and Examinations. Effective March 15, 2000.

*Small Business Administration*

Senior Advisor for Communications and Public Liaison to the Associate Administrator for Marketing and Customer Service. Effective March 9, 2000.

Press Officer and Senior Advisor to the Assistant Administrator for Public Communications. Effective March 27, 2000.

*U.S. International Trade Commission*

Staff Assistant to the Commissioner. Effective March 8, 2000.

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

[FR Doc. 00–12685 Filed 5–19–00; 8:45 am]

BILLING CODE 6325–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, May 25, 2000
Thursday, June 8, 2000
Thursday, June 22, 2000

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street NW, Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street NW, Washington, DC 20415; (202) 606–1500.

Dated: May 10, 2000.

**John F. Leyden,**

*Chairman, Federal Prevailing Rate Advisory Committee.*

[FR Doc. 00–12689 Filed 5–19–00; 8:45 am]

BILLING CODE 6325–01–P

## OFFICE OF PERSONNEL MANAGEMENT

### Science and Technology (S&T) Laboratory Personnel Management Demonstration Project, Department of the Army, U.S. Army Engineer Research & Development Center (ERDC)

**AGENCY:** U.S. Office of Personnel Management (OPM).

**ACTION:** Notice of change to reduction-in-force (RIF) procedures to recognize performance based on the average of the last three annual performance scores in the most recent 4-year period as a criterion to establish retention registers.

**SUMMARY:** 5 U.S.C. 4703 authorizes OPM to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

Public Law 103–337, October 5, 1994, permits the Department of Defense (DoD), with the approval of OPM, to carry out personnel demonstration projects at S&T Reinvention Laboratories. This notice identifies a revision to the ERDC plan where an average of three annual performance scores is used instead of a single performance score to determine an employee's retention standing in a reduction in force.

**DATES:** This revision to the ERDC demonstration project will be implemented May 22, 2000.

**FOR FURTHER INFORMATION CONTACT:**

ERDC: Dr. C.H. Pennington, U.S. Army Engineer Research & Development Center, ATTN: CEERD–ZT–E, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199, phone 601–634–3549.

OPM: Ms. Joan M. Jorgenson, U. S. Office of Personnel Management, 1900 E Street NW Room 7458, Washington, DC 20415, phone 202–606–1315.

**SUPPLEMENTARY INFORMATION:**

**1. Background**

OPM approved and published the final plan in the **Federal Register** for the following S&T Reinvention Laboratory Demonstration Project.

A. U.S. Army Engineer Waterways Experiment Station (WES) final publication on Tuesday, March 3, 1998, Volume 63, Number 41, Part IV.

WES correction and re-publication on Wednesday, March 25, 1998, Volume 63, Number 57, Part V.

B. Publication of amendment to expand coverage of the WES project to include the Construction Engineering Research Laboratory, Cold Regions Research & Engineering Laboratory, and Topographic Engineering Center. Published in the **Federal Register** on Friday, October 16, 1998, Volume 63, Number 200, Part V.

**Note:** The WES demonstration project was renamed the ERDC demonstration project following consolidation of the Army Corps of Engineers' laboratories.

C. Publication of an amendment to include competitive examining and Distinguished Scholastic Achievement Appointment authorities as part of the ERDC plan. Published in the **Federal Register** on Thursday, March 11, 1999, Volume 64, Number 47, Part II.

This demonstration project involves simplified job classification, pay banding, a performance-based compensation system, employee development provisions, and modified RIF procedures.

**2. Overview**

The action to combine all Corps of Engineers laboratories into the ERDC and expand coverage of the WES Personnel Management Demonstration Project to the entire ERDC prompted a review of the provisions of the project to assure acceptance by all levels of management, employees, and bargaining units. The review revealed that the best interests of all involved would be better served by revising the manner in which performance is recognized in RIF procedures to allow for performance based on a longer period than that represented by a single performance score.

Dated: May 9, 2000.

Office of Personnel Management.

**Janice R. Lachance,**

*Director.*

**I. Executive Summary**

The Department of the Army established the personnel management demonstration projects to be generally similar to the system in use at the Navy personnel demonstration project known as China Lake. The projects and this amendment are built upon the concepts of linking performance to pay for all covered positions; simplifying paperwork in the processing of classification and other personnel actions; emphasizing partnerships among management, employees, and unions; and delegating other authorities to line managers.

**II. Introduction**

The demonstration project at the ERDC attempts to provide managers with the authority, control and flexibility to achieve quality laboratories and quality products. These goals are met by employing the best candidates and ensuring the best employees are retained in the event of a reduction in force. The purpose of this amendment is to revise the procedures to recognize employee performance in establishing retention registers by basing the criterion on the average of the last three annual performance scores in the most recent 4-year period instead of the last single performance score. This considers employee performance over a longer period of time. Other basic provisions of the approved plan are unchanged.

**III. Personnel System Changes**

This project is built upon the concepts of linking performance to pay, simplifying paperwork in the processing of classification and other personnel actions, emphasizing partnerships among management, employees and unions, and delegating certain authorities to line managers. Pay for performance is accomplished by assigning a numerical score to an employee's performance at the end of the annual rating cycle and using the score to determine the employee's pay increase. Currently, the score is also used to determine in part an employee's retention standing in the event of a reduction in force. For RIF purposes, this amendment proposes instead to recognize employee performance by averaging the last three performance scores rather than using only the last performance score.

The **Federal Register**, Volume 63, Number 57, dated March 25, 1998, Section III.H.2. (Retention), page 14593, first paragraph, first sentence, is amended to read as follows:

Retention registers will be established based on the following criteria listed in order of priority: Tenure status (Tenure I—career, Tenure II—career conditional, Tenure III—modified term); veterans' preference; the average of the last three annual employee performance scores in the most recent 4-year period; and service computation date.

The use of three performance scores recognizes that an employee's performance may vary from one year to the next because of unforeseen circumstances such as an illness, relocation, a change in workload, or reorganization. The amendment incorporates the recommendations of management, employees and unions, ensures the very best employees are retained in the event of a RIF, and continues to support the objectives of the ERDC personnel management demonstration project.

[FR Doc. 00–12688 Filed 5–19–00; 8:45 am]

BILLING CODE 6325–01–P

## POSTAL SERVICE

### Privacy Act of 1974, Systems of Records

**AGENCY:** Postal Service.

**ACTION:** Notice of amendments to existing systems of records.

**SUMMARY:** The purpose of this document is to publish notice of amendments to two Privacy Act systems of records. The amendments conform to a rule change published in the **Federal Register** on January 25, 2000 (65 FR 3857–3859), amending Postal Service regulations that govern the disclosure of information contained in PS Form 1093, Application for Post Office Box or Caller Service, and PS Form 1583, Application for Delivery of Mail Through Agent. Information collected by these forms is covered by Privacy Act systems of records USPS 010.020, Collection and Delivery Records—Boxholder Records, and USPS 010.050, Collection and Delivery Records—Delivery of Mail Through Agents, respectively, for which changes are proposed by this notice.

**DATES:** Any interested party may submit written comments on the proposed addition and modification. This proposal will become effective without further notice on June 21, 2000, unless comments received on or before that date result in a contrary determination.

**ADDRESSES:** Written comments on this proposal should be mailed or delivered to Administration and FOIA, United States Postal Service, 475 L'Enfant Plaza SW, RM 8141, Washington, DC 20260–5202. Copies of all written comments will be available at the above address for public inspection and photocopying between 8 a.m. and 4 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Betty Sheriff, (202) 268–2608.

**SUPPLEMENTARY INFORMATION:** Information about customers who use post office box service is maintained within Privacy Act system of records USPS 010.020, Collection and Delivery Records—Boxholder Records. In the past, the Postal Service has disclosed to the general public, upon request, the name, address, and telephone number of the holder of a post office box being used for the purpose of doing or soliciting business with the public. To provide a greater degree of privacy and security to the growing number of small business owners who operate out of their homes, that provision has been repealed. As a result, routine use No. 1 is deleted. The rule change referenced above also repeals a provision allowing disclosure of boxholder information in response to oral requests from law enforcement agencies made through the Postal Inspection Service, in the course of a criminal investigation, necessitating the deletion of routine use No. 4. The remaining routine use Nos. 2, 3, and 5 are redesignated as routine uses 1 through 3, respectively, and the "Note" preceding them is amended to delete the explanation as to when copies of PS Form 1093 may be provided (now incorporated into the routine use) and to succeed the routine uses as an exception. Under the exception, disclosure is not authorized by the routine uses if the individual boxholder has filed a protective order with the postmaster, unless the party seeking the information submits an order of a court of competent jurisdiction requiring disclosure.

Information about customers who use commercial mail receiving agency (CMRA) services, and the agents who provide those services, is maintained within Privacy Act system of records USPS 010.050, Collection and Delivery Records—Delivery of Mail Through Agents. Each applicant for delivery of mail to a CMRA is required to complete and sign PS Form 1583, Application for Delivery of Mail Through Agent. Information collected by PS Form 1583 includes the name, address, and telephone number of the agent and the addressee and, drivers license, or other forms of identification. In addition, the owner or manager of a CMRA is required to complete PS Form 1583–A, Application to Act as a Commercial Mail Receiving Agency, which includes the owner/manager's home address and telephone number. This notice amends the categories of records segment of the system notice to note the collection of additional information as a result of revision of PS Form 1583 and adoption of the new PS Form 1583–A.

Consistent with past practice, information provided by a CMRA customer on PS Form 1583 will not be available to the public. A review of the general routine uses (those applied to most Postal Service systems of records to enable the routine conduct of postal business) applied to system of records USPS 010.050 has resulted in the deletion of three routine uses. These routine uses permit disclosure to: an auditor of Postal Service finances, the Office of Management and Budget for review of private relief legislation, and labor organizations for collective bargaining purposes. Since such disclosures of information covered by this system should be unnecessary for those purposes, the routine uses are deleted. Under the remaining routine uses, the Postal Service will not disclose the name or address of a customer who has submitted an appropriate court order of protection unless the requester obtains an order of a court of competent jurisdiction that requires the disclosure notwithstanding the existence of the protective order.

In addition to the above, the Purpose statement for system USPS 010.050 is enhanced by adding objectives directly related to the longstanding purpose for which records in this system are collected.

The amendments proposed by this notice are not expected to diminish individual privacy rights. In fact, the amendments are intended to enhance the privacy of small business owners operating out of the home and of individuals such as battered individuals and stalking victims who feel they may be at risk of harm if their physical location is not kept private. In the interest of those protections, certain routine uses have been deleted to reduce the number of situations in which disclosure may be made outside of the Postal Service and to strengthen assurances of privacy.

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the amendments has been sent to Congress and to the Office of Management and Budget for their evaluation.

For the above reasons, the Postal Service proposes the following amendments. USPS Privacy Act system 010.020 was last published in its entirety in the **Federal Register** on October 26, 1989 (54 FR 43658–43659), and amended on October 11, 1990 (55 FR 41398–41399), and on February 23, 1999 (64 FR 8878). USPS 010.050 was last published in its entirety in the **Federal Register** on October 26, 1989 (54 FR 43660–43661), and amended on May 3, 1994 (59 FR 2284), and on February 23, 1999 (64 FR 8878).

**USPS 010.020**

**SYSTEM NAME:**

Collection and Delivery Records—Boxholder Records, 010.020.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

[CHANGE TO READ:]

General routine use statements a, b, c, d, e, f, g, h, j, and m listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. A copy of PS Form 1093 may be furnished pursuant to any of the general routine uses. Other routine uses are as follows:

1. Subject to the exception noted below, disclosure of boxholder information may be made to a federal, state, or local government agency upon prior written certification that the information is required for the performance of its duties. A copy of PS Form 1093 may be furnished.

2. Subject to the exception noted below, the name or address of the holder of a post office box may be disclosed to a person empowered to serve legal process, or the attorney for a party in whose behalf service will be made, or a party who is acting *pro se*, on receipt of written information that meets prescribed certification requirements. A copy of the PS Form 1093 will not be furnished.

3. Subject to the exception noted below, disclosure of boxholder information may be made, on prior written certification from a foreign government agency citing the relevance of the information to an indication of a violation or potential violation of law and its responsibility for investigating or prosecuting such violation, and only if the address is (a) outside the United States and its territories, and (b) within the territorial boundaries of the requesting foreign government. A copy of PS Form 1093 may be furnished.

*Exception:* Information concerning an individual boxholder who has filed an appropriate protective court order with the postmaster will not be disclosed under any routine use except pursuant to the order of a court of competent jurisdiction.

**USPS 010.050**

**SYSTEM NAME:**

Collection and Delivery Records—Delivery of Mail Through Agents, 010.050.

* * * * *

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records contain the name, address, and telephone number of the agent and of the addressee, the signatures of both parties, and copies of forms of identification of the addressee.

* * * * *

**PURPOSE(S):**

[CHANGE TO READ:]

a. Serves as the written authority for delivery of mail to the addressee's agent.

b. Promotes security of the mail.

c. Protects postal customers from mail fraud and identity theft.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

[CHANGE TO READ:]

General routine use statements a, b, c, d, e, f, and g listed in the prefatory statement at the beginning of the Postal Service's published system notices apply to this system. Other routine uses are as follows:

1. Information may be disclosed for the purpose of identifying an address as an address of an agent to whom mail is delivered on behalf of other persons. This routine use does not authorize the disclosure of the identities of persons on behalf of whom agents receive mail.

*Exception:* Information concerning an individual who has filed an appropriate protective court order with the postmaster will not be disclosed under any of the general routine uses except

pursuant to the order of a court of competent jurisdiction.

* * * * *

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 00–12780 Filed 5–19–00; 8:45 am]

BILLING CODE 7710–12–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42780; File No. SR–CBOE–00–17].**

## Self-Regulatory Organizations; Proposed Rule Change by Chicago Board Options Exchange, Incorporated Relating to Designation of Financial/Operations Principals

May 12, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 11, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

### I. Self Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule

The CBOE proposes to require each CBOE member subject to Commission Rule 15c3–1 (the "net capital rule") to designate a Financial/Operations Principal ("FINOP") and to register the FINOP with the Exchange. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

RULE 2.22—Other Fees or Charges

(a) No change.

(b) Registration Fees. Member organizations (*and individual members, if applicable,*) shall pay application, maintenance and transfer registration fees for *their* Series 7 qualified Registered Representatives ("RR") as described in Rule 9.3, *[and] their* Registered Options Principals ("ROP") as described in Rule 9.2 *and their Financial/Operations Principals ("FINOP") as described in rule 3.6A.* The fees are listed below:

(i) For each new RR, [or] ROP *or FINOP* applicant—$35.00

(ii) For the maintenance of each RR, [or] ROP *or FINOP* Registration–$30.00/*year*[.]

(iii) For an RR or ROP who transfers from another organization, *or a FINOP who transfers from another organization and does not maintain any other FINOP registrations*—$30.00

* * * * *

*Qualification and Registration of Certain Associated Persons*

*RULE 3.6A. (a) Financial/Operations Principal. Each individual member or member organization subject to Exchange Act Rule 15c3–1 shall designate a Financial/Operations Principal. The duties of a Financial/Operations Principal shall include taking appropriate actions to assure that the member complies with applicable financial and operational requirements under the Rules and the Exchange Act, including but not limited to those requirements relating to the submission of financial reports and the maintenance of books and records. Each Financial/Operations Principal is required to have successfully completed the Financial and Operations Principal Examination (Series 27 Exam). Each Financial/Operations Principal designated by a member shall be registered in that capacity with the Exchange in a form and manner prescribed by the Exchange. A Financial/Operations Principal of a member may be a full-time employee of the member, or with the prior written approval of the Exchange, may be a part-time employee or independent contractor of the member.*

(b) *Associated Person Statuses Under Chapter IX. Associated person statuses under Chapter IX (along with the primary Exchange Rule concerning the status) include: (i) Registered Options Principal (Rule 9.2); (ii) Registered Representative (Rule 9.3); (iii) Senior Registered Options Principal (Rule 9.8); and (iv) Compliance Registered Options Principal (Rule 9.8).*

*. . . Interpretations and Policies:*

*.01 Each person in an associated person status enumerated in paragraph (a) or (b) of this Rule shall, in a form and manner prescribed by the Exchange (i) submit to the Exchange a Uniform Application for Securities industry Registration or Transfer (Form U–4) and (ii) promptly submit to the Exchange any required amendments to Form U–4.*

*.02 Any member that discharges or terminates the employment or retention of an associated person enumerated in paragraph (a) or (b) of this Rule shall comply with the termination filing requirements set forth in Rule 9.3(b) and Rule (9.3(c).*

*.03 Each person in an associated person status enumerated in paragraph (a) or (b) of this Rule is required to satisfy the continuing educations requirements set forth in Rule 9.3A.*

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to require each individual member or member organization subject to Exchange Act Rule 15c3–1, the net capital rule,[3] to designate a FINOP and to register the FINOP with the Exchange. The Exchange proposes to include this requirement in proposed new CBOE Rule 3.6A,"Qualification and Registration of Certain Associated Persons."

Proposed Rule 3.6A provides that the duties of a FINOP include taking appropriate actions to ensure that the member complies with applicable financial and operational requirements under the CBOE's Rules and the Act, including but not limited to requirements relating to the submission of financial reports and the maintenance of books and records. Additionally, each FINOP would be required to complete successfully the Financial and Operations Principal Examination (Series 27 Exam). Each FINOP designated by a member would also be required to be registered in that capacity with the Exchange in a form and manner prescribed by the Exchange.

Proposed Rule 3.6A also provides that a FINOP of a member could be a full-time employee of the member or, with the prior written approval of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.15c3–1. Certain options market makers are not subject to the net capital rule, *see* 17 CFR 240.15c3–1(b)(1)(i), and therefore are not subject to proposed CBOE Rule 3.6A.

Exchange, a part-time employee or independent contractor of the member.[4]

The Exchange states that its proposal to require designation of a FINOP is comparable to requirements of other securities self-regulatory organizations, such as the New York Stock Exchange, Inc. and the National Association of Securities Dealers, Inc.

The Exchange also states that it intends to monitor firms for compliance with the requirements relating to FINOPs during the course of the Exchange's financial examination program for CBOE member organizations for which CBOE is the designated examining authority.

To promote ease of reference by CBOE members, the Exchange also proposes to set forth in Rule 3.6A and its Interpretations certain existing requirements with respect to associated persons required to be registered with the Exchange under Chapter IX of CBOE's Rules. Accordingly, Rule 3.6A(b) lists the persons that have associated person status under Chapter IX, and cross-references the primary CBOE Rule concerning each of those persons. These persons include Registered Options Principals with Rule 9.2 as the primary CBOE rule, Registered Representatives (Rule 9.3), Senior Registered Options Principals (Rule 9.8), and Compliance Registered Options Principals (Rule 9.8).

The Interpretations to Rule 3.6A reference certain existing requirements applicable to individuals having associated person status under Chapter IX and provide that these requirements shall be applicable to each FINOP. Thus, Interpretation .01 provides that each person having associated person status as described in Rule 3.6A (including a FINOP) shall, in a form and manner prescribed by the Exchange, submit to the Exchange a Uniform Application for Securities Industry Registration or Transfer (Form U–4) and promptly submit to the Exchange any required amendments to Form U–4. Interpretation .02 provides that any member that discharges or terminates the employment or retention of an associated person enumerated in Rule 3.6A shall comply with the termination filing requirements set forth in CBOE Rules 9.3(b) and 9.3(c).[5] Interpretation .03 provides that each associated person enumerated in Rule 3.6A is required to satisfy the continuing education requirements set forth in CBOE Rule 9.3A.

The Exchange will allow members subject to Rule 15c3–1 under the Act six months from the date of approval of this rule filing by the Commission in which to designate a FINOP in accordance with Rule 3.6A. The purpose of that time period is to provide the Exchange with an opportunity to notify the Exchange's membership of the new requirement and to provide members that do not currently employ or retain an individual who functions as a FINOP a reasonable period of time in which to employ or retain such an individual.

The Exchange also proposes to amend existing CBOE Rule 2.22(b) to assess application, maintenance, and transfer registration fees with respect to the designation of FINOPs. These fees would be the same as those that the Exchange assesses on Registered Representatives and Registered Options Principals under Rule 2.22(b).[6] Thus, the fee for each new FINOP designated by a member is proposed to be $35.00, the annual maintenance fee for each FINOP registration is proposed to be $30.00 per year, and the transfer fee for a FINOP who transfers from another organization and does not maintain any other FINOP registration is proposed to be $30.00. Each member organization (or individual member, if applicable) would have to pay a registration fee for a FINOP, regardless of whether the FINOP also acts in that capacity for another firm.

2. Statutory Basis

The Exchange states that the proposed rule change would enhance compliance with financial and operational requirements under CBOE's Rules and the Act and make it easier for the Exchange's membership to reference registration requirements under CBOE's Rules. Accordingly, the proposed rule is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. The proposed rule change also would further the objectives of Section 6(b)(4) of the Act[9] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The CBOE does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The CBOE represents that the proposed rule change (i) would not significantly affect the protection of investors or the public interest, (ii) would not impose any significant burden on competition, and (iii) would not become operative for 30 days from the date it was filed. In addition, the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change. For the foregoing reasons, this rule filing qualifies for expedited approval as a "non-controversial" rule change under Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6)[11] thereunder and will become operative 30 days from April 11, 2000, the date on which it was filed.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

[4] The Commission interprets the term "associated person" to include any independent contractor, consultant, franchisee, or other person providing services to a broker-dealer equivalent to those service provided by persons specifically referenced in the Act. Accordingly, a FINOP is an associated person of a firm, making the FINOP and the firm subject to all requirements that accompany associated person status, regardless of the nature of the employment relationship or contractual relationship between the FINOP and the firm.

[5] The requirements set forth in CBOE Rules 9.3(b) and 9.3(c) relate to the filing of a Uniform Termination Notice for Securities Industry Registration (Form U–5) and the filing of required amendments to Form U–5.

[6] The fees applicable to Registered Representatives and Registered Options Principals were last raised in 1999. *See* Exchange Act Release No. 41,748 (Aug. 16, 1999); 64 FR 46,218 (Aug. 24, 1999).

[7] 17 U.S.C. 78f(b).

[8] 17 U.S.C. 78f(b)(5).

[9] 17 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–17 and should be submitted by June 6, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12759 Filed 5–19–00; 8:45 am]

BILLING CODE 8010–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42783: File No. SR–NASD–00–05]**

## Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Release of Disciplinary Information

May 15, 2000.

### I. Introduction

On February 16, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend IM–8310–2 of the Association, to provide for the publication of all final, litigated decisions issued by the Office of Hearing Officers ("OHO"),[3] the National Ad judicatory Council ("NAC"), and the NASD Board, regardless of sanctions imposed.

The proposed rule change was published for comment in the **Federal Register** on April 11, 2000.[4] No comments were received on the proposal. This order approves the proposal.

### II. Description of the Proposal

Some NASD disciplinary decisions are currently available in electronic legal research databases, such as Westlaw, Lexis-Nexis, and Books on Screen. Interpretative Material 8310–2 (the "Interpretation") permits the NASD to release any disciplinary decision: (1) Imposing a suspension, cancellation or expulsion of a member; (2) imposing a suspension or revocation of the registration of any associated person; (3) imposing a suspension or barring a member or associated person from association with all members; (4) imposing monetary sanctions of $10,000 or more on a member or associated person; (5) containing on alleged violation of a Designated Rule; or (6) deemed by the President of NASD Regulation to involve a significant policy or enforcement determination where the release of information would be in the public interest.

The Association is proposing to amend the Interpretation to provide for the publication of all final, litigated decisions issued by the OHO, the NAC, and the NASD Board, regardless of sanctions imposed. However, the names of the parties and other identifying information mentioned in the decisions that do not meet the current enumerated publication criteria, as outlined in the Interpretation (listed above), will be redacted from these decisions. Settlements, Letters of Acceptance, Waivers and Consents ("AWCs"), and Minor Rule Violation Plan letters are excluded from this proposal. The proposed rule change will not have any impact on the information contained in or disclosed by the Central Registration Depository system. The NASD will make available all decisions covered under this proposal that were issued after August 7, 1997, the effective date of the most recent significant changes to the NASD Code of Procedure.[5]

### III. Discussion

The Commission finds that the proposal is consistent with Section 15A(b)(6) of the Act,[6] which requires, among other things, that the rules of an association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. In particular, the Commission finds that the proposal is consistent with Section 15A(b)(7) of the Act[7] in that it works to adequately safeguard the interest of investors while establishing fair rules for its members and persons associated with its members.

The Commission believes that providing the public with this expanded information on disciplinary decisions will provide a clearer picture of the Association's current application and interpretation of its substantive and procedural rules. The NASD will make the information available to vendors of legal research databases. Members will have additional insight into how NASD rules are enforced, making it easier for them to comply with the rules.

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–NASD–00–05) is approved. The NASD will announce the effective date of this rule in a Notice to Members to be published within 60 days of the date on this order. The effective date will be 30 days following publication of the Notice to Members announcing Commission approval.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12758 Filed 5–19–00; 8:45 am]

BILLING CODE 8010–01–M

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3253]**

### State of California

Los Angeles County and the contiguous counties of Kern, Orange, San Bernardino, and Ventura in the State of California constitute a disaster area as a result of severe storms that occurred on April 18, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 10, 2000 and for economic injury until the close of business on February 9, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The OHO issues decisions rendered by Hearing Officers (default decisions) and Hearing Panels.

[4] Securities Exchange Act Release No. 42607 (April 3, 2000), 65 FR 19421.

[5] *See* Special NASD Notice to Member 97–55 (August 1997).

[6] 15 U.S.C. 78–*o* 3(b)(6).

[7] 15 U.S.C. 78–*o* 3(b)(7).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

*For Physical Damage*

Homeowners with credit available elsewhere: 7.625%
Homeowners without credit available elsewhere: 3.812%
Businesses with credit available elsewhere: 8.000%
Businesses and non-profit organizations without credit available elsewhere: 4.000%
Others (including non-profit organizations) with credit available elsewhere: 6.750%

*For Economic Injury*

Businesses and small agricultural cooperatives without credit available elsewhere: 4.000%

The numbers assigned to this disaster are 325311 for physical damage and 9H3200 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 9, 2000.

**Kris Swedin,**

*Acting Administrator.*

[FR Doc. 00–12692 Filed 5–19–00; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Economic Injury Disaster #9H25]**

### State of Connecticut (and Contiguous Counties in the State of Rhode Island)

New London County and the contiguous counties of Hartford, Middlesex, Tolland, and Windham in Connecticut, and Kent and Washington Counties in Rhode Island constitute an economic injury disaster loan area as a result of a fire that occurred on March 6, 2000 in the Village of Mystic, in the Town of Groton. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on February 2, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South, 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number for the State of Rhode Island is 9H2600.

(Catalog of Federal Domestic Assistance Program No. 59002)

Dated: May 8, 2000.

**Kris Swedin,**

*Acting Administrator.*

[FR Doc. 00–12693 Filed 5–19–00; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3252]**

### State of Kansas

As a result of the President's major disaster declaration on May 3, 2000, I find that Crawford, Labette, and Neosho Counties in the State of Kansas constitute a disaster area due to damages caused by severe storms and tornadoes that occurred April 19–20, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 2, 2000, and for loans for economic injury until the close of business on February 5, 2001 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Allen, Bourbon, Cherokee, Montgomery, Wilson, and Woodson Counties in Kansas; Barton, Jasper, and Vernon Counties in Missouri; and Craig and Nowata Counties in Oklahoma.

The interest rates are:

*For Physical Damage*

Homeowners with credit available elsewhere: 7.625%
Homeowners without credit available elsewhere: 3.812%
Businesses with credit available elsewhere: 8.000%
Businesses and non-profit organizations without credit available elsewhere: 4.000%
Others (including non-profit organizations) with credit available elsewhere: 6.750%

*For Economic Injury*

Businesses and small agricultural cooperatives without credit available elsewhere: 4.000%

The number assigned to this disaster for physical damage is 325212. For economic injury the numbers are 9H2200 for Kansas, 9H2300 for Missouri, and 9H2400 for Oklahoma.

Dated: May 8, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

**Herbert L. Mitchell,**

*Acting Associate Administrator for Disaster Assistance.*

[FR Doc. 00–12694 Filed 5–19–00; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Region III Advisory Council Meeting; Public Meeting

The South Atlantic States, Regulatory Fairness Board will hold a public hearing on June 22, 2000, at Morgan State University, Main Lecture Hall, Schaefer Building, located at 5200 Perring Parkway, Room 241, Baltimore, Maryland to receive comments and testimony from small businesses and representatives of trade associations concerning federal regulatory enforcement or compliance activities. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman. For further information, call Elestine Harvey (312) 353–0880.

**Bettie Baca,**

*Counselor to the Administrator/Public Liaison.*

[FR Doc. 00–12691 Filed 5–19–00; 8:45 am]

BILLING CODE 8025–01–P

## SOCIAL SECURITY ADMINISTRATION

### Finding Regarding the Social Insurance System of Bosnia and Herzegovina

**AGENCY:** Social Security Administration.

**ACTION:** Notice of finding regarding the Social Insurance System of Bosnia and Herzegovina.

**FINDING:** Section 202(t)(1) of the Social Security Act (42 U.S.C. 402(t)(1)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months, and prior to the first month thereafter for all of which the individual has been in the United States. This prohibition does not apply to such an individual where one of the exceptions described in sections 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition

against payment shall not apply to any individual who is a citizen of a country which the Commissioner of Social Security finds has in effect a social insurance system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Commissioner of Social Security has delegated the authority to make such a finding to the Associate Commissioner for International Programs. Under that authority, the Associate Commissioner for International Programs has approved a finding that Bosnia and Herzegovina, as of April 7, 1992, has social insurance systems of general application which:

(a) Pay periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permit United States citizens who are not citizens of Bosnia and Herzegovina and who qualify for the relevant benefits to receive those benefits, or their actuarial equivalent, while outside of Bosnia or Herzegovina, regardless of the duration of the absence of these individuals from Bosnia and Herzegovina.

On April 7, 1992, the United States recognized the independence of Bosnia and Herzegovina. Before that time, it was considered to be part of the former Socialist Federal Yugoslav Republic which had a system that was determined to meet section 202(t)(2) of the Social Security Act as of March 25, 1959.

Although it was ascertained at the time of independence that the old Yugoslav law was still in effect in Bosnia and Herzegovina, it could not be determined to what extent the war had affected the actual operation of the social insurance system (as contact with appropriate foreign officials was not possible at that time). Thus, citizens of Bosnia and Herzegovina receiving U.S. Social Security benefits under the social insurance exception had their payments suspended in 1995 pending a decision as to whether the system continued to meet the provisions of section 202(t)(2) as of April 7, 1992.

Since March 1994, the country of Bosnia and Herzegovina has been comprised of two territories, the Federation of Bosnia and Herzegovina and the Republic of Srpska. The country of Bosnia and Herzegovina had in effect as of April 7, 1992, a social insurance system which met the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)). The Federation of Bosnia and Herzegovina had in effect as of August 1, 1998, a social insurance system which met the requirements of section 202(t)(2) of the Social Security Act and the Republic of Srpska had in effect, as of January 1, 1994, a social insurance system which met the requirements of section 202(t)(2) of the Social Security Act. The Federation and the Republic are part of the country of Bosnia and Herzegovina and their social insurance systems are derived from, and replaced, the national social insurance system.

**FOR FURTHER INFORMATION CONTACT:** Donna Powers, Room 1104, West High Rise Building, P.O. Box 17741, 6401 Security Boulevard, Baltimore, MD 21235; (410) 965–3568.

(Catalog of Federal Domestic Assistance: Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004 Social Security—Survivors Insurance)

Dated: May 05, 2000.

**Joseph A. Gribbin,**

*Associate Commissioner for International Programs.*

[FR Doc. 00–12684 Filed 5–19–00; 8:45 am]

BILLING CODE 4191–02–U

## HEALTH AND HUMAN SERVICES

### Social Security Administration

### Privacy Act of 1974, as Amended; Correction to Existing System of Records

**AGENCY:** Social Security Administration (SSA).

**ACTION:** Notice of a minor non-substantive change to an existing system of record.

**SUMMARY:** In accordance with the provisions of the Privacy Act (5 U.S.C. 552a(e)(4) and (e)(11)), we are issuing public notice of our intent to make a minor non-substantive change to an existing system of records entitled the Supplemental Security Income Record and Special Veterans Benefits(SSR/SVB), SSA/OSR, 60–0103. We invite public comments on this proposal.

**DATES:** These changes are effective May 22, 2000.

**ADDRESSES:** Interested individuals may comment on this publication by writing to the SSA Privacy Officer, Social Security Administration, 3–F–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401. All comments received will be available for public inspection at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pamela McLaughlin, Social Insurance Program Specialist, Social Security Administration, Room 3–C–2 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, telephone (410) 965–3677.

**SUPPLEMENTARY INFORMATION:** The Supplemental Security Income Record and Special Veterans Benefits(SSR/SVB), SSA/OSR, 60–0103 maintains eligibility information about applicants and recipients of payments under titles VIII and XVI of the Social Security Act. (See the Categories of individuals covered by the system and Categories of records in the system in the notice below for a complete description of the individuals and records covered by the system of records.) The information maintained includes "income" data which in some cases could constitute "returns or return information" within the scope of the Internal Revenue Code (IRC), as amended.

We, therefore, are amending the section of the **Federal Register** notice of the SSR/SVB system of records entitled Routine uses of records maintained in the system, including categories of users and the purposes of such uses to indicate that any information maintained in this system will not be disclosed unless disclosure is authorized by the IRC.

**Darrell Blevins,**

*SSA Privacy Officer.*

**60–0103**

**SYSTEM NAME:**

Supplemental Security Income Record and Special Veterans Benefits, SSA/OSR.

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Social Security Administration, Office of Telecommunications and Systems Operations, 6401 Security Boulevard, Baltimore, MD 21235.

Records also may be located in the Social Security Administration (SSA) Regional and field offices (individuals should consult their local telephone directories for address information).

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

This file contains a record for each individual who has applied for supplemental security income (SSI) payments, including individuals who have requested an advance payment;

SSI recipients who have been overpaid; and ineligible persons associated with an SSI recipient. This file also covers those individuals who have applied for and who are entitled to the Special Veterans Benefits (SVB) under title VIII of the Social Security Act. (This file does not cover applicants who do not have a Social Security number (SSN).)

**CATEGORIES OF RECORDS IN THE SYSTEM:**

This file contains data regarding SSI eligibility; citizenship; residence; Medicaid eligibility; eligibility for other benefits; alcoholism or drug addiction data, if applicable (disclosure of this information may be restricted by 21 U.S.C. 1175 and 42 U.S.C. 290dd–3 and ee–3); income data; resources; payment amounts, including overpayment amounts and date and amount of advance payments; living arrangements; case folder location data; appellate decisions, if applicable; SSN used to identify a particular individual, if applicable; information about representative payees, if applicable; and a history of changes to any of the persons who have applied for SSI payments. For eligible individuals, the file contains basic identifying information, income and resources (if any) and, in conversion cases, the State welfare number.

**THIS FILE ALSO CONTAINS INFORMATION ABOUT APPLICANTS FOR SVB:**

The information maintained in this system of records is collected from the applicants for title VIII SVB, and other systems of records maintained by SSA. The information maintained includes a data element indicating this is a title VIII SVB claim. It will also include: Identifying information such as the applicant's name, Social Security number (SSN) and date of birth (DOB); telephone number (if any); foreign and domestic addresses; the applicant's sex; income data, payment amounts (including overpayment amounts); and other information provided by the applicant relative to his or her entitlement for SVB.

If the beneficiary has a representative payee, this system of records includes data about the representative payee such as the payee's SSN; employer identification number, if applicable; and mailing address.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sections 1602, 1611, 1612, 1613, 1614, 1615, 1616, 1631, 1633, 1634 of title XVI and title VIII of the Social Security Act (the Act).

**PURPOSE(S):**

SSI records begin in Social Security field offices where an individual or couple files an application for SSI payments. SVB records begin in Social Security field offices and Veterans Affairs Regional Office (VARO) where an individual files an application for SVB payments. The SSI and SVB applications contain data which may be used to prove the identity of the applicant, to determine his/her eligibility for SSI or SVB payments and, in cases where eligibility is determined, to compute the amount of the payment. Information from the application, in addition to data used internally to control and process SSI and SVB cases, is used to create the Supplemental Security Income Record (SSR). The SSR also is used as a means of providing a historical record of all activity on a particular individual's or couple's record.

In addition, statistical data are derived from the SSR for actuarial and management information purposes.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Disclosure may be made for routine uses as indicated below. However, disclosure of any information constituting 'returns or return information' within the scope of the Internal Revenue Code will not be disclosed unless disclosure is authorized by that statute.

(1) To the Department of the Treasury to prepare SSI, Energy Assistance, and SVB checks to be sent to claimants or beneficiaries.

(2) To the States to establish the minimum income level for computation of State supplements.

(3) To the following Federal and State agencies to prepare information for verification of benefit eligibility under section 1631(e) of the Act: Bureau of Indian Affairs; Office of Personnel Management; Department of Agriculture; Department of Labor; Immigration and Naturalization Service; Internal Revenue Service; Railroad Retirement Board; State Pension Funds; State Welfare Offices; State Worker's Compensation; Department of Defense; United States Coast Guard; and Department of Veterans Affairs.

(4) To a congressional office in response to an inquiry from that office made at the request of the subject of a record.

(5) To the appropriate State agencies (or other agencies providing services to disabled children) to identify title XVI eligibles under the age of 16 for the consideration of rehabilitation services in accordance with section 1615 of the Act, 42 U.S.C. 1382d.

(6) To contractors under contract to SSA or under contract to another agency with funds provided by SSA for the performance of research and statistical activities directly relating to this system of records.

(7) To State audit agencies for auditing State supplementation payments and Medicaid eligibility consideration.

(8) To State agencies to effect and report the fact of Medicaid eligibility of title XVI recipients in the jurisdiction of those States which have elected Federal determinations of Medicaid eligibility of title XVI eligibles and to assist the States in administering the Medicaid program.

(9) To State agencies to identify title XVI eligibles in the jurisdiction of those States which have not elected Federal determinations of Medicaid eligibility in order to assist those States in establishing and maintaining Medicaid rolls and in administering the Medicaid program.

(10) To State agencies to enable those agencies which have elected Federal administration of their supplementation programs to monitor changes in applicant/recipient income, special needs, and circumstances.

(11) To State agencies to enable those agencies which have elected to administer their own supplementation programs to identify SSI eligibles in order to determine the amount of their monthly supplementary payments.

(12) To State agencies to enable them to assist in the effective and efficient administration of the SSI program.

(13) To State agencies to enable those which have an agreement with SSA to carry out their functions with respect to Interim Assistance Reimbursement pursuant to section 1631(g) of the Act.

(14) To State agencies to enable them to locate potentially eligible individuals and to make eligibility determinations for extensions of social services under the provisions of title XX of the Act.

(15) To State agencies to assist them in determining initial and continuing eligibility in their income maintenance programs and for investigation and prosecution of conduct subject to criminal sanctions under these programs.

(16) To the United States Postal Service for investigating the alleged theft, forgery or unlawful negotiation of SSI and SVB checks.

(17) To the Department of the Treasury for investigating the alleged theft, forgery or unlawful negotiation of SSI and SVB checks.

(18) To the Department of Education, for determining the eligibility of applicants for Basic Educational Opportunity Grants.

(19) To Federal, State or local agencies (or agents on their behalf) for administering cash or non-cash income maintenance or health maintenance programs (including programs under the Act). Such disclosures include, but are not limited to, release of information to:

(a) The Department of Veterans Affairs (DVA) upon request for determining eligibility for, or amount of, DVA benefits or verifying other information with respect thereto in accordance with 38 U.S.C. 5106;

(b) The RRB for administering the Railroad Unemployment Insurance Act;

(c) State agencies to determine eligibility for Medicaid;

(d) State agencies to locate potentially eligible individuals and to make determinations of eligibility for the food stamp program;

(e) State agencies to administer energy assistance to low income groups under programs for which the States are responsible; and

(f) Department of State and its agents to assist SSA in administering the Social Security Act in foreign countries, the American Institute on Taiwan and its agents to assist in administering the Social Security Act in Taiwan, the VA, Philippines Regional Office and its agents to assist in administering the Social Security Act in the Philippines, and the Department of Interior and its agents to assist in administering the Social Security Act in the Northern Mariana Islands.

(20) To IRS, Department of the Treasury, as necessary, for the purpose of auditing SSA's compliance with safeguard provisions of the Internal Revenue Code (IRC) of 1986, as amended.

(21) To the Office of the President for the purpose of responding to an individual pursuant to an inquiry received from that individual or a third party on his/her behalf.

(22) Upon request, information on the identity and location of aliens may be disclosed to the DOJ (Criminal Division, Office of Special Investigations) for the purpose of detecting, investigating and, where necessary, taking legal action against suspected Nazi war criminals in the United States.

(23) To third party contacts such as private collection agencies and credit reporting agencies under contract with SSA and State motor vehicle agencies for the purpose of their assisting SSA in recovering overpayments.

(24) Information may be disclosed to contractors and other Federal agencies, as necessary, for the purpose of assisting SSA in the efficient administration of its programs. We contemplate disclosing information under this routine use only in situations in which SSA may enter a contractual or similar agreement with a third party to assist in accomplishing an agency function relating to this system of records.

(25) Non-tax return information which is not restricted from disclosure by Federal law may be disclosed to General Services Administration and National Archives and Records Administration (NARA) for the purpose of conducting records management studies with respect to their duties and responsibilities under 44 U.S.C. 2904 and 2906, as amended by NARA Act of 1984.

(26) To the DOJ, a court or other tribunal, or another party before such tribunal when:

(a) SSA, any component thereof,

(b) Any SSA employee in his/her official capacity;

(c) Any SSA employee in his/her individual capacity where DOJ (or SSA where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where SSA determines that the litigation is likely to affect the operations of SSA or any of its components is a party to litigation or has an interest in such litigation, and SSA determines that the use of such records by DOJ, the court, or other tribunal, is relevant and necessary to the litigation, provided, however, that in each case, SSA determines that such disclosure is compatible with the purpose for which the records were collected.

Wage and other information which are subject to the disclosure provisions of the IRC (26 U.S.C. 6103) will not be disclosed under this routine use unless disclosure is expressly permitted by the IRC.

(27) To representative payees, when the information pertains to individuals for whom they serve as representative payees, for the purpose of assisting SSA in administering its representative payment responsibilities under the Act and assisting the representative payees in performing their duties as payees, including receiving and accounting for benefits for individuals for whom they serve as payees.

(28) To third party contacts (e.g., employers and private pension plans) in situations where the party to be contacted has, or is expected to have, information relating to the individual's capability to manage his/her affairs or his/her eligibility for, or entitlement to, benefits under the Social Security program when:

(a) The individual is unable to provide information being sought. An individual is considered to be unable to provide certain types of information when:

(i) He/she is incapable or of questionable mental capability;

(ii) He/she cannot read or write;

(iii) He/she cannot afford the cost of obtaining the information;

(iv) He/she has a hearing impairment, and is contacting SSA by telephone through a telecommunications relay system operator;

(v) A language barrier exists; or

(vi) The custodian of the information will not, as a matter of policy, provide it to the individual; or

(b) The data are needed to establish the validity of evidence or to verify the accuracy of information presented by the individual, and it concerns one or more of the following:

(i) His/her eligibility for benefits under the Social Security program;

(ii) The amount of his/her benefit payment; or

(iii) Any case in which the evidence is being reviewed as a result of suspected fraud, concern for program integrity, quality appraisal, or evaluation and measurement activities.

(29) To Rehabilitation Services Administration (RSA) for use in its program studies of, and development of enhancements for, State vocational rehabilitation programs. These are programs to which applicants or beneficiaries under titles II and or XVI of the Act may be referred. Data released to RSA will not include any personally identifying information (such as names or SSNs).

(30) Addresses of beneficiaries who are obligated on loans held by the Secretary of Education or a loan made in accordance with 20 U.S.C. 1071, *et. seq.* (the Robert T. Stafford Student Loan Program) may be disclosed to the Department of Education as authorized by section 489A of the Higher Education Act of 1965.

(31) To student volunteers and other workers, who technically do not have the status of Federal employees, when they are performing work for SSA as authorized by law, and they need access to personally identifiable information in SSA records in order to perform their assigned Agency functions.

(32) To Federal, State, and local law enforcement agencies and private security contractors, as appropriate, if information is necessary:

(a) To enable them to protect the safety of SSA employees and customers, the security of the SSA workplace and the operation of SSA facilities, or

(b) To assist investigations or prosecutions with respect to activities that affect such safety and security or activities that disrupt the operation of SSA facilities.

(33) Corrections to information that resulted in erroneous inclusion of individuals in the Death Master File (DMF) may be disclosed to recipients of erroneous DMF information.

(34) Information as to whether an individual is alive or deceased may be disclosed pursuant to section 1106(d) of the Social Security Act (42 U.S.C. 1306(d)), upon request, for purposes of an epidemiological or similar research project, provided that:

(a) SSA determines in consultation with the Department of Health and Human Services, that the research may reasonably be expected to contribute to a national health interest;

(b) The requester agrees to reimburse SSA for the costs of providing the information; and

(c) the requester agrees to comply with any safeguards and limitations specified by SSA regarding rerelease or redisclosure of the information.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in magnetic media (*e.g.,* magnetic tape) and in microform and microfiche form.

**RETRIEVABILITY:**

Records are indexed and retrieved by SSN.

**SAFEGUARDS:**

System security for automated records has been established in accordance with the Systems Security Handbook. This includes maintaining all magnetic tapes and magnetic disks within an enclosure attended by security guards. Anyone entering or leaving that enclosure must have special badges which are only issued to authorized personnel. All authorized personnel having access to the magnetic records are subject to the penalties of the Privacy Act. The microfiche are stored in locked cabinets, and are accessible to employees only on a need-to-know basis. All SSR State Data Exchange records are protected in accordance with agreements between SSA and the respective States regarding confidentiality, use, and redisclosure.

**RETENTION AND DISPOSAL**

Original input transaction tapes received which contain initial claims and posteligibility actions are retained indefinitely although these are processed as received and incorporated into processing tapes which are updated to the master SSR tape file on a monthly basis. All magnetic tapes appropriate to SSI information furnished to specified Federal, State, and local agencies for verification of eligibility for benefits and under section 1631(e) are retained, in accordance with the PA accounting requirements, for at least 5 years or the life of the record, whichever is longer.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, Division of Supplemental Security Income Systems, Office of Systems Requirements, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235.

**NOTIFICATION PROCEDURE:**

An individual can determine if this system contains a record about him/her by writing to or visiting any Social Security field office and providing his or her name and SSN. (Individuals should consult their local telephone directories for Social Security office address and telephone information.) Applicants for SVB who reside in the Philippines should contact VARO, Philippines. (Furnishing the SSN is voluntary, but it will make searching for an individual's record easier and prevent delay.)

An individual requesting notification of records in person need not furnish any special documents of identity. Documents he/she would normally carry on his/her person would be sufficient (e.g., credit cards, driver's license, or voter registration card). An individual requesting notification via mail or telephone must furnish a minimum of his/her name, date of birth and address in order to establish identity, plus any additional information specified in this section. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c)).

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. An individual who requests notification of, or access to, a medical record shall, at the time he or she makes the request, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion. A parent or guardian who requests notification of, or access to, a minor's medical record shall at the time he or she makes the request designate a physician or other health professional (other than a family member) who will be willing to review the record and inform the parent or guardian of its contents at the physician's or health professional's discretion. These procedures are in accordance with SSA Regulations (20 CFR 401.40(c) and 401.55).

**CONTESTING RECORD PROCEDURES:**

Same as notification procedures. Requesters should also reasonably identify the record, specify the information they are contesting and state the corrective action sought and the reasons for the correction with supporting justification showing how the record is incomplete, untimely, inaccurate or irrelevant. These procedures are in accordance with SSA Regulations (20 CFR 401.65).

**RECORD SOURCE CATEGORIES:**

Data contained in the SSR are obtained for the most part from the applicant for SSI and SVB payments and are derived from the Claims Folders System (60–0089) and the Modernized Supplemental Security Income Claims System. The States and other Federal agencies such as the Department of Veterans Affairs also provide data affecting the SSR.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:**

None.

[FR Doc. 00–12591 Filed 5–19–00; 8:45 am]
BILLING CODE 4190–11–U

## DEPARTMENT OF STATE

**[Public Notice 3316]**

### Office of Defense Trade Controls; Notifications to the Congress of Proposed Commercial Export Licenses

**AGENCY:** Department of State.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the Department of State has forwarded the attached Notifications of Proposed Export Licenses to the Congress on the dates shown on the attachments pursuant to section 36(c) and in compliance with section 36(e) of the Arms Export Control Act (22 U.S.C. 2776).

**EFFECTIVE DATE:** As shown on each of the nine letters.

**FOR FURTHER INFORMATION CONTACT:** Mr. William J. Lowell, Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202–663–2700).

**SUPPLEMENTARY INFORMATION:** Section 38(e) of the Arms Export Control Act mandates that notifications to the Congress pursuant to section 36(c) must be published in the **Federal Register** when they are transmitted to Congress or as soon thereafter as practicable.

Dated: May 15, 2000.

**William J. Lowell,**

*Director, Office of Defense Trade Controls, U.S. Department of State.*

United States Department of State,
Washington, DC 20520, April 14, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c)&(d) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export to Saudi Arabia of 16 search and rescue helicopters for government end-use.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 002–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

United States Department of State,
Washington, D.C. 20520, April 14, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of ship engineering and design services to Egypt for a new Fast Patrol Boat for the Egyptian Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 004–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

United States Department of State,
Washington, D.C. 20520, April 14, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical information, defense services and defense articles to Japan for the manufacture, overhaul and repair of fuel control components for the F100–PW–220 engine on Japanese Defense Agency's F–15J aircraft.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 005–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

United States Department of State,
Washington, D.C. 20520, April 14, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export technical data and information to Japan for the manufacture of AN/TPX–46(V)–(V)6, AN/TPX–46(V)7 and AB/TPX–46A(V)7 IFF Interrogators for the Japanese Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 006–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

United States Department of State,
Washington, DC 20520, April 14, 2000.

Dear Mr. Speaker: Pursuant to Sections 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed Manufacturing License Agreement with Japan.

The transaction described in the attached certification involves the manufacture, testing, maintenance and repair of the AN/ARR–78(V) Advanced Sonobuoy Communications Link Receiver.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 007–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

United States Department of State,
Washington, D.C. 20520, April 14, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical information and defense services to Germany for the manufacture of prepreg ablative materials used in various rockets, space vehicles and missiles of Germany, the Netherlands, Norway, Denmark, France, Italy, United Kingdom and the European Space Agency

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 009–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

United States Department of State,
Washington, D.C. 20520, April 14, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of ship engineering and design services to Australia for the construction of a new class of Frigate for the Royal Australian Navy.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Barbara Larkin,
*Assistant Secretary, Legislative Affairs.*

Enclosure: Transmittal No. DTC 010–00
The Honorable J. Dennis Hastert, Speaker of the House of Representatives.

United States Department of State,
Washington, D.C. 20520, April 14, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting herewith certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of technical data and engineering information to Japan for the manufacture of Chukar II and III target drone systems for use by the Japanese Government.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified, contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 011–00
The Honorable J. Dennis Hastert, Speaker of the House of Representative.

United States Department of State,
Washington, DC 20520, April 14, 2000.

Dear Mr. Speaker: Pursuant to Section 36(c) of the Arms Export Control Act, I am transmitting, herewith, certification of a proposed license for the export of defense articles or defense services sold commercially under a contract in the amount $50,000,000 or more.

The transaction contained in the attached certification involves the export of one HS601 HP PAS 9 commercial communications satellite to French Guiana or Sea Launch for launch on an Ariane or Proton launch vehicle.

The United States Government is prepared to license the export of these items having taken into account political, military, economic, human rights, and arms control considerations.

More detailed information is contained in the formal certification which, though unclassified contains business information submitted to the Department of State by the applicant, publication of which could cause competitive harm to the United States firm concerned.

Sincerely,
Barbara Larkin,
Assistant Secretary, Legislative Affairs.

Enclosure: Transmittal No. DTC 025–00

The Honorable J. Dennis Hastert, Speaker of the House of Representative.

[FR Doc. 00–12831 Filed 5–19–00; 8:45 am]
BILLING CODE 4710–25–U

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Summary Notice No. PE–2000–18]**

### Petitions for Exemption; Summary of Petitions Received; Disposition of Petitions Issued

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of petitions for exemption received and of disposition of prior petitions.

**SUMMARY:** Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

**DATES:** Comments of petitions received must identify the petition docket number involved and must be received on or before July 21, 2000.

**ADDRESSES:** Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

**FOR FURTHER INFORMATION CONTACT:** Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on May 16, 2000.

**Donald P. Byrne,**
*Assistant Chief Counsel for Regulations.*

**Petition for Exemption**

*Docket No.:* 30024.
*Petitioner:* Duncan Aviation.
*Regulations Affected:* 14 CFR 25.813(c)(1), 25.813(c)(2).
*Description of Petition:* To allow access to the required emergency exists on the Israeli Aircraft Industries Astra SPX to be modified.

[FR Doc. 00–12824 Filed 5–19–00; 8:45 am]
BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application (00–03–C–00–MSO), To Impose and Use the Revenue From a Passenger Facility Charge (PFC), at Missoula International Airport, Submitted by the Missoula County Airport Authority, Missoula International Airport, Missoula, Montana

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Missoula International Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR 158).

**DATES:** Comments must be received on or before June 21, 2000.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: David P. Gabbert, Manager; Helena Airports District Office, Federal Aviation Administration, 2725 Skyway Drive, Suite 2, Helena, Montana 59602.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. John P. Seymour, Director of Airports, at the following address: Missoula International Airport, 5225 Highway 10 West, Missoula, Montana 59802.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Missoula International Airport, under section 158.23 of part 158.

**FOR FURTHER INFORMATION CONTACT:** David P. Gabbert, (406) 449–5271, Federal Aviation Administration, Airports District Office, 2725 Skyway Drive, Suite 2, Helena, Montana 59602.

The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application (00–03–C–00–MSO) to impose and use PFC revenue at Missoula International Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 12, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Missoula County Airport Authority, Missoula International Airport, Missoula, Montana, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application in whole or in part, no later than August 11, 2000.

The following is a brief overview of the application.

*Level of the proposed PFC:* $3.00.

*Proposed charge effective date:* August 1, 2003.

*Proposed charge expiration date:* October 31, 2006.

*Total requested for use approval:* $1,500,000.

*Brief description of proposed project:* Acquire land for approach protection, airport development and noise mitigation.

*Class or classes of air carriers which the public agency has requested not be required to collect PFC's:* Non-scheduled on demand air taxis and charters.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Missoula International Airport.

Issued in Renton, Washington on May 12, 2000.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 00–12825 Filed 5–19–00; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

### Environmental Assessment or Environmental Impact Statement: Franklin and Licking Counties, OH

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an Environmental Assessment or Environmental Impact Statement will be prepared for a proposed highway project in Franklin and Licking Counties, Ohio.

**FOR FURTHER INFORMATION, CONTACT:** Andreas Garnes, Rural Programs Engineer, Federal Highway Administration, 200 N. High Street, Room 328, Columbus, Ohio 43215, Telephone: (614) 280–6856.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Ohio Department of Transportation, will prepare an Environmental Assessment (EA) or Environmental Impact Statement (EIS) for a proposal to improve the S.R. 161/S.R. 37/S.R. 16 Macro Corridor by construction of a limited access divided highway facility that will connect the existing four lane facilities located at the western terminus in the vicinity of the City of Columbus, Franklin County, Ohio and the eastern terminus in the vicinity of Granville, Licking County, Ohio. The Macro Corridor extends from IR 270 to IR 77 and encompasses the portions of SR 161, SR 37, SR 16 and US 36 located between these two Interstate Routes.

Construction of this section of the Macro Corridor is considered necessary to complete a missing link in the existing Macro Corridor. This construction is considered necessary to relive congestion and improve safety for local and regional travel. The unimpeded flow of goods and services is essential to the economic vitality of Ohio and Macro-Corridors are essential in the delivery of these goods and services. This proposal needs to be consistent with regional and statewide goals for planned growth and mobility in Central Ohio.

Alternatives will be developed that will address capacity and safety deficiencies. Alternative solutions may consist of different alignments that diverge significantly from the existing alignment within the corridor in some sections. The alternatives may also include improving and widening the existing roadway. FHWA, ODOT, and local agencies will be inviting participation in defining the alternatives to be evaluated in the EA or EIS, and any significant social, economic, or environmental issues related to the alternatives.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Coordination with federal, state, and local agencies will be conducted at the established concurrence points in ODOT's preliminary development process. A series of public meetings will be held throughout the development of the project. At a minimum, the meetings will be held in accordance with ODOT's Preliminary Development Process. The first public meetings will be held in the summer of 2000 and property owners in the study area were notified of the project April 20, 2000. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The EA or draft EIS will be available for public agency review and comment prior to the public hearing. To ensure that the full range of issues relating to this proposed action are identified and addressed, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be sent to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: May 12, 2000.

**Andreas Garnes,**

*Rural Programs Engineer, Federal Highway Administration, Columbus, Ohio.*

[FR Doc. 00–12783 Filed 5–19–00; 8: 45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA 2000–7365]**

### Public Meeting on the Commercial Drivers License Program in Illinois

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of public meeting.

**SUMMARY:** The FMCSA is announcing a public meeting for interested persons to present comments and views on the Commercial Drivers License (CDL)

program in Illinois. This action is necessary to inform the public about the date, time, and structure of the meeting. The FMCSA hopes to hear from the public any concerns they may have about the State's CDL program, CDL issuance practices, driver testing (including third party testing), literacy and translation requirements. The public meeting will be recorded and a summary of the proceedings placed in the docket number provided in the heading of this document.

**DATES:** The meeting will be held on Tuesday June 6, 2000, beginning at 9 a.m. and ending at 4:30 p.m., with a break from Noon to 1:30 p.m.

**ADDRESSES:** The meeting will be held at the Ramada Plaza Hotel (O'Hare), 6600 N. Mannheim Road, Rosemont, Illinois 60018, telephone (847) 827–5131. The location is easily accessible from all major expressways. The hotel is approximately one mile from I–190 Mannheim Road (North exit). It can also be reached by the CTA Blue Line to O'Hare Airport.

**FOR FURTHER INFORMATION CONTACT:** To request general information about the meeting: Mrs. Rose Ropke at (708) 283–3518. FMCSA Headquarters contact: Mr. Larry Slade at (202) 366–5721.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202)512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's web page at: http://www.access.gpo.gov/nara.

Internet users may also find this document on the FMCSA web site at *http://www.fmcsa.dot.gov/rulesregs/fmcsr/rulemakings.htm*.

**Background**

*Structure of Public Meeting*

At 9 a.m. there will be opening remarks by the Panel Chair. Following the opening remarks, the first presenter will be called to the podium. There will be a break from Noon to 1:30 p.m. The afternoon session will close at 4:30 p.m. Speakers must limit their oral presentations to no more than 10 minutes duration. Presenters may submit additional written documentation to the public docket.

**Participants**

All persons who would like to present comments must preregister for the meeting. Preregistration can be done by submitting name, address, phone number, home or business address either by electronic mail (*CDLMTG@fhwa.dot.gov*), facsimile at (708) 283–3579 or by telephone at (708) 283–3518. Those who would like to present comments must preregister and indicate their desire to do so. Preregistration must be submitted by 4 p.m., e.t., no later than June 1, 2000.

All persons will be required to sign in at the reception table. At the reception table please be prepared to give your name, title, company or home address and phone number. Persons failing to satisfy requirements will forfeit their opportunity to participate in the meeting. Such persons may, however, submit their written comments by the close of business on June 13, 2000, to the Docket Clerk, U.S. DOT Docket, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. To the extent possible, the docket comments received after the deadline date will be considered for inclusion in the final panel report.

**Authority:** 49 U.S.C. 322, 31502, and 31136; and 49 CFR 1.73.

Issued on: May 16, 2000.

**Brian M. McLaughlin,**

*Director, Office of Policy Plans and Regulations.*

[FR Doc. 00–12737 Filed 5–19–00; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

**[INTL–978–86]**

### Proposed Collection; Comment Request for Regulation Project

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking, INTL–978–86, Information Reporting by Passport and Permanent Residence Applicants (§ 301.6039E–1(c)).

**DATES:** Written comments should be received on or before July 21, 2000 to be assured of consideration.

**ADDRESSES:** Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of this regulation should be directed to Larnice Mack, (202) 622–3179, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

**SUPPLEMENTARY INFORMATION:**

*Title:* Information Reporting by Passport and Permanent Residence Applicants.

*OMB Number:* 1545–1359.

*Regulation Project Number:* INTL–978–86.

*Abstract:* This regulation requires applicants for passports and permanent residence status to report certain tax information on the applications. The regulation is intended to enable the IRS to identify U.S. citizens who have not filed tax returns and permanent residents who have undisclosed sources of foreign income to notify such persons of their duty to file United States tax returns.

*Current Actions:* There is no change to this existing regulation.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Individuals or households.

Estimated Number of Respondents for Passport Applicants: 5,000,000.

*Estimated Time Per Respondent:* 6 minutes.

*Estimated Total Annual Burden Hours for Passport Applicants:* 500,000.

*Estimated Number of Respondents for Permanent Residence Applicants:* 500,000.

*Estimated Time Per Respondent:* 30 minutes.

*Estimated Total Annual Burden Hours for Permanent Residence Applicants:* 250,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

**Request for Comments**

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 16, 2000.

**Garrick R. Shear,**

*IRS Reports Clearance Officer.*

[FR Doc. 00–12832 Filed 5–19–00; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF VETERANS AFFAIRS

### Advisory Committee on Former Prisoners of War, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Former Prisoners of War will be held on June 5 through June 7, 2000, at the Department of Veterans Affairs, Central Office, 810 Vermont Avenue NW, Room 230, Washington, DC 20420. Each day the meeting will convene at 9 a.m. and end at 4:30 p.m. The meeting is open to the public.

The purpose of the committee is to advise the Secretary of Veterans Affairs on the administration of benefits under Title 38, United States Code, for veterans who are former prisoners of war, and to make recommendations on the needs of such veterans for compensation, health care and rehabilitation.

On June 5, the meeting will begin with an introduction of committee members and dignitaries, a review of Committee reports, an update of activities since the last meeting, and a period for POW veterans and/or the public to address the committee. The Committee will also review the Secretary's response to the April 1999 report of meeting, and receive presentations on the Veterans Benefits Administration and Veterans Health Administration activities. On June 6, the meeting will include an update on the Center for POW Studies, a report from the National Institute of Health on its Mortality/Morbidity Study and a briefing from the Special Panel on Stroke. On June 7, the Committee's Medical and Administrative subcommittees will break out to discuss their activities and report back to the Committee.

Additionally, the Committee will review and analyze the comments discussed throughout the meeting for the purpose of assisting and compiling a final report to be sent to the Secretary.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Robert J. Epley, Director, Compensation and Pension Service (21), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Submitted materials must be received by May 31, 2000. A report of the meeting and roster of Committee members may be obtained from Mr. Epley.

Dated: May 11, 2000.

By Direction of the Secretary.

**Marvin R. Eason,**

*Committee Management Officer.*

[FR Doc. 00–12705 Filed 5–19–00; 8:45 am]

BILLING CODE 8320–01–M

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Monday,
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Part II

# Department of the Treasury

**Internal Revenue Service**

**26 CFR Parts 1 and 31**

**Revisions to Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Revisions of Information Reporting Regulations; Final Rule**

VOL 65 ISS 99 MY 22 2000 UMI

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**26 CFR Parts 1 and 31**

**[TD 8881]**

**RIN 1545–AX53; RIN 1545–AV27; RIN 1545–AV41**

## Revisions to Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Revisions of Information Reporting Regulations.

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains amendments to final regulations relating to the withholding of income tax under sections 1441, 1442, and 1443 on certain U.S. source income paid to foreign persons and related requirements governing collection, deposit, refunds, and credits of withheld amounts under sections 1461 through 1463. Additionally, this document contains amendments under sections 6041, 6041A, 6042, 6045, 6049, and 3406. This regulation affects persons making payments of U.S. source income to foreign persons.

**DATES:** These regulations are effective January 1, 2001.

**FOR FURTHER INFORMATION CONTACT:** Carl Cooper, Laurie Hatten-Boyd, or Kate Hwa (202) 622–3840 (not a toll free number).

**SUPPLEMENTARY INFORMATION:**

### Paperwork Reduction Act

The collections of information in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) under control number 1545–1484. Responses to these collections of information are required to obtain a benefit (to claim an exemption to, or a reduction in, withholding), and to facilitate tax compliance (to verify entitlement to an exemption or a reduced rate). The likely respondents are individuals, businesses, and other for-profit organizations.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224.

The estimated average annual burden per respondent and/or recordkeeper are reflected in the burdens of Forms W–8, 1042, 1042–S, 1099, and the income tax return of a foreign person filed for purposes of claiming a refund.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

### Background

In Treasury Decision (TD) 8734 (62 FR 53387), the Treasury Department and the IRS issued comprehensive regulations (final regulations) under chapter 3 (sections 1441–1464) and subpart G of Subchapter A of chapter 61 (sections 6041–6050S) of the Internal Revenue Code. Those final regulations were amended by TD 8804 (63 FR 72183 [1999–12 I.R.B. 5]) which delayed the effective date of the final regulations to payments made after December 31, 1999. The effective date of the regulations was again extended by TD 8856 (64 FR 73408) to payments made after December 31, 2000.

### Need for Changes

Since the publication of TD 8734, the IRS and Treasury have received numerous comments relating to technical errors in the regulations and ways to ease compliance while keeping the objectives of the regulations in place. In Notice 99–8 (1999–5 I.R.B. 26), the IRS and Treasury announced amendments that would be made to the regulations. This TD implements Notice 99–8 and contains additional changes made in response to comments as well as the IRS and Treasury's further analysis of the regulations.

### Explanation of Revisions

*A. Changes to § 1.1441–1*

1. Payments to a U.S. Branch of Certain Foreign Banks or Foreign Insurance Companies

Generally, a payment to a U.S. branch of a foreign person is a payment to a foreign person. Under § 1.1441–1(b)(2)(iv), however, a U.S. branch of certain foreign banks or insurance companies and a withholding agent may agree to treat the U.S. branch as a U.S. person for purposes of chapter 3 of the Internal Revenue Code. The regulation as initially drafted required a withholding agent to treat such a U.S. branch as a U.S. person for all purposes under chapter 3 of the Internal Revenue Code. The regulation itself, however, does not treat a U.S. branch as a U.S. person for all purposes under chapter 3 of the Internal Revenue Code. For example, a U.S. branch of a foreign bank or insurance company provides a withholding certificate on a Form W–8, which is used only by foreign persons. Further, under § 1.1461–1(c), payments to such a branch are reportable as payments to a foreign person on Form 1042–S. Therefore, § 1.1441–1(b)(2)(iv) has been amended to state that, notwithstanding the agreement between the withholding agent and a U.S. branch to treat the U.S. branch as a U.S. person, the branch is not treated as a U.S. person for purposes of providing documentation or for reporting payments to the branch.

2. Rules for Reliably Associating a Payment With a Withholding Certificate or Other Appropriate Documentation

Section 1.1441–1(b)(2)(vii) contains rules to determine whether a payment can be reliably associated with valid documentation. A payment that cannot be reliably associated with valid documentation is subject to the presumption rules in §§ 1.1441–1(b)(3), 1.1441–4(a)(2)(ii) and (3)(i), 1.1441–5(d) and (e)(6), 1.1441–9(b)(3), and 1.6049–5(d). Paragraph (b)(2)(vii) did not adequately address when a payment made to a nonqualified intermediary, a flow-through entity, or a U.S. branch of certain foreign banks and insurance companies (other than a branch that acts as a U.S. person) would be treated as reliably associated with documentation. These entities provide a withholding certificate for themselves and withholding certificates, documentary evidence, or other information for the persons on whose behalf they act. Therefore, the payment must be reliably associated not only with a withholding certificate from the intermediary, flow-through entity, or U.S. branch, but also with documentation from, or information relating to, the payee on whose behalf the entity acts.

Paragraph (b)(2)(vii) has been amended to provide more detailed reliable association rules. For a payment made to a nonqualified intermediary, a flow-through entity, or a U.S. branch, new paragraph (b)(2)(vii)(B) provides that a withholding agent can reliably associate the payment with valid documentation if, prior to the payment, it has received a valid nonqualified

intermediary withholding certificate on Form W–8IMY; it can determine the portion of the payment that relates to valid documentation associated with the Form W–8IMY from a payee (i.e., a person other than a nonqualified intermediary, flow-through entity, or U.S. branch); and the nonqualified intermediary, flow-through entity, or U.S. branch has provided sufficient information for the withholding agent to report the payment on Form 1042–S or Form 1099, if reporting is required.

Paragraph (b)(2)(vii)(C) provides rules for a withholding agent that makes a payment to a qualified intermediary that does not assume primary withholding responsibility under chapter 3 of the Internal Revenue Code or primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Internal Revenue Code. The payment can be reliably associated with valid documentation if, prior to the payment, the withholding agent receives a valid qualified intermediary withholding certificate on Form W–8IMY and a withholding statement that allocates the payment among withholding rate pools, including withholding rate pools for each U.S. non-exempt recipient for which the qualified intermediary has provided a valid Form W–9 (or other information if a Form W–9 has not been provided).

For a payment made to a qualified intermediary that assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code with respect to the payment, but does not assume primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Internal Revenue Code, paragraph (b)(2)(vii)(D) provides that a withholding agent can reliably associate the payment with valid documentation if, prior to the payment, it receives a valid Form W–8IMY and the withholding statement associated with the Form W–8IMY allocates the payment between a single withholding rate pool for which the qualified intermediary assumes primary withholding responsibility and separate withholding rate pools for each U.S. non-exempt recipient.

Paragraph (b)(2)(vii)(E) provides rules for a withholding agent that makes a payment to a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Internal Revenue Code, but does not assume primary withholding responsibility under chapter 3 of the Internal Revenue Code. The payment can be reliably associated with valid documentation if, prior to the payment, the withholding agent can associate the payment with a valid Form W–8IMY and the withholding statement associated with the Form W–8IMY allocates the payment among the withholding rate pool or pools for which withholding responsibility is not assumed and the portion of payment for which the qualified intermediary assumes Form 1099 reporting and backup withholding responsibility.

Finally, for a payment made to a qualified intermediary that assumes both primary withholding responsibility under chapter 3 of the Internal Revenue Code and primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Internal Revenue Code, paragraph (b)(2)(vii)(F) provides that a withholding agent can reliably associate the payment with valid documentation if, prior to the payment, it can associate the payment with a valid Form W–8IMY. In this case, no withholding rate pool allocation information is required. This same rule applies for payments made to a withholding foreign partnership.

3. Presumptions of Classification as Individual, Corporation, Partnership, etc.

As initially drafted, § 1.1441–1(b)(3)(ii) provided a withholding agent with presumption rules to determine a payee's classification (e.g., individual, corporation, partnership) if it could not reliably associate a payment with valid documentation. Paragraph (b)(3)(ii) did not, however, provide a presumption rule if a withholding agent could reliably associate a payment with documentary evidence (i.e., documentation other than a withholding certificate) from which it could not determine the payee's classification. For example, documentary evidence may indicate that a payee (other than an entity that is treated as a per se corporation under § 301.7701–2(b)(8)(i)) is a type of entity that can be organized so that all of its members have limited liability, in which case it would be treated as an association, or so that one or more of its members have unlimited liability, in which case it would be treated as a partnership. The determination of classification can be critical because if the entity is a flow-through entity, it is not the beneficial owner of the payment and its documentary evidence cannot be relied upon to grant a reduced rate of withholding.

Section 1.1441–1(b)(3)(ii)(C) has been added to permit a withholding agent to treat an entity that has provided documentary evidence as a corporation if the classification of the entity cannot be determined from documentary evidence or by reference to the exempt recipient rules under § 1.6049–4(c)(1)(ii). This presumption rule will reduce burdens on withholding agents that are permitted to use documentary evidence, such as foreign intermediaries and flow-through entities, which would otherwise have to request from payees additional information regarding U.S. tax classification. The presumption rule is not, however, intended to allow foreign entities to avoid making the correct determination of their classification and to provide the correct documentation. Thus, a foreign entity must make a determination about its classification and if it determines that it is an intermediary, partnership, foreign simple trust, or foreign grantor trust under U.S. tax law principles, it must provide an intermediary or flow-through withholding certificate on Form W–8IMY together with the appropriate information relating to its customers, partners, beneficiaries, owners, or other payees. Further, a withholding agent cannot treat an entity as a corporation if it knows, or should know, that the entity is a flow-through entity or intermediary. For example, if a particular type of collective investment vehicle provides documentary evidence that does not establish that it is a corporation, partnership, or trust, but the withholding agent knows, or has reason to know, that the investment vehicle is classified as a partnership for U.S. tax purposes, it must request a partnership withholding certificate from the entity.

An entity that is presumed to be a foreign corporation under new paragraph (b)(2)(ii)(C) cannot be treated as the beneficial owner entitled to a reduced rate of withholding to the extent the documentary evidence indicates that it is a bank, broker, custodian, intermediary, or other agent unless the entity provides a statement that it is the beneficial owner of the income. For example, documentary evidence that indicates that the payee is a bank does not permit a withholding agent to apply the portfolio interest exception to payments of interest made to the bank. In addition, even though a foreign entity is treated as a beneficial owner for purposes of the exceptions to withholding under the Internal Revenue Code and regulations, it is not necessarily entitled to claim treaty benefits. Whether treaty benefits may be claimed by an entity depend on whether it meets the requirements under the income tax treaty and section 894.

4. Changes to Presumption Rules

Several simplifying and clarifying changes have been made to the presumption rules in § 1.1441–1(b)(3). First, the presumption rule applicable to pensions and annuities contained in § 1.1441–1(b)(3)(iii)(C) has been expanded to apply to individual retirement accounts and individual retirement annuities. Second, § 1.1441–1(b)(3)(iii)(D), which contains presumption rules applicable to offshore accounts, was revised to state the applicable rule more clearly. In addition, the restriction on applying the presumption rule of paragraph (b)(3)(iii)(D) to amounts that are not subject to withholding has been moved from that paragraph to § 1.6049–5(d)(2). This change eliminates a conflict with § 1.6049–5(d)(2), as previously drafted, which applied the paragraph (b)(3)(iii)(D) rule to amounts not subject to withholding.

Section 1.1441–1(b)(3)(iv) contains a grace period presumption rule that permits a withholding agent to treat a payee as a foreign person in certain situations where the withholding agent would presume the payee to be a U.S. person. Although the grace period rule generally does not permit a withholding agent to apply any exceptions to withholding, it does permit a withholding agent to apply a reduced rate of withholding for 90 days to a payee that provides a withholding certificate that would have been valid except that it was transmitted by facsimile. One commentator noted that because the facsimile rule applied only to payees that a withholding agent could, "in its discretion" treat as a foreign person, the rule was limited to those situations where the presumption rules would have treated the payee as a U.S. person and the withholding agent was exercising its discretion to treat the payee as foreign. Therefore, the commentator argued, the rule arguably could not be applied to payees that were required to be treated as foreign persons under the presumption rules, e.g., an exempt recipient with indicia of foreign status. The regulation has been modified by removing the phrase "in its discretion" thereby permitting the facsimile rule to apply to payees that are treated as foreign payees under the presumption rules.

Paragraph (b)(3)(v), as promulgated in TD 8734, provided several presumption rules that applied if a withholding agent did not receive from a nonqualified intermediary the withholding certificates or documentary evidence of the persons on whose behalf the nonqualified intermediary acted or did not receive information allocating the payment to each person. Under paragraph (b)(3)(v)(C), if the withholding agent could associate a payment with a group of beneficial owners or payees, it could treat the payment as being made in its entirety to the person in the group that was subject to the highest withholding rate or, if the rates were equal, to the payee in the group with the highest U.S. tax liability. If a nonqualified intermediary grouped persons subject to similar withholding and tax rates together and allocated the payment to the group, the nonqualified intermediary could achieve a reduced rate of withholding for its customers without reliably associating the payment to each of the customers that would be entitled to the payment. Treasury and the IRS stated in Notice 99–8 that affording a reduced rate of withholding under these circumstances was inappropriate. Further, it was inappropriate to report the entire payment as if it were made to a single documented payee who was not entitled to receive the entire amount of income.

Paragraph (b)(3)(v) has been revised so that whenever a payment to a nonqualified intermediary cannot be reliably associated with valid documentation from a specific payee, the payment is treated as made to an undocumented foreign payee and is subject to 30 percent withholding. Under § 1.1461–1(c), such payments are reported to an unknown owner on Form 1042–S. Thus, a payment can no longer be subject to a reduced rate of withholding because it can be allocated to a group of documented payees all of whom are subject to the same reduced rate of withholding. Similar changes have been made to the presumption rules that applied to foreign partnerships under former § 1.1441–5(d)(3)(ii).

Paragraph (b)(3)(vi), as originally drafted, was in error. It stated that the presumption rules that applied to foreign intermediaries also applied to U.S. branches of foreign banks and insurance companies that assumed withholding responsibility. The rule should have provided that the intermediary presumption rules also apply to U.S. branches of foreign banks and insurance companies that do not agree to be treated as U.S. persons. Those branches are generally treated in the same manner as nonqualified intermediaries under chapter 3 of the Internal Revenue Code. Therefore, paragraph (b)(3)(vi) has been revised to apply only to those branches that are not treated as U.S. persons. Finally, paragraph (b)(3)(vii), which applies to payments to joint payees, has been amended to clarify the treatment of payments made to joint accounts.

5. Rules for Withholding and Reporting of Payments by a Foreign Intermediary and Certain U.S. Branches

Section 1.1441–1(b)(6) sets forth the withholding obligations of a foreign intermediary and certain U.S. branches. The regulation, as originally drafted, stated that a qualified intermediary, a nonqualified intermediary, or a U.S. branch of a foreign bank or insurance company was deemed to have satisfied any obligation it had to withhold and report an amount it paid if it did not know that the correct amount had not been withheld. The rule did not, however, require a foreign intermediary or U.S. branch to report a payment if it knew that the withholding agent from whom it received the payment had not reported the payment to the persons on whose behalf the foreign intermediary or U.S. branch acted as long as the correct amount was withheld. For example, if a U.S. withholding agent withheld 30 percent from a payment of an amount subject to withholding made to a nonqualified intermediary because the nonqualified intermediary failed to provide documentation or allocation information relating to the persons for whom it acted, the rule relieved the nonqualified intermediary from any obligation to report the payment to those persons. Foreign intermediaries and U.S. branches, however, are withholding agents under § 1.1441–7(a) and, as stated in Notice 99–8, it is inappropriate to relieve them of any reporting responsibility unless they have provided another withholding agent with all of the information that the withholding agent needs to report amounts paid to the appropriate recipients of the income. In addition, paragraph (b)(6) should not have included qualified intermediaries, because a qualified intermediary has reporting responsibilities whether or not another withholding agent properly reported the payment made to the qualified intermediary.

The regulation has been revised to provide that a nonqualified intermediary or U.S. branch (other than a U.S. branch treated as a U.S. person) is not required to withhold and report if the nonqualified intermediary or U.S. branch (i) has provided a valid nonqualified intermediary or U.S. branch withholding certificate, (ii) has provided all of the information required to be included in a withholding statement associated with its withholding certificate so that another withholding agent can do the required reporting on Form 1042–S or Form

1099, and (iii) does not know, and has no reason to know, that the other withholding agent did not withhold the correct amount or did not report the payment correctly. A qualified intermediary's obligations to withhold and report are determined in accordance with its qualified intermediary agreement.

6. Definitions

Section 1.1441–1(c) contains the definitions of terms used in the regulations under chapter 3 of the Internal Revenue Code. The section has been significantly expanded and certain definitions have been consolidated in this section. New definitions, or cross-references to definitions, have been provided for the terms beneficial owner, payee, intermediary, nonqualified intermediary, qualified intermediary, withholding certificate, documentary evidence, documentation, payor, exempt recipient, non-exempt recipient, reportable amounts, flow-through entity, foreign simple trust, foreign complex trust, foreign grantor trust, partnership, nonwithholding foreign partnership, and withholding foreign partnership.

Paragraph (c)(6)(i) has been changed to state specifically that the definition of beneficial owner does not apply in cases where a reduced rate of withholding is being claimed under an income tax treaty. This change has been made to clarify that a person who is a beneficial owner of an item of income for purposes of these regulations would not necessarily beneficially own the item of income for purposes of an income tax treaty.

Paragraph (c)(6), as originally drafted, did not include rules to determine the beneficial owner of a payment made to a foreign trust or estate. In general, the regulations retained the rules for foreign trusts and estates that existed prior to the publication of TD 8734. The paragraph has been revised to provide specific rules for payments to foreign trusts and estates. Generally, the beneficial owners of a payment to a foreign simple trust are the beneficiaries of the trust. The beneficial owners of a payment made to a foreign grantor trust are the owners of the trust. Foreign complex trusts and foreign estates are considered to be the beneficial owners of income paid to such entities.

Paragraph (c)(12) has been added to clarify the term *payee*. It provides cross-references to those sections under which the payee of income is determined, and emphasizes that foreign intermediaries and flow-through entities are generally not considered the payees of income. A qualified intermediary is, however, a payee to the extent it assumes primary withholding responsibility with respect to a payment, and a flow-through entity is a payee if it is receiving income that is, or is treated as, effectively connected with the conduct of a U.S. trade or business.

The definition of a flow-through entity has been moved from § 1.1441–1(e)(3)(i) to paragraph (c)(23). The definition has also been expanded and clarified. The term *flow-through entity* refers to any entity which has an obligation to transmit documentation to another withholding agent. Therefore, an entity may be a flow-through entity whether or not the income paid to the entity is includible in the gross income of the entity's owners. A flow-through entity includes a nonwithholding foreign partnership, a foreign simple trust, a foreign grantor trust, or an entity that is fiscally transparent under section 894 to the extent it provides documentation on behalf of its interest holders. A withholding foreign partnership and a withholding foreign trust are not flow-through entities. The term flow-through entity has replaced the term partnership in numerous places throughout the regulation.

7. Withholding Certificates

*a. Forms W–9.* Section 1.1441–1(d) contains rules for a payee to establish its status as a U.S. payee. Under paragraph (d), a payee that provides a Form W–9 may be treated as a U.S. payee that is not subject to withholding under section 1441. Commentators have noted that under current law, there is no prohibition against a foreign person providing a Form W–9 to establish status as an exempt recipient. They therefore suggest that the regulations should be clarified to specifically state that providing a Form W–9 serves as a representation of U.S. status and should only be furnished by a U.S. person. In response to these comments, paragraph (d)(2) has been amended to state that furnishing a Form W–9 serves as a statement that the person providing the form is a U.S. person. Therefore, a foreign person, including a U.S. branch of a foreign person, should not provide a Form W–9 to a withholding agent. The instructions to Form W–9 will also be modified to make clear that providing a Form W–9 is a declaration of U.S. status.

Paragraph (d)(3) is revised to eliminate the requirement for a permanent residence address. Permanent residence address is a term defined in § 1.1441–1(e)(2)(ii) and is generally the address of a foreign person in the country in which the person is a resident for tax purposes. The term is inapplicable, and potentially misleading, as applied to the address a U.S. person should provide on Form W–9.

Paragraph (d)(4), as originally drafted, provided rules to determine whether a payment was made to a U.S. beneficial owner. Generally, the regulation provided that if a customer of a foreign intermediary provided a Form W–9, the withholding agent could treat such person as a U.S. beneficial owner. A customer of a foreign intermediary could also be treated as a U.S. beneficial owner if it provided a U.S. branch withholding certificate that evidenced its agreement to be treated as a U.S. person. A Form W–9 and a U.S. branch withholding certificate, however, do not establish beneficial ownership. Further, it is not necessary under the regulations to determine whether a U.S. payee is a beneficial owner because a payment to a U.S. payee is not subject to withholding under chapter 3 of the Internal Revenue Code whether or not the payee is the beneficial owner of the income. Thus, the paragraph has been modified to provide that the withholding agent may treat the payee of a payment made to a foreign intermediary or a flow-through entity as a U.S. payee if the payee provides a Form W–9 or a U.S. branch withholding certificate that evidences the branch's agreement to be treated as a U.S. person.

*b. Intermediary and flow-through withholding certificates.* Section 1.1441–1(e)(3)(i) provides definitions for the terms intermediary withholding certificate, flow-through withholding certificate, and U.S. branch withholding certificate. That section originally defined a flow-through withholding certificate as a Form W–8 furnished by a partnership (other than a withholding foreign partnership) or a trust or estate. The paragraph has been revised to conform to the definition of flow-through entity contained in § 1.1441–1(c)(23) and the new rules contained in § 1.1441–5(e) regarding foreign trusts and foreign estates, discussed in section E of this Explanation of Provisions. Under paragraph (e)(3)(i), as revised, a flow-through withholding certificate is defined as a withholding certificate on Form W–8 furnished by a nonwithholding foreign partnership, a foreign simple trust, a foreign grantor trust, or a foreign entity presenting claims on behalf of its interest holders for a reduced rate of withholding under an income tax treaty. Foreign complex trusts and foreign estates generally provide beneficial owner withholding certificates.

Section 1.1441–1(e)(3)(ii) provides the requirements for a valid withholding certificate provided by a qualified intermediary. The paragraph has been

modified to reflect the procedures applicable to qualified intermediaries as set forth in Rev. Proc. 2000–12 (2004–4 I.R.B. 1).

Section § 1.1441–1(e)(3)(iii) provides rules relating to a nonqualified intermediary withholding certificate. Paragraph (e)(3)(iii) generally provided that payee documentation provided with a nonqualified intermediary withholding certificate needed to be attached to the certificate. Similar requirements existed for flow-through withholding certificates and U.S. branch withholding certificates. The regulations have been revised to require that payee documentation be associated with, rather than attached to, a nonqualified intermediary, flow-through, or U.S. branch certificate to obviate the need for a new withholding certificate each time payee documentation is provided to a withholding agent. The regulations do not set forth specific requirements for associating documentation. Any reasonable method may be used to associate documentation with its intermediary withholding certificate.

Paragraph (e)(3)(iii), as originally drafted, required a certification that the withholding certificates or other appropriate documentation attached to a nonqualified intermediary withholding certificate represented all of the persons to whom the intermediary withholding certificate related or that the amounts of income allocable to persons for whom no documentation was provided was separately stated. A similar requirement applied to nonwithholding foreign partnership withholding certificates in § 1.1441–5(c)(3)(iii)(D). The requirement for this certification has been eliminated. The persons on whose behalf a nonqualified intermediary acts will frequently change as persons open and close accounts with the intermediary. Thus, any such certification may be true at the time made, but false at a later point, necessitating a new withholding certificate. The elimination of the certification is not an elimination, however, of the requirement to provide payee withholding certificates to a withholding agent prior to a payment. The certification requirement has also been eliminated for nonwithholding foreign partnerships.

Section 1.1441–1(e)(3)(iii) permits a nonqualified intermediary to provide payee documentation either in the form of withholding certificates or in the form of documentary evidence. The withholding agent is required to derive information from the withholding certificates or other documentary evidence and report payments to each specific payee on whose behalf the nonqualified intermediary acts. However, the regulations were silent on how a withholding agent was to determine the status (U.S. or foreign) or classification (*e.g.*, corporate, partnership, trust, or estate) and other information required to report payments on Form 1042–S from documentary evidence, particularly when that documentary evidence was in a foreign language. Further, although the regulations require a nonqualified intermediary to allocate payments to each payee on whose behalf it acts so that a withholding agent can report payments to each payee on Form 1042–S or Form 1099, the regulations provided no detail on how the allocation information was to be provided.

The regulations have been revised to take these considerations into account. Under § 1.1441–1(e)(3)(iv) as revised, a nonqualified intermediary must associate with its nonqualified intermediary withholding certificate a withholding statement which sets forth the information a withholding agent needs to allocate a payment to each payee on whose behalf the nonqualified intermediary acts and to report the payment. Specifically, the withholding statement must contain for each payee the payee's name, address, country of residence, TIN (if any), the payee's recipient type for Form 1042–S reporting, the applicable rate of withholding, the type of withholding exception applied (if any), and the name of any other intermediary or flow-through entity from whom the payee directly receives the income. Additional information is required if a reduced rate of withholding under an income tax treaty is claimed. The withholding statement may be provided in any manner that the withholding agent and nonqualified intermediary agree, including electronically. It must be updated as frequently as necessary to remain accurate prior to each payment. The regulation does not require a nonqualified intermediary to provide information for a payee unless the payee is a U.S. non-exempt recipient. Information regarding U.S. non-exempt recipients must be provided irrespective of any local laws that prohibit disclosure of an account holder or account information. Therefore, a nonqualified intermediary should obtain waivers from non-disclosure provisions from U.S. non-exempt recipients. To the extent payee information is not provided, whether for a U.S. non-exempt recipient or any other payee, the regulation has been clarified to state explicitly that a withholding agent must withhold under the presumption rules. Further, the nonqualified intermediary remains liable for any tax not withheld by a withholding agent and, unless the nonqualified intermediary itself files information returns, will also be held liable for penalties imposed for failure to file information returns under sections 6721 and 6722.

Many commentators have argued that it is not practical to provide information allocating a payment to each payee prior to each payment because the customers of nonqualified intermediaries are constantly acquiring and disposing of investments. Several commentators made suggestions on how the regulations might ease compliance burdens. One commentator suggested that no allocation information should be required except in the case of income subject to reduced rates of withholding under an income tax treaty and payments made to U.S. non-exempt recipients. This suggestion was rejected. The IRS has provided a mechanism for aggregate reporting of payments in the model qualified intermediary agreement in Rev. Proc. 2000–12. It is inappropriate to extend such treatment to nonqualified intermediaries without the safeguards contained in a qualified intermediary agreement. Other commentators suggested that a withholding agent should withhold the difference between 30 percent of a payment and the claimed reduced rate of withholding in escrow and release the amounts when allocation information is provided. This suggestion was also not accepted. Such a system would leave the escrow funds out of the control of both the IRS and the beneficial owners of the payments. Further, because the nonqualified intermediary would have to provide frequent allocations as soon as possible after the time of payment to have the escrow funds released, it appeared to provide little relief from the pressures inherent in providing allocation information prior to a payment. Other commentators argued that a reduced rate of withholding should be provided at the time of payment with allocation information to follow after the close of the year with various disincentives provided for failure to furnish the allocation information. The regulations generally adopt this approach.

Paragraph (e)(3)(iv)(D) provides alternative procedures that permit a nonqualified intermediary to provide information allocating reportable amounts to payees (including U.S. exempt recipients) by January 31 of the year following the calendar year of payment. The alternative procedures do

not apply to payments made to U.S. non-exempt recipients. Therefore, allocation information for those persons must be provided prior to a payment. Under the alternative procedures, only allocation information may be provided after a payment is made: all other information that is required to be included in a withholding statement and appropriate payee documentation must be provided prior to a payment. The nonqualified intermediary may have reduced rates of withholding apply by identifying pools of income subject to a particular withholding rate (withholding rate pools) and identifying the payees with the appropriate withholding rate pools.

Various penalties apply if a nonqualified intermediary fails to provide information to allocate payments in a withholding rate pool to a withholding agent by January 31. First, the withholding agent must commence withholding on all payments in accordance with the presumption rules. Therefore, 30 percent withholding applies to amounts subject to withholding and 31 percent backup withholding applies to payments of deposit interest and original issue discount on original issue discount obligations of 183 days or less. Under a cure provision, the withheld amounts may be returned, and the alternative procedures may continue to be used, if the nonqualified intermediary provides allocation information by February 14. If the nonqualified intermediary fails to provide allocation information by that date, withholding continues for the taxable year, and all subsequent taxable years, unless the withholding agent provides allocation information prior to a payment. Further, because no allocation information has been provided, the payments are considered never to have been reliably associated with valid documentation and the foreign beneficial owners and other payees on whose behalf the nonqualified intermediary is acting are not entitled to a reduced rate of withholding. Therefore, the nonqualified intermediary shall remain liable under section 1461 for the difference between the amount, if any, withheld by the withholding agent and the amount that should have been withheld under the presumption rules. Any tax due because of an allocation failure will be assessed against the nonqualified intermediary and, if necessary, collected from the assets that the nonqualified intermediary has with the withholding agent. Interest and penalties may also be assessed against the nonqualified intermediary. In particular, paragraph (e)(3)(iv)(*7*) states that a failure to provide allocation information will be presumed to be an intentional failure to file information returns and payee statements under sections 6721 and 6722. The IRS will not, however, hold the withholding agent liable for any tax, interest, or penalties, that are due solely to the failure of the nonqualified intermediary to provide allocation information.

The withholding statement rules and alternative allocation procedures have also been made applicable to U.S. branches of certain foreign banks and insurance companies and flow-through entities. This change, together with certain other changes discussed in this Explanation of Provisions, generally results in nonqualified intermediaries, U.S. branches, and flow-through entities being treated similarly.

Paragraph (e)(3)(iv)(E) has been added to permit the IRS to provide a withholding agent with a notice prohibiting the withholding agent from applying the alternative procedures of paragraph (e)(3)(iv)(D) to an identified nonqualified intermediary (or to a flow-through entity or a U.S. branch of a foreign bank or foreign insurance company) thereby requiring allocation information prior to a payment to have a reduced rate of withholding apply. In addition, the IRS may, in appropriate circumstances issue a notice to a withholding agent prohibiting the withholding agent from applying a reduced rate of withholding under any circumstances, even if allocation information is provided prior to a payment. The IRS contemplates issuing these notices in situations where a nonqualified intermediary, flow-through entity, or U.S. branch fails to pay a tax due or is not applying the rules of the regulations in good faith.

*c. Reportable amounts.* Foreign intermediaries, flow-through entities, and U.S. branches of foreign banks and insurance companies (other than U.S. branches treated as U.S. persons) are required to provide information with respect to reportable amounts, as defined in § 1.1441–1(e)(3)(vi). Prior to its revision, paragraph (e)(3)(vi) included in the definition of reportable amounts original issue discount or interest (OID) paid on short-term instruments. This definition appeared to include interest and OID regardless of whether those amounts were paid on the redemption of an obligation or from the sale or exchange of an obligation in a transaction other than a redemption. Under the presumption rules, if a withholding agent makes a payment to a foreign intermediary of interest and OID on a short-term obligation and it lacks documentation for such amounts, it must presume that the payee is a U.S. non-exempt recipient and report the income on Form 1099 and backup withhold on the payment. See § 1.6049–5(d)(3)(iii). These rules proved to be impractical for sales of short-term obligations outside the United States. Foreign intermediaries have contended that they do not have the appropriate systems to report gains from sales transactions on Forms 1099 or to provide the proper allocation information to U.S. payors. Moreover, treating the sale or exchange of short-term OID instruments as reportable interest on Form 1099 was inconsistent with rules that treat amounts paid on the sale or exchange, other than redemptions, of such obligations as gross proceeds. See §§ 1.6045–1(d)(3) and 31.3406(b)(2)–2. Because it is more appropriate to treat sales, other than redemptions, of short-term OID instruments as gross proceeds rather than payments of interest or original issue discount, the regulation has been amended to provide that reportable amounts do not include amounts representing interest or OID on the sale or exchange, other than a redemption, of a short-term OID instrument. Therefore, a foreign intermediary, flow-through entity, or U.S. branch is not required to provide information regarding these transactions to a withholding agent as part of its withholding statement.

*d. Period of validity.* Section 1.1441–1(e)(4)(ii)(A) states that documentary evidence (i.e., documentation other than a withholding certificate) remains valid until "the earlier of the last day of the third calendar year following the year in which the documentary evidence is created * * *." Commentators have stated that it is not clear if a document is "created" when it comes into being or when it is provided to a withholding agent. They also stated that basing the validity period on the date a document came into being would be more difficult to administer because they would have to calculate the expiration date in every case rather than assuming that it was valid for three years after it had been received by the withholding agent. In response to these comments, the rule has been amended to permit the validity period to be measured from the date documentation is provided to the withholding agent.

Section 1.1441–1(e)(4)(ii)(B) sets forth the circumstances in which a Form W–8 has an indefinite validity period. Paragraph (e)(4)(ii)(B)(*1*), as originally drafted, provided that a Form W–8 that contained a TIN was valid indefinitely "if the income for which such certificate is furnished is required to be reported"

on Form 1042–S. Commentators noted that a strict reading of this language could preclude the indefinite validity of a Form W–8 with respect to income that was not subject to reporting, even though other income paid to the same beneficial owner by the withholding agent was subject to reporting. The regulation has been amended to provide that if there is annual reporting of at least one item of income paid by a withholding agent to a beneficial owner, the Form W–8 remains valid even for payments that are not subject to reporting. However, if a withholding agent has a Form W–8 with a TIN but does not make any payments of an amount subject to withholding, for example the withholding agent pays only deposit interest, the form remains valid only for 3 calendar years after the year of receipt. In addition, paragraph (e)(4)(ii)(B)(*8*) has been added to provide an indefinite validity period for a withholding certificate provided by a foreign simple trust or foreign grantor trust for the purposes of transmitting withholding certificates or documentary evidence.

*e. Electronic transmission of information.* These regulations finalize the regulations proposed in REG–107872–97 (62 FR 53504) relating to the electronic submission of Forms W–8 and make them applicable beginning January 1, 2000. Like the proposed regulations, the final regulations apply only to situations where there is a direct relationship between the withholding agent or payor and the beneficial owner or payee. The final regulations reserve an applicable standard for transmitting forms through tiers of intermediaries. Comments were solicited on this matter in the preamble to the proposed regulations but none were received. The IRS and Treasury recognize the benefits of allowing the electronic transmission of Forms W–8 through one or more intermediaries and continue to solicit comments regarding requirements to ensure the integrity, accuracy, and reliability of electronically transmitted forms through tiers of intermediaries.

*f. Requirement of taxpayer identifying number.* Section 1.1441–1(e)(4)(vii) provides guidance for when a TIN is required on a Form W–8. Paragraph (e)(4)(vii), as originally drafted, required TINs on withholding certificates from all trusts or estates or the fiduciaries thereof. A number of commentators stated that the TIN requirement was burdensome and unreasonable when applied to pension trusts and large investment trusts. In addition, commentators noted that nonwithholding foreign partnerships, which are treated similarly to foreign simple trusts and foreign grantor trusts, are not required to have a TIN. In response to these comments, the regulations have been amended by eliminating the TIN requirement for foreign trusts other than foreign grantor trusts with 5 or fewer owners.

Paragraph (e)(4)(vii) has also been modified to state that a TIN is required on a withholding certificate from a beneficial owner that is claiming an exemption based on its claim of tax exempt status under section 501(c) or private foundation status. This does not represent a change in the requirements for a withholding certificate from such a beneficial owner. The regulation, as originally drafted, however, contained the requirement only in § 1.1441–9. The requirement of a TIN has been repeated in this paragraph for convenience. Finally, commentators noted that there was a conflict between paragraph (e)(4)(vii), which did not require a TIN on a withholding certificate from a nonwithholding foreign partnership, and § 1.1441–5(c)(3)(iii)(A), which stated that a TIN was required. It was never intended that a nonwithholding foreign partnership withholding certificate used to transmit documentation and information relating to its partners have a TIN. Section 1.1441–5(c)(3)(iii)(A) has been modified accordingly. TINs are required, however, if the withholding foreign partnership is providing a withholding certificate on which it claims an exemption from withholding because the income is effectively connected with the conduct of a trade or business or when it is entitled to claim treaty benefits under section 894 on income for which a TIN is required under § 1.1441–6(b)(1).

*g. Requirement to furnish certificates for each account.* Generally, each withholding agent that makes a payment to a beneficial owner must obtain a separate withholding certificate. In addition, a withholding agent that is a financial institution must obtain withholding certificates or other appropriate documentation on an account-by-account basis from its customers. Under paragraph (e)(4)(ix)(A)(3) of the regulations, a withholding agent may rely on a withholding certificate held at another branch of the same withholding agent or of a person related to the withholding agent if there is a system in place that permits a withholding agent to access data regarding the withholding certificate and to transmit data that affects the validity of the documentation into the system. A commentator noted that the regulations do not contain provisions, however, to let unrelated withholding agents utilize such a system that they maintain in common or that is maintained by another person. New paragraph (e)(4)(ix)(A)(*4*) has been added to permit unrelated withholding agents to rely on such a system.

*h. Special rules for brokers.* Section 1.1441–1(e)(4)(ix)(C) provided that a withholding agent may rely on the certification of a broker acting as the agent of a beneficial owner if the broker held a valid beneficial owner withholding certificate or other documentation for that beneficial owner. As originally drafted, the intention of this provision was unclear. It also appeared to be overly broad because it would have permitted a foreign broker to retain beneficial owner documentation and not transmit the documentation to a U.S. withholding agent.

Paragraph (e)(4)(ix)(C) has been redrafted to clarify, and appropriately limit, its application. As redrafted, it applies only to a U.S. broker. It permits such a broker that is acting as an introducing or corresponding broker to provide a clearing broker with a certification that it holds a valid withholding certificate or other appropriate documentation. Without this rule, an introducing or corresponding broker would have to obtain multiple Forms W–8 and provide them to each clearing broker with whom the introducing or corresponding broker executes transactions. In addition, paragraph (e)(4)(ix)(C) has been amended to apply only to readily tradeable instruments, as provided in § 31.3406(h)–3(d), on which it is modeled. An example has been added to illustrate the paragraph.

8. Qualified Intermediary Withholding Certificates

Section 1.1441–1(e)(5) provides rules regarding qualified intermediaries. The rules have been redrafted to more closely conform with the model qualified intermediary agreement published as part of Rev. Proc. 2000–12. The regulation, as originally drafted, contained a requirement that a qualified intermediary disclose U.S. non-exempt recipients "irrespective of local secrecy laws." The model qualified intermediary agreement has specific provisions contained in section 6.04 of the agreement, as well as other sections, that govern the treatment of U.S. persons whenever foreign law, whether or not a "secrecy" provision, may preclude disclosure of a U.S. non-exempt recipient. Very generally, those provisions require a qualified intermediary to disinvest a U.S. non-exempt recipient who does not waive its

local law non-disclosure privileges and to collect backup withholding on income and sales proceeds paid to such person. Therefore, the language stating that disclosure is required "irrespective of local secrecy laws" has been deleted to avoid creating an inconsistency between the model qualified intermediary agreement and the regulation.

The provisions in paragraph (e)(5) regarding the terms of the withholding agreement a qualified intermediary must enter with the IRS have also been changed to more generally conform with the qualified intermediary agreement as set forth in Rev. Proc. 2000–12. The regulation clarifies the consequences of a qualified intermediary's assumption of primary withholding responsibility. Section 1.1441–1(e)(5)(iv), as originally drafted, stated that a withholding agent making a payment to a qualified intermediary was required to presume full withholding responsibility for that payment unless the qualified intermediary assumed primary withholding responsibility. The regulation was potentially misleading because it could have been interpreted to mean that if a qualified intermediary did not assume primary withholding responsibility, only the U.S. withholding agent was responsible for withholding. Rev. Proc. 2000–12 makes clear, however, that qualified intermediaries are required to withhold in certain circumstances even though they have not assumed primary withholding responsibility. The rule that was initially in paragraph (e)(5)(iv) was intended to relieve a withholding agent making a payment to a qualified intermediary that assumed primary withholding responsibility from the obligation to withhold, not to relieve the qualified intermediary of any withholding requirement. The paragraph has been amended to reflect this intent.

Paragraph (e)(5)(iv) also stated that a qualified intermediary generally would not be permitted to assume withholding and reporting responsibility under section 3406 and chapter 61 of the Internal Revenue Code on a payment made to a U.S. person unless the qualified intermediary was a foreign branch of a U.S. person or a foreign person that had a branch in the United States capable of performing such reporting and withholding. In developing the model qualified intermediary agreement, it became apparent that it was desirable to permit certain qualified intermediaries that did not meet those criteria to assume reporting and withholding responsibility under chapter 61 of the Internal Revenue Code and section 3406. For example, where payments are made through clearing organizations, it may be impractical to require a qualified intermediary to provide information regarding U.S. non-exempt recipients to a U.S. withholding agent. The language that generally limited the ability to assume reporting and withholding responsibility under chapter 61 of the Internal Revenue Code and section 3406 has been eliminated. Whether a qualified intermediary may assume such responsibility is left to the terms of the qualified intermediary agreement. See section 3 of the model qualified intermediary agreement in Rev. Proc. 2000–12.

Section 1.1441–1(e)(5)(v), as originally drafted, required a qualified intermediary to associate a payment with one of three categories of assets: (i) Assets associated with documented foreign persons, (ii) assets associated with documented U.S. payees, and (iii) assets associated with undocumented payees. These three asset categories were subdivided into classes of assets based on withholding rates and reporting requirements. The asset categories did not provide the needed flexibility sought by qualified intermediaries. For example, information regarding U.S. exempt recipient payees, who are not subject to withholding under section 1441, could not be combined with information regarding foreign beneficial owner payees subject to a zero rate of withholding. The model qualified intermediary agreement, as published in Rev. Proc. 2000–12, substituted the withholding rate pool concept for asset classes and this concept has been reflected in the revised regulation. A withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042–S or Form 1099, as applicable, that is subject to a single rate of withholding.

Finally, the regulations permit, in accordance with Rev. Proc. 2000–12, a qualified intermediary and a U.S. withholding agent to use a single withholding rate pool for U.S. non-exempt recipients for whom no backup withholding is required and a single withholding rate pool for U.S. non-exempt recipients that are subject to backup withholding provided that the qualified intermediary agreement permits such an arrangement and sufficient information is provided to the withholding agent no later than January 15 following the year of payment that allocates the reportable payments to each U.S. non-exempt recipient account holder. Failure to provide the allocation information timely may result in penalties imposed on the qualified intermediary and the termination of its qualified intermediary agreement. Unlike qualified intermediaries, nonqualified intermediaries and flow-through entities are not permitted to pool payments to U.S. non-exempt recipients. Therefore, information sufficient to allocate the payment to each U.S. non-exempt recipient must be provided before a payment is made or the withholding agent must treat the payment as made to a U.S. payee that has failed to provide a TIN and impose backup withholding.

*B. Changes to § 1.1441–2*

1. Amounts Subject to Withholding

Section 1.1441–2(a) has been amended to exclude from the definition of amount subject to withholding interest paid as part of the purchase price of an obligation sold between interest payment dates (accrued interest) and an amount representing original issue discount (OID) paid as part of the purchase price of an obligation sold in a transaction other than the redemption of such obligation. The exclusions do not apply, however, if the sale of an obligation is part of a plan the principal purpose of which is to avoid tax and the withholding agent has actual knowledge or reason to know of such plan.

The exclusion of accrued interest and amounts representing OID paid as part of the purchase price of an obligation sold in a transaction other than a redemption were made in response to comments received on § 1.1441–2(b)(3) of the final regulations and proposed regulation § 1.1441–3(b) (REG–114000, 62 FR 53503). Section 1.1441–2(b)(3), as originally drafted, required withholding on OID to the extent the withholding agent had actual knowledge of the amount of the payment that was taxable to the beneficial owner. A withholding agent was treated as having actual knowledge if it had a direct account relationship with the holder of the obligation. Proposed regulation § 1.1441–3(b) would have eliminated the rule that no withholding was required on accrued interest and replaced it with a rule that conformed with the rule applicable to OID on the theory that, from a withholding perspective, the two payments were equivalent. The withholding rules applicable to OID and accrued interest would have required withholding whenever a payment of interest or OID was not subject to an exception, such as the portfolio interest exception, or a payment of OID or accrued interest was presumed made to a foreign person and

the withholding agent could not reliably associate the payment with beneficial owner documentation. Such payments were subject to reporting on Form 1042–S whether or not withholding was imposed.

In Notice 99–8, Treasury and the IRS announced that they would make modifications to the OID and accrued interest rules. The modifications were intended to address criticisms by commentators that the OID and accrued interest rules were unworkable. Commentators argued that debt obligations are often sold in delivery-versus-payment transactions which settle quickly and often involve multiple intermediaries. The requirement to withhold in absence of a beneficial owner withholding certificate would necessarily inhibit the speed with which sales transactions are normally conducted. In addition, they argued that a withholding agent does not necessarily know the amount of OID or accrued interest merely because it has a direct account relationship with the account holder. In addition, custodians stated that sales were often accounted for in systems different from those used to report interest and OID and therefore the reporting requirement of the regulations would require significant systems modifications. They argued that these modifications were not justified because nearly all accrued interest and OID would be from instruments that could qualify for the portfolio interest exception.

Notice 99–8 proposed rules that were intended to require only the withholding agent that had a direct account relationship with a beneficial owner to obtain a Form W–8. Thus, the notice proposed a rule that would require a withholding agent to obtain a withholding certificate only if it received the proceeds from a sale against delivery of the debt obligation or, in the case of a retirement, the withholding agent was the person responsible for paying the owner or crediting its account. The notice would have prevented intermediaries other than the intermediary with the direct account relationship with the beneficial owner from having to obtain a Form W–8 by stating that any withholding agent that effected a transaction for a broker was generally not required to obtain a Form W–8. A broker was defined by reference to § 1.6045–1(a) and generally included a person that makes sales of securities for customers in the ordinary course of that person's trade or business. In addition, the notice proposed to eliminate the rule that presumed knowledge of the amount of OID or interest accrued between interest payment dates merely because there was a direct account relationship with the beneficial owner of an obligation.

Commentators criticized the Notice 99–8 proposal. They argued that the multiple broker exception did not always accomplish its intended purpose because certain participants in a transaction for whom a Form W–8 should not be required could not meet the definition of a broker, particularly since that definition does not include non-U.S. payors that effect sales of obligations at an office outside the United States and certain other persons, such as investment advisors, who might participate in the transaction but did not stand ready to effect sales of securities for others. In addition, the Notice did not solve the problem faced by custodians.

In light of these criticisms, Treasury and the IRS have decided to eliminate the requirement for withholding, and reporting, on accrued interest and an amount representing OID paid on the sale of an OID obligation, other than in a redemption. This change has been effected by eliminating those items from the definition of amounts subject to withholding. Withholding is required, however, if the withholding agent knows or has reason to know that a sale is part of a plan to avoid tax. For example, if a holder of a debt obligation that pays interest that does not qualify for the portfolio interest exception sells the instrument immediately prior to an interest payment date and reacquires the same type of security after the interest payment date and the withholding agent knows, or has reason to know, of this pattern of sales, withholding and reporting of accrued interest is required.

Paragraph (a) has also been amended to state that insurance premiums paid on a contract subject to the section 4371 excise tax are not amounts subject to withholding. As previously drafted, these amounts were excluded from the definition of fixed or determinable annual or periodical (FDAP) income under § 1.1441–1(b)(2)(ii) and therefore were not included in amounts subject to withholding. Excluding insurance premiums from FDAP is inappropriate, however. Insurance premiums fall within the definition of FDAP provided in paragraph (b)(1). Therefore, the better means for exempting premiums subject to the section 4371 excise tax from withholding is to exclude them from the definition of amounts subject to withholding.

2. Fixed or Determinable Annual or Periodical Income

Section 1.1441–2(b)(1)(i) provides the definition of fixed or determinable annual or periodical (FDAP) income. Such income, if from sources within the United States, is generally an amount subject to withholding and therefore also subject to reporting on Form 1042–S if paid to a foreign payee. Paragraph (b)(1)(i) states that amounts that are excluded from gross income under any provision of law "without regard to the identity of the holder" are not FDAP income. This provision was, in part, intended to exclude from FDAP qualified scholarship income under section 117. The language, however, failed to accomplish its intended purpose because the section 117 exclusion is dependent on the identity of the person receiving the income—the recipient must be a candidate for a degree at a certain type of educational organization. The paragraph has been revised to state that amounts that are excluded from gross income without regard to the U.S. or foreign status of the owner of the income is not FDAP. In addition, the paragraph has been changed to clarify that amounts excluded from gross income under sections 892 (income of foreign governments) and 115 (income of a U.S. possession) are not excluded from the definition of FDAP since the foreign status of the owner of the income is determinative of whether the exclusions provided by those sections apply. Amounts subject to the section 892 and section 115 exclusions are, therefore, included in the scope of amounts subject to withholding and therefore are reportable on Form 1042–S under section 1461 even though not taxable under section 871 or 881.

3. Original Issue Discount

Section 1.1441–2(b)(3) provides rules governing the treatment of original issue discount. Paragraph (b)(3)(i) describes the amount of OID subject to taxation in the hands of the owner of an OID obligation. Minor changes have been made to this paragraph to clarify the amount of OID that is taxable to the beneficial owner of the obligation.

Paragraph (b)(3)(ii) describes the amount of OID subject to withholding. To conform paragraph (b)(3)(ii) to the changes discussed in section B.1 of this Explanation of Provisions, the paragraph has been revised to require a withholding agent to withhold on OID only upon the redemption of the original issue discount obligation or in any case where the withholding agent knows that a sale, other than a redemption, is being made with the principal purpose of avoiding tax on the obligation. A withholding agent is required to withhold on the actual amount of OID includible in the gross

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income of the owner of an obligation if it has actual knowledge of such amount, or, if actual knowledge is lacking, on the entire amount of OID determined under Publication 1212, "List of Original Issue Discount Instruments" as if the obligation had been held since issuance.

Paragraph (b)(3)(iii) contained a rule that required a withholding agent to withhold on interest and OID paid on an OID obligation even though it did not know the amount of OID subject to taxation if the withholding agent could not reliably associate the payment with valid documentation. The rule was designed to eliminate an exception to withholding that applied if a withholding agent did not have actual knowledge of the amount of OID that accrued to the holder of the obligation up to the date of sale. If the exception were not eliminated, it was feared that the documentation requirement for portfolio interest could be avoided by selling OID obligations through intermediaries that had no knowledge of the accrued amount of OID. The rule is no longer necessary. Under new § 1.1441–2(a)(6), withholding is required if a withholding agent knows, or has reason to know, that an OID obligation is sold with the principal purpose of avoiding tax. Therefore, the rule as originally contained in paragraph (b)(3)(iii) has been removed. New paragraph (b)(3)(iii) contains the transition rule formerly found in paragraph (b)(3)(iv). The rule has been modified, however. As previously drafted, the rule appeared to eliminate any withholding responsibility by the issuer of an OID obligation or its agent, as formerly contained in Rev. Rul. 68–333 (1968–1 CB 390). As revised, issuers and their agents are subject to any applicable withholding requirements on obligations issued before or after December 31, 2000. The rule now states, however, that withholding on OID obligations is only required by persons other than issuers or their agents with respect to obligations issued after December 31, 2000.

*C. Changes to § 1.1441–3*

1. Accrued Interest

Section 1.1441–3 provides rules to determine the amount subject to withholding. In accordance with the change made in § 1.1441–2(a)(5), which eliminates interest accrued between sales dates from amounts subject to withholding, § 1.1441–3(b)(2) has been modified to eliminate the requirement that a withholding agent that pays accrued interest must report that interest on Form 1042–S.

32. Coordination With REIT Withholding

As originally drafted, § 1.1441–3(c)(4)(i)(C) required withholding under section 1441 on the portion of a Real Estate Investment Trust (REIT) distribution that is not designated as a capital gain dividend or return of basis. Therefore, § 1.1441–3(c)(4)(i)(C) inadvertently required withholding under section 1441 on a distribution in excess of basis, which under section 301(c)(3) is capital gain from the sale or exchange of stock and, therefore, not subject to withholding under section 1441. To correct this error, paragraph (c)(4)(i)(C) has been amended to provide that withholding under section 1441 is not required on a distribution in excess of basis. A distribution in excess of basis is, however, subject to withholding under section 1445 unless the interest in the REIT is not a U.S. real property interest (e.g., an interest in a domestically controlled REIT under section 897(h)(2)).

*D. Changes to § 1441–4*

1. Notional Principal Contracts

Section 1.1441–4(a)(3)(i) treats a payment of income on a notional principal contract made to a foreign person as income effectively connected with a trade or business within the United States unless the withholding agent can reliably associate a payment with a withholding certificate that certifies that the payment is not effectively connected. This rule is overly broad because it presumes that any notional principal contract payment made to a foreign person is effectively connected even if the foreign person has no nexus to the United States. As a result, § 1.1441–4(a)(3)(i) has been amended to limit the presumption that notional principal contract income is effectively connected to a U.S. trade or business to those situations in which the income is either paid to a U.S. qualified business unit of a foreign person or the withholding agent otherwise knows, or has reason to know, that the income is effectively connected with the conduct of a U.S. trade or business. It is not expected that a withholding agent would be considered to have reason to know that a notional principal contract payment is effectively connected with the conduct of a trade or business within the United States solely because the foreign person receiving the payment has a qualified business unit in the United States to which a portion of the payment may be allocated pursuant to proposed regulation § 1.863–3(h) (the global dealing regulations).

Section 1.1441–4(a)(3)(ii), as originally drafted, stated that a payment to a financial institution was not treated as effectively connected with the conduct of a trade or business within the United States if the financial institution provided a representation in a master agreement that governs transactions in notional principal contracts between the parties (for example, an International Swaps and Derivatives Association (ISDA) Agreement) or in the confirmation on the particular notional principal contract transaction that the counter party was a U.S. person or a non-U.S. branch of a foreign person.

Commentators requested that the master agreement and confirmation exceptions be expanded to apply to persons other than financial institutions. Section 1.1441–4(a)(3)(ii) has been amended (in the table or corrections at the end of the regulation) to allow any payee, not just a financial institution, to provide in a master agreement or confirmation statement a representation that the payee is a U.S. person or a non-U.S. branch of a foreign person.

2. Withholding on Payments From Individual Retirement Accounts

Section 1.1441–4(b)(1)(ii), as originally drafted, provided that section 1441 applied to distributions from any trust described in section 401(a) made to a nonresident alien individual and to certain other retirement distributions. The result of this rule is that section 1441, rather than section 3405, applies to retirement distributions. This rule considerably eases the burdens that would otherwise apply to retirement distributions.

Commentators noted that the regulations did not provide the same rule for distributions from individual retirement accounts and annuities described in section 408. The regulation has been amended so that those distributions will be subject to section 1441 as well.

*E. Changes to § 1441–5*

Section 1.1441–5 of the regulations concerns payments made to partnerships, trusts, and estates. As originally drafted, the regulations contained extensive rules for payments made to U.S. and foreign partnerships, but applied the rules of the regulations prior to the publication of TD 8734 to trusts and estates. The trust and estate rules, however, were inconsistent with the rules contained in TD 8734 and were also incomplete. For example, § 1.1441–1(c)(6)(ii)(B) required a withholding agent to determine the

beneficial owner of income paid to a trust or estate under § 1.1441–3(f) and (g) of the regulations in effect prior to January 1, 2001. That section, however, did not determine the beneficial owner of income paid to a trust. In addition, § 1.1441–1(e)(3)(i) stated that a trust or estate was to use a flow-through withholding certificate furnished under § 1.1441–5(e), but that section was reserved in the regulation. The regulation has been revised to provide complete trust and estate rules. Except as noted below, the partnership rules remain generally unchanged; however, several changes were made to clarify those rules.

1. Rules Applicable to U.S. Partnerships, Trusts, and Estates

Section 1.1441–5(b), as originally drafted, provided rules regarding payments to U.S. partnerships. The rules of paragraph (b) have been expanded to cover payments to U.S. trusts and U.S. estates as well. Under revised paragraph (b)(1), a payment to a U.S. partnership, U.S. trust, or U.S. estate is treated as a payment to a U.S. person and, therefore, not subject to withholding under chapter 3 of the Internal Revenue Code. United States partnerships, U.S. trusts, and U.S. estates are required, however, to withhold on payments they make to foreign partners, foreign beneficiaries, or, in the case of grantor trusts, foreign owners. Fiduciaries of U.S. trusts and U.S. estates should take particular note that it is the trust or the estate that is the withholding agent, and Forms 1042 and Forms 1042–S must be filed using the name and TIN of the U.S. trust or U.S. estate, not the name and TIN of the fiduciary.

Under paragraph (b)(2), a U.S. partnership is a withholding agent for a foreign partner's distributable share of partnership income that consists of amounts subject to withholding. A U.S. simple trust is a withholding agent for the distributable net income (DNI) includible in the gross income of a foreign beneficiary to the extent the DNI consists of an amount subject to withholding. Similarly, a U.S. complex trust is a withholding agent on DNI includible in the gross income of a foreign beneficiary to the extent the DNI consists of an amount subject to withholding that is, or is required to be, distributed currently. U.S. simple trusts and complex trusts are permitted to make reasonable estimates of the portion of a distribution that constitute DNI consisting of amounts subject to withholding. A U.S. grantor trust must withhold on any income includible in the taxable income of a foreign person that is treated as an owner to the extent the amount includible consists of an amount subject to withholding.

In the case of a partnership, if amounts subject to withholding are not actually distributed, the U.S. partnership must withhold at the earlier of the time the statement required under section 6031(b) (Form K–1) is mailed or otherwise provided to the partner or the due date for furnishing the statement. In addition, if an amount of income is required to be, but is not actually distributed to the foreign beneficiary of a U.S. simple or complex trust, the U.S. trust must withhold at the time the income is required to be reported on Form 1042–S. A U.S. grantor trust is required to withhold at the time the trust receives the payment or the payment is credited to the trust's account.

2. Payments Made to Foreign Partnerships

Section 1.1441–5(c) provides rules for payments made to foreign partnerships. Generally, the payees of a payment made to a nonwithholding foreign partnership are the partners of the partnership. Paragraph (c)(1)(ii), however, contains rules on when the partnership itself will be regarded as the payee of a payment. That paragraph, as originally drafted, permitted a partnership to be treated as the payee of income if the partnership provided a withholding certificate stating that the payment was effectively connected with the conduct of the partnership's U.S. trade or business. A commentator noted that the paragraph did not treat the partnership as the payee, however, to the extent the income was treated as being effectively connected under the presumption rules in the absence of a withholding certificate.

The paragraph has been revised to treat the partnership as the payee if the income is presumed to be effectively connected in the absence of documentation. For example, if a nonwithholding foreign partnership is receiving income on a notional principal contract and the income is treated as effectively connected income under the presumption rule of § 1.1441–4(b)(3)(i), the nonwithholding foreign partnership, and not the partners, is treated as the payee. In addition, the example in paragraph (c)(1)(iv) has been replaced with several less complex examples that better illustrate the operation of the rules of paragraph (c)(1).

Section 1.1441–5(c)(2) contains rules relating to withholding foreign partnerships. Section 1.1441–5(c)(2)(ii)(A), together with § 1.1461–1(c)(2)(ii)(A), required a withholding foreign partnership to file a Form 1065 and Forms K–1 and exempted the partnership from having to file Form 1042 and Forms 1042–S. The rule was incorrect. A withholding foreign partnership is generally required to withhold on payments and therefore must file a Form 1042, which is an income tax return, and not merely report the amounts on Form 1065. Also, because the IRS matches amounts reported on Forms 1042–S with amounts reported on Form 1042, it was incorrect to substitute Forms K–1 for Forms 1042–S. Therefore, the regulation has been amended to require a withholding foreign partnership to file a tax return on Form 1042 and file information returns on Form 1042–S for amounts subject to withholding paid to, or included in the distributive share of, its foreign partners. A withholding foreign partnership may also be required to file a return on Form 1065 and make the statements on Form K–1 under section 6031 for its partners. However, the IRS may agree in the withholding agreement to modify information reporting requirements to avoid double reporting. A rule that was formerly contained in § 1.1441–7(a), which permitted a withholding foreign partnership to arrange with a withholding agent to have the withholding agent impose withholding on a payment has been removed because a withholding foreign partnership is required to assume withholding responsibility.

Section 1.1441–5(c)(3) provides rules relating to nonwithholding foreign partnerships. Paragraph (c)(3)(iv) has been revised to require a nonwithholding foreign partnership to provide a withholding statement in the same manner as a nonqualified intermediary. In addition, paragraph (c)(3)(v) has been revised to conform with revised § 1.1441–1(b)(6), discussed in section A. 5 of this Explanation of Provisions. Thus, the regulation has been changed to make clear that a nonwithholding foreign partnership has an obligation to report payments even though another withholding agent has withheld the appropriate amount if the nonwithholding partnership has failed to provide adequate information for a withholding agent to report the payments appropriately on Form 1042–S and Form 1099 or the nonwithholding foreign partnership knows, or has reason to know, that the payments were not correctly reported.

Paragraph (d) of § 1.1441–5 provides presumption rules that apply to determine the status of a partnership and its partners if a payment cannot be

reliably associated with valid documentation. The rule in paragraph (d)(3)(ii), which permitted a reduced rate of withholding to be applied to a payment to a nonwithholding foreign partnership if the payment could be associated with a group of documented payees all of whom were subject to the same withholding rate has been removed for the reasons stated in connection with the changes made to § 1.1441–1(b)(3)(v)(C). See section A. 4, of this Explanation of Provisions. Under the revised rule, any payment of an amount subject to withholding paid to a foreign partnership that has not been allocated to a specific payee is presumed made to an undocumented foreign payee and subject to 30 percent withholding.

3. Payments to Foreign Trusts and Estates

Treasury Decision 8734 did not include new provisions regarding withholding on payments by and to foreign trusts and foreign estates. The IRS provided interim guidance in the instructions to Forms W–8BEN and W–8IMY so that withholding agents could replace documentation that was expiring under the withholding regulations with documentation that would meet the requirements of TD 8734. In addition, Notice 99–8 announced that Treasury and the IRS intended to issue regulations that would clarify the withholding obligations of income paid to trusts and estates. Under the instructions and the notice, a payment to a foreign fiduciary was treated as a payment to a foreign intermediary and, therefore, the foreign fiduciary was required to furnish an intermediary withholding certificate on Form W–8IMY. If the trust was a trust described in section 651(a) or a trust, all or a portion of which was treated as owned by the grantor or other persons under sections 671 through 679, the fiduciary was required to attach Forms W–8BEN, Forms W–8EXP, or Forms W–9, from the beneficiaries or owners of the trust. In all other cases, the foreign trustee or executor was required to attach a Form W–8BEN, Form W–8EXP, or if required, Form W–9, completed on behalf of the trust or estate.

Several commentators objected to the requirement that a foreign fiduciary of a complex trust or a foreign estate provide an intermediary withholding certificate. They requested that a withholding certificate be required only from the trust or estate itself. Requiring documentation from a fiduciary also was not consistent with the rules under chapter 61, which generally require a Form W–9 from a trust or estate and ignore the status of the fiduciary. Finally, Notice 99–8 did not provide any presumption rules for payments to foreign trusts and foreign estates.

The regulations now contain a comprehensive set of rules for payments made to foreign trusts and foreign estates in § 1.1441–5(e). A foreign complex trust (as defined in paragraph (c)(25)) and a foreign estate are generally considered beneficial owners of income under § 1.1441–1(c)(6). Therefore, under § 1.1441–5(e)(2), a foreign complex trust or a foreign estate may provide a beneficial owner withholding certificate or other beneficial owner documentation for payments for which a reduced rate of withholding is not claimed under a treaty. Whether such a trust or estate can provide a beneficial owner withholding certificate to claim a reduced rate of withholding under an income tax treaty will depend on whether the trust or estate can claim to be a resident of a treaty country, whether it derives the income under section 894, and the regulations thereunder, and whether treaty benefits are denied under a limitation on benefits provision.

Foreign simple trusts and foreign grantor trusts are not payees or beneficial owners under § 1.1441–5(e)(3), unless the payment is an amount that is treated as effectively connected with the conduct of a U.S. trade or business. The payees of payments to a foreign simple trust or a foreign grantor trust are generally the beneficiaries or owners of the trust. This is similar to the treatment accorded to payments to foreign partnerships, where the partners, rather than the partnership, are generally considered the payees of income paid to the partnership. Therefore, the documentation rules applicable to foreign simple trusts and foreign grantor trusts generally accord with those applicable to foreign partnerships. The trust itself provides a flow-through withholding certificate with which it associates the withholding certificates or, if permitted, documentary evidence of its beneficiaries or owners. The foreign simple trust or foreign grantor trust must also associate with its flow-through withholding certificate a withholding statement identical to that provided by foreign partnerships and nonqualified intermediaries. The IRS may permit a foreign trust to function as a withholding foreign trust. A withholding foreign trust would generally be subject to the same provisions as a withholding foreign partnership.

Section 1.1441–1(e)(6) provides presumption rules for payments of amounts subject to withholding to foreign trusts and estates. Whether a payee is a trust or estate is determined under the general presumption rules of § 1.1441–1(b)(3)(ii). A trust or estate is presumed to be U.S. unless there are indicia of foreign status. If a payee is presumed to be a foreign trust, but its status as a complex, simple, or grantor trust is unknown, it will be treated as a complex trust. If the trust is known to be a foreign simple or grantor trust, its beneficiaries or owners will generally be presumed to be foreign with respect to payments of amounts subject to withholding.

*F. Changes to § 1441–6*

Section 1.1441–6 contains the provisions for claiming a reduced rate of withholding under an income tax treaty. Section 1.1441–6(b) has been revised to clarify the requirements for claiming treaty benefits. Specifically, the provisions of paragraph (b)(2), as originally drafted, which related to use of documentary evidence, have been moved to newly revised paragraphs (c)(1) and (2) so that all the documentary evidence rules appear in the same paragraph. Paragraph (b)(2) now contains the provisions relating to treaty claims made by interest holders of fiscally transparent entities. Clarifying changes to those rules, which appeared in former paragraph (b)(4), have also been made.

Section 1.1441–6(c)(1) and (2), as originally drafted, required a foreign person to establish residency by obtaining a certified taxpayer identification number (certified TIN) from the IRS. Those provisions required a person claiming a reduced rate of withholding to submit either a certificate of residency or certain other prescribed documentation, plus affidavits regarding compliance with the limitation on benefits provisions of a treaty and with the regulations under section 894. In Notice 99–8, the IRS announced that it would not implement the procedures for obtaining certified TINs until January 1, 2002.

The certified TIN procedures have been removed. New paragraph (b)(3), however, provides authority for the IRS to issue guidance on requirements that a treaty claimant must follow to establish residency and compliance with other requirements imposed by treaties and the Internal Revenue Code, such as limitation on benefits provisions and the requirement that the claimant derive the income under section 894. Treasury and the IRS fully intend to implement such procedures. However, Treasury and the IRS determined that it was appropriate to delay

implementation of the requirement while withholding agents and beneficial owners implement other requirements under the regulation. In addition, the IRS will examine ways to more effectively implement the certified TIN requirement.

Paragraphs (c)(3) and (4) prescribe the types of documentation that can be used to claim treaty benefits for income from marketable instruments paid outside the United States to offshore accounts. Former paragraph (b)(2) stated that documentary evidence could be used, in certain cases, to claim treaty benefits if the documentary evidence was accompanied by the certifications required in paragraph (c)(5). Paragraph (c)(5) contained a requirement that a beneficial owner applying for a certified TIN provide the IRS with certifications, made in an affidavit signed under penalties of perjury, that the beneficial owner was in compliance with any applicable limitation on benefits provisions contained in a treaty and that the beneficial owner derives the income for which treaty benefits will be claimed. It was unclear from the regulations, as drafted, whether the certifications that were provided to withholding agents were required to be made in affidavits signed under penalties of perjury or whether the affidavit requirement only applied to obtaining certified TINs. Although Treasury and the IRS believe it is important that statements regarding compliance with limitation on benefits provisions and section 894 be given in conjunction with documentary evidence provided to a withholding agent, a penalties of perjury requirement would impose a burden that undermines the use of documentary evidence. One reason for permitting use of documentary evidence is to eliminate, as much as possible, the need for a penalties of perjury statement. Thus, the affidavit and penalties of perjury requirements have been eliminated with respect to documentary evidence provided to a withholding agent. The IRS may, however, require an affidavit in connection with the certified TIN procedures that it will establish. The affidavit requirement in paragraph (c)(4), stating that the information on documentary evidence is true and complete, has also been eliminated.

*G. Changes to § 1.1441–7*

Section 1.1441–7 defines the term *withholding agent* and provides various rules relating to the obligations of withholding agents, including certain due diligence requirements regarding the documentation they receive from payees.

1. Withholding Agent Defined

§ 1.1441–7(a) provides the definition of a withholding agent as well as a withholding agent's obligation to withhold the appropriate amount of taxes and file returns. The section has been revised by removing language stating that a withholding foreign partnership does not have to file Forms 1042–S for payments made to foreign partners because it is required to provide Forms K–1. The reason for this change is discussed in section E. 2 of this Explanation of Provisions.

Some U.S. withholding agents commented that foreign persons, including U.S. branches of foreign persons, were taking the position that they were not withholding agents for purposes of chapter 3 of the Internal Revenue Code. Any person, whether U.S. or foreign, that pays, or has control, receipt, custody, or disposal of an amount subject to withholding is a withholding agent. In addition, with respect to a single item of income, each person that handles the payment is a withholding agent. Thus, there may be more than one withholding agent with respect to a payment of an amount subject to withholding. Examples have been added in new paragraph (a)(2) to illustrate these principles. In particular, examples were added to emphasize that foreign persons that pay, or have control, receipt, or custody, of amounts subject to withholding are withholding agents, including U.S. branches of foreign persons.

2. Reason To Know

Section 1.1441–7(b)(2)(ii), as originally drafted, provided the exclusive rules for determining when a withholding agent that is a financial institution making a payment of income from marketable securities has reason to know that documentation provided to the withholding agent is unreliable. Commentators noted that the language of paragraph (b)(2)(ii) was inconsistent about whether the rules applied only to withholding certificates (i.e., Forms W–8) or also to documentary evidence. In addition, many commentators noted that the rules could not be reasonably applied to documentary evidence received through tiers of intermediaries, because that documentation would often be in a foreign language. They further argued that the rules relating to P.O. box addresses were unreasonable because in some countries P.O. box addresses are standard. Finally, commentators noted that the means for curing otherwise unreliable documentation were, in some instances, too restrictive.

Section 1.1441–7 (b)(3) through (10) have been added to address the comments. Some of the changes made to paragraph (b) reflect rules in the model qualified intermediary agreement contained in Rev. Proc. 2000–12. Paragraphs (b)(4) through (b)(9) relate to the obligations of a withholding agent for account holders that have a direct account relationship with the withholding agent. The rules are limited to direct account relationships because they often rely on account information that will exist only if such a relationship exists. However, under the rules of paragraph (b)(10), which relate to documentation from persons that are not direct account holders, the rules in paragraph (b)(4) through (9) apply to the extent that they rely on information contained on the face of a withholding certificate, documentary evidence, or a withholding statement.

Paragraph (b)(4) contains general rules regarding the reliability of a withholding certificate provided on Form W–8. Paragraph (b)(5) contains rules for when a Form W–8 will be regarded as unreliable to establish a beneficial owner's foreign status and applicable cure provisions. Paragraph (b)(6) contains rules for when a Form W–8 will be regarded as unreliable to establish a beneficial owner's claim of treaty benefits and applicable cure provisions. Paragraph (b)(7) provides general rules relating to documentary evidence. Paragraphs (b)(8) and (b)(9) contain rules regarding documentary evidence that is unreliable to establish a beneficial owner's status as a foreign person or a resident of a treaty country, respectively.

Paragraph (b)(10) provides rules regarding due diligence standards for documentation from payees received through nonqualified intermediaries, flow-through entities, and certain U.S. branches of foreign banks and insurance companies. Under paragraph (b)(10), a withholding agent is required to review the information contained in a withholding statement provided by those entities and may not rely on the information contained in the withholding statement to the extent it does not support the claims made for the payee. A withholding agent must also review each withholding certificate to verify that they support the claims made and are consistent with the information on the withholding statement. Under a transition rule, this review process does not apply to withholding certificates received before December 31, 2001, if the payment is made prior to that date. If a withholding certificate received before December 31, 2001, is relevant to a payment made

after that date, it must be reviewed for accuracy and matched to the information contained in the withholding statement. Finally, a withholding agent must review documentary evidence to determine that there is no obvious indication that the payee is a U.S. non-exempt recipient or no obvious indication that the documentary evidence does not establish the identity of the person who provided the documentation.

*H. Changes to § 1.1441–9*

Section 1.1441–9 provides the rules for payments made to foreign tax-exempt entities and foreign governments. Paragraph (b)(2) of that section provided that if a tax-exempt organization did not have a determination from the IRS, it could establish its exempt status by attaching to its withholding certificate an opinion of counsel concluding that the organization is described in section 501(c) of the Internal Revenue Code. In addition, if the opinion concluded that the organization was described in section 501(c)(3) and was not a private foundation, an affidavit regarding the operations and support of the organization was required to be attached to the organization's withholding certificate as well. The opinion of counsel and affidavit was required to be renewed whenever the certificate to which it was attached was required to be renewed.

Commentators stated that the requirement that the opinion of tax-exempt status be provided by an attorney was too narrow and that an opinion from any federally authorized tax practitioner, as defined in section 7525(a)(3), should be permitted. In addition, the requirement that the opinion of counsel and the affidavit be renewed whenever the certificate was required to be renewed was confusing because a withholding certificate from a tax-exempt entity requires a TIN and, provided the income paid is subject to reporting, is valid indefinitely absent a change in circumstances.

Treasury and IRS are currently considering whether an opinion issued by a person other than an attorney authorized to practice before the IRS should suffice. Although the Treasury and IRS have not yet concluded that a person other than an attorney should be permitted to provide the opinion, the regulation has been amended to permit that possibility in future guidance. In addition, the requirement to renew the opinion and affidavit has been clarified by stating that it must be renewed if there is a change in facts or circumstances relevant to the organization's status under section 501(c)(3).

*I. Changes to § 1.1461–1*

Section 1.1461–1 contains requirements regarding the payment and deposit of tax withheld under chapter 3 of the Internal Revenue Code and the filing of a tax return (Form 1042) and information returns (Forms 1042–S) by withholding agents. Generally, the paragraph has been amended to make a withholding agent's obligations clearer.

Paragraphs (b)(2) and (c)(4), as originally drafted, stated that a withholding agent was not required to file a tax return or information return if another withholding agent had done so. Numerous exceptions to the rule were provided. These paragraphs were misleading because they implied that the general rule was that a tax return and information returns were not required if there was another withholding agent in the chain of payment required to file a tax return and information returns. The exceptions to the rule, however, required every withholding agent that made payments of an amount subject to withholding to a foreign person to file a tax return and information returns in every situation, except that a nonqualified intermediary or flow-through entity was not required to file a tax return and information returns for payments that it made provided that it furnished to a withholding agent sufficient information for the withholding agent to correctly withhold and report the payment. Section 1.1461–1(b) and (c) have been clarified to state that a withholding agent that makes a payment of an amount subject to reporting to a recipient must file a Form 1042–S and provide a copy to the recipient. The terms recipient and amount subject to reporting are defined in paragraphs (c)(1)(ii) and (c)(2), respectively. A recipient includes a beneficial owner (including a foreign complex trust and estate), a qualified intermediary, a withholding foreign partnership, a withholding foreign trust, an authorized foreign agent, a U.S. branch treated as a U.S. person, a nonwithholding foreign partnership or foreign simple trust receiving income effectively connected with a U.S. trade or business, any payee presumed to be a foreign person, and any other person for whom a Form 1042–S is required by the instructions to the form. A nonqualified intermediary, a disregarded entity, a flow-through entity, and a U.S. branch that is not treated as a U.S. person are not recipients. Amounts paid to such entities are reported as paid to the persons on whose behalf the entity acts or to the interest holders in the entity. The term amount subject to reporting generally means amount subject to withholding as defined under § 1.1441–2(a).

The regulation has also been clarified by providing a more extensive, but not exhaustive, list of those amounts subject to reporting and those amounts for which there is an exception to reporting. See new § 1.1461–1(c)(2). Paragraph (c)(2)(i)(C), as originally drafted, stated that the amount of effectively connected income that was required to be reported with respect to a notional principal contract was the net income described in § 1.446–3(d). Commentators objected to this requirement because their systems are programmed to report cash payments, not accrued amounts. New paragraph (c)(2)(i)(J) now provides that the amount required to be reported is limited to the amount of cash paid from the notional principal contract.

Finally, the section has been clarified by separately stating the reporting requirements of U.S. withholding agents, qualified intermediaries, nonqualified intermediaries, and flow-through entities. Withholding agents should note, in particular, that information regarding nonqualified intermediaries, flow-through entities, and U.S. branches (other than U.S. branches treated as U.S. persons) in which a recipient is an account holder or an interest holder must be included on Form 1042–S. Such information is important to the IRS's efforts to monitor compliance by such entities and branches with the requirements of the regulations.

*J. Changes to the Regulations Under Section 6041*

Section 1.6041–1(d) has been revised to require that the amount of a notional principal contract payment reported on Form 1099 is the amount of cash paid on the contract for the calendar year. This change conforms the Form 1099 reporting rule to that under § 1.1461–1(c)(2)(i)(J).

Section 1.6041–4(a)(3) states that a nonqualified intermediary, a qualified intermediary, or certain U.S. branches of foreign banks and insurance companies that receive payments reportable under section 6041 (e.g., rents, notional principal contract income, and other fixed or determinable income) are not required to report the payments on Form 1099 when they, in turn, make the payment to their account holders unless they know the payments are required to be reported and were not so reported. Similar exceptions apply to dividends, gross proceeds from sales of securities, and interest under §§ 1.6042–3(b)(1)(vi),

1.6045–1(g)(v), and 1.6049–5(b)(14), respectively. These provisions have been modified to state that the exception does not apply to a U.S. branch of a foreign bank or insurance company that agrees with a withholding agent to be treated as a U.S. person. The exception is inappropriate in this case because such branches do not provide payee documentation on Form W–9 (or the name, address, TIN, and information allocating the payment to the payee) to a withholding agent. The exception is also inappropriate if a qualified intermediary assumes Form 1099 reporting responsibility. Therefore, the exception has been changed to exclude qualified intermediaries that assume Form 1099 reporting. Finally, the exceptions have been amended to state that a nonqualified intermediary, qualified intermediary, or U.S. branch is deemed to know the required reporting was not done in any case where the intermediary or branch has failed to provide documentation or other information so that another payor can do the reporting.

*K. Changes to § 1.6041A–1*

Section 1.6041A–1(d)(3)(i)(C) has been added to provide an exception from reporting remuneration for services as a direct seller paid outside the United States. Prior to this change, remuneration for services was subject to reporting in absence of documentation establishing the direct seller's status as a foreign person because the presumption rules of §§ 1.6049–5(d)(2) and 1.1441–1(b)(3)(iii) treated a direct seller as a U.S. non-exempt recipient. Commentators stated that the presumption was inaccurate because most direct sellers abroad are foreign persons. They also argued that obtaining documentation from direct sellers to rebut the presumption was overly burdensome.

*L. Changes to § 1.6045–1*

Section 1.6045–1(g) provides an exception from Form 1099 reporting for a broker if a customer is considered an exempt foreign person under that section. Under § 1.6045–1(g)(1)(i), a broker may treat a customer as an exempt foreign person if the broker receives a withholding certificate or documentary evidence that establishes the person's status as a foreign person. As originally drafted, the last sentence of § 1.6045–1(g)(1)(i) stated that if a withholding certificate was provided, a withholding agent could rely on the certificate to exempt the customer from reporting only if the certificate included a statement that the beneficial owner had not been, and at the time the certificate was furnished reasonably expected not to be, present in the United States for a period aggregating 183 days or more during each calendar year. The regulation did not state whether the a statement was required if documentary evidence was provided.

Two clarifying changes have been made to § 1.6045–1(g)(1)(i). First, the regulation has been modified to require the statement relating to presence in the United States only from individuals. Second, the regulation states that the statement is not required if documentary evidence is provided. The statement is required on a withholding certificate and not on documentary evidence because a withholding certificate is the documentation required for an account maintained in the United States. Documentary evidence can only be used for amounts paid outside the United States to an offshore account and, therefore, the likelihood that the person may be present in the United States for the relevant period is greatly reduced.

Clarifying changes have also been made to § 1.6045–1(g)(3)(iv). The first sentence of that section stated that a broker could treat an intermediary, as defined in § 1.1441–1(c)(13), as an exempt recipient except when the broker had actual knowledge or reason to know the intermediary was acting on behalf of a U.S. person. The exception should only apply if the intermediary is acting on behalf of a U.S. person who is subject to reporting on Form 1099, that is, a U.S. non-exempt recipient. The regulation has been amended to make this clear. An erroneous cite to nonwithholding foreign partnerships has also been eliminated.

In paragraph (g)(4) of § 1.6045–1, *Example 7* has been amended to reflect the change to the regulations that now generally treats accrued interest as an amount that is not subject to withholding. Under that example, a foreign bank that is a U.S. payor effects a sale of an interest bearing obligation at an office outside the United States on behalf of an undocumented account holder. Under the regulation, as originally drafted, the gross proceeds from the sale, net of accrued interest, were reported on Form 1099 as paid to a payee that was presumed to be a U.S. person. However, because the accrued interest was considered an amount subject to withholding, it was reportable on Form 1042–S. Under the regulation, as revised, accrued interest is treated as an amount that is not subject to withholding. Therefore, both the gross proceeds, net of accrued interest, and the accrued interest are now presumed paid to a U.S. payee and reported on Form 1099 under the presumption rule § 1.6049–5(d)(2). Two additional examples have been added to paragraph (g)(4) to illustrate the operation of the presumption rules on a sale of a short-term original issue discount instrument. These examples were added to make clear that a sale of an OID obligation outside the United States is a gross proceeds transaction and, therefore, under the presumption rule of § 1.6049–5(d)(2), presumed made to a U.S. person. Whether the gross proceeds are reportable depends on whether the exception of § 1.6045–1(a) for sales outside the United States by a non-U.S. payor applies.

*M. Changes to § 1.6049–5*

Under § 1.6049–5(c)(1), a withholding agent or payor may generally rely on documentary evidence from a foreign payee instead of a beneficial owner withholding certificate on Form W–8 if an amount is paid outside the United States to an offshore account. An offshore account is an account maintained at an office or branch of a U.S. or foreign bank or other financial institution at any location outside the United States and outside of a U.S. possession. Under § 1.6049–5(e), an amount is considered paid outside the United States if the payor completes the acts necessary to effect payment outside the United States.

The regulations do not specifically address whether partners of a nonwithholding foreign partnership, foreign beneficiaries of a foreign simple trust, or foreign owners of a foreign grantor trust can use documentary evidence to establish their status as foreign payees. Paragraph (c)(1) has been amended to permit the use of documentary evidence by foreign partners, beneficiaries, and owners in these situations. Documentary evidence can also be used for purposes of chapter 3 of the Internal Revenue Code by virtue of the incorporation of § 1.6049–5(c)(1) in § 1.1441–1(e)(1)(ii)(A)(2). The use of documentary evidence is appropriate because the regulations generally treat payments to foreign nonwithholding foreign partnerships, foreign simple trusts, and foreign grantor trusts similar to payments made to nonqualified intermediaries, and the latter are permitted to provide documentary evidence on behalf of their account holders.

Section 1.6049–5(c)(4) provides rules that apply to U.S. payors that make payments outside the United States of amounts not subject to withholding (e.g., foreign source income and gross proceeds from the sale of securities) other than deposit interest and interest

or OID on short-term OID instruments. Non-U.S. payors are generally exempt from reporting these payments. There were several issues under paragraph (c)(4) as originally drafted. First, the paragraph was internally inconsistent. Paragraph (c)(4)(i) stated that a bank or other financial institution could establish a payee's status as a foreign person by relying on a written declaration made on an account opening statement that the payee was not a U.S. person in two circumstances: (i) If it was not customary in a country to obtain documentary evidence to establish a person's identity, or (ii) if it was customary to obtain documentary evidence but it was not customary to renew it. Paragraph (c)(4)(iv), however, stated that a bank or financial institution could not rely on a declaration if it was customary to obtain documentary evidence but not customary to renew it. Second, paragraph (c)(4)(i) did not permit a bank or financial institution to rely on documentary evidence to establish a person's foreign status if there was indicia of U.S. status, including employment by a U.S.-based multinational organization. A commentator noted that prohibiting use of documentary evidence merely because an account holder worked for a U.S.-based multinational organization was overly broad because such organizations commonly employ local employees and a withholding agent may not know whether a particular multinational is U.S. based. Finally, paragraph (c)(4)(iii) required a bank or financial institution that relied upon a declaration of foreign status or non-renewable documentary evidence to send a negative confirmation statement each year to the account holder stating that the account holder was being treated as a foreign payee and that the account holder was obligated to notify the bank or financial institution if it became a U.S. citizen or U.S. resident. A commentator argued that the expense of such a requirement was not justified. The commentator argued that if an account holder legitimately establishes foreign status, it is unlikely that the account holder will become a U.S. citizen or resident and that if it does, there are factors, such as a change of address, that will indicate a change in the person's status.

Paragraph (c)(4) has been amended to remove the inconsistency and to take the commentators' comments into account. Under paragraph (c)(4)(ii), as revised, a declaration of foreign status may be used only if it is not customary to obtain documentary evidence. The declaration may be relied upon only if there is no address or other indicia of U.S. status. If it is customary in the country where a bank or financial institution maintains a branch or office to obtain, but not renew, documentary evidence, then the bank or financial institution may rely on the documentary evidence without the need to renew it provided that it may rely on the documentation to establish foreign status under the due diligence rules of § 1.1441–7(b)(7) and (8). The restriction on using such documentation in the case of a U.S. based multinational employee has been removed. If, however, the bank or financial institution may rely on the documentary evidence as establishing foreign status even though there are indicia of U.S. status, it can rely on the documentary evidence only for a period of three full calendar years after the calendar year in which it is received. Finally, neither the documentation rule of paragraph (c)(4)(i) nor the declaration rule of paragraph (c)(4)(ii) requires a payor to send a negative confirmation.

Section 1.6049–5(d) contains presumption rules that generally apply for chapter 61 reporting if a payor lacks required documentation from a payee. Paragraph (d)(2) governs payments other than payments to intermediaries or flow-through entities. Paragraph (d)(2)(i) has been clarified to state that the presumption rules of § 1.1441–1(b)(3)(iii)(D) (payments to offshore accounts) do not apply to amounts that are not subject to withholding. As originally drafted, paragraph (d)(2)(i) stated that the rules of § 1.1441–1(b)(3)(iii) applied to all payments, irrespective of whether they were subject to withholding. Section 1.1441–1(b)(3)(iii)(D), however, stated that it did not apply to amounts that were not subject to withholding. Revised paragraph (d)(2)(i) eliminates the inconsistency. Therefore, payments of deposit interest, and interest or OID arising from the redemption of an obligation described in section 871(g)(1)(B)(i) paid to an offshore account are presumed paid to a U.S. payee. In addition, gross proceeds, which are not amounts subject to withholding, are also treated as paid to U.S. persons under § 1.6045–1(g)(1)(i). Under the exceptions of §§ 1.6045–1(a)(1) and 1.6045–1(g)(3), however, gross proceeds from the sale of a security by a non-U.S. payor effected outside the United States are not subject to reporting.

The grace period rule in § 1.6049–5(d)(2)(ii), as originally drafted, did not cover the same payments as were covered under the grace period rule of § 1.1441–1(b)(3)(iv) even though the latter regulation cross-references § 1.6049–5(d)(2)(ii). For example, the rule under the 1441 regulations, but not the rule under section 6049, covered dividends from any redeemable security issued by an investment company and amounts paid with respect to loans of securities. Paragraph 5(d)(2)(ii) has been amended to cover the same payments as are covered by the grace period rule of § 1.1441–1(b)(3)(iv). In addition, paragraph (d)(2)(ii) prior to amendment stated that the grace period expired on the earlier of the of the 90th day after the grace period began, the date on which documentation is provided, or the last day of the calendar year. Commentators stated that terminating the grace period at the end of a calendar year complicated systems programming because there was a shrinking grace period for payments made within 90 days of the end of the year. The requirement to terminate the grace period as of the close of a calendar year has been eliminated because it is not necessary.

Paragraph (d)(3) provides presumption rules for payments made to foreign intermediaries. With exceptions for deposit interest and interest and OID on short-term obligations, payments to foreign intermediaries are presumed made to foreign payees. Paragraph (d)(4) provided different presumptions for payments to partnerships. Under that paragraph, payments made to foreign partnerships were generally presumed made to U.S. payees, even if the partnership established its status as a foreign partnership. Commentators argued that the disparate treatment between intermediaries and partnerships was not justified because they are treated similarly for other purposes under the regulations. The differences also complicated payors' information systems. In response to these comments, the presumption rules of paragraph (d)(3) have been revised to apply to payments made to all flow-through entities (nonwithholding foreign partnerships, foreign simple trusts, and foreign grantor trusts).

Paragraph (d)(3)(ii) provides rules for payments of amounts that are not subject to withholding (*e.g.*, foreign source income and gross proceeds from the sales of securities) other than deposit interest and interest and OID on short-term obligations paid to foreign intermediaries and flow-through entities. The paragraph required a payor to presume that a payment was made to an exempt recipient unless the payor had actual knowledge that any person for whom the intermediary was collecting the payment was a U.S. non-

exempt recipient. In that case, the payment was treated as made to the U.S. non-exempt recipient. The last sentence of the paragraph, however, also appeared to require a payor to presume that a payment was made to a U.S. non-exempt recipient if it appeared that the payment might be collected on behalf of a U.S. non-exempt payee, because, for example, an intermediary provided Forms W–9 for some payees but did not allocate a payment to any particular payee. The application of the last sentence of the paragraph, however, was uncertain.

Paragraph (d)(3)(ii) has been revised to generally reflect the principle that a payment of an amount that is not subject to withholding (other than short-term OID and deposit interest) made to an intermediary should not be subject to Form 1099 reporting by a payor if the payment would not be subject to Form 1099 reporting if made to a U.S. non-exempt recipient by an intermediary that is not a U.S. payor. Thus, the general rule is that a payment covered by the paragraph (i.e., foreign source income or gross proceeds) is presumed paid to an exempt recipient unless the payor has actual knowledge that the amount is attributable to a U.S. non-exempt recipient.

As originally drafted, § 1.6049–5(d)(3)(iii) provided special presumption rules for payments of deposit interest and interest or OID from short-term original issue discount obligations to foreign intermediaries. It was not clear whether the presumption rule of the paragraph applied to the portion of the sale proceeds representing OID from the sale or exchange of short-term OID instrument in a transaction other than a redemption.

Under paragraph (d)(3)(iii) as revised, a payment of deposit interest or interest or OID on the redemption of a short-term original issue discount obligation paid to an intermediary or flow-through entity is presumed paid to a U.S. payee. The paragraph does not apply to sales or exchanges (other than redemption) of short-term OID instruments. Such sales or exchanges are treated as gross proceeds transactions, in conformance with the rules in §§ 1.6045–1(c) and (d)(3) and 31.3406(b)(2)–2, and are subject to the general presumption rule for payments made to foreign intermediaries under § 1.6049–5(d)(3)(ii). Therefore, gross proceeds from the sale or exchange (other than a redemption) of a short-term OID instrument will generally be presumed paid as made to an exempt recipient. Intermediaries that are U.S. payors, however, may themselves be required to report such gross proceeds under § 1.6045–1(c) and (1)(g)(i) and the presumption rule of § 1.6049–5(d)(2), which applies to payments made to persons other than an intermediary because under that section gross proceeds are generally considered paid to U.S. payees under that section.

Paragraph (d)(3)(iii)(B) contained a presumption rule for payments made to exempt recipients that had not provided documentation that they were acting as intermediaries. The scope and application of this rule were unclear. Paragraph (d)(3)(iii)(B) has been completely revised and now states that a payment made to an exempt recipient that the payor knows, or has reason to know, is acting as an intermediary is subject to the presumptions that apply to intermediaries.

*N. Withholding Certificate Transitional Issues*

The changes made by this regulation will require revisions to instructions to the withholding certificates issued on Form W–8 and certain minor changes to the forms themselves. Until Forms W–8, and the instructions, are revised withholding agents may rely on Forms W–8BEN, W–8ECI, W–8EXP, and W–8IMY as currently in effect but should take into account, particularly with respect to Form W–8IMY used by intermediaries and flow-through entities, that the instructions to the form do not reflect the withholding statement requirements contained in this regulation. In particular, withholding agents and providers of Form W–8IMY should furnish a withholding statement in connection with the form that conforms to § 1.1441–1(e)(3)(iv).

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Finally, it has been determined that the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations because the regulations do not impose a collection of information on small entities. Pursuant to 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations (61 FR 17614) was submitted to the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal authors of these regulations are Carl Cooper, Laurie Hatten-Boyd, and Kate Hwa of the Office of Associate Chief Counsel (International).

**List of Subjects**

*26 CFR Part 1*

Income taxes, Reporting and recordkeeping requirements.

*26 CFR Part 31*

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

**Adoption of Amendments to Regulations**

Accordingly, 26 CFR parts 1 and 31 are amended as follows:

**PART 1—INCOME TAXES**

**Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

**Par. 2.** Effective January 1, 2001, § 1.1441–0 is amended by:

1. Revising the entry for § 1.1441–1(b)(2)(vii).
2. Adding entries for § 1.1441–1(b)(2)(vii)(A) through (F).
2a. Revising the entry for § 1.1441–1(b)(3)(ii).
3. Adding entries for § 1.1441–1(b)(3)(ii)(A) through (C).
4. Revising the entry for § 1.1441–1(b)(3)(iv).
5. Revising entry for § 1.1441–1(b)(3)(v)(B).
6. Revising the entry for § 1.1441–1(b)(3)(vi).
7. Adding entries for § 1.1441–1(b)(3)(vii)(A) and (B).
8. Adding entries for § 1.1441–1(b)(6)(i) and (ii).
9. Revising the entries for § 1.1441–1(c)(6)(ii), (c)(6)(ii)(B), (c)(6)(ii)(C), and adding a new entry for § 1.1441–1(c)(6)(ii)(D).
10. Adding entries for § 1.1441–1(c)(12) through (29).
11. Revising the entry for § 1.1441–1(d)(4).
12. Revising the entry for § 1.1441–1(e)(3)(iii), (e)(3)(iv), and (e)(3)(iv)(A) through (C).
13. Adding entries for § 1.1441–1(e)(3)(iv)(D) and (E).
14. Adding entries for § 1.1441–1(e)(4)(iv)(A), (B), and (C).
15. Revising the entries for § 1.1441–1(e)(5)(v) and (e)(5)(v)(B) and (C).
16. Revising the entries for § 1.1441–2(b)(3)(i) and (ii).

17. Removing the entries for § 1.1441–2(b)(3)(iii) and (iv).
18. Revising the entry for § 1.1441–5(a).
19. Revising the entries for § 1.1441–5(b), (b)(1), (b)(2), and (b)(2)(i), adding entries for § 1.1441–5(b)(2)(i)(A) and (b)(2)(i)(B), and revising entries for § 1.1441–5(b)(2)(ii), (b)(2)(iii), (b)(2)(iv), and (b)(2)(v).
20. Revising the entry for § 1.1441–5(c)(1)(iv).
21. Removing the entries for § 1.1441–5(c)(2)(ii)(A) and (B).
21. Revising the entry for § 1.1441–5(c)(3).
22. Revising the entries for § 1.1441–5(c)(3)(iii).
23. Revising the entries for § 1.1441–5(c)(3)(iv) and (v).
24. Revising the entry for § 1.1441–5(d).
25. Removing the entries for § 1.1441–5(d)(3)(i) through (d)(3)(iv).
26. Revising the entry for § 1.1441–5(d)(4).
27. Revising the entry for § 1.1441–5(e).
28. Adding entries for § 1.1441–5(e)(1), (e)(2), (e)(3), (e)(3)(i), (e)(3)(ii), (e)(4), (e)(5), (e)(5)(i), (e)(5)(ii), (e)(5)(iii), (e)(5)(iv), (e)(5)(v), (e)(6), (e)(6)(i), (e)(6)(ii) and (e)(6)(iii).
29. Revising the entries for § 1.1441–6(b)(2), (b)(2)(i) and (b)(2)(ii).
30. Adding entries for § 1.1441–6(b)(2)(iii) and (b)(2)(iv).
31. Revising the entry for § 1.1441–6(b)(3).
32. Revising the entry for § 1.1441–6(b)(4).
33. Removing the entries for § 1.1441–6(b)(4)(i), (b)(4)(ii), (b)(4)(ii)(A), (b)(4)(ii)(B), (b)(4)(iii), and (b)(4)(iv).
34. Removing the entry for § 1.1441–6(b)(5).
35. Revising the entry for § 1.1441–6(c).
36. Revising the entry for § 1.1441–6(c)(2).
37. Removing the entries for § 1.1441–6(c)(2)(i), (c)(2)(ii), and (c)(2)(iii).
38. Revising the entries for § 1.1441–6(c)(5), (c)(5)(i) and (c)(5)(ii).
39. Revising the entry for § 1.1441–6(e).
40. Adding entries for § 1.1441–7(a)(1) and (2).
41. Removing the entries for § 1.1441–7(b)(2)(i) and (b)(2)(ii).
42. Revising the entry for § 1.1441–7(b)(3).
43. Adding entries for § 1.1441–7(b)(4), (b)(4)(i), (b)(4)(ii), and (b)(5) through (b)(11).

The additions and revisions read as follows.

**§ 1.1441–0 Outline of regulation provisions for section 1441.**

* * * * *

**§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.**

* * * * *

(b) * * *
(2) * * *
(vii) Rules for reliably associating a payment with a withholding certificate or other appropriate documentation.
(A) Generally.
(B) Special rules applicable to a withholding certificate from a nonqualified intermediary or flow-through entity.
(C) Special rules applicable to a withholding certificate provided by a qualified intermediary that does not assume primary withholding responsibility.
(D) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code.
(E) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility but not primary withholding under chapter 3.
(F) Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 and primary Form 1099 reporting and backup withholding responsibility and a withholding certificate provided by a withholding foreign partnership.
(3) * * *
(ii) Presumptions of classification as individual, corporation, partnership, etc.
(A) In general.
(B) No documentation provided.
(C) Documentary evidence furnished for offshore account.

* * * * *

(iv) Grace period.
(v) * * *
(B) Beneficial owner documentation or allocation information is lacking or unreliable.

* * * * *

(vi) U.S. branches.
(vii) * * *
(A) In general.
(B) Special rule for offshore accounts.

* * * * *

(6) * * *
(i) In general.
(ii) Example.

* * * * *

(c) * * *
(6) * * *
(ii) Special rules.

* * * * *

(B) Foreign partnerships.
(C) Foreign simple trusts and foreign grantor trusts.
(D) Other foreign trusts and foreign estates.

* * * * *

(12) Payee.
(13) Intermediary.
(14) Nonqualified intermediary.
(15) Qualified intermediary.
(16) Withholding certificate.
(17) Documentary evidence; other appropriate documentation.
(18) Documentation.
(19) Payor.
(20) Exempt recipient.
(21) Non-exempt recipient.
(22) Reportable amounts.
(23) Flow-through entity.
(24) Foreign simple trust.
(25) Foreign complex trust.
(26) Foreign grantor trust.
(27) Partnership.
(28) Nonwithholding foreign partnership.
(29) Withholding foreign partnership.
(d) * * *
(4) When a payment to an intermediary or flow-through entity may be treated as made to a U.S. payee.
(e) * * *
(3) * * *
(iii) Intermediary withholding certificate from a nonqualified intermediary.
(iv) Withholding statement provided by nonqualified Intermediary.
(A) In general.
(B) General requirements.
(C) Content of withholding statement.
(D) Alternative procedures.
(E) Notice procedures.

* * * * *

(4) * * *
(iv) * * *
(A) In general.
(B) Requirements.
(C) Special requirements for transmission of Forms W–8 by an intermediary. [Reserved]

* * * * *

(5) * * *
(v) Withholding statement.

* * * * *

(B) Content of withholding statement.
(C) Withholding rate pools.

* * * * *

**§ 1.1441–2 Amounts subject to withholding.**

* * * * *

(b) * * *
(3) * * *
(i) Amount subject to tax.
(ii) Amounts subject to withholding.

* * * * *

**§ 1.1441–5 Withholding on payments to partnerships trusts, and estates.**

(a) In general.
(b) Rules applicable to U.S. partnerships, trusts, and estates.
(1) Payments to U.S. partnerships, trusts, and estates.
(2) Withholding by U.S. payees.
(i) U.S. partnerships.
(A) In general.
(B) Effectively connected income of partners.
(ii) U.S. simple trusts.
(iii) U.S. complex trusts and U.S. estates.
(iv) U.S. grantor trusts.
(v) Subsequent distribution.
(c) * * *
(1) * * *
(iv) Examples.

* * * * *

(3) Nonwithholding foreign partnerships.

* * * * *

(iii) Withholding certificate from a nonwithholding foreign partnership.

(iv) Withholding statement provided by nonwithholding foreign partnership.
(v) Withholding and reporting by a foreign partnership.
(d) Presumption rules.
* * * * *
(4) Determination by a withholding foreign partnership of the status of its partners.
(e) Foreign trusts and estates.
(1) In general.
(2) Payments to foreign complex trusts and estates.
(3) Payees of payments to foreign simple trusts and foreign grantor trusts.
(i) Payments for which beneficiaries and owners are payees.
(ii) Payments for which trust is payee.
(4) Reliance on claim of foreign complex trust or foreign estate status.
(5) Foreign simple trust and foreign grantor trust.
(i) Reliance on claim of foreign simple trust or foreign grantor trust status.
(ii) Reliance on claim of reduced withholding by a foreign simple trust or foreign grantor trust for its beneficiaries or owners.
(iii) Withholding certificate from foreign simple trust or foreign grantor trust.
(iv) Withholding statement provided by foreign simple trust or foreign grantor trust.
(v) Withholding foreign trusts.
(6) Presumption rules.
(i) In general.
(ii) Determination of status as U.S. or foreign trust or estate in the absence of documentation.
(iii) Determination of beneficiary or owner's status in the absence of certain documentation.
* * * * *

**§ 1.1441–6 Claim of reduced withholding under an income tax treaty.**

* * * * *
(b) * * *
(2) Payment to fiscally transparent entity.
(i) In general.
(ii) Certification by qualified intermediary.
(iii) Dual treatment.
(iv) Examples.
(3) Certified TIN.
(4) Claim of benefits under an income tax treaty by a U.S. person.
(c) Exemption from requirement to furnish a taxpayer identifying number and special documentary evidence rules for certain income.
* * * * *
(2) Income to which special rules apply.
* * * * *
(5) Statements regarding entitlement to treaty benefits.
(i) Statement regarding conditions under a limitation on benefits provision.
(ii) Statement regarding whether the taxpayer derives the income.
* * * * *
(e) Competent authority.
* * * * *

**§ 1.1441–7 General provisions relating to withholding agents.**

(a) * * *
(1) In general.
(2) Examples.
(b) * * *
(3) Financial institutions—limits on reason to know.
(4) Rules applicable to withholding certificates.
(i) In general.
(ii) Examples.
(5) Withholding certificate—establishment of foreign status.
(6) Withholding certificate—claim of reduced rate of withholding under treaty.
(7) Documentary evidence.
(8) Documentary evidence—establishment of foreign status.
(9) Documentary evidence—claim of reduced rate of withholding under treaty.
(10) Limits on reason to know—indirect account holders.
(11) Additional guidance.
* * * * *

**Par. 3.** Effective January 1, 2001, section 1.1441–1 is amended by:
1. Revising the first sentence of paragraph (b)(2)(i).
2. Revising paragraphs (b)(2)(iv)(A), (b)(2)(iv)(B)(*3*), and (b)(2)(iv)(C).
3. Revising paragraphs (b)(2)(v)(A) and (b)(2)(v)(B).
4. Revising paragraph (b)(2)(vii).
5. Revising the first sentence of paragraph (b)(3)(i).
6. Revising paragraph (b)(3)(ii).
7. Revising paragraphs (b)(3)(iii)(C) and (b)(3)(iii)(D).
8. Revising paragraph (b)(3)(iv).
9. Revising paragraph (b)(3)(v).
10. Revising paragraphs (b)(3)(vi) and (b)(3)(vii).
11. Revising paragraph (b)(6).
12. Revising paragraph (c)(2).
13. Revising paragraph (c)(6).
14. Adding paragraphs (c)(12) through (c)(29).
15. Revising paragraphs (d)(2) through (d) (4).
16. Revising paragraphs (e)(1)(ii)(A)(*1*), (e)(1)(ii)(A)(*3*), and (e)(1)(ii)(A)(*4*).
17. Revising paragraph (e)(3).
18. Revising paragraph (e)(4)(ii)(A).
19. Revising paragraphs (e)(4)(ii)(B)(*1*) through (e)(4)(ii)(B)(*4*) and (e)(4)(ii)(B)(*6*), and adding paragraph (e)(4)(ii)(B)(*8*).
20. Revising paragraph (e)(4)(iv).
21. Revising paragraph (e)(4)(vii).
22. Adding paragraph (e)(4)(ix)(A)(*4*) and revising paragraph (e)(4)(ix)(C).
23. Revising paragraph (e)(5)(i) and (e)(5)(iii) through (e)(5)(v).

The additions and revisions read as follows:

**§ 1.1441–1 Requirement for the deduction and withholding of tax on payments to foreign persons.**

* * * * *
(b) * * *
(2) *Determination of payee and payee's status*—(i) *In general.* Except as otherwise provided in this paragraph (b)(2) and § 1.1441–5(c)(1) and (e)(3), a payee is the person to whom a payment is made, regardless of whether such person is the beneficial owner of the amount (as defined in paragraph (c)(6) of this section). * * *
* * * * *
(iv) *Payments to a U.S. branch of certain foreign banks or foreign insurance companies*—(A) *U.S. branch treated as a U.S. person in certain cases.* A payment to a U.S. branch of a foreign person is a payment to a foreign person. However, a U.S. branch described in this paragraph (b)(2)(iv)(A) and a withholding agent (including another U.S. branch described in this paragraph (b)(2)(iv)(A)) may agree to treat the branch as a U.S. person for purposes of withholding on specified payments to the U.S. branch. Notwithstanding the preceding sentence, a withholding agent making a payment to a U.S. branch treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not treat the branch as a U.S. person for purposes of reporting the payment made to the branch. Therefore, a payment to such U.S. branch shall be reported on Form 1042–S under § 1.1461–1(c). Further, a U.S. branch that is treated as a U.S. person under this paragraph (b)(2)(iv)(A) shall not be treated as a U.S. person for purposes of the withholding certificate it may provide to a withholding agent. Therefore, the U.S. branch must furnish a U.S. branch withholding certificate on Form W–8 as provided in paragraph (e)(3)(v) of this section and not a Form W–9. An agreement to treat a U.S. branch as a U.S. person must be evidenced by a U.S. branch withholding certificate described in paragraph (e)(3)(v) of this section furnished by the U.S. branch to the withholding agent. A U.S. branch described in this paragraph (b)(2)(iv)(A) is any U.S. branch of a foreign bank subject to regulatory supervision by the Federal Reserve Board or a U.S. branch of a foreign insurance company required to file an annual statement on a form approved by the National Association of Insurance Commissioners with the Insurance Department of a State, a Territory, or the District of Columbia. The Internal Revenue Service (IRS) may approve a list of U.S. branches that may qualify for treatment as a U.S. person under this paragraph (b)(2)(iv)(A) (see § 601.601(d)(2) of this chapter). See § 1.6049–5(c)(5)(vi) for the treatment of U.S. branches as U.S. payors if they make a payment that is subject to reporting under chapter 61 of the Internal Revenue Code. Also see § 1.6049–5(d)(1)(ii) for the treatment of

U.S. branches as foreign payees under chapter 61 of the Internal Revenue Code.

(B) * * *

(*3*) As a payment to a foreign person of income that is effectively connected with the conduct of a trade or business in the United States if the withholding agent cannot reliably associate the payment with a withholding certificate from the U.S. branch or any other certificate or other appropriate documentation from another person. See § 1.1441–4(a)(2)(ii).

(C) *Consequences to the U.S. branch.* A U.S. branch that is treated as a U.S. person under paragraph (b)(2)(iv)(A) of this section shall be treated as a separate person solely for purposes of section 1441(a) and all other provisions of chapter 3 of the Internal Revenue Code and the regulations thereunder (other than for purposes of reporting the payment to the U.S. branch under § 1.1461–1(c) or for purposes of the documentation such a branch must furnish under paragraph (e)(3)(v) of this section) for any payment that it receives as such. Thus, the U.S. branch shall be responsible for withholding on the payment in accordance with the provisions under chapter 3 of the Internal Revenue Code and the regulations thereunder and other applicable withholding provisions of the Internal Revenue Code. For this purpose, it shall obtain and retain documentation from payees or beneficial owners of the payments that it receives as a U.S. person in the same manner as if it were a separate entity. For example, if a U.S. branch receives a payment on behalf of its home office and the home office is a qualified intermediary, the U.S. branch must obtain a qualified intermediary withholding certificate described in paragraph (e)(3)(ii) of this section from its home office. In addition, a U.S. branch that has not provided documentation to the withholding agent for a payment that is, in fact, not effectively connected income is a withholding agent with respect to that payment. See paragraph (b)(6) of this section and § 1.1441–4(a)(2)(ii).

* * * * *

(v) *Payments to a foreign intermediary*—(A) *Payments treated as made to persons for whom the intermediary collects the payment.* Except as otherwise provided in paragraph (b)(2)(v)(B) of this section, the payee of a payment to a person that the withholding agent may treat as a foreign intermediary in accordance with the provisions of paragraph (b)(3)(ii)(C) or (b)(3)(v)(A) of this section is the person or persons for whom the intermediary collects the payment. Thus, for example, the payee of a payment that the withholding agent can reliably associate with a withholding certificate from a qualified intermediary (defined in paragraph (e)(5)(ii) of this section) that does not assume primary withholding responsibility or a payment to a nonqualified intermediary are the persons for whom the qualified intermediary or nonqualified intermediary acts and not to the intermediary itself. See paragraph (b)(3)(v) of this section for presumptions that apply if the payment cannot be reliably associated with valid documentation. For similar rules for payments to flow-through entities, see § 1.1441–5(c)(1) and (e)(3).

(B) *Payments treated as made to foreign intermediary.* The payee of a payment to a person that the withholding agent may treat as a qualified intermediary is the qualified intermediary to the extent that the qualified intermediary assumes primary withholding responsibility under paragraph (e)(5)(iv) of this section for the payment. For example if a qualified intermediary assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code but does not assume primary reporting or withholding responsibility under chapter 61 or section 3406 of the Internal Revenue Code and therefore provides Forms W–9 for U.S. non-exempt recipients, the qualified intermediary is the payee except to the extent the payment is reliably associated with a Form W–9 from a U.S. non-exempt recipient.

* * * * *

(vii) *Rules for reliably associating a payment with a withholding certificate or other appropriate documentation*—(A) *Generally.* The presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d) apply to any payment, or portion of a payment, that a withholding agent cannot reliably associate with valid documentation. Generally, a withholding agent can reliably associate a payment with valid documentation if, prior to the payment, it holds valid documentation (either directly or through an agent), it can reliably determine how much of the payment relates to the valid documentation, and it has no actual knowledge or reason to know that any of the information, certifications, or statements in, or associated with, the documentation are incorrect. Special rules apply for payments made to intermediaries, flow-through entities, and certain U.S. branches. See paragraph (b)(2)(vii)(B) through (F) of this section. The documentation referred to in this paragraph (b)(2)(vii) is documentation described in paragraphs (c)(16) and (17) of this section upon which a withholding agent may rely to treat the payment as a payment made to a payee or beneficial owner, and to ascertain the characteristics of the payee or beneficial owner that are relevant to withholding or reporting under chapter 3 of the Internal Revenue Code and the regulations thereunder. For purposes of this paragraph (b)(2)(vii), documentation also includes the agreement that the withholding agent has in effect with an authorized foreign agent in accordance with § 1.1441–7(c)(2)(i). A withholding agent that is not required to obtain documentation with respect to a payment is considered to lack documentation for purposes of this paragraph (b)(2)(vii). For example, a withholding agent paying U.S. source interest to a person that is an exempt recipient, as defined in § 1.6049–4(c)(1)(ii), is not required to obtain documentation from that person in order to determine whether an amount paid to that person is reportable under an applicable information reporting provision under chapter 61 of the Internal Revenue Code. The withholding agent must, however, treat the payment as made to an undocumented person for purposes of chapter 3 of the Internal Revenue Code. Therefore, the presumption rules of paragraph (b)(3)(iii) of this section apply to determine whether the person is presumed to be a U.S. person (in which case, no withholding is required under this section), or whether the person is presumed to be a foreign person (in which case 30-percent withholding is required under this section). See paragraph (b)(3)(v) of this section for special reliance rules in the case of a payment to a foreign intermediary and § 1.1441–5(d) and (e)(6) for special reliance rules in the case of a payment to a flow-through entity.

(B) *Special rules applicable to a withholding certificate from a nonqualified intermediary or flow-through entity.* (*1*) In the case of a payment made to a nonqualified intermediary, a flow-through entity (as defined in paragraph (c)(23) of this section), and a U.S. branch described in paragraph (b)(2)(iv) of this section (other than a branch that is treated as a U.S. person), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent can allocate the

payment to a valid nonqualified intermediary, flow-through, or U.S. branch withholding certificate; the withholding agent can reliably determine how much of the payment relates to valid documentation provided by a payee as determined under paragraph (c)(12) of this section (i.e., a person that is not itself an intermediary, flow-through entity, or U.S. branch); and the withholding agent has sufficient information to report the payment on Form 1042–S or Form 1099, if reporting is required. See paragraph (e)(3)(iii) of this section for the requirements of a nonqualified intermediary withholding certificate, paragraph (e)(3)(v) of this section for the requirements of a U.S. branch certificate, and §§ 1.1441–5(c)(3)(iii) and (e)(5)(iii) for the requirements of a flow-through withholding certificate. Thus, a payment cannot be reliably associated with valid documentation provided by a payee to the extent such documentation is lacking or unreliable, or to the extent that information required to allocate and report all or a portion of the payment to each payee is lacking or unreliable. If a withholding certificate attached to an intermediary, U.S. branch, or flow-through withholding certificate is another intermediary, U.S. branch, or flow-through withholding certificate, the rules of this paragraph (b)(2)(vii)(B) apply by treating the share of the payment allocable to the other intermediary, U.S. branch, or flow-through entity as if the payment were made directly to such other entity. See paragraph (e)(3)(iv)(D) of this section for rules permitting information allocating a payment to documentation to be received after the payment is made.

(*2*) The rules of paragraph (b)(2)(vii)(B)(*1*) of this section are illustrated by the following examples:

*Example 1.* WH, a withholding agent, makes a payment of U.S. source interest to NQI, an intermediary that is a nonqualified intermediary. NQI provides a valid intermediary withholding certificate under paragraph (e)(3)(iii) of this section. NQI does not, however, provide valid documentation from the persons on whose behalf it receives the interest payment, and, therefore, the interest payment cannot be reliably associated with valid documentation provided by a payee. WH must apply the presumption rules of paragraph (b)(3)(v) of this section to the payment.

*Example 2.* The facts are the same as in *Example 1*, except that NQI does attach valid beneficial owner withholding certificates (as defined in paragraph (e)(2)(i) of this section) from A, B, C, and D establishing their status as foreign persons. NQI does not, however, provide WH with any information allocating the payment among A, B, C, and D and, therefore, WH cannot determine the portion of the payment that relates to each beneficial owner withholding certificate. The interest payment cannot be reliably associated with valid documentation from a payee and WH must apply the presumption rules of paragraph (b)(3)(v) of this section to the payment. See, however, paragraph (e)(3)(iv)(D) of this section providing special rules permitting allocation information to be received after a payment is made.

*Example 3.* The facts are the same as in Example 2, except that NQI does provide allocation information associated with its intermediary withholding certificate indicating that 25 percent of the interest payment is allocable to A and 25 percent to B. NQI does not provide any allocation information regarding the remaining 50 percent of the payment. WH may treat 25 percent of the payment as made to A and 25 percent as made to B. The remaining 50 percent of the payment cannot be reliably associated with valid documentation from a payee, however, since NQI did not provide information allocating the payment. Thus, the remaining 50 percent of the payment is subject to the presumption rules of paragraph (b)(3)(v) of this section.

*Example 4.* WH makes a payment of U.S. source interest to NQI1, an intermediary that is not a qualified intermediary. NQI1 provides WH with a valid nonqualified intermediary withholding certificate as well a valid beneficial owner withholding certificates from A and B and a valid nonqualified intermediary withholding certificate from NQI2. NQI2 has provided valid beneficial owner documentation from C sufficient to establish C's status as a foreign person. Based on information provided by NQI1, WH can allocate 20 percent of the interest payment to A, and 20 percent to B. Based on information that NQI2 provided NQI1 and that NQI1 provides to WH, WH can allocate 60 percent of the payment to NQI 2, but can only allocate one half of that payment (30 percent) to C. Therefore, WH cannot reliably associate 30 percent of the payment made to NQI2 with valid documentation and must apply the presumption rules of paragraph (b)(3)(v) of this section to that portion of the payment.

(C) *Special rules applicable to a withholding certificate provided by a qualified intermediary that does not assume primary withholding responsibility.* (*1*) If a payment is made to a qualified intermediary that does not assume primary withholding responsibility under chapter 3 of the Internal Revenue Code or primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Internal Revenue Code for the payment, a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate and the withholding agent can reliably determine the portion of the payment that relates to a withholding rate pool, as defined in paragraph (e)(5)(v)(C) of this section. In the case of a withholding rate pool attributable to a U.S. non-exempt recipient, a payment cannot be reliably associated with valid documentation unless, prior to the payment, the qualified intermediary has provided the U.S. person's Form W–9 (or, in the absence of the form, the name, address, and TIN, if available, of the U.S. person) and sufficient information for the withholding agent to report the payment on Form 1099. See paragraph (e)(5)(v)(C)(*2*) of this section for special rules regarding allocation of payments among U.S. non-exempt recipients.

(*2*) The rules of this paragraph (b)(2)(vii)(C) are illustrated by the following examples:

*Example 1.* WH, a withholding agent, makes a payment of U.S. source dividends to QI. QI provides WH with a valid qualified intermediary withholding certificate on which it indicates that it does not assume primary withholding responsibility under chapter 3 of the Internal Revenue Code or primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Internal Revenue Code. QI does not provide any information allocating the dividend to withholding rate pools. WH cannot reliably associate the payment with valid payee documentation and therefore must apply the presumption rules of paragraph (b)(3)(v) of this section.

*Example 2.* WH makes a payment of U.S. source dividends to QI. QI has 5 customers: A, B, C, D, and E. QI has obtained documentation from A and B establishing their entitlement to a 15 percent rate of tax on U.S. source dividends under an income tax treaty. C is a U.S. person that is an exempt recipient as defined in paragraph (c)(20) of this section. D and E are U.S. non-exempt recipients who have provided Forms W–9 to QI. A, B, C, D, and E are each entitled to 20 percent of the dividend payment. QI provides WH with a valid qualified intermediary withholding certificate as described in paragraph (e)(2)(ii) of this section with which it associates the Forms W–9 from D and E. QI associates the following allocation information with its qualified intermediary withholding certificate: 40 percent of the payment is allocable to the 15 percent withholding rate pool, and 20 percent is allocable to each of D and E. QI does not provide any allocation information regarding the remaining 20 percent of the payment. WH cannot reliably associate 20 percent of the payment with valid documentation and, therefore, must apply the presumption rules of paragraph (b)(3)(v) of this section to that portion of the payment. The 20 percent of the payment allocable to the 15 percent withholding rate pool, and the portion of the payments allocable to D and E are payments that can be reliably associated with documentation.

(D) *Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 of the Internal Revenue*

*Code.* (*1*) In the case of a payment made to a qualified intermediary that assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code with respect to that payment (but does not assume primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Internal Revenue Code), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate and the withholding agent can reliably determine the portion of the payment that relates to the withholding rate pool for which the qualified intermediary assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code and the portion of the payment attributable to withholding rate pools for each U.S. non-exempt recipient for whom the qualified intermediary has provided a Form W–9 (or, in absence of the form, the name, address, and TIN, if available, of the U.S. non-exempt recipient). See paragraph (e)(5)(v)(C)(*2*) of this section for alternative allocation procedures for payments made to U.S. persons that are not exempt recipients.

(*2*) *Examples.* The following examples illustrate the rules of paragraph (b)(2)(vii)(D)(*1*) of this section:

*Example 1.* WH makes a payment of U.S. source interest to QI, a qualified intermediary. QI provides WH with a withholding certificate that indicates that QI will assume primary withholding responsibility under chapter 3 of the Internal Revenue Code with respect to the payment. In addition, QI attaches a Form W–9 from A, a U.S. non-exempt recipient, as defined in paragraph (c)(21) of this section, and provides the name, address, and TIN of B, a U.S. person that is also a non-exempt recipient but who has not provided a Form W–9. QI associates a withholding statement with its qualified intermediary withholding certificate indicating that 10 percent of the payment is attributable to A, and 10 percent to B, and that QI will assume primary withholding responsibility with respect to the remaining 80 percent of the payment. WH can reliably associate the entire payment with valid documentation. Although under the presumption rule of paragraph (b)(3)(v) of this section, an undocumented person receiving U.S. source interest is generally presumed to be a foreign person, WH has actual knowledge that B is a U.S. non-exempt recipient and therefore must report the payment on Form 1099 and backup withhold on the interest payment under section 3406.

*Example 2.* The facts are the same as in *Example 1*, except that no Forms W–9 or other information have been provided for the 20 percent of the payment that is allocable to A and B. Thus, QI has accepted withholding responsibility for 80 percent of the payment, but has provided no information for the remaining 20 percent. In this case, 20 percent of the payment cannot be reliably associated with valid documentation, and WH must apply the presumption rule of paragraph (b)(3)(v) of this section.

(E) *Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility but not primary withholding under chapter 3.* (*1*) If a payment is made to a qualified intermediary that assumes primary Form 1099 reporting and backup withholding responsibility for the payment (but does not assume primary withholding responsibility under chapter 3 of the Internal Revenue Code), a withholding agent can reliably associate the payment with valid documentation only to the extent that, prior to the payment, the withholding agent has received a valid qualified intermediary withholding certificate and the withholding agent can reliably determine the portion of the payment that relates to a withholding rate pool or pools provided as part of the qualified intermediary's withholding statement and the portion of the payment for which the qualified intermediary assumes primary Form 1099 reporting and backup withholding responsibility.

(*2*) The following example illustrates the rules of paragraph (b)(2)((vii)(D)(*1*) of this section:

*Example.* WH makes a payment of U.S. source dividends to QI, a qualified intermediary. QI has provided WH with a valid qualified intermediary withholding certificate. QI states on its withholding statement accompanying the certificate that it assumes primary Form 1099 reporting and backup withholding responsibility but does not assume primary withholding responsibility under chapter 3 of the Internal Revenue Code. QI represents that 15 percent of the dividend is subject to a 30 percent rate of withholding, 75 percent of the dividend is subject to a 15 percent rate of withholding, and that QI assumed primary Form 1099 reporting and backup withholding for the remaining 10 percent of the payment. The entire payment can be reliably associated with valid documentation.

(F) *Special rules applicable to a withholding certificate provided by a qualified intermediary that assumes primary withholding responsibility under chapter 3 and primary Form 1099 reporting and backup withholding responsibility and a withholding certificate provided by a withholding foreign partnership.* If a payment is made to a qualified intermediary that assumes both primary withholding responsibility under chapter 3 of the Internal Revenue Code and primary Form 1099 reporting and backup withholding responsibility under chapter 61 and section 3406 of the Internal Revenue Code for the payment, a withholding agent can reliably associate a payment with valid documentation provided that it receives a valid qualified intermediary withholding certificate as described in paragraph (e)(3)(ii) of this section. In the case of a payment made to a withholding foreign partnership, the withholding agent can reliably associate the payment with valid documentation to the extent it can associate the payment with a valid withholding certificate described in § 1.1441–5(c)(2)(iv).

(3) *Presumptions regarding payee's status in the absence of documentation*—(i) *General rules.* A withholding agent that cannot, prior to the payment, reliably associate (within the meaning of paragraph (b)(2)(vii) of this section) a payment of an amount subject to withholding (as described in § 1.1441–2(a)) with valid documentation may rely on the presumptions of this paragraph (b)(3) to determine the status of the payee as a U.S. or a foreign person and the payee's other relevant characteristics (e.g., as an owner or intermediary, as an individual, trust, partnership, or corporation). * * *

(ii) *Presumptions of classification as individual, corporation, partnership, etc.* (A) *In general.* A withholding agent that cannot reliably associate a payment with a valid withholding certificate or that has received valid documentary evidence under §§ 1.1441–1(e)(1)(ii)(*2*) and 1.6049–5(c)(1) or (4) but cannot determine a payee's classification from the documentary evidence must apply the rules of this paragraph (b)(3)(ii) to determine the payee's classification as an individual, trust, estate, corporation, or partnership. The fact that a payee is presumed to have a certain status under the provisions of this paragraph (b)(3)(ii) does not mean that it is excused from furnishing documentation if documentation is otherwise required to obtain a reduced rate of withholding under this section. For example, if, for purposes of this paragraph (b)(3)(ii), a payee is presumed to be a tax-exempt organization based on § 1.6049–4(c)(1)(ii)(B), the withholding agent cannot rely on this presumption to reduce the rate of withholding on payments to such person (if such person is also presumed to be a foreign person under paragraph (b)(3)(iii)(A) of this section) because a reduction in the rate of withholding for payments to a foreign tax-exempt organization generally requires that a valid Form W–8

described in § 1.1441–9(b)(2) be furnished to the withholding agent.

(B) *No documentation provided.* If the withholding agent cannot reliably associate a payment with a valid withholding certificate or valid documentary evidence, it must presume that the payee is an individual, a trust, or an estate, if the payee appears to be such person (e.g., based on the payee's name or other indications). In the absence of reliable indications that the payee is an individual, trust, or an estate, the withholding agent must presume that the payee is a corporation or one of the persons enumerated under § 1.6049–4(c)(1)(ii)(B) through (Q) if it can be so treated under § 1.6049–4(c)(1)(ii)(A)(*1*) or any one of the paragraphs under § 1.6049–4(c)(1)(ii)(B) through (Q) without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in § 1.6049–4(c)(1)(ii)(A)(*1*) through (Q), then the payee shall be presumed to be a partnership. If such a partnership is presumed to be foreign, it is not the beneficial owner of the income paid to it. See paragraph (c)(6) of this section. If such a partnership is presumed to be domestic, it is a U.S. non-exempt recipient for purposes of chapter 61 of the Internal Revenue Code.

(C) *Documentary evidence furnished for offshore account.* If the withholding agent receives valid documentary evidence, as described in § 1.6049–5(c)(1) or (4), with respect to an offshore account from an entity but the documentary evidence does not establish the entity's classification as a corporation, trust, estate, or partnership, the withholding agent may presume (in the absence of actual knowledge otherwise) that the entity is the type of person enumerated under § 1.6049–4(c)(1)(ii)(B) through (Q) if it can be so treated under any one of those paragraphs without the need to furnish documentation. If the withholding agent cannot treat a payee as a person described in § 1.6049–4(c)(1)(ii)(B) through (Q), then the payee shall be presumed to be a corporation unless the withholding agent knows, or has reason to know, that the entity is not classified as a corporation for U.S. tax purposes, the withholding agent is required to presume the payee is a U.S. person under paragraph (b)(3)(iii) of this section, or there are indicia of U.S. status. If the withholding agent must presume the payee is a U.S. person, or there are indicia of U.S. status, the withholding agent shall treat the entity as a partnership, and therefore as a U.S. non-exempt recipient for purposes of chapter 61 of the Internal Revenue Code; however backup withholding under section 3406 shall not apply if backup withholding is not required under § 31.3406(g)–1(e) of this chapter. Indicia of U.S. status exists if payments are regularly made to a payee in the United States, the payee has an account with the same withholding agent in the United States, or the payee has a U.S. address. If a payee is, or is presumed to be, a corporation under this paragraph (b)(3)(ii)(C) and a foreign person under paragraph (b)(3)(iii) of this section, a withholding agent shall not treat the payee as the beneficial owner of income if the withholding agent knows, or has reason to know, that the payee is not the beneficial owner of the income. For this purpose, a withholding agent shall have reason to know that the payee is not a beneficial owner if the documentary evidence indicates that the payee is a bank, broker, intermediary, custodian, or other agent, or is treated under § 1.6049–4(c)(1)(ii)(B) through (Q) as such a person. A withholding agent may, however, treat such a person as a beneficial owner if the foreign person provides a statement, in writing and signed by a person with authority to sign the statement, that is attached to the documentary evidence stating it is the beneficial owner of the income.

(iii) * * *

(C) *Pensions, annuities, etc.* A payment from a trust described in section 401(a), an annuity plan described in section 403(a), a payment with respect to any annuity, custodial account, or retirement income account described in section 403(b), or a payment from an individual retirement account or individual retirement annuity described in section 408 that a withholding agent cannot reliably associate with documentation is presumed to be made to a U.S. person only if the withholding agent has a record of a Social Security number for the payee and relies on a mailing address described in the following sentence. A mailing address is an address used for purposes of information reporting or otherwise communicating with the payee that is an address in the United States or in a foreign country with which the United States has an income tax treaty in effect and the treaty provides that the payee, if an individual resident in that country, would be entitled to an exemption from U.S. tax on amounts described in this paragraph (b)(3)(iii)(C). Any payment described in this paragraph (b)(3)(iii)(C) that is not presumed to be made to a U.S. person is presumed to be made to a foreign person. A withholding agent making a payment to a person presumed to be a foreign person may not reduce the 30-percent amount of withholding required on such payment unless it receives a withholding certificate described in paragraph (e)(2)(i) of this section furnished by the beneficial owner. For reduction in the 30-percent rate, see §§ 1.1441–4(e) or 1.1441–6(b).

(D) *Certain payments to offshore accounts.* A payment is presumed made to a foreign payee if the payment is made outside the United States (as defined in § 1.6049–5(e)) to an offshore account (as defined in § 1.6049–5(c)(1)) and the withholding agent does not have actual knowledge that the payee is a U.S. person. See § 1.6049–5(d)(2) and (3) for exceptions to this rule.

(iv) *Grace period.* A withholding agent may choose to apply the provisions of § 1.6049–5(d)(2)(ii) regarding a 90-day grace period for purposes of this paragraph (b)(3) (by applying the term *withholding agent* instead of the term *payor*) to amounts described in § 1.1441–6(c)(2) and to amounts covered by a Form 8233 described in § 1.1441–4(b)(2)(ii). Thus, for these amounts, a withholding agent may choose to treat an account holder as a foreign person and withhold under chapter 3 of the Internal Revenue Code (and the regulations thereunder) while awaiting documentation. For purposes of determining the rate of withholding under this section, the withholding agent must withhold at the unreduced 30-percent rate at the time that the amounts are credited to an account. However, a withholding agent who can reliably associate the payment with a withholding certificate that is otherwise valid within the meaning of the applicable provisions except for the fact that it is transmitted by facsimile may rely on that facsimile form for purposes of withholding at the claimed reduced rate. For reporting of amounts credited both before and after the grace period, see § 1.1461–1(c)(4)(i)(A). The following adjustments shall be made at the expiration of the grace period:

(A) If, at the end of the grace period, the documentation is not furnished in the manner required under this section and the account holder is presumed to be a U.S. non-exempt recipient, then backup withholding applies to amounts credited to the account after the expiration of the grace period only. Amounts credited to the account during the grace period shall be treated as owned by a foreign payee and adjustments must be made to correct any underwithholding on such amounts in the manner described in § 1.1461–2.

(B) If, at the end of the grace period, the documentation is not furnished in the manner required under this section, or if documentation is furnished that

does not support the claimed rate reduction, and the account holder is presumed to be a foreign person then adjustments must be made to correct any underwithholding on amounts credited to the account during the grace period, based on the adjustment procedures described in § 1.1461–2.

(v) *Special rules applicable to payments to foreign intermediaries*—(A) *Reliance on claim of status as foreign intermediary.* The presumption rules of paragraph (b)(3)(v)(B) of this section apply to a payment made to an intermediary (whether the intermediary is a qualified or nonqualified intermediary) that has provided a valid withholding certificate under paragraph (e)(3)(ii) or (iii) of this section (or has provided documentary evidence described in paragraph (b)(3)(ii)(C) of this section that indicates it is a bank, broker, custodian, intermediary, or other agent) to the extent the withholding agent cannot treat the payment as being reliably associated with valid documentation under the rules of paragraph (b)(2)(vii) of this section. For this purpose, a U.S. person's foreign branch that is a qualified intermediary defined in paragraph (e)(5)(ii) of this section shall be treated as a foreign intermediary. A payee that the withholding agent may not reliably treat as a foreign intermediary under this paragraph (b)(3)(v)(A) is presumed to be a payee other than an intermediary whose classification as an individual, corporation, partnership, etc., must be determined in accordance with paragraph (b)(3)(ii) of this section to the extent relevant. In addition, such payee is presumed to be a U.S. or a foreign payee based upon the presumptions described in paragraph (b)(3)(iii) of this section. The provisions of paragraph (b)(3)(v)(B) of this section are not relevant to a withholding agent that can reliably associate a payment with a withholding certificate from a person representing to be a qualified intermediary to the extent the qualified intermediary has assumed primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section.

(B) *Beneficial owner documentation or allocation information is lacking or unreliable.* Any portion of a payment that the withholding agent may treat as made to a foreign intermediary (whether a nonqualified or a qualified intermediary) but that the withholding agent cannot treat as reliably associated with valid documentation under the rules of paragraph (b)(2)(vii) of this section is presumed made to an unknown, undocumented foreign payee. As a result, a withholding agent must deduct and withhold 30 percent from any payment of an amount subject to withholding. If a withholding certificate attached to an intermediary certificate is another intermediary withholding certificate or a flow-through withholding certificate, the rules of this paragraph (b)(3)(v)(B) (or § 1.1441–5(d)(3) or (e)(6)(iii)) apply by treating the share of the payment allocable to the other intermediary or flow-through entity as if it were made directly to the other intermediary or flow-through entity. Any payment of an amount subject to withholding that is presumed made to an undocumented foreign person must be reported on Form 1042–S. See § 1.1461–1(c). See § 1.6049–5(d) for payments that are not subject to withholding.

(vi) *U.S. branches.* The rules of paragraph (b)(3)(v)(B) of this section shall apply to payments to a U.S. branch described in paragraph (b)(2)(iv)(A) of this section that has not agreed to be treated as a U.S. person.

(vii) *Joint payees*—(A) *In general.* Except as provided in paragraph (b)(3)(vii)(B) of this section, if a withholding agent makes a payment to joint payees and cannot reliably associate a payment with valid documentation from all payees, the payment is presumed made to an unidentified U.S. person. However, if one of the joint payees provides a Form W–9 furnished in accordance with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter, the payment shall be treated as made to that payee. See § 31.3406(h)–2 of this chapter for rules to determine the relevant payee if more than one Form W–9 is provided. For purposes of applying this paragraph (b)(3), the grace period rules in paragraph (b)(3)(iv) of this section shall apply only if each payee meets the conditions described in paragraph (b)(3)(iv) of this section.

(B) *Special rule for offshore accounts.* If a withholding agent makes a payment to joint payees and cannot reliably associate a payment with valid documentation from all payees, the payment is presumed made to an unknown foreign payee if the payment is made outside the United States (as defined in § 1.6059–5(e)) to an offshore account (as defined in § 1.6049–5(c)(1)).

* * * * *

(6) *Rules of withholding for payments by a foreign intermediary or certain U.S. branches*—(i) *In general.* A foreign intermediary described in paragraph (e)(3)(i) of this section or a U.S. branch described in paragraph (b)(2)(iv) of this section that receives an amount subject to withholding (as defined in § 1.1441–2(a)) shall be required to withhold (if another withholding agent has not withheld the full amount required) and report such payment under chapter 3 of the Internal Revenue Code and the regulations thereunder except as otherwise provided in this paragraph (b)(6). A nonqualified intermediary or U.S. branch described in paragraph (b)(2)(iv) of this section (other than a branch that is treated as a U.S. person) shall not be required to withhold or report if it has provided a valid nonqualified intermediary withholding certificate or a U.S. branch withholding certificate, it has provided all of the information required by paragraph (e)(3)(iv) of this section (withholding statement), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1461–1(c). A qualified intermediary's obligations to withhold and report shall be determined in accordance with its qualified intermediary withholding agreement.

(ii) *Examples.* The following examples illustrate the rules of paragraph (b)(6)(i) of this section:

*Example 1.* FB, a foreign bank, acts as intermediary for five different persons, A, B, C, D, and E, each of whom owns U.S. securities that generate U.S. source dividends. The dividends are paid by USWA, a U.S. withholding agent. FB furnished USWA with a nonqualified intermediary withholding certificate, described in paragraph (e)(3)(iii) of this section, to which it attached the withholding certificates of each of A, B, C, D, and E. The withholding certificates from A and B claim a 15 percent reduced rate of withholding under an income tax treaty. C, D, and E claim no reduced rate of withholding. FB provides a withholding statement that meets all of the requirements of paragraph (e)(3)(iv) of this section, including information allocating 20 percent of each dividend payment to each of A, B, C, D, and E. FB does not have actual knowledge or reason to know that USWA did not withhold the correct amounts or report the dividends on Forms 1042–S to each of A, B, C, D, and E. FB is not required to withhold or to report the dividends to A, B, C, D, and E.

*Example 2.* The facts are the same as in *Example 1*, except that FB did not provide any information for USWA to determine how much of the dividend payments were made to A, B, C, D, and E. Because USWA could not reliably associate the dividend payments with documentation under paragraph (b)(2)(vii) of this section, USWA applied the presumption rules of paragraph (b)(3)(v) of this section and withheld 30 percent from all dividend payments. In addition, USWA filed a single Form 1042–S reporting the payment to an unknown foreign payee. FB is deemed to know that USWA did not report the payment to A, B, C, D, and E because it did not provide all of the information required on

a withholding statement under paragraph (e)(3)(iv) of this section (*i.e.*, allocation information). Although FB is not required to withhold on the payment because the full 30 percent withholding was imposed by USWA, it is required to report the payments on Forms 1042–S to A, B, C, D, and E. FB's intentional failure to do so will subject it to intentional disregard penalties under sections 6721 and 6722.

* * * * *

(c) * * *

(2) *Foreign and U.S. person.* The term *foreign person* means a nonresident alien individual, a foreign corporation, a foreign partnership, a foreign trust, a foreign estate, and any other person that is not a U.S. person described in the next sentence. Solely for purposes of the regulations under chapter 3 of the Internal Revenue Code, the term *foreign person* also means, with respect to a payment by a withholding agent, a foreign branch of a U.S. person that furnishes an intermediary withholding certificate described in paragraph (e)(3)(ii) of this section. Such a branch continues to be a U.S. payor for purposes of chapter 61 of the Internal Revenue Code. See § 1.6049–5(c)(4). A U.S. person is a person described in section 7701(a)(30), the U.S. government (including an agency or instrumentality thereof), a State (including an agency or instrumentality thereof), or the District of Columbia (including an agency or instrumentality thereof).

* * * * *

(6) *Beneficial owner*—(i) *General rule.* This paragraph (c)(6) defines the term *beneficial owner* for payments of income other than a payment for which a reduced rate of withholding is claimed under an income tax treaty. The term *beneficial owner* means the person who is the owner of the income for tax purposes and who beneficially owns that income. A person shall be treated as the owner of the income to the extent that it is required under U.S. tax principles to include the amount paid in gross income under section 61 (determined without regard to an exclusion or exemption from gross income under the Internal Revenue Code). Beneficial ownership of income is determined under the provisions of section 7701(l) and the regulations under that section and any other applicable general U.S. tax principles, including principles governing the determination of whether a transaction is a conduit transaction. Thus, a person receiving income in a capacity as a nominee, agent, or custodian for another person is not the beneficial owner of the income. In the case of a scholarship, the student receiving the scholarship is the beneficial owner of that scholarship. In the case of a payment of an amount that is not income, the beneficial owner determination shall be made under this paragraph (c)(6) as if the amount were income.

(ii) *Special rules*—(A) *General rule.* The beneficial owners of income paid to an entity described in this paragraph (c)(6)(ii) are those persons described in paragraphs (c)(6)(ii)(B) through (D) of this section.

(B) *Foreign partnerships.* The beneficial owners of income paid to a foreign partnership (whether a nonwithholding or a withholding foreign partnership) are the partners in the partnership, unless they themselves are not the beneficial owners of the income under this paragraph (c)(6). For example, a partnership (first tier) that is a partner in another partnership (second tier) is not the beneficial owner of income paid to the second tier partnership since the first tier partnership is not the owner of the income under U.S. tax principles. Rather, the partners of the first tier partnership are the beneficial owners (to the extent they are not themselves persons that are not beneficial owners under this paragraph (c)(6)). See § 1.1441–5(b) for applicable withholding procedures for payments to a domestic partnership. See also § 1.1441–5(c)(3)(ii) for applicable withholding procedures for payments to a foreign partnership where one of the partners (at any level in the chain of tiers) is a domestic partnership.

(C) *Foreign simple trusts and foreign grantor trusts.* The beneficial owners of income paid to a foreign simple trust, as described in paragraph (c)(23) of this section, are the beneficiaries of the trust, unless they themselves are not the beneficial owners of the income under this paragraph (c)(6). The beneficial owners of income paid to a foreign grantor trust, as described in paragraph (c)(26) of this section, are the persons treated as the owners of the trust, unless they themselves are not the beneficial owners of the income under this paragraph (c)(6).

(D) *Other foreign trusts and foreign estates.* The beneficial owner of income paid to a foreign complex trust as defined in paragraph (c)(25) of this section or to a foreign estate is the foreign complex trust or estate itself.

* * * * *

(12) *Payee.* For purposes of chapter 3 of the Internal Revenue Code, the term *payee* of a payment is determined under paragraph (b)(2) of this section, § 1.1441–5(c)(1) (relating to partnerships), and § 1.1441–5(e)(2) and (3) (relating to trusts and estates) and includes foreign persons, U.S. exempt recipients, and U.S. non-exempt recipients. A nonqualified intermediary and a qualified intermediary (to the extent it does not assume primary withholding responsibility) are not payees if they are acting as intermediaries and not the beneficial owner of income. In addition, a flow-through entity is not a payee unless the income is (or is deemed to be) effectively connected with the conduct of a trade or business in the United States. See § 1.6049–5(d)(1) for rules to determine the payee for purposes of chapter 61 of the Internal Revenue Code. See §§ 1.1441–1(b)(3), 1.1441–5(d), and (e)(6) and 1.6049–5(d)(3) for presumption rules that apply if a payee's identity cannot be determined on the basis of valid documentation.

(13) *Intermediary.* An *intermediary* means, with respect to a payment that it receives, a person that, for that payment, acts as a custodian, broker, nominee, or otherwise as an agent for another person, regardless of whether such other person is the beneficial owner of the amount paid, a flow-through entity, or another intermediary.

(14) *Nonqualified intermediary.* A *nonqualified intermediary* means any intermediary that is not a qualified intermediary, as defined in paragraph (e)(5)(ii) of this section, or a qualified intermediary that is not acting in its capacity as a qualified intermediary with respect to a payment. For example, to the extent an entity that is a qualified intermediary provides another withholding agent with a foreign beneficial owner withholding certificate as defined in paragraph (e)(2)(i) of this section, the entity is not acting in its capacity as a qualified intermediary. Notwithstanding the preceding sentence, a qualified intermediary is acting as a qualified intermediary to the extent it provides another withholding agent with Forms W–9, or other information regarding U.S. non-exempt recipients pursuant to its qualified intermediary agreement with the IRS.

(15) *Qualified intermediary.* The term *qualified intermediary* is defined in paragraph (e)(5)(ii) of this section.

(16) *Withholding certificate.* The term *withholding certificate* means a Form W–8 described in paragraph (e)(2)(i) of this section (relating to foreign beneficial owners), paragraph (e)(3)(i) of this section (relating to foreign intermediaries), § 1.1441–5(c)(2)(iv), (c)(3)(iii), and (e)(3)(iv) (relating to flow-through entities), a Form 8233 described in § 1.1441–4(b)(2), a Form W–9 as described in paragraph (d) of this section, a statement described in § 1.871–14(c)(2)(v) (relating to portfolio

interest), or any other certificates that under the Internal Revenue Code or regulations certifies or establishes the status of a payee or beneficial owner as a U.S. or a foreign person.

(17) *Documentary evidence; other appropriate documentation.* The terms *documentary evidence* or *other appropriate documentation* refer to documents other than a withholding certificate that may be provided for payments made outside the United States to offshore accounts or any other evidence that under the Internal Revenue Code or regulations certifies or establishes the status of a payee or beneficial owner as a U.S. or foreign person. See §§ 1.1441–6(b)(2), (c)(3) and (4) (relating to treaty benefits), and 1.6049–5(c)(1) and (4) (relating to chapter 61 reporting). Also see § 1.1441–4(a)(3)(ii) regarding documentary evidence for notional principal contracts.

(18) *Documentation.* The term *documentation* refers to both withholding certificates, as defined in paragraph (c)(16) of this section, and documentary evidence or other appropriate documentation, as defined in paragraph (c)(17) of this section.

(19) *Payor.* The term *payor* is defined in § 31.3406(a)–2 of this chapter and § 1.6049–4(a)(2) and generally includes a withholding agent, as defined in § 1.1441–7(a). The term also includes any person that makes a payment to an intermediary, flow-through entity, or U.S. branch that is not treated as a U.S. person to the extent the intermediary, flow-through, or U.S. branch provides a Form W–9 or other appropriate information relating to a payee so that the payment can be reported under chapter 61 of the Internal Revenue Code and, if required, subject to backup withholding under section 3406. This latter rule does not preclude the intermediary, flow-through entity, or U.S. branch from also being a payor.

(20) *Exempt recipient.* The term *exempt recipient* means a person that is exempt from reporting under chapter 61 of the Internal Revenue Code and backup withholding under section 3406 and that is described in §§ 1.6041–3(q), 1.6045–2(b)(2)(i), and 1.6049–4(c)(1)(ii), and § 5f.6045–1(c)(3)(i)(B) of this chapter. Exempt recipients are not exempt from withholding under chapter 3 of the Internal Revenue Code unless they are U.S. persons or foreign persons entitled to an exemption from withholding under chapter 3.

(21) *Non-exempt recipient.* A *non-exempt recipient* is any person that is not an exempt recipient under paragraph (c)(20) of this section.

(22) *Reportable amounts. Reportable amounts* are defined in paragraph (e)(3)(vi) of this section.

(23) *Flow-through entity.* A *flow-through entity* means any entity that is described in this paragraph (c)(23) and that may provide documentation on behalf of others to a withholding agent. The entities described in this paragraph are a foreign partnership (other than a withholding foreign partnership), a foreign simple trust (other than a withholding foreign trust) that is described in paragraph (c)(24) of this section, a foreign grantor trust (other than a withholding foreign trust) that is described in paragraph (c)(25) of this section, or, for any payments for which a reduced rate of withholding under an income tax treaty is claimed, any entity to the extent the entity is considered to be fiscally transparent under section 894 with respect to the payment by an interest holder's jurisdiction.

(24) *Foreign simple trust.* A *foreign simple trust* is a foreign trust that is described in section 651(a).

(25) *Foreign complex trust.* A *foreign complex trust* is a foreign trust other than a trust described in section 651(a) or sections 671 through 679.

(26) *Foreign grantor trust.* A *foreign grantor trust* is a foreign trust but only to the extent all or a portion of the income of the trust is treated as owned by the grantor or another person under sections 671 through 679.

(27) *Partnership.* The term *partnership* means any entity treated as a partnership under § 301.7701–2 or –3 of this chapter.

(28) *Nonwithholding foreign partnership.* A *nonwithholding foreign partnership* is a foreign partnership that is not a withholding foreign partnership, as defined in § 1.1441–5(c)(2)(i).

(29) *Withholding foreign partnership.* A withholding foreign partnership is defined in § 1.1441–5(c)(2)(i).

(d) * * *

(2) *Payments for which a Form W–9 is otherwise required.* A withholding agent may treat as a U.S. payee any person who is required to furnish a Form W–9 and who furnishes it in accordance with the procedures described in §§ 31.3406(d)–1 through 31.3406(d)–5 of this chapter (including the requirement that the payee furnish its taxpayer identifying number (TIN)) if the withholding agent meets all the requirements described in § 31.3406(h)–3(e) of this chapter regarding reliance by a payor on a Form W–9. Providing a Form W–9 or valid substitute form shall serve as a statement that the person whose name is on the form is a U.S. person. Therefore, a foreign person, including a U.S. branch treated as a U.S. person under paragraph (b)(2)(iv) of this section, shall not provide a Form W–9. A U.S. branch of a foreign person may establish its status as a foreign person exempt from reporting under chapter 61 and backup withholding under section 3406 by providing a withholding certificate on Form W–8.

(3) *Payments for which a Form W–9 is not otherwise required.* In the case of a payee who is not required to furnish a Form W–9 under section 3406 (e.g., a person exempt from reporting under chapter 61 of the Internal Revenue Code), the withholding agent may treat the payee as a U.S. payee if the payee provides the withholding agent with a Form W–9 or a substitute form described in § 31.3406(h)–3(c)(2) of this chapter (relating to forms for exempt recipients) that contains the payee's name, address, and TIN. The form must be signed under penalties of perjury by the payee if so required by the form or by § 31.3406(h)–3 of this chapter. Providing a Form W–9 or valid substitute form shall serve as a statement that the person whose name is on the certificate is a U.S. person. A Form W–9 or valid substitute form shall not be provided by a foreign person, including any U.S. branch of a foreign person whether or not the branch is treated as a U.S. person under paragraph (b)(2)(iv) of this section. See paragraph (e)(3)(v) of this section for withholding certificates provided by U.S. branches described in paragraph (b)(2)(iv) of this section. The procedures described in § 31.3406(h)–2(a) of this chapter shall apply to payments to joint payees. A withholding agent that receives a Form W–9 to satisfy this paragraph (d)(3) must retain the form in accordance with the provisions of § 31.3406(h)–3(g) of this chapter, if applicable, or of paragraph (e)(4)(iii) of this section (relating to the retention of withholding certificates) if § 31.3406(h)–3(g) of this chapter does not apply. The rules of this paragraph (d)(3) are only intended to provide a method by which a withholding agent may determine that a payee is a U.S. person and do not otherwise impose a requirement that documentation be furnished by a person who is otherwise treated as an exempt recipient for purposes of the applicable information reporting provisions under chapter 61 of the Internal Revenue Code (*e.g.*, § 1.6049–4(c)(1)(ii) for payments of interest).

(4) *When a payment to an intermediary or flow-through entity may be treated as made to a U.S. payee.* A withholding agent that makes a payment to an intermediary (whether a qualified intermediary or nonqualified intermediary), a flow-through entity, or

a U.S. branch described in paragraph (b)(2)(iv) of this section may treat the payment as made to a U.S. payee to the extent that, prior to the payment, the withholding agent can reliably associate the payment with a Form W–9 described in paragraph (d)(2) or (3) of this section attached to a valid intermediary, flow-through, or U.S. branch withholding certificate described in paragraph (e)(3)(i) of this section or to the extent the withholding agent can reliably associate the payment with a Form W–8 described in paragraph (e)(3)(v) of this section that evidences an agreement to treat a U.S. branch described in paragraph (b)(2)(iv) of this section as a U.S. person. In addition, a withholding agent may treat the payment as made to a U.S. payee only if it complies with the electronic confirmation procedures described in paragraph (e)(4)(v) of this section, if required, and it has not been notified by the IRS that any of the information on the withholding certificate or other documentation is incorrect or unreliable. In the case of a Form W–9 that is required to be furnished for a reportable payment that may be subject to backup withholding, the withholding agent may be notified in accordance with section 3406(a)(1)(B) and the regulations under that section. See applicable procedures under section 3406(a)(1)(B) and the regulations under that section for payors who have been notified with regard to such a Form W–9. Withholding agents who have been notified in relation to other Forms W–9, including under section 6724(b) pursuant to section 6721, may rely on the withholding certificate or other documentation only to the extent provided under procedures as prescribed by the IRS (see § 601.601(d)(2) of this chapter).

(e) * * * (1) * * *

(ii) * * * (A) * * *

(*1*) That the withholding agent can reliably associate the payment with a beneficial owner withholding certificate described in paragraph (e)(2) of this section furnished by the person whose name is on the certificate or attached to a valid foreign intermediary, flow-through, or U.S. branch withholding certificate;

* * * * *

(*3*) That the withholding agent can reliably associate the payment with a valid qualified intermediary withholding certificate, as described in paragraph (e)(3)(ii) of this section, and the qualified intermediary has provided sufficient information for the withholding agent to allocate the payment to a withholding rate pool other than a withholding rate pool or pools established for U.S. non-exempt recipients;

(*4*) That the withholding agent can reliably associate the payment with a withholding certificate described in § 1.1441–5(c)(3)(iii) or (e)(5)(iii) from a flow-through entity claiming the income is effectively connected income;

* * * * *

(3) *Intermediary, flow-through, or U.S. branch withholding certificate*—(i) *In general.* An intermediary withholding certificate is a Form W–8 by which a payee represents that it is a foreign person and that it is an intermediary (whether a qualified or nonqualified intermediary) with respect to a payment and not the beneficial owner. See paragraphs (e)(3)(ii) and (iii) of this section. A flow-through withholding certificate is a Form W–8 used by a flow-through entity as defined in paragraph (c)(23) of this section. See § 1.1441–5(c)(3)(iii) (a nonwithholding foreign partnership), § 1.1441–5(e)(5)(iii) (a foreign simple trust or foreign grantor trust) or § 1.1441–6(b)(2) (foreign entity presenting claims on behalf of its interest holders for a reduced rate of withholding under an income tax treaty). A U.S. branch certificate is a Form W–8 furnished under paragraph (e)(3)(v) of this section by a U.S. branch described in paragraph (b)(2)(iv) of this section. See paragraph (e)(4)(viii) of this section for applicable reliance rules.

(ii) *Intermediary withholding certificate from a qualified intermediary.* A qualified intermediary shall provide a qualified intermediary withholding certificate for reportable amounts received by the qualified intermediary. See paragraph (e)(3)(vi) of this section for the definition of reportable amount. A qualified intermediary withholding certificate is valid only if it is furnished on a Form W–8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person with authority to sign for the qualified intermediary, its validity has not expired, and it contains the following information, statement, and certifications—

(A) The name, permanent residence address (as described in paragraph (e)(2)(ii) of this section), qualified intermediary employer identification number (QI–EIN), and the country under the laws of which the intermediary is created, incorporated, or governed. A qualified intermediary that does not act in its capacity as a qualified intermediary must not use its QI–EIN. Rather the intermediary should provide a nonqualified intermediary withholding certificate, if it is acting as an intermediary, and should use the taxpayer identification number, if any, that it uses for all other purposes;

(B) A certification that, with respect to accounts it identifies on its withholding statement (as described in paragraph (e)(5)(v) of this section), the qualified intermediary is not acting for its own account but is acting as a qualified intermediary;

(C) A certification that the qualified intermediary has provided, or will provide, a withholding statement as required by paragraph (e)(5)(v) of this section; and

(D) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (e)(3)(ii) or paragraph (e)(3)(v) of this section. See paragraph (e)(5)(v) of this section for the requirements of a withholding statement associated with the qualified intermediary withholding certificate.

(iii) *Intermediary withholding certificate from a nonqualified intermediary.* A nonqualified intermediary shall provide a nonqualified intermediary withholding certificate for reportable amounts received by the nonqualified intermediary. See paragraph (e)(3)(vi) of this section for the definition of reportable amount. A nonqualified intermediary withholding certificate is valid only to the extent it is furnished on a Form W–8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person authorized to sign for the nonqualified intermediary, it contains the information, statements, and certifications described in this paragraph (e)(3)(iii) and paragraph (e)(3)(iv) of this section, its validity has not expired, and the withholding certificates and other appropriate documentation for all persons to whom the certificate relates are associated with the certificate. Withholding certificates and other appropriate documentation consist of beneficial owner withholding certificates described in paragraph (e)(2)(i) of this section, intermediary and flow-through withholding certificates described in paragraph (e)(3)(i) of this section, withholding foreign partnership certificates described in § 1.1441–5(c)(2)(iv), documentary evidence described in §§ 1.1441–6(c)(3) or (4) and 1.6049–5(c)(1), and any other documentation or certificates applicable under other provisions of the Internal Revenue Code or regulations that certify or establish the status of the payee or beneficial owner as a U.S. or a foreign

person. If a nonqualified intermediary is acting on behalf of another nonqualified intermediary or a flow-through entity, then the nonqualified intermediary must associate with its own withholding certificate the other nonqualified intermediary withholding certificate or the flow-through withholding certificate and separately identify all of the withholding certificates and other appropriate documentation that are associated with the withholding certificate of the other nonqualified intermediary or flow-through entity. Nothing in this paragraph (e)(3)(iii) shall require an intermediary to furnish original documentation. Copies of certificates or documentary evidence may be transmitted to the U.S. withholding agent, in which case the nonqualified intermediary must retain the original documentation for the same time period that the copy is required to be retained by the withholding agent under paragraph (e)(4)(iii) of this section and must provide it to the withholding agent upon request. For purposes of this paragraph (e)(3)(iii), a valid intermediary withholding certificate also includes a statement described in § 1.871–14(c)(2)(v) furnished for interest to qualify as portfolio interest for purposes of sections 871(h) and 881(c). The information and certifications required on a Form W–8 described in this paragraph (e)(3)(iii) are as follows—

(A) The name and permanent resident address (as described in paragraph (e)(2)(ii) of this section) of the nonqualified intermediary, and the country under the laws of which the nonqualified intermediary is created, incorporated, or governed;

(B) A certification that the nonqualified intermediary is not acting for its own account;

(C) If the nonqualified intermediary withholding certificate is used to transmit withholding certificates or other appropriate documentation for more than one person on whose behalf the nonqualified intermediary is acting, a withholding statement associated with the Form W–8 that provides all the information required by paragraph (e)(3)(iv) of this section; and

(D) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information, certifications, and statements described in this paragraph (e)(3)(iii) or paragraph (e)(3)(iv) of this section.

(iv) *Withholding statement provided by nonqualified intermediary*—(A) *In general.* A nonqualified intermediary shall provide a withholding statement required by this paragraph (e)(3)(iv) to the extent the nonqualified intermediary is required to furnish, or does furnish, documentation for payees on whose behalf it receives reportable amounts (as defined in paragraph (e)(3)(vi) of this section) or to the extent it otherwise provides the documentation of such payees to a withholding agent. A nonqualified intermediary is not required to disclose information regarding persons for whom it collects reportable amounts unless it has actual knowledge that any such person is a U.S. non-exempt recipient as defined in paragraph (c)(21) of this section. Information regarding U.S. non-exempt recipients required under this paragraph (e)(3)(iv) must be provided irrespective of any requirement under foreign law that prohibits the disclosure of the identity of an account holder of a nonqualified intermediary or financial information relating to such account holder. Although a nonqualified intermediary is not required to provide documentation and other information required by this paragraph (e)(3)(iv) for persons other than U.S. non-exempt recipients, a withholding agent that does not receive documentation and such information must apply the presumption rules of paragraph (b) of this section, §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d) or the withholding agent shall be liable for tax, interest, and penalties. A withholding agent must apply the presumption rules even if it is not required under chapter 61 of the Internal Revenue Code to obtain documentation to treat a payee as an exempt recipient and even though it has actual knowledge that the payee is a U.S. person. For example, if a nonqualified intermediary fails to provide a withholding agent with a Form W–9 for an account holder that is a U.S. exempt recipient, the withholding agent must presume (even if it has actual knowledge that the account holder is a U.S. exempt recipient), that the account holder is an undocumented foreign person with respect to amounts subject to withholding. See paragraph (b)(3)(v) of this section for applicable presumptions. Therefore, the withholding agent must withhold 30 percent from the payment even though if a Form W–9 had been provided, no withholding or reporting on the payment attributable to a U.S. exempt recipient would apply. Further, a nonqualified intermediary that fails to provide the documentation and the information under this paragraph (e)(3)(iv) for another withholding agent to report the payments on Forms 1042–S and Forms 1099 is not relieved of its responsibility to file information returns. See paragraph (b)(6) of this section. Therefore, unless the nonqualified intermediary itself files such returns and provides copies to the payees, it shall be liable for penalties under sections 6721 (failure to file information returns), and 6722 (failure to furnish payee statements), including the penalties under those sections for intentional failure to file information returns. In addition, failure to provide either the documentation or the information required by this paragraph (e)(3)(iv) results in a payment not being reliably associated with valid documentation. Therefore, the beneficial owners of the payment are not entitled to reduced rates of withholding and if the full amount required to be held under the presumption rules is not withheld by the withholding agent, the nonqualified intermediary must withhold the difference between the amount withheld by the withholding agent and the amount required to be withheld. Failure to withhold shall result in the nonqualified intermediary being liable for tax under section 1461, interest, and penalties, including penalties under section 6656 (failure to deposit) and section 6672 (failure to collect and pay over tax).

(B) *General requirements.* A withholding statement must be provided prior to the payment of a reportable amount and must contain the information specified in paragraph (e)(3)(iv)(C) of this section. The statement must be updated as often as required to keep the information in the withholding statement correct prior to each subsequent payment. The withholding statement forms an integral part of the withholding certificate provided under paragraph (e)(3)(iii) of this section, and the penalties of perjury statement provided on the withholding certificate shall apply to the withholding statement. The withholding statement may be provided in any manner the nonqualified intermediary and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically, there must be sufficient safeguards to ensure that the information received by the withholding agent is the information sent by the nonqualified intermediary and all occasions of user access that result in the submission or modification of the withholding statement information must be recorded. In addition, an electronic system must be capable of providing a hard copy of all withholding statements provided by the nonqualified

intermediary. A withholding agent will be liable for tax, interest, and penalties in accordance with paragraph (b)(7) of this section to the extent it does not follow the presumption rules of paragraph (b)(3) of this section or §§ 1.1441–5(d) and (e)(6), and 1.6049–5(d) for any payment of a reportable amount, or portion thereof, for which it does not have a valid withholding statement prior to making a payment.

(C) *Content of withholding statement.* The withholding statement provided by a nonqualified intermediary must contain the information required by this paragraph (e)(3)(iv)(C).

(*1*) The withholding statement must contain the name, address, TIN (if any) and the type of documentation (documentary evidence, Form W–9, or type of Form W–8) for every person from whom documentation has been received by the nonqualified intermediary to the withholding agent and whether that person is a U.S. exempt recipient, a U.S. non-exempt recipient, or a foreign person. See paragraphs (c)(2), (20), and (21) of this section for the definitions of foreign person, U.S. exempt recipient, and U.S. non-exempt recipient. In the case of a foreign person, the statement must indicate whether the foreign person is a beneficial owner or an intermediary, flow-through entity, or U.S. branch described in paragraph (b)(2)(iv) of this section and include the type of recipient, based on recipient codes used for filing Forms 1042–S, if the foreign person is a recipient as defined in § 1.1461–1(c)(1)(ii).

(*2*) The withholding statement must allocate each payment, by income type, to every payee (including U.S. exempt recipients) for whom documentation has been provided. Any payment that cannot be reliably associated with valid documentation from a payee shall be treated as made to an unknown payee in accordance with the presumption rules of paragraph (b) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d). For this purpose, a type of income is determined by the types of income required to be reported on Forms 1042–S or 1099, as appropriate. Notwithstanding the preceding sentence, deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) and interest or original issue discount on short-term obligations as described in section 871(g)(1)(B) or 881(e) is only required to be allocated to the extent it is required to be reported on Form 1099 or Form 1042–S. See § 1.6049–8 (regarding reporting of bank deposit interest to certain foreign persons). If a payee receives income through another nonqualified intermediary, flow-through entity, or U.S. branch described in paragraph (e)(2)(iv) of this section (other than a U.S. branch treated as a U.S. person), the withholding certificate must also state, with respect to the payee, the name, address, and TIN, if known, of the other nonqualified intermediary or U.S. branch from which the payee directly receives the payment or the flow-through entity in which the payee has a direct ownership interest. If another nonqualified intermediary, flow-through entity, or U.S. branch fails to allocate a payment, the name of the nonqualified intermediary, flow-through entity, or U.S. branch that failed to allocate the payment shall be provided with respect to such payment.

(*3*) If a payee is identified as a foreign person, the nonqualified intermediary must specify the rate of withholding to which the payee is subject, the payee's country of residence and, if a reduced rate of withholding is claimed, the basis for that reduced rate (e.g., treaty benefit, portfolio interest, exempt under section 501(c)(3), 892, or 895). The allocation statement must also include the taxpayer identification numbers of those foreign persons for whom such a number is required under paragraph (e)(4)(vii) of this section or § 1.1441–6(b)(1) (regarding claims for treaty benefits). In the case of a claim of treaty benefits, the nonqualified intermediary's withholding statement must also state whether the limitation on benefits and section 894 statements required by § 1.1441–6(c)(5) have been provided, if required, in the beneficial owner's Form W–8 or associated with such owner's documentary evidence.

(*4*) The withholding statement must also contain any other information the withholding agent reasonably requests in order to fulfill its obligations under chapter 3, chapter 61 of the Internal Revenue Code, and section 3406.

(D) *Alternative procedures*—(*1*) *In general.* Under the alternative procedures of this paragraph (e)(3)(iv)(D), a nonqualified intermediary may provide information allocating a payment of a reportable amount to each payee (including U.S. exempt recipients) otherwise required under paragraph (e)(3)(iv)(B)*(2)* of this section after a payment is made. To use the alternative procedure of this paragraph (e)(3)(iv)(D), the nonqualified intermediary must inform the withholding agent on a statement associated with its nonqualified intermediary withholding certificate that it is using the procedure under this paragraph (e)(3)(iv)(D) and the withholding agent must agree to the procedure. If the requirements of the alternative procedure are met, a withholding agent, including the nonqualified intermediary using the procedures, can treat the payment as reliably associated with documentation and, therefore, the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d) do not apply even though information allocating the payment to each payee has not been received prior to the payment. See paragraph (e)(3)(iv)(D)(*7*) of this section, however, for a nonqualified intermediary's liability for tax and penalties if the requirements of this paragraph (e)(3)(iv)(D) are not met. These alternative procedures shall not be used for payments that are allocable to U.S. non-exempt recipients. Therefore, a nonqualified intermediary is required to provide a withholding agent with information allocating payments of reportable amounts to U.S. non-exempt recipients prior to the payment being made by the withholding agent.

(*2*) *Withholding rate pools.* In place of the information required in paragraph (e)(3)(iv)(B)(*2*) of this section allocating payments to each payee, the nonqualified intermediary must provide a withholding agent with withholding rate pool information prior to the payment of a reportable amount. The withholding statement must contain all other information required by paragraph (e)(3)(iv)(B) of this section. Further, each payee listed in the withholding statement must be assigned to an identified withholding rate pool. To the extent a nonqualified intermediary is required to, or does provide, documentation, the alternative procedures do not relieve the nonqualified intermediary from the requirement to provide documentation prior to the payment being made. Therefore, withholding certificates or other appropriate documentation and all information required by paragraph (e)(3)(iv)(B) of this section (other than allocation information) must be provided to a withholding agent before any new payee receives a reportable amount. In addition, the withholding statement must be updated by assigning a new payee to a withholding rate pool prior to the payment of a reportable amount. A withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income used to file Form 1042–S, that is subject to a single rate of withholding. A withholding rate pool may be established by any reasonable method to which the nonqualified intermediary and a withholding agent agree (*e.g.*, by establishing a separate

account for a single withholding rate pool, or by dividing a payment made to a single account into portions allocable to each withholding rate pool). The nonqualified intermediary shall determine withholding rate pools based on valid documentation or, to the extent a payment cannot be reliably associated with valid documentation, the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d).

(3) *Allocation information.* The nonqualified intermediary must provide the withholding agent with sufficient information to allocate the income in each withholding rate pool to each payee (including U.S. non-exempt recipients) within the pool no later than January 31 of the year following the year of payment. Any payments that are not allocated to payees for whom documentation has been provided shall be allocated to an undocumented payee in accordance with the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d). Notwithstanding the preceding sentence, deposit interest (including original issue discount) described in section 871(i)(2)(A) or 881(d) and interest or original issue discount on short-term obligations as described in section 871(g)(1)(B) or 881(e) is not required to be allocated to a U.S. exempt recipient or a foreign payee, except as required under § 1.6049–8 (regarding reporting of deposit interest paid to certain foreign persons).

(4) *Failure to provide allocation information.* If a nonqualified intermediary fails to provide allocation information, if required, by January 31 for any withholding rate pool, a withholding agent shall not apply the alternative procedures of this paragraph (e)(3)(iv)(D) to any payments of reportable amounts paid after January 31 in the taxable year following the calendar year for which allocation information was not given and any subsequent taxable year. Further, the alternative procedures shall be unavailable for any other withholding rate pool even though allocation information was given for that other pool. Therefore, the withholding agent must withhold on a payment of a reportable amount in accordance with the presumption rules of paragraph (b)(3) of this section, and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d), unless the nonqualified intermediary provides all of the information, including information sufficient to allocate the payment to each specific payee, required by paragraph (e)(3)(iv)(A) through (C) of this section prior to the payment. A nonqualified intermediary must allocate at least 90 percent of the income required to be allocated for each withholding rate pool or the nonqualified intermediary will be treated as having failed to provide allocation information for purposes of this paragraph (e)(3)(iv)(D). See paragraph (e)(3)(iv)(D)(7) of this section for liability for tax and penalties if a nonqualified intermediary fails to provide allocation information in whole or in part.

(5) *Cure provision.* A nonqualified intermediary may cure any failure to provide allocation information by providing the required allocation information to the withholding agent no later than February 14 following the calendar year of payment. If the withholding agent receives the allocation information by that date, it may apply the adjustment procedures of § 1.1461–2 to any excess withholding for payments made on or after February 1 and on or before February 14. Any nonqualified intermediary that fails to cure by February 14, may request the ability to use the alternative procedures of this paragraph (e)(3)(iv)(D) by submitting a request, in writing, to the Assistant Commissioner (International). The request must state the reason that the nonqualified intermediary did not comply with the alternative procedures of this paragraph (e)(3)(iv)(D) and steps that the nonqualified intermediary has taken, or will take, to ensure that no failures occur in the future. If the Assistant Commissioner (International) determines that the alternative procedures of this paragraph (e)(3)(iv)(D) may apply, a determination to that effect will be issued by the IRS to the nonqualified intermediary.

(6) *Form 1042–S reporting in case of allocation failure.* If a nonqualified intermediary fails to provide allocation information by February 14 following the year of payment for a withholding rate pool, the withholding agent must file Forms 1042-S for payments made to each payee in that pool (other than U.S. exempt recipients) in the prior calendar year by pro rating the payment to each payee (including U.S. exempt recipients) listed in the withholding statement for that withholding rate pool. If the nonqualified intermediary fails to allocate10 percent or less of an amount required to be allocated for a withholding rate pool, a withholding agent shall report the unallocated amount as paid to a single unknown payee in accordance with the presumption rules of paragraph (b) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d). The portion of the payment that can be allocated to specific recipients, as defined in § 1.1461–1(c)(1)(ii), shall be reported to each recipient in accordance with the rules of § 1.1461–1(c).

(7) *Liability for tax, interest, and penalties.* If a nonqualified intermediary fails to provide allocation information by February 14 following the year of payment for all or a portion of the payments made to any withholding rate pool, the withholding agent from whom the nonqualified intermediary received payments of reportable amounts shall not be liable for any tax, interest, or penalties, due solely to the errors or omissions of the nonqualified intermediary. See § 1.1441–7(b)(2) through (10) for the due diligence requirements of a withholding agent. Because failure by the nonqualified intermediary to provide allocation information results in a payment not being reliably associated with valid documentation, the beneficial owners for whom the nonqualified intermediary acts are not entitled to a reduced rate of withholding. Therefore, the nonqualified intermediary, as a withholding agent, shall be liable for any tax not withheld by the withholding agent in accordance with the presumption rules, interest on the under withheld tax if the nonqualified intermediary fails to pay the tax timely, and any applicable penalties, including the penalties under sections 6656 (failure to deposit), 6721 (failure to file information returns) and 6722 (failure to file payee statements). Failure to provide allocation information for more than 10 percent of the payments made to a particular withholding rate pool will be presumed to be an intentional failure within the meaning of sections 6721(e) and 6722(c). The nonqualified intermediary may rebut the presumption.

(8) *Applicability to flow-through entities and certain U.S. branches.* See paragraph (e)(3)(v) of this section and § 1.1441–5(c)(3)(iv) and (e)(5)(iv) for the applicability of this paragraph (e)(3)(iv) to U.S. branches described in paragraph (b)(2)(iv) of this section (other than U.S. branches treated as U.S. persons) and flow-through entities.

(E) *Notice procedures.* The IRS may notify a withholding agent that the alternative procedures of paragraph (e)(3)(iv)(D) of this section are not applicable to a specified nonqualified intermediary, a U.S. branch described in paragraph (b)(2)(iv) of this section, or a flow-through entity. If a withholding agent receives such a notice, it must commence withholding in accordance with the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d) unless the

nonqualified intermediary, U.S. branch, or flow-through entity complies with the procedures in paragraphs (e)(3)(iv)(A) through (C) of this section. In addition, the IRS may notify a withholding agent, in appropriate circumstances, that it must apply the presumption rules of paragraph (b)(3) of this section and §§ 1.1441–5(d) and (e)(6) and 1.6049–5(d) to payments made to a nonqualified intermediary, a U.S. branch, or a flow-through entity even if the nonqualified intermediary, U.S. branch or flow-through entity provides allocation information prior to the payment. A withholding agent that receives a notice under this paragraph (e)(3)(iv)(E) must commence withholding in accordance with the presumption rules within 30 days of the date of the notice. The IRS may withdraw its prohibition against using the alternative procedures of paragraph (e)(3)(iv)(D) of this section, or its requirement to follow the presumption rules, if the nonqualified intermediary, U.S. branch, or flow-through entity can demonstrate to the satisfaction of the Assistant Commissioner (International) or his delegate that it is capable of complying with the rules under chapter 3 of the Internal Revenue Code and any other conditions required by the Assistant Commissioner (International).

(v) *Withholding certificate from certain U.S. branches.* A U.S. branch certificate is a withholding certificate provided by a U.S. branch described in paragraph (b)(2)(iv) of this section that is not the beneficial owner of the income. The withholding certificate is provided with respect to reportable amounts and must state that such amounts are not effectively connected with the conduct of a trade or business in the United States. The withholding certificate must either transmit the appropriate documentation for the persons for whom the branch receives the payment (i.e., as an intermediary) or be provided as evidence of its agreement with the withholding agent to be treated as a U.S. person with respect to any payment associated with the certificate. A U.S. branch withholding certificate is valid only if it is furnished on a Form W–8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a person authorized to sign for the branch, its validity has not expired, and it contains the information, statements, and certifications described in this paragraph (e)(3)(v). If the certificate is furnished to transmit withholding certificates and other documentation, it must contain the information, certifications, and statements described in paragraphs (e)(3)(v)(A) through (C) of this section and in paragraphs (e)(3)(iii) and (iv) (alternative procedures) of this section, applying the term *U.S. branch* instead of the term *nonqualified intermediary*. If the certificate is furnished pursuant to an agreement to treat the U.S. branch as a U.S. person, the information and certifications required on the withholding certificate are limited to the following—

(A) The name of the person of which the branch is a part and the address of the branch in the United States;

(B) A certification that the payments associated with the certificate are not effectively connected with the conduct of its trade or business in the United States; and

(C) Any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in lieu of, the information and certification described in this paragraph (e)(3)(v).

(vi) *Reportable amounts.* For purposes of chapter 3 of the Internal Revenue Code, a nonqualified intermediary, qualified intermediary, flow-through entity, and U.S. branch described in paragraph (b)(2)(iv) of this section (other than a U.S. branch that agrees to be treated as a U.S. person) must provide a withholding certificate and associated documentation and other information with respect to reportable amounts. For purposes of the regulations under chapter 3 of the Internal Revenue Code, the term reportable amount means an amount subject to withholding within the meaning of § 1.1441–2(a), bank deposit interest (including original issue discount) and similar types of deposit interest described in section 871(i)(2)(A) or 881(d) that are from sources within the United States, and any amount of interest or original issue discount from sources within the United States on the redemption of certain short-term obligations described in section 871(g)(1)(B) or 881(e). Reportable amounts shall not include amounts received on the sale or exchange (other than a redemption) of an obligation described in section 871(g)(1)(B) or 881(e) that is effected at an office outside the United States. See § 1.6045–1(g)(3) to determine whether a sale is effected at an office outside the United States. Reportable amounts also do not include payments with respect to deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, to amounts of original issue discount arising from a sale and repurchase transaction that is completed within a period of two weeks or less, or to amounts described in § 1.6049–5(b)(7), (10) or (11) (relating to certain obligations issued in bearer form). While short-term OID and bank deposit interest are not subject to withholding under chapter 3 of the Internal Revenue Code, such amounts may be subject to information reporting under section 6049 if paid to a U.S. person who is not an exempt recipient described in § 1.6049–4(c)(1)(ii) and to backup withholding under section 3406 in the absence of documentation. See § 1.6049–5(d)(3)(iii) for applicable procedures when such amounts are paid to a foreign intermediary.

(4) * * *

(ii) *Period of validity*—(A) *Three-year period.* A withholding certificate described in paragraph (e)(2)(i) of this section, or a certificate described in § 1.871–14(c)(2)(v) (furnished to qualify interest as portfolio interest for purposes of sections 871(h) and 881(c)), shall remain valid until the earlier of the last day of the third calendar year following the year in which the withholding certificate is signed or the day that a change in circumstances occurs that makes any information on the certificate incorrect. For example, a withholding certificate signed on September 30, 2001, remains valid through December 31, 2004, unless circumstances change that make the information on the form no longer correct. Documentary evidence described in §§ 1.1441–6(c)(3) or (4) or 1.6049–5(c)(1) shall remain valid until the earlier of the last day of the third calendar year following the year in which the documentary evidence is provided to the withholding agent or the day that a change in circumstances occurs that makes any information on the documentary evidence incorrect.

(B) * * *

(*1*) A withholding certificate described in paragraph (e)(2)(ii) of this section that is furnished with a TIN, provided that the withholding agent reports at least one payment annually to the beneficial owner under § 1.1461–1(c) or the TIN furnished on the certificate is reported to the IRS under the procedures described in § 1.1461–1(d). For example, assume a withholding agent receives a Form W–8 in 2001 from a beneficial owner with respect to an account that contains bonds, the interest on which must be reported on Form 1042–S under § 1.1461–1(c). The Form W–8 contains a valid TIN and the withholding agent reports on Forms 1042–S interest to the beneficial owner for 2001 through 2005. In 2005, the beneficial owner sells some of the bonds. For purposes of the exemption from Form 1099 reporting under § 1.6045–1(g), the withholding

agent may consider the Form W–8 as valid, even though the payment of the sales proceeds is not reportable on Form 1042–S under § 1.1461–1(c) and even though the Form W–8 was provided more than three years previously.

(*2*) A certificate described in paragraph (e)(3)(ii) of this section (a qualified intermediary withholding certificate) but not including the withholding certificates, documentary evidence, statements or other information associated with the certificate.

(*3*) A certificate described in paragraph (e)(3)(iii) of this section (a nonqualified intermediary certificate), but not including the withholding certificates, documentary evidence, statements or other information associated with the certificate.

(*4*) A certificate described in paragraph (e)(3)(v) of this section (a U.S. branch withholding certificate), but not including the withholding certificates, documentary evidence, statements or other information associated with the certificate.

* * * * *

(*6*) A certificate described in § 1.1441–5(c)(3)(iii) (a withholding certificate from a nonwithholding foreign partnership) but not including the withholding certificates, documentary evidence, statements or other information required to be associated with the certificate.

* * * * *

(*8*) A withholding certificate described in § 1.1441–5(e)(5)(iii) provided by a foreign simple trust or a foreign grantor trust to transmit documentation of beneficiaries or owners, but not including the withholding certificates, documentary evidence, statements or other information associated with the certificate.

* * * * *

(iv) *Electronic transmission of information*—(A) *In general.* A withholding agent may establish a system for a beneficial owner or payee to electronically furnish a Form W–8, an acceptable substitute Form W–8, or such other form as the Internal Revenue Service may prescribe. The system must meet the requirements described in paragraph (e)(4)(iv)(B) of this section. A withholding agent may accept Forms W–8 that are furnished electronically on or after January 1, 2000, provided the requirements of paragraph (e)(4)(iv)(B) of this section are met.

(B) *Requirements*—(*1*) *In general.* The electronic system must ensure that the information received is the information sent, and must document all occasions of user access that result in the submission renewal, or modification of a Form W–8. In addition, the design and operation of the electronic system, including access procedures, must make it reasonably certain that the person accessing the system and furnishing Form W–8 is the person named in the Form.

(*2*) *Same information as paper Form W–8.* The electronic transmission must provide the withholding agent or payor with exactly the same information as the paper Form W–8.

(*3*) *Perjury statement and signature requirements.* The electronic transmission must contain an electronic signature by the person whose name is on the Form W–8 and the signature must be under penalties of perjury in the manner described in this paragraph (e)(4)(iv)(B)(*3*).

(*i*) *Perjury statement.* The perjury statement must contain the language that appears on the paper Form W–8. The electronic system must inform the person whose name is on the Form W–8 that the person must make the declaration contained in the perjury statement and that the declaration is made by signing the Form W–8. The instructions and the language of the perjury statement must immediately follow the person's certifying statements and immediately precede the person's electronic signature.

(*ii*) *Electronic signature.* The act of the electronic signature must be effected by the person whose name is on the electronic Form W–8. The signature must also authenticate and verify the submission. For this purpose, the terms *authenticate* and *verify* have the same meanings as they do when applied to a written signature on a paper Form W–8. An electronic signature can be in any form that satisfies the foregoing requirements. The electronic signature must be the final entry in the person's Form W–8 submission.

(*4*) *Requests for electronic Form W–8 data.* Upon request by the Internal Revenue Service during an examination, the withholding agent must supply a hard copy of the electronic Form W–8 and a statement that, to the best of the withholding agent's knowledge, the electronic Form W–8 was filed by the person whose name is on the form. The hard copy of the electronic Form W–8 must provide exactly the same information as, but need not be identical to, the paper Form W–8.

(C) *Special requirements for transmission of Forms W–8 by an intermediary.* [Reserved]

* * * * *

(vii) *Requirement of taxpayer identifying number.* A TIN must be stated on a withholding certificate when required by this paragraph (e)(4)(vii). A TIN is required to be stated on—

(A) A withholding certificate on which a beneficial owner is claiming the benefit of a reduced rate under an income tax treaty (other than for amounts described in § 1.1441–6(c)(2);

(B) A withholding certificate on which a beneficial owner is claiming exemption from withholding because income is effectively connected with a U.S. trade or business;

(C) A withholding certificate on which a beneficial owner is claiming exemption from withholding under section 871(f) for certain annuities received under qualified plans;

(D) A withholding certificate on which a beneficial owner is claiming an exemption based solely on a foreign organization's claim of tax exempt status under section 501(c) or private foundation status (however, a TIN is not required from a foreign private foundation that is subject to the 4-percent tax under section 4948(a) on income if that income would be exempt from withholding but for section 4948(a) (*e.g.*, portfolio interest));

(E) A withholding certificate from a person representing to be a qualified intermediary described in paragraph (e)(5)(ii) of this section;

(F) A withholding certificate from a person representing to be a withholding foreign partnership described in § 1.1441–5(c)(2)(i));

(G) A withholding certificate from a person representing to be a foreign grantor trust with 5 or fewer grantors;

(H) A withholding certificate provided by a foreign organization that is described in section 501(c);

(I) A withholding certificate from a person representing to be a U.S. branch described in paragraph (b)(2)(iv) of this section.

* * * * *

(ix) * * *

(A) * * *

(*4*) A withholding agent may rely on documentation furnished by a beneficial owner or payee to an agent of the withholding agent. The agent may retain the documentation as part of an information system maintained for a single or multiple withholding agents provided that the system permits any withholding agent that uses the system to easily access data regarding the nature of the documentation, the information contained in the documentation, and its validity, and must allow the withholding agent to easily transmit data into the system regarding any facts of which it becomes aware that may affect the reliability of

the documentation. The withholding agent must be able to establish how and when it has accessed the data regarding the documentation and, if applicable, how and when it has transmitted data regarding any facts of which it became aware that may affect the reliability of the documentation. In addition, the withholding agent must be able to establish that any data it has transmitted to the information system has been processed and appropriate due diligence has been exercised regarding the validity of the documentation.

* * * * *

(C) *Special rule for brokers*—(*1*) *In general.* A withholding agent may rely on the certification of a broker that the broker holds a valid beneficial owner withholding certificate described in paragraph (e)(2)(i) of this section or other appropriate documentation for that beneficial owner with respect to any readily tradable instrument, as defined in § 31.3406(h)–1(d) of this chapter, if the broker is a United States person (including a U.S. branch treated as a U.S. person under paragraph (b)(2)(iv) of this section) that is acting as the agent of a beneficial owner and the U.S. broker has been provided a valid Form W–8 or other appropriate documentation. The certification must be in writing or in electronic form and contain all of the information required of a nonqualified intermediary under paragraphs (e)(3)(iv)(B) and (C) of this section. If a U.S. broker chooses to use this paragraph (e)(4)(ix)(C), that U.S. broker will be solely responsible for applying the rules of § 1.1441–7(b) to the withholding certificates or other appropriate documentation. For purposes of this paragraph (c)(4)(ix)(C), the term broker means a person treated as a broker under § 1.6045–1(a).

(*2*) The following example illustrates the rules of this paragraph (e)(4)(ix)(C):

*Example.* SCO is a U.S. securities clearing organization that provides clearing services for correspondent broker, CB, a U.S. corporation. Pursuant to a fully disclosed clearing agreement, CB fully discloses the identity of each of its customers to SCO. Part of SCO's clearing duties include the crediting of income and gross proceeds of readily tradeable instruments (as defined in § 31.3406(h)–1(d)) to each customer's account. For each disclosed customer that is a foreign beneficial owner, CB provides SCO with information required under paragraphs (e)(3)(iv)(B) and (C) of this section that is necessary to apply the correct rate of withholding and to file Forms 1042–S. SCO may use the representations and beneficial owner information provided by CB to determine the proper amount of withholding and to file Forms 1042–S. CB is responsible for determining the validity of the withholding certificates or other appropriate documentation under § 1.1441–1(b).

* * * * *

(5) *Qualified intermediaries*—(i) *General rule.* A qualified intermediary, as defined in paragraph (e)(5)(ii) of this section, may furnish a qualified intermediary withholding certificate to a withholding agent. The withholding certificate provides certifications on behalf of other persons for the purpose of claiming and verifying reduced rates of withholding under section 1441 or 1442 and for the purpose of reporting and withholding under other provisions of the Internal Revenue Code, such as the provisions under chapter 61 and section 3406 (and the regulations under those provisions). Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for the persons for whom the qualified intermediary receives the payment, including interest holders in a qualified intermediary that is fiscally transparent under the regulations under section 894. Although the qualified intermediary is required to obtain withholding certificates or other appropriate documentation from beneficial owners, payees, or interest holders pursuant to its agreement with the IRS, it is generally not required to attach such documentation to the intermediary withholding certificate. Notwithstanding the preceding sentence a qualified intermediary must provide a withholding agent with the Forms W–9, or disclose the names, addresses, and taxpayer identifying numbers, if known, of those U.S. non-exempt recipients for whom the qualified intermediary receives reportable amounts (within the meaning of paragraph (e)(3)(vi) of this section) to the extent required in the qualified intermediary's agreement with the IRS. A person may claim qualified intermediary status before an agreement is executed with the IRS if it has applied for such status and the IRS authorizes such status on an interim basis under such procedures as the IRS may prescribe.

* * * * *

(iii) *Withholding agreement*—(A) *In general.* The IRS may, upon request, enter into a withholding agreement with a foreign person described in paragraph (e)(5)(ii) of this section pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under the withholding agreement, a qualified intermediary shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents and payors under chapters 3 and 61 of the Internal Revenue Code, section 3406, the regulations under those provisions, and other withholding provisions of the Internal Revenue Code, except to the extent provided under the agreement.

(B) *Terms of the withholding agreement.* Generally, the agreement shall specify the type of certifications and documentation upon which the qualified intermediary may rely to ascertain the classification (e.g., corporation or partnership) and status (i.e., U.S. or foreign) of beneficial owners and payees who receive payments collected by the qualified intermediary and, if necessary, entitlement to the benefits of a reduced rate under an income tax treaty. The agreement shall specify if, and to what extent, the qualified intermediary may assume primary withholding responsibility in accordance with paragraph (e)(5)(iv) of this section. It shall also specify the extent to which applicable return filing and information reporting requirements are modified so that, in appropriate cases, the qualified intermediary may report payments to the IRS on an aggregated basis, without having to disclose the identity of beneficial owners and payees. However, the qualified intermediary may be required to provide to the IRS the name and address of those foreign customers who benefit from a reduced rate under an income tax treaty pursuant to the qualified intermediary arrangement for purposes of verifying entitlement to such benefits, particularly under an applicable limitation on benefits provision. Under the agreement, a qualified intermediary may agree to act as an acceptance agent to perform the duties described in § 301.6109–1(d)(3)(iv)(A) of this chapter. The agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures, apply in the context of a qualified intermediary arrangement and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a qualified intermediary to claim refunds of overwithheld amounts. If relevant, the agreement shall specify the manner in which the qualified intermediary may deal with payments to other intermediaries and flow-through entities. In addition, the agreement shall specify the manner in which the IRS will verify compliance with the agreement. In appropriate cases, the IRS may agree to rely on audits performed by an intermediary's approved auditor. In such a case, the IRS's audit may be

limited to the audit of the auditor's records (including work papers of the auditor and reports prepared by the auditor indicating the methodology employed to verify the entity's compliance with the agreement). For this purpose, the agreement shall specify the auditor or class of auditors that are approved. Generally, an auditor will not be approved if the auditor is not subject to laws, regulations, or rules that impose sanctions for failure to exercise its independence and to perform the audit competently. The agreement may include provisions for the assessment and collection of tax in the event that failure to comply with the terms of the agreement results in the failure by the withholding agent or the qualified intermediary to withhold and deposit the required amount of tax. Further, the agreement may specify the procedures by which deposits of amounts withheld are to be deposited, if different from the deposit procedures under the Internal Revenue Code and applicable regulations. To determine whether to enter a qualified intermediary withholding agreement and the terms of any particular withholding agreement, the IRS will consider appropriate factors including whether or not the foreign person agrees to assume primary withholding responsibility, the type of local know-your-customer laws and practices to which it is subject, the extent and nature of supervisory and regulatory control exercised under the laws of the foreign country over the foreign person, the volume of investments in U.S. securities (determined in dollar amounts and number of account holders), the financial condition of the foreign person, and whether the qualified intermediary is a resident of a country with which the United States has an income tax treaty.

(iv) *Assignment of primary withholding responsibility.* Any person who meets the definition of a withholding agent under § 1.1441–7(a) (whether a U.S. person or a foreign person) is required to withhold and deposit any amount withheld under § 1.1461–1(a) and to make the returns prescribed by § 1.1461–1(b) and (c). If permitted by its qualified intermediary agreement, a qualified intermediary agreement may, however, inform a withholding agent from which it receives a payment that it will assume the primary obligation to withhold, deposit, and report amounts under chapter 3 of the Internal Revenue Code and/or under chapter 61 of the Internal Revenue Code and section 3406. If a withholding agent makes a payment of an amount subject to withholding, as defined in § 1.1441–2(a), or a reportable payment, as defined in section 3406(b), to a qualified intermediary that represents to the withholding agent that it has assumed primary withholding responsibility for the payment, the withholding agent is not required to withhold on the payment. The withholding agent is not required to determine that the qualified intermediary agreement actually permits the qualified intermediary to assume primary withholding responsibility. A qualified intermediary that assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code or primary reporting and backup withholding responsibility under chapter 61 and section 3406 is not required to assume primary withholding responsibility for all accounts it has with a withholding agent but must assume primary withholding responsibility for all payments made to any one account that it has with the withholding agent. A qualified intermediary may agree with the withholding agent to assume primary withholding responsibility under chapter 3 and section 3406, only if expressly permitted to do so under its agreement with the IRS.

(v) *Withholding statement*—(A) *In general.* A qualified intermediary must provide each withholding agent from which it receives reportable amounts, as defined in paragraph (e)(3)(vi) of this section, as a qualified intermediary with a written statement (the withholding statement) containing the information specified in paragraph (e)(5)(v)(B) of this section. A withholding statement is not required, however, if all of the information a withholding agent needs to fulfill its withholding and reporting requirements is contained in the withholding certificate. The qualified intermediary agreement may require, in appropriate circumstances, the qualified intermediary to include information in its withholding statement relating to payments other than payments of reportable amounts. The withholding statement forms an integral part of the qualified intermediary's qualified intermediary withholding certificate and the penalties of perjury statement provided on the withholding certificate shall apply to the withholding statement as well. The withholding statement may be provided in any manner, and in any form, to which qualified intermediary and the withholding agent mutually agree, including electronically. If the withholding statement is provided electronically, there must be sufficient safeguards to ensure that the information received by the withholding agent is the information sent by qualified intermediary and must also document all occasions of user access that result in the submission or modification of withholding statement information. In addition, the electronic system must be capable of providing a hard copy of all withholding statements provided by the qualified intermediary. The withholding statement shall be updated as often as necessary for the withholding agent to meet its reporting and withholding obligations under chapters 3 and 61 of the Internal Revenue Code and section 3406. A withholding agent will be liable for tax, interest, and penalties in accordance with paragraph (b)(7) of this section to the extent it does not follow the presumption rules of paragraph (b)(3) of this section, §§ 1.1441–5(d) and (e)(6), and 1.6049–5(d) for any payment, or portion thereof, for which it does not have a valid withholding statement prior to making a payment.

(B) *Content of withholding statement.* The withholding statement must contain sufficient information for a withholding agent to apply the correct rate of withholding on payments from the accounts identified on the statement and to properly report such payments on Forms 1042–S and Forms 1099, as applicable. The withholding statement must—

(*1*) Designate those accounts for which the qualified intermediary acts as a qualified intermediary;

(*2*) Designate those accounts for which qualified intermediary assumes primary withholding responsibility under chapter 3 of the Internal Revenue Code and/or primary reporting and backup withholding responsibility under chapter 61 and section 3406; and

(*3*) Provide information regarding withholding rate pools, as described in paragraph (e)(5)(v)(C) of this section.

(C) *Withholding rate pools*—(*1*) *In general.* Except to the extent it has assumed both primary withholding responsibility under chapter 3 of the Internal Revenue Code and primary reporting and backup withholding responsibility under chapter 61 and section 3406 with respect to a payment, a qualified intermediary shall provide as part of its withholding statement the withholding rate pool information that is required for the withholding agent to meet its withholding and reporting obligations under chapters 3 and 61 of the Internal Revenue Code and section 3406. A withholding rate pool is a payment of a single type of income, determined in accordance with the categories of income reported on Form 1042–S or Form 1099, as applicable,

that is subject to a single rate of withholding. A withholding rate pool may be established by any reasonable method on which the qualified intermediary and a withholding agent agree (*e.g.*, by establishing a separate account for a single withholding rate pool, or by dividing a payment made to a single account into portions allocable to each withholding rate pool). To the extent a qualified intermediary does not assume primary reporting and backup withholding responsibility under chapter 61 and section 3406, a qualified intermediary's withholding statement must establish a separate withholding rate pool for each U.S. non-exempt recipient account holder that the qualified intermediary has disclosed to the withholding agent unless the qualified intermediary uses the alternative procedures in paragraph (e)(5)(v)(C)(*2*) of this section. A qualified intermediary shall determine withholding rate pools based on valid documentation that it obtains under its withholding agreement with the IRS, or if a payment cannot be reliably associated with valid documentation, under the applicable presumption rules. If a qualified intermediary has an account holder that is another intermediary (whether a qualified intermediary or a nonqualified intermediary) or a flow-through entity, the qualified intermediary may combine the account holder information provided by the intermediary or flow-through entity with the qualified intermediary's direct account holder information to determine the qualified intermediary's withholding rate pools.

(*2*) *Alternative procedure for U.S. non-exempt recipients.* If permitted under its agreement with the IRS, a qualified intermediary may, by mutual agreement with a withholding agent, establish a single withholding rate pool (not subject to backup withholding) for all U.S. non-exempt recipient account holders for whom the qualified intermediary has provided Forms W–9 prior to the withholding agent paying any reportable payments, as defined in section 3406(b), and a separate withholding rate pool (subject to 31-percent withholding) for all U.S. non-exempt recipient account holders for whom a qualified intermediary has not provided Forms W–9 prior to the withholding agent paying any reportable payments. If a qualified intermediary chooses the alternative procedure of this paragraph (e)(5)(v)(C)(*2*), the qualified intermediary must provide sufficient information to the withholding agent no later than January 15 of the year following the year in which the reportable payments are paid that allocates the reportable payments to each U.S. non-exempt recipient account holder. Failure to provide such information will result in the application of penalties to the qualified intermediary under sections 6721 and 6722, as well as any other applicable penalties, and may result in the termination of the qualified intermediary's withholding agreement with the IRS. A withholding agent shall not be liable for tax, interest, or penalties for failure to backup withhold or report information under chapter 61 of the Internal Revenue Code due solely to the errors or omissions of the qualified intermediary. If a qualified intermediary fails to provide the allocation information required by this paragraph (e)(5)(v)(C)(*2*), the withholding agent shall report the entire amount paid from the withholding rate pool to an unknown recipient, or otherwise in accordance with the appropriate Form 1099 and the instructions accompanying the form.

* * * * *

**Par 4.** Effective January 1, 2001, § 1.1441–2 is amended by:

1. Revising paragraph (a).
2. Revising paragraph (b)(1)(i).
3. Removing paragraph (b)(2)(ii), redesignating paragraph (b)(2)(iii) as paragraph (b)(2)(ii), and adding the word "and" after the semicolon in paragraph (b)(2)(i).
4. Revising paragraph (b)(3).

The revisions read as follows:

**§ 1.1441–2 Amounts subject to withholding.**

(a) *In general.* For purposes of the regulations under chapter 3 of the Internal Revenue Code, the term *amounts subject to withholding* means amounts from sources within the United States that constitute either fixed or determinable annual or periodical income described in paragraph (b) of this section or other amounts subject to withholding described in paragraph (c) of this section. For purposes of this paragraph (a), an amount shall be treated as being from sources within the United States if the source of the amount cannot be determined at the time of payment. See § 1.1441–3(d)(1) for determining the amount to be withheld from a payment in the absence of information at the time of payment regarding the source of the amount. Amounts subject to withholding include amounts that are not fixed or determinable annual or periodical income and upon which withholding is specifically required under a provision of this section or another section of the regulations under chapter 3 of the Internal Revenue Code (such as corporate distributions upon which withholding is required under § 1.1441–3(c)(1) that do not constitute dividend income). Amounts subject to withholding do not include—

(1) Amounts described in § 1.1441–1(b)(4)(i) to the extent they involve interest on obligations in bearer form or on foreign-targeted registered obligations (but, in the case of a foreign-targeted registered obligation, only to the extent of those amounts paid to a registered owner that is a financial institution within the meaning of section 871(h)(5)(B) or a member of a clearing organization which member is the beneficial owner of the obligation);

(2) Amounts described in § 1.1441–1(b)(4)(ii) (dealing with bank deposit interest and similar types of interest (including original issue discount) described in section 871(i)(2)(A) or 881(d));

(3) Amounts described in § 1.1441–1(b)(4)(iv) (dealing with interest or original issue discount on certain short-term obligations described in section 871(g)(1)(B) or 881(e));

(4) Amounts described in § 1.1441–1(b)(4)(xx) (dealing with income from certain gambling winnings exempt from tax under section 871(j));

(5) Amounts paid as part of the purchase price of an obligation sold or exchanged between interest payment dates, unless the sale or exchange is part of a plan the principal purpose of which is to avoid tax and the withholding agent has actual knowledge or reason to know of such plan;

(6) Original issue discount paid as part of the purchase price of an obligation sold or exchanged in a transaction other than a redemption of such obligation, unless the purchase is part of a plan the principal purpose of which is to avoid tax and the withholding agent has actual knowledge or reason to know of such plan; and

(7) Insurance premiums paid with respect to a contract that is subject to the section 4371 excise tax.

(b) *Fixed or determinable annual or periodical income*—(1) *In general*—(i) *Definition.* For purposes of chapter 3 of the Internal Revenue Code and the regulations thereunder, fixed or determinable annual or periodical income includes all income included in gross income under section 61 (including original issue discount) except for the items specified in paragraph (b)(2) of this section. Items of income that are excluded from gross income under a provision of law without regard to the U.S. or foreign status of the owner of the income, such as interest excluded from gross income

under section 103(a) or qualified scholarship income under section 117, shall not be treated as fixed or determinable annual or periodical income under chapter 3 of the Internal Revenue Code. Income excluded from gross income under section 892 (income of foreign governments) or section 115 (income of a U.S. possession) is fixed or determinable annual or periodical income since the exclusion from gross income under those sections is dependent on the foreign status of the owner of the income. See § 1.306–3(h) for treating income from the disposition of section 306 stock as fixed or determinable annual or periodical income.

* * * * *

(3) *Original issue discount*—(i) *Amount subject to tax.* An amount representing original issue discount is fixed or determinable annual or periodical income that is subject to tax under sections 871(a)(1)(C) and 881(a)(3) to the extent provided in those sections and this paragraph (b)(3) if not otherwise excluded under paragraph (a) of this section. An amount of original issue discount is subject to tax with respect to a foreign beneficial owner of an obligation carrying original issue discount upon a sale or exchange of the obligation or when a payment is made on such obligation. The amount taxable is the amount of original issue discount that accrued while the foreign person held the obligation up to the time that the obligation is sold or exchanged or that a payment is made on the obligation, reduced by any amount of original issue discount that was taken into account prior to that time (due to a payment made on the obligation). In the case of a payment made on the obligation, the tax due on the amount of original issue discount may not exceed the amount of the payment reduced by the tax imposed on any portion of the payment that is qualified stated interest.

(ii) *Amounts subject to withholding.* A withholding agent must withhold on the taxable amount of original issue discount paid on the redemption of an original issue discount obligation unless an exception to withholding applies (e.g., portfolio interest or treaty exception). In addition, withholding is required on the taxable amount of original issue discount upon the sale or exchange of an original issue discount obligation, other than in a redemption, to the extent the withholding agent has actual knowledge or reason to know that the sale or exchange is part of a plan the principal purpose of which is to avoid tax. If a withholding agent cannot determine the taxable amount of original issue discount on the redemption of an original issue discount obligation (or on the sale or exchange of such an obligation if the principal purpose of the sale is to avoid tax), then it must withhold on the entire amount of original issue discount accrued from the date of issue until the date of redemption (or the date the obligation is sold or exchanged) determined on the basis of the most recently published "List of Original Issue Discount Instruments" (IRS Publication 1212, available from the IRS Forms Distribution Center) or similar list published by the IRS as if the beneficial owner of the obligation had held the obligation since its original issue.

(iii) *Exceptions to withholding.* To the extent that this paragraph (b)(3) applies to require withholding by a person other than an issuer of an original issue discount obligation, or the issuer's agent, it shall apply only to obligations issued after December 31, 2000.

* * * * *

**Par. 5.** Effective January 1, 2001, § 1.1441–3 is amended by:

1. Revising paragraph (b)(2)(i).
2. Revising paragraph (c)(1).
3. Revising paragraph (c)(4)(i)(C).

The revisions read as follows:

**§ 1.1441–3 Determination of amounts to be withheld.**

* * * * *

(b) * * *

(2) *No withholding between interest payment dates*—(i) *In general.* A withholding agent is not required to withhold under § 1.1441–1 upon interest accrued on the date of a sale or exchange of a debt obligation when that sale occurs between two interest payment dates (even though the amount is treated as interest under § 1.61–7(c) or (d) and is subject to tax under section 871 or 881). See § 1.6045–1(c) for reporting requirements by brokers with respect to sale proceeds. See § 1.61–7(c) regarding the character of payments received by the acquirer of an obligation subsequent to such acquisition (that is, as a return of capital or interest accrued after the acquisition). Any exemption from withholding pursuant to this paragraph (b)(2)(i) applies without a requirement that documentation be furnished to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6045 or 6049 and backup withholding under section 3406. The exemption from withholding granted by this paragraph (b)(2) is not a determination that the accrued interest is not fixed or determinable annual or periodical income under section 871(a) or 881(a).

* * * * *

(c) *Corporate distributions*—(1) *General rule.* A corporation making a distribution with respect to its stock or any intermediary (described in § 1.1441–1(c)(13)) making a payment of such a distribution is required to withhold under section 1441, 1442, or 1443 on the entire amount of the distribution, unless it elects to reduce the amount of withholding under the provisions of this paragraph (c). Any exceptions from withholding provided by this paragraph (c) apply without any requirement to furnish documentation to the withholding agent. However, documentation may have to be furnished for purposes of the information reporting provisions under section 6042 or 6045 and backup withholding under section 3406. See § 1.1461–1(c) to determine whether amounts excepted from withholding under this section are considered amounts that are subject to reporting.

* * * * *

(4) * * * (i) * * *

(C) *Coordination with REIT withholding.* Withholding is required under section 1441 (or 1442 or 1443) on the portion of a distribution from a REIT that is not designated as a capital gain dividend, a return of basis, or a distribution in excess of a shareholder's adjusted basis in the stock of the REIT that is treated as a capital gain under section 301(c)(3). A distribution in excess of a shareholder's adjusted basis in the stock of the REIT is, however, subject to withholding under section 1445, unless the interest in the REIT is not a U.S. real property interest (e.g., an interest in a domestically controlled REIT under section 897(h)(2)). In addition, withholding is required under section 1445 on the portion of the distribution designated by a REIT as a capital gain dividend. See § 1.1445–8.

* * * * *

**Par. 6.** Effective January 1, 2001, § 1.1441–4 is amended by:

1. Revising paragraph (a)(3)(i).
2. Revising paragraph (b)(1)(ii).

The revisions read as follows:

**§ 1.1441–4 Exemptions from withholding for certain effectively connected income and other amounts.**

(a) * * *

(3) *Income on notional principal contracts*—(i) *General rule.* A withholding agent that pays amounts attributable to a notional principal contract described in § 1.863–7(a) or 1.988–2(e) shall have no obligation to withhold on the amounts paid under the

terms of the notional principal contract regardless of whether a withholding certificate is provided. However, a withholding agent must file returns under § 1.1461–1(b) and (c) reporting the income that it must treat as effectively connected with the conduct of a trade or business in the United States under the provisions of this paragraph (a)(3). Except as otherwise provided in paragraph (a)(3)(ii) of this section, a withholding agent must treat the income as effectively connected with the conduct of a U.S. trade or business if the income is paid to, or to the account of, a qualified business unit of a foreign person located in the United States or, if the payment is paid to, or to the account of, a qualified business unit of a foreign person located outside the United States, the withholding agent knows, or has reason to know, the payment is effectively connected with the conduct of a trade or business within the United States. Income on a notional principal contract does not include the amount characterized as interest under the provisions of § 1.446–3(g)(4).

* * * * *

(b) * * * (1) * * *

(ii) Such compensation would be subject to withholding under section 3402 but for the provisions of section 3401(a) (not including section 3401(a)(6)) and the regulations under that section. This paragraph (b)(1)(ii) does not apply to payments to a nonresident alien individual from any trust described in section 401(a), any annuity plan described in section 403(a), any annuity, custodial account, or retirement income account described in section 403(b), or an individual retirement account or individual retirement annuity described in section 408. Instead, these payments are subject to withholding under this section to the extent they are exempted from the definition of wages under section 3401(a)(12) or to the extent they are from an annuity, custodial account, or retirement income account described in section 403(b), or an individual retirement account or individual retirement annuity described in section 408. Thus, for example, payments to a nonresident alien individual from a trust described in section 401(a) are subject to withholding under section 1441 and not under section 3405 or section 3406.

* * * * *

**Par. 7.** Effective January 1, 2001, in § 1.1441–5 paragraphs (a) through (e) are revised to read as follows:

**§ 1.1441–5 Withholding on payments to partnerships, trusts, and estates.**

(a) *In general.* This section describes the rules that apply to payments made to partnerships, trusts, and estates. Paragraph (b) of this section prescribes the rules that apply to a withholding agent making a payment to a U.S. partnership, trust, or estate. It also prescribes the obligations of a U.S. partnership, trust, or estate that makes a payment to a foreign partner, beneficiary, or owner. Paragraph (c) of this section prescribes rules that apply to a withholding agent that makes a payment to a foreign partnership. Paragraph (d) of this section provides presumption rules that apply to payments made to foreign partnerships. Paragraph (e) of this section prescribes rules, including presumption rules, that apply to a withholding agent that makes a payment to a foreign trust or foreign estate.

(b) *Rules applicable to U.S. partnerships, trusts, and estates*—(1) *Payments to U.S. partnerships, trusts, and estates.* No withholding is required under section 1.1441–1(b)(1) on a payment of an amount subject to withholding (as defined in § 1.1441–2(a)) that a withholding agent may treat as made to a U.S. payee. Therefore, if a withholding agent can reliably associate (within the meaning of § 1.1441–2(b)(vii)) a Form W–9 provided in accordance with § 1.1441–1(d)(2) or (4) by a U.S. partnership, U.S. trust, or a U.S. estate the withholding agent may treat the payment as made to a U.S. payee and the payment is not subject to withholding under section 1441 even though the partnership, trust, or estate may have foreign partners, beneficiaries, or owners. A withholding agent is also not required to withhold under section 1441 on a payment it makes to an entity presumed to be a U.S. payee under paragraphs (d)(2) and (e)(6)(ii) of this section.

(2) *Withholding by U.S. payees*—(i) *U.S. partnerships*—(A) *In general.* A U.S. partnership is required to withhold under § 1.1441–1 as a withholding agent on an amount subject to withholding (as defined in § 1.1441–2(a)) that is includible in the gross income of a partner that is a foreign person. Subject to paragraph (b)(2)(v) of this section, a U.S. partnership shall withhold when any distributions that include amounts subject to withholding (including guaranteed payments made by a U.S. partnership) are made. To the extent a foreign partner's distributive share of income subject to withholding has not actually been distributed to the foreign partner, the U.S. partnership must withhold on the foreign partner's distributive share of the income on the earlier of the date that the statement required under section 6031(b) is mailed or otherwise provided to the partner or the due date for furnishing the statement.

(B) *Effectively connected income of partners.* Withholding on items of income that are effectively connected income in the hands of the partners who are foreign persons is governed by section 1446 and not by this section. In such a case, partners in a domestic partnership are not required to furnish a withholding certificate in order to claim an exemption from withholding under section 1441(c)(1) and § 1.1441–4.

(ii) *U.S. simple trusts.* A U.S. trust that is described in section 651(a) (a U.S. simple trust) is required to withhold under chapter 3 of the Internal Revenue Code as a withholding agent on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income is an amount subject to withholding (as defined in § 1.1441–2(a)). A U.S. simple trust shall withhold when a distribution is made to a foreign beneficiary. The U.S. trust may make a reasonable estimate of the portion of the distribution that constitutes distributable net income consisting of an amount subject to withholding and apply the appropriate rate of withholding to the estimated amount. If, at the end of the taxable year in which the distribution is made, the U.S. simple trust determines that it underwithheld under section 1441 or 1442, the trust shall be liable as a withholding agent for the amount under withheld under section 1461. No penalties shall be imposed for failure to withhold and deposit the tax if the U.S. simple trust's estimate was reasonable and the trust pays the underwithheld amount on or before the due date of Form 1042 under section 1461. Any payment of underwithheld amounts by the U.S. simple trust shall not be treated as income subject to additional withholding even if that amount is treated as additional income to the foreign beneficiary, unless the additional amount is income to the foreign beneficiary as a result of a contractual arrangement between the parties regarding the satisfaction of the foreign beneficiary's tax liability. To the extent a U.S. simple trust is required to, but does not, distribute such income to a foreign beneficiary, the U.S. trust must withhold on the foreign beneficiary's allocable share at the time the income is required (without extension) to be reported on Form 1042-S under § 1.1461–1(c).

(iii) *U.S. complex trusts and U.S. estates.* A U.S. trust that is not a trust described in section 651(a) (a U.S. complex trust) is required to withhold under chapter 3 of the Internal Revenue Code as a withholding agent on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income consists of an amount subject to withholding (as defined in § 1.1441–2(a)) that is, or is required to be, distributed currently. The U.S. complex trust shall withhold when a distribution is made to a foreign beneficiary. The trust may use the same procedures regarding an estimate of the amount subject to withholding as a U.S. simple trust under paragraph (b)(2)(ii) of this section. To the extent an amount subject to withholding is required to be, but is not actually distributed, the U.S. complex trust must withhold on the foreign beneficiary's allocable share at the time the income is required to be reported on Form 1042-S under § 1.1461–1(c), without extension. A U.S. estate is required to withhold under chapter 3 of the Internal Revenue Code on the distributable net income includible in the gross income of a foreign beneficiary to the extent the distributable net income consists of an amount subject to withholding (as defined in § 1.1441–2(a)) that is actually distributed. A U.S. estate may also use the reasonable estimate procedures of paragraph (b)(2)(ii) of this section. However, those procedures apply to an estate that has a taxable year other than a calendar year only if the estate files an amended return on Form 1042 for the calendar year in which the distribution was made and pays the underwithheld tax and interest within 60 days after the close of the taxable year in which the distribution was made.

(iv) *U.S. grantor trusts.* A U.S. trust that is described in section 671 through 679 (a U.S. grantor trust) must withhold on any income includible in the gross income of a foreign person that is treated as an owner of the grantor trust to the extent the amount includible consists of an amount that is subject to withholding (as described in § 1.1441–2(a)). The withholding must occur at the time the income is received by, or credited to, the trust.

(v) *Subsequent distribution.* If a U.S. partnership or U.S. trust withholds on a foreign partner, beneficiary, or owner's share of an amount subject to withholding before the amount is actually distributed to the partner, beneficiary, or owner, withholding is not required when the amount is subsequently distributed.

(c) *Foreign partnerships*—(1) *Determination of payee*—(i) *Payments treated as made to partners.* Except as otherwise provided in paragraph (c)(1)(ii) of this section, the payees of a payment to a person that the withholding agent may treat as a nonwithholding foreign partnership under paragraph (c)(3)(i) or (d)(2) of this section are the partners (looking through partners that are foreign intermediaries or flow-through entities) as follows—

(A) If the withholding agent can reliably associate a partner's distributive share of the payment with a valid Form W–9 provided under § 1.1441–1(d), the partner is a U.S. payee;

(B) If the withholding agent can reliably associate a partner's distributive share of the payment with a valid Form W–8, or other appropriate documentation, provided under § 1.1441–1(e)(1)(ii), the partner is a payee that is a foreign beneficial owner;

(C) If the withholding agent can reliably associate a partner's distributive share of the payment with a qualified intermediary withholding certificate under § 1.1441–1(e)(3)(ii), a nonqualified intermediary withholding certificate under § 1.1441–1(e)(3)(iii), or a U.S. branch certificate under § 1.1441–1(e)(3)(v), then the rules of § 1.1441–1(b)(2)(v) shall apply to determine who the payee is in the same manner as if the partner's distributive share of the payment had been paid directly to such intermediary or U.S. branch;

(D) If the withholding agent can reliably associate the partner's distributive share with a withholding foreign partnership certificate under paragraph (c)(2)(iv) of this section or a nonwithholding foreign partnership certificate under paragraph (c)(3)(iii) of this section, then the rules of this paragraph (c)(1)(i) or paragraph (c)(1)(ii) of this section shall apply to determine whether the payment is treated as made to the partners of the higher-tier partnership under this paragraph (c)(1)(i) or to the higher-tier partnership itself (under the rules of paragraph (c)(1)(ii) of this section) in the same manner as if the partner's distributive share of the payment had been paid directly to the higher-tier foreign partnership;

(E) If the withholding agent can reliably associate the partner's distributive share with a withholding certificate described in paragraph (e) of this section regarding a foreign trust or estate, then the rules of paragraph (e) of this section shall apply to determine who the payees are; and

(F) If the withholding agent cannot reliably associate the partner's distributive share with a withholding certificate or other appropriate documentation, the partners are considered to be the payees and the presumptions described in paragraph (d)(3) of this section shall apply to determine their classification and status.

(ii) *Payments treated as made to the partnership.* A payment to a person that the withholding agent may treat as a foreign partnership is treated as a payment to the foreign partnership and not to its partners only if—

(A) The withholding agent can reliably associate the payment with a withholding certificate described in paragraph (c)(2)(iv) of this section (withholding certificate of a withholding foreign partnership);

(B) The withholding agent can reliably associate the payment with a withholding certificate described in paragraph (c)(3)(iii) of this section (nonwithholding foreign partnership) certifying that the payment is income that is effectively connected with the conduct of a trade or business in the United States; or

(C) The withholding agent can treat the income as effectively connected income under the presumption rules of § 1.1441–4(a)(2)(ii) or (3)(i).

(iii) *Rules for reliably associating a payment with documentation.* For rules regarding the reliable association of a payment with documentation, see § 1.1441–1(b)(2)(vii). In the absence of documentation, see §§ 1.1441–1(b)(3) and 1.6049–5(d) and paragraphs (d) and (e)(6) of this section for applicable presumptions.

(iv) *Examples.* The rules of paragraphs (c)(1)(i) and (ii) of this section are illustrated by the following examples:

*Example 1.* FP is a nonwithholding foreign partnership organized in Country X. FP has two partners, FC, a foreign corporation, and USP, a U.S. partnership. USWH, a U.S. withholding agent, makes a payment of U.S. source interest to FP. FP has provided USWH with a valid nonwithholding foreign partnership certificate, as described in paragraph (c)(3)(iii) of this section, with which it associates a beneficial owner withholding certificate from FC and a Form W–9 from USP together with the withholding statement required by paragraph (c)(3)(iv) of this section. USWH can reliably associate the payment of interest with the withholding certificates from FC and USP. Under paragraph (c)(1)(i) of this section, the payees of the interest payment are FC and USP.

*Example 2.* The facts are the same as in *Example 1*, except that FP1, a nonwithholding foreign partnership, is a partner in FP rather than USP. FP1 has two partners, A and B, both foreign persons. FP provides USWH with a valid nonwithholding foreign partnership certificate, as described in paragraph (c)(3)(iii) of this section, with which it associates a beneficial owner

withholding certificate from FC and a nonwithholding foreign partnership certificate from FP1. In addition, foreign beneficial owner withholding certificates from A and B are associated with the nonwithholding foreign partnership withholding certificate from FP1. FP also provides the withholding statement required by paragraph (c)(3)(iv) of this section. USWH can reliably associate the interest payment with the withholding certificates provided by FC, A, and B. Therefore, under paragraph (c)(1)(i) of this section, the payees of the interest payment are FC, A, and B.

*Example 3.* USWH makes a payment of U.S. source dividends to WFP, a withholding foreign partnership. WFP has two partners, FC1 and FC2, both foreign corporations. USWH can reliably associate the payment with a valid withholding foreign partnership withholding certificate from WFP. Therefore, under paragraph (c)(1)(ii)(A) of this section, WFP is the payee of the dividends.

*Example 4.* USWH makes a payment of U.S. source royalties to FP, a foreign partnership. USWH can reliably associate the royalties with a valid withholding certificate from FP on which FP certifies that the income is effectively connected with the conduct of a trade or business in the United States. Therefore, under paragraph (c)(1)(ii)(B) of this section, FP is the payee of the royalties.

(2) *Withholding foreign partnerships*—(i) *Reliance on claim of withholding foreign partnership status.* A withholding foreign partnership is a foreign partnership that has entered into an agreement with the Internal Revenue Service (IRS), as described in paragraph (c)(2)(ii) of this section, with respect to distributions and guaranteed payments it makes to its partners. A withholding agent that can reliably associate a payment with a certificate described in paragraph (c)(2)(iv) of this section may treat the person to whom it makes the payment as a withholding foreign partnership for purposes of withholding under chapter 3 of the Internal Revenue Code, information reporting under chapter 61 of the Internal Revenue Code, backup withholding under section 3406, and withholding under other provisions of the Internal Revenue Code. Furnishing such a certificate is in lieu of transmitting to a withholding agent withholding certificates or other appropriate documentation for its partners. Although the withholding foreign partnership generally will be required to obtain withholding certificates or other appropriate documentation from its partners pursuant to its agreement with the IRS, it will generally not be required to attach such documentation to its withholding foreign partnership withholding certificate. A foreign partnership may act as a qualified intermediary under § 1.1441–1(e)(5) with respect to payments it makes to persons other than its partners. In addition, the IRS may permit a foreign partnership to act as a qualified intermediary under § 1.1441–1(e)(5)(ii)(D) with respect to its partners in appropriate circumstances.

(ii) *Withholding agreement.* The IRS may, upon request, enter into a withholding agreement with a foreign partnership pursuant to such procedures as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). Under the withholding agreement, a foreign partnership shall generally be subject to the applicable withholding and reporting provisions applicable to withholding agents and payors under chapters 3 and 61 of the Internal Revenue Code, section 3406, the regulations under those provisions, and other withholding provisions of the Internal Revenue Code, except to the extent provided under the agreement. Under the agreement, a foreign partnership may agree to act as an acceptance agent to perform the duties described in § 301.6109–1(d)(3)(iv)(A) of this chapter. The agreement may specify the manner in which applicable procedures for adjustments for underwithholding and overwithholding, including refund procedures, apply to the withholding foreign partnership and its partners and the extent to which applicable procedures may be modified. In particular, a withholding agreement may allow a withholding foreign partnership to claim refunds of overwithheld amounts on behalf of its customers. In addition, the agreement must specify the manner in which the IRS will audit the foreign partnership's books and records in order to verify the partnership's compliance with its agreement. A withholding foreign partnership must file a return on Form 1042 and information returns on Form 1042–S. The withholding foreign partnership agreement may also require a withholding foreign partnership to file a partnership return under section 6031(a) and partner statements under 6031(b).

(iii) *Withholding responsibility.* A withholding foreign partnership must assume primary withholding responsibility under chapter 3 of the Internal Revenue Code. It is not required to provide information to the withholding agent regarding each partner's distributive share of the payment. The withholding foreign partnership will be responsible for reporting the payments under § 1.1461–1(c) and chapter 61 of the Internal Revenue Code. A withholding agent making a payment to a withholding foreign partnership is not required to withhold any amount under chapter 3 of the Internal Revenue Code on a payment to the withholding foreign partnership, unless it has actual knowledge or reason to know that the foreign partnership is not a withholding foreign partnership. The withholding foreign partnership shall withhold the payments under the same procedures and at the same time as prescribed for withholding by a U.S. partnership under paragraph (b)(2) of this section, except that, for purposes of determining the partner's status, the provisions of paragraph (d)(4) of this section shall apply.

(iv) *Withholding certificate from a withholding foreign partnership.* The rules of § 1.1441–1(e)(4) shall apply to withholding certificates described in this paragraph (c)(2)(iv). A withholding certificate furnished by a withholding foreign partnership is valid with regard to any partner on whose behalf the certificate is furnished only if it is furnished on a Form W–8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a partner with authority to sign for the partnership, its validity has not expired, and it contains the information, statement, and certifications described in this paragraph (c)(2)(iv) as follows—

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), and the employer identification number of the partnership, and the country under the laws of which the partnership is created or governed;

(B) A certification that the partnership is a withholding foreign partnership within the meaning of paragraph (c)(2)(i) of this section; and

(C) Any other information, certifications or statements as may be required by the withholding foreign partnership agreement with the IRS or the form or accompanying instructions in addition to, or in lieu of, the information, statements, and certifications described in this paragraph (c)(2)(iv).

(3) *Nonwithholding foreign partnerships*—(i) *Reliance on claim of foreign partnership status.* A withholding agent may treat a person as a nonwithholding foreign partnership if it receives from that person a nonwithholding foreign partnership withholding certificate as described in paragraph (c)(3)(iii) of this section. A withholding agent that does not receive a nonwithholding foreign partnership withholding certificate, or does not receive a valid withholding certificate, from an entity it knows, or has reason to know, is a foreign partnership, must apply the presumption rules of §§ 1.1441–1(b)(3) and 1.6049–5(d) and

paragraphs (d) and (e)(6) of this section. In addition, to the extent a withholding agent cannot, prior to a payment, reliably associate the payment with valid documentation from a payee that is associated with the nonwithholding foreign partnership withholding certificate or has insufficient information to report the payment on Form 1042–S or Form 1099, to the extent reporting is required, must also apply the presumption rules. See § 1.1441–1(b)(2)(vii)(A) and (B) for rules regarding reliable association. See paragraph (c)(3)(iv) of this section and § 1.1441–1(e)(3)(iv) for alternative procedures permitting allocation information to be received after a payment is made.

(ii) *Reliance on claim of reduced withholding by a partnership for its partners.* This paragraph (c)(3)(ii) describes the manner in which a withholding agent may rely on a claim of reduced withholding when making a payment to a nonwithholding foreign partnership. To the extent that a withholding agent treats a payment to a nonwithholding foreign partnership as a payment to the nonwithholding foreign partnership's partners (whether direct or indirect) in accordance with paragraph (c)(1)(i) of this section, it may rely on a claim for reduced withholding by the partner if, prior to the payment, the withholding agent can reliably associate the payment (within the meaning of § 1.1441–1(b)(2)(vii)) with a valid withholding certificate or other appropriate documentation from the partner that establishes entitlement to a reduced rate of withholding. A withholding certificate or other appropriate documentation that establishes entitlement to a reduced rate of withholding is a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i), documentary evidence described in § 1.1441–6(c)(3) or (4) or 1.6049–5(c)(1) (for a partner claiming to be a foreign person and a beneficial owner, determined under the provisions of § 1.1441–1(c)(6)), a Form W–9 described in § 1.1441–1(d) (for a partner claiming to be a U.S. payee), or a withholding foreign partnership withholding certificate described in paragraph (c)(2)(iv) of this section. Unless a nonwithholding foreign partnership withholding certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States, a claim must be presented for each portion of the payment that represents an item of income includible in the distributive share of a partner as required under paragraph (c)(3)(iii)(C) of this section. When making a claim for several partners, the partnership may present a single nonwithholding foreign partnership withholding certificate to which the partners' certificates or other appropriate documentation are associated. Where the nonwithholding foreign partnership withholding certificate is provided for income claimed to be effectively connected with the conduct of a trade or business in the United States under paragraph (c)(3)(iii)(D) of this section, the claim may be presented without having to identify any partner's distributive share of the payment.

(iii) *Withholding certificate from a nonwithholding foreign partnership.* A nonwithholding foreign partnership shall provide a nonwithholding foreign partnership withholding certificate with respect to reportable amounts received by the nonwithholding foreign partnership. A nonwithholding foreign partnership withholding certificate is valid only to the extent it is furnished on a Form W–8 (or an acceptable substitute form or such other form as the IRS may prescribe), it is signed under penalties of perjury by a partner with authority to sign for the partnership, its validity has not expired, and it contains the information, statements, and certifications described in this paragraph (c)(3)(iii) and paragraph (c)(3)(iv) of this section, and the withholding certificates and other appropriate documentation for all the persons to whom the certificate relates are associated with the certificate. The rules of § 1.1441–1(e)(4) shall apply to withholding certificates described in this paragraph (c)(3)(iii). No withholding certificates or other appropriate documentation from persons who derive income through a partnership (whether or not U.S. exempt recipients) are required to be associated with the nonwithholding foreign partnership withholding certificate if the certificate is furnished solely for income claimed to be effectively connected with the conduct of a trade or business in the United States. Withholding certificates and other appropriate documentation that may be associated with the nonwithholding foreign partnership withholding certificate consist of beneficial owner withholding certificates under § 1.1441–1(e)(2)(i), intermediary withholding certificates under § 1.1441–1(e)(3)(i), withholding foreign partnership withholding certificates under paragraph (c)(2)(iv) of this section, nonwithholding foreign partnership withholding certificates under this paragraph (c)(3)(iii), withholding certificates from foreign trusts or estates under paragraph (e) of this section, documentary evidence described in § 1.1441–6(c)(3) or (4) or documentary evidence described in § 1.6049–5(c)(1), and any other documentation or certificates applicable under other provisions of the Internal Revenue Code or regulations that certify or establish the status of the payee or beneficial owner as a U.S. or a foreign person. Nothing in this paragraph (c)(3)(iii) shall require a nonwithholding foreign partnership to furnish original documentation. Copies of certificates or documentary evidence may be transmitted to the U.S. withholding agent, in which case the nonwithholding foreign partnership must retain the original documentation for the same time period that the copy is required to be retained by the withholding agent under § 1.1441–1(e)(4)(iii) and must provide it to the withholding agent upon request. The information, statement, and certifications required on the withholding certificate are as follows—

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), and the employer identification number of the partnership, if any, and the country under the laws of which the partnership is created or governed;

(B) A certification that the person whose name is on the certificate is a foreign partnership;

(C) A withholding statement associated with the nonwithholding foreign partnership withholding certificate that provides all of the information required by paragraph (c)(3)(iv) of this section and § 1.1441–1(e)(3)(iv). No withholding statement is required, however, for a nonwithholding foreign partnership withholding certificate furnished for income claimed to be effectively connected with the conduct of a trade or business in the United States;

(D) A certification that the income is effectively connected with the conduct of a trade or business in the United States, if applicable; and

(E) Any other information, certifications, or statements required by the form or accompanying instructions in addition to, or in lieu of, the information and certifications described in this paragraph (c)(3)(iii).

(iv) *Withholding statement provided by nonwithholding foreign partnership.* The provisions of § 1.1441–1(e)(3)(iv) (regarding a withholding statement) shall apply to a nonwithholding foreign partnership by substituting the term nonwithholding foreign partnership for the term nonqualified intermediary.

(v) *Withholding and reporting by a foreign partnership.* A nonwithholding foreign partnership described in this paragraph (c)(3) that receives an amount subject to withholding (as defined in § 1.1441–2(a)) shall be required to withhold and report such payment under chapter 3 of the Internal Revenue Code and the regulations thereunder except as otherwise provided in this paragraph (c)(3)(v). A nonwithholding foreign partnership shall not be required to withhold and report if it has provided a valid nonwithholding foreign partnership withholding certificate, it has provided all of the information required by paragraph (c)(3)(iv) of this section (withholding statement), and it does not know, and has no reason to know, that another withholding agent failed to withhold the correct amount or failed to report the payment correctly under § 1.1461–1(c). A withholding foreign partnership's obligations to withhold and report shall be determined in accordance with its withholding foreign partnership agreement.

(d) *Presumption rules*—(1) *In general.* This paragraph (d) contains the applicable presumptions for a withholding agent (including a partnership) to determine the classification and status of a partnership and its partners in the absence of documentation. The provisions of § 1.1441–1(b)(3)(iv) (regarding the 90-day grace period) and § 1.1441–1(b)(3)(vii) through (ix) shall apply for purposes of this paragraph (d).

(2) *Determination of partnership status as U.S. or foreign in the absence of documentation.* In the absence of a valid representation of U.S. partnership status in accordance with paragraph (b)(1) of this section or of foreign partnership status in accordance with paragraph (c)(2)(i) or (3)(i) of this section, the withholding agent shall determine the classification of the payee under the presumptions set forth in § 1.1441–1(b)(3)(ii). If the withholding agent treats the payee as a partnership under § 1.1441–1(b)(3)(ii), the withholding agent shall presume the partnership to be a U.S. partnership unless there are indicia of foreign status. If there are indicia of foreign status, the withholding agent may presume the partnership to be foreign. Indicia of foreign status exist only if the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits "98," the withholding agent's communications with the payee are mailed to an address in a foreign country, or the payment is made outside the United States (as defined in § 1.6049–5(e)). For rules regarding reliable association with a withholding certificate from a domestic or a foreign partnership, see § 1.1441–1(b)(2)(vii).

(3) *Determination of partners' status in the absence of certain documentation.* If a nonwithholding foreign partnership has provided a nonwithholding foreign partnership withholding certificate under paragraph (c)(3)(iii) of this section that would be valid except that the withholding agent cannot reliably associate all or a portion of the payment with valid documentation from a partner of the partnership, then the withholding agent may apply the presumption rule of this paragraph (d)(3) with respect to all or a portion of the payment for which documentation has not been received. See § 1.1441–1(b)(2)(vii)(A) and (B) for rules regarding reliable association. The presumption rule of this paragraph (d)(3) also applies to a person that is presumed to be a foreign partnership under the rule of paragraph (d)(2) of this section. Any portion of a payment that the withholding agent cannot treat as reliably associated with valid documentation from a partner may be presumed made to a foreign payee. As a result, any payment of an amount subject to withholding is subject to withholding at a rate of 30 percent. Any payment that is presumed to be made to an undocumented foreign payee must be reported on Form 1042–S. See § 1.1461–1(c).

(4) *Determination by a withholding foreign partnership of the status of its partners.* A withholding foreign partnership shall determine whether the partners or some other persons are the payees of the partners' distributive shares of any payment made by a withholding foreign partnership by applying the rules of § 1.1441–1(b)(2), paragraph (c)(1) of this section (in the case of a partner that is a foreign partnership), and paragraph (e)(3) of this section (in the case of a partner that is a foreign estate or a foreign trust). Further, the provisions of paragraph (d)(3) of this section shall apply to determine the status of partners and the applicable withholding rates to the extent that, at the time the foreign partnership is required to withhold on a payment, it cannot reliably associate the amount with documentation for any one or more of its partners.

(e) *Foreign trusts and estates*—(1) *In general.* This paragraph (e) provides rules applicable to payments of amounts subject to withholding (as defined in § 1.1441–2(a)) that a withholding agent may treat as made to any foreign trust or a foreign estate. For rules relating to payments to a U.S. trust or a U.S. estate, see paragraph (b) of this section. For the definitions of foreign simple trust, foreign complex trust, and foreign grantor trust, see § 1.1441–1(c)(24), (25), and (26).

(2) *Payments to foreign complex trusts and foreign estates.* Under § 1.1441–1(c)(6)(ii)(D), a foreign complex trust or foreign estate is generally considered to be the beneficial owner of income paid to the foreign complex trust or foreign estate. See paragraph (e)(4) of this section for rules describing when a withholding agent may treat a payment as made to a foreign complex trust or a foreign estate.

(3) *Payees of payments to foreign simple trusts and foreign grantor trusts*—(i) *Payments for which beneficiaries and owners are payees.* For purposes of the regulations under chapters 3 and 61 of the Internal Revenue Code and section 3406, a foreign simple trust is not a beneficial owner or a payee of a payment. Also, a foreign grantor trust (or a portion of a trust that is a foreign grantor trust) is not considered a beneficial owner or a payee of a payment. Except as otherwise provided in paragraph (e)(3)(ii) of this section, the payees of a payment made to a person that the withholding agent may treat as a foreign simple trust or a foreign grantor trust (or a portion of a trust that is a foreign grantor trust) are determined under the rules of this paragraph (e)(3)(i). The payees shall be treated as the beneficial owners if they may be so treated under § 1.1441–1(c)(6)(ii)(C) and they provide documentation supporting their status as the beneficial owners. The payees of a payment to a foreign simple trust or foreign grantor trust are determined as follows—

(A) If the withholding agent can reliably associate a payment with a valid Form W–9 provided under § 1.1441–1(d) from a beneficiary or owner of the foreign trust, then the beneficiary or owner is a U.S. payee;

(B) If the withholding agent can reliably associate a payment with a valid Form W–8, or other appropriate documentation, provided under § 1.1441–1(e)(1)(ii) from a beneficiary or owner of the foreign trust, then the beneficiary or owner is a payee that is a foreign beneficial owner;

(C) If the withholding agent can reliably associate a payment with a qualified intermediary withholding certificate under § 1.1441–1(e)(3)(ii), a nonqualified intermediary withholding certificate under § 1.1441–1(e)(3)(ii), or a U.S. branch withholding certificate under § 1.1441–1(e)(3)(v), then the rules of § 1.1441–1(b)(2)(v) shall apply to determine the payee in the same manner

as if the payment had been paid directly to such intermediary or U.S. branch;

(D) If the withholding agent can reliably associate a payment with a withholding foreign partnership withholding certificate under paragraph (c)(2)(iv) of this section or a nonwithholding foreign partnership withholding certificate under paragraph (c)(3)(iii) of this section, then the rules of paragraph (c)(1)(i) or (ii) of this section shall apply to determine the payee;

(E) If the withholding agent can reliably associate the payment with a foreign simple trust withholding certificate or a foreign grantor trust withholding certificate (both described in paragraph (e)(5)(iii) of this section) from a second or higher-tier foreign simple trust or foreign grantor trust, then the rules of this paragraph (e)(3)(i) or paragraph (e)(3)(ii) of this section shall apply to determine whether the payment is treated as made to a beneficiary or owner of the higher-tier trust or to the trust itself in the same manner as if the payment had been made directly to the higher-tier trust; and

(F) If the withholding agent cannot reliably associate a payment with a withholding certificate or other appropriate documentation, the payees shall be determined by applying the presumptions described in paragraph (e)(6) of this section.

(ii) *Payments for which trust is payee.* A payment to a person that the withholding agent may treat as made to a foreign trust under paragraph (e)(5)(iii) of this section is treated as a payment to the trust, and not to a beneficiary of the trust, only if—

(A) The withholding agent can reliably associate the payment with a foreign complex trust withholding certificate under paragraph (e)(4) of this section;

(B) The withholding agent can reliably associate the payment with a foreign simple trust withholding certificate under paragraph (e)(5)(iii) of this section certifying that the payment is income that is treated as effectively connected with the conduct of a trade or business in the United States; or

(C) The withholding agent can treat the income as effectively connected income under the presumption rules of § 1.1441–4(a)(3)(i).

(4) *Reliance on claim of foreign complex trust or foreign estate status.* A withholding agent may treat a payment as made to a foreign complex trust or a foreign estate if the withholding agent can reliably associate the payment with a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) or other documentary evidence under § 1.1441–6(c)(3) or (4) (regarding a claim for treaty benefits) or § 1.6049–5(c)(1) (regarding documentary evidence to establish foreign status for purposes of chapter 61 of the Internal Revenue Code) that establishes the foreign complex trust or foreign estate's status as a beneficial owner. See paragraph (e)(6) of this section for presumption rules if documentation is lacking.

(5) *Foreign simple trust and foreign grantor trust*—(i) *Reliance on claim of foreign simple trust or foreign grantor trust status.* A withholding agent may treat a person as a foreign simple trust or foreign grantor trust if it receives from that person a foreign simple trust or foreign grantor trust withholding certificate as described in paragraph (e)(5)(iii) of this section. A withholding agent must apply the presumption rules of §§ 1.1441–1(b)(3) and 1.6049–5(d) and paragraphs (d) and (e)(6) of this section to the extent it cannot, prior to the payment, reliably associate a payment (within the meaning of § 1.1441–1(b)(2)(vii)) with a valid foreign simple trust or foreign grantor trust withholding certificate, it cannot reliably determine how much of the payment relates to valid documentation provided by a payee (*e.g.*, a person that is not itself a nonqualified intermediary, flow-through entity, or U.S. branch) associated with the foreign simple trust or foreign grantor trust withholding certificate, or it does not have sufficient information to report the payment on Form 1042–S or Form 1099, if reporting is required. See § 1.1441–1(b)(2)(vii)(A) and (B).

*(ii) Reliance on claim of reduced withholding by a foreign simple trust or foreign grantor trust for its beneficiaries or owners.* This paragraph (e)(5)(ii) describes the manner in which a withholding agent may rely on a claim of reduced withholding when making a payment to a foreign simple trust or foreign grantor trust. To the extent that a withholding agent treats a payment to a foreign simple trust or foreign grantor trust as a payment to payees other than the trust in accordance with paragraph (e)(3)(i) of this section, it may rely on a claim for reduced withholding by a beneficiary or owner if, prior to the payment, the withholding agent can reliably associate the payment (within the meaning of § 1.1441–1(b)(2)(vii)) with a valid withholding certificate or other appropriate documentation from a payee or beneficial owner that establishes entitlement to a reduced rate of withholding. A withholding certificate or other appropriate documentation that establishes entitlement to a reduced rate of withholding is a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) or documentary evidence described in § 1.1441–6(c)(3) or(4) or in § 1.6049–5(c)(1) (for a beneficiary or owner claiming to be a foreign person and a beneficial owner, determined under the provisions of § 1.1441–1(c)(6)), a Form W–9 described in § 1.1441–1(d) (for a beneficiary or owner claiming to be a U.S. payee), or a withholding foreign partnership withholding certificate described in paragraph (c)(2)(iv) of this section. Unless a foreign simple trust or foreign grantor trust withholding certificate is provided for income treated as income effectively connected with the conduct of a trade or business in the United States, a claim must be presented for each payee's portion of the payment. When making a claim for several payees, the trust may present a single foreign simple trust or foreign grantor trust withholding certificate with which the payees' certificates or other appropriate documentation are associated. Where the foreign simple trust or foreign grantor trust withholding certificate is provided for income that is treated as effectively connected with the conduct of a trade or business in the United States under paragraph (e)(5)(iii)(D) of this section, the claim may be presented without having to identify any partner's distributive share of the payment.

(iii) *Withholding certificate from foreign simple trust or foreign grantor trust.* A withholding certificate furnished by a foreign simple trust or a foreign grantor trust that is not a withholding foreign trust (within the meaning of paragraph (e)(5)(v) of this section) is valid only if it is furnished on a Form W–8, an acceptable substitute form, or such other form as the IRS may prescribe, it is signed under penalties of perjury by a trustee, its validity has not expired, it contains the information, statements, and certifications required by this paragraph (e)(5)(iii) and § 1.1441–1(e)(3)(iv), and the withholding certificates or other appropriate documentation for all of the payees (as determined under paragraph (e)(3)(i) of this section) to whom the certificate relates are associated with the foreign simple trust or foreign grantor trust withholding certificate. The rules of § 1.1441–1(e)(4) shall apply to withholding certificates described in this paragraph (e)(5)(iii). No withholding certificates or other appropriate documentation from persons who derive income through a foreign simple trust or a foreign grantor trust (whether or not U.S. exempt

recipients) are required to be associated with the foreign simple trust or foreign grantor trust withholding certificate if the certificate is furnished solely for income that is treated as effectively connected with the conduct of a trade or business in the United States. Withholding certificates and other appropriate documentation (as determined under paragraph (e)(3)(i) of this section) that may be associated with a foreign simple trust or foreign grantor trust withholding certificate consist of beneficial owner withholding certificates under § 1.1441–1(e)(2)(i), intermediary withholding certificates under § 1.1441–1(e)(3)(i), withholding foreign partnership withholding certificates under paragraph (c)(2)(iv) of this section, nonwithholding foreign partnership withholding certificates under paragraph (c)(3)(iii) of this section, withholding certificates from foreign trusts or estates under paragraph (e)(4) or (5)(iii) of this section, documentary evidence described in §§ 1.1441–6(c)(3) or (4), or 1.6049–5(c)(1), and any other documentation or certificates applicable under other provisions of the Internal Revenue Code or regulations that certify or establish the status of the payee or beneficial owner as a U.S. or a foreign person. Nothing in this paragraph (e)(5)(iii) shall require a foreign simple trust or foreign grantor trust to provide original documentation. Copies of certificates or documentary evidence may be passed up to the U.S. withholding agent, in which case the foreign simple trust or foreign grantor trust must retain the original documentation for the same time period that the copy is required to be retained by the withholding agent under § 1.1441–1(e)(4)(iii) and must provide it to the withholding agent upon request. The information, statement, and certifications required on a foreign simple trust or foreign grantor trust withholding certificate are as follows—

(A) The name, permanent residence address (as described in § 1.1441–1(e)(2)(ii)), and the employer identification number, if required, of the trust and the country under the laws of which the trust is created;

(B) A certification that the person whose name is on the certificate is a foreign simple trust or a foreign grantor trust;

(C) A withholding statement associated with the foreign simple trust or foreign grantor trust withholding certificate that provides all of the information required by paragraph (e)(5)(iv) of this section. No withholding statement is required, however, for a foreign simple trust withholding certificate furnished for income that is treated as effectively connected with the conduct of a trade or business in the United States;

(D) A certification on a foreign simple trust withholding certificate that the income is treated as effectively connected with the conduct of a trade or business in the United States, if applicable; and

(E) Any other information, certifications, or statements required by the form or accompanying instructions in addition to, or in lieu of, the information, certifications, and statements described in this paragraph (e)(5)(iii);

(iv) *Withholding statement provided by a foreign simple trust or foreign grantor trust.* The provisions of § 1.1441–1(e)(3)(iv) (regarding a withholding statement) shall apply to a foreign simple trust or foreign grantor trust by substituting the term foreign simple trust or foreign grantor trust for the term nonqualified intermediary.

(v) *Withholding foreign trusts.* The IRS may enter an agreement with a foreign trust to treat the trust or estate as a withholding foreign trust. Such an agreement shall generally follow the same principles as an agreement with a withholding foreign partnership under paragraph (c)(2)(ii) of this section. A withholding agent may treat a payment to a withholding foreign trust in the same manner the withholding agent would treat a payment to a withholding foreign partnership. The IRS may also enter an agreement to treat a trust as a qualified intermediary in appropriate circumstances. See § 1.1441–1(e)(5)(ii)(D).

(6) *Presumption rules*—(i) *In general.* This paragraph (e)(6) contains the applicable presumptions for a withholding agent (including a trust or estate) to determine the classification and status of a trust or estate and its beneficiaries or owners in the absence of valid documentation. The provisions of § 1.1441–1(b)(3)(iv) (regarding the 90-day grace period) and § 1.1441–1(b)(3)(vii) through (ix) shall apply for purposes of this paragraph (e)(6).

(ii) *Determination of status as U.S. or foreign trust or estate in the absence of documentation.* In the absence of valid documentation that establishes the U.S. status of a trust or estate under paragraph (b)(1) of this section and of documentation that establishes the foreign status of a trust or estate under paragraph (e)(4) or (5)(iii) of this section, the withholding agent shall determine the classification of the payee based upon the presumptions set forth in § 1.1441–1(b)(3)(ii). If, based upon those presumptions, the withholding agent classifies the payee as a trust or estate, the trust or estate shall be presumed to be a U.S. trust or U.S. estate unless there are indicia of foreign status, in which case the trust or estate shall be presumed to be foreign. Indicia of foreign status exists if the withholding agent has actual knowledge of the payee's employer identification number and that number begins with the two digits "98," the withholding agent's communications with the payee are mailed to an address in a foreign country, or the payment is made outside the United States (as defined in § 1.6049–5(e)). If an undocumented payee is presumed to be a foreign trust it shall be presumed to be a foreign complex trust. If a withholding agent has documentary evidence that establishes that an entity is a foreign trust, but the withholding agent cannot determine whether the foreign trust is a complex trust, a simple trust, or foreign grantor trust, the withholding agent may presume that the trust is a foreign complex trust.

(iii) *Determination of beneficiary or owner's status in the absence of certain documentation.* If a foreign simple trust or foreign grantor trust has provided a foreign simple trust or foreign grantor trust withholding certificate under paragraph (e)(5)(iii) of this section but the payment to such trust cannot be reliably associated with valid documentation from a specific beneficiary or owner of the trust, then any portion of a payment that a withholding agent cannot treat as reliably associated with valid documentation from a beneficiary or owner may be presumed made to a foreign payee. As a result, any payment of an amount subject to withholding is subject to withholding at a rate of 30 percent. Any such payment that is presumed to be made to an undocumented foreign person must be reported on Form 1042–S. See § 1.1461–1(c).

* * * * *

**Par. 8.** Effective January 1, 2001, § 1.1441–6 is amended by:

1. Revising paragraphs (b)(1), (b)(2), and (b)(3).

2. Removing paragraph (b)(4) and redesignating paragraph (b)(5) as new paragraph (b)(4).

3. Revising paragraphs (c) and (e).

The revisions read as follows:

**§ 1.1441–6 Claim of reduced withholding under an income tax treaty.**

* * * * *

(b) *Reliance on claim of reduced withholding under an income tax treaty*—(1) *In general.* The withholding imposed under section 1441, 1442, or

1443 on any payment to a foreign person is eligible for reduction under the terms of an income tax treaty only to the extent that such payment is treated as derived by a resident of an applicable treaty jurisdiction, such resident is a beneficial owner, and all other requirements for benefits under the treaty are satisfied. See section 894 and the regulations thereunder to determine whether a resident of a treaty country derives the income. Absent actual knowledge or reason to know otherwise, a withholding agent may rely on a claim that a beneficial owner is entitled to a reduced rate of withholding based upon an income tax treaty if, prior to the payment, the withholding agent can reliably associate the payment with a beneficial owner withholding certificate, described in § 1.1441–1(e)(2), that contains the information necessary to support the claim, or, in the case of a payment of income described in paragraph (c)(2) of this section made outside the United States with respect to an offshore account, documentary evidence described in paragraphs (c)(3), (4) and (5) of this section. See §§ 1.6049–5(e) for the definition of payments made outside the United States and 1.6049–5(c)(1) for the definition of offshore account. For purposes of this paragraph (b)(1), a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) contains information necessary to support the claim for a treaty benefit only if it includes the beneficial owner's taxpayer identifying number (except as otherwise provided in paragraph (c)(1) of this section) and the representations that the beneficial owner derives the income under section 894 and the regulations thereunder, if required, and meets the limitation on benefits provisions of the treaty, if any. The withholding certificate must also contain any other representations required by this section and any other information, certifications, or statements as may be required by the form or accompanying instructions in addition to, or in place of, the information and certifications described in this section. Absent actual knowledge or reason to know that the claims are incorrect (and subject to the standards of knowledge in § 1.1441–7(b)), a withholding agent may rely on the claims made on a withholding certificate or on documentary evidence. A withholding agent may also rely on the information contained in a withholding statement provided under §§ 1.1441–1(e)(3)(iv) and 1.1441–5(c)(3)(iv) and (e)(5)(iv) to determine whether the appropriate statements regarding section 894 and limitation on benefits have been provided in connection with documentary evidence. If the beneficial owner is a person related to the withholding agent within the meaning of section 482, the withholding certificate must also contain a representation that the beneficial owner will file the statement required under § 301.6114–1(d) of this chapter (if applicable). The requirement to file an information statement under section 6114 for income subject to withholding applies only to amounts received during the calendar year that, in the aggregate, exceed $500,000. See § 301.6114–1(d) of this chapter. The Internal Revenue Service (IRS) may apply the provisions of § 1.1441–1(e)(1)(ii)(B) to notify the withholding agent that the certificate cannot be relied upon to grant benefits under an income tax treaty. See § 1.1441–1(e)(4)(viii) regarding reliance on a withholding certificate by a withholding agent. The provisions of § 1.1441–1(b)(3)(iv) dealing with a 90-day grace period shall apply for purposes of this section.

(2) *Payment to fiscally transparent entity*—(i) *In general.* If the person claiming a reduced rate of withholding under an income tax treaty is the interest holder of an entity that is considered to be fiscally transparent (as defined in the regulations under section 894) by the interest holder's jurisdiction with respect to an item of income, then, with respect to such income derived by that person through the entity, the entity shall be treated as a flow-through entity and may provide a flow-through withholding certificate with which the withholding certificate or other documentary evidence of the interest holder that supports the claim for treaty benefits is associated. For purposes of the preceding sentence, interest holders do not include any direct or indirect interest holders that are themselves treated as fiscally transparent entities with respect to that income by the interest holder's jurisdiction. See § 1.1441–1(c)(23) and (e)(3)(i) for the definition of flow-through entity and flow-through withholding certificate. The entity may provide a beneficial owner withholding certificate, or beneficial owner documentation, with respect to any remaining portion of the income to the extent the entity is receiving income and is not treated as fiscally transparent by its own jurisdiction. Further, the entity may claim a reduced rate of withholding with respect to the portion of a payment for which it is not treated as fiscally transparent if it meets all the requirements to make such a claim and, in the case of treaty benefits, it provides the documentation required by paragraph (b)(1) of this section. If dual claims, as described in paragraph (b)(2)(iii) of this section, are made, multiple withholding certificates may have to be furnished. Multiple withholding certificates may also have to be furnished if the entity receives income for which a reduction of withholding is claimed under a provision of the Internal Revenue Code (*e.g.*, portfolio interest) and income for which a reduction of withholding is claimed under an income tax treaty.

(ii) *Certification by qualified intermediary.* Notwithstanding paragraph (b)(2)(i) of this section, a foreign entity that is fiscally transparent, as defined in the regulations under section 894, that is also a qualified intermediary for purposes of claiming a reduced rate of withholding under an income tax treaty for its interest holders (who are deriving the income paid to the entity as residents of an applicable treaty jurisdiction) may furnish a single qualified intermediary withholding certificate, as described in § 1.1441–1(e)(3)(ii), for amounts for which it claims a reduced rate of withholding under an income tax treaty on behalf of its interest holders.

(iii) *Dual treatment.* Under paragraph (b)(2)(i) of this section, a withholding agent may make a payment to a foreign entity that is simultaneously claiming to be the beneficial owner of a portion of the income (whether or not it is also claiming a reduced rate of tax on its own behalf) and a reduced rate on behalf of persons in their capacity as interest holders in the entity with respect to the same, or a different, portion of the income. If the same portion of a payment may be reliably associated with both the entity's claim and an interest holder's claim, the withholding agent may choose to reject both claims and request new documentation and information allocating the payment among the beneficial owners of the payment or the withholding agent may choose which claim to apply. If the entity and the interest holder's claims are reliably associated with separate portions of the payment, the withholding agent may, at its option, accept such dual claims based on withholding certificates or other appropriate documentation furnished by the entity and its interest holders with respect to their respective shares of the payment even though this will result in the withholding agent treating the entity differently with respect to different portions of the same payment. Alternatively, the withholding agent may choose to apply only the

claim made by the entity, provided the entity may be treated as a beneficial owner of the income. If the withholding agent does not accept claims for a reduced rate of withholding presented by any one or more of the interest holders, or by the entity, any interest holder or the entity may subsequently claim a refund or credit of any amount so withheld to the extent the interest holder's or entity's share of such withholding exceeds the amount of tax due.

(iv) *Examples.* The following examples illustrate the rules of this paragraph (b)(2):

*Example 1.* (i) *Facts.* Entity E is a business organization formed under the laws of country Y. Country Y has an income tax treaty with the United States. The treaty contains a limitation on benefits provision. E receives U.S. source royalties from withholding agent W and claims a reduced rate of withholding under the U.S.-Y tax treaty on its own behalf (rather than on behalf of its interest holders). E furnishes a beneficial owner withholding certificate described in paragraph (b)(1) of this section that represents that E is a resident of country Y (within the meaning of the U.S.-Y tax treaty), is the beneficial owner of the income, derives the income under section 894 and the regulations thereunder, and is not precluded from claiming benefits by the treaty's limitation on benefits provision.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, W may rely on the representations made by E to apply a reduced rate of withholding.

*Example 2.* (i) *Facts.* The facts are the same as under *Example 1*, except that one of E's interest holders, H, is an entity organized in country Z. The U.S.-Z tax treaty reduces the rate on royalties to zero whereas the rate on royalties under the U.S.-Y tax treaty applicable to E is 5 percent. H is not fiscally transparent under country Z's tax law with respect to such income. H furnishes a beneficial owner withholding certificate to E that represents that H derives, within the meaning of section 894 and the regulations thereunder, its share of the royalty income paid to E as a resident of country Z, is the beneficial owner of the royalty income, and is not precluded from claiming treaty benefits by virtue of the limitation on benefits provision in the U.S.-Z treaty. E furnishes to W a flow-through withholding certificate described in § 1.1441–1(e)(3)(i) to which it attaches H's beneficial owner withholding certificate and a withholding statement for the portion of the payment that H claims as its distributive share of the royalty income. E also furnishes to W a beneficial owner withholding certificate for itself for the portion of the payment that H does not claim as its distributive share.

(ii) *Analysis.* Absent actual knowledge or reason to know otherwise, W may rely on the documentation furnished by E to treat the royalty payment to a single foreign entity (E) as derived by different residents of tax treaty countries as a result of the claims presented under different treaties. W may, at its option, grant dual treatment, that is, a reduced rate of zero percent under the U.S.-Z treaty on the portion of the royalty payment that H claims to derive as a resident of country Z and a reduced rate of 5 percent under the U.S.-Y treaty for the balance. However, under paragraph (b)(2)(iii) of this section, W may, at its option, treat E as the only relevant person deriving the royalty and grant benefits under the U.S.-Y treaty only.

*Example 3.* (i) *Facts.* E is a business organization formed under the laws of country X. Country X has an income tax treaty with the United States. E has two interest holders, H1, organized in country Y, and H2, organized in country Z. E receives from W, a U.S. withholding agent, U.S. source royalties and interest that is eligible for the portfolio interest exception under sections 871(h) and 881(c), provided W receives the appropriate beneficial owner statement required under section 871(h)(5). E is classified as a corporation under U.S. tax law principles. Country X, E's country of organization, treats E as an entity that is not fiscally transparent with respect to items of income under the regulations under section 894. Under the U.S.-X income tax treaty, royalties are subject to 5 percent rate of withholding. Country Y, H1's country of organization, treats E as fiscally transparent with respect to items of income under section 894 and H1 as not fiscally transparent with respect to items of income. Under the country Y-U.S. income tax treaty, royalties are exempt from U.S. tax. Country Z, H2's country of organization, treats E as not fiscally transparent under section 894 with respect to items of income. E provides W with a flow-through beneficial owner withholding certificate with which it associates a beneficial owner withholding certificate from H1. H1's withholding certificate states that H1 is a resident of country Y, derives the royalty income under section 894, meets the applicable limitations on benefits provisions of the U.S.-Y treaty, and is the beneficial owner of the income. The withholding statement attached to E's flow-through withholding certificate allocates one-half of the royalty payment to H1. E also provides W with a beneficial owner withholding certificate for the interest income and the remaining one-half of the royalty income. The withholding certificate states that E is a resident of country X, derives the royalty income under section 894, meets the limitation on benefits provisions of the U.S.-X treaty, and is the beneficial owner of the income.

(ii) *Analysis.* Absent actual knowledge or reason to know that the claims are incorrect, W may treat one-half of the royalty derived by E as subject to a 5 percent withholding rate and one-half of the royalty as derived by H1 and subject to no withholding. Further, it may treat all of the interest as being paid to E and as qualifying for the portfolio interest exception. W can, at its option, treat the entire royalty as paid to E and subject it to withholding at a 5 percent rate of withholding. In that case, H1 would be entitled to claim a refund with respect to its one-half of the royalty.

(3) *Certified TIN.* The IRS may issue guidance requiring a foreign person claiming treaty benefits and for whom a TIN is required to establish with the IRS, at the time the TIN is requested or after the TIN is issued, that the person is a resident in a treaty country and meets other conditions (such as limitation on benefits provisions) of the treaty. See § 601.601(d)(2) of this chapter.

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(c) *Exemption from requirement to furnish a taxpayer identifying number and special documentary evidence rules for certain income*—(1) *General rule.* In the case of income described in paragraph (c)(2) of this section, a withholding agent may rely on a beneficial owner withholding certificate described in paragraph (b)(1) of this section without regard to the requirement that the withholding certificate include the beneficial owner's taxpayer identifying number. In the case of payments of income described in paragraph (c)(2) of this section made outside the United States (as defined in § 1.6049–5(e)) with respect to an offshore account (as defined in § 1.6049–5(c)(1)), a withholding agent may, as an alternative to a withholding certificate described in paragraph (b)(1) of this section, rely on a certificate of residence described in paragraph (c)(3) of this section or documentary evidence described in paragraph (c)(4) of this section, relating to the beneficial owner, that the withholding agent has reviewed and maintains in its records in accordance with § 1.1441-1(e)(4)(iii). In the case of a payment to a person other than an individual, the certificate of residence or documentary evidence must be accompanied by the statements described in paragraphs (c)(5)(i) and (ii) of this section regarding limitation on benefits and whether the amount paid is derived by such person or by one of its interest holders. The withholding agent maintains the reviewed documents by retaining either the documents viewed or a photocopy thereof and noting in its records the date on which, and by whom, the documents were received and reviewed. This paragraph (c)(1) shall not apply to amounts that are exempt from withholding based on a claim that the income is effectively connected with the conduct of a trade or business in the United States.

(2) *Income to which special rules apply.* The income to which paragraph (c)(1) of this section applies is dividends and interest from stocks and debt obligations that are actively traded, dividends from any redeemable security issued by an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1),

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dividends, interest, or royalties from units of beneficial interest in a unit investment trust that are (or were upon issuance) publicly offered and are registered with the Securities and Exchange Commission under the Securities Act of 1933 (15 U.S.C. 77a) and amounts paid with respect to loans of securities described in this paragraph (c)(2). For purposes of this paragraph (c)(2), a stock or debt obligation is actively traded if it is actively traded within the meaning of section 1092(d) and § 1.1092(d)–1 when documentation is provided.

(3) *Certificate of residence.* A certificate of residence referred to in paragraph (c)(1) of this section is a certification issued by an appropriate tax official of the treaty country of which the taxpayer claims to be a resident that the taxpayer has filed its most recent income tax return as a resident of that country (within the meaning of the applicable tax treaty). The certificate of residence must have been issued by such official within three years prior to its being presented to the withholding agent, or such other period as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter). See § 1.1441–1(e)(4)(ii)(A) for the period during which a withholding agent may rely on a certificate of residence. The competent authorities may agree to a different procedure for certifying residence, in which case such procedure shall govern for payments made to a person claiming to be a resident of the country with which such an agreement is in effect.

(4) *Documentary evidence establishing residence in the treaty country*—(i) *Individuals.* For an individual, the documentary evidence referred to in paragraph (c)(1) of this section is any documentation that includes the individuals name, address, and photograph, is an official document issued by an authorized governmental body (*i.e.*, a government or agency thereof, or a municipality), and has been issued no more than three years prior to presentation to the withholding agent. A document older than three years may be relied upon as proof of residence only if it is accompanied by additional evidence of the person's residence in the treaty country (*e.g.*, a bank statement, utility bills, or medical bills). Documentary evidence must be in the form of original documents or certified copies thereof.

(ii) *Persons other than individuals.* For a person other than an individual, the documentary evidence referred to in paragraph (c)(1) of this section is any documentation that includes the name of the entity and the address of its principal office in the treaty country, and is an official document issued by an authorized governmental body (*e.g.*, a government or agency thereof, or a municipality).

(5) *Statements regarding entitlement to treaty benefits*—(i) *Statement regarding conditions under a limitation on benefits provision.* In addition to the documentary evidence described in (c)(4)(ii) of this section, a taxpayer that is not an individual must provide a statement that it meets one or more of the conditions set forth in the limitation on benefits article (if any, or in a similar provision) contained in the applicable tax treaty.

(ii) *Statement regarding whether the taxpayer derives the income.* A taxpayer that is not an individual must also provide, in addition to the documentary evidence and the statement described in paragraph (c)(5)(i) of this section, a statement that any income for which it intends to claim benefits under an applicable income tax treaty is income that will properly be treated as derived by itself as a resident of the applicable treaty jurisdiction within the meaning of section 894 and the regulations thereunder. This requirement does not apply if the taxpayer furnishes a certificate of residence that certifies that fact.

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(e) *Competent authority.* The procedures described in this section may be modified to the extent the U.S. competent authority may agree with the competent authority of a country with which the United States has an income tax treaty in effect.

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**Par. 9.** Effective January 1, 2001, § 1.1441–7 is amended by:

1. Revising paragraphs (a), (b)(2) and (b)(3).

2. Adding paragraphs (b)(4) through (b)(11).

The revisions and additions read as follows:

**§ 1.1441–7 General provisions relating to withholding agents.**

(a) *Withholding agent defined*—(1) *In general.* For purposes of chapter 3 of the Internal Revenue Code and the regulations under such chapter, the term *withholding agent* means any person, U.S. or foreign, that has the control, receipt, custody, disposal, or payment of an item of income of a foreign person subject to withholding, including (but not limited to) a foreign intermediary described in § 1.1441–1(e)(3)(i), a foreign partnership, or a U.S. branch described in § 1.1441–1(b)(2)(iv)(A) or (E). See §§ 1.1441–1(b)(2) and (3) and 1.1441–5(c), (d), and (e), for rules to determine whether a payment is considered made to a foreign person. Any person who meets the definition of a withholding agent is required to deposit any tax withheld under § 1.1461–1(a) and to make the returns prescribed by § 1.1461–1(b) and (c), except as otherwise may be required by a qualified intermediary withholding agreement, a withholding foreign partnership agreement, or a withholding foreign trust agreement. When several persons qualify as withholding agents with respect to a single payment, only one tax is required to be withheld and deposited. See § 1.1461–1. A person who, as a nominee described in § 1.6031(c)–1T, has furnished to a partnership all of the information required to be furnished under § 1.6031(c)–1T(a) shall not be treated as a withholding agent if it has notified the partnership that it is treating the provision of information to the partnership as a discharge of its obligations as a withholding agent.

(2) *Examples.* The following examples illustrate the rules of paragraph (a)(1) of this section:

*Example 1.* USB is a broker organized in the United States. USB pays U.S. source dividends and interest, which are amounts subject to withholding under § 1.1441–2(a), to FC, a foreign corporation that has an investment account with USB. USB is a withholding agent as defined in paragraph (a)(1) of this section.

*Example 2.* USB is a bank organized in the United States. FB is a bank organized in country X. X has an omnibus account with USB through which FB invests in debt and equity instruments that pay amounts subject to withholding as defined in § 1.1441–2(a). FB is a nonqualified intermediary, as defined in § 1.1441–1(c)(14). Both USB and FB are withholding agents as defined in paragraph (a)(1) of this section.

*Example 3.* The facts are the same as in Example 2, except that FB is a qualified intermediary. Both USB and FB are withholding agents as defined in paragraph (a)(1) of this section.

*Example 4.* FB is a bank organized in country X. FB has a branch in the United States. FB's branch has customers that are foreign persons who receive amounts subject to withholding, as defined in § 1.1441–2(a). FB is a withholding agent under paragraph (a)(1) of this section and is required to withhold and report payments of amounts subject to withholding in accordance with chapter 3 of the Internal Revenue Code.

*Example 5.* X is a foreign corporation. X pays dividends to shareholders who are foreign persons. Under section 861(a)(2)(B), a portion of the dividends are from sources within the United States and constitute amounts subject to withholding within the meaning of § 1.1441–2(a). The dividends are not subject to tax under section 884(a). See 884(e)(3). X is a withholding agent under paragraph (a)(1) of this section.

(b) * * *

(2) *Reason to know.* A withholding agent shall be considered to have reason to know if its knowledge of relevant facts or of statements contained in the withholding certificates or other documentation is such that a reasonably prudent person in the position of the withholding agent would question the claims made.

(3) *Financial institutions—limits on reason to know.* For purposes of this paragraph (b)(3) and paragraphs (b)(4) through (b)(10) of this section, the terms *withholding certificate, documentary evidence,* and *documentation* are defined in § 1.1441–1(c)(16), (17) and (18). Except as otherwise provided in paragraphs (b)(4) through (b)(9) of this section, a withholding agent that is a financial institution (including a regulated investment company) that has a direct account relationship with a beneficial owner (a direct account holder) has a reason to know, with respect to amounts described in § 1.1441–6(c)(2), that documentation provided by the direct account holder is unreliable or incorrect only if one or more of the circumstances described in paragraphs (b)(4) through (b)(9) of this section exist. If a direct account holder has provided documentation that is unreliable or incorrect under the rules of paragraph (b)(4) through (b)(9) of this section, the withholding agent may require new documentation. Alternatively, the withholding agent may rely on the documentation originally provided if the rules of paragraphs (b)(4) through (b)(9) of this section permit such reliance based on additional statements and documentation. Paragraph (b)(10) of this section provides limits on reason to know for financial institutions that receive beneficial owner documentation from persons (indirect account holders) that have an account relationship with, or an ownership interest in, a direct account holder. For rules regarding reliance on Form W–9, see § 31.3406(g)-3(e)(2) of this chapter.

(4) *Rules applicable to withholding certificates*—(i) *In general.* A withholding agent has reason to know that a beneficial owner withholding certificate provided by a direct account holder in connection with a payment of an amount described in § 1.1441–6(c)(2) is unreliable or incorrect if the withholding certificate is incomplete with respect to any item on the certificate that is relevant to the claims made by the direct account holder, the withholding certificate contains any information that is inconsistent with the direct account holder's claim, the withholding agent has other account information that is inconsistent with the direct account holder's claim, or the withholding certificate lacks information necessary to establish entitlement to a reduced rate of withholding. A withholding agent shall also treat a withholding certificate as unreliable or incorrect if the name of the person on the withholding certificate indicates that the person is a corporation, partnership, trust, estate, or an individual, and the person's claim of classification (e.g. individual, partnership, corporation) is not consistent with such indication and a difference in classification would result in a different rate of withholding or a difference in the person or persons to whom the payment is reported under § 1.1461–1(c) of chapter 61 of the Internal Revenue Code. For purposes of establishing a direct account holder's status as a foreign person or resident of a treaty country a withholding certificate shall be considered unreliable or inconsistent with an account holder's claims only if it is not reliable under the rules of paragraph (b)(5) and (6) of this section. A withholding agent that relies on an agent to review and maintain a withholding certificate is considered to know or have reason to know the facts within the knowledge of the agent.

(ii) *Examples.* The rules of paragraph (b)(4) of this section are illustrated by the following examples:

*Example 1.* F, a foreign person that has a direct account relationship with USB, a bank that is a U.S. person, provides USB with a beneficial owner withholding certificate for the purpose of claiming a reduced rate of withholding on U.S. source dividends. F resides in a treaty country that has a limitation on benefits provision in its income tax treaty with the United States. The withholding certificate, however, does not contain a statement regarding limitations on benefits or deriving the income under section 894 as required by § 1.1441–6(b)(1). USB cannot rely on the withholding certificate to grant a reduced rate of withholding because it is incomplete with respect to the claim made by F.

*Example 2.* F, a foreign person that has a direct account relationship with USB, a broker that is a U.S. person, provides USB with a withholding certificate for the purpose of claiming the portfolio interest exception under section 881(c), which applies to foreign corporations. F indicates on its withholding certificate, however, that it is a partnership. USB may not treat F as a beneficial owner of the interest for purposes of the portfolio interest exception because F has indicated on its withholding certificate that it is a foreign partnership, and therefore under § 1.1441–1(c)(6)(ii) it is not the beneficial owner of the interest payment.

(5) *Withholding certificate—establishment of foreign status.* A withholding agent has reason to know that a beneficial owner withholding certificate (as defined in § 1.1441–1(e)(2)) provided by a direct account holder in connection with a payment of an amount described in § 1.1441–6(c)(2) is unreliable or incorrect for purposes of establishing the account holder's status as a foreign person if the certificate is described in paragraph (b)(5)(i) or (ii) of this section.

(i) A withholding certificate is unreliable or incorrect if the withholding certificate has a permanent residence address (as defined in § 1.1441–1(e)(2)(ii)) in the United States, the withholding certificate has a mailing address in the United States, the withholding agent has a residence or mailing address as part of its account information that is an address in the United States, or the direct account holder notifies the withholding agent of a new residence or mailing address in the United States (whether or not provided on a withholding certificate). A withholding agent may, however, rely on the beneficial owner withholding certificate as establishing the account holder's foreign status if it may do so under the provisions of paragraph (b)(5)(i)(A) or (B) of this section.

(A) A withholding agent may treat a direct account holder as a foreign person if the beneficial owner withholding certificate has been provided by an individual and—

(*1*) The withholding agent has in its possession or obtains documentary evidence (which does not contain a U.S. address) that is no more than three years old, the documentary evidence supports the claim of foreign status, and the direct account holder provides the withholding agent with a reasonable explanation, in writing, supporting the account holder's foreign status; or

(*2*) The account is maintained at an office of the withholding agent outside the United States and the withholding agent is required to report annually a payment to the direct account holder on a tax information statement that is filed with the tax authority of the country in which the office is located and that country has an income tax treaty in effect with the United States.

(B) A withholding agent may treat an account holder as a foreign person if the beneficial owner withholding certificate has been provided by an entity that the withholding agent does not know, or does not have reason to know, is a flow-through entity and—

(*1*) The withholding agent has in its possession, or obtains, documentation that substantiates that the entity is actually organized or created under the laws of a foreign country; or

(2) The account is maintained at an office of the withholding agent outside the United States and the withholding agent is required to report annually a payment to the direct account holder on a tax information statement that is filed with the tax authority of the country in which the office is located and that country has an income tax treaty in effect with the United States.

(ii) A beneficial owner withholding certificate is unreliable or incorrect if it is provided with respect to an offshore account (as defined in § 1.6049–5(c)(1)) and the direct account holder has standing instructions directing the withholding agent to pay amounts from its account to an address or an account maintained in the United States. The withholding agent may treat the direct account holder as a foreign person, however, if the direct account holder provides a reasonable explanation in writing that supports its foreign status.

(6) *Withholding certificate—claim of reduced rate of withholding under treaty.* A withholding agent has reason to know that a withholding certificate (other than Form W–9) provided by a direct account holder in connection with a payment of an amount described in § 1.1441–6(c)(2) is unreliable or incorrect for purposes of establishing that the direct account holder is a resident of a country with which the United States has an income tax treaty if it is described in paragraphs (b)(6)(i) through (iii) of this section.

(i) A beneficial owner withholding certificate is unreliable or incorrect if the permanent residence address on the beneficial owner withholding certificate is not in the country whose treaty is invoked, or the direct account holder notifies the withholding agent of a new permanent residence address that is not in the treaty country. A withholding agent may, however, treat a direct account holder as entitled to a reduced rate of withholding under an income tax treaty if the direct account holder provides a reasonable explanation for the permanent residence address outside the treaty country (e.g., the address is the address of a branch of the beneficial owner located outside the treaty country in which the entity is a resident) or the withholding agent has in its possession, or obtains, documentary evidence that establishes residency in a treaty country.

(ii) A beneficial owner withholding certificate is unreliable or incorrect if the permanent residence address on the withholding certificate is in the applicable treaty country but the withholding certificate contains a mailing address outside the treaty country or the withholding agent has a mailing address as part of its account information that is outside the treaty country. A mailing address that is a P.O. Box, in-care-of address, or address at a financial institution (if the financial institution is not a beneficial owner) shall not preclude a withholding agent from treating the direct account holder as a resident of a treaty country if such address is in the treaty country. If a withholding agent has a mailing address (whether or not contained on the withholding certificate) outside the applicable treaty country, the withholding agent may nevertheless treat a direct account holder as a resident of an applicable treaty country if—

(A) The withholding agent has in its possession, or obtains, additional documentation supporting the direct account holder's claim of residence in the applicable treaty country (and the additional documentation does not contain an address outside the treaty country);

(B) The withholding agent has in its possession, or obtains, documentation that establishes that the direct account holder is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if the applicable treaty so requires);

(C) The withholding agent knows that the address outside the applicable treaty country (other than a P.O. box, or in-care-of address) is a branch of a bank or insurance company that is a resident of the applicable treaty country; or

(D) The withholding agent obtains a written statement from the direct account holder that reasonably establishes entitlement to treaty benefits.

(iii) A beneficial owner withholding certificate is unreliable or incorrect to establish entitlement to a reduced rate of withholding under an income tax treaty if the direct account holder has standing instructions for the withholding agent to pay amounts from its account to an address or an account outside the treaty country unless the direct account holder provides a reasonable explanation, in writing, establishing the direct account holder's residence in the applicable treaty country.

(7) *Documentary evidence.* A withholding agent shall not treat documentary evidence provided by a direct account holder as valid if the documentary evidence does not reasonably establish the identity of the person presenting the documentary evidence. For example, documentary evidence is not valid if it is provided in person by a direct account holder that is a natural person and the photograph or signature on the documentary evidence, if any, does not match the appearance or signature of the person presenting the document. A withholding agent shall not rely on documentary evidence to reduce the rate of withholding that would otherwise apply under the presumption rules of §§ 1.1441–1(b)(3), 1.1441–5(d) and (e)(6), and 1.6049–5(d) if the documentary evidence contains information that is inconsistent with the direct account holder's claim of a reduced rate of withholding, the withholding agent has other account information that is inconsistent with the direct account holder's claim, or the documentary evidence lacks information necessary to establish entitlement to a reduced rate of withholding. For example, if a direct account holder provides documentary evidence to claim treaty benefits and the documentary evidence establishes the direct account holder's status as a foreign person and a resident of a treaty country, but the account holder fails to provide the treaty statements required by § 1.1441–6(c)(5), the documentary evidence does not establish the direct account holder's entitlement to a reduced rate of withholding. For purposes of establishing a direct account holder's status as a foreign person or resident of a country with which the United States has an income tax treaty with respect to income described in § 1.1441–6(c)(2), documentary evidence shall be considered unreliable or incorrect only if it is not reliable under the rules of paragraph (b)(8) and (9) of this section.

(8) *Documentary evidence—establishment of foreign status.* A withholding agent has reason to know that documentary evidence provided in connection with a payment of an amount described in § 1.1441–6(c)(2) is unreliable or incorrect for purposes of establishing the direct account holder's status as a foreign person if the documentary evidence is described in paragraphs (b)(8)(i), (ii), (iii) or (iv) of this section.

(i) A withholding agent shall not treat documentary evidence provided by an account holder after December 31, 2000, as valid for purposes of establishing the direct account holder's foreign status if the only mailing or residence address that is available to the withholding agent is an address at a financial institution (unless the financial institution is a beneficial owner of the income), an in-care-of address, or a P.O. box. In this case, the withholding agent must obtain additional documentation that is sufficient to establish the direct account holder's status as a foreign

person. A withholding agent shall not treat documentary evidence provided by an account holder before January 1, 2001, as valid for purposes of establishing a direct account holder's status as a foreign person if it has actual knowledge that the direct account holder is a U.S. person or if it has a mailing or residence address for the direct account holder in the United States. If a withholding agent has an address for the direct account holder in the United States, the withholding agent may nevertheless treat the direct account holder as a foreign person if it can so treat the direct account holder under the rules of paragraph (b)(8)(ii) of this section.

(ii) Documentary evidence is unreliable or incorrect to establish a direct account holder's status as a foreign person if the withholding agent has a mailing or residence address (whether or not on the documentation) for the direct account holder in the United States or if the direct account holder notifies the withholding agent of a new address in the United States. A withholding agent may, however, rely on documentary evidence as establishing the direct account holder's foreign status if it may do so under the provisions of paragraph (b)(8)(ii)(A) or (B) of this section.

(A) A withholding agent may treat a direct account holder that is an individual as a foreign person even if it has a mailing or residence address for the direct account holder in the United States if the withholding agent—

(*1*) Has in its possession or obtains additional documentary evidence (which does not contain a U.S. address) supporting the claim of foreign status and a reasonable explanation in writing supporting the account holder's foreign status;

(*2*) Has in its possession or obtains a valid beneficial owner withholding certificate on Form W–8 and the Form W–8 contains a permanent residence address outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the direct account holder provides a reasonable explanation in writing supporting the direct account holder's foreign status); or

(*3*) The account is maintained at an office of the withholding agent outside the United States and the withholding agent is required to report annually a payment to the direct account holder on a tax information statement that is filed with the tax authority of the country in which the office is located and that country has an income tax treaty in effect with the United States.

(B) A withholding agent may treat a direct account holder that is an entity (other than a flow-through entity) as a foreign person even if it has a mailing or residence address for the direct account holder in the United States if the withholding agent—

(*1*) Has in its possession, or obtains, documentation that substantiates that the entity is actually organized or created under the laws of a foreign country;

(*2*) Obtains a valid beneficial owner withholding certificate on Form W–8 and the Form W–8 contains a permanent residence address outside the United States and a mailing address outside the United States (or if a mailing address is inside the United States the direct account holder provides additional documentary evidence sufficient to establish the direct account holder's foreign status); or

(*3*) The account is maintained at an office of the withholding agent outside the United States and the withholding agent is required to report annually a payment to the direct account holder on a tax information statement that is filed with the tax authority of the country in which the office is located and that country has an income tax treaty in effect with the United States.

(iii) Documentary evidence is unreliable or incorrect if the direct account holder has standing instructions directing the withholding agent to pay amounts from its account to an address or an account maintained in the United States. The withholding agent may treat the direct account holder as a foreign person, however, if the account holder provides a reasonable explanation in writing that supports its foreign status.

(9) *Documentary evidence—claim of reduced rate of withholding under treaty.* A withholding agent has reason to know that documentary evidence provided in connection with a payment of an amount described in § 1.1441–6(c)(2) is unreliable or incorrect for purposes of establishing that a direct account holder is a resident of a country with which the United States has an income tax treaty if it is described in paragraph (b)(9)(i) or (ii) of this section.

(i) Documentary evidence is unreliable or incorrect if the withholding agent has a mailing or residence address for the direct account holder (whether or not on the documentary evidence) that is outside the applicable treaty country, or the only address that the withholding agent has (whether in or outside of the applicable treaty country) is a P.O. box, an in-care-of address, or the address of a financial institution (if the financial institution is not the beneficial owner). If a withholding agent has a mailing or residence address for the direct account holder outside the applicable treaty country, the withholding agent may nevertheless treat a direct account holder as a resident of an applicable treaty country if the withholding agent—

(A) Has in its possession, or obtains, additional documentary evidence supporting the direct account holder's claim of residence in the applicable treaty country (and the documentary evidence does not contain an address outside the applicable treaty country, a P.O. box, an in-care-of address, or the address of a financial institution);

(B) Has in its possession, or obtains, documentary evidence that establishes the direct account holder is an entity organized in a treaty country (or an entity managed and controlled in a treaty country, if the applicable treaty so requires); or

(C) Obtains a valid beneficial owner withholding certificate on Form W–8 that contains a permanent residence address and a mailing address in the applicable treaty country.

(ii) Documentary evidence is unreliable or incorrect if the direct account holder has standing instructions directing the withholding agent to pay amounts from its account to an address or an account maintained outside the treaty country unless the direct account holder provides a reasonable explanation, in writing, establishing the direct account holder's residence in the applicable treaty country.

(10) *Limits on reason to know—indirect account holders.* A financial institution that receives documentation from a payee through a nonqualified intermediary, a flow-through entity, or a U.S. branch described in § 1.1441–1(b)(2)(iv) (other than a U.S. branch that is treated as a U.S. person) with respect to a payment of an amount described in § 1.1441–6(c)(2) has reason to know that the documentation is unreliable or incorrect if a reasonably prudent person in the position of a withholding agent would question the claims made. This standard requires, but is not limited to, a withholding agent's compliance with the rules of paragraphs (b)(10)(i) through (iii).

(i) The withholding agent must review the withholding statement described in § 1.1441–1(e)(3)(iv) and may not rely on information in the statement to the extent the information does not support the claims made for any payee. For this purpose, a withholding agent may not treat a payee as a foreign person if an address in the United States is provided

for such payee and may not treat a person as a resident of a country with which the United States has an income tax treaty if the address for that person is outside the applicable treaty country. Notwithstanding a U.S. address or an address outside a treaty country, the withholding agent may treat a payee as a foreign person or a foreign person as a resident of a treaty country if a reasonable explanation is provided, in writing, by the nonqualified intermediary, flow-through entity, or U.S. branch supporting the payee's foreign status or the foreign person's residency in a treaty country.

(ii) The withholding agent must review each withholding certificate in accordance with the requirements of paragraphs (b)(5) and (6) of this section and verify that the information on the withholding certificate is consistent with the information on the withholding statement required under § 1.1441–1(e)(3)(iv). If there is a discrepancy between the withholding certificate and the withholding statement, the withholding agent may choose to rely on the withholding certificate, if valid, and instruct the nonqualified intermediary, flow-through entity, or U.S. branch to correct the withholding statement or apply the presumption rules of §§ 1.1441–1(b), 1.1441–5(d) and (e)(6), and 1.6049–5(d) to the payment allocable to the payee who provided the withholding certificate relates. A withholding agent that receives a withholding certificate before December 31, 2001, is not required to review the information on withholding certificates or determine if it is consistent with the information on the withholding statement until December 31, 2001. A withholding agent may withhold and report in accordance with a withholding statement until December 31, 2001, unless it has actually performed the verification procedures required by this paragraph (b)(10)(ii) and determined that the withholding statement is inaccurate with respect to a particular payee.

(iii) The withholding agent must review the documentary evidence provided by the nonqualified intermediary, flow-through entity, or U.S. branch to determine that there is no obvious indication that the payee is a U.S. non-exempt recipient or that the documentary evidence does not establish the identity of the person who provided the documentation (*e.g.*, the documentary evidence does not appear to be an identification document).

(11) *Additional guidance.* The IRS may prescribe other circumstances for which a withholding certificate or documentary evidence is unreliable or incorrect in addition to the circumstances described in paragraph (b) of this section to establish an account holder's status as a foreign person or a beneficial owner entitled to a reduced rate of withholding in published guidance (see § 601.601(d)(2) of this chapter).

* * * * *

**Par. 10.** Effective January 1, 2001, § 1.1441–9 is amended by revising paragraph (b)(2) to read as follows:

**§ 1.1441–9 Exemption from withholding on exempt income of a foreign tax-exempt organization, including foreign private foundations.**

* * * * *

(b) * * *

(2) *Withholding certificate.* A withholding certificate under this paragraph (b)(2) is valid only if it is a Form W–8 and if, in addition to other applicable requirements, the Form W–8 includes the taxpayer identifying number of the organization whose name is on the certificate, and it certifies that the Internal Revenue Service (IRS) has issued a favorable determination letter (and the date thereof) that is currently in effect, what portion, if any, of the amounts paid constitute income includible under section 512 in computing the organization's unrelated business taxable income, and, if the organization is described in section 501(c)(3), whether it is a private foundation described in section 509. Notwithstanding the preceding sentence, if the organization cannot certify that it has been issued a favorable determination letter that is still in effect, its withholding certificate is nevertheless valid under this paragraph (b)(2) if the organization attaches to the withholding certificate an opinion that is acceptable to the withholding agent from a U.S. counsel (or any other person as the IRS may prescribe in published guidance (see § 601.601(d)(2) of this chapter)) concluding that the organization is described in section 501(c). If the determination letter or opinion of counsel to which the withholding certificate refers concludes that the organization is described in section 501(c)(3), and the certificate further certifies that the organization is not a private foundation described in section 509, an affidavit of the organization setting forth sufficient facts concerning the operations and support of the organization for the Internal Revenue Service (IRS) to determine that such organization would be likely to qualify as an organization described in section 509(a)(1), (2), (3), or (4) must be attached to the withholding certificate. An organization that provides an opinion of U.S. counsel or an affidavit may provide the same opinion or affidavit to more than one withholding agent provided that the opinion is acceptable to each withholding agent who receives it in conjunction with a withholding certificate. Any such opinion of counsel or affidavit must be renewed whenever there is a change in facts or circumstances that are relevant to determine the organization's status under section 501(c) or, if relevant, that the organization is or is not a private foundation described in section 509.

* * * * *

**Par. 12.** Effective January 1, 2001, § 1.1461–1 is amended by:

1. Removing the last sentence of paragraph (a)(1).

2. Removing paragraphs (b)(2) and (b)(3) and redesignating paragraph (b)(4) as new paragraph (b)(2).

3. Revising paragraphs (c)(1), (c)(2), (c)(3), and (c)(4).

4. Removing paragraphs (c)(5), (c)(6), and (c)(7), and redesignating paragraph (c)(8) as new paragraph (c)(5).

The revisions read as follows:

**§ 1.1461–1 Payment and returns of tax withheld.**

* * * * *

(c) *Information returns*—(1) *Filing requirement*—(i) *In general.* A withholding agent (other than an individual who is not acting in the course of a trade or business with respect to a payment) must make an information return on Form 1042–S (or such other form as the IRS may prescribe) to report the amounts subject to reporting, as defined in paragraph (c)(2) of this section, that were paid during the preceding calendar year. Notwithstanding the preceding sentence, any person that withholds or is required to withhold an amount under sections 1441, 1442, or 1443 must file a Form 1042–S for the payment withheld upon whether or not that person is engaged in a trade or business and whether or not the payment is an amount subject to reporting. A Form 1042–S shall be prepared for each recipient of an amount subject to reporting. The Form 1042–S shall be prepared in such manner as the form and accompanying instructions prescribe. One copy of the Form 1042–S shall be filed with the IRS on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid. It shall be filed with a transmittal form as provided in the instructions to the Form 1042–S and to the transmittal form. Withholding certificates, documentary evidence, or other statements or documentation

provided to a withholding agent are not required to be attached to the form. Another copy of the Form 1042–S must be furnished to the recipient for whom the form is prepared (or any other person, as required under this paragraph (c) or the instructions to the form) on or before March 15 of the calendar year following the year in which the amount subject to reporting was paid. The withholding agent must retain a copy of each Form 1042–S for the statute of limitations on assessment and collection applicable to the Form 1042 to which the Form 1042–S relates.

(ii) *Recipient*—(A) *Defined.* For purposes of this section, the term *recipient* means—

(*1*) A beneficial owner as defined in paragraph (c)(6) of this section, including a foreign estate or a foreign complex trust, as defined in § 1.1441–1(c)(25);

(*2*) A qualified intermediary as defined in § 1.1441–1(e)(5)(ii);

(*3*) A withholding foreign partnership as defined in § 1.1441–5(c)(2) or a withholding foreign trust under § 1.1441–5(e)(5)(v);

(*4*) An authorized foreign agent as defined in § 1.1441–7(c);

(*5*) A U.S. branch that is treated as a U.S. person under § 1.1441–1(b)(2)(iv)(A);

(*6*) A nonwithholding foreign partnership or a foreign simple trust as defined in § 1.1441–1(c)(24), but only to the extent the income is (or is treated as) effectively connected with the conduct of a trade or business in the United States by such entity;

(*7*) A payee, as defined in § 1.1441–1(b)(2) that is presumed to be a foreign person under the presumption rules of § 1.1441–1(b)(3); 1.1441–5(d) or (e)(6), or 1.6049–5(d); and

(*8*) Any other person as required on Form 1042–S or the instructions to the form.

(B) *Persons that are not recipients.* A recipient does not include—

(*1*) A nonqualified intermediary;

(*2*) A payment to a wholly-owned entity that is disregarded under § 301.7701–2(c)(2) of this chapter as an entity separate from its owner;

(*3*) A flow-through entity, as defined in § 1.1441–1(c)(23) (to the extent it is receiving amounts subject to reporting other than income effectively connected with the conduct of a trade or business in the United States); and

(*4*) A U.S. branch described in § 1.1441–1(b)(2)(iv) that is not treated as a U.S. person under that section.

(2) *Amounts subject to reporting*—(i) *In general.* Subject to the exceptions described in paragraph (c)(2)(ii) of this section, amounts subject to reporting on Form 1042–S are amounts paid to a foreign payee (including persons presumed to be foreign) that are amounts subject to withholding as defined in § 1.1441–2(a). Amounts subject to reporting include amounts subject to withholding even if no amount is deducted and withheld from the payment because of a treaty or Internal Revenue Code exception to taxation or because an amount withheld was reimbursed to the payee under the adjustment procedures of § 1.1461–2. In addition, amounts subject to reporting include any amounts paid to a foreign payee on which a withholding agent withheld an amount (either under chapter 3 of the Internal Revenue Code or section 3406) whether or not the amount is subject to withholding. Amounts subject to reporting include, but are not limited to, the following items—

(A) The entire amount of a corporate distribution (whether actual or deemed) irrespective of any estimate of the portion of the distribution that represents a taxable dividend;

(B) Interest, including the portion of a notional principal contract payment that is characterized as interest. Interest shall also be reported on Form 1042-S if it is bank deposit interest paid to nonresident alien individuals as required under § 1.6049–8;

(C) Rents;

(D) Royalties;

(E) Compensation for dependent and independent personal services performed in the United States;

(F) Annuities;

(G) Pension distributions and other deferred income;

(H) Gambling winnings that are not exempt from tax under section 871(j);

(I) Income from the cancellation of indebtedness unless the withholding agent is unrelated to the debtor and does not have knowledge of the facts that give rise to the payment (see § 1.1441–2(d));

(J) Amounts that are (or are presumed to be) effectively connected with the conduct of a trade or business in the United States (including deposit interest as defined in sections 871(i)(2)(A) and 881(d)) even if no withholding certificate is required to be furnished by the payee or beneficial owner. In the case of amounts paid on a notional principal contract described in § 1.1441–4(a)(3) that are presumed to be effectively connected with the conduct of a trade or business in the United States, the amount required to be reported is limited to the amount of cash paid from the notional principal contract;

(K) Scholarship, fellowship, or grant income and compensation for personal services that is not excludible from gross income under section 117 (whether or not the taxable scholarship, fellowship, grant income, or compensation for personal services is exempt from tax under an income tax treaty) paid to foreign students, trainees, teachers, or researchers;

(L) Amounts paid to foreign governments, international organizations, or the Bank for International Settlements, whether or not documentation must be provided;

(M) Interest (including original issue discount) paid with respect to foreign-targeted registered obligations described in § 1.871–14(e)(2) to the extent the documentation requirements described in § 1.871–14(e)(3) and (4) are required to be satisfied (taking into account the provisions of § 1.871–14(e)(4)(ii), if applicable); and

(N) Original issue discount paid on the redemption of an OID obligation. The amount to be reported is the amount of OID includible in the gross income of the holder of the obligation, if known, or, if not known, the total amount of original issue discount determined as if the holder held the obligation from its original issuance. A withholding agent may determine the total amount of OID by using the most recently published "List of Original Issue Discount Instruments," (Publication 1212, available from the IRS Forms Distribution Centers).

(ii) *Exceptions to reporting.* The amounts listed in this paragraph (c)(2)(ii) are not required to be reported on Form 1042–S—

(A) Interest (including original issue discount) that is deposit interest under sections 871(i)(2)(A) and 881(d) and that is not effectively connected with the conduct of a trade or business in the United States, unless reporting is required under § 1.6049–8 (regarding payments to certain foreign residents) or is interest that is effectively connected with the conduct of a trade or business in the United States;

(B) Interest or original issue discount on certain short-term obligations, described in section 871(g)(1)(B) or 881(a)(3);

(C) Interest paid on obligations sold between interest payment dates and the portion of the purchase price of an OID obligation that is sold or exchanged in a transaction other than a redemption, unless the sale or exchange is part of a plan, the principal purpose of which is to avoid tax and the withholding agent has actual knowledge or reason to know of such plan (see § 1.1441–2(a)(5) and (6));

(D) Any item required to be reported on a Form W–2, including an item required to be shown on Form W–2 solely by reason of § 1.6041–2 (relating to return of information for payments to employees) or § 1.6052–1 (relating to information regarding payment of wages in the form of group-term life insurance);

(E) Any item required to be reported on Form 1099, and such other forms as are prescribed pursuant to the information reporting provisions of sections 6041 through 6050P and the regulations under those sections;

(F) Amounts paid on a notional principal contract described in § 1.1441–4(a)(3)(i) that are not effectively connected with the conduct of a trade or business in the United States (or not treated as effectively connected pursuant to § 1.1441–4(a)(3)(ii));

(G) Amounts required to be reported on Form 8288 (U.S. Withholding Tax Return for Dispositions by Foreign Persons of U.S. Real Property Interests) or Form 8804 (Annual Return for Partnership Withholding Tax (section 1446)). A withholding agent that must report a distribution partly on a Form 8288 or 8804 and partly on a Form 1042–S may elect to report the entire amount on a Form 8288 or 8804;

(H) Interest on a registered obligation that is targeted to foreign markets and qualifies as portfolio interest to the extent it is paid to a registered owner that is a financial institution or member of a clearing organization that has provided the proper withholding certificates (see §§ 1.1441–1(b)(4)(i) and 1.1441–2(a));

(I) Interest on a foreign targeted bearer obligation (see §§ 1.1441–1(b)(4)(i) and 1.1441–2(a));

(J) Gain described in section 301(c)(3); and

(K) Amounts described in § 1.1441–1(b)(4)(xviii) (dealing with certain amounts paid by the U.S. government).

(3) *Required information.* The information required to be furnished under this paragraph (c)(3) shall be based upon the information provided by or on behalf of the recipient of an amount subject to reporting (as corrected and supplemented based on the withholding agent's actual knowledge) or the presumption rules of §§ 1.1441–1(b)(3), 1.1441–4(a); 1.1441–5(d) and (e); 1.1441–9(b)(3) or 1.6049–5(d). The Form 1042–S must include the following information, if applicable—

(i) The name, address, and taxpayer identifying number of the withholding agent;

(ii) A description of each category of income paid based on the income codes provided on the form (e.g., interest, dividends, royalties, etc.) and the aggregate amount in each category expressed in U.S. dollars;

(iii) The rate of withholding applied or the basis for exempting the payment from withholding (based on exemption codes provided on the form);

(iv) The name and address of the recipient;

(v) The name and address of any nonqualified intermediary, flow-through entity, or U.S. branch as described in § 1.1441–1(b)(2)(iv) (other than a branch that is treated as a U.S. person) to which the payment was made;

(vi) The taxpayer identifying number of the recipient if required under § 1.1441–1(e)(4)(vii) or if actually known to the withholding agent making the return;

(vii) The taxpayer identifying number of a nonqualified intermediary or flow-through entity (to the extent it is not a recipient) or other flow-through entity to the extent it is known to the withholding agent;

(viii) The country (based on the country codes provided on the form) of the recipient and of any nonqualified intermediary or flow-through entity the name of which appears on the form; and

(ix) Such information as the form or the instructions may require in addition to, or in lieu of, information required under this paragraph (c)(3).

(4) *Method of reporting*—(i) *Payments by U.S. withholding agents to recipients.* A withholding agent that is a U.S. person (other than a foreign branch of a U.S. person that is a qualified intermediary as defined in § 1.1441–1(e)(5)(ii)) and that makes payments of amounts subject to reporting on Form 1042–S must file a separate Form 1042–S for each recipient who receives such amount. For purposes of this paragraph (c)(4), a U.S. person includes a U.S. branch described in § 1.1441–1(e)(2)(iv)(A) or (E) that agrees to be treated as a U.S. person. Except as may otherwise be required on Form 1042–S or the instructions to the form, only payments for which the income code, exemption code, withholding rate and recipient code are the same may be reported on a single Form 1042–S. See paragraph (c)(4)(ii) of this section for reporting of payments made to a person that is not a recipient.

(A) *Payments to beneficial owners.* If a U.S. withholding agent makes a payment directly to a beneficial owner it must complete Form 1042–S treating the beneficial owner as the recipient. Under the grace period rule of § 1.1441–1(b)(3)(iv), a U.S. withholding agent may, under certain circumstances, treat a payee as a foreign person while the withholding agent awaits a valid withholding certificate. A U.S. withholding agent who relies on the grace period rule to treat a payee as a foreign person must file a Form 1042–S to report all payments on Form 1042–S during the period that person was presumed to be foreign even if that person is later determined to be a U.S. person based on appropriate documentation or is presumed to be a U.S. person after the grace period ends. In the case of joint owners, a withholding agent may provide a single Form 1042–S made out to the owner whose status the U.S. withholding agent relied upon to determine the applicable rate of withholding. If, however, any one of the owners requests its own Form 1042–S, the withholding agent must furnish a Form 1042–S to the person who requests it. If more than one Form 1042–S is issued for a single payment, the aggregate amount paid and tax withheld that is reported on all Forms 1042–S cannot exceed the total amounts paid to joint owners and the tax withheld thereon.

(B) *Payments to a qualified intermediary, a withholding foreign partnership, or a withholding foreign trust.* A U.S. withholding agent that makes payments to a qualified intermediary (whether or not the qualified intermediary assumes primary withholding responsibility), a withholding foreign partnership, or a withholding foreign trust shall complete Forms 1042–S treating the qualified intermediary or withholding foreign partnership as the recipient. The U.S. withholding agent must complete a separate Form 1042–S for each withholding rate pool. A withholding rate pool is a payment of a single type of income (determined by the income codes on Form 1042–S) that is subject to a single rate of withholding. A qualified intermediary that does not assume primary withholding responsibility on all payments it receives provides information regarding the proportions of income subject to a particular withholding rate to the withholding agent on a withholding statement associated with a qualified intermediary withholding certificate. A qualified intermediary may provide a U.S. withholding agent with information regarding withholding rate pools for U.S. non-exempt recipients (as defined under § 1.1441–1(c)(21)). Amounts paid with respect to such withholding rate pools must be reported on Form 1099 completed for each U.S. non-exempt recipient to the extent they are subject to Form 1099 reporting. These amounts must not be reported on

Form 1042–S. In addition, the qualified intermediary may provide the U.S. withholding agent information regarding withholding rate pools for U.S. persons that are exempt recipients as defined under § 1.1441–1(c)(20). If such information is provided, a U.S. withholding agent should not report such withholding rate pools on Form 1042–S.

(C) *Amounts paid to U.S. branches treated as U.S. persons.* A U.S. withholding agent making a payment to a U.S. branch of a foreign person described in § 1.1441–1(b)(2)(iv) shall complete Form 1042–S as follows—

(*1*) If the branch has provided the U.S. withholding agent with a withholding certificate that evidences its agreement with the withholding agent to be treated as a U.S. person, the U.S. withholding agent files Forms 1042–S treating the U.S. branch as the recipient;

(*2*) If the branch has provided the U.S. withholding agent with a withholding certificate that transmits information regarding beneficial owners, qualified intermediaries, withholding foreign partnerships, or other recipients, the U.S. withholding agent must complete a separate Form 1042–S for each recipient whose documentation is associated with the U.S. branch's withholding certificate; or

(*3*) If the U.S. withholding agent cannot reliably associate a payment with a valid withholding certificate from the U.S. branch, it shall treat the U.S. branch as the recipient and report the income as effectively connected with the conduct of a trade or business in the United States.

(D) *Amounts paid to an authorized foreign agent.* If a U.S. withholding agent makes a payment to an authorized foreign agent, the withholding agent files Forms 1042–S treating the authorized foreign agent as the recipient, provided that the authorized foreign agent reports the payments on Forms 1042–S to each recipient to which it makes payments. If the authorized foreign agent fails to report the amounts paid on Forms 1042–S for each recipient to which the payment is made, the U.S. withholding agent remains responsible for such reporting.

(E) *Dual* Claims. A U.S. withholding agent may make a payment to a foreign entity that is simultaneously claiming a reduced rate of tax on its own behalf for a portion of the payment and a reduced rate on behalf of persons in their capacity as interest holders in that entity on the remaining portion. See § 1.1441–6(b)(2)(iii). If the claims are consistent and the withholding agent accepts the multiple claims, the withholding agent must file a separate Form 1042–S for those payments for which the entity is treated as the beneficial owner and Forms 1042–S for each of the interest holder in the entity for which the interest holder is treated as the recipient. For those payments for which the interest holder in an entity is treated as the recipient, the U.S. withholding agent shall prepare the Form 1042–S in the same manner as a payment made to a nonqualified intermediary or flow-through entity as set forth in paragraph (c)(4)(ii) of this section. If the claims are consistent but the withholding agent has not chosen to accept the multiple claims, or if the claims are inconsistent, the withholding agent must file a separate Form 1042–S for the person or persons it has chosen to treat as the recipients.

(ii) *Payments made by U.S. withholding agents to persons that are not recipients*—(A) *Amounts paid to a nonqualified intermediary, a flow-through entity, and certain U.S. branches.* If a U.S. withholding agent makes a payment to a nonqualified intermediary, a flow-through entity, or a U.S. branch described in § 1.1441–1(b)(2)(iv) (other than a branch that agrees to be treated as a U.S. person), it must complete a separate Form 1042–S for each recipient to the extent the withholding agent can reliably associate a payment with valid documentation (within the meaning of § 1.1441–1(b)(2)(vii)) from the recipient which is associated with the withholding certificate provided by the nonqualified intermediary, flow-through entity, or U.S. branch. If a payment is made through tiers of nonqualified intermediaries or flow-through entities, the withholding agent must nevertheless complete Form 1042–S for the recipients to the extent it can reliably associate the payment with documentation from the recipients. A withholding agent that is completing a Form 1042–S for a recipient that receives a payment through a nonqualified intermediary, a flow-through entity, or a U.S. branch must include on the Form 1042–S the name of the nonqualified intermediary or flow-through entity from which the recipient directly receives the payment. If a U.S. withholding agent cannot reliably associate the payment, or any portion of the payment, with valid documentation from a recipient either because no such documentation has been provided or because the nonqualified intermediary, flow-through entity, or U.S. branch has failed to provide sufficient allocation information so that the withholding agent can associate the payment, or any portion thereof, with valid documentation, then the withholding agent must report the payments as made to an unknown recipient in accordance with the appropriate presumption rules for that payment. Thus, if under the presumption rules the payment is presumed to be made to a foreign person, the withholding agent must generally withhold 30 percent of the payment and report the payment on Form 1042–S made out to an unknown recipient and shall also include the name of the nonqualified intermediary or flow-through entity that received the payment on behalf of the unknown recipient. If, however, the recipient is presumed to be a U.S. non-exempt recipient (as defined in § 1.1441–1(c)(21)), the withholding agent must withhold on the payment as required under section 3406 and report the payment as made to an unknown recipient on the appropriate Form 1099 as required under chapter 61 of the Internal Revenue Code.

(B) *Disregarded entities.* If a U.S. withholding agent makes a payment to a disregarded entity but receives a valid withholding certificate or other documentary evidence from a foreign person that is the single owner of a disregarded entity, the withholding agent must file a Form 1042–S treating the foreign single owner as the recipient. The taxpayer identifying number on the Form 1042–S, if required, must be the foreign single owner's TIN.

(iii) *Reporting by qualified intermediaries, withholding foreign partnerships, and withholding foreign trusts.* A qualified intermediary, a withholding foreign partnership, and a withholding foreign trust shall report payments on Form 1042–S as provided in their agreements with the IRS and the instructions to the form.

(iv) *Reporting by a nonqualified intermediary, flow-through entity, and certain U.S. branches.* A nonqualified intermediary, flow-through entity, or U.S. branch described in § 1.1441–1(e)(2)(iv) (other than a U.S. branch that is treated as a U.S. person) is a withholding agent and must file Forms 1042–S for amounts paid to recipients in the same manner as a U.S. withholding agent. A Form 1042–S will not be required, however, if another withholding agent has reported the same amount to the same recipient for which the nonqualified intermediary, flow-through entity, or U.S. branch would be required to file a return and the entire amount that should be withheld from such payment has been withheld. A nonqualified intermediary, flow-through entity, or U.S. branch must

report payments made to recipients to the extent it has failed to provide the appropriate documentation to another withholding agent together with the information required for that withholding agent to reliably associate the payment with the recipient documentation or to the extent it knows, or has reason to know, that less than the required amount has been withheld. A nonqualified intermediary or flow-through entity that is required to report a payment on Form 1042–S must follow the same rules as apply to a U.S. withholding agent under paragraph (c)(4)(i) and (ii) of this section.

(v) *Pro rata reporting for allocation failures.* If a nonqualified intermediary, flow-through entity, or U.S. branch described in § 1.1441–1(b)(2)(iv) (other than a branch treated as a U.S. person) that uses the alternative procedures of § 1.1441–1(e)(3)(iv)(D) fails to provide information sufficient to allocate the amount subject to reporting paid to a withholding rate pool to the payees identified for that pool, then the withholding agent shall report the payment in accordance with the rule provided in § 1.1441–1(e)(3)(iv)(D)(*6*).

(vi) *Other withholding agents.* Any person that is a withholding agent not described in paragraph (c)(4)(i), (iii), or (iv) of this section (e.g., a foreign person that is not a qualified intermediary, flow-through entity, or U.S. branch) shall file Form 1042–S in the same manner as a U.S. withholding agent and in accordance with the instructions to the form.

* * * * *

Par. 11. Effective January 1, 2001, § 1.6041–1 is amended by revising paragraph (d)(5) to read as follows:

**§ 1.6041–1 Return of information as to payments of $600 or more.**

* * * * *

(d) * * *

(5) *Notional principal contracts.* Except as provided in paragraphs (b)(5)(i) and (ii) of this section, amounts paid after December 31, 2000, with respect to notional principal contracts referred to in § 1.863–7 or 1.988–2(e) to persons who are not described in § 1.6049–4(c)(1)(ii) are required to be reported in returns of information under this section. The amount required to be reported under this paragraph (d)(5) is limited to the amount of cash paid from the notional principal contract as described in § 1.446–3(d). A non-periodic payment is reportable for the year in which an actual payment is made. Any amount of interest determined under the provisions of § 1.446–3(g)(4) (dealing with interest in the case of a significant non-periodic payment) is reportable under this paragraph (d)(5) and not under section 6049 (see § 1.6049–5(b)(15)). See § 1.6041–4(a)(4) for reporting exceptions regarding payments to foreign persons. See, however, § 1.1461–1(c)(1) for reporting amounts described under this paragraph (d)(5) that are paid to foreign persons. The provisions of § 1.6049–5(d) shall apply for determining whether a payment with respect to a notional principal contract is made to a foreign person. See § 1.6049–4(a) for a definition of payor. For purposes of this paragraph (d)(5), a payor includes a middleman defined in § 1.6049–4(f)(4).

(i) An amount paid with respect to a notional principal contract is not required to be reported if the payment is made outside the United States (as defined in § 1.6049–5(e)) by a non-U.S. payor or a non-U.S. middleman.

(ii) An amount paid with respect to a notional principal contract is not required to be reported if the payment is made outside the United States (as defined in § 1.6049–5(e)) by a payor that has no actual knowledge that the payee is a U.S. person, and the payor is—

(A) A U.S. payor or U.S. middleman that is not a U.S. person (such as a controlled foreign corporation defined in section 957(a) or certain foreign corporations or foreign partnerships engaged in a U.S. trade or business); or

(B) A foreign branch of a U.S. bank. See § 1.6049–5(c)(5) for a definition of a U.S. payor, a U.S. middleman, a non-U.S. payor, and a non-U.S. middleman.

* * * * *

**Par. 12.** Effective January 1, 2001, § 1.6041–4 is amended by 1. Revising paragraph (a)(3).

2. Adding paragraph (a)(6).

The revision and addition read as follows:

**§ 1.6041–4 Foreign-related items and other exceptions.**

(a) * * *

(3) Returns of information are not required for amounts paid by a foreign intermediary described in § 1.1441–1(c)(13) that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in § 1.1441–1(b)(2)(iv) (other than a U.S. branch that is treated as a U.S. person) that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under § 1.6041–1 and were not so reported. For example, if a foreign intermediary or U.S. branch described in § 1.1441–1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under § 1.6041–3(q) to the person from whom the intermediary or U.S. branch receives the payment, the foreign intermediary or U.S. branch must report the payment on an information return. The exception of this paragraph (a)(3) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Internal Revenue Code.

* * * * *

(6) For rules concerning direct sellers, see § 1.6041A–1(d)(3)(i)(C).

* * * * *

**Par. 13.** Effective January 1, 2001, § 1.6041A–1 is amended by:

1. Revising paragraph (d)(3)(i)(B).

2. Adding paragraph (d)(3)(i)(C).

The revision and addition read as follows:

**§ 1.6041A–1 Returns regarding payments of remuneration for services and certain direct sales.**

* * * * *

(d) * * *

(3) * * * (i) * * *

(B) Returns of information are not required for payments of remuneration for services from sources outside the United States (determined under the provisions of part I, subchapter N, chapter 1 of the Internal Revenue Code and the regulations under those provisions) if payments are made outside the United States by a non-U.S. payor or non U.S. middleman. For a definition of non U.S. payor or non-U.S. middleman, see § 1.6049–5(c)(5). For circumstances in which a payment is considered to be made outside the United States, see § 1.6049–5(e).

(C) Returns of information are not required under sections 6041 or 6041A for amounts paid outside of the United States (within the meaning of § 1.6049–5(e)) as remuneration for services as a direct seller (within the meaning of section 3508) performed outside of the United States or for sales described in section 6041A(b) made outside of the United States of consumer products for resale outside of the United States.

* * * * *

**Par. 14.** Effective January 1, 2001, § 1.6042–3 is amended by revising paragraph (b)(1)(vi) to read as follows:

**§ 1.6042–3 Dividends subject to reporting.**

* * * * *

(b) * * * (1) * * *

(vi) Payments made by a foreign intermediary described in § 1.1441–1(c)(13) of amounts that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in § 1.1441–1(b)(2)(iv) (other than a U.S. branch that is treated as a U.S. person) that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under § 1.6042–2 and were not so reported. For example, if a foreign intermediary or U.S. branch described in § 1.1441–1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under § 1.6049–4(c)(1)(ii) to the person from whom the intermediary or U.S. branch receives the payment, the amount paid by the foreign intermediary or U.S. branch to such person is a dividend. The exception of this paragraph (b)(1)(vi) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Internal Revenue Code.

* * * * *

**Par. 15.** Effective January 1, 2001, § 1.6045–1 is amended by:

1. Removing the last sentence of paragraph (g)(1)(i) and adding two new sentences in its place.
2. Revising paragraph (g)(3)(iv).
3. Revising paragraph (g)(4), *Example 7*.
4. Adding *Examples 8* and *9* to paragraph (g)(4).

The additions and revisions read as follows:

**§ 1.6045–1 Returns of information of brokers and barter exchanges.**

* * * * *

(g) * * * (1) * * *

(i) * * * For purposes of this paragraph (g)(1)(i), a broker that is required to obtain, or chooses to obtain, a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) from an individual may rely on the withholding certificate only to the extent the certificate includes a certification that the beneficial owner has not been, and at the time the certificate is furnished, reasonably expects not to be present in the United States for a period aggregating 183 days or more during each calendar year to which the certificate pertains. The certification is not required if a broker receives documentary evidence under § 1.6049–5(c)(1) or (4).

* * * * *

(3) * * *

(iv) *Special rules where the customer is a foreign intermediary or certain U.S. branches.* A foreign intermediary, as defined in § 1.1441–1(c)(13), is an exempt foreign person, except when the broker has actual knowledge or reason to know (within the meaning of § 1.6049–5(c)(3)) that the person for whom the intermediary acts is a U.S. person that is not exempt from reporting under § 5f.6045–1(c)(3) of this chapter or the broker is required to presume under § 1.6049–5(d)(3) that the payee is a U.S. person that is not an exempt recipient. If an intermediary, as defined in § 1.1441–1(c)(13), or a U.S. branch described in § 1.1441–1(b)(2)(iv) (other than a U.S. branch that is treated as a U.S. person) receives a payment from a payor or middleman, which payment the payor or middleman can associate with a valid withholding certificate described in § 1.1441–1(e)(3)(ii), (iii), or (v) furnished by such intermediary or U.S. branch, then the intermediary or U.S. branch is not required to report such payment when it, in turn, pays the amount to the person whose name is on the certificate furnished by the intermediary or U.S. branch to the payor or middleman, unless, and to the extent, the intermediary or U.S. branch knows that the payment is required to be reported under this section and was not so reported. For example, if a foreign intermediary or U.S. branch fails to provide information regarding U.S. persons that are not exempt from reporting under § 5f.6045–1(c)(3) of this chapter to the person from whom the intermediary or U.S. branch receives the payment, the foreign intermediary or U.S. branch must report the payment on an information return. The exception of this paragraph (g)(3)(iv) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Internal Revenue Code.

(4) * * *

*Example 7.* Customer A, an individual, owns U.S. corporate bonds issued in registered form after July 18, 1984 and carrying a stated rate of interest. The bonds are held through an account with foreign bank, X, and are held in street name. X is a wholly-owned subsidiary of a U.S. company and is not a qualified intermediary within the meaning of § 1.1441–1(e)(5)(ii). X has no documentation regarding A. A instructs X to sell the bonds. In order to effect the sale, X acts through its agent in the United States, Y. Y sells the bonds and remits the sales proceeds to X. X credits A's account in the foreign country. X does not provide documentation to Y.

(i) *Y's obligations to withhold and report.* Y treats X as the customer, and not A, because Y cannot treat X as an intermediary because it has received no documentation from X. Y is not required to report the sales proceeds under the multiple broker exception under § 5f.6045–1(c)(3)(ii) of this chapter, because X is an exempt recipient. Further, Y is not required to report the amount of accrued interest paid to X on Form 1042–S under § 1.1461–1(c)(2)(ii) because accrued interest is not an amount subject to reporting unless the withholding agent knows that the obligation is being sold with a primary purpose of avoiding tax.

(ii) *X's obligations to withhold and report.* Although X has effected, within the meaning of paragraph (a)(1) of this section, the sale of a security at an office outside the United States under paragraph (g)(3)(iii) of this section, X is treated as a broker, under paragraph (a)(1) of this section, because as a wholly-owned subsidiary of a U.S. corporation, X is a U.S. payor. See § 1.6049–5(c)(5). Under the presumptions described in § 1.6049–5(d)(2), X must presume that, with respect to the sales proceeds, A is a U.S. person who is not an exempt recipient. Therefore the payment of sales proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no obligation to backup withhold on the payment based on the exemption under § 31.3406(g)–1(e) of this chapter, unless X has actual knowledge that A is a U.S. person that is not an exempt recipient. X is also required to separately report the accrued interest (see paragraph (d)(3) of this section) on Form 1099 under section 6049 because A is also presumed to be a U.S. person who is not an exempt recipient under the presumption rule in § 1.6049–5(d)(2) and § 1.1441–1(b)(3)(iii) since accrued interest is not an amount subject to reporting and therefore the presumption of foreign status for offshore accounts under § 1.1441–1(b)(3)(iii)(D) does not apply.

*Example 8.* The facts are the same as in *Example 7*, except that instead of U.S. corporate bonds that carry stated interest, A owns original issue discount instruments described in section 871(g)(1)(B)(i) (i.e., obligations payable 183 days or less from the date of original issue). In addition, the sale is in a transaction other than a redemption.

(i) *Y's obligations to withhold and report.* Y is not required to report the sales proceeds under the multiple broker exception under § 5f.6045–1(c)(3)(ii) of this chapter, because X is an exempt recipient.

(ii) *X's obligations to withhold and report.* Although X has effected, within the meaning of paragraph (a)(1) of this section, the sale of a security at an office outside the United States under paragraph (g)(3)(iii) of this section, X is treated as a broker, under paragraph (a)(1) of this section, because as a wholly-owned subsidiary of a U.S. corporation, X is a U.S. payor. See § 1.6049–5(c)(5). Under the presumptions described in § 1.6049–5(d)(2), X must presume that, with respect to the sales proceeds, A is a U.S. person who is not an exempt recipient. Therefore the payment of sales proceeds to A by X is reportable on a Form 1099 under paragraph (c)(2) of this section. X has no

obligation to backup withhold on the payment based on the exemption under § 31.3406(g)–1(e) of this chapter, unless X has actual knowledge that A is a U.S. person that is not an exempt recipient. X is not required to separately report the amount of accrued original issue discount. See paragraph (d)(3) of this section.

*Example 9.* The facts are the same as in *Example 8*, except that X is a foreign corporation that is not a U.S. payor under § 1.6049–5(c).

(i) *Y's obligations to withhold and report.* Y is not required to report the sales proceeds under the multiple broker exception under § 5f.6045–1(c)(3)(ii) of this chapter, because X is the person responsible for paying the proceeds from the sale to A.

(ii) *X's obligations to withhold and report.* Although A is presumed to be a U.S. payee under the presumptions of § 1.6049–5(d)(2), X is not considered to be a broker under paragraph (a)(1) of this section because it is a not a U.S. payor under § 1.6049–5(c)(5). Therefore X is not required to report the sale under paragraph (c)(2) of this section.

* * * * *

**Par. 16.** Effective January 1, 2001, § 1.6049–4 is amended by revising the introductory text of paragraph (c)(1)(ii) to read as follows:

**§ 1.6049–4 Return of information as to interest paid and original issue discount includible in gross income after December 31, 1982.**

* * * * *

(c) * * * (1) * * *

(ii) *Exempt recipient defined.* The term *exempt recipient* means any person described in paragraphs (c)(1)(ii)(A) through (Q) of this section. An exempt recipient is generally exempt from information reporting without filing a certificate claiming exempt status unless the provisions of this paragraph (c)(1)(ii) require a payee to file a certificate.

A payor may, in any case, require a payee that is a U.S. person not otherwise required to file a certificate under this paragraph (c)(1)(ii) to file a certificate in order to qualify as an exempt recipient. See § 31.3406(h)–3(a)(1)(iii) and (c)(2) of this chapter for the certificate that a payee that is a U.S. person must provide when a payor requires the certificate to treat the payee as an exempt recipient under this paragraph (c)(1)(ii). A payor may treat a payee as an exempt recipient based upon a properly completed form as described in § 31.3406(h)–3(e)(2) of this chapter, its actual knowledge that the payee is a person described in this paragraph (c)(1)(ii), or the indicators described in this paragraph (c)(1)(ii).

* * * * *

*Par. 17.* Effective January 1, 2001, § 1.6049–5 is amended by:

1. Adding a sentence at the end of paragraph (b)(10)(ii).

2. Adding a sentence at the end of the introductory text of paragraph (b)(11).

3. Revising paragraph (b)(14).

4. Adding a sentence at the end of paragraph (c)(1).

5. Revising paragraph (c)(4).

6. In paragraph (c)(6), removing *Example 3* and redesignating *Examples 4* and *5* as *Examples 3* and *4*, respectively; in newly designated *Example 3*, revise the language "The facts are the same as in *Example 3*" to read "The facts are the same as in *Example 2*"; in addition, in newly designated *Example 4*, revise the language "The facts are the same as in *Example 4*" to read "The facts are the same as in *Example 3*".

7. Revising the first sentence of paragraph (d)(1) introductory text.

8. Revising paragraphs (d)(2)(i) and (d)(2)(ii), (d)(3), and (d)(4).

9. Removing paragraph (d)(5).

The additions and revisions read as follows:

**§ 1.6049–5 Interest and original issue discount subject to reporting after December 31, 1982.**

* * * * *

(b) * * *

(10) * * *

(ii) * * * The exemption from reporting described in this paragraph (b)(10) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

(11) * * * The exemption from reporting described in this paragraph (b)(11) shall not apply if the payor has actual knowledge that the payee is a U.S. person who is not an exempt recipient.

* * * * *

(14) Payments made by a foreign intermediary described in § 1.1441–1(e)(3)(i) of amounts that it has received in its capacity as an intermediary and that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(ii) or (iii) and payments made by a U.S. branch of a foreign bank or of a foreign insurance company described in § 1.1441–1(b)(2)(iv) (other than a U.S. branch that is treated as a U.S. person) that are associated with a valid withholding certificate described in § 1.1441–1(e)(3)(v), which certificate the intermediary or branch has furnished to the payor or middleman from whom it has received the payment, unless, and to the extent, the intermediary or branch knows that the payments are required to be reported under § 1.6049–4 and were not so reported. For example, if a foreign intermediary or U.S. branch described in § 1.1441–1(b)(2)(iv) fails to provide information regarding U.S. persons that are not exempt from reporting under § 1.6049–4(c)(1)(ii) to the person from whom the intermediary or U.S. branch receives the payment, the amount paid by the foreign intermediary or U.S. branch to such person is interest or original issue discount. The exception of this paragraph (b)(14) shall not apply to a qualified intermediary that assumes reporting responsibility under chapter 61 of the Internal Revenue Code.

* * * * *

(c) * * * (1) * * * A payor may also rely on documentary evidence associated with a flow-through withholding certificate for payments treated as made to foreign partners of a nonwithholding foreign partnership, as defined in § 1.1441–1(c)(28), the foreign beneficiaries of a foreign simple trust, as defined in § 1.1441–1(c)(24), or foreign owners of a foreign grantor trust, as defined in § 1.1441–1(c)(26), even though the partnership or trust account is maintained in the United States.

* * * * *

(4) *Special documentation rules for certain payments.* This paragraph (c)(4) modifies the provisions of this paragraph (c) for payments to offshore accounts maintained at a bank or other financial institution of amounts that are not subject to withholding under chapter 3 of the Internal Revenue Code, other than amounts described in paragraph (d)(3)(iii) of this section (dealing with U.S. short-term OID and U.S. bank deposit interest). Amounts are not subject to withholding under chapter 3 of the Internal Revenue Code if they are not included in the definition of amounts subject to withholding under § 1.1441–2(a) (e.g., deposit interest with foreign branches of U.S. banks, foreign source income, or broker proceeds).

(i) *Special rule when non-renewable documentary evidence is customary.* If it is customary in the country in which a branch or office of a bank or other financial institution is located to obtain documentary evidence described in paragraph (c)(1) of this section, but it is not customary for such documentary evidence to be renewed, then a payor may, in lieu of obtaining a withholding certificate, request such documentary evidence for an account maintained at such branch or office. The bank or other financial institution may rely on such documentary evidence to treat a person as a foreign person without renewing such documentary evidence in accordance with paragraph (c)(2) of this section and § 1.1441–1(e)(4)(ii) if it may rely on the documentary evidence as sufficient to establish the person's

foreign status under § 1.1441–7(b)(7) and (8). If, however, the bank or other financial institution may, under § 1.1441–7(b)(8) treat a payee as a foreign person even though it has a residence or mailing address for the payee in the United States, or has standing instructions to pay amounts from its account to an address in the United States or an account maintained in the United States, then the payor shall rely on the documentary evidence only for a period of three full calendar years after the calendar year in which the documentary evidence is provided to the payor or, if earlier, until the payor is aware of a change of circumstances that affects the validity of the documentation as establishing the payee's status as a foreign person.

(ii) *Statement in lieu of documentary evidence.* If under the local laws, regulations, or practices applicable to a type of account or transaction it is not customary to obtain documentary evidence described in paragraph (c)(1) of this section, the bank or other financial institution may, instead of obtaining a beneficial owner withholding certificate described in § 1.1441–1(e)(2)(i) or documentary evidence described in paragraph (c)(1) of this section, establish a payee's foreign status based on the statement described in this paragraph (4)(ii) (or such substitute statement as the Internal Revenue Service may prescribe) made on an account opening form. The statement shall be valid only if the mailing and residence addresses of the payee are outside the United States and there are no other indicia of U.S. status. If reliance is not permitted because there are indicia of U.S. status then the payor must obtain either documentary evidence described in paragraph (c)(1) of this section or a Form W–8 described in § 1.1441–1(e)(2)(i) to treat the customer as a foreign payee. In such a case, the form or documentary evidence must be renewed every three years in accordance with the renewal procedures set forth in § 1.1441–1(e)(4)(ii)(A) for as long as indicia of U.S. status continue to be present. The statement referred to in this paragraph (c)(4)(i) of this section must appear near the signature line and must read as follows:

> By opening this account and signing below, the account owner represents and warrants that he/she/it is not a U.S. person for purposes of U.S. Federal income tax and that he/she/it is not acting for, or on behalf of, a U.S. person. A false statement or misrepresentation of tax status by a U.S. person could lead to penalties under U.S. law. If your tax status changes and you become a U.S. citizen or a resident, you must notify us within 30 days.

(iii) *Continuous validity of declaration of foreign status subject to due diligence by financial institution.* A declaration of foreign status described in paragraph (c)(4)(ii) of this section does not expire unless the bank or financial institution becomes aware of circumstances indicating that the customer may be a U.S. person.

(iv) *Exception for existing accounts.* The rules of paragraphs (c)(4)(i) and (iii) of this section shall apply to accounts opened on or after January 1, 2001. For accounts opened before 2001, a bank or other financial institution may rely on the rules contained in §§ 35a.9999–3(ii) Q&A 34 and 35a.9999–4T Q&A 1 and 5 of this chapter in effect prior to January 1, 2001 (see 26 CFR Parts 30–39 revised as of April 1, 2000).

* * * * *

(d) * * * (1) *Identifying the payee.* The provisions of §§ 1.1441–1(b)(2), 1.1441–5(c)(1), (e)(2) and (3) shall apply (by applying the term *payor* instead of the term *withholding agent*) to identify the payee for purposes of this section (and other sections of the regulations under this chapter to which this paragraph (d)(1) applies), except to the extent provided in this paragraph (d)(1) in the case of a payment of amounts that are not subject to withholding under chapter 3 of the Internal Revenue Code. * * *

* * * * *

(2) *Presumptions of classification and U.S. or foreign status in the absence of documentation*—(i) *In general.* Except as otherwise provided in this paragraph (d)(2)(i), for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(2) applies), the provisions of § 1.1441–1(b)(3)(i), (ii), (iii), (vii), (viii), and (ix) and 1.1441–5(d) and (e)(6) shall apply (by applying the term *payor* instead of the term *withholding agent*) to determine the classification (e.g., individual, corporation, partnership, trust), status (i.e., a U.S. or a foreign person), and other relevant characteristics (e.g., beneficial owner or intermediary) of a payee if a payment cannot be reliably associated with valid documentation under § 1.1441–1(b)(2)(vii) irrespective of whether the payments are subject to withholding under chapter 3 of the Internal Revenue Code. The provisions of § 1.1441–1(b)(3)(iii)(D) and (vii)(B) shall not apply, however, to payments of amounts that are not subject to withholding. In addition, § 1.1441–5(d)(2) shall not apply to treat a partnership as a foreign partnership with respect to amounts that are not subject to withholding unless the payor has actual knowledge of the payee's employer identification number and that number begins with the two digits "98." The rules of § 1.1441–1(b)(2)(vii) shall apply for purposes of determining when a payment can reliably be associated with documentation, by applying the term *payor* instead of the term *withholding agent*. For this purpose, the documentary evidence or statement described in paragraph (c)(4) of this section can be treated as documentation with which a payment can be associated.

(ii) *Grace period in the case of indicia of a foreign payee.* When the conditions of this paragraph (d)(2)(ii) are satisfied, the 30-day grace period provisions under section 3406(e) shall not apply and the provisions of this paragraph (d)(2)(ii) shall apply instead. A payor that, at any time during the grace period described in this paragraph (d)(2)(ii), credits an account with payments described in § 1.1441–6(c)(2) that are reportable under sections 6042, 6045, 6049, or 6050N may, instead of treating the account as owned by a U.S. person and applying backup withholding under section 3406, if applicable, choose to treat the account as owned by a foreign person if, at the beginning of the grace period, the address that the payor has in its records for the account holder is in a foreign country, the payor has been furnished the information contained in a withholding certificate described in § 1.1441–1(e)(2)(i) or (3)(i) (by way of a facsimile copy of the certificate or other non-qualified electronic transmission of the information required to be stated on the certificate), or the payor holds a withholding certificate that is no longer reliable other than because the validity period as described in § 1.1441–1(e)(4)(ii)(A) has expired. In the case of a newly opened account, the grace period begins on the date that the payor first credits the account.

In the case of an existing account for which the payor holds a Form W–8 or documentary evidence of foreign status, the grace period begins on the date that the payor first credits the account after the existing documentation held with regard to the account can no longer be relied upon (other than because the validity period described in § 1.1441–1(e)(4)(ii)(A) has expired). A new account shall be treated as an existing account if the account holder already holds an account at the branch location at which the new account is opened. It shall also be treated as an existing account if an account is held at another branch location if the institution maintains a coordinated account

information system described in § 1.1441–1(e)(4)(ix). The grace period terminates on the earlier of the close of the 90th day from the date on which the grace period begins or the date that the documentation is provided. The grace period also terminates when the remaining balance in the account (due to withdrawals or otherwise) is equal to or less than 31 percent of the total amounts credited since the beginning of the grace period that would be subject to backup withholding if the provisions of this paragraph (d)(2)(ii) did not apply. At the end of the grace period, the payor shall treat the amounts credited to the account during the grace period as paid to a U.S. or foreign payee depending upon whether documentation has been furnished and the nature of any such documentation furnished upon which the payor may rely to treat the account as owned by a U.S. or foreign payee. If the documentation has not been received on or before the date of expiration of the grace period, the payor may also apply the presumptions described in this paragraph (d) to amounts credited to the account after the date on which the grace period expires (until such time as the payor can reliably associate the documentation with amounts credited). See § 31.6413(a)–3(a)(1)(iv) of this chapter for treating backup withheld amounts under section 3406 as erroneously withheld when the documentation establishing foreign status is furnished prior to the end of the calendar year in which backup withholding occurs. If the provisions of this paragraph (d)(2)(ii) apply, the provisions of § 31.3406(d)–3 of this chapter shall not apply. For purposes of this paragraph (d)(2)(ii), an account holder's reinvestment of gross proceeds of a sale into other instruments constitutes a withdrawal and a non-qualified electronic transmission of information on a withholding certificate is a transmission that is not in accordance with the provisions of § 1.1441–1(e)(4)(iv). See § 1.1092(d)–1 for a definition of the term *actively traded* for purposes of this paragraph (d)(2)(ii).

* * * * *

(3) *Payments to foreign intermediaries or flow-through entities*—(i) *Payments of amounts subject to withholding under chapter 3 of the Internal Revenue Code.* In the case of payments of amounts that the payor may treat as made to a foreign intermediary or flow-through entity in accordance with §§ 1.1441–1(b)(3)(ii)(C) and (b)(3)(v)(A), 1.1441–5(c) or (e) and that are subject to withholding under § 1.1441–2(a), the provisions of §§ 1.1441-1(b)(2)(v) and 1.1441–5(c)(1), (e)(2), and (3) shall apply (by applying the term *payor* instead of the term *withholding agent*) to identify the payee. If a payment of an amount subject to withholding cannot be reliably associated with valid documentation from a payee in accordance with § 1.1441–1(b)(2)(vii) the presumption rules of § 1.1441–1(b)(3)(v) and § 1.1441–5(d) and (e)(6) shall apply to determine the payees status for purposes of this section (and other sections of regulations under this chapter to which this paragraph (d)(3) applies).

(ii) *Payments of amounts not subject to withholding under chapter 3 of the Internal Revenue Code.* Except as provided in paragraph (d)(3)(iii) of this section, amounts that are not subject to withholding under chapter 3 of the Internal Revenue Code that the payor may treat as paid to a foreign intermediary or flow-through entity shall be treated as made to an exempt recipient described in § 1.6049–4(c) except to the extent that the payor has actual knowledge that any person for whom the intermediary or flow-through entity is collecting the payment is a U.S. person who is not an exempt recipient. In the case of such actual knowledge, the payor shall treat the payment that it knows is allocable to such U.S. person as a payment to a U.S. payee who is not an exempt recipient.

(iii) *Special rule for payments of certain short-term original issue discount and bank deposit interest*—(A) *General rule.* A payment of U.S. source deposit interest described in section 871(i)(2)(A) or 881(d)(3) or interest or original issue discount on the redemption of an obligation with a maturity from the date of issue of 183 days or less (short-term OID) described in section 871(g)(1)(B) or 881(e) that the payor may treat as paid to a foreign intermediary or flow-through entity in accordance with the provisions of § 1.1441-1(b)(3)(ii)(C) or (v)(A) shall be treated as paid to an undocumented U.S. payee that is not an exempt recipient under paragraph § 1.6049–4(c) unless the payor has documentation from the payees of the payment and the payment is allocated to foreign payees, as a group, and to each U.S. non-exempt recipient payee. See § 1.1441–1(e)(3)(iv)(C)(*2*).

(B) *Payee may be an intermediary.* If a payment is made to a person described in § 1.6049–4(c)(1)(ii) that has not provided an intermediary withholding certificate under § 1.1441–1(e)(3)(i) but the payor knows or has reason to know that the payee may be an intermediary, the payor must apply the rules of paragraph (d)(3)(iii)(A) of this section. A payor has reason to know that such a person may be an intermediary if that person has provided documentation under § 1.1441–3(b)(ii)(C) or (v)(A) for another account with the same payor.

(iv) *Short-term deposits and repurchase transactions.* The provisions of paragraph (d)(3)(ii) of this section and not paragraph (d)(3)(iii) of this section shall apply to deposits with banks and other financial institutions that remain on deposit for a period of two weeks or less, to amounts of original issue discount arising from a sale and repurchase transaction that is completed within a period of two weeks or less, or to amounts described in paragraphs (b)(7), (10) and (11) of this section (relating to certain obligations issued in bearer form).

(4) *Examples.* The rules of paragraphs (d)(1) through (3) of this section are illustrated by the following examples:

*Example 1. (i) Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP pays interest from sources within the United States to an account maintained in the United States by X. The interest is not deposit interest described in sections 871(i)(2)(A) or 881(d). USP does not have a withholding certificate from X as defined in § 1.1441–1(c)(16). Moreover, USP cannot treat X as an exempt recipient, as defined in § 1.6049–4(c)(1)(ii), without documentation and there is no indication that X is an individual, trust, or estate.

(ii) *Analysis.* The U.S. source interest is an amount subject to withholding as defined in § 1.1441–2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of §§ 1.1441–1(b)(2) and 1.1441–5(c) and (e) to determine the payee of the interest. Under § 1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441–5 apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441–1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under § 1.1441–1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d)(2), X is presumed to be

a U.S. partnership in absence of any indicia of foreign partnership status. The U.S. source interest paid to X is reportable under section 6049 on Form 1099 and the interest is subject to backup withholding under section 3406 because X has not provided its TIN on a valid Form W–9.

*Example 2.* (i) *Facts.* The facts are the same as in *Example 1*, except that the interest paid by USP is from sources outside the United States.

(ii) *Analysis.* Interest from sources outside the United States is not an amount subject to withholding, as defined in § 1.1441–2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of §§ 1.1441–1(b)(2) and 1.1441–5(c) and (e) to determine the payee. Under § 1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441–5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441–1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. These rules apply irrespective of whether the payment is an amount subject to withholding. Under § 1.1441–1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d)(2), X is presumed to be a U.S. partnership in absence of any indicia of foreign partnership status. The foreign source interest is a payment subject to reporting on Form 1099 under § 1.6049–5(a). Further, because X is a non-exempt recipient that has failed to provide its TIN on a valid Form W–9, the foreign source interest is subject to backup withholding under section 3406.

*Example 3. (i) Facts. USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP makes a payment of U.S. source interest outside the United States to an offshore account of X. See paragraphs (c)(1) for a definition of offshore account and (e) for a payment outside the United States. USP does not have a withholding certificate from X as defined in § 1.1441–1(c)(16) nor does it have documentary evidence as described in § 1.1441–1(e)(1)(ii)(A)(2) and 1.6049–5(c)(1).* (ii) *Analysis.* The interest is an amount subject to withholding as defined in § 1.1441–2(a). Under paragraph (d)(1) of this section, USP must apply the provisions of § 1.1441–1(b)(2) and § 1.1441–5(c) and (e) to determine the payee. Under § 1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441–5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, the rules of § 1.1441–1(b)(3)(ii) apply to determine the classification of a payee as an individual, trust, estate, corporation, or partnership. Under § 1.1441–1(b)(3)(ii)(B), X is presumed to be a partnership, since X does not appear to be an individual, trust or estate, and X cannot be presumed to be an exempt recipient in the absence of documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Under §§ 1.1441–1(b)(3)(iii)(D) and 1.1441–5(d)(2), X is presumed to be a foreign partnership. Therefore, under paragraph (d)(1) of this section and § 1.1441–5(c)(1)(i)(E), the payees of the interest are presumed to be the partners of X. Under § 1.1441–5(d)(3), the partners are presumed to be undocumented foreign persons. Therefore, USP must withhold 30 percent of the interest payment under § 1.1441–1(b)(1) and report the payment on Form 1042–S in accordance with § 1.1461–1(c).

*Example 4. (i) Facts. The facts are the same as in Example 3, except that the interest is paid by F, a non-U.S. payor.* (ii) *Analysis.* The analysis and result are the same as in *Example 3*. F is a withholding agent under § 1.1441–7 and its status as a non-U.S. payor under paragraph (c)(5) of this section is irrelevant.

*Example 5.* (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP makes a payment outside the United States of interest from sources outside the United States to an offshore account of X. USP does not have a withholding certificate from X as defined in § 1.1441–1(c)(16) nor does it have documentary evidence as described in §§ 1.1441–1(e)(1)(ii)(A)(*2*) and 1.6049–5(c)(1). USP does not have actual knowledge of an employer identification number for X. X does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient, as defined in § 1.6049–4(c)(1)(ii) in the absence of documentation.

(ii) *Analysis.* The interest is not an amount subject to withholding as defined in § 1.1441–2(a). Under paragraph (d)(1) of this section, USP must apply the rules of §§ 1.1441–1(b)(2) and 1.1441–5(c) and (e) to determine the payee of the interest. Under § 1.1441–1(b)(2)(i), X, the person to whom the payment is made, is considered to be the payee, unless X is determined to be a flow-through entity, in which case the rules of § 1.1441–5(c) or (e) apply to determine the payee. Under paragraph (d)(2)(i) of this section, § 1.1441–1(b)(3)(ii) applies to determine X's classification as an individual, trust, estate, corporation or partnership. Under § 1.1441–1(b)(3)(ii)(B), X is treated as a partnership, since it does not appear to be an individual, trust, or estate and cannot be treated as an exempt recipient without documentation. Paragraph (d)(2)(i) of this section requires USP to apply the provisions of §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d) to determine whether, X is presumed to be a U.S. or foreign partnership. Paragraph (d)(2)(i) also states that the presumptions of foreign status for payments made to offshore accounts contained in §§ 1.1441–1(b)(3)(iii)(D) and 1.1441–5(d)(2) do not apply to amounts that are not subject to withholding. Therefore, under §§ 1.1441–1(b)(3)(iii) and 1.1441–5(d)(2), X is presumed to be a U.S. partnership because it does not have actual knowledge that X's employer identification number begins with the digits "98." Therefore, USP must treat X as a U.S. person that is not an exempt recipient and report the payment on Form 1099 under section 6049. Under § 31.3406(g)–1(e) of this chapter, however, USP is not required to backup withhold on the payment unless it has actual knowledge that X is a U.S. person that is not an exempt recipient.

*Example 6.* (i) *Facts.* The facts are the same as in *Example 5*, except that the interest is paid by F, a non-U.S. payor, as defined under paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis is the same as under *Example 5*. However, because F is a non-U.S. payor paying foreign source interest outside the United States, paragraph (b)(6) of this section exempts the payment from reporting under section 6049.

*Example 7.* (i) *Facts.* USP, a U.S. payor as defined in paragraph (c)(5) of this section, makes a payment of U.S. source interest to NQI, a foreign corporation and a nonqualified intermediary as defined in § 1.1441–1(c)(14). The interest is not deposit interest as defined in sections 871(i)(2)(A) and 881(d). The interest is paid inside the United States to an account maintained in the United States. NQI has provided USP with a nonqualified intermediary withholding certificate, as described in § 1.1441–1(e)(3)(iii), but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in § 1.1441–1(e)(3)(iv).

(ii) *Analysis.* U.S. source interest is an amount subject to withholding under § 1.1441–2(a). USP may treat the payment as made to a foreign intermediary under § 1.1441–1(b)(3)(v)(A) because USP has received a nonqualified intermediary withholding certificate from NQI. Under paragraph (d)(3)(i) of this section, USP must apply § 1.1441–1(b)(2)(v) to determine the payees of the payment. Under § 1.1441–1(b)(2)(v)(A), USP must treat the persons on whose behalf NQI is acting as the payees. Paragraph (d)(3)(i) of this section also requires USP to apply the presumption rules of § 1.1441–1(b)(3)(v) if it cannot reliably associate the payment with valid documentation from a payee. See § 1.1441–1(b)(2)(vii). Under § 1.1441–1(b)(3)(v)(B), the interest is treated as paid to an unknown foreign payee because it cannot be reliably associated with documentation under § 1.1441–1(b)(2)(vii). Therefore, the payment is not subject to reporting on Form 1099 under paragraph (b)(12) of this section because the payment is presumed made to a foreign person. The payment is subject to withholding, however, under § 1.1441–1(b) at a rate of 30 percent and is subject to reporting on Form 1042–S under § 1.1461–1(c).

*Example 8.* (i) *Facts.* The facts are the same as in *Example 7*, except that the interest is paid outside the United States, as defined in paragraph (e) of this section to an offshore account, as defined in paragraph (c)(1) of this section.

(ii) *Analysis.* The analysis and results are the same as in *Example 7*. The rules of

§ 1.1441–1(b)(3)(v) apply irrespective of where the account is maintained or the payment made.

*Example 9.* (i) *Facts.* The facts are the same as in *Example 8*, except that the interest is paid by F, a non-U.S. payor, as defined in paragraph (c)(5) of this section.

(ii) *Analysis.* The analysis and results are the same as in *Example 7*.

*Example 10.* (i) USP, a U.S. payor as defined in paragraph (c)(5) of this section, makes a payment of foreign source interest to NQI, a foreign corporation and a nonqualified intermediary as defined in § 1.1441–1(c)(14). NQI has provided USP with a nonqualified intermediary withholding certificate, as described in § 1.1441–1(e)(3)(iii), but has not attached any documentation from the persons on whose behalf it acts or a withholding statement as described in § 1.1441–1(e)(3)(iv).

(ii) *Analysis.* Foreign source interest is not an amount subject to withholding under chapter 3 of the Internal Revenue Code. See § 1.1441–2(a). Under paragraph (d)(3)(ii)(A) of this section, amounts that are not subject to withholding under chapter 3 of the Internal Revenue Code that a payor may treat as paid to a foreign intermediary are treated as made to an exempt recipient described in § 1.6049–4(c). Therefore, the foreign source interest is not subject to reporting on Form 1099.

*Example 11.* (i) *Facts.* USP is a U.S. payor as defined in paragraph (c)(5) of this section. USP pays U.S. source original issue discount from the redemption of an obligation described in section 871(g)(1)(B) to NQI, a foreign corporation that is a nonqualified intermediary as defined in § 1.1441–1(c)(14). The redemption proceeds are paid to an account NQI has with USP in the United States. NQI provides a nonqualified intermediary withholding certificate as described in § 1.1441–1(e)(3)(iii) but does not attach any payee documentation or a withholding statement described in § 1.1441–1(e)(3)(iv).

(ii) *Analysis.* Under paragraph (d)(3)(ii)(A) of this section, USP must treat the payment as made to an undocumented U.S. payee that is not an exempt recipient and report the payment on Form 1099. Further, because the payment is made inside the United States, the exception to backup withholding for offshore accounts contained in § 31.3406(g)–1(e) of this chapter does not apply and the payment is subject to backup withholding.

*Example 12.* (i) Facts. P, a payor, makes a payment to NQI of U.S. source interest on debt obligations issued prior to July 18, 1984. Therefore, the interest does not qualify as portfolio interest under section 871(h) or 881(d). NQI is a nonqualified foreign intermediary, as defined in § 1.1441–1(c)(14), and has furnished P a valid nonqualified intermediary withholding certificate described in § 1.1441–1(e)(3)(iii) to which it has attached a valid Form W–9 for A, and two valid beneficial owner Forms W–8, one for B and one for C. A is not an exempt recipient under § 1.6049–4(c). NQI furnishes a withholding statement, described in § 1.1441–1(e)(3)(iv), in which it allocates 20 percent of the U.S. source interest to A, but does not allocate the remaining 80 percent of the interest between B and C. B's withholding certificate indicates that B is a foreign pension fund, exempt from U.S. tax under the U.S. income tax treaty with Country T. C's withholding certificate indicates that C is a foreign corporation not entitled to a reduced rate of withholding.

(ii) *Analysis.* Under paragraph (d)(3)(i) of this section, P applies the rules of § 1.1441–1(b)(2)(v) to determine the payees of the interest. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 20 percent of the payment with valid documentation provided by A, P must treat 20 percent of the interest as paid to A, a U.S. person not exempt from reporting, and report the payment on Form 1099. P cannot reliably associate the remaining 80 percent of the payment with valid documentation under § 1.1441–1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of § 1.1441–1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under § 1.1441–1(b), 80 percent of the interest is subject to 30 percent withholding, however, and the interest is reportable on Form 1042-S under § 1.1461–1(c).

*Example 13.* (i) *Facts.* The facts are the same as in Example 12, except that P can reliably associate 30 percent of the payment of interest to B, but cannot reliably associate the remaining 70 percent with A or C.

(ii) *Analysis.* Under paragraph (d)(3)(i) of this section, P applies the rules of § 1.1441–1(b)(2)(v) to determine the payees of the interest. Under that section, the payees are the persons on whose behalf NQI acts—A, B and C. Because P can reliably associate 30 percent of the payment with B, a foreign pensions fund exempt from withholding under an income tax treaty, P may treat that payment as paid to B and not subject to reporting on Form 1099 under paragraph (b)(12) of this section. P cannot reliably associate the remaining 70 percent of the payment with valid documentation under § 1.1441–1(b)(2)(vii) and, therefore, under paragraph (d)(3)(i) of this section must apply the presumption rules of § 1.1441–1(b)(3)(v). Under that section, the interest is presumed paid to an unknown foreign payee. Under paragraph (b)(12) of this section, P is not required to report the interest presumed paid to a foreign person on Form 1099. Under § 1.1441–1(b), 80 percent of the interest is subject to 30 percent withholding, however, and the interest is reportable on Form 1042-S under § 1.1461–1(c).

*Example 14.* (i) *Facts.* The facts are the same as in *Example 12*, except that P also makes a payment of foreign source interest to NQI.

(ii) *Analysis.* Under paragraph (d)(3)(ii)(A), P may treat the foreign source interest as paid to an exempt recipient as defined in § 1.6049–4(c) and not subject to reporting on Form 1099 even though some or all of the foreign source interest may in fact be owned by A, the U.S. person that is not exempt from reporting.

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## Parts 1 and 31 [Amended]

**Par. 18.** Effective January 1, 2001, in the list below, for each section indicated in the left column remove the language in the middle column and add the language in the right column:

| Section | Remove | Add |
|---|---|---|
| 1.1441–1(b)(1), first sentence | to a beneficial owner that is a U.S. person | to a payee that is a U.S. person. |
| 1.1441–1(b)(2)(iii)(A), last sentence | 1.1441–6(b)(4) | 1.1441–6(b)(2). |
| 1.1441–1(b)(2)(iii)(B), third sentence | 1.1441–6(b)(4) | 1.1441–6(b)(2). |
| 1.1441–1(b)(2)(vi), second sentence | 1.6049–5(c)(4) | 1.6049–5(c)(1). |
| 1.1441–1(b)(4)(iii), last sentence | § 1.6049–5(c)(4) | § 1.6049–5(c)(1). |
| 1.1441–1(b)(4)(v), third sentence | § 1.6049–5(c)(4) | § 1.6049–5(c). |
| 1.1441–1(b)(4)(xviii), third sentence | is required | is not required. |
| 1.1441–1(b)(7)(i)(A) | § 1.1441–4(a)(2)(i) or (3) | § 1.1441–4(a)(2)(ii) or (3)(i). |
| 1.1441–1(b)(7)(iii), first sentence | § 1.1441–4(a)(2)(i) or (3) | § 1.1441–4(a)(2)(ii) or (3)(i). |
| 1.14441–1(b)(9), second sentence | a withholding certificate | an intermediary or flow-through withholding certificate. |
| 1.1441–1(b)(9), second sentence | a U.S. beneficial owner | a U.S. payee. |
| 1.1441–1(e)(1)(ii)(A)(*2*) | with respect to an offshore account | to an offshore account. |
| 1.1441–1(e)(2)(i), fifth sentence | See § 1.1441–6(b)(4)(ii) | See § 1.1441–6(b)(2). |
| 1.1441–1(e)(2)(ii), sixth sentence | See § 1.1441–6(b)(4)(i) | See § 1.1441–6(b). |
| 1.1441–1(e)(4)(viii), introductory text, second sentence. | § 1.1441–6(b)(2)(ii) | § 1.1441–6(c)(2). |
| 1.1441–1(e)(4)(viii), third sentence | § 1.1441–6(b)(4)(ii) | § 1.1441–6(b)(1). |

| Section | Remove | Add |
|---|---|---|
| 1.1441–3(c)(2)(i), introductory text, second sentence. | estimate of earnings and profits, | estimates under this paragraph (c)(2). |
| 1.1441–4(a)(3)(ii) | payment to a foreign financial institution (within the meaning of § 1.165–12(c)(1)(iv)) shall. | payment shall. |
| 1.1441–4(a)(3)(ii) | counterparty | payee. |
| 1.1441–7(b)(1), first sentence | is incorrect. | is unreliable or incorrect. |
| 1.1441–7(b)(1), third sentence | contained in, or attached to, a withholding certificate. | contained in, or associated with, a withholding certificate. |
| 1.1441–7(b)(1), third sentence | are not correct and | are incorrect or unreliable and. |
| 1.1461–1(b)(2), first sentence | Form 1042X | Form 1042. |
| 1.6045–1(j), first sentence | the end of the second calendar month following the close of the calendar year of such reporting period. | February 28 of the following calendar year. |
| 1.6049–4(c)(1)(ii)(A), second sentence | meets the | meets one of the. |
| 31.3406(h)–3(a), introductory text, first sentence. | the payee certifies | a payee that is a U.S. person certifies. |

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: May 5, 2000.

**Jonathan Talisman,**

*Deputy Assistant Secretary of the Treasury.*

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Part III

# Environmental Protection Agency

40 CFR Part 261
Regulatory Determination on Wastes from the Combustion of Fossil Fuels; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 261**

**[FRL–6588–1]**

**RIN 2050–AD91**

## Notice of Regulatory Determination on Wastes From the Combustion of Fossil Fuels

**AGENCY:** Environmental Protection Agency.

**ACTION:** Regulatory determination.

**SUMMARY:** This document explains EPA's determination of whether regulation of fossil fuel combustion wastes is warranted under subtitle C of the Resource Conservation and Recovery Act (RCRA). Today's action applies to all remaining fossil fuel combustion wastes other than high volume coal combustion wastes generated at electric utilities and independent power producing facilities and managed separately, which were addressed by a 1993 regulatory determination. These include: Large-volume coal combustion wastes generated at electric utility and independent power producing facilities that are co-managed together with certain other coal combustion wastes; coal combustion wastes generated by non-utilities; coal combustion wastes generated at facilities with fluidized bed combustion technology; petroleum coke combustion wastes; wastes from the combustion of mixtures of coal and other fuels (*i.e.*, co-burning); wastes from the combustion of oil; and wastes from the combustion of natural gas.

The Agency has concluded these wastes do not warrant regulation under subtitle C of RCRA and is retaining the hazardous waste exemption under RCRA section 3001(b)(3)(C). However, EPA has also determined national regulations under subtitle D of RCRA are warranted for coal combustion wastes when they are disposed in landfills or surface impoundments, and that regulations under subtitle D of RCRA (and/or possibly modifications to existing regulations established under authority of the Surface Mining Control and Reclamation Act (SMCRA)) are warranted when these wastes are used to fill surface or underground mines.

So that coal combustion wastes are consistently regulated across all waste management scenarios, the Agency also intends to make these national regulations for disposal in surface impoundments and landfills and minefilling applicable to coal combustion wastes generated at electric utility and independent power producing facilities that are not co-managed with low volume wastes,.

The Agency has concluded that no additional regulations are warranted for coal combustion wastes that are used beneficially (other than for minefilling) and for oil and gas combustion wastes. We do not wish to place any unnecessary barriers on the beneficial use of fossil fuel combustion wastes so that they can be used in applications that conserve natural resources and reduce disposal costs. Currently, about one-quarter of all coal combustion wastes are diverted to beneficial uses. We support increases in these beneficial uses, such as for additions to cement and concrete products, waste stabilization and use in construction products such as wallboard.

**DATES:** Comments in response to data and information requests in this document are due to EPA on September 19, 2000.

**ADDRESSES:** Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC). In addition to the data and information that was included in the docket to support the RTC on FFC waste and the Technical Background Documents, the docket also includes the following document: Responses to Public Comments on the Report To Congress, Wastes from the Combustion of Fossil Fuels. The RIC is located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–2000–FF2F–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that the public make an appointment by calling 703 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

Commenters must send an original and two copies of their comments referencing docket number F–2000–FF2F–FFFFF to: (1) If using regular US Postal Service mail: RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters (EPA, HQ), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002; or (2) if using special delivery, such as overnight express service: RCRA Docket Information Center (RIC), Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Comments may also be submitted electronically through the Internet to: *rcra-docket@epa.gov*. Comments in electronic format should also be identified by the docket number F–2000–FF2F–FFFFF and must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit electronically any confidential business information (CBI). An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002.

**FOR FURTHER INFORMATION CONTACT:** For general information, contact the RCRA Hotline at 800 424–9346 or TDD 800 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703 412–9810 or TDD 703 412–3323.

For more detailed information on specific aspects of this regulatory determination, contact Dennis Ruddy, Office of Solid Waste (5306W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460–0002, telephone (703) 308–8430, e-mail address *ruddy.dennis@epa.gov*.

**SUPPLEMENTARY INFORMATION:** The index and several of the primary supporting materials are available on the Internet. You can find these materials at *<http://www.epa.gov/epaoswer/other/fossil/index.htm*.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **ADDRESSES** at the beginning of this notice.

EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

The contents of today's notice are listed in the following outline:

1. General Information

A. What action is EPA taking today?

B. What is the statutory authority for this action?

C. What was the process EPA used in making today's decision?

D. What is the significance of "uniquely associated wastes" and what wastes does EPA consider to be uniquely associated wastes?

E. Who is affected by today's action and how are they affected?
F. What additional actions will EPA take after this regulatory determination regarding coal, oil and natural gas combustion wastes?
2. What Is the Basis for EPA's Regulatory Determination for Coal Combustion Wastes?
A. What is the Agency's decision regarding the regulatory status of coal combustion wastes and why did EPA make that decision?
B. What were EPA's tentative decisions as presented in the Report to Congress?
C. How did commenters react to EPA's tentative decisions and what was EPA's analysis of their comments?
D. What is the basis for today's decisions?
E. What approach will EPA take in developing national regulations?
3. What Is the Basis for EPA's Regulatory Determination for Oil Combustion Wastes?
A. What is the Agency's decision regarding the regulatory status of oil combustion wastes and why did EPA make that decision?
B. What were EPA's tentative decisions as presented in the Report to Congress?
C. How did commenters react to EPA's tentative decisions and what was EPA's analysis of their comments?
D. What is the basis for today's decisions?
4. What Is the Basis for EPA's Regulatory Determination for Natural Gas Combustion Wastes?
A. What is the Agency's decision regarding the regulatory status of natural gas combustion wastes and why did EPA make that decision?
B. What was EPA's tentative decision as presented in the Report to Congress?
C. How did commenters react to EPA's tentative decisions?
D. What is the basis for today's decisions?
5. What Is the History of EPA's Regulatory Determinations for Fossil Fuel Combustion Wastes?
A. On what basis is EPA required to make regulatory decisions regarding the regulatory status of fossil fuel combustion wastes?
B. What was EPA's general approach in making these regulatory determinations?
C. What happened when EPA failed to issue its determination of the regulatory status of the large volume utility combustion wastes in a timely manner?
D. When was the Part 1 regulatory decision made and what were EPA's findings?
6. Executive Orders and Laws Addressed in Today's Action
A. Executive Order 12866—Determination of Significance.
B. Regulatory Flexibility Act, as amended.
C. Paperwork Reduction Act (Information Collection Requests).
D. Unfunded Mandates Reform Act.
E. Executive Order 13132: Federalism.
F. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments.
G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks.
H. National Technology Transfer and Advancement Act of 1995.
I. Executive Order 12898: Environmental Justice.
J. Congressional Review Act.
7. How To Obtain more Information

## 1. General Information

### *A. What Action Is EPA Taking Today?*

In today's action, we are determining that regulation of fossil fuel combustion (FFC) wastes under subtitle C of the Resource Conservation and Recovery Act (RCRA) is not warranted. This determination covers the following wastes:

- Large-volume coal combustion wastes generated at electric utility and independent power producing facilities that are co-managed together with certain other coal combustion wastes;
- Coal combustion wastes generated at non-utilities;
- Coal combustion wastes generated at facilities with fluidized bed combustion technology;
- Petroleum coke combustion wastes;
- Wastes from the combustion of mixtures of coal and other fuels (i.e., co-burning of coal with other fuels where coal is at least 50% of the total fuel);
- Wastes from the combustion of oil; and
- Wastes from the combustion of natural gas.

While these wastes remain exempt from subtitle C, we have further decided to establish national regulations under subtitle D of RCRA (RCRA sections 1008(a) and 4004(a)) for coal combustion wastes that are disposed in landfills or surface impoundments or used to fill surface or underground mines. For coal combustion wastes used as minefill, we will consult with the Office of Surface Mining in the Department of the Interior and thoroughly assess whether equivalent protectiveness could be achieved by using regulatory authorities available under the Surface Mining Control and Reclamation Act (SMCRA), as well as those afforded under the Resource Conservation and Recovery Act. We will consider whether RCRA subtitle D or SMCRA authorities or some combination of both are most appropriate to regulate the disposal of coal combustion wastes when used for minefill in surface and underground mines to ensure protection of human health and the environment. These standards will be developed through notice and comment rulemaking and in consultation with states and other stakeholders. These regulations will, in EPA's view, ensure that the trend towards improved management of coal combustion wastes over recent years will accelerate and will ensure a consistent level of protection of human health and the environment is put in place across the United States.

If, as a result of comments in response to this notice; the forthcoming analyses identified in this notice; or additional information garnered in the course of developing these national regulations; we find that there is a need for regulation under the authority of RCRA subtitle C, the Agency will revise this determination accordingly.

We recognize our decision to develop regulations under RCRA subtitle D (or, for minefilling, possibly under SMCRA) for the above-listed coal combustion wastes was not specifically identified as an option in our March 31, 1999 Report to Congress. Our final determination reflects our consideration of public comments received on the Report to Congress and other analyses that we conducted.

Today's decision was, in the Agency's view, a difficult one, given the many competing considerations discussed throughout today's notice. After considering all of the factors specified in RCRA section 8002(n), we have decided as discussed further below, that the decisive factors are the trends in present disposal and utilization practices (section 8002 (n)(2)), the current and potential utilization of the wastes (Section 8002 (n)(8), and the admonition against duplication of efforts by other federal and state agencies.

As described in the Report to Congress, the utility industry has made significant improvements in its waste management practices over recent years, and most state regulatory programs are similarly improving. For example, in the utility industry the use of liners and groundwater monitoring at landfills and surface impoundments has increased substantially over the past 15 years as indicated in the following table.

PERCENT OF UTILITY COAL COMBUSTION WASTE MANAGEMENT UNITS WITH CONTROLS IN 1995

| Waste management unit | Liners | | Groundwater monitoring | |
|---|---|---|---|---|
| | Percent of all units | Percent of new units * | Percent of all units | Percent of new units * |
| Landfills | 57 | 75 | 85 | 88 |
| Surface Impoundments | 26 | 60 | 38 | 65 |

* New units constructed between 1985–1995.
Source: USWAG, EPRI 1995.

Public comments and other analyses, however, have convinced us that these wastes could pose risks to human health and the environment if not properly managed, and there is sufficient evidence that adequate controls may not be in place—for example, while most states can now require newer units to include liners and groundwater monitoring, 62% of existing utility surface impoundments do not have groundwater monitoring. This, in our view, justifies the development of national regulations. We note, however, that some waste management units may not warrant liners and/or groundwater monitoring, depending on site-specific characteristics.

New information we received in public comments includes additional documented damage cases, as well as cases indicating at least a potential for damage to human health and the environment. We did not independently investigate these damage cases; rather, we relied on information contained in state files. While the absolute number of documented damage cases is not large, we have considered the evidence of proven and potential damage in light of the proportion of facilities that lack basic environmental controls (*e.g.*, groundwater monitoring). We acknowledge, moreover, that our inquiry into the existence of damage cases was focused primarily on a subset of states—albeit states that account for almost 20 percent of coal fired utility electricity generation capacity. Given the volume of coal combustion wastes generated nationwide (115 million tons) and the numbers of facilities that currently lack some basic environmental controls, especially groundwater monitoring, other cases of proven and potential damage are likely to exist. Because EPA did not use a statistical sampling methodology to evaluate the potential for damage, the Agency is unable to determine whether the identified cases are representative of the conditions at all facilities and, therefore, cannot quantify the extent and magnitude of damages at the national level.

Since the Report to Congress, we have conducted additional analyses of the potential for the constituents of coal combustion wastes to leach in dangerous levels into ground water. Based on a comparison of drinking water and other appropriate standards to leach test data from coal combustion waste samples, we identified a potential for risks from arsenic that we cannot dismiss at this time. This conclusion is based on possible exceedences of a range of values that EPA is currently considering for a revised arsenic MCL. Once a new arsenic MCL is established, additional groundwater modeling may be required to evaluate the likelihood of exceeding that MCL.

As discussed further below, in light of certain comments received on the Report to Congress, we are not relying on a quantitative groundwater risk assessment to assess potential risks to human health or the environment. In the absence of a more complete groundwater risk assessment, we are unable at this time to draw quantitative conclusions regarding the risks due to arsenic or other contaminants posed by improper waste management. Once we have completed a review of our groundwater model and made any necessary changes, we will reevaluate groundwater risks and take appropriate regulatory actions. We will specifically assess new modeling results as they relate to any promulgated changes in the arsenic MCL.

We acknowledge that, even without federal regulatory action, many facilities in the utility industry have either voluntarily instituted adequate environmental controls or have done so at the direction of states that regulate these facilities. In addition, we found that for the proven damage cases, the states (and in two cases, EPA under the Superfund program) have taken action to mitigate risk and require corrective action. However, in light of the evidence of actual and potential environmental releases of metals from these wastes; the large volume of wastes generated from coal combustion; the proportion of existing and even newer units that do not currently have basic controls in place; and the presence of hazardous constituents in these wastes; we believe, on balance, that the best means of ensuring that adequate controls are imposed where needed is to develop national subtitle D regulations. As we develop and issue the national regulations, we will try to minimize disruptions to operation of existing waste management units.

In taking today's action, we carefully considered whether to develop national regulations under RCRA subtitle D or subtitle C authorities. One approach we considered was to promulgate regulations pursuant to subtitle C authority, similar to recently proposed regulations applicable to cement kiln dust. Under this approach, EPA would have established national management standards for coal combustion wastes managed in landfills and surface impoundments and used for minefilling, as well as a set of tailored subtitle C requirements, promulgated pursuant to RCRA section 3004(x). If wastes were properly managed in accordance with subtitle D-like standards, they would not be classified as a hazardous waste. If wastes were not properly managed, they would become listed hazardous wastes subject to tailored subtitle C standards. This approach would give EPA enforcement authority in states following their adoption of the contingent management listing.

We believe, however, for the reasons described below, the better approach at this time to ensuring adequate management of FFC wastes is to develop national regulations under subtitle D rather than subtitle C. EPA has reached this conclusion in large part based on consideration of "present disposal and utilization practices." RCRA § 8002(n). As noted above, present disposal practices in landfills and surface impoundments are significantly better than they have been in the past in terms of imposing basic environmental controls such as liners and groundwater monitoring. This trend is the result of increasing regulatory oversight by states of the management of these wastes as well as voluntary industry improvements. In the 1980's, only 11

states had authority to require facilities to install liners, and 28 states had the authority to require facilities to conduct groundwater monitoring at landfills. As of 1995, these rates were significantly higher, with 43 states having the authority to require liners and 46 states having the authority to require groundwater monitoring at landfills. When authority under state groundwater and drinking water regulations are considered, some commenters have suggested that nearly all states can address the management of these wastes. Thus, with the exception of relatively few states, the regulatory infrastructure is generally in place at the state level to ensure adequate management of these wastes.

While the trend both in terms of state regulatory authorities and the imposition of controls at these facilities has been positive, between 40 and 70 percent of sites lacked controls such as liners and/or groundwater monitoring as of 1995. This gap is of environmental concern given the potential for risks posed by mismanagement of coal combustion wastes in certain circumstances. Nonetheless, given most of the states' current regulatory capabilities and the evidence that basic controls are increasingly being put in place by the states and facilities (see RCRA section 8002(n), which directs EPA to consider actions of state and other federal agencies with a view to avoiding duplication of effort), EPA believes that subtitle D controls will provide sufficient clarity and incentive for states to close the remaining gaps in coverage, and for facilities to ensure that their wastes are managed properly.

For minefilling, although we have considerable concern about certain current practices (*e.g.*, placement directly into groundwater) we have not yet identified a case where placement of coal wastes can be determined to have actually caused increased damage to ground water. In addition, there is a federal regulatory program—SMCRA—expressly designed to address environmental risks associated with coal mines. Finally, given that states have been diligent in expanding and upgrading programs, as they have done for surface impoundments and landfills, we believe they will be similarly responsive in addressing environmental concerns arising from this emerging practice. In short, we arrive at the same conclusions, for substantially the same reasons, for this practice as we did for landfills and surface impoundments: that subtitle D controls, or upgraded SMCRA controls or a combination of the two, should provide sufficient clarity and incentive to ensure proper handling of this waste. Having determined that subtitle C regulation is not warranted for all other management practices, EPA does not see a basis in the record for carving this one practice out for separate regulatory treatment.

Once these regulations are effective, facilities would be subject to citizen suits for any violation of the standards. If EPA were addressing wastes that had not been addressed by the states (or the federal government) in the past, or an industry with wide evidence of irresponsible solid waste management practices, EPA may well conclude that the additional incentives for improvement and compliance provided by the subtitle C scheme—the threat of federal enforcement and the stigma associated with improper management of RCRA subtitle C waste—were necessary. But the record before us indicates that the structure and the sanctions associated with a subtitle D approach (or a SMCRA approach if EPA determines it is equivalent) should be sufficient.

We also see a potential downside to pursuing a subtitle C approach. Section 8002(n)(8) directs us to consider, among other factors, "the current and potential utilization of such materials." Industry commenters have indicated that they believe subjecting any coal combustion wastes to a subtitle C regime would place a significant stigma on these wastes, the most important effect being that it would adversely impact beneficial reuse. As we understand it, the concern is that, even though beneficially reused waste would not be hazardous under the contemplated subtitle C approach, the link to subtitle C would nonetheless tend to discourage purchase and re-use of the waste. We do not wish to place any unnecessary barriers on the beneficial uses of these wastes, because they conserve natural resources, reduce disposal costs and reduce the total amount of waste destined for disposal. States and industry have also expressed concern that regulation under subtitle C could cause a halt in the use of coal combustion wastes to reclaim abandoned and active mine sites. We recognize that when done properly, minefilling can lead to substantial environmental benefits. EPA believes the contingent management scheme we discussed should diminish any stigma that might be associated with the subtitle C link. Nonetheless, we acknowledge the possibility that the approach could have unintended consequences. We would be particularly concerned about any adverse effect on the beneficial re-use market for these wastes because more than 23 percent (approximately 28 million tons) of the total coal combustion waste generated each year is beneficially reused and an additional eight percent (nine million tons) is used for minefilling. EPA believes that such reuse when performed properly, is by far the environmentally preferable destination for these wastes, including when minefilled. Normally, concerns about stigma are not a deciding factor in EPA's decisions under RCRA, given the central concern under the statute for protection of human health and the environment. However, given our conclusion that the subtitle D approach here should be fully effective in protecting human health and the environment, and given the large and salutary role that beneficial reuse plays for this waste, concern over stigma is a factor supporting our decision today that subtitle C regulation is unwarranted in light of our decision to pursue a subtitle D approach.

Additionally, in a 1993 regulatory determination, EPA previously addressed large volume coal combustion wastes generated at electric utility and independent power producing facilities that manage the wastes separately from certain other low volume and uniquely associated coal combustion wastes (see 58 FR 42466; August 9, 1993). Our 1993 regulatory determination maintained the exemption of these large volume coal combustion wastes from being regulated as hazardous wastes when managed separately from other wastes (e.g., in monofills). We intend that the national subtitle D regulations we develop for the coal combustion wastes subject to today's regulatory determination will also be applicable to the wastes covered in the 1993 regulatory determination for the reasons listed below, so that all coal combustion wastes are consistently regulated for placement in landfills, surface impoundments, and minefills.

- The co-managed coal combustion wastes that we studied extensively in making today's regulatory determination derive their characteristics largely from these large-volume wastes and not from the other wastes that are co-managed with them.
- We believe that the risks posed by the co-managed coal combustion wastes result principally from the large-volume wastes.
- These large-volume coal combustion wastes, account for over 20% of coal combustion wastes.

As we proceed with regulation development, we will also take enforcement action under RCRA section 7003 when we identify cases of imminent and substantial endangerment. We will also use Superfund remedial and emergency

response authorities under the Comprehensive Environmental Response Compensation and Liabilities Act (CERCLA), as appropriate, to address damages that result in risk to human health and the environment.

However, as stated above, this decision was a difficult one and EPA believes that, absent our conclusions regarding the current trends in management of this waste, the waste might present sufficient potential threat to human health and the environment to justify subtitle C regulation. There are several factors that might cause us to rethink our current determination. First, and perhaps most importantly, if current trends toward protective management do not continue, EPA may well determine that subtitle C regulation is warranted for this waste. As we have stated, we do not believe the current gaps in the basic controls are acceptable, and our determination that subtitle C regulation is not warranted is premised to a large extent on our conclusion that subtitle D regulation will be sufficient to close these gaps. If this conclusion turns out not to be warranted, we would be inclined to re-examine our current decision.

Second, EPA will continue to examine available information and, as a result of the ongoing review, may conclude over the next several months that this decision should be revised. Our ongoing review will include consideration of: (1) The extent to which fossil fuel combustion wastes have caused actual or potential damage to human health or the environment; (2) the environmental effects of filling underground and surface coal mines with fossil fuel combustion wastes; and (3) the adequacy of existing state and/or federal regulation of these wastes. Finally, the agency will consider the results of a report of the National Academy of Sciences regarding the adverse human health effects of mercury, one of the constituents in fossil fuel combustion wastes. EPA believes that this report will enhance our understanding of the risks due to exposure to mercury. All of these efforts may result in a subsequent revision of today's regulatory determination.

Finally, relating to oil combustion wastes, we will work with relevant stakeholders so that any necessary measures are taken to ensure that oil combustion wastes currently managed in the two known remaining unlined surface impoundments are managed in a manner that protects human health and the environment.

### *B. What Is the Statutory Authority for This Action?*

We are issuing today's notice under the authority of RCRA section 3001 (b) (3) (C), as amended. This section exempts certain wastes, including fossil fuel combustion wastes, from hazardous waste regulation until the Agency completes a Report to Congress mandated by RCRA section 8002 (n) and maintains the exemption, unless the EPA Administrator makes a determination that subtitle C (hazardous waste) regulation is warranted. RCRA section 3004 (x) provides the Agency with flexibility in developing subtitle C standards. If appropriate, these formerly exempted wastes may not be subjected to full subtitle C requirements in areas such as treatment standards, liner design requirements and corrective action.

### *C. What Was the Process EPA Used in Making Today's Decision?*

#### 1. What Approach Did EPA Take to Studying Fossil Fuel Combustion Wastes?

We conducted our study of wastes generated by the combustion of fossil fuels in two phases. The first phase, called the Part 1 determination, covered high volume coal combustion wastes (*e.g.*, bottom ash and fly ash) generated at electric utility and independent power producing facilities (non-utility electric power producers that are not engaged in any other industrial activity) and managed separately from other fossil fuel combustion wastes. In 1993, EPA issued a regulatory determination that exempted Part 1 wastes from regulation as hazardous wastes (see 58 FR 42466; August 9, 1993). Today's regulatory determination is the second phase of our effort, or the Part 2 determination. It covers all other fossil fuel combustion wastes not covered in Part 1. This includes high volume, utility-generated coal combustion wastes when co-managed with certain low volume wastes that are also generated by utility coal burners; coal combustion wastes generated by industrial, non-utility, facilities; and wastes from the combustion of oil and gas. Under court order, we are required to complete the Part 2 regulatory determination by April 25, 2000. [1]

[1] The consent decree entered into by EPA (*Frank Gearhart, et al.* v. *Browner, et al.*, No. 91–2435 (D.D.C.) for completing the studies and regulatory determination for fossil fuel combustion wastes used the term "remaining wastes" to differentiate the wastes to be covered in today's decision from the large-volume utility coal combustion wastes that were covered in the August 1993 regulatory determination (see 58 FR 42466).

#### 2. What Statutory Requirements Does EPA Have To Meet in Making Today's Regulatory Determinations?

RCRA section 8002(n) specifies eight study factors that we must take into account in our decision-making. These are:

1. The source and volumes of such materials generated per year.
2. Present disposal practices.
3. Potential danger, if any, to human health and the environment from the disposal of such materials.
4. Documented cases in which danger to human health or the environment has been proved.
5. Alternatives to current disposal methods.
6. The costs of such alternatives.
7. The impact of those alternatives on the use of natural resources.
8. The current and potential utilization of such materials.

Additionally, in developing the Report to Congress, we are directed to consider studies and other actions of other federal and State agencies with a view toward avoiding duplication of effort (RCRA section 8002(n)). In addition to considering the information contained in the Report, EPA is required to base its regulatory determination on information received in public hearings and comments submitted on the Report to Congress (RCRA section 3001(b)(3)(C)).

#### 3. What Were the Agency's Sources of Information and Data That Serve as the Basis for This Decision?

We gathered publicly available information from a broad range of sources, including federal and state agencies, industry trade groups, environmental organizations, and open literature searches. We requested information from all stakeholder groups on each of the study factors Congress requires us to evaluate. For many of the study factors, very limited information existed prior to this study. We worked closely with the Edison Electric Institute (EEI), Utility Solid Waste Activities Group (USWAG), the Electric Power Research Institute (EPRI), and the Council of Industrial Boiler Owners (CIBO) as those organizations developed new information. Because other ongoing EPA projects currently focus on portions of the FFC waste generator universe, we also leveraged data collection efforts conducted for air, industrial waste, and hazardous waste programs. In addition, we obtained information from environmental organizations regarding beneficial uses of some FFC wastes and methods for characterizing the risks associated with FFC wastes.

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Specifically, we gathered and analyzed the following information from industry, states and environmental groups:

- Published and unpublished materials obtained from state and federal agencies, utilities and trade industry groups, and other knowledgeable parties on the volumes and characteristics of coal, oil, and natural gas combustion wastes and the corresponding low-volume and uniquely associated wastes (see the following section for a description of "uniquely associated wastes").
- Published and unpublished materials on waste management practices (including co-disposal and re-use) associated with FFC wastes and the corresponding low-volume and uniquely associated wastes.
- Published and unpublished materials on the potential environmental impacts associated with FFC wastes.
- Published and unpublished materials on trends in utility plant operations that may affect waste volumes and characteristics. We gathered specific information on innovations in scrubber use and the potential impacts of the 1990 Clean Air Act Amendments on waste volumes and characteristics.
- Energy Information Agency (EIA), Department of Energy, data on utility operations and waste generation obtained from EIA's Form 767 database. These data are submitted to EIA annually by electric utilities.
- Site visit reports and accompanying facility submittals for utility and non-utility plants we visited during the study.
- Materials obtained from public files maintained by State regulatory agencies. These materials focus on waste characterization, waste management, and environmental monitoring data, along with supporting background information.

We visited five states to gather specific information about state regulatory programs, FFC waste generators, waste management practices and candidate damage cases related to fossil fuel combustion. The five states we examined in great detail were: Indiana, Pennsylvania, North Carolina, Wisconsin, and Virginia. These five states account for almost 20 percent of coal-fired utility electrical generation capacity.

We also performed a variety of analyses, including human health and ecological risk assessments, analyses of existing federal and state regulatory programs, and economic impact analyses. We discussed and shared these results with all of our stakeholders. We also conducted an external peer review of our risk analysis.

4. What Process Did EPA Follow To Obtain Comments on the Report to Congress?

RCRA requires that we publish a Report to Congress (RTC) evaluating the above criteria. Further, within six months of submitting the report, we must, after public hearings and opportunity for comment, decide whether to retain the exemption from hazardous waste requirements or whether regulation as hazardous waste is warranted. On March 31, 1999, we issued the required RTC on those fossil fuel combustion wastes (coal, oil and gas) not covered in the Part 1 regulatory determination, which are also known as the "remaining wastes" (see footnote 1).

We asked the public to comment on the Report and the appropriateness of regulating fossil fuel wastes under subtitle C of RCRA. To ensure that all interested parties had an opportunity to present their views, we held a public meeting with stakeholders on May 21, 1999. The April 28, 1999 **Federal Register** notice provided a 45-day public comment period, until June 14, 1999. We received over 150 requests to extend the public comment period by up to six months. However, we were obligated by a court-ordered deadline to issue our official Regulatory Determination by October 1, 1999. (See 64 FR 31170; June 10, 1999.) In response to requests for an extension, we entered into discussions with the parties to consider an extension of the comment period to ensure that all interested members of the public had sufficient time to complete their review and submit comments. Subsequently, the plaintiffs in *Gearhart* v. *Reilly* moved to modify the consent decree to reopen the comment period and to allow EPA until March 10, 2000 to complete the Regulatory Determination. We supported the motion, and on September 2, 1999, the Court granted the motion. In compliance with the court order, on September 20, 1999, we announced that public comments would be accepted through September 24, 1999 (64 FR 50788; Sept. 20, 1999). We have since received two extensions to the date for the final determination. Currently, EPA is directed to issue the Part 2 regulatory determination by April 25, 2000.

We received about 220 comments on the RTC from the public hearing and our **Federal Register** requests for comments. The docket for this action (Docket No. F–99–FF2P–FFFFF) contains all individual comments presented in the public meetings and hearing, and a transcript from the public hearing, and all written comments. The docket is available for public inspection. Today's decision is based on the RTC, its underlying data and analyses, public comments, and EPA analyses of these comments.

The comments covered a wide variety of topics discussed in the Report to Congress, such as fossil fuel combustion waste generation and characteristics; current and alternative practices for managing FFC waste; documented damage cases and potential danger to human health and the environment; existing regulatory controls on FFC waste management; cost and economic impacts of alternatives to current management practices; FFC beneficial use practices; and our review of applicable state and federal regulations.

*D. What Is the Significance of "Uniquely Associated Wastes" and What Wastes Does EPA Consider To Be "Uniquely Associated Wastes?'*

Facilities that burn fossil fuels generate combustion wastes and also generate other wastes from processes that are related to the main fuel combustion processes. Often, as a general practice, facilities co-dispose these wastes with the large volume wastes that are subject to the RCRA section 3001 (b) (3) (C) exemption. Examples of these related wastes are:

- Precipitation runoff from the coal storage piles at the facility.
- Waste coal or coal mill rejects that are not of sufficient quality to burn as fuel.
- Wastes from cleaning the boilers used to generate steam.

There are numerous wastes like these, collectively known as "low-volume" wastes. Further, when one of these low-volume wastes, during the course of generation or normal handling at the facility, comes into contact with either fossil fuel (*e.g.*, coal, oil) or fossil fuel combustion waste (*e.g.*, coal ash or oil ash) and it takes on at least some of the characteristics of the fuel or combustion waste, we call it a "uniquely associated" waste. When uniquely associated wastes are co-managed with fossil fuel combustion wastes, they fall within the coverage of today's regulatory determination. When managed separately, uniquely associated wastes are subject to regulation as hazardous waste if they are listed wastes or exhibit the characteristic of a hazardous waste (see 40 CFR 261.20 and 261.30, which specify when a solid waste is considered to be a hazardous waste).

The Agency recognizes that determining whether a particular waste

is uniquely associated with fossil fuel combustion involves an evaluation of the specific facts of each case. In the Agency's view, the following qualitative criteria should be used to make such determinations on a case-by-case basis:

(1) Wastes from ancillary operations are not "uniquely associated" because they are not properly viewed as being "from" fossil fuel combustion.

(2) In evaluating a waste from non-ancillary operations, one must consider the extent to which the waste originates or derives from the fossil fuels, the combustion process, or combustion residuals, and the extent to which these operations impart chemical characteristics to the waste.

The low-volume wastes that are not uniquely associated with fossil fuel combustion would not be subject to today's regulatory determination. That is, they would not be accorded an exemption from RCRA subtitle C, whether or not they were co-managed with any of the exempted fossil fuel combustion wastes. Instead, they would be subject to the RCRA characteristic standards and hazardous waste listings. The exemption applies to mixtures of an exempt waste with a non-hazardous waste, but when an exempt waste is mixed with a hazardous waste, the mixture is not exempt.

Based on our identification and review of low volume wastes associated with the combustion of fossil fuels, we are considering offering the following guidance concerning which low volume wastes are uniquely associated with and which are not uniquely associated with fossil fuel combustion. Unless there are some unusual site-specific circumstances, we would generally consider that the following lists of low volume wastes are uniquely and non-uniquely associated wastes:

Uniquely Associated

- Coal Pile Runoff
- Coal Mill Rejects and Waste Coal
- Air Heater and Precipitator Washes
- Floor and Yard Drains and Sumps
- Wastewater Treatment Sludges
- Boiler Fireside Chemical Cleaning Wastes

Not Uniquely Associated

- Boiler Blowdown
- Cooling Tower Blowdown and Sludges
- Intake or Makeup Water Treatment and Regeneration Wastes
- Boiler Waterside Cleaning Wastes
- Laboratory Wastes
- General Construction and Demolition Debris
- General Maintenance Wastes

Moreover, we do not generally consider spillage or leakage of materials used in the processes that generate these non-uniquely associated wastes, such as boiler water treatment chemicals, to be uniquely associated wastes, even if they occur in close proximity to the fossil fuel wastes covered by this regulatory determination.

An understanding of whether a waste is uniquely associated can be important in one circumstance. If a waste is not uniquely associated and is a hazardous waste, co-managment with a Bevill waste will result in loss of the Bevill exemption. As a general matter, the wastes identified above as potentially not uniquely associated do not tend to be hazardous. This issue may therefore not be critical. The Agency, however, must still define appropriate boundaries for the Bevill exemption, because there is no authority to grant Bevill status to wastes that are not uniquely associated—the exemption was not intended as an umbrella for wastes that other industries must treat as hazardous.

EPA solicits comment on this discussion of uniquely associated wastes in the context of fossil fuel combustion and will issue final guidance after reviewing and evaluating information we receive as a result of this request.

*E. Who Is Affected by Today's Action and How Are They Affected?*

As explained above, fossil fuel combustion wastes generated from the combustion of coal, oil and natural gas will continue to remain exempt from being regulated as hazardous wastes under RCRA. No party is affected by today's determination to develop regulations applicable to coal combustion wastes when they are land disposed or used to fill surface or underground mines because today's action does not impose requirements. However, if such regulations are promulgated, they would affect coal combustion wastes subject to today's regulatory determination as well as wastes covered by the Part 1 regulatory determination when they are disposed in landfills and surface impoundments, or when used to fill surface or underground mines.

While we do not intend that national subtitle D regulations would be applicable to oil combustion wastes, we intend to work with relevant stakeholders so that any necessary measures are taken to ensure that oil combustion wastes currently managed in the two known remaining unlined surface impoundments are managed in a manner that protects human health and the environment.

*F. What Additional Actions Will EPA Take After this Regulatory Determination Regarding Coal, Oil and Natural Gas Combustion Wastes?*

To ensure that entities who generate and/or manage fossil fuel combustion wastes provide long-term protection of human health and the environment, we plan several actions:

- We will review comments submitted in response to today's notice on uniquely associated wastes and on the adequacy of the guidance developed by the utility industry on co-management of mill rejects (pyrites) with large volume coal combustion wastes.
- We will work with the State of Massachusetts and the owners and operators of the remaining two oil combustion facilities that currently manage their wastes in unlined surface impoundments to ensure that any necessary measures are taken so these wastes are managed in a manner that protects human health and the environment (described in section 3.D. of this document).
- We are evaluating the groundwater model and modeling methods that were used in the RTC to estimate risks for these wastes. This review may result in a re-evaluation of the potential groundwater risks posed by the management of fossil fuel combustion wastes and action to revise our Part 1 and Part 2 determinations if appropriate (see section 2.C. of this document).
- There are a number of ongoing and evolving efforts underway at EPA to improve our understanding of the human health impacts of wastes used in agricultural settings. We expect to receive substantial comments and new scientific information based on a risk assessment of the use of cement kiln dust as a substitute for agricultural lime (see 64 FR 45632; August 20, 1999) and other Agency efforts. As a result, we may refine our methodology for assessing risks related to the use of wastes in agricultural settings. If these efforts lead us to a different understanding of the risks posed by fossil fuel combustion wastes when used as a substitute for agricultural lime, we will take appropriate action to reevaluate today's regulatory determination (see section 2.C. of this document).
- We will review the findings and recommendations of the National Academy of Sciences upcoming report on mercury and assess its implications on risks due to exposure to mercury. We will ensure that the regulations we develop as a result of today's regulatory determination address any additional

risks posed by these wastes if hazardous constituent levels exceed acceptable levels

- We will reevaluate risk posed by managing coal combustion solid wastes if levels of mercury or other hazardous constituents change due to any future Clean Air Act air pollution control requirements for coal burning utilities (see section 2.C. of this document).
- We will continue EPA's partnership with the states to finalize voluntary industrial solid waste management guidance that identifies baseline protective practices for industrial waste management units, including fossil fuel combustion waste management units. We will use relevant information and knowledge that we obtain as a result of this effort to assist us in developing national regulations applicable to coal combustion wastes.

**2. What Is the Basis for EPA's Regulatory Determination for Coal Combustion Wastes?**

*A. What Is the Agency's Decision Regarding the Regulatory Status of Coal Combustion Wastes and Why Did EPA Make That Decision?*

We have determined at this time that regulation of coal combustion wastes under subtitle C is not warranted. However, we have also decided that it is appropriate to establish national regulations under non-hazardous waste authorities for coal combustion wastes that are disposed in landfills and surface impoundments. We believe that subtitle D regulations are the most appropriate mechanism for ensuring that these wastes disposed in landfills and surface impoundments are managed safely.

EPA's conclusion that some form of national regulation is warranted to address these wastes is based on the following considerations: (a) The composition of these wastes could present danger to human health and the environment under certain conditions, and "potential" damage cases identified by EPA and commenters, while not definitively demonstrating damage from coal combustion wastes, may indicate that these wastes have the potential to pose such danger; (b) we have identified eleven documented cases of proven damages to human health and the environment by improper management of these wastes in landfills and surface impoundments; (c) present disposal practices are such that, in 1995, these wastes were being managed in 40 percent to 70 percent of landfills and surface impoundments without reasonable controls in place, particularly in the area of groundwater monitoring; and (d) while there have been substantive improvements in state regulatory programs, we have also identified gaps in state oversight.

When we considered a tailored subtitle C approach, we estimated the potential costs of regulation of coal combustion wastes (including the utility coal combustion wastes addressed in the 1993 Part 1 determination) to be $1 billion per year. While large in absolute terms, we estimate that these costs are less than 0.4 percent of industry sales. To improve our estimates we solicit public comment on the potential compliance costs to coal combustion waste generators as well as the indirect costs to users of these combustion by-products.

We have also decided that it is appropriate to establish national regulations under RCRA non-hazardous waste authorities (and/or possibly modifications to exiting regulations established under authority of SMCRA) applicable to the placement of coal combustion wastes in surface or underground mines. We have reached this decision because (a) we find that these wastes when minefilled could present a danger to human health and the environment under certain circumstances, and (b) there are few states that currently operate comprehensive programs that specifically address the unique circumstances of minefilling, making it more likely that damage to human health or the environment could go unnoticed.

With the exception of minefilling as described above, we have decided that national regulation under subtitle C or subtitle D is not warranted for any of the other beneficial uses of coal combustion wastes. We have reached this decision because: (a) We have not identified any other beneficial uses that are likely to present significant risks to human health or the environment; and (b) no documented cases of damage to human health or the environment have been identified. Additionally, we do not want to place any unnecessary barriers on the beneficial uses of coal combustion wastes so they can be used in applications that conserve natural resources and reduce disposal costs.

*B. What Were EPA's Tentative Decisions as Presented in the Report to Congress?*

On March 31, 1999, EPA indicated a preliminary decision that disposal of coal combustion wastes should remain exempt from regulation under RCRA subtitle C. We also presented our tentative view that most beneficial uses of these wastes should remain exempt from regulation under RCRA subtitle C. However, in the RTC we identified three situations where we had particular concerns with the disposition or uses of these wastes.

First, we indicated some concern with the co-management of mill rejects ("pyrites") with coal combustion wastes which, under certain circumstances, could cause or contribute to ground water contamination or other localized environmental damage. We indicated that the utility industry responded to our concern by implementing a voluntary education and technical guidance program for the proper management of these wastes. We expressed satisfaction with the industry program and tentatively concluded that additional regulation in this area was not necessary. We explained that we were committed to overseeing industry's progress on properly managing pyritic wastes, and would revisit our regulatory determination relative to co-management of pyrites with large volume coal combustion wastes at a later date, if industry progress was insufficient in this area.

Second, in the RTC we identified potential human health risks from arsenic when these wastes are used for agricultural purposes (*e.g.*, as a lime substitute). To address this risk, we indicated our preliminary view that Subtitle C regulations may be appropriate for this management practice. We explained that an example of such controls could include regulation of the content of these materials such that, when used for agricultural purposes, the arsenic level could be no higher than that found in agricultural lime. As an alternative to subtitle C regulation, we indicated that EPA could engage the industry to implement a voluntary program to address the risk, for example, by limiting the level of arsenic in coal combustion wastes when using them for agricultural purposes. Moreover, we indicated that a decision to establish hazardous waste regulations applicable to agricultural uses of co-managed coal combustion wastes would likely affect the regulatory status of the Part 1 wastes (i.e., electric utility high volume coal combustion wastes managed separately from other coal combustion wastes) when used for agricultural purposes. This is because the source of the identified risk was the arsenic content of the high volume coal combustion wastes and not other materials that may be co-managed with them.

Third, we expressed concern with potential impacts from the expanding practice of minefilling coal combustion wastes (i.e., backfilling the wastes into mined areas) and described the

difficulties we had with assessing the impacts and potential risks of this practice. We explained that these difficulties include:

- Determining if elevated contaminants in ground water are due to minefill practices or pre-existing conditions resulting from mining operations,
- Trying to model situations that may be more complex than our groundwater models can accommodate,
- The lack of long-term experience with the recent practice of minefilling, which limits the amount of environmental data for analysis, and
- The site-specific nature of these operations.

Accordingly, we did not present a tentative decision in the RTC for this practice. We indicated that subtitle C regulation would remain an option for minefilling, but that we needed additional information prior to making a final decision. Rather, we solicited additional information from commenters on these and other aspects of minefilling practices and indicated we would carefully consider that information in the formulation of today's decision.

*C. How Did Commenters' React to EPA's Tentative Decisions and What Was EPA's Analysis of Their Comments?*

Commenter's provided substantial input and information on several aspects of our overall tentative decision to retain the exemption for these wastes from RCRA subtitle C regulation. These aspects are: modeling and risk assessment for the groundwater pathway, documented damage cases, the potential for coal combustion waste characteristics to change as a result of possible future Clean Air Act regulations, proper management of mill rejects (pyrites), agricultural use of coal combustion wastes, the practice of minefilling coal combustion wastes, and our assessment of existing State programs and industry waste management practices.

1. How Did Commenters React to the Groundwater Modeling and Risk Assessment Analyses Conducted by EPA To Support its Findings in the Report to Congress?

*Comments.* Industry and public interest group commenters submitted detailed critiques of the groundwater model, EPACMTP, that we used for our risk analysis. Industry commenters believe that the model will overestimate the levels of contaminants that may migrate down-gradient from disposed wastes. Environmental groups expressed the opposite belief; that is, that the model underestimates down-gradient chemical concentrations and, therefore, underestimates the potential risk posed by coal combustion wastes.

The breadth and potential implications of the numerous technical comments on the EPACMTP model are significant. Examples of the comments include issues relating to:

- The thermodynamic data that are the basis for certain model calculations,
- The model's ability to account for the effects of oxidation-reduction potential,
- The model's ability to account for competition between multiple contaminants for adsorption sites,
- The model's algorithm for selecting adsorption isotherms,
- The impact of leachate chemistry on adsorption and aquifer chemistry, and
- The model's inherent assumptions about the chemistry of the underlying aquifer.

*EPA's Analysis of the Comments.* We have been carefully reviewing all of the comments on the model. We determined that the process of thoroughly investigating all of the comments will take substantially more time to complete than is available within the court deadline for issuing this regulatory determination. At this time, we are uncertain of the overall outcome of our analysis of the issues raised in the comments. Accordingly, we have decided not to use the results of our groundwater pathway risk analysis in support of today's regulatory determination on fossil fuel combustion wastes. As explained below, in making today's regulatory determination, we have relied in part on other information related to the potential danger that may result from the management of fossil fuel combustion wastes.

Meanwhile, we will continue with our analysis of comments on the groundwater model and risk analysis. This may involve changing or re-structuring various aspects of the model, if appropriate. It may also include additional analyses to determine whether any changes to the model or modeling methodology would materially affect the groundwater risk analysis results that were reported in the RTC. If our investigations reveal that a re-analysis of groundwater risks is appropriate, we will conduct the analysis and re-evaluate today's decisions as warranted by the re-analysis.

In addition to our ongoing review of comments on the groundwater model, one element of the model—the metals partitioning component called "MINTEQ"—has been proposed for additional peer review. When additional peer review is completed, we will take the findings and recommendations into account in any overall decision to re-evaluate today's regulatory determination.

While not relying on the EPACMTP groundwater modeling as presented in the RTC, we have since conducted a general comparison of the metals levels in leachate from coal combustion wastes to their corresponding hazardous waste toxicity characteristic levels. Fossil fuel wastes infrequently exceed the hazardous waste characteristic. For co-managed wastes, 2% (1 of 51 samples) exceeded the characteristic level. For individual wastes streams, 0% of the coal bottom ash, 2% of the coal fly ash, 3% of the coal flue gas desulfurization, and 7% of the coal boiler slag samples that were tested exceeded the characteristic level. Nevertheless, once we have completed a review of our groundwater model and made any necessary changes, we will reevaluate groundwater risks and take appropriate regulatory actions. We will specifically assess new modeling results as they relate to any promulgated changes in the arsenic MCL.

We also compared leach concentrations from fossil fuel wastes to the drinking water MCLs. In the case of arsenic, we examined a range of values because EPA expects to promulgate a new arsenic drinking water regulation by January 1, 2001. This range includes the existing arsenic MCL (50 ug/l), a lower health based number presented in the FFC Report to Congress (RTC) (0.29 ug/l), and two assumed values in between (10 and 5 ug/l). We examined this range of values because of our desire to bracket the likely range of values that EPA will be considering in its effort to revise the current MCL for arsenic. The National Research Council's 1999 report on Arsenic in Drinking Water indicated that the current MCL is not sufficiently protective and should be revised downward as soon as possible. For this reason, we selected the current MCL of 50 ug/L for the high end of the range because EPA is now considering lowering the current MCL and does not anticipate that the current MCL would be revised to any higher value. We selected the health-based number presented in the Report to Congress for the low end of the range because we believe this represents the lowest concentration that would be considered in revising the current MCL. Because at this time we cannot project a particular value as the eventual MCL, we also examined values in between these low-end and high-end values, a value of 5

ug/L and a value of 10 ug/L, for our analyses supporting today's regulatory determination. The choice of these mid-range values for analyses does not predetermine the final MCL for arsenic.

Those circumstances where the leach concentrations from the wastes exceed the drinking water criteria have the greatest potential to cause significant risks. This "potential" risk, however, may not occur at actual facilities. Pollutants in the leachate of the wastes undergo dilution and attenuation as they migrate through the ground. The primary purpose of models such as EPACMTP is to account for the degree of dilution and attenuation that is likely to occur, and to obtain a realistic estimate of the concentration of contaminants at a groundwater receptor. To provide a view of potential groundwater risk, we tabulated the number of occurrences where the waste leachate hazardous metals concentrations were: (a) Less than the criteria, (b) between 1 and 10 times the criteria, (c) between 10 and 100 times the criteria, and (d) greater than 100 times the criteria. Groundwater models that we currently use, when applied to large volume monofill sources of metals, frequently predict that dilution and attenuation will reduce leachate levels on the order of a factor of 10 under reasonable high end conditions. This multiple is commonly called a dilution and attenuation factor (DAF). For this reason and because lower dilution and attenuation factors (*e.g.*, 10) are often associated with larger disposal units such as those typical at facilities where coal is burned, we assessed the frequency of occurrence of leach concentrations for various hazardous metals which were greater than 10 times the drinking water criteria. Based on current MCLs, there was only one exceedence (for cadmium). However, when we considered the arsenic health based criterion from the RTC, we found that a significant percentage (86%) of available waste samples had leach concentrations for arsenic that were greater than ten times the health-based criterion. Even considering intermediate values closer to the current MCL, a significant percentage of available waste samples had leach concentrations for arsenic that were greater than ten times the criteria (30% when the criterion was assumed to be 5 ug/l, and 14% when the criterion was assumed to be 10 ug/l). Similar concerns also occurred when comparing actual groundwater samples associated with FFC waste units and this range of criteria for arsenic. We believe this is an indication of potential risks from arsenic.

For the above analysis, we used a value equal to half the detection level to deal with those situations where analyses resulted in "less than detection" values that exceeded the MCL criteria. The actual concentration may be as low as zero or up to the detection level. To illustrate the impact of this assumption, an analysis was performed setting the "less than detection" values to zero, and an arsenic criteria at 50 ug/l. While 30% of the values exceeded 10 times the criteria when using half the detection level, exceedences dropped to 13% when "less than detection" values were set to zero.

The comparison of the leachate levels to 10 times MCL criteria is a screening level analysis that supports our concerns, which are primarily based on damage cases and the lack of installed controls (liners and groundwater monitoring). We recognize, however, that prior to issuing a regulation the Agency expects to address the issues raised on the groundwater model and complete a comprehensive groundwater modeling effort. Furthermore, we anticipate that uncertainty regarding whether the arsenic MCL will be amended and to what level, will be more settled prior to regulation of these wastes. These factors could heighten or reduce concerns with regard to the need for Federal regulation of fossil fuel combustion wastes.

2. How Did Commenters React to EPA's Assessment of Documented Damage Cases Presented in the Report to Congress?

Prior to issuing the RTC, we sought and reviewed potential damage cases related to these particular wastes. The activities included:

- A re-analysis of the potential damage cases identified during the Part 1 determination,
- A search of the CERCLA Information System for instances of these wastes being cited as causes or contributors to damages,
- Contacts and visits to regulatory agencies in five states with high rates of coal consumption to review file materials and discuss with state officials the existence of damage cases,
- A review of information provided by the Utility Solid Waste Act Group and the Electric Power Research Institute on 14 co-management sites, and
- A review of information provided by the Council of Industrial Boiler Owners on eight fluidized bed combustion (FBC) facilities.

These activities yielded three damage case sites in addition to the four cases initially identified in the Part 1 determination.[2] Five of the damage cases involved surface impoundments and the two other cases involved landfills. The waste management units in these cases were all older, unlined units. The releases in these cases were confined to the vicinity of the facilities and did not affect human receptors. None of the damages impacted human health. We did not identify any damage cases that were associated with beneficial use practices.

*Comments.* Public interest group commenters criticized our approach to identifying damage cases associated with the management of fossil fuel combustion (FFC) wastes, stating that EPA did not use the same procedure used to identify damage cases for the cement kiln dust (CKD) Report to Congress. These commenters believed that we were too conservative in our interpretation and determination of FFC damage cases and dismissed cases that commenters believe are relevant instances of damage. For example, these commenters indicated that EPA, in the RTC, did not consider cases where the only exceedences of ground water standards were for secondary MCLs (Maximum Contaminant Levels as established by EPA for drinking water standards). They further indicated that the states often require ground water monitoring only for secondary MCL constituents and that elevated levels of the secondary MCL constituents are an indication of future potential for more serious, health-based standards to be exceeded for other constituents in the wastes, such as toxic metals. Additionally, these commenters stated that the Agency's analysis for damage cases was incomplete and they provided information on 59 possible damage cases involving these wastes, mostly at utilities. Additionally, commenters submitted seven cases of ecological damage that allege damage to mammals, amphibians, fish, benthic layer organisms and plants from co-management of coal combustion wastes in surface impoundments.

Industry commenters cited EPA's finding of so few damage cases as important support for our tentative conclusion to exempt these wastes from hazardous waste regulation. Further, some of the industry commenters indicated that the few damage cases that EPA identified do not represent current

[2] The Part 1 determination identified six cases of documented damages. Upon further reveiw, we determined that two of these cases involve utility coal ash monofills which are covered by the Part 1 determination. However, the other four cases involved remaining wastes that are covered by today's determination.

utility industry management practices, but rather reflect less environmentally protective management practices at older facilities that pre-date the numerous state and federal requirements that are now in effect for managing these wastes.

*EPA's Analysis of the Comments.* Regarding ecological damage, while we did not identify any ecological damage cases in the RTC associated with management of coal combustion wastes, we reviewed the information on ecological damage submitted by commenters and agree that four of the seven submitted are documented damage cases that involve FFC wastes. All of these involve some form of discharge from waste management units to nearby lakes or creeks. These confirm our risk modeling conclusions as presented in the RTC that there could be adverse impacts on amphibians, birds, or mammals if they were subject to the elevated concentrations of selected chemicals that had been measured in some impoundments. However, no information was submitted in comments that would lead us to alter our conclusion that these threats are not substantial enough to cause large scale, system level ecological disruptions. These damage cases, attributable to runoff or overflow that is already subject to Clean Water Act discharge or stormwater regulations, are more appropriately addressed under the existing Clean Water Act requirements.

Regarding our assessment of damage to ground water, we believe our approach to FFC damage cases in the RTC was consistent with the approach we used for identifying CKD damage cases. For CKD, we established two categories of damage cases—"proven" damage cases and "potential" damage cases. Proven damage cases were those with documented MCL exceedences that were measured in ground water at a sufficient distance from the waste management unit to indicate that hazardous constituents had migrated to the extent that they could cause human health concerns. Potential damage cases were those with documented MCL exceedences that were measured in ground water beneath or close to the waste source. In these cases, the documented exceedences had not been demonstrated at a sufficient distance from the waste management unit to indicate that waste constituents had migrated to the extent that they could cause human health concerns. We do not believe that it would be appropriate to consider an exceedence directly beneath a waste management unit or very close to the waste boundary to be a documented, proven damage case. State regulations typically use a compliance procedure that relies on measurement at a receptor site or in ground water at a point beyond the waste boundary (*e.g.*, 150 meters). While our CKD analysis did not distinguish between primary and secondary MCL exceedences, most CKD damage cases involved a primary MCL constituent. Our principal basis for determining that CKD when managed in land-based units would no longer remain exempt from being regulated as a hazardous waste was our concern about generally poor management practices characteristic of that industry. Our conclusion was further supported by the extremely high percentage of proven damage cases occurring at active CKD sites for which groundwater monitoring data were available.

For FFC, we used the same test of proof to identify possible damage cases. Our FFC analysis drew a distinction between primary and secondary MCL exceedences because we believe this factor is appropriate in weighing the seriousness of FFC damage in terms of indicating risk to human health and the environment. For FFC, in the RTC, we reported only the "proven" damage (*i.e.*, exceedence of a health-based standard such as a primary MCL and measurement in ground water or surface water). As was done in the CKD analysis, we also identified a number of potential FFC damage cases (eleven) which were included in the background documents that support the RTC.

Unlike the primary MCLs, secondary MCLs are not based on human health considerations. (Examples are dissolved solids, sulfate, iron, and chloride for which groundwater standards have been established because of their effect on taste, odor, and color.) While some commenters believe that elevated levels of some secondary MCL parameters such as soluble salts are likely precursors or indicators of future hazardous constituent exceedences that could occur at coal combustion facilities, we are not yet able and will not be able to test their hypothesis until we complete our analysis of all comments received on our groundwater model and risk analysis, which will not be concluded until next year.

Of the 59 damage cases reported by commenters, 11 cases appear to involve exceedences of primary MCLs or other health-based standards as measured either in off-site ground water or in nearby surface waters, the criteria we used in the RTC to identify proven damage cases. Of these eleven cases, two are coal ash monofills which were included in the set of damage cases described by EPA in its record supporting the Part 1 regulatory determination. The remaining nine cases involve the co-management of large volume coal combustion wastes with other low volume and uniquely associated coal combustion wastes. We had already identified five of these nine cases in the RTC. Thus, only four of these eleven damage cases are newly identified to us. Briefly, the four new cases involve:

- Exceedence of a state standard for lead in downgradient ground water at a coal fly ash landfill in New York. There were also secondary MCL exceedences for sulfate, dissolved solids, and iron.
- Primary MCL exceedences for arsenic and selenium in downgradient monitoring wells for a coal ash impoundment at a power plant in North Dakota. There were also secondary MCL exceedences for sulfate and chloride.
- Primary MCL exceedences for fluoride and exceedence of a state standard for boron in downgradient monitoring wells at a utility coal combustion waste impoundment in Wisconsin. There was also a secondary MCL exceedence for sulfate.
- Exceedence of a state standard for boron and the secondary MCL for sulfate and manganese in downgradient monitoring wells at a utility coal combustion landfill in Wisconsin.

We found that in nine of the 11 proven damage cases (including one Superfund site), states took appropriate action to require or conduct remedial activities to reduce or eliminate the cause of contamination. EPA took action in the remaining two cases under the Superfund program

Nineteen of the candidate damage cases submitted by commenters involve either on-site or off-site exceedences of secondary MCLs, but not primary MCLs or other health-based standards. Consistent with our CKD analysis, we consider these cases to be indicative of a potential for damage to occur at these sites because they demonstrate that there has been a release to ground water from the waste management unit.

Regarding the remaining 29 cases submitted by commenters:

- Six involve primary MCL exceedences, but measurements were in ground water either directly beneath the waste or very close to the waste boundary, *i.e.*, no off-site ground water or receptor measurements indicated that ground water standards had been exceeded. Consistent with our analysis of damage cases for cement kiln dust, we consider these six cases to be indicative of a potential for damage to occur at these sites because they demonstrate that there has been a

release to ground water from the waste management unit..

• Eighteen case summary submissions contained insufficient documentation and data for us to verify and draw a conclusion about whether we should consider these to be potential or proven damage cases. Of these 18 cases, commenters claimed that 11 cases involve primary MCL exceedences, and another two involve secondary MCLs, but not primary MCLs. The other five cases lacked sufficient information and documentation to determine whether primary or secondary MCLs are involved. Examples of information critical to assessing and verifying candidate damage cases that was not available for these particular cases include: Identification of the pollutants causing the contamination; identification of where or how the damage case information was obtained (*e.g.*, facility monitoring data, state monitoring or investigation, third party study or analysis); monitoring data used to identify levels of contaminants; and/or sufficient information to determine whether the damages were actually attributable to fossil fuel combustion wastes; and/or location of the identified contamination (*i.e.*, directly beneath the unit or very close to the waste boundary or at a point some distant (*e.g.*, 150 meters) from the unit boundary).

• Three case submissions are cases we identified in the Part 1 determination and involve monofilled utility coal ash wastes. However, as explained in the Report to Congress for the Part 1 determination, EPA determined that there was insufficient evidence to consider them to be documented damage cases.

• One case did not involve fossil fuel combustion wastes.

• One case involved coal combustion wastes and other unrelated wastes in an illegal, unpermitted dump site. This site was handled by the state as a hazardous waste cleanup site.

Our detailed analysis of the damage cases submitted by commenters is available in the public docket for this regulatory determination.

In summary, based on damage case information presented in the RTC and our review of comments, we conclude that there are 11 proven damage cases associated with wastes covered by today's regulatory determination. We identified seven of these damage cases in the RTC, so there are four new proven damage cases that were identified by commenters. All of the sites were at older, unlined units, with disposal occurring prior to 1993. For all 11 of the proven damage cases, either the state or EPA provided adequate follow-up to require or else undertake corrective action. Although these damage cases indicate that coal combustion wastes can present risks to human health and the environment, they also show the effectiveness of states' responses when damages were identified. None of these cases involved actual human exposure.

Additionally, we determined that another 25 of the commenter submitted cases are potential damage cases for the reasons described above. Thus, including the 11 potential damage cases that we identified in the background documents that support the RTC, we are aware of 36 potential damage cases. While we do not believe the latter 36 cases satisfy the statutory criteria of documented, proven damage cases because damage to human health or the environment has not been proven, we believe that these cases may indicate that these wastes pose a "potential" danger to human health and the environment in some circumstances.

In conclusion, while the absolute number of documented, proven damage cases is not large, we believe that the evidence of proven and potential damage should be considered in light of the proportion of new and existing facilities, particularly surface impoundments, that today lack basic environmental controls such as liners and groundwater monitoring. Approximately one-third of coal combustion wastes are managed in surface impoundments. We note that controls such as liners may not be warranted at some facilities, due to site-specific conditions. We acknowledge, however, that our inquiry into the existence of damage cases was focused primarily on a subset of states. Given the volume of coal combustion wastes generated nationwide and the number of facilities that lacked groundwater monitoring as of 1995, there is at least a substantial likelihood other cases of actual and potential damage likely exist. Because we did not use a statistical sampling methodology to evaluate the potential for damage, we are unable to determine whether the identified cases are representative of the conditions at all facilities and, therefore, cannot quantify the extent and magnitude of damages at the national level.

3. What Concerns Did Commenters Express About the Impact of Potential Future Regulation of Hazardous Air Pollutants Under the Clean Air Act on Today's Regulatory Determination?

*Comments.* In both public hearing testimony and written comments, public interest groups expressed concern about potential changes in the characteristics of these wastes when new air pollution controls are established under the Clean Air Act. The commenters referred to the possible future requirement for hazardous air pollutant controls at coal burning electric utility power plants, which could result in an increased level of metals and possibly other hazardous constituents in coal combustion wastes. The commenters indicated that these increased levels, in turn, could have serious implications for cross-media environmental impacts such as leaching to groundwater and volatilization to the air. The commenters argued that the Agency should include these factors in its current decision making on the regulatory status of coal combustion under the Resource Conservation and Recovery Act.

*EPA's Analysis of the Comments.* We have carefully considered the issue of cross-media impacts and the commenters' specific concerns that future air regulations could have an adverse impact on the characteristics of coal combustion wastes. We have concluded that it is premature to consider the possible future impact of such new air pollution controls on the wastes that are subject to today's regulatory determination. The Agency plans to issue a regulatory determination in the latter part of 2000 regarding hazardous air pollutant (HAP) controls at coal-burning, power generating facilities. If EPA decides to initiate a rulemaking process, final rulemaking under the Clean Air Act is projected to occur in 2004. Thus, no final decision has been made on what, if any, constituents will be regulated by future air pollution control requirements. Additionally, the regulatory levels of the those specific pollutants that might be controlled and the control technologies needed to attain any regulatory requirements have not yet been identified. Therefore, we believe there is insufficient information at this time for evaluating the characteristics and potential environmental impacts of solid wastes that would be generated as a result of new Clean Air Act requirements.

When any rulemaking under the Clean Air Act proceeds to a point where we can complete an assessment of the likely changes to the character of coal combustion wastes, we will evaluate the implications of these changes relative to today's regulatory determination and take appropriate action.

4. How Did Commenters React to the Findings Presented in the Report to Congress Related to Proper Management of Mill Rejects (Pyrites)?

The RTC explained that we identified situations where pyrite-bearing

materials such as mill rejects (a low volume and uniquely associated waste) that are co-managed with coal combustion wastes may cause or contribute to risks or environmental damage if not managed properly. These materials when managed improperly with exposure to air and water can generate acid. The acid, in turn, can mobilize metals contained in the co-managed combustion wastes. The RTC also explained that the Agency engaged the utility industry in a voluntary program to ensure appropriate management of these wastes. The industry responded by developing technical guidance and a voluntary industry education program on proper management of these wastes.

*Comments.* Utility industry commenters supported our tentative decision to continue the exemption for coal combustion wastes co-managed with mill rejects from regulation as a hazardous waste. Their position is based primarily on the industry's voluntary implementation of an education program and technical guidance on the proper management of these wastes, as described in the RTC.

Public interest groups and other commenters disagreed with our tentative decision, explaining their belief that such voluntary controls or programs are inadequate. They indicated that coal combustion wastes should be subject to hazardous waste regulations.

*EPA's Analysis of the Comments.* We remain encouraged by the utility industry program to educate and inform its members by implementing guidance on the proper management of coal mill rejects. However, as pointed out by commenters, there is no assurance that facilities where coal combustion wastes co-managed with pyritic wastes will follow the guidance developed by industry. In light of the number of demonstrated and potential damage cases identified to date, we are concerned that simply relying on voluntary institution of necessary controls would not adequately ensure the protection of human health and the environment. At this time, to ensure that we are aware of all stakeholders views on the adequacy of the control approaches described in the guidance to protect human health and the environment, we are soliciting public comment on the final version of the industry coal mill rejects guidance. This guidance is available in the docket supporting today's decisions.

### 5. How Did Commenters React to the Findings Presented in the Report to Congress Related to Agricultural Use of Coal Combustion Wastes?

In the RTC, we presented findings on the human health risks associated with agricultural use of coal wastes as an agricultural lime substitute. The pathway examined embodies risks from ingestion of soil and inhalation, and from ingestion of contaminated dairy, beef, fruit and vegetable products. The resultant "high end" cancer risk reported in the RTC was $1 \times 10^{-5}$ (one in one hundred thousand exposed population), for the child of a farmer. The variables held at high end for this calculation were contaminant concentration and children's soil ingestion. With all variables set to central tendency values, the risk was calculated to be $1 \times 10^{-7}$ (one in ten million exposed population). We did not identify the presence of any non-cancer hazard of concern. Based on the high end risk, the Agency raised the possibility in the RTC of developing Subtitle C controls or seeking commitments from industry to a voluntary program.

*Comments.* A number of industry, academic, and federal agency commenters disagreed with our tentative conclusion that some level of regulation may be appropriate for coal combustion wastes when used as an agricultural soil supplement. They indicated that EPA used unrealistically conservative levels for four key inputs used in our risk analysis and that use of a realistic level for any one of these inputs would result in a risk level less than $1 \times 10^{-6}$. The four inputs identified by the commenters are: application rate of the wastes to the land, the rate of soil ingestion by children, the bioavailability of arsenic and the phytoavailability of arsenic.

These commenters further recommended that EPA not regulate, but rather encourage voluntary restrictions because:

- Agricultural use of coal combustion wastes creates no adverse environmental impacts and EPA identified no damage cases associated with this practice;
- Agricultural use of these wastes has significant technical and economic benefits;
- Federal controls would be unnecessarily costly and would create a barrier for research and development on the practice;
- Existing regulatory programs are sufficient to control any risks from this practice; and
- The limits suggested in the RTC for arsenic levels in coal combustion wastes are inconsistent with limits applied to other materials used in agriculture.

Public interest groups stated their belief that a voluntary approach would not be sufficiently protective of human health and the environment. They believe the Agency should apply restrictions on the use of these wastes in agriculture because the Agency's analyses of the risks and benefits of this practice were inadequate. They further recommended that EPA should prohibit the land application of coal combustion wastes generated by conventional boilers, and make the arsenic limitation of EPA's sewage sludge land application regulations applicable to the land application of coal combustion wastes generated by fluidized bed combustors, which add lime as part of the combustion process.

*EPA's Analysis of Comments.* After reviewing these comments and supporting information provided by the commenters, we concluded that a revised input into the model for children's soil ingestion rate is appropriate. Based on further review of the Agency's Exposure Factors Handbook (EFH), we decided to model a children's soil ingestion rate of 0.4 grams per day instead of the 1.4 grams per day that underlay the results given in the RTC.

Many studies have been conducted to estimate soil ingestion by children. Early studies focused on dirt present on children's hands. More recently, studies have focused on measuring trace elements in soil and then in feces as a function of internal absorption. These measurements are used to estimate amounts of soil ingested over a specified time period. The EFH findings for children's soil ingestion are based on seven key studies and nine other relevant studies that the Agency reviewed on this subject. These studies showed that mean values for soil ingestion ranged from 39 mg/day to 271 mg/day with an average of 146 mg/day. These results are characterized for studies that were for short periods with little information reported for pica behavior. To account for longer periods of time, the EFH reviewed the upper percentile ranges of the data studied and found ingestion rates that ranged from 106 mg/day to 1,432 mg/day with an average of 383 mg/day for soil ingestion. Rounding to one significant figure, the EFH recommended an upper percentile children's soil ingestion rate of 400 mg/day. The Agency believes that this recommendation is the best available information to address children's exposure through the soil ingestion route. Reducing the ingestion rate to the EFH handbook recommended level of

400 mg/day reduced the calculated risk to 3.4 × 10–6 for this one child risk situation and suggests that agricultural use of FFC wastes does not cause a risk of concern.

EPA believes its inputs for phytoavailability are accurate, although there are studies that suggest phytoavailability will decrease over time. Arsenic bioavailability is a function of all sources of arsenic and EPA believes it has characterized this accurately. However, as noted elsewhere, arsenic toxicity is now being studied by the Agency in conjunction with a proposed new arsenic MCL and may necessitate re-visiting today's judgement on agricultural use.

Our technical analysis that resulted in revised risk is explained in a document titled Reevaluation of Non-groundwater Pathway Risks from Agricultural Use of Coal Combustion Wastes, which is available in the docket for this action.

The comment on inappropriateness of application frequency was caused by a misunderstanding of the language in the RTC. The rate used was actually every two or three years, not two or three times per year.

Two ongoing studies of wastes of potential use as agricultural soil supplements relate to the use of FFC wastes for this purpose. Although these did not play a direct role in EPA's decision regarding FFC wastes, they are summarized below and may play a role in any future review of today's decision.

(1) On August 20, 1999, the agency proposed risk-based standards for cement kiln dust when used as a liming agent (see 64 FR 45632; August 20, 1999). This analysis was completed in 1998 just prior to our completion of the analysis of FFC wastes when used as agricultural supplements. The CKD analysis underwent a special peer review by a standing committee that is used by the Department of Agriculture. We were not able to respond to the peer review comments in either the CKD proposal or in our assessment for fossil fuel combustion wastes prior to publication of today's regulatory determination. The comment period for the CKD proposal closed on February 17, 2000, and we will soon begin our review and analyses of the public and peer review comments.

(2) In December 1999, EPA proposed new risk based standards for the use of municipal sewage sludge under section 503 of the Clean Water Act (the "503 standards"). It is important to note that municipal sludge has unique properties, application rates, and uses. This makes it inappropriate to transfer the 503 standards directly. Even though the standards cannot be used directly, there may be interest in the risk assessment methodologies used to support the development of these standards. We disagree that it is appropriate to establish an arsenic limitation for coal combustion ash when used for agricultural purposes equivalent to that contained in the EPA sewage sludge land application regulations. The organic nature of sewage sludge makes it behave very differently from inorganic wastes such as coal combustion wastes.

We conclude at this time that arsenic levels in coal combustion wastes do not pose a significant risk to human health when used for agricultural purposes. We expect to continue to review and refine the related risk assessments noted above, and will consider comments on the Agency's CKD and municipal sludge proposals, as well as new scientific developments related to this issue such as additional peer review of the EPA MINTEQ model that was used as a component of our risk analysis. If these efforts lead us to a different understanding of the risks posed by coal combustion wastes when used as a substitute for agricultural lime, we will take appropriate action to reevaluate today's regulatory determination.

6. How Did Commenters React to the Findings Presented in the Report to Congress Related to Minefilling of Coal Combustion Wastes?

In the RTC, we explained that we had insufficient information to adequately assess the risks associated with the use of coal combustion wastes to fill surface and underground mines, whether the mines are active or abandoned. Accordingly, we did not present a tentative conclusion in the RTC with respect to the use of coal combustion wastes for disposal in active mines or for reclamation of mines. However, we did indicate that regulation of minefilling under hazardous waste rulemaking authority would remain an option for minefilling, but that we needed additional information prior to making a final decision. Thus, we solicited additional information on specific minefilling techniques, problems that may be inherent in this management practice, risks posed by this practice, existing state regulatory requirements, and environmental monitoring data. We indicated that we would consider any comments and new information on minefilling received in comments and would address this management practice in today's regulatory determination.

*Comments.* A number of commenters responded to our request by providing reports on individual case studies, including minefilling in underground as well as in surface mines, descriptions of current state regulatory requirements that address this practice, monitoring data, and information about risk analysis techniques.

Industry commenters and one federal agency supported our decision to study the issue further and not attempt to estimate the risks posed by this practice using existing methods. Further, numerous industry, academic, state agency, and federal agency commenters encouraged EPA not to adopt national regulations or voluntary restrictions on minefilling because: (a) Nationwide standards would not be conducive to the site-specific evaluations needed to appropriately control these operations; (b) minefilling creates no adverse environmental impacts and EPA identified no damage cases associated with this practice; (c) existing state and federal regulatory programs and industry practices are sufficient to control any risks from this practice, and (d) federal standards would be an unreasonable interference with states' authorities.

Additionally, several industry representatives, legislators, and state mining and environmental agencies mentioned that this practice, when used to remediate abandoned mine lands, will produce considerably greater environmental benefits than risks. Further, they maintained that minefilling is a relatively inexpensive means to stop or even reverse the environmental damage caused by old mining practices. They indicated that through remediation by minefilling, these lands frequently can be returned to productive use. These commenters recommended no additional regulation of this practice.

Public interest groups and others believe we should regulate minefilling under RCRA subtitle C or prohibit it for several reasons including weaknesses in existing state and federal regulatory programs, the poor practices and performance at existing minefilling operations, and potential impacts on potable water sources. Commenters stated that state programs effectively allow open dumps without any design or construction standards. For minefilling, one commenter urged EPA to defer to state regulations only if the Agency specifically found existing state regulations to be adequate.

*EPA's Analysis of Comments.* We agree with commenters that it is inappropriate to estimate the risks posed by minefilling using the existing methods that we employed to conduct risk analyses for disposal of coal combustion wastes in landfills and impoundments. We found that the

groundwater models available to us are unsuitable for estimating risks from minefills because, for example, they are not able to account for conditions such as fractured flow that are typical of the hydrogeology associated with mining operations. In addition, as explained above, EPA's primary groundwater model, EPACMTP, is now undergoing careful review on the basis of comments received on the Report to Congress.

We are aware that the use of coal combustion wastes to conduct remediation of mine lands can improve conditions caused by mining activities. We also recognize that this often is the lowest cost option for conducting these remediation activities. We generally encourage the practice of remediating mine lands with coal combustion wastes when minefilling is conducted properly and when there is adequate oversight of the remediation activities. We are also aware that relatively few states currently operate regulatory or other programs that specifically address minefilling, and that many states where this practice is occurring do not have programs in place. Based on our review of information on existing state minefill programs, we find serious gaps such as a lack of adequate controls and restrictions on unsound practices, *e.g.*, no requirement for groundwater monitoring and no control or prohibitions on waste placement in the aquifer.

At this time, we cannot reach definitive conclusions about the adequacy of minefilling practices employed currently in the United States and the ability of government oversight agencies to ensure that human health and the environment are being adequately protected. For example, it is often impossible to determine if existing groundwater quality has been impacted by previous mining operations or as a result of releases of hazardous constituents from the coal combustion wastes used in the minefilling applications. Additionally, data and information submitted during the public comment period indicate that if the chemistry of the mine relative to the chemistry of the coal combustion wastes is not properly taken into account, the addition of coal combustion wastes to certain environmental settings can lead to an increase in hazardous metals released into the environment. This phenomena has been substantiated by data available to the Agency that show when pyrites, which can cause acid generation, have been improperly co-managed with coal combustion wastes, high levels of metals, especially arsenic, have leached from the wastes.

Finally, we concluded in our recent study of disposal of cement kiln dust that placement of cement kiln dust directly in contact with ground water led to a substantially greater release of hazardous metal constituents than we predicted would occur when such placement in ground water did not occur. We are aware of situations where coal combustion wastes are being placed in direct contact with ground water in both underground and surface mines. This could lead to increased releases of hazardous metal constituents as a result of minefilling. Thus, if the complexities related to site-specific geology, hydrology, and waste chemistry are not properly taken into account when minefilling coal combustion wastes, we believe that certain minefilling practices have the potential to degrade, rather than improve, existing groundwater quality and can pose a potential danger to human health and the environment. Subsequent impacts on human health would depend in part on the proximity of drinking water wells, if any, to elevated levels of metals in the water. To date we are unaware of any proven damage cases resulting from minefilling operations.

7. How Did Commenters React to EPA's Tentative Reliance on State Programs and Voluntary Industry Implementation of Improved Management Practices To Mitigate Potential Risks From Coal Combustion Waste Management?

In the RTC, EPA considered retaining the exemption for coal combustion wastes disposed in surface impoundments and landfills and for mill rejects (pyrites) that are managed with those wastes. The Agency cited a reliance on state programs that have improved substantially over the past 10 to 15 years and continue to improve, combined with voluntary industry implementation of guidance for improved management practices to mitigate risk. In addition, we stated that we would continue to work with industries and states to promote and monitor improvements.

To assess the adequacy of state programs and the potential for voluntary implementation of improved practices, we looked at the current number of facilities with liners and groundwater monitoring (which may reflect voluntary industry upgrading as well as state requirements), and the number of state programs that currently have authority to require a broad range of environmental controls. For units operating as of 1995, we found that among utilities, slightly more than half of the disposal units were surface impoundments. Of these impoundments, 38 percent had groundwater monitoring and 26 percent had liners. Eighty-five percent of the utility landfills had groundwater monitoring and 57 percent had liners. For non-utility landfills, 94 percent had groundwater monitoring, and between 16 percent and 52 percent had liners. Between 1985 and 1995, 75 percent of new landfills and 60 percent of new surface impoundments within the utility sector had been lined. We have no information regarding the percentage of units built since 1995 (the date when the study we have relied on ended) that have liners or groundwater monitoring programs.

In looking at state programs, we found that for landfills, more than 40 states have the authority to require permits, siting restrictions, liners, leachate collection, groundwater monitoring, closure controls, and cover/dust controls. Forty-three states can require liners and 46 can require groundwater monitoring compared to 11 and 28 states, respectively, in the 1980's. For surface impoundments, more than 40 states have authority to require permits, siting restrictions, liners, groundwater monitoring, and closure control; 33 can require leachate collection (there is no earlier comparison data for surface impoundments). Forty-five states can require liners and 44 can require groundwater monitoring for impoundments.

*Comments.* Industry and state agency commenters generally stated that the Agency presented an accurate and comprehensive analysis of state programs and that existing state regulations are adequate. Public interest commenters raised many concerns about the adequacy of state programs: Either they do not have provisions to cover all elements of a protective program; they do not consistently impose the requirements for which they have authority; and/or enforcement is lax. Evidence commenters cited for the inadequacy of state programs included grandfathering for older management units and an apparent lack of controls for surface impoundments. For these reasons, some found EPA's review of state programs inaccurate or incomplete.

Public interest commenters were also skeptical of programs or efforts that rely on voluntary industry implementation because adherence to guidance is not guaranteed. Several commenters, primarily from industry, urged the Agency not to regulate pyrite co-management because of the voluntary, industry-developed guidance.

*EPA's Analysis of Comments.* We believe that state programs have, in fact, substantially improved over the last 15

years or so. A high percentage of states have authority to impose protective management standards on surface impoundments and landfills, especially for groundwater monitoring, liners, and leachate collection, which mitigate potential risks posed by these units. Over 40 states today have these authorities (33 states have authority to require leachate collection in surface impoundments). When authority under state groundwater and drinking water regulations are considered, some commenters have suggested that nearly all states can address the management of these wastes. In addition, we believe that the trend to line and install groundwater monitoring for new surface impoundments and landfills is positive. However, as some commenters noted, we acknowledge that our state program review looked at the authorities available to states and their overall regulatory requirements, not the specific requirements applied to given facilities, which could be more or less stringent. In addition, we recognize that individual state programs may have some gaps in coverage, as indicated below, so that some controls may not now be required at coal combustion waste impoundments and landfills. We would expect to see some differences in the application of requirements, depending on site-specific conditions.

One consistent trend that raises concern for the Agency is that controls are much less common at surface impoundment than at landfills. Even for newer units at utilities (constructed between 1985 and 1995), liners are used at 75 percent of landfills and only 60 percent of surface impoundments. Also at newer units, groundwater monitoring is implemented at 88 percent of landfills and at only 65 percent of surface impoundments. Approximately one-third of coal combustion wastes were managed in surface impoundments in 1995. Hydraulic pressure in a surface impoundment increases the likelihood of releases. We believe that groundwater monitoring, at a minimum, in existing as well as new impoundments, is a reasonable approach to monitor performance of the unit and a critical first step to addressing groundwater damage that may be caused by the unit. As of 1995, 38 percent of currently operating utility surface impoundments had groundwater monitoring and only 26 percent had liners.

While liners and groundwater monitoring are applied more frequently at landfills, there are still many utility and non-utility landfills that do not have liners. In addition, 15 percent of utility landfills do not have groundwater monitoring, and some six percent of non-utility landfills do not have groundwater monitoring, based on a limited survey.

The utility industry through its trade associations has demonstrated a willingness to work with EPA to develop protective management practices, and individual companies have committed to upgrading their own practices. However, the Agency recognizes that participation in voluntary programs is not assured. Also, individual facilities and companies may not implement protective management practices and controls, for a variety of reasons, in spite of their endorsement by industry-wide groups.

We see a trend toward significantly improving state programs and voluntary industry investment in liners and groundwater monitoring that we believe can mitigate potential risks over time. However, we identified significant gaps in controls already in place and, in particular, requirements that may be lacking in some states, either in authority to impose the requirements or potentially in exercising that authority. In response to comments, we further analyzed risks posed by coal combustion wastes taking into account waste characteristics and potential and actual damage cases. Based on these analyses, we concluded that coal combustion wastes, in certain circumstances, could unnecessarily increase risks to human health and the environment, and that a number of proven damages have been documented, and that more are likely if we had been able to conduct a more thorough search of available state records and if groundwater monitoring data were available for all units. We recognize there will probably continue to be some gaps in practices and controls and are concerned at the possibility that these will go unaddressed. We also believe the time frame for improvement of current practices is likely to be longer in the absence of federal regulations.

*D. What Is the Basis for Today's Decisions?*

Based on our collection and analysis of information reflecting the criteria in section 8002(n) of RCRA that EPA must consider in making today's regulatory determination, materials developed in preparing the RTC and supportive background materials, existing state and federal regulations and programs that affect the management of coal combustion wastes, and comments received from the public on the findings we presented in the RTC, we have concluded the following:

1. Beneficial Uses

To the extent coal combustion wastes are used for beneficial purposes, we believe they should continue to remain exempt from being regulated as hazardous wastes under RCRA. Beneficial purposes include waste stabilization, beneficial construction applications (*e.g.*, cement, concrete, brick and concrete products, road bed, structural fill, blasting grit, wall board, insulation, roofing materials), agricultural applications (*e.g.*, as a substitute for lime) and other applications (absorbents, filter media, paints, plastics and metals manufacture, snow and ice control, waste stabilization). For the reasons presented in section 3 below, we are separately addressing the use of coal combustion wastes to fill surface or underground mines.

For beneficial uses other than minefilling, we have reached this decision because: (a) We have not identified any beneficial uses that are likely to present significant risks to human health or the environment; and (b) no documented cases of damage to human health or the environment have been identified. Additionally, we do not want to place any unnecessary barriers on the beneficial use of coal combustion wastes so that they can be used in applications that conserve natural resources and reduce disposal costs.

Disposal can be burdensome and fails to take advantage of beneficial characteristics of fossil fuel combustion wastes. About one-quarter of the coal combustion wastes now generated are diverted to beneficial uses. Currently, the major beneficial uses of coal combustion wastes include: Construction (including building products, road base and sub-base, blasting grit and roofing materials) accounting for approximately 21%; sludge and waste stabilization and acid neutralization accounting for approximately 3%; and agricultural use accounting for 0.1%. Based on our conclusion that these beneficial uses of coal combustion wastes are not likely to pose significant risks to human health and the environment, we support increases in these beneficial uses of coal combustion wastes.

Off-site uses in construction, including wallboard, present low risk due to the coal combustion wastes being bound or encapsulated in the construction materials or because there is low potential for exposure. Use in waste and sludge stabilization and in acid neutralization are either regulated (under RCRA for hazardous waste stabilization or when placed in

municipal solid waste landfills, or under the Clean Water Act in the case of municipal sewage sludge or wastewater neutralization), or appear to present low risk due to low exposure potential. While in the RTC, we expressed concern over risks presented by agricultural use, we now believe our previous analysis assumed unrealistically high-end conditions, and that the risk, which we now believe to be on the order of $10^{-6}$, does not warrant national regulation of coal combustion wastes that are used in agricultural applications.

In the RTC, we were not able to identify damage cases associated with these types of beneficial uses, nor do we now believe that these uses of coal combustion wastes present a significant risk to human health or the environment. While some commenters disagreed with our findings, no data or other support for the commenters' position was provided, nor was any information provided to show risk or damage associated with agricultural use. Therefore, we conclude that none of the beneficial uses of coal combustion wastes listed above pose risks of concern.

2. Disposal in Landfills and Surface Impoundments

In this section, we discuss available information regarding the potential risks to human health and the environment from the disposal of coal combustion wastes into landfills and impoundments. In sum, our conclusion is these wastes can pose significant risks when mismanaged and, while significant improvements are being made in waste management practices due to increasing state oversight, gaps in the current regulatory regime remain.

We have determined that the establishment of national regulations is warranted for coal combustion wastes when they are disposed in landfills and surface impoundments, because: (a) The composition of these wastes has the potential to present danger to human health and the environment under some circumstances and "potential" damage cases identified by EPA and commenters, while not definitively demonstrating damage from coal combustion wastes, lend support to our conclusion that these wastes have the potential to pose such danger; (b) we have identified eleven cases of proven damage to human health and the environment by improper management of these wastes when land disposed; (c) while industry management practices have improved measurably in recent years, there is sufficient evidence these wastes are currently being managed in a significant number of landfills and surface impoundments without proper controls in place, particularly in the area of groundwater monitoring; and (d) while there have been substantive improvements in state regulatory programs, we have also identified significant gaps either in states' regulatory authorities or in their exercise of existing authorities. Moreover, we believe that the costs of complying with regulations that specifically address these problems, while large in absolute terms, are only a small percentage of industry revenues.

When we considered a tailored subtitle C regulatory approach, we estimated the potential costs of regulation of coal combustion wastes (including the utility coal combustion wastes addressed in the 1993 Part 1 determination) to be $1 billion per year. While large in absolute terms, we estimate that these costs are less than 0.4 percent of industry sales. Our preliminary estimate of impact on profitability is a function of facility size, among other factors. For the larger facilities, we estimate that reported pre-tax profit margins of about 13 percent may be reduced to about 11 percent. For smaller facilities, margins may be reduced from about nine percent to about seven percent.

We identified that the constituents of concern in these wastes are metals, particularly hazardous metals. We further identified that leachate from various large volume wastes generated at coal combustion facilities infrequently exceed the hazardous waste toxicity characteristic, for one or more of the following metals: arsenic, cadmium, chromium, lead, and mercury. Additionally, when we compared waste leachate concentrations for hazardous metals to their corresponding MCLs (or potential MCLs in the case of arsenic), we found that there was a potential for risk as a result of arsenic leaching from these wastes. The criteria we examined included the existing arsenic MCL, a lower health based number presented in the RTC, and two assumed values in between. We examined this range of values because, as explained earlier in this notice, EPA is in the process of revising the current MCL for arsenic to a lower value as a result of a detailed study of arsenic in drinking water and we wanted to assess the likely range of values that would be under consideration by EPA. Once we have completed a review of our groundwater model and made necessary changes, we will reevaluate the potential risks from metals in coal combustion wastes and compare any projected groundwater contamination to the MCLs that exist at that time.

We also identified situations where the improper management of mill rejects, a low volume and uniquely associated waste, with high volume coal combustion wastes has the potential to cause releases of higher quantities of hazardous metals. When these wastes are improperly managed, the mill rejects can create an acidic environment which enhances leachability and can lead to the release of hazardous metals in high concentrations from the co-managed wastes to ground water or surface waters. Thus, our analysis of the characteristics of coal combustion wastes leads us to conclude that these wastes have the potential to pose risk to human health and the environment. We also plan to address such waste management practices in our subsequent rulemaking.

Additionally, we identified 11 proven damage cases that documented disposal of coal combustion wastes in unlined landfills or surface impoundments that involved exceedences of primary MCLs or other health-based standards in ground water or drinking water wells. Three of the proven damage cases were on the EPA Superfund National Priorities List. Although these damage cases indicate that coal combustion wastes can present risks to human health and the environment, they also show the effectiveness of states' responses when damages were identified. All of the sites were at older, unlined units, with disposal occurring prior to 1993. None of these cases involved actual human exposure. Given the large number of facilities that do not now conduct groundwater monitoring, we have a concern that additional cases of damage may be undetected.

As detailed in the RTC and explained earlier in this notice, we identified that the states and affected industry have made considerable progress in recent years toward more effective management of coal combustion wastes. We also identified that the ability for most states to impose specific regulatory controls for coal combustion wastes has increased almost three-fold over the past 15 years. Forty-three states can now impose a liner requirements at landfills whereas 15 years ago, 11 had the same authority. In addition to regulatory permits, the majority of states now have authority to require siting controls, liners, leachate collection, groundwater monitoring, closure controls, and other controls and requirements for surface impoundments and landfills.

Nonetheless, we have concluded that there are still gaps in the actual application of these controls and

requirements, particularly for surface impoundments. While most states now have the appropriate authorities and regulations to require liners and groundwater monitoring that would reduce or minimize the risks that we have identified, we have also identified numerous situations where these controls are not being applied. For example, only 26 percent of utility surface impoundments and 57 percent of utility landfills have liner systems in place. We have insufficient information to determine whether the use of these controls is significantly different for non-utility disposal units, due to a small sample size.

While many of these unlined units may be subject to grandfathering provisions that allow them to continue to operate without being lined, or may not need to be lined due to site-specific conditions, we are especially concerned that a substantial number of units do not employ groundwater monitoring to ensure that if significant releases occur from these unlined units, they will be detected and controlled. In 1995, groundwater was monitored at only 38 percent of utility surface impoundments. While monitoring is more frequent at landfills, there are still many units at which releases of hazardous metals could go undetected. For example, of the approximately 300 utility landfills, 45 newer landfills (15%) do not monitor ground water. We are concerned that undetected releases could cause exceedences of drinking water or other health-based standards that may threaten public health or groundwater and surface water resources. Thus, we conclude that national regulations would lead to substantial improvements in the management of coal combustion wastes.

3. Minefilling

We have determined that the establishment of national regulations is warranted for coal combustion wastes when they are placed in surface or underground mines because: (a) We wind that these wastes when minefilled have the potential to present a danger to human health and the environment, (b) minefilling of these wastes has been an expanding practice and there are few states that currently operate comprehensive programs that specifically address the unique circumstances of minefilling, making it more likely that any damage to human health or the environment would go unnoticed or unaddressed, and (c) we believe that the cost of complying with regulations that address these potential dangers may not have a substantial impact on this practice because minefilling continues to grow in those few states that already have comprehensive programs.

We recognize that at this time, we cannot quantify the nature of damage that may be occurring or may occur in the future as a result of using coal combustion wastes as minefill. It is often impossible to determine if existing groundwater quality has been impacted by previous mining operations or as a result of releases of hazardous constituents from the coal combustion wastes used in minefilling applications. We have not as yet identified proven damage cases resulting from the use of coal combustion wastes for minefilling.

We also acknowledge that when the complexities related to site-specific geology, hydrology, waste chemistry and interactions with the surrounding matrix, and other relevant factors are properly taken into account, coal combustion wastes used as minefill can provide significant benefits. However, when not done properly, minefilling has the potential to contaminate ground water to levels that could damage human health and the environment. Based on materials submitted during the public comment period, coal combustion wastes used as minefill can lead to increases in hazardous metals released into ground water if the acidity within the mine overwhelms the capacity of the coal combustion wastes to neutralize the acidic conditions. This is due to the increased leaching of hazardous metals from the wastes. The potential for this to occur is further supported by data showing that management of coal combustion wastes in the presence of acid-generating pyritic wastes has caused metals to leach from the combustion wastes at much higher levels than are predicted by leach test data for coal combustion wastes when strongly acidic conditions are not present. Such strongly acidic conditions often exist at mining sites.

Although we have identified no damage cases involving minefilling, we are also aware of situations where coal combustion wastes are being placed in direct contact with ground water in both surface and underground mines. We concluded in our recent study of cement kiln dust management practices that placement of cement kiln dust in direct contact with ground water led to a substantially greater release of hazardous metals than we predicted would occur when the waste was placed above the water table. For this reason, we find that there is a potential for increased releases of hazardous metals as a result of placing coal combustion wastes in direct contact with groundwater. Also, there are damage cases associated with coal combustion wastes in landfills. The Agency believes it is reasonable to be concerned when similar quantities of coal combustion wastes are placed in mines, which often are not engineered disposal units and in some cases involve direct placement of wastes into direct contact with ground water.

We are concerned that government oversight is necessary to ensure that minefilling is done appropriately to protect human health and the environment, particularly since minefilling is a recent, but rapidly expanding use of coal combustion wastes. Government oversight has not yet "caught up" with the practice consistently across the country. There are some states that have programs that specifically address minefilling practices. We are likely to find that their programs or certain elements of their programs could serve as the basis for a comprehensive, flexible set of national management standards that ensure protection of human health and the environment. We also believe that these state programs will provide valuable experience in coordinating with SMCRA program requirements. However, at this time, few of the programs are comprehensive. Commenters pointed out, and we agree, there are significant gaps in other states. We believe that additional requirements for long-term groundwater monitoring, and controls on wastes placed directly into groundwater might be prudent.

*E. What Approach Will EPA Take in Developing National Regulations?*

We will not promulgate any regulations for beneficial uses other than minefilling. We do not wish to place any unnecessary barriers on the beneficial use of fossil fuel combustion wastes so that they can be used in applications that conserve natural resources and reduce disposal costs.

Once we concluded there is a need for some form of national regulation of coal combustion wastes disposed in landfills and surface impoundments and used as minefill, we considered two approaches. One approach would involve promulgating subtitle D regulations, pursuant to sections 1008 and 4004(a) of RCRA, that would contain criteria defining landfills and impoundments that would constitute "sanitary landfills." Any facility that failed to meet the standards would constitute an open dump, which is prohibited by section 4005(a) of RCRA. Such standards would set a consistent baseline for protective management throughout the country. We would also work with the Department of Interior,

Office of Surface Mining to evaluate whether equivalent protectiveness for minefilling could be afforded by relying on revision of existing SMCRA regulations or by relying on a combination of RCRA and SMCRA authorities.

The second approach was to promulgate regulations pursuant to Subtitle C of RCRA, that would have been similar to our recent proposed regulation of cement kiln dust. Following this approach, EPA would develop national management standards based on the Subtitle D open dump criteria as discussed above, as well as a set of tailored Subtitle C requirements promulgated pursuant to RCRA section 3004(x). If the wastes were properly managed in accordance with the subtitle D-like standards, they would not be classified as hazardous wastes. When they were not properly managed, they would become listed hazardous wastes subject to tailored subtitle C standards. This scheme would be effective in each state authorized for the hazardous waste program when that state modified its hazardous waste program to incorporate the listing.

Under this approach, after states have adopted the contingent listing, facilities that have egregious or repeated violations of the management standards would be moved into the subtitle C program (subject to the tailored RCRA 3004 (x) requirements, rather than to the full set of subtitle C requirements). Thus, EPA would have authority to enforce the management standards.

The decision whether to establish regulations under subtitle C or D of RCRA for disposal of coal combustion wastes in landfills and surface impoundments and when minefilled was a difficult one. EPA believes that, in this case, either approach would ensure adequate protection of public health and the environment. Either subtitle C or D provides EPA with the authority to prescribe protective standards for the management of these wastes. Moreover, as described above, the standards that EPA would adopt under either regime, because of the flexibility provided by section 3004 (x), would be substantively the same. Also, under either approach, a facility that fails to comply with the standards is in violation of RCRA—in the case of subtitle C, the facility would be in violation of the tailored standards promulgated under section 3004(x). In the case of subtitle D, the facility would be in violation of the prohibition in section 4005(a) of RCRA against "open dumping." The prohibition against open dumping is, however, enforceable only by private citizens and states, not EPA. Management standards established under the authority of subtitle C (including tailored section 3004(x) standards) are also enforceable by EPA. It appears that more than 40 states already have sufficient authority to implement most, if not all of the national standards we contemplate would be appropriate for surface impoundments and landfills. One difference between the two regimes may be that states could cite revised subtitle D standards as a basis for exercising their existing authorities more vigorously, potentially promoting swifter adoption of appropriate controls for surface impoundments and landfills. In addition, subtitle D standards would be applicable and enforceable by citizens as soon as the federal rule becomes effective. subtitle C standards in contrast, would not apply until incorporated into state subtitle C programs. For minefilling, we would also explore SMCRA as a possible mechanism to speed implementation, even if we relied on subtitle D to establish protective standards, because minefilling operations already are subject to SMCRA permitting authority.

Taking into account the common and distinct features of these alternative approaches, EPA believes at this time, based on the current record, that subtitle D regulations are the more appropriate mechanism for a number of reasons. In view of the very substantial progress that states have made in regulating disposal of fossil fuel combustion wastes in surface impoundments and landfills in recent years, as well as the active role that this industry has played recently in facilitating responsible waste disposal practices, EPA believes that subtitle D controls will provide sufficient clarity and incentive for states to close the remaining gaps in coverage, and for facilities to ensure that their wastes are managed properly.

For minefilling, although we have considerable concern about certain current practices (*e.g.*, placement directly into groundwater), we have not yet identified a case where placement of coal wastes can be determined to have actually caused increased damage to ground water. In addition, there is a federal regulatory program—SMCRA—expressly designed to address environmental risks associated with coal mines. Finally, given that states have been diligent in expanding and upgrading programs for surface impoundments and landfills, we believe they will be similarly responsive in addressing environmental concerns arising from this emerging practice. In short, we arrive at the same conclusions, for substantially the same reasons, for this practice as we did for landfills and surface impoundments: that subtitle D controls, or upgraded SMCRA controls or a combination of the two, should provide sufficient clarity and incentive to ensure proper handling of this waste when minefilled. Having determined that subtitle C regulation is not warranted for all other management practices, EPA does not see a basis in the record for carving this one practice out for separate regulatory treatment.

Once these subtitle D regulations are effective, facilities would be subject to citizen suits for any violation of the standards. If EPA were addressing wastes that had not been addressed by the states (or the federal government) in the past, or an industry with wide evidence of irresponsible solid waste management practices, EPA may well conclude that the additional incentives for improvement and compliance provided by the subtitle C scheme—the threat of federal enforcement and the stigma associated with improper management of RCRA subtitle C waste—were necessary. But the record before us indicates that the structure and the sanctions associated with a subtitle D approach (or a SMCRA approach if EPA determines it is equivalent) should be sufficient.

We also see a potential downside to pursuing a subtitle C approach. Section 8002(n)(8) directs us to consider, among other factors, "the current and potential utilization of such materials." Industry commenters have indicated that they believe subjecting any coal combustion wastes to a subtitle C regime would place a significant stigma on these wastes, the most important effect being that it would adversely impact beneficial reuse. As we understand it, the concern is that, even though beneficially reused waste would not be hazardous under the contemplated subtitle C approach, the link to subtitle C would nonetheless tend to discourage purchase and re-use of the wastes or products made from the wastes. We do not wish to place any unnecessary barriers on the beneficial uses of these wastes, because they conserve natural resources, reduce disposal costs and reduce the total amount of waste destined for disposal. States and industry have also expressed concern that regulation under subtitle C could cause a halt in the use of coal combustion wastes to reclaim abandoned and active mine sites. If this were to occur, it would be unfortunate in that when done properly, we recognize this practice can lead to substantial environmental benefits. EPA believes the contingent management scheme we discussed should diminish

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any stigma that might be associated with the subtitle C link. Nonetheless, we acknowledge the possibility that the approach could have unintended consequences. We would be particularly concerned about any adverse effect on the beneficial re-use market for these wastes because more than 23 percent (approximately 28 million tons) of the total coal combustion waste generated each year is beneficially reused and an additional eight percent (nine million tons) is used for minefilling. EPA believes that such reuse when performed properly, is by far the environmentally preferable destination for these wastes, including when minefilled. Normally, concerns about stigma are not a deciding factor in EPA's decisions under RCRA, given the central concern under the statute for protection of human health and the environment. However, given our conclusion that the subtitle D approach here should be fully effective in protecting human health and the environment, and given the large and salutary role that beneficial reuse plays for this waste, concern over stigma is a factor supporting our decision today that subtitle C regulation is unwarranted in light of our decision to pursue a subtitle D approach.

As we proceed with regulation development, we will also take enforcement action under RCRA section 7003 when we identify cases of imminent and substantial endangerment. We will also use Superfund remedial and emergency response authorities under the Comprehensive Environmental Response Compensation and Liabilities Act (CERCLA), as appropriate, to address damages that result in risk to human health and the environment. We will also take into account new information as it becomes available. We are awaiting a National Academy of Sciences report scheduled to be released in June 2000. This report will present a comprehensive review of mercury and recommendations on appropriate adverse health effects levels for this constituent. We believe that this report will enhance our understanding of the risks due to exposure to mercury, and we will review and assess its implications for today's decision on fossil fuel combustion wastes. These efforts may result in a re-evaluation of the risks posed by managing coal combustion wastes.

### 3. What Is the Basis for EPA's Regulatory Determination for Oil Combustion Wastes?

*A. What Is the Agency's Decision Regarding the Regulatory Status of Oil Combustion Wastes and Why Did EPA Make This Decision?*

We have determined that it is not appropriate to issue regulations under subtitle C of RCRA applicable to oil combustion wastes because: (a) We have not identified any beneficial uses that are likely to present significant risks to human health or the environment; and (b) except for a limited number of unlined surface impoundments, we have not identified any significant risks to human health and the environment associated with any waste management practices.

We intend to work with the State of Massachusetts and the owners and operators of the remaining two oil combustion facilities that currently manage their wastes in unlined surface impoundments to ensure that their wastes are managed in a manner that protects human health and the environment.

*B. What Were EPA's Tentative Decisions as Presented in the Report to Congress and Why Did EPA Make That Decision?*

In the Report to Congress, we stated that the only management scenario for which we found risks posed by management of oil combustion wastes was when oil combustion wastes are managed in unlined surface impoundments. The Report to Congress further explained that we were considering two approaches to address these identified risks. One approach was to regulate using RCRA subtitle C authority. The other approach was to encourage voluntary changes so that no oil combustion wastes are managed in unlined surface impoundments. This voluntary approach is based on recent industry and state regulatory trends to line oil combustion waste disposal units and implement groundwater monitoring.

We also tentatively decided that the existing beneficial uses of oil combustion wastes should remain exempt from RCRA subtitle C. There are few existing beneficial uses of these wastes, which include use in concrete products, structural fill, roadbed fill, and vanadium recovery. We determined that no significant risks to human health exist for the beneficial uses of these wastes. For the case of facilities that accept these wastes to recover vanadium from them, we explained that if the wastes resulting from the metal recovery processes are hazardous, they will be subject to existing hazardous waste requirements.

We found in most cases that OCW, whether managed alone or co-managed, are rarely characteristically hazardous. Additionally, we identified no significant ecological risks posed by land disposal of OCW. We identified only one documented damage case involving OCW in combination with coal combustion wastes, and it did not affect human receptors.

Although most of the disposed oil combustion wastes are managed in lined surface impoundments, we did identify six utility sites where wastes are managed in unlined units. We expressed particular concern with management of these wastes in unlined settling basins and impoundments that are designed and operated to discharge the aqueous portion of the wastes to ground water. Our risk analysis indicated that, in these situations, three metals—arsenic, nickel, and vanadium—may pose potential risk by the groundwater pathway.

*C. How Did Commenters React to EPA's Tentative Decisions and What Was EPA's Analysis of Their Comments?*

Because we were able to identify so few unlined surface impoundments, the only management scenario for which we found risks, the primary focus of the comments regarding oil combustion wastes was on the six unlined surface impoundments that we identified. In addition, there were extensive comments on our modeling and risk assessment methodology for the groundwater pathway that are applicable to our assessment of risks posed by oil combustion wastes.

1. How Did Commenters React to the Six Unlined Oil Combustion Waste Surface Impoundments That We Identified?

*Comments.* Industry commenters supported the approach to encourage voluntary changes in industry practices on a site-specific basis, and explained why they believed hazardous waste regulations are unnecessary. The environmental community supported the development of hazardous waste regulations.

*EPA's Analysis of Comments.* In the RTC, we identified that our only concern about oil combustion wastes was based on the potential for migration of arsenic, nickel, and vanadium from unlined surface impoundments. We requested information on this issue and did not receive any additional data and/or information to refute our tentative finding stated in the RTC that these

unlined surface impoundments could pose a significant risk.

As stated in the RTC, there are only six sites involving two companies that have unlined surface impoundments. Four of the sites are in Florida and are operated by one company. The company operating the four unlined impoundments in Florida is undertaking projects to mitigate potential risks posed by their unlined management units. At a May 21, 1999 public hearing, the company announced its plans to remove all the oil ash and basin material from its unlined impoundments and to line or close the units. The company informed us in January 2000 that it had completed the lining of all the units. Based on this information, we do not believe that these units pose a significant risk to human health and the environment.

The other two sites with unlined impoundments are operated by one utility in Massachusetts. Both sites are permitted under Massachusetts' ground water discharge permit program and have monitoring wells around the unlined basins. Arsenic is monitored for compliance with state regulations. Although the company expressed no plans to line their impoundments, they are preparing to implement monitoring for nickel and vanadium in ground water around the waste management units. We have been working with the State and the company to obtain additional information to evaluate these two management units. We will continue this effort and will work with the company and the State to ensure that any necessary measures are taken so that these wastes are managed in a manner that protects human health and the environment.

2. How Did Commenters React to the Groundwater Modeling and Risk Assessment Analyses Conducted by EPA to Support Its Findings in the Report to Congress?

*Comments.* Industry and public interest group commenters submitted detailed critiques of the ground water model, EPACMTP, that we used for our risk analysis. Industry commenters believe that the model will overestimate the levels of contaminants that may migrate down-gradient from disposed wastes. Environmental groups expressed the opposite belief; that is, that the model underestimates down-gradient chemical concentrations and, therefore, underestimates the potential risk posed by oil combustion wastes.

*EPA's Analysis of the Comments.* We are carefully reviewing all of the comments on the model and have determined that the process of thoroughly investigating all of the comments will take substantially more time to complete than is available within the court deadline for issuing this regulatory determination. At this time, we are uncertain of the overall outcome of our analysis of the issues raised in the comments. Accordingly, we have decided not to use the results of our ground water pathway risk analysis in support of today's regulatory determination on fossil fuel combustion wastes. As explained above, we believe that actions have been taken or are under way by specific companies and/or the State of Massachusetts to address potential risks at the six impoundments that we have been able to identify. Therefore we believe that further groundwater analysis is unnecessary at this time.

Meanwhile, we will continue with our analysis of comments on the groundwater model and risk analysis. This may involve changing or restructuring various aspects of the model, if appropriate. It may also include additional analyses to determine whether any changes to the model or modeling methodology would materially affect the groundwater risk analysis results that were reported in the RTC. If our investigations reveal that a reanalysis of groundwater risks is appropriate, we will conduct the analysis and reevaluate today's decisions as appropriate.

In addition to our ongoing review of comments on the groundwater model, one element of the model—the metals partitioning component called "MINTEQ"—has been proposed for additional peer review. When this additional peer review is completed, we will take the findings and recommendations into account in any overall decision to re-evaluate today's regulatory determination.

*D. What Is the Basis for Today's Decisions?*

We have determined that it is not appropriate to establish national regulations applicable to oil combustion wastes because: (a) We have not identified any beneficial uses that are likely to present significant risks to human health or the environment; and (b) except for two remaining unlined surface impoundments, we have not identified any significant risks to human health and the environment associated with any waste management practices. As explained in the previous section, we intend to work with the State of Massachusetts and the owners and operators of the remaining two oil combustion facilities that currently manage their wastes in unlined surface impoundments to ensure that any necessary measures are taken so that their wastes are managed in a manner that protects human health and the environment. Given the limited number of sites at issue and our ability to adequately address risks from these waste management units through site-specific response measures, we see no need for issuing regulations under subtitle C or D of RCRA.

**4. What Is the Basis for EPA's Regulatory Determination for Natural Gas Combustion Wastes?**

*A. What Is the Decision Regarding the Regulatory Status of Natural Gas Combustion Wastes?*

For the reasons described in the Report to Congress (pages 7–1 to 7–3), EPA has decided that regulation of natural gas combustion wastes as hazardous wastes under RCRA subtitle C or D is not warranted. The burning of natural gas generates virtually no solid waste.

*B. What Was EPA's Tentative Decision as Presented in the Report to Congress?*

The Agency's tentative decision was to retain the subtitle C exemption for natural gas combustion because virtually no solid waste is generated.

*C. How Did Commenters React to EPA's Tentative Decision?*

No commenters on the RTC disagreed with EPA's findings or its tentative decision to continue the exemption for natural gas combustion wastes.

Specific comments on this issue supported our tentative decision to retain the exemption for natural gas combustion waste. One industry association encouraged us to foster the use of natural gas as a substitute for other fossil fuels. While some public interest group commenters disagreed broadly with our tentative conclusions to retain the exemption for fossil fuel combustion wastes, they did not specifically address natural gas combustion wastes.

*D. What Is the Basis for Today's Decision?*

The burning of natural gas generates virtually no solid waste. We, therefore, believe that there is no basis for EPA developing subtitle C or D regulations applicable to natural gas combustion wastes.

**5. What Is the History of EPA's Regulatory Determinations for Fossil Fuel Combustion Wastes?**

*A. On What Basis Is EPA Required To Make Regulatory Determinations Regarding the Regulatory Status of Fossil Fuel Combustion Wastes?*

Section 3001(b)(3)(C) of the Resource Conservation and Recovery Act (RCRA) as amended requires that, after completing a Report to Congress mandated by section 8002(n) of RCRA, the EPA Administrator must determine whether Subtitle C (hazardous waste) regulation of fossil fuel combustion wastes is warranted.

*B. What Was EPA's General Approach in Making These Regulatory Determinations?*

We began our effort to make our determination of the regulatory status of fossil fuel combustion wastes by studying high volume coal combustion wastes managed separately from other fossil fuel combustion wastes that are generated by electric utilities. In February 1988, EPA published the Report to Congress on Wastes from the Combustion of Coal by Electric Utility Power Plants. The report addressed four large-volume coal combustion wastes generated by electric utilities and independent power producers when managed alone. The four wastes are fly ash, bottom ash, boiler slag, and flue gas desulfurization (FGD) wastes. The report did not address co-managed utility coal combustion wastes (UCCWs), other fossil fuel wastes generated by utilities, or wastes from non-utility boilers burning any type of fossil fuel. Because of other priorities at the time, we did not immediately complete a determination of the regulatory status of these large-volume coal combustion wastes.

*C. What Happened When EPA Failed To Issue Its Determination of the Regulatory Status of the Large Volume Utility Combustion Wastes in a Timely Manner?*

In 1991, a suit was filed against EPA for not completing a regulatory determination on fossil fuel combustion wastes (*Gearhart* v. *Reilly*, Civil No. 91–2345 (D.D.C.)). On June 30, 1992, the Agency entered into a Consent Decree that established a schedule for us to complete the regulatory determination for all fossil fuel combustion wastes in two phases:

- The first phase covers fly ash, bottom ash, boiler slag, and flue gas emission control wastes from the combustion of coal by electric utilities and independent commercial power producers. These are the four large volume wastes that were the subject of the 1988 Report to Congress described above. We refer to this as the Part 1 regulatory determination.
- The second phase covers all of the "remaining" fossil fuel combustion wastes not covered in the Part 1 regulatory determination. We refer to this as the Part 2 regulatory determination, which is the subject of today's action. Under the current court-order, EPA was directed to issue the Part 2 regulatory determination by April 25, 2000.

*D. When Was the Part 1 Regulatory Decision Made and What Were EPA's Findings?*

In 1993, EPA issued the Part 1 regulatory determination, in which we retained the exemption for Part 1 wastes (see 58 FR 42466; August 9, 1993). The four Part 1 large-volume utility coal combustion wastes (UCCWs) are also addressed in the Part 2 regulatory determination when they are co-managed with low-volume fossil fuel combustion wastes not covered in the Part 1 determination.

**6. Executive Orders and Laws Addressed in Today's Action**

*A. Executive Order 12866—Determination of Significance*

Under Executive Order 12866, (58 FR 51735, Oct. 4, 1993) we must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in the Executive Order."

Under Executive Order 12866, this is a "significant regulatory action." Thus, we have submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

*B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.*

Today's action is not subject to the RFA, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This action is not subject to notice and comment requirements under the APA or any other statute. Today's action is being taken pursuant to section 3001(b)(3)(C) of the Resource Conservation and Recovery Act. This provision requires EPA to make a determination whether to regulate fossil fuel combustion wastes after submission of its Report to Congress and public hearings and an opportunity for comment. This provision does not require the publication of a notice of proposed rulemaking and today's action is not a regulation. *See American Portland Cement Alliance* v. *E.P.A.*, 101 F.3d 772 (D.C.Cir. 1996).

*C. Paperwork Reduction Act Information Collection Requests*

Today's final action contains no information collection requirements.

*D. Unfunded Mandates Reform Act*

Today's action is not subject to the requirements of sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4. Title II of UMRA establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before we issue a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the rule's objectives. Section 205 doesn't apply when it is inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least

burdensome alternative if the final rule explains why that alternative was not adopted. Before we establish any regulatory requirements that may significantly affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small-government-agency plan. The plan must provide for notifying potentially affected small governments, enabling them to have meaningful and timely input in the developing EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final action contains no federal mandates (under the regulatory provisions of Title II of the UMRA) for state, local, or tribal governments or the private sector. Today's final action imposes no enforceable duty on any state, local or tribal governments or the private sector.

In addition, we have determined this action contains no federal mandate that may result in expenditures of $100 million or more for state, local, and tribal governments, in the aggregate, or the private sector in any one year.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) requires us to develop an accountable process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. The executive order defines policies that have federalism implications to include regulations that have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Under section 6 of Executive Order 13132, we may issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that isn't required by statute, only if the federal government provides funds the direct compliance costs incurred by state and local governments, or if EPA consults with state and local officials early in the development of the proposed regulation. Also, EPA may issue a regulation that has federalism implications and that preempts state law, only if we consult with state and local officials early in the development of the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires us to provide OMB, in a separately identified section of the rule's preamble, a federalism summary impact statement (FSIS). The FSIS must describe the extent of our prior consultation with state and local officials, summarizing the nature of their concerns and our position supporting the need for the regulation, and state the extent to which the concerns of state and local officials have been met. Also, when we transmit a draft final rule with federalism implications to OMB for review under Executive Order 12866, our federalism official must include a certification that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

Today's final action does not have federalism implications. It will not have a substantial direct affect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This is because no requirements are imposed by today's action, and EPA is not otherwise mandating any state or local government actions. Thus, the requirements of section 6 of the Executive Order do not apply to this final action.

*F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may take an action that isn't required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, only if the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires us to describe in a separately identified section of the preamble to the rule the extent of our prior consultation with representatives of affected tribal governments, summarizing of the nature of their concerns, and state the need for the regulation. Also, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final action does not significantly or uniquely affect the communities of Indian tribal governments. This is because today's action by EPA involves no regulations or other requirements that significantly or uniquely affect Indian tribal governments. So, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

"Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's final action isn't subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because we have no reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. Risks were thoroughly evaluated during the course of developing today's decision and were determined not to disproportionately affect children.

*H. National Technology Transfer and Advancement Act of 1995*

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law. No. 104–113, section12(d) (15 U.S.C. 272 note) directs EPA to use voluntary-consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary-consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary-consensus standards bodies. The NTTAA directs us to explain to Congress, through OMB, when we decide not to use available and applicable voluntary-consensus standards.

Today's final action involves no technical standards. So, EPA didn't consider using any voluntary-consensus standards.

*I. Executive Order 12898: Environmental Justice*

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all populations in the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health or environmental impacts as a result of EPA's policies, programs, and activities, and that all people live in safe and healthful environments. In response to Executive Order 12898 and to concerns voiced by many groups outside the Agency, EPA's Office of Solid Waste and Emergency Response formed an Environmental Justice Task Force to analyze the array of environmental justice issues specific to waste programs and to develop an overall strategy to identify and address these issues (OSWER Directive No. 9200.317).

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3). Rather, this action is an order as defined by 5 U.S.C. 551(6).

**7. How To Obtain More Information**

Documents related to this regulatory determination, including EPA's response to the public comments, are available for inspection in the docket. The relevant docket numbers are: F–99–FF2D–FFFFF for the regulatory determination, and F–99–FF2P–FFFFF for the RTC. The RCRA Docket Information Center (RIC), is located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703-603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the Supplementary Information section for information on accessing them.

**List of Subjects in 40 CFR Part 261**

Fossil fuel combustion waste, Coal combustion, Gas combustion, Oil combustion, Special wastes, Bevill exemption

Dated: April 25, 2000.

**Carol M. Browner,**

*Administrator.*

[FR Doc. 00–11138 Filed 5–19–00; 8:45 am]

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Part IV

# Department of Housing and Urban Development

24 CFR Part 2003
Implementation of the Privacy Act of 1974; Proposed Rule
Privacy Act of 1974; Proposed Amendment of Routine Uses Applicable to Existing Systems of Records, and Establishment of Two New Systems of Records; Notice

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**24 CFR Part 2003**

**[Docket No. FR–4575–P–02]**

**RIN 2508–AA11**

## Implementation of the Privacy Act of 1974

**AGENCY:** Office of Inspector General, HUD.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would amend the regulations of the Office of Inspector General (OIG) that implement the Privacy Act of 1974 to conform these regulations to the OIG's notice adding two new systems of records to the four systems of records already in existence.

**DATES:** *Comment Due Date:* July 21, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** Bryan Saddler, Acting Counsel to the Inspector General, Room 8260, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, (202) 708–1613. (This is not a toll free number.) A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number.)

**SUPPLEMENTARY INFORMATION:**

### Background

The Inspector General Act of 1978 (5 U.S.C. App. 3) was enacted to create independent and objective units to perform various investigative and monitoring functions in several Executive Agencies of the Federal Government, including the Department of Housing and Urban Development (HUD). This Act confers broad authority upon the Inspector General to conduct independent investigations, audits, and other activities. Consistent with its statutory independence, the OIG of HUD adopted separate regulations at 24 CFR Chapter XII. Chapter XII is applicable to such OIG matters as availability of information to the public (part 2002) and production of information in response to subpoenas or demands of courts or other authorities (part 2004). *See* 57 FR 2225, January 21, 1992.

In June 1992, the Inspector General of HUD also adopted part 2003 of Chapter XII, for the purpose of implementing the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) with respect to OIG records. Part 2003 generally incorporated the Department's existing Privacy Act regulations (24 CFR part 16), but also contained a series of general and specific exemptions for three of OIG's four existing systems of records.

This proposed rule would amend these regulations consistent with the OIG notice, published elsewhere in this **Federal Register**, that adds two new systems of records to the four systems of records already in existence.

### Findings and Certifications

*Environmental Review*

This proposed rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish , revise, or provide for standards for construction or construction materials, manufactured housing or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this issuance is categorically excluded from environmental review under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321).

*Regulatory Flexibility Act*

This rule would not create a significant economic impact on a substantial number of small entities. This rule is limited to proposing to make a conforming amendment to existing regulations.

While HUD has determined that this rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes any comments regarding alternatives to this rule that would meet HUD's objectives, as described in this preamble, and would be less burdensome to small entities.

*Executive Order 13132, Federalism*

This rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132.

*Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 109 Stat. 48, 64, codified at 2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This proposed rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or, tribal governments or on the private sector.

### List of Subjects in 24 CFR Part 2003

Privacy.

Accordingly, 24 CFR chapter XII, part 2003, is proposed to be amended to read as follows:

## PART 2003—IMPLEMENTATION OF THE PRIVACY ACT OF 1974

1. The authority citation for part 2003 is revised to read as follows:

**Authority:** 5 U.S.C. 552a; 5 U.S.C. App. 3 (Inspector General Act of 1978); 42 U.S.C. 3535(d).

2. In § 2003.8, the introductory text of paragraph (a) is revised to read as follows:

**§ 2003.8 General exemptions.**

(a) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General," "Name Indices System of the Office of Inspector General," and "AutoInvestigation of the Office of Inspector General" consist, in part, of information compiled by the OIG for the purpose of criminal law enforcement investigations. Therefore, to the extent that information in these systems falls within the scope of exemption (j)(2) of the Privacy Act, 5 U.S.C. 552a(j)(2), these systems of records are exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

* * * * *

3. In § 2003.9, the introductory text of paragraph (a) is revised, and paragraph (b) is revised, to read as follows:

**§ 2003.9 Specific Exemptions.**

(a) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General," "Name Indices System of the Office of Inspector General," and "AutoInvestigation of the Office of Inspector General" consist, in part, of investigatory material compiled by the OIG for law enforcement purposes. Therefore, to the extent that information

in these systems falls within the coverage of exemption (k)(2) of the Privacy Act, 5 U.S.C. 552a(k)(2), these systems of records are exempt from the requirements of the following subsections of the Privacy Act, for the reasons stated below.

* * * * *

(b) The systems of records entitled "Investigative Files of the Office of Inspector General," "Hotline Complaint Files of the Office of Inspector General," "Name Indices System of the Office of Inspector General," and "AutoInvestigation of the Office of Inspector General" consist in part of investigatory material compiled by the OIG for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence. Therefore, to the extent that information in these systems fall within the coverage of exemption (k)(5) of the Privacy Act, 5 U.S.C. 552a(k)(5), these systems of records are exempt from the requirements of subsection (d)(1), because release would reveal the identity of a source who furnished information to the Government under an express promise of confidentiality. Revealing the identity of a confidential source could impede future cooperation by sources, and could result in harassment or harm to such sources.

Dated: April 25, 2000.

**Susan Gaffney,**

*Inspector General.*

[FR Doc. 00–12711 Filed 5–19–00; 8:45 am]

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## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4575–N–01]

## Privacy Act of 1974; Proposed Amendment of Routine Uses Applicable to Existing Systems of Records, and Establishment of Two New Systems of Records

**AGENCY:** Office of Inspector General, HUD.

**ACTION:** Notification of Proposed Amendment of Routine Uses Applicable to Existing Systems of Records, and Establishment of Two New Systems of Records.

**SUMMARY:** In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Inspector General (OIG) gives notice that it proposes to amend the routine uses applicable to its four existing systems of records, and to establish two new systems of records. The amendment adds two new routine uses to the five uses currently applicable to OIG's four existing systems of records. The new routine uses permit disclosure: to State boards of accountancy, for potential disciplinary action against independent public accountants; and to the Department of Justice ("DOJ"), for use in litigation. This two new systems of records established are the AutoAudit (HUD/OIG–5) and the AutoInvestigation (HUD/OIG–6). These systems of records are automated information tracking and storage systems employed in connection with OIG audits and investigations commenced on or after June 1, 2000.

**DATES:** *Effective Date:* This proposal shall become effective without further notice on June 21, 2000, unless comments are received on or before that date which would result in a contrary determination.

*Comment Due Date:* June 21, 2000.

**ADDRESSES:** Interested persons are invited to submit comments regarding this notice to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Comments submitted by facsimile (FAX) will not be accepted. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

**FOR FURTHER INFORMATION CONTACT:** For Privacy Act information: Jeanette Smith, Departmental Privacy Act Officer, Telephone Number (202) 708–2374. For OIG-related information: Bryan Saddler, Acting Counsel to the Inspector General, Office of Inspector General, Telephone Number (202) 708–1613. (These are not toll free numbers). A telecommunications device for hearing- and speech-impaired persons (TTY) is available at 1–800–877–8339 (Federal Information Relay Services). (This is a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Revision of Existing Systems of Records

The OIG, pursuant to the Privacy Act of 1974, currently maintains four systems of records: (1) Investigative Files of the Office of Inspector General (HUD/OIG–1); (2) Hotline Complaint Files of the Office of Inspector General (HUD/OIG–2); (3) Name Indices System of the Office of Inspector General (HUD/OIG–3); and (4) Independent Auditor Monitoring Files of the Office of Inspector General (HUD/OIG–4). The notice for these systems of records was last published on June 12, 1992 (57 FR 25069). The two additional routine uses being made applicable to OIG's four existing systems of records will permit disclosure: (1) To State boards of accountancy, for potential disciplinary action against independent public accountants; and (2) to the Department of Justice, for use in litigation. All other aspects of OIG's four existing systems of records remain unchanged and are as published at 57 FR 25069.

Sections 552a(e)(4) and (11) of title 5, United States Code provide that an agency publish a notice of the establishment or revision of a record system which affords the public a 30-day period in which to submit comments. To meet this requirement, the texts of the new routine uses are printed below. Further, a report of the OIG's intention to amend the routine uses applicable to its four existing systems of records has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB), pursuant to paragraph 4b of Appendix I of OMB Circular A–130, which is entitled "Federal Agency Responsibilities for Maintaining Records About Individuals" (50 FR 52730, December 24, 1985).

### Establishment of New Systems of Records

AutoAudit and AutoInvestigation, OIG's new automated information tracking and storage systems, will effectively consolidate and expand upon information included in OIG's four existing systems of records. AutoAudit and AutoInvestigation are designed to function as tools to create, maintain and manage audits and investigations in a centralized, paper-less environment. Records maintained in AutoAudit and AutoInvestigation may be accessed by reference to any information field entered into such systems, including name, alias, social security number, address, etc.

The AutoAudit and AutoInvestigation systems notices required under section 552a are also printed below. Additionally, a report of the OIG's intention to establish the two new systems has been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and OMB.

Accordingly, the notice, pursuant to 5 U.S.C. 552a(e)(4) and (11), of revisions to OIG's four existing systems of records and the establishment of two new systems of records follows:

**HUD/OIG–1**

**SYSTEM NAME:**

Investigative Files of the Office of Inspector General.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, State or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the

litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate State boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate State board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

* * * * *

**HUD/OIG–2**

**SYSTEM NAME: HOTLINE COMPLAINT FILES OF THE OFFICE OF INSPECTOR GENERAL**

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, State or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate State boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate State board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

* * * * *

**HUD/OIG–3**

**SYSTEM NAME:**

Name Indices System of the Office of Inspector General.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, State or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate State boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate State board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

* * * * *

**HUD/OIG–4**

**SYSTEM NAME:**

Independent Auditor Monitoring Files of the Office of Inspector General.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, State or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate State boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate State board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

* * * * *

**HUD/OIG–5**

**SYSTEM NAME:**

AutoAudit of the Office of Inspector General.

**SYSTEM LOCATION:**

Headquarters, District Offices, and Field Offices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals covered consist of: (1) HUD program participants and HUD employees who are associated with an activity that OIG is auditing or reviewing; (2) requesters of an OIG audit or other activity; and (3) persons and entities performing some other role of significance to the OIG's efforts, such as relatives or business associates of HUD program participants or employees, potential witnesses, or persons who represent legal entities that are connected to an OIG audit or other activity. The system also tracks information pertaining to OIG staff handling the audit or other activity, and may contain contact names for relevant staff in other agencies.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records consist of materials compiled and/or generated in connection with audits and other activities performed by OIG staff. These materials include information regarding the planning, conduct and resolution of audits and reviews of HUD programs and participants in those programs, internal legal assistance requests, information requests, responses to such requests, reports of findings, etc.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Inspector General Act of 1978 (5 U.S.C. App. 3) authorizes the Inspector General to conduct, supervise and coordinate audits and investigations relating to the programs and operations of HUD, to engage in other activities that promote economy and efficiency in the programs and operations of HUD, and to receive and investigate complaints concerning possible violations of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial or specific danger to the public health or safety.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, State or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate State boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate State board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:**

Records are stored electronically in office automation equipment and manually in file jackets.

**RETRIEVABILITY:**

Records may be retrieved by computer search of the AutoAudit software, and/or by reference to a particular file number.

**SAFEGUARDS:**

Records are maintained in a secure computer network, and in locked file cabinets or in metal file cabinets in rooms with controlled access.

**RETENTION AND DISPOSAL:**

Retention and disposal is in accordance with (1) Records Disposition Schedule 3 (Administrative Records), Item Nos. 79–1 to 86, Appendix 3, HUD Handbook 2225.6 Rev 1; and (2) General Records Schedules, Appendix 22 (Inspector General Records), HUD Handbook 2228.2 Rev. 4.

**SYSTEM MANAGERS AND ADDRESS:**

Assistant Inspector General for Audit, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

**NOTIFICATION PROCEDURE:**

The System Manager will accept inquiries from individuals seeking notification of whether the system contains records pertaining to them.

**RECORD ACCESS PROCEDURES:**

The procedures for requesting access to records appear in 24 CFR parts 16 and 2003.

**CONTESTING RECORD PROCEDURES:**

The procedures for requesting amendment or correction of records appear in 24 CFR part 16.

**RECORD SOURCE CATEGORIES:**

The OIG collects information from a wide variety of sources, including from HUD, other federal agencies, the General Accounting Office ("GAO"), law enforcement agencies, program participants, subject individuals, complainants, witnesses and other non-governmental sources.

**EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:**

None.

**HUD/OIG–6**

**SYSTEM NAME:**

AutoInvestigation of the Office of Inspector General.

**SYSTEM LOCATION:**

Headquarters, District Offices, and Field Offices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals covered consist of: (1) HUD program participants and HUD employees who are associated with an activity that OIG is investigating or evaluating; (2) requesters of an OIG investigative or other activity; and (3) persons and entities performing some other role of significance to the OIG's efforts, such as relatives or business associates of HUD program participants or employees, potential witnesses, or persons who represent legal entities that are connected to an OIG investigation or other activity. The system also tracks information pertaining to OIG staff handling the investigation or other activity, and may contain contact names for relevant staff in other agencies.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records consist of investigatory material compiled and/or generated for law enforcement purposes in connection with investigations and other activities performed by OIG staff. These materials include information regarding the planning, conduct and prosecution of investigations of HUD program participants and employees, legal assistance requests, information requests, responses to such requests, reports of investigations, etc.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Inspector General Act of 1978 authorizes the Inspector General to conduct, supervise and coordinate audits and investigations relating to the programs and operations of HUD, to engage in other activities that promote economy and efficiency in the programs and operations of HUD, and to receive and investigate complaints concerning possible violations of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial or specific danger to the public health or safety.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under subsection (b) of the Privacy Act of 1974, 5 U.S.C. 552a(b), records may also be disclosed routinely to other users under the following circumstances:

1. In the event that records indicate a violation or potential violation of law, whether criminal, civil or regulatory in nature, the relevant records may be disclosed to the appropriate federal, State or local agency charged with the responsibility for investigating or prosecuting such violation or enforcing or implementing such statute, rule or regulation.

2. Records may be disclosed to a congressional office in response to an inquiry from that congressional office made at the request of the individual who is the subject of the records.

3. Records may be disclosed to HUD contractors, Public Housing Authorities or management agents of HUD-assisted housing projects, in order to assist such entities in taking action to recover money or property, where such recovery serves to promote the integrity of the programs or operations of HUD.

4. Records may be disclosed during the course of an administrative proceeding where HUD is a party to the litigation and the disclosure is relevant and reasonably necessary to adjudicate the matter.

5. Records may be disclosed to any source, either private or governmental, to the extent necessary to elicit information relevant to an OIG investigation.

6. Records may be disclosed to appropriate State boards of accountancy for possible administrative or disciplinary sanctions such as license revocation. These referrals will be made only after the independent auditor has been notified that the OIG is contemplating disclosure of its findings to an appropriate State board of accountancy, and the independent auditor has been provided with an opportunity to respond in writing to the OIG's findings.

7. Records may be disclosed to DOJ for litigation purposes associated with the representation of OIG and/or HUD before the courts.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:**

Records are stored electronically in office automation equipment and manually in file jackets.

**RETRIEVABILITY:**

Records may be retrieved by computer search of the AutoInvestigation software, and/or by reference to a particular file number.

**SAFEGUARDS:**

Records are maintained in a secure computer network, and in locked file cabinets or in metal file cabinets in rooms with controlled access.

**RETENTION AND DISPOSAL:**

Retention and disposal is in accordance with (1) Records Disposition Schedule 3 (Administrative Records), Item Nos. 79–1 to 86, Appendix 3, HUD Handbook 2225.6 Rev 1; and (2) General Records Schedules, Appendix 22 (Inspector General Records), HUD Handbook 2228.2 Rev. 4.

**SYSTEM MANAGER(S) AND ADDRESS:**

Assistant Inspector General for Investigation, Office of the Inspector General, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

**NOTIFICATION PROCEDURE:**

Records are generally exempt from Privacy Act access. However, the System Manager will accept and give consideration to a request from an individual for notification of whether the system contains records pertaining to that individual.

**RECORD ACCESS PROCEDURES:**

Records are generally exempt from Privacy Act access. However, the System Manager will accept and give consideration to a request from an individual for access to records pertaining to that individual that are indexed and retrieved by reference to that individual's name and/or social security number. The procedures for requesting access to records appear in 24 CFR parts 16 and 2003.

**CONTESTING RECORD PROCEDURES:**

Records are generally exempt from Privacy Act amendment or correction. However, the System Manager will accept and give consideration to a request from an individual for amendment or correction of records pertaining to that individual that are indexed and retrieved by reference to that individual's name and/or social

security number. The procedures for requesting amendment or correction of records appear in 24 CFR part 16.

**RECORD SOURCE CATEGORIES:**

The OIG collects information from a wide variety of sources, including from HUD, other federal agencies, GAO, law enforcement agencies, program participants, subject individuals, complainants, witnesses and other non-governmental sources.

**EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:**

This system of records, to the extent that it consists of information compiled for the purpose of criminal investigations, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2), (e)(1), (e)(2) and (e)(3) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2). In addition, this system of records, to the extent that it consists of other investigatory material compiled or generated for law enforcement purposes, has been exempted from the requirements of subsections (c)(3), (d)(1), (d)(2) and (e)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2). Finally, this system of records, to the extent that it consists of investigatory material compiled or generated for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment or Federal contracts, the release of which would reveal the identity of a source who furnished information to the government under an express promise that the identity of the source would be held in confidence, has been exempted from the requirements of subsection (d)(1) of the Privacy Act pursuant to 5 U.S.C. 552a(k)(5). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e) and have been published in the **Federal Register**.

Dated: April 25, 2000.

**Susan Gaffney,**

*Inspector General.*

[FR Doc. 00–12712 Filed 5–19–00; 8:45 am]

**BILLING CODE 4210–01–P**

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## LIST OF PUBLIC LAWS

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**H.R. 434/P.L. 106–200**

Trade and Development Act of 2000 (May 18, 2000; 114 Stat. 251)

**S. 1744/P.L. 106–201**

To amend the Endangered Species Act of 1973 to provide that certain species conservation reports shall continue to be required to be submitted. (May 18, 2000; 114 Stat. 307)

**S. 2323/P.L. 106–202**

Worker Economic Opportunity Act (May 18, 2000; 114 Stat. 308)

**Last List May 10, 2000**

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.

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**Editorial Note:** In the issue of Monday, May 22, 2000 the inside cover should read 32007-33246. In addition, page 32241 should read 32241-33241.

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# Presidential Documents

Title 3—

## The President

**Proclamation 7309 of May 18, 2000**

## National Safe Boating Week, 2000

**By the President of the United States of America**

**A Proclamation**

Living in a country bordered by oceans and blessed with abundant lakes and rivers, Americans have made recreational boating one of our Nation's most popular pastimes. Each year, more than 74 million Americans take to the water with family and friends to relax and enjoy the beauty of the natural world.

But each year, for too many Americans, boating ends in tragedy. Most boating-related injuries and deaths are the result of human error and poor judgment, caused, for example, by excessive speed, failure to follow safe navigation rules, and drinking or taking drugs while operating watercraft. These injuries could easily be prevented by using common sense and making safety the first priority.

Boating accidents can occur at any time—whether the water is smooth or turbulent and whether the boater is experienced or a novice. One of the best ways to make a recreational boating experience safe and enjoyable is to ensure that everyone on board always wears a life jacket. To reinforce this lifesaving message, the National Safe Boating Campaign has once again selected the theme "Boat Smart from the Start! Wear Your Life Jacket!" for this year's observance. Recreational boating organizations, including the National Safe Boating Council and the National Association of State Boating Law Administrators, as well as the U.S. Coast Guard, other Federal agencies, and State and local governments, are continuing to promote safety through education by emphasizing the importance of wearing life jackets and practicing boating and water safety.

In recognition of the importance of safe boating practices, the Congress, by joint resolution approved June 4, 1958 (36 U.S.C. 131), as amended, has authorized and requested the President to proclaim annually the 7-day period ending on the last Friday before Memorial Day as "National Safe Boating Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 20 through May 26, 2000, as National Safe Boating Week. I encourage the governors of the 50 States and the Commonwealth of Puerto Rico, and officials of other areas subject to the jurisdiction of the United States, to join in observing this occasion and to urge all Americans to use safe boating practices throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of May, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

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# Rules and Regulations

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**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 124**

## 8(a) Business Development/Small Disadvantaged Business Status Determinations

**AGENCY:** Small Business Administration (SBA).

**ACTION:** Final rule.

**SUMMARY:** This final rule amends SBA's regulations governing the Small Disadvantaged Business (SDB) program. The rule establishes a formal reconsideration process for applicants declined certification as an SDB.

**DATES:** This rule is effective on May 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Terri Dickerson, Acting Assistant Administrator, Office of Small Disadvantaged Business Certification and Eligibility, 202–619–1727.

**SUPPLEMENTARY INFORMATION:** On March 10, 2000, SBA published in the **Federal Register** a proposed rule to amend SBA's regulations governing the Small Disadvantaged Business (SDB) program. *See* 65 FR 12955. The rule proposed to grant applicants declined SDB certification, a 45-day period to request that the Assistant Administrator, Office of Small Disadvantaged Business Certification and Eligibility (AA/SDBCE) reconsider the decline. The proposed rule was designed to improve the efficiency and effectiveness of the certification process, by providing a formal mechanism to enable SDB applicants to immediately correct deficiencies in their SDB application.

SBA received one timely comment concerning the proposed regulation. The commenter supported the proposed amendment, but requested that SBA indicate whether the reconsideration process would apply to pending SDB applications. SBA agrees that it should clarify the applicability of this final rule.

As indicated above, this rule is effective on the date of publication. An immediate effective date will avoid any unnecessary delay in the implementation of the rule and any resulting interference in the efficient administration of the SDB certification process. To ensure that all current SDB applicants are afforded the same opportunity for a reconsideration of the AA/SDBCE's negative determination of SDB eligibility, this rule applies to all applications for SDB certification submitted on or after the effective date of this rule, to all SDB applications pending before a Private Certifier or the AA/SDBCE as of the rule's effective date, to any declined application where no appeal was filed at the Office of Hearings and Appeals (OHA) and applications that are pending appeals at OHA.

Since SBA received no other comments concerning the proposed rule, this final rule is identical in all respects to the proposed rule which SBA published on March 10. Under this rule, applicants denied SDB certification have 45 days from the date of the AA/SDBCE's written decision, to request that the AA/SDBCE reconsider the decline. As part of the request for reconsideration, applicants requesting reconsideration may submit additional evidence to show that they have overcome the reason(s) for the AA/SDBCE's denial. If the AA/SDBCE once again declines the application solely on grounds that were not included in the original denial letter, the AA/SDBCE is required to grant the applicant an additional 45-day period to request that the AA/SDBCE reconsider the new basis for denial. If, however, the AA/SDBCE determines that the applicant is ineligible for SDB certification for one or more of the same reason(s) as addressed in the original decline, the applicant is not entitled to a second reconsideration.

This final rule does not affect an applicant's right under the current 13 CFR 124.1008(f)(3) to appeal the AA/SDBCE's decision denying eligibility nor does it affect an applicant's right with respect to ownership and control determinations of Private Certifiers. An applicant denied SDB certification based solely on reasons of social disadvantage, economic disadvantage, or disadvantaged ownership or control, continues to have the right to appeal to SBA's Office of Hearings and Appeals (OHA). The applicant also has the option to forego the reconsideration process and appeal the AA/SDBCE's initial decision to OHA, or to request reconsideration and if declined a second time solely on those grounds, to appeal the AA/SDBCE's reconsideration decision.

### Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

This final rule does not constitute a significant regulatory action as defined by Executive Order 12866, in that it is not likely to have an annual economic effect of $100 million or more on the economy, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy. SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, since it is a procedural amendment to the SDB certification process that would not impose any mandatory requirements on SDB applicants or deprive them of any existing rights under governing SBA regulations.

For purposes of the Paperwork Reduction Act of 1995 (Public Law 104–13), SBA certifies that this final rule imposes no new reporting or recordkeeping requirements on firms applying to be certified as an SDB. The rule grants certain SDB applicants the right to submit evidence to SBA that they are socially and economically disadvantaged, that they are citizens of the United States, and that they own and control the applicant concern. This rule does not require an SDB, once certified, to report any other information to SBA or to maintain additional records.

For purposes of Executive Order 13132, SBA has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For purposes of Executive Order 12988, SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in Section 3 of that Order.

**List of Subjects in 13 CFR Part 124**

Government procurement, Minority businesses, Tribally owned concerns, Hawaiian Natives, Reporting and recordkeeping requirements, and Technical assistance.

Accordingly, for the reasons set forth above, SBA amends title 13, CFR as follows:

**PART 124—[AMENDED]**

1. The authority citation for 13 CFR part 124 continues to read as follows:

**Authority:** 15 U.S.C. 634(b)(6), 636(j), 637(a), 637(d) and Pub. L. 99–661, Pub. L. 100–656, sec. 1207, Pub. L. 101–37, Pub. L. 101–574, and 42 U.S.C. 9815.

2. Section 124.1008 is amended by redesignating paragraphs (f)(3) and (f)(4) as paragraphs (f)(4) and (f)(5), respectively, and adding a new paragraph (f)(3) to read as follows:

**§ 124.1008 How does a firm become certified as an SDB?**

* * * * *

(f) * * *

(3)(i) If the AA/SDBCE declines the firm's application for SDB certification, the firm may request that the AA/SDBCE reconsider his or her initial decline by submitting a written request to the AA/SDBCE within 45 days of the date of the AA/SDBCE's decision. The applicant may provide any additional information and documentation pertinent to overcoming the reason(s) for the initial decline.

(ii) The AA/SDBCE will issue a written decision within 30 days of receiving the applicant's request for reconsideration, if practicable. The AA/SDBCE may either approve the application, deny it on one or more of the same grounds as the initial decision, or deny it on other grounds. If the application is denied, the AA/SDBCE will explain why the applicant is not eligible for SDB certification and give specific reasons for the decline. If the AA/SDBCE declines the application solely on issues not raised in the initial decline, the applicant may request another reconsideration as if it were an initial decline. If the AA/SDBCE declines the application for one or more of the same reasons as addressed in the initial decline, the applicant is not entitled to a second reconsideration.

* * * * *

Dated: May 12, 2000.

**Aida Alvarez,**

*Administrator.*

[FR Doc. 00–12690 Filed 5–22–00; 8:45 am]

BILLING CODE 8025–01–U

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Airspace Docket No. 00–ACE–7]**

## Amendment to Class E Airspace; Hampton, IA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends the Class E airspace area at Hampton Municipal Airport, Hampton, IA. The FAA has developed Area Navigation (RNAV) Runway (RWY) 17 and RNAV RWY 35 Standard Instrument Approach Procedures (SIAPs) to serve Hampton Municipal Airport, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the RNAV RWY 17 and RNAV RWY 35 SIAPs in controlled airspace.

In addition a minor revision to the Airport Reference Point (ARP) is included in this document.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing RNAV RWY 17 and RNAV RWY 35 SIAPs, revise the ARP and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

**DATES:** This direct final rule is effective on 0901 UTC, October 5, 2000.

Comments for inclusion in the Rules Docket must be received on or before July 10, 2000.

**ADDRESSES:** Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, DOT Regional Headquarters Building, Federal Aviation Administration, Docket Number 00–ACE–7, 901 Locust, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

**FOR FURTHER INFORMATION CONTACT:** Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

**SUPPLEMENTARY INFORMATION:** The FAA has developed RNAV RWY 17 and RNAV RWY 35 SIAPs to serve the Hampton Municipal Airport, IA. The amendment to Class E airspace at Hampton, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the SIAPs within controlled airspace and thereby facilitate separation of aircraft operating under Instrument Flight Rules (IFR). The amendment at Hampton Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR and revise the ARP. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9G, dated September 10, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Direct Final Rule Procedure**

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, and adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register** and a notice of proposed rulemaking may be published with a new comment period.

**Comments Invited**

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 00–ACE–7." The postcard will be date stamped and returned to the commenter.

**Agency Findings**

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G Airspace Designations and Reporting Points, dated September 10, 1999, and effective September 16, 1999, is amended as follows:

*Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.*

* * * * *

Hampton Municipal Airport, IA
(Lat. 42°43′26″ N., long. 93°13′35″ W.)
Hampton NDB
(Lat. 42°43′32″ N., long. 93°13′30″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Hampton Municipal Airport and within 2.6 miles each side of the 343° bearing from the Hampton NDB extending from the 6.4 mile radius to 7.4 miles northwest of the airport and 2 miles each side of the 177° bearing from the Hampton Municipal Airport extending from the 6.4 mile radius to 7.7 miles south of the airport, excluding that airspace within the Mason City, IA Class E airspace.

* * * * *

Issued in Kansas City, MO, on May 9, 2000.

**Herman J. Lyons, Jr.,**

*Manager, Air Traffic Division, Central Region.*

[FR Doc. 00–12821 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF THE TREASURY

### Customs Service

### 19 CFR Part 12

[T.D. 00–36]

RIN 1515–AC62

## Entry of Softwood Lumber Shipments From Canada

**AGENCY:** Customs Service, Treasury.

**ACTION:** Interim regulations; solicitation of comments.

**SUMMARY:** This document adopts on an interim basis an amendment to the provision within the Customs Regulations that sets forth entry requirements for shipments of softwood lumber from Canada under the agreement between the Governments of the United States and Canada regarding trade in softwood lumber. This interim amendment implements an amendment to the softwood lumber agreement involving the addition of two export fee payment status categories (permit type codes) covering softwood lumber from the Canadian province of British Columbia.

**DATES:**

*Effective Date:* Interim rule effective May 23, 2000.

*Comments:* Comments must be submitted by July 24, 2000.

**ADDRESSES:** Written comments may be addressed to, and inspected at, the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229.

**FOR FURTHER INFORMATION CONTACT:** Dixie Staple, Office of Field Operations (202–927–1131).

**SUPPLEMENTARY INFORMATION:**

**Background**

This document amends the Customs Regulations on an interim basis to reflect an amendment of the agreement between the Governments of the United States and Canada regarding trade in softwood lumber. The amendment involves the addition of two export fee payment status categories (permit type codes) covering softwood lumber from the Canadian province of British Columbia.

*Adoption of the Softwood Lumber Agreement*

On May 29, 1996, the United States entered into the Softwood Lumber Agreement (the Agreement) with Canada under the authority of section 301(c)(1)(D) of the Trade Act of 1974, as amended (19 U.S.C. 2411(c)(1)(D)), which authorizes the United States

Trade Representative (the USTR) to "enter into binding agreements" with a foreign country that commit the foreign country to, among other things, eliminate any burden or restriction on U.S. commerce resulting from an act, policy or practice of the foreign country. The Agreement, which went into effect on April 1, 1996, was specifically intended to provide a satisfactory resolution to certain acts, policies and practices of the Government of Canada affecting exports to the United States of softwood lumber which had been the subject of an investigation initiated by the USTR under section 302(b)(1)(A) of the Trade Act of 1974, as amended (19 U.S.C. 2412(b)(1)(A)), and which on October 4, 1991, pursuant to section 304(a) of the Trade Act of 1974, as amended (19 U.S.C. 2414(a)), had been found by the USTR to be unreasonable and to burden or restrict U.S. commerce. The Agreement was the product of a consultative process established by the United States and Canada and involving the participation of the U.S. Government, Canadian federal and provincial governments and, where appropriate, industries and other interested parties in both countries.

The Agreement refers specifically to softwood lumber mill products classified in subheadings 4407.10.00, 4409.10.10, 4409.10.20, and 4409.10.90 of the Harmonized Tariff Schedule of the United States (HTSUS) that were "first manufactured" into a product of one of those HTSUS subheadings in the Canadian provinces of Ontario, Quebec, British Columbia or Alberta. The Agreement requires that Canada assess fees on exports of that softwood lumber in each of the five years following April 1, 1996, based on the following schedule: (1) For total shipments up to 14.7 billion board feet, free (no fee); (2) for any amount shipped in excess of 14.7 billion board feet but not in excess of 15.35 billion board feet, US$50 per thousand board feet in the first year and with annual adjustments for inflation in subsequent years; and (3) for any amount shipped in excess of 15.35 billion board feet, US$100 per thousand board feet and with annual adjustments for inflation in subsequent years. The Agreement also allows an additional amount of exports of such softwood lumber in excess of 14.7 billion board feet without the payment of a fee if the average price of a benchmark softwood lumber price exceeds a prescribed "trigger price" during any quarterly period. In order to control and monitor exports of softwood lumber first manufactured in Ontario, Quebec, British Columbia and Alberta, the Agreement provides that Canada will issue an export permit for each shipment of such softwood lumber and that Canada will collect any required fee for amounts of lumber exported in excess of 14.7 billion board feet upon issuance of the export permit.

The Agreement requires the collection of information by Canada in connection with the issuance of export permits for softwood lumber first manufactured in Ontario, Quebec, British Columbia and Alberta and the collection of information by the United States in connection with import transactions involving that lumber.

With regard to the import end, the Agreement obligates the United States to require that the U.S. importer provide specific information in connection with the entry of the lumber under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484). The information required to be collected under the Agreement includes the following three specific data elements which were not previously required under the Customs laws and regulations, the last two of which were required by the Agreement to be collected as soon as practicable after the entry into force of the Agreement: (1) The province of first manufacture of the lumber; (2) the export permit number issued in Canada for the shipment; and (3) the fee status of the lumber for which the export permit was issued (whether the lumber in the shipment was attributed to a quantity to which no fee applies or to a quantity that is subject to the US$50 fee or to a quantity that is subject to the US$100 fee or to a quantity that is covered by the trigger price mechanism).

**Implementing Regulations**

On February 26, 1997, Customs published in the **Federal Register** (62 FR 8620) T.D. 97–6 which set forth interim amendments to the Customs Regulations to provide an appropriate regulatory context for the new requirements resulting from the Agreement as described above. Those amendments included the adoption of a new § 12.140 (19 CFR 12.140) which specifically addresses the entry requirements for softwood lumber under the agreement. Paragraph (b) of § 12.140 prescribes the information to be included on the entry summary and requires, under subparagraph (b)(2)(ii), an indication of the export fee payment status of the product for which the permit was issued according to one of four categories, Category A through Category D.

**Amendment of the Agreement**

On June 1, 1998, the British Columbia Forest Ministry reduced stumpage (timber harvesting) fees charged on all timber grown on provincially-owned lands, which accounts for the overwhelming majority of timber harvested in the province. The United States considered this reduction to be a violation of the Agreement and therefore invoked the dispute settlement provisions of the Agreement. When consultations failed to resolve the dispute, an Arbitration Panel was formed, Canada and the United States made submissions to the Arbitration Panel, and oral hearings were held. The dispute was ultimately settled, without issuance of a decision by the Arbitration Panel, on August 26, 1999, by an exchange of letters between the Governments of Canada and the United States which amended the Agreement and terminated the dispute.

The August 26, 1999, settlement and amendment of the Agreement applies only to softwood lumber first manufactured in British Columbia and applies only in the fourth and fifth years of the Agreement. The effect of the settlement and amended Agreement is to require Canada: (1) To impose the higher of the two basic export fee levels called for under the Agreement ($100 per thousand board feet with annual adjustments for inflation after the first year) at lower lumber export levels for the province than previously was the case and (2) to impose a new, higher fee on lumber exports when they exceed recent average annual shipments to the United States from the province. Specifically, under the terms of the settlement and amended Agreement:

1. In the fourth year (April 1, 1999–March 31, 2000):

a. Ninety million board feet of the 362.3 million board feet lower fee base (LFB) allocation to British Columbia companies in that year will be re-priced at the current upper fee base (UFB) fee level (that is, US$105.86 per thousand board feet which represents the adjusted $100 fee applicable during the fourth year), and Canada will collect a fee equivalent to that UFB fee level on the issuance of a permit for export of the softwood lumber to the United States ("re-priced LFB"); and

b. Canada will collect a fee on the issuance of a permit for export to the United States of quantities of UFB by British Columbia companies (which includes re-priced LFB described in paragraph 1.a. above) in excess of 110 million board feet (the average of the UFB shipments for the first and second years of the Agreement) at the fee level

of US$146.25 per thousand board feet (US$105.86 per thousand board feet plus US$40.39 per thousand board feet) ("re-priced UFB");

2. In the fifth year (April 1, 2000–March 31, 2001):

a. Either 90 million board feet, or any amount in excess of 272 million board feet, whichever is greater, of LFB allocations to British Columbia companies in that year will be re-priced at the current UFB level, and Canada will collect a fee equivalent to that UFB fee level on the issuance of a permit for export of the softwood lumber to the United States ("re-priced LFB"); and

b. Canada will collect a fee on the issuance of a permit for export to the United States of quantities of UFB by British Columbia companies (which includes re-priced LFB described in paragraph 2.a. above) in excess of 110 million board feet (the average of the UFB shipments for the first and second years of the Agreement) at the fee level of US$40.39 above the current UFB rate ("re-priced UFB"); and

3. If any portion of LFB lumber allocated to a British Columbia company which has been re-priced pursuant to paragraph 1.a. or paragraph 2.a. above is transferred to a company in another Canadian province or is returned for temporary reallocation, Canada will collect a fee equivalent to the current UFB level on the issuance of a permit for export of the softwood lumber to the United States.

Customs has determined that the portion of § 12.140 that sets forth the various export fee payment statuses to be included on entry summaries must be amended in order to accommodate the new statuses that apply to softwood lumber first manufactured in British Columbia under the settlement and amended Agreement discussed above. In this regard, Customs has been advised by the Government of Canada that the new fee payment status categories (permit type codes) that Canada will assign to the subject British Columbia exports are "R" for re-priced LFB (that is, the products described in paragraphs 1.a. and 2.a. above) and "S" for re-priced UFB (that is, the products described in paragraphs 1.b. and 2.b. above).

Accordingly, this document amends the reporting requirement provisions within § 12.140(b) on an interim basis by adding two new subparagraphs (b)(2)(ii)(E) and (b)(2)(ii)(F) to cover the new "R" and "S" fee payment status categories applicable to British Columbia exports. It should be noted that no reference is made in the new regulatory text to transfers or reallocations (paragraph 3. above) because exports involving transfers and reallocations would be reported as having the category C export fee payment status (that is, UFB) already specified in subparagraph (b)(2)(ii)(C).

**Comments**

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC.

**Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866**

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this interim regulation because it is within the foreign affairs function of the United States. The collection of information provided for in this interim regulation is required under the terms of the amended Softwood Lumber Agreement with Canada and is necessary to ensure effective monitoring of the operation of that Agreement. Furthermore, for the same reasons and because the collection of this information must begin as soon as practicable, it is determined that good cause exists under the provisions of 5 U.S.C. 553(d)(3) for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply; and because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of Executive Order 12866.

**Paperwork Reduction Act**

The collections of information in the current regulations have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB control number 1515–0065 (Entry summary and continuation sheet). This rule does not involve any material change to the existing approved information collection.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

**List of Subjects in 19 CFR Part 12**

Bonds, Canada, Customs duties and inspection, Entry of merchandise, Imports, Prohibited merchandise, Reporting and recordkeeping requirements, Restricted merchandise, Trade agreements.

**Amendment to the Regulations**

For the reasons set forth in the preamble, Part 12, Customs Regulations (19 CFR Part 12), is amended as set forth below.

## PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The authority citation for Part 12 continues to read in part as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Section 12.140 also issued under 19 U.S.C. 1484, 2416(a), 2171;

* * * * *

2. In § 12.140:

a. Paragraph (b)(2)(ii)(C) is amended by removing the word "or" at the end;

b. Paragraph (b)(2)(ii)(D) is amended by removing the period at the end and adding, in its place, a semicolon; and

c. New paragraphs (b)(2)(ii)(E) and (b)(2)(ii)(F) are added to read as follows:

**§ 12.140 Entry of softwood lumber from Canada.**

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(E) Category R: Payment of the re-priced lower fee base export fee applicable to certain products first manufactured in British Columbia; or

(F) Category S: Payment of the re-priced upper fee base export fee applicable to certain products first manufactured in British Columbia.

* * * * *

Approved: April 18, 2000.

**Raymond W. Kelly,**

*Commissioner of Customs.*

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–12921 Filed 5–22–00; 8:45 am]

BILLING CODE 4820–02–P

**DEPARTMENT OF THE TREASURY**

**Customs Service**

**19 CFR Part 162**

**[TD 00–37]**

**RIN 1515–AC60**

## Summary Forfeiture of Controlled Substances

**AGENCY:** Customs Service, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations to reflect an amendment to 21 U.S.C. 881 made by the Anti-Drug Abuse Act of 1986. The statutory amendment added Schedule II controlled substances to the Schedule I controlled substances already subject to summary forfeiture and destruction under subsection (f) of 21 U.S.C. 881. The amendment set forth in this document brings the Customs Regulations into conformance with the statute.

**EFFECTIVE DATE:** May 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Todd Schneider, Office of Regulations and Rulings (202–927–1694).

**SUPPLEMENTARY INFORMATION:**

### Background

Subsection (a)(1) of 21 U.S.C. 881 provides that all controlled substances that have been manufactured, distributed, dispensed or acquired in violation of subchapter 1, chapter 13, title 21, United States Code, are subject to forfeiture to the United States and no property right shall exist in them. Subsection (f) of 21 U.S.C. 881 provides that all controlled substances in Schedule I and Schedule II will be deemed contraband, seized and summarily forfeited to the United States if they are possessed, transferred, sold or offered for sale in violation of the subchapter. Also, subsection (f) provides that all substances in Schedule I and Schedule II that are seized or come into the possession of the United States, the owners of which are unknown, will be deemed contraband and summarily forfeited to the United States.

Prior to 1986, 21 U.S.C. 881(f) applied only to Schedule I controlled substances. Section 1006(c)(1) of the Anti-Drug Abuse Act of 1986 (Pub. L. 99–570, 100 Stat. 3207, October 27, 1986) amended 21 U.S.C. 881(f) to include Schedule II controlled substances.

Section 162.45a of the Customs Regulations (19 CFR 162.45a), which implements the seizure and summary forfeiture procedure of 21 U.S.C. 881(f), does not reflect the current statute in that it only discusses Schedule I controlled substances (as defined in 21 U.S.C. 802(6) and 812). Accordingly, § 162.45a is amended in this document to include Schedule II controlled substances. This document also makes conforming changes to §§ 162.45(b) and 162.63.

### Inapplicability of Public Notice and Comment and Delayed Effective Date Requirements

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that notice and public procedures for this regulation are unnecessary. The regulatory change in this document conforms the Customs Regulations to the terms of a law that is already in effect. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date.

### Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

### Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service.

### List of Subjects in 19 CFR Part 162

Administrative practice and procedure, Drug traffic control, Imports, Inspection, Law Enforcement, Penalties, Prohibited merchandise, Seizures and forfeitures.

### Amendment to the Regulations

For the reasons stated in the preamble, part 162 of the Customs Regulations (19 CFR Part 162) is amended as set forth below.

## PART 162—INSPECTION, SEARCH, AND SEIZURE

1. The authority citation for part 162 continues to read in part, and a new authority citation for § 162.45a is added to read, as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1592, 1593a, 1624.

* * * * *

Section 162.45a also issued under 21 U.S.C. 881;

* * * * *

2. Section 162.45 is amended by revising the section heading, amending the first sentence of paragraph (b)(1), and revising paragraph (b)(2), to read as follows:

**§ 162.45 Summary forfeiture: Property other than Schedule I and Schedule II controlled substances. Notice of seizure and sale.**

* * * * *

(b) *Publication.* (1) If the appraised value of any property in one seizure from one person, other than Schedule I and Schedule II controlled substances (as defined in 21 U.S.C. 802(6) and 812), exceeds $2,500, the notice will be published for at least three successive weeks in a newspaper circulated at the Customs port and in the judicial district where the property was seized. * * *

(2) In all other cases, except for Schedule I and Schedule II controlled substances (see § 162.45a), the notice will be published by posting it in the customhouse nearest the place of seizure. It will be posted in a conspicuous place that is accessible to the public, with the date of posting noted thereon, and will be kept posted for at least three successive weeks. Articles of small value of the same class or kind included in two or more seizures will be advertised as one unit.

* * * * *

3. The heading and text of section 162.45a is revised to read as follows:

**§ 162.45a Summary forfeiture of Schedule I and Schedule II controlled substances.**

The Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801 *et seq.*) provides that all controlled substances in Schedule I and Schedule II (as defined in 21 U.S.C. 802(6) and 812) that are possessed, transferred, sold or offered for sale in violation of the Act will be deemed contraband, seized and summarily forfeited to the United States (21 U.S.C. 881(f)). The Controlled Substances Import and Export Act (21 U.S.C. 951 *et seq.*) incorporates by reference this contraband forfeiture provision of 21 U.S.C. 881. See 21 U.S.C. 965. Accordingly, in the case of a seizure of Schedule I or Schedule II controlled substances, the Fines, Penalties, and Forfeitures Officer or his designee will contact the appropriate Drug Enforcement Administration official responsible for issuing permits authorizing the importation of such substances (see 21 CFR part 1312). If upon inquiry the Fines, Penalties, and Forfeitures Officer or his designee is notified that no permit for lawful importation has been issued, he will declare the seized substances contraband and forfeited pursuant to 21

U.S.C. 881(f). Inasmuch as such substances are Schedule I and Schedule II controlled substances, the notice procedures set forth in § 162.45 are inapplicable. When seized controlled substances are required as evidence in a court proceeding, they will be preserved to the extent and in the quantities necessary for that purpose.

4. Section 162.63 is revised to read as follows:

**§ 162.63 Arrests and seizures.**

Arrests and seizures under the Controlled Substances Act (84 Stat. 1242, 21 U.S.C. 801 *et seq.*), and the Controlled Substances Import and Export Act (84 Stat. 1285, 21 U.S.C. 951 *et seq.*), will be handled in the same manner as other Customs arrests and seizures. However, Schedule I and Schedule II controlled substances (as defined in 21 U.S.C. 802(6) and 812) imported contrary to law will be seized and forfeited in the manner provided in the Controlled Substances Act (21 U.S.C. 881(f)). See § 162.45a.

**Raymond W. Kelly,**

*Commissioner of Customs.*

Approved: March 24, 2000.

**John P. Simpson,**

*Deputy Assistant Secretary of the Treasury.*

[FR Doc. 00–12922 Filed 5–22–00; 8:45 am]

BILLING CODE 4820–02–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Parts 100, 110 and 165

**[CGD 05–99–097]**

**RIN 2115–AA97, AA98, AE46**

### OPSAIL 2000, Port of Baltimore, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary regulations in the Port of Baltimore, Maryland for OPSAIL 2000 activities. This action is necessary to provide for the safety of life on navigable waters before, during, and after OPSAIL 2000 events. This action will restrict vessel traffic in portions of the Inner Harbor, the Northwest Harbor, the Patapsco River, and the Chesapeake Bay.

**DATES:** This rule is effective from 6 a.m. on June 23, 2000 to 11:30 p.m. on June 29, 2000.

**ADDRESSES:** Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05–99–097 and are available for inspection or copying at Commander, (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** S. L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

**SUPPLEMENTARY INFORMATION:**

#### Regulatory Information

On March 28, 2000 we published a notice of proposed rulemaking (NPRM) entitled OPSAIL 2000, Port of Baltimore, MD, in the **Federal Register** (65 FR 16355). We received no letters commenting on the proposed rule. No public hearing was requested and none was held.

#### Background and Purpose

Sail Baltimore is sponsoring OPSAIL 2000 activities in the Port of Baltimore, Maryland. Planned events include the arrival of 27 Tall Ships and other vessels on June 23, 2000 and a Parade of Sail and scheduled departure of those vessels on June 29, 2000.

The Coast Guard anticipates a large spectator fleet for these events. Operators should expect significant vessel congestion along the arrival and parade routes.

The purpose of these regulations is to promote maritime safety and protect participants and the boating public in the Port of Baltimore and the waters of the Chesapeake Bay immediately prior to, during, and after the scheduled events. The regulations will provide for clear parade routes for the participating vessels, establish no wake zones along the parade routes, provide a safety buffer around the participating vessels while they are in transit, and in certain anchorage areas, modify existing anchorage regulations for the benefit of participants and spectators. The regulations will impact the movement of all vessels operating in the specified areas of the Port of Baltimore and the Chesapeake Bay.

It may be necessary for the Coast Guard to establish additional safety or security zones in addition to these regulations to safeguard dignitaries and certain vessels participating in the event. If the Coast Guard deems it necessary to establish such zones at a later date, the details of those zones will be announced separately via the **Federal Register**, Local Notice to Mariners, Safety Voice Broadcasts, and any other means available.

All vessel operators and passengers are reminded that vessels carrying passengers for hire or that have been chartered and are carrying passengers may have to comply with certain additional rules and regulations beyond the safety equipment requirements for all pleasure craft. When a vessel is not being used exclusively for pleasure, but rather is engaged in carrying passengers for hire or has been chartered and is carrying the requisite number of passengers, the vessel operator must possess an appropriate license and the vessel may be subject to inspection. The definition of the term "passenger for hire" is found in 46 U.S.C. 2101(21a). In general, it means any passenger who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage onboard the vessel. The definition of the term "passenger" is found in 46 U.S.C. 2101(21). It varies depending on the type of vessel, but generally means individuals carried aboard vessels except for certain specified individuals engaged in the operation of the vessel or the business of the owner/charterer. The law provides for substantial penalties for any violation of applicable license and inspection requirements. If you have any questions concerning the application of the above law to your particular case, you should contact the Coast Guard at the address listed in **ADDRESSES** for additional information.

Vessel operators are reminded they must have sufficient facilities on board their vessels to retain all garbage and untreated sewage. Discharge of either into any waters of the United States is strictly forbidden. Violators may be assessed civil penalties up to $25,000 or face criminal prosecution.

We recommend that vessel operators visiting the Port of Baltimore for this event obtain up to date editions of National Ocean Service Charts 12278 and 12281 to avoid anchoring within a charted cable or pipeline area.

With the arrival of OPSAIL 2000 and spectator vessels in the Port of Baltimore for this event, it will be necessary to curtail normal port operations to some extent. Interference will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled events.

#### Discussion of Rule

The OPSAIL 2000 vessels are scheduled to arrive on June 23, 2000 and will follow a parade route of approximately 3 nautical miles that includes specified waters of the Inner Harbor and Northwest Harbor. The

OPSAIL 2000 vessels are scheduled to depart on June 29; 2000 and will follow a parade route of approximately 7 nautical miles that includes specified waters of the Inner Harbor, Northwest Harbor, and Patapsco River.

The safety of parade participants and spectators requires that spectator craft be kept at a safe distance from the parade routes during these vessel movements. The Coast Guard is establishing special local regulations for the areas through which the vessels will pass for the OPSAIL 2000 Tall Ships Arrival on June 23, 2000 and the OPSAIL 2000 Parade of Sail on June 29, 2000.

In addition to establishing special local regulations, we are establishing temporary moving safety zones around OPSAIL 2000 vessels which are 175 feet or greater in length, to ensure the safety of participants and spectators immediately prior to, during, and following the parades.

The Coast Guard also is temporarily modifying the existing anchorage regulations found at 33 CFR 110.158 to accommodate OPSAIL 2000 and spectator vessels. Anchorage No. 1, Anchorage No. 4, Anchorage No. 5, and Anchorage No. 6 will be designated exclusively for spectator vessels. Anchorage No. 3 will be designated exclusively for passenger vessels. Anchorage No. 2 will be closed to all vessels except OPSAIL 2000 vessels.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the Tall Ships Arrival on June 23, 2000 and the Parade of Sail on June 29, 2000. Although these regulations prevent traffic from transiting a portion of the Inner Harbor, Northwest Harbor, and Patapsco River during these events, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make, alternative plans for transiting the affected area. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Inner Harbor, the Northwest Harbor, and the Patapsco River in the Port of Baltimore, Maryland. The regulations will not have a significant impact on a substantial number of small entities for the following reasons: the restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. We received no requests for assistance in understanding the rule.

Small businesses may send comments on the actions of the Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

**Collection of Information**

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

**Federalism**

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g) and (h), of Commandant Instruction M16475.1C; this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.** By controlling vessel traffic during these events, this rule is intended to minimize environmental impacts of increased vessel traffic during the transits of event vessels.

**List of Subjects**

*33 CFR Part 100*

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

*33 CFR Part 110*

Anchorage grounds.

*33 CFR Part 165*

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Parts 100, 110, and 165 as follows:

**PART 100—[AMENDED]**

1. The authority citation for Part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add temporary § 100.35T–05–097 to read as follows:

**§ 100.35T–05–097 Special Local Regulations; OPSAIL 2000, Port of Baltimore, MD.**

(a) *Definitions* (1) *Captain of the Port* means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Official Patrol Vessel* includes all Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(3) *OPSAIL 2000 Vessel* includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Baltimore and approved by Commander, Fifth Coast Guard District.

(4) *Parade of Sail* is the outbound procession of OPSAIL 2000 vessels as they navigate designated routes in the Port of Baltimore on June 29, 2000.

(5) *Tall Ships Arrival* is the inbound procession of OPSAIL 2000 vessels as they navigate designated routes in the Port of Baltimore on June 23, 2000.

(b) *Regulated Areas.* (1) *Tall Ships Arrival Area:* All waters of the Patapsco River, Baltimore, Maryland, between the Ferry Bar Channel-East Section and the Inner Harbor west bulkhead, bounded by a line drawn from the coordinates at position latitude 39°15′40″ N, longitude 076°34′50″ W, thence southeasterly to latitude 39°15′23.5′ N, longitude 076° 34′44″ W, thence easterly to latitude 39°15′23.5″ N, longitude 076°33′53″ W.

(2) *Parade of Sail Area:* The waters of the Patapsco River, Northwest Harbor and Inner Harbor enclosed by:

| Latitude | Longitude |
|---|---|
| 39°15′40.5″ N ..... | 076°34′47.5″ W, to |
| 39°15′04.9″ N ..... | 076°34′43.7″ W, and |
| 39°14′07.5″ N ..... | 076°33′37.7″ W, to |
| 39°12′46.3″ N ..... | 076°32′02.6″ W, to |
| 39°10′24.8″ N ..... | 076°31′01″ W, to |
| 39°12′06.3″ N ..... | 076°29′43.2″ W, to |
| 39°13′22.3″ N ..... | 076°31′15.7″ W, to |
| 39°15′40.2″ N ..... | 076°33′33.7″ W |

All coordinates use Datum: NAD 83.

(c) *Special Local Regulations.* (1) Any person or vessel within the regulated area must operate in strict conformance with any directions given by the Captain of the Port and leave the regulated area immediately if the Captain of the Port so orders.

(2) Unless otherwise directed by the Captain of the Port, all vessels within the regulated area shall be operated at the minimum speed required to maintain steerage and shall avoid creating a wake.

(3) No vessel within the regulated area may anchor except in conformance with 33 CFR 110.158.

(4) The Coast Guard and Official Patrol vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (410) 576–2521 or 2693.

(5) The Captain of the Port will notify the public of any changes in the status of the regulated area by a Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective dates.* (1) Tall Ships Arrival Area. This section is effective from 9 a.m. until 6 p.m. on June 23, 2000.

(2) *Parade of Sail Area.* Paragraph (b)(2) of this section is effective from 10:30 a.m. until 2:30 p.m. on June 29, 2000.

**PART 110—[AMENDED]**

3. The authority citation for Part 110 continues to read as follows:

**Authority:** 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

4. From 10:30 a.m. until 2:30 p.m. on June 29, 2000, § 110.158 is amended by adding paragraph (c) to read as follows:

**§ 110.158 Baltimore Harbor, MD.**

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, the following temporary regulations apply from 10:30 a.m. until 2:30 p.m. on June 29, 2000 for OPSAIL 2000.

(1) Anchorage No. 1, Anchorage No. 4, Anchorage No. 5, and Anchorage No. 6 are designated for the exclusive use of spectator vessels. "Spectator vessels" includes any vessel, commercial or recreational, being used for pleasure or carrying passengers, that is in the Port of Baltimore to observe part or all of the events attendant to OPSAIL 2000.

(2) Anchorage No. 2 is designated for the exclusive use of OPSAIL 2000 vessels. "OPSAIL 2000 Vessels" includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Baltimore and approved by the Commander, Fifth Coast Guard District.

(3) Anchorage No. 3 is designated for the exclusive use of passenger vessels. "Passenger vessel" has the meaning of that term in 46 U.S.C. 2101(22).

**PART 165—[AMENDED]**

5. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

6. Add temporary § 165.T05–097 to read as follows:

**§ 165.T05–097 Safety Zone; OPSAIL 2000, Port of Baltimore, MD.**

(a) *Definitions:* (1) *Captain of the Port* means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *OPSAIL 2000 Vessels* includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Baltimore and approved by Commander, Fifth Coast Guard District.

(b) *Location.* The following areas are moving safety zones: All waters within 150 yards ahead of or 50 yards outboard or aft of any OPSAIL 2000 vessel which is 175 feet or greater in length, while operating on the Chesapeake Bay or its tributaries, north of the Maryland-Virginia border and south of latitude 39°35′00″.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within the regulated areas unless authorized to do so by the Captain of the Port. Any person or vessel authorized to enter the regulated areas must operate in strict conformance with any directions given by the Captain of the Port and leave the regulated area

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immediately if the Captain of the Port so orders.

(3) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (410) 576–2521 or 2693.

(4) The Captain of the Port will notify the public of any changes in the status of this zone by a Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective dates:* This section is effective from 6 a.m. on June 23, 2000 to 11:30 p.m. on June 29, 2000.

Dated: May 12, 2000.

**Thomas E. Bernard,**

*Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 00–12877 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

### 33 CFR Part 165

**[CGD 05–00–004]**

**RIN 2115–AA97**

## Safety Zone; Transit of S/V Amerigo Vespucci, Chesapeake Bay, Baltimore, MD

**AGENCY:** Coast Guard, DOT.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary moving safety zone in the Chesapeake Bay and the Port of Baltimore, Maryland during the transit of the sailing vessel *Amerigo Vespucci* through those waters. This action is necessary to provide for the safety of life on navigable waters during the vessel's transit. This action will restrict vessel traffic in portions of the Chesapeake Bay and the Port of Baltimore.

**DATES:** This rule is effective from 6 a.m. on June 21, 2000 until 6 p.m. on June 24, 2000.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD5–00–004 and are available for inspection or copying at Commander, U.S. Coast Guard Activities, 2401 Hawkins Point Road, Baltimore, Maryland 21226–1791, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Chief Warrant Officer Ron Houck, Port Safety and Security Section, at (410) 576–2674.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

On April 26, 2000 we published a notice of rulemaking (NPRM) entitled Safety Zone; Transit of S/V *Amerigo Vespucci*, Chesapeake Bay, Baltimore, MD, in the **Federal Register** (65 FR 24439). We received no letters commenting on the rule. No public hearing was requested and none was held.

### Background and Purpose

The sailing vessel *Amerigo Vespucci* is planning to transit the waters of the Chesapeake Bay enroute to the Port of Baltimore, Maryland on June 21, 2000 and enroute from the Port of Baltimore, Maryland on June 24, 2000. The transits of this 330-foot sailing vessel are expected to attract a large fleet of spectator vessels. The purpose of these regulations is to promote maritime safety and protect the sailing vessel and the boating public during these transits by establishing a safety buffer around the sailing vessel.

### Discussion of Rule

The Coast Guard is establishing a temporary moving safety zone around the 330-foot sailing vessel, *Amerigo Vespucci*. The safety zone will be enforced during her transit of Chesapeake Bay enroute to the Port of Baltimore, Maryland on June 21, 2000 and enroute from the Port of Baltimore on June 24, 2000. The safety zone will include all waters within 150 yards ahead of or 50 yards abeam or astern of the vessel while she is transiting the area. No vessels will be allowed to enter or navigate within this area unless authorized by the Captain of the Port.

### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

These regulations are limited in duration, affect only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or anchor in portions of the Chesapeake Bay and the Port of Baltimore, Maryland. The regulations will not have a significant impact on a substantial number of small entities for the following reasons: The restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas.

### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they could better evaluate its effects on them and participate in the rulemaking. We received no requests for assistance in understanding the rule.

Small businesses may send comments on the actions of the Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

### Federalism

We have analyzed this rule under E.O. 13132 and have determined that this

rule does not have implications for federalism under that Order.

**Unfunded Mandates Reform Act**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule will not impose an unfunded mandate.

**Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

**Protection of Children**

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

**Environment**

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C; this rule is categorically excluded from further environmental documentation. This rule will have no affect on the environment.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

**Regulation**

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

**PART 165—[AMENDED]**

1. The authority citation for Part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T05–004 to read as follows:

**§ 165.T05–004 Safety Zone; Transit of S/V Amerigo Vespucci, Chesapeake Bay, Baltimore, MD.**

(a) *Definitions: Captain of the Port* means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on his behalf.

(b) *Location.* The following area is a moving safety zone: All waters within 150 yards ahead of or 50 yards abeam or astern of the sailing vessel *Amerigo Vespucci,* while the vessel is operating on the Chesapeake Bay or its tributaries, north of the Maryland-Virginia border and south of latitude 39°35′00″.

(c) *Regulations.*

(1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within the regulated areas unless authorized to do so by the Captain of the Port. Any person or vessel authorized to enter the regulated areas must operate in strict conformance with any directions given by the Captain of the Port and leave the regulated area immediately if the Captain of the Port so orders.

(3) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (410) 576–2521 or 2693.

(4) The Captain of the Port will notify the public of any changes in the status of this zone by a Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Enforcement period.* These regulations are enforced from 6 a.m. to 6 p.m. on June 21, 2000 and June 24, 2000 respectively.

Dated: May 16, 2000.

**C.L. Miller,**

*Captain, U.S. Coast Guard, Captain of the Port of Baltimore.*

[FR Doc. 00–13025 Filed 5–19–00; 12:38 pm]

BILLING CODE 4910–15–U

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[CA 031–0237; FRL–6704–1]**

**Revision to the California State Implementation Plan, South Coast Air Quality Management District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule; correction.

**SUMMARY:** In this direct final action, EPA is removing final limited approval and limited disapproval of revisions to the California State Implementation Plan (SIP) that were published on January 13, 2000 (65 FR 2052).

**DATES:** This rule is effective July 24, 2000, without further notice unless EPA receive adverse comments by June 22, 2000. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

**ADDRESSES:** Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

South Coast AQMD, 21865 E. Copley Dr., Diamond Bar, CA 91765–4182.

**FOR FURTHER INFORMATION CONTACT:** Ed Addison, Rulemaking Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105; Telephone: (415) 744–1160.

**SUPPLEMENTARY INFORMATION:** On August 5, 1988, South Coast Air Quality Management District (SCAQMD) adopted Rule 1109, Emissions of Oxides of Nitrogen from Process Heaters and Boilers in Petroleum Refineries. On March 26, 1990, California Air Resources Board (CARB) submitted Rule 1109 to EPA Region IX. On February 28, 1997 at 62 FR 9138, EPA proposed limited approval and limited disapproval of Rule 1109. On December 7, 1999, CARB sent EPA a request to withdraw the March 26, 1990 submittal because all the affected sources are now regulated instead by SCAQMD Regulation XX (Reclaim). EPA believes this is a reasonable request. Unfortunately, before receiving this request, EPA signed an action finalizing the limited approval and limited disapproval, which was published on January 13, 2000 at 65 FR 2052.

Therefore, the purpose of today's Direct Final action is to correct this error pursuant to section 110(k)(6) of the

Clean Air Act. Today's correction has no bearing on the other three rules that were finalized in our January 13, 2000 action. We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), or require prior consultation with State officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 9, 2000.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

Subpart F of part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

**Subpart F—California**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**§ 52.220 [Amended]**

2. Section 52.220 is amended by removing paragraph (c)(179)(H).

[FR Doc. 00–12785 Filed 5–22–00; 8:45 am]

BILLING CODE 6560–50–P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 180**

**[OPP–300507A FRL–6556–2]**

**RIN 2070–AB78**

## Vinclozolin; Order Denying Objections to Issuance of Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final order.

**SUMMARY:** EPA is denying the objections filed by the Natural Resources Defense Council to a final rule issued July 18, 1997, which announced the issuance of a tolerance for use of vinclozolin on succulent (snap) beans under section 408 of the Federal Food, Drug, and Cosmetic Act. The objections are denied because the tolerances have expired and consequently the objections are now moot.

**DATES:** This denial of the objections is effective on May 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Deanna Scher, Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–7043; fax number: (703) 308–7042; e-mail address: scher.deanna@epa.gov.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does This Action Apply to Me?*

This action is directed to the public in general. However, this action is of particular interest to Earthjustice Legal Defense Fund, the organization that filed objections to the vinclozolin tolerance granted for snap beans in 1997 on behalf of Natural Resources Defense Council, American Federation of Labor and Congress of Industrial Organizations, Environmental Working Group, Pineros y Campesinos Unidos del Noroeste, and Northwest Coalition for Alternatives to Pesticides. This action is also of interest to BASF Corporation, the manufacturer of vinclozolin, as well as users of vinclozolin products. Since various different entities may be interested in this action, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section."

*B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the Federal Register listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300507A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

**II. Background**

*A. What Action Is the Agency Taking?*

On September 15, 1997, the Natural Resources Defense Council ("NRDC") filed a series of objections and hearing requests in regard to EPA's issuance of a tolerance for the pesticide vinclozolin on succulent (snap) beans under section 408 of the Federal Food, Drug, and Cosmetic Act ("FFDCA"), 21 U.S.C. 346a. Because that tolerance expired on October 1, 1999, those objections are now moot and are denied on that ground.

*B. What Is the Agency's Authority for Taking This Action?*

Section 408 of the FFDCA authorizes the establishment by regulation of maximum permissible levels of pesticides in foods. Such regulations are

commonly referred to as "tolerances." Without such a tolerance or an exemption from the requirement of a tolerance, a food containing a pesticide residue is "adulterated" under section 402 of the FFDCA and may not be legally moved in interstate commerce. 21 U.S.C. 331, 342. Monitoring and enforcement of pesticide tolerances are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes dietary exposure through food and drinking water and exposure other than dietary that occurs in non-occupational settings. In making safety determinations, EPA is required to consider, among other things, "available information concerning the cumulative effects of the pesticide chemical residue and other substances that have a common mechanism of toxicity." 21 U.S.C. 346a(b)(2)(D)(v).

Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . ." 21 U.S.C. 346a(b)(2)(C). For pesticides that pose a threshold effect, EPA is directed to apply "an additional tenfold margin of safety . . . to take into account potential pre- and post-natal toxicity and completeness of the data with respect to exposure and toxicity to infants and children." [hereinafter referred to as "the children's safety factor"] Id. This provision additionally specifies that EPA "may use a different margin of safety for the pesticide chemical residue only if, on the basis of reliable data, such margin will be safe for infants and children." Id.

The procedure for establishing tolerance regulations is generally initiated by pesticide manufacturers through the filing with EPA of a petition requesting the establishment of a tolerance. See 21 U.S.C. 346a(d). EPA is required to publish notice of this petition as well as a summary of the petition prepared by the petitioner. Id. 346a(d)(3). After evaluation of the petition, EPA may issue a final tolerance regulation, a proposed tolerance regulation, or an order denying the petition. Id. 346a(d)(4). Once a final tolerance regulation is issued, any person may, within 60 days, file written objections to any aspect of this regulation and may also request a hearing on issues of fact raised by the objections. Id. 346a(g).

EPA regulations specify that if a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32. EPA's regulations specify that if no hearing is requested, or a requested hearing is denied, EPA will publish in the **Federal Register** its determination on each objection submitted. 40 CFR 178.37(a).

## III. Regulatory and Procedural History

Vinclozolin is a fungicide produced by BASF Corporation. Vinclozolin is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.*, for use on various fruits and vegetables and corresponding tolerances have been established under the FFDCA. For many years prior to 1997, vinclozolin was approved for use on succulent beans in several states under an emergency exemption under FIFRA. Prior to 1997, vinclozolin was also registered for use on turf in residential areas as well as parks, school grounds, and recreational areas.

In July 1997, in response to a petition submitted by BASF Corporation, EPA issued a tolerance for vinclozolin on succulent beans (62 FR 38464, July 18, 1997) (FRL–5727–9). That tolerance contained an expiration/revocation date of October 1, 1999. In connection with the establishment of the succulent bean tolerance, BASF requested that EPA terminate BASF's vinclozolin FIFRA registrations on tomatoes, grapes, and plums including plums grown for prunes as well as on residential turf and turf in parks, school grounds, and recreational areas (except for golf courses) and to revoke associated FFDCA tolerances. See 62 FR 43327, August 13, 1997.

On September 15, 1997, NRDC filed two objections to this tolerance and requested a hearing regarding several issues raised by its objections. NRDC's two objections were that EPA failed:

(1) To use the statutorily mandated tenfold safety factor to account for infants' and children's exposures to and toxic risks from vinclozolin; and

(2) To incorporate into its assessment of noncancer risks the available information on cumulative exposures to other similar chemicals. Objections at 16.

NRDC argued that EPA was required to use the tenfold safety factor because, among other reasons, there exist data gaps concerning vinclozolin's neurobehavioral effects. Objections at 23–24.

On January 16, 1998, EPA provided an initial response to NRDC's hearing requests. EPA stated that an initial review of the hearing requests indicated that requests would have to be der ied under EPA's regulations. EPA noted that the issues on which NRDC had sought a hearing "rather than being factual claims accompanied by contentions as required by the regulations, are more in the nature of interrogatories or discovery requests." EPA made clear that "[t]he purpose of an evidentiary hearing is to 'receive factual evidence relevant to material issues of fact raised by the objections,' FFDCA section 408(g)(2)(B), not to determine whether such evidence or issues of fact exist." Nonetheless, because NRDC claimed it had not had access to the full administrative record for the tolerance, EPA made that record available and gave NRDC 60 days to withdraw or revise its hearing requests. In response, NRDC, in a filing dated March 31, 1998, submitted revised hearing requests on its original objections. .

Subsequent to EPA's initial response, several important developments occurred in connection with EPA's FIFRA reregistration efforts as to vinclozolin that impact the vinclozolin succulent bean tolerance. First, EPA scientists recommended that EPA use the additional tenfold safety factor for the protection of children in conducting its assessment of *in utero* acute risk to the human fetus. Second, BASF requested that EPA terminate FIFRA registrations for vinclozolin on stone fruits and strawberries and revoke the associated tolerances. See 63 FR 40710, June 30, 1998. Additionally, during the FIFRA reregistration process EPA had altered its conclusion regarding the dose at which no adverse effects had

occurred in a critical developmental study. On July 31, 1998, EPA requested both NRDC and BASF to comment on whether these developments affected the revised hearing requests. In separate letters dated September 9, 1998, BASF and NRDC took opposite positions on the viability of the hearing requests. NRDC contended that these developments "have virtually no effect on the pending objections and hearing request." BASF argued that the hearing requests were either moot or not justified.

In August 1999, NRDC filed two declarations that NRDC asserted "substantiated the data gaps described in NRDC's submissions." In a letter accompanying these declarations, NRDC stated that the declarations made an evidentiary hearing on its objections unnecessary. Accordingly, by that letter, NRDC withdrew its hearing requests and asked that EPA rule on its objections as submitted.

### IV. Order Responding to Objections

The tolerance for vinclozolin on succulent beans to which NRDC filed objections has now expired. NRDC's objections to that tolerance are thus moot and are therefore denied.

The fact that EPA did not substantively respond to NRDC's objections during the existence of the tolerance does not mean that EPA did not consider these objections. To the contrary, NRDC's objections related directly to changes in the way EPA now assesses the risk vinclozolin poses. For example, the centerpiece of NRDC's objections was a challenge to EPA's decision in approving the tolerance that the additional tenfold factor for the protection of infants and children was unnecessary to assure to safety to infants and children. Following NRDC's objections, that decision has been revised on two occasions since the issuance of the succulent bean tolerance. First, as detailed in EPA's July 31, 1998 letter to NRDC, EPA scientists recommended that EPA use the additional tenfold safety factor for the protection of children in conducting its assessment of *in utero* acute risk to the human fetus. That position remained unsatisfactory to NRDC and its August 1999 declarations, in essence, argued that the tenfold factor should be applied more broadly. After considering the declarations and the attached scientific literature, EPA scientists recommended that due to, among other things, the lack of neurotoxicity data, the additional tenfold factor should be used in all risk assessments for vinclozolin.

### V. Regulatory Assessment Requirements

As indicated previously, this action announces the Agency's final decision regarding an objection filed under section 408 of FFDCA. As such, this action is an adjudication and not a rule. The regulatory assessment requirements imposed on rulemakings do not, therefore, apply to this action.

### VI. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule for purposes of 5 U.S.C. 804(3).

### List of Subjects in 40 CFR Part 180

Environmental protection.

Dated: May 19, 2000.

**Marcia E. Mulkey,**

*Director, Office of Pesticide Programs.*

[FR Doc. 00–12962 Filed 5–22–00; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### 49 CFR Parts 209 and 230

**[FRA Docket No. RSSL–98–1, Notice No. 5]**

### Inspection and Maintenance Standards for Steam Locomotives

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of public meeting.

**SUMMARY:** On November 17, 1999, FRA published the final rule on inspection and maintenance of steam locomotives (65 FR 62828). The Inspection and Maintenance Standards for Steam Locomotives, Title 49, Code of Federal Regulations (CFR), parts 209 and 230, which took effect on January 18, 2000, sets forth new inspection and implementation requirements. FRA is holding a public meeting to explain the implementation schedule and general requirements for inspection and maintenance of steam locomotives under the rule. This meeting will also provide interested parties with the opportunity to discuss the rule and ask questions of the presenters. All parties interested in the new rule on inspection and maintenance of steam locomotives are invited to attend this meeting.

**DATES:** The meeting will be held on July 27, 2000, at 8 a.m.

**ADDRESSES:** The meeting will be held on July 27, 2000, in room 570 of the Bishop Henry Whipple Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4007.

**FOR FURTHER INFORMATION CONTACT:**

George Scerbo, Motive Power & Equipment Specialist, Office of Safety, FRA, 1120 Vermont Avenue NW, Washington, DC 20590 (telephone 202–493–6249); or

Paul F. Byrnes, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue NW, Washington, DC 20590 (202–493–6032).

**Grady C. Cothen,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–12950 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–06–P

# Proposed Rules

Federal Register
Vol. 65, No. 100
Tuesday, May 23, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1910**

**[Docket No. S–777]**

**RIN No. 1218–AB36**

## Ergonomics Program

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Proposed rule; request for comments on economic impact and informal public hearing.

**SUMMARY:** OSHA is using this document to provide information and analysis concerning the economic impacts of the proposed ergonomics rule (64 FR 65768, published November 23,1999) on State and local governments, the United States Postal Service, and railroads, and to seek comment on these economic impacts. This document supplements the Agency's Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis of the economic impact of the Ergonomics Program Rule (Exhibit 28–1 in the OSHA docket), which did not directly address these employers. OSHA is also setting dates for a pre-hearing comment period, a public hearing, and a post-hearing comment period to address the economic impacts exclusively in these three industries.

The broader context for OSHA's actions can be found in the Notice of Proposed Rulemaking, published in the **Federal Register** of November 23, 1999 (64 FR 65768). The procedures in this continuation of the public hearing process will be the same as those used in the previous nine weeks of public hearings on the proposed ergonomics standard (See OSHA's home page at *www.osha.gov* or 65 FR 11948; March 7, 2000).

**DATES:** Notice of intention to appear at the informal public hearing: Notices of intention to appear at the informal public hearing must be postmarked by June 14, 2000. If you submit your notice of intention to appear by facsimile or electronically through OSHA's Internet site, you must transmit the notice by June 14, 2000.

*Pre-hearing comments:* Written comments addressing the economic impacts of the rule in these industries must be postmarked no later than June 22, 2000. If you submit comments by facsimile or electronically through OSHA's Internet site, you must transmit those comments by June 22, 2000.

*Hearing Testimony and documentary evidence:* If you will be requesting more than 10 minutes for your oral presentation at the hearing, you must submit the full testimony, postmarked no later than June 27, 2000, or if you will be submitting documentary evidence at the hearing, you must submit all of that evidence, postmarked no later than June 27, 2000.

*Informal public hearing:* The public hearing will be held in Washington, DC, beginning at 9 am, on July 7, 2000 and is expected to conclude that day.

*Post-hearing comments:* Written post-hearing comments must be postmarked no later than August 10, 2000. If you submit comments by facsimile or electronically through OHSA's Internet site, you must transmit those comments no later than August 10, 2000. The publication of this notice and the related public hearing do not affect the 90-day period established earlier for post-hearing submissions related to the ergonomics program proposed standard [65 FR 11948, March 7, 2000]. That period also ends August 10, 2000.

*Addresses:* Written comments: *Mail:* Submit two copies of written comments to: OSHA Docket Office, Docket No. S–777, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350.

*Facsimile:* If your written comments are 10 pages or less, you may fax them to the Docket Office. The OSHA Docket Office fax number is (202) 693–1648.

*Electronic:* You may also submit comments electronically through OSHA's Homepage at *www.osha.gov*. Please note, you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit them separately in duplicate to the OSHA Docket Office at the address listed above. When submitting such materials to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, and subject, so that we can attach them to your electronic comments.

*Notice of intention to appear: Mail:* Notices of intention to appear at the informal public hearing may be submitted by mail in quadruplicate to: Ms. Veneta Chatmon, OSHA Office of Public Affairs, Docket No. S–777, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–3647, Washington, DC 20210; Telephone: (202) 693–2119.

*Facsimile:* You may fax your notice of intention to appear to Ms. Chatmon at (202) 693–1634.

*Electronic:* You may also submit your notice of intention to appear electronically through OSHA's Homepage at *www.osha.gov*.

*Hearing testimony and documentary evidence:* You must submit in quadruplicate your hearing testimony and any documentary evidence you intend to present at the informal public hearing to Ms. Veneta Chatmon, OSHA Office of Public Affairs, Docket No. S–777, U.S. Department of Labor, Room N–3647, 200 Constitution Ave, NW., Washington, DC 20210. Telephone: (202) 693–2119, You may also submit your hearing testimony and documentary evidence on disk (3½ inch) in WP 5.1, 6.0, 6.1, 8.0 or ASCII, provided you also send the original hardcopy at the same time.

*Informal public hearing:* The one-day public hearing to be held in Washington, D.C. will be located in the Auditorium in the U.S. Department of Labor, Francis Perkins Building, 200 Constitution Avenue, NW, Washington, D.C. 20210.

**FOR FURTHER INFORMATION, CONTACT:** OSHA's Ergonomics Team at (202) 693–2116, or visit the OSHA Homepage at www.osha.gov.

**SUPPLEMENTARY INFORMATION:**

## Supplement for State and Local Governments, Railroads and the U.S. Postal Service to the Summary of the Preliminary Economic Analysis and Initial Regulatory Flexibility Analysis of Proposed Ergonomics Program Standard

### *Introduction*

OSHA has prepared this analysis of the costs, benefits, number of

establishments and employees affected, and potential impacts of OSHA's proposed ergonomics program standard on state and local governments in State-plan states, railroads, and the United States Postal Service. The methodology used to analyze the economic effects of the proposed standard for these sectors is the same as that used for other industries in OSHA's Preliminary Economic Analysis of the Proposed Ergonomics Program Standard (PEA) (Ex. 28–1). Where different sources of data or different assumptions are used for these three sectors, they are noted in a Technical Appendix (Ex. 28–15).

As indicated in the preamble to the ergonomics rule [64 FR 66054], OSHA standards do not apply to state and local governments, except in states that have voluntarily elected to adopt an OSHA State Plan. Because state and local governments in State-plan states can be expected to implement the rule, OSHA has analyzed the costs and impacts, as well as benefits, of the proposal for those state and local governments in State-plan states. Currently, California (a State-plan state) has its own ergonomics standard, and other states are in the process of developing their own. However, for simplicity, this summary analysis ignores the effects of existing and proposed state ergonomics regulations.

OSHA shares jurisdiction for occupational safety and health in the railroad industry with the Federal Railroad Administration. Although a number of railroad employees will not be covered by this standard, OSHA has not located data to identify what proportion of employees will be affected by the standard and has therefore decided to include all railroad workers in this analysis. This results in a substantial overestimate of the impact of the proposal on the railroad industry.

The US Postal Service (USPS) is now entirely under the jurisdiction of OSHA, and would thus be affected in the same ways as other private-sector employers.

*Industrial Profile*

*Employment in These Three Industries:* Based on Bureau of the Census data, there were 8.7 million state and local government employees in State-plan states in 1997. This total excludes those employees working in some governmental entities, notably hospitals, which have already been included in OSHA's PEA (Ex. 28–1) because they were included in the Census Bureau's *County Business Patterns* data used for that analysis (Ex. 28–2, p. vi). For the railroad industry, the Bureau of Labor Statistics reported that a total of 226,500 employees work for the railroads. Based on the USPS annual report, there were 904,636 employees, including non-career employees, in the Postal Service in 1998 [USPS, 1998].

*Number of Musculoskeletal Disorders (MSDs) in These Three Industries:* Using data on OSHA recordable MSDs provided to the record by the AFL–CIO [Ex. 32–339–1], and adjusting these data to accord with the scope of the proposed rule and OSHA's definition of MSDs, OSHA estimates that there were approximately 175,000 MSD cases (both lost workday and non-lost workday) among employees in general industry in state and local governments in State-plan states. OSHA estimates, using the same data and methodology for estimating the number of OSHA recordable MSDs that were used for all other private-sector businesses in the Preliminary Economic Analysis (Ex. 28–1), that there were a total of 1,250 MSDs in the railroad industry, of which 781 were lost workday MSDs. For the USPS, information on OSHA-recordable MSDs was not available; OSHA therefore estimated that the number of MSDs among postal workers was equal to the number of filed workers' compensation claims due to "exertion" (defined as including both overexertion and repetition cases) filed with the Federal Office of Workers' Compensation Programs in fiscal year 1996 (OWCP, 1996). There were 29,407 such cases in that year.

*Number of Establishments in These Three Sectors:* Establishment data are needed because portions of the proposed standard are triggered on an establishment basis. Establishment data are not available for any of these sectors; OSHA therefore used a variety of estimation techniques to calculate this information. OSHA estimated that there are 167,788 state and local government establishments, 4,802 railroad establishments, and 33,613 USPS establishments, including both post offices and classified stations. OSHA welcomes comment both on the number of establishments in these sectors, and on how, for regulatory purposes, establishments should be defined for state and local governments and for railroads. For example, if several state agencies work in a single building, would they be considered one or several establishments? Would the reporting structure applying to these agencies, *e.g.*, whether they report to separate branches of state government, affect this definition?

*Benefits*

OSHA's method for estimating the potential reductions in the number of MSDs the proposed standard would prevent and monetizing the benefits associated with this reduction are described in detail in Chapter IV of the PEA [Ex. 28–1]. The Agency estimates that, during the first ten years after implementation of the proposed standard, the proposal would prevent 476,000 covered MSDs among state and local government employees, nearly 1,900 covered MSDs among railroad employees, and approximately 94,000 covered MSDs among postal workers. The Agency estimates that the proposed standard will capture additional annual benefits of approximately $1 billion as a result of including workers in state and local government in State-plan states, the US Postal Service, and the railroads.

*Costs of Compliance*

Following the methodology presented in the Chapter V of the Preliminary Economic Analysis [Ex. 28–1], OSHA estimated the annual costs of compliance for these three industries. Table 1 presents the proposal's total annual costs and the total cost to employers for these three sectors. In total, these three industries add $418 million per year to the total costs (to society) of the rule, and $588 million per year to the costs of the proposal to employers. (The difference between these two costs is the cost of the proposal's Work Restriction Protection provisions, which is a cost to employers but does not represent a net cost to society.)

TABLE 1.—ANNUALIZED COSTS OF COMPLIANCE OF THE PROPOSAL TO SOCIETY AND TO EMPLOYERS IN THESE THREE INDUSTRIES

[In millions of dollars]

| Industry | Annualized costs to— | |
|---|---|---|
| | Society | Employers |
| State and Local Governments in State-plan States | 351 | 497 |
| Railroads | 8 | 9 |
| United States Postal Service | 59 | 82 |
| Total | 418 | 588 |

*Economic Feasibility Analysis*

As in the Preliminary Economic Analysis [Ex. 28–1], OSHA conducted a screening analysis of the potential impacts of the proposed standard on the before-tax profits and sales of the affected industries. A screening analysis

simply looks at the projected costs of the proposal as a percentage of the pre-tax profits and sales of the affected industries but does not actually predict the magnitude of the impacts of these costs on these before-tax profits or sales. Screening analyses are used to determine whether the compliance costs potentially associated with the proposed standard *could* lead to significant impacts on affected establishments under the two worst case scenarios (full cost passthrough and no cost passthrough). OSHA has used the same methodology in its screening analysis for the three industries of interest here. The actual impact of the proposed standard on the profit and sales of establishments in a given private industry will depend on the price elasticity of demand for the products or services produced by establishments in that industry, as discussed in detail in Chapter VI of the Preliminary Economic Analysis [Ex. 28–1]. For the public (government) sector, the impacts of the proposal's compliance costs would indicate the extent to which the government jurisdiction would have to raise taxes or cut back on government services.

According to the Census Bureau, total revenues to state and local government in the State-plan states in Fiscal Year 1996 were $763.3 billion [Census, 1996]. The annual costs of compliance for the proposed standard would therefore be equal to approximately 0.07 percent of these revenues. Increasing the amount of tax collected by these entities by $7 for every $10,000 of revenue currently collected would permit these entities to fully recover outlay. (For comparison, annual increases to payroll made to stay even with inflation are normally 15 to 20 times these costs.) Changes of this small magnitude will have little or no effect on the ability of state and local governments to deliver services to their constituents.

In the railroad industry, estimated annual revenues are $36.9 billion, and thus the costs of compliance with the standard are estimated to equal 0.03% of revenues under the worst-case scenario for price increases [DOT, 1999]. Robert Morris Associates [Ex. 28–10] estimated the pre-tax profit rate for the railroad industry in 1996 to be 12.2%. The standard's costs are therefore estimated to represent 0.21% of profits in the worst case scenario for profits. Even if the costs of compliance were taken entirely from profits (a highly unlikely scenario), they would only reduce, for example, $1,000,000 in profits to $997,900. Such a change in profits would have no measurable effect on the viability or competitive structure of the railroad industry.

The U.S.P.S. reported revenues in 1996 of $56.6 billion [USPS, 1998]. Therefore, the cost of complying with the proposal in SIC 43 would amount to 0.14% of revenue. Such a change in revenues is too small to significantly impact finances or raise questions of economic feasibility. For comparison, annual increases to payroll made to stay even with inflation are 10 to 15 times the annual costs of complying with the proposal. Such an impact will have no effect on the viability of the U.S. Postal Service.

*Regulatory Flexibility Information*

The Agency also examined the impact of the costs of the proposal on small governmental entities, *i.e.*, those governmental jurisdictions serving fewer than 50,000 people. According to the Census Bureau's employment and payroll survey, there were 17,289 governmental jurisdictions with fewer than 50,000 people in the State-plan states, employing a total of 2,312,873 workers. OSHA estimates that these jurisdictions include approximately 45,357 establishments, although defining these in the public sector is difficult, since no data on this point are available. Employing the assumptions used to analyze the costs of the standard to state and local governments, the estimated annualized cost of the proposal to small governmental entities would be $152 million. According to the Census' survey of government revenues, the revenues in governmental jurisdictions serving fewer than 50,000 people in State-plan states in 1996 were $101 billion. Therefore, the costs of compliance would be equal to 0.15 percent of the revenues of these entities.

The Small Business Administration defines "small" railroads as those employing fewer than 1500 employees in SIC 4013 and fewer than 500 in SIC 4011. For the purposes of this analysis, OSHA is classifying all local and regional railroads in the "small" category. Using the same methodology as that described above, OSHA estimates the costs of compliance for small railroad companies to be $896,233, or 0.03 of the revenues and 0.24 percent of the profits, of these companies.

Because the U.S. Postal Service represents the only large governmental entity serving all U.S. citizens, there are no small entities in SIC 43.

The impacts of the proposed standard on the small entities in the state and local government and railroad industries do not exceed OSHA's criteria for identifying significant impacts on small entities-compliance costs equal to more than 1 percent of revenues or 5 percent of profits.

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**Request for Comment**

OSHA requests any additional, relevant data and information and comment on all aspects of this analysis, and on the data sources and methodology used for this analysis, as outlined in the Technical Appendix, Exhibit 28–15.

**Authority:** This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 1911.

Signed at Washington, DC, this 18th day of May, 2000.

**Charles N. Jeffress,**

*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 00–12983 Filed 5–19–00; 10:21 am]

BILLING CODE 4510–26–U

**LIBRARY OF CONGRESS**

**Copyright Office**

**37 CFR Part 201**

**[Docket No. RM 2000–4]**

## Public Performance of Sound Recordings: Definition of a Service

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Copyright Office is requesting comments on whether to grant a petition for rulemaking filed with the Copyright Office by the Digital Media Association. The petition requests an amendment to the rule that defines the term "Service" for purposes of the statutory license governing the public performance of sound recordings by means of digital audio transmissions. The requested amendment would expand the current definition of the term "Service" to state that a service is not interactive simply because it offers the consumer some degree of influence over the programming offered by the webcaster.

**DATES:** Written comments are due June 22, 2000. Reply comments are due July 7, 2000.

**ADDRESSES:** If sent by mail, an original and ten copies of comments and reply comments should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, they should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue SE., Washington, DC 20559–6000.

**FOR FURTHER INFORMATION CONTACT:** David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024; Telephone: (202) 707–8380. Telefax: (202) 252–3423.

**SUPPLEMENTARY INFORMATION:**

### Background

In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act of 1995 ("DPRA"), Public Law 104–39, which created an exclusive right for copyright owners of sound recordings, subject to certain limitations, "to perform the copyrighted work publicly by means of a digital audio transmission." 17 U.S.C. 106(6). Among the limitations on the performance was the creation of a licensing scheme for interactive digital audio services and a compulsory license for nonexempt, noninteractive, digital subscription transmissions, 17 U.S.C. 114(d)(2), (3) and (f) (1995). In addition, Congress exempted certain transmissions and retransmissions from the newly created performance right, 17 U.S.C. 114(d)(1) (1995).

In enacting the DPRA, Congress had two purposes: (1) To ensure that recording artists and record companies will be protected as new technologies affect the way in which their creative works are used; and (2) to create fair and efficient licensing mechanisms that address the complex issues facing copyright owners and copyright users as a result of the rapid growth of digital audio services. H.R. Rep. No. 105–796, at 79–80 (1998). It soon became apparent, however, that with the rapid proliferation of the use of the Internet as a transmission medium and the confusion surrounding the question of how the DPRA applied to some nonsubscription digital audio services, further legislation was needed to achieve these goals.

These changes were part of the Digital Millennium Copyright Act of 1998 ("DMCA"), Public Law 105–304, which, among other things, amended sections 112 and 114 of the Copyright Act to clarify that "the digital sound recording performance right applies to nonsubscription digital audio services such as webcasting" and to address the licensing issues raised by the webcasters. Staff of the House of Representatives Comm. on the Judiciary, 105th Cong., 2d Sess., Section-by-Section Analysis of H.R. 2281 as Passed by the United States House of Representatives on August 4, 1998 at 50 (Comm. Print, Serial No. 6, 1998). Specifically, Congress amended section 114 by creating a new statutory license for nonexempt eligible nonsubscription transmissions (e.g., webcasting) and nonexempt transmissions by preexisting satellite digital audio radio services.

17 U.S.C. 114(f) (1998).

For purposes of the DMCA, an "eligible nonsubscription transmission" is defined as:

> a non-interactive nonsubscription digital audio transmission not exempt under subsection (d)(1) that is made as part of a service that provides audio programming consisting, in whole or in part, of performances of sound recordings, including retransmissions of broadcast transmissions, if the primary purpose of the service is to provide to the public such audio or other entertainment programming, and the primary purpose of the service is not to sell, advertise, or promote particular products or services other than sound recordings, live concerts, or other music-related events.

17 U.S.C. 114(j)(6) (1998).

A key element of the definition is the requirement that the transmission must be "non-interactive." Unless a service meets this criterion, it is ineligible for the statutory license and, therefore, must negotiate a voluntary agreement with the copyright owner(s) of the sound recordings before performing the works by means of digital audio transmissions.

17 U.S.C. 114(d)(3) (1998).

This distinction between interactive and non-interactive has always been critical to determining the rights of a copyright user under section 114, since Congress believed "interactive services [were] most likely to have a significant impact on traditional record sales, and therefore pose[d] the greatest threat to the livelihoods of those whose income depends upon revenues derived from traditional record sales." S. Rep. No. 104–128, at 16 (1995). For this reason, interactive services are excluded from the limitations placed upon the new performance right and, consequently, must conduct arms-length negotiations with the copyright owners of the sound recordings before making a digital transmission of the works.

Congress first defined an "interactive service" in the DPRA as a service that:

> enables a member of the public to receive, on request, a transmission of a particular sound recording chosen by or on behalf of the recipient. The ability of individuals to request that particular sound recordings be performed for reception by the public at large does not make a service interactive. If an entity offers both interactive and non-interactive services (either concurrently or at different times), the non-interactive component shall not be treated as part of an interactive service.

17 U.S.C. 114(j)(4) (1995).

The second sentence was added to make clear that "the term 'interactive service' is not intended to cover traditional practices engaged in by, for example, radio broadcast stations, through which individuals can ask the station to play a particular sound recording as part of the service's general programming available for reception by members of the public at large." S. Rep. No. 104–128, at 33–34 (1995).

In the DMCA, Congress expanded this definition to include further explanation of the type of activity that does not, in and of itself, make a service interactive. Specifically, the DMCA refined the definition of an "interactive service" as follows:

> (7) An "interactive service" is one that enables a member of the public to receive a transmission of a program specially created for the recipient, or on

request, a transmission of a particular sound recording, whether or not as part of a program, which is selected by or on behalf of the recipient. The ability of individuals to request that particular sound recordings be performed for reception by the public at large, or in the case of a subscription service, by all subscribers of the service, does not make a service interactive, if the programming on each channel of the service does not substantially consist of sound recordings that are performed within 1 hour of the request or at a time designated by either the transmitting entity or the individual making such request. If an entity offers both interactive and noninteractive services (either concurrently or at different times), the noninteractive component shall not be treated as part of an interactive service.

17 U.S.C. 114(j)(7) (1998).

In both cases, Congress sought to identify a service as interactive according to the amount of influence a member of the public would have on the selection and performance of a particular sound recording. Neither definition, however, draws a bright line delineating just how much input a member of the public may have upon the basic programming of the service. Consequently, the Digital Media Association ("DiMA") seeks clarification on this point and a regulation that would prohibit designating a service as interactive merely because it offers a consumer some degree of influence over the streamed programming.

**DiMA Petition**

On April 17, 2000, DiMA [1] filed a petition for a rulemaking with the Copyright Office asking that the Office adopt a rule stating that a webcasting service does not become an interactive service merely because a consumer exerts some degree of influence over the streamed programming. DiMA seeks modification of the current regulation that defines a "Service" in order to better distinguish between activities that make a webcasting service non-interactive from those activities that make a service interactive. 37 CFR 201.35(b)(2). The amendment would add specific language to clarify that services which otherwise meet the requirements for the compulsory license set forth in section 114(f) do not become ineligible for the section 114 statutory license merely because they offer the consumer some degree of influence over the streamed programming. DiMA then proposes additional language which, in its view, would clarify that such a webcasting service is not an "interactive service" under section 114(j)(7) of the Copyright Act, provided that the service meet three criteria.

The text of the proposed amendment, to be added at the end of the current regulatory text, would read as follows:

> A Service making transmissions that otherwise meet the requirements for the section 114(f) statutory license is not rendered "interactive," and thus ineligible for the statutory license, simply because the consumer may express preferences to such Service as to the musical genres, artists and sound recordings that may be incorporated into the Service's music programming to the public. Such a Service is not "interactive" under section 114(j)(7), as long as: (i) its transmissions are made available to the public generally; (ii) the features offered by the Service do not enable the consumer to determine or learn in advance what sound recordings will be transmitted over the Service at any particular time; and (iii) its transmissions do not substantially consist of sound recordings performed within one hour of a request or at a time designated by the transmitting entity or the individual making the request.

**DiMA Petition at 14, Attachment A—Proposed Rule.**

In support of its petition, DiMA argues that the consumer input is merely a guide to program selections and that "the actual transmissions of sound recordings over these consumer-influenced stations is generated by a computer according to programs and playlists created by the service, * * * such [that] listeners (including the 'creator(s)' of consumer-influenced stations) never have the ability to determine or know in advance whether any particular song or album will be performed or even when, over an extended period, any particular artist's works will appear." Petition at 12. In summary, DiMA argues that consumer-influenced stations comply with the spirit and intent of the law because the contribution of the consumer does not increase the risk that the consumer will make copies of the transmissions and displace the sale of a sound recording in the marketplace.

DiMA asserts that this issue must be resolved prior to the convening of the Copyright Arbitration Royalty Panel ("CARP") which will determine the rates for the section 114 statutory license "in order to define the appropriate bounds of the statutory license proceedings—which will be before this CARP." Petition at 2. DiMA requests this rulemaking for the purpose of defining the scope of the pending arbitration proceeding that will set rates and terms for the section 114 statutory license with respect to the known "consumer-influenced webcasting technologies presently developed or employed by DiMA members." Petition at 6 n.3.

**Comments**

Under section 702 of the Copyright Act, title 17 of the United States Code, the Register of Copyrights can "establish regulations not inconsistent with law for the administration of the functions and duties made the responsibility of the Register under this title." The question is whether a rulemaking proceeding is the appropriate forum for determining whether certain activities make a service "interactive." While this may, at first glance, appear to be an endeavor similar to the subject of the pending rulemaking regarding definition of a "service," [2] that proceeding presents a situation involving a clearly defined class of services ("any entity that transmits an AM/FM broadcast signal over a digital communications network such as the Internet"). **See** 65 FR 14227 (March 16, 2000). In contrast, it is debatable whether the DiMA petition has presented a clearly defined class of services. Moreover, assuming that this is an appropriate topic for a rulemaking proceeding, it is not clear whether there is sufficient information at this time to promulgate a regulation that could accurately distinguish between activities that are interactive and those that are not. The Office is concerned that it may be being asked to define a moving target.

Interested parties are invited to comment on: (1) Whether the Office should conduct the rulemaking on the subject addressed in the DiMA petition, and (2), if so, what issues should the Office address and what should the Office's conclusion be?

All interested parties are requested to file comments and replies with the Copyright Office in accordance with the information set forth in this document. The Copyright Office has posted the DiMA petition to its website (http://

[1] DiMA is a trade association that represents approximately 40 companies that engage in various forms of Internet multimedia activities, including activities that permit consumers to influence the programming streamed to the public over the Internet.

[2] On March 16, 2000, in response to a petition from the Recording Industry Association of America, the Office published a notice of proposed rulemaking seeking comment on whether to amend its regulation that defines a "Service" for purposes of the statutory license governing the public performance of sound recordings by means of digital audio transmissions, in order to clarify that transmissions of a broadcast signal over a digital communications network, such as the Internet, are not exempt from copyright liability under section 114(d)(1)(A) of the Copyright Act. 65 FR 14227 (March 16, 2000).

www.loc.gov/copyright/carp/DiMApetition.pdf) in order to facilitate the dissemination of the information presented in the petition.

Dated: May 18, 2000.

**Marilyn Kretsinger,**

*Assistant General Counsel.*

[FR Doc. 00–12970 Filed 5–22–00; 8:45 am]

BILLING CODE 1410–31–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 51

**[AD–FRL–6703–6]**

**RIN 2060–AH25**

### Consolidated Emissions Reporting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing this rule to improve and simplify emissions reporting. Many State and local agencies asked EPA to take this action to: consolidate reporting requirements; improve reporting efficiency; provide flexibility for data gathering and reporting; better explain to program managers and the public the need for a consistent inventory program. Consolidated reporting should increase the efficiency of the emission inventory program and provide more consistent and uniform data. EPA is seeking comment on the addition of reporting requirements for hazardous air pollutants (HAPs), and is proposing to add reporting requirements for particulate matter less than or equal to 2.5 micrometers ($PM^{2.5}$) and its precursors, and is proposing to reduce the reporting requirements for other criteria pollutants.

**DATES:** Submit comments on or before July 7, 2000.

**ADDRESSES:** Send comments (in duplicate, if possible) to: Air and Radiation Docket (6102), US Environmental Protection Agency, Attn: Docket No. A9840, 401 M Street, SW., Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** William B. Kuykendal, Emissions, Monitoring, and Analysis Division (MD–14), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711, Telephone: (919) 541–5372, email: kuykendal.bill@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### I. Authority

Sections 110(a)(2)(F), 110(a)(2)(K), 110(a)(2)(J),112, 182(a)(3)(B), 172(c)(3), 182(a)(3)(A), 187(a)(5), 301(a)

### II. Background

Emission inventories are critical for the efforts of State, local, and federal agencies to attain and maintain the National Ambient Air Quality Standards (NAAQS) that EPA has established for criteria pollutants such as ozone, particulate matter, and carbon monoxide. Pursuant to its authority under section 110 of Title I of the Clean Air Act, EPA has long required State Implementation Plans (SIPs) to provide for the submission by States to EPA of emission inventories containing information regarding the emissions of criteria pollutants and their precursors (*e.g.*, volatile organic compounds (VOC)). EPA codified these requirements in 40 CFR part 51, subpart Q in 1979 and amended them in 1987.

The 1990 Amendments to the Clean Air Act (Act) revised many of the provisions of the Clean Air Act related to the attainment of the NAAQS and the protection of visibility in mandatory class I Federal areas (certain national parks and wilderness areas). These revisions establish new periodic emission inventory requirements applicable to certain areas that were designated nonattainment for certain pollutants. For example, section 182(a)(3)(A) required States to submit an emission inventory every three years (3-Year cycle) for ozone nonattainment areas beginning in 1993. Emissions reported must include VOC, nitrogen oxides ($NO_x$), and carbon monoxide (CO) for point, area, mobile (onroad and nonroad), and biogenic sources. Similarly, section 187(a)(5) requires States to submit an inventory every three years for CO nonattainment areas for the same source classes, except biogenic sources. EPA, however, did not codify these statutory requirements in the Code of Federal Regulations (CFR), but simply relied on the statutory language to implement them.

EPA has promulgated the $NO_x$ SIP Call (§ 51.122) which calls on the effected States and the District of Columbia to submit SIP revisions providing for $NO_X$ reductions in order to reduce the amount of ozone and ozone precursors transported between states. As part of that rule, EPA established reporting requirements to be included in the SIP revisions to be submitted by States in accordance with that action. [1]

This proposal consolidates the various reporting requirements that already exist into one place in the CFR, establishes new ones for $PM^{2.5}$ and regional haze, establishes new requirements for the statewide reporting of area source and mobile source emissions, includes the reporting requirements for the $NO_X$ SIP call and asks for comments on new reporting for air toxics.

In this action, we refer to these types of inventories as the following:

- Point source inventories
- 3-Year cycle inventories
- $NO_X$ SIP call inventories

States use data obtained through current annual reporting requirements (point source inventories) to record emissions from large sources and to track progress in reducing emissions from them. States get 3-Year cycle data from stationary sources with lower yearly emission levels and use them with the point source inventories to update their emission inventory every three years. States included in the $NO_X$ SIP call will collect emissions data from the sources that are subject to control as a means of compliance. The Rule also takes advantage of data from Emission Statements available to States but not reported to EPA. As appropriate, States may use this data to meet their reporting requirements for point source data. Combining data from these activities gets the most information from sources with the least burden on the industry and less effort by State and local government agencies. By treating this information as a comprehensive emission inventory, States and local agencies may do the following:

- Measure their progress in reducing emissions.
- Have a tool they can use to support future trading programs.
- Set a baseline from which to do future planning.
- Answer the public's request for information.

[1] EPA recognizes that in its recent decision, the United States Court of Appeals remanded certain issues regarding the $NO_x$ SIP call to the Agency. See State of Michigan v. United States Environmental Protection Agency, No. 98–1497, United States Court of Appeals for the District of Columbia Circuit, slip op. issued March 3, 2000. Those issues, however, do not include the reporting requirements and the proposed consolidation of those requirements does not represent any prejudgment of the issues on remand to the Agency. EPA also recognizes that at this time the SIP call submission deadline has been stayed by the court and that the reporting requirements connected with the SIP call would not go into effect until the issues regarding the timing of SIP submissions are resolved.

We intend these inventories to help nonattainment areas develop and meet SIP requirements to reach the NAAQS.

States will need to inventory direct emissions of $PM_{2.5}$ and its precursors beginning in 2000 for the inventory year 1999. Since $PM_{2.5}$ is a NAAQS pollutant, we feel it is appropriate to begin collecting this emissions data.[2] States will also have to estimate direct emissions of primary particulate matter and $PM_{2.5}$ precursor emissions of condensible organics and ammonia. These $PM_{2.5}$ related data elements are needed as input to emission models. The Administrator has determined that States should submit statewide point source and 3-Year cycle inventories for $PM_{10}$, $PM_{2.5}$, and regional haze, consistent with the data requirements for $O_3$ and CO. Sections 110(a)(2)(F) and 172(c)3 provide ample statutory authority for this proposal as it relates to criteria pollutants. Section 110(a)(2)(F) provides that SIPs are to require "as may be prescribed by the Administrator * * * (ii)periodic reports on the nature and amounts of emissions and emissions-related data from such sources." Section 172(c)(2)(3) provides that SIPs for nonattainment areas are to "include a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of this part are met." Additional statutory authority for emissions inventories from 1-hour ozone nonattainment areas is provided by section 182(a)(3)(A) and for emissions inventories from CO nonattainment areas is provided by section 187(a)(5). Section 301(a) provides authority for EPA to promulgate regulations embodying these provisions.

*What Is the Purpose of the Consolidated Emissions Reporting Rule (CERR)?*

The purpose of this rule is fourfold:

- Simplify emissions reporting,
- Offer options for data exchange
- Unify reporting dates for various categories of inventories, and
- Include reporting fine particulate matter and its precursors.

Previous requirements may have, at times, led to inefficient reporting. This rule provides options for reporting that allow States to match their ongoing activities with federal requirements and provides two options for transmitting data to EPA. This action also consolidates existing and new requirements of emission inventory programs for point sources and 3-Year cycles.

*Who Will Have To Comply With the CERR Requirements?*

This rule will apply to State and local air pollution control agencies. In the rule, we have adopted "plain English language". When "you" is used we mean the State or local agency. When "we" is used, EPA is meant.

*How Are the CERR's Requirements Different From Existing Requirements?*

(a) Additional Pollutants

Your State's inventory will add $PM_{2.5}$, and $PM_{2.5}$ precursors to the criteria pollutants.

(b) Geographic Coverage of Inventory

Your State now reports point source emissions statewide and emissions from area and mobile sources by nonattainment area. Your State's new inventory will be statewide by county for all source types, regardless of the attainment status.

(c) Frequency of Reporting

Your State will continue to report emissions from very large point sources (See Table 1) annually. Your State has a choice to report smaller point sources every three years or one-third of the sources each year. Your State will continue to report emissions from nonattainment areas for area and mobile sources every three years. Attainment areas will be required, for the first time, to report area and mobile source emissions.

*How Will EPA Use the Data Collected Under This Reporting Requirement?*

EPA uses emission inventories to form realistic public policy by the following:

- Modeling analyses,
- Projecting future control strategies,
- Tracking progress to meet requirements of the Clean Air Act,
- Calculating risk, and
- Responding to public inquiries.

*Why Does EPA Want my State's Data?*

Most of the information EPA needs is readily available from States because of the States' efforts to follow the Clean Air Act and its amendments. Using data States have already estimated or collected is a cheaper, more efficient way for us to get information to analyze. EPA can pull your data into a central repository of emissions data and extract what we need to fulfill our mandates.

*How Will Others Use my Data Collected Under This Requirement?*

Recent events have shown that some States need emissions data for areas outside their borders. Programs such as the Ozone Transport Assessment Group, the Ozone Transport Commission $NO_X$ Baseline study, and the Grand Canyon Visibility Transport Commission demonstrated this need. As we recognize pollution as a regional problem, agencies will need multistate inventories more often to do such things as regional modeling.

We can meet our common needs by creating a central repository of data from State and local agencies, or a group of regional emissions databases. Such repositories offer the advantage of ready access and availability, common procedures for ensuring the quality of data, and an ability to meet the general needs of many potential users.

*What Happens if EPA Doesn't Get my Agency's Emissions Data?*

If we don't receive your emissions information at the time this rule specifies, we'll use whatever we have to produce emissions data for your agency's geographical area. Congress often mandates our analyses, so we depend on you to provide the data to complete them. If we don't get your data, we must find other ways to compile similar information.

We can estimate your agency's inventory by any of the following:

- National allocation (top down) methods,
- Projecting from previous data, or
- Using our best judgment.

For area and mobile sources, our methods usually represent your emissions reasonably well. For point sources, our estimates are less accurate. We have to estimate activity and plant parameters based on general knowledge rather than using your specific information.

The Act provides for other actions against a State if we do not receive your data. For example, if a State does not provide emissions data for NAAQS pollutants in nonattainment areas, EPA may take actions such as making findings of failure to submit, that are authorized in instances where a State fails to fulfill SIP obligations.

[2] In *American Trucking Assn.* v. *EPA*, No. 97–1440 ("ATA"), the court found that the record "amply justified" the need for fine particle standards, but remanded for further consideration of the levels of those standards. As EPA explained to the ATA Court in supplemental briefing on the remedy, the States should proceed with preparation of $PM_{2.5}$ emissions inventories because they will be necessary regardless of the levels of the fine particle standards. Accordingly, it is appropriate to proceed with this proposal regarding the collection of emission inventories.

*What Additional Reporting Requirements Is EPA Considering?*

We are seeking comment on the advisability of requiring new reporting of hazardous air pollutants (HAP) emissions.

In addition to the emission inventory provisions related to NAAQS pollutants, EPA is also considering requiring emission inventory reporting of HAPs. The requirements for HAP reporting would be imposed under authority of section 301(a) which authorizes the Administrator to prescribe such regulations as are necessary to carry out her functions under the Act. Several provisions in the CAA address HAPs and, by the nature of their requirements, imply the need for a HAP emissions inventory. Some examples follow.

Title V of the Act requires the Administrator to perform an oversight role with respect to State issued permits, including permits issued to major sources of HAP emissions. In order to determine whether that program is being appropriately and lawfully administrated by the States with respect to major HAP sources, a HAP emission inventory is necessary. You are developing programs to regulate HAPs and your Title V programs must include permits for all HAP sources emitting major quantities of HAPs (10 tons of one HAP or 25 tons of multiple HAPs per year). Thus, the Administrator believes including HAPs in the point source inventory is appropriate and necessary.

Section 112(n)(1)(A) requires us to report to Congress on the hazards to public health reasonably anticipated to occur as a result of emissions from electric utility steam generating units. Section 112(n)(1)(B) requires us to provide a report to Congress that considers the rate and mass of HAP emissions and the health and environmental effects of these emissions. Section 112(c)(6) requires a list of categories and subcategories of HAP sources subject to standards that account for not less than 90% of the aggregate emission of each pollutant. Although these new requirements do not include specific provisions requiring the compilation of HAP emissions inventories, they do introduce the need for such inventories in order to carry out the mandated statutes.

Section 112(k)(3) of the Act mandates that we develop a strategy to control emissions of HAPs from area sources in urban areas, and that the strategy achieve a reduction in the incidence of cancer attributable to exposure to HAPs emitted by stationary sources of not less than 75%, considering control of emissions from all stationary sources, as well as a substantial reduction in public health risks posed by HAPs from area sources. These mandated risk reductions are to be achieved by taking into account all emission control measures implemented by the Administrator or by the States under this or any other laws. A reliable HAP emission inventory covering all stationary sources of HAPs, including point and area sources, will be important in developing the mandated strategy and demonstrating that the strategy achieves the mandated risk reductions. It would be virtually impossible for us to identify and estimate HAP-specific emission reductions from all the federal and State rules that might result in HAP emission reductions. Therefore, we believe development of the strategy and assessment of progress in achieving the strategic goals requires that we develop and periodically update a HAP emission inventory. As presented in a recent **Federal Register** notice on the National Air Toxics Program: The Integrated Urban Strategy (64 FR 38706), we have designed an assessment approach that depends upon a reliable and periodically updated HAP emission inventory as a critical element in the assessments that support the development and evaluation of our urban strategy.

In addition to the Act requirements, the Government Performance and Results Act (GPRA) provides new emphasis on the need for HAP emission inventories, assessment of emissions reductions, and resulting reductions in risk. The GPRA, enacted in 1993, requires federal agencies to establish standards measuring their performance and effectiveness. It is the primary legislative mandate that requires agencies to set strategic goals, measure performance, and report on the degree to which goals are met.

For the EPA's air toxics program, the initial goal, by 2010, is to reduce air toxic emissions by 75% from 1993 levels to significantly reduce the risk to Americans of cancer and other serious adverse health effects caused by airborne toxics.

The EPA is working to further refine this goal so that in the future the air toxics program will protect human health and the environment by reducing the risks from air toxic emissions, particularly focusing on populations and areas disproportionately impacted which include, for example, urban areas, children at risk, and populations whose water and food are affected by persistent, bioaccumulating toxics.

Assessing progress in reducing cumulative risk from HAPs will require EPA to move away from a focus on assessing reductions from tons per year emitted, toward a focus on estimating reductions in cancer and non-cancer risks associated with lower emissions. In general, the choice of appropriate risk characterization approaches will be influenced by both the availability of data to support exposure assessments, and the level of detail and resolution needed to support the purpose of the assessment. EPA has identified four basic approaches for various assessments to evaluate progress with the air toxics program in reducing estimated risk. While each of the approaches relies on different types of data to represent exposures, all of these approaches rely on emission inventory information. The four basic approaches are: (1) toxicity weighting of emissions or ambient concentrations; (2) comparison between ambient concentration and risk-based concentrations (RBCs); (3) comparison between estimated exposure and RBCs that may yield quantitative estimates of risk; and (4) quantitative estimates of carcinogenic risk for individuals and populations. Approaches 1 and 2 are considered hazard-based approaches, in that they lack exposure or dispersion modeling, while approaches 3 and 4 are considered risk-based approaches in that they do incorporate exposure assessments and thereby can provide quantitative risk estimates. Approaches 3 and 4 require a detailed emission inventory that includes facility-specific detail (e.g., geographic location, stack heights).

You would be required to report HAP emissions for plants emitting at least 10 tons per year of one HAP or 25 tons per year of two or more HAPs. You would be required to report the same data elements now being submitted for criteria pollutants. You would provide these new data as part of the 3-year cycle inventory.

## III. Administrative Requirements

*A. Executive Order 12866*

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether the regulatory action is "not significant" and therefore not subject to review by the Office of Management and Budget (OMB) and to the Executive Order's requirements. We've determined this action is "significant" and therefore does require OMB review, based on the Order's definition of a "significant" regulatory action as one that is likely to result in a rule that may do any of the following:

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1. Have an annual effect on the economy of $100 million or more or materially harm the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State and local governments or communities. The ICR (EPA ICR No. 0916.09) analysis shows that the costs to implement the Rule are less than $100 million. The analysis from the ICR shows total costs including proposed new requirements and start up are about $2 million.

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency. The rule will increase data consistency, thus assisting other Agencies.

3. Materially alter the budgetary effect of entitlements, grants, user fees, or loan programs or the rights and obligations of those who receive them. Grant funds have been identified to support these activities.

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in the Executive Order. This rule will establish requirements for collecting and reporting new data to EPA and for this reason is deemed to be "significant".

*B. Paperwork Reduction Act*

The new information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Earlier the Office of Management and Budget approved the current information collection requirements in part 51 under the Paperwork Reduction Act and has assigned OMB control number 2060–0088 (EPA ICR No. 916.07). The Information Collection Request (ICR) document for the new information collection requirements has been prepared by EPA (ICR No. 0916.09) and a copy may be obtained from Sandy Farmer by mail at Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded from the internet at http://www.epa.gov/icr.

Today's action revises part 51 to consolidate old reporting requirements, adds new requirements for $PM_{2.5}$ and its precursors, adds new Statewide reporting requirements for area and mobile sources and asks for comments on newly recognized reporting needs for HAPs. Data from proposed new reporting will be used to:

- Support modeling analyses,
- Project future control strategies,
- Track progress to meet requirements of the Clean Air Act,
- Calculate risk, and
- Respond to public inquiries.

If finalized, this proposed rule would contain mandatory information reporting requirements (see 40 CFR 51.001); EPA considers all information reported under this proposed rule to be in the public domain and therefore cannot be treated as confidential.

The information in the following table was summarized from ICR 0916.09 and presents the reporting burden estimates.

BURDEN ESTIMATE SUMMARY

| Reporting requirement | Number of respondents | Hours per respondent | Total hours per year | Total labor costs per year | Total annual capital costs | Total annual O&M costs |
|---|---|---|---|---|---|---|
| **STATE RESPONDENTS** | | | | | | |
| Current | 55 | 121 | 6,636 | $205,420 | $23,100 | $6,600 |
| Statewide Area and Mobile Source Reporting | * | 717 | 20,971 | 553,897 | | |
| $PM_{2.5}$ Reporting | 55 | 42 | 2,310 | 61,006 | | |
| HAP Reporting | * | 700 | 14,350 | 378,976 | | |
| Subtotal for States | | 1,580 | 44,267 | 1,199,299 | | |
| **INDUSTRY RESPONDENTS** | | | | | | |
| HAP Reporting | 7,500 | 3 | 22,500 | 844,000 | | |
| Total | 7,555 | | 66,767 | 2,043,299 | 23,100 | 6,600 |

*Varies.

The results in the table are broken down into State respondents and industry respondents. Within these groups, the reporting burden is further broken down into "current requirements","Statewide area and mobile source reporting requirements", "$PM_{2.5}$ reporting requirements", and "HAP reporting requirements." This has been done to highlight the major areas changed by the CERR and to show the impact of these changes on the estimated burden.

To simplify the discussion, only the total hours per year will be discussed, however, the other burden components are related and the discussion would be similar. The burden hours estimated for all of the emission inventory reporting requirements in place prior to this proposed rule are labeled "current" and total 6,636 hours per year. Because of the streamlining and flexibility offered by the CERR, these "current" requirements are reduced from the original burden estimate of 11,448 hours per year; a savings of 4,812 hours per year. The new reporting requirements for Statewide area and mobile source reporting adds 20,971 hours per year and the $PM_{2.5}$ reporting requirements adds 2,310 hours per year. All of these burden changes are attributable to the State agency respondents.

Because the Environmental Protection Agency is requesting comment on the advisability of requiring HAP reporting, these costs are shown separately in the table. Note that there is a burden increment for both State and industry respondents. For the States, the new HAP reporting burden would add 14,350 hours per year. For industry, 22,500 hours per year would be added.

The total burden impact of the CERR, including the HAP reporting requirements, is estimated to be 66,767 hours per year for State and industry respondents. For the States alone, this total is 44,267 hours per year. It should be noted that, of this State total of 44,267 hours per year, approximately 20,000 hours per year are associated with start-up costs that will no longer be

incurred after the first three years. Thus, after three years, the estimated burden becomes about 24,000 hours per year for the States and about 47,000 hours per year for the States and industry.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 23, 2000 a comment to OMB is best assured of having its full effect if OMB receives it by June 22, 2000. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

*C. Impact on Small Entities*

Under the Regulatory Flexibility Act we don't need to analyze this proposed regulation's flexibility because it doesn't affect small entities whose jurisdictions cover fewer than 50,000 people. Under 5 U.S.C. 605(b), I certify that this action won't significantly affect the economic well-being of a substantial number of small entities.

*D. Executive Order 13045: Children's Health Protection*

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

*E. The National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule making does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

*F. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The additional work required by this rule takes advantage of information already in the possession of reporting groups. Using existing data leverages past work and reduces the burden of this rule. This conclusion is supported by the analysis done in support of EPA ICR No. 0916.09, OMB control number 2060–0088, which shows that total costs will be about $2 million. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

*G. Executive Order 13132: Federalism*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in

the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

EPA has concluded that this proposed rule will have federalism implications. This is based on the new requirements proposed by this rule that States will now have to report their emissions Statewide and will have to report $PM_{2.5}$ and $PM_{2.5}$ precursor emissions. Moreover, it also may impose substantial direct compliance costs on State or local governments, and the Federal government will not provide the funds necessary to pay those costs. Accordingly, EPA provides the following FSIS as required by section 6(b) of Executive Order 13132.

Federalism Summary Impact Statement (FSIS)

EPA convened a Work Group that included representatives from three States (CA, NJ, TX) in addition to EPA representatives. This Work Group met via conference calls over a period of about a year and a half beginning in early 1997. In addition, EPA maintained an active dialog with a larger number of States through the State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO). The STAPPA/ALAPCO coordination involved two forums: 1. The Standing Air Emissions Work Group (SAEWG) and 2. The STAPPA/ALAPCO Emissions and Modeling committee. The coordination with the States through the STAPPA/ALAPCO process will continue throughout this rule making process. There is considerable support for this rule by the States. The States like having all of the emission inventory reporting requirements updated and in one consolidated rule. However, two principal concerns were raised by the States: 1. Does EPA have authority to collect HAP data?, and 2. Will the rule limit the States' ability to collect emission inventory data beyond the requirements of the rule? EPA has addressed both of these concerns. The first concern has been addressed by removing the HAP reporting requirements from the rule. Instead, these requirements are discussed in the preamble and EPA is requesting comments. The second concern was addressed by the nature of the rule. The rule only specifies information that should be reported to EPA. It does not limit the States from collecting whatever data they deem necessary for their emission inventory programs.

EPA consulted with State and local officials early in the process of developing the proposed regulation to permit them to have meaningful and timely input into its development. For the reasons discussed under the FSIS, EPA believes that it has complied with the requirements of Executive Order 13132.

*H. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments*

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

**List of Subjects in 40 CFR Part 51**

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: May 12, 2000.

**Carol M. Browner,**

*Administrator.*

For the reasons stated in the preamble, title 40, chapter I, of the Code of Federal Regulations is proposed to be amended as follows:

## PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

**Authority:** 42 U.S.C. 7410, 7414, 7421, 7470–7479, 7491, 7492, 7601, and 7602.

2. Part 51 is amended by adding subpart A to read as follows:

### Subpart A—Emission Inventory Reporting Requirements

Sec.

51.1 For what sources must States do emissions reporting?

**General Information for Inventory Preparers**

51.5 Who is responsible for actions described in this subpart?
51.10 What tools are available to help prepare and report emissions data?
51.15 How does my State reduce the effort for reporting?

**Specific Reporting Requirements**

51.20 What data does my State need to report to EPA?
51.25 What are the emission thresholds that separate point and area sources?
51.30 What geographic area must my State's inventory cover?

51.35 When does my State report the data to EPA?
51.40 In what form should my State report the data to EPA?
51.45 Where should my State report the data?
Appendix A to Subpart A of Part 51—Tables and Glossary
Appendix B [Reserved]

## Subpart A—Emission Inventory Reporting Requirements

### § 51.1 For what sources must States do emissions reporting?

Point sources for which States must report emissions annually under § 51.321 are defined as follows:

(a) For $PM_{10}$, $PM_{2.5}$, ammonia, sulfur oxides, VOC, and nitrogen oxides, any plant that actually emits at least 90.7 metric tons (100 tons) per year of any pollutant.

(b) For carbon monoxide, any plant that actually emits at least 907 metric tons (1000 tons) per year.

(c) For lead and lead compounds measured as elemental lead, any plant that actually emits at least 4.5 metric tons (5 tons) per year.

## General Information for Inventory Preparers

### § 51.5 Who is responsible for actions described in this subpart?

State and local agencies whose geographic coverage include any point, area, mobile, or biogenic sources must inventory these sources and report this information to EPA.

### § 51.10 What tools are available to help prepare and report emissions data?

(a) We urge your State to use estimation procedures described in documents from the Emission Inventory Improvement Program (EIIP). These procedures are standardized and ranked according to relative uncertainty for each emission estimating technique. Using this guidance will enable others to use your State's data and be able to evaluate its quality and consistency with other data.

### § 51.15 How does my State reduce the effort for reporting?

(a) Compiling smaller point source (Type B) and 3-Year cycle inventories (see Appendix A, Table 1 of this subpart) means much more effort every three years, but your State may ease this workload spike by reporting one-third of your Type B point and 3-Year cycle sources each year. For these sources, your State will therefore have data from three successive years at any given time, rather than from the single year in which it is compiled. If your State needs to inventory the entire category of Type B point and 3-Year cycle sources in a single year, your State should report this data instead of a third of the estimates each year. If your State is a $NO_X$ SIP Call state as defined in § 51.122, your State can't use these optional reporting frequencies for $NO_X$.

(b) If your State needs a base year emission inventory for a selected pollutant, your State must compile an inventory of all affected source categories for the specified year.

(c) If your State chooses the method of reporting one-third of your Type B sources and 3-Year cycle sources each year, your State must compile each year of the three year period identically. For example, if a process hasn't changed for a source category or individual plant, your State must use the same emission factors to calculate emissions for each year of the three year period. If your State has revised emission factors during the three years for a process that hasn't changed, resubmit previous year's data using the revised factor. If your State uses models to estimate emissions during any year of the three year period, make them identical for all three years.

## Specific Reporting Requirements

### § 51.20 What data does my State need to report to EPA?

(a) *Pollutants.* Report emissions of the following:

(1) Sulfur oxides.
(2) VOC.
(3) Nitrogen oxides.
(4) Carbon monoxide.
(5) Lead and lead compounds.
(6) $PM_{10}$.
(7) $PM_{2.5}$.
(8) $PM_{2.5}$ precursors including ammonia.

(b) *Supporting information.* Report the data elements in Table 2a through 2d of appendix A to this subpart. Depending on the format you choose to report your State data, additional information not listed in Tables 2a through 2d will be required. Specific instructions for your State system format should be consulted. Any you don't report we'll have to generate with our own techniques. We may ask you for other data to meet special requirements.

(c) *Confidential data.* We don't consider the data in Tables 2a through 2d of appendix A to this subpart confidential, but some States limit release of this type of data. Any data that you submit to EPA under this rule will be considered in the public domain and cannot be treated as confidential. If Federal and State requirements are inconsistent, consult your EPA Regional Office for a final reconciliation.

### § 51.25 What are the emission thresholds that separate point and area sources?

(a)(1) Use the following actual emissions thresholds in attainment areas for point source reporting:

(i) Sources emitting at least 100 tpy for $SO_X$, VOC, $NO_X$, $PM_{10}$, $PM_{2.5}$.

(ii) Sources emitting at least 1000 tpy for CO.

(iii) Sources emitting at least 5 tpy for lead and lead compounds.

(2) See Table 1 of appendix A to this subpart for reporting thresholds on point sources in nonattainment areas.

(b) Your State has the option to inventory and report any stationary sources below these thresholds as point or area sources. If you have lower emission thresholds for point sources in your State, you should use them in reporting your emissions to EPA. See Table 1 of appendix A to this subpart for thresholds to report 3-Year cycle data and Tables 2a through 2d of appendix A to this subpart for data elements to report.

(c) In moderate $PM_{10}$ nonattainment areas your State should inventory sources emitting at least 100 tpy (actual) as point sources. In serious $PM_{10}$ nonattainment areas, this requirement applies to sources emitting at least 70 tpy (actual). Inventory $PM_{2.5}$ sources emitting at least 100 tpy (actual) as point sources. Inventory ammonia (a precursor to $PM_{2.5}$) as a point or area source.

### § 51.30 What geographic area must my State's inventory cover?

Because of the regional nature of these pollutants, your State's inventory must be statewide, regardless of an area's attainment status.

### § 51.35 When does my State report the data to EPA?

Your State must report data for the point source inventory and the 3-Year cycle inventory 17 months (by June 1) after the end of the calendar emission year. For example, your calender year 1999 inventory should be reported to EPA by June 1, 2001.

(a) *Point source.* As seen in Table 1 of appendix A to this subpart, your State should divide your point source inventory into two subsets—Type A source inventory and Type B source inventory—with different reporting frequencies. Report actual annual emissions from Type A point sources each calendar year. Review stack data (height, diameter, flow rate, temperature, velocity, and stack number) every three years and send in changes shown in Table 2a of appendix A to this subpart.

(b) *3-Year cycle.* (1) Your State should send EPA its annual and daily estimates

of actual emissions every three years for Type B point sources and area and mobile sources. For Type B point source inventories, include facilities not reported under the Type A source requirement. Area data includes sources below the thresholds for Type B point sources. Your State may report emissions from one-third of your State's Type B point sources, area, and mobile sources each year or from all sources every three years.

(2) Your State and your EPA Regional Office may tailor the reporting by selecting sources that most affect your agency.

(3) We encourage your State to integrate your State's own reporting requirements with EPA's.

(c) *$NO_X$ SIP call.* For $NO_X$ SIP call reporting, States must submit data for a required year no later than 12 months after the end of the calendar year for which the data are collected.

(1) For point, area and mobile sources within your State that your State is controlling to meet the $NO_X$ reductions in § 51.121, submit estimates of $NO_X$ annually for the $NO_X$ ozone season as shown in Tables 2a, 2b and 2c of appendix A to this subpart.

(2) For all $NO_X$ sources including point, area and mobile sources within your State, whether controlled or uncontrolled, submit estimates of $NO_X$ emissions every three years for the $NO_X$ ozone season as shown in Tables 2a, 2b and 2c of appendix A to this subpart.

(d) *Other.* Your State must establish an initial baseline for biogenic emissions. Your State need not submit more biogenic data unless land use characteristics or the methods for estimating emissions change. If either of these variables change, your State must report new biogenic emissions during the reporting period in the following year as shown in Table 2d of appendix A of this subpart.

**§ 51.40 In what form should my State report the data to EPA?**

(a) For better access by everyone, report emissions in your State in an electronic format using one of two options. You can find specific instructions for each option at the following Internet address: *http://www.epa.gov/ttn/chief/ei/eisubmit.html* These two options are as follows:

(1) Submit your State's data in the National Emissions Trends (NET) input format; or

(2) Submit your State's data in the Electronic Data Interchange (EDI) format.

(b) Some metadata describing your submission are not listed in Tables 2a through 2d of appendix A of this subpart are also required. Because electronic reporting technology continually changes, contact your EPA Regional Office for acceptable formats. You should consult specific instructions for your State system format to determine additional requirements not listed in Tables 2a through 2d.

**§ 51.45 Where should my State report the data?**

(a) If your State uses either the NET Input format or the EDI format, your State submits or reports data by either providing it to EPA directly or notifying EPA that it is available in the specified format and at a specific electronic location (FTP site).

(b) For the latest information on data reporting procedures, call our Info Chief help desk at (919)541–1000 or email to info.chief@epa.gov.

**Appendix A to Subpart A of Part 51—Tables and Glossary**

TABLE 1.—SUMMARY OF REQUIREMENTS FOR REPORTING EMISSION INVENTORIES

| Provision | Point source inventory | | $NO_X$ SIP call inventory | 3-Year inventory |
|---|---|---|---|---|
| | Type A sources [1] | Type B sources [1] | | |
| CAA citation | Section 110(a)(2)(F) | Section 110(a)(2)(F), § 112 | Section 110(a)(2) | Section 172(c)(3), Section 182(a)(3)(A), and Section 187(a)(5), § 112 |
| 1. Frequency of reporting | Annual | Every three years | Annual | Every three years |
| 2. Estimating period | Annual | Annual and Daily [3] | Five month season | Annual and Daily [3] |
| 3. Areas to which provision applies. | Entire U.S. (Statewide) | Entire U.S. (Statewide) | $NO_X$ SIP Call areas (Statewide). | Entire U.S. (Statewide) |
| 4. Pollutants and source size thresholds. | Pollutant | Pollutant | Pollutant | Pollutant Ozone NA areas: [4] |
| | tpy [2] | tpy [2] | tpy [2] | tpy [2] |
| | $SO_X \geq 2{,}500$ | $SO_X \geq 100$ | $NO_X \geq 100$ | VOC ≥ 10, |
| | $NO_X \geq 2{,}500$ | $NO_X \geq 100$, | Lesser thresholds to be defined by state | $NO_X \geq 100$, |
| | VOC ≥ 250 | VOC ≥ 100 | | CO ≥ 100. |
| | $PM_{10} \geq 250$ | $PM_{10} \geq 100$ | | CO NA areas: [4] |
| | $PM_{2.5} \geq 250$ | $PM_{2.5} \geq 100$ | | CO ≥ 100. |
| | CO ≥ 2,500 | CO ≥ 1,000 | | |
| | $NH_3 \geq 250$ | Pb ≥ 5 | | |
| | | $NH_3 \geq 100$ | All sources not inventoried as point sources shall be inventoried as area or mobile sources and reported only if they are to be controlled to meet emission budget. | |

TABLE 1.—SUMMARY OF REQUIREMENTS FOR REPORTING EMISSION INVENTORIES—Continued

| Provision | Point source inventory | | $NO_X$ SIP call inventory | 3-Year inventory |
|---|---|---|---|---|
| | Type A sources [1] | Type B sources [1] | | |
| | | | | PM–10 NA areas: [4]<br>$PM_{10} \geq 70$ (serious),<br>$PM_{10} \geq 100$ (moderate).<br><br>$PM_{2.5}$ NA areas: [4]<br>$PM_{2.5} \geq 100$.<br>Ammonia may be inventoried as a point or area source.<br>Inventory includes:<br>• Point sources ≥ specified tpy.<br>• Area sources < specified tpy.<br>• Onroad mobile sources.<br>• Nonroad mobile sources.<br>• Biogenic sources. |

[1] Previously, the Type A sources and the Type B sources together constituted the annual inventory (40 CFR Part 51.321–323); all such sources were required to report annually.
[2] tpy = tons per year.
[3] Ozone daily emissions = summer work weekday; CO daily emissions = winter work weekday; PM daily emissions = to be defined in consultation with Regional office.
[4] Thresholds apply to nonattainment areas only; remainder of State uses Type B Source thresholds to distinguish between point and area sources.

TABLE 2A.—DATA ELEMENTS THAT STATES MUST REPORT FOR POINT SOURCES

| Data elements | Annual | | Every 3 years | | |
|---|---|---|---|---|---|
| | Entire U.S. | $NO_X$ SIP call | Entire U.S. | NAA | $NO_X$ SIP call |
| Emission levels (Tons per year) | VOC≥250<br>$NO_X$≥2500<br>$SO_X$≥2500<br>$PM_{10}$≥250<br>$PM_{2.5}$≥250<br>CO≥2500<br>$NH_3$≥ 250 | $NO_X$≥100<br>Lesser thresholds to be defined by state | VOC≥100<br>$NO_X$≥100<br>$SO_X$≥100<br>$PM_{10}$≥100<br>$PM_{2.5}$≥100<br>CO≥1000<br>Pb≥5<br>$NH_3$≥100 | [1] VOC≥10<br>[1] $NO_X$≥100<br>[1] $PM_{10}$≥70<br>[1] CO ≥100 | $NO_X$≥100 |
| 1. Inventory year | ✔ | ✔ | ✔ | ✔ | ✔ |
| 2. Inventory start date | ✔ | | ✔ | ✔ | ✔ |
| 3. Inventory end date | ✔ | | ✔ | ✔ | ✔ |
| 4. Inventory type | ✔ | | ✔ | ✔ | ✔ |
| 5. State FIPS code | ✔ | ✔ | ✔ | ✔ | ✔ |
| 6. County FIPS code | ✔ | ✔ | ✔ | ✔ | ✔ |
| 7. Federal ID code (plant) | ✔ | ✔ | ✔ | ✔ | ✔ |
| 8. Federal ID code (point) | ✔ | ✔ | ✔ | ✔ | ✔ |
| 9. Federal ID code (process) | ✔ | ✔ | ✔ | ✔ | ✔ |
| 10. Site name | ✔ | ✔ | ✔ | ✔ | ✔ |
| 11. Physical address | ✔ | ✔ | ✔ | ✔ | ✔ |
| 12. SCC | ✔ | ✔ | ✔ | ✔ | ✔ |
| 13. Heat content (fuel) (annual) | ✔ | ✔ | ✔ | ✔ | ✔ |
| 14. Ash content (fuel) (annual) | ✔ | | ✔ | ✔ | |
| 15. Sulfur content (fuel) (annual) | ✔ | | ✔ | ✔ | |
| 16. Heat content (fuel) (seasonal) | | ✔ | | | ✔ |
| 17. Source of fuel heat content | | ✔ | | | ✔ |
| 18. Pollutant code | ✔ | ✔ | ✔ | ✔ | ✔ |
| 19. Activity/throughput (annual) | ✔ | ✔ | ✔ | ✔ | ✔ |
| 20. [2] Activity/throughput (daily) | ✔ | ✔ | ✔ | ✔ | ✔ |
| 21. Activity/throughput ($NO_X$ ozone season). | | ✔ | | | ✔ |
| 22. Source of activity/throughput ($NO_X$ ozone season). | | ✔ | | | ✔ |
| 23. Work weekday emissions | ✔ | ✔ | ✔ | ✔ | ✔ |
| 24. Annual emissions | ✔ | | ✔ | ✔ | |
| 25. $NO_X$ Ozone season emissions | | ✔ | | | ✔ |
| 26. Area classification | | ✔ | | | ✔ |
| 27. Emission factor | ✔ | ✔ | ✔ | ✔ | ✔ |
| 28. Source of emission factor | | ✔ | | | ✔ |

TABLE 2A.—DATA ELEMENTS THAT STATES MUST REPORT FOR POINT SOURCES—Continued

| Data elements | Annual | | Every 3 years | | |
|---|---|---|---|---|---|
| | Entire U.S. | $NO_X$ SIP call | Entire U.S. | NAA | $NO_X$ SIP call |
| 29. Winter throughput (%) | ✔ | | ✔ | ✔ | |
| 30. Spring throughput (%) | ✔ | ✔ | ✔ | ✔ | ✔ |
| 31. Summer throughput (%) | ✔ | ✔ | ✔ | ✔ | ✔ |
| 32. Fall throughput (%) | ✔ | ✔ | ✔ | ✔ | ✔ |
| 33. Hr/day in operation | ✔ | ✔ | ✔ | ✔ | ✔ |
| 34. Start time (hour) | ✔ | ✔ | ✔ | ✔ | ✔ |
| 35. Day/wk in operation | ✔ | ✔ | ✔ | ✔ | ✔ |
| 36. Wk/yr in operation | ✔ | ✔ | ✔ | ✔ | ✔ |
| 37. Federal ID code (stack number) | | ✔ | ✔ | ✔ | ✔ |
| 38. X stack coordinate (latitude) | | | ✔ | ✔ | ✔ |
| 39. Y stack coordinate (longitude) | | | ✔ | ✔ | ✔ |
| 40. Stack height | | | | ✔ | ✔ |
| 41. Stack diameter | | | | ✔ | ✔ |
| 42. Exit gas temperature | | | | ✔ | ✔ |
| 43. Exit gas velocity | | | | ✔ | ✔ |
| 44. Exit gas flow rate | | | | ✔ | ✔ |
| 45. SIC/NAICS | | | ✔ | ✔ | ✔ |
| 46. Design capacity | | | ✔ | ✔ | ✔ |
| 47. Maximum nameplate capacity | | | ✔ | ✔ | ✔ |
| 48. Primary control eff (%) | | | ✔ | ✔ | ✔ |
| 49. Secondary ctl eff (%) | | | ✔ | ✔ | ✔ |
| 50. Control device type | | | ✔ | ✔ | ✔ |
| 51. Rule effectiveness (%) | | | ✔ | ✔ | |

[1] Both daily and annual emission estimates required.
[2] May be derived from annual or seasonal throughput.

TABLE 2B.—DATA ELEMENTS THAT STATES MUST REPORT FOR AREA AND NONROAD SOURCES

| Data elements | Annual | | Every 3 years | | |
|---|---|---|---|---|---|
| | Entire U.S. | [1] $NO_X$ SIP Call | Entire U.S. | NAA | $NO_X$ SIP call |
| Emissions levels (Tons per year) | | | [2] VOC <10<br>[2] $NO_X$ <100<br>[2] $PM_{10}$ <100<br>[2] $PM_{2.5}$ <100<br>[2] CO <100<br>[2] $NH_3$ <100 | | $NO_X$ <100 |
| 1. Inventory year | | ✔ | ✔ | | ✔ |
| 2. Inventory start date | | ✔ | ✔ | | ✔ |
| 3. Inventory end date | | ✔ | ✔ | | ✔ |
| 4. Inventory type | | ✔ | ✔ | | ✔ |
| 5. State FIPS code | | ✔ | ✔ | | ✔ |
| 6. County FIPS code | | ✔ | ✔ | | ✔ |
| 7. SCC | | ✔ | ✔ | | ✔ |
| 8. Emission factor | | ✔ | ✔ | | ✔ |
| 9. Source of emission factor | | ✔ | | | ✔ |
| 10. Activity/throughput level (annual) | | ✔ | ✔ | | ✔ |
| 11. Activity/throughput ($NO_X$ ozone season). | | ✔ | | | ✔ |
| 12. Source of activity/throughput ($NO_X$ ozone season). | | ✔ | | | ✔ |
| 13. Total capture/control efficiency (%). | | ✔ | ✔ | | ✔ |
| 14. Rule effectiveness (%) | | ✔ | ✔ | | ✔ |
| 15. Rule penetration (%) | | ✔ | ✔ | | ✔ |
| 16. Pollutant code | | ✔ | ✔ | | ✔ |
| 17. Summer/winter work weekday emissions. | | ✔ | ✔ | | ✔ |
| 18. Annual emissions | | ✔ | ✔ | | ✔ |
| 19. $NO_X$ ozone season emissions | | ✔ | | | ✔ |
| 20. Source of emissions data | | ✔ | | | ✔ |
| 21. Winter throughput (%) | | ✔ | ✔ | | ✔ |
| 22. Spring throughput (%) | | ✔ | ✔ | | ✔ |
| 23. Summer throughput (%) | | ✔ | ✔ | | ✔ |
| 24. Fall throughput (%) | | ✔ | ✔ | | ✔ |
| 25. Hr/day in operations | | ✔ | ✔ | | ✔ |
| 26. Day/wk in operations | | ✔ | ✔ | | ✔ |

TABLE 2B.—DATA ELEMENTS THAT STATES MUST REPORT FOR AREA AND NONROAD SOURCES—Continued

| Data elements | Annual | | Every 3 years | | |
|---|---|---|---|---|---|
| | Entire U.S. | [1] $NO_X$ SIP Call | Entire U.S. | NAA | $NO_X$ SIP call |
| 27. Wk/yr in operations | | ✔ | ✔ | | ✔ |

[1] You are only required to report sources within your State if they are CONTROLLED to meet $NO_X$ reductions under § 51.121.
[2] Both daily and annual emission estimates required.

TABLE 2C.—DATA ELEMENTS THAT STATES MUST REPORT FOR ONROAD MOBILE SOURCES

| Data elements | Annual | | Every 3 years | | |
|---|---|---|---|---|---|
| | Entire U.S. | [1] $NO_X$ SIP call | Entire U.S. | NAA | $NO_X$ SIP call |
| 1. Inventory year | | ✔ | ✔ | | ✔ |
| 2. Inventory start date | | ✔ | ✔ | | ✔ |
| 3. Inventory end date | | ✔ | ✔ | | ✔ |
| 4. Inventory type | | ✔ | ✔ | | ✔ |
| 5. State FIPS code | | ✔ | ✔ | | ✔ |
| 6. County FIPS code | | ✔ | ✔ | | ✔ |
| 7. SCC | | ✔ | ✔ | | ✔ |
| 8. [2] Emission factor | | ✔ | ✔ | | ✔ |
| 9. Activity (VMT by Roadway Class) | | ✔ | ✔ | | ✔ |
| 10. Source of activity data | | ✔ | | | ✔ |
| 11. Pollutant code | | ✔ | ✔ | | ✔ |
| 12. Summer/winter work weekday emissions | | ✔ | ✔ | | ✔ |
| 13. Annual emissions | | | ✔ | | |
| 14. $NO_X$ Ozone season emissions | | ✔ | | | ✔ |
| 15. Source of emissions data | | ✔ | | | ✔ |

[1] You are only required to report Onroad Mobile sources within your State if they are CONTROLLED to meet $NO_X$ reductions under § 51.121.
[2] Both daily and annual emission estimates required.

TABLE 2D.—DATA ELEMENTS THAT STATES MUST REPORT FOR BIOGENIC SOURCES

| Data elements | Annual | Every 3 years | |
|---|---|---|---|
| | Entire U.S. | Entire U.S. | NAA |
| 1. Inventory year | | ✔ | |
| 2. Inventory start date | | ✔ | |
| 3. Inventory end date | | ✔ | |
| 4. Inventory type | | ✔ | |
| 5. State FIPS code | | ✔ | |
| 6. County FIPS code | | ✔ | |
| 7. SCC | | ✔ | |
| 8. Pollutant code | | ✔ | |
| 9. Summer/winter work weekday emissions | | ✔ | |
| 10. Annual emissions | | ✔ | |

**Glossary to Appendix A**

Activity rate/throughput (annual)—A measurable factor or parameter that relates directly or indirectly to the emissions of an air pollution source. Depending on the type of source category, activity information may refer to the amount of fuel combusted, raw material processed, product manufactured, or material handled or processed. It may also refer to population, employment, number of units, or miles traveled. Activity information is typically the value that is multiplied against an emission factor to generate an emissions estimate.

Activity rate/throughput (daily)—The beginning and ending dates and times that define the emissions period used to estimate the daily activity rate/throughput.

Area classification—The Clean Air Act classification of the nonattainment area containing the reporting source (transitional, marginal, moderate, serious, severe, extreme).

Area sources—Area sources collectively represent individual sources that have not been inventoried as specific point, mobile, or biogenic sources. These individual sources treated collectively as area sources are typically too small, numerous, or difficult to inventory using the methods for the other classes of sources.

Annual emissions—Actual emissions for a plant, point, or process—measured or calculated that represent a calendar year.

Ash content—Inert residual portion of a fuel.

Biogenic sources—Biogenic emissions are all pollutants emitted from non-anthropogenic sources. Example sources include trees and vegetation, oil and gas seeps, and microbial activity.

Control device type—The name of the type of control device (*e.g.*, wet scrubber, flaring, or process change).

County/parish/reservation (FIPS)—Federal Information Placement System (FIPS). FIPS is the system of unique numeric codes the government developed to identify States, counties, towns, and townships for the entire United States, Puerto Rico, and Guam.

Day/wk in operations—Days per week that the emitting process operates.

Design capacity—A measure of the size of a point source, based on the reported maximum continuous capacity of the unit.

Emission factor—Ratio relating emissions of a specific pollutant to an activity or material throughput level.

Exit gas flow rate—Numeric value of stack gas's flow rate.

Exit gas temperature—Numeric value of an exit gas stream's temperature.

Exit gas velocity—Numeric value of an exit gas stream's velocity.

Fall throughput (%)—Part of the throughput for the three Fall months (September, October, November). This expresses part of the annual activity information based on four seasons—typically spring, summer, fall, and winter. It can be a percentage of the annual activity (*e.g.*, production in summer is 40% of the year's production) or units of the activity (*e.g.*, out of 600 units produced, spring =150 units, summer = 250 units, fall = 150 units, and winter = 50 units).

Federal ID code (plant)—Unique code for a plant or facility, containing one or more pollutant-emitting sources.

Federal ID code (point)—Unique code for the point of generation of emissions, typically a physical piece of equipment.

Federal ID code (process)—Unique code for the process generating the emissions, typically a description of a process.

Federal ID code (stack number)—Unique code for the point where emissions from one or more processes release into the atmosphere.

Heat content—The amount of thermal heat energy in a solid, liquid, or gaseous fuel. Fuel heat content is typically expressed in units of Btu/lb of fuel, Btu/gal of fuel, joules/kg of fuel, etc.

Hr/day in operations—Hours per day that the emitting process operates.

Inventory end date—Last day of the inventory period.

Inventory start date—First day of the inventory period.

Inventory type—Type of inventory represented by data (*i.e.*, point, 3-Year cycle, daily).

Inventory year—The calendar year for which you calculated emissions estimates.

Maximum nameplate capacity—A measure of a unit's size that the manufacturer puts on the unit's nameplate.

Metadata—Data that describes how and when and by whom a particular set of data was collected, and how the data is formatted. Metadata are essential for understanding information stored in data bases.

Mobile source—A motor vehicle, nonroad engine or nonroad vehicle.

- A "motor vehicle" is any self-propelled vehicle used to carry people or property on a street or highway.
- A "nonroad engine" is an internal combustion engine (including fuel system) that is not used in a motor vehicle or vehicle only used for competition, or that is not affected by sections 111 or 202 of the CAA.
- A "nonroad vehicle" is a vehicle that is run by a nonroad engine and that is not a motor vehicle or a vehicle only used for competition.

$NO_X$ ozone season emissions—Actual ozone season emissions for a plant, point, or process, either measured or calculated. Ozone season emissions for $NO_X$ SIP Call are the emissions between May 1 and September 30. (Note that 40 CFR Part 58 contains a different definition for ozone season monitoring.)

Physical address—Street address of a facility.

Point source—Point sources are large, stationary (non-mobile), identifiable sources of emissions that release pollutants into the atmosphere. State or local air regulatory agencies define a plant as a point source whenever it annually emits more than a specified amount of a given pollutant; these "cutoff" levels definitions vary among State and local agencies. A stationary source which emits less than a "cutoff" is an area source.

Pollutant code—A unique code for each reported pollutant assigned in the EIIP Data Model. The model uses character names for criteria pollutants and Chemical Abstracts Service (CAS) numbers for all other pollutants. You may be using SAROAD codes for pollutants, but you should be able to map them to the pollutant codes in the EIIP Data Model.

Rule effectiveness (RE)—How well a regulatory program achieves all possible emission reductions. This rating reflects the assumption that controls typically aren't 100 percent effective because of equipment downtime, upsets, decreases in control efficiencies, and other deficiencies in emission estimates. RE adjusts the control efficiency.

Rule penetration—The percentage of an area source category covered by an applicable regulation.

SCC—Source category code. A process-level code that describes the equipment or operation which is emitting pollutants.

Seasonal activity rate/throughput—A measurable factor or parameter that relates directly or indirectly to the pollutant season emissions of an air pollution source. Depending on the type of source category, activity information may refer to the amount of fuel combusted, raw material processed, product manufactured, or material handled or processed. It may also refer to population, employment, number of units, or miles traveled. Activity information is typically the value that is multiplied against an emission factor to generate an emissions estimate.

Seasonal fuel heat content—The amount of thermal heat energy in a solid, liquid, or gaseous fuel used during the pollutant season. Fuel heat content is typically expressed in units of Btu/lb of fuel, Btu/gal of fuel, joules/kg of fuel, etc.

Secondary control eff (%)—The emission reduction efficiency of a secondary control device. Control efficiency is usually expressed as a percentage or in tenths.

Source of activity rate/throughput data—Source of data from which you got the activity rate/throughput.

Source of emission factor—Source of data from which you got the emission factor.

Source of fuel heat content data—Source of data from which you got the fuel heat content.

SIC/NAICS—Standard Industrial Classification code. NAICS (North American Industry Classification System) codes will replace SIC codes. U.S. Department of Commerce's code for businesses by products or services.

Site name—The name of the facility.

Spring throughput (%)—Part of throughput or activity for the three spring months (March, April, May). See the definition of Fall Throughput.

Stack diameter—A stack's inner physical diameter.

Stack height—A stack's physical height above the surrounding terrain.

Start time (hour)—Start time (if available) that you used to calculate the emissions estimates.

State/providence/territory (FIPS)—Federal Information Placement System (FIPS). FIPS is the system of unique numeric codes the government developed to identify States, counties, towns, and townships for the entire United States, Puerto Rico, and Guam.

Sulfur content—Sulfur content of a fuel, usually expressed as a percentage.

Summer throughput (%)—Part of throughput or activity for the three summer months (June, July, August). See the definition of Fall Throughput.

Summer/winter work weekday emissions—Average day's emissions for a typical day. Ozone daily emissions = summer work weekday; CO and PM daily emissions = winter work weekday.

Total capture/control efficiency—The emission reduction efficiency of a primary control device, which shows

the amount controls or material changes reduce a particular pollutant from a process' emissions. Control efficiency is usually expressed as a percentage or in tenths.

Type A source—Very large point sources defined by emission thresholds listed in Table 1.

Type B source—Smaller point sources defined by emission thresholds listed in Table 1.

VMT by Roadway Class—Vehicle miles traveled (VMT) expresses vehicle activity and is used with emission factors. The emission factors are usually expressed in terms of grams per mile of travel. Because VMT doesn't correlate directly to emissions that occur while the vehicle isn't moving, these non-moving emissions are incorporated into the emission factors in EPA's Mobile Model.

Winter throughput (%)—Part of throughput or activity for the three winter months (December, January, February). See the definition of Fall Throughput.

Wk/yr in operation—Weeks per year that the emitting process operates.

Work weekday—Any day of the week except Saturday or Sunday.

X stack coordinate (latitude)—An object's east-west geographical coordinate. Y stack coordinate (longitude)—An object's north-south geographical coordinate.

**Appendix B [Reserved]**

**Subpart Q—[Amended]**

3. Section 51.322 is revised to read as follows:

**§ 51.322 Sources subject to emissions reporting.**

The requirements for reporting emissions data under the plan are in § 51.1 of this part.

4. Section 51.323 is revised to read as follows:

**§ 51.323 Reportable emissions data and information.**

The requirements for reportable emissions data and information under the plan are in subpart A of this part 51.

[FR Doc. 00–12787 Filed 5–22–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[CA 031–0237; FRL–6704–2]

### Revisions to the California State Implementation Plan, South Coast Air Quality Management District (SCAQMD)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to remove revisions to the SCAQMD portion of the California State Implementation Plan (SIP). These revisions concern Emissions of Oxides of Nitrogen from Process Heaters and Boilers in Petroleum Refineries. We are proposing to remove a final limited approval and limited disapproval of a local rule that was published on January 13, 2000 (65 FR 2052).

**DATES:** Any comments on this proposal must arrive by June 22. 2000.

**ADDRESSES:** Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted rule revisions at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

South Coast AQMD, 21865 E. Copley Dr., Diamond Bar, CA 91765–4182

**FOR FURTHER INFORMATION CONTACT:** Ed Addison, Rulemaking Office, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1160.

**SUPPLEMENTARY INFORMATION:** This proposal addresses the South Coast Air Quality Management District (SCAQMD) adopted Rule 1109, Emissions of Oxides of Nitrogen from Process Heaters and Boilers in Petroleum Refineries. In the Rules and Regulations section of this **Federal Register**, we are removing our previous limited approval and limited disapproval of this local rule in a direct final action without prior proposal because we believe this removal is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule removal and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

**Administrative Requirements**

*A. Executive Order 12866*

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

*B. Executive Order 13045*

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

*C. Executive Order 13084*

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting

elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

*D. Executive Order 13132*

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

*E. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

*F. Unfunded Mandates*

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

*G. National Technology Transfer and Advancement Act*

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 9, 2000.

**Keith Takata,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 00–12786 Filed 5–22–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 64**

**[CC Docket No. 94–129; DA 00–1093]**

## Common Carrier Bureau Asks Parties To Refresh Record and Seek Additional Comment on Proposal To Require Resellers To Obtain Carrier Identification Codes

**AGENCY:** Federal Communications Commission.

**ACTION:** Solicitation of supplemental comments.

**SUMMARY:** In a Further Notice in this proceeding released on December 23, 1998, the Commission sought comment on three proposals to address "soft slamming" and carrier identification problems arising from the shared use of carrier identification codes (CICs) by facilities-based carriers and switchless resellers of their services. The first proposal—requiring resellers to obtain their own CICs—garnered both strong support and opposition among commenters. Supporters view it as a

cost-effective and administratively simple solution to the problems identified by the Commission, whereas opponents raise a number of concerns regarding its potential impact on carriers. In order to focus the record, we invite interested parties to refresh the record and to submit additional comments on a number of specific issues regarding the proposal that resellers obtain their own CICs.

**DATES:** Submit comments on or before June 6, 2000 and reply comments on or before June 13, 2000.

**ADDRESSES:** See Supplementary Information section for where and how to file comments.

**FOR FURTHER INFORMATION CONTACT:** William J. Scher or Dana Walton-Bradford (202) 418–7400 TTY: (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** In a *Further Notice*, 64 FR 7763 (February 16, 1999), in this proceeding released on December 23, 1998, the Commission sought comment on three proposals to address "soft slamming" and carrier identification problems arising from the shared use of carrier identification codes (CICs) by facilities-based carriers and switchless resellers of their services. The first proposal—requiring resellers to obtain their own CICs—garnered both strong support and opposition among commenters. Supporters view it as a cost-effective and administratively simple solution to the problems identified by the Commission, whereas opponents raise a number of concerns regarding its potential impact on carriers. In order to focus the record, we invite interested parties to refresh the record and to submit additional comments on a number of specific issues regarding the proposal that resellers obtain their own CICs.

First, we seek comment on what it would cost resellers to purchase translations access alone, as distinguished from Feature Group D access, and on whether the Commission should require that this functionality be offered separately. We encourage commenters to provide specific estimates of costs on both a per-LATA and a nationwide basis.

Second, we request information on whether there are functionally-equivalent services that, in conjunction with elimination of the current NANPA requirement that carriers must purchase Feature Group D access to obtain a CIC, would make it possible for switchless resellers to use CICs without also purchasing translations access directly. If so, can and should the Commission require the purchase of such services by underlying carriers? To what extent are underlying carriers and resellers already taking advantage of any such services, and how are the costs allocated between them? What are the potential drawbacks of such an approach?

Third, we request additional comment on the network, operations support systems, and/or other modifications that underlying carriers and LECs would have to make to accommodate the use of switchless reseller CICs, the likely costs of any such modifications, and the time required to carry them out. We seek comment on whether the Commission should require any such modifications if it adopts the proposed CIC requirement, or whether market incentives are sufficient to encourage carriers to make them of their own accord. Again, we encourage commenters to submit empirical data with their comments, and to provide specific estimates of costs on both a per-LATA and a nationwide basis.

Fourth, we seek additional comment on whether the proposed CIC requirement would be affordable for switchless resellers. We seek comment on whether there are specific measures that would mitigate the financial burden of the proposed CIC requirement on switchless resellers. We also ask commenters to address whether the subject proposal would create additional competitive benefits or disadvantages for resellers, such as giving them greater parity with facilities-based carriers in the timing of customer access to long distance services, or making it more expensive and time-consuming for them to change underlying carriers.

Fifth, we request additional comment on the specific dimensions of soft slamming and the carrier identification problems involving resellers identified in the *Further Notice*. In particular, we request commenters to address—and to submit empirical data, to the greatest extent possible—concerning the percentage of slamming complaints that involve soft slams and the percentage that involve consumers whose preferred carrier freeze protections have been bypassed.

Finally, we seek additional comment on whether this proposal would create a significant threat of CIC exhaustion, and whether modifications to existing Commission policy restricting CIC assignments may be necessary to accommodate the assignment of CICs to resellers.

**Filing Procedures**

This will continue to be a permit-but-disclose proceeding for purposes of the Commission's *ex parte* rules. Pursuant to § 1.1200 and § 1.1206 of the Commission's rules, interested parties may file supplemental filings on or before June 6, 2000, and replies to supplemental filings on or before June 13, 2000. Rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules. Such filings may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998).

Filings submitted through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic filings by Internet e-mail. To receive e-mail filing instructions, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address." A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554. Parties also must send a paper copy of their filings to Sheryl Todd, Accounting Policy Division, Common Carrier Bureau, Federal Communications Commission, 445 Twelfth Street S.W., Room 5–B540, Washington, D.C. 20554. In addition, parties filing supplemental filings must send diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037.

The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's copy contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036, telephone 202–857–3800, facsimile 202–857–3805.

Dated: May 18, 2000.

**Irene M. Flannery,**

*Chief, Accounting Policy Division.*

[FR Doc. 00–12981 Filed 5–22–00; 8:45 am]

**BILLING CODE 6712–01–P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

**RIN 1018–AF90**

## Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Mississippi Gopher Frog Distinct Population Segment of Dusky Gopher Frog as Endangered

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the Fish and Wildlife Service, propose to list the Mississippi gopher frog distinct population segment of the dusky gopher frog (*Rana capito sevosa*) as an endangered species under the authority of the Endangered Species Act of 1973, as amended (Act). Historically, the Mississippi gopher frog occurred in at least nine counties or parishes across Louisiana, Mississippi, and Alabama, ranging from east of the Mississippi River in Louisiana to the Mobile River delta in Alabama. Today, it is known from only one site in Harrison County, Mississippi. This last surviving population is threatened by habitat destruction and degradation from a proposed housing development on property within 200 meters (m) (656 feet (ft)) of its only remaining breeding pond; the construction and expansion of two highways in the vicinity of the pond; and a proposed reservoir. These actions pose threats to the terrestrial habitat of adult frogs and their ability to offset mortality rates with reproduction and recruitment. This proposed rule, if made final, would extend the Act's protection to the Mississippi gopher frog distinct population segment.

**DATES:** Send your comments to reach us on or before July 24, 2000. We will not consider comments received after the above date in making our decision on the proposed rule. We must receive requests for public hearings by July 7, 2000.

**ADDRESSES:** Send comments and materials concerning this proposal to the Field Supervisor, U.S. Fish and Wildlife Service, Mississippi Field Office, 6578 Dogwood View Parkway, Jackson, Mississippi 39213. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

**FOR FURTHER INFORMATION CONTACT:** Ms. Linda LaClaire at the above address, telephone 601/965–4900, or facsimile 601/965–4340.

**SUPPLEMENTARY INFORMATION:**

### Background

The gopher frog (*Rana capito*) is a member of the large cosmopolitan family, Ranidae ("true frogs"). The genus *Rana* is the only North American representative of this family. We define the Mississippi gopher frog distinct population segment as those populations of gopher frogs in the lower coastal plain ranging from the Mississippi River in Louisiana to the Mobile River delta of Alabama. Goin and Netting (1940) described frogs from this geographic range as a distinct species of gopher frog, *Rana sevosa*. The taxonomic history of gopher frogs is complex (summary in Altig and Lohoefener 1983). Subsequent to the original description by Goin and Netting, frogs of this population segment were considered subspecies of *Rana capito* (gopher frog) (*R. c. sevosa*) (Wright and Wright 1942) and later subspecies of *R. areolata* (crayfish frog) (*R. a. sevosa*) (Viosca 1949). In 1991, Collins challenged the taxonomic arrangement that lumped crayfish frogs and gopher frogs together as one species and recommended their separation based on biogeographical grounds. This arrangement was followed by Conant and Collins (1991), who again recognized the name *R. c. sevosa*. Wright and Wright (1942) first used the common name of "dusky gopher frog" for this subspecies, and it has been used in subsequent publications. The range of the subspecies, as presently described, also extends to the Gulf Coast of western Florida and adjacent Alabama (Conant and Collins 1991).

Young (1997) conducted the first comprehensive biochemical analysis of the relationships between gopher frogs and crayfish frogs and among subspecies of gopher frogs. She used allozyme electrophoresis (an assay (examination) of gene products) to examine allelic (genetic) differences between and among populations. Allozyme data have been used extensively to investigate the evolution of genetic relationships among related species. Young found strong support for the species designations *R. areolata* (crayfish frogs) and *R. capito* (gopher frogs). Gopher and crayfish frogs varied from each other by fixed differences at four loci (specific locations on a gene). In addition, she found that populations of gopher frogs from Harrison County, Mississippi, were genetically distinct from other populations of gopher frogs east of the Mobile River drainage in Alabama. Young analyzed tissue from gopher frogs across the range of the species including populations in Mississippi, Alabama, Georgia, Florida, and North Carolina. Although Mississippi gopher frogs showed a fixed difference at only a single locus (site for a specific gene on a chromosome) from all other gopher frogs, this difference is considered by many taxonomists to be significant enough to warrant elevation of the frog to its own species (B. Crother, Southern Louisiana University, pers. comm. 1999). No other specific taxonomic divisions could be determined among the remaining populations of gopher frogs sampled. Since Harrison County is within the range of the original specimens used to describe *R. sevosa*, Young recommended the resurrection of *R. sevosa* as a distinct species. A manuscript summarizing her findings has been submitted for publication (Young and Crother, unpublished manuscript). If her recommendations are accepted by the herpetological scientific community, we will reflect this taxonomic change in subsequent publications in the **Federal Register**. Researchers have recommended "Mississippi gopher frog" as the common name for this population segment to distinguish it from the other populations of gopher frogs further east (R. Seigel, pers. comm. 1998).

The Mississippi gopher frog has a stubby appearance due to its short, plump body, comparatively large head, and relatively short legs (Conant and Collins 1991). The coloration of its back is dark and varies in individual frogs. It ranges from an almost uniform black to a pattern of reddish brown or dark brown spots on a ground color of gray or brown (Goin and Netting 1940). Warts densely cover the back. The belly is thickly covered with dark spots and dusky markings from chin to mid-body (Goin and Netting 1940, Conant and Collins 1991). Males are distinguished from females by their smaller size, enlarged thumbs, and paired vocal sacs on either side of the throat (Godley 1992). Richter and Seigel (1998b) reported a mean snout-vent length of 67.7 millimeters (mm) (2.7 inches (in)) for males and 79.3 mm (3.2 in) for females in the extant population. Mississippi gopher frog tadpoles are presently indistinguishable from those of leopard frogs and other gopher frogs

(R. Altig, Mississippi State University, pers. comm. 1999).

Mississippi gopher frog habitat includes both upland sandy habitats historically forested with longleaf pine and isolated temporary wetland breeding sites embedded within the forested landscape. Frequent fires are necessary to maintain the open canopy and ground cover vegetation of their aquatic and terrestrial habitat.

Adult and subadult Mississippi gopher frogs spend the majority of their lives underground. They use active and abandoned gopher tortoise (*Gopherus polyphemus*) burrows, abandoned mammal burrows, and holes in and under old stumps as refugia (Allen 1932; LaClaire, pers. obs. 1996; Richter and Seigel 1998a). Gopher tortoise burrows likely represent preferred underground habitats. In Florida, Godley (1992) reported that the closely related Florida gopher frog was known only from sites that supported gopher tortoises. The remaining Mississippi gopher frog population occurs in an area presently lacking gopher tortoises, most likely as a result of habitat degradation. An abandoned tortoise burrow occurs approximately 0.8 kilometers (km) (0.5 miles (mi)) from the breeding pond, and an active burrow was found within 1.6 km (1 mi) of the site in 1992 (T. Mann, Mississippi Department of Wildlife, Fisheries and Parks, pers. comm. 1999).

Gopher frog breeding sites are isolated ponds (not connected to any other water body) that dry completely on a cyclic basis. Substantial winter rains are needed to ensure that ponds are filled sufficiently to allow hatching, development, and metamorphosis of larvae. The timing and frequency of rainfall are critical to the successful reproduction and recruitment of Mississippi gopher frogs.

Today, only a single breeding pond is known for the Mississippi gopher frog. It is located in Harrison County, Mississippi. Adult frogs move to this wetland breeding site during heavy rain events, usually from January to late March (Richter and Seigel 1998b). The breeding pond is approximately 1.5 hectares (3.8 acres) when filled. It attains a maximum depth of 1.1 m (3.6 ft). The pond is hard-bottomed, has an open canopy, and contains emergent and submergent vegetation. Female Mississippi gopher frogs attach their eggs to the rigid vertical stems of emergent vegetation (Young 1997, Richter and Seigel 1998a, 1998b). The pond typically dries in early to mid-summer, but on occasion has remained wet until early fall (G. Johnson, U.S. Forest Service, pers. comm. 1993; Young 1997; Richter and Seigel 1998b). As many as 20 amphibian species (18 frogs and 2 salamanders) are known to breed at the site (G. Johnson, pers. comm. 1993). Bailey (1990) and Palis (1998) found similar habitat attributes in breeding ponds of tne closely related gopher frogs in Alabama and Florida.

Adult Mississippi gopher frogs leave the pond site after breeding during major rainfall events. Adults of both sexes use specific migratory corridors when exiting the breeding pond (Richter and Seigel 1998b). Movements away from the pond are slightly east of due north. Young (1997) and Richter and Seigel (1998a) tracked a total of 13 frogs using radio transmitters. The farthest movement recorded was 268 m (879 ft) by a frog tracked for 88 days from its exit of the breeding site. In Florida, gopher frogs have been found 2 km (1.2 mi) from their breeding sites (Carr 1940, Franz *et al.* 1988). It is unclear if the distances recorded for the Mississippi gopher frogs were typical; the tracking periods represented only a fraction of their yearly life cycle. Movements corresponded with major rain events. However, dry conditions prevailed during most of the two study periods. In fact, the frogs in Richter and Seigel's study moved during only one 24-hour period, which was associated with a weather event. Another compounding factor was the clearcut timber harvest in 1994 of a site adjacent to the breeding pond. Migratory corridors and available habitat were eliminated by the forestry operation. In 1996, two frogs were tracked to the property line delineating the clearcut, and they did not move from their burrows during the remainder of the study (Richter and Seigel 1997).

Amphibians need to maintain moist skin for respiration (breathing) and osmoregulation (controlling the amounts of water and salts in their bodies) (Duellman and Trueb 1986). Since they disperse from their aquatic breeding sites to the uplands where they live as adults, desiccation (drying out) can be a limiting factor in their movements. Thus, it is important that areas connecting their wetland and terrestrial habitats are protected in order to provide cover and appropriate moisture regimes during their migration.

It is likely that, given appropriate habitat, Mississippi gopher frogs are long-lived. The longevity record for a captive close relative, the Carolina gopher frog (*R. capito capito*), is 9 years, 1 month (Snider and Bowler 1992). However, overall low rates of recapture at the extant breeding pond suggest low adult survival in the Mississippi gopher frog population (Richter and Seigel 1998b).

Historical records for the Mississippi gopher frog exist for two or possibly three parishes in Louisiana, six counties in Mississippi, and one county in Alabama. Researchers conducting numerous surveys have been unable to document the continuing existence of the Mississippi gopher frog in Louisiana (Seigel and Doody 1992, Thomas 1996) or in Alabama (Bailey 1992, 1994). The last observation of a gopher frog in Louisiana was in 1967 (Gary Lester, Louisiana Natural Heritage Program, pers. comm. 1991). In Alabama, it was last seen in 1922 (Bailey 1994).

Historical records for the Mississippi gopher frog are limited. We have compiled 35 historical records—1 in Alabama, 14 in Louisiana, and 20 in Mississippi. Historical records are defined as those localities where gopher frogs were found prior to 1990. No new localities for the frog have been found since 1988. Localities are sites identified from specimens captured or heard calling during sampling of potential breeding sites or by surveying highway crossings when individuals were on their way to or from breeding sites. Of the 35 historical records, 24 provided data that could be used to approximate the location of the original site.

Habitat degradation is the primary factor in the loss of gopher frog populations in Alabama, Louisiana, and Mississippi. Bailey (1994) visited the historical Alabama locality in 1993. The habitat had been developed as a residential area, and was no longer suitable for the gopher frog. Seigel and Doody (1992) and Thomas (1996) surveyed historical sites in Louisiana and searched for other potential sites that might be occupied by gopher frogs. They also found that longleaf pine forests had been severely degraded. The historical breeding and upland habitats had changed as a result of urbanization and/or conversion of forest to pine plantation. For example, they found three historical breeding sites that had been extensively altered. One had been made a permanent pond in a residential backyard. Two other ponds had been extensively altered by bedding, clearing, and nutrient loading during conversion of the surrounding habitat to pine plantation. Both Seigel and Doody (1992) and Thomas (1996) were unsuccessful at finding any Mississippi gopher frogs in Louisiana.

Crawford (1988) surveyed 42 ponds in 6 Mississippi counties in 1987 and 1988. He attempted to relocate all of the State's historical localities for the gopher frog. He found that habitat in the vicinity of historical localities had been altered by conversion of natural forest to agriculture and pine plantations.

Urbanization was a factor in the loss of at least three breeding ponds. The character of relocated historical breeding ponds had been changed from open-canopy, temporary ponds with clear water and hard bottoms to muddy, more permanent ponds with a closed canopy (G. Johnson, pers. comm. 1999). No appropriate habitat for the Mississippi gopher frog could be found near any of the localities (G. Johnson, pers. comm. 1999). Crawford (1988) also used aerial maps to identify potential breeding sites. In many cases, ponds identified on these maps no longer existed due to land use changes. However, he was able to verify the presence of the species at four new sites in Harrison County, Mississippi. At three of these four sites, only one individual was observed. Kuss (1988) surveyed 60 ponds in southern Mississippi for the flatwoods salamander (*Ambystoma cingulatum*). He did not encounter any gopher frogs during the surveys. Subsequent to these studies, surveys have documented the continued existence of only one population in Mississippi. This population breeds at a pond located in the DeSoto National Forest in Harrison County. Surveyors working in Mississippi during the 1990s have been unable to find the species at any other sites (R. Jones, Mississippi Department of Wildlife, Fisheries and Parks, pers. comm. 1998; G. Johnson, pers. comm. 1999). Although Allen (1932) found gopher frogs to be common in the coastal counties of Mississippi earlier in the century, today R. Seigel (pers. comm. 1998) estimates the extant Mississippi gopher frog population to be only 100 adult frogs at a single site.

The extensive habitat alteration found during surveys of historical gopher frog localities in Alabama, Louisiana, and Mississippi resulted from the loss of virtually all of the natural longleaf pine forest in these States. Presettlement longleaf pine forests were the dominant forest type of the southeastern coastal plain. Today, less than 2 percent of these forests remain (Ware *et al.* 1993). Second growth longleaf pine forests in the vicinity of historical Mississippi gopher frog breeding sites were clearcut extensively in the mid-1950s and then again in the 1980s and 1990s. Longleaf pine forest habitat was replaced with dense pine plantations, agriculture, and urban areas. Habitat degradation has occurred as a result of alterations in the soil horizon (layering of different soil types), forest litter, herbaceous community, and occurrence of downed trees and stumps that Mississippi gopher frogs use as refugia. Fire suppression has further degraded the habitat. The hydrology of many isolated temporary wetlands, required as breeding sites for the Mississippi gopher frog, has been altered. In addition, these same factors have resulted in the decline of the gopher tortoise, whose burrows are most likely the preferred habitat for adult gopher frogs. As a result of these habitat changes, both the uplands and the pond basins previously occupied by the Mississippi gopher frog have become unsuitable.

**Distinct Vertebrate Population Segment**

Recent genetic analysis suggested reevaluation of the taxonomy of gopher frogs (*Rana capito*) is necessary (Young 1997). The analysis of the relationships between gopher frogs and crayfish frogs, and among subspecies of gopher frogs, failed to support the current taxonomy for gopher frogs at the subspecific level. However, the research did support taxonomic distinction of the Mississippi gopher frog from all other gopher frogs east of the Mobile River delta, including other dusky gopher frogs. Young and Crother (unpublished manuscript) concluded that the Mississippi gopher frog population segment should be resurrected to species status.

The biological evidence supports recognition of the Mississippi gopher frog as a distinct vertebrate population segment for purposes of listing, as defined in our February 7, 1996, Policy Regarding the Recognition of Distinct Vertebrate Population Segments (61 FR 4722). The definition of "species" in section 3(16) of the Act includes "any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature." For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered—(1) the discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (*i.e.*, is the population segment endangered or threatened?).

Habitat of the lower Gulf Coastal Plain from the Mississippi River to the Mobile River delta contains the westernmost subpopulation of dusky gopher frogs. This population segment is discrete because it is geographically segregated from other gopher frogs by a large gap (approximately 200 km (125 mi)) of unoccupied habitat and the Mobile River delta. Consequently, this subpopulation does not mix with other dusky gopher frogs.

Young (1997) presented evidence that the Mississippi gopher frog distinct population segment is biologically and ecologically significant due to genetic characteristics different from the species as a whole (see discussion in Background section). The habitat occupied by the Mississippi gopher frog is disjunct from habitat occupied by other populations of the dusky gopher frog. No other populations of gopher frogs remain in Louisiana, Mississippi, or Alabama west of the Mobile River drainage. As a result, loss of the Mississippi gopher frog population segment would result in a substantial modification of the species' range.

**Previous Federal Action**

In our December 30, 1982, Notice of Review, we designated the dusky gopher frog (designation *Rana areolata sevosa*) as a category 2 candidate and solicited status information (47 FR 58454). Category 2 candidates were those taxa for which we had information indicating that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not currently available to support a proposed rule. Category 1 taxa were those taxa for which we had sufficient information on biological vulnerability and threats on file to support issuance of proposed listing rules. In our September 18, 1985 (50 FR 37958), and January 6, 1989 (54 FR 554), Notices of Review, we retained the dusky gopher frog in category 2. We identified the dusky gopher frog as a category 1 candidate species in our November 21, 1991 (56 FR 58804), and November 15, 1994 (59 FR 58982), Notices of Review. Beginning with our February 28, 1996, Notice of Review (61 FR 235), we discontinued the designation of multiple categories of candidates, and we now consider only taxa that meet the definition of former category 1 taxa as candidates for listing. We also removed Rana areolata sevosa from candidate status based on the need for additional information to support a listing proposal. We have recently completed an analysis of newly available information from current studies and determined that listing the Mississippi gopher frog distinct population segment of the dusky gopher frog is warranted. We elevated the Mississippi gopher frog to candidate status in our October 25, 1999, Notice of Review (64 FR 57534).

The processing of this proposed rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order

in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. This proposed rule is a Priority 3 action and is being completed in accordance with the current Listing Priority Guidance.

**Summary of Factors Affecting the Species**

Section 4 of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. We may determine a species to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Mississippi gopher frog distinct population segment (*Rana capito sevosa*) are as follows:

*A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The range of the Mississippi gopher frog has been reduced as a result of habitat destruction and modification (see "Background" section). Historically, the Mississippi gopher frog occurred in at least nine counties or parishes in the States of Alabama, Mississippi, and Louisiana. Today, it is known from only one site in Harrison County, Mississippi.

The Mississippi Gulf Coast has experienced a recent increase in residential development. The land 200 m (656 ft) immediately north of the only known Mississippi gopher frog breeding site is slated for development, including a 20,000-unit retirement community, a sewage treatment plant, and several golf courses (L. Lewis, Brown and Mitchell, Inc., pers. comm. 1999). The sewage treatment plant and one golf course are currently planned immediately north of the gopher frog pond. Richter and Seigel (1998b) reported that the majority of gopher frogs leaving the breeding pond moved in the general direction of the development site. Two frogs, tracked using transmitters, were observed at the fence line delineating the DeSoto National Forest property boundary from the lands currently slated for development (Richter and Seigel 1998a). It seems likely that Mississippi gopher frogs occupy, or in the very recent past have occupied, this site. Residential development of the site would likely destroy its suitability for the frog.

Due to the close proximity of this development to the Mississippi gopher frog pond, a number of indirect impacts are possible. The most severe is the potential alteration of hydrology (physical factors that influence the movement of water into and out of a wetland) in the local region. The breeding pond of the Mississippi gopher frog must maintain its isolation and cycle of filling and drying, or it will no longer be suitable habitat. Wetland dredging and filling will be required in order to site houses and build the golf course and sewage treatment plant. The consequences of these proposed hydrological alterations cannot be estimated without further study. However, the only known breeding pond for the Mississippi gopher frog would undoubtedly be affected in some way (W. Oakley, U.S. Geological Survey, pers. comm. 1999).

A number of scenarios are possible due to the proximity of a proposed regional sewage treatment plant within 1.6 km (1 mi) of the Mississippi gopher frog pond. If sewage lagoons are used, it is possible they could overflow and flood gopher frog habitat. Such conditions of high water periodically result from the tropical storms that occur along the Mississippi Gulf Coast. Another potential effect is the lowering or raising of the groundwater table. Changes in the water table will alter the hydroperiod of the Mississippi gopher frog breeding pond and reduce its habitat suitability.

A dam has been proposed for the Biloxi River within 1.6 km (1 mi) of the Mississippi gopher frog pond. The reservoir plan involves a dam on the Biloxi River that would flood approximately 567 hectares (1,400 acres), primarily within the boundaries of the DeSoto National Forest (*Sun Herald*, Gulfport, Mississippi, May 4, 1999). The impoundment created by this dam would likely alter the temporary nature of the breeding site and flood occupied upland habitat used by adult frogs and/or potentially unoccupied upland habitat.

The highway expansion, both ongoing and planned, in the vicinity of the existing Mississippi gopher frog pond will fragment the available longleaf pine habitat (see Factor E). Urbanization will expand along these highway corridors and further reduce available habitat for the frog. Highway construction may also alter the existing hydrology of the area through creation of drainage ditches, filling of wetlands, and sedimentation.

The remaining breeding pond for the Mississippi gopher frog is located in the DeSoto National Forest. Silviculture, including timber sales with associated clearcutting, is currently the primary activity in this area. Inappropriate timber management could alter the suitability of the Mississippi gopher frog's remaining habitat (see "Background" section). In 1994, habitat on private land 200 m (656 ft) north of the breeding pond, now slated for residential development, was clearcut. The behavior of two Mississippi gopher frogs tracked from their breeding site may be indicative of the negative effects of clearcutting. The two frogs were followed to a burrow at the boundary of the clearcut (Richter and Seigel 1998a). They never left this location during the life of the transmitters. The burrow and stump holes used by migrating frogs on the clearcut site were likely altered. In addition, the site had no overstory and would represent a desert to moisture-requiring frogs. Although the effects of the clearcut on the population are unknown, it appears likely that, at least temporarily, the habitat was unsuitable for the frogs.

Historical gopher frog breeding sites have been degraded by roads that pass through or are adjacent to ponds. Erosion of unpaved roads adjacent to breeding sites may result in an influx of sediment from surrounding uplands during rainstorms. The hydroperiod (period during which a wetland holds water) at the Mississippi gopher frog breeding site has been negatively affected by a poorly maintained logging road that runs within 20 m (66 ft) of the pond (R. Seigel, pers. comm. 1998).

The open canopy and flat, unforested bottom of the Mississippi gopher frog breeding pond represent an alluring site for dumping unwanted trash and riding off-road vehicles (ORV). Many temporary ponds throughout the southeast have been degraded as a result of garbage dumping (LaClaire, pers. obs. 1994). ORVs can cause direct mortality of gopher frog tadpoles and adults (J. Jensen, Georgia Department of Natural Resources, pers. comm. 1996) as well as alter the quality of a breeding site. ORVs alter the contours of the pond floor, eliminate herbaceous vegetation, and can alter the hydrology of the site (LaClaire, pers. obs. 1995). Loss of herbaceous vegetation caused by ORVs could also discourage gopher frog

reproduction, since egg masses are attached to stems of herbaceous vegetation (Young 1997; Richter and Seigel 1998a, 1998b). ORV tracks have been documented within the Mississippi gopher frog breeding site (G. Johnson, pers. comm. 1994). In 1994, an area of the DeSoto National Forest within 2.4 km (1.5 mi) of the existing breeding pond was temporarily closed due to accumulation of trash, soil erosion and water quality degradation caused by ORVs, damage to endangered and sensitive plants and animals, and other vandalism (K. Godwin, U.S. Forest Service, pers. comm. 1994). ORV use will likely increase in the vicinity of the pond if the proposed housing development occurs adjacent to the site.

*B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes*

Direct take of Mississippi gopher frogs for commercial, recreational, scientific, or educational purposes is not currently a threat. However, listing the Mississippi gopher frog may make it more attractive to collectors through recognition of its rarity. In addition, the life history and ecology of Mississippi gopher frogs make them vulnerable to overcollecting, as well as vandalism. Only a single breeding pond remains for this frog. At predictable times of the year, all breeding adults congregate at this one site to breed.

*C. Disease or Predation*

Disease is not known to be a factor in the decline of the Mississippi gopher frog. However, predation may be a threat. Richter and Seigel (1998a) reported that approximately 44 percent of all eggs at the existing breeding site were lost in 1997 prior to hatching. An undetermined amount of the egg mortality was due to predation by caddisfly larvae (Order Trichoptera, Family Phryganeidae) on the egg masses. Caddisfly larvae were not observed on egg masses in the previous year of the study. The effect on the Mississippi gopher frog population is unknown. However, if mortality of this magnitude is a result of predation, it is a cause for concern in such an extremely small and isolated population.

Predation from fish probably contributed to the loss of historic populations. Temporary ponds altered to form more permanent bodies of water and stocked with fish are no longer suitable breeding sites. Fish may have also entered breeding sites through the connection of drainage ditches and firebreaks to pond basins. The Mississippi gopher frog is adapted to temporary wetlands, and its larvae cannot survive the heavy predation of bass and sunfish commonly used to stock ponds. One historical location in Louisiana was destroyed in part because it has become a permanent pond with fish (Thomas 1996). In Mississippi, a calling male was discovered in 1987 at a site that has since been converted to a fish pond (T. Mann, pers. comm. 1998). No gopher frogs have been reported subsequently at this site, which is no longer considered suitable breeding habitat.

*D. The Inadequacy of Existing Regulatory Mechanisms*

Louisiana has no protective legislation for the Mississippi gopher frog. Alabama protects all gopher frogs as nongame species (J. Woehr, Alabama Department of Conservation and Natural Resources, pers. comm. 1994). The Mississippi gopher frog is listed as endangered in Mississippi (Mississippi Department of Wildlife, Fisheries and Parks 1992), and both Mississippi and Alabama provide protection against collecting of the species. However, this legislation does nothing to alleviate the habitat loss that has caused the decline of the species. The only known breeding site for the Mississippi gopher frog is on U.S. Forest Service land. As a result, there has been a concerted effort to encourage the U.S. Forest Service to manage the site for the frog. Although the U.S. Forest Service has an obligation to ensure their land management activities protect fish and wildlife (National Forest Management Act), forest management is often limited by existing funding. Other avenues of funding become available to the U.S. Forest Service once a species is federally listed.

*E. Other Natural or Manmade Factors Affecting Its Continued Existence*

Fire is needed to maintain the natural longleaf pine community. Ecologists consider fire suppression a primary reason for the degradation of the remaining longleaf pine acreage in the southeast (Noss 1988, Ware *et al.* 1993). Fire suppression has reduced the quality of the terrestrial and aquatic habitat for the Mississippi gopher frog. Canopy closure from fire suppression alters the forest floor vegetation and threatens the open, herbaceous character typical of gopher frog breeding ponds (Kirkman 1995, LaClaire 1995). In addition, fire causes the release of nutrients bound in plant material. This release of nutrients results in a flush of primary productivity that is important to the herbivorous gopher frog tadpoles. Fire suppression has probably negatively impacted all of the historical Mississippi gopher frog sites. At this time, fire is the only known management tool that will maintain the existing breeding pond as suitable habitat.

Between 1991 and 1998, the U.S. Forest Service conducted periodic growing-season burns of the forest compartment surrounding the Mississippi gopher frog breeding pond. These burns improved habitat conditions, but their frequency and extent have been insufficient. For example, the interior of the breeding site has been burned only once since 1991. This frequency of burning is too low to prevent woody encroachment and, therefore, too low to enhance herbaceous growth. Residential development and road construction in the vicinity of the breeding pond will create increased concerns about, and likely reduce the use of, fire as a management tool.

Habitat fragmentation of the longleaf pine ecosystem, resulting from habitat conversion, threatens the survival of the single remaining Mississippi gopher frog population. Studies have shown that the loss of small, fragmented populations is common, and recolonization is critical for their regional survival (Fahrig and Merriam 1994, Burkey 1995). As patches of available habitat become separated beyond the dispersal range of a species, populations are more sensitive to genetic, demographic, and environmental variability and may be unable to recover (Gilpin 1987, Sjogren 1991, Blaustein *et al.* 1994). This scenario describes threats to the Mississippi gopher frog. Five historical Mississippi gopher frog localities exist within a 19.2-km (12-mi) radius of the remaining site. Highways have fragmented this area and contributed to habitat degradation. The most recent records of frogs at these locales was in the late 1980s. The planned construction of highways within 5 km (3.1 mi) both to the north and east of the existing Mississippi gopher frog pond will further isolate the remaining population from the two potentially restorable historical breeding sites in the DeSoto National Forest. The Biloxi River and additional residential development bound the habitat to the west and south.

Low reproductive potential may also present a threat to the Mississippi gopher frog's continued existence. Studies at the Mississippi breeding site suggest that female Mississippi gopher frogs may not breed until 2 to 3 years of age and may breed only in alternate years and/or have only a single lifetime

breeding event (Richter and Seigel 1998b). In addition, survival of juvenile frogs is thought to be extremely low (Richter and Seigel 1998b).

Annual variability in rainfall influences how frequently and how long a pond is appropriate breeding habitat. Reliance on specific weather conditions results in unpredictable breeding events and reduces the likelihood that recruitment will occur every year. No larvae survived to metamorphosis in 3 out of 6 years of the reproductive study of the extant Mississippi gopher frog population (summarized in Richter and Seigel 1998b). In addition, study results indicate that only 1 year out of 6 resulted in the explosive numbers (2,488) of juveniles typical of temporary pond breeding amphibians.

The Mississippi gopher frog population is highly susceptible to genetic isolation, inbreeding, and random demographic events as a result of having only one known breeding site. Long-lasting droughts or frequent floods may negatively affect the population. Although these are natural processes, other threats, such as habitat fragmentation, habitat degradation, and low reproductive potential, may cause the population to decline to the point that it cannot recover.

Pesticides and herbicides pose a threat to amphibians such as the Mississippi gopher frog, because their permeable eggs and skin readily absorb substances from the surrounding aquatic or terrestrial environment (Duellman and Trueb 1986). Aquatic frog larvae are likely more vulnerable than adults to chemical changes in their environment. Negative effects of commonly used pesticides and herbicides on amphibian larvae include delayed metamorphosis, paralysis, reduced growth rates, and mortality (Bishop 1992, Berrill and Bertram 1997, Bridges 1999). Adult gopher frogs are predaceous and could be affected by pesticides accumulated in their invertebrate prey. If a golf course is built in the drainage area of the Mississippi gopher frog breeding pond, as proposed, the herbicides and pesticides used to maintain it would pose a potential threat to the population. In addition, runoff from chemically maintained yards and roads in the proposed residential development may contribute toxins that could threaten the frog. Herbicides may also alter the density and species composition of vegetation surrounding a breeding site and reduce the number of potential sites for egg deposition, larval development, or shelter for migrating frogs.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the Mississippi gopher frog distinct population segment in determining to propose this rule. Based on this evaluation, the preferred action is to list the Mississippi gopher frog distinct population segment as endangered. The Act defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range. A threatened species is one that is likely to become an endangered species in the foreseeable future throughout all or a significant portion of its range. As discussed under Factor A, in spite of extensive surveys throughout the known range of the Mississippi gopher frog, only one population is known to exist. Further, residential development, new and expanding highways, increased fire suppression, and a proposed reservoir pose threats to the remaining habitat of adult gopher frogs. For these reasons, we find that the Mississippi gopher frog distinct population segment is in danger of extinction throughout all or a significant portion of its range and, therefore, endangered status is appropriate.

**Critical Habitat**

Critical habitat is defined in section 3 of the Act as: (I) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(I) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (ii) such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is prudent for the Mississippi gopher frog.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, "The processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year." As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act.

We propose that critical habitat is prudent for the Mississippi gopher frog. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of

critical habitat would be prudent for the Mississippi gopher frog.

Due to the fact that the Mississippi gopher frog is only known from one site, it is vulnerable to unrestricted collection, vandalism, or other disturbance. We are concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, at this time we do not have specific evidence for the Mississippi gopher frog of taking, vandalism, collection, or trade of this species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(I)) and recent case law, we do not expect that the identification of critical habitat will further increase the degree of threat of taking or other human activity above that of the listing of the species.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we propose that critical habitat is prudent for the Mississippi gopher frog. However, the deferral of the critical habitat designation for the Mississippi gopher frog will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of the Mississippi gopher frog without further delay. We anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will make the final critical habitat determination with the final listing determination for the Mississippi gopher frog. If this final critical habitat determination is that critical habitat is prudent, we will develop a proposal to designate critical habitat for the Mississippi gopher frog as soon as feasible, considering our workload priorities.

**Available Conservation Measures**

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

The Mississippi gopher frog occurs in the DeSoto National Forest, Federal land administered by the U.S. Forest Service. The U.S. Forest Service will be required to evaluate whether their activities have the potential to adversely impact the Mississippi gopher frog. Their activities that could adversely modify suitable habitat include, but are not limited to, forest management and road construction. Other Federal agencies that may be involved in authorizing, funding, or carrying out activities that may affect the Mississippi gopher frog include the Army Corps of Engineers, due to their regulation of discharges of dredged or fill material into isolated wetlands under section 404 of the Clean Water Act (CWA), nationwide permit 26 and dam construction in navigable waters under section 10 of the Rivers and Harbors Act and 404 of the CWA; the Federal Energy Regulatory Commission, due to their oversight of gas pipeline and powerline rights-of-way; and the Federal Highway Administration, if Federal funds are involved in road construction.

We have been working with the U.S. Forest Service since 1988 to protect the last remaining population of the Mississippi gopher frog. We have advised the U.S. Forest Service on protection and management needs for this species. We have supported research on the ecology and life history of this population by projects funded through our cooperative agreement with the State of Mississippi under section 6 of the Act. In addition, we have collaborated with the U.S. Forest Service on the rehabilitation of a nearby pond as a future breeding site for the frog.

The Act and its implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import, export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and agents of State conservation agencies.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that are or are not likely to constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of

the effects of the listing on proposed and ongoing activities within a species' range.

We believe the following activities are unlikely to result in a violation of section 9 for the Mississippi gopher frog:

(1) Possession of legally acquired Mississippi gopher frogs;

(2) Lawful hunting activities;

(3) Lawful burning of habitat where the Mississippi gopher frog is known to occur, including winter burning;

(4) Federally approved projects that involve activities such as discharge of fill material, draining, ditching, bedding, diversion or alteration of surface or ground water flow into or out of a wetland (*i.e.*, due to roads, impoundments, discharge pipes, etc.), when the activity is conducted in accordance with any reasonable and prudent measures given by us in accordance with section 7 of the Act; and,

(5) Conversion of longleaf pine habitat where the Mississippi gopher frog does not occur.

We believe the following activities could potentially result in "take" of the Mississippi gopher frog:

(1) Unauthorized killing, collecting, handling, or harassing of individual Mississippi gopher frogs; this would include unauthorized use of off-road vehicles in the wetland basins of known breeding sites of the species.

(2) Possessing, selling, transporting, or shipping illegally taken Mississippi gopher frogs;

(3) Unauthorized destruction or alteration of the hydrology of the frog's wetland breeding sites. These actions would include off-site activities that alter the regional hydrology by changing the natural recharge to the below-ground aquifer, altering the groundwater table, or altering flows in stream drainages, which would impact the appropriate temporal fluctuations and/or water-holding capacity at existing breeding sites. Unauthorized actions that could alter the hydrology of breeding sites would include discharge of fill material, draining, ditching, bedding, clear-cutting within the wetland, diversion or alteration of surface or ground water flow into or out of a wetland (*i.e.*, due to roads, impoundments, discharge pipes, etc.), and operation of any vehicles within the wetland; and,

(4) Discharge or dumping of toxic chemicals, silt, or other pollutants (*i.e.*, sewage, oil, pesticides, and gasoline) into isolated wetlands or upland habitats supporting the species. This includes any application of terrestrial or aquatic pesticide that results in the mortality of adult frogs or tadpoles, regardless if the pesticide was applied in accordance with the labeling instructions. This includes drift from aerial applications and runoff from surface applications.

We will review other activities not identified above on a case-by-case basis to determine whether they may be likely to result in a violation of section 9 of the Act. We do not consider these lists to be exhaustive and provide them as information to the public. You should direct questions regarding whether specific activities may constitute a violation of section 9 to the Field Supervisor of our Mississippi Field Office (see **ADDRESSES** section).

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22. For endangered species, you may obtain permits for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. You may request copies of the regulations regarding listed wildlife from, and address questions about prohibitions and permits to, the U.S. Fish and Wildlife Service, 1875 Century Blvd., Suite 200, Atlanta, Georgia 30345, or telephone 404/679–7313; facsimile 404/679–7081.

### Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, we request comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. We particularly seek comments concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this distinct population segment;

(2) The location of any additional populations of this distinct population segment;

(3) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(4) Additional information concerning the range, distribution, and size of this distinct population segment; and

(5) Current or planned activities in the subject area and their possible impacts on this distinct population segment.

We will take into consideration your comments and any additional information received on this distinct population segment when making a final determination regarding this proposal. We will also submit the available scientific data and information to appropriate, independent specialists for review. We will summarize the opinions of these reviewers in the final decision document. The final determination may differ from this proposal based upon the information we receive.

You may request a public hearing on this proposal. Your request for a hearing must be made in writing and filed within 45 days of the date of publication of this proposal in the **Federal Register**. Address your request to the Field Supervisor (see **ADDRESSES** section).

### National Environmental Policy Act

We have determined that we do not need to prepare an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

### Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.22.

### References Cited

You may request a list of all references cited in this document, as well as others, from the Mississippi Field Office (see **ADDRESSES** section).

Author. The primary author of this proposed rule is Linda V. LaClaire, Mississippi Field Office (see **ADDRESSES** section) (601/965–4900).

### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

### Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

## PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

**Authority:** 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. In § 17.11(h) add the following, in alphabetical order under AMPHIBIANS, to the List of Endangered and Threatened Wildlife:

**§ 17.11 Endangered and threatened wildlife.**

* * * * *

(h) * * *

| Species | | Historic range | Vertebrate population where endangered or threatened | Status | When listed | Critical habitat | Special rules |
|---|---|---|---|---|---|---|---|
| Common name | Scientific name | | | | | | |
| AMPHIBIANS | | | | | | | |
| * | * | * | * | * | * | * | |
| Frog, Mississippi gopher. | *Rana capito sevosa* | U.S.A.(AL, FL, LA, MS). | Wherever found west of Mobile and Tombigbee Rivers in AL, MS, and LA. | E | ..... | NA | NA |
| * | * | * | * | * | * | * | |

Dated: April 6, 2000.

**Jamie Rappaport Clark,**

*Director, Fish and Wildlife Service.*

[FR Doc. 00–12796 Filed 5–22–00; 8:45 am]

BILLING CODE 4310–55–U

# Notices

Federal Register
Vol. 65, No. 100
Tuesday, May 23, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Foreign Agricultural Service

### Notice of a Request for Extension of a Currently Approved Information Collection

**AGENCY:** Foreign Agricultural Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act, this notice announces the Department's intention to request an extension for a currently approved information collection in support of the Dairy Tariff-Rate Import Quota Licensing program.

**DATES:** Comments should be submitted no later than July 24, 2000 to be assured of consideration.

**ADDITIONAL INFORMATION AND COMMENTS:** Submit comments and/or requests for information to Richard P. Warsack, Dairy Import Quota Manager, STOP 1021, U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Washington, D.C. 20250–1021, telephone (202) 720–9439 or e-mail warsack@fas.usda.gov. All comments received will be available for public inspection in room 5541–S at the above address. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

**SUPPLEMENTARY INFORMATION**

*Title:* Dairy Tariff-Rate Import Quota Licensing Program.

*OMB Number:* 0551–0001.

*Expiration Date of Approval:* October 31, 2000.

*Type of Request:* Extension of a currently approved information collection.

*Abstract:* The currently approved information collection supports Import Regulation 1, Revision 8 (7 CFR 6.20–6.37) which governs the administration of the import licensing system for certain dairy products subject to tariff-rate quotas (TRQs). The TRQs were established in the Harmonized Tariff Schedule of the United States (HTS) as a result of entry into force of certain provisions in the Uruguay Round Agreement. Imports of nearly all cheese made from cow's milk (except soft-ripened cheese such as Brie) and certain noncheese dairy products are subject to TRQs and the licensing provisions of Revision 8. Import licenses are issued each quota year to eligible licensees and are valid for 12 months (January 1 through December 31). Holders of such licenses may enter dairy articles at the low-tier tariff rate. Importers who do not hold licenses may enter dairy articles at the high-tier tariff rate.

For each quota year, all applicants must submit form FAS 923 (rev. 7–96). This form requests applicants to: (1) identify whether they are applying for a license as an importer, manufacturer or exporter of certain dairy products; and (2) certify they meet the eligibility requirements of § 6.23 of the Import Regulation. Importers and exporters must attach documentation required by § 6.23 and § 6.24 as proof of eligibility for import licenses. Applicants for nonhistorical licenses for cheese and/or noncheese dairy products must also submit form FAS 923–A and/or FAS 924–B (rev. 7–96). This form requires applicants to identify requests for licenses listed on the form in descending rank-order.

After licenses are issued, § 6.26 requires licensees to surrender by October 1 any license amount that a licensee does not intend to enter that year. To the extent practicable, the Licensing Authority reallocates these amounts to existing licensees for the remainder of that year. The information collection includes form FAS 924–A, License Surrender Form and FAS 924–B, Application for Additional License Amounts. These forms require the licensee to complete a table listing the license number and surrendered amount or to list the additional amounts requested by dairy article, supplying country and amount requested by descending rank-order.

*Estimate of burden:* The public reporting burden for this collection of currently approved forms FAS 923, FAS 923–A and 923–B (one form) is estimated to average 255 hours; and FAS 924–A and FAS 924–B (one form) is 15 hours. The estimated average burden includes the time for reviewing instructions, gathering data needed, completing forms, and record keeping are set forth in the table below.

| Estimates | FAS 923, 923–A, 923–B (Rev.7–96) (one form) | FAS 924–A, 924–B (one form) |
|---|---|---|
| Est. number of respondents | 340.00 | 100.00 |
| Est. responses per respondent | 1.00 | 1.00 |
| Est. hours per response | 0.75 | 0.15 |
| Est. total annual burden in hours | 255.00 | 15.00 |
| Aggregate total | 270.00 estimated annual burden in hours. | |

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

The Department requests comments regarding the accuracy of the burden estimate, ways to minimize the burden, including the use of automated collection techniques or other forms of information technology, or any other aspect of the collection of information.

Comments should be submitted in accordance with the Dates, Additional Information and Comments sections above. All comments will be summarized and included in the request for OMB approval, and will also become a matter of public record.

Signed at Washington, D.C. on May 17, 2000.

**Timothy J. Galvin,**

*Administrator, Foreign Agricultural Service.*

[FR Doc. 00–12945 Filed 5–22–00; 8:45 am]

BILLING CODE 3410–10–P

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent To Seek Approval To Conduct an Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request approval for an information collection, the *Census of Agriculture Content Test.*

**DATES:** Comments on this notice must be received by July 27, 2000 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

**SUPPLEMENTARY INFORMATION:** *Title:* Census of Agriculture Content Test.

*Type of Request:* Intent to Seek Approval to Conduct an Information Collection.

*Abstract:* The Census of Agriculture is the leading source of statistics about the nation's agricultural production and the only source of consistent, comparable data at the county, state, and national levels. The Census of Agriculture is required by law under the "Census of Agriculture Act of 1997," Pub. L. No. 105–113 (7 U.S.C. 2204(g)).

The purpose of this voluntary content test is to evaluate a number of factors affecting the census program: questionnaire format and design, new content items, changes to question location and wording, respondent burden, the ability of the respondent to provide the data, and selected processing methods. Results will be analyzed in preparation for the 2002 Census of Agriculture.

Minimizing response burden while recognizing the needs for agricultural sector data is a consideration when reviewing content expansion during 2002 Census questionnaire development. USDA/NASS conducted meetings with other USDA and Federal agencies and contacted State Departments of Agriculture to gather information about uses and justification for county-level data. Recommendations resulting from these evaluations are the basis for many of the changes incorporated into the content test questionnaires.

This Census of Agriculture Content Test will be conducted at the national level, excluding Hawaii and Alaska. The random sample will be mailed questionnaires with nonrespondents receiving a follow-up contact. NASS will summarize the data and present the findings to the Advisory Committee on Agriculture Statistics.

*Estimate of Burden:* Public reporting burden for this collection of information averages 2 minutes per refusal, 5 minutes per screen-out, and 90 minutes per positive response.

*Respondents:* Farm and ranch operators.

*Estimated Number of Respondents:* 15,000.

*Estimated Total Annual Burden on Respondents:* 17,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

**Comments**

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000 or gmcbride@usda.gov/nass.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, April 3, 2000.

**Rich Allen,**

*Associate Administrator.*

[FR Doc. 00–12943 Filed 5–22–00; 8:45 am]

BILLING CODE 3410–20–P

## DEPARTMENT OF AGRICULTURE

### National Agricultural Statistics Service

### Notice of Intent To Extend Approval of an Information Collection

**AGENCY:** National Agricultural Statistics Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request an extension of a currently approved information collection, the *Agricultural Economics and Land Ownership Survey.*

**DATES:** Comments on this notice must be received by July 27, 2000 to be assured of consideration.

**ADDITIONAL INFORMATION OR COMMENTS:** Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

**SUPPLEMENTARY INFORMATION:** *Title:* Agricultural Economics and Land Ownership Survey.

*OMB Control Number:* 0535–0240.

*Expiration Date of Approval:* June 30, 2000.

*Type of Request:* Intent to Extend Approval of an Information Collection.

*Abstract:* The 1999 Agricultural Economics and Land Ownership Survey (AELOS) is being conducted by the National Agricultural Statistics Service. This national survey obtains data to describe the economic status of the U.S. farm operations and farm households. Data collected will provide information on agricultural land ownership, financing, and inputs by farm operators and landlords. The AELOS is designed to provide data that are valid for each

state and the U.S. as a whole. It is being conducted in 2000 for the 1999 calendar year. The respondent universe consists of two populations. First is the official USDA farm population which is defined as "all establishments that sold or would have normally sold at least $1,000 of agricultural products during the year." Second are the landlords of farm operators selected for the survey. This request is for an extension of survey approval through September 30, 2000. These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average 48 minutes per response.

*Respondents:* Farms, individuals.

*Estimated Number of Respondents:* 72,000.

*Estimated Total Annual Burden on Respondents:* 58,100.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, the Agency OMB Clearance Officer, at (202) 720–5778.

**Comments**

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will become a matter of public record.

Signed at Washington, DC, May 1, 2000.

**Rich Allen,**

*Associate Administrator.*

[FR Doc. 00–12944 Filed 5–22–00; 8:45 am]

BILLING CODE 3410–20–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1093]**

### Grant of Authority for Subzone Status; Consolidated Diesel Company (inc.) (Spark-Ignition and Diesel Engines); Nash County, North Carolina

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Foreign-Trade Zones Act provides for "the establishment * * * of * * * foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board (the Board) to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas,* the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas,* the North Carolina Global TransPark Authority, grantee of Foreign-Trade Zone 214, has made application for authority to establish special-purpose subzone status at the spark-ignition and diesel engine manufacturing facilities of Consolidated Diesel Company (Inc.), located in Whitakers and Battleboro, North Carolina (FTZ Docket 6–99, filed 2–10–99);

*Whereas,* notice inviting public comment was given in the **Federal Register** (64 FR 8541, 2–22–99); and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore,* the Board hereby grants authority for subzone status at the spark-ignition and diesel engine manufacturing facilities of Consolidated Diesel Company (Inc.) located in Whitakers and Battleboro, North Carolina (Subzone 214A), at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 8th day of May 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 00–12977 Filed 5–22–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1094]**

### Approval for Extension of Authority of Board Order 828; Foreign-Trade Zone 21 Hubner Manufacturing Corporation (Industrial Bellows/Molded Parts); Charleston, South Carolina

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* Board Order 828 (61 FR 33094, 6–26–96) granted authority on behalf of Hubner Manufacturing Corporation (HMC) to manufacture of textile/rubber industrial bellows and plastic/rubber molded parts under FTZ procedures subject to the following restrictions: 1) privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the zone for the HMC operation; and, 2) initial approval for a period of three years from the date of activation of FTZ procedures at the HMC plant (expires 8–7–2000), subject to extension;

*Whereas,* the South Carolina State Ports Authority, grantee of FTZ 21, has requested authority, on behalf of HMC, to extend its manufacturing authority on a permanent basis by removing Restriction #2;

*Whereas,* notice inviting public comment was given in the **Federal Register** (64 FR 27959, 5–24–99);

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the request would be in the public interest if approval were subject to the restriction listed below;

*Now Therefore,* the Board hereby approves the request subject to the FTZ Act and the Board's regulations, including § 400.28, and further to a restriction requiring that privileged foreign status (19 CFR 146.41) shall be elected on all foreign-origin merchandise admitted to FTZ 21 for the HMC activity. HMC will continue to

destroy all foreign status scrap materials in the zone, per Board Order 828.

Signed at Washington, DC, this 8th day of May, 2000.

**Troy H. Cribb,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 00–12978 Filed 5–22–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1092]**

### Expansion of Foreign-Trade Zone 216; Olympia, WA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a—81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Port of Olympia, grantee of Foreign-Trade Zone 216 (Olympia, Washington), submitted an application to the Board for authority to expand FTZ 216-Site 3 to include an additional area at the Commerce Place industrial/business park in Lacey, Washington, adjacent to the Port of Olympia Customs port of entry (FTZ Docket 27–99; filed 5/26/99);

*Whereas,* notice inviting public comment was given in the **Federal Register** (64 FR 29993, 6/4/99) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, Therefore,* the Board hereby orders:

The application to expand FTZ 216–Site 3 is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 8th day of May 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

**Dennis Puccinelli,**

*Acting Executive Secretary.*

[FR Doc. 00–12976 Filed 5–22–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–603)(C–351–604)(A–122–601)(A–427–602)(C–427–603)(A–475–601)(A–428–602) (A–588–704]**

### Brass Sheet and Strip From Brazil, Canada, France, Italy, Germany, and Japan: Amended Notice of Continuation of Antidumping Duty Orders and Countervailing Duty Orders

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Amended Notice of Continuation of Antidumping Duty Orders and Countervailing Duty Orders: Brass Sheet and Strip From Brazil, Canada, France, Italy, Germany, and Japan.

**SUMMARY:** On May 1, 2000, the Department of Commerce ("the Department") pursuant to section 751(d)(2) of the Act, as amended ("the Act"), published continuation of the antidumping duty orders on brass sheet and strip from Brazil, France, Italy, Germany, Japan, and Canada, and the countervailing duty orders on brass sheet and strip from Brazil and France (65 FR 25304). Subsequent to the issuance of the continuation notice, we discovered a ministerial error. As a result, we are correcting the next sunset review date of these orders listed in the determination section of the notice of continuation of the above orders from "not later than March 2005" to "not later than April 2005."

**EFFECTIVE DATE:** May 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Eun W. Cho or Carole Showers, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th St. & Constitution Ave., NW, Washington, D.C. 20230: telephone (202) 482–1698 or (202) 482–3217, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On May 1, 2000, the Department issued the continuation of antidumping duty orders and countervailing duty orders: brass sheet and strip from Brazil, Canada, France, Italy, Germany, and Japan. (65 FR 25304). Subsequent to the publication of the continuation notice, we discovered a ministerial error.

#### Clerical Error

In our continuation notice, we indicated that we intend to initiate the next five-year reviews of these orders not later than March 2005. However, because the Department's determination to continue the above orders was published on May 1, 2000, pursuant to section 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year reviews of these orders not later than April 2005.

Because we inadvertently listed the wrong initiation month in the determination section of our continuation notice, we are amending that notice to correct the ministerial error.

#### Amended Continuation Notice

We are correcting the month listed in the determination section of our continuation notice as follows:

Pursuant to sections 751(c)(2) and 751 (c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than April 2005.

This amendment is issued and published in accordance with sections 751(h) and 777(i) of the Act.

May 16, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–12973 Filed 5–22–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–831]**

### Fresh Garlic From the People's Republic of China: Final Results of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of antidumping duty administrative review.

**SUMMARY:** On July 21, 1999, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The review covers three producers/exporters of subject merchandise. The period of review is November 1, 1997, through October 31, 1998.

We invited interested parties to comment on our preliminary results. Our analysis of the comments we received resulted in no change to our preliminary results for these final results. The final dumping margin is listed in the section entitled "Final Results of the Review."

**EFFECTIVE DATE:** May 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Farah Naim or Richard Rimlinger, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3174 or (202) 482–4477, respectively.

**SUPPLEMENTARY INFORMATION:**

**The Applicable Statute and Regulations**

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1999).

**Background**

On July 21, 1999, the Department published the preliminary results of the administrative review (64 FR 39115) of the antidumping duty order on fresh garlic from the People's Republic of China (the PRC) (59 FR 59209, November 16, 1994). We invited parties to comment on our preliminary results and received comments from the petitioners which contained new information. On November 30, 1999, we published a notice of extension of time limit for the final results in order to allow all parties to address the new information submitted by the petitioners. We received further comments from the petitioners, but we did not receive any submissions from the respondents. On March 21, 2000, we published a second notice of extension of time limit for the final results in order to consider and address fully the issues raised by petitioners.

We have conducted this administrative review in accordance with section 751 of the Act and 19 CFR 351.213.

**Scope of Review**

The products subject to this antidumping duty administrative review are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay.

The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed.

The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive. In order to be excluded from the antidumping duty order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to the Customs Service to that effect.

**Analysis of Comments Received**

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Richard W. Moreland, Deputy Assistant Secretary, Import Administration, to Troy H. Cribb, Acting Assistant Secretary for Import Administration, dated May 16, 2000, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099 and accessible on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

**Use of Facts Available**

Our use of facts available in this review has not changed from the preliminary results. For a discussion of our application of facts available, see the preliminary results and our Decision Memo, which are on file in room B–099 and are also available on the Web at www.ita.doc.gov/import_admin/records/frn/.

**Final Results of the Review**

We determine that a margin of 376.67 percent exists for all producers/exporters of the subject merchandise from the PRC for the period November 1, 1997, through October 31, 1998. The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to Customs.

**Cash-Deposit Requirements**

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) for all PRC exporters, all of which were found not to be entitled to separate rates, the cash-deposit rate will be 376.67 percent; and (2) for non-PRC exporters of subject merchandise from the PRC, the cash-deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 and 19 CFR 351.306. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a) and 777(i)(1) of the Act.

Dated: May 16, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

## Appendix

**Comments and Responses**

1. Future Request for Administrative Review
2. Evasion of Antidumping Duties

[FR Doc. 00–12974 Filed 5–22–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–848]**

### Notice of Extension of Time Limit for Preliminary Results of Administrative Antidumping Review: Freshwater Crawfish Tail Meat From the People's Republic of China

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Thomas Gilgunn or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0648 or (202) 482–3020, respectively.

**The Applicable Statute**

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351 (1999).

**Background**

In accordance with 19 CFR 351.213(b)(2), the Department received requests that we conduct an administrative review of the sales of the following: Huaiyin Foreign Trade Corp. (30); Yancheng Baolong Biochemical Products Co., Ltd.; Qingdao Rirong Foodstuff Co., Ltd.; Lianyungang Haiwang Aquatic Products Co., Ltd.; Yancheng Haiteng Aquatic Products and Foods Co., Ltd.; and Yancheng Foreign Trade Corp. Maritime Trading, a U.S. importer, requested that we conduct an administrative review of Huaiyin Foreign Trade Corp. a.k.a. Huaiyin Foreign Trade Corp. (5). Petitioner in the proceeding, the Crawfish Processors Alliance, also requested an administrative review of the following: China Everbright Trading Company; Binzhou Prefecture Foodstuffs Import & Export Corp.; Huaiyin Foreign Trade Corporation; Huaiyin Foreign Trade Corporation (5); Yancheng Foreign Trade Corporation; Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp.; Yancheng Baolong Aquatic Foods Co.; Huaiyin Ningtai Fisheries Co., Ltd.; Nantong Delu Aquatic Food Co., Ltd.; Ningbo Nanlian Frozen Foods Company, Ltd.; Qingdao Rirong Foodstuff Co.; Lianyungang Haiwang Aquatic Products Company Ltd.; Yancheng Baolong Biochemical Products Co., Ltd.; Zhenfeng Foodstuff Co.; Weishan Hongfa Lake Foodstuff Co., Ltd.; Ever Concord; Hua Yin Foreign Trading; Huaiyin Foreign Trading; Lianyungang Hailong Aquatic Product; Qiafco; Seatrade International; Weishan Jinmuan Foodstuff; Welly Shipping, aka Kenwa Shipping; Yancheng Foreign Trading; Jiangsu Baolong Group; Asia-Europe; Jiangsu Aquatic Products Freezing Plant; and Yupeng Fishery. We published a notice of initiation of this antidumping duty administrative review on November 4, 1999 (64 FR 60161).

On February 1, 2000, the Crawfish Processor Alliance, petitioner in this case, withdrew their request for review for the following companies: China Everbright Trading Company; Binzhou Prefecture Foodstuffs Import & Export Corp.; Jiangsu Cereals, Oils & Foodstuffs Import & Export Corp.; Yancheng Baolong Aquatic Foods Co.; Huaiyin Ningtai Fisheries Co., Ltd.; Nantong Delu Aquatic Food Co., Ltd.; Ever Concord; Lianyungang Hailong Aquatic Product; Qiafco; Seatrade International; Welly Shipping, a.k.a. Kenwa Shipping; and Yancheng Foreign Trading.

**Extension of Time Limits for Preliminary Results**

Because of the complexity and timing of certain issues in this case, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act. In the Department's *Freshwater Crawfish Tail Meat From The People's Republic of China: Final Results of Administrative Antidumping Duty and New Shipper Reviews, and Final Rescission of New Shipper Review*, 65 FR 20948 (April 19, 2000) covering the 1997–98 review period (final results), the Department addressed a number of extraordinarily complicated issues, including the relationship between certain exporters. Based on the final results, the Department has required certain exporters to submit a consolidated response. The consolidate response is due on June 12, 2000. Therefore, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act and section 351. 213(h)(2) of the Department's regulations. See the *Memorandum from Edward C. Yang to Troy H. Cribb, Extension of Time Limits for the Preliminary Results of Administrative Review of Freshwater Crawfish Tail Meat from the People's Republic of China*, dated May 11, 2000.

Therefore, in accordance with these sections, the Department is extending the time limits for the preliminary results to September 29, 2000.

Dated: May 11, 2000.

**Joseph A. Spetrini,**

*Deputy Assistant Secretary for AD/CVD Enforcement III.*

[FR Doc. 00–12975 Filed 5–22–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–351–806]**

### Silicon Metal From Brazil; Amended Final Results of Antidumping Duty Administrative Review in Accordance With Court Decision

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of amended final results of antidumping duty administrative review in accordance with court decision.

**SUMMARY:** On February 17, 1999, the Court of International Trade (CIT) affirmed the remand determination of the Department of Commerce (the Department) arising from the administrative review of the antidumping duty order on silicon metal from Brazil. *See American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc. and SKW Metals & Alloys, Inc.* v. *United States*, __CIT__, Slip Op. 99–17, (February 17, 1999). No party appealed this decision. As there is now a final and conclusive court decision in this segment, we are amending the final results of reviews in this matter and will instruct the U.S. Customs Service to liquidate entries subject to these amended final results.

**EFFECTIVE DATE:** May 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** Robert Bolling or Jim Doyle, Antidumping/Countervailing Duty Enforcement, Import Administration,

International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–3434 and (202) 482–0159, respectively.

**SUPPLEMENTARY INFORMATION:**

**Background**

On July 31, 1991, the Department issued an antidumping duty order on silicon metal from Brazil. *See Antidumping Duty Order: Silicon Metal from Brazil*, 56 FR 36135 (July 31, 1991) (*Antidumping Duty Order*). On September 5, 1996, the Department published its final results of the second administrative review of silicon metal for four Brazilian exporters, Companhia Brasilerira Carbureto de Calcio ("CBCC"), Companhia Ferroligas Minas Gerais-Minasligas ("Minasligas"), Eletrosilex Belo Horizonte ("Eletrosilex"), Rima Eletrometalurgia S.A. ("Rima"). *See Silicon Metal from Brazil; Final Results of Antidumping Administrative Review*, 61 FR 46763 (September 5, 1996) (*Final Results*). On September 9, 1997, the Department published amended final results to correct ministerial errors raised by the parties after requesting and receiving from the CIT authority to do so. *See Silicon Metal from Brazil: Amended Final Results of Antidumping Duty Administrative Review* 62 FR 47441 (September 9, 1997) (*Amended Final Results*).

On July 30, 1998, the CIT issued an order, *American Silicon Technologies* v. *United States*, 19 F. Supp. 2d 1121 (CIT 1998), remanding to the Department the *Amended Final Results*. In its July 30, 1998 order, the CIT instructed the Department to ensure that any reduction of reported interest expenses for CBCC and Eletrosilex is based upon income specifically derived from short-term investments. *Id.*, at 1123.

On December 16, 1998, the Department filed its final results pursuant to remand. *See Final Results of Redetermination Pursuant to Court Remand, American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc. and SKW Metals & Alloys, Inc.* v. *United States* (December 16, 1998). On February 17, 1999, the CIT upheld the Department's redetermination on remand. *See American Silicon Technologies, Elkem Metals Company, Globe Metallurgical, Inc. and SKW Metals & Alloys, Inc.* v. *United States*, __CIT__, Slip Op. 99–17, (February 17, 1999). Neither party appealed the CIT's decision.

Because neither party appealed, there is now a final and conclusive court decision in this action. We are therefore amending our final results of review for the period July 1, 1992 through June 30, 1993. We recalculated margins for CBCC and Eletrosilex. The revised weighted average margins are as follows:

| Manufacturer/Exporter | Margin (percent) |
|---|---|
| CBCC | 35.43 |
| Eletrosilex | 51.84 |

Accordingly, the Department will determine, and the Customs Service will assess, antidumping duties on all entries of subject merchandise from CBCC and Eletrosilex in accordance with these amended final results. For assessment purposes, we have calculated importer-specific duty assessment rates for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total quantity of sales examined. The Department will issue appraisement instructions directly to Customs. The above rate will not affect CBCC or Eletrosilex's cash deposit rates currently in effect, which continue to be based on the margins found to exist in the most recently completed review.

This notice is published in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: May 15, 2000.

**Troy H. Cribb,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. 00–12980 Filed 5–22–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### University of Wisconsin-Milwaukee; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

*Docket Number*: 00–007.

*Applicant*: University of Wisconsin-Milwaukee, Milwaukee, WI 53211.

*Instrument*: Scanning Tunneling Microscope, Model STM 25DH.

*Manufacturer*: Omicron Vakuumphysik GmbH, Germany.

*Intended Use*: See notice at 65 FR 21397.

*Comments*: None received.

*Decision*: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides:

(1) Capability to operate at temperatures to 1500° K, (2) a vibrationally isolated vacuum chamber capable to $10^{-11}$ mbar and (3) vertical imaging of film surfaces with accuracy to 0.001 nm. The National Institute of Standards and Technology and a university research center for advanced microstructure devices advise that (1) these capabilities are pertinent to the applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use (comparable case).

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Dated: May 16, 2000.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 00–12979 Filed 5–22–00; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 051800B]**

### At-sea Scale Certification Program

**AGENCY:** National Oceanic and Atmospheric Administration.

**ACTION:** Proposed collection; comment request.

**SUMMARY:** The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

**DATES:** Written comments must be submitted on or before July 24, 2000.

**ADDRESSES:** Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of

Commerce, Room 6066, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at lengelme@doc.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Alan Kinsolving, NOAA/NMFS, F/AKR2, PO BOX 21668, Juneau, AK 99802–1668; phone 907–586–7228.

**SUPPLEMENTARY INFORMATION:**

**I. Abstract**

The National Marine Fisheries Service (NMFS) manages the commercial groundfish harvest off Alaska based on an annual total allowable catch for each species. This is based on "round" weight, or the weight of the fish prior to processing. However, much of the fish harvested off Alaska is harvested by vessels that process the catch at-sea and do not land whole fish. One way that NMFS uses to estimate the total weight of fish harvested by processing vessels is by requiring the vessel to weigh all or part of their catch on a motion-compensated scale. At this time, two groups of vessels are required to weigh all catch at-sea: catcher processors and motherships that are listed under the American Fisheries act as eligible to harvest pollock; and trawl catcher processors and motherships that are harvesting fish under the Community Development Quota Program (CDQ quota). Non-trawl catcher/processors that harvest CDQ quota are not required to weigh all catch, but they are required to weigh samples of catch. All of these vessels must also provide an observer sampling station where NMFS-certified observers can work. The station must be inspected and approved annually by NMFS.

**II. Method of Collection**

Scale manufacturers must submit documentation if they wish to have a scale approved by NMFS. Vessel owners required to weigh catch must used NMFS-inspected scales and sampling stations. To schedule an inspection, they must submit a request form. Vessels required to weigh all catch must test their scales daily and maintain documentation verifying that the testing took place. These vessels must also maintain a printed record of the weight of each haul that was required to be weighed. Finally, inspectors employed by other Federal, state, or local weights and measures agencies may request authority to inspect scales on behalf of NMFS.

**III. Data**

*OMB Number:* 0648–0330.
*Form Number:* None.
*Type of Review:* Regular submission.
*Affected public:* Business and other for-profit institutions.
*Estimated Number of Respondents:* 49.
*Estimated Time Per Response:* 176 hours for the scale type evaluation, 45 minutes for conducting and maintaining a record of the daily scale test, 6 minutes to retain a daily printed scale output, 6 minutes for the request for scale inspection, 6 minutes for maintenance of a scale approval sticker, 6 minutes for an application to inspect scales on behalf of NMFS, and 2 hours to make a request for observer sampling station inspection and maintaining the results.
*Estimated Total Annual Burden Hours:* 3,508.
*Estimated Total Annual Cost to Public:* $8,184.

**IV. Request for Comments**

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 17, 2000.

**Gwellnar Banks,**

*Management Analyst, Office of the Chief Information Officer.*

[FR Doc. 00–12969 Filed 5–22–00; 8:45 am]
BILLING CODE 3510–22–F

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 051200C]**

### Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Gulf of Mexico Fishery Management Council will convene a public meeting of the Stone Crab Advisory Panel (AP).

**DATES:** The AP meeting is scheduled to begin at 8:00 a.m. on June 8, 2000 and will conclude by 12:00 noon.

**ADDRESSES:** The meeting will be held at the Banana Bay Resort & Marina, 4590 Overseas Highway, Marathon, FL 33050; telephone: 305–743–3500.

*Council address:* Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

**SUPPLEMENTARY INFORMATION:** The Stone Crab Advisory Panel (AP) will convene to review an amendment to the Stone Crab Fishery Management Plan (FMP).

The amendment proposes to extend the trap certificate program for the commercial stone crab fishery adopted by the state of Florida into the Federal waters off west Florida. The Florida Fish & Wildlife Conservation Commission (FFWCC), after working with the stone crab industry and Council over the past 4 years, has adopted by rule a trap certificate program that will gradually reduce the number of traps over a 30-year period. The Florida legislature has approved the portion of this program pertaining to licenses and fees. Based on this review, the AP may make recommendations to the Council for consideration at their meeting in Key Largo, July 10–14, 2000.

Although other non-emergency issues not on the agendas may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. Copies of the agenda can be obtained by calling 813–228–2815.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by May 25, 2000.

Dated: May 17, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12968 Filed 5–22–00; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 051200E]**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meetings.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT) and Coastal Pelagic Species Advisory Subpanel (CPSAS) will hold public meetings.

**DATES:** The CPSMT meeting will begin on Thursday, June 8, 2000 at 8 a.m. and will continue until 12 p.m. The CPSAS meeting will begin on Thursday, June 8, 2000 at 1 p.m. and may go into the evening until business for the day is completed.

**ADDRESSES:** Both the CPSMT and CPSAS meetings will be held in the Large Conference Room at the California Department of Fish and Game, 330 Golden Shore, Suite 50, Long Beach, CA.

*Council address*: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Mr. Dan Waldeck, Pacific Fishery Management Council, (503) 326–6352; or Dr. Doyle Hanan, California Department of Fish and Game, (619) 546–7170.

**SUPPLEMENTARY INFORMATION:** There are several items that may be on the CPSMT agenda, these include: Pacific mackerel stock assessment and harvest guideline; coastal pelagic species (CPS) stock assessment and fishery evaluation (SAFE) document; fishery management plan amendment for bycatch in CPS fisheries, market squid maximum sustainable yield, and market squid allowable biological catch; transferability of limited entry permits; and applications for anchovy reduction fishery exempted fishing permits. The primary purpose of the CPSAS meeting is to review documents and analyses developed by the CPSMT and to discuss other pertinent business.

Although non-emergency issues not contained in the meeting agenda may come before the CPSMT and/or the CPSAS for discussion, those issues may not be the subject of formal CPSMT or CPSAS action during this meetings. CPSMT and/or CPSAS action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's and/or CPSAS's intent to take final action to address the emergency.

**Special Accommodations**

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 17, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12966 Filed 5–22–00; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 051200D]**

### Pacific Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Council) Groundfish Stock Assessment Review (STAR) Panel will hold a work session which is open to the public.

**DATES:** The STAR Panel for Pacific ocean perch and yellowtail rockfish will meet beginning at 1 p.m., June 12, 2000 and continue through June 16, 2000. Except for Monday, June 12, the STAR Panel will meet each day, from 8 a.m. to 5 p.m.

**ADDRESSES:** The STAR Panel for Pacific ocean perch and yellowtail rockfish will be held in Building 4, Room 2079 of the NMFS Alaska Fisheries Science Center, 7600 Sand Point Way NE., Seattle, WA 98115.

*Council address*: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

**FOR FURTHER INFORMATION CONTACT:** Dan Waldeck, Fishery Management Analyst; telephone: (503) 326–6352.

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to review draft stock assessment documents for Pacific ocean perch and yellowtail rockfish and any other pertinent information, work with stock assessment teams to make necessary revisions, and produce STAR Panel reports for use by the Council family and other interested persons.

Although non-emergency issues not contained in the STAR Panel agenda may come before the STAR Panel for discussion, those issues may not be the subject of formal panel action during this meeting. STAR Panel action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the panel's intent to take final action to address the emergency.

**Special Accommodations**

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 17, 2000.

**Richard W. Surdi,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 00–12967 Filed 5–22–00; 8:45 am]

**BILLING CODE 3510–22–F**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Notice of Availability for the Record of Decision (RDO) for the Disposal and Reuse of Fort Chaffee, Arkansas

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** In compliance with the National Environmental Policy Act (NEPA) of 1969 and the President's

Council on Environmental quality, the Army has prepared the ROD in association with the completion of the Final Environmental Impact Statement (FEIS) for the disposal and Reuse of Fort Chaffee, Arkansas. The approved 1995 base closure and realignment actions required by the Base Closure and Realignment Act of 1990 (Pub. L. 101–510), and subsequent actions in compliance with this law, mandated the closure of Fort Chaffee. It is DoD policy to dispose of property no longer needed by DoD. Consequently, as a result of the mandated closure of Fort Chaffee, the Army is disposing of excess property at Fort Chaffee.

The ROD establishes the Army's decision to proceed with the disposal of excess properties/facilities in accordance with the Army's preferred alternative (encumbered disposal) described in the FEIS.

**ADDRESSES:** Requests for a copy of the FEIS or ROD may be addressed to Mr. Jim Ellis, Little Rock District, U.S. Army Corps of Engineers, ATTN: CESWL–ET–WP, PO Box 867, Little Rock, AR 72203.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jim Ellis at (501) 324–5033 or by fax at (501) 324–5605.

**SUPPLEMENTARY INFORMATION:** The FEIS analyzed three disposal alternatives: (1) The no action alternative, which entails maintaining the property in caretaker status after closure: (2) the encumbered disposal alternative, which entails transferring the property to future owners with Army-imposed limitations, or encumbrances, on the future use of the property; and (3) the unencumbered disposal alternative, which entails transferring the property to future owners with fewer or no Army-imposed restrictions on the future use of the property. The preferred action identified in the FEIS is encumbered disposal of excess property at Fort Chaffee. Based upon the analysis contained in the FEIS, encumbrances and deed restrictions associated with the Army's disposal actions for Fort Chaffee will mitigation measures.

Planning for the reuse of the property to be disposed of is a secondary action resulting from closure. The local community has established the Fort Chaffee Redevelopment Authority (FCRA) to produce a reuse development plan for the surplus property. The impacts of reuse are evaluated in terms of land use intensities. This reuse analysis is based upon implementing one of three reuse alternatives, all of which are based upon the FCRA reuse plan. The Army has not selected one of these three reuse alternatives as the preferred action. Selection of the preferred reuse plan is a decision that will be made by the FCRA.

Dated: May 18, 2000.

**Raymond J. Patz,**

*Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA(I&E).*

[FR Doc. 00–12935 Filed 5–22–00; 8:45 am]

**BILLING CODE 3710–08–M**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) for the National Park Seminary Historic District, Forest Glen Annex, Walter Reed Army Medical Center

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice of availability.

**SUMMARY:** The Department of the Army proposes to report the National Park Seminary Historic District (NPSHD), in its entirety, as excess property to the General Services Administration (GSA), in accordance with Army Regulation 405–90 and federal property law. The NPSHD is part of the Forest Glen Annex of the Walter Reed Army Medical Center (WRAMC) in Montgomery County, Maryland, and is listed on the National Register of Historic Places.

The Army's proposed action will begin the screening and disposal process, by providing notice to the GSA that the NPSHD is excess to the Army's needs. Under the Federal Property and Administrative Services Act and accompanying regulations, GSA is responsible for the disposal of excess federal property. The EA for the NPSHD identifies analyzes the potential impacts of four alternatives: (1) Excessing the NPSHD; (2) excessing NPSHD with additional parcels of land; (3) no action; or (4) moth-balling the historic buildings. The Army's preferred alternative for implementing the proposed action is Alternative 2.

**DATES:** Public comments on the EA and FNSI must be submitted by June 22, 2000.

**ADDRESSES:** Address comments to Ms. Beverly Chidel, Acting Public Affairs Officer, Walter Reed Army Medical Center, 6900 Georgia Avenue, N.W., Washington, D.C. 20307–5001 or via email at beverly.chidel@na.amedd.army.mil.

**FOR FURTHER INFORMATION CONTACT:** Ms. Beverly Chidel, Acting Public Affairs Officer, at (202) 782–7177.

**SUPPLEMENTARY INFORMATION:** Little or no direct adverse impacts on the natural and human environment are anticipated as a result of the Army's proposed excessing action. The Army will retain control of the property and will continue to provide current levels of security and maintenance until a new owner is found. Indirect adverse impacts on air quality, noise, surface water, soil erosion, biological resources, land use, and traffic would result from the eventual reuse of the property by the new (non-Army) owner, which can be avoided or minimized by using best management practices and complying with state and local laws and regulations. The Army is committed to remedying environmental contamination, associated with the Army's past ownership or use of the NPSHD property, as necessary to protect human health and the environment. On the basis of currently available information, no remedial action is expected to be necessary for hazardous substances or wastes, as defined by 42 U.S.C. 9601(14). Indirect adverse effects on historic properties are expected. Consultation with the Maryland State Historic Preservation Officer (SHPO) under Section 106 of the National Historic Preservation Act is ongoing. The GSA, Army, SHPO, Advisory Council on Historic Preservation, as well as any other consulting parties identified by GSA, will work to achieve an appropriate agreement to address potential adverse effects on the historic district. Further evaluation of impacts will be provided in National Environmental Policy Act documentation that will be prepared by GSA for their action of disposal.

On the basis of the environmental impact analyses found in the EA, which was incorporated into a FNSI, it has been determined that implementing the Army's proposed action of reporting the NPSHD to GSA as excess property will not have significant individual or cumulative impacts on the quality of the human environment. Therefore, an Environmental Impact Statement is not required and will not be prepared.

Individuals who want to review the EA and FNSI may obtain a copy and provide comments during this 30-day period, by writing to Ms. Beverly Chidel at the address listed above. Copies of the EA will also be available for public review at the Silver Spring Branch Library (8901 Colesville Road, Silver Spring, MD). The EA also may be viewed on the Internet at www.wramc.amed.army.mil/departments/dpw.

Dated: May 18, 2000.

**Raymond J. Fatz,**

*Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I&E).*

[FR Doc. 00–12972 Filed 5–22–00; 8:45 am]

BILLING CODE 3710–08–M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Record of Decision for the Disposal and Reuse of Naval Air Station Agana, Guam

**SUMMARY:** The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. § 4332(2)(C) (1994), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 C.F.R. Parts 1500–1508, hereby announces its decision to dispose of Naval Air Station (NAS) Agana, which is located in the United States Territory of Guam. Guam is the southernmost island of the Mariana archipelago in the western Pacific Ocean.

Navy analyzed the impacts of the disposal and reuse of NAS Agana in an Environmental Impact Statement (EIS) as required by NEPA. The EIS analyzed four reuse alternatives and identified the NAS Agana Base Reuse Master Plan (Reuse Plan), approved by the Government of Guam on July 8, 1997, and described in the EIS as the Airport/Business/Industry Alternative, as the Preferred Alternative.

The Preferred Alternative proposed to use NAS Agana for commercial aviation; for industrial and commercial activities; to develop parks and recreational areas; and to build and expand roads and highways. The Government of Guam is the local Redevelopment Authority (LRA) for NAS Agana. Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DOD) Rule), 32 C.F.R. § 176.20(a).

Navy intends to dispose of NAS Agana in a manner that is consistent with the Reuse Plan. Navy has determined that the mixed land use proposed for NAS Agana will meet the goals of achieving local economic redevelopment and creating new jobs while limiting adverse environmental impacts and ensuring land uses that are compatible with adjacent property. This Record Of Decision does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the proposed redevelopment to the acquiring entities and the local zoning authority.

**Background**

Under the authority of the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. § 2687 note (1994), the 1993 Defense Base Closure and Realignment Commission recommended the closure of Naval Air Station Agana. The Commission also recommended that navy retain the Air Station officers housing to support Navy personnel stationed at Andersen Air Force Base in the northern part of Guam. These recommendations were approved by President Clinton and accepted by the One Hundred Third Congress in 1993. Naval Air Station Agana closed on March 31, 1995.

Prior to closure of the Air Station, the A. B. Won Pat Guam International Airport Authority (GIAA) operated the Guam International Airport at NAS Agana through a joint use agreement with Navy. Under this agreement, Guam's International Airport Authority, which owns and operates a passenger terminal and maintenance area adjacent to NAS Agana, used the Naval Air Station runways and taxiways and relied upon Navy's air traffic controllers for civilian air operations. After NAS Agana closed, GIAA assumed responsibility for all air operations and began using Navy's maintenance hangars through a lease with Navy. The Federal Aviation Administration (FAA) currently provides air traffic control services.

The 1995 Defense Base Closure and Realignment Commission modified the 1993 Commission's recommendation by directing Navy to close the officers housing at NAS Agana. The 1995 Commission's recommendation was approved by President Clinton and accepted by the One Hundred Fourth Congress in 1995.

Naval Air Station Agana is located in the central part of Guam, about three miles northeast of the Village of Agana, which has been renamed Hagatna. The area around the base is also known as Tiyan. The Air Station covers an area of about 1,824 acres of Navy property, and Navy controls an additional 208 acres near the Air Station by way of easements for air operations and drainage. Navy plans to transfer its interests in these easements to GIAA. Disposal and reuse of the officers housing, covering 93 acres, were treated in a separate environmental analysis and document.

Naval Air Station Agana is oriented along a northeast-southwest axis and has a generally triangular shape. The base is bounded on the north by a steep bluff and Route 10A; on the east and southeast by Route 16; and on the south by the intersection of Routes 16, 10, and 8; on the southwest by Route 8; and on the west and northwest by Route 1 and Agana Bay.

The Village of Tamuning, the Airport Authority's passenger terminal and maintenance area, and the Harmon industrial area are located north of the base property. The Village of Dededo is located northeast of the Air Station. Barrigada Heights and facilities associated with the United States Naval Computer and Telecommunications Station, Guam are located, respectively, east and southeast of the Air Station. The Village of Barrigada is located south of the Air Station; and the villages of Mongmong, Toto, and Maite are located southwest of the base.

During the Federal screening process, two Federal agencies requested interagency transfers of base closure property at NAS Agana. These were the National Weather Service of the Department of Commerce's National Oceanic and Atmospheric Administration and the Federal Aviation Administration.

On July 23, 1998, Navy transferred three acres just south of the runways to the National Weather Service, which is building a weather forecasting facility on the site. Navy will transfer the control tower and base operations building (Building 17–75) and a transmitter building (Building 16–3231) and two non-contiguous parcels covering about three acres in this part of the base to the Federal Aviation Administration for air traffic control activities. The remaining 1,725 acres of Navy property at NAS Agana are surplus to the needs of the Federal Government.

This Record of Decision addresses the disposal and reuse of those parts of NAS Agana that are surplus to the needs of the Federal Government. The Air Station contains two parallel runways in a northeast-southwest alignment: a 10,000-foot primary runway (Runway 06L–24R) and an 8,000-foot secondary runway (Runway 06R–24L). Navy plans to transfer its interests in the air operations easements and the drainage easements to GIAA. The base contains about 592 buildings and structures that were used for aviation operations, training, housing, administrative and support activities. The surplus property's undeveloped areas on the western side of the base contain wetlands and, on the eastern side of the base, a forest with limestone soil. There is an archaeological site eligible for listing on the National Register of Historic Places in a developed area south of the airfield.

Of the 1,725 acres of surplus property at NAS Agana, about 249 acres are available to the Government of Guam for economic redevelopment. The Government of Guam proposes to develop industrial and commercial facilities on this property.

Navy plans to dispose of the remaining 1,476 acres of surplus property at NAS Agana by way of various public benefit conveyances. Navy plans to convey about 1,361 acres to the Guam International Airport Authority for use as an airport after approval by the United States Department of Transportation. Navy plans to assign about 72 acres to the Federal Highway Administration for subsequent conveyance to the Government of Guam to permit development of the proposed Laderan Tiyan Parkway north of the airfield, Mariner Parkway south of the airfield, and the proposed extension of Route 10 south of the airfield.

Navy plans to assign about 41 acres in the southern part of the base to the United States Department of the Interior for subsequent conveyance to the Government of Guam for use as parks and recreational areas. Navy plans to convey the Air Station's chapel and religious center and two acres in the southern part of the base to the Government of Guam after the United States Department of Housing and Urban Development approves a legally binding agreement between the LRA and homeless assistance providers.

Navy published a Notice Of Intent in the **Federal Register** on January 22, 1996, announcing that Navy and the FAA as a cooperating agency would prepare an EIS for the disposal and reuse of NAS Agana. Navy held two public scoping meetings in the Government of Guam's Executive Building at Adelup on January 24, 1996. The scoping period concluded on February 23, 1996.

Navy distributed the Draft EIS (DEIS) to Federal and local government agencies, elected officials, community groups and associations, and interested persons on April 9, 1999, and commenced a 45-day public review and comment period. During this period, Federal and local agencies and one person submitted written comments concerning the DEIS. On May 13, 1999, Navy held a public hearing to receive comments on the DEIS at the San Vicente/San Roke Catholic Church's social hall in Barrigada.

Navy's responses to the public comments were incorporated in the Final EIS (FEIS), which was distributed to the public on December 30, 1999, for a review period that concluded on January 28, 2000. Navy did not receive any comments on the FEIS.

**Alternatives**

NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this surplus Federal property. In the FEIS, Navy analyzed the environmental impacts of four reuse alternatives. Navy also evaluated a "No Action" alternative that would leave the property in caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety. Under this alternative, Guam's International Airport would continue to operate under the existing joint use agreement between Navy and GIAA, and there would be no expansion of the airport, no improvement of roadways within the base's boundaries, and no transfers of easements.

In Executive Order No. 94–07, dated July 8, 1994, the Governor of Guam, Joseph F. Ada, established the Komita Para Tiyan to prepare a reuse plan for NAS Agana. The Kometia conducted the planning process for NAS Agana in two parts: it developed an airport master plan for submission to the FAA that proposed civilian reuse of the NAS Agana facilities and it developed a reuse plan for all of the surplus property. The Komitea solicited expressions of interest in reuse and redevelopment of the property and received notices of interest from local government agencies, private businesses, homeless assistance providers, and nonprofit organizations.

The Komitea Para Tiyan developed three reuse proposals designated as business/industry, education/heritage, and housing/community. Each proposed a similar expansion of Guam's International Airport. At four public meetings in November 1994 and at three public meetings in June 1995, the Komitea solicited comments concerning the three reuse proposals. On December 22, 1995, the Komitea solicited comments concerning the three reuse proposals. On December 22, 1995, the Kometea adopted the business/industry alternative and approved the NAS Agana Base Reuse Master Plan. In letters to the Department of Defense and the Department of Housing and Urban Development (HUD) dated December 26, 1995, the Governor of Guam, Carl T.C. Gutierrez, submitted this reuse plan to the Federal Government.

In a letter to HUD dated July 8, 1997, Governor Gutierrez submitted modifications to the December 1995 reuse plan. The Governor designated two acres in the southern part of the base for use by homeless assistance providers. Additionally, the modifications changed the proposed use of 27 acres in the western part of the base from parks and recreational activities to airport operations and changed the proposed use of 20 acres in the eastern part of the base from industrial and commercial activities to airport operations.

In Executive Order No. 97–27, dated October 16, 1997, Governor Gutierrez disestablished the Komitea Para Tiyan and established the Base Realignment And Closure GovGuam Steering Committee. He assigned the BRAC GovGuam Steering Committee responsibility for coordinating all future redevelopment at NAS Agana.

The Reuse Plan, identified in the FEIS as the Preferred Alternative, proposed a mix of land uses for NAS Agana. The Preferred Alternative would develop commercial aviation, industrial, and commercial activities as well as parks and recreational areas. it will be necessary to make utility infrastructure and roadway improvements to support the Reuse Plan's proposed redevelopment of NAS Agana.

The Preferred Alternative would expand Guam's International Airport to increase its air traffic capacity. By the full build-out year of 2015, the number of annual aircraft operations would increase from 87,000 to 123,400. The primary runway (06L–24R) would be extended from 10,000 to 12,000 feet (1,000 feet to the northeast and 1,000 feet to the southwest), and the secondary runway (06R–24L) would be extended from 8,000 to 11,000 feet (1,000 feet to the southwest and 2,000 feet to the northeast). This Alternative would build two new taxiways, one north of the primary runway and one south of the secondary runway. It would build a new air traffic control tower, a cargo terminal, a general aviation terminal and service center, aircraft maintenance facilities, and training facilities. It would also reserve land for future expansion of the passenger terminal, additional flight kitchens, and aviation businesses such as an express package and cargo hub.

The Preferred Alternative proposed to build several new roadways and to expand other roadways. This Alternative would build the Laderan Tiyan Parkway north of the airport's operations area to provide an alternate access to the passenger terminal from route 8 on the base's south and southwest boundary. This roadway would also provide a link to a proposed north-south bypass road that would connect the Village of Tamuning with the base and communities located south of the base.

In the southern part of the base, the preferred Alternative would expand mariner Avenue, a northeast-southwest road on the base, and rename it Mariner Parkway. This roadway would provide access to airport-related activities to the north as well as to the industrial and commercial activities and parks and recreational areas to the south. It would also serve as a regional transportation link between the villages of Dededo and Cabras. The Preferred Alternative would expand Seagull Avenue between Mariner Parkway and the intersection of Routes 16, 10, and 8 at the southern tip of the base.

The Preferred Alternative proposed to reserve about 30 acres on the bluff north of the airport, overlooking the village of Tamuning, for parks and recreational uses such as walking paths, bike paths, and picnic areas. On about 340 acres located north and south of the runways and taxiways, this Alternative proposed to develop airport-related commercial facilities. To the north, these facilities could include offices for businesses interested in a prime airport location, a trade exhibition center, a 200-room hotel, and educational facilities such as an hotel school. To the south, just north of the proposed Mariner Parkway, the Preferred Alternative would develop facilities for commercial activities related to the airport such as express package services, an airframe and power plant school, light industrial activities, storage, and freight forwarders.

In the southern part of the base, south of the proposed Mariner Parkway, the Preferred Alternative proposed to develop industrial and commercial activities that would include retail stores to serve the Barrigada community. On about 41 acres, it would develop new recreational facilities and reuse the existing sports facilities as an Olympics training center. The Preferred Alternative designated the Air Station's chapel and religious center and two acres located in the center of the industrial and commercial area for use by homeless assistance providers.

Navy analyzed a second "action" alternative, described in the FEIS as Alternative 2, the Airport/Education/Heritage Alternative. Alternative 2 proposed expanding the airport and building extensive roadway improvements similar to those proposed by the Preferred Alternative. In Alternative 2, however, there would be less airport-related development and fewer industrial and commercial activities than proposed in the Preferred Alternative. Instead, the Alternative would emphasize educational and cultural activities and parks and recreational areas and would provide housing.

Alternative 2 would expand the airport's operations by extending both runways and by building two new taxiways. This Alternative would also build a new air traffic control tower, a cargo terminal, a general aviation terminal and service center, aircraft maintenance facilities, and training facilities. It would reserve land for future expansion of the passenger terminal, additional flight kitchens, and aviation businesses such as an express package and cargo hub.

Alternative 2 proposed to build several new roadways to expand other roadways similar to those proposed by the Preferred Alternative. This Alternative would build the Laderan Tiyan Parkway north of the airport's operations area to provide an alternate access to the passenger terminal from Route 8. This roadway would also provide a link to a proposed north-south bypass road that would connect the Village of Tamuning with the base and communities located south of the base.

In the southern part of the base, Alternative 2 would expand Mariner Avenue and rename it Mariner Parkway. This roadway would provide access to airport-related activities to the north as well as to the housing, educational and cultural facilities, industrial and commercial activities, and parks and recreational ares to the south. It would also serve as a regional transportation link between the villages of Dededo and Cabras. Alternative 2 would expand Seagull Avenue between Mariner Parkway and the intersection of Routes 16, 10, and 8 to the south.

In the western part of the base, just south of the officers housing site, Alternative 2 would develop industrial activities. East of the officers housing site, this Alternative would develop educational and cultural facilities and open space an recreational areas. It would also build housing on the bluff north of the airport, overlooking the Village of Tamuning, and establish a parks and recreational area there. In the northeast corner of the base, there would be a large open space and recreational area around the existing ironwood trees.

South of the northeast ends of the runways and taxiways, along the southeast boundary of the Air Station, Alternative 2 would preserve a forest with limestone soil. Along the southwest boundary, from the intersection of Routes 16, 10, and 8, to the southwest ends of the runways and taxiways, it would reserve land for open space and recreation areas. Alternative 2 also proposed to establish a coconut plantation in this area.

South of the proposed Mariner Parkway, Alternative 2 would build an educational and cultural center. This center could include a high school, a vocational training school, and university research facilities. Adjacent to the educational center, this Alternative would build housing and retail stores for students, faculty, and workers. It would also develop industrial activities here. Alternative 2 designated the Air Station's chapel and religious center and two acres located in the educational and cultural area for use by homeless assistance providers.

Navy analyzed a third "action" alternative, described in the FEIS as Alternative 3, the Airport/Housing/Community Alternative. Alternative 3 proposed expanding the airport and building extensive roadway improvements similar to those proposed by the Preferred Alternative. In Alternative 3, however, there would be less airport-related development and fewer industrial and commercial activities than proposed in the Preferred Alternative. Instead, this Alternative would emphasize housing and parks and recreational areas and would provide educational and cultural facilities.

Alternative 3 would expand the airport's operations by extending both runways and by building two new taxiways. This Alternative would also build a new air traffic control tower, a cargo terminal, a general aviation terminal and service center, aircraft maintenance facilities, and training facilities. It would reserve land for future expansion of the passenger terminal, additional flight kitchens, and aviation businesses such as an express package and cargo hub.

Alternative 3 proposed to build several new roadways and to expand other roadways similar to those proposed by the Preferred Alternative. This Alternative would build the Laderan Tiyan Parkway north of the airport's operations area to provide an alternate access to the passenger terminal from Route 8. This roadway would also provide a link to a proposed north-south bypass road that would connect the Village of Tamuing with the base and communities located south of the base.

In the southern part of the base, Alternative 3 would expand Mariner Avenue and rename it Mariner Parkway. Under Alternative 3, this roadway would be a local access road rather than a regional transportation link as proposed in the Preferred Alternative. The Parkway would provide access to

the airport-related activities to the north as well as to the housing, educational and cultural facilities, industrial and commercial activities, and parks and recreational areas to the south. Alternative 3 would also expand Seagull Avenue between Mariner Parkway and the intersection of Routes 16, 10, and 8 to the south.

In the western part of the base, south of the officers housing site, Alternative 3 would develop industrial and commercial activities. On the bluff north of the airport, overlooking the Village of Tamuning, Alternative 3 would build cultural and educational facilities such as an hotel school. It also proposed to reserve part of the bluff for open space and recreational areas.

South of the airport operations area, Alternative 3 would preserve a forest with limestone soil on the east side and establish a coconut plantation on the west side. Between the forest and the coconut plantation, on each side of Mariner Parkway, this Alternative would build industrial and commercial facilities for airport-related activities. It would designate the Air Station's chapel and religious center and two acres located in this area for use by homeless assistance providers. South of Mariner Parkway, it would also build single-family and multi-family housing, community facilities, a new high school, and a town center with retail stores for the Barrigada community.

Navy analyzed a fourth "action" alternative, described in the FEIS as Alternative 4, the Airport/Requestor Alternative. This Alternative incorporated requests made during the public scoping process that were not included in the Komitea's three reuse proposals. Alternative 4 proposed expanding the airport and building new roads similar to those proposed in the Preferred Alternative. In Alternative 4, however, there would be less airport-related development and fewer industrial and commercial activities than proposed in the Preferred Alternative. Instead, this Alternative would emphasize government and business activities and parks and recreational areas and would provide educational and cultural facilities and housing.

Alternative 4 would expand the airport's operations by extending both runways and by building two new taxiways. This Alternative would also build a new air traffic control tower, a cargo terminal, a general aviation terminal and service center, aircraft maintenance facilities, and training facilities. It would reserve land for future expansion of the passenger terminal, additional flight kitchens, and aviation businesses such as an express package and cargo hub.

Alternative 4 proposed to build several new roadways and to expand other roadways similar to those proposed by the Preferred Alternative. This Alternative would build the Laderan Tiyan Parkway north of the airport's operations area to provide an alternate access to the passenger terminal from Route 8. This roadway would also provide a link to a proposed north-south bypass road that would connect the Village of Tamuning with the base and communities located south of the base.

In the southern part of the base, Alternative 4 would expand Mariner Avenue and rename it Mariner Parkway. Under Alternative 4, this roadway would be a local access road rather than a regional transportation link as proposed in the Preferred Alternative. The Parkway would provide access to the airport-related and government and business activities to the north as well as to the government and business activities, educational and cultural facilities, housing, industrial and commercial activities, and parks and recreational areas to the south. Alternative 4 would also expand Seagull Avenue between Mariner Parkway and the intersection of Routes 16, 10, and 8 to the south.

Alternative 4 proposed to develop about 260 acres located north and south of the runways and taxiways for airport-related commercial activities. This Alternative would reserve land for open space and recreational areas in three locations: south of the officers housing site; on the bluff north of the airport overlooking the Village of Tamuning; and in the northeast part of the base. Additionally, Alternative 4 would build government and private offices on part of the bluff. Educational and cultural facilities would also be built in this area.

In the southern part of the base, on either side of Mariner Parkway, Alternative 4 would develop facilities for government and private offices and retail stores. This Alternative would use the existing barracks in this area for housing. South of the proposed Mariner Parkway, Alternative 4 would develop educational and cultural facilities and reserve land for parks and recreational areas. It also designated the Air Station's chapel and religious center and two acres located in the educational and cultural area for use by homeless assistance providers.

**Environmental Impacts**

Navy analyzed the direct, indirect, and cumulative impacts of the disposal and reuse of this surplus Federal property. The FEIS addressed the impacts of the Preferred Alternative, the Airport/Education/Heritage Alternative, the Airport/Housing/Community Alternative, the Airport/Requestor Alternative, and the "No Action" Alternative for each alternative's effects on soils, drainage, water quality, terrestrial resources, noise, land use compatibility, roads and traffic, infrastructure, air quality, socioeconomics, public services, cultural resources, and environmental contamination. This Record Of Decision focuses on the impacts that would likely result from implementation of the Reuse Plan, identified in the FEIS as the Preferred Alternative.

The Preferred Alternative would not have a significant impact on soils. The requirements that would be imposed by the Guam Environmental Protection Agency would minimize soil erosion resulting from new construction. The potential for contaminating soil during redevelopment would be minimized by complying with regulatory requirements, Best Management Practices (BMP), and spill prevention plans. The base does not lie within a floodplain zone.

The Preferred Alternative would not have a significant impact on stormwater runoff and drainage. While the Preferred Alternative would increase the amount of stormwater runoff by 43 percent as a result of the increase in impervious surfaces, runoff will be managed in accordance with Federal and local regulatory requirements, such as the use of ponding basins that would collect and hold runoff during storms. There is sufficient open space available to accommodate the ponding basins.

The Preferred Alternative would not have a significant impact on the quality of groundwater. The potential for future groundwater contamination would be minimized by complying with regulatory requirements, BMP's, and spill prevention plans.

The Preferred Alternative would not have a significant impact on terrestrial resources. Navy held informal consultations with the United States Fish and Wildlife Service pursuant to Section 7 of the Endangered Species Act of 1973, 16 U.S.C § 1536 (1994). In a letter dated November 8, 1999, the Fish And Wildlife Service concurred with Navy's determination that the disposal and reuse of NAS Agana is not likely to adversely affect the Federally-listed endangered Mariana common moorhen (*Gallinula chloropus guami*). The Service's concurrence was based upon Navy's assurance that Navy will erect a fence around a one-acre freshwater

marsh and its upland buffer in the southwestern part of the base and will include a restrictive covenant in the deed requiring maintenance of the upland buffer area around this marsh. In an earlier site visit on September 23, 1999, Navy, the Fish And Wildlife Service, the United States Army Corps of Engineers, the Guam Environmental Protection Agency, the Guam Division of Aquatic and Wildlife Resources, and the Guam Economic Development Authority agreed to incorporate the requirement for a fenced buffer area around this marsh in a restrictive covenant.

The Preferred Alternative would have a significant noise impact on certain residents in Agana Heights and on the Mongmong, Toto, and Maite villages located southwest of the base. Notwithstanding the increase in proposed commercial aviation operations, the exposure to noise from aircraft would be less than when Navy operated military jet aircraft at the base. However, while the substantial reduction in military jet aircraft operations and the introduction of quieter Stage III commercial aircraft would reduce the noise impact, this impact would still exceed the Federal standards for residential exposure to noise in those areas. The Village of Dededo northeast of the airfield would not experience a residential noise impact in excess of Federal standards. The Preferred Alternative did not propose to build any new residential areas.

The nature and extent of mitigation measures to address the noise impacts would be determined in accordance with the Federal Airport Noise Compatibility Planning Regulation set forth at 14 CFR Part 150. Guam's International Airport Authority has received funding from the FAA to proceed with a noise compatibility study that will identify measures to reduce noise levels.

Noise generated by industrial and commercial activities and on roadways could increase compared with pre-closure levels, but this increase is not expected to be substantial. Additionally, noise attenuation treatments can be applied so that noise levels are compatible with adjacent land use. To comply with Guam's environmental regulations, it may be necessary for the acquiring entities to conduct environmental assessments of proposed projects so that project planning incorporates appropriate mitigation for noise impacts.

The Preferred Alternative would not have a significant impact on land use compatibility. The land uses proposed for NAS Agana would be generally compatible with each other and with existing land uses in the adjacent areas. The view of the bluff north of the airport from the Village of Tamuning below could change as a result of building the north-south bypass road and other structures on the bluff. This visual impact would be minimized by selecting a road alignment that requires the least amount of excavation and by imposing building height and setback limits along the bluff.

The Preferred Alternative would have significant impacts on traffic. By the year 2015, this Alternative would generate about 9,000 peak hour trips compared with the 1,358 peak hour trips that were experienced when the base was an active Air Station.

The proposed Laderan Tiyan Parkway would reduce the amount of traffic using Route 1, because it would provide an alternate access route to the passenger terminal at the airport. The proposed north-south bypass road connecting Route 30 and Route 8 would also reduce the amount of traffic using Route 1, because it would provide direct access to the Village of Tamuning and to Tumon Bay from the communities located south of the Air Station. The proposed Mariner Parkway would take some traffic from Routes 8 and 16, by providing an alternate route between the villages of Dededo and Cabras.

Notwithstanding the development of these new roads, the projected level of traffic would still generate substantial delays at nearly all of the intersections along Routes 1, 8, and 16. However, under the "No Action" Alternative, traffic delays at the intersections along Route 1 would be greater than those generated by the Preferred Alternative, because neither the proposed Laderan Tiyan Parkway nor the north-south bypass road would be built.

The Preferred Alternative would have significant impacts on potable water pressure, wastewater treatment capacity, and the demand for electricity. This Alternative would also have a significant cumulative impact on solid waste.

While the supply of potable water is greater than the demand that would be generated by the Preferred Alternative, the 10-inch (diameter) water lines on the base do not maintain sufficient water pressure to provide adequate fire protection during peak periods of water use. Consequently, it would be necessary to install additional water lines or replace the 10-inch water lines.

The Government of Guam's Agana Wastewater Treatment Plant does not have any excess capacity that could be used to treat the additional wastewater that would be generated under the Preferred Alternative. However, there is adequate excess capacity to treat wastewater at Guam's Northern District Wastewater Treatment Plant. Consequently, it would be necessary to redirect wastewater from the Agana Plant to the Northern District Plant. Additionally, sections of major sewer lines on the base do not have sufficient capacity to support the proposed redevelopment; thus, it would be necessary to replace those sewer lines.

There is not enough reserve generating capacity on Guam to supply the proposed redevelopment with sufficient electricity. The redevelopment's projected annual consumption of electricity would exceed the Air Station's annual consumption of electricity and would also exceed the available excess generating capacity on the island. As a result, implementation of the Preferred Alternative would require the development of additional facilities to generate and transmit electricity. In addition, it would be necessary to rebuild the electrical distribution infrastructure at NAS Agana to meet the increased demand for electricity.

The Preferred Alternative assumed that the new landfill at Guatali would replace the Ordot Landfill, which has no excess capacity and will close. Solid waste generated by the Preferred Alternative and other planned developments on the island would reduce the projected life of the new landfill. The acquiring entities, however, could take actions recommended by Guam's Integrated Solid Waste Management Plan such as the reuse, recovery, and recycling of solid waste that would reduce the cumulative impact to a less than significant level.

The Preferred Alternative would not have a significant impact on air quality. Compliance with the regulatory requirements that control emissions such as the Clean Air Act, 42 U.S.C. 7401–7671q (1994), and Guam's Air Pollution Control Standards and Regulations, Guam Public Law 24–322 (1998), would prevent significant impacts from stationary sources. If the roadway improvements described in the Reuse Plan were implemented, there would not be a significant regional or local impact on air quality from mobile sources. There would not be a significant impact on air quality from aircraft operations as a result of expanding the airport. However, further analysis by the Guam International Airport Authority would be required to ensure that the proposed increase in airport operations after expansion does

not exceed National Ambient Air Quality Standards.

The Preferred Alternative would not have any adverse impacts on socioeconomic. It would create bout 4,500 jobs that would generate a payroll of about $20 million per year. These jobs would constitute only about 10% of the new jobs to be generated on Guam over the 20-year development period. Because the total projected job growth on Guam would exceed the projected population growth, it would be necessary to bring people to Guam to fill about 25% of the new jobs that would be created. This impact would be spread out over the 20-year development period. Thus, any social effects arising out of the migration of workers would be minimized. There would be sufficient time for the Government of Guam and the business community to develop training programs and employee the business community to develop training programs and employee support services and to ensure that an adequate work force is available when needed.

The Preferred Alternative would have a significant impact on Guam's police and fire protection services. The establishment of new businesses and the development of regional roadways associated with redevelopment of the Air Station would place substantial demands on the police and fire departments. It would be necessary to increase the police and fire department. It would be necessary to increase the police and fire protection budgets by about 20 to 30 percent to satisfy these demands. The Preferred Alternative would not have a significant impact on Guam's health care services.

The Preferred Alternative would not have a significant impact on cultural resources. Pursuant to Section 106 of the National Historic Preservation Act of 1966, U.S.C. 470f (1994), Navy conducted a cultural resource assessment and determined that one archaeological site, Site 1562–T18, is eligible for listing on the National Register of Historic Places. This site is believed to be a temporary occupation site from the early latte period, an historical period for the Mariana Islands between 1200 A.D. and 1700 A.D., prior to European contact. Radiocarbon dating and ceramic analysis establish this site as one of the oldest sites identified on the northern plateau of Guam.

Navy will include protective deed covenants in the conveyance documents to ensure protection and preservation of this archaeological site during redevelopment. In a letter dated May 24, 1999, the Guam Historic Preservation Officer concurred with Navy's determination that there would not be any adverse effect arising out of disposal and reuse of the Air Station if this archaeological site was protected by a deed covenant. In a letter dated July 8, 1999, the Advisory Council on Historic Preservation also concurred with Navy's determination.

The Preferred Alternative would not have a significant impact on the environment arising out of the use of petroleum products or the use or generation of hazardous substances by the acquiring entities. Hazardous materials used and hazardous wastes generated by the Reuse Plan will be managed in accordance with Federal and local laws and regulations.

Implementation of the Preferred Alternative would not have any impact on existing environmental contamination at the Air Station. Navy will inform future property owners about the environmental condition of the property and may, when appropriate, include restrictions, notifications, or covenants in deeds to ensure the protection of human health and the environment in light of the intended use of the property.

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 3 CFR 859 (1995), requires that Navy determine whether any low income and minority populations will experience disproportionately high and adverse human health or environmental effects from the proposed action. Navy analyzed the impacts on low income and minority populations pursuant to Executive Order 12898. The FEIS addressed the potential environmental, social, and economic impacts associated with the disposal of NAS Agana and subsequent reuse of the property under the various proposed alternatives. Minority and low income populations residing within the region will not be disproportionately affected.

Navy also analyzed the impacts on children pursuant to Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks, 3 CFR 198 (1998). Under the Preferred Alternative, there would not be any large concentration of children, because the Reuse Plan emphasizes aviation, industrial, and commercial redevelopment. The Preferred Alternative would not impose any disproportionate environmental health or safety risks on children.

**Mitigation**

Implementation of Navy's decision to dispose of NAS Agana does not require Navy to implement any mitigation measures. Navy will take certain actions to implement existing agreements and regulations. These actions were treated in the FEIS as agreements or regulatory requirements rather than as mitigation. Navy will erect a fence around the one-acre freshwater marsh and upland buffer in the southwestern part of the Air Station.

The FEIS identified and discussed those actions that will be necessary to mitigate the impacts associated with the reuse and redevelopment of NAS Agana. The acquiring entities, under the direction of Federal and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures.

**Comments Received on the Final EIS**

Navy did not receive any comments on the Final EIS.

**Regulations Governing the Disposal Decision**

Since the proposed action contemplates a disposal under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Public Law 101–510, 10 U.S.C. § 2687 note (1994), Navy's decision was based upon the environmental analysis in the FEIS and application of the standards set forth in the DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR Part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR Parts 174 and 175.

Section 101–47.303–1 of the FPMR requires that disposals of Federal property benefit the Federal Government and constitute the "highest and best use" of the property. Section 101–47.4909 of the FPMR defines the "highers and best use" as the use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The "highest and best use" determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such a zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, road, location, and environmental and historic considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations, and building

codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As as result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the "highest and best use" of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of the DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth in Part 101–47 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under the DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only when Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by Section 2905(b) of the DBCRA, may Navy apply disposal procedure other that those in the FPMR.

In Section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property closing installations. In Section 2903(c) or Public Law 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in this property disposal process. Under Section 2905(b)(2)(E) of the DBCRA must consult with local communities before disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in Section 174.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the LRA's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, as reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, Section 175.(d)(3) of the DoD Rule provides that the LRA's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. § 484 (1994), as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 10–47.304–9) and by competitive sale (FPMR 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property.

The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid, are left to the Federal agency's discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

**Conclusion**

The LRA's proposed reuse of NAS Agana, reflected in the Reuse Plan, is consistent with the prescriptions of the FPMR and Section 174.4 of the DoD Rule. The LRA has determined in its Reuse Plan that the property should be used for various purposes including commercial aviation, industrial, commercial, and parks and recreational activities. The property's location, physical characteristics, existing infrastructure, and use as a civilian airport make it appropriate for the proposed uses.

The proposed reuse of NAS Agana responds to local economic conditions, promotes rapid economic recovery from the impact of the Air Station's closure, and is consistent with President Clinton's Five-Part Plan for Revitalizing Base Closure Communities, which emphasizes local economic redevelopment and creation of new jobs as the means to revitalize these communities, 32 C.F.R. Parts 174 and 175, 59 Fed. Reg. 16,123 (1994).

Although the "No Action" Alternative has less potential for causing adverse environmental impacts, this Alternative would not take advantage of the property's location, physical characteristics, and infrastructure. Additional, it would not foster local economic redevelopment of the base and expansion of Guam's International Airport.

The acquiring entities, under the direction of Federal and local agencies with regulatory authority over protected resources, will be responsible for adopting practicable means to avoid or minimize environmental harm that may result from implementing the Reuse Plan.

Accordingly, Navy will dispose of Naval Air Station Agana in a manner that is consistent with the Government of Guam's Reuse Plan for the property.

Dated: May 9, 2000.

**William J. Cassidy, Jr.,**

*Deputy Assistant Secretary of the Navy (Conversion and Redevelopment).*

[FR Doc. 00–12964 Filed 5–22–00; 8:45 am]

BILLING CODE 3810–FF–M

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before June 22, 2000.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public

consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB.

Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: May 15, 2000.

**William Burrow,**

*Leader, Information Management Group, Office of the Chief Information Officer.*

**Office of Postsecondary Education**

*Type of Review:* Reinstatement, without change, of a previously approved collection for which approval has expired.

*Title:* Financial Report for the Endowment Challenge Grant Program (JS).

*Frequency:* Annually.

*Affected Public:* Not-for-profit institutions.

*Reporting and Recordkeeping Hour Burden:* Responses: 300; Burden Hours: 900.

*Abstract:* The financial report requires investment data from institutions for the purpose of assessing their progress in increasing their endowment fund resources. The data is also used to monitor compliance with regulatory provisions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joe Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–12878 Filed 5–22–00; 8:45 am]

BILLING CODE 4000–01–U

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.326J]**

### Office of Special Education and Rehabilitative Services; Grant Applications under the Special Education—Technical Assistance and Dissemination to Improve Services and Results for Children with Disabilities Program

**AGENCY:** Department of Education.

**ACTION:** Notice inviting applications for new awards for fiscal year (FY) 2000.

*Purpose of Program:* The purpose of this program is to provide technical assistance and information through programs that support States and local entities in building capacity to improve early intervention, educational, and transitional services and results for children with disabilities and their families, and address systemic-change goals and priorities.

*Eligible Applicants:* State and local educational agencies, institutions of higher education, other public agencies, private nonprofit organizations, outlying areas, freely associated States, and Indian tribes or tribal organizations.

*Applications Available:* May 31, 2000

*Deadline for Transmittal of Application:* July 17, 2000

*Deadline for Intergovernmental Review:* September 17, 2000

*Estimated Number of Awards:* 1

*Maximum Award:* We will reject and will not consider an application that proposes a budget exceeding $1,900,000 for any single budget period of 12 months. The Assistant Secretary may change the maximum amounts through a notice published in the **Federal Register**.

*Project Period:* Under this priority, the Assistant Secretary will make one award for a cooperative agreement with a project period of up to 60 months subject to the requirements of 34 CFR 75.253(a) for continuation awards. During the second year of the project, the Assistant Secretary will determine whether to continue the Center for the fourth and fifth years of the project period and will consider in addition to the requirements of 34 CFR 75.253(a):

(a) The recommendation of a review team consisting of three experts selected by the Assistant Secretary. The services of the review team, including a two-day site visit to the project, are to be performed during the last half of the project's second year and may be included in that year's evaluation required under 34 CFR 75.590. Costs associated with the services to be performed by the review team must also be included in the project's budget for year two. These costs are estimated to be approximately $6,000;

(b) The timeliness and effectiveness with which all requirements of the negotiated cooperative agreement have been or are being met by the project; and

(c) The degree to which the project's design and technical strategies demonstrate the dissemination of significant new knowledge.

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99; (b) The selection criteria for the priority under this program are drawn from the EDGAR general selection criteria menu. The specific selection criteria for this priority are included in the funding application packet for the applicable competition.

**Note:** The regulations in 34 CFR part 86 apply to institutions of higher education only.

*General Requirements:* (a) The Project funded under this notice must make positive efforts to employ and advance in employment qualified individuals with disabilities in project activities (see Section 606 of IDEA).

(b) Applicants and the grant recipient funded under this notice must involve individuals with disabilities or parents of individuals with disabilities in planning, implementing, and evaluating the projects (see Section 661(f)(1)(A) of IDEA).

(c) The Project funded under this competition must (1) use current research-validated practices and materials, and (2) communicate appropriately with target audiences, including young people, families, State and local agencies, and employers.

(d) The Project funded under this priority must budget for a two-day Project Directors' meeting in Washington, D.C. during each year of the project.

(e) Part III of the application submitted under the priority in this notice, the application narrative, is where an applicant addresses the selection criteria that are used by reviewers in evaluating the application. You must limit Part III to the equivalent of no more than 70 pages using the following standards:

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• A "page" is 8.5" x 11" (on one side only) with one-inch margins (top, bottom, and sides).

• Double-space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, and captions, as well as all text in charts, tables, figures, and graphs.

• If using a proportional computer font, use no smaller than a 12-point font, and an average character density no greater than 18 characters per inch. If using a nonproportional font or a typewriter, do not use more than 12 characters per inch.

The page limit does not apply to Part I—the cover sheet; Part II—the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography or references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

**Waiver of Rulemaking**

In most instances the Assistant Secretary is required to offer interested parties the opportunity to comment on proposed priorities. However, section 661(e)(2) of IDEA makes the Administrative Procedure Act (5 U.S.C. 553) inapplicable to the priority in this notice.

*Priority:* Under section 685 of IDEA and 34 CFR 75.105(c)(3) we consider only applications that meet the following priority: *Absolute Priority—Secondary Education and Transition Technical Assistance Center* (84.326J)

*Background:* Federal activities in support of transition have shifted in focus from a historical emphasis on the needs of students with significant disabilities to a more recent emphasis on students with high-incidence disabilities. Yet, based on the results of the National Longitudinal Transition Study of Special Education Students (NLTS) and data from the Monitoring and State Improvement Program Division of the Office of Special Education Programs (OSEP), it has become apparent that the transition needs of all students with disabilities are not being adequately met.

The transition needs of students with disabilities are reflected in many factors. First, school completion rates for students with disabilities are low, while at the same time, national studies report that students with disabilities who complete high school are more likely to be employed, to earn higher wages, and to enroll in postsecondary education and training. Second, the labor market demands higher levels of education and skills, and the completion of high school and further education become even more critical. Third, practitioners lack knowledge about integrating academic and career preparation into a seamless, individualized education program for youth with disabilities. Finally, general education initiatives have increased public accountability through more rigorous curriculum standards, large-scale assessment of student performance in relation to those standards, and increased graduation requirements.

To help meet demands for improved results, the IDEA Amendments of 1997 put forth a broader vision of secondary education with greater emphasis on participation and involvement in the general curriculum as a means to improve educational results for students with disabilities and to increase their rates of high school completion. Moreover, earlier transition planning is expected to result in improved postsecondary education participation and employment rates. To achieve this vision of improved postschool outcomes, collaborative partnerships must be developed among multiple systems, such as education, vocational rehabilitation, workforce development, health, social security, housing, and transportation.

To ensure full implementation of IDEA and to achieve quality education and transition results for students with disabilities and their families, Congress found that National technical assistance, support, and dissemination activities were necessary. For that reason, the Secondary Education and Transition Technical Assistance Center (SETAC) will be established to carry out activities that are national in scope, coordinated with other technical assistance and dissemination efforts, and aligned with other Federally-funded synthesis and research centers and institutes in order to avoid duplication. The goals of this Center are to:

(a) Promote secondary education and transition models that integrate academic, career, work-based, and community-based learning;

(b) Support State and local capacity building to improve education and transition results for youth with disabilities;

(c) Promote systemic change by facilitating school and community-based linkages in the provision of transition services to youth with disabilities; and

(d) Translate research into practice by using technical assistance and dissemination mechanisms.

The Center will be responsible for a wide range of work, including developing products and materials, conducting technical assistance activities that are topic-specific, and disseminating information about research-based models and practices. The Assistant Secretary is particularly interested in projects that engage the active participation of multiple partners.

*Priority:* The Assistant Secretary establishes an absolute priority to support a Center that will identify and promote effective policy and practice to improve secondary education and transition results for children with disabilities. At a minimum, this project must—

(a) Provide technical assistance and information by:

(1) Developing a network of researchers, technical assistance providers, and disseminators of research-based and promising practices to facilitate transition from post-secondary education, work, and independent living. This network must:

(i) Work collaboratively with other researchers, technical assistance providers, and disseminators to:

(A) Coordinate technical assistance and dissemination activities;

(B) Develop communication and dissemination strategies; and

(C) Develop products that include research findings and promising practices, including findings from OSEP-supported research and lessons from the School-to-Work program and other Federal youth transition programs, and are designed to broaden the capacity of technical assistance and information providers, particularly regular and special education technical assistance and information providers;

(ii) Include, at a minimum, Federally-funded national research institutes, technical assistance providers, and disseminators that address secondary education and transition issues. These entities may include, for example, the Research Institute for Secondary Education Reform; the Institute for Academic Access; the Center for Promoting What Works; the National Center for Education Outcomes; Regional Resource Centers (RRCs); the National Information Center on Children and Youth with Disabilities (NICHCY); the National Center on the Study of Postsecondary Education Supports; the National Clearinghouse on Postsecondary Education for Individuals with Disabilities (HEATH); the National Institute on Disability and Rehabilitation Research; and Rehabilitation Research and Training Centers, as well as researchers, technical

assistance providers, and disseminators from regular education, such as the National Dissemination Center for Career and Technical Education and other related projects.

(2) Targeting, through proactive strategies and coordination with the IDEA Partnerships, organizations of policymakers, service providers, local-level administrators, and families. Targeted technical assistance must:

(i) Include policy and practice briefs explaining comprehensive secondary education and transition service requirements, and other emerging issues, trends, and legislation;

(ii) Include tools based on (i) above to assist in implementing research-based best practices; and

(iii) Be designed to use research-based and promising practices to:

(A) Improve academic results in secondary education;

(B) Improve transition practice;

(C) Increase postsecondary education participation rates and employment rates; and

(D) Prevent dropouts and increase high school completion rates.

(3) Conducting, in consultation with OSERS, a dynamic and innovative national summit in years two and four of the project. The summit must:

(i) Be designed to:

(A) Identify research-based and promising practices and initiate discussion on emerging issues and trends that affect postsecondary results for youth with disabilities, particularly through secondary education and transition services; and

(B) Sustain development and implementation of systems linkages and systems collaboration for effective transition; and

(ii) Include participants who are national experts in the field or key representatives of Federal agencies, and national organizations, and participants who represent local level leadership, families, employers, and persons with disabilities; and

(iii) Support systemic collaboration among SEAs, LEAs, and Federal education and workforce development programs including Healthy and Ready to Work, Youth Opportunity Grants, Youth Councils established under the Workforce Investment Act, relevant Social Security Administration programs, related Rehabilitation Services Administration and National Institute on Disability and Rehabilitation Research programs, relevant mental health programs, and other related programs and projects.

(4) Designing and implementing capacity-building training institutes on improving results for youth with disabilities, participation and involvement in the general curriculum, self-determination, interagency collaboration, implementation of the transition requirements of IDEA, and strategies for addressing other identified needs. The purpose of the training institutes is to assist technical assistance providers and disseminators to reach front-line service providers. The institutes must:

(i) Help develop, implement, and sustain systemic changes in secondary special education and transition services, that will improve results for all youth with disabilities and their families, including youth from minority backgrounds and youth with limited English proficiency;

(ii) Provide training for RRCs, HEATH, NICHCY, IDEA Partnership Projects, Parent Training Centers, and national technical assistance providers and disseminators; and

(iii) Provide targeted assistance to State technical assistance and information systems, including systems change projects. Targeted assistance includes training and technical assistance activities for implementing research-based practices, increasing participation in the general education curriculum and in large-scale assessments, developing effective interagency collaborations, and sustaining systemic change.

(b) Use state of the art technologies, such as accessible and interactive web sites, list servs, chat rooms, and video-conferencing, in providing technical assistance and disseminating information, including technical assistance and information on research-based and promising practices.

(c) Design and carryout a strategic management plan, including project evaluation. This plan must be designed to provide information to guide necessary, ongoing refinements to the structure, activities, and products that will improve the impact and effectiveness of the Center and will be collaboratively developed with the OSEP project officer and other Federal officials, customers, and network members during the first three months of the project. This plan must include:

(1) Annual data collection activities for needs assessments if extant data are not available;

(2) A clear description of effective strategies for meeting and evaluating project goals and activities;

(3) Goals, objectives, and activities that support the IDEA Government Performance Results Act (GPRA) Performance Plan; and

(4) Procedures for measuring the impact of the Center on its primary purpose—to identify and promote effective policy and practice for secondary education and transition services for youth with disabilities.

(d) Support, through internships or other collaborative arrangements, graduate students who will concentrate their studies in secondary special education or transition services and who show promise for continued service in leadership positions. These graduate students must be involved with all aspects of project activity.

(e) Meet with the OSEP project officer in the first four months of the project to review the needs assessment, evaluation plan, technical assistance, and dissemination approaches and the plan for collaboration with various network members.

(f) Budget three trips annually to Washington, DC (two trips to meet and collaborate with U.S. Department of Education officials and one trip, as specified in the general requirements, to attend the two-day Office of Special Education Programs Technical Assistance Project Directors' Conference).

*Competitive Preferences:* Within this absolute priority, we will give the following competitive preference under section 606 of IDEA and 34 CFR 75.105(c)(2)(i), to applications that are otherwise eligible for funding under this priority:

Up to ten (10) points based on the effectiveness of the applicant's strategies for employing and advancing in employment qualified individuals with disabilities in project activities as required under paragraph (a) of the "General Requirements" section of this notice. In determining the effectiveness of those strategies, the Assistant Secretary can consider the applicant's past success in pursuit of this goal.

For purposes of this competitive preference, applicants can be awarded up to a total of 10 points in addition to those awarded under the published selection criteria for this priority. That is, an applicant meeting this competitive preference could earn a maximum total of 110 points.

**FOR APPLICATIONS CONTACT:** Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, Maryland 20794–1398. Telephone (toll free): 1–877–4ED–Pubs (1–877–433–7827). FAX: 301–470–1244. Individuals who use a telecommunications device for the deaf (TDD) may call (toll free) 1–877–576–7734.

You may also contact Ed Pubs via its Web site http://www.ed.gov/pubs/edpubs.html or its e-mail address edpubs@inet.ed.gov

If you request an application from Ed Pubs be sure to identify the competition as follows: CFDA 84.326J.

**FOR FURTHER INFORMATION CONTACT:** Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, S.W., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 260–9182.

If you use a TDD you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the Department at the address listed. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

**Intergovernmental Review**

The program in this notice is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for those programs.

**Electronic Access to This Document**

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Dated: May 17, 2000.

**Judith E. Heumann,**

*Assistant Secretary for Special Education and Rehabilitative Services.*

[FR Doc. 00–12923 Filed 5–22–00; 8:45 am]

BILLING CODE 4000–01–U

## DEPARTMENT OF ENERGY

### Office of Environmental Management; Environmental Management Site-Specific Advisory Board; Notice of Renewal

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. 92–463), and in accordance with title 41 of the Code of Federal Regulations, Section 101–6.1015(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Site-Specific Advisory Board has been renewed for a two-year period beginning May 16, 2000.

The purpose of the Board is to provide the Assistant Secretary for Environmental Management with advice and recommendations on environmental management projects and issues such as future use, risk management, transportation, long-term stewardship, and budget prioritization activities, from the perspective of affected groups and State and local government. Board membership will reflect the full diversity of views in the affected community and region and be composed primarily of people who are directly affected by Department of Energy (DOE) site cleanup activities. Members will include potentially affected and interested stakeholders from local government, Indian Tribes, environmental and civic groups, labor organizations, universities, waste management and environmental restoration firms, and other interested parties. Representatives from the DOE, the Environmental Protection Agency, and State governments will be ex-officio members of the Board. Selection and appointment of Board members will be accomplished using procedures designed to ensure diverse membership and a balance of viewpoints. Consensus recommendations to the DOE from the Board on the resolution of numerous and difficult issues will help achieve DOE's objective of an integrated environmental management program.

The Secretary of Energy has determined that renewal of the Environmental Management Site-Specific Advisory Board is necessary in order to conduct DOE's business and is in the public interest. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and the rules and regulations issued in the implementation of those acts.

Further information regarding this advisory board may be obtained from Rachel M. Samuel at (202) 586–3279.

Issued in Washington DC on May 16, 2000.

**James N. Solit,**

*Advisory Committee Management Officer.*

[FR Doc. 00–12933 Filed 5–22–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Notice of Competitive Financial Assistance for the Office of Defense Nuclear Nonproliferation

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** Notice of Financial Assistance Solicitation DE–PS01–00NN20115; Biological Detection and Enabling Science.

**SUMMARY:** The Office of Research and Engineering (NN–20) of the Office Defense Nuclear Nonproliferation (NN), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications for its Chemical and Biological Nonproliferation Program. Research is sought for experimental and computational studies for biological detection and the underlying enabling science.

**DATES:** The formal solicitation document, which will include greater detail about specific program areas of interest, application instructions, and evaluation criteria, is expected to be issued in early June 2000. Potential applicants are strongly encouraged to submit a brief two to four page pre-application. All pre-applications, referencing solicitation DE–PS01–00NN20115, should be received by DOE by 2:30 p.m., EST, June 23, 2000. A response encouraging or discouraging the submission of a formal application will be communicated by electronic mail by June 30, 2000. The due date for applications in response to the formal solicitation will be 2:30 p.m., EST, July 28, 2000.

**ADDRESSES:** Both pre-applications and applications should be submitted electronically through the Department's Industry Interactive Procurement System (IIPS) located at *http://doe-iips.pr.doe.gov*. Further information and

instructions for using the IIPS system are provided under the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** David Leotta, U.S. Department of Energy, Office of Headquarters Procurement Services, ATTN: MA–542, 1000 Independence Ave., SW, Washington, DC 20585, telephone number (202) 426–0063, facsimile number (202) 426–0168 or e-mail at: *David.Leotta@hq.doe.gov*. Questions or comments related to using the Industry Interactive Procurement System (IIPS) should be directed to the IIPS help-line at 1–800–683–0751. The preferred method of submitting questions is through e-mail. Only questions and/or comments submitted to Mr. Leotta will be considered. Questions or comments that are technical in nature will be directed by Mr. Leotta to the program office.

**SUPPLEMENTARY INFORMATION:** The formal solicitation document will be disseminated electronically as solicitation number DE–PS01–00NN20115 through the Department's Industry Interactive Procurement System (IIPS) located on the *Doing Business with DOE* Homepage located at *http://doe-iips.pr.doe.gov*. This is the primary way for the Office of Headquarters Procurement Services to conduct competitive acquisitions and financial assistance transactions. IIPS provides the medium for disseminating solicitations, receiving financial assistance applications and proposals, evaluating, and awarding various instruments in a paperless environment. To get more information about IIPS and to register your organization, go to *http://www.doe-iips.pr.doe.gov*. Click on one of the buttons on the left-hand side of the screen (information, register, log-in or browse IIPS). Registration is a prerequisite to the submission of an application, and applicants are encouraged to register as soon as possible. A help document, which describes how IIPS works, can be found at the bottom of the main page.

The Chemical and Biological Nonproliferation Program (CBNP) is an applied research and development program that seeks to develop advanced technologies and capabilities to counter the domestic chemical and biological threat. The program supports a diverse set of technology development efforts and related demonstration programs in areas including: biological detection, modeling, decontamination and the underlying biological sciences. Additional information on the program content and context are available on the CBNP website at: *www.nn.doe.gov/cbnp*.

**Biological Detection and Enabling Science**

A key component in the U.S. strategy to counter the threat posed by biological agents is biological detection. Early detection of a biological attack whether by direct detection of airborne biological agents, or rapid detection of those who have been exposed (pre-symptomatic) is essential to minimize the impact of such attacks. The DOE program is investing in technological approaches that have the potential to provide rapid detection of a suite of agents with high sensitivity and high selectivity. The existing portfolio of CBNP-supported projects are described on the CBNP website (*www.nn.doe.gov/cbnp*).

The CBNP is interested in projects that will further the knowledge of, and lead to improvements in, and techniques to bind and recognize specific biological pathogens. Selected projects will contribute to the public purpose by enhancing the understanding of the general scientific area of biological recognition, and will complement existing detector development projects underway within the CBNP. We are particularly interested in approaches that would ultimately lead to improved biological detection through higher sensitivity, specificity or shelf-live of reagents, or via decreased dependence on reagent use or sample preparation. Technological approaches need not be antigen-based, but may include nucleic acid recognition or other possible mechanisms.

Examples of possible topics include, but are not limited to:

- Structurally-based ligand design
- Molecularly imprinted polymers
- Combinatorial receptor design
- Phage display

Preference will be given to those applications that seek to develop approaches that will have broad generality to classes of pathogens. In addition, applications that propose to use biological targets relevant to the CBNP mission will be preferred over those that focus loosely on surrogate compounds.

The Statutory authority for this program is listed under the Catalog of Federal Domestic Assistance Number 81.113.

**Carol M. Rueter,**

*Director, Division C, Office of Headquarters Procurement Services.*

[FR Doc. 00–12932 Filed 5–22–00; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–389–006]**

### Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

May 17, 2000.

Take notice that on May 10, 2000, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a recently negotiated rate transaction:

FTS–1 Service Agreement No. 68346 between Columbia Gulf Transmission Company and Williams Energy Marketing & Trading Company, dated May 8, 2000

Columbia Gulf requests an effective date of June 1, 2000 for this negotiated rate agreement.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12861 Filed 5–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–222–001]

## Northern Natural Gas Company; Notice of Compliance Filing

May 17, 2000.

Take notice that on May 11, 2000, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective Marcy 27, 2000:

Substitute Fifth Revised Sheet No. 286
Substitute Fourth Revised Sheet No. 288

Northern states that the purpose of this filing is to comply with the Commission's Order of April 26, 2000 in Docket No. RP00–222–000. Northern is filing revised tariff sheets to clarify that there are no maximum rates for short-term capacity releases, that all releases for more than one month must be posted, and to include the sunset date of September 30, 2002, for the price cap waiver.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12863 Filed 5–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–2320–000]

## Pacific Gas and Electric Company; Notice of Filing

May 17, 2000.

Take notice that on April 27,2000, Pacific Gas and Electric Company (PG&E), tendered for filing the Small Facilities Authorization Letter No. 4, submitted pursuant to the Procedures for Implementation (Procedures), of Section 3.3 of the 1987 Agreement between PG&E and the City and County of San Francisco (City). This is PG&E's third quarterly filing submitted pursuant to Section 4 of the Procedures, which provides for the quarterly filing of Facilities Authorization Letters.

The Facilities Authorization Letter streamlines the procedures for filing numerous Facilities, and facilitates payment of PG&E's costs of designing, constructing, procuring, testing, placing in operation, owning, operating and maintaining the customer-specific Facilities required for firm transmission and distribution service requested by City under this Facilities Authorization Letter.

PG&E has requested certain waivers.

Copies of this filing have been served upon City and the CPUC.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 30, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12857 Filed 5–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–239–001]

## Pine Needle LNG Company, LLC; Notice of Compliance Filing

May 17, 2000.

Take notice that on May 11, 2000 Pine Needle LNG Company, LLC (Pine Needle) tendered for filing information fully supporting the increase in its electric power cost rate. Pine Needle asserts that the purpose of this filing is to comply with the Commission's letter order dated April 26, 2000, in Docket No. RP00–239–000.

Any person desiring to protest this filling should file a protest with Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. all such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://ww.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12864 Filed 5–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–224–001]

## Transwestern Pipeline Company; Notice of Compliance Filing

May 17, 2000.

Take notice that on May 11, 2000, Transwestern Pipeline Company (Transwestern), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective March 27, 2000:

Substitute Sixth Revised Sheet No. 95E
Substitute Third Revised Sheet No. 95I
Substitute Fifth Revised Sheet No. 95K

Transwestern states that this filing is made to: (1) Comply with the Commission's April 26, 2000 order

accepting Transwestern's March 27, 2000 filing, subject to Transwestern's submitting within 15 days of such order, tariff sheets consistent with the requirements of Order No. 637; and (2) to clarify its tariff provisions to allow a releasing shipper to subject its prearranged deal at maximum rates or above maximum rates to further posting and bidding if it desires.

Transwestern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12862 Filed 5–22–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RP96–129–011]**

### Trunkline Gas Company; Notice of Compliance Filing

May 17, 2000.

Take notice that on May 11, 2000, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following pro forma tariff sheets:

Pro Forma Sheet No. 79

Trunkline states that the purpose of this filing is to comply with the Commission's Opinion No. 441 and Order on Initial Decision, 90 FERC ¶ 61,017 (2000) in the above referenced proceeding. This filing reflects Trunkline's proposal to liberalize the current directional limitations on its TABS–1 transfer service.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12860 Filed 5–22–00; 8:45 am]

BILLING CODE 6717–01–M

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 935, Project No. 2071, Project No. 2111, and Project No. 2213]**

### PacifiCorp; Public Utility District No. 1 of Cowlitz County; Notice of Scoping Meetings and Tour of Projects Pursuant to the National Environmental Policy Act of 1969 for an Applicant Prepared Environmental Assessment

May 17, 2000.

The Commission's regulations allow applicants the option of preparing their own Environmental Assessment (EA) for hydropower projects, and filing the EA with their application as part of an alternative licensing procedure. [1] On April 1, 1999, the Commission approved the use of an alternative licensing procedure in the preparation of a new license application for PacificCorp's Merwin, Yale, and Swift No. 1 Projects, and Public Utility District No. 1 of Cowlitz County's (Cowlitz PUD) Swift No. 2 Project; project numbers. 935, 2071, 2111, and 2213, respectively. The Commission has also accelerated the Merwin license expiration and is delaying action on the Yale application (filed May 5, 1999) so all four projects can be relicensed at the same time.

The alternative procedures include provisions for the distribution of an initial information package (IIP), and for the cooperative scoping of environmental issues and needed studies. PacifiCorp and Cowlitz PUD (licensees) distributed the IIP on March, 8 2000. During the week of May 15, 1999, the licensees will distribute a Scoping Document (SD1). [2] Two public meetings will be held to discuss these documents.

**Scoping Meetings**

The licensees will hold public scoping meetings on June 21, 2000, pursuant to the National Environmental Policy Act (NEPA) of 1969. At the scoping meetings, the licensees will: (1) Briefly summarize the material presented in the scoping document and the environmental issues tentatively identified in the scoping document for analysis in the EA; (s) outline any resources they believe would not require a detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantitative data, on the resources at issue; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA.

Although the licensees intent is to prepare an EA, there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

The times and locations of the scoping meetings are:

*Daytime Scoping Meeting*

June 21, 2000, 9 a.m. to 4 p.m., Oak Tree Restaurant, Woodland, Washington.

*Evening Scoping Meeting*

June 21, 2000, 6 p.m. to 8 p.m., Oak Tree Restaurant, Woodland, Washington.

All interested individuals, organizations, and agencies are invited and encouraged to attend any or all of the meetings to assist in identifying and clarifying the scope of environmental issues that should be analyzed in the EA.

**Project Tour**

A public tour of the projects is scheduled for June 22, 2000. The tour will begin at the Merwin Project headquarters in Ariel, Washington. Those interested in the project tour

[1] 81 FERC ¶ 61,103 (1997).

[2] Copies of these documents can be obtained by calling Frank Shrier of PacifiCorp at 503–813–6622 or Diana Macdonald of Cowlitz PUD at 360–577–7578.

should contact Frank Shrier at 503–813–6622.

**Scoping Meeting Procedures**

The meetings will be conducted according to the procedures used at Commission scoping meetings in that the meetings will be recorded. Because these will be NEPA scoping meetings under the ALP, the Commission does not intend to conduct further NEPA scoping meetings after the applications and EA are filed with the Commission. Instead, Commission staff will participate in the meetings on June 21, 2000.

Both scoping meetings will be recorded, and the transcripts will become part of the formal record for this project. Those who choose not to speak during the scoping meetings may instead submit written comments on the project. Written comments should be mailed or e-mailed to:

Frank Shrier, PacifiCorp, 825 NE Multnomah, Suite 1500, Portland, OR 97232; frank.shrier@pacificorp.com
Diana MacDonald, Cowlitz County PUD, Box No. 3007, 961 12th Avenue, Longview, WA 98632; dmacdonald@cowlitzpud.org

**Commenting Deadline**

All correspondence should be postmarked no later than July 17, 2000. Comments should show the following caption on the first page: Scoping Comments, Lewis River Projects, Project Nos. 935, 2071, 2111, 2213.

For further information please contact Vince Yearick of the Commission at (202) 219–3073 or vince.yearick@ferc.fed.us

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12859 Filed 5–22–00; 8:45 am]

BILLING CODE 6717–01–M

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**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Notice of Application for Approval of 1997 Pacific Northwest Coordination Agreement as a Headwater Benefits Settlement Agreement, and Soliciting Comments, Motions To Intervene, and Protests**

May 17, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Coordination Agreement as Headwater Benefits Settlement Agreement.

b. *Docket No:* HB02–00–1.

c. *Date Filed:* February 2, 2000.

d. *Applicant:* Public Utility District No. 1 of Chelan County, Washington on its own; and eight other non-federal parties to the agreement.

e. *Name of Project:* 1997 Pacific Northwest Coordination Agreement (PNCA).

f. *Project Location:* PNCA covers ten non-federal hydropower projects licensed by the Commission in Flathead, and Sanders Counties in Montana, Bonner County in Idaho, Chelan, Douglas, and Pend Oreille Counties in Washington, and Lane and Clackamas Counties in Oregon.

g. *Filed Pursuant to:* 18 CFR 11.14(a)(1) and Rule 602 of the Commission's Rules of Practice and Procedure.

h. *Applicant Contact:* Mr. Roger A. Braden, General Manager, Public Utility District No. 1 of the Chelan County, P.O. Box 1231, Wenatchee, WA 99807–1231. Tel: (509) 663–8121.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 219–3273 or by e-mail at vedula.sarma@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* June 23, 2000.

Please include the docket number (HB02–00–1) on any comments or motions filed.

k. *Description of filing:* The 1997 PNCA is intended to supersede and replace the 1964 PNCA previously approved by the Commission, for the coordinated operation of a system publicly and privately owned hydroelectric generating plants and related transmission facilities through the year 2024. Section 12 of the 1997 PNCA, just like its predecessor, provides a method to calculate headwater benefits payments based upon coordinated storage releases from upstream reservoirs controlled by dams in the United States. The payments provided by section 13 are intended to constitute full satisfaction of obligations under section 10(f) of the Federal Power Act.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item g above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission, David P. Boergers, 888 First Street NE, Washington DC 20426.

*Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

*Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS,", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

*Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

**Linwood A. Watson, Jr.,**

*Acting Secretary.*

[FR Doc. 00–12858 Filed 5–22–00; 8:45 am]

BILLING CODE 6717–01–M

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**ENVIRONMENTAL PROTECTION AGENCY**

**[FRL–6704–6]**

**Agency Information Collection Activities; Submission of EPA ICR No. 0574.11 to OMB**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of submission to OMB.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the Information Collection Request (ICR) entitled: "Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for Chemical Substances" (EPA ICR No. 0574.11; OMB Control No. 2070–0012) has been forwarded to the Office of Management and Budget (OMB) for review and approval pursuant to the OMB procedures in 5 CFR 1320.12. The ICR, which is abstracted below, describes the nature of the information collection and its estimated cost and burden. The Agency is requesting that OMB renew for 3 years the existing approval for this ICR, which is scheduled to expire on May 31, 2000. A **Federal Register** notice announcing the Agency's intent to seek the renewal of this ICR and the 60-day public comment opportunity, requesting comments on the request and the contents of the ICR, was issued on September 13, 1999 (64 FR 49484). EPA received no comments on this ICR during the comment period.

**DATES:** Additional comments may be submitted on or before June 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** Sandy Farmer at EPA by phone on (202) 260–2740, by e-mail: "farmer.sandy@epamail.epa.gov," or download off the Internet at http://www.epa.gov/icr/icr.htm and refer to EPA ICR No. 0574.11.

**ADDRESSES:** Send comments, referencing EPA ICR No. 0574.11 and OMB Control No. 2070–0012, to the following addresses:

(1) Ms. Sandy Farmer, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code: 2822), 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; and

(2) Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, N.W., Washington, DC 20503.

**SUPPLEMENTARY INFORMATION:**

*Review Requested:* This is a request to renew a currently approved information collection pursuant to 5 CFR 1320.12.

*ICR Numbers:* EPA ICR No. 0574.11; OMB Control No. 2070–00012.

*Title:* Pre-Manufacture Review Reporting and Exemption Requirements for New Chemical Substances and Significant New Use Reporting Requirements for New Chemical Substances.

*Abstract:* Section 5 of the Toxic Substances Control Act (TSCA) requires manufacturers and importers of new chemical substances to submit to EPA notice of intent to manufacture or import a new chemical substance 90 days before manufacture or import begins. EPA reviews the information contained in the notice to evaluate the health and environmental effects of the new chemical substance. On the basis of the review, EPA may take further regulatory action under TSCA, if warranted. If EPA takes no action within 90 days, the submitter is free to manufacture or import the new chemical substance without restriction.

TSCA section 5 also authorizes EPA to issue Significant New Use Rules (SNURs). EPA uses this authority to take follow-up action on new or existing chemicals that may present an unreasonable risk to human health or the environment if used in a manner that may result in different and/or higher exposures of a chemical to humans or the environment. Once a use is determined to be a significant new use, persons must submit a notice to EPA 90 days before beginning manufacture, processing or importation of a chemical substance for that use. Such a notice allows EPA to receive and review information on such a use and, if necessary, regulate the use before it occurs.

Finally, TSCA section 5 also permits applications for exemption from section 5 review under certain circumstances. An applicant must provide information sufficient for EPA to make a determination that the circumstances in question qualify for an exemption. In granting an exemption, EPA may impose appropriate restrictions.

Responses to the collection of information are mandatory (see 40 CFR parts 700, 720, 721, 723 and 725). Respondents may claim all or part of a document confidential. EPA will disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

*Burden Statement:* The annual public reporting burden for this collection of information is estimated to average 105.5 hours per response for an estimated 443 respondents making one or more submissions of information annually. These estimates include the time needed to review instructions; develop, acquire, install and utilize technology and systems for the purposes of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. No person is required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for these regulations are displayed in 40 CFR part 9.

*Respondents/Affected Entities:* Entities potentially affected by this action are companies that manufacture or import new chemical substances, as defined by TSCA, or manufacture, process or import a chemical substance for a use that has been determined to be a significant new use, as defined by TSCA.

*Estimated Number of Respondents:* 443.

*Estimated Total Annual Burden on Respondents:* 184,608 hours.

*Frequency of Collection:* On occasion.

Dated: May 16, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–12956 Filed 5–22–00; 8:45 am]

**BILLING CODE 6560–50–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6704–5]**

## Agency Information Collection Activities: Submission for OMB Review; Comment Request; Standards of Performance for New Stationary Sources (NSPS) Wool Fiberglass Insulation Manufacturing and National Emission Standards for Hazardous Air Pollutants (NESHAP)—Maximum Achievable Control Technology (MACT) for Source Categories Wool Fiberglass Manufacturing Plants

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Combined ICR for NSPS, Standards of Performance for New Stationary Sources, Wool Fiberglass Insulation Manufacturing, 40 CFR part 60, subpart PPP, expiration date 8/31/00; and NESHAP–MACT for Wool

Manufacturing, 40 CFR part 63, subpart NNN, expiration date 8/31/00. For identification purposes, this combined ICR will continue to use OMB Control Number 2060–0114 and EPA ICR No. 1160.06, which formerly was applicable to NSPS, subpart PPP. OMB Control Number 2060–0359 and EPA ICR Number 1795.01 had been used for NESHAP–MACT Subpart NNN and will no longer be valid. This ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

**DATES:** Comments must be submitted on or before June 22, 2000.

**FOR FURTHER INFORMATION CONTACT:** For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy @epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1160.06. For technical questions about the ICR contact Gregory Fried at EPA by phone at (202) 564–7016 or by email at *fried.gregory@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

*Title:* NSPS Subpart PPP, Standards of Performance for New Stationary Sources—Wool Fiberglass Insulation Manufacturing and NESHAP–MACT Subpart NNN, National Emission Standards for Hazardous Air Pollutants—Wool Fiberglass Manufacturing, OMB Control Number 2060–0114, EPA ICR No. 1160.06. This is a request for extension of two currently approved collections which will be combined into one collection.

*Abstract:* Plants subject to NSPS Subpart PPP and/or NESHAP–MACT Subpart NNN must provide notifications to EPA of construction, modification, startups, shut downs, date and results of initial performance tests and provide semiannual reports of excess emissions. Owners/operators of wool fiberglass manufacturing facilities subject to NSPS Subpart PPP and/or NESHAP–MACT, Subpart NNN must also record continuous measurements of control device operating parameters.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published October 29, 1999 for NSPS Subpart PPP and January 21, 2000 for NESHAP–MACT Subpart NNN in **Federal Register**. No comments were received.

*Burden Statement:* The annual public reporting and recordkeeping burden for the collection of information for these two standards on existing wool fiberglass manufacturing facilities is estimated to average 149 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

*Respondents/Affected Entities:* Wool Fiberglass Insulation Manufacturing Plants for NSPS, Subpart PPP and/or Wool Fiberglass Manufacturing Plants for NESHAP–MACT Subpart NNN

*Estimated Number of Respondents:* 29.

*Frequency of Response:* Initial and semiannual.

*Estimated Total Annual Hour Burden:* 19,098

*Estimated Total Annualized Capital and Operating & Maintenance Cost Burden:* $496,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1160.06 and OMB Control No. 2060–0114 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 20, 2000.

**Oscar Morales,**

*Director, Collection Strategies Division.*

[FR Doc. 00–12957 Filed 5–22–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–6703–9]**

### Science Advisory Board; Notification of Public Advisory Committee Meeting; Meeting Date Correction

Incorrect meeting dates were announced for one of the two Science Advisory Board Executive Committee (EC) meetings at 65 FR 30589–30591, dated May 12, 2000. The meeting was originally announced for Monday, June 12, 2000. The meeting should have been announced for Friday, June 16, 2000. There are no changes to the other EC meeting (scheduled for May 30, 2000) or the Drinking Water Committee meeting (scheduled for June 5–7, 2000) announced in that FR.

The correct meeting announcement information is below.

The Executive Committee (EC) of US EPA's Science Advisory Board will conduct a public teleconference meeting on Friday, June 16, 2000. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadson no earlier than one week prior to the meeting (beginning June 9) at (202) 564–4533, or via e-mail at *tillery.priscilla@epa.gov*.

*Availability of Review Materials*—Drafts of the reports that will be reviewed at the meeting should be available to the public at the SAB website (http://www.epa.gov/sab) by close-of-business on June 1, 2000.

Dated: May 16, 2000.

**Donald G. Barnes,**

*Staff Director, Science Advisory Board.*

[FR Doc. 00–12793 Filed 5–22–00; 8:45 am]

BILLING CODE 6560–50–P

## ENVIRONMENTAL PROTECTION AGENCY

**[PF–941; FRL–6557–1]**

### Notice of Filing Pesticide Petitions to Establish Tolerances for Certain Pesticide Chemicals in or on Food

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the initial filing of a pesticide petition

proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

**DATES:** Comments, identified by docket control number PF–941, must be received on or before June 22, 2000.

**ADDRESSES:** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–941 in the subject line on the first page of your response.

**FOR FURTHER INFORMATION CONTACT:** By mail: Sheila Moats, EPA Biopesticides and Pollution Prevention Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–1259; e-mail address: moats.sheila@epa.gov.

**SUPPLEMENTARY INFORMATION:**

## I. General Information

*A. Does this Action Apply to Me?*

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

| Categories | NAICS codes | Examples of potentially affected entities |
|---|---|---|
| Industry | 111 | Crop production. |
| | 112 | Animal production. |
| | 311 | Food manufacturing. |
| | 32532 | Pesticide manufacturing. |

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?*

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–941. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

*C. How and to Whom Do I Submit Comments?*

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–941 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–941. Electronic comments may also be filed online at many Federal Depository Libraries.

*D. How Should I Handle CBI That I Want to Submit to the Agency?*

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

*E. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

**II. What Action is the Agency Taking?**

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions.

**List of Subjects**

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 4, 2000.

**Kathleen D. Knox,**

*Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.*

**Summaries of Petitions**

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioner and represents the view of the petitioner. The petition summaries announce the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

**1. Natural Plant Products S.A.**

*0F6073*

EPA has received a pesticide petition 0F6073 from Natural Plant Products S.A., Route d'Artix, B.P. 80, 64150 Nogueres, France, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for biochemical pesticide Geraniol [3,7-dimethyl-[E]-2,7-octadien-1-ol] in or on all raw agricultural commodities (RACs).

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, Natural Plant Products S.A. has submitted the following summaries of information, data, and arguments in support of their pesticide petitions. The summaries were prepared by Natural Plant Products S.A. and EPA has not fully evaluated the merits of the pesticide petitions. The summaries may have been edited by EPA, if the terminology used was unclear, the summaries contained extraneous material, or the summaries unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

*A. Product Name and Proposed Use Practices*

Geraniol will be incorporated into the end-use product Biomite as an active ingredient. Biomite is proposed for use as a foliar spray for the control of Tetranychid mites on a variety of agricultural and greenhouse crops. The product is used at the first appearance of spider mite activity on a particular crop, subsequent applications are made as required but not sooner than every 7 days. The application rates of 76 oz in 200 gallons to 20 oz in 50 gallons/per acre equate to 0.085—0.315 oz of Geraniol per acre.

*B. Product Identity/Chemistry*

Geraniol is a Monoterpene alcohol which is found in over 250 essential oils, and as a semiochemical in more than 14 species of insects encompassing 7 families from 5 orders. It is a colorless to pale yellow oily liquid with a sweet, rose odor. Geraniol is listed at 40 CFR 152.25(g) as a minimum risk pesticide active ingredient.

*C. Mammalian Toxicological Profile*

The toxicological profile of Geraniol is, acute oral two studies $LD_{50}$ 3.6 grams/kilograms (g/kg) and 4.8 g/kg in rats: acute dermal $LD_{50}$ greater than 5.0 g/kg. Chronic oral toxicity, 1,000 parts per million (ppm) fed to rats daily for 16 weeks produced no effects; 1,000 ppm fed to rats daily for 28 weeks produced no effects. Geraniol exhibited severe primary skin irritation in rabbits 100 milligrams (mg)/24 hr.; humans 16 mg/48 hr.; Guinea pigs 100 mg/24 hr. but was non-irritating to miniature pigs at 50 mg in the Draize test. Geraniol is a sensitizer although it exhibits relatively weak and variable responses. Geraniol when tested at doses up to 100 micrograms against *Salmonella typhimurium* TA 97 and TA 102 exhibited no mutagenicity. Geraniol was granted generally recognized as safe (GRAS) status by FEMA in 1965, and is approved as GRAS by the Food and Drug Administration (FDA) when used as a synthetic flavoring and adjuvant for direct addition to food for human consumption.

Waivers are being requested for genotoxicity, reproductive and developmental toxicity, sub-chronic toxicity and acute toxicity to non-target species based on Geraniol's ubiquity in nature, long history of use in the fragrance industry and as a flavoring in alcoholic and non-alcoholic beverages, ice cream, candies and baked good etc., favorable toxicological profile in chronic toxicological studies, and the inconsequential exposure resulting from the label-directed use rates.

*D. Aggregate Exposure*

1. *Dietary exposure*—i. *Food*. Current dietary exposure to Geraniol occurs from its use as a flavoring agent and adjuvant in food and beverages (0.8 ppm—11 ppm). Considering the low dose of Geraniol required to achieve the desired effect and the levels of Geraniol found in processed food and beverages, it can be concluded that incremental dietary exposure from the proposed use on agricultural and greenhouse crops is insignificant.

ii. *Drinking water*. Geraniol residues in drinking water are expected to be minimal from the proposed uses due to the low application rate, insolubility in water, and the expected rapid biodegradation in the soil.

2. *Non-dietary exposure*. Geraniol is used to the approximate annual amount of 800,000 lbs as a fragrance component in the manufacture of detergents, soaps, creams, lotions, perfumes, and aromatherapy products. Geraniol is also a component of the floral blend used as a lure in Japanese beetle traps. In the seven currently registered Japanese beetle traps, the Geraniol is present at a loading of 2.84—10.70%. The contribution to non-dietary exposure of Geraniol through the use of Biomite is not expected to pose any risk.

*E. Cumulative Exposure*

It is not expected that Geraniol when used as proposed would result in residues that would remain in human food items at levels which would be of toxicological concern. Because of the low inherent toxicity, low agricultural use rates (compared with flavor and fragrance amounts) no cumulative effects with other substances that might have a common mechanism of toxicity are anticipated.

*F. Safety Determination*

1. *U.S. population.* The use of products containing Geraniol, which is of low toxicity and used in low concentrations is compatible with the Agency's objectives to register reduced risk pesticides. The application of a volatile Terpenoid alcohol at the label-directed rates is expected to result in negligible residues that are of no toxicological concern, and therefore exposure and risk to the general U.S. population from these proposed agricultural uses is not anticipated.

2. *Infants and children.* Geraniol is ubiquitous in foodstuffs beverages, in soaps, detergents, and creams and hence the proposed agricultural uses pose no threat to infants and children. In fact, as the Geraniol-containing biopesticide product replaces existing miticides with less favorable toxicological profiles risk to infants and children will be reduced.

*G. Effects on the Immune and Endocrine Systems*

Oral chronic toxicity studies and mutagenicity studies have been cited above. There is no literature available to suggest that immune or endocrine systems will be compromised by the use of Geraniol as an active ingredient in a biochemical pest control agent used at the label-directed rates.

*H. Existing Tolerances*

There are no known existing tolerances for the use of Geraniol as a pesticide.

*I. International Tolerances*

The Council of Europe listed Geraniol in 1970 giving it an allowable daily intake (ADI) of 5 milligrams/kilograms bodyweight/day.

**2. Natural Plant Products S.A.**

*0F6145*

EPA has received a pesticide petition 0F6145 from Natural Plant Products S.A., Route d'Artix, B.P. 80, 64150 Nogueres, France, proposing pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for biochemical pesticide Citronellol [3,7-dimethyl-6-octen-1-ol] in or on all raw agricultural commodities.

*A. Product Name and Proposed Use Practices*

Citronellol will be incorporated into the end-use product Biomite as an active ingredient. Biomite is proposed for use as a foliar spray for the control of Tetranychid mites on a variety of agricultural and greenhouse crops. The product is used at the first appearance of spider mite activity on a particular crop, subsequent applications are made as required but not sooner than every 7 days. The application rates of 76 oz in 200 gallons to 20 oz in 50 gallons/per acre equate to 0.085—0.315 oz of Citronellol per acre.

*B. Product Identity/Chemistry*

Citronellol is a Monoterpene alcohol which is found in over 30 essential oils, and as a semiochemical in the spider mite Tetranychus urticae, the Formicine ant Lasius alienus and the bumble bee Pyrobombus pratorum. Citronellol also occurs in black currants, certain other fruits, wines, beer and black tea. It is a colorless to pale yellow oily liquid with a sweet, rose, leather, musty, floral odor. It is insoluble in water.

*C. Mammalian Toxicological Profile*

The toxicological profile of Citronellol is, acute oral $LD_{50}$ 3.45 g/kg in rats: acute dermal $LD_{50}$ 2.65 g/kg (rabbit). Citronellol exhibited severe primary skin irritation in rabbits and Guinea pigs (100 mg/24 hr) and moderate to humans (16 mg/48 hr). Citronellol when tested at doses up to 100 micrograms against *Salmonella typhimurium* TA 97 and TA 102 exhibited no mutagenicity. Citronellol has GRAS status at 21 CFR 172.515 when used as a synthetic flavoring and adjuvant for direct addition to foods for humans. Waivers are being requested for genotoxicity, reproductive and developmental toxicity, sub-chronic toxicity and acute toxicity to non-target species based on Citronellol's ubiquity in nature, long history of use in cosmetics, fragrance, detergent, and household cleaners, its natural occurrence in fruit and beverages, its wide use as a synthetic flavoring agent and adjuvant, and the inconsequential exposure resulting from the label-directed use rates.

*D. Aggregate Exposure*

1. *Dietary exposure*—i. *Food.* Current dietary exposure to Citronellol occurs from its natural occurrence in fruits and beverages, and its use as a flavoring agent and adjuvant in food and beverages. Considering the low dose of Citronellol required to achieve the desired effect and the levels of Citronellol found in natural and processed food and beverages, it can be concluded that incremental dietary exposure from the proposed use on agricultural and greenhouse crops is insignificant.

ii. *Drinking water.* Citronellol residues in drinking water are expected to be minimal from the proposed uses due to the low application rate, insolubility in water, and the expected rapid biodegradation in the soil.

2. *Non-dietary exposure.* Citronellol is widely used as a fragrance component in the manufacture of detergents, soaps, creams, lotions, perfumes, and aromatherapy products. Citronellol is also a component of Citronella oil used in candles, sprays, oils, lotions, and towelettes as a repellent for mosquitoes and other flying insects. Currently there are 31 active pesticide registrations containing Citronella oil. Citronellol is also contained in lemongrass oil, an active ingredient in two currently registered repellents. The contribution to non-dietary exposure of Citronellol through the use of Biomite is not expected to pose any risk.

*E. Cumulative Exposure*

It is not expected that Citronellol when used as proposed would result in residues that would remain in human food items at levels which would be of toxicological concern. Because of the low inherent toxicity, low agricultural use rates no cumulative effects with other substances that might have a common mechanism of toxicity are anticipated.

*F. Safety Determination*

1. *U.S. population.* The use of products containing Citronellol, which is of low toxicity and used in low concentrations is compatible with the Agency's objectives to register reduced risk pesticides. The application of a volatile Terpenoid alcohol at the label-directed rates is expected to result in negligible residues that are of no toxicological concern, and therefore, exposure and risk to the general U.S. population from these proposed agricultural uses, is not anticipated.

2. *Infants and children.* Citronellol is ubiquitous in foodstuffs and beverages, and in soaps, detergents and creams and hence the proposed agricultural uses pose no threat to infants and children. In fact, as the Citronellol-containing biopesticide product replaces existing miticides with less favorable toxicological profiles risk to infants and children will be reduced.

*G. Effects on the Immune and Endocrine Systems*

Mutagenicity studies have been cited above. There is no literature available to suggest that immune or endocrine systems will be compromised by the use of Citronellol as an active ingredient in a biochemical pest control agent used at the label-directed rates.

*H. Existing Tolerances*

There are no known existing tolerances for the use of Citronellol as a pesticide.

*I. International Tolerances*

The Council of Europe listed Citronellol in 1970 giving it an allowable daily intake (ADI) of 5 milligrams/kilograms bodyweight/day.

[FR Doc. 00–12961 Filed 5–22–00; 8:45 am]
BILLING CODE 6560–50–F

## ENVIRONMENTAL PROTECTION AGENCY.

**[FRC–670S–1]**

## Nutrient Criteria Development; Notice of Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs, First Edition

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of nutrient criteria technical guidance manual: Lakes and reservoirs, first edition.

**SUMMARY:** The Environmental Protection Agency (EPA) announces the availability of a nutrient criteria technical guidance manual for lakes and reservoirs. This document provides State and Tribal water quality managers and others with guidance on how to develop numeric nutrient criteria for lakes and reservoirs. This document does not contain site-specific numeric nutrient criteria for any lake or reservoir. This guidance was principally developed to assist States and Tribes in their efforts to establish nutrient criteria. States and Tribes are clearly in the best position to consider site-specific conditions in developing nutrient criteria. While this guidance contains EPA's scientific recommendations regarding defensible approaches for developing regional nutrient criteria, this guidance is not regulation; thus it does not impose legally binding requirements on EPA, States, Territories, Tribes, or the public, and might not apply to a particular situation based upon the circumstances. States, Territories, and authorized Tribes retain the discretion to adopt, where appropriate, other scientifically defensible approaches to developing regional or local nutrient criteria that differ from these recommendations.

We have decided to issue technical guidance in a manner similar to that which we are using to issue new and revised criteria (see **Federal Register**, December 10, 1998, 63 FR 68354 and in the EPA document titled, National Recommended Water Quality—Correction EPA 822–Z–99–001, April 1999). Therefore, we invite the public to provide scientific views on this guidance. We will review and consider information submitted by the public on significant scientific issues that might not have otherwise been identified by the Agency during development of this guidance. This guidance has been through external peer review, and a summary of these comments is available on the Nutrient website (http://www.EPA.gov/OST/standards/nutrient.html) After review of the submitted significant scientific information, we will publish a revised document, or publish a notice indicating its decision not to revise the document.

This document has been prepared for publication by the Office of Science and Technology, Office of Water, U.S. Environmental Protection Agency. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

**DATES:** All significant scientific information must be submitted to the Agency by July 24, 2000. Any scientific information submitted should be adequately documented and contain enough supporting information to indicate that acceptable and scientifically defensible procedures were used and that the results are likely reliable.

**ADDRESSES:** This notice contains a summary of the Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs, First Edition. Copies of the complete document may be obtained from EPA's Water Resource Center by phone at 202–260–7786, or by e-mail to: center.water-resource@epa.gov, or by conventional mail to EPA Water Resource Center, RC–4100, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, DC 20460. The document is also available electronically at *http://www.epa.gov/OST/standards/nutrient.html*.

An original and two copies of written significant scientific information should sent to Robert Cantilli (MC–4304), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW , Washington, DC 20460. Written significant scientific information may be submitted electronically in ASCII or Word Perfect 5.1, 5.2, 6.1, or 8.0 formats to OW-General@epa.gov.

**FOR FURTHER INFORMATION CONTACT:** Dr. George Gibson, USEPA, Health and Ecological Criteria Division (4304), Office of Science and Technology, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, DC 20460; or call (410) 305–2618; fax (410) 305–3093; or e-mail gibson.george@epa.gov.

**SUPPLEMENTARY INFORMATION:**

### Introduction

On March 24, 1998, the President's Clean Water Action Plan was presented in the **Federal Register**. The Clean Water Action Plan specifically stated that EPA will establish recommended water quality criteria for nutrients that reflect the different types of water bodies and different ecoregions of the country and that will assist States and Tribes in adopting numeric water quality standards for nutrients. Consistent with the objectives of the Clean Water Action Plan, the U.S. Environmental Protection Agency presented a National Strategy for the Development of Regional Nutrient Criteria on June 25, 1998, that described the approach the Agency would follow in developing nutrient information and working with States and Tribes to adopt nutrient criteria as part of State/Tribal water quality standards. The major focus of the strategy is the development of waterbody-type technical guidance and recommended ecoregion-specific nutrient criteria by the year 2000. Once EPA develops waterbody-type guidance and recommended nutrient criteria, EPA intends to assist States and Tribes in adopting numeric nutrient criteria into water quality standards by the end of 2003.

### Overview of the Problem

Cultural eutrophication (*i.e.*,that associated with humans) of United States surface waters is a long-standing problem; approximately half of the reported impairments in National waters are attributable to excess nutrients. Nitrogen and phosphorus are the primary cause of eutrophication, and algal blooms are often a response to enrichment. Within lakes and reservoirs, chronic symptoms of overenrichment include low dissolved oxygen, fish kills, increased sediment accumulation, and species and abundance shifts of flora and fauna. The problem is National in scope, but varies in nature from one region of the country to another due to geographical variations in geology and soil types. For these reasons, EPA has decided to develop its recommend nutrient criteria on an ecoregional basis for use by States and Tribes.

### Summary of Nutrient Criteria Technical Guidance Manual for Lakes and Reservoirs

EPA initiated the National Strategy to Develop Regional Nutrient Criteria to address enrichment problems. The

Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs, First Edition is the first of a series of waterbody-type specific manuals produced to assist EPA Regions, States, and Tribes in establishing ecoregionally appropriate nutrient criteria. EPA is also developing manuals for rivers and streams, estuarine and coastal waters, and wetlands. EPA expects States and Tribes to use these manuals as the basis for developing State water quality standards for nutrients, to help identify water quality impairments, and to evaluate the relative success in reducing cultural eutrophication. In addition to developing these waterbody-type specific manuals, EPA is developing nutrient criteria guidance under section 304(a) for each of the 14 ecoregions it has identified in the continental United States. EPA expects States and Tribes to use the manuals, other information and local expertise to refine EPA's 304(a) nutrient criteria guidance so that the nutrient water quality criteria eventually adopted by States and Tribes are tailored to more localized conditions. In order to assist States and Tribes in this undertaking, as well as to verify section 304 (a) nutrient criteria guidance, and to provide national consistency wherever possible, EPA has established Regional Technical Assistance Groups (RTAGs). RTAGs are a collection of EPA, State, Tribal representatives who are working together to take EPA's forthcoming section 304(a) nutrient criteria guidance as a starting point to develop more refined ecoregional nutrient criteria. (EPA is also using data and expertise provided by the RTAGs in the development of its section 304(a) nutrient criteria guidance for the 14 ecoregions it has identified.) EPA expects the RTAGs to use the processes set forth in the waterbody-type specific manuals to develop recommended nutrient criteria on an ecoregional basis or a more refined basis (such as subecoregion, State or Tribe-level, more defined class of lakes/reservoirs). Today's manual for lakes and reservoirs also explains how States or Tribes can adopt nutrient water quality standards based on the ecoregional criteria values recommended by the EPA and/or RTAGs.

The key parameters addressed in Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs, First Edition are total phosphorus, total nitrogen, chlorophyll a, and Secchi depth. As set forth in the manual, the elements that EPA expects States and Tribes to consider in developing a nutrient criterion are:

(1) Historical data and other information to establish perspective;

(2) Current reference site information;

(3) Models used to simulate or validate the empirical relationships established between causal (nutrients) and response (biological indicators) variables; and

(4) Evaluation of downstream consequences before finalizing criteria values. EPA also expects the States or Tribes (or the RTAG when developing criteria guidance) to use their best professional judgement when examining the information and establishing criteria.

EPA expects the criteria development and implementation process (undertaken by EPA, the RTAGs and others) to proceed as follows:

- Data acquisition and review, as well as additional data gathering and processing methods.
- Classification of the lakes and reservoirs by physical characteristics.
- Reference site selection and data reduction to identify reference conditions.
- Development of defensible nutrient criteria, verified by an RTAG and evaluated for potential downstream effects.
- Adoption of nutrient criteria by States and Tribes into their water quality. Standards, ideally taking into account the reference condition data and designated uses.
- Implementation of EPA-approved nutrient criteria by EPA, States, and Tribes to identify areas of water quality impairment due to nutrients and to respond appropriately.

These subjects are described in detail in the Nutrient Criteria Technical Guidance Manual: Lakes and Reservoirs, First Edition.

The manual concludes with chapters describing data models and management options that actively protect or restore lake and reservoir resources. Case histories illustrating nutrient criteria development experiences are appended with the names of individual specialists to contact for more information.

The Nutrient Criteria Technical Guidance Document: Lakes and Reservoirs, First Edition that is being announced in this Notice was developed after consideration of public comment and peer review. A draft Technical Guidance Manual: Lakes and Reservoirs was placed on the EPA Nutrient website (http://www.EPA.gov/OST/standards/nutrient.html) on September 8, 1999, and EPA accepted correspondences and comments until November 16, 1999. In addition, a peer review of the proposed criteria document was conducted by a panel of five external reviewers.

Dated: May 4, 2000.

**Geoffrey H. Grubbs,**

*Director, Office of Science and Technology.*

[FR Doc. 00–12955 Filed 5–22–00; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.)*, the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

*Type of Review:* Renewal of a currently approved collection.

*Title:* Notices Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks).

*OMB Number:* 3064–0093.

*Form Number:* G–FIN, G–FINW, G–FIN–4, G–FIN–5

*Annual Burden:*

Estimated annual number of respondents: 110.

Estimated time per response: 1 hour.

Average annual burden hours: 110 hours.

*Expiration Date of OMB Clearance:* July 31, 2000.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

*FDIC Contact:* Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

*Comments:* Comments on this collection of information are welcome and should be submitted on or before June 22, 2000 to both the OMB reviewer and the FDIC contact listed above.

**ADDRESSES:** Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

**SUPPLEMENTARY INFORMATION:** The Government Securities Act of 1986 requires all financial institutions acting as government securities brokers and dealers to notify their federal regulatory agencies of their broker-dealer activities, unless exempted from the notice requirement by Treasury department regulation.

Dated: May 18, 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00–12940 Filed 5–22–00; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*, the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

*Type of Review:* Renewal of a currently approved collection.

*Title:* Notification of Changes in Insured Status.

*OMB Number:* 3064–0124.

*Annual Burden:*

*Estimated annual number of respondents:* 943.

Estimated time per response; ¼ hour.

Average annual burden hours: 236 hours.

*Expiration Date of OMB Clearance:* June 30, 2000.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

*FDIC Contact:* Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

*Comments:* Comments on this collection of information are welcome and should be submitted on or before June 22, 2000 to both the OMB reviewer and the FDIC contact listed above.

**ADDRESSES:** Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

**SUPPLEMENTARY INFORMATION:** 12 U.S.C. 1818(q) requires an insured depository institution to provide the FDIC with a certification when it partially or completely assumes deposit liabilities from another insured depository institution.

Dated: May 18, 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00–12941 Filed 5–22–00; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

**SUMMARY:** In accordance with requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FDIC hereby gives notice that it plans to submit to the Office of Management and Budget (OMB) a request for OMB review and approval of the information collection system described below.

*Type of Review:* Renewal of a currently approved collection.

*Title:* Securities of Insured Nonmember Banks.

*OMB Number:* 3064–0030.

*Form Number:* F–7, F–8, F–8A.

*Annual Burden:*

Estimated annual number of respondents: 2,952.

Estimated time per response: 0.635 hours.

Average annual burden hours: 1,875 hours.

*Expiration Date of OMB Clearance:* July 31, 2000.

*OMB Reviewer:* Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503.

*FDIC Contact:* Tamara R. Manly, (202) 898–7453, Office of the Executive Secretary, Room F–4058, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

*Comments:* Comments on this collection of information are welcome and should be submitted on or before June 22, 2000 to both the OMB reviewer and the FDIC contact listed above.

**ADDRESSES:** Information about this submission, including copies of the proposed collection of information, may be obtained by calling or writing the FDIC contact listed above.

**SUPPLEMENTARY INFORMATION:** The information is collected from FDIC-supervised banks and from officers, directors and shareholders subject to the securities registration requirements of the Securities Exchange Act of 1934, as amended. The information is considered necessary for actual and potential investors making investment decisions concerning securities issued by reporting banks.

Dated: May 18, 2000.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 00–12942 Filed 5–22–00; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained

from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 16, 2000.

**A. Federal Reserve Bank of Minneapolis** (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Dakota Western Bankshares, Inc.* Bowman, North Dakota; to acquire 100 percent of the voting shares of West River Holding Company, Inc., Hettinger, North Dakota, and thereby indirectly acquire voting shares of West River State Bank, Hettinger, North Dakota.

**B. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

*1. Central Financial Corporation*, Hutchinson, Kansas; to acquire 18.94 percent of the voting shares of Premier Bancshares, Inc., Jefferson City, Missouri, and thereby indirectly acquire Premier Bank, Jefferson City, Missouri.

Board of Governors of the Federal Reserve System, May 17, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–12846 Filed 5–22–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 16, 2000.

**A. Federal Reserve Bank of Chicago** (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Capitol Bancorp, Ltd.*, Lansing, Michigan, and Sun Community Bancorp Limited, Phoenix, Arizona, to acquire 51 percent of the voting shares of Arrowhead Community Bank, Glendale, Arizona (in organization).

**B. Federal Reserve Bank of Kansas City** (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. *Downing Partnership, L.P.*, Ellis, Kansas; to become a bank holding company by acquiring 48.04 percent of the voting shares of Ellis State Bank, Ellis, Kansas.

Board of Governors of the Federal Reserve System, May 18, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–12951 Filed 5–22–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 2000.

**A. Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

*1. Concord EFS, Inc.*, Memphis, Tennessee; to acquire Cash Station, Inc., Chicago, Illinois ("CSI"), and indirectly engage in data processing activities, pursuant to § 225.28(b)(14) of Regulation Y. CSI operates the Cash Station Network, an on-line debit network providing cardholder access to ATM's and POS terminals. In connection with its acquisition of CSI, Notificant also proposes to indirectly acquire CSI's 7.4 percent ownership interest in Primary Payment Systems, Inc., Scottsdale, Arizona. Primary Payment Systems, Inc. provides advance notification to participating financial institutions of potential check returns. The activities of Primary Payment Systems, Inc. have been approved by Board Order.

Board of Governors of the Federal Reserve System, May 17, 2000.

**Robert deV. Frierson,**

*Associate Secretary of the Board.*

[FR Doc. 00–12845 Filed 5–22–00; 8:45 am]

BILLING CODE 6210–01–P

## FEDERAL RESERVE SYSTEM

### Consumer Advisory Council; Notice of Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 22, 2000. The meeting, which will be open to public observation, will take place at the Federal Reserve Board's offices in Washington, DC., in Dining Room E of the Martin Building (Terrace level). The meeting will begin at 8:45 a.m. and is expected to conclude at 1 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other

matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

Gramm-Leach-Bliley Act CRA Sunshine Regulation
Discussion of the proposal regarding disclosure of CRA agreements between financial institutions and community groups.
Credit Card Disclosures in Solicitations
Discussion of the adequacy of existing disclosures and possible alternatives.
Predatory Lending
Discussion of issues regarding abusive lending practices.
Committee Reports
Council committees will report on their work.

Other matters previously considered by the Council or initiated by Council members also may be discussed.

Persons wishing to submit views to the Council regarding any of the above topics may do so by sending written statements to Ann Bistay, Secretary of the Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Information about this meeting may be obtained from Ms. Bistay, 202–452–6470.

Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins, 202–452–3544.

Board of Governors of the Federal Reserve System, May 17, 2000.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. 00–12847 Filed 5–22–00; 8:45 am]

BILLING CODE 6210–01–P

## GENERAL SERVICES ADMINISTRATION

### Technical Support Division

### Notice of Availability of Draft Environmental Impact Statement (DEIS); Proposed U.S. Courthouse, Springfield, MA

Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (40 CFR parts 1500–1508), the General Services Administration (GSA) has filed with the U.S. Environmental Protection Agency and made available to other government and interested private parties, a Draft Environmental Impact Statement (DEIS) for the construction of a U.S. Courthouse in the City of Springfield, Hampden County, Massachusetts.

The DEIS is on file at the Springfield City Hall, Clerk's Office, 36 Court Street; Springfield Public Library, Reference Desk, 220 State Street; and General Services Administration, 10 Causeway Street, Ninth Floor, Boston, Massachusetts.

Additional information may be obtained from the General Services Administration, Region 1, Attention: Frank Saviano, Project Manager, 10 Causeway Street, Room 975, Boston, MA 02222. Telephone 617–565–5494; FAX 617–565–5967.

Written comments regarding the DEIS may be submitted until July 6, 2000 and should be addressed to the General Services Administration in care of the above noted individual.

A public hearing is scheduled for June 13, 2000 in the Second Floor Meeting Room, Springfield City Hall, 36 Court Street, Springfield, Massachusetts. The hearing will begin at 4 p.m. and remain open until 7 p.m. or until all comments have been received.

Issued in Boston, Massachusetts on May 15, 2000.

**George Klueber,**

*Portfolio Manager.*

[FR Doc. 00–12924 Filed 5–22–00; 8:45 am]

BILLING CODE 6820–23–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

*1. Survey of Grant Recipients*—NEW—The Office of Grants and Acquisition Management.

OGAM, in compliance with Executive Order 12862, is requesting Office of Management and Budget approval for surveys of HHS grantees to gather information on the performance of the grants management operations in the Department's Operating Divisions (OPDIVs) and their grant awarding components. These surveys will provide OGAM, the OPDIVs, and their awarding components with a necessary tool for the evaluation of the awarding components performance.

*Respondents.* State or local governments, businesses or other for-profit organizations, non-profit institutions, small businesses.

*Annual Number of Respondents:* 2,667.

*Frequency of Response:* Once every three years.

*Average Burden per Response:* 15 minutes.

*Annual Burden:* 667 hours.

*OMB Desk Officer:* Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Written comments should be received within 30 days of this notice.

Dated: May 15, 2000.

**Dennis P. Williams,**

*Deputy Assistant Secretary, Budget.*

[FR Doc. 00–12946 Filed 5–22–00; 8:45 am]

BILLING CODE 4150–04–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

**SUMMARY:** Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will discuss its ongoing projects: (a) Ethical issues in international research and (b) ethical and policy issues in the oversight of human subjects research in the United States. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on June 5 from 1–1:30 p.m.

| Dates/Times | Location |
|---|---|
| June 5, 2000, 8 a.m.–6:30 p.m. | Hyatt at Fisherman's Wharf, 555 North Point Street, San Francisco, CA. |

| Dates/Times | Location |
|---|---|
| June 6, 2000, 8 a.m.–5:30 p.m. | Same Location as Above. |

**SUPPLEMENTARY INFORMATION:** The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

**Public Participation**

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jody Crank, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone (301) 402–4242, fax number (301) 480–6900.

**Eric M. Meslin,**

*Executive Director, National Bioethics Advisory Commission.*

[FR Doc. 00–12949 Filed 5–22–00; 8:45 am]

**BILLING CODE 4167–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 00078]**

### National Conference of State Legislatures; Notice of Availability of Funds

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a grant program for the National Conference of State Legislatures to develop educational initiatives and provide an information forum for State policymakers on all areas of public health.

CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010" a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of: Arthritis, Osteoporosis and Chronic Back Conditions; Cancer; Diabetes; Disability and Secondary Conditions; Educational and Community-Based Programs; Environmental Health; Family Planning; Food Safety; Health Communication; Heart Disease and Stroke; HIV; Immunization and Infectious Diseases; Injury and Violence Prevention; Maternal, Infant and Child Health; Nutrition and Overweight; Occupational Safety and Health; Oral Health; Physical Activity and Fitness; Public Health Infrastructure; Respiratory Diseases; Sexually Transmitted Diseases; Substance Abuse; Tobacco Use; and Vision and Hearing. For the conference copy of "Healthy People 2010," visit the internet site: <http://www.health.gov/healthypeople>

The broad purposes of the grant are to develop educational initiatives and provide an information forum on public health for policymakers, and to provide accurate, comprehensive, and timely information on public health issues to State policymakers for the development of effective public health policy at the State level. Priority areas in the first budget year are prevention, early detection, and control of disease and injury, the promotion of healthy behaviors, and strengthening State and local public health agencies.

**B. Eligible Applicants**

Assistance will be provided only to the National Conference of State Legislatures (NCSL). No other applications are solicited.

NCSL is the only bipartisan organization that represents legislatures and their staff of the 50 States. NCSL is a unique source for policy research, publications, consulting services, and meetings. NCSL tailors these services to State legislators, committees, and their staff. It is the only national conduit for State legislators to communicate with each other to share ideas. NCSL provides a unique network for sharing experiences and information with legislators and staffs throughout the nation.

The NCSL is the source for information on hundreds of policy issues. It connects legislators with policy innovators and national experts. It also uses a variety of technologies and resources to assist legislators and their staff that include:

1. Research and analysis for States on emerging and priority issues and innovative State enterprises.
2. Information Clearinghouse to track, evaluate, and disseminate information on State programs and State best practices.
3. Publications with formats designed specifically for the State legislators. NCSL produces regular reports, issue briefs, legislative briefs, and articles on issues critical to States.
4. Conducts National meetings and intensive workshops planned specifically for the legislators and their staff to support State-to-State communication on technical issues and assistance in solving State focused problems. As the nation's only organization that represents and links legislators and their staff from all 50 States, NCSL is in a unique position to disseminate information on public health issues to State legislatures and convene information-sharing meetings among State legislative representatives and staff.

**Note:** Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other.

**C. Availability of Funds**

Approximately $1,314,300 will be available in FY 2000 to fund public health activities under this grant. Award amounts for each division activity are provided in Attachment I. It is expected the award will begin on or about September 2, 2000, and will be for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made

on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

**D. Program Requirements**

The recipient will be responsible for carrying out activities to support the following:

1. Develop, maintain, and publicize an information clearinghouse for use by State policymakers on issues that relate to public health, to include the prevention, early detection, and control of disease and injury; and the preparedness, capacity, and performance of State and local public health agencies, including the public health workforce.

2. Develop, print, and distribute articles, reports, and other information relating to public health for use by State policymakers.

3. Convene regional and national meetings of State government employees, State legislators and their staff, and others as appropriate for discussion of public health issues to include appropriate topics, audiences and workshops to exchange information.

4. Track relevant State legislation and legislative activities related to public health. Provide quarterly updates to State policymakers on legislation and legislative actions on public health issues such as adolescent health; arthritis, osteoporosis and chronic back conditions; cancer; diabetes; obesity; disability and secondary conditions; educational and community-based programs; environmental health issues, including childhood lead poisoning, safe drinking water, and pediatric asthma; heart disease and stroke; HIV infection; immunization and infectious diseases; maternal, infant and child health; nutrition; oral health; physical activity and fitness; sexually transmitted diseases; injury; tobacco use; State and local public health legal authorities; and other topics. This activity shall not be intended to support or defeat particular State legislation.

5. Coordinate activities with State and local health department contacts, including public health experts, to ensure that NCSL members are aware of public health programs and activities in their State or region.

6. Expand above activities to include other public health areas, when agreed upon by CDC and NCSL.

**E. Application Content**

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative should be no more than 30 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

**F. Submission and Deadline**

Application

Submit the original and two copies of Application Form 5161–1. Forms are in the application kit.

Submit the application on or before July 14, 2000, to the Grants Management Specialist identified in the "Where to Obtain Information section" of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

**G. Evaluation Criteria**

The application will be evaluated according to the following criteria by an independent review group appointed by CDC:

1. Background and Need (5 Points)

The extent to which the applicant identifies specific needs related to the purpose of the program.

2. Objectives (20 Points)

The degree to which short-term and long-term objectives are specific, time-phased, measurable, realistic, and related to identified needs.

3. Methods (35 Points)

The extent to which the plan for achieving the proposed activities appears realistic and feasible, and relates to the stated purposes of this grant.

4. Administration and Management (15 Points)

The degree to which the proposed staff have the background, qualifications, and experience; and the organizational structure demonstrate an ability to conduct proposed activities.

5. Evaluation Plan (25 Points)

The extent to which the evaluation plan appears capable of monitoring progress toward meeting project objectives.

6. Budget and Justification (Not Scored)

The extent to which the budget is reasonable and consistent with the purposes and activities of the program.

**H. Other Requirements**

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Quarterly progress reports are required no later than 30 days after the quarterly reporting period.

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II in the application kit.

| | |
|---|---|
| AR–7 | Executive Order 12372 Review. |
| AR–9 | Paperwork Reduction Act Requirements. |
| AR–10 | Smoke-Free Workplace Requirements. |
| AR–11 | Healthy People 2010. |
| AR–12 | Lobbying Restrictions. |
| AR–15 | Proof of Nonprofit Status. |

**I. Authority and Catalog of Federal Domestic Assistance Number**

This program is authorized under sections 301(a), 317(k)(2), and 1706 (42 U.S.C. 241(a), 247b(k)(2)) of the Public Health Service Act, as amended." The Catalog of Federal Domestic Assistance number is 93.283.

**J. Where to Obtain Additional Information**

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov.

To obtain additional information contact:

Cynthia R. Collins, Grants Management Specialist Grants, Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–5539, telephone: (770) 488–2757, email: coc9@cdc.gov.

For program technical assistance, contact:

Lisa Daily, Associate Director for Planning, Evaluation and Legislation, National Center for Chronic Disease, Prevention and Health Promotion,

Program Announcement 00078, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE MS K–40, Atlanta, GA 30341, telephone (770) 488–5403, e-mail: lid1@cdc.gov.

Dated: May 17, 2000.

**John L. Williams,**

*Director, Procurement and Grants Office, Center for Disease Control, and Prevention (CDC).*

[FR Doc. 00–12882 Filed 5–22–00; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 00N–0356]**

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Survey of Incidence of Gastroenterological Parasitic Infections in the United States as a Result of Consumption of Raw Fish

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

**DATES:** Submit written comments on the collection of information by June 22, 2000.

**ADDRESSES:** Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

**FOR FURTHER INFORMATION CONTACT:** Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

**SUPPLEMENTARY INFORMATION:** In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

### Survey of Incidence of Gastroenterological Parasitic Infections in the United States as a Result of Consumption of Raw Fish

Under section 903(b)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393(b)(2)), FDA has the responsibility to conduct research relating to foods and to conduct educational and public information programs relating to the safety of the nation's food supply. The "Survey of Incidence of Gastroenterological Parasitic Infections in the United States as a Result of Consumption of Raw Fish" will provide information on the actual frequency of occurrence of fish-borne helminth illnesses. Detailed information will be obtained from the target population of clinical gastroenterologists who are likely to have encountered and treated food-borne parasitic infections. Respondents will also be asked to provide demographic information about the most recent cases. The information will be used to better evaluate the need for control of helminth parasites in fish intended for raw consumption and to evaluate effective means for control where such controls are found necessary. A national representative sample of 1,000 clinical gastroenterologists will be selected by a random procedure and interviewed by questionnaire.

In the **Federal Register** of February 22, 2000 (65 FR 8713), the agency requested comments on the proposed collections of information. One comment was received. The comment commended the concept of conducting the survey, but requested that the survey gather information sufficient to determine whether implicated fish were from commercial or recreational sources.

The comment's point is that because the purpose of the survey is to help determine whether infection from fish-borne helminth parasites is a hazard that is responsibly likely to occur in the United States in commercial species of fish, data on parasite infections from noncommercial species could skew the outcome. While the comment's point is valid in theory, it is highly unlikely that recreational species are a significant source of parasite infections. It is more likely that commercial species intended for raw consumption, as in sushi and sashimi, provide an appreciable risk of parasite infection. Consequently, the agency does not regard differentiation between commercial and recreational sources to be critical to the success of the survey. As a practical matter, moreover, information on whether an infection was from a commercially or recreationally obtained fish is probably not available through the kind of survey that is being conducted. Consequently, FDA does not contemplate any change in the survey.

Any findings of significant levels of infection will guide FDA in evaluating its current policy that fish intended for raw consumption should have been previously frozen to eliminate the hazard from live parasites. This recommendation is adhered to by many members of the seafood industry. To the extent that parasite infection from raw fish is demonstrated through this survey to be a hazard reasonably likely to occur, the agency would focus its attention to such actions as increased consumer education, which would apply to raw fish from any source, and to ensuring the implementation of hazard analysis critical control points controls for fish sold for raw consumption.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

| No. of Respondents | Annual Frequency per Response | Total Annual Responses | Hours per Response | Total Hours |
|---|---|---|---|---|
| 500 | 1 | 500 | .50 | 250 |

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

This is a one-time survey. The burden estimate is based on FDA's experience with conducting similar surveys.

Dated: May 15, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

[FR Doc. 00–12854 Filed 5–22–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Psychopharmacological Drugs Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee:* Psychopharmacological Drugs Advisory Committee

*General Function of the Committee:* To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time:* The meeting will be held on July 19, 2000, 8 a.m. to 5 p.m.

*Location:* Holiday Inn, Versailles Ballrooms I, II, and III, 8120 Wisconsin Ave., Bethesda, MD.

*Contact Person:* Sandra L. Titus or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, Rm. 1093) Rockville, MD 20857, 301–827–7001, or e-mail Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12544. Please call the Information Line for up-to-date information on this meeting.

*Agenda:* The committee will consider the safety and efficacy of new drug application (NDA) 20–825, Zeldox™ (ziprasidone hydrochloride capsules, Pfizer, Inc.), proposed for the management of psychotic disorders.

*Procedure:* Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by July 17, 2000. Oral presentations from the public will be scheduled on July 19, 2000, between approximately 1 p.m. to 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before July 17, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: May 11, 2000.

**Linda A. Suydam,**

*Senior Associate Commissioner.*

[FR Doc. 00–12855 Filed 5–22–00; 8:45 am]

BILLING CODE 4160–01–F

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[FDA 225–00–2000]**

### Memorandum of Understanding Between the Food and Drug Administration, U.S. Department of Health and Human Services, and the Food Safety and Inspection Service, U.S. Department of Agriculture, Regarding the Listing or Approval of Food Ingredients and Sources of Radiation Used in the Production of Meat and Poultry Products

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and the Food Safety and Inspection Service, U.S. Department of Agriculture (FSIS). The purpose of the agreement is to establish the working relationship to be followed by FDA and FSIS in responding to requests for the sanctioning of the use of food ingredients and sources of radiation subject to regulation by FDA and intended for use in the production of meat and meat food products.

**DATES:** The agreement became effective January 31, 2000.

**FOR FURTHER INFORMATION CONTACT:** Arletta M. Beloian, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3082.

**SUPPLEMENTARY INFORMATION:** In accordance with 21 CFR 20.108(c), which states that all written agreements and MOU's between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: May 16, 2000.

**William K. Hubbard,**

*Senior Associate Commissioner for Policy, Planning, and Legislation.*

The MOU is set forth in its entirety as follows:

BILLING CODE 4160–01–F

FDA # 225-00-2000

# MEMORANDUM OF UNDERSTANDING

**Between The**

**FOOD SAFETY AND INSPECTION SERVICE**
**UNITED STATES DEPARTMENT OF AGRICULTURE**

**And The**

**FOOD AND DRUG ADMINISTRATION**
**UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES**

Regarding the Listing or Approval of Food Ingredients and Sources of Radiation Used in the Production of Meat and Poultry Products

## I. PURPOSE

This agreement establishes the working relationship to be followed by FSIS and FDA in responding to requests for the sanctioning of the use of food ingredients and sources of radiation subject to regulation by the FDA and intended for use in the production of meat and meat food products (hereinafter known collectively as meat products) and poultry products regulated by FSIS.

## II. BACKGROUND

The Federal Food, Drug, and Cosmetic Act (FFDCA) provides FDA with the authority to determine the safety, wholesomeness, and accurate labeling of food. The Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) provide FSIS with the authority to regulate establishments that process meat and poultry, and determine the safety, wholesomeness, and accurate labeling of such meat and poultry products.

Section 409 of the FFDCA (21 U.S.C. 348) requires premarket approval of food additives that are not food contact substances. Under section 409, any person may submit to FDA a food additive petition that includes data and information that the petitioner believes establish that use of the substance is safe under its intended conditions of use, (i.e., that there is reasonable certainty that the substance is not harmful under the intended conditions of use (21 CFR 170.3(i)). If, based on the data and information in the petition, FDA finds that the food additive is safe under the conditions of its intended use, FDA promulgates a regulation specifying the conditions under which the additive may be safely used.

Likewise, section 721 of the FFDCA (21 U.S.C. 379e) requires premarket review and listing of color additives. Under section 721, any person may submit to FDA a color additive petition that includes data and information that the petitioner believes establish that the intended use of the substance is safe, and that the color additive is suitable for its intended use. If, based on the data and information in the petition, FDA finds that the color additive is suitable and safe under the conditions of its intended use, FDA promulgates a regulation specifying the conditions under which the color additive may be safely used.

In enacting Section 409, Congress recognized that many substances intentionally added to foods would not require a formal premarket review by FDA to ensure their safety, either because their safety had been established by a long history of safe use in food or by virtue of the nature of the substance, its customary or projected conditions of use, and the information generally available to scientists about the substance. Congress thus adopted a two-step definition of "food additive" (21 U.S.C. 321(s)). The first step broadly includes any substance, the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of food. The second step, however, excludes from the definition of food additive substances that are generally recognized, among experts qualified by scientific training and experience to evaluate their safety, as having been adequately shown to be safe under the conditions of their intended use. It is on the basis of this generally recognized as safe (GRAS) provision in the food additive definition that many food ingredients are marketed without formal FDA review and approval. However, there is no corresponding GRAS provision for color additives.

The FMIA and the PPIA grant FSIS the authority to regulate the use of GRAS substances, FDA-listed food and color additives, and sources of radiation to ensure that their use does not adulterate meat or poultry products. Under the tenets of the FMIA and PPIA, and their implementing regulations, FSIS determines the suitability (i.e., status) of the use of food ingredients and sources of radiation used in the production of meat and poultry products, in accordance with various FSIS regulations and policies.

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## III. SCOPE

This is a collaborative FSIS-FDA agreement regarding food ingredients and sources of radiation intended for use in the production of meat and poultry products. This agreement between FSIS and FDA covers the following circumstances: (1) when a party requests Federal approval of a food ingredient or source of radiation that specifies use in or on a meat or poultry product; (2) when a party requests Federal approval of a food ingredient or source of radiation that is intended for use in or on food generally, but does not specify whether it is intended for use in or on a meat and poultry product; (3) when a party requests a suitability determination regarding the use of a food ingredient or source of radiation in or on a meat or poultry product; and (4) when a party inquires about the use of a food ingredient or source of radiation used in or on a meat or poultry product.

## IV. COLLABORATIVE FSIS-FDA AGREEMENT REGARDING FOOD INGREDIENTS AND SOURCES OF RADIATION INTENDED FOR USE IN THE PRODUCTION OF MEAT AND POULTRY PRODUCTS

FSIS and FDA agree to cooperate and collaborate on the review of submissions each agency receives regarding the use of food ingredients and sources of radiation used in the production of meat or poultry products. The agencies further agree that the details of that cooperative relationship are to be elaborated on in a set of mutually agreeable standard operating procedures. The standard operating procedures will provide consistency in the processing of the relevant submissions regardless of which agency is the receiving agency or which agency the consulting agency. When appropriate, the consulting agency to this agreement will provide its evaluation on relevant parts of submissions to the other agency in writing.

## V. IMPLEMENTATION OF THE AGREEMENT

FSIS and FDA jointly agree:

1. That the officials of the two agencies responsible for implementing the agreement are:

   At FSIS: Director, Labeling and Additives Policy Division (or other FSIS designee).

   At FDA: Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition

2. That written notice will be provided to the Director of the Center for Food Safety and Applied Nutrition, FDA, and to the Administrator of the Food Safety and Inspection Service, USDA, of any rulemaking initiative not in keeping with the

provisions of this MOU or about which there is an interagency disagreement, prior to public announcement of the rulemaking.

3. That the Administrator of FSIS and Director of CFSAN shall resolve any problems and make decisions by consensus in areas of disagreement.

## VI. OTHER AGREEMENTS

The provisions of this MOU are not intended to add to or detract from any of the authorities provided to either FDA or FSIS by the FFDCA, FMIA, or PPIA, or the regulations promulgated by each agency under such authorities. Each agency reserves the authority to review, independently of the other, matters of concern to their respective authorities.

## VII. DURATION OF MOU

**This agreement becomes effective upon acceptance by both agencies and will continue indefinitely. It may be modified by mutual written consent or terminated by either agency with a 30-day written notice to the other agency.**

**Signed:**

**By:** _____

**Title: Administrator, FSIS**

**Date:** Jan. 31, 2000

**Signed:**

**By:** _____

**Title: Senior Associate Commissioner for Policy, Planning and Legislation, FDA**

**Date:** January 18, 2000

[FR Doc. 00–12853 Filed 5–22–00; 8:45 am]

BILLING CODE 4160–01–C

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Proposed Collection; Comment Request: National Institute of Diabetes and Digestive and Kidney Diseases Information Clearinghouse Customer Satisfaction Survey

**SUMMARY:** In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 to provide opportunity for public comment on proposed data collection projects; the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management (OMB) for review and approval.

*Title:* NIDDK Information Clearinghouses Customer Satisfaction Survey.

NIDDK will conduct a survey to evaluate the efficiency and effectiveness of services provided NIDDK's three information clearinghouses: National Diabetes Information Clearinghouse, National Digestive Diseases Information Clearinghouse, National Kidney and Urologic Diseases Information Clearinghouse. The survey responds to Executive Order 12862, "Setting Customer Service Standards," which requires agencies and departments to identify and survey their "customers to determine the kind and quality of service they want and their level of satisfaction with existing service."

*Frequency of Response:* On occasion.

*Affected Public:* Individuals or households; clinics or doctor's offices.

*Type of Respondents:* Physicians, nurses, patients, family.

| Type of respondents | Number of respondents | Frequency of response | Estimated average response time | Estimated annual burden hours |
|---|---|---|---|---|
| Patients/Family | 3,600 | 1.00 | 0.167 | 600 |
| Phys. Asst | 7,200 | 1.00 | 0.167 | 1,200 |
| Physicians | 1,200 | 1.00 | 0.167 | 200 |
| Totals | 12,000 | | | 2,000 |

The annual reporting burden is as follows:

*Estimated Number of Respondents:* 12,000.
*Estimated Number of Responses per Respondent:* 1.
*Estimated Average Burden Hours per Response:* 01671.
*Estimated Total Annual Burden Hours Requested:* 2,000.

The annualized cost to respondents is estimated at $39,000. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

**Request for Comments**

Written comments and/or suggestionns from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Please address all comments concerning the proposed collection to Kathy Kranzfelder, Project Officer, NIDDK Information Clearinghouses, NIH, Building 31, Room 9A04, MSC2560, Bethesda, MD 20852. You may also submit comment and data by electronic mail (e-mail) at: *<kranzfeldk@hq.niddk.nih.gov>*.

**Comments Due Date**

Comments regarding this information are best assured of having their full effect if received within 60 days following the date of this notice.

**FOR FURTHER INFORMATION:** To request more information on the proposed project, contact Kathy Kranzfelder at 301–496–3583 or via e-mail at: *<Kranzfeldk@hq.niddk,nih.gov>*.

Dated: May 8, 2000.

**Earl L. Laurence,**

*Department Director, NIDDK.*

[FR Doc. 00–12907 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Notice of Meeting: DHHS Chronic Fatigue Syndrome Coordinating Committee

In accordance with section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of a meeting of the DHHS Chronic Fatigue Syndrome Coordinating Committee.

*Name:* Department of Health and Human Services (DHHS) Chronic Fatigue Syndrome Coordinating Committee (CFSCC).

*Time and Date:* Wednesday, July 12, 2000, from 9 a.m. to 3:30 p.m.

*Place:* Hubert H. Humphrey Building, Room 800, 200 Independence Avenue, SW, Washington, DC 20201.

*Status:* Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Notice:* In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, persons without a government identification card will need to provide a photo ID and must know the subject and room number of the meeting in order to be admitted into the building. Visitors must use the Independence Avenue entrance.

*Purpose:* The Committee is charged with providing advice to the Secretary, the Assistant Secretary for Health, and the Commissioner, Social Security Administration (SSA), to assure interagency coordination and communication regarding chronic fatigue syndrome (CFS) research and other related issues; facilitating increased DHHS and agency awareness of CFS research and educational needs; developing complementary research programs that minimize overlap; identifying opportunities for collaborative and/or coordinated efforts in research and educational; and developing informed responses to constituency groups regarding DHHS and SSA efforts and progress.

*Matters To Be Discussed:* The meeting will have, as its sole focus, a discussion of the forthcoming General Accounting Office report on CFS research activities at NIH and CDC and the role of the DHHS CFSCC. Because this is a briefing session, there will be no public testimony.

*Contact Person for More Information:* Janice C. Ramsden, Executive Secretary, CFSCC, Office of the Acting Director, NIH, Building 1, Room 235, 1 Center Drive, MSC 0159, Bethesda, Maryland 20892–0159, e-mail *jr52h@nih.gov* or telephone 301–496–0959.

Dated: May 16, 2000.

**LaVerne Stringfield,**

*Director, Office of Advisory Committee Policy.*

[FR Doc. 00–12898 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Initial Review Group Subcommittee G—Education.

*Date:* June 27–29, 2000.

*Time:* 1 p.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

*Contact Person:* Harvey P. Stein, Phd, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8036, Bethesda, MD 20892, 301/496–7481.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.3398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 16, 2000.

**LaVerene Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12892 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the President's Cancer Panel.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

*Name of Committee:* President's Cancer Panel.

*Date:* June 15–16, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* Improving Cancer Care for All: Real People—Real Problems.

*Place:* Doubletree Hotel, Omaha, NE.

*Contact Person:* Maureen O. Wilson, Phd, Executive Secretary, National Cancer Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4A48, Bethesda, MD 20892, 301/496–1148.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12893 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Spores for Breast and Prostate Cancer.

*Date:* June 13–15, 2000.

*Time:* 8 a.m. to 6 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel Park Terrace on Embassy Row, 1515 Rhode Island Avenue, NW, Washington, DC 20005.

*Contact Person:* Brian E. Wojcik, Phd, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8019, Bethesda, MD 20892, 301–402–2785.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12894 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Determining the Carcinogenic Significance of Heterocyclic Amines.

*Date:* June 12–14, 2000.

*Time:* 7 pm to 11 am.

*Agenda:* To review and evaluate grant applications.

*Place:* Wyndham Garden Hotel—Pleasanton, 5990 Stoneridge Mall Road, Pleasanton, CA 94588.

*Contact Person:* Michael B Small, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8040, Bethesda, MD 20892, 301/402–0996.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction, 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12895 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

*Date:* June 8, 2000.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Camille M. King, PhD., Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, 301–435–0815.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

*Date:* June 13, 2000.

*Time:* 1 p.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Camille M. King, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, One Rockledge Centre, MSC 7965, 6705 Rockledge Drive, Suite 6018, Bethesda, MD 20892–7965, 301–435–0815.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Center for Research Resources Special Emphasis Panel, General Clinical Research Centers.

*Date:* June 13, 2000.

*Time:* 7 p.m. to 11 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* John L. Meyer, PhD, Deputy Director, Office of Review, National Center for Research Resources, National Institutes of Health, 6705 Rockledge Drive, MSC 7965, One Rockledge Centre, Suite 6018, Bethesda, MD 20892–7965, 301–435–0806.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: May 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12902 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Heart, Lung, and Blood Institute Special emphasis Panel, June 7, 2000, 7 PM to June 8, 2000, 3 PM, Columbia Sheraton, 10207 Wincopin Circle, Columbia, MD, 21044 which was published in the **Federal Register** on April 2, 2000, 65 FR 24491–24492.

The name of the meeting will be changed to Hematopoietic Stem Cell Biology RFA. The meeting is closed to the public.

Dated: May 12, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12905 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Heart, Lung, and Blood Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Heart, Lung, and Blood Institute Special Emphasis Panel, May 17, 2000, 2:30 p.m. to May 17, 2000, 3:30 p.m., NIH, Rockledge II, Bethesda, MD, 20892 which was published in the **Federal Register** on April 26, 2000, 65 FR 24491–24492.

The meeting is cancelled due to the fact that a review meeting is no longer required.

Dated: May 12, 2000.

**LeVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12906 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Drug Abuse; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Drug Abuse Initial Review Group, Medication Development Research Subcommittee.

*Date:* June 28, 2000.

*Time:* 8 a.m. to 2 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

*Contact Person:* Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, Msc 9547, Bethesda, MD 20892–9547, (301) 443–2620.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Minority Institutions' Drug Abuse Research Development Program.

*Date:* June 28, 2000.

*Time:* 3 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Hyatt Arlington, 1325 Wilson Boulevard, Arlington, VA 22209.

*Contact Person:* Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, Msc 9547, Bethesda, MD 29089–2954, (301) 443–2620.

*Name of Committee:* National Institute on Drug Abuse Initial Review Group, Health Services Research Subcommittee.

*Date:* June 29–30, 2000.

*Time:* 8:30 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hotel Washington, 515 15th Street NW, Washington, DC 20004.
*Contact Person:* Marina L. Volkov, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Medication Development Research.
*Date:* June 29, 2000.
*Time:* 9 a.m. to 11 a.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hyatt Arlington, 1325 Wilson Blvd., Arlington, VA 22209.
*Contact Person:* Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

*Name of Committee:* National Institute on Drug Abuse Initial Review Group, Treatment Research Subcommittee.
*Date:* June 29–30, 2000.
*Time:* 11 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hotel Washington, 515 15th Street, NW, Washington, DC 20004.
*Contact Person:* Kesinee Nimit, MD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1432.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Centers Review Committee.
*Date:* June 29, 2000.
*Time:* 6 p.m. to 7:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
*Contact Person:* Rita Liu, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Aids Research Core Grants.
*Date:* June 30, 2000.
*Time:* 8:30 a.m. to 5:30 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Ritz-Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, VA 22202.
*Contact Person:* Rita Liu, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Health Services Research.
*Date:* June 30, 2000.
*Time:* 10 a.m. to 12 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hotel Washington, 515 15th Street NW, Washington, DC 20004.
*Contact Person* Susan L. Coyle, PhD, Chief, Clinical, Epidemiological and Applied Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Treatment Research.
*Date:* June 30, 2000.
*Time:* 1 p.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hotel Washington, 515 15th Street, NW, Washington, DC 20004.
*Contact Person:* Marina L. Volkov, PhD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

*Name of Committee:* National Institute on Drug Abuse Initial Review Group, Training and Career Development Subcommittee.
*Date:* July 6–7, 2000.
*Time:* 9 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
*Contact Person:* Mark Swieter, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1389.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Program Projects.
*Date:* July 10, 2000.
*Time:* 10 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
*Contact Person:* Khursheed Asghar, PhD, Chief, Basic Sciences Review Branch, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, 6001 Executive Boulevard, Room 3158, Msc 9547, Bethesda, MD 29089–2954, (301) 443–2620.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, The Next Generation of Drug Abuse Prevention Research.
*Date:* July 13, 2000.
*Time:* 8:30 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
*Contact Person:* William C. Grace, PhD, Deputy Director, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2755.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Microarray-Based Research On Drug Abuse.
*Date:* July 17–18, 2000.
*Time:* 8:00 a.m. to 5:00 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
*Contact Person:* Rita Liu, PhD, Health Scientist Administrator, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 443–2620.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, Basic Behavioral, Cognitive, and Neurological Research: Applications to HIV/AIDS and Drug Abuse.
*Date:* July 20, 2000.
*Time:* 8:30 a.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Radisson Barcelo Hotel, 2121 P Street NW. Washington, DC 20037.
*Contact Person:* Marina L. Volkov, PhD, Health Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9597, (301) 435–1433.

*Name of Committee:* National Institute on Drug Abuse Special Emphasis Panel, HIV Therapy for Drug Users: Access, Adherence, Effectiveness.

*Date:* July 21, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Radisson Barcelo Hotel 2121 P Street NW Washington, DC 20037.

*Contact Person:* Marina L. Volkov. PhD, Heath Scientist Administrator, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1433.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS).

Dated: May 12, 2000.

**LaVerne Y. Stringfiled,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12903 Filed 5–22–00; 8:45 am]
BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The Meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–73, DE Contract N01DE72623.

*Date:* May 19, 2000.

*Time:* 10 a.m. to 11:30 a.m.

*Agenda:* To review and evaluate contract proposals.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental and Craniofacial Res., 45 Center Drive, Natcher Building, RM. 4N44F, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–68, Review of R01s.

*Date:* June 22, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Pooks Hill Marriott, 5151 Pooks Hill Road, Bethesda,MD 20814.

*Contact Person:* Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental and Craniofacial Res., 45 Center Drive, Natcher Building, RM. 4AN44F, Bethesda, MD 20892.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–57, Review of R01.

*Date:* August 28, 2000.

*Time:* 1 p.m. to 3 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12900 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institutes of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Child Health and Human Development Initial Review Group Population Research Subcommittee.

*Date:* June 12–13, 2000.

*Time:* 7:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Jon M. Ranhand, Health Scientist Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Blvd., rm. 5E01, MSC 7510, Bethesda, MD 20892; (301) 435–6884.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12887 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Child Health and Human Development Council.

*Date:* June 5–6, 2000.

*Open:* June 5, 2000, 10 a.m. to 5 p.m.

*Agenda:* The agenda includes: Report of the Director, NICHD, a presentation by the Child Development and Behavior Branch, CRMC, a presentation on the National Reading Panel, and other business of the council.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

*Closed:* June 6, 2000, 8 a.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

*Open:* June 6, 2000, 1 p.m. to adjournment.

*Agenda:* The meeting will reopen to discuss any policy issues that were raised.

*Place:* National Institutes of Health, Building 31, C Wing, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

*Contact Person:* Mary Plummer, Committee Management Officer, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12888 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as Amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, and the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute on Aging Initial Review Group, Biological Aging Review Committee.

*Date:* June 5–6, 2000.

*Time:* 6 pm to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Chevy Chase, Palladian East and Center Rooms, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* James P. Harwood, Phd, Deputy Chief, Scientific Review Office, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

*Date:* June 5–6, 2000.

*Time:* 7 pm to 2 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Gaithersburg Holiday Inn, Gaithersburg, MD 20879.

*Contact Person:* Louise L. Hsu, Phd, The Bethesda Gateway Buiding, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Initial Review Group, Sociology Aging Review Committee.

*Date:* June 8, 2000.

*Time:* 11:30 am to 10 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Holiday, Inn, 2101 Wisconsin Ave. NW., Washington, DC 20007.

*Contact Person:* Mary Ann Guadagno, Phd, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Small Grants in Sociology and Psychology.

*Date:* June 9, 2000.

*Time:* 9 am to 6 pm.

*Agenda:* To review, and evaluate grant applications.

*Place:* Georgetown Holiday Inn, 2101 Wisconsin Ave, NW, Washington, DC 20007.

*Contact Person:* Mary Ann Guadagno, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Grant application on a population-based, multidisciplinary study of centenarians.

*Date:* June 12, 2000.

*Time:* 1 pm to 3 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* 7201 Wisconsin Ave., Suite 502C, MD 20891 (Telephone Conference Call).

*Contact Person:* Arthur Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

*Date:* June 16, 2000.

*Time:* 8 am to 7 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* William A. Kachadorian, Phd, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

*Name of Committee:* National Institute on Aging Special Emphasis Panel, Stress, the HPA, and Health in Aging.

*Date:* July 11, 2000.

*Time:* 8 am to 4 pm.

*Agenda:* To review and evaluate grant applications.

*Place:* Stanford Terrace Inn, 531 Stanford Avenue, Palo Alto, CA 94306.

*Contact Person:* Arthur Schaerdel, DVM, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12889 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Dental and Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–72, Applicant Interview, R01s.

*Date:* June 14, 2000.

*Time:* 8 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact person:* Anna Sandberg, PhD, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–48, R01s.

*Date:* June 15, 2000.

*Time:* 9 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Anna Sandberg, PhD., Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–56, R13.

*Date:* June 20, 2000.

*Time:* 12 p.m. to 1 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 45 Natcher Bldg., Rm. 5As.25u, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* H. George Hausch, Phd., Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel.

*Date:* June 26–27, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* Yujing Liu, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesdsa, MD 20892.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–62, Review of RFA.

*Date:* June 26–27, 2000.

*Time:* 8:30 am. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1705 Rockville Pike, Rockville, MD 20853.

*Contact Person:* Yasaman Shirazi, PhD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res, Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–67, Review of R01.

*Date:* June 29, 2000.

*Time:* 1 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Yujing Liu, Scientific Review Administrator, National Institute of Dental & Craniofacial Res., 45 Center Drive, Natcher Building, Rm. 4AN44F, Bethesda, MD 20892.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–63, Review of R01.

*Date:* July 18, 2000.

*Time:* 1 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Philip Washko, PhD, DMD., Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–64, Review of R01.

*Date:* July 20, 2000.

*Time:* 11 a.m. to 12.30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* 45 Center Drive, Bethesda, MD 20892, (Telephone Conference Call).

*Contact Person:* Philip Washko, PhD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

*Name of Committee:* National Institute of Dental and Craniofacial Research Special Emphasis Panel 00–60, Applicant Interview. P01.

*Date:* July 25–26, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

*Contact Person:* H. George Hausch, PhD, Chief, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: May 15, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12891 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Institutes of Health

### National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NICHD.

*Date:* June 2, 2000.

*Open:* 8 am to 12 pm.

*Agenda:* For the review of Intramural Research Programs and scientific presentations.

*Place:* National Institutes of Health, Building 6, Room 4A05, Bethesda, MD 20892.

*Closed:* 1 pm to adjournment.

*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.

*Place:* National Institutes of Health, Building 6, Room 4A05, Bethesda, MD 20892.

*Contact Person:* Igor B. Dawid, MD, Acting Scientific Director, NICHD, Division of Intramural Research, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike, Building 31, Room 2A50, Bethesda, MD 20892.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12896 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Nursing Research Initial Review Group, NINR IRG.

*Date:* June 19–20, 2000.

*Time:* 8:30 am to 5 pm.

*Agenda:* To review and evaluate grant applications and/or proposals.

*Place:* Holiday Inn—Chevy Chase, Terrace Room, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

*Contact Person:* Mary J. Stephens-Frazier, Phd, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, 45 Center Drive, Bethesda, MD 20892, (301) 594–5971.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12897 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health; National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Microbiology and Infectious Diseases Research Committee.

*Date:* June 22–23, 2000.

*Open:* June 22, 2000, 9 a.m. to 10 a.m.

*Agenda:* Reports from various Institute staff.

*Place:* Georgetown Holiday Inn, Mirage I Room, 2101 Wisconsin Avenue, Washington, DC 20007.

*Closed:* June 22, 2000, 10 a.m. to adjournment.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Holiday Inn, Mirage I Room, 2101 Wisconsin Avenue, Washington, DC 20007.

*Contact Person:* Gary S. Madonna, Phd, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 16, 2000.

**Laverne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12899 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* June 14, 2000.

*Time:* 8:30 A.M. to 2:30 P.M.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Richard E. Weise, Scientific Review Administrator, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6206, MSC 9619, Bethesda, MD 20892–9619, 301–443–7281.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* June 14, 2000.

*Time:* 2:30 P.M. to 5:30 P.M.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Richard D. Weise, Scientific Review Administrator, National Institute of Mental Health, NIH, 6001 Executive Boulevard, Room 6206, MSC 9619, Bethesda, MD 20892–9619, 301–443–7281.

*Name of Committee:* National Institute of Mental Health Special Emphasis Panel.

*Date:* July 6, 2000.

*Time:* 2 P.M. to 4 P.M.

*Agenda:* To review and evaluate grant applications.

*Place:* Neuroscience Center, National Institutes of Health, 6001 Executive Blvd, Bethesda, MD 20892, (telephone conference call).

*Contact Person:* David I. Sommers, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6144, MSC 9606, Bethesda, MD 20892–9606, 301–443–6470.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office Federal Advisory Committee Policy.*

[FR Doc. 00–12901 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Kidney, Urologic and Hematologic Diseases D Subcommittee.

*Date:* June 8–9, 2000.

*Time:* 12 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

*Contact Person:* Ann A. Hagan, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of

Health, Building 45, Bethesda, MD 20892, (301) 594–8886.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Diabetes, Endocrinology anhd Metabolic Diseases B Subcommittee.

*Date:* June 9, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Ramada, Inn., 8400 Wisconsin Ave, Bethesda, MD 20814.

*Contact Person:* Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 645, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

*Date:* June 13–14, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

*Contact Person:* Dan Matsumoto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 649, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 12, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12904 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Cell Development and Function Integrated Review Group, Cell Development and Function 2.

*Date:* June 1–2, 2000.

*Time:* 8 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

*Contact Person:* Ramesh K. Nayak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5146, MSC 7840, Bethesda, MD 20892, (301) 435–1026.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Molecular, Cellular and Developmental Neuroscience Integrated Review Group Visual Sciences C Study Section.

*Date:* June 1–2, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Doyle Washington Hotel, 1500 New Hampshire Ave., NW, Washington, DC 20036.

*Contact Person:* Carole L. Jelsema, PhD, Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1249, jelsemac@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* June 4–6, 2000.

*Time:* 7 p.m. to 4 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Sheraton Chapel Hill, One Europa Drive, Chapel Hill, NC 27514.

*Contact Person:* Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* June 5, 2000.

*Time:* 8 a.m. to 5:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Georgetown Suites Hotel-Harbor Building, 1000 29th Street NW, Washington, DC 20007.

*Contact Person:* Eugene Vigil, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5144, MSC 7840, Bethesda, MD 20892, (301) 435–1025.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel SSS–K 02 S.

*Date:* June 5, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* River Inn, 924 25th Street, NW, Washington, DC 20037.

*Contact Person:* Lawrence N. Yager, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4200, MSC 7808, Bethesda, MD 20892, 301–435–0903, yagerl@csr.nih.gov

*Name of Committee:* Center for Scientific Review Special Emphasis Panel.

*Date:* June 6–7, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Clarion Hampshire Hotel, 1310 New Hampshire Ave, NW, Washington, DC 20036.

*Contact Person:* Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892, (301) 435–1184.

*Name of Committee:* Cardiovascular Sciences Integrated Review Group Pathology A Study Section.

*Date:* June 6–7, 2000.

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Wyndham City Center, 1143 New Hampshire Avenue NW, Washington, DC 20037.

*Contact Person:* Larry Pinkus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 16, 2000.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 00–12890 Filed 5–22–00; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Public Health Service

### Meeting: National Toxicology Program; Center for Evaluation of Risks to Human Reproduction

National Toxicology Program (NTP), National Institute of Environmental Health Sciences (NIEHS), Center for the Evaluation of Risks to Human Reproduction, announces an Expert Panel Meeting to complete a review of seven phthalates. The review will take

place on July 12–13, 2000, at the Sheraton National Hotel 900 S. Orme Street (Columbia Pike and Washington Boulevard) Arlington, VA 22204. The meeting is open to the public and attendance is limited only by the availability of space.

**Background**

The NTP and the NIEHS established the NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) [**Federal Register** (FR), December 14, 1998 (Volume 63, Number 239, page 68782)] in June 1998. The purpose of the Center is to provide timely and unbiased, scientifically sound evaluations of human and experimental evidence for adverse effects on reproduction, including development, which may be caused by agents to which humans are exposed. An expert panel is established to review the scientific evidence on the chemical(s) under review, receive public comments, and then prepare a report on the chemical(s) that is publicly available and is also published in Environmental Health Perspectives (EHP). NTP staff prepares a final NTP Center Report on the evaluated chemical(s) that integrates background information on the chemical(s), findings of the expert panel, a summary of public comments, and a discussion of any additional, recent studies. The final report is made publicly available, distributed to interested stakeholders, appropriate regulatory and research agencies, and published in EHP. A summary of the complete review process can be found on the CERHR website (http://cerhr.niehs.nih.gov), in FR March 20, 2000 (Volume 65, Number 54, page 14497), or a hardcopy may be requested from Ms. Sheren (see below).

The Center is completing a review of the following seven phthalate esters (Chemical Abstracts Service registry numbers are in parentheses):

butyl benzyl phthalate (85–68–7) BBP
di(2-ethylhexyl) phthalate (117–81–7) DEHP
di-isodecyl phthalate (26761–40–0, 68515–49–1) DIDP
di-isononyl phthalate (28553–12–0, 68515–48–0) DINP
di-n-butyl phthalate (84–74–2) DBP
di-n-hexyl phthalate (84–75–3) DnHP
di-n-octyl phthalate (117–84–0) DnOP

An independent, expert panel began the phthalate review at the first Phthalate Expert Panel Meeting on August 17–19, 1999, in Alexandria, VA [FR August 5, 1999 (Volume 64 Number 150, pp. 42707–42708)]. Prior to this meeting, panelists reviewed existing literature in their areas of expertise and provided other panel members with their summary evaluations. This effort involved the review of nearly 1,000 reports or publications covering general toxicity in animals and humans, developmental and reproductive toxicity, and information on human exposure. The Expert Panel continued its work at a second meeting held on December 15–17 in Research Triangle Park, NC [FR November 19, 1999 (Volume 64 Number 223, pp. 63327–63329)]. Summaries of the first two Phthalate Expert Panel meetings are available on the Center's website (http://cerhr.niehs.nih.gov) or can be obtained in hardcopy from Ms. Sheren (see below).

*Review Panel*

A panel of 16 independent scientists selected for their expertise in various aspects of reproductive toxicology and other relevant areas are conducting this review. The roster of experts follows:

PHTHALATES EXPERT PANEL

| Name | Affiliation |
|---|---|
| Kim Boekelheide, MD, PhD.* | Brown University, Providence, RI |
| Bob Chapin, PhD | NIEHS, Research Triangle Park, NC |
| Mike Cunningham, PhD.* | NIEHS, Research Triangle Park, NC |
| Elaine Faustman, PhD. | University of Washington, Seattle, WA |
| Paul Foster, PhD | Chemical Industry Institute of Toxicology, Research Triangle Park, NC |
| Mari Golub, PhD | Cal/EPA, Davis, CA |
| Rogene Henderson, PhD. | Inhalation Toxicology Research Institute, Albuquerque, NM |
| Irwin Hinberg, PhD | Health Canada, Ottawa, Ontario, Canada |
| Bob Kavlock, PhD (chair). | EPA/ORD, Research Triangle Park, NC |
| Ruth Little, Sc.D | NIEHS, Research Triangle Park, NC |
| Jennifer Seed, PhD | EPA/OPPT, Washington, DC |
| Katherine Shea, MD | North Carolina State University, Raleigh, NC |
| Sonia Tabacova, MD, PhD. | FDA, Rockville, MD |
| Shelley Tyl, PhD | Research Triangle Institute, Research Triangle Park, NC |
| Paige Williams, PhD | Harvard University, Cambridge, MA |
| Tim Zacharewski, PhD. | Michigan State University, East Lansing, MI |

*Unable to attend the Final Phthalate Expert Panel meeting.

**Preliminary Agenda**

The Expert Panel's primary activities at the third and final meeting will be to: (1) Review and approve Integrated Evaluation (Section 5.2) language of the five reports (DnHP, DnOP, DINP, DIDP, and DBP) proposed at the December meeting and generally agreed through review and comment following that meeting and (2) review and discuss Data Summary and Integration (Section 5) of the reports for two phthalates, BBP and DEHP. Initial discussion will be in plenary sessions. All aspects of BBP will be discussed, whereas, the main focus of the DEHP discussion will be data relevant to use of medical products that contain this phthalate. It is expected that the Expert Panel will approve Section 5 language for DEHP and BBP before the end of the July meeting.

*Wednesday, July 12, 2000*

8:30 am—Introductory Remarks and Status of Phthalate Review
9:00 am—Phthalates Expert Panel Opening Comments

Review of BBP (Section 5.0, including 5.1–5.3)

9:10–9:30 am—Public Comments on BBP
9:30–9:40 am—Break
9:40–12 N—Panel Review of BBP
12N–1:00 pm—Lunch
1:00–2:45 pm—Summaries of Previously Reviewed Phthalate Reports, DnHP, DnOP, DINP, DIDP, DBP (Section 5.2 of each report) Public Comment

Expert Panel Discussion and Approval of Sections 5.2

2:45–3:00 pm—Break

Review of DEHP (Section 5.0, including 5.1–5.3)

3:00–3:15 pm—Public Comments on DEHP
3:15–4:30 pm—Panel Review of DEHP
4:30–6:00 pm—Panelists Work on Plenary Assignments
6:00 pm—Progress Report on Plenary Assignments
6:30 pm—Adjourn

*Thursday, July 13, 2000*

8:30–10:00 am—Panel Review of Revised BBP Report
10:00–10:15 am—Break
10:15–11:00 am—Panel Review of Revised DEHP Report
11:00–1:00 pm—Panel Works on Plenary Assignments (working lunch)
1:00–2:30 pm—Expert Panel Discussion and Approval of BBP Report
2:30–2:45 pm—Break
2:45–4:15 pm—Expert Panel Discussion and Approval of DEHP Report

4:15–4:45 pm—Public Comments
4:45–5:00 pm—Closing Remarks
5:00 pm—Adjourn

*Abbreviations:*

BBP—butyl benzyl phthalate (85–68–7)
DEHP—di(2-ethylhexyl) phthalate (117–81–7)
DIDP-di-isodecyl phthalate (26761–40–0, 68515–49–1)
DINP—di-isononyl phthalate (28553–12–0, 68515–48–0)
DBP—di-n-butyl phthalate (84–74–2)
DnHP—di-n-hexyl phthalate (84–75–3)
DnOP—di-n-octyl phthalate (117–84–0)

**Reports Available for Public Review**

Based on deliberations at the previous meetings. Expert Panel Reports are currently being finalized. Each Report is composed of the following sections:

1.0 Exposure
2.0 General Toxicological and Biological Parameters
3.0 Developmental Toxicity Data
4.0 Reproductive Toxicity Data
5.0 Data Summary & Integration
5.1 Summary (Sections 1–4)
5.2 Integrated Evaluation
5.3 Critical Data Needs

All sections of the reports for DIDP, DINP, DnHP and DnOP will be available to the public after May 15 and for DBP, BBP and DEHP after June 1. They can be obtained electronically on the CERHR website (http://cerhr.niehs.nih.gov) or in hardcopy by contacting Ms. Sheren at the address given below.

**Solicitation of Public Comments**

As shown on the above preliminary agenda, time is allotted at this meeting for public comments (seven minutes per speaker). It is expected that comments will be directed to the specific portions of the reports being discussed by the Expert Panel. In order to facilitate planning of this meeting, those wishing to make public comments are asked to submit their comments in writing, provide an electronic copy, and notify Ms. Sheren, (see below) no later than June 30, 2000. Please reference the specific draft phthalate report the comments address. Provide your name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any) and send a copy of the statement or talking points to Ms. Sheren. This information will be provided to the Panel and will assist the Chair and Panel Members in identifying issues for discussion. Registration for public comments will also be available on-site (7:30—8:30 a.m.). Those registering on site are asked to bring 40 copies of their statement or talking points.

A written statement may be submitted in lieu of making an oral presentation. These written comments should be received by Ms. Sheren no later than June 30 in order for them to be considered at the July 12–13 meeting. Persons sending written comments are asked to provide their name, affiliation, mailing address, phone, fax, e-mail and sponsoring organization (if any) and provide an electronic copy. Please reference the specific draft phthalate report the comments address.

Following this meeting, there will be another opportunity for written comment on each Expert Panel Report. These public comments will be considered in the final NTP Center Report prepared by the NTP staff and subsequently distributed to Federal and State Agencies, interested stakeholders and the public.

An index of written public comments will be posted on the CERHR website (*http://cerhr.niehs.nih.gov*). This index and copies of specific public comments may be obtained by contacting Ms. Sheren.

For other questions or additional information about the meeting, please contact Ms. Peggy Sheren at CERHR, 1800 Diagonal Road, Suite 500, Alexandria, VA 22314–2808, Phone: (703) 838–9440, *psheren@sciences.com*.

Dated: May 12, 2000.

**Samuel H. Wilson,**

*Deputy Director, National Institute of Environmental Health Sciences.*

[FR Doc. 00–12908 Filed 5–22–00; 8:45 am]
BILLING CODE 4140–01–U

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Fiscal Year (FY) 2000 Funding Opportunities

**AGENCY:** Substance Abuse and Mental Health Services Administration, HHS.

**ACTION:** Notice of Funding Availability.

**SUMMARY:** The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under section 3 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Program Announcement, including Part I, Programmatic Guidance for Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need, and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing an application.

| Activity | Application deadline | Est. funds FY 2000 | Est. No. of awards | Project period |
|---|---|---|---|---|
| HIV Services Integration Planning Grants. | July 28, 2000 | up to $3.5 million | 25–30 | 1 year |

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA will publish additional notices of available funding opportunities for FY 2000 in subsequent issues of the **Federal Register**.

*General Instructions:* Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The

application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

*Application Submission:* Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, 5600 Fishers Lane, Room 17–89, Rockville, MD 20857.

Applications sent to an address other than the address specified above will be returned to the applicant without review.

*Application Deadlines:* The deadlines for receipt of applications are listed in the table above. Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the deadline date will be returned to the applicant without review.

**FOR FURTHER INFORMATION CONTACT:** Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see section 3).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 3).

**Programmatic Information**

*1. Program Background and Objectives*

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

*2. Criteria for Review and Funding*

2.1 General Review Criteria

Competing applications requesting funding under the specific project activity in section 3 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

2.2 Award Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

*3. Special FY 2000 SAMHSA Activities*

Minority Community Planning Grants for Integration of HIV/AIDS and Substance Abuse Treatment, Mental Health, Primary Care and Public Health (Short Title: HIV Services Integration Planning, GFA No. TI 00–008)

• Application Deadline: July 28, 2000.

• Purpose: The Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), announces the availability of funds for grants for community planning and consensus building. Grantees will develop plans that describe how organizations and agencies should work together to deliver integrated substance abuse treatment, HIV/AIDS prevention and treatment, mental health, primary care and public health services. The targeted populations are racial and ethnic groups who are the highest risk for substance abuse and HIV including: African Americans, Latinos/Hispanics, or other racial or ethnic groups at high risk. The grants are part of a Phase I Planning Program.

Grants can be used for community planning and consensus development. The following are some examples of activities that may be supported: Providing community education; for example, training on community planning and community change strategies; developing an executive advisory committee (include members from community, public, private, and corporate sectors); educating and training groups on organizational and community change dynamics; bringing together various community groups to seek advice and consensus; providing expert consultation and technical assistance; funding needed for travel and other logistical costs to consumers, family members, and others to be able to participate on committees or in programs; evaluating the community planning process; and, other activities that focus on community planning and consensus building.

• Eligible Applicants: Only government units may apply because of their responsibility for the needs of their citizens. The success of the program will depend on their authority and their ability to coordinate a variety of resources and to help their citizens apply for future funding.

State government applicants must:

• Have a working relationship with a city, town, and/or county agency in order to develop plans for their targeted population.

• Show, in a formal MOU (memorandum of understanding), an ongoing public health agreement that describes the working relationship (for example, joint activities).

• Have an annual AIDS case rate of, or greater than, 10 out of 100,000 people.

Local Government applicants (cities, towns, and counties) and Native American Tribal Communities must be located in one of the following:

• A State with an annual AIDS case rate of, or greater than, 10 out of 100,000 people.

• An MSA (metropolitan statistical area) with an annual AIDS case rate of, or greater than, 15 out of 100,000 people.

In the absence of consistent reporting of HIV data by all jurisdictions, the best indicator of the magnitude of the epidemic is AIDS case rates derived from the Center for Disease Control and

Prevention (CDC) HIV/AIDS surveillance reports.

• Amount: It is estimated that up to $3.5 million will be available to support 25 to 30 grants under this announcement in fiscal year 2000. The average award is expected to range from $100,000 to $150,000 in total costs (direct and indirect).

• Period of Support: Grants will be awarded for a period for 12 months.

• *Catalog of Federal Domestic Assistance Number*: 93.230.

• Program Contact: For questions concerning program issues, contact: David C. Thompson, Clinical Interventions and Organizational Models Branch, Division of Practice and Systems Development, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–6523, E-Mail: dthompso@samhsa.gov.

For questions regarding grants management issues, contact: Kathleen Sample, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9667, E-Mail: ksample@samhsa.gov.

• Application kits are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

*4. Public Health System Reporting Requirements*

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

*5. PHS Non-use of Tobacco Policy Statement*

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

*6. Executive Order 12372*

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: May 17, 2000.

**Richard Kopanda,**

*Executive Officer, SAMHSA.*

[FR Doc. 00–12910 Filed 5–22–00; 8:45 am]

BILLING CODE 4162–20–P

## DEPARTMENT OF THE INTERIOR

### Salinas River National Wildlife Refuge

**AGENCY:** Fish and Wildlife Service.

**ACTION:** Notice of Intent to Prepare a Comprehensive Conservation Plan and Associated National Environmental Policy Act Document for Salinas River National Wildlife Refuge, Monterey County, California.

**SUMMARY:** The Fish and Wildlife Service (Service) is preparing a Comprehensive Conservation Plan (CCP) and National Environmental Policy Act (NEPA) document for Salinas River National Wildlife Refuge. This notice advises the public that the Service intends to gather information necessary to prepare a CCP and environmental documents pursuant to the National Wildlife Refuge System Administration Act of 1966, as amended, and NEPA. The public is invited to participate in the planning process. The Service is furnishing this notice in compliance with the Service CCP policy to advise other agencies and the public of our intentions, and obtain suggestions and information on the scope of issues to include in the environmental document.

**DATES:** To ensure that the Service has adequate time to evaluate and incorporate suggestions and other input into the planning process, comments should be received by June 22, 2000. A public meeting to solicit comments on the contents of the CCP and the vision of the refuge for the next 15 years will be held on June 1, 2000.

**ADDRESSES:** Send written comments or requests to be added to the mailing list to the following address: Christopher Barr, Refuge Manager—Salinas River NWR, San Francisco Bay National Wildlife Refuge Complex, P.O. Box 524, Newark, California 94560. The scoping meeting will be held at California State University-Monterey, 100 Campus Center, Building 29, Rooms 114–116, Seaside, California from 6 to 8 p.m.

**FOR FURTHER INFORMATION CONTACT:** Christopher Barr, Refuge Manager, (510) 792–4074 or 0222.

**SUPPLEMENTARY INFORMATION:** The National Wildlife Refuge System Administration Act of 1966, as amended in 1997, mandates that all lands within the National Wildlife Refuge System are to be managed in accordance with an

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approved CCP. The CCP will guide management decisions for the next 15 years and identify refuge goals, long-range objectives, and management strategies for achieving these objectives. The planning process will consider many elements, including habitat and wildlife management, habitat protection, recreational use, and environmental effects. Public input into this planning process is very important. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the refuges and how the Service will implement management strategies.

The Service is soliciting information from the public via written comments. The Service will send out planning updates to people who are interested in the CCP process. These mailings will provide information on how to participate in the CCP process. Comments received will be used to develop goals, key issues evaluated in the NEPA document, and habitat management strategies. Additional opportunities for public participation will occur throughout the process. The CCP is expected to be completed in December 2000.

**Background**

The refuge is located 11 miles northeast of the City of Monterey at the confluence of the Salinas River and Monterey Bay. The 366 acre refuge was established in 1973 because of its "particular value in carrying out the national migratory bird management program". It was acquired by the Service through a transfer of surplus military land from the U.S. Army and the U.S. Coast Guard. From 1974 through 1991 the area was operated as a Wildlife Management Area under a cooperative agreement with the California Department of Fish and Game. By the mid-1980s, the growing importance of the refuge to sensitive species prompted the need for more active management and protection of its natural resources. In 1991, the Service began managing the area as a refuge under the National Wildlife Refuge System Administration Act and the Refuge Recreation Act of 1962. Management on the refuge emphasizes threatened and endangered species and sensitive migratory birds.

The primary purpose of the refuge is to provide habitat for endangered, threatened, and candidate species by providing secure habitat (*e.g.*, nesting, feeding and roosting areas) for them. Endangered species on the refuge include Smith's blue butterfly (Euphilotes enoptes smithi), California brown pelican (Pelecanus occidentalis), and sand gilia (Gilia tenuiflora ssp. arenaria); threatened species include western snowy plover (Charadrius alexandrinus nivosus), and southern sea otter (Enhydra lutris nereis). The endangered Menzies wallflower (Erysimum menziesii) and threatened Monterey spineflower (Chorizanthe pungens var. pungens) may occur on the refuge.

It is expected that a draft CCP and NEPA document will be available for public review and comment in fall 2000.

Dated: May 17, 2000.

**Wayne S. White,**

*California/Nevada Operations Manager, U.S. Fish and Wildlife Service, Sacramento, California.*

[FR Doc. 00–13024 Filed 5–22–00; 8:45 am]

BILLING CODE 4310–55–U

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability of an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for a Permit for the Incidental Take of the Houston Toad (*Bufo houstonensis*) During Construction of One Single Family Residence on up to 0.5 Acres of the 0.5-Acre Lot 6, Section 8, in the Circle D Country Acres Subdivision, Bastrop County, TX.

**SUMMARY:** William and Johnna Cantrell (Applicants) have applied to the U.S. Fish and Wildlife Service (Service) for an incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act). The Applicants have been assigned permit number TE–025654–0. The requested permit, which is for a period of 5 years, would authorize the incidental take of the endangered Houston toad (*Bufo houstonensis*). The proposed take would occur as a result of the construction and occupation of a single family residence on up to 0.5 acres of the 0.5-acre Lot 6, Section 8, in the Circle D Country Acres Subdivision in Bastrop County, Texas.

The Service has prepared the Environmental Assessment/Habitat Conservation Plan (EA/HCP) for the incidental take application. A determination of jeopardy to the species or a Finding of No Significant Impact (FONSI) will not be made until at least 30 days from the date of publication of this notice. This notice is provided pursuant to Section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

**DATES:** Written comments on the application and EA/HCP should be received on or before June 22, 2000.

**ADDRESSES:** Persons wishing to review the application may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103. Persons wishing to review the EA/HCP may obtain a copy by contacting Tannika Englehard, Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, Texas 78758 (512/490–0063). Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, Austin, Texas. Written data or comments concerning the application and EA/HCP should be submitted to the Field Supervisor, Ecological Services Field Office, Austin, Texas, at the above address. Please refer to permit number TE–025654–0 when submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Tannika Englehard at the above Austin Ecological Services Field Office.

**SUPPLEMENTARY INFORMATION:** Section 9 of the Act prohibits the "taking" of endangered species such as the Houston toad. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

*Applicants:* William and Johnna Cantrell plan to construct a single family residence on up to 0.5 acres of the 0.5-acre Lot 6, Section 8, in the Circle D Country Acres Subdivision in Bastrop County, Texas. This action will eliminate less than 1 acre of habitat and result in indirect impacts within the lot. The applicants propose to compensate for this incidental take of the Houston toad by providing $1,500 to the National Fish and Wildlife Foundation for the specific purpose of land acquisition and management within Houston toad habitat, as identified by the Service.

**Geoffrey L. Haskett,**

*Regional Director, Region 2, Albuquerque, New Mexico.*

[FR Doc. 00–12883 Filed 5–22–00; 8:45 am]

BILLING CODE 4510–55–U

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[WY–920–1430–06; WYW 147724]

### Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The Bureau of Land Management (BLM) proposes to withdraw approximately 61.45 acres of public land in Fremont County, to protect capital improvements of the Bridge Station Campground site. This notice closes the land for up to 2 years from surface entry and mining. The lands are not available for mineral leasing in accordance with the BLM's Green River Resource Management Plan.

**DATES:** Comments and requests for a public meeting must be received by August 21, 2000.

**ADDRESSES:** Comments and requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

**FOR FURTHER INFORMATION CONTACT:** Janet Booth, BLM Wyoming State Office, 307–775–6124, or Stan McKee, BLM Rock Springs Field Office Manager, 280 Highway 191 North, Rock Springs, Wyoming 82901, 307–352–0256.

**SUPPLEMENTARY INFORMATION:** On April 28, 2000, a petition/application was approved allowing the BLM to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

**Sixth Principal Meridian**

T. 29 N., R. 102 W.,
Sec. 5, W½ of Lot 3, Lot 4.

The area described contains approximately 61.45 acres in Fremont County.

The purpose of the proposed withdrawal is to protect the capital improvements associated with development and maintenance of the Bridge Station Campground site pending further study and possibly longer-term actions.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which will not significantly impact the values to be protected by the withdrawal may be allowed with the approval of an authorized officer of the BLM during the segregative period.

Dated: May 12, 2000.

**Alan R. Pierson,**

*State Director.*

[FR Doc. 00–12885 Filed 5–22–00; 8:45 am]

BILLING CODE 4310–22–U

## DEPARTMENT OF THE INTERIOR

### National Park Service

### REVISION—Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of the 611th Air Support Group, United States Air Force, Elmendorf Air Force Base, AK

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of 611th Air Support Group, United States Air Force, Elmendorf Air Force Base, AK.

A detailed assessment of the human remains was made by the W.H. Over Museum, South Dakota State Archeological Research Center, and 611th Air Support Group, USAF professional staff in consultation with representatives of the Aleut Corporation, and the **Aleutian Pribilof Islands Association, Inc.**

In 1943, human remains representing one individual were uncovered during a legally authorized runway construction project on Shemya Island, AK conducted by Mr. C.B. Kimbrough, a contracted civil engineer with the Baker Engineering Company, Rochester, PA. In 1944, these human remains were donated by Mr. Kinbrough to the Dakota Museum, University of South Dakota, Vermillion, SD (now known as the W.H. Over Museum). No known individual was identified. The 32 associated funerary objects include stone projectile points and animal bone tools related to sea and land hunting and fishing.

Based on the geographic location and material culture, this individual has been identified as Native American, most likely affiliated with the Aleut culture. The determination of cultural affiliation has been based upon the relative geographic isolation of Shemya Island, archeological evidence from the Shemya Island region, past and present Aleut oral tradition, historical evidence, and expert anthropological opinion. These forms of evidence all indicate that Aleut people were the sole pre-contact (pre-1741 A.D.) occupants of Shemya Island.

Based on the above mentioned information, officials of the 611th Air Force Group, USAF have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the 611th Air Force Group, USAF have also determined that, pursuant to 43 CFR 10.2 (d)(2), the 32 objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the 611th Air Force Group, USAF have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary objects and the **Aleut Corporation**.

This notice has been sent to officials of the Aleut Corporation, and the **Aleutian Pribilof Islands Association, Inc.** Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Captain Christopher A. Pleiman, Cultural Resources Manager, 611th Air Support Group, U.S. Air Force, 6900 9th Street, Ste. 360, Elmendorf AFB, AK 99506-2270; telephone: (907) 552-7442, before June 22, 2000. Repatriation of the human remains and associated funerary

objects to the Aleut Corporation may begin after that date if no additional claimants come forward.

Dated: May 8, 2000.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 00–12848 Filed 5–22–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects in the Possession of Agate Fossil Beds National Monument, National Park Service, Harrison, NE and Scotts Bluff National Monument, National Park Service, Gering, NE

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects in the possession of Agate Fossil Beds National Monument, Harrison, Nebraska, and Scotts Bluff National Monument, Gering, Nebraska.

A detailed assessment of the human remains and associated funerary objects was made by National Park Service professional staff in consultation with representatives of the Arapahoe Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota. Several other tribes, including the Apache Tribe of Oklahoma; Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; Cheyenne-Arapaho Tribes of Oklahoma; Comanche Indian Tribe, Oklahoma; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northwestern Band of Shoshoni Nation of Utah (Washakie); Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Pawnee Indian Tribe of Oklahoma; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; and the Yankton Sioux Tribe of South Dakota were also invited to consult, but did not participate to the extent of the other Indian tribes.

In 1968, human remains representing eight individuals were donated to Agate Fossil Beds National Monument by Margaret Cook. No known individuals were identified. The 11 associated funerary objects consist of one soil burial matrix containing numerous glass beads, six shell buttons and button fragments, one brass bell, one collection of cloth and leather fragments, one collection of plant seeds, and one deer bone.

Collection records indicate that all eight sets of human remains were recovered from the Nebraska panhandle region. One individual is documented as coming from a highway gravel borrow pit north of Mitchell, Nebraska, in 1955. The exact provenience of the other seven individuals is not known. It is assumed that all eight individuals were excavated by or given to Margaret's husband Harold Cook, a paleontologist, geologist, and archeologist who operated a museum in the Cook home. The remains of two individuals are known to have been given to Cook around 1921 by a local physician from Harrison, Nebraska.

Between 1935 and 1945, human remains representing four individuals were donated to Scotts Bluff National Monument by Edgar McKinley, F.J. Strasbaugh, A.C.G. Kaempher, and R.E. Sweet. Scotts Bluff National Monument possesses an additional set of human remains representing seven individuals. No known individuals were identified. The five associated funerary objects consist of two bone awl tips, one jasper rock flake, and two animal bones.

Collection records indicate that all eleven sets of human remains, now held at Scotts Bluff National Monument, were recovered from the Nebraska panhandle region. The four donated sets of human remains came from generally known localities: the McKinley farm, a gravel pit along the North Platte River near Gering Nebraska, the Greenwood Ranch, and Luckenbill Place near Bridgeport, Nebraska. The exact provenience of the other seven individuals and precise date of acquisition is not known.

Through the application of physical anthropological examinations, conducted by Peer Moore-Jansen of Wichita State University in March 1995, and the presence of diagnostic associated funerary objects, 18 of the individuals describe above were identified as Native American. The physical anthropological examinations also determined that one of the individuals described above is likely Native American. Oral history evidence, presented by representatives of the consulting tribes listed above, identified a cultural affiliation to all of the above described human remains held by Agate Fossil Beds National Monument and Scotts Bluff National Monument. This oral history evidence addressed the issue of a "shared group identity" of ancient peoples of the Nebraska panhandle region and their relationship to modern tribal groups recognized by the Unites States Federal government.

Utilizing expert opinion, collection records, geographical, physical anthropological, and oral tradition evidence, it has been determined that the Arapahoe Tribe of the Wind River Reservation, Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Cheyenne River Sioux Tribe of the Cheyenne River Reservation, Crow Creek Sioux Tribe of the Crow Creek Reservation, Crow Tribe of Montana, Lower Brule Sioux Tribe of the Lower Brule Reservation, Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Ponca Tribe of Indians of Oklahoma, Ponca Tribe of Nebraska, Rosebud Sioux Tribe of the Rosebud Indian Reservation, Santee Sioux Tribe of the Santee Reservation, Shoshone Tribe of the Wind River Reservation, Shoshone-Paiute Tribes of the Duck Valley Reservation, and the Three Affiliated Tribes of the Fort Berthold Reservation, as well as the Flandreau Santee Sioux Tribe, Oglala Sioux Tribe of the Pine Ridge Reservation and the Yankton Sioux Tribe are culturally affiliated with the human remains and associated funerary objects described above.

Based on the above mentioned information, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of 19 individuals of Native American ancestry. Officials of the National Park Service have also

determined that, pursuant to 43 CFR 10.2(d)(2), the 16 associated funerary objects listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the National Park Service have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity that can be reasonably traced between these Native American human remains and associated funerary objects and the Arapahoe Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Yankton Sioux Tribe of South Dakota.

This notice has been sent to officials of the Apache Tribe of Oklahoma; Arapahoe Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Blackfeet Tribe of the Blackfeet Indian Reservation of Montana; Cheyenne Arapaho Tribes of Oklahoma; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Comanche Indian Tribe, Oklahoma; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Fort Sill Apache Tribe of Oklahoma; Jicarilla Apache Tribe of the Jicarilla Apache Indian Reservation, New Mexico; Kiowa Indian Tribe of Oklahoma; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Northwestern Band of Shoshoni Nation of Utah (Washakie); Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Omaha Tribe of Nebraska; Pawnee Indian Tribe of Oklahoma; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and the Yankton Sioux Tribe of South Dakota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects, should contact Superintendent Ruthann Knudson, Agate Fossil Beds National Monument, 301 River Road, Harrison Nebraska 69347-2734; telephone: (308) 668-2211, fax: (308) 668-2318, ruthann—knudson@nps.gov, before June 22, 2000. Repatriation of these human remains and cultural items to the Arapahoe Tribe of the Wind River Reservation, Wyoming; Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Crow Tribe of Montana; Flandreau Santee Sioux Tribe of South Dakota; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana; Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota; Ponca Tribe of Indians of Oklahoma; Ponca Tribe of Nebraska; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Santee Sioux Tribe of the Santee Reservation of Nebraska; Shoshone Tribe of the Wind River Reservation, Wyoming; Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; and Yankton Sioux Tribe of South Dakota may begin after the above date if no additional claimants come forward.

Dated: April 3, 2000.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 00–12852 Filed 5–22–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains from Hawaii in the Possession of the National Museum of Health and Medicine, Armed Forces Institute of Pathology, Washington, DC

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Hawaii in the possession of the National Museum of Health and Medicine [formerly the Army Medical Museum (AMM)], Armed Forces Institute of Pathology, Washington, DC.

A detailed assessment of the human remains was made by National Museum of Health and Medicine professional staff in consultation with representatives of Hui Malama I Na Kupuna O Hawai'i Nei, Kauai/Niihau Island Burial Council, Molokai Island Burial Council, Hawai'i Island Burial Council, and the Office of Hawaiian Affairs.

Before 1876, human remains representing one individual were collected from an unknown site in Hawaii by W.H. Jones for the Smithsonian Institution. In 1876, these human remains were transferred to the AMM from the Smithsonian Institution. No known individuals were identified. No associated funerary objects are present.

Based on accession records, this individual has been identified as Native Hawaiian.

At an unknown date, human remains representing one individual were removed from an "old battlefield" on Oahu by W.R. DeWitt, Assistant Surgeon, U.S. Army. In 1862, these human remains were sent to the AMM. No known individual was identified. No associated funerary objects are present.

Based on accession records, this individual has been identified as Native Hawaiian.

Before 1869, human remains representing one individual were taken from Kauai by person(s) unknown under unknown circumstances. In 1869, these human remains were transferred to the AMM from the Smithsonian Institution. No known individual was identified. No associated funerary objects are present.

Based on accession records, this individual has been identified as Native Hawaiian.

Based on the above mentioned information, officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of three individuals of Native American ancestry. Officials of the National Museum of Health and Medicine, Armed Forces Institute of Pathology have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and Hui Malama I Na Kupuna O Hawai'i Nei, Kauai/Niihau Island Burial Council, Molokai Island Burial Council, Hawai'i Island Burial Council, and the Office of Hawaiian Affairs

This notice has been sent to officials of Hui Malama I Na Kupuna O Hawai'i Nei, Kauai/Niihau Island Burial Council, Molokai Island Burial Council, Hawai'i Island Burial Council, and the Office of Hawaiian Affairs. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains should contact Dr. Lenore Barbian, Collection Manager, National Museum of Health and Medicine, Armed Forces Institute of Pathology, Walter Reed Army medical Center, Bldg. 54, Washington, DC 20036; telephone: (202) 782–2203; email: barbian@afip.osd.mil , before June 22, 2000. Repatriation of the human remains to Hui Malama I Na Kupuna O Hawai'i Nei may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: May 8, 2000.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 00–12851 Filed 5–22–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Inventory Completion for Native American Human Remains from Mankato, MN in the Possession of the Public Museum of Grand Rapids, Grand Rapids, MI

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains from Mankato, MN in the possession of the Public Museum of Grand Rapids, Grand Rapids, MI.

A detailed assessment of the human remains was made by Public Museum of Grand Rapids professional staff in consultation with representatives of the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; the Spirit Lake Tribe, North Dakota; the Shakopee Mdewakanton Sioux Community of Minnesota; and the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota.

Around 1915, human remains representing one individual were obtained from G.S. Knapp of Chicago, IL by the Public Museum of Grand Rapids by an unknown method. This individual has been identified as Marpiya Okinajin, a Dakota man executed in 1862 following the United States—Dakota War. No associated funerary objects are present.

The identification of these human remains as those of Marpiya Okinajin is based on a note found with the remains indicating it is a piece of skin from "Chief Cut Nose", an alleged leader of the "New Ulm Massacre". Historic documents confirm that Marpiya Okinajin was among the 38 men executed by the U.S. government on December 26, 1862 at Mankato, MN. "Cut Nose" was used as the translation of Marpiya Okinajin by Americans at the time. Further information indicates that following his execution, this piece of Marpiya Okinajin's skin was removed from his body by a "Dr. Sheardown." There is no information to indicate these human remains are not those of Marpiya Okinajin. No verified lineal descendants have come forward, and a claim of cultural affiliation has been submitted by representatives of the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota.

Based on the above mentioned information, officials of the Public Museum of Grand Rapids have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of one individual of Native American ancestry. Officials of the Public Museum of Grand Rapids have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; the Spirit Lake Tribe, North Dakota; the Shakopee Mdewakanton Sioux Community of Minnesota; and the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota.

This notice has been sent to officials of the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota; the Spirit Lake Tribe, North Dakota; the Shakopee Mdewakanton Sioux Community of Minnesota; and the Prairie Island Indian Community of Minnesota Mdewakanton Sioux Indians of the Prairie Island Reservation, Minnesota. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains or lineal descendants of Maripiya Okinajin should contact Timothy J. Chester, Director, Public Museum of Grand Rapids, 272 Pearl NW, Grand Rapids, MI 49504; telephone: (616) 456-3511, before June 22, 2000. Repatriation of the human remains to the Lower Sioux Indian Community of Minnesota Mdewakanton Sioux Indians of the Lower Sioux Reservation in Minnesota may begin after that date if no additional claimants come forward.

Dated: May 8, 2000.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 00–12849 Filed 5–22–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF THE INTERIOR

### National Park Service

### Notice of Intent To Repatriate Cultural Items in the Possession of the San Diego Archaeological Center, San Diego, CA

**AGENCY:** National Park Service.

**ACTION:** Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the San Diego Archaeological Center, San Diego, CA which meet the definition of "unassociated funerary object" under Section 2 of the Act.

The 11 cultural items are projectile points and four bags of loose beads.

In 1973, the Santee Greens site (CA Sdi 5699) was excavated prior to residential development by Archaeological Consulting Technology, Inc. (ACT) under contract with Time for Living, Inc. ACT stored these cultural items until 1998, when collections including these cultural items were donated to the San Diego Archaeological Center, San Diego, CA. The human remains recovered with these cultural items were repatriated to the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation in 1973.

Based on geographic location and archeological evidence, the Santee Greens site has been identified as a Kumeyaay village site dating to the Late Archaic period (c. 760–1030 A.D.). Based on site information, excavation records, and manner of interment, these cultural items have been identified as unassociated funerary objects. Archeological literature and continuity of occupation indicates cultural affiliation with the Kumeyaay tribes.

Based on the above mentioned information, officials of the San Diego Archaeological Center have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), these 11 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the San Diego Archaeological Center have also determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these items and the Campo Band of Diegueno Mission Indians of the Campo Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California.

This notice has been sent to officials of the Kumeyaay Cultural Repatriation Committee, the Campo Band of Diegueno Mission Indians of the Campo Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California may begin after that date if no additional claimants come forward.

Dated: May 8, 2000.

**Francis P. McManamon,**

*Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.*

[FR Doc. 00–12850 Filed 5–22–00; 8:45 am]

BILLING CODE 4310–70–F

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By Notice dated February 14, 2000, and published in the **Federal Register** on February 22, 2000, (65 FR 35), Isotec Inc., 3858 Benner Road, Miamisburg, Ohio 45342, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cathinone (1235) | I |
| Methcathinone(1237) | I |
| N-Ethylamphetamine (1475) | I |
| N-N-Dimethylamphetamine (1480) | I |
| Aminorex (1585) | I |
| Methaqualone (2565) | I |
| Lysergic acid diethylamide (7315) | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| 2,5-Dimethoxyamphetamine (7396) | I |
| 3,4-Methylenedioxyamphetamine (7400). | I |
| 3,4-Methylenedioxy-N-ethylamphetamine (7404). | I |
| 3, 4,-Methylenedioxymethamphetamine (7405). | I |
| 4-Methoxyamphetamine (7411) | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| N-Ethyl-1-phenylcyclohexylamine (7455). | I |
| Dihydromorphine (9145) | I |
| Normorphine (9313) | I |
| Acetylmethadol (9601) | I |
| Alphacetylmethadol Except Levo-Alphacetylmethadol (9603). | I |
| Normethadone (9635) | I |
| 3-Methylfentanyl (9813) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |
| 1-Phenylcyclohexylamine (7460) | II |
| Phencyclidine (7471) | II |
| Phenylacetone (8501) | II |
| 1-Piperidinocyclohexanecarbonitrile (8603). | II |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Benzoylecgonine (9180) | II |

| Drug | Schedule |
|---|---|
| Ethylmorphone (9190) | II |
| Hydrocodone (9193) | II |
| Isomethadone (9226) | II |
| Meperidine (9230) | II |
| Methadone (9250) | II |
| Methadone intermediate (9254) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |
| Levo-Alphacetylmethadol (9648) | II |
| Oxymorphone (9652) | II |
| Fentanyl (9801) | II |

The firm plans to manufacture small quantities of the listed controlled substances to produce standards for analytical laboratories.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Iostec, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated the company on a regular basis to ensure that its continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: May 12, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–12842 Filed 5–22–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Registration

By notice dated February 10, 2000, and published in the **Federal Register** on February 17, 2000, (65 FR 33), Novartis Pharmaceutical Corporation, 59 Route 10, East Hanover, New Jersey 07926, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture finished product for distribution to its customers.

DEA has considered the factors in title 21, United States Code, section 823(a) and determined that the registration of Novartis Pharmaceutical Corporation to manufacture methylphenidate is consistent with the public interest at this time. DEA has investigated Novartis Pharmaceutical Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: May 12, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–12841 Filed 5–22–00; 8:45 am]

BILLING CODE 4410–09–M

## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 30, 2000, Radian International LLC, 14050 Summit Drive #121, P.O. Box 201088, Austin, Texas 78720–1088, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cathinone (1235) | I |
| Methcathinone (1237) | I |
| N-Ethylamphetamine (1475) | I |
| N-N-Dimethylamphetamine (1480) | I |
| Aminorex (1585) | I |
| 4-Methylaminorex (cis isomer) (1590). | I |
| Methaqualone (2565) | I |
| Alpha-Ethyltryptamine (7249) | I |
| Lysergic acid diethylamide (7315) | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| 3,4,5-Trimethoxyamphetamine (7390). | I |
| 4-Bromo-2,5-dimethoxyamphetamine (7391). | I |
| 4-Bromo-2,5-dimethoxyphenethylamine (7392). | I |
| 4-Methyl-2,5-dimethoxyamphetamine (7395). | I |
| 2,5-Dimethoxyamphetamine (7396) | I |
| 2,5-Dimethoxy-4-ethylamphetamine (7399). | I |
| 3,4-Methylenedioxyamphetamine (7400). | I |
| 5-Methoxy-3,4-methylenedioxyamphetamine (7401). | I |
| N-Hydroxy-3,4-methylenedioxyamphetamine (7402). | I |
| 3,4-Methylenedioxy-N-ethylamphetamine (7404). | I |
| 3,4-Methylenedioxymethamphetamine (7405). | I |
| 4-Methoxyamphetamine (7411) | I |
| Bufotenine (7433) | I |
| Diethyltryptamine (7434) | I |
| Dimethyltryptamine (7435) | I |
| Psilocybin (7437) | I |
| Psilocyn (7438) | I |
| Acetyldihydrocodeine (9051) | I |
| Benzylmorphine (9052) | I |
| Codeine-N-oxide (9053) | I |
| Dihydromorphine (9145) | I |
| Heroin (9200) | I |
| Morphine-N-oxide (9307) | I |
| Normorphine (9313) | I |
| Pholcodine (9314) | I |
| Acetylmethadol (9601) | I |
| Allyprodine (9602) | I |
| Alphacetylmethadol except Levo-Alphacetylmethadol (9603). | I |
| Alphameprodine (9604) | I |
| Alphamethadol (9605) | I |
| Betacetylmethadol (9607) | I |
| Betameprodine (9608) | I |
| Betamethadol (9609) | I |
| Betaprodine (9611) | I |
| Hydromorphinol (9627) | I |
| Noracymethadol (9633) | I |
| Norlevorphanol (9634) | I |
| Normethadone (9635) | I |
| Trimeperidine (9646) | I |
| Para-Fluorofentanyl (9812) | I |
| 3-Methylfentanyl (9813) | I |
| Alpha-methylfentanyl (9814) | I |
| Acetyl-alpha-methylfentanyl (9815) | I |
| Beta-hydroxyfentanyl (9830) | I |
| Beta-hydroxy-3-methyfentanyl (9831) | I |
| Alpha-Methylthiofentanyl (9832) | I |
| 3-Methylthiofentanyl (9833) | I |
| Thiofentanyl (9835) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Phenmetrazine (1631) | II |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270) | II |
| Secobarbital (2315) | II |

| Drug | Schedule |
|---|---|
| Glutethimide (2550) | II |
| Nabilone (7379) | II |
| 1-Phenylcyclohexylamine (7460) | II |
| Phencyclidine (7471) | II |
| 1-Piperid-inocyclohexanecarbonitrile (8603). | II |
| Alphaprodine (9010) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Dihydrocodeine (9120) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Diphenoxylate (9170) | II |
| Benzoylecgonine (9180) | II |
| Ethylmorphine (9190) | II |
| Hydrocodone (9193) | II |
| Levomethorphan (9210) | II |
| Levorphanol (9220) | II |
| Isomethadone (9226) | II |
| Meperidine (9230) | II |
| Methadone (9250) | II |
| Methadone-intermediate (9254) | II |
| Morphine (9300) | II |
| Levo-alphacetylmethadol (9648) | II |
| Oxymorphone (9652) | II |
| Alfentanil (9737) | II |
| Sufentanil (9740) | II |
| Fentanyl (9801) | II |

The firm plans to manufacture small quantities of the listed controlled substances to make deuterated and nondeuterated drug reference standards which will be distributed to analytical and forensic laboratories for drug testing programs.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 24, 2000.

Dated: May 11, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–12844 Filed 5–22–00; 8:45 am]

BILLING CODE 4410–09–M

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## DEPARTMENT OF JUSTICE

### Drug Enforcement Administration

### Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 10, 2000, Sigma Chemical Company, Subsidiary of Sigma-Aldrich Company, 3500 Dekalb Street, St. Louis, Missouri 63118, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

| Drug | Schedule |
|---|---|
| Cathinone (1235) | I |
| Methcathinone (1237) | I |
| Aminorex (1585) | I |
| Methaqualone (2565) | I |
| Ibogaine (7260) | I |
| Lysergic acid diethylamide (7315) | I |
| Marihuana (7360) | I |
| Tetrahydrocannabinols (7370) | I |
| Mescaline (7381) | I |
| 4-Bromo-2, 5-dimethoxyamphetamine (7391). | I |
| 4-Bromo-2, 5-dimethoxyphenethylamine (7392). | I |
| 2, 5-Dimethoxyamphetamine (7396) | I |
| 3, 4-Methylenedioxyamphetamine (7400). | I |
| N-Hydroxy-3, 4-methylenedioxyamphetamine (7402). | I |
| 3, 4-Methylenedioxy-N-ethylamphetamine (7404). | I |
| 3, 4-Methylenedioxymethamphetamine (7405). | I |
| 4-Methoxyamphetamine (7411) | I |
| Bufotenine (7433) | I |
| Psilocyn (7438) | I |
| Heroin (9200) | I |
| Normorphine (9313) | I |
| Etonitazene (9624) | I |
| Amphetamine (1100) | II |
| Methamphetamine (1105) | II |
| Methylphenidate (1724) | II |
| Amobarbital (2125) | II |
| Pentobarbital (2270). | |
| Secobarbital (2315 | II |
| Glutethimide (2550) | II |
| Phencyclidine (7471) | II |
| Cocaine (9041) | II |
| Codeine (9050) | II |
| Diprenorphine (9058) | II |
| Oxycodone (9143) | II |
| Hydromorphone (9150) | II |
| Benzoylecgonine (9180) | II |
| Ethylmorphine (9190) | II |
| Hydrocodone (9193) | II |
| Levorphanol (9220) | II |
| Meperidine (9230) | II |
| Methadone (9250) | II |
| Dextropropoxyphene, bulk (non-dosage forms) (9273). | II |
| Morphine (9300) | II |
| Thebaine (9333) | II |
| Opium powdered (9639) | II |
| Oxymorphone (9652) | II |
| Fentanyl (9801) | II |

The firm plans to repackage and offer as pure standards controlled substances in small milligram quantities for drug testing and analysis.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 22, 2000.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 25, 2000.

**John H. King,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 00–12843 Filed 5–22–00; 8:45 am]

BILLING CODE 4410–09–M

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**DEPARTMENT OF JUSTICE**

**Immigration and Naturalization Service**

**[INS No. 2066–00; AG Order No. 2305–2000]**

**RIN 1115–AE26**

## Termination of the Province of Kosovo in the Republic of Serbia in the State of the Federal Republic of Yugoslavia (Serbia-Montenegro) Under the Temporary Protected Status Program

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Notice.

**SUMMARY:** The Attorney General's designation of the Province of Kosovo in the Republic of Serbia in the State of the Federal Republic of Yugoslavia (Serbia-Montenegro) (the "Kosovo Province") under the Temporary Protected Status (TPS) program expires on June 8, 2000. After reviewing county conditions and consulting with the appropriate Government agencies, the Attorney General has determined that conditions in the Kosovo Province no longer qualify for TPS designation. However, because this determination was not made at least 60 days before the expiration date, the designation of the Kosovo Province for TPS is automatically extended for a period of 6 months, until December 8, 2000. The termination of the TPS designation of the Kosovo Province will therefore take effect on December 8, 2000. After that date, aliens who are nationals of the Kosovo Province (and aliens having no nationality who last habitually resided in the Kosovo Province) who have had TPS under the Kosovo Province designation will no longer possess such status. This notice contains information regarding the 6-month extension and subsequent termination of the TPS designation for the Kosovo Province.

**DATES:** The termination of the TPS designation for the Kosovo Province is extended until December 8, 2000. On December 8, 2000, the TPS designation for the Kosovo Province will be terminated.

**FOR FURTHER INFORMATION CONTACT:** Michael Valverde, Adjudications Officer, Office of Adjudications, Residence and Status Branch, Immigration and Naturalization Service, Room 3040, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

**SUPPLEMENTARY INFORMATION:**

### What Is the Statutory Authority for the Designation and Termination of TPS?

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Attorney General is authorized to designate a foreign state (or past of a state) for TPS. The Attorney General may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). Section 244(b)(3)(A) of the Act requires the Attorney General to review, at least 60 days before the end of the period of TPS designation, the conditions in a foreign state designated under section 244(b)(1) of the Act. 8 U.S.C. 1254a(b)(3)(A).

Section 244(b)(3) of the Act further requires the Attorney General to determine whether the conditions for such a designation continue to be met and to terminate the state's designation when the Attorney General determines the conditions are no longer met. 8 U.S.C. 1254a(b)(3)(B). The Attorney General must then publish a notice of termination in the **Federal Register**. If the Attorney General fails to make the determination required by section 244(b)(3)(A) of the Act at least 60 days before the end of the period of designation, then the designation is automatically extended for an additional period of 6 months. 8 U.S.C. 1254a(b)(3)(C).

### Why Did the Attorney General Decide To Terminate TPS for the Kosovo Province?

On June 8, 1999, the Attorney General published a notice redesignating the Kosovo Province for TPS for a period of 1 year, based upon conditions in the Kosovo Province at that time. 64 FR 30542 (June 8, 1999). That TPS designation is scheduled to expire on June 8, 2000.

Based upon a more recent review of conditions within the Kosovo Province by the Departments of Justice and State, the Attorney General finds that conditions in the Kosovo Province no longer support a TPS designation. A Department of State memorandum concerning the Kosovo Province states that "[a]lthough conditions remain difficult with bursts of ethnically-motivated violence, the situation in Kosovo cannot now be classified as 'ongoing internal conflict.' Outright fighting ended in June 1999 with the withdrawal of the Yugoslav army." The memorandum also states that "[t]he United Nations High Commissioner for Refugees has determined that Kosovar Albanians, who constitute the majority of the Kosovo population, can now return to Kosovo in safety to all areas of Kosovo except the Serb-dominated Mitrovica and certain areas in Eastern Kosovo. In addition, the vast majority of those who fled Kosovo during the conflict returned during the summer and fall of 1999, shortly after the end of the international military presence (KFOR)."

Based on these findings, the Attorney General has decided to terminate the designation of the Kosovo Province for TPS. However, because the Attorney General did not make this determination at least 60 days before the end of the current designation, the designation is automatically extended pursuant to section 244(b)(3)(A) of the Act for an additional 6 months. The termination will therefore take effect at the end of the 6-month extension.

### If I Currently Have TPS, How Do I Register for the 6-Month Extension?

Persons previously granted TPS under the Kosovo Province program may apply for the 6-month extension by filing the Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins May 23, 2000 and ends June 22, 2000. Additionally, those applying must file the Form I–765, Application for Employment Authorization. See the chart below to determine whether or not you must submit the $100 filing fee with the Form I–765.

| If | Then |
|---|---|
| You are applying for employment authorization through December 8, 2000. | You must complete and file the Form I–765, Application for Employment Authorization, with the $100 fee. |
| You already have employment authorization or do not require employment authorization. | You must complete and file the Form I–765 with no fee. |
| You are applying for employment authorization and are requesting a fee waiver. | You must complete and file the Form I–765 and a fee waiver request and requisite affidavit (and any other information) in accordance with 8 CFR 244.20. |

To re-register for TPS, you must also include two identification photographs (1½″ x 1½″).

**Is Late Initial Registration Possible?**

Yes, in addition to timely re-registration, late initial registration is possible for some persons from the Kosovo Province under 8 CFR 244.2(f)(2).

**What Are the Requirements for Late Initial Registration?**

To apply for late initial registration an applicant must:

- Be a national of the Kosovo Province (or a person who has no nationality and who last habitually resided in the Kosovo Province);
- Have been continuously physically present in the United States since June 8, 1999;
- Have continuously resided in the United States since June 8, 1999; and
- Be admissible as an immigrant, except as otherwise provided under section 244(c)(2)(A) of the Act.
- Additionally, the applicant for late initial registration must be able to demonstrate that, during the initial registration period, he or she:
- Was a nonimmigrant, or was granted voluntary departure or any relief from removal;
- Had an application for change of status, adjustment of status, or any relief from removal pending or subject to further review; or
- Was a parolee or had a pending request for reparole; or
- That the applicant is currently the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must register no later than 60 days from the expiration or termination of the qualifying condition. 8 CFR 244.2(g).

**Where Should I File for an Extension of TPS?**

You may register for the extension of TPS by submitting an application and accompanying materials to the Immigration and Naturalization Service's local office that has jurisdiction over your place of residence.

**When Can I File for an Extension of TPS?**

The 30-day re-registration period begins May 23, 2000, and will remain in effect until June 22, 2000.

**What Can I Do If I Feel That My Return to the Kosovo Province Is Unsafe?**

There may be other avenues of immigration relief available to aliens who are nationals of the Kosovo Province (and aliens having no nationality who last habitually resided in the Kosovo Province) in the United States who believe that their particular circumstances make return to the Kosovo Province unsafe. Such avenues may include, but are not limited to, asylum or withholding of removal.

**How Does the Termination of TPS Affect Former TPS Beneficiaries?**

After the designation of the Kosovo Province for TPS is terminated on December 8, 2000, those aliens who are nationals of the Kosovo Province (and aliens having no nationality who last habitually resided in the Kosovo Province) will revert back to the immigration status they had prior to TPS, unless they have been granted another immigration status. The stay of removal and eligibility for employment authorization due to the designation of the Kosovo Province under the TPS program will no longer be available. However, the termination of the TPS designation for the Kosovo Province will not affect any pending applications for other forms of immigration relief.

Those persons who received TPS under the Kosovo Province designation may being accruing periods of unlawful presence as of December 8, 2000, if they have not been granted any other immigration benefit or have no application for such a benefit pending. Aliens who accrue certain periods of unlawful presence in the United States may be barred from admission to the United States under section 212(a)(9)(B)(i) of the Act. See 8 U.S.C. 1182(a)(9)(B)(i).

**Notice of 6-Month Extension and Termination of Designation of Kosovo Province Under the TPS Program**

By the authority vested in me as Attorney General under section 244(b)(3) of the Act, I have consulted with the appropriate agencies of Government concerning conflict and security conditions in the Kosovo Province. 8 U.S.C. 1254a(b)(3). Based on these consultations, I have determined that the Kosovo Province no longer meets the conditions for designation of TPS under section 244(b)(1) of the Act. See 8 U.S.C. 1254a(b)(1).

Since June 10, 1999, when Serb forces withdrew from northern Kosovo and the North Atlantic Treaty Organization suspended its airstrikes, the Kosovo Province has been relatively peaceful, with the exception of occasional isolated outbreaks of violence. An international police force has assumed law enforcement duties and began recruiting Kosovars for local police forces.

I also understand that, although the Kosovo Province is still rebuilding from the war, the return of persons to the Kosovo Province would not result in a danger to their personal safety. The United Nations (UN) is planning to phase out its relief efforts and begin concentrating on rebuilding housing by mid-year. The UN also plans to end its emergency shelter program. Since summer 1999, nearly 90 percent of the over 850,000 ethnic Albanians who fled the Kosovo Province have returned, including over 3,000 from the United States. In view of the recommendations of the Departments of Justice and State for termination, I terminate the designation of the Kosovo Province under the TPS program. However, because I did not make this determination at least 60 days before the expiration of the designation, the designation is automatically extended for 6 months, until December 8, 2000.

Accordingly, I order as follows:

(1) The designation of the Kosovo Province for TPS under section 244(b)(1) of the Act is terminated effective December 8, 2000.

(2) I estimate that there are no more than 1,000 nationals of the Kosovo Province (and aliens having no nationality who last habitually resided in the Kosovo Province) who have been previously granted TPS.

(3) Information concerning the termination of the TPS program for nationals of the Kosovo Province (and aliens having no nationality who last habitually resided in the Kosovo Province) will be available at local Immigration and Naturalization Service (INS) offices upon publication of this notice or at the INS website, http://www.ins.usdoj.gov.

Dated: May 16, 2000.

**Janet Reno,**

*Attorney General.*

[FR Doc. 00–12856 Filed 5–22–00; 8:45 am]

BILLING CODE 4410–10–M

## DEPARTMENT OF JUSTICE

### Bureau of Prisons

### Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS) for development of a medium-security or high-security federal correctional facility in Fresno County, California.

**AGENCY:** Bureau of Prisons, Department of Justice.

**ACTION:** Notice of intent to prepare a draft environmental impact statement (DEIS).

**SUMMARY**

**Proposed Action**

The mission of the United States Department of Justice, Federal Bureau of Prisons (Bureau) is to protect society by confining offenders in the controlled environments of prison and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. The Bureau accomplishes its mission through the appropriate use of community correction, detention, and correctional facilities that are either: Federally-owned and operated; Federally-owned and non-Federally operated; and non-Federally owned and operated.

The Bureau is facing a period of unprecedented growth in its inmate population. Projections show the federal inmate population increasing from approximately 120,000 inmates to 205,000 inmates by 2007. As such, the demand for bedspace within the federal prison system will continue to grow at a significant rate. To accommodate a portion of the growing inmate population, the Bureau has determined that an additional medium-security Federal Correctional Institution (FCI) or a high-security United States Penitentiary (USP) is needed in its system. Therefore, the Bureau is proposing to build and operate a medium-security FCI or high-security USP, with an adjacent minimum-security satellite camp, in Fresno County, California. The main medium-security facility would provide habitation for approximately 1,200 inmates, and a high-security USP would provide habitation for approximately 1,000 inmates. An additional 150–300 inmates will be housed (at the USP or FCI) in an adjacent minimum-security satellite camp.

Several sites in Fresno County, California have been offered to the Bureau for consideration in developing a medium-security FCI or high-security USP and satellite camp. The Bureau has preliminarily evaluated these sites and determined that the prospective sites appear to be of sufficient size to provide space for housing, programs, administrative services and other support facilities associated with the correctional facility. The DEIS to be prepared by the Bureau will analyze the potential impacts of correctional facility construction and operation at these sites.

**The Process**

In the process of evaluating the sites, several aspects will receive detailed examination including, but are not limited to: topography, geology/soils, hydrology, biological resources, utility services, transportation services, cultural resources, land uses, socio-economics, hazardous materials, air and noise quality, among others.

**Alternatives**

In developing the DEIS, the options of "no action" and "alternative sites" for the proposed facility will be fully and thoroughly examined.

**Scoping Process**

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. A public Scoping Meeting will be held at 7:00 p.m., Tuesday, June 13, 2000 at the Victor P. Lopez Rural Development Job Training Center located at 1705 Archor Avenue, Orange Cove, California. There will also be a public Scoping Meeting held at 7:00 p.m., Wednesday, June 14, 2000, at the Mendota High School, located at 1200 Belmont Avenue in Mendota, California. The meeting locations, date, and time will be well publicized and has been arranged to allow for the public as well as interested agencies and organizations to attend. The meetings are being held to allow interested persons to formally express their views on the scope and significant issues to be studied as part of the DEIS process. The Scoping Meeting is being held to provide for timely public comments and understanding of federal plans and programs with possible environmental consequences as required by the National Environmental Policy Act of 1969, as amended, and the National Historic Preservation Act of 1966, as amended. In addition, public information meetings will continue to be held in Fresno County by representatives of the Bureau with interested citizens, elected officials, and community leaders.

**DEIS Preparation**

Public notice will be given concerning the availability of the DEIS for public review and comment.

Addresses:

Questions concerning the proposed action and the DEIS may be directed to: David J. Dorworth, Chief, Site Selection and Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Telephone (202) 514–6470, Telefacsimile (202) 616–6024, E-Mail: siteselection@bop.gov.

Dated: May 17, 2000.

**David J. Dorworth, Chief,**

*Site Selection and Environmental Review Branch.*

[FR Doc. 00–12869 Filed 5–22–00; 8:45 am]

**BILLING CODE 4410–05–U**

## DEPARTMENT OF LABOR

### Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

*Date, time and place:* June 15, 2000, 10 am, U.S. Department of Labor, N–3437 C&D, 200 Constitution Ave., NW, Washington, D.C. 20210.

*Purpose:* The meeting will include a review and discussion of current issues which influence U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

**FOR FURTHER INFORMATION CONTACT:** Jorge Perez-Lopez, Director, Office of International Economic Affairs, Phone: (202) 219–7597.

Signed at Washington, DC this 15th day of May 2000.

**Andrew James Samet,**

*Deputy Under Secretary, International Affairs.*

[FR Doc. 00–12937 Filed 5–22–00; 8:45 am]

**BILLING CODE 4510–28–M**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Workforce Investment Act: Indian and Native American Programs Under Section 166

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice of proposed data collection.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation process to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This process helps to ensure that requested data can be provided in the desired format, reporting burdens are minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA), in consultation with the Native American Employment and Training Council, is soliciting comments concerning the proposed institution of a "reporting and performance standards system for Indian and Native American programs under title I, section 166 of the Workforce Investment Act (WIA)". A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the address section of this notice.

**DATES:** Written comments must be submitted to the office listed in the addressee section below on or before July 24, 2000.

**ADDRESSES:** James C. DeLuca, Chief, Division of Indian and Native American Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219–8502 ext 119(VOICE) or (202) 219–6338(FAX) (these are not toll-free numbers) or INTERNET: jdeluca@doleta.gov.

**FOR FURTHER INFORMATION CONTACT:** Copies of the information collection request are available for inspection in the Division of Indian and Native American Programs at the above address, and will be mailed to persons who request copies in writing from James C. DeLuca at the above address.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Employment and Training Administration of the Department of Labor, in consultation with the Native American Employment and Training Council, is requesting approval of a new reporting and performance standards system for Workforce Investment Act (WIA) title I, section 166 Indian and Native American grantees for three program years (July 1, 2000 to June 30, 2003). In evaluating the last several years' reporting experience of the grantees who receive funding under JTPA section 401, including title II–B Summer Youth funds, and in light of the statutory requirements of WIA applicable to section 166 grantees, the Department has developed the following recommended reporting requirements which it believes supports the statutory requirements under WIA as they relate to the Indian and Native American Program.

## II. Desired Focus of Comments

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's burden estimate for the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

## III. Current Action

This proposed ICR will be used by approximately 150 Workforce Investment Act (WIA) section 166 grantees as the primary reporting and performance measurement vehicle for enrolled individuals, their characteristics, training and services provided, outcomes, including job placement and employability enhancements, as well as detailed financial data on program expenditures. Grantees participating in the demonstration under Public Law 102–477 will not be affected by this collection, and have not been included in the following burden estimates.

*Type of Review:* New.

*Agency:* Employment and Training Administration.

*Title:* Reporting and performance system for WIA title I, section 166 Indian and Native American grantees.

*OMB Number:* 1205–0NEW.

*Catalog of Federal Domestic Assistance Number:* 17.251 (this would replace similar Indian and Native American employment and training activities conducted under section 401 of the Job Training Partnership Act)

*Record Keeping:* Grantees shall retain supporting and other documents necessary for the compilation and submission of the subject reports for three years after submission of the final financial report for the grant in question [29 CFR 97.42 and/or 29 CFR 95.53].

*Affected Public:* Federally-recognized Indian tribes, bands, and groups; Alaska Native entities; Hawaiian Native entities; private non-profit Indian-controlled organizations; State Indian Commissions or Councils (Native American-controlled); consortia of any and/or all of the above.

*Cite/Reference/Form/etc.:* The collection instrument is the Indian and Native American Reporting and Performance System and related instructions. OMB-approved forms are provided for use in gathering information at the grantee field office level.

*Total Respondents:* 150.

*Frequency:* Quarterly for financial information; Semi-annually and annually for participation and characteristics information (for both the Comprehensive and Supplemental Youth Services programs).

*Total Responses:* 900 [For the Comprehensive Services program] (150 times 2, plus 150 times 4—possibly more) There are four statutorily-required quarterly financial status reports per grantee per year, by year of appropriation. For participation and characteristics information, there is one semi-annual and one annual submission per year, regardless of the year(s) of funding expended during the program year. There is only one format for the participation and characteristics report.

*Total Responses:* 690 [For the Supplemental Youth Services program] (115 recipients of Supplemental Youth Services funds times 2, 115 times four—possibly more). There are four statutorily-required quarterly financial status reports per grantee per year, by year of appropriation. For participation and characteristics information, there is one semi-annual and one annual submission per year, regardless of the year(s) of funding expended during the program year. There is only one format for the participation and characteristics report.

*Average Time per Response:* Financial Status Report (FSR)—7.75 hours; [ETA 9083] Participation and Characteristics Report (PCR)-for the Comprehensive Services Program—9.67 hours; [ETA 9084] Participation and Characteristics Report (PCR) for the Supplemental Youth Services Program—9.67 hours [ETA 9085] The individual time per

response varies widely depending on the degree of automation attained by individual grantees. Grantees also vary according to the numbers of individuals served in each program year. If the grantee has a fully-developed and automated MIS, the response time is limited to one-time programming plus processing time for each response. It is the Department's desire to see as many WIA section 166 grantees as possible become computerized, so that response time for reporting will eventually sift down to an irreducible minimum with an absolute minimum of human intervention.

*Estimated Total Burden Hours:* 13,340 (minimum)—1,590 total responses. (FSR: 1,060 responses times 7.75 hours = 8,215 burden hours). (PCR: 530 responses times 9.67 hours = 5,125 burden hours). The total of these two estimates yields a total estimate of at least 13,340 total burden hours per response cycle (one program year). The use of the term "minimum" refers to the fact that an individual grantee must continue to report on expenditures by year of appropriation until those funds are completely expended, or "zeroed out". Thus, if more that one year's appropriation is expended in a given quarter, two (or more) FSRs must be submitted for that period, corresponding to the fund source(s) utilized.

*Total Burden Cost (capital/startup):* $-0-.

*Total Burden Cost (operating/maintaining):* $200,100 (13,340 total hours per response cycle times an estimated average wage of $15.00 per grantee staff hour). As noted, these costs will vary widely among grantees, from nearly no additional cost to some higher figure, depending on the state of automation attained by each grantee and the wages paid to the staff actually completing the various forms. All costs associated with the submission of these forms are allowable grant expenses.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 17th day of May, 2000.

**Thomas M. Dowd,**

*Acting Director, Office of National Programs.*

[FR Doc. 00–12936 Filed 5–22–00; 8:45 am]

BILLING CODE 4510–30–U

## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Application No. D–10624, et al.]**

### Proposed Exemptions; The Banc Funds Company, LLC (TBFC)

**AGENCY:** Pension and Welfare Benefits Administration, Labor

**ACTION:** Notice of proposed exemptions.

**SUMMARY:** This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

### Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

**ADDRESSES:** All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. ____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC 20210.

### Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

**SUPPLEMENTARY INFORMATION:** The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

### The Banc Funds Company, LLC (TBFC), Located in Chicago, IL

[Application No. D–10624]

### Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990.) [1]

*Section I. Covered Transactions*

If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to (1) the purchase or redemption of interests in the Banc Fund V, L.P. (the Partnership) by employee benefit plans (the Plans) investing in the Banc Fund V Group Trust (the BF V Group Trust), where TBFC, a party in interest with respect to the Plans, is the general partner of MidBanc V, L.P. (MidBanc V), which is, in turn, the general partner (the General Partner) of the Partnership; (2) the sale,

[1] For purposes of this proposed exemption, references to the provisions of Title I of the Act, unless otherwise specified, refer also to corresponding provisions of the Code.

for cash or other consideration, by the Partnership of certain securities that are held as Partnership assets to a party in interest with respect to a Plan participating in the Partnership through the BF V Group Trust, where the party in interest proposes to acquire or merge with the portfolio company (the Portfolio Company) that issued such securities; and (3) the payment to the General Partner, by Plans participating in the Partnership through the BF V Group Trust, of an incentive fee (the Performance Fee) which is intended to reward the General Partner for the superior performance of investments in the Partnership.

This proposed exemption is subject to the following conditions as set forth below in Section II.

*Section II. General Conditions*

(a) Prior to a Plan's investment in the BF V Group Trust and the Partnership, a Plan fiduciary which is independent of TBFC and its affiliates (the Independent Fiduciary) approves such investments on behalf of the Plan.

(b) Each Plan investing in the BF V Group Trust and the Partnership has total assets that are in excess of $50 million.

(c) No Plan may invest more than 10 percent of its assets in the BF V Group Trust, and the interests held by the Plan may not exceed 25 percent of the assets of the BF V Group Trust.

(d) No Plan may invest more than 25 percent of its assets in investment vehicles (*i.e.*, collective investment funds or separate accounts) managed or sponsored by TBFC and/or its affiliates.

(e) Prior to investing in the BF V Group Trust and the Partnership, each Independent Fiduciary contemplating investing therein receives a Private Placement Memorandum and its supplement containing descriptions of all material facts concerning the purpose, structure and the operation of the BF V Group Trust and the Partnership.

(f) An Independent Fiduciary which expresses further interest in the BF V Group Trust and Partnership receives —

(1) A copy of the BF V Group Trust Agreement outlining the organizational principles, investment objectives and administration of the BF V Group Trust, the manner in which shares in the Group Trust may be redeemed, the duties of the parties retained to administer the BF V Group Trust and the manner in which BF V Group Trust shares are to be valued; and

(2) A copy of the Partnership Agreement describing the organizational principles, investment objective and administration of the Partnership, the manner in which the Partnership interests may be redeemed, the manner in which Partnership assets are to be valued, the duties and responsibilities of the General Partner, the rate of remuneration of the General Partner, and the conditions under which the General Partner may be removed.

(g) If accepted as an investor in the BF V Group Trust and the Partnership, the Independent Fiduciary is—

(1) Furnished with the names and addresses of all other participating Plan and non-Plan investors in the Partnership;

(2) Required to acknowledge, in writing, prior to purchasing a beneficial interest in the BF V Group Trust (and a corresponding limited partnership interest in the Partnership) that such Independent Fiduciary has received copies of such documents; and

(3) Required to acknowledge, in writing, to the General Partner that such fiduciary is independent of TBFC and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF V Group Trust and the Partnership.

(h) Each Plan, including the trustee (the Trustee) of the BF V Group Trust, receives the following written disclosures from the General Partner with respect to its ongoing participation in the BF V Group Trust and the Partnership:

(1) Within 90 days after the end of each fiscal year of the BF V Group Trust as well as at the time of termination, an annual financial report containing a balance sheet for the BF V Group Trust and the Partnership as of the end of such fiscal year and a statement of changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual reports will also disclose the remuneration that has accrued or is paid to the General Partner.

(2) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the Partnership and the BF V Group Trust, an unaudited quarterly financial report consisting of at least a balance sheet for the Partnership and the BF V Group Trust as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the remuneration that is actually paid or accrued to the General Partner.

(3) Such other written information as may be needed by the Plans (including copies of the proposed exemption and grant notice describing the exemptive relief provided herein).

(i) At least annually, the General Partner will hold a meeting of the Partnership, at which time, the Independent Fiduciaries of the participating Plans will have the opportunity to decide on whether the Partnership, the BF V Group Trust, the Trustee or the General Partner should be terminated as well discuss any aspect of the Partnership, the BF V Group Trust and the agreements promulgated thereunder with the General Partner.

(j) During each year of the BF V Group Trust and the Partnership, representatives of the General Partner will be available to confer by telephone or in person with independent Plan fiduciaries to discuss matters concerning the BF V Group Trust or the Partnership.

(k) The terms of all transactions that are entered into on behalf of the Partnership remain at least as favorable to a Plan investing in the BF V Group Trust as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets in the Partnership that is done in connection with the distribution of any part of the General Partner's Performance Fee will be based upon independent market quotations or (where the same are unavailable) determinations made by an independent appraiser (the Independent Appraiser).

(l) In the case of the sale by the Partnership of Portfolio Company securities to a party in interest with respect to a participating Plan that occurs in connection with the acquisition of a Portfolio Company represented in the Partnership's portfolio (the Portfolio), the party in interest may not be the General Partner, TBFC, any employer of a participating Plan, or any affiliated thereof, and the Partnership receives the same terms as is offered to other shareholders of a Portfolio Company.

(m) As to each Plan, the total fees paid to the General Partner and its affiliates constitute no more than "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

(n) Any increase in the General Partner's Performance Fee is based upon a predetermined percentage of net realized gains minus net unrealized losses determined annually between the date the first contribution is made to the Partnership until the time the Partnership disposes of its last investment. In this regard—

(1) Except as provided below in Section II(o), no part of the General Partner's Performance Fee may be

withdrawn before December 31, 2006, which represents the end of the Acquisition Phase (the Acquisition Phase) for the Partnership, and not until the BF V Group Trust has received distributions equal to 100 percent of its capital contributions made to the Partnership.

(2) Prior to the termination of the Partnership, no more than 75 percent of the Performance Fee credited to the General Partner may be withdrawn by the Partnership.

(3) The debit account established for the General Partner to calculate the Performance Fee (the Performance Fee Account) is credited annually with a predetermined percentage of net realized gains minus net unrealized losses, minus Performance Fee distributions.

(4) No portion of the Performance Fee may be withdrawn if the Performance Fee Account is in a deficit position.

(5) The General Partner repays all deficits in its Performance Fee Account and it maintains a 25 percent cushion in such account prior to receiving any further distribution.

(o) During the Acquisition Phase of the Partnership only,

(1) The General Partner is entitled to take distributions with respect to the Performance Fee in the amount of any income tax liability it or its affiliates become subject to with respect to net capital gains of the Partnership, provided such gains are based upon the sale of Portfolio Company securities that is initiated by a third party in connection with a merger, tender offer or acquisition, and does not involve the exercise of discretion by the General Partner.

(2) The tax distributions are deducted from the Performance Fee.

(3) The General Partner repays to the Partnership any tax refund received to the extent a distribution has been made to such General Partner.

(4) The General Partner provides the Trustee and the Plans with an annual report and accounting of all distributions and repayments attributable to income taxation of the General Partner and its affiliates, including written evidence that the distributions have been utilized exclusively to pay the income tax liability.

(p) The General Partner maintains, for a period of six years, the records necessary to enable the persons described in paragraph (q) of this Section II to determine whether the conditions of this exemption have been met, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the General Partner, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest other than the General Partner shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (q) below.

(q)(1) Except as provided in section (q)(2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (p) of this Section II shall be unconditionally available at their customary location during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service (the Service);

(B) Any Independent Fiduciary of a participating Plan or any duly authorized representative of such Independent Fiduciary;

(C) Any contributing employer to any participating Plan or any duly authorized employee representative of such employer; and

(D) Any participant or beneficiary of any participating Plan, or any duly authorized representative of such participant or beneficiary.

(2) None of the persons described above in subparagraphs (B)–(D) of this paragraph shall be authorized to examine the trade secrets of the General Partner or TBFC or commercial or financial information which is privileged or confidential.

**Section III. Definitions**

For purposes of this proposed exemption,

(a) The term "TBFC" means The Banc Funds Company and any affiliate of TBFC as defined in paragraph (b) of Section III.

(b) An "affiliate" of TBFC includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with TBFC.

(2) Any officer, director or partner in such person, and

(3) Any corporation or partnership of which such person is an officer, director or a 5 percent partner or owner.

(c) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(d) An "Independent Fiduciary" is a Plan fiduciary which is independent of TBFC and its affiliates and is either a Plan administrator, trustee, named fiduciary, as the recordholder of beneficial Interests in the BF V Group Trust or an investment manager.

(e) The term "Portfolio Companies" include commercial banks and other depository institutions such as savings banks, savings and loan associations, holding companies controlling those entities (together, the Bank Companies), and companies providing financial services in the United States, which include, but are not limited to, consumer finance companies and demutualizing life insurance companies (together, the Financial Services Companies).

(f) The term "net realized gains" refers to the excess of realized gains over realized losses.

(g) The term "net realized losses" refers to the excess of realized losses over realized gains.

(h) The term "net unrealized losses" refer to the excess of unrealized losses over unrealized gains.

(i) The term "net unrealized gains" refers to the excess of unrealized gains over unrealized losses. For a gain or loss to be "realized," an asset of the Partnership must be sold for more than or less than its acquisition price. For a gain or loss to be "unrealized," the Partnership asset must increase or decrease in value but not be sold.

**Preamble**

On September 22, 1993, the Department granted PTE 93–63 (58 FR 49322), a temporary exemption which is effective for a period of eight years from the date of the grant. PTE 93–63 permits a series of transactions relating to the (a) sale by the Bank Fund III Group Trust (the BF III Group Trust) in which Plans invest, of certain securities which have been issued by Bank Companies and are held in the BF III Group Trust's portfolio, to a party in interest with respect to a Plan, where the party in interest proposes to acquire or merge with the Bank Company that issued such securities. In addition, PTE 93–63 permits the BF III Group Trust to purchase Bank Company securities from the Midwest Bank Fund I Limited Partnership (MBF I LP) and the Midwest Bank Fund II, Limited Partnership (MBF II LP), two entities organized by The Chicago Corporation (TCC), the company from which TBFC was spun off. Further, PTE 93–63, allows Plans investing in the BF III Group Trust to pay a performance fee to TCC.

On March 5, 1997, the Department granted PTE 97–15 at 62 FR 10078. PTE 97–15 permits Midwest Banc Fund IV Group Trust (the BF IV Group Trust) in

which Plans invest, to sell certain securities that are held in the BF IV Group Trust Portfolio to a party in interest with respect to a participating Plan, where the party in interest proposes to acquire or merge with a bank company or a financial services company. In addition, PTE 97–15 permits TCC to receive a Performance Fee from Plans investing in the BF IV Group Trust.[2]

The pooled investment vehicle that is described herein is similar to four investment funds that were organized by TCC in 1986, 1989, 1993 and 1996 and described in PTEs 93–63 and 97–17. These four vehicles have been operated by TCC, and since April 30, 1997, the date TBFC was spun-off from TCC, by TBFC.

**Summary of Facts and Representations**

1. TBFC is a Chicago, Illinois-based investment advisory firm founded in 1997 as a spin-off from, and by the individuals who managed the financial services company advisory division of TCC.[3] TBFC is a registered investment adviser under the Investment Advisers Act of 1940, as amended, and it has a single line of business. TBFC currently provides institutional investors with investment management services through BF III and BF IV and it acts as a fiduciary with respect to these clients. TBFC currently manages $81 million in assets of plans that are covered under the Act, $129 million in the assets of governmental plans and $65 million in non-Plan assets.

TBFC's relevant specialty is its expertise in the banking industry. In this regard, TBFC employees provide management, investment and capital formation services to collective investment vehicles which invest in commercial banks and other financial institutions and expend significant resources to research specific financial institutions.

As described below, TBFC requests an administrative exemption from the Department with respect to the purchase or redemption of interests in the Partnership by Plans investing in the BF V Group Trust, where TBFC, a party in interest with respect to such Plans, is the general partner of MidBanc V, which is, in turn, the General Partner of the Partnership. In addition, TBFC requests exemptive relief to permit the sale, for cash or other consideration, by the Partnership of certain securities that are held as Partnership assets to a party in interest with respect to a Plan participating in the Partnership through the BF V Group Trust, where the party in interest proposes to acquire or merge with the Portfolio Company that issued such securities. Further, TBFC requests that the exemption apply to the General Partner's receipt of a Performance Fee from the Partnership that is based upon a debit account structure (*i.e.*, the Performance Fee Account) which will keep track of the General Partner's compensation for managing the Partnership but will not represent actual dollars that are reserved or set aside for the General Partner.

The BF V Group Trust is intended to be a "pooled fund" as that term is defined in 29 CFR 2570.31(g) and a "group trust" as that term is defined in Rev. Rul. 81–100, 1981–1 C.B. 326. All investors that are beneficiaries of the BF V Group Trust must evidence the following characteristics in order to acquire beneficial interests: (a) Each investor must commit to making at least $1 million in initial capital contributions; (b) each investor must be a Plan; (c) each Plan must have at least $50 million in assets; (d) each Plan must agree to incorporate the terms of the Group Trust Agreement into its own trust agreement; (e) no Plan may invest more than 10 percent of its assets in interests in the BF V Group Trust and such interests held by a Plan may not exceed 25 percent of the BF V Group Trust; and (f) no Plan may subscribe for beneficial interests which, when aggregated with all other Plan assets that are subject to investment funds or separate accounts managed by TBFC and/or its affiliates, is valued in excess of 25 percent of such Plan's net assets. The BF V Group Trust will not be organized unless $25 million in capital contribution commitments are subscribed for by investors in such Group Trust and the Partnership described below.

3. The trustee (the Trustee) of the BF V Group Trust will be Citibank, F.S.B. Although TBFC may have and may have had business relationships with the Trustee, there will be no control relationship or ownership affiliation between TBFC and the Trustee. The Trustee will be responsible for monitoring the Trust's investment in the Partnership and for policing TBFC's adherence to the provisions of the Partnership Agreement. In addition, the Trustee will serve as custodian for the Partnership.

For services rendered, the Partnership will pay the Trustee (a) an annual base fee of $1,500; (b) a custodial fee based upon the market value of the Partnership at the beginning of each quarter (*e.g.*, 0.02 percent annually of the first $100 million, 0.01 percent annually of any amount over $100 million, and 0.005 percent annually of any amount over $200 million); (c) a transaction fee of $12 per purchase or sale and (d) a disbursement fee of $8 per payment of funds. No charges will be levied for income collection, item storage, statement preparation or other transactions.

In accordance with the provisions of the Trust Agreement, the Trustee may be removed by a vote of Plans holding a majority of beneficial interests in the BF V Group Trust, provided such Plans give the Trustee 30 days' advance written notice of their intent to terminate the Trustee. The Trustee may resign at any time by giving 30 days prior written notice to TBFC for transmittal to the Plans.

4. Approximately 5–10 Plans may invest in the BF V Group Trust. However, no Plan may invest more than 25 percent of its assets in the BF V Group Trust and every other pooled investment vehicle sponsored by TBFC, as measured on the date of such investment.[4] Each Participating Plan must invest a minimum of $1 million in the BF V Group Trust. Further, no Plan benefitting employees of TBFC or the Trustee will be permitted to invest in the BF V Group Trust.[5]

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[2] In 1986, TCC organized the MBF I LP. The general partners of MBF I LP were two partnerships (MidBanc I and MidBanc II), whose general partners were corporate affiliates of TCC and whose limited partners were members of TCC's staff. Less than 25 percent of the assets of MBF I LP were provided by Plans. On December 31, 1994, MBF I LP was liquidated.

In 1989, TCC organized the MBF II LP. This partnership had the same general partners as MBF I LP. Also, less than 25 percent of the assets of MBF II LP were provided by Plans. On December 31, 1997, MBF II LP was liquidated.

Finally, in 1993, TCC completed the organization of BF III which was structured as both a limited partnership (the BF III Partnership) and a group trust (the BF III Group Trust).

In 1996, TCC organized BF IV as a limited partnership (the BF IV Limited Partnership) and as a group trust (the BF IV Group Trust). Each entity has or had investment policies and strategies similar to the proposed investment vehicle (*i.e.*, the Partnership).

[3] During 1997, TCC's parent was acquired by ABN AMRO North America, Inc., a subsidiary of ABN AMRO Bank N.V., a global bank headquartered in the Netherlands. The acquisition did not involve the purchase of the assets of TCC's parent and TCC retains its separate corporate identity.

[4] The Department is not proposing, nor is TBFC requesting, exemptive relief for the purchase and sale of beneficial interests in the BF V Group Trust between the investing Plans and the Trustee beyond that provided under section 408(b)(8) of the Act.

[5] Although TBFC and the Trustee will not be affiliated with, or under the control of, or controlling, any participating Plan, it is likely that certain Plans will have a preexisting relationship with TBFC in the form of an investment in MBF I, MBF II, BF III or BF IV, investment vehicles managed by TBFC, and it is possible that a participating Plan may utilize the services of the

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5. Pooled investments for Plans investing in the BF V Group Trust will be made through the Partnership. The maximum capital contribution commitment of the Partnership will be $300 million. The primary purpose of the Partnership is to engage in the business of providing capital to, acquiring equity and debt interests in, and making available consultative services to Portfolio Companies such as Bank Companies and Financial Services Companies having assets under $7 billion. The Partnership may also invest in insurance contracts, short term investments, derivatives (for hedging purposes only) and covered put and call options. Further, the Partnership may make loans of securities. In short, it is anticipated that the Partnership will share the same basic investment strategy as was held by MBF I, MBF II, BF III and BF IV, and in many ways, the operations and fee structures of these entities.[6]

6. The General Partner of the Partnership will be MidBank V, LP. The general partner of MidBank V, LP will be TBFC and individuals employed by TBFC. The General Partner will acquire a one percent interest in the Partnership, for cash. The General Partner will also serve as the Administrator of the BF V Group Trust but it will not receive any fees from such entity. As described later in this proposed exemption, all fees that are paid to the General Partner and/or its affiliates will be paid by the Partnership and not by the BF V Group Trust.

The principal place of business of the Partnership will be 208 LaSalle Street, Chicago, Illinois or at such other location as the General Partner may select. The Partnership is expected to terminate on December 31, 2007, unless terminated sooner.

7. The Limited Partners of the Partnership will generally consist of non-Plan investors, which will acquire, by making capital contributions in cash directly to the Partnership, a Limited Partner's interest in such Partnership. However, as noted above, another Limited Partner in the Partnership will be the BF V Group Trust, the beneficiaries of which will be Plans covered under the provisions of the Act, and governmental plans. These Plans will acquire, for cash, both a beneficial interest in the BF V Group Trust and a Limited Partner's interest in the Partnership. It is expected that upon the creation of this structure, the BF V Group Trust will own 65.6 percent of the equity interests in the Partnership. Because none of the exceptions to the plan asset regulations will apply, the assets of the BF V Group Trust as well as the assets of the Partnership will constitute plan assets.[7]

Neither the General Partner nor the Trustee will have any control over the decision to cause any Plan to invest in the Partnership through the Group Trust. Under these circumstances, the decision to participate in the BF V Group Trust or the Partnership will be made by a Plan fiduciary which is independent of the Trustee and the General Partner. In each instance, even though the Trustee or the General Partner may present a Plan fiduciary with information concerning investment in the Group Trust and in the Partnership, the Plan fiduciary who makes the investment decision will agree not to rely on either the advice of the Trustee or the General Partner as the primary basis for a Plan's investment and the Independent Fiduciary will be specifically required to do so in every instance.[8] The General Partner assumes that a Plan will invest in the BF V Group Trust only if the fiduciaries of the Plan determine that investment performance is anticipated to be superior.[9]

8. The contribution provisions for the BF V Group Trust and the Partnership will be identical. For example, capital calls for Plans participating in the BF V Group Trust will be concurrent and in the same proportional amount as are capital calls by the Partnership from Limited Partners that are not Plans.[10] In pertinent part, the BF V Group Trust Agreement provides that each Plan's commitment to contribute will be divided into 20 equal segments. The General Partner, in its capacity as Administrator of the BF V Group Trust, may call any amount of these installments, upon 10 days' advance written notice, when cash is needed to fund the acquisition of Portfolio Company securities by the Partnership. However, there are two limitations upon the General Partner's power to call contributions. First, no more than 50 percent of the contribution commitment may be called in any twelve month period. Second, the General Partner cannot call any contributions after the sixth anniversary date of the inception of the BF V Group Trust (the period running from the date on which initial capital contributions are made to such sixth anniversary date being referred to as "the Acquisition Phase").

If an investing Plan cannot or does not meet a capital call, the Partnership Agreement and the BF V Group Trust Agreement provide that ten days after the investor receives notice of default on a capital call, the General Partner/

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Trustee with respect to plan assets other than those invested through the Trust. In this regard, TBFC is not requesting, nor is the Department providing, exemptive relief with respect therefor.

[6] According to TBFC, there are circumstances militating against investments by the Partnership in either BF III or BF IV. First, the Partnership will be structured as a separate investment entity apart from BF III and BF IV. BF III, BF IV and BF V (collectively, the Funds) will all have somewhat different charters with respect to what investments each can make. Second, many companies in which BF III, BF IV and BF V invest are (or will be acquired) by larger banks within three years of the particular Fund making an investment. Therefore, something acquired by an earlier Fund is unlikely to be acquired by a later Fund. Third, the Partnership will not come into existence until BF II and BF IV are fully invested, so concurrent purchases are deemed impossible. Fourth, BF IV may complete its wind-up and termination before the Partnership becomes invested. Fifth, there is an outright prohibition against the Partnership buying investments in BF III and BF IV and also against investing directly in BF III and BF IV. Sixth, the Partnership will invest in an area in which the availability of Portfolio Company securities will be extremely limited. For the Partnership to invest in any of the same investment vehicles as BF III and BF IV, it would mean that none of the investment circumstances described above would apply.

[7] See 29 CFR 2510.3–101(a)(2)(ii) and (f).

[8] The Department notes that the general standards of fiduciary conduct promulgated under the Act would apply to the participation in the BF V Group Trust and the Partnership by an Independent Fiduciary. Section 404 of the Act requires that a fiduciary discharge his duties respecting a plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion. Accordingly, an Independent Fiduciary must act prudently with respect to the decision to invest in the BF V Group Trust and the Partnership. The Department expects that an Independent Fiduciary, prior to investing in the BF V Group Trust and the Partnership, to fully understand all aspects of such investments following disclosure by the General Partner of all relevant information.

[9] The Department is not expressing an opinion on whether the Trustee or the General Partner would be deemed to be fiduciaries under section 3(21)(A)(ii) of the Act with respect to a Plan's investment in the BF V Group Trust or the Partnership. The Department is also not proposing relief for the rendering of investment advice in connection with the acquisition of interests in either BF V Group Trust or the Partnership.

[10] Because of the multi-tiered structure (*i.e.*, investing Plan to BF V Group Trust to Partnership), it is represented that capital calls will be handled as follows:

On the same day, the General Partner will notify the Limited Partners, including Plans investing in the BF V Group Trust that capital is being called. All investors will have 10 days to forward the appropriate amount of cash.

As a matter of practice, all Limited Partners will wire their contributions to the Trustee on the same day (the Trustee will serve as the custodian for the Partnership's assets).

Plan investors' contributions will be credited to a separate Trust account and the non-Plan investors' contributions will be credited to the Partnership's Capital Account.

On the same day, the Trustee transfers the funds from the Trust account to the Partnership's Capital Account.

The General Partner will then instruct the Trustee to utilize the Partnership's Capital Account to acquire the appropriate securities until the Partnership account is exhausted, at which time, another capital call will be made.

Administrator may (a) permit the investor's continued participation in the Partnership (or BF V Group Trust) with a commensurate reduction in both the investor's proportionate interest in such Partnership (or BF V Group Trust) and aggregate size of the Partnership (or BF V Group Trust);[11] (b) declare the investor's entire capital commitment due and pursue collection of the same; or (c) expel, at fair market value, the defaulting investor and offer its interest in the Partnership (or BF V Group Trust) first to the non-defaulting investors and then to non-investors who are qualified to invest in such Partnership (or BF V Group Trust). In making the choice between these alternatives, it is represented that the General Partner/Administrator will be guided by then-current investment strategies and the best interest of the non-defaulting investors.

9. The terms of the Partnership control the duties and authority of the General Partner. For example, the General Partner, at its own expense, will provide the Partnership and the BF V Group Trust with personnel who are able to undertake the investment strategies for these entities as well as perform their clerical, bookkeeping and administrative functions. In addition, the General Partner, at its own expense, will provide the Partnership and the BF V Group Trust with office space, telephones, copying machines, postage and all other necessary items of office services. Further, the General Partner will control proxy voting on all portfolio securities.[12] The Partnership Agreement permits the General Partner to allocate securities transactions to broker-dealers of its choice.

The General Partner will prepare, or cause to be prepared on behalf of the Partnership, the following reports: (a) annual audited financial statements; and (b) quarterly unaudited financial statements. In addition, the General Partner will keep the accounts of the Partnership in its capacity as Administrator of the Trust.[13]

10. Under the Partnership Agreement, two types of fees will be payable to the General Partner by the Partnership. These fees are a management fee (the Management Fee) and the Performance Fee, the components of which are described below.

The General Partner's Management Fee is payable as a percentage of the aggregate capital contributions to the Partnership. The fee will be equal to 5 percent of the first $20 million in capital contributions, 1.74 percent of the next $230 million of capital contributions and 2 percent on amounts in excess of $250 million. On average, the fee will not exceed 2 percent of committed capital when all capital is contributed, even if the Partnership is capitalized at less than $250 million.[14]

Although Limited Partners will receive distributions from the Partnership throughout its duration, if, as a result of distributions to the Limited Partners, paid-in capital contributions are reduced to 50 percent or less of the original aggregate capital contributions to the Partnership after December 31, 2006, the Management Fee will be reduced to 70 percent of the amount otherwise payable, effective for fiscal years subsequent to the year in which said reduction was achieved. Upon the return to the Limited Partners of capital contributions so as to reduce their capital contributions to 25 percent or less of the total capital contributions paid-in, the Management Fee will be reduced to 50 percent of the amount otherwise payable, effective for fiscal years subsequent to the year in which said reduction was achieved.

11. In addition to the Management Fee, the General Partner[15] will be entitled to receive the Performance Fee, which will accrue annually in a debit account (*i.e.*, the Performance Fee Account) between the date the first contribution is made to the Partnership until the time the Partnership disposes of its last investment. As noted above, the Performance Fee Account will provide a mechanism for measuring the General Partner's compensation for managing the Partnership. Such account will be a "moving" balance that will reflect the activity of the Partnership instead of actual dollars that are reserved or set aside for the General Partner. Until distributions from the Performance Fee Account are made, funds that the debit account credits represent will be invested for the benefit of the Limited Partners.

The Performance Fee will be paid during the final two years of the Partnership. Simply stated, the Performance Fee will equal 20 percent of the excess of net realized gains minus net unrealized losses of the Partnership, minus allowed distributions determined annually between the date of the first contribution to the Partnership until the disposition of the last Partnership asset.

In addition, the General Partner's Performance Fee will subject to the following terms and conditions:

(a) *Fee Base.* As noted above, the amount credited to the General Partner as the Performance Fee will be equal to a percentage of net realized gains minus net unrealized losses. The fee will be annually credited to the General Partner.[16]

(b) *Reduced Availability.* Prior to the termination of the Partnership, only 75 percent of the General Partner's Performance Fee may be drawn from the Partnership. (This limit will also apply to special income tax draws as described in Representation 13.)

(c) *Limited Deferral/Return of Capital.* Again, with the exception of the General Partner's income tax liabilities that are described in Representation 13,

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[11] Reductions in a Limited Partner's participations are based upon the relative amount of capital contributions that are omitted. For example, if a Limited Partner subscribes for a 10 percent interest in the Partnership and neglects to honor 25 percent of its commitment, the Limited Partner will only have a 7.5 percent interest in the Partnership if it is permitted to continue its investment.

[12] The Department is not providing exemptive relief herein for any prohibited transactions that may arise as a result of proxy voting on the part of the General Partner. The Department also notes that the general standards of fiduciary conduct promulgated under the Act would apply to such voting practices.

[13] Some examples of the types of accounts that will be maintained by the Partnership for each Limited Partner are (a) the Capital Account, which reflects the original capital paid into the Partnership by the Limited Partner and any adjustments thereto; (b) the Income Account, to which will be credited income, interest, dividends, fees for services (*i.e.*, consulting services provided by the Partnership to financial institutions) and any other income items (other than gains or losses on the sale or other disposition of securities or other assets and other than income from high yield investments) and to which will be debited any expenses of the Partnership other than those which are to be taken into account to determine gains and losses; and (c) the Gain Account, to which will be credited or debited gains or losses after expenses of sale, when and as realized from the sale or other disposition by the Partnership of securities or other assets, whether or not any such gain or loss is recognized or constitutes long-term or short-term capital gain or loss or ordinary income or loss for Federal income tax purposes.

[14] It is represented that the Management Fee is covered by the statutory exemptive relief available under section 408(b)(2) of the Act. However, the Department expresses no opinion herein on whether the General Partner's receipt of the Management Fee will satisfy the terms and conditions of section 408(b)(2) of the Act.

[15] As briefly alluded to in Representation 1, certain employees of TBFC, generally those who take an active part in the management of the Partnership, are limited partners in MidBanc V, the General Partner of the Partnership. MidBanc V will be entitled to receive the Performance Fee to the extent that it is earned. MidBanc V will then allocate the Performance Fee among TBFC and the employees of TBFC who are limited partners in MidBanc V.

[16] Any payments of the Performance Fee will reflect realized gains inuring to the Partnership. For the Partnership to make a Performance Fee payment to the General Partner, it must sell a Partnership investment for a price exceeding the purchase price for such investment. Therefore, the proceeds of the sale will reflect the source of Performance Fee payments.

After the Partnership has invested its capital, it will have two sources of cash. One is income received from its investments, such as dividends or interest. The other is money received when it sells an investment.

distributions of the Performance Fee cannot be made until January 1, 2007, which is after the completion of the Partnership's Acquisition Phase. Withdrawals with respect to the Performance Fee cannot be paid until investors have received distributions equal to 100 percent of their capital contributions.[17]

(d) *Debits.* The General Partner's Performance Fee Account is debited for the appropriate percentage of realized losses and net unrealized losses and distributions pursuant to the formula. The Performance Fee cannot be drawn when the Performance Fee Account is in a deficit position. Thus, if a gain is realized when the Performance Fee Account is in a deficit position, no Performance Fee can be paid to the General Partner and accrue in the Performance Fee Account. Sufficient gains must be realized to restore the deficit, restore the 25 percent cushion and generate surplus before any part of the Performance Feet can eventually be drawn down.

(e) *Unrealized Gains.* Although net unrealized losses are subtracted from net realized gains before the Performance Fee is calculated, net unrealized gains are excluded from the calculation of the General Partner's Performance Fee. In essence, the exclusion of net unrealized gains serves as an additional reserve ensuring that the General Partner will not be permitted withdrawals based on early gains that are subject to offset by later losses. The exclusion of net unrealized gains and the inclusion of net unrealized losses in the Performance Fee calculation operate to create a moving threshold or hurdle. If the General Partner draws on its Performance Fee Account and the Partnership experiences a later loss, the General Partner cannot take another fee until that loss is made up.

(f) *Distribution Repayment.* The General Partner must prepay any deficit in the Performance Fee Account such that if the Partnership were to terminate at any time, the General Partner would not have received a Performance Fee in excess of that which reflects the Partnership's performance to that date.

12. The following examples illustrate the calculation of the General Partner's Performance Fee. Although the Performance Fee may be drawn annually for the specific purpose of satisfying the General Partner's tax liabilities under certain limited circumstances (see Section II(o) and Representation 13), generally the Performance Fee can only be drawn during 2007 and 2008, the final two years of the Partnership's anticipated term. However, for purposes of illustration, four draw years have been assumed in the examples.

EXAMPLE #1

| Year | Cumulative net position | Performance fee account | Maximum draw | Draw or refund |
|---|---|---|---|---|
| 1 | $800 | $160 | $120 | $120 |
| 2 | 200 | 40 | 30 | (90) |
| 3 | 1,000 | 200 | 150 | 120 |
| 4 | 700 | 140 | 105 | (45) |

Year 1 Assume that when the Performance Fee first becomes drawable in 2007 the Partnership's Cumulative Net Position is $800. The General Partner's Performance Fee is 20% of $200 or $160. The General Partner may draw 75% of the $160 or $120.[18]

Year 2 The Partnership's Cumulative Net Position at the end of Year 2 is $200. The General Partner's Performance Fee is 20% of $200 or $40. The General Partner is entitled to draw $30, but since it has previously drawn $120, it must refund $90.

Year 3 The Partnership now has a Cumulative Net Position of $1,000. The General Partner's Performance Fee is $200 with a permitted draw of $150. Because the General Partner has previously drawn a net amount of $30 at the end of Year 2 (*i.e.*, $120 − $90), it may now draw an additional $120.

Year 4 The Partnership's Cumulative Net Position falls to $700 and the General Partner's Performance Fee falls to $140. The 75% draw equals $105, but the General Partner has previously drawn a total of $150 (*i.e.*, $120 − $90 + $120). Therefore, the General Partner must make a refund to the Partnership of $45.

EXAMPLE #2

| Year | Cumulative net position | Performance fee account | Maximum draw | Draw or refund |
|---|---|---|---|---|
| 1 | $2,000 | $400 | $300 | $300 |
| 2 | 1,000 | 200 | 150 | (150) |
| 3 | 500 | 100 | 75 | (75) |
| 4 | 900 | 180 | 135 | 60 |

Year 1 Assume that when the General Partner's Performance Fee first becomes drawable in 2007, the Cumulative Net Position for the Partnership is $2,000. The General Partner's Performance Fee is 20% of

[17] Where a partnership, such as the Partnership described herein, makes a distribution to the Limited Partners, that distribution can include any of the following: income, realized gains, and/or return of capital. Income and gains can arise at any time during the partnership's life. Although income and gains occur after the initial investment phase of a partnership, in the case of the Funds, such distributions have occurred during the Acquisition Phase. However generally, the contributed capital that gives rise to a gain attributed to the Partnership during the Acquisition Phase will be reinvested by the General Partner. Conversely, the contributed capital that gives rise to a gain attributed to the Partnership after the Acquisition Phase has been completed, will be distributed to a Limited Partner if the gain is realized after the Acquisition Phase expires.

[18] The assumption is, for purposes of this example, that all Limited Partners investing in the Partnership have received a 100 percent return of their capital contributions.

$2,000 or $400. The General Partner may draw 75% of the $400 fee or $300. $100 or 25% of the draw amount must be left in the Partnership as a cushion.[19]

Year 2 The Cumulative Net Position for the Partnership at the end of Year 2 has fallen to $1,000. The General Partner's Performance Fee is 20% of $1,000 or $200. TCC is entitled to draw $150, but since it has previously drawn $300, it must refund $150.

Year 3 The Cumulative Net Position for the General Partner has fallen to $500. The General Partner's Performance Fee now falls to $100 (*i.e.*, 20% of $500) with a permitted draw of $75 and a cushion of $25. Because the General Partner has previously drawn $150 ($300 − $150), it must make a refund to the Partnership of $75.

Year 4 The Cumulative Net Position for the Partnership is $900 at the end of Year 4. The General Partner's Performance Fee is 20% of $900 or $180. The General Partner's 75% draw on the Performance Fee equals $135. However, since the General Partner has previously drawn a total of $75 ($300 − $150 − $75), it may now draw a Performance Fee of $60.

13. The General Partner has been informed by its counsel that gains realized by the Partnership will, to the extent that they are allocable to the General Partner's Performance Fee Account, be taxable to the General Partner in the year gains are realized by the Partnership, even though the distribution of gains attributable to the General Partner will be deferred. Therefore, to enable the individual owners of the General Partner or its affiliates (collectively, referred to as the General Partner) to discharge their obligations to state or federal taxing authorities, it is proposed that an amount sufficient to pay taxes (representing approximately 5 percent of the gains of the Partnership) be distributed to the General Partner solely during the Partnership's Acquisition Phase. The sale of the Portfolio Company securities that gives rise to the early distribution of such gains may only occur in connection with a third party merger, acquisition or tender offer and not through an exercise of discretion by the General Partner.

Such distributions will be charged against the General Partner's Performance Fee Account and will reduce the balance that is used to calculate the 25 percent cushion required before actual distributions can be made to the General Partner.[20] In the event the General Partner receives a tax refund, the amount will be repaid by the General Partner to the Partnership to the extent a distribution has been made to such General Partner.

To ensure that tax refunds are repaid, the General Partner will retain an independent accounting firm to calculate the tax liabilities and credits. If a tax payment is owed by the General Partner, it will appear as an asset (*i.e.*, a receivable) on the Partnership's financial reports that are given to the Limited Partners.

In addition, the tax distributions will be in the exact amount of the General Partner's tax liability. All funds received in the distribution will be forwarded to the Service and no portion will be retained by either the General Partner or the Limited Partners. Therefore, there will be no gain by the General Partner.

Finally, TBFC notes that all of the Limited Partners were made aware of the tax distribution feature of the Partnership. TBFC states that this disclosure was made before the Limited Partners determined to commit capital to the Partnership.

14. The Partnership will terminate upon the earliest to occur of (a) the complete distribution of its assets, (b) a vote in favor of termination by 75 percent of the Limited Partners,[21] or (c) December 31, 2008. If it would be to the financial benefit of the Limited Partners to extend the term of the Partnership beyond 2008, extensions of up to two years may be initiated by the General Partner. Any further extension must be approved by the Limited Partners holding a majority of the Limited Partnership interests. Neither the General Partner nor the Partnership may acquire additional Partnership investments at the time of an extension. The purpose of the extension will be to allow the General Partner to liquidate the Partnership's existing investments, distribute the cash proceeds received from the liquidation to the Limited Partners, and terminate the Partnership.

Upon termination of the Partnership, all portfolio positions will be liquidated, Partnership expenses will be paid and distributions will be made (including any remaining portion of the General Partner's Performance Fee). If all assets cannot be converted into cash or if it would be disadvantageous to liquidate every asset, remaining assets may be distributed in-kind, at the discretion of the General Partner. The General Partner will then receive a fractional portion of its fee, in-kind. To ensure that the General Partner will not select higher income-generating Partnership assets for itself, each Limited Partner, as well as the General Partner, will receive a proportionate share of each Portfolio Company security that is distributed in-kind.

15. The following example illustrates the manner in which in-kind distributions will be made by the General Partner:

Assume that there are only two Limited Partners investing in the Partnership and that each has received a full return of capital. Non-Plan A investor has a Partnership interest worth $60 and the BF V Group Trust has a Partnership interest worth $40.

The Partnership holds 100 shares of Bank X stock which it acquired for $5 per share. Upon termination of the Partnership, Bank X stock is worth $7 per share.

The total unrealized gain attributable to Bank X stock is ($7 − $5) × 100 = $200.

The General Partner's Performance Fee is equal to $200 × 20% = $40.

The General Partner receives $40 ÷ $7 = 5.7 shares of Bank X stock.

The non-Plan investor receives 60% × 94.3 = 56.6 shares of Bank X stock.

The BF V Group Trust receives 40% × 94.3 = 37.7 shares of Bank X stock. Therefore, the Plans investing in the BF V Group Trust share proportionately in the 37.7 shares of Bank X stock.

16. In general, Partnership interests will not be assignable, and no Limited Partner may assign or otherwise transfer, pledge or otherwise encumber any or all of its interest in the Partnership without the prior consent of the General Partner. However, a Limited Partner may transfer its interest only after extending to the Partnership and

[19] The assumption is again, for purposes of this example, that all Plans investing in the BF V Group Trust have received a 100 percent return of their capital contributions.

[20] With the exception of the General Partner, all Limited Partners will receive distributions of gains when they are realized. (As noted previously, this could occur prior to the ending of the Acquisition Phase for the Partnership.) For example, if at any time during the Partnership's existence, a Portfolio Company security is purchased for $1 million and sold by the General Partner for $3 million, a $2 million gain will be realized by the Partnership. The Limited Partners will own $1.6 million of the gain while the General Partner will own $400,000 of the gain (*i.e.*, 20 percent of the Performance Fee). Both Plan and non-Plan Limited Partners will receive an aggregate distribution of $1.6 million which will be allocated among such Limited Partners. Depending on whether the Limited Partner receiving a portion of the $1.6 million gain is a taxable or non-taxable entity, the amount allocated to the Limited Partner will be taxed. Although the $400,000 gain attributable to the General Partner will be deferred, the Service will view the General Partner as having received taxable income of $400,000. If the tax rate is 25 percent, the General Partner will owe the Service $100,000. It is the $100,000 that the General Partner seeks to obtain as a tax distribution. The General Partner's remaining Performance Fee amount of $300,000 will stay in the Partnership even though the Limited Partners will receive their proportionate share of the $1.6 million.

[21] A vote of 75 percent of the Limited Partners to remove the General Partner will also result in the termination of the Partnership.

the other Limited Partners the right of "first offer."

In addition, because the BF V Group Trust's investment philosophy is inconsistent with at-will withdrawals, redemptions of Partnership interests are limited to situations where (a) a replacement Plan is available from either current Plans investing in the BF V Group Trust or there are new, qualified investors;

(b) a Plan submits to the General Partner and the Trustee, a written opinion of counsel to the effect that the Plan's continued participation in the BF V Group Trust would violate the Act and that relief from the violation cannot be obtained;

(c) the Plan loses its tax-exempt status and that loss threatens the tax-exempt status of the BF V Group Trust; and (d) the BF V Group Trust loses its tax-exempt status or fails to obtain the exemptive relief proposed herein for the necessary operation of such Group Trust. This information will be disclosed to investors.

17. The BF V Group Trust Agreement requires that the General Partner, as Administrator of the BF V Group Trust, provide the Independent Fiduciary of each Plan proposing to invest in the BF V Group Trust with a copy of the Private Placement Memorandum by the General Partner. The Private Placement Memorandum describes all material facts concerning the purpose, structure and operation of the BF V Group Trust.

If the Independent Fiduciary expresses further interest in participating in the BF V Group Trust, such Independent Fiduciary will be provided with copies of the BF V Group Trust Agreement outlining the organizational principles, investment objectives and administration of the BF V Group Trust, the manner in which Trust shares could be redeemed, the duties of the parties retained to administer the BF V Group Trust and the manner in which Group Trust assets would be valued. The Independent Fiduciary will also be provided with a copy of the Partnership Agreement which describes the organizational principles, investment objectives and administration of the Partnership, the manner in which Partnership assets will be valued, the duties and responsibilities of the General Partner, the rate of remuneration that the General Partner will be paid and the conditions under which the General Partner may be removed. Once the Independent Fiduciary has made a decision to invest in the BF V Group Trust, the General Partner will provide such Independent Fiduciary with the names and addresses of all other participating Plans as well as non-Plan investors.

18. The Independent Fiduciary will be required to acknowledge, in writing, prior to purchasing a beneficial interest in the BF V Group Trust that such fiduciary has received copies of the foregoing documents. The Independent Fiduciary will also be required to acknowledge, in writing, to the General Partner that such fiduciary is independent of the General Partner and its affiliates, capable of making an independent decision regarding the investment of Plan assets, knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF V Group Trust.

With respect to its ongoing participation in the BF V Group Trust, each Plan and the Trustee will receive the following written disclosures from the General Partner, as the Administrator of the BF V Group Trust:

(a) Within 90 days after the end of each fiscal year of the BF V Group Trust as well as at the time of termination, an annual financial report containing a balance sheet for the BF V Group Trust and the Partnership as of the end of such fiscal year and a statement of the changes in the financial position for the fiscal year, as audited and reported upon by independent, certified public accountants. The annual report will also disclose the remuneration actually paid or accrued to the General Partner.

(b) Within 60 days after the end of each quarter (except in the last quarter) of each fiscal year of the BF V Group Trust and the Partnership, an unaudited quarterly financial report consisting of at least a balance sheet for the BF V Group Trust and the Partnership as of the end of such quarter and a profit and loss statement for such quarter. The quarterly report will also specify the remuneration that is actually paid or accrued to the General Partner.

In addition to the foregoing reports, the General Partner will prepare and distribute to the BF V Group Trust and each Plan such other information as may be reasonably requested by the Plans to comply with the reporting requirements of the Act or Code (including copies of the proposed exemption and grant notice with respect to the exemptive relief granted herein).

At least annually, the General Partner will hold a meeting of the Partnership, at which time, the Independent Fiduciaries of participating Plans will have the opportunity to decide on whether the Partnership, the BF V Group Trust, the Trustee or the General Partner should be terminated as well as discuss any aspect of the Partnership and Group Trust and the Agreements promulgated thereunder. Finally, during each year of the BF V Group Trust, representatives of the General Partner will be available to confer by telephone or in person with Independent Fiduciaries on matters concerning the BF V Group Trust or the Partnership.

19. The terms of all transactions that are entered into on behalf of the Partnership by the General Partner will be at least as favorable to an investing Plan as those obtainable in arm's length transactions with unrelated parties. In this regard, valuations of (and for) the Partnership will be needed for general accounting purposes, to determine the value of the Partnership's assets for reports to the Limited Partners, for distributions of securities and to calculate the General Partner's Performance Fee when the General Partner seeks to draw upon it. The General Partner, subject to the review and approval of the Valuation Committee, will determine the fair market value of the assets and liabilities of the Partnership as of each fiscal date.[22] The Valuation Committee, which is the same advisory committee that served MBF I and II and currently serves BF III and IV, will also serve as the Independent Appraiser. The Valuation Committee is composed of three members who are experienced in valuing the securities of Portfolio Companies. None of the members of the Valuation Committee has an ownership or creditor relationship with the General Partner.

As the Independent Appraiser, each member of the Valuation Committee must not be controlled by (or control) TBFC or the Partnership and must not receive more than 5 percent of their lowest annual income from the General Partner or the Partnership, either during the term of the Partnership or in the three years preceding its creation. Individual members of the Valuation Committee or the entire committee may be removed by the General Partner only for cause and with or without cause by Limited Partners holding a majority of the Limited Partnership interests. A

[22] It is represented that the General Partner will gather all requisite information to produce the valuation. This information may include pricing information on any exchange-traded securities plus more voluminous operating and financial data on the companies for whose securities there is a thinner market. The General Partner will then compile this information into a report which is submitted to the Valuation Committee. After reviewing the submitted information, the Committee will meet with the staff of the General Partner to discuss the valuation materials. At the end of this meeting, the Valuation Committee will set the valuation for all portfolio hedgings. Thus, from both a legal and operative standpoints, the Partnership Agreement will control the valuation process and the Valuation Committee will value the Fund.

majority of the Limited Partners must approve a replacement Independent Appraiser. If the Limited Partners and the General Partner cannot agree upon a replacement Independent Appraiser, the firm of KPMG Peat Marwick LLP will be appointed.

Although the General Partner will nominate the Independent Appraiser, the Limited Partners will be given the option of either approving or disapproving the nominee. The Independent Appraiser will not be appointed absent the affirmative written approval of a majority of the Limited Partners. However, the Limited Partners will have no veto power over the General Partner's decision that an Independent Appraiser is required.

If applicable, the Independent Appraiser will use the principles set forth in Revenue Ruling 59–60 and the Department's proposed "Adequate Consideration" regulations (53 FR 17632, May 17, 1988) to determine fair market value. The valuations made by the Independent Appraiser will be binding upon the General Partner. In addition, the Independent Appraiser will issue a report to the General Partner which sets forth the Independent Appraiser's pricing methodology and rationale for securities it has been asked to value. Such report will be issued after each required valuation and will comply with the aforementioned regulations.

With respect to securities for which a market exists, the Independent Appraiser will determine their value according to the following principles:

(a) *National Securities Exchange.* Any security which is listed on a national securities exchange generally will be valued based on its last sales price on the national securities exchange on which the security is principally traded on the valuation date.[23] If no sale of a listed Security occurred on the valuation date, the value will be based on the last bid price.

(b) *No Listing.* Any security which is not listed on a national securities exchange will be valued upon the last publicly available bid price.[24]

(c) *Discount for Illiquidity.* Anything herein to the contrary notwithstanding, the Independent Appraiser in its discretion may apply a discount for illiquidity, on the valuation of securities that have a thin public market.

In the event that there is no independent market for a security or the security is not listed on a national securities exchange, the Independent Appraiser will be required to value such securities. Under such circumstances, the securities will be valued at the time of acquisition at their cost. The Independent Appraiser will continue valuing the securities at their cost until a determination is made that a different valuation level is indicated by the occurrence of (a) a significant change in book value, (b) a significant change in a Portfolio Company's business, (c) a significant third-party transaction, or (d) any other significant change in the Financial Company, its industry or the general market.

20. With respect to transactions that may arise during the existence of the Partnership and which involve parties in interest with respect to participating Plans, the General Partner requests exemptive relief from the provisions of section 406(a) of the Act. Specifically, TBFC requests exemptive relief where the Partnership sells securities in the Partnership Portfolio for cash or other securities to a party in interest with respect to a participating Plan in the context of an acquisition or merger by the party in interest, provided the party in interest is not an affiliate of the General Partner. TBFC represents that the Partnership will receive the same offer that other shareholders of Portfolio Companies will receive. Because the Partnership will always be a minority shareholder in such situation, TBFC states that the Partnership will be in the position of a beneficiary of the acquisition offer and it will not be in the position off an active player in the merger or acquisition transactions.

21. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The participation by a Plan in the BF V Group Trust and in the Partnership will be approved by an Independent Fiduciary.

(b) Each Plan investing in the Partnership through the BF V Group Trust will have assets that are in excess of $50 million.

(c) No Plan will invest more than 10 percent of its assets in the Partnership through the BF V Group Trust and a Plan's respective interests in both entities will not represent more than 25 percent of the assets of either the BF V Group Trust or the Partnership.

(d) No Plan will invest more than 25 percent of its assets in investment funds and separate accounts managed or sponsored by TBFC and/or its affiliates.

(e) Prior to making an investment in the BF V Group Trust and the Partnership, each Independent Fiduciary contemplating investing therein will receive offering materials which disclose all material facts concerning the purpose, structure and operation of the BF V Group Trust, the Partnership and the fees paid to the Trustee and the General Partner.

(f) Each Plan investing in the BF V Group Trust and the Partnership will be required to acknowledge, in writing, prior to purchasing interests that such fiduciary has received copies of such documents and to acknowledge, in writing, to the General Partner that such fiduciary is (1) independent of the General Partner and its affiliates, (2) capable of making an independent decision regarding the investment of Plan assets and (3) knowledgeable with respect to the Plan in administrative matters and funding matters related thereto, and able to make an informed decision concerning participation in the BF V Group Trust.

(g) The General Partner will make quarterly and annual written disclosures to participating Plans with respect to the financial condition of the Partnership and the total fees that it will receive for services rendered to such Partnership.

(h) The General Partner will hold annual meetings and conduct periodic discussions with Independent Fiduciaries to address matters pertaining to the BF V Group Trust or the Partnership.

(i) The terms of all transactions that are entered into on behalf of the Partnership by the General Partner shall remain at least as favorable to an investing Plan as those obtainable in arm's length transactions with unrelated parties. In this regard, the valuation of assets of the Partnership will be based upon independent market quotations or determinations made by an Independent Appraiser.

(j) As to each Plan, the total fees paid to the General Partner and its affiliates will constitute no more than reasonable compensation.

(k) Any increase in the General Partner's Performance Fee will be based upon a predetermined percentage of net realized gains minus net unrealized

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[23] TBFC explains that the phrase "principally traded" means that if a security is traded on more than one exchange and if the trade prices differ between exchanges, the value will be taken from the exchange on which the largest volume of that security has traded.

[24] TBFC explains that the most recent trade price is not used to value a security in this instance because it may be too dated to provide an accurate estimate of value. Instead, TBFC considers the bid price to be indicative of the current value at which someone would be willing to acquire a security on the valuation date. TBFC further notes that the use of the bid price rather than the previous trading or closing price in valuing a Security provides a conservative valuation approach which will result, in most instances, in a lower Performance Fee paid to the General Partner. The Department assumes that the bid price described herein represents active bids and is a true indicator of market prices.

losses. In this regard, (1) Except as described in item (1) below, no part of the General Partner's Performance Fee may be withdrawn before December 31, 2006, which represents the completion of the Acquisition Phase of the Partnership and not until the Limited Partners have received distributions equal to 100 percent of their capital contributions to the Partnership.

(2) Prior to the termination of the Partnership, no more than 75 percent of the Performance Fee credited to the General Partner may be withdrawn from the Partnership.

(3) The Performance Fee Account established for the General Partner will be credited with net realized gains and charged for net unrealized losses and Performance Fee distributions.

(4) The General Partner will repay all deficits in its Performance Fee Account and it will maintain a 25 percent cushion in such account before receiving any further distribution.

(1) The General Partner will be entitled to take distributions with respect to its Performance Fee in the amount of any income tax liability it or its affiliates become subject to with respect to net capital gains of the Partnership (i) only during the Partnership's Acquisition Phase and (ii) provided such gains are based on the sale of Portfolio Company securities that is initiated by a third party in connection with a merger, tender offer or acquisition.

(m) The General Partner will be obligated to repay to the Partnership any tax refund received to the extent a distribution have been made to such General Partner.

**Notice to Interested Persons**

Notice of the proposed exemption will be given to Plans intending to invest in the Partnership through the BF V Group Trust within 3 days of the date of publication of the notice of pendency in the **Federal Register**. Such notice will include a copy of the notice of proposed exemption, as published in the **Federal Register**, as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2), which shall inform interested persons of their right to comment on and/or to request a hearing. Comments and hearing requests with respect to the proposed exemption are due 33 days after the date of publication of the proposed exemption in the **Federal Register**.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Standard Insurance Company (Standard) Located in Portland, OR**

[Application No. D–10705]

**Proposed Exemption**

Based on the facts and representations set forth in the application, the Department is considering granting an exemption under the authority of section 408(a) of the Act (or ERISA) and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[25]

*Section I. Covered Transactions*

If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply, effective April 21, 1999, to (1) the receipt of common stock (the Stock) of the StanCorp Financial Group, Inc. (the Holding Company), the parent of Standard, or (2) the receipt of cash (Cash) or policy credits (Policy Credits), by or on behalf of any eligible policyholder (the Eligible Member) of Standard which is an employee benefit plan (the Plan), including the Standard Group Life, Supplemental Life and AD&D Plan for Employees and Agents (the Standard Group Life Plan) and the Standard Group Term and Short Term Disability Employees Plan (the Standard Disability Plan; together, the Standard Welfare Plans), in exchange for such Eligible Member's interest in Standard, in accordance with the terms of a plan of demutualization (the Plan of Demutualization or Demutualization Plan) adopted by Standard and implemented pursuant to Section 732 of the Oregon Revised Statutes.[26]

In addition, the restrictions of section 406(a)(1)(E) and (a)(2) and section 407(a)(2) of the Act shall not apply, effective April 21, 1999, to the receipt or holding, by the Standard Welfare Plans, of employer securities in the form of excess Holding Company Stock, in accordance with the terms of the Demutualization Plan.

The proposed exemptions described above are subject to the following conditions:

(a) The Plan of Demutualization was implemented in accordance with procedural and substantive safeguards that were imposed under Oregon Insurance Law and was subject to review and supervision by the Director of the Department of Consumer and Business Services of the State of Oregon (the Director).

(b) The Director reviewed the terms of the options that were provided to Eligible Members of Standard, which included, but were not limited to the subject Plans, as part of his review of the Demutualization Plan, and only approved such Demutualization Plan following a determination that the Plan was fair and equitable to all Eligible Members and was not detrimental to the public.

(c) Each Eligible Member had an opportunity to vote to approve the Plan of Demutualization after full written disclosure was given to the Eligible Member by Standard.

(d) One or more independent fiduciaries of a Plan that was an Eligible Member received Holding Company Stock, Cash or Policy Credits, pursuant to the terms of the Demutualization Plan, and neither Standard nor any of its affiliates exercised any discretion or provided "investment advice," within the meaning of 29 CFR 2510.3–21(c), with respect to such acquisition.

(e) With respect to the Standard Welfare Plans and other Plans sponsored by Standard and its affiliates (collectively, the Standard Plans), where the consideration was in the form of Holding Company Stock, Northwestern Trust and Advisory Company (Northwestern Trust), the independent Plan fiduciary appointed to represent the interests of each of the Standard Plans,

(1) Exercised its authority and responsibility to vote on behalf of the Standard Plans at the special meeting of Eligible Members on the proposal to approve the Demutualization Plan;

(2) Monitored the Holding Company Stock received by a Standard Plan; and

(3) Provided instructions with respect to the voting, the continued holding and the disposition of Holding Company Stock held by all of the Standard Plans.

(f) After each Eligible Member was allocated at least 52 shares of Holding Company Stock, additional consideration was allocated to Eligible Members who owned participating policies based on actuarial formulas that took into account each participating policy's contribution to the surplus of Standard which formulas have been approved by the Director.

(g) All Eligible Members that were Plans participated in the transactions on the same basis within their class groupings as other Eligible Members that were not Plans.

(h) No Eligible Member paid any brokerage commissions or fees in

[25] For purposes of this exemption, reference to provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[26] Unless otherwise noted, the client Plans and the Standard Plans are collectively referred to as the Plans.

connection with the receipt of Holding Company Stock, nor has (or will) such Eligible Member pay any brokerage commissions or fees in connection with the implementation of the commission-free sales and purchase program (the Program).

(i) All of Standard's policyholder obligations will remain in force and will not be affected by the Plan of Demutualization.

*Section II. Definitions*

For purposes of this proposed exemption:

(a) The term "Standard" means The Standard Insurance Company and any affiliate of Standard as defined in paragraph (b) of this Section III.

(b) An "affiliate" of Standard includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with Standard; (For purposes of this paragraph, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.) and

(2) Any officer, director or partner in such person.

(c) The term "Eligible Member" means a policyholder who is eligible to vote and to receive consideration under Standard's Demutualization Plan. Such Eligible Member must have been a policyholder of Standard on December 17, 1997, the date the Plan of Demutualization was adopted by the Board of Directors of Standard.

(d) The term "policy credit" means an increase in the accumulation account value [27] (to which no surrender or similar charges are applied) in the general account or an increase in a dividend accumulation on a policy.

*Effective Date:* If granted, this proposed exemption will be effective as of April 21, 1999.

**Summary of Facts and Representations**

1. Standard was formerly a mutual life insurance company chartered under the laws of the State of Oregon. It was originally chartered in 1906 as a stock company and was subsequently "mutualized" in 1929 under Oregon law. Standard is authorized to transact life, health and annuity business in all 50 states (reinsurance only in New York), the District of Columbia and the U.S. Territory of Guam. As of December 31, 1998, Standard had admitted assets (on a statutory basis) in excess of $4.9 billion and generated $890.9 million in annualized premium and annuity consideration.

Standard's home office is located at 1100 S.W. Sixth Avenue, Portland, Oregon. As of December 31, 1998, Standard was rated A (Excellent) by A.M. Best, A+ (Good) by Standard and Poor's, AA (Very High Claims Paying Ability) by Duff & Phelps and A2 (Good) by Moody's.

As a mutual life insurance company, Standard had no stockholders. Instead, its policyholders were members of the company and were entitled to vote to elect its directors and would be entitled to share in its assets upon its liquidation.

Standard provides a variety of fiduciary and other services, including plan administration, investment management and related services, to Plans policyholders that are covered under the applicable provisions of the Act and/or the Code. As a result, Standard may be considered a party in interest or a disqualified person with respect to such Plans under section 3(14)(A) and (B) of the Act as well as the related "derivative" provisions of section 3(14) of the Act.

Standard has actively marketed its products to Plans. As of December 31, 1997, Standard had approximately 30,800 outstanding policies and contracts issued in connection with Plan policyholders that were pension or welfare plans subject to the Act. Of these policies, approximately 5,200 contracts were issued to defined benefit or defined contribution pension plans (including section 401(k) plans) and over 25,600 contracts were issued to welfare plans to provide group life, short-term and long-term disability, accidental death and dismemberment, and group health and dental coverage.

2. Standard Management, Inc. (Standard Management) is a holding company that is organized under Oregon law and formerly wholly owned by Standard. On April 21, 1999, the effective date of the demutualization, Standard Management became a wholly owned subsidiary of StanCorp Financial Group, Inc. (*i.e.*, the Holding Company), which also became the parent of Standard. The Holding Company is also organized under Oregon law.

3. Standard has also created two limited liability companies under Oregon law. They are Standard Mortgage Investors, LLC (Standard Mortgage), which manages Standard's mortgage loan portfolio and markets its expertise to other investors and Standard Real Estate Investors, LLC (Standard Real Estate Investors), which is engaged in the business of real estate management, primarily with respect to real estate owned by Standard. Currently, the assets of Standard Mortgage and Standard Real Estate Investors are owned completely by Standard through Standard Management.

In addition to these companies, Standard has formed Stan-West Equities, Inc. (Stan-West), a licensed broker-dealer, 400 Health Club, Inc. (400 Health Club), a corporate shell that does not conduct business of any kind, and Standard Assigned Benefits, Inc. (Standard Assigned Benefits), an entity which was formerly in the business of funding structured litigation settlements but which is not transacting business at the present time. Through its sister, Standard Management, Standard owns 100 percent of the assets of these entities.

4. Standard and its affiliates also sponsor a number of retirement and welfare plans for their agents and employees that participated in the demutualization transaction described herein. The affected Standard Plans, their total number of participants and assets are shown as follows as of December 31, 1997, which is the most recent date this information is available:

| Standard plans | Number of participants as of 12/97 | Total assets as of 12/97 |
|---|---|---|
| Group Life, Supplemental Life and AD&D Employees and Agents .... | 2,837 | [1] $431,985 |
| Group Long Term and Short Term Disability-Employees ..... | 1,771 | [1] 802,820 |
| Defined Benefit Plan-Employees ..... | 1,419 | 64,754,363 |
| Defined Benefit Plan-Agents ... | 85 | 13,442,533 |
| Defined Contribution Plan-Employees .... | 1,405 | 55,397,674 |
| Defined Contribution Plan-Agents ..... | 119 | 16,200,232 |

[1] Expressed as an annualized premium.

5. In 1997, Standard's Board of Directors authorized its management to develop a plan of demutualization

[27] In general, a policy's accumulation account value is expressed in dollar terms and reflects contributions and interest credited under the policy, less expenses and withdrawals. Accumulation values may be applied for the purchase of annuity benefits, or depending on the provisions of the contract, withdrawn by the policyholder in a lump sum or installments. Under Standard's Plan of Demutualization, where a policy eligible for distributions under such Plan has an accumulation value, the policy's accumulation value will be increased by an amount equal to the distribution the policyholder is entitled to under the Plan.

whereby Standard would be converted from a mutual life insurance company to a stock life insurance company. In response, Standard began developing the Plan of Demutualization which was formally adopted by the Board of Directors on September 28, 1998. The principal purposes for the demutualization were to (a) enhance Standard's strategic and financial flexibility by creating a corporate structure that would provide opportunities for obtaining additional capital from sources that are unavailable to Standard in its current form as a mutual insurer; (b) allow Standard to use stock options or other equity-based compensation arrangements to attract and retain talented employees; (c) facilitate acquisitions, which Standard's management viewed as an important element of future growth; and (d) provide Eligible Members with an opportunity to convert their illiquid interests as members of Standard into shares of Stock of the Holding Company or Cash or Policy Credits. The demutualization would not, in any way, change premiums or reduce policy benefits, values, guarantees or other policy obligations of Standard to its policyholders. Policy dividends would continue to be paid as declared, although they may vary from year to year. In effect, insurance policies would remain in force and policyholders would be entitled to receive the benefits under their policies and contracts to which they would have been entitled if the Demutualization Plan had not been adopted.

6. Therefore, Standard has requested an individual exemption from the Department that would apply, effective April 21, 1999, to the receipt of Holding Company Stock, Cash or Policy Credits by Eligible Members that were Plans in exchange for their existing membership interests in Standard because it believes the transaction could be viewed as a prohibited sale or exchange of property between a plan and a party in interest in violation of section 406(a)(1)(A) and (D) of the Act. Standard also has requested exemptive relief, effective April 21, 1999, with respect to distributions of Holding Company Stock to the Standard Welfare Plans, because it believes the receipt of Holding Company Stock by these Standard Plans violated section 406(a)(1)(E) and (a)(2) of the Act and section 407(a)(2) of the Act, in addition to section 406(a)(1)(A) and (D) of the Act.[28] Standard represents that although the Holding Company Stock would constitute "qualifying employer securities" within the meaning of section 407(d)(5) of the Act, such stock would represent 100 percent of the assets of the Standard Welfare Plans, in violation of section 407(a)(2) of the Act. Standard also asserts that the statutory exemptive relief contained in section 408(e) of the Act would not apply to the acquisition and holding of Holding Company Stock by the Standard Welfare Plans.[29]

Standard further notes that the holding of Holding Company Stock by the Standard Welfare Plans would not violate section 407(f) of the Act because neither Plan would own more than 25 percent of the outstanding shares of Holding Company Stock, and at least 50 percent of the outstanding shares would be owned by persons who were independent of the issuer.

Standard represents that statutory exemptive relief from section 408(e) of the Act would apply to distributions of Holding Company Stock to its defined benefit plans (*i.e.*, the Defined Benefit Retirement Plan-Employees and the Defined Benefit Retirement Plan-Agents) (together, the Standard Defined Benefit Plans) because the fair market value of the Stock would not exceed 10 percent of the assets of these Plans. Therefore, Standard has not requested that the exemption apply to the Standard Defined Benefit Plans.

Similarly, Standard represents that section 408(e) would be applicable to distributions of Holding Company Stock to its two defined contribution plans (*i.e.*, the Defined Contribution Plan-Employees and the Defined Contribution Plan-Agents) (together, the Standard Defined Contribution Plans).[30] Therefore, Standard has not requested that the exemption apply to the Standard Defined Contribution Plans.

7. Standard's Plan of Demutualization was approved by the Director in January 1999. Subsequently, the following steps were taken to implement the Demutualization Plan:

(a) *Demutualization under Oregon Law.* Standard converted from a mutual life insurance company to a stock life insurance company on April 21, 1999 in accordance with the requirements of Sections 732.600 to 732.630 of the Oregon Revised Statutes as well as under the provisions of its Plan of Demutualization. Each policyholder's membership interest in Standard was terminated. As compensation for their membership interests, Eligible Members received Holding Company Stock, Cash or Policy Credits as compensation for the termination of their interests.

As a result of the demutualization, Standard became a stock company and a wholly owned subsidiary of the Holding Company. Standard also distributed its real estate management and mortgage subsidiaries (*i.e.*, Standard Mortgage and Standard Real Estate Investors) and certain other non-insurance subsidiaries (*i.e.*, Stan-West Equities, 400 Health Club and Standard Assigned Benefits) to the Holding Company. As a result, these companies became direct or indirect subsidiaries of the Holding Company.

(b) *The Initial Public Offering (the IPO).* The Holding Company sold 15,209,400 shares of Holding Company Stock in an underwritten IPO in conjunction with the demutualization. The Holding Company also arranged for the listing of Holding Company Stock on the NYSE.

(c) *Contribution to the Capital of Standard.* Following the transactions described above, the Holding Company contributed $267.9 million raised in the IPO (after the payment of transaction expenses) to Standard to pay Cash consideration to certain Eligible Members and to fund Policy Credits for other Eligible Members as required under the Plan of Demutalization.

8. Standard represents that Sections 732.600 to 732.630 (Section 732) of the Oregon Revised Statutes establish an approval process for the demutualization of a life insurance company organized under Oregon law.

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[28] Section 406(a)(1)(E) of the Act prohibits the acquisition by a Plan of any employer security that violates section 407(a) of the Act. Section 406(a)(2) of the Act states that no fiduciary who has authority or discretion to control the assets of a plan shall permit the plan to hold any employer security if he [or she] knows that holding such security would violate section 407(a) of the Act. Section 407(a)(1)(A) of the Act states that, except otherwise provided, a plan may not hold any employer security which is not a qualifying employer security. Section 407(a)(2) of the Act prohibits the acquisition by a plan of any qualifying employer security if immediately after such acquisition, the aggregate fair market value of such securities exceeds 10 percent of the fair market value of the plan's assets.

[29] Northwestern Trust, which was retained by Standard as the independent fiduciary for all of the Standard Plans, subsequently determined (see Representation 11) that the only Standard Plan affected by the "excess holding problem" was the Standard Group Life Plan. Although Northwestern Trust expressed no opinion on the Standard Disability Plan, Standard believes that Northwestern Trust may have concluded that the Holding Company Stock received in connection with the demutualization was not a "plan asset" and was thus allocable to Standard. Nevertheless, to remove any doubt, Standard has requested that the exemption apply to both of the Standard Welfare Plans. However, the Department is not expressing an opinion herein on whether the Standard Disability Plan is entitled to any of the consideration received as a result of the demutualization.

[30] The Department expresses no opinion herein on whether the Holding Company Stock constitutes qualifying employer securities and whether such distributions satisfied the terms and conditions of section 408(e) of the Act.

Specifically, Section 732 requires that a plan of demutualization be approved by both the Director and a vote of the policyholders. The Director may hold a hearing for the purpose of receiving comments on whether a plan should be approved and on any other matter relating to the demutualization. After the hearing, the Director will approve the demutualization plan if he or she finds all of the following: [31]

(a) The applicable provisions of ORS 732.600 to 732.630, and other applicable provisions of the law, have been fully met.

(b) The plan protects the rights of policyholders.

(c) The plan will be fair and equitable to the members, and the plan will not prejudice the interests of the members.

(d) The allocation of consideration among the Eligible Members is fair and equitable.

(e) The converted stock insurer will have capital or surplus, or any combination thereof, that is required of a domestic stock insurer on initial authorization to transact like kinds of insurance, and otherwise will be able to satisfy the requirements of this state for transacting its insurance business.

(f) The plan will not substantially reduce the security of the policyholders and the service to be rendered to the policyholders.

(g) If a stock holding or mutual holding company is organized, the financial condition of the stock holding company, the mutual holding company or any subsidiary thereof will not jeopardize the financial stability of the converted stock insurer.

(h) The financial condition of the converting mutual insurer will not be jeopardized by the conversion or reorganization, and the conversion or reorganization will not jeopardize the financial stability of the stock holding company, the mutual holding company or any subsidiary thereof.

(i) The competence, experience and integrity of those persons who will control the operation of the converted stock insurer are not contrary to the interests of policyholders of the converted stock insurer and of the public in allowing the plan to proceed.

(j) Implementation of the plan will protect the interests of the insurance-buying public.

(k) The activity is not subject to other material and reasonable objections.

(l) All modifications required by the Director have been made.

Section 732 authorizes the Director to employ staff personnel and to engage outside consultants to assist the Commissioner in determining whether a demutualization plan meets the requirements of Section 732. (In the case of the Standard demutualization, the Director retained Ernst & Young to provide actuarial services, Sidley & Austin to provide legal services and Merrill Lynch & Co. to provide investment banking services.) The decision by the Director to approve a demutualization plan under Section 732 is subject to judicial review in the Oregon courts.

9. In addition to being approved by the Director, Standard represents that its Demutualization Plan had to be approved by its policyholders. In this regard, Section 732 requires that the policyholders be provided with notice of a meeting convened for the purpose of voting on whether to approve the demutualization plan.[32] Moreover, the demutalization plan must be approved by a vote of not less than a majority of the votes of the insurer's policyholders voting thereon in person, by proxy or by mail.

With respect to Standard, approximately 114,000 Eligible Members were eligible to vote on the Demutualization Plan which occurred at a special meeting on March 19, 1999. Each Eligible Member was entitled to one vote. Of the Eligible Members, 35,569 or 32.4 percent voted and 32,598 or 91.7 percent of the votes cast were in favor of the demutualization.

10. Standard's Demutualization Plan provided for Eligible Members to receive Holding Company Stock, Cash or Policy Credits as consideration for the termination of their membership interests in the mutual company. (Combinations of different forms of consideration were not permitted.) For purposes of the demutualization, an Eligible Member is any owner of one or more policies of insurance, if the policy was in force as of December 17, 1998, the record date for the plan of conversion. This was the date that Standard's Board of Directors adopted the Demutualization Plan.

Solely for purposes of calculating the amount of consideration, each Eligible Member was allocated (but not necessarily issued) a minimum of 52 shares of Holding Company Stock as soon as reasonably practicable after April 21, 1999, the effective date of the demutualization. Any remaining Holding Company Stock was allocated substantially on the basis of the contributions to surplus made by each Eligible Member's in-force policies.[33] In this regard, under Section 732, the Director was required to make a finding that the allocation methodology was fair and equitable.

Certain Eligible Members received Cash or Policy Credits in lieu of Holding Company Stock, which Cash or Policy Credits had a value equal to the Holding Company Stock the policyholders would otherwise have received, based on the price per share of the Holding Company Stock in the IPO. Specifically, an Eligible Member received Cash in lieu of allocable Holding Company Stock (a) if the owner of the policy was known to Standard to be subject to a bankruptcy proceeding, or (b) where the Eligible Member's address for mailing purposes, as shown on the records of Standard, was located outside the United States of America or was shown on Standard's records to be an address at which mail to such Eligible Member is undeliverable, or (c) where an Eligible Member, who had been allocated 99 shares or less of Holding Company Stock, made an affirmative election, on a form provided to such Eligible Member by Standard, to receive Cash instead of Holding Company Stock.

An Eligible Member received Policy Credits in lieu of Holding Company Stock with respect any policy that was (a) an individual retirement annuity contract within the meaning of section 408 of the Code, (b) a tax sheltered annuity contract within the meaning of section 403(b) of the Code, (c) an individual annuity contract that had been issued pursuant to a plan qualified under section 401(a) of the Code directly to the plan participant, or (d) an individual life insurance policy that had been issued pursuant to a plan qualified under section 401(a) of the Code directly to the plan participant.

The decision to receive Holding Company Stock, Cash or Policy Credits by a Plan was made by one or more fiduciaries of such Plan which was independent of Standard and its affiliates. In addition, neither Standard nor any of its affiliates exercised discretion or provided "investment advice," within the meaning of 29 CFR 2510.3–21(c), with respect to each such acquisition.[34] Further, no Eligible

[31] The Director held a public hearing regarding Standard's demutualization on January 27, 1999 and approved the Demutualization Plan by order issued on February 12, 1999.

[32] Under Oregon law, the notice of the policyholder meeting must be mailed within 45 days of the Director's order and at least 30 days prior to the meeting. Eligible Members must receive two notices. The first notice pertains to the public hearing and includes a summary of the plan of demutualization and provides information regarding the right of the Eligible Member to comment, either in person or in writing, on the plan. The second notice relates to the meeting to vote on the plan of demutualization and includes a full copy of the plan, a detailed explanation of the plan and its consequences, and an explanation of the voting procedure.

[33] As noted above, Standard's IPO resulted in the sale of 15,290,400 shares of Holding Company Stock. An additional 18,310,836 shares were also allocated by Standard to Eligible Members.

[34] Consistent with section 732.600 to 732.630 of Oregon Insurance Law, the Demutualization Plan generally provides that the policyholder eligible to participate in the distribution of stock, cash or policy credits resulting from the Demutualization

Continued

Member will pay any brokerage commissions or fees in connection with the receipt of stock.

11. Standard's Demutualization Plan provided for the Holding Company to establish a commission-free sales and purchase program. The Program commenced on February 24, 2000 and it will continue until May 31, 2000. The Program may be extended if the Board of Directors of the Holding Company determines that the extension is appropriate and in the best interest of the Holding Company and its shareholders.

Under the Program, each Eligible Member who received 99 or fewer shares of Holding Company Stock has been given the opportunity to sell, at prevailing market prices, all shares of such stock. Moreover, an Eligible Member who received 99 or fewer shares of Holding Company Stock is permitted to purchase, at prevailing market prices, additional shares of Holding Company Stock required to round-up the total number of shares to 100. Under either the sales or purchase components of the Program, the Eligible Member is not required to pay any brokerage commissions or similar fees. Also, Standard and its affiliates have not provided (and will not provide) "investment advice," as defined in 29 CFR 2510.3–21(c).

12. Northwestern Trust was appointed by Standard to serve as the independent fiduciary and, in so doing, to represent the interests of the Standard Plans that are identified in Representation 4. Northwestern Trust is a privately-owned trust company chartered by the State of Washington and regulated by the State of Washington Department of Financial Institutions. As of May 31, 1999, Northwestern Trust had assets under administration exceeding $3.5 billion. A majority of those assets consisted of retirement plan assets. Northwestern Trust's professional staff manages ERISA programs and its ERISA clients are located in 15 states across the United States. Northwestern Trust provides fiduciary services to a variety of pension and welfare plans and it is experienced in connection with the acquisition, retention and disposition of employer securities. In addition, Northwestern Trust is extensively involved with non-qualified deferred compensation arrangements. To assist Northwestern Trust in carrying out its independent fiduciary duties, it retained Dorsey & Whitney LLP as independent legal counsel.

Northwestern Trust represents that it is completely unrelated to Standard and its affiliates. In this regard, Northwestern Trust states that both it and Standard have no common officers or directors nor does it have an ownership interest in Standard or vice versa.

Northwestern Trust also represents that although it had no voting or dispositive power over shares of Holding Company Stock other than pursuant to its Independent Fiduciary Agreement with Standard, it acted as a directed trustee or custodian to various retirement or welfare plans that were not sponsored by Standard or its affiliates. On a *de minimus basis*, Northwestern Trust explains that it made investments on behalf of these plans in contracts issued by Standard. However, Northwestern Trust states that it received no revenues from these investments other than a trustee or custodial fee from the investing plan.

As the independent fiduciary for the Standard Plans, Northwestern Trust explains that it understood and acknowledged the duties, responsibilities and liabilities in acting as a fiduciary for such Plans. In this respect, Northwestern Trust states that in accordance with the terms of its Independent Fiduciary Agreement, it (a) exercised its authority and responsibility to vote on behalf of the Standard Plans at the special meeting of Eligible Members on the proposal to approve the Demutualization Plan; (b) monitored, on behalf of the Standard Plans, the holding of the Holding Company Stock; and (c) provided instructions with respect to the voting, the continued holding and the disposition of Holding Company Stock held by all of the Standard Plans. Finally, Northwestern Trust asserts that it would take all actions that were necessary and appropriate to safeguard the interests of the Standard Plans.

Northwestern Trust notes that the Standard Plans were entitled to receive consideration in the form of Holding Company Stock because each of these Plans was allocated more than 99 shares. Thus, Northwestern Trust states that it was not required to make an "election" with respect to the form of consideration that was to be received by the Standard Plans.[35] Northwestern Trust also states that it advised Standard that the only Standard Plan for which a distribution of Holding Company Stock would exceed the 10 percent limitation imposed by section 407(a)(2) of the Act was Standard's Group Life Plan which had no other assets.

Northwestern Trust represents that the transactions were prudent and in the best interests of the Standard Plans and their participants and beneficiaries because the consummation of the transactions was conditioned upon approval of Standard's Eligible Members, an overwhelming majority of whom approved the Demutualization Plan on March 19, 1999, as well as other conditions set forth in the Demutualization Plan. In addition, Northwestern Trust states that its determination that the transactions were appropriate for the Standard Plans was based upon its review of all of the facts and circumstances surrounding the transactions, including documentation and records prepared in connection with the transactions. Based upon this information, Northwestern Trust determined that approval of the Demutualization Plan would be in the best interests of all of the Standard Plans and their participants and beneficiaries. Accordingly, Northwestern Trust explains that it voted in favor of the Demutualization Plan and directed the appropriate fiduciaries of the Standard Plans to receive and hold title to the Holding Company Stock when issued.

13. In connection with the disposition of Holding Company Stock that was held by the Standard Plans, Northwestern Trust directed that such shares be repurchased by the Holding Company as follows:

(a) *The Standard Defined Contribution Plans.* The Standard Defined Contribution Plan-Employees and the Standard Defined Contribution Plan-Agents received a total of 44,610 shares of Holding Company Stock as a result of the demutualization. The

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Plan is the "Owner" of the policy and that "The Owner of a Policy shall be shown on the Company's records." Standard further represents that an insurance or annuity policy that provides benefits under an employee benefit plan, typically designates the employer that sponsors the plan, or a trustee acting on behalf of the plan, as the owner of the policy. In regard to insurance or annuity policies that designate the employer or trustee as owner of the policy, Standard represents that it was required under the foregoing provisions of Oregon Law and the Demutualization Plan to make distributions resulting from such Plan to the employer or trustee as owner of the policy, except as provided below.

In general, it is the Department's view that, if an insurance policy (including an annuity contract) is purchased with assets of an employee benefit plan, including participant contributions, and if there exist any participants covered under the plan (as defined at 29 CFR 2510.3–3) at the time when Standard incurred the obligation to distribute Holding Company Stock, Cash or policy credits, then such consideration would constitute an asset of such plan. Under these circumstances, the appropriate plan fiduciaries must take all necessary steps to safeguard the assets of the plan in order to avoid engaging in a violation of the fiduciary responsibility provisions of the Act.

[35] Indeed, the Independent Fiduciary Agreement requires that Northwestern Trust make an election available under the Demutualization Plan with respect to the form of consideration that is to be received by each of the Standard Plans.

Holding Company Stock held by these Standard Plans was repurchased by the Holding Company for cash in four equal weekly installments occurring on November 4, 1999, November 10, 1999, November 18, 1999 and November 24, 1999 at the closing market prices on those dates. In this regard, on November 4, 1999, the Standard Defined Contribution Plans sold 11,152 shares of Holding Company Stock to the Holding Company for a closing price of $24.625 per share. On November 10, 1999, the Standard Defined Contribution Plans sold another 11,152 shares of Holding Company Stock to the Holding Company for a closing price of $23.625 per share. On November 18, 1999, the Standard Defined Contribution Plans sold 11,153 shares of Holding Company Stock to the Holding Company at a closing price of $25.50 per share. Finally, on November 24, 1999, the Standard Defined Contribution Plans sold 11,153 shares of Holding Company Stock to the Holding Company at the closing price of $28.188 per share.

(b) *The Standard Defined Benefit Plans.* The Standard Defined Benefit Plan-Employees and the Standard Defined Benefit-Agents received 26,127 shares and 4,389 shares, respectively, as a result of the demutualization. These shares were repurchased by the Holding Company on November 4, 1999 at the closing market price per share of $24.625.

(c) *The Standard Group Life Plan.* In Standard's demutualization, the Standard Group Life Plan received 29,562 shares of Holding Company Stock.[36] On November 4, 1999, 23,490 shares of Holding Company Stock that were held by the Standard Group Life Plan were repurchased by the Holding Company at the closing market price of $24.625 per share. On November 11, 1999, the remaining 5,632 shares of Holding Company Stock that were held by the Standard Group Life Plan and which had been transferred to a voluntary beneficiary employee association, were sold to the Holding Company at the closing price of $23.562 per share.

No commissions or other fees were charged to the Standard Plans with respect to each repurchase transaction. Proceeds from the sale were deposited with each Standard Plan and distributed or allocated by Northwestern Trust.

Standard represents that statutory exemptive relief under section 408(e) of the Act will cover the repurchase of shares of Holding Company Stock by each of the Standard Plans. Therefore, it has not requested administrative exemptive relief from the Department.[37]

14. In summary, it is represented that the transactions satisfied or will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The Plan of Demutualization, which was being implemented pursuant to stringent procedural and substantive safeguards imposed under Oregon law and supervised by the Director, will not require any ongoing involvement by the Department.

(b) One or more independent Plan fiduciaries had an opportunity to determine whether or not to vote to approve the terms of the Demutualization Plan and was solely responsible for all such decisions.

(c) The exemption allowed Eligible Members that were Plans to acquire Holding Company Stock, Cash or Policy Credits in exchange for their membership interests in Standard and neither Standard nor its affiliates exercised any discretion nor provided "investment advice" within the meaning of 29 CFR 2510.3–21(c) with respect to such acquisitions.

(d) No Eligible Member paid any brokerage commissions or fees in connection with such Eligible Member's receipt of Holding Company Stock, nor did (or will) an Eligible Member pay any brokerage commissions or fees with respect to the implementation of the Program.

(e) Each Eligible Member that was a Plan had an opportunity to comment on the Demutualization Plan and to vote to approve such Plan after receiving full and complete disclosure of its terms.

(f) The Director made an independent determination that the Demutualization Plan was in the interest of all of Standard's policyholders, including Plans.

(g) The Plan of Demutualization did not change and will not change premiums or reduce policy benefits, values, guarantees or other policy obligations of Standard to its policyholders or contractholders.

**Notice to Interested Persons**

Standard will provide notice of the proposed exemption to Eligible Members which are Plans within 14 days of the publication of the notice of pendency in the **Federal Register**. Such notice will be provided to interested persons by first class mail and will include a copy of the notice of proposed exemption as published in the **Federal Register** as well as a supplemental statement, as required pursuant to 29 CFR 2570.43(b)(2) which shall inform interested persons of their right to comment on the proposed exemption. Comments with respect to the notice of proposed exemption are due within 44 days after the date of publication of this pendency notice in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and

[36] As noted previously, it is believed that shares of Holding Company Stock attributed to the Standard Disability Plan were determined not to be "plan assets" and thus, were distributed to Standard.

[37] The Department again expresses no opinion on whether the sale of Holding Company Stock by any of the Standard Plans described above satisfied the terms and conditions of section 408(e) of the Act.

that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th; day of May, 2000.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits, Administration U.S. Department of Labor.*

[FR Doc. 00–12948 Filed 5–22–00; 8:45 am]

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## DEPARTMENT OF LABOR

### Pension and Welfare Benefits Administration

**[Prohibited Transaction Exemption 2000–21; Exemption Application No. D–10777, et al.]**

### Grant of Individual exemptions; Texas Iron Workers and Employers Apprenticeship Training and Journeyman Upgrading Fund (the Plan)

**AGENCY:** Pension and Welfare Benefits Administration, Labor.

**ACTION:** Grant of individual exemptions.

**SUMMARY:** This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

### Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

### Texas Iron Workers and Employers Apprenticeship Training and Journeyman Upgrading Fund (the Plan), Located in San Antonio, Texas

[Prohibited Transaction Exemption 2000–21; Exemption Application No. D–10777]

### Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the purchase of a classroom/office building and a shop building (together, the Buildings) and an adjacent lot (the Adjacent Lot) by the Plan from Local Union No. 66 of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, for $63,000, provided that: (a) The purchase is a one-time transaction for cash, and no commissions are paid by the Plan with respect to the transaction; (b) the Plan pays a price for the Buildings and the Adjacent Lot (collectively, the Properties) that is no more than the fair market value of the Properties at the time of the transaction, as determined by a qualified, independent appraiser; (c) the Plan's independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries; and (d) the Plan's independent fiduciary monitors the purchase of the Properties by the Plan and takes whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 22, 2000 at 65 FR 15367.

*For Further Information Contact:* Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

### Bankers Trust Company (BTC), Located in New York, New York

[Prohibited Transaction Exemption 2000–22; Application No. D–10838]

### Exemption

The restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to: (1) The granting to BTC (a) by the Cheslock-Bakker Opportunity Fund, L.P. (the LP) of security interests in (i) the capital commitments and capital contributions (Capital Contributions) of certain employee benefit plans (the Plans) investing in the LP and (ii) a borrower collateral account to which all Capital Contributions will be deposited when paid and (b) by the LP and by its general partner, CBA Real Estate Partners, LLC, a Delaware limited liability company, of the right to make calls for cash contributions (Contribution Calls) under the Cheslock-Bakker Opportunity Fund, L.P. Limited Partnership Agreement, where BTC is the representative of certain lenders (the Lenders) that will fund a so-called "credit facility" providing credit to the LP, and where the Lenders are parties in interest with respect to the Plans; and (2) the execution of a partner agreement and estoppel (the Estoppel) under which the Plans agree to honor the Contribution Calls; provided that (a) the grants and Estoppels are on terms no less favorable to the Plans than those which the Plans could obtain in arm's-length transactions with unrelated parties; (b) the decisions on behalf of each Plan to invest in the LP and to execute such Estoppels in favor of BTC are made by a fiduciary which is not included among, and is independent of and unaffiliated with, the Lenders and BTC; (c) with respect to Plans that have invested or may invest in the LP in the future, such Plans have or will have assets of not less than $100 million and not more than 5% of the assets of any such Plan are or will be invested in the LP. For purposes of this condition (c), in the case of multiple plans maintained by a single employer or single controlled group of employers, the assets of which are invested on a commingled basis, (*e.g.*, through a master trust), this $100 million threshold will be applied to the aggregate assets of all such plans; and (d) the general partner of the LP must be

independent of BTC, the Lenders and the Plans.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 14, 2000 at 65 FR 13855.

*For Further Information Contact:* Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

**Bay Internists, Inc. Profit Sharing Plan (the Plan) Located in Kilmarnock, Virginia**

[Prohibited Transaction Exemption 2000–23; Exemption Application No. D–10847]

**Exemption**

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain unimproved real property (the Property) located in Kilmarnock, Virginia, to Bay-Med, a general partnership which is a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The proposed sale is a one-time cash transaction;

(b) The Plan receives the current fair market value for Property, as established at the time of the sale by an independent, qualified appraiser; and

(c) The Plan pays no commissions or other expenses associated with the sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 14, 2000 at 65 FR 13858.

*For Further Information Contact:* Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

**Foodcraft, Inc. Defined Benefit Plan (the Plan) Located in Los Angeles, California**

[Prohibited Transaction Exemption 2000–24; Exemption Application No. D–10864]

**Exemption**

The restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain improved real property (the Property) by the Plan to the trustees of the Plan, Ernest Lieblich and Caryl Lieblich (collectively, the Trustees), parties in interest and disqualified persons with respect to the Plan, provided that the following conditions are met:

(a) All terms and conditions of the Sale are no less favorable to the Plan than those which the Plan could obtain in an arm's length transaction with an unrelated party;

(b) The Trustees will purchase the Property from the Plan for the greater of $315,000 or the Property's fair market value as of the date of the transaction as determined by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash; and

(d) The Plan will pay no fees or commissions in connection with the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on March 22, 2000 at 65 FR 15369.

*For Further Information Contact:* Mr. J. Martin Jara, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

**General Information**

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 18th day of May, 2000.

**Ivan Strasfeld,**

*Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.*

[FR Doc. 00–12947 Filed 5–22–00; 8:45 am]

BILLING CODE 4510–29–P

## NATIONAL SCIENCE FOUNDATION

### Notice of Permits Issued Under the Antarctic Conservation Act of 1978

**AGENCY:** National Science Foundation.

**ACTION:** Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

**SUMMARY:** The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

**FOR FURTHER INFORMATION CONTACT:** Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

**SUPPLEMENTARY INFORMATION:** On April 11th and April 13, 2000, the National Science Foundation published notices in the **Federal Register** of permit applications received. Permits were issued on May 15, 2000 to the following applicant:

Anne A. Sturz: Permit No. 2001–006
Rudolf S. Scheltema: Permit No. 2001–007

**Nadene G. Kennedy,**

*Permit Officer.*

[FR Doc. 00–12934 Filed 5–22–00; 8:45 am]

BILLING CODE 7555–01–M

## NATIONAL TRANSPORTATION SAFETY BOARD

### Sunshine Act Meeting

**TIME AND DATE:** 9:30 a.m., Wednesday, May 31, 2000.

**PLACE:** NTSB Board Room, 429 L'Enfant Plaza, SW., Washington, DC 20594.

**STATUS:** Open to the Public.

**MATTERS TO BE CONSIDERED:**

7009A—Marine Accident Report: Ramming of the Eads Bridge by Barges in Tow of the M/V Anne Holly with Subsequent Ramming and near breakaway of the President of the Casino on the Admiral, St. Louis, Missouri, on April 4, 1998.

**NEWS MEDIA CONTACT:** Telephone: (202) 314–6100.

Individuals requesting specific accommodation should contact Mrs. Barbara Bush at (202) 314–6220 by Friday, May 26, 2000.

**FOR MORE INFORMATION CONTACT:** Rhonda Underwood (202) 314–6065.

Dated: May 19, 2000.

**Rhonda Underwood,**

*Federal Register Liaison Officer.*

[FR Doc. 00–13091 Filed 5–19–00; 2:58 pm]

BILLING CODE 7590–01–M

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 50–311]**

## Public Service Electric and Gas Company; Notice of Consideration of Issuance of Amendment To Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–75 issued to Public Service Electric and Gas Company (the licensee), for operation of the Salem Nuclear Generating Station, Unit No. 2 (Salem Unit No. 2), located in Salem County, New Jersey.

The proposed amendment would modify the requirements contained in the Salem Unit No. 2 Technical Specifications regarding the operation of the movable incore detector system. The proposed change would be a one-time change to allow use of the movable incore detector system for measurement of core peaking factors with less than 75% and greater than or equal to 50% of the detector thimbles available. The licensee has submitted this request in response to degradation of the Salem Unit No. 2 movable incore detector system. There are currently 75.8% of the detector thimble locations available for use. The proposed changes would allow continued operation of Salem Unit No. 2 through the remainder of Cycle 11.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The movable incore detector system is used only to provide confirmatory information on the neutron flux distribution of the core. This system does not provide any automatic control functions or protective functions for the operation of the plant. The only accident that the movable incore detector system could be involved in is the breaching of the detector thimbles which is bounded by the small break loss of coolant accident (LOCA) analysis. As the proposed changes do not involve any changes to the physical equipment or operation of the system, there is no increase in the probability of an accident previously evaluated.

The movable incore detector system provides a monitoring function that is not used for accident mitigation. The small break LOCA analysis continues to bound potential breaching of the system's detector thimbles. With less than 75% but greater than or equal to 50% of the detector thimbles available, core peaking factor measurement uncertainties will be increased. This can impact core peaking factors and as a result could affect the consequences of certain accidents. However, any changes in the core peaking factors resulting from increased measurement uncertainties will be compensated for by conservative measurement uncertainty adjustments in the Technical Specifications to ensure that pertinent core design parameters are maintained. Sufficient additional penalty is added to the power distribution measurements such that this change will not impact the consequences of any accident previously evaluated.

Therefore, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

There are no changes to the physical plant or operation of the movable incore systems as a result of the proposed changes. Since no changes are being made to the way the system is operated and no changes are being made to the system equipment, no new accidents or different accidents than previously analyzed are introduced by the proposed changes.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The reduction in the minimum complement of equipment necessary for the operability of the movable incore detector system only impacts the monitoring and calibration functions of the system. Reduction of the number of available moveable incore detector thimbles to the 50% level does not significantly degrade the ability of the system to measure core power distributions. With less than 75% but greater than or equal to 50% of the detector thimbles available, core peaking factor measurement uncertainties will be increased but will be compensated for by conservative measurement uncertainty adjustments in the Technical Specifications to ensure that pertinent core design parameters are maintained. Sufficient additional penalty is added to the power distribution measurements such that this change does not impact the safety margins that currently exist. Also, the reduction of available detector thimbles has negligible impact on the quadrant power tilt and core average axial power shape measurements and will not adversely affect excore detector calibration. Sufficient detector thimbles will be available to ensure that no quadrant will be unmonitored.

Based on the above, the proposed changes will not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to

take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 22, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

Non-timely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated April 10, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 17th day of May.

For the Nuclear Regulatory Commission.

**Robert J. Fretz,**

*Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 00–12963 Filed 5–22–00; 8:45 am]

BILLING CODE 7590–01–P

## RAILROAD RETIREMENT BOARD

### Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold

a meeting on May 25, 2000, at 10:30 a.m. at the office of the Chief Actuary of the U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, on the conduct of the 21st Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the results and presentation of the 21st Actuarial Valuation. The text and tables which constitute the Valuation will have been prepared in draft form for review by the Committee. It is expected that this will be the last meeting of the Committee before publication of the Valuation.

The meeting will be open to the public. Persons wishing to submit written statements or make oral presentations should address their communications or notices to the RRB Actuarial Advisory Committee, c/o Chief Actuary, U.S. Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092.

Dated: May 11, 2000.

**Beatrice Ezerski,**

*Secretary to the Board.*

[FR Doc. 00–12866 Filed 5–22–00; 8:45 am]

BILLING CODE 7905–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–24456; File No. 812–12092]**

## Northbrook Life Insurance Company, et al.

May 16, 2000.

**AGENCY:** Securities and exchange Commission ("Commission")

**ACTION:** Notice of application for an order pursuant to Section 11(a) of the Investment Company Act of 1940 (the "Act") approving the terms of an offer of a Longevity Reward Rider to owners of certain variable annuity contracts (the "Contracts").

*Applicants:* Northbrook Life Insurance Company ("Northbrook"), Northbrook Life Insurance Company Variable Annuity Accout II ("Account II"), and Dean Witter Reynolds Inc. ("Dean Witter").

*Summary of Application:* Applicants seek an order approving the terms of a proposed offer to certain owners of the Contracts of a rider that (a) upon death of a Contract's owner, gives any surviving spouse theoption of continuing the Contract with a value equal to the death benefit then payable, (b) reduces or waives certain charges, and (c) imposes a new withdrawal charge on purchase payments made before or after the rider's issue date (the "Rider Date").

*Filing Date:* The application was filed on May 15, 2000.

*Hearing or Notification of Hearing:* An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on June 7, 2000, and should be accompanied by proof of service on Applicants in the form of an affidvit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC. 20549–0609. Applicants, Bruce A. Teichner, Esq., Associate Counsel, Allstate Life Insurance Company, 3100 Sanders Road, Northbrook, Illinois 60062.

**FOR FURTHER INFORMATION CONTACT:** Ann L. Vlcek, Senior Counsel, Michael D. Pappas, Senior Counsel, or William J. Kotapish, Assistant Director, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, N.W., Washington, DC. 20549–0102, (202) 942–8090.

### Applicant's Representations

1. Northbrook is a wholly-owned subsidiary of Allstate Life Insurance company ("Allstate Life"). Allstate Life is an indirect subsidiary of The Allstate Corporation, a publicly-traded insurance holding company. Northbrook is Account II's depositor within the meaning of the Act.

2. Dean Witter is a wholly-owned subsidiary of Morgan Stanley Dean Witter & Co., a publicly-traded financial services company. Dean Witter is the principal underwriter of Account II. Dean Witter is registered as a broker-dealer under the Securities Exchange Act of 1934 (File No. 9–14172).

3. Account II is registered under the Act as a unit investment trust (File No. 811–6116). Account II funds the Morgan Stanley Dean Witter Variable Annuity II Contracts (defined above as the "Contracts") that Northbrook and Dean Witter have offered and sold for a number of years.

4. The Contracts, which are registered under the Securities Act of 1933 (File No. 033–35412), are deferred annuity contracts under which Contract owners may make one or more purchase payments over a period of time (called the "accumulation phase"). During the accumulation phase, the Contract owner's purchase payments, after deduction of certain charges, earn (at the owner's election) a "variable" return based on the investment performance of one or more of Account II's subaccounts and/or a fixed rate of return that Northbrook declares from time to time.

5. At the end of the accumulation phase, the Contract owner elects whether to receive a "lump sum" payment of the Contract's accumulated value, or to receive that value under one of several payment options that Northbrook offers. Payment options are available on a variable and/or fixed basis. The Contracts incorporate many other features, including several "death benefit" options, partial withdrawal rights, full surrender rights, transfer privileges, and other optional rider benefits.

6. The Contracts currently impose a withdrawal charge of up to 6% of any amount by which purchase payments withdrawn in any year exceed 15% of the cumulative purchase payments that had been made as of the beginning of that year (the "annual free withdrawal amount"). The withdrawal charge associated with each purchase payment declines 1% each year until it is 0% beginning in the seventh year after the payment was made. Unused portions of the annual free withdrawal amount do not carry over to future years.

7. The Contracts also impose an annual Contract maintenance charge of $30, a $25 charge applicable to certain transfers in excess of twelve during a one-year period (which is currently being waived), a daily administrative charge at an annual rate of 0.10% of the Contract's value in Account II, a mortality and expense risk charge at an annual rate of 1.25% of the Contract's value in Account II (or higher if certain optional rider benefits are selected), and a charge corresponding to any applicable state premium taxes.

8. Northbrook now proposes to offer a Longevity Reward Rider (the "LRR") to owners of certain outstanding Contracts. The LRR provides additional Contract benefits. The benefits under the LRR include: (a) An option whereby a deceased owner's surviving spouse may continue the Contract using the then-current death benefit value as the new Contract value, if higher, rather

than the current Contract value; (b) a reduced mortality and expense risk charge (*i.e.*, at an annual rate that is .07% less than the rate that otherwise would apply); (c) a permanent waiver of the $30 annual Contract maintenance charge if the Contract's value exceeds $40,000 at any time; and (d) a reduction in the withdrawal charge that will apply to the withdrawal of any purchase payments that are made after the LRR is added to the Contract.

9. Contract owners who elect the LRR will have a new three year withdrawal charge schedule that will apply to withdrawals made after the Rider Date. The new schedule would apply to any amount of such a subsequent withdrawal of purchase payments that exceeds the 15% annual free withdrawal amount, regardless of whether such withdrawn purchase payments were made before or after the Rider Date.

10. The withdrawal charge under the new withdrawal charge schedule will begin at 3% and decline by 1% per year over three years to 0% by the end of the third year. For purchase payments made prior to the rider Date, the three year period runs from the Rider Date. For any purchase payment made subsequent to the Rider Date, the three year period runs from the date of that payment.

11. The same exceptions to imposing the LRR withdrawal charge will apply as apply to the Contract's basic withdrawal charge. Specifically, no LRR withdrawal charge will be imposed at the time a payment option commences, upon the death of a Contract owner or annuitant, upon amounts withdrawn to satisfy any applicable minimum distribution requirements under the Internal Revenue Code, or upon amounts withdrawn that are within the 15% annual free withdrawal amount. These are the same exceptions as would apply to the Contracts without the LRR.

12. The LRR will be offered only to Contract owners who have maintained their existing purchase payments in their Contracts for at least six years. Accordingly, no amount of withdrawal charge will remain on any purchase payments made prior to the Rider Date.

13. Contract owners will not be permitted to elect for the LRR to apply to part of a Contract and not to the rest. Any election of the LRR must apply to the whole Contract.

14. Applicants state that the principal purpose of offering the LRR is to reward the eligible Contract owners for their persistency. In addition, the LRR allows Northbrook to maintain the Contract on a competitive footing with other newer variable annuity contracts in the marketplace that offer the same or similar benefits.

15. After an initial notification of the offer in the Contract prospectus or other communication to Contract owners by Dean Witter's registered representatives, the LRR will be offered by providing eligible owners who express an interest in learning the details of the offer, in addition to such prospectus, a separate document explaining the offer ("the Officer Document").

16. The Offering Document will advise such Contract owners that the offer is specifically designed for those Contract owners who intend to continue to hold their Contracts as long-term investment vehicles. The Offering Document will state that the offer is not intended for all Contract owners, and that it is especially not appropriate for any Contract owner who anticipates surrendering all or a significant part of his or her Contract within the next three years. In this regard, the Offering Document will encourage Contract owners to carefully evaluate their personal financial situation when deciding whether to accept or reject the offer of the LRR. In addition, the Offering Document will explain how an owner of a Contract contemplating acceptance of the LRR may avoid the LRR withdrawal charge if no more than the annual 15% free withdrawal amount is withdrawn in any one year and any subsequent purchase payments are maintained until expiration of the applicable LRR withdrawal charge period. In this regard, the Offering Document will state in clear plain English that, if a significant amount of the Contract's value is surrendered or withdrawn during the three years following the Rider Date: (a) the LRR's benefits may be more than offset by the LRR withdrawal charge; and (b) a Contract owner may be worse off than if he or she had rejected the offer.

17. To accept the LRR, an owner must complete an internal election form. This election form will include the disclosure set forth in Condition No. 1 under "Applicant' Conditions" below.

18. The compensation to registered representatives who offer the LRR to Contract owners is expected to take the form of annual "trail" commissions equal to approximately 0.70% of the Contract's average value. On the sale of a new Contract, the registered representative would currently earn a commission equal to approximately 5% of purchase payments made, plus annual trail commission of approximately .10%.

19. The Contracts provide a basic death benefit equal to the highest of (a) the Contract's accumulated value; (b) the cumulative amount of all purchase payments made to date (with approximate adjustment for any partial withdrawals that have been made); and (c) the Contract's accumulated value on the most recent death benefit anniversary, which are every sixth anniversary of a Contract's issuance beginning with the sixth, with appropriate adjustment for subsequent purchase payments and partial withdrawals. The Applicants assert that this basic death benefit can be of quite significant value to a Contract Owner and that it can reasonably be expected that, in many cases where an owner has died, the death benefit will exceed the Contract's then accumulated value. The Applicants maintain, therefore, that the LRR could have considerable value for a surviving spouse who wishes to continue the Contract.

20. The .07% reduction in the mortality and expense risk charge and, in cases involving more than $40,000 of Contract value, the waiver of the $30 annual charge that otherwise would apply are further benefits that the LRR would provide. These benefits are guaranteed and cannot be reduced or withdrawn. In particular, if the Contract value ever exceeds $40,000 at any time following the Rider Date, the $30 charge will be waived for the remaining duration of the Contract, even if its value subsequently falls below $40,000.

21. Finally, additional purchase payments made after the LRR is added to a Contract will be subject only to the 3%/3-year withdrawal charge schedule provided for in that rider, rather than the Contract's regular 6%/6-year withdrawal charge schedule that would have applied to those same purchase payments if the LRR had not been added to the Contract. Applicants assert that this is a substantial benefit to any Contract owner, including a surviving spouse, who may have an interest in making further purchase payments.

**Applicants' Legal Analysis**

1. Section 11(a) of the Act makes it unlawful for any registered open-end company, or any principal underwriter for such a company, to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company, to exchange that security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities, unless the terms of the offer have first been submitted to and approved by the Commission.

2. section 11(c) of the Act, in pertinent part, requires, in effect, that any offer of exchange of the securities of

a registered unit investment trust for the securities of any other investment company be approved by the Commission regardless of the basis of the exchange.

3. Standing alone, Section 11(a) by its terms applies only to exchanges of securities issued by "open-end" investment companies, which, under Section 5(a)(1) of the Act, includes only management-type investment companies. Account II itself, as noted above, is a unit investment trust-type (rather than a management-type) of investment company under Section 4(2) of the Act. It would appear, therefore, that Section 11 could require Commission approval for Applicants' offer of the LRR only if that falls within the ambit of Section 11(c).

4. Applicants do not conceded that their offer of the LRR to existing Contract owners necessarily constitutes an offer of securities of a registered unit investment trust in exchange for securities of any other investment company within the purview of Section 11(c). Nor do Applicants concede that, for purposes of Section 11, a Contract with the LRR is a different security than a contract without the LRR. Nevertheless, Applicants request an exemption pursuant to Section 11(a) of the Act to the extent deemed necessary to permit the offer of the LRR as described herein.

5. Applicants have considered whether they could rely on Rule 11a-2 under the Act. Applicants believe and represent that the only provision in Rule 11a-2 that could prevent such reliance would be the so-called "tacking" requirement in Rule 11a-2(d)(1). Applicants state that since the LRR withdrawal charge continues for only three years, and since the most recent purchase payment made by Contract owners who are eligible for the LRR was made at least six years prior to the Rider Date, the tracking requirement effectively would prohibit the imposition of any portion of the LRR's withdrawal charge with respect to purchase payments made prior to the Rider Date. For that reason, Applicants have concluded that Rule 11a-2 is unavailable to them.

6. Congress enacted Section 11 to prevent "switching," *i.e.*, the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges. Applicants assert that the LRR would not involve "switching." Applicants maintain, to the contrary, that the purpose of the LRR is to enable Contract owners to enhance their Contracts through the rider without having to buy a new variable annuity contract. Applicants represent that because the LRR provides clear benefits, as described above, the LRR's sole purpose is not to exact additional selling charges (or any other type of charge).

7. Applicants state that the LRR would not result in any duplicative charges. Applicants represent that the limited withdrawal charge provided under the LRR is reasonable in relation to the benefits that the rider provides and the costs that Applicants will incur in providing those benefits. Those costs will include costs of developing and administering the LRR, the direct dollar costs of the charges that will be waived or reduced and the benefits that will be paid under the LRR, and the costs of distributing the LRR to Contract owners and educating them about it.

8. Applicants represent that any possible withdrawal charge under the LRR is modest in amount. Applicants state that, if the Contract owner makes no withdrawals during the three years after the Rider Date, there is no possibility that any withdrawal charge will ever be deducted that exceeds what would have been deducted absent the LRR. Applicants also state that even if purchase payments are withdrawn during that three year period, the LRR withdrawal charge will apply only if more than the 15% annual free withdrawal amount is withdrawn in any year.

9. The LRR will be offered only to Contract owners who already have demonstrated an inclination to maintain their Contracts for substantial periods of time. Applicants believe that the income taxes that are generally payable when earnings are withdrawn from a Contract, as well as the tax penalties that may apply if those withdrawals are made prior to the owner's reaching age 59½, serve as additional motivations that cause most owners to hold their Contracts for a substantial number of years (and often until retirement).

10. Applicants state that any withdrawal charge will be waived for withdrawals of any amounts necessary to meet any federal tax law minimum distribution requirements applicable to a Contract.

11. Under all these circumstances, Applicants believe that, as a practical matter, few owners that add the LRR to their Contracts will ever actually pay any additional withdrawal charges as a result; and to the extent that the LRR succeeds in its purpose of maintaining the Contracts on a competitive footing in the marketplace, withdrawals should be even further reduced.

12. Applicants state that except for the withdrawal charge as described above, the LRR will not result in any increase in or imposition of any charge. Accordingly, Applicants assert that except for the potential imposition of the LRR withdrawal charge on certain withdrawals that occur within three years after the Rider Date, every aspect of a Contract will be at least as favorable after the LRR is added as it was before. Applicants maintain that adding the LRR to a Contract will have no adverse tax consequences to a Contract's owner.

13. In light of these considerations, Applicants do not believe there is any public policy or purpose under Section 11 (or otherwise) that would preclude offering the LRR on the terms and subject to the conditions stated herein.

*Applicants' Conditions*

Applicants consent to the following conditions:

1. The Offering Document will contain concise, plain English statements that: (a) the LRR is suitable only for Contract owners who expect to hold their Contracts as long term investments; and (b) if a significant amount of the Contract's value is surrendered or withdrawn during the first three years after the Rider Date, the LRR's benefits may be more than offset by that charge, and a Contract owner may be worse off than if he or she had rejected the LRR.

2. The Offering Document will disclose in concise plain English the only aspect in which adding the LRR rider could disadvantage a Contract owner (i.e., through the possible imposition of the LRR withdrawal charge).

3. A Contract owner choosing to add the LRR will complete and sign the election form, which will prominently restate in concise, plain English the statements required in Condition No. 1, and will return it to Northbrook. If the election form is more than two pages long, Northbrook will use a separate document to obtain the Contract owner's acknowledgment of the statements referred to in Condition No. 1 above.

4. Applicants will maintain and make available the following separately identifiable records, for the time periods specified below, for review by the Commission upon request: (a) Northbrook will maintain records showing the level of LRR purchases and how it relates to the total number of Contract owners eligible to acquire the LRR (at least quarterly as a percentage of the number eligible); (b)(i) Northbrook will maintain copies of any form of Offering Document, prospectus

disclosure, election form, acknowledgment form, or offering letter, regarding the offering of the LRR, including the dates(s) used, and (ii) Dean Witter will maintain copies of any other written materials or scripts for presentations used by registered representatives regarding the LRR, including the dates used; (c) records showing information about each LRR purchase that occurs, including (i) the following information to be maintained by Northbrook: The name of the Contract owner; the Contract number; the election form (and separate acknowledgment form, if any, used to obtain the Contract owner's acknowledgment of the statements required in Condition No. 1 above), including the date such election or acknowledgment form was signed; the date of birth, address and telephone number of the Contract owner; the issue date of the LRR; the amount of the Contract's value on that date; and persistency information relating to the Contract (date of any subsequent withdrawals and withdrawal charges paid); and (ii) the following information to be maintained by Dean Witter: The name of the Contract owner, the Contract number, the registered representative's name, CRD number, firm affiliation, branch office address and telephone number; the name of the registered representative's broker-dealer; and the amount of commissions paid to the registered representative that relates to the LRR; and (d) each of Northbrook and Dean Witter will maintain logs showing any Contract owner complaints received by it about the LRR, state insurance department inquiries to it about the LRR, or litigation, arbitration or other proceedings to which it is a party regarding the LRR.

5. Applicants will include the following information on the logs referred to in Condition No. 4(d) above: date of complaint or commencement of proceeding; name and address of the person making the complaint or commencing the proceeding; nature of the complaint or proceeding; and persons named or involved in the complaint or proceeding.

6. Applicants will retain (i) the records specified in Condition Nos. 4(a) and (d) above for six years from creation of the record; (ii) the records specified in Condition No. 4(b) above for six years after the date of last use; and (iii) the records specified in Condition No. 4(c) for five years from the Rider Date. The records referred to in these conditions will be prepared and retained, for the periods specified herein, by Northbrook and Dean Witter. Nevertheless, upon request of the Commission or its staff, Northbrook and Dean Witter shall coordinate the prompt assembly of such records for review at a single easily accessible location.

*Conclusion*

For the reasons discussed above, Applicants submit that the LRR offer is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants submit that the requested order should therefore be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12865 Filed 5–22–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42784; File No. SR–CHX–00–12]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Chicago Stock Exchange, Incorporated Relating to Fees for the E-Session

May 15, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b—4 thereunder,[2] notice is hereby given that on May 1, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On May 15, 2000, the Exchange amended the proposal.[3] The Exchange has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule (the "Schedule") to provide Exchange specialists and floor brokers with a credit of $.25 per trade executed during the Exchange's extended hours trading session ("E-Session")[5] through October 1,200. The text of the proposed rule change is below. Additions are in italics. Deletions are in brackets.

**MEMBERSHIP DUES AND FEES**

* * * * *

M. Credits

1. Specialist Credits

Total monthly fees owned by a specialist to the Exchange will be reduced (but to no less than zero) by the application of the following [transaction] credits:

a. No change.

b. No change.

*c. E-Session Credits. A credit of $.25 per trade executed during the E-Session. This credit shall be available through October 1, 2000.*

2. Floor Broker Credits.

a. No change.

b. No change.

*c. E-Session Credits. Total monthly fees owned by a floor broker to the Exchange will also be reduced (but to no less than zero) by the application of an E-Session Credit.* "E-Session Credit" means a credit of $.25 per trade executed during the E-Session. This credit shall be available through October 1, 2000.

* * * * *

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of

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[1] 15 U.S C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* May 12, 2000 letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, SEC ("Amendment No. 1"). Amendment No. 1 states that the subject E-Session credit will be available through October 1, 2000.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] On October 13, 1999, the Commission approved, on a pilot basis, the CHX's proposed rule change that allowed the CHX to implement an extended hours trading session. *See* Securities Exchange Act Release No. 42004 (October 13, 1999), 64 FR 56548 (October 20, 1999) (SR–CHX–99–16). The E-Session is currently approved to continue through October 1, 2000. *See* Securities Exchange Act Release No. 42463 (February 28, 2000), 65 FR 11817 (March 6, 2000) (SR–CHX–00–02).

the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

On October 29, 1999, the Exchange implemented the E-Session, which permits investors to submit limit orders for execution until 5:30 p.m., Central Time. To encourage members to seek additional order flow during the E-Session, the Exchange developed an E-Session credit program, necessitating a change to the Schedule. The proposal amends the Schedule to provide Exchange specialists and floor brokers with a credit of $.25 per trade executed during the E-Session through October 1, 2000.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)(4) of the Act[6] in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[7] and subparagraph (f)(2) of Rule 19b–4 thereunder,[8] because it involves a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] The Commission notes that the proposal may raise questions concerning payment for order flow. To the extent that it does raise such issues, exchange members should consider best execution and disclosure obligations they may have under the federal securities laws in general, and particularly under Rules 10b–10 and 11Ac1–3 under the Act. 17 CFR 240.10b–10 and 17 CFR 240.11Ac1–3, respectively.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–00–12, and should be submitted by June 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12928 Filed 5–22–00; 8:45 am]

BILLING CODE 8010–01–M

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42790; File No. SR–NASD–00–27]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc., Amending the Nasdaq By-Laws and Restated Certificate of Incorporation

May 16, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 11, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

Nasdaq is proposing to amend its By-Laws and Restated Certificate of Incorporation. Additions are italicized, deletions are bracketed.

*By-Laws of the NASDAQ Stock Market, Inc.*

**Article I Definitions**

When used in these By-Laws, unless the context otherwise requires, the term:

* * * * *

(i) "Director" means a member of the Board[, excluding the Chief Executive Officer of the NASD];

(j) "Industry Director" or "Industry member" means a Director (excluding the President *or the Chief Executive Officer*) or Nasdaq Listing and Hearing Review Council or committee member who (1) is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (2) is an officer, director (excluding and outside director), or employee of an entity that owns more than ten percent of the equity of a broker or dealer, and the broker or dealer accounts for more than five percent of the gross revenues received by the consolidated entity; (3) owns more than five percent of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed ten percent of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (4) provides professional services to brokers or dealers, and such services constitute 20 percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or member's firm or partnership; (5) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50 percent or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20

percent or more of the professional revenues received by the Director or member or 20 percent or more of the gross revenues received by the Director's or members's firm or partnership; or (6) has a consulting or employment relationship with or provides professional services to the NASD, NASD Regulation, Nasdaq, or Amex (and any predecessor) or has had any such relationship or provided any such services at any time within the prior three years;

* * * * *

(q) "Non-Industry Director" or "Non-Industry member" means a Director (excluding the President *or the Chief Executive Officer)* or Nasdaq Listing and Hearing Review Council or committee member who is (1) a Public Director or Public member; (2) an officer or employee of an issuer of securities listed on Nasdaq or Amex, or traded in the over-the-counter market; or (3) any other individual who would not be an Industry Director or Industry member;

* * * * *

(s) "Public Director" or "Public member" means a Director or Nasdaq Listing and Hearing Review Council or committee member who has no material business relationship with a broker or dealer or the NASD, NASD Regulation, or Nasdaq; [and]

(t) "Rules of the Association" or "Rules" means the numbered rules set forth in the NASD Manual beginning with the rule 0100 Series, as adopted by the NASD Board pursuant to the NASD By-Laws, as hereafter amended or supplemented [.];

* * * * *

(w) "Amex" means American Stock Exchange LLC; *and*

(x) "Amex Board" means the Board of Governors of Amex [;].

**Article III Meetings of [The Stockholder] Stockholders**

**Action by Consent of Stockholder**

[Sec. 3.1 Any action required or permitted by law to be taken at any meeting of the stockholder of Nasdaq may be taken without a meeting, without prior notice and without a vote, if a consent in writing, setting forth the action so taken, is signed by the holder of the outstanding stock.]

*Annual Meetings of Stockholders*

*Sec. 3.1 (a) Nominations of persons for election to the Board and the proposal of business to be considered by the stockholders may be made at an annual meeting of stockholders only (i) pursuant to Nasdaq's notice of meeting (or any supplement thereto), (ii) by or at the direction of the Board or the National Nominating Committee or (iii) by any stockholder of Nasdaq who was a stockholder of record of Nasdaq at the time the notice provided for in this Section 3.1 is delivered to the Secretary of Nasdaq, who is entitled to vote at the meeting and who complies with the notice procedures set forth in this Section 3.1.*

*(b) For nominations or other business to be properly brought before an annual meeting by a stockholder pursuant to Section 3.1(a)(iii), the stockholder must have given timely notice thereof in writing to the Secretary of Nasdaq and any such proposed business other than the nominations of persons for election to the Board must constitute a proper matter for stockholder action. To be timely, a stockholder's notice shall be delivered to the Secretary at the principal executive offices of Nasdaq not later than the close of business on the ninetieth day nor earlier than the close of business on the one hundred twentieth day prior to the first anniversary of the preceding year's annual meeting (provided, however, that in the event that the date of the annual meeting is more than thirty days before or more than seventy days after such anniversary date, notice by the stockholder must be so delivered not earlier than the close of business on the one hundred twentieth day prior to such annual meeting and not later than the close of business on the later of the ninetieth day prior to such annual meeting or the tenth day following the day on which public announcement of the date of such meeting is first made by Nasdaq). For purposes of the first annual meeting of stockholders of Nasdaq held after 2000, the first anniversary of the 2000 annual meeting of stockholders shall be deemed to be _____, 2001. In no event shall the public announcement of an adjournment or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. Such stockholder's notice shall set forth: (i) as to each person whom the stockholder proposes to nominate for election as a director all information relating to such person that is required to be disclosed in solicitations of proxies for election of directors in an election contest, or is otherwise required, in each case pursuant to Regulation 14A under the Act and Rule 14a–11 thereunder (and such person's written consent to being named in the proxy statement as a nominee and to serving as a director if elected); (ii) as to any other business that the stockholder proposes to bring before the meeting, a brief description of the business desired to be brought before the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes proposal to amend the By-Laws of Nasdaq, the language of the proposed amendment), the reasons for conducting such business at the meeting and any material interest in such business of such stockholder and the beneficial owner, if any, on whose behalf the proposal is made; and (iii) as to the stockholder giving the notice and the beneficial owner, if any, on whose behalf the nomination or proposal is made (A) the name and address of such stockholder, as they appear on Nasdaq's books, and of such beneficial owner, (B) the class and number of shares of capital stock of Nasdaq which are owned beneficially and of record by such stockholder and such beneficial owner, (c) a representation that the stockholder is a holder of record of stock of Nasdaq entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, and (D) a representation whether the stockholder or the beneficial owner, if any, intends or is part of a group which intends (1) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of Nasdaq's outstanding capital stock required to approve or adopt the proposal or elect the nominee and/or (2) otherwise to solicit proxies from stockholders in support of such proposal or nomination. Nasdaq may require any proposed nominee to furnish such other information as it may reasonably require to determine the eligibility of such proposed nominee to serve as a director of Nasdaq.*

*(c) Notwithstanding anything in the second sentence of Section 3.1(b) to the contrary, in the event that the number of directors to be elected to the Board at an annual meeting is increased and there is no public announcement by Nasdaq naming the nominees for the additional directorships at least one hundred days prior to the first anniversary of the preceding year's annual meeting, a stockholder's notice required by this Section 3.1 shall also be considered timely, but only with respect to nominees for the additional directorships, if it shall be delivered to the Secretary at the principal executive offices at Nasdaq not later than the close of business on the tenth day following the day on which such public announcement is first made by Nasdaq.*

*Special Meetings of Stockholders*

*Sec. 3.2 Only such business shall be conducted at a special meeting of*

*stockholders as shall have been brought before the meeting pursuant to Nasdaq's notice of meeting. Nominations of persons for election to the Board may be made at a special meeting of stockholders at which directors are to be elected pursuant to Nasdaq's notice of meeting (a) by or at the direction of the Board or the National Nominating Committee or (b) provided that the Board has determined that directors shall be elected at such meeting, by any stockholder of Nasdaq who is a stockholder of record at the time the notice provided for in this Section 3.2 is delivered to the Secretary of Nasdaq, who is entitled to vote at the meeting and upon such election and who complies with the notice procedures set forth in this Section 3.2. In the event Nasdaq calls a special meeting of stockholders for the purpose of electing one or more directors to the Board, any such stockholders entitled to vote in such election may nominate a person or persons (as the case may be) for election of such position(s) as specified in Nasdaq's notice of meeting, if the stockholders's notice required by Section 3.1(b) shall be delivered to the Secretary at the principal executive offices of Nasdaq not earlier than the close of business on the one hundred twentieth day prior to such special meeting and not later then the close of business on the later of the ninetieth day prior to such special meeting or the tenth day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commerce a new time period (or extend any time period) for the giving of a stockholder's notice as described above.*

*General*

*Sec. 3.3 (a) Only such persons who are nominated in accordance with the procedures set forth in this Article III shall be eligible to be elected at an annual or special meeting of stockholders of Nasdaq to serve as directors and only such business shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Article III. Except as otherwise provided by law, the chairman of the meeting shall have the power and duty (a) to determine whether a nomination or any business proposed to be brought before the meeting was made or proposed, as the case may be, in accordance with the procedures set forth in this Article III (including whether the stockholder or beneficial owner, if any, on whose behalf the nomination or proposal is made solicited (or is part of a group which solicited) or did not so solicit, as the case may be, proxies in support of such stockholder's nominee or proposal in compliance with such stockholder's representation as required by Section 3.1(b)(iii)(D)) and (ii) if any proposed nomination or business was not made or proposed in compliance with this Article III, to declare that such nomination shall be disregarded or that such proposed business shall not be transacted. Notwithstanding the foregoing provisions of this Article III, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of Nasdaq to present a nomination or business, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by Nasdaq.*

*(b) For purposes of this Article III, "public announcement" shall include disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by Nasdaq with the Commission pursuant to Section 13, 14, or 15(d) of the Act.*

(c) Notwithstanding the foregoing provisions of this Article III, a stockholder shall also comply with all applicable requirements of the Act and the rules and regulations thereunder with respect to the matters set forth in this Article III. Nothing in Article III shall be deemed to affect any rights (i) of stockholders to request inclusion of proposals in Nasdaq's proxy stateement pursuant to Rule 14a–8 under the Act or (ii) of the holders of any series of Preferred Stock to elect directors pursuant to any applicable provisions of the Restated Certificate of Incorporation.

*Conduct of Meetings*

*Sec. 3.4 The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at a meeting shall be announed at the meeting by the person presiding over the meeting. The Board may adopt by resolution such rules and regulations for the conduct of the meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board, the person presiding over any meeting of stockholders shall have the right and authority to convene and to adjourn the meeting, to prescribe such rules, regulations and procedurs and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board or prescribed by the presiding officer of the meeting, may include, without limitation, the following: (a) the establishment of an agenda or order of business for the meeting; (b) rules and procedures for maintaining order at the meeting and the safety of those present; (c) limitations on attendance at or participation in the meeting to stockholders of record of Nasdaq, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (d) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (e) limitations on the time allotted to questions or comments by participants. Unless and to the extent determined by the Board or the person presiding over the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.*

**Article IV Board of Directors**

**General Powers**

Sec. 4.1 No change.

**Number of Directors**

Sec. 4.2 The [Board shall consist of no fewer than five and no more than ten Directors, the exact number to] *exact number of members of the Board shall* be determined by resolution adopted by the [stockholder of Nasdaq from time to time. Notwithstanding the preceding sentence, the number of Directors shall equal the number of Directors on the NASD Regulation Board] *Board from time to time.* Any new Director position created as a result of an increase in the size of the Board shall be filed [pursuant to Section 4.4] *in accordance with the Restated Certificate of Incorporation.*

**Qualifications**

Sec. 4.3 Directors need not be stockholders of Nasdaq. [Only Governors of the NASD Board shall be eligible for election to the Board. The President of Nasdaq shall be a Director.] The number of Non-Industry Directors, including at least one Public Director and at least one issuer representative, shall equal or exceed the number of Industry Directors, plus the President *and the Chief Executive Officer (if they are elected Directors),* unless the Board consists of ten *or more* Directors. In such case at least two Directors shall be issuer representatives. [The Chief Executive Officer of the NASD shall be an ex-offico non-voting member of the Board] *At least two Industry Directors*

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*and two Non-Industry Directors shall be drawn from candidates proposed to the National Nominating Committee by a majority of the non-NASD stockholders of Nasdaq.*

**Election**

Sec. 4.4 Except as otherwise provided by law, these By-Laws, or the Delegation Plan, after the first meeting of Nasdaq at which Directors are elected, *a class of* Directors of Nasdaq shall be elected each year at the annual meeting of the [stockholder] *stockholders*, or at a special meeting called for such purpose in lieu of the annual meeting. If the annual election of Directors is not held on the date designated therefore, the Directors shall cause such election to be held as soon thereafter as convenient.

**Resignation**

Sec. 4.5 Any Director may resign at any time either upon written notice of resignation to the Chair of the Board, *the Chief Executive Officer*, the President, or the Secretary. Any such resignation shall take effect at the time specified therein or, if the time is not specified, upon receipt thereof, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

**Removal**

Sec. 4.6 Any or all of the Directors may be removed from office at any time, [with or without cause, only by a majority vote of the NSDA Board] *but only for cause, by the affirmative vote of at least 66⅔ percent of the total voting power of the outstanding shares of capital stock of Nasdaq entitled to vote generally in the election of directors, voting together as a single class.*

**Disqualification**

Sec. 4.7 The term of office of a Director shall terminate immediately upon a determination by the Board, by a majority vote of the remaining Directors, that: (a) [*The*] the Director no longer satisfies the classification for which the Director was elected; and (b) the Director's continued service as such would violate the compositional requirements of the Board set forth in Section 4.3. If the term of office of a Director terminates under this Section, and the remaining term of office of such Director at the time of termination is not more than six months, during the period of vacancy the Board shall not be deemed to be in violation of Section 4.3 by virtue of such vacancy.

**Filling of Vacancies**

Sec. 4.8 If a Director position becomes vacant, whether because of death, disability, disqualification, removal, or resignation, the National Nominating Committee shall nominate, and the [NASD] Board shall elect by majority vote, a person satisfying the classification (Industry, Non-Industry, or Public Director) for the directorship as provided in Section 4.3 to fill such vacancy, except that if the remaining term of office for the vacant Director position is not more than six months, no replacement shall be required.

**Quorum and Voting**

Sec. 4.9 (a) At all meetings of the Board, unless otherwise set forth in these By-Laws or required by law, a quorum for the transaction of business shall consist of a majority of the Board[, including not less than 50 percent of the Non-Industry Directors]. On the absence of a quorum, a majority of the Directors present may adjourn the meeting until a quorum be present.

(b) Except as provided [in Section 4.14(b)] *herein or by applicable law*, the vote of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board.

**Regulation**

Sec. 4.10 No change.

**Meetings**

Sec. 4.11 (a) An annual meeting of the Board shall be held for the purpose of organization, election of officers, and transaction of any other business. If such meeting is held promptly after and at the place specified for the annual meeting of the [stockholder] *stockholders*, no notice of the annual meeting of the Board need be given. Otherwise, such annual meeting shall be held at such time and place as may be specified in a notice given in accordance with Section [4.13] *4.12*.

(b) No change.

(c) Special meetings of the Board may be called by the Chair of the Board, *by the Chief Executive Officer*, by the President, or by at least one-third of the Directors then in office. Notice of any special meeting of the Board shall be given to each Director in accordance with Section 4.12.

(d) No change.

**Notice of Meetings; Waiver of Notice**

Sec. 4.12 (a) No change.

(b) No change.

(c) Any meeting of the Board shall be a legal meeting without any prior notice if all Directors then in office shall be present thereat, *Except when a Director attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened.*

**Committees**

Sec. 4.13 (a) The Board may, by resolution or resolutions adopted by a majority of the whole Board, appoint one or more committees. Except as herein provided, vacancies in membership of any committee shall be filled by the vote of a majority of the whole Board. The Board may designate one or more Directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of any member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another Director to act at the meeting in the place of any such absent or disqualified member. Members of a committee shall hold office for such period as may be fixed by a resolution adopted by a majority of the whole Board. Any member of a committee may be removed from such committee only after a majority vote of the whole Board, after appropriate notice[, for refusal, failure, neglect, or inability to discharge such committee member's duties].

(b) No change.

(c) Except as otherwise provided by applicable law, no committee shall have the power or authority of the Board with regard to: amending the Restated Certificate of Incorporation or the By-Laws of Nasdaq; adopting an agreement of merger or consolidation; recommending to the [stockholder] *stockholders* the sale, lease, or exchange of all or substantially all Nasdaq's property and assets; or recommending to the [stockholder] *stockholders* a dissolution of Nasdaq or a revocation of a dissolution. Unless the resolution of the Board expressly so provides, no committee shall have the power or authority to authorize the issuance of stock.

(d) The Board may appoint an Executive Committee, which shall, to the fullest extent permitted by Delaware Law and other applicable law, have and be permitted to exercise all the powers and authority of the Board in the management of the business and affairs of Nasdaq between meetings of the Board, and which may authorize the seal of Nasdaq to be affixed to all papers that may require it. The Executive Committee shall consist of three or four Directors, including at least one Public Director. The [President] *Chief Executive Officer* of Nasdaq shall be a member of the Executive Committee. The number of Non-Industry committee members shall equal or exceed the number of Industry committee members plus the [President] *Chief Executive Officer*. An Executive Committee

member shall hold office for a term of one year. At all meetings of the Executive Committee, a quorum for the transaction of business shall consist of a majority of the Executive Committee[, including not less than 50 percent of the Non-Industry committee members]. In the absence of a quorum, a majority of the committee members present may adjourn the meeting until a quorum is present.

(e) The Board may appoint a Finance Committee. The Finance Committee shall advise the Board with respect to the oversight of the financial operations and conditions of Nasdaq, including recommendations for Nasdaq's annual operating and capital budgets and proposed changes to the rates and fees charged by Nasdaq. The Finance Committee shall consist of three or four Directors. The [President] *Chief Executive Officer* of Nasdaq shall serve as a member of the Committee. A Finance Committee member shall hold office for a term of one year.

(f) No change.

(g) No change.

(h) Upon request of the Secretary of Nasdaq, each prospective committee member who is not a Director shall provide to the Secretary such information as is reasonably necessary to serve as the basis for a determination of the prospective committee member's classification as an Industry, Non-Industry, or Public committee member. The Secretary of Nasdaq shall certify to the Board each prospective committee member's classification. Such committee members shall update the information submitted under this Section at least annually and upon request of the Secretary of Nasdaq, and shall report immediately to the Secretary any change in such [classification] information.

**Conflicts of Interest; Contracts and Transactions Involving Directors**

Sec. 4.14 (a) No change.

(b) No contract or transaction between Nasdaq and one or more of its Directors of officers, or between Nasdaq and any other corporation, partnership, association, or other organization in which one or more of its Directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason if: (i) the material facts pertaining to such Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmation vote of a majority of the disinterested Directors, *even though the disinterested Directors be less than a quorum;* (ii) the material facts are disclosed or become known to the Board or committee after the contract or transaction is entered into, and the Board or committee in good faith ratifies the contract or transaction by the affirmative vote of a majority of the disinterested Directors, *even though the disinterested Directors be less than a quorum;* or (iii) the material facts pertaining to the Director's or officer's relationship or interest and the contract or transaction are disclosed or are known to the [stockholder] *stockholders* entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the [stockholder. Only disinterested Directors may be counted in determining the presence of a quorum at the portion of a meeting of the Board or of a committee that authorizes the contract or transaction. This subsection shall not apply to a contract or transaction between Nasdaq and: the NASD, NASD Regulation, Nasdaq-Amex, or Amex] *stockholders.*

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**Article V NASDAQ Listing and Hearing Review Council Appointment and Authority**

Sec. 5.1 No change.

**Number of Members and Qualifications**

Sec. 5.2 No change.

**Nomination Process**

Sec. 5.3 The Secretary of Nasdaq shall collect from each nominee for the office of member of the Nasdaq Listing and Hearing Review Council such information as is reasonably necessary to serve as the basis for a determination of the nominee's qualifications and classification as an Industry or Non-Industry member, and the Secretary shall certify to the National Nominating Committee each nominee's qualifications and classification. After appointment to the Nasdaq Listing and Hearing Review Council, each member shall update such information at least annually and upon request of the Secretary, and shall report immediately to the Secretary any change in such [qualifications or classification] *information.*

* * * * *

**Article VII Officers, Agents, and Employees**

**Principal Officers**

Sec. 7.1 The principal officers of Nasdaq shall be elected by the Board and shall include a Chair, *a Chief Executive Officer,* a President, a Secretary, a Treasurer, and such other officers as may be designated by the Board. One person may hold the offices and perform the duties of any two or more of said principal offices, except the offices and duties of President and Vice President or of President and Secretary. None of the principal officers, except the Chair of the Board and the [President] *Chief Executive Officer,* need be Directors of Nasdaq.

**Election of Principal Officers; Term of Office**

Sec. 7.2 No change.

**Subordinate Officers, Agents, or Employees**

Sec. 7.3 In addition to the principal officers, Nasdaq may have one or more subordinate officers, agents, and employees as the Board may deem necessary, each of whom shall hold office for such period and exercise such authority and perform such duties as the Board, *the Chief Executive Officer,* the President, or any officer designated by the Board, may from time to time determine. Agents and employees of Nasdaq shall be under the supervision and control of the officers of Nasdaq, unless the Board, by resolution, provides that an agent or employee shall be under the supervision and control of the Board.

**Delegation of Duties of Officers**

Sec. 7.4 No change.

**Resignation and Removal of Officers**

Sec. 7.5 (a) Any officer may resign at any time upon written notice of resignation to the Board, *the Chief Executive Officer,* the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. The acceptance of a resignation shall not be necessary to make the resignation effective.

(b) No change.

**Bond**

Sec. 7.6 No change.

**Chair of the Board**

Sec. 7.7 The Chair of the Board shall preside at all meetings of the Board *and stockholders* at which the Chair is present. The Chair shall exercise such other powers and perform such other duties as may be assigned to the Chair from time to time by the Board.

**[President] *Chief Executive Officer***

Sec. 7.8 *The Chief Executive Officer shall, in the absence of the Chair of the Board, preside at all meetings of the Board and stockholders at which the Chief Executive Officer is present. The Chief Executive Officer shall be the chief executive officer of Nasdaq and shall have general supervision over the business and affairs of Nasdaq. The Chief Executive Officer shall have all*

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*powers and duties usually incident to the office of the Chief Executive Officer, except as specifically limited by a resolution of the Board. The Chief Executive Officer shall exercise such other powers and perform such other duties as may be assigned to the Chief Executive Officer from time to time by the Board.*

***President***

Sec. [7.8]*7.9* The President shall, in the absence of the Chair of the Board *and the Chief Executive Officer,* preside at all meetings of the Board *and stockholders* at which the President is present. The President [shall be the Chief Executive Officer of Nasdaq and] shall have general supervision over the business and affairs of Nasdaq. The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by a resolution of the Board. The President shall exercise such other powers perform such other duties as may be assigned to the President from time to time by the Board.

**Vice President**

Sec. [7.9] *7.10* The Board shall elect one or more Vice Presidents. In the absence or disability of the President or if the office of President becomes vacant, the Vice Presidents in the order determined by the Board, or if no such determination has been made, in the order of their seniority, shall perform the duties and exercise the powers of the President, subject to the right of the Board at any time to extend or restrict such powers and duties or to assign them to others. Any Vice President may have such additional designations in such Vice President's title as the Board may determine. The Vice Presidents shall generally assist the President in such manner as the President shall direct. Each Vice President shall exercise such other powers and perform such other duties as may be assigned to such Vice President from time to time by the Board, *the Chief Executive Officer* or the President. The term "Vice President" used in this Section shall include the positions of Executive Vice President, Senior Vice President, and Vice President.

**Secretary**

Sec. [7.10] *7.11* The Secretary shall act as Secretary of all meetings of the [stockholder] *stockholders* and of the Board at which the Secretary is present, shall record all the proceedings of all such meetings in a book to be kept for that purpose, shall have supervision over the giving and service of notices of Nasdaq, and shall have supervision over the care and custody of the corporate records and the corporate seal of Nasdaq. The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of Nasdaq under its seal, is duly authorized, and when so affixed, may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall exercise such other powers and perform such other duties as may be assigned to the Secretary from time to time by the Board, *the Chief Executive Officer* or the President.

**Assistant Secretary**

Sec. [7.11] *7.12* In the absence of the Secretary or in the event of the Secretary's inability or refusal to act, any Assistant Secretary, approved by the Board, shall exercise all powers and perform all duties of the Secretary. An Assistant Secretary shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Secretary from time to time by the Board or the Secretary.

**Treasurer**

Sec. [7.12] *7.13* The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of Nasdaq and shall cause the funds of Nasdaq to be deposited in the name of Nasdaq in such banks or other depositories as the Board may designate. The Treasurer shall have supervision over the care and safekeeping of the securities of Nasdaq. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall have all powers and duties usually incident to the office of Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall exercise such other powers and perform such other duties as may be assigned to the Treasurer from time to time by the Board, *the Chief Executive Officer* or the President.

**Assistant Treasurer**

*Sec. [7.13] 7.14* In the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, any Assistant Treasurer, approved by the Board, shall exercise all powers and perform all duties of the Treasurer. An Assistant Treasurer shall also exercise such other powers and perform such other duties as may be assigned to such Assistant Treasurer from time to time by the Board or the Treasurer.

**Article VIII Indemnification**

**Indemnification of Directors, Officers, Employees, Agents, Nasdaq Listing and Hearing Review Council and Committee Members**

Sec. 8.1 (a) No change.

(b) Nasdaq shall advance expenses (including attorneys' fees and disbursements) *reasonably and actually incurred in defending any action, suit, or proceeding in advance of its final disposition* to persons described in subsection (a); provided, however, that the payment of expenses incurred by such person in advance of the final disposition of the matter shall be conditioned upon receipt of a written undertaking by that person to repay all amounts advanced if it should be ultimately determined that the person is not entitled to be indemnified under this Section or otherwise.

* * * * *

**Article IX Capital Stock**

[Sole Stockholder] Certificates

[Sec. 9.1 The NASD shall be the sole stockholder of the capital stock of Nasdaq.] Certificates

[See 9.2 The] *Sec. 9.1 Each* stockholder shall be entitled to a certificate or certificates in such form as shall be approved by the Board, certifying the number of shares of capital stock in Nasdaq owned by [the] *such* stockholder.

**Signatures**

Sec. [9.3] *9.2* (a) Certificates for shares of capital stock of Nasdaq shall be signed in the name of Nasdaq by two officers with one being the Chair of the Board, *the Chief Executive Officer,* the President, or a Vice President, and the other being the Secretary, the Treasurer, or such other officer that may be authorized by the Board. Such certificates may be sealed with the corporate seal of Nasdaq or a facsimile thereof.

(b) If any such certificates are countersigned by a transfer agent other than Nasdaq or its employee, or by a registrar other than Nasdaq or its employee, any other signature on the certificate may be a facsimile. In the event that any officer, transfer agent, or registrar who has signed or whose facsimile signature has been placed upon a certificate shall cease to be such officer, transfer agent, or registrar before such certificate is issued, such certificate may be issued by Nasdaq with the same effect as if such person were such officer, transfer agent, or registrar at the date of issue.

**Stock Ledger**

Sec. [9.4] *9.3* (a) A record of all certificates for capital stock issued by Nasdaq shall be kept by the Secretary or any other officer, employee, or agent

designated by the Board. Such record shall show the name and address of the person, firm, or corporation in which certificates for capital stock are registered, the number of shares represented by each such certificate, the date of each such certificate, and in the case of certificates which have been canceled, the date of cancellation thereof.

(b) Nasdaq shall be entitled to treat the holder of record of shares of capital stock as shown on the stock ledger as the owner thereof and as the person entitled to vote such shares and to receive notice of meetings, and for all other purposes. Nasdaq shall not be bound to recognize any equitable or other claim to or interest in any share of capital stock on the part of any other person, whether or not Nasdaq shall have express or other notice thereof.

**Transfers of Stock**

Sec. [9.5] *9.4* (a) The Board may make such rules and regulations as it may deem expedient, not inconsistent with law, the Restated Certificate of Incorporation, or these By-Laws, concerning the issuance, transfer, and registration of certificates for shares of capital stock of Nasdaq. The Board may appoint, or authorize any principal officer to appoint, one or more transfer agents or one or more transfer clerks and one or more registrars and may require all certificates for capital stock to bear the signature or signatures of any of them.

(b) Transfers of capital stock shall be made on the books of Nasdaq only upon delivery to Nasdaq or its transfer agent of: (i) a written direction of the registered holder named in the certificate or such holder's attorney lawfully constituted in writing; (ii) the certificate for the shares of capital stock being transferred; and (iii) a written assignment of the shares of capital stock evidenced thereby.

**Cancellation**

Sec. [9.6] *9.5* Each certificate for capital stock surrendered to Nasdaq for exchange or transfer shall be canceled and no new certificate or certificates shall be issued in exchange for any existing certificate other than pursuant to Section [9.7] *9.6* until such existing certificate shall have been canceled.

**Lost, Stolen, Destroyed, and Multilated Certificates**

Sec. [9.7] *9.6* In the event that any certificate for shares of capital stock of Nasdaq shall be multilated, Nasdaq shall issue a new certificate in place of such multilated certificate. In the event that any such certificate shall be lost, stolen, or destroyed, Nasdaq may, in the discretion of the Board or a committee appointed thereby with power so to act, issue a new certificate for capital stock in the place of any such lost, stolen, or destroyed certificate. The applicant for any substituted certificate or certificates shall surrender any multilated certificate or, in the case of any lost, stolen, or destroyed certificate, furnish satisfactory proof of such loss, theft, or destruction of such certificate and of the ownership thereof. The Board or such committee may, in its discretion, require the owner of a lost or destroyed certificate, or the owner's representatives, to furnish to Nasdaq a bond with an acceptable surety or sureties and in such sum as will be sufficient to indemnify Nasdaq against any claim that may be against it on account of the lost, stolen, or destroyed certificate or the issuance of such new certificate. A new certificate may be issued without requiring a bond when, in the judgment of the Board, it is proper to do so.

**Fixing of Record Date**

Sec. [9.8] *9.7* The Board may fix a record date in accordance with Delaware law.

**Article X Miscellaneous Provisions**

**Corporate Seal**

Sec. 10.1 No change.

**Fiscal Year**

Sec. 10.2 No change.

**Waiver of Notice**

Sec. 10.3 (a) Whenever notice is required to be given by law, the Restated Certificate of Incorporation, or these By-Laws, a written waiver thereof, signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the [stockholder] *stockholders*, Directors, or members of a committee of Directors need be specified in any written waiver of notice.

* * * * *

**Article XI Amendments; Emergency By-Laws**

By [Stockholder] *Stockholders*

Sec. 11.1 These By-Laws may be altered, amended, or repealed, or new By-Laws may be adopted, at any meeting of the [stockholder] *stockholders by the affirmative vote of the holders of at least 66⅔ percent of the voting power of the then outstanding stock entitled to vote, voting together as a single class*, provided that, in the case of a special meeting, notice that an amendment is to be considered and acted upon shall be inserted in the notice or waiver of notice of said meeting.

**By Directors**

Sec. 11.2 No change.

**Emergency By-Laws**

Sec. 11.3 The Board may adopt emergency By-Laws subject to repeal or change by action of the [stockholder] *stockholders* which shall, notwithstanding any different provision of law, the Restated Certificate of Incorporation, or these By-Laws, be operative during any emergency resulting from any nuclear or atomic disaster, an attack on the United States or on a locality in which Nasdaq conducts its business or customarily holds meetings of the Board or the [stockholder] *stockholders*, any catastrophe, or other emergency condition, as a result of which a quorum of the Board or a committee thereof cannot readily be convened for action. Such emergency By-Laws may make any provision that may be practicable and necessary under the circumstances of the emergency.

* * * * *

Restated Certificate of Incorporation of the Nasdaq Stock Market, Inc.

The undersigned, _____[Joan C. Conley, Corporate Secretary], *the* of The Nasdaq Stock Market, Inc. ("Nasdaq"), a Delaware corporation, does hereby certify:

**First:** That the name of the corporation is The Nasdaq Stock Market, Inc. The date of the filing of its original Certificate of Incorporation with the Secretary of State of the State of Delaware was November 13, 1979. The name under which Nasdaq was originally incorporated was "NASD Market Services, Inc."

**Second:** That the Certificate of Incorporation of Nasdaq [has been] *is hereby* amended and restated *to read* in its entirety as follows:

**Article First**

The name of the corporation is The Nasdaq Stock Market, Inc.

**Article Second**

The address of Nasdaq's registered office in the State of Delaware is 1209 Orange Street, City of Wilmington, County of New Castle, Delaware 19801. The name of Nasdaq's registered agent at such address is The Corporation Trust Company.

**Article Third**

The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be

organized under the General Corporation Law of the State of Delaware, and, without limiting the generality of the foregoing business or purposes to be conducted or promoted, shall include, *to the extent applicable to Nasdaq*, the responsibilities and functions set forth in the "Plan of Allocation and Delegation of Functions by NASD to Subsidiaries," as approved by the Securities and Exchange Commission, as amended from time to time.

**Article Fourth**

[Nasdaq shall be authorized to issue a total of 2,000 shares of common stock with no par value.

**Article Fifth**

Nasdaq shall be governed by the Board of Directors of such number and having such qualifications, powers, and duties as shall be provided in the By-Laws. The Board shall be selected in such manner, and shall serve for such term, as shall be stated in the By-Laws. The Board of Directors shall have the power to adopt, alter, or repeal the By-Laws of Nasdaq at any meeting at which a quorum is present] *A. The total number of shares of stock which Nasdaq shall have the authority to issue is Three Hundred Thirty Million (330,000,000), consisting of Thirty Million (30,000,000) shares of Preferred Stock, par value $.01 per share (hereinafter referred to as "Preferred Stock), and Three Hundred Million (300,000,000) shares of Common Stock, par value $.01 per share (hereinafter referred to as "Common Stock").*

*B. The Preferred Stock may be issued from time to time in one or more series. The Board of Directors of Nasdaq (the "Board") is hereby authorized to provide for the issuance of shares of Preferred Stock in one or more series and, by filing a certificate pursuant to the applicable law of the State of Delaware (hereinafter referred to as "Preferred Stock Designation"), to establish from time to time the number of shares to be included in each such series, and to fix the designation, powers, preferences and rights of the shares of each such series and the qualifications, limitations and restrictions thereof. The authority of the Board with respect to each series shall include, but not limited to, determination of the following:*

*(1) The designation of the series, which may be by distinguishing number, letter or title.*

*(2) The number of shares of the series, which number the Board may thereafter (except where otherwise provided in the Preferred Stock Designation) increase or decrease (but not below the number of shares thereof then outstanding).*

*(3) The amounts payable on, and the preferences, if any, of shares of the series in respect of dividends, and whether such dividends, if any, shall be cumulative or noncumulative.*

*(4) Dates at which dividends, if any, shall be payable.*

*(5) The redemption rights and price or prices, if any, for shares of the series.*

*(6) The terms and amount of any sinking fund provided for the purchase or redemption of shares of the series.*

*(7) The amounts payable on, and the preferences, if any, of shares of the series in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of Nasdaq.*

*(8) Whether the shares of the series shall be convertible into or exchangeable for shares of any other class or series, or any other security, of Nasdaq or any other corporation, and, if so, the specification of such other class or series or such other security, the conversion or exchange price or prices or rate or rates, any adjustments thereof, the date or dates at which such shares shall be convertible or exchangeable and all other terms and conditions upon which such conversion or exchange may be made.*

*(9) Restrictions on the issuance of shares of the same series or of any other class or series.*

*(10) The voting rights, if any, of the holders or shares of the series.*

*C. 1. Except as may otherwise be provided in this Restated Certificate of Incorporation (including any Preferred Stock Designation) or by applicable law, each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote, and no holder of any series of Preferred Stock, as such, shall be entitled to any voting powers in respect thereof.*

*2. Notwithstanding any other provision of this Restated Certificate of Incorporation, but subject to subparagraph 6 of this paragraph C. of this Article Fourth, in no event shall any record owner of any outstanding Common Stock which is beneficially owned, directly or indirectly, as of any record date for the determination of stockholders entitled to vote on any matter, by a person (other than an Exempt Person) who beneficially owns shares of Common Stock ("Excess Shares") in excess of five percent (5%) of the then-outstanding shares of Common Stock, be entitled or permitted to vote any Excess Shares. For all purposes hereof, any calculation of the number of shares of Common Stock outstanding at any particular time, including for purposes of determining the particular percentage of such outstanding shares of Common Stock of which any person is the beneficial owner, shall be made in accordance with the last sentence of Rule 13d–3(d)(1)(i) of the General Rules and Regulations under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), as in effect on the date of filing this Restated Certificate of Incorporation.*

*3. The following definitions shall apply to this paragraph C. of this Article Fourth:*

*(a) "Affiliate" shall have the meaning ascribed to that term in Rule 12b–2 of the General Rules and Regulations under the Exchange Act, as in effect on the date of filing this Restated Certificate of Incorporation.*

*(b) A person shall be deemed the "beneficial owher" of, shall be deemed to have "beneficial ownership" of and shall be deemed to "beneficially own" any securities:*

*(i) which such person or any of such person's Affiliates is deemed to beneficially own, directly or indirectly, within the meaning of Rule 13d–3 of the General Rules and Regulations under the Exchange Act as in effect on the date of the filing of this Restated Certificate of Incorporation;*

*(ii) which such person or any such person's Affiliates has (A) the right to acquire (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities), or upon the exercise of conversion rights, exchange rights, rights, warrants or options, or otherwise; provided however, that a person shall not be deemed the beneficial owner of, or to beneficially own, securities tendered pursuant to a tender or exchange offer made by or on behalf of such person or any of such person's Affiliates until such tendered securities are accepted for purchase; or (B) the right to vote pursuant to any agreement, arrangement or understanding; provided, however, that a person shall not be deemed the beneficial owner of, or to beneficially own, any security by reason of such agreement, arrangement or understanding if the agreement, arrangement or understanding to vote such security (1) arises solely from a revocable proxy or consent given to such*

*person in response to a public proxy or consent solicition made pursuant to, and in accordance with, the applicable rules and regulations promulgated under the Exchange Act and (2) is not also then reportable on Schedule 13D under the Exchange Act (or any comparable or successor report); or*

*(iii) which are beneficially owned, directly or indirectly, by any other person and with respect to which such person or any of such person's Affiliates has any agreement, arrangement or understanding (other than customary agreements with and between underwriters and selling group members with respect to a bona fide public offering of securities) for the purpose of acquiring, holding, voting (except to the extent contemplated by the proviso to (b)(ii)(B) above) or disposing of such securities;*

*provided, however, that (A) no person who is an officer, director or employee of an Exempt Person shall be deemed, solely by reason of such person's status or authority as such, to be the "beneficial owner" of, to have "beneficial ownership" of or to "beneficially own" any securities that are "beneficially owned" (as defined herein), including, without limitation, in a fiduciary capacity, by an Exempt Person or by any other such officer, director or employee of an Exempt Person, and (B) the Voting Trustee, as defined in the Voting Trust Agreement by and among Nasdaq, the National Association of Securities Dealers, Inc., a Delaware corporation (the "NADS", and The Bank of New York, a New York banking corporation, as such may be amended from time to time (the "Voting Trust Agreement"), shall not be deemed, solely by reason of such person's status or authority as such, to be the "beneficial owner" of, to have "beneficial ownership" of or to "beneficially own" any securities that are governed by and held in accordance with the Voting Trust Agreement.*

*(c) A "person" shall mean any individual, firm, corporation, partnership, limited liability company or other entity.*

*(d) "Exempt Person" shall mean Nasdaq or any Subsidiary of Nasdaq, in each case including, without limitation, in its fiduciary capacity, or any employee benefit plan of Nasdaq or of any Subsidiary of Nasdaq, or any entity or trustee holding Common Stock for or pursuant to the terms of any such plan or for the purpose of funding any such plan or funding other employee benefits for employees of Nasdaq or of any Subsidiary of Nasdaq.*

*(e) "Subsidiary" of any person shall mean any corporation or other entity of which securities or other ownership interests have ordinary voting power sufficient to elect a majority of the board of directors or other persons performing similar functions are beneficially owned, directly or indirectly, by such person, and any corporation or other entity that is otherwise controlled by such person.*

*(f) The Board shall have the power to construe and apply the provisions of this paragraph C. of this Article Fourth and to make all determinations necessary or desirable to implement such provisions, including, but not limited to, matters with respect to (1) the number of shares of Common Stock beneficially owned by any person, (2) whether a person is an Affiliate of another, (3) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in the definition of beneficial ownership, (4) the application of any other definition or operative provision hereof to the given facts, or (5) any other matter relating to the applicability or effect of this paragraph C. of this Article Fourth.*

*4. The Board shall have the right to demand that any person who is reasonably believed to hold of record or beneficially own Excess Shares supply Nasdaq with complete information as to (a) the record owner(s) of all shares beneficially owned by such person who is reasonably believed to own Excess Shares, and (b) any other factual matter relating to the applicability or effect of this paragraph C. of this Article Fourth as may reasonably be requested of such person.*

*5. Any constructions, applications, or determinations made by the Board, pursuant to this paragraph C. of this Article Fourth, in good faith and on the basis of such information and assistance as was then reasonably available for such purpose, shall be conclusive and binding upon Nasdaq and its stockholders.*

*6. Notwithstanding anything herein to the contrary, subparagraph 2 of this paragraph C. of this Article Fourth shall not be applicable to any Excess Shares beneficially owned by (a) the NASD or its Affiliates until such time as the NASD beneficially owns five percent (5%) or less of the outstanding shares of Common Stock or (b) any other person as may be approved for such exemption by the Board prior to the time such person beneficially owns more than five percent (5%) of the outstanding shares of Common Stock. The Board, however, may not approve an exemption under this Section 6(b): (i) for a registered broker or dealer or an Affiliate thereof (provided that, for these purposes, an Affiliate shall not be deemed to include an entity that either owns ten percent or less of the equity of a broker or dealer, or the broker or dealer accounts for one percent or less of the gross revenues received by the consolidated entity); or (ii) an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Exchange Act. The Board may approve an exemption for any other stockholder if the Board determines that granting such exemption would (A) not reasonably be expected to diminish the quality of, or public confidence in, The Nasdaq Stock Market or the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (B) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.*

*7. In the event any provision (or portion thereof) of this paragraph C. of this Article Fourth shall be found to be invalid, prohibited or unenforceable for any reason, the remaining provisions (or portions thereof) of this paragraph C. of this Article Fourth shall remain in full force and effect, and shall be construed as if such invalid, prohibited or unenforceable provision (or portion hereof) had been stricken herefrom or otherwise rendered inapplicable, it being the intent of Nasdaq and its stockholders that each such remaining provision (or portion thereof) of this paragraph C. of this Article Fourth remains, to the fullest extent permitted by law, applicable and enforceable as to all stockholders, including stockholders that beneficially own Excess Shares, notwithstanding any such finding.*

**Article Fifth**

*A. The business and affairs of Nasdaq shall be managed by, or under the direction of, the Board. The total number of directors constituting the entire Board shall be fixed from time to time by the Board.*

*B. The Board (other than those directors elected by the holders of any series of Preferred Stock provided for or fixed pursuant to the provisions of Article Fourth hereof, (the "Preferred Stock Diectors")) shall be divided into three classes, as nearly equal in number as possible, designated Class I, Class II and Class III. Class I directors shall initially serve until the first annual meeting of stockholders following the*

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*effectiveness of this Restated Certificate of Incorporation; Class II directors shall initially serve until the second annual meeting of stockholders following the effectiveness of this Restated Certificate of Incorporation; and Class III directors shall initially serve until the third annual meeting of stockholders following the effectiveness of this Restated Certificate of Incorporation. Commencing with the first annual meeting of stockholders following the effectiveness of this Restated Certificate of Incorporation, directors of each class the term of which shall then expire shall be elected to hold office for a three-year term and until the election and qualification of their respective successors in office. In case of any increase or decrease, from time to time, in the number of directors (other than Preferred Stock Directors), the number of directors in each class shall be apportioned as nearly equal as possible.*

*C. Subject to the rights of the holders of any one or more series of Preferred Stock then outstanding, newly created directorships resulting from any increase in the authorized number of directors or any vacancies in the Board resulting from death, resignation, retirement, disqualification, removal from office or other cause shall only be filled by the Board. Any director so chosen shall hold office until the next election of the class for which such directors shall have been chosen and until his successor shall be elected and qualified. No decrease in the number of directors shall shorten the term of any incumbent director.*

*D. Except for Preferred Stock Directors, any director, or the entire Board, may be removed from office at any time, but only for cause and only* by the affirmative vote of [the majority of the whole Board of Directors.] *at least 66⅔% of the total voting power of the outstanding shares of capital stock of Nasdaq entitled to vote generally in the election of directors ("Voting Stock"), voting together as a single class.*

*E. During any period when the holders of any series of Preferred Stock have the right to elect additional directors as provided for or fixed pursuant to the provisions of Article Four hereof, then upon commencement and for the duration of the period during which such right continues: (i) the then otherwise total authorized number of directors of Nasdaq shall automatically be increased by such specified number of directors, and the holders of such Preferred Stock shall be entitled to elect the additional directors so provided for or fixed pursuant to said provisions, and (ii) each such additional director shall serve until such director's successor shall have been duly elected and qualified, or until such director's right to hold such office terminates pursuant to said provisions, whichever occurs earlier, subject to his earlier death, disqualification, resignation or removal. Except as otherwise provided by the Board in the resolution or resolutions establishing such series, whenever the holders of any series of Preferred Stock having such right to elect additional directors are divested of such right pursuant to the provisions of such stock, the terms of office of all such additional directors elected by the holders of such stock, or elected to fill any vacancies resulting from death, resignation, disqualification or removal of such additional directors, shall forthwith terminate and the total authorized number of directors of Nasdaq shall automatically be reduced accordingly.*

**Article Sixth**

*A.* A director of Nasdaq shall not be liable to Nasdaq or its stockholders for monetary damages for breach of fiduciary duty as a director, except to the extent that such exemption from liability or limitation thereof is not permitted under the General Corporation Law of the State of Delaware as the same exists or may hereafter be amended.

*B.* Any repeal or modification of [the foregoing] paragraph *A.* shall not adversely affect any right or protection of a director of Nasdaq existing hereunder with respect to any act or omission occurring prior to such repeal or modification.

**Article [Sixth]** *Seventh*

[Nasdaq reserves the right to amend, alter, change, or repeal any provisions contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein are granted subject to this reservation.] *No action that is required or permitted to be taken by the stockholders of Nasdaq at any annual or special meeting of stockholders may be effected by written consent of stockholders in lieu of a meeting of stockholders.*

**[Article Seventh]** *Article Eighth*

*In furtherance of, and not in limitation of, the powers conferred by law, the Board is expressly authorized and empowered to adopt, amend or repeal the By-Laws of Nasdaq: provided, however, that the By-Laws adopted by the Board under the powers hereby conferred may be amended or repealed by the Board or by the stockholders having voting power with respect thereto, provided further that, notwithstanding any other provision of this Restated Certificate of Incorporation or any provision of law which might otherwise permit a lesser vote or no vote, but in addition to any affirmative vote of the holders of any particular class or series of the stock required by law or this Restated Certificate of Incorporation, the affirmative vote of the holders of at least 66⅔% percent of the total voting power of the outstanding Voting Stock, voting together as a single class, shall be required in order for the stockholders to adopt, alter, amend or repeal any By-Law.*

**Article Ninth**

*Nasdaq reserves the right to amend, alter, change, or repeal any provisions contained in this Restated Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred herein are granted subject to this reservation; provided, however, that the affirmative vote of the holders of at least 66⅔% of the voting power of the outstanding Voting Stock, voting together as a single class, shall be required to amend, repeal or adopt any provision inconsistent with paragraph C. of Article Fourth, Article Fifth, Article Seventh, Article Eighth or this Article Ninth.*

**Article Tenth**

*Nasdaq shall have perpetual existence.*

**Article Eleventh**

*In light of the unique nature of Nasdaq and its operations and in light of Nasdaq's status as a self-regulatory organization, the Board of Directors, when evaluating (A) any tender or exchange offer or invitation for tenders or exchanges, or proposal to make a tender or exchange offer or request or invitation for tenders or exchanges, by another party, for any equity security of Nasdaq, (B) any proposal or offer by another party to (1) merge or consolidate Nasdaq or any subsidiary with another corporation or other entity, (2) purchase or otherwise acquire all or a substantial portion of the properties or assets of Nasdaq or any subsidiary, or sell or otherwise dispose of to Nasdaq or any subsidiary all or a substantial portion of the properties or assets of such other party, or (3) liquidate, dissolve, reclassify the securities of, declare an extraordinary dividend of, recapitalize or reorganize Nasdaq, (C) any action, or any failure to act, with respect to any holder or potential holder of Excess Shares subject to the limitations set forth in subparagraph 2 of paragraph C. of Article Fourth, (D) any demand or proposal, precatory or*

*otherwise, on behalf of or by a holder or potential holder of Excess Shares subject to the limitations set forth in subparagraph 2 of paragraph C. of Article Fourth or (E) any other issue, shall, to the fullest extent permitted by applicable law, take into account all factors that the Board of Directors deems relevant, including, without limitation, to the extent deemed relevant, (i) the potential impact thereof on the integrity, continuity and stability of The Nasdaq Stock Market and the other operations of Nasdaq, on the ability to prevent fradulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.*

**Third:** That such Restated Certificate of Incorporation has been duly adopted by [the stockholder of] Nasdaq in accordance with the applicable provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware *and in accordance with Section 228 of the General Corporation Law of the State of Delaware (by the written consent of its sole stockholder*).

*In witness whereof*, the undersigned [have] *has* executed this certificate this ____ [24th day of November, 1997] day of _____, ____.

*THE NASDAQ STOCK MARKET, INC.*

By:_____

(signature)

[Joan C. Conley] [Corporate Secretary]

_____

(printed name)

(title)

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend Nasdaq's By-Laws and Restated Certificate of Incorporation ("Certificate") in accordance with the Restructuring Plan (the "Restructuring") approved by NASD members on April 14, 2000, with 3,423 members voting in favor and 652 against the Restructuring. The Restructuring involves broadening the ownership in Nasdaq (which is currently 100 percent owned by the NASD) through a two-phase private placement of common stock and warrants to NASD members, Nasdaq issuers, institutional investors and strategic partners. In order to implement the Restructuring, Nasdaq must amend its By-Laws and Certificate. The proposed rule change, as described below, includes amendments needed to implement Phase I of the Restructuring. During this Phase, Nasdaq will continue to operate under the Plan of Allocation and Delegation of Functions by the NASD to its Subsidiaries (the "Delegation Plan"), as approved by the Commission. Nasdaq will submit an Application For, and Amendments to Application For, Registration as a National Securities Exchange or Exemption from Registration Pursuant to Section 5 of the Exchange Act (Form 1) to obtain exchange registration. After exchange registration, Nasdaq will no longer operate under the Delegation Plan.

By-Laws

**Article I**

Nasdaq proposes to amend the definitions in Article I(i), (j), and (q) to reflect the newly created Chief Executive Officer position. *See* Article VII, Section 7.8. Nasdaq also proposes conforming amendments in Article IV, Sections 4.5, 4.11(c), 4.13(d) and (e); Article VII, Sections 7.1, 7.3, 7.5, 7.9, 7.10, 7.11, and 7.13; and Article IX, Section 9.2.

**Article III**

Nasdaq proposes procedures for annual and special meetings of stockholders, including procedures for a stockholder to nominate persons for election to the Board or to propose business to be considered at an annual meeting.

**Article IV**

Nasdaq proposes to amend Section 4.2 to permit the Board to determine the number of Directors. Currently, this Section requires that the number of Nasdaq Directors equal the number of NASD Regulation Directors. This provisions was designed to balance the roles of the subsidiaries in the current interlocking Board structure and is no longer applicable under the new structure. Under the proposed rule change, any increase in the size of the Board would be filled in accordance with the Certificate, as described below.

Under Section 4.3, Nasdaq proposes to remove the requirement that all Directors also be Governors of the NASD Board. As part of the Restructuring, the non-NASD shareholders will have the right to nominate four Directors who will not be NASD Governors. These four Directors must be proposed to the NASD National Nominating Committee by a majority of non-NASD stockholders of Nasdaq. The number of Non-Industry Directors would continue to equal or exceed the number of Industry Directors, plus the newly created Chief Executive Officer and the Nasdaq President (if they are elected to be Directors). To maintain this balance, the four new Nasdaq Director positions will be evenly split between Industry and Non-Industry Directors.

Nasdaq proposes to amend Section 4.6 by deleting the provision that permits a Director to be removed with or without cause by a majority vote of the Board. Under the proposed rule change, a Director could only be removed for cause by an affirmative vote of at least 66⅔ percent of the total voting power of the outstanding shares of capital stock of Nasdaq entitled to vote generally in the election of directors, voting together as a single class. The Certificate contains a similar provision. *See* Article Fifth, Paragraph D, Certificate.

Nasdaq proposes to amend Section 4.8 to authorize the Nasdaq Board, rather than the NASD Board, to fill vacancies on the Nasdaq Board. *See also* Article Fifth, Paragraph C, Certificate.

Nasdaq proposes to amend Section 4.9 to provide that a quorum for the transaction of business at a Board meeting shall consist of a majority of the Board. The requirement that the quorum also include not less than 50 percent of the Non-Industry directors is eliminated, on the advice of NASD's Delaware Counsel that these provisions would be deemed, under Delaware's General Corporation Law ("Delaware Law"), to confer special voting powers on the non-industry members: Section 141(d) of Delaware Law permits such disparity only where the Directors are elected by separate classes of stock, and such disparity of directors is delineated in the certificate of incorporation.

Nasdaq proposes to amend Section 4.13(a) to eliminate a provision that the Board may remove a committee member only for refusal, failure, neglect, or inability to discharge the committee member's duties. Removal of a committee member would still require a majority vote of the whole Board and notice to the committee member.

Nasdaq proposes to amend Section 4.14(b), which concerns interested party transactions, to permit the authorization or ratification of an interested party transaction by a majority of disinterested Directors, even if the number of such Directors does not constitute a quorum. The Section is further amended by eliminating a provision that excludes from application of the Section any contracts or transactions among the NASD companies. The amended Section will not apply to contracts or transactions among stockholders.

**Article IX**

The text of Section 9.1, which states that the NASD shall be the sole stockholder of Nasdaq, is deleted. The remainder of Article IX is renumbered accordingly. References to a single stockholder throughout the By-Laws are amended to refer to "stockholders."

**Article XI**

Currently, as sole stockholder of Nasdaq, the NASD may amend the Nasdaq By-Laws. Nasdaq proposes to amend Section 11.1 to eliminate this authority and provide that the Nasdaq By-Laws may be amended by an affirmative vote of the holders of at least 66⅔ percent of the voting power of the then outstanding stock entitled to vote, voting together as a single class. As under the current By-Laws, the Nasdaq Board also may amend the By-Laws. *See also* Article Eighth, Certificate.

Certificate

Nasdaq is amending the Certificate to conform it to the changes described above,, as well as to make the following changes.

**Article Fourth**

*Number of Shares:* The Certificate currently authorizes Nasdaq to issues 2,000 shares of common stock. The authorization is increased to 330 million shares.

*Blank Check Preferred Stock:* Under Delaware Law, a certificate of incorporation of a corporation can authorize the issuance of shares of preferred stock, the terms of which are not set forth in the certificate of incorporation but may be fixed by the board of directors in the future. The Certificate authorizes the issuance of such shares and confers upon the Nasdaq Board such authority.

*Scaled Voting:* Paragraph C of Article Fourth contains a "scaled voting" provision. Pursuant to this provision, beneficial owners of Nasdaq common stock have their voting power capped. Specifically, any person who benefically owns shares of common stock in excess of five percent of the then-outstanding shares of common stock ("Excess Shares") will not be entitled or permitted to vote any such Excess Shares. This provision is not, however, applicable to: (1) the NASD or its affiliates until such time as NASD beneficially owns five percent of less of the outstanding shares of Nasdaq common stock; or (2) any other person approved by the Board for such an exemption before such person owns more than five percent of the outstanding shares of Nasdaq common stock. The purpose of this latter exemptive provision is to allow some flexibility should Nasdaq seek to enter into a business combination in which it would want to utilize shares of common stock in the transaction. The Nasdaq Board may not approve an exemption for a registered broker or dealer or an affiliate (with certain exceptions for affiliates as defined in the provision) or an individual or entity that is subject to a statutory disqualification under Section 3(a)(39) of the Act. The Nasdaq Board may grant an exemption to any other shareholder if the Board determines that granting an exemption would: (1) not reasonably be expected to diminish the quality of, or public confidence in, The Nasdaq Stock Market or the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

**Article Fifth**

*Board Size:* Under Delaware Law, the number of directors must be fixed by, or in the manner provided in, the by-laws unless the certificate of incorporation fixes the number of directors, in which case a change in the number of directors shall be made only by amendment to the certificate of incorporation. The Certificate vests the Board with the exclusive authority to fix the number of directors of Nasdaq.

*Staggered Board:* Delaware Law permits a corporation, either in its certificate of incorporation or in a stockholder-adopted by-law, to divide its board of directors into three classes, with the term of office of one-third of the directors expiring each year. A staggered or classified board of directors provides for continuity of membership and limits an acquiror's ability to effect a rapid change in control of a corporation and/or its management, since it will take at least two stockholder meetings, instead of one, for majority control of the board to shift. The Certificate contains such a provision. Under the amended Certificate, Directors elected to the classified board may be removed only for cause and by affirmative vote of at least 66⅔% of the total voting power of the outstanding shares of capital stock of Nasdaq entitled to vote generally in the election of directors, voting together as a single class. *See also* Article IV, Section 4.4, Bylaws.

*Filling Vacancies on the Board and Newly-Created Directorship:* Under Delaware Law, unless otherwise provided in the certificate of incorporation or by-laws, (i) vacancies and newly-created directorships may be filled by a majority of the directors then in office, although less than a quorum, or by a sole remaining director, or (ii) if holders of any class or classes of stock are entitled to elect one or more directors, vacancies and newly-created directorships of such class or classes may be filled by a majority of the other directors elected by such class or classes. The Certificate vests the Board with the exclusive authority to fill vacancies on the Board and newly-created directorships.

**Article Seventh**

*Limitations on Stockholder Actions Without Meetings:* Unless otherwise provided in the certificate of incorporation, stockholders of a Delaware corporation may take action without meetings, without prior notice and without a vote if a consent or consents in writing setting forth the action taken is signed by the holders of that number of shares that would be required to authorize the taking of such action at a meeting at which all shares were present. The Certificate prohibits stockholder action by written consent.

**Articles Eighth and Ninth**

*Power of Board to Amend By-Laws:* Under Delaware Law, stockholders have the power to adopt, amend, or repeal by-laws. However, the certificate of incorporation can also confer this power upon the directors. The Certificate vests

the Nasdaq Board with such concurrent authority.

*Supermajority Voting Requirements for By-Law or Certificate Amendments:* Delaware Law permits the certificate of incorporation to require a supermajority vote of stockholders for particular corporate action. The Certificate requires the approval of 66⅔% of the outstanding voting power for stockholder approval of amendments to certain provisions of the Certificate and for stockholders to amend the Nasdaq By-Laws.

**Article Eleventh**

The amended Certificate includes a new constituency provision that reflects the unique nature of the Nasdaq and its operations and status as a self-regulatory organization. To the fullest extent permitted by applicable law, this provision requires the Board to take into account certain factors in evaluating tender or exchange offers, mergers or consolidations, voting exemptions pursuant to Article Fourth, and other issues. These factors include, but are not limited to: (i) the potential impact thereof on the integrity, continuity and stability of The Nasdaq Stock Market and the other operations of Nasdaq, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. Nasdaq believes that the voting limitations and constituency provision in Articles Fourth and Eleventh of the Certificate will serve the public interest by ensuring that certain individuals or entities cannot gain under influence over the operations of the Nasdaq Stock Market.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Nasdaq neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change; or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–00–27 and should be submitted by June 13, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12926 Filed 5–22–00; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–42785; International Series Release No. 1223; File No. SR–NYSE–00–23]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Trading of the Ordinary Shares of UBS AG

May 15, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act");[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 15, 2000, the New York Stock Exchange, Inc. (the "Exchange" or the "NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is proposing to adopt an interpretation under its rules to accommodate the trading of UBS AG ("UBS"). UBS is a stock corporation incorporated under the laws of Switzerland with a single class of common stock—ordinary shares with a par value of 20 Swiss Francs each—that will trade on both the NYSE and the Swiss Exchange, as well as on other exchanges around the world.

UBS will solicit proxies in a manner that combines characteristics of both the Swiss and U.S. markets. This rule change interprets Paragraphs 401.03 and 402 of the Exchange's Listed Company Manual ("Manual") to accept UBS's proposed proxy procedures.

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[3] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to provide an interpretation under the Exchange's rules to accommodate the listing and trading of UBS. This interpretation pertains to UBS's proxy solicitation and voting procedures, and is similar to an interpretation that the Commission approved in 1998 [3] with respect to the listing of the ordinary shares of DaimlerChrysler.[4]

Under Swiss law, only stockholders who hold shares on the date of the stockholders meeting are entitled to vote. Accordingly, the record date for voting at a stockholder meeting is the meeting date. In contrast, Exchange rules require 10 days' notice of a record date and 30 days between record and meeting date. UBS will modify its current practice to accommodate the notice periods in the United States. In Switzerland, there already are procedures to distribute preliminary agendas and other information to shareholders approximately one month before the meeting. UBS has agreed to prepare and mail stockholder meeting materials approximately 45 days prior to its meeting, permitting the solicitation of proxies in the Untied States in the currently accepted time frame. The company also has agreed to give the Exchange 10 days' notice of the record date.

The coincidence of the record and meeting date also raises the possibility that a selling shareholder could give a proxy and then sell the shares, with the buyer also getting a proxy. This could lead to double voting. In order to address this, both The Bank of New York as transfer agent (the "Transfer Agent") and Automatic Data Processing ("ADP"), the proxy agent for most member organizations, will institute procedures to monitor changes in the shareholder list between the date the proxy material is originally mailed out and the date of the meeting. These procedures will be designed (i) to cancel the votes of persons who submit proxies but sell their shares prior to the meeting date, and (ii) to facilitate voting by persons who purchase shares after the time the proxy material is mailed out, but before the meeting date. The second purpose of the proposed rule change is to accept these procedures as being in compliance with NYSE procedures.

Both the Transfer Agent and ADP will produce shareholder lists on the day designated for mailing the proxy material (approximately 30–45 days prior to the meeting). The Transfer Agent's list will reflect the names of registered holders and ADP's list will reflect the names of beneficial owners. Prior to the meeting date, the Transfer Agent and ADP will each produce a current shareholder list. If holders no longer appear on the list, then votes attributed to proxies submitted by them will be cancelled. If new holders appear, proxy materials will be mailed to them by the Transfer Agent, the case of registered owners, and by ADP, in the case of beneficial owners.

The shareholder lists can be updated periodically up until the date of the meeting. If practicable, proxy materials will be mailed to any new holders. This will be done on a best efforts basis. Such best efforts may include electronic notification and expedited delivery service. The proxy materials will describe voting procedures in detail. Notices will be included advising of the automatic revocation of the proxy if the holder sells stocks prior to the meeting. Finally, as a check and balance, the total vote cast in nominee name will not be permitted to exceed the total position so held.

In addition, UBS shareholders can vote in person at a shareholder's meeting. Under Swiss law, a shareholder must give the company notice of his or her intent to vote in person no later than three business days prior to the meeting, and the person must be a record holder on the meeting date.[5]

2. Basis

The basis under the Exchange Act for this proposed rule change is the requirement under Section 6(b)(5) of the Act [6] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

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[3] *See* Securities Exchange Act Release No. 40597 (October 23, 1998), 63 FR 58435 (October 30, 1998). That rule change also interpreted the Exchange's rules to accommodate the form of DaimlerChrysler's share certificates. The Exchange is not requesting approval of any interpretations related to UBS's share certificates.

[4] The Exchange anticipates developing and filing with the Commission such generally applicable rules as are necessary to cover matters relating to the trading of ordinary shares of non-U.S. companies, thus making company specific rule filings such as this one unnecessary. Since UBS is listing before the development work can be finalized, however, the Exchange is requesting this company-specific approval, following the DaimlerChrysler model.

[5] With respect to dividends, UBS's record date also will be the date of the company's annual meeting (like most Swiss companies, UBS pays dividends annually.) This will make it impossible to trade the stock "ex-dividend" on the Exchange in the normal course. Accordingly, the Exchange will use its existing flexibility under Exchange Rules 235 and 257 and Paragraph 703.02 of the Manual to trade UBS stock with "due bills" for the period that the stock normally would trade ex-dividend. This is a process pursuant to which the seller will receive the dividend, but is obligated to pay the dividend to the buyer of the shares. This process will be transparent to investors since due bills net out in the clearing process. To avoid any potential confusion as to the "ex-dividend date," the Exchange will endeavor to transmit notices to member organizations well in advance of the dividend declaration date.

[6] 15 U.S.C. 78f(b)(5).

Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–23 and should be submitted by June 13, 2000.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

The Commission finds that the NYSE's proposal to interpret the Manual to accommodate the listing and trading of UBS shares is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[7] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[8] in that it will remove impediments to and perfect the mechanism of a free and open market, and will protect investors and the public interest, by enabling the NYSE to serve as a market for shares of UBS (rather than American depository receipts) while maintaining trading standards that are substantially equivalent to the NYSE's existing standards.

The Commission believes that it is reasonable for the NYSE to interpret the Manual to accept UBS's proxy procedures. By mailing stockholder meeting materials approximately 45 days prior to its annual meeting, UBS will give shareholders the same type of advance notification provided for in the Manual. Moreover, UBS's proxy procedures will cancel proxies for shares sold prior to the meeting, and will facilitate voting by persons who purchase shares during the month leading up to the meeting. In that way, the Exchange's proxy procedures regarding UBS appear to be substantially equivalent to the NYSE's existing standards, by permitting the votes cast at the annual meeting to accurately reflect the company's shareholders at the time of the meeting. Indeed, the Commission approved a substantially similar interpretation in 1998 to permit the NYSE to trade ordinary shares of DaimlerChrysler.[9]

The Commission notes that the Exchange states that it anticipates developing and filing generally applicable rules related to the trading of ordinary shares of non-U.S. companies, making this type of company-specific rule filing unnecessary. The Commission supports that goal, and concurs that general rules are preferable to a series of company-specific exemptions.

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after its publication in the **Federal Register.** According to the Exchange, the trading of UBS shares on the Exchange is scheduled to commence on May 16, 2000. The Exchange states that in light of the significant trading interest in UBS shares and the imminence of its listing date, approving this rule as quickly as possible will help eliminate uncertainty on the part of the market participants. The Exchange also states that DaimlerChrysler ordinary shares have traded without difficulty on the Exchange since their first listing.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register.** The Commission believes that it is necessary to approve the NYSE's proposal on an accelerated basis to permit the public to begin to trade the newly issued UBS shares on the NYSE without questions about how UBS will conduct proxy voting.

*It is Therefore Ordered,* pursuant to Section 19(b)(2) of the Act[10] that the proposed rule change (SR–NYSE–00–23) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 00–12927 Filed 5–22–00; 8:45 am]

BILLING CODE 8010–01–M

[7] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* note 3, *supra.*

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

### Reporting and Recordkeeping Requirements Under OMB Review

**AGENCY:** Small Business Administration.

**ACTION:** Notice of reporting requirements submitted for OMB review.

**SUMMARY:** Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

**DATES:** Submit comments on or before June 22, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

**COPIES:** Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

**ADDRESSES:** Address all comments concerning this notice to: *Agency Clearance Officer,* Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** Jacqueline White, Agency Clearance Officer, (202) 205–7044.

**SUPPLEMENTARY INFORMATION:**

*Title:* Amendments to License Application.

*Form No.:* SBA Form-415C.

*Frequency:* On Occasion.

*Description of Respondents:* SBIC Investment Companies.

*Annual Responses:* 1,200.

*Annual Burden:* 300.

**Jacqueline White,**

*Chief, Administrative Information Branch.*

[FR Doc. 00–12925 Filed 5–22–00; 8:45 am]

BILLING CODE 8025–01–U

## DEPARTMENT OF STATE

**[Public Notice #3310]**

### Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee will hold a meeting on June 16, 2000 from 2 pm to 5 pm to obtain public comment on issues to be

addressed at the July 3–7, 2000 United Nations Educational, Scientific and Cultural Organization (UNESCO) meeting of governmental experts on the draft Convention on Underwater Cultural Heritage.

The meeting will be held in the Department of State located at 2201 C Street, NW, Washington, DC 20520, Room 1105. Interested members of the public are invited to attend, up to the capacity of the room. To expedite entry into the Department of State, please provide your name, social security number, and date of birth to Yvonne Seward (202) 647-3262, at least one week prior to the meeting. To enter the building you must present a photo ID, such as a drivers license or passport. Please use the entrance to the Department of State on C Street.

For further information, please contact Mr. Robert Blumberg, Office of Oceans Affairs, telephone (202) 647–4971.

Dated: May 17, 2000.

**Stephen M. Miller,**

*Executive Secretary, Shipping Coordinating Committee, Department of State.*

[FR Doc. 00–12938 Filed 5–22–00; 8:45 am]

BILLING CODE 4710–09–P

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

**[USCG 2000–7379]**

### Collection of Information Under Review by Office of Management and Budget (OMB): OMB Control Number 2115–0644

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the Coast Guard intends to seek the approval of OMB for the renewal of one Information Collection Request (ICR). The ICR comprises Understanding how Mariners use Aids to Navigation—A Systems Analysis Report for the U.S. Coast Guard Research and Development Center. Before submitting the ICR to OMB, the Coast Guard is asking for comments on the collection described below.

**DATES:** Comments must reach the Coast Guard on or before July 24, 2000.

**ADDRESSES:** You may mail comments to the Docket Management System (DMS) [USCG 2000–7379], U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The DMS maintains the public docket for this request. Comments will become part of this docket and will be available for inspection or copying in room PL–401, located on the Plaza Level of the Nassif Building at the above address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

Copies of the complete ICR is available through this docket on the Internet at http://dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106 (Attn: Barbara Davis), 2100 Second Street SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

**FOR FURTHER INFORMATION CONTACT:** Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document; Dorothy Walker, Chief, Documentary Services Division, U.S. Department of Transportation, 202–366–9330, for questions on the docket.

**Request for Comments**

The Coast Guard encourages interested persons to submit written comments. Persons submitting comments should include their names and addresses, identify this document [USCG 2000–7379], and give the reason for the comment. Please submit all comments and attachments in an unbound format no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

**Information Collection Request**

1. *Title:* Understanding how Mariners use Aids to Navigation—A Systems Analysis Project for the U.S. Coast Guard Research and Development Center.

*OMB Control Number:* 2115–0644.

*Summary:* The goal of the National Aids to Navigation Survey is to understand how mariners use aids in order to navigate. Navigational methods and techniques vary with the type of vessel, conditions of the waterway, and the navigator's experience.

*Need:* The survey is being done under the mandates of the National Performance Review and Executive order 12802. It will enable program officers in aids to navigation (AtoN) to assess navigational risk, implement appropriate AtoN strategies, and measure the effectiveness of the program in reducing the number of vessel collisions, allisions, and groundings.

*Respondents:* Navigators of vessels.

*Frequency:* On occasion.

*Burden:* The estimated burden is 6,518 hours annually.

Dated: May 15, 2000.

**Daniel F. Sheehan,**

*Director of Information and Technology.*

[FR Doc. 00–12876 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–15–U

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2000–7316]**

### Notice of Request for Renewal of an Information Collection; Medical Qualifications Requirements

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the FMCSA solicits comment on its intent to request the Office of Management and Budget (OMB) to approve the renewal to collect information for continuation of the requirements within 49 CFR parts 391 and 398 for (1) A medical examination form and certificate to be completed by a licensed medical examiner; (2) the submission of an application to the FMCSA for the agency to resolve conflicts of medical evaluation between medical examiners; (3) a driver qualification file for motor carriers to include the medical certificate; (4) a driver qualification file for motor carriers of migrant workers to include a doctor's certificate for every driver employed or used by them; (5) a driver qualification file to include a limb disability waiver issued to a driver; and (6) information collection requirements for granting exemptions from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs).

**DATES:** Comments must be submitted on or before July 24, 2000.

**ADDRESSES:** Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5

p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Sandra Zywokarte, Office of Bus and Truck Standards & Operations, (202) 366–4001, Federal Motor Carrier Safety Administration, DOT, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Title:* Medical Qualifications Requirements.

*OMB Number:* 2126–0006.

*Background:* Title 49 U.S.C. 31136 requires the Secretary of Transportation to prescribe regulations to ensure that the physical qualifications of commercial motor vehicle (CMV) operators are adequate to enable them to operate CMVs safely. In addition, 49 U.S.C. 31502 authorizes the Secretary to prescribe requirements for qualifications of employees of a motor carrier when needed to promote safety of operation. Information about an individual's physical condition must be collected in order for the FMCSA and motor carriers to verify that the individual meets the physical qualifications for CMV drivers in 49 CFR 391.41 and for the FMCSA to determine whether the individual is physically able to operate a CMV safely. This information collection is comprised of the 6 components listed in the summary.

*Respondents:* Medical examiners, medical specialists, physicians, licensed doctors of medicine or osteopathy, motor carriers, and CMV drivers.

*Estimated Burden Per Record:* Eight minutes for a medical examiner to complete the medical examination form; 1 minute for the medical examiner to complete the medical examiner's certificate; 1 minute to copy and file the medical examiner's certificate; 1 hour to prepare an application for resolution of medical conflict; 15 minutes to complete an application for an initial waiver of physical defects or impairments; 2 minutes to complete an application for a renewal of a waiver of physical defects or impairments; 1 minute to copy and file limb waiver applications; 66 minutes to complete an application for a vision exemption with required supporting documents; and 1 minute for a doctor of medicine or osteopathy to complete a doctor's certificate for a driver of migrant workers.

*Frequency:* Estimated annual responses are as follows: 2,750,000 medical examinations and medical certificates; 2 applications for resolution of conflicts of medical evaluation; 750 applications for waivers of physical defects and impairments; 200 applications for renewal of waiver of physical defects and impairments; 840 applications for vision exemption; 100 medical certificates for drivers of migrant workers.

*Total Estimated Annual Burden:* There are an estimated 5,500,000 CMV drivers, 2,750,000 per year who must undergo a medical examination. Approximately 2 cases per year are submitted to the FMCSA for a hearing before an Administrative Law Judge to resolve medical conflicts between medical examiners. There are approximately 1,500 limb waivers outstanding, resulting in 750 renewals. There are approximately 200 new applications for limb waivers annually. There are approximately 840 new applications for vision exemptions annually. Since the vision exemption program is new, the agency has not yet received any applications for renewal. The total estimated annual burden for this information collection is 459,321 hours.

**Public Comments Invited**

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) Whether the collection of information is necessary for the proper performance of the functions of the FMCSA, including whether the information has practical utility; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information.

**Electronic Availability**

An electronic copy of this document may be downloaded from the Internet, from the Office of the Federal Register web site: *http://www.nara.gov/fedreg*, or the U.S. Government Printing Office web site: *http://www.access.gpo.gov/nara*. Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. This service is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

**Authority:** 49 U.S.C. 315 and 49 CFR 1.73.

Issued on: May 14, 2000.

**Julie Anna Cirillo,**

*Acting Deputy Administrator, Federal Motor Carrier Safety Administration.*

[FR Doc. 00–12874 Filed 5–22–00; 8:45 am]

**BILLING CODE 4910–22–P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of denials.

**SUMMARY:** The FMCSA is publishing the names of persons denied exemptions from the vision standard in 49 CFR 391.41(b)(10) and the reasons for the denials.

**DATES:** May 23, 2000.

**FOR FURTHER INFORMATION CONTACT:** For information about the applications addressed in this notice, Ms. Teresa Doggett, Office of Bus and Truck Standards and Operations, MC–PSD, (202) 366–2990; for information about legal issues related to this rule, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–2519, FMCSA, 400 Seventh Street, SW., Washington, D.C. 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Registers home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

**Background**

The Secretary of Transportation (Secretary) has the authority under 49 U.S.C. 31502 and 31136 to establish standards for physical qualifications that must be met by commercial motor vehicle drivers in interstate commerce. These standards are published in 49 CFR part 391 of the Federal Motor Carrier Safety Regulations.

In October 1999, the Secretary rescinded the authority previously delegated to the Federal Highway Administrator to perform the motor carrier functions and operations, and to

carry out the duties and powers related to motor carrier safety, that are statutorily vested in the Secretary. That authority was redelegated to the Director of the Office of Motor Carrier Safety (OMCS), a new office within the Department (64 FR 56270, October 19, 1999, and 64 FR 58356, October 29, 1999). The OMCS had previously been the FHWA's Office of Motor Carriers (OMC).

The Motor Carrier Safety Improvement Act of 1999 established the Federal Motor Carrier Safety Administration (FMCSA) as a new operating administration within the Department of Transportation, effective January 1, 2000 (Pub. L. No. 106–159, 113 Stat. 1748, December 9, 1999). The Secretary therefore rescinded the motor carrier authority delegated to the Director of the OMCS and redelegated it to the Administrator of the FMCSA (65 FR 220, January 4, 2000).

The staff previously assigned to the FHWA's OMC, and then to the OMCS, are now assigned to the FMCSA. The motor carrier functions of the FHWA's Resource Centers and Division (*i.e.*, State) Offices have been transferred without change to the FMCSA Resource Centers and FMCSA Division Offices, respectively. For the time being, all phone numbers and addresses are unchanged. Similarly, rulemaking activities begun under the auspices of the FWHA and continued under the OMCS will be completed by the FMCSA.

On June 9, 1998, the FHWA's waiver authority changed with enactment of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107. Section 4007 of TEA–21 amended the waiver provisions of 49 U.S.C. 31136(e) and 31315 to change the standard for evaluating waiver requests, to distinguish between a waiver and an exemption, and to establish term limits for both. Under revised section 31136(e), the FMCSA may grant a waiver for a period of up to 3 months or an exemption for a renewable 2-year period.

The amendments to 49 U.S.C. 31136(e) also changed the criteria for exempting a person from application of a regulation. Previously an exemption was appropriate if it was consistent with the public interest and the safe operation of CMVs. Now the FMCSA may grant an exemption if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." According to the legislative history, the Congress changed the statutory standard to give the agency greater discretion to consider exemptions. The previous standard was judicially construed as requiring an advance determination that absolutely no reduction in safety would result from an exemption. The Congress revised the standard to require that an "equivalent" level of safety be achieved by the exemption.

The FMCSA individually evaluated 141 exemption requests on their merits, as required by the decision in *Rauenhorst* v. *United States Department of Transportation, Federal Highway Administration*, 95 F. 3d. 715 (8th Cir. 1996), and determined that the applicants do not satisfy the criteria established to demonstrate that granting the exemptions is likely to achieve an equal or greater level of safety than exists without the exemption. Each applicant has, prior to this notice, received a letter of final disposition on his/her individual exemption request. Those decision letters fully outlined the basis for the denial and constitute final agency action. The list published today summarizes the agency's recent denials as required under 49 U.S.C. 31315(b)(4) by periodically publishing names and reason for denials.

Ninety-two applicants lacked sufficient recent driving experience over the past 3 years. Twenty-nine applicants lacked at least 3 years of experience driving a commercial motor vehicle with the vision deficiency. Fourteen applicants had no experience driving a commercial motor vehicle and therefore presented no evidence from which the FMCSA could conclude that granting the exemption would likely achieve a level of safety equal to that existing without the exemption. Two drivers had waivers for the loss of a limb and therefore could not qualify for a vision exemption because they did not satisfy all other physical qualification standards in 49 CFR 391.41(b) to drive a commercial motor vehicle. In addition to their vision deficiency, they had missing limbs. One driver was diagnosed with high blood pressure, in addition to the vision deficiency, and could not qualify for the vision exemption because the physical qualification standards could not be satisfied. Another driver could not qualify for the exemption because he was convicted of three speeding violations in a three-year period and received a fourth speeding violation during the application process. An applicant for the vision exemption is only allowed two violations in a three-year period.

The agency is required to publish the names of persons who were not granted an exemption from the Federal vision requirements and the reasons for not granting the exemptions. The FMCSA has declined to consider the following applications for exemptions from the Federal vision requirements at 49 CFR 391.41(b)(10) because they lack sufficient evidence of the necessary criteria to find "such exemptions would likely achieve a level of safety that is equivalent to or greater than, the level that would be achieved absent such exemption."

**Summary of Causes for Not Granting Exemptions**

The FMCSA is not granting the following petitions for exemption from the vision standard in 49 CFR 391.41(b)(10). In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), the agency is publishing notice of the names of the applicants and reasons for not granting exemptions.

*1. Eldo J. Haugen*

Mr. Haugen was diagnosed with high blood pressure and therefore does not meet all other physical requirements, excluding vision, to qualify for an exemption. He does not qualify for an exemption because he is not "otherwise qualified" to drive a CMV.

*2. Gary A. Smith*

Mr. Smith does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*3. Louis Ingwersen*

Mr. Ingwersen does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safety performance.

*4. Jefferson S. Thomas*

Mr. Thomas does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safety performance.

*5. Lloyd H. Walters*

Mr. Walters does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safety performance.

*6. Robert L. Bowman*

Mr. Bowman does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an

adequate predictor of future safety performance.

*7. Martin G. Taylor*

Mr. Taylor does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*8. Alvin F. Schroll*

Mr. Schroll does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safety performance.

*9. Lawrence A. Lundquist*

Mr. Lundquist does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safety performance.

*10. Ronald A. Mills*

Mr. Mills does not have 3 years recent experience driving a commercial vehicle with his vision deficiency.

*11. Norman E. Schluter*

Mr. Schluter does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safety performance.

*12. Roland R. Strempke*

Mr. Strempke does not have any experience driving a commercial motor vehicle with his vision deficiency.

*13. Carolyn M. Beauvais*

Ms. Beauvais has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*14. Robert L. Slayden, Jr.*

Mr. Slayden does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safety performance.

*15. Gary D. Beavers*

Mr. Beavers does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safety performance.

*16. Mitchell L. Carson*

Mr. Carson has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*17. Willis M. Reeves*

Mr. Reeves does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*18. Harold E. Pepperling*

Mr. Pepperling does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*19. James E. Rhodes, II*

Mr. Rhodes does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*20. Ronald D. Danberry*

Mr. Danberry does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*21. Jimmy Joe Dougherty*

Mr. Dougherty does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*22. Frank D. Pfeifer*

Mr. Pfeifer has an amputation of his left hand and currently holds a Waiver of Physical Defects. As he does not meet all of the other physical standards in 49 CFR 391.41, without any other waiver or exemption, he failed to satisfy the criteria applied to evaluate vision exemption requests. In light of the recent decision in *Parker* v. *FHWA*, 207 F.3d 359 (6th Cir. 2000), we will reconsider Mr. Pfeifer's application consistent with the court's holding.

*23. William R. Bass, Jr.*

Mr. Bass does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*24. Roger D. Smith*

Mr. Smith does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*25. John C. Anderson*

Mr. Anderson does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

*26. Jimmy R. Hollingshad*

Mr. Hollingshad has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*27. Nikki B. Strom*

Ms. Strom does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*28. Odell Scott*

Mr. Scott does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance. Mr. Scott has a revocation of his CDL which also disqualifies him from receiving an exemption.

*29. Thomas W. Markham*

Mr. Markham does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*30. Barry I. Murtha*

Mr. Murtha does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*31. Mark A. Miller*

Mr. Miller does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*32. Russell D. Mertens*

Mr. Mertens does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

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*33. Robert H. Niederdeppe*

Mr. Niederdeppe does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

*34. Thomas E. Hammond, Sr.*

Mr. Hammond does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*35. Michael Dupell*

Mr. Dupell does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*36. Kenneth L. Taylor*

Mr. Taylor does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

*37. Marvin L. Muilenburg*

Mr. Muilenburg does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*38. Gregory B. Roberts*

Mr. Roberts does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*39. Abe A. Fehr*

Mr. Fehr does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*40. Jerry L. Paulsen*

Mr. Paulsen does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*41. Timothy D. McDaniel*

Mr. McDaniel has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*42. David A. Ferguson*

Mr. Ferguson does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

*43. John V. Cascone*

Mr. Cascone has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*44. John D. McCormick*

Mr. McCormick does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

*45. Gary W. Lindsey, Jr.*

Mr. Lindsey has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*46. Mona J. Meyers*

Ms. Myers does not have 3 years recent experience driving a commercial motor vehicle with her vision deficiency.

*47. Dorian N. Holladay*

Mr. Holladay had three commercial motor vehicle speeding violations within a 3-year period while operating a commercial motor vehicle and during the application process he received a fourth speeding violation in a commercial motor vehicle. He does not qualify since each applicant is allowed only 2 citations.

*48. Roger D. Duggins*

Mr. Duggins does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*49. Duane B. Coggin*

Mr. Coggin does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*50. Morris R. Beebe*

Mr. Beebe does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*51. Anthony R. Miles*

Mr. Miles does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*52. David L. Burroughs*

Mr. Burroughs does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

*53. John D. Prather, Jr.*

Mr. Prather does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*54. Eddie M. Brown*

Mr. Brown does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*55. Thomas G. Danclovic*

Mr. Danclovic does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*56. Kim A. Shaffer*

Mr. Shaffer does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*57. James H. Martin*

Mr. Martin does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*58. Joseph R. Maillet, Jr.*

Mr. Maillet does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*59. Vincent J. Hayhurst*

Mr. Hayhurst does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

*60. David O. Caldwell*

Mr. Caldwell does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

*61. Kenneth G. Mallette*

Mr. Mallette does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

*62. Micheal L. Metivier*

Mr. Metivier has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*63. Chris W. Hageman*

Mr. Hageman does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*64. Kyle P. McGill*

Mr. McGill does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*65. Randall G. Henderson*

Mr. Henderson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*66. Alonza V. Ferrell*

Mr. Ferrell does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

*67. Kenneth W. Lyons*

Mr. Lyons does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*68. Howard G. Williams*

Mr. Williams does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*69. Dana Quince*

Mr. Quince does not have 3 years of recent experience driving a commercial motor vehicle with his vision deficiency.

*70. Raymond J. Misslich*

Mr. Misslich does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*71. Sherman R. Garrett*

Mr. Garrett does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

*72. Johnny L. Nesbitt, Jr.*

Mr. Nesbitt does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*73. David A. Christenson*

Mr. Christenson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*74. Donald A. Verrill*

Mr. Verrill does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*75. Dennis C. Madison, Sr.*

Mr. Madison does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

*76. Michael J. Sullivan*

Mr. Sullivan has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*77. Ronald W. Winslow*

Mr. Winslow does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*78. Warren Streeter*

Mr. Streeter does not have 3 years of experience driving a commercial motor vehicle with his vision deficiency.

*79. William J. Wilkins*

Mr. Wilkins does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*80. Ambrosio E. Calles*

Mr. Calles does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*81. Arnold G. Patchin*

Mr. Patchin does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*82. Steven M. Montalbo*

Mr. Montalbo does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*83. Leonard D. Berogan*

Mr. Berogan has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*84. Bobby G. Carr*

Mr. Carr does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*85. Edward C. Miller*

Mr. Miller has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*86. John E. Kramer*

Mr. Kramer does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*87. Donald R. Good*

Mr. Good does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*88. Rocky D. Rubink*

Mr. Rubink does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

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*89. Charles L. Croster*

Mr. Croster does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*90. Tony E. Parks*

Mr. Parks does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*91. Steven G. Lee*

Mr. Lee does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*92. John R. Osborne*

Mr. Osborne does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*93. James G. Binkley*

Mr. Binkley does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*94. James D. Raley*

Mr. Raley does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*95. John L. Casner*

Mr. Casner does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*96. Dennis J. Christensen*

Mr. Christensen does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*97. Charles F. Schmidt*

Mr. Schmidt does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*98. Linda L. Billings*

Ms. Billings does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*99. Carl D. Hopkins*

Mr. Hopkins does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*100. Darin P. Milton*

Mr. Milton does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*101. Brian H. Spencer*

Mr. Spencer does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*102. Fred A. Christopherson*

Mr. Christopherson does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*103. David A. Feindel*

Mr. Feindel does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*104. Donald Thompson*

Mr. Thompson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*105. Daniel Hollins*

Mr. Hollins does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*106. Christopher J. Kane*

Mr. Kane does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*107. Caroleah Baker*

Ms. Baker does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*108. Tommy L. McKnight*

Mr. McKnight does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*109. Larry E. Dunn*

Mr. Dunn does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*110. Melvin T. Bullock*

Mr. Bullock does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*111. Gerald L. Craig*

Mr. Craig does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*112. Lewis E. Armstrong*

Mr. Armstrong does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*113. Edwin J. DarDar*

Mr. DarDar does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*114. David E. Miller*

Mr. Miller does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*115. Wesley E. Jones*

Mr. Jones does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*116. David W. Smith*

Mr. Smith does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an

adequate predictor of future safe performance.

*117. Michael L. Eckstein, Sr.*

Mr. Eckstein does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*118. Michael T. Howes*

Mr. Howes does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*119. Peter D. Wehner*

Mr. Wehner does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*120. Richard N. Bowling, Sr.*

Mr. Bowling does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*121. Kenneth Allen, Jr.*

Mr. Allen does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*122. Jerry W. Parker*

Mr. Parker has a missing left arm and therefore does not meet all other physical requirements, excluding vision, to qualify for an exemption. The FMCSA is reconsidering its denial in accordance with *Parker* v. *FHWA*, 207 F.3d 359 (6th Cir. 2000).

*123. Nathan A. Buckles*

Mr. Buckles does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*124. Belinda Betancur*

Ms. Betancur does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*125. John F. Ellington*

Mr. Ellington does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*126. Eric D. Bennett*

Mr. Bennett does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*127. Jerry D. Lawson*

Mr. Lawson does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*128. Jimmy L. Spates*

Mr. Spates does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*129. Steve L. Hopkins*

Mr. Hopkins does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*130. Willie O. Evans, Sr.*

Mr. Evans has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*131. Jimmy Cuttino*

Mr. Cuttino has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*132. Anthony L. Dewalt*

Mr. Dewalt does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*133. Scott K. Kenyon*

Mr. Kenyon has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*134. Raymond E. Umphrey*

Mr. Umphrey does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*135. William R. Farrington*

Mr. Farrington does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*136. Donald S. Ellison*

Mr. Ellison does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

*137. Scott Alan Boyd*

Mr. Boyd has no experience operating a commercial motor vehicle and therefore presented no evidence from which the FMCSA can conclude that granting the exemption is likely to achieve a level of safety equal to that existing without the exemption.

*138. Robert E. Almond*

Mr. Almond does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*139. Christopher F. Vanstory*

Mr. Vanstory does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*140. Robert L. Nix*

Mr. Nix does not have 3 years of experience driving a commercial vehicle with his vision deficiency.

*141. Ofelio Estrada*

Mr. Estrada does not have sufficient driving experience over the past 3 years under normal highway operating conditions that would serve as an adequate predictor of future safe performance.

**Authority:** 49 U.S.C. 322, 31315, and 31136; 49 CFR 1.73

Issued on: May 12, 2000.

**Julie Anna Cirillo,**

*Acting Deputy Administrator.*

[FR Doc. 00–12929 Filed 5–22–00; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2000–7165]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of petitions and intent to grant applications for exemption; request for comments.

**SUMMARY:** This notice announces the FMCSA's preliminary determination to grant the applications of 63 individuals for an exemption from the vision requirements in the Federal Motor Carrier Safety Regulations (FMCSRs). Granting the exemptions will enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the vision standard prescribed in 49 CFR 391.41(b)(10).

**DATES:** Comments must be received on or before June 22, 2000.

**ADDRESSES:** Your written, signed comments must refer to the docket number at the top of this document, and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

**FOR FURTHER INFORMATION CONTACT:** For information about the vision exemptions in this notice, Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987; for information about legal issues related to this notice, Ms. Judith Rutledge, Office of the Chief Counsel, (202) 366–2519, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Electronic Access**

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

**Creation of New Agency**

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748). The new statute established the Federal Motor Carrier Safety Administration in the Department of Transportation. On January 4, 2000, the Secretary rescinded the authority previously delegated to the Office of Motor Carrier Safety (OMCS) (65 FR 220). This authority is now delegated to the FMCSA.

The motor carrier functions of the OMCS' Resource Centers and Division (i.e., State) Offices have been transferred to FMCSA Service Centers and FMCSA Division Offices, respectively. Rulemaking, enforcement, and other activities of the Office of Motor Carrier Safety while part of the FHWA, and while operating independently of the FHWA, will be continued by the FMCSA. The redelegation will cause no changes in the motor carrier functions and operations previously handled by the FHWA or the OMCS. For the time being, all phone numbers and addresses are unchanged.

**Background**

Sixty-three individuals have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Under 49 U.S.C. 31315 and 31136(e), the FMCSA (and previously the FHWA) may grant an exemption for a renewable 2-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." Accordingly, the FMCSA has evaluated each of the 63 exemption requests on its merits, as required by 49 U.S.C. 31315 and 31136(e), and preliminarily determined that exempting these 63 applicants from the vision requirement in 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption.

**Qualifications of Applicants**

*1. Elijah Allen, Jr.*

Mr. Elijah Allen, 36, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/400 in the left eye. He was examined in 1999 by an ophthalmologist who stated, "In my opinion, because of his current driving record, I believe he has sufficient vision to perform the tasks that he needs in order to operate a commercial vehicle."

Mr. Allen has driven tractor-trailer combination vehicles for 14 years, accumulating over 2 million miles. He holds an Arkansas Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the past 3 years.

*2. Charles Leon Baney*

Mr. Charles Leon Baney, 61, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in his left eye and 20/400 in the right eye. He was examined in 1999 and his optometrist stated, "My clinical impression is that Mr. Baney's vision is sufficient to perform the driving tasks required to operate a commercial vehicle."

Mr. Baney has driven straight trucks for 5 years, accumulating 60,000 miles; tractor-trailer combination vehicles for 6 years, accumulating over 540,000 miles; and buses for 2 years, accumulating over 4,000 miles. He holds an Illinois CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the past 3 years.

*3. Walter F. Blair*

Mr. Walter F. Blair, 63, has been blind in his left eye since the age of 5 due to trauma. The visual acuity in his right eye is 20/20, uncorrected. He was examined in 1999 by an optometrist who stated, "In my medical opinion, this person has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Blair has driven straight trucks for 31 years, accumulating 620,000 miles. He holds a Tennessee Class B CDL. His official driving record shows no accidents or convictions of moving violations in a CMV during the past 3 years.

*4. Jullie A. Bolster*

Ms. Jullie A. Bolster, 50, has had diffuse haze and corneal scarring due to severe keratitis in her left eye since 1995. Her best corrected visual acuity is 20/20 in her right eye and 20/200 in her left eye. She was examined in 1999 by an ophthalmologist who stated, "I feel at this time she has sufficient vision to perform driving tasks required to operate a commercial vehicle."

Ms. Bolster has driven tractor-trailer combination vehicles for over 6.5 years, accumulating over 260,000 miles. She holds a Montana Class A CDL. Her official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*5. Gary Bryan*

Mr. Gary Bryan, 51, has had an ocular toxoplasmosis scar in his right eye since childhood. His best corrected visual acuity is 20/20 in the left eye and 20/400 in the right eye. He was examined in 1999 by an optometrist who stated, "His vision is sufficient to perform the driving tasks required to operate a commercial vehicle."

Mr. Bryan has driven straight trucks for 10 years, accumulating 250,000 miles and tractor-trailer combination vehicles for 15 years, accumulating 525,000 miles. He holds a Montana Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

*6. Timothy John Bryant*

Mr. Timothy John Bryant, 42, has had optic nerve damage in his left eye since birth. His best corrected vision is 20/20 in his right eye and 20/200 in his left eye. He was examined in 1999 by an ophthalmologist who stated, "I feel that Mr. Bryant's vision is adequate to operate a commercial vehicle."

Mr. Bryant has operated straight trucks for 10 years, accumulating 500,000 miles and tractor-trailer combination vehicles for 4 years, accumulating over 260,000 miles. He holds a Florida Class A CDL. His official driving history shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*7. Thomas A. Burke*

Mr. Thomas A. Burke, 56, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/100 in the left eye. He was examined in 1999 by an ophthalmologist who stated, "In view of his driving record and experience and the fact that nothing has changed, that his vision is stable, I feel that he is definitely safe to qualify to continue driving a commercial vehicle."

Mr. Burke has driven tractor-trailer combination vehicles for 20 years, accumulating over 425,000 miles. He holds a Michigan Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

*8. Monty Glenn Calderon*

Mr. Monty Glenn Calderon, 34, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in his left eye and 20/400 in his right eye. According to a 1999 examination, his ophthalmologist stated, "Mr. Calderon should be able to operate a commercial vehicle."

Mr. Calderon has driven a straight truck for 4 years and has accumulated 180,000 miles of driving. He holds an Ohio Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV in the last 3 years.

*9. Ronald Lee Carpenter*

Mr. Ronald Lee Carpenter, 56, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in his right eye and 20/100 in his left eye. He was examined in 1999 by his optometrist who stated, "In my opinion, Mr. Carpenter has the visual skills to perform the driving tasks required to operate a commercial vehicle."

Mr. Carpenter has driven tractor-trailer combination vehicles for 20 years, totaling 200,000 miles. He holds an Oklahoma CDL. His official driving record shows no accidents and no convictions of any moving violations in a CMV during the past 3 years.

*10. Charles Casey Chapman*

Mr. Charles Casey Chapman, 30, has reduced vision in his right eye due to trauma at the age of 10. His best corrected visual acuity is 20/20 in the left eye and 20/200 in the right eye. He was examined in 1999 by an optometrist who stated, "should be able to drive a truck because condition has existed over 18 yr. [sic] with no problems."

Mr. Chapman has driven straight trucks for 7 years, accumulating 560,000 miles. He holds a North Carolina Class B CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*11. Milton Coleman*

Mr. Milton Coleman, 52, has been blind in his right eye since the age of 3 due to an injury. His best corrected visual acuity in his left eye is 20/20. He was examined in 1999 by an optometrist who stated, "I feel Mr. Coleman can safely operate a commercial vehicle if he utilizes a compensatory head turn toward R [sic] shoulder to widen his effective visual field."

Mr. Coleman has driven tractor-trailer combination vehicles for 8 years, accumulating 4 million miles. He holds a California Class A CDL. His official driving record shows one accident. No injury was involved and no citations were issued to either party. The driving record shows no convictions of moving violations in a CMV for the last 3 years.

*12. David Earl Corwin*

Mr. David Earl Corwin, 51, has been blind in his left eye since childhood. His best corrected visual acuity is 20/20 in his right eye. He was examined in 1999, and his optometrist stated, "At this time his vision is stable and in my opinion sufficient to perform the tasks required to operate a commercial vehicle."

Mr. Corwin has driven straight trucks for 25 years, accumulating over 1.2 million miles. He holds a Idaho CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV during the past 3 years.

*13. Adam D. Craig*

Mr. Adam D. Craig, 56, has macular degeneration in his left eye. His best corrected visual acuity is 20/20 in his right eye and 20/200 in his left eye. According to a 1999 examination, his ophthalmologist stated, "It is my medical opinion that due to the excellent vision in the right eye and his full visual fields in both eyes, that Mr. Craig should have no restrictions to a commercial vehicle license."

Mr. Craig has driven straight trucks for 16 years and tractor-trailer combination vehicles for 18 years, accumulating over 1.4 million miles. He holds an Indiana Class A CDL. His official driving record for the last 3 years shows no accidents or convictions of moving violations in a CMV.

*14. Eric L. Dawson, III*

Mr. Eric L. Dawson, 55, has had a corneal scar secondary to herpes zoster in his left eye since 1986. His best corrected visual acuity is 20/20 in his right eye and 20/80 in his left eye. He was examined in 1999, and his ophthalmologist stated that, in her medical opinion, Mr. Dawson has sufficient vision to perform the driving tasks required to operate a commercial vehicle.

Mr. Dawson has driven straight trucks for 38 years and tractor-trailer combination vehicles for 25 years, accumulating over 1.6 million miles. He holds a North Carolina CDL. His official driving record shows no accidents or convictions for moving violations in a CMV for the last 3 years.

*15. Richard L. Derick*

Mr. Richard L. Derick, 46, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/400 in the left eye. He was examined in 1999 by an optometrist who stated, "I do not feel that the central visual condition in his left eye will significantly detract from his ability to *safely* drive a commercial vehicle, if at all."

Mr. Derick has driven straight trucks for 4 years, accumulating 120,000 miles and tractor-trailer combination vehicles

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for 12 years, accumulating over 1.2 million miles. He holds a New Hampshire Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CDL for the last 3 years.

*16. Joseph A. Dunlap*

Mr. Joseph A. Dunlap, 34, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/80− in the left eye. He was examined in 1999 and his ophthalmologist stated, "He, to my knowledge, has an excellent driving record with no history of accidents or traffic violations. This record has been achieved with his present visual status, and as long as the results of his current visual exam meet your requirements, I see no reason why he cannot continue to drive a commercial vehicle."

Mr. Dunlap has driven straight trucks for 13 years and tractor-trailer combination vehicles for 9 years, accumulating over 600,000 miles. He holds an Ohio CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*17. John C. Edwards, Jr.*

Mr. John C. Edwards, 63, has longstanding macular scarring in his right eye. His best corrected visual acuity is 20/40 in his left eye and 20/400 in his right eye. He was examined in 1999, and his ophthalmologist stated, "In my opinion Mr. Edwards' vision has not deviated and has been stable for well over ten years. I expect his vision to remain that way. I feel he has maintained the ability to operate a commercial vehicle."

Mr. Edwards has driven straight trucks for 8 years and tractor-trailer combination vehicles for 26 years, accumulating over 3 million miles. He holds a Mississippi CDL. His official driving record shows no accidents or convictions of moving violations in a CMV in the last 3 years.

*18. Calvin J. Eldridge*

Mr. Calvin J. Eldridge, 55, is blind in his right eye due to an injury at age twelve. His best corrected visual acuity in his left eye is 20/15. He was examined by his optometrist in 1999 who stated, "In my opinion, Calvin Eldridge has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Eldridge has driven tractor-trailer combination vehicles for 27 years and a total of 2.7 million miles. He has a Washington CDL. His official driving record shows no accidents and 2 non-serious speeding violations in a CMV during the past 3 years.

*19. Ronald G. Ellwanger*

Mr. Ronald G. Ellwanger, 65, has macular degeneration in his right eye. His best corrected visual acuity is 20/20 in the left eye and 20/80 in the right eye. He was examined in 1999 and his ophthalmologist stated, "I certify that this patient has sufficient vision to safely perform the driving tasks required to operate a commercial vehicle."

Mr. Ellwanger has driven straight trucks for 40 years, accumulating at least 2 million miles during that period. He holds a Virginia CDL. His official driving record shows no accidents or convictions of moving violations in a CMV during the last 3 years.

*20. Marcellus Albert Garland*

Mr. Marcellus Albert Garland, 61, has been blind in his left eye due to an accident since 1967. His best corrected visual acuity in his right eye is 20/20. He was examined by an optometrist in 1999 who stated, "In my professional opinion Mr. Garland has sufficient visual function to perform the driving tasks required to operate a commercial vehicle."

Mr. Garland has driven straight trucks for 3 years, accumulating 90,000 miles and tractor-trailer combination vehicles for 31 years, accumulating 2.5 million miles. He holds a California Class A CDL. His official driving record shows 1 accident in a CMV in which there were no injuries and no citations issued. It also shows one speeding violation in a CMV during the last 3 years.

*21. George J. Ghigliotty*

Mr. George J. Ghigliotty, 56, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in the left eye and 20/60 in the right eye. He was examined in 1999 by an optometrist who stated, "It is my opinion that this patient has sufficient vision to drive a commercial vehicle."

Mr. Ghigliotty has driven tractor-trailer combination vehicles for 38 years, accumulating 3.8 million miles. He holds a Florida Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the past 3 years.

*22. Ronald E. Goad*

Mr. Ronald E. Goad, 53, has worn a prosthesis in his left eye since 1956 due to an accident. His best corrected visual acuity in his right eye is 20/20. He was examined by his optometrist in 1999 who stated, "Mr. Ronald Goad has sufficient vision to operate a commercial vehicle."

Mr. Goad has driven straight trucks for 33 years totaling more than 260,000 miles and tractor-trailer combination vehicles for 10 years, having accumulated anywhere between 5,000 and 75,000 miles per year, depending on the company for which he was employed. He holds a Maryland CDL. His official driving record shows no accidents or convictions of moving violations in a CMV during the past 3 years.

*23. Steven F. Grass*

Mr. Steven F. Grass, 30, has been blind in his left eye since the age of 2 due to injury. His best corrected visual acuity in his right eye is 20/20. He was examined in 1999 by an optometrist who stated, "Mr. Grass is very well adapted to using only the vision in his right eye. He is able to function normally. *I believe that there is no reason for him to not be able to operate a commercial vehicle safely.*"

Mr. Grass has operated tractor-trailer combination vehicles for 6 years, accumulating over 300,000 miles and straight trucks for 1 year, accumulating 10,000 miles. He holds a New Mexico Class A CDL. His official driving record shows no accidents and one conviction of a moving violation (Failure to Obey Traffic Signal/Light) in a CMV during the last 3 years.

*24. Randolph D. Hall*

Mr. Randolph D. Hall, 59, has had reduced vision in his right eye since childhood, probably as the result of an infection of the macula. His best corrected visual acuity is 20/20 in his left eye and 20/800 in his right eye. He was examined in 1999 by an optometrist who stated, "In my opinion, with his excellent vision in his left eye and great peripheral vision in both eyes, there is no reason why he can't operate a commercial truck and trailer."

Mr. Hall has operated tractor-trailer combination vehicles for 29 years, accumulating over 2 million miles. He holds a Florida Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the past 3 years.

*25. Reginald I. Hall*

Mr. Reginald I. Hall, 43, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/200 in the left eye. He was examined in 1999 by an ophthalmologist who stated, "Based upon my medical opinion, Mr. Hall has shown an exemplary driving record and has sufficient vision to operate a commercial vehicle."

Mr. Hall has driven straight trucks for 12 years, accumulating 432,000 miles and tractor-trailer combination vehicles for 10 years, accumulating 540,000 miles. He holds a Texas Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

*26. Sherman William Hawk, Jr.*

Mr. Sherman William Hawk, Jr., 48, has a long-standing retinal scar in his left eye. His best corrected visual acuity is 20/20 in his right eye and 20/150 in his left eye. He was examined in 1999 by an optometrist who stated, "In my professional opinion, Mr. Hawk possesses sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Hawk has driven straight trucks for 13 years, accumulating over 800,000 miles and tractor-trailer combination vehicles for 10 years, accumulating 600,000 miles. He holds a Maryland Class AM CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

*27. Daniel J. Hillman*

Mr. Daniel J. Hillman, 56, has a history of retinal disease which has caused a significant loss of visual acuity in the right eye. His best corrected vision is 20/25–3 in the left eye and 20/70 in the right eye. He was examined in 1999 by an optometrist who stated, "I feel Daniel Hillman is visually capable of performing well as a commercial driver."

Mr. Hillman has driven tractor-trailer combination vehicles for 28 years, accumulating 2.8 million miles. He holds a Washington Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*28. Gordon William Howell*

Mr. Gordon William Howell, 45, has been blind in his right eye for the last 10 years. His best visual acuity in his left eye is 20/20 uncorrected. He was examined by an ophthalmologist in 1999 who stated, "He has been driving commercial last 12 yr [sic] so it is my opinion he has sufficient vision to do so."

Mr. Howell has driven tractor-trailer combination vehicles for 22 years, accumulating more than 330,000 miles. He holds a Washington Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*29. Roger Louis Jacobson*

Mr. Roger Louis Jacobson, 72, suffered permanent, stable visual loss in his right eye as the result of an accident in 1968. His best corrected visual acuity is 20/20 in the left eye and light perception in the right eye. He was examined in 1999 by an ophthalmologist who stated, "Mr. Jacobson's long standing visual acuity and performance as a monocular driver more than qualifies him to operate a commercial motor vehicle throughout the United States."

Mr. Jacobson has driven straight trucks for 4 years, accumulating 4,800 miles and tractor-trailer combination vehicles for 49 years, accumulating over 4 million miles. He holds an Arizona Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*30. Robert C. Jeffres*

Mr. Robert C. Jeffres, 58, has been blind in his left eye due to injury since 1991. His best corrected visual acuity is 20/15 in the right eye. He was examined by an optometrist in 1999 who stated, "In my medical opinion Robert Jeffres has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Jeffres has driven straight trucks for 41 years, accumulating 205,000 miles and tractor-trailer combination vehicles for 30 years, accumulating 2.4 million miles. He holds a Wyoming Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*31. Alfred C. Jewell, Jr.*

Mr. Alfred C. Jewell, Jr., 45, has amblyopia in his right eye. His best corrected visual acuity is 20/20+ in the left eye and 20/100 − in the right eye. He was examined in 1999 by an optometrist who stated, "This patient has been driving commercial vehicles all of his adult life. There have been no visual decreases during that time. I feel that for this individual, the vision is sufficient."

Mr. Jewell has driven tractor-trailer combination vehicles for 27 years, accumulating over 3.7 million miles. He holds a Wyoming Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*32. Anton R. Kibler*

Mr. Anton R. Kibler, 46, has amblyopia in his right eye. His best corrected vision is 20/20 in his left eye and 20/100+ in his right eye. He was examined by an optometrist in 1999 who stated, "In my opinion, applicant has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Kibler has driven straight trucks for 29 years, accumulating 667,000 miles. He holds a Delaware Class B CDL. His official driving record shows no accidents or convictions of moving violations in a CMV during the last 3 years.

*33. James Alonzo Kneece*

Mr. James Alonzo Kneece, 67, has had poor vision in his left eye due to injury since childhood. He has optic nerve damage in that eye and scarring of the retina in the centrally located area. His best corrected visual acuity is 20/20 in the right eye and 20/400 in the left eye. He was examined by an ophthalmologist in 1999 who stated, "I think because of his lifelong adaptation to the poor vision in the left eye, he is qualified to operate a commercial vehicle."

Mr. Kneece has driven straight trucks for 2 years, accumulating 120,000 miles and tractor-trailer combination vehicles for 40 years, accumulating 3.6 million miles. He holds a Georgia Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

*34. Ronnie L. LeMasters*

Mr. Ronnie L. LeMasters, 48, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in the right eye and 20/400 in the left eye. He was examined in 1999, and his optometrist stated, "Mr. LeMasters congenital amblyopia is stable and should not affect his ability to drive a commercial vehicle."

Mr. LeMasters has driven straight trucks for 26 years, accumulating more than 545,000 miles. He holds a West Virginia CDL. His official driving record shows no accidents or convictions for moving violations in a CMV for the last 3 years.

*35. Samuel Joseph Long*

Mr. Samuel Joseph Long, 33, has been blind in his right eye since 1971. His uncorrected vision in his left eye is 20/15. He was examined by an ophthalmologist in 1999 who stated, "It is my opinion that Mr. Long's vision is sufficient to perform the driving tasks required to operate a commercial vehicle."

Mr. Long has driven straight trucks for 6 years and a total of 360,000 miles. He holds a Florida Class D license. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*36. Steven G. Luther*

Mr. Steven G. Luther, 47, has a diagnosis of ocular histoplasmosis in his right eye. His visual acuity is 20/20 in the left eye and 20/200 in the right eye. He was examined by an ophthalmologist in 1999 who stated, "I think also that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Luther has driven straight trucks for 25 years, accumulating 837,500 miles and tractor-trailer combination vehicles for 8 years, accumulating 8,000 miles. He holds an Iowa Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV during the past 3 years.

*37. Lewis V. McNeice*

Mr. Lewis V. McNeice, 52, has been monocular since his right eye was removed approximately 34 years ago. His best corrected visual acuity in his left eye is 20/15. He was examined by his optometrist in 1999 who stated, "I believe Mr. McNeice has sufficient vision to drive commercially."

Mr. McNeice has driven straight trucks for 34 years and tractor-trailer combination vehicles for 25 years for a total of over 3.1 million miles. He holds a Texas CDL. His official driving record for the last 3 years shows no accidents or convictions of moving violations in a CMV.

*38. Barry B. Morgan*

Mr. Barry B. Morgan, 57, has amblyopia in his left eye. His best corrected visual acuity is 20/15 in his right eye and 20/300 in his left eye. He was examined in 1999 by an optometrist who stated, "My impression of Mr. Morgan is that he is intelligent, alert, and thoughtful, and that he is capable, with his vision, of operating a commercial vehicle."

Mr. Morgan has driven straight trucks and tractor-trailer combination vehicles for 6 years, accumulating 33,600 miles. He holds a Washington Class B CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*39. Richard O'Neal, Jr.*

Mr. Richard O'Neal, 68, has been blind in his right eye due to injury since approximately 1969. His best corrected visual acuity in his left eye is 20/20. He was examined in 1999, and his ophthalmologist stated, "it is my medical opinion that he has sufficient vision to perform the driving task required to operate a commercial vehicle."

Mr. O'Neal has driven tractor-trailer combination vehicles for 20 years, accumulating over 800,000 miles. He holds an Indiana CDL. His official driving record shows no accidents or convictions of moving violations in a CMV during the past 3 years.

*40. Dewey Owens, Jr.*

Mr. Dewey Owens, Jr., 75, has worn a prosthesis in his right eye for at least 13 years since his current optometrist has been treating him. His best corrected visual acuity is 20/20 in his left eye. He was examined in 1999, and his optometrist stated, "I feel that Mr. Owens certainly has sufficient vision to continue to operate a commercial vehicle as he had demonstrated for all the years that I have known him."

Mr. Owens has driven tractor-trailer combination vehicles of over 50 years and has accumulated over 5.5 million miles. He holds an Alabama Class AM CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*41. Richard E. Perry*

Mr. Richard E. Perry, 47, suffered trauma to the left eye as a child, leaving him with severely reduced vision in that eye. His best visual acuity is 20/20 in the right eye (uncorrected) and count fingers in the left. He was examined in 1999, and his ophthalmologist stated, "I certify, in my opinion, that his [Mr. Perry's] vision is sufficient to perform the driving test required to operate a commercial vehicle."

Mr. Perry has driven straight trucks for 3 years, accumulating 75,000 miles and tractor-trailer combination vehicles for 20 years, accumulating 2.5 million miles. He holds a California CDL. His official driving record shows no convictions of moving violations in a CMV in the last 3 years. He was involved in one accident in a CMV in the last 3 years. In the accident the other driver involved was charged with an unsafe lane change. Mr. Perry was not charged with any violation.

*42. Douglas McArthur Potter*

Mr. Douglas McArthur Potter, 58, suffered a retinal detachment in his left eye in August 1995. His best corrected visual acuity is 20/20 in the right eye and hand motion in the left eye. He was examined in 1999 by an ophthalmologist who stated, "I see no reason why his vision would preclude him from operating a commercial vehicle."

Mr. Potter has driven tractor-trailer combination vehicles for 30 years, accumulating 2.4 million miles and straight trucks for 41 years, accumulating 205,000 miles. He holds a Colorado Class A CDL. His official driving record shows one accident and no convictions of moving violations in a CMV for the last 3 years. There were no injuries in the accident and no citations were issued to Mr. Potter. The driver of the other vehicle involved received a citation for careless driving.

*43. Gregory Martin Preves*

Mr. Gregory Martin Preves, 47, has worn a prosthesis in his right eye since he was 20 years old. The visual acuity in his left eye is 20/20, corrected and uncorrected. He was examined in 1999 by an optometrist who stated, "Mr. Preves definitely has sufficient vision to perform the tasks required to operate a commercial vehicle."

Mr. Preves has driven straight trucks and tractor-trailer combination vehicles for 9 years, accumulating approximately 450,000 miles. He holds a Georgia Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

*44. James M. Rafferty*

Mr. James M. Rafferty, 38, has been blind in his right eye since 1974 due to trauma. His best corrected visual acuity is 20/15 in his right eye. He was examined in 1999 by an ophthalmologist who stated, "In my opinion, Mr. Rafferty has sufficient visual function to perform the driving tasks required to operate a commercial vehicle."

Mr. Rafferty has driven straight trucks for 15 years, accumulating more than 1.2 million miles; tractor-trailer combination vehicles for 2 years, accumulating 10,000 miles; and buses for 1 year, accumulating 5,000 miles. He holds a New Hampshire Class A–MC CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

*45. Paul C. Reagle, Sr.*

Mr. Paul C. Reagle, 64, has age-related macular changes in his left eye, causing decreased vision. His best corrected visual acuity is 20/30 in the right eye and 20/100 in the left eye. He was examined in 1999 by his ophthalmologist who stated, "I support Mr. Reagle's application for continued use of a commercial drivers license and any questions should be directed to my Mays Landing office."

Mr. Reagle has driven straight trucks for 10 years and 200,000 miles; tractor-trailer combination vehicles for 44 years and 2.8 million miles; and buses for 30 years totaling 600,000 miles. He holds a

CDL from New Jersey. His official driving record shows no accidents or convictions of moving violations in a CMV for the past 3 years.

*46. Glenn E. Robbins*

Mr. Glen E. Robbins, 55, has been blind in his right eye since an automobile accident in 1963. His best corrected visual acuity is 20/20 in the left eye. He was examined in 1999 by an ophthalmologist who stated, "I hereby certify that Mr. Robbins has sufficient vision to perform the duties of his work in a commercial motor vehicle in a normal manner without endangering himself or the general public."

Mr. Robbins has driven straight trucks for 5 years, accumulating 350,000 miles and tractor-trailer combination vehicles for 29 years, accumulating 2.9 million miles. He holds a Wyoming Class ATX CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

*47. Daniel Salinas*

Mr. Daniel Salinas, 43, has amblyopia in his left eye. His best corrected visual acuity is 20/15 in the right eye and 20/400 in the left eye. He was examined in 1999 by an optometrist who stated, "Daniel has sufficient vision to continue to perform the driving tasks required to operate a commercial vehicle."

Mr. Salinas has driven straight trucks for 26 years, accumulating 2.6 million miles and tractor-trailer combination vehicles for 15 years, accumulating 1.7 million miles. He holds an Oregon Class A CDL. His official driving record shows no accidents and no convictions of a moving violation in a CMV for the last 3 years.

*48. Salvador Sarmiento*

Mr. Salvador Sarmiento, 49, has amblyopia in the right eye. His best corrected visual acuity is 20/20 in the left eye and 20/80 in the right eye. He was examined in 1999 by an optometrist who stated, "His ability to operate a commercial [vehicle] is not compromised with his ocular condition."

Mr. Sarmiento has driven tractor-trailer combination vehicles for 29 years, accumulating 870,000 miles and straight trucks for 5 years, accumulating 90,000 miles. He holds a Texas Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV in the last 3 years.

*49. Wayne Richard Sears*

Mr. Wayne Richard Sears, 39, has had a macular scar in his right eye for approximately 10 years. His visual acuity is 20/20 in the left eye and 20/300 in the right eye. He was examined in 1999 by an optometrist who stated, "I believe that Mr. Sears can certainly see well enough to continue driving in a commercial vehicle."

Mr. Sears has driven tractor-trailer combination vehicles for 16 years, accumulating 1.6 million miles and straight trucks for 2 years, accumulating 200,000 miles. He holds a Texas Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*50. Garry R. Setters*

Mr. Garry R. Setters, 45, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in the left eye and 20/60 in the right eye. He was examined in 1999 by an ophthalmologist who stated, "This patient has mild amblyopia of the right eye and, in my medical opinion, his vision is sufficient to perform his driving task with a commercial vehicle."

Mr. Setters has driven a straight truck for 22 years, accumulating 770,000 miles. He holds a Kentucky Class DA License. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*51. Hoyt M. Shamblin*

Mr. Hoyt M. Shamblin, 41, has had a corneal scar in his right eye due to injury since age 5. His best corrected visual acuity is 20/20 (-1) in his left eye and 20/200 in his right eye. He was examined in 1999 by an optometrist who stated, "It is my opinion that Mr. Shamblin has the ability to safely operate a commercial vehicle for the tasks described necessary for his present employment."

Mr. Shamblin has driven straight trucks for 5 years, accumulating 130,000 miles. He holds a Georgia Class BM license. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*52. Lee Russell Sidwell*

Mr. Lee Russell Sidwell, 37, has amblyopia in his left eye. His best corrected visual acuity is 20/15 in the right eye and 20/60 in the left eye. He was examined in 1999 by an optometrist who stated, "This letter certifies that in my medical opinion Lee Sidwell has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Sidwell has driven both straight trucks and tractor-trailer combination vehicles for 11 years, accumulating 627,000 miles. He holds an Ohio Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

*53. Jesse M. Sikes*

Mr. Jesse M. Sikes, 61, has been blind in his right eye since the age of 8 due to injury. His best corrected visual acuity is 20/20 in the left eye. He was examined by an optometrist in 1999 who stated, "In my opinion Mr. Sikes can safely operate a commercial vehicle as well now as he has for the last several years."

Mr. Sikes has driven straight trucks and tractor-trailer combination vehicles for 30 years, accumulating 1.5 million miles. He holds a Wyoming Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*54. Harold A. Sleesman*

Mr. Harold A. Sleesman, 68, has scarring in the central retina of the left eye which has been present since childhood. His best corrected visual acuity is 20/20 in the right eye and count fingers in the left eye. He was examined by an optometrist in 1999 who stated, "Based on the above findings, it is my opinion that Mr. Sleesman should have no trouble continuing to perform the tasks required in operating a commercial vehicle."

Mr. Sleesman has driven straight trucks for 26 years, accumulating 910,000 miles. He holds an Indiana Class A–NT CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*55. James E. Smith*

Mr. James E. Smith, 43, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in his right eye and 20/80 in his left eye. He was examined in 1999, and his optometrist stated, "Mr. Smith is able to be a safe commercial driver and is no threat on the road."

Mr. Smith has driven both straight trucks and tractor-trailer combination vehicles for 17 years, accumulating approximately 415,000 miles. He holds a Missouri CDL. His official driving record shows no accidents or convictions of moving violations in a CMV in the last 3 years.

*56. Daniel A. Sohn*

Mr. Daniel A. Sohn, 44, has congenital decreased visual acuity in his right eye. His best corrected visual acuity is 20/20 in the left eye and 20/70 in the right eye. He was examined in

1999 by an optometrist who stated, "My medical opinion is that he certainly has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Sohn has driven straight trucks and tractor-trailer combination vehicles for 14 years, accumulating 1.6 million miles. He holds a Wisconsin Class ABCDM CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

*57. Denney Vern Traylor*

Mr. Denney Vern Traylor, 42, has amblyopia in his left eye. His visual acuity is 20/20 in the right eye and 20/200 in the left eye. He was examined by an ophthalmologist in 1999 who stated, "Based on my examination of his eyes, it is my opinion that he has sufficient vision to operate a commercial vehicle."

Mr. Traylor has driven tractor-trailer combination vehicles for 14 years, accumulating over 1.3 million miles. He holds a California Class AM CDL. His official driving record shows no accidents and 1 conviction for a moving violation in a CMV during the last 3 years. The conviction was for failure to obey a traffic sign.

*58. Noel Stuart Wangerin*

Mr. Noel Stuart Wangerin, 63, has been blind in his left eye since 1941 due to injury. His best corrected visual acuity is 20/20 in his right eye. He was examined in 1999 by an optometrist who stated, "Mr. Wangerin has 20/20 vision which is sufficient to perform the driving tasks required to operate a commercial vehicle."

Mr. Wangerin has driven straight trucks for 7 years, accumulating 140,000 miles and tractor-trailer combination vehicles for 25 years, accumulating 2.0 million miles. He holds an Illinois Class A CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the last 3 years.

*59. Brian W. Whitmer*

Mr. Brian W. Whitmer, 43, has amblyopia in his right eye. His best corrected visual acuity is 20/20 in his left eye and 20/200 in his right eye. He was examined in 1999 by his optometrist who stated, "Since he has been a successful commercial driver for many years, it is my opinion that he has sufficient vision to continue performing commercial driving tasks."

Mr. Whitmer has driven tractor-trailer combination vehicles for 4 years and 10 months, totaling approximately 300,000 miles. He holds an Ohio CDL. His official driving record shows no accidents or convictions of moving violations in a CMV during the past 3 years.

*60. Jeffrey D. Wilson*

Mr. Jeffrey D. Wilson, 23, has been blind in his right eye since birth as the result of optic nerve pits. His best corrected vision is 20/15 in his left eye. He was examined by an optometrist in 1999 who stated, "It is my opinion that Mr. Jeffrey Wilson has sufficient vision to be able to safely operate a commercial vehicle and should be granted an exemption from the Federal vision standard."

Mr. Wilson has driven tractor-trailer combination vehicles for 4 years, accumulating 400,000 miles. He holds a Colorado Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

*61. Joseph F. Wood*

Mr. Joseph F. Wood, 29, has amblyopia in his left eye. His best corrected visual acuity is 20/20 in his right eye and 20/60 in his left eye. He was examined in 1999, and his optometrist stated, "I certify that in my opinion, Joseph Wood's vision is sufficient to perform the driving tasks required to operate a commercial vehicle."

Mr. Wood has driven straight trucks for 6 years, accumulating approximately 300,000 miles. He holds a Mississippi CDL. His official driving record shows no accidents or convictions of moving violations in a CMV for the past 3 years.

*62. William E. Woodhouse*

Mr. William E. Woodhouse, 41, sustained a corneal ulcer on his right eye in June 1992. His best corrected visual acuity is 20/400, pinholing to 20/200 in the right eye and 20/20 in the left eye uncorrected. He was examined in 1999 by an ophthalmologist who stated, "My medical opinion is that he has sufficient vision to perform the driving tasks required to operate a commercial vehicle."

Mr. Woodhouse has driven tractor-trailer combination vehicles for 11 years, accumulating over 1.3 million miles. He holds an Illinois Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

*63. Rick A. Young*

Mr. Rick A. Young, 39, has been blind in his left eye since 1982 due to injury. The visual acuity in his right eye is 20/20. He was examined in 1999 by an ophthalmologist who stated, "I feel he has sufficient vision to perform the driving tasks required to operate a commercial vehicle and has been doing this in the past with this level of vision."

Mr. Young has driven straight trucks for 16 years, accumulating 400,000 miles and tractor-trailer combination vehicles for 10 years, accumulating 150,000 miles. He holds an Indiana Class A CDL. His official driving record shows no accidents and no convictions of moving violations in a CMV for the last 3 years.

**Basis for Preliminary Determination To Grant Exemptions**

Independent studies support the principle that past driving performance is a reliable indicator of an individual's future safety record. The studies are filed in FHWA Docket No. FHWA–97–2625 and discussed at 63 FR 1524, 1525 (January 9, 1998). We believe we can properly apply the principle to monocular drivers because data from the vision waiver program clearly demonstrate the driving performance of monocular drivers in the program is better than that of all CMV drivers collectively. (See 61 FR 13338, March 26, 1996.) That monocular drivers in the waiver program demonstrated their ability to drive safely supports a conclusion that other monocular drivers, with qualifications similar to those required by the waiver program, can also adapt to their vision deficiency and operate safely.

The 63 applicants have qualifications similar to those possessed by drivers in the waiver program. Their experience and safe driving record operating CMVs demonstrate that they have adapted their driving skills to accommodate their vision deficiency. Since past driving records are reliable precursors of the future, there is no reason to expect these individuals to drive less safely after receiving their exemptions. Indeed, there is every reason to expect at least the same level of safety, if not a greater level, because the applicants can have their exemptions revoked if they compile an unsafe driving record.

For these reasons, the FMCSA believes exempting the individuals from 49 CFR 391.41(b)(10) is likely to achieve a level of safety equal to, or greater than, the level that would be achieved without the exemption as long as vision in their better eye continues to meet the standard specified in 391.41(b)(10). As a condition of the exemption, therefore, the FMCSA proposes to impose requirements on the individuals similar to the grandfathering provisions in 49 CFR 391.64(b) applied to drivers who participated in the agency's former vision waiver program.

These requirements are as follows: (1) That each individual be physically examined every year (a) by an ophthalmologist or optometrist who attests that vision in the better eye meets the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to his or her employer for retention in its driver qualification file or keep a copy in his or her driver qualification file if he or she becomes self-employed. The driver must also have a copy of the certification when driving so it may be presented to a duly authorized Federal, State, or local enforcement official.

In accordance with 49 U.S.C. 31315 and 31136(e), the proposed exemption for each person will be valid for 2 years unless revoked earlier by the FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is effective at the end of the 2-year period, the person may apply to the FMCSA for a renewal under procedures in effect at that time.

**Request for Comments**

In accordance with 49 U.S.C. 31315 and 31136(e), the FMCSA is requesting public comment from all interested persons on the exemption petitions and the matters discussed in this notice. All comments received before the close of business on the closing date indicated above will be considered and will be available for examination in the docket room at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable, but the FMCSA may issue exemptions from the vision requirement to the 63 applicants and publish in the **Federal Register** a notice of final determination at any time after the close of the comment period. In addition to late comments, the FMCSA will also continue to file in the docket relevant information which becomes available after the closing date. Interested persons should continue to examine the docket for new material.

**Authority:** 49 U.S.C. 322, 31136 and 31315; 49 CFR 1.73.

Issued on: May 15, 2000.

**Julie Anna Cirillo,**

*Acting Deputy Administrator, Federal Motor Carrier Safety Administration.*

[FR Doc. 00–12930 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–22–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with provisions of the Hours of Service Law (108 Stat. 888, Pub. L. 103–272, 49 U.S.C. 21102(b)). The Hours of Service Law currently makes it unlawful for a railroad to require specified employees to remain on duty in excess of 12 hours. However, the Hours of Service Law contains a provision permitting a railroad, which employs not more than 15 employees subject to the statute, to seek an exemption from the 12 hour limitation.

**Apalachicola Northern Railroad Company (AN)**

(Waiver Petition Docket No. FRA–1999–5184)

The AN seeks an exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The AN requests a one hour extension to the maximum limit of twelve hours total on-duty time for covered service employees. The request is made due to changing operational needs. The AN currently operates on 96 miles of track in the State of Florida.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 1999–5184) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, D.C. on May 18, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–12916 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for continuation of a waiver of compliance with provisions of the Hours of Service Law (108 Stat. 888, Pub. L. 103–272, 49 U.S.C. 21102(b)). The Hours of Service Law currently makes it unlawful for a railroad to require specified employees to remain on duty in excess of 12 hours. However, the Hours of Service Law contains a provision permitting a railroad, which employs not more than 15 employees subject to the statute, to seek an exemption from the 12 hour limitation.

**Carolina Rail Services, Incorporated (CRS)**

[Waiver Petition Docket No. FRA–1998–4566]

CRS seeks continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. CRS states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. CRS provides intra-port

services at the Port of Morehead City, North Carolina.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 1998–4566) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, DC 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, DC, on May 18, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–12915 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49, Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for continuation of a waiver of compliance with provisions of the Hours of Service Law (108 Stat. 888, Pub. L. 103–272, 49 U.S.C. 21102(b)). The Hours of Service Law currently makes it unlawful for a railroad to require specified employees to remain on duty in excess of 12 hours. However, the Hours of Service Law contains a provision permitting a railroad, which employs not more than 15 employees subject to the statute, to seek an exemption from the 12 hour limitation.

**Central Montana Rail, Incorporated (CMR)**

[Waiver Petition Docket No. FRA–2000–7200]

CMR seeks a continuation of a previously issued exemption so that it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. CMR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. CMR provides service over 87 miles of trackage between Moccasin Junction and Geraldine, Montana.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–7200) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 30 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, DC, on May 18, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–12919 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49, Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a continued waiver of compliance with provisions of the Hours of Service Law (108 Stat. 888, Pub. L. 103–272, 49 U.S.C. 21102(b)). The Hours of Service Law currently makes it unlawful for a railroad to require specified employees to remain on duty in excess of 12 hours. However, the Hours of Service Law contains a provision permitting a railroad, which employs not more than 15 employees subject to the statute, to seek an exemption from the 12 hour limitation.

**Pioneer Valley Railroad (PVRR)**

[Waiver Petition Docket No. FRA–2000–7094]

The PVRR seeks to continue its exemption so that it may permit train crew employees to remain on duty not more than 16 hours in any 24-hour period. The PVRR states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if continued, would help its operation if unusual operating conditions are encountered. The PVRR provides service on over 16.9 miles of trackage wholly within the state of Massachusetts with headquarters in Westfield, Massachusetts.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–7094) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, DC, on May 18, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–12918 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Petition for Waiver of Compliance

In accordance with Part 211 of Title 49, Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with provisions of the Hours of Service Law (108 Stat. 888, Pub. L. 103–272, 49 U.S.C. 21102(b)). The Hours of Service Law currently makes it unlawful for a railroad to require specified employees to remain on duty in excess of 12 hours. However, the Hours of Service Law contains a provision permitting a railroad, which employs not more than 15 employees subject to the statute, to seek an exemption from the 12 hour limitation.

**York Railway Company (YRC)**

[Waiver Petition Docket No. FRA–2000–7064]

The YRC seeks an exemption so that it may permit train crew employees to remain on duty not more than 16 hours in any 24-hour period to provide coal train deliveries to a consignee located in Spring Grove, Pennsylvania. The YRC further states that it is not its intention to employ a train crew over 12 hours per day under normal circumstances, but this exemption, if continued, would help its operation if other unusual operating conditions are encountered. The YRC provides service on over 40 miles of trackage located in York County, Pennsylvania, with its headquarters in York, Pennsylvania.

The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees that are subject to the statue and has demonstrated good cause for granting this exemption.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number 2000–7064) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, S.W., Washington, D.C. 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov*.

Issued in Washington, DC on May 18, 2000.

**Grady C. Cothen, Jr.,**

*Deputy Associate Administrator for Safety Standards and Program Development.*

[FR Doc. 00–12917 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Federal Railroad Administration

### Notice of Safety Advisory on RoadRailer Trailers

**AGENCY:** Federal Railroad Administration (FRA), DOT.

**ACTION:** Notice of safety advisory.

**SUMMARY:** FRA is issuing Safety Advisory 99–03A in order to modify and update previously issued Safety Advisory 99–03 which addressed the securement of floor beam cross-members on RoadRailer® trailers. *See* 64 FR 61377 (November 10, 1999). FRA is issuing this revised Safety Advisory to address the securement of lift rods on RoadRailer® trailers in order to prevent the highway tandem wheels on these trailers from falling to the rails on moving trains. This Safety Advisory also provides updated information regarding the actions being taken within the industry regarding the securement of floor beam cross-members and lift rods on this equipment.

**FOR FURTHER INFORMATION CONTACT:** Gary Fairbanks, Mechanical Engineer, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, FRA, 400 Seventh Street, SW, RRS–14, Mail Stop 25, Washington, DC 20590 (Telephone 202–493–6322/ Fax 202–493–6230)

**SUPPLEMENTARY INFORMATION:** In November of 1999, FRA issued Safety Advisory 99–03 based on its discovery that several RoadRailer® trailers operated by Triple Crown Services (Triple Crown) had experienced failures of floor beam cross-members. *See* 64 FR 61377. The cross beams connect the highway tandem wheel set to the body of the trailer via slide rails. The failure of the cross beams allows the weight of the tandem wheel set to deflect the slide rails to the point where the highway tires contact the rail. Prior to the issuance of Safety Advisory 99–03, FRA notified Wabash National Incorporated (Wabash), the manufacturer of RoadRailer® equipment, and requested that Wabash randomly inspect trailers at the Fort Wayne, Indiana, Triple Crown facility. Representatives of Wabash, Triple Crown, the Federal Highway Administration (FHWA), and FRA conducted a series of inspections at this facility in October of 1999. The cross-member defects found during these inspections could be classified into four categories:

1. A weld crack at the slide rail to I-beam cross-member;
2. A crack in the cross-member I-beam flange (which usually starts at the end of a weld);
3. A crack which has progressed into the web of the I-beam from the flange; or
4. A cross-member broken into two pieces.

The practice of attaching the tandem wheel set slide rails to the trailer body by welding to floor cross-member I-beam flanges has been the accepted method of highway trailer fabrication for many years. This method is

currently being used by nearly all van trailer manufacturers, and is considered safe and reliable when properly applied. It should be noted that there are some RoadRailer® trailers which have been in service since January 1988 that have not exhibited signs of weld or cross-member cracking in the above noted areas. Currently, the entire fleet of Triple Crown RoadRailer® trailers is in the process of being inspected or repaired. All inbound and outbound trailers are being inspected. Defective trailers will be withheld from service, transloaded, or repaired prior to being assembled into a train, depending upon the condition of the trailer. At this time, the manufacturer is considering one broken floor beam cross-member or four successive cross-members with cracks to be sufficient cause to withhold the trailer from service or to repair the trailer prior to continuing it in service.

Subsequent to the issuance of Safety Advisory 99–03, FRA discovered that several RoadRailer® trailers operated by Triple Crown Services (Triple Crown) and the National Railroad Passenger Corporation (Amtrak) have recently experienced failure of the tandem axle lift rods. These spring loaded lift rods retract the highway wheel set when the trailers are operated in the rail mode. Direct inspection of the lift rods is not possible by personnel positioned on the ground and standing adjacent to the trailer because the lift rods are encased in a steel tube and are located above the highway tandem axles at the rear of the trailer near the centerline of the trailer body. A broken lift rod will result in the highway tandem wheel set lowering toward the rail. Furthermore, if one or more of the lift rods fail per trailer the highway wheel set could potentially strike a close clearance object or the highway wheel set could drop completely to the rail. Thus, a high potential for derailment exists if a highway wheel set were to drop onto the rails.

An informal inquiry into the potential causes for the recent failures of the tandem axle lift rods determined that recently manufactured lift rods were not properly heat treated when manufactured and thus, may not be of adequate strength to handle the high loads encountered during the operation of the equipment. Due to the safety implications related to the failure of the lift rods, the National Highway Traffic Safety Administration (NHTSA) in conjunction with Wabash has issued a voluntary recall of equipment outfitted with tandem axle lift rods manufactured within the last two years. *See* NHTSA Recall Number 00V–025 and 00V–344. Wabash will also provide NHTSA and FRA with quarterly progress reports on the status of the recall. Furthermore, Wabash has issued six "Service Bulletins" regarding the inspection and repair of the RoadRailer® trailers in response to the recent lift rod failures and the failures of the floor beam cross-members discussed in Safety Advisory 99–03. These bulletins include:

- *SB2000–001:* RoadRailer® cross-members at front of slide reinforcement to prevent cracking; *Priority—Mandatory* (part of NHTSA Recall Number 00V–025 and 00V–344). This bulletin covers the inspection and installation of a bolt-on reinforcement channel that will increase the strength of the cross-member and reduce the stress at the welds. A three-inch diameter blue decal will be applied to the front of each trailer just above the Vehicle Identification Number (VIN) tag to indicate the rework has been completed.
- *SB2000–002:* RoadRailer® slide suspension body rail rear attachment reinforcement; *Priority—Voluntary* (at customer expense). This bulletin covers the modification of the aft end of the suspension body rails on standard dry freight RoadRailer® trailers. This reinforcement modification to the rear stop pipe will reduce the potential of the weld cracking.
- *SB200–003:* RoadRailer® slide suspension hold-down replacement and repair of cracks between lock pin holes in slide body rails; *Priority—Mandatory* (Warranty). This bulletin covers the replacement of the 3/8" thick trailer slide body rail suspension hold down brackets with 1/4" brackets that have more clearance for the bottom lip of the body rail. The 3/8" bracket caused stresses in the body rails and resulted in cracking between pairs of holes in the body rail.
- *SB2000–004:* RoadRailer® Lift Rod Replacement due to improper material; *Priority—Mandatory* (Warranty). This bulletin covers the replacement of trailer suspension lift rods that did not have the steel properly heat treated, and, therefore, may not be of adequate strength for the application. These lift rods can see high loads during the transfer and rail modes that require the material used in the lift rods to be of high strength heat treated steel.
- *SB2000–005:* RoadRailer® cross-member inspection; *Priority—Recommended*. This bulletin covers the procedures for the inspection of cross-members and the repair of the cross-members over the body rails during regular trailer inspections.
- *SB2000–006:* RoadRailer® Ultra Cube slide suspension body rail rear attachment reinforcement; *Priority—Voluntary* (at customer expense). This bulletin covers the reinforcement procedures for the aft end of the suspension body rails on Ultra Cube trailers. Severe impact of the slider suspension into the rear stop pipe can force the body rail to bow upwards causing the bottom of the vertical leg of the body rail of the extension to crack.

*Recommended Action*

Until the root cause(s) of the floor beam cross-member failures and the lift rod failures can be determined, and the appropriate long-term repairs effectuated, FRA recommends that the following actions be taken with regard to all RoadRailer® trailers:

- Each trailer should be inspected upon receipt at a facility from a highway motor carrier prior to being transferred to the rail mode to determine whether it has any of the following conditions:

1. One broken floor beam cross-member.
2. Four successive cross-member with cracks.

If either of the conditions is found, the trailer should be held until a repair can be made to correct the deficiency, or if loaded, the lading should be transferred to another trailer that has been inspected and found not to have any of these conditions.

- Each such inbound trailer should be inspected upon its arrival in a train prior to its transfer to the highway mode. If either of the conditions noted above is found, the trailer should be held until a repair can be made to correct the deficiency, or if loaded, the lading should be transferred to another trailer that has been inspected and found not to have any of these conditions.
- All operators of RoadRailer® trailers should obtain a copy of the above listed "Service Bulletins" and should follow all of the manufacturer's recommended inspection, repair, and modification procedures contained in those bulletins. To obtain a copy of the bulletins, operators should contact Mr. John Gabriel, Customer Service, Wabash National Corporation, P.O. Box 6129 Lafayette, IN 47903 or telephone (765) 771–5404.

FRA may modify Safety Advisory 99–03A, issue additional safety advisories, or take other appropriate action to ensure the highest level of safety on the Nation's railroads.

Issued in Washington, DC, on May 18, 2000.

**George Gavalla,**

*Associate Administrator for Safety.*

[FR Doc. 00–13014 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–06–P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

### Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

The Department of Transportation (DOT), Maritime Administration (MARAD) has submitted the following public information collection request to the Office of Management and Budget (OMB) for emergency review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA) (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by June 12, 2000. A copy of this information collection request, with applicable supporting documentation, may be obtained by contacting Raymond R. Barberesi, Director, Office of Sealift Support, MAR–630, Room 7307, Maritime Administration, 400 Seventh Street, SW., Washington, DC 20590, telephone number: 202–366–2323 or fax 202–493–2180. Comments and questions about the request listed below should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Transportation, Office of Management and Budget, Room 10102, Washington, DC 20503.

*Agency:* Maritime Administration.

*Date:* Comments must be submitted on or before June 12, 2000.

*Title:* Evaluation of the Maritime Security Program (MSP) and the Voluntary Intermodal Sealift Agreement (VISA) Program.

*OMB Number:* 2133–New.

*Frequency:* One-Time.

*Affected Public:* Vessel Operators, Shippers, Maritime Labor Entities, DOD and other Federal agencies and affected parties in the maritime and transportation industries.

*Number of Respondents:* 20 Respondents.

*Estimated Time Per Respondent:* 1 Hour.

*Total Burden Hours:* 20 Hours.

*Summary:* MARAD is conducting a program evaluation of the MSP and VISA programs and seeks to collect empirical information from various maritime- and transportation-related entities and other Federal agencies relating to the impact of the MSP and the VISA programs on DOD sealift capability and the U.S. merchant fleet. The evaluation seeks to determine the contribution of the MSP/VISA to the achievement of DOT's and MARAD's national security goals. This evaluation is part of DOT's implementation of the Government Performance and Results Act (GRPA). The information received will be used by MARAD personnel as part of the evaluation to identify and evaluate the causal relationship between MSP/VISA and the DOT/MARAD national security goals.

*Burden Statement:* According to the PRA, persons are not required to respond to a collection of information unless it displays a valid OMB control number. Note that this information collection has not yet received an OMB control number. It is estimated that the time required to complete this information collection averages approximately 1 hour per response, including the time to review instructions, search existing data resources, gather the data needed, and complete the information collection.

Dated: May 16, 2000.

**Joel C. Richard,**

*Secretary, Maritime Administration.*

[FR Doc. 00–12875 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–81–P

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applications delayed more than 180 days.

**SUMMARY:** In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

**FOR FURTHER INFORMATION CONTACT:** J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001, (202) 366–4535.

**Key to "Reasons for Delay"**

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

**Meaning of Application Number Suffixes**

N—New application

M—Modification request

PM—Party to application with modification request

Issued in Washington, DC, on May 17, 2000.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials, Exemptions and Approvals.*

NEW EXEMPTION APPLICATIONS

| Application No. | Applicant | Reason for delay | Estimated date of completion |
|---|---|---|---|
| 11862–N | The BOC Group, Murray Hill, NJ | 4 | 6/30/2000 |
| 11927–N | Alaska Marine Lines, Inc., Seattle, WA | 4 | 6/30/2000 |
| 12125–N | Mayo Foundation, Rochester, MN | 4 | 6/30/2000 |
| 12142–N | Aristech Chemical Corp., Pittsburgh, PA | 4 | 6/30/2000 |
| 12148–N | Eastman Kodak Company, Rochester, NY | 4 | 6/30/2000 |
| 12158–N | Hickson Corporation, Conley, GA | 4 | 6/30/2000 |
| 12181–N | Aristech, Pittsburgh, PA | 4 | 6/30/2000 |
| 12205–N | Independent Chemical Corp., Glendale, NY | 4 | 6/30/2000 |
| 12248–N | Ciba Specialty Chemicals Corp., High Point, NC | 4 | 6/30/2000 |
| 12277–N | The Indian Sugar & General Engineering Corp. ISGE, Haryana, IX | 4 | 6/30/2000 |
| 12281–N | ABS Group, Inc., Houston, TX | 4 | 6/30/2000 |

NEW EXEMPTION APPLICATIONS—Continued

| Application No. | Applicant | Reason for delay | Estimated date of completion |
|---|---|---|---|
| 12290–N | Savage Industries, Inc., Pottstown, PA | 4 | 6/30/2000 |
| 12292–N | Westway Trading Corporation, New Orleans, LA | 4 | 6/30/2000 |
| 12307–N | Kern County Dept. of Weights & Measures, Bakersfield, CA | 4 | 6/30/2000 |
| 12325–N | Lifeline Technologies, Inc., Sharon Hill, PA | 4 | 6/30/2000 |
| 12332–N | Automotive Occupant Restraints Council, Lexington, KY | 4 | 6/30/2000 |
| 12339–N | BOC Gases, Murray Hill, NJ | 4 | 6/30/2000 |
| 12341–N | Space Systems/Loral, Palo Alto, CA | 4 | 7/31/2000 |
| 12343–N | City Machine & Welding, Inc. of Amarillo, Amarillo, TX | 1 | 7/31/2000 |
| 12350–N | BAC Technologies, Ltd., West Liberty, OH | 4 | 7/31/2000 |
| 12351–N | Nalco/Exxon Energy Chemicals, L.P., Freeport, TX | 4 | 7/31/2000 |
| 12353–N | Monson Companies, South Portland, ME | 4 | 7/31/2000 |
| 12355–N | Union Tank Car Company, East Chicago, IN | 4 | 7/31/2000 |
| 12356–N | Memorial Healthcare System, Pembroke Pines, FL | 4 | 7/31/2000 |
| 12368–N | Occidental Chemical Corp., Dallas, TX | 4 | 7/31/2000 |
| 12370–N | Eurotainer US, Inc., Somerset, NJ | 4 | 6/30/2000 |
| 12379–N | Western Farm Service, Inc., Walnut Grove, CA | 4 | 7/31/2000 |
| 12381–N | Ideal Chemical & Supply Co., Memphis, TN | 4 | 7/31/2000 |
| 12392–N | Consani Engineering, Elsies River, SA | 1 | 7/31/2000 |
| 7277–M | Structural Composites Industries, Pomona, CA | 4 | 6/30/2000 |
| 8308–M | Tradewind Enterprises, Inc., Hillsboro, OR | 4 | 6/30/2000 |
| 8556–M | Gardner Cryogenics, LeHigh Valley, PA | 4 | 6/30/2000 |
| 9266–M | ERMEWA, Inc., Houston, TX | 4 | 6/30/2000 |
| 10656–M | Conf. of Radiation Control Program Directors, Inc., Frankfort, KY | 4 | 6/30/2000 |
| 10672–M | Burlington Packaging, Inc., Brooklyn, NY | 4 | 6/30/2000 |
| 10921–M | The Procter & Gamble Company, Cincinnati, OH | 1 | 6/30/2000 |
| 10977–M | Federal Industries Corporation Plymouth, MN | 4 | 6/30/2000 |
| 11406–M | Conf. of Radiation Control Program Directors, Inc., Frankfort, KY | 4 | 7/31/2000 |
| 11537–M | JCI Jones Chemicals, Inc., Milford, VA | 4 | 7/31/2000 |
| 11769–M | Great Western Chemical Company, Portland, OR | 4 | 7/31/2000 |
| 11769–M | Great Western Chemical Company, Portland, OR | 4 | 7/31/2000 |
| 11769–M | Hydrite Chemical Company, Brookfield, WI | 4 | 7/31/2000 |
| 11798–M | Air Products and Chemicals, Inc., Allentown, PA | 1, 4 | 7/31/2000 |
| 12074–M | Van Hool NV, B–2500 Lier Koningshooikt, BG | 1 | 7/31/2000 |
| 12132–M | Carleton Technologies, Inc., Orchard Park, NY | 4 | 7/31/2000 |
| 12178–M | STC Technologies, Inc., Bethlehem, PA | 1 | 7/31/2000 |

[FR Doc. 00–12870 Filed 5–22–00; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of Applications for Modification of Exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.* to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

**DATES:** Comments must be received on or before June 7, 2000.

**ADDRESS COMMENTS TO:** Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at http://dms.dot.gov.

This notice of receipt of applications for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 16, 2000.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials, Exemptions and Approvals.*

| Application No. | Docket No. | Applicant | Modification of exemption |
|---|---|---|---|
| 8299–M | | Pacific Scientific, Duarte, CA (See Footnoote 1) | 8299 |
| 10555–M | | Pacific Scientific HTL/KIN–Tech Division, Durate, CA (See Footnote 2) | 10555 |
| 11761–M | | Vulcan Chemicals, Birmingham, AL (See Footnote 3) | 11761 |
| 11826–M | | Spectra Gases, Inc., Branchburg, NJ (See Footnote 4) | 11826 |
| 12378–M | RSPA–1999–6568 | Federal Express, Memphis, TN (See Footnote 5) | 12378 |
| 12447–M | RSPA–2000–7236 | Akzo Nobel Coatings, Inc., Norcross, GA (See Footnote 6) | 12447 |
| 12448–M | RSPA–2000–7244 | Onyx Environmental Services, L.L.C., Flanders, NJ (See Footnote 7) | 12448 |

[1] To modify the exemption to increase the service life limit to 24 years of the non-DOT specification pressure vessels for the transportation of certain Division 2.2 compressed gases.
[2] To modify the exemption to allow for the transportation of an additional Division 2.2 material in an alternative non-DOT specification cylinder.
[3] To modify the exemption to eliminate the marking requirements of certain DOT specification and AAR specification tank cars containing a residue of Class 8 materials.
[4] To modify the exemption to authorize additional Division 2.2 materials transported in DOT–3AL aluminum cylinders.
[5] To modify the exemption to indicate applicability to companies under subcontract operating under exclusive use for Federal Express for the transportation in commerce of dry ice by cargo aircraft only.
[6] To reissue the exemption originally issued on an emergency basis authorizing the use of hazard warning labels that do not conform with the specifications in the HMR.
[7] To reissue the exemption originally issued on an emergency basis for the transportation of anhydrous ammonia in DOT specification cylinders.

[FR Doc. 00–12871 Filed 5–22–00; 8:45am]
BILLING CODE 4910–60–M

## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

### Office of Hazardous Materials Safety; Notice of Applications for Exemptions

**AGENCY:** Research and Special Programs Administration, DOT.

**ACTION:** List of applicants for exemptions.

**SUMMARY:** In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

**DATES:** Comments must be received on or before June 22, 2000.

**ADDRESS COMMENTS TO:** Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

**FOR FURTHER INFORMATION CONTACT:** Copies of the applications (See Docket Number) are available for inspection at the New Docket Management Facility, PF–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW, Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on May 12, 2000.

**J. Suzanne Hedgepeth,**

*Director, Office of Hazardous Materials, Exemptions and Approvals.*

### NEW EXEMPTIONS

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 12452–N | RSPA–00–7237 | CA Dept. of Health Services, Berkeley, CA. | 49 CFR 173.196, 178.609 | To authorize the transportation in commerce of biological specimens classed as infectious substance (Etiologic agent) in specially designed packagings inside mechanical freezers. (mode 1) |
| 12454–N | RSPA–00–7322 | Ethyl Corp., Richmond, VA. | 49 CFR 180.509(1), 180.509(e). | To authorize an alternative testing method for DOT class 105 tank cars for use in transporting various classes of hazardous materials. (mode 2) |
| 12455–N | RSPA–00–7320 | United States Marine, Safety Association, Philadelphia, PA. | 49 CFR 173.34(e) | To authorize an alternative testing period for 3A, 3AA and 3AL compressed gas cylinders installed in marine inflatable liferafts undergoing required annual service at a United States Coast Guard approved inflatable liferaft service facility. (modes 1, 2, 3, 4) |

NEW EXEMPTIONS—Continued

| Application No. | Docket No. | Applicant | Regulation(s) affected | Nature of exemption thereof |
|---|---|---|---|---|
| 12457–N ..... | RSPA–00–7371 | Arch Chemicals, Inc., Norwalk, CN. | 49 CFR 172.101(i)(3) Col. 8C. | To authorize the transportation in commerce of dry calcium hypochlorite mixture, Division 5.1, in DOT specification flexible intermediate bulk containers. (mode 1) |
| 12460–N ..... | RSPA–00–7355 | M&M Service Company, Carinville, IL. | 49 CFR 173.315(k) ..... | To authorize the interstate transportation in commerce of a non-DOT specification tank built to MC 330 or MC 331 specifications for use in transporting propane, Division 2.1. (mode 1) |

[FR Doc. 00–12872 Filed 5–23–00; 8:45 am]

BILLING CODE 4910–60–M

## DEPARTMENT OF THE TREASURY

### Federal Law Enforcement Training Center

### Notice of Meeting

**AGENCY:** Federal Law Enforcement Training Center, Treasury.

**ACTION:** Notice of meeting.

**SUMMARY:** The Advisory Committee to the National Center for State and Local Law Enforcement Training at the Federal Law Enforcement Training Center will meet on June 7, 2000. The agenda for this meeting includes remarks by the Committee Co-Chairs, Karen Wehner, Deputy Assistant Secretary (LE), Department of the Treasury, and Mary Lou Leary, Acting Assistant Attorney General, Office of Justice Programs, Department of Justice; progress reports on initiatives and training programs; and presentations on collaborative programs presented by the National Center.

**ADDRESSES:** James J. Rowley Training Center, 9200 Powder Mill Road, Laurel, Maryland.

**FOR FURTHER INFORMATION CONTACT:** Hobart M. Henson, Director, National Center for State and Local Law Enforcement Training, Federal Law Enforcement Training Center, Glynco, GA 31524, 912–267–2322.

Dated: May 17, 2000.

**Hobart M. Henson,**

*Director, National Center for State and Local Law Enforcement Training.*

[FR Doc. 00–12886 Filed 5–22–00; 8:45 am]

BILLING CODE 4810–32–P

## DEPARTMENT OF VETERANS AFFAIRS

### Summary of Precedent Opinions of the General Counsel

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The Department of Veterans Affairs (VA) is publishing a summary of legal interpretations issued by the Department's General Counsel involving veterans' benefits under laws administered by VA. These interpretations are considered precedential by VA and will be followed by VA officials and employees in future claim matters. The summary is published to provide the public, and, in particular, veterans' benefit claimants and their representatives, with notice of VA's interpretation regarding the legal matter at issue.

**FOR FURTHER INFORMATION CONTACT:** Jane L. Lehman, Chief, Law Library, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6558.

**SUPPLEMENTARY INFORMATION:** VA regulations at 38 CFR 2.6(e)(9) and 14.507 authorize the Department's General Counsel to issue written legal opinions having precedential effect in adjudications and appeals involving veterans' benefits under laws administered by VA. The General Counsel's interpretations on legal matters, contained in such opinions, are conclusive as to all VA officials and employees not only in the matter at issue but also in future adjudications and appeals, in the absence of a change in controlling statute or regulation or a superseding written legal opinion of the General Counsel.

VA publishes summaries of such opinions in order to provide the public with notice of those interpretations of the General Counsel that must be followed in future benefit matters and to assist veterans' benefit claimants and their representatives in the prosecution of benefit claims. The full text of such opinions, with personal identifiers deleted, may be obtained by contacting the VA official named above.

### New Precedent Opinions

**VAOPGCPREC 01–2000**

*Question Presented*

a. Is the last sentence of 38 CFR 3.272(h) consistent with 38 U.S.C. 1503(a)(3) in providing that expenses of a veteran's last illness paid by a surviving spouse subsequent to the veteran's death, but prior to the date of entitlement to improved death pension, may not be excluded from countable income for the purpose of determining death pension entitlement?

b. If so: (1) What is the basis for the differing treatment accorded by section 3.272(h) to expenses paid prior to the date of death and those paid after the date of death but before the date of entitlement; and, (2) does Congress' intent in enacting Pub. L. No. 98–369 to limit retroactive payments of pension in the case of claimants who file claims more than 45 days after the date of a veteran's death provide an adequate basis for prohibiting consideration of expenses in determining prospective entitlement for the period following the date of claim?

*Held*

a. The last sentence of 38 CFR 3.272(h) is inconsistent with 38 U.S.C. 1503(a)(3) in providing that expenses of a veteran's last illness paid by the veteran's surviving spouse subsequent to the veteran's death, but prior to the date of the surviving spouse's entitlement to death pension, may not be deducted from countable income for the purpose of determining entitlement to improved death pension. VA may not rely upon the last sentence of 38 CFR 3.272(h) as a basis for denying a death pension claim or reducing the amount of benefits payable.

b. (1) There is no basis for the differing treatment currently accorded under 38 CFR 3.272(h) for expenses of a veteran's last illness paid prior to the

date of a veteran's death and those paid after the date of death but before the date of a surviving spouse's entitlement to death pension.

(2) Congress' intent in enacting Pub. L. No. 98–369 to limit retroactive payments of pension in the case of claimants who file claims more than 45 days after the date of a veteran's death does not provide an adequate basis for prohibiting consideration of expenses of a veteran's last illness in determining prospective entitlement for the period following the date of a claim for improved death pension.

*Effective date:* March 28, 2000.

**VAOPGCPREC 02–2000**

*Question Presented*

May the Department of Veterans Affairs (VA) through rulemaking authorize special monthly compensation under 38 U.S.C. § 1114(k) (k-rate SMC) for a service-connected mastectomy?

*Held*

Section 1114(k) of title 38, United States Code, authorizes a special rate of compensation for the disabilities specified in that provision. Neither section 1114(k) nor VA's general rulemaking authority, 38 U.S.C. § 501(a), delegates to VA authority to recognize by rulemaking additional injuries or conditions not specified in section 1114(k) for which the special rate of compensation will be paid. By authorizing that rate of compensation for "anatomical loss or loss of use of one or more creative organs," Congress intended to compensate for loss of a procreative, or reproductive, organ, which does not include the breast. Therefore, VA may not by rulemaking authorize special monthly compensation under section 1114(k) for a service-connected mastectomy.

*Effective date:* April 3, 2000.

**VAOPGCPREC 03–2000**

*Question Presented*

a. When the Department of Veterans Affairs (VA) issues an amendment to a provision of its rating schedule while a claim for an increased rating is pending, what is the proper analysis for determining whether, and to what extent, the pending claim is governed by the prior rating-schedule provision or the revised rating-schedule provision?

**VAOPGCPREC 04–2000**

*Question Presented*

A. Do provisions of paragraph 7.21 in Veterans Benefits Administration (VBA) Adjudication Procedure Manual M21–1 (Manual M21–1), part VI, pertaining to claims involving asbestos-related diseases constitute regulations which are binding on the Department of Veterans Affairs (VA)?

B. Is medical-nexus evidence required to establish a well-grounded claim for service connection for an asbestos-related disease referenced in paragraph 7.21 of VBA Manual M21–1, Part VI, and allegedly due to in-service asbestos exposure?

*Held*

A.(1) Paragraph 7.21a., b., c., and d.(3) of Veterans Benefits Administration Adjudication Procedure Manual M21–1, Part VI, and the fourth and fifth sentences of paragraph 7.21d.(1) of that manual are not substantive in nature. However, relevant factors discussed in paragraphs 7.21a., b., and c. must be considered and addressed by the Board in assessing the evidence regarding an asbestos-related claim in order to fulfill the Board's obligation under 38 U.S.C. § 7104(d)(1) to provide an adequate statement of the reasons and bases for a decision.

(2) The first three sentences of paragraph 7.21d. (1) of Veterans Benefits. Administration Adjudication Procedure Manual M21–1, Part VI, establish a procedure which, in light of current case law, adjudicators are required to follow in claims involving asbestos-related diseases. However, to the extent that paragraph 7.21d.(1) of that manual establishes claim-development procedures, those procedures are only applicable in the case of a well-grounded claim.

(3) Paragraph 7.21d.(2) of Veterans Benefits Administration Adjudication Procedure Manual M21–1, Part VI, should be regarded as substantive. However, that paragraph should not be treated as binding to the extent it may adversely affect a claimant by requiring that a particular asbestos-related disease be rated by analogy to a specified condition, where a rating more favorable to the claimant would be obtained by reference to current rating criteria for the particular disease in VA's rating schedule. Similarly, where the current rating schedule contains no criteria specific to the asbestos-related disease, paragraph 7.21d(2) should not be treated as binding to the extent it would adversely affect a claimant by requiring that the asbestos-related disease be rated by analogy to a particular condition, where a rating more favorable to the claimant would be obtained by rating by analogy to another disease pursuant to 38 CFR 4.20.

B. Medical-nexus evidence is required to establish a well-grounded claim for service connection for an asbestos-related disease referenced in paragraph 7.21 of Veterans Benefits Administration Adjudication Procedure Manual M21–1, Part VI, and allegedly due to in-service asbestos exposure.

*Effective date:* April 13, 2000.

**Withdrawn Precedent Opinion**

**VAOPGCPREC 13–94**

"* * * G.C. Prec. 13–94 [VAOPGCPREC 13–94] held the following:

Service connection may not be established for a disability incurred following the date on which a veteran was discharged from active military duty, although the discharge was subsequently voided and full active-duty credit granted by a Board for Correction of Military Records to a date after the date on which injury occurred, because the veteran was not engaged in active service at that time."

VAOPGCPREC 13–94 was overruled by *Spencer* v. *West,* 2000 WL 266117 (Vet. App., March 13, 2000). Accordingly, VAOPGCPREC 13–94 is hereby withdrawn.

Effective Date: March 13, 2000.

By direction of the Secretary.

**Leigh A. Bradley,**

*General Counsel.*

[FR Doc. 00–12867 5–22–00; 8:45 am]

BILLING CODE 8320–01–M

# Corrections

Federal Register

Vol. 65, No. 100

Tuesday, May 23, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Parts 600 and 660

**[Docket No. 991223347–9347; I.D. 042600B]**

### Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

*Correction*

In rule document 00–11108 beginning on page 25881 in the issue of Thursday, May 4, 2000, make the following corrections:

1. On page 25882, in the first column, in the first paragraph, in the fourth line, "1,000 (454 kg)" should read "1,000 lb (454 kg)".

2. On the same page, in the third column, in the second paragraph, in the ninth line, "2,100 (953 kg)" should read "2,100 lb (953 kg)".

3. On page 25885, in the second column, in section IV, in paragraph C(4), in the first line, "the area between 45°20′15″N.lat." should read "the area between 45°03′50″N.lat. and 45°20′15″N.lat.".

4. On the same page, in the third column, in the same section, in the same paragraph, in the third line, "October 1–December 31, 2000:" should read "(b) October 1–December 31, 2000:".

[FR Doc. C0–11108 Filed 5–22–00; 8:45 am]

BILLING CODE 1505–01–D

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 444

**[FRL-6503-6]**

**RIN 2040-AC23**

### Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Commercial Hazardous Waste Combustor Subcategory of the Waste Combustors Point Source Category

*Correction*

In rule document 00–2019 beginning on page 4360 in the issue of Thursday, January 27, 2000, make the following corrections:

1. On page 4379, in the second column, in the eighth paragraph, remove the duplicated text under the heading *"Commercial Hazardous Waste Combustor"*.

**§444.12 [Corrected]**

2. On page 4382, in the table, in the fourth column, the entry under "ASTM" in the third line, "2972-93(A)" should read "D2972-93(A)".

[FR Doc. C0–2019 Filed 5–22–00; 8:45 am]

BILLING CODE 1505–01–D

## DEPARTMENT OF THE INTERIOR

### Bureau of Indian Affairs

### Indian Gaming

*Correction*

In notice document 00–12321 appearing on page 31189 in the issue of Tuesday, May 16, 2000 make the following correction:

In the third column, in the fourth line from the bottom,"Levin" should read "Kevin".

[FR Doc. C0–12321 Filed 5–22–00; 8:45 am]

BILLING CODE 1505–01–D

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Part II

# Department of Defense

Department of the Army, Corps of Engineers

33 CFR Part 334
United States Marine Corps Restricted Area, New River, North Carolina, and Vicinity; Proposed Rule

**DEPARTMENT OF DEFENSE**

**Department of the Army, Corps of Engineers**

**33 CFR Part 334**

**United States Marine Corps Restricted Area, New River, NC, and Vicinity**

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of proposed rulemaking and request for comments.

**SUMMARY:** The Corps of Engineers is proposing to amend the regulations which establish restricted areas in the waters of New River, North Carolina, and vicinity to include restricted areas for United States Marine Corps Waterborne Refueling Training Operation in the Morgan Bay Sector, Farnell Bay Sector, and Grey Point Sector. Refueling operations would occur approximately fourteen times a year. Small craft would be refueled with unleaded gasoline or diesel fuel from a tactical bulk refueling system loaded onto a floating platform or vessel. The purpose is for the Marine Corps to gain proficiency in refueling operations and associated activities in riverine environments. The restricted area currently serves as a firing range; but there are no provisions for refueling operations. The changes to the regulation are necessary to safeguard Marine Corps vessels, ribbon bridges, and United States Government facilities from sabotage and other subversive acts, accidents, or other incidents of similar nature. These changes are also necessary to protect the public from potentially hazardous conditions which may exist as a result of the Marine Corps use of the area.

**DATES:** Written comments must be submitted on or before June 22, 2000.

**ADDRESSES:** U.S. Army Corps of Engineers, ATTN: CECW–OR, 20 Massachusetts Avenue, NW, Washington, D. C. 20314–1000

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank Torbett, Headquarters Regulatory Branch, Washington, D.C. at (202) 761–1787, or Mr. Ernie Jahnke, Corps of Engineers, Wilmington District, at 910–251–4467.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX, of the Army Appropriations Act of 1919 (40 Stat 892 U.S.C.3) the Corps proposes to amend the restricted area regulations in 33 CFR Part 334.400.

**Procedural Requirements**

*a. Review Under Executive Order 12866*

This proposed rule is issued with respect to a military function of the Defense Department and the provisions of Executive Order 12866 do not apply.

*b. Review Under the Regulatory Flexibility Act*

These proposed rules have been reviewed under the Regulatory Flexibility Act (Pub. L. 96–354), which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). The Corps expects that the economic impact of the establishment of this restricted area would have practically no impact on the public, no anticipated navigational hazard or interference with existing waterway traffic and accordingly, certifies that this proposal if adopted, will have no significant economic impact on small entities.

*c. Review Under the National Environmental Policy Act*

An environmental assessment has been prepared for this action. We have concluded, based on the minor nature of the proposed additional restricted area regulations, that this action, if adopted, will not have a significant impact to the quality of the human environment, and preparation of an environmental impact statement is not required. The environmental assessment may be reviewed at the District Office listed at the end of **FOR FURTHER INFORMATION CONTACT**, above.

*d. Unfunded Mandates Act*

This proposed rule does not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Act. We have also found under Section 203 of the Act, that small Governments will not be significantly and uniquely affected by this rulemaking.

**List of Subjects in 33 CFR Part 334**

Marine Safety, Navigation (water), Transportation, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR Part 334, as follows:

**PART 334—DANGER ZONE AND RESTRICTED AREA REGULATIONS**

1. The authority citation for Part 334 continues to read as follows:

**Authority:** 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3)

2. Section 334.440 would be amended by adding paragraph (c)(6) to read as follows:

**§ 334.440 New River, N.C., and vicinity; Marine Corps firing ranges,**

* * * * *

(c) * * *

(6) No person shall enter or remain within a 2 acre area surrounding a waterborne refueling training operation, in either the Grey Point Sector, Farnell Bay Sector, or Morgan Bay Sector as described in paragraph (b) of this section, for the duration of the training operation after a notice to conduct a waterborne refueling training operation has been published in the local notice to mariners and has been broadcast over the Marine Band radio network. The 2 acre area surrounding a waterborne refueling training operation will be patrolled and persons and vessels shall clear the area under patrol upon being warned by the surface patrol craft.

* * * * *

Dated: May 9, 2000.

**Charles M. Hess,**

*Chief, Operations Division, Office of Deputy Commanding General for Civil Works.*

[FR Doc. 00–12764 Filed 5–22–00; 8:45 am]

**BILLING CODE 3710–92–U**

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Federal Register

Tuesday,
May 23, 2000

Part III

# Department of Defense
# General Services Administration
# National Aeronautics and Space Administration

48 CFR Part 17
Federal Acquisition Regulation; Executive Agent; Proposed Rule

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Part 17**

**[FAR Case 99–004]**

**RIN 9000–AI42**

## Federal Acquisition Regulation; Executive Agent

**AGENCIES:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Withdrawal of proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) agreed to withdraw FAR case 99–004, Executive Agent, because it is no longer necessary. The proposed rule was published in the **Federal Register** at 64 FR 44100, August 12, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 99–004, withdrawal.

**SUPPLEMENTARY INFORMATION:**

### A. Background

The rule which was published in the **Federal Register** at 64 FR 44100, August 12, 1999, proposed amending FAR part 17 to add another example of an interagency acquisition that is not subject to the Economy Act. This rule is being withdrawn because it is no longer necessary.

### List of Subjects in 48 CFR Part 17

Government procurement.

Dated: May 17, 2000.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

[FR Doc. 00–12868 Filed 5–22–00; 8:45 am]

**BILLING CODE 6820–EP–U**

# Reader Aids

**Federal Register**

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## CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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Air quality implementation plans; approval and promulgation; various States:
- California; published 3-24-00

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
- Vinclozolin; published 5-23-00

**SMALL BUSINESS ADMINISTRATION**

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- 8(a) business development/ small disadvantaged business status determinations; published 5-23-00

**TRANSPORTATION DEPARTMENT**

**Federal Aviation Administration**

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- Special visual flight rules; published 3-24-00

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- Controlled substances; summary forfeiture; published 5-23-00

Merchandise, special classes:
- Softwood lumber shipments from Canada; published 5-23-00

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**Animal and Plant Health Inspection Service**

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- Horses from contagious equine meritis (CEM)-affected countries—
  - Spain; Spanish Pure Breed horses; comments due by 6-2-00; published 4-3-00

**AGRICULTURE DEPARTMENT**

**Food Safety and Inspection Service**

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**ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD**

Electronic and information technology accessibility standards; comments due by 5-30-00; published 3-31-00

**COMMERCE DEPARTMENT**

**National Oceanic and Atmospheric Administration**

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  - Atlantic Coast horseshoe crab; comments due by 6-2-00; published 5-3-00
- Caribbean, Gulf, and South Atlantic fisheries—
  - Gulf of Mexico and South Atlantic coastal migratory pelagic resources; comments due by 5-31-00; published 5-16-00

Ocean and coastal resource management:
- Coastal Zone Management Act Federal consistency regulations; comments due by 5-30-00; published 4-14-00

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- Twenty-year patent term; patent term adjustment; implementation; comments due by 5-30-00; published 3-31-00

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- Competitive negotiated acquisitions; discussion requirements; comments due by 6-2-00; published 4-3-00
- Procurement integrity rewrite; comments due by 5-30-00; published 3-29-00

**EDUCATION DEPARTMENT**

Grants:
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**ENERGY DEPARTMENT**

**Energy Efficiency and Renewable Energy Office**

Consumer products; energy conservation program:
- Fluorescent lamp ballasts—
  - Energy conservation standards; comments due by 5-30-00; published 3-15-00

**ENVIRONMENTAL PROTECTION AGENCY**

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- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 5-31-00; published 5-1-00

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- Tennessee and Alabama; comments due by 5-30-00; published 4-19-00
- Texas; comments due by 5-30-00; published 4-19-00
- Various States; comments due by 5-30-00; published 4-19-00

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**FEDERAL HOUSING FINANCE BOARD**

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**FEDERAL TRADE COMMISSION**

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Maryland; comments due by 5-30-00; published 4-28-00

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/nara/index.html. Some laws may not yet be available.

**H.R. 434/P.L. 106–200**

Trade and Development Act of 2000 (May 18, 2000; 114 Stat. 251)

**S. 1744/P.L. 106–201**

To amend the Endangered Species Act of 1973 to provide that certain species conservation reports shall continue to be required to be submitted. (May 18, 2000; 114 Stat. 307)

**S. 2323/P.L. 106–202**

Worker Economic Opportunity Act (May 18, 2000; 114 Stat. 308)

**Last List May 10, 2000**

## Public Laws Electronic Notification Service (PENS)

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Of significant historical interest is Appendix B, which lists the agencies and functions of the Federal Government abolished, transferred, or renamed subsequent to March 4, 1933.

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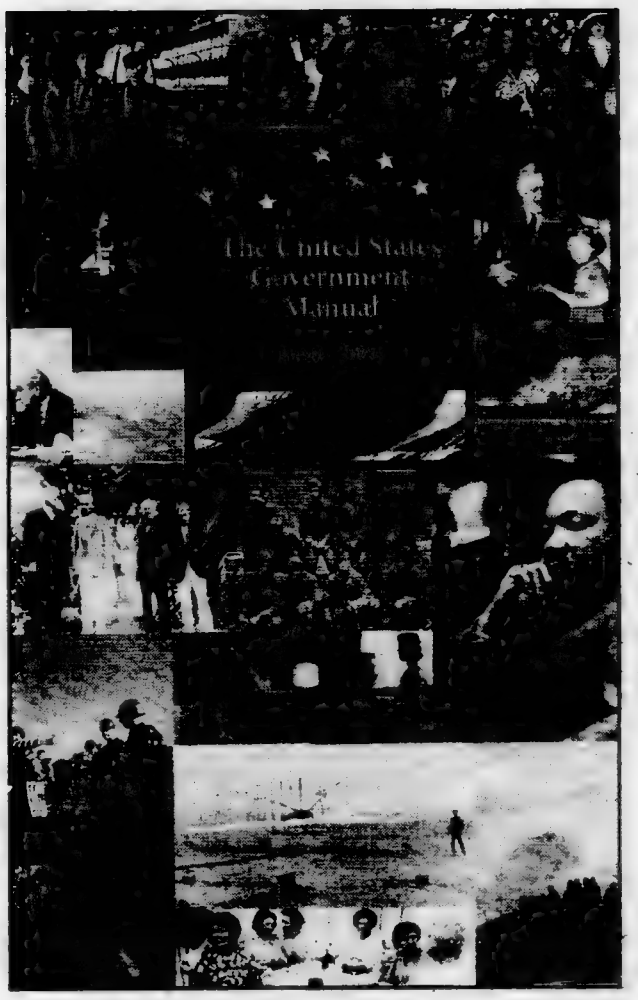


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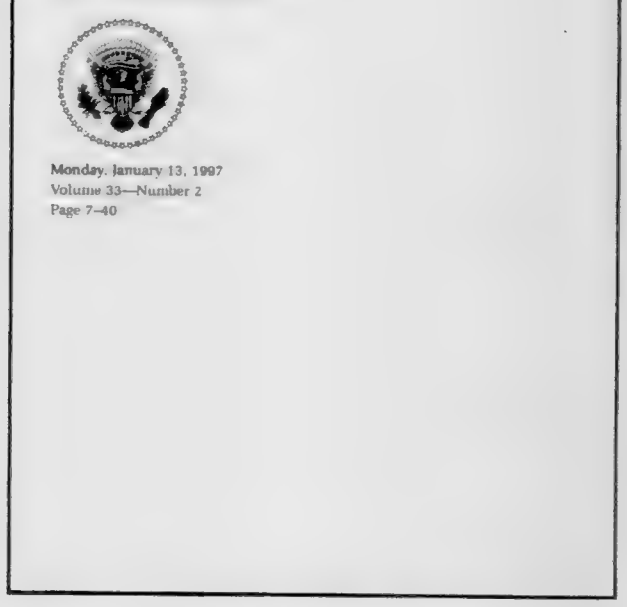


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